

# Brisbane City Council

CLAYTON UTZ-(BRISBANE CITY COUNCIL -  
COLIN JENSEN)

Response to Req. Ref# 1748942  
SM #1758551 CDJ-56 #1758552 &  
CDJ-57 # 1758553 File 540236/1  
Volume 1 of 3 ORIGINAL

CC

## Queensland Floods Commission Inquiry

quiry

### Seventh Statement of Colin David Jensen

20 October 2011

Volume 1 of 3

Clayton Utz  
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Our reference 12376/12282/80117397

Legal\305403798.1

**QFCI**

Date: 10/11/11 Jm

Exhibit Number: 955

## Seventh Statement of Colin David Jensen

I, **Colin David Jensen**, Chief Executive Officer of Brisbane City Council, of 266 George Street, Brisbane, in the State of Queensland, state on oath as follows:

A. Attachment "**CDJ-56**" is a copy of a notice from the Commissioner of the Queensland Floods Commission of Inquiry (**Commission**) dated 13 October 2011 (**Notice**). This Statement is provided in response to the Notice.

B. For the purposes of responding to the Notice and preparing this Statement I have, in my position as Chief Executive Officer of Brisbane City Council (**Council**), had access to:

- (a) the business records of Council; and
- (b) Council officers,

to obtain information to provide a response to the Notice. Unless otherwise stated, the matters set out in this Statement are based on my own knowledge or the information derived from the above sources. I have necessarily relied on Council officers to assist me in preparing this Statement. While I am familiar with the matters dealt with in this Statement, I am Chief Executive Officer of a large organisation and therefore I am not necessarily familiar with all of the detail.

C. I set out below my responses to each of the questions set out in the Notice.

D. The documents from the above sources and attached to this Statement have been collated by Council officers under my instruction.

1. **A detailed account of the agreement between the Brisbane City Council and Mirvac for the Brisbane City Council to purchase part of the Tennyson Reach development site following the January 2011 floods, including:**

- (a) **a chronology of dealings between the Brisbane City Council and Mirvac regarding the agreement;**
- (b) **a chronology of any involvement of the State of Queensland regarding the matter;**
- (c) **whether there were any reports which informed the Brisbane City Council in relation to the agreement;**

**Colin David Jensen**

**Witness**

**(d) all information received by Brisbane City Council [in relation to] the Tennyson development site and valuations;**

**(e) the reasons Brisbane City Council entered into the agreement.**

- 1.1 The Notice defines the Tennyson Reach development site as "the sites of the former Tennyson power station and animal research centre". The land purchased by Council from Mirvac Queensland Pty Limited is Lots 3, 4, 5 and 101 on Survey Plan 195275 (**Land**). The Land is a part of the former Tennyson power station and does not relate to the animal research centre.
- 1.2 Council's records indicate that on or about 2 March 2011, Matthew Wallace's office contacted the then Lord Mayor's office to seek a meeting to discuss Mirvac's Tennyson Reach development and a potential community based opportunity. Mr Wallace is the CEO of Mirvac Queensland.
- 1.3 I am informed by Cr Amanda Cooper and believe that, on behalf of the then Lord Mayor, she met with Mr Wallace in her office on 31 March 2011. At this meeting, Mirvac presented its idea to proceed no further with its approved development and sought to gauge Council's interest to acquire the balance of the property for parkland.
- 1.4 It is likely that Cr Cooper contacted me shortly after the meeting on 31 March and informed me that there was an opportunity for Council to develop a significant parkland on the balance of the land for the approved, but not yet constructed, Mirvac Tennyson Reach development.
- 1.5 I agreed with Cr Cooper that this was a rare opportunity for Council to acquire approximately 2.5 hectares of riverfront land for public purposes at a reasonable price and it should therefore be carefully considered further. It was my understanding that the market for prime riverfront property in Brisbane was already relatively flat at the time due to the downturn in the global and regional economies and that this was heightened due to the then recent January Brisbane River flooding. The timing was therefore good in terms of Council achieving a reasonable purchase for the acquisition.
- 1.6 Cr Cooper's office arranged through my office a meeting for 12 April 2011 between Cr Cooper, Matthew Wallace and myself at the site of the Queensland Government Building Revival Forum (where they were both were to be in attendance) to discuss the Tennyson Reach parkland proposal.

Colin David Jenser

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- 1.7 The meeting took place on 12 April as scheduled. I recall that Matthew Wallace presented his concept for Mirvac to not proceed with the remaining development but rather offer Council the opportunity to acquire the site for park purposes.
- 1.8 A subsequent meeting was organised to take place in Cr Cooper's office on 13 May 2011. The meeting took place on that date as scheduled. The attendees at the meeting were Cr Cooper, Mr Wallace, [REDACTED] and myself. [REDACTED] Mirvac's consultant landscape architect, laid out his architectural concept for the park development. This concept showed a high quality park development that provided good linkage between the river and the adjacent Tennis Centre and would be of benefit to the wider community. I made a handwritten note of the meeting. It was agreed in principle that Council was interested in acquiring the property at fair value for park purposes, subject to mutual approvals and acceptable terms and conditions. In particular, it was noted that Mirvac would require various board approvals and also the approval of the Body Corporate. Further, I would need to obtain various Council approvals.
- 1.9 The final price of \$15m includes a fully completed high-quality parkland, designed and constructed by Mirvac. I formed the view that the price is favourably comparable to that of other park acquisition and development that Council (and the State) has undertaken or is considering.
- 1.10 I exchanged several brief phone calls with Mr Wallace over the following fortnight to clarify and expand the proposal prior to receipt of a draft Memorandum of Understanding from Mirvac on 25 May 2011. I responded to the draft Memorandum of Understanding by letter dated 2 June 2011.
- 1.11 During the period of the discussions referred to above, to my knowledge there had been no contact by Council with the State government on this matter as none was necessary.
- 1.12 From that point, I had little direct involvement with Mirvac's representatives. There were perhaps a few phone calls with Mr Wallace to discuss progress in general terms, but nothing of substance was canvassed.
- 1.13 Attachment "CDJ-57" is a paginated chronological bundle of documents from Council's records relating to the dealings between Council, Mirvac Queensland Pty Limited and Mirvac Constructions (Qld) Pty Ltd (collectively **Mirvac**) in relation to:

- (i) the agreement for Council to purchase the Land; and

Colin Da [REDACTED]

W [REDACTED]

3

- (ii) the agreement for Mirvac to design and construct parkland works on the Land.

**(Bundle)**

1.14 The Bundle includes:

- (a) documents evidencing meetings between Council and Mirvac;
- (b) contractual documents between Council and Mirvac including:
  - (i) the draft Memorandum of Understanding referred to in 1.9;
  - (ii) the exchange of correspondence between Council and Mirvac setting out the contractual negotiations;
  - (iii) the contract for the sale of the Land dated 30 June 2011; and
  - (iv) the contract for the design and construction of the parkland works dated 30 June 2011;
- (c) documents which evidence the involvement of the State of Queensland;
- (d) valuations for the Land;
- (e) reports relating to the Land; and
- (f) the Submission to Council's Establishment and Co-ordination Committee dated 21 June 2011.

1.15 The reasons Council entered into the contracts referred to in 1.11 are set out in the Submission to Council's Establishment and Co-ordination Committee dated 21 June 2011.

1.16 In summary, the acquisition and development of the Tennyson Reach Parkland provided an excellent and infrequent opportunity to provide high-quality riverside public realm, associated with a major sports facility.

I make this statement conscientiously believing the same to be true, and by virtue of the provisions of the Oaths Act 1867 (Qld).

Colin D


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**Dated 20 October 2011**

**Signed and declared** by Colin David Jensen at  
Brisbane in the State of Queensland  
this 20th day of October 2011  
Before me:

  
\_\_\_\_\_  
Signature of declarant  
The declaration is  
made

  
\_\_\_\_\_  
Signature of declarant

  
\_\_\_\_\_  
The declaration is made

Our ref: Doc 1748942

13 October 2011

Mr Collin Jensen  
Chief Executive Officer  
Brisbane City Council  
GPO Box 1434  
BRISBANE QLD 4001

**REQUIREMENT TO PROVIDE STATEMENT TO COMMISSION OF INQUIRY**

I, Justice Catherine E Holmes, Commissioner of Inquiry, pursuant to section 5(1)(d) of the *Commissions of Inquiry Act 1950* (Qld), require Mr Collin Jensen to provide a written statement, under oath or affirmation, to the Queensland Floods Commission of Inquiry, in which the said Mr Jensen provides the following:

1. a detailed account of the agreement between the Brisbane City Council and Mirvac for the Brisbane City Council to purchase part of the Tennyson Reach development site following the January 2011 floods, including:
  - a. a chronology of dealings between the Brisbane City Council and Mirvac regarding the agreement;
  - b. a chronology of any involvement of the State of Queensland regarding the matter
  - c. whether there were any reports which informed the Brisbane City Council in relation to the agreement;
  - d. all information received by Brisbane City Council the Tennyson development site and valuations;
  - e. the reasons Brisbane City Council entered into the agreement.

The 'Tennyson Reach development site' means the sites of the former Tennyson power station and animal research centre.

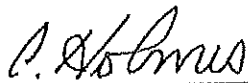
In addressing these matters, Mr Jensen is to:

- provide all information in his possession and identify the source or sources of that information;
- make commentary and provide opinions he is qualified to give as to the appropriateness of particular actions or decisions and the basis of that commentary or opinion.

Mr Jensen may also address other topics relevant to the Terms of Reference of the Commission in the statement, if he wishes.

The statement is to be provided to the Queensland Floods Commission of Inquiry by 4pm, Thursday, 20 October 2011.

The statement can be provided by post, email or by arranging delivery to the Commission by emailing [info@floodcommission.qld.gov.au](mailto:info@floodcommission.qld.gov.au).



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Commissioner  
Justice C E Holmes



**From:** [REDACTED]  
**To:** [REDACTED]  
**Date:** 2/03/2011 6:10:06 PM  
**Subject:** Meeting with Lord Mayor

---

Hi [REDACTED]

Hope you have gotten over your cold!

Matthew Wallace, CEO, Mirvac Queensland would like to meet with the Lord Mayor to discuss Mirvac's Tennyson Reach development and a potential community based opportunity.

Could you please let me know a suitable time for the Lord Mayor. I note that Matthew is unavailable the week commencing 14th March 2011.

Kind regards,

[REDACTED]  
Executive Assistant to CEO  
Development Queensland

Mirvac  
Level 2, 164 Grey Street South Bank QLD 4101 Australia PO Box 5121 West End QLD 4101  
T + [REDACTED]  
<http://www.mirvac.com>  
Electronic Data Transmission Disclaimer

Please consider the environment before printing emails and attachments

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This message has passed through an insecure network.  
Please direct all enquiries to the message author.

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**From:** [REDACTED]  
**To:** [REDACTED]  
**Date:** 24/03/2011 2:38:40 PM  
**Subject:** Meeting : Cr Cooper and Matthew Wallace, Mirvac

---

Hi [REDACTED]

Thank you for your assistance in arranging a time for Matthew Wallace, CEO, Mirvac Queensland to meet Cr Amanda Cooper, which I confirm as follows:

**Date** Thursday, 31st March 2011  
**Time** 4.30pm  
**Location** Cr Cooper's office, Level 12, Brisbane Square

I have discussed with Matthew the topic of the meeting and he advised that the topic is highly confidential however it relates to Mirvac's intentions with regard to the balance development site at Tennyson Reach.

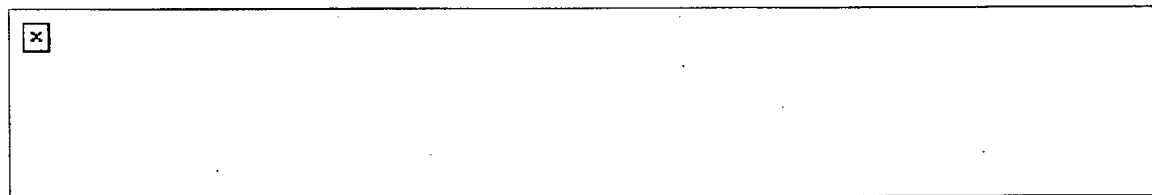
If you require any further information, please do not hesitate to contact me.

Kind regards,

[REDACTED]  
Executive Assistant to CEO  
Development Queensland

Mirvac  
Level 2, 164 Grey Street South Bank QLD 4101 Australia PO Box 5121 West End QLD 4101

[REDACTED] <http://www.mirvac.com>  
Electronic Data Transmission Disclaimer



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This message has passed through an insecure network.  
Please direct all enquiries to the message author.

---

**From:** [REDACTED]  
**To:** [REDACTED]  
**Date:** 24/03/2011 3:15:28 PM  
**Subject:** Re: Meeting : Cr Cooper and Matthew Wallace, Mirvac

Thanks [REDACTED]

[REDACTED] could you please have Matthew come to level 11 in Brisbane Square to reception and let them know he has a meeting with Cr Cooper.

We have a secured floor on 12

Any problems please let me know

Regards  
[REDACTED]  
[REDACTED]

PA to Cr Amanda Cooper  
Chairman of Neighbourhood Planning and Development Assessment  
Brisbane City Council  
Email: [REDACTED]  
Phone [REDACTED]

Please Note: The Integrity Act 2009 makes it an offence for Councillors or their staff to knowingly allow lobbying activities unless the lobbyist is first registered with the State.

In responding to this email, you should advise in writing whether or not the purpose of your visit is a lobbying activity within the meaning of the Integrity Act 2009; and if so, you should also advise you are in compliance with all provisions in the Integrity Act 2009.

Regrettably, if an answer to this question is not received in writing your request for a meeting may be refused.

>>> [REDACTED] 24/03/2011 2:38:17 pm >>>  
Hi [REDACTED]

Thank you for your assistance in arranging a time for Matthew Wallace, CEO, Mirvac Queensland to meet with Cr Amanda Cooper, which I confirm as follows:

Date Thursday, 31st March 2011  
Time 4.30pm  
Location Cr Cooper's office, Level 12, Brisbane Square

I have discussed with Matthew the topic of the meeting and he advised that the topic is highly confidential, however it relates to Mirvac's intentions with regard to the balance development site at Tennyson Reach.

If you require any further information, please do not hesitate to contact me.

Kind regards,  
[REDACTED]

Executive Assistant to CEO  
Development Queensland

Mirvac  
Level 2, 164 Grey Street South Bank QLD 4101 Australia PO Box 5121 West End QLD 4101

T [REDACTED] <http://www.mirvac.com>  
Electronic Data Transmission Disclaimer < <http://ext.mirvac.com/email-disclaimer> >  
[<http://ext.mirvac.com/images/signature/earthhour.jpg>]

Please consider the environment before printing emails and attachments

**From:** [REDACTED]  
**To:** Amanda Cooper; [REDACTED]  
**Date:** 31/03/2011  
**Time:** 4:30:00 PM - 5:00:00 PM  
**Subject:** Meeting with Cr Cooper and Matthew Wallace re Tennyson reach  
**Place:** Cr Cooper's chair office 12

---

**From:** [REDACTED]  
**To:** [REDACTED]  
**Date:** 8/04/2011 1:30:21 PM  
**Subject:** Meeting with Cr Cooper and Colin Jensen

---

Hi [REDACTED]

Cr Cooper would like to arrange a meeting with Colin, herself and Matthew Wallace CEO of Mirvac Development QLD.

They would like to discuss Tennyson Reach.

Could you please contact me to arrange a time.

Regards

[REDACTED]  
PA to Cr Amanda Cooper  
Chairman of Neighbourhood Planning and Development Assessment  
Brisbane City Council  
Email: [REDACTED]  
Phone: [REDACTED]

Please Note: The Integrity Act 2009 makes it an offence for Councillors or their staff to knowingly allow lobbying activities unless the lobbyist is first registered with the State.

In responding to this email, you should advise in writing whether or not the purpose of your visit is a lobbying activity within the meaning of the Integrity Act 2009; and if so, you should also advise you are in compliance with all provisions in the Integrity Act 2009.

Regrettably, if an answer to this question is not received in writing your request for a meeting may be refused.

**From:** [REDACTED]  
**To:** Amanda Cooper; [REDACTED]  
**Date:** 12/04/2011  
**Time:** 10:00:00 AM - 10:15:00 AM  
**Subject:** meet with Colin Jensen and Matthew Wallace ar morning tea time  
**Place:** Building Revival Forum

**From:** [REDACTED]  
**To:** Amanda Cooper; [REDACTED]  
**Date:** 12/04/2011  
**Time:** 10:00:00 AM - 10:15:00 AM  
**Subject:** meet with Colin Jensen and Matthew Wallace ar morning tea time  
**Place:** entrance to Auditorium 1 level 2

---

Matthew Wallace [REDACTED]

[REDACTED]

---

**Subject:** Meeting with Cr Cooper & Matthew Wallace, CEO, Mirvac Development re Tennyson Reach  
**Location:** Meet at the entry of Auditorium 1 on Level 2 (Mr Wallace Mob: [REDACTED])  
**Start:** Tue 12/04/2011 10:00 AM  
**End:** Tue 12/04/2011 10:30 AM  
**Recurrence:** (none)  
**Meeting Status:** Meeting organizer  
**Organizer:** Colin Jensen

Hi [REDACTED]

Cr Cooper would like to arrange a meeting with Colin, herself and Matthew Wallace CEO of Mirvac Development QLD.

They would like to discuss Tennyson Reach.

Could you please contact me to arrange a time.

Regards

[REDACTED]

[REDACTED]

PA to Cr Amanda Cooper  
Chairman of Neighbourhood Planning and Development Assessment  
Brisbane City Council  
Email: [REDACTED]  
Phone: [REDACTED]



**From:** [REDACTED]  
**To:** Amanda Cooper; [REDACTED]  
**Date:** 13/05/2011  
**Time:** 8:30:00 AM - 9:00:00 AM  
**Subject:** Meeting with Cr Cooper and Matthew Wallace Mirvac  
**Place:** Cr Cooper's Chair Office 12

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**Subject:** Mtg with Cr Cooper and Matthew Wallis, Mirvac  
**Location:** Cr Cooper's Office - BSQ-L12  
  
**Start:** Fri 13/05/2011 8:30 AM  
**End:** Fri 13/05/2011 9:00 AM  
  
**Recurrence:** (none)  
  
**Meeting Status:** Meeting organizer  
  
**Organizer:** Colin Jensen

follow up from pre Easter meeting?

Contact:



Fri 13.5.11

08.1.0

Misc Post

From Landscape Matters Program.

Re: Tennyson Regional Park

Misc Timings

ELT 8.30am Fri 20th

Board mtg June 10th

- incl on MoU.

Prof Report by end June 28th

- 6th June Pgs

Pre-budget amounts.

30 June Tpt of land for Stage 1/2/3

14.22

Returned call & left message



26/5/2011

RECEIVED  
OFFICE OF THE CHIEF EXECUTIVE  
25 MAY 2011  
56496

From: Matthew Wallace [REDACTED]  
To: [REDACTED]  
Date: 25/05/2011 2:42 pm  
Subject: Fwd: Tennyson MOU  
Attachments: DRAFT MOU 25 May, 2011.pdf; ATT00001.htm

Hello Colin,

First draft of an MOU regarding Tennyson as discussed. Please forgive my lack of protocol. I'm sending this from home and I'm sure that Shelly will be shaking her head when she reads this.

Please call me anytime on my mobile number to discuss any aspect of this proposal.

Best regards,

Matthew.

Sent from my iPad

Begin forwarded message:

From: [REDACTED]  
To: [REDACTED]  
Subject: Tennyson MOU

Hi Matt

Please find attached the Draft Tennyson parklands MOU with attachments.

Regards,

[REDACTED]

Senior Development Manager  
Development Queensland

Mirvac  
Level 2, 164 Grey Street South Bank QLD 4101 Australia PO Box 5121 West End QLD 4101  
T: [REDACTED]

<http://www.mirvac.com> - <http://www.mirvac.com>  
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\*\*\*\*\*  
This message has passed through an insecure network.  
Please direct all enquiries to the message author.  
\*\*\*\*\*

*→ Jay Evans  
- Confidential -  
for expert review.  
I note some differences  
from my  
version that  
we will need to  
discuss  
Thats  
bl  
25/5*

## MEMORANDUM OF UNDERSTANDING TENNYSON REACH – PARKLAND

### Purpose

1. Mirvac is the owner of the Land.
2. Council wishes to acquire the Land for the purposes of public parkland.
3. Mirvac is willing to undertake the works to construct the public parkland on behalf of Council.
4. The parties wish to record their agreement in relation to the Land to enable formal documentation to be produced.

### Terms

Council	Brisbane City Council
Mirvac	Mirvac Queensland Pty Limited
Land	<p>The land contained and described in:</p> <ul style="list-style-type: none"> <li>o Lot 101 SP195275</li> <li>o Lot 5 SP195275</li> <li>o Lot 4 SP195275</li> <li>o Lot 3 SP195275</li> </ul> <p>as outlined in the plan attached to this MOU as schedule 1.</p>
Purchase Price	\$15,000,000 plus GST (if any)
Settlement	Settlement will take place on 31 July 2011 at which time title to the Land will transfer to Council
Payment	<p>Council will pay the Purchase Price in installments as follows:</p> <ol style="list-style-type: none"> <li>1. \$6,000,000 – on settlement;</li> <li>2. \$8,000,000 – on the later of: <ul style="list-style-type: none"> <li>➤ 31 July 2012; and</li> <li>➤ practical completion of Stage 1 of the Works.</li> </ul> </li> <li>3. \$1,000,000 – on the later of: <ul style="list-style-type: none"> <li>➤ 31 July 2013; and</li> <li>➤ Practical completion of Stage 2 of the Works.</li> </ul> </li> </ol>
Lease	At settlement, Council will grant a lease to Mirvac to enable Mirvac to undertake the Works. The terms of the

	<p>lease will include the following:</p> <p>Term: commencing on the settlement date and expiring on 31 July 2013 (unless terminated before hand)</p> <p>Early termination: The lease will automatically terminate upon Mirvac obtaining practical completion of Stage 2 of the Works.</p> <p>Permitted Use: Carrying out the Works and using the sales office to continue marketing and sales activities in relation to residential dwellings owned by Mirvac at Tennyson Reach.</p> <p>Exclusive Use: Mirvac shall be entitled to exclude any person from the Land during the term of the Lease to ensure safety while the Works are being undertaken.</p> <p>Rent: \$10 for the entire Term.</p>
Design	<p>Mirvac must undertake the Design of the Works on the Land at its own cost.</p> <p>In undertaking the Design, Mirvac is responsible for the appointment and management of any consultants required to carry out the Design.</p>
Works	<p>Mirvac must undertake all of the works on the Land necessary to convert the Land into public parkland as contemplated in the Master Plan attached as Schedule 2 of this MOU.</p> <p>Mirvac will pay costs associated with the Works as set out in the attached Scope of Works attached in Schedule 3. The Scope of Works is to be agreed between the parties and will be based on the Master Plan.</p> <p>Council will be responsible for any costs not described in the Cost Plan.</p> <p>Mirvac is responsible for obtaining all approvals necessary to carry out the Works.</p> <p>Mirvac must ensure that all of the Works are undertaken in accordance with all necessary approvals.</p> <p>It is currently contemplated that the Works will be undertaken in two stages as follows:</p> <ul style="list-style-type: none"> <li>➤ Stage 1 – parkland to the east of the sales office; and</li> <li>➤ Stage 2 – the sales office and that part of the Land to the east of the sales office.</li> </ul> <p>Practical completion of the Works will be certified by an independent certifier appointed by Mirvac and approved</p>

	by Council (such approval not to be unreasonably withheld).
Defects liability	A defects liability period of 12 months will apply in relation to the Works. Mirvac will not be required to provide any security or bond in relation to obligations under the defects liability period.
Contracts	Mirvac will be responsible for the preparation of documents to give effect to the above.
Good faith	The parties must work together in good faith in an attempt to finalise and execute documents to give effect to this MOU by 30 June 2011.
Duty	Council must pay any stamp duty payable in relation to the contract for sale contemplated in this MOU.
Costs	Mirvac and Council will be responsible for their own costs in association with the agreement contemplated in this MOU.
Non-binding	With the exception of the items titled 'Good faith' and 'Confidentiality' this memorandum of understanding is non-binding, is not intended to create binding legal obligations and remains subject to contract. The parties will negotiate in good faith with a view to entering into more detailed binding definitive contracts in relation to the matters set out in this MOU as soon as practicable.
Confidentiality	<p>Each party must keep the terms of this MOU, and any confidential information obtained by the parties in the course of furthering the aims of this MOU, confidential. A party may, however, make any disclosures in relation to the terms of this MOU as it thinks necessary to:</p> <ul style="list-style-type: none"> <li>➤ its professional advisers, bankers, financial advisers and financiers, if those persons undertake to keep the information disclosed confidential;</li> <li>➤ comply with any applicable law or requirement of any regulatory body (including any relevant stock exchange); or</li> <li>➤ any of its employees to whom it is necessary to disclose the information, on receipt of an undertaking from that employee to keep the information confidential.</li> </ul>

	<p>Any other public discussion, announcement, notice or media release may only be made jointly and in agreement by Council and Mirvac.</p>
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### Signing Page

Executed by **Brisbane City Council** in )  
accordance with section 127 of the )  
Corporations Act 2001 (Cth) )  
)

.....  
Company Secretary/Director

.....  
Director

.....  
Name of Company Secretary/Director  
(print)

.....  
Name of Director (print)

Executed by **Mirvac Queensland Pty** )  
**Limited ACN 060 411 207** in )  
accordance with section 127 of the )  
Corporations Act 2001 (Cth) )  
)

.....  
Company Secretary/Director

.....  
Director

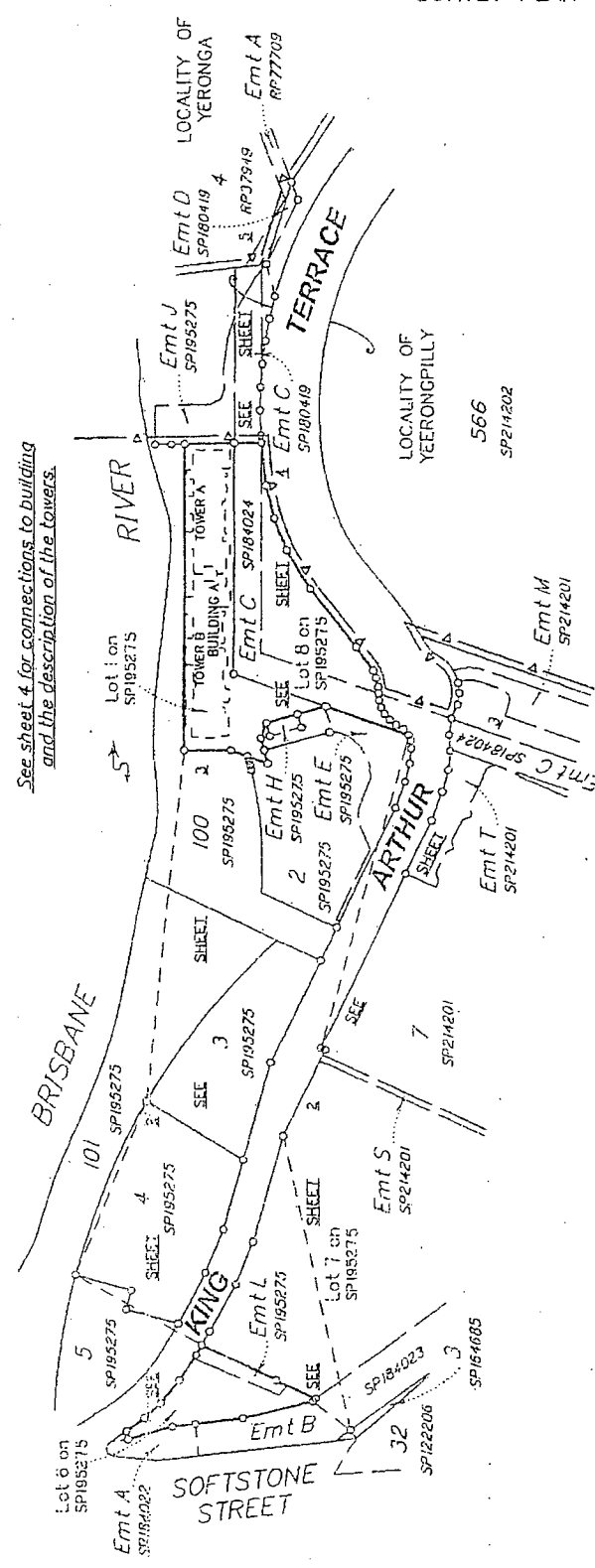
.....  
Name of Company Secretary/Director  
(print)

.....  
Name of Director (print)

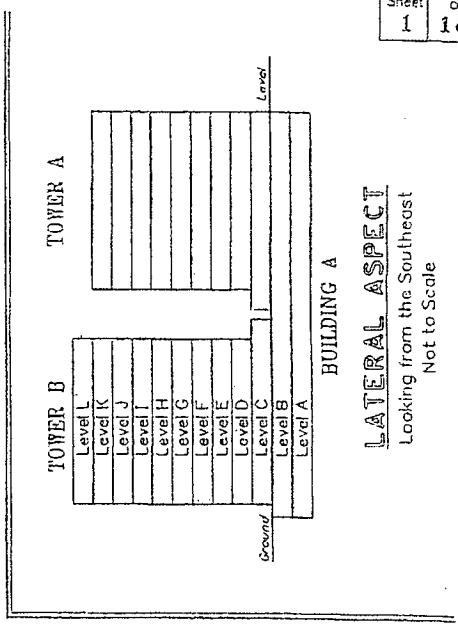
Schedule 1 – Land



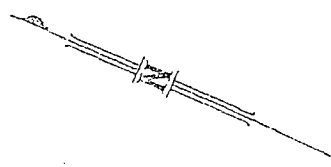
SURVEY PLAN



See sheet 4 for connections to building and the description of the towers.

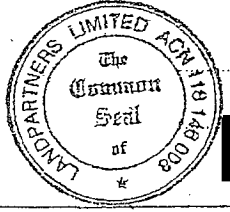


**LATERAL ASPECT**  
Looking from the Southeast  
Not to Scale

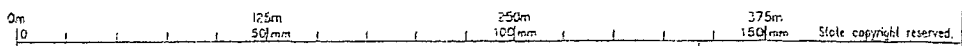


**Area of Base Parcels**  
(X-30-29-X) ..... 1.0 ha  
(19-21-5-13-19) ..... 1931 m<sup>2</sup>  
**Total** ..... 1.193 ha  
Reg placed at all subject corners unless otherwise stated.  
Original information compiled from SP214201 in the Department of Natural Resources and Water.

LandPartners Limited (ACN 115 146 008) hereby certify that the land comprised in this plan was surveyed by the corporation, by Roland Pi- is ODSEY, cadastral surveyor for whose work the corporation accepts responsibility and that the plan is accurate, that the said survey was performed in accordance with the Survey and Mapping Infrastructure Act 2003 and Surveyors Act 2003 and associated Regulations and Standards and that the said survey was completed on 28/01/2009.



Director  
18/02/09  
Date



**Plan of Lots 3101-3117, 3201-3216, 3301-3311, 4101-4126, 4201-4227, 4301-4318 & Common Property**

cancelling Lots 1 & 8 on SP195275 and Lot 6 on SP214201

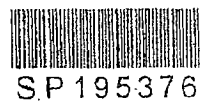
PARISH: YEERONGPILLY COUNTY: Stanley

Meridian: SP195275

F/N's: No

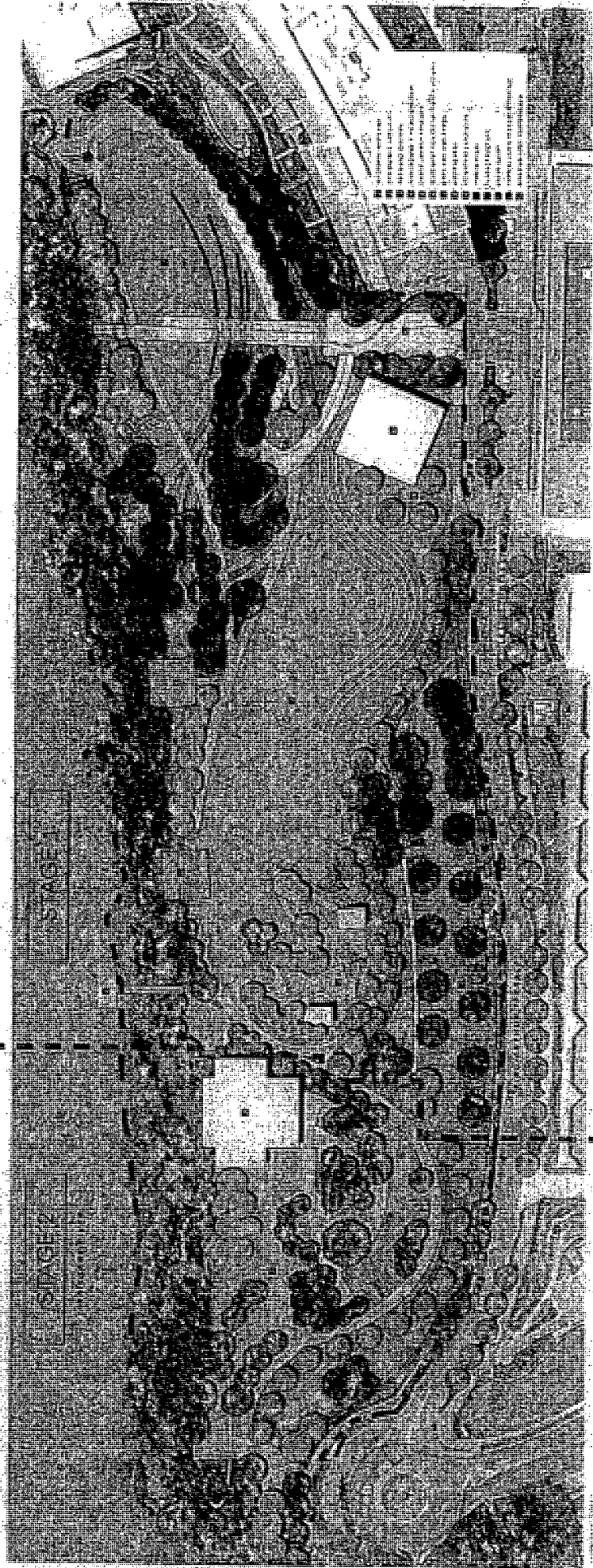
Scale: 1:2500

Format: BUILDING



Plan Status:

Schedule 2 – Master Plan



Schedule 3 – Scope of Works

## Tennyson Reach Parkland- Schematic Design

### SCOPE OF WORKS

#### Preparation & Bulk Excavation

- Site preparation including clearing of vegetation, stripping of topsoil and removing from site
- Demolition and removal of existing vehicular access road crossing through the site
- Excavate to correct levels and profiles
- Place approx. 11,200m<sup>3</sup> of fill materials, imported to site once subgrades have been excavated, tested, surveyed and approved. All fill materials will be compacted, tested and verified

#### Existing Service Pits & Channels

- Design and construct suspended slab system over existing in ground structures to withstand the placement of imported materials above
- Demolish existing 15m<sup>3</sup> blockwall and remove from site
- Remove existing chain wire fencing

#### Community Building (Existing Mirvac Sales Office)

- Relocate existing building within 20m including structural certification but not limited to:
  - Relocation of services & rainwater tank
  - Raise building height 500mm
  - Modifications to existing staircase
  - Reconfigure access ramp
  - Replace existing timber cladding with face brick
- Retain & Make-good Landscaping & Carpark
  - Make-good existing driveway & carpark
  - Make-good existing landscaping pathways

#### Create canoe storage to underfloor area:

- Internal demolition and alteration of existing structure
- Design and Construct slab on ground, 200mm thick
- Horizontal timber batten screen to under floor area
- Canoe storage 6m by 8m
- Pavement to forecourt area

#### Canoe launching pontoon

- Design and construct canoe launching pontoon approx. 60m<sup>2</sup>

#### Power Station/ Pump House Structures

- Design and construct structural slab system over existing structures
- Stabilise existing structures
- Design and construct boardwalk over Pump Station (as per master plan)

#### Playground

- Playground Equipment - \$250,000 Allowance
- Rubber (500sqm) & sand (800sqm) softfall to playground
- Shade sails to playground
- Concrete seating wall – 185m

#### Amphitheatre

- Concrete terrace seating wall- 435sqm

#### Public Plaza

- Pavement area- 1450sqm
- Cube Arbour structure- \$340,000 Allowance

#### Driveway & Carpark

- Sealed bitumen driveway & carpark- 47 spaces
- Linemarking
- Disabled parking provisions

#### Pathways & Ramp

- Remove existing temporary PWD ramp & balustrade at Public plaza
- Construct pathways & ramps as shown on masterplan (approx 2800m<sup>2</sup>)
- Tactile ground surface indicators

#### Gabion Retaining Walls- (max 1000mm high) - 424m

#### 3 Park Shelters (approx 5m x 7m)

#### Toilet Block

- Proprietary toilet facilities



### Art & Signage

- Public Art- \$60,000 allowance
- Interpretative Signage- \$10,000 allowance
- Feature & Directional Signage- \$45,000 allowance

### Furniture

- 6 Wheelie Bin Enclosures
- 15 Park Seats
- 390 Timber Bollards
- 10 Removable bollards
- 60 Feature Bollards
- 2 Lock Rails
- Bike Racks for 20 bikes
- 4 Drinking fountains including connection
- 8 Picnic benches

### Services

- Site Water connection
- Stormwater Gully pits
- Connection to water mains
- 25 Post mounted lights
- 45 Bollard lights
- Shelter lights as required
- 4 BCC Hose Cocks

### Landscaping

- 780m<sup>2</sup> concrete garden edge
- 450m<sup>2</sup> compacted decomposed granite
- 11,000m<sup>2</sup> Turf including topsoil
- 7,000m<sup>2</sup> Topsoil to garden beds
- 7,000m<sup>2</sup> Bark mulch to garden beds
- 40x Ex ground Trees
- 65x 200L Advance tree
- 60x 100L Tree/Advanced Shrub
- 150x 45L Tree/ Advanced Shrub
- Revegetation to riparian edge
- Biofilter and stormwater garden

Establishment

- 12 weeks establishment
- 52 weeks maintenance

Mirvac Project Management





*Dedicated to a better Brisbane*

## Brisbane City Council

To: File Date: 02/06/2011

CC:

**Brisbane City Legal Practice**  
Office of the Lord Mayor & CEO

From: [REDACTED]  
Chief Legal Counsel

Level 20 Brisbane Square  
266 George Street  
Brisbane Qld 4000  
GPO Box 1434  
Brisbane Qld 4001

Re: Mirvac Tennyson Reach Parkland Proposal

Phone: 07 3403 5313  
Facsimile: 07 3334 0058

Our Ref: OP302033

I met today with representatives of Mirvac. Also present was [REDACTED] and [REDACTED]

I tabled draft letter as attached. They are generally happy with the draft letter but will provide their comments tomorrow.

Issues discussed:

1. All land has been rehabilitated and taken environmental; and contamination registers.
2. They would like title to be transferred before 30 June 2011 Lot 3 may have to be a future settlement having regard to process to remove it from body corporate.
3. We will need access for our valuer to their valuer to get valuation to justify price paid.
4. Mirvac will wear any additional duty if value is determined by OSR to be above the purchase prices.
5. Sales Office may need to be subleased.
6. Council wants sales office left in good condition to fit out as a community centre. Mirvac will provide information on current condition.
7. Happy to provide a parent company guarantee
8. Agree that in respect of \$15m Mirvac will not charge profit margin. It may do so for work in excess of that figure ordered by Council.
9. Mirvac will provide information on car parks and public consultation on park proposals.
10. They will provide advice on sustainability measures to be incorporated in the parkland design.
11. Deal to be subject to Mirvac Board approval.

MEMORANDUM

12. Deal to be subject to Council formal and budget approval including sole sourcing.

I will send redrafted letter.

Regards

  
Chief Legal Counsel  
Brisbane City Legal Practice  
**OFFICE OF THE LORD MAYOR & CEO**



*Dedicated to a better Brisbane*  
Our reference: Colin Jensen

SUBJECT  
TO  
COUNCIL  
APPROVAL  
& BUDGET

2 June 2011

The Manager  
Mirvac Queensland Pty Limited

Dear Sir/Madam

### Proposal for Tennyson Reach Parkland

I can confirm that Council is willing to negotiate with your company for the sale of vacant land in the Tennyson Reach Development to Council and for the construction of parkland works on that vacant land by your company for Council to an agreed value.

The terms and conditions which will form the basis of the negotiations for the final agreement are as follows:-

#### The Land

1. The following land is to be transferred in Freehold Title on Settlement Date free from encumbrance:

The whole of Lot 4 on Survey Plan 195275  
The whole of Lot 5 on Survey Plan 195275  
The whole of Lot 101 on Survey Plan 195275 subject to Energex Easement.

2. The following land is to be converted from Community Title to Freehold Title free from encumbrance at the expense of Mirvac.

Lot 3 on Survey Plan 1955275 Community Management Statement 39925

All consents required for this conversion are to be obtained by Mirvac at Mirvac's cost.

3. Council will be allowed a 30 day Due Diligence Period before settlement.
4. Mirvac to provide full and complete disclosure of all material relevant to the land being transferred.

5. The anticipated settlement date is <sup>30 JUNE</sup> 24 July 2011. FOR LOT 104 4 & 5
6. The anticipated purchase price payable at settlement is \$6m subject to receipt by Council of a valuation supporting that price. THIS MAY HAVE TO BE SPLIT FOR THE TWO TRANCHES OF PROPERTY  
DEFERRED SETTLEMENT DATE FOR LOT 3 TO ALLOW FOR EXCISION

Office of the Lord Mayor & CEO  
Brisbane City Legal Practice  
Reception Level 20 Brisbane Square 266 George Street Brisbane Qld 4000 GPO Box 1434 Brisbane Qld 4001  
T 07 3403 5313 F 07 3334 0058 www.brisbane.qld.gov.au

7. All stamp duty payable on the anticipated purchase price will be the responsibility of Council. Any stamp duty imposed above that figure or otherwise is the responsibility of Mirvac.

#### The Lease

1. Mirvac is to be granted a lease of the transferred land.
2. The Lessee will be Mirvac Queensland Pty Limited. (If different company parent guarantee may be required).
3. The term of the lease will be from the Settlement Date until practical completion of Stage 2 of the Parkland Works.
4. Rental will be \$10 total.
5. The leased premises can only be used for:-
  - (a) construction of Stage 1 and 2 of the Parkland Works.
  - (b) conduct of the existing sales office for marketing and sales of the Tennyson Reach Development. *THIS MAY BE THE SUBJECT OF A SUBLEASE BY MIRVAC*

#### The Parkland Works

1. Mirvac ~~Queensland Pty Limited~~ *CONSTRUCTION P/L* is to construct the Parkland Works *PARENT* (If different company parent guarantee may be required).
2. Mirvac is to develop the Design and Specification for the Parkland Works at its own expense for approval by Council.
3. Mirvac will construct the Parkland Works in accordance with the approved design and specification.
4. ~~Mirvac will be paid no greater than \$15m by Council for the delivery of the Parkland Works and the transfer of the land.~~
5. Any costs of delivery of the works in excess of that \$15m figure will be the responsibility of Mirvac unless Council agrees to the contrary.
6. ~~Mirvac will not be entitled to claim any profit margin or overheads for its involvement in the Parkland Works.~~
7. Mirvac will not ~~procure~~ *OR* engage subcontractors except as authorised by council.
8. Council will only be liable for variation claims where it has previously expressly approved such variation.
9. Council will not be liable for the costs of removal of contamination, latent conditions and delay costs.
10. The Parkland Works will be delivered in 2 stages.
11. Stage 1 represents the Parkland Works to the east of the sale office.

12. Stage 2 represents the relocation and refurbishment of the Sales Office and the balance of the Parkland Works to the west of the Sales Office.

13. Council will engage its own superintendent and independent verifier to check the Parkland Works as they are undertaken.

14. Stage 1 works will be paid as follows:-

- (a) on an agreed milestone \$4m
- (b) at practical completion \$3m
- (c) at expiry of defects liability period \$1m

Total \$8m

15. Stage 2 works will be paid as follows:-

- (a) on an agreed milestone \$500k
- (b) at practical completion \$400k
- (c) at expiry of defects liability period \$100k

Total \$1m

16. Mirvac is to agree to a defects liability period of 12 months.

17. In addition Mirvac agrees to take the works on maintenance at its own <sup>COST</sup> for a period of 12 months from practical completion.

18. Mirvac is responsible for obtaining all necessary approvals for the Parkland Works, lease and transfer of land at Mirvac's expense.

19. Mirvac is to allow full access to its financial and project accounts for the purposes of audit and verification of payment claims under this agreement.

If you are happy with these terms and conditions please sign the duplicate of this letter and return it to me.

I will then arrange for the documents to be prepared in draft for your approval prior to execution.

I can confirm that there is no intention for this exchange of letters to amount to in any way to an enforceable agreement or undertaking or to create binding legal obligations.

FINAL AGREEMENT WILL BE SUBJECT TO FORMAL BUDGET APPROVAL & COUNCIL'S FORMAL APPROVAL PRESS

Yours faithfully

SUBJECT TO MIRVAC BOARD APPROVAL

Colin Jensen  
CHIEF EXECUTIVE OFFICER

**From:** [Redacted]  
**To:** [Redacted] Adam Moore  
**CC:** [Redacted] Colin Jensen ...  
**Date:** [Redacted]  
**Subject:** RE: Tennyson Reach Parkland Proposal  
**Attachments:** Tennyson Park Letter w Mirvac comments.doc

Please find attached Mirvac's comments also in tracked changes.

Please call me with any questions or comments.

Regards,

[Redacted]  
Senior Development Manager  
Development Queensland

Mirvac  
Level 2, 164 Grey Street South Bank QLD 4101 Australia PO Box 5121 West End QLD 4101  
T [Redacted]  
<http://ext.mirvac.com/email-disclaimer>

Please consider the environment before printing this email and attachments

**From:** [Redacted]  
**Sent:** Friday, 3 June 2011 8:42 AM  
**To:** Adam Moore; [Redacted] Matthew Wallace  
**Cc:** [Redacted] Colin Jensen; [Redacted]  
**Subject:** Tennyson Reach Parkland Proposal

Matthew

Here is the updated draft letter with track changes as a result of our meeting yesterday. Please advise me if you have any comments or amendments to add.

Regards

[Redacted]  
Chief Legal Counsel | Brisbane City Legal Practice  
OFFICE OF THE LORD MAYOR & CEO | Brisbane City Council  
GPO Box 1434 | Brisbane Qld 4001

Phone: [Redacted]  
[Redacted]

*3/6/2011  
Revised  
down with  
all amendments  
in order*

\*\*\*\*\*  
This message has passed through an insecure network.  
Please direct all enquiries to the message author.  
\*\*\*\*\*

\*\*\*\*\*  
This message has passed through an insecure network.



Please direct all enquiries to the message author.

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Our reference: Colin Jensen

*Dedicated to a better Brisbane*

2 June 2011

The Manager  
Mirvac Queensland Pty Limited

Dear Sir/Madam

**Proposal for Tennyson Reach Parkland**

I can confirm that Council is willing to negotiate with your company for the sale of vacant land in the Tennyson Reach Development to Council and for the construction of parkland works on that vacant land by your company for Council to an agreed value.

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**The Land**

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- The whole of Lot 4 on Survey Plan 195275
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- 2. The following land is to be transferred to Council after it is converted from Community Title to Freehold Title free from encumbrance at the expense of Mirvac.

- Lot 3 on Survey Plan 195275 Community Management Statement 39925

- All consents required for this conversion are to be obtained by Mirvac at Mirvac's cost.

- 3. Council will be allowed a 20 day Due Diligence Period before settlement.

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- 4. Mirvac to provide full and complete disclosure of all material relevant to the land being transferred.

- 5. The anticipated settlement date for Lots 4, 5 and 101, 30 June 2011. Lot 3 will be transferred 14 days after it is converted to freehold title.

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Office of the Lord Mayor & CEO  
 Brisbane City Legal Practice  
 Reception Level 20 Brisbane Square 268 George Street Brisbane Qld 4000 GPO Box 1434 Brisbane Qld 4001  
 T 07 3403 6313 F 07 3334 0000 www.brisbane.qld.gov.au

2

6. The anticipated purchase price payable at settlement is \$6m subject to receipt by Council of a valuation supporting that price. Price to be apportioned between Lot 3 and the rest of the land
7. All stamp duty payable on the anticipated purchase price will be the responsibility of Council. Any stamp duty imposed above that figure or otherwise is the responsibility of Mirvac.

#### The Lease

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2. The Lessee will be Mirvac ~~Constructions (Old) Pty Limited,~~
3. The term of the lease will be from the Settlement Date until practical completion of Stage 2 of the Parkland Works.
4. Rental will be \$10 total.
5. The leased premises can only be used for:-
  - (a) construction of Stage 1 and 2 of the Parkland Works.
  - (b) conduct of the existing sales office for marketing and sales of the Tennyson Reach Development. This may be the subject of a sublease to a real estate agent for the same purpose

**Deleted:** Queensland  
**Deleted:** (If different company parent guarantee may be required).

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11. Stage 1 represents the Parkland Works to the east of the sale office.

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(a)	on an agreed milestone	\$4m
(b)	at practical completion	\$3m
(c)	at expiry of defects liability period	\$1m
Total		\$8m

16. Stage 2 works will be paid as follows:-

(a)	on an agreed milestone	\$500k
(b)	at practical completion	\$400k
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Total		\$1m

17. Mirvac is to agree to a defects liability period of 12 months.

18. In addition Mirvac agrees to take the works on maintenance at its own cost for a period of 12 months from practical completion.

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22. Final agreement will always be subject to formal approval under Council's processes including sole source approval and budget approval.

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I can confirm that there is no intention for this exchange of letters to amount to in any way to an enforceable agreement or undertaking or to create binding legal obligations.

Yours faithfully

Colin Jensen  
CHIEF EXECUTIVE OFFICER

4

From: [Redacted]  
 To: [Redacted]  
 Date: 03/06/2011 4:13:40 pm  
 Subject: Letter from Mr Colin Jensen, CEO, Brisbane City Council - Proposal for Tennyson Reach Parkland

*302*  
*302040*  
*CEO*  
*Tennyson*

Ms [Redacted]

Please find attached. The original will be forwarded in the post.

Thank you

[Redacted]  
 Senior Administration Support Co-ordinator | CEO's Office  
 OFFICE OF THE LORD MAYOR AND CEO | Brisbane City Council  
 GPO Box 1434 | Brisbane Qld 4001  
 Brisbane Square | Level 23, 266 George Street, Brisbane, Qld 4000  
 Phone: [Redacted]  
 Email: [Redacted]  
 CEO office protocols: [http://ispweb.bcc.qld.gov.au/ceo\\_web/default.jsp](http://ispweb.bcc.qld.gov.au/ceo_web/default.jsp)

CC: [Redacted]



Brisbane City Council ABN 72 002 765 795

Office of the Chief Executive  
 Level 23 Brisbane Square  
 266 George Street Brisbane Qld 4000  
 GPO Box 1434 Brisbane Qld 4001  
 T 07 3403 4501 F 07 3334 0043  
 www.brisbane.qld.gov.au

*Dedicated to a better Brisbane*

2 June 2011

[REDACTED]  
 Senior Development Manager  
 Development Queensland  
 Mirvac Queensland Pty Limited  
 Email: [REDACTED]  
 BRISBANE

Dear [REDACTED]

### **Proposal for Tennyson Reach Parkland**

I can confirm that Council is willing to negotiate with your company for the sale of vacant land in the Tennyson Reach Development to Council and for the construction of parkland works on that vacant land by your company for Council to an agreed value.

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Total		\$8m

16. Stage 2 works will be paid as follows:-

(a)	on an agreed milestone	\$500k
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If you are happy with these terms and conditions please sign the duplicate of this letter and return it to me.

I will then arrange for the documents to be prepared in draft for your approval prior to execution.

I can confirm that there is no intention for this exchange of letters to amount to in any way to an enforceable agreement or undertaking or to create binding legal obligations.

Yours faithfully



Colin Jensen  
CHIEF EXECUTIVE OFFICER

Tennyson Reach Acceptance

From: Matthew Wallace  
To:  
Date: 03/06/2011 4:43:37 pm  
Subject: Tennyson Reach Acceptance

Dear

Please find attached signed acceptance from Matthew Wallace.

Kind regards

Matthew Wallace  
Chief Executive Officer  
Development Queensland

Mirvac  
Level 2, 164 Grey Street South Bank QLD 4101 Australia PO Box 5121 West End QLD 4101

T <http://www.mirvac.com>  
Electronic Data Transmission Disclaimer<<http://ext.mirvac.com/email-disclaimer>>

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\*\*\*\*\*  
This message has passed through an insecure network.  
Please direct all enquiries to the message author.  
\*\*\*\*\*

CC:

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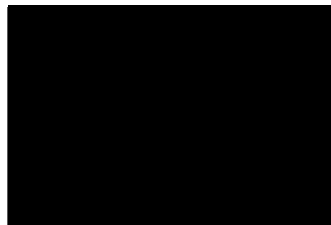
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CHIEF EXECUTIVE OFFICER



Approved by Matthew Wallace  
 Chief Executive Officer  
 Mirvac  
 Development Queensland  
 3 June 2011

**From:** [REDACTED]  
**To:** [REDACTED]  
**Date:** 8/06/2011 4:27 pm  
**Subject:** Tennyson Mirvac

Dear [REDACTED]

I confirm I am preparing a Head Agreement, which will basically be a long form of the CEO letter.

I am awaiting confirmation from the CPO about whether Council will be issuing an AS4000-1997 for the construction work. On the expectation that we will be required to use it, the Head Agreement shall contain some cross references to AS4000-1997.

The "construction lease" will be constituted by clauses contained in the Head Agreement.

I confirm Mirvac is to prepare the transfer documents as the vendor.

I look forward to moving this to completion and expect to have a draft Head Agreement available for your consideration tomorrow.

Regards

[REDACTED]  
Solicitor/Team Leader Commercial | Brisbane City Legal Practice  
Brisbane City Legal Practice  
Office of the Lord Mayor & CEO

Ph: [REDACTED]  
E-mail: [REDACTED]

**From:** [REDACTED]  
**To:** [REDACTED]  
**Date:** 9/06/2011 10:48 am  
**Subject:** Tennyson Reach Parklands

Dear [REDACTED]

Further to our conversation this is the new clause proposing a compensation in the unfortunate event that Council does wish to purchase the 4th lot but Mirvac is unsuccessful in having it removed from the CTS:

if, however, Settlement does not occur before 14 July 2011, (for the reason that the CMS lots is not able to be removed from the CTS as a freehold non CTS lot on the Qld Titles register), Council may either at its sole election, affirm or terminate the Contract of sale. In the event that Council affirms Contract of Sale 2, the purchase price will be reduced by XXXX which represents the sinking and admin fund payments to the Body Corporate required for a 20 year period, following settlement. This clause is for the sole benefit of the Council.

The reference "Contract of Sale 2" is to differentiate from the contract of sale for the other lots which of course will be "Contract of Sale 1".

Look forward to your feedback.

Regards

[REDACTED]  
Solicitor/Team Leader Commercial | Brisbane City Legal Practice  
Brisbane City Legal Practice  
Office of the Lord Mayor & CEOPh: [REDACTED]  
E-mail: [REDACTED]

[Redacted]

To: [Redacted]  
Subject: Fwd: Tennyson Parkland

Attachments: TEXT.htm



TEXT.htm (6 KB)

>>> [Redacted]

Hi [Redacted]

Thank-you for your time to discuss Tennyson this morning.

I understand that internal discussions within Council for the Due Diligence are in their initial stages, but in the mean time I will aim to get you the following information to begin discussions:

- \* Evidence that the site has been removed from the EMR,
- \* Survey Information,
- \* Plans of Structures on site, and
- \* Copies of the Development agreement with the State (subject to legal advice)

I have also set up a tentative site visit time for 4pm on Tuesday, 14 June.

Please feel free to contact me with any questions or comments.

Regards,

[Redacted]

Senior Development Manager  
Development Queensland

Mirvac  
Level 2, 164 Grey Street South Bank QLD 4101 Australia PO Box 5121 West End QLD 4101 T

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\*\*\*\*\*

[Redacted]

Subject: Fwd: Re: Tennyson Parkland

Attachments: TEXT.htm



TEXT.htm (6 KB)

>>> [Redacted]

[Redacted] I look forward to receiving the following documents. These will greatly assist us in accelerating the due diligence process and also look forward to the site meeting on Tuesday.

Regards

[Redacted]

Group Manager  
Project Management & Structures  
City Design  
Brisbane Infrastructure

Tel: [Redacted]

>>> [Redacted] >>>

Hi [Redacted] Thank-you for your time to discuss Tennyson this morning. I understand that internal discussions within Council for the Due Diligence are in their initial stages, but in the mean time I will aim to get you the following information to begin discussions: \* Evidence that the site has been removed from the EMR, \* Survey Information, \* Plans of Structures on site, and \* Copies of the Development agreement with the State (subject to legal advice) I have also set up a tentative site visit time for 4pm on Tuesday 14 June. Please feel free to contact me with any questions or comments. Regards, [Redacted] Senior Development Manager Development Queensland

Mirvac  
Level 2, 164 Grey Street South Bank QLD 4101 Australia PO Box 5121 West End QLD 4101 T

1 [Redacted]  
<http://www.mirvac.com> Electronic Data Transmission Disclaimer Please consider the environment before printing emails and attachments

\*\*\*\*\* This message has passed through an insecure network. Please direct all enquiries to the message author. \*\*\*\*\*

**Tennyson Reach Parklands**

---

**From:** [REDACTED]  
**To:** [REDACTED]  
**Date:** 09/06/2011 5:25 pm  
**Subject:** Tennyson Reach Parklands  
**CC:** Maria Menchise

---

Dear [REDACTED]

As always we want more time so please consider this a working draft.

It was quickly put together amongst other matters requiring urgent attention so ideally I would have preferred another day or two, however, given the time constraints, and to meet my promise to you, I now attach the first draft Head Agreement for your consideration.

I must reserve the rights to make further changes once I receive further instructions. Nonetheless, I like to think we will be able to execute this document early next week.

Regards

[REDACTED]  
Solicitor/Team Leader Commercial | Brisbane City Legal Practice  
Brisbane City Legal Practice  
Office of the Lord Mayor & CEO

Ph: [REDACTED]  
E-mail: [REDACTED]



HEAD AGREEMENT

For the

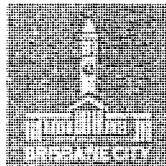
*TENNYSON REACH PARKLANDS*

*Between*

Brisbane City Council

*and*

Mirvac Queensland Pty Ltd



*Dedicated to a better Brisbane*  
BRISBANE CITY COUNCIL  
266 George Street  
Brisbane QLD 4000

TABLE OF CONTENTS

1. Interpretation .....	3
2. Term.....	5
3. The Land .....	5
4. Construction of the Parkland and the Construction lease.....	6
5. Default.....	7
6. Reports and Inspections .....	8
7. Insurance .....	9
8. Indemnity .....	9
9. GST .....	9
10. Default and Termination .....	9
11. Dispute Resolution.....	10
12. Confidentiality and Non-Disclosure .....	11
13. Right to Information and Disclosure.....	12
14. Privacy and Disclosure of Personal Information .....	13
15. Notices .....	14
16. Governing Law .....	14
17. Waiver .....	14
18. Variation .....	15
19. Costs .....	15
20. Assignment .....	15
21. Entire Agreement.....	15
22. Relationship of Parties.....	15
23. Execution .....	15
Schedule 1 .....	17

THIS AGREEMENT is made this                      day of June 2011.

**BETWEEN:** Brisbane City Council ABN 72 002 765 795, a body corporate constituted under the *City of Brisbane Act 2010* of 266 George Street, Brisbane in the State of Queensland.

("Council")

**AND:** Mirvac Queensland Pty Ltd ABN 24 060 411 207 with a principal place of business Level 2, 164 Grey Street, South Bank Qld 4101

("Mircac")

## RECITALS

- A. Mirvac is the owner of the land ("the Land") suitable for the construction of a parkland ("Parkland").
- B. Council has agreed to purchase the Land.
- C. Upon purchase of the Land, Council will permit Mirvac to construct the Parkland Works.
- D. The parties wish to record the terms of their agreement.

## NOW THE PARTIES AGREE AS FOLLOWS -

### 1. Interpretation

- 1.1 In this Agreement unless the context otherwise requires or the contrary intention appears, the following terms must have the meanings assigned to them -

"**Agreement**" means this document and all schedules and annexures to this document.

"**Business Day**" means a day (other than a Saturday, Sunday or a public holiday) on which banks are open for business in Queensland.

"**Budget**" means the construction budget for the Parkland Works as approved by Council.

"**Certificate of Classification**" means a certificate of classification pursuant to Section 108A of the Building Act 1975 (Qld).

"**Confidential Material**" means any or all of either party's information stored on materials irrespective of whether such information has been deemed or designated as confidential (or not) by a party and, without limiting the generality of the foregoing, does not include any information which a party can establish was either in the possession of another party or was independently developed or acquired by another party:

- (a) prior to a party's engagement under this Agreement; and
- (b) which was disclosed by one party to the other party prior to the commencement of negotiations for the subject matter of this Agreement.

"**Construction Contract**" means an AS4000-1997 contract between Council and Mirvac Constructions (Qld) Pty Ltd, on terms satisfactory to Council, to construct the Parkland Works as approved by Council.

"**Council**" means Brisbane City Council and unless inconsistent with the subject matter, includes Council's employees, agents, contractor and invitees.

**"Financial Acquittal"** means a reconciliation of cost of the completion of the construction of the Parkland Works against line items in the Budget, and a copy of a budget specifying the final cost of the construction of the Parkland Works using the classifications in the Budget plus any additional line items for otherwise unaccountable budget items.

**"GST"** has the same meaning as in GST Law.

**"GST Law"** includes *A New Tax System (Goods & Services Tax) Act 1999* (Cth), order, ruling or regulation which imposes or purports to impose or otherwise deals with the administration or imposition of GST on a supply of goods or services in Australia.

**"Land"** means the land specified at Item 1 of Schedule 1.

**"Lease"** means the lease in substantially the same form as the lease annexed as Attachment A to this Agreement.

**"Parkland"** means the parkland development referred to in Item 2 of Schedule 1.

**"Parkland Works"** means the Council approved works for the construction of park amenities and improvements on the Parkland;

**"Completion"** means that stage of the work when all relevant statutory requirements have been complied with and the Certificate of Classification has been issued for the Parkland.

**"Completion Date"** means the date specified at Item 4 of Schedule 1.

**"Site"** means that part of the Land as indicated on the plan in Schedule 2.

**"Stages"** means the stages for the construction of the Parkland Works linked to draw downs specified in Item 2 of Schedule 1;

**"supply"** means a supply which is deemed under the GST Law.

**"tax invoice"** includes a document which is deemed to constitute a tax invoice under the GST Law.

- 1.2 A reference to a person includes a reference to corporations and other entities recognised by law.
- 1.3 In this Agreement the table of contents and the headings to the clauses have been inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of any of the terms and conditions of this Agreement.
- 1.4 A reference to a statute, regulation, ordinance or local law must be deemed to extend to all statutes, regulations, ordinances or local laws amending, consolidating or replacing them.
- 1.5 The singular includes the plural and vice versa.
- 1.6 Words importing one gender must include a reference to all other genders.
- 1.7 A covenant or agreement on the part of two or more persons must be deemed to bind them jointly and severally.
- 1.8 A reference to a clause, schedule or attachment is a reference to a clause, schedule or attachment to this Agreement and includes any amendments to them made in accordance with this Agreement.

- 1.9 Where under or pursuant to this Agreement the day on or by which any act, matter or things is to be done is not a Business Day, such an act, matter or thing may be done on the next Business Day.
- 1.10 References to certificates generally are references to certificates required by the Building Act 1975 (Qld).
- 1.11 In the case of any inconsistency between any of either the Schedules, an Attachment, or a clause contained in this Agreement, the provisions of the clause shall prevail over any Schedule or Attachment, and a Schedule shall prevail over any Attachment, to the extent of any inconsistency.

## 2. Term

Despite the dates of execution of this Agreement, the parties acknowledge and agree that this Agreement is deemed to have commenced and taken effect on and from the execution of this Agreement and will continue until the expiry of the defects liability period in the Construction Contract, unless terminated earlier in accordance with the terms of this Agreement.

## 3. The Land

- 3.1 As soon as reasonably practicable, in the opinion of the Council, the Council will obtain a valuation setting out the market value for Lots 4, 5 and 101 on SP 195275 ("Lots 4,5 and 101") and Lot 3 on SP 1955275 CMS 39925 ("the CMS lot").
- 3.2 The Council and Mirvac will no later 24 June enter into 2 contracts of sale, one contract of sale for Lots 4, 5 and 101 to be settled on 29 June 2011 ("Contract of Sale 1"), and one contract of sale for the CMS lot to be settled on 14 July 2011 ("Contract of Sale 2").
- 3.3 The Contract of Sale 1 for Lots 4, 5 and 101 will be on the REIQ standard conditions for commercial land, with the following special conditions:
- (a) Mirvac to provide the Council with complete disclosure of all material it has in relation to the land. This information to be provided no later than 5 days after the Contract Date;
  - (b) There be 20 day due diligence period where the Council can terminate the contract for any reason caused or contributed by its due diligence investigation. This clause is for the sole benefit of the Council.
  - (c) Land to be sold free of all mortgages, encumbrances, easements, leases, licences, writs, caveats, registered or unregistered etc with the exception of the Energex easement on Lot 10;
  - (d) Land to be clear of land tax at settlement. A land tax clearance certificate will be required prior to settlement, else the purchase price will be reduced by the land tax owing; and
  - (e) The price to be \$4.5 million dollars - (which is based on approx 3/4 of the \$6million price representing approx 3/4 of the land)- plus GST.
- 3.4 The Contract of Sale 2 for the CMS Lot will be on the REIQ standard conditions for commercial land, with the following special conditions:
- (a) Mirvac to provide Council with complete disclosure of all material it has in relation to the land no later than 5 days after the Contract of Sale 2 date;

- (b) there be 20 day due diligence period where Council can terminate the contract for any reason caused or contributed by its due diligence investigation. This clause to be for the sole benefit of Council;
- (c) Land to be sold free of all mortgages, encumbrances, easements, leases, licences, writs, caveats, registered or unregistered etc, and free of the CMS;
- (d) Mirvac undertake all reasonably necessary steps to remove the CMS lot from the CMS;
- (e) settlement to occur 14 days after the CMS lot is removed from the Body Corporate for Tennyson Community Title Scheme 39925 (CTS) and becomes a freehold lot, free of the CTS on the Queensland Titles Register;
- (f) Land to be clear of land tax at settlement. A land tax clearance certificate will be required prior to settlement, else the purchase price will be reduced by the land tax owing; and
- (g) The price to be \$1.5 million dollars - (which is based on approx 1/4 of the \$6million price representing approx 314 of the land)- plus GST;

if, however, Settlement does not occur before 14 July 2011, (for the reason that the CMS lots is not able to be removed from the CTS as a freehold non CTS lot on the Qld Titles register), the Council may either at its sole election, affirm or terminate the Contract of sale. In the event that the Council affirms the Contract of sale, the purchase price will be reduced by XXXX which represents the sinking and admin fund payments to the Body Corporate required for a 20 year period, following settlement. This clause is for the sole benefit of the Council.

- 3.5 For the purpose of entry to the land for construction for the Parkland Works the parties will enter into a lease, more or less in the form in Annexure A no later than the Settlement date for Contract of Sale 1, from clause 3.3, over the land the subject of each of both Contract of Sale 1 and Contract of Sale 2. There will be two leases - one for Lots 4, 5 and 101 and a lease for the CMS lot - as they will have different settlement dates.

#### **4. Construction of the Parkland and the Construction lease**

- 4.1 Mirvac shall be solely and exclusively responsible for the design and specifications for the Parkland Works at its own expense, which shall be subject to the written approval of Council. Mirvac shall attend to design and specification changes to the Parkland Works as required by Council.
- 4.2 Mirvac shall procure the entry of Mirvac Constructions Construction Contract to construct the Parkland Works as approved by Council pursuant to clause 4.1.
- 4.3 Mirvac of Mirvac Constructions (Qld) Pty Ltd ABN 88 088 536 476 shall not apply any profit margins to its works under the Construction Contract, or the design and specification process. Payment draw down is pre-agreed in this Agreement, to be replicated in the Construction Contract, to be as per the Stages identified at Item 3 of Schedule 1.
- 4.4 In no event and under no circumstances shall the Construction Contract costs to Council, including but not limited to all EOT's and delay claims, as such claims are contemplated in AS4000-1997, exceed the total of Nine Million Dollars (\$9,000,000.00). Any such Construction Contract costs exceeding the limit of \$9,000,000.00 shall be met solely by Mirvac.

- 4.5 Subject to subclause 4.4, the Construction Contract shall provide that Council shall not be liable for any variations (section 36 of AS4000-1997) to the approved Parkland Works unless the express by prior written approval of Council.
- 4.6 Mirvac is prohibited from, and the Construction Contract shall prohibit Mirvac Constructions (Qld) Pty Ltd from, procuring or engaging subcontractors without the prior written approval of Council, which such approval must not be unreasonably withheld and provided within a reasonable time frame.
- 4.7 Mirvac shall be solely responsible for the costs of removal of contamination and latent conditions, and EOT's and delay claims (as such claims are contemplated in AS4000-1997), except to the extent caused or contributed to by Council.
- 4.8 For clarity, latent conditions shall not include the former power station structures identified by Mirvac within the Parkland Works which will be suitably treated, capped and left insitu. Mirvac shall be solely responsible for the treatment of these structures at no cost to Council if they are disturbed, uncovered or otherwise need treating and capping prior to and during the construction of the Parklands Works.
- 4.9 The Superintendent and services for the Construction Contract shall be provided by Council.
- 4.10 Mirvac shall deliver to Council copies of certificates when due pursuant to the Building Act 1975 (Qld), provided however that final approval of the Parkland Works shall be by a Council verifier.
- 4.11 Mirvac shall provide Council with a copy of the Certificate of Classification for the Parkland on or before practical completion, as such term is to be defined in the Construction Contract.
- 4.12 Mirvac shall agree in the Construction Contract to a defects liability period of not less than twelve (12) months.
- 4.13 Mirvac agrees to undertake maintenance works at its own cost on the Parkland Works for the period of twelve (12) months from the Completion Date.
- 4.14 Mirvac is solely responsible for the acquisition of all development assessment and other necessary approvals for the construction of the Parkland Works.
- 4.15 Mirvac shall permit, consent to, and cooperate with, the access of Council representatives to the construction works site during business hours to monitor workplace health and safety obligations. Mirvac shall perform, and comply with, all the reasonable directions of Council's representatives to ensure compliance with the *Workplace Health and Safety Act (Qld) 1995*, including its codes and regulations.

## 5. Default

- 5.1 In the event that Mirvac, Mirvac Constructions (Qld) Pty Ld, or subcontractors:
- (a) fail to proceed with construction of the Parkland Works in a competent and timely manner;
  - (b) without reasonable cause suspends, delays or abandons, execution of a Construction Contract for the Parkland Works for more than three (3) calendar months;

- (c) has taken or instituted against it, any action or proceeding whether voluntary or compulsory, which has as an object or may result in the winding up of Mirvac, its principal builder or subcontractor, or any of them is placed under official management or enters into a compromise or other arrangement with its creditors or a receiver or receiver and manager is appointed to carry on its business for the benefit of its creditors or any of them; or
- (d) has an inspector appointed, in regard of all or any part of its affairs, pursuant to the provisions of the Corporations Law, or if any application is made pursuant to any such code for the appointment of such an inspector;

then Council may serve on Mirvac with fourteen (14) days notice a notice of default specifying a reasonable time not exceeding fourteen (14) days to remedy the default, and if Mirvac within that time has failed to remedy the default, which may include the financing and contracting of a replacement builder or subcontractor, Council shall be at liberty to terminate this Agreement forthwith upon giving Mirvac notice in writing of such termination.

- 5.2 Where Mirvac's engagement under this Agreement has been determined pursuant to clause 5.1 Council may employ and pay other persons to carry out and complete the construction of the Parkland Works and Council and any of such other persons may enter upon the Land and use all temporary buildings, plant, materials and goods intended for, delivered to and placed on or adjacent to the Parkland Works and may purchase all materials and goods and do all other acts and things necessary for the carrying out and completion of construction of the Parkland Works.

## 6. Reports and Inspections

- 6.1 Mirvac shall deliver to Council reports on the progress of the construction of the Parkland Works on the 30<sup>th</sup> day of each month until Completion, and thereafter as may be required by Council. The reports obliged to be delivered to Council must include:
- (a) a financial cost report identifying the progress of expenditure of the Budget as against actual expenditure; and
  - (b) details of construction progress and any disputes that may give rise of liquidated damages or delay claims (as such terms are defined in AS4000-1997).
- 6.2 All reports delivered to Council may be by email to an agreed officer of Council.
- 6.3 Council or its nominated agents may, on giving three (3) Business Days notice to Mirvac:
- (a) access the Land and the Parkland Works, and any location or premises where construction and accounting records are stored relating to or arising from the construction of the Parkland Works;
  - (b) inspect and copy documentation and records, however stored, in the custody or control of Mirvac, Mirvac Constructions (Qld) Pty Ltd, or any entity or person authorised to hold or keep such documentation and records, to ensure compliance with all reporting and accountability requirements under this Agreement; and
  - (c) require Mirvice and Mirvac Constructions (Qld) Pty Ltd or its employees to provide full and accurate answers to any questions concerning progress of the construction of the Parkland Works, and records or information related to or arising from the construction of the Parkland Works.



## **7. Insurance**

- 7.1 Before commencing the construction of the Parkland Works pursuant to the Construction Contract, Mirvac must first insure the Parkland Works and Council with an authorised insurer pursuant to the Insurance Act 1973 (Cth), against loss or damage resulting from any reasonably insurable cause during the construction of the Parkland Works up and until Completion, including but not limited to:
- (a) Public liability;
  - (b) the rights and interests of Council in the Parkland;
  - (c) the parties' respective liability to each other for loss or damage to property and the death of or injury to any person (other than liability which the law required to be covered by workers compensation insurance policies); and
  - (d) workers compensation insurance pursuant to Queensland legislation.
- 7.2 All insurance policies must name Council as a beneficiary.
- 7.3 Mirvac must deliver to Council current certificates of insurances complying with this clause 7 on or before commencement of the construction of the Parkland Works, and current for the duration of the construction of the Parkland Works and a reasonable contingency period.

## **8. Indemnity**

- 8.1 Mirvac releases, indemnifies and holds harmless Council against any loss, damage, expense, cost and any consequential loss or damage and whether incurred by or awarded against Council or, or that Council may sustain or incur as a result, whether directly or indirectly, of:
- (a) any breach of any term, condition or warranty of this Agreement by Mirvac, including but not limited to a breach in respect of which Council may exercise an express right to terminate this Agreement; and
  - (b) any loss or damage to any property or injury to or death of any person caused by any negligent act or omission or willful misconduct of Mirvac, Mirvac Constructions (Qld) Pty Ltd, or any of their subcontractors.
- 8.2 The obligations of Mirvac to Council under this clause 8 shall survive any termination of this Agreement.

## **9. GST**

- 9.1 The Parties acknowledge that GST may be payable on the supply of goods and/or services under this Agreement.
- 9.2 Where GST is payable upon any supply of goods and/or services under this Agreement the consideration payable by the recipient for the supply must be adjusted by the amount of GST payable.
- 9.3 Subject to the supplier issuing a valid GST tax invoice, the consideration payable by the recipient to the supplier for the supply must be increased by the amount equal to that which the supplier is obliged to remit as GST on the supply.

## **10. Default and Termination**

- 10.1 If any party is in default in the performance of any obligation under this Agreement ("defaulting party") the other parties may give written notice to the defaulting party to remedy the default. If the default is not remedied within twenty-eight (28) days of such

notice, then the other parties may terminate this Agreement by further written notice to the defaulting party.

- 10.2 Termination under clause 10.1 shall be without prejudice to any rights, which any party may have against another arising out of or connected with this Agreement prior to the date of termination.

## 11. Dispute Resolution

- 11.1 Any party to this Agreement, claiming that a dispute has arisen between any of the parties to this Agreement, shall give written notice to the other party, or parties in dispute, designating as its representative in negotiations relating to the dispute, a person with authority to settle the dispute. Each other party who is given written notice shall promptly give written notice to the other parties in dispute, designating as its representative in negotiations relating to the dispute, a person with similar authority.
- 11.2 Following whatever investigations each deems necessary, the designated persons shall have endeavoured to resolve the dispute no later than ten (10) days after the last designation under clause 11.1.
- 11.3 If a dispute arises in relation to the matters subject of this Agreement, a party may refer it for determination by a person ("Referee") under this clause.
- 11.4 A party who wishes to refer a dispute for determination under this clause must do so by giving a notice to the other party ("First Dispute Notice") in which it –
- (a) states the name, address and occupation of the person it nominates to determine the dispute ("Nominated Referee"); and
  - (b) nominates one of the classes of expert listed in clause 11.4 ("Expert Category"); and
  - (c) states the matter or matters which constitute the dispute it wishes to refer for determination
- 11.5 Within 7 days after receipt of the First Dispute Notice the other party may give the party who gave the First Dispute Notice a notice ("Second Dispute Notice") in which it states that it accepts or rejects the Nominated Referee in the First Dispute Notice.
- 11.6 If no Second Dispute Notice is given within the time specified in clause 11.5, the Nominated Referee may determine the dispute under this clause.
- 11.7 If the Second Dispute Notice accepts the Nominated Referee, the Nominated Referee may determine the dispute under this clause.
- 11.8 If the Second Dispute Notice rejects the Nominated Referee and/or the nomination of the Expert Category, the nomination of the Referee and/or the Expert Category may be referred by either party to a solicitor appointed by the President for the time being of the Queensland Law Society Inc. who may nominate the Referee and/or the Expert Category.
- 11.9 When a dispute is referred to a Referee for determination under this clause, each of the parties must –
- (a) use its best endeavours to make available to the Referee all facts and circumstances which the Referee may need to know in order to determine the dispute; and
  - (b) ensure that its employees, agents and consultants are available to appear at any hearing or enquiry called for by the Referee; and
  - (c) give a copy of any written submission it makes to the Referee to the other party at the same time as it gives the submission to the Referee.

- 11.10 The Referee must decide the dispute and inform the parties of the result within fourteen (14) days after the date of submission of the dispute for determination.
- 11.11 The Referee acts as an expert and not as an arbitrator. The Referee's decision is final and binding on the parties. The Referee must give a written statement of reasons for the decision to the parties.
- 11.12 The Referee may decide who must pay the costs and expenses arising out of the reference of the dispute to the Referee, including the Referee's reasonable costs and expenses. If the Referee does not make a decision about costs and expenses, the parties must pay the costs and expenses equally.
- 11.13 Each party must continue to perform its obligations under this Agreement while the determination of the dispute under this clause is in progress.
- 11.14 The classes of expert referred to in clause 11.4 are as follows, or persons of equivalent stature who so agree to act in their place if unavailable as nominated by the Institute of Arbitrators and Mediators Australia:
- |                         |  |
|-------------------------|--|
| (a) Architect           | President or Acting President for the time being of the Royal Australian Institute of Architects (Queensland Chapter);     |
| (b) Expert in Insurance | President or Acting President for the time being of the Insurance Institute of Queensland;                                 |
| (c) Lawyer              | President or Acting President for the time being of the Queensland Law Society Inc; and                                    |
| (d) Engineer            | President or Acting President for the time being of the Institution of Engineers, Australia, Queensland Division.          |
| (e) Accountant          | President or Acting President for the time being of the Certified Practising Accountants of Australia (Queensland Branch). |
- 11.15 Unless a party to this Agreement has complied with this clause 11, then that party may not commence court proceedings relating to any dispute arising under this Agreement, except where that party seeks urgent interlocutory relief. In that case, that party need not comply with this clause 11. Where a party fails to comply with this clause 11 ("the defaulting party") then any other party in dispute with the defaulting party need not comply with this clause 11 before commencing court proceedings.

## 12. Confidentiality and Non-Disclosure

### 12.1 General Obligations

A party must:

- (a) not without the other's prior written consent, directly or indirectly use, disclose, reproduce or publish any part of the other party's Confidential Information in any material form whatsoever save and except for the purpose of construction of the Parkland and matters arising from the Lease;
- (b) treat and keep as strictly confidential all Confidential Information and not make, assist or permit any person (including any member of each other's staff) to make any unauthorised use, disclosure, reproduction or publication of Confidential Information; and

- (c) comply with all instructions provided by the a party regarding its own Confidential Information.

#### 12.2 Permitted Use and Disclosure

- (a) Each party may disclose its own Confidential Information to any member of its staff on the condition that any such disclosure is only to the extent necessary to enable the party to perform its obligations under this Agreement and the Lease.
- (b) If a party is required by law to disclose any Confidential Information in its possession it shall:
  - (i) immediately (but prior to making such disclosure) notify the other party in writing of any such disclosure that it is obliged to make; and
  - (ii) provide the other party with all assistance and co-operation which the other party reasonably requires in order to prevent or limit the disclosure of the Confidential Information.

#### 12.3 The parties shall either:

- (a) upon demand being made by the other party or
- (b) at the time when the Confidential Material is no longer required;
 

(whichever occurs first) deliver to the other party (or with that other party's prior written consent, destroy or erase) all material forms of the Confidential Information in the possession, power or control of that party or any of its staff and do so irrespective of whether those material forms were created by or on behalf of that party or not.
- (c) The return of Confidential Information under this clause does not release a party from its obligations under this Agreement.

#### 12.4 The obligations as to confidentiality pursuant to this clause shall survive any expiry or termination of this Agreement until such time as either:

- (a) the Confidential Information is or becomes generally available in the public domain other than by reason (whether wholly or partially, directly or indirectly) of either a breach of this Agreement or a breach of any other obligation of confidentiality owed to a party or any other person; or
- (b) a party is required by law to disclose such information; or
- (c) such disclosure has been permitted in writing by a party prior to such disclosure.

### 13. Right to Information and Disclosure

- (a) The Right to Information Act 2009 ("RTI Act") provides members of the public with a legally enforceable right to access documents held by Council.
- (b) The RTI Act requires that documents be disclosed upon request, unless the documents are exempt or on balance, disclosure is contrary to the public interest.

- (c) Information relating to this Agreement is potentially subject to disclosure to third parties pursuant to the RTI Act and any such disclosure will not constitute a breach of this Agreement.
- (d) If disclosure under the RTI Act, and/or general disclosure of information provided by a party in connection with this Agreement would be of substantial concern to the other party, because it would disclose trade secrets, information of commercial value, the purpose or results of research, or other information of a confidential nature. It is acknowledged that neither party can guarantee that any information held by either party will be protected from disclosure under the RTI Act.
- (e) Despite any other provision of this Agreement, either party may be required under the RTI Act to disclose certain details in respect of the Agreement and the Parkland.

#### 14. Privacy and Disclosure of Personal Information

- (a) Where Mirvac, and/or its agents, subcontractors or suppliers hold "personal information" (as such term is contemplated in the RTI) in order to fulfill Council's obligations or under this Agreement, it shall:
  - (i) comply with Parts 1 and 3 of Chapter 2 of that Information Privacy Act Qld (2009) in relation to the discharge of its obligations under this Agreement, as if Mirvac was Council;
  - (ii) ensure the personal information is protected against loss and against unauthorised access, use, modification or disclosure and against other misuse;
  - (iii) not use personal information other than for the purposes of this Agreement unless required or authorised by law;
  - (iv) not disclose personal information without the written agreement of Council, unless required or authorised by law;
  - (v) ensure that only authorised personnel who require access in order to perform their duties have access to personal information;
  - (vi) ensure that its personnel do no access, use or disclose personal information other than in the performance of their duties;
  - (vii) immediately notify Council if it becomes aware that a disclosure of personal information is, or may be required or authorised by law;
  - (viii) fully co-operate with Council to enable Council to respond to applications for access to, or amendment of a document containing an individual's personal information and to privacy complaints; and
  - (ix) comply with such other privacy and security measures as Council reasonably advises Mirvac in writing from time to time.
- (b) Any personal information exchanged between Council and Mirvac shall be dealt with in accordance with the Privacy Act.
- (c) Mirvac must immediately notify Council upon becoming aware of any breach of this clause 14.

## 15. Notices

15.1 Notices under this Agreement may be delivered by hand, by registered mail, or by facsimile to the addresses specified in clause 15.3 or any substitute address as may have been notified in writing by the relevant addressee from time to time.

15.2 Notice will be deemed to be given –

- (a) 2 Business Days after deposit in the mail with postage prepaid;
- (b) when delivered by hand; or
- (c) if sent by facsimile transmission, upon an apparently successful transmission being noted by the sender's facsimile machine prior to close of business at 5.00pm. Facsimile transmissions received after 5.00pm will be deemed to be received at the start of the next Business Day,

as the case may be.

15.3 The address for each party is –

### Council

Address:

Postal Address:

Attention:

Telephone:

Email:

### Mirvac

Address:

Postal Address:

Attention:

Telephone:

Email:

## 16. Governing Law

This Agreement will be governed by and construed according to the law of the Council of Queensland and the Parties agree to submit to the jurisdiction of the Courts of the Council of Queensland.

## 17. Waiver

No right under this Agreement must be deemed to be waived except by notice in writing

signed by each party.

**18. Variation**

This Agreement may be varied at any time by a written agreement executed by all parties.

**19. Costs**

Each Party must pay their own costs of and incidental to the negotiation, preparation and execution of this Agreement.

**20. Assignment**

None of the parties to this Agreement may assign their rights and obligations without the prior written consent of the other parties.

**21. Entire Agreement**

This Agreement constitutes the entire agreement between the parties. Any prior arrangements, agreements, warranties, representations or undertakings are superseded.

**22. Relationship of Parties**

The relationship of the parties is that of independent contractor and principal. Nothing in this Agreement creates or will give rise to any relationship of partnership or agency between the parties.

**23. Execution**

23.1 The parties agree that if this Agreement is not executed by all parties on the same date, this Agreement shall commence on and from the last of the dates of execution.

23.2 The parties shall execute copies of this Agreement with each party retaining an original copy.

Executed as an Agreement by the Parties this                      day of June 2011.

Executed for BRISBANE CITY COUNCIL )  
ABN 72 002 765 795 this by )  
..... its duly authorised officer )

(full name)

) ..... )  
) (name and title)

Executed for Mirvac Queensland Pty )  
Ltd ABN 24 060 411 207 in accordance )  
with Section 127 of the Corporations Act )  
2001 and with the authority of two )  
Directors or one Director and the )  
Secretary: )

..... )  
Director/Secretary )

) Director

..... )  
Director/Secretary to print name

) ..... )  
Director print name



## Schedule 1

## Item 1: Land

Lot	County	Parish	Title Ref
Lot 3 on SP195275	Stanley	Yeerongpilly	50710033
Lot 4 on SP195275	Stanley	Yeerongpilly	50710034
Lot 5 on SP195275	Stanley	Yeerongpilly	50710035
Lot 101 on SP195275	Stanley	Yeerongpilly	50710040

## Item 2: Parkland Works

To be approved by Council.

## Item 3: Stages

Subject to execution of the Construction Contract, payment for the Stages of the Parkland Works will be as follows:

## Stage 1

(a)	on an agreed milestone	\$4m
(b)	at practical completion	\$3m
(c)	at expiry of the defects liability period	<u>\$1m</u> <u>\$8m</u>

## Stage 2

(a)	on an agreed milestone	\$500k
(b)	at practical completion	\$400k
(c)	at expiry of the defects liability period	<u>\$100k</u> <u>\$1m</u>

## Item 4: Completion Date

[REDACTED] - Tennyson Reach Parkland Works

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**From:** [REDACTED]  
**To:** [REDACTED]  
**Date:** 10/06/2011 11:48 am  
**Subject:** Tennyson Reach Parkland Works  
**CC:** [REDACTED]

---

Dear [REDACTED]

Thanks for taking my call.

When you are able to do so, I would appreciate your confirmation of the plan to excise Lot 3 from the CTS. I would like to insert this into the Head Agreement in replacement of the clause seeking compensation if it does not happen. I would like to phrase it as an obligation on Mirvac such that the question of compensation can be deleted.

Furthermore, I confirm I have been contacted by [REDACTED] from the Department of Works and I will copy you on correspondence shortly to try and settle the issue of any outstanding State conditions in the State/Mirvac contract of sale that may affect the relevant lots.

Finally, the critical time issue we face to settle by 30 June is the valuation. To this extent Mirvac can assist Council by disclosing voluntarily any information or issues which may be relevant to the transaction and the valuation. We need all documentation as a matter of extreme urgency.

Regards

[REDACTED]  
Solicitor/Team Leader Commercial | Brisbane City Legal Practice  
Brisbane City Legal Practice  
Office of the Lord Mayor & CEO

Ph: [REDACTED]

E-m [REDACTED]

**Tennyson Reach Proposed Council Parklands**

**From:** [REDACTED]  
**To:** [REDACTED]  
**Date:** 10/06/2011 12:22 pm  
**Subject:** Tennyson Reach Proposed Council Parklands  
**CC:** [REDACTED]

Dear [REDACTED]

I refer to our telephone conversation this morning.

Council is negotiating to purchase:

Lot	County	Parish	Title Ref
Lot 3 on SP195275	Stanley	Yeerongpilly	50710033
Lot 4 on SP195275	Stanley	Yeerongpilly	50710034
Lot 5 on SP195275	Stanley	Yeerongpilly	50710035
Lot 101 on SP195275	Stanley	Yeerongpilly	50710040

To this end we are conducting a valuation and although we initially sought a copy of the State/Mirvac contract of sale, in summary we are only seeking to ascertain whether there are any outstanding contract obligations that may affect the above lots or affect the valuation of the above lots.

If you can confirm to me any such provisions are outstanding, or provide relevant portions of the contract for review, it would be greatly appreciated.

We are under intense time pressure and would appreciate your urgent attention to this request.

Regards

[REDACTED]  
 Solicitor/Team Leader Commercial | Brisbane City Legal Practice  
 Brisbane City Legal Practice  
 Office of the Lord Mayor & CEO

Ph [REDACTED]  
 E-r [REDACTED]

**From:** [Redacted]  
**To:** [Redacted]  
**Date:** 10/06/2011 1:51:13 pm  
**Subject:** Tennyson EPA Approval

Hi [Redacted]

Please find attached confirmation that Lots 3,4,5 & 101 have been removed from the EMR and CLR.

I will also send through some survey information.

Please call me with any questions or comments.

[Redacted]  
Senior Development Manager  
Development Queensland

Mirvac  
Level 2, 164 Grey Street South Bank QLD 4101 Australia PO Box 5121 West End QLD 4101

T. [Redacted]  
<http://www.mirvac.com><<http://www.mirvac.com>>  
Electronic Data Transmission Disclaimer <<http://ext.mirvac.com/email-disclaimer>>

Please consider the environment before printing emails and attachments

\*\*\*\*\*  
This message has passed through an insecure network.  
Please direct all enquiries to the message author.  
\*\*\*\*\*

**CC:** [Redacted]

**QLD ENVIRONMENTAL PROTECTION AGENCY**

**ENVIRONMENTAL MANAGEMENT REGISTER (EMR)  
CONTAMINATED LAND REGISTER (CLR)**

Transaction ID: 1078682      EMR Site Id:      18 September 2008  
This response relates to a search request received for the site:  
Lot: 1      Plan: SP195275

**EMR RESULT**

The above site is NOT included on the Environmental Management Register.

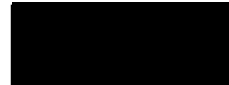
**CLR RESULT**

The above site is NOT included on the Contaminated Land Register.

**ADDITIONAL ADVICE**

**Note: Searches maybe conducted online through the State Government Website  
[www.smartservice.qld.gov.au](http://www.smartservice.qld.gov.au) or Citec Confirm [www.confirm.com.au](http://www.confirm.com.au).**

If you have any queries in relation to this search please phone



**Registrar, Contaminated Land Unit**

**QLD ENVIRONMENTAL PROTECTION AGENCY**  
**ENVIRONMENTAL MANAGEMENT REGISTER (EMR)**  
**CONTAMINATED LAND REGISTER (CLR)**

Transaction ID: 1078683 EMR Site Id: 18 September 2008  
This response relates to a search request received for the site:  
Lot: 2 Plan: SP195275

**EMR RESULT**

The above site is NOT included on the Environmental Management Register.

**CLR RESULT**

The above site is NOT included on the Contaminated Land Register.

**ADDITIONAL ADVICE**

**Note: Searches maybe conducted online through the State Government Website  
[www.smartservice.qld.gov.au](http://www.smartservice.qld.gov.au) or Citec Confirm [www.confirm.com.au](http://www.confirm.com.au).**

If you have any queries in relation to this search please phone

  
  
**Registrar, Contaminated Land Unit**

**QLD ENVIRONMENTAL PROTECTION AGENCY**  
**ENVIRONMENTAL MANAGEMENT REGISTER (EMR)**  
**CONTAMINATED LAND REGISTER (CLR)**

Transaction ID: 1078684 EMR Site Id: 18 September 2008  
This response relates to a search request received for the site:  
Lot: 3 Plan: SP195275

**EMR RESULT**

The above site is NOT included on the Environmental Management Register.

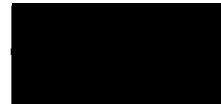
**CLR RESULT**

The above site is NOT included on the Contaminated Land Register.

**ADDITIONAL ADVICE**

**Note: Searches maybe conducted online through the State Government Website  
[www.smartservice.qld.gov.au](http://www.smartservice.qld.gov.au) or Citec Confirm [www.confirm.com.au](http://www.confirm.com.au).**

If you have any queries in relation to this search please phone



**Registrar, Contaminated Land Unit**

**QLD ENVIRONMENTAL PROTECTION AGENCY**  
**ENVIRONMENTAL MANAGEMENT REGISTER (EMR)**  
**CONTAMINATED LAND REGISTER (CLR)**

Transaction ID: 1078685 EMR Site Id: 18 September 2008  
This response relates to a search request received for the site:  
Lot: 4 Plan: SP195275

**EMR RESULT**


The above site is NOT included on the Environmental Management Register.

**CLR RESULT**

The above site is NOT included on the Contaminated Land Register.

**ADDITIONAL ADVICE**

**Note: Searches maybe conducted online through the State Government Website  
[www.smartservice.qld.gov.au](http://www.smartservice.qld.gov.au) or Citec Confirm [www.confirm.com.au](http://www.confirm.com.au).**

If you have any queries in relation to this search please phone 

  
Registrar, Contaminated Land Unit



**QLD ENVIRONMENTAL PROTECTION AGENCY****ENVIRONMENTAL MANAGEMENT REGISTER (EMR)  
CONTAMINATED LAND REGISTER (CLR)**

Transaction ID: 1078686 EMR Site Id: 18 September 2008  
This response relates to a search request received for the site:  
Lot: 5 Plan: SP195275

**EMR RESULT**

The above site is NOT included on the Environmental Management Register.

**CLR RESULT**

The above site is NOT included on the Contaminated Land Register.

**ADDITIONAL ADVICE**

**Note: Searches maybe conducted online through the State Government Website  
[www.smartservice.qld.gov.au](http://www.smartservice.qld.gov.au) or Citec Confirm [www.confirm.com.au](http://www.confirm.com.au).**

If you have any queries in relation to this search please phone [REDACTED]

[REDACTED]  
Registrar, Contaminated Land Unit

**QLD ENVIRONMENTAL PROTECTION AGENCY**  
**ENVIRONMENTAL MANAGEMENT REGISTER (EMR)**  
**CONTAMINATED LAND REGISTER (CLR)**

Transaction ID: 1078687 EMR Site Id: 18 September 2008  
This response relates to a search request received for the site:  
Lot: 6 Plan: SP195275

**EMR RESULT**

The above site is NOT included on the Environmental Management Register.

**CLR RESULT**

The above site is NOT included on the Contaminated Land Register.

**ADDITIONAL ADVICE**

**Note: Searches maybe conducted online through the State Government Website  
[www.smartservice.qld.gov.au](http://www.smartservice.qld.gov.au) or Citec Confirm [www.confirm.com.au](http://www.confirm.com.au).**

If you have any queries in relation to this search please phone 

  
**Registrar, Contaminated Land Unit**

**QLD ENVIRONMENTAL PROTECTION AGENCY****ENVIRONMENTAL MANAGEMENT REGISTER (EMR)  
CONTAMINATED LAND REGISTER (CLR)**

Transaction ID: 1078681 EMR Site Id: 70812 18 September 2008  
This response relates to a search request received for the site:  
Lot: 8 Plan: SP195275

**EMR RESULT**

The above site IS included on the Environmental Management Register.  
Lot: 8 Plan: SP195275  
Address: SOFTSTONE ST  
TENNYSON 4101

The site has been subject to the following Notifiable Activity pursuant to section 374 of the *Environmental Protection Act 1994*.

COAL FIRED POWER STATION - operating a coal fired power station.

PETROLEUM PRODUCT OR OIL STORAGE - storing petroleum products or oil -

(a) in underground tanks with more than 200L capacity; or

(b) in above ground tanks with -

(i) for petroleum products or oil in class 3 in packaging groups 1 and 2 of the dangerous goods code - more than 2,500L capacity; or

(ii) for petroleum products or oil in class 3 in packaging groups 3 of the dangerous goods code - more than 5,000L capacity; or

(iii) for petroleum products that are combustible liquids in class C1 or C2 in Australian Standard AS1940, 'The storage and handling of flammable and combustible liquids' published by Standards Australia - more than 25,000L capacity.

A site management plan has been prepared for this site and is included with this search response as Annexure 1. It has been determined that this site is suitable for the following uses, providing the site is used and managed according to the site management plan:  
Suitable for recreational and sporting facility, road and carpark.

Following the date of effect of the site management plan, subsequent uses of the site for notifiable activities or for situations where a hazardous contaminant is released into the soil may result in the need to review suitable uses or amend the attached site management plan.

**CLR RESULT**

The above site is NOT included on the Contaminated Land Register.

**ADDITIONAL ADVICE**

**Note: Searches maybe conducted online through the State Government Website [www.smartservice.qld.gov.au](http://www.smartservice.qld.gov.au) or Citec Confirm [www.confirm.com.au](http://www.confirm.com.au).**

If you have any queries in relation to this search please phone 

██████████  
Registrar, Contaminated Land Unit

## ANNEXURE 1 - SITE MANAGEMENT PLAN

LOT : 8      PLAN : SP195275      FILE REF : BNE2841      PRINTED: 18/09/2008

DATE OF EFFECT : 12/09/2008

**Lots 7 and 8 on SP195275**

### 1.0 SUMMARY OF CONTAMINATION

The site covered by this Site Management Plan is described as Lots 7 and 8 on SP195275, which includes three easements.

The site and the easements are shown on Figure 1. The easements comprise land designated as electrical easement through which electrical cables up to 110kV are located. It should be noted that due to the risks associated with the assessment of such areas, investigation has been limited and the area described as Easement B and the southern part of Easement C have not been investigated. The land originally formed part of two larger properties historically used as a coal fired power station. At identified locations on these easements backfill comprising ash, coal, metal, concrete, glass, brick and fibrous cement sheeting within a soil matrix has been placed over and around the cables. Within this backfill material, asbestos sheeting comprising chrysotile and amosite asbestos has been identified.

### 2.0 OBJECTIVES OF THE SMP

The purpose of this SMP is to manage contamination on the site in a manner that protects human health and the environment.

### 3.0 ACHIEVEMENT AND MAINTENANCE OF OBJECTIVES

*3.1 Responsibility.* The owner of the land (as defined in the *Environmental Protection Act 1994*) is to ensure that this SMP and any variations approved or required by the administering authority are complied with. The obligations and conditions set out in this SMP bind the owner, from time to time, of the land.

*3.2 Site Use.* The land "Easement B" and "Southern Part of Easement C (known as C1)" as described in Appendix A - Metes and Bounds Descriptions, and shown on Figure 1, is suitable, and only to be used as an electrical easement. The land "Central Part of Easement C" as described in Appendix A - Metes and Bounds Descriptions and shown on Figure 1 is suitable and only to be used as a recreational and sporting facility, road and carpark (State Tennis Centre) provided the management requirements set out in this SMP are complied with. The remainder of Lots 7 and 8 on SP195275 is suitable for any use without any management required under this SMP.

*3.3 Provision of SMP to appropriate persons.* The owner must provide all persons involved in building design and planning and all contractors and lessees conducting building and/or excavation works with a copy of the SMP prior to commencement of works. All persons occupying or working on the site must comply with the requirements of the SMP.

*3.4 Site Capping and Fencing* The land identified as "Central Part of Easement C" must be capped with one of the following prior to the commencement of the site use

identified in Section 3.2 of this Site Management Plan for this land:

- in unsealed areas 300mm of growing medium with grass cover overlying a marker layer indicating the top of the contaminated material;
- asphalt/bitumen paving over a minimum of 150mm compacted road base; or
- concrete slab/brick paving with a minimum thickness of 100mm.

This cap must be maintained in a good condition at all times.

Easements B and C1 must be fenced to prevent access by unauthorised persons.

**3.5 Soil excavation & Removal.** Any soil excavated from contaminated areas on the site must be assessed for the contaminants of concern, to assess the level of contamination of the material and to identify appropriate management and disposal/re-use options.

Representative sampling and analysis of soil from excavations in contaminated areas must be managed by a suitably qualified and experienced person in accordance with Section 381 of the *Environmental Protection Act 1994* (EP Act). Contaminated soil must not be removed off-site without obtaining prior approval from the Administering Authority under Section 424 of the *Environmental Protection Act 1994* or equivalent.

**3.6 Unexpected Contamination.** If during any site earthworks or excavation, offensive or noxious odours and/or evidence of gross contamination not previously detected is observed, site works are to cease in that area and action taken to immediately abate the environmental harm. The administering authority is to be notified in writing within two (2) business days of detection and advised of appropriate remedial action.

Any remedial action is to be developed by an appropriately qualified and experienced person in accordance with Section 381 of the EP Act.

**3.7 General Environmental Protection.** All earthworks are to be undertaken in accordance with general environmental protection measures to avoid unwanted migration and deposition of soil. These measures include the control of dust, noise, stormwater runoff, sediment, erosion, spillage from haulage trucks and odour releases involving the handling or movement of contaminated material.

**3.8 Workplace Health and Safety.** A Workplace Health and Safety Plan (WH&S plan), which conforms to the requirements of the *Workplace Health and Safety Act 1995* is to be developed for any site excavation works in contaminated areas. The WH&S plan must specifically address contaminants of concern.

**3.9 Underground Services.** New underground services in contaminated areas which could require future maintenance must be surrounded on all sides by a minimum of 0.3m of uncontaminated fill for minor services (<100 mm in diameter), and 0.5m of uncontaminated fill for services greater than 100 mm in diameter to protect future maintenance workers from contact with potentially contaminated fill material. Maintenance of existing services in contaminated areas should be undertaken in accordance with Sections 3.5 and 3.8 of this plan. No disturbance of the existing electrical cables is required.

#### **4.0 MONITORING AND REPORTING**

Biennial- inspection of the site is to be undertaken by the owner to ensure that the capping of the contaminated areas and fence (see Section 3.5) remain in good condition.

Records are to be kept of any soil excavation in contaminated areas, disposal permits and site management plan compliance for review by the administering authority from time to time.

Within 45 days of the installation of the cap and fence identified in Section 3.4 of this Site Management Plan, a Validation Report documenting the installation of the cap and the fence must be submitted for review to the Third Party Reviewer appointed by the Administering Authority for the site. The report must be prepared by a person who satisfies the requirements of section 395 of the *Environmental Protection Act 1994* (EP Act) and be accompanied by the documentation required by section 395 of the EP Act.

***This Site Management Plan (SMP) has been developed to manage site contamination risks present at the issue date. Subsequent uses of the site may result in the need to review the plan.***

***This SMP makes reference to a plan attachment that is available from the Administering Authority if required.***

**APPENDIX A - METES AND BOUNDS DESCRIPTIONS**

**CENTRAL PART OF EASEMENT C**

**Central Part of Easement C in Lot 8 On SP195275**

Commencing from the south-western corner of Lot 8 on SP195275, Parish of Yeerongpilly, County of Stanley, and thence bounded by lines,

Bearing of	355	30' 00"	for a distance of	44.063 metres
Bearing of	85	30' 00"	for a distance of	15.002 metres
Bearing of	175	30' 00"	for a distance of	22.336 metres
Bearing of	241	23' 40"	for a distance of	3.559 metres
Bearing of	228	18' 58"	for a distance of	3.958 metres
Bearing of	216	56' 45"	for a distance of	3.664 metres
Bearing of	206	40' 55"	for a distance of	3.772 metres
Bearing of	194	40' 35"	for a distance of	4.189 metres
Bearing of	184	40' 24"	for a distance of	4.415 metres
Bearing of	206	18' 14"	for a distance of	4.182 metres

to the point of commencement and containing an area of 445 square metres, more or less.

**Central Part of Easement C in Lot 7 on SP195275**

Commencing from the south-western corner of Lot 8 on SP195275, Parish of Yeerongpilly, County of Stanley, and thence bounded by lines,

Bearing of	26	18' 14"	for a distance of	4.182 metres
Bearing of	4	40' 24"	for a distance of	4.415 metres
Bearing of	14	40' 35"	for a distance of	4.189 metres
Bearing of	26	40' 55"	for a distance of	3.772 metres
Bearing of	36	56' 45"	for a distance of	3.664 metres
Bearing of	48	18' 58"	for a distance of	3.958 metres
Bearing of	61	23' 40"	for a distance of	3.559 metres
Bearing of	175	30' 00"	for a distance of	184.274 metres
Bearing of	269	42' 10"	for a distance of	15.043 metres
Bearing of	355	30' 00"	for a distance of	161.445 metres

to the point of commencement and containing an area of 2,647 square metres, more or

less.

**SOUTHERN PART OF EASEMENT C (KNOWN AS C1)**

**Southern Part of Easement C in Lot 7 on SP195275**

Commencing from the north-western corner of Lot 4 on SP164685, Parish of Yeerongpilly, County of Stanley, and thence bounded by lines,

Bearing of	0	0' 10"	for a distance of	46.918 metres
Bearing of	89	42' 10"	for a distance of	57.370 metres
Bearing of	175	30' 00"	for a distance of	16.108 metres
Bearing of	96	6' 00"	for a distance of	110.938 metres
Bearing of	184	31' 03"	for a distance of	20.702 metres
Bearing of	274	18' 40"	for a distance of	54.275 metres
Bearing of	268	30' 10"	for a distance of	67.235 metres
Bearing of	268	41' 10"	for a distance of	45.993 metres

to the point of commencement and containing an area of 5,326 square metres, more or less.

**EASEMENT B**

**Easement B in Lot 7 on SP195275**

The parcel of land being Easement B in Lot 7 on SP195275 commencing from Station 43 on SP195275, Parish of Yeerongpilly, County of Stanley, and thence bounded by lines,

Bearing of	149	28' 30"	for a distance of	24.148 metres
Bearing of	142	1' 15"	for a distance of	36.345 metres
Bearing of	119	0' 41"	for a distance of	99.650 metres
Bearing of	125	47' 00"	for a distance of	24.784 metres
Bearing of	113	52' 40"	for a distance of	19.822 metres
Bearing of	92	10' 25"	for a distance of	54.090 metres
Bearing of	212	9' 15"	for a distance of	12.243 metres
Bearing of	180	0' 10"	for a distance of	23.879 metres
Bearing of	277	20' 00"	for a distance of	4.803 metres
Bearing of	287	46' 20"	for a distance of	43.420 metres
Bearing of	292	25' 00"	for a distance of	32.571 metres
Bearing of	297	53' 45"	for a distance of	29.275 metres
Bearing of	299	46' 10"	for a distance of	88.446 metres
Bearing of	210	1' 15"	for a distance of	5.276 metres
Bearing of	329	38' 21"	for a distance of	17.653 metres
Bearing of	329	38' 20"	for a distance of	62.171 metres
Bearing of	59	38' 20"	for a distance of	16.587 metres

to the point of commencement and containing an area of 6,083 square metres, more or less.

**QLD ENVIRONMENTAL PROTECTION AGENCY**  
ENVIRONMENTAL MANAGEMENT REGISTER (EMR)  
CONTAMINATED LAND REGISTER (CLR)

Transaction ID: 1078680      EMR Site Id: 18 September 2008  
This response relates to a search request received for the site:  
Lot: 100      Plan: SP195275

**EMR RESULT**

The above site is NOT included on the Environmental Management Register.

**CLR RESULT**

The above site is NOT included on the Contaminated Land Register.

**ADDITIONAL ADVICE**

**Note: Searches maybe conducted online through the State Government Website  
[www.smartservice.qld.gov.au](http://www.smartservice.qld.gov.au) or Citec Confirm [www.confirm.com.au](http://www.confirm.com.au).**

If you have any queries in relation to this search please phone [REDACTED]

[REDACTED]  
**Registrar, Contaminated Land Unit**



**QLD ENVIRONMENTAL PROTECTION AGENCY**

**ENVIRONMENTAL MANAGEMENT REGISTER (EMR)  
CONTAMINATED LAND REGISTER (CLR)**

Transaction ID: 1078678 EMR Site Id: 18 September 2008  
This response relates to a search request received for the site:  
Lot: 101 Plan: SP195275

**EMR RESULT**

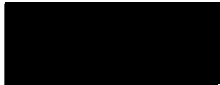
The above site is NOT included on the Environmental Management Register.


**CLR RESULT**

The above site is NOT included on the Contaminated Land Register.

**ADDITIONAL ADVICE**

**Note: Searches maybe conducted online through the State Government Website  
[www.smartservice.qld.gov.au](http://www.smartservice.qld.gov.au) or Citec Confirm [www.confirm.com.au](http://www.confirm.com.au).**

If you have any queries in relation to this search please phone 

  
**Registrar, Contaminated Land Unit**

**From:** [REDACTED]  
**To:** [REDACTED]  
**Date:** 10/06/2011 1:59:16 pm  
**Subject:** FW: Tennyson Detail Survey (Email 1 of 2)

Hi [REDACTED]

Please find attached survey information on the broader Tennyson site including the Tennis Stadium.

This broad survey is what I have to hand but I can find more detail if you require.

Regards,

[REDACTED]  
Senior Development Manager  
Development Queensland

Mirvac  
Level 2, 164 Grey Street South Bank QLD 4101 Australia PO Box 5121 West End QLD 4101

T [REDACTED]  
<http://www.mirvac.com><<http://www.mirvac.com>>  
Electronic Data Transmission Disclaimer <<http://ext.mirvac.com/email-disclaimer>>

Please consider the environment before printing emails and attachments

From: [REDACTED]  
Sent: Wednesday, 20 April 2011 9:10 AM  
To: [REDACTED]  
Subject: RE: Tennyson Detail Survey

[REDACTED]  
First email bounced due to size so I will split it into two. This is email 1 of 2.  
[REDACTED]

From: [REDACTED]  
Sent: Wednesday, 20 April 2011 9:08 AM  
To: [REDACTED]  
Subject: Tennyson Detail Survey

Hi [REDACTED]

As discussed, please find attached the detail survey over the carpark as well as the tennis complex area. If there are any questions, please contact the office.

WE HAVE MOVED

LandPartners Limited Brisbane Office has relocated. As of Monday 18th April 2011 you can find us at:  
13 Railway Terrace, Milton, QLD 4064

Regards,

[REDACTED]  
Project Manager

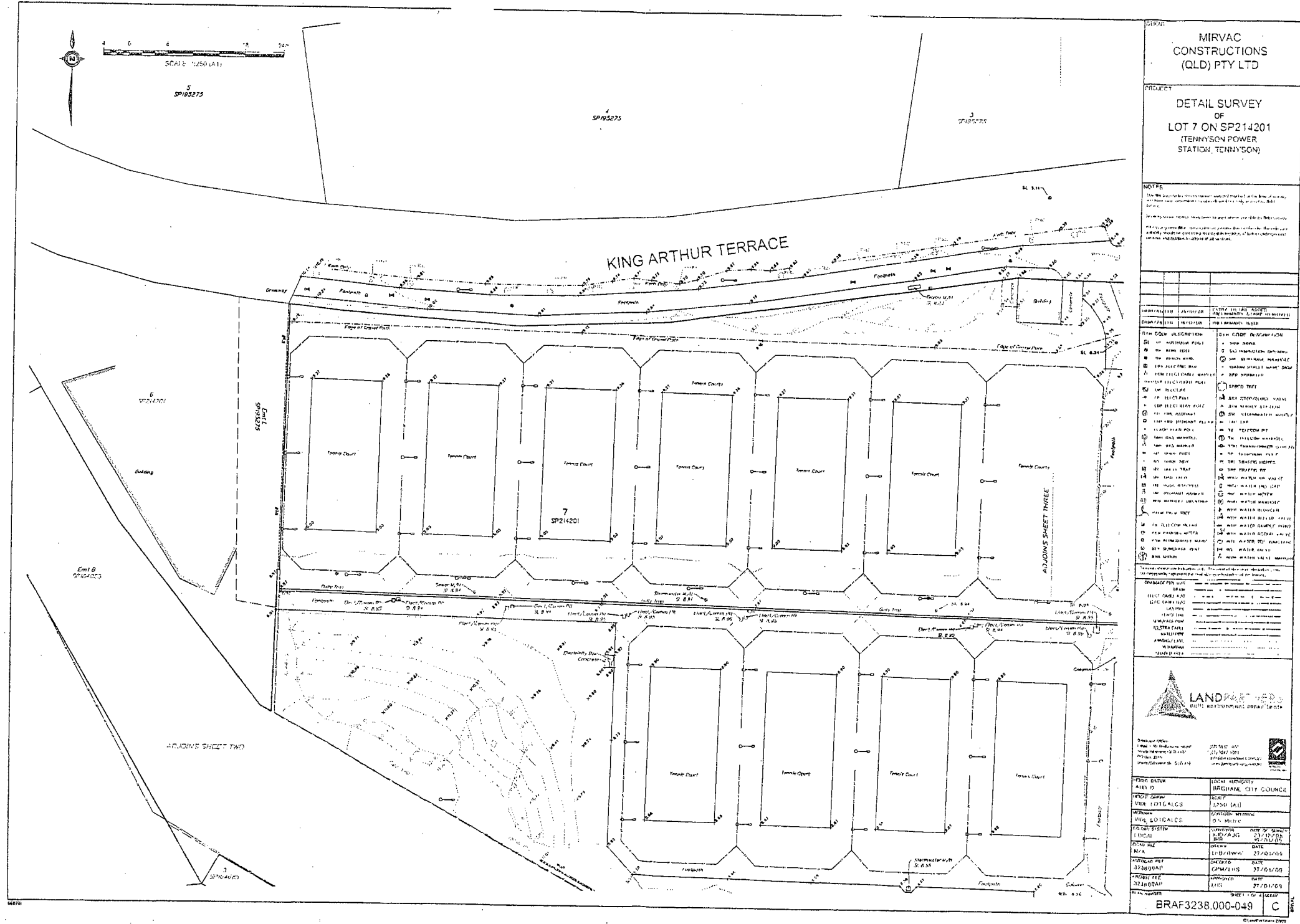
LANDPARTNERS LIMITED  
Built Environment Consultants

[UDIA\_Seal\_Winner2010 copy.jpg]Surveying - Titling - Planning - Urban Design - Mapping & GIS -  
Landscape Architecture - Environmental - Water Service Coordinator  
13 Railway Terrace, Milton, QLD, 4064  
PO Box 3916 South Brisbane BC, QLD, 4101  
Ph: [REDACTED] Fax [REDACTED]  
Email [REDACTED] Web:  
[www.landpartners.com.au](http://www.landpartners.com.au)<<http://www.landpartners.com.au/>>

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\*\*\*\*\*

CC: [REDACTED]



**MIRVAC CONSTRUCTIONS (QLD) PTY LTD**

**PROJECT**  
 DETAIL SURVEY  
 OF  
 LOT 7 ON SP214201  
 (TENNYSON POWER STATION, TENNYSON)

**NOTES**  
 1. The survey was conducted in accordance with the Survey Act 1981 and the Survey Regulation 2002.  
 2. The survey was conducted on the 27th day of October 2009.  
 3. The survey was conducted by the following persons:  
 3.1. Surveyor: [Name]  
 3.2. Assistant Surveyor: [Name]  
 3.3. Chainman: [Name]  
 3.4. Driver: [Name]  
 3.5. Clerk: [Name]

SYMBOL	DESCRIPTION	SYMBOL	DESCRIPTION
(Symbol)	WATER MAIN	(Symbol)	SEWER
(Symbol)	STORMWATER DRAIN	(Symbol)	BOUNDARY
(Symbol)	UTILITY POLE	(Symbol)	ADJOINING LOT
(Symbol)	...	(Symbol)	...

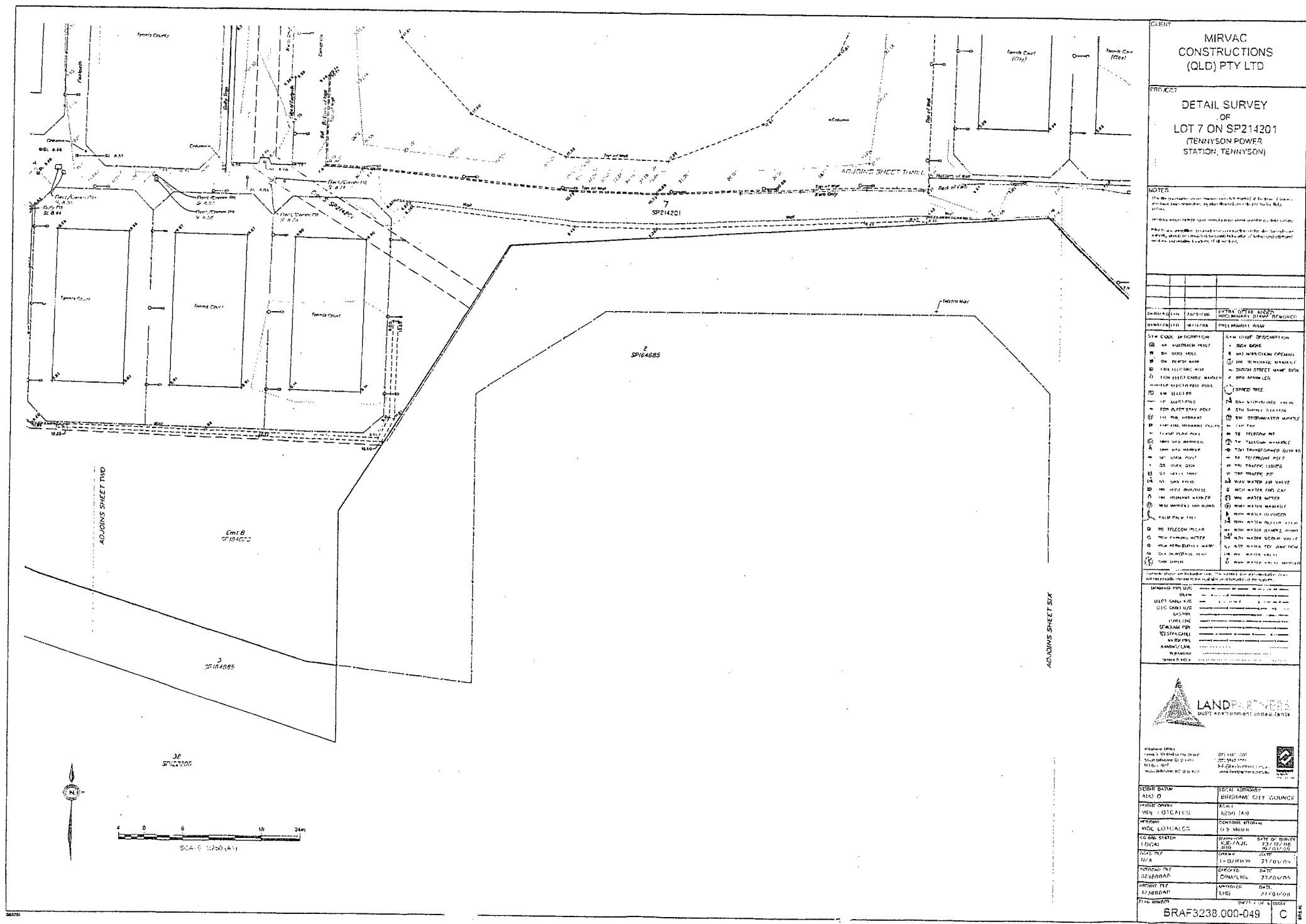
**LANDPLAN PTD'S**  
 LAND SURVEYING & ENGINEERING

PROJECT NO.	DATE	SCALE
...	...	...

**BRAF3238.000-049 C**







**MIRVAC  
CONSTRUCTIONS  
(QLD) PTY LTD**

**PROJECT**  
DETAIL SURVEY  
OF  
LOT 7 ON SP214201  
(TENNYSOON POWER  
STATION, TENNYSON)

**NOTES**  
1. This site plan is a detail survey of the lot shown.  
2. The site plan is based on the plan of the lot shown.  
3. The site plan is based on the plan of the lot shown.  
4. The site plan is based on the plan of the lot shown.

SYMBOL	DESCRIPTION	SYMBOL	DESCRIPTION
(S)	SECTION CORNER	(R)	RAILROAD
(M)	MANHOLE	(E)	ELECTRIC
(T)	TELEPHONE	(W)	WATER
(G)	GAS	(F)	FENCE
(C)	CONCRETE	(S)	SURFACE

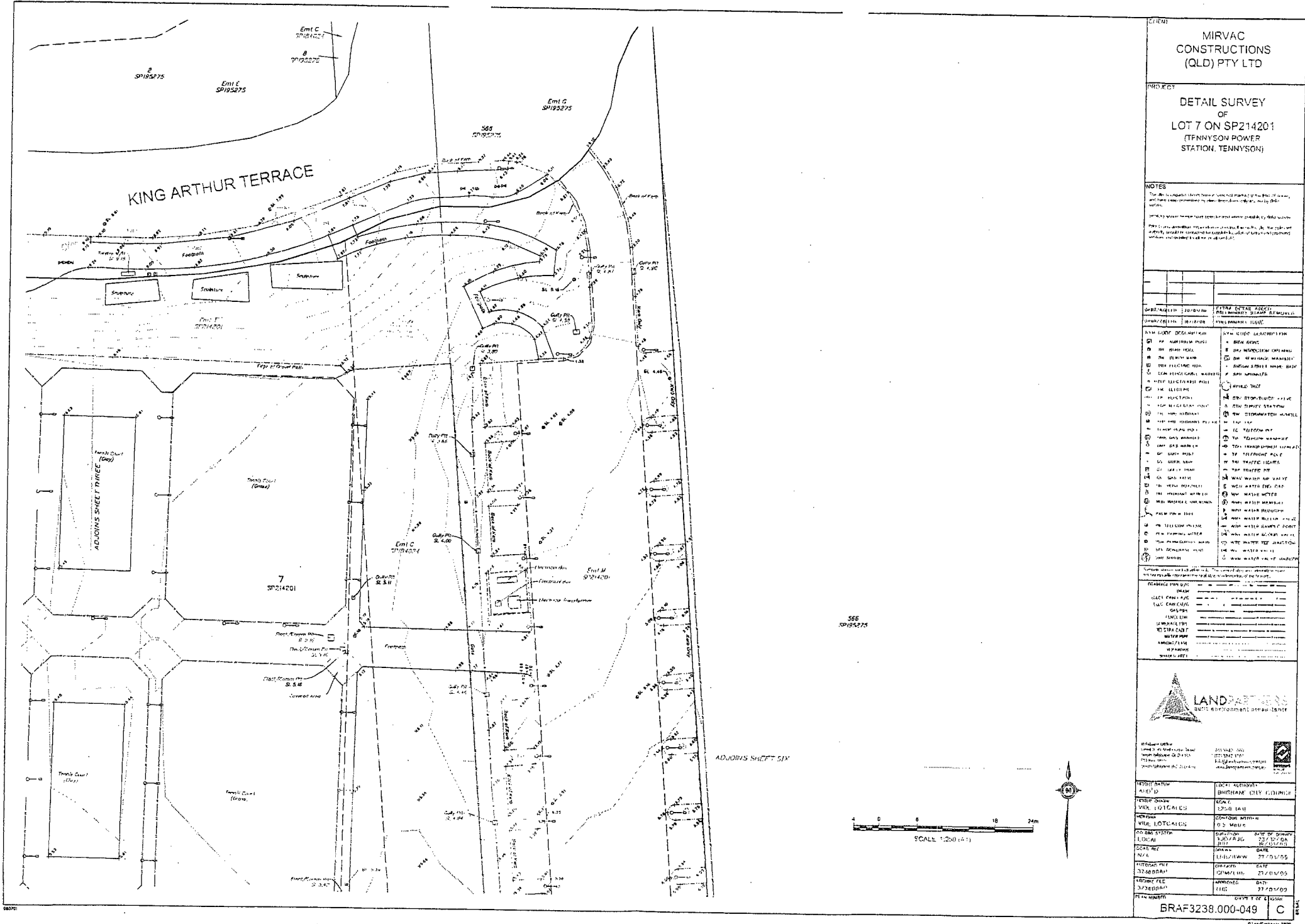
**LAND SURVEYORS**  
220/120/121  
120/120/121  
120/120/121

**BRIGHTON CITY COUNCIL**

DATE	LOCAL COUNCIL	LOCAL NUMBER
12/01/12	BRIGHTON CITY COUNCIL	

Scale: 1:1250 (A1)

**BRAF3238.000-049 C**



**MIRVAC CONSTRUCTIONS (QLD) PTY LTD**

**PROJECT**  
**DETAIL SURVEY OF LOT 7 ON SP214201 (TENNYSOON POWER STATION, TENNYSSON)**

**NOTES**  
 The survey has been conducted in accordance with the Survey Act 1981 and the Survey Regulation 2002. The survey has been conducted in accordance with the Survey Act 1981 and the Survey Regulation 2002. The survey has been conducted in accordance with the Survey Act 1981 and the Survey Regulation 2002.

SYMBOL	DESCRIPTION	SYMBOL	DESCRIPTION
(Symbol)	BOUNDARY OF LOT 7	(Symbol)	BOUNDARY OF LOT 8
(Symbol)	EASEMENT FOR POWER LINES	(Symbol)	EASEMENT FOR SEWERAGE
(Symbol)	EASEMENT FOR STORMWATER	(Symbol)	EASEMENT FOR ROAD
(Symbol)	BOUNDARY OF LOT 6	(Symbol)	BOUNDARY OF LOT 9
(Symbol)	BOUNDARY OF LOT 5	(Symbol)	BOUNDARY OF LOT 10
(Symbol)	BOUNDARY OF LOT 4	(Symbol)	BOUNDARY OF LOT 11
(Symbol)	BOUNDARY OF LOT 3	(Symbol)	BOUNDARY OF LOT 12
(Symbol)	BOUNDARY OF LOT 2	(Symbol)	BOUNDARY OF LOT 13
(Symbol)	BOUNDARY OF LOT 1	(Symbol)	BOUNDARY OF LOT 14
(Symbol)	BOUNDARY OF LOT 15	(Symbol)	BOUNDARY OF LOT 16
(Symbol)	BOUNDARY OF LOT 17	(Symbol)	BOUNDARY OF LOT 18
(Symbol)	BOUNDARY OF LOT 19	(Symbol)	BOUNDARY OF LOT 20
(Symbol)	BOUNDARY OF LOT 21	(Symbol)	BOUNDARY OF LOT 22
(Symbol)	BOUNDARY OF LOT 23	(Symbol)	BOUNDARY OF LOT 24
(Symbol)	BOUNDARY OF LOT 25	(Symbol)	BOUNDARY OF LOT 26
(Symbol)	BOUNDARY OF LOT 27	(Symbol)	BOUNDARY OF LOT 28
(Symbol)	BOUNDARY OF LOT 29	(Symbol)	BOUNDARY OF LOT 30
(Symbol)	BOUNDARY OF LOT 31	(Symbol)	BOUNDARY OF LOT 32
(Symbol)	BOUNDARY OF LOT 33	(Symbol)	BOUNDARY OF LOT 34
(Symbol)	BOUNDARY OF LOT 35	(Symbol)	BOUNDARY OF LOT 36
(Symbol)	BOUNDARY OF LOT 37	(Symbol)	BOUNDARY OF LOT 38
(Symbol)	BOUNDARY OF LOT 39	(Symbol)	BOUNDARY OF LOT 40
(Symbol)	BOUNDARY OF LOT 41	(Symbol)	BOUNDARY OF LOT 42
(Symbol)	BOUNDARY OF LOT 43	(Symbol)	BOUNDARY OF LOT 44
(Symbol)	BOUNDARY OF LOT 45	(Symbol)	BOUNDARY OF LOT 46
(Symbol)	BOUNDARY OF LOT 47	(Symbol)	BOUNDARY OF LOT 48
(Symbol)	BOUNDARY OF LOT 49	(Symbol)	BOUNDARY OF LOT 50
(Symbol)	BOUNDARY OF LOT 51	(Symbol)	BOUNDARY OF LOT 52
(Symbol)	BOUNDARY OF LOT 53	(Symbol)	BOUNDARY OF LOT 54
(Symbol)	BOUNDARY OF LOT 55	(Symbol)	BOUNDARY OF LOT 56
(Symbol)	BOUNDARY OF LOT 57	(Symbol)	BOUNDARY OF LOT 58
(Symbol)	BOUNDARY OF LOT 59	(Symbol)	BOUNDARY OF LOT 60
(Symbol)	BOUNDARY OF LOT 61	(Symbol)	BOUNDARY OF LOT 62
(Symbol)	BOUNDARY OF LOT 63	(Symbol)	BOUNDARY OF LOT 64
(Symbol)	BOUNDARY OF LOT 65	(Symbol)	BOUNDARY OF LOT 66
(Symbol)	BOUNDARY OF LOT 67	(Symbol)	BOUNDARY OF LOT 68
(Symbol)	BOUNDARY OF LOT 69	(Symbol)	BOUNDARY OF LOT 70
(Symbol)	BOUNDARY OF LOT 71	(Symbol)	BOUNDARY OF LOT 72
(Symbol)	BOUNDARY OF LOT 73	(Symbol)	BOUNDARY OF LOT 74
(Symbol)	BOUNDARY OF LOT 75	(Symbol)	BOUNDARY OF LOT 76
(Symbol)	BOUNDARY OF LOT 77	(Symbol)	BOUNDARY OF LOT 78
(Symbol)	BOUNDARY OF LOT 79	(Symbol)	BOUNDARY OF LOT 80
(Symbol)	BOUNDARY OF LOT 81	(Symbol)	BOUNDARY OF LOT 82
(Symbol)	BOUNDARY OF LOT 83	(Symbol)	BOUNDARY OF LOT 84
(Symbol)	BOUNDARY OF LOT 85	(Symbol)	BOUNDARY OF LOT 86
(Symbol)	BOUNDARY OF LOT 87	(Symbol)	BOUNDARY OF LOT 88
(Symbol)	BOUNDARY OF LOT 89	(Symbol)	BOUNDARY OF LOT 90
(Symbol)	BOUNDARY OF LOT 91	(Symbol)	BOUNDARY OF LOT 92
(Symbol)	BOUNDARY OF LOT 93	(Symbol)	BOUNDARY OF LOT 94
(Symbol)	BOUNDARY OF LOT 95	(Symbol)	BOUNDARY OF LOT 96
(Symbol)	BOUNDARY OF LOT 97	(Symbol)	BOUNDARY OF LOT 98
(Symbol)	BOUNDARY OF LOT 99	(Symbol)	BOUNDARY OF LOT 100

**LAND**

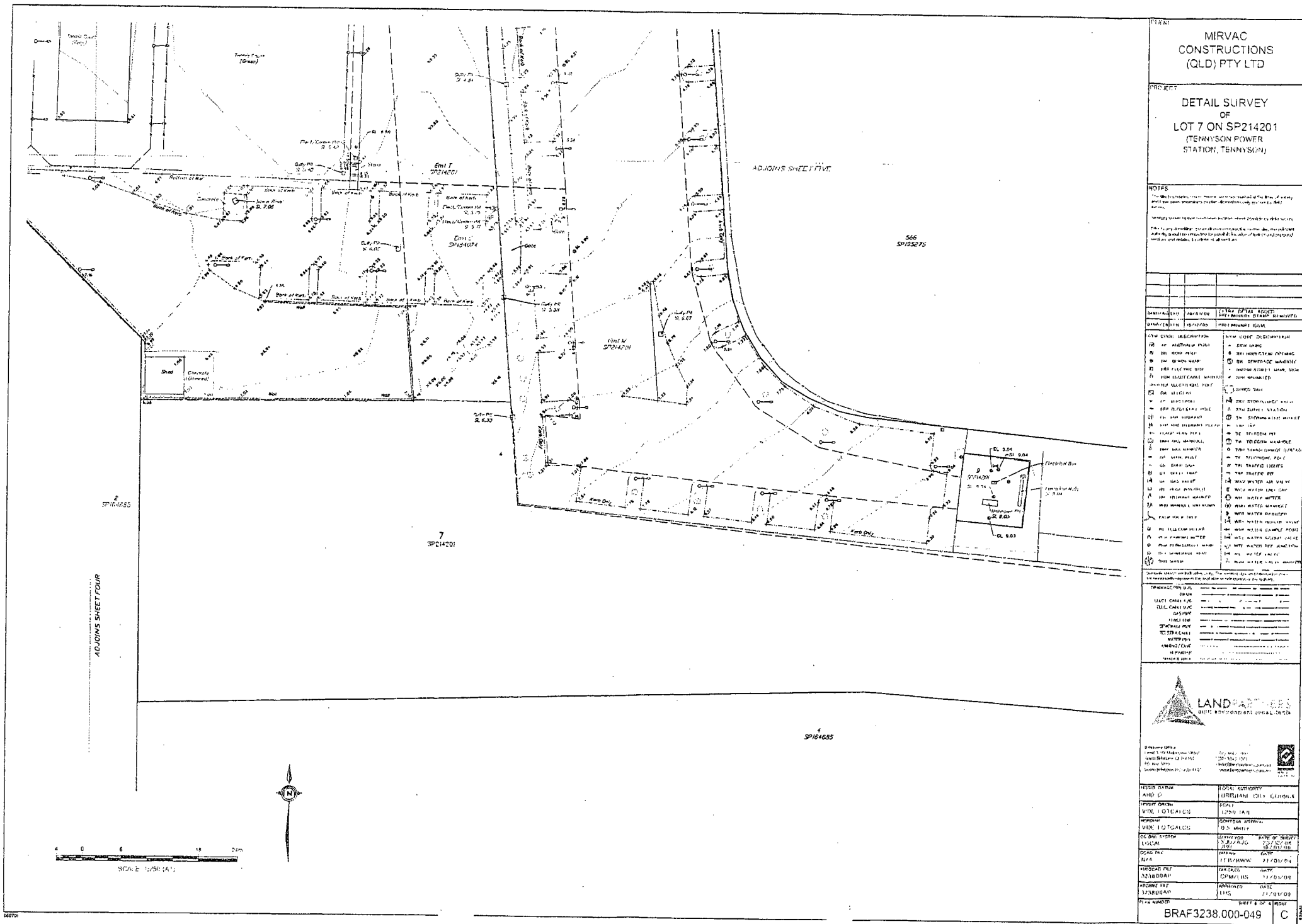
1:200

SCALE 1:200 (A1)

PROJECT NO.	DATE
PROJECT NAME	DATE
PROJECT LOCATION	DATE
PROJECT DESCRIPTION	DATE
PROJECT STATUS	DATE
PROJECT CONTACT	DATE
PROJECT APPROVAL	DATE
PROJECT REVIEW	DATE
PROJECT SIGNATURE	DATE
PROJECT CHECK	DATE
PROJECT APPROVED	DATE
PROJECT REVISION	DATE
PROJECT CANCELLED	DATE
PROJECT COMPLETED	DATE
PROJECT ARCHIVED	DATE
PROJECT DELETED	DATE

BRAF3238.000-049 C





**MIRVAC CONSTRUCTIONS (QLD) PTY LTD**

PROJECT  
**DETAIL SURVEY OF LOT 7 ON SP214201 (TENNYSYON POWER STATION, TENNYSYON)**

**NOTES**  
 1. The survey is intended to be used for the purposes of the project described in the title block. It is not to be used for any other purpose without the written consent of the Surveyor.  
 2. This survey is intended to be used for the purposes of the project described in the title block. It is not to be used for any other purpose without the written consent of the Surveyor.

DATE: 21/01/09  
 SURVEYOR: [Signature]

SYMBOL	DESCRIPTION	SYMBOL	DESCRIPTION
(Symbol)	STAKE	(Symbol)	BOUNDARY
(Symbol)	BOUNDARY	(Symbol)	BOUNDARY
(Symbol)	BOUNDARY	(Symbol)	BOUNDARY
(Symbol)	BOUNDARY	(Symbol)	BOUNDARY
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(Symbol)	BOUNDARY	(Symbol)	BOUNDARY
(Symbol)	BOUNDARY	(Symbol)	BOUNDARY
(Symbol)	BOUNDARY	(Symbol)	BOUNDARY

PROJECT NO	
DATE	
CLIENT	
SYMBOL	
SYMBOL	
SYMBOL	
SYMBOL	
SYMBOL	

**LANDPAC**  
 BUILT BY PROFESSIONAL LOCAL EXPERTS

REGISTRATION NO: 10110  
 ADDRESS: 1/120 EAST BRISBANE ROAD, BRISBANE QLD 4001

REGISTRATION NO	10110
ADDRESS	1/120 EAST BRISBANE ROAD, BRISBANE QLD 4001
PHONE	07 3238 0049
WEBSITE	www.landpac.com.au

REGISTRATION NO	10110	LOCAL AUTHORITY	BRISBANE CITY COUNCIL
PROJECT NO			
DATE			
CLIENT			

PROJECT NO: BRAF3238.000-049  
 SHEET 4 OF 4  
 DATE: 21/01/09

From: [Redacted]  
To: [Redacted]  
CC: [Redacted]  
Date: 14/06/2011 2:56 pm  
Subject: RE: Tennyson Reach Parklands

Hi [Redacted]

I have received in principal support to do away with the Head Agreement.

Will discuss tomorrow.

Regards

[Redacted]  
Solicitor/Team Leader Commercial | Brisbane City Legal Practice  
Brisbane City Legal Practice  
Office of the Lord Mayor & CEO

Ph: [Redacted]  
E-ma [Redacted]

>>> [Redacted] 14/06/2011 12:21 pm >>>

[Redacted] Thank-you for your time to discuss the structure of contracts for the sale of the land at Tennyson. If you have any further questions please contact [Redacted] of Clarke Kann below to discuss [Redacted]  
Partner | Property & Projects

Tel: [Redacted] [www.clarkekann.com.au](http://www.clarkekann.com.au)  
Brisbane | Level 7, 300 Queen Street, Brisbane QLD 4000, Australia | GPO Box 2249, Brisbane QLD 4001, Australia  
Sydney | Level 7, 55 Clarence Street, Sydney NSW 2000, Australia | GPO Box 1342, Sydney NSW 2001, Australia  
We are aiming to have to you this afternoon the draft land sale contracts. Could you please confirm that Council is preparing the AS 4000 construction contract. Regards Alex Levy

From: [Redacted]  
Sent: Friday, 10 June 2011 2:27 PM  
To: [Redacted]  
Cc: [Redacted]  
Subject: Tennyson Reach Parklands

Hi [Redacted]

Due to the unavailability of Maria Menchise, I will be attending our Wednesday meeting with [Redacted] another member of the BCLP property law team.

I am letting you know that [Redacted] previously worked at a CBD law firm and Mirvac was a client of that firm and [Redacted] had some matters with Mirvac directly. However, I do not believe is any conflict of interest and her skills may well serve to assist the expeditious resolution of this transaction.

Regards

[Redacted]  
Solicitor/Team Leader Commercial | Brisbane City Legal Practice  
Brisbane City Legal Practice  
Office of the Lord Mayor & CEO

Ph: [Redacted]  
E-m [Redacted]

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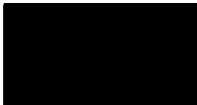
Tennyson Reach Proposed Council Parklands

From: [Redacted]  
To: [Redacted]  
Date: 14/06/2011 5:36 PM  
Subject: Tennyson Reach Proposed Council Parklands  
CC: [Redacted]  
Attachments: 20110614172318013.pdf

Dear [Redacted]

Please see attached.

Kind regards



Assistant Director

Legal Services  
Department of Public Works  
Level 6A 80 George Street Brisbane QLD 4000  
GPO Box 2457 Brisbane QLD 4001  
Telephone: [Redacted]  
Email: [Redacted]

From: [Redacted]  
Sent: Friday, 10 June 2011 12:22 PM  
To: [Redacted]  
Cc: [Redacted]  
Subject: Tennyson Reach Proposed Council Parklands

Dear [Redacted]

I refer to our telephone conversation this morning.

Council is negotiating to purchase:

Lot	County	Parish	Title Ref
Lot 3 on SP195275	Stanley	Yeerongpilly	50710033
Lot 4 on SP195275	Stanley	Yeerongpilly	50710034
Lot 5 on SP195275	Stanley	Yeerongpilly	50710035
Lot 101 on SP195275	Stanley	Yeerongpilly	50710040

To this end we are conducting a valuation and although we initially sought a copy of the State/Mirvac contract of sale, in summary we are only seeking to ascertain whether there are any outstanding contract obligations that may affect the above lots or affect the valuation of the above lots.

If you can confirm to me any such provisions are outstanding, or provide relevant portions of the contract for review, it would be greatly appreciated.

We are an under intense time pressure and would appreciate your urgent attention to this request.

Regards



Solicitor/Team Leader Commercial | Brisbane City Legal Practice  
Brisbane City Legal Practice  
Office of the Lord Mayor & CEO

Ph: [Redacted]  
E-mail: [Redacted]

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Thank you.

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Department of  
Public Works

14 June 2011

[REDACTED]  
Solicitor/Team Leader Commercial | Brisbane City Legal Practice  
Brisbane City Legal Practice  
Office of the Lord Mayor & CEO

E-mail: [REDACTED]

Dear [REDACTED]

**Proposed transfer from Mirvac Queensland Pty Limited to the Brisbane City Council  
Lot 3 on SP195275, Lot 4 on SP195275, Lot 5 on SP195275, Lot 101 on SP195275**

I refer to your email enquiry of 10 June directed to [REDACTED] of my office.

While the arrangements between the State and Mirvac Queensland Pty Limited in relation to the sale of the above described lots are commercial in confidence, I consider that they do not affect the valuation of those lots.

Yours faithfully

[REDACTED]  
**Executive Director  
Legal Services**

Legal Services  
Level 6A 80 George Street  
Brisbane Queensland 4000  
GPO Box 2457 Brisbane Queensland 4001

Telephone +61 7 3224 6223  
Facsimile +61 7 3224 6938  
Website [www.housing.qld.gov.au](http://www.housing.qld.gov.au)  
ABN 82 518 481 938

**From:** [REDACTED]  
**To:** [REDACTED]  
**Date:** 15/06/2011 10:02:23 AM  
**Subject:** [REDACTED]

Hi [REDACTED]

[REDACTED]  
Senior Development Manager  
Development Queensland

Mirvac  
Level 2, 164 Grey Street, South Bank QLD 4101 Australia PO Box 5121 West End QLD 4101

T [REDACTED]  
[Electronic Data Transmission Disclaimer](#)

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\*\*\*\*\*

---

**Attachments:** 110406 SD01 Masterplan only\_v2.pdf, Park Scope (2).docx





## Tennyson Reach Parkland- Schematic Design

### SCOPE OF WORKS

#### Preparation & Bulk Excavation

- Site preparation including clearing of vegetation, stripping of topsoil and removing from site
- Demolition and removal of existing vehicular access road crossing through the site
- Excavate to correct levels and profiles
- Place approx. 11,200m<sup>3</sup> of fill materials, imported to site once subgrades have been excavated, tested, surveyed and approved. All fill materials will be compacted, tested and verified

#### Existing Service Pits & Channels

- Design and construct suspended slab system over existing in ground structures to withstand the placement of imported materials above
- Demolish existing 15m<sup>3</sup> blockwall and remove from site
- Remove existing chain wire fencing

#### Community Building (Existing Mirvac Sales Office)

- Relocate existing building within 20m including structural certification but not limited to:
  - Relocation of services & rainwater tank
  - Raise building height 500mm
  - Modifications to existing staircase
  - Reconfigure access ramp
  - Replace existing timber cladding with face brick
- Retain & Make-good Landscaping & Carpark
  - Make-good existing driveway & carpark
  - Make-good existing landscaping pathways

#### Create canoe storage to underfloor area:

- Internal demolition and alteration of existing structure
- Design and Construct slab on ground, 200mm thick
- Horizontal timber batten screen to under floor area
- Canoe storage 6m by 8m
- Pavement to forecourt area

#### Canoe launching pontoon

- Design and construct canoe launching pontoon approx. 60m<sup>2</sup>

#### Power Station/ Pump House Structures

- Design and construct structural slab system over existing structures
- Stabilise existing structures
- Design and construct boardwalk over Pump Station (as per master plan)

#### Playground

- Playground Equipment - \$250,000 Allowance
- Rubber (500sqm) & sand (800sqm) softfall to playground
- Shade sails to playground
- Concrete seating wall – 185m

#### Amphitheatre

- Concrete terrace seating wall- 435sqm

#### Public Plaza

- Pavement area- 1450sqm
- Cube Arbour structure- \$340,000 Allowance

#### Driveway & Carpark

- Sealed bitumen driveway & carpark- 47 spaces
- Linemarking
- Disabled parking provisions

#### Pathways & Ramp

- Remove existing temporary PWD ramp & balustrade at Public plaza
- Construct pathways & ramps as shown on masterplan (approx 2800m<sup>2</sup>)
- Tactile ground surface indicators

Gabion Retaining Walls- (max 1000mm high) - 424m

3 Park Shelters (approx 5m x 7m)

#### Toilet Block

- Proprietary toilet facilities

### Art & Signage

- Public Art- \$60,000 allowance
- Interpretative Signage- \$10,000 allowance
- Feature & Directional Signage- \$45,000 allowance

### Furniture

- 6 Wheelie Bin Enclosures
- 15 Park Seats
- 390 Timber Bollards
- 10 Removable bollards
- 60 Feature Bollards
- 2 Lock Rails
- Bike Racks for 20 bikes
- 4 Drinking fountains including connection
- 8 Picnic benches

### Services

- Site Water connection
- Stormwater Gully pits
- Connection to water mains
- 25 Post mounted lights
- 45 Bollard lights
- Shelter lights as required
- 4 BCC Hose Cocks

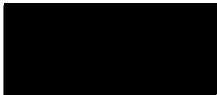
### Landscaping

- 780m<sup>2</sup> concrete garden edge
- 450m<sup>2</sup> compacted decomposed granite
- 11,000m<sup>2</sup> Turf including topsoil
- 7,000m<sup>2</sup> Topsoil to garden beds
- 7,000m<sup>2</sup> Bark mulch to garden beds
- 40x Ex ground Trees
- 65x 200L Advance tree
- 60x 100L Tree/Advanced Shrub
- 150x 45L Tree/ Advanced Shrub
- Revegetation to riparian edge
- Biofilter and stormwater garden

#### Establishment

- 12 weeks establishment
- 52 weeks maintenance

#### Mirvac Project Management



Tennyson Reach: Removal of Lot 3 from CTS

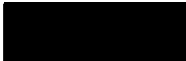
**From:** [Redacted]  
**To:** [Redacted]  
**Date:** 15/06/2011 1:35 PM  
**Subject:** Tennyson Reach: Removal of Lot 3 from CTS  
**CC:** [Redacted]  
**Attachments:** img-614162306-0001.pdf

Hi [Redacted]

Please see attached the letter from Clarke Kann to the Body Corporate which sets out the process for removing Lot 3 from the Tennyson Body Corporate.

Could you please forward to Belinda- I don't have her details.

Regards



\*\*\*\*\* This message has passed through  
 an insecure network. Please direct all enquiries to the message author.  
 \*\*\*\*\*

**ClarkeKann**  
LAWYERS

with

GRAY | PERKINS  
LAWYERS

Office Brisbane  
Contact  
Direct Line  
Email  
Our ref

14 June 2011

The Committee  
Body Corporate for Tennyson Reach CTS 39925  
C/- Cambridge Management Services Pty Ltd  
PO Box 175  
OXENFORD 4210

Facsimile:

Dear Committee Members

**Request for New CMS to Record Removal of Lot 3 on SP195275 from the Tennyson Reach Community Titles Scheme 39925 ("Scheme")**

We act for Mirvac Queensland Pty Ltd ACN 060 411 207 ("Mircvac").

Mircvac has asked us to write to you to more fully explain Mircvac's position in relation to Motion 17 included in the Notice of AGM scheduled for 29 June 2011 which Motion was proposed by Mircvac and submitted by the Committee.

CK

Mircvac is currently negotiating with Brisbane City Council for the transfer of proposed Stages 3, 4 and 5 Land Parcels (being lots 3, 4 and 5 on SP195275) and Lot 101 to Council for Parkland purposes. Lot 3 on SP195275 is currently included in the Scheme as the proposed Stage 3 Development Lot as referred to in Schedule B (Explanation of the Development of Scheme Land) of the recorded CMS. As part of negotiations with Council, Mircvac will be involved in the delivery of the completed Parklands.

BRISBANE  
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BRISBANE 4000  
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Pursuant to Schedule B (and, in particular, Item 5 – Reservations) of the recorded CMS, Mircvac, as Original Owner "reserves the right not to proceed with the development of one or more further Stages and reserves the right to extract or remove any Lot or Lots from the Scheme Land or to alter the number of Lots in any Stage in which case a new Community Management Statement will be recorded to amend the description of the Scheme Land and to adjust the CSLE and the ISLE allocations." "The Body Corporate and owners of Lots agree to give their consent to the recording of any new Community Management Statement(s) required to facilitate the development of the Scheme Land as referred to in (the) Schedule B by the Original Owner."

SYDNEY  
LEVEL 7  
55 CLARENCE STREET  
SYDNEY 2000  
GPO Box 1342  
SYDNEY 2001  
AUSTRALIA  
TEL: 61 2 8235 1222  
FAX: 61 2 8235 1299  
LAWYERS LIMITED BY A  
SCHEME APPROVED UNDER THE  
PROFESSIONAL STANDARDS LEGISLATION  
www.clarkekann.com.au

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Mirvac's rights, and the obligations of the Body Corporate and Lot owners not to hinder such rights, are entrenched in by-law 58 (Development by Original Owner) of the recorded CMS.

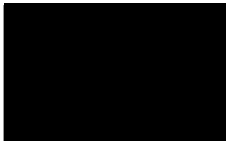
In the spirit of transparency, Mirvac has elected to seek the Body Corporate's consent to the recording of the New CMS by ordinary resolution at the AGM pursuant to section 62(4)(f) of the *Body Corporate and Community Management Act* ("BCCM Act") as opposed to making application under section 57 of the BCCM Act which obliges the Committee to endorse the consent of the Body Corporate on the New CMS within a mandatory 30 day period. However, Mirvac reserves its right to proceed under section 57.

Given the uncertainty of development of the proposed Stages 3, 4 and 5 Land Parcels following the January 2011 floods, Mirvac believes the completed Parklands on the proposed Stages 3, 4 and 5 Land Parcels will be a positive outcome for Owners of Lots in Stages 1 and 2.

The removal of Lot 3 from the Scheme will have marginal impact on the Body Corporate Budget as there are no Body Corporate costs attributable to Lot 3 as part of the Scheme (with the exception, perhaps, of minimal additional security costs and utilities in connection with administration of the Common Property, if any, along the perimeter of Lot 3). Accordingly, to the extent that Lot 3 is currently included in this Scheme with a CSLE of 4703 out of a total CSLE of 57,678, it is noted that Mirvac, as owner of Lot 3, has, in recent years, been subsidising the Body Corporate Budget by a not insignificant amount and would be subsidising the Body Corporate Budget by approximately \$130,000 in the 2011-2012 financial year. Notwithstanding that the Scheme as structured has resulted in Mirvac subsidising the Body Corporate Budget, Mirvac appreciates that Lot owners may be concerned about future increases in levies upon removal of Lot 3 from the Scheme and so Mirvac is prepared to consider a compensation package to defray such future Levy increases. Mirvac will liaise with you in the lead up to the AGM with a view to settling on a reasonable compensation package linked to the Body Corporate consenting to the New CMS.

When Mirvac has some resolution with you regarding the compensation package we will prepare a short circular to owners outlining the purpose of the proposed CMS amendments, the approval process and details of any Mirvac compensation package.

Yours faithfully



Partner  
Property & Projects



*Dedicated to a better Brisbane*

## Tennyson Riverside Parkland Project Weekly Report

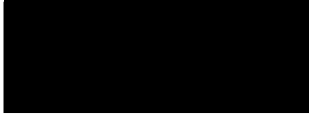
Reporting Period: From: Tue 14 June 2011  
To: Friday 17 June 2011

Activity and achievements	
1	<p><b><u>Town Planning</u></b></p> <p>Highest and best use for land valuation purpose has been assessed as residential apartment towers.</p>
2	<p><b><u>Land Valuation</u></b></p> <p>Valuator has been appointed and the valuation report is due 23 June.</p>
3	<p><b><u>Parkland Deed of Agreement</u></b></p> <p>The lawyers for Mirvac considered the draft Head of Agreement, and in light of the fact that it simply sought to formalise the terms of the letter sent from the CEO to Mirvac, suggested it be discarded and the parties move straight to finalising the Land Purchase Contract and the Design &amp; Construction Contract.</p> <p>BCLP have approved this approach and are now negotiating the Land Purchase Contract, and expect to sight a first draft AS4902.</p>
4	<p><b><u>Design and Construction</u></b></p> <p>Held meeting with Mirvac to discuss construction agreement. The following are the key action item;</p> <ul style="list-style-type: none"> <li>• Mirvac will draft AS4902 D&amp;C and issue to Council on 20 June for review. [REDACTED] and [REDACTED] to review.</li> <li>• Mirvac will issue landscape works return brief to Council on 20 June for review. NES, [REDACTED] to review.</li> <li>• NES to consolidate landscape design requirements.</li> </ul>
5	<p>Post Mirvac meeting held with NES to discuss landscape works design review for input into the proposed landscape schematic design and scope of works.</p>
6	<p><b><u>Purchase of land</u></b></p> <p>A submission is being prepared by SPO for the Stores Board to approve;</p> <ul style="list-style-type: none"> <li>• The purchase of the vacant land; and</li> <li>• To enter into a Contract with Mirvac Constructions (Qld) Pty Ltd (Mircac Constructions) to construct a Parkland (Parkland Works).</li> </ul> <p>Without seeking competitive tenders from industry in accordance with Section 1.2(c), Sole or Select Tendering, of the Procurement Manual pursuant to the City of Brisbane Act 2010.</p>
Next week outlook	
1	<p><b><u>Land Valuation</u></b></p> <p>Monitor valuation report progress. Due 23 June</p>
2	<p><b><u>Design and Construction</u></b></p> <p>Review Mirvac draft AS4906 D&amp;C contract.</p> <p>Review Mirvac landscape works return brief.</p> <p>NES to consolidate landscape design requirements</p>
3	<p><b><u>Purchase of land</u></b></p> <p>Monitor Stores Board submission</p>





Phone:  
Fax:  
Email:



# SAVAS VARITIMOS VALUER\*

REAL ESTATE VALUERS & PROPERTY PROFESSIONALS

ABN 25 329 474 597

13 Coates Court  
Brassall QLD 4305

VALUATION

of

REAL PROPERTY

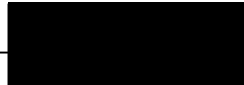
SITUATED AT

LOTS 3, 4, & 5 KING ARTHUR TERRACE, TENNYSON

PREPARED FOR

BRISBANE CITY COUNCIL  
MAJOR LAND ACQUISITION  
MAJOR INFRASTRUCTURE PROJECTS OFFICE  
GPO BOX 1434  
BRISBANE QLD 4001

ATTENTION:



Date of Valuation: 19 June, 2011

\*MIKAL QLD PTY LTD ACN 119 987 763 ATF THE MIKAL TRUST ABN 25 329 474 597 T/A SAVAS VARITIMOS VALUER

**CERTIFICATE OF VALUATION**

ADDRESS Lot 3 King Arthur Terrace, Tennyson

PURPOSE OF VALUATION Purchase purposes.

METHOD OF VALUATION The method of valuation used in our report is the direct comparison approach on a rate/m<sup>2</sup> basis.

PREPARED FOR Brisbane City Council

BASIS OF VALUATION Market Value - Fee Simple Vacant Possession

REGISTERED OWNER Mirvac Queensland Pty Limited A.C.N. 060 411 207

REAL PROPERTY DESCRIPTION Lot 3 SP195275  
County of Stanley, Parish of Yeerongpilly

MARKET VALUE Three Million One Hundred Thousand Dollars  
(\$3,100,000) excluding GST



Lot 3 is located to the front of the buildings

.....



Registered Valuer Qld 1908  
 Certified Practising Valuer  
 Savas Varitimos Valuer  
 22 June, 2011

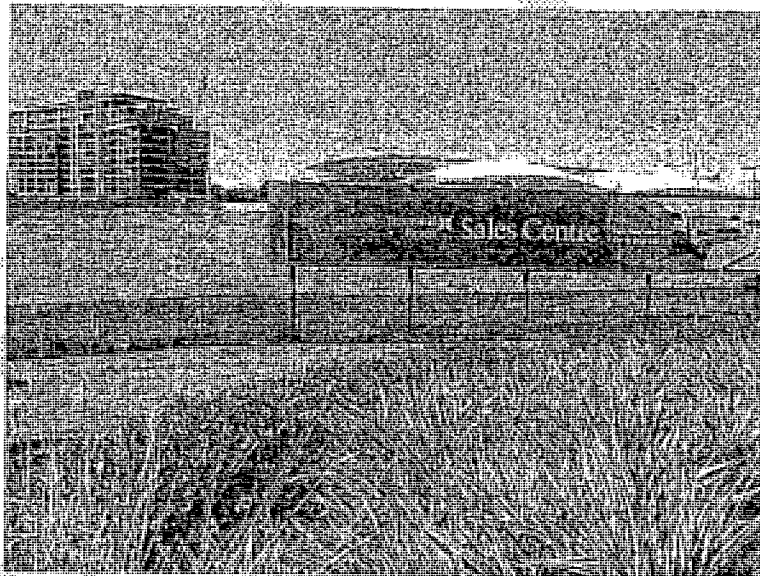
Our Reference: 11091

This valuation is subject to the qualifications, limitations and assumptions made within our report.

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CERTIFICATE OF VALUATION

<u>ADDRESS</u>	Lot 4 King Arthur Terrace, Tennyson
<u>PURPOSE OF VALUATION</u>	Purchase purposes.
<u>METHOD OF VALUATION</u>	The method of valuation used in our report is the direct comparison approach on a rate/m <sup>2</sup> basis.
<u>PREPARED FOR</u>	Brisbane City Council
<u>BASIS OF VALUATION</u>	Market Value - Fee Simple Vacant Possession
<u>REGISTERED OWNER</u>	Mirvac Queensland Pty Limited A.C.N. 060 411 207
<u>REAL PROPERTY DESCRIPTION</u>	Lot 4 SP195275 County of Stanley, Parish of Yeerongpilly
<u>MARKET VALUE</u>	Four Million Dollars (\$4,000,000) excluding GST



Lot 4 includes the landscaping in the foreground and the area taken up by the sign.

.....  
 [REDACTED]  
 Registered Valuer Qld 1908  
 Certified Practising Valuer  
 Savas Varitimos Valuer  
 22 June, 2011

Our Reference: 11091

This valuation is subject to the qualifications, limitations and assumptions made within our report.

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**CERTIFICATE OF VALUATION**

ADDRESS Lot 5 King Arthur Terrace, Tennyson

PURPOSE OF VALUATION Purchase purposes.

METHOD OF VALUATION The method of valuation used in our report is the direct comparison approach on a rate/m<sup>2</sup> basis.

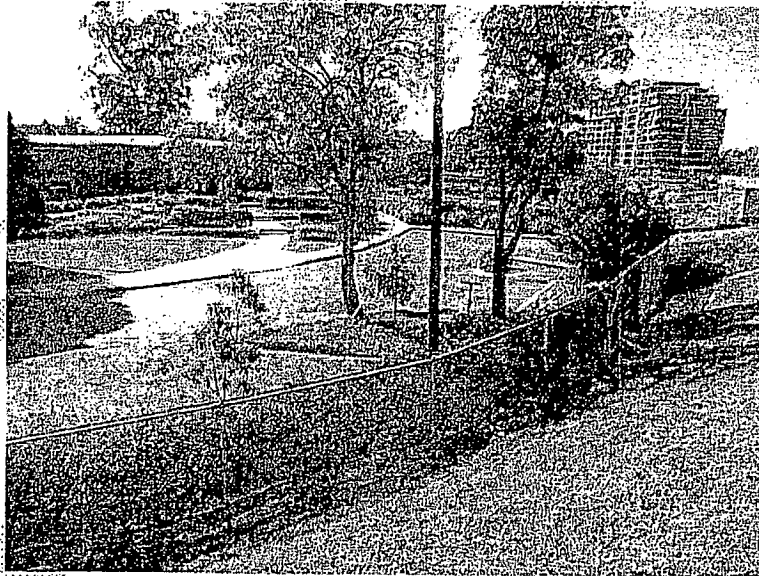
PREPARED FOR Brisbane City Council

BASIS OF VALUATION Market Value - Fee Simple Vacant Possession

REGISTERED OWNER Mirvac Queensland Pty Limited A.C.N. 060 411 207

REAL PROPERTY DESCRIPTION Lot 5 SP195275  
County of Stanley, Parish of Yeerongpilly

MARKET VALUE Two Million and Fifty Thousand Dollars  
(\$2,050,000) excluding GST



Lot 5 includes the landscaping and carpark.

.....  
 [Redacted]  
 Registered Valuer Qld 1908  
 Certified Practising Valuer  
 Savas Varitimos Valuer  
 22 June, 2011

Our Reference: 11091

This valuation is subject to the qualifications, limitations and assumptions made within our report.

./5

**Lots 3, 4, & 5 King Arthur Terrace  
Tennyson  
Brisbane City Council**

OUR REFERENCE 11091  
DATE OF VALUATION 19 June, 2011  
DATE OF INSPECTION 19 June, 2011

PURPOSE OF VALUATION

As instructed by email dated 14 June, 2010 to assess the market value for purchase purposes of the following described land and improvements thereon.

'Market value is the estimated amount for which an asset should exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion.'

REAL PROPERTY DESCRIPTION

Lots 3, 4, & 5 SP195275  
County of Stanley, Parish of Yeerongpilly

The property has been identified by Cadastral Map, however, a detailed site survey has not been carried out and for the purpose of this valuation it has been assumed that all structural improvements have been erected within the title boundaries.

REGISTERED OWNER

MIRVAC QUEENSLAND PTY LIMITED

TITLE REFERENCES

Lot 3 50710033  
Lot 4 50710034  
Lot 5 50710035

Initial:

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**Lots 3, 4, & 5 King Arthur Terrace  
Tennyson  
Brisbane City Council**

EASEMENTS, ENCUMBRANCES & INTERESTS

Lot 3 on SP195275

1. Rights and interests reserved to the Crown by  
Deed of Grant No. 40054677 (Lot 3 on SP195275)
2. EASEMENT No 712884080 23/11/2009 at 16:17  
benefiting the land over  
EASEMENT U ON SP230021

ADMINISTRATIVE ADVICES - NIL  
UNREGISTERED DEALINGS - NIL

Lot 4 on SP195275

1. Rights and interests reserved to the Crown by  
Deed of Grant No. 40054677 (Lot 4 on SP195275)

ADMINISTRATIVE ADVICES - NIL  
UNREGISTERED DEALINGS - NIL

Lot 5 on SP195275

1. Rights and interests reserved to the Crown by  
Deed of Grant No. 40054677 (Lot 5 on SP195275)

ADMINISTRATIVE ADVICES - NIL  
UNREGISTERED DEALINGS - NIL

AREA OF LAND

Lot 3	4,429m <sup>2</sup>
Lot 4	5,725m <sup>2</sup>
Lot 5	2,921m <sup>2</sup>
Total land area	13,075m <sup>2</sup>

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**Lots 3, 4, & 5 King Arthur Terrace  
Tennyson  
Brisbane City Council**

TOWN PLANNING

Lot 3

The land is designated Community Use Area CU8 – Utility Installation under the Brisbane City Council Town Plan.

Constraints

- Brisbane River Corridor
- Stephens District Local Plan

Lots 4 & 5

The land is designated Community Use Area CU8 – Utility Installation under the Brisbane City Council Town Plan.

Constraints

- Brisbane River Corridor
- Brisbane River Precinct 2
- Stephens District Local Plan
- Land Subject to Wetland Code

Approval

A Preliminary Approval (Council Reference No: A002824927) exists overriding the Planning Scheme for the Tennyson Reach Development. The approval includes the development of 191 units in 3 buildings referred to as Building A, B and C on the subject properties.

Council has advised that:

“As part of the Preliminary Approval, there is an approved Master Plan and associated documentation including a Code and Level of Assessment table which guides the “approved development” intent in accordance with the preliminary approval.”

Condition 149 of the Preliminary Approval relates to the minimum habitable floor level. “The condition provides that the minimum habitable floor levels are 500mm above the 100 year (ARI) flood level (river and creek flooding) or 500mm above the 50 year (ARI) (overland flowpath) whichever is the greater.”

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**Lots 3, 4, & 5 King Arthur Terrace  
Tennyson  
Brisbane City Council**

TOWN PLANNING CONTINUED

Development under the Preliminary Approval would not be required to adhere to the revised DFE that Council has imposed through the City Plan 2000 as the Preliminary Approval overrides the City Plan 2000 provisions.”

“Buildings A, B and C have an indicative building height of approximately 8 to 10 storeys which would be subject to detailed design that would be part of a Code Assessment Material Change of Use Application seeking a Development Permit.”

Town planning information was obtained from the Brisbane City Council Customer Service Centre and from correspondence provided. We recommend that this zoning or planning area should be verified by application to Council for the issue of a zoning certificate.

DEPARTMENT OF ENVIRONMENT & RESOURCE MANAGEMENT VALUATION

No site value is recorded against the subject properties.

LOCALITY

The subject properties are situated on the northern side of King Arthur Terrace. Lot 4 and 5 are inside allotments and Lot 5 is located at the intersection of the King Arthur Terrace and Softstone Street roundabout. A site proposed for development as parkland separates the subject properties from the Brisbane River.

They are located within an established but developing locality. Surrounding properties include the Queensland Tennis Centre, modern residential towers; and dwellings of varying age, size, style and quality. Indooroopilly Golf Course is located to the northern side of the Brisbane River and the Brisbane Golf Club is located approximately 400 metres to the south.

They are within approximately 7 radial kilometres in a southerly direction of the Brisbane General Post Office.

Local amenities including convenience stores and schools are within approximately 2 radial kilometres. The Tennyson Train Station is within approximately 150 radial metres.

SERVICES

All city services are available to the property including electricity, telephone, town water and sewerage.

Initial:

../9



**Lots 3, 4, & 5 King Arthur Terrace  
Tennyson  
Brisbane City Council**

ROADS AND ACCESS

King Arthur Terrace is two (2) way, two (2) lane carriageway. It is bitumen sealed to the full width with concrete kerb and channel, and has a concrete footpath to its southern boundary.

Vehicular access is available but not provided to lots 3 and 4. For lot 5 it is provided over a concrete crossover.

NATURE OF LAND

All lots are irregular in shape and below street level. They fall gradually to a pad which slopes gentle to the rear. They are all identified as having been flooded in January, 2011 under the Council's Temporary Local Planning Instrument. At the peak of the flood it is understood that the maximum depth was 9.1 metres.

As stated above the Preliminary Approval overrides the Planning Scheme. The minimum habitable floor level based on the approval is 500mm above the 1 in 100 flood level being 8.4 metres. The minimum habitable floor level under the preliminary approval is below the level adopted under the Temporary Local Planning Instrument.

At ground level they have river views.

The table below provides the levels of the lots and various flood levels.

	<u>Lot 3</u>	<u>Lot 4</u>	<u>Lot 5</u>
Lowest level	3.7m	3.9m	6.1m
Highest level	9.6m	9.8m	13.7m
2% (50 year ARI)	6.6m	6.6m	6.6m
1% (100 year ARI or DFL)	7.9m	7.9m	7.9m
January 2011	9.1m	9.1m	9.1m

IMPROVEMENTS

Other than a carpark and part of a sales office used by Mirvac in marketing Tennyson Reach and located on lot 5, the properties are vacant land devoid of any significant improvements.

We consider the highest and best use of the subject properties is for their redevelopment and have therefore excluded the existing improvements from this report.

Initial:

../10

**Lots 3, 4, & 5 King Arthur Terrace  
Tennyson  
Brisbane City Council**

VALUATION

Highest and Best Use

The highest and best use is defined as the most profitable use of an asset which is physically possible, appropriately justified, legally permissible, financially feasible and which results in the highest and best use of the asset being valued.

As previously stated a Preliminary Approval exists to develop residential apartment towers on each of the subject properties.

We consider the highest and best use of the subject properties is for their individual development subject to Council Approval and conditions.

Rationale

As stated above a Preliminary Approval exists over the subject properties to develop each lot with residential apartments up to approximately 8 to 10 storeys. Advice obtained from Council Officers indicate that this places the subject property into a category similar to Medium Density, Multi-Purpose Centre MP3 or Multi-Purpose Centre MP4 designations.

We have valued the subject properties on a rate/m<sup>2</sup> basis having regard to the sales evidence contained herein. Consideration has been given to site characteristics, location, land area, zones and approvals in comparing the sales evidence to the subject property.

As the subject properties are held as three (3) separate lots, valuations have been undertaken on each lot. Whilst being held as three (3) lots creates an advantage in being able to market each separately, it also has a negative influence on value as each purchaser/developer is aware that they will potentially be competing with a neighbouring development. Further, purchasing three (3) lots in one line, as is the case here, has a negative impact on value.

Whilst the Approval creates some advantages and adds value, it is questionable as to whether or not development at the habitable floor levels conditioned into the approval (which is below the level adopted under the Temporary Local Planning Instrument) would occur.

Prior to the January, 2011 flood and subsequent to the peak in the property market in early 2008, there has been a distinct decrease in the number of high rise residential developments being undertaken and number of sales transacting. The development site market could best be described as patchy with in many cases sites being repossessed and sold by Mortgagees exercising their power of sale. There is a distinct lack of relativity in the market place which is largely driven by current economic conditions and the financial position of vendors.

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../11

Lots 3, 4, & 5 King Arthur Terrace  
Tennyson  
Brisbane City Council

VALUATION CONTINUED

Rationale continued

Complicating matters even further has been the January, 2011 flood. To date no recorded sales have occurred of flood affected residential development sites to gauge the implications the flood will have on value. Therefore, we can only rely on sales evidence which occurred prior to January, 2011. If available, which is not the case, we would have also referred to flood free residential development site sales.

Sales evidence

In undertaking our valuation we have referred to known sales evidence of residential development sites. Some of the sales referred to are as follows:

1. 75 Kittyhawk Drive, Chermside

Sold 9 December, 2010 for \$11,367,000

Land area 14,780 m<sup>2</sup>

Analysis: \$769/m<sup>2</sup>

Vacant Multi-Purpose Centre MP2 zoned site sold by a Mortgagee exercising their power of sale. The land is slightly above street level, generally level in contour and irregular in shape. Sold with an approval to develop 5 affordable housing residential towers on the land ranging from 7 to 12 levels. The intent of the purchaser is reportedly to sub-divide the land into 6 smaller lots and develop each with 80 to 90 units. The sale price equates to \$769/m<sup>2</sup>. Considered slightly superior on a rate/m<sup>2</sup> basis due to its superior zone and approvals.

2. 35 Burdett Street, 60 Crosby Street and lots 121 & 122 Crosby Street, Albion

Sold 6 August, 2010 for \$15,608,848

Land area 17,576m<sup>2</sup>

Analysis: \$888/m<sup>2</sup>

Medium Density zoned site with 3 street frontages. Improved with industrial buildings of fair condition. **Sold by a Mortgagee Exercising their power of sale in an off the market transaction.** An approval has subsequently been obtained to develop 35 Burdett Street with multi unit dwellings over 6 levels. The property has some city views and is located opposite a concrete batching plant. The purchaser's intention is to develop 60 Crosby Street with a mixed use development and the smaller lots with executive residence. The sale price equates to \$888/m<sup>2</sup>. Considered vastly superior on a rate per/m<sup>2</sup> basis due to its proximity to the city and elevation.

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./12

**Lots 3, 4, & 5 King Arthur Terrace  
Tennyson  
Brisbane City Council**

VALUATION CONTINUED

3. 589 Fairfield Road, Yeronga

Sold 16 February, 2010 for \$1,600,000

Land area 1,591m<sup>2</sup>

Analysis: \$1,005/m<sup>2</sup>

Low-Medium density residential zoned site located on a corner, adjacent to existing residential units and within 500 metres of the Yeerongpilly Train Station. Purchased by the State for construction of residential units on the land. The sale price equates to \$1,005/m<sup>2</sup>. Considered vastly superior on a rate/m<sup>2</sup> basis due to its smaller land area and elevation.

4. 11 Stephens Street, Morningside

Sold 16 July, 2010 for \$2,140,000

Land area 2,023m<sup>2</sup>

Analysis: \$1,057/m<sup>2</sup>

Low-Medium Density zoned site improved with a dwelling in average condition. The land is generally level in contour and located opposite a school. An application has subsequently been made to develop multi-unit dwellings on the land. The sale price equates to \$1,057/m<sup>2</sup>. Considered vastly superior on a rate/m<sup>2</sup> basis due to its smaller land area.

5. 27, 29 & 314 Elizabeth Street, Toowong

Sold 22 September, 2010 for \$2,533,333

Land area 2,548m<sup>2</sup>

Three adjoining Low-Medium Density Residential zoned sites, improved with a dwelling and a lodge. The land is above street level and a hatchet access is provided to the rear. Sold with an approval to develop multi unit dwellings on the land. The sale price equates to \$994/m<sup>2</sup> including the added value of the improvements. Considered vastly superior on a rate/m<sup>2</sup> basis due to its superior location and elevation.

6. 557 Ipswich Road, Annerley

Sold 27 September, 2010 for \$2,050,000

Land area 3,354m<sup>2</sup>

Analysis: \$611/m<sup>2</sup>

Four (4) adjoining sites each improved with a dwelling, zoned Low-Medium Residential and purchased in one line. The land has a gradual fall to the rear and one site is located on a corner. The sale price equates to \$611/m<sup>2</sup> including the added value of the improvements. Considered inferior on a rate/m<sup>2</sup> basis due to its inferior zone and location.

Initial:

../13

**Lots 3, 4, & 5 King Arthur Terrace  
Tennyson  
Brisbane City Council**

VALUATION CONTINUED

7. 30 Chatsworth Road, Greenslopes

Sold 1 October, 2010 for \$1,450,000  
Land area 2,074m<sup>2</sup>

Analysis: \$699m<sup>2</sup>

Low-Medium Density zoned site improved with a character home. The property is held as two (2) lots. An approval has subsequently been obtained to move the existing dwelling across the site and develop one lot with multi unit dwellings. The property is elevated and has city views. The sale price equates to \$699/m<sup>2</sup> including the added value of the improvements. Considered comparable overall on a rate/m<sup>2</sup> basis due to its inferior zone and having regard to the implication of having to retain a character dwelling on the land.

Calculations

Having regard to the known sales evidence, we value the real property for the sum of **Nine Million One Hundred and Fifty Thousand Dollars (\$9,150,000) excluding GST**, which we reasonably determine as follows:

Lot 3 – 4,429m <sup>2</sup> @ \$700/m <sup>2</sup>	= (\$3,100,300)	Adopt \$3,100,000
Lot 4 – 5,725m <sup>2</sup> @ \$700/m <sup>2</sup>	= (\$4,007,500)	Adopt \$4,000,000
Lot 5 – 2,921m <sup>2</sup> @ \$700/m <sup>2</sup>	= (\$2,044,700)	Adopt <u>\$2,050,000</u>
		<b>\$9,150,000 excluding GST</b>

This valuation has been undertaken having regard to the Preliminary Approval obtained from Council (Council Reference No: A002824927) allowing for the development of residential towers on the land. It is also undertaken having regard to sales evidence which took place prior to the January, 2011 flood. Searches using PDS live have not revealed sales evidence of similar sites to determine if the flood will have an impact on value. We reserve the right to alter our valuation and the advices contained herein if sales evidence of flood affected residential development sites with similar potential to the subject property become available. It may become apparent from sales evidence that the flood may have an impact on valuations.

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Registered Valuer Qld 1908  
Certified Practising Valuer  
Savas Varitimos Valuer  
22 June, 2011

../14

Lots 3, 4, & 5 King Arthur Terrace  
Tennyson  
Brisbane City Council

REMARKS

There are no recently recorded sales evidence of properties similar in zone, potential, constraints and elevation to the subject property.

The property market experienced a strong growth phase, peaking in early 2008. Since and due to a dramatic decline in economic conditions, developers have been shelving developments, lending institutions have been reluctant to lend money on commercial developments and many sites have been repossessed. These issues have had a detrimental impact on sales volumes with a lack of evidence available of sites similar in zone and potential to the subject property.

An extended marketing period may be required in selling a property of this type within this locality given the current state of the market.

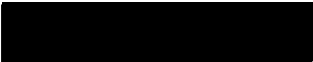
We consider this valuation to be a reasonable interpretation of the available evidence and would be capable of realisation if offered for sale on the open market at the date of valuation.

This report is not to be used by the purchaser for pre-purchase advising or mortgage security purposes and no liability is extended in this regard.

This valuation is for the use only of the party to whom it is addressed and for no other purpose. No responsibility is accepted to any third party, who may use or rely on the whole of or any part of the content of this valuation and report without the written consent of the valuer.

In accordance with instructions we advise we do not have a pecuniary or other interest that would conflict with the proper valuation of the property.

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Registered Valuer Qld 1908  
Certified Practising Valuer  
Savas Varitimos Valuer  
22 June, 2011

**Lots 3, 4, & 5 King Arthur Terrace  
Tennyson  
Brisbane City Council**

QUALIFICATIONS & LIMITATIONS

1. We state that this valuation is for the use only of the Brisbane City Council for purchases purposes.
2. We assume that all approvals have been obtained from all authorities regarding structural improvements upon the property.
3. This report is for valuation assessment purposes and is not a structural survey of improvements.
4. This valuation assumes that there are no restrictions or onerous encumbrances other than those registered on Title.
5. We have not carried out a Contamination search or Investigation. Our assessment assumes that no contamination exists, and that the property complies with all environmental requirements set down by all relevant authorities.
6. In accordance with the International Valuation Standards Committee (IVSC) the definition of market value is as follows: "Market Value is the estimated amount for which an asset should exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion."
7. Copyright to this report is retained by Mikal Qld Pty Ltd as trustee for the Mikal Trust trading as Savas Varitimos Valuer and no copying or distribution of the valuation, either in full or in part, may be undertaken without the prior written consent of Mikal Qld Pty Ltd as trustee for the Mikal Trust trading as Savas Varitimos Valuer.
8. This valuation is current as at the date of valuation only. The value assessed herein may change significantly and unexpectedly over a relatively short period (including as a result of general market movement or factors specific to the particular property). We do not accept liability for losses arising from such subsequent changes in value. Without limiting the generality of the above comment, we do not assume any responsibility or accept any liability where this valuation is relied upon after the expiration of 45 days from the date of the valuation or such earlier date if you become aware of any factors that have any effect on the valuation.
9. In analysing the sales evidence referred to herein, it is noted that we have attempted to ascertain whether or not the sale price is inclusive or exclusive of Goods and Services Tax (GST). In relation to sales evidence, it is emphasised that Land Titles Offices in Australia do not currently differentiate between or record whether or not the sale price is inclusive or exclusive of GST. Where we have not been able to verify whether or not GST is included in the sale price, we have assumed that the record of sales price is exclusive of GST. Should this not be the case for any particular sale used as evidence, we reserve the right to reconsider our valuation.

Initial:

**- FW: Tennyson River Park - Return Brief**

**From:** [Redacted]  
**To:** [Redacted]  
**Date:** 22/06/2011 3:26:57 pm  
**Subject:** FW: Tennyson River Park - Return Brief  
**CC:** [Redacted]

Hi [Redacted]

As discussed the Works Contract will be forwarded to you this afternoon.

However, in the meantime, please find attached the draft Return Brief, the schematic masterplan and the draft park scope. Together these will form the '*Principal's Project Requirements*' that are referred to in the draft Contract.

Please contact me with any questions or comments.

Regards,

[Redacted]  
Senior Development Manager  
Development Queensland

Mirvac  
Level 2, 164 Grey Street South Bank QLD 4101 Australia PO Box 5121 West End QLD 4101

[Electronic Data Transmission Disclaimer](#)

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# TENNYSON RIVER PARK

RETURN BRIEF

MIRVAC

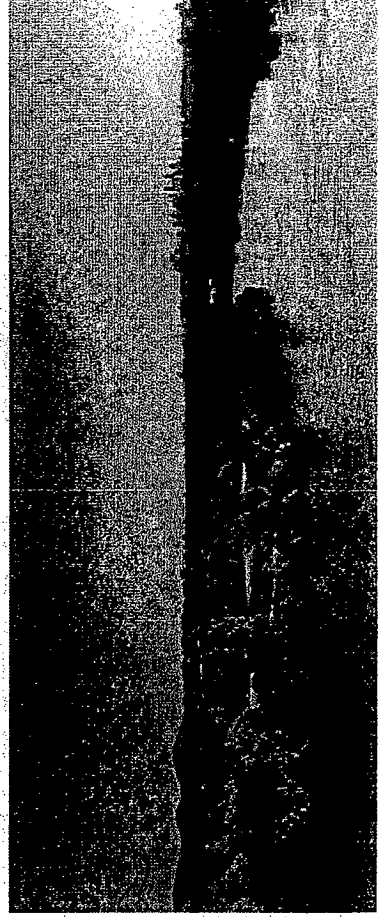


TABLE OF CONTENTS

02 INTRODUCTION

03 VISION

04 DESIGN PRINCIPLES

06 KEY DESIGN ELEMENTS

08 KEY PRECINCTS  
(CHARACTER IMAGES & MATERIALS PALETTE)

- PLAZA PRECINCT
- AMPHITHEATRE PRECINCT
- SCULPTURE PRECINCT
- KICK & THROW, PLAYGROUND PRECINCT
- CULTURAL HERITAGE PRECINCT
- COMMUNITY FACILITIES PRECINCT

## INTRODUCTION

The reclamation and revitalization of Brisbane's river front has seen the emergence of a number of high quality public open spaces reinforcing the character and livability of our city. New park designs along the river corridor are embracing the opportunity for the public to engage with the river edge promoting the creation of a wholesome, just and rich quality of urban life.

The Tennyson River Park site, formerly the site of the now demolished Tennyson power station, is located on the southern bank of the Brisbane River opposite the state tennis centre 8km from the Brisbane CBD.

The subject land provides an excellent opportunity to transform a post industrial site into a dynamic yet sustainable, year round Public Park, animated by a wide variety of uses and multifunctional spaces.

The design for the park should not only achieve core planning and design principles identified within the Brisbane City Council guidelines but exceed the expectations and design standards for public open space creating a park of exceptional distinction within the City and the State.

## VISION

The design vision for Tennyson River Park is to revitalise this part of the riverfront to establish a positive, meaningful relationship with the river and to transform the land into a marvellous public destination with vibrant public and cultural spaces capable of providing a variety of experiences and amenities. At the same time the park must provide a highly local environment featuring dynamic, sustainable spaces with strong connections to adjacent communities, landuses and the environment.

COMMUNITY NEEDS AND CULTURAL VALUES

- Provide a variety of recreational opportunities and facilities that respond to the needs and demographics of the surrounding community while maintaining a flexibility that caters for large scale festivals and events.
- Understand the provisions and future planning of surrounding park facilities and avoid the unnecessary facility duplication.
- Integrate elements associated with the cultural heritage of the site and provide opportunities for these to be interpreted by the park users.
- Ensure recreational facilities are inclusive and engaging for a broad range of age groups and abilities.

CIRCULATION AND CONNECTION

- Provide a legible circulation network that clearly identifies entry nodes, directional signage, and recreational features of the park encouraging easy access and orientation for park visitors.
- Accommodate a hierarchy of pedestrian and bicycle pathways within the park that provide a variety of experiences and engage with the spaces and the river at differing levels.
- Provide safe connections to the park from the surrounding community linking to transport nodes, car parks, and other surrounding open space networks.
- Ensure that the grades associated with the pedestrian circulation into and throughout the park are safe and accessible for all users.

DESIGN PRINCIPLES

CHARACTER AND VISUAL AMENITY	CHARACTER AND VISUAL AMENITY	SUSTAINABILITY
<ul style="list-style-type: none"> <li>Reinforce and complement the existing park character and create a synergy between the existing and the new Tennyson River Park.</li> <li>Embrace the location of the site adjacent the Queensland Tennis centre and accommodate the potential opportunities for exposure and use during tennis events.</li> <li>Protect and promote the visual connections to the river and the riparian edge from numerous vantage points surrounding and within the park.</li> <li>Integrate the existing vegetation including the mangroves along the river edge into the park design and landscape character.</li> </ul>	<ul style="list-style-type: none"> <li>Incorporate CPTED (Crime Prevention through Environmental Design) principles into the park design to minimise site vandalism and unintended uses of the park.</li> <li>Integrate shelter from the sun and weather through the provision of park structures, playground shade sails and shade tree planting.</li> <li>Structure the layout of the park so adjacent uses are complimentary and do not conflict creating hazardous situations.</li> </ul>	<ul style="list-style-type: none"> <li>Maximise the use of recycled and recyclable materials within the design of the park finishes and park elements.</li> <li>Reduce the levels of energy consumption and make greater use of low impact renewable energy sources.</li> <li>Improve water quality by integrating WSUD design principles into the park landscape and harvest water from proposed structures for reuse on site.</li> <li>Protect and reinforce the environmental integrity within the riparian edge of the park providing habitat and niche environments for a diversity of riparian flora and fauna.</li> <li>Ensure that design elements within the park are robust and do not create excessive maintenance and demand on resources.</li> <li>Reinforce the community through reference to past community consultation, integration of local historical reflections, and the creation of public spaces that foster social interaction.</li> </ul>

## DESIGN PRINCIPLES

#### PARK PREPARATION WORKS

- The majority of the park is currently cleared of all vegetation as part of the original demolition of the Tennyson Power station leaving a relatively blank canvas for the park landscape design. Some riverfront vegetation and mangroves have been retained and should be integrated into the final park design.
- A significant cut exists of approximately 4-5 meters along the southern edge of the site along the King Arthur Terrace road frontage. Filling will need to be undertaken to address level changes and accessibility to the lower spaces within the river park.
- It is anticipated that a number of retaining structures will be required to establish levels within the park defining spaces and allowing transitions between levels on approach to the river edge.
- The site should be drained incorporating the principles of water sensitive urban design, polishing the stormwater as it disperses off roads, car parking and hard surfaces draining towards the Brisbane River.
- Technical advice should be sought to develop a plan for the removal and maintenance of weeds within the riparian zone and the remnant river vegetation.
- Ensure that elements of the remaining powerstation substructures are integrated into the park design in an unobtrusive and safe way.

#### DESIGN ELEMENTS

## PARK LANDSCAPE WORKS

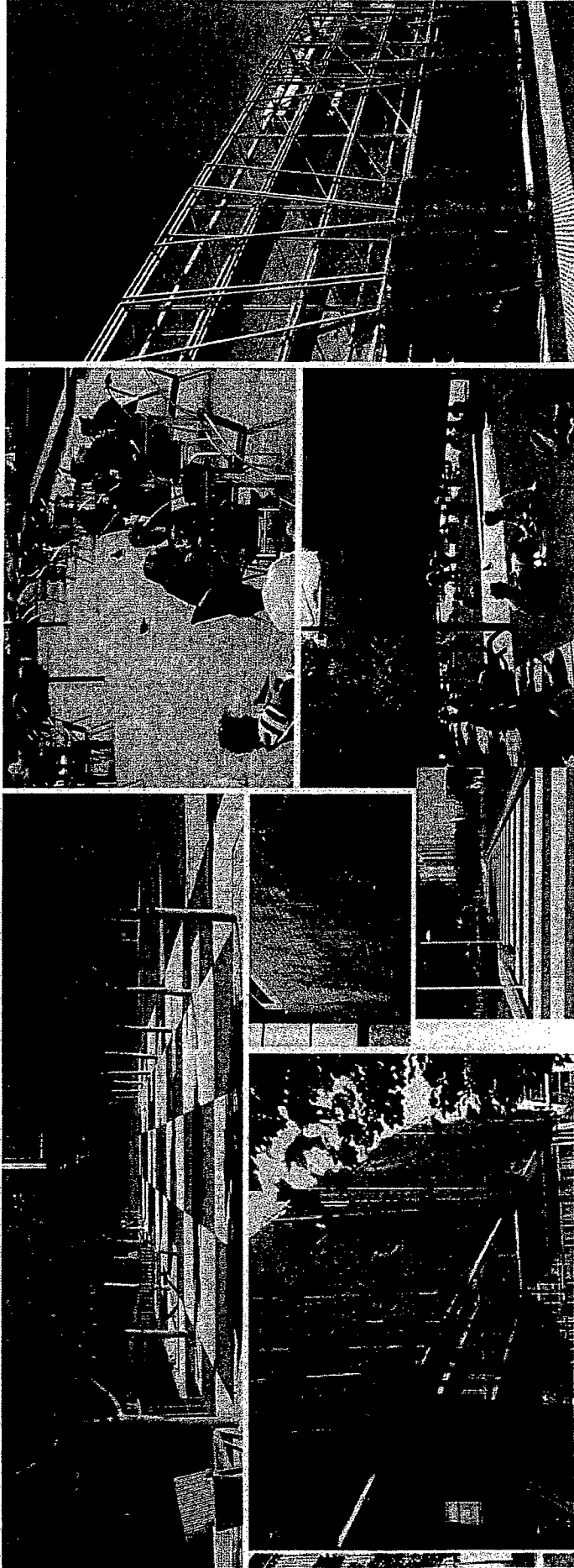
- Landscape garden bed areas should be used only to reinforce retained vegetation areas, buffer levels changes and retaining walls, to screen undesirable site features, and to define landscape spaces within the park.
- Planting selected for the parkland should be predominantly native species with some cultural planting reinforcing the subtropical character of Brisbane's landscape.
- All garden edges separating turf and garden areas will be defined by a continuous concrete edging.
- Tree planting should be selected to achieve a quality outcome reinforcing the landscape character, cultural heritage, natural habitat, and various micro-climatic environments throughout the site.

## INFRASTRUCTURE REQUIREMENTS

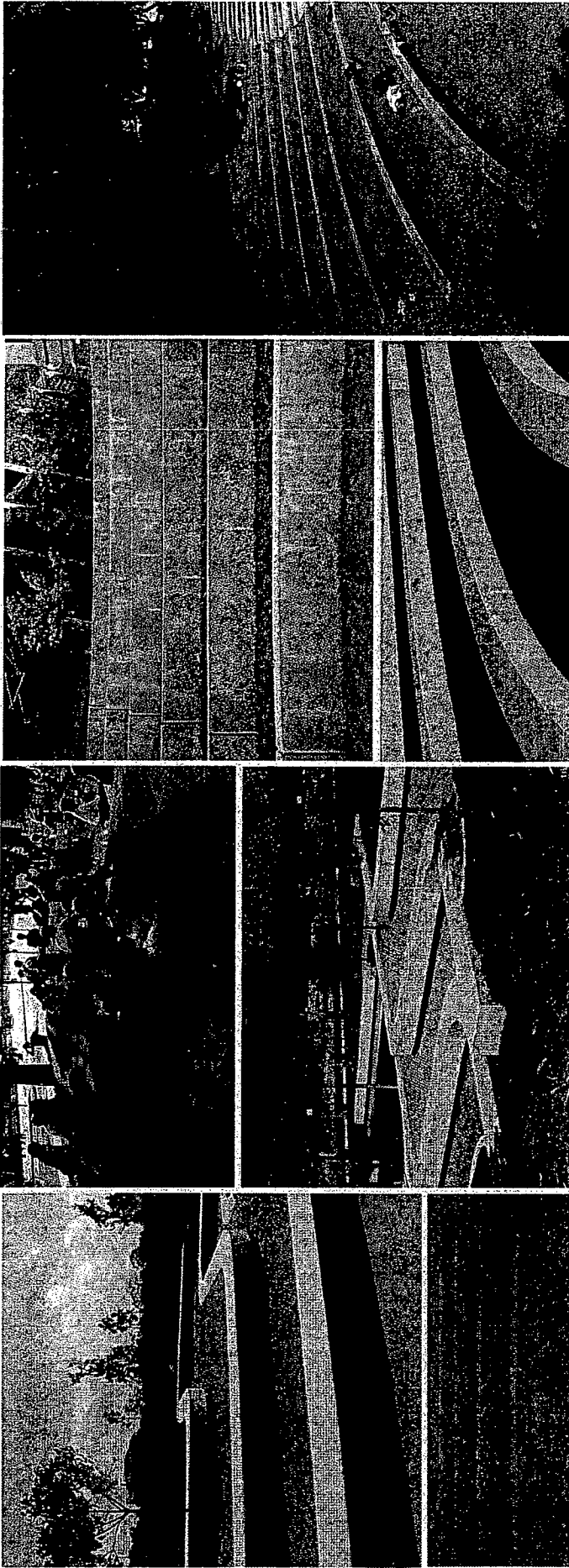
- Defined vehicular maintenance and emergency access points should be provided at strategic locations along road frontages or car parks linking into the park.
- Pathways, bikeways, and pavement areas within the park should be constructed to suitable dimensions to reflect usage, and integrate sustainable finishes that are easily replicated and reproduced if required.
- Car parking should be provided to accommodate for the anticipated daily usage of the park and link into pedestrian networks connecting the park.
- Bollard barriers should be provided along road frontages to restrict vehicular access into the park.
- A clear language of signage should be developed for the park that enhances the identity, legibility and circulation of the Tennyson River Park Precinct.
- Utilities to accommodate potable water supply, electrical connections, public lighting, and sewage and drainage connections should be carefully planned for the parkland.
- A playground design should be developed to provide engaging interactive play environments which encourage linkages to other spaces within the park.
- Careful consideration and design should be afforded to utility elements with a goal to reinforcing the character of the park through a complimentary language of furniture, rubbish bins, barbeques, signage, and shelters.
- The existing building which will be retained within the park should be redesigned to take on multiple functions that may facilitate canoe club storage area, and public function rooms and meeting space.
- Public art should be integrated throughout the site as a reflection of the cultural heritage of the site and as a means of engaging the local community.
- Careful consideration should be given to the future maintenance of the park as a key component of the parks sustainability.

## DESIGN ELEMENTS

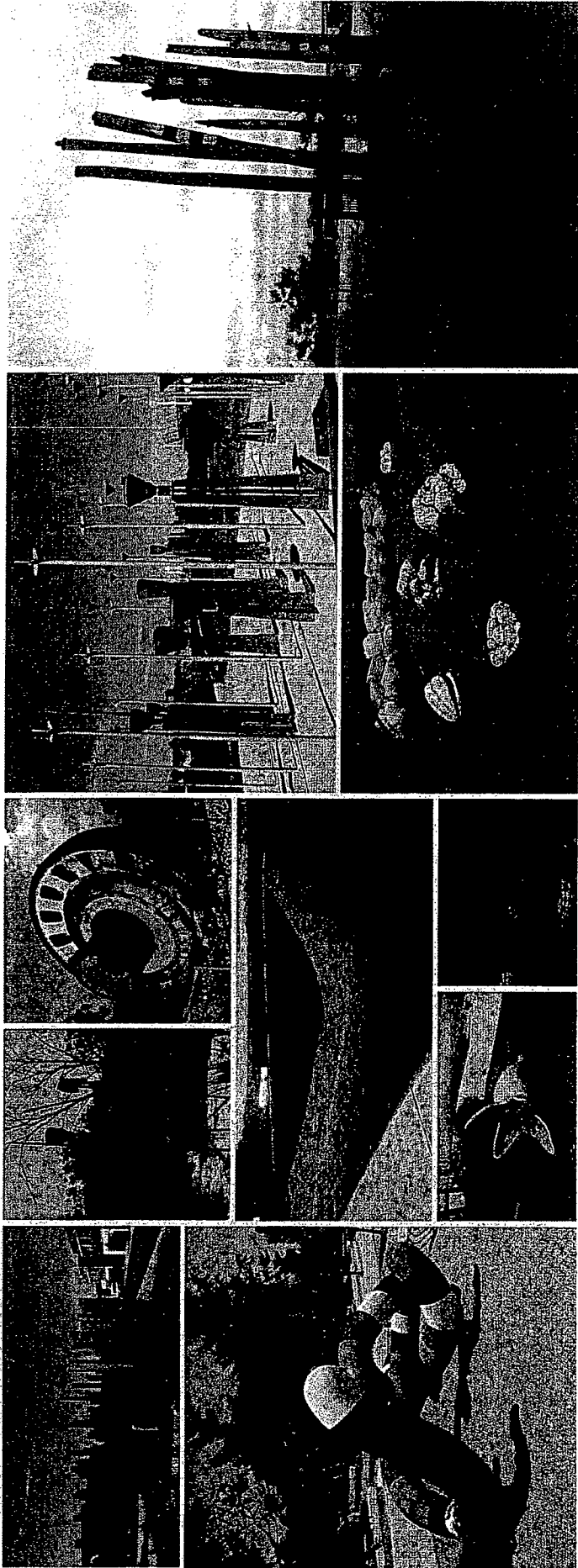




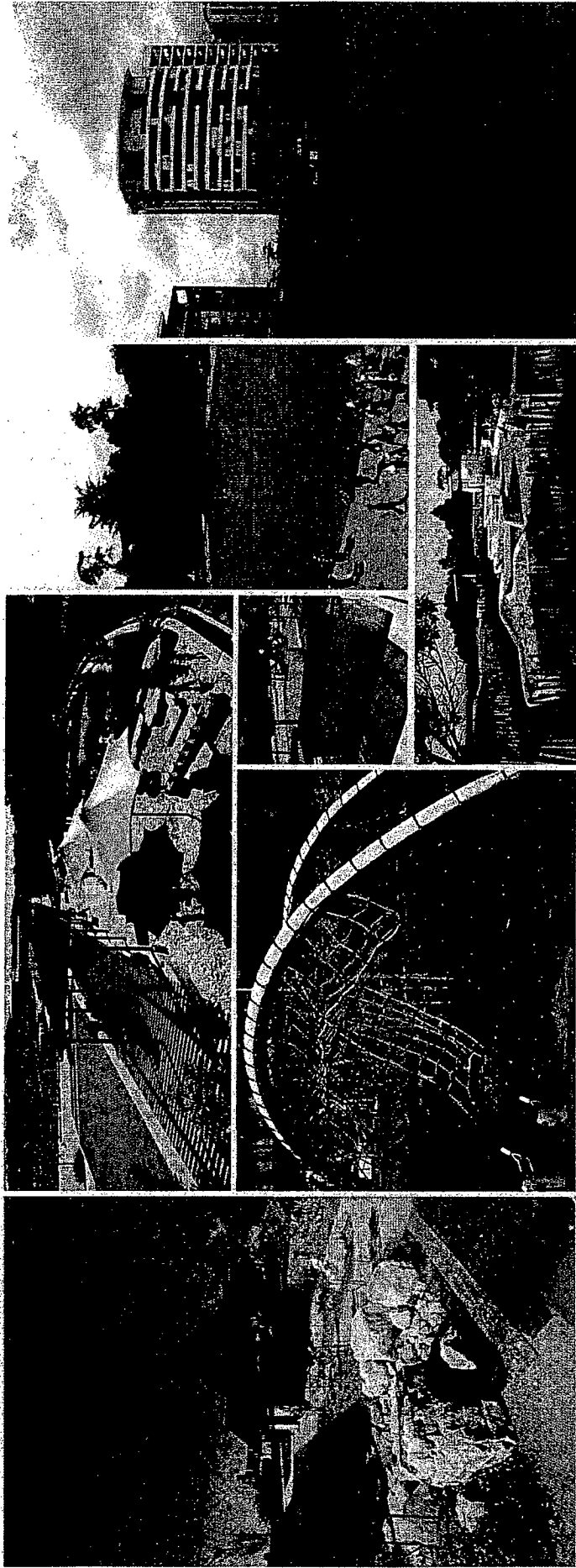
PLAZA PRECINCT



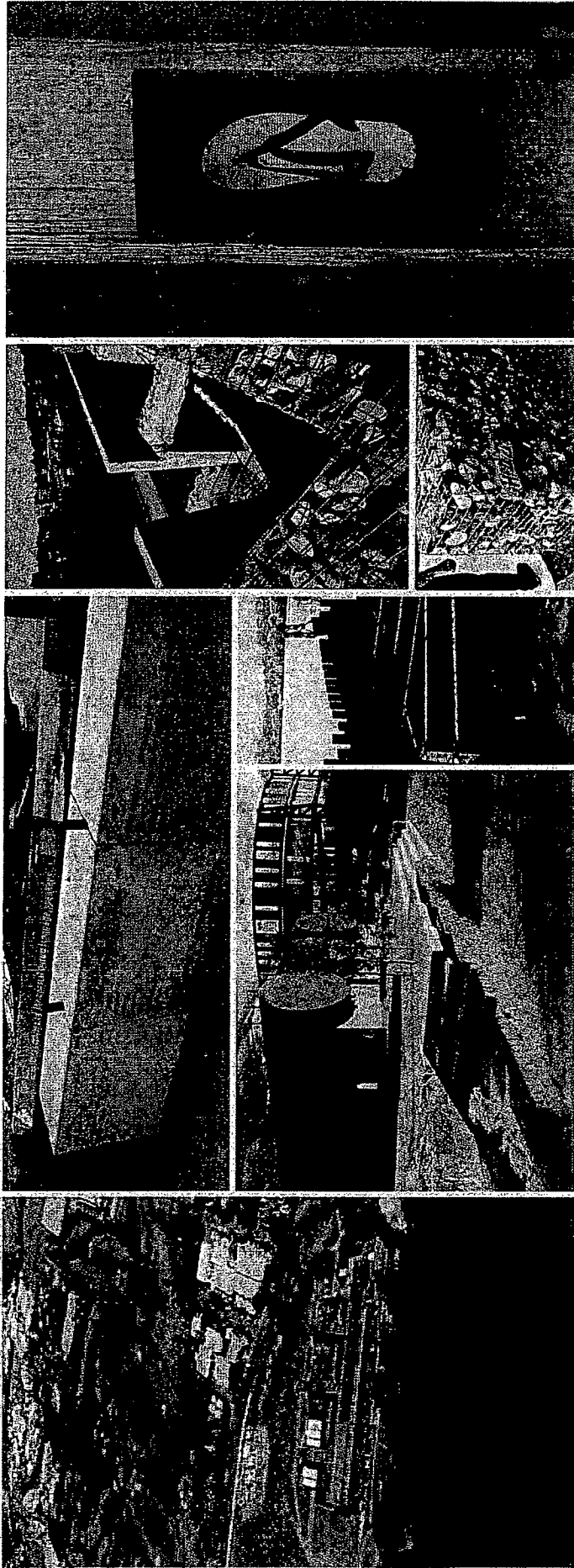
AMPITHEATRE PRECINCT



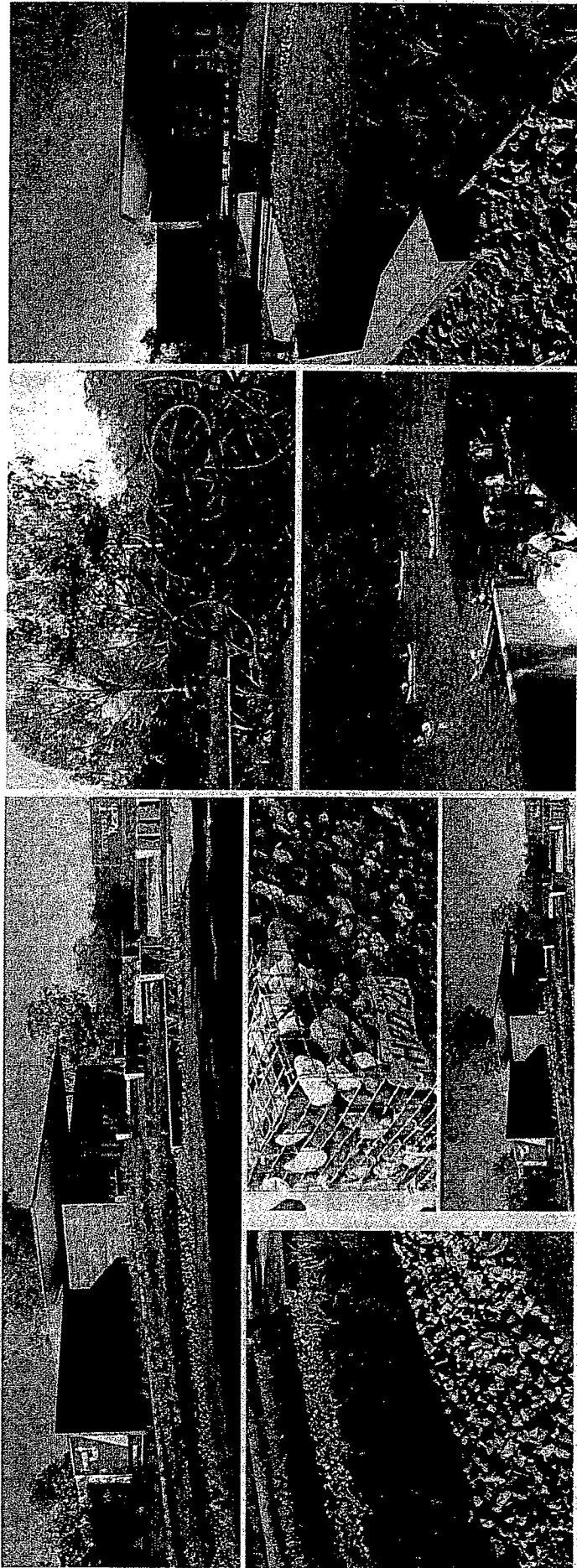
LANDSCAPE SCULPTURE PRECINCT



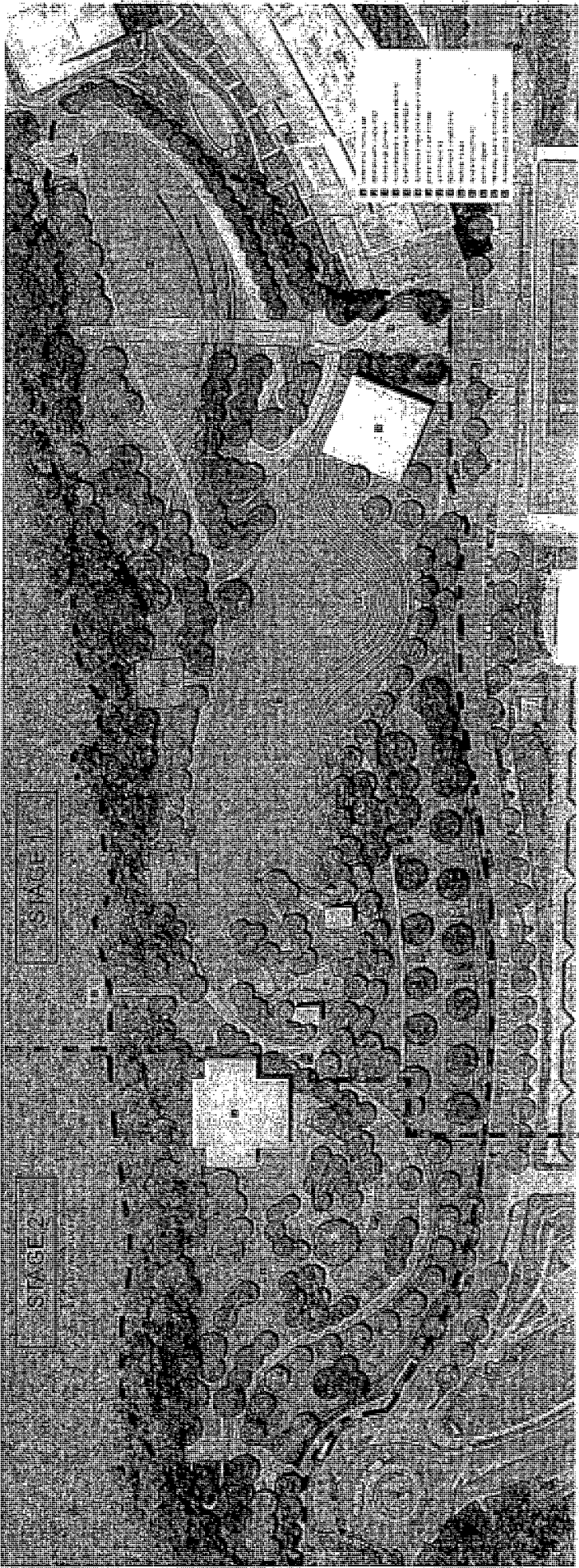
KICK THROW, PLAYGROUND & PICNIC PRECINCT



CULTURAL HERITAGE PRECINCT



COMMUNITY FACILITIES PRECINCT



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## Tennyson Reach Parkland- Schematic Design

### SCOPE OF WORKS

#### Preparation & Bulk Excavation

- Site preparation including clearing of vegetation, stripping of topsoil and removing from site
- Demolition and removal of existing vehicular access road crossing through the site
- Excavate to correct levels and profiles
- Place approx. 11,200m<sup>3</sup> of fill materials, imported to site once subgrades have been excavated, tested, surveyed and approved. All fill materials will be compacted, tested and verified

#### Existing Service Pits & Channels

- Design and construct suspended slab system over existing in ground structures to withstand the placement of imported materials above
- Demolish existing 15m<sup>3</sup> blockwall and remove from site
- Remove existing chain wire fencing

#### Community Building (Existing Mirvac Sales Office)

- Relocate existing building within 20m including structural certification but not limited to:
  - Relocation of services & rainwater tank
  - Raise building height 500mm
  - Modifications to existing staircase
  - Reconfigure access ramp
  - Replace existing timber cladding with face brick
- Retain & Make-good Landscaping & Carpark
  - Make-good existing driveway & carpark
  - Make-good existing landscaping pathways

#### Create canoe storage to underfloor area:

- Internal demolition and alteration of existing structure
- Design and Construct slab on ground, 200mm thick
- Horizontal timber batten screen to under floor area
- Canoe storage 6m by 8m
- Pavement to forecourt area

#### Canoe launching pontoon

- Design and construct canoe launching pontoon approx. 60m<sup>2</sup>



#### Power Station/ Pump House Structures

- Design and construct structural slab system over existing structures
- Stabilise existing structures
- Design and construct boardwalk over Pump Station (as per master plan)

#### Playground

- Playground Equipment - \$250,000 Allowance
- Rubber (500sqm) & sand (800sqm) softfall to playground
- Shade sails to playground
- Concrete seating wall – 185m

#### Amphitheatre

- Concrete terrace seating wall- 435sqm

#### Public Plaza

- Pavement area- 1450sqm
- Cube Arbour structure- \$340,000 Allowance

#### Driveway & Carpark

- Sealed bitumen driveway & carpark- 47 spaces
- Linemarking
- Disabled parking provisions

#### Pathways & Ramp

- Remove existing temporary PWD ramp & balustrade at Public plaza
- Construct pathways & ramps as shown on masterplan (approx 2800m<sup>2</sup>)
- Tactile ground surface indicators

Gabion Retaining Walls- (max 1000mm high) - 424m

3 Park Shelters (approx 5m x 7m)

#### Toilet Block

- Proprietary toilet facilities

#### Art & Signage

- Public Art- \$60,000 allowance
- Interpretative Signage- \$10,000 allowance
- Feature & Directional Signage- \$45,000 allowance

#### Furniture

- 6 Wheelie Bin Enclosures
- 15 Park Seats
- 390 Timber Bollards
- 10 Removable bollards
- 60 Feature Bollards
- 2 Lock Rails
- Bike Racks for 20 bikes
- 4 Drinking fountains including connection
- 8 Picnic benches

#### Services

- Site Water connection
- Stormwater Gully pits
- Connection to water mains
- 25 Post mounted lights
- 45 Bollard lights
- Shelter lights as required
- 4 BCC Hose Cocks

#### Landscaping

- 780m2 concrete garden edge
- 450m2 compacted decomposed granite
- 11,000m2 Turf including topsoil
- 7,000m2 Topsoil to garden beds
- 7,000m2 Bark mulch to garden beds
- 40x Ex ground Trees
- 65x 200L Advance tree
- 60x 100L Tree/Advanced Shrub
- 150x 45L Tree/ Advanced Shrub
- Revegetation to riparian edge
- Biofilter and stormwater garden

#### Establishment

- 12 weeks establishment
- 52 weeks maintenance

#### Mirvac Project Management

[REDACTED] - Tennyson Reach Parklands & Council

---

**From:** [REDACTED]  
**To:** [REDACTED]  
**Date:** 23/06/2011 9:07 am  
**Subject:** Tennyson Reach Parklands & Council  
**CC:** [REDACTED]

---

Hi [REDACTED]

I called your land line and mobile but left no message so this is it - I have received further instructions and presume they accord with Mirvac's understanding of the agreement reached yesterday.

The Council valuation is now in and I advise of the following changes:

1. the Purchase price is to be \$6m for lots 4, 5 and 101;
2. the Purchase price for lot 3 is to be \$3m.
3. the D&C contract sum must not exceed \$6m and if Council by its own analysis determines that the contract sum is, or should be, less than \$6m, then Council and Mirvac shall share the saving equally (50/50).

Please issue revised versions of the Purchase contracts as soon as possible incorporating the previous BCLP revisions with relevant changes arising from points 1. and 2. of this email.

Regards

[REDACTED]  
Solicitor/Team Leader Commercial | Brisbane City Legal Practice  
Brisbane City Legal Practice  
Office of the Lord Mayor & CEO

Ph: [REDACTED]  
E-mail: [REDACTED]

[REDACTED] - Mirvac Queensland Pty Ltd - sale to Brisbane City Council - Lots 3, 4, 5 & 101 Tennyson Reach - Email no. 1

**From:** [REDACTED]  
**To:** [REDACTED]  
**Date:** 23/06/2011 10:20 am  
**Subject:** Mirvac Queensland Pty Ltd - sale to Brisbane City Council - Lots 3, 4, 5 & 101 Tennyson Reach - Email no. 1  
**CC:** [REDACTED]

[REDACTED] - we have amended the Land Sale Contracts to incorporate Council's requested amendments. Because of the size of the attachments, I am sending you the amended Land Sale Contracts under separate emails. Please acknowledge receipt.

Attached to this email is the amended Land Sale Contract for Lots 4, 5 & 101. Since the last version issued, we have further completed the REIQ component and revised the Transfer Documents and amended the Annexure Special Conditions (which amendments are in mark up).

The amendments to the Annexure Special Conditions incorporate all of Council's requested amendments but also include additional new provisions (highlighted) which I understand Mirvac representatives have already flagged to Council representatives. In particular, the new changes include a different split between the Land Contract Purchase Prices and the Parkland Works Contract Price to better reflect the consideration amounts under those agreements with the increased Land Contract Purchase Prices being payable by instalments to reflect the original timing of payments and with settlements of the Land Contracts being linked in certain circumstances with either party having the right to terminate if both Contracts have not settled by 11 December 2011.

We hope to be in a position to forward to you the annexure Lease and Mortgage documents referred to in the Land Contracts, later today. Thanks.

We look forward to your comments asap.

Regards  
[REDACTED]  
Head of Property & Projects  
**ClarkeKann**  
LAWYERS  
  
with  
GRAY PERKINS  
ATTORNEYS

Tel: [REDACTED] [www.clarkekann.com.au](http://www.clarkekann.com.au)  
Brisbane | Level 7, 300 Queen Street, Brisbane QLD 4000, Australia | GPO Box 2249, Brisbane QLD 4001, Australia  
Sydney | Level 7, 55 Clarence Street, Sydney NSW 2000, Australia | GPO Box 1342, Sydney NSW 2001, Australia

Gray & Perkins merged with ClarkeKann on 1 November 2010.  
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# PAMD Form 30c



Queensland  
Government

ABN: 24 830 236 406

Department of Employment, Economic  
Development and Innovation

## Warning statement

*Property Agents and Motor Dealers Act 2000* — Chapter 11  
This form is effective from 1 October 2010.

### Instructions

This form is to be attached to a proposed relevant contract of sale for residential property to be read and signed by a proposed buyer **BEFORE** the proposed buyer signs the proposed relevant contract.

**The seller or seller's agent must give the proposed buyer a clear statement directing the buyer's attention to the proposed relevant contract and to this warning statement before the proposed buyer signs the proposed relevant contract. Failure to give the proposed buyer a clear statement may give the buyer a right to terminate the contract under section 370 within 90 days of receiving a copy of the relevant contract unless settlement occurs earlier.**

#### Property address

Note: If no street address is applicable, use lot and plan information to identify the property

Street name and number ..... King Arthur Tce .....

Suburb ..... Tennyson ..... State    Postcode

# WARNING

**DO NOT sign the proposed relevant contract for the above property until you have read and understood ALL SECTIONS of this form. DO NOT sign if you feel pressured.**

The relevant contract is subject to a five (5) business day cooling-off period. You may terminate this contract during the cooling-off period. However, the seller may deduct a termination penalty of up to 0.25% of the purchase price from the deposit.

### You should obtain independent:

- **legal advice** See note 1
- **valuation** See note 2

### Cooling-off period

#### What is the cooling-off period?

The cooling-off period is five (5) business days, during which you can change your mind about purchasing this property. Use this time to seek independent legal advice and an independent valuation of the property.

#### When does the cooling-off period start?

Your cooling-off period starts on the day you receive a copy of the completed relevant contract from the seller or seller's agent. The proposed contract becomes a relevant contract when both parties have signed. In any dispute about the commencement of the cooling-off period, it will be up to the seller to prove the buyer received a copy of the relevant contract. If you receive a copy of the relevant contract on a day other than a business day, the cooling-off period commences on the first business day after you receive a copy of the relevant contract

#### When does the cooling-off period end?

Your cooling-off period ends at 5.00pm on the fifth business day after the cooling-off period started. A business day is a day other than a Saturday, Sunday or public holiday.

#### Can I waive or shorten the cooling-off period?

Yes, but only if you engage an independent lawyer who must give you a lawyer's certificate explaining the purpose and nature of the certificate. You should seek advice from your lawyer about the effect of waiving or shortening your cooling-off period. If you are waiving the cooling-off period, the lawyer's certificate must be given to the seller or seller's agent before you and the seller enter into the relevant contract.

**Cooling-off period continued**

**What should I do during the five (5) day cooling-off period?**

It is strongly recommended that you seek independent legal advice and obtain an independent valuation of the property during this time and that you understand and agree with the terms and conditions of the contract.

**How do I terminate the contract during the cooling-off period and what happens if the relevant contract is terminated?**

If you want to terminate the contract at any time before the end of the five (5) day cooling-off period, you must give a signed, dated notice to the seller indicating that you wish to terminate the contract during the cooling-off period. The notice must state that the relevant contract is terminated under section 370A of the *Property Agents and Motor Dealers Act 2000*. The seller must refund your deposit within **14 days** of the termination. The seller may deduct a termination penalty of up to **0.25% of the purchase price**. Make sure you terminate any building contract associated with this property if you terminate this contract during the cooling-off period.

**What happens after the cooling-off period ends?**

If you do not terminate the contract during the cooling-off period, you are legally bound by the contract, subject to the terms and conditions of the contract.

**Other important information**

**Read the attached proposed relevant contract. Do not be pressured into signing the proposed relevant contract before you have read it.**

**Note 1 - Independent legal advice**

Do you fully understand the legal consequences of signing the attached proposed relevant contract? Before signing the proposed relevant contract, it is strongly recommended that you seek independent legal advice and clarify any queries or concerns you have about buying the property. Are you sure the person you have obtained advice from is totally independent from the seller or seller's agent? **Exercise extreme caution in accepting the advice of anyone referred to you by the seller or seller's agent.**

**Note 2 - Independent valuation of the property**

Are you sure the purchase price for this property is fair? You should consider obtaining an independent valuation of the property before you sign the contract, or before your cooling-off period ends. When choosing a valuer you should ask whether the valuer has any relationship with any person involved in selling the property and whether they have professional indemnity insurance. Before you engage the valuer ask about the cost of the valuation. For more information about valuations, go to [www.fairtrading.qld.gov.au/house-valuation.htm](http://www.fairtrading.qld.gov.au/house-valuation.htm).

**Building contracts**

For building contracts associated with the purchase of residential property, you should ensure that the building contract price is not over-valued or inflated. Get a valuation or compare homes of similar value advertised or displayed by other home builders.

Domestic building contracts also have a cooling-off period under the *Domestic Building Contracts Act 2000* (section 72). Please check the Building Services Authority of Queensland website at [www.bsa.qld.gov.au](http://www.bsa.qld.gov.au) for further information about building contracts. Remember to terminate any building contracts related to this property if you terminate this contract.

**Claim fund and property developers**

A claim fund exists which, in some cases, enables buyers to make a claim if they suffer financial loss because a real estate agent commits a claimable offence. Strict guidelines and timeframes apply. If you suffer loss while buying an investment property or buying any property from a property developer you can not make a claim for loss against the fund.

**How do I know if I'm dealing with a licensed real estate agent or property developer and/or obtain further information about purchasing real estate?**

The Fair Trading website at [www.fairtrading.qld.gov.au](http://www.fairtrading.qld.gov.au) provides you with useful information about purchasing property. You can check that you are dealing with a licensed real estate agent or property developer at [www.fairtrading.qld.gov.au/are-you-licensed.htm](http://www.fairtrading.qld.gov.au/are-you-licensed.htm) or by phoning 13 13 04.

**Buyer's acknowledgment**

I/we have read all sections of this warning statement and I/we acknowledge that by signing this warning statement, my/our attention has been directed to this warning statement and the attached proposed relevant contract by a clear statement and I/we have signed the warning statement BEFORE I/we signed the attached proposed relevant contract.

Signing this Warning Statement negates any termination right I/we may have had under section 370 of the *Property Agents and Motor Dealers Act 2000*.

Name Brisbane City Council .....

Name .....

Signature .....

Date   /   /

Date   /   /



The Real Estate Institute of Queensland

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# Contract

## For Houses and Residential Land

Eighth Edition



This document has been approved by The Real Estate Institute of Queensland Limited and the Queensland Law Society Incorporated as being suitable for the sale and purchase of houses and residential land in Queensland except for new residential property in which case the issue of GST liability must be dealt with by special condition.

The Seller and Buyer agree to sell and buy the Property under this contract

### Reference Schedule

**Contract Date:** \_\_\_\_\_

**Agent:** \_\_\_\_\_

ABN: \_\_\_\_\_ Licence Number: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Facsimile: \_\_\_\_\_ Mobile: \_\_\_\_\_

Email Address: \_\_\_\_\_

#### Parties

**Seller:** Mirvac Queensland Pty Ltd ACN 060 411 207

ABN: \_\_\_\_\_ Email Address: \_\_\_\_\_

Address: Level 2, 164 Grey Street, South Bank Qld 4101

Telephone: 07 3859 5888 Facsimile: 07 3010 1706 Mobile: \_\_\_\_\_

**Seller's Solicitor:** ClarkeKann Lawyers [or any other solicitor notified to the Buyer]

ABN: \_\_\_\_\_ Ref: SMC

Address: Level 7, 300 Queen Street, Brisbane Qld 4000

Telephone: \_\_\_\_\_ Mobile: \_\_\_\_\_

Email Address: \_\_\_\_\_

**Buyer:** Brisbane City Council

ABN: \_\_\_\_\_ Email Address: \_\_\_\_\_

Address: 266 George Street, Brisbane

Telephone: \_\_\_\_\_ Facsimile: \_\_\_\_\_ Mobile: \_\_\_\_\_

**Buyer's Solicitor:** Brisbane City Legal Practice [or any other solicitor notified to the Seller]

ABN: \_\_\_\_\_ Ref: \_\_\_\_\_

Address: 266 George Street, Brisbane

Telephone: \_\_\_\_\_ Facsimile: \_\_\_\_\_ Mobile: \_\_\_\_\_

Email Address: \_\_\_\_\_

**Property Land** Address: King Arthur Tce, Tennyson QLD 4105

Description: See Schedule 1 \*Vacant/Built on [\*Delete one]

County: See Schedule 1 Parish: See Schedule 1

Title Reference: See Schedule 1 Area: \_\_\_\_\_ [more or less]

Land sold as \*Freehold/Leasehold [\*Delete one. If neither is deleted, the land is treated as being Freehold]

**Present Use:** Residential **Local Government:** Brisbane City Council

2052443\_1



**Property - Continued**

*Excluded Fixtures:* Nil

*Included Chattels:* Nil

**Matters Affecting Property**

*Title Encumbrances:* See Schedule 1

[If the Property is sold free from Title Encumbrances insert "Nil"  
[If the Property is sold subject to Title Encumbrances, they must be described]

*Tenancies:* Not applicable

Tenant's Name: \_\_\_\_\_

Term and Options: \_\_\_\_\_

Starting Date of Term: \_\_\_\_\_

Ending Date of Term: \_\_\_\_\_

Rent: \_\_\_\_\_ Bond: \_\_\_\_\_

*Managing Agent:* Not applicable

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Facsimile: \_\_\_\_\_ Mobile: \_\_\_\_\_

Email Address: \_\_\_\_\_

**Price**

*Deposit Holder:* ClarkeKann Lawyers

[Unless otherwise specified in this contract, the Purchase Price includes any GST payable on the supply of the Property to the Buyer]

*Purchase Price:* \$ 6,500,000.00 (payable in accordance with special conditions)

*Deposit:* \$ 1.00 Initial Deposit payable when Buyer signs this contract (if demanded)

\$ \_\_\_\_\_ Balance Deposit (If any) payable on: \_\_\_\_\_

*Default Interest Rate:* \_\_\_\_\_ % [If no figure is inserted, the Contract Rate published by the Queensland Law Society Inc will apply]

**Finance**

*Finance Amount:* \$ Not applicable

[Unless all of "Finance Amount", "Financier" and "Finance Date" are completed, this contract is not subject to finance and clause 3 does not apply]

*Financier:* Not applicable

*Finance Date:* Not applicable

**Building and/or Pest Inspection Date**

*Inspection Date:* Not applicable

[If not completed, the contract is not subject to an inspection report and clause 4 does not apply]

**Pool Safety**

Q1. Is there a pool on the Land or on adjacent land used in association with the Land?

- Yes
- No      Clause 4.7 of this contract does not apply

[WARNING TO SELLER: Failure to comply with the Pool Safety Requirements is an offence with substantial penalties.]

Q2. If the answer to Q1 is Yes, is there a Pool Safety Certificate for the pool at the time of contract?

- Yes      Clause 5.3(1)(e) applies
- No      Clause 4.7 applies (except where this contract is formed on a sale by auction)

[WARNING TO BUYER: If the Buyer does not receive a Pool Safety Certificate at settlement, the Buyer becomes responsible at its cost to obtain a Pool Safety Certificate within 90 days after settlement. The Buyer can also become liable to pay any costs of rectification necessary to comply with the Pool Safety Requirements to obtain a pool safety certificate. The Buyer commits an offence and can be liable to substantial penalties if the Buyer fails to comply with this requirement.]

*If there is a pool on the Land and Q2 is not completed then clause 4.7 applies.*

Q3. If the answer to Q2 is No, has a Notice of no pool safety certificate been given prior to contract?

- Yes
- No

*Note: This is an obligation of the Seller under Section 16 of the Building Regulation 2006.*

**Pool Safety Inspection**

Date: Not applicable

[Clause 4.7(2) applies except where this contract is formed on a sale by auction]

**Electrical Safety Switch and Smoke Alarm**

*This section must be completed unless the Land is vacant.*

The Seller gives notice to the Buyer that an Approved Safety Switch for the General Purpose

Socket Outlets is:

- \*installed in the residence
- \*not installed in the residence

*\*Mark whichever is applicable*

[WARNING: By giving false or misleading information in this section, the Seller may incur a penalty. The Seller should seek expert and qualified advice about completing this section and not rely on the Seller's Agent to complete this section.]

The Seller gives notice to the Buyer that a Compliant Smoke Alarm(s) is/are:

- \*installed in the residence
- \*not installed in the residence

*\*Mark whichever is applicable*

[WARNING: Failure to install a Compliant Smoke Alarm is an offence under the Fire and Rescue Service Act 1990.]

The REIQ Terms of Contract for Houses and Residential Land (Pages 5-10)  
(Eighth Edition) Contain the Terms of this Contract.

### Special Conditions

See Schedule 1 and Annexures A-C

**Settlement**

**Settlement Date:** 30 June 2011 (subject to the special conditions)

[or the next Business Day if that is not a Business Day in the Place for Settlement]  
[If Brisbane is inserted this is a reference to Brisbane CBD]

**Place for Settlement:** Brisbane CBD

**Signing**

**Seller**

**Witness**

**Buyer**

**Witness**

**Deposit Holder**

[Who acknowledges having received the Initial Deposit and agrees to hold that amount and any Balance Deposit when received as Deposit Holder for the parties as provided in the Contract.]



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# Terms of Contract

## For Houses and Residential Land

### 1. Definitions

#### 1.1 In this contract:

- (1) terms in **bold** in the Reference Schedule have the meanings shown opposite them; and
- (2) unless the context otherwise indicates:
  - (a) **"Approved Safety Switch"** means a residual current device as defined in the *Electrical Safety Regulation 2002*;
  - (b) **"Balance Purchase Price"** means the Purchase Price, less the Deposit, adjusted under clauses 2.6(2) and 2.6(13);
  - (c) **"Bank"** means:
    - (i) a bank as defined by section 5 of the *Banking Act 1959* of the Commonwealth; or
    - (ii) a bank constituted under a law of a state;
  - (d) **"Bond"** means a bond under the *Residential Tenancies and Rooming Accommodation Act 2008*;
  - (e) **"Building Act"** means the *Building Act 1975* as amended.
  - (f) **"Business Day"** means a week day other than a public holiday in the Place for Settlement;
  - (g) **"Compliant Smoke Alarm"** means a smoke alarm complying with sections 104RB (2) or (4) of the *Fire and Rescue Service Act 1990*;
  - (h) **"Contract Date"** or **"Date of Contract"** means the date inserted in the Reference Schedule;
  - (i) **"Court"** includes any tribunal established under statute.
  - (j) **"Encumbrances"** includes unregistered and statutory encumbrances;
  - (k) **"Essential Term"** includes, in the case of breach by:
    - (i) the Buyer: clauses 2.2, 2.5(1), 5.1 and 6.1; and
    - (ii) the Seller: clauses 5.1, 5.3(1)(a)-(c), 5.3(1)(d)(ii) & (iii), 5.3(1)(e), 5.5 and 6.1;
 but nothing in this definition precludes a Court from finding other terms to be essential.
  - (l) **"Financial Institution"** means a Bank, building society or credit union;
  - (m) **"General Purpose Socket Outlet"** means an electrical socket outlet as defined in the *Electrical Safety Regulation 2002*;
  - (n) **"GST"** means the goods and services tax under the *GST Act*;
  - (o) **"GST Act"** means *A New Tax System (Goods and Services Tax) Act* and includes other GST related legislation;
  - (p) **"Improvements"** means fixed structures on the Land and includes all items fixed to them (such as stoves, hot water systems, fixed carpets, curtains, blinds and their fittings, clothes lines, fixed satellite dishes and television antennae, in-ground plants) but does not include the Reserved Items;
  - (q) **"Keys"** means keys, codes or devices in the Seller's possession for all locks or security systems on the Property;
  - (r) **"Notice of no pool safety certificate"** means the Form 36 under the *Building Regulation 2006* to the effect that there is no Pool Safety Certificate issued for the Land;
  - (s) **"Outgoings"** means:
    - (i) rates or charges on the Land by any competent authority (for example, council rates, water rates, fire service levies); and
    - (ii) land tax;
  - (t) **"Pool Safety Requirements"** means the requirements for pool safety contained in the *Building Act 1975* and *Building Regulation 2006*;
  - (u) **"Pool Safety Certificate"** means either:
    - (i) a certificate of compliance; or
    - (ii) an exemption from compliance; issued in accordance with the Pool Safety Requirements;
  - (v) **"Pool Safety Inspection Date"** means the Pool Safety Inspection Date inserted in the Reference Schedule. If no date is inserted in the Reference Schedule, the Pool Safety Inspection Date is taken to be the earlier of the following:
    - (i) the Inspection Date for the Building and/or Pest Inspection; or
    - (ii) 2 Business Days before the Settlement Date;
  - (w) **"Pool Safety Inspector"** means a person licensed or authorised under the *Building Act 1975* and *Building Regulation 2006* to issue a Pool Safety Certificate;
  - (x) **"Property"** means:
    - (i) the Land;
    - (ii) the Improvements; and
    - (iii) the Included Chattels;
  - (y) **"Rent"** means any periodic amount payable under the Tenancies;
  - (z) **"Reserved Items"** means the Excluded Fixtures and all chattels on the Land other than the Included Chattels;
  - (aa) **"Transfer Documents"** means:
    - (i) the form of transfer under the *Land Title Act 1994* required to transfer title in the Land to the Buyer; and
    - (ii) any other document to be signed by the Seller necessary for stamping or registering the transfer; and
  - (bb) **"Transport Infrastructure"** has the meaning defined in the *Transport Infrastructure Act 1994*.

### 2. Purchase Price

#### 2.1 GST

Unless otherwise specified in this contract, the Purchase Price includes any GST payable on the supply of the Property to the Buyer.

#### 2.2 Deposit

- (1) The Buyer must pay the Deposit to the Deposit Holder at the times shown in the Reference Schedule. The Deposit Holder will hold the Deposit until a party becomes entitled to it.
- (2) The Buyer will be in default if it:
  - (a) does not pay the Deposit when required;
  - (b) pays the Deposit by a post-dated cheque; or
  - (c) pays the Deposit by cheque which is dishonoured on presentation.
- (3) The Seller may recover from the Buyer as a liquidated debt any part of the Deposit which is not paid when required.



**2.3 Investment of Deposit**

- If:
- (1) the Deposit Holder is instructed by either the Seller or the Buyer; and
  - (2) it is lawful to do so;
- the Deposit Holder must:
- (3) invest as much of the Deposit as has been paid with any Financial Institution in an interest-bearing account in the names of the parties; and
  - (4) provide the parties' tax file numbers to the Financial Institution (if they have been supplied).

**2.4 Entitlement to Deposit and Interest**

- (1) The party entitled to receive the Deposit is:
  - (a) if this contract settles, the Seller;
  - (b) if this contract is terminated without default by the Buyer, the Buyer; and
  - (c) if this contract is terminated owing to the Buyer's default, the Seller.
- (2) The interest on the Deposit must be paid to the person who is entitled to the Deposit.
- (3) If this contract is terminated, the Buyer has no further claim once it receives the Deposit and interest, unless the termination is due to the Seller's default or breach of warranty.
- (4) The Deposit is invested at the risk of the party who is ultimately entitled to it.

**2.5 Payment of Balance Purchase Price**

- (1) On the Settlement Date, the Buyer must pay the Balance Purchase Price by Bank cheque as the Seller directs.
- (2) Despite any other provision of this contract, a reference to a "Bank cheque" in clause 2.5(1):
  - (a) includes a cheque drawn by a building society or credit union on itself;
  - (b) does not include a cheque drawn by a building society or credit union on a Bank; and the Seller is not obliged to accept a cheque referred to in clause 2.5(2)(b) on the Settlement Date.

**2.6 Adjustments to Balance Purchase Price**

- (1) The Seller is liable for Outgoings and is entitled to Rent up to and including the Settlement Date. The Buyer is liable for Outgoings and is entitled to Rent after the Settlement Date.
- (2) Subject to clauses 2.6(3), 2.6(4), 2.6(5) and 2.6(6), Outgoings for periods including the Settlement Date must be adjusted:
  - (a) for those paid, on the amount paid;
  - (b) for those assessed but unpaid, on the amount payable (excluding any discount); and
  - (c) for those not assessed:
    - (i) on the amount the relevant authority advises will be assessed (excluding any discount); or
    - (ii) if no advice on the assessment to be made is available, on the amount of the latest assessment (excluding any discount).
- (3) If there is no separate assessment of rates for the Land at the Settlement Date and the Local Government informs the Buyer that it will not apportion rates between the Buyer and the Seller, then:
  - (a) the amount of rates to be adjusted is that proportion of the assessment equal to the ratio of the area of the Land to the area of the parcel in the assessment; and
  - (b) if an assessment of rates includes charges imposed on a "per lot" basis, then the portion of those charges to be adjusted is the amount assessed divided by the number of lots in that assessment.

(4) Land tax must be adjusted:

- (a) on the assessment that the Office of State Revenue would issue for the land tax year current at the Settlement Date if the Seller was one natural person resident in Queensland and the Land was the Seller's only land; or
- (b) based on the assumptions in clause 2.6(4)(a), if there is no separate unimproved value for the Land, on a notional unimproved value equal to:

Unimproved value of the parcel that includes the Land under Valuation of Land Act 1944	x	$\frac{\text{Area of Land}}{\text{Area of the parcel}}$
--	---	---

- (5) If land tax is unpaid at the Settlement Date and the Office of State Revenue advises that it will issue a final clearance for the Land on payment of a specified amount, then the Buyer may deduct the specified amount from the Balance Purchase Price at settlement and must pay it promptly to the Office of State Revenue. If an amount is deducted under this clause, then land tax will be treated as paid at the Settlement Date for the purposes of clause 2.6(2).
- (6) Any Outgoings assessable on the amount of water used must be adjusted on the charges that would be assessed on the total water usage for the assessment period, determined by assuming that the actual rate of usage shown by the meter reading made before settlement continues throughout the assessment period. The Buyer must obtain and pay for the meter reading.
- (7) If any Outgoings are assessed but unpaid at the Settlement Date, then the Buyer may deduct the amount payable from the Balance Purchase Price at settlement and pay it promptly to the relevant authority. If an amount is deducted under this clause, the relevant Outgoing will be treated as paid at the Settlement Date for the purposes of clause 2.6(2).
- (8) Arrears of Rent for any rental period ending on or before the Settlement Date belong to the Seller and are not adjusted at settlement.
- (9) Unpaid Rent for the rental period including both the Settlement Date and the following day ("Current Period") is not adjusted until it is paid.
- (10) Rent already paid for the Current Period or beyond must be adjusted at settlement.
- (11) If Rent payments are reassessed after the Settlement Date for periods including the Settlement Date, any additional Rent payment from a Tenant or refund due to a Tenant must be apportioned under clauses 2.6(8), 2.6(9) and 2.6(10).
- (12) Payments under clause 2.6(10) must be made within 14 days after notification by one party to the other but only after any additional payment from a Tenant has been received.
- (13) The cost of Bank cheques payable at settlement:
  - (a) to the Seller or its mortgagee are the responsibility of the Buyer; and
  - (b) to parties other than the Seller or its mortgagee are the responsibility of the Seller.

**3. Finance**

- 3.1 This contract is conditional on the Buyer obtaining approval of a loan for the Finance Amount from the Financier by the Finance Date on terms satisfactory to the



Buyer. The Buyer must take all reasonable steps to obtain approval.

**3.2** The Buyer must give notice to the Seller that:

- (1) approval has not been obtained by the Finance Date and the Buyer terminates this contract; or
- (2) the finance condition has been either satisfied or waived by the Buyer.

**3.3** The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 3.2 by 5pm on the Finance Date. This is the Seller's only remedy for the Buyer's failure to give notice.

**3.4** The Seller's right under clause 3.3 is subject to the Buyer's continuing right to terminate this contract under clause 3.2(1) or waive the benefit of this clause 3 by giving written notice to the Seller of the waiver.

**4. Building and Pest Inspection Reports and Pool Safety**

**4.1 Building and Pest Inspection**

This contract is conditional upon the Buyer obtaining a written building report from a building inspector and a written pest report from a pest inspector (which may be a single report) on the Property by the Inspection Date on terms satisfactory to the Buyer. The Buyer must take all reasonable steps to obtain the reports (subject to the right of the Buyer to elect to obtain only one of the reports).

**4.2** The Buyer must give notice to the Seller that:

- (1) a satisfactory inspector's report under clause 4.1 has not been obtained by the Inspection Date and the Buyer terminates this contract. The Buyer must act reasonably; or
- (2) clause 4.1 has been either satisfied or waived by the Buyer.

**4.3** If the Buyer terminates this contract and the Seller asks the Buyer for a copy of the building and pest reports, the Buyer must give a copy of each report to the Seller without delay.

**4.4** The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 4.2 by 5pm on the Inspection Date. This is the Seller's only remedy for the Buyer's failure to give notice.

**4.5** The Seller's right under clause 4.4 is subject to the Buyer's continuing right to terminate this contract under clause 4.2(1) or waive the benefit of this clause 4 by giving written notice to the Seller of the waiver.

**4.6** If required under the *Queensland Building Services Authority Act 1991*, an inspector referred to in clause 4.1 must hold a current licence under that Act.

**4.7 Pool Safety**

- (1) This clause 4.7 applies if:
  - (a) there is a pool on the Land and the answer to Q2 of the Reference Schedule is No or Q2 is not completed; and
  - (b) this contract was not formed on a sale by auction.
- (2) This contract is conditional upon the Buyer obtaining from a Pool Safety Inspector by the Pool Safety Inspection Date:
  - (a) confirmation that the Pool Safety Requirements have been met and the issue of a Pool Safety Certificate; or
  - (b) confirmation of the works required before a Pool Safety Certificate can be issued.
- (3) The Buyer must give notice to the Seller on or before the Pool Safety Inspection Date that:
  - (a) a Pool Safety Inspector has issued a Pool Safety Certificate in which case neither the Buyer nor the

Seller have any further rights under this clause 4.7; or

- (b) a Pool Safety Inspector has not issued a Pool Safety Certificate and the Buyer terminates this contract. The Buyer must act reasonably; or
  - (c) the Buyer waives the benefit of this clause 4.7 and elects to proceed to settlement notwithstanding that there is no Pool Safety Certificate.
- (4) The Buyer's right to terminate this contract or waive the benefit of this clause 4.7 ends on the earlier of:
    - (a) a Pool Safety Certificate being issued; or
    - (b) settlement occurring.
  - (5) The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 4.7 (3) by 5pm on the Pool Safety Inspection Date. This is the Seller's only remedy for the Buyer's failure to give notice.
  - (6) The Seller's right under clause 4.7(5) is subject to the Buyer's continuing right to terminate this contract or waive the benefit of this clause 4.7 by giving written notice to the Seller of the waiver.
  - (7) If the Buyer terminates this contract in accordance with clause 4.7(3)(b), and the Seller asks the Buyer for a copy of the pool safety inspection report, the Buyer must give a copy of the report to the Seller without delay.
  - (8) For the purpose of this clause 4.7, "**formed on a sale by auction**" means formed on sale by auction—
    - (a) directly on the fall of the hammer, by outcry; or
    - (b) directly at the end of another similar type of competition for purchase.

**5. Settlement**

**5.1 Time and Date**

- (1) Settlement must occur between 9am and 5pm on the Settlement Date.
- (2) If the parties do not agree on where settlement is to occur, it must take place in the Place for Settlement at the office of a solicitor or Financial Institution nominated by the Seller, or, if the Seller does not make a nomination, at the land registry office in or nearest to the Place for Settlement.

**5.2 Transfer Documents**

- (1) The Transfer Documents must be prepared by the Buyer's Solicitor and delivered to the Seller a reasonable time before the Settlement Date.
- (2) If the Buyer pays the Seller's reasonable expenses, it may require the Seller to produce the Transfer Documents at the Office of State Revenue nearest the Place for Settlement for stamping before settlement.

**5.3 Documents and Keys at Settlement**

- (1) In exchange for payment of the Balance Purchase Price, the Seller must deliver to the Buyer at settlement:
  - (a) any instrument of title for the Land required to register the transfer to the Buyer; and
  - (b) unstamped Transfer Documents capable of immediate registration after stamping; and
  - (c) if requested, the Keys in the Seller's or the Seller's Agent's possession or control for all locks and security systems on the Property; and
  - (d) if there are Tenancies:
    - (i) the Seller's copy of any Tenancy agreements;
    - (ii) a notice to each tenant advising of the sale in the form required by law; and
    - (iii) any notice required by law to transfer to the Buyer the Seller's interest in any Bond; and



- (e) if the answer to Q2 in the Reference Schedule is Yes, a copy of a current Pool Safety Certificate, if not already provided to the Buyer.
- (2) If the instrument of title for the Land also relates to other land, the Seller need not deliver it to the Buyer, but the Seller must make arrangements satisfactory to the Buyer to produce it for registration of the transfer.
- (3) If the Keys are not delivered at Settlement under clause 5.3(1)(c), the Seller must deliver the Keys to the Buyer. The Seller may discharge its obligation under this provision by authorising the Seller's Agent to release the Keys to the Buyer.

#### 5.4 Assignment of Covenants and Warranties

At settlement, the Seller assigns to the Buyer the benefit of all:

- (1) covenants by the tenants under the Tenancies;
- (2) guarantees and Bonds (subject to the requirements of the *Residential Tenancies and Rooming Accommodation Act 2008*) supporting the Tenancies;
- (3) manufacturers' warranties regarding the Included Chattels; and
- (4) builders' warranties on the Improvements; to the extent they are assignable. However, the right to recover arrears of Rent is not assigned to the Buyer and section 117 of the *Property Law Act 1974* does not apply.

#### 5.5 Possession of Property and Title to Included Chattels

On the Settlement Date, in exchange for the Balance Purchase Price, the Seller must give the Buyer vacant possession of the Land and the Improvements except for the Tenancies. Title to the Included Chattels passes at settlement.

#### 5.6 Reservations

- (1) The Seller must remove the Reserved Items from the Property before the Settlement Date.
- (2) The Seller must repair at its expense any damage done to the Property in removing the Reserved Items. If the Seller fails to do so, the Buyer may repair that damage.
- (3) Any Reserved Items not removed before settlement will be considered abandoned and the Buyer may, without limiting its other rights, complete this contract and appropriate those Reserved Items or dispose of them in any way.
- (4) The Seller indemnifies the Buyer against any damages and expenses resulting from the Buyer's actions under clauses 5.6(2) or 5.6(3).

#### 5.7 Consent to Transfer

- (1) If the Land sold is leasehold, this contract is subject to any necessary consent to the transfer of the lease to the Buyer being obtained by the Settlement Date.
- (2) The Seller must apply for the consent required as soon as possible.
- (3) The Buyer must do everything reasonably required to help obtain this consent.

### 6. Time

6.1 Time is of the essence of this contract, except regarding any agreement between the parties on a time of day for settlement.

### 7. Matters Affecting the Property

#### 7.1 Title

The Land is sold subject to:

- (1) any reservations or conditions on the title or the original Deed of Grant (if freehold); or
- (2) the Conditions of the Crown Lease (if leasehold).

#### 7.2 Encumbrances

The Property is sold free of all Encumbrances other than the Title Encumbrances and Tenancies.

#### 7.3 Requisitions

The Buyer may not deliver any requisitions or enquiries on title.

#### 7.4 Seller's Warranties

- (1) The Seller warrants that at settlement:
  - (a) if the Land is freehold: it will be the registered owner of an estate in fee simple in the Land and will own the rest of the Property;
  - (b) if the Land is leasehold: it will be the registered lessee, the lease is not liable to forfeiture because of default under the lease, and it will own the rest of the Property;
  - (c) it will be capable of completing this contract (unless the Seller dies or becomes mentally incapable after the Contract Date); and
  - (d) there will be no unsatisfied judgment, order or writ affecting the Property.
- (2) The Seller warrants that at the Contract Date and at settlement there are no current or threatened claims, notices or proceedings that may lead to a judgment, order or writ affecting the Property.
- (3) (a) The Seller warrants that, except as disclosed in this contract or a notice given by the Seller to the Buyer under the *Environmental Protection Act 1994* ("EPA"), at the Contract Date:
  - (i) there is no outstanding obligation on the Seller to give notice to the administering authority under EPA of notifiable activity being conducted on the Land; and
  - (ii) the Seller is not aware of any facts or circumstances that may lead to the Land being classified as contaminated land within the meaning of EPA.
- (b) If the Seller breaches a warranty in clause 7.4(3)(a), the Buyer may:
  - (i) terminate this contract by notice in writing to the Seller given within 2 Business Days before the Settlement Date; or
  - (ii) complete this contract and claim compensation, but only if the Buyer claims it in writing before the Settlement Date.
- (4) If a warranty in clause 7.4(1) or clause 7.4(2) is not correct, the Buyer may terminate this contract by notice to the Seller.
- (5) The Seller does not warrant that the Present Use is lawful.

#### 7.5 Survey and Mistake

- (1) The Buyer may survey the Land.
- (2) If there is:
  - (a) an error in the boundaries or area of the Land;
  - (b) an encroachment by structures onto or from the Land; or
  - (c) a mistake or omission in describing the Property or the Seller's title to it;
 which is:
  - (d) immaterial; or
  - (e) material, but the Buyer elects to complete this contract; the Buyer's only remedy against the Seller is for compensation, but only if claimed by the Buyer in writing on or before settlement.
- (3) The Buyer may not delay settlement or withhold any part of the Balance Purchase Price because of any compensation claim under clause 7.5(2).



- (4) If there is a material error, encroachment or mistake, the Buyer may terminate this contract before settlement.
- 7.6 Requirements of Authorities**
- (1) Any valid notice or order by any competent authority or Court requiring work to be done or money spent in relation to the Property ("Work or Expenditure") must be fully complied with:
- if issued before the Contract Date, by the Seller before the Settlement Date;
  - if issued on or after the Contract Date, by the Buyer.
- (2) If any Work or Expenditure that is the Seller's responsibility under clause 7.6(1)(a) is not done before the Settlement Date, the Buyer is entitled to claim the reasonable cost of work done by the Buyer in accordance with the notice or order referred to in clause 7.6(1) from the Seller after settlement as a debt.
- (3) Any Work or Expenditure that is the Buyer's responsibility under clause 7.6(1)(b), which is required to be done before the Settlement Date, must be done by the Seller unless the Buyer directs the Seller not to and indemnifies the Seller against any liability for not carrying out the work. If the Seller does the work, or spends the money, the reasonable cost of that Work or Expenditure must be added to the Balance Purchase Price.
- (4) The Buyer may terminate this contract by notice to the Seller if there is an outstanding notice at the Contract Date under sections 246AG, 247 or 248 of the *Building Act 1975* or sections 588 or 590 of the *Sustainable Planning Act 2009* that affects the Property.
- 7.7 Property Adversely Affected**
- (1) If at the Contract Date:
- the Present Use is not lawful under the relevant town planning scheme;
  - the Land is affected by a proposal of any competent authority to alter the dimensions of any Transport Infrastructure or locate Transport Infrastructure on the Land;
  - access or any service to the Land passes unlawfully through other land;
  - any competent authority has issued a current notice to treat, or notice of intention to resume, regarding any part of the Land; or
  - the Property is affected by the *Queensland Heritage Act 1992* or is included in the World Heritage List;
- and that has not been disclosed in this contract, the Buyer may terminate this contract by notice to the Seller given no later than 2 Business Days before the Settlement Date.
- (2) If no notice is given under clause 7.7(1), the Buyer will be treated as having accepted the Property subject to all of the matters referred to in that clause.
- (3) The Seller authorises the Buyer to inspect records held by any authority relating to the Property.
- 7.8 Dividing Fences**
- The Seller need not contribute to the cost of building any dividing fence between the Land and any adjoining land owned by it. The Buyer waives any right to claim contribution from the Seller.

## 8: Rights Until Settlement

### 8.1 Risk

The Property is at the Buyer's risk from 5pm on the first Business Day after the Contract Date.

### 8.2 Access

After reasonable notice to the Seller, the Buyer and its consultants may enter the Property:

- once to read any meter;
- for inspections under clause 4;
- once to inspect the Property before settlement; and
- once to value the Property before settlement.

### 8.3 Seller's Use of Property

The Seller must use the Property reasonably until settlement. The Seller must not do anything regarding the Property or Tenancies that may significantly alter them or result in later expense for the Buyer.

### 8.4 Information Regarding the Property

Before settlement, the Seller must give the Buyer:

- copies of all documents relating to any unregistered interests in the Property;
- full details of the Tenancies to allow the Buyer to properly manage the Property after settlement; and
- further copies or details if those previously given cease to be complete and accurate.

### 8.5 Possession Before Settlement

If possession is given before settlement:

- the Buyer must maintain the Property in substantially its condition at the date of possession, fair wear and tear excepted;
- entry into possession is under a licence personal to the Buyer revocable at any time and does not:
  - create a relationship of landlord and tenant; or
  - waive the Buyer's rights under this contract;
- the Buyer must insure the Property to the Seller's satisfaction; and
- the Buyer indemnifies the Seller against any expense or damages incurred by the Seller as a result of the Buyer's possession of the Property.

## 9. Parties' Default

### 9.1 Seller and Buyer May Affirm or Terminate

Without limiting any other right or remedy of the parties including those under this contract or any right at common law, if the Seller or Buyer, as the case may be, fails to comply with an Essential Term, or makes a fundamental breach of an intermediate term, the Seller (in the case of the Buyer's default) or the Buyer (in the case of the Seller's default) may affirm or terminate this contract.

### 9.2 If Seller Affirms

If the Seller affirms this contract under clause 9.1, it may sue the Buyer for:

- damages;
- specific performance; or
- damages and specific performance.

### 9.3 If Buyer Affirms

If the Buyer affirms this contract under clause 9.1, it may sue the Seller for:

- damages;
- specific performance; or
- damages and specific performance.

### 9.4 If Seller Terminates

If the Seller terminates this contract under clause 9.1, it may do all or any of the following:

- resume possession of the Property;
- forfeit the Deposit and any interest earned;
- sue the Buyer for damages;
- resell the Property.



**9.5 If Buyer Terminates**

If the Buyer terminates this contract under clause 9.1, it may do all or any of the following:

- (1) recover the Deposit and any interest earned;
- (2) sue the Seller for damages.

**9.6 Seller's Resale**

(1) If the Seller terminates this contract and resells the Property, the Seller may recover from the Buyer as liquidated damages:

- (a) any deficiency in price on a resale; and
- (b) its expenses connected with any repossession, any failed attempt to resell, and the resale; provided the resale settles within 2 years of termination of this contract.

(2) Any profit on a resale belongs to the Seller.

**9.7 Seller's Damages**

The Seller may claim damages for any loss it suffers as a result of the Buyer's default, including its legal costs on an indemnity basis and the cost of any Work or Expenditure under clause 7.6(3).

**9.8 Buyer's Damages**

The Buyer may claim damages for any loss it suffers as a result of the Seller's default, including its legal costs on an indemnity basis.

**9.9 Interest on Late Payments**

- (1) Without affecting the Seller's other rights, if any money payable by the Buyer under this contract is not paid when due, the Buyer must pay the Seller at settlement interest on that money calculated at the Default Interest Rate from the due date for payment until payment is made.
- (2) The Seller may recover that interest from the Buyer as liquidated damages.
- (3) Any judgment for money payable under this contract will bear interest from the date of judgment to the date of payment and the provisions of this clause 9.9 apply to calculation of that interest.

**10. General****10.1 Agent**

The Agent is appointed as the Seller's agent to introduce a buyer.

**10.2 Foreign Investment Review Board**

The Buyer warrants that either:

- (1) the Treasurer has consented under the *Foreign Acquisitions and Takeovers Act* to the Buyer's purchase of the Property; or
- (2) the Treasurer's consent is not required to the Buyer's purchase of the Property.

**10.3 Duty**

The Buyer must pay all duty on this contract.

**10.4 Notices**

- (1) Notices under this contract must be in writing and may be given by a party's solicitor.
- (2) Notices are effectively given if:
  - (a) delivered or posted to the other party or its solicitor; or
  - (b) sent to the facsimile number of the other party or its solicitor.
- (3) Posted notices will be treated as given 2 Business Days after posting.
- (4) Notices sent by facsimile will be treated as given when the sender obtains a clear transmission report.
- (5) Notices given after 5pm will be treated as given on the next Business Day.
- (6) Notices or other written communications by a party's solicitor (for example, varying the Inspection Date,

Finance Date or Settlement Date) will be treated as given with that party's authority.

**10.5 Business Days**

- (1) If anything is required to be done on a day that is not a Business Day, it must be done instead on the next Business Day.
- (2) If the Finance Date or Inspection Date fall on a day that is not a Business Day, then it falls on the next Business Day.

**10.6 Rights After Settlement**

Despite settlement and registration of the transfer, any term of this contract that can take effect after settlement or registration remains in force.

**10.7 Further Acts**

If requested by the other party, each party must, at its own expense, do everything reasonably necessary to give effect to this contract.

**10.8 Severance**

If any term or part of a term of this contract is or becomes legally ineffective, invalid or unenforceable in any jurisdiction it will be severed and the effectiveness, validity or enforceability of the remainder will not be affected.

**10.9 Interpretation****(1) Plurals and Genders**

Reference to:

- (a) the singular includes the plural and the plural includes the singular;
- (b) one gender includes each other gender;
- (c) a person includes a body corporate; and
- (d) a party includes the party's executors, administrators, successors and permitted assigns.

**(2) Parties**

- (a) If a party consists of more than one person, this contract binds them jointly and each of them individually.
- (b) A party that is a trustee is bound both personally and in its capacity as a trustee.

**(3) Statutes and Regulations**

Reference to statutes includes all statutes amending, consolidating or replacing them.

**(4) Inconsistencies**

If there is any inconsistency between any provision added to this contract and the printed provisions, the added provision prevails.

**(5) Headings**

Headings are for convenience only and do not form part of this contract or affect its interpretation.

### Schedule 1 – Property Details

Lot and Plan	County	Parish	Title Reference	Encumbrances
Lot 4 on SP 195275	Stanley	Yeerongpilly	50710034	Nil
Lot 5 on SP 195275	Stanley	Yeerongpilly	50710035	Nil
Lot 101 on SP 195275	Stanley	Yeerongpilly	50710040	Easement in Gross No. 709116788

## Annexure A - Special Conditions to Contract

### 1. SPECIAL CONDITIONS TO PREVAIL

#### 1.1 Amendments to Terms of Contract

(a) Where there is an inconsistency between the Standard Terms of Contract and a Special Condition, the Special Condition prevails.

(b) The Standard Terms of Contract are amended as follows:

~~(i) Clause 2.6(4)(a) of the Terms of Contract is amended by deleting the words: "the Seller was one natural person resident in Queensland and".~~

~~(ii) Clause 2.6(13) of the Terms of Contract is amended by deleting 2.6(13)(b) and amending clause 2.6(13)(e) to read: "to the Seller or its mortgagee and to parties other than the Seller or its mortgagee are the responsibility of the Buyer."~~

~~(i) Clauses 2.6(4) and 2.6(5) of the Terms of Contract are deleted and replaced with the following:~~

~~"(4) The Seller will provide the Buyer with a current Land Tax Clearance Certificate on or before Settlement.~~

~~(5) If the Buyer is advised by the Commissioner of Land Tax or the Office of State Revenue that a specified amount is payable in order to secure a Land Tax Certificate for the period to the Settlement Date then the amount payable will be paid at the Seller's cost from the proceeds of Sale on Settlement and the Buyer will accept such payment in satisfaction of the Seller's obligation under this clause."~~

~~(ii) Clause 2.6(13) of the Terms of Contract is deleted and replaced with the following:~~

~~"(13) The following provisions shall apply in relation to settlement cheques:~~

~~(a) The Buyer will provide a maximum of 3 bank cheques at Settlement.~~

~~(b) The Seller will provide the Buyer with the details (payee and amounts) of cheques required at Settlement by no later than 10.00am on the day prior to Settlement (being days when banks are open in the city of Brisbane).~~

~~(c) In the event that cheque details are not provided by the Seller to the Buyer at 10.00am on the day prior to the Settlement Date, then the Buyer may at its discretion defer the Settlement Date by one (1) business day from when the cheque details are provided. The Seller will not be entitled to claim interest for this period.~~

~~(d) This clause is for the sole benefit of the Buyer."~~

~~(iii) Clauses 3, 4, 7.4(1)-(4), 7.5, 7.6 and 7.7 (1)-(2), 9.3, 9.5 and 9.8 of the Terms of Contract are deleted;~~

~~(iv) All references to "Buyer" in clause 9.1 are deleted; and~~

~~(v) Clause 10.4 of the REIQ Terms of Contract is amended as follows:~~

~~(A) by inserting a new clause 10.4(2)(c) "emailed to the email address of the other party or its solicitor";~~

~~(B) by inserting a new clause 10.4(7) "Notices sent by email will be treated as given when a delivery confirmation report is received by the sender, which~~

records the time that the email was delivered to the addressee's current email address."; and

- (C) by inserting a new clause 10.4(8) "Pursuant to the *Electronic Transactions (Queensland) Act 2001* (Qld), the Buyer and the Seller consent to information and notices under this Contract of Sale being given by an electronic communication."

## 2. DUE DILIGENCE

### 2.1 Due Diligence Investigations

- (a) The Buyer shall forthwith after signing this Contract carry out a "due diligence" in respect of the Property to satisfy itself (or otherwise) with respect to all matters, which in the opinion of the Buyer are relevant to the acquisition of the Property. If the Buyer is not satisfied with respect to any matter, which in its absolute discretion it considers relevant to the acquisition of the Property, then the Buyer may by notice in writing given not later than the Due Diligence Date terminate this Contract and thereafter neither party shall have any Claim against the other pursuant to or arising under this Contract. If the Buyer fails to give a notice that it is satisfied or otherwise with its due diligence by the Due Diligence Date then the Buyer shall be deemed to have given a notice pursuant to this Special Condition 2.1(a) that it:
- (i) is satisfied with its due diligence; and
  - (ii) has elected to waive the benefit of this special condition.
- (b) The parties acknowledge and agree that this Special Condition 2.1(a) is inserted solely for the benefit of the Buyer and the benefit of this Special Condition 2.1(a) may be waived by the Buyer by notice in writing.

### 2.2 Disclosed Materials

- (a) The Seller must allow the Buyer and its consultants to have access to the Property for the purpose of conducting its due diligence inquiries and access to all Disclosed Materials relating to the Property.
- (b) Any access to the Property given to the Buyer or its consultants for the purpose of conducting Investigations is at the Buyer's risk. ~~The Buyer indemnifies the Seller in respect of any Loss to the Seller caused by or arising in connection with the Buyer's or the Buyer's consultants' access to the Property or the Buyer's or its consultants' presence on the Property.~~

## 3. NO REPRESENTATIONS

### 3.1 "As is where is"

The Buyer acknowledges that, as a consequence of its rights under Special Condition 2, it ~~Buyer~~ has inspected, and has the opportunity to further inspect the Property. Subject to the Buyer's rights under special condition 2, the Buyer accepts the Property in its present condition "as is where is" and subject to any legal, physical, patent or latent defects.

### 3.2 Buyer to satisfy itself

The Buyer:

- (a) does not rely on any representations, warranties or information provided or statements about the Property made by or on behalf of the Seller, the Seller's agent or their respective employees or agents, other than as set out in this Contract;
- (b) acknowledges that it has not been induced to enter into this Contract by any representation, warranty or information provided by the Seller, the Seller's agent or their respective employees or agents;

- (c) acknowledges that it has the opportunity under special condition 2 to carry out a full due diligence and other enquiries in respect of the Property and satisfy itself about all related matters including without limitation:
- (i) the use, fitness or suitability of the Property for any purpose;
  - (ii) the means of access to the Property;
  - (iii) any encroachments, easements, Crown reservations and other encumbrances from the Land onto adjoining land, or from adjoining land onto the Land;
  - (iv) as to any possible and/or potential flooding of the Land;
  - (v) as to neighbourhood or environment in which the Property is situated;
  - (vi) as to the zoning of the Land and the use to which the Property may be put, the suitability of the Land for future development or the rights and privileges relating to the Property or the services actually or likely to be connected or provided to the Property;
  - (vii) the quality, state of repair, fitness for purpose and construction of the Property;
  - (i) as to the existence, condition, location and capacity of any services located in, on, or under, or connected to the Property;
  - (ii) whether the Property complies with all laws, statutes, regulations and by-laws including the *Sustainable Planning Act 2009*;
  - (iii) the existence of any hazardous substance or hazardous contaminant within the meaning of the *Environmental Protection Act 1994*;
  - (iv) any failure to comply with all laws, statutes, regulations or by-law or a requirement of any Authority relating to the Property;
  - (v) as to anything disclosed or referred to in the Disclosed Materials;
  - (vi) the existence or otherwise of any requirements of Authorities relating to the Property including, without limitation, resumptions, road dedications, road widening and similar things;
  - (vii) the existence or otherwise of necessary consents, approvals and licences from Authorities relating to the Property, including any failure to comply with any approvals or licences; and
  - (viii) with any other matter, past, present, future or anticipated, relevant to the Property.

Apart from the right to terminate this Contract under special condition 2, the Buyer cannot terminate this Contract, delay Settlement, deduct or retain any amount from the Purchase Price or make any Claim in relation to any matter referred to in this Special Condition 3.

#### 4. CONTEMPORANEOUS AGREEMENT

- (a) This Contract is interdependent with and is to be entered into contemporaneously with the Contemporaneous Agreements.
- (b) If a Contemporaneous Agreement is terminated prior to the Settlement Date without default of either party to the Contemporaneous Agreement, then this Contract will also be terminated and the parties will have no further obligation to the other.
- (c) Default or breach by the Seller or Mirvac Constructions (Qld) Pty Ltd under a Contemporaneous Agreement entitling the Buyer to rescind a Contemporaneous Agreement prior to the Settlement Date will be deemed default or breach by the Seller entitling the Buyer to rescind this Contract.

- (d) Default or breach by the Buyer under a Contemporaneous Agreement prior to the Settlement Date entitling the Seller or Mirvac Constructions (Qld) Pty Ltd under a Contemporaneous Agreement to rescind a Contemporaneous Agreement will be deemed default or breach by the Buyer entitling the Seller to rescind this Contract.

## 5. STAMP DUTY

6. Despite any provision to the contrary the parties agree that the Buyer is responsible for the transfer duty payable under the *Duties Act 2001 (Qld)* in respect of this Contract and the Lot 3 Contract ("Contracts") on the maximum amount of \$6 million (plus GST) which totals \$332,175.00 in transfer duty ("Stamp Duty Amount").

- 6.1 The Seller agrees to reimburse the Buyer for the transfer duty payable under the *Duties Act 2001 (Qld)* in respect of the Contracts (excluding any penalties, any additional amounts payable for fines or penalties for late assessment or late payment) above the Stamp Duty Amount ("Additional Amount").

- 6.2 The Additional Amount will be paid as an adjustment to the Balance Purchase Price in favour of the Buyer at Settlement.

## 7. TRANSFER DOCUMENTS

The parties agree that the form of transfer under the *Land Title Act 1994* required to transfer title in the Property to the Buyer is in the form contained in Annexure B.

## 8. GOODS AND SERVICES TAX

### 8.1 Consideration is GST exclusive

Any consideration to be paid or provided for a supply made under or in connection with this Contract, does not include an amount on account of GST.

### 8.2 Gross up of Consideration

Despite any other provision in this Contract, if a party ("**Supplier**") makes a supply under or in connection with this Contract on which GST is imposed (not being a supply the consideration for which is specifically described in this Contract as "**GST inclusive**"):

- (a) the consideration payable or to be provided for that supply under this Contract but for the application of this special condition ("**GST exclusive consideration**") is increased by and the recipient of the supply ("**Recipient**") must also pay to the Supplier an amount equal to the GST payable by the Supplier on that supply; and
- (b) subject to special condition 8.4 the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

### 8.3 Reimbursements

If a payment to a party under this Contract is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

That party is assumed to be entitled to a full input tax credit unless it proves, before the date on which the payment must be made, that its entitlement is otherwise.

### 8.4 Tax Invoice and Registration

Despite any other provision of this Contract, a party need not make a payment of any amount for GST until the party has been given by the other party:

- (a) a GST tax invoice for that payment stating the amount of GST imposed on the party in respect of the supply to which the GST tax invoice relates; and

- (b) evidence satisfactory to the party that the other party is registered for the purposes of GST.

#### 8.5 Interpretation

Words or expressions used in this special condition 8 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this special condition.

#### 9. CONFIDENTIALITY

- (a) Subject to special condition 9(b), the contents of this Contract and all books accounts records documents and information made available to any party for the purposes of entering into this Contract or in the course of the performance of this Contract shall be kept confidential and shall not be disclosed to any other person without the written consent of the other parties.
- (b) Special condition 9(a) shall not apply to any disclosure:
- (i) required by law;
  - (ii) required by any applicable stock exchange listing rules;
  - (iii) made in good faith to officers employees legal and other advisors and auditors of any party under a duty of confidentiality;
  - (iv) by a party to its bankers or other financial institutions to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements;
  - (v) required by this Contract or necessary for or incidental to the performance of the obligations and duties contained in this Contract or any Contemporaneous Agreement including in connection with an exercise of rights or a dealing with rights or obligations under this Contract or any Contemporaneous Agreement (including, in particular, by way of giving information to owners of lots in the Tennyson Reach Community Titles Scheme and other interested persons or entities in connection with the removal of Lot 3 on SP 195275 from the Tennyson Reach Community Titles Scheme); and
  - (vi) of information in the public domain otherwise than due to a breach of special condition 9(a).
- (c) Each party consents to disclosures made in accordance with this special condition 9. This special condition supersedes any pre-existing agreements between the parties about confidentiality.

#### 10. COMPANY CHARGE

If at settlement anyone holds a registered charge over the Seller's assets, the Buyer agrees to accept from the Seller (instead of an ASIC Form 312 Discharge or Release of Property from a Charge) either:

- ~~(a) a written statement from the chargee confirming the Property is not subject to the charge; or~~
- ~~(a) a written statement from the Seller confirming that the Property is not subject to the charge.~~

#### 11. LEASE

- 11.1 The Buyer acknowledges and agrees that the Seller may occupy part of the Property that contains the sale office for Tennyson Reach ("Sales Office Land") following Settlement at a rental of \$10 per annum (if demanded), until the date of practical completion of stage 2 of the Parkland Works under the Parkland Works Contract ("Tenancy").
- 11.2 The Seller acknowledges that whilst the Seller remains in occupation of the Sales Office Land pursuant to this special condition, the Seller:
- (a) must maintain the Sales Office Land in substantially the same condition as it is at the Settlement Date, fair wear and tear excepted;

- (b) must take out necessary insurance for the Sales Office Land, including public risk insurance in a sum reasonably acceptable to the Buyer;
- (c) indemnifies and shall hold indemnified the Buyer against any expense or damage incurred by the Buyer as a result of the Seller's possession of the Sales Office Land; and
- (d) must pay outgoings levied in respect of the Sales Office Land.

11.3 The parties agree to do all things necessary at Settlement to record the Tenancy, including if necessary entering into a lease in the form incorporated in Annexure D, providing for the matters dealt with in this special condition and other matters usual for such a tenancy.

## 12. CONTRACT SUBJECT TO APPROVAL OF COUNCIL'S E&C COMMITTEE

12.1 This Contract is subject to and conditional upon the Buyer Council obtaining the approval of its E&C Committee to the transaction no later than the Due Diligence Date.

12.2 If E&C Committee approval is not obtained by the Due Diligence Date then this Contract is at an end with no penalty to the Buyer.

## 13. CONTRACT SUBJECT TO SELLER'S BOARD APPROVAL

13.1 This Contract is subject to and conditional upon the Seller obtaining the approval of its Board to the transaction no later than the Due Diligence Date.

13.2 If the Seller's Board approval is not obtained by the Due Diligence Date then this Contract is at an end with no penalty to the Seller.

## 14. PURCHASE PRICE PAYABLE BY INSTALMENTS

14.1 The Seller and the Buyer agree that the Purchase Price shall be payable by instalments in the amounts (plus GST) and on the dates set out below:

(a) \$4,500,000.00 (plus GST) payable on the Settlement Date; and

(b) \$2,000,000.00 (plus GST) ("Balance Purchase Price Instalment") payable on the date of practical completion of stage 1 of the Parkland Works under the Parkland Works Contract.

14.2 The Seller and the Buyer acknowledge and agree that payment of the Balance Purchase Price Instalment shall be secured by a first registered mortgage in the form incorporated in Annexure E of this Contract and registered against the title to the Land. The Buyer must duly execute the mortgage, as mortgagor and deliver same to the Seller on Settlement. The Seller shall be responsible for the registration fees payable in respect of the mortgage. The Buyer must coordinate lodgement of the Transfer in conjunction with the Seller's lodgement of the mortgage. The Seller will deliver a Release of Mortgage to the Buyer in exchange for payment of the Balance Purchase Price Instalment.

## 15. SETTLEMENT DATE

15.1 The Seller and the Buyer acknowledge that settlement of the Lot 3 Contract is subject to and conditional upon the removal of Lot 3 on SP 195275 from the Tennyson Reach Community Titles Scheme. The Seller and the Buyer agree that, if the Body Corporate for Tennyson Reach CTS 39925 does not pass the requisite resolution consenting to a New Community Management Statement to effect the removal of Lot 3 on SP 195275 from the Scheme at the Body Corporate's AGM scheduled for 29 June 2011, then the Seller may extend the Settlement Date under this Contract to coincide with any settlement date under the Lot 3 Contract by giving written notice to the Buyer at any time before Settlement of this Contract PROVIDED THAT if Settlement of this Contract and/or the Lot 3 Contract has not occurred by 11 December 2011 then either party may terminate this Contract by giving written notice to the other at any time after 11 December 2011 whereupon this Contract shall be at an end and neither party shall have any claim against the other in respect thereof other than for antecedent breaches.



**12-16. DEFINITIONS**

In these special conditions, the following words have the following meanings:

<b>Authority</b>	means any government or semi government authority or instrumentality, statutory or judicial authority.
<b>Claim</b>	means any cost, claim, demand, obligation, remedy, damage, loss, action, proceeding, claim for compensation, requisition or objection, whichever is applicable.
<b>Consulting Reports</b>	means all reports received in respect of the Property in the possession or control of the Seller including, but not limited to, engineering, planning, construction and architectural reports.
<b>Contemporaneous Agreement</b>	means the Lot 3 Contract and the Parkland Works Contract
<b>Cost</b>	includes any costs, damage, expense or payment and includes fees payable to consultants and lawyers.
<b>Disclosed Materials</b>	means all Consulting Reports, existing development approvals and any other documentation or information about the Property reasonably requested by the Buyer or its representatives in connection with the Property whether before or after the date of this Contract.
<b>Due Dillgence Date</b>	means 30 June 2011.
<b>Loss</b>	means any damage, loss (including loss of reputation), Cost, expense, fine, penalty and liability incurred by the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent and <b>Losses</b> has an equivalent meaning.
<b>Lot 3 Contract</b>	means the contract of sale between the Seller and the Buyer In respect of Lot 3 on SP 195275 dated on or about the date of this Contract.
<b>Parkland Works Contract</b>	means the construction contract between the Buyer and Mirvac Constructions (Qld) Pty Ltd dated on or about the date of this Contract which is in substantially the same form as the contract in Annexure C .

## Annexure B – Transfer Documents

Dealing Number



OFFICE USE ONLY

Privacy Statement

Collection of this information is authorised by the Land Title Act 1994 the Land Act 1994 and the Water Act 2000 and is used to maintain the publicly searchable registers in the land registry and the water register. For more information about privacy in NR&W see the department's website.

1. Interest being transferred (if shares show as a fraction) Lodger (Name, address, E-mail & phone number) Lodger Code  
FEE SIMPLE

Note: A Form 24 - Property Information (Transfer) must be attached to this Form where interest being transferred is "fee simple" (Land Title Act 1994), "State leasehold" (Land Act 1994) or "Water Allocation" (Water Act 2000)

2. Lot on Plan Description	County	Parish	Title Reference
LOT 4 ON SP195275	STANLEY	YEERONGPILLY	50710034
LOT 5 ON SP195275	STANLEY	YEERONGPILLY	50710035
LOT 101 ON SP195275	STANLEY	YEERONGPILLY	50710040

3. Transferor  
MIRVAC QUEENSLAND PTY LIMITED ACN 060 411 207

4. Consideration  
\$

5. Transferee Given names Surname/Company name and number (include tenancy if more than one)  
BRISBANE CITY COUNCIL AS TRUSTEE

6. Transfer/Execution The Transferor transfers to the Transferee the estate and interest described in item 1 for the consideration and in the case of monetary consideration acknowledges receipt thereof. The Transferor declares that the information contained in items 3 to 6 on the attached Form 24 is true and correct. The Transferee states the information contained in items 1, 2, 4 to 6 on the attached Form 24 is true and correct. Where a solicitor signs on behalf of the Transferee the information in items 1, 2, 4 to 6 on Form 24 is based on information supplied by the Transferee.

NOTE: Witnessing officer must be aware of their obligations under section 162 of the Land Title Act 1994.

Separate executions are required for each transferor and transferee. Signatories are to provide to the witness, evidence that they are the person entitled to sign the instrument (including proof of identity).

Mirvac Queensland Pty Limited ACN 060 411 207  
by its duly appointed Attorney

....., pursuant to  
registered Power of Attorney No. 713238897, who  
declares he has no notice of revocation of the  
Power of Attorney

.....  
Witnessing Officer (signature, full name & qualification)

/ /  
Execution Date

.....  
Transferor's Signature

Mirvac Queensland Pty Limited ACN 060 411 207  
by its duly appointed Attorney

....., pursuant to  
registered Power of Attorney No. 713238897, who  
declares he has no notice of revocation of the  
Power of Attorney

.....  
Witnessing Officer (signature, full name & qualification)

/ /  
Execution Date

.....  
Transferor's Signature

.....  
Witnessing Officer (signature, full name & qualification)

/ /  
Execution Date

.....  
\*Transferee's or Solicitor's Signature

(Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

\*Note: A Solicitor is required to print full name if signing on behalf of the Transferee and no witness is required in this instance

**SCHEDULE / ENLARGED PANEL /  
ADDITIONAL PAGE / DECLARATION**

**Title Reference 50710034, 50710035, 50710040**

This is the schedule to the Form 1 dated                      day of                      2011

The Transferor and the Council hereby covenant and agree as follows:

**1. Declaration of Trust**

1.1 It is declared that the Land in Item 2 of the Form 1 Transfer ("Land") is to be held by the Council upon trust for public use for parkland, community facilities and ancillary uses.

**2. Terms of Trust**

2.1 Council will maintain and manage the Land and any improvements on the Land consistent with achieving the purpose of the Trust. Council may take all action necessary for maintenance and management of the Land.

2.2 Council may make and enforce local laws for the use of the Land and any improvements on the Land.

**3. General Provisions**

3.1 The Transferor warrants that the Land is free of encumbrances (except for Easement No. 709116788), and does not owe land tax or rates or water as at the date of Transfer.

3.2 Each party to this document will do all acts and render all co-operation reasonably required by the other for the purpose of enabling the registration of this document in the Queensland Land Registry.

(This form must accompany Land Registry Form 1 – Transfer when lodged in the Land Registry)

Duties Act 2001; Valuation of Land Act 1944; Land Tax Act 1915; Local Government Act 1993; Water Act 2000, Electrical Safety Act 2002; Fire and Rescue Service Act 1990

**PART A – Transferee to complete**

Title reference [50710034, 50710035, 50710040]

Page 1 of 2

Electronic version – for completion before printing.

Where insufficient space in an item, use Form 20 (Enlarged Panel).

Mark appropriate [ ] with 'X'

Refer to guide for completion for further information.

**Official use only**



**1. Transferee**

(a) Given names & surname or Company & ACN/ABN

(b) Date of birth (dd/mm/yyyy)

(c) Residential or business address after possession

BRISBANE CITY COUNCIL

266 GEORGE STREET, BRISBANE 4000

(d) Contact details after possession

(i) Phone number - [REDACTED]

(ii) Postal address - As above [ ] OR complete address below  
GPO BOX 1434, BRISBANE 4001

(e) Name of trust - N/A [ ] OR complete - N/A

(f) Is transferee a foreign person / corporation?

N/A [ ] NO [ x ] YES [ ]

Attach completed Form 25 (Foreign Ownership Information)

(g) Does transferee ordinarily reside in Australia?

N/A [ ] NO [ ] YES [ x ]

**2. Transaction**

(a) Date of possession (dd/mm/yyyy) – / /

(b) Date of settlement (dd/mm/yyyy) – / /

**This form is comprised of two Parts -**  
▪ **Part A – Transferee to complete**  
▪ **Part B – Transferor to complete**  
**BOTH parts must be submitted with the Form 1 Transfer.**

(This form must accompany Land Registry Form 1 – Transfer when lodged in the Land Registry)

**PART B – Transferor to complete**

Title reference [50710034, 50710034, 50710040]

Page 2 of 2

Electronic version – for completion before printing.  
Where insufficient space in an item, use Form 20 (Enlarged Panel).

Mark appropriate [ ] with 'X'  
Refer to guide for completion for further information.

**3. Transferor's residential or business address after settlement**

Level 2, 164 Grey Street, SOUTHBANK QLD 4101

**4. Details of sale price**

(a) Property excluding water allocation		(b) Water allocation - N/A [ X ] OR complete below	
Cash	\$	Cash	\$
Vendor terms	\$	Vendor terms	\$
Assumption of liabilities	\$	Assumption of liabilities	\$
	\$		\$
Other (specify above)		Other (specify above)	
<b>Total</b>	<b>\$</b>	<b>Total</b>	<b>\$</b>
			\$

**5. Property details**

(a) Land / Water allocation description		(b) Property address			
Lot	Plan type & no.	Street no.	Street name	Suburb/Town/Locality	Postcode
4,5 and 101	SP195275		King Arthur Terrace	Tennyson	4105

(c) Property transferred Includes		(d) Current land use		(e) Water allocation - N/A [ X ] OR complete below	
Plant & machinery	[ ]	Vacant land	[ x ]	(i) Is water allocation unsupplemented?	
Livestock	[ ]	Dwelling	[ ]	NO [ ] YES [ ] > complete (ii) below	
Crops	[ ]	Multi-unit	[ ]	(ii) Reference number of the water allocation	
Existing right	[ ]	Flats	[ ]	dealing certificate - unsupplemented	
Movable chattels	[ ]	Guest house /			
Water licence	[ ]	Private hotel	[ ]		
Interim water allocation	[ ]	Farming	[ ]		
	[ ]	Industrial	[ ]		
Other (specify above)		Commercial	[ ]		
			[ ]		
		Other (specify above)			

- (f) Safety switch
- (i) Is an electrical safety switch installed? N/A [ x ] NO [ ] YES [ ]
  - (ii) Has transferee been informed in writing about its existence? N/A [ x ] NO [ ] YES [ ]
- (g) Smoke alarm
- (i) Is a compliant smoke alarm/s installed? N/A [ x ] NO [ ] YES [ ]
  - (ii) Has transferee been informed in writing about its existence? N/A [ x ] NO [ ] YES [ ]

**6. Transaction information**

- (a) Has an agreement in writing for the transfer of dutiable property been entered into? NO [ ] YES [ x ] > If Yes, complete (b) below / /
- (b) Date of written agreement (dd/mm/yyyy) - / /
- (c) Are the transferor and transferee related or associated at the date of the transfer? NO [ X ] YES [ ] > If Yes, complete (d) below
- (d) State the degree of relationship or association and supply evidence of value to Office of State Revenue - > See guide for completion
- (e) Is the consideration less than the unencumbered value of the property included in this transaction? NO [ X ] YES [ ] > See guide for completion
- (f) Does this transaction form part of an arrangement that includes other dutiable transactions? NO [ ] YES [ x ] > See guide for completion

**Annexure C – Parkland Works Contract**

Annexure D – Lease of Sales Office



Annexure E – Mortgage

[Redacted] - Mirvac Queensland Pty Ltd - Sale to Brisbane City Council - Lots 3, 4, 5 & 101 Tennyson Reach - Email no. 2

**From:** [Redacted]  
**To:** [Redacted]  
**Date:** 23/06/2011 10:25 am  
**Subject:** Mirvac Queensland Pty Ltd - Sale to Brisbane City Council - Lots 3, 4, 5 & 101 Tennyson Reach - Email no. 2  
**CC:** [Redacted]

[Redacted] - Further to email no. 1 just sent to you, I now attach the amended Land Sale Contract for Lot 3. Please refer to our comments in email no. 1. However, please also note that we have not incorporated Council's request to retain Standard Conditions 8.4(2) - (4) because, under the Contract, Council will not be owner of Lot 3 whilst it is part of the Tennyson Reach Community Titles Scheme without Council's agreement and so cannot be affected by any Body Corporate resolutions.

Regards

Partner | Property & Projects  
**ClarkeKann**  
LAWYERS

with  
GRAY | PEAKING  
ATTORNEYS

Tel: [Redacted] [www.clarkekann.com.au](http://www.clarkekann.com.au)  
Brisbane | Level 7, 300 Queen Street, Brisbane QLD 4000, Australia | GPO Box 2249, Brisbane QLD 4001, Australia  
Sydney | Level 7, 55 Clarence Street, Sydney NSW 2000, Australia | GPO Box 1342, Sydney NSW 2001, Australia

\*\*\*\*\* This message has passed through an insecure network. Please direct all enquiries to the message author. \*\*\*\*\*

**PAMD Form 30c****Warning statement**

*Property Agents and Motor Dealers Act 2000* — Chapter 11  
This form is effective from 1 October 2010.

ABN: 24 830 236 406  
Department of Employment, Economic  
Development and Innovation

**Instructions**

This form is to be attached to a proposed relevant contract of sale for residential property to be read and signed by a proposed buyer **BEFORE** the proposed buyer signs the proposed relevant contract.

**The seller or seller's agent must give the proposed buyer a clear statement directing the buyer's attention to the proposed relevant contract and to this warning statement before the proposed buyer signs the proposed relevant contract. Failure to give the proposed buyer a clear statement may give the buyer a right to terminate the contract under section 370 within 90 days of receiving a copy of the relevant contract unless settlement occurs earlier.**

**Property address**

**Note:** If no street address is applicable, use lot and plan information to identify the property

Street name and number ..... King Arthur Tce .....

Suburb ..Tennyson..... State    Postcode

**WARNING**

**DO NOT sign the proposed relevant contract for the above property until you have read and understood ALL SECTIONS of this form. DO NOT sign if you feel pressured.**

The relevant contract is subject to a five (5) business day cooling-off period. You may terminate this contract during the cooling-off period. However, the seller may deduct a termination penalty of up to 0.25% of the purchase price from the deposit.

**You should obtain independent:**

- **legal advice** See note 1
- **valuation** See note 2

**Cooling-off period****What is the cooling-off period?**

The cooling-off period is five (5) business days, during which you can change your mind about purchasing this property. Use this time to seek independent legal advice and an independent valuation of the property.

**When does the cooling-off period start?**

Your cooling-off period starts on the day you receive a copy of the completed relevant contract from the seller or seller's agent. The proposed contract becomes a relevant contract when both parties have signed. In any dispute about the commencement of the cooling-off period, it will be up to the seller to prove the buyer received a copy of the relevant contract. If you receive a copy of the relevant contract on a day other than a business day, the cooling-off period commences on the first business day after you receive a copy of the relevant contract

**When does the cooling-off period end?**

Your cooling-off period ends at 5.00pm on the fifth business day after the cooling-off period started. A business day is a day other than a Saturday, Sunday or public holiday.

**Can I waive or shorten the cooling-off period?**

Yes, but only if you engage an independent lawyer who must give you a lawyer's certificate explaining the purpose and nature of the certificate. You should seek advice from your lawyer about the effect of waiving or shortening your cooling-off period. If you are waiving the cooling-off period, the lawyer's certificate must be given to the seller or seller's agent before you and the seller enter into the relevant contract.

**Cooling-off period (continued)****What should I do during the five (5) day cooling-off period?**

It is strongly recommended that you seek independent legal advice and obtain an independent valuation of the property during this time and that you understand and agree with the terms and conditions of the contract.

**How do I terminate the contract during the cooling-off period and what happens if the relevant contract is terminated?**

If you want to terminate the contract at any time before the end of the five (5) day cooling-off period, you must give a signed, dated notice to the seller indicating that you wish to terminate the contract during the cooling-off period. The notice must state that the relevant contract is terminated under section 370A of the *Property Agents and Motor Dealers Act 2000*. The seller must refund your deposit within **14 days** of the termination. The seller may deduct a termination penalty of up to **0.25% of the purchase price**. Make sure you terminate any building contract associated with this property if you terminate this contract during the cooling-off period.

**What happens after the cooling-off period ends?**

If you do not terminate the contract during the cooling-off period, you are legally bound by the contract, subject to the terms and conditions of the contract.

**Other important information**

**Read the attached proposed relevant contract. Do not be pressured into signing the proposed relevant contract before you have read it.**

**Note 1 - Independent legal advice**

Do you fully understand the legal consequences of signing the attached proposed relevant contract? Before signing the proposed relevant contract, it is strongly recommended that you seek independent legal advice and clarify any queries or concerns you have about buying the property. Are you sure the person you have obtained advice from is totally independent from the seller or seller's agent? **Exercise extreme caution in accepting the advice of anyone referred to you by the seller or seller's agent.**

**Note 2 - Independent valuation of the property**

Are you sure the purchase price for this property is fair? You should consider obtaining an independent valuation of the property before you sign the contract, or before your cooling-off period ends. When choosing a valuer you should ask whether the valuer has any relationship with any person involved in selling the property and whether they have professional indemnity insurance. Before you engage the valuer ask about the cost of the valuation. For more information about valuations, go to [www.fairtrading.qld.gov.au/house-valuation.htm](http://www.fairtrading.qld.gov.au/house-valuation.htm).

**Building contracts**

For building contracts associated with the purchase of residential property, you should ensure that the building contract price is not over-valued or inflated. Get a valuation or compare homes of similar value advertised or displayed by other home builders.

Domestic building contracts also have a cooling-off period under the *Domestic Building Contracts Act 2000* (section 72). Please check the Building Services Authority of Queensland website at [www.bsa.qld.gov.au](http://www.bsa.qld.gov.au) for further information about building contracts. Remember to terminate any building contracts related to this property if you terminate this contract.

**Claim fund and property developers**

A claim fund exists which, in some cases, enables buyers to make a claim if they suffer financial loss because a real estate agent commits a claimable offence. Strict guidelines and timeframes apply. If you suffer loss while buying an investment property or buying any property from a property developer you can not make a claim for loss against the fund.

**How do I know if I'm dealing with a licensed real estate agent or property developer and/or obtain further information about purchasing real estate?**

The Fair Trading website at [www.fairtrading.qld.gov.au](http://www.fairtrading.qld.gov.au) provides you with useful information about purchasing property. You can check that you are dealing with a licensed real estate agent or property developer at [www.fairtrading.qld.gov.au/are-you-licensed.htm](http://www.fairtrading.qld.gov.au/are-you-licensed.htm) or by phoning 13 13 04.

**Buyer's acknowledgment**

I/we have read all sections of this warning statement and I/we acknowledge that by signing this warning statement, my/our attention has been directed to this warning statement and the attached proposed relevant contract by a clear statement and I/we have signed the warning statement BEFORE I/we signed the attached proposed relevant contract.

Signing this Warning Statement negates any termination right I/we may have had under section 370 of the *Property Agents and Motor Dealers Act 2000*.

Name Brisbane City Council

Name .....

Signature .....

Date   /   /

D D M M Y Y Y Y

Date   /   /

D D M M Y Y Y Y

**BCCM****Form 14**

ABN: 13 846 673 994

Department of  
Justice and Attorney-General**Information sheet (body corporate information)***Body Corporate and Community Management Act 1997*

This form is effective from 29 April 2011

**WARNING**

You are strongly advised to obtain independent legal advice regarding any questions or concerns you have about purchasing the property or your prospective rights and obligations as a member of a body corporate.

**Notice to agent:** The *Property Agents and Motor Dealers Act 2000* and *Body Corporate and Community Management Act 1997* (the Act) include strict requirements for presentation of prescribed warning statements and information sheets. Failure to comply may result in cancellation of the contract.

**By law the seller or the seller's agent must attach this information sheet to the contract.  
Do NOT sign the contract of sale without reading this information sheet.**

In addition to the contract, you should have before you:

- a separate warning statement, if the lot is a residential property, provided by the seller under the *Property Agents and Motor Dealers Act 2000*
- a disclosure statement provided by the seller, containing essential information about the body corporate that you will become a member of through purchasing this property (e.g. the amount of annual contributions currently set by the body corporate and payable by the lot owner)
- a community management statement for the scheme provided by the seller, containing important details about the scheme including details of any proposed future development of the scheme, the lot entitlements, by-laws and the regulation module applying to the scheme.

**Community titles schemes**

This contract warning contains important information you should read and understand before signing a contract to buy a lot in a community titles scheme. Community titles schemes include duplexes, residential unit blocks, high-rise apartment complexes, townhouse complexes and some commercial premises. They contain individually owned units and common property such as lawns and access roadways.

Some new unit owners do not realise owning a lot in a community titles scheme brings with it certain obligations. You should carefully consider whether living or investing in a community titles scheme suits your lifestyle and financial needs.

When a community titles scheme is established, a body corporate is created to administer the scheme. Each lot owner is automatically a member of their body corporate and enjoys certain rights and responsibilities.

Owners are **NOT** able to decline to be members of their body corporate. Normally, an elected committee carries out day-to-day functions on behalf of the body corporate. Bodies corporate may also engage service providers such as body corporate managers and on-site managers, caretakers and letting agents.

Common obligations of a body corporate include:

- administering the common property and any body corporate assets
- enforcing the by-laws for the scheme, such as noise levels, the keeping of pets, car parking and a range of other matters
- arranging compulsory body corporate insurance
- conducting general meetings of owners, adopting budgets, and levying contributions to fund the operation of the body corporate
- maintaining bank accounts, keeping records, and preparing financial statements.

Common obligations of individual lot owners include:

- making financial contributions towards the body corporate administrative costs
- complying with by-laws
- maintaining their lot in good condition.

**Suggested searches and matters to investigate**

There are significant differences between owning a lot in a community titles scheme and owning other types of property (such as a detached house). In addition to carrying out conveyancing searches, it is also recommended you investigate a number of special body corporate matters through the following sources:

**1. Department of Justice and Attorney-General, Office of the Commissioner for Body Corporate and Community Management**

Conduct a search at the Office of the Commissioner for Body Corporate and Community Management for any Adjudicator's Orders (a decision regarding the outcome of a dispute) made concerning the scheme.

General information and fact sheets are also provided about community title living and body corporate rules and regulations. For more information, call 1800 060 119 or visit [www.justice.qld.gov.au/bccm](http://www.justice.qld.gov.au/bccm)

**2. Body corporate secretary**

Obtain a **Body Corporate Information Certificate** from the body corporate secretary or body corporate manager whose name and address is supplied in the disclosure statement. Compare the disclosure statement with the information certificate, as inaccurate information in the disclosure statement may give you grounds to cancel the contract (Section 209 or Section 217 of the Act).

A search of the **body corporate records** can provide other important information, such as whether any improvements to the lot you are purchasing (e.g. balcony enclosure, air-conditioning) were approved, whether any conditions apply, and who is responsible for their maintenance and insurance.

Also, check for any **agreements** the body corporate may have entered into (e.g. caretaking, letting, body corporate management or lift maintenance).

**Checklist**

- By purchasing this property, do you know you will be part of a body corporate?
- Are you aware of any contracts the body corporate is a party to?
- Have you read and understood the body corporate by-laws?
- Do you understand your likely financial contributions to the body corporate?
- Are you aware that an adjustment of lot entitlements may increase or decrease your financial contributions to the body corporate?
- Are you aware that your financial contributions to the body corporate will vary as the financial liabilities of the body corporate change?
- Do you understand your maintenance responsibilities?
- Do you understand the role of the body corporate manager and on-site manager (if appointed)?

**Buyer's acknowledgment**

I/we have read all sections of this information sheet and I/we have acknowledged and signed the information sheet BEFORE I/we signed the attached contract.

If the lot is residential property, I/we acknowledge that by signing this information sheet, my/our attention has been directed to this information sheet and the attached proposed relevant contract by a clear statement and that signing this information sheet negates any termination right I/we may have had under section 206A or 213A of the *Body Corporate and Community Management Act 1997*.

Name Brisbane City Council .....

Signature ..... Date   /   /

Name .....

Signature ..... Date   /   /



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# Contract



## For Residential Lots in a Community Titles Scheme Fourth Edition

This document has been approved by The Real Estate Institute of Queensland Limited and the Queensland Law Society Incorporated as being suitable for the sale and purchase of Residential Lots in a Community Titles Scheme in Queensland except for new residential property in which case the issue of GST liability must be dealt with by

**The Seller and Buyer agree to sell and buy the Property under this contract**  
**Reference Schedule**

**Contract Date:** \_\_\_\_\_  
**Agent:** \_\_\_\_\_  
ABN: \_\_\_\_\_ Licence Number: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Facsimile: \_\_\_\_\_ Mobile: \_\_\_\_\_  
Email Address: \_\_\_\_\_

**Parties**

**Seller:** Mirvac Queensland Pty Ltd ACN 060 411 207  
ABN: \_\_\_\_\_ Email Address: \_\_\_\_\_  
Address: Level 2, 164 Grey Street, South Bank Qld 4101  
Telephone: \_\_\_\_\_ Facsimile: \_\_\_\_\_ Mobile: \_\_\_\_\_

**Seller's Solicitor:** ClarkeKann Lawyers [for any other solicitor notified to the Buyer]  
ABN: \_\_\_\_\_ Ref: SMC  
Address: Level 7, 300 Queen Street, Brisbane Qld 4000  
Telephone: \_\_\_\_\_ Facsimile: \_\_\_\_\_ Mobile: \_\_\_\_\_  
Email Address: \_\_\_\_\_

**Buyer:** Brisbane City Council  
ABN: \_\_\_\_\_ Email Address: \_\_\_\_\_  
Address: 266 George Street, Brisbane  
Telephone: \_\_\_\_\_ Facsimile: \_\_\_\_\_ Mobile: \_\_\_\_\_

**Buyer's Solicitor:** Brisbane City Legal Practice [for any other solicitor notified to the Seller]  
ABN: \_\_\_\_\_ Ref: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Facsimile: \_\_\_\_\_ Mobile: \_\_\_\_\_  
Email Address: \_\_\_\_\_

**Property** Lot Address: 197 King Arthur Terrace, Tennyson QLD 4105  
Description: Lot: Lot 3 on SP: 195275 [\*Delete two]  
Scheme: Tennyson Reach Community Titles Scheme: 39925  
County: Stanley Parish: Yeerongpilly  
Title Reference: 50710033  
**Present Use:** Residential **Local Government:** Brisbane City Council  
**Excluded Fixtures:** Nil  
**Included Chattels:** Not applicable

2052759\_1

**Matters Affecting Property**

**Title Encumbrances:** Easement no. 712884080 benefiting the Land over Easement U on SP 230021 [If the Property is sold free from Title Encumbrances insert "Nil" [If the Property is sold subject to Title Encumbrances, they must be described]

**Tenancies:** Nil

Tenant's Name: \_\_\_\_\_

Term and Options: \_\_\_\_\_

Starting Date of Term: \_\_\_\_\_

Ending Date of Term: \_\_\_\_\_

Rent: \_\_\_\_\_ Bond: \_\_\_\_\_

**Managing Agent:** Nil

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Facsimile: \_\_\_\_\_ Mobile: \_\_\_\_\_

Email: \_\_\_\_\_

**Price**

**Deposit Holder:** ClarkeKann Lawyers [Unless otherwise specified in this contract, the Purchase Price includes any GST payable on the supply of the Property to the Buyer]

**Purchase Price:** \$ 2,500,000.00 (payable in accordance with special conditions)

**Deposit:** \$ \$1.00\* Initial Deposit payable when Buyer signs this contract  
 (\*if demanded) Balance Deposit (if any) payable on Finance Approval, or if this Contract is not subject to Finance Approval, when the Buyer signs this Contract

**Default Interest Rate:** \_\_\_\_\_ % [If no figure is inserted, the Contract Rate published by the Queensland Law Society Inc will apply]

**Finance**

**Finance Amount:** \$ Not applicable [Unless all of "Finance Amount", "Financier" and "Finance Date" are completed, this contract is not subject to finance and clause 3 does not apply]

**Financier:** Not applicable

**Finance Date:** Not applicable

**Building and/or Pest Inspection Date**

**Inspection Date:** Not applicable [If not completed, the contract is not subject to an inspection report and clause 4 does not apply]

**Pool Safety for non-shared pools on the Lot**

Complete the following questions if there is a non-shared pool on the Lot.

- Q1. Is there a non-shared pool on the Lot?  
 Yes  
 No Clause 4.7 of this contract does not apply
- Q2. If the answer to Q1 is Yes, is there a Pool Safety Certificate for the non-shared pool at the time of contract?  
 Yes Clause 5.3(1)(e) applies  
 No Clause 4.7 applies (except where this contract is formed on a sale by auction)  
*if there is a pool on the Lot and Q2 is not completed then clause 4.7 applies.*
- Q3. If the answer to Q2 is No, has a Notice of no pool safety certificate been given prior to contract?  
 Yes  
 No

**[WARNING TO SELLER:** Failure to comply with the Pool Safety Requirements is an offence with substantial penalties.]

**[WARNING TO BUYER:** If the Buyer does not receive a Pool Safety Certificate at settlement, the Buyer becomes responsible at its cost to obtain a Pool Safety Certificate within 90 days after settlement. The Buyer can also become liable to pay any costs of rectification necessary to comply with the Pool Safety Requirements to obtain a pool safety certificate. The Buyer commits an offence and can be liable to substantial penalties if the Buyer fails to comply with this requirement.]

*Note: This is an obligation of the Seller under Section 16 of the Building Regulation 2006.*

**Pool Safety Inspection Date:**

Not applicable

[Clause 4.7(2) applies except where this contract is formed on a sale by auction]



**Electrical Safety Switch and Smoke Alarm**

The Seller gives notice to the Buyer that an Approved Safety Switch for the General Purpose Socket Outlets is:

- \*installed in the Lot
- \*not installed in the Lot

*\*Mark whichever is applicable*

The Seller gives notice to the Buyer that a Compliant Smoke Alarm(s) is/are:

- \*Installed in the Lot
- \*not installed in the Lot

*\*Mark whichever is applicable*

[WARNING: By giving false or misleading information in this section, the Seller may incur a penalty. The Seller should seek expert and qualified advice about completing this section and not rely on the Seller's Agent to complete this section.]

[WARNING: Failure to install a Compliant Smoke Alarm is an offence under the Fire and Rescue Service Act 1990.]

**Additional Body Corporate Information**

Interest Schedule Lot Entitlement of Lot:	<u>1</u>
Aggregate Interest Schedule Lot Entitlement:	<u>26562</u>
Contribution Schedule Lot Entitlement of Lot:	<u>4703</u>
Aggregate Contribution Schedule Lot Entitlement:	<u>57678</u>

**Insurance Policies**

Insurer: CGU Insurance Limited ABN 27 004 478 371 (Strata Unit Underwriters)

Policy No: 06S0653289  
 \$238,389,056 (Loss of Rent/Temporary Accom. - \$35,758,362); (Catastrophe or Emergency - \$36,758,362)

Building: \$36,758,362

Public Liability: \$20,000,000  
 Fidelity Guarantee - \$100,000  
 Office Bearers Liability - \$5,000,000  
 Voluntary Workers Personal Accident - \$200,000

Other: Motor Vehicles (Policy 098985XZBI - Oamps Insurance Brokers) Market Value

**Pool Safety for shared pools only**

Complete the following questions if there is a shared pool on the Land.

- A. Is there a shared pool on the Land or on adjacent land used in association with the Land?
  - Yes
  - No
- B. If the answer to A is Yes, is there a Pool Safety Certificate for the shared pool at the time of contract?
  - Yes
  - No
- C. If the answer to B is No, has a Notice of no pool safety certificate been given prior to contract?
  - Yes
  - No

*Note: This is an obligation of the Seller under Section 16 of the Building Regulation 2006.*

The REIQ Terms of Contract for Residential Lots in a Community Titles Scheme (Pages 6-12)  
Fourth Edition Contain the Terms of this Contract.

### Special Conditions

See Annexures "A" and "B"

**Settlement**

*Settlement Date:* See special condition 15

[or the next Business Day if that is not a Business Day in the Place for Settlement]  
[If Brisbane is inserted this is a reference to Brisbane CBD]

*Place for Settlement:* Brisbane CBD

**Signing**

Seller

Witness

Buyer

Witness

**Deposit Holder**

[Who acknowledges having received the Initial Deposit and agrees to hold that amount and any Balance Deposit when received as Deposit Holder for the parties as provided in the Contract.]

The REIQ Terms of Contract for Residential Lots in a Community Titles Scheme (Pages 6-12)  
Fourth Edition Contain the Terms of this Contract

## Seller's Disclosure

**[WARNING: The Seller is taken to have knowledge of significant Body Corporate matters that may affect the Buyer, where the Seller ought reasonably to be aware of those matters.  
Section 223(4) *Body Corporate and Community Management Act 1997*]**

**Latent or Patent Defects in Common Property or Body Corporate Assets**  
[Sections 223(2)(a) and 223(2)(b) *Body Corporate and Community Management Act 1997*]

[Annex details of disclosure made by the Seller (if any)]

The Seller discloses that there may be latent or patent defects in common property or body corporate assets as a result of the January 2011 floods. Refer to the disclosure statement which details the special levies as a result of inundation rectification.

**Actual or Contingent or Expected Liabilities of Body Corporate**  
[Sections 223(2)(c) and 223(2)(d) *Body Corporate and Community Management Act 1997*]

[Annex details of disclosure made by the Seller (if any)]

The Seller discloses that there may be actual, contingent or expected liabilities of the Body Corporate as a result of the January 2011 floods. Refer to the disclosure statement which details the special levies as a result of inundation rectification.

The Seller also discloses there may be a change in the Body Corporate financial affairs as a result of any change in the CSLEs upon removal of any Development Lot pursuant to the Seller's rights as Original Owner, in accordance with the clause 5 in Schedule B of the Community Management Statement. New Community Management Statements may be required to be recorded to reflect changes to the Scheme as a result of the Seller exercising its rights as Original Owner.

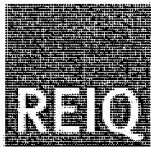
**Circumstances in Relation to Affairs of the Body Corporate**  
[Section 223(3) *Body Corporate and Community Management Act 1997*]

[Annex details of disclosure made by the Seller (if any)]

The Seller also discloses there may be a change in the Body Corporate financial affairs as a result of any change in the CSLEs upon removal of any Development Lot pursuant to the Seller's rights as Original Owner, in accordance with the clause 5 in Schedule B of the Community Management Statement. New Community Management Statements may be required to be recorded to reflect changes to the Scheme as a result of the Seller exercising its rights as Original Owner.

**Exceptions to Statements in Clause 7.4(3)**

[Annex details of disclosure made by the Seller (if any)]



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## Terms of Contract

### For Residential Lots in a Community Titles Scheme

#### 1. Definitions

##### 1.1 In this contract:

- (1) terms in **bold** in the Reference Schedule and the Disclosure Statement have the meanings shown opposite them unless the context requires otherwise; and
- (2) (a) **"Approved Safety Switch"** means a residual current device as defined in the *Electrical Safety Regulation 2002*;
- (b) **"Balance Purchase Price"** means the Purchase Price, less the Deposit, adjusted under clause 2.6;
- (c) **"Bank"** means:
- (i) an entity carrying on banking business as defined by section 5 of the *Banking Act 1959* of the Commonwealth; or
  - (ii) a bank constituted under a law of a state;
- (d) **"Body Corporate"** means the body corporate of the Scheme;
- (e) **"Bond"** means a bond under the *Residential Tenancies and Rooming Accommodation Act 2008*;
- (f) **"Building"** means any building that forms part of the Lot or in which the Lot is situated;
- (g) **"Business Day"** means a week day other than a public holiday in the Place for Settlement;
- (h) **"Compliant Smoke Alarm"** means a smoke alarm complying with sections 104RB (2) or (4) of the *Fire and Rescue Service Act 1990*;
- (i) **"Contract Date"** or **"Date of Contract"** means the date inserted in the Reference Schedule;
- (j) **"Court"** includes any tribunal established under statute;
- (k) **"Disclosure Statement"** means the statement under section 206 (existing lot) or section 213 (proposed lot) of the *Body Corporate and Community Management Act 1997*;
- (l) **"Encumbrances"** includes unregistered and statutory encumbrances;
- (m) **"Essential Term"** includes, in the case of breach by:
- (i) the Buyer: clauses 2.2, 2.5(1), 5.1 and 6.1; and
  - (ii) the Seller: clauses 5.1, 5.3(1)(a) – (c), 5.3(1)(d)(ii) & (iii), 5.3(1)(e), 5.5 and 6.1;
- but nothing in this definition precludes a Court from finding other terms to be essential;
- (n) **"Financial Institution"** means a Bank, building society or credit union;
- (o) **"General Purpose Socket Outlet"** means an electrical socket outlet as defined in the *Electrical Safety Regulation 2002*;
- (p) **"GST"** means the goods and services tax under the *GST Act*;
- (q) **"GST Act"** means *A New Tax System (Goods and Services Tax) Act* and includes other GST related legislation;
- (r) **"Improvements"** means fixed structures in the Lot (such as stoves, hot water systems, fixed carpets, curtains, blinds and their fittings, clothes lines, fixed satellite dishes and television antennae, in-ground plants) but does not include the Reserved Items;
- (s) **"Keys"** means keys, codes or devices in the Seller's possession for all locks or security systems on the Property;
- (t) **"Land"** means the Scheme land;
- (u) **"Notice of no pool safety certificate"** means the Form 36 under the *Building Regulation 2006* to the effect that there is no Pool Safety Certificate issued for the Land and/or the Lot;
- (v) **"Outgoings"** means:
- (i) rates or charges on the Lot by any competent authority (for example, council rates, water rates, fire service levies);
  - (ii) land tax; and
  - (iii) regular periodic contributions payable to the Body Corporate (other than Special Contributions);
- (w) **"Plan"** means the building units, group titles or survey plan containing the Lot;
- (x) **"Pool Safety Requirements"** means the requirements for pool safety contained in the *Building Act 1975* and *Building Regulation 2006*;
- (y) **"Pool Safety Certificate"** means either:
- (i) a certificate of compliance; or
  - (ii) an exemption from compliance; issued in accordance with the Pool Safety Requirements;
- (z) **"Pool Safety Inspection Date"** means the Pool Safety Inspection Date inserted in the Reference Schedule. If no date is inserted in the Reference Schedule, the Pool Safety Inspection Date is taken to be the earlier of the following:
- (i) the Inspection Date for the Building and/or Pest Inspection; or
  - (ii) 2 Business Days before the Settlement Date;
- (aa) **"Pool Safety Inspector"** means a person licensed or authorised under the *Building Act 1975* and *Building Regulation 2006* to issue a Pool Safety Certificate;
- (bb) **"Property"** means:
- (i) the Lot;
  - (ii) the Improvements; and
  - (iii) the Included Chattels;
- (cc) **"Regulation Module"** means the regulation module for the Scheme;
- (dd) **"Rent"** means any periodic amount, including outgoing, payable under the Tenancies;
- (ee) **"Reserved Items"** means the Excluded Fixtures and all chattels in the Lot other than the Included Chattels;
- (ff) **"Scheme"** means the community titles scheme containing the Lot;
- (gg) **"Special Contribution"** means an amount:
- (i) levied by the Body Corporate under the Regulation Module for a liability for which no provision or inadequate provision has been made in the budget of the Body Corporate; or
  - (ii) payable in connection with an exclusive use by-law; that is not an Outgoing;



- (hh) "Transfer Documents" means:
  - (i) the form of transfer under the *Land Title Act 1994* required to transfer title in the Lot to the Buyer; and
  - (ii) any other document to be signed by the Seller necessary for stamping or registering the transfer; and
- (ii) "Transport Infrastructure" has the meaning defined in the *Transport Infrastructure Act 1994*.

1.2 Words and phrases defined in the *Body Corporate and Community Management Act 1997* have the same meaning in this contract unless the context indicates otherwise.

**2. Purchase Price**

**2.1 GST**

Unless otherwise specified in this contract, the Purchase Price includes any GST payable on the supply of the Property to the Buyer.

**2.2 Deposit**

- (1) The Buyer must pay the Deposit to the Deposit Holder at the times shown in the Reference Schedule. The Deposit Holder will hold the Deposit until a party becomes entitled to it.
- (2) The Buyer will be in default if it:
  - (a) does not pay the Deposit when required;
  - (b) pays the Deposit by a post-dated cheque; or
  - (c) pays the Deposit by cheque which is dishonoured on presentation.
- (3) The Seller may recover from the Buyer as a liquidated debt any part of the Deposit which is not paid when required.

**2.3 Investment of Deposit**

- If:
- (1) the Deposit Holder is instructed by either the Seller or the Buyer; and
  - (2) it is lawful to do so;
- the Deposit Holder must:
- (3) invest as much of the Deposit as has been paid with any Financial Institution in an interest-bearing account in the names of the parties; and
  - (4) provide the parties' tax file numbers to the Financial Institution (if they have been supplied).

**2.4 Entitlement to Deposit and Interest**

- (1) The party entitled to receive the Deposit is:
  - (a) if this contract settles, the Seller;
  - (b) if this contract is terminated without default by the Buyer, the Buyer; and
  - (c) if this contract is terminated owing to the Buyer's default, the Seller.
- (2) The interest on the Deposit must be paid to the person who is entitled to the Deposit.
- (3) If this contract is terminated, the Buyer has no further claim once it receives the Deposit and interest unless the termination is due to the Seller's default or breach of warranty.
- (4) The Deposit is invested at the risk of the party who is ultimately entitled to it.

**2.5 Payment of Balance Purchase Price**

- (1) On the Settlement Date, the Buyer must pay the Balance Purchase Price by Bank cheque as the Seller directs.
- (2) Despite any other provision of this contract, reference to a "Bank cheque" in clause 2.5(1):
  - (a) includes a cheque drawn by a building society or credit union on itself;
  - (b) does not include a cheque drawn by a building society or credit union on a Bank;

and the Seller is not obliged to accept a cheque referred to in clause 2.5(2)(b) on the Settlement Date.

**2.6 Adjustments to Balance Purchase Price**

- (1) The Seller is liable for Outgoings and is entitled to Rent up to and including the Settlement Date. The Buyer is liable for Outgoings and is entitled to Rent after the Settlement Date.
- (2) Subject to clauses 2.6(3), 2.6(4), 2.6(5) and 2.6(6), Outgoings for periods including the Settlement Date must be adjusted:
  - (a) for those paid, on the amount paid;
  - (b) for those assessed but unpaid, on the amount payable (excluding any discount); and
  - (c) for those not assessed:
    - (i) on the amount the relevant authority or the Body Corporate advises will be assessed (excluding any discount); or
    - (ii) if no advice on the assessment to be made is available, on the amount of the latest assessment (excluding any discount).
- (3) If there is no separate assessment of rates for the Lot at the Settlement Date and the Local Government informs the Buyer that it will not apportion rates between the Buyer and the Seller, then:
  - (a) the amount of rates to be adjusted is that proportion of the assessment equal to the ratio of the interest schedule lot entitlement of the Lot to the aggregate interest schedule lot entitlement of the Scheme; and
  - (b) if an assessment of rates includes charges imposed on a "per lot" basis, then the portion of those charges to be adjusted is the amount assessed divided by the number of lots in that assessment.
- (4) Land tax must be adjusted:
  - (a) on the assessment that the Office of State Revenue would issue for the land tax year current at the Settlement Date if the Seller was one natural person resident in Queensland and the Lot was the Seller's only land; or
  - (b) based on the assumptions in clause 2.6(4)(a), if there is no separate unimproved value for the Lot, on a notional unimproved value equal to:

Unimproved value of the Land under <i>Valuation of Land Act 1944</i>	Interest schedule lot entitlement of Lot
	Aggregate interest schedule lot entitlement
- (5) If land tax is unpaid at the Settlement Date and the Office of State Revenue advises that it will issue a final clearance for the Lot on payment of a specified amount, then the Buyer may deduct the specified amount from the Balance Purchase Price at settlement and must pay it promptly to the Office of State Revenue. If an amount is deducted under this clause, then land tax will be treated as paid at the Settlement Date for the purposes of clause 2.6(2).
- (6) Any Outgoings assessable on the amount of water used must be adjusted on the charges that would be assessed on the total water usage for the assessment period, determined by assuming that the actual rate of usage shown by the meter reading made before settlement continues throughout the assessment period. The Buyer must obtain and pay for the meter reading.
- (7) If any Outgoings are assessed but unpaid at the Settlement Date, then the Buyer may deduct the amount payable from the Balance Purchase Price at



settlement and pay it promptly to the relevant authority or the Body Corporate, as appropriate. If an amount is deducted under this clause, the relevant Outgoing will be treated as paid at the Settlement Date for the purposes of clause 2.6(2).

- (8) Arrears of Rent for any rental period ending on or before the Settlement Date belong to the Seller and are not adjusted at settlement.
- (9) Unpaid Rent for the rental period including both the Settlement Date and the following day ("Current Period") is not adjusted until it is paid.
- (10) Rent already paid for the Current Period or beyond must be adjusted at settlement.
- (11) If Rent payments are reassessed after the Settlement Date for periods including the Settlement Date, any additional Rent payment from a Tenant or refund due to a Tenant must be apportioned under clauses 2.6(8), 2.6(9) and 2.6(10).
- (12) Payments under clause 2.6(11) must be made within 14 days after notification by one party to the other but only after any additional payment from a Tenant has been received.
- (13) The Seller is liable for any Special Contribution levied on or before the Contract Date. The Buyer is liable for any Special Contribution levied after the Contract Date.
- (14) For the purposes of clause 2.6(13), an amount payable under an exclusive use by-law will be treated as levied on the date it is due.
- (15) The cost of Bank cheques payable at settlement:
  - (a) to the Seller or its mortgagee are the responsibility of the Buyer; and
  - (b) to parties other than the Seller or its mortgagee are the responsibility of the Seller.

### 3. Finance

- 3.1 This contract is conditional on the Buyer obtaining approval of a loan for the Finance Amount from the Financier by the Finance Date on terms satisfactory to the Buyer. The Buyer must take all reasonable steps to obtain approval.
- 3.2 The Buyer must give notice to the Seller that:
  - (1) approval has not been obtained by the Finance Date and the Buyer terminates this contract; or
  - (2) the finance condition has been either satisfied or waived by the Buyer.
- 3.3 The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 3.2 by 5pm on the Finance Date. This is the Seller's only remedy for the Buyer's failure to give notice.
- 3.4 The Seller's right under clause 3.3 is subject to the Buyer's continuing right to terminate this contract under clause 3.2(1) or waive the benefit of this clause 3 by giving written notice to the Seller of the waiver.

### 4. Building and Pest Inspection Reports and Pool Safety

- 4.1 This contract is conditional on the Buyer obtaining a written building report from a building inspector and a written pest report from a pest inspector (which may be a single report) on the Property by the Inspection Date on terms satisfactory to the Buyer. The Buyer must take all reasonable steps to obtain the reports (subject to the right of the Buyer to elect to obtain only one of the reports).
- 4.2 The Buyer must give notice to the Seller that:
  - (1) a satisfactory inspector's report under clause 4.1 has not been obtained by the Inspection Date and the

Buyer terminates this contract. The Buyer must act reasonably; or

- (2) clause 4.1 has been either satisfied or waived by the Buyer.
- 4.3 If the Buyer terminates this contract and the Seller asks the Buyer for a copy of the building and pest reports, the Buyer must give a copy of each report to the Seller without delay.
- 4.4 The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 4.2 by 5pm on the Inspection Date. This is the Seller's only remedy for the Buyer's failure to give notice.
- 4.5 The Seller's right under clause 4.4 is subject to the Buyer's continuing right to terminate this contract under clause 4.2(1) or waive the benefit of this clause 4 by giving written notice to the Seller of the waiver.
- 4.6 If required under the *Queensland Building Services Authority Act 1991*, an inspector referred to in clause 4.1 must hold a current licence under that Act.
- 4.7 **Pool Safety for non-shared pools on the Lot**
  - (1) This clause 4.7 applies if:
    - (a) there is a pool on the Lot and the answer to Q2 of the Reference Schedule is No or Q2 is not completed (for a non-shared pool on the Lot); and
    - (b) this contract was not formed on a sale by auction.
  - (2) This contract is conditional upon the Buyer obtaining from a Pool Safety Inspector by the Pool Safety Inspection Date:
    - (a) confirmation that the Pool Safety Requirements have been met and the issue of a Pool Safety Certificate; or
    - (b) confirmation of the works required before a Pool Safety Certificate can be issued.
  - (3) The Buyer must give notice to the Seller on or before the Pool Safety Inspection Date that:
    - (a) a Pool Safety Inspector has issued a Pool Safety Certificate in which case neither the Buyer nor the Seller have any further rights under this clause 4.7; or
    - (b) a Pool Safety Inspector has not issued a Pool Safety Certificate and the Buyer terminates this contract. The Buyer must act reasonably; or
    - (c) the Buyer waives the benefit of this clause 4.7 and elects to proceed to settlement notwithstanding that there is no Pool Safety Certificate.
  - (4) The Buyer's right to terminate this contract or waive the benefit of this clause 4.7 ends on the earlier of:
    - (a) a Pool Safety Certificate being issued; or
    - (b) settlement occurring.
  - (5) The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 4.7 (3) by 5pm on the Pool Safety Inspection Date. This is the Seller's only remedy for the Buyer's failure to give notice.
  - (6) The Seller's right under clause 4.7(5) is subject to the Buyer's continuing right to terminate this contract or waive the benefit of this clause 4.7 by giving written notice to the Seller of the waiver.
  - (7) If the Buyer terminates this contract in accordance with Clause 4.7(3)(b), and the Seller asks the Buyer for a copy of the pool safety inspection report, the Buyer must give a copy of the report to the Seller without delay.
  - (8) For the purpose of this clause 4.7, "formed on a sale by auction" means formed on sale by auction—
    - (a) directly on the fall of the hammer, by outcry; or
    - (b) directly at the end of another similar type of competition for purchase.



## 5. Settlement

### 5.1 Time and Date

- (1) Settlement must occur between 9am and 5pm on the Settlement Date.
- (2) If the parties do not agree on where settlement is to occur, it must take place in the Place for Settlement at the office of a solicitor or Financial Institution nominated by the Seller, or, if the Seller does not make a nomination, at the land registry office in or nearest to the Place for Settlement.

### 5.2 Transfer Documents

- (1) The Transfer Documents must be prepared by the Buyer's Solicitor and delivered to the Seller a reasonable time before the Settlement Date.
- (2) If the Buyer pays the Seller's reasonable expenses, it may require the Seller to produce the Transfer Documents at the Office of State Revenue nearest the Place for Settlement for stamping before settlement.

### 5.3 Documents and Keys at Settlement

- (1) In exchange for payment of the Balance Purchase Price, the Seller must deliver to the Buyer at settlement:
  - (a) any instrument of title for the Lot required to register the transfer to the Buyer; and
  - (b) unstamped Transfer Documents capable of immediate registration after stamping; and
  - (c) if requested, the Keys in the Seller's or the Seller's Agent's possession or control for all locks and security systems on the Lot or the common property; and
  - (d) if there are Tenancies:
    - (i) the Seller's copy of any Tenancy agreements;
    - (ii) a notice to each tenant advising of the sale in the form required by law; and
    - (iii) any notice required by law to transfer to the Buyer the Seller's interest in any Bond; and
  - (e) if the answer to Q2 in the Reference Schedule is Yes, a copy of a current Pool Safety Certificate, if not already provided to the Buyer.
- (2) If the Keys are not delivered at Settlement under clause 5.3 (1)(c), the Seller must deliver the Keys to the Buyer. The Seller may discharge its obligation under this provision by authorising the Seller's Agent to release the Keys to the Buyer.

### 5.4 Assignment of Covenants and Warranties

- At settlement, the Seller assigns to the Buyer the benefit of all:
- (1) covenants by the tenants under the Tenancies;
  - (2) guarantees and Bonds (subject to the requirements of the *Residential Tenancies and Rooming Accommodation Act 2008*) supporting the Tenancies; and
  - (3) manufacturers' warranties regarding the Included Chattels;
  - (4) builders' warranties on the Improvements.
- to the extent that they are assignable and the Buyer accepts the assignment. However, the right to recover arrears of Rent is not assigned to the Buyer and section 117 of the *Property Law Act 1974* does not apply.

### 5.5 Possession of Property and Title to Included Chattels

On the Settlement Date, in exchange for the Balance Purchase Price, the Seller must give the Buyer vacant possession of the Lot and the Improvements except for the Tenancies. Title to the Included Chattels passes at settlement.

## 5.6 Reservations

- (1) The Seller must remove the Reserved Items from the Property before the Settlement Date.
- (2) The Seller must repair at its expense any damage done to the Property in removing the Reserved Items. If the Seller fails to do so, the Buyer may repair that damage.
- (3) Any Reserved Items not removed before settlement will be considered abandoned and the Buyer may, without limiting its other rights, complete this contract and appropriate those Reserved Items or dispose of them in any way.
- (4) The Seller indemnifies the Buyer against any damages and expenses resulting from the Buyer's actions under clauses 5.6(2) or 5.6(3).

## 6. Time

- 6.1 Time is of the essence of this contract, except regarding any agreement between the parties on a time of day for settlement.

## 7. Matters Affecting the Property

### 7.1 Title

The Lot is sold subject to the *Body Corporate and Community Management Act 1997* and the by-laws of the Body Corporate.

### 7.2 Encumbrances

The Property is sold free of all Encumbrances other than the Title Encumbrances, Tenancies and interests registered on the Plan.

### 7.3 Requisitions

The Buyer may not deliver any requisitions or enquiries on title.

### 7.4 Seller's Warranties

- (1) The Seller warrants that at settlement:
  - (a) it will be the registered owner of an estate in fee simple in the Lot and will own the rest of the Property;
  - (b) it will be capable of completing this contract (unless the Seller dies or becomes mentally incapable after the Contract Date); and
  - (c) there will be no unsatisfied judgment, order or writ affecting the Property.
- (2) The Seller warrants that at the Contract Date and at settlement there are no current or threatened claims; notices or proceedings that may lead to a judgment, order or writ affecting the Property.
- (3) The Seller warrants that, except as disclosed in this contract, at the Contract Date:
  - (a) there is no unregistered lease, easement or other right capable of registration and which is required to be registered to give indefeasibility affecting the common property or Body Corporate assets;
  - (b) there is no proposal to record a new community management statement for the Scheme and it has not received a notice of a meeting of the Body Corporate to be held after the Contract Date or notice of any proposed resolution or a decision of the Body Corporate to consent to the recording of a new community management statement for the Scheme;
  - (c) all Body Corporate consents to improvements made to common property and which benefit the Lot, or the registered owner of the Lot, are in force;
  - (d) the community management statement recorded for the Scheme contains details of all allocations that affect the Lot or the registered owner of the Lot; and



- (e) the Additional Body Corporate Information is correct (if completed).
- (4) If a warranty in clause 7.4(1) or clause 7.4(2) is not correct, the Buyer may terminate this contract by notice to the Seller.
- (5) If:
- a warranty in clause 7.4(3) is not correct; or
  - the Additional Body Corporate Information is not completed;
- and, as a result, the Buyer is materially prejudiced, the Buyer may terminate this contract by notice to the Seller given within 14 days after the Contract Date but may not claim damages or compensation.
- (6) Clauses 7.4(4) and 7.4(5) do not restrict any statutory rights the Buyer may have which cannot be excluded by this contract.
- (7) (a) The Seller warrants that, except as disclosed in this contract or a notice given by the Seller to the Buyer under the *Environmental Protection Act 1994* ("EPA"), at the Contract Date:
- there is no outstanding obligation on the Seller to give notice to the administering authority under EPA of notifiable activity being conducted on the Land; and
  - the Seller is not aware of any facts or circumstances that may lead to the Land being classified as contaminated land within the meaning of EPA.
- (b) If the Seller breaches a warranty in clause 7.4(7), the Buyer may:
- terminate this contract by notice in writing to the Seller given no later than 2 Business Days before the Settlement Date; or
  - complete this contract and claim compensation, but only if the Buyer claims it in writing before the Settlement Date.
- (8) The Seller does not warrant that the Present Use is lawful.

#### 7.5 Survey and Mistake

- (1) The Buyer may survey the Lot.
- (2) If there is:
- an error in the boundaries or area of the Lot;
  - an encroachment by structures onto or from the Lot; or
  - a mistake or omission in describing the Lot or the Seller's title to it;
- which is:
- immaterial; or
  - material, but the Buyer elects to complete this contract;
- the Buyer's only remedy against the Seller is for compensation, but only if claimed by the Buyer in writing on or before settlement.
- (3) The Buyer may not delay settlement or withhold any part of the Balance Purchase Price because of any compensation claim under clause 7.5(2).
- (4) If there is a material error, encroachment or mistake, the Buyer may terminate this contract before settlement.

#### 7.6 Requirements of Authorities

- (1) Any valid notice or order by any competent authority or Court requiring work to be done or money spent in relation to the Property ("Work or Expenditure") must be fully complied with:
- if issued before the Contract Date, by the Seller before the Settlement Date;
  - if issued on or after the Contract Date, by the Buyer.

- (2) If any Work or Expenditure that is the Seller's responsibility under clause 7.6(1)(a) is not done before the Settlement Date, the Buyer is entitled to claim the reasonable cost of work done by the Buyer in accordance with the notice or order referred to in clause 7.6(1) from the Seller after settlement as a debt.
- (3) Any Work or Expenditure that is the Buyer's responsibility under clause 7.6(1)(b), which is required to be done before the Settlement Date, must be done by the Seller unless the Buyer directs the Seller not to and indemnifies the Seller against any liability for not carrying out the work. If the Seller does the work, or spends the money, the reasonable cost of that Work or Expenditure must be added to the Balance Purchase Price.
- (4) The Buyer may terminate this contract by notice to the Seller if there is an outstanding notice at the Contract Date under section 248AG of the *Building Act 1975* that affects the Lot. The Buyer may terminate this contract by notice to the Seller if there is an outstanding notice at the Contract Date under sections 247 or 248 of the *Building Act 1975* or sections 588 or 590 of the *Sustainable Planning Act 2009* that affects the Property or Land.

#### 7.7 Property Adversely Affected

- (1) If at the Contract Date:
- the Present Use is not lawful under the relevant town planning scheme;
  - the Land is affected by a proposal of any competent authority to alter the dimensions of any Transport Infrastructure or locate Transport Infrastructure on the Land;
  - access or any service to the Land passes unlawfully through other land;
  - any competent authority has issued a current notice to treat, or notice of intention to resume, regarding any part of the Land; or
  - the Property is affected by the *Queensland Heritage Act 1992* or is included in the World Heritage List;
- and that has not been disclosed in this contract, the Buyer may terminate this contract by notice to the Seller given no later than 2 Business Days before the Settlement Date.
- (2) If no notice is given under clause 7.7(1), the Buyer will be treated as having accepted the Property subject to all of the matters referred to in that clause.
- (3) The Seller authorises the Buyer to:
- inspect records held by any authority relating to the Lot or the Land; and
  - apply for a certificate of currency of the Body Corporate's insurance from any insurer.

#### 7.8 Dividing Fences

The Seller need not contribute to the cost of construction of any dividing fence between the Lot and any adjoining land owned by it. The Buyer waives any right to claim contribution from the Seller.

### 8. Rights Until Settlement

#### 8.1 Risk

The Property is at the Buyer's risk from 5pm on the first Business Day after the Contract Date.

#### 8.2 Access

After reasonable notice to the Seller, the Buyer and its consultants may enter the Property:

- once to read any meter;
- for inspections under clause 4;





- (3) once to inspect the Property before settlement; and  
 (4) once to value the Property before settlement.
- 8.3 Seller's Use of Property**  
 The Seller must use the Property reasonably until settlement. The Seller must not do anything regarding the Property or Tenancies that may significantly alter them or result in later expense for the Buyer.
- 8.4 Body Corporate Meetings**
- (1) The Seller must promptly give the Buyer a copy of:
    - (a) any notice it receives of a proposed meeting of the Body Corporate to be held after the Contract Date; and
    - (b) resolutions passed at that meeting and prior to settlement.
  - (2) The Buyer may terminate this contract by notice in writing to the Seller given before settlement if it is materially prejudiced by:
    - (a) any resolution of the Body Corporate passed after the Contract Date, other than a resolution of the Body Corporate passed to record a new community management statement, details of which are disclosed to the Buyer in this contract; or
    - (b) where the Scheme is a subsidiary scheme, any resolution of a body corporate of a higher scheme.
  - (3) In clause 8.4(2) a resolution includes a decision of the Body Corporate Committee to consent to recording a new community management statement.
  - (4) If the Buyer is not given a copy of the resolutions before settlement, it may sue the Seller for damages.
- 8.5 Information Regarding the Property**  
 Before settlement, the Seller must give the Buyer:
- (1) copies of all documents relating to any unregistered interests in the Property;
  - (2) full details of the Tenancies to allow the Buyer to properly manage the Property after settlement; and
  - (3) further copies or details if those previously given cease to be complete and accurate.
- 8.6 Possession Before Settlement**  
 If possession is given before settlement:
- (1) the Buyer must maintain the Property in substantially its condition at the date of possession, fair wear and tear excepted;
  - (2) entry into possession is under a licence personal to the Buyer revocable at any time and does not:
    - (a) create a relationship of landlord and tenant; or
    - (b) waive the Buyer's rights under this contract;
  - (3) the Buyer must insure the Property to the Seller's satisfaction; and
  - (4) the Buyer indemnifies the Seller against any expense or damages incurred by the Seller as a result of the Buyer's possession of the Property.
- 9. Parties' Default**
- 9.1 Seller and Buyer May Affirm or Terminate**  
 Without limiting any other right or remedy of the parties including those under this contract, or any right at common law, if the Seller or Buyer, as the case may be, fails to comply with an Essential Term, or makes a fundamental breach of an intermediate term, the Seller (in the case of the Buyer's default) or the Buyer (in the case of the Seller's default) may affirm or terminate this contract.
- 9.2 If Seller Affirms**  
 If the Seller affirms this contract under clause 9.1, it may sue the Buyer for:
- (1) damages;
  - (2) specific performance; or
  - (3) damages and specific performance.
- 9.3 If Buyer Affirms**  
 If the buyer affirms this contract under clause 9.1, it may sue the Seller for:
- (1) damages;
  - (2) specific performance; or
  - (3) damages and specific performance.
- 9.4 If Seller Terminates**  
 If the Seller terminates this contract under clause 9.1, it may do all or any of the following:
- (1) resume possession of the Property;
  - (2) forfeit the Deposit and any interest earned;
  - (3) sue the Buyer for damages;
  - (4) resell the Property.
- 9.5 If Buyer Terminates**  
 If the Buyer terminates this contract under clause 9.1, it may do all or any of the following:
- (1) recover the Deposit and any interest earned;
  - (2) sue the Seller for damages.
- 9.6 Seller's Resale**
- (1) If the Seller terminates this contract and resells the Property, the Seller may recover from the Buyer as liquidated damages:
    - (a) any deficiency in price on a resale; and
    - (b) its expenses connected with any repossession, any failed attempt to resell, and the resale; provided the resale settles within 2 years of termination of this contract.
  - (2) Any profit on a resale belongs to the Seller.
- 9.7 Seller's Damages**  
 The Seller may claim damages for any loss it suffers as a result of the Buyer's default, including its legal costs on an indemnity basis and the cost of any Work or Expenditure under clause 7.6(3).
- 9.8 Buyer's Damages**  
 The Buyer may claim damages for any loss it suffers as a result of the Seller's default, including its legal costs on an indemnity basis.
- 9.9 Interest on Late Payments**
- (1) Without affecting the Seller's other rights, if any money payable by the Buyer under this contract is not paid when due, the Buyer must pay the Seller at settlement interest on that money calculated at the Default Interest Rate from the due date for payment until payment is made.
  - (2) The Seller may recover that interest from the Buyer as liquidated damages.
  - (3) Any judgment for money payable under this contract will bear interest from the date of judgment to the date of payment and the provisions of this clause 9.9 apply to calculation of that interest.
- 10. General**
- 10.1 Agent**  
 The Agent is appointed as the Seller's agent to introduce a Buyer.
- 10.2 Foreign Investment Review Board**  
 The Buyer warrants that either:
- (1) the Treasurer has consented under the *Foreign Acquisitions and Takeovers Act* to the Buyer's purchase of the Property; or
  - (2) the Treasurer's consent is not required to the Buyer's purchase of the Property.
- 10.3 Duty**  
 The Buyer must pay all duty on this contract.
- 10.4 Notices**
- (1) Notices under this contract must be in writing and may be given by a party's solicitor.

Contract



- (2) Notices are effectively given if:
  - (a) delivered or posted to the other party or its solicitor; or
  - (b) sent to the facsimile number of the other party or its solicitor.
- (3) Posted notices will be treated as given 2 Business Days after posting.
- (4) Notices sent by facsimile will be treated as given when the sender obtains a clear transmission report.
- (5) Notices given after 5pm will be treated as given on the next Business Day.
- (6) Notices or other written communications by a party's solicitor (for example, varying the Inspection Date, Finance Date or Settlement Date) will be treated as given with that party's authority.

#### 10.5 Business Days

- (1) If anything is required to be done on a day that is not a Business Day, it must be done instead on the next Business Day.
- (2) If the Finance Date or Inspection Date fall on a day that is not a Business Day, then it falls on the next Business Day.

#### 10.6 Rights After Settlement

Despite settlement and registration of the transfer, any term of this contract that can take effect after settlement or registration remains in force.

#### 10.7 Further Acts

If requested by the other party, each party must, at its own expense, do everything reasonably necessary to give effect to this contract.

#### 10.8 Severance

If any term or part of a term of this contract is or becomes legally ineffective, invalid or unenforceable in any jurisdiction it will be severed and the effectiveness, validity or enforceability of the remainder will not be affected.

#### 10.9 Interpretation

##### (1) Plurals and Genders

Reference to:

- (a) the singular includes the plural and the plural includes the singular;
- (b) one gender includes each other gender;
- (c) a person includes a body corporate; and
- (d) a party includes the party's executors, administrators, successors and permitted assigns.

##### (2) Parties

- (a) If a party consists of more than one person, this contract binds them jointly and each of them individually.
- (b) A party that is a trustee is bound both personally and in its capacity as a trustee.

##### (3) Statutes and Regulations

Reference to statutes includes all statutes amending, consolidating or replacing them.

##### (4) Inconsistencies

If there is any inconsistency between any provision added to this contract and the printed provisions, the added provision prevails.

##### (5) Headings

Headings are for convenience only and do not form part of this contract or affect its interpretation.

## Annexure A - Special Conditions to Contract

### 1. SPECIAL CONDITIONS TO PREVAIL

#### 1.1 Amendments to Terms of Contract

- (a) Where there is an inconsistency between the Standard Terms of Contract and a Special Condition, the Special Condition prevails.
- (b) The Standard Terms of Contract are amended as follows:
- (i) ~~Clause 2.6(4)(a) of the Terms of Contract is amended by deleting the words: "the Seller was one natural person resident in Queensland and".~~
- (ii) ~~Clause 2.6(15) of the Terms of Contract is amended by deleting 2.6(15)(b) and amending clause 2.6(15)(a) to read: "to the Seller or its mortgagee and to parties other than the Seller or its mortgagee are the responsibility of the Buyer."~~
- (i) Clauses 2.6(4) and 2.6(5) of the Terms of Contract are deleted and replaced with the following:
- "(4) The Seller will provide the Buyer with a current Land Tax Clearance Certificate on or before Settlement.
- (5) If the Buyer is advised by the Commissioner of Land Tax or the Office of State Revenue that a specified amount is payable in order to secure a Land Tax Certificate for the period to the Settlement Date then the amount payable will be paid at the Seller's cost from the proceeds of Sale on Settlement and the Buyer will accept such payment in satisfaction of the Seller's obligation under this clause."
- (ii) Clause 2.6(15) of the Terms of Contract is deleted and replaced with the following:
- "(15) The following provisions shall apply in relation to settlement cheques:
- (a) The Buyer will provide a maximum of 3 bank cheques at Settlement.
- (b) The Seller will provide the Buyer with the details (payee and amounts) of cheques required at Settlement by no later than 10.00am on the day prior to Settlement (being days when banks are open in the city of Brisbane).
- (c) In the event that cheque details are not provided by the Seller to the Buyer at 10.00am on the day prior to the Settlement Date, then the Buyer may at its discretion defer the Settlement Date by one (1) business day from when the cheque details are provided. The Seller will not be entitled to claim interest for this period.
- (d) This clause is for the sole benefit of the Buyer."
- (iii) Clauses 3, 4, 7.4(1)-(7), 7.5, 7.6, 7.7 (1)-(2) and 8.4(2) - (4), 9.3, 9.5 and 9.8 of the Terms of Contract are deleted;
- ~~(iv) All references to "Buyer" in clause 9.1 are deleted; and~~
- ~~(v) (iv) Clause 10.4 of the REIQ Terms of Contract is amended as follows:~~
- (A) ~~by inserting a new clause 10.4(2)(c) "emailed to the email address of the other party or its solicitor.";~~
- (B) ~~by inserting a new clause 10.4(7) "Notices sent by email will be treated as given when a delivery confirmation report is received by the sender, which~~

records the time that the email was delivered to the addressee's current email address."; and

- (C) by inserting a new clause 10.4(8) "Pursuant to the *Electronic Transactions (Queensland) Act 2001* (Qld), the Buyer and the Seller consent to information and notices under this Contract of Sale being given by an electronic communication."

## 1.2 Buyer's Acknowledgement

The Buyer acknowledges having been given the following, by the Seller, prior to entering into this Contract:

- (a) a Disclosure Statement pursuant to section 206 of the *Body Corporate and Community Management Act (Qld) 1997*;
- (b) a written notice pursuant to section 421(2) of the *Environmental Protection Act (Qld) 1994* that particulars of the Common Property in the Scheme are recorded in the Environmental Management Register and/or the Common Property in the Scheme is subject to a Site Management Plan (a copy of which has also been given to the Buyer); and
- (c) a notice of No Pool Safety Certificate as required by the *Building Act 1975 (Qld)* and the *Building Regulations 2006 (Qld)*.

## 2. DUE DILIGENCE

### 2.1 Due Diligence Investigations

- (a) The Buyer shall forthwith after signing this Contract carry out a "due diligence" in respect of the Property to satisfy itself (or otherwise) with respect to all matters, which in the opinion of the Buyer are relevant to the acquisition of the Property. If the Buyer is not satisfied with respect to any matter, which in its absolute discretion it considers relevant to the acquisition of the Property, then the Buyer may by notice in writing given not later than the Due Diligence Date terminate this Contract and thereafter neither party shall have any Claim against the other pursuant to or arising under this Contract. If the Buyer fails to give a notice that it is satisfied or otherwise with its due diligence by the Due Diligence Date then the Buyer shall be deemed to have given a notice pursuant to this Special Condition 2.1(a) that it:
  - (i) is satisfied with its due diligence; and
  - (ii) has elected to waive the benefit of this special condition.
- (b) The parties acknowledge and agree that this Special Condition 2.1(a) is inserted solely for the benefit of the Buyer and the benefit of this Special Condition 2.1(a) may be waived by the Buyer by notice in writing.

### 2.2 Disclosed Materials

- (a) The Seller must allow the Buyer and its consultants to have access to the Property for the purpose of conducting its due diligence inquiries and access to all Disclosed Materials relating to the Property.
- (b) Any access to the Property given to the Buyer or its consultants for the purpose of conducting investigations is at the Buyer's risk. ~~The Buyer indemnifies the Seller in respect of any Loss to the Seller caused by or arising in connection with the Buyer's or the Buyer's consultants' access to the Property or the Buyer's or its consultants' presence on the Property.~~

### 3. NO REPRESENTATIONS

#### 3.1 "As is where is"

The Buyer acknowledges that, as a consequence of its rights under Special Condition 2, it Buyer has inspected, and has the opportunity to further inspect the Property. Subject to the Buyer's rights under special condition 2, the Buyer accepts the Property in its present condition "as is where is" and subject to any legal, physical, patent or latent defects.

#### 3.2 Buyer to satisfy itself

The Buyer:

- (a) does not rely on any representations, warranties or information provided or statements about the Property made by or on behalf of the Seller, the Seller's agent or their respective employees or agents, other than as set out in this Contract;
- (b) acknowledges that it has not been induced to enter into this Contract by any representation, warranty or information provided by the Seller, the Seller's agent or their respective employees or agents;
- (c) acknowledges that it has the opportunity under special condition 2 to carry out a full due diligence and other enquiries in respect of the Property and satisfy itself about all related matters including without limitation:
  - (i) the use, fitness or suitability of the Property for any purpose;
  - (ii) the means of access to the Property;
  - (iii) any encroachments, easements, Crown reservations and other encumbrances from the Land onto adjoining land, or from adjoining land onto the Land;
  - (iv) as to any possible and/or potential flooding of the Land;
  - (v) as to neighbourhood or environment in which the Property is situated;
  - (vi) as to the zoning of the Land and the use to which the Property may be put, the suitability of the Land for future development or the rights and privileges relating to the Property or the services actually or likely to be connected or provided to the Property;
  - (vii) the quality, state of repair, fitness for purpose and construction of the Property;
  - (i) as to the existence, condition, location and capacity of any services located in, on, or under, or connected to the Property;
  - (ii) whether the Property complies with all laws, statutes, regulations and by-laws including the *Sustainable Planning Act 2009*;
  - (iii) the existence of any hazardous substance or hazardous contaminant within the meaning of the *Environmental Protection Act 1994*;
  - (iv) any failure to comply with all laws, statutes, regulations or by-law or a requirement of any Authority relating to the Property;
  - (v) as to anything disclosed or referred to in the Disclosed Materials;
  - (vi) the existence or otherwise of any requirements of Authorities relating to the Property including, without limitation, resumptions, road dedications, road widening and similar things;
  - (vii) the existence or otherwise of necessary consents, approvals and licences from Authorities relating to the Property, including any failure to comply with any approvals or licences; and

- (viii) with any other matter, past, present, future or anticipated, relevant to the Property.

Apart from the right to terminate this Contract under special condition 2, the Buyer cannot terminate this Contract, delay Settlement, deduct or retain any amount from the Purchase Price or make any Claim in relation to any matter referred to in this Special Condition 3.

#### 4. CONTEMPORANEOUS AGREEMENT

- (a) This Contract is interdependent with and is to be entered into contemporaneously with the Contemporaneous Agreements.
- (b) If a Contemporaneous Agreement is terminated prior to the Settlement Date without default of either party to the Contemporaneous Agreement, then this Contract will also be terminated and the parties will have no further obligation to the other.
- (c) Default or breach by the Seller or Mirvac Constructions (Qld) Pty Ltd under a Contemporaneous Agreement entitling the Buyer to rescind a Contemporaneous Agreement prior to the Settlement Date will be deemed default or breach by the Seller entitling the Buyer to rescind this Contract.
- (d) Default or breach by the Buyer under a Contemporaneous Agreement prior to the Settlement Date entitling the Seller or Mirvac Constructions (Qld) Pty Ltd under a Contemporaneous Agreement to rescind a Contemporaneous Agreement will be deemed default or breach by the Buyer entitling the Seller to rescind this Contract.

#### 5. STAMP DUTY

- 6. Despite any provision to the contrary the parties agree that the Buyer is responsible for the transfer duty payable under the *Duties Act 2001 (Qld)* in respect of this Contract and the Parkland Contract ("Contracts") on the maximum amount of \$6 million (plus GST) which totals \$332,175.00 in transfer duty ("Stamp Duty Amount").
- 6.1 The Seller agrees to reimburse the Buyer for the transfer duty payable under the *Duties Act 2001 (Qld)* in respect of the Contracts (excluding any penalties, any additional amounts payable for fines or penalties for late assessment or late payment) above the Stamp Duty Amount ("Additional Amount").
- 6.2 The Additional Amount will be paid as an adjustment to the Balance Purchase Price in favour of the Buyer at Settlement.

#### 7. TRANSFER DOCUMENTS

The parties agree that the form of transfer under the *Land Title Act 1994* required to transfer title in the Property to the Buyer is in the form contained in Annexure B.

#### 8. GOODS AND SERVICES TAX

##### 8.1 Consideration is GST exclusive

Any consideration to be paid or provided for a supply made under or in connection with this Contract, does not include an amount on account of GST.

##### 8.2 Gross up of Consideration

Despite any other provision in this Contract, if a party ("**Supplier**") makes a supply under or in connection with this Contract on which GST is imposed (not being a supply the consideration for which is specifically described in this Contract as "**GST inclusive**");

- (a) the consideration payable or to be provided for that supply under this Contract but for the application of this special condition ("**GST exclusive consideration**") is increased by and the recipient of the supply ("**Recipient**") must also pay to the Supplier an amount equal to the GST payable by the Supplier on that supply; and
- (b) subject to special condition 8.4 the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or

requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

### 8.3 Reimbursements

If a payment to a party under this Contract is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

That party is assumed to be entitled to a full input tax credit unless it proves, before the date on which the payment must be made, that its entitlement is otherwise.

### 8.4 Tax Invoice and Registration

Despite any other provision of this Contract, a party need not make a payment of any amount for GST until the party has been given by the other party:

- (a) a GST tax invoice for that payment stating the amount of GST imposed on the party in respect of the supply to which the GST tax invoice relates; and
- (b) evidence satisfactory to the party that the other party is registered for the purposes of GST.

### 8.5 Interpretation

Words or expressions used in this special condition 8 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this special condition.

## 9. CONFIDENTIALITY

- (a) Subject to special condition 9(b), the contents of this Contract and all books accounts records documents and information made available to any party for the purposes of entering into this Contract or in the course of the performance of this Contract shall be kept confidential and shall not be disclosed to any other person without the written consent of the other parties.
- (b) Special condition 9(a) shall not apply to any disclosure:
  - (i) required by law;
  - (ii) required by any applicable stock exchange listing rules;
  - (iii) made in good faith to officers employees legal and other advisors and auditors of any party under a duty of confidentiality;
  - (iv) by a party to its bankers or other financial institutions to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements;
  - (v) required by this Contract or necessary for or incidental to the performance of the obligations and duties contained in this Contract or any Contemporaneous Agreement including in connection with an exercise of rights or a dealing with rights or obligations under this Contract or any Contemporaneous Agreement (including, in particular, by way of giving information to owners of lots in the Scheme and other interested persons or entities in connection with the removal of the Lot from the Scheme); and
  - (vi) of information in the public domain otherwise than due to a breach of special condition 9(a).
- (c) Each party consents to disclosures made in accordance with this special condition 9. This special condition supersedes any pre-existing agreements between the parties about confidentiality.

## 10. COMPANY CHARGE

If at settlement anyone holds a registered charge over the Seller's assets, the Buyer agrees to accept from the Seller (instead of an ASIC Form 312 Discharge or Release of Property from a Charge) either:

~~(e) a written statement from the chargee confirming the Property is not subject to the charge; or~~

~~(a) a written statement from the Seller confirming that the Property is not subject to the charge.~~

#### 11. REMOVAL OF LOT FROM THE SCHEME

11.1 The Seller will ~~use its best endeavours~~ undertake all reasonable steps to remove the Lot from the Scheme prior to the Due Diligence Date.

~~11.2 If the Lot has not been removed from the Scheme by the Settlement Date then the parties agree that the Purchase Price will be reduced by an amount which is to be agreed between the parties which represents the sinking and administrative fund payments to the Body Corporate required for a 20 year period following Settlement.~~

#### 12. CONTRACT SUBJECT TO APPROVAL OF COUNCIL'S E&C COMMITTEE

12.1 This Contract is subject to and conditional upon the Buyer Council obtaining the approval of its E&C Committee to the transaction no later than the Due Diligence Date.

12.2 If E&C Committee approval is not obtained by the Due Diligence Date then this Contract is at an end with no penalty to the Buyer.

#### 13. CONTRACT SUBJECT TO SELLER'S BOARD APPROVAL

13.1 This Contract is subject to and conditional upon the Seller obtaining the approval of its Board to the transaction no later than the Due Diligence Date.

13.2 If the Seller's Board approval is not obtained by the Due Diligence Date then this Contract is at an end with no penalty to the Seller.

#### 14. PURCHASE PRICE PAYABLE BY INSTALMENTS

14.1 The Seller and the Buyer agree that the Purchase Price shall be payable by instalments in the amounts (plus GST) and on the dates set out below:

(a) \$1,500,000.00 (plus GST) payable on the Settlement Date; and

(b) \$1,000,000.00 (plus GST) ("Balance Purchase Price Instalment") payable on the date of practical completion of stage 1 of the Parkland Works under the Parkland Works Contract.

14.2 The Seller and the Buyer acknowledge and agree that payment of the Balance Purchase Price Instalment shall be secured by a first registered mortgage in the form incorporated in Annexure C of this Contract and registered against the title to the Lot. The Buyer must duly execute the mortgage, as mortgagor and deliver same to the Seller on Settlement. The Seller shall be responsible for the registration fees payable in respect of the mortgage. The Buyer must coordinate lodgement of the Transfer in conjunction with the Seller's lodgement of the mortgage. The Seller will deliver a Release of Mortgage to the Buyer in exchange for payment of the Balance Purchase Price Instalment.

#### ~~14.15.~~ SETTLEMENT DATE

15.1 The parties agree that the Settlement Date will be 14 days after the date of recording of any New Community Management Statement which effects removal of the Lot from the Scheme.

15.2 If Settlement of this Contract and/or the Parkland Contract has not occurred by 11 December 2011 then either party may terminate this Contract by giving written notice to the other at any time after 11 December 2011 whereupon this Contract shall be at an end and neither party shall have any claim against the other in respect thereof other than for antecedent breaches.

The parties agree that the Settlement Date is the earlier of:

~~(a) the date 14 days after the Lot is removed from the Scheme; or~~

~~(b) 14 July 2011.~~



13.16 DEFINITIONS

In these special conditions, the following words have the following meanings:

<b>Authority</b>	means any government or semi government authority or instrumentality, statutory or judicial authority.
<b>Claim</b>	means any cost, claim, demand, obligation, remedy, damage, loss, action, proceeding, claim for compensation, requisition or objection, whichever is applicable.
<b>Consulting Reports</b>	means all reports received in respect of the Property in the possession or control of the Seller including, but not limited to, engineering, planning, construction and architectural reports.
<b>Contemporaneous Agreement</b>	means the Parkland Contract and the Parkland Works Contract
<b>Cost</b>	includes any costs, damage, expense or payment and includes fees payable to consultants and lawyers.
<b>Disclosed Materials</b>	means all Consulting Reports, existing development approvals and any other documentation or information about the Property reasonably requested by the Buyer or its representatives in connection with the Property whether before or after the date of this Contract.
<b>Community Management Statement</b>	means the Community Management Statement recorded for the Scheme.
<b>Due Diligence Date</b>	means 30 June 2011.
<b>Loss</b>	means any damage, loss (including loss of reputation), Cost, expense, fine, penalty and liability incurred by the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent and <b>Losses</b> has an equivalent meaning.
<b>Parkland Contract</b>	means the contract of sale between the Seller and the Buyer in respect of Lots 4, 5 and 101 on SP 195275 dated on or about the date of this Contract.
<b>Parkland Works Contract</b>	means the construction contract between the Buyer and Mirvac Constructions (Qld) Pty Ltd dated on or about the date of this Contract.
<b>Scheme</b>	means the Tennyson Reach Community Titles Scheme <u>39925</u> to which the Community Management Statement applies.

## Annexure B – Transfer Documents

Dealing Number



OFFICE USE ONLY

Privacy Statement

Collection of this information is authorised by the Land Title Act 1994 the Land Act 1994 and the Water Act 2000 and is used to maintain the publicly searchable registers in the land registry and the water register. For more information about privacy in NR&W see the department's website.

1. Interest being transferred (if shares show as a fraction) FEE SIMPLE Lodger (Name, address, E-mail & phone number) Lodger Code

Note: A Form 24 - Property Information (Transfer) must be attached to this Form where interest being transferred is "fee simple" (Land Title Act 1994), "State leasehold" (Land Act 1994) or "Water Allocation" (Water Act 2000)

2. Lot on Plan Description County Parish Title Reference  
LOT 3 ON SP195275 STANLEY YEERONGPILLY 50710033

3. Transferor  
MIRVAC QUEENSLAND PTY LIMITED ACN 060 411 207

4. Consideration  
\$

5. Transferee Given names Surname/Company name and number (include tenancy if more than one)  
BRISBANE CITY COUNCIL AS TRUSTEE

6. Transfer/Execution The Transferor transfers to the Transferee the estate and interest described in item 1 for the consideration and in the case of monetary consideration acknowledges receipt thereof. The Transferor declares that the information contained in items 3 to 6 on the attached Form 24 is true and correct. The Transferee states the information contained in items 1, 2, 4 to 6 on the attached Form 24 is true and correct. Where a solicitor signs on behalf of the Transferee the information in items 1, 2, 4 to 6 on Form 24 is based on information supplied by the Transferee.

NOTE: Witnessing officer must be aware of their obligations under section 162 of the Land Title Act 1994.

Separate executions are required for each transferor and transferee. Signatories are to provide to the witness, evidence that they are the person entitled to sign the instrument (including proof of identity).

Mirvac Queensland Pty Limited ACN 060 411 207  
by its duly appointed Attorney

....., pursuant to registered Power of Attorney No. 713238897, who declares he has no notice of revocation of the Power of Attorney

.....  
Witnessing Officer (signature, full name & qualification)

..... / /  
Execution Date

.....  
Transferor's Signature

Mirvac Queensland Pty Limited ACN 060 411 207  
by its duly appointed Attorney

....., pursuant to registered Power of Attorney No. 713238897, who declares he has no notice of revocation of the Power of Attorney

.....  
Witnessing Officer (signature, full name & qualification)

..... / /  
Execution Date

.....  
Transferor's Signature

.....  
Witnessing Officer (signature, full name & qualification)

..... / /  
Execution Date

.....  
\*Transferee's or Solicitor's Signature

.....  
Witnessing Officer (signature, full name & qualification)

..... / /  
Execution Date

.....  
\*Transferee's or Solicitor's Signature

(Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

\*Note: A Solicitor is required to print full name if signing on behalf of the Transferee and no witness is required in this instance

**SCHEDULE / ENLARGED PANEL /  
ADDITIONAL PAGE / DECLARATION**

Title Reference 50710033

This is the schedule to the Form 1 dated                      day of                      2011

The Transferor and the Council hereby covenant and agree as follows:

**1. Declaration of Trust**

- 1.1 It is declared that the Land in Item 2 of the Form 1 Transfer ("Land") is to be held by the Council upon trust for public use for parkland, community facilities and ancillary uses.

**2. Terms of Trust**

- 2.1 Council will maintain and manage the Land and any improvements on the Land consistent with achieving the purpose of the Trust. Council may take all action necessary for maintenance and management of the Land.
- 2.2 Council may make and enforce local laws for the use of the Land and any improvements on the Land.

**3. General Provisions**

- 3.1 The Transferor warrants that the Land is free of encumbrances (except for Easement No. 712884080), and does not owe land tax or rates or water as at the date of Transfer.
- 3.2 Each party to this document will do all acts and render all co-operation reasonably required by the other for the purpose of enabling the registration of this document in the Queensland Land Registry.

(This form must accompany Land Registry Form 1 – Transfer when lodged in the Land Registry)

Duties Act 2001; Valuation of Land Act 1944; Land Tax Act 1915; Local Government Act 1993; Water Act 2000; Electrical Safety Act 2002; Fire and Rescue Service Act 1990

**PART A – Transferee to complete**

Title reference [50710033 ]

Page 1 of 2

Electronic version – for completion before printing.

Where insufficient space in an item, use Form 20  
(Enlarged Panel).

Mark appropriate [ ] with 'X'

Refer to guide for completion for further information.

**Official use only****1. Transferee**

- |  |                                   |   |
|--|-----------------------------------|---|
| (a) Given names & surname<br>or Company & ACN/ABN<br><br>BRISBANE CITY COUNCIL | (b) Date of birth<br>(dd/mm/yyyy) | (c) Residential or business address<br>after possession<br><br>266 GEORGE STREET, BRISBANE 4000 |
|--|-----------------------------------|---|

## (d) Contact details after possession

- (i) Phone number - 07 3403 9891
- (ii) Postal address - As above [ ] OR complete address below  
GPO BOX 1434, BRISBANE 4001

(e) Name of trust - N/A [ ] OR complete - N/A

- (f) Is transferee a foreign person / corporation? N/A [ ] NO [ x ] YES [ ] > Attach completed Form 25  
(Foreign Ownership Information)
- (g) Does transferee ordinarily reside in Australia? N/A [ ] NO [ ] YES [ x ]

**2. Transaction**

- (a) Date of possession (dd/mm/yyyy) – / /
- (b) Date of settlement (dd/mm/yyyy) – / /

**This form is comprised of two Parts -**

- Part A – Transferee to complete
- Part B – Transferor to complete

**BOTH parts must be submitted  
with the Form 1 Transfer.**

(This form must accompany Land Registry Form 1 – Transfer when lodged in the Land Registry)

**PART B – Transferor to complete**

Title reference [ 50710033 ] Page 2 of 2

Electronic version – for completion before printing.

Mark appropriate [ ] with 'X'

Where insufficient space in an item, use Form 20 (Enlarged Panel).

Refer to guide for completion for further information.

**3. Transferor's residential or business address after settlement**

Level 2, 164 Grey Street, SOUTHBANK QLD 4101

**4. Details of sale price**

(a) Property excluding water allocation		(b) Water allocation - N/A [ X ] OR complete below	
Cash	\$	Cash	\$
Vendor terms	\$	Vendor terms	\$
Assumption of liabilities	\$	Assumption of liabilities	\$
	\$		\$
Other (specify above)		Other (specify above)	
<b>Total</b>	<b>\$</b>	<b>Total</b>	<b>\$</b>
			\$

**5. Property details**

(a) Land / Water allocation description		(b) Property address			
Lot	Plan type & no.	Street no.	Street name	Suburb/Town/Locality	Postcode
3	SP195275		King Arthur Terrace	Tennyson	4105

(c) Property transferred Includes		(d) Current land use		(e) Water allocation - N/A [ X ] OR complete below	
Plant & machinery	[ ]	Vacant land	[ x ]	(i) Is water allocation unsupplemented?	
Livestock	[ ]	Dwelling	[ ]	NO [ ] YES [ ] > complete (ii) below	
Crops	[ ]	Multi-unit	[ ]	(ii) Reference number of the water allocation	
Existing right	[ ]	Flats	[ ]	dealing certificate - unsupplemented	
Movable chattels	[ ]	Guest house /	[ ]		
Water licence	[ ]	Private hotel	[ ]		
Interim water allocation	[ ]	Farming	[ ]		
	[ ]	Industrial	[ ]		
Other (specify above)		Commercial	[ ]		
		Other (specify above)	[ ]		

- (f) Safety switch
- (i) Is an electrical safety switch installed? N/A [ x ] NO [ ] YES [ ]
  - (ii) Has transferee been informed in writing about its existence? N/A [ x ] NO [ ] YES [ ]
- (g) Smoke alarm
- (i) Is a compliant smoke alarm/s installed? N/A [ x ] NO [ ] YES [ ]
  - (ii) Has transferee been informed in writing about its existence? N/A [ x ] NO [ ] YES [ ]

**6. Transaction information**

- (a) Has an agreement in writing for the transfer of dutiable property been entered into? NO [ ] YES [ x ] > If Yes, complete (b) below
- (b) Date of written agreement (dd/mm/yyyy) - / /
- (c) Are the transferor and transferee related or associated at the date of the transfer? NO [ X ] YES [ ] > If Yes, complete (d) below
- (d) State the degree of relationship or association and supply evidence of value to Office of State Revenue - > See guide for completion
- (e) Is the consideration less than the unencumbered value of the property included in this transaction? NO [ X ] YES [ ] > See guide for completion
- (f) Does this transaction form part of an arrangement that includes other dutiable transactions? NO [ ] YES [ x ] > See guide for completion

Annexure C – Mortgage

158/40/446/2781-03  
 REF  
 28 JUN 2011  
 INFORMATION MANAGEMENT  
 ATTACH No. CA 11/147614.

[REDACTED] FW: Draft Contract for the Tennyson Reach Parkland [401365]

**From:** [REDACTED]  
**To:** [REDACTED]  
**Date:** 23/06/2011 2:45 pm  
**Subject:** FW: Draft Contract for the Tennyson Reach Parkland [401365]  
**CC:** [REDACTED]

Hi [REDACTED]

Please find attached the draft Construction Contract for the Tennyson Parkland.

We will send through an update version with attachments this afternoon.

Please contact me with any questions or comments.

Regards,

[REDACTED]  
 Senior Development Manager  
 Development Queensland

Mirvac  
 Level 2, 164 Grey Street South Bank QLD 4101 Australia PO Box 5121 West End QLD 4101  
 T [REDACTED]  
<http://www.mirvac.com>  
 Electronic Data Transmission Disclaimer

Please consider the environment before printing emails and attachments

**From:** [REDACTED]  
**Sent:** Thursday, 23 June 2011 12:25 PM  
**To:** [REDACTED]  
**Cc:** Adam Moore; [REDACTED]  
**Subject:** Draft Contract for the Tennyson Reach Parkland [401365]

Attached is a draft contract amended in accordance with your emails of this morning and last night and out teleconference of this morning.

I am unable to attach the cost plan as you sent it to me in PDF. Please resend in Word format and I will attach the cost plan.

I will call you shortly to discuss.

Regards  
 [REDACTED]  
[www.clarkekann.com.au](http://www.clarkekann.com.au)

**From:** [REDACTED]  
**Sent:** Thursday, 23 June 2011 12:21 PM



**To:** [REDACTED]  
**Cc:** Adam Moore; [REDACTED]  
**Subject:** RE: Tennyson Reach Parkland - Updated Cost Plan

[REDACTED]

Attached is a draft contract that was amended in accordance with your emails of this morning and last night.  
I will call you shortly to discuss.

Regards

[REDACTED]  
[REDACTED] [www.clarkekann.com.au](http://www.clarkekann.com.au)

---

**From:** [REDACTED]  
**Sent:** Thursday, 23 June 2011 11:58 AM  
**To:** [REDACTED]  
**Cc:** Adam Moore; [REDACTED]  
**Subject:** FW: Tennyson Reach Parkland - Updated Cost Plan

Hi [REDACTED]

Please find attached the draft Cost Plan for inclusion in the Works Contract.

Regards

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** Thursday, 23 June 2011 11:55 AM  
**To:** [REDACTED]  
**Subject:** RE: Tennyson Reach Parkland - Updated Cost Plan

Hi [REDACTED]

Please find attached Draft Cost Plan as per your request.

Thanks.

Kind Regards,

[REDACTED]  
Cost Planner/Quantity Surveyor  
Development Queensland

Mirvac  
Level 2, 164 Grey Street South Bank QLD 4101 Australia PO Box 5121 West End QLD 4101

[REDACTED]

Please consider the environment before printing emails and attachments

---

**From:** [REDACTED]  
**Sent:** Thursday, 23 June 2011 11:50 AM  
**To:** [REDACTED]

**Cc:** [REDACTED]  
**Subject:** RE: Tennyson Reach Parkland - Updated Cost Plan

Hi [REDACTED]

Can you please add 'DRAFT' to the title and resend?

Thanks

---

**From:** [REDACTED]  
**Sent:** Thursday, 23 June 2011 11:42 AM  
**To:** [REDACTED]  
**Subject:** Re: Tennyson Reach Parkland - Updated Cost Plan

Yes

---

**From:** [REDACTED]  
**Sent:** Thursday, June 23, 2011 11:25 AM  
**To:** [REDACTED]  
**Cc:** Adam Moore  
**Subject:** RE: Tennyson Reach Parkland - Updated Cost Plan

Hi [REDACTED]

Are you happy to send as is- marked as draft?

Cheers

---

**From:** [REDACTED]  
**Sent:** Thursday, 23 June 2011 10:55 AM  
**To:** [REDACTED]  
**Cc:** Adam Moore  
**Subject:** FW: Tennyson Reach Parkland - Updated Cost Plan

[REDACTED]

Hot off the press...I am still reviewing however please also let me know your thoughts.

We have

- a) Deleted the option to move the Sales Display and allowed to just raise.
- b) Where applicable adjusted rates to reflect industry feedback obtained from Digit
- c) Added 2.5% Mirvac offsite O/H
- d) Tinkered with consultants and contingency to achive budget

---

**From:** [REDACTED]  
**Sent:** Thursday, 23 June 2011 10:49 AM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Tennyson Reach Parkland - Updated Cost Plan

Hi [REDACTED]

Please find attached Updated Cost Plan for Tennyson Reach Parkland project.

Kind Regards,

[REDACTED]

Cost Planner/Quantity Surveyor  
Development Queensland

Mirvac  
Level 2, 164 Grey Street South Bank QLD 4101 Australia PO Box 5121 West End QLD 4101

Tel: [REDACTED] <http://www.mirvac.com>  
[Electronic Data Transmission Disclaimer](#)

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\*\*\*\*\* This message has passed through  
an insecure network. Please direct all enquiries to the message author.  
\*\*\*\*\*

Undercover  
CAM

AS 4902—2000  
(Incorporating Amendment No. 1)

AS 4902—2000



# Tennyson Reach Parkland

**Brisbane City Council**

**ABN 72 002 765 795**

**Mirvac Constructions (Qld) Pty Limited**

**ACN 088 536 476**

*Maintenance*  
*Cf. 17*  
*18*

**DRAFT**

Australian Standard™

## General conditions of contract for design and construct

Print date ~~16 June 2011~~ 23 June 2011

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DRAFT



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AUSTRALIA**

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This Australian Standard was prepared by Committee OB-003, General Conditions of Contract. It was approved on behalf of the Council of Standards Australia on 7 September 1999. This Standard was published on 27 December 2000.

The following are represented on Committee OB-003:

Association of Consulting Engineers Australia  
 Australian Chamber of Commerce and Industry  
 Australian Procurement and Construction Council  
 AUSTROADS  
 Construction Industry Engineering Services Group  
 Construction Policy Steering Committee  
 Electricity Supply Association of Australia  
 Institution of Engineers, Australia  
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*This Standard was issued in draft form for comment as DR 97528.*

AS 4902—2000  
(Incorporating Amendment No. 1)

Australian Standard™

**General conditions of contract for  
design and construct**

First published as AS 4300—1995.  
Revised and redesignated AS 4902—2000.  
Reissued incorporating Amendment No. 1 (March 2005).

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## PREFACE

This Standard was prepared by the Joint Standards Australia/Standards New Zealand Committee OB/3, General Conditions of Contract.

*This Standard incorporates Amendment No. 1 (March 2005). The changes required by the Amendment are indicated in the text by a marginal bar and amendment number against the clause, note, table, figure or part thereof affected.*

This Standard is the result of a consensus among Australian and New Zealand representatives on the Joint Committee to produce it as an Australian Standard.

AS 4902—2000 *General conditions of contract for design and construct*, is a part of the suite of conditions of contract based on AS 4000—1997 *General conditions of contract*.

This Standard covers the following types of project procurement methods:

- (a) design and construct;
- (b) design development and construct; and
- (c) design, novate and construct.

If the project procurement method chosen by the Principal is

- (a) **design and construct**—the Principal would provide the Principal's project requirements, would not normally provide a detailed preliminary design and would not require novation;
- (b) **design development and construct**—the Principal would provide the Principal's project requirements, would always provide a preliminary design and accordingly would complete Annexure Part A Items 10 and 11;
- (c) **design, novate and construct**—the Principal would provide the Principal's project requirements, would always provide a preliminary design, would complete Annexure Part A Items 10 and 11 and would complete Annexure Part A Item 20 stating which subcontract (including consultant's agreement) or selected subcontract is to be novated to the Contractor.

Subclauses 8.6 and 29.2, prefixed by \*, are optional, and may be omitted in the Contract, where necessary, without making consequential amendments but such omission should be clearly shown on the face of the document by striking out these subclauses or indicating clearly in clause 1 of Annexure Part E or elsewhere that they are *not to apply*. See paragraph (i) of clause 1 for the effect of stating deletions in Annexure Part E.

### WARNINGS

- (1) Users of this Australian Standard are warned that clause 15 (Damage to persons and property other than WUC) does not limit the liability of parties for special, indirect or consequential losses.

This unlimited liability applies notwithstanding any limitations or exclusions permitted under insurance clauses 16A (Insurance of the Works), 16B (Professional indemnity insurance) and 17 (Public liability insurance).

Parties wishing to limit their liability should seek insurance and legal advice before entering a contract under this Standard.

- (2) Principals should ensure that their specific requirements are fully and completely incorporated in the Principal's project requirements obtaining specialist advice if necessary. Where a Contractor provides a proposed design as part of its tender, the parties should consider whether that design should form part of the preliminary design.



- (3) The risk allocation, drafting, interpretation and construction of this Standard are interrelated. Users who alter the Standard do so at their own risk and should obtain specialist advice as to whether it is suitable for a particular project.
- (4) Contractors should ensure that they satisfy the requirements of payment for unfixed plant and materials.
- (5) Legislation has come into force in some jurisdictions dealing with security of payments. Parties intending to use this Standard should seek expert advice as to their rights and obligations under such legislation.

**DRAFT**

## CONTENTS

Clause	Title	Page
1	INTERPRETATION AND CONSTRUCTION OF CONTRACT	7
2	NATURE OF CONTRACT	12
3	PROVISIONAL SUMS	14
4	SEPARABLE PORTIONS	14
5	SECURITY	14
6	EVIDENCE OF CONTRACT	15
7	SERVICE OF NOTICES	15
8	CONTRACT DOCUMENTS	15
9	ASSIGNMENT AND SUBCONTRACTING	17
10	INTELLECTUAL PROPERTY RIGHTS	19
11	LEGISLATIVE REQUIREMENTS	20
12	PROTECTION OF PEOPLE AND PROPERTY	21
13	URGENT PROTECTION	21
14	CARE OF THE WORK AND REINSTATEMENT OF DAMAGE	22
15	DAMAGE TO PERSONS AND PROPERTY OTHER THAN WUC	23
17	PUBLIC LIABILITY INSURANCE	24
18	INSURANCE OF EMPLOYEES	25
19	INSPECTION AND PROVISIONS OF INSURANCE POLICIES	25
20	SUPERINTENDENT	26
21	SUPERINTENDENT'S REPRESENTATIVE	26
22	CONTRACTOR'S REPRESENTATIVE	27
23	CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS	27
24	SITE	27
25	LATENT CONDITIONS	28
26	SETTING OUT THE WORKS	28
27	CLEANING UP	29
28	MATERIALS, LABOUR AND CONSTRUCTION PLANT	29
29	QUALITY	30
30	EXAMINATION AND TESTING	31
31	WORKING HOURS	31
32	PROGRAMMING	32
33	SUSPENSION	32
34	TIME AND PROGRESS	33
35	DEFECTS LIABILITY	34
36	VARIATIONS	35
37	PAYMENT	36
38	PAYMENT OF WORKERS, CONSULTANTS AND SUBCONTRACTORS	38
39	DEFAULT OR INSOLVENCY	38

40	TERMINATION BY FRUSTRATION.....	42
41	NOTIFICATION OF CLAIMS.....	42
42	DISPUTE RESOLUTION.....	43
43	WAIVER OF CONDITIONS.....	44
44	SHARED COST SAVINGS.....	44
45	GST44	
46	ENTIRE AGREEMENT.....	45
	PART A.....	46
	PART B.....	61
	PART C.....	62
	PART D.....	64
	PART E.....	66
	INDEX.....	67
	INTERPRETATION AND CONSTRUCTION OF CONTRACT.....	6
— 2	NATURE OF CONTRACT.....	11
— 3	PROVISIONAL SUMS.....	12
— 4	SEPARABLE PORTIONS.....	12
— 5	SECURITY.....	13
— 6	EVIDENCE OF CONTRACT.....	14
— 7	SERVICE OF NOTICES.....	14
— 8	CONTRACT DOCUMENTS.....	14
— 9	ASSIGNMENT AND SUBCONTRACTING.....	16
— 10	INTELLECTUAL PROPERTY RIGHTS.....	17
— 11	LEGISLATIVE REQUIREMENTS.....	18
— 12	PROTECTION OF PEOPLE AND PROPERTY.....	18
— 13	URGENT PROTECTION.....	18
— 14	CARE OF THE WORK AND REINSTATEMENT OF DAMAGE.....	19
— 15	DAMAGE TO PERSONS AND PROPERTY OTHER THAN WUC.....	20
— 16A	INSURANCE OF THE WORKS.....	20
— 16B	PROFESSIONAL INDEMNITY INSURANCE.....	21
— 17	PUBLIC LIABILITY INSURANCE.....	21
— 18	INSURANCE OF EMPLOYEES.....	22
— 19	INSPECTION AND PROVISIONS OF INSURANCE POLICIES.....	22
— 20	SUPERINTENDENT.....	23
— 21	SUPERINTENDENT'S REPRESENTATIVE.....	23
— 22	CONTRACTOR'S REPRESENTATIVE.....	24
— 23	CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS.....	24
— 24	SITE.....	24
— 25	LATENT CONDITIONS.....	25
— 26	SETTING OUT THE WORKS.....	25
— 27	CLEANING UP.....	26

— 28 —	MATERIALS, LABOUR AND CONSTRUCTION PLANT .....	26
— 29 —	QUALITY .....	27
— 30 —	EXAMINATION AND TESTING .....	28
— 31 —	WORKING HOURS .....	28
— 32 —	PROGRAMMING .....	29
— 33 —	SUSPENSION .....	29
— 34 —	TIME AND PROGRESS .....	30
— 35 —	DEFECTS LIABILITY .....	31
— 36 —	VARIATIONS .....	32
— 37 —	PAYMENT .....	33
		<i>Page</i>
— 38 —	PAYMENT OF WORKERS, CONSULTANTS AND SUBCONTRACTORS .....	35
— 39 —	DEFAULT OR INSOLVENCY .....	35
— 40 —	TERMINATION BY FRUSTRATION .....	39
— 41 —	NOTIFICATION OF CLAIMS .....	39
— 42 —	DISPUTE RESOLUTION .....	40
— 43 —	WAIVER OF CONDITIONS .....	41
ANNEXURE PART A .....		42
ANNEXURE PART B — APPROVED FORM OF UNCONDITIONAL UNDERTAKING .....		53
ANNEXURE PART C — DEED OF NOVATION (SUBCLAUSE 9.2(C)) .....		54
ANNEXURE PART D — DEED OF NOVATION (SUBCLAUSE 9.4) .....		56
ANNEXURE PART E — DELETIONS, AMENDMENTS AND ADDITIONS .....		58
INDEX .....		59

## STANDARDS AUSTRALIA

## Australian Standard

## General conditions of contract for design and construct

## 1 Interpretation and construction of Contract

In the *Contract*, except where the context otherwise requires:

- Item** means an *Item* in Annexure Part A;
- certificate of practical completion** has the meaning in subclause 34.6;
- compensable cause** means:
- (a) any act, default or omission of the *Superintendent*, the *Principal* or its consultants, agents or other contractors (not being employed by the *Contractor*); or
  - (b) those listed in *Item 31*.
- construction plant** means appliances and things used in the carrying out of *WUC* but not forming part of *the Works*;
- consultant** means any person engaged by the *Contractor* to perform consultancy services in connection with *WUC* and includes any *Principal's* consultant whose prior contract is novated to the *Contractor* under subclause 9.4;
- Contract** has the meaning in clause 6;
- contract sum** means:
- (a) where the *Principal* accepted a lump sum, the lump sum;
  - (b) where the *Principal* accepted rates, the sum of the products ascertained by multiplying the rates by the corresponding quantities in the *schedule of rates*; or
  - (c) where the *Principal* accepted a lump sum and rates, the aggregate of the sums referred to in paragraphs (a) and (b),
- including *provisional sums* but excluding any additions or deductions which may be required to be made under the *Contract*;
- Contractor** means the person bound to carry out and complete *WUC*;
- Contractor's design obligations** means all tasks necessary to design and specify *the Works* required by the *Contract*, including preparation of the *design documents* and, if the documents stated in *Item 10* as describing the *Principal's project requirements* include a *preliminary design*, developing the *preliminary design*;

- date for practical completion* means:
- (a) where *Item 7(a)* provides a date for *practical completion*, the date;
  - (b) where *Item 7(b)* provides a period of time for *practical completion*, the last day of the period,
- but if any *EOT* for *practical completion* is directed by the *Superintendent* or allowed in any arbitration or litigation, it means the date resulting therefrom;
- date of acceptance of tender* means the date which appears on the written notice of acceptance of the tender;
- date of practical completion* means:
- (a) the date evidenced in a *certificate of practical completion* as the date upon which *practical completion* was reached; or
  - (b) where another date is determined in any arbitration or litigation as the date upon which *practical completion* was reached, that other date;
- deed of guarantee, undertaking and substitution* has the meaning in subclause 5.6;
- defects* has the meaning in clause 35 and includes omissions;
- defects liability period* has the meaning in clause 35;
- design documents* means the drawings, specifications and other information, samples, models, patterns and the like required by the *Contract* and created (and including, where the context so requires, those to be created by the *Contractor*) for the construction of the *Works*;
- direction* includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;
- dispute* has the meaning in clause 42;
- EOT (from 'extension of time')* has the meaning in subclause 34.3;
- excepted risk* has the meaning in subclause 14.3;
- final certificate* has the meaning in subclause 37.4;
- final payment* has the meaning in clause 37;
- final payment claim* means the final payment claim referred to in subclause 37.4;
- intellectual property right* means any patent, registered design, trademark or name, copyright or other protected right;
- latent condition* has the meaning in subclause 25.1;

*legislative requirement* includes:

- (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where *WUC* or the particular part thereof is being carried out;
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of *WUC*; and
- (c) fees and charges payable in connection with the foregoing;

*practical completion* is that stage in the carrying out and completion of *WUC* when:

- (a) *the Works* are complete except for minor defects:
  - (i) which do not prevent *the Works* from being reasonably capable of being used for their stated purpose;
  - (ii) which the *Superintendent* determines the *Contractor* has reasonable grounds for not promptly rectifying; and
  - (iii) the rectification of which will not prejudice the convenient use of *the Works*;
- (b) those *tests* which are required by the *Contract* to be carried out and passed before *the Works* reach *practical completion* have been carried out and passed; and
- (c) documents and other information required under the *Contract* which, in the *Superintendent's* opinion, are essential for the use, operation and maintenance of *the Works* have been supplied;

*preliminary design* means the documents stated in *Item 11*;

*prescribed notice* has the meaning in subclause 41.1;

*Principal* means the *Principal* stated in *Item 1*;

*Principal's project requirements* means the *Principal's* written requirements for *the Works* described in the documents stated in *Item 10* which:

- (a) shall include the stated purpose for which *the Works* are intended;
- (b) may include the *Principal's* design, timing and cost objectives for *the Works*; and
- (c) where stated in *Item 10*, shall include a *preliminary design*;
- (d) are also referred to in this *Contract* as *PPRs*.

*program* has the meaning in clause 32;

*progress certificate* has the meaning in subclause 37.2;

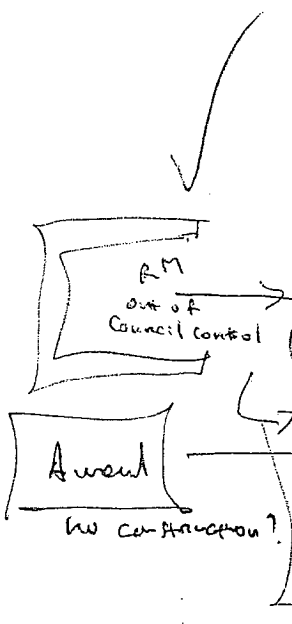
*provisional sum* has the meaning in clause 3 and includes monetary sum, contingency sum and prime cost item;

*public liability policy* has the meaning in clause 17;

A future documents  
 See Partland Terms of Reference  
 Design Release  
 Completion to be

signed off by Council - incorporate

**qualifying cause of delay** means:



- (a) any act, default or omission of the Superintendent, the Principal or its consultants, agents or other contractors (not being employed by the Contractor); or
- (b) other than:
  - (i) a breach or omission by the Contractor;
  - (ii) industrial conditions; or
- (c) inclement weather occurring after the date for practical completion; and
- (d) the delivery of statutory approvals later than that which is prescribed by statute;
- (e) all time that is spent liaising with statutory authorities required to procure all statutory approvals necessary for the design and construction of the Stage III Works that is in excess of 60 days;
- (f) the time that is required to prepare and submit any Development Application (if any is required) up to the time of receipt of the corresponding Development Permit; and

~~(f)(g) (iii) the qualifying causes of delay stated in Item 28; —~~

Move in this draft.

**schedule of rates** means any schedule included in the Contract which, in respect of any section or item of work to be carried out, shows the rate or respective rates of payment for the execution of that work and which may also include lump sums, provisional sums, other sums, quantities and prices;

**security** means:

- (a) cash;
- (b) retention moneys;
- (c) bonds or inscribed stock or their equivalent issued by a national, state or territory government;
- (d) interest bearing deposit in a bank carrying on business at the place stated in Item 9(c);
- (e) an approved unconditional undertaking (the form in Annexure Part B is approved) or an approved performance undertaking given by an approved financial institution or insurance company; or
- (f) other form approved by the party having the benefit of the security;

**selected subcontract work** has the meaning in subclause 9.3;

**selected subcontractor** has the meaning in subclause 9.3;

**separable portion** means a portion of the Works identified as such in the Contract or by the Superintendent pursuant to clause 4;



*site* means the lands and other places to be made available and any other lands and places made available to the *Contractor* by the *Principal* for the purpose of the *Contract*;

*Stage I* means the area shown as Stage I on drawing entitled '*Masterplan*', referenced 110406 and dated 17/05/11

*Stage II* means the area shown as Stage II on drawing entitled '*Masterplan*', referenced 110406 and dated 17/05/11

*Stage III* means the area shown as Stage III on drawing entitled '*Masterplan*', referenced 110406 and dated 17/05/11

*subcontractor* in clauses 3 and 9 includes a *consultant*;

*Superintendent* means the person stated in *Item 5* as the Superintendent or other person from time to time appointed in writing by the *Principal* to be the Superintendent and notified as such in writing to the *Contractor* by the *Principal* and, so far as concerns the functions exercisable by a *Superintendent's Representative*, includes a *Superintendent's Representative*;

*Superintendent's Representative* means an individual appointed in writing by the *Superintendent* under clause 21;

*survey mark* in clause 26 means a survey peg, benchmark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring *WUC*;

*temporary works* means *work* used in carrying out and completing *WUC*, but not forming part of the *Works*;

*test* has the meaning in subclause 30.1 and includes examine and measure;

*the Works* means the whole of the *work* to be carried out and completed in accordance with the *Contract*, including *variations* provided for by the *Contract*, which by the *Contract* is to be handed over to the *Principal*;

*variation* has the meaning in clause 36;

*work* includes the provision of materials;

*WUC (from 'work under the Contract')* means the *work* which the *Contractor* is or may be required to carry out and complete under the *Contract* and includes *variations*, remedial *work*, *construction plant* and *temporary works*,

and like words have a corresponding meaning.

In the *Contract*:

- (a) references to days mean calendar days and references to a person include an individual, firm or a body, corporate or unincorporate;
- (b) time for doing any act or thing under the *Contract* shall, if it ends on a Saturday, Sunday or Statutory or Public Holiday, be deemed to end on the day next following which is not a Saturday, Sunday or Statutory or Public Holiday;

- (c) clause headings and subclause headings shall not form part of, nor be used in the interpretation of, the *Contract*;
- (d) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context. Words importing a gender include every gender;
- (e) communications between the *Principal*, the *Superintendent* and the *Contractor* shall be in the English language;
- (f) measurements of physical quantities shall be in legal units of measurement of the jurisdiction in *Item 8*;
- (g) unless otherwise provided, prices are in the currency in *Item 9(a)* and payments shall be made in that currency at the place in *Item 9(b)*;
- (h) the law governing the *Contract*, its interpretation and construction, and any agreement to arbitrate, is the law of the jurisdiction in *Item 8*; and
- (i) if pursuant to Annexure Part E to these General Conditions, clauses or their parts in these General Conditions are deleted, the *Contract* shall be read and construed as though the clause or its part has been deleted, whether or not that particular clause or its part has been struck from these General Conditions.

## 2 Nature of Contract

### 2.1 Performance and payment

It is a condition of this *Contract* that the *Principal* engages the *Contractor* for the sole purpose of designing and constructing the Tennivson Reach Parklands in accordance with the PPRs. *THIS Contract*

The *Contractor* shall carry out and complete *WUC* in accordance with the *Contract* and directions authorised by the *Contract*.

The *Principal* shall pay the *Contractor*:

- (a) for *work* for which the *Principal* accepted a lump sum, the lump sum; and
- (b) for *work* for which the *Principal* accepted rates, the sum of the products ascertained by multiplying the measured quantity of each section or item of *work* actually carried out under the *Contract* by the rate accepted by the *Principal* for the section or item, adjusted by any additions or deductions made pursuant to the *Contract*.

### 2.2 Contractor's warranties

Without limiting the generality of subclause 2.1, the *Contractor* warrants to the *Principal* that:

- (a) the *Contractor*:
  - (i) at all times shall be suitably qualified and experienced, and shall exercise due skill, care and diligence in the carrying out and completion of *WUC*;

- (ii) has examined any *preliminary design* included in the *Principal's project requirements* and that such *preliminary design* is suitable, appropriate and adequate for the purpose stated in the *Principal's project requirements*;
- (iii) shall carry out and complete the *Contractor's design obligations* to accord with the *Principal's project requirements* and, if subclause 9.4 applies, accept the novation and retain the *Principal's* consultants for any work the subject of a prior contract with the *Principal*; and
- (iv) shall carry out and complete *WUC* in accordance with the *design documents* so that *the Works*, when completed, shall:
  - (A) be fit for their stated purpose to be used as a public park as is set out in the *PPRs*; and
  - (B) comply with all the requirements of the *Contract*; and
- (b) subject to clause 9, the *consultants* identified in the *Contractor's* tender are suitably qualified and experienced.

### 2.3 Warranties unaffected

The warranties remain unaffected notwithstanding:

- (a) that design work (including the *preliminary design*) has been carried out by or on behalf of the *Principal* and included in the *Principal's project requirements*;
- (b) that the *Contractor* has entered into a novation of any prior contract between the *Principal* and a *Principal's* consultant under subclause 9.4 and thereafter has retained that consultant in connection with *WUC*;
- (c) any receipt or review of, or comment or *direction* on, the *design documents* by the *Superintendent*; or
- (d) any *variation*.

### 2.4 Quantities

Quantities in a *schedule of rates* are estimated quantities only.

The *Superintendent* is not required to give a *direction* by reason of the actual quantity of an item required to perform the *Contract* being greater or less than the quantity shown in the *schedule of rates*.

### 2.5 Adjustment for actual quantities

Where, otherwise than by reason of a *direction* to vary *WUC*, the actual quantity of an item required to perform the *Contract* is greater or less than the quantity shown in the *schedule of rates*:

- (a) the *Principal* accepted a lump sum for the item, the difference shall be a deemed *variation*;
- (b) the *Principal* accepted a rate for the item, the rate shall apply to the greater or lesser quantities provided that where limits of accuracy for a quantity in a *schedule of rates* are stated in *Item 12*, the rate shall apply to the greater or lesser quantities within the limits, and quantities outside the limits shall be a deemed *variation*.

If such a *schedule of rates* omits an item which should have been included, the item shall be a deemed *variation*.

### 3 Provisional sums

A *provisional sum* included in the *Contract* shall not itself be payable by the *Principal* but where pursuant to a *direction* the *work* or item to which the *provisional sum* relates is carried out or supplied by the *Contractor*, the *work* or item shall be priced by the *Superintendent*, and the difference shall be added to or deducted from the *contract sum*.

Where any part of such *work* or item is carried out or supplied by a *subcontractor*, the *Superintendent* shall allow the amount payable by the *Contractor* to the *subcontractor* for the *work* or item, disregarding:

- (a) any damages payable by the *Contractor* to the *subcontractor* or vice versa; and
- (b) any deduction of cash discount for prompt payment,

plus an amount for profit and attendance calculated by using the percentage thereon stated in *Item 13* or elsewhere in the *Contract*, or, if not so stated, as assessed by the *Superintendent*.

### 4 Separable portions

*Separable portions* may be directed by the *Superintendent*, who shall clearly identify for each, the:

- (a) portion of the *Works*;
- (b) *date for practical completion*; and
- (c) respective amounts for *security*, *bonus*, liquidated damages and delay damages (all calculated pro-rata according to the ratio of the *Superintendent's* valuation of the *separable portion* to the *contract sum*).

### 5 Security

#### 5.1 Provision

*Security* shall be provided in accordance with *Item 14* or *15*. All delivered *security*, other than cash or retention moneys, shall be transferred in escrow.

#### 5.2 Recourse

*Security* shall be subject to recourse by a party who remains unpaid after the time for payment where at least 5 days have elapsed since that party notified the other party of intention to have recourse.

#### 5.3 Change of security

At any time a party providing retention moneys or cash *security* may substitute another form of *security*. To the extent that another form of *security* is provided, the other party shall not deduct, and shall promptly release and return, retention moneys and cash *security*.

#### 5.4 Reduction and release

Upon the issue of the *certificate of practical completion* a party's entitlement to *security* (other than in *Item 14(e)*) shall be reduced by the percentage or amount in *Item 14(f)* or *15(d)* as applicable, and the reduction shall be released and returned within 14 days to the other party.

The *Principal's* entitlement to *security* in *Item 14(e)* shall cease 14 days after incorporation into the *Works* of the plant and materials for which that *security* was provided.

A party's entitlement otherwise to *security* shall cease 14 days after *final certificate*.

Upon a party's entitlement to *security* ceasing, that party shall release and return forthwith the *security* to the other party.

### 5.5 Trusts and interest

Except where held by a government department or agency or a municipal, public or statutory authority, any portion of *security* (and interest earned thereon) which is cash or retention moneys, shall be held in trust for the party providing them until the *Principal* or the *Contractor* is entitled to receive them.

Interest earned on *security* not required to be held in trust shall belong to the party holding that *security*.

### 5.6 Deed of guarantee, undertaking and substitution

Where:

- (a) a party is a related or subsidiary corporation (as defined in the applicable corporations law of the jurisdiction); and
- (b) a form of *deed of guarantee, undertaking and substitution* was included in the tender documents,

that party shall, within 14 days after receiving a written request from the other party, provide such *deed of guarantee, undertaking and substitution* duly executed and enforceable.

## 6 Evidence of Contract

Until a formal instrument of agreement is executed by the parties, documents evidencing the parties' consensus shall constitute the *Contract*. If such *Contract* requires a formal instrument of agreement, the *Principal* shall, within 28 days of the *date of acceptance of tender*, send it in duplicate for execution by the *Contractor*. Within 14 days after receiving them, the *Contractor* shall (if they are correct) properly execute both copies and return them.

Within 14 days after receiving them, the *Principal* shall execute both copies, have them stamped as necessary and send one copy to the *Contractor*.

The *Superintendent* may extend the time under this clause by written notice to the parties.

## 7 Service of notices

A notice (and other documents) shall be deemed to have been given and received:

- (a) if addressed or delivered to the relevant address in the *Contract* or last communicated in writing to the person giving the notice; and
- (b) on the earliest date of:
  - (i) actual receipt;
  - (ii) confirmation of correct transmission of fax; or
  - (iii) 3 days after posting.

## 8 Contract documents

### 8.1 Discrepancies

Figured shall prevail over scaled dimensions in a discrepancy. Otherwise, if either party discovers any inconsistency, ambiguity or discrepancy in any document prepared for the

purpose of carrying out *WUC*, that party shall give the *Superintendent* written notice of it. The *Superintendent*, thereupon, and upon otherwise becoming aware, shall direct the *Contractor* as to the interpretation and construction to be followed.

The *Contractor* shall bear the cost of compliance with a *direction* under this subclause to the extent that any inconsistency, ambiguity or discrepancy in the *design documents* or between the *design documents* and the *Principal's project requirements* necessitates the *direction*.

If compliance with any other *direction* under this subclause causes the *Contractor* to incur more or less cost than otherwise would have been incurred had the *direction* not been given, the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

### 8.2 Principal-supplied documents

The *Principal* shall supply to the *Contractor* the documents and number of copies thereof, both stated in *Item 16*.

They shall:

- (a) remain the *Principal's* property and be returned to the *Principal* on written demand; and
- (b) not be used, copied nor reproduced for any purpose other than *WUC*.

### 8.3 Contractor-supplied documents

The *Contractor* shall supply to the *Superintendent* the documents and number of copies at the times or stages stated in *Item 17*.

Other documents and information required by the *Contract*, unless elsewhere stated in the *Contract*, shall be supplied not less than 14 days before the work described in the documents is commenced and shall be in a form satisfactory to the *Superintendent*.

If the *Contractor* submits a document to the *Superintendent*, then except where the *Contract* otherwise provides:

- (a) the *Superintendent* shall not be required to check that document for errors, omissions, inconsistencies, ambiguities, discrepancies or compliance with the *Contract*;
- (b) notwithstanding subclause 2.1, any *Superintendent's* acknowledgment or approval shall not prejudice the *Contractor's* obligations; and
- (c) if the *Contract* requires the *Contractor* to obtain the *Superintendent's* *direction* about that document, the *Superintendent* shall give, within the time stated in *Item 18*, the appropriate *direction*, including reasons if the document is not suitable.

A *direction* by the *Superintendent* to vary anything in the *design documents* shall be a *variation* to *WUC*, only to the extent that the *design documents*, before such *variation*, complied, or would have complied, with the *Principal's project requirements*.

Copies of documents supplied by the *Contractor* shall be the *Principal's* property but shall not be used nor copied otherwise than for the use, repair, maintenance or alteration of the *Works*.

### 8.4 Availability

The *Contractor* shall keep available to the *Superintendent* and the *Principal*:

- (a) on site, one complete set of documents affecting *WUC* and supplied by a party or the *Superintendent*; and

- (b) at the place of manufacture or assembly of any significant part of *WUC* off site, a set of the documents affecting that part.

### 8.5 Confidential information

The parties shall ensure that there are kept confidential such documents, samples, models, patterns and other information as are supplied and clearly identified as confidential.

If required in writing by a party, the other party shall enter into a separate agreement not to disclose to anyone else any confidential matter even after *final certificate* or earlier termination of the *Contract*. If so required by the *Contractor*, the *Principal* shall ensure that the *Superintendent* also enters into such an agreement.

### \* 8.6 Media

The *Contractor* shall not disclose any information concerning the project for distribution through any communications media without the *Principal's* prior written approval (which shall not be unreasonably withheld). The *Contractor* shall refer to the *Principal* any enquiries from any media concerning the project.

## 9 Assignment and subcontracting

### 9.1 Assignment

Neither party shall, without the other's prior written approval (including terms) assign the *Contract* or any payment or any other right, benefit or interest thereunder.

### 9.2 Subcontracting generally

The *Contractor* shall engage and retain the consultants identified in the *Contractor's* tender.

The *Contractor* shall not without the *Superintendent's* prior written approval (which shall not be unreasonably withheld):

- (a) subcontract or allow a *subcontractor* to subcontract any *work* described in *Item 19*; or
- (b) allow a *subcontractor* to assign a subcontract or any payment or any other right, benefit or interest thereunder.

With a request for approval, the *Contractor* shall give the *Superintendent* written particulars of the *work* to be subcontracted and the name and address of the proposed *subcontractor*. The *Contractor* shall give the *Superintendent* other information which the *Superintendent* reasonably requests, including the proposed subcontract documents without prices.

Within 14 days of the *Contractor's* request for approval, the *Superintendent* shall give the *Contractor* written notice of approval or of the reasons why approval is not given.

Approval may be conditional upon the subcontract including:

- (a) provision that the *subcontractor* shall not assign nor subcontract without the *Contractor's* written consent;
- (b) provisions which may be reasonably necessary to enable the *Contractor* to fulfil the *Contractor's* obligations to the *Principal*;
- (c) provision that if the *Contract* is terminated and upon the *subcontractor* being paid the sum certified by the *Superintendent* as owing to the *subcontractor*, the *Contractor*

\* See Preface

and the *subcontractor* shall, after the *Principal* has done so, promptly execute a deed of novation in the form of Annexure Part C.

For the purpose of effecting such novation only, the *Contractor* hereby irrevocably appoints the *Superintendent* to be the *Contractor's* attorney with authority to execute such documents as are necessary to give effect to the novation and to bind the *Contractor* accordingly; and

- (d) where the *subcontractor* is a *consultant*, provision that the *subcontractor* shall effect and maintain professional indemnity insurance on the same terms as are required under *Items 24(c)* and *24(d)*.

### 9.3 Selected subcontract work

If the *Principal* has included in the invitation to tender a list of one or more *selected subcontractors* for particular work, the *Contractor* shall subcontract that work to a *selected subcontractor* and thereupon give the *Superintendent* written notice of that *selected subcontractor's* name.

If no subcontractor on the *Principal's* list will subcontract to carry out the *selected subcontract work*, the *Contractor* shall provide a list for the written approval of the *Superintendent*.

### 9.4 Novation

This subclause applies only where the *Principal's project requirements* include a *preliminary design* or the *Contract* includes *selected subcontract work*.

When directed by the *Principal*, the *Contractor*, without being entitled to compensation, shall promptly execute a deed of novation in the form of Annexure Part D, such deed being between the *Principal*, the *Contractor* and the *subcontractor* or the *selected subcontractor* stated in *Item 20* for the particular part of the *preliminary design* or *selected subcontract work*.

### 9.5 Contractor's responsibility

Except where the *Contract* otherwise provides, the *Contractor* shall be liable to the *Principal* for the acts, defaults and omissions of *subcontractors* (including *selected subcontractors*) and employees and agents of *subcontractors* as if they were those of the *Contractor*.

Approval to subcontract shall not relieve the *Contractor* from any liability or obligation under the *Contract*

### 9.6 Design and documentation development

The Contractor's design obligations are as follows:

- (a) The Contractor must determine which statutory approvals are required for the completion of the design in accordance with the Contract and the PPRs;
- (b) The Contractor must procure:
- (i) the design and documentation; and
- (ii) the relevant statutory approvals;
- necessary to construct the Works in accordance with the Contract and the PPRs.
- (c) The Contractor must procure the design and documentation necessary for the completion of the Works in accordance with the program and in accordance with sound engineering and building practice.



- (c) The Contractor may make recommendations to the Superintendent in respect of any revision to the preliminary design or the design documents as may be necessary to develop and document the design of the Works and to facilitate the timely completion of the Works.
- (d) The Contractor must ensure that the design and construction of the Works conforms to all legislative requirements and other authorities' requirements having jurisdiction over the Works.
- (e) The Contractor is entitled to, and may claim an extension of time and payment for costs incurred under the Contract arising out of any changes to the preliminary design directed by the Superintendent.

Approval?

**9.7 Discrepancies in Principal supplied documents**

The Contractor is entitled to, and may claim, an extension of time and additional payment for all costs incurred that are in addition to the contract sum arising out of any discrepancy, omission, inconsistency or ambiguity within or between any of the following:

- (a) the documents constituting preliminary design;
- (b) the documents constituting the PPRs;
- (c) the documents comprising the Contract.

but Council not designing

**9.8 Design development obligations**

The Contractor must:

- (a) develop the preliminary design (design documents) and produce design documents to be used to construct the Works;
- (b) submit 3 copies of the latest design documents to the Superintendent at the completion of the schematic design phase and at the completion of the design development phase.
- (c) provide an explanation of any design documents or report on any matter as requested by the Superintendent from time to time at the Principal's cost;
- (d) ensure that the design documents are in accordance with the PPRs.

approval by Council

**9.9 Principal's acceptance of design documents**

The Superintendent must review the design documents submitted by the Contractor under clause 9.8

Within 10 business days of receipt of the design documents, the Superintendent must instruct the Contractor whether or not the design documents are acceptable to the Principal.

If the design documents are not acceptable to the Principal, the Superintendent must set out its reasons as to why the design documents do not comply with the Contract or provide further instructions to change the design.

If the Superintendent does not advise the Contractor within 10 business days, then the design documents submitted in accordance with this clause are deemed to have satisfied the requirements of this Contract.

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**10 Intellectual property rights**

**10.1 Warranties and indemnities**

The *Principal* warrants that, unless otherwise provided in the *Contract*, the *Principal's project requirements*, design, materials, documents and methods of working, each specified

in the *Contract* or provided or directed by the *Principal* or the *Superintendent* shall not infringe any *intellectual property right*.

The *Contractor* warrants that any other design, materials, documents and methods of working, each provided by the *Contractor*, shall not infringe any *intellectual property right*.

Each party shall indemnify the other against such respective infringements.

## 10.2 Intellectual property rights granted to Principal

The Alternative in *Item 21* applies.

### *Alternative 1*

The *Contractor* grants to the *Principal* an irrevocable licence to use the *design documents* for *WUC*. Such licence shall also include any subsequent repairs to, maintenance or servicing of (including the supply of replacement parts), or additions or alterations to, the *Works* and the copying of the documents for such purposes.

### *Alternative 2*

Copyright and property in the *design documents* (and, as between the *Principal* and the *Contractor*, any part of the *preliminary design* produced under a prior contract between the *Principal* and a *Principal's* consultant novated under subclause 9.4) hereby vest in the *Principal*, and the *Principal* grants to the *Contractor* an irrevocable licence to use the *design documents* for *WUC*. Such vesting shall not extend to components of the design which have been developed by the *Contractor* for general use in the *Contractor's* work and have not been specially developed for incorporation in the *design documents*.

The *Contractor* shall do everything necessary to perfect such vesting.

The *Contractor* shall ensure that the *design documents* are used, copied and supplied only for the purpose of *WUC*.

## 11 Legislative requirements

### 11.1 Compliance

The *Contractor* shall satisfy all *legislative requirements* except those in *Item 22(a)* or directed by the *Superintendent* to be satisfied by or on behalf of the *Principal*.

The *Contractor*, upon finding that a *legislative requirement* is at variance with the *Contract* or the *Principal's* project requirements, shall promptly give the *Superintendent* written notice thereof.

### 11.2 Changes

If a *legislative requirement*:

- (a) necessitates a change:
  - (i) to the *Principal's* project requirements;
  - (ii) to the *Works*;
  - (iii) to so much of *WUC* as is identified in *Item 22(b)*;
  - (iv) being the provision of services by a municipal, public or other statutory authority in connection with *WUC*; or
  - (v) in a fee or charge or payment of a new fee or charge;
- (b) comes into effect after the 14th day before the closing of tenders but could not reasonably then have been anticipated by a competent contractor; and

- (c) causes the *Contractor* to incur more or less cost than otherwise would have been incurred,

the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

### **11.3 Occupational health and safety**

The Principal appoints the Contractor as Principal Contractor in accordance with the Workplace Health & Safety Act 1995 (Old) (WHS legislation).

Without limiting the generality of clause 11.1 and 11.2, the Contractor must comply with all legislative requirements, codes of practice, and standards (including Australian Standards) in relation to occupational health and safety. The Contractor must instruct its employees, subcontractors and consultants to:

- (a) follow safe work practices and procedures at all times;
- (b) take reasonable care for their own safety; and
- (c) take reasonable care for the health and safety of anyone else who may be affected by anything that they do or fail to do;

in connection with the WUC,

If requested by the Superintendent, the Contractor must provide the following information about the Contractor's occupational health and safety systems and those of its subcontractors or consultant's:

- (d) safe working practices and procedures; and
- (e) occupational health and safety practices and procedures;

The Contractor must ensure that all employees, subcontractors, consultants and appointees have completed an appropriate induction prior to commencement on the WUC.

## **12 Protection of people and property**

Insofar as compliance with the *Contract* permits, the *Contractor* shall:

- (a) take measures necessary to protect people and property;
- (b) avoid unnecessary interference with the passage of people and vehicles; and
- (c) prevent nuisance and unreasonable noise and disturbance.

If the *Contractor* damages property, the *Contractor* shall promptly rectify the damage and pay any compensation which the law requires the *Contractor* to pay.

If the *Contractor* fails to comply with an obligation under this clause, the *Principal*, after the *Superintendent* has given reasonable written notice to the *Contractor* and in addition to the *Principal's* other rights and remedies, may have the obligation performed by others. The cost thereby incurred shall be certified by the *Superintendent* as moneys due from the *Contractor* to the *Principal*.

## **13 Urgent protection**

If urgent action is necessary to protect *WUC*, other property or people and the *Contractor* fails to take the action, in addition to any other remedies of the *Principal*, the *Superintendent* may take the necessary action. If the action was action which the *Contractor* should have taken at the *Contractor's* cost, the *Superintendent* shall certify the cost incurred as moneys due from the *Contractor* to the *Principal*.

Liability  
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If time permits, the *Superintendent* shall give the *Contractor* prior written notice of the intention to take action pursuant to this clause.

#### 14 Care of the work and reinstatement of damage

##### 14.1 Care of WUC

Except as provided in subclause 14.3, the *Contractor* shall be responsible for care of:

- (a) the whole of *WUC* from and including the date of commencement of *WUC* to 4:00 pm on the *date of practical completion*, at which time responsibility for the care of the *Works* (except to the extent provided in paragraph (b)) shall pass to the *Principal*; and
- (b) outstanding *work* and items to be removed from the *site* by the *Contractor* after 4:00 pm on the *date of practical completion* until completion of outstanding *work* or compliance with clauses 29, 30 and 35.

Without limiting the generality of paragraph (a), the *Contractor* shall be responsible for the care of unfixed items accounted for in a *progress certificate* and the care and preservation of things entrusted to the *Contractor* by the *Principal* or brought onto the *site* by *subcontractors* for carrying out *WUC*.

##### 14.2 Reinstatement

If loss or damage, other than that caused by an *excepted risk*, occurs to *WUC* during the period of the *Contractor's* care, the *Contractor* shall at its cost, rectify such loss or damage.

In the event of loss or damage being caused by any of the *excepted risks* (whether or not in combination with other risks), the *Contractor* shall to the extent directed by the *Superintendent*, rectify the loss or damage and such rectification shall be a deemed *variation*. If loss or damage is caused by a combination of *excepted risks* and other risks, the *Superintendent* in pricing the *variation* shall assess the proportional responsibility of the parties.

##### 14.3 Excepted risks

The *excepted risks* causing loss or damage, for which the *Principal* is liable, are:

- (a) any negligent act or omission of the *Superintendent*, the *Principal* or its consultants, agents, employees or other contractors (not being employed by the *Contractor*);
- (b) any risk specifically excepted elsewhere in the *Contract*;
- (c) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority;
- (d) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the *Contractor* or its *subcontractors* or either's employees or agents;
- (e) use or occupation of any part of *WUC* by the *Principal* or its consultants, agents or other contractors (not being employed by the *Contractor*); and
- (f) defects in such part of the design of *WUC*, including the *preliminary design* provided by the *Principal*, as is not warranted under clause 2.

## 15 Damage to persons and property other than WUC

### 15.1 Indemnity by Contractor

Insofar as this subclause applies to property, it applies to property other than *WUC*.

The *Contractor* shall indemnify the *Principal* against:

- (a) loss of or damage to the *Principal's* property; and
- (b) claims in respect of personal injury or death or loss of, or damage to, any other property,

arising out of or as a consequence of the carrying out of *WUC*, but the indemnity shall be reduced proportionally to the extent that the act or omission of the *Superintendent*, the *Principal* or its consultants, agents or other contractors (not being employed by the *Contractor*) may have contributed to the injury, death, loss or damage.

This subclause shall not apply to:

- (a) the extent that the *Contractor's* liability is limited by another provision of the *Contract*;
- (b) exclude any other right of the *Principal* to be indemnified by the *Contractor*;
- (c) things for the care of which the *Contractor* is responsible under subclause 14.1; and
- (d) claims in respect of the *Principal's* right to have *WUC* carried out.

### 15.2 Indemnity by Principal

The *Principal* shall indemnify the *Contractor* in respect of claims referred to in paragraph (d) of subclause 15.1.

## 16A Insurance of the Works

The Alternative in *Item 23(a)* applies.

### *Alternative 1: Contractor to insure*

Before commencing *WUC*, the *Contractor* shall insure all the things referred to in subclause 14.1 against loss or damage resulting from any cause until the *Contractor* ceases to be responsible for their care.

Without limiting the generality of the obligation to insure, such insurance shall cover the *Contractor's* liability under subclause 14.2 and things in storage off *site* and in transit to the *site* but may exclude:

- (a) the cost of making good fair wear and tear or gradual deterioration, but shall not exclude the loss or damage resulting therefrom;
- (b) the cost of making good faulty design, workmanship and materials, but shall not exclude the loss or damage resulting therefrom;
- (c) consequential loss of any kind, but shall not exclude loss of or damage to *the Works*;
- (d) damages for delay in completing or for the failure to complete *the Works*;
- (e) loss or damage resulting from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel resulting from any cause;
- (f) loss or damage resulting from the *excepted risks* referred to in paragraphs (b) and (c) of subclause 14.3.

The insurance cover shall be for an amount not less than the aggregate of the:

- (a) *contract sum*;
- (b) provision in *Item 23(b)* to provide for costs of demolition and removal of debris;
- (c) provision in *Item 23(c)* for *consultants' fees* and *Principal's consultants' fees*;
- (d) value in *Item 23(d)* of any materials or things to be supplied by the *Principal* for the purposes of *WUC*; and
- (e) additional amount or percentage in *Item 23(e)* of the total of the items referred to in sub-paragraphs (a) to (d) of this paragraph.

Insurance shall be in the joint names of the parties, shall cover the parties, *consultants* and *subcontractors* whenever engaged in *WUC* for their respective rights, interests and liabilities and, except where the *Contract* otherwise provides, shall be with an insurer and in terms both approved in writing by the *Principal* (which approvals shall not be unreasonably withheld).

The insurance shall be maintained until the *Contractor* ceases to be responsible under subclause 14.1 for the care of anything.

**Alternative 2: Principal to insure**

Before the *date of acceptance of tender*, the *Principal* shall insure *WUC* in the terms of the policy included in the tender documents and nominating or stating the insurer. The *Principal* shall maintain such insurance while ever the *Contractor* has an interest in *WUC*.

**16B Professional indemnity insurance**

Before commencing *WUC*, the *Contractor* shall effect and maintain professional indemnity insurance with levels of cover not less than stated in *Item 24(a)*.

The insurance shall be maintained until the *final certificate* is issued and thereafter for the period as stated in *Item 24(b)*.

The *Contractor* shall ensure that every *consultant*, if within a category stated in *Item 24(c)*, shall effect and maintain professional indemnity insurance with levels of cover not less than stated in *Item 24(c)* applicable to that category.

Each such *consultant's* professional indemnity insurance shall be maintained until the *final certificate* is issued and thereafter for the period as stated in *Item 24(d)*.

**17 Public liability insurance**

The Alternative in *Item 25(a)* applies.

**Alternative 1: Contractor to insure**

Before commencing *WUC*, the *Contractor* shall effect and maintain for the duration of the *Contract*, a *public liability policy*.

The policy shall:

- (a) be in the joint names of the parties;
- (b) cover the:
  - (i) respective rights and interests; and
  - (ii) liabilities to third parties,
 of the parties, the *Superintendent*, *consultants* and *subcontractors* from time to time, whenever engaged in *WUC*;
- (c) cover the parties' respective liability to each other for loss or damage to property (other than property required to be insured by clause 16A) and the death of or injury

to any person (other than liability which the law requires to be covered under a workers compensation insurance policy);

- (d) be endorsed to cover the use of any *construction plant* not covered under a comprehensive or third party motor vehicle insurance policy;
- (e) provide insurance cover for an amount in respect of any one occurrence of not less than the sum in *Item 25(b)*; and
- (f) be with an insurer and otherwise in terms both approved in writing by the *Principal* (which approvals shall not be unreasonably withheld).

#### **Alternative 2: Principal to insure**

Before the *date of acceptance of tender*, the *Principal* shall effect in relation to *WUC*, a *public liability policy* in the terms of the policy included in the tender documents and nominating or stating the insurer. The *Principal* shall maintain such insurance while ever the *Contractor* has an interest in *WUC*.

#### **18 Insurance of employees**

Before commencing *WUC*, the *Contractor* shall insure against statutory and common law liability for death of or injury to persons employed by the *Contractor*. The insurance cover shall be maintained until completion of all *WUC*.

Where permitted by law, the insurance policy or policies shall be extended to provide indemnity for the *Principal's* statutory liability to the *Contractor's* employees.

The *Contractor* shall ensure that all *consultants* and *subcontractors* have similarly insured their employees.

#### **19 Inspection and provisions of insurance policies**

##### **19.1 Proof of insurance**

Before the *Contractor* commences *WUC* and whenever requested in writing by the other party, a party liable to insure shall provide satisfactory evidence of such insurance effected and maintained.

Insurance shall not limit liabilities or obligations under other provisions of the *Contract*.

##### **19.2 Failure to produce proof of insurance**

If after being so requested, a party liable to insure fails promptly to provide evidence of satisfactory compliance, then without prejudice to other rights or remedies, the other party may insure and the cost thereof shall be certified by the *Superintendent* as moneys due and payable from the party in default to the other party. Where the defaulting party is the *Contractor*, the *Principal* may refuse payment until such evidence is produced by the *Contractor*.

##### **19.3 Notices from or to insurer**

The party insuring under clause 16A or 17 shall ensure that each insurance policy contains provisions acceptable to the other party which:

- (a) requires the insurer to inform both parties, whenever the insurer gives a party or a *consultant* or a *subcontractor* a notice in connection with the policy;
- (b) provides that a notice of claim given to the insurer by either party, the *Superintendent*, a *consultant* or a *subcontractor* shall be accepted by the insurer as a

notice of claim given by both parties, the *Superintendent*, the *consultant* and the *subcontractor*; and

- (c) requires the insurer, whenever the party fails to maintain the policy, promptly to give written notice thereof to both parties and prior to cancellation of the policy.

#### 19.4 Notices of potential claims

A party shall, as soon as practicable, inform the other party in writing of any occurrence that may give rise to a claim under an insurance policy required by clause 16A or 17 and shall keep the other party informed of subsequent developments concerning the claim. The *Contractor* shall ensure that *consultants* and *subcontractors* in respect of their operations similarly inform the parties.

#### 19.5 Settlement of claims

Upon settlement of a claim under the insurance required by clause 16A:

- (a) to the extent that reinstatement has been the subject of a payment or allowance by the *Principal* to the *Contractor*, if the *Contractor* has not completed such reinstatement, insurance moneys received shall, if requested by either party, be paid into an agreed bank account in the joint names of the parties. As the *Contractor* reinstates the loss or damage, the *Superintendent* shall certify against the joint account for the cost of reinstatement; and
- (b) to the extent that reinstatement has not been the subject of a payment or allowance by the *Principal* to the *Contractor*, the *Contractor* shall be entitled immediately to receive from insurance moneys received, the amount of such moneys so paid in relation to any loss suffered by the *Contractor*.

#### 19.6 Cross liability

Any insurance required to be effected in joint names in accordance with the *Contract* shall include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons constituting the insured and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons constituting the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby).

#### 20 Superintendent

The *Principal* shall ensure that at all times there is a *Superintendent*, and that the *Superintendent* fulfils all aspects of the role and functions reasonably and in good faith.

Except where the *Contract* otherwise provides, the *Superintendent* may give a *direction* orally but shall as soon as practicable confirm it in writing. If the *Contractor* in writing requests the *Superintendent* to confirm an oral *direction*, the *Contractor* shall not be bound to comply with the *direction* until the *Superintendent* does so.

#### 21 Superintendent's Representative

The *Superintendent* may from time to time appoint individuals to exercise delegated *Superintendent's* functions, provided that:

- (a) no aspect of any function shall at any one time be the subject of delegation to more than one *Superintendent's Representative*;
- (b) delegation shall not prevent the *Superintendent* exercising any function;
- (c) the *Superintendent* forthwith gives the *Contractor* written notice of respectively:



- (i) the appointment, including the *Superintendent's Representative's* name and delegated functions; and
- (ii) the termination of each appointment; and
- (d) if the *Contractor* makes a reasonable objection to the appointment of a *Superintendent's Representative*, the *Superintendent* shall terminate the appointment.

## 22 Contractor's representative

The *Contractor* shall superintend *WUC* personally or by a competent representative. Matters within a *Contractor's* representative's knowledge (including *directions* received) shall be deemed to be within the *Contractor's* knowledge.

The *Contractor* shall forthwith give the *Superintendent* written notice of the representative's name and any subsequent changes.

If the *Superintendent* makes a reasonable objection to the appointment of a representative, the *Contractor* shall terminate the appointment and appoint another representative.

## 23 Contractor's employees and subcontractors

The *Superintendent* may direct the *Contractor* to have removed, within a stated time, from the *site* or from any activity of *WUC*, any person employed on *WUC* who, in the *Superintendent's* opinion, is incompetent, negligent or guilty of misconduct.

## 24 Site

### 24.1 Access and possession

Before the expiry of the time stated in *Item 26(a)*, the *Principal* shall give the *Contractor* access to the *site* sufficient to enable the *Contractor* to commence and carry out the *Contractor's design obligations*.

Provided the *Contractor* has complied with subclause 19.1, the *Principal* shall before the expiry of the time in *Item 26(b)* give the *Contractor* possession of sufficient of the *site* for commencement of *WUC* on *site*. If the *Principal* has not given the *Contractor* possession of the whole *site*, the *Principal* shall give the *Contractor* possession of such further portions of the *site* as may, from time to time, be necessary for carrying out *WUC*. Subject to subclause 39.7, delay by the *Principal* in giving possession shall not be a breach of the *Contract*.

Possession of the *site* shall confer on the *Contractor* a right to only such use and control as is necessary to enable the *Contractor* to carry out *WUC* and shall exclude camping, residential purposes and any purpose not connected with *WUC*, unless approved by the *Superintendent*.

### 24.2 Access for Principal and others

The *Principal* and the *Principal's* employees, consultants and agents may at any time after reasonable written notice to the *Contractor*, have access to any part of the *site* for any purpose. The *Contractor* shall permit persons engaged by the *Principal* to carry out *work* on the *site* other than *WUC* and shall cooperate with them. The *Principal* shall give to the *Contractor* the names and roles of the persons so engaged.

The *Contractor* shall at all reasonable times give the *Superintendent* access to *WUC*.

The *Principal* shall ensure that none of the persons referred to in this subclause impedes the *Contractor*.

**24.3 Minerals, fossils and relics**

Valuable minerals, fossils, articles or objects of antiquity or of anthropological or archaeological interest, treasure trove, coins and articles of value found on the *site* shall as between the parties be and remain the property of the *Principal*. Immediately upon the discovery of these things the *Contractor* shall:

- (a) take precautions to prevent their loss, removal or damage; and
- (b) give the *Superintendent* written notice of the discovery.

All costs so incurred by the *Contractor* shall be assessed by the *Superintendent* and added to the *contract sum*.

**25 Latent conditions**

**25.1 Scope**

*Latent conditions* are physical conditions on the *site* and its near surrounds, including artificial things but excluding weather conditions, which differ materially from the physical conditions which should reasonably have been anticipated by a competent contractor at the time of the *Contractor's* tender if the *Contractor* had inspected:

- (a) all written information made available by the *Principal* to the *Contractor* for the purpose of tendering;
- (b) all information influencing the risk allocation in the *Contractor's* tender and reasonably obtainable by the making of reasonable enquiries; and
- (c) the *site* and its near surrounds.

**25.2 Notification**

The *Contractor*, upon becoming aware of a *latent condition* while carrying out *WUC*, shall promptly, and where possible before the *latent condition* is disturbed, give the *Superintendent* written notice of the general nature thereof.

If required by the *Superintendent* promptly after receiving that notice, the *Contractor* shall, as soon as practicable, give the *Superintendent* a written statement of:

- (a) the *latent condition* encountered and the respects in which it differs materially;
- (b) the additional *work*, resources, time and cost which the *Contractor* estimates to be necessary to deal with the *latent condition*; and
- (c) other details reasonably required by the *Superintendent*.

**25.3 Deemed variation**

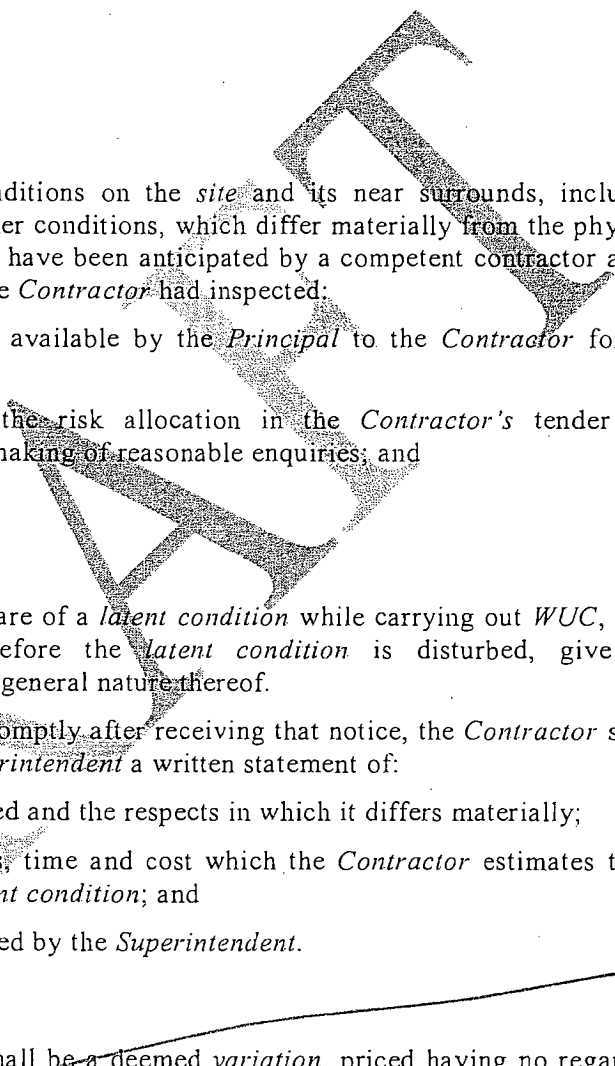
The effect of the *latent condition* shall be a deemed variation, priced having no regard to additional cost incurred more than 28 days before the date on which the *Contractor* gave the notice required by the first paragraph of subclause 25.2 but so as to include the *Contractor's* other costs for each compliance with subclause 25.2.

**26 Setting out the Works**

**26.1 Setting out**

The *Principal* shall ensure that the *Superintendent* gives the *Contractor* the data, *survey marks* and like information necessary for the *Contractor* to set out the *Works*, together with those *survey marks* specified in the *Contract*. Thereupon the *Contractor* shall set out the *Works* in accordance with the *Contract*.

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## 26.2 Errors in setting out

The *Contractor* shall rectify every error in the position, level, dimensions or alignment of any *WUC* after promptly notifying the *Superintendent* and unless the *Superintendent* within 3 days directs otherwise.

If the error was caused by incorrect data, *survey marks* or information given by the *Superintendent*, the cost incurred by the *Contractor* in rectifying the error shall be assessed by the *Superintendent* and added to the *contract sum*.

## 26.3 Care of survey marks

The *Contractor* shall keep in their true positions all *survey marks* supplied by the *Superintendent*.

The *Contractor* shall reinstate any *survey mark* disturbed, after promptly notifying the *Superintendent* and unless the *Superintendent* within 3 days directs otherwise.

If the disturbance was caused by a person referred to in subclause 24.2 other than the *Contractor*, the cost incurred by the *Contractor* in reinstating the *survey mark* shall be assessed by the *Superintendent* and added to the *contract sum*.

## 27 Cleaning up

The *Contractor* shall keep the *site* and *WUC* clean and tidy and regularly remove rubbish and surplus material.

Within 14 days after the *date of practical completion*, the *Contractor* shall remove *temporary works* and *construction plant*. The *Superintendent* may extend the time to enable the *Contractor* to perform remaining obligations.

If the *Contractor* fails to comply with the preceding obligations in this clause, the *Superintendent* may direct the *Contractor* to rectify the non-compliance and the time for rectification.

If:

- (a) the *Contractor* fails to comply with such a direction; and
- (b) that failure has not been made good within 5 days after the *Contractor* receives written notice from the *Superintendent* that the *Principal* intends to have the subject work carried out by others,

the *Principal* may have that work so carried out and the *Superintendent* shall certify the cost incurred as moneys due from the *Contractor* to the *Principal*. The rights given by this paragraph are additional to any other rights and remedies.

## 28 Materials, labour and construction plant

Except where the *Contract* otherwise provides, the *Contractor* shall supply everything necessary for the proper performance of the *Contractor's* obligations and discharge of the *Contractor's* liabilities.

In respect of any materials, machinery or equipment to be supplied by the *Contractor* in connection with the *Contract*, the *Superintendent* may direct the *Contractor* to:

- (a) supply particulars of the mode and place of manufacture, the source of supply, the performance capacities and other related information; and
- (b) arrange reasonable inspection at such place or sources by the *Superintendent*, the *Principal* and persons authorised by the *Principal*.

The *Superintendent* may give the *Contractor* a written *direction* not to remove materials or *construction plant* from the *site*. Thereafter the *Contractor* shall not remove them without the *Superintendent's* prior written approval (which shall not be unreasonably withheld).

## 29 Quality

### 29.1 Quality of material and work

Unless otherwise provided, the *Contractor* shall use suitable new materials and proper and tradesmanlike workmanship.

### \* 29.2 Quality assurance

If the *Contract* elsewhere requires further quality assurance, the *Contractor* shall:

- (a) plan, establish and maintain a conforming quality system; and
- (b) ensure that the *Superintendent* has access to the quality system of the *Contractor*, *consultants* and *subcontractors* so as to enable monitoring and quality auditing.

Any such quality system shall be used only as an aid to achieving compliance with the *Contract* and to document such compliance. Such system shall not discharge the *Contractor's* other obligations under the *Contract*.

### 29.3 Defective work

If the *Superintendent* becomes aware of *work* done (including material provided) by the *Contractor* which does not comply with the *Contract*, the *Superintendent* shall as soon as practicable give the *Contractor* written details thereof. If the subject *work* has not been rectified, the *Superintendent* may direct the *Contractor* to do any one or more of the following (including times for commencement and completion):

- (a) remove the material from the *site*;
- (b) demolish the *work*;
- (c) redesign, reconstruct, replace or correct the *work*; and
- (d) not deliver it to the *site*.

If:

- (a) the *Contractor* fails to comply with such a *direction*; and
- (b) that failure has not been made good within 8 days after the *Contractor* receives written notice from the *Superintendent* that the *Principal* intends to have the subject *work* rectified by others,

the *Principal* may have that *work* so rectified and the *Superintendent* shall certify the cost incurred as moneys due from the *Contractor* to the *Principal*.

### 29.4 Acceptance of defective work

Instead of a *direction* pursuant to subclause 29.3, the *Superintendent* may direct the *Contractor* that the *Principal* elects to accept the subject *work*, whereupon there shall be a deemed *variation*.

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\* See Preface

### 29.5 Timing

The *Superintendent* may give a *direction* pursuant to this clause at any time before the expiry of the last *defects liability period*.

## 30 Examination and testing

### 30.1 Tests

At any time before the expiry of the last *defects liability period*, the *Superintendent* may direct that any *WUC* be tested. The *Contractor* shall give such assistance and samples and make accessible such parts of *WUC* as may be directed by the *Superintendent*.

### 30.2 Covering up

The *Superintendent* may direct that any part of *WUC* shall not be covered up or made inaccessible without the *Superintendent's* prior written *direction*.

### 30.3 Who conducts

*Tests* shall be conducted as provided elsewhere in the *Contract* or by the *Superintendent* or a person (which may include the *Contractor*) nominated by the *Superintendent*.

### 30.4 Notice

The *Superintendent* or the *Contractor* (whichever is to conduct the *test*) shall give reasonable written notice to the other of the date, time and place of the *test*. If the other does not attend, the *test* may nevertheless proceed.

### 30.5 Delay

Without prejudice to any other right, if the *Contractor* or the *Superintendent* delays in conducting a *test*, the other, after giving reasonable written notice of intention to do so, may conduct the *test*.

### 30.6 Completion and results

On completion of the *tests*, the *Contractor* shall make good *WUC* so that it fully complies with the *Contract*.

Results of *tests* shall be promptly made available by each party to the other and to the *Superintendent*.

### 30.7 Costs

Costs in connection with testing pursuant to this clause shall be borne by the *Principal* except where the *Contract* otherwise provides or the *test* is consequent upon, or reveals a failure of the *Contractor* to comply with the *Contract* (including this clause).

## 31 Working hours

If the working hours and working days on the *site* are not stated elsewhere in the *Contract*, they shall be as notified by the *Contractor* to the *Superintendent* before commencement of *work on site*. They shall not be varied without the *Superintendent's* prior written approval, except when, in the interests of safety of persons or property, the *Contractor* finds it necessary to carry out *WUC* otherwise, whereupon the *Contractor* shall give the *Superintendent* written notice of those circumstances as early as possible.

## 32 Programming

The *Superintendent* shall give to the *Contractor* the information, materials, documents and instructions by the times or within the periods both stated in *Item 27*.

The *Contractor* shall give the *Superintendent* reasonable advance notice of when the *Contractor* needs other information, materials, documents or instructions from the *Superintendent* or the *Principal*.

The *Principal* and the *Superintendent* shall not be obliged to give any information, materials, documents or instructions earlier than the *Principal* or the *Superintendent*, as the case may be, should reasonably have anticipated at the *date of acceptance of tender*.

The *Superintendent* may direct in what order and at what time the various stages or portions of *WUC* shall be carried out. If the *Contractor* can reasonably comply with the *direction*, the *Contractor* shall do so. If the *Contractor* cannot reasonably comply, the *Contractor* shall give the *Superintendent* written notice of the reasons.

A *program* is a written statement showing the dates by which, or the times within which, the various stages or portions of *WUC* are to be carried out or completed. It shall be deemed a *Contract* document.

The *Superintendent* may direct the *Contractor* to give the *Superintendent* a *program* within the time and in the form directed.

The *Contractor* shall not, without reasonable cause, depart from a *program*.

If compliance with any such *directions* under this clause, except those pursuant to the *Contractor's* default, causes the *Contractor* to incur more or less cost than otherwise would have been incurred had the *Contractor* not been given the *direction*, the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

## 33 Suspension

### 33.1 Superintendent's suspension

The *Superintendent* may direct the *Contractor* to suspend the carrying out of the whole or part of *WUC* for such time as the *Superintendent* thinks fit, if the *Superintendent* is of the opinion that it is necessary:

- (a) because of an act, default or omission of:
  - (i) the *Superintendent*, the *Principal* or its employees, consultants, agents or other contractors (not being employed by the *Contractor*); or
  - (ii) the *Contractor*, a *consultant*, a *subcontractor* or the employees or agents of any of them;
- (b) for the protection or safety of any person or property; or
- (c) to comply with a court order.

### 33.2 Contractor's suspension

If the *Contractor* wishes to suspend the carrying out of the whole or part of *WUC*, otherwise than pursuant to subclause 39.9, the *Contractor* shall obtain the *Superintendent's* prior written approval. The *Superintendent* may approve the suspension and may impose conditions of approval.

### 33.3 Recommencement

As soon as the *Superintendent* becomes aware that the reason for any suspension no longer exists, the *Superintendent* shall direct the *Contractor* to recommence suspended *WUC* as soon as reasonably practicable.

The *Contractor* may recommence *WUC* suspended pursuant to subclause 33.2 or 39.9 at any time after reasonable notice to the *Superintendent*.

### 33.4 Cost

The *Contractor* shall bear the cost of suspension pursuant to paragraph (a)(ii) of subclause 33.1 and subclause 33.2. If the *Contractor* made the protection, safety, court order or suspension of work necessary, the *Contractor* shall bear the cost of suspension pursuant to paragraph (b) or (c) of subclause 33.1. If the *Contractor* otherwise incurs more or less cost than otherwise would have been incurred, the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

## 34 Time and progress

### 34.1 Progress

The *Contractor* shall ensure that *WUC* reaches *practical completion* by the *date for practical completion*.

### 34.2 Notice of delay

A party becoming aware of anything which will probably cause delay to *WUC* shall promptly give the *Superintendent* and the other party written notice of that cause and the estimated delay.

### 34.3 Claim

The *Contractor* shall be entitled to such extension of time for carrying out *WUC* (including reaching *practical completion*) as the *Superintendent* assesses ('*EOT*'), if:

- (a) the *Contractor* is or will be delayed in reaching *practical completion* by a *qualifying cause of delay*; and
- (b) the *Contractor* gives the *Superintendent*, within 28 days of when the *Contractor* should reasonably have become aware of that causation occurring, a written claim for an *EOT* evidencing the facts of causation and of the delay to *WUC* (including extent).

If further delay results from a *qualifying cause of delay* evidenced in a claim under paragraph (b) of this subclause, the *Contractor* shall claim an *EOT* for such delay by promptly giving the *Superintendent* a written claim evidencing the facts of that delay.

### 34.4 Assessment

When both non-qualifying and *qualifying causes of delay* overlap, the *Superintendent* shall apportion the resulting delay to *WUC* according to the respective causes' contribution.

In assessing each *EOT* the *Superintendent* shall disregard questions of whether:

- (a) *WUC* can nevertheless reach *practical completion* without an *EOT*; or
- (b) the *Contractor* can accelerate,

but shall have regard to what prevention and mitigation of the delay has not been effected by the *Contractor*.

### 34.5 Extension of time

Within 28 days after receiving the *Contractor's* claim for an *EOT*, the *Superintendent* shall give to the *Contractor* and the *Principal* a written *direction* evidencing the *EOT* so assessed. If the *Superintendent* does not do so, there shall be a deemed assessment and *direction* for an *EOT* as claimed.

Notwithstanding that the *Contractor* is not entitled to or has not claimed an *EOT*, the *Superintendent* may at any time and from time to time before issuing the *final certificate* direct an *EOT*.

### 34.6 Practical completion

The *Contractor* shall give the *Superintendent* at least 14 days written notice of the date upon which the *Contractor* anticipates that *practical completion* will be reached.

When the *Contractor* is of the opinion that *practical completion* has been reached, the *Contractor* shall in writing request the *Superintendent* to issue a *certificate of practical completion*. Within 14 days after receiving the request, the *Superintendent* shall give the *Contractor* and the *Principal* either a *certificate of practical completion* evidencing the date of *practical completion* or written reasons for not doing so.

If the *Superintendent* is of the opinion that *practical completion* has been reached, the *Superintendent* may issue a *certificate of practical completion* even though no request has been made.

### 34.7 Liquidated damages

If *WUC* does not reach *practical completion* by the date for *practical completion*, the *Superintendent* shall certify, as due and payable to the *Principal*, liquidated damages in *Item 29* for every day after the date for *practical completion* to and including the earliest of the date of *practical completion* or termination of the *Contract* or the *Principal* taking *WUC* out of the hands of the *Contractor*.

If an *EOT* is directed after the *Contractor* has paid or the *Principal* has set off liquidated damages, the *Principal* shall forthwith repay to the *Contractor* such of those liquidated damages as represent the days the subject of the *EOT*.

### 34.8 Bonus for early practical completion

If the date of *practical completion* is earlier than the date for *practical completion* the *Superintendent* shall certify as due and payable to the *Contractor* the bonus in *Item 30(a)* for every day after the date of *practical completion* to and including the date for *practical completion*.

The *Contractor* hereby waives that part of a bonus exceeding the *Item 30(b)* amount.

### 34.9 Delay damages

For every day the subject of an *EOT* for a *compensable cause* and for which the *Contractor* gives the *Superintendent* a claim for delay damages pursuant to subclause 41.1, damages certified by the *Superintendent* under subclause 41.3 shall be due and payable to the *Contractor*.

## 35 Defects liability

The *defects liability period* stated in *Item 32* shall commence on the date of *practical completion* at 4:00 pm.



The *Contractor* shall carry out rectification at times and in a manner causing as little inconvenience to the occupants or users of the *Works* as is reasonably possible.

As soon as possible after the *date of practical completion*, the *Contractor* shall rectify all *defects* existing at the *date of practical completion*.

During the *defects liability period*, the *Superintendent* may give the *Contractor* a *direction* to rectify a *defect* which:

- (a) shall identify the *defect* and the date for completion of its rectification; and
- (b) may state a date for commencement of the rectification and whether there shall be a separate *defects liability period* therefor (not exceeding that in *Item 32*, commencing at 4:00 pm on the date the rectification is completed and governed by this clause).

If the rectification is not commenced or completed by the stated dates, the *Principal* may have the rectification carried out by others but without prejudice to any other rights and remedies the *Principal* may have. The cost thereby incurred shall be certified by the *Superintendent* as moneys due and payable to the *Principal*.

## 36 Variations

### 36.1 Directing variations

The *Contractor* shall not vary *WUC* except as directed in writing.

The *Superintendent*, before the *date of practical completion*, may direct the *Contractor* to vary *WUC* by any one or more of the following which is nevertheless of a character and extent contemplated by, and capable of being carried out under, the provisions of the *Contract* (including being within the warranties in subclause 2.2).

- (a) increase, decrease or omit any part;
- (b) change the character or quality;
- (c) change the levels, lines, positions or dimensions;
- (d) carry out additional work;
- (e) demolish or remove material or work no longer required by the *Principal*.

### 36.2 Proposed variations

The *Superintendent* may give the *Contractor* written notice of a proposed *variation*.

The *Contractor* shall as soon as practicable after receiving such notice, notify the *Superintendent* whether the proposed *variation* can be effected, together with, if it can be effected, the *Contractor's* estimate of the:

- (a) effect on the *program* (including the *date for practical completion*); and
- (b) cost (including all warranties and time-related costs, if any) of the proposed *variation*.

The *Superintendent* may direct the *Contractor* to give a detailed quotation for the proposed *variation* supported by measurements or other evidence of cost.

The *Contractor's* costs for each compliance with this subclause shall be certified by the *Superintendent* as moneys due to the *Contractor*.

### 36.3 Variations for convenience of Contractor

If the *Contractor* requests the *Superintendent* to direct a *variation* for the convenience of the *Contractor*, the *Superintendent* may do so. The *direction* shall be written and may be

conditional. Unless the *direction* provides otherwise, the *Contractor* shall be entitled to neither extra time nor extra money.

### 36.4 Pricing

The *Superintendent* shall, as soon as possible, price each *variation* using the following order of precedence:

- (a) prior agreement;
- (b) applicable rates or prices in the *Contract*;
- (c) rates or prices in a *schedule of rates* or schedule of prices, even though not *Contract* documents, to the extent that it is reasonable to use them; and
- (d) reasonable rates or prices, which shall include a reasonable amount for profit and overheads,

and any deductions shall include a reasonable amount for profit but not overheads.

That price shall be added to or deducted from the *contract sum*.

## 37 Payment

### 37.1 Progress claims

The *Contractor* shall claim payment progressively in accordance with *Item 33*.

An early progress claim shall be deemed to have been made on the date for making that claim.

Each progress claim shall be given in writing to the *Superintendent* and shall include details of the value of *WUC* done and may include details of other moneys then due to the *Contractor* pursuant to provisions of the *Contract*.

### 37.2 Certificates

The *Superintendent* shall, within 14 days after receiving such a progress claim, issue to the *Principal* and the *Contractor*:

- (a) a *progress certificate* evidencing the *Superintendent's* opinion of the moneys due from the *Principal* to the *Contractor* pursuant to the progress claim and reasons for any difference ('*progress certificate*'); and
- (b) a certificate evidencing the *Superintendent's* assessment of retention moneys and moneys due from the *Contractor* to the *Principal* pursuant to the *Contract*.

If the *Contractor* does not make a progress claim in accordance with *Item 33*, the *Superintendent* may issue the *progress certificate* with details of the calculations and shall issue the certificate in paragraph (b).

If the *Superintendent* does not issue the *progress certificate* within 14 days of receiving a progress claim in accordance with subclause 37.1, that progress claim shall be deemed to be the relevant *progress certificate*.

The *Principal* shall within 7 days after receiving both such certificates, or within 21 days after the *Superintendent* receives the progress claim, pay to the *Contractor* the balance of the *progress certificate* after setting off such of the certificate in paragraph (b) as the *Principal* elects to set off. If that setting off produces a negative balance, the *Contractor* shall pay that balance to the *Principal* within 7 days of receiving written notice thereof.

Neither a *progress certificate* nor a payment of moneys shall be evidence that the subject *WUC* has been carried out satisfactorily. Payment other than *final payment* shall be payment on account only.

### 37.3 Unfixed plant and materials

The *Principal* shall not be liable to pay for unfixed plant and materials unless they are listed in *Item 34* and the *Contractor*:

- (a) provides the additional *security* in *Item 14(e)*; and
- (b) satisfies the *Superintendent* that the subject plant and materials have been paid for, properly stored and protected, and labelled the property of the *Principal*.

Upon payment to the *Contractor* and the release of any additional *security* in paragraph (a), the subject plant and materials shall be the unencumbered property of the *Principal*.

### 37.4 Final payment claim and certificate

Within 28 days after the expiry of the last *defects liability period*, the *Contractor* shall give the *Superintendent* a written *final payment claim* endorsed 'Final Payment Claim' being a progress claim together with all other claims whatsoever in connection with the subject matter of the *Contract*.

Within 42 days after the expiry of the last *defects liability period*, the *Superintendent* shall issue to both the *Contractor* and the *Principal* a *final certificate* evidencing the moneys finally due and payable between the *Contractor* and the *Principal* on any account whatsoever in connection with the subject matter of the *Contract*.

Those moneys certified as due and payable shall be paid by the *Principal* or the *Contractor*, as the case may be, within 7 days after the debtor receives the *final certificate*.

The *final certificate* shall be conclusive evidence of accord and satisfaction, and in discharge of each party's obligations in connection with the subject matter of the *Contract* except for:

- (a) fraud or dishonesty relating to *WUC* or any part thereof or to any matter dealt with in the *final certificate*;
- (b) any *defect* or omission in the *Works* or any part thereof which was not apparent at the end of the last *defects liability period*, or which would not have been disclosed upon reasonable inspection at the time of the issue of the *final certificate*;
- (c) any accidental or erroneous inclusion or exclusion of any *work* or figures in any computation or an arithmetical error in any computation; and
- (d) unresolved issues the subject of any notice of *dispute* pursuant to clause 42, served before the 7th day after the issue of the *final certificate*.

### 37.5 Interest

Interest in *Item 35* shall be due and payable after the date of default in payment.

### 37.6 Other moneys due

The *Principal* may elect that moneys due and owing otherwise than in connection with the subject matter of the *Contract* also be due to the *Principal* pursuant to the *Contract*.

### 38 Payment of workers, consultants and subcontractors

#### 38.1 Workers, consultants and subcontractors

The *Contractor* shall give in respect of a progress claim, documentary evidence of the payment of moneys due and payable to:

- (a) workers of the *Contractor* and of the *subcontractors*;
- (b) *consultants*; and
- (c) *subcontractors*,

in respect of *WUC* the subject of that claim.

If the *Contractor* is unable to give such documentary evidence, the *Contractor* shall give other documentary evidence of the moneys so due and payable to workers, *consultants* and *subcontractors*.

Documentary evidence, except where the *Contract* otherwise provides, shall be to the *Superintendent's* satisfaction.

#### 38.2 Withholding payment

Subject to the next paragraph, the *Principal* may withhold moneys certified due and payable in respect of the progress claim until the *Contractor* complies with subclause 38.1.

The *Principal* shall not withhold payment of such moneys in excess of the moneys evidenced pursuant to subclause 38.1 as due and payable to workers, *consultants* and *subcontractors*.

#### 38.3 Direct payment

Before *final payment*, the *Principal*, if not aware of a relevant relation-back day (as defined in the Corporations Law) may pay unpaid moneys the subject of subclause 38.1 directly to a worker, *consultant* or *subcontractor* where:

- (a) permitted by law;
- (b) given a court order in favour of the worker, *consultant* or *subcontractor*; or
- (c) requested in writing by the *Contractor*.

Such payment and a payment made to a worker, *consultant* or *subcontractor* in compliance with a *legislative requirement* shall be deemed to be part-satisfaction of the *Principal's* obligation to pay pursuant to subclause 37.2 or 37.4, as the case may be.

### 39 Default or insolvency

#### 39.1 Preservation of other rights

If a party breaches (including repudiates) the *Contract*, nothing in this clause shall prejudice the right of the other party to recover damages or exercise any other right or remedy.

#### 39.2 Contractor's default

If the *Contractor* commits a substantial breach of the *Contract*, the *Principal* may, by hand or by registered post, give the *Contractor* a written notice to show cause.

Substantial breaches include, but are not limited to:

- (a) failing to:

- (i) perform properly the *Contractor's design obligations*;
  - (ii) provide *security*;
  - (iii) provide evidence of insurance;
  - (iv) comply with a *direction* of the *Superintendent* pursuant to subclause 29.3; or
  - (v) use the materials or standards of *work* required by the *Contract*;
- (b) wrongful suspension of *work*;
  - (c) substantial departure from a *program* without reasonable cause or the *Superintendent's* approval;
  - (d) where there is no *program*, failing to proceed with due expedition and without delay; and
  - (e) in respect of clause 38, knowingly providing documentary evidence containing an untrue statement.

### 39.3 Principal's notice to show cause

A notice under subclause 39.2 shall state:

- (a) that it is a notice under clause 39 of these General Conditions;
- (b) the alleged substantial breach;
- (c) that the *Contractor* is required to show cause in writing why the *Principal* should not exercise a right referred to in subclause 39.4;
- (d) the date and time by which the *Contractor* must show cause (which shall not be less than 7 clear days after the notice is received by the *Contractor*); and
- (e) the place at which cause must be shown.

### 39.4 Principal's rights

If the *Contractor* fails to show reasonable cause by the stated date and time, the *Principal* may by written notice to the *Contractor*:

- (a) take out of the *Contractor's* hands the whole or part of the *work* remaining to be completed and suspend payment until it becomes due and payable pursuant to subclause 39.6; or
- (b) terminate the *Contract*.

### 39.5 Take out

The *Principal* shall complete *work* taken out of the *Contractor's* hands and may:

- (a) use materials, equipment and other things intended for *WUC*; and
- (b) without payment of compensation to the *Contractor*:
  - (i) take possession of, and use, such of the *construction plant* and other things on or in the vicinity of the *site* as were used by the *Contractor*;
  - (ii) contract with such of the *consultants* and *subcontractors*; and
  - (iii) take possession of, and use, such of the *design documents*,

as are reasonably required by the *Principal* to facilitate completion of *WUC* taken out.

If the *Principal* takes possession of *construction plant*, *design documents* or other things, the *Principal* shall maintain them and, subject to subclause 39.6, on completion of the *work* taken out, shall return such of them as are surplus.

The *Superintendent* shall keep records of the cost of completing the *work* taken out.

### 39.6 Adjustment on completion of work taken out

When *work* taken out of the *Contractor's* hands has been completed, the *Superintendent* shall assess the cost thereby incurred and shall certify as moneys due and payable accordingly the difference between that cost (showing the calculations therefor) and the amount which would otherwise have been paid to the *Contractor* if the *work* had been completed by the *Contractor*.

If the *Contractor* is indebted to the *Principal*, the *Principal* may retain *construction plant* or other things taken under subclause 39.5 until the debt is satisfied. If after reasonable notice, the *Contractor* fails to pay the debt, the *Principal* may sell the *construction plant* or other things and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess shall be paid to the *Contractor*.

### 39.7 Principal's default

If the *Principal* commits a substantial breach of the *Contract*, the *Contractor* may, by hand or by registered post, give the *Principal* a written notice to show cause.

Substantial breaches include, but are not limited to:

- (a) failing to:
  - (i) provide *security*;
  - (ii) produce evidence of insurance;
  - (iii) rectify inadequate *Contractor's* access to the *site* if that failure continues for longer than the time stated in *Item 36(a)*;
  - (iv) rectify inadequate *Contractor's* possession of the *site* if that failure continues for longer than the time stated in *Item 36(b)*; or
  - (v) make a payment due and payable pursuant to the *Contract*; and
- (b) the *Superintendent* not giving a *certificate of practical completion* or reasons as referred to in subclause 34.6.

### 39.8 Contractor's notice to show cause

A notice given under subclause 39.7 shall state:

- (a) that it is a notice under clause 39 of these General Conditions;
- (b) the alleged substantial breach;
- (c) that the *Principal* is required to show cause in writing why the *Contractor* should not exercise a right referred to in subclause 39.9;
- (d) the date and time by which the *Principal* must show cause (which shall not be less than 7 clear days after the notice is received by the *Principal*); and
- (e) the place at which cause must be shown.

### 39.9 Contractor's rights

If the *Principal* fails to show reasonable cause by the stated date and time, the *Contractor* may, by written notice to the *Principal*, suspend the whole or any part of *WUC*.

The *Contractor* shall remove the suspension if the *Principal* remedies the breach.

The *Contractor* may, by written notice to the *Principal*, terminate the *Contract*, if within 28 days of the date of suspension under this subclause the *Principal* fails:

- (a) to remedy the breach; or
- (b) if the breach is not capable of remedy, to make other arrangements to the reasonable satisfaction of the *Contractor*.

Damages suffered by the *Contractor* by reason of the suspension shall be assessed by the *Superintendent*, who shall certify them as moneys due and payable to the *Contractor*.

### 39.10 Termination

If the *Contract* is terminated pursuant to subclause 39.4(b) or 39.9, the parties' remedies, rights and liabilities shall be the same as they would have been under the law governing the *Contract* had the defaulting party repudiated the *Contract* and the other party elected to treat the *Contract* as at an end and recover damages.

If Alternative 2 of subclause 10.2 applies and the *Principal* has terminated the *Contract*, the *Principal* may also, without payment of compensation, take possession of the *design documents*.

### 39.11 Insolvency

If:

- (a) a party informs the other in writing, or creditors generally, that the party is insolvent or is financially unable to proceed with the *Contract*;
- (b) execution is levied against a party by a creditor;
- (c) a party is an individual person or a partnership including an individual person, and if that person:
  - (i) commits an act of bankruptcy;
  - (ii) has a bankruptcy petition presented against him or her or presents his or her own petition;
  - (iii) is made bankrupt;
  - (iv) makes a proposal for a scheme of arrangement or a composition; or
  - (v) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the Bankruptcy Act 1966 (Cwlth) or like provision under the law governing the *Contract*; or
- (d) in relation to a party being a corporation:
  - (i) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
  - (ii) it enters a deed of company arrangement with creditors;
  - (iii) a controller or administrator is appointed;
  - (iv) an application is made to a court for its winding up and not stayed within 14 days;
  - (v) a winding up order is made in respect of it;
  - (vi) it resolves by special resolution that it be wound up voluntarily (other than for a member's voluntary winding up); or
  - (vii) a mortgagee of any of its property takes possession of that property,
 then, where the other party is:

- (A) the *Principal*, the *Principal* may, without giving a notice to show cause, exercise the right under subclause 39.4(a); or
- (B) the *Contractor*, the *Contractor* may, without giving a notice to show cause, exercise the right under subclause 39.9.

The rights and remedies given by this subclause are additional to any other rights and remedies. They may be exercised notwithstanding that there has been no breach of contract.

#### 40 Termination by frustration

If the *Contract* is frustrated:

- (a) the *Superintendent* shall issue a *progress certificate* for *WUC* carried out to the date of frustration, evidencing the amount which would have been payable had the *Contract* not been frustrated and had the *Contractor* been entitled to and made a progress claim on the date of frustration;
- (b) the *Principal* shall pay the *Contractor*:
  - (i) the amount due to the *Contractor* evidenced by all unpaid certificates;
  - (ii) the cost of materials and equipment reasonably ordered by the *Contractor* for *WUC* and which the *Contractor* is liable to accept, but only if they will become the *Principal's* property upon payment; and
  - (iii) the costs reasonably incurred:
    - (A) removing *temporary works* and *construction plant*;
    - (B) returning to their place of engagement the *Contractor*, *consultants*, *subcontractors* and their respective employees engaged in *WUC* at the date of frustration; and
    - (C) by the *Contractor* in expectation of completing *WUC* and not included in any other payment; and
- (c) each party shall promptly release and return all *security* provided by the other.

#### 41 Notification of claims

##### 41.1 Communication of claims

The *prescribed notice* is a written notice of the general basis and quantum of the claim.

As soon as practicable after a party becomes aware of any claim in connection with the subject matter of the *Contract*, that party shall give to the other party and to the *Superintendent* the *prescribed notice* or a notice of *dispute* under subclause 42.1.

This subclause and subclause 41.3 shall not apply to any claim, including a claim for payment (except for claims which would, other than for this subclause, have been included in the *final payment claim*), the communication of which is required by another provision of the *Contract*.

##### 41.2 Liability for failure to communicate

The failure of a party to comply with the provisions of subclause 41.1 or to communicate a claim in accordance with the relevant provision of the *Contract* shall, inter alia, entitle the other party to damages for breach of the *Contract* but shall neither bar nor invalidate the claim.



### 41.3 Superintendent's decision

If within 28 days of giving the *prescribed notice* the party giving it does not notify the other party and the *Superintendent* of particulars of the claim, the *prescribed notice* shall be deemed to be the claim.

Within 56 days of receipt of the *prescribed notice* the *Superintendent* shall assess the claim and notify the parties in writing of the decision. Unless a party within a further 28 days of such notification gives a notice of *dispute* under subclause 42.1 which includes such decision, the *Superintendent* shall certify the amount of that assessment to be moneys then due and payable.

## 42 Dispute resolution

### 42.1 Notice of dispute

If a difference or dispute (together called a '*dispute*') between the parties arises in connection with the subject matter of the *Contract*, including a *dispute* concerning:

- (a) a *Superintendent's direction*; or
- (b) a claim:
  - (i) in tort;
  - (ii) under statute;
  - (iii) for restitution based on unjust enrichment or other quantum meruit; or
  - (iv) for rectification or frustration
 or like claim available under the law governing the *Contract*,

then either party shall, by hand or by registered post, give the other and the *Superintendent* a written notice of *dispute* adequately identifying and providing details of the *dispute*.

Notwithstanding the existence of a *dispute*, the parties shall, subject to clauses 39 and 40 and subclause 42.4, continue to perform the *Contract*.

### 42.2 Conference

Within 14 days after receiving a notice of *dispute*, the parties shall confer at least once to resolve the *dispute* or to agree on methods of doing so. At every such conference each party shall be represented by a person having authority to agree to such resolution or methods. All aspects of every such conference except the fact of occurrence shall be privileged.

If the *dispute* has not been resolved within 28 days of service of the notice of *dispute*, that *dispute* shall be and is hereby referred to arbitration.

### 42.3 ~~Arbitration~~ Expert Determination

If within a further 14 days the parties have not agreed upon an ~~arbitrator~~ expert, the ~~arbitrator~~ expert shall be nominated by the person in *Item 37(a)*. The arbitration shall be conducted in accordance with the rules in *Item 37(b)*.

### 42.4 Summary relief

Nothing herein shall prejudice the right of a party to institute proceedings to enforce payment due under the *Contract* or to seek injunctive or urgent declaratory relief.

43 Waiver of conditions

Except as provided at law or in equity or elsewhere in the Contract, none of the terms of the Contract shall be varied, waived, discharged or released, except with the prior written consent of the parties.

44 Shared cost savings

The Contract includes a document entitled 'Cost Plan for the design and construction of the Tennyson Reach Parkland' (Cost Plan) dated [TBA].

The Cost Plan sets out an itemised account of the contract sum on a subcontract and supplier basis and also includes an itemised account of the Contractor's fixed preliminaries costs to carry out the Works.

Within 30 Business Days of the date of practical completion for each separable portion, the Contractor must provide to the Principal the following Documents:

- (a) A copy of each subcontract and supply agreement.
(b) A spreadsheet that sets out the amount shown in the cost plan (Budgeted Amount) and the actual subcontract or supply agreement amount (Actual Amount), for each subcontractor and supplier.
(c) A calculation of the cost saving being the sum of the difference of the Budgeted Amount and the Actual Amount for each supplier and subcontractor that carried out any part of the Works.

The Principal must notify the Contractor within 3 Business Days of receipt of the Documents referred to above if it disagrees with the Contractor's calculation of the cost saving and provide its reasons.

If either party disagrees with the calculation of the cost savings, either party may serve on the other party a notice of dispute pursuant to clause 42.1.

The Contractor must pay the Principal 50% of the cost saving within 10 Business Days of receipt of the Principal's agreement of the cost savings or within 10 Business Days of a decision made by Expert Determination under clause 42.3.

45 GST

Words or expressions used in this clause which are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cwth) (GST Act), have the same meaning in this clause.

Any consideration to be paid or provided for a supply made under or in connection with this Contract, does not include an amount on account of GST.

Despite any other provision in this Contract, if a party (Supplier) makes a supply under or in connection with this Contract on which GST is imposed:

- (a) the consideration payable or to be provided for that supply under this Contract but for the application of this clause (GST exclusive consideration) is increased by, and the recipient of the supply (Recipient) must also pay to the Supplier, an amount equal to the GST payable by the Supplier on that supply in accordance with the GST Act; and
(b) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.
(c) If a payment to a party under this Contract is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then payment

Before start of work?

restrict to transit between Council & Mis-a-c

preliminary

assessed by ind. QS subject to approval

subject to RPI

define build exclusion of time for info + clarification

will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

(d) The Supplier will provide a tax invoice to the Recipient which complies with the GST Act.

(e) The clause will not apply where any amount payable or other consideration to be provided under this Contract is expressly stated to be inclusive of GST.

97 ~~46~~ Entire Agreement

This Contract contains everything that the parties have agreed on in relation to the Works. No party can rely on an earlier document, or on anything said or done by another party (or by a director, officer, agent or employee of that party) before this Contract was executed.


98 ~~70~~ — Maintenance

DRAFT

**ANNEXURE to the Australian Standard  
General Conditions of Contract for  
Design and Construct**

# Part A

This Annexure shall be completed and issued as part of the tender documents and, subject to any amendments to be incorporated into the *Contract*, is to be attached to the General Conditions of Contract and shall be read as part of the *Contract*.

Item		
1	<i>Principal</i> (clause 1)	<u>Brisbane City Council</u> <u>ABN 72 002 765 795</u>
2	<i>Principal's address</i>	<u>[TBA]</u> Phone ..... Fax .....
3	<i>Contractor</i> (clause 1)	<u>Mirvac Constructions (Qld) Pty Limited</u> <u>ABN 88 088 536 476</u>
4	<i>Contractor's address</i>	<u>Level 2, 164 Grey Street South Bank QLD 4101</u> Phone <u>[TBA]</u> Fax <u>[TBA]</u>
5	<i>Superintendent</i> (clause 1)	<u>[TBA]</u>  ..... ACN ..... ABN .....
6	<i>Superintendent's address</i>	<u>[TBA]</u> Phone ..... Fax .....
7	(a) <i>Date for practical completion</i> (clause 1)	<u>(Refer to details in separable Part A and Part B)</u>
	OR	
	(b) <i>Period of time for practical completion</i> (clause 1)	<u>(Refer to details in separable Part A and Part B)</u>

† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A  
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8 Governing law (clause 1(h)) ..... If nothing stated, that of the jurisdiction where the *site* is located

9 (a) Currency (clause 1(g)) ..... If nothing stated, that of the jurisdiction where the *site* is located

(b) Place for payments (clause 1(g)) ..... If nothing stated, the *Principal's* address

(c) Place of business of bank (clause 1(d)) ..... If nothing stated, the place nearest to where the *site* is located

10 The *Principal's* project requirements are described in the following documents (clause 1) 1 Preliminary design (if included in Item 11) 2 Schedule of rates ..... 3 Cost Plan for the design and construction of the Tennyson Reach Parklands (Cost Plan) dated [TBA]

*to approved*



11 Preliminary design (clause 1) (a) A preliminary design ~~is included~~ *is not included* *set* in the *Principal's* project requirements. If neither deleted, a preliminary design is not included

- (b) The preliminary design documents are:
- 1 Drawing entitled 'Masterplan', referenced 110406 and dated 17/05/11
  - 2 Specification entitled 'Schematic Design Package', referenced 110406, dated 5/12/11
  - 3 Scope of works

4 *to be approved by Council,*

12 Quantities in *schedule of rates*, limits of accuracy (subclause 2.5) Upper Limit Lower Limit

\* Delete one

48 [Redacted]

10  
18%

13 Provisional sum, percentage for profit and overheads, preliminaries and attendance (clause 3)

[Redacted]

cancel if reinstated liquidated damages - e

† 14 Contractor's security

(a) Form (clause 5)

No security or retention is required under this contract

(b) Amount or maximum percentage of contract sum (clause 5)

If nothing stated, 5% of the contract sum

(c) If retention moneys, percentage of each progress certificate (clause 5 and subclause 37.2)

If nothing stated, 10%, until the limit in Item 14(b)

(d) Time for provision (except for retention moneys) (clause 5)

within ..... days after date of acceptance of tender  
If nothing stated, 28 days

(e) Additional security for unfixed plant and materials (subclauses 5.4 and 37.3)

..... \$ .....

(f) Contractor's security upon certificate of practical completion is reduced by (subclause 5.4)

.....% of amount held  
If nothing stated, 50% of amount held

† 15 Principal's security

(a) Form (clause 5)

No security or retention is required under this Contract

(b) Amount or maximum percentage of contract sum (clause 5)

If nothing stated, nil

(c) Time for provision (clause 5)

within ..... days after date of acceptance of tender  
If nothing stated, 28 days

(d) Principal's security upon certificate of practical completion is reduced by (subclause 5.4)

.....% of amount held  
If nothing stated, 50% of amount held

† If applicable, delete and instead complete equivalent Item in the separable portions section of the Annexure Part A

16 *Principal-supplied documents*  
(subclause 8.2)

Document	No. of copies
1 <i>Principal's project requirements</i>	.....
2 <u>[Principal to advise]</u>	.....
3 .....	.....
4 .....	.....
5 .....	.....

If nothing stated,  
5 copies

17 Documents, numbers of copies, and  
the times or stages at which they are to  
be supplied by the *Contractor*  
(subclause 8.3)

Document	No. of copies	Time/stage
1 .....	.....	.....
2 .....	.....	.....
3 .....	.....	.....
4 .....	.....	.....
5 .....	.....	.....

18 Time for *Superintendent's direction*  
about documents  
(subclause 8.3)

1 day  
If nothing stated, 14 days

19 Subcontracting  
(subclause 9.2)

*Work by consultants*

*Work by others*

.....	.....
.....	.....
.....	.....
.....	.....

20 Novation  
(subclause 9.4)

Subcontractor or  
selected subcontractor,  
as the case may be

Particular part of the  
preliminary design or  
selected subcontract work,  
as the case may be

.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....

21 Intellectual property rights granted  
to the Principal,  
the Alternative applying  
(subclause 10.2)

If nothing stated, Alternative 1 applies

22 Legislative requirements

(a) Those excepted  
(subclause 11.1)

.....  
.....  
.....

(b) Identified WUC  
(subclause 11.2(a)(iii))

.....  
.....

23 Insurance of the Works  
(clause 16A)

(a) Alternative applying

If nothing stated, Alternative 1 applies

If Alternative 1 applies

(b) Provision for demolition and  
removal of debris

..... \$ .....

OR

..... % of the contract sum

(c) Provision for consultants' fees and  
Principal's consultants' fees

..... \$ .....

OR

..... % of the contract sum



(d) Value of materials or things to be supplied by the *Principal* ..... \$ .....

(e) Additional amount or percentage ..... \$ .....

OR

.....% of the total of (a) to (d) in clause 16A

24 Professional indemnity insurance (clause 16B and subclause 9.2(d))

(a) Levels of cover of Contractor's professional indemnity insurance shall be not less than ..... \$ .....  
If nothing stated, \$5 000 000

(b) Period for which Contractor's professional indemnity insurance shall be maintained after issue of the final certificate .....  
If nothing stated, 6 years

Category	Levels of cover
.....	\$ .....
.....	\$ .....
.....	\$ .....
.....	\$ .....
	If nothing stated, \$1 000 000

(d) Period for which each consultant's professional indemnity insurance shall be maintained after issue of the final certificate .....  
If nothing stated, 6 years

25 Public liability insurance (clause 17)

(a) Alternative applying .....  
If nothing stated, Alternative 1 applies

If Alternative 1 applies

(b) Amount per occurrence shall be not less than ..... \$ .....  
If nothing stated, \$10 000 000

- 26 (a) Time for giving access (subclause 24.1) within ..... days of *date of acceptance of tender*  
If nothing stated, 14 days
- (b) Time for giving possession (subclause 24.1) within ..... days of *date of acceptance of tender*  
If nothing stated, 14 days

27 The information, materials, documents or instructions and the times by, or periods within which they are to be given to the <i>Contractor</i> (clause 32)	Documents or instructions	Times/Periods
	1 .....	.....
	2 .....	.....
	3 .....	.....
	4 .....	.....
	5 .....	.....

28 *Qualifying causes of delay* ~~causes~~ being causes of delay for which EOTs will ~~not~~ be granted (paragraph (b)(iii) of clause 1 and subclause 34.3)

.....

.....

.....

† 29 Liquidated damages, rate (subclause 34.7) \$ Nil per day 46m / 140000

† 30 Bonus for early *practical completion* (subclause 34.8)

(a) Rate ..... per day \$ ..... per day

(b) Limit ..... \$ .....

OR  
.....% of *contract sum*  
If nothing stated, there is no waiver

† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A

† 31 Other compensable causes (paragraph (b) of clause 1 and subclause 34.9)

or omissions of the Principal that cause a delay to the Works  
The delivery of statutory approvals later than that which is prescribed by statute that cause delays to the Works  
All time that is spent liaising with statutory authorities required to procure all statutory approvals for the design and construction of the Stage III Works that is in excess of 20 Business Days.

32 Defects Liability period (clause 35)

If nothing stated, 12 months

33 Progress Claims (subclause 37.1)

The contract sum at the date that both parties executed the Contract is \$6,000,000.00 Excl GST.

(a) Times for progress claims

On the..... day each month for WUC  
For work up to..... day of that month

OR

(b) Stages of WUC for progress claims

The Principal must pay in accordance with the following schedule upon achieving the milestone events set out below:

Stage I

Completion of the bulk earthworks	\$3,054,000.00
At practical completion	\$1,500,000.00
At expiry of defects liability period of Stage I	\$500,000.00

Stage II

Completion of the bulk earthworks	\$750,000.00
At practical completion	\$100,000.00
At expiry of defects liability period of Stage II	\$90,000.00

Stage III

At practical completion	\$5,000.00
At expiry of defects liability period of Stage III	\$1,000.00

All of the above amounts are stated exclusive of GST.

Man & son  
get  
Leave Stages  
Only  
remove  
numbers

TBA

\$6m

34 Unfixed plant and materials for which .....  
 payment claims may be .....  
 made .....  
 (subclause 37.3) .....

35 Interest rate on overdue payments ..... % per annum  
 (subclause 37.5) If nothing stated, 18% per annum

36 (a) Time for *Principal* to rectify ..... days  
 inadequate access .....  
 (subclause 39.7(a)(iii)) If nothing stated, 14 days

(b) Time for *Principal* to rectify ..... days  
 inadequate possession .....  
 (subclause 39.7(a)(iv)) If nothing stated, 14 days

37 ~~Arbitration~~ Expert Determination  
 (subclause 42.3)

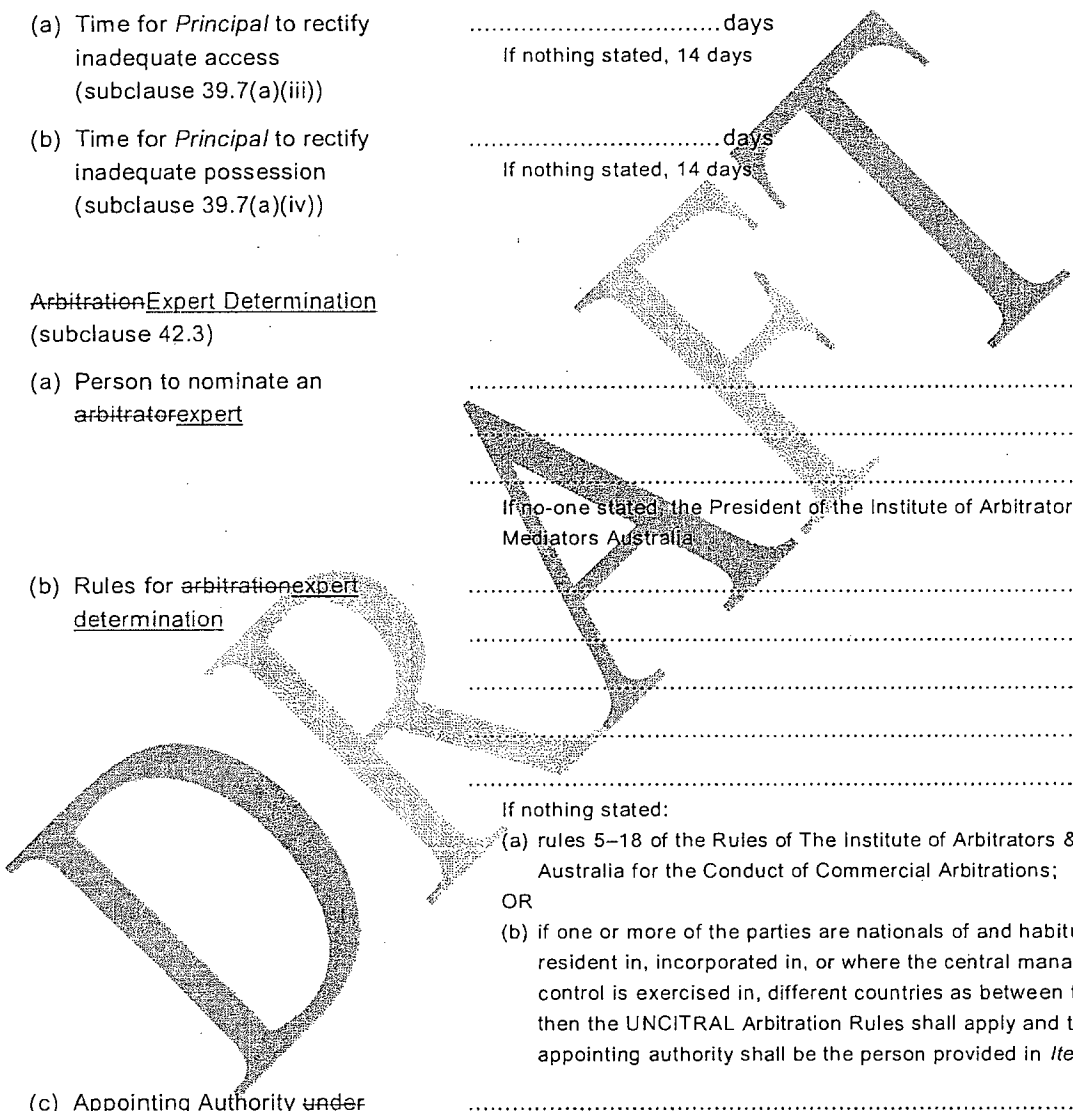
(a) Person to nominate an .....  
 arbitrator expert .....

If no-one stated, the President of the Institute of Arbitrators & Mediators Australia

(b) Rules for ~~arbitration~~ expert  
determination .....

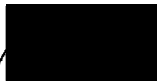
If nothing stated:  
 (a) rules 5–18 of the Rules of The Institute of Arbitrators & Mediators Australia for the Conduct of Commercial Arbitrations;  
 OR  
 (b) if one or more of the parties are nationals of and habitually resident in, incorporated in, or where the central management and control is exercised in, different countries as between the parties, then the UNCITRAL Arbitration Rules shall apply and the appointing authority shall be the person provided in *Item 37(c)*

(c) Appointing Authority under .....  
~~UNCITRAL Arbitration Rules~~ .....  
 If no-one stated, the President of the institute of Arbitrators & Mediators Australia



A1

A1



# Part A

## Separable Portions

- This section should be completed only if the *Contract* provides for *separable portions*.
- Complete separate pages for each *separable portion*, which should be numbered appropriately. Any balance of the *Works* should also be a *separable portion*.

Separable portion  
(clause 1)

Description of *separable portion*  
(clause 1)

Stage I

the area shown as Stage I on drawing entitled 'Masterplan' referenced 110406 and dated 17/05/11

Item

7 (a) *Date for practical completion*  
(clause 1)

OR

(b) *Period of time for practical completion*  
(clause 1)

45 weeks from the date that this contract is executed by both parties

14 *Contractor's security*

(a) *Form*  
(clause 5)

The Contractor is not required to provide any security under this Contract

(b) *Amount or maximum percentage value of this separable portion*  
(clause 5)

Nil % .....  
If nothing stated, 5% of value of this separable portion

(c) *If retention moneys, percentage of each progress certificate applicable to this separable portion*  
(clause 5 and subclause 37.2)

.....%, until the limit in *Item 14(b)*  
If nothing stated, 10%, until the limit in *Item 14(b)*

(d) *Time for provision (except for retention moneys)*  
(clause 5)

within ..... days after *date of acceptance of tender*  
If nothing stated, 28 days

(e) *Additional security for unfixed plant and materials*  
(subclauses 5.4 and 37.3)

..... \$ .....

(f) *Contractor's security upon certificate of practical completion is reduced by*  
(subclause 5.4)

.....% of amount held  
If nothing stated, 50% of amount held

15 *Principal's security*

(a) Form (clause 5) The Principal is not required to provide any security under this Contract

(b) Amount or maximum percentage of value of this *separable portion* (clause 5) .....  
If nothing stated, nil

(c) Time for provision (clause 5) within ..... days after *date of acceptance of tender*  
If nothing stated, 28 days

(d) *Principal's security upon certificate of practical completion* is reduced by (subclause 5.4) .....% of amount held  
If nothing stated, 50% of amount held

29 Liquidated damages, rate (subclause 34.7) \$ Nil per day

30 Bonus for early *practical completion* (subclause 34.8) \$ Nil

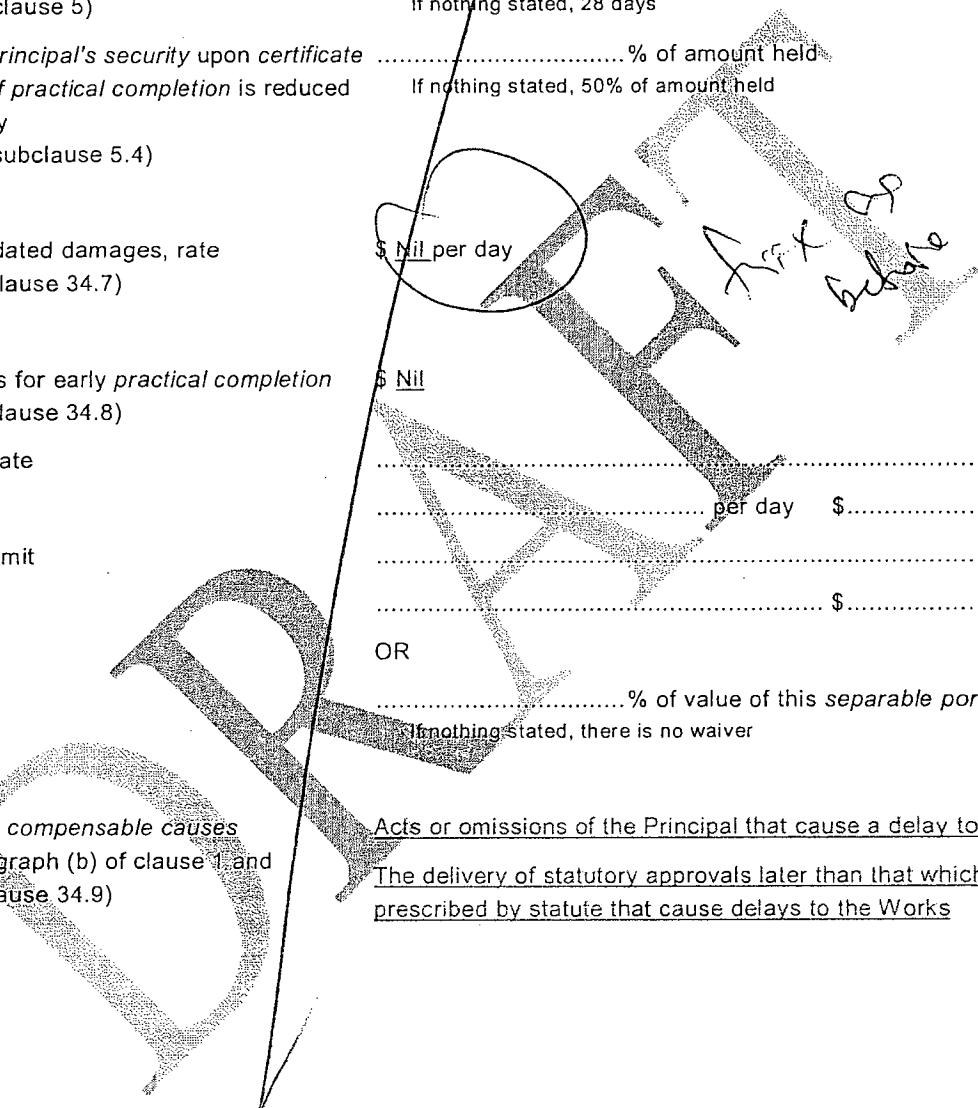
(a) Rate .....  
..... per day \$ ..... per day

(b) Limit .....  
\$ .....

OR

.....% of value of this *separable portion*  
If nothing stated, there is no waiver

31 *Other compensable causes* (paragraph (b) of clause 1 and subclause 34.9) Acts or omissions of the Principal that cause a delay to the Works  
The delivery of statutory approvals later than that which is prescribed by statute that cause delays to the Works



# Part A

## Separable Portions

- This section should be completed only if the *Contract* provides for *separable portions*.
- Complete separate pages for each *separable portion*, which should be numbered appropriately. Any balance of the *Works* should also be a *separable portion*.

Separable portion (clause 1)	Stage II	the portion
Description of <i>separable portion</i> (clause 1)	the area shown as Stage II on drawing entitled 'Masterplan', referenced 110406 and dated 17/05/14	
Item		
7 (a) <i>Date for practical completion</i> (clause 1)	[Redacted]	
OR		
(b) <i>Period of time for practical completion</i> (clause 1)	104 <del>140 weeks</del> from the date that this contract is executed by both parties	
14 <i>Contractor's security</i>		
(a) <i>Form</i> (clause 5)	The Contractor is not required to provide any security under this Contract	
(b) <i>Amount or maximum percentage value of this separable portion</i> (clause 5)	Nil % If nothing stated, 5% of value of this separable portion	
(c) <i>If retention moneys, percentage of each progress certificate applicable to this separable portion</i> (clause 5 and subclause 37.2)	.....%, until the limit in <i>Item 14(b)</i> If nothing stated, 10%, until the limit in <i>Item 14(b)</i>	
(d) <i>Time for provision (except for retention moneys)</i> (clause 5)	within ..... days after <i>date of acceptance of tender</i> If nothing stated, 28 days	
(e) <i>Additional security for unfixed plant and materials</i> (subclauses 5.4 and 37.3)	..... \$ .....	
(f) <i>Contractor's security upon certificate of practical completion is reduced by</i> (subclause 5.4)	.....% of amount held If nothing stated, 50% of amount held	

15 *Principal's security*

(a) Form (clause 5) The Principal is not required to provide any security under this Contract

(b) Amount or maximum percentage of value of this separable portion (clause 5) .....  
If nothing stated, nil

(c) Time for provision (clause 5) within ..... days after *date of acceptance of tender*  
If nothing stated, 28 days

(d) *Principal's security upon certificate of practical completion* is reduced by (subclause 5.4) .....% of amount held  
If nothing stated, 50% of amount held

29 Liquidated damages, rate (subclause 34.7) \$ Nil per day

30 Bonus for early practical completion (subclause 34.8) \$ Nil

(a) Rate .....  
..... per day \$ ..... per day

(b) Limit .....  
..... \$ .....

OR

.....% of value of this separable portion  
If nothing stated, there is no waiver

31 Other compensable causes (paragraph (b) of clause 1 and subclause 34.9) Acts or omissions of the Principal that cause a delay to the Works  
the delivery of statutory approvals later than that which is  
prescribed by statute that cause delays to the Works



# Part A

## Separable Portions

- This section should be completed only if the *Contract* provides for *separable portions*.
- Complete separate pages for each *separable portion*, which should be numbered appropriately. Any balance of the *Works* should also be a *separable portion*.

Separable portion  
(clause 1)

Description of separable portion  
(clause 1)

Stage III

~~the portion~~

the area shown as Stage III on drawing entitled 'Masterplan', referenced 110406 and dated 17/05/11

Item

7 (a) Date for practical completion  
(clause 1)

OR

(b) Period of time for practical completion  
(clause 1)

52 weeks from the date that this contract is executed by both parties

14 Contractor's security

(a) Form  
(clause 5)

The Contractor is not required to provide any security under this Contract

(b) Amount or maximum percentage value of this separable portion  
(clause 5)

Nil%  
If nothing stated, 5% of value of this separable portion

(c) If retention moneys, percentage of each progress certificate applicable to this separable portion  
(clause 5 and subclause 37.2)

.....%, until the limit in Item 14(b)  
If nothing stated, 10%, until the limit in Item 14(b)

(d) Time for provision (except for retention moneys)  
(clause 5)

within ..... days after date of acceptance of tender  
If nothing stated, 28 days

(e) Additional security for unfixed plant and materials  
(subclauses 5.4 and 37.3)

..... \$ .....

(f) Contractor's security upon certificate of practical completion is reduced by  
(subclause 5.4)

.....% of amount held  
If nothing stated, 50% of amount held

- 15 Principal's security
- (a) Form (clause 5) The Principal is not required to provide any security under this Contract
- (b) Amount or maximum percentage of value of this separable portion (clause 5) .....  
If nothing stated, nil
- (c) Time for provision (clause 5) within ..... days after date of acceptance of tender  
If nothing stated, 28 days
- (d) Principal's security upon certificate of practical completion is reduced by (subclause 5.4) .....% of amount held  
If nothing stated, 50% of amount held
- 29 Liquidated damages, rate (subclause 34.7) \$ Nil per day
- 30 Bonus for early practical completion (subclause 34.8) \$ Nil
- (a) Rate .....  
..... per day \$ ..... per day
- (b) Limit .....  
..... \$ .....
- OR
- .....% of value of this separable portion  
If nothing stated, there is no waiver
- 31 Other compensable causes (paragraph (b) of clause 4 and subclause 34.9) Acts or omissions of the Principal that cause a delay to the Works  
The delivery of statutory approvals later than that which is prescribed by statute that cause delays to the Works  
All time that is spent liaising with statutory authorities required to procure all statutory approvals for the design and construction of the Stage III Works that is in excess of 60 days.

Annexure to the Australian Standard  
General Conditions of Contract for  
Design and Construct

# Part B

- This form may also be used where the *Principal* is required to provide an unconditional undertaking, by substituting *Principal* for *Contractor* and vice versa, wherever occurring.

## Approved form of unconditional undertaking

(clause 1 – security)

At the request of .....

ACN..... ABN ..... (the *Contractor*) and in consideration of .....

ACN..... ABN ..... (the *Principal*) accepting this undertaking  
in respect of the *Contract* for .....

..... (the *Project*) .....

ACN..... ABN ..... (the *Financial Institution*) unconditionally  
undertakes to pay on demand any sum or sums which may from time to time be demanded by the *Principal* to a  
maximum aggregate sum of .....

..... (\$ ..... )

The undertaking is to continue until notification has been received from the *Principal* that the sum is no longer  
required by the *Principal* or until this undertaking is returned to the *Financial Institution* or until payment to the  
*Principal* by the *Financial Institution* of the whole of the sum or such part as the *Principal* may require.

Should the *Financial Institution* be notified in writing, purporting to be signed by .....  
..... for and on behalf of the *Principal* that the *Principal* desires  
payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the *Financial  
Institution* will make the payment or payments to the *Principal* forthwith without reference to the *Contractor* and  
notwithstanding any notice given by the *Contractor* not to pay same.

Provided always that the *Financial Institution* may at any time without being required so to do pay to the  
*Principal* the sum of .....

..... (\$ ..... )

less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be  
required and specified by the *Principal* and thereupon the liability of the *Financial Institution* hereunder shall  
immediately cease.

Dated at ..... this ..... day of ..... 20.....

Annexure to the Australian Standard  
General Conditions of Contract for  
Design and Construct

# Part C

## Deed of novation

(subclause 9.2(c))

This Deed made the ..... day of ..... 20 .....  
between ..... (the *Principal*)  
of ..... ACN ..... ABN .....  
and ..... (the *Contractor*)  
of ..... ACN ..... ABN .....  
and ..... (the *Subcontractor*)  
of ..... ACN ..... ABN .....  
and ..... (the *Incoming Contractor*)  
of ..... ACN ..... ABN .....  
witness that:

- 1 Upon receipt by the *Subcontractor* of the sum certified by the *Superintendent* as owing under the prior contract described in the Schedule hereto:
  - (a) the prior contract shall be discharged;
  - (b) the *Subcontractor* shall release the *Contractor* from the further performance of the prior contract and from all claims and demands in connection with the prior contract;
  - (c) the *Incoming Contractor* shall punctually perform the obligations of the *Contractor* under the prior contract as far as they are not performed. The *Incoming Contractor* acknowledges itself bound by the provisions of the prior contract as if the *Incoming Contractor* had been named in the prior contract; and
  - (d) the *Subcontractor* shall punctually perform like obligations and be bound to the *Incoming Contractor* as if the provisions of the prior contract were incorporated herein.
- 2 The *Principal* and *Subcontractor* each warrant to the *Incoming Contractor* that:
  - (a) subcontract work carried out to the date hereof is in accordance with the provisions of the prior contract; and
  - (b) all claims and demands in connection with the prior contract have been made to the *Contractor*.
- 3 The *Principal* and *Subcontractor* each indemnifies the *Incoming Contractor* from all claims and demands of the *Contractor*, *Principal* and *Subcontractor* in connection with the prior contract.
- 4 A dispute between:
  - (a) the *Principal* and the *Subcontractor* in connection with the *Superintendent's* certification of the sum owing under the prior contract; or
  - (b) the *Incoming Contractor* and the *Subcontractor* in connection with clause 1(c) or 1(d), shall be resolved pursuant to the provisions of AS 4903—2000 Subcontract Conditions for Design and Construct which for the purposes of this clause 4 are incorporated herein.
- 5 This Deed shall be governed by the laws of the jurisdiction stated in *Item 8* of the *Contract* between the *Principal* and *Contractor*.

**Schedule**

.....

.....

.....

.....

In witness whereof the parties have executed this DEED OF NOVATION by affixing their seals.

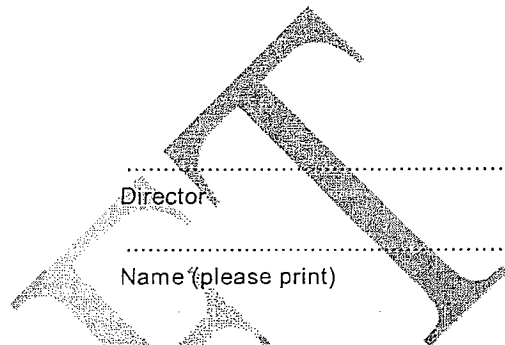
THE COMMON SEAL of the *Principal*  
was affixed to this document in the presence of:

.....  
Secretary/Director

.....  
Name (please print)

.....  
Director

.....  
Name (please print)



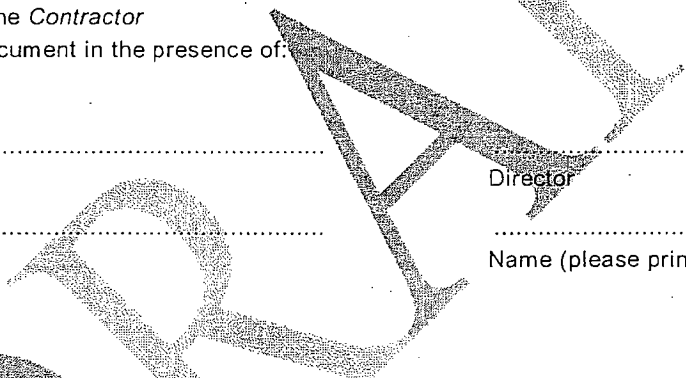
THE COMMON SEAL of the *Contractor*  
was affixed to this document in the presence of:

.....  
Secretary/Director

.....  
Name (please print)

.....  
Director

.....  
Name (please print)



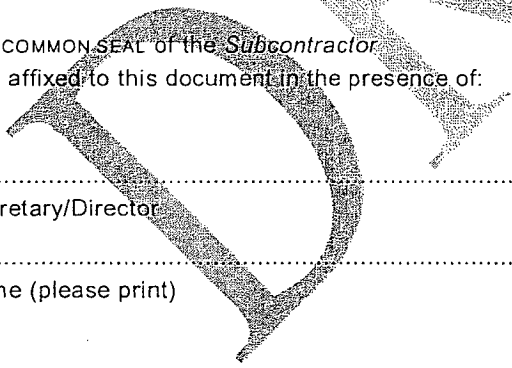
THE COMMON SEAL of the *Subcontractor*  
was affixed to this document in the presence of:

.....  
Secretary/Director

.....  
Name (please print)

.....  
Director

.....  
Name (please print)



THE COMMON SEAL of the *Incoming Contractor*  
was affixed to this document in the presence of:

.....  
Secretary/Director

.....  
Name (please print)

.....  
Director

.....  
Name (please print)

Annexure to the Australian Standard  
General Conditions of Contract for  
Design and Construct

# Part D

**Note:** Usually the *continuing party* is the subcontractor, selected subcontractor or consultant, as the case may be.

## Deed of novation

(subclause 9.4)

This Deed made this ..... day of ..... 20 .....

between ..... (the *outgoing party*)

of ..... ACN ..... ABN .....

and ..... (the *incoming party*)

of ..... ACN ..... ABN .....

and ..... (the *continuing party*)

of ..... ACN ..... ABN .....

witness that:

- 1 Upon receipt by the *continuing party* of all moneys owing under the prior contract:
  - (a) the *incoming party* shall punctually perform the obligations of the *outgoing party* under the prior contract described in the Schedule hereto as far as they are not performed. The *incoming party* acknowledges itself bound by the provisions of the prior contract as if the *incoming party* had been named as the *outgoing party* in the prior contract;
  - (b) the *continuing party* punctually perform like obligations and be bound to the *incoming party* as if the provisions of the prior contract were incorporated herein; and
  - (c) the *outgoing party* and *continuing party* shall each release and forever discharge the other from the further performance of the prior contract and from all claims and demands in connection with the prior contract.
- 2 The *outgoing party* and *continuing party* each warrant to the *incoming party* that *preliminary design or selected subcontract work*, as the case may be, carried out to the date hereof, is in accordance with the provisions of the prior contract.
- 3 This Deed shall be governed by the governing law of the prior contract between the *outgoing party* and *continuing party*.

**Schedule**

.....

.....

.....

.....

In witness whereof the parties have executed this DEED OF NOVATION by affixing their seals.

THE COMMON SEAL of the *outgoing party* was affixed to this document in the presence of:

.....  
Secretary/Director

.....  
Name (please print)

.....  
Director

.....  
Name (please print)

THE COMMON SEAL of the *incoming party* was affixed to this document in the presence of:

.....  
Secretary/Director

.....  
Name (please print)

.....  
Director

.....  
Name (please print)

THE COMMON SEAL of the *continuing party* was affixed to this document in the presence of:

.....  
Secretary/Director

.....  
Name (please print)

.....  
Director

.....  
Name (please print)

Annexure to the Australian Standard  
General Conditions of Contract for  
Design and Construct

# Part E

**Deletions, amendments and additions**

1 The following clauses have been deleted from AS 4902—2000

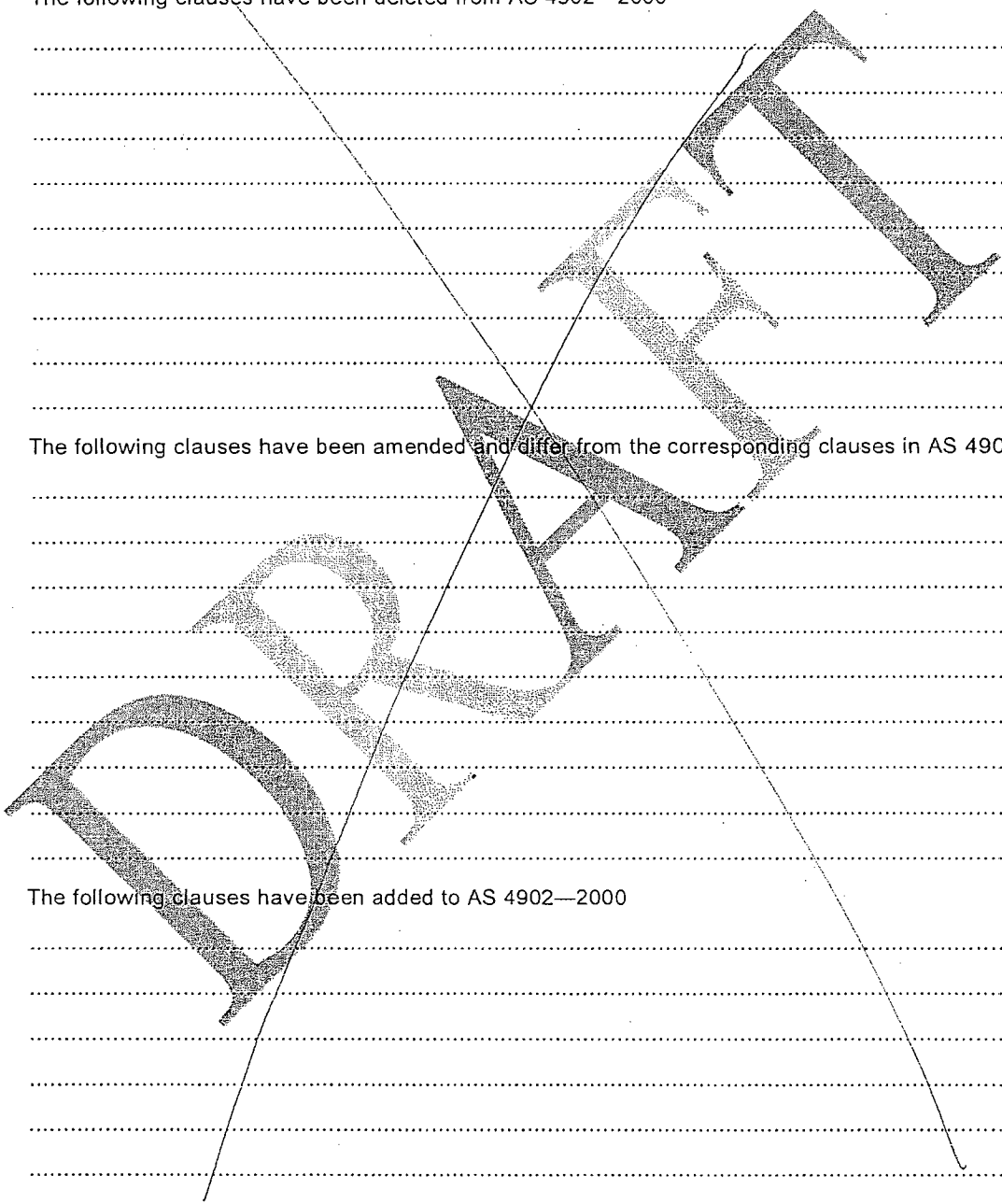
.....  
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.....  
.....  
.....  
.....  
.....

2 The following clauses have been amended and differ from the corresponding clauses in AS 4902—2000

.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....

3 The following clauses have been added to AS 4902—2000

.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....





## † INDEX

<i>Clause</i>	<i>Clause</i>		
Acceleration .....	34.4(b)	fees and charges .....	11.2
Acceptance (see Approval)		interest .....	37.5
Acceptance of tender		liquidated damages .....	34.7
date of, defined .....	1	minerals, fossils and relics .....	24.3
formal instrument of agreement .....	6	omitted items .....	2.5
security—time for .....	5.1, <i>Items</i> 14(d), 15(c)	on completion of work taken out of the hands of the Contractor .....	39.6
Access (see also possession of site)		pricing variations .....	36.4
during defects liability period .....	35	protection of people and property .....	12
for Principal and others .....	24.2	provisional sums .....	3
for testing .....	30.1	quantities .....	2.5
Accident (see also Insurance, Urgent protection and Protection of persons and property)		set-offs by the Principal .....	37.2, 37.6
reinstatement of damage .....	14.2	suspension by Contractor .....	39.9
to employees .....	18	urgent protection .....	13
to third parties .....	15, 17		
to WUC .....	14, 16A	Agreement	
Accord and satisfaction .....	37.4	Contract in absence of formal instrument .....	6
Actions		formal instrument of .....	6
arbitration .....	42	interpretation of .....	1, 8.1
indemnification by Contractor .....	10, 15.1	rectification when dispute .....	42.1
indemnification by Principal .....	10, 15.2	Alignments (see Survey mark)	
Acts, (of Parliament) (see Legislative requirements)		Alternative clauses .....	10.2, 16A, 17
Additions and/or deductions		Ambiguity in documents .....	8.1
adjustment generally .....	2.1	Appliances (see Construction plant)	
care of survey marks .....	26.3	Approval	
changes in legislative requirements .....	11.2	effect of certificates .....	37.2
contract sum definition, excluded in .....	1	examination and testing .....	30
discrepancies in documents .....	8.1	extension of time .....	34.4, 34.5
error in setting out .....	26.2	of documents .....	8.3
generally .....	2.1	of form of security .....	1
legislative requirements .....	11.2	of insurance policies .....	16A, 17
minerals, fossils and relics .....	24.3	of media releases .....	8.6
order of work .....	32	of municipal and statutory authorities (see Legislative requirement)	
pricing variations generally .....	36.4	of subcontracting .....	9.2
programming .....	32	of variations of convenience .....	36.3
provisional sums .....	3	to suspension by Contractor .....	33.2
suspension .....	33.4	working days .....	31
variations .....	36.4	working hours .....	31
Address for service (see also Service)		Approved form of unconditional undertaking	
change of .....	7	security .....	1
Contractor .....	7, <i>Item</i> 4	form of .....	Annexure Part B
Principal .....	7, <i>Item</i> 2	Arbitration	
Superintendent .....	7, <i>Item</i> 6	agreement to arbitrate .....	42.2
Adjustment (for)		ambit of dispute .....	42.1
actual quantities .....	2.5	conference .....	42.2
bonus .....	34.8	nomination of arbitrator .....	42.3, <i>Item</i> 37(a)
cost of suspension .....	33.4	rules of .....	42.3, <i>Item</i> 37(b)
cost of tests .....	30.7	Assessment (see Superintendent, assessments by)	
defective material and work .....	29.3	Assignment	
delay damages .....	34.9	of Contract .....	9.1
directions on order of work .....	32	of subcontract .....	9.2(a)
errors in documents .....	8.1	by subcontractor .....	9.2(b)
errors in setting out .....	26.2	Asterisk clauses .....	8.6, 29.2

† References to *Items* are to *Items* in Annexure Part A

Clause	Clause
Australasian Dispute Centre ..... <i>Item 37(a), (c)</i>	settlement of claims under policy of insurance ..... 19.5
Authorisation (see Direction)	settlement of disputes ..... 42
Awards (see Legislative requirements)	Superintendent's decision on ..... 41.3
Bank guarantee (see Unconditional undertaking)	valuation of ..... 37.2, 41.3
Bank—place of business ..... 1, <i>Item 9(c)</i>	Clause headings—effect ..... 1(c)
Bankruptcy	Cleaning up ..... 27
of Contractor ..... 39.11	Commencement of WUC
of Principal ..... 39.11	generally ..... 16A, 16B, 17, 18, 19.1
Basis of payment ..... 2.1	insurance, proof of ..... 19.1, 24.1
Bench mark (see Survey mark)	possession of site ..... 24.1
Bonus	production of policies before ..... 19.1
for early practical completion ..... 34.8, <i>Item 30(a)</i>	Communications between parties ..... 1(e)
limit of ..... 34.8, <i>Item 30(b)</i>	Compensable cause
rate of ..... 34.8, <i>Item 30(a)</i>	defined ..... 1
waiver of part of bonus ..... 34.8, <i>Item 30(b)</i>	delay damages for ..... 34.9
where separable portions ..... 4(c)	others listed ..... <i>Item 31</i>
Breach of contract	Completion
claims for ..... 41	by Principal on default ..... 39.4, 39.5, 39.6
default of the Contractor ..... 39.2	final certificate ..... 37.4
default of the Principal ..... 39.7	practical (see Practical completion)
preservation of other rights ..... 39.1	Compliance
repudiation ..... 39.10	with legislative requirements ..... 11.1
substantial breaches ..... 39.2, 39.7	with Superintendent's interpretation ..... 8.1
By-laws (see Legislative requirements)	Concurrent delay ..... 34.4
Calendar days ..... 1(a)	Conditions, waiver of ..... 43
Care of WUC	Confidential information
cleaning up ..... 27	agreement as to ..... 8.5
Contractor's obligations for ..... 14.1	generally ..... 8.5
excepted risks ..... 14.3	Construction of Contract ..... 1, 8.1
generally ..... 14.1	Construction plant
reinstatement of loss or damage ..... 14.2	care of ..... 14.1
urgent protection of ..... 13	Contractor to supply ..... 28
Certificate(s) (see also Direction and Payment)	defined ..... 1
effect of ..... 37.2	insurance of ..... 16A
final certificate ..... 37.4	not to be removed ..... 28
of cost to complete on default by Contractor of municipal and statutory authorities (see Legislative requirements)	removal of ..... 27, 40
practical completion ..... 34.6	use by Principal ..... 39.5, 39.6
progress certificate ..... 37.2	WUC includes ..... 1
Certificate of Practical Completion	Consultants
defined ..... 1	defined ..... 1
issue of ..... 34.6	engagement of ..... 9.2
meaning of ..... 34.6	insurance of WUC, included in ..... 16A
non-issue of ..... 34.6	notices to and from insurer ..... 19.3
request for ..... 34.6	novation of ..... 2.2(a)(iii), 2.3(b), 9.4
Claims (see also Adjustment)	professional indemnity insurance ..... 16B, <i>Items 24(c), (d)</i>
arbitration of ..... 42.3	proof of payment of ..... 38
compensation to third party ..... 12	public liability insurance ..... 17
failure to notify, effect ..... 41.2	suspension because of ..... 33.1(a)
for damages ..... 41.1, 42.1	workers compensation policy ..... 18
for EOT for practical completion ..... 34.3	Consultant fees
for final payment ..... 37.4	in contract works policy ..... 16A, <i>Item 23(c)</i>
for progress payment ..... 37.1, <i>Item 33</i>	Contingency sum (see Provisional sum)
indemnity by Contractor ..... 10.1, 15.1	Contract
indemnity by Principal ..... 10.1, 15.2	assignment ..... 9.1
notice of dispute ..... 41.1, 41.3, 42.1	breach of (see Breach of Contract)
notice of potential claims on insurance policies ..... 19.4	construction of ..... 1
notification of ..... 41	defined ..... 1
	disputes under ..... 42

<i>Clause</i>	<i>Clause</i>
documents .....	8
evidence of .....	6
formal instrument of .....	6
frustration of .....	40, 42.1
governing law of .....	1(h), <i>Item</i> 8
interpretation of .....	1
nature of .....	2
rectification of .....	42.1
subcontracting .....	9.2
termination—effect of .....	39.10
termination of	
by Contractor .....	34.9, 39.11
by Principal .....	34.4, 39.11
work under the (WUC) .....	1
<b>Contract documents</b> .....	8
ambiguities in .....	8.1
construction of .....	8.1
discrepancies in .....	8.1
inconsistencies in .....	8.1
interpretation of .....	8.1
<b>Contract sum</b>	
defined .....	1
insurance of WUC .....	16A
<b>Contract works insurance</b>	
amount of cover of .....	16A, <i>Item</i> 23
Contractor controlled .....	16A Alt 1
exclusions in .....	16A
in joint names .....	16A
length of cover .....	16A
policy .....	16A
Principal controlled .....	16A Alt 2
<b>Contractor</b>	
access to site by .....	24.1
address of .....	<i>Item</i> 4
appointment of representative .....	22
default by .....	39.2
defined .....	1
design obligations defined .....	1
design, property in .....	10.2
licence to use design documents .....	10.2
named .....	<i>Item</i> 3
possession of site by .....	24.1
professional indemnity insurance .....	16B, <i>Item</i> 24(a), (b)
rights of .....	34.9, 39.11
security by .....	5, <i>Item</i> 14
service on .....	7
to insure .....	16A Alt 1, 16B, 17 Alt 1, 18
use of site by .....	24.1
warranties .....	2.2
warranties unaffected .....	2.3
<b>Contractor-supplied documents</b>	
approval of .....	8.3(b)
availability of .....	8.4
checking of .....	8.3(a)
copies of .....	8.3
rejection of .....	8.3(c)
responsibility for .....	8.3
submission of .....	8.3
suitability of .....	8.3(c)
supply of .....	8.3
<b>Contractor's all risk insurance</b> (see <b>Contract works insurance</b> )	
<b>Contractor's design obligations</b> defined .....	1
warranties, as to .....	2.2
warranties unaffected .....	2.3
<b>Contractor's employees</b>	
control of .....	23
death or injury .....	18
insurance of .....	18
liability for .....	9.5
payment of .....	38
removal of, from site .....	23
<b>Contractor's representative</b> .....	22
<b>Contractor's responsibility (see also Contractor and Care of WUC)</b>	
for employees (see <b>Contractor's employees</b> ) .....	38
for payment of workers and subcontractors .....	9.5
for selected subcontractors .....	9.5
for subcontractors .....	9.5
to carry out WUC .....	2.1
<b>Contributory negligence</b> indemnify, as to .....	15.1
reduction of liability for .....	15.1
<b>Copyright (see Intellectual property right)</b>	
<b>Corporation (also see Person)</b> .....	1(a), 5.6, 39.11(d)
<b>Corporations Law</b> .....	5.6, 38.3
<b>Cost objective</b> defined in Principal's project requirements .....	1
<b>Cost(s) (see also Adjustment)</b>	
added to contract sum .....	24.3, 26.2, 26.3
completion of work taken out of the hands of the Contractor .....	39.6
complying with legislative requirements .....	11.2
examination and testing .....	30.7
latent conditions .....	25.3
protection of person, etc. ....	12
provisional sums .....	3
reinstatement .....	14.2
set-offs by Principal .....	37.6
setting out .....	26.3
urgent protection .....	13
variations .....	36.2, 36.4
<b>Covering up of WUC</b> .....	30.2
<b>Cross liability clause</b> .....	19.6
<b>Currency</b> .....	1(g), <i>Item</i> 9(a)
<b>Damage (see also care of the Works and Insurance)</b>	
prevention of .....	12
protection of property, etc. ....	12
reinstatement of .....	14.2
to persons and property other than WUC .....	15.1
to WUC .....	14.1
urgent protection .....	13
<b>Damages (see also Adjustment and Claims)</b>	
delay damages .....	34.9
for breach of the Contract .....	39.1
for delay by Contractor .....	34.7, <i>Item</i> 29
for delay due to compensable cause .....	34.9
liquidated .....	34.7, <i>Item</i> 29
on insolvency .....	39.11
on termination of the Contract .....	39.10
<b>Date</b>	
for practical completion .....	1, <i>Item</i> 7, 34.7, 34.8
of acceptance of tender .....	1
of practical completion .....	1, 34.6, 34.7, 34.8, 35

<i>Clause</i>	<i>Clause</i>
Date of acceptance of tender defined .....	records of cost to complete ..... 39.5
1	retention of plant and materials ..... 39.6
Date for practical completion	rights of the Principal ..... 39.1–39.6, 39.9
bonus ..... 34.8	show cause notice to ..... 39.3
defined ..... 1, <i>Item 7</i>	substantial breach by ..... 39.2
effect of proposed variation on ..... 36.2(a)	substantial departure from construction program ..... 39.2(c)
liquidated damages ..... 34.7	suspension of payment on ..... 39.4
period of time for ..... 1, <i>Item 7</i>	when the Principal takes work out of hands of Contractor ..... 39.5, 39.6
Date of practical completion	Default of subcontractor ..... 9.5
defects liability period ..... 35	Default or insolvency
defined ..... 1	by Contractor ..... 39.2, 39.11
generally ..... 34.6	by Principal ..... 39.7, 39.11
liquidated damages ..... 34.7	generally ..... 39
Days	preservation of other rights ..... 39.1
mean calendar days ..... 1(a)	substantial breaches ..... 39.2, 39.7
working ..... 31	show cause notices ..... 39.3, 39.8
Debt due to the Principal ..... 12, 13, 27, 29.3, 34.7, 35, 37.6, 39.6	Defective work
Decision (see also Direction)	acceptance of ..... 29.4
Deed of guarantee, undertaking and substitution	correction of ..... 29.3
defined ..... 1	cost of rectification ..... 29.3
provision of ..... 5.6	demolition of ..... 29.3
requirement for ..... 5.6	examination and testing of ..... 30
Deed of novation ..... 9.4	generally ..... 29.3
Deemed variation	includes material ..... 29.3
as to acceptance of defective work ..... 29.4	not to delivery ..... 29.3
for latent condition ..... 25.3	quality assurance ..... 29.2
omission in schedule of rates ..... 2.5	reconstruction of ..... 29.3
on adjustment of quantities ..... 2.5	removal of ..... 29.3
reinstatement of damage ..... 14.2	replacement of ..... 29.3
Default by Principal	testing of ..... 30
Contractor's rights on ..... 39.9	time of notice of ..... 29.5
Contractor's show cause notice ..... 39.8	Defects
generally ..... 39.7	costs of rectification ..... 29.3, 35
in making due payment ..... 39.7(a)	defined ..... 1
in providing evidence of insurance ..... 39.7(a)	direction to rectify ..... 35
in providing security ..... 39.7(a)	examination and testing for ..... 30
in rectifying inadequate access ..... 39.7(a), <i>Item 36(a)</i>	in design—excepted risk ..... 14.3(f)
in rectifying inadequate possession ..... 39.7(a), <i>Item 36(b)</i>	in work ..... 29.3, 29.4, 35
on termination ..... 39.10	length of liability period ..... 35, <i>Item 32</i>
rights of the Contractor ..... 39.1, 39.7, 39.8, 39.9	material and work ..... 29.3, 29.4, 35
Superintendent not issuing certificate of practical completion ..... 39.7(b)	minor, practical completion ..... 1
show cause on ..... 39.7, 39.8	remedying ..... 29.3, 35
Default by Contractor	removal and replacement ..... 29.3
adjustment of costs on ..... 39.6	times for rectification ..... 35
assessment of cost to complete on ..... 39.6	Defects liability period
failing to comply with a direction of the Superintendent ..... 39.2(a)	defined ..... 1
failing to maintain program ..... 39.2(c)	duration of ..... 35, <i>Item 32</i>
failing to proceed with due expedition and without delay ..... 39.2(d)	generally ..... 35, <i>Item 32</i>
failing to properly perform design obligations ..... 39.2(a)	Definitions (generally) ..... 1
failing to provide evidence of insurance ..... 39.2(a)	dispute ..... 42.1
failing to use materials or standards of workmanship ..... 39.2(a)	Delay
in providing documentary evidence ..... 39.2(e)	concurrent ..... 34.4
in providing security ..... 39.2(a)	construction program ..... 32, 39.2(c)
may use plant and materials on ..... 39.5	damages ..... 4(c), 34.9
on termination ..... 39.10	further delay ..... 34.3
possession of plant and materials ..... 39.5	in giving possession ..... 24.1
procedure on ..... 39.2–39.6	notice of ..... 34.2
	overlapping ..... 34.4
	rate of progress ..... 34.1
	Delay damages
	certified by Superintendent ..... 34.9
	claim for ..... 34.9
	due and payable ..... 34.9

<i>Clause</i>	<i>Clause</i>
for compensable cause.....	34.9
other compensable causes.....	1, 34.9, <i>Item</i> 31
where separable portions.....	4(c)
Deletion of clauses, etc.—effect.....	1(i)
Deletions, amendments and additions (generally).....	1(i), Annexure Part E
Demand (see also Direction)	
Demolition and removal of debris in Contract works policy.....	16A(b), <i>Item</i> 23(b)
Deposit (see Security)	
Design	
defects in—excepted risk.....	14.3(f)
intellectual property rights in.....	10
objectives, defined in Principal's project requirements.....	1
procurement methods explained.....	Preface
stated purpose.....	2.2
warranties, as to.....	2.2
warranties, as to by Principal.....	10.1
warranties unaffected.....	2.3
Design and Construct explained.....	Preface
Design, Development and Construct explained.....	Preface
Design documents	
ambiguities in.....	8.1
defined.....	1
direction not to copy.....	8.2
discrepancies in.....	8.1
included in Contractor's design obligations.....	1
inconsistencies in.....	8.1
licence to use.....	10.2
novation.....	9.4
ownership of.....	10.2
variation to, affect of.....	8.3
warranties, as to.....	2.2
warranties unaffected.....	2.3(c)
Design, Novate and Construct explained.....	Preface
Design objectives defined in Principal's project requirements.....	1
Determination (see also Direction) defined in direction.....	1
disputes.....	42
interpretation of discrepancy.....	8.1
pricing of variation.....	36.4
value of work.....	37.2
Determination of Contract (see Termination of Contract)	
Dimensions	
figured.....	8.1
scaled.....	8.1
Direct payment to subcontractor.....	38.3
Direction (see also Approval) construction program.....	32
covering up of work.....	30.2
defective materials or work.....	29.3, 29.4
defined.....	1
dispute as to.....	42.1(a)
examination and testing.....	30
oral, to be confirmed in writing.....	20
order of work.....	32
notice of tests.....	30.4
relating to Contractor's employees.....	23
relating to subcontractors.....	23
suspension of WUC.....	33.1
written.....	20
Discrepancies	
Contract documents.....	8.1
dimensions.....	8.1
Dispute (see Dispute resolution)	
Dispute resolution	
after final certificate.....	37.4(d)
ambit of.....	42.1
arbitration.....	42.3
conference.....	42.2
continue performance of Contract.....	42.1
dispute defined.....	1, 42.1
includes difference.....	42.1
meaning of dispute.....	1, 42.1
notice of dispute.....	37.4(d), 41.1, 42.1
summary relief.....	42.4
Documents	
ambiguities in.....	8.1
approval of the Superintendent.....	8.3
availability of.....	8.4
confidential information.....	8.5
construction of.....	8.1
Contractor supplied.....	8.3
discrepancies in.....	8.1
evidencing Contract.....	6
generally.....	8
inconsistencies in.....	8.1
interpretation of.....	8.1
Principal supplied.....	8.2
property in.....	8.2, 8.3
results of tests.....	30.6
service of.....	7
Due (see Moneys due)	
Due and owing (see Moneys due and owing)	
Due and payable (see Moneys due and payable)	
Emergency work.....	13
Employees	
control of.....	23
insurance of.....	17(c), 18
of Contractor (see Contractor's employees)	
of subcontractor.....	23
responsibility for.....	9.5
English language.....	1(e)
EOT (extension of time)	
application for.....	34.3
assessment of.....	34.4, 34.5
claim for.....	34.3
deemed assessment.....	34.5
defined.....	1
failure to apply for, effect.....	41.2
grant of.....	34.5
in event of further delay.....	34.3
partial grant of.....	34.5
qualifying cause of delay.....	1, 34.3
refusal of.....	34.5
time for applying for.....	34.3
Superintendent may direct.....	34.5

<i>Clause</i>	<i>Clause</i>
Equipment to be provided by Contractor (see Construction plant).....28	Formal instrument of agreement execution of..... 6 generally..... 6 stamping of..... 6
Errors	Form of unconditional undertaking ..... Annexure Part B
Contract documents .....8.1	Fossils ..... 24.3
in schedule of rates .....2.5	Frustration
setting out.....26.2	generally..... 40
Escrow	notice of dispute when ..... 42.1(b)
security transferred in .....5.1	payment on ..... 40
Examination and testing .....30	release and return of security ..... 40
Excepted risk	termination by..... 40
defined ..... 1	Gender includes every gender ..... 1(d)
meaning.....14.3	Governing law ..... 1, <i>Item 8</i>
Explanation (see also Direction)	Guarantee, etc., deed of ..... 5.6
Extension of time (see EOT)	Headings of clauses ..... 1(c)
Failure of Contractor (see also Delay and Default by Contractor)	Hours of work..... 31
to arrange urgent protection .....13	Incompetence of employees, etc..... 23
to lodge security ..... 5.1, 39.2(a)	Indemnity
to make claims.....41.2	by Contractor ..... 10.1, 15.1
to produce proof of insurance ..... 19.2, 39.2(a)	by Principal ..... 10.1, 15.2
to show cause .....39.3	care of work ..... 14
Failure of Principal (see also Default of Principal)	damage to persons and property ..... 15
to give access ..... 39.7(a)	infringement of intellectual property rights ..... 10.1
to give possession of Site..... 39.7(a)	Information to be supplied
to insure ..... 19.2, 39.2(a)	advance notice ..... 32
to make payment.....37.5, 39.7(a)	by Principal ..... 32
Faulty work (see Defective material or work)	confidential information..... 8.5
Fees and charges (see Legislative requirements)	Contract documents ..... 8
Figured dimensions ..... 8.1	examination of information made available for tendering ..... 25.1(a)
Final certificate	examination of information relevant to risks, contingencies, etc. .... 25.1(b)
accord and satisfaction.....37.4	for setting out the Works..... 26.1
defined ..... 1	latent conditions ..... 25
effect of.....37.4	particulars of materials and plant ..... 28(a)
final payment claim for.....37.4	results of tests..... 30.6
generally.....37.4	to media..... 8.6
meaning.....37.4	working hours and days ..... 31
release of security..... 5.4	Injury to persons
Final payment (see also Final certificate)	generally..... 12
defined ..... 1	indemnity by Contractor ..... 15.1
meaning.....37	insurance ..... 17, 18
Final payment claim	measures to prevent ..... 12
defined ..... 1	Insolvency
endorsement of .....37.4	bankruptcy ..... 39.11(c)
includes all claims ..... 37.4	Contractor's rights on ..... 39.11(B)
meaning..... 1, 37.4	deed of arrangement..... 39.11(d)
payment on account, excepted .....37.2	generally..... 39.11
prescribed notice, excluded ..... 41.1	meeting of creditors ..... 39.11(d)
time for..... 37.4	mortgagee in possession..... 39.11(d)
Financial institution	Principal's rights on ..... 39.11(A)
form of unconditional undertaking by ..... Annexure Part B	voluntary winding up ..... 39.11(d)
security provided by ..... 1	when corporation ..... 39.11(d)
Finding of minerals, fossils and relics.....24.3	when exercisable.....39.11
Fitness for stated purpose	when individual ..... 39.11(c)
to be stated in Principal's project requirements (definition) ..... 1	Inspection
warranty, as to .....2.2(a)(ii)	access for testing ..... 30.1
warranty as to preliminary design .....2.2(a)(ii)	access to Principal and others ..... 24.2
Float ..... 34.4(a)	insurance policies ..... 19.1

<i>Clause</i>	<i>Clause</i>
testing ..... 30.1	payment to subcontractor under ..... 38.3
Institute of Arbitrators & Mediators Australia rules of ..... <i>Item 37(b)</i>	payment to worker under ..... 38.3
Instruction (see also Direction)	provision of services ..... 11.2(a)
Insurance	satisfaction of ..... 11.1, <i>Item 22(a)</i>
cross-liability ..... 19.6	time of effect of ..... 11.2(b)
failure to provide proof of ..... 19.2, 39.2(a), 39.7(a)	variance in ..... 11.1
inspection of policies ..... 19.1	Level mark (see Survey mark)
notice of potential claims ..... 19.4	Liability of the Contractor
notices to and from insurer ..... 19.3	for care of WUC ..... 14
of employees ..... 18	for compliance with legislative requirements ..... 11
of the Works ..... 16A, <i>Item 23</i>	for selected subcontractors ..... 9.5
professional indemnity ..... 16B, <i>Item 24</i>	for subcontractors ..... 9.5
proof of insurance ..... 19.1	Licences (see Legislative requirements)
provisions of policies ..... 19.3	Limits of accuracy in schedule of rates ..... 2.5(b), <i>Item 12</i>
public liability ..... 17	Liquidated damages
settlement of claims ..... 19.5	certifying of ..... 34.7
workers' compensation ..... 18	rate of ..... 34.7, <i>Item 29</i>
Intellectual property rights	repayment of ..... 34.7
Contractor's warranty as to ..... 10	separable portions ..... 4(c)
defined ..... 1	Litigation ..... 42.4
design documents ..... 10.2	Local authorities ..... 11
indemnity as to ..... 10	Loss or damage to WUC
licence in ..... 10.2	care of WUC ..... 14.1
ownership of ..... 10.2	excepted risks ..... 14.3
Principal's warranty as to ..... 10	generally ..... 14
Interpretation of Contract documents ..... 1, 8.1	protection ..... 12, 13
Interest	reinstatement ..... 14.2
on security ..... 5.5	urgent protection ..... 13
overdue payments ..... 37.5, <i>Item 35</i>	Lump sum ..... 2.1
rate of ..... 37.5, <i>Item 35</i>	Making good (see also Reinstatement) ..... 14.2, 29.3, 35
Issue of	Materials (see also Work)
certificate of practical completion ..... 34.6	acceptance of defective ..... 29.4
final certificate ..... 37.4	defective ..... 29.3, 29.4
payment certificate ..... 37.2	examination and testing of ..... 30
<i>Item</i>	failure to use proper materials ..... 39.2(a)
defined ..... 1	manufacture and supply of ..... 28
Labour	not to remove from site ..... 28
provision by Contractor ..... 28	particulars of ..... 28
Language of Contract ..... 1(e)	possession on default ..... 39.5
Latent conditions	provision of by Contractor ..... 28
costs of ..... 25.3	quality of ..... 29.1
deemed variation on ..... 25.3	supply of ..... 28
defined ..... 1	testing of ..... 30
meaning ..... 25.1	unfixed ..... 37.3
notification of ..... 25.2	upon frustration of Contract ..... 40
scope of ..... 25.1	use of new materials ..... 29.1
Law	Measurement
compliance with legislative requirements ..... 11.1	generally ..... 37.2
Corporations ..... 5.6, 38.3	of quantities ..... 1(f)
governing the Contract ..... 1(h), <i>Item 8</i>	Media releases ..... 8.6
Legislative requirements	Minor defects
change in Principal's project requirements ..... 11.2(a)(i)	practical completion, in definition of ..... 1
changes in ..... 11.2	remedying ..... 29.3, 35
changes to WUC ..... 11.2(a)(iii)	Misconduct of employee ..... 23
changes to the Works ..... 11.2(a)(ii)	Monetary sum (see Provisional sum)
compliance with ..... 11.1	Moneys due
cost of ..... 11.2(c)	claim for ..... 37.1
defined ..... 1	cleaning up costs ..... 27
excepted ..... 11.1, <i>Item 22(a)</i>	cost of proposed variation ..... 36.2
fees and charges ..... 1, 11.2(a)	
identified WUC ..... 11.2, <i>Item 22(b)</i>	

<i>Clause</i>	<i>Clause</i>		
cost of protection .....	12	consultant .....	9.4, Item 20
cost of urgent protection .....	13	deed of .....	9.4
moneys certified due to Principal .....	37.2(b)	Deeds of .....	Annexure Parts C and D
on frustration .....	40(b)	of Principal's consultants .....	2.2(a)(iii)
other moneys due .....	37.6	selected subcontractor .....	9.4, Item 20
progress certificate .....	37.2(a)	subcontractor .....	9.2(c), 9.4, Item 20
progress claim .....	37.1	warranties unaffected by .....	2.3(b)
Moneys due and owing		Omissions (see also Defects and Minor defects)	
to Principal otherwise .....	37.6	at final certificate .....	37.4(b)
Moneys due and payable		schedule of rates .....	2.5
bonus .....	34.8	Opening up for examination and testing .....	30.1
claims generally .....	41.3	Oral direction .....	20
cost of defect rectification .....	35	Order (see also Direction)	
costs of suspension on breach .....	39.9	Order of work .....	32
delay damages .....	34.9	Orders (see Legislative requirements)	
final certificate .....	37.4	Ordinances (see Legislative requirements)	
interest .....	37.5	Ordinary working days .....	31
liquidated damages .....	34.7	Ordinary working hours .....	31
on work taken out of the hands of Contractor .....	39.6	Other moneys due .....	37.6
substantial breach .....	39.7(a)	Overlapping delays .....	34.4
to workers and subcontractors .....	38.2	Ownership of documents	
unpaid insurance premium .....	19.2	supplied by Contractor .....	8.3
Nature of Contract .....	2	supplied by Principal .....	8.2
Negligence of employee .....	23	Patent (see Intellectual property right)	
Nominated subcontractor		Payment(s) (see also Adjustments)	
(see Novation) .....	9.3, 9.4	adjustment for errors in schedule of rates .....	2.5
Notice (see also Direction, Notice of dispute)		adjustment for fees to statutory authorities .....	11.2
for testing .....	30.4	and performance .....	2.1
for urgent protection .....	13	basis of .....	2.1
from or to insurer .....	19.3	bonus .....	34.8
of availability of site .....	24.1	calculated by rates .....	2.1
of claim for EOT .....	34.3	calculation of .....	37.2
of claims generally .....	41	certificates .....	37.2
of default by the Contractor .....	39.3	claims for .....	37.1
of default by the Principal .....	39.8	currency of .....	1(g), Item 9(a)
of delay .....	34.2	deductions .....	37.2
of discovery of minerals, fossils or relics .....	24.3	default by Principal .....	39.7(a)
of dispute .....	42.1	delay damages .....	34.9
of errors in setting out .....	26.2	during arbitration .....	42.1
of latent conditions .....	25.2	for defective materials and work .....	29.3, 35
of names of persons entitled to access .....	24.2	for progress certificates .....	37.2
of potential insurance claims .....	19.4	for unfixed plant and materials .....	37.3
of working hours .....	31	insurance premiums, proof of .....	19.2
oral or written .....	20	interest on overdue .....	37.5
prescribed .....	41.1	liquidated damages .....	34.7
service of .....	7	not evidence of satisfactory WUC .....	37.2
statutory authorities .....	11.2	of balance after set off .....	37.2
to suspend work .....	33.1	of security and retention moneys .....	5.1
Notice of dispute		of workers and subcontractors .....	38
arbitration .....	42.3	on completion by Principal .....	39.6
concerning claims .....	41.1, 41.3	on final certificate .....	37.4
conference following .....	42.2	payment certificate .....	37.2
generally .....	42	payment on account .....	37.2
how served .....	42.1	place for .....	1(g), Item 9(b)
includes difference .....	42.1	provisional sums .....	3
when final certificate .....	37.4(d)	retention moneys .....	5.1, Item 14(c)
Notification of claims (see also Claims)		set-offs by Principal .....	37.2, 37.6
failure to comply .....	41.2	suspension of by Principal .....	39.4
generally .....	41	to consultants .....	38
notice of dispute concerning .....	41.1, 41.3	to subcontractors .....	38
prescribed notice .....	41.1	to workers .....	38
Superintendent's decision on .....	41.3		
Novation			
acceptance of .....	2.2(a)(iii)		



<i>Clause</i>	<i>Clause</i>
urgent protection .....13	licence to use design documents..... 10.2
within 7 days of certificate .....37.2	named ..... <i>Item</i> 1
within 21 days of claim.....37.2	ownership of design documents ..... 10.2
withholding by Principal.....38.2	project requirements defined ..... 1
Payment to workers, consultants and subcontractors	rights of ..... 39.2, 39.3, 39.4, 39.5
direct payment to .....38.3	security by ..... 5, <i>Item</i> 15
documentary evidence of .....38.1	set off by ..... 37.2
Principal may withhold payment.....38.2	Principal's project requirements
where required by law .....38.3	change in legislative requirements ..... 11.2(a)(i)
withholding of payment .....38.2	cost objectives ..... 1
Performance and payment .....2.1	defined ..... 1, <i>Item</i> 10
Permission (see also Direction)	design objectives ..... 1
Permits (see Legislative requirements)	details of ..... <i>Item</i> 10
Person, meaning ..... 1(a)	inconsistency, etc. in ..... 8.1
Persons	novation ..... 9.4
death of .....15.1	preliminary design included ..... <i>Item</i> 11
indemnity by Principal .....15.2	stated purpose of ..... 1, 2.2(a)(iv)
injury to .....15.1	timing objectives ..... 1
insurance of .....17, 18	warranties, as to ..... 2.2
protection of .....12	warranties, as to by Principal ..... 10.1
suspension, to protect .....33.1	Principal-supplied documents
urgent protection of .....13	availability of ..... 8.2
Place for payment ..... 1(g), <i>Item</i> 9(b)	copies of ..... 8.2, <i>Item</i> 16
Place of business of bank (security) ..... 1, <i>Item</i> 9(c)	copying of ..... 8.2
Plant (see Construction plant) ..... 1, 28, 39.5, 39.6	number of ..... 8.2
Plant and materials	property in ..... 8.2
security for unfixed ..... 5.4, 37.3, <i>Item</i> 14(e)	supply of ..... 8.2, <i>Item</i> 16
unfixed ..... 37.3, <i>Item</i> 34	Proclamation (see Legislative requirements)
Possession of site (see also Access) .....24.1	Profit and overheads/attendance
Practical completion	in pricing variations ..... 36.4
certificate of .....34.6	on provisional sums ..... 3
date for ..... 1, 34.1, 34.6, 34.7	Program
date of ..... 1, 34.6, 34.7	defined ..... 1
defined ..... 1	departure from ..... 32
early practical completion ..... 34.8	direction as to ..... 32
EOT for ..... 34.3	failing to adhere to ..... 39.2(c)
request for certificate of .....34.6	meaning of ..... 32
separable portions ..... 4	proposed variation, effect on ..... 36.2(a)
Preliminary design	Programming (see Program)
copyright and ownership of design .....10.2	Progress certificate
defined ..... 1	deemed ..... 37.2
details of ..... <i>Item</i> 11	defined ..... 1
included in Contractor's design obligations ..... 1	issue of ..... 37.2
novation ..... 9.4	meaning ..... 1, 37.2
warranties, as to ..... 2.2(a)(ii)	not evidence WUC is satisfactory ..... 37.2
warranties unaffected ..... 2.3(a)	on account only ..... 37.2
Prescribed notice	Progress claims
defined ..... 1	early ..... 37.1
meaning ..... 1, 41.1	generally ..... 37.1
Pricing	time for ..... 37.1, <i>Item</i> 33
variations .....36.4	Progress, failure to maintain ..... 39.2(c), 39.2(d)
Prime cost item (see Provisional sum)	Prompt payment discount .....3(b)
Principal	Proper law of Contract ..... 1(h), <i>Item</i> 8
address of ..... <i>Item</i> 2	Property
certificate to ..... 37.2(b)	damage to ..... 12
consultants, novation of ..... 2.2(a)(iii), 9.4	indemnity as to ..... 15
default of .....39.7	insurance of ..... 17
defined ..... 1	loss of ..... 15.1
dispute with Contractor .....42.1	protection of ..... 12
	unavoidable damage to ..... 15.1(b)
	Protected right (see Intellectual property right)

Clause	Clause
Protection	included in definition of WUC..... 1
of persons and property .....12	Removal of
of WUC .....14	construction plant ..... 28
suspension due to.....33.1	materials ..... 28
urgent .....13	Contractor's employees and subcontractors ..... 23
Provisional sum ..... 3	Repairs, urgent (see Urgent protection)..... 13
defined ..... 1	Replacement (see Reinstatement)
included in contract sum ..... 1	Replacement of defective
included in schedule of rates ..... 1	materials or work ..... 29.3
meaning .....1, 3	Representative of
percentage for profit and attendance .....3, <i>Item</i> 13	Contractor..... 22
Public authorities..... 5.5, 11	Superintendent..... 21
Public liability policy	Repudiation of Contract
alternative applying .....17, <i>Item</i> 25(a)	parties rights on ..... 39.1, 39.10
amount of .....17, <i>Item</i> 25(b)	Request (see also Direction)
defined ..... 1	Requirement (see also Direction)
meaning .....1, 17	Requirements of legislation ..... 11.1
Qualifying cause of delay	Responsibility
defined ..... 1	of Contractor for subcontractors..... 9.5
excludes those in ..... <i>Item</i> 28	for performance ..... 2.1
EOT for .....34.3	Retention moneys (see Security)
further delay due to.....34.3	Risks
Quality .....29	excepted .....1, 14.3
Quality assurance .....29.2	Royalties (see Intellectual property rights)
Quality of materials and work	Schedule of prices
defective materials and work .....29.3	included in definition of schedule of rates..... 1
examination and testing of.....30	variations priced by ..... 36.4(c)
generally.....29.1	Schedule of rates
Quality system.....29.2	defined ..... 1
Quantities	generally .....2.4, 2.5
errors in .....2.5	limits of accuracy in ..... 2.5(b), <i>Item</i> 12
estimated only .....2.4	omitted items in ..... 2.5
generally ..... 2.4, 2.5	payment by ..... 2.1
omitted items .....2.5	quantities in ..... 2.4
Rates (see also Schedule of rates)	variations priced by ..... 36.4(c)
adjustment of .....2.5	Security (includes Retention moneys)
limits of accuracy ..... 2.5(b), <i>Item</i> 12	change of..... 5.3
payment of .....2.1	Contractor's ..... <i>Item</i> 14
provisional sums ..... 3	defined ..... 1
valuation of variations ..... 36.4(c)	form of ..... 5.1
Receiver .....39.11	generally ..... 5
Reference mark (see also Survey marks)	includes retention moneys..... 1
defined ..... 1	interest earned on..... 5.5
survey mark, included in .....1, 26.1	Principal's ..... <i>Item</i> 15
Registered design (see Intellectual property right)	provision of .....5.1, <i>Items</i> 14, 15
Regulations (see Legislative requirements)	purpose of..... 5.1
Reinstatement of damage	recourse to ..... 5.2
excepted risks .....14.3	reduction of .....5.4, <i>Items</i> 14, 15
generally.....14.2	release of ..... 5.4
Rejection (see also Direction)	return of..... 5.4
Rejection of materials or work .....29.3	substitution of ..... 5.3
Relation-back day	time of lodgement of.....5.1, <i>Items</i> 14, 15
concerning direct payment to workers and	trust ..... 5.5
subcontractors.....38.3	unfixed plant and materials .....5.4, 37.3(a), <i>Item</i> 14(e)
Release of security ..... 5.4	upon frustration of the Contract ..... 40(c)
Remedial work	Selected subcontract work
generally.....29.3, 35	defined ..... 1
	meaning ..... 1, 9.3

Clause	Clause
Selected subcontractor	warranty, as to ..... 2.2(a)(iv)
defined ..... 1	Statutory requirements (see Legislative requirements)
meaning ..... 1, 9.3	Subclause headings—effect ..... 1(c)
Separable portion(s) ..... 4, Annexure Part A	Subcontract work
date for practical completion ..... 4(b)	generally ..... 9
defects liability period ..... 3.5	requiring approval ..... 9.2, <i>Item 19</i>
defined ..... 1	Subcontractor
directed by Superintendent ..... 4	approval of ..... 9.2, <i>Item 19</i>
liquidated damages ..... 4(c)	Contractor's responsibility for ..... 9.5
security in ..... 4(c)	defined ..... 1
Service	includes consultant ..... 1
by fax ..... 7(b)(ii)	novation of ..... 9.2(c), 9.4, <i>Item 20</i>
by hand ..... 39.2, 39.7, 42.1	removal of ..... 23
by post ..... 7(b)(iii)	selected ..... 9.3, 9.4, <i>Item 20</i>
by registered post ..... 39.2, 39.7, 42.1	terms of approval ..... 9.2
by the Contractor on the Principal ..... 39.7	when Contract frustrated ..... 40(b)
by the Principal on the Contractor ..... 39.2	Subcontractor's employees
from or to the insurer ..... 19.3	control of ..... 9.5, 23
notification of latent conditions ..... 25.2	insurance of ..... 18
of appointment of Superintendent ..... 1	responsibility for ..... 9.5
of appointment of Superintendent's Representative ..... 21	Substantial breaches ..... 39.2, 39.7
of claims to the Superintendent ..... 41.1	Superintendent (see also Directions)
of finding of minerals, fossils and relics ..... 24.3	address of ..... <i>Item 6</i>
of notice of dispute ..... 42.1	appointment of ..... 20
of notice(s) (see also Notices) ..... 7	appointment of Superintendent's representative ..... 21
of potential (insurance) claims ..... 19.4	assessments by ..... 3, 8.1, 11.2, 14.2, 24.3, 26.2, 26.3, 32, 33.4, 34.5, 39.6, 39.9, 41.3
of taking the work out of the hands of Contractor ..... 39.4	certifications by ..... 12, 13, 19.2, 19.5, 27, 29.3, 34.7, 34.8, 34.9, 35, 36.2, 37.2, 37.4, 39.6, 39.9, 40(a), 41.3
of terminating the Contract ..... 39.4, 39.9	defined ..... 1
personal service ..... 7	directions of ..... 20
Set-off	generally ..... 20
by Principal ..... 37.2, 37.6	includes Superintendent's Representative ..... 1
election by Principal ..... 37.2	named ..... <i>Item 5</i>
generally ..... 37.2, 37.6	notice to in relation to dispute ..... 42.1
Setting out the Works	obligations of ..... 20
care of ..... 26.3	pricing by (deemed variation, etc.) ..... 2.5, 3, 14.2, 25.3, 36.4
disturbance to ..... 26.3	to confirm oral direction ..... 20
errors in ..... 26.2	valuations by ..... 4
generally ..... 26.3	Superintendent's Representative ..... 1
survey marks for ..... 26.1	appointment of ..... 21
Settlement	defined ..... 1
arbitration ..... 42.2	functions of ..... 21
notice of dispute ..... 42.1	notice of appointment of ..... 21(c)
of disputes ..... 42.1	objection to appointment of ..... 21(d)
Signal (see Survey mark)	termination of appointment of ..... 21(c)
Site	Survey mark
access to by Contractor ..... 24.1, <i>Item 26(a)</i>	care of ..... 26.3
access to by Principal, etc. .... 24.2	defined ..... 1
access to by Superintendent ..... 24.2	errors in ..... 26.2
cleaning up ..... 27	supply of ..... 26.1
commencement of work on ..... 24.1	Survey peg (see Survey mark)
defined ..... 1	Suspension
delay in making available ..... 24.1	by the Contractor ..... 33.2, 39.9
generally ..... 24	by the Superintendent ..... 33.1
latent conditions on ..... 25	cost of ..... 33.4, 39.9
materials, delivery to ..... 24.1	due to acts, etc. of Contractor ..... 33.1(a)
minerals, fossils, relics, etc. on ..... 24.3	due to acts, etc. of Principal ..... 33.1(a)
possession of ..... 24.1, <i>Item 26(b)</i>	effect of ..... 33.4
substantial breach in giving access of ..... 39.7(a), <i>Item 36(a)</i>	end of ..... 33.3
substantial breach in giving possession of ..... 39.7(a), <i>Item 36(b)</i>	protection or safety ..... 33.1(b)
Stated purpose	
in Principal's project requirements ..... 1	

Clause	Clause
generally.....33	for Superintendent's direction
to comply with court order..... 33.1(c)	about documents ..... 8.3, <i>Item 18</i>
Suspension of payment by Principal ..... 38.2, 39.4	for supply of construction program ..... 32
Taking over of work by Principal ..... 39.5	for supply of Contractor's documents ..... 8.3, <i>Item 17</i>
Temporary works	for supply of Principal's documents ..... 32, <i>Item 27</i>
care of ..... 14.1	for testing ..... 30.1
defined ..... 1	for urgent protection ..... 13
insurance of ..... 16A	suspension of work ..... 33.1
removal of ..... 27	to rectify inadequate access ..... 39.7(a), <i>Item 36(a)</i>
Tender (see Acceptance of tender)	to rectify inadequate possession ..... 39.7(a), <i>Item 36(b)</i>
date of acceptance, defined ..... 1	Timing objective
Termination of the Contract (see Default, Frustration)	defined in Principal's project requirements ..... 1
by frustration ..... 40	Trademark or name (see Intellectual property right)
by the Contractor ..... 39.9, 39.10	Unconditional undertaking (see Security)
by the Principal ..... 39.4, 39.10	approved form ..... Annexure Part B
insolvency ..... 39.11	UNCITRAL Rules ..... <i>Items 37(b), (c)</i>
rights of parties on ..... 39.10	Unfixed plant and materials
Test	additional security for ..... 37.3(a), <i>Item 14(e)</i>
completion of ..... 30.6	generally ..... 37.3, <i>Item 34</i>
costs of ..... 30.7	labelled ..... 37.3(b)
covering up of work ..... 30.2	payment for ..... 37.3
defined ..... 1	Principal's liability for ..... 37.3
delay in testing ..... 30.5	security for ..... 37.3, <i>Item 14(e)</i>
notice of ..... 30.4	stored and protected ..... 37.3(b)
procedure if delayed ..... 30.5	unencumbered property of Principal ..... 37.3
results of ..... 30.6	Unpaid moneys ..... 38.3
Superintendent may direct ..... 30.3	Urgent protection ..... 13
who conducts ..... 30.3	Urgent relief ..... 42.4
Tests (see definition of Practical completion)	Valuation
Third party insurance	of final payment claims ..... 37.4
(see Public liability insurance) ..... 17	of progress payment claims ..... 37.2
Time (see also EOT)	pricing of variations ..... 36.4
acceleration of work ..... 34.4(b)	Variation
construction program ..... 32	character and extent of ..... 36.1
Contractor's float ..... 34.4(a)	cost of complying ..... 36.2
defects liability period ..... 35, <i>Item 32</i>	cost of proposed ..... 36.2
delay damages ..... 34.9	deductions—valuing ..... 36.4
for access to site ..... 24.1, <i>Item 26(a)</i>	deemed ..... 2.5, 14.2, 25.3, 29.4
for approval of Contractor's	defined ..... 1
drawings ..... 8.3(c), <i>Item 18</i>	directing of ..... 36.1
for arbitration ..... 42.2	direction by Superintendent ..... 36.1
for carrying of work ..... 32	estimate for ..... 36.2
for claiming EOT ..... 34.3	for convenience of Contractor ..... 36.3
for cleaning up ..... 27	generally ..... 36
for completing WUC ..... 34.1	meaning ..... 1, 36.1
for doing any act ..... 1(b)	measurements ..... 36.2
for effecting insurance ..... 16A, 16B, 17, 18	notice of proposed ..... 36.2
for executing formal instrument of agreement ..... 6	order of precedence in pricing ..... 36.4
for final payment ..... 37.4	pricing of ..... 36.4
for granting an EOT ..... 34.5	proposed ..... 36.2
for lodging security ..... 5.1, <i>Items 14, 15</i>	quotation for ..... 36.2
for making claims ..... 41	scope of ..... 36.1
for notice of latent condition ..... 25.2	valuation of ..... 36.4
for notice of tests ..... 30.4	Wages
for notice to show cause ..... 39.3, 39.8	of workers ..... 38
for notification of claims ..... 41	Waiver of conditions
for possession of Site ..... 24.1, <i>Item 26(b)</i>	generally ..... 43
for practical completion ..... 34.1, <i>Item 7</i>	in writing ..... 43
for progress claims ..... 37.1, <i>Item 33</i>	Warranties
for progress payments ..... 37.2	Contractor's ..... 2.2
for release of security or retention ..... 5.4	proposed variation, effect on ..... 36.2
for service of notices ..... 7	unaffected ..... 2.3
for Superintendent to confirm oral direction ..... 20	

<i>Clause</i>	<i>Clause</i>
variation, effect on.....	2.3(d), 36.1, 36.2
Winding up.....	39.11
Words—singular includes plural and vice versa.....	1(d)
<b>Work (includes Materials)</b>	
acceptance of defective work.....	29.4
care of .....	14.1
deemed variation as to defective work .....	29.4
defective.....	29.3
defined .....	1
examination and testing of.....	30
not complying with the Contract.....	29.3
order of work.....	32
outside working hours.....	31
progress of.....	34
quality of.....	29.1
remedial .....	29.3, 35
subcontracting .....	9.2, Item 19
suspension of.....	33
testing of.....	30
times for work .....	32
under the Contract, defined (WUC) .....	1
variations (see Variations) .....	36
<b>Work under the Contract (see WUC)</b>	
Workers' compensation .....	18
Workers, payment of.....	38
Working days .....	31
Working hours.....	31
<b>Works (see also care of WUC)</b>	
defined .....	1
design of, warranties.....	2.2
design, timing and cost objectives in Principal's project requirements.....	1
insurance of.....	16A
setting out of .....	26
stated purpose in Principal's project requirements .....	1
<b>WUC (work under the Contract)</b>	
acceleration of .....	34.4(b)
care of .....	14.1
damage to property other than.....	15
defined .....	1
delay to .....	34.2, 34.3
excepted risks .....	14.3
insurance of .....	16A
insurance of property other than .....	17
novation relating to .....	9.4, Item 20
order and time of carrying out.....	32
programming of.....	32
progress of.....	34.1
recommencement of.....	33.3
reinstatement of.....	14.2
suspension of.....	33, 39.9
urgent protection of.....	13

AMENDMENT CONTROL SHEET

AS 4902—2000

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Amendment No. 1 (2005)

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REVISED TEXT

*SUMMARY:* This Amendment applies to Clause 37 (a) and (c) of Annexure Part A.

Published on 30 March 2005.

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NOTES

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**FW: Mirvac Group - Tennyson Reach Update**

**From:** Matthew Wallace [redacted]  
**To:** [redacted] Colin Jensen  
**Date:** 24/06/2011 10:51 am  
**Subject:** FW: Mirvac Group - Tennyson Reach Update  
**CC:** [redacted]

Dear Colin and [redacted]

I can now confirm that our Board has taken a decision to provide for future losses of \$80.8m in respect of our Tennyson Reach development.

This decision reflects the agreement in principle that we have reached in relation to the conversion of the balance site into parkland for a total amount of \$15m. This now paves the way clear for us to begin to explain to the existing owners of the Tennyson Reach project our intentions and share with them the concept plan for the parkland ahead of the AGM of the Body Corporate to be held next Wednesday evening on site.

[redacted] and myself will be distributing information this morning to the Body Corporate manager and committee and will be hosting 4 information sessions for residents between 6.00pm and 8.00pm next Monday and Tuesday evening in an effort to ensure the support of owners for the vote to remove the balance land from the community management scheme.

Thank you for your assistance on this matter to date and I look forward to concluding this outcome with your team over the coming week.

Best regards,

**Matthew Wallace**  
CEO Queensland Development  
Development Queensland

Mirvac  
Level 2, 164 Grey Street South Bank QLD 4101 Australia PO Box 5121 West End QLD 4101  
T [redacted]

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 Australia



ASX Release / Media Release

24 June 2011

### TENNYSON REACH UPDATE

As previously advised by Mirvac Group ("Mircac" or the "Group") [ASX:MGR] with the release of its half year results on 22 February 2011, the Group's residential development project at Tennyson Reach, Brisbane, QLD was affected by the January floods.

In the Group's announcement dated 6 May 2011, Mirvac advised that it would update the market as soon as it had a reasonable basis to forecast the impact of these events.

Since the January floods, the Tennyson residential market has been characterised by limited transactions, consequential pricing impacts and uncertainty in relation to the outcomes of the Queensland Floods Commission of Inquiry.

The Group's continued assessment of these sustained market conditions has led the Group in taking a conservative approach to the reassessment of the carrying value of Tennyson Reach, including 43 unsold apartments and remaining undeveloped land. This has led to a provision of \$80.8 million, resulting in zero residual value as at 31 May 2011. The impact on Mirvac's previously disclosed December 2010 NTA would be \$0.02. Consequently, Mirvac's proforma December 2010 NTA would now be \$1.58.<sup>1</sup>

In assessing the carrying value of Tennyson Reach, Mirvac has amended the project's forecast settlement and pricing profile for the unsold lots in Stage Two, Farringford. For undeveloped land, the Group has deferred development and will seek to dispose of the site.

Finalisation of a provision against the carrying value of Tennyson Reach has no impact on Mirvac's ongoing efforts to restore the amenity of Tennyson Reach following the floods. The Group's efforts on this front commenced as soon as the flood waters receded, with the mobilisation of skilled labour to assist in the clean up and subsequent restoration works. This initiative was supported by the generosity and spirit of staff, major sub-contractors and volunteers.

Mircac project-managed the cleanup and made available unsold apartments on higher floors in the Farringford apartments for residents to store belongings. For the eight ground floor apartments directly impacted, Mirvac offered temporary accommodation to the owners and restored the apartments to their original state from the time when the apartments were finished in 2009.

With rectification works largely completed and interim findings of the Queensland Floods Commission of Inquiry scheduled for release in August, Mirvac looks forward to reopening the Tennyson Reach sales office before the end of 2011.

For more information, please contact:

[REDACTED]  
 Group General Manager, Corporate Communications

Investor enquiries:

[REDACTED]  
 Group Investor Relations Manager

Media enquiries:

[REDACTED]  
 Group Communications Manager

<sup>1</sup> Excluding securities issued pursuant to employee incentive schemes.

**From:** Colin Jensen  
**To:** [REDACTED]  
**CC:** [REDACTED]  
**Date:** 24/06/2011 11:26:24 AM  
**Subject:** Re: FW: Mirvac Group - Tennyson Reach Update

Matt

Thanks for the progress report. I look forward to a positive outcome for all.

Regards

Colin

Colin Jensen  
Chief Executive Officer  
Brisbane City Council  
GPO Box 1434 | Brisbane Qld 4001  
Level 23 Brisbane Square | 266 George Street, Brisbane, Qld 4000  
Phone: [REDACTED]  
Email: [REDACTED]

>>> Matthew Wallace [REDACTED] 4/06/11 10:51 AM >>>  
Dear Colin and [REDACTED]

I can now confirm that our Board has taken a decision to provide for future losses of \$80.8m in respect of our Tennyson Reach development.

This decision reflects the agreement in principle that we have reached in relation to the conversion of the balance site into parkland for a total amount of \$15m. This now paves the way clear for us to begin to explain to the existing owners of the Tennyson Reach project our intentions and share with them the concept plan for the parkland ahead of the AGM of the Body Corporate to be held next Wednesday evening on site.

[REDACTED] and myself will be distributing information this morning to the Body Corporate manager and committee and will be hosting 4 information sessions for residents between 6.00pm and 8.00pm next Monday and Tuesday evening in an effort to ensure the support of owners for the vote to remove the balance land from the community management scheme.

Thank you for your assistance on this matter to date and I look forward to concluding this outcome with your team over the coming week.

Best regards,

Matthew Wallace  
CEO Queensland Development  
Development Queensland

Mirvac  
Level 2, 164 Grey Street South Bank QLD 4101 Australia PO Box 5121 West End QLD 4101

T [REDACTED] <http://www.mirvac.com>  
Electronic Data Transmission Disclaimer <<http://ext.mirvac.com/email-disclaimer>>  
Please consider the environment before printing emails and attachments

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This message has passed through an insecure network.  
Please direct all enquiries to the message author.  
\*\*\*\*\*

-----Original Message-----

From: [REDACTED]  
Sent: Friday, June 24 2011 1:06 PM  
To: [REDACTED]  
Cc: [REDACTED]  
Subject: RE: Mirvac Queensland Pty Ltd - Sale to Brisbane City Council-Lots 3, 4, 5 & 101 Tennyson Reach - Email

Hi [REDACTED]

We have reviewed the Land Sale Contracts and comment as follows:

Lots 4, 5 and 101

Clause 14.1(b) - I understand the parties have agreed this amount will be paid on settlement of Lot 3.

Clause 14.2 - I understand the parties have agreed to delete this provision.

Clause 15 - I am instructed that Council requires the clause to be amended in accordance with the following points:

- The Buyer may settle this Contract on 30 June 2011 even if the Body Corporate does not pass the requisite resolution to remove Lot 3 from the Scheme Land at the AGM to be held on 29 June 2011.
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- The settlement date under this Contract must not be extended beyond 11 December 2011.

Annexure E - delete.

Lot 3

Clause 14.1 - This will need to be amended so that \$2.5 million is paid on the Settlement Date and not in instalments.

Clause 14.2 - I understand the parties have agreed to delete this provision.

Annexure C - delete.

Do we need to include a provision that in the event Lot 3 is removed from the Scheme that the provisions in the Contract relating to Community Titles Schemes do not apply?

Regards,

[REDACTED]  
Solicitor | Brisbane City Legal Practice  
Office of the Lord Mayor & CEO  
| Brisbane City Council  
266 George Street | GPO Box 1434 | Brisbane Qld 4001

Phone: [REDACTED]  
[REDACTED]

>>> [REDACTED] 23/06/2011 3:13 pm

>>>

Thanks Paul. So that it doesn't slip my mind in next week's probable rush, I attach a Land Tax Clearance Certificate for the subject land parcels (being one of Council's settlement requirements). Thanks.

Regards

[REDACTED]  
Partner | Property & Projects

Tel: [REDACTED]

[www.clarkekerr.com.au](http://www.clarkekerr.com.au)

Brisbane | Level 7, 300 Queen Street, Brisbane QLD 4000, Australia | GPO  
Box 2249, Brisbane QLD 4001, Australia  
Sydney | Level 7, 55 Clarence Street, Sydney NSW 2000, Australia | GPO  
Box 1342, Sydney NSW 2001, Australia

---

From: [REDACTED]

Sent: Thursday, June 23 2011 12:12 PM

To: [REDACTED]

Cc: [REDACTED]

Subject: Re: Mirvac Queensland Pty Ltd - Sale to Brisbane City Council  
-Lots 3, 4, 5 & 101 Tennyson Reach - Email

Hi [REDACTED]

Amended Purchase contracts confirmed as received. We will review as a priority.

Regards

[Redacted]

Solicitor/Team Leader Commercial | Brisbane City Legal Practice  
Brisbane City Legal Practice  
Office of the Lord Mayor & CEO

Ph: [Redacted]  
E-mail: [Redacted]

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CC: [Redacted]

**From:** [REDACTED]  
**To:** [REDACTED]  
**CC:** [REDACTED]  
**Date:** 24/06/2011 1:55:56 PM  
**Subject:** Tennyson Reach Parkland Design

---

[REDACTED]

A review of the Mirvac proposed Park Master Plan and the Return Brief has been conducted by City Projects Office in collaboration with Natural Environment and Sustainability to determine the design intent and design requirements for the development of the site for public parkland. The ultimate design intent, objectives and design requirements have been prepared in consideration of community requirements, proposed parkland hierarchy within Council's Park Classification guide and long term asset management considerations.

A Terms of Reference (TOR) has been attached to clearly define Council's design intent and key objectives to inform the development of parkland at Tennyson Reach Parkland.

I would appreciate if you could review the TOR and advise if this is satisfactory to be included in the AS4902 by COB Monday 27 June.

Regards  
[REDACTED]

---

**Attachments:** Tennyson Reach Parkland TOR 24 June2011.pdf



## TENNYSON RIVERSIDE PARKLAND: DESIGN DEVELOPMENT TERMS OF REFERENCE

The development of the Tennyson Reach Parkland is to occur in accordance with the following:

### 1.1 DESIGN DEVELOPMENT TECHNICAL TERMS OF REFERENCE

#### 1.2 NEEDS ASSESSMENT

The park will be classified as District Park, whereas the detailed make-up of ingredients will be determined in context of its envisaged user catchment profile and needs. This should be done through a needs assessment study to Council requirements for a District Park.

##### 1.2.1 DESIGN INTENT

Development of parkland at the site should be of a high quality, innovative and accessible riverside park featuring facilities that are commensurate to a District Park within the Council Park Classification System. The park and its facilities must be designed to be flood tolerant, low maintenance and accessible. Facilities provided within the park must be reflective of community needs including equitable access and play equipment that can be used by all levels and abilities. Design of the park must incorporate Crime Prevention through Environmental Design (CPTED) and sustainability best practice and be consistent with all other applicable Council standards and policies.

##### 1.2.2 PARK OBJECTIVES

The following are the key objectives that are intended to guide development of the park.

- ▶ To develop the park to a **District Parkland** standard  
The Brisbane City Council Park Classification system is a guide for the development of public parkland to ensure appropriate hierarchy of parks are provided across the city with appropriate levels of facilities and infrastructure provided within those parks. The Tennyson Parkland is intended to be of a District Level Park. The intended catchment of a District park is approximately a 2-5km radius around the site. Further information relating to the level of facilities intended for a district level park is available within the Park Classification System document.
- ▶ To design a park that is responsive to the **broader community need** and use, including:
  - Compliance with the requirements of the *Disability Discrimination Act 1992*;
  - Inclusion of Crime Prevention Through Environmental Design Principles (CPTED);
  - Conduct a community engagement process or needs assessment study to determine the facilities that are needed for the site.

As a district level public park, the site is anticipated to attract a broad range of users. The parkland proposal must therefore provide facilities that address the broad community need, including an all abilities playground; facilities that are compliant with the requirements of the Disability Discrimination Act 1992 and facilities that are safe and accessible to all.

- ▶ To achieve a development outcome that is **flood resilient/ tolerant**.  
The impact of the January 2011 floods on the site was extensive. Development of the parkland at the site must be responsive and tolerant of potential future flooding. It is intended that any improvements within this site should be designed to anticipate future inundation and reflect the location of the park as a riverside facility that is within the Brisbane River floodplain.
- ▶ To achieve a development outcome that is considerate of **long term maintenance requirements**.  
The development must include fittings and equipment on site that can be easily maintained. Preference is also noted for readily accessible, where possible, local products, that can be easily sourced when replacement is required.
- ▶ Compliance with **BCC and other applicable standards**  
Development of the park should be compliant with all applicable standards and requirements. This includes *City Plan 2000*, BCC Subdivision and Development Guidelines, Riverside Parks Design Manual, BCC Public Toilet Guidelines; Australian Standards, Standard Building Regulations, Building Code of Australia, and any other applicable provisions.

### 1.2.3 BULK EARTHWORKS

It is important to note that filling or excavation within a Waterway Corridor or area subject to the Wetland Code will trigger development application requirements. Hydraulic assessment of a proposal of this level of filling within proximity to the river will be required in order to ensure that there are no impacts upon surrounding areas. Consideration of the impacts of filling upon the river and water quality in the event of future inundation of the site should also be considered.

In regards to the site preparation, it is also requested that weed removal along the riverbank and restoration / replanting be included as part of the site preparation.

Given the intention to import a large volume of fill this material needs to be of a type and placement that can support the long term establishment of vegetation. Horticulturist input and certification required.

### 1.2.4 EXISTING STRUCTURES

If the proposal is to involve the establishment of the concrete suspended slab over the existing power house structures, long term maintenance considerations must be addressed. Additionally, where a suspended slab is constructed, the depth of soil placed over the slab must be sufficient to allow the maintenance and growth of turf and vegetation.

The change of the use of the Mirvac Sales office to a community use is supported, subject to Development Approval. The scope of works should include works to the building to ensure it complies with the relevant codes for a public building.

### 1.2.5 PARKLAND USES

#### Community Uses

The change of the use of the Mirvac Sales office to a community use is supported, subject to Development Approval.

Operational details and nature of use should be addressed as part of the concept development stage.

#### Sport and Recreation Uses

Establishment of a canoe facility with storage under the community building and establishment of a pontoon associated with the use should be subject to a needs assessment and identification of a user of the facility. If a canoe facility is pursued, operational details should be resolved as part of the concept design stage.

Any works associated with the community building or a canoe facility will need to be compliant with the provisions of the *Disability Discrimination Act 1992* and is subject to obtaining Development Approval.

#### Park Elements

As part of the initial design development of the park elements, a needs assessment must be conducted to determine the demand and community requirements for this parkland area. The needs assessment should then guide the facilities that are established within the park. Uses already contemplated are:

##### o Play Area

Equipment must be for all abilities as per the recent Lord Mayor's announcement. A needs assessment should be conducted regarding requirements with the local Community Special School which have been identified as a potential park user.

Design of the play area is to be reviewed and obtain safety certification at the concept, documentation and construction stages.

Parkland equipment is to be sourced from Council's playground supplier panel.

The play area should consist of a mix of landscape elements and equipment.

o Amphitheatre

The design of the amphitheatre should ensure it is a multi-use facility that can accommodate for screening of sporting events, music events and festivals, community events and passive recreation.

If an amphitheatre is established, three (3) phase power and provision for WiFi telecommunication infrastructure should be provided.

If the space between seating walls is to be turfed they should be suitably spaced to accommodate mowing vehicles. Otherwise low maintenance alternative surface finishes should be employed.

Vehicle access for bumping-in equipment and stages needs to be designated in the design, whilst turf surface needs to be hard wearing to cope with large events.

o Plaza

Any plaza or arbour structures must be consistent with Crime Prevention Through Environmental Design (CPTED) principles.

Consideration of the impacts of any existing view corridors should be made in the design of any structures.

o Amenities

Toilet facilities must be included as part of this parkland. Toilets must be designed in accordance with Council's Public Toilet Design Guidelines and should be located in proximity to the play area.

Provision of rubbish bins within the park should be compliant with Council's standard fixtures and sufficient for anticipated use.

o Shading, Shelters and furniture

Shelters and shade planting should be supplied to compliment the park uses, inclusive of appropriate park furniture. Inclusion of BBQ facilities is supported and should be co-located with shelters.

Provision of bike racks should be located in proximity to key facilities, including the tennis centre.

Any structures, fixtures and furniture should be designed in accordance with Council standards and be considerate of long term maintenance requirements.

o Movement and circulation

Establishment of a bike way through the park should ensure the minimisation of any risks of conflicts with park users and pedestrians.

The design of the park should be compliant with CPTED principles.

All pavements should be able to accommodate maintenance and emergency vehicles.

o Art and Signage

Artworks across the site should be curated to ensure they contribute to an overall theme or message that is particular to the place.

Signage should be designed and co-ordinated as a suite.

Signage should be kept to a minimum and where possible applied to surfaces and structural elements to minimise the need for additional support structures.

o Furniture

Bin locations should afford easy access for maintenance staff.

Bins should enable park users to separate recyclable materials from general waste.

Furniture should be designed as a suite consisting of similar materials and finishes.

Materials and finishes should be kept to a minimum to enable ease of maintenance and repairs.

Items should be easily replaceable and should be installed in a manner that enables removal and replacement without excavation.

All furniture items should be suitable for disable access and use.

#### 1.2.6 UTILITIES AND SERVICES

- Adequate fire fighting facilities should be provided
- Integrated systems and services for water supply, stormwater and sewerage connection should be provided
- Adequate overhead lighting should be provided, bollard lighting is not supported
- Sufficient three (3) phase power supply for use at the site
- Provision of telecommunication infrastructure including WiFi

#### 1.2.7 ACCESS AND PARKING

- Car parking provision and design is to be in accordance with Transport, Access, Parking and Servicing Code and Planning Scheme Policy
- Small bus and maxi taxi drop off area for Seniors and the Disabled should be provided
- Bikeway to be designed to minimise risk of conflicts with park users through the site
- Stormwater polishing from car parking areas and the overall site is to be included

#### 1.2.8 LANDSCAPING

- All landscaping elements of the park is to be designed in accordance with the Landscaping Code and associated Planning Scheme Policies
- All landscaping works including tree removal will be subject to the necessary development approval and permit requirements
- Weed removal from site is to be done as part of site preparation
- Landscaping to be designed with consideration of ongoing maintenance and should include endemic species in accordance with the Landscaping Code and the Planting Species Planning Scheme Policy

#### 1.2.9 SUSTAINABILITY

##### *Natural habitats and biodiversity*

Enhance species and habitat diversity and their links and interconnections. It is important to enhance what remains of Tennyson Parkland's natural landscape and through a program of restoration works, ensure that the ecological processes of the site can remain viable as habitat and wildlife corridors.

The Parkland site offers opportunities for weed removal and the re-establishment of vegetated corridors along the river edge. A diverse range of habitats could be established throughout this corridor to provide food and shelter for a broad variety of native wildlife.

*Integrated water management*

Simple and innovative engineering and management solutions can be tailored to suit the site conditions. These can reduce Tennyson Parkland's water consumption whilst providing a reliable, low cost alternative to using potable water supply for some uses. Furthermore the quality of stormwater leaving the site can be improved and this will enhance the health of downstream aquatic habitats.

It is recommended that a total water management plan be developed for the parklands that identify potential alternative fit-for-purpose water sources to offset operational consumption of the potable supply.

*Energy & greenhouse gas emissions*

Incorporating renewable energy sources (such as solar generation) can be employed across the park to account for all or part of Tennyson Parkland's energy requirements. The Parkland's energy demands can also be reduced through the application of low energy fittings (such as LED lighting) and ensuring the design enables efficient maintenance practices to reduce fuel consumption by maintenance equipment, such as edge trimmers and mowers.

*Land resources*

The development should seek to achieve a highly efficient physical footprint that provides multiple social, economic and environmental benefits within the same space whilst providing opportunities for expansion of facilities to meet community needs over time.

By avoiding locking up space for a single intermittent use and providing opportunities for multiple simultaneous functions to occur, the design for Tennyson Parklands can provide the public with an efficient parkland space.

*Materials & construction methodologies*

Selecting durable, low maintenance materials from renewable and recycled sources can assist in reducing the amount of raw materials and production energy that will be required to develop Tennyson Parklands. The use of such materials can reduce cost over the lifetime of the development.

Tennyson Parkland will not be a static place over time. Many changes to the type and function of facilities in the parklands will occur due to changing community needs and desires. The process of future renovation and refurbishment can result in the creation of waste and low return on initial investment in the asset. By designing park elements to be disassembled, this will enable relocation or removal with minimal waste creation and permit asset cost recovery.

*Participation & awareness*

It is important that the community is aware and informed about the sustainability features of the Tennyson Parklands. Providing guidance and understanding about the intent of the design interventions and how they benefit the community and the environment is essential. Early community consultation processes, or physical elements such as interpretive artworks, signage or by expressing sustainability elements within the Parkland design, could assist in enhancing community awareness.

### 1.3 COMPLIANCE WITH EXISTING PROVISIONS

Lot 101 on SP195275 was included to be dedicated as parkland as part of the existing Preliminary Approval (A002824927). The conditions of this Preliminary Approval, in particular conditions 129 and 199 relates directly to Council requirements for the development of Lot 101 as parkland. The provisions of Condition 129 and Condition 199 should be applied to the development of the entire Parkland, thus also for the development of Lots 3, 4 and 5 on SP 195275.

### 1.4 APPROVAL OF KEY MILESTONE STAGES.

Approval will be sought from the Council Project Manager at the following milestone;

- Schematic design completion;
- Design development completion; and
- Construction drawing.



*Dedicated to a better Brisbane*

## Tennyson Riverside Parkland Project Weekly Report

Reporting Period: From: Mon 20 June 2011  
To: Friday 24 June 2011

Activity and achievements	
1	<p><u>Land Valuation</u></p> <p>Land valuation completed and forwarded to BCLP.</p>
2	<p><u>Design and Construction</u></p> <p>Received Mirvac draft AS4902 D&amp;C and issue to Council on 20 June for review. [REDACTED] and [REDACTED] to review by COB 27 June. Contracting sign is expected to occur on 28 June.</p>
3	<p>Mirvac issue landscape works return brief to Council on 22 June for review. NES [REDACTED] parkland Terms of Reference sent to Mirvac 24 June.</p> <ul style="list-style-type: none"> <li>Mirvac response due COB 27 June.</li> </ul>
4	<p><u>Purchase of land</u></p> <p>A submission is being prepared by SPO for the Stores Board to approve;</p> <ul style="list-style-type: none"> <li>The purchase of the vacant land; and</li> <li>To enter into a Contract with Mirvac Constructions (Qld) Pty Ltd (Mirvac Constructions) to construct a Parkland (Parkland Works).</li> </ul> <p>Without seeking competitive tenders from industry in accordance with Section 1.2(c), Sole or Select Tendering, of the Procurement Manual pursuant to the City of Brisbane Act 2010.</p>
5	BCLP progressing to finalised purchase agreement by COB 27 June.
6	<p><u>Budget</u></p> <p>Cost Plan and cash flow prepared.</p>

Next week outlook	
1	<p><u>Design and Construction</u></p> <p>Monitor draft AS4902 progress for signing on the 28 June.</p>
2	TOR due from Mirvac.
3	<p><u>Purchase of land</u></p> <p>Monitor Stores Board submission.</p>

**From:** [REDACTED]  
**To:** [REDACTED]  
**CC:** [REDACTED]  
**Date:** 27/06/2011 12:09 pm  
**Subject:** RE: Mirvac Queensland Pty Ltd - Sale to Brisbane City Council-Lots 3, 4, 5 & 101 Tennyson Reach - Emai  
**Attachments:** Lease - Lot 5 sales office\_2054676\_(1).DOC

Thanks [REDACTED]

We confirm that the parties no longer require special conditions 14 in the Land Sale Contracts and that the mortgage back security will therefore not be applicable.

In relation to your comments on special condition 15, we are instructed that the parties (Matthew Wallace for Mirvac & [REDACTED] for Council) have agreed in principle that either all lots must be sold or no lots are sold (ie the scenario where lots 4, 5 & 101 transfer to Council but lot 3 does not transfer to Council cannot occur). To that extent, we are not sure how your proposed amendments to special condition 15 would work within this agreed principle. For example, are you proposing that any election by Council to settle in the event the Body Corporate motion does not get passed on 29 June 2011 applies to both Land Sale Contracts. If Council elects to settle on the Land Sale Contract for Lots 4, 5 & 101 then the Land Sale Contract for Lot 3 must become unconditional (although I do not believe Mirvac will have any problems with a continuing obligation to try and remove Lot 3 from the Tennyson Reach Scheme). Please confirm and/or phone me to discuss any requisite amendments to special condition 15 of the Land Sale Contracts. Thanks.

I attach the draft Lease of the Sales Office. It is not intended that this Lease will be registered. Please confirm Council agrees to the attached form of basic Lease.

I will prepare and submit draft Settlement Statements based on Settlement on 30 June 2011. On this point, if the Body Corporate passes the requisite Motion to remove Lot 3 on 29 June 2011 and ClarkeKann lodges the New CMS for recording at DERM on 30 June 2011, would Council consider settling on Lot 3 on 30 June 2011 or does Council still require 14 days as contemplated in the Land Sale Contract?

Thanks for your ongoing assistance.

Regards

[REDACTED]  
Partner | Property & Projects  
ClarkeKann

Tel: [REDACTED]  
www.clarkekann.com.au  
Brisbane | Level 7, 300 Queen Street, Brisbane QLD 4000,  
Australia | GPO Box 2249, Brisbane QLD 4001, Australia  
Sydney | Level 7, 55 Clarence Street, Sydney NSW 2000, Australia | GPO  
Box 1342, Sydney NSW 2001, Australia

-----Original Message-----

**From:** [REDACTED]  
**Sent:** Friday, June 24, 2011 1:06 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]

Subject: RE: Mirvac Queensland Pty Ltd - Sale to Brisbane City Council-Lots 3, 4, 5 & 101 Tennyson Reach - Email

Hi [REDACTED]

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Annexure E - delete.

Lot 3

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Regards,

[REDACTED]  
Solicitor| Brisbane City Legal Practice  
Office of the Lord Mayor & CEO  
| Brisbane City Council



266 George Street | GPO Box 1434 | Brisbane Qld 4001

Phone [REDACTED]

>>> [REDACTED] 23/06/2011 3:13 pm

>>>

Thanks [REDACTED] So that it doesn't slip my mind in next week's probable rush, I attach a Land Tax Clearance Certificate for the subject land parcels (being one of Council's settlement requirements). Thanks.

Regards

[REDACTED]  
Partner | Property & Projects

Tel: [REDACTED]

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Box 2249, Brisbane QLD 4001, Australia  
Sydney | Level 7, 55 Clarence Street, Sydney NSW 2000, Australia | GPO  
Box 1342, Sydney NSW 2001, Australia

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From: [REDACTED]

Sent: Thursday, June 23 2011 12:12 PM

To: [REDACTED]

Cc: [REDACTED]

Subject: Re: Mirvac Queensland Pty Ltd - Sale to Brisbane City Council  
-Lots 3, 4, 5 & 101 Tennyson Reach - Email

Hi [REDACTED]

Amended Purchase contracts confirmed as recieved. We will review as a priority.

Regards

[REDACTED]  
Solicitor/Team Leader Commercial | Brisbane City Legal Practice  
Brisbane City Legal Practice  
Office of the Lord Mayor & CEO

Ph:  
E-m

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**From:** [REDACTED]  
**To:** [REDACTED]  
**CC:** [REDACTED]  
**Date:** 27/06/2011 2:40 pm  
**Subject:** RE: Mirvac Queensland Pty Ltd - Sale to Brisbane City Council-Lots 3, 4, 5 & 101  
 Tennyson Reach - Email

FYI  
 306  
 307040  
 CPS  
 MIRVA

Hi [REDACTED]

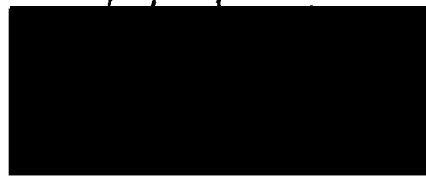
I am now instructed that Council does agree in principle that the deal is "all or nothing" and either:

1. the Body Corporate motion is passed on 29 June 2011 and the New CMS is lodged with DERM on 30 June 2011 (and an undertaking to answer any requisitions is provided to Council), then both Land Sale Contracts will settle on 30 June 2011; or
2. the Body Corporate motion does not get passed on 29 June 2011 and the settlement date of both Land Sale Contracts is extended to a date beyond 30 June 2011 (i.e. to the date the New CMS is lodged with DERM to remove Lot 3 from the Scheme (and an undertaking to answer any requisitions is provided to Council)) but no later than 11 December 2011.

I will get back to you shortly regarding the proposed lease.

Regards,

[REDACTED]  
 Solicitor | Brisbane City Legal Practice  
 Office of the Lord Mayor & CEO  
 | Brisbane City Council  
 266 George Street | GPO Box 1434 | Brisbane Qld 4001



Phone: [REDACTED]  
Belinda [REDACTED]

>>> [REDACTED] 27/06/2011 12:05 pm >>>  
Thanks [REDACTED]

We confirm that the parties no longer require special conditions 14 in the Land Sale Contracts and that the mortgage back security will therefore not be applicable.

In relation to your comments on special condition 15, we are instructed that the parties (Matthew Wallace for Mirvac & [REDACTED] for Council) have agreed in principle that either all lots must be sold or no lots are sold (ie the scenario where lots 4, 5 & 101 transfer to Council but lot 3 does not transfer to Council cannot occur). To that extent, we are not sure how your proposed amendments to special condition 15 would work within this agreed principle. For example, are you proposing that any election by Council to settle in the event the Body Corporate motion does not get passed on 29 June 2011 applies to both Land Sale Contracts. If Council elects to settle on the Land Sale Contract for Lots 4, 5 & 101 then the Land Sale Contract for Lot 3 must become unconditional (although I do not believe Mirvac will have any problems with a continuing obligation to try and remove Lot 3 from the Tennyson Reach Scheme). Please confirm and/or phone me to discuss any requisite amendments to special condition 15 of the Land Sale Contracts. Thanks.

I attach the draft Lease of the Sales Office. It is not intended that this Lease will be registered. Please confirm Council agrees to the attached form of basic Lease.

I will prepare and submit draft Settlement Statements based on Settlement on 30 June 2011. On this point, if the Body Corporate passes the requisite Motion to remove Lot 3 on 29 June 2011 and ClarkeKann lodges the New CMS for recording at DERM on 30 June 2011, would Council consider settling on Lot 3 on 30 June 2011 or does Council still require 14 days as contemplated in the Land Sale Contract?

Thanks for your ongoing assistance.

Regards

[REDACTED]  
Partner | Property & Projects  
ClarkeKann

Tel: [REDACTED]

[www.clarkekann.com.au](http://www.clarkekann.com.au)

Brisbane | Level 7, 300 Queen Street, Brisbane QLD 4000,  
Australia | GPO Box 2249, Brisbane QLD 4001, Australia  
Sydney | Level 7, 55 Clarence Street, Sydney NSW 2000, Australia | GPO  
Box 1342, Sydney NSW 2001, Australia

-----Original Message-----

From: [REDACTED]  
Sent: Friday, June 24, 2011 1:06 PM  
To: [REDACTED]  
Cc: [REDACTED]  
Subject: RE: Mirvac Queensland Pty Ltd - Sale to Brisbane City Council-Lots 3, 4, 5 & 101 Tennyson Reach - Email

Hi [REDACTED]

We have reviewed the Land Sale Contracts and comment as follows:

Lots 4, 5 and 101

Clause 14.1(b) - I understand the parties have agreed this amount will be paid on settlement of Lot 3.

Clause 14.2 - I understand the parties have agreed to delete this provision.

Clause 15 - I am instructed that Council requires the clause to be amended in accordance with the following points:

- The Buyer may settle this Contract on 30 June 2011 even if the Body Corporate does not pass the requisite resolution to remove Lot 3 from the Scheme Land at the AGM to be held on 29 June 2011.

- The Buyer may extend settlement under this Contract to coincide with the settlement date of the Lot 3 Contract by written notice to the Seller in the event the Body Corporate does not pass the requisite resolution to remove Lot 3 from the Scheme Land at the AGM to be held on 29 June 2011.

- The settlement date under this Contract must not be extended beyond 11 December 2011.

Annexure E - delete.

Lot 3

Clause 14.1 - This will need to be amended so that \$2.5 million is paid on the Settlement Date and not in instalments.

Clause 14.2 - I understand the parties have agreed to delete this provision.

Annexure C - delete.

Do we need to include a provision that in the event Lot 3 is removed from the Scheme that the provisions in the Contract relating to Community Titles Schemes do not apply?

Regards,

[REDACTED]  
Solicitor | Brisbane City Legal Practice  
Office of the Lord Mayor & CEO  
| Brisbane City Council  
266 George Street | GPO Box 1434 | Brisbane Qld 4001

Phone: [REDACTED]

>>> [REDACTED] 23/06/2011 3:13 pm

>>> [REDACTED]  
Thanks [REDACTED] So that it doesn't slip my mind in next week's probable rush, I attach a Land Tax Clearance Certificate for the subject land parcels (being one of Council's settlement requirements). Thanks.

Regards

[REDACTED]  
Partner | Property & Projects

Tel: [REDACTED]

[www.clarkekann.com.au](http://www.clarkekann.com.au)

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Box 1342, Sydney NSW 2001, Australia

From: [Redacted]  
Sent: Thursday, June 23, 2011 12:12 PM  
To: [Redacted]  
Cc: [Redacted]  
Subject: Re: Mirvac Queensland Pty Ltd - Sale to Brisbane City Council  
-Lots 3, 4, 5 & 101 Tennyson Reach - Email

Hi [Redacted]

Amended Purchase contracts confirmed as recieved. We will review as a priority.

Regards

[Redacted]  
Solicitor/Team Leader Commercial | Brisbane City Legal Practice  
Brisbane City Legal Practice  
Office of the Lord Mayor & CEO

Ph: [Redacted]  
E-mail: [Redacted]

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Please direct all enquiries to the message author.

\*\*\*\*\*

**From:**  
**To:**  
**CC:**

**Date:** 27/06/2011 4:47:54 PM  
**Subject:** RE: Tennyson Reach Parkland Design

H

Thanks for the draft TOR.

Needs Assessment

- \* Mirvac have already undertaken considerable community consultation with the surrounding community as part of the broader process of delivering the Queensland Tennis Stadium on the site.
- \* We propose that, rather than going back out to the community, we collate the comments related to the parkland and use this to inform the park design.

All Abilities Playground

- \* We envisage that some all-abilities equipment would be provided in the parkland, but the current TOR drafting could be read to suggest that all facilities and all areas of the parkland can be accessed by people of 'all levels and abilities'. Could you please provide some further clarity regarding the intent here?

Development Assessment Strategy

- \* As discussed we believe an expedient DA strategy would be to seek separate approvals for Stage 1 (Code Assessable) and Stage 2 (Impact Assessable).

We have comments on some other aspects of the TOR, but will discuss in our meeting tomorrow.

Regards

---

**From:**  
**Sent:** Friday, 24 June 2011 1:56 PM  
**To:**  
**Cc:**  
**Subject:** Tennyson Reach Parkland Design

A review of the Mirvac proposed Park Master Plan and the Return Brief has been conducted by City Projects Office in collaboration with Natural Environment and Sustainability to determine the design intent and design requirements for the development of the site for public parkland. The ultimate design intent, objectives and design requirements have been prepared in consideration of community requirements, proposed parkland hierarchy within Council's Park Classification guide and long term asset management considerations.

A Terms of Reference (TOR) has been attached to clearly define Council's design intent and key objectives to inform the development of parkland at Tennyson Reach Parkland.

I would appreciate if you could review the TOR and advise if this is satisfactory to be included in the AS4902 by COB Monday 27 June.

Regards

\*\*\*\*\* This message has passed through an insecure network. Please direct all enquiries to the message author. \*\*\*\*\*

\*\*\*\*\* This message has passed through an insecure network. Please direct all enquiries to the message author. \*\*\*\*\*



**From:** [REDACTED]  
**To:** [REDACTED]  
**Date:** 27/06/2011 5:37:20 pm  
**Subject:** RE: Mirvac Queensland Pty Ltd - Sale to Brisbane CityCouncil-Lots 3, 4, 5 & 101 Tennyson Reach - Email

Thanks [REDACTED] I attach marked up copies of the amended Annexure Special Conditions for each of the Land Sale Contracts. Please let me have your comments. Please note that I am providing same to my client with this email and so submission is subject to my client's review and confirmation of the amended Special Conditions.

Regards

[REDACTED]  
Partner | Property & Projects  
ClarkeKann

Tel: [REDACTED]  
www.clarkekann.com.au  
Brisbane | Level 7, 300 Queen Street, Brisbane QLD 4000,  
Australia | GPO Box 2249, Brisbane QLD 4001, Australia  
Sydney | Level 7, 55 Clarence Street, Sydney NSW 2000, Australia | GPO  
Box 1342, Sydney NSW 2001, Australia

-----Original Message-----

**From:** [REDACTED]  
**Sent:** Monday, June 27, 2011 2:41 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Mirvac Queensland Pty Ltd - Sale to Brisbane CityCouncil-Lots 3, 4, 5 & 101 Tennyson Reach - Email

Hi [REDACTED]

I am now instructed that Council does agree in principle that the deal is "all or nothing" and either:

1. the Body Corporate motion is passed on 29 June 2011 and the New CMS is lodged with DERM on 30 June 2011 (and an undertaking to answer any requisitions is provided to Council), then both Land Sale Contracts will settle on 30 June 2011; or
2. the Body Corporate motion does not get passed on 29 June 2011 and the settlement date of both Land Sale Contracts is extended to a date beyond 30 June 2011 (i.e. to the date the New CMS is lodged with DERM to remove Lot 3 from the Scheme (and an undertaking to answer any requisitions is provided to Council)) but no later than 11 December 2011.

I will get back to you shortly regarding the proposed lease.

Regards,

[REDACTED]  
Solicitor | Brisbane City Legal Practice  
Office of the Lord Mayor & CEO

| Brisbane City Council  
266 George Street | GPO Box 1434 | Brisbane Qld 4001

Phone: [REDACTED]  
[REDACTED]

>>> [REDACTED] 27/06/2011 12:05 pm

>>>

Thanks [REDACTED]

We confirm that the parties no longer require special conditions 14 in the Land Sale Contracts and that the mortgage back security will therefore not be applicable.

In relation to your comments on special condition 15, we are instructed that the parties (Matthew Wallace for Mirvac & [REDACTED] for Council) have agreed in principle that either all lots must be sold or no lots are sold (ie the scenario where lots 4, 5 & 101 transfer to Council but lot 3 does not transfer to Council cannot occur). To that extent, we are not sure how your proposed amendments to special condition 15 would work within this agreed principle. For example, are you proposing that any election by Council to settle in the event the Body Corporate motion does not get passed on 29 June 2011 applies to both Land Sale Contracts. If Council elects to settle on the Land Sale Contract for Lots 4, 5 & 101 then the Land Sale Contract for Lot 3 must become unconditional (although I do not believe Mirvac will have any problems with a continuing obligation to try and remove Lot 3 from the Tennyson Reach Scheme). Please confirm and/or phone me to discuss any requisite amendments to special condition 15 of the Land Sale Contracts. Thanks.

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Thanks for your ongoing assistance.

Regards

[REDACTED]  
Partner | Property & Projects  
ClarkeKann

Te [REDACTED]

[www.clarkekann.com.au](http://www.clarkekann.com.au)

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Box 1342, Sydney NSW 2001, Australia

From: [Redacted]  
To: [Redacted]  
Date: 27/06/2011 5:50:46 pm  
Subject: RE: Mirvac Queensland Pty Ltd - Sale to Brisbane CityCouncil-Lots 3, 4, 5 & 101 Tennyson Reach - Email

*AM* 302040  
CPS  
MIRVAC TENNYSON

Hi [Redacted]

In the Land Sale Contract for Lots 4, 5 and 101 it says "the Seller may extend the settlement date to coincide with any settlement date under the Lot 3 Contract". Council requires that the Buyer may extend the settlement date by notice to the Seller.

Thanks

Regards,

[Redacted]  
Solicitor| Brisbane City Legal Practice  
Office of the Lord Mayor & CEO  
| Brisbane City Council  
266 George Street | GPO Box 1434 | Brisbane Qld 4001

*27/6/2011  
20 droussy*

Phone: [Redacted]

>>> [Redacted] 27/06/2011 5:31 pm >>>

Thanks [Redacted] I attach marked up copies of the amended Annexure Special Conditions for each of the Land Sale Contracts. Please let me have your comments. Please note that I am providing same to my client with this email and so submission is subject to my client's review and confirmation of the amended Special Conditions.

Regards

[Redacted]  
Partner | Property & Projects  
ClarkeKann

Tel: [Redacted]  
[www.clarkekann.com.au](http://www.clarkekann.com.au)  
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-----Original Message-----

From: [Redacted]  
Sent: Monday, June 27, 2011 2:41 PM  
To: [Redacted]  
Cc: [Redacted]  
Subject: RE: Mirvac Queensland Pty Ltd - Sale to Brisbane CityCouncil-Lots 3, 4, 5 & 101 Tennyson Reach - Email

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[Redacted]  
 Solicitor, Brisbane City Legal Practice  
 Office of the Lord Mayor & CEO  
 | Brisbane City Council  
 266 George Street | GPO Box 1434 | Brisbane Qld 4001

Phone: [Redacted]

>>> [Redacted] 27/06/2011 12:05 pm

>>> Thanks [Redacted]

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Regards

Partner | Property & Projects  
ClarkeKann

Tel:

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Box 1342, Sydney NSW 2001, Australia

-----Original Message-----

From:

Sent: Friday, June 24, 2011 1:08 PM

To:

Cc:

Subject: RE: Mirvac Queensland Pty Ltd - Sale to Brisbane City Council-Lots 3, 4, 5 & 101 Tennyson Reach - Email

Hi

We have reviewed the Land Sale Contracts and comment as follows:

Lots 4, 5 and 101

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- The settlement date under this Contract must not be extended beyond 11 December 2011.

Annexure E - delete.

Lot 3

Clause 14.1 - This will need to be amended so that \$2.5 million is paid on the Settlement Date and not in instalments.

Clause 14.2 - I understand the parties have agreed to delete this provision.

Annexure C - delete.

Do we need to include a provision that in the event Lot 3 is removed from the Scheme that the provisions in the Contract relating to Community Titles Schemes do not apply?

Regards,

[REDACTED]  
Solicitor | Brisbane City Legal Practice  
Office of the Lord Mayor & CEO  
| Brisbane City Council  
266 George Street | GPO Box 1434 | Brisbane Qld 4001

Phone: [REDACTED]

>>> [REDACTED] 23/06/2011 3:13 pm

>>>

Thanks [REDACTED] So that it doesn't slip my mind in next week's probable rush, I attach a Land Tax Clearance Certificate for the subject land parcels (being one of Council's settlement requirements). Thanks.

Regards

[REDACTED]  
Partner | Property & Projects

Tel: [REDACTED]

[www.clarkekann.com.au](http://www.clarkekann.com.au)

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Box 1342, Sydney NSW 2001, Australia

From: [Redacted]  
Sent: Thursday, June 23 2011 12:12 PM  
To: [Redacted]  
Cc: [Redacted]  
Subject: Re: Mirvac Queensland Pty Ltd - Sale to Brisbane City Council  
-Lots 3, 4, 5 & 101 Tennyson Reach - Email

Hi [Redacted]

Amended Purchase contracts confirmed as recieved. We will review as a priority.

Regards

[Redacted]  
Solicitor/Team Leader Commercial | Brisbane City Legal Practice  
Brisbane City Legal Practice  
Office of the Lord Mayor & CEO

Ph: [Redacted]  
E-mail: [Redacted]

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\*\*\*\*\*

CC:





**[REDACTED] - Tennyson Parklands AS4902**

---

**From:** [REDACTED]  
**To:** [REDACTED]  
**Date:** 27/06/2011 6:01 pm  
**Subject:** Tennyson Parklands AS4902  
**CC:** [REDACTED]

---

Dear [REDACTED]

We have completed quite a reworking of the AS4902 provided, but feel now it is actually more in accordance with the original agreement, and bearing in mind that we are buying land from Mirvac not the other way round and thus Mirvac is accepting the risk of design, costing, and statutory delays.

I look forward to our discussion tomorrow.

Regards

[REDACTED]  
Solicitor/Team Leader Commercial | Brisbane City Legal Practice  
Brisbane City Legal Practice  
Office of the Lord Mayor & CEO

Ph: [REDACTED]  
E-mail: [REDACTED]

[REDACTED]

---

**Subject:** Fwd: Meeting with Mirvac

>>> [REDACTED] 27/06/2011 6:11:38 PM >>>

[REDACTED]

As discussed, we have a meeting with Mirvac to discuss the design and construct contract AS4902 and TOR which specifies at a high level the minimum design, planning and sustainability requirements and process of delivery. I understand the Mirvac Queensland CEO will also be attending. The meeting has been arranged at a very short notice due to the tight signing deadline (29 June). I know that you are unable to attend due to your other previous commitments and the very short notice provided. I will brief you of the outcome after the meeting. [REDACTED]

[REDACTED] and I will be attending the meeting.

Regards  
[REDACTED]

**SUBMISSION TO THE ESTABLISHMENT AND COORDINATION COMMITTEE**

1.0 Primary file number  
137/800/1121/265

Related subject matter files  
158/40/446/2782

2.0 Title  
Stores Board Submission - Tennyson Reach Parkland


3.0 Issue/purpose  
To seek approval from the Establishment & Coordination Committee

- (A) Entering into a Contract with Mirvac Queensland Pty Limited (Mircvac) for the purchase of Tennyson Reach vacant land; and
- (B) Entering into a Contract with Mirvac Constructions (Qld) Pty Ltd (Mircvac Constructions) to construct a Parkland (Parkland Works) without seeking competitive tenders from industry in accordance with Section 1.2(c), Sole or Select Tendering, of the Procurement Manual pursuant to the City of Brisbane Act 2010.


4.0 Proponent  
Colin Jensen, Chief Executive Officer

5.0 Submission prepared by  
 Acting Corporate Risk Manager, Corporate Services Division

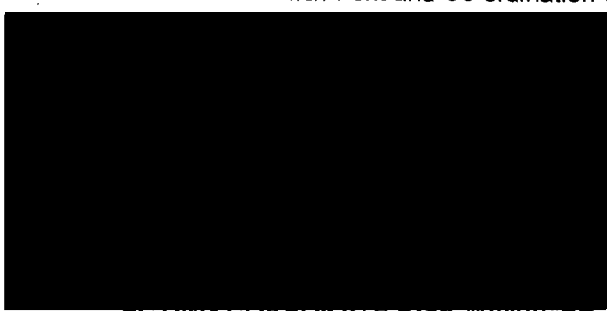
6.0 Date  
21 June 2011  


7.0 For E&C approval or recommendation to Council  
For E&C approval 

8.0 If for recommendation to Council, is a Council resolution required under an Act or Local Law?  
No

9.0 Recommended for public release  
 Immediate release

10.0 Recommendation  
That the Establishment and Co-ordination Committee approves the attached submission.

  
ACTING CORPORATE RISK MANAGER

  
Colin Jensen  
CHIEF EXECUTIVE OFFICER

BRIEFING CONFERENCE

**APPROVED**

**12.0 Background**

The Chief Executive Officer and the Stores Board considered the attached scheduled submission on 21 June 2011.

The submission is referred to E&C as it is considered the most advantageous outcome for the provision of the required services:

<b>CONTRACT NO.</b>	<b>CONTRACT TITLE</b>	<b>REASON FOR SUBMISSION</b>
V110212-10/11	Tennyson Reach Parkland Construction	For E&C approval

**13.0 Consultation**

- The Chief Executive Officer
- Permanent Head of the Unit of Administration responsible for the submission
- Stores Board
- Relevant Divisional Officers

All are in agreement with the recommendation.

**14.0 Implications of proposal**

The recommended process will provide the most advantageous outcome for Council.

**15.0 Commercial in confidence**

Not Applicable.

**16.0 Vision/Corporate Plan impact**

The recommendation of this submission will contribute to the efficient management of the City's resources.

**17.0 Customer impact**

The submission covers the acquisition of land for parkland carrying out of work or supply of goods and services to meet Council approved programs.

**18.0 Environmental impact**

Environmental considerations will be taken into account in the evaluation of tenders for the construction works where applicable.

**19.0 Policy impact**

Submitted in accordance with Council's procedures acquisition of land and for procurement, contracting and tendering.

**20.0 Financial impact**

Financial details are included in the Divisional submission.

**21.0 Human resource impact**

Not Applicable

**22.0 Urgency**

As soon as possible

**23.0 Publicity/marketing strategy**

As Required

**24.0 Options**

*Option 1: That the E&C approves the recommendation.*

*Option 2: Not approve the recommendation.*

**Option 1 is the preferred option.**

***NB: If the officer's recommendation is not followed, then the reasons for departure from that recommendation should be recorded here.***

CABINET - IN CONFIDENCE

ATTACHMENT A**ESTABLISHMENT AND COORDINATION COMMITTEE****FORMAL SUBMISSION****TENNYSON REACH PARKLAND CONSTRUCTION****FROM THE MEETING OF MONDAY 27 JUNE 2011**

The vacant land comprised of Lots 3, 4, 5, and 101 on survey plan 19275 is owned by Mirvac Queensland Pty Limited (Mircvac), who purchased the land with then intention to build residential units on the land. This land was inundated by flood waters during the January 2011 flood event, which led to reconsideration by Mirvac of the suitability of the proposed development. Consequently, Mirvac approached Council to create Parklands on the vacant land, which represents a rare opportunity to provide riverside parkland for the community.

To achieve the Parklands objective, Council has negotiated the purchase of the vacant land from Mirvac to achieve this unique opportunity to establish another Riverside Park in a highly accessible place within Brisbane.

There are a number of Contractors in the Brisbane area with the capability of performing the Parkland Works required by Council, however it is considered that entering directly into a contract with Mirvac will be the most advantageous outcome for Council and in the public interest.

The parkland works will be delivered in 2 stages:

Stage 1 represents the parkland works to the east of the sale office.

Stage 2 represents the relocation and external refurbishment of the Sales Office and the balance of the parkland works to the west of the Sales Office.

On Monday 27 June 2011, the Establishment and Coordination Committee approved:

- (A) Entering into a Contract with Mirvac Queensland Pty Limited (Mircvac) for the purchase of Tennyson Reach vacant land; and
- (B) Entering into a Contract with Mirvac Constructions (Qld) Pty Ltd (Mircvac Constructions) to construct a Parkland (Parkland Works) without seeking competitive tenders from industry in accordance with Section 1.2(c), Sole or Select Tendering, of the Procurement Manual pursuant to the City of Brisbane Act 2010.

**SOLE SOURCING SUBMISSION**

<i>To:</i>	Colin Jensen <b>Chief Executive Officer (Stores Board Chair)</b>	<i>Date:</i> 21 June 2011
<i>Through:</i>	[REDACTED] Chief Procurement Officer <b>Strategic Procurement Office Organisational Services Division</b>	
<i>From:</i>	[REDACTED] Divisional Manager <b>Organisational Services Division</b>	
<i>Subject:</i>	<b>Tennyson Reach Parkland Construction Contract No. V110212-10/11</b>	
<i>File reference:</i> OP 302040		

**1.0 PURPOSE**

That the Chief Executive Officer (through the Stores Board) recommends to Establishment & Coordination Committee that it **approves**:

- (A) Entering into a Contract with Mirvac Queensland Pty Limited (Mircac) for the purchase of Tennyson Reach vacant land; and
- (B) Entering into a Contract with Mirvac Constructions (Qld) Pty Ltd (Mircac Constructions) to construct a Parkland (Parkland Works) without seeking competitive tenders from industry in accordance with Section 1.2(c), Sole or Select Tendering, of the Procurement Manual pursuant to the City of Brisbane Act 2010.

Subject to any variations negotiated by Council, Mirvac and Mirvac Constructions will together be paid no greater than \$15m by Council for the delivery of the Parkland Works and the transfer of the land.

The date for practical completion of the construction of the Parkland Works shall be 18 months from the date the Contract is entered into by the parties.

**2.0 BACKGROUND**

Mircac approached Council to create Parklands on the vacant land comprised of Lots 3, 4, 5, and 101 on survey plan 19275 in lieu of Mirvac developing residential units in the same area. This vacant land was inundated by flood waters during the January 2011 flood event which has led to a reconsideration by Mirvac of the suitability of the proposed development. This represents a rare opportunity to provide riverside parkland for the community.

The Parkland Works will be delivered in 2 stages. Stage 1 represents the Parkland Works to the east of the sale office. Stage 2 represents the relocation and external refurbishment of the Sales Office and the balance of the Parkland Works to the west of the Sales Office.

### 3.0 CONSIDERATIONS IN RELATION TO THE PURCHASE OF LAND

The following land will be transferred to Council in Freehold Title on Settlement Date free from encumbrance:

- The whole of Lot 4 on Survey Plan 195275
- The whole of Lot 5 on Survey Plan 195275
- The whole of Lot 101 on Survey Plan 195275, subject to Energex Easement

The following land is to be converted from Community Title to Freehold Title free from encumbrance at the expense of Mirvac with all consents required for the conversion to be obtained by Mirvac at their expense:

- Lot 3 on Survey Plan 195275, Community Management Statement 39925

Mirvac is to provide full and complete disclosure of all materials relevant to the land being transferred. The independent valuation and purchasing price of the land is \$9 million. The land payment at settlement on 30 June 2011 is \$6m. The remaining \$3 million will be paid over the construction period.

Mirvac is to be granted a lease of the transferred land. The terms of the lease will be from the settlement date until practical completion of Stage 2 of the Parkland Works. Rent will be \$10 total.

The lease of the transferred land shall only be used for :-

- (a) Construction of Stage 1 and 2 of the Parkland Works.
- (b) Conduct of the existing sales office for marketing and sale of the Tennyson Reach Development. This may be the subject of a sublease to a real estate agent for the same purpose.

### 4.0 RATIONALE FOR SOLE SOURCING WITH MIRVAC FOR THE CONSTRUCTION OF PARKLAND

- (a) The vacant land designated for the Parkland Construction is owned by Mirvac who intended to build residential units on the vacant land. Mirvac approached Council to create Parklands on the vacant land comprised of Lots 3, 4, 5, and 101 on survey plan 19275 in lieu of Mirvac developing residential units in the same area. The land was inundated by flood waters during the January 2011 flood event.
- (b) Council wishes to enter into a Contract with Mirvac Constructions for the Parkland Works without seeking competitive tenders from industry in accordance with Section 1.2(c), Sole or Restricted Tendering, of the Procurement Manual pursuant to the City of Brisbane Act 2010.
- (c) The construction of the proposed parkland on Lots 3, 4, 5, and 101 on Survey Plan 195275 by Mirvac Constructions Qld Pty Ltd is conditionally tied to the purchase of the land.
- (d) There are a number of Contractors in the Brisbane area with the capability of performing the Parkland Works required by Council, however it is considered that entering directly into a contract with Mirvac will be the most advantageous outcome for Council.



- (e) Mirvac has a strong reputational drive to develop parkland in a manner which enhance saleability of existing units and keeps faith with existing body corporate members
- (f) The following terms of engagement with Mirvac will ensure that value for money is achieved by Council for the Parkland Works:
- Develop the Design & Specification for the Parkland at its own expense for approval by Council;
  - Construct the Parkland in accordance with Council approved Design & Specification;
  - Subject to any variations requested by Council, Mirvac will be paid no greater than \$15M by Council for the delivery of the Parkland Works and the transfer of the land;
  - Any costs of delivery of the Works in excess of the \$15M figure will be the responsibility of Mirvac unless Council agrees to the contrary;
  - Mirvac will not be entitled to claim any profit margin for its involvement in, or construction of, the Parklands Works;
  - Council will not be liable for the costs of removal of contamination, latent conditions and delay costs to the extent caused or contributed to by Council;
  - Council will only be liable for variation claims where it has previously expressly approved such variation;
  - Council will engage its own superintendent and independent verifier to check the Parkland Works as they are undertaken;
  - Mirvac agrees to a 12 month liability period and maintenance at its own cost for a period of 12 months from the date of practical completion;
  - Mirvac is responsible for obtaining all necessary approvals for the Parkland Works, lease and transfer of land at Mirvac's expense;
  - Mirvac is to allow full access to its financial and project accounts relating to the Parkland Works for the purposes of audit and verification of payment claims; and
  - Mirvac will not procure any or engage subcontractors except as authorised by Council.

It is therefore considered that directly entering into a contract with Mirvac Constructions for the Parkland Works is in the public interest.

## 5.0 CONTRACT, PRICE BASIS OF AGREEMENT AND PRICE VARIATION ARRANGEMENTS INCLUDING FOREIGN EXCHANGE AND COMMODITY PRICE RISKS

The Contract for the construction of the parkland with Mirvac Construction Queensland Pty Ltd shall be:

- In the form of Council's construction contract standard Australian Standard for design and construct AS4902-2000 (BCC amended).
- The time for Practical Completion shall be 18 months from the date of commencement.
- Defects Liability period of 12 months will apply from the date of practical completion
- On a lump sum price basis, the rates shall be fixed for the term of the Contract.
- The contract will include an incentive to reduce the cost of the construction works by including a provision for any savings below the capped contract sum to be shared 50/50 by the parties

## 6.0 PROCUREMENT RISK ASSESSMENT

Procurement Risk	Risk Rating	Risk Mitigation Strategy	Risk Allocation
<b>Financial Risks</b>			
The valuation is more than or less than \$6m	Medium	Negotiate cost of construction.	Shared between BCC and Mirvac
<b>Operational Risks</b>			
The Body Corporate does not agree to the transfer of Lot 3 on Survey Plan 195275, Community Management Statement 39925	Medium	Mirvac to provide legal options to ensure appropriate outcome	Mirvac
<b>Contractual Risk</b>			
No agreement reached on total land & construction costs	Medium	BCC to seek agreement to tender work	Shared between BCC and Mirvac

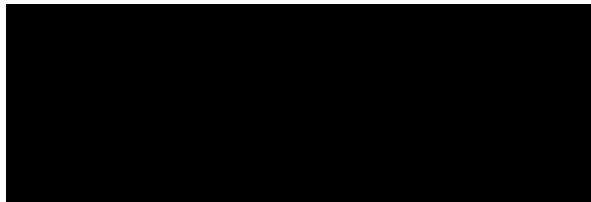
**7.0 FUNDING AND BUDGET CONSIDERATIONS**

Mirvac will be paid no greater than \$15M by Council for the delivery of the Parkland Works and the transfer of the land. Council approved funds of \$12m have been allowed for the project. Approval to enter into the construction contract where the cost of land and park construction exceeds \$12m will be subject to budget funding.

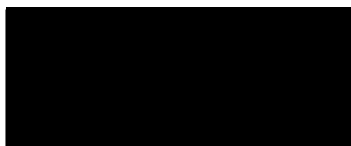
**8.0 RECOMMENDATION**

That the Chief Executive Officer (through the Stores Board) recommends to Establishment & Coordination Committee that it **approves**:

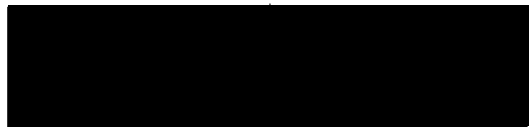
- Entering into a Contract with Mirvac Queensland Pty Limited for the purchase of the Tennyson Reach Parkland;
- Entering into a Contract with Mirvac Constructions (Qld) Pty Ltd to construct Parkland Works on the transferred Parkland without seeking competitive tenders from industry in accordance with Section 1.2(c), Sole or Select Tendering, of the Procurement Manual pursuant to the City of Brisbane Act 2010;
- Subject to any variations requested by Council, Mirvac and Mirvac Constructions will together be paid no greater than \$15 million by Council for the delivery of the Parkland Works and the transfer of the land;
- Subject to budget approval should the combined cost of land and par construction exceed \$12 million; and
- The date for practical completion shall be 18 months from the date the Contract is entered into by the parties.



**Chief Procurement Officer  
Strategic Procurement Office  
Organisational Services Division**



**Divisional Manager  
Organisational Services Division**

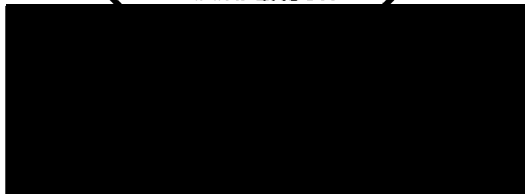


**APPROVED  
BY STORES BOARD**

.....21 / 06 / 2011.....



**CHAIRPERSON**



[REDACTED]

---

**Subject:** Fwd: Mirvac Meeting

**Attachments:** TEXT.htm



TEXT.htm (3 KB)

>>> [REDACTED] 28/06/2011 10:54:23 AM >>>

The meeting with Mirvac went reasonably well. The focus of the meeting was to come to an agreement on certain key principles / issues the Council had with respect to the Contract and the Design Development Terms of reference (TOR). These were:

1. The Contract prepared by Mirvac and the TOR were not clear on how the final cost of the design and construction of the parkland will be agreed. The Contract only specified that the final cost will be capped at \$6million. Mirvac has now agreed to present a cost plan at the detailed design stage which will be validated by the Council through an independent Quantity Surveyor and a guaranteed construction cost will be agreed at this stage which will form the basis for costs sharing. This has now been incorporated in both documents. The price will be capped at \$6m.
2. Mirvac will be fully responsible for design and documentation including all associated approvals. Mirvac will seek approval from the Council during key milestones including schematic stage, detail design and construction stages. This will not imply that the Council will be responsible for any design errors etc.
3. Mirvac stated that total project time frame for all three stages is 140 weeks. This was on an agreement between the Council and Mirvac at a high level to lease the building for 24 months + after the expiry of the lease, a 36 week construction period will for Stage 2. [REDACTED] will raise this at the Stores Board today and confirm.

Other minor issues such as provision for latent condition, development approval time frame, nominated sub contractor etc were also discussed. In general, I believe there was a common understanding on the key principles and should be resolved by tomorrow including the drafting of final Contract and TOR.

Regards

[REDACTED]

Group Manager  
Project Management & Structures  
City Design  
Brisbane Infrastructure

Tel: [REDACTED]

[REDACTED] RE: Mirvac Queensland Pty Ltd - Sale to BrisbaneCityCouncil-Lots 3, 4, 5 & 101 Tennyson Reach - Email

---

**From:** [REDACTED]  
**To:** [REDACTED]  
**Date:** 28/06/2011 12:21 pm  
**Subject:** RE: Mirvac Queensland Pty Ltd - Sale to BrisbaneCityCouncil-Lots 3, 4, 5 & 101 Tennyson Reach - Email  
**CC:** [REDACTED]

---

[REDACTED] I refer to our telephone conversation and confirm/note the following:

- (1) **Land Sale Contract for Lots 4, 5 & 101** – I confirm we have no problems with amending special condition 14.1 to provide that "either the Seller or the Buyer may extend the Settlement Date.." in the circumstances referred to in the special condition. I also confirm the need to amend special condition 11.1 so that it refers to an expiry date for the Lease of the Sales Office being the "commencement of Stage 2 of the Parkland Works.." consistent with the draft Sales Office Lease issued.
- (2) **Valuations** – I note the independent valuations for Lots 3, 4 & 5 come in at \$9, 150,000 (plus GST). I confirm that you are making enquiries regarding the valuation of lot 101 (anticipated to be a nominal amount). As discussed, for ease of stamping of the Transfers, the parties should consider having the Land Contract purchase prices mirror the unencumbered valuations on which stamp duty is payable (with a corresponding decrease in the Parkland Works Contract). I will check with Mirvac and note you will check with the relevant person at BCC. Please also urgently advise the valuation of Lot 101.
- (3) **Mirvac Queensland Pty Ltd Company Charge** – As discussed, I attach an ASIC Company Extract for the Seller noting only one current registered Company Charge to ING Bank (Australia) Ltd (see page 25 of 31) as well as a copy of the relevant Company Charge. You will see from the definition of "Mortgaged Property" that the Company Charge is limited to the Seller's property at Ephraim Island and does not affect the Tennyson Reach land parcels. Amended special condition 10 (Company Charge) of the Land Sale Contracts would require the Seller to obtain a statement from the Chargee to this effect whereas time is unlikely to allow this. Accordingly, please confirm special condition 10 can be amended back to the drafting as originally submitted and/or confirm the Buyer will be satisfied based on the attachments. Thanks.

Thanks.

Regards

[REDACTED]  
Partner | Property & Projects  
ClarkeKann

Tel: [REDACTED] [www.clarkekann.com.au](http://www.clarkekann.com.au)  
Brisbane | Level 7, 300 Queen Street, Brisbane QLD 4000, Australia | GPO Box 2249, Brisbane QLD 4001, Australia  
Sydney | Level 7, 55 Clarence Street, Sydney NSW 2000, Australia | GPO Box 1342, Sydney NSW 2001, Australia

-----Original Message-----

From: [REDACTED]  
Sent: Monday, June 27, 2011 5:51 PM  
To: [REDACTED]  
Cc: [REDACTED]  
Subject: RE: Mirvac Queensland Pty Ltd - Sale to BrisbaneCityCouncil-Lots 3, 4, 5 & 101 Tennyson Reach - Email

Hi [REDACTED]

In the Land Sale Contract for Lots 4, 5 and 101 it says "the Seller may extend the settlement date to coincide with any settlement date under the Lot 3 Contract". Council requires that the Buyer may extend the settlement

date by notice to the Seller.

Thanks

Regards,

[Redacted]  
Solicitor| Brisbane City Legal Practice  
Office of the Lord Mayor & CEO  
| Brisbane City Council  
266 George Street | GPO Box 1434 | Brisbane Qld 4001

Phone: [Redacted]

>>> [Redacted] 27/06/2011 5:31 pm >>>

Thanks [Redacted] I attach marked up copies of the amended Annexure Special Conditions for each of the Land Sale Contracts. Please let me have your comments. Please note that I am providing same to my client with this email and so submission is subject to my client's review and confirmation of the amended Special Conditions.

Regards

[Redacted]  
Partner | Property & Projects  
ClarkeKann

Tel: [Redacted]  
www.clarkekann.com.au  
Brisbane | Level 7, 300 Queen Street, Brisbane QLD 4000,  
Australia | GPO Box 2249, Brisbane QLD 4001, Australia  
Sydney | Level 7, 55 Clarence Street, Sydney NSW 2000, Australia | GPO  
Box 1342, Sydney NSW 2001, Australia

-----Original Message-----

From: [Redacted]  
Sent: Monday, June 27 2011 2:41 PM  
To: [Redacted]  
Cc: [Redacted]  
Subject: RE: Mirvac Queensland Pty Ltd - Sale to Brisbane City Council-Lots 3, 4, 5 & 101 Tennyson Reach - Email

Hi [Redacted]

I am now instructed that Council does agree in principle that the deal is "all or nothing" and either:

1. the Body Corporate motion is passed on 29 June 2011 and the New CMS is lodged with DERM on 30 June 2011 (and an undertaking to answer any requisitions is provided to Council), then both Land Sale Contracts will settle on 30 June 2011; or
2. the Body Corporate motion does not get passed on 29 June 2011 and the settlement date of both Land Sale Contracts is extended to a date beyond 30 June 2011 (i.e. to the date the New CMS is lodged with DERM to remove Lot 3 from the Scheme (and an undertaking to answer any requisitions is provided to Council)) but no later than 11 December 2011.

I will get back to you shortly regarding the proposed lease.

Regards,

[Redacted]

Solicitor| Brisbane City Legal Practice  
Office of the Lord Mayor & CEO  
| Brisbane City Council  
266 George Street | GPO Box 1434 | Brisbane Qld 4001

Phone: [REDACTED]

>>> [REDACTED] 27/06/2011 12:05 pm

>>>

Thanks [REDACTED]

We confirm that the parties no longer require special conditions 14 in the Land Sale Contracts and that the mortgage back security will therefore not be applicable.

In relation to your comments on special condition 15, we are instructed that the parties (Matthew Wallace for Mirvac & [REDACTED] for Council) have agreed in principle that either all lots must be sold or no lots are sold (ie the scenario where lots 4, 5 & 101 transfer to Council but lot 3 does not transfer to Council cannot occur). To that extent, we are not sure how your proposed amendments to special condition 15 would work within this agreed principle. For example, are you proposing that any election by Council to settle in the event the Body Corporate motion does not get passed on 29 June 2011 applies to both Land Sale Contracts. If Council elects to settle on the Land Sale Contract for Lots 4, 5 & 101 then the Land Sale Contract for Lot 3 must become unconditional (although I do not believe Mirvac will have any problems with a continuing obligation to try and remove Lot 3 from the Tennyson Reach Scheme). Please confirm and/or phone me to discuss any requisite amendments to special condition 15 of the Land Sale Contracts. Thanks.

I attach the draft Lease of the Sales Office. It is not intended that this Lease will be registered. Please confirm Council agrees to the attached form of basic Lease.

I will prepare and submit draft Settlement Statements based on Settlement on 30 June 2011. On this point, if the Body Corporate passes the requisite Motion to remove Lot 3 on 29 June 2011 and ClarkeKann lodges the New CMS for recording at DERM on 30 June 2011, would Council consider settling on Lot 3 on 30 June 2011 or does Council still require 14 days as contemplated in the Land Sale Contract?

Thanks for your ongoing assistance.

Regards

[REDACTED]  
Partner | Property & Projects  
ClarkeKann

Tel: [REDACTED]

www.clarkekann.com.au

Brisbane | Level 7, 300 Queen Street, Brisbane QLD 4000,  
Australia | GPO Box 2249, Brisbane QLD 4001, Australia  
Sydney | Level 7, 55 Clarence Street, Sydney NSW 2000, Australia | GPO  
Box 1342, Sydney NSW 2001, Australia

-----Original Message-----

From [REDACTED]

Sent: Friday, June 24 2011 1:06 PM

To: [REDACTED]

Cc: [REDACTED]

Subject: RE: Mirvac Queensland Pty Ltd - Sale to Brisbane City Council-Lots 3, 4, 5 & 101 Tennyson Reach - Email

Hi [REDACTED]

We have reviewed the Land Sale Contracts and comment as follows:

Lots 4, 5 and 101

Clause 14.1(b) - I understand the parties have agreed this amount will be paid on settlement of Lot 3.

Clause 14.2 - I understand the parties have agreed to delete this provision.

Clause 15 - I am instructed that Council requires the clause to be amended in accordance with the following points:

- The Buyer may settle this Contract on 30 June 2011 even if the Body Corporate does not pass the requisite resolution to remove Lot 3 from the Scheme Land at the AGM to be held on 29 June 2011.

- The Buyer may extend settlement under this Contract to coincide with the settlement date of the Lot 3 Contract by written notice to the Seller in the event the Body Corporate does not pass the requisite resolution to remove Lot 3 from the Scheme Land at the AGM to be held on 29 June 2011.

- The settlement date under this Contract must not be extended beyond 11 December 2011.

Annexure E - delete.

Lot 3

Clause 14.1 - This will need to be amended so that \$2.5 million is paid on the Settlement Date and not in instalments.

Clause 14.2 - I understand the parties have agreed to delete this provision.

Annexure C - delete.

Do we need to include a provision that in the event Lot 3 is removed from the Scheme that the provisions in the Contract relating to Community Titles Schemes do not apply?

Regards,

[REDACTED]  
Solicitor| Brisbane City Legal Practice  
Office of the Lord Mayor & CEO  
| Brisbane City Council  
266 George Street | GPO Box 1434 | Brisbane Qld 4001

>> [REDACTED]

3/06/2011 3:13 pm



>>>

Thanks [redacted] So that it doesn't slip my mind in next week's probable rush, I attach a Land Tax Clearance Certificate for the subject land parcels (being one of Council's settlement requirements). Thanks.

Regards

[redacted]  
Partner | Property & Projects

Tel: [redacted]  
www.clarkekann.com.au  
Brisbane | Level 7, 300 Queen Street, Brisbane QLD 4000, Australia | GPO  
Box 2249, Brisbane QLD 4001, Australia  
Sydney | Level 7, 55 Clarence Street, Sydney NSW 2000, Australia | GPO  
Box 1342, Sydney NSW 2001, Australia

---

From: [redacted]  
Sent: Thursday, June 23 2011 12:12 PM  
To: [redacted]  
Cc: [redacted]  
Subject: Re: Mirvac Queensland Pty Ltd - Sale to Brisbane City Council  
-Lots 3, 4, 5 & 101 Tennyson Reach - Email

H [redacted]

Amended Purchase contracts confirmed as recieved. We will review as a priority.

Regards

[redacted]  
Solicitor/Team Leader Commercial | Brisbane City Legal Practice  
Brisbane City Legal Practice  
Office of the Lord Mayor & CEO

Ph: [redacted]  
E-mail: [redacted]

\*\*\*\*\* This message has passed through an insecure network. Please direct all enquiries to the message author. \*\*\*\*\*

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an insecure network. Please direct all enquiries to the message author.  
\*\*\*\*\*

RE: Mirvac Queensland Pty Ltd - Sale to BrisbaneCityCouncil-Lots 3, 4, 5 & 101 Tennyson Reach - Email

**From:** [REDACTED]  
**To:** [REDACTED]  
**Date:** 28/06/2011 1:26 pm  
**Subject:** RE: Mirvac Queensland Pty Ltd - Sale to BrisbaneCityCouncil-Lots 3, 4, 5 & 101 Tennyson Reach - Email  
**CC:** [REDACTED]

[REDACTED] Further to my below email, and based on current agreed purchase prices and based on settlements occurring on 30 June 2011, I attach drafts of the following:

- (1) Settlement Statement for Lots 4, 5 & 101 (-once we know the total unencumbered value of lots 3, 4, 5 & 101, we can calculate Mirvac's contribution to stamp duty which relates to the value in excess of \$6 million);
- (2) Settlement Statement for Lot 3;
- (3) Seller's Tax Invoice for sale of Lots 4, 5 & 101; and
- (4) Seller's Tax Invoice for sale of Lot 3.

Please let me have your input, if any. Thanks.

Regards

Partner | Property & Projects

**ClarkeKann**  
LAWYERS

with  
GRAY | PERKINS  
LAWYERS

Tel: +61 7 3001 9239 | Mob: 0417 074 405 | Fax: +61 7 3001 9299 | [www.clarkekann.com.au](http://www.clarkekann.com.au)  
 Brisbane | Level 7, 300 Queen Street, Brisbane QLD 4000, Australia | GPO Box 2249, Brisbane QLD 4001, Australia  
 Sydney | Level 7, 55 Clarence Street, Sydney NSW 2000, Australia | GPO Box 1342, Sydney NSW 2001, Australia

**From:** [REDACTED]  
**Sent:** Tuesday, June 28 2011 12:16 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Mirvac Queensland Pty Ltd - Sale to BrisbaneCityCouncil-Lots 3, 4, 5 & 101 Tennyson Reach - Email

[REDACTED] I refer to our telephone conversation and confirm/note the following:

- (1) **Land Sale Contract for Lots 4, 5 & 101** – I confirm we have no problems with amending special condition 14.1 to provide that “either the Seller or the Buyer may extend the Settlement Date..” in the circumstances referred to in the special condition. I also confirm the need to amend special condition 11.1 so that it refers to an expiry date for the Lease of the Sales Office being the “commencement of Stage 2 of the Parkland Works..” consistent with the draft Sales Office Lease issued.
- (2) **Valuations** – I note the independent valuations for Lots 3, 4 & 5 come in at \$9, 150,000 (plus GST). I confirm that you are making enquiries regarding the valuation of lot 101 (anticipated to be a nominal amount). As discussed, for ease of stamping of the Transfers, the parties should consider having the Land Contract purchase prices mirror the unencumbered valuations on which stamp duty is payable (with a corresponding decrease in the Parkland Works Contract). I will check with Mirvac and note you will check with the relevant person at BCC. Please also urgently advise the valuation of Lot 101.
- (3) **Mirvac Queensland Pty Ltd Company Charge** – As discussed, I attach an ASIC Company

Extract for the Seller noting only one current registered Company Charge to ING Bank (Australia) Ltd (see page 25 of 31) as well as a copy of the relevant Company Charge. You will see from the definition of "Mortgaged Property" that the Company Charge is limited to the Seller's property at Ephraim Island and does not affect the Tennyson Reach land parcels. Amended special condition 10 (Company Charge) of the Land Sale Contracts would require the Seller to obtain a statement from the Chargee to this effect whereas time is unlikely to allow this. Accordingly, please confirm special condition 10 can be amended back to the drafting as originally submitted and/or confirm the Buyer will be satisfied based on the attachments. Thanks.

Thanks.

Regards

[Redacted]  
Partner | Property & Projects  
ClarkeKann

Tel: [Redacted] www.clarkekann.com.au  
Brisbane | Level 7, 300 Queen Street, Brisbane QLD 4000, Australia | GPO Box 2249, Brisbane QLD 4001, Australia  
Sydney | Level 7, 55 Clarence Street, Sydney NSW 2000, Australia | GPO Box 1342, Sydney NSW 2001, Australia

-----Original Message-----

From: [Redacted]  
Sent: Monday, June 27, 2011 5:31 PM  
To: [Redacted]  
Cc: [Redacted]  
Subject: RE: Mirvac Queensland Pty Ltd - Sale to BrisbaneCityCouncil-Lots 3, 4, 5 & 101 Tennyson Reach - Email

Hi [Redacted]

In the Land Sale Contract for Lots 4, 5 and 101 it says "the Seller may extend the settlement date to coincide with any settlement date under the Lot 3 Contract". Council requires that the Buyer may extend the settlement date by notice to the Seller.

Thanks

Regards,

[Redacted]  
Solicitor| Brisbane City Legal Practice  
Office of the Lord Mayor & CEO  
| Brisbane City Council  
266 George Street | GPO Box 1434 | Brisbane Qld 4001

Phone [Redacted]

>>> [Redacted] 27/06/2011 5:31 pm >>>

Thanks [Redacted] I attach marked up copies of the amended Annexure Special Conditions for each of the Land Sale Contracts. Please let me have your comments. Please note that I am providing same to my client with this email and so submission is subject to my client's review and confirmation of the amended Special Conditions.

Regards

[Redacted]  
Partner | Property & Projects  
ClarkeKann

Tel: [Redacted]  
www.clarkekann.com.au  
Brisbane | Level 7, 300 Queen Street, Brisbane QLD 4000,

Australia | GPO Box 2249, Brisbane QLD 4001, Australia  
Sydney | Level 7, 55 Clarence Street, Sydney NSW 2000, Australia | GPO  
Box 1342, Sydney NSW 2001, Australia

-----Original Message-----

From: [Redacted]

Sent: Monday, June 27 2011 2:41 PM

To: [Redacted]

Cc: [Redacted]

Subject: RE: Mirvac Queensland Pty Ltd - Sale to Brisbane  
CityCouncil-Lots 3, 4, 5 & 101 Tennyson Reach - Email

Hi [Redacted]

I am now instructed that Council does agree in principle that the deal is "all or nothing" and either:

- 1. the Body Corporate motion is passed on 29 June 2011 and the New CMS is lodged with DERM on 30 June 2011 (and an undertaking to answer any requisitions is provided to Council), then both Land Sale Contracts will settle on 30 June 2011; or
- 2. the Body Corporate motion does not get passed on 29 June 2011 and the settlement date of both Land Sale Contracts is extended to a date beyond 30 June 2011 (i.e. to the date the New CMS is lodged with DERM to remove Lot 3 from the Scheme (and an undertaking to answer any requisitions is provided to Council)) but no later than 11 December 2011.

I will get back to you shortly regarding the proposed lease.

Regards,

[Redacted]  
Solicitor| Brisbane City Legal Practice  
Office of the Lord Mayor & CEO  
| Brisbane City Council  
266 George Street | GPO Box 1434 | Brisbane Qld 4001

Phone: [Redacted]

>>> [Redacted] 27/06/2011 12:05 pm

>>> [Redacted]  
Thanks [Redacted]

We confirm that the parties no longer require special conditions 14 in the Land Sale Contracts and that the mortgage back security will therefore not be applicable.

In relation to your comments on special condition 15, we are instructed that the parties (Matthew Wallace for Mirvac & [Redacted] or Council) have agreed in principle that either all lots must be sold or no lots are sold (ie the scenario where lots 4, 5 & 101 transfer to Council but lot 3 does not transfer to Council cannot occur). To that extent, we are not sure how your proposed amendments to special condition 15 would work within this agreed principle. For example, are you proposing that any election by Council to settle in the event the Body Corporate motion does not get passed on 29 June 2011 applies to both Land Sale Contracts. If Council elects to settle on the Land Sale Contract for Lots 4, 5 & 101 then the Land Sale Contract for Lot 3 must become unconditional (although I do not believe Mirvac will have any problems with a continuing obligation to try and remove Lot 3 from the Tennyson Reach Scheme). Please confirm and/or phone me to discuss any requisite

amendments to special condition 15 of the Land Sale Contracts. Thanks.

I attach the draft Lease of the Sales Office. It is not intended that this Lease will be registered. Please confirm Council agrees to the attached form of basic Lease.

I will prepare and submit draft Settlement Statements based on Settlement on 30 June 2011. On this point, if the Body Corporate passes the requisite Motion to remove Lot 3 on 29 June 2011 and ClarkeKann lodges the New CMS for recording at DERM on 30 June 2011, would Council consider settling on Lot 3 on 30 June 2011 or does Council still require 14 days as contemplated in the Land Sale Contract?

Thanks for your ongoing assistance.

Regards

[REDACTED]  
Partner | Property & Projects  
ClarkeKann

Tel: [REDACTED]  
www.clarkekann.com.au  
Brisbane | Level 7, 300 Queen Street, Brisbane QLD 4000,  
Australia | GPO Box 2249, Brisbane QLD 4001, Australia  
Sydney | Level 7, 55 Clarence Street, Sydney NSW 2000, Australia | GPO  
Box 1342, Sydney NSW 2001, Australia

-----Original Message-----

From: [REDACTED]  
Sent: Friday, June 24, 2011 1:00 PM  
To: [REDACTED]  
Cc: [REDACTED]  
Subject: RE: Mirvac Queensland Pty Ltd - Sale to Brisbane City  
Council-Lots 3, 4, 5 & 101 Tennyson Reach - Email

Hi Steven

We have reviewed the Land Sale Contracts and comment as follows:

Lots 4, 5 and 101

Clause 14.1(b) - I understand the parties have agreed this amount will be paid on settlement of Lot 3.

Clause 14.2 - I understand the parties have agreed to delete this provision.

Clause 15 - I am instructed that Council requires the clause to be amended in accordance with the following points:

- The Buyer may settle this Contract on 30 June 2011 even if the Body Corporate does not pass the requisite resolution to remove Lot 3 from the Scheme Land at the AGM to be held on 29 June 2011.

- The Buyer may extend settlement under this Contract to coincide with the settlement date of the Lot 3 Contract by written notice to the Seller in the event the Body Corporate does not pass the requisite resolution to remove Lot 3 from the Scheme Land at the AGM to be held on 29 June 2011.

- The settlement date under this Contract must not be extended beyond 11 December 2011.

Annexure E - delete.

Lot 3

Clause 14.1 - This will need to be amended so that \$2.5 million is paid on the Settlement Date and not in instalments.

Clause 14.2 - I understand the parties have agreed to delete this provision.

Annexure C - delete.

Do we need to include a provision that in the event Lot 3 is removed from the Scheme that the provisions in the Contract relating to Community Titles Schemes do not apply?

Regards,

[Redacted]  
Solicitor| Brisbane City Legal Practice  
Office of the Lord Mayor & CEO  
| Brisbane City Council  
266 George Street | GPO Box 1434 | Brisbane Qld 4001

Phone: [Redacted]

>>> [Redacted] 23/06/2011 3:13 pm

>>> [Redacted]  
Thank [Redacted] So that it doesn't slip my mind in next week's probable rush, I attach a Land Tax Clearance Certificate for the subject land parcels (being one of Council's settlement requirements). Thanks.

Regards

[Redacted]  
Partner | Property & Projects

Tel: [Redacted]  
www.clarkekann.com.au  
Brisbane | Level 7, 300 Queen Street, Brisbane QLD 4000, Australia | GPO  
Box 2249, Brisbane QLD 4001, Australia  
Sydney | Level 7, 55 Clarence Street, Sydney NSW 2000, Australia | GPO  
Box 1342, Sydney NSW 2001, Australia

---

From: [Redacted]  
Sent: Thursday, June 23 2011 12:12 PM  
To: [Redacted]  
Cc: [Redacted]  
Subject: Re: Mirvac Queensland Pty Ltd - Sale to Brisbane City Council  
-Lots 3, 4, 5 & 101 Tennyson Reach - Email

Hi [REDACTED]

Amended Purchase contracts confirmed as recieved. We will review as a priority.

Regards

[REDACTED]  
Solicitor/Team Leader Commercial | Brisbane City Legal Practice  
Brisbane City Legal Practice  
Office of the Lord Mayor & CEO

Ph: [REDACTED]  
E-mail: [REDACTED]

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\*\*\*\*\* This message has passed through an insecure network. Please direct all enquiries to the message author. \*\*\*\*\*



**SETTLEMENT STATEMENT**

with

 GRAY | PERKINS  
 lawyers

**SELLER:** Mirvac Queensland Pty Ltd ACN 060 411 207

**BUYER:** Brisbane City Council

**PROPERTY:** Lots 4, 5 and 101 on SP 195275

**SETTLEMENT DATE:** Thursday, 30 June 2011

**SETTLEMENT FIGURES:**

Contract Purchase Price	\$	6,500,000.00
<b>PLUS:</b> 10% GST	\$	650,000.00
	\$	<u>7,150,000.00</u>
<b>LESS:</b> Deposit	\$	0.00
	\$	
	\$	
<b>Amount Payable by Buyer at Settlement</b>	\$	<u><u>7,150,000.00</u></u>

**BANK CHEQUE(S) REQUIRED AT SETTLEMENT:**

1. Mirvac Queensland Pty Ltd	\$	
2. Office of State Revenue (Seller's contribution to Stamp Duty on Transfer)	\$	
	\$	<u><u>7,150,000.00</u></u>

\*Adjustment for Council Rates  
 Council Rates paid in full to 30 June 2011.

\*\*Adjustment for Land Tax  
 Land Tax paid in full to 30 June 2011.

**SELLER TO HAND OVER AT SETTLEMENT**

1. Form 1 – Transfer and Form 24 (if not already delivered to Buyer's Solicitors pursuant to a Solicitor's undertaking).
2. Seller's Tax Invoice.
3. Seller's undertaking regarding registration of Request to Record New CMS.
4. Parkland Works Contract (duly executed by the Seller).
5. Lease of Sales Office (duly executed by the Seller).

**BUYER TO HAND OVER AT SETTLEMENT**

1. Parkland Works Contract (duly executed by the Buyer).
2. Lease of Sales Office (duly executed by the Buyer).

with

 GRAY | PERKINS  
 lawyers

**SETTLEMENT STATEMENT**

**SELLER:** Mirvac Queensland Pty Ltd ACN 060 411 207  
**BUYER:** Brisbane City Council  
**PROPERTY:** Lot 3 on SP 195275  
**SETTLEMENT DATE:** Thursday, 30 June 2011

**SETTLEMENT FIGURES:**

Contract Purchase Price	\$	2,500,000.00
<b>PLUS:</b> 10% GST	\$	250,000.00
	\$	<u>2,750,000.00</u>
<b>LESS:</b> Deposit	\$	0.00
	\$	
	\$	
<b>Amount Payable by Buyer at Settlement</b>	\$	<u><u>2,750,000.00</u></u>

**BANK CHEQUE(S) REQUIRED AT SETTLEMENT:**

1. Mirvac Queensland Pty Ltd	\$	2,750,000.00
	\$	<u><u>2,750,000.00</u></u>

\*Adjustment for Council Rates  
 Council Rates paid in full to 30 June 2011.

\*\*Adjustment for Land Tax  
 Land Tax paid in full to 30 June 2011.

**SELLER TO HAND OVER AT SETTLEMENT**

- Form 1 – Transfer and Form 24 (if not already delivered to Buyer's Solicitors pursuant to a Solicitor's undertaking).
- Seller's Tax Invoice.

**BUYER TO HAND OVER AT SETTLEMENT**

-

MIRVAC QUEENSLAND PTY LIMITED  
ABN 24 060 411 207

164 GREY STREET  
SOUTH BANK  
QLD 4101

Phone No: 07 3859 5888  
Fax No: 07 3010 1600

### TAX INVOICE

Supplied to:

Brisbane City Council  
266 George Street  
Brisbane Qld 4000

DATE: 30/06/11

INVOICE NO: MQ-02

Description		Amount Due
Sale of Lots 4, 5 and 101 King Arthur Terrace, Tennyson QLD 4105		\$ 6,500,000.00
<b>Sub-Total</b>		\$ 6,500,000.00
Total amount of GST payable		\$ 650,000.00
Total price for the supply		\$ 7,150,000.00
<b>Total Amount Payable</b>		<b>\$ 7,150,000.00</b>

Please detach and send with payment

Supplied to:

Brisbane City Council  
266 George Street  
Brisbane Qld 4000

### REMITTANCE ADVICE

Please make Cheque Payable to:

PLEASE DETACH THIS SECTION AND RETURN  
WITH YOUR PAYMENT DIRECTLY TO:

MIRVAC QUEENSLAND PTY LTD  
164 GREY STREET  
SOUTH BANK  
QLD 4101

ACCOUNT NO: MQ-02

**MIRVAC QUEENSLAND PTY LIMITED**  
 ABN 24 060 411 207

164 GREY STREET  
 SOUTH BANK  
 QLD 4101

Phone No: 07 3859 5888  
 Fax No: 07 3010 1600

**TAX INVOICE**

Supplied to:

Brisbane City Council  
 266 George Street  
 Brisbane Qld 4000

DATE: 30/06/11  
 INVOICE NO: MQ-01

Description		Amount Due
Sale of Lot 3 197 King Arthur Terrace, Tennyson QLD 4105		\$ 2,500,000.00
<b>Sub-Total</b>		\$ 2,500,000.00
Total amount of GST payable		\$ 250,000.00
Total price for the supply		\$ 2,750,000.00
<b>Total Amount Payable</b>		<b>\$ 2,750,000.00</b>

Please detach and send with payment

Supplied to:

Brisbane City Council  
 266 George Street  
 Brisbane Qld 4000

**REMITTANCE ADVICE**

Please make Cheque Payable to:

PLEASE DETACH THIS SECTION AND RETURN  
 WITH YOUR PAYMENT DIRECTLY TO:

MIRVAC QUEENSLAND PTY LTD  
 164 GREY STREET  
 SOUTH BANK  
 QLD 4101

ACCOUNT NO: MQ-01

**From:** [REDACTED]  
**To:** [REDACTED]  
**CC:** [REDACTED]  
**Date:** 28/06/2011 2:07 pm  
**Subject:** RE: Mirvac Queensland Pty Ltd - Sale to BrisbaneCityCouncil-Lots 3, 4, 5 & 101 Tennyson Reach - Email

Hi [REDACTED]

I am instructed to respond as indicated in **bold** below:

Regards,

[REDACTED]  
Solicitor | Brisbane City Legal Practice  
Office of the Lord Mayor & CEO  
| Brisbane City Council  
266 George Street | GPO Box 1434 | Brisbane Qld 4001

Phone [REDACTED]  
[REDACTED]

>>> [REDACTED] 28/06/2011 12:16 pm >>>

[REDACTED] I refer to our telephone conversation and confirm/note the following:

(1) Land Sale Contract for Lots 4, 5 & 101 - I confirm we have no problems with amending special condition 14.1 to provide that "either the Seller or the Buyer may extend the Settlement Date.." in the circumstances referred to in the special condition. I also confirm the need to amend special condition 11.1 so that it refers to an expiry date for the Lease of the Sales Office being the "commencement of Stage 2 of the Parkland Works.." consistent with the draft Sales Office Lease issued. **Agree to both amendments.**

(2) Valuations - I note the independent valuations for Lots 3, 4 & 5 come in at \$9, 150,000 (plus GST). I confirm that you are making enquiries regarding the valuation of lot 101 (anticipated to be a nominal amount). As discussed, for ease of stamping of the Transfers, the parties should consider having the Land Contract purchase prices mirror the unencumbered valuations on which stamp duty is payable (with a corresponding decrease in the Parkland Works Contract). I will check with Mirvac and note you will check with the relevant person at BCC. Please also urgently advise the valuation of Lot 101. **Agree to Land Contract purchase prices mirroring the unencumbered valuations. I understand Paul and Alex have had a recent discussion regarding the valuation and this may be resolved?**

(3) Mirvac Queensland Pty Ltd Company Charge - As discussed, I attach an ASIC Company Extract for the Seller noting only one current registered Company Charge to ING Bank (Australia) Ltd (see page 25 of 31) as well as a copy of the relevant Company Charge. You will see from the definition of "Mortgaged Property" that the Company Charge is limited to the Seller's property at Ephraim Island and does not affect

the Tennyson Reach land parcels. Amended special condition 10 (Company Charge) of the Land Sale Contracts would require the Seller to obtain a statement from the Chargee to this effect whereas time is unlikely to allow this. Accordingly, please confirm special condition 10 can be amended back to the drafting as originally submitted and/or confirm the Buyer will be satisfied based on the attachments. Thanks. **Not agreed. Council requires a letter from the Chargee confirming the charge does not affect to the Tennyson Reach land parcels.**

Thanks.

Regards

Partner | Property & Projects

ClarkeKann

Tel:

[www.clarkekann.com.au](http://www.clarkekann.com.au)

Brisbane | Level 7, 300 Queen Street, Brisbane QLD 4000,  
Australia | GPO Box 2249, Brisbane QLD 4001, Australia

Sydney | Level 7, 55 Clarence Street, Sydney NSW 2000, Australia | GPO  
Box 1342, Sydney NSW 2001, Australia

-----Original Message-----

From:

Sent: Monday, June 27 2011 5:51 PM

To:

Cc:

Subject: RE: Mirvac Queensland Pty Ltd - Sale to  
BrisbaneCityCouncil-Lots 3, 4, 5 & 101 Tennyson Reach - Email

Hi

In the Land Sale Contract for Lots 4, 5 and 101 it says "the Seller may extend the settlement date to coincide with any settlement date under the Lot 3 Contract". Council requires that the Buyer may extend the settlement date by notice to the Seller.

Thanks

Regards,

[REDACTED]

Solicitor | Brisbane City Legal Practice

Office of the Lord Mayor & CEO

| Brisbane City Council

266 George Street | GPO Box 1434 | Brisbane Qld 4001

Phone: [REDACTED]

[REDACTED]

>>> [REDACTED] 27/06/2011 5:31 pm  
>>>

Thanks [REDACTED] I attach marked up copies of the amended Annexure Special Conditions for each of the Land Sale Contracts. Please let me have your comments. Please note that I am providing same to my client with this email and so submission is subject to my client's review and confirmation of the amended Special Conditions.

Regards

[REDACTED]

Partner | Property & Projects

ClarkeKann

Tel: [REDACTED]

[www.clarkekann.com.au](http://www.clarkekann.com.au)

Brisbane | Level 7, 300 Queen Street, Brisbane QLD 4000,  
Australia | GPO Box 2249, Brisbane QLD 4001, Australia  
Sydney | Level 7, 55 Clarence Street, Sydney NSW 2000, Australia | GPO  
Box 1342, Sydney NSW 2001, Australia

-----Original Message-----

From: [REDACTED]

Sent: Monday, June 27 2011 2:41 PM

To: [REDACTED]

Cc: [REDACTED]

Subject: RE: Mirvac Queensland Pty Ltd - Sale to Brisbane  
CityCouncil-Lots 3, 4, 5 & 101 Tennyson Reach - Email

Hi [REDACTED]

I am now instructed that Council does agree in principle that the deal  
is "all or nothing" and either:

1. the Body Corporate motion is passed on 29 June 2011 and the New CMS  
is lodged with DERM on 30 June 2011 (and an undertaking to answer any  
requisitions is provided to Council), then both Land Sale Contracts will  
settle on 30 June 2011; or
2. the Body Corporate motion does not get passed on 29 June 2011 and the  
settlement date of both Land Sale Contracts is extended to a date beyond  
30 June 2011 (i.e. to the date the New CMS is lodged with DERM to remove  
Lot 3 from the Scheme (and an undertaking to answer any requisitions is  
provided to Council)) but no later than 11 December 2011.



I will get back to you shortly regarding the proposed lease.

Regards,

[Redacted]

Solicitor| Brisbane City Legal Practice

Office of the Lord Mayor & CEO

| Brisbane City Council

266 George Street | GPO Box 1434 | Brisbane Qld 4001

Phone [Redacted]

[Redacted]

>>>

[Redacted]

27/06/2011 12:05 pm

>>>

Thanks [Redacted]

We confirm that the parties no longer require special conditions 14 in the Land Sale Contracts and that the mortgage back security will therefore not be applicable.

In relation to your comments on special condition 15, we are instructed that the parties (Matthew Wallace for Mirvac & [Redacted] for Council) have agreed in principle that either all lots must be sold or no lots are sold (ie the scenario where lots 4, 5 & 101 transfer to Council but lot 3 does not transfer to Council cannot occur). To that extent, we are

not sure how your proposed amendments to special condition 15 would work within this agreed principle. For example, are you proposing that any election by Council to settle in the event the Body Corporate motion does not get passed on 29 June 2011 applies to both Land Sale Contracts. If Council elects to settle on the Land Sale Contract for Lots 4, 5 & 101 then the Land Sale Contract for Lot 3 must become unconditional (although I do not believe Mirvac will have any problems with a continuing obligation to try and remove Lot 3 from the Tennyson Reach Scheme). Please confirm and/or phone me to discuss any requisite amendments to special condition 15 of the Land Sale Contracts. Thanks.

I attach the draft Lease of the Sales Office. It is not intended that this Lease will be registered. Please confirm Council agrees to the attached form of basic Lease.

I will prepare and submit draft Settlement Statements based on Settlement on 30 June 2011. On this point, if the Body Corporate passes the requisite Motion to remove Lot 3 on 29 June 2011 and ClarkeKann lodges the New CMS for recording at DERM on 30 June 2011, would Council consider settling on Lot 3 on 30 June 2011 or does Council still require 14 days as contemplated in the Land Sale Contract?

Thanks for your ongoing assistance.

Regards

  
Partner | Property & Projects

ClarkeKann

Tel: [REDACTED]

[www.clarkekann.com.au](http://www.clarkekann.com.au)

Brisbane | Level 7, 300 Queen Street, Brisbane QLD 4000,  
Australia | GPO Box 2249, Brisbane QLD 4001, Australia  
Sydney | Level 7, 55 Clarence Street, Sydney NSW 2000, Australia | GPO  
Box 1342, Sydney NSW 2001, Australia

-----Original Message-----

From: [REDACTED]

Sent: Friday, June 24 2011 1:06 PM

To: [REDACTED]

Cc: [REDACTED]

Subject: RE: Mirvac Queensland Pty Ltd - Sale to Brisbane City  
Council-Lots 3, 4, 5 & 101 Tennyson Reach - Email

Hi [REDACTED]

We have reviewed the Land Sale Contracts and comment as follows:

Lots 4, 5 and 101

Clause 14.1(b) - I understand the parties have agreed this amount will  
be paid on settlement of Lot 3.

Clause 14.2 - I understand the parties have agreed to delete this  
provision.

Clause 15 - I am instructed that Council requires the clause to be

amended in accordance with the following points:

- The Buyer may settle this Contract on 30 June 2011 even if the Body Corporate does not pass the requisite resolution to remove Lot 3 from the Scheme Land at the AGM to be held on 29 June 2011.

- The Buyer may extend settlement under this Contract to coincide with the settlement date of the Lot 3 Contract by written notice to the Seller in the event the Body Corporate does not pass the requisite resolution to remove Lot 3 from the Scheme Land at the AGM to be held on 29 June 2011.

- The settlement date under this Contract must not be extended beyond 11 December 2011.

Annexure E - delete.

Lot 3

Clause 14.1 - This will need to be amended so that \$2.5 million is paid on the Settlement Date and not in instalments.

Clause 14.2 - I understand the parties have agreed to delete this provision.

Annexure C - delete.

Do we need to include a provision that in the event Lot 3 is removed from the Scheme that the provisions in the Contract relating to

Community Titles Schemes do not apply?

Regards,

[REDACTED]  
Solicitor | Brisbane City Legal Practice

Office of the Lord Mayor & CEO

| Brisbane City Council

266 George Street | GPO Box 1434 | Brisbane Qld 4001

Phone: [REDACTED]  
[REDACTED]

>>> [REDACTED] 23/06/2011 3:13 pm

>>>

Thanks [REDACTED] So that it doesn't slip my mind in next week's probable rush, I attach a Land Tax Clearance Certificate for the subject land parcels (being one of Council's settlement requirements). Thanks.

Regards

[REDACTED]  
Partner | Property & Projects

Tel: [REDACTED]

[www.clarkekann.com.au](http://www.clarkekann.com.au)

Brisbane | Level 7, 300 Queen Street, Brisbane QLD 4000, Australia | GPO

Box 2249, Brisbane QLD 4001, Australia

Sydney | Level 7, 55 Clarence Street, Sydney NSW 2000, Australia | GPO

Box 1342, Sydney NSW 2001, Australia

---

From: [REDACTED]

Sent: Thursday, June 23 2011 12:12 PM

To: [REDACTED]

Cc: [REDACTED]

Subject: Re: Mirvac Queensland Pty Ltd - Sale to Brisbane City Council

-Lots 3, 4, 5 & 101 Tennyson Reach - Emai

Hi [REDACTED]

Amended Purchase contracts confirmed as recieved. We will review as a priority.

Regards

[REDACTED]  
Solicitor/Team Leader Commercial | Brisbane City Legal Practice  
Brisbane City Legal Practice  
Office of the Lord Mayor & CEO

Ph: [REDACTED]  
E-m [REDACTED]

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Please direct all enquiries to the message author.  
\*\*\*\*\*

30/06/11  
CAS  
TENNANT

**From:** [REDACTED]  
**To:** [REDACTED]  
**CC:** [REDACTED]  
**Date:** 28/06/2011 3:49 pm  
**Subject:** RE: Mirvac Queensland Pty Ltd - Sale to BrisbaneCityCouncil-Lots 3, 4, 5 & 101  
Tennyson Reach - Emai

Hi [REDACTED]

On further review I confirm Council is prepared to waive the requirement of a letter from ING in respect of the charge registered over Mirvac Queensland Pty Limited.

In relation to Lot 101 and the consideration on the transfer as \$1, in our view a valuation would be required to satisfy the Commissioner of Duties that the value is \$1. Do you have another view?

Regards,

[REDACTED]  
Solicitor | Brisbane City Legal Practice  
Office of the Lord Mayor & CEO  
| Brisbane City Council  
266 George Street | GPO Box 1434 | Brisbane Qld 4001

Phone: [REDACTED]

28/6/2011  
Recd  
Tennant

>>> [REDACTED] 28/06/2011 1:21 pm >>>  
[REDACTED] Further to my below email, and based on current agreed purchase prices and based on settlements occurring on 30 June 2011, I attach drafts of the following:

- (1) Settlement Statement for Lots 4, 5 & 101 (-once we know the total unencumbered value of lots 3, 4, 5 & 101, we can calculate Mirvac's contribution to stamp duty which relates to the value in excess of \$6 million);
- (2) Settlement Statement for Lot 3;
- (3) Seller's Tax Invoice for sale of Lots 4, 5 & 101; and
- (4) Seller's Tax Invoice for sale of Lot 3.

Please let me have your input, if any. Thanks.

Regards

[REDACTED]  
Partner | Property & Projects

Tel: [REDACTED]

[www.crankekahn.com.au](http://www.crankekahn.com.au)

Brisbane | Level 7, 300 Queen Street, Brisbane QLD 4000, Australia | GPO  
Box 2249, Brisbane QLD 4001, Australia  
Sydney | Level 7, 55 Clarence Street, Sydney NSW 2000, Australia | GPO  
Box 1342, Sydney NSW 2001, Australia

From: [REDACTED]

Sent: Tuesday, June 28 2011 12:16 PM

To: [REDACTED]

Cc: [REDACTED]

Subject: RE: Mirvac Queensland Pty Ltd - Sale to  
BrisbaneCityCouncil-Lots 3, 4, 5 & 101 Tennyson Reach - Email

[REDACTED] - I refer to our telephone conversation and confirm/note the following:

- (1) Land Sale Contract for Lots 4, 5 & 101 - I confirm we have no problems with amending special condition 14.1 to provide that "either the Seller or the Buyer may extend the Settlement Date.." in the circumstances referred to in the special condition. I also confirm the need to amend special condition 11.1 so that it refers to an expiry date for the Lease of the Sales Office being the "commencement of Stage 2 of the Parkland Works.." consistent with the draft Sales Office Lease issued.
- (2) Valuations - I note the independent valuations for Lots 3, 4 & 5 come in at \$9, 150,000 (plus GST). I confirm that you are making enquiries regarding the valuation of lot 101 (anticipated to be a nominal amount). As discussed, for ease of stamping of the Transfers, the parties should consider having the Land Contract purchase prices mirror the unencumbered valuations on which stamp duty is payable (with a corresponding decrease in the Parkland Works Contract). I will check with Mirvac and note you will check with the relevant person at BCC. Please also urgently advise the valuation of Lot 101.
- (3) Mirvac Queensland Pty Ltd Company Charge - As discussed, I attach an ASIC Company Extract for the Seller noting only one current registered Company Charge to ING Bank (Australia) Ltd (see page 25 of 31) as well as a copy of the relevant Company Charge. You will see from the definition of "Mortgaged Property" that the Company Charge is limited to the Seller's property at Ephraim Island and does not affect the Tennyson Reach land parcels. Amended special condition 10 (Company Charge) of the Land Sale Contracts would require the Seller to obtain a statement from the Chargee to this effect whereas time is unlikely to allow this. Accordingly, please confirm special condition 10 can be amended back to the drafting as originally submitted and/or confirm the

Buyer will be satisfied based on the attachments. Thanks.

Thanks.

Regards

[REDACTED]

Partner | Property & Projects

ClarkeKann

Tel: [REDACTED]  
[www.clarkekann.com.au](http://www.clarkekann.com.au)

Brisbane | Level 7, 300 Queen Street, Brisbane QLD 4000,  
Australia | GPO Box 2249, Brisbane QLD 4001, Australia

Sydney | Level 7, 55 Clarence Street, Sydney NSW 2000, Australia | GPO  
Box 1342, Sydney NSW 2001, Australia

-----Original Message-----

From: [REDACTED]  
Sent: Monday, June 27, 2011 5:51 PM  
To: [REDACTED]  
Cc: [REDACTED]  
Subject: RE: Mirvac Queensland Pty Ltd - Sale to  
BrisbaneCityCouncil-Lots 3, 4, 5 & 101 Tennyson Reach - Email

Hi [REDACTED]

In the Land Sale Contract for Lots 4, 5 and 101 it says "the Seller may extend the settlement date to coincide with any settlement date under the Lot 3 Contract". Council requires that the Buyer may extend the settlement date by notice to the Seller.

Thanks

Regards,

[REDACTED]

Solicitor | Brisbane City Legal Practice

Office of the Lord Mayor & CEO

| Brisbane City Council

266 George Street | GPO Box 1434 | Brisbane Qld 4001

Phone: [REDACTED]  
[REDACTED]

>>> [REDACTED] 27/06/2011 5:31 pm  
>>>

Thanks [REDACTED] I attach marked up copies of the amended Annexure Special Conditions for each of the Land Sale Contracts. Please let me have your comments. Please note that I am providing same to my client with this email and so submission is subject to my client's review and confirmation of the amended Special Conditions.

Regards

[REDACTED]

Partner | Property & Projects

ClarkeKann

Tel: [REDACTED]

[www.clarkekann.com.au](http://www.clarkekann.com.au)

Brisbane | Level 7, 300 Queen Street, Brisbane QLD 4000,

Australia | GPO Box 2249, Brisbane QLD 4001, Australia

Sydney | Level 7, 55 Clarence Street, Sydney NSW 2000, Australia | GPO

Box 1342, Sydney NSW 2001, Australia

-----Original Message-----

From: [REDACTED]

Sent: Monday, June 27 2011 2:41 PM

To: [REDACTED]

Cc: [REDACTED]

Subject: RE: Mirvac Queensland Pty Ltd - Sale to Brisbane

CityCouncil-Lots 3, 4, 5 & 101 Tennyson Reach - Email

Hi [REDACTED]

I am now instructed that Council does agree in principle that the deal is "all or nothing" and either:

1. the Body Corporate motion is passed on 29 June 2011 and the New CMS is lodged with DERM on 30 June 2011 (and an undertaking to answer any requisitions is provided to Council), then both Land Sale Contracts will settle on 30 June 2011; or

2. the Body Corporate motion does not get passed on 29 June 2011 and the settlement date of both Land Sale Contracts is extended to a date beyond 30 June 2011 (i.e. to the date the New CMS is lodged with DERM to remove Lot 3 from the Scheme (and an undertaking to answer any requisitions is provided to Council)) but no later than 11 December 2011.

I will get back to you shortly regarding the proposed lease.

Regards,

[Redacted]  
Solicitor| Brisbane City Legal Practice

Office of the Lord Mayor & CEO

| Brisbane City Council

266 George Street | GPO Box 1434 | Brisbane Qld 4001

Phone: [Redacted]  
[Redacted]

>>> [Redacted] 27/06/2011 12:05 pm

>>>

Thanks [Redacted]

We confirm that the parties no longer require special conditions 14 in the Land Sale Contracts and that the mortgage back security will therefore not be applicable.

In relation to your comments on special condition 15, we are instructed that the parties (Matthew Wallace for Mirvac & [Redacted] for Council) have agreed in principle that either all lots must be sold or no lots are sold (ie the scenario where lots 4, 5 & 101 transfer to Council but lot 3 does not transfer to Council cannot occur). To that extent, we are not sure how your proposed amendments to special condition 15 would work within this agreed principle. For example, are you proposing that any election by Council to settle in the event the Body Corporate motion does not get passed on 29 June 2011 applies to both Land Sale Contracts.

If Council elects to settle on the Land Sale Contract for Lots 4, 5 & 101 then the Land Sale Contract for Lot 3 must become unconditional (although I do not believe Mirvac will have any problems with a continuing obligation to try and remove Lot 3 from the Tennyson Reach Scheme). Please confirm and/or phone me to discuss any requisite amendments to special condition 15 of the Land Sale Contracts. Thanks.

I attach the draft Lease of the Sales Office. It is not intended that this Lease will be registered. Please confirm Council agrees to the attached form of basic Lease.

I will prepare and submit draft Settlement Statements based on Settlement on 30 June 2011. On this point, if the Body Corporate passes the requisite Motion to remove Lot 3 on 29 June 2011 and ClarkeKann lodges the New CMS for recording at DERM on 30 June 2011, would Council consider settling on Lot 3 on 30 June 2011 or does Council still require 14 days as contemplated in the Land Sale Contract?

Thanks for your ongoing assistance.

Regards

Partner | Property & Projects

ClarkeKann

Tel:

[www.clarkekann.com.au](http://www.clarkekann.com.au)

Brisbane | Level 7, 300 Queen Street, Brisbane QLD 4000,



Australia | GPO Box 2249, Brisbane QLD 4001, Australia

Sydney | Level 7, 55 Clarence Street, Sydney NSW 2000, Australia | GPO

Box 1342, Sydney NSW 2001, Australia

-----Original Message-----

From: [REDACTED]

Sent: Friday, June 24 2011 1:06 PM

To: [REDACTED]

Cc: [REDACTED]

Subject: RE: Mirvac Queensland Pty Ltd - Sale to Brisbane City

Council-Lots 3, 4, 5 & 101 Tennyson Reach - Email

Hi [REDACTED]

We have reviewed the Land Sale Contracts and comment as follows:

Lots 4, 5 and 101

Clause 14.1(b) - I understand the parties have agreed this amount will be paid on settlement of Lot 3.

Clause 14.2 - I understand the parties have agreed to delete this provision.

Clause 15 - I am instructed that Council requires the clause to be amended in accordance with the following points:

- The Buyer may settle this Contract on 30 June 2011 even if the Body Corporate does not pass the requisite resolution to remove Lot 3 from

the Scheme Land at the AGM to be held on 29 June 2011.

- The Buyer may extend settlement under this Contract to coincide with the settlement date of the Lot 3 Contract by written notice to the Seller in the event the Body Corporate does not pass the requisite resolution to remove Lot 3 from the Scheme Land at the AGM to be held on 29 June 2011.

- The settlement date under this Contract must not be extended beyond 11 December 2011.

Annexure E - delete.

Lot 3

Clause 14.1 - This will need to be amended so that \$2.5 million is paid on the Settlement Date and not in instalments.

Clause 14.2 - I understand the parties have agreed to delete this provision.

Annexure C - delete.

Do we need to include a provision that in the event Lot 3 is removed from the Scheme that the provisions in the Contract relating to Community Titles Schemes do not apply?

Regards,

[Redacted]

Solicitor | Brisbane City Legal Practice

Office of the Lord Mayor & CEO

| Brisbane City Council

266 George Street | GPO Box 1434 | Brisbane Qld 4001

Phone: [Redacted]

[Redacted]

>>> [Redacted] 23/06/2011 3:13 pm

>>>

Thanks [Redacted] So that it doesn't slip my mind in next week's probable rush, I attach a Land Tax Clearance Certificate for the subject land parcels (being one of Council's settlement requirements). Thanks.

Regards

[Redacted]

Partner | Property & Projects

Tel: +

[www.clarkekann.com.au](http://www.clarkekann.com.au)

Brisbane | Level 7, 300 Queen Street, Brisbane QLD 4000, Australia | GPO

Box 2249, Brisbane QLD 4001, Australia

Sydney | Level 7, 55 Clarence Street, Sydney NSW 2000, Australia | GPO

Box 1342, Sydney NSW 2001, Australia

---

From:

Sent: Thursday, June 23 2011 12:12 PM

To:

Cc:

Subject: Re: Mirvac Queensland Pty Ltd - Sale to Brisbane City Council

-Lots 3, 4, 5 & 101 Tennyson Reach - Email

Hi

Amended Purchase contracts confirmed as recieved. We will review as a

priority.

Regards

[Redacted]  
Solicitor/Team Leader Commercial | Brisbane City Legal Practice  
Brisbane City Legal Practice  
Office of the Lord Mayor & CEO

Ph: [Redacted]  
E-m [Redacted]

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**From:** A [REDACTED]  
**To:** A [REDACTED]  
**CC:** [REDACTED]; Adam Moore; Matthew Wallace [REDACTED]

**Date:** 28/06/2011 5:43:11 PM  
**Subject:** FW: Tennyson Reack Parkland - draft contract

Hi All

Please see attached the next version of the draft Contract for the Tennyson Parkland.

Please note that Mirvac are yet to review this version, but I am sending through given time constraints.

Regards,

[REDACTED]  
Senior Development Manager  
Development Queensland

Mirvac  
Level 2, 164 Grey Street South Bank QLD 4101 Australia PO Box 5121 West End QLD 4101  
T +61 7 3859 5990 F +61 7 3010 1790 M 0421 994 833  
[Alex\\_Levy@mirvac.com](mailto:Alex_Levy@mirvac.com) <http://www.mirvac.com>  
[Electronic Data Transmission Disclaimer](#)

Please consider the environment before printing emails and attachments

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**From:** [REDACTED]  
**Sent:** Tuesday, 28 June 2011 5:07 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Tennyson Reack Parkland - draft contract

**Attached** is the draft contract amended in accordance with your instructions of today.

Please note that due to the extensive changes required to clauses 9 and 44, I have removed the previous editions of those clauses to ensure ease of reading.

Regards

[REDACTED]  
Special Counsel Construction & Resources  
Tel: [REDACTED] [www.clarkekann.com.au](http://www.clarkekann.com.au)

\*\*\*\*\* This message has passed through an insecure network. Please direct all enquiries to the message author. \*\*\*\*\*

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**Attachments:** Header.txt, TEXT.htm, Further Amended - AS 4902-2000 Draft23June 2011 DOC\_2060761\_(1)+BCLP 4\_30pm\_2064700\_(1).DOC, Mime.822

Tennyson Reach Parkland

**Brisbane City Council**

**ABN 72 002 765 795**

**Mirvac Constructions (Qld) Pty Limited**

**ACN 088 536 476**

**DRAFT**

Australian Standard™

**General conditions of contract for  
design and construct**

Deleted: 16 June 2011

Deleted: 23

Print date 27 June 2011

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This Australian Standard was prepared by Committee OB-003, General Conditions of Contract. It was approved on behalf of the Council of Standards Australia on 7 September 1999. This Standard was published on 27 December 2000.

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Association of Consulting Engineers Australia  
 Australian Chamber of Commerce and Industry  
 Australian Procurement and Construction Council  
 AUSTROADS  
 Construction Industry Engineering Services Group  
 Construction Policy Steering Committee  
 Electricity Supply Association of Australia  
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*This Standard was issued in draft form for comment as DR 97528.*



AS 4902—2000  
(Incorporating Amendment No. 1)

Australian Standard™

**General conditions of contract for  
design and construct**

First published as AS 4300—1995.  
Revised and redesignated AS 4902—2000.  
Reissued incorporating Amendment No. 1 (March 2005).

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## PREFACE

This Standard was prepared by the Joint Standards Australia/Standards New Zealand Committee OB/3, General Conditions of Contract.

*This Standard incorporates Amendment No. 1 (March 2005). The changes required by the Amendment are indicated in the text by a marginal bar and amendment number against the clause, note, table, figure or part thereof affected.*

This Standard is the result of a consensus among Australian and New Zealand representatives on the Joint Committee to produce it as an Australian Standard.

AS 4902—2000 *General conditions of contract for design and construct*, is a part of the suite of conditions of contract based on AS 4000—1997 *General conditions of contract*.

This Standard covers the following types of project procurement methods:

- (a) design and construct;
- (b) design development and construct; and
- (c) design, novate and construct.

If the project procurement method chosen by the Principal is:

- (a) **design and construct**—the Principal would provide the Principal's project requirements, would not normally provide a detailed preliminary design and would not require novation;
- (b) **design development and construct**—the Principal would provide the Principal's project requirements, would always provide a preliminary design and accordingly would complete Annexure Part A Items 10 and 11;
- (c) **design, novate and construct**—the Principal would provide the Principal's project requirements, would always provide a preliminary design, would complete Annexure Part A Items 10 and 11 and would complete Annexure Part A Item 20 stating which subcontract (including consultant's agreement) or selected subcontract is to be novated to the Contractor.

Subclauses 8.6 and 29.2, prefixed by \*, are optional, and may be omitted in the Contract, where necessary, without making consequential amendments but such omission should be clearly shown on the face of the document by striking out these subclauses or indicating clearly in clause 1 of Annexure Part E or elsewhere that they are *not to apply*. See paragraph (f) of clause 1 for the effect of stating deletions in Annexure Part E.

### WARNINGS

- (1) Users of this Australian Standard are warned that clause 15 (Damage to persons and property other than WUC) does not limit the liability of parties for special, indirect or consequential losses.

This unlimited liability applies notwithstanding any limitations or exclusions permitted under insurance clauses 16A (Insurance of the Works), 16B (Professional indemnity insurance) and 17 (Public liability insurance).

Parties wishing to limit their liability should seek insurance and legal advice before entering a contract under this Standard.

- (2) Principals should ensure that their specific requirements are fully and completely incorporated in the Principal's project requirements obtaining specialist advice if necessary. Where a Contractor provides a proposed design as part of its tender, the parties should consider whether that design should form part of the preliminary design.

- (3) The risk allocation, drafting, interpretation and construction of this Standard are interrelated. Users who alter the Standard do so at their own risk and should obtain specialist advice as to whether it is suitable for a particular project.
- (4) Contractors should ensure that they satisfy the requirements of payment for unfixed plant and materials.
- (5) Legislation has come into force in some jurisdictions dealing with security of payments. Parties intending to use this Standard should seek expert advice as to their rights and obligations under such legislation.

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## CONTENTS

Clause	Title	Page	
1	INTERPRETATION AND CONSTRUCTION OF CONTRACT .....	6	Deleted: 7
2	NATURE OF CONTRACT .....	11	Deleted: 12
3	PROVISIONAL SUMS .....	13	Deleted: 14
4	SEPARABLE PORTIONS .....	13	Deleted: 14
5	SECURITY .....	13	Deleted: 14
6	EVIDENCE OF CONTRACT .....	14	Deleted: 15
7	SERVICE OF NOTICES .....	14	Deleted: 15
8	CONTRACT DOCUMENTS .....	15	
9	ASSIGNMENT AND SUBCONTRACTING .....	16	Deleted: 17
10	INTELLECTUAL PROPERTY RIGHTS .....	19	
11	LEGISLATIVE REQUIREMENTS .....	19	Deleted: 20
12	PROTECTION OF PEOPLE AND PROPERTY .....	20	Deleted: 21
13	URGENT PROTECTION .....	21	
14	CARE OF THE WORK AND REINSTATEMENT OF DAMAGE .....	21	Deleted: 22
15	DAMAGE TO PERSONS AND PROPERTY OTHER THAN WUC .....	22	Deleted: 23
16A	INSURANCE OF WORKS .....	23	
16B	PROFESSIONAL INDEMNITY INSURANCE .....	24	Formatted
17	PUBLIC LIABILITY INSURANCE .....	23	Deleted: 24
18	INSURANCE OF EMPLOYEES .....	24	Deleted: 25
19	INSPECTION AND PROVISIONS OF INSURANCE POLICIES .....	24	Deleted: 25
20	SUPERINTENDENT .....	25	Deleted: 26
21	SUPERINTENDENT'S REPRESENTATIVE .....	25	Deleted: 26
22	CONTRACTOR'S REPRESENTATIVE .....	26	Deleted: 27
23	CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS .....	26	Deleted: 27
24	SITE .....	26	Deleted: 27
25	LATENT CONDITIONS .....	27	Deleted: 28
26	SETTING OUT THE WORKS .....	28	
27	CLEANING UP .....	28	Deleted: 29
28	MATERIALS, LABOUR AND CONSTRUCTION PLANT .....	28	Deleted: 29
29	QUALITY .....	29	Deleted: 30
30	EXAMINATION AND TESTING .....	30	Deleted: 31
31	WORKING HOURS .....	30	Deleted: 31
32	PROGRAMMING .....	31	Deleted: 32
33	SUSPENSION .....	31	Deleted: 32
34	TIME AND PROGRESS .....	32	Deleted: 33
35	DEFECTS LIABILITY .....	34	
36	VARIATIONS .....	34	Deleted: 35
37	PAYMENT .....	35	Deleted: 36

38 PAYMENT OF WORKERS, CONSULTANTS AND SUBCONTRACTORS ..... 37

39 DEFAULT OR INSOLVENCY ..... 37

40 TERMINATION BY FRUSTRATION ..... 41

41 NOTIFICATION OF CLAIMS ..... 41

42 DISPUTE RESOLUTION ..... 42

43 WAIVER OF CONDITIONS ..... 43

44 SHARED COST SAVINGS ..... 43

45 GST<sup>43</sup> ..... 43

46 ENTIRE AGREEMENT ..... 44

PART A ..... 45

PART B ..... 60

PART C ..... 61

PART D ..... 63

PART E ..... 65

INDEX ..... 66

Deleted: 38
Deleted: 38
Deleted: 42
Deleted: 42
Deleted: 43
Deleted: 44
Deleted: 44
Deleted: 44
Deleted: 45
Deleted: 46
Deleted: 61
Deleted: 62
Deleted: 64
Deleted: 66
Deleted: 67
Deleted: ¶
1 . INTERPRETATION AND CONSTRUCTION OF CONTRACT . 6¶
. 2 . NATURE OF CONTRACT . 11¶
. 3 . PROVISIONAL SUMS . 12¶
. 4 . SEPARABLE PORTIONS . 12¶
. 5 . SECURITY . 13¶
. 6 . EVIDENCE OF CONTRACT . 14¶
. 7 . SERVICE OF NOTICES . 14¶
. 8 . CONTRACT DOCUMENTS . 14¶
. 9 . ASSIGNMENT AND SUBCONTRACTING . 16¶
. 10 . INTELLECTUAL PROPERTY RIGHTS . 17¶
. 11 . LEGISLATIVE REQUIREMENTS . 18¶
. 12 . PROTECTION OF PEOPLE AND PROPERTY . 18¶
. 13 . URGENT PROTECTION . 18¶
. 14 . CARE OF THE WORK AND REINSTATEMENT OF DAMAGE . 19¶
. 15 . DAMAGE TO PERSONS AND PROPERTY OTHER THAN WUC . 20¶
. 16A . INSURANCE OF THE WORKS . 20¶
. 16B . PROFESSIONAL INDEMNITY INSURANCE . 21¶
. 17 . PUBLIC LIABILITY INSURANCE . 21¶
. 18 . INSURANCE OF EMPLOYEES . 22¶
. 19 . INSPECTION AND PROVISIONS OF INSURANCE POLICIES . 22¶
. 20 . SUPERINTENDENT . 23¶
. 21 . SUPERINTENDENT'S REPRESENTATIVE . 23¶
. 22 . CONTRACTOR'S REPRESENTATIVE . 24¶
. 23 . CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS . 24¶
. 24 . SITE . 24¶
. 25 . LATENT

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## STANDARDS AUSTRALIA

## Australian Standard

## General conditions of contract for design and construct

## 1 Interpretation and construction of Contract

In the *Contract*, except where the context otherwise requires:

- Item** means an *Item* in Annexure Part A;
- certificate of practical completion** has the meaning in subclause 34.6;
- compensable cause** means:
- (a) any act, default or omission of the *Superintendent*, the *Principal* or its consultants, agents or other contractors (not being employed by the *Contractor*); or
  - (b) those listed in *Item 31*.
- construction plant** means appliances and things used in the carrying out of *WUC* but not forming part of *the Works*;
- consultant** means any person engaged by the *Contractor* to perform consultancy services in connection with *WUC* and includes any *Principal's* consultant whose prior contract is novated to the *Contractor* under subclause 9.4;
- Contract** has the meaning in clause 6;
- contract sum** means:
- (a) where the *Principal* accepted a lump sum, the lump sum;
  - (b) where the *Principal* accepted rates, the sum of the products ascertained by multiplying the rates by the corresponding quantities in the *schedule of rates*; or
  - (c) where the *Principal* accepted a lump sum and rates, the aggregate of the sums referred to in paragraphs (a) and (b),
- including *provisional sums* but excluding any additions or deductions which may be required to be made under the *Contract*;
- Contractor** means the person bound to carry out and complete *WUC*;
- Contractor's design obligations** means all tasks necessary to design and specify *the Works* required by the *Contract*, including preparation of the *design documents* and, if the documents stated in *Item 10* as describing the *Principal's project requirements* include a *preliminary design*, developing the *preliminary design*;

- date for practical completion** means:
- (a) where *Item 7(a)* provides a date for *practical completion*, the date;
  - (b) where *Item 7(b)* provides a period of time for *practical completion*, the last day of the period,
- but if any *EOT* for *practical completion* is directed by the *Superintendent* or allowed in any arbitration or litigation, it means the date resulting therefrom;
- date of acceptance of tender** means the date which appears on the written notice of acceptance of the tender;
- date of practical completion** means:
- (a) the date evidenced in a *certificate of practical completion* as the date upon which *practical completion* was reached; or
  - (b) where another date is determined in any arbitration or litigation as the date upon which *practical completion* was reached, that other date
- deed of guarantee, undertaking and substitution** has the meaning in subclause 5.6;
- defects** has the meaning in clause 35 and includes omissions;
- defects liability period** has the meaning in clause 35;
- design documents** means the drawings, specifications and other information, samples, models, patterns and the like required by the *Contract* and created (and including, where the context so requires, those to be created by the *Contractor*) for the construction of the *Works*;
- direction** includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;
- dispute** has the meaning in clause 42;
- EOT (from 'extension of time')** has the meaning in subclause 34.3;
- excepted risk** has the meaning in subclause 14.3;
- final certificate** has the meaning in subclause 37.4;
- final payment** has the meaning in clause 37;
- final payment claim** means the final payment claim referred to in subclause 37.4;
- intellectual property right** means any patent, registered design, trademark or name, copyright or other protected right;
- latent condition** has the meaning in subclause 25.1;

**legislative requirement** includes:

- (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where *WUC* or the particular part thereof is being carried out;
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of *WUC*; and
- (c) fees and charges payable in connection with the foregoing;

**practical completion** is that stage in the carrying out and completion of *WUC* when:

- (a) *the Works* are complete except for minor defects:
  - (i) which do not prevent *the Works* from being reasonably capable of being used for their stated purpose;
  - (ii) which the *Superintendent* determines the *Contractor* has reasonable grounds for not promptly rectifying; and
  - (iii) the rectification of which will not prejudice the convenient use of *the Works*;
- (b) those tests which are required by the *Contract* to be carried out and passed before *the Works* reach *practical completion* have been carried out and passed; and
- (c) documents and other information required under the *Contract* which, in the *Superintendent's* opinion, are essential for the use, operation and maintenance of *the Works* have been supplied;

**preliminary design** means the documents stated in *Item 11*;

**prescribed notice** has the meaning in subclause 41.1;

**Principal** means the *Principal* stated in *Item 1*;

**Principal's project requirements** means the *Principal's* written requirements for *the Works* described in the documents stated in *Item 10* which:

- ("PPRs")
- (a) shall include the stated purpose for which *the Works* are intended;
  - (b) may include the *Principal's* design, timing and cost objectives for *the Works*; and
  - (c) where stated in *Item 10*, shall include a *preliminary design*.

are also referred to in this *Contract* as *PPRs*.

**program** has the meaning in clause 32;

**progress certificate** has the meaning in subclause 37.2;

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**Deleted:** (d) all Council approved design and budget documents for *the Works* approved pursuant to clause 9; and

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**Deleted:** (e) the Terms of Reference annexed as Annexure Two; provided that any Council approved design and budget documents pursuant to clause 9 shall prevail over any *PPRs* inconsistent or in conflict with such *PPRs*.

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*provisional sum* has the meaning in clause 3 and includes monetary sum, contingency sum and prime cost item;

*public liability policy* has the meaning in clause 17;

*qualifying cause of delay* means:

(a) any act, default or omission of the Superintendent, the Principal or its consultants, agents or other contractors (not being employed by the Contractor);

(b) industrial conditions;

(c) inclement weather but the first:

1. 20 days of inclement weather for Stage I works;
2. 10 days of inclement weather for Stage II works;
3. 5 days of inclement weather for Stage III works;

encountered after the date of commencement of the relevant Stage will not be a qualifying cause of delay. Subsequent inclement weather, however, will be a qualifying cause of delay.

(d) the length of time from the commencement of the preparation of the Development Application up until the time that the Development Permit is issued for a particular Stage that is in excess of the following:

1. 90 days for Stage I;
2. 150 days for Stage II;
3. 90 days for Stage III;

(e) the qualifying causes of delay stated in Item 28;

*schedule of rates* means any schedule included in the Contract which, in respect of any section or item of work to be carried out, shows the rate or respective rates of payment for the execution of that work and which may also include lump sums, provisional sums, other sums, quantities and prices;

*security* means:

- (a) cash;
- (b) retention moneys;
- (c) bonds or inscribed stock or their equivalent issued by a national, state or territory government;
- (d) interest bearing deposit in a bank carrying on business at the place stated in Item 9(c);
- (e) an approved unconditional undertaking (the form in Annexure Part B is approved) or an approved performance undertaking given by an approved financial institution or insurance company; or
- (f) other form approved by the party having the benefit of the security;

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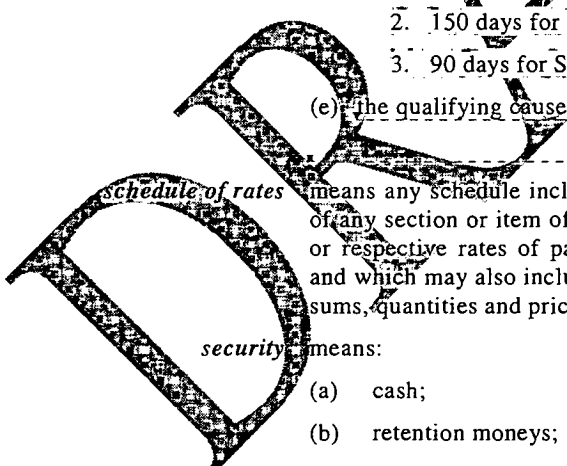
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- selected subcontract work** has the meaning in subclause 9.3;
- selected subcontractor** has the meaning in subclause 9.3;
- separable portion** means a portion of *the Works* identified as such in the *Contract* or by the *Superintendent* pursuant to clause 4;
- site** means the lands and other places to be made available and any other lands and places made available to the *Contractor* by the *Principal* for the purpose of the *Contract*;
- Stage I** means the area shown as Stage I on drawing entitled '*Masterplan*', referenced 110406 and dated 17/05/11
- Stage II** means the area shown as Stage II on drawing entitled '*Masterplan*', referenced 110406 and dated 17/05/11
- Stage III** means the area shown as Stage III on drawing entitled '*Masterplan*', referenced 110406 and dated 17/05/11
- subcontractor** in clauses 3 and 9 includes a *consultant*;
- Superintendent** means the person stated in *Item 5* as the *Superintendent* or other person from time to time appointed in writing by the *Principal* to be the *Superintendent* and notified as such in writing to the *Contractor* by the *Principal* and, so far as concerns the functions exercisable by a *Superintendent's Representative*, includes a *Superintendent's Representative*;
- Superintendent's Representative** means an individual appointed in writing by the *Superintendent* under clause 21
- survey mark** in clause 26 means a survey peg, benchmark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring *WUC*;
- temporary works** means *work* used in carrying out and completing *WUC*, but not forming part of *the Works*;
- test** has the meaning in subclause 30.1 and includes examine and measure;
- the Works** means the whole of the *work* to be carried out and completed in accordance with the *Contract*, including *variations* provided for by the *Contract*, which by the *Contract* is to be handed over to the *Principal*;
- variation** has the meaning in clause 36;
- work** includes the provision of materials;
- WUC (from 'work under the Contract')** means the *work* which the *Contractor* is or may be required to carry out and complete under the *Contract* and includes *variations*, remedial *work*, *construction plant* and *temporary works*,

and like words have a corresponding meaning.

In the *Contract*:

- (a) references to days mean calendar days and references to a person include an individual, firm or a body, corporate or unincorporate;

- (b) time for doing any act or thing under the *Contract* shall, if it ends on a Saturday, Sunday or Statutory or Public Holiday, be deemed to end on the day next following which is not a Saturday, Sunday or Statutory or Public Holiday;
- (c) clause headings and subclause headings shall not form part of, nor be used in the interpretation of, the *Contract*;
- (d) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context. Words importing a gender include every gender;
- (e) communications between the *Principal*, the *Superintendent* and the *Contractor* shall be in the English language;
- (f) measurements of physical quantities shall be in legal units of measurement of the jurisdiction in *Item 8*;
- (g) unless otherwise provided, prices are in the currency in *Item 9(a)* and payments shall be made in that currency at the place in *Item 9(b)*;
- (h) the law governing the *Contract*, its interpretation and construction, and any agreement to arbitrate, is the law of the jurisdiction in *Item 8*; and
- (i) if pursuant to Annexure Part E to these General Conditions, clauses or their parts in these General Conditions are deleted, the *Contract* shall be read and construed as though the clause or its part has been deleted, whether or not that particular clause or its part has been struck from these General Conditions.

## 2 Nature of Contract

### 2.1 Performance and payment

It is a condition of this Contract that the *Principal* engages the *Contractor* for the sole purpose of designing and constructing the Tennyson Reach Parklands in accordance with this Contract.

It is a further condition of this Contract that the *Principal* will not reduce the level of amenity or the standard of finish below that which is set out in the preliminary design.

The *Contractor* shall carry out and complete *WUC* in accordance with the *Contract* and directions authorised by the *Contract*.

The *Principal* shall pay the *Contractor*:

- (a) for work for which the *Principal* accepted a lump sum, the lump sum; and
- (b) for work for which the *Principal* accepted rates, the sum of the products ascertained by multiplying the measured quantity of each section or item of work actually carried out under the *Contract* by the rate accepted by the *Principal* for the section or item,

adjusted by any additions or deductions made pursuant to the *Contract*.

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## 2.2 Contractor's warranties

Without limiting the generality of subclause 2.1, the *Contractor* warrants to the *Principal* that:

- (a) the *Contractor*:
- (a) at all times shall be suitably qualified and experienced, and shall exercise due skill, care and diligence in the carrying out and completion of *WUC*;
  - (b) has examined any *preliminary design* included in the *Principal's project requirements* and that such *preliminary design* is suitable, appropriate and adequate for the purpose stated in the *Principal's project requirements*;
  - (c) shall carry out and complete the *Contractor's design obligations* to accord with the *Principal's project requirements* and, if subclause 9.4 applies, accept the novation and retain the *Principal's consultants* for any *work* the subject of a prior contract with the *Principal*; and
  - (d) shall carry out and complete *WUC* in accordance with the *design documents* so that *the Works*, when completed, shall:
    - (A) be fit for to be used as a public park as is set out in the PPRs; and
    - (B) comply with all the requirements of the *Contract*; and
- (b) subject to clause 9, the *consultants* identified in the *Contractor's tender* are suitably qualified and experienced.

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## 2.3 Warranties unaffected

The warranties remain unaffected notwithstanding:

- (a) that design work (including the *preliminary design*) has been carried out by or on behalf of the *Principal* and included in the *Principal's project requirements*;
- (b) that the *Contractor* has entered into a novation of any prior contract between the *Principal* and a *Principal's consultant* under subclause 9.4 and thereafter has retained that consultant in connection with *WUC*;
- (c) any receipt or review of, or comment or *direction* on, the *design documents* by the *Superintendent*; or
- (d) any variation.

## 2.4 Quantities

Quantities in a *schedule of rates* are estimated quantities only.

The *Superintendent* is not required to give a *direction* by reason of the actual quantity of an item required to perform the *Contract* being greater or less than the quantity shown in the *schedule of rates*.

## 2.5 Adjustment for actual quantities

Where, otherwise than by reason of a *direction* to vary *WUC*, the actual quantity of an item required to perform the *Contract* is greater or less than the quantity shown in the *schedule of rates*:

- (a) the *Principal* accepted a lump sum for the item, the difference shall be a deemed variation;
- (b) the *Principal* accepted a rate for the item, the rate shall apply to the greater or lesser quantities provided that where limits of accuracy for a quantity in a *schedule of rates*

are stated in *Item 12*, the rate shall apply to the greater or lesser quantities within the limits, and quantities outside the limits shall be a deemed *variation*.

If such a *schedule of rates* omits an item which should have been included, the item shall be a deemed *variation*.

### 3 Provisional sums

A *provisional sum* included in the *Contract* shall not itself be payable by the *Principal* but where pursuant to a *direction* the *work* or item to which the *provisional sum* relates is carried out or supplied by the *Contractor*, the *work* or item shall be priced by the *Superintendent*, and the difference shall be added to or deducted from the *contract sum*.

Where any part of such *work* or item is carried out or supplied by a *subcontractor*, the *Superintendent* shall allow the amount payable by the *Contractor* to the *subcontractor* for the *work* or item, disregarding:

- (a) any damages payable by the *Contractor* to the *subcontractor* or vice versa; and
- (b) any deduction of cash discount for prompt payment,

plus an amount for profit and attendance calculated by using the percentage thereon stated in *Item 13* or elsewhere in the *Contract*, or, if not so stated, as assessed by the *Superintendent*.

### 4 Separable portions

*Separable portions* may be directed by the *Superintendent*, who shall clearly identify for each, the:

- (a) portion of the *Works*;
- (b) *date for practical completion*; and
- (c) respective amounts for *security*, bonus, liquidated damages and delay damages (all calculated pro-rata according to the ratio of the *Superintendent's* valuation of the *separable portion* to the *contract sum*).

## 5 Security

### 5.1 Provision

*Security* shall be provided in accordance with *Item 14* or *15*. All delivered *security*, other than cash or retention moneys, shall be transferred in escrow.

### 5.2 Recourse

*Security* shall be subject to recourse by a party who remains unpaid after the time for payment where at least 5 days have elapsed since that party notified the other party of intention to have recourse.

### 5.3 Change of security

At any time a party providing retention moneys or cash *security* may substitute another form of *security*. To the extent that another form of *security* is provided, the other party shall not deduct, and shall promptly release and return, retention moneys and cash *security*.

### 5.4 Reduction and release

Upon the issue of the *certificate of practical completion* a party's entitlement to *security* (other than in *Item 14(e)*) shall be reduced by the percentage or amount in *Item 14(f)* or



15(d) as applicable, and the reduction shall be released and returned within 14 days to the other party.

The *Principal's* entitlement to *security* in *Item 14(e)* shall cease 14 days after incorporation into *the Works* of the plant and materials for which that *security* was provided.

A party's entitlement otherwise to *security* shall cease 14 days after *final certificate*.

Upon a party's entitlement to *security* ceasing, that party shall release and return forthwith the *security* to the other party.

### 5.5 Trusts and interest

Except where held by a government department or agency or a municipal, public or statutory authority, any portion of *security* (and interest earned thereon) which is cash or retention moneys, shall be held in trust for the party providing them until the *Principal* or the *Contractor* is entitled to receive them.

Interest earned on *security* not required to be held in trust shall belong to the party holding that *security*.

### 5.6 Deed of guarantee, undertaking and substitution

Where:

- (a) a party is a related or subsidiary corporation (as defined in the applicable corporations law of the jurisdiction); and
- (b) a form of *deed of guarantee, undertaking and substitution* was included in the tender documents,

that party shall, within 14 days after receiving a written request from the other party, provide such *deed of guarantee, undertaking and substitution* duly executed and enforceable.

### 6 Evidence of Contract

Until a formal instrument of agreement is executed by the parties, documents evidencing the parties' consensus shall constitute the *Contract*. If such *Contract* requires a formal instrument of agreement, the *Principal* shall, within 28 days of the *date of acceptance of tender*, send it in duplicate for execution by the *Contractor*. Within 14 days after receiving them the *Contractor* shall (if they are correct) properly execute both copies and return them.

Within 14 days after receiving them, the *Principal* shall execute both copies, have them stamped as necessary and send one copy to the *Contractor*.

The *Superintendent* may extend the time under this clause by written notice to the parties.

### 7 Service of notices

A notice (and other documents) shall be deemed to have been given and received:

- (a) if addressed or delivered to the relevant address in the *Contract* or last communicated in writing to the person giving the notice; and
- (b) on the earliest date of:
  - (a) actual receipt;
  - (b) confirmation of correct transmission of fax; or
  - (c) 3 days after posting.

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## 8 Contract documents

### 8.1 Discrepancies

Figured shall prevail over scaled dimensions in a discrepancy. Otherwise, if either party discovers any inconsistency, ambiguity or discrepancy in any document prepared for the purpose of carrying out *WUC*, that party shall give the *Superintendent* written notice of it. The *Superintendent*, thereupon, and upon otherwise becoming aware, shall direct the *Contractor* as to the interpretation and construction to be followed.

The *Contractor* shall bear the cost of compliance with a *direction* under this subclause to the extent that any inconsistency, ambiguity or discrepancy in the *design documents* or between the *design documents* and the *Principal's project requirements* necessitates the *direction*.

If compliance with any other *direction* under this subclause causes the *Contractor* to incur more or less cost than otherwise would have been incurred had the *direction* not been given, the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

### 8.2 Principal-supplied documents

The *Principal* shall supply to the *Contractor* the documents and number of copies thereof, both stated in *Item 16*.

They shall:

- (a) remain the *Principal's* property and be returned to the *Principal* on written demand; and
- (b) not be used, copied nor reproduced for any purpose other than *WUC*.

### 8.3 Contractor-supplied documents

The *Contractor* shall supply to the *Superintendent* the documents and number of copies at the times or stages stated in *Item 17*.

Other documents and information required by the *Contract*, unless elsewhere stated in the *Contract*, shall be supplied not less than 14 days before the *work* described in the documents is commenced and shall be in a form satisfactory to the *Superintendent*.

If the *Contractor* submits a document to the *Superintendent*, then except where the *Contract* otherwise provides:

- (a) the *Superintendent* shall not be required to check that document for errors, omissions, inconsistencies, ambiguities, discrepancies or compliance with the *Contract*;
- (b) notwithstanding subclause 2.1, any *Superintendent's* acknowledgment or approval shall not prejudice the *Contractor's* obligations; and
- (c) if the *Contract* requires the *Contractor* to obtain the *Superintendent's* *direction* about that document, the *Superintendent* shall give, within the time stated in *Item 18*, the appropriate *direction*, including reasons if the document is not suitable.

A *direction* by the *Superintendent* to vary anything in the *design documents* shall be a *variation* to *WUC* only to the extent that the *design documents*, before such *variation*, complied, or would have complied, with the *Principal's project requirements*.

Copies of documents supplied by the *Contractor* shall be the *Principal's* property but shall not be used nor copied otherwise than for the use, repair, maintenance or alteration of the *Works*.

#### 8.4 Availability

The *Contractor* shall keep available to the *Superintendent* and the *Principal*:

- (a) on *site*, one complete set of documents affecting *WUC* and supplied by a party or the *Superintendent*; and
- (b) at the place of manufacture or assembly of any significant part of *WUC* off *site*, a set of the documents affecting that part.

#### 8.5 Confidential information

The parties shall ensure that there are kept confidential such documents, samples, models, patterns and other information as are supplied and clearly identified as confidential.

If required in writing by a party, the other party shall enter into a separate agreement not to disclose to anyone else any confidential matter even after *final certificate* or earlier termination of the *Contract*. If so required by the *Contractor*, the *Principal* shall ensure that the *Superintendent* also enters into such an agreement.

#### \* 8.6 Media

The *Contractor* shall not disclose any information concerning the project for distribution through any communications media without the *Principal's* prior written approval (which shall not be unreasonably withheld). The *Contractor* shall refer to the *Principal* any enquiries from any media concerning the project.

### 9 Assignment and subcontracting

#### 9.1 Assignment

Neither party shall, without the other's prior written approval (including terms) assign the *Contract* or any payment or any other right, benefit or interest thereunder.

#### 9.2 Subcontracting generally

The *Contractor* may not appoint or subcontract any *WUC* without the prior written approval of the *Principal* which such approval shall not be unreasonably withheld provided the *Contractor* has made full disclosure to the *Principal* as to the terms and conditions of the proposed contract with the subcontractor.

The *Contractor* shall not without the *Superintendent's* prior written approval (which shall not be unreasonably withheld):

- (a) subcontract or allow a *subcontractor* to subcontract any work described in *Item 19*; or
- (b) allow a *subcontractor* to assign a subcontract or any payment or any other right, benefit or interest thereunder.

With a request for approval, the *Contractor* shall give the *Superintendent* written particulars of the work to be subcontracted and the name and address of the proposed *subcontractor*. The *Contractor* shall give the *Superintendent* other information which the *Superintendent* reasonably requests, including the proposed subcontract documents without prices.

Within 14 days of the *Contractor's* request for approval, the *Superintendent* shall give the *Contractor* written notice of approval or of the reasons why approval is not given.

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\* See Preface

Approval may be conditional upon the subcontract including:

- (a) provision that the *subcontractor* shall not assign nor subcontract without the *Contractor's* written consent;
- (b) provisions which may be reasonably necessary to enable the *Contractor* to fulfil the *Contractor's* obligations to the *Principal*;
- (c) provision that if the *Contract* is terminated and upon the *subcontractor* being paid the sum certified by the *Superintendent* as owing to the *subcontractor*, the *Contractor* and the *subcontractor* shall, after the *Principal* has done so, promptly execute a deed of novation in the form of Annexure Part C.

For the purpose of effecting such novation only, the *Contractor* hereby irrevocably appoints the *Superintendent* to be the *Contractor's* attorney with authority to execute such documents as are necessary to give effect to the novation and to bind the *Contractor* accordingly; and

- (d) where the *subcontractor* is a *consultant*, provision that the *subcontractor* shall effect and maintain professional indemnity insurance on the same terms as are required under *Items 24(c)* and *24(d)*.

**9.3 Selected subcontract work**

If the *Principal* has included in the invitation to tender a list of one or more *selected subcontractors* for particular *work*, the *Contractor* shall subcontract that *work* to a *selected subcontractor* and thereupon give the *Superintendent* written notice of that *selected subcontractor's* name.

If no subcontractor on the *Principal's* list will subcontract to carry out the *selected subcontract work*, the *Contractor* shall provide a list for the written approval of the *Superintendent*.

**9.4 Novation**

This subclause applies only where the *Principal's* project requirements include a preliminary design or the *Contract* includes *selected subcontract work*.

When directed by the *Principal*, the *Contractor*, without being entitled to compensation, shall promptly execute a deed of novation in the form of Annexure Part D, such deed being between the *Principal*, the *Contractor* and the *subcontractor* or the *selected subcontractor* stated in *Item 20* for the particular part of the *preliminary design* or *selected subcontract work*.

**9.5 Contractor's responsibility**

Except where the *Contract* otherwise provides, the *Contractor* shall be liable to the *Principal* for the acts, defaults and omissions of *subcontractors* (including *selected subcontractors*) and employees and agents of *subcontractors* as if they were those of the *Contractor*.

Approval to subcontract shall not relieve the *Contractor* from any liability or obligation under the *Contract*

**9.6 Design and documentation development**

The *Contractor's* design obligations are as follows:

- (a) The *Contractor* must determine which statutory approvals are required for the completion of the design in accordance with the *Contract* and the *PPRs*;
- (b) The *Contractor* must procure the design documents that comprise:

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- (a) the relevant statutory approvals;
  - (b) the design and documentation;
  - (c) cost estimates that shall include all costs to carry out the Works on a subcontractor and supplier basis and shall include all of the Contractor's costs but shall not include profit;
- (c) The Contractor must deliver an electronic copy of the latest set of design documents at the;
- (a) schematic design complete phase (30% complete of the design);
  - (b) design development complete phase (80% complete of the design); and
  - (c) construction documentation complete phase (95% complete of the design);
- in sufficient time to ensure that there will be no delay to the dates for practical completion.
- (d) The Superintendent may request the Contractor to provide an explanation of any design documents, cost estimate or to provide a report on any design matter at the Contractor's cost;
- (e) The Contractor must procure the design documents necessary for the completion of the Works in accordance with the PPRs and in accordance with sound engineering and building practice.
- (f) The Contractor must notify the Superintendent of the time and cost implications of every design changes that is directed by the Superintendent.

The contract sum must not exceed \$6,000,000 (excl. GST) unless varied by the Superintendent in accordance with this Contract.

In the event that the Superintendent directs a variation that will cause the contract sum to exceed \$6,000,000 (excl GST), the Contractor must provide the Superintendent notice accordingly within 5 business days and, if possible, provide suggestions as to how the design may be further amended in order to ensure that the contract sum does not exceed \$6,000,000 (excl GST).

The Contractor is entitled to, and may claim an extension of time and payment for costs incurred arising out of any variations to the preliminary design directed by the Superintendent.

### 9.7 Cost Estimate of the Works

Upon receipt of the design documents at the construction documentation complete phase, the Superintendent must obtain an independent cost assessment of the design documents (QS Report) and provide a copy of the QS Report to the Contractor.

Within 40 days of receipt of the design documents and cost estimate, the Superintendent must instruct the Contractor whether or not the design documents and cost estimate are acceptable to the Principal.

If the design documents and cost estimate are not acceptable to the Principal, the Superintendent must set out its reasons as to why the design documents and cost estimate do not comply with this Contract or provide further instructions to change the design documents and cost estimate.

If the parties reach agreement as to the design documents and the cost estimate, that cost estimate shall be revised contract sum (Cost Estimate) and shall be used for the purposes of calculating further cost savings under clause 44.

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The Contractor is entitled to, and may claim, an extension of time and additional payment for all costs incurred that are in addition to the contract sum arising out of any discrepancy, omission, inconsistency or ambiguity within or between any of the following:
(a) the documents constituting preliminary design;
(b) the documents constituting the PPRs;
(c) the documents comp ... [10]
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If the parties are unable to reach agreement of the design documents or the cost estimate, the Superintendent must direct the Contractor to progress the Works on the basis of the design. Additionally, the Superintendent shall determine the Cost Estimate based upon the design documents, the cost estimate and the QS Report. In this event, the Contractor may provide the Principal a notice of dispute and refer the matter to expert determination in accordance with the Contract.

If the Superintendent does not advise the Contractor within the time stated in this clause, the design documents and cost estimate submitted in accordance with this clause 9.6(c) are deemed to have satisfied the requirements of this Contract and will be the design documents to be used to construct the Works and the Cost Estimate setting out the breakup of the contract sum. In this case, contract sum must not exceed \$6,000,000.00 (Excl GST).

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## 10 Intellectual property rights

### 10.1 Warranties and indemnities

The *Principal* warrants that, unless otherwise provided in the *Contract*, the *Principal's* project requirements, design, materials, documents and methods of working, each specified in the *Contract* or provided or directed by the *Principal* or the *Superintendent* shall not infringe any *intellectual property right*.

The *Contractor* warrants that any other design, materials, documents and methods of working, each provided by the *Contractor*, shall not infringe any *intellectual property right*.

Each party shall indemnify the other against such respective infringements.

**Deleted:** When the Principal has agreed to the Design and Cost Estimate, the Contractor must perform the Works strictly according to the Design and Cost Estimate it being a material condition of this Contract that the Principal shall not be liable to the Contractor for any contract sum, whether by way of EOTs, delay costs, variations or other liabilities, above the agreed absolute cap of Six Million Dollars (\$6,000,000.00).¶

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### 10.2 Intellectual property rights granted to Principal

The Alternative in *Item 21* applies.

#### Alternative 1

The *Contractor* grants to the *Principal* an irrevocable licence to use the *design documents* for *WUC*. Such licence shall also include any subsequent repairs to, maintenance or servicing of (including the supply of replacement parts), or additions or alterations to, the *Works* and the copying of the documents for such purposes.

#### Alternative 2

Copyright and property in the *design documents* (and, as between the *Principal* and the *Contractor*, any part of the *preliminary design* produced under a prior contract between the *Principal* and a *Principal's* consultant novated under subclause 9.4) hereby vest in the *Principal*, and the *Principal* grants to the *Contractor* an irrevocable licence to use the *design documents* for *WUC*. Such vesting shall not extend to components of the design which have been developed by the *Contractor* for general use in the *Contractor's* work and have not been specially developed for incorporation in the *design documents*.

The *Contractor* shall do everything necessary to perfect such vesting.

The *Contractor* shall ensure that the *design documents* are used, copied and supplied only for the purpose of *WUC*.

## 11 Legislative requirements

### 11.1 Compliance

The *Contractor* shall satisfy all *legislative requirements* except those in *Item 22(a)* or directed by the *Superintendent* to be satisfied by or on behalf of the *Principal*.

The *Contractor*, upon finding that a *legislative requirement* is at variance with the *Contract* or the *Principal's project requirements*, shall promptly give the *Superintendent* written notice thereof.

## 11.2 Changes

If a *legislative requirement*:

- (a) necessitates a change:
  - (a) to the *Principal's project requirements*;
  - (b) to the *Works*;
  - (c) to so much of *WUC* as is identified in *Item 22(b)*;
  - (d) being the provision of services by a municipal, public or other statutory authority in connection with *WUC*; or
  - (e) in a fee or charge or payment of a new fee or charge;
- (b) comes into effect after the 14th day before the closing of tenders but could not reasonably then have been anticipated by a competent contractor; and
- (c) causes the *Contractor* to incur more or less cost than otherwise would have been incurred,

the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

## 11.3 Occupational health and safety

The *Principal* appoints the *Contractor* as *Principal Contractor* in accordance with the *Workplace Health & Safety Act 1995 (Qld) (WHS legislation)*.

Without limiting the generality of clause 11.1 and 11.2, the *Contractor* must comply with all legislative requirements, codes of practice, and standards (including Australian Standards) in relation to occupational health and safety. The *Contractor* must instruct its employees, subcontractors and consultants to:

- (a) follow safe work practices and procedures at all times;
- (b) take reasonable care for their own safety; and
- (c) take reasonable care for the health and safety of anyone else who may be affected by anything that they do or fail to do;

in connection with the *WUC*,

If requested by the *Superintendent*, the *Contractor* must provide the following information about the *Contractor's* occupational health and safety systems and those of its subcontractors or consultant's:

- (d) safe working practices and procedures; and
- (e) occupational health and safety practices and procedures;

The *Contractor* must ensure that all employees, subcontractors, consultants and appointees have completed an appropriate induction prior to commencement on the *WUC*.

## 12 Protection of people and property

Insofar as compliance with the *Contract* permits, the *Contractor* shall:

- (a) take measures necessary to protect people and property;

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- (b) avoid unnecessary interference with the passage of people and vehicles; and
- (c) prevent nuisance and unreasonable noise and disturbance.

If the *Contractor* damages property, the *Contractor* shall promptly rectify the damage and pay any compensation which the law requires the *Contractor* to pay.

If the *Contractor* fails to comply with an obligation under this clause, the *Principal*, after the *Superintendent* has given reasonable written notice to the *Contractor* and in addition to the *Principal's* other rights and remedies, may have the obligation performed by others. The cost thereby incurred shall be certified by the *Superintendent* as moneys due from the *Contractor* to the *Principal*.

### 13 Urgent protection

If urgent action is necessary to protect *WUC*, other property or people and the *Contractor* fails to take the action, in addition to any other remedies of the *Principal*, the *Superintendent* may take the necessary action. If the action was action which the *Contractor* should have taken at the *Contractor's* cost, the *Superintendent* shall certify the cost incurred as moneys due from the *Contractor* to the *Principal*.

If time permits, the *Superintendent* shall give the *Contractor* prior written notice of the intention to take action pursuant to this clause.

### 14 Care of the work and reinstatement of damage

#### 14.1 Care of WUC

Except as provided in subclause 14.3, the *Contractor* shall be responsible for care of:

- (a) the whole of *WUC* from and including the date of commencement of *WUC* to 4:00 pm on the date of practical completion, at which time responsibility for the care of the *Works* (except to the extent provided in paragraph (b)) shall pass to the *Principal*; and
- (b) outstanding work and items to be removed from the site by the *Contractor* after 4:00 pm on the date of practical completion until completion of outstanding work or compliance with clauses 29, 30 and 35.

Without limiting the generality of paragraph (a), the *Contractor* shall be responsible for the care of unfixed items accounted for in a *progress certificate* and the care and preservation of things entrusted to the *Contractor* by the *Principal* or brought onto the site by *subcontractors* for carrying out *WUC*.

#### 14.2 Reinstatement

If loss or damage, other than that caused by an *excepted risk*, occurs to *WUC* during the period of the *Contractor's* care, the *Contractor* shall at its cost, rectify such loss or damage.

In the event of loss or damage being caused by any of the *excepted risks* (whether or not in combination with other risks), the *Contractor* shall to the extent directed by the *Superintendent*, rectify the loss or damage and such rectification shall be a deemed *variation*. If loss or damage is caused by a combination of *excepted risks* and other risks, the *Superintendent* in pricing the *variation* shall assess the proportional responsibility of the parties.

#### 14.3 Excepted risks

The *excepted risks* causing loss or damage, for which the *Principal* is liable, are:

- (a) any negligent act or omission of the *Superintendent*, the *Principal* or its consultants, agents, employees or other contractors (not being employed by the *Contractor*);



- (b) any risk specifically excepted elsewhere in the *Contract*;
- (c) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority;
- (d) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the *Contractor* or its *subcontractors* or either's employees or agents; and
- (e) use or occupation of any part of *WUC* by the *Principal* or its consultants, agents or other contractors (not being employed by the *Contractor*).

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defects in such part of the design of *WUC*, including the *preliminary design* provided by the *Principal*, as is not warranted under clause 2

## 15 Damage to persons and property other than *WUC*

### 15.1 Indemnity by Contractor

Insofar as this subclause applies to property, it applies to property other than *WUC*.

The *Contractor* shall indemnify the *Principal* against:

- (a) loss of or damage to the *Principal's* property; and
- (b) claims in respect of personal injury or death or loss of, or damage to, any other property,

arising out of or as a consequence of the carrying out of *WUC*, but the indemnity shall be reduced proportionally to the extent that the act or omission of the *Superintendent*, the *Principal* or its consultants, agents or other contractors (not being employed by the *Contractor*) may have contributed to the injury, death, loss or damage.

This subclause shall not apply to:

- (a) the extent that the *Contractor's* liability is limited by another provision of the *Contract*;
- (b) exclude any other right of the *Principal* to be indemnified by the *Contractor*;
- (c) things for the care of which the *Contractor* is responsible under subclause 14.1; and
- (d) claims in respect of the *Principal's* right to have *WUC* carried out.

### 15.2 Indemnity by Principal

The *Principal* shall indemnify the *Contractor* in respect of claims referred to in paragraph (d) of subclause 15.1.

## 16A Insurance of the Works

The Alternative in *Item 23(a)* applies.

### *Alternative 1: Contractor to insure*

Before commencing *WUC*, the *Contractor* shall insure all the things referred to in subclause 14.1 against loss or damage resulting from any cause until the *Contractor* ceases to be responsible for their care.

Without limiting the generality of the obligation to insure, such insurance shall cover the *Contractor's* liability under subclause 14.2 and things in storage off *site* and in transit to the *site* but may exclude:

- (a) the cost of making good fair wear and tear or gradual deterioration, but shall not exclude the loss or damage resulting therefrom;

- (b) the cost of making good faulty design, workmanship and materials, but shall not exclude the loss or damage resulting therefrom;
- (c) consequential loss of any kind, but shall not exclude loss of or damage to *the Works*;
- (d) damages for delay in completing or for the failure to complete *the Works*;
- (e) loss or damage resulting from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel resulting from any cause;
- (f) loss or damage resulting from the *excepted risks* referred to in paragraphs (b) and (c) of subclause 14.3.

The insurance cover shall be for an amount not less than the aggregate of the:

- (a) *contract sum*;
- (b) provision in *Item 23(b)* to provide for costs of demolition and removal of debris;
- (c) provision in *Item 23(c)* for *consultants' fees* and *Principal's consultants' fees*;
- (d) value in *Item 23(d)* of any materials or things to be supplied by the *Principal* for the purposes of *WUC*; and
- (e) additional amount or percentage in *Item 23(e)* of the total of the items referred to in sub-paragraphs (a) to (d) of this paragraph.

Insurance shall be in the joint names of the parties, shall cover the parties, *consultants* and *subcontractors* whenever engaged in *WUC* for their respective rights, interests and liabilities and, except where the *Contract* otherwise provides, shall be with an insurer and in terms both approved in writing by the *Principal* (which approvals shall not be unreasonably withheld).

The insurance shall be maintained until the *Contractor* ceases to be responsible under subclause 14.1 for the care of anything.

#### **16B Professional indemnity insurance**

Before commencing *WUC*, the *Contractor* shall effect and maintain professional indemnity insurance with levels of cover not less than stated in *Item 24(a)*.

The insurance shall be maintained until the *final certificate* is issued and thereafter for the period as stated in *Item 24(b)*.

The *Contractor* shall ensure that every *consultant*, if within a category stated in *Item 24(c)*, shall effect and maintain professional indemnity insurance with levels of cover not less than stated in *Item 24(c)* applicable to that category.

Each such *consultant's* professional indemnity insurance shall be maintained until the *final certificate* is issued and thereafter for the period as stated in *Item 24(d)*.

#### **17 Public liability insurance**

The Alternative in *Item 25(a)* applies.

##### **Alternative 1: Contractor to insure**

Before commencing *WUC*, the *Contractor* shall effect and maintain for the duration of the *Contract*, a *public liability policy*.

The policy shall:

- (a) be in the joint names of the parties;
- (b) cover the:

**Deleted: Alternative 2:**  
**Principal to insure**  
 Before the date of acceptance of tender, the *Principal* shall insure *WUC* in the terms of the policy included in the tender documents and nominating or stating the insurer. The *Principal* shall maintain such insurance while ever the *Contractor* has an interest in *WUC*.

- (a) respective rights and interests; and
- (b) liabilities to third parties,

of the parties, the *Superintendent*, *consultants* and *subcontractors* from time to time, whenever engaged in *WUC*;

- (c) cover the parties' respective liability to each other for loss or damage to property (other than property required to be insured by clause 16A) and the death of or injury to any person (other than liability which the law requires to be covered under a workers compensation insurance policy);
- (d) be endorsed to cover the use of any *construction plant* not covered under a comprehensive or third party motor vehicle insurance policy;
- (e) provide insurance cover for an amount in respect of any one occurrence of not less than the sum in *Item 25(b)*; and
- (f) be with an insurer and otherwise in terms both approved in writing by the *Principal* (which approvals shall not be unreasonably withheld).

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## 18. Insurance of employees

Before commencing *WUC*, the *Contractor* shall insure against statutory and common law liability for death of or injury to persons employed by the *Contractor*. The insurance cover shall be maintained until completion of all *WUC*.

Where permitted by law, the insurance policy or policies shall be extended to provide indemnity for the *Principal's* statutory liability to the *Contractor's* employees.

The *Contractor* shall ensure that all *consultants* and *subcontractors* have similarly insured their employees.

Deleted: Alternative 2:

*Principal to insure*¶  
Before the date of acceptance of tender, the *Principal* shall effect in relation to *WUC*, a public liability policy in the terms of the policy included in the tender documents and nominating or stating the insurer. The *Principal* shall maintain such insurance while ever the *Contractor* has an interest in *WUC*.¶

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## 19. Inspection and provisions of insurance policies

### 19.1 Proof of insurance

Before the *Contractor* commences *WUC* and whenever requested in writing by the other party, a party liable to insure shall provide satisfactory evidence of such insurance effected and maintained.

Insurance shall not limit liabilities or obligations under other provisions of the *Contract*.

### 19.2 Failure to produce proof of insurance

If after being so requested, a party liable to insure fails promptly to provide evidence of satisfactory compliance, then without prejudice to other rights or remedies, the other party may insure and the cost thereof shall be certified by the *Superintendent* as moneys due and payable from the party in default to the other party. Where the defaulting party is the *Contractor*, the *Principal* may refuse payment until such evidence is produced by the *Contractor*.

### 19.3 Notices from or to insurer

The party insuring under clause 16A or 17 shall ensure that each insurance policy contains provisions acceptable to the other party which:

- (a) requires the insurer to inform both parties, whenever the insurer gives a party or a *consultant* or a *subcontractor* a notice in connection with the policy;
- (b) provides that a notice of claim given to the insurer by either party, the *Superintendent*, a *consultant* or a *subcontractor* shall be accepted by the insurer as a

notice of claim given by both parties, the *Superintendent*, the *consultant* and the *subcontractor*; and

- (c) requires the insurer, whenever the party fails to maintain the policy, promptly to give written notice thereof to both parties and prior to cancellation of the policy.

#### 19.4 Notices of potential claims

A party shall, as soon as practicable, inform the other party in writing of any occurrence that may give rise to a claim under an insurance policy required by clause 16A or 17 and shall keep the other party informed of subsequent developments concerning the claim. The *Contractor* shall ensure that *consultants* and *subcontractors* in respect of their operations similarly inform the parties.

#### 19.5 Settlement of claims

Upon settlement of a claim under the insurance required by clause 16A:

- (a) to the extent that reinstatement has been the subject of a payment or allowance by the *Principal* to the *Contractor*, if the *Contractor* has not completed such reinstatement, insurance moneys received shall, if requested by either party, be paid into an agreed bank account in the joint names of the parties. As the *Contractor* reinstates the loss or damage, the *Superintendent* shall certify against the joint account for the cost of reinstatement; and
- (b) to the extent that reinstatement has not been the subject of a payment or allowance by the *Principal* to the *Contractor*, the *Contractor* shall be entitled immediately to receive from insurance moneys received the amount of such moneys so paid in relation to any loss suffered by the *Contractor*.

#### 19.6 Cross liability

Any insurance required to be effected in joint names in accordance with the *Contract* shall include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons constituting the insured and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons constituting the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby).

#### 20 Superintendent

The *Principal* shall ensure that at all times there is a *Superintendent*, and that the *Superintendent* fulfils all aspects of the role and functions reasonably and in good faith.

Except where the *Contract* otherwise provides, the *Superintendent* may give a *direction* orally but shall as soon as practicable confirm it in writing. If the *Contractor* in writing requests the *Superintendent* to confirm an oral *direction*, the *Contractor* shall not be bound to comply with the *direction* until the *Superintendent* does so.

The *Principal* may change the *Superintendent* by written or electronic notice to the *Contractor* and the change shall be from the date of such notice.

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#### 21 Superintendent's Representative

The *Superintendent* may from time to time appoint individuals to exercise delegated *Superintendent's* functions, provided that:

- (a) no aspect of any function shall at any one time be the subject of delegation to more than one *Superintendent's Representative*;

- (b) delegation shall not prevent the *Superintendent* exercising any function;
- (c) the *Superintendent* forthwith gives the *Contractor* written notice of respectively:
  - (a) the appointment, including the *Superintendent's Representative's* name and delegated functions; and
  - (b) the termination of each appointment; and
- (d) if the *Contractor* makes a reasonable objection to the appointment of a *Superintendent's Representative*, the *Superintendent* shall terminate the appointment.

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## 22 Contractor's representative

The *Contractor* shall superintend *WUC* personally or by a competent representative. Matters within a *Contractor's* representative's knowledge (including *directions* received) shall be deemed to be within the *Contractor's* knowledge.

The *Contractor* shall forthwith give the *Superintendent* written notice of the representative's name and any subsequent changes.

If the *Superintendent* makes a reasonable objection to the appointment of a representative, the *Contractor* shall terminate the appointment and appoint another representative.

## 23 Contractor's employees and subcontractors

The *Superintendent* may direct the *Contractor* to have removed, within a stated time, from the *site* or from any activity of *WUC*, any person employed on *WUC* who, in the *Superintendent's* opinion, is incompetent, negligent or guilty of misconduct.

## 24 Site

### 24.1 Access and possession

Before the expiry of the time stated in *Item 26(a)*, the *Principal* shall give the *Contractor* access to the *site* sufficient to enable the *Contractor* to commence and carry out the *Contractor's design obligations*.

Provided the *Contractor* has complied with subclause 19.1, the *Principal* shall before the expiry of the time in *Item 26(b)*, give the *Contractor* possession of sufficient of the *site* for commencement of *WUC* on *site*. If the *Principal* has not given the *Contractor* possession of the whole *site*, the *Principal* shall give the *Contractor* possession of such further portions of the *site* as may, from time to time, be necessary for carrying out *WUC*. Subject to subclause 39.7, delay by the *Principal* in giving possession shall not be a breach of the *Contract*.

Possession of the *site* shall confer on the *Contractor* a right to only such use and control as is necessary to enable the *Contractor* to carry out *WUC* and shall exclude camping, residential purposes and any purpose not connected with *WUC*, unless approved by the *Superintendent*.

### 24.2 Access for Principal and others

The *Principal* and the *Principal's* employees, consultants and agents may at any time after reasonable written notice to the *Contractor*, have access to any part of the *site* for any purpose. The *Contractor* shall permit persons engaged by the *Principal* to carry out *work* on the *site* other than *WUC* and shall cooperate with them. The *Principal* shall give to the *Contractor* the names and roles of the persons so engaged.

The *Contractor* shall at all reasonable times give the *Superintendent* access to *WUC*.

The *Principal* shall ensure that none of the persons referred to in this subclause impedes the *Contractor*.

### 24.3 Minerals, fossils and relics

Valuable minerals, fossils, articles or objects of antiquity or of anthropological or archaeological interest, treasure trove, coins and articles of value found on the *site* shall as between the parties be and remain the property of the *Principal*. Immediately upon the discovery of these things the *Contractor* shall:

- (a) take precautions to prevent their loss, removal or damage; and
- (b) give the *Superintendent* written notice of the discovery.

All costs so incurred by the *Contractor* shall be assessed by the *Superintendent* and added to the *contract sum*.

## 25 Latent conditions

### 25.1 Scope

*Latent conditions* are physical conditions on the *site* and its near surrounds, including artificial things but excluding weather conditions, which differ materially from the physical conditions which should reasonably have been anticipated by a competent contractor at the time of the *Contractor's* tender if the *Contractor* had inspected:

- (a) all written information made available by the *Principal* to the *Contractor* for the purpose of tendering;
- (b) all information influencing the risk allocation in the *Contractor's* tender and reasonably obtainable by the making of reasonable enquiries; and
- (c) the *site* and its near surrounds.

### 25.2 Notification

The *Contractor*, upon becoming aware of a *latent condition* while carrying out *WUC*, shall promptly, and where possible before the *latent condition* is disturbed, give the *Superintendent* written notice of the general nature thereof.

If required by the *Superintendent* promptly after receiving that notice, the *Contractor* shall, as soon as practicable, give the *Superintendent* a written statement of:

- (a) the *latent condition* encountered and the respects in which it differs materially;
- (b) the additional *work*, resources, time and cost which the *Contractor* estimates to be necessary to deal with the *latent condition*; and
- (c) other details reasonably required by the *Superintendent*.

### 25.3 Liability for latent conditions and design

The *Contractor* is solely and exclusively liable for latent conditions including but not limited to any damages claims, EOT's, or delays, arising from the identification and rectification of such latent conditions. The *Contractor* is solely liable for the design of the *WUC* and the *Contractor* shall not enjoin, seek apportionment or any liability from the *Principal* for any liability arising from, or in connection with, the design of the *WUC*.

**Deleted:** Deemed variation

**Deleted:** The effect of the *latent condition* shall be a deemed variation, priced having no regard to additional cost incurred more than 28 days before the date on which the *Contractor* gave the notice required by the first paragraph of subclause 25.2 but so as to include the *Contractor's* other costs for each compliance with subclause 25.2

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## 26 Setting out the Works

### 26.1 Setting out

The *Principal* shall ensure that the *Superintendent* gives the *Contractor* the data, *survey marks* and like information necessary for the *Contractor* to set out *the Works*, together with those *survey marks* specified in the *Contract*. Thereupon the *Contractor* shall set out *the Works* in accordance with the *Contract*.

### 26.2 Errors in setting out

The *Contractor* shall rectify every error in the position, level, dimensions or alignment of any *WUC* after promptly notifying the *Superintendent* and unless the *Superintendent* within 3 days directs otherwise. The cost of any rectification shall be at the sole cost of the *Contractor*.

### 26.3 Care of survey marks

The *Contractor* shall keep in their true positions all *survey marks* supplied by the *Superintendent*.

The *Contractor* shall reinstate any *survey mark* disturbed, after promptly notifying the *Superintendent* and unless the *Superintendent* within 3 days directs otherwise.

If the disturbance was caused by a person referred to in subclause 24.2 other than the *Contractor*, the cost incurred by the *Contractor* in reinstating the *survey mark* shall be borne by the *Contractor*.

## 27 Cleaning up

The *Contractor* shall keep the site and *WUC* clean and tidy and regularly remove rubbish and surplus material.

Within 14 days after the date of practical completion, the *Contractor* shall remove temporary works and construction plant. The *Superintendent* may extend the time to enable the *Contractor* to perform remaining obligations.

If the *Contractor* fails to comply with the preceding obligations in this clause, the *Superintendent* may direct the *Contractor* to rectify the non-compliance and the time for rectification.

If:

- (a) the *Contractor* fails to comply with such a direction; and
- (b) that failure has not been made good within 5 days after the *Contractor* receives written notice from the *Superintendent* that the *Principal* intends to have the subject work carried out by others,

the *Principal* may have that work so carried out and the *Superintendent* shall certify the cost incurred as moneys due from the *Contractor* to the *Principal*. The rights given by this paragraph are additional to any other rights and remedies.

## 28 Materials, labour and construction plant

Except where the *Contract* otherwise provides, the *Contractor* shall supply everything necessary for the proper performance of the *Contractor's* obligations and discharge of the *Contractor's* liabilities.

In respect of any materials, machinery or equipment to be supplied by the *Contractor* in connection with the *Contract*, the *Superintendent* may direct the *Contractor* to:

**Deleted:** If the error was caused by incorrect data, *survey marks* or information given by the *Superintendent*, the cost incurred by the *Contractor* in rectifying the error shall be assessed by the *Superintendent* and added to the contract sum.

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**Deleted:** assessed by the *Superintendent* and added to the contract sum

- (a) supply particulars of the mode and place of manufacture, the source of supply, the performance capacities and other related information; and
- (b) arrange reasonable inspection at such place or sources by the *Superintendent*, the *Principal* and persons authorised by the *Principal*.

The *Superintendent* may give the *Contractor* a written *direction* not to remove materials or *construction plant* from the *site*. Thereafter the *Contractor* shall not remove them without the *Superintendent's* prior written approval (which shall not be unreasonably withheld).

## 29 Quality

### 29.1 Quality of material and work

Unless otherwise provided, the *Contractor* shall use suitable new materials and proper and tradesmanlike workmanship.

### \* 29.2 Quality assurance

If the *Contract* elsewhere requires further quality assurance, the *Contractor* shall:

- (a) plan, establish and maintain a conforming quality system; and
- (b) ensure that the *Superintendent* has access to the quality system of the *Contractor*, *consultants* and *subcontractors* so as to enable monitoring and quality auditing.

Any such quality system shall be used only as an aid to achieving compliance with the *Contract* and to document such compliance. Such system shall not discharge the *Contractor's* other obligations under the *Contract*.

### 29.3 Defective work

If the *Superintendent* becomes aware of *work* done (including material provided) by the *Contractor* which does not comply with the *Contract*, the *Superintendent* shall as soon as practicable give the *Contractor* written details thereof. If the subject *work* has not been rectified, the *Superintendent* may direct the *Contractor* to do any one or more of the following (including times for commencement and completion):

- (a) remove the material from the *site*;
- (b) demolish the *work*;
- (c) redesign, reconstruct, replace or correct the *work*; and
- (d) not deliver it to the *site*.

If:

- (a) the *Contractor* fails to comply with such a *direction*; and
- (b) that failure has not been made good within 8 days after the *Contractor* receives written notice from the *Superintendent* that the *Principal* intends to have the subject *work* rectified by others,

the *Principal* may have that *work* so rectified and the *Superintendent* shall certify the cost incurred as moneys due from the *Contractor* to the *Principal*.

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\* See Preface



#### 29.4 Acceptance of defective work

Instead of a *direction* pursuant to subclause 29.3, the *Superintendent* may direct the *Contractor* that the *Principal* elects to accept the subject work, whereupon there shall be a deemed *variation*.

#### 29.5 Timing

The *Superintendent* may give a *direction* pursuant to this clause at any time before the expiry of the last *defects liability period*.

### 30 Examination and testing

#### 30.1 Tests

At any time before the expiry of the last *defects liability period*, the *Superintendent* may direct that any *WUC* be tested. The *Contractor* shall give such assistance and samples and make accessible such parts of *WUC* as may be directed by the *Superintendent*.

#### 30.2 Covering up

The *Superintendent* may direct that any part of *WUC* shall not be covered up or made inaccessible without the *Superintendent's* prior written *direction*.

#### 30.3 Who conducts

*Tests* shall be conducted as provided elsewhere in the *Contract* or by the *Superintendent* or a person (which may include the *Contractor*) nominated by the *Superintendent*.

#### 30.4 Notice

The *Superintendent* or the *Contractor* (whichever is to conduct the *test*) shall give reasonable written notice to the other of the date, time and place of the *test*. If the other does not attend, the *test* may nevertheless proceed.

#### 30.5 Delay

Without prejudice to any other right, if the *Contractor* or the *Superintendent* delays in conducting a *test*, the other, after giving reasonable written notice of intention to do so, may conduct the *test*.

#### 30.6 Completion and results

On completion of the *tests*, the *Contractor* shall make good *WUC* so that it fully complies with the *Contract*.

Results of *tests* shall be promptly made available by each party to the other and to the *Superintendent*.

#### 30.7 Costs

Costs in connection with testing pursuant to this clause shall be borne by the *Principal* except where the *Contract* otherwise provides or the *test* is consequent upon, or reveals a failure of the *Contractor* to comply with the *Contract* (including this clause).

### 31 Working hours

If the working hours and working days on the *site* are not stated elsewhere in the *Contract*, they shall be as notified by the *Contractor* to the *Superintendent* before commencement of

work on site. They shall not be varied without the *Superintendent's* prior written approval, except when, in the interests of safety of persons or property, the *Contractor* finds it necessary to carry out *WUC* otherwise, whereupon the *Contractor* shall give the *Superintendent* written notice of those circumstances as early as possible.

### 32 Programming

The *Superintendent* shall give to the *Contractor* the information, materials, documents and instructions by the times or within the periods both stated in *Item 27*.

The *Contractor* shall give the *Superintendent* reasonable advance notice of when the *Contractor* needs other information, materials, documents or instructions from the *Superintendent* or the *Principal*.

The *Principal* and the *Superintendent* shall not be obliged to give any information, materials, documents or instructions earlier than the *Principal* or the *Superintendent*, as the case may be, should reasonably have anticipated at the *date of acceptance of tender*.

The *Superintendent* may direct in what order and at what time the various stages or portions of *WUC* shall be carried out. If the *Contractor* can reasonably comply with the *direction*, the *Contractor* shall do so. If the *Contractor* cannot reasonably comply, the *Contractor* shall give the *Superintendent* written notice of the reasons.

A *program* is a written statement showing the dates by which, or the times within which, the various stages or portions of *WUC* are to be carried out or completed. It shall be deemed a *Contract* document.

The *Superintendent* may direct the *Contractor* to give the *Superintendent* a *program* within the time and in the form directed.

The *Contractor* shall not, without reasonable cause, depart from a *program*.

If compliance with any such *directions* under this clause, except those pursuant to the *Contractor's* default, causes the *Contractor* to incur more or less cost than otherwise would have been incurred had the *Contractor* not been given the *direction*, the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

### 33 Suspension

#### 33.1 Superintendent's suspension

The *Superintendent* may direct the *Contractor* to suspend the carrying out of the whole or part of *WUC* for such time as the *Superintendent* thinks fit, if the *Superintendent* is of the opinion that it is necessary:

- (a) because of an act, default or omission of:
  - (a) the *Superintendent*, the *Principal* or its employees, consultants, agents or other contractors (not being employed by the *Contractor*); or
  - (b) the *Contractor*, a *consultant*, a *subcontractor* or the employees or agents of any of them;
- (b) for the protection or safety of any person or property; or
- (c) to comply with a court order.

#### 33.2 Contractor's suspension

If the *Contractor* wishes to suspend the carrying out of the whole or part of *WUC*, otherwise than pursuant to subclause 39.9, the *Contractor* shall obtain the *Superintendent's*

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prior written approval. The *Superintendent* may approve the suspension and may impose conditions of approval.

### 33.3 Recommencement

As soon as the *Superintendent* becomes aware that the reason for any suspension no longer exists, the *Superintendent* shall direct the *Contractor* to recommence suspended *WUC* as soon as reasonably practicable.

The *Contractor* may recommence *WUC* suspended pursuant to subclause 33.2 or 39.9 at any time after reasonable notice to the *Superintendent*.

### 33.4 Cost

The *Contractor* shall bear the cost of suspension pursuant to paragraph (a)(ii) of subclause 33.1 and subclause 33.2. If the *Contractor* made the protection, safety, court order or suspension of work necessary, the *Contractor* shall bear the cost of suspension pursuant to paragraph (b) or (c) of subclause 33.1. If the *Contractor* otherwise incurs more or less cost than otherwise would have been incurred, the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

## 34 Time and progress

### 34.1 Progress

The *Contractor* shall ensure that *WUC* reaches *practical completion* by the *date for practical completion*.

### 34.2 Notice of delay

A party becoming aware of anything which will probably cause delay to *WUC* shall promptly give the *Superintendent* and the other party written notice of that cause and the estimated delay.

### 34.3 Claim

The *Contractor* shall be entitled to such extension of time for carrying out *WUC* (including reaching *practical completion*) as the *Superintendent* assesses ('*EOT*'), if:

- (a) the *Contractor* is or will be delayed in reaching *practical completion* by a *qualifying cause of delay*; and
- (b) the *Contractor* gives the *Superintendent*, within 28 days of when the *Contractor* should reasonably have become aware of that causation occurring, a written claim for an *EOT* evidencing the facts of causation and of the delay to *WUC* (including extent).

If further delay results from a *qualifying cause of delay* evidenced in a claim under paragraph (b) of this subclause, the *Contractor* shall claim an *EOT* for such delay by promptly giving the *Superintendent* a written claim evidencing the facts of that delay.

### 34.4 Assessment

When both non-qualifying and *qualifying causes of delay* overlap, the *Superintendent* shall apportion the resulting delay to *WUC* according to the respective causes' contribution.

In assessing each *EOT* the *Superintendent* shall disregard questions of whether:

- (a) *WUC* can nevertheless reach *practical completion* without an *EOT*; or
- (b) the *Contractor* can accelerate,

but shall have regard to what prevention and mitigation of the delay has not been effected by the *Contractor*.

#### 34.5 Extension of time

Within 28 days after receiving the *Contractor's* claim for an *EOT*, the *Superintendent* shall give to the *Contractor* and the *Principal* a written *direction* evidencing the *EOT* so assessed. If the *Superintendent* does not do so, there shall be a deemed assessment and *direction* for an *EOT* as claimed.

Notwithstanding that the *Contractor* is not entitled to or has not claimed an *EOT*, the *Superintendent* may at any time and from time to time before issuing the *final certificate* direct an *EOT*.

#### 34.6 Practical completion

The *Contractor* shall give the *Superintendent* at least 14 days written notice of the date upon which the *Contractor* anticipates that *practical completion* will be reached.

When the *Contractor* is of the opinion that *practical completion* has been reached, the *Contractor* shall in writing request the *Superintendent* to issue a *certificate of practical completion*. Within 14 days after receiving the request, the *Superintendent* shall give the *Contractor* and the *Principal* either a *certificate of practical completion* evidencing the *date of practical completion* or written reasons for not doing so.

If the *Superintendent* is of the opinion that *practical completion* has been reached, the *Superintendent* may issue a *certificate of practical completion*, even though no request has been made.

#### 34.7 Liquidated damages

If *WUC* does not reach *practical completion* by the *date for practical completion*, the *Superintendent* shall certify, as due and payable to the *Principal*, liquidated damages in *Item 29* for every day after the *date for practical completion* to and including the earliest of the *date of practical completion* or termination of the *Contract* or the *Principal* taking *WUC* out of the hands of the *Contractor*.

If an *EOT* is directed after the *Contractor* has paid or the *Principal* has set off liquidated damages, the *Principal* shall forthwith repay to the *Contractor* such of those liquidated damages as represent the days the subject of the *EOT*.

#### 34.8 Bonus for early practical completion

If the *date of practical completion* is earlier than the *date for practical completion* the *Superintendent* shall certify as due and payable to the *Contractor* the bonus in *Item 30(a)* for every day after the *date of practical completion* to and including the *date for practical completion*.

The *Contractor* hereby waives that part of a bonus exceeding the *Item 30(b)* amount.

#### 34.9 Delay damages

For every day the subject of an *EOT* for a *compensable cause* and for which the *Contractor* gives the *Superintendent* a claim for delay damages pursuant to subclause 41.1, damages certified by the *Superintendent* under subclause 41.3 shall be due and payable to the *Contractor*.

### 35 Defects liability

The *defects liability period* stated in *Item 32* shall commence on the *date of practical completion* at 4:00 pm.

The *Contractor* shall carry out rectification at times and in a manner causing as little inconvenience to the occupants or users of *the Works* as is reasonably possible.

As soon as possible after the *date of practical completion*, the *Contractor* shall rectify all *defects* existing at the *date of practical completion*.

During the *defects liability period*, the *Superintendent* may give the *Contractor* a *direction* to rectify a *defect* which:

- (a) shall identify the *defect* and the date for completion of its rectification; and
- (b) may state a date for commencement of the rectification and whether there shall be a separate *defects liability period* therefor (not exceeding that in *Item 32*, commencing at 4:00 pm on the date the rectification is completed and governed by this clause).

If the rectification is not commenced or completed by the stated dates, the *Principal* may have the rectification carried out by others but without prejudice to any other rights and remedies the *Principal* may have. The cost thereby incurred shall be certified by the *Superintendent* as moneys due and payable to the *Principal*.

### 36 Variations

#### 36.1 Directing variations

The *Contractor* shall not vary *WUC* except as directed in writing.

The *Superintendent*, before the *date of practical completion*, may direct the *Contractor* to vary *WUC* by any one or more of the following which is nevertheless of a character and extent contemplated by, and capable of being carried out under, the provisions of the *Contract* (including being within the warranties in subclause 2.2):

- (a) increase, decrease or omit any part;
- (b) change the character or quality;
- (c) change the levels, lines, positions or dimensions;
- (d) carry out additional work;
- (e) demolish or remove material or work no longer required by the *Principal*.

#### 36.2 Proposed variations

The *Superintendent* may give the *Contractor* written notice of a proposed *variation*.

The *Contractor* shall as soon as practicable after receiving such notice, notify the *Superintendent* whether the proposed *variation* can be effected, together with, if it can be effected, the *Contractor's* estimate of the:

- (a) effect on the *program* (including the *date for practical completion*); and
- (b) cost (including all warranties and time-related costs, if any) of the proposed *variation*.

The *Superintendent* may direct the *Contractor* to give a detailed quotation for the proposed *variation* supported by measurements or other evidence of cost.

The *Contractor's* costs for each compliance with this subclause shall be certified by the *Superintendent* as moneys due to the *Contractor*.

### 36.3 Variations for convenience of Contractor

If the *Contractor* requests the *Superintendent* to direct a *variation* for the convenience of the *Contractor*, the *Superintendent* may do so. The *direction* shall be written and may be conditional. Unless the *direction* provides otherwise, the *Contractor* shall be entitled to neither extra time nor extra money.

### 36.4 Pricing

The *Superintendent* shall, as soon as possible, price each *variation* using the following order of precedence:

- (a) prior agreement;
- (b) applicable rates or prices in the *Contract*;
- (c) rates or prices in a *schedule of rates* or *schedule of prices*, even though not *Contract* documents, to the extent that it is reasonable to use them; and
- (d) reasonable rates or prices, which shall include a reasonable amount for profit and overheads,

and any deductions shall include a reasonable amount for profit but not overheads.

That price shall be added to or deducted from the *contract sum*.

## 37 Payment

### 37.1 Progress claims

The *Contractor* shall claim payment progressively in accordance with *Item 33*.

An early progress claim shall be deemed to have been made on the date for making that claim.

Each progress claim shall be given in writing to the *Superintendent* and shall include details of the value of *W/C* done and may include details of other moneys then due to the *Contractor* pursuant to provisions of the *Contract*.

### 37.2 Certificates

The *Superintendent* shall, within 14 days after receiving such a progress claim, issue to the *Principal* and the *Contractor*:

- (a) a *progress certificate* evidencing the *Superintendent's* opinion of the moneys due from the *Principal* to the *Contractor* pursuant to the progress claim and reasons for any difference ('*progress certificate*'); and
- (b) a certificate evidencing the *Superintendent's* assessment of retention moneys and moneys due from the *Contractor* to the *Principal* pursuant to the *Contract*.

If the *Contractor* does not make a progress claim in accordance with *Item 33*, the *Superintendent* may issue the *progress certificate* with details of the calculations and shall issue the certificate in paragraph (b).

If the *Superintendent* does not issue the *progress certificate* within 14 days of receiving a progress claim in accordance with subclause 37.1, that progress claim shall be deemed to be the relevant *progress certificate*.

The *Principal* shall within 7 days after receiving both such certificates, or within 21 days after the *Superintendent* receives the progress claim, pay to the *Contractor* the balance of the *progress certificate* after setting off such of the certificate in paragraph (b) as the

*Principal* elects to set off. If that setting off produces a negative balance, the *Contractor* shall pay that balance to the *Principal* within 7 days of receiving written notice thereof.

Neither a *progress certificate* nor a payment of moneys shall be evidence that the subject *WUC* has been carried out satisfactorily. Payment other than *final payment* shall be payment on account only.

### 37.3 Unfixed plant and materials

The *Principal* shall not be liable to pay for unfixed plant and materials unless they are listed in *Item 34* and the *Contractor*:

- (a) provides the additional *security* in *Item 14(e)*; and
- (b) satisfies the *Superintendent* that the subject plant and materials have been paid for, properly stored and protected, and labelled the property of the *Principal*.

Upon payment to the *Contractor* and the release of any additional *security* in paragraph (a), the subject plant and materials shall be the unencumbered property of the *Principal*.

### 37.4 Final payment claim and certificate

Within 28 days after the expiry of the last *defects liability period*, the *Contractor* shall give the *Superintendent* a written *final payment claim* endorsed 'Final Payment Claim' being a progress claim together with all other claims whatsoever in connection with the subject matter of the *Contract*.

Within 42 days after the expiry of the last *defects liability period*, the *Superintendent* shall issue to both the *Contractor* and the *Principal* a *final certificate* evidencing the moneys finally due and payable between the *Contractor* and the *Principal* on any account whatsoever in connection with the subject matter of the *Contract*.

Those moneys certified as due and payable shall be paid by the *Principal* or the *Contractor*, as the case may be, within 7 days after the debtor receives the *final certificate*.

The *final certificate* shall be conclusive evidence of accord and satisfaction, and in discharge of each party's obligations in connection with the subject matter of the *Contract* except for:

- (a) fraud or dishonesty relating to *WUC* or any part thereof or to any matter dealt with in the *final certificate*;
- (b) any defect or omission in the *Works* or any part thereof which was not apparent at the end of the last *defects liability period*, or which would not have been disclosed upon reasonable inspection at the time of the issue of the *final certificate*;
- (c) any accidental or erroneous inclusion or exclusion of any *work* or figures in any computation or an arithmetical error in any computation; and
- (d) unresolved issues the subject of any notice of *dispute* pursuant to clause 42, served before the 7th day after the issue of the *final certificate*.

### 37.5 Interest

Interest in *Item 35* shall be due and payable after the date of default in payment.

### 37.6 Other moneys due

The *Principal* may elect that moneys due and owing otherwise than in connection with the subject matter of the *Contract* also be due to the *Principal* pursuant to the *Contract*.

### 38 Payment of workers, consultants and subcontractors

#### 38.1 Workers, consultants and subcontractors

The *Contractor* shall give in respect of a progress claim, documentary evidence of the payment of moneys due and payable to:

- (a) workers of the *Contractor* and of the *subcontractors*;
- (b) *consultants*; and
- (c) *subcontractors*,

in respect of *WUC* the subject of that claim.

If the *Contractor* is unable to give such documentary evidence, the *Contractor* shall give other documentary evidence of the moneys so due and payable to workers, *consultants* and *subcontractors*.

Documentary evidence, except where the *Contract* otherwise provides, shall be to the *Superintendent's* satisfaction.

#### 38.2 Withholding payment

Subject to the next paragraph, the *Principal* may withhold moneys certified due and payable in respect of the progress claim until the *Contractor* complies with subclause 38.1.

The *Principal* shall not withhold payment of such moneys in excess of the moneys evidenced pursuant to subclause 38.1 as due and payable to workers, *consultants* and *subcontractors*.

#### 38.3 Direct payment

Before final payment, the *Principal*, if not aware of a relevant relation-back day (as defined in the Corporations Law) may pay unpaid moneys the subject of subclause 38.1 directly to a worker, *consultant* or *subcontractor* where:

- (a) permitted by law;
- (b) given a court order in favour of the worker, *consultant* or *subcontractor*; or
- (c) requested in writing by the *Contractor*.

Such payment and a payment made to a worker, *consultant* or *subcontractor* in compliance with a legislative requirement shall be deemed to be part-satisfaction of the *Principal's* obligation to pay pursuant to subclause 37.2 or 37.4, as the case may be.

### 39 Default or insolvency

#### 39.1 Preservation of other rights

If a party breaches (including repudiates) the *Contract*, nothing in this clause shall prejudice the right of the other party to recover damages or exercise any other right or remedy.

#### 39.2 Contractor's default

If the *Contractor* commits a substantial breach of the *Contract*, the *Principal* may, by hand or by registered post, give the *Contractor* a written notice to show cause.

Substantial breaches include, but are not limited to:

- (a) failing to:



- (a) perform properly the *Contractor's design obligations*;
  - (b) provide *security*;
  - (c) provide evidence of insurance;
  - (d) comply with a *direction* of the *Superintendent* pursuant to subclause 29.3; or
  - (e) use the materials or standards of *work* required by the *Contract*;
- (b) wrongful suspension of *work*;
  - (c) substantial departure from a *program* without reasonable cause or the *Superintendent's* approval;
  - (d) where there is no *program*, failing to proceed with due expedition and without delay; and
  - (e) in respect of clause 38, knowingly providing documentary evidence containing an untrue statement.

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### 39.3 Principal's notice to show cause

A notice under subclause 39.2 shall state:

- (a) that it is a notice under clause 39 of these General Conditions;
- (b) the alleged substantial breach;
- (c) that the *Contractor* is required to show cause in writing why the *Principal* should not exercise a right referred to in subclause 39.4;
- (d) the date and time by which the *Contractor* must show cause (which shall not be less than 7 clear days after the notice is received by the *Contractor*); and
- (e) the place at which cause must be shown.

### 39.4 Principal's rights

If the *Contractor* fails to show reasonable cause by the stated date and time, the *Principal* may by written notice to the *Contractor*:

- (a) take out of the *Contractor's* hands the whole or part of the *work* remaining to be completed and suspend payment until it becomes due and payable pursuant to subclause 39.6; or
- (b) terminate the *Contract*.

### 39.5 Take out

The *Principal* shall complete *work* taken out of the *Contractor's* hands and may:

- (a) use materials, equipment and other things intended for *WUC*; and
- (b) without payment of compensation to the *Contractor*:
  - (a) take possession of, and use, such of the *construction plant* and other things on or in the vicinity of the *site* as were used by the *Contractor*;
  - (b) contract with such of the *consultants* and *subcontractors*; and
  - (c) take possession of, and use, such of the *design documents*,

as are reasonably required by the *Principal* to facilitate completion of *WUC* taken out.

If the *Principal* takes possession of *construction plant*, *design documents* or other things, the *Principal* shall maintain them and, subject to subclause 39.6, on completion of the *work* taken out, shall return such of them as are surplus.

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The *Superintendent* shall keep records of the cost of completing the *work* taken out.

### 39.6 Adjustment on completion of work taken out

When *work* taken out of the *Contractor's* hands has been completed, the *Superintendent* shall assess the cost thereby incurred and shall certify as moneys due and payable accordingly the difference between that cost (showing the calculations therefor) and the amount which would otherwise have been paid to the *Contractor* if the *work* had been completed by the *Contractor*.

If the *Contractor* is indebted to the *Principal*, the *Principal* may retain *construction plant* or other things taken under subclause 39.5 until the debt is satisfied. If after reasonable notice, the *Contractor* fails to pay the debt, the *Principal* may sell the *construction plant* or other things and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess shall be paid to the *Contractor*.

### 39.7 Principal's default

If the *Principal* commits a substantial breach of the *Contract*, the *Contractor* may, by hand or by registered post, give the *Principal* a written notice to show cause.

Substantial breaches include, but are not limited to:

- (a) failing to:
  - (a) provide *security*;
  - (b) produce evidence of insurance;
  - (c) rectify inadequate *Contractor's* access to the *site* if that failure continues for longer than the time stated in *Item 36(a)*;
  - (d) rectify inadequate *Contractor's* possession of the *site* if that failure continues for longer than the time stated in *Item 36(b)*; or
  - (e) make a payment due and payable pursuant to the *Contract*; and
- (b) the *Superintendent* not giving a *certificate of practical completion* or reasons as referred to in subclause 34.6.

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### 39.8 Contractor's notice to show cause

A notice given under subclause 39.7 shall state:

- (a) that it is a notice under clause 39 of these General Conditions;
- (b) the alleged substantial breach;
- (c) that the *Principal* is required to show cause in writing why the *Contractor* should not exercise a right referred to in subclause 39.9;
- (d) the date and time by which the *Principal* must show cause (which shall not be less than 7 clear days after the notice is received by the *Principal*); and
- (e) the place at which cause must be shown.

### 39.9 Contractor's rights

If the *Principal* fails to show reasonable cause by the stated date and time, the *Contractor* may, by written notice to the *Principal*, suspend the whole or any part of *WUC*.

The *Contractor* shall remove the suspension if the *Principal* remedies the breach.

The *Contractor* may, by written notice to the *Principal*, terminate the *Contract*, if within 28 days of the date of suspension under this subclause the *Principal* fails:

- (a) to remedy the breach; or
- (b) if the breach is not capable of remedy, to make other arrangements to the reasonable satisfaction of the *Contractor*.

Damages suffered by the *Contractor* by reason of the suspension shall be assessed by the *Superintendent*, who shall certify them as moneys due and payable to the *Contractor*.

### 39.10 Termination

If the *Contract* is terminated pursuant to subclause 39.4(b) or 39.9, the parties' remedies, rights and liabilities shall be the same as they would have been under the law governing the *Contract* had the defaulting party repudiated the *Contract* and the other party elected to treat the *Contract* as at an end and recover damages.

If Alternative 2 of subclause 10.2 applies and the *Principal* has terminated the *Contract*, the *Principal* may also, without payment of compensation, take possession of the *design documents*.

### 39.11 Insolvency

If:

- (a) a party informs the other in writing, or creditors generally, that the party is insolvent or is financially unable to proceed with the *Contract*;
- (b) execution is levied against a party by a creditor;
- (c) a party is an individual person or a partnership including an individual person, and if that person:
  - (a) commits an act of bankruptcy;
  - (b) has a bankruptcy petition presented against him or her or presents his or her own petition;
  - (c) is made bankrupt;
  - (d) makes a proposal for a scheme of arrangement or a composition; or
  - (e) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the Bankruptcy Act 1966 (Cwlth) or like provision under the law governing the *Contract*; or
- (d) in relation to a party being a corporation:
  - (a) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
  - (b) it enters a deed of company arrangement with creditors;
  - (c) a controller or administrator is appointed;
  - (d) an application is made to a court for its winding up and not stayed within 14 days;
  - (e) a winding up order is made in respect of it;
  - (f) it resolves by special resolution that it be wound up voluntarily (other than for a member's voluntary winding up); or
  - (g) a mortgagee of any of its property takes possession of that property,
 then, where the other party is:

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- (A) the *Principal*, the *Principal* may, without giving a notice to show cause, exercise the right under subclause 39.4(a); or
- (B) the *Contractor*, the *Contractor* may, without giving a notice to show cause, exercise the right under subclause 39.9.

The rights and remedies given by this subclause are additional to any other rights and remedies. They may be exercised notwithstanding that there has been no breach of contract.

#### 40 Termination by frustration

If the *Contract* is frustrated:

- (a) the *Superintendent* shall issue a *progress certificate* for *WUC* carried out to the date of frustration, evidencing the amount which would have been payable had the *Contract* not been frustrated and had the *Contractor* been entitled to and made a progress claim on the date of frustration;
- (b) the *Principal* shall pay the *Contractor*:
  - (a) the amount due to the *Contractor* evidenced by all unpaid certificates;
  - (b) the cost of materials and equipment reasonably ordered by the *Contractor* for *WUC* and which the *Contractor* is liable to accept, but only if they will become the *Principal's* property upon payment; and
  - (c) the costs reasonably incurred:
    - (A) removing *temporary works and construction plant*;
    - (B) returning to their place of engagement the *Contractor, consultants, subcontractors* and their respective employees engaged in *WUC* at the date of frustration; and
    - (C) by the *Contractor* in expectation of completing *WUC* and not included in any other payment; and
- (c) each party shall promptly release and return all *security* provided by the other.

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#### 41 Notification of claims

##### 41.1 Communication of claims

The *prescribed notice* is a written notice of the general basis and quantum of the claim.

As soon as practicable after a party becomes aware of any claim in connection with the subject matter of the *Contract*, that party shall give to the other party and to the *Superintendent*, the *prescribed notice* or a notice of *dispute* under subclause 42.1.

This subclause and subclause 41.3 shall not apply to any claim, including a claim for payment (except for claims which would, other than for this subclause, have been included in the *final payment claim*), the communication of which is required by another provision of the *Contract*.

##### 41.2 Liability for failure to communicate

The failure of a party to comply with the provisions of subclause 41.1 or to communicate a claim in accordance with the relevant provision of the *Contract* shall, inter alia, entitle the other party to damages for breach of the *Contract* but shall neither bar nor invalidate the claim.

### 41.3 Superintendent's decision

If within 28 days of giving the *prescribed notice* the party giving it does not notify the other party and the *Superintendent* of particulars of the claim, the *prescribed notice* shall be deemed to be the claim.

Within 56 days of receipt of the *prescribed notice* the *Superintendent* shall assess the claim and notify the parties in writing of the decision. Unless a party within a further 28 days of such notification gives a notice of *dispute* under subclause 42.1 which includes such decision, the *Superintendent* shall certify the amount of that assessment to be moneys then due and payable.

## 42 Dispute resolution

### 42.1 Notice of dispute

If a difference or dispute (together called a '*dispute*') between the parties arises in connection with the subject matter of the *Contract*, including a *dispute* concerning:

- (a) a *Superintendent's direction*; or
- (b) a claim:
  - (a) in tort;
  - (b) under statute;
  - (c) for restitution based on unjust enrichment or other quantum meruit; or
  - (d) for rectification or frustration;

or like claim available under the law governing the *Contract*,

then either party shall, by hand or by registered post, give the other and the *Superintendent* a written notice of *dispute* adequately identifying and providing details of the *dispute*.

Notwithstanding the existence of a *dispute*, the parties shall, subject to clauses 39 and 40 and subclause 42.4, continue to perform the *Contract*.

### 42.2 Conference

Within 14 days after receiving a notice of *dispute*, the parties shall confer at least once to resolve the *dispute* or to agree on methods of doing so. At every such conference each party shall be represented by a person having authority to agree to such resolution or methods. All aspects of every such conference except the fact of occurrence shall be privileged.

If the *dispute* has not been resolved within 28 days of service of the notice of *dispute*, that *dispute* shall be and is hereby referred to arbitration.

### 42.3 Expert Determination

If within a further 14 days the parties have not agreed upon an *expert*, the *expert* shall be nominated by the person in *Item 37(a)*. The *expert* determination shall be conducted in accordance with the rules in *Item 37(b)*.

### 42.4 Summary relief

Nothing herein shall prejudice the right of a party to institute proceedings to enforce payment due under the *Contract* or to seek injunctive or urgent declaratory relief.

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43 Waiver of conditions

Except as provided at law or in equity or elsewhere in the *Contract*, none of the terms of the *Contract* shall be varied, waived, discharged or released, except with the prior written consent of the parties.

44 Shared cost savings

The *Contract* includes a preliminary document entitled '*Cost Plan for the design and construction of the Tennyson Reach Parkland*' (**Cost Plan**) dated [TBA].

During the course of the design, the Contractor shall produce 3 cost estimates that are based on the **Cost Plan** but amended to reflect the latest design.

Upon completion of the design, the parties shall agree or the Superintendent shall determine cost estimate pursuant to clause 9.7 that sets out the contract sum comprising all costs to carry out the Works, on a subcontractor and supplier basis, and shall include all of the Contractor's costs but shall not include profit.

Within 30 days of the date of practical completion for each separable portion, the Contractor must provide to the *Principal* the following Documents:

- (a) A copy of each subcontract and supply agreement;
- (b) A spreadsheet that sets out the amount shown in the cost plan (**Budgeted Amount**) and the actual subcontract or supply agreement amount (**Actual Amount**) for each subcontractor and supplier;
- (c) A calculation of the cost saving being the sum of the difference of the Budgeted Amount and the Actual Amount for each supplier and subcontractor that carried out any part of the Works.

The *Principal* must notify the Contractor within 28 days of receipt the Documents referred to above if it disagrees with the Contractor's calculation of the cost saving and provide its reasons, provided however that such time frame may be extended by the *Principal* by a further 28 business days to allow for requests for information (RFI's") and time to consider clarifications of responses to RFI's, such further 28 business days to commence from the date of receipt by the *Principal* of a full and detailed response by the Contractor to the RFI's.

If either party disagrees with the calculation of the cost savings, either party may serve on the other party a notice of dispute pursuant to clause 42.1.

The Contractor must pay the *Principal* 50% of the cost saving within 10 Business Days of receipt of the *Principal's* agreement of the cost savings or within 10 Business Days of a decision made by Expert Determination under clause 42.3.

45 GST

Words or expressions used in this clause which are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cwth) (GST Act), have the same meaning in this clause.

Any consideration to be paid or provided for a supply made under or in connection with this Contract, does not include an amount on account of GST.

Despite any other provision in this Contract, if a party (Supplier) makes a supply under or in connection with this Contract on which GST is imposed:

- (a) the consideration payable or to be provided for that supply under this Contract but for the application of this clause (GST exclusive consideration) is increased by, and the

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- recipient of the supply (Recipient) must also pay to the Supplier, an amount equal to the GST payable by the Supplier on that supply in accordance with the GST Act; and
- (b) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.
  - (c) If a payment to a party under this Contract is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.
  - (d) The Supplier will provide a tax invoice to the Recipient which complies with the GST Act.
  - (e) The clause will not apply where any amount payable or other consideration to be provided under this Contract is expressly stated to be inclusive of GST.

**46 Entire Agreement**

This Contract contains everything that the parties have agreed on in relation to the Works. No party can rely on an earlier document, or on anything said or done by another party (or by a director, officer, agent or employee of that party) before this Contract was executed.

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**47 Maintenance**

The Contractor shall fully maintain the Works at its sole cost and expense for a period of twelve (12) months for each stage of the Works commencing from the date of practical completion of each of the stages. The standard of care shall be minimum wear and tear.

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**48 Access to Records**

The Contractor must to permit and allow full access to its financial and project accounts relating to the Works for the purposes of audit and verification of payment claims. This access includes but is not limited to the taking of financial records, access to electronic records and full disclosure.

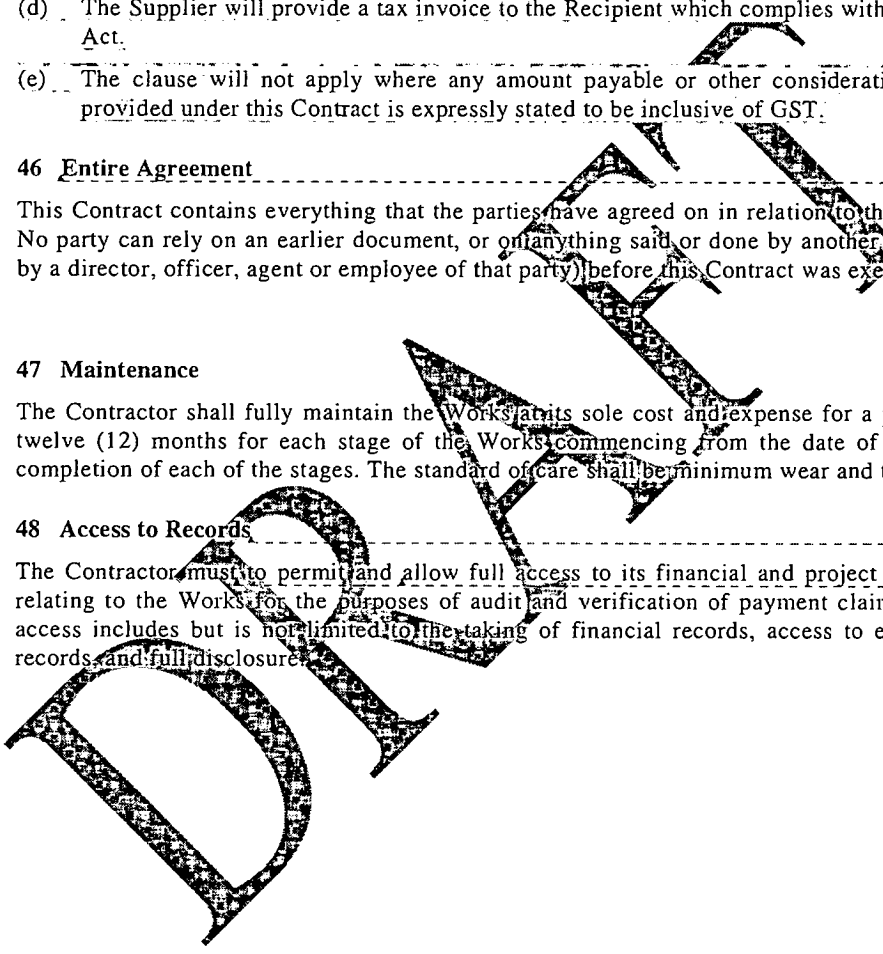
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**ANNEXURE to the Australian Standard  
General Conditions of Contract for  
Design and Construct**

# Part A

This Annexure shall be completed and issued as part of the tender documents and, subject to any amendments to be incorporated into the *Contract*, is to be attached to the General Conditions of Contract and shall be read as part of the *Contract*.

- 
- Item*
- 1 *Principal*  
(clause 1) Brisbane City Council  
ABN 72 002 765 795
- 2 *Principal's address* [TBA]  
Phone ..... Fax .....
- 3 *Contractor*  
(clause 1) Mirvac Constructions (Qld) Pty Limited  
ABN 88 088 536 476
- 4 *Contractor's address* Level 2, 164 Grey Street, South Bank QLD 4101  
Phone [TBA] Fax [TBA]
- 5 *Superintendent*  
(clause 1) [TBA]  
.....  
ACN ..... ABN .....
- 6 *Superintendent's address* [TBA]  
Phone ..... Fax .....
- † 7 (a) *Date for practical completion*  
(clause 1) (Refer to details in separable Part A and Part B)
- OR
- (b) *Period of time for practical completion*  
(clause 1) (Refer to details in separable Part A and Part B)

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† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A  
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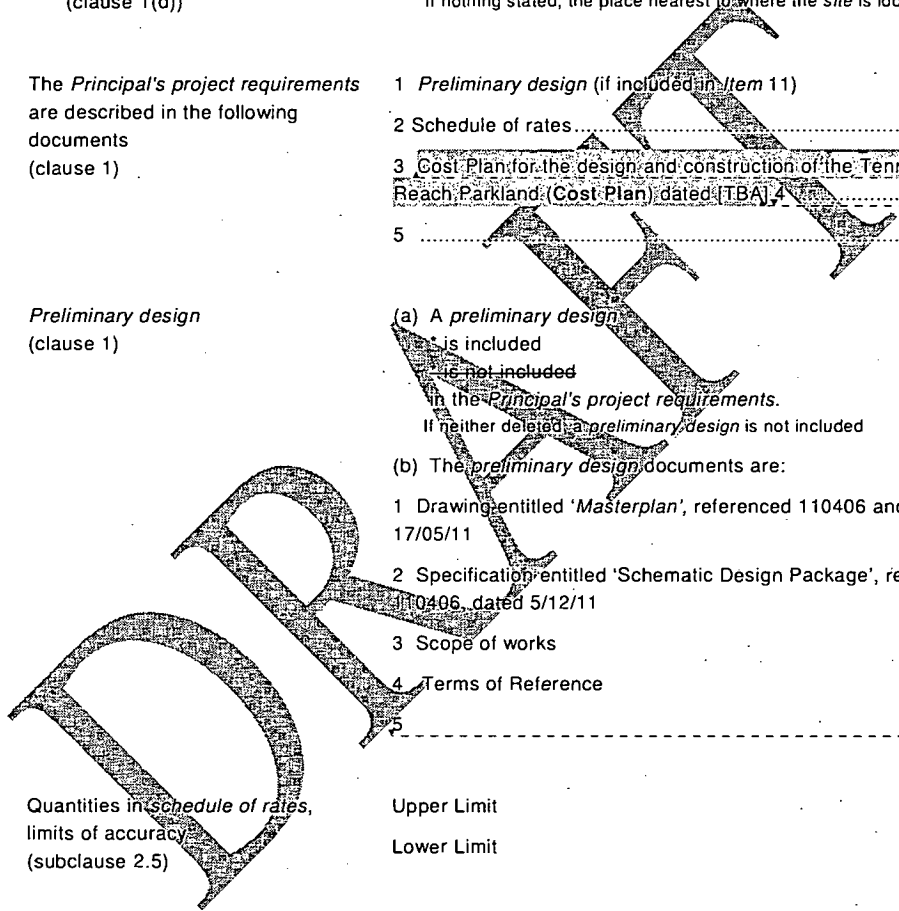
8	Governing law (clause 1(h))	If nothing stated, that of the jurisdiction where the <i>site</i> is located
9	(a) Currency (clause 1(g))	If nothing stated, that of the jurisdiction where the <i>site</i> is located
	(b) Place for payments (clause 1(g))	If nothing stated, the <i>Principal's</i> address
	(c) Place of business of bank (clause 1(d))	If nothing stated, the place nearest to where the <i>site</i> is located
10	The <i>Principal's</i> project requirements are described in the following documents (clause 1)	<p>1 Preliminary design (if included in Item 11)</p> <p>2 Schedule of rates</p> <p>3 <del>Cost Plan for the design and construction of the Tennyson Reach Parkland (Cost Plan) dated [TBA]</del></p> <p>5</p>
11	Preliminary design (clause 1)	<p>(a) A preliminary design is included is not included in the <i>Principal's</i> project requirements. If neither deleted, a preliminary design is not included</p> <p>(b) The preliminary design documents are:</p> <p>1 Drawing entitled 'Masterplan', referenced 110406 and dated 17/05/11</p> <p>2 Specification entitled 'Schematic Design Package', referenced 110406, dated 5/12/11</p> <p>3 Scope of works</p> <p>4 Terms of Reference</p>
12	Quantities in <i>Schedule of rates</i> , limits of accuracy (subclause 2.5)	<p>Upper Limit</p> <p>Lower Limit</p>

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13 *Provisional sum, percentage for overheads, preliminaries and attendance (clause 3)* 10%

† 14 *Contractor's security*

- (a) Form (clause 5) No security or retention is required under this contract
- (b) Amount or maximum percentage of *contract sum* (clause 5) If nothing stated, 5% of the *contract sum*
- (c) If retention moneys, percentage of each *progress certificate* (clause 5 and subclause 37.2) NIL %, until the limit in *Item 14(b)*  
If nothing stated, 10%, until the limit in *Item 14(b)*
- (d) Time for provision (except for retention moneys) (clause 5) within ..... days after *date of acceptance of tender*  
If nothing stated, 28 days
- (e) Additional *security* for unfixed plant and materials (subclauses 5.4 and 37.3) ..... \$ .....
- (f) *Contractor's security* upon *certificate of practical completion* is reduced by (subclause 5.4) ..... % of amount held  
If nothing stated, 50% of amount held

† 15 *Principal's security*

- (a) Form (clause 5) No security or retention is required under this Contract
- (b) Amount or maximum percentage of *contract sum* (clause 5) .....  
If nothing stated, nil
- (c) Time for provision (clause 5) within ..... days after *date of acceptance of tender*  
If nothing stated, 28 days
- (d) *Principal's security* upon *certificate of practical completion* is reduced by (subclause 5.4) ..... % of amount held  
If nothing stated, 50% of amount held

† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A

16 *Principal*-supplied documents  
(subclause 8.2)

Document	No. of copies
1 <i>Principal's project requirements</i>	.....
2	.....
3	.....
4	.....
5	.....
	If nothing stated, 5 copies

17 Documents, numbers of copies, and  
the times or stages at which they are to  
be supplied by the *Contractor*  
(subclause 8.3)

Document	No. of copies	Time/stage
1	.....	.....
2	.....	.....
3	.....	.....
4	.....	.....
5	.....	.....

18 Time for *Superintendent's direction*  
about documents  
(subclause 8.3)

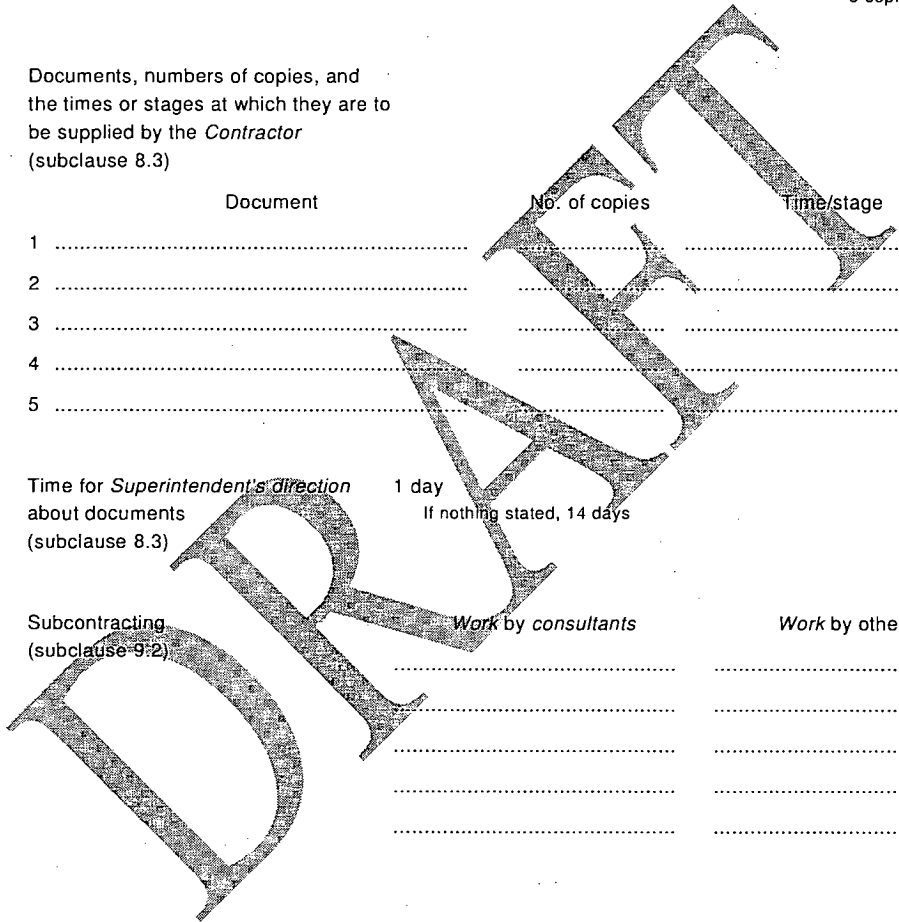
1 day  
If nothing stated, 14 days

19 Subcontracting  
(subclause 9.2)

*Work by consultants*

*Work by others*

.....	.....
.....	.....
.....	.....
.....	.....
.....	.....



20 Novation  
(subclause 9.4)

Subcontractor or  
selected subcontractor,  
as the case may be

Particular part of the  
preliminary design or  
selected subcontract work,  
as the case may be

.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....

21 Intellectual property rights granted  
to the Principal,  
the Alternative applying  
(subclause 10.2)

If nothing stated, Alternative 1 applies

22 Legislative requirements

(a) Those excepted  
(subclause 11.1)

.....  
.....

(b) Identified WUC  
(subclause 11.2(a)(iii))

.....

23 Insurance of the Works  
(clause 16A)

(a) Alternative applying

If nothing stated, Alternative 1 applies

If Alternative 1 applies

(b) Provision for demolition and  
removal of debris

.....  
..... \$ .....

OR

.....% of the contract sum

(c) Provision for consultants' fees and  
Principal's consultants' fees

.....  
..... \$ .....

OR

.....% of the contract sum

(d) Value of materials or things to be supplied by the *Principal* ..... \$ .....

(e) Additional amount or percentage ..... \$ .....

OR

.....% of the total of (a) to (d) in clause 16A

24 Professional indemnity insurance (clause 16B and subclause 9.2(d))

(a) Levels of cover of *Contractor's* professional indemnity insurance shall be not less than ..... \$ .....  
If nothing stated, \$5 000 000

(b) Period for which *Contractor's* professional indemnity insurance shall be maintained after issue of the *final certificate* .....  
If nothing stated, 6 years

Category	Levels of cover
.....	\$ .....
.....	\$ .....
.....	\$ .....
.....	\$ .....
	If nothing stated, \$1 000 000

(d) Period for which each *consultant's* professional indemnity insurance shall be maintained after issue of the *final certificate* .....  
If nothing stated, 6 years

25 Public liability insurance (clause 17)

(a) Alternative applying .....  
If nothing stated, Alternative 1 applies

If Alternative 1 applies

(b) Amount per occurrence shall be not less than ..... \$ .....  
If nothing stated, \$10 000 000

- 26 (a) Time for giving access (subclause 24.1) within ..... days of *date of acceptance of tender*  
If nothing stated, 14 days
- (b) Time for giving possession (subclause 24.1) within ..... days of *date of acceptance of tender*  
If nothing stated, 14 days

27 The information, materials, documents or instructions and the times by, or periods within which they are to be given to the <i>Contractor</i> (clause 32)	Documents or instructions	Times/Periods
1 .....		
2 .....		
3 .....		
4 .....		
5 .....		

28 *Qualifying causes of delay, being causes of delay for which EOTs will be granted* (paragraph (b)(iii) of clause 1 and subclause 34.3)

- Deleted: , causes
- Deleted: Unseasonal weather
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† 29 Liquidated damages, rate (subclause 34.7) Nil per day

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- Formatted: Highlight
- Deleted: Duration of Works/Contract sum for this stage

† 30 Bonus for early *practical completion* (subclause 34.8)

(a) Rate ..... per day \$ ..... per day

(b) Limit ..... \$ .....

OR

.....% of *contract sum*

If nothing stated, there is no waiver

† 31 Other *compensable causes* (paragraph (b) of clause 1 and subclause 34.9) Acts or omissions of the *Principal* that cause a delay to the Works

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- Deleted: The delivery of statutory approvals later than that which is prescribed by statute that cause delays to the Works¶
- All time that is spent liaising with statutory authorities required to procure all statutory approvals for the design and construction of the Stage III Works that is in excess of 20 Business Days.

32 *Defects Liability period* (clause 35) If nothing stated, 12 months

- Deleted: ¶

† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A

33 Progress Claims (subclause 37.1)

The contract sum is that amount that is set out as the contract sum in the Cost Estimate

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(a) Times for progress claims

On the.....day each month for WUC  
For work up to..... day of that month

OR

(b) Stages of WUC for progress claims

The Principal must pay in accordance with the following schedule upon achieving the milestone events set out below:

Stage I

Completion of the bulk earthworks \$TBA

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At practical completion \$TBA

Deleted: 1,500,000.00

At expiry of defects liability period of Stage I

\$TBA

Deleted: 500,000.00

Stage II

Completion of the bulk earthworks \$TBA

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At practical completion \$TBA

Deleted: 100,000.00

At expiry of defects liability period of Stage II

\$TBA

Deleted: 90,000.00

Stage III

At practical completion \$TBA

Deleted: 5,000.00

At expiry of defects liability period of Stage III

\$TBA

Deleted: 1,000.00

All of the above amounts are stated exclusive of GST.

34 Unfixed plant and materials for which payment claims may be made (subclause 37.3)

35 Interest rate on overdue payments (subclause 37.5)

.....% per annum  
If nothing stated, 18% per annum

36 (a) Time for Principal to rectify inadequate access (subclause 39.7(a)(iii))

..... days  
If nothing stated, 14 days

(b) Time for Principal to rectify inadequate possession (subclause 39.7(a)(iv))

..... days  
If nothing stated, 14 days

37 Expert Determination  
(subclause 42.3)

Deleted: Arbitration

(a) Person to nominate an expert

Deleted: arbitrator

A1

If no-one stated, the President of the Institute of Arbitrators & Mediators Australia

(b) Rules for expert determination

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If nothing stated:

(a) rules 5–18 of the Rules of The Institute of Arbitrators & Mediators Australia for the Conduct of Commercial Arbitrations;

OR

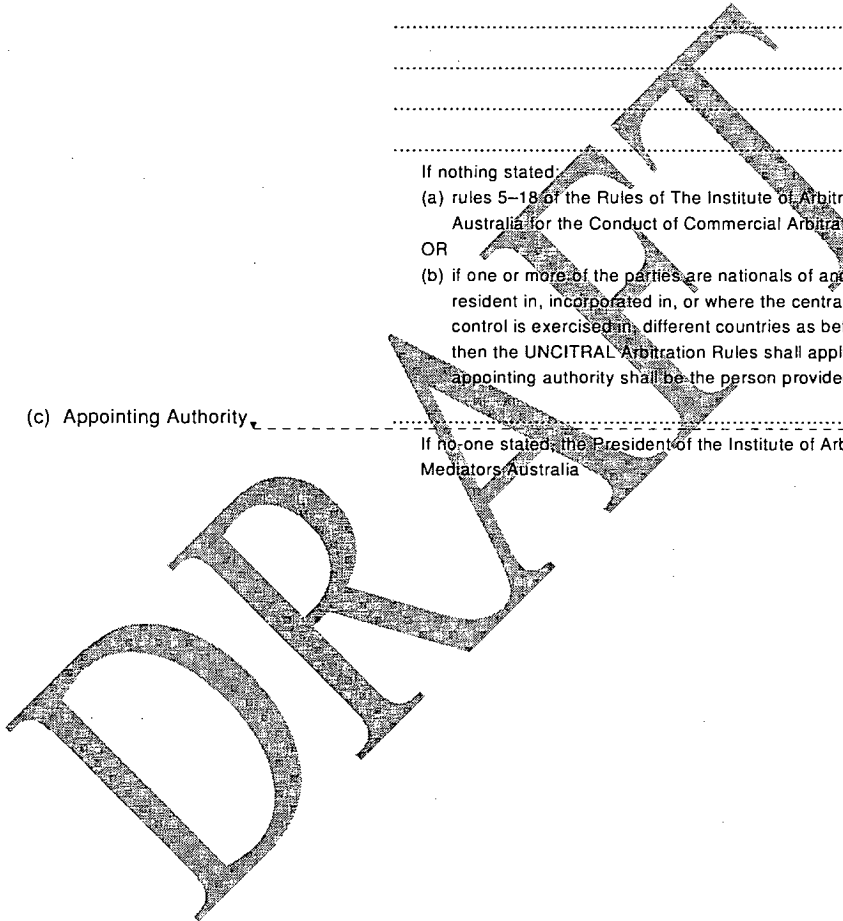
(b) if one or more of the parties are nationals of and habitually resident in, incorporated in, or where the central management and control is exercised in, different countries as between the parties, then the UNCITRAL Arbitration Rules shall apply and the appointing authority shall be the person provided in *Item 37(c)*

(c) Appointing Authority

Deleted: under UNCITRAL Arbitration Rules

A1

If no-one stated, the President of the Institute of Arbitrators & Mediators Australia





## Part A

### Separable Portions

- This section should be completed only if the *Contract* provides for *separable portions*.
- Complete separate pages for each *separable portion*, which should be numbered appropriately. Any balance of the *Works* should also be a *separable portion*.

<p><i>Separable portion</i> (clause 1)</p> <p>Description of <i>separable portion</i> (clause 1)</p>	<p>Stage I</p> <p>the area shown as Stage I on drawing entitled 'Masterplan', referenced 110406 and dated 17/05/11</p>
<p><i>Item</i></p> <p>7 (a) <i>Date for practical completion</i> (clause 1)</p> <p>OR</p> <p>(b) <i>Period of time for practical completion</i> (clause 1)</p>	
<p>14 <i>Contractor's security</i></p> <p>(a) <i>Form</i> (clause 5)</p> <p>(b) <i>Amount or maximum percentage value of this separable portion</i> (clause 5)</p> <p>(c) <i>If retention moneys, percentage of each progress certificate applicable to this separable portion</i> (clause 5 and subclause 37.2)</p> <p>(d) <i>Time for provision (except for retention moneys)</i> (clause 5)</p> <p>(e) <i>Additional security for unfixed plant and materials</i> (subclauses 5.4 and 37.3)</p> <p>(f) <i>Contractor's security upon certificate of practical completion is reduced by</i> (subclause 5.4)</p>	<p>57 weeks from the date that this contract is executed by both parties</p> <p>The Contractor is not required to provide any security under this Contract</p> <p>Nil % If nothing stated, 5% of value of this separable portion</p> <p>.....%, until the limit in <i>Item 14(b)</i> If nothing stated, 10%, until the limit in <i>Item 14(b)</i></p> <p>within ..... days after <i>date of acceptance of tender</i> If nothing stated, 28 days</p> <p>..... \$ .....</p> <p>.....% of amount held If nothing stated, 50% of amount held</p>

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15 *Principal's security*

- (a) Form (clause 5) The Principal is not required to provide any security under this Contract
- (b) Amount or maximum percentage of value of this *separable portion* (clause 5) .....  
If nothing stated, nil
- (c) Time for provision (clause 5) within ..... days after *date of acceptance of tender*  
If nothing stated, 28 days
- (d) *Principal's security upon certificate of practical completion* is reduced by (subclause 5.4) .....% of amount held  
If nothing stated, 50% of amount held

29 Liquidated damages, rate (subclause 34.7)

\$ Nil per day

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30 Bonus for early *practical completion* (subclause 34.8)

\$ Nil

(a) Rate

..... per day \$..... per day

(b) Limit

..... \$.....

OR

.....% of value of this *separable portion*  
If nothing stated, there is no waiver

31 *Other compensable causes* (paragraph (b) of clause 3 and subclause 34.9)

Acts or omissions of the Principal that cause a delay to the Works

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## Part A

### Separable Portions

- This section should be completed only if the *Contract* provides for *separable portions*.
- Complete separate pages for each *separable portion*, which should be numbered appropriately. Any balance of the *Works* should also be a *separable portion*.

<p><i>Separable portion</i> (clause 1)</p> <p>Description of <i>separable portion</i> (clause 1)</p>	<p>Stage II</p> <p>the area shown as Stage II on drawing entitled 'Masterplan', referenced 110406 and dated 17/05/11</p>
<p><b>DRAFT</b></p>	
<p><i>Item</i></p> <p>7 (a) <i>Date for practical completion</i> (clause 1)</p> <p>OR</p> <p>(b) <i>Period of time for practical completion</i> (clause 1)</p>	<p>140 weeks from the date that this contract is executed by both parties</p>
<div style="border: 1px solid black; border-radius: 5px; padding: 2px 5px; display: inline-block;">Formatted: Highlight</div>	
<p>14 <i>Contractor's security</i></p> <p>(a) <i>Form</i> (clause 5)</p> <p>(b) <i>Amount or maximum percentage value of this separable portion</i> (clause 5)</p> <p>(c) <i>If retention moneys, percentage of each progress certificate applicable to this separable portion</i> (clause 5 and subclause 37.2)</p> <p>(d) <i>Time for provision (except for retention moneys)</i> (clause 5)</p> <p>(e) <i>Additional security for unfixed plant and materials</i> (subclauses 5.4 and 37.3)</p> <p>(f) <i>Contractor's security upon certificate of practical completion is reduced by</i> (subclause 5.4)</p>	<p>The Contractor is not required to provide any security under this Contract</p> <p>Nil % If nothing stated, 5% of value of this separable portion</p> <p>..... %, until the limit in <i>Item 14(b)</i> If nothing stated, 10%, until the limit in <i>Item 14(b)</i></p> <p>within ..... days after <i>date of acceptance of tender</i> If nothing stated, 28 days</p> <p>..... \$</p> <p>..... % of amount held If nothing stated, 50% of amount held</p>

15 *Principal's security*

- (a) Form (clause 5) The Principal is not required to provide any security under this Contract
- (b) Amount or maximum percentage of value of this separable portion (clause 5) ..... If nothing stated, nil
- (c) Time for provision (clause 5) within ..... days after *date of acceptance of tender* If nothing stated, 28 days
- (d) *Principal's security upon certificate of practical completion* is reduced by (subclause 5.4) ..... % of amount held If nothing stated, 50% of amount held

29 Liquidated damages, rate (subclause 34.7) \$ Nil per day

30 Bonus for early *practical completion* (subclause 34.8) \$ Nil

- (a) Rate ..... per day \$ ..... per day
- (b) Limit ..... \$

OR

..... % of value of this *separable portion*  
If nothing stated, there is no waiver

31 Other *compensable causes* (paragraph (b) of clause 1 and subclause 34.9) Acts or omissions of the Principal that cause a delay to the Works

Special Condition:

If the Contractor fails achieve *practical completion* within 60 days of the amended date for practical completion for a Stage of the Works, the Principal may:

- (a) novate the subcontractors to the Principal and take over this Stage of the Works and the total site to complete the Works;
- (b) deduct, as appropriate, the costs for completion of the relevant portion of the Contract pertaining to this Stage; and
- (c) provide accommodation for the Sales Office at commercial rates until the parkland is complete.

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**Deleted:** shall have the right to

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# Part A

## Separable Portions

- This section should be completed only if the *Contract* provides for *separable portions*.
- Complete separate pages for each *separable portion*, which should be numbered appropriately. Any balance of the *Works* should also be a *separable portion*.

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Separable portion  
(clause 1)

Stage III

Description of *separable portion*  
(clause 1)

the area shown as Stage III on drawing entitled 'Masterplan', referenced 110406 and dated 17/05/11

Item

7 (a) Date for practical completion  
(clause 1)

OR

(b) Period of time for practical completion  
(clause 1)

57 weeks from the date that this contract is executed by both parties

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14 Contractor's security

(a) Form  
(clause 5)

The Contractor is not required to provide any security under this Contract

(b) Amount or maximum percentage value of this *separable portion*  
(clause 5)

Nil %  
If nothing stated, 5% of value of this separable portion

(c) If retention moneys, percentage of each *progress certificate* applicable to this *separable portion*  
(clause 5 and subclause 37.2)

.....%, until the limit in *Item 14(b)*  
If nothing stated, 10%, until the limit in *Item 14(b)*

(d) Time for provision (except for retention moneys)  
(clause 5)

within ..... days after *date of acceptance of tender*  
If nothing stated, 28 days

(e) Additional *security* for unfixed plant and materials  
(subclauses 5.4 and 37.3)

..... \$ .....

(f) *Contractor's security* upon *certificate of practical completion* is reduced by  
(subclause 5.4)

.....% of amount held  
If nothing stated, 50% of amount held

15 *Principal's security*

- (a) Form (clause 5) The Principal is not required to provide any security under this Contract
- (b) Amount or maximum percentage of value of this *separable portion* (clause 5) .....  
If nothing stated, nil
- (c) Time for provision (clause 5) within .....days after *date of acceptance of tender*  
If nothing stated, 28 days
- (d) *Principal's security upon certificate of practical completion* is reduced by (subclause 5.4) .....% of amount held  
If nothing stated, 50% of amount held

29 Liquidated damages, rate (subclause 34.7)

~~\$ Nil per day~~

**Deleted:** Duration of Works/Contract sum for this stage -

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30 Bonus for early *practical completion* (subclause 34.8)

~~\$ Nil~~

- (a) Rate .....  
..... per day \$ ..... per day
- (b) Limit .....  
..... \$ .....

OR

.....% of value of this *separable portion*  
If nothing stated, there is no waiver

31 *Other compensable causes* (paragraph (b) of clause 3 and subclause 34.9)

~~Acts or omissions of the Principal that cause a delay to the Works~~

**Deleted:** Nil

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**Deleted:** The delivery of statutory approvals later than that which is prescribed by statute that cause delays to the Works¶  
All time that is spent liaising with statutory authorities required to procure all statutory approvals for the design and construction of the Stage III Works that is in excess of 60 days.

Annexure to the Australian Standard  
General Conditions of Contract for  
Design and Construct

# Part B

- This form may also be used where the *Principal* is required to provide an unconditional undertaking, by substituting *Principal* for *Contractor* and vice versa, wherever occurring.

### Approved form of unconditional undertaking

(clause 1 – security)

At the request of .....

ACN..... ABN ..... (the *Contractor*) and in consideration of .....

ACN..... ABN ..... (the *Principal*) accepting this undertaking in respect of the *Contract* for .....

..... (the *Project*) .....

ACN..... ABN ..... (the *Financial Institution*) unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded by the *Principal* to a maximum aggregate sum of .....

..... (\$ ..... )

The undertaking is to continue until notification has been received from the *Principal* that the sum is no longer required by the *Principal* or until this undertaking is returned to the *Financial Institution* or until payment to the *Principal* by the *Financial Institution* of the whole of the sum or such part as the *Principal* may require.

Should the *Financial Institution* be notified in writing, purporting to be signed by ..... for and on behalf of the *Principal* that the *Principal* desires payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the *Financial Institution* will make the payment or payments to the *Principal* forthwith without reference to the *Contractor* and notwithstanding any notice given by the *Contractor* not to pay same.

Provided always that the *Financial Institution* may at any time without being required so to do pay to the *Principal* the sum of .....

..... (\$ ..... )

less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the *Principal* and thereupon the liability of the *Financial Institution* hereunder shall immediately cease.

Dated at ..... this ..... day of ..... 20.....

Annexure to the Australian Standard  
General Conditions of Contract for  
Design and Construct

# Part C

## Deed of novation

(subclause 9.2(c))

This Deed made the ..... day of ..... 20 .....  
between ..... (the *Principal*)  
of ..... ACN ..... ABN .....  
and ..... (the *Contractor*)  
of ..... ACN ..... ABN .....  
and ..... (the *Subcontractor*)  
of ..... ACN ..... ABN .....  
and ..... (the *Incoming Contractor*)  
of ..... ACN ..... ABN .....  
witness that:

- 1 Upon receipt by the *Subcontractor* of the sum certified by the *Superintendent* as owing under the prior contract described in the Schedule hereto:
  - (a) the prior contract shall be discharged;
  - (b) the *Subcontractor* shall release the *Contractor* from the further performance of the prior contract and from all claims and demands in connection with the prior contract;
  - (c) the *Incoming Contractor* shall punctually perform the obligations of the *Contractor* under the prior contract as far as they are not performed. The *Incoming Contractor* acknowledges itself bound by the provisions of the prior contract as if the *Incoming Contractor* had been named in the prior contract; and
  - (d) the *Subcontractor* shall punctually perform like obligations and be bound to the *Incoming Contractor* as if the provisions of the prior contract were incorporated herein.
- 2 The *Principal* and *Subcontractor* each warrant to the *Incoming Contractor* that:
  - (a) subcontract work carried out to the date hereof is in accordance with the provisions of the prior contract; and
  - (b) all claims and demands in connection with the prior contract have been made to the *Contractor*.
- 3 The *Principal* and *Subcontractor* each indemnifies the *Incoming Contractor* from all claims and demands of the *Contractor*, *Principal* and *Subcontractor* in connection with the prior contract.
- 4 A dispute between:
  - (a) the *Principal* and the *Subcontractor* in connection with the *Superintendent's* certification of the sum owing under the prior contract; or
  - (b) the *Incoming Contractor* and the *Subcontractor* in connection with clause 1(c) or 1(d), shall be resolved pursuant to the provisions of AS 4903—2000 Subcontract Conditions for Design and Construct which for the purposes of this clause 4 are incorporated herein.
- 5 This Deed shall be governed by the laws of the jurisdiction stated in *Item 8* of the *Contract* between the *Principal* and *Contractor*.



**Schedule**

.....

.....

.....

.....

In witness whereof the parties have executed this DEED OF NOVATION by affixing their seals.

THE COMMON SEAL of the *Principal*  
was affixed to this document in the presence of:

.....  
Secretary/Director

.....  
Name (please print)

.....  
Director

.....  
Name (please print)

THE COMMON SEAL of the *Contractor*  
was affixed to this document in the presence of:

.....  
Secretary/Director

.....  
Name (please print)

.....  
Director

.....  
Name (please print)

THE COMMON SEAL of the *Subcontractor*  
was affixed to this document in the presence of:

.....  
Secretary/Director

.....  
Name (please print)

.....  
Director

.....  
Name (please print)

THE COMMON SEAL of the *Incoming Contractor*  
was affixed to this document in the presence of:

.....  
Secretary/Director

.....  
Name (please print)

.....  
Director

.....  
Name (please print)

**Annexure to the Australian Standard  
General Conditions of Contract for  
Design and Construct**

# Part D

**Note:** Usually the *continuing party* is the subcontractor, selected subcontractor or consultant, as the case may be.

## Deed of novation

(subclause 9.4)

This Deed made this ..... day of ..... 20 .....

between ..... (the *outgoing party*)

of ..... ACN ..... ABN .....

and ..... (the *incoming party*)

of ..... ACN ..... ABN .....

and ..... (the *continuing party*)

of ..... ACN ..... ABN .....

witness that:

- 1 Upon receipt by the *continuing party* of all moneys owing under the prior contract:
  - (a) the *incoming party* shall punctually perform the obligations of the *outgoing party* under the prior contract described in the Schedule hereto as far as they are not performed. The *incoming party* acknowledges itself bound by the provisions of the prior contract as if the *incoming party* had been named as the *outgoing party* in the prior contract.
  - (b) the *continuing party* punctually perform like obligations and be bound to the *incoming party* as if the provisions of the prior contract were incorporated herein; and
  - (c) the *outgoing party* and *continuing party* shall each release and forever discharge the other from the further performance of the prior contract and from all claims and demands in connection with the prior contract.
- 2 The *outgoing party* and *continuing party* each warrant to the *incoming party* that *preliminary design* or *selected subcontract work*, as the case may be, carried out to the date hereof, is in accordance with the provisions of the prior contract.
- 3 This Deed shall be governed by the governing law of the prior contract between the *outgoing party* and *continuing party*.

**Schedule**

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In witness whereof the parties have executed this DEED OF NOVATION by affixing their seals.

THE COMMON SEAL of the *outgoing party*  
was affixed to this document in the presence of:

.....  
Secretary/Director

.....  
Name (please print)

.....  
Director

.....  
Name (please print)

THE COMMON SEAL of the *incoming party*  
was affixed to this document in the presence of:

.....  
Secretary/Director

.....  
Name (please print)

.....  
Director

.....  
Name (please print)

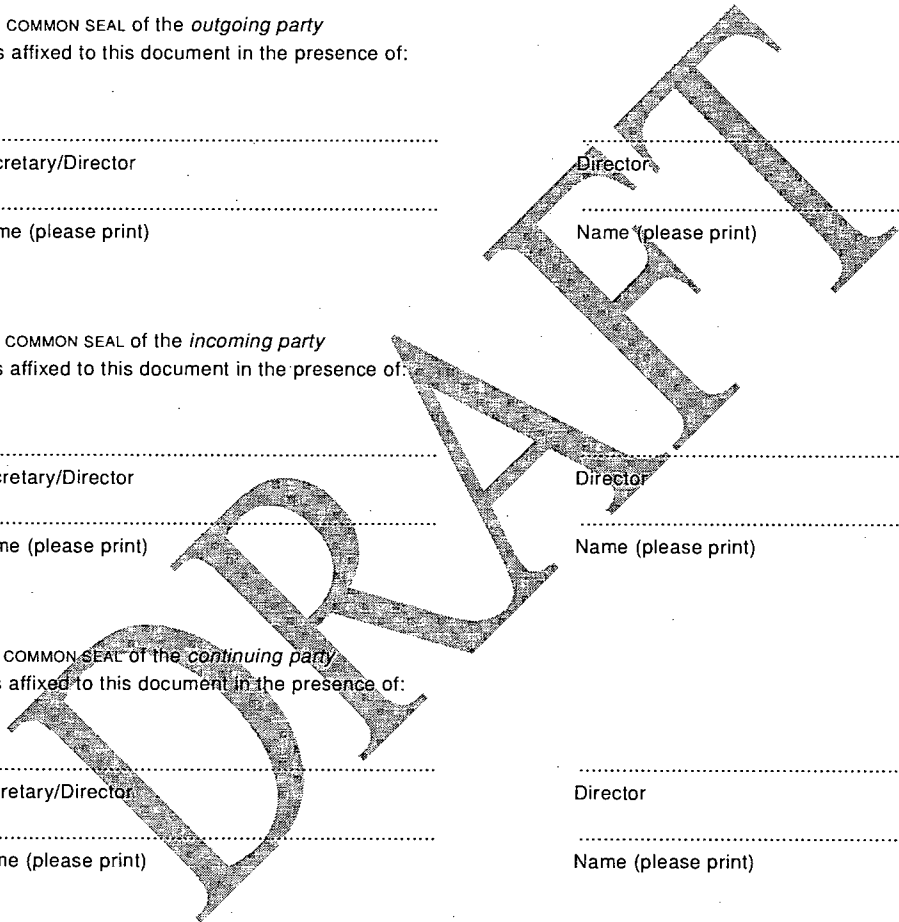
THE COMMON SEAL of the *continuing party*  
was affixed to this document in the presence of:

.....  
Secretary/Director

.....  
Name (please print)

.....  
Director

.....  
Name (please print)



**Deletions, amendments and additions**

1 The following clauses have been deleted from AS 4902—2000

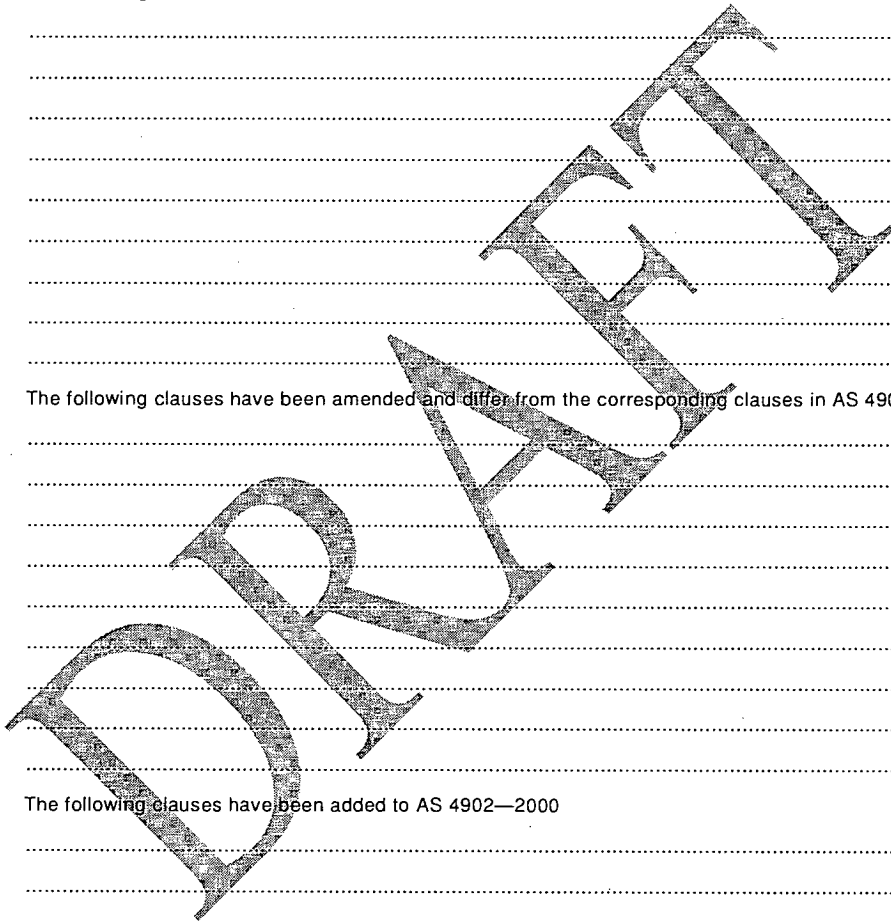
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2 The following clauses have been amended and differ from the corresponding clauses in AS 4902—2000

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3 The following clauses have been added to AS 4902—2000

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## † INDEX

<i>Clause</i>	<i>Clause</i>		
Acceleration .....	34.4(b)	fees and charges.....	11.2
Acceptance (see Approval)		interest .....	37.5
Acceptance of tender		liquidated damages .....	34.7
date of, defined .....	1	minerals, fossils and relics.....	24.3
formal instrument of agreement.....	6	omitted items.....	2.5
security—time for.....	5.1, <i>Items</i> 14(d), 15(c)	on completion of work taken out of the hands of the Contractor .....	39.6
Access (see also possession of site)		pricing variations .....	36.4
during defects liability period.....	35	protection of people and property.....	12
for Principal and others.....	24.2	provisional sums .....	3
for testing .....	30.1	quantities .....	2.5
Accident (see also Insurance, Urgent protection and Protection of persons and property)		set-offs by the Principal .....	37.2, 37.6
reinstatement of damage.....	14.2	suspension by Contractor.....	39.9
to employees .....	18	urgent protection.....	13
to third parties.....	15, 17	Agreement	
to WUC .....	14, 16A	Contract in absence of formal instrument.....	6
Accord and satisfaction .....	37.4	formal instrument of .....	6
Actions		interpretation of .....	1, 8.1
arbitration .....	42	rectification when dispute.....	42.1
indemnification by Contractor .....	10, 15.1	Alignments (see Survey mark)	
indemnification by Principal .....	10, 15.2	Alternative clauses .....	10.2, 16A, 17
Acts, (of Parliament) (see Legislative requirements)		Ambiguity in documents .....	8.1
Additions and/or deductions		Appliances (see Construction plant)	
adjustment generally .....	2.1	Approval	
care of survey marks .....	26.3	effect of certificates .....	37.2
changes in legislative requirements .....	11.2	examination and testing .....	30
contract sum definition, excluded in .....	1	extension of time .....	34.4, 34.5
discrepancies in documents .....	8.1	of documents .....	8.3
error in setting out .....	26.2	of form of security .....	1
generally .....	2.1	of insurance policies .....	16A, 17
legislative requirements .....	11.2	of media releases .....	8.6
minerals, fossils and relics .....	24.3	of municipal and statutory authorities (see Legislative requirement)	
order of work .....	32	of subcontracting .....	9.2
pricing variations generally .....	36.4	of variations of convenience .....	36.3
programming .....	32	to suspension by Contractor .....	33.2
provisional sums .....	3	working days .....	31
suspension .....	33.4	working hours.....	31
variations .....	36.4	Approved form of unconditional undertaking	
Address for service (see also Service)		security .....	1
change of .....	7	form of .....	Annexure Part B
Contractor .....	7, <i>Item</i> 4	Arbitration	
Principal .....	7, <i>Item</i> 2	agreement to arbitrate.....	42.2
Superintendent .....	7, <i>Item</i> 6	ambit of dispute.....	42.1
Adjustment (for)		conference.....	42.2
actual quantities .....	2.5	nomination of arbitrator .....	42.3, <i>Item</i> 37(a)
bonus .....	34.8	rules of .....	42.3, <i>Item</i> 37(b)
cost of suspension.....	33.4	Assessment (see Superintendent, assessments by)	
cost of tests .....	30.7	Assignment	
defective material and work .....	29.3	of Contract .....	9.1
delay damages .....	34.9	of subcontract .....	9.2(a)
directions on order of work .....	32	by subcontractor .....	9.2(b)
errors in documents .....	8.1	Asterisk clauses.....	8.6, 29.2
errors in setting out.....	26.2		

† References to *Items* are to *Items* in Annexure Part A

<i>Clause</i>	<i>Clause</i>
Australasian Dispute Centre.....	Item 37(a), (c)
Authorisation (see Direction)	
Awards (see Legislative requirements)	
Bank guarantee (see Unconditional undertaking)	
Bank—place of business .....	1, Item 9(c)
Bankruptcy	
of Contractor .....	39.11
of Principal .....	39.11
Basis of payment.....	2.1
Bench mark (see Survey mark)	
Bonus	
for early practical completion .....	34.8, Item 30(a)
limit of .....	34.8, Item 30(b)
rate of .....	34.8, Item 30(a)
waiver of part of bonus .....	34.8, Item 30(b)
where separable portions .....	4(c)
Breach of contract	
claims for .....	41
default of the Contractor .....	39.2
default of the Principal.....	39.7
preservation of other rights .....	39.1
repudiation.....	39.10
substantial breaches .....	39.2, 39.7
By-laws (see Legislative requirements)	
Calendar days .....	(a)
Care of WUC	
cleaning up .....	27
Contractor's obligations for .....	14.1
excepted risks.....	14.3
generally.....	14.1
reinstatement of loss or damage .....	14.2
urgent protection of .....	13
Certificate(s) (see also Direction and Payment)	
effect of .....	37.2
final certificate.....	37.4
of cost to complete on default by Contractor of municipal and statutory authorities (see Legislative requirements)	39.6
practical completion .....	34.6
progress certificate .....	37.2
Certificate of Practical Completion	
defined .....	1
issue of .....	34.6
meaning of .....	34.6
non-issue of .....	34.6
request for.....	34.6
Claims (see also Adjustment)	
arbitration of .....	42.3
compensation to third party .....	12
failure to notify, effect.....	41.2
for damages.....	41.1, 42.1
for EOT for practical completion .....	34.3
for final payment.....	37.4
for progress payment .....	37.1, Item 33
indemnity by Contractor.....	10.1, 15.1
indemnity by Principal.....	10.1, 15.2
notice of dispute.....	41.1, 41.3, 42.1
notice of potential claims on insurance policies.....	19.4
notification of .....	41
settlement of claims under policy of insurance .....	19.5
settlement of disputes.....	42
Superintendent's decision on.....	41.3
valuation of .....	37.2, 41.3
Clause headings—effect.....	1(c)
Cleaning up.....	27
Commencement of WUC	
generally .....	16A, 16B, 17, 18, 19.1
insurance, proof of .....	19.1, 24.1
possession of site .....	24.1
production of policies before .....	19.1
Communications between parties.....	1(e)
Compensable cause	
defined .....	1
delay damages for.....	34.9
others listed.....	Item 31
Completion	
by Principal on default .....	39.4, 39.5, 39.6
final certificate .....	37.4
practical (see Practical completion)	
Compliance	
with legislative requirements .....	11.1
with Superintendent's interpretation .....	8.1
Concurrent delay.....	34.4
Conditions, waiver of.....	43
Confidential information	
agreement as to .....	8.5
generally.....	8.5
Construction of Contract.....	1, 8.1
Construction plant	
care of .....	14.1
Contractor to supply.....	28
defined .....	1
insurance of.....	16A
not to be removed .....	28
removal of .....	27, 40
use by Principal .....	39.5, 39.6
WUC includes .....	1
Consultants	
defined .....	1
engagement of .....	9.2
insurance of WUC, included in .....	16A
notices to and from insurer .....	19.3
novation of .....	2.2(a)(iii), 2.3(b), 9.4
professional indemnity insurance .....	16B, Items 24(c), (d)
proof of payment of .....	38
public liability insurance .....	17
suspension because of .....	33.1(a)
workers compensation policy.....	18
Consultant fees	
in contract works policy .....	16A, Item 23(c)
Contingency sum (see Provisional sum)	
Contract	
assignment .....	9.1
breach of (see Breach of Contract)	
construction of.....	1
defined .....	1
disputes under.....	42

<i>Clause</i>	<i>Clause</i>
documents.....8	warranties, as to.....2.2
evidence of.....6	warranties unaffected.....2.3
formal instrument of.....6	Contractor's employees
frustration of.....40, 42.1	control of.....23
governing law of.....1(h), <i>Item</i> 8	death or injury.....18
interpretation of.....1	insurance of.....18
nature of.....2	liability for.....9.5
rectification of.....42.1	payment of.....38
subcontracting.....9.2	removal of, from site.....23
termination—effect of.....39.10	Contractor's representative.....22
termination of	Contractor's responsibility (see also Contractor and Care of
by Contractor.....34.9, 39.11	WUC)
by Principal.....34.4, 39.11	for employees (see Contractor's employees)
work under the (WUC).....1	for payment of workers and subcontractors.....38
Contract documents.....8	for selected subcontractors.....9.5
ambiguities in.....8.1	for subcontractors.....9.5
construction of.....8.1	to carry out WUC.....2.1
discrepancies in.....8.1	Contributory negligence
inconsistencies in.....8.1	indemnity, as to.....15.1
interpretation of.....8.1	reduction of liability for.....15.1
Contract sum	Copyright (see Intellectual property right)
defined.....1	Corporation (also see Person).....1(a), 5.6, 39.11(d)
insurance of WUC.....16A	Corporations Law.....5.6, 38.3
Contract works insurance	Cost objective
amount of cover of.....16A, <i>Item</i> 23	defined in Principal's project requirements.....1
Contractor controlled.....16A Alt 1	Cost(s) (see also Adjustment)
exclusions in.....16A	added to contract sum.....24.3, 26.2, 26.3
in joint names.....16A	completion of work taken out
length of cover.....16A	of the hands of the Contractor.....39.6
policy.....16A	complying with legislative requirements.....11.2
Principal controlled.....16A Alt 2	examination and testing.....30.7
Contractor	latent conditions.....25.3
access to site by.....24.1	protection of person, etc.....12
address of..... <i>Item</i> 4	provisional sums.....3
appointment of representative.....22	reinstatement.....14.2
default by.....39.2	set-offs by Principal.....37.6
defined.....1	setting out.....26.3
design obligations defined.....1	urgent protection.....13
design, property in.....10.2	variations.....36.2, 36.4
licence to use design documents.....10.2	Covering up of WUC.....30.2
named..... <i>Item</i> 3	Cross liability clause.....19.6
possession of site by.....24.1	Currency.....1(g), <i>Item</i> 9(a)
professional indemnity	Damage (see also care of the Works and Insurance)
insurance.....16B, <i>Item</i> 24(a), (b)	prevention of.....12
rights of.....34.9, 39.11	protection of property, etc.....12
security by..... <i>Item</i> 14	reinstatement of.....14.2
service on.....7	to persons and property other than WUC.....15.1
to insure.....16A Alt 1, 16B, 17 Alt 1, 18	to WUC.....14.1
use of site by.....24.1	urgent protection.....13
warranties.....2.2	Damages (see also Adjustment and Claims)
warranties unaffected.....2.3	delay damages.....34.9
Contractor-supplied documents	for breach of the Contract.....39.1
approval of.....8.3(b)	for delay by Contractor.....34.7, <i>Item</i> 29
availability of.....8.4	for delay due to compensable cause.....34.9
checking of.....8.3(a)	liquidated.....34.7, <i>Item</i> 29
copies of.....8.3	on insolvency.....39.11
rejection of.....8.3(c)	on termination of the Contract.....39.10
responsibility for.....8.3	Date
submission of.....8.3	for practical completion.....1, <i>Item</i> 7, 34.7, 34.8
suitability of.....8.3(c)	of acceptance of tender.....1
supply of.....8.3	of practical completion.....1, 34.6, 34.7, 34.8, 35
Contractor's all risk insurance	
(see Contract works insurance)	
Contractor's design obligations	
defined.....1	

<i>Clause</i>	<i>Clause</i>
Date of acceptance of tender	records of cost to complete ..... 39.5
defined ..... 1	retention of plant and materials ..... 39.6
Date for practical completion	rights of the Principal ..... 39.1–39.6, 39.9
bonus ..... 34.8	show cause notice to ..... 39.3
defined ..... 1, <i>Item 7</i>	substantial breach by ..... 39.2
effect of proposed variation on ..... 36.2(a)	substantial departure from construction
liquidated damages ..... 34.7	program ..... 39.2(c)
period of time for ..... 1, <i>Item 7</i>	suspension of payment on ..... 39.4
Date of practical completion	when the Principal takes work
defects liability period ..... 35	out of hands of Contractor ..... 39.5, 39.6
defined ..... 1	Default of subcontractor ..... 9.5
generally ..... 34.6	Default or insolvency
liquidated damages ..... 34.7	by Contractor ..... 39.2, 39.11
Days	by Principal ..... 39.7, 39.11
mean calendar days ..... 1(a)	generally ..... 39
working ..... 31	preservation of other rights ..... 39.1
Debt due to the Principal ..... 12, 13, 27, 29.3, 34.7,	substantial breaches ..... 39.2, 39.7
35, 37.6, 39.6	show cause notices ..... 39.3, 39.8
Decision (see also Direction)	Defective work
Deed of guarantee, undertaking and substitution	acceptance of ..... 29.4
defined ..... 1	correction of ..... 29.3
provision of ..... 5.6	cost of rectification ..... 29.3
requirement for ..... 5.6	demolition of ..... 29.3
Deed of novation ..... 9.4	examination and testing of ..... 30
Deemed variation	generally ..... 29.3
as to acceptance of defective work ..... 29.4	includes material ..... 29.3
for latent condition ..... 25.3	not to delivery ..... 29.3
omission in schedule of rates ..... 2.5	quality assurance ..... 29.2
on adjustment of quantities ..... 2.5	reconstruction of ..... 29.3
reinstatement of damage ..... 14.2	removal of ..... 29.3
Default by Principal	replacement of ..... 29.3
Contractor's rights on ..... 39.9	testing of ..... 30
Contractor's show cause notice ..... 39.8	time of notice of ..... 29.5
generally ..... 39.7	Defects
in making due payment ..... 39.7(a)	costs of rectification ..... 29.3, 35
in providing evidence of insurance ..... 39.7(a)	defined ..... 1
in providing security ..... 39.7(a)	direction to rectify ..... 35
in rectifying inadequate access ..... 39.7(a), <i>Item 36(a)</i>	examination and testing for ..... 30
in rectifying inadequate	in design—excepted risk ..... 14.3(f)
possession ..... 39.7(a), <i>Item 36(b)</i>	in work ..... 29.3, 29.4, 35
on termination ..... 39.10	length of liability period ..... 35, <i>Item 32</i>
rights of the Contractor ..... 39.1, 39.7, 39.8, 39.9	material and work ..... 29.3, 29.4, 35
Superintendent not issuing	minor, practical completion ..... 1
certificate of practical completion ..... 39.7(b)	remedying ..... 29.3, 35
show cause on ..... 39.7, 39.8	removal and replacement ..... 29.3
Default by Contractor	times for rectification ..... 35
adjustment of costs on ..... 39.6	Defects liability period
assessment of cost to complete on ..... 39.6	defined ..... 1
failing to comply with a direction of the	duration of ..... 35, <i>Item 32</i>
Superintendent ..... 39.2(a)	generally ..... 35, <i>Item 32</i>
failing to maintain program ..... 39.2(c)	Definitions (generally) ..... 1
failing to proceed with due expedition	dispute ..... 42.1
and without delay ..... 39.2(d)	Delay
failing to properly perform design	concurrent ..... 34.4
obligations ..... 39.2(a)	construction program ..... 32, 39.2(c)
failing to provide evidence of insurance ..... 39.2(a)	damages ..... 4(c), 34.9
failing to use materials or standards of	further delay ..... 34.3
workmanship ..... 39.2(a)	in giving possession ..... 24.1
in providing documentary evidence ..... 39.2(e)	notice of ..... 34.2
in providing security ..... 39.2(a)	overlapping ..... 34.4
may use plant and materials on ..... 39.5	rate of progress ..... 34.1
on termination ..... 39.10	Delay damages
possession of plant and materials ..... 39.5	certified by Superintendent ..... 34.9
procedure on ..... 39.2–39.6	claim for ..... 34.9
	due and payable ..... 34.9



<i>Clause</i>	<i>Clause</i>
for compensable cause ..... 34.9	order of work ..... 32
other compensable causes ..... 1, 34.9, <i>Item 31</i>	notice of tests ..... 30.4
where separable portions ..... 4(c)	relating to Contractor's employees ..... 23
Deletion of clauses, etc.—effect ..... 1(i)	relating to subcontractors ..... 23
Deletions, amendments and	suspension of WUC ..... 33.1
additions (generally) ..... 1(i), <i>Annexure Part E</i>	written ..... 20
Demand (see also <i>Direction</i> )	Discrepancies
Demolition and removal of debris	Contract documents ..... 8.1
in Contract works policy ..... 16A(b), <i>Item 23(b)</i>	dimensions ..... 8.1
Deposit (see <i>Security</i> )	Dispute (see <i>Dispute resolution</i> )
Design	Dispute resolution
defects in—excepted risk ..... 14.3(f)	after final certificate ..... 37.4(d)
intellectual property rights in ..... 10	ambit of ..... 42.1
objectives, defined in Principal's	arbitration ..... 42.3
project requirements ..... 1	conference ..... 42.2
procurement methods explained ..... <i>Preface</i>	continue performance of Contract ..... 42.1
stated purpose ..... 2.2	dispute defined ..... 1, 42.1
warranties, as to ..... 2.2	includes difference ..... 42.1
warranties, as to by Principal ..... 10.1	meaning of dispute ..... 1, 42.1
warranties unaffected ..... 2.3	notice of dispute ..... 37.4(d), 41.1, 42.1
Design and Construct	summary relief ..... 42.4
explained ..... <i>Preface</i>	Documents
Design, Development and Construct	ambiguities in ..... 8.1
explained ..... <i>Preface</i>	approval of the Superintendent ..... 8.3
Design documents	availability of ..... 8.4
ambiguities in ..... 8.1	confidential information ..... 8.5
defined ..... 8.1	construction of ..... 8.1
direction not to copy ..... 8.2	Contractor supplied ..... 8.3
discrepancies in ..... 8.1	discrepancies in ..... 8.1
included in Contractor's design obligations ..... 1	evidencing Contract ..... 6
inconsistencies in ..... 8.1	generally ..... 8
licence to use ..... 10.2	inconsistencies in ..... 8.1
novation ..... 9.4	interpretation of ..... 8.1
ownership of ..... 10.2	Principal supplied ..... 8.2
variation to, affect of ..... 8.3	property in ..... 8.2, 8.3
warranties, as to ..... 2.2	results of tests ..... 30.6
warranties unaffected ..... 2.3(c)	service of ..... 7
Design, Novate and Construct	Due (see <i>Moneys due</i> )
explained ..... <i>Preface</i>	Due and owing (see <i>Moneys due and owing</i> )
Design objectives	Due and payable (see <i>Moneys due and payable</i> )
defined in Principal's project requirements ..... 1	Emergency work ..... 13
Determination (see also <i>Direction</i> )	Employees
defined in direction ..... 1	control of ..... 23
disputes ..... 42	insurance of ..... 17(c), 18
interpretation of discrepancy ..... 8.1	of Contractor (see <i>Contractor's employees</i> )
pricing of variation ..... 36.4	of subcontractor ..... 23
value of work ..... 37.2	responsibility for ..... 9.5
Determination of Contract (see <i>Termination of Contract</i> )	English language ..... 1(e)
Dimensions	EOT (extension of time)
figured ..... 8.1	application for ..... 34.3
scaled ..... 8.1	assessment of ..... 34.4, 34.5
Direct payment to subcontractor ..... 38.3	claim for ..... 34.3
Direction (see also <i>Approval</i> )	deemed assessment ..... 34.5
construction program ..... 32	defined ..... 1
covering up of work ..... 30.2	failure to apply for, effect ..... 41.2
defective materials or work ..... 29.3, 29.4	grant of ..... 34.5
defined ..... 1	in event of further delay ..... 34.3
dispute as to ..... 42.1(a)	partial grant of ..... 34.5
examination and testing ..... 30	qualifying cause of delay ..... 1, 34.3
oral, to be confirmed in writing ..... 20	refusal of ..... 34.5
	time for applying for ..... 34.3
	Superintendent may direct ..... 34.5

<i>Clause</i>	<i>Clause</i>		
Equipment to be provided by Contractor (see Construction plant) .....	28	Formal instrument of agreement execution of .....	6
Errors		generally .....	6
Contract documents .....	8.1	stamping of .....	6
in schedule of rates .....	2.5	Form of unconditional undertaking .....	Annexure Part B
setting out .....	26.2	Fossils .....	24.3
Escrow		Frustration	
security transferred in .....	5.1	generally .....	40
Examination and testing .....	30	notice of dispute when .....	42.1(b)
Excepted risk		payment on .....	40
defined .....	1	release and return of security .....	40
meaning .....	14.3	termination by .....	40
Explanation (see also Direction)		Gender includes every gender .....	1(d)
Extension of time (see EOT)		Governing law .....	1, <i>Item 8</i>
Failure of Contractor (see also Delay and Default by Contractor)		Guarantee, etc., deed of .....	5.6
to arrange urgent protection .....	13	Headings of clauses .....	1(c)
to lodge security .....	5.1, 39.2(a)	Hours of work .....	31
to make claims .....	41.2	Incompetence of employees, etc .....	23
to produce proof of insurance .....	19.2, 39.2(a)	Indemnity	
to show cause .....	39.3	by Contractor .....	10.1, 15.1
Failure of Principal (see also Default of Principal)		by Principal .....	10.1, 15.2
to give access .....	39.7(a)	care of work .....	14
to give possession of Site .....	39.7(a)	damages to persons and property .....	15
to insure .....	19.2, 39.2(a)	infringement of intellectual property rights .....	10.1
to make payment .....	37.5, 39.7(a)	Information to be supplied	
Faulty work (see Defective material or work)		advance notice .....	32
Fees and charges (see Legislative requirements)		by Principal .....	32
Figured dimensions .....	8.1	confidential information .....	8.5
Final certificate		Contract documents .....	8
accord and satisfaction .....	37.4	examination of information made available for tendering .....	25.1(a)
defined .....	1	examination of information relevant to risks, contingencies, etc. ....	25.1(b)
effect of .....	37.4	for setting out the Works .....	26.1
final payment claim for .....	37.4	latent conditions .....	25
generally .....	37.4	particulars of materials and plant .....	28(a)
meaning .....	37.4	results of tests .....	30.6
release of security .....	5.4	to media .....	8.6
Final payment (see also Final certificate)		working hours and days .....	31
defined .....	1	Injury to persons	
meaning .....	37	generally .....	12
Final payment claim		indemnity by Contractor .....	15.1
defined .....	1	insurance .....	17, 18
endorsement of .....	37.4	measures to prevent .....	12
includes all claims .....	37.4	Insolvency	
meaning .....	1, 37.4	bankruptcy .....	39.11(c)
payment on account, excepted prescribed notice, excluded .....	37.2 41.1	Contractor's rights on .....	39.11(B)
time for .....	37.4	deed of arrangement .....	39.11(d)
Financial institution		generally .....	39.11
form of unconditional undertaking by .....	Annexure Part B	meeting of creditors .....	39.11(d)
security provided by .....	1	mortgagee in possession .....	39.11(d)
Finding of minerals, fossils and relics .....	24.3	Principal's rights on .....	39.11(A)
Fitness for stated purpose		voluntary winding up .....	39.11(d)
to be stated in Principal's project requirements (definition) .....	1	when corporation .....	39.11(d)
warranty, as to .....	2.2(a)(ii)	when exercisable .....	39.11
warranty as to preliminary design .....	2.2(a)(ii)	when individual .....	39.11(c)
Float .....	34.4(a)	Inspection	
www.standards.com.au		access for testing .....	30.1
		access to Principal and others .....	24.2
		insurance policies .....	19.1

<i>Clause</i>	<i>Clause</i>
testing .....	30.1
Institute of Arbitrators & Mediators Australia rules of .....	<i>Item 37(b)</i>
Instruction (see also Direction)	
Insurance	
cross-liability .....	19.6
failure to provide proof of .....	19.2, 39.2(a), 39.7(a)
inspection of policies .....	19.1
notice of potential claims .....	19.4
notices to and from insurer .....	19.3
of employees .....	18
of the Works .....	16A, <i>Item 23</i>
professional indemnity .....	16B, <i>Item 24</i>
proof of insurance .....	19.1
provisions of policies .....	19.3
public liability .....	17
settlement of claims .....	19.5
workers' compensation .....	18
Intellectual property rights	
Contractor's warranty as to .....	10
defined .....	1
design documents .....	10.2
indemnity as to .....	10
licence in .....	10.2
ownership of .....	10.2
Principal's warranty as to .....	10
Interpretation of Contract documents .....	1.8.1
Interest	
on security .....	37.5
overdue payments .....	37.5, <i>Item 35</i>
rate of .....	37.5, <i>Item 35</i>
Issue of	
certificate of practical completion .....	34.6
final certificate .....	37.4
payment certificate .....	37.2
<i>Item</i>	
defined .....	1
Labour	
provision by Contractor .....	28
Language of Contract .....	1(e)
Latent conditions	
costs of .....	25.3
deemed variation on .....	25.3
defined .....	1
meaning .....	25.1
notification of .....	25.2
scope of .....	25.1
Law	
compliance with legislative requirements .....	11.1
Corporations .....	5.6, 38.3
governing the Contract .....	1(h), <i>Item 8</i>
Legislative requirements	
change in Principal's project requirements .....	11.2(a)(i)
changes in .....	11.2
changes to WUC .....	11.2(a)(iii)
changes to the Works .....	11.2(a)(ii)
compliance with .....	11.1
cost of .....	11.2(c)
defined .....	1
excepted .....	11.1, <i>Item 22(a)</i>
fees and charges .....	1, 11.2(a)
identified WUC .....	11.2, <i>Item 22(b)</i>
payment to subcontractor under .....	38.3
payment to worker under .....	38.3
provision of services .....	11.2(a)
satisfaction of .....	11.1, <i>Item 22(a)</i>
time of effect of .....	11.2(b)
variance in .....	11.1
Level mark (see Survey mark)	
Liability of the Contractor	
for care of WUC .....	14
for compliance with legislative requirements .....	11
for selected subcontractors .....	9.5
for subcontractors .....	9.5
Licences (see Legislative requirements)	
Limits of accuracy in schedule of rates .....	2.5(b), <i>Item 12</i>
Liquidated damages	
certifying of .....	34.7
rate of .....	34.7, <i>Item 29</i>
repayment of .....	34.7
separable portions .....	4(c)
Litigation .....	42.4
Local authorities .....	11
Loss or damage to WUC	
care of WUC .....	14.1
excepted risks .....	14.3
generally .....	14
protection .....	12, 13
reinstatement .....	14.2
urgent protection .....	13
Lumpsum .....	2.1
Making good (see also Reinstatement) .....	14.2, 29.3, 35
Materials (see also Work)	
acceptance of defective .....	29.4
defective .....	29.3, 29.4
examination and testing of .....	30
failure to use proper materials .....	39.2(a)
manufacture and supply of .....	28
not to remove from site .....	28
particulars of .....	28
possession on default .....	39.5
provision of by Contractor .....	28
quality of .....	29.1
supply of .....	28
testing of .....	30
unfixed .....	37.3
upon frustration of Contract .....	40
use of new materials .....	29.1
Measurement	
generally .....	37.2
of quantities .....	1(f)
Media releases .....	8.6
Minor defects	
practical completion, in definition of .....	1
remedying .....	29.3, 35
Misconduct of employee .....	23
Monetary sum (see Provisional sum)	
Moneys due	
claim for .....	37.1
cleaning up costs .....	27
cost of proposed variation .....	36.2

<i>Clause</i>	<i>Clause</i>
cost of protection..... 12	consultant..... 9.4, Item 20
cost of urgent protection ..... 13	deed of ..... 9.4
moneys certified due to Principal..... 37.2(b)	Deeds of ..... Annexure Parts C and D
on frustration ..... 40(b)	of Principal's consultants..... 2.2(a)(iii)
other moneys due..... 37.6	selected subcontractor..... 9.4, Item 20
progress certificate ..... 37.2(a)	subcontractor..... 9.2(c), 9.4, Item 20
progress claim ..... 37.1	warranties unaffected by..... 2.3(b)
Moneys due and owing	Omissions (see also Defects and Minor defects)
to Principal otherwise..... 37.6	at final certificate..... 37.4(b)
Moneys due and payable	schedule of rates ..... 2.5
bonus ..... 34.8	Opening up for examination and testing ..... 30.1
claims generally ..... 41.3	Oral direction..... 20
cost of defect rectification..... 35	Order (see also Direction)
costs of suspension on breach..... 39.9	Order of work..... 32
delay damages..... 34.9	Orders (see Legislative requirements)
final certificate..... 37.4	Ordinances (see Legislative requirements)
interest ..... 37.5	Ordinary working days..... 31
liquidated damages..... 34.7	Ordinary working hours..... 31
on work taken out of the hands of Contractor ..... 39.6	Other moneys due..... 37.6
substantial breach..... 39.7(a)	Overlapping delays..... 34.4
to workers and subcontractors ..... 38.2	Ownership of documents
unpaid insurance premium..... 19.2	supplied by Contractor ..... 8.3
Nature of Contract..... 2	supplied by Principal..... 8.2
Negligence of employee ..... 23	Patent (see Intellectual property right)
Nominated subcontractor	Payment(s) (see also Adjustments)
(see Novation)..... 9.3, 9.4	adjustment for errors in schedule of rates ..... 2.5
Notice (see also Direction, Notice of dispute)	adjustment for fees to statutory authorities ..... 11.2
for testing ..... 30.4	and performance ..... 2.1
for urgent protection ..... 13	basis of ..... 2.1
from or to insurer ..... 19.3	bonus ..... 34.8
of availability of site..... 24.1	calculated by rates ..... 2.1
of claim for EOT ..... 34.3	calculation of..... 37.2
of claims generally ..... 41	certificates..... 37.2
of default by the Contractor..... 39.3	claims for ..... 37.1
of default by the Principal..... 39.8	currency of ..... 1(g), Item 9(a)
of delay..... 34.2	deductions ..... 37.2
of discovery of minerals, fossils or relics ..... 24.3	default by Principal..... 39.7(a)
of dispute..... 42.1	delay damages ..... 34.9
of errors in setting out..... 26.2	during arbitration..... 42.1
of latent conditions..... 25.2	for defective materials and work ..... 29.3, 35
of names of persons entitled to access..... 24.2	for progress certificates ..... 37.2
of potential insurance claims..... 19.4	for unfixed plant and materials ..... 37.3
of working hours ..... 31	insurance premiums, proof of..... 19.2
oral or written ..... 20	interest on overdue..... 37.5
prescribed..... 41.1	liquidated damages ..... 34.7
service of ..... 7	not evidence of satisfactory WUC ..... 37.2
statutory authorities..... 11.2	of balance after set off..... 37.2
to suspend work..... 33.1	of security and retention moneys..... 5.1
Notice of dispute	of workers and subcontractors..... 38
arbitration ..... 42.3	on completion by Principal..... 39.6
concerning claims..... 41.1, 41.3	on final certificate..... 37.4
conference following ..... 42.2	payment certificate..... 37.2
generally..... 42	payment on account ..... 37.2
how served..... 42.1	place for..... 1(g), Item 9(b)
includes difference ..... 42.1	provisional sums..... 3
when final certificate..... 37.4(d)	retention moneys..... 5.1, Item 14(c)
Notification of claims (see also Claims)	set-offs by Principal..... 37.2, 37.6
failure to comply ..... 41.2	suspension of by Principal..... 39.4
generally..... 41	to consultants ..... 38
notice of dispute concerning..... 41.1, 41.3	to subcontractors..... 38
prescribed notice ..... 41.1	to workers ..... 38
Superintendent's decision on ..... 41.3	
Novation	
acceptance of ..... 2.2(a)(iii)	

<i>Clause</i>	<i>Clause</i>
urgent protection .....	13
within 7 days of certificate .....	37.2
within 21 days of claim .....	37.2
withholding by Principal .....	38.2
Payment to workers, consultants and subcontractors	
direct payment to .....	38.3
documentary evidence of .....	38.1
Principal may withhold payment .....	38.2
where required by law .....	38.3
withholding of payment .....	38.2
Performance and payment .....	2.1
Permission (see also Direction)	
Permits (see Legislative requirements)	
Person, meaning .....	1(a)
Persons	
death of .....	15.1
indemnity by Principal .....	15.2
injury to .....	15.1
insurance of .....	17, 18
protection of .....	12
suspension, to protect .....	33.1
urgent protection of .....	13
Place for payment .....	1(g), Item 9(b)
Place of business of bank (security) .....	1, Item 9(c)
Plant (see Construction plant) .....	1, 28, 39.5, 39.6
Plant and materials	
security for unfixed .....	5.4, 37.3, Item 14(c)
unfixed .....	37.3, Item 34
Possession of site (see also Access) .....	24.1
Practical completion	
certificate of .....	34.6
date for .....	1, 34.1, 34.6, 34.7
date of .....	1, 34.6, 34.7
defined .....	1
early practical completion .....	34.8
EOT for .....	34.3
request for certificate of .....	34.6
separable portions .....	4
Preliminary design	
copyright and ownership of design .....	10.2
defined .....	1
details of .....	Item 11
included in Contractor's design obligations .....	1
novation .....	9.4
warranties, as to .....	2.2(a)(ii)
warranties unaffected .....	2.3(a)
Prescribed notice	
defined .....	1
meaning .....	1, 41.1
Pricing	
variations .....	36.4
Prime cost item (see Provisional sum)	
Principal	
address of .....	Item 2
certificate to .....	37.2(b)
consultants, novation of .....	2.2(a)(iii), 9.4
default of .....	39.7
defined .....	1
dispute with Contractor .....	42.1
licence to use design documents .....	10.2
named .....	Item 1
ownership of design documents .....	10.2
project requirements defined .....	1
rights of .....	39.2, 39.3, 39.4, 39.5
security by .....	5, Item 15
set off by .....	37.2
Principal's project requirements	
change in legislative requirements .....	11.2(a)(i)
cost objectives .....	1
defined .....	1, Item 10
design objectives .....	1
details of .....	Item 10
inconsistency, etc. in .....	8.1
novation .....	9.4
preliminary design included .....	Item 11
stated purpose of .....	1, 2.2(a)(iv)
timing objectives .....	1
warranties, as to .....	2.2
warranties, as to by Principal .....	10.1
Principal-supplied documents	
availability of .....	8.2
copies of .....	8.2, Item 16
copying of .....	8.2
number of .....	8.2
property in .....	8.2
supply of .....	8.2, Item 16
Proclamation (see Legislative requirements)	
Profit and overheads/attendance	
in pricing variations .....	36.4
on provisional sums .....	3
Program	
defined .....	1
departure from .....	32
direction as to .....	32
failing to adhere to .....	39.2(c)
meaning of .....	32
proposed variation, effect on .....	36.2(a)
Programming (see Program)	
Progress certificate	
deemed .....	37.2
defined .....	1
issue of .....	37.2
meaning .....	1, 37.2
not evidence WUC is satisfactory .....	37.2
on account only .....	37.2
Progress claims	
early .....	37.1
generally .....	37.1
time for .....	37.1, Item 33
Progress, failure to maintain .....	39.2(c), 39.2(d)
Prompt payment discount .....	3(b)
Proper law of Contract .....	1(h), Item 8
Property	
damage to .....	12
indemnity as to .....	15
insurance of .....	17
loss of .....	15.1
protection of .....	12
unavoidable damage to .....	15.1(b)
Protected right (see Intellectual property right)	

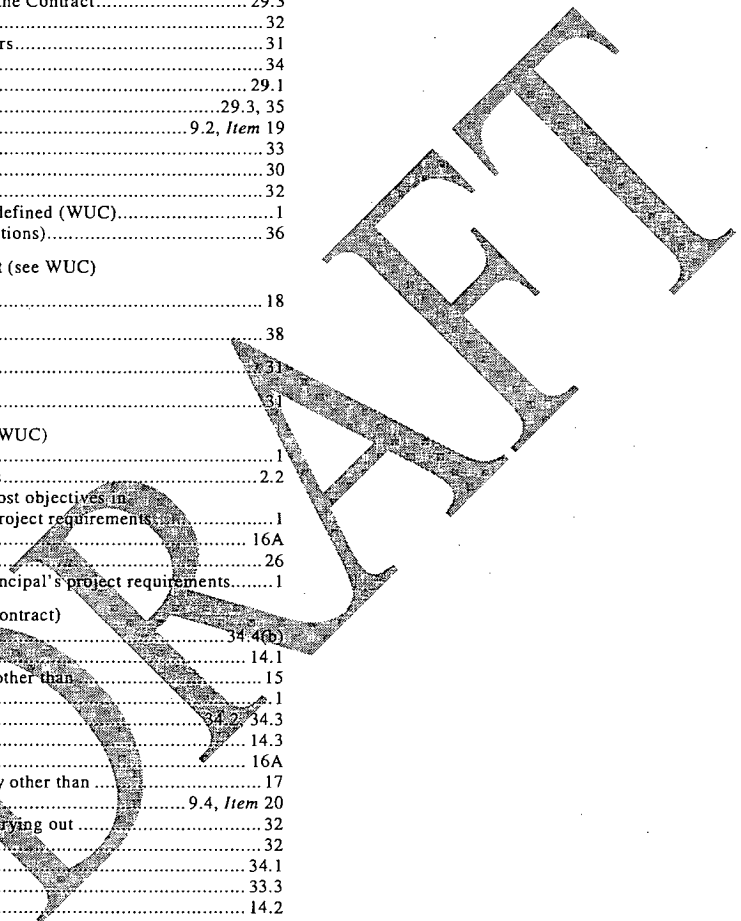
<i>Clause</i>	<i>Clause</i>	
Protection		
of persons and property .....	12	
of WUC .....	14	
suspension due to .....	33.1	
urgent .....	13	
Provisional sum .....	3	
defined .....	1	
included in contract sum .....	1	
included in schedule of rates .....	1	
meaning .....	1, 3	
percentage for profit and attendance .....	3, Item 13	
Public authorities .....	5.5, 11	
Public liability policy		
alternative applying .....	17, Item 25(a)	
amount of .....	17, Item 25(b)	
defined .....	1	
meaning .....	1, 17	
Qualifying cause of delay		
defined .....	1	
excludes those in .....	Item 28	
EOT for .....	34.3	
further delay due to .....	34.3	
Quality .....	29	
Quality assurance .....	29.2	
Quality of materials and work		
defective materials and work .....	29.3	
examination and testing of .....	30	
generally .....	29.1	
Quality system .....	29.2	
Quantities		
errors in .....	2.5	
estimated only .....	2.4	
generally .....	2.4, 2.5	
omitted items .....	2.5	
Rates (see also Schedule of rates)		
adjustment of .....	2.5	
limits of accuracy .....	2.5(b), Item 12	
payment of .....	2.1	
provisional sums .....	3	
valuation of variations .....	36.4(c)	
Receiver .....	39.11	
Reference mark (see also Survey marks)		
defined .....	1	
survey mark, included in .....	1, 26.1	
Registered design (see Intellectual property right)		
Regulations (see Legislative requirements)		
Reinstatement of damage		
excepted risks .....	14.3	
generally .....	14.2	
Rejection (see also Direction)		
Rejection of materials or work .....	29.3	
Relation-back day		
concerning direct payment to workers and subcontractors .....	38.3	
Release of security .....	5.4	
Remedial work		
generally .....	29.3, 35	
	included in definition of WUC .....	1
Removal of		
construction plant .....	28	
materials .....	28	
Contractor's employees and subcontractors .....	23	
Repairs, urgent (see Urgent protection) .....	13	
Replacement (see Reinstatement)		
Replacement of defective materials or work .....	29.3	
Representative of		
Contractor .....	22	
Superintendent .....	21	
Repudiation of Contract parties rights on .....	39.1, 39.10	
Request (see also Direction)		
Requirement (see also Direction)		
Requirements of legislation .....	11.1	
Responsibility		
of Contractor for subcontractors .....	9.5	
for performance .....	2.1	
Retention moneys (see Security)		
Risks		
excepted .....	1, 14.3	
Royalties (see Intellectual property rights)		
Schedule of prices		
included in definition of schedule of rates .....	1	
variations priced by .....	36.4(c)	
Schedule of rates		
defined .....	1	
generally .....	2.4, 2.5	
limits of accuracy in .....	2.5(b), Item 12	
omitted items in .....	2.5	
payment by .....	2.1	
quantities in .....	2.4	
variations priced by .....	36.4(c)	
Security (includes Retention moneys)		
change of .....	5.3	
Contractor's .....	Item 14	
defined .....	1	
form of .....	5.1	
generally .....	5	
includes retention moneys .....	1	
interest earned on .....	5.5	
Principal's .....	Item 15	
provision of .....	5.1, Items 14, 15	
purpose of .....	5.1	
recourse to .....	5.2	
reduction of .....	5.4, Items 14, 15	
release of .....	5.4	
return of .....	5.4	
substitution of .....	5.3	
time of lodgement of .....	5.1, Items 14, 15	
trust .....	5.5	
unfixed plant and materials .....	5.4, 37.3(a), Item 14(e)	
upon frustration of the Contract .....	40(c)	
Selected subcontract work		
defined .....	1	
meaning .....	1, 9.3	

<i>Clause</i>	<i>Clause</i>
Selected subcontractor	warranty, as to ..... 2.2(a)(iv)
defined ..... 1	Statutory requirements (see Legislative requirements)
meaning ..... 1, 9.3	Subclause headings—effect ..... 1(c)
Separable portion(s) ..... 4, Annexure Part A	Subcontract work
date for practical completion ..... 4(b)	generally ..... 9
defects liability period ..... 35	requiring approval ..... 9.2, <i>Item</i> 19
defined ..... 1	Subcontractor
directed by Superintendent ..... 4	approval of ..... 9.2, <i>Item</i> 19
liquidated damages ..... 4(c)	Contractor's responsibility for ..... 9.5
security in ..... 4(c)	defined ..... 1
Service	includes consultant ..... 1
by fax ..... 7(b)(ii)	novation of ..... 9.2(c), 9.4, <i>Item</i> 20
by hand ..... 39.2, 39.7, 42.1	removal of ..... 23
by post ..... 7(b)(iii)	selected ..... 9.3, 9.4, <i>Item</i> 20
by registered post ..... 39.2, 39.7, 42.1	terms of approval ..... 9.2
by the Contractor on the Principal ..... 39.7	when Contract frustrated ..... 40(b)
by the Principal on the Contractor ..... 39.2	Subcontractor's employees
from or to the insurer ..... 19.3	control of ..... 9.5, 23
notification of latent conditions ..... 25.2	insurance of ..... 18
of appointment of Superintendent ..... 1	responsibility for ..... 9.5
of appointment of Superintendent's	Substantial breaches ..... 39.2, 39.7
Representative ..... 21	Superintendent (see also Directions)
of claims to the Superintendent ..... 41.1	address of ..... <i>Item</i> 6
of finding of minerals, fossils and relics ..... 24.3	appointment of ..... 20
of notice of dispute ..... 42.1	appointment of Superintendent's representative ..... 21
of notice(s) (see also Notices) ..... 7	assessments by ..... 3, 8.1, 11.2, 14.2, 24.3, 26.2, 26.3,
of potential (insurance) claims ..... 19.4	32, 33.4, 34.5, 39.6, 39.9, 41.3
of taking the work out of the hands	certifications by ..... 12, 13, 19.2, 19.5, 27, 29.3, 34.7,
of Contractor ..... 39.4	34.8, 34.9, 35, 36.2, 37.2, 37.4,
of terminating the Contract ..... 39.4, 39.9	39.6, 39.9, 40(a), 41.3
personal service ..... 7	defined ..... 1
Set-off	directions of ..... 20
by Principal ..... 37.2, 37.6	generally ..... 20
election by Principal ..... 37.2	includes Superintendent's Representative ..... 1
generally ..... 37.2, 37.6	named ..... <i>Item</i> 5
Settling out the Works	notice to in relation to dispute ..... 42.1
care of ..... 26.3	obligations of ..... 20
disturbance to ..... 26.3	pricing by (deemed variation, etc.) ..... 2.5, 3, 14.2,
errors in ..... 26.2	25.3, 36.4
generally ..... 26	to confirm oral direction ..... 20
survey marks for ..... 26.1	valuations by ..... 4
Settlement	Superintendent's Representative ..... 1
arbitration ..... 42.2	appointment of ..... 21
notice of dispute ..... 42.1	defined ..... 1
of disputes ..... 42.1	functions of ..... 21
Signal (see Survey mark)	notice of appointment of ..... 21(c)
Site	objection to appointment of ..... 21(d)
access to by Contractor ..... 24.1, <i>Item</i> 26(a)	termination of appointment of ..... 21(c)
access to by Principal, etc. .... 24.2	Survey mark
access to by Superintendent ..... 24.2	care of ..... 26.3
cleaning up ..... 27	defined ..... 1
commencement of work on ..... 24.1	errors in ..... 26.2
defined ..... 1	supply of ..... 26.1
delay in making available ..... 24.1	Survey peg (see Survey mark)
generally ..... 24	Suspension
latent conditions on ..... 25	by the Contractor ..... 33.2, 39.9
materials, delivery to ..... 24.1	by the Superintendent ..... 33.1
minerals, fossils, relics, etc. on ..... 24.3	cost of ..... 33.4, 39.9
possession of ..... 24.1, <i>Item</i> 26(b)	due to acts, etc. of Contractor ..... 33.1(a)
substantial breach in giving	due to acts, etc. of Principal ..... 33.1(a)
access of ..... 39.7(a), <i>Item</i> 36(a)	effect of ..... 33.4
substantial breach in giving	end of ..... 33.3
possession of ..... 39.7(a), <i>Item</i> 36(b)	protection or safety ..... 33.1(b)
Stated purpose	
in Principal's project requirements ..... 1	

<i>Clause</i>	<i>Clause</i>
generally..... 33	for Superintendent's direction
to comply with court order ..... 33.1(c)	about documents..... 8.3, <i>Item</i> 18
Suspension of payment by Principal ..... 38.2, 39.4	for supply of construction program ..... 32
Taking over of work by Principal ..... 39.5	for supply of Contractor's documents ..... 8.3, <i>Item</i> 17
Temporary works	for supply of Principal's documents ..... 32, <i>Item</i> 27
care of ..... 14.1	for testing..... 30.1
defined ..... 1	for urgent protection ..... 13
insurance of ..... 16A	suspension of work ..... 33.1
removal of..... 27	to rectify inadequate access ..... 39.7(a), <i>Item</i> 36(a)
Tender (see Acceptance of tender)	to rectify inadequate possession ..... 39.7(a), <i>Item</i> 36(b)
date of acceptance, defined..... 1	Timing objective
Termination of the Contract (see Default, Frustration)	defined in Principal's project requirements ..... 1
by frustration ..... 40	Trademark or name (see Intellectual property right)
by the Contractor..... 39.9, 39.10	Unconditional undertaking (see Security)
by the Principal ..... 39.4, 39.10	approved form ..... Annexure Part B
insolvency..... 39.11	UNCITRAL Rules ..... <i>Items</i> 37(b), (c)
rights of parties on ..... 39.10	Unfixed plant and materials
Test	additional security for ..... 37.3(a), <i>Item</i> 14(e)
completion of ..... 30.6	generally ..... 37.3, <i>Item</i> 34
costs of ..... 30.7	labelled ..... 37.3(b)
covering up of work ..... 30.2	payment for ..... 37.3
defined ..... 1	Principal's liability for ..... 37.3
delay in testing ..... 30.5	security for ..... 37.3, <i>Item</i> 14(e)
notice of ..... 30.4	stored and protected ..... 37.3(b)
procedure if delayed ..... 30.5	unencumbered property of Principal ..... 37.3
results of ..... 30.6	Unpaid moneys ..... 38.3
Superintendent may direct ..... 30.1	Urgent protection ..... 13
who conducts ..... 30.3	Urgent relief ..... 42.4
Tests (see definition of Practical completion)	Valuation
Third party insurance	of final payment claims ..... 37.4
(see Public liability insurance) ..... 17	of progress payment claims ..... 37.2
Time (see also EOT)	pricing of variations ..... 36.4
acceleration of work ..... 34.4(b)	Variation
construction program ..... 32	character and extent of ..... 36.1
Contractor's float ..... 34.4(a)	cost of complying ..... 36.2
defects liability period ..... 35, <i>Item</i> 32	cost of proposed ..... 36.2
delay damages ..... 34.9	deductions—valuing ..... 36.4
for access to site ..... 24.1, <i>Item</i> 26(a)	deemed ..... 2.5, 14.2, 25.3, 29.4
for approval of Contractor's	defined ..... 1
drawings ..... 8.5(c), <i>Item</i> 18	directing of ..... 36.1
for arbitration ..... 42.2	direction by Superintendent ..... 36.1
for carrying of work ..... 32	estimate for ..... 36.2
for claiming EOT ..... 34.3	for convenience of Contractor ..... 36.3
for cleaning up ..... 27	generally ..... 36
for completing WUC ..... 34.1	meaning ..... 1, 36.1
for doing any act ..... 1(b)	measurements ..... 36.2
for effecting insurance ..... 16A, 16B, 17, 18	notice of proposed ..... 36.2
for executing formal instrument of agreement ..... 6	order of precedence in pricing ..... 36.4
for final payment ..... 37.4	pricing of ..... 36.4
for granting an EOT ..... 34.5	proposed ..... 36.2
for lodging security ..... 5.1, <i>Items</i> 14, 15	quotation for ..... 36.2
for making claims ..... 41	scope of ..... 36.1
for notice of latent condition ..... 25.2	valuation of ..... 36.4
for notice of tests ..... 30.4	Wages
for notice to show cause ..... 39.3, 39.8	of workers ..... 38
for notification of claims ..... 41	Waiver of conditions
for possession of Site ..... 24.1, <i>Item</i> 26(b)	generally ..... 43
for practical completion ..... 34.1, <i>Item</i> 7	in writing ..... 43
for progress claims ..... 37.1, <i>Item</i> 33	Warranties
for progress payments ..... 37.2	Contractor's ..... 2.2
for release of security or retention ..... 5.4	proposed variation, effect on ..... 36.2
for service of notices ..... 7	unaffected ..... 2.3
for Superintendent to confirm oral direction ..... 20	



<i>Clause</i>	<i>Clause</i>
variation, effect on .....	2.3(d), 36.1, 36.2
Winding up .....	39.11
Words—singular includes plural and vice versa .....	1(d)
<b>Work (includes Materials)</b>	
acceptance of defective work .....	29.4
care of .....	14.1
deemed variation as to defective work .....	29.4
defective .....	29.3
defined .....	1
examination and testing of .....	30
not complying with the Contract .....	29.3
order of work .....	32
outside working hours .....	31
progress of .....	34
quality of .....	29.1
remedial .....	29.3, 35
subcontracting .....	9.2, Item 19
suspension of .....	33
testing of .....	30
times for work .....	32
under the Contract, defined (WUC) .....	1
variations (see Variations) .....	36
<b>Work under the Contract (see WUC)</b>	
Workers' compensation .....	18
Workers, payment of .....	38
Working days .....	31
Working hours .....	31
<b>Works (see also care of WUC)</b>	
defined .....	1
design of, warranties .....	2.2
design, timing and cost objectives in Principal's project requirements .....	1
insurance of .....	16A
setting out of .....	26
stated purpose in Principal's project requirements .....	1
<b>WUC (work under the Contract)</b>	
acceleration of .....	34.4(b)
care of .....	14.1
damage to property other than .....	15
defined .....	1
delay to .....	34.2, 34.3
excepted risks .....	14.3
insurance of .....	16A
insurance of property other than .....	17
novation relating to .....	9.4, Item 20
order and time of carrying out .....	32
programming of .....	32
progress of .....	34.1
recommencement of .....	33.3
reinstatement of .....	14.2
suspension of .....	33, 39.9
urgent protection of .....	13



**AMENDMENT CONTROL SHEET**

**AS 4902—2000**

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**Amendment No. 1 (2005)**

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**REVISED TEXT**

*SUMMARY:* This Amendment applies to Clause 37 (a) and (c) of Annexure Part A

Published on 30 March 2005.

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NOTES

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1	INTERPRETATION AND CONSTRUCTION OF CONTRACT .....	6
2	NATURE OF CONTRACT .....	11
3	PROVISIONAL SUMS.....	12
4	SEPARABLE PORTIONS.....	12
5	SECURITY.....	13
6	EVIDENCE OF CONTRACT.....	14
7	SERVICE OF NOTICES.....	14
8	CONTRACT DOCUMENTS.....	14
9	ASSIGNMENT AND SUBCONTRACTING .....	16
10	INTELLECTUAL PROPERTY RIGHTS.....	17
11	LEGISLATIVE REQUIREMENTS.....	18
12	PROTECTION OF PEOPLE AND PROPERTY.....	18
13	URGENT PROTECTION .....	18
14	CARE OF THE WORK AND REINSTATEMENT OF DAMAGE .....	19
15	DAMAGE TO PERSONS AND PROPERTY OTHER THAN WUC .....	20
16A	INSURANCE OF THE WORKS .....	20
16B	PROFESSIONAL INDEMNITY INSURANCE .....	21
17	PUBLIC LIABILITY INSURANCE .....	21
18	INSURANCE OF EMPLOYEES.....	22
19	INSPECTION AND PROVISIONS OF INSURANCE POLICIES .....	22
20	SUPERINTENDENT .....	23
21	SUPERINTENDENT'S REPRESENTATIVE .....	23
22	CONTRACTOR'S REPRESENTATIVE .....	24
23	CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS .....	24
24	SITE.....	24
25	LATENT CONDITIONS .....	25
26	SETTING OUT THE WORKS .....	25
27	CLEANING UP.....	26
28	MATERIALS, LABOUR AND CONSTRUCTION PLANT.....	26
29	QUALITY .....	27
30	EXAMINATION AND TESTING.....	28
31	WORKING HOURS .....	28
32	PROGRAMMING.....	29
33	SUSPENSION .....	29
34	TIME AND PROGRESS.....	30
35	DEFECTS LIABILITY .....	31
36	VARIATIONS.....	32
37	PAYMENT.....	33

38	PAYMENT OF WORKERS, CONSULTANTS AND SUBCONTRACTORS.....	35
39	DEFAULT OR INSOLVENCY.....	35
40	TERMINATION BY FRUSTRATION.....	39
41	NOTIFICATION OF CLAIMS.....	39
42	DISPUTE RESOLUTION.....	40
43	WAIVER OF CONDITIONS.....	41
	ANNEXURE PART A.....	42
	ANNEXURE PART B—APPROVED FORM OF UNCONDITIONAL UNDERTAKING.....	53
	ANNEXURE PART C—DEED OF NOVATION (SUBCLAUSE 9.2(C)).....	54
	ANNEXURE PART D—DEED OF NOVATION (SUBCLAUSE 9.4).....	56
	ANNEXURE PART E—DELETIONS, AMENDMENTS AND ADDITIONS.....	58
	INDEX.....	59

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### Discrepancies in Principal supplied documents

The Contractor is entitled to, and may claim, an extension of time and additional payment for all costs incurred that are in addition to the contract sum arising out of any discrepancy, omission, inconsistency or ambiguity within or between any of the following:

- (a) the documents constituting preliminary design;
- (b) the documents constituting the PPRs;
- (c) the documents comprising the Contract.

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# SAVAS VARITIMOS VALUER\*

REAL ESTATE VALUERS & PROPERTY PROFESSIONALS

ABN 25 329 474 597

13 Coates Court  
Brassall QLD 4305

VALUATION

of

REAL PROPERTY

SITUATED AT

LOT 101 KING ARTHUR TERRACE, TENNYSON

PREPARED FOR


BRISBANE CITY COUNCIL

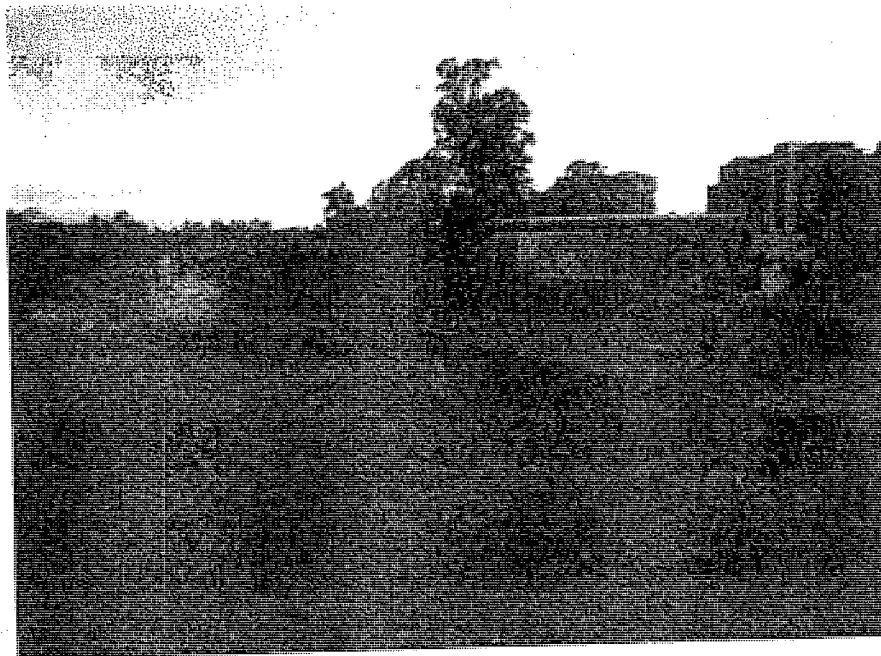
MAJOR LAND ACQUISITION

MAJOR INFRASTRUCTURE PROJECTS OFFICE

GPO BOX 1434

BRISBANE QLD 4001

ATTENTION: 



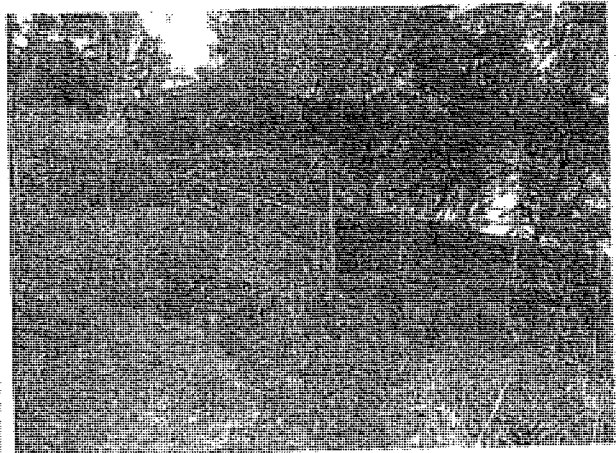
Date of Valuation: 29 June, 2011

\*MIKAL QLD PTY LTD ACN 119 987 763 ATF THE MIKAL TRUST ABN 25 329 474 597 T/A SAVAS VARITIMOS VALUER

ML

CERTIFICATE OF VALUATION

<u>ADDRESS</u>	Lot 101 King Arthur Terrace, Tennyson
<u>PURPOSE OF VALUATION</u>	Purchase purposes.
<u>METHOD OF VALUATION</u>	The method of valuation used in our report is the direct comparison approach on a rate/m <sup>2</sup> basis.
<u>PREPARED FOR</u>	Brisbane City Council
<u>BASIS OF VALUATION</u>	Market Value - Fee Simple Vacant Possession
<u>REGISTERED OWNER</u>	Mirvac Queensland Pty Limited A.C.N. 060 411 207
<u>REAL PROPERTY DESCRIPTION</u>	Lot 101 SP195275 County of Stanley, Parish of Yeerongpilly
<u>MARKET VALUE</u>	Two Hundred and Thirty-Six Thousand Dollars (\$236,000) excluding GST



Our Reference: 11099

Registered Valuer Qld 1908  
 Certified Practising Valuer  
 Savas Varitimos Valuer  
 29 June, 2011

This valuation is subject to the qualifications, limitations and assumptions made within our report.

..13

Lot 101 King Arthur Terrace  
Tennyson  
Brisbane City Council

OUR REFERENCE 11099  
DATE OF VALUATION 29 June, 2011  
DATE OF INSPECTION 29 June, 2011  
PURPOSE OF VALUATION

As instructed by telephone conversation of 28 June, 2011 to assess the market value for Stamp Duty purposes of the following described land.

'Market value is the estimated amount for which an asset should exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion.'

REAL PROPERTY DESCRIPTION

Lot 101 SP195275  
County of Stanley, Parish of Yeerongpilly

The property has been identified by Cadastral Map, however, a detailed site survey has not been carried out and for the purpose of this valuation it has been assumed that all structural improvements have been erected within the title boundaries.

REGISTERED OWNER

MIRVAC QUEENSLAND PTY LIMITED A.C.N. 060 411 207

EASEMENTS, ENCUMBRANCES & INTERESTS

1. Rights and interests reserved to the Crown by  
Deed of Grant No. 40054677 (Lot 101 SP195275)
2. EASEMENT IN GROSS No. 709116788 08/11/2005 at 12:24  
burdening the land  
ENERGEX LIMITED A.C.N. 078 849 055  
over  
EASEMENT A ON SP184022

ADMINISTRATIVE ADVICES - NIL  
UNREGISTERED DEALINGS - NIL

Initial: 

.J4

Lot 101 King Arthur Terrace  
Tennyson  
Brisbane City Council

AREA OF LAND

1.18 hectares (11,800m<sup>2</sup>)

TOWN PLANNING

The land is designated Community Use Area CU8 – Utility Installation under the Brisbane City Council Town Plan.

Constraints

- Brisbane River Corridor
- Brisbane River Precinct 2
- Stephens District Local Plan
- Land Subject to Wetland Code

Approval

A Preliminary Approval (Council Reference No: A002824927) exists overriding the Planning Scheme for the Tennyson Reach Development. The approval includes the development of 191 units in 3 buildings referred to as Building A, B and C on Lots 3-5 SP195275 and for Lot 101 to be developed as Associated Parkland.

Lot 101 is flagged as Ministerial Designation No (D49). This relates to the Curzon Street to Tennyson Substation 100kV electricity transmission line.

Town planning information was obtained from the Brisbane City Council Customer Service Centre and from correspondence provided. We recommend that this zoning or planning area should be verified by application to Council for the issue of a zoning certificate.

Initial: 

..15

Lot 101 King Arthur Terrace  
Tennyson  
Brisbane City Council

DEPARTMENT OF ENVIRONMENT & RESOURCE MANAGEMENT VALUATION

No site value is recorded against the subject property.

LOCALITY

The subject property is situated on the north-eastern side of the King Arthur Terrace and Softstone Street roundabout and to the southern side of the Brisbane River. Sites proposed for development with medium density housing separate the subject property from King Arthur Terrace.

It is located within an established but developing locality. Surrounding properties include the Queensland Tennis Centre; modern residential towers; and dwellings of varying age, size, style and quality. Indooroopilly Golf Course is located to the northern side of the Brisbane River. The Brisbane Golf Club is located approximately 400 metres to the south.

It is within approximately 7 radial kilometres in a southerly direction of the Brisbane General Post Office.

Local amenities including convenience stores and schools are within approximately 2 radial kilometres. The Yeerongpilly Train Station is within approximately 700 radial metres.

SERVICES

All city services are available to the property including electricity, telephone, town water and sewerage.

Initial: 

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**Lot 101 King Arthur Terrace**  
**Tennyson**  
**Brisbane City Council**

### ROADS AND ACCESS

King Arthur Terrace is two (2) way, two (2) lane carriageway. It is bitumen sealed to the full width with concrete kerb and channel, and has a concrete footpath to its southern boundary.

Vehicular access is not provided to the subject property although it does have street frontage at the north-eastern side of the King Arthur Terrace and Softstone Street roundabout.

### NATURE OF LAND

The land is irregular in shape, is wide and is shallow in depth. At first it falls moderately to a generally level platform before falling moderately to the Brisbane River to the north. It is identified as having been flooded in January, 2011 under the Council's Temporary Local Planning Instrument. At the peak of the flood it is understood that the maximum depth was 9.1 metres.

The table below provides the levels of the land and various flood levels.

Lowest level of the land	0.0m
Highest level of the land	13.9m
2% (50 year ARI)	4.4m
1% (100 year ARI or DFL)	7.9m
January 2011	9.1m

The present use of the property is not a prescribed use under the Contaminated Land Act nor is the use of the immediate adjoining property. We have not, however, undertaken nor requested an environmental audit of the site, nor a search of the Contaminated Site Register and cannot state that the land is not contaminated. If the site is found to be contaminated we reserve the right to alter this valuation and the advices contained herein.

### IMPROVEMENTS

Part of a sales office, landscaping and demountable building used by Mirvac in marketing and developing Tennyson Reach are located on the land. Various stormwater pits and other partly demolished structures presumably part of the former Tennyson Power Station are located on the land.

We consider the highest and best use of the subject property is for its development as parkland as approved by council. The improvements are temporary and have been excluded from this valuation.

Initial: 

..17

Lot 101 King Arthur Terrace  
Tennyson  
Brisbane City Council

VALUATION

Highest and Best Use

The highest and best use is defined as the most profitable use of an asset which is physically possible, appropriately justified, legally permissible, financially feasible and which results in the highest and best use of the asset being valued.

As previously stated a Preliminary Approval exists whereby Parkland is to be developed on the subject property in connection with the development of lots 3-5 on SP195275 adjoining.

We consider the highest and best use of the subject property is for its development as Parkland.

Rationale

As stated above a Preliminary Approval exists over the subject property and lots 3-5 on SP195275 adjoining. The approval includes the development of the adjoining lots with residential apartments up to approximately 8 to 10 storeys and for the development of the subject property as associated Parkland.

We have valued the subject property on a rate/m<sup>2</sup> basis having regard to sales evidence of recreation, conservation and constrained sites. We consider the subject property to be superior to most of the sales evidence due to its proximity to the river.

Initial: 

../8



Lot 101 King Arthur Terrace  
Tennyson  
Brisbane City Council

VALUATION CONTINUED

Sales evidence

In undertaking our valuation we have referred to known sales evidence of recreation, conservation and constrained sites. Some of the sales referred to are as follows:

1. 490 & 498 Wembley Road, Berrinba

Sold 2 July, 2009 for \$2,359,185

Land area 10.64 hectares

Analysis: \$22.17/m<sup>2</sup>

Conservation zoned site constrained by vegetation, wetland, noise and acid sulfate soil issues. Purchased by the Logan City Council for Conservation purposes. The land is gently undulating in contour. The sale price equates to \$22.17/m<sup>2</sup>. Considered slightly superior on a rate/m<sup>2</sup> basis.

2. 407 Wadeville Street, Pallara

Sold 13 August, 2009 for \$2,600,000

Land area 26.08 hectares

Analysis: \$9.97/m<sup>2</sup>

Vacant Environmental Protection Area zoned land purchased by the Brisbane City Council. The land is moderate to steeply undulating. Constrained by a waterway corridor, subject to the wetland code, Dominant Remnant Vegetation containing endangered regional ecosystems and Remnant Vegetation that is a least concern regional ecosystem. The sale price equates to 9.97/m<sup>2</sup>. Considered vastly inferior on a rate/m<sup>2</sup> basis.

3. 168 Bardon Road, Kingston

Sold 1 September, 2008 for \$100,000

Land area 1.619 hectares

Analysis: \$6.17/m<sup>2</sup>

Vacant Conservation designated land purchased by a private party. The land has a gradual fall then rise to the rear. It is constrained by flooding, wetlands, a waterway area, stormwater drainage network, remaining bushland area overlay and vegetation management area overlay. A large drainage easement traverses the property. The sale price equates to \$6.17/m<sup>2</sup>. Considered vastly inferior on a rate/m<sup>2</sup>.

Initial: [REDACTED]

./9

Lot 101 King Arthur Terrace  
Tennyson  
Brisbane City Council

VALUATION CONTINUED

4. 129 Brisbane Road, Riverview

Sold 9 January, 2009 for \$750,000

Land area 7.06 hectares

Analysis: \$10.85/m<sup>2</sup>

Vacant Residential Low Density (Sub Area 2) and Recreation zoned land purchased by the Ipswich City Council. The land is gradually undulating in contour with a natural depression traversing the land. It is constrained by: a Gas Pipeline Buffer Area Overlay; a small section by difficult topography; the 1 in 20 and 1 in 100 flood level; and the 90 metre Building Height Restriction. The line separating the zones is dotted which indicates that the zones are only indicative. Subject to further investigations it may be that the area of land capable of sub-division could be increased. An estimate of the land area zoned Residential Low Density is 1.5 hectares. The sale price equates to \$10.85/m<sup>2</sup> overall. Considered inferior on a rate/m<sup>2</sup> basis.

5. 354 West Mount Cotton Road, Cornubia

Sold 17 February, 2009 for \$2,700,000

Land area 43.29ha

Analysis: \$6.24/m<sup>2</sup>

Vacant Conservation designated land held as two (2) lots and purchased by the Logan City Council. The land is moderately undulating in contour and constrained by: Remaining bushland areas; vegetation management; bushfire hazard; and steep slopes. A high voltage powerline and water pipeline traverse the land. The sale price equates to \$6.24/m<sup>2</sup>. Considered superior on a rate/m<sup>2</sup> basis.

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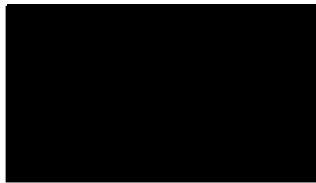
Lot 101 King Arthur Terrace  
Tennyson  
Brisbane City Council

VALUATION CONTINUED

Calculations

Having regard to the known sales evidence, we value the real property for the sum of **Two Hundred and Thirty-Six Thousand Dollars (\$236,000) excluding GST**, which we reasonably determine as follows:

$$11,800\text{m}^2 @ \$20/\text{m}^2 = \$236,000 \text{ excluding GST.}$$



Registered Valuer Qld 1908  
Certified Practising Valuer  
Savas Varitimos Valuer  
29 June, 2011

Lot 101 King Arthur Terrace  
Tennyson  
Brisbane City Council

REMARKS

There are no recently recorded sales evidence of properties similar in zone, potential, constraints and elevation to the subject property within the immediate locality.

The subject property is unique being zoned Community Area CU8 and having an approval for its use as Parkland. Many Local Authorities have been acquiring sites for conservation and recreational purposes over recent years. Local Authorities are generally the only likely purchasers for properties of this type. Often, as is the case here, it is conditioned into an approval for the developer to dedicate land for Park and Recreational purposes to Council in connection with an adjoining development.

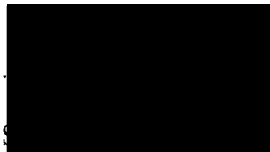
An extended marketing period may be required in selling a property of this type within this locality given the current state of the market and its limited use and potential.

We consider this valuation to be a reasonable interpretation of the available evidence and would be capable of realisation if offered for sale on the open market at the date of valuation.

This report is not to be used by the purchaser for pre-purchase advising or mortgage security purposes and no liability is extended in this regard.

This valuation is for the use only of the party to whom it is addressed and for no other purpose. No responsibility is accepted to any third party, who may use or rely on the whole of or any part of the content of this valuation and report without the written consent of the valuer.

In accordance with instructions we advise we do not have a pecuniary or other interest that would conflict with the proper valuation of the property.



Registered Valuer Qld 1908  
Certified Practising Valuer  
Savas Varitimos Valuer  
29 June, 2011

Lot 101 King Arthur Terrace  
Tennyson  
Brisbane City Council

QUALIFICATIONS & LIMITATIONS

1. We state that this valuation is for the use only of the Brisbane City Council. It is provided to assist in negotiating the purchase of the subject property.
2. This valuation assumes that there are no restrictions or onerous encumbrances other than those registered on Title.
3. We have not carried out a Contamination search or Investigation. Our assessment assumes that no contamination exists, and that the property complies with all environmental requirements set down by all relevant authorities.
4. In accordance with the International Valuation Standards Committee (IVSC) the definition of market value is as follows: "Market Value is the estimated amount for which an asset should exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion."
5. Copyright to this report is retained by Mikal Qld Pty Ltd as trustee for the Mikal Trust trading as Savas Varitimos Valuer and no copying or distribution of the valuation, either in full or in part, may be undertaken without the prior written consent of Mikal Qld Pty Ltd as trustee for the Mikal Trust trading as Savas Varitimos Valuer.
6. This valuation is current as at the date of valuation only. The value assessed herein may change significantly and unexpectedly over a relatively short period (including as a result of general market movement or factors specific to the particular property). We do not accept liability for losses arising from such subsequent changes in value. Without limiting the generality of the above comment, we do not assume any responsibility or accept any liability where this valuation is relied upon after the expiration of 30 days from the date of the valuation or such earlier date if you become aware of any factors that have any effect on the valuation.
7. In analysing the sales evidence referred to herein, it is noted that we have attempted to ascertain whether or not the sale price is inclusive or exclusive of Goods and Services Tax (GST). In relation to sales evidence, it is emphasised that Land Titles Offices in Australia do not currently differentiate between or record whether or not the sale price is inclusive or exclusive of GST. Where we have not been able to verify whether or not GST is included in the sale price, we have assumed that the record of sales price is exclusive of GST. Should this not be the case for any particular sale used as evidence, we reserve the right to reconsider our valuation.

Initial: 

**From:** [Redacted]  
**To:** [Redacted]  
**CC:** [Redacted]  
**Date:** 29/06/2011 10:23:35 AM  
**Subject:** RE: Tennyson Parkland TOR

---

Thanks for the revised

As discussed the proposed Section 1.7 is new and I would suggest it is removed as clauses relating to the timely completion of each stage are included in the Contract itself.

Could you please review and respond.

Thanks

[Redacted]  
Senior Development Manager  
Development Queensland

Mirvac  
Level 2, 164 Grey Street South Bank QLD 4101 Australia PO Box 5121 West End QLD 4101  
T: [Redacted]  
[Redacted] <http://www.mirvac.com>  
<http://ext.mirvac.com/email-disclaimer>

Please consider the environment before printing this email and attachments

-----Original Message-----

**From:** [Redacted]  
**Sent:** Tuesday, 28 June 2011 2:04 PM  
**To:** [Redacted]  
**Cc:** [Redacted]  
**Subject:** Tennyson Parkland TOR

Please review amended version of TOR pursuant to our meeting earlier. I have kept it simple, please see text highlighted in green under 1.2.3 and 1.2.9.

I confirm my understanding that you were going to send through some words on park amenity, please let me know about that.

[Redacted]

\*\*\*\*\*  
This message has passed through an insecure network.  
Please direct all enquiries to the message author.  
\*\*\*\*\*

\*\*\*\*\*  
This message has passed through an insecure network.  
Please direct all enquiries to the message author.  
\*\*\*\*\*

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**Attachments:** 20110628 Tennyson TOR.PDF

## TENNYSON RIVERSIDE PARKLAND: DESIGN DEVELOPMENT TERMS OF REFERENCE

The development of the Tennyson Reach Parkland is to occur in accordance with the following:

### 1.1 DESIGN DEVELOPMENT TECHNICAL TERMS OF REFERENCE

#### 1.2 NEEDS ASSESSMENT

The park will be classified as District Park, whereas the detailed make-up of ingredients will be determined in context of its envisaged user catchment profile and needs. This should be done through a needs assessment study to Council requirements for a District Park.

##### 1.2.1 DESIGN INTENT

Development of parkland at the site should be of a high quality, innovative and accessible riverside park featuring facilities that are commensurate to a District Park within the Council Park Classification System. The park and its facilities must be designed to be flood tolerant, low maintenance and accessible. Facilities provided within the park must be reflective of community needs including equitable access and play equipment that can be used by all levels and abilities. Design of the park must incorporate Crime Prevention through Environmental Design (CPTED) and sustainability best practice and be consistent with all other applicable Council standards and policies.

##### 1.2.2 PARK OBJECTIVES

The following are the key objectives that are intended to guide development of the park.

- ▶ To develop the park to a **District Parkland** standard  
The Brisbane City Council Park Classification system is a guide for the development of public parkland to ensure appropriate hierarchy of parks are provided across the city with appropriate levels of facilities and infrastructure provided within those parks. The Tennyson Parkland is intended to be of a District Level Park. The intended catchment of a District park is approximately a 2-5km radius around the site. Further information relating to the level of facilities intended for a district level park is available within the Park Classification System document.
- ▶ To design a park that is responsive to the **broader community need** and use, including:
  - Compliance with the requirements of the *Disability Discrimination Act 1992*;
  - Inclusion of Crime Prevention Through Environmental Design Principles (CPTED);
  - Conduct a community engagement process or needs assessment study to determine the facilities that are needed for the site.

As a district level public park, the site is anticipated to attract a broad range of users. The parkland proposal must therefore provide facilities that address the broad community need, including an all abilities playground; facilities that are compliant with the requirements of the Disability Discrimination Act 1992 and facilities that are safe and accessible to all.

- ▶ To achieve a development outcome that is **flood resilient/ tolerant**.  
The impact of the January 2011 floods on the site was extensive. Development of the parkland at the site must be responsive and tolerant of potential future flooding. It is intended that any improvements within this site should be designed to anticipate future inundation and reflect the location of the park as a riverside facility that is within the Brisbane River floodplain.
- ▶ To achieve a development outcome that is considerate of **long term maintenance requirements**.  
The development must include fittings and equipment on site that can be easily maintained. Preference is also noted for readily accessible, where possible, local products, that can be easily sourced when replacement is required.
- ▶ Compliance with **BCC and other applicable standards**  
Development of the park should be compliant with all applicable standards and requirements. This includes *City Plan 2000*, BCC Subdivision and Development Guidelines, Riverside Parks Design Manual, BCC Public Toilet Guidelines; Australian Standards, Standard Building Regulations, Building Code of Australia, and any other applicable provisions.

### 1.2.3 BULK EARTHWORKS

It is important to note that filling or excavation within a Waterway Corridor or area subject to the Wetland Code will trigger development application requirements. Hydraulic assessment of a proposal of this level of filling within proximity to the river will be required in order to ensure that there are no impacts upon surrounding areas. Consideration of the impacts of filling upon the river and water quality in the event of future inundation of the site should also be considered.

In regards to the site preparation, it is also requested that weed removal along the riverbank and restoration of appropriate native vegetation be included as part of the site preparation.

Given the intention to import a large volume of fill this material needs to be of a type and placement that can support the long term establishment of vegetation. Horticulturist input and certification required.

### 1.2.4 EXISTING STRUCTURES

If the proposal is to involve the establishment of the concrete suspended slab over the existing power house structures, long term maintenance considerations must be addressed. Additionally, where a suspended slab is constructed, the depth of soil placed over the slab must be sufficient to allow the maintenance and growth of turf and vegetation.

The change of the use of the Mirvac Sales office to a community use is supported, subject to Development Approval. The scope of works should include works to the building to ensure it complies with the relevant codes for a public building.

### 1.2.5 PARKLAND USES

#### • Community Uses

The change of the use of the Mirvac Sales office to a community use is supported, subject to Development Approval.

Operational details and nature of use should be addressed as part of the concept development stage.

#### • Sport and Recreation Uses

Establishment of a canoe facility with storage under the community building and establishment of a pontoon associated with the use should be subject to a needs assessment and identification of a user of the facility. If a canoe facility is pursued, operational details should be resolved as part of the concept design stage.

Any works associated with the community building or a canoe facility will need to be compliant with the provisions of the *Disability Discrimination Act 1992* and is subject to obtaining Development Approval.

#### • Park Elements

As part of the initial design development of the park elements, a needs assessment must be conducted to determine the demand and community requirements for this parkland area. The needs assessment should then guide the facilities that are established within the park. Uses already contemplated are:

##### o Play Area

Equipment must be for all abilities as per the recent Lord Mayor's announcement. A needs assessment should be conducted regarding requirements with the local Community Special School which have been identified as a potential park user.



Design of the play area is to be reviewed and obtain safety certification at the concept, documentation and construction stages.

Parkland equipment is to be sourced from Council's playground supplier panel.

The play area should consist of a mix of landscape elements and equipment.

- o Amphitheatre

The design of the amphitheatre should ensure it is a multi-use facility that can accommodate for screening of sporting events, music events and festivals, community events and passive recreation.

If an amphitheatre is established, three (3) phase power and provision for WiFi telecommunication infrastructure should be provided.

If the space between seating walls is to be turfed they should be suitably spaced to accommodate mowing vehicles. Otherwise low maintenance alternative surface finishes should be employed.

Vehicle access for bumping-in equipment and stages needs to be designated in the design, whilst turf surface needs to be hard wearing to cope with large events.

- o Plaza

Any plaza or arbour structures must be consistent with Crime Prevention Through Environmental Design (CPTED) principles.

Consideration of the impacts of any existing view corridors should be made in the design of any structures.

- o Amenities

Toilet facilities must be included as part of this parkland. Toilets must be designed in accordance with Council's Public Toilet Design Guidelines and should be located in proximity to the play area.

Provision of rubbish bins within the park should be compliant with Council's standard fixtures and sufficient for anticipated use.

- o Shading, Shelters and furniture

Shelters and shade planting should be supplied to compliment the park uses, inclusive of appropriate park furniture. Inclusion of BBQ facilities is supported and should be co-located with shelters.

Provision of bike racks should be located in proximity to key facilities, including the tennis centre.

Any structures, fixtures and furniture should be designed in accordance with Council standards and be considerate of long term maintenance requirements.

- o Movement and circulation

Establishment of a bike way through the park should ensure the minimisation of any risks of conflicts with park users and pedestrians.

The design of the park should be compliant with CPTED principles.

All pavements should be able to accommodate maintenance and emergency vehicles.

- o Art and Signage

Artworks across the site should be curated to ensure they contribute to an overall theme or message that is particular to the place.

Signage should be designed and co-ordinated as a suite.

Signage should be kept to a minimum and where possible applied to surfaces and structural elements to minimise the need for additional support structures.

o Furniture

Bin locations should afford easy access for maintenance staff.

Bins should enable park users to separate recyclable materials from general waste.

Furniture should be designed as a suite consisting of similar materials and finishes.

Materials and finishes should be kept to a minimum to enable ease of maintenance and repairs.

Items should be easily replaceable and should be installed in a manner that enables removal and replacement without excavation.

All furniture items should be suitable for disabled access and use.

#### 1.2.6 UTILITIES AND SERVICES

- Adequate fire fighting facilities should be provided
- Integrated systems and services for water supply, stormwater and sewerage connection should be provided
- Adequate overhead lighting should be provided, bollard lighting is not supported
- Sufficient three (3) phase power supply for use at the site
- Provision of telecommunication infrastructure including WiFi

#### 1.2.7 ACCESS AND PARKING

- Car parking provision and design is to be in accordance with Transport, Access, Parking and Servicing Code and Planning Scheme Policy
- Small bus and maxi taxi drop off area for Seniors and the Disabled should be provided
- Bikeway to be designed to minimise risk of conflicts with park users through the site
- Stormwater polishing from car parking areas and the overall site is to be included

#### 1.2.8 LANDSCAPING

- All landscaping elements of the park is to be designed in accordance with the Landscaping Code and associated Planning Scheme Policies
- All landscaping works including tree removal will be subject to the necessary development approval and permit requirements
- Weed removal from site is to be done as part of site preparation
- Landscaping to be designed with consideration of ongoing maintenance and should include endemic species in accordance with the Landscaping Code and the Planting Species Planning Scheme Policy

#### 1.2.9 SUSTAINABILITY

##### *Natural habitats and biodiversity*

Enhance species and habitat diversity and their links and interconnections. It is important to enhance what remains of Tennyson Parkland's natural landscape and through a program of vegetation restoration works, ensure that the ecological processes of the site can remain viable as habitat and wildlife corridors.

The Parkland site offers opportunities for weed removal and the re-establishment of vegetated corridors along the river edge. A diverse range of habitats could be established throughout this corridor to provide food and shelter for a broad variety of native wildlife.

*Integrated water management*

Simple and innovative engineering and management solutions can be tailored to suit the site conditions. These can reduce Tennyson Parkland's water consumption whilst providing a reliable, low cost alternative to using potable water supply for some uses via stormwater harvesting and re-use. Furthermore the quality of stormwater leaving the site can be improved and this will enhance the health of downstream aquatic habitats.

It is recommended that a total water management plan be developed for the parklands that identify potential alternative fit-for-purpose water sources to offset operational consumption of the potable supply.

*Energy & greenhouse gas emissions*

Incorporating renewable energy sources (such as solar generation) can be employed across the park to account for all or part of Tennyson Parkland's energy requirements. The Parkland's energy demands can also be reduced through the application of low energy fittings (such as LED lighting) and ensuring the design enables efficient maintenance practices to reduce fuel consumption by maintenance equipment, such as edge trimmers and mowers.

*Land resources*

The development should seek to achieve a highly efficient physical footprint that provides multiple social, economic and environmental benefits within the same space whilst providing opportunities for expansion of facilities to meet community needs over time.

By avoiding locking up space for a single intermittent use and providing opportunities for multiple simultaneous functions to occur, the design for Tennyson Parklands can provide the public with an efficient parkland space.

*Materials & construction methodologies*

Selecting durable, low maintenance materials from renewable and recycled sources can assist in reducing the amount of raw materials and production energy that will be required to develop Tennyson Parklands. The use of such materials can reduce cost over the lifetime of the development.

Tennyson Parkland will not be a static place over time. Many changes to the type and function of facilities in the parklands will occur due to changing community needs and desires. The process of future renovation and refurbishment can result in the creation of waste and low return on initial investment in the asset. By designing park elements to be disassembled, this will enable relocation or removal with minimal waste creation and permit asset cost recovery.

*Participation & awareness*

It is important that the community is aware and informed about the sustainability features of the Tennyson Parklands. Providing guidance and understanding about the intent of the design interventions and how they benefit the community and the environment is essential. Early community consultation processes, or physical elements such as interpretive artworks, signage or by expressing sustainability elements within the Parkland design, could assist in enhancing community awareness.

### 1.3 COMPLIANCE WITH EXISTING PROVISIONS

Lot 101 on SP195275 was included to be dedicated as parkland as part of the existing Preliminary Approval (A002824927). The conditions of this Preliminary Approval, in particular conditions 129 and 199 relates directly to Council requirements for the development of Lot 101 as parkland. The provisions of Condition 129 and Condition 199 should be applied to the development of the entire Parkland, thus also for the development of Lots 3, 4 and 5 on SP 195275.

### 1.4 APPROVAL OF KEY MILESTONE STAGES.

Approval will be sought from the Council Project Manager at the following milestone;

- Schematic design completion;
- Design development completion; and
- Construction drawing.

## 1.5 DESIGN APPROVAL AND COST PLAN DEVELOPMENT

The following process will be followed for the approval of the detailed design, agreement for the guaranteed construction costs and the detailed cost plan:

- The contractor will be responsible for submitting to the Superintendent the detailed design along with the P90 (or P95) cost estimate,
- The Superintendent will confirm that the detailed design is satisfactory, and approve the design for the purposes of construction,
- The Superintendent will review the design, P95 estimate and the cost plan and agree with the contractor the maximum cost for construction. (This guaranteed maximum cost is to be less than \$6 million).
- The detailed cost plan is to be provided as follows:
  - Stage 1, 2 and 3,
  - Each Stage is to be divided into the relevant trade and construction packages, and,
  - A cash flow showing:
    - Detailed design costs,
    - Stage 1 costs
    - Stage 2 costs,
    - Stage 3 costs,
    - Estimated weeks for completion of each payment milestone, and
    - Contractor management costs.
- The detailed cost plan is to be agreed by both parties, and this cost plan will be used for the sharing of cost savings in the agreement.

## 1.6 TIMELY COMPLETION OF EACH STAGE

It is expected that the contractor will complete all of the works (Stages 1 to 3 inclusive), within the 104 weeks agreed. If the contractor fails to complete the Stages in the agreed times, the Council will have the right to:

- Take over the works and the total site to complete the works,
- Deduct, as appropriate, the costs for completion of the park, and
- Provide accommodation for the Sales Office at commercial rates until the parkland is complete.

**From:** [REDACTED]

**To:** [REDACTED]

**CC:** [REDACTED]

**Date:** 29/06/2011 10:57:25 AM

**Subject:** RE: Tennyson Parkland TOR

---

Correct and Agree to removing clause 1.6 from the TOR.

We are having an internal meeting today at 11.30 and we may need to met with you and your team at 4.00pm. I will confirmed at 1.00pm today if this meeting is required.

The intention of this meeting is to finalise then and there any discrepancy between the Council and Mirvac re: the contract and the TOR.

Regards  
[REDACTED]

>>> [REDACTED] 29/06/2011 10:23:18 am >>>

Hi [REDACTED]

Thanks for the revised

As discussed the proposed Section 1.7 is new and I would suggest it is removed as clauses relating to the timely completion of each stage are included in the Contract itself.

Could you please review and respond.

Thanks

[REDACTED]  
Senior Development Manager  
Development Queensland

Mirvac

Level 2, 164 Grey Street South Bank QLD 4101 Australia PO Box 5121 West End QLD 4101

T + [REDACTED]

<http://www.mirvac.com>

<http://ext.mirvac.com/email-disclaimer>

Please consider the environment before printing this email and attachments

-----Original Message-----

**From:** [REDACTED]

**Sent:** Tuesday, 28 June 2011 2:04 PM

**To:** [REDACTED]

**Cc:** [REDACTED]

Subject: Tennyson Parkland TOR

Please review amended version of TOR pursuant to our meeting earlier. I have kept it simple, please see text highlighted in green under 1.2.3 and 1.2.9.

I confirm my understanding that you were going to send through some words on park amenity, please let me know about that.

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Please direct all enquiries to the message author.  
\*\*\*\*\*

\*\*\*\*\*  
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Please direct all enquiries to the message author.  
\*\*\*\*\*

## TENNYSON RIVERSIDE PARKLAND: DESIGN DEVELOPMENT TERMS OF REFERENCE

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It is important that the community is aware and informed about the sustainability features of the Tennyson Parklands. Providing guidance and understanding about the intent of the design interventions and how they benefit the community and the environment is essential. Early community consultation processes, or physical elements such as interpretive artworks, signage or by expressing sustainability elements within the Parkland design, could assist in enhancing community awareness.

### 1.3 COMPLIANCE WITH EXISTING PROVISIONS

Lot 101 on SP195275 was included to be dedicated as parkland as part of the existing Preliminary Approval (A002824927). The conditions of this Preliminary Approval, in particular conditions 129 and 199 relates directly to Council requirements for the development of Lot 101 as parkland. The provisions of Condition 129 and Condition 199 should be applied to the development of the entire Parkland, thus also for the development of Lots 3, 4 and 5 on SP 195275.

### 1.4 APPROVAL OF KEY MILESTONE STAGES.

Approval will be sought from the Council Project Manager at the following milestone;

- Schematic design completion;
- Design development completion; and
- Construction drawing.

## 1.5 DESIGN APPROVAL AND COST PLAN DEVELOPMENT

The following process will be followed for the approval of the detailed design, agreement for the guaranteed construction costs and the detailed cost plan:

- The contractor will be responsible for submitting to the Superintendent the detailed design along with the P90 (or P95) cost estimate,
- The Superintendent will confirm that the detailed design is satisfactory, and approve the design for the purposes of construction,
- The Superintendent will review the design, P95 estimate and the cost plan and agree with the contractor the maximum cost for construction. (This guaranteed maximum cost is to be less than \$6 million).
- The detailed cost plan is to be provided as follows:
  - Stage 1, 2 and 3,
  - Each Stage is to be divided into the relevant trade and construction packages, and,
  - A cash flow showing:
    - Detailed design costs,
    - Stage 1 costs
    - Stage 2 costs,
    - Stage 3 costs,
    - Estimated weeks for completion of each payment milestone, and
    - Contractor management costs.
- The detailed cost plan is to be agreed by both parties, and this cost plan will be used for the sharing of cost savings in the agreement.

## 1.6 TIMELY COMPLETION OF EACH STAGE

It is expected that the contractor will complete all of the works (Stages 1 to 3 inclusive), within the 104 weeks agreed. If the contractor fails to complete the Stages in the agreed times, the Council will have the right to:

- Take over the works and the total site to complete the works,
- Deduct, as appropriate, the costs for completion of the park, and
- Provide accommodation for the Sales Office at commercial rates until the parkland is complete.

**Subject:** Fwd: RE: Tennyson Parkland TOR

**Attachments:** TEXT.htm



TEXT.htm (10 KB)

>>> [REDACTED] 29/06/2011 11:55:28 AM >>>

Hi [REDACTED]  
Thanks for your feedback. I have everyone lined up for a 4pm meeting if required.  
Regards,

[REDACTED]  
Senior Development Manager  
Development Queensland

rvac  
Level 2, 164 Grey Street, South Bank QLD 4101 Australia PO Box 5121 West End QLD 4101 T

[REDACTED] <http://www.mirvac.com> Electronic  
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From: [REDACTED]  
Sent: Wednesday, 29 June 2011 10:57 AM  
To: [REDACTED]  
Cc: [REDACTED]

Subject: RE: Tennyson Parkland TOR

[REDACTED]  
Correct and Agree to removing clause 1.6 from the TOR.

We are having an internal meeting today at 11.30 and we may need to met with you and your team at 4.00pm. I will confirmed at 1.00pm today if this meeting is required.

The intention of this meeting is to finalise then and there any discrepancy between the Council and Mirvac re: the contract and the TOR.

Regards  
[REDACTED]

>>> [REDACTED] 29/06/2011 10:23:18 am >>>  
Hi [REDACTED]

Thanks for the revised

As discussed the proposed Section 1.7 is new and I would suggest it is removed as clauses relating to the timely completion of each stage are included in the Contract itself.

Could you please review and respond.

Thanks  
[REDACTED]

Senior Development Manager  
Development Queensland

Mirvac

[REDACTED] RE: Mirvac Queensland Pty Ltd - Sale to Brisbane City Council - Lots 3, 4, 5 & 101 Tennyson Reach - Email

**From:** [REDACTED]  
**To:** [REDACTED]  
**Date:** 29/06/2011 12:47 pm  
**Subject:** RE: Mirvac Queensland Pty Ltd - Sale to Brisbane City Council - Lots 3, 4, 5 & 101 Tennyson Reach - Email  
**CC:** [REDACTED]

[REDACTED] - I note that we have missed telephone messages from each other. For the sake of expediency, I attach clean, hopefully finalized, copies of:

- (1) Land Sale Contract for Lots 4, 5 & 101 (minus the Parkland Works Contract); and
- (2) Land Sale Contract for Lot 3.

Please note the following changes from the last drafts issued to you, namely:

- (a) we understand that the parties want to keep the current split of \$9 million & \$6 million for the Land Contract Purchase Prices and the Parkland Works Contract Price respectively. However, we believe that the Lot 3 Contract Purchase Price should mirror the valuation for Lot 3, otherwise we believe Mirvac may be liable to additional unnecessary Transfer Duty on any valuation amount in excess of the Contract Purchase Price. Accordingly, we have made the Lot 4, 5 & 101 Contract Purchase Price \$5,900,000 (plus GST) and the Lot 3 Contract Purchase Price \$3,100,000 (plus GST). The change in allocation of Purchase Prices should not be of concern as the Settlement Dates will be linked at the election of either party under the current Contract terms. We have also amended the Transfer Documents accordingly. In our view, Transfer Duty will still be payable on the total of the Valuation amounts (which we understand will total \$9,209,000 on the basis Lot 101 is valued at \$59,000) and Mirvac will pay the Transfer Duty attributable to the amount in excess of \$6 million (plus GST). I am still waiting for Mirvac to confirm these changes but would ask you to confirm Council's position. Thanks.
- (b) The Lot 4, 5 & 101 Contract special conditions have been amended in accordance with the below exchange of emails, namely - special condition 10 (Company Charge) - the Buyer will accept the Seller's statement in relation to any current registered company charges; special condition 11.1 (Lease) - the expiry date of the Lease of the Sales Office will be the date of commencement of the Stage 2 Works; and special condition 14 (Settlement Date) - either party has the right to extend the Settlement Date within the circumstances of the special condition.

Please confirm these changes and, subject to Mirvac's confirming instructions, we will issue amended Settlement Statements and Seller's Tax Invoices for the GST. Thanks.

Regards

[REDACTED]  
 Partner | Property & Projects  
 ClarkeKann

Tel: [REDACTED] [www.clarkekann.com.au](http://www.clarkekann.com.au)  
 Brisbane | Level 7, 300 Queen Street, Brisbane QLD 4000, Australia | GPO Box 2249, Brisbane QLD 4001, Australia  
 Sydney | Level 7, 55 Clarence Street, Sydney NSW 2000, Australia | GPO Box 1342, Sydney NSW 2001, Australia

-----O [REDACTED]  
**From:** [REDACTED]  
**Sent:** Tuesday, June 28 2011 3:49 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Mirvac Queensland Pty Ltd - Sale to Brisbane City Council - Lots 3, 4, 5 & 101 Tennyson Reach - Email

Hi [REDACTED]

On further review I confirm Council is prepared to waive the requirement of a letter from ING in respect of the charge registered over Mirvac Queensland Pty Limited.

In relation to Lot 101 and the consideration on the transfer as \$1, in our view a valuation would be required to satisfy the Commissioner of Duties that the value is \$1. Do you have another view?

Regards,

[REDACTED]  
Solicitor | Brisbane City Legal Practice  
Office of the Lord Mayor & CEO  
| Brisbane City Council  
266 George Street | GPO Box 1434 | Brisbane Qld 4001

Phone: [REDACTED]

[REDACTED]  
[REDACTED] Further to my below email, and based on current agreed purchase prices and based on settlements occurring on 30 June 2011, I attach drafts of the following:

- (1) Settlement Statement for Lots 4, 5 & 101 (-once we know the total unencumbered value of lots 3, 4, 5 & 101, we can calculate Mirvac's contribution to stamp duty which relates to the value in excess of \$6 million);
- (2) Settlement Statement for Lot 3;
- (3) Seller's Tax Invoice for sale of Lots 4, 5 & 101; and
- (4) Seller's Tax Invoice for sale of Lot 3.

Please let me have your input, if any. Thanks.

Regards

[REDACTED]  
Partner | Property & Projects

Tel: [REDACTED]

www.clarkekann.com.au  
Brisbane | Level 7, 300 Queen Street, Brisbane QLD 4000, Australia | GPO  
Box 2249, Brisbane QLD 4001, Australia  
Sydney | Level 7, 55 Clarence Street, Sydney NSW 2000, Australia | GPO  
Box 1342, Sydney NSW 2001, Australia

---

From: [REDACTED]  
Sent: Tuesday, June 28 2011 12:16 PM

To: [REDACTED]  
Cc: [REDACTED]  
Subject: RE: Mirvac Queensland Pty Ltd - Sale to  
BrisbaneCityCouncil-Lots 3, 4, 5 & 101 Tennyson Reach - Email

[REDACTED] I refer to our telephone conversation and confirm/note the following:

- (1) Land Sale Contract for Lots 4, 5 & 101 - I confirm we have no problems with amending special condition 14.1 to provide that "either the Seller or the Buyer may extend the Settlement Date.." in the circumstances referred to in the special condition. I also confirm the need to amend special condition 11.1 so that it refers to an expiry date for the Lease of the Sales Office being the "commencement of Stage 2 of the Parkland Works.." consistent with the draft Sales Office Lease issued.
- (2) Valuations - I note the independent valuations for Lots 3, 4 & 5 come in at \$9, 150,000 (plus GST). I confirm that you are making enquiries regarding the valuation of lot 101 (anticipated to be a nominal amount). As discussed, for ease of stamping of the Transfers, the parties should consider having the Land Contract purchase prices mirror the unencumbered valuations on which stamp duty is payable (with a corresponding decrease in the Parkland Works Contract). I will check with Mirvac and note you will check with the relevant person at BCC. Please also urgently advise the valuation of Lot 101.
- (3) Mirvac Queensland Pty Ltd Company Charge - As discussed, I attach an ASIC Company Extract for the Seller noting only one current registered Company Charge to ING Bank (Australia) Ltd (see page 25 of 31) as well as a copy of the relevant Company Charge. You will see from the definition of "Mortgaged Property" that the Company Charge is limited to the Seller's property at Ephraim Island and does not affect the Tennyson Reach land parcels. Amended special condition 10 (Company Charge) of the Land Sale Contracts would require the Seller to obtain a statement from the Chargee to this effect whereas time is unlikely to allow this. Accordingly, please confirm special condition 10 can be amended back to the drafting as originally submitted and/or confirm the Buyer will be satisfied based on the attachments. Thanks.

Thanks.

Regards

[REDACTED]  
Partner | Property & Projects

ClarkeKann

Tel: [REDACTED]  
www.clarkekann.com.au

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Original Message-----

From:

ld.gov.au%5d>

Sent: Tuesday, 28 June 2011 2:04 PM

To:

Cc:

Subject: Tennyson Parkland TOR

Please review amended version of TOR pursuant to our meeting earlier. I have kept it simple, please see text highlighted in green under 1.2.3 and 1.2.9.

I confirm my understanding that you were going to send through some words on park amenity, please let me know about that.

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\*\*\*\*\*

**From:** [REDACTED]**To:** [REDACTED]

Matthew Wallace;

**Date:** 29/06/2011 12:54:04 PM**Subject:** RE: Tennyson Parklands AS4902 [401365]

Hi Paul

Please find attached the revised contract following our review this morning.

Additional changes have been made to the following clauses:

- Definition: Qualifying Cause of Delay
- 9.7
- 9.8
- 44
- Part A Clause 33.

Regards

[REDACTED]  
Senior Development Manager  
Development Queensland

Mirvac  
Level 2, 164 Grey Street South Bank QLD 4101 Australia PO Box 5121 West End QLD 4101

[REDACTED] <http://www.mirvac.com>  
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**From:** [REDACTED]**Sent:** Wednesday, 29 June 2011 12:43 PM**To:** [REDACTED]; Matthew Wallace; Adam Moore; [REDACTED]**Subject:** Tennyson Parklands AS4902 [401365]

[REDACTED]  
**Attached** is a further amended draft contract in accordance with your instructions.

Regards  
[REDACTED]

Special Counsel | Construction & Resources

[REDACTED] [www.clarkekann.com.au](http://www.clarkekann.com.au)

---

**From:** [REDACTED]**Sent:** Monday, 27 June 2011 9:30 PM**To:** Matthew Wallace; Adam Moore; [REDACTED]**Subject:** Fw: Tennyson Parklands AS4902

**From:** [REDACTED]  
**Sent:** Monday, June 27, 2011 06:01 PM  
**To:** A [REDACTED]  
**Cc:** A [REDACTED]  
**Subject:** Tennyson Parklands AS4902

Dear [REDACTED]

We have completed quite a reworking of the AS4902 provided, but feel now it is actually more in accordance with the original agreement, and bearing in mind that we are buying land from Mirvac not the other way round and thus Mirvac is accepting the risk of design, costing, and statutory delays.

I look forward to our discussion tomorrow.

Regards

[REDACTED]  
Solicitor/Team Leader Commercial | Brisbane City Legal Practice  
Brisbane City Legal Practice  
Office of the Lord Mayor & CEO

Ph: [REDACTED]  
E-mail: [REDACTED]

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**Attachments:** Further Amended - AS 4902-2000 Draft23June 2011 DOC\_2060761\_(1)+BCLP 4\_30pm\_2064700\_(1).doc

AS 4902—2000  
(Incorporating Amendment No. 1)

AS 4902—2000

Tennyson Reach Parkland

**Brisbane City Council**

**ABN 72 002 765 795**

**Mirvac Constructions (Qld) Pty Limited**

**ACN 088 536 476**

Australian Standard™

**General conditions of contract for  
design and construct**

Print date 27 June 2011

Deleted: 16 June 2011

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DRAFT



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This Australian Standard was prepared by Committee OB-003, General Conditions of Contract. It was approved on behalf of the Council of Standards Australia on 7 September 1999. This Standard was published on 27 December 2000.

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Association of Consulting Engineers Australia  
 Australian Chamber of Commerce and Industry  
 Australian Procurement and Construction Council  
 AUSTROADS  
 Construction Industry Engineering Services Group  
 Construction Policy Steering Committee  
 Electricity Supply Association of Australia  
 Institution of Engineers, Australia  
 Institution of Professional Engineers, New Zealand  
 Law Council of Australia  
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*This Standard was issued in draft form for comment as DR 97528.*





AS 4902—2000  
(Incorporating Amendment No. 1)

Australian Standard™

**General conditions of contract for  
design and construct**

First published as AS 4300—1995.  
Revised and redesignated AS 4902—2000.  
Reissued incorporating Amendment No. 1 (March 2005).

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## PREFACE

This Standard was prepared by the Joint Standards Australia/Standards New Zealand Committee OB/3, General Conditions of Contract.

*This Standard incorporates Amendment No. 1 (March 2005). The changes required by the Amendment are indicated in the text by a marginal bar and amendment number against the clause, note, table, figure or part thereof affected.*

This Standard is the result of a consensus among Australian and New Zealand representatives on the Joint Committee to produce it as an Australian Standard.

AS 4902—2000 *General conditions of contract for design and construct*, is a part of the suite of conditions of contract based on AS 4000—1997 *General conditions of contract*.

This Standard covers the following types of project procurement methods:

- (a) design and construct;
- (b) design development and construct; and
- (c) design, novate and construct.

If the project procurement method chosen by the Principal is

- (a) **design and construct**—the Principal would provide the Principal's project requirements, would not normally provide a detailed preliminary design and would not require novation;
- (b) **design development and construct**—the Principal would provide the Principal's project requirements, would always provide a preliminary design and accordingly would complete Annexure Part A Items 10 and 11;
- (c) **design, novate and construct**—the Principal would provide the Principal's project requirements, would always provide a preliminary design, would complete Annexure Part A Items 10 and 11 and would complete Annexure Part A Item 20 stating which subcontract (including consultant's agreement) or selected subcontract is to be novated to the Contractor.

Subclauses 8.6 and 29.2, prefixed by \*, are optional, and may be omitted in the Contract, where necessary, without making consequential amendments but such omission should be clearly shown on the face of the document by striking out these subclauses or indicating clearly in clause 1 of Annexure Part E or elsewhere that they are *not to apply*. See paragraph (1) of clause 1 for the effect of stating deletions in Annexure Part E.

### WARNINGS

- (1) Users of this Australian Standard are warned that clause 15 (Damage to persons and property other than WUC) does not limit the liability of parties for special, indirect or consequential losses.

This unlimited liability applies notwithstanding any limitations or exclusions permitted under insurance clauses 16A (Insurance of the Works), 16B (Professional indemnity insurance) and 17 (Public liability insurance).

Parties wishing to limit their liability should seek insurance and legal advice before entering a contract under this Standard.

- (2) Principals should ensure that their specific requirements are fully and completely incorporated in the Principal's project requirements obtaining specialist advice if necessary. Where a Contractor provides a proposed design as part of its tender, the parties should consider whether that design should form part of the preliminary design.

- (3) The risk allocation, drafting, interpretation and construction of this Standard are interrelated. Users who alter the Standard do so at their own risk and should obtain specialist advice as to whether it is suitable for a particular project.
- (4) Contractors should ensure that they satisfy the requirements of payment for unfixed plant and materials.
- (5) Legislation has come into force in some jurisdictions dealing with security of payments. Parties intending to use this Standard should seek expert advice as to their rights and obligations under such legislation.

**DRAFT**

## CONTENTS

Clause	Title	Page	
1	INTERPRETATION AND CONSTRUCTION OF CONTRACT .....	6	Deleted: 7
2	NATURE OF CONTRACT .....	12	
3	PROVISIONAL SUMS .....	13	Deleted: 14
4	SEPARABLE PORTIONS .....	13	Deleted: 14
5	SECURITY .....	14	
6	EVIDENCE OF CONTRACT .....	15	
7	SERVICE OF NOTICES .....	15	
8	CONTRACT DOCUMENTS .....	15	
9	ASSIGNMENT AND SUBCONTRACTING .....	17	
10	INTELLECTUAL PROPERTY RIGHTS .....	20	Deleted: 19
11	LEGISLATIVE REQUIREMENTS .....	20	
12	PROTECTION OF PEOPLE AND PROPERTY .....	21	
13	URGENT PROTECTION .....	22	Deleted: 21
14	CARE OF THE WORK AND REINSTATEMENT OF DAMAGE .....	22	
15	DAMAGE TO PERSONS AND PROPERTY OTHER THAN WUC .....	23	
16A	INSURANCE OF WORKS .....	23	
16B	PROFESSIONAL INDEMNITY INSURANCE .....	24	Formatted
17	PUBLIC LIABILITY INSURANCE .....	24	
18	INSURANCE OF EMPLOYEES .....	25	
19	INSPECTION AND PROVISIONS OF INSURANCE POLICIES .....	25	
20	SUPERINTENDENT .....	26	
21	SUPERINTENDENT'S REPRESENTATIVE .....	26	
22	CONTRACTOR'S REPRESENTATIVE .....	27	
23	CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS .....	27	
24	SITE .....	27	
25	LATENT CONDITIONS .....	28	
26	SETTING OUT THE WORKS .....	28	
27	CLEANING UP .....	29	
28	MATERIALS, LABOUR AND CONSTRUCTION PLANT .....	29	
29	QUALITY .....	30	
30	EXAMINATION AND TESTING .....	31	
31	WORKING HOURS .....	31	
32	PROGRAMMING .....	31	Deleted: 32
33	SUSPENSION .....	32	
34	TIME AND PROGRESS .....	33	
35	DEFECTS LIABILITY .....	34	
36	VARIATIONS .....	35	
37	PAYMENT .....	36	

38 PAYMENT OF WORKERS, CONSULTANTS AND SUBCONTRACTORS ..... 37

39 DEFAULT OR INSOLVENCY ..... 38

40 TERMINATION BY FRUSTRATION ..... 42

41 NOTIFICATION OF CLAIMS ..... 42

42 DISPUTE RESOLUTION ..... 43

43 WAIVER OF CONDITIONS ..... 43

44 SHARED COST SAVINGS ..... 43

45 GST44

46 ENTIRE AGREEMENT ..... 45

PART A ..... 46

PART B ..... 61

PART C ..... 62

PART D ..... 64

PART E ..... 66

INDEX ..... 67

DRAFT

<b>Deleted: 38</b>
<b>Deleted: 44</b>
<b>Deleted: 44</b>
<b>Deleted: ¶</b>
1. INTERPRETATION AND CONSTRUCTION OF CONTRACT . 6¶
. 2. NATURE OF CONTRACT . 11¶
. 3. PROVISIONAL SUMS . 12¶
. 4. SEPARABLE PORTIONS . 12¶
. 5. SECURITY . 13¶
. 6. EVIDENCE OF CONTRACT . 14¶
. 7. SERVICE OF NOTICES . 14¶
. 8. CONTRACT DOCUMENTS . 14¶
. 9. ASSIGNMENT AND SUBCONTRACTING . 16¶
. 10. INTELLECTUAL PROPERTY RIGHTS . 17¶
. 11. LEGISLATIVE REQUIREMENTS . 18¶
. 12. PROTECTION OF PEOPLE AND PROPERTY . 18¶
. 13. URGENT PROTECTION . 18¶
. 14. CARE OF THE WORK AND REINSTATEMENT OF DAMAGE . 19¶
. 15. DAMAGE TO PERSONS AND PROPERTY OTHER THAN WUC . 20¶
. 16A. INSURANCE OF THE WORKS . 20¶
. 16B. PROFESSIONAL INDEMNITY INSURANCE . 21¶
. 17. PUBLIC LIABILITY INSURANCE . 21¶
. 18. INSURANCE OF EMPLOYEES . 22¶
. 19. INSPECTION AND PROVISIONS OF INSURANCE POLICIES . 22¶
. 20. SUPERINTENDENT . 23¶
. 21. SUPERINTENDENT'S REPRESENTATIVE . 23¶
. 22. CONTRACTOR'S REPRESENTATIVE . 24¶
. 23. CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS . 24¶
. 24. SITE . 24¶
. 25. LATENT CONDITIONS . 25¶
. 26. SETTING OUT THE WORKS . 25¶
. 27. CLEANING UP . 26¶
. 28. MATERIALS, LABOUR AND CONSTRUCTION PLANT . 26¶
. 29. QUALITY . 27¶
. 30. EXAMINATION AND TESTING . 28¶
. 31. WORKING HOURS . 28¶
. 32. PROGRAMMING . 29¶
. 33. SUSPENSION . 29¶
. 34. TIME AND PROGRESS . 30¶
. 35. DEFECTS LIABILITY . 31¶
. 36. VARIATIONS . 32¶
. 37. PAYMENT . 33¶
. Page¶
. 38. PAYMENT OF ... [1]

## STANDARDS AUSTRALIA

## Australian Standard

## General conditions of contract for design and construct

## 1 Interpretation and construction of Contract

In the *Contract*, except where the context otherwise requires:

- Item** means an *Item* in Annexure Part A;
- certificate of practical completion** has the meaning in subclause 34.6;
- compensable cause** means:
- any act, default or omission of the *Superintendent*, the *Principal* or its consultants, agents or other contractors (not being employed by the *Contractor*); or
  - those listed in *Item 31*.
- construction plant** means appliances and things used in the carrying out of *WUC* but not forming part of *the Works*;
- consultant** means any person engaged by the *Contractor* to perform consultancy services in connection with *WUC* and includes any *Principal's* consultant whose prior contract is novated to the *Contractor* under subclause 9.4;
- Contract** has the meaning in clause 6;
- contract sum** means:
- where the *Principal* accepted a lump sum, the lump sum;
  - where the *Principal* accepted rates, the sum of the products ascertained by multiplying the rates by the corresponding quantities in the *schedule of rates*; or
  - where the *Principal* accepted a lump sum and rates, the aggregate of the sums referred to in paragraphs (a) and (b),
- including *provisional sums* but excluding any additions or deductions which may be required to be made under the *Contract*;
- Contractor** means the person bound to carry out and complete *WUC*;
- Contractor's design obligations** means all tasks necessary to design and specify *the Works* required by the *Contract*, including preparation of the *design documents* and, if the documents stated in *Item 10* as describing the *Principal's project requirements* include a *preliminary design*, developing the *preliminary design*;

- date for practical completion** means:
- (a) where *Item 7(a)* provides a date for *practical completion*, the date;
  - (b) where *Item 7(b)* provides a period of time for *practical completion*, the last day of the period,
- but if any *EOT* for *practical completion* is directed by the *Superintendent* or allowed in any arbitration or litigation, it means the date resulting therefrom;
- date of acceptance of tender** means the date which appears on the written notice of acceptance of the tender;
- date of practical completion** means:
- (a) the date evidenced in a *certificate of practical completion* as the date upon which *practical completion* was reached; or
  - (b) where another date is determined in any arbitration or litigation as the date upon which *practical completion* was reached, that other date.
- deed of guarantee, undertaking and substitution** has the meaning in subclause 5.6;
- defects** has the meaning in clause 35 and includes omissions;
- defects liability period** has the meaning in clause 35;
- design documents** means the drawings, specifications and other information, samples, models, patterns and the like required by the *Contract* and created (and including, where the context so requires, those to be created by the *Contractor*) for the construction of the *Works*;
- direction** includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;
- dispute** has the meaning in clause 42;
- EOT (from 'extension of time')** has the meaning in subclause 34.3;
- excepted risk** has the meaning in subclause 14.3;
- final certificate** has the meaning in subclause 37.4;
- final payment** has the meaning in clause 37;
- final payment claim** means the final payment claim referred to in subclause 37.4;
- intellectual property right** means any patent, registered design, trademark or name, copyright or other protected right;
- latent condition** has the meaning in subclause 25.1;

**legislative requirement** includes:

- (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where *WUC* or the particular part thereof is being carried out;
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of *WUC*; and
- (c) fees and charges payable in connection with the foregoing;

**practical completion** is that stage in the carrying out and completion of *WUC* when:

- (a) *the Works* are complete except for minor defects:
  - (i) which do not prevent *the Works* from being reasonably capable of being used for their stated purpose;
  - (ii) which the *Superintendent* determines the *Contractor* has reasonable grounds for not promptly rectifying; and
  - (iii) the rectification of which will not prejudice the convenient use of *the Works*;
- (b) those *tests* which are required by the *Contract* to be carried out and passed before *the Works* reach *practical completion* have been carried out and passed; and
- (c) documents and other information required under the *Contract* which, in the *Superintendent's* opinion, are essential for the use, operation and maintenance of *the Works* have been supplied;

**preliminary design** means the documents stated in *Item 11*;

**prescribed notice** has the meaning in subclause 41.1;

**Principal** means the Principal stated in *Item 1*;

**Principal's project requirements ("PPRs")** means the *Principal's* written requirements for *the Works* described in the documents stated in *Item 10* which:

- (a) shall include the stated purpose for which *the Works* are intended;
- (b) may include the *Principal's* design, timing and cost objectives for *the Works*; and
- (c) where stated in *Item 10*, shall include a *preliminary design*.

are also referred to in this Contract as PPRs.

**program** has the meaning in clause 32;

**progress certificate** has the meaning in subclause 37.2;

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<b>Deleted:</b> (e) the Terms of Reference annexed as Annexure Two; provided that any Council approved design and budget documents pursuant to clause 9 shall prevail over any PPRs inconsistent or in conflict with such PPRs.
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*provisional sum* has the meaning in clause 3 and includes monetary sum, contingency sum and prime cost item;

*public liability policy* has the meaning in clause 17;

*qualifying cause of delay* means:

- (a) any act, default or omission of the Superintendent, the Principal or its consultants, agents or other contractors (not being employed by the Contractor);
- (b) industrial conditions;
- (c) inclement weather but the first:
  - 1. 20 days of inclement weather for Stage I works;
  - 2. 10 days of inclement weather for Stage II works;
  - 3. 5 days of inclement weather for Stage III works;
 encountered after the date of commencement of the relevant Stage will not be a qualifying cause of delay. Subsequent inclement weather, however, will be a qualifying cause of delay.
- (d) the length of time from the commencement of the submission of the Development Application up until the time that the Development Permit is issued for a particular Stage that is in excess of the following:
  - 1. 90 days for Stage I;
  - 2. 150 days for Stage II;
  - 3. 90 days for Stage III;
- (e) The time taken by the Superintendent to provide a notice pursuant to clause 9.8 that is in excess of 28 business days.
- (f) the qualifying causes of delay stated in Item 28;

*schedule of rates*

means any schedule included in the Contract which, in respect of any section or item of work to be carried out, shows the rate or respective rates of payment for the execution of that work and which may also include lump sums, provisional sums, other sums, quantities and prices;

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- security** means:
- (a) cash;
  - (b) retention moneys;
  - (c) bonds or inscribed stock or their equivalent issued by a national, state or territory government;
  - (d) interest bearing deposit in a bank carrying on business at the place stated in *Item 9(c)*;
  - (e) an approved unconditional undertaking (the form in Annexure Part B is approved) or an approved performance undertaking given by an approved financial institution or insurance company; or
  - (f) other form approved by the party having the benefit of the security;
- selected subcontract work** has the meaning in subclause 9.3;
- selected subcontractor** has the meaning in subclause 9.3;
- separable portion** means a portion of *the Works* identified as such in the *Contract* or by the *Superintendent* pursuant to clause 4;
- site** means the lands and other places to be made available and any other lands and places made available to the *Contractor* by the *Principal* for the purpose of the *Contract*;
- Stage I** means the area shown as Stage I on drawing entitled '*Masterplan*', referenced 110406 and dated 17/05/11
- Stage II** means the area shown as Stage II on drawing entitled '*Masterplan*', referenced 110406 and dated 17/05/11
- Stage III** means the area shown as Stage III on drawing entitled '*Masterplan*', referenced 110406 and dated 17/05/11
- subcontractor** in clauses 3 and 9 includes a *consultant*;
- Superintendent** means the person stated in *Item 5* as the Superintendent or other person from time to time appointed in writing by the *Principal* to be the Superintendent and notified as such in writing to the *Contractor* by the *Principal* and, so far as concerns the functions exercisable by a *Superintendent's Representative*, includes a *Superintendent's Representative*;
- Superintendent's Representative** means an individual appointed in writing by the *Superintendent* under clause 21;
- survey mark** in clause 26 means a survey peg, benchmark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring *WUC*;
- temporary works** means *work* used in carrying out and completing *WUC*, but not forming part of *the Works*;
- test** has the meaning in subclause 30.1 and includes examine and measure;

**the Works** means the whole of the *work* to be carried out and completed in accordance with the *Contract*, including *variations* provided for by the *Contract*, which by the *Contract* is to be handed over to the *Principal*;

**variation** has the meaning in clause 36;

**work** includes the provision of materials;

**WUC (from 'work under the Contract')** means the *work* which the *Contractor* is or may be required to carry out and complete under the *Contract* and includes *variations*, remedial *work*, *construction plant* and *temporary works*,

and like words have a corresponding meaning.

In the *Contract*:

- (a) references to days mean calendar days and references to a person include an individual, firm or a body, corporate or unincorporate;
- (b) time for doing any act or thing under the *Contract* shall, if it ends on a Saturday, Sunday or Statutory or Public Holiday, be deemed to end on the day next following which is not a Saturday, Sunday or Statutory or Public Holiday;
- (c) clause headings and subclause headings shall not form part of, nor be used in the interpretation of, the *Contract*;
- (d) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context. Words importing a gender include every gender;
- (e) communications between the *Principal*, the *Superintendent* and the *Contractor* shall be in the English language;
- (f) measurements of physical quantities shall be in legal units of measurement of the jurisdiction in *Item 8*;
- (g) unless otherwise provided, prices are in the currency in *Item 9(a)* and payments shall be made in that currency at the place in *Item 9(b)*;
- (h) the law governing the *Contract*, its interpretation and construction, and any agreement to arbitrate, is the law of the jurisdiction in *Item 8*; and
- (i) if pursuant to Annexure Part E to these General Conditions, clauses or their parts in these General Conditions are deleted, the *Contract* shall be read and construed as though the clause or its part has been deleted, whether or not that particular clause or its part has been struck from these General Conditions.

## 2 Nature of Contract

### 2.1 Performance and payment

It is a condition of this Contract that the Principal engages the Contractor for the sole purpose of designing and constructing the Tennyson Reach Parklands in accordance with this Contract.

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~~It is a further condition of this Contract that the Principal will not reduce the level of amenity or the standard of finish below that which is set out in the preliminary design.~~

The Contractor shall carry out and complete WUC in accordance with the Contract and directions authorised by the Contract.

The Principal shall pay the Contractor:

- (a) for work for which the Principal accepted a lump sum, the lump sum; and
- (b) for work for which the Principal accepted rates, the sum of the products ascertained by multiplying the measured quantity of each section or item of work actually carried out under the Contract by the rate accepted by the Principal for the section or item, adjusted by any additions or deductions made pursuant to the Contract.

### 2.2 Contractor's warranties

Without limiting the generality of subclause 2.1, the Contractor warrants to the Principal that:

- (a) the Contractor:
  - (a) at all times shall be suitably qualified and experienced, and shall exercise due skill, care and diligence in the carrying out and completion of WUC;
  - (b) has examined any preliminary design included in the Principal's project requirements and that such preliminary design is suitable, appropriate and adequate for the purpose stated in the Principal's project requirements;
  - (c) shall carry out and complete the Contractor's design obligations to accord with the Principal's project requirements and, if subclause 9.4 applies, accept the novation and retain the Principal's consultants for any work the subject of a prior contract with the Principal; and
  - (d) shall carry out and complete WUC in accordance with the design documents so that the Works, when completed, shall:
    - (A) be fit for to be used as a public park as is set out in the PPRs; and
    - (B) comply with all the requirements of the Contract; and
- (b) subject to clause 9, the consultants identified in the Contractor's tender are suitably qualified and experienced.

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### 2.3 Warranties unaffected

The warranties remain unaffected notwithstanding:

- (a) that design work (including the preliminary design) has been carried out by or on behalf of the Principal and included in the Principal's project requirements;
- (b) that the Contractor has entered into a novation of any prior contract between the Principal and a Principal's consultant under subclause 9.4 and thereafter has retained that consultant in connection with WUC;

- (c) any receipt or review of, or comment or *direction* on, the *design documents* by the *Superintendent*; or
- (d) any *variation*.

#### 2.4 Quantities

Quantities in a *schedule of rates* are estimated quantities only.

The *Superintendent* is not required to give a *direction* by reason of the actual quantity of an item required to perform the *Contract* being greater or less than the quantity shown in the *schedule of rates*.

#### 2.5 Adjustment for actual quantities

Where, otherwise than by reason of a *direction* to vary *WUC*, the actual quantity of an item required to perform the *Contract* is greater or less than the quantity shown in the *schedule of rates*:

- (a) the *Principal* accepted a lump sum for the item, the difference shall be a deemed *variation*;
- (b) the *Principal* accepted a rate for the item, the rate shall apply to the greater or lesser quantities provided that where limits of accuracy for a quantity in a *schedule of rates* are stated in *Item 12*, the rate shall apply to the greater or lesser quantities within the limits, and quantities outside the limits shall be a deemed *variation*.

If such a *schedule of rates* omits an item which should have been included, the item shall be a deemed *variation*.

### 3 Provisional sums

A *provisional sum* included in the *Contract* shall not itself be payable by the *Principal* but where pursuant to a *direction* the work or item to which the *provisional sum* relates is carried out or supplied by the *Contractor*, the work or item shall be priced by the *Superintendent*, and the difference shall be added to or deducted from the *contract sum*.

Where any part of such work or item is carried out or supplied by a *subcontractor*, the *Superintendent* shall allow the amount payable by the *Contractor* to the *subcontractor* for the work or item, disregarding:

- (a) any damages payable by the *Contractor* to the *subcontractor* or vice versa; and
- (b) any deduction of cash discount for prompt payment,

plus an amount for profit and attendance calculated by using the percentage thereon stated in *Item 13* or elsewhere in the *Contract*, or, if not so stated, as assessed by the *Superintendent*.

### 4 Separable portions

*Separable portions* may be directed by the *Superintendent*, who shall clearly identify for each, the:

- (a) portion of the *Works*;
- (b) *date for practical completion*; and
- (c) respective amounts for *security*, bonus, liquidated damages and delay damages (all calculated pro-rata according to the ratio of the *Superintendent's* valuation of the *separable portion* to the *contract sum*).

## 5 Security

### 5.1 Provision

*Security* shall be provided in accordance with *Item 14* or *15*. All delivered *security*, other than cash or retention moneys, shall be transferred in escrow.

### 5.2 Recourse

*Security* shall be subject to recourse by a party who remains unpaid after the time for payment where at least 5 days have elapsed since that party notified the other party of intention to have recourse.

### 5.3 Change of security

At any time a party providing retention moneys or cash *security* may substitute another form of *security*. To the extent that another form of *security* is provided, the other party shall not deduct, and shall promptly release and return, retention moneys and cash *security*.

### 5.4 Reduction and release

Upon the issue of the *certificate of practical completion* a party's entitlement to *security* (other than in *Item 14(e)*) shall be reduced by the percentage or amount in *Item 14(f)* or *15(d)* as applicable, and the reduction shall be released and returned within 14 days to the other party.

The *Principal's* entitlement to *security* in *Item 14(e)* shall cease 14 days after incorporation into the *Works* of the plant and materials for which that *security* was provided.

A party's entitlement otherwise to *security* shall cease 14 days after *final certificate*.

Upon a party's entitlement to *security* ceasing, that party shall release and return forthwith the *security* to the other party.

### 5.5 Trusts and interest

Except where held by a government department or agency or a municipal, public or statutory authority, any portion of *security* (and interest earned thereon) which is cash or retention moneys, shall be held in trust for the party providing them until the *Principal* or the *Contractor* is entitled to receive them.

Interest earned on *security* not required to be held in trust shall belong to the party holding that *security*.

### 5.6 Deed of guarantee, undertaking and substitution

Where:

- (a) a party is a related or subsidiary corporation (as defined in the applicable corporations law of the jurisdiction); and
- (b) a form of *deed of guarantee, undertaking and substitution* was included in the tender documents,

that party shall, within 14 days after receiving a written request from the other party, provide such *deed of guarantee, undertaking and substitution* duly executed and enforceable.

## 6 Evidence of Contract

Until a formal instrument of agreement is executed by the parties, documents evidencing the parties' consensus shall constitute the *Contract*. If such *Contract* requires a formal instrument of agreement, the *Principal* shall, within 28 days of the *date of acceptance of tender*, send it in duplicate for execution by the *Contractor*. Within 14 days after receiving them, the *Contractor* shall (if they are correct) properly execute both copies and return them.

Within 14 days after receiving them, the *Principal* shall execute both copies, have them stamped as necessary and send one copy to the *Contractor*.

The *Superintendent* may extend the time under this clause by written notice to the parties.

## 7 Service of notices

A notice (and other documents) shall be deemed to have been given and received:

- (a) if addressed or delivered to the relevant address in the *Contract* or last communicated in writing to the person giving the notice; and
- (b) on the earliest date of:
  - (a) actual receipt;
  - (b) confirmation of correct transmission of fax; or
  - (c) 3 days after posting.

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## 8 Contract documents

### 8.1 Discrepancies

Figured shall prevail over scaled dimensions in a discrepancy. Otherwise, if either party discovers any inconsistency, ambiguity or discrepancy in any document prepared for the purpose of carrying out *WUC*, that party shall give the *Superintendent* written notice of it. The *Superintendent*, thereupon, and upon otherwise becoming aware, shall direct the *Contractor* as to the interpretation and construction to be followed.

The *Contractor* shall bear the cost of compliance with a *direction* under this subclause to the extent that any inconsistency, ambiguity or discrepancy in the *design documents* or between the *design documents* and the *Principal's project requirements* necessitates the *direction*.

If compliance with any other *direction* under this subclause causes the *Contractor* to incur more or less cost than otherwise would have been incurred had the *direction* not been given, the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

### 8.2 Principal-supplied documents

The *Principal* shall supply to the *Contractor* the documents and number of copies thereof, both stated in *Item 16*.

They shall:

- (a) remain the *Principal's* property and be returned to the *Principal* on written demand; and
- (b) not be used, copied nor reproduced for any purpose other than *WUC*.

### 8.3 Contractor-supplied documents

The *Contractor* shall supply to the *Superintendent* the documents and number of copies at the times or stages stated in *Item 17*.

Other documents and information required by the *Contract*, unless elsewhere stated in the *Contract*, shall be supplied not less than 14 days before the *work* described in the documents is commenced and shall be in a form satisfactory to the *Superintendent*.

If the *Contractor* submits a document to the *Superintendent*, then except where the *Contract* otherwise provides:

- (a) the *Superintendent* shall not be required to check that document for errors, omissions, inconsistencies, ambiguities, discrepancies or compliance with the *Contract*;
- (b) notwithstanding subclause 2.1, any *Superintendent's* acknowledgment or approval shall not prejudice the *Contractor's* obligations; and
- (c) if the *Contract* requires the *Contractor* to obtain the *Superintendent's* direction about that document, the *Superintendent* shall give, within the time stated in *Item 18*, the appropriate *direction*, including reasons if the document is not suitable.

A *direction* by the *Superintendent* to vary anything in the *design documents* shall be a *variation* to *WUC* only to the extent that the *design documents*, before such *variation*, complied, or would have complied, with the *Principal's* project requirements.

Copies of documents supplied by the *Contractor* shall be the *Principal's* property but shall not be used nor copied otherwise than for the use, repair, maintenance or alteration of the *Works*.

### 8.4 Availability

The *Contractor* shall keep available to the *Superintendent* and the *Principal*:

- (a) on *site*, one complete set of documents affecting *WUC* and supplied by a party or the *Superintendent*; and
- (b) at the place of manufacture or assembly of any significant part of *WUC* off *site*, a set of the documents affecting that part.

### 8.5 Confidential information

The parties shall ensure that there are kept confidential such documents, samples, models, patterns and other information as are supplied and clearly identified as confidential.

If required in writing by a party, the other party shall enter into a separate agreement not to disclose to anyone else any confidential matter even after *final certificate* or earlier termination of the *Contract*. If so required by the *Contractor*, the *Principal* shall ensure that the *Superintendent* also enters into such an agreement.

### \* 8.6 Media

The *Contractor* shall not disclose any information concerning the project for distribution through any communications media without the *Principal's* prior written approval (which shall not be unreasonably withheld). The *Contractor* shall refer to the *Principal* any enquiries from any media concerning the project.

\* See Preface



## 9 Assignment and subcontracting

### 9.1 Assignment

Neither party shall, without the other's prior written approval (including terms) assign the *Contract* or any payment or any other right, benefit or interest thereunder.

### 9.2 Subcontracting generally

The Contractor may not appoint or subcontract any *WUC* without the prior written approval of the Principal which such approval shall not be unreasonably withheld provided the Contractor has made full disclosure to the Principal as to the terms and conditions of the proposed contract with the subcontractor.

The Contractor shall not without the Superintendent's prior written approval (which shall not be unreasonably withheld):

- (a) subcontract or allow a subcontractor to subcontract any work described in Item 19; or
- (b) allow a subcontractor to assign a subcontract or any payment or any other right, benefit or interest thereunder.

With a request for approval, the Contractor shall give the Superintendent written particulars of the work to be subcontracted and the name and address of the proposed subcontractor. The Contractor shall give the Superintendent other information which the Superintendent reasonably requests, including the proposed subcontract documents without prices.

Within 14 days of the Contractor's request for approval, the Superintendent shall give the Contractor written notice of approval or of the reasons why approval is not given.

Approval may be conditional upon the subcontract including:

- (a) provision that the subcontractor shall not assign nor subcontract without the Contractor's written consent;
- (b) provisions which may be reasonably necessary to enable the Contractor to fulfil the Contractor's obligations to the Principal;
- (c) provision that if the Contract is terminated and upon the subcontractor being paid the sum certified by the Superintendent as owing to the subcontractor, the Contractor and the subcontractor shall, after the Principal has done so, promptly execute a deed of novation in the form of Annexure Part C.

For the purpose of effecting such novation only, the Contractor hereby irrevocably appoints the Superintendent to be the Contractor's attorney with authority to execute such documents as are necessary to give effect to the novation and to bind the Contractor accordingly; and

- (d) where the subcontractor is a consultant, provision that the subcontractor shall effect and maintain professional indemnity insurance on the same terms as are required under Items 24(c) and 24(d).

### 9.3 Selected subcontract work

If the Principal has included in the invitation to tender a list of one or more selected subcontractors for particular work, the Contractor shall subcontract that work to a selected subcontractor and thereupon give the Superintendent written notice of that selected subcontractor's name.

If no subcontractor on the Principal's list will subcontract to carry out the selected subcontract work, the Contractor shall provide a list for the written approval of the Superintendent.

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9.4 Novation

This subclause applies only where the *Principal's project requirements* include a *preliminary design* or the *Contract* includes *selected subcontract work*.

When directed by the *Principal*, the *Contractor*, without being entitled to compensation, shall promptly execute a deed of novation in the form of Annexure Part D, such deed being between the *Principal*, the *Contractor* and the *subcontractor* or the *selected subcontractor* stated in *Item 20* for the particular part of the *preliminary design* or *selected subcontract work*.

9.5 Contractor's responsibility

Except where the *Contract* otherwise provides, the *Contractor* shall be liable to the *Principal* for the acts, defaults and omissions of *subcontractors* (including *selected subcontractors*) and employees and agents of *subcontractors* as if they were those of the *Contractor*.

Approval to subcontract shall not relieve the *Contractor* from any liability or obligation under the *Contract*

9.6 Design and documentation development

The Contractor's design obligations are as follows:

- (a) The Contractor must determine which statutory approvals are required for the completion of the design in accordance with the Contract and the PPRs;
- (b) The Contractor must procure the design documents that comprise:
  - (a) the relevant statutory approvals;
  - (b) the design and documentation;
  - (c) cost estimates that shall include all costs to carry out the Works on a subcontractor and supplier basis and shall include all of the Contractor's costs but shall not include profit.
- (c) The Contractor must deliver an electronic copy of the latest set of design documents at the:
  - (a) schematic design complete phase (30% complete of the design);
  - (b) design development complete phase (80% complete of the design); and
  - (c) construction documentation complete phase (95% complete of the design);
 in sufficient time to ensure that there will be no delay to the dates for practical completion.
- (d) The Superintendent may request the Contractor to provide an explanation of any design documents, cost estimate or to provide a report on any design matter at the Contractor's cost;
- (e) The Contractor must procure the design documents necessary for the completion of the Works in accordance with the PPRs and in accordance with sound engineering and building practice;
- (f) The Contractor must notify the Superintendent of the time and cost implications of every design changes that is directed by the Superintendent.

The contract sum must not exceed \$6,000,000 (excl. GST) unless varied by the Superintendent in accordance with this Contract.

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In the event that the Superintendent directs a variation that will cause the contract sum to exceed \$6,000,000 (excl GST), the Contractor must provide the Superintendent notice accordingly within 5 business days and, if possible, provide suggestions as to how the design may be further amended in order to ensure that the contract sum does not exceed \$6,000,000 (excl GST).

The Contractor is entitled to, and may claim an extension of time and payment for costs incurred arising out of any variations to the preliminary design directed by the Superintendent.

9.7 Review of design documents

Upon receipt of the design documents provided by the Contractor pursuant to above clauses 9.6(c)(a) and 9.6(c)(b), the Superintendent must review the design documents.

Within 10 business days of receipt of the design documents, the Superintendent must instruct the Contractor whether or not the design documents are acceptable to the Principal including any direction to amend the design if so required.

9.8 Cost Estimate of the Works

Upon receipt of the design documents at the construction documentation complete phase referred to in above clause 9.6(c)(c), the Superintendent must obtain an independent cost assessment of the design documents (QS Report) and provide a copy of the QS Report to the Contractor.

For the purposes of this clause, within 28 business days of receipt of the design documents, the Superintendent must instruct the Contractor whether or not the design documents are acceptable to the Principal. If the design documents are not acceptable to the Principal, the Superintendent may direct that the Principal requires up to a further 14 business days to consider the design documents.

If the design documents and cost estimate are not acceptable to the Principal, the Superintendent must set out its reasons as to why the design documents and cost estimate do not comply with this Contract or provide further instructions to change the design documents and cost estimate.

If the parties reach agreement as to the design documents and the cost estimate, that cost estimate shall be revised contract sum (Cost Estimate) and shall be used for the purposes of calculating further cost savings under clause 44.

If the parties are unable to reach agreement of the design documents or the cost estimate, the Superintendent must direct the Contractor to progress the Works on the basis of the design. Additionally, the Superintendent shall determine the Cost Estimate based upon the design documents, the cost estimate and the QS Report. In this event, the Contractor may provide the Principal a notice of dispute and refer the matter to expert determination in accordance with the Contract.

If the Superintendent does not advise the Contractor within the time stated in this clause, the design documents and cost estimate submitted in accordance with this clause 9.6(c) are deemed to have satisfied the requirements of this Contract and will be the design documents to be used to construct the Works and the Cost Estimate setting out the breakup of the contract sum. In this case, contract sum must not exceed \$6,000,000.00 (Excl GST).

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## 10 Intellectual property rights

### 10.1 Warranties and indemnities

The *Principal* warrants that, unless otherwise provided in the *Contract*, the *Principal's* project requirements, design, materials, documents and methods of working, each specified in the *Contract* or provided or directed by the *Principal* or the *Superintendent* shall not infringe any *intellectual property right*.

The *Contractor* warrants that any other design, materials, documents and methods of working, each provided by the *Contractor*, shall not infringe any *intellectual property right*.

Each party shall indemnify the other against such respective infringements.

### 10.2 Intellectual property rights granted to Principal

The Alternative in *Item 21* applies.

#### Alternative 1

The *Contractor* grants to the *Principal* an irrevocable licence to use the *design documents* for *WUC*. Such licence shall also include any subsequent repairs to, maintenance or servicing of (including the supply of replacement parts), or additions or alterations to, the *Works* and the copying of the documents for such purposes.

#### Alternative 2

Copyright and property in the *design documents* (and, as between the *Principal* and the *Contractor*, any part of the *preliminary design* produced under a prior contract between the *Principal* and a *Principal's* consultant novated under subclause 9.4) hereby vest in the *Principal*, and the *Principal* grants to the *Contractor* an irrevocable licence to use the *design documents* for *WUC*. Such vesting shall not extend to components of the design which have been developed by the *Contractor* for general use in the *Contractor's* work and have not been specially developed for incorporation in the *design documents*.

The *Contractor* shall do everything necessary to perfect such vesting.

The *Contractor* shall ensure that the *design documents* are used, copied and supplied only for the purpose of *WUC*.

## 11 Legislative requirements

### 11.1 Compliance

The *Contractor* shall satisfy all *legislative requirements* except those in *Item 22(a)* or directed by the *Superintendent* to be satisfied by or on behalf of the *Principal*.

The *Contractor*, upon finding that a *legislative requirement* is at variance with the *Contract* or the *Principal's* project requirements, shall promptly give the *Superintendent* written notice thereof.

### 11.2 Changes

If a *legislative requirement*:

- (a) necessitates a change:
  - (a) to the *Principal's* project requirements;
  - (b) to the *Works*;
  - (c) to so much of *WUC* as is identified in *Item 22(b)*;

**Deleted:** When the *Principal* has agreed to the *Design and Cost Estimate*, the *Contractor* must perform the *Works* strictly according to the *Design and Cost Estimate* it being a material condition of this *Contract* that the *Principal* shall not be liable to the *Contractor* for any contract sum, whether by way of *EOIs*, delay costs, variations or other liabilities, above the agreed absolute cap of Six Million Dollars (\$6,000,000.00).†

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- (d) being the provision of services by a municipal, public or other statutory authority in connection with *WUC*; or
- (e) in a fee or charge or payment of a new fee or charge;
- (b) comes into effect after the 14th day before the closing of tenders but could not reasonably then have been anticipated by a competent contractor; and
- (c) causes the *Contractor* to incur more or less cost than otherwise would have been incurred,

the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

### 11.3 Occupational health and safety

The Principal appoints the Contractor as Principal Contractor in accordance with the Workplace Health & Safety Act 1995 (Qld) (WHS legislation).

Without limiting the generality of clause 11.1 and 11.2, the Contractor must comply with all legislative requirements, codes of practice, and standards (including Australian Standards) in relation to occupational health and safety. The Contractor must instruct its employees, subcontractors and consultants to:

- (a) follow safe work practices and procedures at all times;
- (b) take reasonable care for their own safety; and
- (c) take reasonable care for the health and safety of anyone else who may be affected by anything that they do or fail to do,

in connection with the *WUC*,

If requested by the *Superintendent*, the Contractor must provide the following information about the Contractor's occupational health and safety systems and those of its subcontractors or consultant's:

- (d) safe working practices and procedures; and
- (e) occupational health and safety practices and procedures;

The Contractor must ensure that all employees, subcontractors, consultants and appointees have completed an appropriate induction prior to commencement on the *WUC*.

### 12 Protection of people and property

Insofar as compliance with the *Contract* permits, the *Contractor* shall:

- (a) take measures necessary to protect people and property;
- (b) avoid unnecessary interference with the passage of people and vehicles; and
- (c) prevent nuisance and unreasonable noise and disturbance.

If the *Contractor* damages property, the *Contractor* shall promptly rectify the damage and pay any compensation which the law requires the *Contractor* to pay.

If the *Contractor* fails to comply with an obligation under this clause, the *Principal*, after the *Superintendent* has given reasonable written notice to the *Contractor* and in addition to the *Principal's* other rights and remedies, may have the obligation performed by others. The cost thereby incurred shall be certified by the *Superintendent* as moneys due from the *Contractor* to the *Principal*.

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### 13 Urgent protection

If urgent action is necessary to protect *WUC*, other property or people and the *Contractor* fails to take the action, in addition to any other remedies of the *Principal*, the *Superintendent* may take the necessary action. If the action was action which the *Contractor* should have taken at the *Contractor's* cost, the *Superintendent* shall certify the cost incurred as moneys due from the *Contractor* to the *Principal*.

If time permits, the *Superintendent* shall give the *Contractor* prior written notice of the intention to take action pursuant to this clause.

### 14 Care of the work and reinstatement of damage

#### 14.1 Care of WUC

Except as provided in subclause 14.3, the *Contractor* shall be responsible for care of:

- (a) the whole of *WUC* from and including the date of commencement of *WUC* to 4:00 pm on the date of practical completion, at which time responsibility for the care of the *Works* (except to the extent provided in paragraph (b)) shall pass to the *Principal*; and
- (b) outstanding work and items to be removed from the site by the *Contractor* after 4:00 pm on the date of practical completion until completion of outstanding work or compliance with clauses 29, 30 and 35.

Without limiting the generality of paragraph (a), the *Contractor* shall be responsible for the care of unfixed items accounted for in a progress certificate and the care and preservation of things entrusted to the *Contractor* by the *Principal* or brought onto the site by subcontractors for carrying out *WUC*.

#### 14.2 Reinstatement

If loss or damage, other than that caused by an *excepted risk*, occurs to *WUC* during the period of the *Contractor's* care, the *Contractor* shall at its cost, rectify such loss or damage.

In the event of loss or damage being caused by any of the *excepted risks* (whether or not in combination with other risks), the *Contractor* shall to the extent directed by the *Superintendent*, rectify the loss or damage and such rectification shall be a deemed variation. If loss or damage is caused by a combination of *excepted risks* and other risks, the *Superintendent* in pricing the variation shall assess the proportional responsibility of the parties.

#### 14.3 Excepted risks

The *excepted risks* causing loss or damage, for which the *Principal* is liable, are:

- (a) any negligent act or omission of the *Superintendent*, the *Principal* or its consultants, agents, employees or other contractors (not being employed by the *Contractor*);
- (b) any risk specifically excepted elsewhere in the *Contract*;
- (c) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority;
- (d) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the *Contractor* or its subcontractors or either's employees or agents; and
- (e) use or occupation of any part of *WUC* by the *Principal* or its consultants, agents or other contractors (not being employed by the *Contractor*).

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defects in such part of the design of *WUC*, including the preliminary design provided by the *Principal*, as is not warranted under clause 2

## 15 Damage to persons and property other than WUC

### 15.1 Indemnity by Contractor

Insofar as this subclause applies to property, it applies to property other than *WUC*.

The *Contractor* shall indemnify the *Principal* against:

- (a) loss of or damage to the *Principal's* property; and
- (b) claims in respect of personal injury or death or loss of, or damage to, any other property,

arising out of or as a consequence of the carrying out of *WUC*, but the indemnity shall be reduced proportionally to the extent that the act or omission of the *Superintendent*, the *Principal* or its consultants, agents or other contractors (not being employed by the *Contractor*) may have contributed to the injury, death, loss or damage.

This subclause shall not apply to:

- (a) the extent that the *Contractor's* liability is limited by another provision of the *Contract*;
- (b) exclude any other right of the *Principal* to be indemnified by the *Contractor*;
- (c) things for the care of which the *Contractor* is responsible under subclause 14.1; and
- (d) claims in respect of the *Principal's* right to have *WUC* carried out.

### 15.2 Indemnity by Principal

The *Principal* shall indemnify the *Contractor* in respect of claims referred to in paragraph (d) of subclause 15.1.

### 16A Insurance of the Works

The Alternative in *Item 23(a)* applies.

#### *Alternative 1: Contractor to insure.*

Before commencing *WUC*, the *Contractor* shall insure all the things referred to in subclause 14.1 against loss or damage resulting from any cause until the *Contractor* ceases to be responsible for their care.

Without limiting the generality of the obligation to insure, such insurance shall cover the *Contractor's* liability under subclause 14.2 and things in storage off *site* and in transit to the *site* but may exclude:

- (a) the cost of making good fair wear and tear or gradual deterioration, but shall not exclude the loss or damage resulting therefrom;
- (b) the cost of making good faulty design, workmanship and materials, but shall not exclude the loss or damage resulting therefrom;
- (c) consequential loss of any kind, but shall not exclude loss of or damage to *the Works*;
- (d) damages for delay in completing or for the failure to complete *the Works*;
- (e) loss or damage resulting from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel resulting from any cause;
- (f) loss or damage resulting from the *excepted risks* referred to in paragraphs (b) and (c) of subclause 14.3.

The insurance cover shall be for an amount not less than the aggregate of the:

- (a) *contract sum*;
- (b) provision in *Item 23(b)* to provide for costs of demolition and removal of debris;
- (c) provision in *Item 23(c)* for *consultants' fees* and *Principal's consultants' fees*;
- (d) value in *Item 23(d)* of any materials or things to be supplied by the *Principal* for the purposes of *WUC*; and
- (e) additional amount or percentage in *Item 23(e)* of the total of the items referred to in sub-paragraphs (a) to (d) of this paragraph.

Insurance shall be in the joint names of the parties, shall cover the parties, *consultants* and *subcontractors* whenever engaged in *WUC* for their respective rights, interests and liabilities and, except where the *Contract* otherwise provides, shall be with an insurer and in terms both approved in writing by the *Principal* (which approvals shall not be unreasonably withheld).

The insurance shall be maintained until the *Contractor* ceases to be responsible under subclause 14.1 for the care of anything.

#### 16B Professional indemnity insurance

Before commencing *WUC*, the *Contractor* shall effect and maintain professional indemnity insurance with levels of cover not less than stated in *Item 24(a)*.

The insurance shall be maintained until the *final certificate* is issued and thereafter for the period as stated in *Item 24(b)*.

The *Contractor* shall ensure that every *consultant*, if within a category stated in *Item 24(c)*, shall effect and maintain professional indemnity insurance with levels of cover not less than stated in *Item 24(c)* applicable to that category.

Each such *consultant's* professional indemnity insurance shall be maintained until the *final certificate* is issued and thereafter for the period as stated in *Item 24(d)*.

#### 17 Public liability insurance

The Alternative in *Item 25(a)* applies.

##### Alternative 1: Contractor to insure

Before commencing *WUC*, the *Contractor* shall effect and maintain for the duration of the *Contract*, a *public liability policy*.

The policy shall:

- (a) be in the joint names of the parties;
- (b) cover the:
  - (a) respective rights and interests; and
  - (b) liabilities to third parties,

of the parties, the *Superintendent*, *consultants* and *subcontractors* from time to time, whenever engaged in *WUC*;

- (c) cover the parties' respective liability to each other for loss or damage to property (other than property required to be insured by clause 16A) and the death of or injury to any person (other than liability which the law requires to be covered under a workers compensation insurance policy);
- (d) be endorsed to cover the use of any *construction plant* not covered under a comprehensive or third party motor vehicle insurance policy;

**Deleted: Alternative 2: Principal to insure**  
 Before the date of acceptance of tender, the *Principal* shall insure *WUC* in the terms of the policy included in the tender documents and nominating or stating the insurer. The *Principal* shall maintain such insurance while ever the *Contractor* has an interest in *WUC*.

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- (e) provide insurance cover for an amount in respect of any one occurrence of not less than the sum in *Item 25(b)*; and
- (f) be with an insurer and otherwise in terms both approved in writing by the *Principal* (which approvals shall not be unreasonably withheld).

## 18. Insurance of employees

Before commencing *WUC*, the *Contractor* shall insure against statutory and common law liability for death of or injury to persons employed by the *Contractor*. The insurance cover shall be maintained until completion of all *WUC*.

Where permitted by law, the insurance policy or policies shall be extended to provide indemnity for the *Principal's* statutory liability to the *Contractor's* employees.

The *Contractor* shall ensure that all *consultants* and *subcontractors* have similarly insured their employees.

**Deleted: Alternative 2:**  
*Principal to insure*¶  
 Before the date of acceptance of tender, the *Principal* shall effect in relation to *WUC*, a public liability policy in the terms of the policy included in the tender documents and nominating or stating the insurer. The *Principal* shall maintain such insurance while ever the *Contractor* has an interest in *WUC*.¶

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## 19. Inspection and provisions of insurance policies

### 19.1 Proof of insurance

Before the *Contractor* commences *WUC* and whenever requested in writing by the other party, a party liable to insure shall provide satisfactory evidence of such insurance effected and maintained.

Insurance shall not limit liabilities or obligations under other provisions of the *Contract*.

### 19.2 Failure to produce proof of insurance

If after being so requested, a party liable to insure fails promptly to provide evidence of satisfactory compliance, then without prejudice to other rights or remedies, the other party may insure and the cost thereof shall be certified by the *Superintendent* as moneys due and payable from the party in default to the other party. Where the defaulting party is the *Contractor*, the *Principal* may refuse payment until such evidence is produced by the *Contractor*.

### 19.3 Notices from or to insurer

The party insuring under clause 16A or 17 shall ensure that each insurance policy contains provisions acceptable to the other party which:

- (a) requires the insurer to inform both parties, whenever the insurer gives a party or a *consultant* or a *subcontractor* a notice in connection with the policy;
- (b) provides that a notice of claim given to the insurer by either party, the *Superintendent*, a *consultant* or a *subcontractor* shall be accepted by the insurer as a notice of claim given by both parties, the *Superintendent*, the *consultant* and the *subcontractor*; and
- (c) requires the insurer, whenever the party fails to maintain the policy, promptly to give written notice thereof to both parties and prior to cancellation of the policy.

### 19.4 Notices of potential claims

A party shall, as soon as practicable, inform the other party in writing of any occurrence that may give rise to a claim under an insurance policy required by clause 16A or 17 and shall keep the other party informed of subsequent developments concerning the claim. The *Contractor* shall ensure that *consultants* and *subcontractors* in respect of their operations similarly inform the parties.

### 19.5 Settlement of claims

Upon settlement of a claim under the insurance required by clause 16A:

- (a) to the extent that reinstatement has been the subject of a payment or allowance by the *Principal* to the *Contractor*, if the *Contractor* has not completed such reinstatement, insurance moneys received shall, if requested by either party, be paid into an agreed bank account in the joint names of the parties. As the *Contractor* reinstates the loss or damage, the *Superintendent* shall certify against the joint account for the cost of reinstatement; and
- (b) to the extent that reinstatement has not been the subject of a payment or allowance by the *Principal* to the *Contractor*, the *Contractor* shall be entitled immediately to receive from insurance moneys received, the amount of such moneys so paid in relation to any loss suffered by the *Contractor*.

### 19.6 Cross liability

Any insurance required to be effected in joint names in accordance with the *Contract* shall include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons constituting the insured and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons constituting the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby).

### 20 Superintendent

The *Principal* shall ensure that at all times there is a *Superintendent*, and that the *Superintendent* fulfils all aspects of the role and functions reasonably and in good faith.

Except where the *Contract* otherwise provides, the *Superintendent* may give a *direction* orally but shall as soon as practicable confirm it in writing. If the *Contractor* in writing requests the *Superintendent* to confirm an oral *direction*, the *Contractor* shall not be bound to comply with the *direction* until the *Superintendent* does so.

The *Principal* may change the *Superintendent* by written or electronic notice to the *Contractor* and the change shall be from the date of such notice.

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### 21 Superintendent's Representative

The *Superintendent* may from time to time appoint individuals to exercise delegated *Superintendent's* functions, provided that:

- (a) no aspect of any function shall at any one time be the subject of delegation to more than one *Superintendent's Representative*;
- (b) delegation shall not prevent the *Superintendent* exercising any function;
- (c) the *Superintendent* forthwith gives the *Contractor* written notice of respectively:
  - (a) the appointment, including the *Superintendent's Representative's* name and delegated functions; and
  - (b) the termination of each appointment; and
- (d) if the *Contractor* makes a reasonable objection to the appointment of a *Superintendent's Representative*, the *Superintendent* shall terminate the appointment.

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## 22 Contractor's representative

The *Contractor* shall superintend *WUC* personally or by a competent representative. Matters within a *Contractor's* representative's knowledge (including *directions* received) shall be deemed to be within the *Contractor's* knowledge.

The *Contractor* shall forthwith give the *Superintendent* written notice of the representative's name and any subsequent changes.

If the *Superintendent* makes a reasonable objection to the appointment of a representative, the *Contractor* shall terminate the appointment and appoint another representative.

## 23 Contractor's employees and subcontractors

The *Superintendent* may direct the *Contractor* to have removed, within a stated time, from the *site* or from any activity of *WUC*, any person employed on *WUC* who, in the *Superintendent's* opinion, is incompetent, negligent or guilty of misconduct.

## 24 Site

### 24.1 Access and possession

Before the expiry of the time stated in *Item 26(a)*, the *Principal* shall give the *Contractor* access to the *site* sufficient to enable the *Contractor* to commence and carry out the *Contractor's* design obligations.

Provided the *Contractor* has complied with subclause 19.1, the *Principal* shall before the expiry of the time in *Item 26(b)*, give the *Contractor* possession of sufficient of the *site* for commencement of *WUC* on *site*. If the *Principal* has not given the *Contractor* possession of the whole *site*, the *Principal* shall give the *Contractor* possession of such further portions of the *site* as may, from time to time, be necessary for carrying out *WUC*. Subject to subclause 39.7, delay by the *Principal* in giving possession shall not be a breach of the *Contract*.

Possession of the *site* shall confer on the *Contractor* a right to only such use and control as is necessary to enable the *Contractor* to carry out *WUC* and shall exclude camping, residential purposes and any purpose not connected with *WUC*, unless approved by the *Superintendent*.

### 24.2 Access for Principal and others

The *Principal* and the *Principal's* employees, consultants and agents may at any time after reasonable written notice to the *Contractor*, have access to any part of the *site* for any purpose. The *Contractor* shall permit persons engaged by the *Principal* to carry out work on the *site* other than *WUC* and shall cooperate with them. The *Principal* shall give to the *Contractor* the names and roles of the persons so engaged.

The *Contractor* shall at all reasonable times give the *Superintendent* access to *WUC*.

The *Principal* shall ensure that none of the persons referred to in this subclause impedes the *Contractor*.

### 24.3 Minerals, fossils and relics

Valuable minerals, fossils, articles or objects of antiquity or of anthropological or archaeological interest, treasure trove, coins and articles of value found on the *site* shall as between the parties be and remain the property of the *Principal*. Immediately upon the discovery of these things the *Contractor* shall:

- (a) take precautions to prevent their loss, removal or damage; and

- (b) give the *Superintendent* written notice of the discovery.

All costs so incurred by the *Contractor* shall be assessed by the *Superintendent* and added to the *contract sum*.

## 25 Latent conditions

### 25.1 Scope

*Latent conditions* are physical conditions on the *site* and its near surrounds, including artificial things but excluding weather conditions, which differ materially from the physical conditions which should reasonably have been anticipated by a competent contractor at the time of the *Contractor's* tender if the *Contractor* had inspected:

- (a) all written information made available by the *Principal* to the *Contractor* for the purpose of tendering;
- (b) all information influencing the risk allocation in the *Contractor's* tender and reasonably obtainable by the making of reasonable enquiries; and
- (c) the *site* and its near surrounds.

### 25.2 Notification

The *Contractor*, upon becoming aware of a *latent condition* while carrying out *WUC*, shall promptly, and where possible before the *latent condition* is disturbed, give the *Superintendent* written notice of the general nature thereof.

If required by the *Superintendent* promptly after receiving that notice, the *Contractor* shall, as soon as practicable, give the *Superintendent* a written statement of:

- (a) the *latent condition* encountered and the respects in which it differs materially;
- (b) the additional work, resources, time and cost which the *Contractor* estimates to be necessary to deal with the *latent condition*; and
- (c) other details reasonably required by the *Superintendent*.

### 25.3 Liability for latent conditions and design

The *Contractor* is solely and exclusively liable for latent conditions including but not limited to any damages claims, EOT's, or delays, arising from the identification and rectification of such latent conditions. The *Contractor* is solely liable for the design of the *WUC* and the *Contractor* shall not enjoin, seek apportionment or any liability from the *Principal* for any liability arising from, or in connection with, the design of the *WUC*.

## 26 Setting out the Works

### 26.1 Setting out

The *Principal* shall ensure that the *Superintendent* gives the *Contractor* the data, *survey marks* and like information necessary for the *Contractor* to set out the *Works*, together with those *survey marks* specified in the *Contract*. Thereupon the *Contractor* shall set out the *Works* in accordance with the *Contract*.

### 26.2 Errors in setting out

The *Contractor* shall rectify every error in the position, level, dimensions or alignment of any *WUC* after promptly notifying the *Superintendent* and unless the *Superintendent* within 3 days directs otherwise. The cost of any rectification shall be at the sole cost of the *Contractor*.

Deleted: Deemed variation

Deleted: The effect of the *latent condition* shall be a deemed variation, priced having no regard to additional cost incurred more than 28 days before the date on which the *Contractor* gave the notice required by the first paragraph of subclause 25.2 but so as to include the *Contractor's* other costs for each compliance with subclause 25.2

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### 26.3 Care of survey marks

~~The Contractor shall keep in their true positions all survey marks supplied by the Superintendent.~~

The Contractor shall reinstate any survey mark disturbed, after promptly notifying the Superintendent and unless the Superintendent within 3 days directs otherwise.

If the disturbance was caused by a person referred to in subclause 24.2 other than the Contractor, the cost incurred by the Contractor in reinstating the survey mark shall be borne by the Contractor.

**Deleted:** If the error was caused by incorrect data, survey marks or information given by the Superintendent, the cost incurred by the Contractor in rectifying the error shall be assessed by the Superintendent and added to the contract sum.¶

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**Deleted:** assessed by the Superintendent and added to the contract sum

### 27 Cleaning up

The Contractor shall keep the site and WUC clean and tidy and regularly remove rubbish and surplus material.

Within 14 days after the date of practical completion, the Contractor shall remove temporary works and construction plant. The Superintendent may extend the time to enable the Contractor to perform remaining obligations.

If the Contractor fails to comply with the preceding obligations in this clause, the Superintendent may direct the Contractor to rectify the non-compliance and the time for rectification.

If:

- (a) the Contractor fails to comply with such a direction; and
- (b) that failure has not been made good within 5 days after the Contractor receives written notice from the Superintendent that the Principal intends to have the subject work carried out by others,

the Principal may have that work so carried out and the Superintendent shall certify the cost incurred as moneys due from the Contractor to the Principal. The rights given by this paragraph are additional to any other rights and remedies.

### 28 Materials, labour and construction plant

Except where the Contract otherwise provides, the Contractor shall supply everything necessary for the proper performance of the Contractor's obligations and discharge of the Contractor's liabilities.

In respect of any materials, machinery or equipment to be supplied by the Contractor in connection with the Contract, the Superintendent may direct the Contractor to:

- (a) supply particulars of the mode and place of manufacture, the source of supply, the performance capacities and other related information; and
- (b) arrange reasonable inspection at such place or sources by the Superintendent, the Principal and persons authorised by the Principal.

The Superintendent may give the Contractor a written direction not to remove materials or construction plant from the site. Thereafter the Contractor shall not remove them without the Superintendent's prior written approval (which shall not be unreasonably withheld).

## 29 Quality

### 29.1 Quality of material and work

Unless otherwise provided, the *Contractor* shall use suitable new materials and proper and tradesmanlike workmanship.

### \* 29.2 Quality assurance

If the *Contract* elsewhere requires further quality assurance, the *Contractor* shall:

- (a) plan, establish and maintain a conforming quality system; and
- (b) ensure that the *Superintendent* has access to the quality system of the *Contractor*, *consultants* and *subcontractors* so as to enable monitoring and quality auditing.

Any such quality system shall be used only as an aid to achieving compliance with the *Contract* and to document such compliance. Such system shall not discharge the *Contractor's* other obligations under the *Contract*.

### 29.3 Defective work

If the *Superintendent* becomes aware of work done (including material provided) by the *Contractor* which does not comply with the *Contract*, the *Superintendent* shall as soon as practicable give the *Contractor* written details thereof. If the subject work has not been rectified, the *Superintendent* may direct the *Contractor* to do any one or more of the following (including times for commencement and completion):

- (a) remove the material from the *site*;
- (b) demolish the *work*;
- (c) redesign, reconstruct, replace or correct the *work*; and
- (d) not deliver it to the *site*.

If:

- (a) the *Contractor* fails to comply with such a *direction*; and
- (b) that failure has not been made good within 8 days after the *Contractor* receives written notice from the *Superintendent* that the *Principal* intends to have the subject *work* rectified by others,

the *Principal* may have that *work* so rectified and the *Superintendent* shall certify the cost incurred as moneys due from the *Contractor* to the *Principal*.

### 29.4 Acceptance of defective work

Instead of a *direction* pursuant to subclause 29.3, the *Superintendent* may direct the *Contractor* that the *Principal* elects to accept the subject *work*, whereupon there shall be a deemed *variation*.

### 29.5 Timing

The *Superintendent* may give a *direction* pursuant to this clause at any time before the expiry of the last *defects liability period*.

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\* See Preface

### 30 Examination and testing

#### 30.1 Tests

At any time before the expiry of the last *defects liability period*, the *Superintendent* may direct that any *WUC* be tested. The *Contractor* shall give such assistance and samples and make accessible such parts of *WUC* as may be directed by the *Superintendent*.

#### 30.2 Covering up

The *Superintendent* may direct that any part of *WUC* shall not be covered up or made inaccessible without the *Superintendent's* prior written *direction*.

#### 30.3 Who conducts

*Tests* shall be conducted as provided elsewhere in the *Contract* or by the *Superintendent* or a person (which may include the *Contractor*) nominated by the *Superintendent*.

#### 30.4 Notice

The *Superintendent* or the *Contractor* (whichever is to conduct the *test*) shall give reasonable written notice to the other of the date, time and place of the *test*. If the other does not attend, the *test* may nevertheless proceed.

#### 30.5 Delay

Without prejudice to any other right, if the *Contractor* or the *Superintendent* delays in conducting a *test*, the other, after giving reasonable written notice of intention to do so, may conduct the *test*.

#### 30.6 Completion and results

On completion of the *tests*, the *Contractor* shall make good *WUC* so that it fully complies with the *Contract*.

Results of *tests* shall be promptly made available by each party to the other and to the *Superintendent*.

#### 30.7 Costs

Costs in connection with testing pursuant to this clause shall be borne by the *Principal* except where the *Contract* otherwise provides or the *test* is consequent upon, or reveals a failure of the *Contractor* to comply with the *Contract* (including this clause).

### 31 Working hours

If the working hours and working days on the *site* are not stated elsewhere in the *Contract*, they shall be as notified by the *Contractor* to the *Superintendent* before commencement of work on *site*. They shall not be varied without the *Superintendent's* prior written approval, except when, in the interests of safety of persons or property, the *Contractor* finds it necessary to carry out *WUC* otherwise, whereupon the *Contractor* shall give the *Superintendent* written notice of those circumstances as early as possible.

### 32 Programming

The *Superintendent* shall give to the *Contractor* the information, materials, documents and instructions by the times or within the periods both stated in *Item 27*.

The *Contractor* shall give the *Superintendent* reasonable advance notice of when the *Contractor* needs other information, materials, documents or instructions from the *Superintendent* or the *Principal*.

The *Principal* and the *Superintendent* shall not be obliged to give any information, materials, documents or instructions earlier than the *Principal* or the *Superintendent*, as the case may be, should reasonably have anticipated at the *date of acceptance of tender*.

The *Superintendent* may direct in what order and at what time the various stages or portions of *WUC* shall be carried out. If the *Contractor* can reasonably comply with the *direction*, the *Contractor* shall do so. If the *Contractor* cannot reasonably comply, the *Contractor* shall give the *Superintendent* written notice of the reasons.

A *program* is a written statement showing the dates by which, or the times within which, the various stages or portions of *WUC* are to be carried out or completed. It shall be deemed a *Contract* document.

The *Superintendent* may direct the *Contractor* to give the *Superintendent* a *program* within the time and in the form directed.

The *Contractor* shall not, without reasonable cause, depart from a *program*.

If compliance with any such *directions* under this clause, except those pursuant to the *Contractor's* default, causes the *Contractor* to incur more or less cost than otherwise would have been incurred had the *Contractor* not been given the *direction*, the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

### 33 Suspension

#### 33.1 Superintendent's suspension

The *Superintendent* may direct the *Contractor* to suspend the carrying out of the whole or part of *WUC* for such time as the *Superintendent* thinks fit, if the *Superintendent* is of the opinion that it is necessary:

- (a) because of an act, default or omission of:
  - (a) the *Superintendent*, the *Principal* or its employees, consultants, agents or other contractors (not being employed by the *Contractor*); or
  - (b) the *Contractor*, a *consultant*, a *subcontractor* or the employees or agents of any of them;
- (b) for the protection or safety of any person or property; or
- (c) to comply with a court order.

#### 33.2 Contractor's suspension

If the *Contractor* wishes to suspend the carrying out of the whole or part of *WUC*, otherwise than pursuant to subclause 39.9, the *Contractor* shall obtain the *Superintendent's* prior written approval. The *Superintendent* may approve the suspension and may impose conditions of approval.

#### 33.3 Recommencement

As soon as the *Superintendent* becomes aware that the reason for any suspension no longer exists, the *Superintendent* shall direct the *Contractor* to recommence suspended *WUC* as soon as reasonably practicable.

The *Contractor* may recommence *WUC* suspended pursuant to subclause 33.2 or 39.9 at any time after reasonable notice to the *Superintendent*.

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### 33.4 Cost

The *Contractor* shall bear the cost of suspension pursuant to paragraph (a)(ii) of subclause 33.1 and subclause 33.2. If the *Contractor* made the protection, safety, court order or suspension of work necessary, the *Contractor* shall bear the cost of suspension pursuant to paragraph (b) or (c) of subclause 33.1. If the *Contractor* otherwise incurs more or less cost than otherwise would have been incurred, the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

## 34 Time and progress

### 34.1 Progress

The *Contractor* shall ensure that *WUC* reaches *practical completion* by the *date for practical completion*.

### 34.2 Notice of delay

A party becoming aware of anything which will probably cause delay to *WUC* shall promptly give the *Superintendent* and the other party written notice of that cause and the estimated delay.

### 34.3 Claim

The *Contractor* shall be entitled to such extension of time for carrying out *WUC* (including reaching *practical completion*) as the *Superintendent* assesses ('*EOT*'), if:

- (a) the *Contractor* is or will be delayed in reaching *practical completion* by a *qualifying cause of delay*; and
- (b) the *Contractor* gives the *Superintendent*, within 28 days of when the *Contractor* should reasonably have become aware of that causation occurring, a written claim for an *EOT* evidencing the facts of causation and of the delay to *WUC* (including extent).

If further delay results from a *qualifying cause of delay* evidenced in a claim under paragraph (b) of this subclause, the *Contractor* shall claim an *EOT* for such delay by promptly giving the *Superintendent* a written claim evidencing the facts of that delay.

### 34.4 Assessment

When both non-qualifying and *qualifying causes of delay* overlap, the *Superintendent* shall apportion the resulting delay to *WUC* according to the respective causes' contribution.

In assessing each *EOT* the *Superintendent* shall disregard questions of whether:

- (a) *WUC* can nevertheless reach *practical completion* without an *EOT*; or
- (b) the *Contractor* can accelerate,

but shall have regard to what prevention and mitigation of the delay has not been effected by the *Contractor*.

### 34.5 Extension of time

Within 28 days after receiving the *Contractor's* claim for an *EOT*, the *Superintendent* shall give to the *Contractor* and the *Principal* a written *direction* evidencing the *EOT* so assessed. If the *Superintendent* does not do so, there shall be a deemed assessment and *direction* for an *EOT* as claimed.

Notwithstanding that the *Contractor* is not entitled to or has not claimed an *EOT*, the *Superintendent* may at any time and from time to time before issuing the *final certificate* direct an *EOT*.

#### 34.6 Practical completion

The *Contractor* shall give the *Superintendent* at least 14 days written notice of the date upon which the *Contractor* anticipates that *practical completion* will be reached.

When the *Contractor* is of the opinion that *practical completion* has been reached, the *Contractor* shall in writing request the *Superintendent* to issue a *certificate of practical completion*. Within 14 days after receiving the request, the *Superintendent* shall give the *Contractor* and the *Principal* either a *certificate of practical completion* evidencing the *date of practical completion* or written reasons for not doing so.

If the *Superintendent* is of the opinion that *practical completion* has been reached, the *Superintendent* may issue a *certificate of practical completion* even though no request has been made.

#### 34.7 Liquidated damages

If *WUC* does not reach *practical completion* by the *date for practical completion*, the *Superintendent* shall certify, as due and payable to the *Principal*, liquidated damages in *Item 29* for every day after the *date for practical completion* to and including the earliest of the *date of practical completion* or termination of the *Contract* or the *Principal* taking *WUC* out of the hands of the *Contractor*.

If an *EOT* is directed after the *Contractor* has paid or the *Principal* has set off liquidated damages, the *Principal* shall forthwith repay to the *Contractor* such of those liquidated damages as represent the days the subject of the *EOT*.

#### 34.8 Bonus for early practical completion

If the *date of practical completion* is earlier than the *date for practical completion* the *Superintendent* shall certify as due and payable to the *Contractor* the bonus in *Item 30(a)* for every day after the *date of practical completion* to and including the *date for practical completion*.

The *Contractor* hereby waives that part of a bonus exceeding the *Item 30(b)* amount.

#### 34.9 Delay damages

For every day the subject of an *EOT* for a *compensable cause* and for which the *Contractor* gives the *Superintendent* a claim for delay damages pursuant to subclause 41.1, damages certified by the *Superintendent* under subclause 41.3 shall be due and payable to the *Contractor*.

#### 35 Defects liability

The *defects liability period* stated in *Item 32* shall commence on the *date of practical completion* at 4:00 pm.

The *Contractor* shall carry out rectification at times and in a manner causing as little inconvenience to the occupants or users of the *Works* as is reasonably possible.

As soon as possible after the *date of practical completion*, the *Contractor* shall rectify all defects existing at the *date of practical completion*.

During the *defects liability period*, the *Superintendent* may give the *Contractor* a *direction* to rectify a *defect* which:

- (a) shall identify the *defect* and the date for completion of its rectification; and
- (b) may state a date for commencement of the rectification and whether there shall be a separate *defects liability period* therefor (not exceeding that in *Item 32*, commencing at 4:00 pm on the date the rectification is completed and governed by this clause).

If the rectification is not commenced or completed by the stated dates, the *Principal* may have the rectification carried out by others but without prejudice to any other rights and remedies the *Principal* may have. The cost thereby incurred shall be certified by the *Superintendent* as moneys due and payable to the *Principal*.

### 36 Variations

#### 36.1 Directing variations

The *Contractor* shall not vary *WUC* except as directed in writing.

The *Superintendent*, before the *date of practical completion*, may direct the *Contractor* to vary *WUC* by any one or more of the following which is nevertheless of a character and extent contemplated by, and capable of being carried out under, the provisions of the *Contract* (including being within the warranties in subclause 2.2):

- (a) increase, decrease or omit any part;
- (b) change the character or quality;
- (c) change the levels, lines, positions or dimensions;
- (d) carry out additional *work*;
- (e) demolish or remove material or *work* no longer required by the *Principal*.

#### 36.2 Proposed variations

The *Superintendent* may give the *Contractor* written notice of a proposed *variation*.

The *Contractor* shall, as soon as practicable after receiving such notice, notify the *Superintendent* whether the proposed *variation* can be effected, together with, if it can be effected, the *Contractor's* estimate of the

- (a) effect on the *program* (including the *date for practical completion*); and
- (b) cost (including all warranties and time-related costs, if any) of the proposed *variation*.

The *Superintendent* may direct the *Contractor* to give a detailed quotation for the proposed *variation* supported by measurements or other evidence of cost.

The *Contractor's* costs for each compliance with this subclause shall be certified by the *Superintendent* as moneys due to the *Contractor*.

#### 36.3 Variations for convenience of Contractor

If the *Contractor* requests the *Superintendent* to direct a *variation* for the convenience of the *Contractor*, the *Superintendent* may do so. The *direction* shall be written and may be conditional. Unless the *direction* provides otherwise, the *Contractor* shall be entitled to neither extra time nor extra money.

#### 36.4 Pricing

The *Superintendent* shall, as soon as possible, price each *variation* using the following order of precedence:

- (a) prior agreement;

- (b) applicable rates or prices in the *Contract*;
- (c) rates or prices in a *schedule of rates* or schedule of prices, even though not *Contract* documents, to the extent that it is reasonable to use them; and
- (d) reasonable rates or prices, which shall include a reasonable amount for profit and overheads,

and any deductions shall include a reasonable amount for profit but not overheads.

That price shall be added to or deducted from the *contract sum*.

### 37 Payment

#### 37.1 Progress claims

The *Contractor* shall claim payment progressively in accordance with *Item 33*.

An early progress claim shall be deemed to have been made on the date for making that claim.

Each progress claim shall be given in writing to the *Superintendent* and shall include details of the value of *WUC* done and may include details of other moneys then due to the *Contractor* pursuant to provisions of the *Contract*.

#### 37.2 Certificates

The *Superintendent* shall, within 14 days after receiving such a progress claim, issue to the *Principal* and the *Contractor*:

- (a) a *progress certificate* evidencing the *Superintendent's* opinion of the moneys due from the *Principal* to the *Contractor* pursuant to the progress claim and reasons for any difference ('*progress certificate*'), and
- (b) a certificate evidencing the *Superintendent's* assessment of retention moneys and moneys due from the *Contractor* to the *Principal* pursuant to the *Contract*.

If the *Contractor* does not make a progress claim in accordance with *Item 33*, the *Superintendent* may issue the *progress certificate* with details of the calculations and shall issue the certificate in paragraph (b).

If the *Superintendent* does not issue the *progress certificate* within 14 days of receiving a progress claim in accordance with subclause 37.1, that progress claim shall be deemed to be the relevant *progress certificate*.

The *Principal* shall within 7 days after receiving both such certificates, or within 21 days after the *Superintendent* receives the progress claim, pay to the *Contractor* the balance of the *progress certificate* after setting off such of the certificate in paragraph (b) as the *Principal* elects to set off. If that setting off produces a negative balance, the *Contractor* shall pay that balance to the *Principal* within 7 days of receiving written notice thereof.

Neither a *progress certificate* nor a payment of moneys shall be evidence that the subject *WUC* has been carried out satisfactorily. Payment other than *final payment* shall be payment on account only.

#### 37.3 Unfixed plant and materials

The *Principal* shall not be liable to pay for unfixed plant and materials unless they are listed in *Item 34* and the *Contractor*:

- (a) provides the additional *security* in *Item 14(e)*; and

- (b) satisfies the *Superintendent* that the subject plant and materials have been paid for, properly stored and protected, and labelled the property of the *Principal*.

Upon payment to the *Contractor* and the release of any additional *security* in paragraph (a), the subject plant and materials shall be the unencumbered property of the *Principal*.

#### 37.4 Final payment claim and certificate

Within 28 days after the expiry of the last *defects liability period*, the *Contractor* shall give the *Superintendent* a written *final payment claim* endorsed 'Final Payment Claim' being a progress claim together with all other claims whatsoever in connection with the subject matter of the *Contract*.

Within 42 days after the expiry of the last *defects liability period*, the *Superintendent* shall issue to both the *Contractor* and the *Principal* a *final certificate* evidencing the moneys finally due and payable between the *Contractor* and the *Principal* on any account whatsoever in connection with the subject matter of the *Contract*.

Those moneys certified as due and payable shall be paid by the *Principal* or the *Contractor*, as the case may be, within 7 days after the debtor receives the *final certificate*.

The *final certificate* shall be conclusive evidence of accord and satisfaction, and in discharge of each party's obligations in connection with the subject matter of the *Contract* except for:

- (a) fraud or dishonesty relating to *WUC* or any part thereof or to any matter dealt with in the *final certificate*;
- (b) any *defect* or omission in the *Works* or any part thereof which was not apparent at the end of the last *defects liability period*, or which would not have been disclosed upon reasonable inspection at the time of the issue of the *final certificate*;
- (c) any accidental or erroneous inclusion or exclusion of any *work* or figures in any computation or an arithmetical error in any computation; and
- (d) unresolved issues, the subject of any notice of *dispute* pursuant to clause 42, served before the 7th day after the issue of the *final certificate*.

#### 37.5 Interest

Interest in *Item 35* shall be due and payable after the date of default in payment.

#### 37.6 Other moneys due

The *Principal* may elect that moneys due and owing otherwise than in connection with the subject matter of the *Contract* also be due to the *Principal* pursuant to the *Contract*.

### 38 Payment of workers, consultants and subcontractors

#### 38.1 Workers, consultants and subcontractors

The *Contractor* shall give in respect of a progress claim, documentary evidence of the payment of moneys due and payable to:

- (a) workers of the *Contractor* and of the *subcontractors*;
- (b) *consultants*; and
- (c) *subcontractors*,

in respect of *WUC* the subject of that claim.

If the *Contractor* is unable to give such documentary evidence, the *Contractor* shall give other documentary evidence of the moneys so due and payable to workers, *consultants* and *subcontractors*.

Documentary evidence, except where the *Contract* otherwise provides, shall be to the *Superintendent's* satisfaction.

### 38.2 Withholding payment

Subject to the next paragraph, the *Principal* may withhold moneys certified due and payable in respect of the progress claim until the *Contractor* complies with subclause 38.1.

The *Principal* shall not withhold payment of such moneys in excess of the moneys evidenced pursuant to subclause 38.1 as due and payable to workers, *consultants* and *subcontractors*.

### 38.3 Direct payment

Before *final payment*, the *Principal*, if not aware of a relevant relation-back day (as defined in the Corporations Law) may pay unpaid moneys the subject of subclause 38.1 directly to a worker, *consultant* or *subcontractor* where:

- (a) permitted by law;
- (b) given a court order in favour of the worker, *consultant* or *subcontractor*; or
- (c) requested in writing by the *Contractor*.

Such payment and a payment made to a worker, *consultant* or *subcontractor* in compliance with a *legislative requirement* shall be deemed to be part-satisfaction of the *Principal's* obligation to pay pursuant to subclause 37.2 or 37.4, as the case may be.

## 39 Default or insolvency

### 39.1 Preservation of other rights

If a party breaches (including repudiates) the *Contract*, nothing in this clause shall prejudice the right of the other party to recover damages or exercise any other right or remedy.

### 39.2 Contractor's default

If the *Contractor* commits a substantial breach of the *Contract*, the *Principal* may, by hand or by registered post, give the *Contractor* a written notice to show cause.

Substantial breaches include, but are not limited to:

- (a) failing to:
  - (a) perform properly the *Contractor's design obligations*;
  - (b) provide *security*;
  - (c) provide evidence of insurance;
  - (d) comply with a *direction* of the *Superintendent* pursuant to subclause 29.3; or
  - (e) use the materials or standards of *work* required by the *Contract*;
- (b) wrongful suspension of *work*;
- (c) substantial departure from a *program* without reasonable cause or the *Superintendent's* approval;

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- (d) where there is no *program*, failing to proceed with due expedition and without delay; and
- (e) in respect of clause 38, knowingly providing documentary evidence containing an untrue statement.

### 39.3 Principal's notice to show cause

A notice under subclause 39.2 shall state:

- (a) that it is a notice under clause 39 of these General Conditions;
- (b) the alleged substantial breach;
- (c) that the *Contractor* is required to show cause in writing why the *Principal* should not exercise a right referred to in subclause 39.4;
- (d) the date and time by which the *Contractor* must show cause (which shall not be less than 7 clear days after the notice is received by the *Contractor*); and
- (e) the place at which cause must be shown.

### 39.4 Principal's rights

If the *Contractor* fails to show reasonable cause by the stated date and time, the *Principal* may by written notice to the *Contractor*:

- (a) take out of the *Contractor's* hands the whole or part of the *work* remaining to be completed and suspend payment until it becomes due and payable pursuant to subclause 39.6; or
- (b) terminate the *Contract*.

### 39.5 Take out

The *Principal* shall complete *work* taken out of the *Contractor's* hands and may:

- (a) use materials, equipment and other things intended for *WUC*; and
- (b) without payment of compensation to the *Contractor*:
  - (a) take possession of, and use, such of the *construction plant* and other things on or in the vicinity of the *site* as were used by the *Contractor*;
  - (b) contract with such of the *consultants* and *subcontractors*; and
  - (c) take possession of, and use, such of the *design documents*,

as are reasonably required by the *Principal* to facilitate completion of *WUC* taken out.

If the *Principal* takes possession of *construction plant*, *design documents* or other things, the *Principal* shall maintain them and, subject to subclause 39.6, on completion of the *work* taken out, shall return such of them as are surplus.

The *Superintendent* shall keep records of the cost of completing the *work* taken out.

### 39.6 Adjustment on completion of work taken out

When *work* taken out of the *Contractor's* hands has been completed, the *Superintendent* shall assess the cost thereby incurred and shall certify as moneys due and payable accordingly the difference between that cost (showing the calculations therefor) and the amount which would otherwise have been paid to the *Contractor* if the *work* had been completed by the *Contractor*.

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If the *Contractor* is indebted to the *Principal*, the *Principal* may retain *construction plant* or other things taken under subclause 39.5 until the debt is satisfied. If after reasonable notice, the *Contractor* fails to pay the debt, the *Principal* may sell the *construction plant* or other things and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess shall be paid to the *Contractor*.

### 39.7 Principal's default

If the *Principal* commits a substantial breach of the *Contract*, the *Contractor* may, by hand or by registered post, give the *Principal* a written notice to show cause.

Substantial breaches include, but are not limited to:

- (a) failing to:
  - (a) provide *security*;
  - (b) produce evidence of insurance;
  - (c) rectify inadequate *Contractor's* access to the *site* if that failure continues for longer than the time stated in *Item 36(a)*;
  - (d) rectify inadequate *Contractor's* possession of the *site* if that failure continues for longer than the time stated in *Item 36(b)*; or
  - (e) make a payment due and payable pursuant to the *Contract*; and
- (b) the *Superintendent* not giving a *certificate of practical completion* or reasons as referred to in subclause 34.6.

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### 39.8 Contractor's notice to show cause

A notice given under subclause 39.7 shall state:

- (a) that it is a notice under clause 39 of these General Conditions;
- (b) the alleged substantial breach;
- (c) that the *Principal* is required to show cause in writing why the *Contractor* should not exercise a right referred to in subclause 39.9;
- (d) the date and time by which the *Principal* must show cause (which shall not be less than 7 clear days after the notice is received by the *Principal*); and
- (e) the place at which cause must be shown.

### 39.9 Contractor's rights

If the *Principal* fails to show reasonable cause by the stated date and time, the *Contractor* may, by written notice to the *Principal*, suspend the whole or any part of *WUC*.

The *Contractor* shall remove the suspension if the *Principal* remedies the breach.

The *Contractor* may, by written notice to the *Principal*, terminate the *Contract*, if within 28 days of the date of suspension under this subclause the *Principal* fails:

- (a) to remedy the breach; or
- (b) if the breach is not capable of remedy, to make other arrangements to the reasonable satisfaction of the *Contractor*.

Damages suffered by the *Contractor* by reason of the suspension shall be assessed by the *Superintendent*, who shall certify them as moneys due and payable to the *Contractor*.



### 39.10 Termination

If the *Contract* is terminated pursuant to subclause 39.4(b) or 39.9, the parties' remedies, rights and liabilities shall be the same as they would have been under the law governing the *Contract* had the defaulting party repudiated the *Contract* and the other party elected to treat the *Contract* as at an end and recover damages.

If Alternative 2 of subclause 10.2 applies and the *Principal* has terminated the *Contract*, the *Principal* may also, without payment of compensation, take possession of the *design documents*.

### 39.11 Insolvency

If:

- (a) a party informs the other in writing, or creditors generally, that the party is insolvent or is financially unable to proceed with the *Contract*;
- (b) execution is levied against a party by a creditor;
- (c) a party is an individual person or a partnership including an individual person, and if that person:
  - (a) commits an act of bankruptcy;
  - (b) has a bankruptcy petition presented against him or her or presents his or her own petition;
  - (c) is made bankrupt;
  - (d) makes a proposal for a scheme of arrangement or a composition; or
  - (e) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the Bankruptcy Act 1966 (Cwlth) or like provision under the law governing the *Contract*; or
- (d) in relation to a party being a corporation:
  - (a) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
  - (b) it enters a deed of company arrangement with creditors;
  - (c) a controller or administrator is appointed;
  - (d) an application is made to a court for its winding up and not stayed within 14 days;
  - (e) a winding up order is made in respect of it;
  - (f) it resolves by special resolution that it be wound up voluntarily (other than for a member's voluntary winding up); or
  - (g) a mortgagee of any of its property takes possession of that property,
 then, where the other party is:
  - (A) the *Principal*, the *Principal* may, without giving a notice to show cause, exercise the right under subclause 39.4(a); or
  - (B) the *Contractor*, the *Contractor* may, without giving a notice to show cause, exercise the right under subclause 39.9.

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The rights and remedies given by this subclause are additional to any other rights and remedies. They may be exercised notwithstanding that there has been no breach of contract.

#### 40 Termination by frustration

If the *Contract* is frustrated:

- (a) the *Superintendent* shall issue a *progress certificate* for *WUC* carried out to the date of frustration, evidencing the amount which would have been payable had the *Contract* not been frustrated and had the *Contractor* been entitled to and made a progress claim on the date of frustration;
- (b) the *Principal* shall pay the *Contractor*:
  - (a) the amount due to the *Contractor* evidenced by all unpaid certificates;
  - (b) the cost of materials and equipment reasonably ordered by the *Contractor* for *WUC* and which the *Contractor* is liable to accept, but only if they will become the *Principal's* property upon payment; and
  - (c) the costs reasonably incurred:
    - (A) removing *temporary works* and *construction plant*;
    - (B) returning to their place of engagement the *Contractor consultants*, *subcontractors* and their respective employees engaged in *WUC* at the date of frustration; and
    - (C) by the *Contractor* in expectation of completing *WUC* and not included in any other payment; and
- (c) each party shall promptly release and return all *security* provided by the other.

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#### 41 Notification of claims

##### 41.1 Communication of claims

The *prescribed notice* is a written notice of the general basis and quantum of the claim.

As soon as practicable after a party becomes aware of any claim in connection with the subject matter of the *Contract*, that party shall give to the other party and to the *Superintendent* the *prescribed notice* or a notice of *dispute* under subclause 42.1.

This subclause and subclause 41.3 shall not apply to any claim, including a claim for payment (except for claims which would, other than for this subclause, have been included in the *final payment claim*), the communication of which is required by another provision of the *Contract*.

##### 41.2 Liability for failure to communicate

The failure of a party to comply with the provisions of subclause 41.1 or to communicate a claim in accordance with the relevant provision of the *Contract* shall, inter alia, entitle the other party to damages for breach of the *Contract* but shall neither bar nor invalidate the claim.

##### 41.3 Superintendent's decision

If within 28 days of giving the *prescribed notice* the party giving it does not notify the other party and the *Superintendent* of particulars of the claim, the *prescribed notice* shall be deemed to be the claim.

Within 56 days of receipt of the *prescribed notice* the *Superintendent* shall assess the claim and notify the parties in writing of the decision. Unless a party within a further 28 days of such notification gives a notice of *dispute* under subclause 42.1 which includes such decision, the *Superintendent* shall certify the amount of that assessment to be moneys then due and payable.

## 42 Dispute resolution

### 42.1 Notice of dispute

If a difference or dispute (together called a 'dispute') between the parties arises in connection with the subject matter of the *Contract*, including a *dispute* concerning:

- (a) a *Superintendent's direction*; or
  - (b) a claim:
    - (a) in tort;
    - (b) under statute;
    - (c) for restitution based on unjust enrichment or other quantum meruit; or
    - (d) for rectification or frustration,
- or like claim available under the law governing the *Contract*,

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then either party shall, by hand or by registered post, give the other and the *Superintendent* a written notice of *dispute* adequately identifying and providing details of the *dispute*.

Notwithstanding the existence of a *dispute*, the parties shall, subject to clauses 39 and 40 and subclause 42.4, continue to perform the *Contract*.

### 42.2 Conference

Within 14 days after receiving a notice of *dispute*, the parties shall confer at least once to resolve the *dispute* or to agree on methods of doing so. At every such conference each party shall be represented by a person having authority to agree to such resolution or methods. All aspects of every such conference except the fact of occurrence shall be privileged.

If the *dispute* has not been resolved within 28 days of service of the notice of *dispute*, that *dispute* shall be and is hereby referred to arbitration.

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### 42.3 Expert Determination

If within a further 14 days the parties have not agreed upon an expert, the expert shall be nominated by the person in *Item 37(a)*. The expert determination shall be conducted in accordance with the rules in *Item 37(b)*.

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### 42.4 Summary relief

Nothing herein shall prejudice the right of a party to institute proceedings to enforce payment due under the *Contract* or to seek injunctive or urgent declaratory relief.

## 43 Waiver of conditions

Except as provided at law or in equity or elsewhere in the *Contract*, none of the terms of the *Contract* shall be varied, waived, discharged or released, except with the prior written consent of the parties.

## 44 Shared cost savings

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The *Contract* includes a preliminary document entitled '*Cost Plan for the design and construction of the Tennyson Reach Parkland*' (*Cost Plan*) dated [TBA].

During the course of the design, the Contractor shall produce 3 cost estimates that are based on the *Cost Plan* but amended to reflect the latest design.

Upon completion of the design, the parties shall agree or the *Superintendent* shall determine cost estimate pursuant to clause 9.7 that sets out the contract sum comprising all costs to

carry out the Works, on a subcontractor and supplier basis, and shall include all of the Contractor's costs but shall not include profit.

Within 30 days of the date of practical completion for each separable portion, the Contractor must provide to the Principal the following Documents:

- (a) A copy of each subcontract and supply agreement;
- (b) A spreadsheet that sets out the amount shown in the cost plan (Budgeted Amount) and the actual subcontract or supply agreement amount (Actual Amount) for each subcontractor and supplier;
- (c) A calculation of the cost saving being the sum of the difference of the Budgeted Amount and the Actual Amount for each supplier and subcontractor that carried out any part of the Works.

The Principal must notify the Contractor within 28 days of receipt the Documents referred to above if it disagrees with the Contractor's calculation of the cost saving and provide its reasons, provided however that such time frame may be extended by the Principal by a further 28 business days to allow for requests for information (RFI's") and time to consider clarifications of responses to RFI's, such further 28 business days to commence from the date of receipt by the Principal of a full and detailed response by the Contractor to the RFI's.

If either party disagrees with the calculation of the cost savings, either party may serve on the other party a notice of dispute pursuant to clause 42.1.

The Contractor must pay the Principal 50% of the cost saving within 15 Business Days of receipt of the Principal's agreement of the cost savings or within 15 Business Days of a decision made by Expert Determination under clause 42.3.

#### 45 GST

Words or expressions used in this clause which are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cwth) (GST Act), have the same meaning in this clause.

Any consideration to be paid or provided for a supply made under or in connection with this Contract, does not include an amount on account of GST.

Despite any other provision in this Contract, if a party (Supplier) makes a supply under or in connection with this Contract on which GST is imposed:

- (a) the consideration payable or to be provided for that supply under this Contract but for the application of this clause (GST exclusive consideration) is increased by, and the recipient of the supply (Recipient) must also pay to the Supplier, an amount equal to the GST payable by the Supplier on that supply in accordance with the GST Act; and
- (b) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided;
- (c) If a payment to a party under this Contract is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.
- (d) The Supplier will provide a tax invoice to the Recipient which complies with the GST Act.
- (e) The clause will not apply where any amount payable or other consideration to be provided under this Contract is expressly stated to be inclusive of GST.

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**46 Entire Agreement**

~~This Contract contains everything that the parties have agreed on in relation to the Works. No party can rely on an earlier document, or on anything said or done by another party (or by a director, officer, agent or employee of that party) before this Contract was executed.~~

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**47 Maintenance**

The Contractor shall fully maintain the Works at its sole cost and expense for a period of twelve (12) months for each stage of the Works commencing from the date of practical completion of each of the stages. The standard of care shall be minimum wear and tear.

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**48 Access to Records**

~~The Contractor must to permit and allow full access to its financial and project accounts relating to the Works for the purposes of audit and verification of payment claims. This access includes but is not limited to the taking of financial records, access to electronic records, and full disclosure.~~

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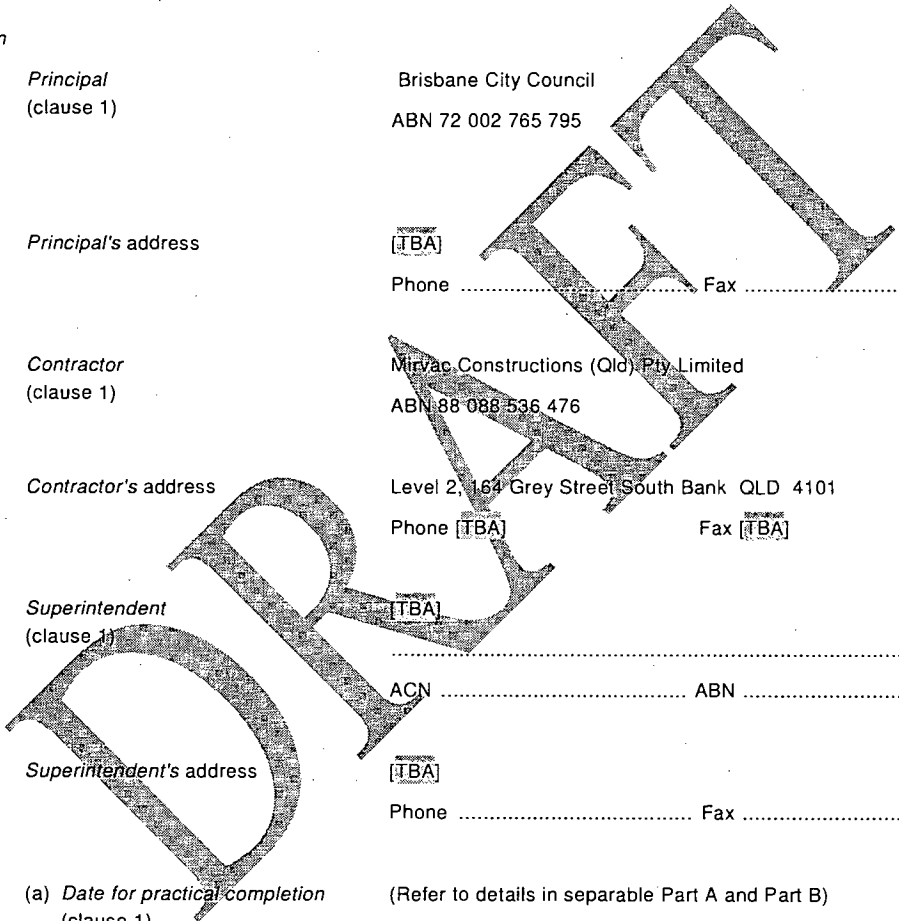
**ANNEXURE to the Australian Standard  
General Conditions of Contract for  
Design and Construct**

# Part A

This Annexure shall be completed and issued as part of the tender documents and, subject to any amendments to be incorporated into the *Contract*, is to be attached to the General Conditions of Contract and shall be read as part of the *Contract*.

*Item*

- |     |  |   |
|-----|--|---|
| 1   | <i>Principal</i><br>(clause 1)                                   | Brisbane City Council<br>ABN 72 002 765 795                           |
| 2   | <i>Principal's address</i>                                       | [TBA]<br>Phone ..... Fax .....  |
| 3   | <i>Contractor</i><br>(clause 1)                                  | Mirvac Constructions (Qld) Pty Limited<br>ABN 88 088 536 476          |
| 4   | <i>Contractor's address</i>                                      | Level 2, 164 Grey Street South Bank QLD 4101<br>Phone [TBA] Fax [TBA] |
| 5   | <i>Superintendent</i><br>(clause 1)                              | [TBA]<br>.....<br>ACN ..... ABN .....                                 |
| 6   | <i>Superintendent's address</i>                                  | [TBA]<br>Phone ..... Fax .....  |
| † 7 | (a) <i>Date for practical completion</i><br>(clause 1)           | (Refer to details in separable Part A and Part B)                     |
|     | OR   |   |
|     | (b) <i>Period of time for practical completion</i><br>(clause 1) | (Refer to details in separable Part A and Part B)                     |



† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A  
© Standards Australia [www.standards.com.au](http://www.standards.com.au)

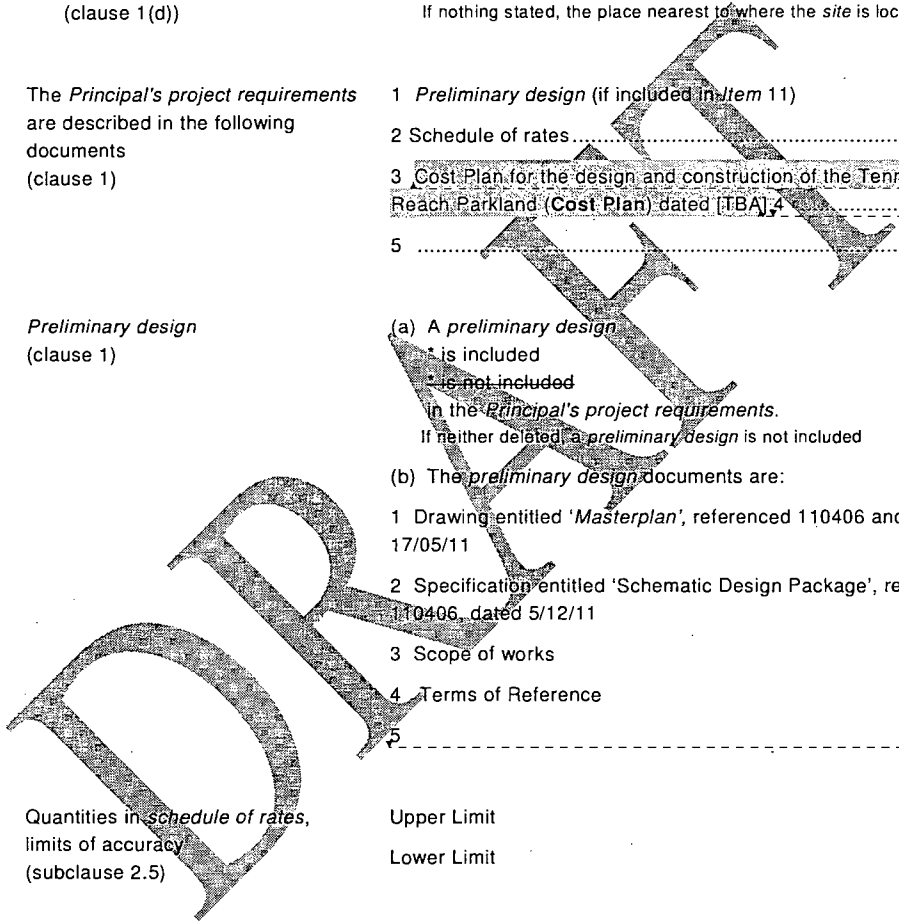
- 8 Governing law (clause 1(h)) ..... If nothing stated, that of the jurisdiction where the *site* is located
  
- 9 (a) Currency (clause 1(g)) ..... If nothing stated, that of the jurisdiction where the *site* is located
- (b) Place for payments (clause 1(g)) ..... If nothing stated, the *Principal's* address
- (c) Place of business of bank (clause 1(d)) ..... If nothing stated, the place nearest to where the *site* is located
  
- 10 The *Principal's* project requirements are described in the following documents (clause 1)
  - 1 Preliminary design (if included in Item 11)
  - 2 Schedule of rates .....
  - 3 Cost Plan for the design and construction of the Tennyson Reach Parkland (Cost Plan) dated [TBA]
  - 4 .....
  - 5 .....
  
- 11 Preliminary design (clause 1)
  - (a) A preliminary design
    - is included
    - is not included
 in the *Principal's* project requirements.  
 If neither deleted, a preliminary design is not included
  - (b) The preliminary design documents are:
    - 1 Drawing entitled 'Masterplan', referenced 110406 and dated 17/05/11
    - 2 Specification entitled 'Schematic Design Package', referenced 110406, dated 5/12/11
    - 3 Scope of works
    - 4 Terms of Reference
    - 5 .....
  
- 12 Quantities in schedule of rates, limits of accuracy (subclause 2.5)
  - Upper Limit
  - Lower Limit

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13 *Provisional sum, percentage for overheads, preliminaries and attendance (clause 3)* 10%

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† 14 *Contractor's security*

- (a) Form (clause 5) No security or retention is required under this contract
- (b) Amount or maximum percentage of *contract sum* (clause 5) If nothing stated, 5% of the *contract sum*
- (c) If retention moneys, percentage of each *progress certificate* (clause 5 and subclause 37.2) NIL %, until the limit in *Item 14(b)*  
If nothing stated, 10%, until the limit in *Item 14(b)*
- (d) Time for provision (except for retention moneys) (clause 5) within ..... days after *date of acceptance of tender*  
If nothing stated, 28 days
- (e) Additional security for unfixed plant and materials (subclauses 5.4 and 37.3) ..... \$ .....
- (f) *Contractor's security* upon *certificate of practical completion* is reduced by (subclause 5.4) ..... % of amount held  
If nothing stated, 50% of amount held

† 15 *Principal's security*

- (a) Form (clause 5) No security or retention is required under this Contract
- (b) Amount or maximum percentage of *contract sum* (clause 5) .....  
If nothing stated, nil
- (c) Time for provision (clause 5) within ..... days after *date of acceptance of tender*  
If nothing stated, 28 days
- (d) *Principal's security* upon *certificate of practical completion* is reduced by (subclause 5.4) ..... % of amount held  
If nothing stated, 50% of amount held

† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A



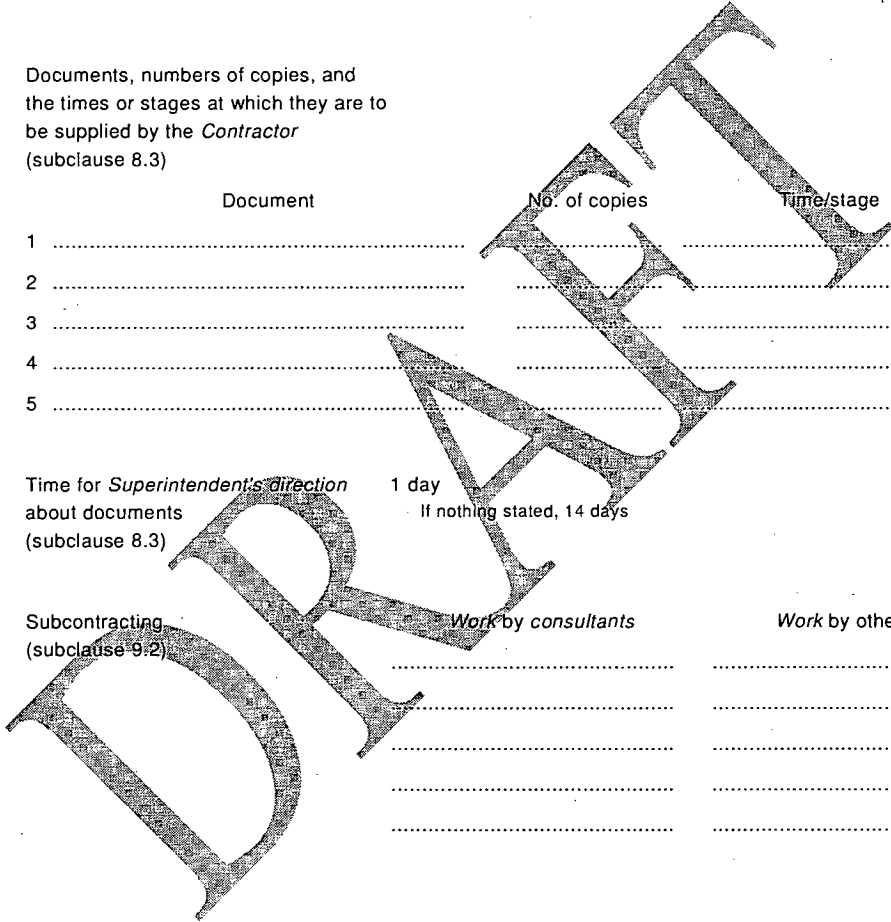
16	<i>Principal-supplied documents</i> (subclause 8.2)	Document	No. of copies
		1 <i>Principal's project requirements</i>	.....
		2	.....
		3	.....
		4	.....
		5	.....
			If nothing stated, 5 copies

17	Documents, numbers of copies, and the times or stages at which they are to be supplied by the <i>Contractor</i> (subclause 8.3)	Document	No. of copies	Time/stage
		1	.....	.....
		2	.....	.....
		3	.....	.....
		4	.....	.....
		5	.....	.....

18 Time for *Superintendent's direction* about documents (subclause 8.3)

1 day  
If nothing stated, 14 days

19	Subcontracting (subclause 9.2)	<i>Work by consultants</i>	<i>Work by others</i>
		.....	.....
		.....	.....
		.....	.....
		.....	.....



20 Novation  
(subclause 9.4)

Subcontractor or  
selected subcontractor,  
as the case may be

Particular part of the  
preliminary design or  
selected subcontract work,  
as the case may be

.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....

21 Intellectual property rights granted  
to the Principal,  
the Alternative applying  
(subclause 10.2)

If nothing stated, Alternative 1 applies

22 Legislative requirements

(a) Those excepted  
(subclause 11.1)

.....  
.....  
.....

(b) Identified WUC  
(subclause 11.2(a)(iii))

.....  
.....

23 Insurance of the Works  
(clause 16A)

(a) Alternative applying

If nothing stated, Alternative 1 applies

If Alternative 1 applies

(b) Provision for demolition and  
removal of debris

.....  
..... \$ .....

OR

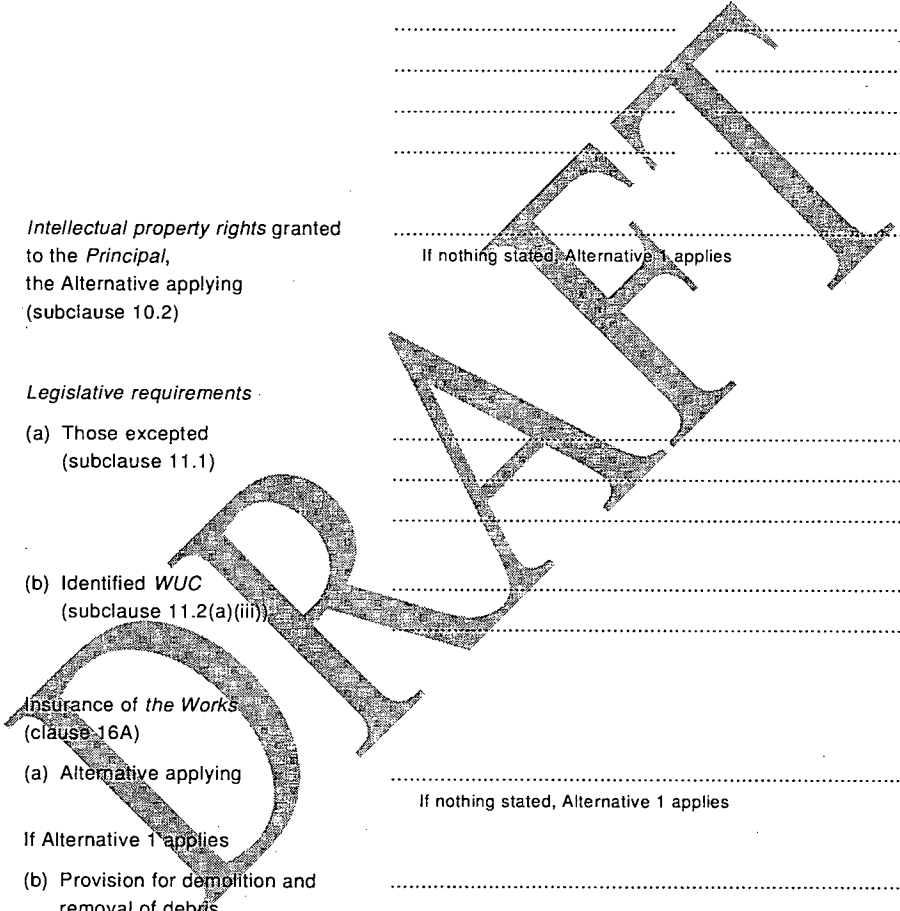
.....% of the contract sum

(c) Provision for consultants' fees and  
Principal's consultants' fees

..... \$ .....

OR

.....% of the contract sum



(d) Value of materials or things to be supplied by the *Principal* ..... \$ .....

(e) Additional amount or percentage ..... \$ .....

OR

.....% of the total of (a) to (d) in clause 16A

24 Professional indemnity insurance (clause 16B and subclause 9.2(d))

(a) Levels of cover of Contractor's professional indemnity insurance shall be not less than ..... \$ .....  
If nothing stated, \$5 000 000

(b) Period for which Contractor's professional indemnity insurance shall be maintained after issue of the final certificate .....  
If nothing stated, 6 years

Category	Levels of cover
.....	\$ .....
.....	\$ .....
.....	\$ .....
.....	\$ .....
	If nothing stated, \$1 000 000

(d) Period for which each consultant's professional indemnity insurance shall be maintained after issue of the final certificate .....  
If nothing stated, 6 years

25 Public liability insurance (clause 17)

(a) Alternative applying .....  
If nothing stated, Alternative 1 applies

If Alternative 1 applies

(b) Amount per occurrence shall be not less than ..... \$ .....  
If nothing stated, \$10 000 000

- 26 (a) Time for giving access (subclause 24.1) within ..... days of *date of acceptance of tender*  
If nothing stated, 14 days
- (b) Time for giving possession (subclause 24.1) within ..... days of *date of acceptance of tender*  
If nothing stated, 14 days

27 The information, materials, documents or instructions and the times by, or periods within which they are to be given to the <i>Contractor</i> (clause 32)	Documents or instructions	Times/Periods
	1 .....	.....
	2 .....	.....
	3 .....	.....
	4 .....	.....
	5 .....	.....

28 ~~Qualifying causes of delay, being causes of delay for which EOTs will be granted (paragraph (b)(iii) of clause 1 and subclause 34.3)~~

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- Deleted: Unseasonal weather
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† 29 Liquidated damages, rate (subclause 34.7)

~~Nil per day~~

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† 30 Bonus for early *practical completion* (subclause 34.8)

(a) Rate

..... per day \$ ..... per day

(b) Limit

..... \$

OR

.....% of *contract sum*

If nothing stated, there is no waiver

† 31 ~~Other *compensable causes* (paragraph (b) of clause 1 and subclause 34.9)~~

~~Acts or omissions of the Principal that cause a delay to the Works~~

- Deleted: Nil
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- Deleted: The delivery of statutory approvals later than that which is prescribed by statute that cause delays to the Works
- All time that is spent liaising with statutory authorities required to procure all statutory approvals for the design and construction of the Stage III Works that is in excess of 20 Business Days.
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32 *Defects Liability period* (clause 35)

.....  
If nothing stated, 12 months

† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A

33 Progress Claims (subclause 37.1)

The contract sum is that amount that is set out as the contract sum in the Cost Estimate

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(a) Times for progress claims

On the.....day each month for WUC For work up to..... day of that month

OR

(b) Stages of WUC for progress claims

The Contractor may make a progress claim in accordance with clause 37 upon achieving the following milestone events.

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The amounts set out alongside each of the milestones are estimates of the progress claims that will be made. Those amounts are subject to variation in accordance with clauses 9.8, 36.1 and 44.

Stage I

Completion of the bulk earthworks	\$3,054,000.00
At practical completion	\$1,500,000.00
At expiry of defects liability period of Stage I	\$ 500,000.00

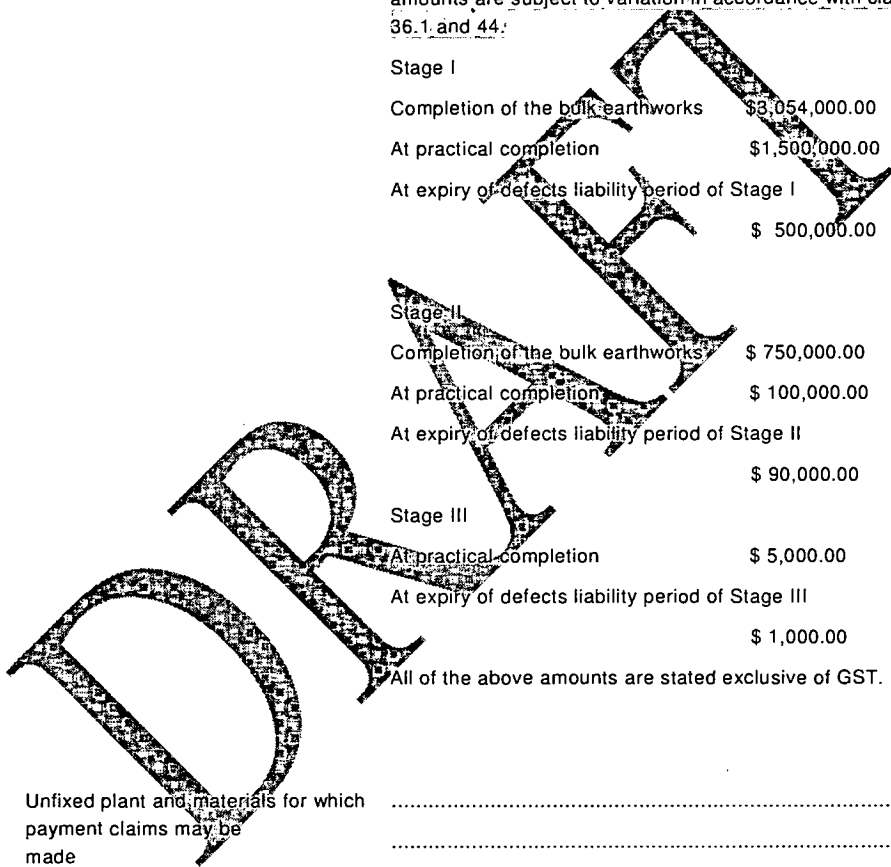
Stage II

Completion of the bulk earthworks	\$ 750,000.00
At practical completion	\$ 100,000.00
At expiry of defects liability period of Stage II	\$ 90,000.00

Stage III

At practical completion	\$ 5,000.00
At expiry of defects liability period of Stage III	\$ 1,000.00

All of the above amounts are stated exclusive of GST.



34 Unfixed plant and materials for which payment claims may be made (subclause 37.3)

.....  
.....  
.....

35 Interest rate on overdue payments (subclause 37.5)

.....% per annum  
If nothing stated, 18% per annum

36 (a) Time for Principal to rectify inadequate access (subclause 39.7(a)(iii))

.....days  
If nothing stated, 14 days

(b) Time for *Principal* to rectify inadequate possession ..... days  
If nothing stated, 14 days  
(subclause 39.7(a)(iv))

37 Expert Determination (subclause 42.3)

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(a) Person to nominate an expert

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A1

If no-one stated, the President of the Institute of Arbitrators & Mediators Australia

(b) Rules for expert determination

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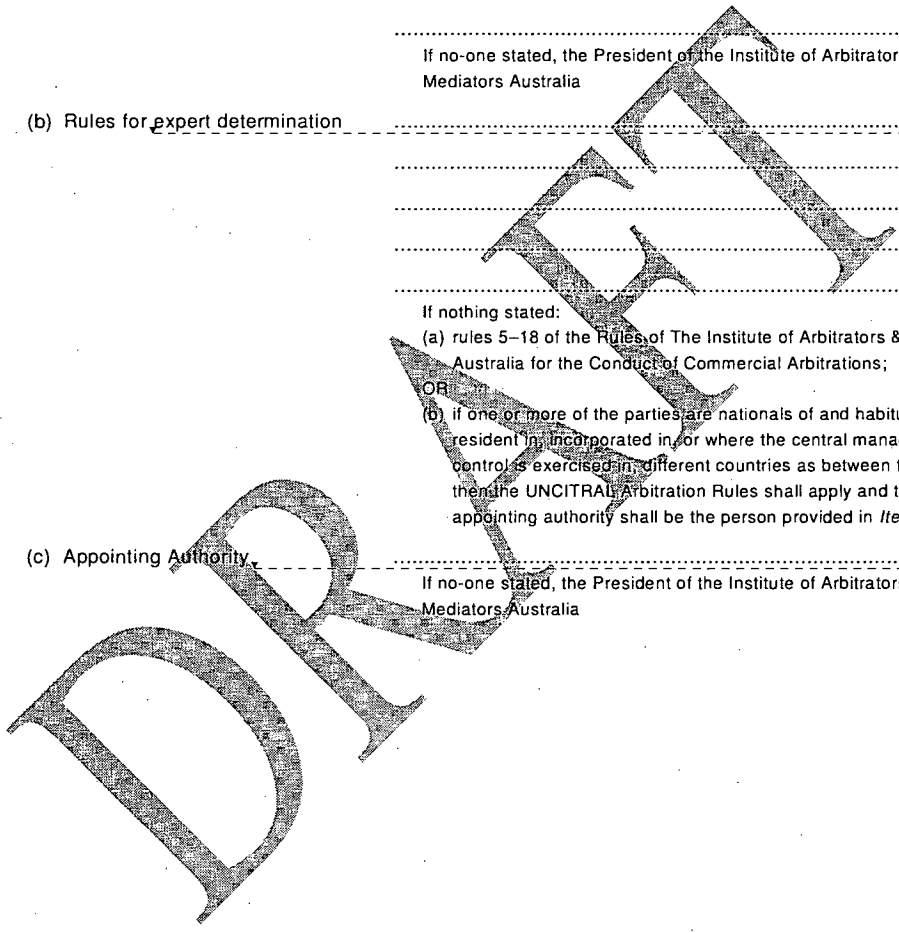
If nothing stated:  
(a) rules 5–18 of the Rules of The Institute of Arbitrators & Mediators Australia for the Conduct of Commercial Arbitrations;  
OR  
(b) if one or more of the parties are nationals of and habitually resident in, incorporated in, or where the central management and controls exercised in, different countries as between the parties, then the UNCITRAL Arbitration Rules shall apply and the appointing authority shall be the person provided in *Item* 37(c)

(c) Appointing Authority

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If no-one stated, the President of the Institute of Arbitrators & Mediators Australia



# Part A

## Separable Portions

- This section should be completed only if the *Contract* provides for *separable portions*.
- Complete separate pages for each *separable portion*, which should be numbered appropriately. Any balance of the *Works* should also be a *separable portion*.

Item	Separable portion (clause 1)	Description of separable portion (clause 1)	Stage I
7	(a) Date for practical completion (clause 1)		the area shown as Stage I on drawing entitled 'Masterplan', referenced 110406 and dated 17/05/11
	OR		
	(b) Period of time for practical completion (clause 1)		57 weeks from the date that this contract is executed by both parties
14	Contractor's security		
	(a) Form (clause 5)		The Contractor is not required to provide any security under this Contract
	(b) Amount or maximum percentage value of this separable portion (clause 5)		Nil % If nothing stated, 5% of value of this separable portion
	(c) If retention moneys, percentage of each progress certificate applicable to this separable portion (clause 5 and subclause 37.2)		.....%, until the limit in Item 14(b) If nothing stated, 10%, until the limit in Item 14(b)
	(d) Time for provision (except for retention moneys) (clause 5)		within ..... days after date of acceptance of tender If nothing stated, 28 days
	(e) Additional security for unfixed plant and materials (subclauses 5.4 and 37.3)		..... \$ .....
	(f) Contractor's security upon certificate of practical completion is reduced by (subclause 5.4)		.....% of amount held If nothing stated, 50% of amount held

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15 *Principal's security*

- (a) Form (clause 5) The Principal is not required to provide any security under this Contract
- (b) Amount or maximum percentage of value of this separable portion (clause 5) .....  
If nothing stated, nil
- (c) Time for provision (clause 5) within ..... days after *date of acceptance of tender*  
If nothing stated, 28 days
- (d) *Principal's security upon certificate of practical completion is reduced by* (subclause 5.4) .....% of amount held  
If nothing stated, 50% of amount held

29 Liquidated damages, rate (subclause 34.7)

\$ Nil per day

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30 Bonus for early *practical completion* (subclause 34.8)

\$ Nil

(a) Rate

..... per day \$..... per day

(b) Limit

..... \$.....

OR

.....% of value of this *separable portion*  
If nothing stated, there is no waiver

31 *Other compensable causes* (paragraph (b) of clause 1 and subclause 34.9)

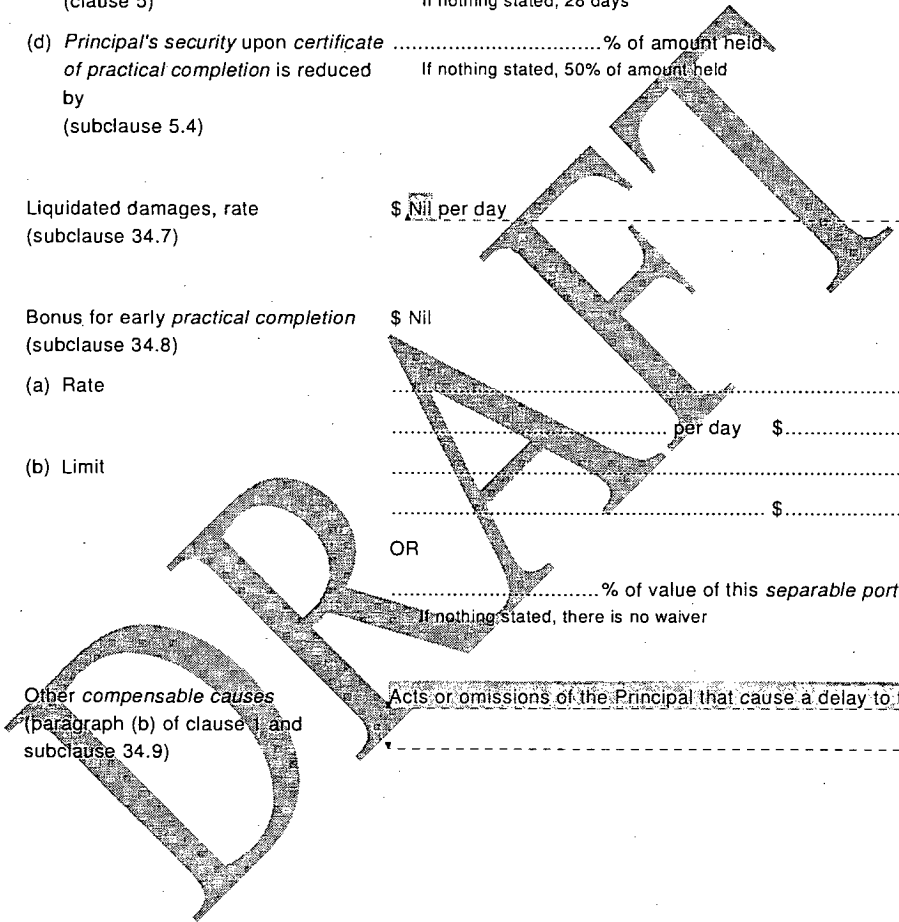
~~Acts or omissions of the Principal that cause a delay to the Works~~

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# Part A

## Separable Portions

- This section should be completed only if the *Contract* provides for *separable portions*.
- Complete separate pages for each *separable portion*, which should be numbered appropriately. Any balance of the *Works* should also be a *separable portion*.

<p><i>Separable portion</i> (clause 1)</p> <p>Description of <i>separable portion</i> (clause 1)</p>	<p>Stage II</p> <p>the area shown as Stage II on drawing entitled 'Masterplan', referenced 110406 and dated 17/05/11</p>
<i>Item</i>	
<p>7 (a) <i>Date for practical completion</i> (clause 1)</p> <p>OR</p> <p>(b) <i>Period of time for practical completion</i> (clause 1)</p>	<p>140 weeks from the date that this contract is executed by both parties</p>
<p>14 <i>Contractor's security</i></p> <p>(a) <i>Form</i> (clause 5)</p> <p>(b) <i>Amount or maximum percentage value of this separable portion</i> (clause 5)</p> <p>(c) <i>If retention moneys, percentage of each progress certificate applicable to this separable portion</i> (clause 5 and subclause 37.2)</p> <p>(d) <i>Time for provision (except for retention moneys)</i> (clause 5)</p> <p>(e) <i>Additional security for unfixed plant and materials</i> (subclauses 5.4 and 37.3)</p> <p>(f) <i>Contractor's security upon certificate of practical completion is reduced by</i> (subclause 5.4)</p>	<p>The Contractor is not required to provide any security under this Contract</p> <p>Nil % If nothing stated, 5% of value of this separable portion</p> <p>.....%, until the limit in <i>Item 14(b)</i> If nothing stated, 10%, until the limit in <i>Item 14(b)</i></p> <p>within ..... days after <i>date of acceptance of tender</i> If nothing stated, 28 days</p> <p>..... \$ .....</p> <p>.....% of amount held If nothing stated, 50% of amount held</p>

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15 *Principal's security*

- (a) Form (clause 5) The Principal is not required to provide any security under this Contract
- (b) Amount or maximum percentage of value of this *separable portion* (clause 5) .....  
If nothing stated, nil
- (c) Time for provision (clause 5) within ..... days after *date of acceptance of tender*  
If nothing stated, 28 days
- (d) *Principal's security upon certificate of practical completion* is reduced by (subclause 5.4) ..... % of amount held  
If nothing stated, 50% of amount held

29 Liquidated damages, rate (subclause 34.7)

\$ Nil per day

30 Bonus for early *practical completion* (subclause 34.8)

\$ Nil

(a) Rate

..... per day \$ ..... per day

(b) Limit

..... \$

OR

..... % of value of this *separable portion*  
If nothing stated, there is no waiver

31 *Other compensable causes* (paragraph (b) of clause 1 and subclause 34.9)

Acts or omissions of the Principal that cause a delay to the Works

Special Condition:

If the Contractor fails achieve *practical completion* within 60 days of the amended date for practical completion for a Stage of the Works, the Principal may:

- (a) novate the subcontractors to the Principal and take over this Stage of the Works and the total site to complete the Works;
- (b) deduct, as appropriate, the costs for completion of the relevant portion of the Contract pertaining to this Stage; and
- (c) provide accommodation for the Sales Office at commercial rates until the parkland is complete.

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# Part A

## Separable Portions

- This section should be completed only if the *Contract* provides for *separable portions*.
- Complete separate pages for each *separable portion*, which should be numbered appropriately. Any balance of the *Works* should also be a *separable portion*.

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Item	Separable portion (clause 1)	Description of separable portion (clause 1)	Stage III
7	(a) Date for practical completion (clause 1)		the area shown as Stage III on drawing entitled 'Masterplan', referenced 110406 and dated 17/05/11
	OR		
	(b) Period of time for practical completion (clause 1)		57 weeks from the date that this contract is executed by both parties
14	Contractor's security		
	(a) Form (clause 5)		The Contractor is not required to provide any security under this Contract
	(b) Amount or maximum percentage value of this separable portion (clause 5)		Nil % If nothing stated, 5% of value of this separable portion
	(c) If retention moneys, percentage of each progress certificate applicable to this separable portion (clause 5 and subclause 37.2)		.....%, until the limit in Item 14(b) If nothing stated, 10%, until the limit in Item 14(b)
	(d) Time for provision (except for retention moneys) (clause 5)		within ..... days after date of acceptance of tender If nothing stated, 28 days
	(e) Additional security for unfixed plant and materials (subclauses 5.4 and 37.3)		..... \$ .....
	(f) Contractor's security upon certificate of practical completion is reduced by (subclause 5.4)		.....% of amount held If nothing stated, 50% of amount held

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15 Principal's security

- (a) Form (clause 5) The Principal is not required to provide any security under this Contract
- (b) Amount or maximum percentage of value of this separable portion (clause 5) .....  
If nothing stated, nil
- (c) Time for provision (clause 5) within ..... days after date of acceptance of tender  
If nothing stated, 28 days
- (d) Principal's security upon certificate of practical completion is reduced by (subclause 5.4) .....% of amount held.  
If nothing stated, 50% of amount held

29 Liquidated damages, rate (subclause 34.7)

~~\$ Nil per day~~

**Deleted:** Duration of Works/Contract sum for this stage -  
**Formatted:** Highlight

30 Bonus for early practical completion (subclause 34.8)

\$ Nil

- (a) Rate .....  
..... per day \$..... per day
- (b) Limit .....  
..... \$.....

OR

.....% of value of this separable portion  
If nothing stated, there is no waiver

31 Other compensable causes (paragraph (b) of clause 1 and subclause 34.9)

~~Acts or omissions of the Principal that cause a delay to the Works~~

**Deleted:** Nil  
**Formatted:** Highlight  
**Deleted:** The delivery of statutory approvals later than that which is prescribed by statute that cause delays to the Works¶  
 All time that is spent liaising with statutory authorities required to procure all statutory approvals for the design and construction of the Stage III Works that is in excess of 60 days.

**Annexure to the Australian Standard  
General Conditions of Contract for  
Design and Construct**

# Part B

- This form may also be used where the *Principal* is required to provide an unconditional undertaking, by substituting *Principal* for *Contractor* and vice versa, wherever occurring.

## Approved form of unconditional undertaking

(clause 1 – security)

At the request of .....  
ACN..... ABN ..... (the *Contractor*) and in consideration of

ACN..... ABN ..... (the *Principal*) accepting this undertaking  
in respect of the *Contract* for .....  
..... (the *Project*)

ACN..... ABN ..... (the *Financial Institution*) unconditionally  
undertakes to pay on demand any sum or sums which may from time to time be demanded by the *Principal* to a  
maximum aggregate sum of .....  
..... (\$ ..... )

The undertaking is to continue until notification has been received from the *Principal* that the sum is no longer  
required by the *Principal* or until this undertaking is returned to the *Financial Institution* or until payment to the  
*Principal* by the *Financial Institution* of the whole of the sum or such part as the *Principal* may require.

Should the *Financial Institution* be notified in writing, purporting to be signed by .....  
..... for and on behalf of the *Principal* that the *Principal* desires  
payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the *Financial  
Institution* will make the payment or payments to the *Principal* forthwith without reference to the *Contractor* and  
notwithstanding any notice given by the *Contractor* not to pay same.

Provided always that the *Financial Institution* may at any time without being required so to do pay to the  
*Principal* the sum of .....  
..... (\$ ..... )

less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be  
required and specified by the *Principal* and thereupon the liability of the *Financial Institution* hereunder shall  
immediately cease.

Dated at ..... this ..... day of ..... 20.....

Annexure to the Australian Standard  
General Conditions of Contract for  
Design and Construct

# Part C

## Deed of novation

(subclause 9.2(c))

This Deed made the ..... day of ..... 20 .....  
between ..... (the *Principal*)  
of ..... ACN ..... ABN .....  
and ..... (the *Contractor*)  
of ..... ACN ..... ABN .....  
and ..... (the *Subcontractor*)  
of ..... ACN ..... ABN .....  
and ..... (the *Incoming Contractor*)  
of ..... ACN ..... ABN .....  
witness that:

- 1 Upon receipt by the *Subcontractor* of the sum certified by the *Superintendent* as owing under the prior contract described in the Schedule hereto:
  - (a) the prior contract shall be discharged;
  - (b) the *Subcontractor* shall release the *Contractor* from the further performance of the prior contract and from all claims and demands in connection with the prior contract;
  - (c) the *Incoming Contractor* shall punctually perform the obligations of the *Contractor* under the prior contract as far as they are not performed. The *Incoming Contractor* acknowledges itself bound by the provisions of the prior contract as if the *Incoming Contractor* had been named in the prior contract; and
  - (d) the *Subcontractor* shall punctually perform like obligations and be bound to the *Incoming Contractor* as if the provisions of the prior contract were incorporated herein.
- 2 The *Principal* and *Subcontractor* each warrant to the *Incoming Contractor* that:
  - (a) subcontract work carried out to the date hereof is in accordance with the provisions of the prior contract; and
  - (b) all claims and demands in connection with the prior contract have been made to the *Contractor*.
- 3 The *Principal* and *Subcontractor* each indemnifies the *Incoming Contractor* from all claims and demands of the *Contractor*, *Principal* and *Subcontractor* in connection with the prior contract.
- 4 A dispute between:
  - (a) the *Principal* and the *Subcontractor* in connection with the *Superintendent's* certification of the sum owing under the prior contract; or
  - (b) the *Incoming Contractor* and the *Subcontractor* in connection with clause 1(c) or 1(d), shall be resolved pursuant to the provisions of AS 4903—2000 Subcontract Conditions for Design and Construct which for the purposes of this clause 4 are incorporated herein.
- 5 This Deed shall be governed by the laws of the jurisdiction stated in *Item 8* of the *Contract* between the *Principal* and *Contractor*.

**Schedule**

.....

.....

.....

.....

In witness whereof the parties have executed this DEED OF NOVATION by affixing their seals.

THE COMMON SEAL of the *Principal*  
was affixed to this document in the presence of:

.....  
Secretary/Director

.....  
Name (please print)

.....  
Director

.....  
Name (please print)

THE COMMON SEAL of the *Contractor*  
was affixed to this document in the presence of:

.....  
Secretary/Director

.....  
Name (please print)

.....  
Director

.....  
Name (please print)

THE COMMON SEAL of the *Subcontractor*  
was affixed to this document in the presence of:

.....  
Secretary/Director

.....  
Name (please print)

.....  
Director

.....  
Name (please print)

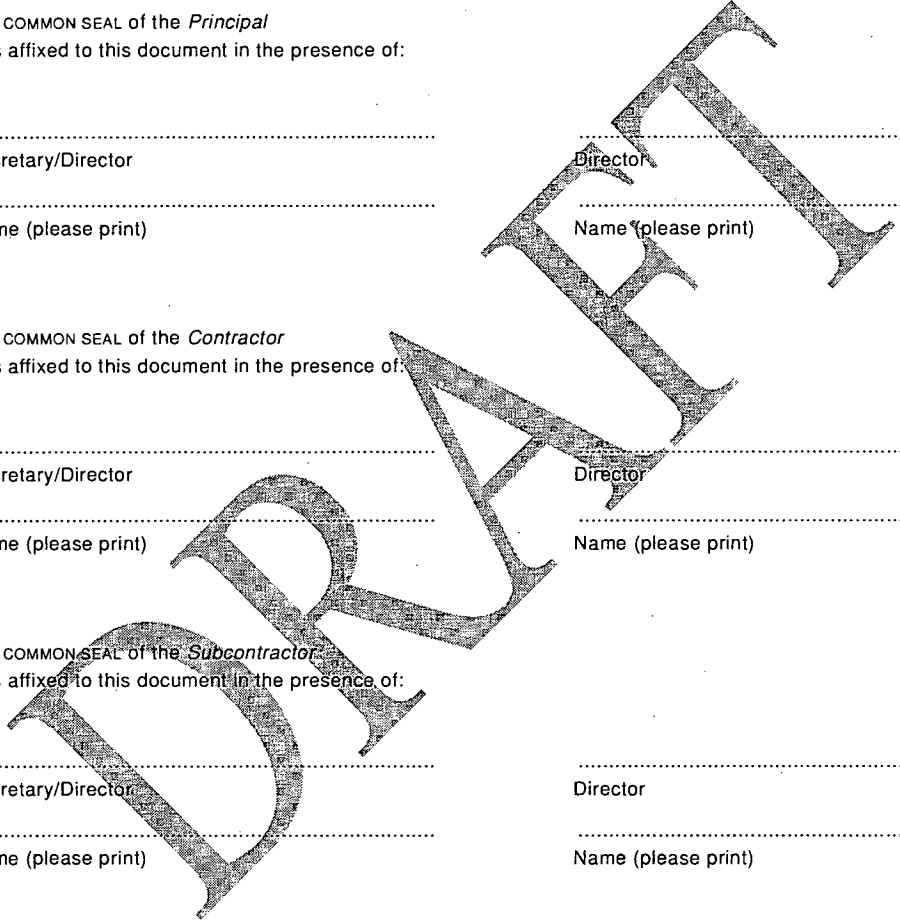
THE COMMON SEAL of the *Incoming Contractor*  
was affixed to this document in the presence of:

.....  
Secretary/Director

.....  
Name (please print)

.....  
Director

.....  
Name (please print)



Annexure to the Australian Standard  
General Conditions of Contract for  
Design and Construct

# Part D

**Note:** Usually the *continuing party* is the subcontractor, selected subcontractor or consultant, as the case may be.

## Deed of novation

(subclause 9.4)

This Deed made this ..... day of ..... 20 .....

between ..... (the *outgoing party*)

of ..... ACN ..... ABN .....

and ..... (the *incoming party*)

of ..... ACN ..... ABN .....

and ..... (the *continuing party*)

of ..... ACN ..... ABN .....

witness that:

- 1 Upon receipt by the *continuing party* of all moneys owing under the prior contract:
  - (a) the *incoming party* shall punctually perform the obligations of the *outgoing party* under the prior contract described in the Schedule hereto as far as they are not performed. The *incoming party* acknowledges itself bound by the provisions of the prior contract as if the *incoming party* had been named as the *outgoing party* in the prior contract;
  - (b) the *continuing party* punctually perform like obligations and be bound to the *incoming party* as if the provisions of the prior contract were incorporated herein; and
  - (c) the *outgoing party* and *continuing party* shall each release and forever discharge the other from the further performance of the prior contract and from all claims and demands in connection with the prior contract.
- 2 The *outgoing party* and *continuing party* each warrant to the *incoming party* that *preliminary design* or *selected subcontract work*, as the case may be, carried out to the date hereof, is in accordance with the provisions of the prior contract.
- 3 This Deed shall be governed by the governing law of the prior contract between the *outgoing party* and *continuing party*.



**Schedule**

.....

.....

.....

.....

In witness whereof the parties have executed this DEED OF NOVATION by affixing their seals.

THE COMMON SEAL of the *outgoing party* was affixed to this document in the presence of:

.....  
Secretary/Director

.....  
Name (please print)

.....  
Director

.....  
Name (please print)

THE COMMON SEAL of the *incoming party* was affixed to this document in the presence of:

.....  
Secretary/Director

.....  
Name (please print)

.....  
Director

.....  
Name (please print)

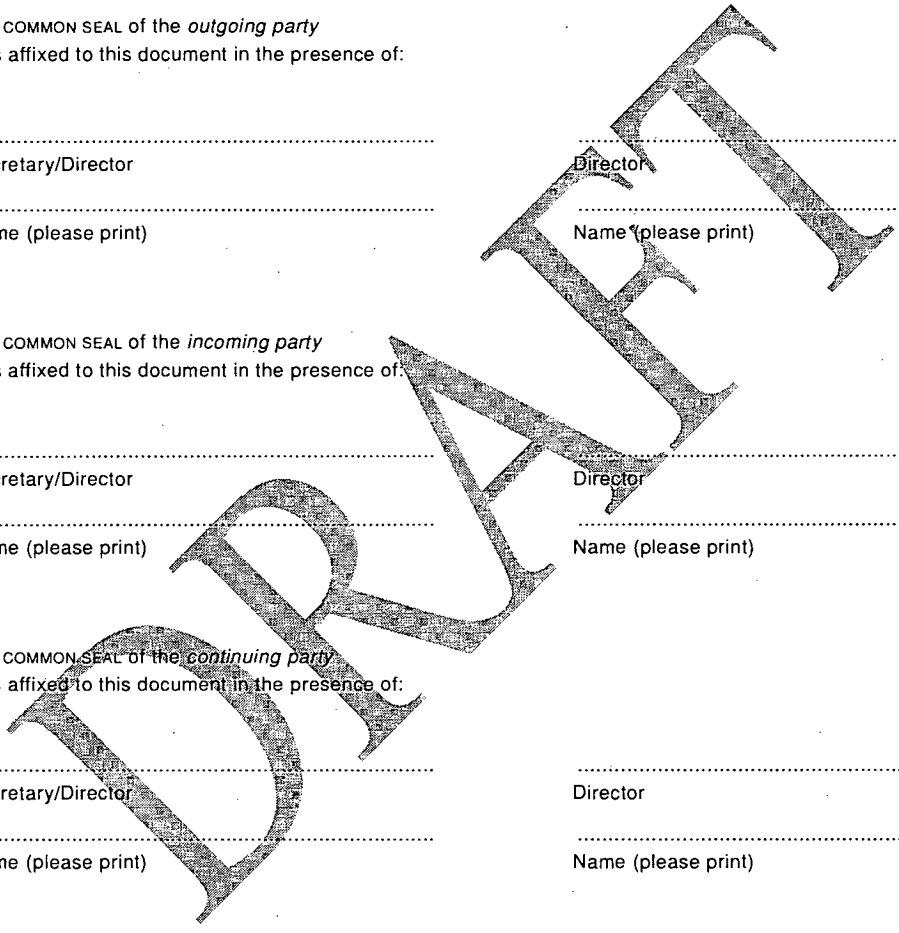
THE COMMON SEAL of the *continuing party* was affixed to this document in the presence of:

.....  
Secretary/Director

.....  
Name (please print)

.....  
Director

.....  
Name (please print)



Annexure to the Australian Standard  
General Conditions of Contract for  
Design and Construct

# Part E

### Deletions, amendments and additions

1 The following clauses have been deleted from AS 4902—2000

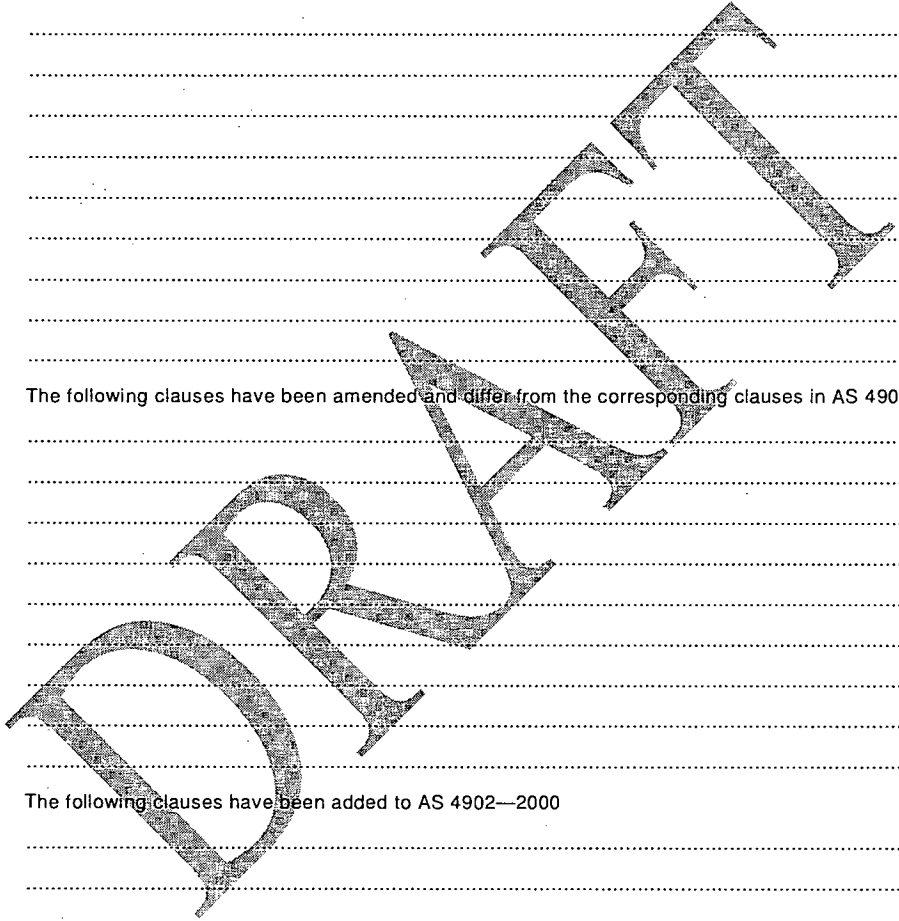
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2 The following clauses have been amended and differ from the corresponding clauses in AS 4902—2000

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3 The following clauses have been added to AS 4902—2000

.....  
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## † INDEX

<i>Clause</i>		<i>Clause</i>	
Acceleration .....	34.4(b)	fees and charges.....	11.2
Acceptance (see Approval)		interest .....	37.5
Acceptance of tender		liquidated damages .....	34.7
date of, defined .....	1	minerals, fossils and relics.....	24.3
formal instrument of agreement.....	6	omitted items.....	2.5
security—time for.....	5.1, <i>Items</i> 14(d), 15(c)	on completion of work taken out of the hands of the Contractor .....	39.6
Access (see also possession of site)		pricing variations.....	36.4
during defects liability period.....	35	protection of people and property.....	12
for Principal and others.....	24.2	provisional sums .....	3
for testing .....	30.1	quantities .....	2.5
Accident (see also Insurance, Urgent protection and Protection of persons and property)		set-offs by the Principal.....	37.2, 37.6
reinstatement of damage.....	14.2	suspension by Contractor.....	39.9
to employees .....	18	urgent protection.....	13
to third parties.....	15, 17	Agreement	
to WUC .....	14, 16A	Contract in absence of formal instrument.....	6
Accord and satisfaction .....	37.4	formal instrument of .....	6
Actions		interpretation of.....	1, 8.1
arbitration .....	42	rectification when dispute.....	42.1
indemnification by Contractor.....	10, 15.1	Alignments (see Survey mark)	
indemnification by Principal .....	10, 15.2	Alternative clauses .....	10.2, 16A, 17
Acts, (of Parliament) (see Legislative requirements)		Ambiguity in documents .....	8.1
Additions and/or deductions		Appliances (see Construction plant)	
adjustment generally.....	2.1	Approval	
care of survey marks.....	26.3	effect of certificates .....	37.2
changes in legislative requirements .....	11.2	examination and testing.....	30
contract sum definition, excluded in .....	1	extension of time .....	34.4, 34.5
discrepancies in documents .....	8.1	of documents .....	8.3
error in setting out .....	26.2	of form of security .....	1
generally.....	2.1	of insurance policies .....	16A, 17
legislative requirements .....	11.2	of media releases .....	8.6
minerals, fossils and relics .....	24.3	of municipal and statutory authorities (see Legislative requirement)	
order of work .....	32	of subcontracting .....	9.2
pricing variations generally.....	36.4	of variations of convenience .....	36.3
programming .....	32	to suspension by Contractor.....	33.2
provisional sums .....	3	working days .....	31
suspension .....	33.4	working hours.....	31
variations.....	36.4	Approved form of unconditional undertaking	
Address for service (see also Service).....	7	security .....	1
change of .....	7	form of .....	Annexure Part B
Contractor.....	7, <i>Item</i> 4	Arbitration	
Principal .....	7, <i>Item</i> 2	agreement to arbitrate.....	42.2
Superintendent .....	7, <i>Item</i> 6	ambit of dispute .....	42.1
Adjustment (for)		conference.....	42.2
actual quantities .....	2.5	nomination of arbitrator .....	42.3, <i>Item</i> 37(a)
bonus .....	34.8	rules of .....	42.3, <i>Item</i> 37(b)
cost of suspension.....	33.4	Assessment (see Superintendent, assessments by)	
cost of tests .....	30.7	Assignment	
defective material and work .....	29.3	of Contract.....	9.1
delay damages .....	34.9	of subcontract.....	9.2(a)
directions on order of work .....	32	by subcontractor .....	9.2(b)
errors in documents .....	8.1	Asterisk clauses.....	8.6, 29.2
errors in setting out.....	26.2		

† References to *Items* are to *Items* in Annexure Part A

<i>Clause</i>	<i>Clause</i>
Australasian Dispute Centre..... <i>Item 37(a), (c)</i>	settlement of claims under policy of insurance .....19.5
Authorisation (see Direction)	settlement of disputes.....42
Awards (see Legislative requirements)	Superintendent's decision on.....41.3
Bank guarantee (see Unconditional undertaking)	valuation of ..... 37.2, 41.3
Bank—place of business ..... 1, <i>Item 9(c)</i>	Clause headings—effect..... 1(c)
Bankruptcy	Cleaning up.....27
of Contractor..... 39.11	Commencement of WUC
of Principal ..... 39.11	generally ..... 16A, 16B, 17, 18, 19.1
Basis of payment..... 2.1	insurance, proof of ..... 19.1, 24.1
Bench mark (see Survey mark)	possession of site ..... 24.1
Bonus	production of policies before ..... 19.1
for early practical completion..... 34.8, <i>Item 30(a)</i>	Communications between parties ..... 1(e)
limit of ..... 34.8, <i>Item 30(b)</i>	Compensable cause
rate of ..... 34.8, <i>Item 30(a)</i>	defined ..... 1
waiver of part of bonus ..... 34.8, <i>Item 30(b)</i>	delay damages for ..... 34.9
where separable portions ..... 4(c)	others listed ..... <i>Item 31</i>
Breach of contract	Completion
claims for ..... 41	by Principal on default ..... 39.4, 39.5, 39.6
default of the Contractor ..... 39.2	final certificate ..... 37.4
default of the Principal ..... 39.7	practical (see Practical completion)
preservation of other rights ..... 39.1	Compliance
repudiation ..... 39.10	with legislative requirements ..... 11.1
substantial breaches ..... 39.2, 39.7	with Superintendent's interpretation ..... 8.1
By-laws (see Legislative requirements)	Concurrent delay ..... 34.4
Calendar days ..... 1(a)	Conditions, waiver of ..... 43
Care of WUC	Confidential information
cleaning up ..... 27	agreement as to ..... 8.5
Contractor's obligations for	generally ..... 8.5
excepted risks ..... 14.3	Construction of Contract ..... 1, 8.1
generally ..... 14.1	Construction plant
reinstatement of loss or damage ..... 14.2	care of ..... 14.1
urgent protection of ..... 13	Contractor to supply ..... 28
Certificate(s) (see also Direction and Payment)	defined ..... 1
effect of ..... 37.2	insurance of ..... 16A
final certificate ..... 37.4	not to be removed ..... 28
of cost to complete on default by Contractor ..... 39.6	removal of ..... 27, 40
of municipal and statutory authorities	use by Principal ..... 39.5, 39.6
(see Legislative requirements)	WUC includes ..... 1
practical completion ..... 34.6	Consultants
progress certificate ..... 37.2	defined ..... 1
Certificate of Practical Completion	engagement of ..... 9.2
defined ..... 1	insurance of WUC, included in ..... 16A
issue of ..... 34.6	notices to and from insurer ..... 19.3
meaning of ..... 34.6	novation of ..... 2.2(a)(iii), 2.3(b), 9.4
non-issue of ..... 34.6	professional indemnity
request for ..... 34.6	insurance ..... 16B, <i>Items 24(c), (d)</i>
Claims (see also Adjustment)	proof of payment of ..... 38
arbitration of ..... 42.3	public liability insurance ..... 17
compensation to third party ..... 41.2	suspension because of ..... 33.1(a)
failure to notify, effect ..... 41.2	workers compensation policy ..... 18
for damages ..... 41.1, 42.1	Consultant fees
for EOT for practical completion ..... 34.3	in contract works policy ..... 16A, <i>Item 23(c)</i>
for final payment ..... 37.4	Contingency sum (see Provisional sum)
for progress payment ..... 37.1, <i>Item 33</i>	Contract
indemnity by Contractor ..... 10.1, 15.1	assignment ..... 9.1
indemnity by Principal ..... 10.1, 15.2	breach of (see Breach of Contract)
notice of dispute ..... 41.1, 41.3, 42.1	construction of ..... 1
notice of potential claims on	defined ..... 1
insurance policies ..... 19.4	disputes under ..... 42
notification of ..... 41	

Clause	Clause		
documents.....	8	warranties, as to.....	2.2
evidence of.....	6	warranties unaffected.....	2.3
formal instrument of.....	6	Contractor's employees	
frustration of.....	40, 42.1	control of.....	23
governing law of.....	1(h), <i>Item</i> 8	death or injury.....	18
interpretation of.....	1	insurance of.....	18
nature of.....	2	liability for.....	9.5
rectification of.....	42.1	payment of.....	38
subcontracting.....	9.2	removal of, from site.....	23
termination—effect of.....	39.10	Contractor's representative.....	22
termination of		Contractor's responsibility (see also Contractor and Care of WUC)	
by Contractor.....	34.9, 39.11	for employees (see Contractor's employees)	38
by Principal.....	34.4, 39.11	for payment of workers and subcontractors.....	9.5
work under the (WUC).....	1	for selected subcontractors.....	9.5
Contract documents.....	8	for subcontractors.....	9.5
ambiguities in.....	8.1	to carry out WUC.....	2.1
construction of.....	8.1	Contributory negligence	
discrepancies in.....	8.1	indemnity as to.....	15.1
inconsistencies in.....	8.1	reduction of liability for.....	15.1
interpretation of.....	8.1	Copyright (see Intellectual property right)	
Contract sum		Corporation (also see Person).....	1(a), 5.6, 39.11(d)
defined.....	1	Corporations Law.....	5.6, 38.3
insurance of WUC.....	16A	Cost objective	
Contract works insurance		defined in Principal's project requirements.....	1
amount of cover of.....	16A, <i>Item</i> 23	Cost(s) (see also Adjustment)	
Contractor controlled.....	16A Alt 1	added to contract sum.....	24.3, 26.2, 26.3
exclusions in.....	16A	completion of work taken out	
in joint names.....	16A	of the hands of the Contractor.....	39.6
length of cover.....	16A	complying with legislative requirements.....	11.2
policy.....	16A	examination and testing.....	30.7
Principal controlled.....	16A Alt 2	latent conditions.....	25.3
Contractor		protection of person, etc.....	12
access to site by.....	24.1	provisional sums.....	3
address of.....	<i>Item</i> 4	reinstatement.....	14.2
appointment of representative.....	22	set-offs by Principal.....	37.6
default by.....	39.2	setting out.....	26.3
defined.....	1	urgent protection.....	13
design obligations defined.....	1	variations.....	36.2, 36.4
design, property in.....	10.2	Covering up of WUC.....	30.2
licence to use design documents.....	10.2	Cross liability clause.....	19.6
named.....	<i>Item</i> 3	Currency.....	1(g), <i>Item</i> 9(a)
possession of site by.....	24.1	Damage (see also care of the Works and Insurance)	
professional indemnity		prevention of.....	12
insurance.....	16B, <i>Item</i> 24(a), (b)	protection of property, etc.....	12
rights of.....	34.9, 39.11	reinstatement of.....	14.2
security by.....	<i>Item</i> 14	to persons and property other than WUC.....	15.1
service on.....	7	to WUC.....	14.1
to insure.....	16A Alt 1, 16B, 17 Alt 1, 18	urgent protection.....	13
use of site by.....	24.1	Damages (see also Adjustment and Claims)	
warranties.....	2.2	delay damages.....	34.9
warranties unaffected.....	2.3	for breach of the Contract.....	39.1
Contractor-supplied documents		for delay by Contractor.....	34.7, <i>Item</i> 29
approval of.....	8.3(b)	for delay due to compensable cause.....	34.9
availability of.....	8.4	liquidated.....	34.7, <i>Item</i> 29
checking of.....	8.3(a)	on insolvency.....	39.11
copies of.....	8.3	on termination of the Contract.....	39.10
rejection of.....	8.3(c)	Date	
responsibility for.....	8.3	for practical completion.....	1, <i>Item</i> 7, 34.7, 34.8
submission of.....	8.3	of acceptance of tender.....	1
suitability of.....	8.3(c)	of practical completion.....	1, 34.6, 34.7, 34.8, 35
supply of.....	8.3		
Contractor's all risk insurance			
(see Contract works insurance)			
Contractor's design obligations			
defined.....	1		

Clause	Clause
Date of acceptance of tender defined ..... 1	records of cost to complete ..... 39.5
Date for practical completion bonus ..... 34.8	retention of plant and materials ..... 39.6
defined ..... 1, <i>Item 7</i>	rights of the Principal ..... 39.1–39.6, 39.9
effect of proposed variation on ..... 36.2(a)	show cause notice to ..... 39.3
liquidated damages ..... 34.7	substantial breach by ..... 39.2
period of time for ..... 1, <i>Item 7</i>	substantial departure from construction program ..... 39.2(c)
Date of practical completion	suspension of payment on ..... 39.4
defects liability period ..... 35	when the Principal takes work out of hands of Contractor ..... 39.5, 39.6
defined ..... 1	Default of subcontractor ..... 9.5
generally ..... 34.6	Default or insolvency
liquidated damages ..... 34.7	by Contractor ..... 39.2, 39.11
Days	by Principal ..... 39.7, 39.11
mean calendar days ..... 1(a)	generally ..... 39
working ..... 31	preservation of other rights ..... 39.1
Debt due to the Principal ..... 12, 13, 27, 29.3, 34.7, 35, 37.6, 39.6	substantial breaches ..... 39.2, 39.7
Decision (see also Direction)	show cause notices ..... 39.3, 39.8
Deed of guarantee, undertaking and substitution	Defective work
defined ..... 1	acceptance of ..... 29.4
provision of ..... 5.6	correction of ..... 29.3
requirement for ..... 5.6	cost of rectification ..... 29.3
Deed of novation ..... 9.4	demolition of ..... 29.3
Deemed variation	examination and testing of ..... 30
as to acceptance of defective work ..... 29.4	generally ..... 29.3
for latent condition ..... 25.3	includes material ..... 29.3
omission in schedule of rates ..... 2.5	not to delivery ..... 29.3
on adjustment of quantities ..... 2.5	quality assurance ..... 29.2
reinstatement of damage ..... 14.2	reconstruction of ..... 29.3
Default by Principal	removal of ..... 29.3
Contractor's rights on ..... 39.9	replacement of ..... 29.3
Contractor's show cause notice ..... 39.8	testing of ..... 30
generally ..... 39.7	time of notice of ..... 29.5
in making due payment ..... 39.7(a)	Defects
in providing evidence of insurance ..... 39.7(a)	costs of rectification ..... 29.3, 35
in providing security ..... 39.7(a)	defined ..... 1
in rectifying inadequate access ..... 39.7(a), <i>Item 36(a)</i>	direction to rectify ..... 35
in rectifying inadequate possession ..... 39.7(a), <i>Item 36(b)</i>	examination and testing for ..... 30
on termination ..... 39.10	in design—excepted risk ..... 14.3(f)
rights of the Contractor ..... 39.1, 39.7, 39.8, 39.9	in work ..... 29.3, 29.4, 35
Superintendent not issuing certificate of practical completion ..... 39.7(b)	length of liability period ..... 35, <i>Item 32</i>
show cause on ..... 39.7, 39.8	material and work ..... 29.3, 29.4, 35
Default by Contractor	minor, practical completion ..... 1
adjustment of costs on ..... 39.6	remediating ..... 29.3, 35
assessment of cost to complete on ..... 39.6	removal and replacement ..... 29.3
failing to comply with a direction of the Superintendent ..... 39.2(a)	times for rectification ..... 35
failing to maintain program ..... 39.2(c)	Defects liability period
failing to proceed with due expedition and without delay ..... 39.2(d)	defined ..... 1
failing to properly perform design obligations ..... 39.2(a)	duration of ..... 35, <i>Item 32</i>
failing to provide evidence of insurance ..... 39.2(a)	generally ..... 35, <i>Item 32</i>
failing to use materials or standards of workmanship ..... 39.2(a)	Definitions (generally) ..... 1
in providing documentary evidence ..... 39.2(e)	dispute ..... 42.1
in providing security ..... 39.2(a)	Delay
may use plant and materials on ..... 39.5	concurrent ..... 34.4
on termination ..... 39.10	construction program ..... 32, 39.2(c)
possession of plant and materials ..... 39.5	damages ..... 4(c), 34.9
procedure on ..... 39.2–39.6	further delay ..... 34.3
	in giving possession ..... 24.1
	notice of ..... 34.2
	overlapping ..... 34.4
	rate of progress ..... 34.1
	Delay damages
	certified by Superintendent ..... 34.9
	claim for ..... 34.9
	due and payable ..... 34.9

Clause	Clause
for compensable cause ..... 34.9	order of work ..... 32
other compensable causes ..... 1, 34.9, <i>Item</i> 31	notice of tests ..... 30.4
where separable portions ..... 4(c)	relating to Contractor's employees ..... 23
Deletion of clauses, etc.—effect ..... 1(i)	relating to subcontractors ..... 23
Deletions, amendments and	suspension of WUC ..... 33.1
additions (generally) ..... 1(i), Annexure Part E	written ..... 20
Demand (see also Direction)	Discrepancies
Demolition and removal of debris	Contract documents ..... 8.1
in Contract works policy ..... 16A(b), <i>Item</i> 23(b)	dimensions ..... 8.1
Deposit (see Security)	Dispute (see Dispute resolution)
Design	Dispute resolution
defects in—excepted risk ..... 14.3(f)	after final certificate ..... 37.4(d)
intellectual property rights in ..... 10	ambit of ..... 42.1
objectives, defined in Principal's	arbitration ..... 42.3
project requirements ..... 1	conference ..... 42.2
procurement methods explained ..... Preface	continue performance of Contract ..... 42.1
stated purpose ..... 2.2	dispute defined ..... 1, 42.1
warranties, as to ..... 2.2	includes difference ..... 42.1
warranties, as to by Principal ..... 10.1	meaning of dispute ..... 1, 42.1
warranties unaffected ..... 2.3	notice of dispute ..... 37.4(d), 41.1, 42.1
Design and Construct	summary relief ..... 42.4
explained ..... Preface	Documents
Design, Development and Construct	ambiguities in ..... 8.1
explained ..... Preface	approval of the Superintendent ..... 8.3
Design documents	availability of ..... 8.4
ambiguities in ..... 8.1	confidential information ..... 8.5
defined ..... 8.1	construction of ..... 8.1
direction not to copy ..... 8.2	Contractor-supplied ..... 8.3
discrepancies in ..... 8.1	discrepancies in ..... 8.1
included in Contractor's design obligations ..... 1	evidencing Contract ..... 6
inconsistencies in ..... 8.1	generally ..... 8
licence to use ..... 10.2	inconsistencies in ..... 8.1
novation ..... 9.4	interpretation of ..... 8.1
ownership of ..... 10.2	Principal-supplied ..... 8.2
variation to, affect of ..... 8.3	property in ..... 8.2, 8.3
warranties, as to ..... 2.2	results of tests ..... 30.6
warranties unaffected ..... 2.3(c)	service of ..... 7
Design, Novate and Construct	Due (see Moneys due)
explained ..... Preface	Due and owing (see Moneys due and owing)
Design Objectives	Due and payable (see Moneys due and payable)
defined in Principal's project requirements ..... 1	Emergency work ..... 13
Determination (see also Direction)	Employees
defined in direction ..... 1	control of ..... 23
disputes ..... 42	insurance of ..... 17(c), 18
interpretation of discrepancy ..... 8.1	of Contractor (see Contractor's employees)
pricing of variation ..... 36.4	of subcontractor ..... 23
value of work ..... 37.2	responsibility for ..... 9.5
Determination of Contract (see Termination of Contract)	English language ..... 1(e)
Dimensions	EOT (extension of time)
figured ..... 8.1	application for ..... 34.3
scaled ..... 8.1	assessment of ..... 34.4, 34.5
Direct payment to subcontractor ..... 38.3	claim for ..... 34.3
Direction (see also Approval)	deemed assessment ..... 34.5
construction program ..... 32	defined ..... 1
covering up of work ..... 30.2	failure to apply for, effect ..... 41.2
defective materials or work ..... 29.3, 29.4	grant of ..... 34.5
defined ..... 1	in event of further delay ..... 34.3
dispute as to ..... 42.1(a)	partial grant of ..... 34.5
examination and testing ..... 30	qualifying cause of delay ..... 1, 34.3
oral, to be confirmed in writing ..... 20	refusal of ..... 34.5
	time for applying for ..... 34.3
	Superintendent may direct ..... 34.5

<i>Clause</i>	<i>Clause</i>
Equipment to be provided by Contractor (see Construction plant) .....	28
Errors	
Contract documents .....	8.1
in schedule of rates .....	2.5
setting out .....	26.2
Escrow	
security transferred in .....	5.1
Examination and testing .....	30
Excepted risk	
defined .....	1
meaning .....	14.3
Explanation (see also Direction)	
Extension of time (see EOT)	
Failure of Contractor (see also Delay and Default by Contractor)	
to arrange urgent protection .....	13
to lodge security .....	5.1, 39.2(a)
to make claims .....	41.2
to produce proof of insurance .....	19.2, 39.2(a)
to show cause .....	39.3
Failure of Principal (see also Default of Principal)	
to give access .....	39.7(a)
to give possession of Site .....	39.7(a)
to insure .....	19.2, 39.2(a)
to make payment .....	37.5, 39.7(a)
Faulty work (see Defective material or work)	
Fees and charges (see Legislative requirements)	
Figured dimensions .....	8.1
Final certificate	
accord and satisfaction .....	37.4
defined .....	1
effect of .....	37.4
final payment claim for .....	37.4
generally .....	37.4
meaning .....	37.4
release of security .....	5.4
Final payment (see also Final certificate)	
defined .....	1
meaning .....	37
Final payment claim	
defined .....	1
endorsement of .....	37.4
includes all claims .....	37.4
meaning .....	1, 37.4
payment on account, excepted .....	37.2
prescribed notice, excluded .....	41.1
time for .....	37.4
Financial institution	
form of unconditional undertaking by .....	Annexure Part B
security provided by .....	1
Finding of minerals, fossils and relics .....	24.3
Fitness for stated purpose	
to be stated in Principal's project requirements (definition) .....	1
warranty, as to .....	2.2(a)(ii)
warranty as to preliminary design .....	2.2(a)(ii)
Float .....	34.4(a)
Formal instrument of agreement	
execution of .....	6
generally .....	6
stamping of .....	6
Form of unconditional undertaking .....	Annexure Part B
Fossils .....	24.3
Frustration	
generally .....	40
notice of dispute when .....	42.1(b)
payment on .....	40
release and return of security .....	40
termination by .....	40
Gender includes every gender .....	1(d)
Governing law .....	1, Item 8
Guarantee, etc deed of .....	5.6
Headings of clauses .....	1(c)
Hours of work .....	31
Incompetence of employees, etc .....	23
Indemnity	
by Contractor .....	10.1, 15.1
by Principal .....	10.1, 15.2
care of work .....	14
damages to persons and property .....	15
infringement of intellectual property rights .....	10.1
Information to be supplied	
advance notice .....	32
by Principal .....	32
confidential information .....	8.5
Contract documents .....	8
examination of information made available for tendering .....	25.1(a)
examination of information relevant to risks, contingencies, etc .....	25.1(b)
for setting out the Works .....	26.1
latent conditions .....	25
particulars of materials and plant .....	28(a)
results of tests .....	30.6
to media .....	8.6
working hours and days .....	31
Injury to persons	
generally .....	12
indemnity by Contractor .....	15.1
insurance .....	17, 18
measures to prevent .....	12
Insolvency	
bankruptcy .....	39.11(c)
Contractor's rights on .....	39.11(B)
deed of arrangement .....	39.11(d)
generally .....	39.11
meeting of creditors .....	39.11(d)
mortgagee in possession .....	39.11(d)
Principal's rights on .....	39.11(A)
voluntary winding up .....	39.11(d)
when corporation .....	39.11(d)
when exercisable .....	39.11
when individual .....	39.11(c)
Inspection	
access for testing .....	30.1
access to Principal and others .....	24.2
insurance policies .....	19.1



Clause	Clause
testing ..... 30.1	payment to subcontractor under ..... 38.3
Institute of Arbitrators & Mediators Australia	payment to worker under ..... 38.3
rules of ..... <i>Item 37(b)</i>	provision of services ..... 11.2(a)
Instruction (see also Direction)	satisfaction of ..... 11.1, <i>Item 22(a)</i>
Insurance	time of effect of ..... 11.2(b)
cross-liability ..... 19.6	variance in ..... 11.1
failure to provide proof of ..... 19.2, 39.2(a), 39.7(a)	Level mark (see Survey mark)
inspection of policies ..... 19.1	Liability of the Contractor
notice of potential claims ..... 19.4	for care of WUC ..... 14
notices to and from insurer ..... 19.3	for compliance with legislative requirements ..... 11
of employees ..... 18	for selected subcontractors ..... 9.5
of the Works ..... 16A, <i>Item 23</i>	for subcontractors ..... 9.5
professional indemnity ..... 16B, <i>Item 24</i>	Licences (see Legislative requirements)
proof of insurance ..... 19.1	Limits of accuracy in schedule of rates ..... 2.5(b), <i>Item 12</i>
provisions of policies ..... 19.3	Liquidated damages
public liability ..... 17	certifying of ..... 34.7
settlement of claims ..... 19.5	rate of ..... 34.7, <i>Item 29</i>
workers' compensation ..... 18	repayment of ..... 34.7
Intellectual property rights	separable portions ..... 4(c)
Contractor's warranty as to ..... 10	Litigation ..... 42.4
defined ..... 1	Local authorities ..... 11
design documents ..... 10.2	Loss of damage to WUC
indemnity as to ..... 10	care of WUC ..... 14.1
licence in ..... 10.2	excepted risks ..... 14.3
ownership of ..... 10.2	generally ..... 14
Principal's warranty as to ..... 10	protection ..... 12, 13
Interpretation of Contract documents ..... 1.8.1	reinstatement ..... 14.2
Interest	urgent protection ..... 13
on security ..... 5.5	Lump sum ..... 2.1
overdue payments ..... 37.5, <i>Item 35</i>	Making good (see also Reinstatement) ..... 14.2, 29.3, 35
rate of ..... 37.5, <i>Item 35</i>	Materials (see also Work)
Issue of	acceptance of defective ..... 29.4
certificate of practical completion ..... 34.6	defective ..... 29.3, 29.4
final certificate ..... 37.4	examination and testing of ..... 30
payment certificate ..... 37.2	failure to use proper materials ..... 39.2(a)
<i>Item</i>	manufacture and supply of ..... 28
defined ..... 1	not to remove from site ..... 28
Labour	particulars of ..... 28
provision by Contractor ..... 28	possession on default ..... 39.5
Language of Contract ..... 1(e)	provision of by Contractor ..... 28
Latent conditions	quality of ..... 29.1
costs of ..... 25.3	supply of ..... 28
deemed variation on ..... 25.3	testing of ..... 30
defined ..... 1	unfixed ..... 37.3
meaning ..... 25.1	upon frustration of Contract ..... 40
notification of ..... 25.2	use of new materials ..... 29.1
scope of ..... 25.1	Measurement
Law	generally ..... 37.2
compliance with legislative requirements ..... 11.1	of quantities ..... 1(f)
Corporations ..... 5.6, 38.3	Media releases ..... 8.6
governing the Contract ..... 1(h), <i>Item 8</i>	Minor defects
Legislative requirements	practical completion, in definition of ..... 1
change in Principal's project requirements ..... 11.2(a)(i)	remedying ..... 29.3, 35
changes in ..... 11.2	Misconduct of employee ..... 23
changes to WUC ..... 11.2(a)(iii)	Monetary sum (see Provisional sum)
changes to the Works ..... 11.2(a)(ii)	Moneys due
compliance with ..... 11.1	claim for ..... 37.1
cost of ..... 11.2(c)	cleaning up costs ..... 27
defined ..... 1	cost of proposed variation ..... 36.2
excepted ..... 11.1, <i>Item 22(a)</i>	
fees and charges ..... 1, 11.2(a)	
identified WUC ..... 11.2, <i>Item 22(b)</i>	

<i>Clause</i>	<i>Clause</i>		
cost of protection.....	12	consultant.....	9.4, Item 20
cost of urgent protection.....	13	deed of.....	9.4
moneys certified due to Principal.....	37.2(b)	Deeds of.....	Annexure Parts C and D
on frustration.....	40(b)	of Principal's consultants.....	2.2(a)(iii)
other moneys due.....	37.6	selected subcontractor.....	9.4, Item 20
progress certificate.....	37.2(a)	subcontractor.....	9.2(c), 9.4, Item 20
progress claim.....	37.1	warranties unaffected by.....	2.3(b)
Moneys due and owing to Principal otherwise.....	37.6	Omissions (see also Defects and Minor defects) at final certificate.....	37.4(b)
Moneys due and payable bonus.....	34.8	schedule of rates.....	2.5
claims generally.....	41.3	Opening up for examination and testing.....	30.1
cost of defect rectification.....	35	Oral direction.....	20
costs of suspension on breach.....	39.9	Order (see also Direction)	
delay damages.....	34.9	Order of work.....	32
final certificate.....	37.4	Orders (see Legislative requirements)	
interest.....	37.5	Ordinances (see Legislative requirements)	
liquidated damages.....	34.7	Ordinary working days.....	31
on work taken out of the hands of Contractor.....	39.6	Ordinary working hours.....	31
substantial breach.....	39.7(a)	Other moneys due.....	37.6
to workers and subcontractors.....	38.2	Overlapping delays.....	34.4
unpaid insurance premium.....	19.2	Ownership of documents supplied by Contractor.....	8.3
Nature of Contract.....	2	supplied by Principal.....	8.2
Negligence of employee.....	23	Patent (see Intellectual property right)	
Nominated subcontractor (see Novation).....	9.3, 9.4	Payment(s) (see also Adjustments) adjustment for errors in schedule of rates.....	2.5
Notice (see also Direction, Notice of dispute) for testing.....	30.4	adjustment for fees to statutory authorities.....	11.2
for urgent protection.....	1	and performance.....	2.1
from or to insurer.....	19.3	basis of.....	2.1
of availability of site.....	24.1	bonus.....	34.8
of claim for EOT.....	34.3	calculated by rates.....	2.1
of claims generally.....	41	calculation of.....	37.2
of default by the Contractor.....	39.3	certificates.....	37.2
of default by the Principal.....	39.8	claims for.....	37.1
of delay.....	34.2	currency of.....	1(g), Item 9(a)
of discovery of minerals, fossils or relics.....	24.3	deductions.....	37.2
of dispute.....	42.1	default by Principal.....	39.7(a)
of errors in setting out.....	26.2	delay damages.....	34.9
of latent conditions.....	25.2	during arbitration.....	42.1
of names of persons entitled to access.....	24.2	for defective materials and work.....	29.3, 35
of potential insurance claims.....	19.4	for progress certificates.....	37.2
of working hours.....	31	for unfixed plant and materials.....	37.3
oral or written.....	20	insurance premiums, proof of.....	19.2
prescribed.....	41.1	interest on overdue.....	37.5
service of.....	7	liquidated damages.....	34.7
statutory authorities.....	11.2	not evidence of satisfactory WUC.....	37.2
to suspend work.....	33.1	of balance after set off.....	37.2
Notice of dispute arbitration.....	42.3	of security and retention moneys.....	5.1
concerning claims.....	41.1, 41.3	of workers and subcontractors.....	38
conference following.....	42.2	on completion by Principal.....	39.6
generally.....	42	on final certificate.....	37.4
how served.....	42.1	payment certificate.....	37.2
includes difference.....	42.1	payment on account.....	37.2
when final certificate.....	37.4(d)	place for.....	1(g), Item 9(b)
Notification of claims (see also Claims) failure to comply.....	41.2	provisional sums.....	3
generally.....	41	retention moneys.....	5.1, Item 14(c)
notice of dispute concerning.....	41.1, 41.3	set-offs by Principal.....	37.2, 37.6
prescribed notice.....	41.1	suspension of by Principal.....	39.4
Superintendent's decision on.....	41.3	to consultants.....	38
Novation acceptance of.....	2.2(a)(iii)	to subcontractors.....	38
		to workers.....	38

Clause	Clause
urgent protection .....	13
within 7 days of certificate .....	37.2
within 21 days of claim .....	37.2
withholding by Principal .....	38.2
Payment to workers, consultants and subcontractors	
direct payment to .....	38.3
documentary evidence of .....	38.1
Principal may withhold payment .....	38.2
where required by law .....	38.3
withholding of payment .....	38.2
Performance and payment .....	2.1
Permission (see also Direction)	
Permits (see Legislative requirements)	
Person, meaning .....	1(a)
Persons	
death of .....	15.1
indemnity by Principal .....	15.2
injury to .....	15.1
insurance of .....	17, 18
protection of .....	12
suspension, to protect .....	33.1
urgent protection of .....	13
Place for payment .....	1(g), Item 9(b)
Place of business of bank (security) .....	1, Item 9(c)
Plant (see Construction plant) .....	1, 28, 39.5, 39.6
Plant and materials	
security for unfixed .....	5.4, 37.3, Item 14(c)
unfixed .....	37.3, Item 34
Possession of site (see also Access) .....	24.1
Practical completion	
certificate of .....	34.6
date for .....	1, 34.6, 34.7
date of .....	1, 34.6, 34.7
defined .....	1
early practical completion .....	34.6
EOT for .....	34.3
request for certificate of .....	34.6
separable portions .....	4
Preliminary design	
copyright and ownership of design .....	10.2
defined .....	1
details of .....	Item 11
included in Contractor's design obligations .....	1
novation .....	9.4
warranties, as to .....	2.2(a)(ii)
warranties unaffected .....	2.3(a)
Prescribed notice	
defined .....	1
meaning .....	1, 41.1
Pricing	
variations .....	36.4
Prime cost item (see Provisional sum)	
Principal	
address of .....	Item 2
certificate to .....	37.2(b)
consultants, novation of .....	2.2(a)(iii), 9.4
default of .....	39.7
defined .....	1
dispute with Contractor .....	42.1
licence to use design documents .....	10.2
named .....	Item 1
ownership of design documents .....	10.2
project requirements defined .....	1
rights of .....	39.2, 39.3, 39.4, 39.5
security by .....	5, Item 15
set off by .....	37.2
Principal's project requirements	
change in legislative requirements .....	11.2(a)(i)
cost objectives .....	1
defined .....	1, Item 10
design objectives .....	1
details of .....	Item 10
inconsistency, etc. in .....	8.1
novation .....	9.4
preliminary design included .....	Item 11
stated purpose of .....	1, 2.2(a)(iv)
timing objectives .....	1
warranties, as to .....	2.2
warranties, as to by Principal .....	10.1
Principal-supplied documents	
availability of .....	8.2
copies of .....	8.2, Item 16
copying of .....	8.2
number of .....	8.2
property in .....	8.2
supply of .....	8.2, Item 16
Proclamation (see Legislative requirements)	
Profit and overheads/attendance	
in pricing variations .....	36.4
on provisional sums .....	3
Program	
defined .....	1
departure from .....	32
direction as to .....	32
failing to adhere to .....	39.2(c)
meaning of .....	32
proposed variation, effect on .....	36.2(a)
Programming (see Program)	
Progress certificate	
deemed .....	37.2
defined .....	1
issue of .....	37.2
meaning .....	1, 37.2
not evidence WUC is satisfactory .....	37.2
on account only .....	37.2
Progress claims	
early .....	37.1
generally .....	37.1
time for .....	37.1, Item 33
Progress, failure to maintain .....	39.2(c), 39.2(d)
Prompt payment discount .....	3(b)
Proper law of Contract .....	1(h), Item 8
Property	
damage to .....	12
indemnity as to .....	15
insurance of .....	17
loss of .....	15.1
protection of .....	12
unavoidable damage to .....	15.1(b)
Protected right (see Intellectual property right)	

Clause	Clause
Protection	included in definition of WUC..... 1
of persons and property..... 12	Removal of
of WUC..... 14	construction plant..... 28
suspension due to..... 33.1	materials..... 28
urgent..... 13	Contractor's employees and subcontractors..... 23
Provisional sum..... 3	Repairs, urgent (see Urgent protection)..... 13
defined..... 1	Replacement (see Reinstatement)
included in contract sum..... 1	Replacement of defective
included in schedule of rates..... 1	materials or work..... 29.3
meaning..... 1, 3	Representative of
percentage for profit and attendance..... 3, Item 13	Contractor..... 22
Public authorities..... 5.5, 11	Superintendent..... 21
Public liability policy	Repudiation of Contract
alternative applying..... 17, Item 25(a)	parties rights on..... 39.1, 39.10
amount of..... 17, Item 25(b)	Request (see also Direction)
defined..... 1	Requirement (see also Direction)
meaning..... 1, 17	Requirements of legislation..... 11.1
Qualifying cause of delay	Responsibility
defined..... 1	of Contractor for subcontractors..... 9.5
excludes those in..... Item 28	for performance..... 2.1
EOT for..... 34.3	Retention moneys (see Security)
further delay due to..... 34.3	Risks
Quality..... 29	excepted..... 1, 14.3
Quality assurance..... 29.2	Royalties (see Intellectual property rights)
Quality of materials and work	Schedule of prices
defective materials and work..... 29.3	included in definition of schedule of rates..... 1
examination and testing of..... 30	variations priced by..... 36.4(c)
generally..... 29.1	Schedule of rates
Quality system..... 29.2	defined..... 1
Quantities	generally..... 2.4, 2.5
errors in..... 2.5	limits of accuracy in..... 2.5(b), Item 12
estimated only..... 2.4	omitted items in..... 2.5
generally..... 2.4, 2.5	payment by..... 2.1
omitted items..... 2.5	quantities in..... 2.4
Rates (see also Schedule of rates)	variations priced by..... 36.4(c)
adjustment of..... 2.5	Security (includes Retention moneys)
limits of accuracy..... 2.5(b), Item 12	change of..... 5.3
payment of..... 2.1	Contractor's..... Item 14
provisional sums..... 3	defined..... 1
valuation of variations..... 36.4(c)	form of..... 5.1
Receiver..... 39.11	generally..... 5
Reference mark (see also Survey marks)	includes retention moneys..... 1
defined..... 1	interest earned on..... 5.5
survey mark, included in..... 1, 26.1	Principal's..... Item 15
Registered design (see Intellectual property right)	provision of..... 5.1, Items 14, 15
Regulations (see Legislative requirements)	purpose of..... 5.1
Reinstatement of damage	recourse to..... 5.2
excepted risks..... 14.3	reduction of..... 5.4, Items 14, 15
generally..... 14.2	release of..... 5.4
Rejection (see also Direction)	return of..... 5.4
Rejection of materials or work..... 29.3	substitution of..... 5.3
Relation-back day	time of lodgement of..... 5.1, Items 14, 15
concerning direct payment to workers and	trust..... 5.5
subcontractors..... 38.3	unfixed plant and materials..... 5.4, 37.3(a), Item 14(e)
Release of security..... 5.4	upon frustration of the Contract..... 40(c)
Remedial work	Selected subcontract work
generally..... 29.3, 35	defined..... 1
	meaning..... 1, 9.3

Clause	Clause
Selected subcontractor	warranty, as to ..... 2.2(a)(iv)
defined ..... 1	Statutory requirements (see Legislative requirements)
meaning ..... 1, 9.3	Subclause headings—effect ..... 1(c)
Separable portion(s) ..... 4, Annexure Part A	Subcontract work
date for practical completion ..... 4(b)	generally ..... 9
defects liability period ..... 35	requiring approval ..... 9.2, <i>Item</i> 19
defined ..... 1	Subcontractor
directed by Superintendent ..... 4	approval of ..... 9.2, <i>Item</i> 19
liquidated damages ..... 4(c)	Contractor's responsibility for ..... 9.5
security in ..... 4(c)	defined ..... 1
Service	includes consultant ..... 1
by fax ..... 7(b)(ii)	novation of ..... 9.2(c), 9.4, <i>Item</i> 20
by hand ..... 39.2, 39.7, 42.1	removal of ..... 23
by post ..... 7(b)(iii)	selected ..... 9.3, 9.4, <i>Item</i> 20
by registered post ..... 39.2, 39.7, 42.1	terms of approval ..... 9.2
by the Contractor on the Principal ..... 39.7	when Contract frustrated ..... 40(b)
by the Principal on the Contractor ..... 39.2	Subcontractor's employees
from or to the insurer ..... 19.3	control of ..... 9.5, 23
notification of latent conditions ..... 25.2	insurance of ..... 18
of appointment of Superintendent ..... 1	responsibility for ..... 9.5
of appointment of Superintendent's Representative ..... 21	Substantial breaches ..... 39.2, 39.7
of claims to the Superintendent ..... 41.1	Superintendent (see also Directions)
of finding of minerals, fossils and relics ..... 24.3	address of ..... <i>Item</i> 6
of notice of dispute ..... 42.1	appointment of ..... 20
of notice(s) (see also Notices) ..... 7	appointment of Superintendent's representative ..... 21
of potential (insurance) claims ..... 19.4	assessments by ..... 3, 8.1, 11.2, 14.2, 24.3, 26.2, 26.3,
of taking the work out of the hands of Contractor ..... 39.4	32, 33.4, 34.5, 39.6, 39.9, 41.3
of terminating the Contract ..... 39.4, 39.9	certifications by ..... 12, 13, 19.2, 19.5, 27, 29.3, 34.7,
personal service ..... 7	34.8, 34.9, 35, 36.2, 37.2, 37.4,
Set-off	39.6, 39.9, 40(a), 41.3
by Principal ..... 37.2, 37.6	defined ..... 1
election by Principal ..... 37.2	directions of ..... 20
generally ..... 37.2, 37.6	generally ..... 20
Setting out the Works	includes Superintendent's Representative ..... 1
care of ..... 26.3	named ..... <i>Item</i> 5
disturbance to ..... 26.3	notice to in relation to dispute ..... 42.1
errors in ..... 26.2	obligations of ..... 20
generally ..... 26	pricing by (deemed variation, etc.) ..... 2.5, 3, 14.2,
survey marks for ..... 26.1	25.3, 36.4
Settlement	to confirm oral direction ..... 20
arbitration ..... 42.2	valuations by ..... 4
notice of dispute ..... 42.1	Superintendent's Representative ..... 1
of disputes ..... 42.1	appointment of ..... 21
Signal (see Survey mark)	defined ..... 1
Site	functions of ..... 21
access to by Contractor ..... 24.1, <i>Item</i> 26(a)	notice of appointment of ..... 21(c)
access to by Principal, etc. .... 24.2	objection to appointment of ..... 21(d)
access to by Superintendent ..... 24.2	termination of appointment of ..... 21(c)
cleaning up ..... 27	Survey mark
commencement of work on ..... 24.1	care of ..... 26.3
defined ..... 1	defined ..... 1
delay in making available ..... 24.1	errors in ..... 26.2
generally ..... 24	supply of ..... 26.1
latent conditions on ..... 25	Survey peg (see Survey mark)
materials, delivery to ..... 24.1	Suspension
minerals, fossils, relics, etc. on ..... 24.3	by the Contractor ..... 33.2, 39.9
possession of ..... 24.1, <i>Item</i> 26(b)	by the Superintendent ..... 33.1
substantial breach in giving access of ..... 39.7(a), <i>Item</i> 36(a)	cost of ..... 33.4, 39.9
substantial breach in giving possession of ..... 39.7(a), <i>Item</i> 36(b)	due to acts, etc. of Contractor ..... 33.1(a)
Stated purpose	due to acts, etc. of Principal ..... 33.1(a)
in Principal's project requirements ..... 1	effect of ..... 33.4
www.standards.com.au	end of ..... 33.3
	protection or safety ..... 33.1(b)

Clause	Clause
generally.....	33
to comply with court order.....	33.1(c)
Suspension of payment by Principal.....	38.2, 39.4
Taking over of work by Principal.....	39.5
Temporary works	
care of.....	14.1
defined.....	1
insurance of.....	16A
removal of.....	27
Tender (see Acceptance of tender)	
date of acceptance, defined.....	1
Termination of the Contract (see Default, Frustration)	
by frustration.....	40
by the Contractor.....	39.9, 39.10
by the Principal.....	39.4, 39.10
insolvency.....	39.11
rights of parties on.....	39.10
Test	
completion of.....	30.6
costs of.....	30.7
covering up of work.....	30.2
defined.....	1
delay in testing.....	30.5
notice of.....	30.4
procedure if delayed.....	30.5
results of.....	30.6
Superintendent may direct.....	30.1
who conducts.....	30.3
Tests (see definition of Practical completion)	
Third party insurance	
(see Public liability insurance).....	17
Time (see also EOT)	
acceleration of work.....	34.4(b)
construction program.....	32
Contractor's float.....	34.4(a)
defects liability period.....	35, Item 32
delay damages.....	34.9
for access to site.....	24.1, Item 26(a)
for approval of Contractor's drawings.....	8.3(e), Item 18
for arbitration.....	42.2
for carrying of work.....	32
for claiming EOT.....	34.3
for cleaning up.....	27
for completing WUC.....	34.1
for doing any act.....	1(b)
for effecting insurance.....	16A, 16B, 17, 18
for executing formal instrument of agreement.....	6
for final payment.....	37.4
for granting an EOT.....	34.5
for lodging security.....	5.1, Items 14, 15
for making claims.....	41
for notice of latent condition.....	25.2
for notice of tests.....	30.4
for notice to show cause.....	39.3, 39.8
for notification of claims.....	41
for possession of Site.....	24.1, Item 26(b)
for practical completion.....	34.1, Item 7
for progress claims.....	37.1, Item 33
for progress payments.....	37.2
for release of security or retention.....	5.4
for service of notices.....	7
for Superintendent to confirm oral direction.....	20
for Superintendent's direction about documents.....	8.3, Item 18
for supply of construction program.....	32
for supply of Contractor's documents.....	8.3, Item 17
for supply of Principal's documents.....	32, Item 27
for testing.....	30.1
for urgent protection.....	13
suspension of work.....	33.1
to rectify inadequate access.....	39.7(a), Item 36(a)
to rectify inadequate possession.....	39.7(a), Item 36(b)
Timing objective	
defined in Principal's project requirements.....	1
Trademark or name (see Intellectual property right)	
Unconditional undertaking (see Security)	
approved form.....	Annexure Part B
UNCITRAL Rules.....	Items 37(b), (c)
Unfixed plant and materials	
additional security for.....	37.3(a), Item 14(e)
generally.....	37.3, Item 34
labelled.....	37.3(b)
payment for.....	37.3
Principal's liability for.....	37.3
security for.....	34, 37.3, Item 14(e)
stored and protected.....	37.3(b)
unencumbered property of Principal.....	37.3
Unpaid moneys.....	38.3
Urgent protection.....	13
Urgent relief.....	42.4
Valuation	
of final payment claims.....	37.4
of progress payment claims.....	37.2
pricing of variations.....	36.4
Variation	
character and extent of.....	36.1
cost of complying.....	36.2
cost of proposed.....	36.2
deductions—valuing.....	36.4
deemed.....	2.5, 14.2, 25.3, 29.4
defined.....	1
directing of.....	36.1
direction by Superintendent.....	36.1
estimate for.....	36.2
for convenience of Contractor.....	36.3
generally.....	36
meaning.....	1, 36.1
measurements.....	36.2
notice of proposed.....	36.2
order of precedence in pricing.....	36.4
pricing of.....	36.4
proposed.....	36.2
quotation for.....	36.2
scope of.....	36.1
valuation of.....	36.4
Wages	
of workers.....	38
Waiver of conditions	
generally.....	43
in writing.....	43
Warranties	
Contractor's.....	2.2
proposed variation, effect on.....	36.2
unaffected.....	2.3

<i>Clause</i>	<i>Clause</i>
variation, effect on .....	2.3(d), 36.1, 36.2
Winding up .....	39.11
Words—singular includes plural and vice versa .....	1(d)
<b>Work (includes Materials)</b>	
acceptance of defective work .....	29.4
care of .....	14.1
deemed variation as to defective work .....	29.4
defective .....	29.3
defined .....	1
examination and testing of .....	30
not complying with the Contract .....	29.3
order of work .....	32
outside working hours .....	31
progress of .....	34
quality of .....	29.1
remedial .....	29.3, 35
subcontracting .....	9.2, Item 19
suspension of .....	33
testing of .....	30
times for work .....	32
under the Contract, defined (WUC) .....	1
variations (see Variations) .....	36
<b>Work under the Contract (see WUC)</b>	
Workers' compensation .....	18
Workers, payment of .....	38
Working days .....	31
Working hours .....	31
<b>Works (see also care of WUC)</b>	
defined .....	1
design of, warranties .....	2.2
design, timing and cost objectives in Principal's project requirements .....	1
insurance of .....	16A
setting out of .....	26
stated purpose in Principal's project requirements .....	1
<b>WUC (work under the Contract)</b>	
acceleration of .....	34.4(b)
care of .....	14.1
damage to property other than defined .....	15 1
delay to .....	34.2, 34.3
excepted risks .....	14.3
insurance of .....	16A
insurance of property other than .....	17
novation relating to .....	9.4, Item 20
order and time of carrying out .....	32
programming of .....	32
progress of .....	34.1
recommencement of .....	33.3
reinstatement of .....	14.2
suspension of .....	33, 39.9
urgent protection of .....	13

AMENDMENT CONTROL SHEET

AS 4902—2000

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Amendment No. 1 (2005)

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REVISED TEXT

*SUMMARY:* This Amendment applies to Clause 37 (a) and (c) of Annexure Part A.

Published on 30 March 2005.

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NOTES

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1	INTERPRETATION AND CONSTRUCTION OF CONTRACT .....	6
2	NATURE OF CONTRACT .....	11
3	PROVISIONAL SUMS.....	12
4	SEPARABLE PORTIONS.....	12
5	SECURITY.....	13
6	EVIDENCE OF CONTRACT.....	14
7	SERVICE OF NOTICES.....	14
8	CONTRACT DOCUMENTS.....	14
9	ASSIGNMENT AND SUBCONTRACTING .....	16
10	INTELLECTUAL PROPERTY RIGHTS.....	17
11	LEGISLATIVE REQUIREMENTS.....	18
12	PROTECTION OF PEOPLE AND PROPERTY.....	18
13	URGENT PROTECTION .....	18
14	CARE OF THE WORK AND REINSTATEMENT OF DAMAGE .....	19
15	DAMAGE TO PERSONS AND PROPERTY OTHER THAN WUC .....	20
16A	INSURANCE OF THE WORKS .....	20
16B	PROFESSIONAL INDEMNITY INSURANCE .....	21
17	PUBLIC LIABILITY INSURANCE .....	21
18	INSURANCE OF EMPLOYEES.....	22
19	INSPECTION AND PROVISIONS OF INSURANCE POLICIES .....	22
20	SUPERINTENDENT .....	23
21	SUPERINTENDENT'S REPRESENTATIVE .....	23
22	CONTRACTOR'S REPRESENTATIVE .....	24
23	CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS .....	24
24	SITE.....	24
25	LATENT CONDITIONS .....	25
26	SETTING OUT THE WORKS .....	25
27	CLEANING UP.....	26
28	MATERIALS, LABOUR AND CONSTRUCTION PLANT.....	26
29	QUALITY .....	27
30	EXAMINATION AND TESTING.....	28
31	WORKING HOURS .....	28
32	PROGRAMMING.....	29
33	SUSPENSION.....	29
34	TIME AND PROGRESS.....	30
35	DEFECTS LIABILITY .....	31
36	VARIATIONS.....	32
37	PAYMENT .....	33

38	PAYMENT OF WORKERS, CONSULTANTS AND SUBCONTRACTORS .....	35
39	DEFAULT OR INSOLVENCY .....	35
40	TERMINATION BY FRUSTRATION .....	39
41	NOTIFICATION OF CLAIMS .....	39
42	DISPUTE RESOLUTION .....	40
43	WAIVER OF CONDITIONS .....	41
	ANNEXURE PART A .....	42
	ANNEXURE PART B—APPROVED FORM OF UNCONDITIONAL UNDERTAKING .....	53
	ANNEXURE PART C—DEED OF NOVATION (SUBCLAUSE 9.2(C)) .....	54
	ANNEXURE PART D—DEED OF NOVATION (SUBCLAUSE 9.4) .....	56
	ANNEXURE PART E—DELETIONS, AMENDMENTS AND ADDITIONS .....	58
	INDEX .....	59

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#### Discrepancies in Principal supplied documents

The Contractor is entitled to, and may claim, an extension of time and additional payment for all costs incurred that are in addition to the contract sum arising out of any discrepancy, omission, inconsistency or ambiguity within or between any of the following:

- (a) the documents constituting preliminary design;
- (b) the documents constituting the PPRs;
- (c) the documents comprising the Contract.

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Within 40 days of receipt of the design documents and cost estimate, the Superintendent must instruct the Contractor whether or not the design documents and cost estimate are acceptable to the Principal.

From: [REDACTED]  
To: [REDACTED]  
Date: 29/06/2011 1:53:54 pm  
Subject: RE: Mirvac Queensland Pty Ltd - Sale to Brisbane City Council - Lots 3, 4, 5 & 101 Tennyson Reach - Email

PHI

H

In relation to the Lease for the Sales Office:

Clause 2.1 - full stop missing.  
Clause 4 - delete semi-colon and insert full stop.  
Clause 6.1 - Is this contrary to the Contract? Clause 11.2(a) of the Contract Special Conditions states that Mirvac must maintain the Sales Office Land in same condition as at Settlement Date. The Lease provides that Mirvac **may but is not obliged to** keep the Land clean and tidy and repair and maintain any improvements. Council will require Mirvac to maintain the Land and repair and maintain the Sales Office and any improvements.  
Clause 6.2(a) - Not agreed. Council's consent must be obtained for any alterations which will not be unreasonably withheld. In addition, no works on the land will be permitted other than under the Parkland Works Contract. No signs on the land will be permitted other than safety signs and signage reasonable for direction to the sales office.  
Clause 8.1 and 8.2 - Council's consent will be required but will not be unreasonably withheld.

Also where did you get the valuation amount for Lot 101 as \$59,000? Do you have a valuation for this? we are arranging for a valuation of Lot 101 today.

I am reviewing the Contracts and Transfers now and will respond shortly.

Thanks

Regards,

[REDACTED]  
Solicitor, Brisbane City Legal Practice  
Office of the Lord Mayor & CEO  
| Brisbane City Council  
266 George Street | GPO Box 1434 | Brisbane Qld 4001

Phone: 07 [REDACTED]

[REDACTED] 29/06/2011 12:45 pm >>>

[REDACTED] - I note that we have missed telephone messages from each other.  
For the sake of expediency, I attach clean, hopefully finalized, copies of:

- (1) Land Sale Contract for Lots 4, 5 & 101 (minus the Parkland Works Contract); and
- (2) Land Sale Contract for Lot 3.



Please note the following changes from the last drafts issued to you, namely:

(a) we understand that the parties want to keep the current split of \$9 million & \$6 million for the Land Contract Purchase Prices and the Parkland Works Contract Price respectively. However, we believe that the Lot 3 Contract Purchase Price should mirror the valuation for Lot 3, otherwise we believe Mirvac may be liable to additional unnecessary Transfer Duty on any valuation amount in excess of the Contract Purchase Price. Accordingly, we have made the Lot 4, 5 & 101 Contract Purchase Price \$5,900,000 (plus GST) and the Lot 3 Contract Purchase Price \$3,100,000 (plus GST). The change in allocation of Purchase Prices should not be of concern as the Settlement Dates will be linked at the election of either party under the current Contract terms. We have also amended the Transfer Documents accordingly. In our view, Transfer Duty will still be payable on the total of the Valuation amounts (which we understand will total \$9,209,000 on the basis Lot 101 is valued at \$59,000) and Mirvac will pay the Transfer Duty attributable to the amount in excess of \$6 million (plus GST). I am still waiting for Mirvac to confirm these changes but would ask you to confirm Council's position. Thanks.

(b) The Lot 4, 5 & 101 Contract special conditions have been amended in accordance with the below exchange of emails, namely - special condition 10 (Company Charge) - the Buyer will accept the Seller's statement in relation to any current registered company charges; special condition 11.1 (Lease) - the expiry date of the Lease of the Sales Office will be the date of commencement of the Stage 2 Works; and special condition 14 (Settlement Date) - either party has the right to extend the Settlement Date within the circumstances of the special condition.

Please confirm these changes and, subject to Mirvac's confirming instructions, we will issue amended Settlement Statements and Seller's Tax Invoices for the GST. Thanks.

Regards

[Redacted Signature]

Partner | Property & Projects

ClarkeKann

Tel: [Redacted]  
[www.clarkekann.com.au](http://www.clarkekann.com.au)

Brisbane | Level 7, 300 Queen Street, Brisbane QLD 4000,

Australia | GPO Box 2249, Brisbane QLD 4001, Australia

Sydney | Level 7, 55 Clarence Street, Sydney NSW 2000, Australia | GPO  
Box 1342, Sydney NSW 2001, Australia

-----Original Message-----

From: [REDACTED]  
Sent: Tuesday, June 28, 2011 3:49 PM  
To: [REDACTED]  
Cc: [REDACTED]  
Subject: RE: Mirvac Queensland Pty Ltd - Sale to Brisbane City Council - Lots  
3, 4, 5 & 101 Tennyson Reach - Email

Hi [REDACTED]

On further review I confirm Council is prepared to waive the requirement  
of a letter from ING in respect of the charge registered over Mirvac  
Queensland Pty Limited.

In relation to Lot 101 and the consideration on the transfer as \$1, in  
our view a valuation would be required to satisfy the Commissioner of  
Duties that the value is \$1. Do you have another view?

Regards,

[REDACTED]  
Solicitor | Brisbane City Legal Practice

Office of the Lord Mayor & CEO

| Brisbane City Council

266 George Street | GPO Box 1434 | Brisbane Qld 4001

Phone [REDACTED]  
[REDACTED]

>>>  
>>>

[REDACTED] 28/06/2011 1:21 pm

[REDACTED] Further to my below email, and based on current agreed purchase prices and based on settlements occurring on 30 June 2011, I attach drafts of the following:

- (1) Settlement Statement for Lots 4, 5 & 101 (-once we know the total unencumbered value of lots 3, 4, 5 & 101, we can calculate Mirvac's contribution to stamp duty which relates to the value in excess of \$6 million);
- (2) Settlement Statement for Lot 3;
- (3) Seller's Tax Invoice for sale of Lots 4, 5 & 101; and
- (4) Seller's Tax Invoice for sale of Lot 3.

Please let me have your input, if any. Thanks.

Regards

Partner | Property & Projects

Tel:

[www.clarkekann.com.au](http://www.clarkekann.com.au)

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Box 2249, Brisbane QLD 4001, Australia

Sydney | Level 7, 55 Clarence Street, Sydney NSW 2000, Australia | GPO

Box 1342, Sydney NSW 2001, Australia

---

From:

Sent: Tuesday, June 28 2011 12:16 PM

To:

Cc:

Subject: RE: Mirvac Queensland Pty Ltd - Sale to  
Brisbane City Council - Lots 3, 4, 5 & 101 Tennyson Reach - Email

refer to our telephone conversation and confirm/note the following:

(1) Land Sale Contract for Lots 4, 5 & 101 - I confirm we have no problems with amending special condition 14.1 to provide that "either the Seller or the Buyer may extend the Settlement Date.." in the circumstances referred to in the special condition. I also confirm the need to amend special condition 11.1 so that it refers to an expiry date for the Lease of the Sales Office being the "commencement of Stage 2 of the Parkland Works.." consistent with the draft Sales Office Lease issued.

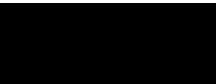
(2) Valuations - I note the independent valuations for Lots 3, 4 & 5 come in at \$9, 150,000 (plus GST). I confirm that you are making enquiries regarding the valuation of lot 101 (anticipated to be a nominal amount). As discussed, for ease of stamping of the Transfers, the parties should consider having the Land Contract purchase prices mirror the unencumbered valuations on which stamp duty is payable (with a corresponding decrease in the Parkland Works Contract). I will check with Mirvac and note you will check with the relevant person at BCC. Please also urgently advise the valuation of Lot 101.

(3) Mirvac Queensland Pty Ltd Company Charge - As discussed, I attach an ASIC Company Extract for the Seller noting only one current registered Company Charge to ING Bank (Australia) Ltd (see page 25 of 31) as well as a copy of the relevant Company Charge. You will see from the definition of "Mortgaged Property" that the Company Charge is limited to the Seller's property at Ephraim Island and does not affect the Tennyson Reach land parcels. Amended special condition 10 (Company

Charge) of the Land Sale Contracts would require the Seller to obtain a statement from the Chargee to this effect whereas time is unlikely to allow this. Accordingly, please confirm special condition 10 can be amended back to the drafting as originally submitted and/or confirm the Buyer will be satisfied based on the attachments. Thanks.

Thanks.

Regards



Partner | Property & Projects

ClarkeKann

Tel: 

[www.clarkekann.com.au](http://www.clarkekann.com.au)

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Box 1342, Sydney NSW 2001, Australia

\*\*\*\*\*  
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Please direct all enquiries to the message author.  
\*\*\*\*\*

CC:

[REDACTED]

**From:**  
**To:**  
**CC:**



**Date:** 29/06/2011 2:19:19 PM  
**Subject:** RE: Tennyson Parkland TOR

Hi

Thanks for the revised TOR

I suggest we remove Section 1.5 as the mechanisms for design and cost plan approval are included elsewhere in the Contract and this could potentially cause confusion.

In relation to 1.6 cost plan will remove references to design costs being included in the Cost Estimates.

Regards,



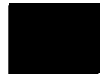
Senior Development Manager  
Development Queensland

Mirvac  
Level 2, 164 Grey Street South Bank QLD 4101 Australia PO Box 5121 West End QLD 4101  
T  
<http://www.mirvac.com>  
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**From:**  
**Sent:** Wednesday, 29 June 2011 1:05 PM  
**To:**  
**Cc:**  
**Subject:** RE: Tennyson Parkland TOR



One of the outcome of todays meeting is to issue you the amended TOR with a new Clause 1.6 for your records.

Regards



>>> 29/06/2011 12:41 pm >>>

Hi

We had an excellent meeting within Council this morning, if you can shoot through the marked up AS4902 from last night with the amendments we discussed this morning, I will be able to return it within the hour with Council's final positions.

I do not believe our changes will cause grief and like to think we shall reach agreement on them without the need for a 4pm meeting.

As some foundation points I can advise:



1. The WUC will be based on an agreed Cost Estimate.
2. The 50/50 shared savings will be from savings coming in beneath the Cost Estimate.
3. All Design and changes to design work are at Mirvac's sole cost and expense as per the original CEO's agreement, Council will require these costs to be declared in the cost estimates and not form part of the contract sum.
4. As per my email to you this morning, delays and EOT's may be accepted however no financial liability whatsoever will accrue to Council by any Qualifying Delays.
5. Our compromise to such a stand is Council shall agree to no Liquidated Damages.

Regards

[Redacted]  
 Solicitor/Team Leader Commercial | Brisbane City Legal Practice  
 Brisbane City Legal Practice  
 Office of the Lord Mayor & CEO

Ph: [Redacted]  
 E-mail: [Redacted]

>>> [Redacted] 29/06/2011 11:55 am >>>

Hi [Redacted]

Thanks for your feedback. I have everyone lined up for a 4pm meeting if required.

Regards,

[Redacted]  
 Senior Development Manager  
 Development Queensland

Mirvac  
 Level 2, 164 Grey Street South Bank QLD 4101 Australia PO Box 5121 West End QLD 4101

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**From:** [Redacted]  
**Sent:** Wednesday, 29 June 2011 10:57 AM  
**To:** [Redacted]  
**Cc:** [Redacted]  
**Subject:** RE: Tennyson Parkland TOR

[Redacted]  
Correct and Agree to removing clause 1.6 from the TOR.

We are having an internal meeting today at 11.30 and we may need to met with you and your team at 4.00pm. I will confirmed at 1.00pm today if this meeting is required.

The intention of this meeting is to finalise then and there any discrepancy between the Council and Mirvac re: the contract and the TOR.

Regards  
[REDACTED]

>>> [REDACTED] 29/06/2011 10:23:18 am >>>  
Hi [REDACTED]

Thanks for the revised

As discussed the proposed Section 1.7 is new and I would suggest it is removed as clauses relating to the timely completion of each stage are included in the Contract itself.

Could you please review and respond.

Thanks

[REDACTED]  
Senior Development Manager  
Development Queensland

Mirvac  
Level 2, 164 Grey Street South Bank QLD 4101 Australia PO Box 5121 West End QLD 4101  
T [REDACTED]  
<http://www.mirvac.com>  
<http://ext.mirvac.com/email-disclaimer>

Please consider the environment before printing this email and attachments

-----Original Message-----

From: [REDACTED]  
Sent: Tuesday, 28 June 2011 2:04 PM  
To: [REDACTED]  
Cc: [REDACTED]  
Subject: Tennyson Parkland TOR

[REDACTED]  
Please review amended version of TOR pursuant to our meeting earlier. I have kept it simple, please see text highlighted in green under 1.2.3 and 1.2.9.

I confirm my understanding that you were going to send through some words on park amenity, please let me know about that.

[REDACTED]  
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Please direct all enquiries to the message author.  
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\*\*\*\*\*

**From:** [REDACTED]  
**To:** [REDACTED]  
**Date:** 30/06/2011 8:45:44 am  
**Subject:** Tennyson settlement

[REDACTED]  
Please excuse my rushed email but I am time poor in relation to organising cheques for settlement today. My understanding of what is happening today is as follows:

Title of Lots 3, 4, 5 and 101 (Lots) will be transferred to Council. Mirvac will register a Consent Caveat over Lots following registration of transfer to Council.

Council will pay Mirvac \$6 million plus GST (\$6,600,000).

Valuation of Lots = \$9,150,236.00. Transfer duty payable is \$466,065.75.

Council liable for duty up to \$6 million = \$332,175.00

Balance transfer duty payable by Mirvac = \$133,890.75

At settlement Council will provided:

Cheque for Mirvac = \$6,466,109.25

Cheque for OSR = \$133,890.75

The remaining \$3 million will be paid to Mirvac on the later of completion of Stage 1 works or 30 June 2012.

I would appreciate your urgent attention to my calculations so I can finalise cheques.

Thank you.

Regards,

[REDACTED]  
Solicitor | Brisbane City Legal Practice  
Office of the Lord Mayor & CEO  
| Brisbane City Council  
266 George Street | GPO Box 1434 | Brisbane Qld 4001

Phone: [REDACTED]  
[REDACTED]

CC: [REDACTED]

From: [REDACTED]  
To: [REDACTED]  
Date: 30/06/2011 8:56:30 am  
Subject: Re: Tennyson settlement

I refer to my discussion with Alex amend the figures below in **BOLD**:

An adjustment will be made for Mirvac's transfer duty liability.

Please confirm urgently.

Thanks

Regards,

[REDACTED]  
Solicitor| Brisbane City Legal Practice  
Office of the Lord Mayor & CEO  
| Brisbane City Council  
266 George Street | GPO Box 1434 | Brisbane Qld 4001

Phone: [REDACTED]

>>> Belinda Curtin 30/06/2011 8:45 am >>>

[REDACTED]  
Please excuse my rushed email but I am time poor in relation to organising cheques for settlement today. My understanding of what is happening today is as follows:

Title of Lots 3, 4, 5 and 101 (Lots) will be transferred to Council. Mirvac will register a Consent Caveat over Lots following registration of transfer to Council.

Council will pay Mirvac \$6 million plus GST (\$6,600,000.00).

Valuation of Lots = **\$9,386,000.00**. Transfer duty payable is **\$478,440.00**.

Council liable for duty up to \$6 million = \$332,175.00

Balance transfer duty payable by Mirvac = **\$146,265.00**

At settlement Council will provided:

Cheque for Mirvac = **\$6,600,000.00 - \$146,265.00 = \$6,453,735.00**

Cheque for OSR = **\$146,265.00**

The remaining \$3 million will be paid to Mirvac on the later of completion of Stage 1 works or **1 July 2012 2012/2013 financial year**).

I would appreciate your urgent attention to my calculations so I can finalise cheques.

Thank you.

Regards,

[REDACTED]  
Solicitor| Brisbane City Legal Practice  
Office of the Lord Mayor & CEO  
| Brisbane City Council  
266 George Street | GPO Box 1434 | Brisbane Qld 4001

Phone: [REDACTED]  
[REDACTED]

CC: [REDACTED]

**From:** [REDACTED]

**To:** [REDACTED]

**CC:** [REDACTED]

**Date:** 30/06/2011 9:16:48 AM

**Subject:** RE: Tennyson Parkland TOR

Hi [REDACTED]

We are agreeable to these amendments. Can you please re-send the final version.

Thanks

[REDACTED]  
Senior Development Manager  
Development Queensland

Mirvac  
Level 2, 164 Grey Street South Bank QLD 4101 Australia PO Box 5121 West End QLD 4101  
T [REDACTED]  
<http://www.mirvac.com>  
Electronic Data Transmission Disclaimer

Please consider the environment before printing emails and attachments

---

**From:** [REDACTED]

**Sent:** Wednesday, 29 June 2011 3:03 PM

**To:** [REDACTED]

**Cc:** [REDACTED]

**Subject:** RE: Tennyson Parkland TOR

[REDACTED]  
Agree to remove Section 1.5 and Section 1.6 has been amended to reflect construction cost only.

Regards  
[REDACTED]

>>> [REDACTED] 29/06/2011 2:17 pm >>>

Hi [REDACTED]

Thanks for the revised TOR

I suggest we remove Section 1.5 as the mechanisms for design and cost plan approval are included elsewhere in the Contract and this could potentially cause confusion.

In relation to 1.6 cost plan will remove references to design costs being included in the Cost Estimates.

Regards,

[REDACTED]  
Senior Development Manager  
Development Queensland

Mirvac  
Level 2, 164 Grey Street South Bank QLD 4101 Australia PO Box 5121 West End QLD 4101

T [redacted]  
<http://www.mirvac.com>  
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---

**From:** [redacted]  
**Sent:** Wednesday, 29 June 2011 1:05 PM  
**To:** [redacted]  
**Cc:** [redacted]  
**Subject:** RE: Tennyson Parkland TOR

[redacted]

One of the outcome of todays meeting is to issue you the amended TOR with a new Clause 1.6 for your records.

Regards

[redacted]

>>> [redacted]  
Hi [redacted]

We had an excellent meeting within Council this morning, if you can shoot through the marked up AS4902 from last night with the amendments we discussed this morning, I will be able to return it within the hour with Council's final positions.

I do not believe our changes will cause grief and like to think we shall reach agreement on them without the need for a 4pm meeting.

As some foundation points I can advise:

1. The WUC will be based on an agreed Cost Estimate.
2. The 50/50 shared savings will be from savings coming in beneath the Cost Estimate.
3. All Design and changes to design work are at Mirvac's sole cost and expense as per the original CEO's agreement, Council will require these costs to be declared in the cost estimates and not form part of the contract sum.
4. As per my email to you this morning, delays and EOT's may be accepted however no financial liability whatsoever will accrue to Council by any Qualifying Delays.
5. Our compromise to such a stand is Council shall agree to no Liquidated Damages.

Regards

[redacted]

Solicitor/Team Leader Commercial | Brisbane City Legal Practice  
Brisbane City Legal Practice  
Office of the Lord Mayor & CEO

Ph: [redacted]  
E-m [redacted]

>>> [redacted] 9/06/2011 11:55 am >>>

Hi [redacted]



Thanks for your feedback. I have everyone lined up for a 4pm meeting if required.

Regards,

[REDACTED]  
Senior Development Manager  
Development Queensland

Mirvac  
Level 2, 164 Grey Street South Bank QLD 4101 Australia PO Box 5121 West End QLD 4101  
T [REDACTED]  
<http://www.mirvac.com>  
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**From:** [REDACTED]  
**Sent:** Wednesday, 29 June 2011 10:57 AM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Tennyson Parkland TOR

[REDACTED]  
Correct and Agree to removing clause 1.6 from the TOR.

We are having an internal meeting today at 11.30 and we may need to met with you and your team at 4.00pm. I will confirmed at 1.00pm today if this meeting is required.

The intention of this meeting is to finalise then and there any discrepancy between the Council and Mirvac re: the contract and the TOR.

Regards  
Rob

>>> [REDACTED] 29/06/2011 10:23:18 am >>>  
Hi [REDACTED]

Thanks for the revised

As discussed the proposed Section 1.7 is new and I would suggest it is removed as clauses relating to the timely completion of each stage are included in the Contract itself.

Could you please review and respond.

Thanks

[REDACTED]  
Senior Development Manager  
Development Queensland

Mirvac  
Level 2, 164 Grey Street South Bank QLD 4101 Australia PO Box 5121 West End QLD 4101  
T [REDACTED]  
<http://www.mirvac.com>  
<http://ext.mirvac.com/email-disclaimer>

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-----Original Message-----

From: [REDACTED]  
Sent: Tuesday, 28 June 2011 2:04 PM  
To: [REDACTED]  
Cc: [REDACTED]  
Subject: Tennyson Parkland TOR

[REDACTED]

Please review amended version of TOR pursuant to our meeting earlier. I have kept it simple, please see text highlighted in green under 1.2.3 and 1.2.9.

I confirm my understanding that you were going to send through some words on park amenity, please let me know about that.

[REDACTED]

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[REDACTED] - RE: Tennyson Parkland TOR

**From:** [REDACTED]  
**To:** [REDACTED]  
**Date:** 30/06/2011 12:45:46 pm  
**Subject:** RE: Tennyson Parkland TOR  
**CC:** [REDACTED]

[REDACTED]  
Please find attached the Final version.

Regards  
[REDACTED]

>>> [REDACTED] 30/06/2011 9:16 am >>>

Hi [REDACTED]

We are agreeable to these amendments. Can you please re-send the final version.

Thanks

[REDACTED]  
Senior Development Manager  
Development Queensland

Mirvac  
Level 2, 164 Grey Street South Bank QLD 4101 Australia PO Box 5121 West End QLD 4101  
T [REDACTED] <http://www.mirvac.com>  
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---

**From:** [REDACTED]  
**Sent:** Wednesday, 29 June 2011 3:03 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Tennyson Parkland TOR

[REDACTED]  
Agree to remove Section 1.5 and Section 1.6 has been amended to reflect construction cost only.

Regards  
[REDACTED]

>>> [REDACTED] 29/06/2011 2:17 pm >>>

Hi [REDACTED]

Thanks for the revised TOR

I suggest we remove Section 1.5 as the mechanisms for design and cost plan approval are included elsewhere in the Contract and this could potentially cause confusion.

In relation to 1.6 cost plan will remove references to design costs being included in the Cost Estimates.

Regards,

[REDACTED]  
Senior Development Manager  
Development Queensland

Mirvac  
Level 2, 164 Grey Street South Bank QLD 4101 Australia PO Box 5121 West End QLD 4101

T [REDACTED]  
<http://www.mirvac.com>  
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**From:** [REDACTED]  
**Sent:** Wednesday, 29 June 2011 1:05 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Tennyson Parkland TOR

[REDACTED]  
One of the outcome of todays meeting is to issue you the amended TOR with a new Clause 1.6 for your records.

Regards

[REDACTED]  
>>> [REDACTED]  
Hi [REDACTED]

We had an excellent meeting within Council this morning, if you can shoot through the marked up AS4902 from last night with the amendments we discussed this morning, I will be able to return it within the hour with Council's final positions.

I do not believe our changes will cause grief and like to think we shall reach agreement on them without the need for a 4pm meeting.

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3. All Design and changes to design work are at Mirvac's sole cost and expense as per the original CEO's agreement, Council will require these costs to be declared in the cost estimates and not form part of the contract sum.
4. As per my email to you this morning, delays and EOT's may be accepted however no financial liability whatsoever will accrue to Council by any Qualifying Delays.
5. Our compromise to such a stand is Council shall agree to no Liquidated Damages.

Regards

Solicitor/Team Leader Commercial | Brisbane City Legal Practice  
Brisbane City Legal Practice  
Office of the Lord Mayor & CEO

Ph: [REDACTED]  
E-m [REDACTED]

>>> [REDACTED] 29/06/2011 11:55 am >>>

Hi [REDACTED]

Thanks for your feedback. I have everyone lined up for a 4pm meeting if required.

Regards,

[REDACTED]  
Senior Development Manager  
Development Queensland

Mirvac  
Level 2, 164 Grey Street South Bank QLD 4101 Australia PO Box 5121 West End QLD 4101  
T [REDACTED]  
<http://www.mirvac.com>  
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**From:** [REDACTED]  
**Sent:** Wednesday, 29 June 2011 10:57 AM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Tennyson Parkland TOR

[REDACTED]  
Correct and Agree to removing clause 1.6 from the TOR.

We are having an internal meeting today at 11.30 and we may need to met with you and your team at 4.00pm. I will confirmed at 1.00pm today if this meeting is required.

The intention of this meeting is to finalise then and there any discrepancy between the Council and Mirvac re: the contract and the TOR.

Regards

[REDACTED]  
>>> [REDACTED] 30/06/2011 10:23:18 am >>>  
Hi [REDACTED]

Thanks for the revised

As discussed the proposed Section 1.7 is new and I would suggest it is removed as clauses relating to the timely completion of each stage are included in the Contract itself.

Could you please review and respond.

Thanks

[Redacted]  
Senior Development Manager  
Development Queensland

Mirvac  
Level 2, 164 Grey Street South Bank QLD 4101 Australia PO Box 5121 West End QLD 4101  
T [Redacted]  
[Redacted] <http://www.mirvac.com>  
<http://ext.mirvac.com/email-disclaimer>

Please consider the environment before printing this email and attachments

-----Original Message-----

From: [Redacted]  
Sent: Tuesday, 28 June 2011 2:04 PM  
To: [Redacted]  
Cc: [Redacted]  
Subject: Tennyson Parkland TOR

[Redacted]

Please review amended version of TOR pursuant to our meeting earlier. I have kept it simple, please see text highlighted in green under 1.2.3 and 1.2.9.

I confirm my understanding that you were going to send through some words on park amenity, please let me know about that.

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[REDACTED] RE: Tennyson Reach Parkland - Updated Draft Cost Plan

**From:**  
**To:**

[REDACTED]

**Date:** 30/06/2011 12:58:22 pm  
**Subject:** RE: Tennyson Reach Parkland - Updated Draft Cost Plan  
**CC:** Adam Moore [REDACTED]

H [REDACTED]

Please find the version of the Contract reflecting this morning's discussion.  
The changes are all one's as we've discussed so there should be no surprises.  
Can you please indicate your acceptance and we will proceed to prepare the executable copy.

Regards

[REDACTED]  
Senior Development Manager  
Development Queensland

Mirvac  
Level 2, 164 Grey Street South Bank QLD 4101 Australia PO Box 5121 West End QLD 4101  
[REDACTED] <http://www.mirvac.com>  
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**From:** [REDACTED]  
**Sent:** Thursday, 30 June 2011 12:08 PM  
**To:** [REDACTED]  
**Cc:** Adam Moore; [REDACTED]  
**Subject:** RE: Tennyson Reach Parkland - Updated Draft Cost Plan

[REDACTED]

**Attached** is the draft contract amended in accordance with our teleconference with [REDACTED]

Please provide your comments. I will produce an execution copy as soon as you tell me there are no further changes.

Regards

[REDACTED]  
Special Counsel | Construction & Resources

**ClarkeKann**  
LAWYERS

with  
GRAY PERKINS  
Lawyers

Tel [REDACTED] [www.clarkekann.com.au](http://www.clarkekann.com.au)



Brisbane | Level 7, 300 Queen Street, Brisbane QLD 4000, Australia | GPO Box 2249, Brisbane QLD 4001, Australia  
Sydney | Level 7, 55 Clarence Street, Sydney NSW 2000, Australia | GPO Box 1342, Sydney NSW 2001, Australia

Gray & Perkins merged with ClarkeKann on 1 November 2010.  
Please consider the environment before printing this email.

Liability limited by a scheme approved under professional standards legislation.  
This communication is intended for the named recipients only. It is confidential and may contain information which is privileged or personal. Unless expressly stated, this communication does not waive legal professional privilege with respect to any material. If you are not an intended recipient you must not disclose or use this communication for any purpose. If you have received this communication in error, please call us collect on Australia +61 7 3001 9222 and then destroy the communication or delete it from your computer system.

---

**From:** [REDACTED]  
**Sent:** Thursday, 30 June 2011 12:02 PM  
**To:** [REDACTED]  
**Cc:** Adam Moore, [REDACTED]  
**Subject:** FW: Tennyson Reach Parkland - Updated Draft Cost Plan

Hi [REDACTED]  
Please find attached the updated cost plan removing design costs and maintenance. Note it's dated 30 June, 2011.

Regards,  
[REDACTED]  
Senior Development Manager  
Development Queensland

Mirvac  
Level 2, 164 Grey Street South Bank QLD 4101 Australia PO Box 5121 West End QLD 4101  
T: [REDACTED]  
<http://www.mirvac.com>  
Electronic Data Transmission Disclaimer

Please consider the environment before printing emails and attachments

---

**From:** [REDACTED]  
**Sent:** Thursday, 30 June 2011 11:58 AM  
**To:** [REDACTED]  
**Subject:** Tennyson Reach Parkland - Updated Draft Cost Plan

Hi [REDACTED]  
Please find attached updated Draft Cost Plan for Tennyson Reach Parkland as per your request.

Thanks.  
  
Kind Regards,  
[REDACTED]

Cost Planner/Quantity Surveyor  
Development Queensland  
  
Mirvac  
Level 2, 164 Grey Street South Bank QLD 4101 Australia PO Box 5121 West End QLD 4101  
T: [REDACTED]  
<http://www.mirvac.com>  
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**PAMD Form 30c****Warning statement**

*Property Agents and Motor Dealers Act 2000* — Chapter 11  
This form is effective from 1 October 2010.

ABN: 24 830 236 406  
Department of Employment, Economic  
Development and Innovation

**Instructions**

This form is to be attached to a proposed relevant contract of sale for residential property to be read and signed by a proposed buyer **BEFORE** the proposed buyer signs the proposed relevant contract. The seller or seller's agent must give the proposed buyer a clear statement directing the buyer's attention to the proposed relevant contract and to this warning statement before the proposed buyer signs the proposed relevant contract. Failure to give the proposed buyer a clear statement may give the buyer a right to terminate the contract under section 370 within 90 days of receiving a copy of the relevant contract unless settlement occurs earlier.

**Property address**

**Note:** If no street address is applicable, use lot and plan information to identify the property

Street name and number .....

Suburb ..... State  Postcode

# WARNING

**DO NOT** sign the proposed relevant contract for the above property until you have read and understood **ALL SECTIONS** of this form. **DO NOT** sign if you feel pressured.

The relevant contract is subject to a five (5) business day cooling-off period. You may terminate this contract during the cooling-off period. However, the seller may deduct a termination penalty of up to 0.25% of the purchase price from the deposit.

**You should obtain independent:**

- **legal advice** See note 1
- **valuation** See note 2

**Cooling-off period****What is the cooling-off period?**

The cooling-off period is five (5) business days, during which you can change your mind about purchasing this property. Use this time to seek independent legal advice and an independent valuation of the property.

**When does the cooling-off period start?**

Your cooling-off period starts on the day you receive a copy of the completed relevant contract from the seller or seller's agent. The proposed contract becomes a relevant contract when both parties have signed. In any dispute about the commencement of the cooling-off period, it will be up to the seller to prove the buyer received a copy of the relevant contract. If you receive a copy of the relevant contract on a day other than a business day, the cooling-off period commences on the first business day after you receive a copy of the relevant contract

**When does the cooling-off period end?**

Your cooling-off period ends at 5.00pm on the fifth business day after the cooling-off period started. A business day is a day other than a Saturday, Sunday or public holiday.

**Can I waive or shorten the cooling-off period?**

Yes, but only if you engage an independent lawyer who must give you a lawyer's certificate explaining the purpose and nature of the certificate. You should seek advice from your lawyer about the effect of waiving or shortening your cooling-off period. If you are waiving the cooling-off period, the lawyer's certificate must be given to the seller or seller's agent before you and the seller enter into the relevant contract.

**Cooling-off period continued**

**What should I do during the five (5) day cooling-off period?**

It is strongly recommended that you seek independent legal advice and obtain an independent valuation of the property during this time and that you understand and agree with the terms and conditions of the contract.

**How do I terminate the contract during the cooling-off period and what happens if the relevant contract is terminated?**

If you want to terminate the contract at any time before the end of the five (5) day cooling-off period, you must give a signed, dated notice to the seller indicating that you wish to terminate the contract during the cooling-off period. The notice must state that the relevant contract is terminated under section 370A of the *Property Agents and Motor Dealers Act 2000*. The seller must refund your deposit within 14 days of the termination. The seller may deduct a termination penalty of up to 0.25% of the purchase price. Make sure you terminate any building contract associated with this property if you terminate this contract during the cooling-off period.

**What happens after the cooling-off period ends?**

If you do not terminate the contract during the cooling-off period, you are legally bound by the contract, subject to the terms and conditions of the contract.

**Other important information**

Read the attached proposed relevant contract. Do not be pressured into signing the proposed relevant contract before you have read it.

**Note 1 - Independent legal advice**

Do you fully understand the legal consequences of signing the attached proposed relevant contract? Before signing the proposed relevant contract, it is strongly recommended that you seek independent legal advice and clarify any queries or concerns you have about buying the property. Are you sure the person you have obtained advice from is totally independent from the seller or seller's agent? Exercise extreme caution in accepting the advice of anyone referred to you by the seller or seller's agent.

**Note 2 - Independent valuation of the property**

Are you sure the purchase price for this property is fair? You should consider obtaining an independent valuation of the property before you sign the contract, or before your cooling-off period ends. When choosing a valuer you should ask whether the valuer has any relationship with any person involved in selling the property and whether they have professional indemnity insurance. Before you engage the valuer ask about the cost of the valuation. For more information about valuations, go to [www.fairtrading.qld.gov.au/house-valuation.htm](http://www.fairtrading.qld.gov.au/house-valuation.htm).

**Building contracts**

For building contracts associated with the purchase of residential property, you should ensure that the building contract price is not over-valued or inflated. Get a valuation or compare homes of similar value advertised or displayed by other home builders.

Domestic building contracts also have a cooling-off period under the *Domestic Building Contracts Act 2000* (section 72). Please check the Building Services Authority of Queensland website at [www.bsa.qld.gov.au](http://www.bsa.qld.gov.au) for further information about building contracts. Remember to terminate any building contracts related to this property if you terminate this contract.

**Claim fund and property developers**

A claim fund exists which, in some cases, enables buyers to make a claim if they suffer financial loss because a real estate agent commits a claimable offence. Strict guidelines and timeframes apply. If you suffer loss while buying an investment property or buying any property from a property developer you can not make a claim for loss against the fund.

**How do I know if I'm dealing with a licensed real estate agent or property developer and/or obtain further information about purchasing real estate?**

The Fair Trading website at [www.fairtrading.qld.gov.au](http://www.fairtrading.qld.gov.au) provides you with useful information about purchasing property. You can check that you are dealing with a licensed real estate agent or property developer at [www.fairtrading.qld.gov.au/are-you-licensed.htm](http://www.fairtrading.qld.gov.au/are-you-licensed.htm) or by phoning 13 13 04.

**Buyer's acknowledgment**

I/we have read all sections of this warning statement and I/we acknowledge that by signing this warning statement, my/our attention has been directed to this warning statement and the attached proposed relevant contract by a clear statement and I/we have signed the warning statement BEFORE I/we signed the attached proposed relevant contract.

Signing this Warning Statement negates any termination right I/we may have had under section 370 of the *Property Agents and Motor Dealers Act 2000*.

Name .....

Name .....

Signature ..... Signature .....

Date   /   /

Date   /   /

**Information sheet (body corporate information)***Body Corporate and Community Management Act 1997*

This form is effective from 29 April 2011

**WARNING**

**You are strongly advised to obtain independent legal advice regarding any questions or concerns you have about purchasing the property or your prospective rights and obligations as a member of a body corporate.**

**Notice to agent:** The *Property Agents and Motor Dealers Act 2000* and *Body Corporate and Community Management Act 1997* (the Act) include strict requirements for presentation of prescribed warning statements and information sheets. Failure to comply may result in cancellation of the contract.

**By law the seller or the seller's agent must attach this information sheet to the contract.  
Do NOT sign the contract of sale without reading this information sheet.**

In addition to the contract, you should have before you:

- a separate warning statement, if the lot is a residential property, provided by the seller under the *Property Agents and Motor Dealers Act 2000*
- a disclosure statement provided by the seller, containing essential information about the body corporate that you will become a member of through purchasing this property (e.g. the amount of annual contributions currently set by the body corporate and payable by the lot owner)
- a community management statement for the scheme provided by the seller, containing important details about the scheme including details of any proposed future development of the scheme, the lot entitlements, by-laws and the regulation module applying to the scheme.

**Community titles schemes**

This contract warning contains important information you should read and understand before signing a contract to buy a lot in a community titles scheme. Community titles schemes include duplexes, residential unit blocks, high-rise apartment complexes, townhouse complexes and some commercial premises. They contain individually owned units and common property such as lawns and access roadways.

Some new unit owners do not realise owning a lot in a community titles scheme brings with it certain obligations. You should carefully consider whether living or investing in a community titles scheme suits your lifestyle and financial needs.

When a community titles scheme is established, a body corporate is created to administer the scheme. Each lot owner is automatically a member of their body corporate and enjoys certain rights and responsibilities.

Owners are **NOT** able to decline to be members of their body corporate. Normally, an elected committee carries out day-to-day functions on behalf of the body corporate. Bodies corporate may also engage service providers such as body corporate managers and on-site managers, caretakers and letting agents.

Common obligations of a body corporate include:

- administering the common property and any body corporate assets
- enforcing the by-laws for the scheme, such as noise levels, the keeping of pets, car parking and a range of other matters
- arranging compulsory body corporate insurance
- conducting general meetings of owners, adopting budgets, and levying contributions to fund the operation of the body corporate
- maintaining bank accounts, keeping records, and preparing financial statements.

Common obligations of individual lot owners include:

- making financial contributions towards the body corporate administrative costs
- complying with by-laws
- maintaining their lot in good condition.

**Suggested searches and matters to investigate**

There are significant differences between owning a lot in a community titles scheme and owning other types of property (such as a detached house). In addition to carrying out conveyancing searches, it is also recommended you investigate a number of special body corporate matters through the following sources:

**1. Department of Justice and Attorney-General, Office of the Commissioner for Body Corporate and Community Management**

Conduct a search at the Office of the Commissioner for Body Corporate and Community Management for any Adjudicator's Orders (a decision regarding the outcome of a dispute) made concerning the scheme.

General information and fact sheets are also provided about community title living and body corporate rules and regulations. For more information, call 1800 060 119 or visit [www.justice.qld.gov.au/bccm](http://www.justice.qld.gov.au/bccm)

**2. Body corporate secretary**

Obtain a **Body Corporate Information Certificate** from the body corporate secretary or body corporate manager whose name and address is supplied in the disclosure statement. Compare the disclosure statement with the information certificate, as inaccurate information in the disclosure statement may give you grounds to cancel the contract (Section 209 or Section 217 of the Act).

A search of the **body corporate records** can provide other important information, such as whether any improvements to the lot you are purchasing (e.g. balcony enclosure, air-conditioning) were approved, whether any conditions apply, and who is responsible for their maintenance and insurance.

Also, check for any **agreements** the body corporate may have entered into (e.g. caretaking, letting, body corporate management or lift maintenance).

**Checklist**

- By purchasing this property, do you know you will be part of a body corporate?
- Are you aware of any contracts the body corporate is a party to?
- Have you read and understood the body corporate by-laws?
- Do you understand your likely financial contributions to the body corporate?
- Are you aware that an adjustment of lot entitlements may increase or decrease your financial contributions to the body corporate?
- Are you aware that your financial contributions to the body corporate will vary as the financial liabilities of the body corporate change?
- Do you understand your maintenance responsibilities?
- Do you understand the role of the body corporate manager and on-site manager (if appointed)?

**Buyer's acknowledgment**

I/we have read all sections of this information sheet and I/we have acknowledged and signed the information sheet BEFORE I/we signed the attached contract.

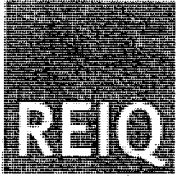
If the lot is residential property, I/we acknowledge that by signing this information sheet, my/our attention has been directed to this information sheet and the attached proposed relevant contract by a clear statement and that signing this information sheet negates any termination right I/we may have had under section 206A or 213A of the *Body Corporate and Community Management Act 1997*.

Name .....

Signature ..... Date   /   /

Name .....

Signature ..... Date   /   /



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# Contract

## For Houses and Residential Land

Eighth Edition



This document has been approved by The Real Estate Institute of Queensland Limited and the Queensland Law Society Incorporated as being suitable for the sale and purchase of houses and residential land in Queensland except for new residential property in which case the issue of GST liability must be dealt with by special condition.

The Seller and Buyer agree to sell and buy the Property under this contract

### Reference Schedule

**Contract Date:** \_\_\_\_\_  
**Agent:** \_\_\_\_\_  
**ABN:** \_\_\_\_\_ **Licence Number:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
**Telephone:** \_\_\_\_\_ **Facsimile:** \_\_\_\_\_ **Mobile:** \_\_\_\_\_  
**Email Address:** \_\_\_\_\_

**Parties**

**Seller:** Mirvac Queensland Pty Ltd ACN 060 411 207

**ABN:** \_\_\_\_\_ **Email Address:** \_\_\_\_\_  
**Address:** Level 2, 164 Grey Street, South Bank Qld 4101  
**Telephone:** [REDACTED] **Facsimile:** [REDACTED] **Mobile:** \_\_\_\_\_

**Seller's Solicitor:** ClarkeKann Lawyers. [or any other solicitor notified to the Buyer]

**ABN:** \_\_\_\_\_ **Ref:** SMC  
**Address:** Level 7, 300 Queen Street, Brisbane Qld 4000  
**Telephone:** [REDACTED] **Facsimile:** [REDACTED] **Mobile:** \_\_\_\_\_  
**Email Address:** [REDACTED]

**Buyer:** Brisbane City Council

**ABN:** \_\_\_\_\_ **Email Address:** [REDACTED]  
**Address:** 266 George Street, Brisbane  
**Telephone:** [REDACTED] **Facsimile:** \_\_\_\_\_ **Mobile:** \_\_\_\_\_

**Buyer's Solicitor:** Brisbane City Legal Practice [or any other solicitor notified to the Seller]

**ABN:** \_\_\_\_\_ **Ref:** \_\_\_\_\_  
**Address:** 266 George Street, Brisbane  
**Telephone:** [REDACTED] **Facsimile:** \_\_\_\_\_ **Mobile:** \_\_\_\_\_  
**Email Address:** [REDACTED]

**Property Land** **Address:** King Arthur Tce, Tennyson QLD 4105

\*Vacant/~~Built on~~ [\*Delete one]

**Description:** See Schedule 1  
**County:** See Schedule 1 **Parish:** See Schedule 1  
**Title Reference:** See Schedule 1 **Area:** \_\_\_\_\_ [more or less]  
**Land sold as \*Freehold/Leasehold- [\*Delete one. If neither is deleted, the land is treated as being Freehold]**

**Present Use:** Residential **Local Government:** Brisbane City Council  
2052443\_1

**Property - Continued**

*Excluded Fixtures:* Nil  
*Included Chattels:* Nil

**Matters Affecting Property**

*Title Encumbrances:* See Schedule 1

[If the Property is sold free from Title Encumbrances insert "Nil"]  
 [If the Property is sold subject to Title Encumbrances, they must be described]

*Tenancies:* Not applicable  
 Tenant's Name: \_\_\_\_\_  
 Term and Options: \_\_\_\_\_  
 Starting Date of Term: \_\_\_\_\_  
 Ending Date of Term: \_\_\_\_\_  
 Rent: \_\_\_\_\_ Bond: \_\_\_\_\_  
*Managing Agent:* Not applicable  
 Address: \_\_\_\_\_  
 Telephone: \_\_\_\_\_ Facsimile: \_\_\_\_\_ Mobile: \_\_\_\_\_  
 Email Address: \_\_\_\_\_

**Price**

*Deposit Holder:* ClarkeKann Lawyers

[Unless otherwise specified in t' contract, the Purchase Price includes any GST payable on the supply of the Property to the Buyer]

*Purchase Price:* \$ 9,000,000.00 (plus GST) [payable in accordance Special Conditions]

*Deposit:* \$ 1.00 Initial Deposit payable when Buyer signs this contract (if demanded)

\$ \_\_\_\_\_ Balance Deposit (if any) payable on: \_\_\_\_\_

*Default Interest Rate:* \_\_\_\_\_ % [If no figure is inserted, the Contract Rate published by the Queensland Law Society Inc will apply]

**Finance**

*Finance Amount:* \$ Not applicable

[Unless all of "Finance Amount", "Financier" and "Finance Date" are completed, this contract is not subject to finance and clause 3 does not apply]

*Financier:* Not applicable

*Finance Date:* Not applicable

**Building and/or Pest Inspection Date**

*Inspection Date:* Not applicable

[If not completed, the contract is not subject to an inspection report and clause 4 does not apply]



**Pool Safety**

- Q1. Is there a pool on the Land or on adjacent land used in association with the Land?  
 Yes  
 No Clause 4.7 of this contract does not apply
- Q2. If the answer to Q1 is Yes, is there a Pool Safety Certificate for the pool at the time of contract?  
 Yes Clause 5.3(1)(e) applies  
 No Clause 4.7 applies (except where this contract is formed on a sale by auction)
- If there is a pool on the Land and Q2 is not completed then clause 4.7 applies.*
- Q3. If the answer to Q2 is No, has a Notice of no pool safety certificate been given prior to contract?  
 Yes  
 No

[WARNING TO SELLER: Failure to comply with the Pool Safety Requirements is an offence with substantial penalties.]

[WARNING TO BUYER: If the Buyer does not receive a Pool Safety Certificate at settlement, the Buyer becomes responsible at its cost to obtain a Pool Safety Certificate within 90 days after settlement. The Buyer can also become liable to pay any costs of rectification necessary to comply with the Pool Safety Requirements to obtain a pool safety certificate. The Buyer commits an offence and can be liable to substantial penalties if the Buyer fails to comply with this requirement.]

*Note: This is an obligation of the Seller under Section 16 of the Building Regulation 2006.*

**Pool Safety Inspection**

Date: Not applicable

[Clause 4.7(2) applies except where this contract is formed on a sale by auction]

**Electrical Safety Switch and Smoke Alarm**

*This section must be completed unless the Land is vacant.*

The Seller gives notice to the Buyer that an Approved Safety Switch for the General Purpose Socket Outlets is:

- \*installed in the residence  
 \*not installed in the residence

*\*Mark whichever is applicable*

The Seller gives notice to the Buyer that a Compliant Smoke Alarm(s) is/are:

- \*installed in the residence  
 \*not installed in the residence

*\*Mark whichever is applicable*

[WARNING: By giving false or misleading information in this section, the Seller may incur a penalty. The Seller should seek expert and qualified advice about completing this section and not rely on the Seller's Agent to complete this section.]

[WARNING: Failure to install a Compliant Smoke Alarm is an offence under the Fire and Rescue Service Act 1990.]

The REIQ Terms of Contract for Houses and Residential Land (Pages 5-10)  
(Eighth Edition) Contain the Terms of this Contract.

**Special Conditions**

See Schedule 1 and Annexures A-E

**Settlement**

**Settlement Date:** 30 June 2011 (subject to the special conditions)

[for the next Business Day if that is not a Business Day in the Place for Settlement]  
[If Brisbane is inserted this is a reference to Brisbane CBD]

**Place for Settlement:** Brisbane CBD

**Signing**

**Seller**

**Witness**

**Buyer**

**Witness**

**Deposit Holder**

[Who acknowledges having received the Initial Deposit and agrees to hold that amount and any Balance Deposit when received as Deposit Holder for the parties as provided in the Contract.]



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# Terms of Contract

## For Houses and Residential Land

### 1. Definitions

#### 1.1 In this contract:

- (1) terms in **bold** in the Reference Schedule have the meanings shown opposite them; and
- (2) unless the context otherwise indicates:
  - (a) **"Approved Safety Switch"** means a residual current device as defined in the *Electrical Safety Regulation 2002*;
  - (b) **"Balance Purchase Price"** means the Purchase Price, less the Deposit, adjusted under clauses 2.6(2) and 2.6(13);
  - (c) **"Bank"** means:
    - (i) a bank as defined by section 5 of the *Banking Act 1959* of the Commonwealth; or
    - (ii) a bank constituted under a law of a state;
  - (d) **"Bond"** means a bond under the *Residential Tenancies and Rooming Accommodation Act 2008*;
  - (e) **"Building Act"** means the *Building Act 1975* as amended.
  - (f) **"Business Day"** means a week day other than a public holiday in the Place for Settlement;
  - (g) **"Compliant Smoke Alarm"** means a smoke alarm complying with sections 104RB (2) or (4) of the *Fire and Rescue Service Act 1990*;
  - (h) **"Contract Date"** or **"Date of Contract"** means the date inserted in the Reference Schedule;
  - (i) **"Court"** includes any tribunal established under statute.
  - (j) **"Encumbrances"** includes unregistered and statutory encumbrances;
  - (k) **"Essential Term"** includes, in the case of breach by:
    - (i) the Buyer: clauses 2.2, 2.5(1), 5.1 and 6.1; and
    - (ii) the Seller: clauses 5.1, 5.3(1)(a)-(c), 5.3(1)(d)(ii) & (iii), 5.3(1)(e), 5.5 and 6.1;
 but nothing in this definition precludes a Court from finding other terms to be essential.
  - (l) **"Financial Institution"** means a Bank, building society or credit union;
  - (m) **"General Purpose Socket Outlet"** means an electrical socket outlet as defined in the *Electrical Safety Regulation 2002*;
  - (n) **"GST"** means the goods and services tax under the *GST Act*;
  - (o) **"GST Act"** means *A New Tax System (Goods and Services Tax) Act* and includes other GST related legislation;
  - (p) **"Improvements"** means fixed structures on the Land and includes all items fixed to them (such as stoves, hot water systems, fixed carpets, curtains, blinds and their fittings, clothes lines, fixed satellite dishes and television antennae, in-ground plants) but does not include the Reserved Items;
  - (q) **"Keys"** means keys, codes or devices in the Seller's possession for all locks or security systems on the Property;
  - (r) **"Notice of no pool safety certificate"** means the Form 36 under the *Building Regulation 2006* to the effect that there is no Pool Safety Certificate issued for the Land;

- (s) **"Outgoings"** means:
  - (i) rates or charges on the Land by any competent authority (for example, council rates, water rates, fire service levies); and
  - (ii) land tax;
- (t) **"Pool Safety Requirements"** means the requirements for pool safety contained in the *Building Act 1975* and *Building Regulation 2006*;
- (u) **"Pool Safety Certificate"** means either:
  - (i) a certificate of compliance; or
  - (ii) an exemption from compliance; issued in accordance with the Pool Safety Requirements;
- (v) **"Pool Safety Inspection Date"** means the Pool Safety Inspection Date inserted in the Reference Schedule. If no date is inserted in the Reference Schedule, the Pool Safety Inspection Date is taken to be the earlier of the following:
  - (i) the Inspection Date for the Building and/or Pest Inspection; or
  - (ii) 2 Business Days before the Settlement Date;
- (w) **"Pool Safety Inspector"** means a person licensed or authorised under the *Building Act 1975* and *Building Regulation 2006* to issue a Pool Safety Certificate;
- (x) **"Property"** means:
  - (i) the Land;
  - (ii) the improvements; and
  - (iii) the Included Chattels;
- (y) **"Rent"** means any periodic amount payable under the Tenancies;
- (z) **"Reserved Items"** means the Excluded Fixtures and all chattels on the Land other than the Included Chattels;
- (aa) **"Transfer Documents"** means:
  - (i) the form of transfer under the *Land Title Act 1994* required to transfer title in the Land to the Buyer; and
  - (ii) any other document to be signed by the Seller necessary for stamping or registering the transfer; and
- (bb) **"Transport Infrastructure"** has the meaning defined in the *Transport Infrastructure Act 1994*.

### 2. Purchase Price

#### 2.1 GST

Unless otherwise specified in this contract, the Purchase Price includes any GST payable on the supply of the Property to the Buyer.

#### 2.2 Deposit

- (1) The Buyer must pay the Deposit to the Deposit Holder at the times shown in the Reference Schedule. The Deposit Holder will hold the Deposit until a party becomes entitled to it.
- (2) The Buyer will be in default if it:
  - (a) does not pay the Deposit when required;
  - (b) pays the Deposit by a post-dated cheque; or
  - (c) pays the Deposit by cheque which is dishonoured on presentation.
- (3) The Seller may recover from the Buyer as a liquidated debt any part of the Deposit which is not paid when required.



**2.3 Investment of Deposit**

If:

- (1) the Deposit Holder is instructed by either the Seller or the Buyer; and
  - (2) it is lawful to do so;
- the Deposit Holder must:
- (3) invest as much of the Deposit as has been paid with any Financial Institution in an interest-bearing account in the names of the parties; and
  - (4) provide the parties' tax file numbers to the Financial Institution (if they have been supplied).

**2.4 Entitlement to Deposit and Interest**

- (1) The party entitled to receive the Deposit is:
  - (a) if this contract settles, the Seller;
  - (b) if this contract is terminated without default by the Buyer, the Buyer; and
  - (c) if this contract is terminated owing to the Buyer's default, the Seller.
- (2) The interest on the Deposit must be paid to the person who is entitled to the Deposit.
- (3) If this contract is terminated, the Buyer has no further claim once it receives the Deposit and interest, unless the termination is due to the Seller's default or breach of warranty.
- (4) The Deposit is invested at the risk of the party who is ultimately entitled to it.

**2.5 Payment of Balance Purchase Price**

- (1) On the Settlement Date, the Buyer must pay the Balance Purchase Price by Bank cheque as the Seller directs.
- (2) Despite any other provision of this contract, a reference to a "Bank cheque" in clause 2.5(1):
  - (a) includes a cheque drawn by a building society or credit union on itself;
  - (b) does not include a cheque drawn by a building society or credit union on a Bank; and the Seller is not obliged to accept a cheque referred to in clause 2.5(2)(b) on the Settlement Date.

**2.6 Adjustments to Balance Purchase Price**

- (1) The Seller is liable for Outgoings and is entitled to Rent up to and including the Settlement Date. The Buyer is liable for Outgoings and is entitled to Rent after the Settlement Date.
- (2) Subject to clauses 2.6(3), 2.6(4), 2.6(5) and 2.6(6), Outgoings for periods including the Settlement Date must be adjusted:
  - (a) for those paid, on the amount paid;
  - (b) for those assessed but unpaid, on the amount payable (excluding any discount); and
  - (c) for those not assessed:
    - (i) on the amount the relevant authority advises will be assessed (excluding any discount); or
    - (ii) if no advice on the assessment to be made is available, on the amount of the latest assessment (excluding any discount).
- (3) If there is no separate assessment of rates for the Land at the Settlement Date and the Local Government informs the Buyer that it will not apportion rates between the Buyer and the Seller, then:
  - (a) the amount of rates to be adjusted is that proportion of the assessment equal to the ratio of the area of the Land to the area of the parcel in the assessment; and
  - (b) if an assessment of rates includes charges imposed on a "per lot" basis, then the portion of those charges to be adjusted is the amount assessed divided by the number of lots in that assessment.

(4) Land tax must be adjusted:

- (a) on the assessment that the Office of State Revenue would issue for the land tax year current at the Settlement Date if the Seller was one natural person resident in Queensland and the Land was the Seller's only land; or
- (b) based on the assumptions in clause 2.6(4)(a), if there is no separate unimproved value for the Land, on a notional unimproved value equal to:

$$\begin{array}{l} \text{Unimproved value of} \\ \text{the parcel that} \\ \text{includes the Land} \\ \text{under Valuation of} \\ \text{Land Act 1944} \end{array} \times \frac{\text{Area of Land}}{\text{Area of the parcel}}$$

- (5) If land tax is unpaid at the Settlement Date and the Office of State Revenue advises that it will issue a final clearance for the Land on payment of a specified amount, then the Buyer may deduct the specified amount from the Balance Purchase Price at settlement and must pay it promptly to the Office of State Revenue. If an amount is deducted under this clause, then land tax will be treated as paid at the Settlement Date for the purposes of clause 2.6(2).
- (6) Any Outgoings assessable on the amount of water used must be adjusted on the charges that would be assessed on the total water usage for the assessment period, determined by assuming that the actual rate of usage shown by the meter reading made before settlement continues throughout the assessment period. The Buyer must obtain and pay for the meter reading.
- (7) If any Outgoings are assessed but unpaid at the Settlement Date, then the Buyer may deduct the amount payable from the Balance Purchase Price at settlement and pay it promptly to the relevant authority. If an amount is deducted under this clause, the relevant Outgoing will be treated as paid at the Settlement Date for the purposes of clause 2.6(2).
- (8) Arrears of Rent for any rental period ending on or before the Settlement Date belong to the Seller and are not adjusted at settlement.
- (9) Unpaid Rent for the rental period including both the Settlement Date and the following day ("Current Period") is not adjusted until it is paid.
- (10) Rent already paid for the Current Period or beyond must be adjusted at settlement.
- (11) If Rent payments are reassessed after the Settlement Date for periods including the Settlement Date, any additional Rent payment from a Tenant or refund due to a Tenant must be apportioned under clauses 2.6(8), 2.6(9) and 2.6(10).
- (12) Payments under clause 2.6(10) must be made within 14 days after notification by one party to the other but only after any additional payment from a Tenant has been received.
- (13) The cost of Bank cheques payable at settlement:
  - (a) to the Seller or its mortgagee are the responsibility of the Buyer; and
  - (b) to parties other than the Seller or its mortgagee are the responsibility of the Seller.

**3. Finance**

3.1 This contract is conditional on the Buyer obtaining approval of a loan for the Finance Amount from the Financier by the Finance Date on terms satisfactory to the



Buyer. The Buyer must take all reasonable steps to obtain approval.

- 3.2 The Buyer must give notice to the Seller that:
- (1) approval has not been obtained by the Finance Date and the Buyer terminates this contract; or
  - (2) the finance condition has been either satisfied or waived by the Buyer.
- 3.3 The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 3.2 by 5pm on the Finance Date. This is the Seller's only remedy for the Buyer's failure to give notice.
- 3.4 The Seller's right under clause 3.3 is subject to the Buyer's continuing right to terminate this contract under clause 3.2(1) or waive the benefit of this clause 3 by giving written notice to the Seller of the waiver.

#### 4. Building and Pest Inspection Reports and Pool Safety

##### 4.1 Building and Pest Inspection

This contract is conditional upon the Buyer obtaining a written building report from a building inspector and a written pest report from a pest inspector (which may be a single report) on the Property by the Inspection Date on terms satisfactory to the Buyer. The Buyer must take all reasonable steps to obtain the reports (subject to the right of the Buyer to elect to obtain only one of the reports).

- 4.2 The Buyer must give notice to the Seller that:
- (1) a satisfactory inspector's report under clause 4.1 has not been obtained by the Inspection Date and the Buyer terminates this contract. The Buyer must act reasonably; or
  - (2) clause 4.1 has been either satisfied or waived by the Buyer.
- 4.3 If the Buyer terminates this contract and the Seller asks the Buyer for a copy of the building and pest reports, the Buyer must give a copy of each report to the Seller without delay.
- 4.4 The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 4.2 by 5pm on the Inspection Date. This is the Seller's only remedy for the Buyer's failure to give notice.
- 4.5 The Seller's right under clause 4.4 is subject to the Buyer's continuing right to terminate this contract under clause 4.2(1) or waive the benefit of this clause 4 by giving written notice to the Seller of the waiver.
- 4.6 If required under the *Queensland Building Services Authority Act 1991*, an inspector referred to in clause 4.1 must hold a current licence under that Act.
- 4.7 Pool Safety
- (1) This clause 4.7 applies if:
    - (a) there is a pool on the Land and the answer to Q2 of the Reference Schedule is No or Q2 is not completed; and
    - (b) this contract was not formed on a sale by auction.
  - (2) This contract is conditional upon the Buyer obtaining from a Pool Safety Inspector by the Pool Safety Inspection Date:
    - (a) confirmation that the Pool Safety Requirements have been met and the issue of a Pool Safety Certificate; or
    - (b) confirmation of the works required before a Pool Safety Certificate can be issued.
  - (3) The Buyer must give notice to the Seller on or before the Pool Safety Inspection Date that:
    - (a) a Pool Safety Inspector has issued a Pool Safety Certificate in which case neither the Buyer nor the

Seller have any further rights under this clause 4.7; or

- (b) a Pool Safety Inspector has not issued a Pool Safety Certificate and the Buyer terminates this contract. The Buyer must act reasonably; or
  - (c) the Buyer waives the benefit of this clause 4.7 and elects to proceed to settlement notwithstanding that there is no Pool Safety Certificate.
- (4) The Buyer's right to terminate this contract or waive the benefit of this clause 4.7 ends on the earlier of:
- (a) a Pool Safety Certificate being issued; or
  - (b) settlement occurring.
- (5) The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 4.7 (3) by 5pm on the Pool Safety Inspection Date. This is the Seller's only remedy for the Buyer's failure to give notice.
- (6) The Seller's right under clause 4.7(5) is subject to the Buyer's continuing right to terminate this contract or waive the benefit of this clause 4.7 by giving written notice to the Seller of the waiver.
- (7) If the Buyer terminates this contract in accordance with clause 4.7(3)(b), and the Seller asks the Buyer for a copy of the pool safety inspection report, the Buyer must give a copy of the report to the Seller without delay.
- (8) For the purpose of this clause 4.7, "formed on a sale by auction" means formed on sale by auction—
- (a) directly on the fall of the hammer, by outcry; or
  - (b) directly at the end of another similar type of competition for purchase.

#### 5. Settlement

##### 5.1 Time and Date

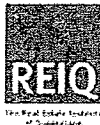
- (1) Settlement must occur between 9am and 5pm on the Settlement Date.
- (2) If the parties do not agree on where settlement is to occur, it must take place in the Place for Settlement at the office of a solicitor or Financial Institution nominated by the Seller, or, if the Seller does not make a nomination, at the land registry office in or nearest to the Place for Settlement.

##### 5.2 Transfer Documents

- (1) The Transfer Documents must be prepared by the Buyer's Solicitor and delivered to the Seller a reasonable time before the Settlement Date.
- (2) If the Buyer pays the Seller's reasonable expenses, it may require the Seller to produce the Transfer Documents at the Office of State Revenue nearest the Place for Settlement for stamping before settlement.

##### 5.3 Documents and Keys at Settlement

- (1) In exchange for payment of the Balance Purchase Price, the Seller must deliver to the Buyer at settlement:
  - (a) any instrument of title for the Land required to register the transfer to the Buyer; and
  - (b) unstamped Transfer Documents capable of immediate registration after stamping; and
  - (c) if requested, the Keys in the Seller's or the Seller's Agent's possession or control for all locks and security systems on the Property; and
  - (d) if there are Tenancies:
    - (i) the Seller's copy of any Tenancy agreements;
    - (ii) a notice to each tenant advising of the sale in the form required by law; and
    - (iii) any notice required by law to transfer to the Buyer the Seller's interest in any Bond; and



(e) if the answer to Q2 in the Reference Schedule is Yes, a copy of a current Pool Safety Certificate, if not already provided to the Buyer.

- (2) If the instrument of title for the Land also relates to other land, the Seller need not deliver it to the Buyer, but the Seller must make arrangements satisfactory to the Buyer to produce it for registration of the transfer.
- (3) If the Keys are not delivered at Settlement under clause 5.3(1)(c), the Seller must deliver the Keys to the Buyer. The Seller may discharge its obligation under this provision by authorising the Seller's Agent to release the Keys to the Buyer.

#### 5.4 Assignment of Covenants and Warranties

At settlement, the Seller assigns to the Buyer the benefit of all:

- (1) covenants by the tenants under the Tenancies;
- (2) guarantees and Bonds (subject to the requirements of the *Residential Tenancies and Rooming Accommodation Act 2008*) supporting the Tenancies;
- (3) manufacturers' warranties regarding the Included Chattels; and
- (4) builders' warranties on the Improvements; to the extent they are assignable. However, the right to recover arrears of Rent is not assigned to the Buyer and section 117 of the *Property Law Act 1974* does not apply.

#### 5.5 Possession of Property and Title to Included Chattels

On the Settlement Date, in exchange for the Balance Purchase Price, the Seller must give the Buyer vacant possession of the Land and the Improvements except for the Tenancies. Title to the Included Chattels passes at settlement.

#### 5.6 Reservations

- (1) The Seller must remove the Reserved Items from the Property before the Settlement Date.
- (2) The Seller must repair at its expense any damage done to the Property in removing the Reserved Items. If the Seller fails to do so, the Buyer may repair that damage.
- (3) Any Reserved Items not removed before settlement will be considered abandoned and the Buyer may, without limiting its other rights, complete this contract and appropriate those Reserved Items or dispose of them in any way.
- (4) The Seller indemnifies the Buyer against any damages and expenses resulting from the Buyer's actions under clauses 5.6(2) or 5.6(3).

#### 5.7 Consent to Transfer

- (1) If the Land sold is leasehold, this contract is subject to any necessary consent to the transfer of the lease to the Buyer being obtained by the Settlement Date.
- (2) The Seller must apply for the consent required as soon as possible.
- (3) The Buyer must do everything reasonably required to help obtain this consent.

### 6. Time

6.1 Time is of the essence of this contract, except regarding any agreement between the parties on a time of day for settlement.

### 7. Matters Affecting the Property

#### 7.1 Title

The Land is sold subject to:

- (1) any reservations or conditions on the title or the original Deed of Grant (if freehold); or
- (2) the Conditions of the Crown Lease (if leasehold).

#### 7.2 Encumbrances

The Property is sold free of all Encumbrances other than the Title Encumbrances and Tenancies.

#### 7.3 Requisitions

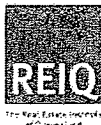
The Buyer may not deliver any requisitions or enquiries on title.

#### 7.4 Seller's Warranties

- (1) The Seller warrants that at settlement:
  - (a) if the Land is freehold: it will be the registered owner of an estate in fee simple in the Land and will own the rest of the Property;
  - (b) if the Land is leasehold: it will be the registered lessee, the lease is not liable to forfeiture because of default under the lease, and it will own the rest of the Property;
  - (c) it will be capable of completing this contract (unless the Seller dies or becomes mentally incapable after the Contract Date); and
  - (d) there will be no unsatisfied judgment, order or writ affecting the Property.
- (2) The Seller warrants that at the Contract Date and at settlement there are no current or threatened claims, notices or proceedings that may lead to a judgment, order or writ affecting the Property.
- (3) (a) The Seller warrants that, except as disclosed in this contract or a notice given by the Seller to the Buyer under the *Environmental Protection Act 1994* ("EPA"), at the Contract Date:
  - (i) there is no outstanding obligation on the Seller to give notice to the administering authority under EPA of notifiable activity being conducted on the Land; and
  - (ii) the Seller is not aware of any facts or circumstances that may lead to the Land being classified as contaminated land within the meaning of EPA.
- (b) If the Seller breaches a warranty in clause 7.4(3)(a), the Buyer may:
  - (i) terminate this contract by notice in writing to the Seller given within 2 Business Days before the Settlement Date; or
  - (ii) complete this contract and claim compensation, but only if the Buyer claims it in writing before the Settlement Date.
- (4) If a warranty in clause 7.4(1) or clause 7.4(2) is not correct, the Buyer may terminate this contract by notice to the Seller.
- (5) The Seller does not warrant that the Present Use is lawful.

#### 7.5 Survey and Mistake

- (1) The Buyer may survey the Land.
- (2) If there is:
  - (a) an error in the boundaries or area of the Land;
  - (b) an encroachment by structures onto or from the Land; or
  - (c) a mistake or omission in describing the Property or the Seller's title to it;
 which is:
  - (d) immaterial; or
  - (e) material, but the Buyer elects to complete this contract; the Buyer's only remedy against the Seller is for compensation, but only if claimed by the Buyer in writing on or before settlement.
- (3) The Buyer may not delay settlement or withhold any part of the Balance Purchase Price because of any compensation claim under clause 7.5(2).



- (4) If there is a material error, encroachment or mistake, the Buyer may terminate this contract before settlement.

#### 7.6 Requirements of Authorities

- (1) Any valid notice or order by any competent authority or Court requiring work to be done or money spent in relation to the Property ("Work or Expenditure") must be fully complied with:
- if issued before the Contract Date, by the Seller before the Settlement Date;
  - if issued on or after the Contract Date, by the Buyer.
- (2) If any Work or Expenditure that is the Seller's responsibility under clause 7.6(1)(a) is not done before the Settlement Date, the Buyer is entitled to claim the reasonable cost of work done by the Buyer in accordance with the notice or order referred to in clause 7.6(1) from the Seller after settlement as a debt.
- (3) Any Work or Expenditure that is the Buyer's responsibility under clause 7.6(1)(b), which is required to be done before the Settlement Date, must be done by the Seller unless the Buyer directs the Seller not to and indemnifies the Seller against any liability for not carrying out the work. If the Seller does the work, or spends the money, the reasonable cost of that Work or Expenditure must be added to the Balance Purchase Price.
- (4) The Buyer may terminate this contract by notice to the Seller if there is an outstanding notice at the Contract Date under sections 246AG, 247 or 248 of the *Building Act 1975* or sections 588 or 590 of the *Sustainable Planning Act 2009* that affects the Property.

#### 7.7 Property Adversely Affected

- (1) If at the Contract Date:
- the Present Use is not lawful under the relevant town planning scheme;
  - the Land is affected by a proposal of any competent authority to alter the dimensions of any Transport Infrastructure or locate Transport Infrastructure on the Land;
  - access or any service to the Land passes unlawfully through other land;
  - any competent authority has issued a current notice to treat, or notice of intention to resume, regarding any part of the Land; or
  - the Property is affected by the *Queensland Heritage Act 1992* or is included in the World Heritage List;
- and that has not been disclosed in this contract, the Buyer may terminate this contract by notice to the Seller given no later than 2 Business Days before the Settlement Date.
- (2) If no notice is given under clause 7.7(1), the Buyer will be treated as having accepted the Property subject to all of the matters referred to in that clause.
- (3) The Seller authorises the Buyer to inspect records held by any authority relating to the Property.

#### 7.8 Dividing Fences

The Seller need not contribute to the cost of building any dividing fence between the Land and any adjoining land owned by it. The Buyer waives any right to claim contribution from the Seller.

## 8. Rights Until Settlement

### 8.1 Risk

The Property is at the Buyer's risk from 5pm on the first Business Day after the Contract Date.

### 8.2 Access

After reasonable notice to the Seller, the Buyer and its consultants may enter the Property:

- once to read any meter;
- for inspections under clause 4;
- once to inspect the Property before settlement; and
- once to value the Property before settlement.

### 8.3 Seller's Use of Property

The Seller must use the Property reasonably until settlement. The Seller must not do anything regarding the Property or Tenancies that may significantly alter them or result in later expense for the Buyer.

### 8.4 Information Regarding the Property

Before settlement, the Seller must give the Buyer:

- copies of all documents relating to any unregistered interests in the Property;
- full details of the Tenancies to allow the Buyer to properly manage the Property after settlement; and
- further copies or details if those previously given cease to be complete and accurate.

### 8.5 Possession Before Settlement

If possession is given before settlement:

- the Buyer must maintain the Property in substantially its condition at the date of possession, fair wear and tear excepted;
- entry into possession is under a licence personal to the Buyer revocable at any time and does not:
  - create a relationship of landlord and tenant; or
  - waive the Buyer's rights under this contract;
- the Buyer must insure the Property to the Seller's satisfaction; and
- the Buyer indemnifies the Seller against any expense or damages incurred by the Seller as a result of the Buyer's possession of the Property.

## 9. Parties' Default

### 9.1 Seller and Buyer May Affirm or Terminate

Without limiting any other right or remedy of the parties including those under this contract or any right at common law, if the Seller or Buyer, as the case may be, fails to comply with an Essential Term, or makes a fundamental breach of an intermediate term, the Seller (in the case of the Buyer's default) or the Buyer (in the case of the Seller's default) may affirm or terminate this contract.

### 9.2 If Seller Affirms

If the Seller affirms this contract under clause 9.1, it may sue the Buyer for:

- damages;
- specific performance; or
- damages and specific performance.

### 9.3 If Buyer Affirms

If the Buyer affirms this contract under clause 9.1, it may sue the Seller for:

- damages;
- specific performance; or
- damages and specific performance.

### 9.4 If Seller Terminates

If the Seller terminates this contract under clause 9.1, it may do all or any of the following:

- resume possession of the Property;
- forfeit the Deposit and any interest earned;
- sue the Buyer for damages;
- resell the Property.



### 9.5 If Buyer Terminates

If the Buyer terminates this contract under clause 9.1, it may do all or any of the following:

- (1) recover the Deposit and any interest earned;
- (2) sue the Seller for damages.

### 9.6 Seller's Resale

- (1) If the Seller terminates this contract and resells the Property, the Seller may recover from the Buyer as liquidated damages:
  - (a) any deficiency in price on a resale; and
  - (b) its expenses connected with any repossession, any failed attempt to resell, and the resale; provided the resale settles within 2 years of termination of this contract.
- (2) Any profit on a resale belongs to the Seller.

### 9.7 Seller's Damages

The Seller may claim damages for any loss it suffers as a result of the Buyer's default, including its legal costs on an indemnity basis and the cost of any Work or Expenditure under clause 7.6(3).

### 9.8 Buyer's Damages

The Buyer may claim damages for any loss it suffers as a result of the Seller's default, including its legal costs on an indemnity basis.

### 9.9 Interest on Late Payments

- (1) Without affecting the Seller's other rights, if any money payable by the Buyer under this contract is not paid when due, the Buyer must pay the Seller at settlement interest on that money calculated at the Default Interest Rate from the due date for payment until payment is made.
- (2) The Seller may recover that interest from the Buyer as liquidated damages.
- (3) Any judgment for money payable under this contract will bear interest from the date of judgment to the date of payment and the provisions of this clause 9.9 apply to calculation of that interest.

## 10. General

### 10.1 Agent

The Agent is appointed as the Seller's agent to introduce a buyer.

### 10.2 Foreign Investment Review Board

The Buyer warrants that either:

- (1) the Treasurer has consented under the *Foreign Acquisitions and Takeovers Act* to the Buyer's purchase of the Property; or
- (2) the Treasurer's consent is not required to the Buyer's purchase of the Property.

### 10.3 Duty

The Buyer must pay all duty on this contract.

### 10.4 Notices

- (1) Notices under this contract must be in writing and may be given by a party's solicitor.
- (2) Notices are effectively given if:
  - (a) delivered or posted to the other party or its solicitor; or
  - (b) sent to the facsimile number of the other party or its solicitor.
- (3) Posted notices will be treated as given 2 Business Days after posting.
- (4) Notices sent by facsimile will be treated as given when the sender obtains a clear transmission report.
- (5) Notices given after 5pm will be treated as given on the next Business Day.
- (6) Notices or other written communications by a party's solicitor (for example, varying the Inspection Date,

Finance Date or Settlement Date) will be treated as given with that party's authority.

### 10.5 Business Days

- (1) If anything is required to be done on a day that is not a Business Day, it must be done instead on the next Business Day.
- (2) If the Finance Date or Inspection Date fall on a day that is not a Business Day, then it falls on the next Business Day.

### 10.6 Rights After Settlement

Despite settlement and registration of the transfer, any term of this contract that can take effect after settlement or registration remains in force.

### 10.7 Further Acts

If requested by the other party, each party must, at its own expense, do everything reasonably necessary to give effect to this contract.

### 10.8 Severance

If any term or part of a term of this contract is or becomes legally ineffective, invalid or unenforceable in any jurisdiction it will be severed and the effectiveness, validity or enforceability of the remainder will not be affected.

### 10.9 Interpretation

#### (1) Plurals and Genders

Reference to:

- (a) the singular includes the plural and the plural includes the singular;
- (b) one gender includes each other gender;
- (c) a person includes a body corporate; and
- (d) a party includes the party's executors, administrators, successors and permitted assigns.

#### (2) Parties

- (a) If a party consists of more than one person, this contract binds them jointly and each of them individually.
- (b) A party that is a trustee is bound both personally and in its capacity as a trustee.

#### (3) Statutes and Regulations

Reference to statutes includes all statutes amending, consolidating or replacing them.

#### (4) Inconsistencies

If there is any inconsistency between any provision added to this contract and the printed provisions, the added provision prevails.

#### (5) Headings

Headings are for convenience only and do not form part of this contract or affect its interpretation.



## Schedule 1 – Property Details

Lot and Plan	County	Parish	Title Reference	Encumbrances
Lot 3 on SP 195275	Stanley	Yeerongpilly	50710033	Benefit Easement No. 712884080
Lot 4 on SP 195275	Stanley	Yeerongpilly	50710034	Nil
Lot 5 on SP 195275	Stanley	Yeerongpilly	50710035	Nil
Lot 101 on SP 195275	Stanley	Yeerongpilly	50710040	Burden Easement in Gross No. 709116788

## Annexure A - Special Conditions to Contract

### 1. SPECIAL CONDITIONS TO PREVAIL

#### 1.1 Amendments to Terms of Contract

- (a) Where there is an inconsistency between the Standard Terms of Contract and a Special Condition, the Special Condition prevails.
- (b) The Standard Terms of Contract are amended as follows:
- (i) Clauses 2.6(4) and 2.6(5) of the Terms of Contract are deleted and replaced with the following:
- "(4) The Seller will provide the Buyer with a current Land Tax Clearance Certificate on or before Settlement.
- (5) If the Buyer is advised by the Commissioner of Land Tax or the Office of State Revenue that a specified amount is payable in order to secure a Land Tax Certificate for the period to the Settlement Date then the amount payable will be paid at the Seller's cost from the proceeds of Sale on Settlement and the Buyer will accept such payment in satisfaction of the Seller's obligation under this clause."
- (ii) Clause 2.6(13) of the Terms of Contract is deleted and replaced with the following:
- "(13) The following provisions shall apply in relation to settlement cheques:
- (a) The Buyer will provide a maximum of 3 bank cheques at Settlement.
- (b) The Seller will provide the Buyer with the details (payee and amounts) of cheques required at Settlement by no later than 10.00am on the day prior to Settlement (being days when banks are open in the city of Brisbane).
- (c) In the event that cheque details are not provided by the Seller to the Buyer at 10.00am on the day prior to the Settlement Date, then the Buyer may at its discretion defer the Settlement Date by one (1) business day from when the cheque details are provided. The Seller will not be entitled to claim interest for this period.
- (d) This clause is for the sole benefit of the Buyer."
- (iii) Clauses 3, 4, 7.4(1)-(4), 7.5, 7.6 and 7.7 (1)-(2), of the Terms of Contract are deleted;
- (iv) Clause 10.4 of the REIQ Terms of Contract is amended as follows:
- (A) by inserting a new clause 10.4(2)(c) "emailed to the email address of the other party or its solicitor.";
- (B) by inserting a new clause 10.4(7) "Notices sent by email will be treated as given when a delivery confirmation report is received by the sender, which records the time that the email was delivered to the addressee's current email address."; and
- (C) by inserting a new clause 10.4(8) "Pursuant to the *Electronic Transactions (Queensland) Act 2001 (Qld)*, the Buyer and the Seller consent to information and notices under this Contract of Sale being given by an electronic communication."

## 2. DUE DILIGENCE

### 2.1 Due Diligence Investigations

- (a) The Buyer shall forthwith after signing this Contract carry out a "due diligence" in respect of the Property to satisfy itself (or otherwise) with respect to all matters, which in the opinion of the Buyer are relevant to the acquisition of the Property. If the Buyer is not satisfied with respect to any matter, which in its absolute discretion it considers relevant to the acquisition of the Property, then the Buyer may by notice in writing given not later than the Due Diligence Date terminate this Contract and thereafter neither party shall have any Claim against the other pursuant to or arising under this Contract. If the Buyer fails to give a notice that it is satisfied or otherwise with its due diligence by the Due Diligence Date then the Buyer shall be deemed to have given a notice pursuant to this Special Condition 2.1(a) that it:
- (i) is satisfied with its due diligence; and
  - (ii) has elected to waive the benefit of this special condition.
- (b) The parties acknowledge and agree that this Special Condition 2.1(a) is inserted solely for the benefit of the Buyer and the benefit of this Special Condition 2.1(a) may be waived by the Buyer by notice in writing.

### 2.2 Disclosed Materials

- (a) The Seller must allow the Buyer and its consultants to have access to the Property for the purpose of conducting its due diligence inquiries and access to all Disclosed Materials relating to the Property.
- (b) Any access to the Property given to the Buyer or its consultants for the purpose of conducting Investigations is at the Buyer's risk.

## 3. NO REPRESENTATIONS

### 3.1 "As is where is"

The Buyer acknowledges that, as a consequence of its rights under Special Condition 2, it has inspected, and has the opportunity to further inspect the Property. Subject to the Buyer's rights under special condition 2, the Buyer accepts the Property in its present condition "as is where is" and subject to any legal, physical, patent or latent defects.

### 3.2 Buyer to satisfy itself

The Buyer:

- (a) does not rely on any representations, warranties or information provided or statements about the Property made by or on behalf of the Seller, the Seller's agent or their respective employees or agents, other than as set out in this Contract;
- (b) acknowledges that it has not been induced to enter into this Contract by any representation, warranty or information provided by the Seller, the Seller's agent or their respective employees or agents;
- (c) acknowledges that it has the opportunity under special condition 2 to carry out a full due diligence and other enquiries in respect of the Property and satisfy itself about all related matters including without limitation:
  - (i) the use, fitness or suitability of the Property for any purpose;
  - (ii) the means of access to the Property;
  - (iii) any encroachments, easements, Crown reservations and other encumbrances from the Land onto adjoining land, or from adjoining land onto the Land;
  - (iv) as to any possible and/or potential flooding of the Land;

- (v) as to neighbourhood or environment in which the Property is situated;
- (vi) as to the zoning of the Land and the use to which the Property may be put, the suitability of the Land for future development or the rights and privileges relating to the Property or the services actually or likely to be connected or provided to the Property;
- (vii) the quality, state of repair, fitness for purpose and construction of the Property;
- (i) as to the existence, condition, location and capacity of any services located in, on, or under, or connected to the Property;
- (ii) whether the Property complies with all laws, statutes, regulations and by-laws including the *Sustainable Planning Act 2009*;
- (iii) the existence of any hazardous substance or hazardous contaminant within the meaning of the *Environmental Protection Act 1994*;
- (iv) any failure to comply with all laws, statutes, regulations or by-law or a requirement of any Authority relating to the Property;
- (v) as to anything disclosed or referred to in the Disclosed Materials;
- (vi) the existence or otherwise of any requirements of Authorities relating to the Property including, without limitation, resumptions, road dedications, road widening and similar things;
- (vii) the existence or otherwise of necessary consents, approvals and licences from Authorities relating to the Property, including any failure to comply with any approvals or licences; and
- (viii) with any other matter, past, present, future or anticipated, relevant to the Property.

Apart from the right to terminate this Contract under special condition 2, the Buyer cannot terminate this Contract, delay Settlement, deduct or retain any amount from the Purchase Price or make any Claim in relation to any matter referred to in this Special Condition 3.

#### 4. CONTEMPORANEOUS AGREEMENT

- (a) This Contract is interdependent with and is to be entered into contemporaneously with the Contemporaneous Agreements.
- (b) If ~~the~~ Contemporaneous Agreement is terminated prior to the Settlement Date without default of either party to the Contemporaneous Agreement, then this Contract will also be terminated and the parties will have no further obligation to the other.
- (c) Default or breach by ~~the Seller or Mirvac Constructions (Qld) Pty Ltd under a~~ the Contemporaneous Agreement entitling the Buyer to rescind ~~a~~ the Contemporaneous Agreement prior to the Settlement Date will be deemed default or breach by the Seller entitling the Buyer to rescind this Contract.
- (d) Default or breach by the Buyer under ~~a~~ the Contemporaneous Agreement prior to the Settlement Date entitling ~~the Seller or Mirvac Constructions (Qld) Pty Ltd under a~~ Contemporaneous Agreement to rescind ~~a~~ the Contemporaneous Agreement will be deemed default or breach by the Buyer entitling the Seller to rescind this Contract.
- (e) The Contemporaneous Agreement shall only take effect and be operational upon settlement of this Contract and the Buyer becoming the registered owner of the Land.

#### 5. STAMP DUTY

- 6. Despite any provision to the contrary the parties agrees that the Buyer is responsible for the transfer duty payable under the *Duties Act 2001 (Qld)* in respect of this Contract ~~and the Lot 3 Contract~~

(“Contracts”) on the maximum amount of \$6 million (plus GST) which totals \$332,175.00 in transfer duty (“Stamp Duty Amount”).

- 6.1 The Seller agrees to reimburse the Buyer for the transfer duty payable under the *Duties Act 2001* (Qld) in respect of these Contracts (excluding any penalties, any additional amounts payable for fines or penalties for late assessment or late payment) above the Stamp Duty Amount (“Additional Amount”).
- 6.2 The Additional Amount will be paid as an adjustment to the Balance Purchase Price in favour of the Buyer at Settlement.

## 7. TRANSFER DOCUMENTS

The parties agree that the form of transfer under the *Land Title Act 1994* required to transfer title in the Property to the Buyer is in the form contained in Annexure B.

## 8. GOODS AND SERVICES TAX

### 8.1 Consideration is GST exclusive

Any consideration to be paid or provided for a supply made under or in connection with this Contract, does not include an amount on account of GST.

### 8.2 Gross up of Consideration

Despite any other provision in this Contract, if a party (“Supplier”) makes a supply under or in connection with this Contract on which GST is imposed (not being a supply the consideration for which is specifically described in this Contract as “GST inclusive”):

- (a) the consideration payable or to be provided for that supply under this Contract but for the application of this special condition (“GST exclusive consideration”) is increased by and the recipient of the supply (“Recipient”) must also pay to the Supplier an amount equal to the GST payable by the Supplier on that supply; and
- (b) subject to special condition 8.4 the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

### 8.3 Reimbursements

If a payment to a party under this Contract is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

That party is assumed to be entitled to a full input tax credit unless it proves, before the date on which the payment must be made, that its entitlement is otherwise.

### 8.4 Tax Invoice and Registration

Despite any other provision of this Contract, a party need not make a payment of any amount for GST until the party has been given by the other party:

- (a) a GST tax invoice for that payment stating the amount of GST imposed on the party in respect of the supply to which the GST tax invoice relates; and
- (b) evidence satisfactory to the party that the other party is registered for the purposes of GST.

### 8.5 Interpretation

Words or expressions used in this special condition 8 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this special condition.

## 9. CONFIDENTIALITY

- (a) Subject to special condition 9(b), the contents of this Contract and all books accounts records documents and information made available to any party for the purposes of entering into this Contract or in the course of the performance of this Contract shall be kept confidential and shall not be disclosed to any other person without the written consent of the other parties.
- (b) Special condition 9(a) shall not apply to any disclosure:
- (i) required by law;
  - (ii) required by any applicable stock exchange listing rules;
  - (iii) made in good faith to officers employees legal and other advisors and auditors of any party under a duty of confidentiality;
  - (iv) by a party to its bankers or other financial institutions to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements;
  - (v) required by this Contract or necessary for or incidental to the performance of the obligations and duties contained in this Contract or any Contemporaneous Agreement including in connection with an exercise of rights or a dealing with rights or obligations under this Contract or any Contemporaneous Agreement (including, in particular, by way of giving information to owners of lots in the Tennyson Reach Community Titles Scheme and other interested persons or entities in connection with the removal of Lot 3 on SP 195275 from the Tennyson Reach Community Titles Scheme); and
  - (vi) of information in the public domain otherwise than due to a breach of special condition 9(a).
- (c) Each party consents to disclosures made in accordance with this special condition 9. This special condition supersedes any pre-existing agreements between the parties about confidentiality.

#### 10. COMPANY CHARGE

If at settlement anyone holds a registered charge over the Seller's assets, the Buyer agrees to accept from the Seller (instead of an ASIC Form 312 Discharge or Release of Property from a Charge) a written statement from either the chargee or the Seller confirming the Property is not subject to the charge.

#### 11. LEASE

- 11.1 The Buyer acknowledges and agrees that the Seller may occupy part of the Property that contains the sale office for Tennyson Reach ("Sales Office Land") following Settlement at a rental of \$10 per annum (if demanded), until the date of commencement of stage 2 of the Parkland Works under the Parkland Works Contract ("Tenancy").
- 11.2 The Seller acknowledges that whilst the Seller remains in occupation of the Sales Office Land pursuant to this special condition, the Seller:
- (a) must maintain the Sales Office Land in substantially the same condition as it is at the Settlement Date, fair wear and tear excepted;
  - (b) must take out necessary insurance for the Sales Office Land, including public risk insurance in a sum reasonably acceptable to the Buyer;
  - (c) indemnifies and shall hold indemnified the Buyer against any expense or damage incurred by the Buyer as a result of the Seller's possession of the Sales Office Land; and
  - (d) must pay consumption and utility charges in relation to use of the Sales Office Land.
- 11.3 The parties agree to do all things necessary at Settlement to record the Tenancy, including if necessary entering into a lease in the form incorporated in Annexure D.

12. **CONTRACT SUBJECT TO APPROVAL OF COUNCIL'S E&C COMMITTEE**

- 12.1 This Contract is subject to and conditional upon the Buyer Council obtaining the approval of its E&C Committee to the transaction no later than the Due Diligence Date.
- 12.2 If E&C Committee approval is not obtained by the Due Diligence Date then this Contract is at an end with no penalty to the Buyer.

13. **CONTRACT SUBJECT TO SELLER'S BOARD APPROVAL**

- 13.1 This Contract is subject to and conditional upon the Seller obtaining the approval of its Board to the transaction no later than the Due Diligence Date.
- 13.2 If the Seller's Board approval is not obtained by the Due Diligence Date then this Contract is at an end with no penalty to the Seller.

14. **SETTLEMENT DATE PURCHASE PRICE PAYABLE BY INSTALMENTS**

- 14.1 ~~The Seller and the Buyer acknowledge that settlement of the Lot 3 Contract is subject to and conditional upon the removal of Lot 3 on SP 195275 from the Tennyson Reach Community Titles Scheme. The Seller and the Buyer agree that if the Body Corporate for Tennyson Reach GTS 39925 does not pass the requisite resolution consenting to a New Community Management Statement to effect the removal of Lot 3 on SP 195275 from the Scheme at the Body Corporate's AGM scheduled for 29 June 2011, then the Seller or the Buyer may extend the Settlement Date under this Contract to coincide with any settlement date under the Lot 3 Contract by giving written notice to the other at any time before Settlement of this Contract PROVIDED THAT if Settlement of this Contract and/or the Lot 3 Contract has not occurred by 14 December 2011 then either party may terminate this Contract by giving written notice to the other at any time after 14 December 2011 whereupon this Contract shall be at an end and neither party shall have any claim against the other in respect thereof other than for antecedent breaches. The Seller and the Buyer agree that the Purchase Price shall be payable by instalments and the amounts and on the dates set out below:~~

- (a) \$6,600,000.00 (inclusive of GST of \$900,000.00 for the Supply under this Contract) ("Initial Purchase Price Instalment") payable on the Settlement Date; and
- (b) \$3,300,000.00 ("Balance Purchase Price Instalment") payable on the later of the date of Practical Completion of Stage 1 of the Parkland Works under the Parkland Works Contract and 2 July 2012 ("Balance Instalment Payment Date").

- 14.2 The Buyer grants to the Seller a charge over the Land following settlement and to secure the payment of the Balance Purchase Price Instalment.

- 14.3 In consideration of the Seller paying to the Buyer the sum of \$1.00, if demanded (and/or the parties acknowledge shall be in lieu of the Buyer paying the Deposit of \$1.00 to the Seller), and subject to the terms of this Special Condition, the Buyer offers to re-sell the Land back to the Seller during the Call Option Period for the Initial Purchase Price Instalment and otherwise on the terms and conditions in the standard form of contract Houses and Land (8<sup>th</sup> Edition) as adopted by the Real Estate Institute of Queensland approved by the Queensland Law Society ("Seller's Call Option"). For the purposes of this Special Condition, the "Call Option Period" shall mean the period of 30 days after the Balance Instalment Payment Date. The Seller's Call Option shall only be exercisable if the Buyer does not pay the Balance Purchase Price Instalment to the Seller on or before the Balance Instalment Payment Date.

- 14.4 The Seller and the Buyer acknowledge and agree that the Seller's interest in the Land pursuant to the Seller's Call Option shall be secured by a Consent Caveat in the form incorporated in Annexure E of this Contract and registered against the title to the Land. The Buyer must duly execute a Form 18 - General Consent to the Caveat (as registered owner of the Land following settlement) and deliver same to the Seller on settlement. The Seller shall be responsible for the registration fees payable in respect of the Consent Caveat. The Buyer must co-ordinate lodgement of the Transfer in conjunction with the Seller's lodgement of the Consent Caveat. The Seller will deliver a Withdrawal of Caveat to the Buyer in exchange for payment of the Balance Purchase Price Instalment.

15. **LOT 3 ON SP 195275**

15.1 The Seller and the Buyer acknowledge that Lot 3 on SP 195275 ("Lot 3") is, as at the date of this Contract, or was a lot in the Tennyson Reach Community Title Scheme 39925 ("Scheme") but pursuant to an ordinary resolution of the Body Corporate at the AGM held on 29 June 2011, the Body Corporate for Tennyson Reach CTS 39925 consented to the recording of a New Community Management Statement ("New CMS") to effect the removal of Lot 3 from the Scheme. The Seller agrees to use its best endeavours to have the New CMS recorded at the Department of Environment and Resource Management ("DERM") as soon as practicable but, to the extent that the New CMS remains un-recorded as at the date of this Contract, the Buyer acknowledges the Seller's Disclosures regarding exceptions to Seller warranties contained in the Body Corporate and Community Management Act as incorporated in Annexure F to this Contract so far as may relate to Lot 3 as a lot in the Scheme.

#### 15.16. DEFINITIONS

In these special conditions, the following words have the following meanings:

<b>Authority</b>	means any government or semi government authority or instrumentality, statutory or judicial authority.
<b>Claim</b>	means any cost, claim, demand, obligation, remedy, damage, loss, action, proceeding, claim for compensation, requisition or objection, whichever is applicable.
<b>Consulting Reports</b>	means all reports received in respect of the Property in the possession or control of the Seller including, but not limited to, engineering, planning, construction and architectural reports.
<b>Contemporaneous Agreement</b>	means the <del>Lot 3 Contract and the</del> Parkland Works Contract
<b>Cost</b>	includes any costs, damage, expense or payment and includes fees payable to consultants and lawyers.
<b>Disclosed Materials</b>	means all Consulting Reports, existing development approvals and any other documentation or information about the Property reasonably requested by the Buyer or its representatives in connection with the Property whether before or after the date of this Contract.
<b>Due Diligence Date</b>	means 30 June 2011.
<b>Loss</b>	means any damage, loss (including loss of reputation), Cost, expense, fine, penalty and liability incurred by the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent and Losses has an equivalent meaning.
<b>Lot 3 Contract</b>	<del>means the contract of sale between the Seller and the Buyer in respect of Lot 3 on SP 195275 dated on or about the date of this Contract.</del>
<b>Parkland Works Contract</b>	means the construction contract between the Buyer and Mirvac Constructions (Qld) Pty Ltd dated on or about the date of this Contract which is in substantially the same form as the contract in Annexure C.



## Annexure B – Transfer Documents

Dealing Number



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Privacy Statement

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1. Interest being transferred (if shares show as a fraction) Lodger (Name, address, E-mail & phone number) Lodger Code  
FEE SIMPLE

Note: A Form 24 - Property Information (Transfer) must be attached to this Form where interest being transferred is "fee simple" (Land Title Act 1994), "State leasehold" (Land Act 1994) or "Water Allocation" (Water Act 2000)

2. Lot on Plan Description	County	Parish	Title Reference
LOT 3 ON SP195275	STANLEY	YEERONGPILLY	50710033
LOT 4 ON SP195275	STANLEY	YEERONGPILLY	50710034
LOT 5 ON SP195275	STANLEY	YEERONGPILLY	50710035
LOT 101 ON SP195275	STANLEY	YEERONGPILLY	50710040

3. Transferor  
MIRVAC QUEENSLAND PTY LIMITED ACN 060 411 207

4. Consideration  
\$9,900,000.00 (inclusive of GST)

5. Transferee Given names Sumame/Company name and number (include tenancy if more than one)  
BRISBANE CITY COUNCIL AS TRUSTEE

6. Transfer/Execution The Transferor transfers to the Transferee the estate and interest described in item 1 for the consideration and in the case of monetary consideration acknowledges receipt thereof. The Transferor declares that the information contained in items 3 to 6 on the attached Form 24 is true and correct. The Transferee states the information contained in items 1, 2, 4 to 6 on the attached Form 24 is true and correct. Where a solicitor signs on behalf of the Transferee the information in items 1, 2, 4 to 6 on Form 24 is based on information supplied by the Transferee.

NOTE: Witnessing officer must be aware of their obligations under section 162 of the Land Title Act 1994.

Separate executions are required for each transferor and transferee. Signatories are to provide to the witness, evidence that they are the person entitled to sign the instrument (including proof of identity).

Mirvac Queensland Pty Limited ACN 060 411 207  
by its duly appointed Attorney

\_\_\_\_\_ pursuant to  
registered Power of Attorney No. 713238897, wh  
declares he has no notice of revocation of the  
Power of Attorney

.....  
Witnessing Officer (signature, full name & qualification)

/ /  
Execution Date

.....  
Transferor's Signature

Mirvac Queensland Pty Limited ACN 060 411 207  
by its duly appointed Attorney

\_\_\_\_\_ pursuant to  
registered Power of Attorney No. 713238897, who  
declares he has no notice of revocation of the  
Power of Attorney

.....  
Witnessing Officer (signature, full name & qualification)

/ /  
Execution Date

.....  
Transferor's Signature

.....  
Witnessing Officer (signature, full name & qualification)

/ /  
Execution Date

.....  
\*Transferee's or Solicitor's Signature

(Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

\*Note: A Solicitor is required to print full name if signing on behalf of the Transferee and no witness is required in this instance

Title Reference 50710034, 50710035, 50710040

This is the schedule to the Form 1 dated \_\_\_\_\_ day of \_\_\_\_\_ 2011

The Transferor and the Council hereby covenant and agree as follows:

**1. Declaration of Trust**

1.1 It is declared that the Land in Item 2 of the Form 1 Transfer ("Land") is to be held by the Council upon trust for public use for parkland, community facilities and ancillary uses.

**2. Terms of Trust**

2.1 Council will maintain and manage the Land and any improvements on the Land consistent with achieving the purpose of the Trust. Council may take all action necessary for maintenance and management of the Land.

2.2 Council may make and enforce local laws for the use of the Land and any improvements on the Land.

**3. General Provisions**

3.1 The Transferor warrants that the Land is free of encumbrances (except for Easement No. 709116788), and does not owe land tax or rates or water as at the date of Transfer.

3.2 Each party to this document will do all acts and render all co-operation reasonably required by the other for the purpose of enabling the registration of this document in the Queensland Land Registry.

(This form must accompany Land Registry Form 1 – Transfer when lodged in the Land Registry)

Duties Act 2001; Valuation of Land Act 1944; Land Tax Act 1915; Local Government Act 1993; Water Act 2000; Electrical Safety Act 2002; Fire and Rescue Service Act 1990

**PART A – Transferee to complete**

Title reference [50710034, 50710035, 50710040] Page 1 of 2

Electronic version – for completion before printing.

Where insufficient space in an item, use Form 20  
(Enlarged Panel).**Official use only**

Mark appropriate [ ] with 'X'

Refer to guide for completion for further information.

**1. Transferee**(a) Given names & surname  
or Company & ACN/ABN(b) Date of birth  
(dd/mm/yyyy)(c) Residential or business address  
after possession

BRISBANE CITY COUNCIL

266 GEORGE STREET, BRISBANE 4000

(d) Contact details after possession

(i) Phone number - 07 3403 9891

(ii) Postal address - As above [ ] OR complete address below  
GPO BOX 1434, BRISBANE 4001

(e) Name of trust - N/A [ ] OR complete - N/A

(f) Is transferee a foreign person / corporation?

N/A [ ] NO [ x ] YES [ ]

Attach completed Form 25  
(Foreign Ownership Information)

(g) Does transferee ordinarily reside in Australia?

N/A [ ] NO [ ] YES [ x ]

**2. Transaction**

(a) Date of possession (dd/mm/yyyy) – / /

(b) Date of settlement (dd/mm/yyyy) – / /

**This form is comprised of two Parts -**

- Part A – Transferee to complete
- Part B – Transferor to complete

**BOTH parts must be submitted  
with the Form 1 Transfer.**

(This form must accompany Land Registry Form 1 – Transfer when lodged in the Land Registry)

**PART B – Transferor to complete**

Title reference [50710034, 50710034, 50710040]

Page 2 of 2

Electronic version – for completion before printing.  
Where insufficient space in an item, use Form 20  
(Enlarged Panel).

Mark appropriate [ ] with 'X'  
Refer to guide for completion for further information.

**3. Transferor's residential or business address after settlement**

Level 2, 164 Grey Street, SOUTHBANK QLD 4101

**4. Details of sale price**

(a) Property excluding water allocation		(b) Water allocation - N/A [ X ] OR complete below	
Cash	\$9,900,000.00	Cash	\$
Vendor terms	\$	Vendor terms	\$
Assumption of liabilities	\$	Assumption of liabilities	\$
	\$		\$
Other (specify above)		Other (specify above)	
<b>Total</b>		<b>Total</b>	
		\$	
		\$	

**5. Property details**

(a) Land / Water allocation description		(b) Property address			
Lot	Plan type & no.	Street no.	Street name	Suburb/Town/Locality	Postcode
3,4,5 and 101	SP195275		King Arthur Terrace	Tennyson	4105

(c) Property transferred Includes		(d) Current land use		(e) Water allocation - N/A [ X ] OR complete below	
Plant & machinery	[ ]	Vacant land	[ x ]	(i) Is water allocation unsupplemented?	
Livestock	[ ]	Dwelling	[ ]	NO [ ] YES [ ] > complete (ii) below	
Crops	[ ]	Multi-unit	[ ]	(ii) Reference number of the water allocation	
Existing right	[ ]	Flats	[ ]	dealing certificate - unsupplemented	
Movable chattels	[ ]	Guest house /	[ ]		
Water licence	[ ]	Private hotel	[ ]		
Interim water allocation	[ ]	Farming	[ ]		
Other (specify above)	[ ]	Industrial	[ ]		
		Commercial	[ ]		
		Other (specify above)	[ ]		

- (f) Safety switch
- (i) Is an electrical safety switch installed? N/A [ x ] NO [ ] YES [ ]
  - (ii) Has transferee been informed in writing about its existence? N/A [ x ] NO [ ] YES [ ]
- (g) Smoke alarm
- (i) Is a compliant smoke alarm/s installed? N/A [ x ] NO [ ] YES [ ]
  - (ii) Has transferee been informed in writing about its existence? N/A [ x ] NO [ ] YES [ ]

**6. Transaction information**

- (a) Has an agreement in writing for the transfer of dutiable property been entered into? NO [ ] YES [ x ] > If Yes, complete (b) below
- (b) Date of written agreement (dd/mm/yyyy) - 30/06/2011
- (c) Are the transferor and transferee related or associated at the date of the transfer? NO [ x ] YES [ ] > If Yes, complete (d) below
- (d) State the degree of relationship or association and supply evidence of value to Office of State Revenue - > See guide for completion
- (e) Is the consideration less than the unencumbered value of the property included in this transaction? NO [ ] YES [ x ] > See guide for completion
- (f) Does this transaction form part of an arrangement that includes other dutiable transactions? NO [ x ] YES [ ] > See guide for completion

**Annexure C – Parkland Works Contract**

Annexure D – Lease of Sales Office

Annexure E – Consent Caveat



Dealing Number



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## Privacy Statement

Collection of this information is authorised by the Land Title Act 1994 and the Water Act 2000 and is used to maintain the publicly searchable registers in the land registry and the water register. For more information about privacy in NR&W see the department's website.

<b>1. Caveator full name and address for service</b>		<b>Lodger (Name, address, E-mail &amp; phone number)</b>		<b>Lodger Code</b>
Mirvac Queensland Pty Limited ACN 060 411 207 Level 2 164 Grey Street South Bank 4101		ClarkeKann 300 Queen Street BRISBANE 4000 Email: [REDACTED] Phone: [REDACTED]		122A
<b>2. Lot on Plan Description</b>	<b>County</b>	<b>Parish</b>	<b>Title Reference</b>	
Lot 3 on SP 195275	Stanley	Yeerongpilly	50710033	
Lot 4 on SP 195275	Stanley	Yeerongpilly	50710034	
Lot 5 on SP 195275	Stanley	Yeerongpilly	50710035	
Lot 101 on SP 195275	Stanley	Yeerongpilly	50710040	
<b>3. Interest being claimed</b>				
The grantee of an option to purchase an estate in fee simple in the Land				
<b>4. Grounds of claim</b>				
An equitable interest as grantee of an option to purchase an estate in fee simple in the Land identified in item 2 which may be exercised under a Contract dated 30 June 2011 between the registered owner (identified in item 5) and the Caveator, forbidding registration of any transfer of, or encumbrance over the registered owner's estate in fee simple				
<b>5. Registered owner full name and address</b>		<b>6. Other parties full name and address (eg Mortgagees)</b>		
Brisbane City Council 266 George Street BRISBANE 4000		Nil		

**7. Request/Execution**

- a) The Caveator claiming as per item 3 on the grounds detailed in item 4 and subject to the *Land Title Act 1994* forbids the registration of any instrument affecting the land described in item 2 until:  
\*this caveat is withdrawn by the Caveator

\* delete if not applicable

Execution Date

Caveator's or Solicitor's Signature

Note: A Solicitor is required to print full name if signing on behalf of the Caveator

1. Lot on Plan Description	County	Parish	Title Reference
Lot 3 on SP 195275	Stanley	Yeerongpilly	50710033
Lot 4 on SP 195275	Stanley	Yeerongpilly	50710034
Lot 5 on SP 195275	Stanley	Yeerongpilly	50710035
Lot 101 on SP 195275	Stanley	Yeerongpilly	50710040

2. Instrument/document being consented to

Instrument/document type: Form 11- Caveat

Dated / /

Names of parties Mirvac Queensland Pty Limited ACN 060 411 207 (as Caveator) and Brisbane City Council (as registered owner)

3. Instrument/document under which consent required

Instrument/document type Sale Contract

Dealing No. N/A

Name of consenting party Brisbane City Council (as registered owner)

4. Execution by consenting party

The party identified in item 3 consents to the registration of the instrument/document identified in item 2.

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

..... signature

..... full name

..... qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

/ /  
Execution Date

.....  
Consenting Party's Signature

Privacy Statement

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Annexure F – Seller’s Disclosures

## Seller's Disclosure

**[WARNING: The Seller is taken to have knowledge of significant Body Corporate matters that may affect the Buyer, where the Seller ought reasonably to be aware of those matters.**  
 Section 223(4) *Body Corporate and Community Management Act 1997*

**Latent or Patent Defects in Common Property or Body Corporate Assets**  
 [Sections 223(2)(a) and 223(2)(b) *Body Corporate and Community Management Act 1997*]

[Annex details of disclosure made by the Seller (if any)]

The Seller discloses that there may be latent or patent defects in common property or body corporate assets as a result of the January 2011 floods. Refer to the disclosure statement which details the special levies as a result of inundation rectification.

**Actual or Contingent or Expected Liabilities of Body Corporate**  
 [Sections 223(2)(c) and 223(2)(d) *Body Corporate and Community Management Act 1997*]

[Annex details of disclosure made by the Seller (if any)]

The Seller discloses that there may be actual, contingent or expected liabilities of the Body Corporate as a result of the January 2011 floods. Refer to the disclosure statement which details the special levies as a result of inundation rectification.

The Seller also discloses there may be a change in the Body Corporate financial affairs as a result of any change in the CSLEs upon removal of any Development Lot pursuant to the Seller's rights as Original Owner, in accordance with the clause 5 in Schedule B of the Community Management Statement. New Community Management Statements may be required to be recorded to reflect changes to the Scheme as a result of the Seller exercising its rights as Original Owner.

**Circumstances in Relation to Affairs of the Body Corporate**  
 [Section 223(3) *Body Corporate and Community Management Act 1997*]

[Annex details of disclosure made by the Seller (if any)]

The Seller also discloses there may be a change in the Body Corporate financial affairs as a result of any change in the CSLEs upon removal of any Development Lot pursuant to the Seller's rights as Original Owner, in accordance with the clause 5 in Schedule B of the Community Management Statement. New Community Management Statements may be required to be recorded to reflect changes to the Scheme as a result of the Seller exercising its rights as Original Owner

**From:** [Redacted]  
**To:** [Redacted]  
**CC:** [Redacted] Adam Moore; [Redacted]  
**Date:** 30/06/2011 12:58:21 PM  
**Subject:** RE: Tennyson Reach Parkland - Updated Draft Cost Plan

Hi [Redacted]

Please find the version of the Contract reflecting this morning's discussion.

The changes are all one's as we've discussed so there should be no surprises.

Can you please indicate your acceptance and we will proceed to prepare the executable copy.

Regards

[Redacted]  
Senior Development Manager  
Development Queensland

Mirvac  
Level 7, 301 Queen Street, Brisbane QLD 4000, Australia PO Box 5121 West End QLD 4101  
Tel: [Redacted]  
<http://www.mirvac.com>  
[Electronic Data Transmission Disclaimer](#)

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---

**From:** [Redacted]  
**Sent:** Thursday, 30 June 2011 12:08 PM  
**To:** [Redacted]  
**Cc:** Adam Moore; [Redacted]  
**Subject:** RE: Tennyson Reach Parkland - Updated Draft Cost Plan

**Attached** is the draft contract amended in accordance with our teleconference with [Redacted]

Please provide your comments. I will produce an execution copy as soon as you tell me there are no further changes.

Regards

[Redacted]  
Special Counsel | Construction & Resources

**ClarkeKann**  
LAWYERS

web  
GRAY | PERKINS  
20071111

Tel: [Redacted] [www.clarkekann.com.au](http://www.clarkekann.com.au)  
Brisbane | Level 7, 300 Queen Street, Brisbane QLD 4000, Australia | GPO Box 2249, Brisbane QLD 4001, Australia  
Sydney | Level 7, 55 Clarence Street, Sydney NSW 2000, Australia | GPO Box 1342, Sydney NSW 2001, Australia

Gray & Perkins merged with ClarkeKann on 1 November 2010.  
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---

**From:** [REDACTED]  
**Sent:** Thursday, 30 June 2011 12:02 PM  
**To:** [REDACTED]  
**Cc:** Adam Moore; [REDACTED]  
**Subject:** FW: Tennyson Reach Parkland - Updated Draft Cost Plan

Hi [REDACTED]

Please find attached the updated cost plan removing design costs and maintenance. Note it's dated 30 June, 2011.

Regards,

[REDACTED]  
Senior Development Manager  
Development Queensland

Mirvac  
Level 2, 164 Grey Street South Bank QLD 4101 Australia PO Box 5121 West End QLD 4101  
T [REDACTED]

<http://www.mirvac.com>

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---

**From:** [REDACTED]  
**Sent:** Thursday, 30 June 2011 11:58 AM  
**To:** [REDACTED]  
**Subject:** Tennyson Reach Parkland - Updated Draft Cost Plan

Hi [REDACTED]

Please find attached updated Draft Cost Plan for Tennyson Reach Parkland as per your request.

Thanks.

Kind Regards,

[REDACTED]  
Cost Planner/Quantity Surveyor  
Development Queensland

Mirvac  
Level 2, 164 Grey Street South Bank QLD 4101 Australia PO Box 5121 West End QLD 4101  
T [REDACTED]

<http://www.mirvac.com>

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**Attachments:** Further Amended - AS4902-2000Draft23June 2011 DOC\_2060761\_  
(1)+BCLP4\_30pm\_2064700\_(1)+29JuneBCLP (JTCOMMENTS)\_2066928\_(1).doc

AS 4902—2000  
(Incorporating Amendment No. 1)

AS 4902—2000

Tennyson Reach Parkland

**Brisbane City Council**

**ABN 72 002 765 795**

**Mirvac Constructions (Qld) Pty Limited**

**ACN 088 536 476**

**DRAFT**

Australian Standard™

**General conditions of contract for  
design and construct**

- Deleted: 16 June 2011
- Deleted: 23
- Deleted: 27

Print date, 30 June 2011

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**DRAFT**



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This Australian Standard was prepared by Committee OB-003, General Conditions of Contract. It was approved on behalf of the Council of Standards Australia on 7 September 1999. This Standard was published on 27 December 2000.

The following are represented on Committee OB-003:

Association of Consulting Engineers Australia  
 Australian Chamber of Commerce and Industry  
 Australian Procurement and Construction Council  
 AUSTROADS  
 Construction Industry Engineering Services Group  
 Construction Policy Steering Committee  
 Electricity Supply Association of Australia  
 Institution of Engineers, Australia  
 Institution of Professional Engineers, New Zealand  
 Law Council of Australia  
 Master Builders Australia  
 National Construction Council of the Australian Industry Group  
 Process Engineers and Constructors Association  
 Royal Australian Institute of Architects

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*This Standard was issued in draft form for comment as DR 97528.*



AS 4902—2000  
(Incorporating Amendment No. 1)

Australian Standard™

**General conditions of contract for  
design and construct**

First published as AS 4300—1995.  
Revised and redesignated AS 4902—2000.  
Reissued incorporating Amendment No. 1 (March 2005).

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## PREFACE

This Standard was prepared by the Joint Standards Australia/Standards New Zealand Committee OB/3, General Conditions of Contract.

*This Standard incorporates Amendment No. 1 (March 2005). The changes required by the Amendment are indicated in the text by a marginal bar and amendment number against the clause, note, table, figure or part thereof affected.*

This Standard is the result of a consensus among Australian and New Zealand representatives on the Joint Committee to produce it as an Australian Standard.

AS 4902—2000 *General conditions of contract for design and construct*, is a part of the suite of conditions of contract based on AS 4000—1997 *General conditions of contract*.

This Standard covers the following types of project procurement methods:

- (a) design and construct;
- (b) design development and construct; and
- (c) design, novate and construct.

If the project procurement method chosen by the Principal is:

- (a) **design and construct**—the Principal would provide the Principal's project requirements, would not normally provide a detailed preliminary design and would not require novation;
- (b) **design development and construct**—the Principal would provide the Principal's project requirements, would always provide a preliminary design and accordingly would complete Annexure Part A Items 10 and 11;
- (c) **design, novate and construct**—the Principal would provide the Principal's project requirements, would always provide a preliminary design, would complete Annexure Part A Items 10 and 11 and would complete Annexure Part A Item 20 stating which subcontract (including consultant's agreement) or selected subcontract is to be novated to the Contractor.

Subclauses 8.6 and 29.2, prefixed by \*, are optional, and may be omitted in the Contract, where necessary, without making consequential amendments but such omission should be clearly shown on the face of the document by striking out these subclauses or indicating clearly in clause 1 of Annexure Part E or elsewhere that they are *not to apply*. See paragraph (1) of clause 1 for the effect of stating deletions in Annexure Part E.

### WARNINGS

- (1) Users of this Australian Standard are warned that clause 15 (Damage to persons and property other than WUC) does not limit the liability of parties for special, indirect or consequential losses.

This unlimited liability applies notwithstanding any limitations or exclusions permitted under insurance clauses 16A (Insurance of the Works), 16B (Professional indemnity insurance) and 17 (Public liability insurance).

Parties wishing to limit their liability should seek insurance and legal advice before entering a contract under this Standard.

- (2) Principals should ensure that their specific requirements are fully and completely incorporated in the Principal's project requirements obtaining specialist advice if necessary. Where a Contractor provides a proposed design as part of its tender, the parties should consider whether that design should form part of the preliminary design.

- (3) The risk allocation, drafting, interpretation and construction of this Standard are interrelated. Users who alter the Standard do so at their own risk and should obtain specialist advice as to whether it is suitable for a particular project.
- (4) Contractors should ensure that they satisfy the requirements of payment for unfixed plant and materials.
- (5) Legislation has come into force in some jurisdictions dealing with security of payments. Parties intending to use this Standard should seek expert advice as to their rights and obligations under such legislation.

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CONTENTS

Clause	Title	Page	
1	INTERPRETATION AND CONSTRUCTION OF CONTRACT .....	6	Deleted: 7
2	NATURE OF CONTRACT .....	12	Deleted: 13
3	PROVISIONAL SUMS .....	13	Deleted: 14
4	SEPARABLE PORTIONS .....	13	Deleted: 14
5	SECURITY .....	14	Deleted: 15
6	EVIDENCE OF CONTRACT .....	15	Deleted: 16
7	SERVICE OF NOTICES .....	15	Deleted: 16
8	CONTRACT DOCUMENTS .....	15	Deleted: 16
9	ASSIGNMENT AND SUBCONTRACTING .....	17	Deleted: 18
10	INTELLECTUAL PROPERTY RIGHTS .....	19	Deleted: 21
11	LEGISLATIVE REQUIREMENTS .....	20	Deleted: 21
12	PROTECTION OF PEOPLE AND PROPERTY .....	21	Deleted: 22
13	URGENT PROTECTION .....	21	Deleted: 23
14	CARE OF THE WORK AND REINSTATEMENT OF DAMAGE .....	22	Deleted: 23
15	DAMAGE TO PERSONS AND PROPERTY OTHER THAN WUC .....	22	Deleted: 24
17	PUBLIC LIABILITY INSURANCE .....	24	Deleted: 25
18	INSURANCE OF EMPLOYEES .....	25	Deleted: 26
19	INSPECTION AND PROVISIONS OF INSURANCE POLICIES .....	25	Deleted: 26
20	SUPERINTENDENT .....	26	Deleted: 27
21	SUPERINTENDENT'S REPRESENTATIVE .....	26	Deleted: 28
22	CONTRACTOR'S REPRESENTATIVE .....	26	Deleted: 28
23	CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS .....	27	Deleted: 28
24	SITE .....	27	Deleted: 28
25	LATENT CONDITIONS .....	28	Deleted: 29
26	SETTING OUT THE WORKS .....	28	Deleted: 30
27	CLEANING UP .....	29	Deleted: 30
28	MATERIALS, LABOUR AND CONSTRUCTION PLANT .....	29	Deleted: 31
29	QUALITY .....	29	Deleted: 31
30	EXAMINATION AND TESTING .....	30	Deleted: 32
31	WORKING HOURS .....	31	Deleted: 33
32	PROGRAMMING .....	31	Deleted: 33
33	SUSPENSION .....	32	Deleted: 34
34	TIME AND PROGRESS .....	33	Deleted: 34
35	DEFECTS LIABILITY .....	34	Deleted: 36
36	VARIATIONS .....	35	Deleted: 36
37	PAYMENT .....	36	Deleted: 37
38	PAYMENT OF WORKERS, CONSULTANTS AND SUBCONTRACTORS .....	37	Deleted: 39
39	DEFAULT OR INSOLVENCY .....	38	Deleted: 40

40 TERMINATION BY FRUSTRATION.....	41	Deleted: 43
41 NOTIFICATION OF CLAIMS.....	42	Deleted: 44
42 DISPUTE RESOLUTION.....	42	Deleted: 44
43 WAIVER OF CONDITIONS.....	43	Deleted: 45
44 SHARED COST SAVINGS.....	43	Deleted: 45
45 GST <sup>44</sup> .....		Deleted: 46
46 ENTIRE AGREEMENT.....	44	Deleted: 46
47 MAINTENANCE.....	45	Deleted: 46
48 ACCESS TO RECORDS.....	45	Deleted: 47
PART A.....	46	Deleted: 62
PART B.....	63	Deleted: 63
PART C.....	64	Deleted: 65
PART D.....	66	Deleted: 67
PART E.....	68	Deleted: 68
INDEX.....	69	Deleted: ¶

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¶	1. INTERPRETATION AND CONSTRUCTION OF CONTRACT . 6¶
	. 2. NATURE OF CONTRACT . 11¶
	. 3. PROVISIONAL SUMS . 12¶
	. 4. SEPARABLE PORTIONS . 12¶
	. 5. SECURITY . 13¶
	. 6. EVIDENCE OF CONTRACT . 14¶
	. 7. SERVICE OF NOTICES . 14¶
	. 8. CONTRACT DOCUMENTS . 14¶
	. 9. ASSIGNMENT AND SUBCONTRACTING . 16¶
	. 10. INTELLECTUAL PROPERTY RIGHTS . 17¶
	. 11. LEGISLATIVE REQUIREMENTS . 18¶
	. 12. PROTECTION OF PEOPLE AND PROPERTY . 18¶
	. 13. URGENT PROTECTION . 18¶
	. 14. CARE OF THE WORK AND REINSTATEMENT OF DAMAGE . 19¶
	. 15. DAMAGE TO PERSONS AND PROPERTY OTHER THAN WUC . 20¶
	. 16A. INSURANCE OF THE WORKS . 20¶
	. 16B. PROFESSIONAL INDEMNITY INSURANCE . 21¶
	. 17. PUBLIC LIABILITY INSURANCE . 21¶
	. 18. INSURANCE OF EMPLOYEES . 22¶
	. 19. INSPECTION AND PROVISIONS OF INSURANCE POLICIES . 22¶
	. 20. SUPERINTENDENT . 23¶
	. 21. SUPERINTENDENT'S REPRESENTATIVE . 23¶
	. 22. CONTRACTOR'S REPRESENTATIVE . 24¶
	. 23. CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS . 24¶
	. 24. SITE . 24¶



## STANDARDS AUSTRALIA

## Australian Standard

## General conditions of contract for design and construct

## 1 Interpretation and construction of Contract

In the *Contract*, except where the context otherwise requires:

- Item** means an *Item* in Annexure Part A;
- certificate of practical completion** has the meaning in subclause 34.6;
- compensable cause** means:
- (a) any act, default or omission of the *Superintendent*, the *Principal* or its consultants, agents or other contractors (not being employed by the *Contractor*); or
  - (b) those listed in *Item 31*;
- construction plant** means appliances and things used in the carrying out of *WUC* but not forming part of *the Works*;
- consultant** means any person engaged by the *Contractor* to perform consultancy services in connection with *WUC* and includes any *Principal's* consultant whose prior contract is novated to the *Contractor* under subclause 9.4;
- Contract** has the meaning in clause 6;
- contract sum** means:
- (a) where the *Principal* accepted a lump sum, the lump sum;
  - (b) where the *Principal* accepted rates, the sum of the products ascertained by multiplying the rates by the corresponding quantities in the *schedule of rates*; or
  - (c) where the *Principal* accepted a lump sum and rates, the aggregate of the sums referred to in paragraphs (a) and (b),
- including *provisional sums* but excluding any additions or deductions which may be required to be made under the *Contract*;
- Contractor** means the person bound to carry out and complete *WUC*;
- Contractor's design obligations** means all tasks necessary to design and specify *the Works* required by the *Contract*, including preparation of the *design documents* and, if the documents stated in *Item 10* as describing the *Principal's project requirements* include a *preliminary design*, developing the *preliminary design*;

- date for practical completion** means:
- (a) where *Item 7(a)* provides a date for *practical completion*, the date;
  - (b) where *Item 7(b)* provides a period of time for *practical completion*, the last day of the period,
- but if any *EOT* for *practical completion* is directed by the *Superintendent* or allowed in any arbitration or litigation, it means the date resulting therefrom;
- date of acceptance of tender** means the date which appears on the written notice of acceptance of the tender;
- date of practical completion** means:
- (a) the date evidenced in a *certificate of practical completion* as the date upon which *practical completion* was reached; or
  - (b) where another date is determined in any arbitration or litigation as the date upon which *practical completion* was reached, that other date;
- deed of guarantee, undertaking and substitution** has the meaning in subclause 5.6;
- defects** has the meaning in clause 35 and includes omissions;
- defects liability period** has the meaning in clause 35;
- design documents** means the drawings, specifications and other information, samples, models, patterns and the like required by the *Contract* and created (and including, where the context so requires, those to be created by the *Contractor*) for the construction of the *Works*;
- direction** includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;
- dispute** has the meaning in clause 42;
- EOT (from 'extension of time')** has the meaning in subclause 34.3;
- excepted risk** has the meaning in subclause 14.3;
- final certificate** has the meaning in subclause 37.4;
- final payment** has the meaning in clause 37;
- final payment claim** means the final payment claim referred to in subclause 37.4;
- intellectual property right** means any patent, registered design, trademark or name, copyright or other protected right;
- latent condition** has the meaning in subclause 25.1;

**legislative requirement** includes:

- (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where *WUC* or the particular part thereof is being carried out;
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of *WUC*; and
- (c) fees and charges payable in connection with the foregoing;

**practical completion** is that stage in the carrying out and completion of *WUC* when:

- (a) *the Works* are complete except for minor defects:
  - (i) which do not prevent *the Works* from being reasonably capable of being used for their stated purpose;
  - (ii) which the *Superintendent* determines the *Contractor* has reasonable grounds for not promptly rectifying; and
  - (iii) the rectification of which will not prejudice the convenient use of *the Works*;
- (b) those *tests* which are required by the *Contract* to be carried out and passed before *the Works* reach *practical completion* have been carried out and passed; and
- (c) documents and other information required under the *Contract* which, in the *Superintendent's* opinion, are essential for the use, operation and maintenance of *the Works* have been supplied;

**preliminary design** means the documents stated in *Item 11*;

**prescribed notice** has the meaning in subclause 41.1;

**Principal** means the *Principal* stated in *Item 1*;

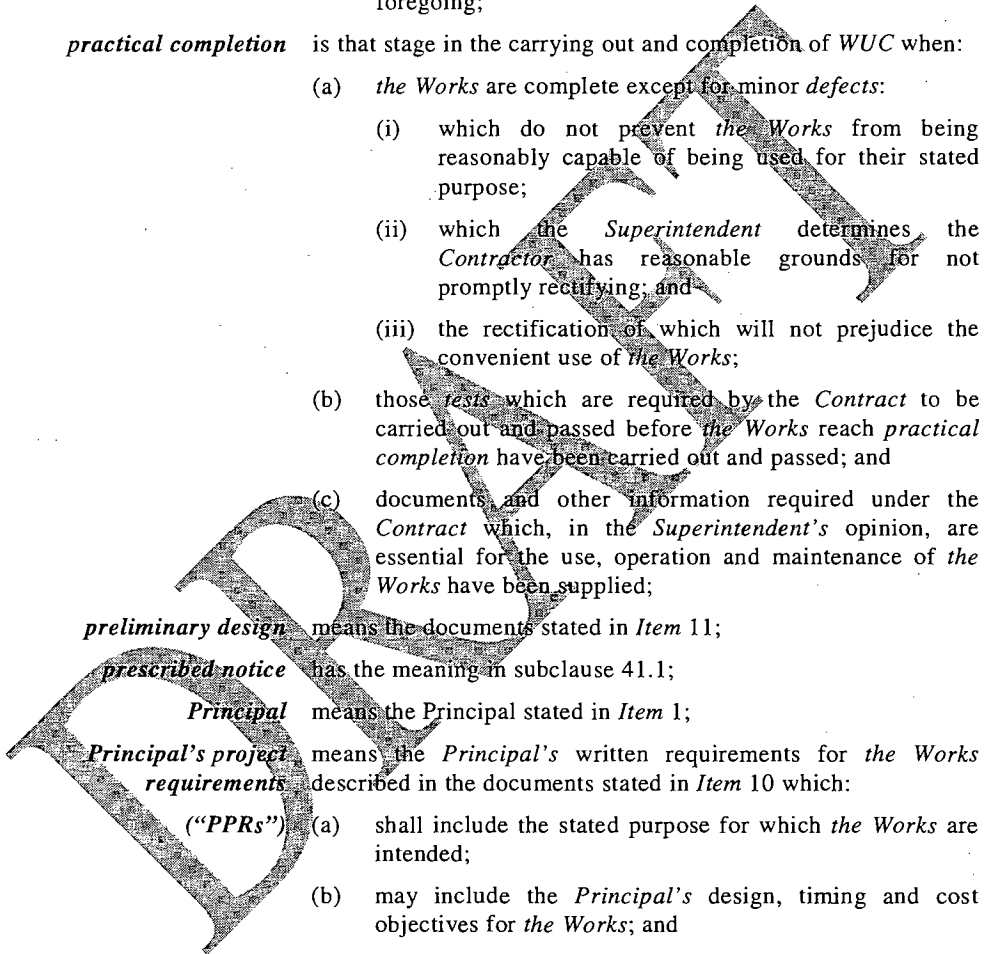
**Principal's project requirements** means the *Principal's* written requirements for *the Works* described in the documents stated in *Item 10* which:

- (a) shall include the stated purpose for which *the Works* are intended;
- (b) may include the *Principal's* design, timing and cost objectives for *the Works*; and
- (c) where stated in *Item 10*, shall include a *preliminary design*.

are also referred to in this Contract as PPRs.

**program** has the meaning in clause 32;

**progress certificate** has the meaning in subclause 37.2;



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<b>Deleted:</b> (c) the Terms of Reference annexed as Annexure Two; provided that any Council approved design and budget documents pursuant to clause 9 shall prevail over any PPRs inconsistent or in conflict with such PPRs.
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*provisional sum* has the meaning in clause 3 and includes monetary sum, contingency sum and prime cost item;

*public liability policy* has the meaning in clause 17;

*qualifying cause of delay* means:

(a) any act, default or omission of the Superintendent, the Principal or its consultants, agents or other contractors (not being employed by the Contractor);

(b) industrial conditions;

(c) inclement weather but the first:

1. 20 days of inclement weather for Stage I works;
2. 10 days of inclement weather for Stage II works;
3. 5 days of inclement weather for Stage III works;

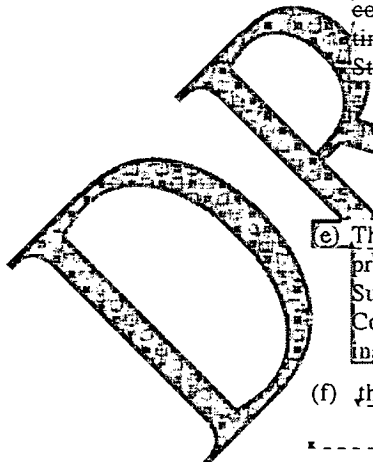
encountered after the date of commencement of the relevant Stage will not be a qualifying cause of delay. Subsequent inclement weather, however, will be a qualifying cause of delay.

~~(d) except where the Contractor is the cause of this delay due to an incomplete, inadequate or substandard Development Application, the length of time from the commencement of the preparation of a Development Application (and under no circumstances can this cause create any obligation whatsoever on the Principal to expedite the time frame for consideration of a Development Application) up until the time that a Development Permit is issued for a particular Stage that is in excess of the following:~~

- ~~1. 90 days for Stage I;~~
- ~~2. 150 days for Stage II;~~
- ~~3. 90 days for Stage III;~~

~~(e) The period that is in excess of the time prescribed to process a Development Application in accordance with the Sustainable Planning Act 2009 (Qld) except where the Contractor causes this delay due to an incomplete, inadequate or substandard Development Application!~~

(f) the qualifying causes of delay stated in Item 28;



*schedule of rates* means any schedule included in the Contract which, in respect of any section or item of work to be carried out, shows the rate or respective rates of payment for the execution of that work and which may also include lump sums, provisional sums, other sums, quantities and prices;

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(i) a breach or omission by the Contractor;  
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- security** means:
- (a) cash;
  - (b) retention moneys;
  - (c) bonds or inscribed stock or their equivalent issued by a national, state or territory government;
  - (d) interest bearing deposit in a bank carrying on business at the place stated in *Item 9(c)*;
  - (e) an approved unconditional undertaking (the form in Annexure Part B is approved) or an approved performance undertaking given by an approved financial institution or insurance company; or
  - (f) other form approved by the party having the benefit of the security;
- selected subcontract work** has the meaning in subclause 9.3;
- selected subcontractor** has the meaning in subclause 9.3;
- separable portion** means a portion of *the Works* identified as such in the *Contract* or by the *Superintendent* pursuant to clause 4;
- site** means the lands and other places to be made available and any other lands and places made available to the *Contractor* by the *Principal* for the purpose of the *Contract*;
- Stage I** means the area shown as Stage I on drawing entitled '*Masterplan*', referenced 110406 and dated 17/05/11
- Stage II** means the area shown as Stage II on drawing entitled '*Masterplan*', referenced 110406 and dated 17/05/11
- Stage III** means the area shown as Stage III on drawing entitled '*Masterplan*', referenced 110406 and dated 17/05/11
- subcontractor** in clauses 3 and 9 includes a *consultant*;
- Superintendent** means the person stated in *Item 5* as the Superintendent or other person from time to time appointed in writing by the *Principal* to be the Superintendent and notified as such in writing to the *Contractor* by the *Principal* and, so far as concerns the functions exercisable by a *Superintendent's Representative*, includes a *Superintendent's Representative*;
- Superintendent's Representative** means an individual appointed in writing by the *Superintendent* under clause 21;
- survey mark** in clause 26 means a survey peg, benchmark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring *WUC*;
- temporary works** means *work* used in carrying out and completing *WUC*, but not forming part of *the Works*;
- test** has the meaning in subclause 30.1 and includes examine and measure;

*the Works* means the whole of the *work* to be carried out and completed in accordance with the *Contract*, including *variations* provided for by the *Contract*, which by the *Contract* is to be handed over to the *Principal*;

*Terms of Reference* means the *Terms of Reference* annexed to this *Contract* as Attachment A.

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*variation* has the meaning in clause 36;

*work* includes the provision of materials;

*WUC (from 'work under the Contract')* means the *work* which the *Contractor* is or may be required to carry out and complete under the *Contract* and includes *variations*, remedial *work*, *construction plant* and *temporary works*,

and like words have a corresponding meaning.

In the *Contract*:

- (a) references to days mean calendar days and references to a person include an individual, firm or a body, corporate or unincorporate;
- (b) time for doing any act or thing under the *Contract* shall, if it ends on a Saturday, Sunday or Statutory or Public Holiday, be deemed to end on the day next following which is not a Saturday, Sunday or Statutory or Public Holiday;
- (c) clause headings and subclause headings shall not form part of, nor be used in the interpretation of, the *Contract*;
- (d) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context. Words importing a gender include every gender;
- (e) communications between the *Principal*, the *Superintendent* and the *Contractor* shall be in the English language;
- (f) measurements of physical quantities shall be in legal units of measurement of the jurisdiction in *Item 8*;
- (g) unless otherwise provided, prices are in the currency in *Item 9(a)* and payments shall be made in that currency at the place in *Item 9(b)*;
- (h) the law governing the *Contract*, its interpretation and construction, and any agreement to arbitrate, is the law of the jurisdiction in *Item 8*; and
- (i) if pursuant to Annexure Part E to these General Conditions, clauses or their parts in these General Conditions are deleted, the *Contract* shall be read and construed as though the clause or its part has been deleted, whether or not that particular clause or its part has been struck from these General Conditions.

## 2 Nature of Contract

### 2.1 Performance and payment

It is a condition of this Contract that the Principal engages the Contractor for the sole purpose of designing and constructing the Tennyson Reach Parklands in accordance with this Contract.

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~~It is a further condition of this Contract that the Principal will not reduce the level of amenity or the standard of finish below that which is set out in the preliminary design.~~

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The Contractor shall carry out and complete WUC in accordance with the Contract and directions authorised by the Contract.

The Principal shall pay the Contractor:

- (a) for work for which the Principal accepted a lump sum, the lump sum; and
- (b) for work for which the Principal accepted rates, the sum of the products ascertained by multiplying the measured quantity of each section or item of work actually carried out under the Contract by the rate accepted by the Principal for the section or item, adjusted by any additions or deductions made pursuant to the Contract.

### 2.2 Contractor's warranties

Without limiting the generality of subclause 2.1, the Contractor warrants to the Principal that:

- (a) the Contractor:
  - (a) at all times shall be suitably qualified and experienced, and shall exercise due skill, care and diligence in the carrying out and completion of WUC;
  - (b) has examined any preliminary design included in the Principal's project requirements and that such preliminary design is suitable, appropriate and adequate for the purpose stated in the Principal's project requirements;
  - (c) shall carry out and complete the Contractor's design obligations to accord with the Principal's project requirements and, if subclause 9.4 applies, accept the novation and retain the Principal's consultants for any work the subject of a prior contract with the Principal; and
  - (d) shall carry out and complete WUC in accordance with the design documents so that the Works, when completed, shall:
    - (A) be fit for to be used as a public park as is set out in the PPRs; and
    - (B) comply with all the requirements of the Contract; and
- (b) subject to clause 9, the consultants identified in the Contractor's tender are suitably qualified and experienced.

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### 2.3 Warranties unaffected

The warranties remain unaffected notwithstanding:

- (a) that design work (including the preliminary design) has been carried out by or on behalf of the Principal and included in the Principal's project requirements;
- (b) that the Contractor has entered into a novation of any prior contract between the Principal and a Principal's consultant under subclause 9.4 and thereafter has retained that consultant in connection with WUC;

- (c) any receipt or review of, or comment or *direction* on, the *design documents* by the *Superintendent*; or
- (d) any *variation*.

#### 2.4 Quantities

Quantities in a *schedule of rates* are estimated quantities only.

The *Superintendent* is not required to give a *direction* by reason of the actual quantity of an item required to perform the *Contract* being greater or less than the quantity shown in the *schedule of rates*.

#### 2.5 Adjustment for actual quantities

Where, otherwise than by reason of a *direction* to vary *WUC*, the actual quantity of an item required to perform the *Contract* is greater or less than the quantity shown in the *schedule of rates*:

- (a) the *Principal* accepted a lump sum for the item, the difference shall be a deemed *variation*;
- (b) the *Principal* accepted a rate for the item, the rate shall apply to the greater or lesser quantities provided that where limits of accuracy for a quantity in a *schedule of rates* are stated in *Item 12*, the rate shall apply to the greater or lesser quantities within the limits, and quantities outside the limits shall be a deemed *variation*.

If such a *schedule of rates* omits an item which should have been included, the item shall be a deemed *variation*.

#### 3 Provisional sums

A *provisional sum* included in the *Contract* shall not itself be payable by the *Principal* but where pursuant to a *direction* the work or item to which the *provisional sum* relates is carried out or supplied by the *Contractor*, the work or item shall be priced by the *Superintendent*, and the difference shall be added to or deducted from the *contract sum*.

Where any part of such work or item is carried out or supplied by a *subcontractor*, the *Superintendent* shall allow the amount payable by the *Contractor* to the *subcontractor* for the work or item, disregarding:

- (a) any damages payable by the *Contractor* to the *subcontractor* or vice versa; and
- (b) any deduction of cash discount for prompt payment,

plus an amount for profit and attendance calculated by using the percentage thereon stated in *Item 13* or elsewhere in the *Contract*, or, if not so stated, as assessed by the *Superintendent*.

#### 4 Separable portions

*Separable portions* may be directed by the *Superintendent*, who shall clearly identify for each, the:

- (a) portion of the *Works*;
- (b) *date for practical completion*; and
- (c) respective amounts for *security*, bonus, liquidated damages and delay damages (all calculated pro-rata according to the ratio of the *Superintendent's* valuation of the *separable portion* to the *contract sum*).



## 5 Security

### 5.1 Provision

*Security* shall be provided in accordance with *Item 14* or *15*. All delivered *security*, other than cash or retention moneys, shall be transferred in escrow.

### 5.2 Recourse

*Security* shall be subject to recourse by a party who remains unpaid after the time for payment where at least 5 days have elapsed since that party notified the other party of intention to have recourse.

### 5.3 Change of security

At any time a party providing retention moneys or cash *security* may substitute another form of *security*. To the extent that another form of *security* is provided, the other party shall not deduct, and shall promptly release and return, retention moneys and cash *security*.

### 5.4 Reduction and release

Upon the issue of the *certificate of practical completion* a party's entitlement to *security* (other than in *Item 14(e)*) shall be reduced by the percentage or amount in *Item 14(f)* or *15(d)* as applicable, and the reduction shall be released and returned within 14 days to the other party.

The *Principal's* entitlement to *security* in *Item 14(e)* shall cease 14 days after incorporation into the *Works* of the plant and materials for which that *security* was provided.

A party's entitlement otherwise to *security* shall cease 14 days after *final certificate*.

Upon a party's entitlement to *security* ceasing, that party shall release and return forthwith the *security* to the other party.

### 5.5 Trusts and interest

Except where held by a government department or agency or a municipal, public or statutory authority, any portion of *security* (and interest earned thereon) which is cash or retention moneys, shall be held in trust for the party providing them until the *Principal* or the *Contractor* is entitled to receive them.

Interest earned on *security* not required to be held in trust shall belong to the party holding that *security*.

### 5.6 Deed of guarantee, undertaking and substitution

Where:

- (a) a party is a related or subsidiary corporation (as defined in the applicable corporations law of the jurisdiction); and
- (b) a form of *deed of guarantee, undertaking and substitution* was included in the tender documents,

that party shall, within 14 days after receiving a written request from the other party, provide such *deed of guarantee, undertaking and substitution* duly executed and enforceable.

## 6 Evidence of Contract

Until a formal instrument of agreement is executed by the parties, documents evidencing the parties' consensus shall constitute the *Contract*. If such *Contract* requires a formal instrument of agreement, the *Principal* shall, within 28 days of the *date of acceptance of tender*, send it in duplicate for execution by the *Contractor*. Within 14 days after receiving them, the *Contractor* shall (if they are correct) properly execute both copies and return them.

Within 14 days after receiving them, the *Principal* shall execute both copies, have them stamped as necessary and send one copy to the *Contractor*.

The *Superintendent* may extend the time under this clause by written notice to the parties.

## 7 Service of notices

A notice (and other documents) shall be deemed to have been given and received:

- (a) if addressed or delivered to the relevant address in the *Contract* or last communicated in writing to the person giving the notice; and
- (b) on the earliest date of:
  - (a) actual receipt;
  - (b) confirmation of correct transmission of fax; or
  - (c) 3 days after posting.

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## 8 Contract documents

### 8.1 Discrepancies

Figured shall prevail over scaled dimensions in a discrepancy. Otherwise, if either party discovers any inconsistency, ambiguity or discrepancy in any document prepared for the purpose of carrying out *WUC*, that party shall give the *Superintendent* written notice of it. The *Superintendent*, thereupon, and upon otherwise becoming aware, shall direct the *Contractor* as to the interpretation and construction to be followed.

The *Contractor* shall bear the cost of compliance with a *direction* under this subclause to the extent that any inconsistency, ambiguity or discrepancy in the *design documents* or between the *design documents* and the *Principal's project requirements* necessitates the *direction*.

If compliance with any other *direction* under this subclause causes the *Contractor* to incur more or less cost than otherwise would have been incurred had the *direction* not been given, the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

### 8.2 Principal-supplied documents

The *Principal* shall supply to the *Contractor* the documents and number of copies thereof, both stated in *Item 16*.

They shall:

- (a) remain the *Principal's* property and be returned to the *Principal* on written demand; and
- (b) not be used, copied nor reproduced for any purpose other than *WUC*.

### 8.3 Contractor-supplied documents

The *Contractor* shall supply to the *Superintendent* the documents and number of copies at the times or stages stated in *Item 17*.

Other documents and information required by the *Contract*, unless elsewhere stated in the *Contract*, shall be supplied not less than 14 days before the *work* described in the documents is commenced and shall be in a form satisfactory to the *Superintendent*.

If the *Contractor* submits a document to the *Superintendent*, then except where the *Contract* otherwise provides:

- (a) the *Superintendent* shall not be required to check that document for errors, omissions, inconsistencies, ambiguities, discrepancies or compliance with the *Contract*;
- (b) notwithstanding subclause 2.1, any *Superintendent's* acknowledgment or approval shall not prejudice the *Contractor's* obligations; and
- (c) if the *Contract* requires the *Contractor* to obtain the *Superintendent's* direction about that document, the *Superintendent* shall give, within the time stated in *Item 18*, the appropriate *direction*, including reasons if the document is not suitable.

A *direction* by the *Superintendent* to vary anything in the *design documents* shall be a variation to *WUC* only to the extent that the *design documents*, before such variation, complied, or would have complied, with the *Principal's* project requirements.

Copies of documents supplied by the *Contractor* shall be the *Principal's* property but shall not be used nor copied otherwise than for the use, repair, maintenance or alteration of the *Works*.

### 8.4 Availability

The *Contractor* shall keep available to the *Superintendent* and the *Principal*:

- (a) on site, one complete set of documents affecting *WUC* and supplied by a party or the *Superintendent*; and
- (b) at the place of manufacture or assembly of any significant part of *WUC* off site, a set of the documents affecting that part.

### 8.5 Confidential information

The parties shall ensure that there are kept confidential such documents, samples, models, patterns and other information as are supplied and clearly identified as confidential.

If required in writing by a party, the other party shall enter into a separate agreement not to disclose to anyone else any confidential matter even after *final certificate* or earlier termination of the *Contract*. If so required by the *Contractor*, the *Principal* shall ensure that the *Superintendent* also enters into such an agreement.

### \* 8.6 Media

The *Contractor* shall not disclose any information concerning the project for distribution through any communications media without the *Principal's* prior written approval (which shall not be unreasonably withheld). The *Contractor* shall refer to the *Principal* any enquiries from any media concerning the project.

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\* See Preface

## 9 Assignment and subcontracting

### 9.1 Assignment

Neither party shall, without the other's prior written approval (including terms) assign the *Contract* or any payment or any other right, benefit or interest thereunder.

### 9.2 Subcontracting generally

The Contractor may not appoint or subcontract any *WUC* without the prior written approval of the Principal which such approval shall not be unreasonably withheld provided the Contractor has made full disclosure to the Principal as to the terms and conditions of the proposed contract with the subcontractor.

The Contractor shall not without the Superintendent's prior written approval (which shall not be unreasonably withheld):

- (a) subcontract or allow a subcontractor to subcontract any work described in Item 19; or
- (b) allow a subcontractor to assign a subcontract or any payment or any other right, benefit or interest thereunder.

With a request for approval, the Contractor shall give the Superintendent written particulars of the work to be subcontracted and the name and address of the proposed subcontractor. The Contractor shall give the Superintendent other information which the Superintendent reasonably requests, including the proposed subcontract documents without prices.

Within 14 days of the Contractor's request for approval, the Superintendent shall give the Contractor written notice of approval or of the reasons why approval is not given.

Approval may be conditional upon the subcontract including:

- (a) provision that the subcontractor shall not assign nor subcontract without the Contractor's written consent;
- (b) provisions which may be reasonably necessary to enable the Contractor to fulfil the Contractor's obligations to the Principal;
- (c) provision that if the Contract is terminated and upon the subcontractor being paid the sum certified by the Superintendent as owing to the subcontractor, the Contractor and the subcontractor shall, after the Principal has done so, promptly execute a deed of novation in the form of Annexure Part C.

For the purpose of effecting such novation only, the Contractor hereby irrevocably appoints the Superintendent to be the Contractor's attorney with authority to execute such documents as are necessary to give effect to the novation and to bind the Contractor accordingly; and

- (d) where the subcontractor is a consultant, provision that the subcontractor shall effect and maintain professional indemnity insurance on the same terms as are required under Items 24(c) and 24(d).

### 9.3 Selected subcontract work

If the Principal has included in the invitation to tender a list of one or more selected subcontractors for particular work, the Contractor shall subcontract that work to a selected subcontractor and thereupon give the Superintendent written notice of that selected subcontractor's name.

If no subcontractor on the Principal's list will subcontract to carry out the selected subcontract work, the Contractor shall provide a list for the written approval of the Superintendent.

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**9.4 Novation**

This subclause applies only where the *Principal's project requirements* include a *preliminary design* or the *Contract* includes *selected subcontract work*.

When directed by the *Principal*, the *Contractor*, without being entitled to compensation, shall promptly execute a deed of novation in the form of Annexure Part D, such deed being between the *Principal*, the *Contractor* and the *subcontractor* or the *selected subcontractor* stated in *Item 20* for the particular part of the *preliminary design* or *selected subcontract work*.

**9.5 Contractor's responsibility**

Except where the *Contract* otherwise provides, the *Contractor* shall be liable to the *Principal* for the acts, defaults and omissions of *subcontractors* (including *selected subcontractors*) and employees and agents of *subcontractors* as if they were those of the *Contractor*.

Approval to subcontract shall not relieve the *Contractor* from any liability or obligation under the *Contract*

**9.6 Design and documentation development**

The *Contractor's* design obligations are as follows:

- (a) The *Contractor* must determine which statutory approvals are required for the completion of the design in accordance with the *Contract* and the *PPRs*;
- (b) The *Contractor* must procure the design documents that comprise:
  - (a) the relevant statutory approvals;
  - (b) the design and documentation in accordance with the *PPRs*;
  - (c) cost estimates that shall include all costs to carry out the Works on a subcontractor and supplier basis and shall include all of the *Contractor's* costs but shall not include profit;
- (c) The *Contractor* must deliver an electronic copy of the latest set of design documents to the *Principal* for the *Principal's* written approval at each stage, at the:
  - (a) schematic design complete phase (30% complete of the design);
  - (b) design development complete phase (80% complete of the design); and
  - (c) construction documentation complete phase (95% complete of the design);

in sufficient time to ensure that there will be no delay to the dates for practical completion.
- (d) The Superintendent may request the *Contractor* to provide an explanation of any design documents, cost estimate or to provide a report on any design matter at the *Contractor's* cost;
- (e) The *Contractor* must procure the design documents necessary for the completion of the Works in accordance with the *PPRs* and in accordance with sound engineering and building practice.
- (f) The *Contractor* must notify the Superintendent of the time and cost implications of every design changes that is directed by the Superintendent.

The contract sum must not exceed \$6,000,000 (excl. GST) unless varied by direction of the Superintendent, providing evidence to the Contractor of the Principal's prior written consent.

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The Contractor is entitled to, and may claim an extension of time and payment for costs incurred arising out of any variations to the preliminary design directed in writing by the Superintendent. The Contractor is not entitled to claim any additional design costs arising out of variations directed by the Superintendent until the design costs incurred by the Contractor for the variations exceed 50% of the cost of the preliminary design cost, which is \$10,000.00.

**9.7. Review of design documents**

Upon receipt of the design documents provided by the Contractor pursuant to above clauses 9.6(c)(a) and 9.6(c)(b), the Superintendent must review the design documents.

Within 10 business days of receipt of the design documents, the Superintendent must instruct the Contractor whether or not the design documents are acceptable to the Principal including any direction to amend the design if so required.

**9.8. Cost Estimate of the Works**

Upon receipt of the design documents at the construction documentation complete phase, the Superintendent must obtain an independent cost assessment of the design documents (QS Report) and provide a copy of the QS Report to the Contractor.

Within 40 days of receipt of the design documents and cost estimate, the Superintendent must instruct the Contractor whether or not the design documents and cost estimate are acceptable to the Principal.

If the design documents and cost estimate are not acceptable to the Principal, the Superintendent must set out its reasons as to why the design documents and cost estimate do not comply with this Contract or provide further instructions to change the design documents and cost estimate.

If the parties reach agreement as to the design documents and the cost estimate, that cost estimate shall be revised contract sum (Cost Estimate) and shall also be used for the purposes of calculating further cost savings under clause 44.

If the parties are unable to reach agreement of the design documents or the cost estimate, the dispute shall be referred to the parties' respective CEO's for resolution. In default of the CEO's resolving the dispute the matter must be referred by a party for expert determination in accordance with the Contract.

If the Superintendent does not advise the Contractor within the time stated in this clause, the design documents and cost estimate submitted in accordance with clause 9.6(c) are deemed to have satisfied the requirements of this Contract and will be the design documents to be used to construct the Works and the Cost Estimate setting out the breakup of the revised contract sum. In this case, contract sum must not exceed \$6,000,000.00 (Excl GST):

**10. Intellectual property rights**

**10.1 Warranties and indemnities**

The Principal warrants that, unless otherwise provided in the Contract, the Principal's project requirements, design, materials, documents and methods of working, each specified in the Contract or provided or directed by the Principal or the Superintendent shall not infringe any intellectual property right.

The Contractor warrants that any other design, materials, documents and methods of working, each provided by the Contractor, shall not infringe any intellectual property right.

Each party shall indemnify the other against such respective infringements.

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## 10.2 Intellectual property rights granted to Principal

The Alternative in *Item 21* applies.

### Alternative 1

The *Contractor* grants to the *Principal* an irrevocable licence to use the *design documents* for *WUC*. Such licence shall also include any subsequent repairs to, maintenance or servicing of (including the supply of replacement parts), or additions or alterations to, the *Works* and the copying of the documents for such purposes.

### Alternative 2

Copyright and property in the *design documents* (and, as between the *Principal* and the *Contractor*, any part of the *preliminary design* produced under a prior contract between the *Principal* and a *Principal's* consultant novated under subclause 9.4) hereby vest in the *Principal*, and the *Principal* grants to the *Contractor* an irrevocable licence to use the *design documents* for *WUC*. Such vesting shall not extend to components of the design which have been developed by the *Contractor* for general use in the *Contractor's* work and have not been specially developed for incorporation in the *design documents*.

The *Contractor* shall do everything necessary to perfect such vesting.

The *Contractor* shall ensure that the *design documents* are used, copied and supplied only for the purpose of *WUC*.

## 11 Legislative requirements

### 11.1 Compliance

The *Contractor* shall satisfy all *legislative requirements* except those in *Item 22(a)* or directed by the *Superintendent* to be satisfied by or on behalf of the *Principal*.

The *Contractor*, upon finding that a *legislative requirement* is at variance with the *Contract* or the *Principal's* project requirements, shall promptly give the *Superintendent* written notice thereof.

### 11.2 Changes

If a *legislative requirement*:

- (a) necessitates a change:
  - (a) to the *Principal's* project requirements;
  - (b) to the *Works*;
  - (c) to so much of *WUC* as is identified in *Item 22(b)*;
  - (d) being the provision of services by a municipal, public or other statutory authority in connection with *WUC*; or
  - (e) in a fee or charge or payment of a new fee or charge;
- (b) comes into effect after the 14th day before the closing of tenders but could not reasonably then have been anticipated by a competent contractor; and
- (c) causes the *Contractor* to incur more or less cost than otherwise would have been incurred,

the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

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### 11.3 Occupational health and safety

The ~~Principal appoints the Contractor as Principal Contractor in accordance with the~~ Workplace Health & Safety Act 1995 (Qld) (WHS legislation).

Without limiting the generality of clause 11.1 and 11.2, the Contractor must comply with all legislative requirements, codes of practice, and standards (including Australian Standards) in relation to occupational health and safety. The Contractor must instruct its employees, subcontractors and consultants to:

- (a) follow safe work practices and procedures at all times;
- (b) take reasonable care for their own safety; and
- (c) take reasonable care for the health and safety of anyone else who may be affected by anything that they do or fail to do;

in connection with the WUC,

If requested by the Superintendent, the Contractor must provide the following information about the Contractor's occupational health and safety systems and those of its subcontractors or consultant's:

- (d) safe working practices and procedures; and
- (e) occupational health and safety practices and procedures.

The Contractor must ensure that all employees, subcontractors, consultants and appointees have completed an appropriate induction prior to commencement on the WUC.

### 12 Protection of people and property

Insofar as compliance with the *Contract* permits, the *Contractor* shall:

- (a) take measures necessary to protect people and property;
- (b) avoid unnecessary interference with the passage of people and vehicles; and
- (c) prevent nuisance and unreasonable noise and disturbance.

If the *Contractor* damages property, the *Contractor* shall promptly rectify the damage and pay any compensation which the law requires the *Contractor* to pay.

If the *Contractor* fails to comply with an obligation under this clause, the *Principal*, after the *Superintendent* has given reasonable written notice to the *Contractor* and in addition to the *Principal's* other rights and remedies, may have the obligation performed by others. The cost thereby incurred shall be certified by the *Superintendent* as moneys due from the *Contractor* to the *Principal*.

### 13 Urgent protection

If urgent action is necessary to protect *WUC*, other property or people and the *Contractor* fails to take the action, in addition to any other remedies of the *Principal*, the *Superintendent* may take the necessary action. If the action was action which the *Contractor* should have taken at the *Contractor's* cost, the *Superintendent* shall certify the cost incurred as moneys due from the *Contractor* to the *Principal*.

If time permits, the *Superintendent* shall give the *Contractor* prior written notice of the intention to take action pursuant to this clause.

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## 14 Care of the work and reinstatement of damage

### 14.1 Care of WUC

Except as provided in subclause 14.3, the *Contractor* shall be responsible for care of:

- (a) the whole of *WUC* from and including the date of commencement of *WUC* to 4:00 pm on the *date of practical completion*, at which time responsibility for the care of the *Works* (except to the extent provided in paragraph (b)) shall pass to the *Principal*; and
- (b) outstanding *work* and items to be removed from the *site* by the *Contractor* after 4:00 pm on the *date of practical completion* until completion of outstanding *work* or compliance with clauses 29, 30 and 35.

Without limiting the generality of paragraph (a), the *Contractor* shall be responsible for the care of unfixed items accounted for in a *progress certificate* and the care and preservation of things entrusted to the *Contractor* by the *Principal* or brought onto the *site* by *subcontractors* for carrying out *WUC*.

### 14.2 Reinstatement

If loss or damage, other than that caused by an *excepted risk*, occurs to *WUC* during the period of the *Contractor's* care, the *Contractor* shall at its cost, rectify such loss or damage.

In the event of loss or damage being caused by any of the *excepted risks* (whether or not in combination with other risks), the *Contractor* shall to the extent directed by the *Superintendent*, rectify the loss or damage and such rectification shall be a deemed *variation*. If loss or damage is caused by a combination of *excepted risks* and other risks, the *Superintendent* in pricing the *variation* shall assess the proportional responsibility of the parties.

### 14.3 Excepted risks

The *excepted risks* causing loss or damage, for which the *Principal* is liable, are:

- (a) any negligent act or omission of the *Superintendent*, the *Principal* or its consultants, agents, employees or other contractors (not being employed by the *Contractor*);
- (b) any risk specifically excepted elsewhere in the *Contract*;
- (c) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority;
- (d) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the *Contractor* or its *subcontractors* or either's employees or agents; and
- (e) use or occupation of any part of *WUC* by the *Principal* or its consultants, agents or other contractors (not being employed by the *Contractor*).

## 15 Damage to persons and property other than WUC

### 15.1 Indemnity by Contractor

Insofar as this subclause applies to property, it applies to property other than *WUC*.

The *Contractor* shall indemnify the *Principal* against:

- (a) loss of or damage to the *Principal's* property; and
- (b) claims in respect of personal injury or death or loss of, or damage to, any other property,

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arising out of or as a consequence of the carrying out of *WUC*, but the indemnity shall be reduced proportionally to the extent that the act or omission of the *Superintendent*, the *Principal* or its consultants, agents or other contractors (not being employed by the *Contractor*) may have contributed to the injury, death, loss or damage.

This subclause shall not apply to:

- (a) the extent that the *Contractor's* liability is limited by another provision of the *Contract*;
- (b) exclude any other right of the *Principal* to be indemnified by the *Contractor*;
- (c) things for the care of which the *Contractor* is responsible under subclause 14.1; and
- (d) claims in respect of the *Principal's* right to have *WUC* carried out.

### 15.2 Indemnity by Principal

The *Principal* shall indemnify the *Contractor* in respect of claims referred to in paragraph (d) of subclause 15.1.

### 16A Insurance of the Works

The Alternative in *Item 23(a)* applies.

#### *Alternative 1: Contractor to insure*

Before commencing *WUC*, the *Contractor* shall insure all the things referred to in subclause 14.1 against loss or damage resulting from any cause until the *Contractor* ceases to be responsible for their care.

Without limiting the generality of the obligation to insure, such insurance shall cover the *Contractor's* liability under subclause 14.2 and things in storage off *site* and in transit to the *site* but may exclude:

- (a) the cost of making good fair wear and tear or gradual deterioration, but shall not exclude the loss or damage resulting therefrom;
- (b) the cost of making good faulty design, workmanship and materials, but shall not exclude the loss or damage resulting therefrom;
- (c) consequential loss of any kind, but shall not exclude loss of or damage to *the Works*;
- (d) damages for delay in completing or for the failure to complete *the Works*;
- (e) loss or damage resulting from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel resulting from any cause;
- (f) loss or damage resulting from the *excepted risks* referred to in paragraphs (b) and (c) of subclause 14.3.

The insurance cover shall be for an amount not less than the aggregate of the:

- (a) *contract sum*;
- (b) provision in *Item 23(b)* to provide for costs of demolition and removal of debris;
- (c) provision in *Item 23(c)* for *consultants' fees* and *Principal's consultants' fees*;
- (d) value in *Item 23(d)* of any materials or things to be supplied by the *Principal* for the purposes of *WUC*; and
- (e) additional amount or percentage in *Item 23(e)* of the total of the items referred to in sub-paragraphs (a) to (d) of this paragraph.

Insurance shall be in the joint names of the parties, shall cover the parties, *consultants* and *subcontractors* whenever engaged in *WUC* for their respective rights, interests and liabilities and, except where the *Contract* otherwise provides, shall be with an insurer and in terms both approved in writing by the *Principal* (which approvals shall not be unreasonably withheld).

The insurance shall be maintained until the *Contractor* ceases to be responsible under subclause 14.1 for the care of anything.

#### 16B Professional indemnity insurance

Before commencing *WUC*, the *Contractor* shall effect and maintain professional indemnity insurance with levels of cover not less than stated in *Item 24(a)*.

The insurance shall be maintained until the *final certificate* is issued and thereafter for the period as stated in *Item 24(b)*.

The *Contractor* shall ensure that every *consultant*, if within a category stated in *Item 24(c)*, shall effect and maintain professional indemnity insurance with levels of cover not less than stated in *Item 24(c)* applicable to that category.

Each such *consultant's* professional indemnity insurance shall be maintained until the *final certificate* is issued and thereafter for the period as stated in *Item 24(d)*.

#### 17 Public liability insurance

The Alternative in *Item 25(a)* applies.

##### *Alternative 1: Contractor to insure*

Before commencing *WUC*, the *Contractor* shall effect and maintain for the duration of the *Contract*, a *public liability policy*.

The policy shall:

- (a) be in the joint names of the parties;
- (b) cover the:

- (a) respective rights and interests, and
- (b) liabilities to third parties,

of the parties, the *Superintendent*, *consultants* and *subcontractors* from time to time, whenever engaged in *WUC*;

- (c) cover the parties' respective liability to each other for loss or damage to property (other than property required to be insured by clause 16A) and the death of or injury to any person (other than liability which the law requires to be covered under a workers compensation insurance policy);
- (d) be endorsed to cover the use of any *construction plant* not covered under a comprehensive or third party motor vehicle insurance policy;
- (e) provide insurance cover for an amount in respect of any one occurrence of not less than the sum in *Item 25(b)*; and
- (f) be with an insurer and otherwise in terms both approved in writing by the *Principal* (which approvals shall not be unreasonably withheld).

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*Principal to insure*  
 Before the date of acceptance of tender, the *Principal* shall insure *WUC* in the terms of the policy included in the tender documents and nominating or stating the insurer. The *Principal* shall maintain such insurance while ever the *Contractor* has an interest in *WUC*.

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## 18 Insurance of employees

Before commencing WUC, the Contractor shall insure against statutory and common law liability for death of or injury to persons employed by the Contractor. The insurance cover shall be maintained until completion of all WUC.

Where permitted by law, the insurance policy or policies shall be extended to provide indemnity for the Principal's statutory liability to the Contractor's employees.

The Contractor shall ensure that all consultants and subcontractors have similarly insured their employees.

## 19 Inspection and provisions of insurance policies

### 19.1 Proof of insurance

Before the Contractor commences WUC and whenever requested in writing by the other party, a party liable to insure shall provide satisfactory evidence of such insurance effected and maintained.

Insurance shall not limit liabilities or obligations under other provisions of the Contract.

### 19.2 Failure to produce proof of insurance

If after being so requested, a party liable to insure fails promptly to provide evidence of satisfactory compliance, then without prejudice to other rights or remedies, the other party may insure and the cost thereof shall be certified by the Superintendent as moneys due and payable from the party in default to the other party. Where the defaulting party is the Contractor, the Principal may refuse payment until such evidence is produced by the Contractor.

### 19.3 Notices from or to insurer

The party insuring under clause 16A or 17 shall ensure that each insurance policy contains provisions acceptable to the other party which:

- (a) requires the insurer to inform both parties, whenever the insurer gives a party or a consultant or a subcontractor a notice in connection with the policy;
- (b) provides that a notice of claim given to the insurer by either party, the Superintendent, a consultant or a subcontractor shall be accepted by the insurer as a notice of claim given by both parties, the Superintendent, the consultant and the subcontractor; and
- (c) requires the insurer, whenever the party fails to maintain the policy, promptly to give written notice thereof to both parties and prior to cancellation of the policy.

### 19.4 Notices of potential claims

A party shall, as soon as practicable, inform the other party in writing of any occurrence that may give rise to a claim under an insurance policy required by clause 16A or 17 and shall keep the other party informed of subsequent developments concerning the claim. The Contractor shall ensure that consultants and subcontractors in respect of their operations similarly inform the parties.

### 19.5 Settlement of claims

Upon settlement of a claim under the insurance required by clause 16A:

- (a) to the extent that reinstatement has been the subject of a payment or allowance by the Principal to the Contractor, if the Contractor has not completed such reinstatement,

**Deleted: Alternative 2:**

**Principal to insure**

Before the date of acceptance of tender, the Principal shall effect in relation to WUC, a public liability policy in the terms of the policy included in the tender documents and nominating or stating the insurer. The Principal shall maintain such insurance while ever the Contractor has an interest in WUC.

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insurance moneys received shall, if requested by either party, be paid into an agreed bank account in the joint names of the parties. As the *Contractor* reinstates the loss or damage, the *Superintendent* shall certify against the joint account for the cost of reinstatement; and

- (b) to the extent that reinstatement has not been the subject of a payment or allowance by the *Principal* to the *Contractor*, the *Contractor* shall be entitled immediately to receive from insurance moneys received, the amount of such moneys so paid in relation to any loss suffered by the *Contractor*.

### 19.6 Cross liability

Any insurance required to be effected in joint names in accordance with the *Contract* shall include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons constituting the insured and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons constituting the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby).

### 20 Superintendent

The *Principal* shall ensure that at all times there is a *Superintendent*, and that the *Superintendent* fulfils all aspects of the role and functions reasonably and in good faith.

Except where the *Contract* otherwise provides, the *Superintendent* may give a *direction* orally but shall as soon as practicable confirm it in writing. If the *Contractor* in writing requests the *Superintendent* to confirm an oral *direction*, the *Contractor* shall not be bound to comply with the *direction* until the *Superintendent* does so.

The *Principal* may change the *Superintendent* by written or electronic notice to the *Contractor* and the change shall be from the date of such notice.

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### 21 Superintendent's Representative

The *Superintendent* may from time to time appoint individuals to exercise delegated *Superintendent's* functions, provided that:

- (a) no aspect of any function shall at any one time be the subject of delegation to more than one *Superintendent's Representative*;
- (b) delegation shall not prevent the *Superintendent* exercising any function;
- (c) the *Superintendent* forthwith gives the *Contractor* written notice of respectively:
- (a) the appointment, including the *Superintendent's Representative's* name and delegated functions; and
- (b) the termination of each appointment; and
- (d) if the *Contractor* makes a reasonable objection to the appointment of a *Superintendent's Representative*, the *Superintendent* shall terminate the appointment.

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### 22 Contractor's representative

The *Contractor* shall superintend *WUC* personally or by a competent representative. Matters within a *Contractor's* representative's knowledge (including *directions* received) shall be deemed to be within the *Contractor's* knowledge.

The *Contractor* shall forthwith give the *Superintendent* written notice of the representative's name and any subsequent changes.

If the *Superintendent* makes a reasonable objection to the appointment of a representative, the *Contractor* shall terminate the appointment and appoint another representative.

### 23 Contractor's employees and subcontractors

The *Superintendent* may direct the *Contractor* to have removed, within a stated time, from the *site* or from any activity of *WUC*, any person employed on *WUC* who, in the *Superintendent's* opinion, is incompetent, negligent or guilty of misconduct.

## 24 Site

### 24.1 Access and possession

Before the expiry of the time stated in *Item 26(a)*, the *Principal* shall give the *Contractor* access to the *site* sufficient to enable the *Contractor* to commence and carry out the *Contractor's design obligations*.

Provided the *Contractor* has complied with subclause 19.1, the *Principal* shall before the expiry of the time in *Item 26(b)*, give the *Contractor* possession of sufficient of the *site* for commencement of *WUC* on *site*. If the *Principal* has not given the *Contractor* possession of the whole *site*, the *Principal* shall give the *Contractor* possession of such further portions of the *site* as may, from time to time, be necessary for carrying out *WUC*. Subject to subclause 39.7, delay by the *Principal* in giving possession shall not be a breach of the *Contract*.

Possession of the *site* shall confer on the *Contractor* a right to only such use and control as is necessary to enable the *Contractor* to carry out *WUC* and shall exclude camping, residential purposes and any purpose not connected with *WUC*, unless approved by the *Superintendent*.

### 24.2 Access for Principal and others

The *Principal* and the *Principal's* employees, consultants and agents may at any time after reasonable written notice to the *Contractor*, have access to any part of the *site* for any purpose. The *Contractor* shall permit persons engaged by the *Principal* to carry out work on the *site*, other than *WUC* and shall cooperate with them. The *Principal* shall give to the *Contractor* the names and roles of the persons so engaged.

The *Contractor* shall at all reasonable times give the *Superintendent* access to *WUC*.

The *Principal* shall ensure that none of the persons referred to in this subclause impedes the *Contractor*.

### 24.3 Minerals, fossils and relics

Valuable minerals, fossils, articles or objects of antiquity or of anthropological or archaeological interest, treasure trove, coins and articles of value found on the *site* shall as between the parties be and remain the property of the *Principal*. Immediately upon the discovery of these things the *Contractor* shall:

- (a) take precautions to prevent their loss, removal or damage; and
- (b) give the *Superintendent* written notice of the discovery.

All costs so incurred by the *Contractor* shall be assessed by the *Superintendent* and added to the *contract sum*.

## 25 Latent conditions

### 25.1 Scope

*Latent conditions* are physical conditions on the *site* and its near surrounds, including artificial things but excluding weather conditions, which differ materially from the physical conditions which should reasonably have been anticipated by a competent contractor at the time of the *Contractor's* tender if the *Contractor* had inspected:

- (a) all written information made available by the *Principal* to the *Contractor* for the purpose of tendering;
- (b) all information influencing the risk allocation in the *Contractor's* tender and reasonably obtainable by the making of reasonable enquiries; and
- (c) the *site* and its near surrounds.

### 25.2 Notification

The *Contractor*, upon becoming aware of a *latent condition* while carrying out *WUC*, shall promptly, and where possible before the *latent condition* is disturbed, give the *Superintendent* written notice of the general nature thereof.

If required by the *Superintendent* promptly after receiving that notice, the *Contractor* shall, as soon as practicable, give the *Superintendent* a written statement of:

- (a) the *latent condition* encountered and the respects in which it differs materially;
- (b) the additional *work*, resources, time and cost which the *Contractor* estimates to be necessary to deal with the *latent condition*; and
- (c) other details reasonably required by the *Superintendent*.

### 25.3 Liability for latent conditions and design

The *Contractor* is solely and exclusively liable for latent conditions including but not limited to any damages claims, EOT's, or delays, arising from the identification and rectification of such latent conditions. The *Contractor* is solely liable for the design of the *WUC* and the *Contractor* shall not enjoin, seek apportionment or any liability from the *Principal* for any liability arising from, or in connection with, the design of the *WUC*.

## 26 Setting out the Works

### 26.1 Setting out

The *Principal* shall ensure that the *Superintendent* gives the *Contractor* the data, *survey marks* and like information necessary for the *Contractor* to set out *the Works*, together with those *survey marks* specified in the *Contract*. Thereupon the *Contractor* shall set out *the Works* in accordance with the *Contract*.

### 26.2 Errors in setting out

The *Contractor* shall rectify every error in the position, level, dimensions or alignment of any *WUC* after promptly notifying the *Superintendent* and unless the *Superintendent* within 3 days directs otherwise. The cost of any rectification shall be at the sole cost of the *Contractor*.

### 26.3 Care of survey marks

The *Contractor* shall keep in their true positions all *survey marks* supplied by the *Superintendent*.

**Deleted:** Deemed variation

**Deleted:** The effect of the *latent condition* shall be a deemed variation, priced having no regard to additional cost incurred more than 28 days before the date on which the *Contractor* gave the notice required by the first paragraph of subclause 25.2 but so as to include the *Contractor's* other costs for each compliance with subclause 25.2

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**Deleted:** If the error was caused by incorrect data, *survey marks* or information given by the *Superintendent*, the cost incurred by the *Contractor* in rectifying the error shall be assessed by the *Superintendent* and added to the *contract sum*.¶

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The *Contractor* shall reinstate any *survey mark* disturbed, after promptly notifying the *Superintendent* and unless the *Superintendent* within 3 days directs otherwise.

If the disturbance was caused by a person referred to in subclause 24.2 other than the *Contractor*, the cost incurred by the *Contractor* in reinstating the *survey mark* shall be borne by the *Contractor*.

**Deleted:** assessed by the *Superintendent* and added to the *contract sum*

## 27 Cleaning up

The *Contractor* shall keep the *site* and *WUC* clean and tidy and regularly remove rubbish and surplus material.

Within 14 days after the *date of practical completion*, the *Contractor* shall remove *temporary works* and *construction plant*. The *Superintendent* may extend the time to enable the *Contractor* to perform remaining obligations.

If the *Contractor* fails to comply with the preceding obligations in this clause, the *Superintendent* may direct the *Contractor* to rectify the non-compliance and the time for rectification.

If:

- (a) the *Contractor* fails to comply with such a *direction*; and
- (b) that failure has not been made good within 5 days after the *Contractor* receives written notice from the *Superintendent* that the *Principal* intends to have the subject work carried out by others,

the *Principal* may have that work so carried out and the *Superintendent* shall certify the cost incurred as moneys due from the *Contractor* to the *Principal*. The rights given by this paragraph are additional to any other rights and remedies.

## 28 Materials, labour and construction plant

Except where the *Contract* otherwise provides, the *Contractor* shall supply everything necessary for the proper performance of the *Contractor's* obligations and discharge of the *Contractor's* liabilities.

In respect of any materials, machinery or equipment to be supplied by the *Contractor* in connection with the *Contract*, the *Superintendent* may direct the *Contractor* to:

- (a) supply particulars of the mode and place of manufacture, the source of supply, the performance capacities and other related information; and
- (b) arrange reasonable inspection at such place or sources by the *Superintendent*, the *Principal* and persons authorised by the *Principal*.

The *Superintendent* may give the *Contractor* a written *direction* not to remove materials or *construction plant* from the *site*. Thereafter the *Contractor* shall not remove them without the *Superintendent's* prior written approval (which shall not be unreasonably withheld).

## 29 Quality

### 29.1 Quality of material and work

Unless otherwise provided, the *Contractor* shall use suitable new materials and proper and tradesmanlike workmanship.



## 29.2 Quality assurance

\* If the *Contract* elsewhere requires further quality assurance, the *Contractor* shall:

- (a) plan, establish and maintain a conforming quality system; and
- (b) ensure that the *Superintendent* has access to the quality system of the *Contractor*, *consultants* and *subcontractors* so as to enable monitoring and quality auditing.

Any such quality system shall be used only as an aid to achieving compliance with the *Contract* and to document such compliance. Such system shall not discharge the *Contractor's* other obligations under the *Contract*.

## 29.3 Defective work

If the *Superintendent* becomes aware of *work* done (including material provided) by the *Contractor* which does not comply with the *Contract*, the *Superintendent* shall as soon as practicable give the *Contractor* written details thereof. If the subject *work* has not been rectified, the *Superintendent* may direct the *Contractor* to do any one or more of the following (including times for commencement and completion):

- (a) remove the material from the *site*;
- (b) demolish the *work*;
- (c) redesign, reconstruct, replace or correct the *work*; and
- (d) not deliver it to the *site*.

If:

- (a) the *Contractor* fails to comply with such a *direction*; and
- (b) that failure has not been made good within 8 days after the *Contractor* receives written notice from the *Superintendent* that the *Principal* intends to have the subject *work* rectified by others.

the *Principal* may have that *work* so rectified and the *Superintendent* shall certify the cost incurred as moneys due from the *Contractor* to the *Principal*.

## 29.4 Acceptance of defective work

Instead of a *direction* pursuant to subclause 29.3, the *Superintendent* may direct the *Contractor* that the *Principal* elects to accept the subject *work*, whereupon there shall be a deemed *variation*.

## 29.5 Timing

The *Superintendent* may give a *direction* pursuant to this clause at any time before the expiry of the last *defects liability period*.

## 30 Examination and testing

### 30.1 Tests

At any time before the expiry of the last *defects liability period*, the *Superintendent* may direct that any *WUC* be tested. The *Contractor* shall give such assistance and samples and make accessible such parts of *WUC* as may be directed by the *Superintendent*.

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\* See Preface

### 30.2 Covering up

The *Superintendent* may direct that any part of *WUC* shall not be covered up or made inaccessible without the *Superintendent's* prior written *direction*.

### 30.3 Who conducts

*Tests* shall be conducted as provided elsewhere in the *Contract* or by the *Superintendent* or a person (which may include the *Contractor*) nominated by the *Superintendent*.

### 30.4 Notice

The *Superintendent* or the *Contractor* (whichever is to conduct the *test*) shall give reasonable written notice to the other of the date, time and place of the *test*. If the other does not attend, the *test* may nevertheless proceed.

### 30.5 Delay

Without prejudice to any other right, if the *Contractor* or the *Superintendent* delays in conducting a *test*, the other, after giving reasonable written notice of intention to do so, may conduct the *test*.

### 30.6 Completion and results

On completion of the *tests*, the *Contractor* shall make good *WUC* so that it fully complies with the *Contract*.

Results of *tests* shall be promptly made available by each party to the other and to the *Superintendent*.

### 30.7 Costs

Costs in connection with testing pursuant to this clause shall be borne by the *Principal* except where the *Contract* otherwise provides or the *test* is consequent upon, or reveals a failure of the *Contractor* to comply with the *Contract* (including this clause).

### 31 Working hours

If the working hours and working days on the *site* are not stated elsewhere in the *Contract*, they shall be as notified by the *Contractor* to the *Superintendent* before commencement of work on *site*. They shall not be varied without the *Superintendent's* prior written approval, except when, in the interests of safety of persons or property, the *Contractor* finds it necessary to carry out *WUC* otherwise, whereupon the *Contractor* shall give the *Superintendent* written notice of those circumstances as early as possible.

### 32 Programming

The *Superintendent* shall give to the *Contractor* the information, materials, documents and instructions by the times or within the periods both stated in *Item 27*.

The *Contractor* shall give the *Superintendent* reasonable advance notice of when the *Contractor* needs other information, materials, documents or instructions from the *Superintendent* or the *Principal*.

The *Principal* and the *Superintendent* shall not be obliged to give any information, materials, documents or instructions earlier than the *Principal* or the *Superintendent*, as the case may be, should reasonably have anticipated at the *date of acceptance of tender*.

The *Superintendent* may direct in what order and at what time the various stages or portions of *WUC* shall be carried out. If the *Contractor* can reasonably comply with the *direction*,

the *Contractor* shall do so. If the *Contractor* cannot reasonably comply, the *Contractor* shall give the *Superintendent* written notice of the reasons.

A *program* is a written statement showing the dates by which, or the times within which, the various stages or portions of *WUC* are to be carried out or completed. It shall be deemed a *Contract* document.

The *Superintendent* may direct the *Contractor* to give the *Superintendent* a *program* within the time and in the form directed.

The *Contractor* shall not, without reasonable cause, depart from a *program*.

If compliance with any such *directions* under this clause, except those pursuant to the *Contractor's* default, causes the *Contractor* to incur more or less cost than otherwise would have been incurred had the *Contractor* not been given the *direction*, the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

### 33 Suspension

#### 33.1 Superintendent's suspension

The *Superintendent* may direct the *Contractor* to suspend the carrying out of the whole or part of *WUC* for such time as the *Superintendent* thinks fit, if the *Superintendent* is of the opinion that it is necessary:

- (a) because of an act, default or omission of:
  - (a) the *Superintendent*, the *Principal* or its employees, consultants, agents or other contractors (not being employed by the *Contractor*); or
  - (b) the *Contractor*, a *consultant*, a *subcontractor* or the employees or agents of any of them;
- (b) for the protection or safety of any person or property, or
- (c) to comply with a court order.

#### 33.2 Contractor's suspension

If the *Contractor* wishes to suspend the carrying out of the whole or part of *WUC*, otherwise than pursuant to subclause 39.9, the *Contractor* shall obtain the *Superintendent's* prior written approval. The *Superintendent* may approve the suspension and may impose conditions of approval.

#### 33.3 Re commencement

As soon as the *Superintendent* becomes aware that the reason for any suspension no longer exists, the *Superintendent* shall direct the *Contractor* to recommence suspended *WUC* as soon as reasonably practicable.

The *Contractor* may recommence *WUC* suspended pursuant to subclause 33.2 or 39.9 at any time after reasonable notice to the *Superintendent*.

#### 33.4 Cost

The *Contractor* shall bear the cost of suspension pursuant to paragraph (a)(ii) of subclause 33.1 and subclause 33.2. If the *Contractor* made the protection, safety, court order or suspension of work necessary, the *Contractor* shall bear the cost of suspension pursuant to paragraph (b) or (c) of subclause 33.1. If the *Contractor* otherwise incurs more or less cost than otherwise would have been incurred, the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

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## 34 Time and progress

### 34.1 Progress

The *Contractor* shall ensure that *WUC* reaches *practical completion* by the date for *practical completion*.

### 34.2 Notice of delay

A party becoming aware of anything which will probably cause delay to *WUC* shall promptly give the *Superintendent* and the other party written notice of that cause and the estimated delay.

### 34.3 Claim

The *Contractor* shall be entitled to such extension of time for carrying out *WUC* (including reaching *practical completion*) as the *Superintendent* assesses ('*EOT*'), if:

- (a) the *Contractor* is or will be delayed in reaching *practical completion* by a *qualifying cause of delay*; and
- (b) the *Contractor* gives the *Superintendent*, within 28 days of when the *Contractor* should reasonably have become aware of that causation occurring, a written claim for an *EOT* evidencing the facts of causation and of the delay to *WUC* (including extent).

If further delay results from a *qualifying cause of delay* evidenced in a claim under paragraph (b) of this subclause, the *Contractor* shall claim an *EOT* for such delay by promptly giving the *Superintendent* a written claim evidencing the facts of that delay.

### 34.4 Assessment

When both non-qualifying and *qualifying causes of delay* overlap, the *Superintendent* shall apportion the resulting delay to *WUC* according to the respective causes' contribution.

In assessing each *EOT*, the *Superintendent* shall disregard questions of whether:

- (a) *WUC* can nevertheless reach *practical completion* without an *EOT*; or
- (b) the *Contractor* can accelerate,

but shall have regard to what prevention and mitigation of the delay has not been effected by the *Contractor*.

### 34.5 Extension of time

Within 28 days after receiving the *Contractor's* claim for an *EOT*, the *Superintendent* shall give to the *Contractor* and the *Principal* a written *direction* evidencing the *EOT* so assessed. If the *Superintendent* does not do so, there shall be a deemed assessment and *direction* for an *EOT* as claimed.

Notwithstanding that the *Contractor* is not entitled to or has not claimed an *EOT*, the *Superintendent* may at any time and from time to time before issuing the *final certificate* direct an *EOT*.

### 34.6 Practical completion

The *Contractor* shall give the *Superintendent* at least 14 days written notice of the date upon which the *Contractor* anticipates that *practical completion* will be reached.

When the *Contractor* is of the opinion that *practical completion* has been reached, the *Contractor* shall in writing request the *Superintendent* to issue a *certificate of practical completion*. Within 14 days after receiving the request, the *Superintendent* shall give the

*Contractor* and the *Principal* either a *certificate of practical completion* evidencing the *date of practical completion* or written reasons for not doing so.

If the *Superintendent* is of the opinion that *practical completion* has been reached, the *Superintendent* may issue a *certificate of practical completion* even though no request has been made.

#### 34.7 Liquidated damages

If *WUC* does not reach *practical completion* by the *date for practical completion*, the *Superintendent* shall certify, as due and payable to the *Principal*, liquidated damages in *Item 29* for every day after the *date for practical completion* to and including the earliest of the *date of practical completion* or termination of the *Contract* or the *Principal* taking *WUC* out of the hands of the *Contractor*.

If an *EOT* is directed after the *Contractor* has paid or the *Principal* has set off liquidated damages, the *Principal* shall forthwith repay to the *Contractor* such of those liquidated damages as represent the days the subject of the *EOT*.

#### 34.8 Bonus for early practical completion

If the *date of practical completion* is earlier than the *date for practical completion* the *Superintendent* shall certify as due and payable to the *Contractor* the bonus in *Item 30(a)* for every day after the *date of practical completion* to and including the *date for practical completion*.

The *Contractor* hereby waives that part of a bonus exceeding the *Item 30(b)* amount.

#### 34.9 Delay damages

For every day the subject of an *EOT* for a *compensable cause* and for which the *Contractor* gives the *Superintendent* a claim for delay damages pursuant to subclause 41.1, damages certified by the *Superintendent* under subclause 41.3 shall be due and payable to the *Contractor*.

#### 35 Defects liability

The *defects liability period* stated in *Item 32* shall commence on the *date of practical completion* at 4:00 pm.

The *Contractor* shall carry out rectification at times and in a manner causing as little inconvenience to the occupants or users of the *Works* as is reasonably possible.

As soon as possible after the *date of practical completion*, the *Contractor* shall rectify all defects existing at the *date of practical completion*.

During the *defects liability period*, the *Superintendent* may give the *Contractor* a direction to rectify a defect which:

- (a) shall identify the *defect* and the date for completion of its rectification; and
- (b) may state a date for commencement of the rectification and whether there shall be a separate *defects liability period* therefor (not exceeding that in *Item 32*, commencing at 4:00 pm on the date the rectification is completed and governed by this clause).

If the rectification is not commenced or completed by the stated dates, the *Principal* may have the rectification carried out by others but without prejudice to any other rights and remedies the *Principal* may have. The cost thereby incurred shall be certified by the *Superintendent* as moneys due and payable to the *Principal*.

## 36 Variations

### 36.1 Directing variations

The *Contractor* shall not vary *WUC* except as directed in writing.

The *Superintendent*, before the *date of practical completion*, may direct the *Contractor* to vary *WUC* by any one or more of the following which is nevertheless of a character and extent contemplated by, and capable of being carried out under, the provisions of the *Contract* (including being within the warranties in subclause 2.2):

- (a) increase, decrease or omit any part;
- (b) change the character or quality;
- (c) change the levels, lines, positions or dimensions;
- (d) carry out additional *work*;
- (e) demolish or remove material or *work* no longer required by the *Principal*.

### 36.2 Proposed variations

The *Superintendent* may give the *Contractor* written notice of a proposed *variation*.

The *Contractor* shall as soon as practicable after receiving such notice, notify the *Superintendent* whether the proposed *variation* can be effected, together with, if it can be effected, the *Contractor's* estimate of the:

- (a) effect on the *program* (including the *date for practical completion*); and
- (b) cost (including all warranties and time-related costs, if any) of the proposed *variation*.

The *Superintendent* may direct the *Contractor* to give a detailed quotation for the proposed *variation* supported by measurements or other evidence of cost.

The *Contractor's* costs for each compliance with this subclause shall be certified by the *Superintendent* as moneys due to the *Contractor*.

### 36.3 Variations for convenience of Contractor

If the *Contractor* requests the *Superintendent* to direct a *variation* for the convenience of the *Contractor*, the *Superintendent* may do so. The *direction* shall be written and may be conditional. Unless the *direction* provides otherwise, the *Contractor* shall be entitled to neither extra time nor extra money.

### 36.4 Pricing

The *Superintendent* shall, as soon as possible, price each *variation* using the following order of precedence:

- (a) prior agreement;
- (b) applicable rates or prices in the *Contract*;
- (c) rates or prices in a *schedule of rates* or schedule of prices, even though not *Contract* documents, to the extent that it is reasonable to use them; and
- (d) reasonable rates or prices, which shall include a reasonable amount for profit and overheads,

and any deductions shall include a reasonable amount for profit but not overheads.

That price shall be added to or deducted from the *contract sum*.

## 37 Payment

### 37.1 Progress claims

The *Contractor* shall claim payment progressively in accordance with *Item 33*.

An early progress claim shall be deemed to have been made on the date for making that claim.

Each progress claim shall be given in writing to the *Superintendent* and shall include details of the value of *WUC* done and may include details of other moneys then due to the *Contractor* pursuant to provisions of the *Contract*.

### 37.2 Certificates

The *Superintendent* shall, within 14 days after receiving such a progress claim, issue to the *Principal* and the *Contractor*:

- (a) a *progress certificate* evidencing the *Superintendent's* opinion of the moneys due from the *Principal* to the *Contractor* pursuant to the progress claim and reasons for any difference ('*progress certificate*'); and
- (b) a certificate evidencing the *Superintendent's* assessment of retention moneys and moneys due from the *Contractor* to the *Principal* pursuant to the *Contract*.

If the *Contractor* does not make a progress claim in accordance with *Item 33*, the *Superintendent* may issue the *progress certificate* with details of the calculations and shall issue the certificate in paragraph (b).

If the *Superintendent* does not issue the *progress certificate* within 14 days of receiving a progress claim in accordance with subclause 37.1, that progress claim shall be deemed to be the relevant *progress certificate*.

The *Principal* shall within 7 days after receiving both such certificates, or within 21 days after the *Superintendent* receives the progress claim, pay to the *Contractor* the balance of the *progress certificate* after setting off such of the certificate in paragraph (b) as the *Principal* elects to set off. If that setting off produces a negative balance, the *Contractor* shall pay that balance to the *Principal* within 7 days of receiving written notice thereof.

Neither a *progress certificate* nor a payment of moneys shall be evidence that the subject *WUC* has been carried out satisfactorily. Payment other than *final payment* shall be payment on account only.

### 37.3 Unfixed plant and materials

The *Principal* shall not be liable to pay for unfixed plant and materials unless they are listed in *Item 34* and the *Contractor*:

- (a) provides the additional *security* in *Item 14(e)*; and
- (b) satisfies the *Superintendent* that the subject plant and materials have been paid for, properly stored and protected, and labelled the property of the *Principal*.

Upon payment to the *Contractor* and the release of any additional *security* in paragraph (a), the subject plant and materials shall be the unencumbered property of the *Principal*.

### 37.4 Final payment claim and certificate

Within 28 days after the expiry of the last *defects liability period*, the *Contractor* shall give the *Superintendent* a written *final payment claim* endorsed 'Final Payment Claim' being a progress claim together with all other claims whatsoever in connection with the subject matter of the *Contract*.

Within 42 days after the expiry of the last *defects liability period*, the *Superintendent* shall issue to both the *Contractor* and the *Principal* a *final certificate* evidencing the moneys finally due and payable between the *Contractor* and the *Principal* on any account whatsoever in connection with the subject matter of the *Contract*.

Those moneys certified as due and payable shall be paid by the *Principal* or the *Contractor*, as the case may be, within 7 days after the debtor receives the *final certificate*.

The *final certificate* shall be conclusive evidence of accord and satisfaction, and in discharge of each party's obligations in connection with the subject matter of the *Contract* except for:

- (a) fraud or dishonesty relating to *WUC* or any part thereof or to any matter dealt with in the *final certificate*;
- (b) any *defect* or omission in the *Works* or any part thereof which was not apparent at the end of the last *defects liability period*, or which would not have been disclosed upon reasonable inspection at the time of the issue of the *final certificate*;
- (c) any accidental or erroneous inclusion or exclusion of any *work* or figures in any computation or an arithmetical error in any computation; and
- (d) unresolved issues the subject of any notice of *dispute* pursuant to clause 42, served before the 7th day after the issue of the *final certificate*.

### 37.5 Interest

Interest in *Item 35* shall be due and payable after the date of default in payment.

### 37.6 Other moneys due

The *Principal* may elect that moneys due and owing otherwise than in connection with the subject matter of the *Contract* also be due to the *Principal* pursuant to the *Contract*.

## 38 Payment of workers, consultants and subcontractors

### 38.1 Workers, consultants and subcontractors

The *Contractor* shall give in respect of a progress claim, documentary evidence of the payment of moneys due and payable to:

- (a) workers of the *Contractor* and of the *subcontractors*;
- (b) *consultants*; and
- (c) *subcontractors*,

in respect of *WUC* the subject of that claim.

If the *Contractor* is unable to give such documentary evidence, the *Contractor* shall give other documentary evidence of the moneys so due and payable to workers, *consultants* and *subcontractors*.

Documentary evidence, except where the *Contract* otherwise provides, shall be to the *Superintendent's* satisfaction.

### 38.2 Withholding payment

Subject to the next paragraph, the *Principal* may withhold moneys certified due and payable in respect of the progress claim until the *Contractor* complies with subclause 38.1.



The *Principal* shall not withhold payment of such moneys in excess of the moneys evidenced pursuant to subclause 38.1 as due and payable to workers, *consultants* and *subcontractors*.

### 38.3 Direct payment

Before *final payment*, the *Principal*, if not aware of a relevant relation-back day (as defined in the Corporations Law) may pay unpaid moneys the subject of subclause 38.1 directly to a worker, *consultant* or *subcontractor* where:

- (a) permitted by law;
- (b) given a court order in favour of the worker, *consultant* or *subcontractor*; or
- (c) requested in writing by the *Contractor*.

Such payment and a payment made to a worker, *consultant* or *subcontractor* in compliance with a *legislative requirement* shall be deemed to be part satisfaction of the *Principal's* obligation to pay pursuant to subclause 37.2 or 37.4, as the case may be.

## 39 Default or insolvency

### 39.1 Preservation of other rights

If a party breaches (including repudiates) the *Contract*, nothing in this clause shall prejudice the right of the other party to recover damages or exercise any other right or remedy.

### 39.2 Contractor's default

If the *Contractor* commits a substantial breach of the *Contract*, the *Principal* may, by hand or by registered post, give the *Contractor* a written notice to show cause.

Substantial breaches include, but are not limited to:

- (a) failing to:
  - (a) perform properly the *Contractor's design obligations*;
  - (b) provide *security*;
  - (c) provide evidence of insurance;
  - (d) comply with a *direction* of the *Superintendent* pursuant to subclause 29.3; or
  - (e) use the materials or standards of *work* required by the *Contract*;
- (b) wrongful suspension of *work*;
- (c) substantial departure from a *program* without reasonable cause or the *Superintendent's* approval;
- (d) where there is no *program*, failing to proceed with due expedition and without delay; and
- (e) in respect of clause 38, knowingly providing documentary evidence containing an untrue statement.

### 39.3 Principal's notice to show cause

A notice under subclause 39.2 shall state:

- (a) that it is a notice under clause 39 of these General Conditions;
- (b) the alleged substantial breach;

- (c) that the *Contractor* is required to show cause in writing why the *Principal* should not exercise a right referred to in subclause 39.4;
- (d) the date and time by which the *Contractor* must show cause (which shall not be less than 7 clear days after the notice is received by the *Contractor*); and
- (e) the place at which cause must be shown.

#### 39.4 Principal's rights

If the *Contractor* fails to show reasonable cause by the stated date and time, the *Principal* may by written notice to the *Contractor*:

- (a) take out of the *Contractor's* hands the whole or part of the *work* remaining to be completed and suspend payment until it becomes due and payable pursuant to subclause 39.6; or
- (b) terminate the *Contract*.

#### 39.5 Take out

The *Principal* shall complete *work* taken out of the *Contractor's* hands and may:

- (a) use materials, equipment and other things intended for *WUC*; and
- (b) without payment of compensation to the *Contractor*:
  - (a) take possession of, and use, such of the *construction plant* and other things on or in the vicinity of the *site* as were used by the *Contractor*;
  - (b) contract with such of the *consultants* and *subcontractors*; and
  - (c) take possession of, and use, such of the *design documents*,

as are reasonably required by the *Principal* to facilitate completion of *WUC* taken out.

If the *Principal* takes possession of *construction plant*, *design documents* or other things, the *Principal* shall maintain them and, subject to subclause 39.6, on completion of the *work* taken out, shall return such of them as are surplus.

The *Superintendent* shall keep records of the cost of completing the *work* taken out.

#### 39.6 Adjustment on completion of work taken out

When *work* taken out of the *Contractor's* hands has been completed, the *Superintendent* shall assess the cost thereby incurred and shall certify as moneys due and payable accordingly the difference between that cost (showing the calculations therefor) and the amount which would otherwise have been paid to the *Contractor* if the *work* had been completed by the *Contractor*.

If the *Contractor* is indebted to the *Principal*, the *Principal* may retain *construction plant* or other things taken under subclause 39.5 until the debt is satisfied. If after reasonable notice, the *Contractor* fails to pay the debt, the *Principal* may sell the *construction plant* or other things and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess shall be paid to the *Contractor*.

#### 39.7 Principal's default

If the *Principal* commits a substantial breach of the *Contract*, the *Contractor* may, by hand or by registered post, give the *Principal* a written notice to show cause.

Substantial breaches include, but are not limited to:

- (a) failing to:

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- (a) provide *security*;
  - (b) produce evidence of insurance;
  - (c) rectify inadequate *Contractor's* access to the *site* if that failure continues for longer than the time stated in *Item 36(a)*;
  - (d) rectify inadequate *Contractor's* possession of the *site* if that failure continues for longer than the time stated in *Item 36(b)*; or
  - (e) make a payment due and payable pursuant to the *Contract*; and
- (b) the *Superintendent* not giving a *certificate of practical completion* or reasons as referred to in subclause 34.6.

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### 39.8 Contractor's notice to show cause

A notice given under subclause 39.7 shall state:

- (a) that it is a notice under clause 39 of these General Conditions;
- (b) the alleged substantial breach;
- (c) that the *Principal* is required to show cause in writing why the *Contractor* should not exercise a right referred to in subclause 39.9;
- (d) the date and time by which the *Principal* must show cause (which shall not be less than 7 clear days after the notice is received by the *Principal*); and
- (e) the place at which cause must be shown.

### 39.9 Contractor's rights

If the *Principal* fails to show reasonable cause by the stated date and time, the *Contractor* may, by written notice to the *Principal*, suspend the whole or any part of *WUC*.

The *Contractor* shall remove the suspension if the *Principal* remedies the breach.

The *Contractor* may, by written notice to the *Principal*, terminate the *Contract*, if within 28 days of the date of suspension under this subclause the *Principal* fails:

- (a) to remedy the breach; or
- (b) if the breach is not capable of remedy, to make other arrangements to the reasonable satisfaction of the *Contractor*.

Damages suffered by the *Contractor* by reason of the suspension shall be assessed by the *Superintendent*, who shall certify them as moneys due and payable to the *Contractor*.

### 39.10 Termination

If the *Contract* is terminated pursuant to subclause 39.4(b) or 39.9, the parties' remedies, rights and liabilities shall be the same as they would have been under the law governing the *Contract* had the defaulting party repudiated the *Contract* and the other party elected to treat the *Contract* as at an end and recover damages.

If Alternative 2 of subclause 10.2 applies and the *Principal* has terminated the *Contract*, the *Principal* may also, without payment of compensation, take possession of the *design documents*.

### 39.11 Insolvency

If:

- (a) a party informs the other in writing, or creditors generally, that the party is insolvent or is financially unable to proceed with the *Contract*;
- (b) execution is levied against a party by a creditor;
- (c) a party is an individual person or a partnership including an individual person, and if that person:
  - (a) commits an act of bankruptcy;
  - (b) has a bankruptcy petition presented against him or her or presents his or her own petition;
  - (c) is made bankrupt;
  - (d) makes a proposal for a scheme of arrangement or a composition; or
  - (e) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the Bankruptcy Act 1966 (Cwth) or like provision under the law governing the *Contract*; or
- (d) in relation to a party being a corporation:
  - (a) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
  - (b) it enters a deed of company arrangement with creditors;
  - (c) a controller or administrator is appointed;
  - (d) an application is made to a court for its winding up, and not stayed within 14 days;
  - (e) a winding up order is made in respect of it;
  - (f) it resolves by special resolution that it be wound up voluntarily (other than for a member's voluntary winding up); or
  - (g) a mortgagee of any of its property takes possession of that property,
 then where the other party is:
  - (A) the *Principal*, the *Principal* may, without giving a notice to show cause, exercise the right under subclause 39.4(a); or
  - (B) the *Contractor*, the *Contractor* may, without giving a notice to show cause, exercise the right under subclause 39.9.

The rights and remedies given by this subclause are additional to any other rights and remedies. They may be exercised notwithstanding that there has been no breach of contract.

#### 40 Termination by frustration

If the *Contract* is frustrated:

- (a) the *Superintendent* shall issue a *progress certificate* for *WUC* carried out to the date of frustration, evidencing the amount which would have been payable had the *Contract* not been frustrated and had the *Contractor* been entitled to and made a progress claim on the date of frustration;
- (b) the *Principal* shall pay the *Contractor*:
  - (a) the amount due to the *Contractor* evidenced by all unpaid certificates;

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- (b) the cost of materials and equipment reasonably ordered by the *Contractor* for *WUC* and which the *Contractor* is liable to accept, but only if they will become the *Principal's* property upon payment; and
- (c) the costs reasonably incurred:
  - (A) removing *temporary works* and *construction plant*;
  - (B) returning to their place of engagement the *Contractor*, *consultants*, *subcontractors* and their respective employees engaged in *WUC* at the date of frustration; and
  - (C) by the *Contractor* in expectation of completing *WUC* and not included in any other payment; and
- (c) each party shall promptly release and return all *security* provided by the other.

## 41 Notification of claims

### 41.1 Communication of claims

The *prescribed notice* is a written notice of the general basis and quantum of the claim.

As soon as practicable after a party becomes aware of any claim in connection with the subject matter of the *Contract*, that party shall give to the other party and to the *Superintendent* the *prescribed notice* or a notice of *dispute* under subclause 42.1.

This subclause and subclause 41.3 shall not apply to any claim, including a claim for payment (except for claims which would, other than for this subclause, have been included in the *final payment claim*), the communication of which is required by another provision of the *Contract*.

### 41.2 Liability for failure to communicate

The failure of a party to comply with the provisions of subclause 41.1 or to communicate a claim in accordance with the relevant provision of the *Contract* shall, inter alia, entitle the other party to damages for breach of the *Contract* but shall neither bar nor invalidate the claim.

### 41.3 Superintendent's decision

If within 28 days of giving the *prescribed notice* the party giving it does not notify the other party and the *Superintendent* of particulars of the claim, the *prescribed notice* shall be deemed to be the claim.

Within 56 days of receipt of the *prescribed notice* the *Superintendent* shall assess the claim and notify the parties in writing of the decision. Unless a party within a further 28 days of such notification gives a notice of *dispute* under subclause 42.1 which includes such decision, the *Superintendent* shall certify the amount of that assessment to be moneys then due and payable.

## 42 Dispute resolution

### 42.1 Notice of dispute

If a difference or dispute (together called a '*dispute*') between the parties arises in connection with the subject matter of the *Contract*, including a *dispute* concerning:

- (a) a *Superintendent's direction*; or
- (b) a claim:

- (a) in tort;
- (b) under statute;
- (c) for restitution based on unjust enrichment or other quantum meruit; or
- (d) for rectification or frustration,

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or like claim available under the law governing the *Contract*,

then either party shall, by hand or by registered post, give the other and the *Superintendent* a written notice of *dispute* adequately identifying and providing details of the *dispute*.

Notwithstanding the existence of a *dispute*, the parties shall, subject to clauses 39 and 40 and subclause 42.4, continue to perform the *Contract*.

#### 42.2 Conference

Within 14 days after receiving a notice of *dispute*, the parties shall confer at least once to resolve the *dispute* or to agree on methods of doing so. At every such conference each party shall be represented by a person having authority to agree to such resolution or methods. All aspects of every such conference except the fact of occurrence shall be privileged.

If the *dispute* has not been resolved within 28 days of service of the notice of *dispute*, that *dispute* shall be and is hereby referred to arbitration.

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#### 42.3 Expert Determination

If within a further 14 days the parties have not agreed upon an expert, the expert shall be nominated by the person in *Item 37(a)*. The expert determination shall be conducted in accordance with the rules in *Item 37(b)*.

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#### 42.4 Summary relief

Nothing herein shall prejudice the right of a party to institute proceedings to enforce payment due under the *Contract* or to seek injunctive or urgent declaratory relief.

#### 43 Waiver of conditions

Except as provided at law or in equity or elsewhere in the *Contract*, none of the terms of the *Contract* shall be varied, waived, discharged or released, except with the prior written consent of the parties.

#### 44 Shared cost savings

The *Contract* includes a preliminary document entitled '*Cost Plan for the design and construction of the Tennyson Reach Parkland*' (*Cost Plan*) dated 30 June 2011.

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During the course of the design, the Contractor shall produce 3 cost estimates that are based on the *Cost Plan* but amended to reflect the latest design.

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Upon completion of the design, the parties shall agree or the Superintendent shall determine cost estimate (**Budgeted Amount**) pursuant to clause 9.7 that sets out the contract sum comprising all costs to carry out the Works, on a subcontractor and supplier basis, and shall include all of the Contractor's costs but shall not include profit.

Within 30 days of the date of practical completion for each separable portion, the Contractor must provide to the *Principal* the following Documents:

- (a) A copy of each subcontract and supply agreement;

- (b) A spreadsheet that sets out the amount shown in the Budgeted Amount and the actual subcontract or supply agreement amount (Actual Amount) for each subcontractor and supplier.
- (c) A calculation of the cost saving being the sum of the difference of the Budgeted Amount and the Actual Amount for each supplier and subcontractor that carried out any part of the Works.

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The Principal must notify the Contractor within 28 days of receipt the Documents referred to above if it disagrees with the Contractor's calculation of the cost saving and provide its reasons, provided however that such time frame may be extended by the Principal by a further 28 business days to allow for requests for information (RFI's") and time to consider clarifications of responses to RFI's, such further 28 business days to commence from the date of receipt by the Principal of a full and detailed response by the Contractor to the RFI's.

If either party disagrees with the calculation of the cost savings, either party may serve on the other party a notice of dispute pursuant to clause 42.1.

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The Contractor must pay the Principal 50% of the cost saving within 15 Business Days of receipt of the Principal's agreement of the cost savings or within 15 Business Days of a decision made by Expert Determination under clause 42.3.

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45 GST

Words or expressions used in this clause which are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cwth) (GST Act), have the same meaning in this clause.

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Any consideration to be paid or provided for a supply made under or in connection with this Contract, does not include an amount on account of GST.

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Despite any other provision in this Contract, if a party (Supplier) makes a supply under or in connection with this Contract on which GST is imposed:

- (a) the consideration payable or to be provided for that supply under this Contract but for the application of this clause (GST exclusive consideration) is increased by, and the recipient of the supply (Recipient) must also pay to the Supplier, an amount equal to the GST payable by the Supplier on that supply in accordance with the GST Act; and
- (b) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.
- (c) If a payment to a party under this Contract is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.
- (d) The Supplier will provide a tax invoice to the Recipient which complies with the GST Act.
- (e) The clause will not apply where any amount payable or other consideration to be provided under this Contract is expressly stated to be inclusive of GST.

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46 Entire Agreement

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This Contract contains everything that the parties have agreed on in relation to the Works. No party can rely on an earlier document, or on anything said or done by another party (or by a director, officer, agent or employee of that party) before this Contract was executed.

**47 Maintenance**

The Contractor shall fully maintain the Works at its sole cost and expense for a period of twelve (12) months for each stage of the Works commencing from the date of practical completion of each of the stages. The standard of care shall be minimum wear and tear.

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**48 Access to Records**

The Contractor must to permit and allow full access to its financial and project accounts relating to the Works for the purposes of audit and verification of payment claims. This access includes but is not limited to the taking of financial records, access to electronic records, and full disclosure.

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**ANNEXURE to the Australian Standard  
General Conditions of Contract for  
Design and Construct**

# Part A

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This Annexure shall be completed and issued as part of the tender documents and, subject to any amendments to be incorporated into the *Contract*, is to be attached to the General Conditions of Contract and shall be read as part of the *Contract*.

*Item*

- 1 *Principal* (clause 1) Brisbane City Council  
ABN 72 002 765 795
- 2 *Principal's address* [TBA]  
Phone ..... Fax .....
- 3 *Contractor* (clause 1) Mirvac Constructions (Qld) Pty Limited  
ABN 88 088 536 476
- 4 *Contractor's address* Level 2, 164 Grey Street South Bank QLD 4101  
Phone [TBA] Fax [TBA]
- 5 *Superintendent* (clause 1) Ray Dwyer  
.....  
ACN (N/A) ..... ABN (N/A).....
- 6 *Superintendent's address* [Brisbane City Council, Level 3, 171 George St, Brisbane  
Phone 0410 290 746 Fax (333) 40053  
Email: [Ray.Dwyer@brisbane.qld.gov.au](mailto:Ray.Dwyer@brisbane.qld.gov.au)
- † 7 (a) *Date for practical completion* (clause 1) (Refer to details in separable Part A)  
OR  
(b) *Period of time for practical completion* (clause 1) (Refer to details in separable Part A)

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† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A  
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- 8 Governing law (clause 1(h)) .....  
If nothing stated, that of the jurisdiction where the *site* is located
- 9 (a) Currency (clause 1(g)) .....  
If nothing stated, that of the jurisdiction where the *site* is located
- (b) Place for payments (clause 1(g)) .....  
If nothing stated, the *Principal's* address
- (c) Place of business of bank (clause 1(d)) .....  
If nothing stated, the place nearest to where the *site* is located

- 10 The *Principal's* project requirements are described in the following documents (clause 1)
  - 1 Preliminary design (if included in Item 11)
  - 2 Schedule of rates
  - 3 ~~Cost Plan for the design and construction of the Tennyson Reach Parkland (Cost Plan) dated 30 June 2011~~
  - 4
  - 5

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- 11 Preliminary design (clause 1)
  - (a) A preliminary design
    - ~~is included~~
    - ~~is not included~~
    - in the *Principal's* project requirements.
    - If neither deleted, a preliminary design is not included
  - (b) The preliminary design documents are:
    - 1 Drawing entitled 'Masterplan', referenced 110406 and dated 17/05/11
    - 2 Specification entitled 'Schematic Design Package', referenced 110406, dated 5/12/11
    - 3 Scope of works
    - 4 ~~Terms of Reference~~
    - 5

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- 12 Quantities in schedule of rates, limits of accuracy (subclause 2.5)
  - Upper Limit
  - Lower Limit

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13 *Provisional sum, percentage for overheads, preliminaries and attendance (clause 3)* 10%

† 14 *Contractor's security*

- (a) Form (clause 5) No security or retention is required under this contract
- (b) Amount or maximum percentage of *contract sum* (clause 5) NIL  
If nothing stated, 5% of the *contract sum*
- (c) If retention moneys, percentage of each *progress certificate* (clause 5 and subclause 37.2) NIL %, until the limit in *Item 14(b)*  
If nothing stated, 10%, until the limit in *Item 14(b)*
- (d) Time for provision (except for retention moneys) (clause 5) within ..... days after *date of acceptance of tender*  
If nothing stated, 28 days
- (e) Additional *security* for unfixed plant and materials (subclauses 5.4 and 37.3) ..... \$ .....
- (f) *Contractor's security* upon *certificate of practical completion* is reduced by (subclause 5.4) ..... % of amount held  
If nothing stated, 50% of amount held

† 15 *Principal's security*

- (a) Form (clause 5) No security or retention is required under this Contract
- (b) Amount or maximum percentage of *contract sum* (clause 5) .....  
If nothing stated, nil
- (c) Time for provision (clause 5) within ..... days after *date of acceptance of tender*  
If nothing stated, 28 days
- (d) *Principal's security* upon *certificate of practical completion* is reduced by (subclause 5.4) ..... % of amount held  
If nothing stated, 50% of amount held

† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A

16 *Principal-supplied documents*  
(subclause 8.2)

Document	No. of copies
1 <i>Principal's project requirements</i>	.....
2	.....
3	.....
4	.....
5	.....
	If nothing stated, 5 copies

17 Documents, numbers of copies, and  
the times or stages at which they  
are to be supplied by the *Contractor*  
(subclause 8.3)

Document	No. of copies	Time/stage
1	.....	.....
2	.....	.....
3	.....	.....
4	.....	.....
5	.....	.....

18 Time for *Superintendent's direction*  
about documents  
(subclause 8.3)

If nothing stated, 14 days

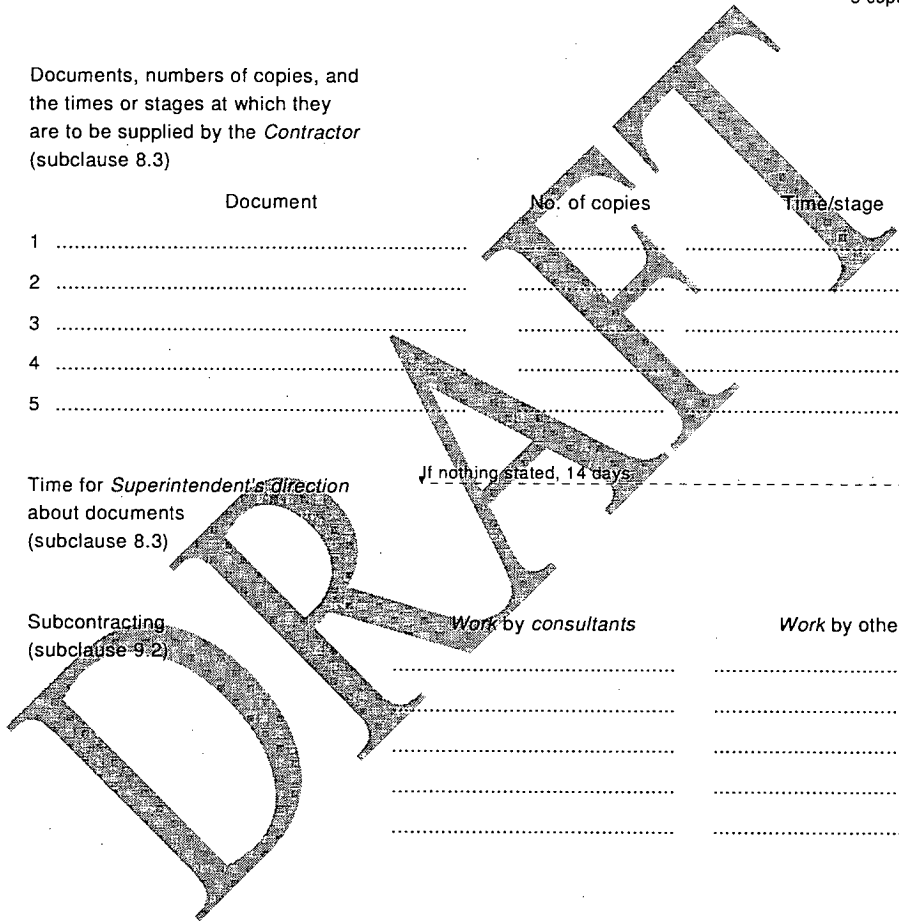
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19 Subcontracting  
(subclause 9.2)

*Work by consultants*

*Work by others*

.....	.....
.....	.....
.....	.....
.....	.....



20	Novation (subclause 9.4)	<i>Subcontractor or selected subcontractor, as the case may be</i>	<i>Particular part of the preliminary design or selected subcontract work, as the case may be</i>
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.....

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21	<i>Intellectual property rights</i> granted to the <i>Principal</i> , the Alternative applying (subclause 10.2)	If nothing stated, Alternative 1 applies	
----	---	--	--

22	<i>Legislative requirements</i>		
	(a) Those excepted (subclause 11.1)		.....

	(b) Identified <i>WUC</i> (subclause 11.2(a)(iii))		.....
--	--	--	-------

23	<i>Insurance of the Works</i> (clause 16A)		
	(a) Alternative applying		.....

	If Alternative 1 applies		.....
	(b) Provision for demolition and removal of debris		..... \$.....

OR

.....% of the *contract sum*

	(c) Provision for <i>consultants' fees</i> and <i>Principal's consultants' fees</i>		.....
			..... \$.....

OR

.....% of the *contract sum*

(d) Value of materials or things to be supplied by the *Principal* ..... \$ .....

(e) Additional amount or percentage ..... \$ .....

OR

.....% of the total of (a) to (d) in clause 16A

24 Professional indemnity insurance (clause 16B and subclause 9.2(d))

(a) Levels of cover of Contractor's professional indemnity insurance shall be not less than ..... \$ .....  
If nothing stated, \$5 000 000

(b) Period for which Contractor's professional indemnity insurance shall be maintained after issue of the *final certificate* .....  
If nothing stated, 6 years

Category	Levels of cover
.....	\$ .....
.....	\$ .....
.....	\$ .....
.....	\$ .....
	If nothing stated, \$1 000 000

(d) Period for which each *consultant's* professional indemnity insurance shall be maintained after issue of the *final certificate* .....  
If nothing stated, 6 years

25 Public liability insurance (clause 17)

(a) Alternative applying .....  
If nothing stated, Alternative 1 applies

If Alternative 1 applies

(b) Amount per occurrence shall be not less than ..... \$ .....  
If nothing stated, \$10 000 000

- 26 (a) Time for giving access (subclause 24.1) within ..... days of *date of acceptance of tender*  
If nothing stated, 14 days
- (b) Time for giving possession (subclause 24.1) within ..... days of *date of acceptance of tender*  
If nothing stated, 14 days

27	The information, materials, documents or instructions and the times by, or periods within which they are to be given to the <i>Contractor</i> (clause 32)	Documents or instructions	Times/Periods
		1	.....
		2	.....
		3	.....
		4	.....
		5	.....

28 *Qualifying causes of delay, being causes of delay for which EOTs will be granted (paragraph (b)(iii) of clause 1 and subclause 34.3)*

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† 29 Liquidated damages, rate (subclause 34.7)

Nil per day

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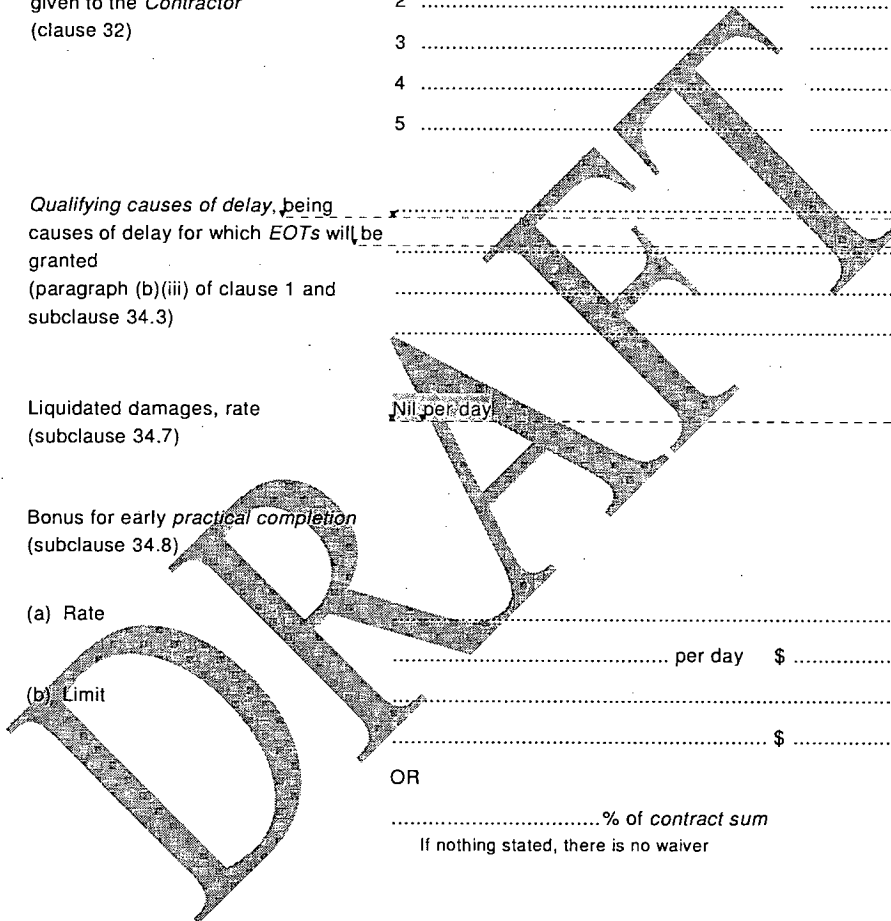
† 30 Bonus for early *practical completion* (subclause 34.8)

(a) Rate ..... per day \$ ..... per day

(b) Limit ..... \$ .....

OR

.....% of *contract sum*  
 If nothing stated, there is no waiver



† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A

† 31 Other compensable causes  
 (paragraph (b) of clause 1 and  
 subclause 34.9)

~~Acts or omissions of the Principal that cause a delay to the Works~~  
 This compensable cause only relates to the Brisbane City Council  
 (BCC) acting as the Principal under this contract and not as a  
 statutory authority.

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In other words if BCC caused any delay (excluding a delay arising  
 out of carrying out BCC carrying out its statutory duty) it will be  
 liable to pay delay damages pursuant to clause 34.9.  
 Alternatively, if BCC caused a delay because of its failure to  
 provide a response to a development application pursuant to the  
 Sustainable Planning Act 2009, BCC will not be liable for delay  
 damages suffered by the Contractor.

32 Defects Liability period  
 (clause 35)

If nothing stated: 12 months

**Deleted:** The delivery of  
 statutory approvals later than  
 that which is prescribed by  
 statute that cause delays to the  
 Works  
 All time that is spent liaising  
 with statutory authorities  
 required to procure all statutory  
 approvals for the design and  
 construction of the Stage III  
 Works that is in excess of 20  
 Business Days.

33 Progress Claims  
 (subclause 37.1)

~~The contract sum is that amount that is set out as the contract  
 sum in the Cost Plan including as amended pursuant to clause  
 9.8, 37 and 44.~~

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(a) Times for progress claims

On the ..... day each month for WUC

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For work up to ..... day of that month

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 absolute maximum of

OR

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(b) Stages of WUC for progress claims

The Contractor may make a progress claim in accordance with clause 37 upon achieving the following milestone events:

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The amounts set out alongside each of the milestones are estimates of the progress claims that will be made. Those amounts are subject to variation in accordance with clause 39.50.1.2.1.4.4.

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Stage I

Completion of the bulk earthworks	\$3,054,000.00
At practical completion	\$1,500,000.00
At expiry of defects liability period of Stage I	\$ 500,000.00

Stage II

Completion of the bulk earthworks	\$ 750,000.00
At practical completion	\$ 100,000.00
At expiry of defects liability period of Stage II	\$ 90,000.00

Stage III

At practical completion	\$ 5,000.00
At expiry of defects liability period of Stage III	\$ 1,000.00

All of the above amounts are stated exclusive of GST.

- 34 Unfixed plant and materials for which payment claims may be made (subclause 37.3) .....
- 35 Interest rate on overdue payments (subclause 37.5) .....% per annum  
If nothing stated, 18% per annum
- 36 (a) Time for *Principal* to rectify inadequate access (subclause 39.7(a)(iii)) ..... days  
If nothing stated, 14 days
- (b) Time for *Principal* to rectify inadequate possession (subclause 39.7(a)(iv)) ..... days  
If nothing stated, 14 days

37 Expert Determination (subclause 42.3)

Deleted: Arbitration

(a) Person to nominate an expert

Deleted: arbitrator

A1

If no-one stated, the President of the Institute of Arbitrators & Mediators Australia

(b) Rules for expert determination

Deleted: arbitration

If nothing stated:

(a) rules 5–18 of the Rules of The Institute of Arbitrators & Mediators Australia for the Conduct of Commercial Arbitrations;

OR

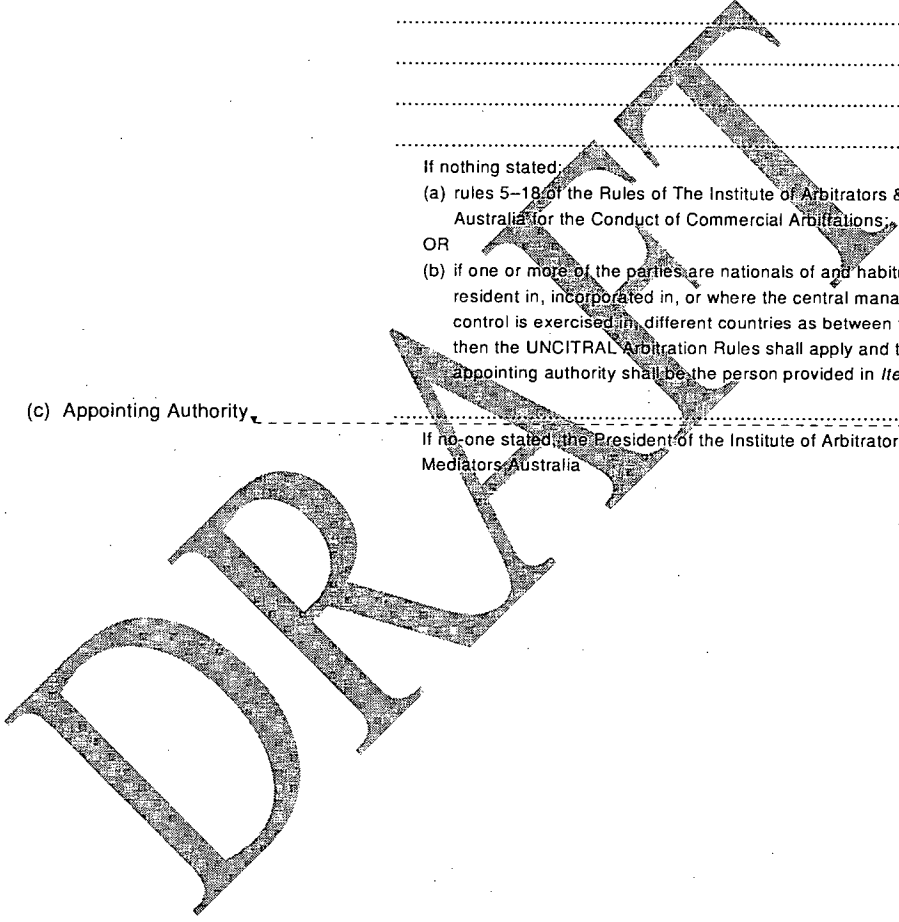
(b) if one or more of the parties are nationals of and habitually resident in, incorporated in, or where the central management and control is exercised in, different countries as between the parties, then the UNCITRAL Arbitration Rules shall apply and the appointing authority shall be the person provided in Item 37(c)

(c) Appointing Authority

Deleted: under UNCITRAL Arbitration Rules

A1

If no-one stated, the President of the Institute of Arbitrators & Mediators Australia



**Part A**

**Separable Portions**

- This section should be completed only if the *Contract* provides for *separable portions*.
- Complete separate pages for each *separable portion*, which should be numbered appropriately. Any balance of the *Works* should also be a *separable portion*.

*Separable portion*  
(clause 1)

Stage I

Description of *separable portion*  
(clause 1)

the area shown as Stage I on drawing entitled 'Masterplan', referenced 110406 and dated 17/05/11

Item

7 (a) *Date for practical completion*  
(clause 1)

OR

(b) *Period of time for practical completion*  
(clause 1)

57 weeks from the date that this contract is executed by both parties

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14 *Contractor's security*

(a) *Form*  
(clause 5)

The Contractor is not required to provide any security under this Contract

(b) *Amount or maximum percentage value of this separable portion*  
(clause 5)

Nil %  
If nothing stated, 5% of value of this separable portion

(c) *If retention moneys, percentage of each progress certificate applicable to this separable portion*  
(clause 5 and subclause 37.2)

.....%, until the limit in *Item 14(b)*  
If nothing stated, 10%, until the limit in *Item 14(b)*

(d) *Time for provision (except for retention moneys)*  
(clause 5)

within ..... days after *date of acceptance of tender*  
If nothing stated, 28 days

(e) *Additional security for unfixed plant and materials*  
(subclauses 5.4 and 37.3)

..... \$ .....

(f) *Contractor's security upon certificate of practical completion is reduced by*  
(subclause 5.4)

.....% of amount held  
If nothing stated, 50% of amount held

15 *Principal's security*

- (a) Form (clause 5) The Principal is not required to provide any security under this Contract
- (b) Amount or maximum percentage of value of this *separable portion* (clause 5) .....  
If nothing stated, nil
- (c) Time for provision (clause 5) within ..... days after *date of acceptance of tender*  
If nothing stated, 28 days
- (d) *Principal's security upon certificate of practical completion* is reduced by (subclause 5.4) .....% of amount held  
If nothing stated, 50% of amount held

29 Liquidated damages, rate (subclause 34.7)

\$ Nil per day

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30 Bonus for early *practical completion* (subclause 34.8)

\$ Nil

- (a) Rate .....  
..... per day \$..... per day
- (b) Limit .....  
..... \$.....

OR

.....% of value of this *separable portion*  
If nothing stated, there is no waiver

31 *Other compensable causes* (paragraph (b) of clause 1 and subclause 34.9)

Acts or omissions of the Principal that cause a delay to the Works  
The Contractor may make a progress claim in accordance with clause 37 upon achieving the following milestone events:

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.....  
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.....

Deleted: The delivery of statutory approvals later than that which is prescribed by statute that cause delays to the Works

## Part A

### Separable Portions

- This section should be completed only if the *Contract* provides for *separable portions*.
- Complete separate pages for each *separable portion*, which should be numbered appropriately. Any balance of the *Works* should also be a *separable portion*.

<p><i>Separable portion</i> (clause 1)</p> <p>Description of <i>separable portion</i> (clause 1)</p>	<p>Stage II</p> <p>the area shown as Stage II on drawing entitled 'Masterplan', referenced 110406 and dated 17/05/11</p>
<p><i>Item</i></p>	
<p>7 (a) <i>Date for practical completion</i> (clause 1)</p> <p>OR</p> <p>(b) <i>Period of time for practical completion</i> (clause 1)</p>	<p>140 weeks from the date that this contract is executed by both parties</p>
<p>14 <i>Contractor's security</i></p> <p>(a) <i>Form</i> (clause 5)</p> <p>(b) <i>Amount or maximum percentage value of this separable portion</i> (clause 5)</p> <p>(c) <i>If retention moneys, percentage of each progress certificate applicable to this separable portion</i> (clause 5 and subclause 37.2)</p> <p>(d) <i>Time for provision (except for retention moneys)</i> (clause 5)</p> <p>(e) <i>Additional security for unfixed plant and materials</i> (subclauses 5.4 and 37.3)</p> <p>(f) <i>Contractor's security upon certificate of practical completion is reduced by</i> (subclause 5.4)</p>	<p>The Contractor is not required to provide any security under this Contract</p> <p>Nil % If nothing stated, 5% of value of this separable portion</p> <p>.....%, until the limit in <i>Item 14(b)</i> If nothing stated, 10%, until the limit in <i>Item 14(b)</i></p> <p>within ..... days after <i>date of acceptance of tender</i> If nothing stated, 28 days</p> <p>..... \$</p> <p>.....% of amount held If nothing stated, 50% of amount held</p>

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15 *Principal's security*

- (a) Form (clause 5) The Principal is not required to provide any security under this Contract
- (b) Amount or maximum percentage of value of this *separable portion* (clause 5) .....  
If nothing stated, nil
- (c) Time for provision (clause 5) within ..... days after *date of acceptance of tender*  
If nothing stated, 28 days
- (d) *Principal's security* upon certificate of practical completion is reduced by (subclause 5.4) ..... % of amount held  
If nothing stated, 50% of amount held

29 Liquidated damages, rate (subclause 34.7)

\$ Nil per day

30 Bonus for early *practical completion* (subclause 34.8)

\$ Nil

- (a) Rate .....  
..... per day \$ ..... per day
  - (b) Limit .....  
..... \$ .....
- OR
- ..... % of value of this *separable portion*  
If nothing stated, there is no waiver

31 *Other compensable causes* (paragraph (b) of clause 1 and subclause 34.9)

Acts or omissions of the Principal that cause a delay to the Works

The Contractor may make a progress claim in accordance with clause 37 upon achieving the following milestone events:

The amount set out alongside each of the milestones are estimates of the progress claims that will be made. Those amounts are subject to variation in accordance with clauses 3.5, 3.6, 3.7 and 4.4.

**Special Condition:**

If the Contractor fails to achieve *practical completion* within 60 days of the amended date for *practical completion* for a Stage of the Works, the Principal may:

- (a) novate the subcontractors to the Principal and take over this Stage of the Works and the total site to complete the Works;
- (b) deduct, as appropriate, the costs for completion of the relevant portion of the Contract pertaining to this Stage; and

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(c) provide accommodation for the Sales Office at commercial rates until the parkland is complete.

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# Part A

## Separable Portions

- This section should be completed only if the *Contract* provides for *separable portions*.
- Complete separate pages for each *separable portion*, which should be numbered appropriately. Any balance of the *Works* should also be a *separable portion*.

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Separable portion  
(clause 1)

Stage III

Description of *separable portion*  
(clause 1)

the area shown as Stage III of drawing entitled 'Masterplan', referenced 110406 and dated 17/05/11

Item

7 (a) *Date for practical completion*  
(clause 1)

OR

(b) *Period of time for practical completion*  
(clause 1)

57 weeks from the date that this contract is executed by both parties

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14 *Contractor's security*

(a) *Form*  
(clause 5)

The Contractor is not required to provide any security under this Contract

(b) *Amount or maximum percentage value of this separable portion*  
(clause 5)

Nil %  
If nothing stated, 5% of value of this separable portion

(c) *If retention moneys, percentage of each progress certificate applicable to this separable portion*  
(clause 5 and subclause 37.2)

.....%, until the limit in *Item 14(b)*  
If nothing stated, 10%, until the limit in *Item 14(b)*

(d) *Time for provision (except for retention moneys)*  
(clause 5)

within ..... days after *date of acceptance of tender*  
If nothing stated, 28 days

(e) *Additional security for unfixated plant and materials*  
(subclauses 5.4 and 37.3)

..... \$ .....

(f) *Contractor's security upon certificate of practical completion is reduced by*  
(subclause 5.4)

.....% of amount held  
If nothing stated, 50% of amount held



15 *Principal's security*

- (a) Form (clause 5) The Principal is not required to provide any security under this Contract
- (b) Amount or maximum percentage of value of this *separable portion* (clause 5) ..... If nothing stated, nil
- (c) Time for provision (clause 5) within ..... days after *date of acceptance of tender* If nothing stated, 28 days
- (d) *Principal's security upon certificate of practical completion* is reduced by (subclause 5.4) ..... % of amount held If nothing stated, 50% of amount held

29 Liquidated damages, rate (subclause 34.7)

\$ Nil per day

**Deleted:** Duration of Works/Contract sum for this stage -

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30 Bonus for early *practical completion* (subclause 34.8)

\$ Nil

- (a) Rate ..... per day \$ ..... per day
  - (b) Limit ..... \$ .....
- OR
- ..... % of value of this *separable portion*  
If nothing stated, there is no waiver

31 *Other compensable causes* (paragraph (b) of clause 1 and subclause 34.9)

~~Acts or omissions of the Principal that cause a delay to the Works~~

~~The Contractor may make a progress claim in accordance with clause 37 upon achieving the following milestone events:~~

~~The amount to set off against each of the milestones are estimates of the progress claims that will be made. These amounts are subject to variation in accordance with clauses 3.5, 3.6, 3.9, 3.11, 3.12, 3.13, 3.14, 3.15, 3.16, 3.17, 3.18, 3.19, 3.20, 3.21, 3.22, 3.23, 3.24, 3.25, 3.26, 3.27, 3.28, 3.29, 3.30, 3.31, 3.32, 3.33, 3.34, 3.35, 3.36, 3.37, 3.38, 3.39, 3.40, 3.41, 3.42, 3.43, 3.44, 3.45, 3.46, 3.47, 3.48, 3.49, 3.50, 3.51, 3.52, 3.53, 3.54, 3.55, 3.56, 3.57, 3.58, 3.59, 3.60, 3.61, 3.62, 3.63, 3.64, 3.65, 3.66, 3.67, 3.68, 3.69, 3.70, 3.71, 3.72, 3.73, 3.74, 3.75, 3.76, 3.77, 3.78, 3.79, 3.80, 3.81, 3.82, 3.83, 3.84, 3.85, 3.86, 3.87, 3.88, 3.89, 3.90, 3.91, 3.92, 3.93, 3.94, 3.95, 3.96, 3.97, 3.98, 3.99, 4.00.~~

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All time that is spent liaising with statutory authorities required to procure all statutory approvals for the design and construction of the Stage III Works that is in excess of 60 days.

Annexure to the Australian Standard  
General Conditions of Contract for  
Design and Construct

# Part B

- This form may also be used where the *Principal* is required to provide an unconditional undertaking, by substituting *Principal* for *Contractor* and vice versa, wherever occurring.

### Approved form of unconditional undertaking

(clause 1 – security)

At the request of .....

ACN..... ABN ..... (the *Contractor*) and in consideration of .....

ACN..... ABN ..... (the *Principal*) accepting this undertaking

in respect of the *Contract* for .....

..... (the *Project*) .....

ACN..... ABN ..... (the *Financial Institution*) unconditionally

undertakes to pay on demand any sum or sums which may from time to time be demanded by the *Principal* to a

maximum aggregate sum of .....

..... (\$ .....

The undertaking is to continue until notification has been received from the *Principal* that the sum is no longer required by the *Principal* or until this undertaking is returned to the *Financial Institution* or until payment to the *Principal* by the *Financial Institution* of the whole of the sum or such part as the *Principal* may require.

Should the *Financial Institution* be notified in writing, purporting to be signed by .....

..... for and on behalf of the *Principal* that the *Principal* desires

payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the *Financial*

*Institution* will make the payment or payments to the *Principal* forthwith without reference to the *Contractor* and

notwithstanding any notice given by the *Contractor* not to pay same.

Provided always that the *Financial Institution* may at any time without being required so to do pay to the

*Principal* the sum of .....

..... (\$ .....

less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be

required and specified by the *Principal* and thereupon the liability of the *Financial Institution* hereunder shall

immediately cease.

Dated at ..... this ..... day of ..... 20.....

Annexure to the Australian Standard  
General Conditions of Contract for  
Design and Construct

# Part C

## Deed of novation

(subclause 9.2(c))

This Deed made the ..... day of ..... 20 .....  
between ..... (the *Principal*)  
of ..... ACN ..... ABN .....  
and ..... (the *Contractor*)  
of ..... ACN ..... ABN .....  
and ..... (the *Subcontractor*)  
of ..... ACN ..... ABN .....  
and ..... (the *Incoming Contractor*)  
of ..... ACN ..... ABN .....  
witness that:

- 1 Upon receipt by the *Subcontractor* of the sum certified by the *Superintendent* as owing under the prior contract described in the Schedule hereto:
  - (a) the prior contract shall be discharged;
  - (b) the *Subcontractor* shall release the *Contractor* from the further performance of the prior contract and from all claims and demands in connection with the prior contract;
  - (c) the *Incoming Contractor* shall punctually perform the obligations of the *Contractor* under the prior contract as far as they are not performed. The *Incoming Contractor* acknowledges itself bound by the provisions of the prior contract as if the *Incoming Contractor* had been named in the prior contract; and
  - (d) the *Subcontractor* shall punctually perform like obligations and be bound to the *Incoming Contractor* as if the provisions of the prior contract were incorporated herein.
- 2 The *Principal* and *Subcontractor* each warrant to the *Incoming Contractor* that:
  - (a) subcontract work carried out to the date hereof is in accordance with the provisions of the prior contract; and
  - (b) all claims and demands in connection with the prior contract have been made to the *Contractor*.
- 3 The *Principal* and *Subcontractor* each indemnifies the *Incoming Contractor* from all claims and demands of the *Contractor*, *Principal* and *Subcontractor* in connection with the prior contract.
- 4 A dispute between:
  - (a) the *Principal* and the *Subcontractor* in connection with the *Superintendent's* certification of the sum owing under the prior contract; or
  - (b) the *Incoming Contractor* and the *Subcontractor* in connection with clause 1(c) or 1(d), shall be resolved pursuant to the provisions of AS 4903—2000 Subcontract Conditions for Design and Construct which for the purposes of this clause 4 are incorporated herein.
- 5 This Deed shall be governed by the laws of the jurisdiction stated in *Item 8* of the *Contract* between the *Principal* and *Contractor*.

**Schedule**

.....

.....

.....

.....

In witness whereof the parties have executed this DEED OF NOVATION by affixing their seals.

THE COMMON SEAL of the *Principal*  
was affixed to this document in the presence of:

.....  
Secretary/Director

.....  
Name (please print)

.....  
Director

.....  
Name (please print)

THE COMMON SEAL of the *Contractor*  
was affixed to this document in the presence of:

.....  
Secretary/Director

.....  
Name (please print)

.....  
Director

.....  
Name (please print)

THE COMMON SEAL of the *Subcontractor*  
was affixed to this document in the presence of:

.....  
Secretary/Director

.....  
Name (please print)

.....  
Director

.....  
Name (please print)

THE COMMON SEAL of the *Incoming Contractor*  
was affixed to this document in the presence of:

.....  
Secretary/Director

.....  
Name (please print)

.....  
Director

.....  
Name (please print)

**Annexure to the Australian Standard  
General Conditions of Contract for  
Design and Construct**

# Part D

**Note:** Usually the *continuing party* is the subcontractor, selected subcontractor or consultant, as the case may be.

## Deed of novation

(subclause 9.4)

This Deed made this ..... day of ..... 20 .....  
between ..... (the *outgoing party*)  
of ..... ACN ..... ABN .....  
and ..... (the *incoming party*)  
of ..... ACN ..... ABN .....  
and ..... (the *continuing party*)  
of ..... ACN ..... ABN .....

witness that:

- 1 Upon receipt by the *continuing party* of all moneys owing under the prior contract:
  - (a) the *incoming party* shall punctually perform the obligations of the *outgoing party* under the prior contract described in the Schedule hereto as far as they are not performed. The *incoming party* acknowledges itself bound by the provisions of the prior contract as if the *incoming party* had been named as the *outgoing party* in the prior contract;
  - (b) the *continuing party* punctually perform like obligations and be bound to the *incoming party* as if the provisions of the prior contract were incorporated herein; and
  - (c) the *outgoing party* and *continuing party* shall each release and forever discharge the other from the further performance of the prior contract and from all claims and demands in connection with the prior contract.
- 2 The *outgoing party* and *continuing party* each warrant to the *incoming party* that *preliminary design* or *selected subcontract work*, as the case may be, carried out to the date hereof, is in accordance with the provisions of the prior contract.
- 3 This Deed shall be governed by the governing law of the prior contract between the *outgoing party* and *continuing party*.

**Schedule**

.....

.....

.....

.....

In witness whereof the parties have executed this DEED OF NOVATION by affixing their seals.

THE COMMON SEAL of the *outgoing party* was affixed to this document in the presence of:

.....  
Secretary/Director

.....  
Name (please print)

.....  
Director

.....  
Name (please print)

THE COMMON SEAL of the *incoming party* was affixed to this document in the presence of:

.....  
Secretary/Director

.....  
Name (please print)

.....  
Director

.....  
Name (please print)

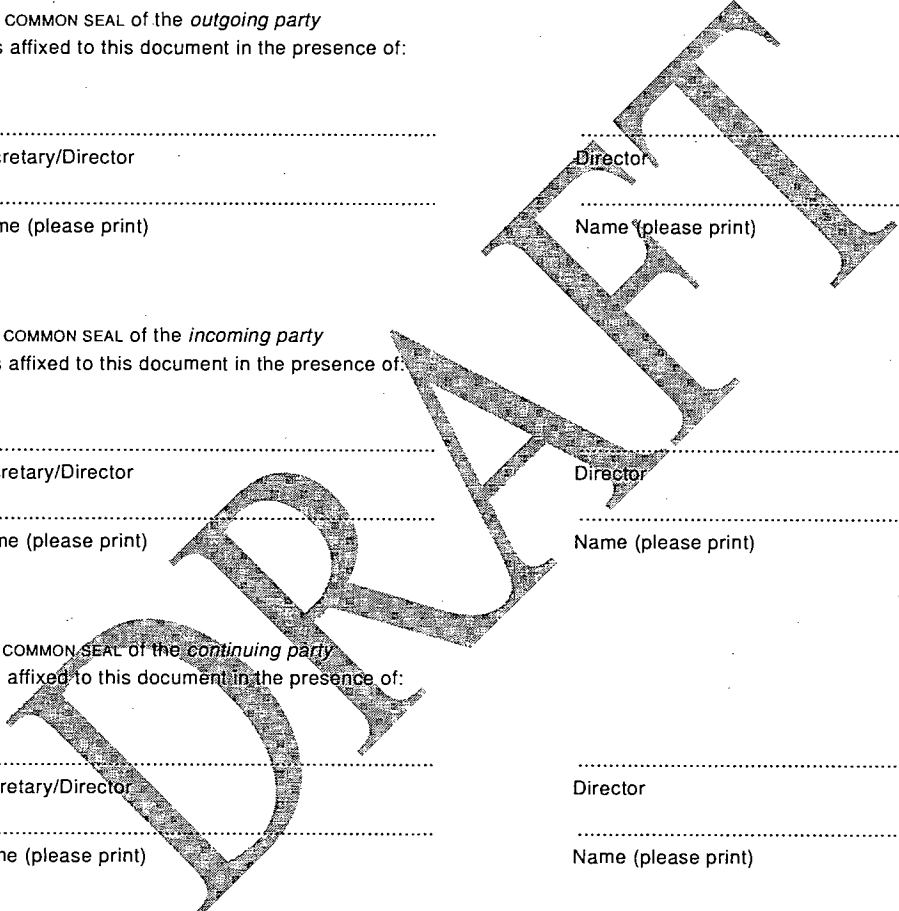
THE COMMON SEAL of the *continuing party* was affixed to this document in the presence of:

.....  
Secretary/Director

.....  
Name (please print)

.....  
Director

.....  
Name (please print)



**Annexure to the Australian Standard  
General Conditions of Contract for  
Design and Construct**

# Part E

**Deletions, amendments and additions**

1 The following clauses have been deleted from AS 4902—2000

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2 The following clauses have been amended and differ from the corresponding clauses in AS 4902—2000

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3 The following clauses have been added to AS 4902—2000

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## † INDEX

<i>Clause</i>	<i>Clause</i>
Acceleration ..... 34.4(b)	fees and charges ..... 11.2
Acceptance (see Approval)	interest ..... 37.5
Acceptance of tender	liquidated damages ..... 34.7
date of, defined ..... 1	minerals, fossils and relics ..... 24.3
formal instrument of agreement ..... 6	omitted items ..... 2.5
security—time for ..... 5.1, <i>Items</i> 14(d), 15(c)	on completion of work taken out of the hands of the Contractor ..... 39.6
Access (see also possession of site)	pricing variations ..... 36.4
during defects liability period ..... 35	protection of people and property ..... 12
for Principal and others ..... 24.2	provisional sums ..... 3
for testing ..... 30.1	quantities ..... 2.5
Accident (see also Insurance, Urgent protection and Protection of persons and property)	set-offs by the Principal ..... 37.2, 37.6
reinstatement of damage ..... 14.2	suspension by Contractor ..... 39.9
to employees ..... 18	urgent protection ..... 13
to third parties ..... 15, 17	Agreement
to WUC ..... 14, 16A	Contract in absence of formal instrument ..... 6
Accord and satisfaction ..... 37.4	formal instrument of ..... 6
Actions	interpretation of ..... 1, 8.1
arbitration ..... 42	rectification when dispute ..... 42.1
indemnification by Contractor ..... 10, 15.1	Alignments (see Survey mark)
indemnification by Principal ..... 10, 15.2	Alternative clauses ..... 10.2, 16A, 17
Acts, (of Parliament) (see Legislative requirements)	Ambiguity in documents ..... 8.1
Additions and/or deductions	Appliances (see Construction plant)
adjustment generally ..... 2.1	Approval
care of survey marks ..... 26.3	effect of certificates ..... 37.2
changes in legislative requirements ..... 11.2	examination and testing ..... 30
contract sum definition, excluded in ..... 1	extension of time ..... 34.4, 34.5
discrepancies in documents ..... 8.1	of documents ..... 8.3
error in setting out ..... 26.2	of form of security ..... 1
generally ..... 2.1	of insurance policies ..... 16A, 17
legislative requirements ..... 11.2	of media releases ..... 8.6
minerals, fossils and relics ..... 24.3	of municipal and statutory authorities (see Legislative requirement)
order of work ..... 7.32	of subcontracting ..... 9.2
pricing variations generally ..... 36.4	of variations of convenience ..... 36.3
programming ..... 32	to suspension by Contractor ..... 33.2
provisional sums ..... 3	working days ..... 31
suspension ..... 33.4	working hours ..... 31
variations ..... 36.4	Approved form of unconditional undertaking
Address for service (see also Service)	security ..... 1
change of ..... 7	form of ..... Annexure Part B
Contractor ..... 7, <i>Item</i> 4	Arbitration
Principal ..... 7, <i>Item</i> 2	agreement to arbitrate ..... 42.2
Superintendent ..... 7, <i>Item</i> 6	ambit of dispute ..... 42.1
Adjustment (for)	conference ..... 42.2
actual quantities ..... 2.5	nomination of arbitrator ..... 42.3, <i>Item</i> 37(a)
bonus ..... 34.8	rules of ..... 42.3, <i>Item</i> 37(b)
cost of suspension ..... 33.4	Assessment (see Superintendent, assessments by)
cost of tests ..... 30.7	Assignment
defective material and work ..... 29.3	of Contract ..... 9.1
delay damages ..... 34.9	of subcontract ..... 9.2(a)
directions on order of work ..... 32	by subcontractor ..... 9.2(b)
errors in documents ..... 8.1	Asterisk clauses ..... 8.6, 29.2
errors in setting out ..... 26.2	

† References to *Items* are to *Items* in Annexure Part A



<i>Clause</i>	<i>Clause</i>
Australasian Dispute Centre..... <i>Item</i> 37(a), (c)	settlement of claims under policy of insurance ..... 19.5
Authorisation (see Direction)	settlement of disputes ..... 42
Awards (see Legislative requirements)	Superintendent's decision on ..... 41.3
Bank guarantee (see Unconditional undertaking)	valuation of ..... 37.2, 41.3
Bank—place of business ..... 1, <i>Item</i> 9(c)	Clause headings—effect ..... 1(c)
Bankruptcy	Cleaning up ..... 27
of Contractor ..... 39.11	Commencement of WUC
of Principal ..... 39.11	generally ..... 16A, 16B, 17, 18, 19.1
Basis of payment ..... 2.1	insurance, proof of ..... 19.1, 24.1
Bench mark (see Survey mark)	possession of site ..... 24.1
Bonus	production of policies before ..... 19.1
for early practical completion ..... 34.8, <i>Item</i> 30(a)	Communications between parties ..... 1(c)
limit of ..... 34.8, <i>Item</i> 30(b)	Compensable cause
rate of ..... 34.8, <i>Item</i> 30(a)	defined ..... 1
waiver of part of bonus ..... 34.8, <i>Item</i> 30(b)	delay damages for ..... 34.9
where separable portions ..... 4(c)	others listed ..... <i>Item</i> 31
Breach of contract	Completion
claims for ..... 41	by Principal on default ..... 39.4, 39.5, 39.6
default of the Contractor ..... 39.2	final certificate ..... 37.4
default of the Principal ..... 39.7	practical (see Practical completion)
preservation of other rights ..... 39.1	Compliance
repudiation ..... 39.10	with legislative requirements ..... 11.1
substantial breaches ..... 39.2, 39.7	with Superintendent's interpretation ..... 8.1
By-laws (see Legislative requirements)	Concurrent delay ..... 34.4
Calendar days ..... 1(a)	Conditions, waiver of ..... 43
Care of WUC	Confidential information
cleaning up ..... 27	agreement as to ..... 8.5
Contractor's obligations for ..... 14.1	generally ..... 8.5
excepted risks ..... 14.3	Construction of Contract ..... 1, 8.1
generally ..... 14.1	Construction plant
reinstatement of loss or damage ..... 14.2	care of ..... 14.1
urgent protection of ..... 13	Contractor to supply ..... 28
Certificate(s) (see also Direction and Payment)	defined ..... 1
effect of ..... 37.2	insurance of ..... 16A
final certificate ..... 37.4	not to be removed ..... 28
of cost to complete on default by Contractor ..... 39.6	removal of ..... 27, 40
of municipal and statutory authorities (see Legislative requirements)	use by Principal ..... 39.5, 39.6
practical completion ..... 34.6	WUC includes ..... 1
progress certificate ..... 37.2	Consultants
Certificate of Practical Completion	defined ..... 1
defined ..... 1	engagement of ..... 9.2
issue of ..... 34.6	insurance of WUC, included in ..... 16A
meaning of ..... 34.6	notices to and from insurer ..... 19.3
non-issue of ..... 34.6	novation of ..... 2.2(a)(iii), 2.3(b), 9.4
request for ..... 34.6	professional indemnity
Claims (see also Adjustment)	insurance ..... 16B, <i>Items</i> 24(c), (d)
arbitration of ..... 42.3	proof of payment of ..... 38
compensation to third party ..... 12	public liability insurance ..... 17
failure to notify, effect ..... 41.2	suspension because of ..... 33.1(a)
for damages ..... 41.1, 42.1	workers compensation policy ..... 18
for EOT for practical completion ..... 34.3	Consultant fees
for final payment ..... 37.4	in contract works policy ..... 16A, <i>Item</i> 23(c)
for progress payment ..... 37.1, <i>Item</i> 33	Contingency sum (see Provisional sum)
indemnity by Contractor ..... 10.1, 15.1	Contract
indemnity by Principal ..... 10.1, 15.2	assignment ..... 9.1
notice of dispute ..... 41.1, 41.3, 42.1	breach of (see Breach of Contract)
notice of potential claims on insurance policies ..... 19.4	construction of ..... 1
notification of ..... 41	defined ..... 1
	disputes under ..... 42

<i>Clause</i>	<i>Clause</i>
documents.....	8
evidence of.....	6
formal instrument of.....	6
frustration of.....	40, 42.1
governing law of.....	1(h), <i>Item</i> 8
interpretation of.....	1
nature of.....	2
rectification of.....	42.1
subcontracting.....	9.2
termination—effect of.....	39.10
termination of	
by Contractor.....	34.9, 39.11
by Principal.....	34.4, 39.11
work under the (WUC).....	1
Contract documents.....	8
ambiguities in.....	8.1
construction of.....	8.1
discrepancies in.....	8.1
inconsistencies in.....	8.1
interpretation of.....	8.1
Contract sum	
defined.....	1
insurance of WUC.....	16A
Contract works insurance	
amount of cover of.....	16A, <i>Item</i> 23
Contractor controlled.....	16A Alt 1
exclusions in.....	16A
in joint names.....	16A
length of cover.....	16A
policy.....	16A
Principal controlled.....	16A Alt 2
Contractor	
access to site by.....	24.1
address of.....	<i>Item</i> 4
appointment of representative.....	22
default by.....	39.2
defined.....	1
design obligations defined.....	1
design, property in.....	10.2
licence to use design documents.....	10.2
named.....	<i>Item</i> 9
possession of site by.....	24.1
professional indemnity insurance.....	16B, <i>Item</i> 23(a), (b)
rights of.....	34.9, 39.11
security by.....	<i>Item</i> 14
service on.....	7
to insure.....	16A Alt 1, 16B, 17 Alt 1, 18
use of site by.....	24.1
warranties.....	2.2
warranties unaffected.....	2.3
Contractor-supplied documents	
approval of.....	8.3(b)
availability of.....	8.4
checking of.....	8.3(a)
copies of.....	8.3
rejection of.....	8.3(c)
responsibility for.....	8.3
submission of.....	8.3
suitability of.....	8.3(c)
supply of.....	8.3
Contractor's all risk insurance (see Contract works insurance)	
Contractor's design obligations defined.....	1
warranties, as to.....	2.2
warranties unaffected.....	2.3
Contractor's employees	
control of.....	23
death or injury.....	18
insurance of.....	18
liability for.....	9.5
payment of.....	38
removal of, from site.....	23
Contractor's representative.....	22
Contractor's responsibility (see also Contractor and Care of WUC)	
for employees (see Contractor's employees)	
for payment of workers and subcontractors.....	38
for selected subcontractors.....	9.5
for subcontractors.....	9.5
to carry out WUC.....	2.1
Contributory negligence	
indemnity, as to.....	15.1
reduction of liability for.....	15.1
Copyright (see Intellectual property right)	
Corporation (also see Person).....	1(a), 5.6, 39.11(d)
Corporations Law.....	5.6, 38.3
Cost objective	
defined in Principal's project requirements.....	1
Cost(s) (see also Adjustment)	
added to contract sum.....	24.3, 26.2, 26.3
completion of work taken out of the hands of the Contractor.....	39.6
complying with legislative requirements.....	11.2
examination and testing.....	30.7
latent conditions.....	25.3
protection of person, etc.....	12
provisional sums.....	3
reinstatement.....	14.2
set-offs by Principal.....	37.6
setting out.....	26.3
urgent protection.....	13
variations.....	36.2, 36.4
Covering up of WUC.....	30.2
Cross liability clause.....	19.6
Currency.....	1(g), <i>Item</i> 9(a)
Damage (see also care of the Works and Insurance)	
prevention of.....	12
protection of property, etc.....	12
reinstatement of.....	14.2
to persons and property other than WUC.....	15.1
to WUC.....	14.1
urgent protection.....	13
Damages (see also Adjustment and Claims)	
delay damages.....	34.9
for breach of the Contract.....	39.1
for delay by Contractor.....	34.7, <i>Item</i> 29
for delay due to compensable cause.....	34.9
liquidated.....	34.7, <i>Item</i> 29
on insolvency.....	39.11
on termination of the Contract.....	39.10
Date	
for practical completion.....	1, <i>Item</i> 7, 34.7, 34.8
of acceptance of tender.....	1
of practical completion.....	1, 34.6, 34.7, 34.8, 35

Clause	Clause
Date of acceptance of tender	records of cost to complete ..... 39.5
defined ..... 1	retention of plant and materials ..... 39.6
Date for practical completion	rights of the Principal ..... 39.1–39.6, 39.9
bonus ..... 34.8	show cause notice to ..... 39.3
defined ..... 1, <i>Item 7</i>	substantial breach by ..... 39.2
effect of proposed variation on ..... 36.2(a)	substantial departure from construction
liquidated damages ..... 34.7	program ..... 39.2(c)
period of time for ..... 1, <i>Item 7</i>	suspension of payment on ..... 39.4
Date of practical completion	when the Principal takes work
defects liability period ..... 35	out of hands of Contractor ..... 39.5, 39.6
defined ..... 1	Default of subcontractor ..... 9.5
generally ..... 34.6	Default or insolvency
liquidated damages ..... 34.7	by Contractor ..... 39.2, 39.11
Days	by Principal ..... 39.7, 39.11
mean calendar days ..... 1(a)	generally ..... 39
working ..... 31	preservation of other rights ..... 39.1
Debt due to the Principal ..... 12, 13, 27, 29.3, 34.7,	substantial breaches ..... 39.2, 39.7
35, 37.6, 39.6	show cause notices ..... 39.3, 39.8
Decision (see also Direction)	Defective work
Deed of guarantee, undertaking and substitution	acceptance of ..... 29.4
defined ..... 1	correction of ..... 29.3
provision of ..... 5.6	cost of rectification ..... 29.3
requirement for ..... 5.6	demolition of ..... 29.3
Deed of novation ..... 9.4	examination and testing of ..... 30
Deemed variation	generally ..... 29.3
as to acceptance of defective work ..... 29.4	includes material ..... 29.3
for latent condition ..... 25.3	not to identify ..... 29.3
omission in schedule of rates ..... 2.5	quality assurance ..... 29.2
on adjustment of quantities ..... 2.5	reconstruction of ..... 29.3
reinstatement of damage ..... 14.2	removal of ..... 29.3
Default by Principal	replacement of ..... 29.3
Contractor's rights on ..... 39.9	testing of ..... 30
Contractor's show cause notice ..... 39.8	time of notice of ..... 29.5
generally ..... 39.7	Defects
in making due payment ..... 39.7(a)	costs of rectification ..... 29.3, 35
in providing evidence of insurance ..... 39.7(a)	defined ..... 1
in providing security ..... 39.7(a)	direction to rectify ..... 35
in rectifying inadequate access ..... 39.7(a), <i>Item 36(a)</i>	examination and testing for ..... 30
in rectifying inadequate	in design—excepted risk ..... 14.3(f)
possession ..... 39.7(a), <i>Item 36(b)</i>	in work ..... 29.3, 29.4, 35
on termination ..... 39.10	length of liability period ..... 35, <i>Item 32</i>
rights of the Contractor ..... 39.1, 39.7, 39.8, 39.9	material and work ..... 29.3, 29.4, 35
Superintendent not issuing	minor, practical completion ..... 1
certificate of practical completion ..... 39.7(b)	remedying ..... 29.3, 35
show cause on ..... 39.7, 39.8	removal and replacement ..... 29.3
Default by Contractor	times for rectification ..... 35
adjustment of costs on ..... 39.6	Defects liability period
assessment of cost to complete on ..... 39.6	defined ..... 1
failing to comply with a direction of the	duration of ..... 35, <i>Item 32</i>
Superintendent ..... 39.2(a)	generally ..... 35, <i>Item 32</i>
failing to maintain program ..... 39.2(c)	Definitions (generally) ..... 1
failing to proceed with due expedition	dispute ..... 42.1
and without delay ..... 39.2(d)	Delay
failing to properly perform design	concurrent ..... 34.4
obligations ..... 39.2(a)	construction program ..... 32, 39.2(c)
failing to provide evidence of insurance ..... 39.2(a)	damages ..... 4(c), 34.9
failing to use materials or standards of	further delay ..... 34.3
workmanship ..... 39.2(a)	in giving possession ..... 24.1
in providing documentary evidence ..... 39.2(e)	notice of ..... 34.2
in providing security ..... 39.2(a)	overlapping ..... 34.4
may use plant and materials on ..... 39.5	rate of progress ..... 34.1
on termination ..... 39.10	Delay damages
possession of plant and materials ..... 39.5	certified by Superintendent ..... 34.9
procedure on ..... 39.2–39.6	claim for ..... 34.9
	due and payable ..... 34.9

<i>Clause</i>	<i>Clause</i>
for compensable cause ..... 34.9	order of work ..... 32
other compensable causes ..... 1, 34.9, <i>Item</i> 31	notice of tests ..... 30.4
where separable portions ..... 4(c)	relating to Contractor's employees ..... 23
Deletion of clauses, etc.—effect ..... 1(i)	relating to subcontractors ..... 23
Deletions, amendments and additions (generally) ..... 1(i), Annexure Part E	suspension of WUC ..... 33.1
Demand (see also Direction)	written ..... 20
Demolition and removal of debris in Contract works policy ..... 16A(b), <i>Item</i> 23(b)	Discrepancies
Deposit (see Security)	Contract documents ..... 8.1
Design	dimensions ..... 8.1
defects in—excepted risk ..... 14.3(f)	Dispute (see Dispute resolution)
intellectual property rights in objectives, defined in Principal's project requirements ..... 1	Dispute resolution
procurement methods explained ..... Preface	after final certificate ..... 37.4(d)
stated purpose ..... 2.2	ambit of ..... 42.1
warranties, as to ..... 2.2	arbitration ..... 42.3
warranties, as to by Principal ..... 10.1	conference ..... 42.2
warranties unaffected ..... 2.3	continue performance of Contract ..... 42.1
Design and Construct explained ..... Preface	dispute defined ..... 1, 42.1
Design, Development and Construct explained ..... Preface	includes difference ..... 42.1
Design documents	meaning of dispute ..... 1, 42.1
ambiguities in ..... 8.1	notice of dispute ..... 37.4(d), 41.1, 42.1
defined ..... 8.1	summary relief ..... 42.4
direction not to copy ..... 8.2	Documents
discrepancies in ..... 8.1	ambiguities in ..... 8.1
included in Contractor's design obligations ..... 1	approval of the Superintendent ..... 8.3
inconsistencies in ..... 8.1	availability of ..... 8.4
licence to use ..... 10.2	confidential information ..... 8.5
novation ..... 9.4	construction of ..... 8.1
ownership of ..... 10.2	Contractor supplied ..... 8.3
variation to, affect of ..... 8.3	discrepancies in ..... 8.1
warranties, as to ..... 2.2	evidencing Contract generally ..... 6
warranties unaffected ..... 2.3(c)	inconsistencies in ..... 8.1
Design, Novate and Construct explained ..... Preface	interpretation of ..... 8.1
Design objectives defined in Principal's project requirements ..... 1	Principal supplied ..... 8.2
Determination (see also Direction)	property in ..... 8.2, 8.3
defined in direction ..... 1	results of tests ..... 30.6
disputes ..... 42	service of ..... 7
interpretation of discrepancy ..... 8.1	Due (see Moneys due)
pricing of variation ..... 36.4	Due and owing (see Moneys due and owing)
value of work ..... 37.2	Due and payable (see Moneys due and payable)
Determination of Contract (see Termination of Contract)	Emergency work ..... 13
Dimensions	Employees
figured ..... 8.1	control of ..... 23
scaled ..... 8.1	insurance of ..... 17(c), 18
Direct payment to subcontractor ..... 38.3	of Contractor (see Contractor's employees)
Direction (see also Approval)	of subcontractor ..... 23
construction program ..... 32	responsibility for ..... 9.5
covering up of work ..... 30.2	English language ..... 1(e)
defective materials or work ..... 29.3, 29.4	EOT (extension of time)
defined ..... 1	application for ..... 34.3
dispute as to ..... 42.1(a)	assessment of ..... 34.4, 34.5
examination and testing ..... 30	claim for ..... 34.3
oral, to be confirmed in writing ..... 20	deemed assessment ..... 34.5
	defined ..... 1
	failure to apply for, effect ..... 41.2
	grant of ..... 34.5
	in event of further delay ..... 34.3
	partial grant of ..... 34.5
	qualifying cause of delay ..... 1, 34.3
	refusal of ..... 34.5
	time for applying for ..... 34.3
	Superintendent may direct ..... 34.5

<i>Clause</i>	<i>Clause</i>		
Equipment to be provided by Contractor (see Construction plant) .....	28	Formal instrument of agreement	
Errors		execution of .....	6
Contract documents .....	8.1	generally .....	6
in schedule of rates .....	2.5	stamping of .....	6
setting out .....	26.2	Form of unconditional undertaking .....	Annexure Part B
Escrow		Fossils .....	24.3
security transferred in .....	5.1	Frustration	
Examination and testing .....	30	generally .....	40
Excepted risk		notice of dispute when .....	42.1(b)
defined .....	1	payment on .....	40
meaning .....	14.3	release and return of security .....	40
Explanation (see also Direction)		termination by .....	40
Extension of time (see EOT)		Gender includes every gender .....	1(d)
Failure of Contractor (see also Delay and Default by Contractor)		Governing law .....	1, Item 8
to arrange urgent protection .....	13	Guarantee, etc., deed of .....	5.6
to lodge security .....	5.1, 39.2(a)	Headings of clauses .....	1(c)
to make claims .....	41.2	Hours of work .....	31
to produce proof of insurance .....	19.2, 39.2(a)	Incompetence of employees, etc .....	23
to show cause .....	39.3	Indemnity	
Failure of Principal (see also Default of Principal)		by Contractor .....	10.1, 15.1
to give access .....	39.7(a)	by Principal .....	10.1, 15.2
to give possession of Site .....	39.7(a)	care of work .....	14
to insure .....	19.2, 39.2(a)	damages to persons and property .....	15
to make payment .....	37.5, 39.7(a)	infringement of intellectual property rights .....	10.1
Faulty work (see Defective material or work)		Information to be supplied	
Fees and charges (see Legislative requirements)		advance notice .....	32
Figured dimensions .....	8.1	by Principal .....	32
Final certificate		confidential information .....	8.5
accord and satisfaction .....	37.4	Contract documents .....	8
defined .....	1	examination of information made available	
effect of .....	37.4	for tendering .....	25.1(a)
final payment claim for .....	37.4	examination of information relevant to	
generally .....	37.4	risks, contingencies, etc. ....	25.1(b)
meaning .....	37.4	for setting out the Works .....	26.1
release of security .....	5.4	latent conditions .....	25
Final payment (see also Final certificate)		particulars of materials and plant .....	28(a)
defined .....	1	results of tests .....	30.6
meaning .....	37	to media .....	8.6
Final payment claim		working hours and days .....	31
defined .....	1	Injury to persons	
endorsement of .....	37.4	generally .....	12
includes all claims .....	37.4	indemnity by Contractor .....	15.1
meaning .....	1, 37.4	insurance .....	17, 18
payment on account, excepted .....	37.2	measures to prevent .....	12
prescribed notice, excluded .....	41.1	Insolvency	
time for .....	37.4	bankruptcy .....	39.11(c)
Financial institution		Contractor's rights on .....	39.11(B)
form of unconditional		deed of arrangement .....	39.11(d)
undertaking by .....	Annexure Part B	generally .....	39.11
security provided by .....	1	meeting of creditors .....	39.11(d)
Finding of minerals, fossils and relics .....	24.3	mortgagee in possession .....	39.11(d)
Fitness for stated purpose		Principal's rights on .....	39.11(A)
to be stated in Principal's project		voluntary winding up .....	39.11(d)
requirements (definition) .....	1	when corporation .....	39.11(d)
warranty, as to .....	2.2(a)(ii)	when exercisable .....	39.11
warranty as to preliminary design .....	2.2(a)(ii)	when individual .....	39.11(c)
Float .....	34.4(a)	Inspection	
© Standards Australia		access for testing .....	30.1
		access to Principal and others .....	24.2
		insurance policies .....	19.1

<i>Clause</i>	<i>Clause</i>
testing ..... 30.1	payment to subcontractor under ..... 38.3
Institute of Arbitrators & Mediators Australia rules of ..... <i>Item 37(b)</i>	payment to worker under ..... 38.3
Instruction (see also Direction)	provision of services ..... 11.2(a)
Insurance	satisfaction of ..... 11.1, <i>Item 22(a)</i>
cross-liability ..... 19.6	time of effect of ..... 11.2(b)
failure to provide proof of ..... 19.2, 39.2(a), 39.7(a)	variance in ..... 11.1
inspection of policies ..... 19.1	Level mark (see Survey mark)
notice of potential claims ..... 19.4	Liability of the Contractor
notices to and from insurer ..... 19.3	for care of WUC ..... 14
of employees ..... 18	for compliance with legislative requirements ..... 11
of the Works ..... 16A, <i>Item 23</i>	for selected subcontractors ..... 9.5
professional indemnity ..... 16B, <i>Item 24</i>	for subcontractors ..... 9.5
proof of insurance ..... 19.1	Licences (see Legislative requirements)
provisions of policies ..... 19.3	Limits of accuracy in schedule of rates ..... 2.5(b), <i>Item 12</i>
public liability ..... 17	Liquidated damages
settlement of claims ..... 19.5	certifying of ..... 34.7
workers' compensation ..... 18	rate of ..... 34.7, <i>Item 29</i>
Intellectual property rights	repayment of ..... 34.7
Contractor's warranty as to ..... 10	separable portions ..... 4(c)
defined ..... 1	Litigation ..... 42.4
design documents ..... 10.2	Local authorities ..... 11
indemnity as to ..... 10	Loss of damage to WUC
licence in ..... 10.2	care of WUC ..... 14.1
ownership of ..... 10.2	excepted risks ..... 14.3
Principal's warranty as to ..... 10	generally ..... 14
Interpretation of Contract documents ..... 8.1	protection ..... 12, 13
Interest	reinstatement ..... 14.2
on security ..... 35.5	urgent protection ..... 13
overdue payments ..... 37.5, <i>Item 35</i>	Lump sum ..... 2.1
rate of ..... 37.5, <i>Item 35</i>	Making good (see also Reinstatement) ..... 14.2, 29.3, 35
Issue of	Materials (see also Work)
certificate of practical completion ..... 34.6	acceptance of defective ..... 29.4
final certificate ..... 37.4	defective ..... 29.3, 29.4
payment certificate ..... 37.2	examination and testing of ..... 30
<i>Item</i>	failure to use proper materials ..... 39.2(a)
defined ..... 1	manufacture and supply of ..... 28
Labour	not to remove from site ..... 28
provision by Contractor ..... 28	particulars of ..... 28
Language of Contract ..... 1(e)	possession on default ..... 39.5
Latent conditions	provision of by Contractor ..... 28
costs of ..... 25.3	quality of ..... 29.1
deemed variation on ..... 25.3	supply of ..... 28
defined ..... 1	testing of ..... 30
meaning ..... 25.1	unfixed ..... 37.3
notification of ..... 25.2	upon frustration of Contract ..... 40
scope of ..... 25.1	use of new materials ..... 29.1
Law	Measurement
compliance with legislative requirements ..... 11.1	generally ..... 37.2
Corporations ..... 5.6, 38.3	of quantities ..... 1(f)
governing the Contract ..... 1(h), <i>Item 8</i>	Media releases ..... 8.6
Legislative requirements	Minor defects
change in Principal's project requirements ..... 11.2(a)(i)	practical completion, in definition of ..... 1
changes in ..... 11.2	remedying ..... 29.3, 35
changes to WUC ..... 11.2(a)(iii)	Misconduct of employee ..... 23
changes to the Works ..... 11.2(a)(ii)	Monetary sum (see Provisional sum)
compliance with ..... 11.1	Moneys due
cost of ..... 11.2(c)	claim for ..... 37.1
defined ..... 1	cleaning up costs ..... 27
excepted ..... 11.1, <i>Item 22(a)</i>	cost of proposed variation ..... 36.2
fees and charges ..... 1, 11.2(a)	
identified WUC ..... 11.2, <i>Item 22(b)</i>	

<i>Clause</i>	<i>Clause</i>
cost of protection..... 12	consultant..... 9.4, Item 20
cost of urgent protection ..... 13	deed of ..... 9.4
moneys certified due to Principal..... 37.2(b)	Deeds of ..... Annexure Parts C and D
on frustration ..... 40(b)	of Principal's consultants ..... 2.2(a)(iii)
other moneys due..... 37.6	selected subcontractor ..... 9.4, Item 20
progress certificate ..... 37.2(a)	subcontractor ..... 9.2(c), 9.4, Item 20
progress claim ..... 37.1	warranties unaffected by..... 2.3(b)
Moneys due and owing	Omissions (see also Defects and Minor defects)
to Principal otherwise ..... 37.6	at final certificate..... 37.4(b)
Moneys due and payable	schedule of rates ..... 2.5
bonus ..... 34.8	Opening up for examination and testing ..... 30.1
claims generally ..... 41.3	Oral direction..... 20
cost of defect rectification ..... 35	Order (see also Direction)
costs of suspension on breach ..... 39.9	Order of work..... 32
delay damages ..... 34.9	Orders (see Legislative requirements)
final certificate..... 37.4	Ordinances (see Legislative requirements)
interest ..... 37.5	Ordinary working days..... 31
liquidated damages ..... 34.7	Ordinary working hours ..... 31
on work taken out of the hands of Contractor ..... 39.6	Other moneys due..... 37.6
substantial breach ..... 39.7(a)	Overlapping delays ..... 34.4
to workers and subcontractors ..... 38.2	Ownership of documents
unpaid insurance premium..... 19.2	supplied by Contractor ..... 8.3
Nature of Contract..... 2	supplied by Principal ..... 8.2
Negligence of employee ..... 23	Patent (see Intellectual property right)
Nominated subcontractor	Payment(s) (see also Adjustments)
(see Novation)..... 9.3, 9.4	adjustment for errors in schedule of rates ..... 2.5
Notice (see also Direction, Notice of dispute)	adjustment for fees to statutory authorities ..... 11.2
for testing ..... 30.4	and performance ..... 2.1
for urgent protection ..... 13	basis of ..... 2.1
from or to insurer ..... 19.3	bonus ..... 34.8
of availability of site..... 24.1	calculated by rates ..... 2.1
of claim for EOT ..... 34.3	calculation of ..... 37.2
of claims generally ..... 41	certificates..... 37.2
of default by the Contractor ..... 39.3	claims for ..... 37.1
of default by the Principal ..... 39.8	currency of ..... 1(g), Item 9(a)
of delay ..... 34.2	deductions ..... 37.2
of discovery of minerals, fossils or relics ..... 24.3	default by Principal..... 39.7(a)
of dispute ..... 42.1	delay damages ..... 34.9
of errors in setting out ..... 26.2	during arbitration ..... 42.1
of latent conditions ..... 25.2	for defective materials and work ..... 29.3, 35
of names of persons entitled to access ..... 24.2	for progress certificates ..... 37.2
of potential insurance claims ..... 19.4	for unfixed plant and materials ..... 37.3
of working hours ..... 31	insurance premiums, proof of..... 19.2
oral or written ..... 20	interest on overdue..... 37.5
prescribed ..... 41.1	liquidated damages ..... 34.7
service of ..... 7	not evidence of satisfactory WUC ..... 37.2
statutory authorities ..... 11.2	of balance after set off..... 37.2
to suspend work ..... 33.1	of security and retention moneys ..... 5.1
Notice of dispute	of workers and subcontractors..... 38
arbitration ..... 42.3	on completion by Principal ..... 39.6
concerning claims..... 41.1, 41.3	on final certificate..... 37.4
conference following ..... 42.2	payment certificate..... 37.2
generally..... 42	payment on account ..... 37.2
how served..... 42.1	place for..... 1(g), Item 9(b)
includes difference ..... 42.1	provisional sums ..... 3
when final certificate ..... 37.4(d)	retention moneys..... 5.1, Item 14(c)
Notification of claims (see also Claims)	set-offs by Principal ..... 37.2, 37.6
failure to comply ..... 41.2	suspension of by Principal ..... 39.4
generally ..... 41	to consultants ..... 38
notice of dispute concerning ..... 41.1, 41.3	to subcontractors..... 38
prescribed notice ..... 41.1	to workers ..... 38
Superintendent's decision on ..... 41.3	
Novation	
acceptance of ..... 2.2(a)(iii)	

Clause	Clause		
urgent protection .....	13	licence to use design documents .....	10.2
within 7 days of certificate .....	37.2	named .....	Item 1
within 21 days of claim .....	37.2	ownership of design documents .....	10.2
withholding by Principal .....	38.2	project requirements defined .....	1
Payment to workers, consultants and subcontractors		rights of .....	39.2, 39.3, 39.4, 39.5
direct payment to .....	38.3	security by .....	5, Item 15
documentary evidence of .....	38.1	set off by .....	37.2
Principal may withhold payment .....	38.2	Principal's project requirements	
where required by law .....	38.3	change in legislative requirements .....	11.2(a)(i)
withholding of payment .....	38.2	cost objectives .....	1
Performance and payment .....	2.1	defined .....	1, Item 10
Permission (see also Direction)		design objectives .....	1
Permits (see Legislative requirements)		details of .....	Item 10
Person, meaning .....	1(a)	inconsistency, etc. in .....	8.1
Persons		novation .....	9.4
death of .....	15.1	preliminary design included .....	Item 11
indemnity by Principal .....	15.2	stated purpose of .....	1, 2.2(a)(iv)
injury to .....	15.1	timing objectives .....	1
insurance of .....	17, 18	warranties, as to .....	2.2
protection of .....	12	warranties, as to by Principal .....	10.1
suspension, to protect .....	33.1	Principal-supplied documents	
urgent protection of .....	13	availability of .....	8.2
Place for payment .....	1(g), Item 9(b)	copies of .....	8.2, Item 16
Place of business of bank (security) .....	1, Item 9(c)	copying of .....	8.2
Plant (see Construction plant) .....	1, 28, 39.5, 39.6	number of .....	8.2
Plant and materials		property in .....	8.2
security for unfixed .....	5.4, 37.3, Item 14(b)	supply of .....	8.2, Item 16
unfixed .....	37.3, Item 34	Proclamation (see Legislative requirements)	
Possession of site (see also Access) .....	24.1	Profit and overheads/attendance	
Practical completion		in pricing variations .....	36.4
certificate of .....	34.6	on provisional sums .....	3
date for .....	1, 34.6, 34.7	Program	
date of .....	1, 34.6, 34.7	defined .....	1
defined .....	1	departure from .....	32
early practical completion .....	34.8	direction as to .....	32
EOT for .....	34.8	failing to adhere to .....	39.2(c)
request for certificate of .....	34.6	meaning of .....	32
separable portions .....	4	proposed variation, effect on .....	36.2(a)
Preliminary design		Programming (see Program)	
copyright and ownership of design .....	10.2	Progress certificate	
defined .....	1	deemed .....	37.2
details of .....	Item 11	defined .....	1
included in Contractor's design obligations .....	1	issue of .....	37.2
novation .....	9.4	meaning .....	1, 37.2
warranties, as to .....	2.2(a)(ii)	not evidence WUC is satisfactory .....	37.2
warranties unaffected .....	2.3(a)	on account only .....	37.2
Prescribed notice		Progress claims	
defined .....	1	early .....	37.1
meaning .....	1, 41.1	generally .....	37.1
Pricing		time for .....	37.1, Item 33
variations .....	36.4	Progress, failure to maintain .....	39.2(c), 39.2(d)
Prime cost item (see Provisional sum)		Prompt payment discount .....	3(b)
Principal		Proper law of Contract .....	1(h), Item 8
address of .....	Item 2	Property	
certificate to .....	37.2(b)	damage to .....	12
consultants, novation of .....	2.2(a)(iii), 9.4	indemnity as to .....	15
default of .....	39.7	insurance of .....	17
defined .....	1	loss of .....	15.1
dispute with Contractor .....	42.1	protection of .....	12
		unavoidable damage to .....	15.1(b)
		Protected right (see Intellectual property right)	



Clause	Clause
Protection	included in definition of WUC..... 1
of persons and property..... 12	Removal of
of WUC..... 14	construction plant..... 28
suspension due to..... 33.1	materials..... 28
urgent..... 13	Contractor's employees and subcontractors..... 23
Provisional sum..... 3	Repairs, urgent (see Urgent protection)..... 13
defined..... 1	Replacement (see Reinstatement)
included in contract sum..... 1	Replacement of defective
included in schedule of rates..... 1	materials or work..... 29.3
meaning..... 1, 3	Representative of
percentage for profit and attendance..... 3, Item 13	Contractor..... 22
Public authorities..... 5.5, 11	Superintendent..... 21
Public liability policy	Repudiation of Contract
alternative applying..... 17, Item 25(a)	parties rights on..... 39.1, 39.10
amount of..... 17, Item 25(b)	Request (see also Direction)
defined..... 1	Requirement (see also Direction)
meaning..... 1, 17	Requirements of legislation..... 11.1
Qualifying cause of delay	Responsibility
defined..... 1	of Contractor for subcontractors..... 9.5
excludes those in..... Item 28	for performance..... 2.1
EOT for..... 34.3	Retention moneys (see Security)
further delay due to..... 34.3	Risks
Quality..... 29	excepted..... 1, 14.3
Quality assurance..... 29.2	Royalties (see Intellectual property rights)
Quality of materials and work	Schedule of prices
defective materials and work..... 29.3	included in definition of schedule of rates..... 1
examination and testing of..... 30	variations priced by..... 36.4(c)
generally..... 29.1	Schedule of rates
Quality system..... 29.2	defined..... 1
Quantities	generally..... 2.4, 2.5
errors in..... 2.5	limits of accuracy in..... 2.5(b), Item 12
estimated only..... 2.4	omitted items in..... 2.5
generally..... 2.4, 2.5	payment by..... 2.1
omitted items..... 2.5	quantities in..... 2.4
Rates (see also Schedule of rates)	variations priced by..... 36.4(c)
adjustment of..... 2.5	Security (includes Retention moneys)
limits of accuracy..... 2.5(b), Item 12	change of..... 5.3
payment of..... 2.1	Contractor's..... Item 14
provisional sums..... 3	defined..... 1
valuation of variations..... 36.4(c)	form of..... 5.1
Receiver..... 39.11	generally..... 5
Reference mark (see also Survey marks)	includes retention moneys..... 1
defined..... 1	interest earned on..... 5.5
survey mark, included in..... 1, 26.1	Principal's..... Item 15
Registered design (see Intellectual property right)	provision of..... 5.1, Items 14, 15
Regulations (see Legislative requirements)	purpose of..... 5.1
Reinstatement of damage	recourse to..... 5.2
excepted risks..... 14.3	reduction of..... 5.4, Items 14, 15
generally..... 14.2	release of..... 5.4
Rejection (see also Direction)	return of..... 5.4
Rejection of materials or work..... 29.3	substitution of..... 5.3
Relation-back day	time of lodgement of..... 5.1, Items 14, 15
concerning direct payment to workers and	trust..... 5.5
subcontractors..... 38.3	unfixed plant and materials..... 5.4, 37.3(a), Item 14(c)
Release of security..... 5.4	upon frustration of the Contract..... 40(c)
Remedial work	Selected subcontract work
generally..... 29.3, 35	defined..... 1
	meaning..... 1, 9.3

Clause	Clause
Selected subcontractor	warranty, as to ..... 2.2(a)(iv)
defined ..... 1	Statutory requirements (see Legislative requirements)
meaning ..... 1, 9.3	Subclause headings—effect ..... 1(c)
Separable portion(s) ..... 4, Annexure Part A	Subcontract work
date for practical completion ..... 4(b)	generally ..... 9
defects liability period ..... 35	requiring approval ..... 9.2, <i>Item</i> 19
defined ..... 1	Subcontractor
directed by Superintendent ..... 4	approval of ..... 9.2, <i>Item</i> 19
liquidated damages ..... 4(c)	Contractor's responsibility for ..... 9.5
security in ..... 4(c)	defined ..... 1
Service	includes consultant ..... 1
by fax ..... 7(b)(ii)	novation of ..... 9.2(c), 9.4, <i>Item</i> 20
by hand ..... 39.2, 39.7, 42.1	removal of ..... 23
by post ..... 7(b)(iii)	selected ..... 9.3, 9.4, <i>Item</i> 20
by registered post ..... 39.2, 39.7, 42.1	terms of approval ..... 9.2
by the Contractor on the Principal ..... 39.7	when Contract frustrated ..... 40(b)
by the Principal on the Contractor ..... 39.2	Subcontractor's employees
from or to the insurer ..... 19.3	control of ..... 9.5, 23
notification of latent conditions ..... 25.2	insurance of ..... 18
of appointment of Superintendent ..... 1	responsibility for ..... 9.5
of appointment of Superintendent's Representative ..... 21	Substantial breaches ..... 39.2, 39.7
of claims to the Superintendent ..... 41.1	Superintendent (see also Directions)
of finding of minerals, fossils and relics ..... 24.3	address of ..... <i>Item</i> 6
of notice of dispute ..... 42.1	appointment of ..... 20
of notice(s) (see also Notices) ..... 7	appointment of Superintendent's representative ..... 21
of potential (insurance) claims ..... 19.4	assessments by ..... 3, 8.1, 11.2, 14.2, 24.3, 26.2, 26.3,
of taking the work out of the hands	32, 33.4, 34.5, 39.6, 39.9, 41.3
of Contractor ..... 39.4	certifications by ..... 12, 13, 19.2, 19.5, 27, 29.3, 34.7,
of terminating the Contract ..... 39.4, 39.9	34.8, 34.9, 35, 36.2, 37.2, 37.4,
personal service ..... 7	39.6, 39.9, 40(a), 41.3
Set-off	defined ..... 1
by Principal ..... 37.2, 37.6	directions of ..... 20
election by Principal ..... 37.2	generally ..... 20
generally ..... 37.2, 37.6	includes Superintendent's Representative ..... 1
Setting out the Works	named ..... <i>Item</i> 5
care of ..... 26.3	notice in relation to dispute ..... 42.1
disturbance to ..... 26.3	obligations of ..... 20
errors in ..... 26.2	pricing by (deemed variation, etc.) ..... 2.5, 3, 14.2,
generally ..... 26.1	25.3, 36.4
survey marks for ..... 26.1	to confirm oral direction ..... 20
Settlement	valuations by ..... 4
arbitration ..... 42.2	Superintendent's Representative ..... 1
notice of dispute ..... 42.1	appointment of ..... 21
of disputes ..... 42.1	defined ..... 1
Signal (see Survey mark)	functions of ..... 21
Site	notice of appointment of ..... 21(c)
access to by Contractor ..... 24.1, <i>Item</i> 26(a)	objection to appointment of ..... 21(d)
access to by Principal, etc. .... 24.2	termination of appointment of ..... 21(c)
access to by Superintendent ..... 24.2	Survey mark
cleaning up ..... 27	care of ..... 26.3
commencement of work on ..... 24.1	defined ..... 1
defined ..... 1	errors in ..... 26.2
delay in making available ..... 24.1	supply of ..... 26.1
generally ..... 24	Survey peg (see Survey mark)
latent conditions on ..... 25	Suspension
materials, delivery to ..... 24.1	by the Contractor ..... 33.2, 39.9
minerals, fossils, relics, etc. on ..... 24.3	by the Superintendent ..... 33.1
possession of ..... 24.1, <i>Item</i> 26(b)	cost of ..... 33.4, 39.9
substantial breach in giving	due to acts, etc. of Contractor ..... 33.1(a)
access of ..... 39.7(a), <i>Item</i> 36(a)	due to acts, etc. of Principal ..... 33.1(a)
substantial breach in giving	effect of ..... 33.4
possession of ..... 39.7(a), <i>Item</i> 36(b)	end of ..... 33.3
Stated purpose	protection or safety ..... 33.1(b)
in Principal's project requirements ..... 1	

<i>Clause</i>	<i>Clause</i>
generally..... 33	for Superintendent's direction
to comply with court order..... 33.1(c)	about documents..... 8.3, <i>Item 18</i>
Suspension of payment by Principal..... 38.2, 39.4	for supply of construction program..... 32
Taking over of work by Principal..... 39.5	for supply of Contractor's documents..... 8.3, <i>Item 17</i>
Temporary works	for supply of Principal's documents..... 32, <i>Item 27</i>
care of..... 14.1	for testing..... 30.1
defined..... 1	for urgent protection..... 13
insurance of..... 16A	suspension of work..... 33.1
removal of..... 27	to rectify inadequate access..... 39.7(a), <i>Item 36(a)</i>
Tender (see Acceptance of tender)	to rectify inadequate possession..... 39.7(a), <i>Item 36(b)</i>
date of acceptance, defined..... 1	Timing objective
Termination of the Contract (see Default, Frustration)	defined in Principal's project requirements..... 1
by frustration..... 40	Trademark or name (see Intellectual property right)
by the Contractor..... 39.9, 39.10	Unconditional undertaking (see Security)
by the Principal..... 39.4, 39.10	approved form..... Annexure Part B
insolvency..... 39.11	UNCITRAL Rules..... <i>Items 37(b), (c)</i>
rights of parties on..... 39.10	Unfixed plant and materials
Test	additional security for..... 37.3(a), <i>Item 14(e)</i>
completion of..... 30.6	generally..... 37.3, <i>Item 34</i>
costs of..... 30.7	labelled..... 37.3(b)
covering up of work..... 30.2	payment for..... 37.3
defined..... 1	Principal's liability for..... 37.3
delay in testing..... 30.5	security for..... 5.4, 37.3, <i>Item 14(e)</i>
notice of..... 30.4	stored and protected..... 37.3(b)
procedure if delayed..... 30.5	unencumbered property of Principal..... 37.3
results of..... 30.6	Unpaid moneys..... 38.3
Superintendent may direct..... 30.7	Urgent protection..... 13
who conducts..... 30.5	Urgent relief..... 42.4
Tests (see definition of Practical completion)	Valuation
Third party insurance	of final payment claims..... 37.4
(see Public liability insurance)..... 17	of progress payment claims..... 37.2
Time (see also EOT)	pricing of variations..... 36.4
acceleration of work..... 34.4(b)	Variation
construction program..... 32	Character and extent of..... 36.1
Contractor's float..... 34.4(a)	cost of complying..... 36.2
defects liability period..... 35, <i>Item 32</i>	cost of proposed..... 36.2
delay damages..... 34.9	deductions—valuing..... 36.4
for access to site..... 24.1, <i>Item 26(a)</i>	deemed..... 2.5, 14.2, 25.3, 29.4
for approval of Contractor's	defined..... 1
drawings..... 8.3(c), <i>Item 18</i>	directing of..... 36.1
for arbitration..... 42.2	direction by Superintendent..... 36.1
for carrying of work..... 32	estimate for..... 36.2
for claiming EOT..... 34.3	for convenience of Contractor..... 36.3
for cleaning up..... 27	generally..... 36
for completing WUC..... 34.1	meaning..... 1, 36.1
for doing any act..... 1(b)	measurements..... 36.2
for effecting insurance..... 16A, 16B, 17, 18	notice of proposed..... 36.2
for executing formal instrument of agreement..... 6	order of precedence in pricing..... 36.4
for final payment..... 37.4	pricing of..... 36.4
for granting an EOT..... 34.5	proposed..... 36.2
for lodging security..... 5.1, <i>Items 14, 15</i>	quotation for..... 36.2
for making claims..... 41	scope of..... 36.1
for notice of latent condition..... 25.2	valuation of..... 36.4
for notice of tests..... 30.4	Wages
for notice to show cause..... 39.3, 39.8	of workers..... 38
for notification of claims..... 41	Waiver of conditions
for possession of Site..... 24.1, <i>Item 26(b)</i>	generally..... 43
for practical completion..... 34.1, <i>Item 7</i>	in writing..... 43
for progress claims..... 37.1, <i>Item 33</i>	Warranties
for progress payments..... 37.2	Contractor's..... 2.2
for release of security or retention..... 5.4	proposed variation, effect on..... 36.2
for service of notices..... 7	unaffected..... 2.3
for Superintendent to confirm oral direction..... 20	

<i>Clause</i>	<i>Clause</i>
variation, effect on .....	2.3(d), 36.1, 36.2
Winding up .....	39.11
Words—singular includes plural and vice versa .....	1(d)
<b>Work (includes Materials)</b>	
acceptance of defective work .....	29.4
care of .....	14.1
deemed variation as to defective work .....	29.4
defective .....	29.3
defined .....	1
examination and testing of .....	30
not complying with the Contract .....	29.3
order of work .....	32
outside working hours .....	31
progress of .....	34
quality of .....	29.1
remedial .....	29.3, 35
subcontracting .....	9.2, <i>Item</i> 19
suspension of .....	33
testing of .....	30
times for work .....	32
under the Contract, defined (WUC) .....	1
variations (see Variations) .....	36
<b>Work under the Contract (see WUC)</b>	
Workers' compensation .....	18
Workers, payment of .....	38
Working days .....	31
Working hours .....	31
<b>Works (see also care of WUC)</b>	
defined .....	1
design of, warranties .....	2.2
design, timing and cost objectives in Principal's project requirements .....	1
insurance of .....	16A
setting out of .....	26
stated purpose in Principal's project requirements .....	1
<b>WUC (work under the Contract)</b>	
acceleration of .....	34.4(b)
care of .....	14.1
damage to property other than defined .....	15 1
delay to .....	4.2, 34.3
excepted risks .....	14.3
insurance of .....	16A
insurance of property other than .....	17
novation relating to .....	9.4, <i>Item</i> 20
order and time of carrying out .....	32
programing of .....	32
progress of .....	34.1
recommencement of .....	33.3
reinstatement of .....	14.2
suspension of .....	33, 39.9
urgent protection of .....	13

AMENDMENT CONTROL SHEET

AS 4902—2000

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Amendment No. 1 (2005)

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REVISED TEXT

*SUMMARY:* This Amendment applies to Clause 37 (a) and (c) of Annexure Part A.

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NOTES

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1	INTERPRETATION AND CONSTRUCTION OF CONTRACT .....	6
2	NATURE OF CONTRACT .....	11
3	PROVISIONAL SUMS .....	12
4	SEPARABLE PORTIONS .....	12
5	SECURITY .....	13
6	EVIDENCE OF CONTRACT .....	14
7	SERVICE OF NOTICES .....	14
8	CONTRACT DOCUMENTS .....	14
9	ASSIGNMENT AND SUBCONTRACTING .....	16
10	INTELLECTUAL PROPERTY RIGHTS .....	17
11	LEGISLATIVE REQUIREMENTS .....	18
12	PROTECTION OF PEOPLE AND PROPERTY .....	18
13	URGENT PROTECTION .....	18
14	CARE OF THE WORK AND REINSTATEMENT OF DAMAGE .....	19
15	DAMAGE TO PERSONS AND PROPERTY OTHER THAN WUC .....	20
16A	INSURANCE OF THE WORKS .....	20
16B	PROFESSIONAL INDEMNITY INSURANCE .....	21
17	PUBLIC LIABILITY INSURANCE .....	21
18	INSURANCE OF EMPLOYEES .....	22
19	INSPECTION AND PROVISIONS OF INSURANCE POLICIES .....	22
20	SUPERINTENDENT .....	23
21	SUPERINTENDENT'S REPRESENTATIVE .....	23
22	CONTRACTOR'S REPRESENTATIVE .....	24
23	CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS .....	24
24	SITE .....	24
25	LATENT CONDITIONS .....	25
26	SETTING OUT THE WORKS .....	25
27	CLEANING UP .....	26
28	MATERIALS, LABOUR AND CONSTRUCTION PLANT .....	26
29	QUALITY .....	27
30	EXAMINATION AND TESTING .....	28
31	WORKING HOURS .....	28
32	PROGRAMMING .....	29
33	SUSPENSION .....	29
34	TIME AND PROGRESS .....	30
35	DEFECTS LIABILITY .....	31
36	VARIATIONS .....	32
37	PAYMENT .....	33

	<i>Page</i>
38 PAYMENT OF WORKERS, CONSULTANTS AND SUBCONTRACTORS.....	35
39 DEFAULT OR INSOLVENCY .....	35
40 TERMINATION BY FRUSTRATION .....	39
41 NOTIFICATION OF CLAIMS .....	39
42 DISPUTE RESOLUTION.....	40
43 WAIVER OF CONDITIONS.....	41
ANNEXURE PART A .....	42
ANNEXURE PART B—APPROVED FORM OF UNCONDITIONAL UNDERTAKING.....	53
ANNEXURE PART C—DEED OF NOVATION (SUBCLAUSE 9.2(C)) .....	54
ANNEXURE PART D—DEED OF NOVATION (SUBCLAUSE 9.4) .....	56
ANNEXURE PART E—DELETIONS, AMENDMENTS AND ADDITIONS .....	58
INDEX .....	59

Page 18: [2] Formatted Highlight	j.tuhtan	28/06/2011 4:11:00 PM
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### Discrepancies in Principal supplied documents

The Contractor is entitled to, and may claim, an extension of time and additional payment for all costs incurred that are in addition to the contract sum arising out of any discrepancy, omission, inconsistency or ambiguity within or between any of the following:

- (a) the documents constituting preliminary design;
- (b) the documents constituting the PPRs;
- (c) the documents comprising the Contract.

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Page 19: [21] Formatted Highlight	j.tuhtan	28/06/2011 4:34:00 PM
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Superintendent must direct the Contractor to progress the Works on the basis of the design. Additionally, the Superintendent shall determine the Cost Estimate based upon the design documents, the cost estimate and the QS Report. In this event, the Contractor may provide the Principal a notice of dispute and refer the matter to expert determination in accordance with the Contract

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When the Principal has agreed to the Design and Cost Estimate, the Contractor must perform the Works strictly according to the Design and Cost Estimate, it being a material condition of this Contract that the Principal shall not be liable to the Contractor for any contract sum, whether by way of EOTs, delay costs, variations or other liabilities, above the agreed absolute cap of Six Million Dollars (\$6,000,000.00).

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**From:** [REDACTED]  
**To:** [REDACTED]  
**Date:** 30/06/2011 2:05:28 pm  
**Subject:** RE: Tennyson: Change to payment structure

[REDACTED] - Thanks. Just one tidy up amendment required to the Contract - now that the Land Sale Contract provisions relating to the Balance Purchase Price Instalment will survive settlement of the contract, our client does not want to be exposed in the unlikely event that Council defaults under the Parklands Works Contract and/or the Parkland Works Contract is terminated for whatever reason. Accordingly, our client requires:

- (1) special condition 4 (a) - (d) to be deleted. These clauses are now basically redundant anyway; and
- (2) in special condition 14.1 (b) delete reference to the Parkland Works Contract date and leave it as "by 2 July 2012".

Please confirm these amendments.

I have noted the need to list all the Title References on the Form 1 Transfer/Form 24. That will be corrected.

Regards

[REDACTED]  
Partner | Property & Projects  
ClarkeKann

Tel: [REDACTED]  
www.clarkekann.com.au  
Brisbane | Level 7, 300 Queen Street, Brisbane QLD 4000,  
Australia | GPO Box 2249, Brisbane QLD 4001, Australia  
Sydney | Level 7, 55 Clarence Street, Sydney NSW 2000, Australia | GPO  
Box 1342, Sydney NSW 2001, Australia

-----Original Message-----

**From:** [REDACTED]  
**Sent:** Thursday, June 30 2011 1:34 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED] Matthew Wallace  
**Subject:** RE: Tennyson: Change to payment structure

[REDACTED]  
I confirm Council is satisfied with the attached marked up Contract.  
Please arrange for Steven issue execution copies.

I will call you to discuss a settlement time.

Regards,

[REDACTED]  
Solicitor | Brisbane City Legal Practice  
Office of the Lord Mayor & CEO  
| Brisbane City Council  
266 George Street | GPO Box 1434 | Brisbane Qld 4001

Phone: [REDACTED]

>>> [REDACTED] 30/06/2011 1:04 pm >>>

Hi [REDACTED]

Please see attached the revised Contract of Sale.

Could you please review and respond with any comments.

Regards,

[REDACTED]  
Senior Development Manager  
Development Queensland

Mirvac  
Level 2, 164 Grey Street South Bank QLD 4101 Australia PO Box 5121 West  
End QLD 4101  
T + [REDACTED] <http://www.mirvac.com>

Electronic Data Transmission Disclaimer  
<<http://ext.mirvac.com/email-disclaimer>>  
Please consider the environment before printing emails and attachments

From: [REDACTED]  
Sent: Thursday, 30 June 2011 12:40 PM  
To: [REDACTED]  
Cc: [REDACTED] Matthew Wallace, [REDACTED]  
Subject: RE: Tennyson: Change to payment structure

[REDACTED] I attach the revised Sale Contract (and Annexures) (in mark up).  
If in order, please on-forward to the relevant people at BCC for  
confirmation so that we can then issue execution copies. I am still to  
amend the Sales Office Lease.

Regards  
[REDACTED]  
Partner | Property & Projects  
[cid:image001.gif@01CC3726.441EDCE0]

Tel: [REDACTED]  
[www.clarkekann.com.au](http://www.clarkekann.com.au)<<http://www.clarkekann.com.au>>  
Brisbane | Level 7, 300 Queen Street, Brisbane QLD 4000, Australia | GPO  
Box 2249, Brisbane QLD 4001, Australia  
Sydney | Level 7, 55 Clarence Street, Sydney NSW 2000, Australia | GPO  
Box 1342, Sydney NSW 2001, Australia

\*\*\*\*\*  
This message has passed through an insecure network.



Please direct all enquiries to the message author.  
\*\*\*\*\*

\*\*\*\*\*  
This message has passed through an insecure network.  
Please direct all enquiries to the message author.  
\*\*\*\*\*

\*\*\*\*\*  
This message has passed through an insecure network.  
Please direct all enquiries to the message author.  
\*\*\*\*\*

CC: [REDACTED]  
[REDACTED]

30/06/2011 2:01 pm >>>

Thanks. Just one tidy up amendment required to the Contract - now that the Land Sale Contract provisions relating to the Balance Purchase Price Instalment will survive settlement of the contract, our client does not want to be exposed in the unlikely event that Council defaults under the Parklands Works Contract and/or the Parkland Works Contract is terminated for whatever reason. Accordingly, our client requires:

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Please confirm these amendments.

I have noted the need to list all the Title References on the Form 1 Transfer/Form 24. That will be corrected.

Regards

Partner | Property & Projects  
ClarkeKann

Tel:

[www.clarkekann.com.au](http://www.clarkekann.com.au)

Brisbane | Level 7, 300 Queen Street, Brisbane QLD 4000,  
Australia | GPO Box 2249, Brisbane QLD 4001, Australia  
Sydney | Level 7, 55 Clarence Street, Sydney NSW 2000, Australia | GPO  
Box 1342, Sydney NSW 2001, Australia

-----Original Message-----

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To: [REDACTED]  
Cc: [REDACTED] Matthew Wallace  
Subject: RE: Tennyson: Change to payment structure

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I will call you to discuss a settlement time.

Regards,

[REDACTED]  
Solicitor | Brisbane City Legal Practice  
Office of the Lord Mayor & CEO  
| Brisbane City Council  
266 George Street | GPO Box 1434 | Brisbane Qld 4001

Phone: [REDACTED]

>>> [REDACTED] 30/06/2011 1:04 pm >>>  
Hi [REDACTED]

Please see attached the revised Contract of Sale.

Could you please review and respond with any comments.

Regards,

[REDACTED]  
Senior Development Manager  
Development Queensland

Mirvac  
Level 2, 164 Grey Street South Bank QLD 4101 Australia PO Box 5121 West  
End QLD 4101

Tel: [REDACTED] > <http://www.mirvac.com>

Electronic Data Transmission Disclaimer  
<<http://ext.mirvac.com/email-disclaimer>>  
Please consider the environment before printing emails and attachments

From: [REDACTED]  
Sent: Thursday, 30 June 2011 12:40 PM  
To: [REDACTED]  
Cc: [REDACTED] Matthew Wallace; [REDACTED]  
Subject: RE: Tennyson: Change to payment structure

[REDACTED] - I attach the revised Sale Contract (and Annexures) (in mark up).  
If in order, please on-forward to the relevant people at BCC for  
confirmation so that we can then issue execution copies. I am still to  
amend the Sales Office Lease.

Regards,

[REDACTED]  
Partner | Property & Projects  
[\[cid:image001.gif@01CC3726.441EDCE0\]](#)

Tel: [REDACTED]  
[www.clarkekann.com.au](http://www.clarkekann.com.au) <<http://www.clarkekann.com.au>>  
Brisbane | Level 7, 300 Queen Street, Brisbane QLD 4000, Australia | GPO  
Box 2249, Brisbane QLD 4001, Australia  
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Box 1342, Sydney NSW 2001, Australia

\*\*\*\*\*  
This message has passed through an insecure network.  
Please direct all enquiries to the message author.  
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This message has passed through an insecure network.  
Please direct all enquiries to the message author.  
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This message has passed through an insecure network.  
Please direct all enquiries to the message author.  
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**PAMD Form 30c****Queensland  
Government**

ABN: 24 830 236 406

Department of **Employment, Economic  
Development and Innovation****Warning statement***Property Agents and Motor Dealers Act 2000* — Chapter 11

This form is effective from 1 October 2010.

**Instructions**

This form is to be attached to a proposed relevant contract of sale for residential property to be read and signed by a proposed buyer **BEFORE** the proposed buyer signs the proposed relevant contract.

**The seller or seller's agent must give the proposed buyer a clear statement directing the buyer's attention to the proposed relevant contract and to this warning statement before the proposed buyer signs the proposed relevant contract. Failure to give the proposed buyer a clear statement may give the buyer a right to terminate the contract under section 370 within 90 days of receiving a copy of the relevant contract unless settlement occurs earlier.**

**Property address**

**Note:** If no street address is applicable, use lot and plan information to identify the property

Street name and number ..... King Arthur Tce .....

Suburb ..... Tennyson ..... State  Q  L  D Postcode    

# WARNING

**DO NOT sign the proposed relevant contract for the above property until you have read and understood ALL SECTIONS of this form. DO NOT sign if you feel pressured.**

**The relevant contract is subject to a five (5) business day cooling-off period. You may terminate this contract during the cooling-off period. However, the seller may deduct a termination penalty of up to 0.25% of the purchase price from the deposit.**

**You should obtain independent:**

- **legal advice** See note 1
- **valuation** See note 2

**Cooling-off period****What is the cooling-off period?**

The cooling-off period is five (5) business days, during which you can change your mind about purchasing this property. Use this time to seek independent legal advice and an independent valuation of the property.

**When does the cooling-off period start?**

Your cooling-off period starts on the day you receive a copy of the completed relevant contract from the seller or seller's agent. The proposed contract becomes a relevant contract when both parties have signed. In any dispute about the commencement of the cooling-off period, it will be up to the seller to prove the buyer received a copy of the relevant contract. If you receive a copy of the relevant contract on a day other than a business day, the cooling-off period commences on the first business day after you receive a copy of the relevant contract

**When does the cooling-off period end?**

Your cooling-off period ends at 5.00pm on the **fifth business day** after the cooling-off period started. A business day is a day other than a Saturday, Sunday or public holiday.

**Can I waive or shorten the cooling-off period?**

Yes, but only if you engage an independent lawyer who must give you a lawyer's certificate explaining the purpose and nature of the certificate. You should seek advice from your lawyer about the effect of waiving or shortening your cooling-off period. If you are waiving the cooling-off period, the lawyer's certificate must be given to the seller or seller's agent before you and the seller enter into the relevant contract.

### Reading and period continued

#### What should I do during the five (5) day cooling-off period?

It is strongly recommended that you seek independent legal advice and obtain an independent valuation of the property during this time and that you understand and agree with the terms and conditions of the contract.

#### How do I terminate the contract during the cooling-off period and what happens if the relevant contract is terminated?

If you want to terminate the contract at any time before the end of the five (5) day cooling-off period, you must give a signed, dated notice to the seller indicating that you wish to terminate the contract during the cooling-off period. The notice must state that the relevant contract is terminated under section 370A of the *Property Agents and Motor Dealers Act 2000*. The seller must refund your deposit within **14 days** of the termination. The seller may deduct a termination penalty of up to **0.25% of the purchase price**. Make sure you terminate any building contract associated with this property if you terminate this contract during the cooling-off period.

#### What happens after the cooling-off period ends?

If you do not terminate the contract during the cooling-off period, you are legally bound by the contract, subject to the terms and conditions of the contract.

### Other important information

**Read the attached proposed relevant contract. Do not be pressured into signing the proposed relevant contract before you have read it.**

#### Note 1 - Independent legal advice

Do you fully understand the legal consequences of signing the attached proposed relevant contract? Before signing the proposed relevant contract, it is strongly recommended that you seek independent legal advice and clarify any queries or concerns you have about buying the property. Are you sure the person you have obtained advice from is totally independent from the seller or seller's agent? **Exercise extreme caution in accepting the advice of anyone referred to you by the seller or seller's agent.**

#### Note 2 - Independent valuation of the property

Are you sure the purchase price for this property is fair? You should consider obtaining an independent valuation of the property before you sign the contract, or before your cooling-off period ends. When choosing a valuer you should ask whether the valuer has any relationship with any person involved in selling the property and whether they have professional indemnity insurance. Before you engage the valuer ask about the cost of the valuation. For more information about valuations, go to [www.fairtrading.qld.gov.au/house-valuation.htm](http://www.fairtrading.qld.gov.au/house-valuation.htm).

#### Building contracts

For building contracts associated with the purchase of residential property, you should ensure that the building contract price is not over-valued or inflated. Get a valuation or compare homes of similar value advertised or displayed by other home builders.

Domestic building contracts also have a cooling-off period under the *Domestic Building Contracts Act 2000* (section 72). Please check the Building Services Authority of Queensland website at [www.bsa.qld.gov.au](http://www.bsa.qld.gov.au) for further information about building contracts. Remember to terminate any building contracts related to this property if you terminate this contract.

#### Claim fund and property developers

A claim fund exists which, in some cases, enables buyers to make a claim if they suffer financial loss because a real estate agent commits a claimable offence. Strict guidelines and timeframes apply. If you suffer loss while buying an investment property or buying any property from a property developer you can not make a claim for loss against the fund.

#### How do I know if I'm dealing with a licensed real estate agent or property developer and/or obtain further information about purchasing real estate?

The Fair Trading website at [www.fairtrading.qld.gov.au](http://www.fairtrading.qld.gov.au) provides you with useful information about purchasing property. You can check that you are dealing with a licensed real estate agent or property developer at [www.fairtrading.qld.gov.au/are-you-licensed.htm](http://www.fairtrading.qld.gov.au/are-you-licensed.htm) or by phoning 13 13 04.

### Buyer's acknowledgment

I/we have read all sections of this warning statement and I/we acknowledge that by signing this warning statement, my/our attention has been directed to this warning statement and the attached proposed relevant contract by a clear statement and I/we have signed the warning statement BEFORE I/we signed the attached proposed relevant contract.

Signing this Warning Statement negates any termination right I/we may have had under section 370 of the *Property Agents and Motor Dealers Act 2000*.

Name .. Brisbane City Council .....

Name .. ..

Signature .. Appointed Officer .. Signature .....

Date   /   /

Date   /   /

**Information sheet (body corporate information)***Body Corporate and Community Management Act 1997*

This form is effective from 29 April 2011

**WARNING**

**You are strongly advised to obtain independent legal advice regarding any questions or concerns you have about purchasing the property or your prospective rights and obligations as a member of a body corporate.**

**Notice to agent:** The *Property Agents and Motor Dealers Act 2000* and *Body Corporate and Community Management Act 1997* (the Act) include strict requirements for presentation of prescribed warning statements and information sheets. Failure to comply may result in cancellation of the contract.

**By law the seller or the seller's agent must attach this information sheet to the contract.  
Do NOT sign the contract of sale without reading this information sheet.**

In addition to the contract, you should have before you:

- a separate warning statement, if the lot is a residential property, provided by the seller under the *Property Agents and Motor Dealers Act 2000*
- a disclosure statement provided by the seller, containing essential information about the body corporate that you will become a member of through purchasing this property (e.g. the amount of annual contributions currently set by the body corporate and payable by the lot owner)
- a community management statement for the scheme provided by the seller, containing important details about the scheme including details of any proposed future development of the scheme, the lot entitlements, by-laws and the regulation module applying to the scheme.

**Community titles schemes**

This contract warning contains important information you should read and understand before signing a contract to buy a lot in a community titles scheme. Community titles schemes include duplexes, residential unit blocks, high-rise apartment complexes, townhouse complexes and some commercial premises. They contain individually owned units and common property such as lawns and access roadways.

Some new unit owners do not realise owning a lot in a community titles scheme brings with it certain obligations. You should carefully consider whether living or investing in a community titles scheme suits your lifestyle and financial needs.

When a community titles scheme is established, a body corporate is created to administer the scheme. Each lot owner is automatically a member of their body corporate and enjoys certain rights and responsibilities.

Owners are **NOT** able to decline to be members of their body corporate. Normally, an elected committee carries out day-to-day functions on behalf of the body corporate. Bodies corporate may also engage service providers such as body corporate managers and on-site managers, caretakers and letting agents.

Common obligations of a body corporate include:

- administering the common property and any body corporate assets
- enforcing the by-laws for the scheme, such as noise levels, the keeping of pets, car parking and a range of other matters
- arranging compulsory body corporate insurance
- conducting general meetings of owners, adopting budgets, and levying contributions to fund the operation of the body corporate
- maintaining bank accounts, keeping records, and preparing financial statements.

Common obligations of individual lot owners include:

- making financial contributions towards the body corporate administrative costs
- complying with by-laws
- maintaining their lot in good condition.

## Suggested searches and matters to investigate

There are significant differences between owning a lot in a community titles scheme and owning other types of property (such as a detached house). In addition to carrying out conveyancing searches, it is also recommended you investigate a number of special body corporate matters through the following sources:

### 1. Department of Justice and Attorney-General, Office of the Commissioner for Body Corporate and Community Management

Conduct a search at the Office of the Commissioner for Body Corporate and Community Management for any Adjudicator's Orders (a decision regarding the outcome of a dispute) made concerning the scheme.

General information and fact sheets are also provided about community title living and body corporate rules and regulations. For more information, call 1800 060 119 or visit [www.justice.qld.gov.au/bccm](http://www.justice.qld.gov.au/bccm)

### 2. Body corporate secretary

Obtain a **Body Corporate Information Certificate** from the body corporate secretary or body corporate manager whose name and address is supplied in the disclosure statement. Compare the disclosure statement with the information certificate, as inaccurate information in the disclosure statement may give you grounds to cancel the contract (Section 209 or Section 217 of the Act).

**A search of the body corporate records** can provide other important information, such as whether any improvements to the lot you are purchasing (e.g. balcony enclosure, air-conditioning) were approved, whether any conditions apply, and who is responsible for their maintenance and insurance.

Also, **check for any agreements** the body corporate may have entered into (e.g. caretaking, letting, body corporate management or lift maintenance).

#### Checklist

- By purchasing this property, do you know you will be part of a body corporate?
- Are you aware of any contracts the body corporate is a party to?
- Have you read and understood the body corporate by-laws?
- Do you understand your likely financial contributions to the body corporate?
- Are you aware that an adjustment of lot entitlements may increase or decrease your financial contributions to the body corporate?
- Are you aware that your financial contributions to the body corporate will vary as the financial liabilities of the body corporate change?
- Do you understand your maintenance responsibilities?
- Do you understand the role of the body corporate manager and on-site manager (if appointed)?

## Buyer's acknowledgment

I/we have read all sections of this information sheet and I/we have acknowledged and signed the information sheet BEFORE I/we signed the attached contract.

If the lot is residential property, I/we acknowledge that by signing this information sheet, my/our attention has been directed to this information sheet and the attached proposed relevant contract by a clear statement and that signing this information sheet negates any termination right I/we may have had under section 206A or 213A of the *Body Corporate and Community Management Act 1997*.

Name Brisbane City Council .....

Signature ..... Date 30/06/2017  
D D / M M / Y Y Y Y

Name .....  
Appointed Officer

Signature ..... Date  /  /   
D D / M M / Y Y Y Y





The Real Estate Institute of Queensland

© COPYRIGHT

# Contract

## For Houses and Residential Land

Eighth Edition

This document has been approved by The Real Estate Institute of Queensland Limited and the Queensland Law Society Incorporated as being suitable for the sale and purchase of houses and residential land in Queensland except for new residential property in which case the issue of GST liability must be dealt with by special condition.

The Seller and Buyer agree to sell and buy the Property under this contract

### Reference Schedule

Contract Date:

Agent:

ABN:

Address:

Licence Number:

Telephone:

Facsimile:

Mobile:

Email Address:

#### Parties

**Seller:**

Mirvac Queensland Pty Ltd ACN 060 411 207

ABN:

Email Address:

Address:

Level 2, 164 Grey Street, South Bank Qld 4101

Telephone:

Facsimile:

Mobile:

**Seller's Solicitor:**

ClarkeKann Lawyers

[or any other solicitor notified to the Buyer]

ABN:

Ref: SMC

Address:

Level 7, 300 Queen Street, Brisbane Qld 4000

Telephone:

Facsimile:

Mobile:

Email Address:

**Buyer:**

Brisbane City Council

ABN:

Email Address:

Address:

266 George Street, Brisbane

Telephone:

Facsimile:

Mobile:

**Buyer's Solicitor:**

Brisbane City Legal Practice

[or any other solicitor notified to the Seller]

ABN:

Ref:

Address:

266 George Street, Brisbane

Telephone:

Facsimile:

Mobile:

Email Address:

#### Property

**Land**

Address:

King Arthur Tce, Tennyson QLD 4105

\*Vacant/~~Built on~~ [\*Delete one]

Description:

See Schedule 1

County:

See Schedule 1

Parish: See Schedule 1

Title Reference:

See Schedule 1

Area:

[more or less]

Land sold as \*Freehold/~~Leasehold~~ [\*Delete one. If neither is deleted, the land is treated as being Freehold]

**Present Use:**

Residential

**Local Government:**

Brisbane City Council

2052443\_1

**Property - Continued**

**Excluded Fixtures:** Nil

**Included Chattels:** Nil

**Matters Affecting Property**

**Title Encumbrances:** See Schedule 1

[If the Property is sold free from Title Encumbrances insert "Nil"]  
[If the Property is sold subject to Title Encumbrances, they must be described]

**Tenancies:** Not applicable

Tenant's Name: \_\_\_\_\_

Term and Options: \_\_\_\_\_

Starting Date of Term: \_\_\_\_\_

Ending Date of Term: \_\_\_\_\_

Rent: \_\_\_\_\_ Bond: \_\_\_\_\_

**Managing Agent:** Not applicable

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Facsimile: \_\_\_\_\_ Mobile: \_\_\_\_\_

Email Address: \_\_\_\_\_

**Price**

**Deposit Holder:** ClarkeKann Lawyers

[Unless otherwise specified in contract, the Purchase Price includes any GST payable on the supply of the Property to the Buyer]

**Purchase Price:** \$ 9,000,000.00 (plus GST) [payable in accordance Special Conditions]

**Deposit:** \$ 1.00 Initial Deposit payable when Buyer signs this contract (if demanded)

\$ \_\_\_\_\_ Balance Deposit (if any) payable on: \_\_\_\_\_

**Default Interest Rate:** \_\_\_\_\_ % [If no figure is inserted, the Contract Rate published by the Queensland Law Society Inc will apply]

**Finance**

**Finance Amount:** \$ Not applicable

[Unless all of "Finance Amount", "Financier" and "Finance Date" are completed, this contract is not subject to finance and clause 3 does not apply]

**Financier:** Not applicable

**Finance Date:** Not applicable

**Building and/or Pest Inspection Date**

**Inspection Date:** Not applicable

[If not completed, the contract is not subject to an inspection report and clause 4 does not apply]

**Pool Safety**

- Q1. Is there a pool on the Land or on adjacent land used in association with the Land?
- Yes
- No      Clause 4.7 of this contract does not apply
- Q2. If the answer to Q1 is Yes, is there a Pool Safety Certificate for the pool at the time of contract?
- Yes      Clause 5.3(1)(e) applies
- No      Clause 4.7 applies (except where this contract is formed on a sale by auction)
- If there is a pool on the Land and Q2 is not completed then clause 4.7 applies.*
- Q3. If the answer to Q2 is No, has a Notice of no pool safety certificate been given prior to contract?
- Yes
- No

*Note: This is an obligation of the Seller under Section 16 of the Building Regulation 2006.*

**Pool Safety Inspection**

Date: Not applicable

**[WARNING TO SELLER:** Failure to comply with the Pool Safety Requirements is an offence with substantial penalties.]

**[WARNING TO BUYER:** If the Buyer does not receive a Pool Safety Certificate at settlement, the Buyer becomes responsible at its cost to obtain a Pool Safety Certificate within 90 days after settlement. The Buyer can also become liable to pay any costs of rectification necessary to comply with the Pool Safety Requirements to obtain a pool safety certificate. The Buyer commits an offence and can be liable to substantial penalties if the Buyer fails to comply with this requirement.]

[Clause 4.7(2) applies except where this contract is formed on a sale by auction]

**Electrical Safety Switch and Smoke Alarm**

*This section must be completed unless the Land is vacant.*

The Seller gives notice to the Buyer that an Approved Safety Switch for the General Purpose Socket Outlets is:

- \*installed in the residence
- \*not installed in the residence

*\*Mark whichever is applicable*

The Seller gives notice to the Buyer that a Compliant Smoke Alarm(s) is/are:

- \*installed in the residence
- \*not installed in the residence

*\*Mark whichever is applicable*

**[WARNING:** By giving false or misleading information in this section, the Seller may incur a penalty. The Seller should seek expert and qualified advice about completing this section and not rely on the Seller's Agent to complete this section.]

**[WARNING:** Failure to install a Compliant Smoke Alarm is an offence under the *Fire and Rescue Service Act 1990*.]

The REIQ Terms of Contract for Houses and Residential Land (Pages 5-10)  
(Eighth Edition) Contain the Terms of this Contract.

# Special Conditions

See Schedule 1 and Annexures A-E


**Settlement**

**Settlement Date:** 30 June 2011 (subject to the special conditions)

[or the next Business Day if that is not a Business Day in the Place for Settlement]  
[If Brisbane is inserted this is a reference to Brisbane CBD]

**Place for Settlement:** Brisbane CBD

**Signing**

 **Seller**  
 MATHIEW JAMES  
 [Redacted]  
 [Redacted] **Appointed Officer**  
 [Redacted] **Buyer**  
 [Redacted] **Witness / Justice of the Peace (C.Dec)**  
 [Redacted] **Witness**

Mirvac Queensland Pty Ltd ACN 060 411 207  
by its duly appointed Attorneys

**Deposit Holder**

[Who acknowledges having received the Initial Deposit and agrees to hold that amount and any Balance Deposit when received as Deposit Holder for the parties as provided in the Contract.]



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# Terms of Contract

## For Houses and Residential Land

### 1. Definitions

#### 1.1 In this contract:

- (1) terms in **bold** in the Reference Schedule have the meanings shown opposite them; and
- (2) unless the context otherwise indicates:
  - (a) **"Approved Safety Switch"** means a residual current device as defined in the *Electrical Safety Regulation 2002*;
  - (b) **"Balance Purchase Price"** means the Purchase Price, less the Deposit, adjusted under clauses 2.6(2) and 2.6(13);
  - (c) **"Bank"** means:
    - (i) a bank as defined by section 5 of the *Banking Act 1959* of the Commonwealth; or
    - (ii) a bank constituted under a law of a state;
  - (d) **"Bond"** means a bond under the *Residential Tenancies and Rooming Accommodation Act 2008*;
  - (e) **"Building Act"** means the *Building Act 1975* as amended.
  - (f) **"Business Day"** means a week day other than a public holiday in the Place for Settlement;
  - (g) **"Compliant Smoke Alarm"** means a smoke alarm complying with sections 104RB (2) or (4) of the *Fire and Rescue Service Act 1990*;
  - (h) **"Contract Date"** or **"Date of Contract"** means the date inserted in the Reference Schedule;
  - (i) **"Court"** includes any tribunal established under statute.
  - (j) **"Encumbrances"** includes unregistered and statutory encumbrances;
  - (k) **"Essential Term"** includes, in the case of breach by:
    - (i) the Buyer: clauses 2.2, 2.5(1), 5.1 and 6.1; and
    - (ii) the Seller: clauses 5.1, 5.3(1)(a)-(c), 5.3(1)(d)(ii) & (iii), 5.3(1)(e), 5.5 and 6.1;
 but nothing in this definition precludes a Court from finding other terms to be essential.
  - (l) **"Financial Institution"** means a Bank, building society or credit union;
  - (m) **"General Purpose Socket Outlet"** means an electrical socket outlet as defined in the *Electrical Safety Regulation 2002*;
  - (n) **"GST"** means the goods and services tax under the *GST Act*;
  - (o) **"GST Act"** means *A New Tax System (Goods and Services Tax) Act* and includes other GST related legislation;
  - (p) **"Improvements"** means fixed structures on the Land and includes all items fixed to them (such as stoves, hot water systems, fixed carpets, curtains, blinds and their fittings, clothes lines, fixed satellite dishes and television antennae, in-ground plants) but does not include the Reserved Items;
  - (q) **"Keys"** means keys, codes or devices in the Seller's possession for all locks or security systems on the Property;
  - (r) **"Notice of no pool safety certificate"** means the Form 36 under the *Building Regulation 2006* to the effect that there is no Pool Safety Certificate issued for the Land;
  - (s) **"Outgoings"** means:
    - (i) rates or charges on the Land by any competent authority (for example, council rates, water rates, fire service levies); and
    - (ii) land tax;
  - (t) **"Pool Safety Requirements"** means the requirements for pool safety contained in the *Building Act 1975* and *Building Regulation 2006*;
  - (u) **"Pool Safety Certificate"** means either:
    - (i) a certificate of compliance; or
    - (ii) an exemption from compliance; issued in accordance with the Pool Safety Requirements;
  - (v) **"Pool Safety Inspection Date"** means the Pool Safety Inspection Date inserted in the Reference Schedule. If no date is inserted in the Reference Schedule, the Pool Safety Inspection Date is taken to be the earlier of the following:
    - (i) the Inspection Date for the Building and/or Pest Inspection; or
    - (ii) 2 Business Days before the Settlement Date;
  - (w) **"Pool Safety Inspector"** means a person licensed or authorised under the *Building Act 1975* and *Building Regulation 2006* to issue a Pool Safety Certificate;
  - (x) **"Property"** means:
    - (i) the Land;
    - (ii) the Improvements; and
    - (iii) the Included Chattels;
  - (y) **"Rent"** means any periodic amount payable under the Tenancies;
  - (z) **"Reserved Items"** means the Excluded Fixtures and all chattels on the Land other than the Included Chattels;
  - (aa) **"Transfer Documents"** means:
    - (i) the form of transfer under the *Land Title Act 1994* required to transfer title in the Land to the Buyer; and
    - (ii) any other document to be signed by the Seller necessary for stamping or registering the transfer; and
  - (bb) **"Transport Infrastructure"** has the meaning defined in the *Transport Infrastructure Act 1994*.

### 2. Purchase Price

#### 2.1 GST

Unless otherwise specified in this contract, the Purchase Price includes any GST payable on the supply of the Property to the Buyer.

#### 2.2 Deposit

- (1) The Buyer must pay the Deposit to the Deposit Holder at the times shown in the Reference Schedule. The Deposit Holder will hold the Deposit until a party becomes entitled to it.
- (2) The Buyer will be in default if it:
  - (a) does not pay the Deposit when required;
  - (b) pays the Deposit by a post-dated cheque; or
  - (c) pays the Deposit by cheque which is dishonoured on presentation.
- (3) The Seller may recover from the Buyer as a liquidated debt any part of the Deposit which is not paid when required.



### 2.3 Investment of Deposit

If:

- (1) the Deposit Holder is instructed by either the Seller or the Buyer; and
  - (2) it is lawful to do so;
- the Deposit Holder must:
- (3) invest as much of the Deposit as has been paid with any Financial Institution in an interest-bearing account in the names of the parties; and
  - (4) provide the parties' tax file numbers to the Financial Institution (if they have been supplied).

### 2.4 Entitlement to Deposit and Interest

- (1) The party entitled to receive the Deposit is:
  - (a) if this contract settles, the Seller;
  - (b) if this contract is terminated without default by the Buyer, the Buyer; and
  - (c) if this contract is terminated owing to the Buyer's default, the Seller.
- (2) The interest on the Deposit must be paid to the person who is entitled to the Deposit.
- (3) If this contract is terminated, the Buyer has no further claim once it receives the Deposit and interest, unless the termination is due to the Seller's default or breach of warranty.
- (4) The Deposit is invested at the risk of the party who is ultimately entitled to it.

### 2.5 Payment of Balance Purchase Price

- (1) On the Settlement Date, the Buyer must pay the Balance Purchase Price by Bank cheque as the Seller directs.
- (2) Despite any other provision of this contract, a reference to a "Bank cheque" in clause 2.5(1):
  - (a) includes a cheque drawn by a building society or credit union on itself;
  - (b) does not include a cheque drawn by a building society or credit union on a Bank;
 and the Seller is not obliged to accept a cheque referred to in clause 2.5(2)(b) on the Settlement Date.

### 2.6 Adjustments to Balance Purchase Price

- (1) The Seller is liable for Outgoings and is entitled to Rent up to and including the Settlement Date. The Buyer is liable for Outgoings and is entitled to Rent after the Settlement Date.
- (2) Subject to clauses 2.6(3), 2.6(4), 2.6(5) and 2.6(6), Outgoings for periods including the Settlement Date must be adjusted:
  - (a) for those paid, on the amount paid;
  - (b) for those assessed but unpaid, on the amount payable (excluding any discount); and
  - (c) for those not assessed:
    - (i) on the amount the relevant authority advises will be assessed (excluding any discount); or
    - (ii) if no advice on the assessment to be made is available, on the amount of the latest assessment (excluding any discount).
- (3) If there is no separate assessment of rates for the Land at the Settlement Date and the Local Government informs the Buyer that it will not apportion rates between the Buyer and the Seller, then:
  - (a) the amount of rates to be adjusted is that proportion of the assessment equal to the ratio of the area of the Land to the area of the parcel in the assessment; and
  - (b) if an assessment of rates includes charges imposed on a "per lot" basis, then the portion of those charges to be adjusted is the amount assessed divided by the number of lots in that assessment.

- (4) Land tax must be adjusted:

- (a) on the assessment that the Office of State Revenue would issue for the land tax year current at the Settlement Date if the Seller was one natural person resident in Queensland and the Land was the Seller's only land; or
- (b) based on the assumptions in clause 2.6(4)(a), if there is no separate unimproved value for the Land, on a notional unimproved value equal to:

Unimproved value of the parcel that includes the Land under <i>Valuation of Land Act 1944</i>	x	$\frac{\text{Area of Land}}{\text{Area of the parcel}}$
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- (5) If land tax is unpaid at the Settlement Date and the Office of State Revenue advises that it will issue a final clearance for the Land on payment of a specified amount, then the Buyer may deduct the specified amount from the Balance Purchase Price at settlement and must pay it promptly to the Office of State Revenue. If an amount is deducted under this clause, then land tax will be treated as paid at the Settlement Date for the purposes of clause 2.6(2).
- (6) Any Outgoings assessable on the amount of water used must be adjusted on the charges that would be assessed on the total water usage for the assessment period, determined by assuming that the actual rate of usage shown by the meter reading made before settlement continues throughout the assessment period. The Buyer must obtain and pay for the meter reading.
- (7) If any Outgoings are assessed but unpaid at the Settlement Date, then the Buyer may deduct the amount payable from the Balance Purchase Price at settlement and pay it promptly to the relevant authority. If an amount is deducted under this clause, the relevant Outgoing will be treated as paid at the Settlement Date for the purposes of clause 2.6(2).
- (8) Arrears of Rent for any rental period ending on or before the Settlement Date belong to the Seller and are not adjusted at settlement.
- (9) Unpaid Rent for the rental period including both the Settlement Date and the following day ("Current Period") is not adjusted until it is paid.
- (10) Rent already paid for the Current Period or beyond must be adjusted at settlement.
- (11) If Rent payments are reassessed after the Settlement Date for periods including the Settlement Date, any additional Rent payment from a Tenant or refund due to a Tenant must be apportioned under clauses 2.6(8), 2.6(9) and 2.6(10).
- (12) Payments under clause 2.6(10) must be made within 14 days after notification by one party to the other but only after any additional payment from a Tenant has been received.
- (13) The cost of Bank cheques payable at settlement:
  - (a) to the Seller or its mortgagee are the responsibility of the Buyer; and
  - (b) to parties other than the Seller or its mortgagee are the responsibility of the Seller.

### 3. Finance

- 3.1 This contract is conditional on the Buyer obtaining approval of a loan for the Finance Amount from the Financier by the Finance Date on terms satisfactory to the



- Buyer. The Buyer must take all reasonable steps to obtain approval.
- 3.2 The Buyer must give notice to the Seller that:
- (1) approval has not been obtained by the Finance Date and the Buyer terminates this contract; or
  - (2) the finance condition has been either satisfied or waived by the Buyer.
- 3.3 The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 3.2 by 5pm on the Finance Date. This is the Seller's only remedy for the Buyer's failure to give notice.
- 3.4 The Seller's right under clause 3.3 is subject to the Buyer's continuing right to terminate this contract under clause 3.2(1) or waive the benefit of this clause 3 by giving written notice to the Seller of the waiver.
- 4. Building and Pest Inspection Reports and Pool Safety**
- 4.1 Building and Pest Inspection**
- This contract is conditional upon the Buyer obtaining a written building report from a building inspector and a written pest report from a pest inspector (which may be a single report) on the Property by the Inspection Date on terms satisfactory to the Buyer. The Buyer must take all reasonable steps to obtain the reports (subject to the right of the Buyer to elect to obtain only one of the reports).
- 4.2 The Buyer must give notice to the Seller that:
- (1) a satisfactory inspector's report under clause 4.1 has not been obtained by the Inspection Date and the Buyer terminates this contract. The Buyer must act reasonably; or
  - (2) clause 4.1 has been either satisfied or waived by the Buyer.
- 4.3 If the Buyer terminates this contract and the Seller asks the Buyer for a copy of the building and pest reports, the Buyer must give a copy of each report to the Seller without delay.
- 4.4 The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 4.2 by 5pm on the Inspection Date. This is the Seller's only remedy for the Buyer's failure to give notice.
- 4.5 The Seller's right under clause 4.4 is subject to the Buyer's continuing right to terminate this contract under clause 4.2(1) or waive the benefit of this clause 4 by giving written notice to the Seller of the waiver.
- 4.6 If required under the *Queensland Building Services Authority Act 1991*, an inspector referred to in clause 4.1 must hold a current licence under that Act.
- 4.7 Pool Safety**
- (1) This clause 4.7 applies if:
    - (a) there is a pool on the Land and the answer to Q2 of the Reference Schedule is No or Q2 is not completed; and
    - (b) this contract was not formed on a sale by auction.
  - (2) This contract is conditional upon the Buyer obtaining from a Pool Safety Inspector by the Pool Safety Inspection Date:
    - (a) confirmation that the Pool Safety Requirements have been met and the issue of a Pool Safety Certificate; or
    - (b) confirmation of the works required before a Pool Safety Certificate can be issued.
  - (3) The Buyer must give notice to the Seller on or before the Pool Safety Inspection Date that:
    - (a) a Pool Safety Inspector has issued a Pool Safety Certificate in which case neither the Buyer nor the

- Seller have any further rights under this clause 4.7; or
- (b) a Pool Safety Inspector has not issued a Pool Safety Certificate and the Buyer terminates this contract. The Buyer must act reasonably; or
  - (c) the Buyer waives the benefit of this clause 4.7 and elects to proceed to settlement notwithstanding that there is no Pool Safety Certificate.
- (4) The Buyer's right to terminate this contract or waive the benefit of this clause 4.7 ends on the earlier of:
    - (a) a Pool Safety Certificate being issued; or
    - (b) settlement occurring.
  - (5) The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 4.7 (3) by 5pm on the Pool Safety Inspection Date. This is the Seller's only remedy for the Buyer's failure to give notice.
  - (6) The Seller's right under clause 4.7(5) is subject to the Buyer's continuing right to terminate this contract or waive the benefit of this clause 4.7 by giving written notice to the Seller of the waiver.
  - (7) If the Buyer terminates this contract in accordance with clause 4.7(3)(b), and the Seller asks the Buyer for a copy of the pool safety inspection report, the Buyer must give a copy of the report to the Seller without delay.
  - (8) For the purpose of this clause 4.7, "**formed on a sale by auction**" means formed on sale by auction—
    - (a) directly on the fall of the hammer, by outcry; or
    - (b) directly at the end of another similar type of competition for purchase.

## 5. Settlement

### 5.1 Time and Date

- (1) Settlement must occur between 9am and 5pm on the Settlement Date.
- (2) If the parties do not agree on where settlement is to occur, it must take place in the Place for Settlement at the office of a solicitor or Financial Institution nominated by the Seller, or, if the Seller does not make a nomination, at the land registry office in or nearest to the Place for Settlement.

### 5.2 Transfer Documents

- (1) The Transfer Documents must be prepared by the Buyer's Solicitor and delivered to the Seller a reasonable time before the Settlement Date.
- (2) If the Buyer pays the Seller's reasonable expenses, it may require the Seller to produce the Transfer Documents at the Office of State Revenue nearest the Place for Settlement for stamping before settlement.

### 5.3 Documents and Keys at Settlement

- (1) In exchange for payment of the Balance Purchase Price, the Seller must deliver to the Buyer at settlement:
  - (a) any instrument of title for the Land required to register the transfer to the Buyer; and
  - (b) unstamped Transfer Documents capable of immediate registration after stamping; and
  - (c) if requested, the Keys in the Seller's or the Seller's Agent's possession or control for all locks and security systems on the Property; and
  - (d) if there are Tenancies:
    - (i) the Seller's copy of any Tenancy agreements;
    - (ii) a notice to each tenant advising of the sale in the form required by law; and
    - (iii) any notice required by law to transfer to the Buyer the Seller's interest in any Bond; and



(e) if the answer to Q2 in the Reference Schedule is Yes, a copy of a current Pool Safety Certificate, if not already provided to the Buyer.

- (2) If the instrument of title for the Land also relates to other land, the Seller need not deliver it to the Buyer, but the Seller must make arrangements satisfactory to the Buyer to produce it for registration of the transfer.
- (3) If the Keys are not delivered at Settlement under clause 5.3(1)(c), the Seller must deliver the Keys to the Buyer. The Seller may discharge its obligation under this provision by authorising the Seller's Agent to release the Keys to the Buyer.

#### 5.4 Assignment of Covenants and Warranties

At settlement, the Seller assigns to the Buyer the benefit of all:

- (1) covenants by the tenants under the Tenancies;
- (2) guarantees and Bonds (subject to the requirements of the *Residential Tenancies and Rooming Accommodation Act 2008*) supporting the Tenancies;
- (3) manufacturers' warranties regarding the Included Chattels; and
- (4) builders' warranties on the Improvements; to the extent they are assignable. However, the right to recover arrears of Rent is not assigned to the Buyer and section 117 of the *Property Law Act 1974* does not apply.

#### 5.5 Possession of Property and Title to Included Chattels

On the Settlement Date, in exchange for the Balance Purchase Price, the Seller must give the Buyer vacant possession of the Land and the Improvements except for the Tenancies. Title to the Included Chattels passes at settlement.

#### 5.6 Reservations

- (1) The Seller must remove the Reserved Items from the Property before the Settlement Date.
- (2) The Seller must repair at its expense any damage done to the Property in removing the Reserved Items. If the Seller fails to do so, the Buyer may repair that damage.
- (3) Any Reserved Items not removed before settlement will be considered abandoned and the Buyer may, without limiting its other rights, complete this contract and appropriate those Reserved Items or dispose of them in any way.
- (4) The Seller indemnifies the Buyer against any damages and expenses resulting from the Buyer's actions under clauses 5.6(2) or 5.6(3).

#### 5.7 Consent to Transfer

- (1) If the Land sold is leasehold, this contract is subject to any necessary consent to the transfer of the lease to the Buyer being obtained by the Settlement Date.
- (2) The Seller must apply for the consent required as soon as possible.
- (3) The Buyer must do everything reasonably required to help obtain this consent.

### 6. Time

6.1 Time is of the essence of this contract, except regarding any agreement between the parties on a time of day for settlement.

### 7. Matters Affecting the Property

#### 7.1 Title

The Land is sold subject to:

- (1) any reservations or conditions on the title or the original Deed of Grant (if freehold); or
- (2) the Conditions of the Crown Lease (if leasehold).

#### 7.2 Encumbrances

The Property is sold free of all Encumbrances other than the Title Encumbrances and Tenancies.

#### 7.3 Requisitions

The Buyer may not deliver any requisitions or enquiries on title.

#### 7.4 Seller's Warranties

- (1) The Seller warrants that at settlement:
  - (a) if the Land is freehold: it will be the registered owner of an estate in fee simple in the Land and will own the rest of the Property;
  - (b) if the Land is leasehold: it will be the registered lessee, the lease is not liable to forfeiture because of default under the lease, and it will own the rest of the Property;
  - (c) it will be capable of completing this contract (unless the Seller dies or becomes mentally incapable after the Contract Date); and
  - (d) there will be no unsatisfied judgment, order or writ affecting the Property.
- (2) The Seller warrants that at the Contract Date and settlement there are no current or threatened claims, notices or proceedings that may lead to a judgment, order or writ affecting the Property.
- (3) (a) The Seller warrants that, except as disclosed in this contract or a notice given by the Seller to the Buyer under the *Environmental Protection Act 1994* ("EPA"), at the Contract Date:
  - (i) there is no outstanding obligation on the Seller to give notice to the administering authority under EPA of notifiable activity being conducted on the Land; and
  - (ii) the Seller is not aware of any facts or circumstances that may lead to the Land being classified as contaminated land within the meaning of EPA.
- (b) If the Seller breaches a warranty in clause 7.4(3)(a), the Buyer may:
  - (i) terminate this contract by notice in writing to the Seller given within 2 Business Days before the Settlement Date; or
  - (ii) complete this contract and claim compensation, but only if the Buyer claims it in writing before the Settlement Date.
- (4) If a warranty in clause 7.4(1) or clause 7.4(2) is not correct, the Buyer may terminate this contract by notice to the Seller.
- (5) The Seller does not warrant that the Present Use is lawful.

#### 7.5 Survey and Mistake

- (1) The Buyer may survey the Land.
- (2) If there is:
  - (a) an error in the boundaries or area of the Land;
  - (b) an encroachment by structures onto or from the Land; or
  - (c) a mistake or omission in describing the Property or the Seller's title to it;
 which is:
  - (d) immaterial; or
  - (e) material, but the Buyer elects to complete this contract; the Buyer's only remedy against the Seller is for compensation, but only if claimed by the Buyer in writing on or before settlement.
- (3) The Buyer may not delay settlement or withhold any part of the Balance Purchase Price because of any compensation claim under clause 7.5(2).





- (4) If there is a material error, encroachment or mistake, the Buyer may terminate this contract before settlement.

#### 7.6 Requirements of Authorities

- (1) Any valid notice or order by any competent authority or Court requiring work to be done or money spent in relation to the Property ("**Work or Expenditure**") must be fully complied with:
- if issued before the Contract Date, by the Seller before the Settlement Date;
  - if issued on or after the Contract Date, by the Buyer.
- (2) If any Work or Expenditure that is the Seller's responsibility under clause 7.6(1)(a) is not done before the Settlement Date, the Buyer is entitled to claim the reasonable cost of work done by the Buyer in accordance with the notice or order referred to in clause 7.6(1) from the Seller after settlement as a debt.
- (3) Any Work or Expenditure that is the Buyer's responsibility under clause 7.6(1)(b), which is required to be done before the Settlement Date, must be done by the Seller unless the Buyer directs the Seller not to and indemnifies the Seller against any liability for not carrying out the work. If the Seller does the work, or spends the money, the reasonable cost of that Work or Expenditure must be added to the Balance Purchase Price.
- (4) The Buyer may terminate this contract by notice to the Seller if there is an outstanding notice at the Contract Date under sections 246AG, 247 or 248 of the *Building Act 1975* or sections 588 or 590 of the *Sustainable Planning Act 2009* that affects the Property.

#### 7.7 Property Adversely Affected

- (1) If at the Contract Date:
- the Present Use is not lawful under the relevant town planning scheme;
  - the Land is affected by a proposal of any competent authority to alter the dimensions of any Transport Infrastructure or locate Transport Infrastructure on the Land;
  - access or any service to the Land passes unlawfully through other land;
  - any competent authority has issued a current notice to treat, or notice of intention to resume, regarding any part of the Land; or
  - the Property is affected by the *Queensland Heritage Act 1992* or is included in the World Heritage List;
- and that has not been disclosed in this contract, the Buyer may terminate this contract by notice to the Seller given no later than 2 Business Days before the Settlement Date.
- (2) If no notice is given under clause 7.7(1), the Buyer will be treated as having accepted the Property subject to all of the matters referred to in that clause.
- (3) The Seller authorises the Buyer to inspect records held by any authority relating to the Property.

#### 7.8 Dividing Fences

The Seller need not contribute to the cost of building any dividing fence between the Land and any adjoining land owned by it. The Buyer waives any right to claim contribution from the Seller.

## 8. Rights Until Settlement

### 8.1 Risk

The Property is at the Buyer's risk from 5pm on the first Business Day after the Contract Date.

### 8.2 Access

After reasonable notice to the Seller, the Buyer and its consultants may enter the Property:

- once to read any meter;
- for inspections under clause 4;
- once to inspect the Property before settlement; and
- once to value the Property before settlement.

### 8.3 Seller's Use of Property

The Seller must use the Property reasonably until settlement. The Seller must not do anything regarding the Property or Tenancies that may significantly alter them or result in later expense for the Buyer.

### 8.4 Information Regarding the Property

Before settlement, the Seller must give the Buyer:

- copies of all documents relating to any unregistered interests in the Property;
- full details of the Tenancies to allow the Buyer to properly manage the Property after settlement; and
- further copies or details if those previously given cease to be complete and accurate.

### 8.5 Possession Before Settlement

If possession is given before settlement:

- the Buyer must maintain the Property in substantially its condition at the date of possession, fair wear and tear excepted;
- entry into possession is under a licence personal to the Buyer revocable at any time and does not:
  - create a relationship of landlord and tenant; or
  - waive the Buyer's rights under this contract;
- the Buyer must insure the Property to the Seller's satisfaction; and
- the Buyer indemnifies the Seller against any expense or damages incurred by the Seller as a result of the Buyer's possession of the Property.

## 9. Parties' Default

### 9.1 Seller and Buyer May Affirm or Terminate

Without limiting any other right or remedy of the parties including those under this contract or any right at common law, if the Seller or Buyer, as the case may be, fails to comply with an Essential Term, or makes a fundamental breach of an intermediate term, the Seller (in the case of the Buyer's default) or the Buyer (in the case of the Seller's default) may affirm or terminate this contract.

### 9.2 If Seller Affirms

If the Seller affirms this contract under clause 9.1, it may sue the Buyer for:

- damages;
- specific performance; or
- damages and specific performance.

### 9.3 If Buyer Affirms

If the Buyer affirms this contract under clause 9.1, it may sue the Seller for:

- damages;
- specific performance; or
- damages and specific performance.

### 9.4 If Seller Terminates

If the Seller terminates this contract under clause 9.1, it may do all or any of the following:

- resume possession of the Property;
- forfeit the Deposit and any interest earned;
- sue the Buyer for damages;
- resell the Property.



### 9.5 If Buyer Terminates

If the Buyer terminates this contract under clause 9.1, it may do all or any of the following:

- (1) recover the Deposit and any interest earned;
- (2) sue the Seller for damages.

### 9.6 Seller's Resale

- (1) If the Seller terminates this contract and resells the Property, the Seller may recover from the Buyer as liquidated damages:
  - (a) any deficiency in price on a resale; and
  - (b) its expenses connected with any repossession, any failed attempt to resell, and the resale; provided the resale settles within 2 years of termination of this contract.
- (2) Any profit on a resale belongs to the Seller.

### 9.7 Seller's Damages

The Seller may claim damages for any loss it suffers as a result of the Buyer's default, including its legal costs on an indemnity basis and the cost of any Work or Expenditure under clause 7.6(3).

#### Buyer's Damages

The Buyer may claim damages for any loss it suffers as a result of the Seller's default, including its legal costs on an indemnity basis.

### 9.9 Interest on Late Payments

- (1) Without affecting the Seller's other rights, if any money payable by the Buyer under this contract is not paid when due, the Buyer must pay the Seller at settlement interest on that money calculated at the Default Interest Rate from the due date for payment until payment is made.
- (2) The Seller may recover that interest from the Buyer as liquidated damages.
- (3) Any judgment for money payable under this contract will bear interest from the date of judgment to the date of payment and the provisions of this clause 9.9 apply to calculation of that interest.

## 10. General

### 10.1 Agent

The Agent is appointed as the Seller's agent to introduce a buyer.

### 10.2 Foreign Investment Review Board

The Buyer warrants that either:

- (1) the Treasurer has consented under the *Foreign Acquisitions and Takeovers Act* to the Buyer's purchase of the Property; or
- (2) the Treasurer's consent is not required to the Buyer's purchase of the Property.

### 10.3 Duty

The Buyer must pay all duty on this contract.

### 10.4 Notices

- (1) Notices under this contract must be in writing and may be given by a party's solicitor.
- (2) Notices are effectively given if:
  - (a) delivered or posted to the other party or its solicitor; or
  - (b) sent to the facsimile number of the other party or its solicitor.
- (3) Posted notices will be treated as given 2 Business Days after posting.
- (4) Notices sent by facsimile will be treated as given when the sender obtains a clear transmission report.
- (5) Notices given after 5pm will be treated as given on the next Business Day.
- (6) Notices or other written communications by a party's solicitor (for example, varying the Inspection Date,

Finance Date or Settlement Date) will be treated as given with that party's authority.

### 10.5 Business Days

- (1) If anything is required to be done on a day that is not a Business Day, it must be done instead on the next Business Day.
- (2) If the Finance Date or Inspection Date fall on a day that is not a Business Day, then it falls on the next Business Day.

### 10.6 Rights After Settlement

Despite settlement and registration of the transfer, any term of this contract that can take effect after settlement or registration remains in force.

### 10.7 Further Acts

If requested by the other party, each party must, at its own expense, do everything reasonably necessary to give effect to this contract.

### 10.8 Severance

If any term or part of a term of this contract is or becomes legally ineffective, invalid or unenforceable in any jurisdiction it will be severed and the effectiveness, validity or enforceability of the remainder will not be affected.

### 10.9 Interpretation

#### (1) Plurals and Genders

Reference to:

- (a) the singular includes the plural and the plural includes the singular;
- (b) one gender includes each other gender;
- (c) a person includes a body corporate; and
- (d) a party includes the party's executors, administrators, successors and permitted assigns.

#### (2) Parties

- (a) If a party consists of more than one person, this contract binds them jointly and each of them individually.
- (b) A party that is a trustee is bound both personally and in its capacity as a trustee.

#### (3) Statutes and Regulations

Reference to statutes includes all statutes amending, consolidating or replacing them.

#### (4) Inconsistencies

If there is any inconsistency between any provision added to this contract and the printed provisions, the added provision prevails.

#### (5) Headings

Headings are for convenience only and do not form part of this contract or affect its interpretation.

## Schedule 1 – Property Details

Lot and Plan	County	Parish	Title Reference	Encumbrances
Lot 3 on SP 195275	Stanley	Yeerongpilly	50710033	Benefit Easement No. 712884080
Lot 4 on SP 195275	Stanley	Yeerongpilly	50710034	Nil
Lot 5 on SP 195275	Stanley	Yeerongpilly	50710035	Nil
Lot 101 on SP 195275	Stanley	Yeerongpilly	50710040	Burden Easement in Gross No. 709116788

## 1. SPECIAL CONDITIONS TO PREVAIL

### 1.1 Amendments to Terms of Contract

- (a) Where there is an inconsistency between the Standard Terms of Contract and a Special Condition, the Special Condition prevails.
- (b) The Standard Terms of Contract are amended as follows:
- (i) Clauses 2.6(4) and 2.6(5) of the Terms of Contract are deleted and replaced with the following:
    - "(4) The Seller will provide the Buyer with a current Land Tax Clearance Certificate on or before Settlement.
    - (5) If the Buyer is advised by the Commissioner of Land Tax or the Office of State Revenue that a specified amount is payable in order to secure a Land Tax Certificate for the period to the Settlement Date then the amount payable will be paid at the Seller's cost from the proceeds of Sale on Settlement and the Buyer will accept such payment in satisfaction of the Seller's obligation under this clause."
  - (ii) Clause 2.6(13) of the Terms of Contract is deleted and replaced with the following:
    - "(13) The following provisions shall apply in relation to settlement cheques:
      - (a) The Buyer will provide a maximum of 3 bank cheques at Settlement.
      - (b) The Seller will provide the Buyer with the details (payee and amounts) of cheques required at Settlement by no later than 10.00am on the day prior to Settlement (being days when banks are open in the city of Brisbane).
      - (c) In the event that cheque details are not provided by the Seller to the Buyer at 10.00am on the day prior to the Settlement Date, then the Buyer may at its discretion defer the Settlement Date by one (1) business day from when the cheque details are provided. The Seller will not be entitled to claim interest for this period.
      - (d) This clause is for the sole benefit of the Buyer."
  - (iii) Clauses 3, 4, 7.4(1)-(4), 7.5, 7.6 and 7.7 (1)-(2), of the Terms of Contract are deleted;
  - (iv) Clause 10.4 of the REIQ Terms of Contract is amended as follows:
    - (A) by inserting a new clause 10.4(2)(c) "emailed to the email address of the other party or its solicitor.";
    - (B) by inserting a new clause 10.4(7) "Notices sent by email will be treated as given when a delivery confirmation report is received by the sender, which records the time that the email was delivered to the addressee's current email address."; and
    - (C) by inserting a new clause 10.4(8) "Pursuant to the *Electronic Transactions (Queensland) Act 2001* (Qld), the Buyer and the Seller consent to information and notices under this Contract of Sale being given by an electronic communication."

## 2. DUE DILIGENCE

### 2.1 Due Diligence Investigations

- (a) The Buyer shall forthwith after signing this Contract carry out a "due diligence" in respect of the Property to satisfy itself (or otherwise) with respect to all matters, which in the opinion of the Buyer are relevant to the acquisition of the Property. If the Buyer is not satisfied with respect to any matter, which in its absolute discretion it considers relevant to the acquisition of the Property, then the Buyer may by notice in writing given not later than the Due Diligence Date terminate this Contract and thereafter neither party shall have any Claim against the other pursuant to or arising under this Contract. If the Buyer fails to give a notice that it is satisfied or otherwise with its due diligence by the Due Diligence Date then the Buyer shall be deemed to have given a notice pursuant to this Special Condition 2.1(a) that it:
- (i) is satisfied with its due diligence; and
  - (ii) has elected to waive the benefit of this special condition.
- (b) The parties acknowledge and agree that this Special Condition 2.1(a) is inserted solely for the benefit of the Buyer and the benefit of this Special Condition 2.1(a) may be waived by the Buyer by notice in writing.

### 2.2 Disclosed Materials

- (a) The Seller must allow the Buyer and its consultants to have access to the Property for the purpose of conducting its due diligence inquiries and access to all Disclosed Materials relating to the Property.
- (b) Any access to the Property given to the Buyer or its consultants for the purpose of conducting Investigations is at the Buyer's risk.

## 3. NO REPRESENTATIONS

### 3.1 "As is where is"

The Buyer acknowledges that, as a consequence of its rights under Special Condition 2, it has inspected, and has the opportunity to further inspect the Property. Subject to the Buyer's rights under special condition 2, the Buyer accepts the Property in its present condition "as is where is" and subject to any legal, physical, patent or latent defects.

### 3.2 Buyer to satisfy itself

The Buyer:

- (a) does not rely on any representations, warranties or information provided or statements about the Property made by or on behalf of the Seller, the Seller's agent or their respective employees or agents, other than as set out in this Contract;
- (b) acknowledges that it has not been induced to enter into this Contract by any representation, warranty or information provided by the Seller, the Seller's agent or their respective employees or agents;
- (c) acknowledges that it has the opportunity under special condition 2 to carry out a full due diligence and other enquiries in respect of the Property and satisfy itself about all related matters including without limitation:
  - (i) the use, fitness or suitability of the Property for any purpose;
  - (ii) the means of access to the Property;

- (iii) any encroachments, easements, Crown reservations and other encumbrances from 774 the Land onto adjoining land, or from adjoining land onto the Land;
- (iv) as to any possible and/or potential flooding of the Land;
- (v) as to neighbourhood or environment in which the Property is situated;
- (vi) as to the zoning of the Land and the use to which the Property may be put, the suitability of the Land for future development or the rights and privileges relating to the Property or the services actually or likely to be connected or provided to the Property;
- (vii) the quality, state of repair, fitness for purpose and construction of the Property;
- (i) as to the existence, condition, location and capacity of any services located in, on, or under, or connected to the Property;
- (ii) whether the Property complies with all laws, statutes, regulations and by-laws including the *Sustainable Planning Act 2009*;
- (iii) the existence of any hazardous substance or hazardous contaminant within the meaning of the *Environmental Protection Act 1994*;
- (iv) any failure to comply with all laws, statutes, regulations or by-law or a requirement of any Authority relating to the Property;
- (v) as to anything disclosed or referred to in the Disclosed Materials;
- (vi) the existence or otherwise of any requirements of Authorities relating to the Property including, without limitation, resumptions, road dedications, road widening and similar things;
- (vii) the existence or otherwise of necessary consents, approvals and licences from Authorities relating to the Property, including any failure to comply with any approvals or licences; and
- (viii) with any other matter, past, present, future or anticipated, relevant to the Property.

Apart from the right to terminate this Contract under special condition 2, the Buyer cannot terminate this Contract, delay Settlement, deduct or retain any amount from the Purchase Price or make any Claim in relation to any matter referred to in this Special Condition 3.

#### 4. **CONTEMPORANEOUS AGREEMENT**

The Contemporaneous Agreement shall only take effect and be operational upon settlement of this Contract and the Buyer becoming the registered owner of the Land.

#### 5. **STAMP DUTY**

- 6. Despite any provision to the contrary the parties agrees that the Buyer is responsible for the transfer duty payable under the *Duties Act 2001 (Qld)* in respect of this Contract on the maximum amount of \$6 million (plus GST) which totals \$332,175.00 in transfer duty ("Stamp Duty Amount").
- 6.1 The Seller agrees to reimburse the Buyer for the transfer duty payable under the *Duties Act 2001 (Qld)* in respect of this Contract (excluding any penalties, any additional amounts payable for fines or penalties for late assessment or late payment) above the Stamp Duty Amount ("Additional Amount").
- 6.2 The Additional Amount will be paid as an adjustment to the Balance Purchase Price in favour of the Buyer at Settlement.

7. **TRANSFER DOCUMENTS**

The parties agree that the form of transfer under the *Land Title Act 1994* required to transfer title in the Property to the Buyer is in the form contained in Annexure B.

8. **GOODS AND SERVICES TAX**

8.1 **Consideration is GST exclusive**

Any consideration to be paid or provided for a supply made under or in connection with this Contract, does not include an amount on account of GST.

8.2 **Gross up of Consideration**

Despite any other provision in this Contract, if a party ("**Supplier**") makes a supply under or in connection with this Contract on which GST is imposed (not being a supply the consideration for which is specifically described in this Contract as "**GST inclusive**"):

- (a) the consideration payable or to be provided for that supply under this Contract but for the application of this special condition ("**GST exclusive consideration**") is increased by and the recipient of the supply ("**Recipient**") must also pay to the Supplier an amount equal to the GST payable by the Supplier on that supply; and
- (b) subject to special condition 8.4 the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

8.3 **Reimbursements**

If a payment to a party under this Contract is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

That party is assumed to be entitled to a full input tax credit unless it proves, before the date on which the payment must be made, that its entitlement is otherwise.

8.4 **Tax Invoice and Registration**

Despite any other provision of this Contract, a party need not make a payment of any amount for GST until the party has been given by the other party:

- (a) a GST tax invoice for that payment stating the amount of GST imposed on the party in respect of the supply to which the GST tax invoice relates; and
- (b) evidence satisfactory to the party that the other party is registered for the purposes of GST.

8.5 **Interpretation**

Words or expressions used in this special condition 8 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this special condition.

9. **CONFIDENTIALITY**

- (a) Subject to special condition 9(b), the contents of this Contract and all books accounts records documents and information made available to any party for the purposes of entering into this Contract or in the course of the performance of this Contract shall be kept confidential and shall not be disclosed to any other person without the written consent of the other parties.
- (b) Special condition 9(a) shall not apply to any disclosure:
  - (i) required by law;

- (ii) required by any applicable stock exchange listing rules;
  - (iii) made in good faith to officers employees legal and other advisors and auditors of any party under a duty of confidentiality;
  - (iv) by a party to its bankers or other financial institutions to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements;
  - (v) required by this Contract or necessary for or incidental to the performance of the obligations and duties contained in this Contract or any Contemporaneous Agreement including in connection with an exercise of rights or a dealing with rights or obligations under this Contract or any Contemporaneous Agreement (including, in particular, by way of giving information to owners of lots in the Tennyson Reach Community Titles Scheme and other interested persons or entities in connection with the removal of Lot 3 on SP 195275 from the Tennyson Reach Community Titles Scheme); and
  - (vi) of information in the public domain otherwise than due to a breach of special condition 9(a).
- (c) Each party consents to disclosures made in accordance with this special condition 9. This special condition supersedes any pre-existing agreements between the parties about confidentiality.

#### 10. COMPANY CHARGE

If at settlement anyone holds a registered charge over the Seller's assets, the Buyer agrees to accept from the Seller (instead of an ASIC Form 312 Discharge or Release of Property from a Charge) a written statement from either the chargee or the Seller confirming the Property is not subject to the charge.

#### 11. LEASE

- 11.1 The Buyer acknowledges and agrees that the Seller may occupy part of the Property that contains the sale office for Tennyson Reach ("Sales Office Land") following Settlement at a rental of \$10 per annum (if demanded), until the date of commencement of stage 2 of the Parkland Works under the Parkland Works Contract ("Tenancy").
- 11.2 The Seller acknowledges that whilst the Seller remains in occupation of the Sales Office Land pursuant to this special condition, the Seller:
- (a) must maintain the Sales Office Land in substantially the same condition as it is at the Settlement Date, fair wear and tear excepted;
  - (b) must take out necessary insurance for the Sales Office Land, including public risk insurance in a sum reasonably acceptable to the Buyer;
  - (c) indemnifies and shall hold indemnified the Buyer against any expense or damage incurred by the Buyer as a result of the Seller's possession of the Sales Office Land; and
  - (d) must pay consumption and utility charges in relation to use of the Sales Office Land.
- 11.3 The parties agree to do all things necessary at Settlement to record the Tenancy, including if necessary entering into a lease in the form incorporated in Annexure D.

#### 12. CONTRACT SUBJECT TO APPROVAL OF COUNCIL'S E&C COMMITTEE

- 12.1 This Contract is subject to and conditional upon the Buyer Council obtaining the approval of its E&C Committee to the transaction no later than the Due Diligence Date.



- 12.2 If E&C Committee approval is not obtained by the Due Diligence Date then this Contract is at an end with no penalty to the Buyer.
13. **CONTRACT SUBJECT TO SELLER'S BOARD APPROVAL**
- 13.1 This Contract is subject to and conditional upon the Seller obtaining the approval of its Board to the transaction no later than the Due Diligence Date.
- 13.2 If the Seller's Board approval is not obtained by the Due Diligence Date then this Contract is at an end with no penalty to the Seller.
14. **PURCHASE PRICE PAYABLE BY INSTALMENTS**
- 14.1 The Seller and the Buyer agree that the Purchase Price shall be payable by instalments and the amounts and on the dates set out below:
- (a) \$6,600,000.00 (inclusive of GST of \$900,000.00 for the Supply under this Contract) ("Initial Purchase Price Instalment") payable on the Settlement Date; and
- (b) \$3,300,000.00 ("Balance Purchase Price Instalment") payable by 2 July 2012 ("Balance Instalment Payment Date").
- 14.2 The Buyer grants to the Seller a charge over the Land following settlement and to secure the payment of the Balance Purchase Price Instalment.
- 14.3 In consideration of the Seller paying to the Buyer the sum of \$1.00, if demanded (and/or the parties acknowledge shall be in lieu of the Buyer paying the Deposit of \$1.00 to the Seller), and subject to the terms of this Special Condition, the Buyer offers to re-sell the Land back to the Seller during the Call Option Period for the Initial Purchase Price Instalment and otherwise on the terms and conditions in the standard form of contract Houses and Land (8<sup>th</sup> Edition) as adopted by the Real Estate Institute of Queensland approved by the Queensland Law Society ("Seller's Call Option"). For the purposes of this Special Condition, the "Call Option Period" shall mean the period of 30 days after the Balance Instalment Payment Date. The Seller's Call Option shall only be exercisable if the Buyer does not pay the Balance Purchase Price Instalment to the Seller on or before the Balance Instalment Payment Date.
- 14.4 The Seller and the Buyer acknowledge and agree that the Seller's interest in the Land pursuant to the Seller's Call Option shall be secured by a Consent Caveat in the form incorporated in Annexure E of this Contract and registered against the title to the Land. The Buyer must duly execute a Form 18 – General Consent to the Caveat (as registered owner of the Land following settlement) and deliver same to the Seller on settlement. The Seller shall be responsible for the registration fees payable in respect of the Consent Caveat. The Buyer must co-ordinate lodgement of the Transfer in conjunction with the Seller's lodgement of the Consent Caveat. The Seller will deliver a Withdrawal of Caveat to the Buyer in exchange for payment of the Balance Purchase Price Instalment.
15. **LOT 3 ON SP 195275**
- 15.1 The Seller and the Buyer acknowledge that Lot 3 on SP 195275 ("Lot 3") is, as at the date of this Contract, or was a lot in the Tennyson Reach Community Title Scheme 39925 ("Scheme") but pursuant to an ordinary resolution of the Body Corporate at the AGM held on 29 June 2011, the Body Corporate for Tennyson Reach CTS 39925 consented to the recording of a New Community Management Statement ("New CMS") to effect the removal of Lot 3 from the Scheme. The Seller agrees to use its best endeavours to have the New CMS recorded at the Department of Environment and Resource Management ("DERM") as soon as practicable but, to the extent that the New CMS remains un-recorded as at the date of this Contract, the Buyer acknowledges the Seller's Disclosures regarding exceptions to Seller warranties contained in the Body Corporate and Community Management Act as incorporated in Annexure F to this Contract so far as may relate to Lot 3 as a lot in the Scheme.

In these special conditions, the following words have the following meanings:

- Authority** means any government or semi government authority or instrumentality, statutory or judicial authority.
- Claim** means any cost, claim, demand, obligation, remedy, damage, loss, action, proceeding, claim for compensation, requisition or objection, whichever is applicable.
- Consulting Reports** means all reports received in respect of the Property in the possession or control of the Seller including, but not limited to, engineering, planning, construction and architectural reports.
- Contemporaneous Agreement** means the Parkland Works Contract
- Cost** includes any costs, damage, expense or payment and includes fees payable to consultants and lawyers.
- Disclosed Materials** means all Consulting Reports, existing development approvals and any other documentation or information about the Property reasonably requested by the Buyer or its representatives in connection with the Property whether before or after the date of this Contract.
- Due Diligence Date** means 30 June 2011.
- Loss** means any damage, loss (including loss of reputation), Cost, expense, fine, penalty and liability incurred by the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent and **Losses** has an equivalent meaning.
- Parkland Works Contract** means the construction contract between the Buyer and Mirvac Constructions (Qld) Pty Ltd dated on or about the date of this Contract which is in substantially the same form as the contract in Annexure C .





Dealing Number



OFFICE USE ONLY

Privacy Statement

Collection of this information is authorised by the Land Title Act 1994 the Land Act 1994 and the Water Act 2000 and is used to maintain the publicly searchable registers in the land registry and the water register. For more information about privacy in NR&W see the department's website.

1. Interest being transferred (if shares show as a fraction) Lodger (Name, address, E-mail & phone number) Lodger Code  
FEE SIMPLE

Note: A Form 24 - Property Information (Transfer) must be attached to this Form where interest being transferred is "fee simple" (Land Title Act 1994), "State leasehold" (Land Act 1994) or "Water Allocation" (Water Act 2000)

2. Lot on Plan Description	County	Parish	Title Reference
LOT 3 ON SP195275	STANLEY	YEERONGPILLY	50710033
LOT 4 ON SP195275	STANLEY	YEERONGPILLY	50710034
LOT 5 ON SP195275	STANLEY	YEERONGPILLY	50710035
LOT 101 ON SP195275	STANLEY	YEERONGPILLY	50710040

3. Transferor  
MIRVAC QUEENSLAND PTY LIMITED ACN 060 411 207

4. Consideration  
\$9,900,000.00 (inclusive of GST)

5. Transferee Given names Surname/Company name and number (include tenancy if more than one)  
BRISBANE CITY COUNCIL AS TRUSTEE

6. Transfer/Execution The Transferor transfers to the Transferee the estate and interest described in item 1 for the consideration and in the case of monetary consideration acknowledges receipt thereof. The Transferor declares that the information contained in items 3 to 6 on the attached Form 24 is true and correct. The Transferee states the information contained in items 1, 2, 4 to 6 on the attached Form 24 is true and correct. Where a solicitor signs on behalf of the Transferee the information in items 1, 2, 4 to 6 on Form 24 is based on information supplied by the Transferee.

NOTE: Witnessing officer must be aware of their obligations under section 162 of the Land Title Act 1994.

Separate executions are required for each transferor and transferee. Signatories are to provide to the witness, evidence that they are the person entitled to sign the instrument (including proof of identity).

Mirvac Queensland Pty Limited ACN 060 411 207  
by its duly appointed Attorney

\_\_\_\_\_ pursuant to  
registered Power of Attorney No. 713238897, who  
declares he has no notice of revocation of the  
Power of Attorney

Witnessing Officer (signature, full name & qualification)

Execution Date

Transferor's Signature

Mirvac Queensland Pty Limited ACN 060 411 207  
by its duly appointed Attorney

\_\_\_\_\_ pursuant to  
registered Power of Attorney No. 713238897, who  
declares he has no notice of revocation of the  
Power of Attorney

Witnessing Officer (signature, full name & qualification)

Execution Date

Transferor's Signature

Witnessing Officer (signature, full name & qualification)

Execution Date

\*Transferee's or Solicitor's Signature

(Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

\*Note: A Solicitor is required to print full name if signing on behalf of the Transferee and no witness is required in this instance

**SCHEDULE / ENLARGED PANEL /  
ADDITIONAL PAGE / DECLARATION**

Title Reference 50710033, 50710034, 50710035, 50710040

This is the schedule to the Form 1 dated                      day of                      2011

The Transferor and the Council hereby covenant and agree as follows:

**1. Declaration of Trust**

1.1 It is declared that the Land in Item 2 of the Form 1 Transfer ("Land") is to be held by the Council upon trust for public use for parkland, community facilities and ancillary uses.

**2. Terms of Trust**

2.1 Council will maintain and manage the Land and any improvements on the Land consistent with achieving the purpose of the Trust. Council may take all action necessary for maintenance and management of the Land.

2.2 Council may make and enforce local laws for the use of the Land and any improvements on the Land.

**General Provisions**

3.1 The Transferor warrants that the Land is free of encumbrances (except for Easement No. 709116788), and does not owe land tax or rates or water as at the date of Transfer.

3.2 Each party to this document will do all acts and render all co-operation reasonably required by the other for the purpose of enabling the registration of this document in the Queensland Land Registry.

(This form must accompany Land Registry Form 1 – Transfer when lodged in the Land Registry)

Duties Act 2001; Valuation of Land Act 1944; Land Tax Act 1915; Local Government Act 1993; Water Act 2000. Electrical Safety Act 2002; Fire and Rescue Service Act 1990

**PART A – Transferee to complete**

title reference [50710033, 50710034, 50710035, 50710040] Page 1 of 2

Electronic version – for completion before printing.

Where insufficient space in an item, use Form 20 (Enlarged Panel).

**Official use only**



Mark appropriate [ ] with 'X'

Refer to guide for completion for further information.

**1. Transferee**

(a) Given names & surname  
or Company & ACN/ABN

(b) Date of birth  
(dd/mm/yyyy)

(c) Residential or business address  
after possession

BRISBANE CITY COUNCIL

266 GEORGE STREET, BRISBANE 4000

(d) Contact details after possession

(i) Phone number - [REDACTED]

(ii) Postal address - As above [ ] OR complete address below  
GPO BOX 1434, BRISBANE 4001

(e) Name of trust - N/A [ ] OR complete - N/A

(f) Is transferee a foreign person / corporation?

N/A [ ] NO [ x ] YES [ ]

Attach completed Form 25  
(Foreign Ownership Information)

(g) Does transferee ordinarily reside in Australia?

N/A [ ] NO [ ] YES [ x ]

**2. Transaction**

(a) Date of possession (dd/mm/yyyy) – / /

(b) Date of settlement (dd/mm/yyyy) – / /

**This form is comprised of two Parts -**

- Part A – Transferee to complete
- Part B – Transferor to complete

**BOTH parts must be submitted  
with the Form 1 Transfer.**

(This form must accompany Land Registry Form 1 – Transfer when lodged in the Land Registry)

**PART B – Transferor to complete** Title reference [50710033, 50710034, 50710035, 50710040] Page 2 of 2

Electronic version – for completion before printing.  
Where insufficient space in an item, use Form 20 (Enlarged Panel).

Mark appropriate [ ] with 'X'  
Refer to guide for completion for further information.

**3. Transferor's residential or business address after settlement**

Level 2, 164 Grey Street, SOUTHBANK QLD 4101

**4. Details of sale price**

<b>(a) Property excluding water allocation</b>		<b>(b) Water allocation - N/A [ X ] OR complete below</b>	
Cash	\$9,900,000.00	Cash	\$
Vendor terms	\$	Vendor terms	\$
Assumption of liabilities	\$	Assumption of liabilities	\$
	\$	Other (specify above)	\$
Other (specify above)		Other (specify above)	
<b>Total</b>		<b>Total</b>	
		\$	
\$9,900,000.00		\$	

**5. Property details**

<b>(a) Land / Water allocation description</b>	<b>(b) Property address</b>				
Lot	Plan type & no.	Street no.	Street name	Suburb/Town/Locality	Postcode
4,5 and 101	SP195275		King Arthur Terrace	Tennyson	4105

<b>(c) Property transferred Includes</b>	<b>(d) Current land use</b>	<b>(e) Water allocation - N/A [ X ] OR complete below</b>	
Plant & machinery [ ]	Vacant land [ x ]	<b>(i) Is water allocation unsupplemented?</b>	
Livestock [ ]	Dwelling [ ]	<b>NO [ ] YES [ ]</b> > complete (ii) below	
Crops [ ]	Multi-unit [ ]	<b>(ii) Reference number of the water allocation dealing certificate - unsupplemented</b>	
Existing right [ ]	Flats [ ]		
Movable chattels [ ]	Guest house / [ ]		
Water licence [ ]	Private hotel [ ]		
Interim water allocation [ ]	Farming [ ]		
Other (specify above) [ ]	Industrial [ ]		
	Commercial [ ]		
	Other (specify above) [ ]		
<b>(f) Safety switch</b>			
(i) Is an electrical safety switch installed?		N/A [ x ]	NO [ ] YES [ ]
(ii) Has transferee been informed in writing about its existence?		N/A [ x ]	NO [ ] YES [ ]
<b>(g) Smoke alarm</b>			
(i) Is a compliant smoke alarm/s installed?		N/A [ x ]	NO [ ] YES [ ]
(ii) Has transferee been informed in writing about its existence?		N/A [ x ]	NO [ ] YES [ ]

**6. Transaction information**

<b>(a) Has an agreement in writing for the transfer of dutiable property been entered into?</b>	<b>NO [ ] YES [ x ]</b> > If Yes, complete (b) below
<b>(b) Date of written agreement (dd/mm/yyyy) -</b>	30/06/2011
<b>(c) Are the transferor and transferee related or associated at the date of the transfer?</b>	<b>NO [ x ] YES [ ]</b> > If Yes, complete (d) below
<b>(d) State the degree of relationship or association and supply evidence of value to Office of State Revenue -</b>	> See guide for completion
<b>(e) Is the consideration less than the unencumbered value of the property included in this transaction?</b>	<b>NO [ ] YES [ x ]</b> > See guide for completion
<b>(f) Does this transaction form part of an arrangement that includes other dutiable transactions?</b>	<b>NO [ x ] YES [ ]</b> > See guide for completion

**Annexure C – Parkland Works Contract**

Contract exhibited to parties at time  
of execution.



## Annexure D – Lease of Sales Office

785



Title Reference 50710034, 50710035, 50710040

PARTICULARS

<u>Term</u>	<u>Definition</u>
Landlord	BRISBANE CITY COUNCIL of 266 George Street, Brisbane
Tenant	MIRVAC QUEENSLAND PTY LIMITED ACN 060 411 207 of Level 2, 164 Grey Street, South Bank 4010
Land	Whole of Lots 4, 5 and 101 on SP 195275 as noted in Item 5 of the Form 7
Rent	\$10.00 including GST (if demanded)
Permitted Use	Sales office and related car park and surrounds including the construction, alteration, reconstruction, repair or removal of sales office and signage and entry statements relating to Tennyson Reach and associated landscaping as may be permitted by the local authority.
Commencement Date	The date of settlement of the Sale Contract entered into between the Tenant (as Seller) and the Landlord (as Buyer) and pursuant to which the Landlord became owner of the Land.
Expiry Date	Commencement of Stage 2 of the Parkland Works Contract.
Public Risk Insurance Amount	\$20 million

Title Reference 50710034, 50710035, 50710040

## 1. INTERPRETATION

### 1.1 Definitions

The definitions on the Form 7 and in the Particulars, apply unless the context requires otherwise.

**Parkland Works Contract** means the construction contract entered into between the Landlord and Mirvac Constructions (Qld) Pty Ltd in respect of parkland works to be constructed on the Land.

**Tenant's Obligations** means the covenants and agreements contained or implied in this Lease to be observed and performed by the Tenant.

**Tennyson Reach Estate** means the development known as "Tennyson Reach" located at King Arthur Terrace, Tennyson QLD 4105.

### 1.2 General

The following apply to this Lease:

- (a) This Lease is governed by Queensland law.
- (b) The provisions of sections 105, 107 and 109 of the Property Law Act 1974 are separately covered in this Lease and are excluded from it.

The following rules of interpretation apply unless the context requires otherwise:

- (c) Headings are for convenience only and do not affect interpretation.
- (d) The singular includes the plural and the plural includes the singular.
- (e) A gender includes all genders.
- (f) A person includes an individual and a corporation.
- (g) A reference to any party to this Lease includes its successors and assigns.
- (h) A reference to a right or obligation of any party comprising two or more people confers that right, or imposes that obligation, on each of them individually and both (or all) of them together.
- (i) A reference to legislation includes an amendment of or substitution for it and a regulation or statutory instrument issued under it.
- (j) Unless stated otherwise, one word or provision does not limit the effect of another.
- (k) Reference to the whole includes part.
- (l) All obligations are taken to be required to be performed properly and punctually.
- (m) Where anything is permitted in an "emergency" the opinion of the Landlord as to the existence or non-existence of an emergency is conclusive.
- (n) Anything to be done on a Saturday, Sunday or a public holiday in Queensland may be done on the next business day.
- (o) Every obligation by the Tenant is taken to include an obligation by the Tenant to ensure that each of the Tenant's employees and others under the Tenant's control comply with that obligation.
- (p) If under this Lease the Tenant requires the consent, approval or agreement of the Landlord for any action, the Tenant must obtain it in writing before the Tenant starts to take that action.

Title Reference 50710034, 50710035, 50710040

**2. TERM**

**2.1 Length of Lease**

The Landlord leases the Land to the Tenant for the Term of the Lease.

This Lease starts on the Commencement Date and its provisions bind the parties on and from that date, whenever the Lease is signed or dated. It ends at midnight on the Expiry Date.

**2.2 Monthly Tenancy**

If the Tenant continues to occupy the Land after the Expiry Date, the Tenant shall do so on the terms of this Lease, for a fixed term of one month and then for successive periods of one month each. Either party may end the tenancy at any time by giving one month's notice to the other.

**3. RENT**

The Tenant must pay the Rent if and when demanded by the Landlord.

**COSTS**

The Tenant must pay, if applicable:

- (a) duty on this Lease; and
- (b) fees for registration of this Lease.

**5. USE OF LAND**

**5.1 Use of Land**

The Tenant may use the Land for the Permitted Use or for any other purpose reasonably associated with the Tenant's development and promotion of Tennyson Reach, including for example a car park or site office.

**5.2 Compliance with Law**

The Tenant must at the Tenant's cost comply with all laws, and with the requirements of each authority, relating to the Land or its use.

**Usage Charges**

The Tenant must pay on time all consumption and utility charges incurred as a result of the Tenant's use of the Land, including local authority water charges, electricity charges and telecommunication charges.

**6. MAINTENANCE OF LAND**

**6.1 Repair**

The Tenant must:-

- (a) keep the Land clean and tidy; and
- (b) repair and maintain any improvements (including signage, entry statements and landscaping) on the Land.

**6.2 Alterations**

- (a) The Tenant must not, without the consent of the Landlord (which will not be unreasonably withheld), construct, alter, reconstruct or remove any improvements (including signage, entry statements, landscaping and sales office works) on the Land. The Tenant must obtain the approval of each authority necessary to enable any Landlord approved work to be lawfully carried out. Subject to this clause, the

**Title Reference 50710034, 50710035, 50710040**

Landlord and the Tenant acknowledge and agree that no works will be permitted on the Land other than works pursuant to the Parkland Works Contract and that the Tenant must not erect any signage on the Land other than safety signs, signs reasonably necessary to give direction to the Sales Office and signs advertising Tennyson Reach Apartments for sale/lease.

- (b) The Landlord must not alter, amend, change or remove any improvements (other than landscaping) on the Land other than pursuant to the Parkland Works Contract.

**6.3 When the Lease ends**

On the expiration or earlier termination of this Lease the Tenant:

- (a) must vacate the Land;
- (b) may remove all property owned by the Tenant (including the loose furniture and other items of chattels located in the sales office on the Land); and
- (c) must give the Land back to the Landlord clean, free from rubbish and in a condition consistent with full compliance with the Tenant's Obligations.

**7. INSURANCE AND RISK**

**7.1 Insurance by Tenant**

The Tenant must maintain with reputable insurers insurance policies covering public liability for the Public Risk Insurance Amount.

**7.2 Tenant may use Group Policies**

The Tenant may include any insurance in any Australia wide group policies or other existing policy.

**7.3 Tenant's risk**

The Tenant uses and occupies the Land, and carries out all work in them, at the Tenant's own risk.

**7.4 Release of Landlord**

To the extent permitted by law, the Tenant releases the Landlord from any liability for loss, damage, injury or death occurring on the Land, except to the extent that it is caused by negligence, recklessness or wilful misconduct on the part of the Landlord, its employees or others under its control.

**7.5 Indemnity by Tenant**

The Tenant indemnifies the Landlord against any liability for loss, damage, injury or death caused by:

- (a) any act or omission on the part of the Tenant, the Tenant's employees or others under the Tenant's control; or
- (b) the Tenant's use or occupation of the Land.

**8. DEALINGS WITH LEASE AND PREMISES**

**8.1 Assignment**

The Tenant may only assign this Lease with the consent of the Landlord (which shall not be unreasonably withheld).

**8.2 Sub-Letting**

The Tenant may only sublet part of the Land with the consent of the Landlord (which shall not be unreasonably withheld).

**Title Reference 50710034, 50710035, 50710040**

**8.3 Mortgages and charges**

The Tenant must not mortgage this Lease without the consent of the Landlord.

**9. LANDLORD'S OBLIGATIONS**

**9.1 Quiet enjoyment**

The Landlord must permit the Tenant to occupy and use the Land without interruption or disturbance, except where otherwise allowed by this Lease.

**9.2 Consents**

The Landlord will promptly consider any request by the Tenant for the Landlord's consent or approval. The Landlord will not unreasonably withhold or delay its consent or approval or impose any unreasonable conditions on its consent or approval.

**10. LANDLORD'S RIGHTS**

**10.1 Inspection of Land**

The Landlord may at any time on reasonable notice to the Tenant enter the Land to inspect its condition.

**10.2 Tenant's Acknowledgment**

The Tenant acknowledges that the Landlord has commissioned the parkland works to be constructed on the Land pursuant to the Parkland Works Contract and the Tenant agrees to allow the Landlord's contractors and its agents, employees, sub-contractors and invitees to carry out the parkland works on the Land in accordance with the Parklands Works Contract and not to raise objection, requisition or claim compensation for same nor to interfere with the carrying out of the parkland works.

**11. DEFAULT**

**11.1 Tenant's default**

The Tenant will be in default under this Lease if the Tenant:

- (a) fails to pay any money payable to the Landlord, within 14 days after the due date; or
- (b) fails to comply with any other obligation under this Lease, and does not make good that default within a reasonable time after notice from the Landlord.

**11.2 Landlord's rights**

In any of those events, the Landlord may do any one or more of the following:

- (a) re-enter and take possession of the Land;
- (b) terminate this Lease;
- (c) recover from the Tenant any loss suffered by the Landlord as a result of the Tenant's default; and
- (d) exercise any of its other legal rights.

**11.3 Essential conditions**

If the Landlord terminates this Lease, following breach of an essential condition by the Tenant, the Landlord may recover all money payable by the Tenant under the lease until the Expiry Date. Clauses 3, 5.1 and 7.1 are essential conditions of this Lease.

Title Reference 50710034, 50710035, 50710040

**11.4 Landlord's Default**

If the Landlord breaches this Lease, the Tenant must give a notice to the Landlord specifying the breach and allow the Landlord a reasonable time within which to remedy the breach.

**12. NOTICES**

**12.1 Must be in writing**

All notices required by this Lease must be in writing.

**12.2 Methods of service**

- (a) The Landlord may serve a notice on the Tenant by:
  - (i) giving it to the Tenant personally; or
  - (ii) delivering, posting or faxing it to the Tenant's business address last known to the Landlord or to its registered office.
- (b) The Tenant may serve a notice on the Landlord by delivering, posting or faxing it to the Landlord's address in the Particulars or any other address notified by the Landlord to the Tenant.
- (c) The Tenant may, by notice to the Landlord, elect to have all notices served at a specified address in Australia.

**12.3 Validity of Landlord's notices**

Any notice by the Landlord will be valid if it is:

- (a) signed under the common seal of the Landlord; or
- (b) signed on behalf of the Landlord by the manager of the Land or by any director, secretary or attorney of the Landlord or by the Landlord's solicitors.

**13. EARLY TERMINATION**

Notwithstanding any other clause in this Lease, the Tenant may terminate this Lease agreement by giving not less than 14 days' written notice to the Landlord.

**14. GOODS AND SERVICES TAX**

**14.1** It is agreed that all amounts payable by the Recipient to the Supplier under this Lease are exclusive of GST, unless otherwise expressly stipulated.

**14.2** The Recipient must:

- (a) pay to the Supplier the amount of the Supplier's GST Liability (if any); and
- (b) make that payment to the Supplier at the same time as the Recipient makes the payment for the relevant Taxable Supply.

**14.3** The Supplier must deliver to the Recipient a tax invoice in a form which complies with the GST Legislation to enable the Recipient to claim any input tax credits that the Recipient may be entitled to claim in respect of the payment by the Recipient for the Taxable Supply. The tax invoice must be delivered not later than the date of payment referred to in clause 14.2 of this clause.



Title Reference 50710034, 50710035, 50710040

14.4 Any amount to be reimbursed to a party ("Reimbursed Party") under this Lease by another party ("Reimbursing Party") which does not relate to a taxable supply made by the Reimbursed Party shall be reduced by the amount of any input tax credits to which the Reimbursed Party is entitled in respect of the creditable acquisition for which reimbursement is being sought. The intention is that the Reimbursing Party only reimburses the Reimbursed Party for the net cost of the acquisition so as to avoid any element of price exploitation.

14.5 Definitions

In this clause, the following words have these meanings:

**GST** has the same definition as that term has in the GST Legislation and other expressions used in this Lease in respect of GST which are not defined in this Lease have the meanings as defined in the GST Legislation;

**GST Legislation** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any associated Commonwealth legislation, regulations and publicly-available rulings;

**GST Liability** means the liability of the relevant party making a Taxable Supply (the "Supplier") to another party (the "Recipient") under or pursuant to this document to pay GST under the GST Legislation in respect of that Taxable Supply.

## Annexure E – Consent Caveat

Dealing Number



OFFICE USE ONLY

Privacy Statement

Collection of this information is authorised by the Land Title Act 1994 and the Water Act 2000 and is used to maintain the publicly searchable registers in the land registry and the water register. For more information about privacy in NR&W see the department's website.

<b>1. Caveator full name and address for service</b>	<b>Lodger (Name, address, E-mail &amp; phone number)</b>	<b>Lodger Code</b>
Mirvac Queensland Pty Limited ACN 060 411 207 Level 2 164 Grey Street South Bank 4101	ClarkeKann 300 Queen Street BRISBANE 4000 Email: [REDACTED] Phone: 50019222	122A

<b>2. Lot on Plan Description</b>	<b>County</b>	<b>Parish</b>	<b>Title Reference</b>
Lot 3 on SP 195275	Stanley	Yeerongpilly	50710033
Lot 4 on SP 195275	Stanley	Yeerongpilly	50710034
Lot 5 on SP 195275	Stanley	Yeerongpilly	50710035
Lot 101 on SP 195275	Stanley	Yeerongpilly	50710040

**3. Interest being claimed**  
The grantee of an option to purchase an estate in fee simple in the Land

**4. Grounds of claim**  
An equitable interest as grantee of an option to purchase an estate in fee simple in the Land identified in item 2 which may be exercised under a Contract dated 30 June 2011 between the registered owner (identified in item 5) and the Caveator, forbidding registration of any transfer of, or encumbrance over the registered owner's estate in fee simple

<b>5. Registered owner full name and address</b>	<b>6. Other parties full name and address (eg Mortgagees)</b>
Brisbane City Council 266 George Street BRISBANE 4000	Nil

**7. Request/Execution**

a) The Caveator claiming as per item 3 on the grounds detailed in item 4 and subject to the *Land Title Act 1994* forbids the registration of any instrument affecting the land described in item 2 until:  
\*this caveat is withdrawn by the Caveator

delete if not applicable

Execution Date \_\_\_\_\_ Caveator's or Solicitor's Signature \_\_\_\_\_  
Note: A Solicitor is required to print full name if signing on behalf of the Caveator

1. Lot on Plan Description	County	Parish	Title Reference
Lot 3 on SP 195275	Stanley	Yeerongpilly	50710033
Lot 4 on SP 195275	Stanley	Yeerongpilly	50710034
Lot 5 on SP 195275	Stanley	Yeerongpilly	50710035
Lot 101 on SP 195275	Stanley	Yeerongpilly	50710040

2. Instrument/document being consented to

Instrument/document type: Form 11- Caveat

Dated / /

Names of parties Mirvac Queensland Pty Limited ACN 060 411 207 (as Caveator) and Brisbane City Council (as registered owner)

3. Instrument/document under which consent required

Instrument/document type Sale Contract

Dealing No. N/A

Name of consenting party Brisbane City Council (as registered owner)

4. Execution by consenting party

The party identified in item 3 consents to the registration of the instrument/document identified in item 2.

**Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994**

..... signature

..... full name

..... qualification

/ /  
Execution Date

.....  
Consenting Party's Signature

**Witnessing Officer**

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

**Privacy Statement**

Collection of this information is authorised by the Land Title Act 1994 the Land Act 1994 and the Water Act 2000 and is used to maintain the publicly searchable registers in the land registry and the water register. For more information about privacy in NR&W, see the department's website.

**Annexure F – Seller’s Disclosures**

## Seller's Disclosure

**[WARNING: The Seller is taken to have knowledge of significant Body Corporate matters that may affect the Buyer, where the Seller ought reasonably to be aware of those matters.**  
Section 223(4) *Body Corporate and Community Management Act 1997*

**Latent or Patent Defects in Common Property or Body Corporate Assets**  
[Sections 223(2)(a) and 223(2)(b) *Body Corporate and Community Management Act 1997*]

[Annex details of disclosure made by the Seller (if any)]

The Seller discloses that there may be latent or patent defects in common property or body corporate assets as a result of the January 2011 floods. Refer to the disclosure statement which details the special levies as a result of inundation rectification.

**Actual or Contingent or Expected Liabilities of Body Corporate**  
[Sections 223(2)(c) and 223(2)(d) *Body Corporate and Community Management Act 1997*]

[Annex details of disclosure made by the Seller (if any)]

The Seller discloses that there may be actual, contingent or expected liabilities of the Body Corporate as a result of the January 2011 floods. Refer to the disclosure statement which details the special levies as a result of inundation rectification.

The Seller also discloses there may be a change in the Body Corporate financial affairs as a result of any change in the CSLEs upon removal of any Development Lot pursuant to the Seller's rights as Original Owner, in accordance with the clause 5 in Schedule B of the Community Management Statement. New Community Management Statements may be required to be recorded to reflect changes to the Scheme as a result of the Seller exercising its rights as Original Owner.

**Circumstances in Relation to Affairs of the Body Corporate**  
[Section 223(3) *Body Corporate and Community Management Act 1997*]

[Annex details of disclosure made by the Seller (if any)]

The Seller also discloses there may be a change in the Body Corporate financial affairs as a result of any change in the CSLEs upon removal of any Development Lot pursuant to the Seller's rights as Original Owner, in accordance with the clause 5 in Schedule B of the Community Management Statement. New Community Management Statements may be required to be recorded to reflect changes to the Scheme as a result of the Seller exercising its rights as Original Owner.

**PAMD Form 30c****Warning statement**

*Property Agents and Motor Dealers Act 2000* – Chapter 11

This form is effective from 1 October 2010.

ABN: 24 830 236 406

Department of Employment, Economic  
Development and Innovation

**Instructions**

This form is to be attached to a proposed relevant contract of sale for residential property to be read and signed by a proposed buyer **BEFORE** the proposed buyer signs the proposed relevant contract.

**The seller or seller's agent must give the proposed buyer a clear statement directing the buyer's attention to the proposed relevant contract and to this warning statement before the proposed buyer signs the proposed relevant contract. Failure to give the proposed buyer a clear statement may give the buyer a right to terminate the contract under section 370 within 90 days of receiving a copy of the relevant contract unless settlement occurs earlier.**

**Property address**

**Note:** If no street address is applicable, use lot and plan information to identify the property

Street name and number ..... King Arthur Tce .....

Suburb ..... Tennyson ..... State    Postcode

**WARNING**

**DO NOT sign the proposed relevant contract for the above property until you have read and understood ALL SECTIONS of this form. DO NOT sign if you feel pressured.**

**The relevant contract is subject to a five (5) business day cooling-off period. You may terminate this contract during the cooling-off period. However, the seller may deduct a termination penalty of up to 0.25% of the purchase price from the deposit.**

**You should obtain independent:**

- **legal advice** See note 1
- **valuation** See note 2

**Cooling-off period****What is the cooling-off period?**

The cooling-off period is five (5) business days, during which you can change your mind about purchasing this property. Use this time to seek independent legal advice and an independent valuation of the property.

**When does the cooling-off period start?**

Your cooling-off period starts on the day you receive a copy of the completed relevant contract from the seller or seller's agent. The proposed contract becomes a relevant contract when both parties have signed. In any dispute about the commencement of the cooling-off period, it will be up to the seller to prove the buyer received a copy of the relevant contract. If you receive a copy of the relevant contract on a day other than a business day, the cooling-off period commences on the first business day after you receive a copy of the relevant contract

**When does the cooling-off period end?**

Your cooling-off period ends at 5.00pm on the fifth business day after the cooling-off period started. A business day is a day other than a Saturday, Sunday or public holiday.

**Can I waive or shorten the cooling-off period?**

Yes, but only if you engage an independent lawyer who must give you a lawyer's certificate explaining the purpose and nature of the certificate. You should seek advice from your lawyer about the effect of waiving or shortening your cooling-off period. If you are waiving the cooling-off period, the lawyer's certificate must be given to the seller or seller's agent before you and the seller enter into the relevant contract.

**What should I do during the five (5) day cooling-off period?**

It is strongly recommended that you seek independent legal advice and obtain an independent valuation of the property during this time and that you understand and agree with the terms and conditions of the contract.

**How do I terminate the contract during the cooling-off period and what happens if the relevant contract is terminated?**

If you want to terminate the contract at any time before the end of the five (5) day cooling-off period, you must give a signed, dated notice to the seller indicating that you wish to terminate the contract during the cooling-off period. The notice must state that the relevant contract is terminated under section 370A of the *Property Agents and Motor Dealers Act 2000*. The seller must refund your deposit within **14 days** of the termination. The seller may deduct a termination penalty of up to **0.25% of the purchase price**. Make sure you terminate any building contract associated with this property if you terminate this contract during the cooling-off period.

**What happens after the cooling-off period ends?**

If you do not terminate the contract during the cooling-off period, you are legally bound by the contract, subject to the terms and conditions of the contract.

**Other important information**

**Read the attached proposed relevant contract. Do not be pressured into signing the proposed relevant contract before you have read it.**

**Note 1 - Independent legal advice**

Do you fully understand the legal consequences of signing the attached proposed relevant contract? Before signing the proposed relevant contract, it is strongly recommended that you seek independent legal advice and clarify any queries or concerns you have about buying the property. Are you sure the person you have obtained advice from is totally independent from the seller or seller's agent? **Exercise extreme caution in accepting the advice of anyone referred to you by the seller or seller's agent.**

**Note 2 - Independent valuation of the property**

Are you sure the purchase price for this property is fair? You should consider obtaining an independent valuation of the property before you sign the contract, or before your cooling-off period ends. When choosing a valuer you should ask whether the valuer has any relationship with any person involved in selling the property and whether they have professional indemnity insurance. Before you engage the valuer ask about the cost of the valuation. For more information about valuations, go to [www.fairtrading.qld.gov.au/house-valuation.htm](http://www.fairtrading.qld.gov.au/house-valuation.htm).

**Building contracts**

For building contracts associated with the purchase of residential property, you should ensure that the building contract price is not over-valued or inflated. Get a valuation or compare homes of similar value advertised or displayed by other home builders.

Domestic building contracts also have a cooling-off period under the *Domestic Building Contracts Act 2000* (section 72). Please check the Building Services Authority of Queensland website at [www.bsa.qld.gov.au](http://www.bsa.qld.gov.au) for further information about building contracts. Remember to terminate any building contracts related to this property if you terminate this contract.

**Claim fund and property developers**

A claim fund exists which, in some cases, enables buyers to make a claim if they suffer financial loss because a real estate agent commits a claimable offence. Strict guidelines and timeframes apply. If you suffer loss while buying an investment property or buying any property from a property developer you can not make a claim for loss against the fund.

**How do I know if I'm dealing with a licensed real estate agent or property developer and/or obtain further information about purchasing real estate?**

The Fair Trading website at [www.fairtrading.qld.gov.au](http://www.fairtrading.qld.gov.au) provides you with useful information about purchasing property. You can check that you are dealing with a licensed real estate agent or property developer at [www.fairtrading.qld.gov.au/are-you-licensed.htm](http://www.fairtrading.qld.gov.au/are-you-licensed.htm) or by phoning 13 13 04.

**Buyer's acknowledgment**

I/we have read all sections of this warning statement and I/we acknowledge that by signing this warning statement, my/our attention has been directed to this warning statement and the attached proposed relevant contract by a clear statement and I/we have signed the warning statement BEFORE I/we signed the attached proposed relevant contract.

Signing this Warning Statement negates any termination right I/we may have had under section 370 of the *Property Agents and Motor Dealers Act 2000*.

Name Brisbane City Council .....

Name .....  
.....

Signature ..... Appointed Officer Signature .....

Date 30 / 06 / 2011  
D D M M Y Y Y Y

Date   /   /      
D D M M Y Y Y Y



**BCCM****Form 14****Queensland  
Government**

ABN: 13 846 673 994

Department of  
Justice and Attorney-General**Information sheet (body corporate information)***Body Corporate and Community Management Act 1997*

This form is effective from 29 April 2011

**WARNING**

**You are strongly advised to obtain independent legal advice regarding any questions or concerns you have about purchasing the property or your prospective rights and obligations as a member of a body corporate.**

**Notice to agent:** The *Property Agents and Motor Dealers Act 2000* and *Body Corporate and Community Management Act 1997* (the Act) include strict requirements for presentation of prescribed warning statements and information sheets. Failure to comply may result in cancellation of the contract.

**By law the seller or the seller's agent must attach this information sheet to the contract.  
Do NOT sign the contract of sale without reading this information sheet.**

In addition to the contract, you should have before you:

- a separate warning statement, if the lot is a residential property, provided by the seller under the *Property Agents and Motor Dealers Act 2000*
- a disclosure statement provided by the seller, containing essential information about the body corporate that you will become a member of through purchasing this property (e.g. the amount of annual contributions currently set by the body corporate and payable by the lot owner)
- a community management statement for the scheme provided by the seller, containing important details about the scheme including details of any proposed future development of the scheme, the lot entitlements, by-laws and the regulation module applying to the scheme.

**Community titles schemes**

This contract warning contains important information you should read and understand before signing a contract to buy a lot in a community titles scheme. Community titles schemes include duplexes, residential unit blocks, high-rise apartment complexes, townhouse complexes and some commercial premises. They contain individually owned units and common property such as lawns and access roadways.

Some new unit owners do not realise owning a lot in a community titles scheme brings with it certain obligations. You should carefully consider whether living or investing in a community titles scheme suits your lifestyle and financial needs.

When a community titles scheme is established, a body corporate is created to administer the scheme. Each lot owner is automatically a member of their body corporate and enjoys certain rights and responsibilities.

Owners are **NOT** able to decline to be members of their body corporate. Normally, an elected committee carries out day-to-day functions on behalf of the body corporate. Bodies corporate may also engage service providers such as body corporate managers and on-site managers, caretakers and letting agents.

Common obligations of a body corporate include:

- administering the common property and any body corporate assets
- enforcing the by-laws for the scheme, such as noise levels, the keeping of pets, car parking and a range of other matters
- arranging compulsory body corporate insurance
- conducting general meetings of owners, adopting budgets, and levying contributions to fund the operation of the body corporate
- maintaining bank accounts, keeping records, and preparing financial statements.

Common obligations of individual lot owners include:

- making financial contributions towards the body corporate administrative costs
- complying with by-laws
- maintaining their lot in good condition.

## Suggested searches and matters to investigate

There are significant differences between owning a lot in a community titles scheme and owning other types of property (such as a detached house). In addition to carrying out conveyancing searches, it is also recommended you investigate a number of special body corporate matters through the following sources:

### 1. Department of Justice and Attorney-General, Office of the Commissioner for Body Corporate and Community Management

Conduct a search at the Office of the Commissioner for Body Corporate and Community Management for any Adjudicator's Orders (a decision regarding the outcome of a dispute) made concerning the scheme.

General information and fact sheets are also provided about community title living and body corporate rules and regulations. For more information, call 1800 060 119 or visit [www.justice.qld.gov.au/bccm](http://www.justice.qld.gov.au/bccm)

### 2. Body corporate secretary

Obtain a **Body Corporate Information Certificate** from the body corporate secretary or body corporate manager whose name and address is supplied in the disclosure statement. Compare the disclosure statement with the information certificate, as inaccurate information in the disclosure statement may give you grounds to cancel the contract (Section 209 or Section 217 of the Act).

A search of the **body corporate records** can provide other important information, such as whether any improvements to the lot you are purchasing (e.g. balcony enclosure, air-conditioning) were approved, whether any conditions apply, and who is responsible for their maintenance and insurance.

Also, **check for any agreements** the body corporate may have entered into (e.g. caretaking, letting, body corporate management or lift maintenance).

#### Checklist

- By purchasing this property, do you know you will be part of a body corporate?
- Are you aware of any contracts the body corporate is a party to?
- Have you read and understood the body corporate by-laws?
- Do you understand your likely financial contributions to the body corporate?
- Are you aware that an adjustment of lot entitlements may increase or decrease your financial contributions to the body corporate?
- Are you aware that your financial contributions to the body corporate will vary as the financial liabilities of the body corporate change?
- Do you understand your maintenance responsibilities?
- Do you understand the role of the body corporate manager and on-site manager (if appointed)?

## Buyer's acknowledgment

I/we have read all sections of this information sheet and I/we have acknowledged and signed the information sheet BEFORE I/we signed the attached contract.

If the lot is residential property, I/we acknowledge that by signing this information sheet, my/our attention has been directed to this information sheet and the attached proposed relevant contract by a clear statement and that signing this information sheet negates any termination right I/we may have had under section 206A or 213A of the *Body Corporate and Community Management Act 1997*.

Name Brisbane City Council .....

Signature ..... Date 30 / 06 / 2011  
D D M M Y Y Y Y

Name .....  
Appointed Officer

Signature ..... Date  /  /   
D D M M Y Y Y Y



The Real Estate Institute of Queensland

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# Contract

## For Houses and Residential Land

Eighth Edition



This document has been approved by The Real Estate Institute of Queensland Limited and the Queensland Law Society Incorporated as being suitable for the sale and purchase of houses and residential land in Queensland except for new residential property in which case the issue of GST liability must be dealt with by special condition.

### The Seller and Buyer agree to sell and buy the Property under this contract

#### Reference Schedule

**Contract Date:** \_\_\_\_\_

**Agent:** \_\_\_\_\_

ABN: \_\_\_\_\_ Licence Number: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Facsimile: \_\_\_\_\_ Mobile: \_\_\_\_\_

Email Address: \_\_\_\_\_

**Parties**

**Seller:** Mirvac Queensland Pty Ltd ACN 060 411 207

ABN: \_\_\_\_\_ Email Address: \_\_\_\_\_

Address: Level 2, 164 Grey Street, South Bank Qld 4101

Telephone: [REDACTED] Facsimile: [REDACTED] Mobile: \_\_\_\_\_

**Seller's Solicitor:** ClarkeKann Lawyers [or any other solicitor notified to the Buyer]

ABN: \_\_\_\_\_ Ref: SMC

Address: Level 7, 300 Queen Street, Brisbane Qld 4000

Telephone: [REDACTED] Facsimile: [REDACTED] Mobile: \_\_\_\_\_

Email Address: [REDACTED]

**Buyer:** Brisbane City Council

ABN: \_\_\_\_\_ Email Address: [REDACTED]

Address: 266 George Street, Brisbane

Telephone: [REDACTED] Facsimile: \_\_\_\_\_ Mobile: \_\_\_\_\_

**Buyer's Solicitor:** Brisbane City Legal Practice [or any other solicitor notified to the Seller]

ABN: \_\_\_\_\_ Ref: \_\_\_\_\_

Address: 266 George Street, Brisbane

Telephone: [REDACTED] Facsimile: \_\_\_\_\_ Mobile: \_\_\_\_\_

Email Address: [REDACTED]

**Property**

**Land** Address: King Arthur Tce, Tennyson QLD 4105

\*Vacant/~~Built on~~ [\*Delete one]

Description: See Schedule 1

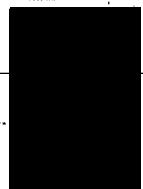
County: See Schedule 1 Parish: See Schedule 1

Title Reference: See Schedule 1 Area: \_\_\_\_\_ [more or less]

Land sold as \*Freehold/~~Leasehold~~ [\*Delete one. If neither is deleted, the land is treated as being Freehold]

**Present Use:** Residential **Local Government:** Brisbane City Council

2052443\_1



**Property -  
Continued**

*Excluded Fixtures:* Nil  
*Included Chattels:* Nil  
*Title Encumbrances:* See Schedule 1

[If the Property is sold free from Title Encumbrances insert "Nil"]  
 [If the Property is sold subject to Title Encumbrances, they must be described]

**Matters  
Affecting  
Property**

*Tenancies:* Not applicable  
 Tenant's Name: \_\_\_\_\_  
 Term and Options: \_\_\_\_\_  
 Starting Date of Term: \_\_\_\_\_  
 Ending Date of Term: \_\_\_\_\_  
 Rent: \_\_\_\_\_ Bond: \_\_\_\_\_  
*Managing Agent:* Not applicable  
 Address: \_\_\_\_\_  
 Telephone: \_\_\_\_\_ Facsimile: \_\_\_\_\_ Mobile: \_\_\_\_\_  
 Email Address: \_\_\_\_\_

**Price**

*Deposit Holder:* ClarkeKann Lawyers  
*Purchase Price:* \$ 9,000,000.00 (plus GST) [payable in accordance Special Conditions]  
*Deposit:* \$ 1.00 Initial Deposit payable when Buyer signs this contract (if demanded)  
 \$ \_\_\_\_\_ Balance Deposit (if any) payable on: \_\_\_\_\_  
*Default Interest Rate:* \_\_\_\_\_ % [if no figure is inserted, the Contract Rate published by the Queensland Law Society Inc will apply]

[Unless otherwise specified in this contract, the Purchase Price includes any GST payable on the supply of the Property to the Buyer]

**Finance**

*Finance Amount:* \$ Not applicable  
*Financier:* Not applicable  
*Finance Date:* Not applicable

[Unless all of "Finance Amount", "Financier" and "Finance Date" are completed, this contract is not subject to finance and clause 3 does not apply]

**Building  
and/or  
Pest  
Inspection  
Date**

*Inspection Date:* Not applicable

[If not completed, the contract is not subject to an inspection report and clause 4 does not apply]

**Pool Safety**

- Q1. Is there a pool on the Land or on adjacent land used in association with the Land?  
 Yes  
 No Clause 4.7 of this contract does not apply
- Q2. If the answer to Q1 is Yes, is there a Pool Safety Certificate for the pool at the time of contract?  
 Yes Clause 5.3(1)(e) applies  
 No Clause 4.7 applies (except where this contract is formed on a sale by auction)
- If there is a pool on the Land and Q2 is not completed then clause 4.7 applies.*
- Q3. If the answer to Q2 is No, has a Notice of no pool safety certificate been given prior to contract?  
 Yes  
 No

*Note: This is an obligation of the Seller under Section 16 of the Building Regulation 2006.*

**Pool Safety Inspection**

Date: Not applicable

[WARNING TO SELLER: Failure to comply with the Pool Safety Requirements is an offence with substantial penalties.]

[WARNING TO BUYER: If the Buyer does not receive a Pool Safety Certificate at settlement, the Buyer becomes responsible at its cost to obtain a Pool Safety Certificate within 90 days after settlement. The Buyer can also become liable to pay any costs of rectification necessary to comply with the Pool Safety Requirements to obtain a pool safety certificate. The Buyer commits an offence and can be liable to substantial penalties if the Buyer fails to comply with this requirement.]

[Clause 4.7(2) applies except where this contract is formed on a sale by auction]

**Electrical Safety Switch and Smoke Alarm**

*This section must be completed unless the Land is vacant.*

The Seller gives notice to the Buyer that an Approved Safety Switch for the General Purpose Socket Outlets is:

- \*installed in the residence  
 \*not installed in the residence

*\*Mark whichever is applicable*

The Seller gives notice to the Buyer that a Compliant Smoke Alarm(s) is/are:

- \*installed in the residence  
 \*not installed in the residence

*\*Mark whichever is applicable*

[WARNING: By giving false or misleading information in this section, the Seller may incur a penalty. The Seller should seek expert and qualified advice about completing this section and not rely on the Seller's Agent to complete this section.]

[WARNING: Failure to install a Compliant Smoke Alarm is an offence under the Fire and Rescue Service Act 1990.]

The REIQ Terms of Contract for Houses and Residential Land (Pages 5-10)  
(Eighth Edition) Contain the Terms of this Contract.

### Special Conditions

See Schedule 1 and Annexures A-E

Settlement

Settlement Date: 30 June 2011 (subject to the special conditions)

[or the next Business Day if that is not a Business Day in the Place for Settlement]  
[If Brisbane is inserted this is a reference to Brisbane CBD]

Place for Settlement: Brisbane CBD

Signing

MATHEW JAMES WALLACE  
Mirvac Queensland Pty Ltd ACN 060 411 207  
by its duly appointed Attorneys

Witness /

Buyer

[Redacted signature area]

Appointed Officer

Witness

Justice of the Peace (C. Dec)

Deposit Holder

[Who acknowledges having received the Initial Deposit and agrees to hold that amount and any Balance Deposit when received as Deposit Holder for the parties as provided in the Contract.]



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# Terms of Contract

## For Houses and Residential Land

### 1. Definitions

#### 1.1 In this contract:

- (1) terms in **bold** in the Reference Schedule have the meanings shown opposite them; and
- (2) unless the context otherwise indicates:
  - (a) **"Approved Safety Switch"** means a residual current device as defined in the *Electrical Safety Regulation 2002*;
  - (b) **"Balance Purchase Price"** means the Purchase Price, less the Deposit, adjusted under clauses 2.6(2) and 2.6(13);
  - (c) **"Bank"** means:
    - (i) a bank as defined by section 5 of the *Banking Act 1959* of the Commonwealth; or
    - (ii) a bank constituted under a law of a state;
  - (d) **"Bond"** means a bond under the *Residential Tenancies and Rooming Accommodation Act 2008*;
  - (e) **"Building Act"** means the *Building Act 1975* as amended.
  - (f) **"Business Day"** means a week day other than a public holiday in the Place for Settlement;
  - (g) **"Compliant Smoke Alarm"** means a smoke alarm complying with sections 104RB (2) or (4) of the *Fire and Rescue Service Act 1990*;
  - (h) **"Contract Date"** or **"Date of Contract"** means the date inserted in the Reference Schedule;
  - (i) **"Court"** includes any tribunal established under statute.
  - (j) **"Encumbrances"** includes unregistered and statutory encumbrances;
  - (k) **"Essential Term"** includes, in the case of breach by:
    - (i) the Buyer: clauses 2.2, 2.5(1), 5.1 and 6.1; and
    - (ii) the Seller: clauses 5.1, 5.3(1)(a)-(c), 5.3(1)(d)(ii) & (iii), 5.3(1)(e), 5.5 and 6.1;
 but nothing in this definition precludes a Court from finding other terms to be essential.
  - (l) **"Financial Institution"** means a Bank, building society or credit union;
  - (m) **"General Purpose Socket Outlet"** means an electrical socket outlet as defined in the *Electrical Safety Regulation 2002*;
  - (n) **"GST"** means the goods and services tax under the *GST Act*;
  - (o) **"GST Act"** means *A New Tax System (Goods and Services Tax) Act* and includes other GST related legislation;
  - (p) **"Improvements"** means fixed structures on the Land and includes all items fixed to them (such as stoves, hot water systems, fixed carpets, curtains, blinds and their fittings, clothes lines, fixed satellite dishes and television antennae, in-ground plants) but does not include the Reserved Items;
  - (q) **"Keys"** means keys, codes or devices in the Seller's possession for all locks or security systems on the Property;
  - (r) **"Notice of no pool safety certificate"** means the Form 36 under the *Building Regulation 2006* to the effect that there is no Pool Safety Certificate issued for the Land;
  - (s) **"Outgoings"** means:
    - (i) rates or charges on the Land by any competent authority (for example, council rates, water rates, fire service levies); and
    - (ii) land tax;
  - (t) **"Pool Safety Requirements"** means the requirements for pool safety contained in the *Building Act 1975* and *Building Regulation 2006*;
  - (u) **"Pool Safety Certificate"** means either:
    - (i) a certificate of compliance; or
    - (ii) an exemption from compliance;
 issued in accordance with the Pool Safety Requirements;
  - (v) **"Pool Safety Inspection Date"** means the Pool Safety Inspection Date inserted in the Reference Schedule. If no date is inserted in the Reference Schedule, the Pool Safety Inspection Date is taken to be the earlier of the following:
    - (i) the Inspection Date for the Building and/or Pest Inspection; or
    - (ii) 2 Business Days before the Settlement Date;
  - (w) **"Pool Safety Inspector"** means a person licensed or authorised under the *Building Act 1975* and *Building Regulation 2006* to issue a Pool Safety Certificate;
  - (x) **"Property"** means:
    - (i) the Land;
    - (ii) the Improvements; and
    - (iii) the Included Chattels;
  - (y) **"Rent"** means any periodic amount payable under the Tenancies;
  - (z) **"Reserved Items"** means the Excluded Fixtures and all chattels on the Land other than the Included Chattels;
  - (aa) **"Transfer Documents"** means:
    - (i) the form of transfer under the *Land Title Act 1994* required to transfer title in the Land to the Buyer; and
    - (ii) any other document to be signed by the Seller necessary for stamping or registering the transfer; and
  - (bb) **"Transport Infrastructure"** has the meaning defined in the *Transport Infrastructure Act 1994*.

### 2. Purchase Price

#### 2.1 GST

Unless otherwise specified in this contract, the Purchase Price includes any GST payable on the supply of the Property to the Buyer.

#### 2.2 Deposit

- (1) The Buyer must pay the Deposit to the Deposit Holder at the times shown in the Reference Schedule. The Deposit Holder will hold the Deposit until a party becomes entitled to it.
- (2) The Buyer will be in default if it:
  - (a) does not pay the Deposit when required;
  - (b) pays the Deposit by a post-dated cheque; or
  - (c) pays the Deposit by cheque which is dishonoured on presentation.
- (3) The Seller may recover from the Buyer as a liquidated debt any part of the Deposit which is not paid when required.



### 2.3 Investment of Deposit

If:

- (1) the Deposit Holder is instructed by either the Seller or the Buyer; and
  - (2) it is lawful to do so;
- the Deposit Holder must:
- (3) invest as much of the Deposit as has been paid with any Financial Institution in an interest-bearing account in the names of the parties; and
  - (4) provide the parties' tax file numbers to the Financial Institution (if they have been supplied).

### 2.4 Entitlement to Deposit and Interest

- (1) The party entitled to receive the Deposit is:
  - (a) if this contract settles, the Seller;
  - (b) if this contract is terminated without default by the Buyer, the Buyer; and
  - (c) if this contract is terminated owing to the Buyer's default, the Seller.
- (2) The interest on the Deposit must be paid to the person who is entitled to the Deposit.
- (3) If this contract is terminated, the Buyer has no further claim once it receives the Deposit and interest, unless the termination is due to the Seller's default or breach of warranty.
- (4) The Deposit is invested at the risk of the party who is ultimately entitled to it.

### 2.5 Payment of Balance Purchase Price

- (1) On the Settlement Date, the Buyer must pay the Balance Purchase Price by Bank cheque as the Seller directs.
- (2) Despite any other provision of this contract, a reference to a "Bank cheque" in clause 2.5(1):
  - (a) includes a cheque drawn by a building society or credit union on itself;
  - (b) does not include a cheque drawn by a building society or credit union on a Bank;
 and the Seller is not obliged to accept a cheque referred to in clause 2.5(2)(b) on the Settlement Date.

### 2.6 Adjustments to Balance Purchase Price

- (1) The Seller is liable for Outgoings and is entitled to Rent up to and including the Settlement Date. The Buyer is liable for Outgoings and is entitled to Rent after the Settlement Date.
- (2) Subject to clauses 2.6(3), 2.6(4), 2.6(5) and 2.6(6), Outgoings for periods including the Settlement Date must be adjusted:
  - (a) for those paid, on the amount paid;
  - (b) for those assessed but unpaid, on the amount payable (excluding any discount); and
  - (c) for those not assessed:
    - (i) on the amount the relevant authority advises will be assessed (excluding any discount); or
    - (ii) if no advice on the assessment to be made is available, on the amount of the latest assessment (excluding any discount).
- (3) If there is no separate assessment of rates for the Land at the Settlement Date and the Local Government informs the Buyer that it will not apportion rates between the Buyer and the Seller, then:
  - (a) the amount of rates to be adjusted is that proportion of the assessment equal to the ratio of the area of the Land to the area of the parcel in the assessment; and
  - (b) if an assessment of rates includes charges imposed on a "per lot" basis, then the portion of those charges to be adjusted is the amount assessed divided by the number of lots in that assessment.

### (4) Land tax must be adjusted:

- (a) on the assessment that the Office of State Revenue would issue for the land tax year current at the Settlement Date if the Seller was one natural person resident in Queensland and the Land was the Seller's only land; or
- (b) based on the assumptions in clause 2.6(4)(a), if there is no separate unimproved value for the Land, on a notional unimproved value equal to:

$$\begin{array}{l} \text{Unimproved value of} \\ \text{the parcel that} \\ \text{includes the Land} \\ \text{under Valuation of} \\ \text{Land Act 1944} \end{array} \times \frac{\text{Area of Land}}{\text{Area of the parcel}}$$

- (5) If land tax is unpaid at the Settlement Date and the Office of State Revenue advises that it will issue a final clearance for the Land on payment of a specified amount, then the Buyer may deduct the specified amount from the Balance Purchase Price at settlement and must pay it promptly to the Office of State Revenue. If an amount is deducted under this clause, then land tax will be treated as paid at the Settlement Date for the purposes of clause 2.6(2).
- (6) Any Outgoings assessable on the amount of water used must be adjusted on the charges that would be assessed on the total water usage for the assessment period, determined by assuming that the actual rate of usage shown by the meter reading made before settlement continues throughout the assessment period. The Buyer must obtain and pay for the meter reading.
- (7) If any Outgoings are assessed but unpaid at the Settlement Date, then the Buyer may deduct the amount payable from the Balance Purchase Price at settlement and pay it promptly to the relevant authority. If an amount is deducted under this clause, the relevant Outgoing will be treated as paid at the Settlement Date for the purposes of clause 2.6(2).
- (8) Arrears of Rent for any rental period ending on or before the Settlement Date belong to the Seller and are not adjusted at settlement.
- (9) Unpaid Rent for the rental period including both the Settlement Date and the following day ("Current Period") is not adjusted until it is paid.
- (10) Rent already paid for the Current Period or beyond must be adjusted at settlement.
- (11) If Rent payments are reassessed after the Settlement Date for periods including the Settlement Date, any additional Rent payment from a Tenant or refund due to a Tenant must be apportioned under clauses 2.6(8), 2.6(9) and 2.6(10).
- (12) Payments under clause 2.6(10) must be made within 14 days after notification by one party to the other but only after any additional payment from a Tenant has been received.
- (13) The cost of Bank cheques payable at settlement:
  - (a) to the Seller or its mortgagee are the responsibility of the Buyer; and
  - (b) to parties other than the Seller or its mortgagee are the responsibility of the Seller.

## 3. Finance

- 3.1 This contract is conditional on the Buyer obtaining approval of a loan for the Finance Amount from the Financier by the Finance Documents satisfactory to the





- Buyer. The Buyer must take all reasonable steps to obtain approval.
- 3.2 The Buyer must give notice to the Seller that:
- (1) approval has not been obtained by the Finance Date and the Buyer terminates this contract; or
  - (2) the finance condition has been either satisfied or waived by the Buyer.
- 3.3 The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 3.2 by 5pm on the Finance Date. This is the Seller's only remedy for the Buyer's failure to give notice.
- 3.4 The Seller's right under clause 3.3 is subject to the Buyer's continuing right to terminate this contract under clause 3.2(1) or waive the benefit of this clause 3 by giving written notice to the Seller of the waiver.
- 4. Building and Pest Inspection Reports and Pool Safety**
- 4.1 Building and Pest Inspection**  
This contract is conditional upon the Buyer obtaining a written building report from a building inspector and a written pest report from a pest inspector (which may be a single report) on the Property by the Inspection Date on terms satisfactory to the Buyer. The Buyer must take all reasonable steps to obtain the reports (subject to the right of the Buyer to elect to obtain only one of the reports).
- 4.2 The Buyer must give notice to the Seller that:
- (1) a satisfactory inspector's report under clause 4.1 has not been obtained by the Inspection Date and the Buyer terminates this contract. The Buyer must act reasonably; or
  - (2) clause 4.1 has been either satisfied or waived by the Buyer.
- 4.3 If the Buyer terminates this contract and the Seller asks the Buyer for a copy of the building and pest reports, the Buyer must give a copy of each report to the Seller without delay.
- 4.4 The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 4.2 by 5pm on the Inspection Date. This is the Seller's only remedy for the Buyer's failure to give notice.
- 4.5 The Seller's right under clause 4.4 is subject to the Buyer's continuing right to terminate this contract under clause 4.2(1) or waive the benefit of this clause 4 by giving written notice to the Seller of the waiver.
- 4.6 If required under the *Queensland Building Services Authority Act 1991*, an inspector referred to in clause 4.1 must hold a current licence under that Act.
- 4.7 Pool Safety**
- (1) This clause 4.7 applies if:
    - (a) there is a pool on the Land and the answer to Q2 of the Reference Schedule is No or Q2 is not completed; and
    - (b) this contract was not formed on a sale by auction.
  - (2) This contract is conditional upon the Buyer obtaining from a Pool Safety Inspector by the Pool Safety Inspection Date:
    - (a) confirmation that the Pool Safety Requirements have been met and the issue of a Pool Safety Certificate; or
    - (b) confirmation of the works required before a Pool Safety Certificate can be issued.
  - (3) The Buyer must give notice to the Seller on or before the Pool Safety Inspection Date that:
    - (a) a Pool Safety Inspector has issued a Pool Safety Certificate in which case neither the Buyer nor the

- Seller have any further rights under this clause 4.7; or
- (b) a Pool Safety Inspector has not issued a Pool Safety Certificate and the Buyer terminates this contract. The Buyer must act reasonably; or
  - (c) the Buyer waives the benefit of this clause 4.7 and elects to proceed to settlement notwithstanding that there is no Pool Safety Certificate.
- (4) The Buyer's right to terminate this contract or waive the benefit of this clause 4.7 ends on the earlier of:
    - (a) a Pool Safety Certificate being issued; or
    - (b) settlement occurring.
  - (5) The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 4.7 (3) by 5pm on the Pool Safety Inspection Date. This is the Seller's only remedy for the Buyer's failure to give notice.
  - (6) The Seller's right under clause 4.7(5) is subject to the Buyer's continuing right to terminate this contract or waive the benefit of this clause 4.7 by giving written notice to the Seller of the waiver.
  - (7) If the Buyer terminates this contract in accordance with clause 4.7(3)(b), and the Seller asks the Buyer for a copy of the pool safety inspection report, the Buyer must give a copy of the report to the Seller without delay.
  - (8) For the purpose of this clause 4.7, "**formed on a sale by auction**" means formed on sale by auction—
    - (a) directly on the fall of the hammer, by outcry; or
    - (b) directly at the end of another similar type of competition for purchase.

## 5. Settlement

### 5.1 Time and Date

- (1) Settlement must occur between 9am and 5pm on the Settlement Date.
- (2) If the parties do not agree on where settlement is to occur, it must take place in the Place for Settlement at the office of a solicitor or Financial Institution nominated by the Seller, or, if the Seller does not make a nomination, at the land registry office in or nearest to the Place for Settlement.

### 5.2 Transfer Documents

- (1) The Transfer Documents must be prepared by the Buyer's Solicitor and delivered to the Seller a reasonable time before the Settlement Date.
- (2) If the Buyer pays the Seller's reasonable expenses, it may require the Seller to produce the Transfer Documents at the Office of State Revenue nearest the Place for Settlement for stamping before settlement.

### 5.3 Documents and Keys at Settlement

- (1) In exchange for payment of the Balance Purchase Price, the Seller must deliver to the Buyer at settlement:
  - (a) any instrument of title for the Land required to register the transfer to the Buyer; and
  - (b) unstamped Transfer Documents capable of immediate registration after stamping; and
  - (c) if requested, the Keys in the Seller's or the Seller's Agent's possession or control for all locks and security systems on the Property; and
  - (d) if there are Tenancies:
    - (i) the Seller's copy of any Tenancy agreements;
    - (ii) a notice to each tenant advising of the sale in the form required by law; and
    - (iii) any notice required by law to transfer to the Buyer the Seller's interest in any Bond; and



(e) if the answer to Q2 in the Reference Schedule is Yes, a copy of a current Pool Safety Certificate, if not already provided to the Buyer.

- (2) If the instrument of title for the Land also relates to other land, the Seller need not deliver it to the Buyer, but the Seller must make arrangements satisfactory to the Buyer to produce it for registration of the transfer.
- (3) If the Keys are not delivered at Settlement under clause 5.3(1)(c), the Seller must deliver the Keys to the Buyer. The Seller may discharge its obligation under this provision by authorising the Seller's Agent to release the Keys to the Buyer.

#### 5.4 Assignment of Covenants and Warranties

At settlement, the Seller assigns to the Buyer the benefit of all:

- (1) covenants by the tenants under the Tenancies;
  - (2) guarantees and Bonds (subject to the requirements of the *Residential Tenancies and Rooming Accommodation Act 2008*) supporting the Tenancies;
  - (3) manufacturers' warranties regarding the Included Chattels; and
  - (4) builders' warranties on the Improvements;
- to the extent they are assignable. However, the right to recover arrears of Rent is not assigned to the Buyer and section 117 of the *Property Law Act 1974* does not apply.

#### 5.5 Possession of Property and Title to Included Chattels

On the Settlement Date, in exchange for the Balance Purchase Price, the Seller must give the Buyer vacant possession of the Land and the Improvements except for the Tenancies. Title to the Included Chattels passes at settlement.

#### 5.6 Reservations

- (1) The Seller must remove the Reserved Items from the Property before the Settlement Date.
- (2) The Seller must repair at its expense any damage done to the Property in removing the Reserved Items. If the Seller fails to do so, the Buyer may repair that damage.
- (3) Any Reserved Items not removed before settlement will be considered abandoned and the Buyer may, without limiting its other rights, complete this contract and appropriate those Reserved Items or dispose of them in any way.
- (4) The Seller indemnifies the Buyer against any damages and expenses resulting from the Buyer's actions under clauses 5.6(2) or 5.6(3).

#### 5.7 Consent to Transfer

- (1) If the Land sold is leasehold, this contract is subject to any necessary consent to the transfer of the lease to the Buyer being obtained by the Settlement Date.
- (2) The Seller must apply for the consent required as soon as possible.
- (3) The Buyer must do everything reasonably required to help obtain this consent.

### 6. Time

6.1 Time is of the essence of this contract, except regarding any agreement between the parties on a time of day for settlement.

### 7. Matters Affecting the Property

#### 7.1 Title

The Land is sold subject to:

- (1) any reservations or conditions on the title or the original Deed of Grant (if freehold); or
- (2) the Conditions of the Crown Lease (if leasehold).

#### 7.2 Encumbrances

The Property is sold free of all Encumbrances other than the Title Encumbrances and Tenancies.

#### 7.3 Requisitions

The Buyer may not deliver any requisitions or enquiries on title.

#### 7.4 Seller's Warranties

- (1) The Seller warrants that at settlement:
  - (a) if the Land is freehold: it will be the registered owner of an estate in fee simple in the Land and will own the rest of the Property;
  - (b) if the Land is leasehold: it will be the registered lessee, the lease is not liable to forfeiture because of default under the lease, and it will own the rest of the Property;
  - (c) it will be capable of completing this contract (unless the Seller dies or becomes mentally incapable after the Contract Date); and
  - (d) there will be no unsatisfied judgment, order or writ affecting the Property.
- (2) The Seller warrants that at the Contract Date and at settlement there are no current or threatened claims, notices or proceedings that may lead to a judgment, order or writ affecting the Property.
- (3) (a) The Seller warrants that, except as disclosed in this contract or a notice given by the Seller to the Buyer under the *Environmental Protection Act 1994* ("EPA"), at the Contract Date:
  - (i) there is no outstanding obligation on the Seller to give notice to the administering authority under EPA of notifiable activity being conducted on the Land; and
  - (ii) the Seller is not aware of any facts or circumstances that may lead to the Land being classified as contaminated land within the meaning of EPA.
- (b) If the Seller breaches a warranty in clause 7.4(3)(a), the Buyer may:
  - (i) terminate this contract by notice in writing to the Seller given within 2 Business Days before the Settlement Date; or
  - (ii) complete this contract and claim compensation, but only if the Buyer claims it in writing before the Settlement Date.
- (4) If a warranty in clause 7.4(1) or clause 7.4(2) is not correct, the Buyer may terminate this contract by notice to the Seller.
- (5) The Seller does not warrant that the Present Use is lawful.

#### 7.5 Survey and Mistake

- (1) The Buyer may survey the Land.
- (2) If there is:
  - (a) an error in the boundaries or area of the Land;
  - (b) an encroachment by structures onto or from the Land; or
  - (c) a mistake or omission in describing the Property or the Seller's title to it;
 which is:
  - (d) immaterial; or
  - (e) material, but the Buyer elects to complete this contract; the Buyer's only remedy against the Seller is for compensation, but only if claimed by the Buyer in writing on or before settlement.
- (3) The Buyer may not delay settlement or withhold any part of the Balance Purchase Price because of any compensation claim under clause 7.5(2).



- (4) If there is a material error, encroachment or mistake, the Buyer may terminate this contract before settlement.

#### 7.6 Requirements of Authorities

- (1) Any valid notice or order by any competent authority or Court requiring work to be done or money spent in relation to the Property ("**Work or Expenditure**") must be fully complied with:
- if issued before the Contract Date, by the Seller before the Settlement Date;
  - if issued on or after the Contract Date, by the Buyer.
- (2) If any Work or Expenditure that is the Seller's responsibility under clause 7.6(1)(a) is not done before the Settlement Date, the Buyer is entitled to claim the reasonable cost of work done by the Buyer in accordance with the notice or order referred to in clause 7.6(1) from the Seller after settlement as a debt.
- (3) Any Work or Expenditure that is the Buyer's responsibility under clause 7.6(1)(b), which is required to be done before the Settlement Date, must be done by the Seller unless the Buyer directs the Seller not to and indemnifies the Seller against any liability for not carrying out the work. If the Seller does the work, or spends the money, the reasonable cost of that Work or Expenditure must be added to the Balance Purchase Price.
- (4) The Buyer may terminate this contract by notice to the Seller if there is an outstanding notice at the Contract Date under sections 246AG, 247 or 248 of the *Building Act 1975* or sections 588 or 590 of the *Sustainable Planning Act 2009* that affects the Property.

#### 7.7 Property Adversely Affected

- (1) If at the Contract Date:
- the Present Use is not lawful under the relevant town planning scheme;
  - the Land is affected by a proposal of any competent authority to alter the dimensions of any Transport Infrastructure or locate Transport Infrastructure on the Land;
  - access or any service to the Land passes unlawfully through other land;
  - any competent authority has issued a current notice to treat, or notice of intention to resume, regarding any part of the Land; or
  - the Property is affected by the *Queensland Heritage Act 1992* or is included in the World Heritage List;

and that has not been disclosed in this contract, the Buyer may terminate this contract by notice to the Seller given no later than 2 Business Days before the Settlement Date.

- (2) If no notice is given under clause 7.7(1), the Buyer will be treated as having accepted the Property subject to all of the matters referred to in that clause.
- (3) The Seller authorises the Buyer to inspect records held by any authority relating to the Property.

#### 7.8 Dividing Fences

The Seller need not contribute to the cost of building any dividing fence between the Land and any adjoining land owned by it. The Buyer waives any right to claim contribution from the Seller.

## 8. Rights Until Settlement

### 8.1 Risk

The Property is at the Buyer's risk from 5pm on the first Business Day after the Contract Date.

### 8.2 Access

After reasonable notice to the Seller, the Buyer and its consultants may enter the Property:

- once to read any meter;
- for inspections under clause 4;
- once to inspect the Property before settlement; and
- once to value the Property before settlement.

### 8.3 Seller's Use of Property

The Seller must use the Property reasonably until settlement. The Seller must not do anything regarding the Property or Tenancies that may significantly alter them or result in later expense for the Buyer.

### 8.4 Information Regarding the Property

Before settlement, the Seller must give the Buyer:

- copies of all documents relating to any unregistered interests in the Property;
- full details of the Tenancies to allow the Buyer to properly manage the Property after settlement; and
- further copies or details if those previously given cease to be complete and accurate.

### 8.5 Possession Before Settlement

If possession is given before settlement:

- the Buyer must maintain the Property in substantially its condition at the date of possession, fair wear and tear excepted;
- entry into possession is under a licence personal to the Buyer revocable at any time and does not:
  - create a relationship of landlord and tenant; or
  - waive the Buyer's rights under this contract;
- the Buyer must insure the Property to the Seller's satisfaction; and
- the Buyer indemnifies the Seller against any expense or damages incurred by the Seller as a result of the Buyer's possession of the Property.

## 9. Parties' Default

### 9.1 Seller and Buyer May Affirm or Terminate

Without limiting any other right or remedy of the parties including those under this contract or any right at common law, if the Seller or Buyer, as the case may be, fails to comply with an Essential Term, or makes a fundamental breach of an intermediate term, the Seller (in the case of the Buyer's default) or the Buyer (in the case of the Seller's default) may affirm or terminate this contract.

### 9.2 If Seller Affirms

If the Seller affirms this contract under clause 9.1, it may sue the Buyer for:

- damages;
- specific performance; or
- damages and specific performance.

### 9.3 If Buyer Affirms

If the Buyer affirms this contract under clause 9.1, it may sue the Seller for:

- damages;
- specific performance; or
- damages and specific performance.

### 9.4 If Seller Terminates

If the Seller terminates this contract under clause 9.1, it may do all or any of the following:

- resume possession of the Property;
- forfeit the Deposit and any interest earned;
- sue the Buyer for damages;
- resell the Property.



### 9.5 If Buyer Terminates

If the Buyer terminates this contract under clause 9.1, it may do all or any of the following:

- (1) recover the Deposit and any interest earned;
- (2) sue the Seller for damages.

### 9.6 Seller's Resale

(1) If the Seller terminates this contract and resells the Property, the Seller may recover from the Buyer as liquidated damages:

- (a) any deficiency in price on a resale; and
- (b) its expenses connected with any repossession, any failed attempt to resell, and the resale; provided the resale settles within 2 years of termination of this contract.

(2) Any profit on a resale belongs to the Seller.

### 9.7 Seller's Damages

The Seller may claim damages for any loss it suffers as a result of the Buyer's default, including its legal costs on an indemnity basis and the cost of any Work or Expenditure under clause 7.6(3).

### 3 Buyer's Damages

The Buyer may claim damages for any loss it suffers as a result of the Seller's default, including its legal costs on an indemnity basis.

### 9.9 Interest on Late Payments

- (1) Without affecting the Seller's other rights, if any money payable by the Buyer under this contract is not paid when due, the Buyer must pay the Seller at settlement interest on that money calculated at the Default Interest Rate from the due date for payment until payment is made.
- (2) The Seller may recover that interest from the Buyer as liquidated damages.
- (3) Any judgment for money payable under this contract will bear interest from the date of judgment to the date of payment and the provisions of this clause 9.9 apply to calculation of that interest.

## 10. General

### 10.1 Agent

The Agent is appointed as the Seller's agent to introduce a buyer.

### 10.2 Foreign Investment Review Board

The Buyer warrants that either:

- (1) the Treasurer has consented under the *Foreign Acquisitions and Takeovers Act* to the Buyer's purchase of the Property; or
- (2) the Treasurer's consent is not required to the Buyer's purchase of the Property.

### 10.3 Duty

The Buyer must pay all duty on this contract.

### 10.4 Notices

- (1) Notices under this contract must be in writing and may be given by a party's solicitor.
- (2) Notices are effectively given if:
  - (a) delivered or posted to the other party or its solicitor; or
  - (b) sent to the facsimile number of the other party or its solicitor.
- (3) Posted notices will be treated as given 2 Business Days after posting.
- (4) Notices sent by facsimile will be treated as given when the sender obtains a clear transmission report.
- (5) Notices given after 5pm will be treated as given on the next Business Day.
- (6) Notices or other written communications by a party's solicitor (for example, varying the Inspection Date,

Finance Date or Settlement Date) will be treated as given with that party's authority.

### 10.5 Business Days

- (1) If anything is required to be done on a day that is not a Business Day, it must be done instead on the next Business Day.
- (2) If the Finance Date or Inspection Date fall on a day that is not a Business Day, then it falls on the next Business Day.

### 10.6 Rights After Settlement

Despite settlement and registration of the transfer, any term of this contract that can take effect after settlement or registration remains in force.

### 10.7 Further Acts

If requested by the other party, each party must, at its own expense, do everything reasonably necessary to give effect to this contract.

### 10.8 Severance

If any term or part of a term of this contract is or becomes legally ineffective, invalid or unenforceable in any jurisdiction it will be severed and the effectiveness, validity or enforceability of the remainder will not be affected.

### 10.9 Interpretation

#### (1) Plurals and Genders

Reference to:

- (a) the singular includes the plural and the plural includes the singular;
- (b) one gender includes each other gender;
- (c) a person includes a body corporate; and
- (d) a party includes the party's executors, administrators, successors and permitted assigns.

#### (2) Parties

- (a) If a party consists of more than one person, this contract binds them jointly and each of them individually.
- (b) A party that is a trustee is bound both personally and in its capacity as a trustee.

#### (3) Statutes and Regulations

Reference to statutes includes all statutes amending, consolidating or replacing them.

#### (4) Inconsistencies

If there is any inconsistency between any provision added to this contract and the printed provisions, the added provision prevails.

#### (5) Headings

Headings are for convenience only and do not form part of this contract or affect its interpretation.

## Schedule 1 – Property Details

Lot and Plan	County	Parish	Title Reference	Encumbrances
Lot 3 on SP 195275	Stanley	Yeerongpilly	50710033	Benefit Easement No. 712884080
Lot 4 on SP 195275	Stanley	Yeerongpilly	50710034	Nil
Lot 5 on SP 195275	Stanley	Yeerongpilly	50710035	Nil
Lot 101 on SP 195275	Stanley	Yeerongpilly	50710040	Burden Easement in Gross No. 709116788



## Annexure A - Special Conditions to Contract

### 1. SPECIAL CONDITIONS TO PREVAIL

#### 1.1 Amendments to Terms of Contract

- (a) Where there is an inconsistency between the Standard Terms of Contract and a Special Condition, the Special Condition prevails.
- (b) The Standard Terms of Contract are amended as follows:
- (i) Clauses 2.6(4) and 2.6(5) of the Terms of Contract are deleted and replaced with the following:
- “(4) The Seller will provide the Buyer with a current Land Tax Clearance Certificate on or before Settlement.
- (5) If the Buyer is advised by the Commissioner of Land Tax or the Office of State Revenue that a specified amount is payable in order to secure a Land Tax Certificate for the period to the Settlement Date then the amount payable will be paid at the Seller’s cost from the proceeds of Sale on Settlement and the Buyer will accept such payment in satisfaction of the Seller’s obligation under this clause.”
- (ii) Clause 2.6(13) of the Terms of Contract is deleted and replaced with the following:
- “(13) The following provisions shall apply in relation to settlement cheques:
- (a) The Buyer will provide a maximum of 3 bank cheques at Settlement.
- (b) The Seller will provide the Buyer with the details (payee and amounts) of cheques required at Settlement by no later than 10.00am on the day prior to Settlement (being days when banks are open in the city of Brisbane).
- (c) In the event that cheque details are not provided by the Seller to the Buyer at 10.00am on the day prior to the Settlement Date, then the Buyer may at its discretion defer the Settlement Date by one (1) business day from when the cheque details are provided. The Seller will not be entitled to claim interest for this period.
- (d) This clause is for the sole benefit of the Buyer.”
- (iii) Clauses 3, 4, 7.4(1)-(4), 7.5, 7.6 and 7.7 (1)-(2), of the Terms of Contract are deleted;
- (iv) Clause 10.4 of the REIQ Terms of Contract is amended as follows:
- (A) by inserting a new clause 10.4(2)(c) “emailed to the email address of the other party or its solicitor.”;
- (B) by inserting a new clause 10.4(7) “Notices sent by email will be treated as given when a delivery confirmation report is received by the sender, which records the time that the email was delivered to the addressee’s current email address.”; and
- (C) by inserting a new clause 10.4(8) “Pursuant to the *Electronic Transactions (Queensland) Act 2001* (Qld), the Buyer and the Seller consent to information and notices under this Contract of Sale being given by an electronic communication.”

## 2. DUE DILIGENCE

### 2.1 Due Diligence Investigations

- (a) The Buyer shall forthwith after signing this Contract carry out a "**due diligence**" in respect of the Property to satisfy itself (or otherwise) with respect to all matters, which in the opinion of the Buyer are relevant to the acquisition of the Property. If the Buyer is not satisfied with respect to any matter, which in its absolute discretion it considers relevant to the acquisition of the Property, then the Buyer may by notice in writing given not later than the Due Diligence Date terminate this Contract and thereafter neither party shall have any Claim against the other pursuant to or arising under this Contract. If the Buyer fails to give a notice that it is satisfied or otherwise with its due diligence by the Due Diligence Date then the Buyer shall be deemed to have given a notice pursuant to this Special Condition 2.1(a) that it:
- (i) is satisfied with its due diligence; and
  - (ii) has elected to waive the benefit of this special condition.
- (b) The parties acknowledge and agree that this Special Condition 2.1(a) is inserted solely for the benefit of the Buyer and the benefit of this Special Condition 2.1(a) may be waived by the Buyer by notice in writing.

### 2.2 Disclosed Materials

- (a) The Seller must allow the Buyer and its consultants to have access to the Property for the purpose of conducting its due diligence inquiries and access to all Disclosed Materials relating to the Property.
- (b) Any access to the Property given to the Buyer or its consultants for the purpose of conducting Investigations is at the Buyer's risk.

## 3. NO REPRESENTATIONS

### 3.1 "As is where is"

The Buyer acknowledges that, as a consequence of its rights under Special Condition 2, it has inspected, and has the opportunity to further inspect the Property. Subject to the Buyer's rights under special condition 2, the Buyer accepts the Property in its present condition "as is where is" and subject to any legal, physical, patent or latent defects.

### 3.2 Buyer to satisfy itself

The Buyer:

- (a) does not rely on any representations, warranties or information provided or statements about the Property made by or on behalf of the Seller, the Seller's agent or their respective employees or agents, other than as set out in this Contract;
- (b) acknowledges that it has not been induced to enter into this Contract by any representation, warranty or information provided by the Seller, the Seller's agent or their respective employees or agents;
- (c) acknowledges that it has the opportunity under special condition 2 to carry out a full due diligence and other enquiries in respect of the Property and satisfy itself about all related matters including without limitation:
  - (i) the use, fitness or suitability of the Property for any purpose;
  - (ii) the means of access to the Property;



- (iii) any encroachments, easements, Crown reservations and other encumbrances from the Land onto adjoining land, or from adjoining land onto the Land;
- (iv) as to any possible and/or potential flooding of the Land;
- (v) as to neighbourhood or environment in which the Property is situated;
- (vi) as to the zoning of the Land and the use to which the Property may be put, the suitability of the Land for future development or the rights and privileges relating to the Property or the services actually or likely to be connected or provided to the Property;
- (vii) the quality, state of repair, fitness for purpose and construction of the Property;
  - (i) as to the existence, condition, location and capacity of any services located in, on, or under, or connected to the Property;
  - (ii) whether the Property complies with all laws, statutes, regulations and by-laws including the *Sustainable Planning Act 2009*;
  - (iii) the existence of any hazardous substance or hazardous contaminant within the meaning of the *Environmental Protection Act 1994*;
  - (iv) any failure to comply with all laws, statutes, regulations or by-law or a requirement of any Authority relating to the Property;
  - (v) as to anything disclosed or referred to in the Disclosed Materials;
  - (vi) the existence or otherwise of any requirements of Authorities relating to the Property including, without limitation, resumptions, road dedications, road widening and similar things;
  - (vii) the existence or otherwise of necessary consents, approvals and licences from Authorities relating to the Property, including any failure to comply with any approvals or licences; and
  - (viii) with any other matter, past, present, future or anticipated, relevant to the Property.

Apart from the right to terminate this Contract under special condition 2, the Buyer cannot terminate this Contract, delay Settlement, deduct or retain any amount from the Purchase Price or make any Claim in relation to any matter referred to in this Special Condition 3.

#### 4. CONTEMPORANEOUS AGREEMENT

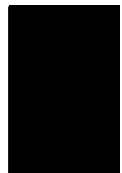
The Contemporaneous Agreement shall only take effect and be operational upon settlement of this Contract and the Buyer becoming the registered owner of the Land.

#### 5. STAMP DUTY

6. Despite any provision to the contrary the parties agrees that the Buyer is responsible for the transfer duty payable under the *Duties Act 2001 (Qld)* in respect of this Contract on the maximum amount of \$6 million (plus GST) which totals \$332,175.00 in transfer duty ("Stamp Duty Amount").

6.1 The Seller agrees to reimburse the Buyer for the transfer duty payable under the *Duties Act 2001 (Qld)* in respect of this Contract (excluding any penalties, any additional amounts payable for fines or penalties for late assessment or late payment) above the Stamp Duty Amount ("Additional Amount").

6.2 The Additional Amount will be paid as an adjustment to the Balance Purchase Price in favour of the Buyer at Settlement.



## 7. TRANSFER DOCUMENTS

The parties agree that the form of transfer under the *Land Title Act 1994* required to transfer title in the Property to the Buyer is in the form contained in Annexure B.

## 8. GOODS AND SERVICES TAX

### 8.1 Consideration is GST exclusive

Any consideration to be paid or provided for a supply made under or in connection with this Contract, does not include an amount on account of GST.

### 8.2 Gross up of Consideration

Despite any other provision in this Contract, if a party ("**Supplier**") makes a supply under or in connection with this Contract on which GST is imposed (not being a supply the consideration for which is specifically described in this Contract as "**GST inclusive**"):

- (a) the consideration payable or to be provided for that supply under this Contract but for the application of this special condition ("**GST exclusive consideration**") is increased by and the recipient of the supply ("**Recipient**") must also pay to the Supplier an amount equal to the GST payable by the Supplier on that supply; and
- (b) subject to special condition 8.4 the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

### 8.3 Reimbursements

If a payment to a party under this Contract is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

That party is assumed to be entitled to a full input tax credit unless it proves, before the date on which the payment must be made, that its entitlement is otherwise.

### 8.4 Tax Invoice and Registration

Despite any other provision of this Contract, a party need not make a payment of any amount for GST until the party has been given by the other party:

- (a) a GST tax invoice for that payment stating the amount of GST imposed on the party in respect of the supply to which the GST tax invoice relates; and
- (b) evidence satisfactory to the party that the other party is registered for the purposes of GST.

### 8.5 Interpretation

Words or expressions used in this special condition 8 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this special condition.

## 9. CONFIDENTIALITY

- (a) Subject to special condition 9(b), the contents of this Contract and all books accounts records documents and information made available to any party for the purposes of entering into this Contract or in the course of the performance of this Contract shall be kept confidential and shall not be disclosed to any other person without the written consent of the other parties.
- (b) Special condition 9(a) shall not apply to any disclosure:
  - (i) required by law;

- (ii) required by any applicable stock exchange listing rules;
  - (iii) made in good faith to officers employees legal and other advisors and auditors of any party under a duty of confidentiality;
  - (iv) by a party to its bankers or other financial institutions to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements;
  - (v) required by this Contract or necessary for or incidental to the performance of the obligations and duties contained in this Contract or any Contemporaneous Agreement including in connection with an exercise of rights or a dealing with rights or obligations under this Contract or any Contemporaneous Agreement (including, in particular, by way of giving information to owners of lots in the Tennyson Reach Community Titles Scheme and other interested persons or entities in connection with the removal of Lot 3 on SP 195275 from the Tennyson Reach Community Titles Scheme); and
  - (vi) of information in the public domain otherwise than due to a breach of special condition 9(a).
- (c) Each party consents to disclosures made in accordance with this special condition 9. This special condition supersedes any pre-existing agreements between the parties about confidentiality.

## 10. COMPANY CHARGE

If at settlement anyone holds a registered charge over the Seller's assets, the Buyer agrees to accept from the Seller (instead of an ASIC Form 312 Discharge or Release of Property from a Charge) a written statement from either the chargee or the Seller confirming the Property is not subject to the charge.

## 11. LEASE

- 11.1 The Buyer acknowledges and agrees that the Seller may occupy part of the Property that contains the sale office for Tennyson Reach ("Sales Office Land") following Settlement at a rental of \$10 per annum (if demanded), until the date of commencement of stage 2 of the Parkland Works under the Parkland Works Contract ("Tenancy").
- 11.2 The Seller acknowledges that whilst the Seller remains in occupation of the Sales Office Land pursuant to this special condition, the Seller:
- (a) must maintain the Sales Office Land in substantially the same condition as it is at the Settlement Date, fair wear and tear excepted;
  - (b) must take out necessary insurance for the Sales Office Land, including public risk insurance in a sum reasonably acceptable to the Buyer;
  - (c) indemnifies and shall hold indemnified the Buyer against any expense or damage incurred by the Buyer as a result of the Seller's possession of the Sales Office Land; and
  - (d) must pay consumption and utility charges in relation to use of the Sales Office Land.
- 11.3 The parties agree to do all things necessary at Settlement to record the Tenancy, including if necessary entering into a lease in the form incorporated in Annexure D.

## 12. CONTRACT SUBJECT TO APPROVAL OF COUNCIL'S E&C COMMITTEE

- 12.1 This Contract is subject to and conditional upon the Buyer Council obtaining the approval of its E&C Committee to the transaction no later than the Due Diligence Date.

- 12.2 If E&C Committee approval is not obtained by the Due Diligence Date then this Contract is at an end with no penalty to the Buyer.
13. **CONTRACT SUBJECT TO SELLER'S BOARD APPROVAL**
- 13.1 This Contract is subject to and conditional upon the Seller obtaining the approval of its Board to the transaction no later than the Due Diligence Date.
- 13.2 If the Seller's Board approval is not obtained by the Due Diligence Date then this Contract is at an end with no penalty to the Seller.
14. **PURCHASE PRICE PAYABLE BY INSTALMENTS**
- 14.1 The Seller and the Buyer agree that the Purchase Price shall be payable by instalments and the amounts and on the dates set out below:
- (a) \$6,600,000.00 (inclusive of GST of \$900,000.00 for the Supply under this Contract) ("Initial Purchase Price Instalment") payable on the Settlement Date; and
  - (b) \$3,300,000.00 ("Balance Purchase Price Instalment") payable by 2 July 2012 ("Balance Instalment Payment Date").
- 14.2 The Buyer grants to the Seller a charge over the Land following settlement and to secure the payment of the Balance Purchase Price Instalment.
- 14.3 In consideration of the Seller paying to the Buyer the sum of \$1.00, if demanded (and/or the parties acknowledge shall be in lieu of the Buyer paying the Deposit of \$1.00 to the Seller), and subject to the terms of this Special Condition, the Buyer offers to re-sell the Land back to the Seller during the Call Option Period for the Initial Purchase Price Instalment and otherwise on the terms and conditions in the standard form of contract Houses and Land (8<sup>th</sup> Edition) as adopted by the Real Estate Institute of Queensland approved by the Queensland Law Society ("Seller's Call Option"). For the purposes of this Special Condition, the "Call Option Period" shall mean the period of 30 days after the Balance Instalment Payment Date. The Seller's Call Option shall only be exercisable if the Buyer does not pay the Balance Purchase Price Instalment to the Seller on or before the Balance Instalment Payment Date.
- 14.4 The Seller and the Buyer acknowledge and agree that the Seller's interest in the Land pursuant to the Seller's Call Option shall be secured by a Consent Caveat in the form incorporated in Annexure E of this Contract and registered against the title to the Land. The Buyer must duly execute a Form 18 – General Consent to the Caveat (as registered owner of the Land following settlement) and deliver same to the Seller on settlement. The Seller shall be responsible for the registration fees payable in respect of the Consent Caveat. The Buyer must co-ordinate lodgement of the Transfer in conjunction with the Seller's lodgement of the Consent Caveat. The Seller will deliver a Withdrawal of Caveat to the Buyer in exchange for payment of the Balance Purchase Price Instalment.
15. **LOT 3 ON SP 195275**
- 15.1 The Seller and the Buyer acknowledge that Lot 3 on SP 195275 ("Lot 3") is, as at the date of this Contract, or was a lot in the Tennyson Reach Community Title Scheme 39925 ("Scheme") but pursuant to an ordinary resolution of the Body Corporate at the AGM held on 29 June 2011, the Body Corporate for Tennyson Reach CTS 39925 consented to the recording of a New Community Management Statement ("New CMS") to effect the removal of Lot 3 from the Scheme. The Seller agrees to use its best endeavours to have the New CMS recorded at the Department of Environment and Resource Management ("DERM") as soon as practicable but, to the extent that the New CMS remains un-recorded as at the date of this Contract, the Buyer acknowledges the Seller's Disclosures regarding exceptions to Seller warranties contained in the Body Corporate and Community Management Act as incorporated in Annexure F to this Contract so far as may relate to Lot 3 as a lot in the Scheme.

16. **DEFINITIONS**

In these special conditions, the following words have the following meanings:

<b><i>Authority</i></b>	means any government or semi government authority or instrumentality, statutory or judicial authority.
<b><i>Claim</i></b>	means any cost, claim, demand, obligation, remedy, damage, loss, action, proceeding, claim for compensation, requisition or objection, whichever is applicable.
<b><i>Consulting Reports</i></b>	means all reports received in respect of the Property in the possession or control of the Seller including, but not limited to, engineering, planning, construction and architectural reports.
<b><i>Contemporaneous Agreement</i></b>	means the Parkland Works Contract
<b><i>Cost</i></b>	includes any costs, damage, expense or payment and includes fees payable to consultants and lawyers.
<b><i>Disclosed Materials</i></b>	means all Consulting Reports, existing development approvals and any other documentation or information about the Property reasonably requested by the Buyer or its representatives in connection with the Property whether before or after the date of this Contract.
<b><i>Due Diligence Date</i></b>	means 30 June 2011.
<b><i>Loss</i></b>	means any damage, loss (including loss of reputation), Cost, expense, fine, penalty and liability incurred by the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent and <b>Losses</b> has an equivalent meaning.
<b><i>Parkland Works Contract</i></b>	means the construction contract between the Buyer and Mirvac Constructions (Qld) Pty Ltd dated on or about the date of this Contract which is in substantially the same form as the contract in Annexure C .



# Annexure B – Transfer Documents



Dealing Number



**OFFICE USE ONLY**

**Privacy Statement**

Collection of this information is authorised by the Land Title Act 1994 the Land Act 1994 and the Water Act 2000 and is used to maintain the publicly searchable registers in the land registry and the water register. For more information about privacy in NR&W see the department's website.

**1. Interest being transferred** (if shares show as a fraction) **Lodger** (Name, address, E-mail & phone number) **Lodger Code**  
FEE SIMPLE

Note: A Form 24 - Property Information (Transfer) must be attached to this Form where interest being transferred is "fee simple" (Land Title Act 1994), "State leasehold" (Land Act 1994) or "Water Allocation" (Water Act 2000)

2. Lot on Plan Description	County	Parish	Title Reference
LOT 3 ON SP195275	STANLEY	YEERONGPILLY	50710033
LOT 4 ON SP195275	STANLEY	YEERONGPILLY	50710034
LOT 5 ON SP195275	STANLEY	YEERONGPILLY	50710035
LOT 101 ON SP195275	STANLEY	YEERONGPILLY	50710040

**3. Transferor**  
MIRVAC QUEENSLAND PTY LIMITED ACN 060 411 207

**4. Consideration**  
\$9,900,000.00 (inclusive of GST)

**5. Transferee** Given names Surname/Company name and number (include tenancy if more than one)  
BRISBANE CITY COUNCIL AS TRUSTEE

**6. Transfer/Execution** The Transferor transfers to the Transferee the estate and interest described in item 1 for the consideration and in the case of monetary consideration acknowledges receipt thereof. The Transferor declares that the information contained in items 3 to 6 on the attached Form 24 is true and correct. The Transferee states the information contained in items 1, 2, 4 to 6 on the attached Form 24 is true and correct. Where a solicitor signs on behalf of the Transferee the information in items 1, 2, 4 to 6 on Form 24 is based on information supplied by the Transferee.

**NOTE: Witnessing officer must be aware of their obligations under section 162 of the Land Title Act 1994.**

Separate executions are required for each transferor and transferee. Signatories are to provide to the witness, evidence that they are the person entitled to sign the instrument (including proof of identity).

Mirvac Queensland Pty Limited ACN 060 411 207  
by its duly appointed Attorney

\_\_\_\_\_ pursuant to  
registered Power of Attorney No. 713238897, who  
declares he has no notice of revocation of the  
Power of Attorney

.....  
Witnessing Officer (signature, full name & qualification)

/ /  
Execution Date

.....  
Transferor's Signature

Mirvac Queensland Pty Limited ACN 060 411 207  
by its duly appointed Attorney

\_\_\_\_\_ pursuant to  
registered Power of Attorney No. 713238897, who  
declares he has no notice of revocation of the  
Power of Attorney

.....  
Witnessing Officer (signature, full name & qualification)

/ /  
Execution Date

.....  
Transferor's Signature

.....  
Witnessing Officer (signature, full name & qualification)

/ /  
Execution Date

.....  
\*Transferee's or Solicitor's Signature

(Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

\*Note: A Solicitor is required to print full name if signing on behalf of the Transferee and no witness is required in this instance

**SCHEDULE / ENLARGED PANEL /  
ADDITIONAL PAGE / DECLARATION**

Title Reference 50710033, 50710034, 50710035, 50710040

This is the schedule to the Form 1 dated                      day of                      2011

The Transferor and the Council hereby covenant and agree as follows:

**1. Declaration of Trust**

1.1 It is declared that the Land in Item 2 of the Form 1 Transfer ("Land") is to be held by the Council upon trust for public use for parkland, community facilities and ancillary uses.

**2. Terms of Trust**

2.1 Council will maintain and manage the Land and any improvements on the Land consistent with achieving the purpose of the Trust. Council may take all action necessary for maintenance and management of the Land.

2.2 Council may make and enforce local laws for the use of the Land and any improvements on the Land.

**General Provisions**

3.1 The Transferor warrants that the Land is free of encumbrances (except for Easement No. 709116788), and does not owe land tax or rates or water as at the date of Transfer.

3.2 Each party to this document will do all acts and render all co-operation reasonably required by the other for the purpose of enabling the registration of this document in the Queensland Land Registry.



(This form must accompany Land Registry Form 1 – Transfer when lodged in the Land Registry)

Duties Act 2001; Valuation of Land Act 1944; Land Tax Act 1915; Local Government Act 1993; Water Act 2000, Electrical Safety Act 2002; Fire and Rescue Service Act 1990

**PART A – Transferee to complete**

title reference [50710033, 50710034, 50710035, 50710040] Page 1 of 2

Electronic version – for completion before printing.

Where insufficient space in an item, use Form 20  
(Enlarged Panel).

Mark appropriate [ ] with 'X'

Refer to guide for completion for further information.

**Official use only**

**1. Transferee**

(a) Given names & surname  
or Company & ACN/ABN

(b) Date of birth  
(dd/mm/yyyy)

(c) Residential or business address  
after possession

BRISBANE CITY COUNCIL

266 GEORGE STREET, BRISBANE 4000

(d) Contact details after possession

(i) Phone number - [REDACTED]

(ii) Postal address - As above [ ] OR complete address below  
GPO BOX 1434, BRISBANE 4001

(e) Name of trust - N/A [ ] OR complete - N/A

(f) Is transferee a foreign person / corporation?

N/A [ ] NO [ x ] YES [ ]

Attach completed Form 25  
(Foreign Ownership Information)

(g) Does transferee ordinarily reside in Australia?

N/A [ ] NO [ ] YES [ x ]

**2. Transaction**

(a) Date of possession (dd/mm/yyyy) – / /

(b) Date of settlement (dd/mm/yyyy) – / /

**This form is comprised of two Parts -**

- Part A – Transferee to complete
- Part B – Transferor to complete

**BOTH parts must be submitted  
with the Form 1 Transfer.**

(This form must accompany Land Registry Form 1 – Transfer when lodged in the Land Registry)

**PART B – Transferor to complete** Title reference [50710033, 50710034, 50710035, 50710040] Page 2 of 2

Electronic version – for completion before printing.

Mark appropriate [ ] with 'X'

Where insufficient space in an item, use Form 20 (Enlarged Panel).

Refer to guide for completion for further information.

**3. Transferor's residential or business address after settlement**

Level 2, 164 Grey Street, SOUTHBANK QLD 4101

**4. Details of sale price**

(a) Property excluding water allocation		(b) Water allocation - N/A [ X ] OR complete below	
Cash	\$9,900,000.00	Cash	\$
Vendor terms	\$	Vendor terms	\$
Assumption of liabilities	\$	Assumption of liabilities	\$
	\$		\$
Other (specify above)		Other (specify above)	
<b>Total</b>		<b>Total</b>	
		\$	

**5. Property details**

(a) Land / Water allocation description	(b) Property address				
Plot	Plan type & no.	Street no.	Street name	Suburb/Town/Locality	Postcode
3,4,5 and 101	SP195275		King Arthur Terrace	Tennyson	4105

(c) Property transferred Includes	(d) Current land use	(e) Water allocation - N/A [ X ] OR complete below
Plant & machinery [ ]	Vacant land [ x ]	(i) Is water allocation unsupplemented? NO [ ] YES [ ] > complete (ii) below
Livestock [ ]	Dwelling [ ]	(ii) Reference number of the water allocation dealing certificate - unsupplemented
Crops [ ]	Multi-unit [ ]	
Existing right [ ]	Flats [ ]	
Movable chattels [ ]	Guest house / [ ]	
Water licence [ ]	Private hotel [ ]	
Interim water allocation [ ]	Farming [ ]	
	Industrial [ ]	
Other (specify above)	Commercial [ ]	
	Other (specify above)	

(f) Safety switch	
(i) Is an electrical safety switch installed?	N/A [ x ] NO [ ] YES [ ]
(ii) Has transferee been informed in writing about its existence?	N/A [ x ] NO [ ] YES [ ]
(g) Smoke alarm	
(i) Is a compliant smoke alarm/s installed?	N/A [ x ] NO [ ] YES [ ]
(ii) Has transferee been informed in writing about its existence?	N/A [ x ] NO [ ] YES [ ]

**6. Transaction information**

(a) Has an agreement in writing for the transfer of dutiable property been entered into?	NO [ ] YES [ x ] > If Yes, complete (b) below
(b) Date of written agreement (dd/mm/yyyy) -	30/06/2011
(c) Are the transferor and transferee related or associated at the date of the transfer?	NO [ x ] YES [ ] > If Yes, complete (d) below
(d) State the degree of relationship or association and supply evidence of value to Office of State Revenue -	> See guide for completion
(e) Is the consideration less than the unencumbered value of the property included in this transaction?	NO [ ] YES [ x ] > See guide for completion
(f) Does this transaction form part of an arrangement that includes other dutiable transactions?	NO [ x ] YES [ ] > See guide for completion

**Annexure C – Parkland Works Contract**

Contract exhibited to parties at time  
of execution.



## Annexure D – Lease of Sales Office





**Title Reference 50710034, 50710035, 50710040**

**PARTICULARS**

<b><u>Term</u></b>	<b><u>Definition</u></b>
<b>Landlord</b>	BRISBANE CITY COUNCIL of 266 George Street, Brisbane
<b>Tenant</b>	MIRVAC QUEENSLAND PTY LIMITED ACN 060 411 207 of Level 2, 164 Grey Street, South Bank 4010
<b>Land</b>	Whole of Lots 4, 5 and 101 on SP 195275 as noted in Item 5 of the Form 7
<b>Rent</b>	\$10.00 including GST (if demanded)
<b>Permitted Use</b>	Sales office and related car park and surrounds including the construction, alteration, reconstruction, repair or removal of sales office and signage and entry statements relating to Tennyson Reach and associated landscaping as may be permitted by the local authority.
<b>Commencement Date</b>	The date of settlement of the Sale Contract entered into between the Tenant (as Seller) and the Landlord (as Buyer) and pursuant to which the Landlord became owner of the Land.
<b>Expiry Date</b>	Commencement of Stage 2 of the Parkland Works Contract.
<b>Public Risk Insurance Amount</b>	\$20 million



Title Reference 50710034, 50710035, 50710040

1. INTERPRETATION

1.1 Definitions

The definitions on the Form 7 and in the Particulars, apply unless the context requires otherwise.

**Parkland Works Contract** means the construction contract entered into between the Landlord and Mirvac Constructions (Qld) Pty Ltd in respect of parkland works to be constructed on the Land.

**Tenant's Obligations** means the covenants and agreements contained or implied in this Lease to be observed and performed by the Tenant.

**Tennyson Reach Estate** means the development known as "Tennyson Reach" located at King Arthur Terrace, Tennyson QLD 4105.

1.2 General

The following apply to this Lease:

- (a) This Lease is governed by Queensland law.
- (b) The provisions of sections 105, 107 and 109 of the Property Law Act 1974 are separately covered in this Lease and are excluded from it.

The following rules of interpretation apply unless the context requires otherwise:

- (c) Headings are for convenience only and do not affect interpretation.
- (d) The singular includes the plural and the plural includes the singular.
- (e) A gender includes all genders.
- (f) A person includes an individual and a corporation.
- (g) A reference to any party to this Lease includes its successors and assigns.
- (h) A reference to a right or obligation of any party comprising two or more people confers that right, or imposes that obligation, on each of them individually and both (or all) of them together.
- (i) A reference to legislation includes an amendment of or substitution for it and a regulation or statutory instrument issued under it.
- (j) Unless stated otherwise, one word or provision does not limit the effect of another.
- (k) Reference to the whole includes part.
- (l) All obligations are taken to be required to be performed properly and punctually.
- (m) Where anything is permitted in an "emergency" the opinion of the Landlord as to the existence or non-existence of an emergency is conclusive.
- (n) Anything to be done on a Saturday, Sunday or a public holiday in Queensland may be done on the next business day.
- (o) Every obligation by the Tenant is taken to include an obligation by the Tenant to ensure that each of the Tenant's employees and others under the Tenant's control comply with that obligation.
- (p) If under this Lease the Tenant requires the consent, approval or agreement of the Landlord for any action, the Tenant must obtain it in writing before the Tenant starts to take that action.

**Title Reference 50710034, 50710035, 50710040**

**2. TERM**

**2.1 Length of Lease**

The Landlord leases the Land to the Tenant for the Term of the Lease.

This Lease starts on the Commencement Date and its provisions bind the parties on and from that date, whenever the Lease is signed or dated. It ends at midnight on the Expiry Date.

**2.2 Monthly Tenancy**

If the Tenant continues to occupy the Land after the Expiry Date, the Tenant shall do so on the terms of this Lease, for a fixed term of one month and then for successive periods of one month each. Either party may end the tenancy at any time by giving one month's notice to the other.

**3. RENT**

The Tenant must pay the Rent if and when demanded by the Landlord.

**4. COSTS**

The Tenant must pay, if applicable:

- (a) duty on this Lease; and
- (b) fees for registration of this Lease.

**5. USE OF LAND**

**5.1 Use of Land**

The Tenant may use the Land for the Permitted Use or for any other purpose reasonably associated with the Tenant's development and promotion of Tennyson Reach, including for example a car park or site office.

**5.2 Compliance with Law**

The Tenant must at the Tenant's cost comply with all laws, and with the requirements of each authority, relating to the Land or its use.

**5.3 Usage Charges**

The Tenant must pay on time all consumption and utility charges incurred as a result of the Tenant's use of the Land, including local authority water charges, electricity charges and telecommunication charges.

**6. MAINTENANCE OF LAND**

**6.1 Repair**

The Tenant must:-

- (a) keep the Land clean and tidy; and
- (b) repair and maintain any improvements (including signage, entry statements and landscaping) on the Land.

**6.2 Alterations**

- (a) The Tenant must not, without the consent of the Landlord (which will not be unreasonably withheld), construct, alter, reconstruct or remove any improvements (including signage, entry statements, landscaping and sales office works) on the Land. The Tenant must obtain the approval of each authority necessary to enable any Landlord approved work to be lawfully carried out. Subject to this clause, the

**Title Reference 50710034, 50710035, 50710040**

Landlord and the Tenant acknowledge and agree that no works will be permitted on the Land other than works pursuant to the Parkland Works Contract and that the Tenant must not erect any signage on the Land other than safety signs, signs reasonably necessary to give direction to the Sales Office and signs advertising Tennyson Reach Apartments for sale/lease.

- (b) The Landlord must not alter, amend, change or remove any improvements (other than landscaping) on the Land other than pursuant to the Parkland Works Contract.

**6.3 When the Lease ends**

On the expiration or earlier termination of this Lease the Tenant:

- (a) must vacate the Land;
- (b) may remove all property owned by the Tenant (including the loose furniture and other items of chattels located in the sales office on the Land); and
- (c) must give the Land back to the Landlord clean, free from rubbish and in a condition consistent with full compliance with the Tenant's Obligations.

**7. INSURANCE AND RISK**

**7.1 Insurance by Tenant**

The Tenant must maintain with reputable insurers insurance policies covering public liability for the Public Risk Insurance Amount.

**7.2 Tenant may use Group Policies**

The Tenant may include any insurance in any Australia wide group policies or other existing policy.

**7.3 Tenant's risk**

The Tenant uses and occupies the Land, and carries out all work in them, at the Tenant's own risk.

**7.4 Release of Landlord**

To the extent permitted by law, the Tenant releases the Landlord from any liability for loss, damage, injury or death occurring on the Land, except to the extent that it is caused by negligence, recklessness or wilful misconduct on the part of the Landlord, its employees or others under its control.

**7.5 Indemnity by Tenant**

The Tenant indemnifies the Landlord against any liability for loss, damage, injury or death caused by:

- (a) any act or omission on the part of the Tenant, the Tenant's employees or others under the Tenant's control; or
- (b) the Tenant's use or occupation of the Land.

**8. DEALINGS WITH LEASE AND PREMISES**

**8.1 Assignment**

The Tenant may only assign this Lease with the consent of the Landlord (which shall not be unreasonably withheld).

**8.2 Sub-Letting**

The Tenant may only sublet part of the Land with the consent of the Landlord (which shall not be unreasonably withheld).

**Title Reference 50710034, 50710035, 50710040**

**8.3 Mortgages and charges**

The Tenant must not mortgage this Lease without the consent of the Landlord.

**9. LANDLORD'S OBLIGATIONS**

**9.1 Quiet enjoyment**

The Landlord must permit the Tenant to occupy and use the Land without interruption or disturbance, except where otherwise allowed by this Lease.

**9.2 Consents**

The Landlord will promptly consider any request by the Tenant for the Landlord's consent or approval. The Landlord will not unreasonably withhold or delay its consent or approval or impose any unreasonable conditions on its consent or approval.

**10. LANDLORD'S RIGHTS**

**10.1 Inspection of Land**

The Landlord may at any time on reasonable notice to the Tenant enter the Land to inspect its condition.

**10.2 Tenant's Acknowledgment**

The Tenant acknowledges that the Landlord has commissioned the parkland works to be constructed on the Land pursuant to the Parkland Works Contract and the Tenant agrees to allow the Landlord's contractors and its agents, employees, sub-contractors and invitees to carry out the parkland works on the Land in accordance with the Parklands Works Contract and not to raise objection, requisition or claim compensation for same nor to interfere with the carrying out of the parkland works.

**11. DEFAULT**

**11.1 Tenant's default**

The Tenant will be in default under this Lease if the Tenant:

- (a) fails to pay any money payable to the Landlord, within 14 days after the due date; or
- (b) fails to comply with any other obligation under this Lease, and does not make good that default within a reasonable time after notice from the Landlord.

**11.2 Landlord's rights**

In any of those events, the Landlord may do any one or more of the following:

- (a) re-enter and take possession of the Land;
- (b) terminate this Lease;
- (c) recover from the Tenant any loss suffered by the Landlord as a result of the Tenant's default; and
- (d) exercise any of its other legal rights.

**11.3 Essential conditions**

If the Landlord terminates this Lease, following breach of an essential condition by the Tenant, the Landlord may recover all money payable by the Tenant under the lease until the Expiry Date. Clauses 3, 5.1 and 7.1 are essential conditions of this Lease.

Title Reference 50710034, 50710035, 50710040

**11.4 Landlord's Default**

If the Landlord breaches this Lease, the Tenant must give a notice to the Landlord specifying the breach and allow the Landlord a reasonable time within which to remedy the breach.

**12. NOTICES**

**12.1 Must be in writing**

All notices required by this Lease must be in writing.

**12.2 Methods of service**

(a) The Landlord may serve a notice on the Tenant by:

- (i) giving it to the Tenant personally; or
- (ii) delivering, posting or faxing it to the Tenant's business address last known to the Landlord or to its registered office.

(b) The Tenant may serve a notice on the Landlord by delivering, posting or faxing it to the Landlord's address in the Particulars or any other address notified by the Landlord to the Tenant.

(c) The Tenant may, by notice to the Landlord, elect to have all notices served at a specified address in Australia.

**12.3 Validity of Landlord's notices**

Any notice by the Landlord will be valid if it is:

- (a) signed under the common seal of the Landlord; or
- (b) signed on behalf of the Landlord by the manager of the Land or by any director, secretary or attorney of the Landlord or by the Landlord's solicitors.

**13. EARLY TERMINATION**

Notwithstanding any other clause in this Lease, the Tenant may terminate this Lease agreement by giving not less than 14 days' written notice to the Landlord.

**14. GOODS AND SERVICES TAX**

**14.1** It is agreed that all amounts payable by the Recipient to the Supplier under this Lease are exclusive of GST, unless otherwise expressly stipulated.

**14.2** The Recipient must:

- (a) pay to the Supplier the amount of the Supplier's GST Liability (if any); and
- (b) make that payment to the Supplier at the same time as the Recipient makes the payment for the relevant Taxable Supply.

**14.3** The Supplier must deliver to the Recipient a tax invoice in a form which complies with the GST Legislation to enable the Recipient to claim any input tax credits that the Recipient may be entitled to claim in respect of the payment by the Recipient for the Taxable Supply. The tax invoice must be delivered not later than the date of payment referred to in clause 14.2 of this clause.

Title Reference 50710034, 50710035, 50710040

14.4 Any amount to be reimbursed to a party ("Reimbursed Party") under this Lease by another party ("Reimbursing Party") which does not relate to a taxable supply made by the Reimbursed Party shall be reduced by the amount of any input tax credits to which the Reimbursed Party is entitled in respect of the creditable acquisition for which reimbursement is being sought. The intention is that the Reimbursing Party only reimburses the Reimbursed Party for the net cost of the acquisition so as to avoid any element of price exploitation.

14.5 **Definitions**

In this clause, the following words have these meanings:

**GST** has the same definition as that term has in the GST Legislation and other expressions used in this Lease in respect of GST which are not defined in this Lease have the meanings as defined in the GST Legislation;

**GST Legislation** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any associated Commonwealth legislation, regulations and publicly-available rulings;

**GST Liability** means the liability of the relevant party making a Taxable Supply (the "Supplier") to another party (the "Recipient") under or pursuant to this document to pay GST under the GST Legislation in respect of that Taxable Supply.

## Annexure E – Consent Caveat





Dealing Number



## OFFICE USE ONLY

## Privacy Statement

Collection of this information is authorised by the Land Title Act 1994 and the Water Act 2000 and is used to maintain the publicly searchable registers in the land registry and the water register. For more information about privacy in NR&W see the department's website.

<b>1. Caveator full name and address for service</b>		<b>Lodger (Name, address, E-mail &amp; phone number)</b>		<b>Lodger Code</b>
Mirvac Queensland Pty Limited ACN 060 411 207 Level 2 164 Grey Street South Bank 4101		ClarkeKann 300 Queen Street BRISBANE 4000 Email: [REDACTED] Phone: [REDACTED]		122A
<b>2. Lot on Plan Description</b>	<b>County</b>	<b>Parish</b>	<b>Title Reference</b>	
Lot 3 on SP 195275	Stanley	Yeerongpilly	50710033	
Lot 4 on SP 195275	Stanley	Yeerongpilly	50710034	
Lot 5 on SP 195275	Stanley	Yeerongpilly	50710035	
Lot 101 on SP 195275	Stanley	Yeerongpilly	50710040	
<b>3. Interest being claimed</b>				
The grantee of an option to purchase an estate in fee simple in the Land				
<b>4. Grounds of claim</b>				
An equitable interest as grantee of an option to purchase an estate in fee simple in the Land identified in item 2 which may be exercised under a Contract dated 30 June 2011 between the registered owner (identified in item 5) and the Caveator, forbidding registration of any transfer of, or encumbrance over the registered owner's estate in fee simple				
<b>5. Registered owner full name and address</b>		<b>6. Other parties full name and address (eg Mortgagees)</b>		
Brisbane City Council 266 George Street BRISBANE 4000		Nil		
<b>7. Request/Execution</b>				
a) The Caveator claiming as per item 3 on the grounds detailed in item 4 and subject to the <i>Land Title Act 1994</i> forbids the registration of any instrument affecting the land described in item 2 until: *this caveat is withdrawn by the Caveator				
* delete if not applicable				

/ /  
Execution Date.....  
Caveator's or Solicitor's Signature

Note: A Solicitor is required to print full name if signing on behalf of the Caveator



**GENERAL CONSENT**

1. Lot on Plan Description	County	Parish	Title Reference
Lot 3 on SP 195275	Stanley	Yeerongpilly	50710033
Lot 4 on SP 195275	Stanley	Yeerongpilly	50710034
Lot 5 on SP 195275	Stanley	Yeerongpilly	50710035
Lot 101 on SP 195275	Stanley	Yeerongpilly	50710040

**2. Instrument/document being consented to**

Instrument/document type: Form 11- Caveat

Dated     /     /

Names of parties   Mirvac Queensland Pty Limited ACN 060 411 207 (as Caveator) and Brisbane City Council (as registered owner)

**3. Instrument/document under which consent required**

Instrument/document type   Sale Contract

Dealing No.   N/A

Name of consenting party   Brisbane City Council (as registered owner)

**4. Execution by consenting party**

The party identified in item 3 consents to the registration of the instrument/document identified in item 2.

**Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994**

..... signature

..... full name

..... qualification

..... / /  
**Execution Date**

**Witnessing Officer**

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

.....  
**Consenting Party's Signature**

**Privacy Statement**

Collection of this information is authorised by the Land Title Act 1994 the Land Act 1994 and the Water Act 2000 and is used to maintain the publicly searchable registers in the land registry and the water register. For more information about privacy in NR&W, see the department's website.



## Annexure F – Seller's Disclosures



## Seller's Disclosure

**[WARNING: The Seller is taken to have knowledge of significant Body Corporate matters that may affect the Buyer, where the Seller ought reasonably to be aware of those matters.**  
 Section 223(4) *Body Corporate and Community Management Act 1997*

**Latent or Patent Defects in Common Property or Body Corporate Assets**  
 [Sections 223(2)(a) and 223(2)(b) *Body Corporate and Community Management Act 1997*]

[Annex details of disclosure made by the Seller (if any)]

The Seller discloses that there may be latent or patent defects in common property or body corporate assets as a result of the January 2011 floods. Refer to the disclosure statement which details the special levies as a result of inundation rectification.

**Actual or Contingent or Expected Liabilities of Body Corporate**  
 [Sections 223(2)(c) and 223(2)(d) *Body Corporate and Community Management Act 1997*]

[Annex details of disclosure made by the Seller (if any)]

The Seller discloses that there may be actual, contingent or expected liabilities of the Body Corporate as a result of the January 2011 floods. Refer to the disclosure statement which details the special levies as a result of inundation rectification.

The Seller also discloses there may be a change in the Body Corporate financial affairs as a result of any change in the CSLEs upon removal of any Development Lot pursuant to the Seller's rights as Original Owner, in accordance with the clause 5 in Schedule B of the Community Management Statement. New Community Management Statements may be required to be recorded to reflect changes to the Scheme as a result of the Seller exercising its rights as Original Owner.

**Circumstances in Relation to Affairs of the Body Corporate**  
 [Section 223(3) *Body Corporate and Community Management Act 1997*]

[Annex details of disclosure made by the Seller (if any)]

The Seller also discloses there may be a change in the Body Corporate financial affairs as a result of any change in the CSLEs upon removal of any Development Lot pursuant to the Seller's rights as Original Owner, in accordance with the clause 5 in Schedule B of the Community Management Statement. New Community Management Statements may be required to be recorded to reflect changes to the Scheme as a result of the Seller exercising its rights as Original Owner.





**ClarkeKann**  
LAWYERS

**Brisbane City Council**  
ABN 72 002 765 795

**Mirvac Constructions (Qld) Pty Ltd**  
ACN 088 536 476

# Form of Formal Instrument of Agreement



LEVEL 7, 300 QUEEN STREET, BRISBANE Q 4000, AUSTRALIA  
TEL: 61 7 3001 9222 FAX: 61 7 3001 9299  
[www.clarkekann.com.au](http://www.clarkekann.com.au)

Thursday, 30 June 2011

2067806\_1  
Version 30/06/2011

BCC.160.0081

DATED

30 JUNE 2011

**PARTIES**

Brisbane City Council ABN 72 002 765 795 of Level 3, 171 George Street, Brisbane QLD 4000  
(Principal)

Mirvac Constructions (Qld) Pty Ltd ACN 088 536 476 of Level 2, 164 Grey Street, South Bank QLD  
4101 (Contractor)

**BACKGROUND**

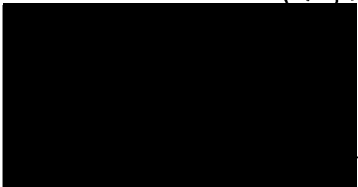
- A. The Principal has acquired 3 lots of land at the Tennyson Reach Development (**Site**) and wishes to construct a public park and amenities (**Works**) on the Site.
- B. The Principal wishes to carry out the design and construction of the Works at the Site.
- C. The Contractor has offered to carry out the Works and the parties wish to enter into an agreement in relation to the Works.
- D. The Contractor must design and construct the Works in accordance with the 'principal's project requirements' that form a part the amended AS 4902 – 2000 contract that is attached and including the following:
- (i) The preparation, submission and procurement of all development permits for the Works;
  - (ii) develop the Principals preliminary design into a detailed design suitable for the construction of the Works.
- E. This agreement sets out the rights and obligations of the parties with respect to the Works (**Contract**).

**OPERATIVE PROVISIONS**

1. The Contractor must design and construct the Works in accordance with the 'principal's project requirements' that form a part the Contract including the following:
- (a) The preparation, submission and procurement of all development permits for the Works;
  - (b) The development of the Principal's preliminary design into a detailed design suitable for the construction of the Works.
2. The Contract is effective from the date of execution of the Contract (**the Commencement Date**).
- (a) The contract sum for the Works is \$6,000,000 (six million dollars)(excluding GST).
  - (b) The contract sum will be adjusted in accordance with clauses 9.8, 37 and 44 of the Contract.
3. It is agreed that the following documents shall together comprise the Contract between the parties:
- (a) AS4902-2000 General Conditions of Contract as amended;
  - (b) Annexure to AS4902-2000;
  - (c) Schedule 1 to Part A of the Annexure to AS4902-2000;
  - (d) Schedule 2 to Part A of the Annexure to AS4902-2000;

EXECUTED AS A DEED

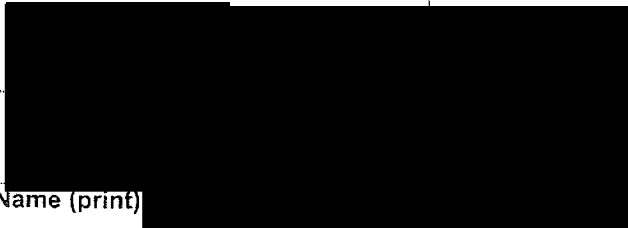
Mirvac Constructions (Qld) Pty Ltd ACN 088 536 476 )



MATTHEW JAMES WALLACE

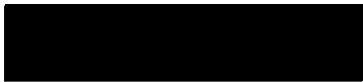
Name (print)

DIRECTOR



Name (print)

THE SEAL OF THE BRISBANE CITY COUNCIL was hereunto affixed this 30th day of June 2011 by me;

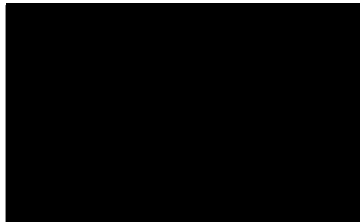


I being the proper officer to affix such seal



Name (print)

Justice of the Peace (C.Dec)



Appointed Officer

in the presence of:

Name (print)

AS 4902—2000  
(Incorporating Amendment No. 1)

AS 4902—2000

# Tennyson Reach Parkland

**Brisbane City Council**

**ABN 72 002 765 795**

**Mirvac Constructions (Qld) Pty Limited**

**ACN 088 536 476**

**Australian Standard™**

**General conditions of contract for  
design and construct**

Print date 30 June 2011

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This Australian Standard was prepared by Committee OB-003, General Conditions of Contract. It was approved on behalf of the Council of Standards Australia on 7 September 1999. This Standard was published on 27 December 2000.

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The following are represented on Committee OB-003:

Association of Consulting Engineers Australia  
 Australian Chamber of Commerce and Industry  
 Australian Procurement and Construction Council  
 AUSTRROADS  
 Construction Industry Engineering Services Group  
 Construction Policy Steering Committee  
 Electricity Supply Association of Australia  
 Institution of Engineers, Australia  
 Institution of Professional Engineers, New Zealand  
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 Process Engineers and Constructors Association  
 Royal Australian Institute of Architects

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*This Standard was issued in draft form for comment as DR 97528.*



AS 4902—2000  
(Incorporating Amendment No. 1)

Australian Standard™

**General conditions of contract for  
design and construct**

First published as AS 4300—1995.  
Revised and redesignated AS 4902—2000.  
Reissued incorporating Amendment No. 1 (March 2005).

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## PREFACE

This Standard was prepared by the Joint Standards Australia/Standards New Zealand Committee OB/3, General Conditions of Contract.

*This Standard incorporates Amendment No. 1 (March 2005). The changes required by the Amendment are indicated in the text by a marginal bar and amendment number against the clause, note, table, figure or part thereof affected.*

This Standard is the result of a consensus among Australian and New Zealand representatives on the Joint Committee to produce it as an Australian Standard.

AS 4902—2000 *General conditions of contract for design and construct*, is a part of the suite of conditions of contract based on AS 4000—1997 *General conditions of contract*.

This Standard covers the following types of project procurement methods:

- (a) design and construct;
- (b) design development and construct; and
- (c) design, novate and construct.

If the project procurement method chosen by the Principal is:

- (a) **design and construct**—the Principal would provide the Principal's project requirements, would not normally provide a detailed preliminary design and would not require novation;
- (b) **design development and construct**—the Principal would provide the Principal's project requirements, would always provide a preliminary design and accordingly would complete Annexure Part A Items 10 and 11;
- (c) **design, novate and construct**—the Principal would provide the Principal's project requirements, would always provide a preliminary design, would complete Annexure Part A Items 10 and 11 and would complete Annexure Part A Item 20 stating which subcontract (including consultant's agreement) or selected subcontract is to be novated to the Contractor.

Subclauses 8.6 and 29.2, prefixed by \*, are optional, and may be omitted in the Contract, where necessary, without making consequential amendments but such omission should be clearly shown on the face of the document by striking out these subclauses or indicating clearly in clause 1 of Annexure Part E or elsewhere that they are *not to apply*. See paragraph (i) of clause 1 for the effect of stating deletions in Annexure Part E.

### WARNINGS

- (1) Users of this Australian Standard are warned that clause 15 (Damage to persons and property other than WUC) does not limit the liability of parties for special, indirect or consequential losses.

This unlimited liability applies notwithstanding any limitations or exclusions permitted under insurance clauses 16A (Insurance of the Works), 16B (Professional indemnity insurance) and 17 (Public liability insurance).

Parties wishing to limit their liability should seek insurance and legal advice before entering a contract under this Standard.

- (2) Principals should ensure that their specific requirements are fully and completely incorporated in the Principal's project requirements obtaining specialist advice if necessary. Where a Contractor provides a proposed design as part of its tender, the parties should consider whether that design should form part of the preliminary design.

- (3) The risk allocation, drafting, interpretation and construction of this Standard are interrelated. Users who alter the Standard do so at their own risk and should obtain specialist advice as to whether it is suitable for a particular project.
- (4) Contractors should ensure that they satisfy the requirements of payment for unfixed plant and materials.
- (5) Legislation has come into force in some jurisdictions dealing with security of payments. Parties intending to use this Standard should seek expert advice as to their rights and obligations under such legislation.

## CONTENTS

Clause	Title	Page
1	INTERPRETATION AND CONSTRUCTION OF CONTRACT.....	6
2	NATURE OF CONTRACT.....	11
3	PROVISIONAL SUMS.....	13
4	SEPARABLE PORTIONS.....	13
5	SECURITY.....	13
6	EVIDENCE OF CONTRACT.....	14
7	SERVICE OF NOTICES.....	14
8	CONTRACT DOCUMENTS.....	15
9	ASSIGNMENT AND SUBCONTRACTING.....	16
10	INTELLECTUAL PROPERTY RIGHTS.....	19
11	LEGISLATIVE REQUIREMENTS.....	20
12	PROTECTION OF PEOPLE AND PROPERTY.....	21
13	URGENT PROTECTION.....	21
14	CARE OF THE WORK AND REINSTATEMENT OF DAMAGE.....	21
15	DAMAGE TO PERSONS AND PROPERTY OTHER THAN WUC.....	22
17	PUBLIC LIABILITY INSURANCE.....	24
18	INSURANCE OF EMPLOYEES.....	24
19	INSPECTION AND PROVISIONS OF INSURANCE POLICIES.....	24
20	SUPERINTENDENT.....	25
21	SUPERINTENDENT'S REPRESENTATIVE.....	26
22	CONTRACTOR'S REPRESENTATIVE.....	26
23	CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS.....	26
24	SITE.....	26
25	LATENT CONDITIONS.....	27
26	SETTING OUT THE WORKS.....	28
27	CLEANING UP.....	28
28	MATERIALS, LABOUR AND CONSTRUCTION PLANT.....	29
29	QUALITY.....	29
30	EXAMINATION AND TESTING.....	30
31	WORKING HOURS.....	31
32	PROGRAMMING.....	31
33	SUSPENSION.....	31
34	TIME AND PROGRESS.....	32
35	DEFECTS LIABILITY.....	34
36	VARIATIONS.....	34
37	PAYMENT.....	35
38	PAYMENT OF WORKERS, CONSULTANTS AND SUBCONTRACTORS.....	37

39 DEFAULT OR INSOLVENCY .....37

40 TERMINATION BY FRUSTRATION.....41

41 NOTIFICATION OF CLAIMS .....41

42 DISPUTE RESOLUTION .....42

43 WAIVER OF CONDITIONS .....43

44 SHARED COST SAVINGS .....43

45 GST43

46 ENTIRE AGREEMENT.....44

47 MAINTENANCE .....44

48 ACCESS TO RECORDS.....44

PART A .....45

SCHEDULE 1 TO PART A .....61

SCHEDULE 1 TO PART A .....62

PART B.....63

PART C.....64

PART D .....66

PART E.....68

INDEX.....69

## STANDARDS AUSTRALIA

## Australian Standard

## General conditions of contract for design and construct

## 1 Interpretation and construction of Contract

In the *Contract*, except where the context otherwise requires:

- Item** means an *Item* in Annexure Part A;
- certificate of practical completion** has the meaning in subclause 34.6;
- compensable cause** means:
- (a) any act, default or omission of the *Superintendent*, the *Principal* or its consultants, agents or other contractors (not being employed by the *Contractor*); or
  - (b) those listed in *Item 31*;
- construction plant** means appliances and things used in the carrying out of *WUC* but not forming part of *the Works*;
- consultant** means any person engaged by the *Contractor* to perform consultancy services in connection with *WUC* and includes any *Principal's* consultant whose prior contract is novated to the *Contractor* under subclause 9.4;
- Contract** has the meaning in clause 6;
- contract sum** means:
- (a) where the *Principal* accepted a lump sum, the lump sum;
  - (b) where the *Principal* accepted rates, the sum of the products ascertained by multiplying the rates by the corresponding quantities in the *schedule of rates*; or
  - (c) where the *Principal* accepted a lump sum and rates, the aggregate of the sums referred to in paragraphs (a) and (b),
- including *provisional sums* but excluding any additions or deductions which may be required to be made under the *Contract*;
- Contractor** means the person bound to carry out and complete *WUC*;
- Contractor's design obligations** means all tasks necessary to design and specify *the Works* required by the *Contract*, including preparation of the *design documents* and, if the documents stated in *Item 10* as describing the *Principal's project requirements* include a *preliminary design*, developing the *preliminary design*;

- date for practical completion** means:
- (a) where *Item 7(a)* provides a date for *practical completion*, the date;
  - (b) where *Item 7(b)* provides a period of time for *practical completion*, the last day of the period,
- but if any *EOT* for *practical completion* is directed by the *Superintendent* or allowed in any arbitration or litigation, it means the date resulting therefrom;
- date of acceptance of tender** means the date which appears on the written notice of acceptance of the tender;
- date of practical completion** means:
- (a) the date evidenced in a *certificate of practical completion* as the date upon which *practical completion* was reached; or
  - (b) where another date is determined in any arbitration or litigation as the date upon which *practical completion* was reached, that other date;
- deed of guarantee, undertaking and substitution** has the meaning in subclause 5.6;
- defects** has the meaning in clause 35 and includes omissions;
- defects liability period** has the meaning in clause 35;
- design documents** means the drawings, specifications and other information, samples, models, patterns and the like required by the *Contract* and created (and including, where the context so requires, those to be created by the *Contractor*) for the construction of the *Works*;
- direction** includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;
- dispute** has the meaning in clause 42;
- EOT (from 'extension of time')** has the meaning in subclause 34.3;
- excepted risk** has the meaning in subclause 14.3;
- final certificate** has the meaning in subclause 37.4;
- final payment** has the meaning in clause 37;
- final payment claim** means the final payment claim referred to in subclause 37.4;
- intellectual property right** means any patent, registered design, trademark or name, copyright or other protected right;
- latent condition** has the meaning in subclause 25.1;

**legislative requirement** includes:

- (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where *WUC* or the particular part thereof is being carried out;
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of *WUC*; and
- (c) fees and charges payable in connection with the foregoing;

**practical completion** is that stage in the carrying out and completion of *WUC* when:

- (a) *the Works* are complete except for minor defects:
  - (i) which do not prevent *the Works* from being reasonably capable of being used for their stated purpose;
  - (ii) which the *Superintendent* determines the *Contractor* has reasonable grounds for not promptly rectifying; and
  - (iii) the rectification of which will not prejudice the convenient use of *the Works*;
- (b) those *tests* which are required by the *Contract* to be carried out and passed before *the Works* reach *practical completion* have been carried out and passed; and
- (c) documents and other information required under the *Contract* which, in the *Superintendent's* opinion, are essential for the use, operation and maintenance of *the Works* have been supplied;

**preliminary design** means the documents stated in *Item 11*;

**prescribed notice** has the meaning in subclause 41.1;

**Principal** means the Principal stated in *Item 1*;

**Principal's project requirements** means the *Principal's* written requirements for *the Works* described in the documents stated in *Item 10* which:

- (a) shall include the stated purpose for which *the Works* are intended;
- (b) may include the *Principal's* design, timing and cost objectives for *the Works*; and
- (c) where stated in *Item 10*, shall include a *preliminary design*.

are also referred to in this Contract as PPRs.

**program** has the meaning in clause 32;

**progress certificate** has the meaning in subclause 37.2;

- provisional sum** has the meaning in clause 3 and includes monetary sum, contingency sum and prime cost item;
- public liability policy** has the meaning in clause 17;
- qualifying cause of delay** means:
- (a) any act, default or omission of the Superintendent, the Principal or its consultants, agents or other contractors (not being employed by the Contractor);
  - (b) industrial conditions;
  - (c) inclement weather but the first:
    1. 20 days of inclement weather for Stage I works;
    2. 10 days of inclement weather for Stage II works;
    3. 5 days of inclement weather for Stage III works;

encountered after the date of commencement of the relevant Stage will not be a qualifying cause of delay. Subsequent inclement weather, however, will be a qualifying cause of delay;
  - (d) The period that is in excess of the time prescribed to process a Development Application in accordance with the Sustainable Planning Act 2009 (Qld) except where the Contractor causes this delay due to an incomplete, inadequate or substandard Development Application.
  - (e) the qualifying causes of delay stated in Item 28;
- schedule of rates** means any schedule included in the *Contract* which, in respect of any section or item of *work* to be carried out, shows the rate or respective rates of payment for the execution of that *work* and which may also include lump sums, *provisional sums*, other sums, quantities and prices;
- security** means:
- (a) cash;
  - (b) retention moneys;
  - (c) bonds or inscribed stock or their equivalent issued by a national, state or territory government;
  - (d) interest bearing deposit in a bank carrying on business at the place stated in *Item 9(c)*;
  - (e) an approved unconditional undertaking (the form in Annexure Part B is approved) or an approved performance undertaking given by an approved financial institution or insurance company; or
  - (f) other form approved by the party having the benefit of the security;
- selected subcontract work** has the meaning in subclause 9.3;
- selected subcontractor** has the meaning in subclause 9.3;



- separable portion** means a portion of *the Works* identified as such in the *Contract* or by the *Superintendent* pursuant to clause 4;
- site** means the lands and other places to be made available and any other lands and places made available to the *Contractor* by the *Principal* for the purpose of the *Contract*;
- Stage I** means the area shown as Stage I on drawing entitled '*Masterplan*', referenced 110406 and dated 17/05/11
- Stage II** means the area shown as Stage II on drawing entitled '*Masterplan*', referenced 110406 and dated 17/05/11
- Stage III** means the area shown as Stage III on drawing entitled '*Masterplan*', referenced 110406 and dated 17/05/11
- subcontractor** in clauses 3 and 9 includes a *consultant*;
- Superintendent** means the person stated in *Item 5* as the Superintendent or other person from time to time appointed in writing by the *Principal* to be the Superintendent and notified as such in writing to the *Contractor* by the *Principal* and, so far as concerns the functions exercisable by a *Superintendent's Representative*, includes a *Superintendent's Representative*;
- Superintendent's Representative** means an individual appointed in writing by the *Superintendent* under clause 21;
- survey mark** in clause 26 means a survey peg, benchmark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring *WUC*;
- temporary works** means *work* used in carrying out and completing *WUC*, but not forming part of *the Works*;
- test** has the meaning in subclause 30.1 and includes examine and measure;
- the Works** means the whole of the *work* to be carried out and completed in accordance with the *Contract*, including *variations* provided for by the *Contract*, which by the *Contract* is to be handed over to the *Principal*;
- Terms of Reference** means the Terms of Reference annexed to this Contract as Attachment A.
- variation** has the meaning in clause 36;
- work** includes the provision of materials;
- WUC (from 'work under the Contract')** means the *work* which the *Contractor* is or may be required to carry out and complete under the *Contract* and includes *variations*, remedial *work*, *construction plant* and *temporary works*,  
and like words have a corresponding meaning.
- In the *Contract*:
- (a) references to days mean calendar days and references to a person include an individual, firm or a body, corporate or unincorporate;

- (b) time for doing any act or thing under the *Contract* shall, if it ends on a Saturday, Sunday or Statutory or Public Holiday, be deemed to end on the day next following which is not a Saturday, Sunday or Statutory or Public Holiday;
- (c) clause headings and subclause headings shall not form part of, nor be used in the interpretation of, the *Contract*;
- (d) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context. Words importing a gender include every gender;
- (e) communications between the *Principal*, the *Superintendent* and the *Contractor* shall be in the English language;
- (f) measurements of physical quantities shall be in legal units of measurement of the jurisdiction in *Item 8*;
- (g) unless otherwise provided, prices are in the currency in *Item 9(a)* and payments shall be made in that currency at the place in *Item 9(b)*;
- (h) the law governing the *Contract*, its interpretation and construction, and any agreement to arbitrate, is the law of the jurisdiction in *Item 8*; and
- (i) if pursuant to Annexure Part E to these General Conditions, clauses or their parts in these General Conditions are deleted, the *Contract* shall be read and construed as though the clause or its part has been deleted, whether or not that particular clause or its part has been struck from these General Conditions.

## 2 Nature of Contract

### 2.1 Performance and payment

It is a condition of this Contract that the *Principal* engages the *Contractor* for the sole purpose of designing and constructing the Tennyson Reach Parklands in accordance with this Contract.

It is a further condition of this Contract that the *Principal* will not reduce the level of amenity or the standard of finish below that which is set out in the preliminary design.

It is a condition of the Contract that the land shown on the Masterplan relating to Stages I, II and III that forms a part of the preliminary design is transferred to the Brisbane City Council before this Contract will take effect.

The *Contractor* shall carry out and complete *WUC* in accordance with the *Contract* and directions authorised by the *Contract*.

The *Principal* shall pay the *Contractor*:

- (a) for *work* for which the *Principal* accepted a lump sum, the lump sum; and
- (b) for *work* for which the *Principal* accepted rates, the sum of the products ascertained by multiplying the measured quantity of each section or item of *work* actually carried out under the *Contract* by the rate accepted by the *Principal* for the section or item,

adjusted by any additions or deductions made pursuant to the *Contract*.

## 2.2 Contractor's warranties

Without limiting the generality of subclause 2.1, the *Contractor* warrants to the *Principal* that:

- (a) the *Contractor*:
  - (a) at all times shall be suitably qualified and experienced, and shall exercise due skill, care and diligence in the carrying out and completion of *WUC*;
  - (b) has examined any *preliminary design* included in the *Principal's project requirements* and that such *preliminary design* is suitable, appropriate and adequate for the purpose stated in the *Principal's project requirements*;
  - (c) shall carry out and complete the *Contractor's design obligations* to accord with the *Principal's project requirements* and, if subclause 9.4 applies, accept the novation and retain the *Principal's* consultants for any work the subject of a prior contract with the *Principal*; and
  - (d) shall carry out and complete *WUC* in accordance with the *design documents* so that *the Works*, when completed, shall:
    - (A) be fit for to be used as a public park as is set out in the PPRs; and
    - (B) comply with all the requirements of the *Contract*; and
- (b) subject to clause 9, the *consultants* identified in the *Contractor's* tender are suitably qualified and experienced.

## 2.3 Warranties unaffected

The warranties remain unaffected notwithstanding:

- (a) that design work (including the *preliminary design*) has been carried out by or on behalf of the *Principal* and included in the *Principal's project requirements*;
- (b) that the *Contractor* has entered into a novation of any prior contract between the *Principal* and a *Principal's* consultant under subclause 9.4 and thereafter has retained that consultant in connection with *WUC*;
- (c) any receipt or review of, or comment or *direction* on, the *design documents* by the *Superintendent*; or
- (d) any *variation*.

## 2.4 Quantities

Quantities in a *schedule of rates* are estimated quantities only.

The *Superintendent* is not required to give a *direction* by reason of the actual quantity of an item required to perform the *Contract* being greater or less than the quantity shown in the *schedule of rates*.

## 2.5 Adjustment for actual quantities

Where, otherwise than by reason of a *direction* to vary *WUC*, the actual quantity of an item required to perform the *Contract* is greater or less than the quantity shown in the *schedule of rates*:

- (a) the *Principal* accepted a lump sum for the item, the difference shall be a deemed *variation*;

- (b) the *Principal* accepted a rate for the item, the rate shall apply to the greater or lesser quantities provided that where limits of accuracy for a quantity in a *schedule of rates* are stated in *Item 12*, the rate shall apply to the greater or lesser quantities within the limits, and quantities outside the limits shall be a deemed *variation*.

If such a *schedule of rates* omits an item which should have been included, the item shall be a deemed *variation*.

### 3 Provisional sums

A *provisional sum* included in the *Contract* shall not itself be payable by the *Principal* but where pursuant to a *direction* the *work* or item to which the *provisional sum* relates is carried out or supplied by the *Contractor*, the *work* or item shall be priced by the *Superintendent*, and the difference shall be added to or deducted from the *contract sum*.

Where any part of such *work* or item is carried out or supplied by a *subcontractor*, the *Superintendent* shall allow the amount payable by the *Contractor* to the *subcontractor* for the *work* or item, disregarding:

- (a) any damages payable by the *Contractor* to the *subcontractor* or vice versa; and
- (b) any deduction of cash discount for prompt payment,

plus an amount for profit and attendance calculated by using the percentage thereon stated in *Item 13* or elsewhere in the *Contract*, or, if not so stated, as assessed by the *Superintendent*.

### 4 Separable portions

*Separable portions* may be directed by the *Superintendent*, who shall clearly identify for each, the:

- (a) portion of the *Works*;
- (b) *date for practical completion*; and
- (c) respective amounts for *security*, bonus, liquidated damages and delay damages (all calculated pro-rata according to the ratio of the *Superintendent's* valuation of the *separable portion* to the *contract sum*).

## 5 Security

### 5.1 Provision

*Security* shall be provided in accordance with *Item 14* or *15*. All delivered *security*, other than cash or retention moneys, shall be transferred in escrow.

### 5.2 Recourse

*Security* shall be subject to recourse by a party who remains unpaid after the time for payment where at least 5 days have elapsed since that party notified the other party of intention to have recourse.

### 5.3 Change of security

At any time a party providing retention moneys or cash *security* may substitute another form of *security*. To the extent that another form of *security* is provided, the other party shall not deduct, and shall promptly release and return, retention moneys and cash *security*.

#### 5.4 Reduction and release

Upon the issue of the *certificate of practical completion* a party's entitlement to *security* (other than in *Item 14(e)*) shall be reduced by the percentage or amount in *Item 14(f)* or *15(d)* as applicable, and the reduction shall be released and returned within 14 days to the other party.

The *Principal's* entitlement to *security* in *Item 14(e)* shall cease 14 days after incorporation into *the Works* of the plant and materials for which that *security* was provided.

A party's entitlement otherwise to *security* shall cease 14 days after *final certificate*.

Upon a party's entitlement to *security* ceasing, that party shall release and return forthwith the *security* to the other party.

#### 5.5 Trusts and interest

Except where held by a government department or agency or a municipal, public or statutory authority, any portion of *security* (and interest earned thereon) which is cash or retention moneys, shall be held in trust for the party providing them until the *Principal* or the *Contractor* is entitled to receive them.

Interest earned on *security* not required to be held in trust shall belong to the party holding that *security*.

#### 5.6 Deed of guarantee, undertaking and substitution

Where:

- (a) a party is a related or subsidiary corporation (as defined in the applicable corporations law of the jurisdiction); and
- (b) a form of *deed of guarantee, undertaking and substitution* was included in the tender documents,

that party shall, within 14 days after receiving a written request from the other party, provide such *deed of guarantee, undertaking and substitution* duly executed and enforceable.

#### 6 Evidence of Contract

Until a formal instrument of agreement is executed by the parties, documents evidencing the parties' consensus shall constitute the *Contract*. If such *Contract* requires a formal instrument of agreement, the *Principal* shall, within 28 days of the *date of acceptance of tender*, send it in duplicate for execution by the *Contractor*. Within 14 days after receiving them, the *Contractor* shall (if they are correct) properly execute both copies and return them.

Within 14 days after receiving them, the *Principal* shall execute both copies, have them stamped as necessary and send one copy to the *Contractor*.

The *Superintendent* may extend the time under this clause by written notice to the parties.

#### 7 Service of notices

A notice (and other documents) shall be deemed to have been given and received:

- (a) if addressed or delivered to the relevant address in the *Contract* or last communicated in writing to the person giving the notice; and
- (b) on the earliest date of:
  - (a) actual receipt;

- (b) confirmation of correct transmission of fax; or
- (c) 3 days after posting.

## 8 Contract documents

### 8.1 Discrepancies

Figured shall prevail over scaled dimensions in a discrepancy. Otherwise, if either party discovers any inconsistency, ambiguity or discrepancy in any document prepared for the purpose of carrying out *WUC*, that party shall give the *Superintendent* written notice of it. The *Superintendent*, thereupon, and upon otherwise becoming aware, shall direct the *Contractor* as to the interpretation and construction to be followed.

The *Contractor* shall bear the cost of compliance with a *direction* under this subclause to the extent that any inconsistency, ambiguity or discrepancy in the *design documents* or between the *design documents* and the *Principal's project requirements* necessitates the *direction*.

If compliance with any other *direction* under this subclause causes the *Contractor* to incur more or less cost than otherwise would have been incurred had the *direction* not been given, the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

### 8.2 Principal-supplied documents

The *Principal* shall supply to the *Contractor* the documents and number of copies thereof, both stated in *Item 16*.

They shall:

- (a) remain the *Principal's* property and be returned to the *Principal* on written demand; and
- (b) not be used, copied nor reproduced for any purpose other than *WUC*.

### 8.3 Contractor-supplied documents

The *Contractor* shall supply to the *Superintendent* the documents and number of copies at the times or stages stated in *Item 17*.

Other documents and information required by the *Contract*, unless elsewhere stated in the *Contract*, shall be supplied not less than 14 days before the *work* described in the documents is commenced and shall be in a form satisfactory to the *Superintendent*.

If the *Contractor* submits a document to the *Superintendent*, then except where the *Contract* otherwise provides:

- (a) the *Superintendent* shall not be required to check that document for errors, omissions, inconsistencies, ambiguities, discrepancies or compliance with the *Contract*;
- (b) notwithstanding subclause 2.1, any *Superintendent's* acknowledgment or approval shall not prejudice the *Contractor's* obligations; and
- (c) if the *Contract* requires the *Contractor* to obtain the *Superintendent's direction* about that document, the *Superintendent* shall give, within the time stated in *Item 18*, the appropriate *direction*, including reasons if the document is not suitable.

A *direction* by the *Superintendent* to vary anything in the *design documents* shall be a *variation* to *WUC* only to the extent that the *design documents*, before such *variation*, complied, or would have complied, with the *Principal's project requirements*.

Copies of documents supplied by the *Contractor* shall be the *Principal's* property but shall not be used nor copied otherwise than for the use, repair, maintenance or alteration of the *Works*.

#### 8.4 Availability

The *Contractor* shall keep available to the *Superintendent* and the *Principal*:

- (a) on *site*, one complete set of documents affecting *WUC* and supplied by a party or the *Superintendent*; and
- (b) at the place of manufacture or assembly of any significant part of *WUC* off *site*, a set of the documents affecting that part.

#### 8.5 Confidential information

The parties shall ensure that there are kept confidential such documents, samples, models, patterns and other information as are supplied and clearly identified as confidential.

If required in writing by a party, the other party shall enter into a separate agreement not to disclose to anyone else any confidential matter even after *final certificate* or earlier termination of the *Contract*. If so required by the *Contractor*, the *Principal* shall ensure that the *Superintendent* also enters into such an agreement.

#### \* 8.6 Media

The *Contractor* shall not disclose any information concerning the project for distribution through any communications media without the *Principal's* prior written approval (which shall not be unreasonably withheld). The *Contractor* shall refer to the *Principal* any enquiries from any media concerning the project.

### 9 Assignment and subcontracting

#### 9.1 Assignment

Neither party shall, without the other's prior written approval (including terms) assign the *Contract* or any payment or any other right, benefit or interest thereunder.

#### 9.2 Subcontracting generally

The *Contractor* may not appoint or subcontract any *WUC* without the prior written approval of the *Principal* which such approval shall not be unreasonably withheld provided the *Contractor* has made full disclosure to the *Principal* as to the terms and conditions of the proposed contract with the subcontractor.

The *Contractor* shall not without the *Superintendent's* prior written approval (which shall not be unreasonably withheld):

- (a) subcontract or allow a *subcontractor* to subcontract any *work* described in *Item 19*; or
- (b) allow a *subcontractor* to assign a subcontract or any payment or any other right, benefit or interest thereunder.

With a request for approval, the *Contractor* shall give the *Superintendent* written particulars of the *work* to be subcontracted and the name and address of the proposed *subcontractor*. The *Contractor* shall give the *Superintendent* other information which the *Superintendent* reasonably requests, including the proposed subcontract documents without prices.

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\* See Preface

Within 14 days of the *Contractor's* request for approval, the *Superintendent* shall give the *Contractor* written notice of approval or of the reasons why approval is not given.

Approval may be conditional upon the subcontract including:

- (a) provision that the *subcontractor* shall not assign nor subcontract without the *Contractor's* written consent;
- (b) provisions which may be reasonably necessary to enable the *Contractor* to fulfil the *Contractor's* obligations to the *Principal*;
- (c) provision that if the *Contract* is terminated and upon the *subcontractor* being paid the sum certified by the *Superintendent* as owing to the *subcontractor*, the *Contractor* and the *subcontractor* shall, after the *Principal* has done so, promptly execute a deed of novation in the form of Annexure Part C.

For the purpose of effecting such novation only, the *Contractor* hereby irrevocably appoints the *Superintendent* to be the *Contractor's* attorney with authority to execute such documents as are necessary to give effect to the novation and to bind the *Contractor* accordingly; and

- (d) where the *subcontractor* is a *consultant*, provision that the *subcontractor* shall effect and maintain professional indemnity insurance on the same terms as are required under *Items 24(c)* and *24(d)*.

### 9.3 Selected subcontract work

If the *Principal* has included in the invitation to tender a list of one or more *selected subcontractors* for particular work, the *Contractor* shall subcontract that work to a *selected subcontractor* and thereupon give the *Superintendent* written notice of that *selected subcontractor's* name.

If no subcontractor on the *Principal's* list will subcontract to carry out the *selected subcontract work*, the *Contractor* shall provide a list for the written approval of the *Superintendent*.

### 9.4 Novation

This subclause applies only where the *Principal's project requirements* include a *preliminary design* or the *Contract* includes *selected subcontract work*.

When directed by the *Principal*, the *Contractor*, without being entitled to compensation, shall promptly execute a deed of novation in the form of Annexure Part D, such deed being between the *Principal*, the *Contractor* and the *subcontractor* or the *selected subcontractor* stated in *Item 20* for the particular part of the *preliminary design* or *selected subcontract work*.

### 9.5 Contractor's responsibility

Except where the *Contract* otherwise provides, the *Contractor* shall be liable to the *Principal* for the acts, defaults and omissions of *subcontractors* (including *selected subcontractors*) and employees and agents of *subcontractors* as if they were those of the *Contractor*.

Approval to subcontract shall not relieve the *Contractor* from any liability or obligation under the *Contract*

### 9.6 Design and documentation development

The *Contractor's* design obligations are as follows:



- (a) The Contractor must determine which statutory approvals are required for the completion of the design in accordance with the Contract and the PPRs;
- (b) The Contractor must procure the design documents that comprise:
  - (a) the relevant statutory approvals;
  - (b) the design and documentation in accordance with the PPRs;
  - (c) cost estimates that shall include all costs to carry out the Works on a subcontractor and supplier basis and shall include all of the Contractor's costs but shall not include profit.
- (c) The Contractor must deliver an electronic copy of the latest set of design documents to the Principal for the Principal's written approval at each stage, at the:
  - (a) schematic design complete phase (30% complete of the design);
  - (b) design development complete phase (80% complete of the design); and
  - (c) construction documentation complete phase (95% complete of the design);
 in sufficient time to ensure that there will be no delay to the dates for practical completion.
- (d) The Superintendent may request the Contractor to provide an explanation of any design documents, cost estimate or to provide a report on any design matter at the Contractor's cost;
- (e) The Contractor must procure the design documents necessary for the completion of the Works in accordance with the PPRs and in accordance with sound engineering and building practice.
- (f) The Contractor must notify the Superintendent of the time and cost implications of every design changes that is directed by the Superintendent.

The contract sum must not exceed \$6,000,000 (excl. GST) unless varied by direction of the Superintendent providing evidence to the Contractor of the Principal's prior written consent.

The Contractor is entitled to, and may claim an extension of time and payment for costs incurred arising out of any variations to the preliminary design directed in writing by the Superintendent. The Contractor is not entitled to claim any additional design costs arising out of variations directed by the Superintendent until the design costs incurred by the Contractor for the variations exceed 50% of the cost of the preliminary design cost, which is \$10,000.00.

### 9.7 Review of design documents

Upon receipt of the design documents provided by the Contractor pursuant to above clauses 9.6(c)(a) and 9.6(c)(b), the Superintendent must review the design documents.

Within 10 business days of receipt of the design documents, the Superintendent must instruct the Contractor whether or not the design documents are acceptable to the Principal including any direction to amend the design if so required.

### 9.8 Cost Estimate of the Works

Upon receipt of the design documents at the construction documentation complete phase, the Superintendent must obtain an independent cost assessment of the design documents (QS Report) and provide a copy of the QS Report to the Contractor.

Within 40 days of receipt of the design documents and cost estimate, the Superintendent must instruct the Contractor whether or not the design documents and cost estimate are acceptable to the Principal.

If the design documents and cost estimate are not acceptable to the Principal, the Superintendent must set out its reasons as to why the design documents and cost estimate do not comply with this Contract or provide further instructions to change the design documents and cost estimate.

If the parties reach agreement as to the design documents and the cost estimate, that cost estimate shall be revised contract sum (**Cost Estimate**) and shall also be used for the purposes of calculating further cost savings under clause 44.

If the parties are unable to reach agreement of the design documents or the cost estimate, the dispute shall be referred to the party's respective CEOs for resolution. In default of the CEOs resolving the dispute the matter must be referred by a party for expert determination in accordance with the Contract..

If the Superintendent does not advise the Contractor within the time stated in this clause, the design documents and cost estimate submitted in accordance with clause 9.6(c) are deemed to have satisfied the requirements of this Contract and will be the design documents to be used to construct the Works and the Cost Estimate setting out the breakup of the revised contract sum. In this case, contract sum must not exceed \$6,000,000.00 (Excl GST).

## 10 Intellectual property rights

### 10.1 Warranties and indemnities

The *Principal* warrants that, unless otherwise provided in the *Contract*, the *Principal's project requirements*, design, materials, documents and methods of working, each specified in the *Contract* or provided or directed by the *Principal* or the *Superintendent* shall not infringe any *intellectual property right*.

The *Contractor* warrants that any other design, materials, documents and methods of working, each provided by the *Contractor*, shall not infringe any *intellectual property right*.

Each party shall indemnify the other against such respective infringements.

### 10.2 Intellectual property rights granted to Principal

The Alternative in *Item 21* applies.

#### *Alternative 1*

The *Contractor* grants to the *Principal* an irrevocable licence to use the *design documents* for *WUC*. Such licence shall also include any subsequent repairs to, maintenance or servicing of (including the supply of replacement parts), or additions or alterations to, *the Works* and the copying of the documents for such purposes.

#### *Alternative 2*

Copyright and property in the *design documents* (and, as between the *Principal* and the *Contractor*, any part of the *preliminary design* produced under a prior contract between the *Principal* and a *Principal's* consultant novated under subclause 9.4) hereby vest in the *Principal*, and the *Principal* grants to the *Contractor* an irrevocable licence to use the *design documents* for *WUC*. Such vesting shall not extend to components of the design which have been developed by the *Contractor* for general use in the *Contractor's work* and have not been specially developed for incorporation in the *design documents*.

The *Contractor* shall do everything necessary to perfect such vesting.

The *Contractor* shall ensure that the *design documents* are used, copied and supplied only for the purpose of *WUC*.

## 11 Legislative requirements

### 11.1 Compliance

The *Contractor* shall satisfy all *legislative requirements* except those in *Item 22(a)* or directed by the *Superintendent* to be satisfied by or on behalf of the *Principal*.

The *Contractor*, upon finding that a *legislative requirement* is at variance with the *Contract* or the *Principal's project requirements*, shall promptly give the *Superintendent* written notice thereof.

### 11.2 Changes

If a *legislative requirement*:

- (a) necessitates a change:
  - (a) to the *Principal's project requirements*;
  - (b) to the *Works*;
  - (c) to so much of *WUC* as is identified in *Item 22(b)*;
  - (d) being the provision of services by a municipal, public or other statutory authority in connection with *WUC*; or
  - (e) in a fee or charge or payment of a new fee or charge;
- (b) comes into effect after the 14th day before the closing of tenders but could not reasonably then have been anticipated by a competent contractor; and
- (c) causes the *Contractor* to incur more or less cost than otherwise would have been incurred,

the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

### 11.3 Occupational health and safety

The *Principal* appoints the *Contractor* as *Principal Contractor* in accordance with the *Workplace Health & Safety Act 1995 (Qld)* (WHS legislation).

Without limiting the generality of clause 11.1 and 11.2, the *Contractor* must comply with all legislative requirements, codes of practice, and standards (including Australian Standards) in relation to occupational health and safety. The *Contractor* must instruct its employees, subcontractors and consultants to:

- (a) follow safe work practices and procedures at all times;
- (b) take reasonable care for their own safety; and
- (c) take reasonable care for the health and safety of anyone else who may be affected by anything that they do or fail to do;

in connection with the *WUC*,

If requested by the *Superintendent*, the *Contractor* must provide the following information about the *Contractor's* occupational health and safety systems and those of its subcontractors or consultant's:

- (d) safe working practices and procedures; and

- (e) occupational health and safety practices and procedures;

The Contractor must ensure that all employees, subcontractors, consultants and appointees have completed an appropriate induction prior to commencement on the WUC.

## 12 Protection of people and property

Insofar as compliance with the *Contract* permits, the *Contractor* shall:

- (a) take measures necessary to protect people and property;
- (b) avoid unnecessary interference with the passage of people and vehicles; and
- (c) prevent nuisance and unreasonable noise and disturbance.

If the *Contractor* damages property, the *Contractor* shall promptly rectify the damage and pay any compensation which the law requires the *Contractor* to pay.

If the *Contractor* fails to comply with an obligation under this clause, the *Principal*, after the *Superintendent* has given reasonable written notice to the *Contractor* and in addition to the *Principal's* other rights and remedies, may have the obligation performed by others. The cost thereby incurred shall be certified by the *Superintendent* as moneys due from the *Contractor* to the *Principal*.

## 13 Urgent protection

If urgent action is necessary to protect *WUC*, other property or people and the *Contractor* fails to take the action, in addition to any other remedies of the *Principal*, the *Superintendent* may take the necessary action. If the action was action which the *Contractor* should have taken at the *Contractor's* cost, the *Superintendent* shall certify the cost incurred as moneys due from the *Contractor* to the *Principal*.

If time permits, the *Superintendent* shall give the *Contractor* prior written notice of the intention to take action pursuant to this clause.

## 14 Care of the work and reinstatement of damage

### 14.1 Care of WUC

Except as provided in subclause 14.3, the *Contractor* shall be responsible for care of:

- (a) the whole of *WUC* from and including the date of commencement of *WUC* to 4:00 pm on the *date of practical completion*, at which time responsibility for the care of the *Works* (except to the extent provided in paragraph (b)) shall pass to the *Principal*; and
- (b) outstanding *work* and items to be removed from the *site* by the *Contractor* after 4:00 pm on the *date of practical completion* until completion of outstanding *work* or compliance with clauses 29, 30 and 35.

Without limiting the generality of paragraph (a), the *Contractor* shall be responsible for the care of unfixed items accounted for in a *progress certificate* and the care and preservation of things entrusted to the *Contractor* by the *Principal* or brought onto the *site* by *subcontractors* for carrying out *WUC*.

### 14.2 Reinstatement

If loss or damage, other than that caused by an *excepted risk*, occurs to *WUC* during the period of the *Contractor's* care, the *Contractor* shall at its cost, rectify such loss or damage.

In the event of loss or damage being caused by any of the *excepted risks* (whether or not in combination with other risks), the *Contractor* shall to the extent directed by the *Superintendent*, rectify the loss or damage and such rectification shall be a deemed

*variation*. If loss or damage is caused by a combination of *excepted risks* and other risks, the *Superintendent* in pricing the *variation* shall assess the proportional responsibility of the parties.

### 14.3 Excepted risks

The *excepted risks* causing loss or damage, for which the *Principal* is liable, are:

- (a) any negligent act or omission of the *Superintendent*, the *Principal* or its consultants, agents, employees or other contractors (not being employed by the *Contractor*);
- (b) any risk specifically excepted elsewhere in the *Contract*;
- (c) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority;
- (d) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the *Contractor* or its *subcontractors* or either's employees or agents; and
- (e) use or occupation of any part of *WUC* by the *Principal* or its consultants, agents or other contractors (not being employed by the *Contractor*).

## 15 Damage to persons and property other than WUC

### 15.1 Indemnity by Contractor

Insofar as this subclause applies to property, it applies to property other than *WUC*.

The *Contractor* shall indemnify the *Principal* against:

- (a) loss of or damage to the *Principal's* property; and
- (b) claims in respect of personal injury or death or loss of, or damage to, any other property,

arising out of or as a consequence of the carrying out of *WUC*, but the indemnity shall be reduced proportionally to the extent that the act or omission of the *Superintendent*, the *Principal* or its consultants, agents or other contractors (not being employed by the *Contractor*) may have contributed to the injury, death, loss or damage.

This subclause shall not apply to:

- (a) the extent that the *Contractor's* liability is limited by another provision of the *Contract*;
- (b) exclude any other right of the *Principal* to be indemnified by the *Contractor*;
- (c) things for the care of which the *Contractor* is responsible under subclause 14.1; and
- (d) claims in respect of the *Principal's* right to have *WUC* carried out.

### 15.2 Indemnity by Principal

The *Principal* shall indemnify the *Contractor* in respect of claims referred to in paragraph (d) of subclause 15.1.

## 16A Insurance of the Works

The Alternative in *Item 23(a)* applies.

**Alternative 1: Contractor to insure**

Before commencing *WUC*, the *Contractor* shall insure all the things referred to in subclause 14.1 against loss or damage resulting from any cause until the *Contractor* ceases to be responsible for their care.

Without limiting the generality of the obligation to insure, such insurance shall cover the *Contractor's* liability under subclause 14.2 and things in storage off *site* and in transit to the *site* but may exclude:

- (a) the cost of making good fair wear and tear or gradual deterioration, but shall not exclude the loss or damage resulting therefrom;
- (b) the cost of making good faulty design, workmanship and materials, but shall not exclude the loss or damage resulting therefrom;
- (c) consequential loss of any kind, but shall not exclude loss of or damage to *the Works*;
- (d) damages for delay in completing or for the failure to complete *the Works*;
- (e) loss or damage resulting from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel resulting from any cause;
- (f) loss or damage resulting from the *excepted risks* referred to in paragraphs (b) and (c) of subclause 14.3.

The insurance cover shall be for an amount not less than the aggregate of the:

- (a) *contract sum*;
- (b) provision in *Item 23(b)* to provide for costs of demolition and removal of debris;
- (c) provision in *Item 23(c)* for *consultants' fees* and *Principal's consultants' fees*;
- (d) value in *Item 23(d)* of any materials or things to be supplied by the *Principal* for the purposes of *WUC*; and
- (e) additional amount or percentage in *Item 23(e)* of the total of the items referred to in sub-paragraphs (a) to (d) of this paragraph.

Insurance shall be in the joint names of the parties, shall cover the parties, *consultants* and *subcontractors* whenever engaged in *WUC* for their respective rights, interests and liabilities and, except where the *Contract* otherwise provides, shall be with an insurer and in terms both approved in writing by the *Principal* (which approvals shall not be unreasonably withheld).

The insurance shall be maintained until the *Contractor* ceases to be responsible under subclause 14.1 for the care of anything.

**16B Professional indemnity insurance**

Before commencing *WUC*, the *Contractor* shall effect and maintain professional indemnity insurance with levels of cover not less than stated in *Item 24(a)*.

The insurance shall be maintained until the *final certificate* is issued and thereafter for the period as stated in *Item 24(b)*.

The *Contractor* shall ensure that every *consultant*, if within a category stated in *Item 24(c)*, shall effect and maintain professional indemnity insurance with levels of cover not less than stated in *Item 24(c)* applicable to that category.

Each such *consultant's* professional indemnity insurance shall be maintained until the *final certificate* is issued and thereafter for the period as stated in *Item 24(d)*.

## 17 Public liability insurance

The Alternative in *Item 25(a)* applies.

### *Alternative 1: Contractor to insure*

Before commencing *WUC*, the *Contractor* shall effect and maintain for the duration of the *Contract*, a public liability policy.

The policy shall:

- (a) be in the joint names of the parties;
- (b) cover the:
  - (a) respective rights and interests; and
  - (b) liabilities to third parties,
    - of the parties, the *Superintendent*, *consultants* and *subcontractors* from time to time, whenever engaged in *WUC*;
- (c) cover the parties' respective liability to each other for loss or damage to property (other than property required to be insured by clause 16A) and the death of or injury to any person (other than liability which the law requires to be covered under a workers compensation insurance policy);
- (d) be endorsed to cover the use of any *construction plant* not covered under a comprehensive or third party motor vehicle insurance policy;
- (e) provide insurance cover for an amount in respect of any one occurrence of not less than the sum in *Item 25(b)*; and
- (f) be with an insurer and otherwise in terms both approved in writing by the *Principal* (which approvals shall not be unreasonably withheld).

## 18 Insurance of employees

Before commencing *WUC*, the *Contractor* shall insure against statutory and common law liability for death of or injury to persons employed by the *Contractor*. The insurance cover shall be maintained until completion of all *WUC*.

Where permitted by law, the insurance policy or policies shall be extended to provide indemnity for the *Principal's* statutory liability to the *Contractor's* employees.

The *Contractor* shall ensure that all *consultants* and *subcontractors* have similarly insured their employees.

## 19 Inspection and provisions of insurance policies

### 19.1 Proof of insurance

Before the *Contractor* commences *WUC* and whenever requested in writing by the other party, a party liable to insure shall provide satisfactory evidence of such insurance effected and maintained.

Insurance shall not limit liabilities or obligations under other provisions of the *Contract*.

### 19.2 Failure to produce proof of insurance

If after being so requested, a party liable to insure fails promptly to provide evidence of satisfactory compliance, then without prejudice to other rights or remedies, the other party may insure and the cost thereof shall be certified by the *Superintendent* as moneys due and payable from the party in default to the other party. Where the defaulting party is the

*Contractor*, the *Principal* may refuse payment until such evidence is produced by the *Contractor*.

### 19.3 Notices from or to insurer

The party insuring under clause 16A or 17 shall ensure that each insurance policy contains provisions acceptable to the other party which:

- (a) requires the insurer to inform both parties, whenever the insurer gives a party or a *consultant* or a *subcontractor* a notice in connection with the policy;
- (b) provides that a notice of claim given to the insurer by either party, the *Superintendent*, a *consultant* or a *subcontractor* shall be accepted by the insurer as a notice of claim given by both parties, the *Superintendent*, the *consultant* and the *subcontractor*; and
- (c) requires the insurer, whenever the party fails to maintain the policy, promptly to give written notice thereof to both parties and prior to cancellation of the policy.

### 19.4 Notices of potential claims

A party shall, as soon as practicable, inform the other party in writing of any occurrence that may give rise to a claim under an insurance policy required by clause 16A or 17 and shall keep the other party informed of subsequent developments concerning the claim. The *Contractor* shall ensure that *consultants* and *subcontractors* in respect of their operations similarly inform the parties.

### 19.5 Settlement of claims

Upon settlement of a claim under the insurance required by clause 16A:

- (a) to the extent that reinstatement has been the subject of a payment or allowance by the *Principal* to the *Contractor*, if the *Contractor* has not completed such reinstatement, insurance moneys received shall, if requested by either party, be paid into an agreed bank account in the joint names of the parties. As the *Contractor* reinstates the loss or damage, the *Superintendent* shall certify against the joint account for the cost of reinstatement; and
- (b) to the extent that reinstatement has not been the subject of a payment or allowance by the *Principal* to the *Contractor*, the *Contractor* shall be entitled immediately to receive from insurance moneys received, the amount of such moneys so paid in relation to any loss suffered by the *Contractor*.

### 19.6 Cross liability

Any insurance required to be effected in joint names in accordance with the *Contract* shall include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons constituting the insured and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons constituting the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby).

## 20 Superintendent

The *Principal* shall ensure that at all times there is a *Superintendent*, and that the *Superintendent* fulfils all aspects of the role and functions reasonably and in good faith.

Except where the *Contract* otherwise provides, the *Superintendent* may give a *direction* orally but shall as soon as practicable confirm it in writing. If the *Contractor* in writing



requests the *Superintendent* to confirm an oral *direction*, the *Contractor* shall not be bound to comply with the *direction* until the *Superintendent* does so.

The *Principal* may change the *Superintendent* by written or electronic notice to the *Contractor* and the change shall be from the date of such notice.

## 21 Superintendent's Representative

The *Superintendent* may from time to time appoint individuals to exercise delegated *Superintendent's* functions, provided that:

- (a) no aspect of any function shall at any one time be the subject of delegation to more than one *Superintendent's Representative*;
- (b) delegation shall not prevent the *Superintendent* exercising any function;
- (c) the *Superintendent* forthwith gives the *Contractor* written notice of respectively:
  - (a) the appointment, including the *Superintendent's Representative's* name and delegated functions; and
  - (b) the termination of each appointment; and
- (d) if the *Contractor* makes a reasonable objection to the appointment of a *Superintendent's Representative*, the *Superintendent* shall terminate the appointment.

## 22 Contractor's representative

The *Contractor* shall superintend *WUC* personally or by a competent representative. Matters within a *Contractor's* representative's knowledge (including *directions* received) shall be deemed to be within the *Contractor's* knowledge.

The *Contractor* shall forthwith give the *Superintendent* written notice of the representative's name and any subsequent changes.

If the *Superintendent* makes a reasonable objection to the appointment of a representative, the *Contractor* shall terminate the appointment and appoint another representative.

## 23 Contractor's employees and subcontractors

The *Superintendent* may direct the *Contractor* to have removed, within a stated time, from the *site* or from any activity of *WUC*, any person employed on *WUC* who, in the *Superintendent's* opinion, is incompetent, negligent or guilty of misconduct.

## 24 Site

### 24.1 Access and possession

Before the expiry of the time stated in *Item 26(a)*, the *Principal* shall give the *Contractor* access to the *site* sufficient to enable the *Contractor* to commence and carry out the *Contractor's design obligations*.

Provided the *Contractor* has complied with subclause 19.1, the *Principal* shall before the expiry of the time in *Item 26(b)*, give the *Contractor* possession of sufficient of the *site* for commencement of *WUC* on *site*. If the *Principal* has not given the *Contractor* possession of the whole *site*, the *Principal* shall give the *Contractor* possession of such further portions of the *site* as may, from time to time, be necessary for carrying out *WUC*. Subject to subclause 39.7, delay by the *Principal* in giving possession shall not be a breach of the *Contract*.

Possession of the *site* shall confer on the *Contractor* a right to only such use and control as is necessary to enable the *Contractor* to carry out *WUC* and shall exclude camping,

residential purposes and any purpose not connected with *WUC*, unless approved by the *Superintendent*.

#### 24.2 Access for Principal and others

The *Principal* and the *Principal's* employees, consultants and agents may at any time after reasonable written notice to the *Contractor*, have access to any part of the *site* for any purpose. The *Contractor* shall permit persons engaged by the *Principal* to carry out *work* on the *site* other than *WUC* and shall cooperate with them. The *Principal* shall give to the *Contractor* the names and roles of the persons so engaged.

The *Contractor* shall at all reasonable times give the *Superintendent* access to *WUC*.

The *Principal* shall ensure that none of the persons referred to in this subclause impedes the *Contractor*.

#### 24.3 Minerals, fossils and relics

Valuable minerals, fossils, articles or objects of antiquity or of anthropological or archaeological interest, treasure trove, coins and articles of value found on the *site* shall as between the parties be and remain the property of the *Principal*. Immediately upon the discovery of these things the *Contractor* shall:

- (a) take precautions to prevent their loss, removal or damage; and
- (b) give the *Superintendent* written notice of the discovery.

All costs so incurred by the *Contractor* shall be assessed by the *Superintendent* and added to the *contract sum*.

### 25 Latent conditions

#### 25.1 Scope

*Latent conditions* are physical conditions on the *site* and its near surrounds, including artificial things but excluding weather conditions, which differ materially from the physical conditions which should reasonably have been anticipated by a competent contractor at the time of the *Contractor's* tender if the *Contractor* had inspected:

- (a) all written information made available by the *Principal* to the *Contractor* for the purpose of tendering;
- (b) all information influencing the risk allocation in the *Contractor's* tender and reasonably obtainable by the making of reasonable enquiries; and
- (c) the *site* and its near surrounds.

#### 25.2 Notification

The *Contractor*, upon becoming aware of a *latent condition* while carrying out *WUC*, shall promptly, and where possible before the *latent condition* is disturbed, give the *Superintendent* written notice of the general nature thereof.

If required by the *Superintendent* promptly after receiving that notice, the *Contractor* shall, as soon as practicable, give the *Superintendent* a written statement of:

- (a) the *latent condition* encountered and the respects in which it differs materially;
- (b) the additional *work*, resources, time and cost which the *Contractor* estimates to be necessary to deal with the *latent condition*; and
- (c) other details reasonably required by the *Superintendent*.

### 25.3 Liability for latent conditions and design

The Contractor is solely and exclusively liable for latent conditions including but not limited to any damages claims, EOT's, or delays, arising from the identification and rectification of such latent conditions. The Contractor is solely liable for the design of the *WUC* and the Contractor shall not enjoin, seek apportionment or any liability from the Principal for any liability arising from, or in connection with, the design of the *WUC*.

## 26 Setting out the Works

### 26.1 Setting out

The *Principal* shall ensure that the *Superintendent* gives the *Contractor* the data, *survey marks* and like information necessary for the *Contractor* to set out the *Works*, together with those *survey marks* specified in the *Contract*. Thereupon the *Contractor* shall set out the *Works* in accordance with the *Contract*.

### 26.2 Errors in setting out

The *Contractor* shall rectify every error in the position, level, dimensions or alignment of any *WUC* after promptly notifying the *Superintendent* and unless the *Superintendent* within 3 days directs otherwise. The cost of any rectification shall be at the sole cost of the *Contractor*.

### 26.3 Care of survey marks

The *Contractor* shall keep in their true positions all *survey marks* supplied by the *Superintendent*.

The *Contractor* shall reinstate any *survey mark* disturbed, after promptly notifying the *Superintendent* and unless the *Superintendent* within 3 days directs otherwise.

If the disturbance was caused by a person referred to in subclause 24.2 other than the *Contractor*, the cost incurred by the *Contractor* in reinstating the *survey mark* shall be borne by the *Contractor*.

## 27 Cleaning up

The *Contractor* shall keep the *site* and *WUC* clean and tidy and regularly remove rubbish and surplus material.

Within 14 days after the *date of practical completion*, the *Contractor* shall remove *temporary works* and *construction plant*. The *Superintendent* may extend the time to enable the *Contractor* to perform remaining obligations.

If the *Contractor* fails to comply with the preceding obligations in this clause, the *Superintendent* may direct the *Contractor* to rectify the non-compliance and the time for rectification.

If:

- (a) the *Contractor* fails to comply with such a *direction*; and
- (b) that failure has not been made good within 5 days after the *Contractor* receives written notice from the *Superintendent* that the *Principal* intends to have the subject *work* carried out by others,

the *Principal* may have that *work* so carried out and the *Superintendent* shall certify the cost incurred as moneys due from the *Contractor* to the *Principal*. The rights given by this paragraph are additional to any other rights and remedies.

## 28 Materials, labour and construction plant

Except where the *Contract* otherwise provides, the *Contractor* shall supply everything necessary for the proper performance of the *Contractor's* obligations and discharge of the *Contractor's* liabilities.

In respect of any materials, machinery or equipment to be supplied by the *Contractor* in connection with the *Contract*, the *Superintendent* may direct the *Contractor* to:

- (a) supply particulars of the mode and place of manufacture, the source of supply, the performance capacities and other related information; and
- (b) arrange reasonable inspection at such place or sources by the *Superintendent*, the *Principal* and persons authorised by the *Principal*.

The *Superintendent* may give the *Contractor* a written *direction* not to remove materials or *construction plant* from the *site*. Thereafter the *Contractor* shall not remove them without the *Superintendent's* prior written approval (which shall not be unreasonably withheld).

## 29 Quality

### 29.1 Quality of material and work

Unless otherwise provided, the *Contractor* shall use suitable new materials and proper and tradesmanlike workmanship.

### \* 29.2 Quality assurance

If the *Contract* elsewhere requires further quality assurance, the *Contractor* shall:

- (a) plan, establish and maintain a conforming quality system; and
- (b) ensure that the *Superintendent* has access to the quality system of the *Contractor*, *consultants* and *subcontractors* so as to enable monitoring and quality auditing.

Any such quality system shall be used only as an aid to achieving compliance with the *Contract* and to document such compliance. Such system shall not discharge the *Contractor's* other obligations under the *Contract*.

### 29.3 Defective work

If the *Superintendent* becomes aware of *work* done (including material provided) by the *Contractor* which does not comply with the *Contract*, the *Superintendent* shall as soon as practicable give the *Contractor* written details thereof. If the subject *work* has not been rectified, the *Superintendent* may direct the *Contractor* to do any one or more of the following (including times for commencement and completion):

- (a) remove the material from the *site*;
- (b) demolish the *work*;
- (c) redesign, reconstruct, replace or correct the *work*; and
- (d) not deliver it to the *site*.

If:

- (a) the *Contractor* fails to comply with such a *direction*; and

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\* See Preface

- (b) that failure has not been made good within 8 days after the *Contractor* receives written notice from the *Superintendent* that the *Principal* intends to have the subject *work* rectified by others,

the *Principal* may have that *work* so rectified and the *Superintendent* shall certify the cost incurred as moneys due from the *Contractor* to the *Principal*.

#### 29.4 Acceptance of defective work

Instead of a *direction* pursuant to subclause 29.3, the *Superintendent* may direct the *Contractor* that the *Principal* elects to accept the subject *work*, whereupon there shall be a deemed *variation*.

#### 29.5 Timing

The *Superintendent* may give a *direction* pursuant to this clause at any time before the expiry of the last *defects liability period*.

### 30 Examination and testing

#### 30.1 Tests

At any time before the expiry of the last *defects liability period*, the *Superintendent* may direct that any *WUC* be tested. The *Contractor* shall give such assistance and samples and make accessible such parts of *WUC* as may be directed by the *Superintendent*.

#### 30.2 Covering up

The *Superintendent* may direct that any part of *WUC* shall not be covered up or made inaccessible without the *Superintendent's* prior written *direction*.

#### 30.3 Who conducts

*Tests* shall be conducted as provided elsewhere in the *Contract* or by the *Superintendent* or a person (which may include the *Contractor*) nominated by the *Superintendent*.

#### 30.4 Notice

The *Superintendent* or the *Contractor* (whichever is to conduct the *test*) shall give reasonable written notice to the other of the date, time and place of the *test*. If the other does not attend, the *test* may nevertheless proceed.

#### 30.5 Delay

Without prejudice to any other right, if the *Contractor* or the *Superintendent* delays in conducting a *test*, the other, after giving reasonable written notice of intention to do so, may conduct the *test*.

#### 30.6 Completion and results

On completion of the *tests*, the *Contractor* shall make good *WUC* so that it fully complies with the *Contract*.

Results of *tests* shall be promptly made available by each party to the other and to the *Superintendent*.

### 30.7 Costs

Costs in connection with testing pursuant to this clause shall be borne by the *Principal* except where the *Contract* otherwise provides or the *test* is consequent upon, or reveals a failure of the *Contractor* to comply with the *Contract* (including this clause).

### 31 Working hours

If the working hours and working days on the *site* are not stated elsewhere in the *Contract*, they shall be as notified by the *Contractor* to the *Superintendent* before commencement of *work on site*. They shall not be varied without the *Superintendent's* prior written approval, except when, in the interests of safety of persons or property, the *Contractor* finds it necessary to carry out *WUC* otherwise, whereupon the *Contractor* shall give the *Superintendent* written notice of those circumstances as early as possible.

### 32 Programming

The *Superintendent* shall give to the *Contractor* the information, materials, documents and instructions by the times or within the periods both stated in *Item 27*.

The *Contractor* shall give the *Superintendent* reasonable advance notice of when the *Contractor* needs other information, materials, documents or instructions from the *Superintendent* or the *Principal*.

The *Principal* and the *Superintendent* shall not be obliged to give any information, materials, documents or instructions earlier than the *Principal* or the *Superintendent*, as the case may be, should reasonably have anticipated at the *date of acceptance of tender*.

The *Superintendent* may direct in what order and at what time the various stages or portions of *WUC* shall be carried out. If the *Contractor* can reasonably comply with the *direction*, the *Contractor* shall do so. If the *Contractor* cannot reasonably comply, the *Contractor* shall give the *Superintendent* written notice of the reasons.

A *program* is a written statement showing the dates by which, or the times within which, the various stages or portions of *WUC* are to be carried out or completed. It shall be deemed a *Contract* document.

The *Superintendent* may direct the *Contractor* to give the *Superintendent* a *program* within the time and in the form directed.

The *Contractor* shall not, without reasonable cause, depart from a *program*.

If compliance with any such *directions* under this clause, except those pursuant to the *Contractor's* default, causes the *Contractor* to incur more or less cost than otherwise would have been incurred had the *Contractor* not been given the *direction*, the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

### 33 Suspension

#### 33.1 Superintendent's suspension

The *Superintendent* may direct the *Contractor* to suspend the carrying out of the whole or part of *WUC* for such time as the *Superintendent* thinks fit, if the *Superintendent* is of the opinion that it is necessary:

- (a) because of an act, default or omission of:
  - (a) the *Superintendent*, the *Principal* or its employees, consultants, agents or other contractors (not being employed by the *Contractor*); or
  - (b) the *Contractor*, a *consultant*, a *subcontractor* or the employees or agents of any of them;

- (b) for the protection or safety of any person or property; or
- (c) to comply with a court order.

### 33.2 Contractor's suspension

If the *Contractor* wishes to suspend the carrying out of the whole or part of *WUC*, otherwise than pursuant to subclause 39.9, the *Contractor* shall obtain the *Superintendent's* prior written approval. The *Superintendent* may approve the suspension and may impose conditions of approval.

### 33.3 Recommencement

As soon as the *Superintendent* becomes aware that the reason for any suspension no longer exists, the *Superintendent* shall direct the *Contractor* to recommence suspended *WUC* as soon as reasonably practicable.

The *Contractor* may recommence *WUC* suspended pursuant to subclause 33.2 or 39.9 at any time after reasonable notice to the *Superintendent*.

### 33.4 Cost

The *Contractor* shall bear the cost of suspension pursuant to paragraph (a)(ii) of subclause 33.1 and subclause 33.2. If the *Contractor* made the protection, safety, court order or suspension of work necessary, the *Contractor* shall bear the cost of suspension pursuant to paragraph (b) or (c) of subclause 33.1. If the *Contractor* otherwise incurs more or less cost than otherwise would have been incurred, the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

## 34 Time and progress

### 34.1 Progress

The *Contractor* shall ensure that *WUC* reaches *practical completion* by the date for *practical completion*.

### 34.2 Notice of delay

A party becoming aware of anything which will probably cause delay to *WUC* shall promptly give the *Superintendent* and the other party written notice of that cause and the estimated delay.

### 34.3 Claim

The *Contractor* shall be entitled to such extension of time for carrying out *WUC* (including reaching *practical completion*) as the *Superintendent* assesses ('*EOT*'), if:

- (a) the *Contractor* is or will be delayed in reaching *practical completion* by a *qualifying cause of delay*; and
- (b) the *Contractor* gives the *Superintendent*, within 28 days of when the *Contractor* should reasonably have become aware of that causation occurring, a written claim for an *EOT* evidencing the facts of causation and of the delay to *WUC* (including extent).

If further delay results from a *qualifying cause of delay* evidenced in a claim under paragraph (b) of this subclause, the *Contractor* shall claim an *EOT* for such delay by promptly giving the *Superintendent* a written claim evidencing the facts of that delay.

#### 34.4 Assessment

When both non-qualifying and *qualifying causes of delay* overlap, the *Superintendent* shall apportion the resulting delay to *WUC* according to the respective causes' contribution.

In assessing each *EOT* the *Superintendent* shall disregard questions of whether:

- (a) *WUC* can nevertheless reach *practical completion* without an *EOT*; or
- (b) the *Contractor* can accelerate,

but shall have regard to what prevention and mitigation of the delay has not been effected by the *Contractor*.

#### 34.5 Extension of time

Within 28 days after receiving the *Contractor's* claim for an *EOT*, the *Superintendent* shall give to the *Contractor* and the *Principal* a written *direction* evidencing the *EOT* so assessed. If the *Superintendent* does not do so, there shall be a deemed assessment and *direction* for an *EOT* as claimed.

Notwithstanding that the *Contractor* is not entitled to or has not claimed an *EOT*, the *Superintendent* may at any time and from time to time before issuing the *final certificate* direct an *EOT*.

#### 34.6 Practical completion

The *Contractor* shall give the *Superintendent* at least 14 days written notice of the date upon which the *Contractor* anticipates that *practical completion* will be reached.

When the *Contractor* is of the opinion that *practical completion* has been reached, the *Contractor* shall in writing request the *Superintendent* to issue a *certificate of practical completion*. Within 14 days after receiving the request, the *Superintendent* shall give the *Contractor* and the *Principal* either a *certificate of practical completion* evidencing the *date of practical completion* or written reasons for not doing so.

If the *Superintendent* is of the opinion that *practical completion* has been reached, the *Superintendent* may issue a *certificate of practical completion* even though no request has been made.

#### 34.7 Liquidated damages

If *WUC* does not reach *practical completion* by the *date for practical completion*, the *Superintendent* shall certify, as due and payable to the *Principal*, liquidated damages in *Item 29* for every day after the *date for practical completion* to and including the earliest of the *date of practical completion* or termination of the *Contract* or the *Principal* taking *WUC* out of the hands of the *Contractor*.

If an *EOT* is directed after the *Contractor* has paid or the *Principal* has set off liquidated damages, the *Principal* shall forthwith repay to the *Contractor* such of those liquidated damages as represent the days the subject of the *EOT*.

#### 34.8 Bonus for early practical completion

If the *date of practical completion* is earlier than the *date for practical completion* the *Superintendent* shall certify as due and payable to the *Contractor* the bonus in *Item 30(a)* for every day after the *date of practical completion* to and including the *date for practical completion*.

The *Contractor* hereby waives that part of a bonus exceeding the *Item 30(b)* amount.



### 34.9 Delay damages

For every day the subject of an *EOT* for a *compensable cause* and for which the *Contractor* gives the *Superintendent* a claim for delay damages pursuant to subclause 41.1, damages certified by the *Superintendent* under subclause 41.3 shall be due and payable to the *Contractor*.

### 35 Defects liability

The *defects liability period* stated in *Item 32* shall commence on the *date of practical completion* at 4:00 pm.

The *Contractor* shall carry out rectification at times and in a manner causing as little inconvenience to the occupants or users of *the Works* as is reasonably possible.

As soon as possible after the *date of practical completion*, the *Contractor* shall rectify all *defects* existing at the *date of practical completion*.

During the *defects liability period*, the *Superintendent* may give the *Contractor* a *direction* to rectify a *defect* which:

- (a) shall identify the *defect* and the date for completion of its rectification; and
- (b) may state a date for commencement of the rectification and whether there shall be a separate *defects liability period* therefor (not exceeding that in *Item 32*, commencing at 4:00 pm on the date the rectification is completed and governed by this clause).

If the rectification is not commenced or completed by the stated dates, the *Principal* may have the rectification carried out by others but without prejudice to any other rights and remedies the *Principal* may have. The cost thereby incurred shall be certified by the *Superintendent* as moneys due and payable to the *Principal*.

### 36 Variations

#### 36.1 Directing variations

The *Contractor* shall not vary *WUC* except as directed in writing.

The *Superintendent*, before the *date of practical completion*, may direct the *Contractor* to vary *WUC* by any one or more of the following which is nevertheless of a character and extent contemplated by, and capable of being carried out under, the provisions of the *Contract* (including being within the warranties in subclause 2.2):

- (a) increase, decrease or omit any part;
- (b) change the character or quality;
- (c) change the levels, lines, positions or dimensions;
- (d) carry out additional *work*;
- (e) demolish or remove material or *work* no longer required by the *Principal*.

#### 36.2 Proposed variations

The *Superintendent* may give the *Contractor* written notice of a proposed *variation*.

The *Contractor* shall as soon as practicable after receiving such notice, notify the *Superintendent* whether the proposed *variation* can be effected, together with, if it can be effected, the *Contractor's* estimate of the:

- (a) effect on the *program* (including the *date for practical completion*); and

- (b) cost (including all warranties and time-related costs, if any) of the proposed variation.

The *Superintendent* may direct the *Contractor* to give a detailed quotation for the proposed variation supported by measurements or other evidence of cost.

The *Contractor's* costs for each compliance with this subclause shall be certified by the *Superintendent* as moneys due to the *Contractor*.

### 36.3 Variations for convenience of Contractor

If the *Contractor* requests the *Superintendent* to direct a variation for the convenience of the *Contractor*, the *Superintendent* may do so. The *direction* shall be written and may be conditional. Unless the *direction* provides otherwise, the *Contractor* shall be entitled to neither extra time nor extra money.

### 36.4 Pricing

The *Superintendent* shall, as soon as possible, price each variation using the following order of precedence:

- (a) prior agreement;
- (b) applicable rates or prices in the *Contract*;
- (c) rates or prices in a *schedule of rates* or schedule of prices, even though not *Contract* documents, to the extent that it is reasonable to use them; and
- (d) reasonable rates or prices, which shall include a reasonable amount for profit and overheads,

and any deductions shall include a reasonable amount for profit but not overheads.

That price shall be added to or deducted from the *contract sum*.

## 37 Payment

### 37.1 Progress claims

The *Contractor* shall claim payment progressively in accordance with *Item 33*.

An early progress claim shall be deemed to have been made on the date for making that claim.

Each progress claim shall be given in writing to the *Superintendent* and shall include details of the value of *WUC* done and may include details of other moneys then due to the *Contractor* pursuant to provisions of the *Contract*.

### 37.2 Certificates

The *Superintendent* shall, within 14 days after receiving such a progress claim, issue to the *Principal* and the *Contractor*:

- (a) a *progress certificate* evidencing the *Superintendent's* opinion of the moneys due from the *Principal* to the *Contractor* pursuant to the progress claim and reasons for any difference ('*progress certificate*'); and
- (b) a certificate evidencing the *Superintendent's* assessment of retention moneys and moneys due from the *Contractor* to the *Principal* pursuant to the *Contract*.

If the *Contractor* does not make a progress claim in accordance with *Item 33*, the *Superintendent* may issue the *progress certificate* with details of the calculations and shall issue the certificate in paragraph (b).

If the *Superintendent* does not issue the *progress certificate* within 14 days of receiving a progress claim in accordance with subclause 37.1, that progress claim shall be deemed to be the relevant *progress certificate*.

The *Principal* shall within 7 days after receiving both such certificates, or within 21 days after the *Superintendent* receives the progress claim, pay to the *Contractor* the balance of the *progress certificate* after setting off such of the certificate in paragraph (b) as the *Principal* elects to set off. If that setting off produces a negative balance, the *Contractor* shall pay that balance to the *Principal* within 7 days of receiving written notice thereof.

Neither a *progress certificate* nor a payment of moneys shall be evidence that the subject *WUC* has been carried out satisfactorily. Payment other than *final payment* shall be payment on account only.

### 37.3 Unfixed plant and materials

The *Principal* shall not be liable to pay for unfixed plant and materials unless they are listed in *Item 34* and the *Contractor*:

- (a) provides the additional *security* in *Item 14(e)*; and
- (b) satisfies the *Superintendent* that the subject plant and materials have been paid for, properly stored and protected, and labelled the property of the *Principal*.

Upon payment to the *Contractor* and the release of any additional *security* in paragraph (a), the subject plant and materials shall be the unencumbered property of the *Principal*.

### 37.4 Final payment claim and certificate

Within 28 days after the expiry of the last *defects liability period*, the *Contractor* shall give the *Superintendent* a written *final payment claim* endorsed 'Final Payment Claim' being a progress claim together with all other claims whatsoever in connection with the subject matter of the *Contract*.

Within 42 days after the expiry of the last *defects liability period*, the *Superintendent* shall issue to both the *Contractor* and the *Principal* a *final certificate* evidencing the moneys finally due and payable between the *Contractor* and the *Principal* on any account whatsoever in connection with the subject matter of the *Contract*.

Those moneys certified as due and payable shall be paid by the *Principal* or the *Contractor*, as the case may be, within 7 days after the debtor receives the *final certificate*.

The *final certificate* shall be conclusive evidence of accord and satisfaction, and in discharge of each party's obligations in connection with the subject matter of the *Contract* except for:

- (a) fraud or dishonesty relating to *WUC* or any part thereof or to any matter dealt with in the *final certificate*;
- (b) any *defect* or omission in the *Works* or any part thereof which was not apparent at the end of the last *defects liability period*, or which would not have been disclosed upon reasonable inspection at the time of the issue of the *final certificate*;
- (c) any accidental or erroneous inclusion or exclusion of any *work* or figures in any computation or an arithmetical error in any computation; and
- (d) unresolved issues the subject of any notice of *dispute* pursuant to clause 42, served before the 7th day after the issue of the *final certificate*.

### 37.5 Interest

Interest in *Item 35* shall be due and payable after the date of default in payment.

### 37.6 Other moneys due

The *Principal* may elect that moneys due and owing otherwise than in connection with the subject matter of the *Contract* also be due to the *Principal* pursuant to the *Contract*.

## 38 Payment of workers, consultants and subcontractors

### 38.1 Workers, consultants and subcontractors

The *Contractor* shall give in respect of a progress claim, documentary evidence of the payment of moneys due and payable to:

- (a) workers of the *Contractor* and of the *subcontractors*;
- (b) *consultants*; and
- (c) *subcontractors*,

in respect of *WUC* the subject of that claim.

If the *Contractor* is unable to give such documentary evidence, the *Contractor* shall give other documentary evidence of the moneys so due and payable to workers, *consultants* and *subcontractors*.

Documentary evidence, except where the *Contract* otherwise provides, shall be to the *Superintendent's* satisfaction.

### 38.2 Withholding payment

Subject to the next paragraph, the *Principal* may withhold moneys certified due and payable in respect of the progress claim until the *Contractor* complies with subclause 38.1.

The *Principal* shall not withhold payment of such moneys in excess of the moneys evidenced pursuant to subclause 38.1 as due and payable to workers, *consultants* and *subcontractors*.

### 38.3 Direct payment

Before *final payment*, the *Principal*, if not aware of a relevant relation-back day (as defined in the Corporations Law) may pay unpaid moneys the subject of subclause 38.1 directly to a worker, *consultant* or *subcontractor* where:

- (a) permitted by law;
- (b) given a court order in favour of the worker, *consultant* or *subcontractor*; or
- (c) requested in writing by the *Contractor*.

Such payment and a payment made to a worker, *consultant* or *subcontractor* in compliance with a *legislative requirement* shall be deemed to be part-satisfaction of the *Principal's* obligation to pay pursuant to subclause 37.2 or 37.4, as the case may be.

## 39 Default or insolvency

### 39.1 Preservation of other rights

If a party breaches (including repudiates) the *Contract*, nothing in this clause shall prejudice the right of the other party to recover damages or exercise any other right or remedy.

### 39.2 Contractor's default

If the *Contractor* commits a substantial breach of the *Contract*, the *Principal* may, by hand or by registered post, give the *Contractor* a written notice to show cause.

Substantial breaches include, but are not limited to:

- (a) failing to:
  - (a) perform properly the *Contractor's design obligations*;
  - (b) provide *security*;
  - (c) provide evidence of insurance;
  - (d) comply with a *direction* of the *Superintendent* pursuant to subclause 29.3; or
  - (e) use the materials or standards of *work* required by the *Contract*;
- (b) wrongful suspension of *work*;
- (c) substantial departure from a *program* without reasonable cause or the *Superintendent's* approval;
- (d) where there is no *program*, failing to proceed with due expedition and without delay; and
- (e) in respect of clause 38, knowingly providing documentary evidence containing an untrue statement.

### 39.3 Principal's notice to show cause

A notice under subclause 39.2 shall state:

- (a) that it is a notice under clause 39 of these General Conditions;
- (b) the alleged substantial breach;
- (c) that the *Contractor* is required to show cause in writing why the *Principal* should not exercise a right referred to in subclause 39.4;
- (d) the date and time by which the *Contractor* must show cause (which shall not be less than 7 clear days after the notice is received by the *Contractor*); and
- (e) the place at which cause must be shown.

### 39.4 Principal's rights

If the *Contractor* fails to show reasonable cause by the stated date and time, the *Principal* may by written notice to the *Contractor*:

- (a) take out of the *Contractor's* hands the whole or part of the *work* remaining to be completed and suspend payment until it becomes due and payable pursuant to subclause 39.6; or
- (b) terminate the *Contract*.

### 39.5 Take out

The *Principal* shall complete *work* taken out of the *Contractor's* hands and may:

- (a) use materials, equipment and other things intended for *WUC*; and
- (b) without payment of compensation to the *Contractor*:
  - (a) take possession of, and use, such of the *construction plant* and other things on or in the vicinity of the *site* as were used by the *Contractor*;

- (b) contract with such of the *consultants* and *subcontractors*; and
- (c) take possession of, and use, such of the *design documents*,

as are reasonably required by the *Principal* to facilitate completion of *WUC* taken out.

If the *Principal* takes possession of *construction plant*, *design documents* or other things, the *Principal* shall maintain them and, subject to subclause 39.6, on completion of the *work* taken out, shall return such of them as are surplus.

The *Superintendent* shall keep records of the cost of completing the *work* taken out.

### 39.6 Adjustment on completion of work taken out

When *work* taken out of the *Contractor's* hands has been completed, the *Superintendent* shall assess the cost thereby incurred and shall certify as moneys due and payable accordingly the difference between that cost (showing the calculations therefor) and the amount which would otherwise have been paid to the *Contractor* if the *work* had been completed by the *Contractor*.

If the *Contractor* is indebted to the *Principal*, the *Principal* may retain *construction plant* or other things taken under subclause 39.5 until the debt is satisfied. If after reasonable notice, the *Contractor* fails to pay the debt, the *Principal* may sell the *construction plant* or other things and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess shall be paid to the *Contractor*.

### 39.7 Principal's default

If the *Principal* commits a substantial breach of the *Contract*, the *Contractor* may, by hand or by registered post, give the *Principal* a written notice to show cause.

Substantial breaches include, but are not limited to:

- (a) failing to:
  - (a) provide *security*;
  - (b) produce evidence of insurance;
  - (c) rectify inadequate *Contractor's* access to the *site* if that failure continues for longer than the time stated in *Item 36(a)*;
  - (d) rectify inadequate *Contractor's* possession of the *site* if that failure continues for longer than the time stated in *Item 36(b)*; or
  - (e) make a payment due and payable pursuant to the *Contract*; and
- (b) the *Superintendent* not giving a *certificate of practical completion* or reasons as referred to in subclause 34.6.

### 39.8 Contractor's notice to show cause

A notice given under subclause 39.7 shall state:

- (a) that it is a notice under clause 39 of these General Conditions;
- (b) the alleged substantial breach;
- (c) that the *Principal* is required to show cause in writing why the *Contractor* should not exercise a right referred to in subclause 39.9;
- (d) the date and time by which the *Principal* must show cause (which shall not be less than 7 clear days after the notice is received by the *Principal*); and
- (e) the place at which cause must be shown.

### 39.9 Contractor's rights

If the *Principal* fails to show reasonable cause by the stated date and time, the *Contractor* may, by written notice to the *Principal*, suspend the whole or any part of *WUC*.

The *Contractor* shall remove the suspension if the *Principal* remedies the breach.

The *Contractor* may, by written notice to the *Principal*, terminate the *Contract*, if within 28 days of the date of suspension under this subclause the *Principal* fails:

- (a) to remedy the breach; or
- (b) if the breach is not capable of remedy, to make other arrangements to the reasonable satisfaction of the *Contractor*.

Damages suffered by the *Contractor* by reason of the suspension shall be assessed by the *Superintendent*, who shall certify them as moneys due and payable to the *Contractor*.

### 39.10 Termination

If the *Contract* is terminated pursuant to subclause 39.4(b) or 39.9, the parties' remedies, rights and liabilities shall be the same as they would have been under the law governing the *Contract* had the defaulting party repudiated the *Contract* and the other party elected to treat the *Contract* as at an end and recover damages.

If Alternative 2 of subclause 10.2 applies and the *Principal* has terminated the *Contract*, the *Principal* may also, without payment of compensation, take possession of the *design documents*.

### 39.11 Insolvency

If:

- (a) a party informs the other in writing, or creditors generally, that the party is insolvent or is financially unable to proceed with the *Contract*;
- (b) execution is levied against a party by a creditor;
- (c) a party is an individual person or a partnership including an individual person, and if that person:
  - (a) commits an act of bankruptcy;
  - (b) has a bankruptcy petition presented against him or her or presents his or her own petition;
  - (c) is made bankrupt;
  - (d) makes a proposal for a scheme of arrangement or a composition; or
  - (e) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the Bankruptcy Act 1966 (Cwlth) or like provision under the law governing the *Contract*; or
- (d) in relation to a party being a corporation:
  - (a) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
  - (b) it enters a deed of company arrangement with creditors;
  - (c) a controller or administrator is appointed;
  - (d) an application is made to a court for its winding up and not stayed within 14 days;

- (e) a winding up order is made in respect of it;
  - (f) it resolves by special resolution that it be wound up voluntarily (other than for a member's voluntary winding up); or
  - (g) a mortgagee of any of its property takes possession of that property,
- then, where the other party is:
- (A) the *Principal*, the *Principal* may, without giving a notice to show cause, exercise the right under subclause 39.4(a); or
  - (B) the *Contractor*, the *Contractor* may, without giving a notice to show cause, exercise the right under subclause 39.9.

The rights and remedies given by this subclause are additional to any other rights and remedies. They may be exercised notwithstanding that there has been no breach of contract.

#### 40 Termination by frustration

If the *Contract* is frustrated:

- (a) the *Superintendent* shall issue a *progress certificate* for *WUC* carried out to the date of frustration, evidencing the amount which would have been payable had the *Contract* not been frustrated and had the *Contractor* been entitled to and made a progress claim on the date of frustration;
- (b) the *Principal* shall pay the *Contractor*:
  - (a) the amount due to the *Contractor* evidenced by all unpaid certificates;
  - (b) the cost of materials and equipment reasonably ordered by the *Contractor* for *WUC* and which the *Contractor* is liable to accept, but only if they will become the *Principal's* property upon payment; and
  - (c) the costs reasonably incurred:
    - (A) removing *temporary works* and *construction plant*;
    - (B) returning to their place of engagement the *Contractor*, *consultants*, *subcontractors* and their respective employees engaged in *WUC* at the date of frustration; and
    - (C) by the *Contractor* in expectation of completing *WUC* and not included in any other payment; and
- (c) each party shall promptly release and return all *security* provided by the other.

#### 41 Notification of claims

##### 41.1 Communication of claims

The *prescribed notice* is a written notice of the general basis and quantum of the claim.

As soon as practicable after a party becomes aware of any claim in connection with the subject matter of the *Contract*, that party shall give to the other party and to the *Superintendent* the *prescribed notice* or a notice of *dispute* under subclause 42.1.

This subclause and subclause 41.3 shall not apply to any claim, including a claim for payment (except for claims which would, other than for this subclause, have been included in the *final payment claim*), the communication of which is required by another provision of the *Contract*.



### 41.2 Liability for failure to communicate

The failure of a party to comply with the provisions of subclause 41.1 or to communicate a claim in accordance with the relevant provision of the *Contract* shall, inter alia, entitle the other party to damages for breach of the *Contract* but shall neither bar nor invalidate the claim.

### 41.3 Superintendent's decision

If within 28 days of giving the *prescribed notice* the party giving it does not notify the other party and the *Superintendent* of particulars of the claim, the *prescribed notice* shall be deemed to be the claim.

Within 56 days of receipt of the *prescribed notice* the *Superintendent* shall assess the claim and notify the parties in writing of the decision. Unless a party within a further 28 days of such notification gives a notice of *dispute* under subclause 42.1 which includes such decision, the *Superintendent* shall certify the amount of that assessment to be moneys then due and payable.

## 42 Dispute resolution

### 42.1 Notice of dispute

If a difference or dispute (together called a '*dispute*') between the parties arises in connection with the subject matter of the *Contract*, including a *dispute* concerning:

- (a) a *Superintendent's direction*; or
  - (b) a claim:
    - (a) in tort;
    - (b) under statute;
    - (c) for restitution based on unjust enrichment or other quantum meruit; or
    - (d) for rectification or frustration,
- or like claim available under the law governing the *Contract*,

then either party shall, by hand or by registered post, give the other and the *Superintendent* a written notice of *dispute* adequately identifying and providing details of the *dispute*.

Notwithstanding the existence of a *dispute*, the parties shall, subject to clauses 39 and 40 and subclause 42.4, continue to perform the *Contract*.

### 42.2 Conference

Within 14 days after receiving a notice of *dispute*, the parties shall confer at least once to resolve the *dispute* or to agree on methods of doing so. At every such conference each party shall be represented by a person having authority to agree to such resolution or methods. All aspects of every such conference except the fact of occurrence shall be privileged.

If the *dispute* has not been resolved within 28 days of service of the notice of *dispute*, that *dispute* shall be and is hereby referred to arbitration.

### 42.3 Expert Determination

If within a further 14 days the parties have not agreed upon an expert, the expert shall be nominated by the person in *Item 37(a)*. The expert determination shall be conducted in accordance with the rules in *Item 37(b)*.

#### 42.4 Summary relief

Nothing herein shall prejudice the right of a party to institute proceedings to enforce payment due under the *Contract* or to seek injunctive or urgent declaratory relief.

#### 43 Waiver of conditions

Except as provided at law or in equity or elsewhere in the *Contract*, none of the terms of the *Contract* shall be varied, waived, discharged or released, except with the prior written consent of the parties.

#### 44 Shared cost savings

The *Contract* includes a preliminary document entitled '*Cost Plan for the design and construction of the Tennyson Reach Parkland*' (**Cost Plan**) dated 30 June 2011.

During the course of the design, the Contractor shall produce 3 cost estimates that are based on the Cost Plan but amended to reflect the latest design.

Upon completion of the design, the parties shall agree or the Superintendent shall determine cost estimate (**Budgeted Amount**) pursuant to clause 9.7 that sets out the contract sum comprising all costs to carry out the Works, on a subcontractor and supplier basis, and shall include all of the Contractor's costs but shall not include profit.

Within 30 days of the date of practical completion for each separable portion, the Contractor must provide to the *Principal* the following Documents:

- (a) A copy of each subcontract and supply agreement;
- (b) A spreadsheet that sets out the amount shown in the **Budgeted Amount** and the actual subcontract or supply agreement amount (**Actual Amount**) for each subcontractor and supplier.
- (c) A calculation of the cost saving being the sum of the difference of the Budgeted Amount and the Actual Amount for each supplier and subcontractor that carried out any part of the Works.

The *Principal* must notify the Contractor within 28 days of receipt the Documents referred to above if it disagrees with the Contractor's calculation of the cost saving and provide its reasons, provided however that such time frame may be extended by the Principal by a further 28 business days to allow for requests for information (RFI's") and time to consider clarifications of responses to RFI's, such further 28 business days to commence from the date of receipt by the Principal of a full and detailed response by the Contractor to the RFI's.

If either party disagrees with the calculation of the cost savings, either party may serve on the other party a notice of dispute pursuant to clause 42.1.

The Contractor must pay the *Principal* 50% of the cost saving within 15 Business Days of receipt of the *Principal's* agreement of the cost savings or within 15 Business Days of a decision made by Expert Determination under clause 42.3.

#### 45 GST

Words or expressions used in this clause which are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cwth) (GST Act), have the same meaning in this clause.

Any consideration to be paid or provided for a supply made under or in connection with this Contract, does not include an amount on account of GST.

Despite any other provision in this Contract, if a party (Supplier) makes a supply under or in connection with this Contract on which GST is imposed:

- (a) the consideration payable or to be provided for that supply under this Contract but for the application of this clause (GST exclusive consideration) is increased by, and the recipient of the supply (Recipient) must also pay to the Supplier, an amount equal to the GST payable by the Supplier on that supply in accordance with the GST Act; and
- (b) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.
- (c) If a payment to a party under this Contract is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.
- (d) The Supplier will provide a tax invoice to the Recipient which complies with the GST Act.
- (e) The clause will not apply where any amount payable or other consideration to be provided under this Contract is expressly stated to be inclusive of GST.

#### **46 Entire Agreement**

This Contract contains everything that the parties have agreed on in relation to the Works. No party can rely on an earlier document, or on anything said or done by another party (or by a director, officer, agent or employee of that party) before this Contract was executed.

#### **47 Maintenance**

The Contractor shall fully maintain the Works at its sole cost and expense for a period of twelve (12) months for each stage of the Works commencing from the date of practical completion of each of the stages. The standard of care shall be minimum wear and tear.

#### **48 Access to Records**

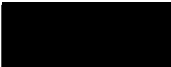
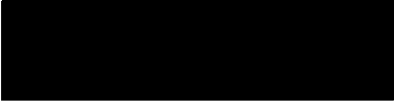

The Contractor must to permit and allow full access to its financial and project accounts relating to the Works for the purposes of audit and verification of payment claims. This access includes but is not limited to the taking of financial records, access to electronic records, and full disclosure.

**ANNEXURE to the Australian Standard  
General Conditions of Contract for  
Design and Construct**

# Part A

This Annexure shall be completed and issued as part of the tender documents and, subject to any amendments to be incorporated into the *Contract*, is to be attached to the General Conditions of Contract and shall be read as part of the *Contract*.

*Item*

- 1 *Principal*  
(clause 1) Brisbane City Council  
ABN 72 002 765 795
  
- 2 *Principal's address* [TBA]  
Phone ..... Fax .....
  
- 3 *Contractor*  
(clause 1) Mirvac Constructions (Qld) Pty Limited  
ABN 88 088 536 476
  
- 4 *Contractor's address* Level 2, 164 Grey Street South Bank QLD 4101  
Phone [TBA] Fax [TBA]
  
- 5 *Superintendent*  
(clause 1)   
ACN (N/A) ..... ABN (N/A).....
  
- 6 *Superintendent's address* Brisbane City Council, Level 3, 171 George St, Brisbane  
Phone   
Email: 
  
- † 7 (a) *Date for practical completion* (Refer to details in separable Part A)  
(clause 1)  
  
OR  
(b) *Period of time for practical completion* (Refer to details in separable Part A)  
(clause 1)
  
- 8 *Governing law*  
(clause 1(h)) .....  
If nothing stated, that of the jurisdiction where the *site* is located

† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A  
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9	(a) Currency (clause 1(g))	..... If nothing stated, that of the jurisdiction where the <i>site</i> is located
	(b) Place for payments (clause 1(g))	..... If nothing stated, the <i>Principal's</i> address
	(c) Place of business of bank (clause 1(d))	..... If nothing stated, the place nearest to where the <i>site</i> is located
10	The <i>Principal's project requirements</i> are described in the following documents (clause 1)	1 <i>Preliminary design</i> (if included in <i>Item 11</i> )  2 Cost Plan for the design and construction of the Tennyson Reach Parkland ( <b>Cost Plan</b> ) dated 30 June 2011 that is based on the PPRs, which are attached as Schedule 2 to Part A
11	<i>Preliminary design</i> (clause 1)	(a) A <i>preliminary design</i> * is included <del>* is not included</del> in the <i>Principal's project requirements</i> . If neither deleted, a <i>preliminary design</i> is not included  (b) The <i>preliminary design</i> documents, which are attached as Schedule 1 to Part A, are:  1 Drawing entitled ' <i>Masterplan</i> ', referenced 110406 and dated 17/05/11  2 Specification entitled ' <i>Schematic Design Package</i> ', referenced 110406, dated 5/12/11  3 Scope of works  4 Terms of Reference
12	Quantities in <i>schedule of rates</i> , limits of accuracy (subclause 2.5)	Upper Limit  Lower Limit
13	<i>Provisional sum</i> , percentage for overheads, preliminaries and attendance (clause 3)	10 %
† 14	<i>Contractor's security</i>  (a) Form (clause 5)	No security or retention is required under this contract

---

\* Delete one

† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A

- (b) Amount or maximum percentage of *contract sum* (clause 5) NIL  
If nothing stated, 5% of the *contract sum*
- (c) If retention moneys, percentage of each *progress certificate* (clause 5 and subclause 37.2) NIL % , until the limit in *Item 14(b)*  
If nothing stated, 10% , until the limit in *Item 14(b)*
- (d) Time for provision (except for retention moneys) (clause 5) within .....days after *date of acceptance of tender*  
If nothing stated, 28 days
- (e) Additional *security* for unfixed plant and materials (subclauses 5.4 and 37.3) .....  
\$ .....
- (f) *Contractor's security* upon *certificate of practical completion* is reduced by (subclause 5.4) .....% of amount held  
If nothing stated, 50% of amount held

† 15 *Principal's security*

- (a) Form (clause 5) No security or retention is required under this Contract
- (b) Amount or maximum percentage of *contract sum* (clause 5) .....  
If nothing stated, nil
- (c) Time for provision (clause 5) within .....days after *date of acceptance of tender*  
If nothing stated, 28 days
- (d) *Principal's security* upon *certificate of practical completion* is reduced by (subclause 5.4) .....% of amount held  
If nothing stated, 50% of amount held

16 *Principal-supplied documents* (subclause 8.2)

	Document	No. of copies
1	<i>Principal's project requirements</i>	.....
2	.....	.....
3	.....	.....
4	.....	.....
5	.....	.....
		If nothing stated, 5 copies

17 Documents, numbers of copies, and the times or stages at which they are to be supplied by the *Contractor* (subclause 8.3)

Document	No. of copies	Time/stage
----------	---------------	------------

1	.....	.....	.....
2	.....	.....	.....
3	.....	.....	.....
4	.....	.....	.....
5	.....	.....	.....

18 Time for *Superintendent's direction* about documents (subclause 8.3) If nothing stated, 14 days

19 Subcontracting (subclause 9.2)	<i>Work by consultants</i>	<i>Work by others</i>
	.....	.....
	.....	.....
	.....	.....
	.....	.....

20 Novation (subclause 9.4)	<i>Subcontractor or selected subcontractor, as the case may be</i>	<i>Particular part of the preliminary design or selected subcontract work, as the case may be</i>
	.....	.....
	.....	.....
	.....	.....
	.....	.....
	.....	.....
	.....	.....
	.....	.....
	.....	.....
	.....	.....

21 *Intellectual property rights* granted to the *Principal*, the Alternative applying (subclause 10.2) If nothing stated, Alternative 1 applies

22 <i>Legislative requirements</i> (a) Those excepted (subclause 11.1)	.....	.....
	.....	.....
	.....	.....

(b) Identified *WUC*  
(subclause 11.2(a)(iii))

.....  
.....

23 Insurance of *the Works*  
(clause 16A)

(a) Alternative applying

.....  
If nothing stated, Alternative 1 applies

If Alternative 1 applies

(b) Provision for demolition and  
removal of debris

.....  
..... \$ .....

OR

..... % of the *contract sum*

(c) Provision for *consultants' fees* and  
*Principal's consultants' fees*

.....  
..... \$ .....

OR

..... % of the *contract sum*

(d) Value of materials or things to be  
supplied by the *Principal*

.....  
..... \$ .....

(e) Additional amount or percentage

.....  
..... \$ .....

OR

..... % of the total of (a) to (d) in clause 16A

24 Professional indemnity insurance  
(clause 16B and subclause 9.2(d))

(a) Levels of cover of *Contractor's*  
professional indemnity insurance  
shall be not less than

.....  
..... \$ .....

If nothing stated, \$5 000 000

(b) Period for which *Contractor's*  
professional indemnity insurance  
shall be maintained after issue of  
the *final certificate*

.....  
If nothing stated, 6 years

(c) Categories of *consultants* and  
levels of cover of *consultants'*  
professional indemnity  
insurance

Category	Levels of cover
.....	\$ .....
.....	\$ .....
.....	\$ .....



			\$ .....
			If nothing stated, \$1 000 000
	(d) Period for which each <i>consultant's</i> professional indemnity insurance shall be maintained after issue of the <i>final certificate</i>	..... If nothing stated, 6 years	
25	Public liability insurance (clause 17)		
	(a) Alternative applying	..... If nothing stated, Alternative 1 applies	
	If Alternative 1 applies		
	(b) Amount per occurrence shall be not less than	..... \$ .....	
		If nothing stated, \$10 000 000	
26	(a) Time for giving access (subclause 24.1)	within ..... days of <i>date of acceptance of tender</i> If nothing stated, 14 days	
	(b) Time for giving possession (subclause 24.1)	within ..... days of <i>date of acceptance of tender</i> If nothing stated, 14 days	
27	The information, materials, documents or instructions and the times by, or periods within which they are to be given to the <i>Contractor</i> (clause 32)	Documents or instructions	Times/Periods
		1 .....	.....
		2 .....	.....
		3 .....	.....
		4 .....	.....
		5 .....	.....
28	<i>Qualifying causes of delay</i> , being causes of delay for which <i>EOTs</i> will be granted (paragraph (b)(iii) of clause 1 and subclause 34.3)	..... ..... ..... .....	
† 29	Liquidated damages, rate (subclause 34.7)	\$Nil per day	

† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A

† 30 Bonus for early *practical completion*  
(subclause 34.8)

(a) Rate

.....  
..... per day \$ ..... per day

(b) Limit

.....  
..... \$ .....

OR

.....% of *contract sum*

If nothing stated, there is no waiver

† 31 Other *compensable causes*  
(paragraph (b) of clause 1 and  
subclause 34.9)

Acts or omissions of the Principal that cause a delay to the Works

This compensable cause only relates to the Brisbane City Council  
(BCC) acting as the Principal under this contract and not as a  
statutory authority.

In other words if BCC caused any delay (excluding a delay arising  
out of carrying out BCC carrying out its statutory duty) it will be  
liable to pay delay damages pursuant to clause 34.9.

Alternatively, if BCC caused a delay because of its failure to  
provide a response to a development application pursuant to the  
Sustainable Planning Act 2009, BCC will not be liable for delay  
damages suffered by the Contractor.

32 *Defects Liability period*  
(clause 35)

.....

If nothing stated, 12 months

33 Progress Claims  
(subclause 37.1)

The contract sum is that amount that is set out as the contract  
sum in the Cost Plan including as amended pursuant to clause  
9.8, 37 and 44.

(a) Times for progress claims

On the.....day each month for *WUC*

For work up to..... day of that month

OR

(b) Stages of WUC for progress claims

The Contractor may make a progress claim in accordance with clause 37 upon achieving the following milestone events.

The amounts set out alongside each of the milestones are estimates of the progress claims that will be made. Those amounts are subject to variation in accordance with clauses; 9.8, 36.1 and 44.

Stage I

Completion of the bulk earthworks	\$3,054,000.00
At practical completion	\$1,500,000.00
At expiry of defects liability period of Stage I	\$ 500,000.00

Stage II

Completion of the bulk earthworks	\$ 750,000.00
At practical completion	\$ 100,000.00
At expiry of defects liability period of Stage II	\$ 90,000.00

Stage III

At practical completion	\$ 5,000.00
At expiry of defects liability period of Stage III	\$ 1,000.00

All of the above amounts are stated exclusive of GST.

34 Unfixed plant and materials for which payment claims may be made (subclause 37.3) .....  
 .....  
 .....

35 Interest rate on overdue payments (subclause 37.5) .....% per annum  
 If nothing stated, 18% per annum

36 (a) Time for *Principal* to rectify inadequate access (subclause 39.7(a)(iii)) .....days  
 If nothing stated, 14 days

(b) Time for *Principal* to rectify inadequate possession (subclause 39.7(a)(iv)) .....days  
 If nothing stated, 14 days

37 Expert Determination  
(subclause 42.3)

(a) Person to nominate an expert

.....  
.....  
.....

A1

If no-one stated, the President of the Institute of Arbitrators & Mediators Australia

(b) Rules for expert determination

.....  
.....  
.....  
.....

If nothing stated:

(a) rules 5–18 of the Rules of The Institute of Arbitrators & Mediators Australia for the Conduct of Commercial Arbitrations;

OR

(b) if one or more of the parties are nationals of and habitually resident in, incorporated in, or where the central management and control is exercised in, different countries as between the parties, then the UNCITRAL Arbitration Rules shall apply and the appointing authority shall be the person provided in *Item 37(c)*

(c) Appointing Authority

A1

.....  
If no-one stated, the President of the Institute of Arbitrators & Mediators Australia

# Part A

## Separable Portions

- This section should be completed only if the *Contract* provides for *separable portions*.
- Complete separate pages for each *separable portion*, which should be numbered appropriately. Any balance of the *Works* should also be a *separable portion*.

<p><i>Separable portion</i> (clause 1)</p> <p>Description of <i>separable portion</i> (clause 1)</p>	<p>Stage I</p> <p>the area shown as Stage I on drawing entitled '<i>Masterplan</i>', referenced 110406 and dated 17/05/11</p>
<p><i>Item</i></p>	
<p>7 (a) <i>Date for practical completion</i> (clause 1)</p> <p>OR</p> <p>(b) <i>Period of time for practical completion</i> (clause 1)</p>	<p>57 weeks from the date that this contract is executed by both parties</p>
<p>14 <i>Contractor's security</i></p>	
<p>(a) <i>Form</i> (clause 5)</p> <p>(b) <i>Amount or maximum percentage value of this separable portion</i> (clause 5)</p> <p>(c) <i>If retention moneys, percentage of each progress certificate applicable to this separable portion</i> (clause 5 and subclause 37.2)</p> <p>(d) <i>Time for provision (except for retention moneys)</i> (clause 5)</p> <p>(e) <i>Additional security for unfixed plant and materials</i> (subclauses 5.4 and 37.3)</p> <p>(f) <i>Contractor's security upon certificate of practical completion is reduced by</i> (subclause 5.4)</p>	<p>The Contractor is not required to provide any security under this Contract</p> <p>Nil % ..... If nothing stated, 5% of value of this separable portion</p> <p>.....%, until the limit in <i>Item 14(b)</i> If nothing stated, 10%, until the limit in <i>Item 14(b)</i></p> <p>within ..... days after <i>date of acceptance of tender</i> If nothing stated, 28 days</p> <p>..... \$ .....</p> <p>.....% of amount held If nothing stated, 50% of amount held</p>

15 *Principal's security*

- (a) Form (clause 5) The Principal is not required to provide any security under this Contract
- (b) Amount or maximum percentage of value of this *separable portion* (clause 5) .....  
If nothing stated, nil
- (c) Time for provision (clause 5) within .....days after *date of acceptance of tender*  
If nothing stated, 28 days
- (d) *Principal's security upon certificate of practical completion* is reduced by (subclause 5.4) .....% of amount held  
If nothing stated, 50% of amount held

29 Liquidated damages, rate (subclause 34.7) \$ Nil per day

30 Bonus for early *practical completion* (subclause 34.8) \$ Nil

- (a) Rate .....  
..... per day \$ ..... per day
- (b) Limit .....  
..... \$ .....

OR

.....% of value of this *separable portion*  
If nothing stated, there is no waiver

31 Other *compensable causes* (paragraph (b) of clause 1 and subclause 34.9)

Acts or omissions of the Principal that cause a delay to the Works  
This compensable cause only relates to the Brisbane City Council (BCC) acting as the Principal under this contract and not as a statutory authority.

In other words if BCC caused any delay (excluding a delay arising out of carrying out BCC carrying out its statutory duty) it will be liable to pay delay damages pursuant to clause 34.9.

Alternatively, if BCC caused a delay because of its failure to provide a response to a development application pursuant to the Sustainable Planning Act 2009, BCC will not be liable for delay damages suffered by the Contractor.

# Part A

## Separable Portions

- This section should be completed only if the *Contract* provides for *separable portions*.
- Complete separate pages for each *separable portion*, which should be numbered appropriately. Any balance of the *Works* should also be a *separable portion*.

*Separable portion*  
(clause 1)

Stage II

Description of *separable portion*  
(clause 1)

the area shown as Stage II on drawing entitled '*Masterplan*', referenced 110406 and dated 17/05/11

*Item*

7 (a) *Date for practical completion*  
(clause 1)

OR

(b) *Period of time for practical completion*  
(clause 1)

140 weeks from the date that this contract is executed by both parties

14 *Contractor's security*

(a) *Form*  
(clause 5)

The Contractor is not required to provide any security under this Contract

(b) *Amount or maximum percentage value of this separable portion*  
(clause 5)

Nil % .....  
If nothing stated, 5% of value of this separable portion

(c) *If retention moneys, percentage of each progress certificate applicable to this separable portion*  
(clause 5 and subclause 37.2)

.....%, until the limit in *Item 14(b)*  
If nothing stated, 10%, until the limit in *Item 14(b)*

(d) *Time for provision (except for retention moneys)*  
(clause 5)

within ..... days after *date of acceptance of tender*  
If nothing stated, 28 days

(e) *Additional security for unfixed plant and materials*  
(subclauses 5.4 and 37.3)

.....  
\$ .....

(f) *Contractor's security upon certificate of practical completion is reduced by*  
(subclause 5.4)

.....% of amount held  
If nothing stated, 50% of amount held

15 *Principal's security*

- (a) Form (clause 5) The Principal is not required to provide any security under this Contract
- (b) Amount or maximum percentage of value of this *separable portion* (clause 5) .....  
If nothing stated, nil
- (c) Time for provision (clause 5) within ..... days after *date of acceptance of tender*  
If nothing stated, 28 days
- (d) *Principal's security upon certificate of practical completion* is reduced by (subclause 5.4) ..... % of amount held  
If nothing stated, 50% of amount held

29 Liquidated damages, rate (subclause 34.7) \$ Nil per day

30 Bonus for early *practical completion* (subclause 34.8) \$ Nil

- (a) Rate .....  
..... per day \$..... per day
- (b) Limit .....  
..... \$.....

OR

.....% of value of this *separable portion*  
If nothing stated, there is no waiver

31 Other *compensable causes* (paragraph (b) of clause 1 and subclause 34.9)

Acts or omissions of the Principal that cause a delay to the Works  
This compensable cause only relates to the Brisbane City Council (BCC) acting as the Principal under this contract and not as a statutory authority.

In other words if BCC caused any delay (excluding a delay arising out of carrying out BCC carrying out its statutory duty) it will be liable to pay delay damages pursuant to clause 34.9.

Alternatively, if BCC caused a delay because of its failure to provide a response to a development application pursuant to the Sustainable Planning Act 2009, BCC will not be liable for delay damages suffered by the Contractor.

Special Condition:

If the Contractor fails achieve *practical completion* within 60 days of the amended date for practical completion for a Stage of the Works, the Principal may:

- (a) novate the subcontractors to the Principal and take over this Stage of the Works and the total site to complete the Works;



- (b) deduct, as appropriate, the costs for completion of the relevant portion of the Contract pertaining to this Stage; and
- (c) provide accommodation for the Sales Office at commercial rates until the parkland is complete.

# Part A

## Separable Portions

- This section should be completed only if the *Contract* provides for *separable portions*.
- Complete separate pages for each *separable portion*, which should be numbered appropriately. Any balance of the *Works* should also be a *separable portion*.

*Separable portion*  
(clause 1)

Stage III

Description of *separable portion*  
(clause 1)

the area shown as Stage III on drawing entitled 'Masterplan', referenced 110406 and dated 17/05/11

*Item*

7 (a) *Date for practical completion*  
(clause 1)

OR

(b) *Period of time for practical completion*  
(clause 1)

57 weeks from the date that this contract is executed by both parties

14 *Contractor's security*

(a) *Form*  
(clause 5)

The Contractor is not required to provide any security under this Contract

(b) *Amount or maximum percentage value of this separable portion*  
(clause 5)

Nil % .....  
If nothing stated, 5% of value of this separable portion

(c) *If retention moneys, percentage of each progress certificate applicable to this separable portion*  
(clause 5 and subclause 37.2)

.....%, until the limit in *Item 14(b)*  
If nothing stated, 10%, until the limit in *Item 14(b)*

(d) *Time for provision (except for retention moneys)*  
(clause 5)

within ..... days after *date of acceptance of tender*  
If nothing stated, 28 days

(e) *Additional security for unfixed plant and materials*  
(subclauses 5.4 and 37.3)

.....  
\$ .....

(f) *Contractor's security upon certificate of practical completion is reduced by*  
(subclause 5.4)

.....% of amount held  
If nothing stated, 50% of amount held

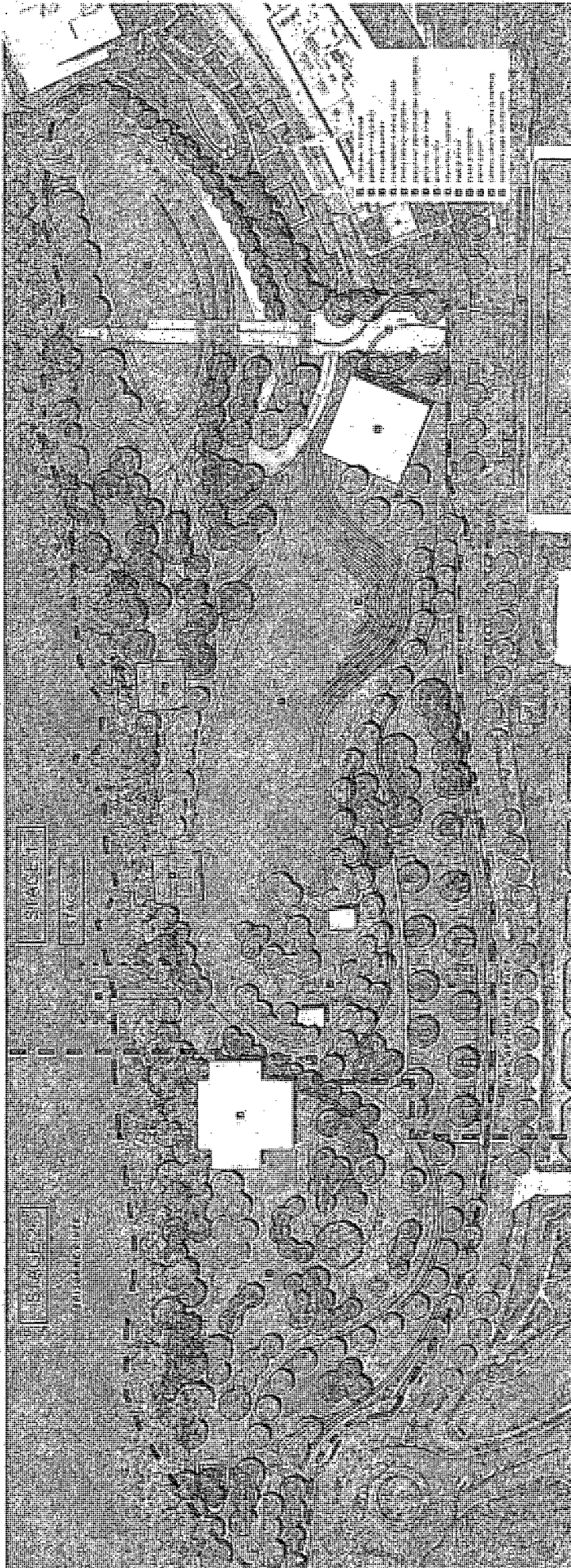
15	<i>Principal's security</i>	
	(a) Form (clause 5)	The Principal is not required to provide any security under this Contract
	(b) Amount or maximum percentage of value of this <i>separable portion</i> (clause 5)	..... If nothing stated, nil
	(c) Time for provision (clause 5)	within ..... days after <i>date of acceptance of tender</i> If nothing stated, 28 days
	(d) <i>Principal's security upon certificate of practical completion</i> is reduced by (subclause 5.4)	.....% of amount held If nothing stated, 50% of amount held
29	Liquidated damages, rate (subclause 34.7)	\$ Nil per day
30	Bonus for early <i>practical completion</i> (subclause 34.8)	\$ Nil
	(a) Rate	..... ..... per day \$ ..... per day
	(b) Limit	..... ..... \$ .....
		OR .....% of value of this <i>separable portion</i> If nothing stated, there is no waiver
31	Other <i>compensable causes</i> (paragraph (b) of clause 1 and subclause 34.9)	Acts or omissions of the Principal that cause a delay to the Works  This compensable cause only relates to the Brisbane City Council (BCC) acting as the Principal under this contract and not as a statutory authority.  In other words if BCC caused any delay (excluding a delay arising out of carrying out BCC carrying out its statutory duty) it will be liable to pay delay damages pursuant to clause 34.9. Alternatively, if BCC caused a delay because of its failure to provide a response to a development application pursuant to the Sustainable Planning Act 2009, BCC will not be liable for delay damages suffered by the Contractor.

**ANNEXURE to the Australian Standard  
General Conditions of Contract for  
Design and Construct**

# Schedule 1 to Part A

This Annexure shall be completed and issued as part of the tender documents and, subject to any amendments to be incorporated into the *Contract*, is to be attached to the General Conditions of Contract and shall be read as part of the *Contract*.

## Preliminary Design



# TENNYSON RIVER PARK

RETURN BRIEF

MIRVAC

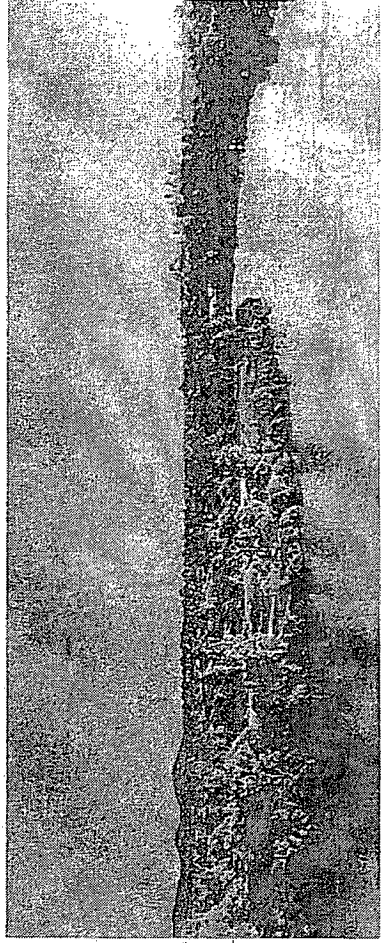


TABLE OF CONTENTS

02 INTRODUCTION

03 VISION

04 DESIGN PRINCIPLES

06 KEY DESIGN ELEMENTS

08 KEY PRECINCTS

- (CHARACTER IMAGES & MATERIALS PALETTE)
  - PLAZA PRECINCT
  - AMPHITHEATRE PRECINCT
  - SCULPTURE PRECINCT
  - KICK & THROW PLAYGROUND PRECINCT
  - CULTURAL HERITAGE PRECINCT
  - COMMUNITY FACILITIES PRECINCT

## INTRODUCTION

The reclamation and revitalization of Brisbane's river front has seen the emergence of a number of high quality public open spaces reinforcing the character and livability of our city. New park designs along the river corridor are embracing the opportunity for the public to engage with the river edge promoting the creation of a wholesome, just and rich quality of urban life.

The Tennyson River Park site, formerly the site of the now demolished Tennyson power station, is located on the southern bank of the Brisbane River opposite the state tennis centre 8km from the Brisbane CBD.

The subject land provides an excellent opportunity to transform a post industrial site into a dynamic yet sustainable, year round Public Park, animated by a wide variety of uses and multifunctional spaces.

The design for the park should not only achieve core planning and design principles identified within the Brisbane City Council guidelines but exceed the expectations and design standards for public open space creating a park of exceptional distinction within the City and the State.



## VISION

The design vision for Tennyson River Park is to revitalise this part of the riverfront to establish a positive, meaningful relationship with the river and to transform the land into a marvellous public destination with vibrant public and cultural spaces capable of providing a variety of experiences and amenities. At the same time the park must provide a highly local environment featuring dynamic, sustainable spaces with strong connections to adjacent communities, landuses and the environment.

COMMUNITY NEEDS AND CULTURAL VALUES

- Provide a variety of recreational opportunities and facilities that respond to the needs and demographics of the surrounding community while maintaining a flexibility that caters for large scale festivals and events.
- Understand the provisions and future planning of surrounding park facilities and avoid the unnecessary facility duplication.
- Integrate elements associated with the cultural heritage of the site and provide opportunities for these to be interpreted by the park users.
- Ensure recreational facilities are inclusive and engaging for a broad range of age groups and abilities.

CIRCULATION AND CONNECTION

- Provide a legible circulation network that clearly identifies entry nodes, directional signage, and recreational features of the park encouraging easy access and orientation for park visitors.
- Accommodate a hierarchy of pedestrian and bicycle pathways within the park that provide a variety of experiences and engage with the spaces and the river at differing levels.
- Provide safe connections to the park from the surrounding community linking to transport nodes, car parks, and other surrounding open space networks.
- Ensure that the grades associated with the pedestrian circulation into and throughout the park are safe and accessible for all users.

DESIGN PRINCIPLES

CHARACTER AND VISUAL AMENITY

- Reinforce and complement the existing park character and create a synergy between the existing and the new Tennyson River Park.
- Embrace the location of the site adjacent the Queensland Tennis centre and accommodate the potential opportunities for exposure and use during tennis events.
- Protect and promote the visual connections to the river and the riparian edge from numerous vantage points surrounding and within the park.
- Integrate the existing vegetation including the mangroves along the river edge into the park design and landscape character.

CHARACTER AND VISUAL AMENITY

- Incorporate CPTED (Crime Prevention through Environmental Design) principles into the park design to minimise site vandalism and unintended uses of the park.
- Integrate shelter from the sun and weather through the provision of park structures, playground shade sails and shade tree planting.
- Structure the layout of the park so adjacent uses are complimentary and do not conflict creating hazardous situations.

SUSTAINABILITY

- Maximise the use of recycled and recyclable materials within the design of the park finishes and park elements.
- Reduce the levels of energy consumption and make greater use of low impact renewable energy sources.
- Improve water quality by integrating WSUD design principles into the park landscape and harvest water from proposed structures for reuse on site.
- Protect and reinforce the environmental integrity within the riparian edge of the park providing habitat and niche environments for a diversity of riparian flora and fauna.
- Ensure that design elements within the park are robust and do not create excessive maintenance and demand on resources.
- Reinforce the community through reference to past community consultation, integration of local historical reflections, and the creation of public spaces that foster social interaction.

DESIGN PRINCIPLES

### PARK PREPARATION WORKS

- The majority of the park is currently cleared of all vegetation as part of the original demolition of the Tennyson Power station leaving a relatively blank canvas for the park landscape design. Some riverfront vegetation and mangroves have been retained and should be integrated into the final park design.
- A significant cut exists of approximately 4-5 meters along the southern edge of the site along the King Arthur Terrace road frontage. Filling will need to be undertaken to address level changes and accessibility to the lower spaces within the river park.
- It is anticipated that a number of retaining structures will be required to establish levels within the park defining spaces and allowing transitions between levels on approach to the river edge.
- The site should be drained incorporating the principles of water sensitive urban design, polishing the stormwater as it disperses off roads, car parking and hard surfaces draining towards the Brisbane River.
- Technical advice should be sought to develop a plan for the removal and maintenance of weeds within the riparian zone and the remnant river vegetation.
- Ensure that elements of the remaining powerstation substructures are integrated into the park design in an unobtrusive and safe way.

### DESIGN ELEMENTS

## PARK LANDSCAPE WORKS

- Landscape garden bed areas should be used only to reinforce retained vegetation areas, buffer levels changes and retaining walls, to screen undesirable site features, and to define landscape spaces within the park.
- Planting selected for the parkland should be predominantly native species with some cultural planting reinforcing the subtropical character of Brisbane's landscape.
- All garden edges separating turf and garden areas will be defined by a continuous concrete edging.
- Tree planting should be selected to achieve a quality outcome reinforcing the landscape character, cultural heritage, natural habitat, and various micro-climatic environments throughout the site.

## INFRASTRUCTURE REQUIREMENTS

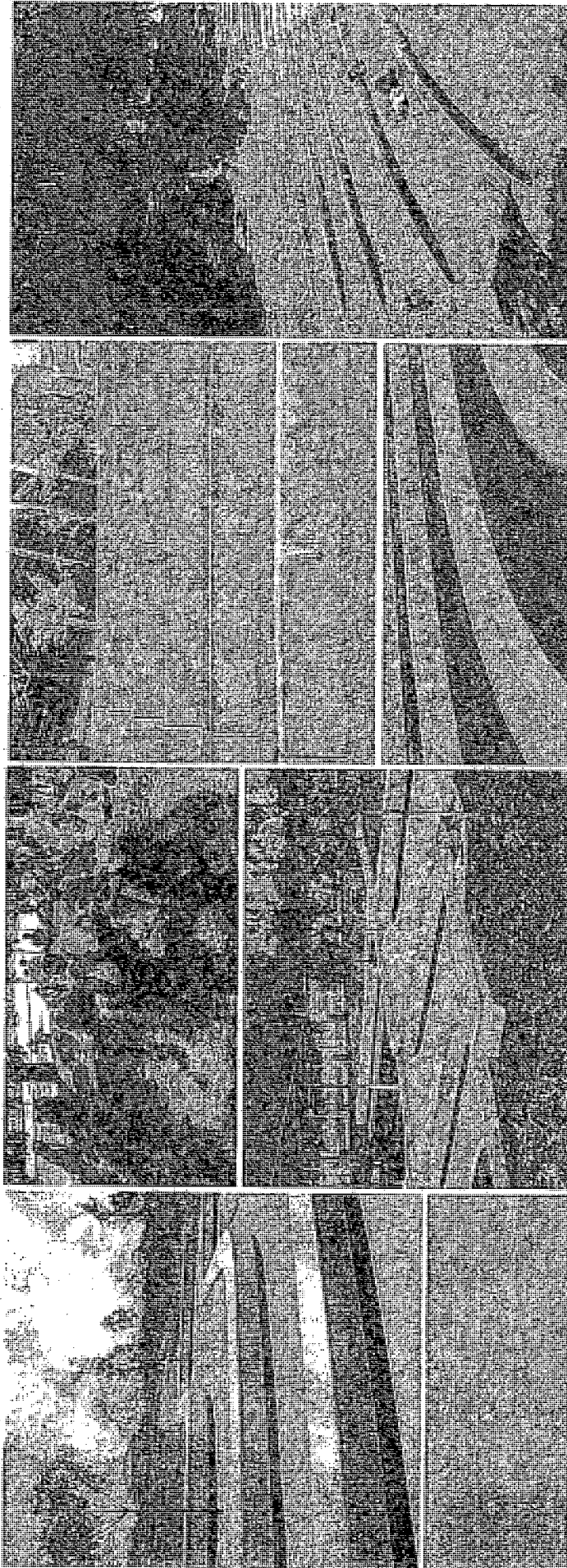
- Defined vehicular maintenance and emergency access points should be provided at strategic locations along road frontages or car parks linking into to the park.
- Pathways, bikeways, and pavement areas within the park should be constructed to suitable dimensions to reflect usage, and integrate sustainable finishes that are easily replicated and reproduced if required.
- Car parking should be provided to accommodate for the anticipated daily usage of the park and link into pedestrian networks connecting the park.
- Bollard barriers should be provided along road frontages to restrict vehicular access into the park.
- A clear language of signage should be developed for the park that enhances the identity, legibility and circulation of the Tennyson River Park Precinct.
- Utilities to accommodate potable water supply, electrical connections, public lighting, and sewage and drainage connections should be carefully planned for the parkland.
- A playground design should be developed to provide engaging interactive play environments which encourage linkages to other spaces within the park.
- Careful consideration and design should be afforded to utility elements with a goal to reinforcing the character of the park through a complimentary language of furniture, rubbish bins, barbeques, signage, and shelters.
- The existing building which will be retained within the park should be redesigned to take on multiple functions that may facilitate canoe club storage area, and public function rooms and meeting space.
- Public art should be integrated throughout the site as a reflection of the cultural heritage of the site and as a means of engaging the local community.
- Careful consideration should be given to the future maintenance of the park as a key component of the parks sustainability.

## DESIGN ELEMENTS



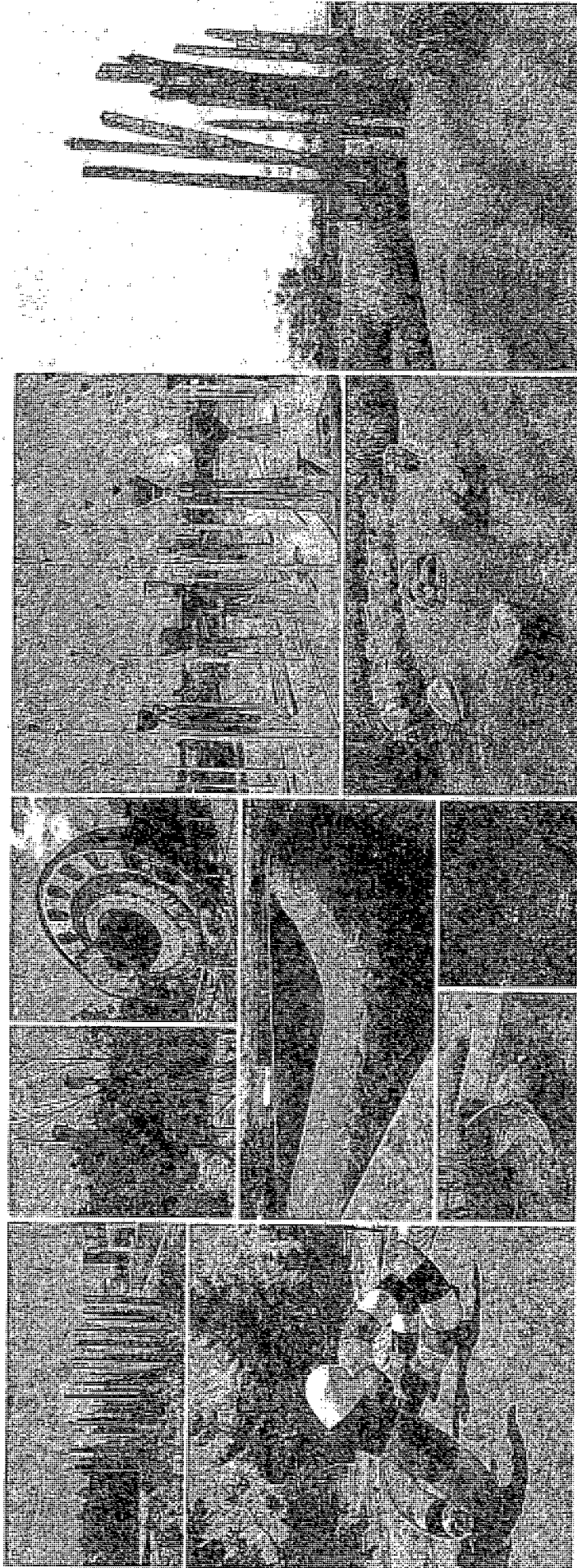
PLAZA PRECINCT

110406 | 22/06/11 | 5002  
PROJECT TERNYSON RIVER PARK - RETURN BRIEF | CLIENT MIRVAC



AMPHITHEATRE PRECINCT

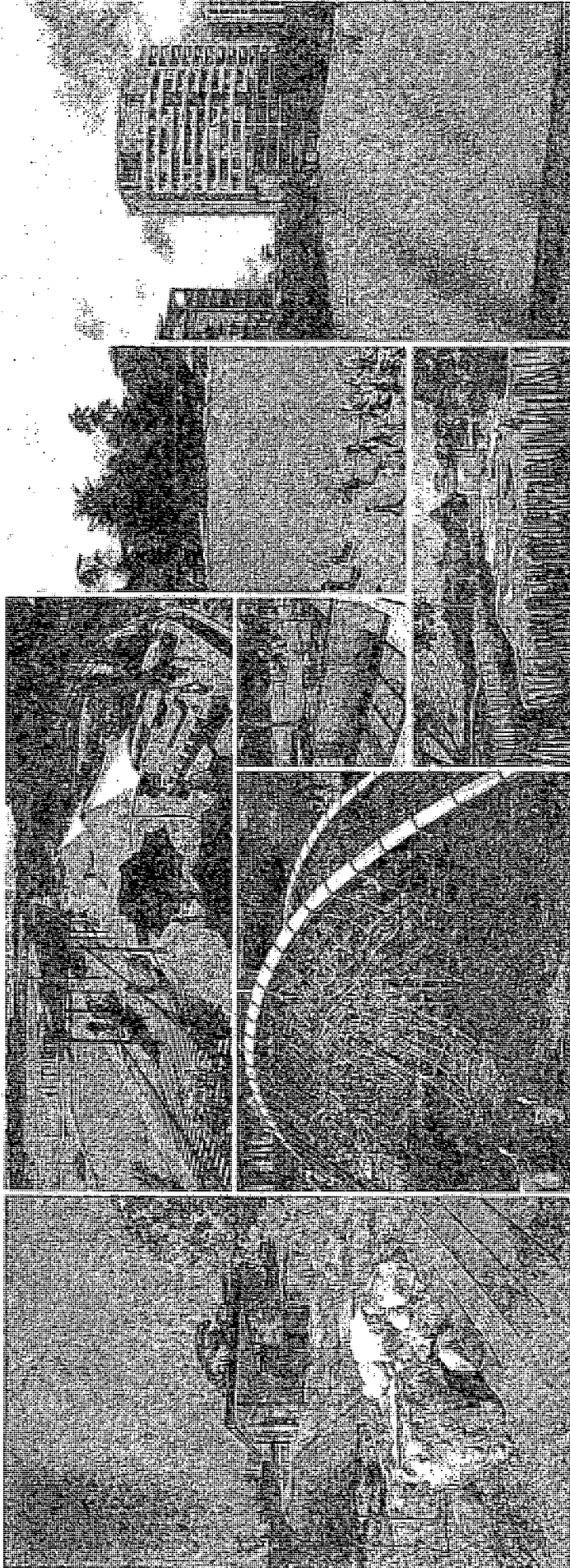
110906 | 22/06/11 | 5002  
PROJECT TERNYSON RIVER PARK - RETURN BRIEF | CLIENT MIRVAC



LANDSCAPE SCULPTURE PRECINCT

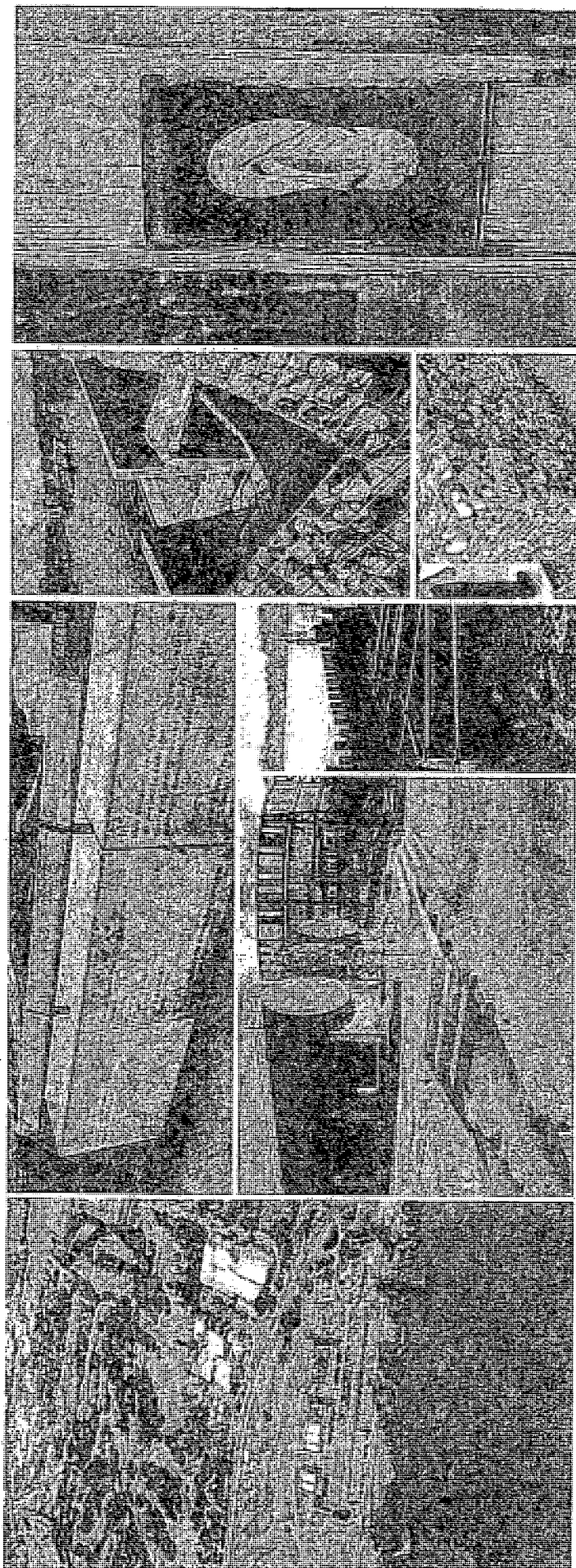
PROJECT TENNYSON RIVER PARK - RETURN BRIEF - CLIENT MIRVAC  
11/04/06, 12/27/06/FAI SD02





KICK THROW, PLAYGROUND & PICNIC PRECINCT

110406 | 22/05/11 | 5002  
PROJECT TERRAYSON RIVER PARK - RETURN BRIEF | CLIENT MIRVAC



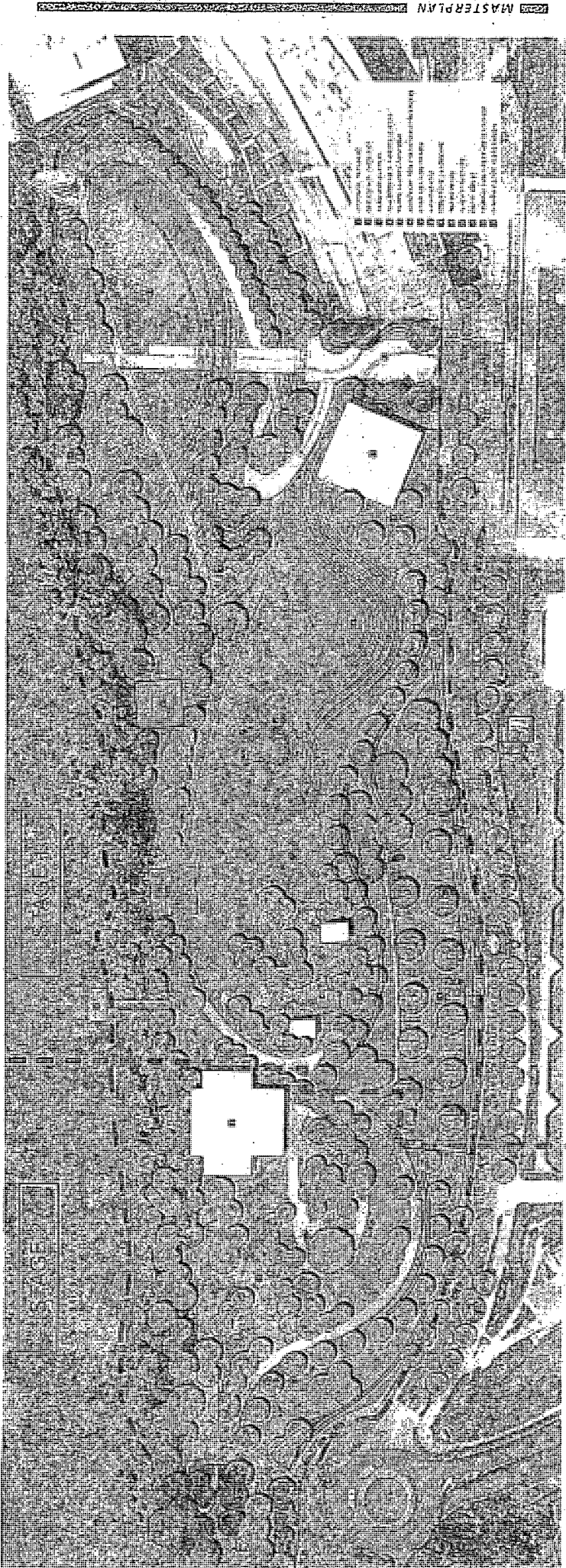
CULTURAL HERITAGE PRECINCT

PROJECT TENNYSON RIVER PARK - RETURN BRIEF | CLIENT MHRVAC  
110406, J. 22/06/11 | SD02



COMMUNITY FACILITIES PRECINCT

110406 12/26/11 SD03  
PROJECT: IRBYSON RIVER PARK, RICHMOND BRISTOL COUNTY, VIRGINIA



## Tennyson Reach Parkland- Schematic Design

### SCOPE OF WORKS

#### Preparation & Bulk Excavation

- Site preparation including clearing of vegetation, stripping of topsoil and removing from site
- Demolition and removal of existing vehicular access road crossing through the site
- Excavate to correct levels and profiles
- Place approx. 11,200m<sup>3</sup> of fill materials, imported to site once subgrades have been excavated, tested, surveyed and approved. All fill materials will be compacted, tested and verified

#### Existing Service Pits & Channels

- Design and construct suspended slab system over existing in ground structures to withstand the placement of imported materials above
- Demolish existing 15m<sup>3</sup> blockwall and remove from site
- Remove existing chain wire fencing

#### Community Building (Existing Mirvac Sales Office)

- Relocate existing building within 20m including structural certification but not limited to:
  - Relocation of services & rainwater tank
  - Raise building height 500mm
  - Modifications to existing staircase
  - Reconfigure access ramp
  - Replace existing timber cladding with face brick
- Retain & Make-good Landscaping & Carpark
  - Make-good existing driveway & carpark
  - Make-good existing landscaping pathways

#### Create canoe storage to underfloor area:

- Internal demolition and alteration of existing structure
- Design and Construct slab on ground, 200mm thick
- Horizontal timber batten screen to under floor area
- Canoe storage 6m by 8m
- Pavement to forecourt area

#### Canoe launching pontoon

- Design and construct canoe launching pontoon approx. 60m<sup>2</sup>

#### Power Station/ Pump House Structures

- Design and construct structural slab system over existing structures
- Stabilise existing structures
- Design and construct boardwalk over Pump Station (as per master plan)

#### Playground

- Playground Equipment - \$250,000 Allowance
- Rubber (500sqm) & sand (800sqm) softfall to playground
- Shade sails to playground
- Concrete seating wall – 185m

#### Amphitheatre

- Concrete terrace seating wall- 435sqm

#### Public Plaza

- Pavement area- 1450sqm
- Cube Arbour structure- \$340,000 Allowance

#### Driveway & Carpark

- Sealed bitumen driveway & carpark- 47 spaces
- Linemarking
- Disabled parking provisions

#### Pathways & Ramp

- Remove existing temporary PWD ramp & balustrade at Public plaza
- Construct pathways & ramps as shown on masterplan (approx 2800m<sup>2</sup>)
- Tactile ground surface indicators

Gabion Retaining Walls- (max 1000mm high) - 424m

3 Park Shelters (approx 5m x 7m)

#### Toilet Block

- Proprietary toilet facilities

### Art & Signage

- Public Art- \$60,000 allowance
- Interpretative Signage- \$10,000 allowance
- Feature & Directional Signage- \$45,000 allowance

### Furniture

- 6 Wheelie Bin Enclosures
- 15 Park Seats
- 390 Timber Bollards
- 10 Removable bollards
- 60 Feature Bollards
- 2 Lock Rails
- Bike Racks for 20 bikes
- 4 Drinking fountains including connection
- 8 Picnic benches

### Services

- Site Water connection
- Stormwater Gully pits
- Connection to water mains
- 25 Post mounted lights
- 45 Bollard lights
- Shelter lights as required
- 4 BCC Hose Cocks

### Landscaping

- 780m2 concrete garden edge
- 450m2 compacted decomposed granite
- 11,000m2 Turf including topsoil
- 7,000m2 Topsoil to garden beds
- 7,000m2 Bark mulch to garden beds
- 40x Ex ground Trees
- 65x 200L Advance tree
- 60x 100L Tree/Advanced Shrub
- 150x 45L Tree/ Advanced Shrub
- Revegetation to riparian edge
- Biofilter and stormwater garden

Establishment

- 12 weeks establishment
- 52 weeks maintenance

Mirvac Project Management



## Schedule 1 to Part A

# Tennyson Reach Parkland

---

### SCOPE OF WORKS

#### 1) Preparation & Bulk Excavation

- Site preparation including the clearing of vegetation, stripping of topsoil and removing from the site
- Demolition and removal of existing vehicular access road crossing through the site
- Excavate to correct levels and profiles
- Place approximately 11,200m<sup>3</sup> of fill materials, imported to site after subgrades have been excavated, tested, surveyed and approved
- All fill materials will be compacted, tested and verified

#### 2) Existing Service Pits & Channels

- Design and construct suspended slab over existing in ground structures to withstand the placement of imported materials above
- Demolish an existing 15m<sup>3</sup> blockwall and remove from the site
- Remove the existing chain wire fencing

#### 3) Community Building (Existing Mirvac Sales Office)

- Relocate existing building within 20m including structural certification but not limited to:
  - Relocation of services & rainwater tank
  - Raise building height 500mm
  - Modifications to existing staircase
  - Reconfigure access ramp
  - Replace existing timber cladding with face brick
- Retain & Make-good Landscaping & Carpark
  - Make-good existing driveway & carpark
  - Make-good existing landscaping pathways

#### 4) Create canoe storage to underfloor area:

- Internal demolition and alteration of existing structure
- Design and Construct slab on ground, 200mm thick
- Horizontal timber batten screen to under floor area
- Canoe storage 6m by 8m
- Pavement to forecourt area

#### 5) Canoe launching pontoon

- Design and construct canoe launching pontoon approx. 60m<sup>2</sup>

**6) Power Station/ Pump House Structures**

- Design and construct structural slab system over existing structures
- Stabilise existing structures
- Design and construct boardwalk over Pump Station (as per master plan)

**7) Playground**

- Playground Equipment - \$250,000 Allowance
- Rubber (500sqm) & sand (800sqm) sofffall to playground
- Shade sails to playground
- Concrete seating wall – 185m

**8) Amphitheatre**

- Concrete terrace seating wall- 435sqm

**9) Public Plaza**

- Pavement area- 1450sqm
- Cube Arbour structure- \$340,000 Allowance

**10) Driveway & Carpark**

- Sealed bitumen driveway & carpark- 47 spaces
- Linemarking
- Disabled parking provisions

**11) Pathways & Ramp**

- Remove existing temporary PWD ramp & balustrade at Public plaza
- Construct pathways & ramps as shown on masterplan (approx 2800m<sup>2</sup>)
- Tactile ground surface indicators

**12) wRetaining walls**

- Gabion Retaining Walls- (max 1000mm high) - 424m

**13) Shelters**

- 3 Park Shelters (approx 5m x 7m)

**14) Toilet Block**

- Proprietary toilet facilities

**15) Art & Signage**

- Public Art- \$60,000 allowance
- Interpretative Signage- \$10,000 allowance
- Feature & Directional Signage- \$45,000 allowance

**16) Furniture**

- 6 Wheelie Bin Enclosures
- 15 Park Seats
- 390 Timber Bollards
- 10 Removable bollards
- 60 Feature Bollards

- 2 Lock Rails
- Bike Racks for 20 bikes
- 4 Drinking fountains including connection
- 8 Picnic benches

#### **17) Services**

- Site Water connection
- Stormwater Gully pits
- Connection to water mains
- 25 Post mounted lights
- 45 Bollard lights
- Shelter lights as required
- 4 BCC Hose Cocks

#### **18) Landscaping**

- 780m<sup>2</sup> concrete garden edge
- 450m<sup>2</sup> compacted decomposed granite
- 11,000m<sup>2</sup> Turf including topsoil
- 7,000m<sup>2</sup> Topsoil to garden beds
- 7,000m<sup>2</sup> Bark mulch to garden beds
- 40x Ex ground Trees
- 65x 200L Advance tree
- 60x 100L Tree/Advanced Shrub
- 150x 45L Tree/ Advanced Shrub
- Revegetation to riparian edge
- Biofilter and stormwater garden

#### **19) Establishment**

- 12 weeks establishment
- 52 weeks maintenance

#### **20) Mirvac Project Management**

## TENNYSON RIVERSIDE PARKLAND: DESIGN DEVELOPMENT TERMS OF REFERENCE

The development of the Tennyson Reach Parkland is to occur in accordance with the following:

### 1.1 DESIGN DEVELOPMENT TECHNICAL TERMS OF REFERENCE

#### 1.2 NEEDS ASSESSMENT

The park will be classified as District Park, whereas the detailed make-up of ingredients will be determined in context of its envisaged user catchment profile and needs. This should be done through a needs assessment study to Council requirements for a District Park.

##### 1.2.1 DESIGN INTENT

Development of parkland at the site should be of a high quality, innovative and accessible riverside park featuring facilities that are commensurate to a District Park within the Council Park Classification System. The park and its facilities must be designed to be flood tolerant, low maintenance and accessible. Facilities provided within the park must be reflective of community needs including equitable access and play equipment that can be used by all levels and abilities. Design of the park must incorporate Crime Prevention through Environmental Design (CPTED) and sustainability best practice and be consistent with all other applicable Council standards and policies.

##### 1.2.2 PARK OBJECTIVES

The following are the key objectives that are intended to guide development of the park.

- ▶ To develop the park to a **District Parkland** standard  
The Brisbane City Council Park Classification system is a guide for the development of public parkland to ensure appropriate hierarchy of parks are provided across the city with appropriate levels of facilities and infrastructure provided within those parks. The Tennyson Parkland is intended to be of a District Level Park. The intended catchment of a District park is approximately a 2-5km radius around the site. Further information relating to the level of facilities intended for a district level park is available within the Park Classification System document.
- ▶ To design a park that is responsive to the **broader community need** and use, including:
  - Compliance with the requirements of the *Disability Discrimination Act 1992*;
  - Inclusion of Crime Prevention Through Environmental Design Principles (CPTED);
  - Conduct a community engagement process or needs assessment study to determine the facilities that are needed for the site.

As a district level public park, the site is anticipated to attract a broad range of users. The parkland proposal must therefore provide facilities that address the broad community need, including an all abilities playground; facilities that are compliant with the requirements of the Disability Discrimination Act 1992 and facilities that are safe and accessible to all.

- ▶ To achieve a development outcome that is **flood resilient/ tolerant**.  
The impact of the January 2011 floods on the site was extensive. Development of the parkland at the site must be responsive and tolerant of potential future flooding. It is intended that any improvements within this site should be designed to anticipate future inundation and reflect the location of the park as a riverside facility that is within the Brisbane River floodplain.
- ▶ To achieve a development outcome that is considerate of **long term maintenance requirements**.  
The development must include fittings and equipment on site that can be easily maintained. Preference is also noted for readily accessible, where possible, local products, that can be easily sourced when replacement is required.
- ▶ Compliance with **BCC and other applicable standards**  
Development of the park should be compliant with all applicable standards and requirements. This includes *City Plan 2000*, BCC Subdivision and Development Guidelines, Riverside Parks Design Manual, BCC Public Toilet Guidelines; Australian Standards, Standard Building Regulations, Building Code of Australia, and any other applicable provisions.

### 1.2.3 BULK EARTHWORKS

It is important to note that filling or excavation within a Waterway Corridor or area subject to the Wetland Code will trigger development application requirements. Hydraulic assessment of a proposal of this level of filling within proximity to the river will be required in order to ensure that there are no impacts upon surrounding areas. Consideration of the impacts of filling upon the river and water quality in the event of future inundation of the site should also be considered.

In regards to the site preparation, it is also requested that weed removal along the riverbank and restoration of appropriate native vegetation be included as part of the site preparation.

Given the intention to import a large volume of fill this material needs to be of a type and placement that can support the long term establishment of vegetation. Horticulturist input and certification required.

### 1.2.4 EXISTING STRUCTURES

If the proposal is to involve the establishment of the concrete suspended slab over the existing power house structures, long term maintenance considerations must be addressed. Additionally, where a suspended slab is constructed, the depth of soil placed over the slab must be sufficient to allow the maintenance and growth of turf and vegetation.

The change of the use of the Mirvac Sales office to a community use is supported, subject to Development Approval. The scope of works should include works to the building to ensure it complies with the relevant codes for a public building.

### 1.2.5 PARKLAND USES

#### ▸ Community Uses

The change of the use of the Mirvac Sales office to a community use is supported, subject to Development Approval.

Operational details and nature of use should be addressed as part of the concept development stage.

#### ▸ Sport and Recreation Uses

Establishment of a canoe facility with storage under the community building and establishment of a pontoon associated with the use should be subject to a needs assessment and identification of a user of the facility. If a canoe facility is pursued, operational details should be resolved as part of the concept design stage.

Any works associated with the community building or a canoe facility will need to be compliant with the provisions of the *Disability Discrimination Act 1992* and is subject to obtaining Development Approval.

#### ▸ Park Elements

As part of the initial design development of the park elements, a needs assessment must be conducted to determine the demand and community requirements for this parkland area. The needs assessment should then guide the facilities that are established within the park. Uses already contemplated are:

##### ○ Play Area

Equipment must be for all abilities as per the recent Lord Mayor's announcement. A needs assessment should be conducted regarding requirements with the local Community Special School which have been identified as a potential park user.

Design of the play area is to be reviewed and obtain safety certification at the concept, documentation and construction stages.

Parkland equipment is to be sourced from Council's playground supplier panel.

The play area should consist of a mix of landscape elements and equipment.

- o Amphitheatre

The design of the amphitheatre should ensure it is a multi-use facility that can accommodate for screening of sporting events, music events and festivals, community events and passive recreation.

If an amphitheatre is established, three (3) phase power and provision for WiFi telecommunication infrastructure should be provided.

If the space between seating walls is to be turfed they should be suitably spaced to accommodate mowing vehicles. Otherwise low maintenance alternative surface finishes should be employed.

Vehicle access for bumping-in equipment and stages needs to be designated in the design, whilst turf surface needs to be hard wearing to cope with large events.

- o Plaza

Any plaza or arbour structures must be consistent with Crime Prevention Through Environmental Design (CPTED) principles.

Consideration of the impacts of any existing view corridors should be made in the design of any structures.

- o Amenities

Toilet facilities must be included as part of this parkland. Toilets must be designed in accordance with Council's Public Toilet Design Guidelines and should be located in proximity to the play area.

Provision of rubbish bins within the park should be compliant with Council's standard fixtures and sufficient for anticipated use.

- o Shading, Shelters and furniture

Shelters and shade planting should be supplied to compliment the park uses, inclusive of appropriate park furniture. Inclusion of BBQ facilities is supported and should be co-located with shelters.

Provision of bike racks should be located in proximity to key facilities, including the tennis centre.

Any structures, fixtures and furniture should be designed in accordance with Council standards and be considerate of long term maintenance requirements.

- o Movement and circulation

Establishment of a bike way through the park should ensure the minimisation of any risks of conflicts with park users and pedestrians.

The design of the park should be compliant with CPTED principles.

All pavements should be able to accommodate maintenance and emergency vehicles.

- o Art and Signage

Artworks across the site should be curated to ensure they contribute to an overall theme or message that is particular to the place.

Signage should be designed and co-ordinated as a suite.

Signage should be kept to a minimum and where possible applied to surfaces and structural elements to minimise the need for additional support structures.

o Furniture

Bin locations should afford easy access for maintenance staff.

Bins should enable park users to separate recyclable materials from general waste.

Furniture should be designed as a suite consisting of similar materials and finishes.

Materials and finishes should be kept to a minimum to enable ease of maintenance and repairs.

Items should be easily replaceable and should be installed in a manner that enables removal and replacement without excavation.

All furniture items should be suitable for disable access and use.

#### 1.2.6 UTILITIES AND SERVICES

- Adequate fire fighting facilities should be provided
- Integrated systems and services for water supply, stormwater and sewerage connection should be provided
- Adequate overhead lighting should be provided, bollard lighting is not supported
- Sufficient three (3) phase power supply for use at the site
- Provision of telecommunication infrastructure including WiFi

#### 1.2.7 ACCESS AND PARKING

- Car parking provision and design is to be in accordance with Transport, Access, Parking and Servicing Code and Planning Scheme Policy
- Small bus and maxi taxi drop off area for Seniors and the Disabled should be provided
- Bikeway to be designed to minimise risk of conflicts with park users through the site
- Stormwater polishing from car parking areas and the overall site is to be included

#### 1.2.8 LANDSCAPING

- All landscaping elements of the park is to be designed in accordance with the Landscaping Code and associated Planning Scheme Policies
- All landscaping works including tree removal will be subject to the necessary development approval and permit requirements
- Weed removal from site is to be done as part of site preparation
- Landscaping to be designed with consideration of ongoing maintenance and should include endemic species in accordance with the Landscaping Code and the Planting Species Planning Scheme Policy

#### 1.2.9 SUSTAINABILITY

##### *Natural habitats and biodiversity*

Enhance species and habitat diversity and their links and interconnections. It is important to enhance what remains of Tennyson Parkland's natural landscape and through a program of vegetation restoration works, ensure that the ecological processes of the site can remain viable as habitat and wildlife corridors.

The Parkland site offers opportunities for weed removal and the re-establishment of vegetated corridors along the river edge. A diverse range of habitats could be established throughout this corridor to provide food and shelter for a broad variety of native wildlife.

*Integrated water management*

Simple and innovative engineering and management solutions can be tailored to suit the site conditions. These can reduce Tennyson Parkland's water consumption whilst providing a reliable, low cost alternative to using potable water supply for some uses via stormwater harvesting and re-use. Furthermore the quality of stormwater leaving the site can be improved and this will enhance the health of downstream aquatic habitats.

It is recommended that a total water management plan be developed for the parklands that identify potential alternative fit-for-purpose water sources to offset operational consumption of the potable supply.

*Energy & greenhouse gas emissions*

Incorporating renewable energy sources (such as solar generation) can be employed across the park to account for all or part of Tennyson Parkland's energy requirements. The Parkland's energy demands can also be reduced through the application of low energy fittings (such as LED lighting) and ensuring the design enables efficient maintenance practices to reduce fuel consumption by maintenance equipment, such as edge trimmers and mowers.

*Land resources*

The development should seek to achieve a highly efficient physical footprint that provides multiple social, economic and environmental benefits within the same space whilst providing opportunities for expansion of facilities to meet community needs over time.

By avoiding locking up space for a single intermittent use and providing opportunities for multiple simultaneous functions to occur, the design for Tennyson Parklands can provide the public with an efficient parkland space.

*Materials & construction methodologies*

Selecting durable, low maintenance materials from renewable and recycled sources can assist in reducing the amount of raw materials and production energy that will be required to develop Tennyson Parklands. The use of such materials can reduce cost over the lifetime of the development.

Tennyson Parkland will not be a static place over time. Many changes to the type and function of facilities in the parklands will occur due to changing community needs and desires. The process of future renovation and refurbishment can result in the creation of waste and low return on initial investment in the asset. By designing park elements to be disassembled, this will enable relocation or removal with minimal waste creation and permit asset cost recovery.

*Participation & awareness*

It is important that the community is aware and informed about the sustainability features of the Tennyson Parklands. Providing guidance and understanding about the intent of the design interventions and how they benefit the community and the environment is essential. Early community consultation processes, or physical elements such as interpretive artworks, signage or by expressing sustainability elements within the Parkland design, could assist in enhancing community awareness.

### 1.3 COMPLIANCE WITH EXISTING PROVISIONS

Lot 101 on SP195275 was included to be dedicated as parkland as part of the existing Preliminary Approval (A002824927). The conditions of this Preliminary Approval, in particular conditions 129 and 199 relates directly to Council requirements for the development of Lot 101 as parkland. The provisions of Condition 129 and Condition 199 should be applied to the development of the entire Parkland, thus also for the development of Lots 3, 4 and 5 on SP 195275.

### 1.4 APPROVAL OF KEY MILESTONE STAGES.

Approval will be sought from the Council Superintendant at the following milestone;

- Schematic design completion;
- Design development completion; and
- Construction drawing.



## 1.5 COST OF DESIGN

Cost estimates for design and design changes will not be reported in cost estimates. Such cost arising from the development of, and changes to, the design, shall be at the sole expense of Mirvac. The cost estimate is for construction and to be certified that design costs are excluded.

**ANNEXURE to the Australian Standard  
General Conditions of Contract for  
Design and Construct**

# Schedule 1 to Part A

This Annexure shall be completed and issued as part of the tender documents and, subject to any amendments to be incorporated into the *Contract*, is to be attached to the General Conditions of Contract and shall be read as part of the *Contract*.

## Cost Plan

## DRAFT COST PLAN

Project: Tennyson Reach Parkland Building: Schematic Design		Details: SD Cost Plan_11.06.30_Update					
Code	Description	Quantity	Unit	Rate	SubTotal	Factor	Total
	<b>Preparation &amp; Bulk Excavation</b>						
	Site preparation, clear site of heavy vegetation including mangrove clean-up	4,582	m2	10.00	45,820		45,820
	Site preparation, clear site of light vegetation	20,887	m2	2.00	41,774		41,774
	Import fill, average 1500 high	11,127	m3	15.00	166,905		166,905
	Site filling & trimming	320	hour	250.00	80,000		80,000
	<b>Existing Services Pits &amp; Channels</b>						
	Suspended slab over existing services pits & channels	724	m2	236.00	170,864		170,864
	Demolish existing blockwall, area 15m2	1	item	5,000.00	5,000		5,000
	Remove existing chain wire fencing	41	m	50.00	2,050		2,050
	<b>Community Building [Existing Mirvac Sales Office]</b>						
	Relocate existing building within 10 to 20m including relocation of services and rainwater tanks, size 566m2 including deck and staircase						Excl
	Raise existing floor area by 500mm, area 566m2	1	item	85,000.00	85,000		85,000
	Reconfiguration of access ramp	1	item	20,000.00	20,000		20,000
	Replace existing external timber wall cladding with face brick	342	m2	180.00	61,560		61,560
	Reuse existing glazed windows	95	m2	150.00	14,250		14,250
	Reuse existing door	2	no	500.00	1,000		1,000
	Pavement to forecourt	100	m2	200.00	20,008		20,008
	Slab on ground to under floor, 200mm thick	321	m2	150.00	48,150		48,150
	Horizontal timber batten screen to under floor	99	m2	350.00	34,650		34,650
	Canoe storage to under floor, approx. size 6m x 8m	1	item	35,000.00	35,000		35,000
	Internal demolition and/or alteration	342	m2	110.00	37,639		37,639
	<b>Pontoon &amp; Canoe Launch</b>						
	Canoe launch pontoon, approx. area 60m2	1	item	75,000.00	75,000		75,000
	<b>Power Station / Pump House Structures</b>						
	Precast concrete over existing structure	50	m2	400.00	20,060		20,060
	Precast concrete beams	25	m	550.00	13,750		13,750
	Boardwalk	84	m2	350.00	29,460		29,460
	Boardwalk balustrades	25	m	1,000.00	25,000		25,000
	Stainless steel safety fencing to top of existing structures	134	m	1,000.00	134,310		134,310
	Stabilise existing structures	1	item	60,000.00	60,000		60,000
	<b>Playground</b>						
	Rubber softfall to playground	531	m2	180.00	95,580		95,580
	Sand softfall to playground	800	m2	45.00	36,000		36,000
	Shade sails to playground	350	m2	250.00	87,500		87,500
	Playground equipment [supply and install]	1	item	250,000.00	250,000		250,000
	Concrete seating wall	185	m	450.00	83,250		83,250
	<b>Amphitheatre</b>						

## DRAFT COST PLAN

Project: Tennyson Reach Parkland Building: Schematic Design		Details: SD Cost Plan_11.06.30_Update					
Code	Description	Quantity	Unit	Rate	SubTotal	Factor	Total
	Concrete terrace seating wall	436	m	750.00	326,745		326,745
	<b>Public Plaza</b>						
	Pavement to public plaza	1,450	m2	150.00	217,500		217,500
	Cube harbour	400	m2	850.00	340,000		340,000
	<b>Driveway &amp; Carpark</b>						
	Sealed bitumen driveway & carpark	1,440	m2	85.00	122,400		122,400
	Linemarking	1	item	5,000.00	5,000		5,000
	Disabled parking	1	item	1,500.00	1,500		1,500
	<b>Pathways &amp; Ramps</b>						
	Remove existing concrete ramp including balustrades, approx. area 15m2	1	item	5,000.00	5,000		5,000
	Concrete pathway & ramp	2,830	m2	110.00	311,266		311,266
	Tactile ground surface indicators	1	item	1,000.00	1,000		1,000
	Wall to concrete ramp, approx. 1000mm high	41	m2	300.00	12,300		12,300
	Stainless steel handrail to concrete ramp	41	m	350.00	14,350		14,350
	<b>Gabion Retaining Walls</b>						
	Gabion retaining wall, maximum 1000mm high	424	m	550.00	233,437		233,437
	<b>Park Shelters</b>						
	Park shelter, approx. size 5m x 7m	3	no	45,000.00	135,000		135,000
	<b>Amenities</b>						
	Proprietary toilet	1	item	150,000.00	150,000		150,000
	<b>Art &amp; Signage</b>						
	Public art	5	no	12,000.00	60,000		60,000
	Interpretive signage	5	no	2,000.00	10,000		10,000
	Feature and directional signage	1	item	45,000.00	45,000		45,000
	<b>Furnitures</b>						
	Rubbish bin [wheelie bin enclosure]	6	no	2,500.00	15,000		15,000
	Park seat	15	no	3,000.00	45,000		45,000
	Timber bollard	390	no	100.00	39,000		39,000
	Removable bollard	10	no	150.00	1,500		1,500
	Feature bollard	60	no	450.00	27,000		27,000
	Lock rail	2	no	1,200.00	2,400		2,400
	Bike rack	20	no	650.00	13,000		13,000
	Drinking fountain including connection	4	no	3,000.00	12,000		12,000
	Picnic benches	8	no	5,650.00	45,200		45,200
	<b>Services</b>						
	Post mounted light	25	no	2,800.00	70,000		70,000
	Bollard light	45	no	1,200.00	54,000		54,000
	Shelter light	6	no	650.00	3,900		3,900
	Hose cock	4	no	420.00	1,680		1,680

## DRAFT COST PLAN

Project: Tennyson Reach Parkland		Details: SD Cost Plan_11.06.30_Update					
Building: Schematic Design							
Code	Description	Quantity	Unit	Rate	SubTotal	Factor	Total
	Water connection	1	item	1,200.00	1,200		1,200
	Gully pit	15	no	120.00	1,800		1,800
	Connection to water mains	1	item	3,500.00	3,500		3,500
	Landscaping						
	Concrete garden edge	780	m	22.00	17,160		17,160
	Compacted decomposed granite	450	m2	25.00	11,250		11,250
	Turf including topsoil	11,200	m2	8.50	95,200		95,200
	Topsoil to garden bed	6,891	m2	3.50	24,120		24,120
	Extra over for topsoil over suspended concrete slab to existing services pits & channels	199	m2	10.00	1,990		1,990
	Bark mulch to garden bed	6,891	m2	4.00	27,565		27,565
	Decorative mulch to garden bed [recycled concrete rubble]	1,450	m2	25.00	36,250		36,250
	Plant to garden bed	5,850	no	35.00	204,750		204,750
	Ex ground park tree / feature tree [supply & install]	40	no	1,200.00	48,000		48,000
	200L advanced tree	65	no	450.00	29,250		29,250
	100L tree / advanced shrub	60	no	250.00	15,000		15,000
	45L tree / advanced shrub	150	no	110.00	16,500		16,500
	Revegetation of riparian edge	5,800	no	21.00	121,800		121,800
	Biofilter and stormwater garden	480	m2	125.00	60,000		60,000
	Retain & Make Good Existing Structures						
	Driveway & carpark	588	m2	17.02	10,000		10,000
	Concrete pathway	485	m2	10.31	5,000		5,000
	Lawn & garden bed	2,234	m2	2.24	5,000		5,000
	Establishment						
	Establishment	12	week	6,500.00	78,000		78,000
	Mirvac admin and supervision	8	month	25,000.00	200,000		200,000
	Sundries						
	Surveyor		item		20,000		20,000
	Programmer		item		10,000		10,000
	Statutory		item		60,000		60,000
	Sub-Total						5,203,091
	Contingency [5%]	0.05	%	5,203,091	260,155		260,155
	Mirvac off-site overhead [2.5%]	0.025	%	5,203,091	130,077		130,077
	Total						5,593,323

## DRAFT COST PLAN

Project: Tennyson Reach Parkland Building: Schematic Design		Details: SD Cost Plan_11.06.30_Update					
Code	Description	Quantity	Unit	Rate	SubTotal	Factor	Total
	<b>Preparation &amp; Bulk Excavation</b>						
	Site preparation, clear site of heavy vegetation including mangrove clean-up	4,582	m2	10.00	45,820		45,820
	Site preparation, clear site of light vegetation	20,887	m2	2.00	41,774		41,774
	Import fill, average 1500 high	11,127	m3	15.00	166,905		166,905
	Site filling & trimming	320	hour	250.00	80,000		80,000
	<b>Existing Services Pits &amp; Channels</b>						
	Suspended slab over existing services pits & channels	724	m2	236.00	170,864		170,864
	Demolish existing blockwall, area 15m2	1	item	5,000.00	5,000		5,000
	Remove existing chain wire fencing	41	m	50.00	2,050		2,050
	<b>Community Building [Existing Mirvac Sales Office]</b>						
	Relocate existing building within 10 to 20m including relocation of services and rainwater tanks, size 566m2 including deck and staircase						Excl
	Raise existing floor area by 500mm, area 566m2	1	item	85,000.00	85,000		85,000
	Reconfiguration of access ramp	1	item	20,000.00	20,000		20,000
	Replace existing external timber wall cladding with face brick	342	m2	180.00	61,560		61,560
	Reuse existing glazed windows	95	m2	150.00	14,250		14,250
	Reuse existing door	2	no	500.00	1,000		1,000
	Pavement to forecourt	100	m2	200.00	20,008		20,008
	Slab on ground to under floor, 200mm thick	321	m2	150.00	48,150		48,150
	Horizontal timber batten screen to under floor	99	m2	350.00	34,650		34,650
	Canoe storage to under floor, approx. size 6m x 8m	1	item	35,000.00	35,000		35,000
	Internal demolition and/or alteration	342	m2	110.00	37,639		37,639
	<b>Pontoon &amp; Canoe Launch</b>						
	Canoe launch pontoon, approx. area 60m2	1	item	75,000.00	75,000		75,000
	<b>Power Station / Pump House Structures</b>						
	Precast concrete over existing structure	50	m2	400.00	20,060		20,060
	Precast concrete beams	25	m	550.00	13,750		13,750
	Boardwalk	84	m2	350.00	29,460		29,460
	Boardwalk balustrades	25	m	1,000.00	25,000		25,000
	Stainless steel safety fencing to top of existing structures	134	m	1,000.00	134,310		134,310
	Stabilise existing structures	1	item	60,000.00	60,000		60,000
	<b>Playground</b>						
	Rubber soffit to playground	531	m2	180.00	95,580		95,580
	Sand soffit to playground	800	m2	45.00	36,000		36,000
	Shade sails to playground	350	m2	250.00	87,500		87,500
	Playground equipment [supply and install]	1	item	250,000.00	250,000		250,000
	Concrete seating wall	185	m	450.00	83,250		83,250
	<b>Amphitheatre</b>						

**Annexure to the Australian Standard  
General Conditions of Contract for  
Design and Construct**

# Part B

- This form may also be used where the *Principal* is required to provide an unconditional undertaking, by substituting *Principal* for *Contractor* and vice versa, wherever occurring.

### Approved form of unconditional undertaking

(clause 1 – security)

At the request of .....

ACN..... ABN ..... (the *Contractor*) and in consideration of .....

ACN..... ABN ..... (the *Principal*) accepting this undertaking in respect of the *Contract* for .....

..... (the *Project*) .....

ACN..... ABN ..... (the *Financial Institution*) unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded by the *Principal* to a maximum aggregate sum of .....

..... (\$ ..... )

The undertaking is to continue until notification has been received from the *Principal* that the sum is no longer required by the *Principal* or until this undertaking is returned to the *Financial Institution* or until payment to the *Principal* by the *Financial Institution* of the whole of the sum or such part as the *Principal* may require.

Should the *Financial Institution* be notified in writing, purporting to be signed by ..... for and on behalf of the *Principal* that the *Principal* desires payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the *Financial Institution* will make the payment or payments to the *Principal* forthwith without reference to the *Contractor* and notwithstanding any notice given by the *Contractor* not to pay same.

Provided always that the *Financial Institution* may at any time without being required so to do pay to the *Principal* the sum of .....

..... (\$ ..... )

less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the *Principal* and thereupon the liability of the *Financial Institution* hereunder shall immediately cease.

Dated at ..... this ..... day of ..... 20.....

Annexure to the Australian Standard  
General Conditions of Contract for  
Design and Construct

# Part C

## Deed of novation

(subclause 9.2(c))

This Deed made the ..... day of ..... 20 .....  
between ..... (the *Principal*)  
of ..... ACN ..... ABN .....  
and ..... (the *Contractor*)  
of ..... ACN ..... ABN .....  
and ..... (the *Subcontractor*)  
of ..... ACN ..... ABN .....  
and ..... (the *Incoming Contractor*)  
of ..... ACN ..... ABN .....  
witness that:

- 1 Upon receipt by the *Subcontractor* of the sum certified by the *Superintendent* as owing under the prior contract described in the Schedule hereto:
  - (a) the prior contract shall be discharged;
  - (b) the *Subcontractor* shall release the *Contractor* from the further performance of the prior contract and from all claims and demands in connection with the prior contract;
  - (c) the *Incoming Contractor* shall punctually perform the obligations of the *Contractor* under the prior contract as far as they are not performed. The *Incoming Contractor* acknowledges itself bound by the provisions of the prior contract as if the *Incoming Contractor* had been named in the prior contract; and
  - (d) the *Subcontractor* shall punctually perform like obligations and be bound to the *Incoming Contractor* as if the provisions of the prior contract were incorporated herein.
- 2 The *Principal* and *Subcontractor* each warrant to the *Incoming Contractor* that:
  - (a) subcontract work carried out to the date hereof is in accordance with the provisions of the prior contract; and
  - (b) all claims and demands in connection with the prior contract have been made to the *Contractor*.
- 3 The *Principal* and *Subcontractor* each indemnifies the *Incoming Contractor* from all claims and demands of the *Contractor*, *Principal* and *Subcontractor* in connection with the prior contract.
- 4 A dispute between:
  - (a) the *Principal* and the *Subcontractor* in connection with the *Superintendent's* certification of the sum owing under the prior contract; or
  - (b) the *Incoming Contractor* and the *Subcontractor* in connection with clause 1(c) or 1(d), shall be resolved pursuant to the provisions of AS 4903—2000 Subcontract Conditions for Design and Construct which for the purposes of this clause 4 are incorporated herein.
- 5 This Deed shall be governed by the laws of the jurisdiction stated in *Item 8* of the *Contract* between the *Principal* and *Contractor*.



**Schedule**

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In witness whereof the parties have executed this DEED OF NOVATION by affixing their seals.

THE COMMON SEAL of the *Principal*  
was affixed to this document in the presence of:

.....

Secretary/Director

.....

Name (please print)

.....

Director

.....

Name (please print)

THE COMMON SEAL of the *Contractor*  
was affixed to this document in the presence of:

.....

Secretary/Director

.....

Name (please print)

.....

Director

.....

Name (please print)

THE COMMON SEAL of the *Subcontractor*  
was affixed to this document in the presence of:

.....

Secretary/Director

.....

Name (please print)

.....

Director

.....

Name (please print)

THE COMMON SEAL of the *Incoming Contractor*  
was affixed to this document in the presence of:

.....

Secretary/Director

.....

Name (please print)

.....

Director

.....

Name (please print)

Annexure to the Australian Standard  
General Conditions of Contract for  
Design and Construct

# Part D

**Note:** Usually the *continuing party* is the subcontractor, selected subcontractor or consultant, as the case may be.

## Deed of novation

(subclause 9.4)

This Deed made this ..... day of ..... 20 .....

between ..... (the *outgoing party*)

of ..... ACN ..... ABN .....

and ..... (the *incoming party*)

of ..... ACN ..... ABN .....

and ..... (the *continuing party*)

of ..... ACN ..... ABN .....

witness that:

- 1 Upon receipt by the *continuing party* of all moneys owing under the prior contract:
  - (a) the *incoming party* shall punctually perform the obligations of the *outgoing party* under the prior contract described in the Schedule hereto as far as they are not performed. The *incoming party* acknowledges itself bound by the provisions of the prior contract as if the *incoming party* had been named as the *outgoing party* in the prior contract;
  - (b) the *continuing party* punctually perform like obligations and be bound to the *incoming party* as if the provisions of the prior contract were incorporated herein; and
  - (c) the *outgoing party* and *continuing party* shall each release and forever discharge the other from the further performance of the prior contract and from all claims and demands in connection with the prior contract.
- 2 The *outgoing party* and *continuing party* each warrant to the *incoming party* that *preliminary design or selected subcontract work*, as the case may be, carried out to the date hereof, is in accordance with the provisions of the prior contract.
- 3 This Deed shall be governed by the governing law of the prior contract between the *outgoing party* and *continuing party*.

**Schedule**

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.....

In witness whereof the parties have executed this DEED OF NOVATION by affixing their seals.

THE COMMON SEAL of the *outgoing party* was affixed to this document in the presence of:

.....

Secretary/Director

.....

Name (please print)

.....

Director

.....

Name (please print)

THE COMMON SEAL of the *incoming party* was affixed to this document in the presence of:

.....

Secretary/Director

.....

Name (please print)

.....

Director

.....

Name (please print)

THE COMMON SEAL of the *continuing party* was affixed to this document in the presence of:

.....

Secretary/Director

.....

Name (please print)

.....

Director

.....

Name (please print)



## † INDEX

<i>Clause</i>	<i>Clause</i>		
Acceleration .....	34.4(b)	fees and charges .....	11.2
Acceptance (see Approval)		interest .....	37.5
Acceptance of tender		liquidated damages .....	34.7
date of, defined .....	1	minerals, fossils and relics .....	24.3
formal instrument of agreement .....	6	omitted items .....	2.5
security—time for .....	5.1, <i>Items</i> 14(d), 15(c)	on completion of work taken out of the hands of the Contractor .....	39.6
Access (see also possession of site)		pricing variations .....	36.4
during defects liability period .....	35	protection of people and property .....	12
for Principal and others .....	24.2	provisional sums .....	3
for testing .....	30.1	quantities .....	2.5
Accident (see also Insurance, Urgent protection and Protection of persons and property)		set-offs by the Principal .....	37.2, 37.6
reinstatement of damage .....	14.2	suspension by Contractor .....	39.9
to employees .....	18	urgent protection .....	13
to third parties .....	15, 17		
to WUC .....	14, 16A	Agreement	
Accord and satisfaction .....	37.4	Contract in absence of formal instrument .....	6
Actions		formal instrument of .....	6
arbitration .....	42	interpretation of .....	1, 8.1
indemnification by Contractor .....	10, 15.1	rectification when dispute .....	42.1
indemnification by Principal .....	10, 15.2	Alignments (see Survey mark)	
Acts, (of Parliament) (see Legislative requirements)		Alternative clauses .....	10.2, 16A, 17
Additions and/or deductions		Ambiguity in documents .....	8.1
adjustment generally .....	2.1	Appliances (see Construction plant)	
care of survey marks .....	26.3	Approval	
changes in legislative requirements .....	11.2	effect of certificates .....	37.2
contract sum definition, excluded in .....	1	examination and testing .....	30
discrepancies in documents .....	8.1	extension of time .....	34.4, 34.5
error in setting out .....	26.2	of documents .....	8.3
generally .....	2.1	of form of security .....	1
legislative requirements .....	11.2	of insurance policies .....	16A, 17
minerals, fossils and relics .....	24.3	of media releases .....	8.6
order of work .....	32	of municipal and statutory authorities (see Legislative requirement)	9.2
pricing variations generally .....	36.4	of subcontracting .....	9.2
programming .....	32	of variations of convenience .....	36.3
provisional sums .....	3	to suspension by Contractor .....	33.2
suspension .....	33.4	working days .....	31
variations .....	36.4	working hours .....	31
Address for service (see also Service) .....	7	Approved form of unconditional undertaking	
change of .....	7	security .....	1
Contractor .....	7, <i>Item</i> 4	form of .....	Annexure Part B
Principal .....	7, <i>Item</i> 2	Arbitration	
Superintendent .....	7, <i>Item</i> 6	agreement to arbitrate .....	42.2
Adjustment (for)		ambit of dispute .....	42.1
actual quantities .....	2.5	conference .....	42.2
bonus .....	34.8	nomination of arbitrator .....	42.3, <i>Item</i> 37(a)
cost of suspension .....	33.4	rules of .....	42.3, <i>Item</i> 37(b)
cost of tests .....	30.7	Assessment (see Superintendent, assessments by)	
defective material and work .....	29.3	Assignment	
delay damages .....	34.9	of Contract .....	9.1
directions on order of work .....	32	of subcontract .....	9.2(a)
errors in documents .....	8.1	by subcontractor .....	9.2(b)
errors in setting out .....	26.2	Asterisk clauses .....	8.6, 29.2

† References to *Items* are to *Items* in Annexure Part A

<i>Clause</i>	<i>Clause</i>
Australasian Dispute Centre ..... <i>Item 37(a), (c)</i>	settlement of claims under policy of insurance ..... 19.5
Authorisation (see Direction)	settlement of disputes ..... 42
Awards (see Legislative requirements)	Superintendent's decision on ..... 41.3
Bank guarantee (see Unconditional undertaking)	valuation of ..... 37.2, 41.3
Bank—place of business ..... 1, <i>Item 9(c)</i>	Clause headings—effect ..... 1(c)
Bankruptcy	Cleaning up ..... 27
of Contractor ..... 39.11	Commencement of WUC
of Principal ..... 39.11	generally ..... 16A, 16B, 17, 18, 19.1
Basis of payment ..... 2.1	insurance, proof of ..... 19.1, 24.1
Bench mark (see Survey mark)	possession of site ..... 24.1
Bonus	production of policies before ..... 19.1
for early practical completion ..... 34.8, <i>Item 30(a)</i>	Communications between parties ..... 1(e)
limit of ..... 34.8, <i>Item 30(b)</i>	Compensable cause
rate of ..... 34.8, <i>Item 30(a)</i>	defined ..... 1
waiver of part of bonus ..... 34.8, <i>Item 30(b)</i>	delay damages for ..... 34.9
where separable portions ..... 4(c)	others listed ..... <i>Item 31</i>
Breach of contract	Completion
claims for ..... 41	by Principal on default ..... 39.4, 39.5, 39.6
default of the Contractor ..... 39.2	final certificate ..... 37.4
default of the Principal ..... 39.7	practical (see Practical completion)
preservation of other rights ..... 39.1	Compliance
repudiation ..... 39.10	with legislative requirements ..... 11.1
substantial breaches ..... 39.2, 39.7	with Superintendent's interpretation ..... 8.1
By-laws (see Legislative requirements)	Concurrent delay ..... 34.4
Calendar days ..... 1(a)	Conditions, waiver of ..... 43
Care of WUC	Confidential information
cleaning up ..... 27	agreement as to ..... 8.5
Contractor's obligations for ..... 14.1	generally ..... 8.5
excepted risks ..... 14.3	Construction of Contract ..... 1, 8.1
generally ..... 14.1	Construction plant
reinstatement of loss or damage ..... 14.2	care of ..... 14.1
urgent protection of ..... 13	Contractor to supply ..... 28
Certificate(s) (see also Direction and Payment)	defined ..... 1
effect of ..... 37.2	insurance of ..... 16A
final certificate ..... 37.4	not to be removed ..... 28
of cost to complete on default by Contractor ..... 39.6	removal of ..... 27, 40
of municipal and statutory authorities (see Legislative requirements)	use by Principal ..... 39.5, 39.6
practical completion ..... 34.6	WUC includes ..... 1
progress certificate ..... 37.2	Consultants
Certificate of Practical Completion	defined ..... 1
defined ..... 1	engagement of ..... 9.2
issue of ..... 34.6	insurance of WUC, included in ..... 16A
meaning of ..... 34.6	notices to and from insurer ..... 19.3
non-issue of ..... 34.6	novation of ..... 2.2(a)(iii), 2.3(b), 9.4
request for ..... 34.6	professional indemnity insurance ..... 16B, <i>Items 24(c), (d)</i>
Claims (see also Adjustment)	proof of payment of ..... 38
arbitration of ..... 42.3	public liability insurance ..... 17
compensation to third party ..... 12	suspension because of ..... 33.1(a)
failure to notify, effect ..... 41.2	workers compensation policy ..... 18
for damages ..... 41.1, 42.1	Consultant fees
for EOT for practical completion ..... 34.3	in contract works policy ..... 16A, <i>Item 23(c)</i>
for final payment ..... 37.4	Contingency sum (see Provisional sum)
for progress payment ..... 37.1, <i>Item 33</i>	Contract
indemnity by Contractor ..... 10.1, 15.1	assignment ..... 9.1
indemnity by Principal ..... 10.1, 15.2	breach of (see Breach of Contract)
notice of dispute ..... 41.1, 41.3, 42.1	construction of ..... 1
notice of potential claims on insurance policies ..... 19.4	defined ..... 1
notification of ..... 41	disputes under ..... 42

<i>Clause</i>	
documents .....	8
evidence of .....	6
formal instrument of .....	6
frustration of .....	40, 42.1
governing law of .....	1(h), <i>Item 8</i>
interpretation of .....	1
nature of .....	2
rectification of .....	42.1
subcontracting .....	9.2
termination—effect of .....	39.10
termination of	
by Contractor .....	34.9, 39.11
by Principal .....	34.4, 39.11
work under the (WUC) .....	1
Contract documents .....	8
ambiguities in .....	8.1
construction of .....	8.1
discrepancies in .....	8.1
inconsistencies in .....	8.1
interpretation of .....	8.1
Contract sum	
defined .....	1
insurance of WUC .....	16A
Contract works insurance	
amount of cover of .....	16A, <i>Item 23</i>
Contractor controlled .....	16A Alt 1
exclusions in .....	16A
in joint names .....	16A
length of cover .....	16A
policy .....	16A
Principal controlled .....	16A Alt 2
Contractor	
access to site by .....	24.1
address of .....	<i>Item 4</i>
appointment of representative .....	22
default by .....	39.2
defined .....	1
design obligations defined .....	1
design, property in .....	10.2
licence to use design documents .....	10.2
named .....	<i>Item 3</i>
possession of site by .....	24.1
professional indemnity	
insurance .....	16B, <i>Item 24(a), (b)</i>
rights of .....	34.9, 39.11
security by .....	5, <i>Item 14</i>
service on .....	7
to insure .....	16A Alt 1, 16B, 17 Alt 1, 18
use of site by .....	24.1
warranties .....	2.2
warranties unaffected .....	2.3
Contractor-supplied documents	
approval of .....	8.3(b)
availability of .....	8.4
checking of .....	8.3(a)
copies of .....	8.3
rejection of .....	8.3(c)
responsibility for .....	8.3
submission of .....	8.3
suitability of .....	8.3(c)
supply of .....	8.3
Contractor's all risk insurance	
(see Contract works insurance)	
Contractor's design obligations	
defined .....	1

	<i>Clause</i>
warranties, as to .....	2.2
warranties unaffected .....	2.3
Contractor's employees	
control of .....	23
death or injury .....	18
insurance of .....	18
liability for .....	9.5
payment of .....	38
removal of, from site .....	23
Contractor's representative .....	22
Contractor's responsibility (see also Contractor and Care of WUC)	
for employees (see Contractor's employees)	
for payment of workers and subcontractors .....	38
for selected subcontractors .....	9.5
for subcontractors .....	9.5
to carry out WUC .....	2.1
Contributory negligence	
indemnity as to .....	15.1
reduction of liability for .....	15.1
Copyright (see Intellectual property right)	
Corporation (also see Person) .....	1(a), 5.6, 39.11(d)
Corporations Law .....	5.6, 38.3
Cost objective	
defined in Principal's project requirements .....	1
Cost(s) (see also Adjustment)	
added to contract sum .....	24.3, 26.2, 26.3
completion of work taken out	
of the hands of the Contractor .....	39.6
complying with legislative requirements .....	11.2
examination and testing .....	30.7
latent conditions .....	25.3
protection of person, etc .....	12
provisional sums .....	3
reinstatement .....	14.2
set-offs by Principal .....	37.6
setting out .....	26.3
urgent protection .....	13
variations .....	36.2, 36.4
Covering up of WUC .....	30.2
Cross liability clause .....	19.6
Currency .....	1(g), <i>Item 9(a)</i>
Damage (see also care of the Works and Insurance)	
prevention of .....	12
protection of property, etc .....	12
reinstatement of .....	14.2
to persons and property other than WUC .....	15.1
to WUC .....	14.1
urgent protection .....	13
Damages (see also Adjustment and Claims)	
delay damages .....	34.9
for breach of the Contract .....	39.1
for delay by Contractor .....	34.7, <i>Item 29</i>
for delay due to compensable cause .....	34.9
liquidated .....	34.7, <i>Item 29</i>
on insolvency .....	39.11
on termination of the Contract .....	39.10
Date	
for practical completion .....	1, <i>Item 7</i> , 34.7, 34.8
of acceptance of tender .....	1
of practical completion .....	1, 34.6, 34.7, 34.8, 35

	<i>Clause</i>
Date of acceptance of tender	
defined .....	1
Date for practical completion	
bonus .....	34.8
defined .....	1, <i>Item 7</i>
effect of proposed variation on .....	36.2(a)
liquidated damages .....	34.7
period of time for .....	1, <i>Item 7</i>
Date of practical completion	
defects liability period .....	35
defined .....	1
generally .....	34.6
liquidated damages .....	34.7
Days	
mean calendar days .....	1(a)
working .....	31
Debt due to the Principal .....	12, 13, 27, 29.3, 34.7, 35, 37.6, 39.6
Decision (see also Direction)	
Deed of guarantee, undertaking and substitution	
defined .....	1
provision of .....	5.6
requirement for .....	5.6
Deed of novation .....	9.4
Deemed variation	
as to acceptance of defective work .....	29.4
for latent condition .....	25.3
omission in schedule of rates .....	2.5
on adjustment of quantities .....	2.5
reinstatement of damage .....	14.2
Default by Principal	
Contractor's rights on .....	39.9
Contractor's show cause notice .....	39.8
generally .....	39.7
in making due payment .....	39.7(a)
in providing evidence of insurance .....	39.7(a)
in providing security .....	39.7(a)
in rectifying inadequate access .....	39.7(a), <i>Item 36(a)</i>
in rectifying inadequate possession .....	39.7(a), <i>Item 36(b)</i>
on termination .....	39.10
rights of the Contractor .....	39.1, 39.7, 39.8, 39.9
Superintendent not issuing certificate of practical completion .....	39.7(b)
show cause on .....	39.7, 39.8
Default by Contractor	
adjustment of costs on .....	39.6
assessment of cost to complete on .....	39.6
failing to comply with a direction of the Superintendent .....	39.2(a)
failing to maintain program .....	39.2(c)
failing to proceed with due expedition and without delay .....	39.2(d)
failing to properly perform design obligations .....	39.2(a)
failing to provide evidence of insurance .....	39.2(a)
failing to use materials or standards of workmanship .....	39.2(a)
in providing documentary evidence .....	39.2(e)
in providing security .....	39.2(a)
may use plant and materials on .....	39.5
on termination .....	39.10
possession of plant and materials .....	39.5
procedure on .....	39.2–39.6

	<i>Clause</i>
records of cost to complete .....	39.5
retention of plant and materials .....	39.6
rights of the Principal .....	39.1–39.6, 39.9
show cause notice to .....	39.3
substantial breach by .....	39.2
substantial departure from construction program .....	39.2(c)
suspension of payment on .....	39.4
when the Principal takes work out of hands of Contractor .....	39.5, 39.6
Default of subcontractor .....	9.5
Default or insolvency	
by Contractor .....	39.2, 39.11
by Principal .....	39.7, 39.11
generally .....	39
preservation of other rights .....	39.1
substantial breaches .....	39.2, 39.7
show cause notices .....	39.3, 39.8
Defective work	
acceptance of .....	29.4
correction of .....	29.3
cost of rectification .....	29.3
demolition of .....	29.3
examination and testing of .....	30
generally .....	29.3
includes material .....	29.3
not to delivery .....	29.3
quality assurance .....	29.2
reconstruction of .....	29.3
removal of .....	29.3
replacement of .....	29.3
testing of .....	30
time of notice of .....	29.5
Defects	
costs of rectification .....	29.3, 35
defined .....	1
direction to rectify .....	35
examination and testing for .....	30
in design—excepted risk .....	14.3(f)
in work .....	29.3, 29.4, 35
length of liability period .....	35, <i>Item 32</i>
material and work .....	29.3, 29.4, 35
minor, practical completion .....	1
remedying .....	29.3, 35
removal and replacement .....	29.3
times for rectification .....	35
Defects liability period	
defined .....	1
duration of .....	35, <i>Item 32</i>
generally .....	35, <i>Item 32</i>
Definitions (generally) .....	1
dispute .....	42.1
Delay	
concurrent .....	34.4
construction program .....	32, 39.2(c)
damages .....	4(c), 34.9
further delay .....	34.3
in giving possession .....	24.1
notice of .....	34.2
overlapping .....	34.4
rate of progress .....	34.1
Delay damages	
certified by Superintendent .....	34.9
claim for .....	34.9
due and payable .....	34.9



<i>Clause</i>	
	for compensable cause.....34.9
	other compensable causes ..... 1, 34.9, <i>Item</i> 31
	where separable portions ..... 4(c)
Deletion of clauses, etc.—effect .....	1(i)
Deletions, amendments and additions (generally) .....	1(i), Annexure Part E
Demand (see also Direction)	
Demolition and removal of debris in Contract works policy .....	16A(b), <i>Item</i> 23(b)
Deposit (see Security)	
Design	
defects in—excepted risk .....	14.3(f)
intellectual property rights in .....	10
objectives, defined in Principal's project requirements.....	1
procurement methods explained .....	Preface
stated purpose.....	2.2
warranties, as to .....	2.2
warranties, as to by Principal .....	10.1
warranties unaffected .....	2.3
Design and Construct explained.....	Preface
Design, Development and Construct explained.....	Preface
Design documents	
ambiguities in .....	8.1
defined .....	1
direction not to copy .....	8.2
discrepancies in .....	8.1
included in Contractor's design obligations.....	1
inconsistencies in.....	8.1
licence to use .....	10.2
novation .....	9.4
ownership of.....	10.2
variation to, affect of.....	8.3
warranties, as to .....	2.2
warranties unaffected .....	2.3(c)
Design, Novate and Construct explained.....	Preface
Design objectives defined in Principal's project requirements .....	1
Determination (see also Direction)	
defined in direction .....	1
disputes .....	42
interpretation of discrepancy.....	8.1
pricing of variation.....	36.4
value of work.....	37.2
Determination of Contract (see Termination of Contract)	
Dimensions	
figured .....	8.1
scaled .....	8.1
Direct payment to subcontractor .....	38.3
Direction (see also Approval)	
construction program.....	32
covering up of work .....	30.2
defective materials or work.....	29.3, 29.4
defined .....	1
dispute as to.....	42.1(a)
examination and testing.....	30
oral, to be confirmed in writing.....	20

	<i>Clause</i>
order of work .....	32
notice of tests .....	30.4
relating to Contractor's employees.....	23
relating to subcontractors .....	23
suspension of WUC .....	33.1
written .....	20
Discrepancies	
Contract documents .....	8.1
dimensions.....	8.1
Dispute (see Dispute resolution)	
Dispute resolution	
after final certificate .....	37.4(d)
ambit of .....	42.1
arbitration .....	42.3
conference .....	42.2
continue performance of Contract .....	42.1
dispute defined.....	1, 42.1
includes difference .....	42.1
meaning of dispute .....	1, 42.1
notice of dispute .....	37.4(d), 41.1, 42.1
summary relief .....	42.4
Documents	
ambiguities in.....	8.1
approval of the Superintendent .....	8.3
availability of.....	8.4
confidential information.....	8.5
construction of .....	8.1
Contractor-supplied .....	8.3
discrepancies in.....	8.1
evidencing Contract.....	6
generally.....	8
inconsistencies in .....	8.1
interpretation of.....	8.1
Principal-supplied.....	8.2
property in .....	8.2, 8.3
results of tests .....	30.6
service of.....	7
Due (see Moneys due)	
Due and owing (see Moneys due and owing)	
Due and payable (see Moneys due and payable)	
Emergency work .....	13
Employees	
control of.....	23
insurance of .....	17(c), 18
of Contractor (see Contractor's employees)	
of subcontractor .....	23
responsibility for .....	9.5
English language.....	1(e)
EOT (extension of time)	
application for.....	34.3
assessment of .....	34.4, 34.5
claim for .....	34.3
deemed assessment .....	34.5
defined .....	1
failure to apply for, effect .....	41.2
grant of.....	34.5
in event of further delay .....	34.3
partial grant of .....	34.5
qualifying cause of delay .....	1, 34.3
refusal of .....	34.5
time for applying for.....	34.3
Superintendent may direct.....	34.5

<i>Clause</i>	
Equipment to be provided by Contractor (see Construction plant).....	28
Errors	
Contract documents.....	8.1
in schedule of rates.....	2.5
setting out.....	26.2
Escrow	
security transferred in.....	5.1
Examination and testing.....	30
Excepted risk	
defined.....	1
meaning.....	14.3
Explanation (see also Direction)	
Extension of time (see EOT)	
Failure of Contractor (see also Delay and Default by Contractor)	
to arrange urgent protection.....	13
to lodge security.....	5.1, 39.2(a)
to make claims.....	41.2
to produce proof of insurance.....	19.2, 39.2(a)
to show cause.....	39.3
Failure of Principal (see also Default of Principal)	
to give access.....	39.7(a)
to give possession of Site.....	39.7(a)
to insure.....	19.2, 39.2(a)
to make payment.....	37.5, 39.7(a)
Faulty work (see Defective material or work)	
Fees and charges (see Legislative requirements)	
Figured dimensions.....	8.1
Final certificate	
accord and satisfaction.....	37.4
defined.....	1
effect of.....	37.4
final payment claim for.....	37.4
generally.....	37.4
meaning.....	37.4
release of security.....	5.4
Final payment (see also Final certificate)	
defined.....	1
meaning.....	37
Final payment claim	
defined.....	1
endorsement of.....	37.4
includes all claims.....	37.4
meaning.....	1, 37.4
payment on account, excepted.....	37.2
prescribed notice, excluded.....	41.1
time for.....	37.4
Financial institution	
form of unconditional undertaking by.....	Annexure Part B
security provided by.....	1
Finding of minerals, fossils and relics.....	24.3
Fitness for stated purpose	
to be stated in Principal's project requirements (definition).....	1
warranty, as to.....	2.2(a)(ii)
warranty as to preliminary design.....	2.2(a)(ii)
Float.....	34.4(a)

	<i>Clause</i>
Formal instrument of agreement	
execution of.....	6
generally.....	6
stamping of.....	6
Form of unconditional undertaking.....	Annexure Part B
Fossils.....	24.3
Frustration	
generally.....	40
notice of dispute when.....	42.1(b)
payment on.....	40
release and return of security.....	40
termination by.....	40
Gender includes every gender.....	1(d)
Governing law.....	1, <i>Item 8</i>
Guarantee, etc., deed of.....	5.6
Headings of clauses.....	1(c)
Hours of work.....	31
Incompetence of employees, etc.....	23
Indemnity	
by Contractor.....	10.1, 15.1
by Principal.....	10.1, 15.2
care of work.....	14
damage to persons and property.....	15
infringement of intellectual property rights.....	10.1
Information to be supplied	
advance notice.....	32
by Principal.....	32
confidential information.....	8.5
Contract documents.....	8
examination of information made available for tendering.....	25.1(a)
examination of information relevant to risks, contingencies, etc.....	25.1(b)
for setting out the Works.....	26.1
latent conditions.....	25
particulars of materials and plant.....	28(a)
results of tests.....	30.6
to media.....	8.6
working hours and days.....	31
Injury to persons	
generally.....	12
indemnity by Contractor.....	15.1
insurance.....	17, 18
measures to prevent.....	12
Insolvency	
bankruptcy.....	39.11(c)
Contractor's rights on.....	39.11(B)
deed of arrangement.....	39.11(d)
generally.....	39.11
meeting of creditors.....	39.11(d)
mortgagee in possession.....	39.11(d)
Principal's rights on.....	39.11(A)
voluntary winding up.....	39.11(d)
when corporation.....	39.11(d)
when exercisable.....	39.11
when individual.....	39.11(c)
Inspection	
access for testing.....	30.1
access to Principal and others.....	24.2
insurance policies.....	19.1

<i>Clause</i>	<i>Clause</i>
testing .....30.1	payment to subcontractor under ..... 38.3
Institute of Arbitrators & Mediators Australia	payment to worker under ..... 38.3
rules of ..... <i>Item 37(b)</i>	provision of services ..... 11.2(a)
Instruction (see also Direction)	satisfaction of ..... 11.1, <i>Item 22(a)</i>
Insurance	time of effect of ..... 11.2(b)
cross-liability ..... 19.6	variance in ..... 11.1
failure to provide proof of ..... 19.2, 39.2(a), 39.7(a)	Level mark (see Survey mark)
inspection of policies ..... 19.1	Liability of the Contractor
notice of potential claims ..... 19.4	for care of WUC ..... 14
notices to and from insurer ..... 19.3	for compliance with legislative requirements ..... 11
of employees ..... 18	for selected subcontractors ..... 9.5
of the Works ..... 16A, <i>Item 23</i>	for subcontractors ..... 9.5
professional indemnity ..... 16B, <i>Item 24</i>	Licences (see Legislative requirements)
proof of insurance ..... 19.1	Limits of accuracy in schedule of rates ..... 2.5(b), <i>Item 12</i>
provisions of policies ..... 19.3	Liquidated damages
public liability ..... 17	certifying of ..... 34.7
settlement of claims ..... 19.5	rate of ..... 34.7, <i>Item 29</i>
workers' compensation ..... 18	repayment of ..... 34.7
Intellectual property rights	separable portions ..... 4(c)
Contractor's warranty as to ..... 10	Litigation ..... 42.4
defined ..... 1	Local authorities ..... 11
design documents ..... 10.2	Loss or damage to WUC
indemnity as to ..... 10	care of WUC ..... 14.1
licence in ..... 10.2	excepted risks ..... 14.3
ownership of ..... 10.2	generally ..... 14
Principal's warranty as to ..... 10	protection ..... 12, 13
Interpretation of Contract documents ..... 1, 8.1	reinstatement ..... 14.2
Interest	urgent protection ..... 13
on security ..... 5.5	Lump sum ..... 2.1
overdue payments ..... 37.5, <i>Item 35</i>	Making good (see also Reinstatement) ..... 14.2, 29.3, 35
rate of ..... 37.5, <i>Item 35</i>	Materials (see also Work)
Issue of	acceptance of defective ..... 29.4
certificate of practical completion ..... 34.6	defective ..... 29.3, 29.4
final certificate ..... 37.4	examination and testing of ..... 30
payment certificate ..... 37.2	failure to use proper materials ..... 39.2(a)
<i>Item</i>	manufacture and supply of ..... 28
defined ..... 1	not to remove from site ..... 28
Labour	particulars of ..... 28
provision by Contractor ..... 28	possession on default ..... 39.5
Language of Contract ..... 1(e)	provision of by Contractor ..... 28
Latent conditions	quality of ..... 29.1
costs of ..... 25.3	supply of ..... 28
deemed variation on ..... 25.3	testing of ..... 30
defined ..... 1	unfixed ..... 37.3
meaning ..... 25.1	upon frustration of Contract ..... 40
notification of ..... 25.2	use of new materials ..... 29.1
scope of ..... 25.1	Measurement
Law	generally ..... 37.2
compliance with legislative requirements ..... 11.1	of quantities ..... 1(f)
Corporations ..... 5.6, 38.3	Media releases ..... 8.6
governing the Contract ..... 1(h), <i>Item 8</i>	Minor defects
Legislative requirements	practical completion, in definition of ..... 1
change in Principal's project requirements ..... 11.2(a)(i)	remedying ..... 29.3, 35
changes in ..... 11.2	Misconduct of employee ..... 23
changes to WUC ..... 11.2(a)(iii)	Monetary sum (see Provisional sum)
changes to the Works ..... 11.2(a)(ii)	Moneys due
compliance with ..... 11.1	claim for ..... 37.1
cost of ..... 11.2(c)	cleaning up costs ..... 27
defined ..... 1	cost of proposed variation ..... 36.2
excepted ..... 11.1, <i>Item 22(a)</i>	
fees and charges ..... 1, 11.2(a)	
identified WUC ..... 11.2, <i>Item 22(b)</i>	

<i>Clause</i>	<i>Clause</i>		
cost of protection .....	12	consultant .....	9.4, Item 20
cost of urgent protection .....	13	deed of .....	9.4
moneys certified due to Principal .....	37.2(b)	Deeds of .....	Annexure Parts C and D
on frustration .....	40(b)	of Principal's consultants .....	2.2(a)(iii)
other moneys due .....	37.6	selected subcontractor .....	9.4, Item 20
progress certificate .....	37.2(a)	subcontractor .....	9.2(c), 9.4, Item 20
progress claim .....	37.1	warranties unaffected by .....	2.3(b)
Moneys due and owing		Omissions (see also Defects and Minor defects)	
to Principal otherwise .....	37.6	at final certificate .....	37.4(b)
Moneys due and payable		schedule of rates .....	2.5
bonus .....	34.8	Opening up for examination and testing .....	30.1
claims generally .....	41.3	Oral direction .....	20
cost of defect rectification .....	35	Order (see also Direction)	
costs of suspension on breach .....	39.9	Order of work .....	32
delay damages .....	34.9	Orders (see Legislative requirements)	
final certificate .....	37.4	Ordinances (see Legislative requirements)	
interest .....	37.5	Ordinary working days .....	31
liquidated damages .....	34.7	Ordinary working hours .....	31
on work taken out of the hands of Contractor .....	39.6	Other moneys due .....	37.6
substantial breach .....	39.7(a)	Overlapping delays .....	34.4
to workers and subcontractors .....	38.2	Ownership of documents	
unpaid insurance premium .....	19.2	supplied by Contractor .....	8.3
Nature of Contract .....	2	supplied by Principal .....	8.2
Negligence of employee .....	23	Patent (see Intellectual property right)	
Nominated subcontractor		Payment(s) (see also Adjustments)	
(see Novation) .....	9.3, 9.4	adjustment for errors in schedule of rates .....	2.5
Notice (see also Direction, Notice of dispute)		adjustment for fees to statutory authorities .....	11.2
for testing .....	30.4	and performance .....	2.1
for urgent protection .....	13	basis of .....	2.1
from or to insurer .....	19.3	bonus .....	34.8
of availability of site .....	24.1	calculated by rates .....	2.1
of claim for EOT .....	34.3	calculation of .....	37.2
of claims generally .....	41	certificates .....	37.2
of default by the Contractor .....	39.3	claims for .....	37.1
of default by the Principal .....	39.8	currency of .....	1(g), Item 9(a)
of delay .....	34.2	deductions .....	37.2
of discovery of minerals, fossils or relics .....	24.3	default by Principal .....	39.7(a)
of dispute .....	42.1	delay damages .....	34.9
of errors in setting out .....	26.2	during arbitration .....	42.1
of latent conditions .....	25.2	for defective materials and work .....	29.3, 35
of names of persons entitled to access .....	24.2	for progress certificates .....	37.2
of potential insurance claims .....	19.4	for unfixed plant and materials .....	37.3
of working hours .....	31	insurance premiums, proof of .....	19.2
oral or written .....	20	interest on overdue .....	37.5
prescribed .....	41.1	liquidated damages .....	34.7
service of .....	7	not evidence of satisfactory WUC .....	37.2
statutory authorities .....	11.2	of balance after set off .....	37.2
to suspend work .....	33.1	of security and retention moneys .....	5.1
Notice of dispute		of workers and subcontractors .....	38
arbitration .....	42.3	on completion by Principal .....	39.6
concerning claims .....	41.1, 41.3	on final certificate .....	37.4
conference following .....	42.2	payment certificate .....	37.2
generally .....	42	payment on account .....	37.2
how served .....	42.1	place for .....	1(g), Item 9(b)
includes difference .....	42.1	provisional sums .....	3
when final certificate .....	37.4(d)	retention moneys .....	5.1, Item 14(c)
Notification of claims (see also Claims)		set-offs by Principal .....	37.2, 37.6
failure to comply .....	41.2	suspension of by Principal .....	39.4
generally .....	41	to consultants .....	38
notice of dispute concerning .....	41.1, 41.3	to subcontractors .....	38
prescribed notice .....	41.1	to workers .....	38
Superintendent's decision on .....	41.3		
Novation			
acceptance of .....	2.2(a)(iii)		

<i>Clause</i>	<i>Clause</i>		
urgent protection .....	13	licence to use design documents .....	10.2
within 7 days of certificate.....	37.2	named .....	<i>Item 1</i>
within 21 days of claim .....	37.2	ownership of design documents .....	10.2
withholding by Principal.....	38.2	project requirements defined .....	1
Payment to workers, consultants and subcontractors		rights of.....	39.2, 39.3, 39.4, 39.5
direct payment to .....	38.3	security by .....	5, <i>Item 15</i>
documentary evidence of .....	38.1	set off by .....	37.2
Principal may withhold payment .....	38.2	Principal's project requirements	
where required by law .....	38.3	change in legislative requirements .....	11.2(a)(i)
withholding of payment .....	38.2	cost objectives.....	1
Performance and payment .....	2.1	defined .....	1, <i>Item 10</i>
Permission (see also Direction)		design objectives .....	1
Permits (see Legislative requirements)		details of.....	<i>Item 10</i>
Person, meaning .....	1(a)	inconsistency, etc. in .....	8.1
Persons		novation.....	9.4
death of .....	15.1	preliminary design included .....	<i>Item 11</i>
indemnity by Principal .....	15.2	stated purpose of .....	1, 2.2(a)(iv)
injury to .....	15.1	timing objectives .....	1
insurance of.....	17, 18	warranties, as to .....	2.2
protection of.....	12	warranties, as to by Principal.....	10.1
suspension, to protect .....	33.1	Principal-supplied documents	
urgent protection of.....	13	availability of.....	8.2
Place for payment .....	1(g), <i>Item 9(b)</i>	copies of.....	8.2, <i>Item 16</i>
Place of business of bank (security) .....	1, <i>Item 9(c)</i>	copying of.....	8.2
Plant (see Construction plant).....	1, 28, 39.5, 39.6	number of .....	8.2
Plant and materials		property in .....	8.2
security for unfixed.....	5.4, 37.3, <i>Item 14(e)</i>	supply of.....	8.2, <i>Item 16</i>
unfixed.....	37.3, <i>Item 34</i>	Proclamation (see Legislative requirements)	
Possession of site (see also Access) .....	24.1	Profit and overheads/attendance	
Practical completion		in pricing variations.....	36.4
certificate of .....	34.6	on provisional sums .....	3
date for.....	1, 34.1, 34.6, 34.7	Program	
date of .....	1, 34.6, 34.7	defined .....	1
defined .....	1	departure from.....	32
early practical completion.....	34.8	direction as to .....	32
EOT for.....	34.3	failing to adhere to .....	39.2(c)
request for certificate of .....	34.6	meaning of.....	32
separable portions .....	4	proposed variation, effect on .....	36.2(a)
Preliminary design		Programming (see Program)	
copyright and ownership of design .....	10.2	Progress certificate	
defined .....	1	deemed .....	37.2
details of .....	<i>Item 11</i>	defined .....	1
included in Contractor's design obligations.....	1	issue of.....	37.2
novation .....	9.4	meaning.....	1, 37.2
warranties, as to .....	2.2(a)(ii)	not evidence WUC is satisfactory .....	37.2
warranties unaffected .....	2.3(a)	on account only .....	37.2
Prescribed notice		Progress claims	
defined .....	1	early .....	37.1
meaning.....	1, 41.1	generally.....	37.1
Pricing		time for.....	37.1, <i>Item 33</i>
variations.....	36.4	Progress, failure to maintain .....	39.2(c); 39.2(d)
Prime cost item (see Provisional sum)		Prompt payment discount.....	3(b)
Principal		Proper law of Contract.....	1(h), <i>Item 8</i>
address of .....	<i>Item 2</i>	Property	
certificate to .....	37.2(b)	damage to .....	12
consultants, novation of.....	2.2(a)(iii), 9.4	indemnity as to.....	15
default of.....	39.7	insurance of .....	17
defined .....	1	loss of .....	15.1
dispute with Contractor .....	42.1	protection of.....	12
		unavoidable damage to.....	15.1(b)
		Protected right (see Intellectual property right)	

<i>Clause</i>	<i>Clause</i>
Protection	included in definition of WUC..... 1
of persons and property ..... 12	Removal of
of WUC..... 14	construction plant ..... 28
suspension due to ..... 33.1	materials ..... 28
urgent ..... 13	Contractor's employees and subcontractors ..... 23
Provisional sum ..... 3	Repairs, urgent (see Urgent protection)..... 13
defined ..... 1	Replacement (see Reinstatement)
included in contract sum ..... 1	Replacement of defective
included in schedule of rates ..... 1	materials or work ..... 29.3
meaning ..... 1, 3	Representative of
percentage for profit and attendance ..... 3, <i>Item</i> 13	Contractor ..... 22
Public authorities ..... 5.5, 11	Superintendent ..... 21
Public liability policy	Repudiation of Contract
alternative applying ..... 17, <i>Item</i> 25(a)	parties rights on ..... 39.1, 39.10
amount of ..... 17, <i>Item</i> 25(b)	Request (see also Direction)
defined ..... 1	Requirement (see also Direction)
meaning ..... 1, 17	Requirements of legislation ..... 11.1
Qualifying cause of delay	Responsibility
defined ..... 1	of Contractor for subcontractors ..... 9.5
excludes those in ..... <i>Item</i> 28	for performance ..... 2.1
EOT for ..... 34.3	Retention moneys (see Security)
further delay due to ..... 34.3	Risks
Quality ..... 29	excepted ..... 1, 14.3
Quality assurance ..... 29.2	Royalties (see Intellectual property rights)
Quality of materials and work	Schedule of prices
defective materials and work ..... 29.3	included in definition of schedule of rates ..... 1
examination and testing of ..... 30	variations priced by ..... 36.4(c)
generally ..... 29.1	Schedule of rates
Quality system ..... 29.2	defined ..... 1
Quantities	generally ..... 2.4, 2.5
errors in ..... 2.5	limits of accuracy in ..... 2.5(b), <i>Item</i> 12
estimated only ..... 2.4	omitted items in ..... 2.5
generally ..... 2.4, 2.5	payment by ..... 2.1
omitted items ..... 2.5	quantities in ..... 2.4
Rates (see also Schedule of rates)	variations priced by ..... 36.4(c)
adjustment of ..... 2.5	Security (includes Retention moneys)
limits of accuracy ..... 2.5(b), <i>Item</i> 12	change of ..... 5.3
payment of ..... 2.1	Contractor's ..... <i>Item</i> 14
provisional sums ..... 3	defined ..... 1
valuation of variations ..... 36.4(c)	form of ..... 5.1
Receiver ..... 39.11	generally ..... 5
Reference mark (see also Survey marks)	includes retention moneys ..... 1
defined ..... 1	interest earned on ..... 5.5
survey mark, included in ..... 1, 26.1	Principal's ..... <i>Item</i> 15
Registered design (see Intellectual property right)	provision of ..... 5.1, <i>Items</i> 14, 15
Regulations (see Legislative requirements)	purpose of ..... 5.1
Reinstatement of damage	recourse to ..... 5.2
excepted risks ..... 14.3	reduction of ..... 5.4, <i>Items</i> 14, 15
generally ..... 14.2	release of ..... 5.4
Rejection (see also Direction)	return of ..... 5.4
Rejection of materials or work ..... 29.3	substitution of ..... 5.3
Relation-back day	time of lodgement of ..... 5.1, <i>Items</i> 14, 15
concerning direct payment to workers and	trust ..... 5.5
subcontractors ..... 38.3	unfixed plant and materials ..... 5.4, 37.3(a), <i>Item</i> 14(e)
Release of security ..... 5.4	upon frustration of the Contract ..... 40(c)
Remedial work	Selected subcontract work
generally ..... 29.3, 35	defined ..... 1
	meaning ..... 1, 9.3

<i>Clause</i>	<i>Clause</i>
Selected subcontractor	warranty, as to.....2.2(a)(iv)
defined.....1	Statutory requirements (see Legislative requirements)
meaning.....1, 9.3	Subclause headings—effect.....1(c)
Separable portion(s).....4, Annexure Part A	Subcontract work
date for practical completion.....4(b)	generally.....9
defects liability period.....35	requiring approval.....9.2, <i>Item</i> 19
defined.....1	Subcontractor
directed by Superintendent.....4	approval of.....9.2, <i>Item</i> 19
liquidated damages.....4(c)	Contractor's responsibility for.....9.5
security in.....4(c)	defined.....1
Service	includes consultant.....1
by fax.....7(b)(ii)	novation of.....9.2(c), 9.4, <i>Item</i> 20
by hand.....39.2, 39.7, 42.1	removal of.....23
by post.....7(b)(iii)	selected.....9.3, 9.4, <i>Item</i> 20
by registered post.....39.2, 39.7, 42.1	terms of approval.....9.2
by the Contractor on the Principal.....39.7	when Contract frustrated.....40(b)
by the Principal on the Contractor.....39.2	Subcontractor's employees
from or to the insurer.....19.3	control of.....9.5, 23
notification of latent conditions.....25.2	insurance of.....18
of appointment of Superintendent.....1	responsibility for.....9.5
of appointment of Superintendent's	Substantial breaches.....39.2, 39.7
Representative.....21	Superintendent (see also Directions)
of claims to the Superintendent.....41.1	address of..... <i>Item</i> 6
of finding of minerals, fossils and relics.....24.3	appointment of.....20
of notice of dispute.....42.1	appointment of Superintendent's representative.....21
of notice(s) (see also Notices).....7	assessments by.....3, 8.1, 11.2, 14.2, 24.3, 26.2, 26.3,
of potential (insurance) claims.....19.4	32, 33.4, 34.5, 39.6, 39.9, 41.3
of taking the work out of the hands	certifications by.....12, 13, 19.2, 19.5, 27, 29.3, 34.7,
of Contractor.....39.4	34.8, 34.9, 35, 36.2, 37.2, 37.4,
of terminating the Contract.....39.4, 39.9	39.6, 39.9, 40(a), 41.3
personal service.....7	defined.....1
Set-off	directions of.....20
by Principal.....37.2, 37.6	generally.....20
election by Principal.....37.2	includes Superintendent's Representative.....1
generally.....37.2, 37.6	named..... <i>Item</i> 5
Setting out the Works	notice to in relation to dispute.....42.1
care of.....26.3	obligations of.....20
disturbance to.....26.3	pricing by (deemed variation, etc.).....2.5, 3, 14.2,
errors in.....26.2	25.3, 36.4
generally.....26	to confirm oral direction.....20
survey marks for.....26.1	valuations by.....4
Settlement	Superintendent's Representative.....1
arbitration.....42.2	appointment of.....21
notice of dispute.....42.1	defined.....1
of disputes.....42.1	functions of.....21
Signal (see Survey mark)	notice of appointment of.....21(c)
Site	objection to appointment of.....21(d)
access to by Contractor.....24.1, <i>Item</i> 26(a)	termination of appointment of.....21(c)
access to by Principal, etc.....24.2	Survey mark
access to by Superintendent.....24.2	care of.....26.3
cleaning up.....27	defined.....1
commencement of work on.....24.1	errors in.....26.2
defined.....1	supply of.....26.1
delay in making available.....24.1	Survey peg (see Survey mark)
generally.....24	Suspension
latent conditions on.....25	by the Contractor.....33.2, 39.9
materials, delivery to.....24.1	by the Superintendent.....33.1
minerals, fossils, relics, etc. on.....24.3	cost of.....33.4, 39.9
possession of.....24.1, <i>Item</i> 26(b)	due to acts, etc. of Contractor.....33.1(a)
substantial breach in giving	due to acts, etc. of Principal.....33.1(a)
access of.....39.7(a), <i>Item</i> 36(a)	effect of.....33.4
substantial breach in giving	end of.....33.3
possession of.....39.7(a), <i>Item</i> 36(b)	protection or safety.....33.1(b)
Stated purpose	
in Principal's project requirements.....1	

<i>Clause</i>	<i>Clause</i>
generally .....	33
to comply with court order .....	33.1(c)
Suspension of payment by Principal .....	38.2, 39.4
Taking over of work by Principal .....	39.5
Temporary works	
care of .....	14.1
defined .....	1
insurance of .....	16A
removal of .....	27
Tender (see Acceptance of tender)	
date of acceptance, defined .....	1
Termination of the Contract (see Default, Frustration)	
by frustration .....	40
by the Contractor .....	39.9, 39.10
by the Principal .....	39.4, 39.10
insolvency .....	39.11
rights of parties on .....	39.10
Test	
completion of .....	30.6
costs of .....	30.7
covering up of work .....	30.2
defined .....	1
delay in testing .....	30.5
notice of .....	30.4
procedure if delayed .....	30.5
results of .....	30.6
Superintendent may direct .....	30.1
who conducts .....	30.3
Tests (see definition of Practical completion)	
Third party insurance (see Public liability insurance) .....	17
Time (see also EOT)	
acceleration of work .....	34.4(b)
construction program .....	32
Contractor's float .....	34.4(a)
defects liability period .....	35, <i>Item 32</i>
delay damages .....	34.9
for access to site .....	24.1, <i>Item 26(a)</i>
for approval of Contractor's drawings .....	8.3(c), <i>Item 18</i>
for arbitration .....	42.2
for carrying of work .....	32
for claiming EOT .....	34.3
for cleaning up .....	27
for completing WUC .....	34.1
for doing any act .....	1(b)
for effecting insurance .....	16A, 16B, 17, 18
for executing formal instrument of agreement .....	6
for final payment .....	37.4
for granting an EOT .....	34.5
for lodging security .....	5.1, <i>Items 14, 15</i>
for making claims .....	41
for notice of latent condition .....	25.2
for notice of tests .....	30.4
for notice to show cause .....	39.3, 39.8
for notification of claims .....	41
for possession of Site .....	24.1, <i>Item 26(b)</i>
for practical completion .....	34.1, <i>Item 7</i>
for progress claims .....	37.1, <i>Item 33</i>
for progress payments .....	37.2
for release of security or retention .....	5.4
for service of notices .....	7
for Superintendent to confirm oral direction .....	20
for Superintendent's direction	
about documents .....	8.3, <i>Item 18</i>
for supply of construction program .....	32
for supply of Contractor's documents .....	8.3, <i>Item 17</i>
for supply of Principal's documents .....	32, <i>Item 27</i>
for testing .....	30.1
for urgent protection .....	13
suspension of work .....	33.1
to rectify inadequate access .....	39.7(a), <i>Item 36(a)</i>
to rectify inadequate possession .....	39.7(a), <i>Item 36(b)</i>
Timing objective	
defined in Principal's project requirements .....	1
Trademark or name (see Intellectual property right)	
Unconditional undertaking (see Security)	
approved form .....	Annexure Part B
UNCITRAL Rules .....	<i>Items 37(b), (c)</i>
Unfixed plant and materials	
additional security for .....	37.3(a), <i>Item 14(e)</i>
generally .....	37.3, <i>Item 34</i>
labelled .....	37.3(b)
payment for .....	37.3
Principal's liability for .....	37.3
security for .....	5.4, 37.3, <i>Item 14(e)</i>
stored and protected .....	37.3(b)
unencumbered property of Principal .....	37.3
Unpaid moneys .....	38.3
Urgent protection .....	13
Urgent relief .....	42.4
Valuation	
of final payment claims .....	37.4
of progress payment claims .....	37.2
pricing of variations .....	36.4
Variation	
character and extent of .....	36.1
cost of complying .....	36.2
cost of proposed .....	36.2
deductions—valuing .....	36.4
deemed .....	2.5, 14.2, 25.3, 29.4
defined .....	1
directing of .....	36.1
direction by Superintendent .....	36.1
estimate for .....	36.2
for convenience of Contractor .....	36.3
generally .....	36
meaning .....	1, 36.1
measurements .....	36.2
notice of proposed .....	36.2
order of precedence in pricing .....	36.4
pricing of .....	36.4
proposed .....	36.2
quotation for .....	36.2
scope of .....	36.1
valuation of .....	36.4
Wages	
of workers .....	38
Waiver of conditions	
generally .....	43
in writing .....	43
Warranties	
Contractor's .....	2.2
proposed variation, effect on .....	36.2
unaffected .....	2.3



	<i>Clause</i>
variation, effect on .....	2.3(d), 36.1, 36.2
Winding up .....	39.11
Words—singular includes plural and vice versa .....	1(d)
Work (includes Materials)	
acceptance of defective work .....	29.4
care of .....	14.1
deemed variation as to defective work .....	29.4
defective .....	29.3
defined .....	1
examination and testing of .....	30
not complying with the Contract .....	29.3
order of work .....	32
outside working hours .....	31
progress of .....	34
quality of .....	29.1
remedial .....	29.3, 35
subcontracting .....	9.2, <i>Item</i> 19
suspension of .....	33
testing of .....	30
times for work .....	32
under the Contract, defined (WUC) .....	1
variations (see Variations) .....	36
Work under the Contract (see WUC)	
Workers' compensation .....	18
Workers, payment of .....	38
Working days .....	31
Working hours .....	31
Works (see also care of WUC)	
defined .....	1
design of, warranties .....	2.2
design, timing and cost objectives in Principal's project requirements .....	1
insurance of .....	16A
setting out of .....	26
stated purpose in Principal's project requirements .....	1
WUC (work under the Contract)	
acceleration of .....	34.4(b)
care of .....	14.1
damage to property other than .....	15
defined .....	1
delay to .....	34.2, 34.3
excepted risks .....	14.3
insurance of .....	16A
insurance of property other than .....	17
novation relating to .....	9.4, <i>Item</i> 20
order and time of carrying out .....	32
programming of .....	32
progress of .....	34.1
recommencement of .....	33.3
reinstatement of .....	14.2
suspension of .....	33, 39.9
urgent protection of .....	13

*Clause*

AS 4902—2000

82

**AMENDMENT CONTROL SHEET****AS 4902—2000**

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**Amendment No. 1 (2005)**

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**REVISED TEXT**

*SUMMARY:* This Amendment applies to Clause 37 (a) and (c) of Annexure Part A.

Published on 30 March 2005.

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NOTES

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## Tennyson Reach Parkland

**Brisbane City Council**

**ABN 72 002 765 795**

**Mirvac Constructions (Qld) Pty Limited**

**ACN 088 536 476**

**Australian Standard™**

**General conditions of contract for  
design and construct**

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AS 4902—2000  
(Incorporating Amendment No. 1)

Australian Standard™

**General conditions of contract for  
design and construct**

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## PREFACE

This Standard was prepared by the Joint Standards Australia/Standards New Zealand Committee OB/3, General Conditions of Contract.

*This Standard incorporates Amendment No. 1 (March 2005). The changes required by the Amendment are indicated in the text by a marginal bar and amendment number against the clause, note, table, figure or part thereof affected.*

This Standard is the result of a consensus among Australian and New Zealand representatives on the Joint Committee to produce it as an Australian Standard.

AS 4902—2000 *General conditions of contract for design and construct*, is a part of the suite of conditions of contract based on AS 4000—1997 *General conditions of contract*.

This Standard covers the following types of project procurement methods:

- (a) design and construct;
- (b) design development and construct; and
- (c) design, novate and construct.

If the project procurement method chosen by the Principal is:

- (a) **design and construct**—the Principal would provide the Principal's project requirements, would not normally provide a detailed preliminary design and would not require novation;
- (b) **design development and construct**—the Principal would provide the Principal's project requirements, would always provide a preliminary design and accordingly would complete Annexure Part A Items 10 and 11;
- (c) **design, novate and construct**—the Principal would provide the Principal's project requirements, would always provide a preliminary design, would complete Annexure Part A Items 10 and 11 and would complete Annexure Part A Item 20 stating which subcontract (including consultant's agreement) or selected subcontract is to be novated to the Contractor.

Subclauses 8.6 and 29.2, prefixed by \*, are optional, and may be omitted in the Contract, where necessary, without making consequential amendments but such omission should be clearly shown on the face of the document by striking out these subclauses or indicating clearly in clause 1 of Annexure Part E or elsewhere that they are *not to apply*. See paragraph (i) of clause 1 for the effect of stating deletions in Annexure Part E.

### WARNINGS

- (1) Users of this Australian Standard are warned that clause 15 (Damage to persons and property other than WUC) does not limit the liability of parties for special, indirect or consequential losses.

This unlimited liability applies notwithstanding any limitations or exclusions permitted under insurance clauses 16A (Insurance of the Works), 16B (Professional indemnity insurance) and 17 (Public liability insurance).

Parties wishing to limit their liability should seek insurance and legal advice before entering a contract under this Standard.

- (2) Principals should ensure that their specific requirements are fully and completely incorporated in the Principal's project requirements obtaining specialist advice if necessary. Where a Contractor provides a proposed design as part of its tender, the parties should consider whether that design should form part of the preliminary design.

- (3) The risk allocation, drafting, interpretation and construction of this Standard are interrelated. Users who alter the Standard do so at their own risk and should obtain specialist advice as to whether it is suitable for a particular project.
- (4) Contractors should ensure that they satisfy the requirements of payment for unfixed plant and materials.
- (5) Legislation has come into force in some jurisdictions dealing with security of payments. Parties intending to use this Standard should seek expert advice as to their rights and obligations under such legislation.

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## CONTENTS

Clause	Title	Page
1	INTERPRETATION AND CONSTRUCTION OF CONTRACT .....	9
2	NATURE OF CONTRACT .....	15
3	PROVISIONAL SUMS .....	16
4	SEPARABLE PORTIONS .....	17
5	SECURITY .....	17
6	EVIDENCE OF CONTRACT .....	18
7	SERVICE OF NOTICES .....	18
8	CONTRACT DOCUMENTS .....	18
9	ASSIGNMENT AND SUBCONTRACTING .....	20
10	INTELLECTUAL PROPERTY RIGHTS .....	23
11	LEGISLATIVE REQUIREMENTS .....	24
12	PROTECTION OF PEOPLE AND PROPERTY .....	25
13	URGENT PROTECTION .....	25
14	CARE OF THE WORK AND REINSTATEMENT OF DAMAGE .....	25
15	DAMAGE TO PERSONS AND PROPERTY OTHER THAN WUC .....	26
17	PUBLIC LIABILITY INSURANCE .....	28
18	INSURANCE OF EMPLOYEES .....	29
19	INSPECTION AND PROVISIONS OF INSURANCE POLICIES .....	29
20	SUPERINTENDENT .....	30
21	SUPERINTENDENT'S REPRESENTATIVE .....	30
22	CONTRACTOR'S REPRESENTATIVE .....	30
23	CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS .....	31
24	SITE .....	31
25	PATENT CONDITIONS .....	32
26	SHUTTING OUT THE WORKS .....	32
27	CLEANING UP .....	33
28	MATERIALS, LABOUR AND CONSTRUCTION PLANT .....	33
29	QUALITY .....	34
30	EXAMINATION AND TESTING .....	35
31	WORKING HOURS .....	35
32	PROGRAMMING .....	35
33	SUSPENSION .....	36
34	TIME AND PROGRESS .....	37
35	DEFECTS LIABILITY .....	38
36	VARIATIONS .....	39
37	PAYMENT .....	40
38	PAYMENT OF WORKERS, CONSULTANTS AND SUBCONTRACTORS .....	41
39	DEFAULT OR INSOLVENCY .....	42

40 TERMINATION BY FRUSTRATION..... 46

41 NOTIFICATION OF CLAIMS..... 46

42 DISPUTE RESOLUTION..... 47

43 WAIVER OF CONDITIONS..... 47

44 SHARED COST SAVINGS..... 47

45 GST48

46 ENTIRE AGREEMENT..... 49

47 MAINTENANCE..... 49

48 ACCESS TO RECORDS..... 49

PART A..... 50

SCHEDULE 1 TO PART A..... 67

SCHEDULE 1 TO PART A..... 68

PART B..... 69

PART C..... 70

PART D..... 72

PART E..... 74

INDEX..... 75

1 INTERPRETATION AND CONSTRUCTION OF CONTRACT..... 7

2 NATURE OF CONTRACT..... 13

3 PROVISIONAL SUMS..... 14

4 SEPARABLE PORTIONS..... 14

5 SECURITY..... 15

6 EVIDENCE OF CONTRACT..... 16

7 SERVICE OF NOTICES..... 16

8 CONTRACT DOCUMENTS..... 16

9 ASSIGNMENT AND SUBCONTRACTING..... 18

10 INTELLECTUAL PROPERTY RIGHTS..... 21

11 LEGISLATIVE REQUIREMENTS..... 21

12 PROTECTION OF PEOPLE AND PROPERTY..... 23

13 URGENT PROTECTION..... 23

14 CARE OF THE WORK AND REINSTATEMENT OF DAMAGE..... 23

15 DAMAGE TO PERSONS AND PROPERTY OTHER THAN WUC..... 24

17 PUBLIC LIABILITY INSURANCE..... 25

18 INSURANCE OF EMPLOYEES..... 26

19 INSPECTION AND PROVISIONS OF INSURANCE POLICIES..... 26

20 SUPERINTENDENT..... 27

21 SUPERINTENDENT'S REPRESENTATIVE..... 28

22 CONTRACTOR'S REPRESENTATIVE..... 28

23 CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS..... 28

24 SITE..... 28

25 LATENT CONDITIONS..... 29

26 SETTING OUT THE WORKS.....	30
27 CLEANING UP.....	30
28 MATERIALS, LABOUR AND CONSTRUCTION PLANT.....	31
29 QUALITY.....	31
30 EXAMINATION AND TESTING.....	32
31 WORKING HOURS.....	33
32 PROGRAMMING.....	33
33 SUSPENSION.....	34
34 TIME AND PROGRESS.....	34
35 DEFECTS LIABILITY.....	36
36 VARIATIONS.....	36
37 PAYMENT.....	37
38 PAYMENT OF WORKERS, CONSULTANTS AND SUBCONTRACTORS.....	39
39 DEFAULT OR INSOLVENCY.....	40
40 TERMINATION BY FRUSTRATION.....	43
41 NOTIFICATION OF CLAIMS.....	44
42 DISPUTE RESOLUTION.....	44
43 WAIVER OF CONDITIONS.....	45
44 SHARED COST SAVINGS.....	45
45 GST.....	46
46 ENTIRE AGREEMENT.....	46
47 MAINTENANCE.....	46
48 ACCESS TO RECORDS.....	46
PART A.....	47
PART B.....	62
PART C.....	63
PART D.....	65
PART E.....	67
INDEX.....	68
INTERPRETATION AND CONSTRUCTION OF CONTRACT.....	6
— 2 NATURE OF CONTRACT.....	11
— 3 PROVISIONAL SUMS.....	12
— 4 SEPARABLE PORTIONS.....	12
— 5 SECURITY.....	13
— 6 EVIDENCE OF CONTRACT.....	14
— 7 SERVICE OF NOTICES.....	14
— 8 CONTRACT DOCUMENTS.....	14
— 9 ASSIGNMENT AND SUBCONTRACTING.....	16
— 10 INTELLECTUAL PROPERTY RIGHTS.....	17
— 11 LEGISLATIVE REQUIREMENTS.....	18



12	PROTECTION OF PEOPLE AND PROPERTY	18
13	URGENT PROTECTION	18
14	CARE OF THE WORK AND REINSTATEMENT OF DAMAGE	19
15	DAMAGE TO PERSONS AND PROPERTY OTHER THAN WUC	20
16A	INSURANCE OF THE WORKS	20
16B	PROFESSIONAL INDEMNITY INSURANCE	21
17	PUBLIC LIABILITY INSURANCE	21
18	INSURANCE OF EMPLOYEES	22
19	INSPECTION AND PROVISIONS OF INSURANCE POLICIES	22
20	SUPERINTENDENT	23
21	SUPERINTENDENT'S REPRESENTATIVE	23
22	CONTRACTOR'S REPRESENTATIVE	24
23	CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS	24
24	SITE	24
25	LATENT CONDITIONS	25
26	SETTING OUT THE WORKS	25
27	CLEANING UP	26
28	MATERIALS, LABOUR AND CONSTRUCTION PLANT	26
29	QUALITY	27
30	EXAMINATION AND TESTING	28
31	WORKING HOURS	28
32	PROGRAMMING	29
33	SUSPENSION	29
34	TIME AND PROGRESS	30
35	DEFECTS LIABILITY	31
36	VARIATIONS	32
37	PAYMENT	33
		<i>Page</i>
38	PAYMENT OF WORKERS, CONSULTANTS AND SUBCONTRACTORS	35
39	DEFAULT OR INSOLVENCY	35
40	TERMINATION BY FRUSTRATION	39
41	NOTIFICATION OF CLAIMS	39
42	DISPUTE RESOLUTION	40
43	WAIVER OF CONDITIONS	41
	ANNEXURE PART A	42
	ANNEXURE PART B—APPROVED FORM OF UNCONDITIONAL UNDERTAKING	53
	ANNEXURE PART C—DEED OF NOVATION (SUBCLAUSE 9.2(C))	54
	ANNEXURE PART D—DEED OF NOVATION (SUBCLAUSE 9.4)	56
	ANNEXURE PART E—DELETIONS, AMENDMENTS AND ADDITIONS	58

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## STANDARDS AUSTRALIA

## Australian Standard

## General conditions of contract for design and construct

## 1 Interpretation and construction of Contract

In the *Contract*, except where the context otherwise requires:

- Item** means an *Item* in Annexure Part A;
- certificate of practical completion** has the meaning in subclause 34.6;
- compensable cause** means:
- (a) any act, default or omission of the *Superintendent*, the *Principal* or its consultants, agents or other contractors (not being employed by the *Contractor*); or
  - (b) those listed in *Item 31*;
- construction plant** means appliances and things used in the carrying out of *WUC* but not forming part of the *Works*;
- consultant** means any person engaged by the *Contractor* to perform consultancy services in connection with *WUC* and includes any *Principal's* consultant whose prior contract is novated to the *Contractor* under subclause 9.4;
- Contract** has the meaning in clause 6;
- contract sum** means:
- (a) where the *Principal* accepted a lump sum, the lump sum;
  - (b) where the *Principal* accepted rates, the sum of the products ascertained by multiplying the rates by the corresponding quantities in the *schedule of rates*; or
  - (c) where the *Principal* accepted a lump sum and rates, the aggregate of the sums referred to in paragraphs (a) and (b),
- including *provisional sums* but excluding any additions or deductions which may be required to be made under the *Contract*;
- Contractor** means the person bound to carry out and complete *WUC*;
- Contractor's design obligations** means all tasks necessary to design and specify the *Works* required by the *Contract*, including preparation of the *design documents* and, if the documents stated in *Item 10* as describing the *Principal's project requirements* include a *preliminary design*, developing the *preliminary design*;

- date for practical completion*** means:
- (a) where *Item 7(a)* provides a date for *practical completion*, the date;
  - (b) where *Item 7(b)* provides a period of time for *practical completion*, the last day of the period,
- but if any *EOT* for *practical completion* is directed by the *Superintendent* or allowed in any arbitration or litigation, it means the date resulting therefrom;
- date of acceptance of tender*** means the date which appears on the written notice of acceptance of the tender;
- date of practical completion*** means:
- (a) the date evidenced in a *certificate of practical completion* as the date upon which *practical completion* was reached; or
  - (b) where another date is determined in any arbitration or litigation as the date upon which *practical completion* was reached, that other date;
- deed of guarantee, undertaking and substitution*** has the meaning in subclause 5.6;
- defects*** has the meaning in clause 35 and includes omissions;
- defects liability period*** has the meaning in clause 35;
- design documents*** means the drawings, specifications and other information, samples, models, patterns and the like required by the *Contract* and created (and including, where the context so requires, those to be created by the *Contractor*) for the construction of the *Works*;
- direction*** includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;
- dispute*** has the meaning in clause 42;
- EOT (from 'extension of time')*** has the meaning in subclause 34.3;
- excepted risk*** has the meaning in subclause 14.3;
- final certificate*** has the meaning in subclause 37.4;
- final payment*** has the meaning in clause 37;
- final payment claim*** means the final payment claim referred to in subclause 37.4;
- intellectual property right*** means any patent, registered design, trademark or name, copyright or other protected right;
- latent condition*** has the meaning in subclause 25.1;

*legislative requirement* includes:

- (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where *WUC* or the particular part thereof is being carried out;
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of *WUC*; and
- (c) fees and charges payable in connection with the foregoing;

*practical completion* is that stage in the carrying out and completion of *WUC* when:

- (a) *the Works* are complete except for minor *defects*:
  - (i) which do not prevent *the Works* from being reasonably capable of being used for their stated purpose;
  - (ii) which the *Superintendent* determines the *Contractor* has reasonable grounds for not promptly rectifying; and
  - (iii) the rectification of which will not prejudice the convenient use of *the Works*;
- (b) those *tests* which are required by the *Contract* to be carried out and passed before *the Works* reach *practical completion* have been carried out and passed; and
- (c) documents and other information required under the *Contract* which, in the *Superintendent's* opinion, are essential for the use, operation and maintenance of *the Works* have been supplied;

*preliminary design* means the documents stated in *Item 11*;

*prescribed notice* has the meaning in subclause 41.1;

*Principal* means the *Principal* stated in *Item 1*;

*Principal's project requirements* means the *Principal's* written requirements for *the Works* described in the documents stated in *Item 10* which:

(“PPRs”) (a) shall include the stated purpose for which *the Works* are intended;

(b) may include the *Principal's* design, timing and cost objectives for *the Works*; and

(c) where stated in *Item 10*, shall include a *preliminary design*;

~~(d) all Council approved design and budget documents for the Works approved pursuant to clause 9; and~~

~~(e) the Terms of Reference annexed as Annexure Two; provided that any Council approved design and budget documents pursuant to clause 9 shall prevail over any PPRs inconsistent or in conflict with such PPRs;~~

are also referred to in this Contract as PPRs.

- program* has the meaning in clause 32;
- progress certificate* has the meaning in subclause 37.2;
- provisional sum* has the meaning in clause 3 and includes monetary sum, contingency sum and prime cost item;
- public liability policy* has the meaning in clause 17;
- qualifying cause of delay* means:
- (a) any act, default or omission of the Superintendent, the Principal or its consultants, agents or other contractors (not being employed by the Contractor); or
  - (b) either than:
    - (i) ~~a breach or omission by the Contractor;~~
    - (ii) ~~industrial conditions; or~~
  - (c) ~~unseasonal inclement weather but the first:~~
    1. ~~20 days of inclement weather for Stage I works;~~
    2. ~~10 days of inclement weather for Stage II works;~~
    3. ~~5 days of inclement weather for Stage III works;~~

~~encountered after the date of commencement of the relevant Stage will not be a qualifying cause of delay. Subsequent inclement weather, however, will be a qualifying cause of delay, occurring after the date for practical completion; and~~
  - (d) ~~except where the Contractor is the cause of this delay due to an incomplete, inadequate or substandard Development Application, the length of time from the commencement of the preparation of the Development Application (and under no circumstances can this cause create any obligation whatsoever on the Principal to expedite the time frame for consideration of a Development Application) up until the time that the Development Permit is issued for a particular Stage that is in excess of the following:~~
    1. ~~90 days for Stage I;~~
    2. ~~150 days for Stage II;~~
    3. ~~90 days for Stage III;~~
  - (e) ~~The period that is in excess of the time prescribed to process a Development Application in accordance with the Sustainable Planning Act 2009 (Old) except where the Contractor causes this delay due to an incomplete, inadequate or substandard Development Application;~~
  - (f) (iii) ~~the qualifying causes of delay stated in Item 28;~~

~~provided however that delays caused by the Principal extending times relating to the negotiation and approval of the design and cost of the design, or the approval of subcontractors, are expressly excluded as qualifying causes of delay.~~

- schedule of rates** means any schedule included in the *Contract* which, in respect of any section or item of *work* to be carried out, shows the rate or respective rates of payment for the execution of that *work* and which may also include lump sums, *provisional sums*, other sums, quantities and prices;
- security** means:
- (a) cash;
  - (b) retention moneys;
  - (c) bonds or inscribed stock or their equivalent issued by a national, state or territory government;
  - (d) interest bearing deposit in a bank carrying on business at the place stated in *Item 9(c)*;
  - (e) an approved unconditional undertaking (the form in Annexure Part B is approved) or an approved performance undertaking given by an approved financial institution or insurance company; or
  - (f) other form approved by the party having the benefit of the security;
- selected subcontract work** has the meaning in subclause 9.3;
- selected subcontractor** has the meaning in subclause 9.3;
- separable portion** means a portion of *the Works* identified as such in the *Contract* or by the *Superintendent* pursuant to clause 4;
- site** means the lands and other places to be made available and any other lands and places made available to the *Contractor* by the *Principal* for the purpose of the *Contract*;
- Stage I** means the area shown as Stage I on drawing entitled '*Masterplan*', referenced 110406 and dated 17/05/11
- Stage II** means the area shown as Stage II on drawing entitled '*Masterplan*', referenced 110406 and dated 17/05/11
- Stage III** means the area shown as Stage III on drawing entitled '*Masterplan*', referenced 110406 and dated 17/05/11
- subcontractor** in clauses 3 and 9 includes a *consultant*;
- Superintendent** means the person stated in *Item 5* as the Superintendent or other person from time to time appointed in writing by the *Principal* to be the Superintendent and notified as such in writing to the *Contractor* by the *Principal* and, so far as concerns the functions exercisable by a *Superintendent's Representative*, includes a *Superintendent's Representative*;
- Superintendent's Representative** means an individual appointed in writing by the *Superintendent* under clause 21;
- survey mark** in clause 26 means a survey peg, benchmark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring *WUC*;

- temporary works** means *work* used in carrying out and completing *WUC*, but not forming part of *the Works*;
- test** has the meaning in subclause 30.1 and includes examine and measure;
- the Works** means the whole of the *work* to be carried out and completed in accordance with the *Contract*, including *variations* provided for by the *Contract*, which by the *Contract* is to be handed over to the *Principal*;
- Terms of Reference** means the *Terms of Reference* annexed to this *Contract* as Attachment A;
- variation** has the meaning in clause 36;
- work** includes the provision of materials;
- WUC (from 'work under the Contract')** means the *work* which the *Contractor* is or may be required to carry out and complete under the *Contract* and includes *variations*, remedial *work*, *construction plant* and *temporary works*,  
and like words have a corresponding meaning.

In the *Contract*:

- (a) references to days mean calendar days and references to a person include an individual, firm or a body, corporate or unincorporate;
- (b) time for doing any act or thing under the *Contract* shall, if it ends on a Saturday, Sunday or Statutory or Public Holiday, be deemed to end on the day next following which is not a Saturday, Sunday or Statutory or Public Holiday;
- (c) clause headings and subclause headings shall not form part of, nor be used in the interpretation of, the *Contract*;
- (d) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context. Words importing a gender include every gender;
- (e) communications between the *Principal*, the *Superintendent* and the *Contractor* shall be in the English language;
- (f) measurements of physical quantities shall be in legal units of measurement of the jurisdiction in *Item 8*;
- (g) unless otherwise provided, prices are in the currency in *Item 9(a)* and payments shall be made in that currency at the place in *Item 9(b)*;
- (h) the law governing the *Contract*, its interpretation and construction, and any agreement to arbitrate, is the law of the jurisdiction in *Item 8*; and



**Annexure to the Australian Standard  
General Conditions of Contract for  
Design and Construct**

# Part D

**Note:** Usually the *continuing party* is the subcontractor, selected subcontractor or consultant, as the case may be.

## Deed of novation

(subclause 9.4)

This Deed made this ..... day of ..... 20 .....  
between ..... (the *outgoing party*)  
of ..... ACN ..... ABN .....  
and ..... (the *incoming party*)  
of ..... ACN ..... ABN .....  
and ..... (the *continuing party*)  
of ..... ACN ..... ABN .....  
witness that:

- 1 Upon receipt by the *continuing party* of all moneys owing under the prior contract:
  - (a) the *incoming party* shall punctually perform the obligations of the *outgoing party* under the prior contract described in the Schedule hereto as far as they are not performed. The *incoming party* acknowledges itself bound by the provisions of the prior contract as if the *incoming party* had been named as the *outgoing party* in the prior contract;
  - (b) the *continuing party* punctually perform like obligations and be bound to the *incoming party* as if the provisions of the prior contract were incorporated herein; and
  - (c) the *outgoing party* and *continuing party* shall each release and forever discharge the other from the further performance of the prior contract and from all claims and demands in connection with the prior contract.
- 2 The *outgoing party* and *continuing party* each warrant to the *incoming party* that *preliminary design* or *selected subcontract work*, as the case may be, carried out to the date hereof, is in accordance with the provisions of the prior contract.
- 3 This Deed shall be governed by the governing law of the prior contract between the *outgoing party* and *continuing party*.

- (i) if pursuant to Annexure Part E to these General Conditions, clauses or their parts in these General Conditions are deleted, the *Contract* shall be read and construed as though the clause or its part has been deleted, whether or not that particular clause or its part has been struck from these General Conditions.

## 2 Nature of Contract

### 2.1 Performance and payment

It is a condition of this Contract that the Principal engages the Contractor for the sole purpose of designing and constructing the Tomvson Reach Parklands in accordance with the PPRs this Contract.

It is a further condition of this Contract that the Principal will not reduce the level of amenity or the standard of finish below that which is set out in the preliminary design.

It is a condition of the Contract that the land shown on the Masterplan relating to Stages I, II and III that forms a part of the preliminary design is transferred to the Brisbane City Council before this Contract will take effect.

The *Contractor* shall carry out and complete *WUC* in accordance with the *Contract* and directions authorised by the *Contract*.

The *Principal* shall pay the *Contractor*:

- (a) for work for which the *Principal* accepted a lump sum, the lump sum; and
- (b) for work for which the *Principal* accepted rates, the sum of the products ascertained by multiplying the measured quantity of each section or item of work actually carried out under the *Contract* by the rate accepted by the *Principal* for the section or item, adjusted by any additions or deductions made pursuant to the *Contract*.

### 2.2 Contractor's warranties

Without limiting the generality of subclause 2.1, the *Contractor* warrants to the *Principal* that:

- (a) the *Contractor*:
  - ~~(i)~~(a) at all times shall be suitably qualified and experienced, and shall exercise due skill, care and diligence in the carrying out and completion of *WUC*;
  - ~~(ii)~~(b) has examined any preliminary design included in the *Principal's* project requirements and that such preliminary design is suitable, appropriate and adequate for the purpose stated in the *Principal's* project requirements;
  - ~~(iii)~~(c) shall carry out and complete the *Contractor's* design obligations to accord with the *Principal's* project requirements and, if subclause 9.4 applies, accept the novation and retain the *Principal's* consultants for any work the subject of a prior contract with the *Principal*; and
  - ~~(iv)~~(d) shall carry out and complete *WUC* in accordance with the design documents so that the *Works*, when completed, shall:
    - (A) be fit for their stated purpose to be used as a public park as is set out in the PPRs; and
    - (B) comply with all the requirements of the *Contract*; and

- (b) subject to clause 9, the *consultants* identified in the *Contractor's* tender are suitably qualified and experienced.

### 2.3 Warranties unaffected

The warranties remain unaffected notwithstanding:

- (a) that design *work* (including the *preliminary design*) has been carried out by or on behalf of the *Principal* and included in the *Principal's project requirements*;
- (b) that the *Contractor* has entered into a novation of any prior contract between the *Principal* and a *Principal's* consultant under subclause 9.4 and thereafter has retained that consultant in connection with *WUC*;
- (c) any receipt or review of, or comment or *direction* on, the *design documents* by the *Superintendent*; or
- (d) any *variation*.

### 2.4 Quantities

Quantities in a *schedule of rates* are estimated quantities only.

The *Superintendent* is not required to give a *direction* by reason of the actual quantity of an item required to perform the *Contract* being greater or less than the quantity shown in the *schedule of rates*.

### 2.5 Adjustment for actual quantities

Where, otherwise than by reason of a *direction* to vary *WUC*, the actual quantity of an item required to perform the *Contract* is greater or less than the quantity shown in the *schedule of rates*:

- (a) the *Principal* accepted a lump sum for the item, the difference shall be a deemed *variation*;
- (b) the *Principal* accepted a rate for the item, the rate shall apply to the greater or lesser quantities provided that where limits of accuracy for a quantity in a *schedule of rates* are stated in *Item 12*, the rate shall apply to the greater or lesser quantities within the limits, and quantities outside the limits shall be a deemed *variation*.

If such a *schedule of rates* omits an item which should have been included, the item shall be a deemed *variation*.

## 3 Provisional sums

A *provisional sum* included in the *Contract* shall not itself be payable by the *Principal* but where pursuant to a *direction* the *work* or item to which the *provisional sum* relates is carried out or supplied by the *Contractor*, the *work* or item shall be priced by the *Superintendent*, and the difference shall be added to or deducted from the *contract sum*.

Where any part of such *work* or item is carried out or supplied by a *subcontractor*, the *Superintendent* shall allow the amount payable by the *Contractor* to the *subcontractor* for the *work* or item, disregarding:

- (a) any damages payable by the *Contractor* to the *subcontractor* or vice versa; and
- (b) any deduction of cash discount for prompt payment.

plus an amount for profit and attendance calculated by using the percentage thereon stated in *Item 13* or elsewhere in the *Contract*, or, if not so stated, as assessed by the *Superintendent*.

#### 4 Separable portions

*Separable portions* may be directed by the *Superintendent*, who shall clearly identify for each, the:

- (a) portion of the *Works*;
- (b) date for practical completion; and
- (c) respective amounts for *security*, bonus, liquidated damages and delay damages (all calculated pro-rata according to the ratio of the *Superintendent's* valuation of the *separable portion* to the *contract sum*).

#### 5 Security

##### 5.1 Provision

*Security* shall be provided in accordance with *Item 14* or *15*. All delivered *security*, other than cash or retention moneys, shall be transferred in escrow.

##### 5.2 Recourse

*Security* shall be subject to recourse by a party who remains unpaid after the time for payment where at least 5 days have elapsed since that party notified the other party of intention to have recourse.

##### 5.3 Change of security

At any time a party providing retention moneys or cash *security* may substitute another form of *security*. To the extent that another form of *security* is provided, the other party shall not deduct, and shall promptly release and return, retention moneys and cash *security*.

##### 5.4 Reduction and release

Upon the issue of the *certificate of practical completion* a party's entitlement to *security* (other than in *Item 14(e)*) shall be reduced by the percentage or amount in *Item 14(f)* or *15(d)* as applicable, and the reduction shall be released and returned within 14 days to the other party.

The *Principal's* entitlement to *security* in *Item 14(e)* shall cease 14 days after incorporation into the *Works* of the plant and materials for which that *security* was provided.

A party's entitlement otherwise to *security* shall cease 14 days after *final certificate*.

Upon a party's entitlement to *security* ceasing, that party shall release and return forthwith the *security* to the other party.

##### 5.5 Trusts and interest

Except where held by a government department or agency or a municipal, public or statutory authority, any portion of *security* (and interest earned thereon) which is cash or retention moneys, shall be held in trust for the party providing them until the *Principal* or the *Contractor* is entitled to receive them.

Interest earned on *security* not required to be held in trust shall belong to the party holding that *security*.

##### 5.6 Deed of guarantee, undertaking and substitution

Where:

- (a) a party is a related or subsidiary corporation (as defined in the applicable corporations law of the jurisdiction); and
- (b) a form of *deed of guarantee, undertaking and substitution* was included in the tender documents,

that party shall, within 14 days after receiving a written request from the other party, provide such *deed of guarantee, undertaking and substitution* duly executed and enforceable.

## 6 Evidence of Contract

Until a formal instrument of agreement is executed by the parties, documents evidencing the parties' consensus shall constitute the *Contract*. If such *Contract* requires a formal instrument of agreement, the *Principal* shall, within 28 days of the *date of acceptance of tender*, send it in duplicate for execution by the *Contractor*. Within 14 days after receiving them, the *Contractor* shall (if they are correct) properly execute both copies and return them.

Within 14 days after receiving them, the *Principal* shall execute both copies, have them stamped as necessary and send one copy to the *Contractor*.

The *Superintendent* may extend the time under this clause by written notice to the parties.

## 7 Service of notices

A notice (and other documents) shall be deemed to have been given and received:

- (a) if addressed or delivered to the relevant address in the *Contract* or last communicated in writing to the person giving the notice; and
- (b) on the earliest date of:
  - (i)(a) actual receipt;
  - (i)(b) confirmation of correct transmission of fax; or
  - (i)(c) 3 days after posting.

## 8 Contract documents

### 8.1 Discrepancies

Figured shall prevail over scaled dimensions in a discrepancy. Otherwise, if either party discovers any inconsistency, ambiguity or discrepancy in any document prepared for the purpose of carrying out *WUC*, that party shall give the *Superintendent* written notice of it. The *Superintendent*, thereupon, and upon otherwise becoming aware, shall direct the *Contractor* as to the interpretation and construction to be followed.

The *Contractor* shall bear the cost of compliance with a *direction* under this subclause to the extent that any inconsistency, ambiguity or discrepancy in the *design documents* or between the *design documents* and the *Principal's project requirements* necessitates the *direction*.

If compliance with any other *direction* under this subclause causes the *Contractor* to incur more or less cost than otherwise would have been incurred had the *direction* not been given, the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

## 8.2 Principal-supplied documents

The *Principal* shall supply to the *Contractor* the documents and number of copies thereof, both stated in *Item 16*.

They shall:

- (a) remain the *Principal's* property and be returned to the *Principal* on written demand; and
- (b) not be used, copied nor reproduced for any purpose other than *WUC*.

## 8.3 Contractor-supplied documents

The *Contractor* shall supply to the *Superintendent* the documents and number of copies at the times or stages stated in *Item 17*.

Other documents and information required by the *Contract*, unless elsewhere stated in the *Contract*, shall be supplied not less than 14 days before the *work* described in the documents is commenced and shall be in a form satisfactory to the *Superintendent*.

If the *Contractor* submits a document to the *Superintendent*, then except where the *Contract* otherwise provides:

- (a) the *Superintendent* shall not be required to check that document for errors, omissions, inconsistencies, ambiguities, discrepancies or compliance with the *Contract*;
- (b) notwithstanding subclause 2.1, any *Superintendent's* acknowledgment or approval shall not prejudice the *Contractor's* obligations; and
- (c) if the *Contract* requires the *Contractor* to obtain the *Superintendent's* direction about that document, the *Superintendent* shall give, within the time stated in *Item 18*, the appropriate *direction*, including reasons if the document is not suitable.

A *direction* by the *Superintendent* to vary anything in the *design documents* shall be a *variation* to *WUC* only to the extent that the *design documents*, before such *variation*, complied, or would have complied, with the *Principal's* project requirements.

Copies of documents supplied by the *Contractor* shall be the *Principal's* property but shall not be used nor copied otherwise than for the use, repair, maintenance or alteration of the *Works*.

## 8.4 Availability

The *Contractor* shall keep available to the *Superintendent* and the *Principal*:

- (a) on *site*, one complete set of documents affecting *WUC* and supplied by a party or the *Superintendent*; and
- (b) at the place of manufacture or assembly of any significant part of *WUC* off *site*, a set of the documents affecting that part.

## 8.5 Confidential information

The parties shall ensure that there are kept confidential such documents, samples, models, patterns and other information as are supplied and clearly identified as confidential.

If required in writing by a party, the other party shall enter into a separate agreement not to disclose to anyone else any confidential matter even after *final certificate* or earlier termination of the *Contract*. If so required by the *Contractor*, the *Principal* shall ensure that the *Superintendent* also enters into such an agreement.

## 8.6 Media

- \* The *Contractor* shall not disclose any information concerning the project for distribution through any communications media without the *Principal's* prior written approval (which shall not be unreasonably withheld). The *Contractor* shall refer to the *Principal* any enquiries from any media concerning the project.

## 9 Assignment and subcontracting

### 9.1 Assignment

Neither party shall, without the other's prior written approval (including terms) assign the *Contract* or any payment or any other right, benefit or interest thereunder.

### 9.2 Subcontracting generally

~~The Contractor may not appoint or subcontract, nor permit to start any WUC, any subcontractor without the prior written approval of the Principal which such approval shall not be unreasonably withheld provided the Contractor has made full disclosure to the Principal as to the terms and conditions of the proposed contract with the subcontractor.~~

~~The Contractor shall engage and retain the consultants identified in the Contractor's tender.~~

The *Contractor* shall not without the *Superintendent's* prior written approval (which shall not be unreasonably withheld):

- (a) subcontract or allow a *subcontractor* to subcontract any work described in *Item 19*; or
- (b) allow a *subcontractor* to assign a subcontract or any payment or any other right, benefit or interest thereunder.

With a request for approval, the *Contractor* shall give the *Superintendent* written particulars of the work to be subcontracted and the name and address of the proposed *subcontractor*. The *Contractor* shall give the *Superintendent* other information which the *Superintendent* reasonably requests, including the proposed subcontract documents without prices.

Within 14 days of the *Contractor's* request for approval, the *Superintendent* shall give the *Contractor* written notice of approval or of the reasons why approval is not given.

Approval may be conditional upon the subcontract including:

- (a) provision that the *subcontractor* shall not assign nor subcontract without the *Contractor's* written consent;
- (b) provisions which may be reasonably necessary to enable the *Contractor* to fulfil the *Contractor's* obligations to the *Principal*;
- (c) provision that if the *Contract* is terminated and upon the *subcontractor* being paid the sum certified by the *Superintendent* as owing to the *subcontractor*, the *Contractor* and the *subcontractor* shall, after the *Principal* has done so, promptly execute a deed of novation in the form of Annexure Part C.

For the purpose of effecting such novation only, the *Contractor* hereby irrevocably appoints the *Superintendent* to be the *Contractor's* attorney with authority to execute such documents as are necessary to give effect to the novation and to bind the *Contractor* accordingly; and

\* See Preface

- (d) where the *subcontractor* is a *consultant*, provision that the *subcontractor* shall effect and maintain professional indemnity insurance on the same terms as are required under *Items 24(c)* and *24(d)*.

### 9.3 Selected subcontract work

If the *Principal* has included in the invitation to tender a list of one or more *selected subcontractors* for particular *work*, the *Contractor* shall subcontract that *work* to a *selected subcontractor* and thereupon give the *Superintendent* written notice of that *selected subcontractor's* name.

If no subcontractor on the *Principal's* list will subcontract to carry out the *selected subcontract work*, the *Contractor* shall provide a list for the written approval of the *Superintendent*.

### 9.4 Novation

This subclause applies only where the *Principal's project requirements* include a *preliminary design* or the *Contract* includes *selected subcontract work*.

When directed by the *Principal*, the *Contractor*, without being entitled to compensation, shall promptly execute a deed of novation in the form of Annexure Part D, such deed being between the *Principal*, the *Contractor* and the *subcontractor* or the *selected subcontractor* stated in *Item 20* for the particular part of the *preliminary design* or *selected subcontract work*.

### 9.5 Contractor's responsibility

Except where the *Contract* otherwise provides, the *Contractor* shall be liable to the *Principal* for the acts, defaults and omissions of *subcontractors* (including *selected subcontractors*) and employees and agents of *subcontractors* as if they were those of the *Contractor*.

Approval to subcontract shall not relieve the *Contractor* from any liability or obligation under the *Contract*

### 9.6 Design and documentation development

The *Contractor's design obligations* are as follows:

- (a) The Contractor must determine which statutory approvals are required for the completion of the design in accordance with the Contract and the PPRs;
- (b) The Contractor must procure the design documents that comprise:
- (a) the relevant statutory approvals;
  - (b) the design and documentation in accordance with the Terms of Reference PPRs;  
and
  - (c) a P-95 cost estimates that shall include all costs to carry out the Works on a subcontractor and supplier basis and shall include all of the Contractor's costs but shall not include profit.
- (c) The Contractor must deliver an electronic copy of the latest set of design documents to the Principal for the Principal's written approval at each stage, at the:
- (a) schematic design complete phase (30% complete of the design);
  - (b) design development complete phase (80% complete of the design); and
  - (c) construction documentation complete phase (95% complete of the design);



in sufficient time to ensure that there will be no delay to the dates for practical completion.

(d) The Superintendent may request the Contractor to provide an explanation of any design documents, cost estimate or to provide a report on any design matter at the Contractor's cost.

(c) The Contractor must procure the design documents necessary for the completion of the Works in accordance with the program PPRs and in accordance with sound engineering and building practice.

(b) The Contractor must notify the Superintendent of the time and cost implications of every design changes that is directed by the Superintendent.

The contract sum must not exceed \$6,000,000 (excl. GST) unless varied by and the Contractor shall not accept or act upon any direction by of the Superintendent in accordance with this Contract to do so except with the providing evidence to the Contractor of the Principal's prior written consent of the Principal.

In the event that the Superintendent directs a variation that will cause the contract sum to exceed \$6,000,000 (excl. GST), the Contractor must provide the Superintendent notice accordingly within 5 business days and, if possible, provide suggestions as to how the design may be further amended in order to ensure that the contract sum does not exceed \$6,000,000 (excl. GST).

The Contractor is not entitled to, and may not claim any extension of time and payment for costs incurred arising out of any variations to the preliminary design exceeding 50% of the preliminary design cost and expenses directed in writing by the Superintendent, which such costs will be the sole liability of the Contractor. The Contractor is not entitled to claim any additional design costs arising out of variations directed by the Superintendent until the design costs incurred by the Contractor for the variations exceed 50% of the cost of the preliminary design cost which is \$10,000,000.

#### Discrepancies in Principal supplied documents

The Contractor is entitled to, and may claim, an extension of time and additional payment for all costs incurred that are in addition to the contract sum arising out of any discrepancy, omission, inconsistency or ambiguity within or between any of the following:

- (a) the documents constituting preliminary design;
- (b) the documents constituting the PPRs;
- (c) the documents comprising the Contract.

#### 9.7 Review of design documents

Upon receipt of the design documents provided by the Contractor pursuant to above clauses 9.6(c)(a) and 9.6(c)(b), the Superintendent must review the design documents.

Within 10 business days of receipt of the design documents, the Superintendent must instruct the Contractor whether or not the design documents are acceptable to the Principal including any direction to amend the design if so required.

#### 9.8 Cost Estimate of the Works

Upon receipt of the design documents at the construction documentation complete phase, the Superintendent must obtain an independent cost assessment of the design documents (OS Report) and provide a copy of the OS Report to the Contractor.

Within 40 days of receipt of the design documents and cost estimate, the Superintendent must instruct the Contractor whether or not the design documents and cost estimate are acceptable to the Principal.

If the design documents and cost estimate are not acceptable to the Principal, the Superintendent must set out its reasons as to why the design documents and cost estimate do not comply with this Contract or provide further instructions to change the design documents and cost estimate.

If the parties reach agreement as to the design documents and the cost estimate, that cost estimate shall be revised contract sum (**Cost Estimate**) and shall also be used for the purposes of calculating further cost savings under clause 44.

If the parties are unable to reach agreement of the design documents or the cost estimate, the dispute shall be referred to the parties' respective CEO's for resolution. In default of the CEO's resolving the dispute, the matter ~~may~~ be referred by a party for expert determination in accordance with the Contract. Superintendent must direct the Contractor to progress the Works on the basis of the design. Additionally, the Superintendent shall determine the Cost Estimate based upon the design documents, the cost estimate and the OS Report. In this event, the Contractor may provide the Principal a notice of dispute and refer the matter to expert determination in accordance with the Contract.

If the Superintendent does not advise the Contractor within the time stated in this clause, the design documents and cost estimate submitted in accordance with this clause 9.6(c) are deemed to have satisfied the requirements of this Contract and will be the design documents to be used to construct the Works and the Cost Estimate setting out the breakup of the revised contract sum. In this case, contract sum must not exceed not exceed \$6,000,000.00 (Excl GST).

~~When the Principal has agreed to the Design and Cost Estimate, the Contractor must perform the Works strictly according to the Design and Cost Estimate. It being a material condition of this Contract that the Principal shall not be liable to the Contractor for any contract sum, whether by way of DOLs, delay costs, variations or other liabilities, above the agreed absolute cap of Six Million Dollars (\$6,000,000.00).~~

## 10 Intellectual property rights

### 10.1 Warranties and indemnities

The *Principal* warrants that, unless otherwise provided in the *Contract*, the *Principal's* project requirements, design, materials, documents and methods of working, each specified in the *Contract* or provided or directed by the *Principal* or the *Superintendent* shall not infringe any *intellectual property right*.

The *Contractor* warrants that any other design, materials, documents and methods of working, each provided by the *Contractor*, shall not infringe any *intellectual property right*.

Each party shall indemnify the other against such respective infringements.

### 10.2 Intellectual property rights granted to Principal

The Alternative in *Item 21* applies.

#### *Alternative 1*

The *Contractor* grants to the *Principal* an irrevocable licence to use the *design documents* for *WUC*. Such licence shall also include any subsequent repairs to, maintenance or servicing of (including the supply of replacement parts), or additions or alterations to, the *Works* and the copying of the documents for such purposes.

#### *Alternative 2*

Copyright and property in the *design documents* (and, as between the *Principal* and the *Contractor*, any part of the *preliminary design* produced under a prior contract between the *Principal* and a *Principal's* consultant novated under subclause 9.4) hereby vest in the *Principal*, and the *Principal* grants to the *Contractor* an irrevocable licence to use the *design documents* for *WUC*. Such vesting shall not extend to components of the design which have been developed by the *Contractor* for general use in the *Contractor's work* and have not been specially developed for incorporation in the *design documents*.

The *Contractor* shall do everything necessary to perfect such vesting.

The *Contractor* shall ensure that the *design documents* are used, copied and supplied only for the purpose of *WUC*.

## 11 Legislative requirements

### 11.1 Compliance

The *Contractor* shall satisfy all *legislative requirements* except those in *Item 22(a)* or directed by the *Superintendent* to be satisfied by or on behalf of the *Principal*.

The *Contractor*, upon finding that a *legislative requirement* is at variance with the *Contract* or the *Principal's project requirements*, shall promptly give the *Superintendent* written notice thereof.

### 11.2 Changes

If a *legislative requirement*:

- (a) necessitates a change:
  - (i)(a) to the *Principal's project requirements*;
  - (ii)(b) to the *Works*;
  - (iii)(c) to so much of *WUC* as is identified in *Item 22(b)*;
  - (iv)(d) being the provision of services by a municipal, public or other statutory authority in connection with *WUC*; or
  - (v)(e) in a fee or charge or payment of a new fee or charge;
- (b) comes into effect after the 14th day before the closing of tenders but could not reasonably then have been anticipated by a competent contractor; and
- (c) causes the *Contractor* to incur more or less cost than otherwise would have been incurred,

the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

### 11.3 Occupational health and safety

The *Principal* appoints the *Contractor* as *Principal Contractor* in accordance with the *Workplace Health & Safety Act 1995 (Qld)* (WHS legislation).

Without limiting the generality of clause 11.1 and 11.2, the *Contractor* must comply with all legislative requirements, codes of practice, and standards (including Australian Standards) in relation to occupational health and safety. The *Contractor* must instruct its employees, subcontractors and consultants to:

- (a) follow safe work practices and procedures at all times;
- (b) take reasonable care for their own safety; and

(c) take reasonable care for the health and safety of anyone else who may be affected by anything that they do or fail to do;

in connection with the WUC.

If requested by the Superintendent, the Contractor must provide the following information about the Contractor's occupational health and safety systems and those of its subcontractors or consultant's:

(d) safe working practices and procedures; and

(e) occupational health and safety practices and procedures;

The Contractor must ensure that all employees, subcontractors, consultants and appointees have completed an appropriate induction prior to commencement on the WUC.

## 12 Protection of people and property

Insofar as compliance with the *Contract* permits, the *Contractor* shall:

- (a) take measures necessary to protect people and property;
- (b) avoid unnecessary interference with the passage of people and vehicles; and
- (c) prevent nuisance and unreasonable noise and disturbance.

If the *Contractor* damages property, the *Contractor* shall promptly rectify the damage and pay any compensation which the law requires the *Contractor* to pay.

If the *Contractor* fails to comply with an obligation under this clause, the *Principal*, after the *Superintendent* has given reasonable written notice to the *Contractor* and in addition to the *Principal's* other rights and remedies, may have the obligation performed by others. The cost thereby incurred shall be certified by the *Superintendent* as moneys due from the *Contractor* to the *Principal*.

## 13 Urgent protection

If urgent action is necessary to protect *WUC*, other property or people and the *Contractor* fails to take the action, in addition to any other remedies of the *Principal*, the *Superintendent* may take the necessary action. If the action was action which the *Contractor* should have taken at the *Contractor's* cost, the *Superintendent* shall certify the cost incurred as moneys due from the *Contractor* to the *Principal*.

If time permits, the *Superintendent* shall give the *Contractor* prior written notice of the intention to take action pursuant to this clause.

## 14 Care of the work and reinstatement of damage

### 14.1 Care of WUC

Except as provided in subclause 14.3, the *Contractor* shall be responsible for care of:

- (a) the whole of *WUC* from and including the date of commencement of *WUC* to 4:00 pm on the *date of practical completion*, at which time responsibility for the care of the *Works* (except to the extent provided in paragraph (b)) shall pass to the *Principal*; and
- (b) outstanding *work* and items to be removed from the *site* by the *Contractor* after 4:00 pm on the *date of practical completion* until completion of outstanding *work* or compliance with clauses 29, 30 and 35.

Without limiting the generality of paragraph (a), the *Contractor* shall be responsible for the care of unfixed items accounted for in a *progress certificate* and the care and preservation

of things entrusted to the *Contractor* by the *Principal* or brought onto the *site* by *subcontractors* for carrying out *WUC*.

#### 14.2 Reinstatement

If loss or damage, other than that caused by an *excepted risk*, occurs to *WUC* during the period of the *Contractor's* care, the *Contractor* shall at its cost, rectify such loss or damage.

In the event of loss or damage being caused by any of the *excepted risks* (whether or not in combination with other risks), the *Contractor* shall to the extent directed by the *Superintendent*, rectify the loss or damage and such rectification shall be a deemed *variation*. If loss or damage is caused by a combination of *excepted risks* and other risks, the *Superintendent* in pricing the *variation* shall assess the proportional responsibility of the parties.

#### 14.3 Excepted risks

The *excepted risks* causing loss or damage, for which the *Principal* is liable, are:

- (a) any negligent act or omission of the *Superintendent*, the *Principal* or its consultants, agents, employees or other contractors (not being employed by the *Contractor*);
- (b) any risk specifically excepted elsewhere in the *Contract*;
- (c) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority;
- (d) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the *Contractor* or its *subcontractors* or either's employees or agents; and
- (e) use or occupation of any part of *WUC* by the *Principal* or its consultants, agents or other contractors (not being employed by the *Contractor*); and
- (f) (c) defects in such part of the design of *WUC*, including the preliminary design provided by the *Principal*, as is not warranted under clause 2.

### 15 Damage to persons and property other than WUC

#### 15.1 Indemnity by Contractor

Insofar as this subclause applies to property, it applies to property other than *WUC*.

The *Contractor* shall indemnify the *Principal* against:

- (a) loss of or damage to the *Principal's* property; and
- (b) claims in respect of personal injury or death or loss of, or damage to, any other property,

arising out of or as a consequence of the carrying out of *WUC*, but the indemnity shall be reduced proportionally to the extent that the act or omission of the *Superintendent*, the *Principal* or its consultants, agents or other contractors (not being employed by the *Contractor*) may have contributed to the injury, death, loss or damage.

This subclause shall not apply to:

- (a) the extent that the *Contractor's* liability is limited by another provision of the *Contract*;
- (b) exclude any other right of the *Principal* to be indemnified by the *Contractor*;
- (c) things for the care of which the *Contractor* is responsible under subclause 14.1; and

- (d) claims in respect of the *Principal's* right to have *WUC* carried out.

## 15.2 Indemnity by Principal

The *Principal* shall indemnify the *Contractor* in respect of claims referred to in paragraph (d) of subclause 15.1.

## 16A Insurance of the Works

The Alternative in *Item 23(a)* applies.

### *Alternative 1: Contractor to insure*

Before commencing *WUC*, the *Contractor* shall insure all the things referred to in subclause 14.1 against loss or damage resulting from any cause until the *Contractor* ceases to be responsible for their care.

Without limiting the generality of the obligation to insure, such insurance shall cover the *Contractor's* liability under subclause 14.2 and things in storage off *site* and in transit to the *site* but may exclude:

- (a) the cost of making good fair wear and tear or gradual deterioration, but shall not exclude the loss or damage resulting therefrom;
- (b) the cost of making good faulty design, workmanship and materials, but shall not exclude the loss or damage resulting therefrom;
- (c) consequential loss of any kind, but shall not exclude loss of or damage to *the Works*;
- (d) damages for delay in completing or for the failure to complete *the Works*;
- (e) loss or damage resulting from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel resulting from any cause;
- (f) loss or damage resulting from the *excepted risks* referred to in paragraphs (b) and (c) of subclause 14.3.

The insurance cover shall be for an amount not less than the aggregate of the:

- (a) *contract sum*;
- (b) provision in *Item 23(b)* to provide for costs of demolition and removal of debris;
- (c) provision in *Item 23(c)* for *consultants' fees* and *Principal's consultants' fees*;
- (d) value in *Item 23(d)* of any materials or things to be supplied by the *Principal* for the purposes of *WUC*; and
- (e) additional amount or percentage in *Item 23(e)* of the total of the items referred to in sub-paragraphs (a) to (d) of this paragraph.

Insurance shall be in the joint names of the parties, shall cover the parties, *consultants* and *subcontractors* whenever engaged in *WUC* for their respective rights, interests and liabilities and, except where the *Contract* otherwise provides, shall be with an insurer and in terms both approved in writing by the *Principal* (which approvals shall not be unreasonably withheld).

The insurance shall be maintained until the *Contractor* ceases to be responsible under subclause 14.1 for the care of anything.

~~*Alternative 2: Principal to insure*~~

~~Before the date of acceptance of tender, the Principal shall insure WUC in the terms of the policy included in the tender documents and nominating or stating the insurer. The Principal shall maintain such insurance while ever the Contractor has an interest in WUC.~~

**16B Professional indemnity insurance**

Before commencing WUC, the Contractor shall effect and maintain professional indemnity insurance with levels of cover not less than stated in *Item 24(a)*.

The insurance shall be maintained until the *final certificate* is issued and thereafter for the period as stated in *Item 24(b)*.

The Contractor shall ensure that every *consultant*, if within a category stated in *Item 24(c)*, shall effect and maintain professional indemnity insurance with levels of cover not less than stated in *Item 24(c)* applicable to that category.

Each such *consultant's* professional indemnity insurance shall be maintained until the *final certificate* is issued and thereafter for the period as stated in *Item 24(d)*.

**17 Public liability insurance**

The Alternative in *Item 25(a)* applies.

~~*Alternative 1: Contractor to insure*~~

~~Before commencing WUC, the Contractor shall effect and maintain for the duration of the Contract, a public liability policy.~~

The policy shall:

- (a) be in the joint names of the parties;
- (b) cover the:
  - (i)(a) respective rights and interests; and
  - (i)(b) liabilities to third parties,
 of the parties, the *Superintendent*, *consultants* and *subcontractors* from time to time, whenever engaged in WUC;
- (c) cover the parties' respective liability to each other for loss or damage to property (other than property required to be insured by clause 16A) and the death of or injury to any person (other than liability which the law requires to be covered under a workers compensation insurance policy);
- (d) be endorsed to cover the use of any *construction plant* not covered under a comprehensive or third party motor vehicle insurance policy;
- (e) provide insurance cover for an amount in respect of any one occurrence of not less than the sum in *Item 25(b)*; and
- (f) be with an insurer and otherwise in terms both approved in writing by the *Principal* (which approvals shall not be unreasonably withheld).

~~*Alternative 2: Principal to insure*~~

~~Before the date of acceptance of tender, the Principal shall effect in relation to WUC, a public liability policy in the terms of the policy included in the tender documents and nominating or stating the insurer. The Principal shall maintain such insurance while ever the Contractor has an interest in WUC.~~

## 18 Insurance of employees

Before commencing *WUC*, the *Contractor* shall insure against statutory and common law liability for death of or injury to persons employed by the *Contractor*. The insurance cover shall be maintained until completion of all *WUC*.

Where permitted by law, the insurance policy or policies shall be extended to provide indemnity for the *Principal's* statutory liability to the *Contractor's* employees.

The *Contractor* shall ensure that all *consultants* and *subcontractors* have similarly insured their employees.

## 19 Inspection and provisions of insurance policies

### 19.1 Proof of insurance

Before the *Contractor* commences *WUC* and whenever requested in writing by the other party, a party liable to insure shall provide satisfactory evidence of such insurance effected and maintained.

Insurance shall not limit liabilities or obligations under other provisions of the *Contract*.

### 19.2 Failure to produce proof of insurance

If after being so requested, a party liable to insure fails promptly to provide evidence of satisfactory compliance, then without prejudice to other rights or remedies, the other party may insure and the cost thereof shall be certified by the *Superintendent* as moneys due and payable from the party in default to the other party. Where the defaulting party is the *Contractor*, the *Principal* may refuse payment until such evidence is produced by the *Contractor*.

### 19.3 Notices from or to insurer

The party insuring under clause 16A or 17 shall ensure that each insurance policy contains provisions acceptable to the other party which:

- (a) requires the insurer to inform both parties, whenever the insurer gives a party or a *consultant* or a *subcontractor* a notice in connection with the policy;
- (b) provides that a notice of claim given to the insurer by either party, the *Superintendent*, a *consultant* or a *subcontractor* shall be accepted by the insurer as a notice of claim given by both parties, the *Superintendent*, the *consultant* and the *subcontractor*; and
- (c) requires the insurer, whenever the party fails to maintain the policy, promptly to give written notice thereof to both parties and prior to cancellation of the policy.

### 19.4 Notices of potential claims

A party shall, as soon as practicable, inform the other party in writing of any occurrence that may give rise to a claim under an insurance policy required by clause 16A or 17 and shall keep the other party informed of subsequent developments concerning the claim. The *Contractor* shall ensure that *consultants* and *subcontractors* in respect of their operations similarly inform the parties.

### 19.5 Settlement of claims

Upon settlement of a claim under the insurance required by clause 16A:

- (a) to the extent that reinstatement has been the subject of a payment or allowance by the *Principal* to the *Contractor*, if the *Contractor* has not completed such reinstatement,



insurance moneys received shall, if requested by either party, be paid into an agreed bank account in the joint names of the parties. As the *Contractor* reinstates the loss or damage, the *Superintendent* shall certify against the joint account for the cost of reinstatement; and

- (b) to the extent that reinstatement has not been the subject of a payment or allowance by the *Principal* to the *Contractor*, the *Contractor* shall be entitled immediately to receive from insurance moneys received, the amount of such moneys so paid in relation to any loss suffered by the *Contractor*.

### 19.6 Cross liability

Any insurance required to be effected in joint names in accordance with the *Contract* shall include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons constituting the insured and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons constituting the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby).

### 20 Superintendent

The *Principal* shall ensure that at all times there is a *Superintendent*, and that the *Superintendent* fulfils all aspects of the role and functions reasonably and in good faith.

Except where the *Contract* otherwise provides, the *Superintendent* may give a *direction* orally but shall as soon as practicable confirm it in writing. If the *Contractor* in writing requests the *Superintendent* to confirm an oral *direction*, the *Contractor* shall not be bound to comply with the *direction* until the *Superintendent* does so.

The *Principal* may change the *Superintendent* by written or electronic notice to the *Contractor* and the change shall be from the date of such notice.

### 21 Superintendent's Representative

The *Superintendent* may from time to time appoint individuals to exercise delegated *Superintendent's* functions, provided that:

- (a) no aspect of any function shall at any one time be the subject of delegation to more than one *Superintendent's Representative*;
- (b) delegation shall not prevent the *Superintendent* exercising any function;
- (c) the *Superintendent* forthwith gives the *Contractor* written notice of respectively:
- (i)(a) the appointment, including the *Superintendent's Representative's* name and delegated functions; and
- (ii)(b) the termination of each appointment; and
- (d) if the *Contractor* makes a reasonable objection to the appointment of a *Superintendent's Representative*, the *Superintendent* shall terminate the appointment.

### 22 Contractor's representative

The *Contractor* shall superintend *WUC* personally or by a competent representative. Matters within a *Contractor's* representative's knowledge (including *directions* received) shall be deemed to be within the *Contractor's* knowledge.

The *Contractor* shall forthwith give the *Superintendent* written notice of the representative's name and any subsequent changes.

If the *Superintendent* makes a reasonable objection to the appointment of a representative, the *Contractor* shall terminate the appointment and appoint another representative.

### 23 Contractor's employees and subcontractors

The *Superintendent* may direct the *Contractor* to have removed, within a stated time, from the *site* or from any activity of *WUC*, any person employed on *WUC* who, in the *Superintendent's* opinion, is incompetent, negligent or guilty of misconduct.

## 24 Site

### 24.1 Access and possession

Before the expiry of the time stated in *Item 26(a)*, the *Principal* shall give the *Contractor* access to the *site* sufficient to enable the *Contractor* to commence and carry out the *Contractor's design obligations*.

Provided the *Contractor* has complied with subclause 19.1, the *Principal* shall before the expiry of the time in *Item 26(b)*, give the *Contractor* possession of sufficient of the *site* for commencement of *WUC* on *site*. If the *Principal* has not given the *Contractor* possession of the whole *site*, the *Principal* shall give the *Contractor* possession of such further portions of the *site* as may, from time to time, be necessary for carrying out *WUC*. Subject to subclause 39.7, delay by the *Principal* in giving possession shall not be a breach of the *Contract*.

Possession of the *site* shall confer on the *Contractor* a right to only such use and control as is necessary to enable the *Contractor* to carry out *WUC* and shall exclude camping, residential purposes and any purpose not connected with *WUC*, unless approved by the *Superintendent*.

### 24.2 Access for Principal and others

The *Principal* and the *Principal's* employees, consultants and agents may at any time after reasonable written notice to the *Contractor*, have access to any part of the *site* for any purpose. The *Contractor* shall permit persons engaged by the *Principal* to carry out work on the *site* other than *WUC* and shall cooperate with them. The *Principal* shall give to the *Contractor* the names and roles of the persons so engaged.

The *Contractor* shall at all reasonable times give the *Superintendent* access to *WUC*.

The *Principal* shall ensure that none of the persons referred to in this subclause impedes the *Contractor*.

### 24.3 Minerals, fossils and relics

Valuable minerals, fossils, articles or objects of antiquity or of anthropological or archaeological interest, treasure trove, coins and articles of value found on the *site* shall as between the parties be and remain the property of the *Principal*. Immediately upon the discovery of these things the *Contractor* shall:

- (a) take precautions to prevent their loss, removal or damage; and
- (b) give the *Superintendent* written notice of the discovery.

All costs so incurred by the *Contractor* shall be assessed by the *Superintendent* and added to the *contract sum*.

## 25 Latent conditions

### 25.1 Scope

*Latent conditions* are physical conditions on the *site* and its near surrounds, including artificial things but excluding weather conditions, which differ materially from the physical conditions which should reasonably have been anticipated by a competent contractor at the time of the *Contractor's* tender if the *Contractor* had inspected:

- (a) all written information made available by the *Principal* to the *Contractor* for the purpose of tendering;
- (b) all information influencing the risk allocation in the *Contractor's* tender and reasonably obtainable by the making of reasonable enquiries; and
- (c) the *site* and its near surrounds.

### 25.2 Notification

The *Contractor*, upon becoming aware of a *latent condition* while carrying out *WUC*, shall promptly, and where possible before the *latent condition* is disturbed, give the *Superintendent* written notice of the general nature thereof.

If required by the *Superintendent* promptly after receiving that notice, the *Contractor* shall, as soon as practicable, give the *Superintendent* a written statement of:

- (a) the *latent condition* encountered and the respects in which it differs materially;
- (b) the additional *work*, resources, time and cost which the *Contractor* estimates to be necessary to deal with the *latent condition*; and
- (c) other details reasonably required by the *Superintendent*.

### 25.3 ~~Deemed variation~~ Liability for latent conditions and design

~~The effect of the *latent condition* shall be a deemed variation, priced having no regard to additional cost incurred more than 28 days before the date on which the *Contractor* gave the notice required by the first paragraph of subclause 25.2 but so as to include the *Contractor's* other costs for each compliance with subclause 25.2. The *Contractor* is solely and exclusively liable for latent conditions including but not limited to any damages claims, EOT's, or delays, arising from the identification and rectification of such latent conditions. The *Contractor* is solely liable for the design of the *WUC* and the *Contractor* shall not enjoin, seek apportionment or any liability from the *Principal* for any liability arising from, or in connection with, the design of the *WUC*.~~

## 26 Setting out the Works

### 26.1 Setting out

The *Principal* shall ensure that the *Superintendent* gives the *Contractor* the data, *survey marks* and like information necessary for the *Contractor* to set out the *Works*, together with those *survey marks* specified in the *Contract*. Thereupon the *Contractor* shall set out the *Works* in accordance with the *Contract*.

### 26.2 Errors in setting out

The *Contractor* shall rectify every error in the position, level, dimensions or alignment of any *WUC* after promptly notifying the *Superintendent* and unless the *Superintendent* within 3 days directs otherwise. The cost of any rectification shall be at the sole cost of the *Contractor*.

~~If the error was caused by incorrect data, survey marks or information given by the Superintendent, the cost incurred by the Contractor in rectifying the error shall be assessed by the Superintendent and added to the contract sum.~~

### 26.3 Care of survey marks

The Contractor shall keep in their true positions all *survey marks* supplied by the Superintendent.

The Contractor shall reinstate any *survey mark* disturbed, after promptly notifying the Superintendent and unless the Superintendent within 3 days directs otherwise.

If the disturbance was caused by a person referred to in subclause 24.2 other than the Contractor, the cost incurred by the Contractor in reinstating the *survey mark* shall be assessed by the Superintendent and added to the ~~contract sum~~ borne by the Contractor.

### 27 Cleaning up

The Contractor shall keep the *site* and *WUC* clean and tidy and regularly remove rubbish and surplus material.

Within 14 days after the *date of practical completion*, the Contractor shall remove *temporary works* and *construction plant*. The Superintendent may extend the time to enable the Contractor to perform remaining obligations.

If the Contractor fails to comply with the preceding obligations in this clause, the Superintendent may direct the Contractor to rectify the non-compliance and the time for rectification.

If:

- (a) the Contractor fails to comply with such a *direction*; and
- (b) that failure has not been made good within 5 days after the Contractor receives written notice from the Superintendent that the Principal intends to have the subject work carried out by others.

the Principal may have that work so carried out and the Superintendent shall certify the cost incurred as moneys due from the Contractor to the Principal. The rights given by this paragraph are additional to any other rights and remedies.

### 28 Materials, labour and construction plant

Except where the *Contract* otherwise provides, the Contractor shall supply everything necessary for the proper performance of the Contractor's obligations and discharge of the Contractor's liabilities.

In respect of any materials, machinery or equipment to be supplied by the Contractor in connection with the *Contract*, the Superintendent may direct the Contractor to:

- (a) supply particulars of the mode and place of manufacture, the source of supply, the performance capacities and other related information; and
- (b) arrange reasonable inspection at such place or sources by the Superintendent, the Principal and persons authorised by the Principal.

The Superintendent may give the Contractor a written *direction* not to remove materials or *construction plant* from the *site*. Thereafter the Contractor shall not remove them without the Superintendent's prior written approval (which shall not be unreasonably withheld).

## 29 Quality

### 29.1 Quality of material and work

Unless otherwise provided, the *Contractor* shall use suitable new materials and proper and tradesmanlike workmanship.

### \* 29.2 Quality assurance

If the *Contract* elsewhere requires further quality assurance, the *Contractor* shall:

- (a) plan, establish and maintain a conforming quality system; and
- (b) ensure that the *Superintendent* has access to the quality system of the *Contractor*, *consultants* and *subcontractors* so as to enable monitoring and quality auditing.

Any such quality system shall be used only as an aid to achieving compliance with the *Contract* and to document such compliance. Such system shall not discharge the *Contractor's* other obligations under the *Contract*.

### 29.3 Defective work

If the *Superintendent* becomes aware of *work* done (including material provided) by the *Contractor* which does not comply with the *Contract*, the *Superintendent* shall as soon as practicable give the *Contractor* written details thereof. If the subject *work* has not been rectified, the *Superintendent* may direct the *Contractor* to do any one or more of the following (including times for commencement and completion):

- (a) remove the material from the *site*;
- (b) demolish the *work*;
- (c) redesign, reconstruct, replace or correct the *work*; and
- (d) not deliver it to the *site*.

If:

- (a) the *Contractor* fails to comply with such a *direction*; and
- (b) that failure has not been made good within 8 days after the *Contractor* receives written notice from the *Superintendent* that the *Principal* intends to have the subject *work* rectified by others,

the *Principal* may have that *work* so rectified and the *Superintendent* shall certify the cost incurred as moneys due from the *Contractor* to the *Principal*.

### 29.4 Acceptance of defective work

Instead of a *direction* pursuant to subclause 29.3, the *Superintendent* may direct the *Contractor* that the *Principal* elects to accept the subject *work*, whereupon there shall be a deemed *variation*.

### 29.5 Timing

The *Superintendent* may give a *direction* pursuant to this clause at any time before the expiry of the last *defects liability period*.

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\* See Preface

## 30 Examination and testing

### 30.1 Tests

At any time before the expiry of the last *defects liability period*, the *Superintendent* may direct that any *WUC* be tested. The *Contractor* shall give such assistance and samples and make accessible such parts of *WUC* as may be directed by the *Superintendent*.

### 30.2 Covering up

The *Superintendent* may direct that any part of *WUC* shall not be covered up or made inaccessible without the *Superintendent's* prior written *direction*.

### 30.3 Who conducts

*Tests* shall be conducted as provided elsewhere in the *Contract* or by the *Superintendent* or a person (which may include the *Contractor*) nominated by the *Superintendent*.

### 30.4 Notice

The *Superintendent* or the *Contractor* (whichever is to conduct the *test*) shall give reasonable written notice to the other of the date, time and place of the *test*. If the other does not attend, the *test* may nevertheless proceed.

### 30.5 Delay

Without prejudice to any other right, if the *Contractor* or the *Superintendent* delays in conducting a *test*, the other, after giving reasonable written notice of intention to do so, may conduct the *test*.

### 30.6 Completion and results

On completion of the *tests*, the *Contractor* shall make good *WUC* so that it fully complies with the *Contract*.

Results of *tests* shall be promptly made available by each party to the other and to the *Superintendent*.

### 30.7 Costs

Costs in connection with testing pursuant to this clause shall be borne by the *Principal* except where the *Contract* otherwise provides or the *test* is consequent upon, or reveals a failure of the *Contractor* to comply with the *Contract* (including this clause).

## 31 Working hours

If the working hours and working days on the *site* are not stated elsewhere in the *Contract*, they shall be as notified by the *Contractor* to the *Superintendent* before commencement of *work on site*. They shall not be varied without the *Superintendent's* prior written approval, except when, in the interests of safety of persons or property, the *Contractor* finds it necessary to carry out *WUC* otherwise, whereupon the *Contractor* shall give the *Superintendent* written notice of those circumstances as early as possible.

## 32 Programming

The *Superintendent* shall give to the *Contractor* the information, materials, documents and instructions by the times or within the periods both stated in *Item 27*.

The *Contractor* shall give the *Superintendent* reasonable advance notice of when the *Contractor* needs other information, materials, documents or instructions from the *Superintendent* or the *Principal*.

The *Principal* and the *Superintendent* shall not be obliged to give any information, materials, documents or instructions earlier than the *Principal* or the *Superintendent*, as the case may be, should reasonably have anticipated at the *date of acceptance of tender*.

The *Superintendent* may direct in what order and at what time the various stages or portions of *WUC* shall be carried out. If the *Contractor* can reasonably comply with the *direction*, the *Contractor* shall do so. If the *Contractor* cannot reasonably comply, the *Contractor* shall give the *Superintendent* written notice of the reasons.

A *program* is a written statement showing the dates by which, or the times within which, the various stages or portions of *WUC* are to be carried out or completed. It shall be deemed a *Contract* document.

The *Superintendent* may direct the *Contractor* to give the *Superintendent* a *program* within the time and in the form directed.

The *Contractor* shall not, without reasonable cause, depart from a *program*.

If compliance with any such *directions* under this clause, except those pursuant to the *Contractor's* default, causes the *Contractor* to incur more or less cost than otherwise would have been incurred had the *Contractor* not been given the *direction*, the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

### 33 Suspension

#### 33.1 Superintendent's suspension

The *Superintendent* may direct the *Contractor* to suspend the carrying out of the whole or part of *WUC* for such time as the *Superintendent* thinks fit, if the *Superintendent* is of the opinion that it is necessary:

- (a) because of an act, default or omission of:
  - (i)(a) the *Superintendent*, the *Principal* or its employees, consultants, agents or other contractors (not being employed by the *Contractor*); or
  - (i)(b) the *Contractor*, a *consultant*, a *subcontractor* or the employees or agents of any of them;
- (b) for the protection or safety of any person or property; or
- (c) to comply with a court order.

#### 33.2 Contractor's suspension

If the *Contractor* wishes to suspend the carrying out of the whole or part of *WUC*, otherwise than pursuant to subclause 39.9, the *Contractor* shall obtain the *Superintendent's* prior written approval. The *Superintendent* may approve the suspension and may impose conditions of approval.

#### 33.3 Recommencement

As soon as the *Superintendent* becomes aware that the reason for any suspension no longer exists, the *Superintendent* shall direct the *Contractor* to recommence suspended *WUC* as soon as reasonably practicable.

The *Contractor* may recommence *WUC* suspended pursuant to subclause 33.2 or 39.9 at any time after reasonable notice to the *Superintendent*.

### 33.4 Cost

The *Contractor* shall bear the cost of suspension pursuant to paragraph (a)(ii) of subclause 33.1 and subclause 33.2. If the *Contractor* made the protection, safety, court order or suspension of work necessary, the *Contractor* shall bear the cost of suspension pursuant to paragraph (b) or (c) of subclause 33.1. If the *Contractor* otherwise incurs more or less cost than otherwise would have been incurred, the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

## 34 Time and progress

### 34.1 Progress

The *Contractor* shall ensure that *WUC* reaches *practical completion* by the *date for practical completion*.

### 34.2 Notice of delay

A party becoming aware of anything which will probably cause delay to *WUC* shall promptly give the *Superintendent* and the other party written notice of that cause and the estimated delay.

### 34.3 Claim

The *Contractor* shall be entitled to such extension of time for carrying out *WUC* (including reaching *practical completion*) as the *Superintendent* assesses ('*EOT*'), if:

- (a) the *Contractor* is or will be delayed in reaching *practical completion* by a *qualifying cause of delay*; and
- (b) the *Contractor* gives the *Superintendent*, within 28 days of when the *Contractor* should reasonably have become aware of that causation occurring, a written claim for an *EOT* evidencing the facts of causation and of the delay to *WUC* (including extent).

If further delay results from a *qualifying cause of delay* evidenced in a claim under paragraph (b) of this subclause, the *Contractor* shall claim an *EOT* for such delay by promptly giving the *Superintendent* a written claim evidencing the facts of that delay.

### 34.4 Assessment

When both non-qualifying and *qualifying causes of delay* overlap, the *Superintendent* shall apportion the resulting delay to *WUC* according to the respective causes' contribution.

In assessing each *EOT* the *Superintendent* shall disregard questions of whether:

- (a) *WUC* can nevertheless reach *practical completion* without an *EOT*; or
- (b) the *Contractor* can accelerate,

but shall have regard to what prevention and mitigation of the delay has not been effected by the *Contractor*.

### 34.5 Extension of time

Within 28 days after receiving the *Contractor's* claim for an *EOT*, the *Superintendent* shall give to the *Contractor* and the *Principal* a written *direction* evidencing the *EOT* so assessed. If the *Superintendent* does not do so, there shall be a deemed assessment and *direction* for an *EOT* as claimed.



Notwithstanding that the *Contractor* is not entitled to or has not claimed an *EOT*, the *Superintendent* may at any time and from time to time before issuing the *final certificate* direct an *EOT*.

#### 34.6 Practical completion

The *Contractor* shall give the *Superintendent* at least 14 days written notice of the date upon which the *Contractor* anticipates that *practical completion* will be reached.

When the *Contractor* is of the opinion that *practical completion* has been reached, the *Contractor* shall in writing request the *Superintendent* to issue a *certificate of practical completion*. Within 14 days after receiving the request, the *Superintendent* shall give the *Contractor* and the *Principal* either a *certificate of practical completion* evidencing the *date of practical completion* or written reasons for not doing so.

If the *Superintendent* is of the opinion that *practical completion* has been reached, the *Superintendent* may issue a *certificate of practical completion* even though no request has been made.

#### 34.7 Liquidated damages

If *WUC* does not reach *practical completion* by the *date for practical completion*, the *Superintendent* shall certify, as due and payable to the *Principal*, liquidated damages in *Item 29* for every day after the *date for practical completion* to and including the earliest of the *date of practical completion* or termination of the *Contract* or the *Principal* taking *WUC* out of the hands of the *Contractor*.

If an *EOT* is directed after the *Contractor* has paid or the *Principal* has set off liquidated damages, the *Principal* shall forthwith repay to the *Contractor* such of those liquidated damages as represent the days the subject of the *EOT*.

#### 34.8 Bonus for early practical completion

If the *date of practical completion* is earlier than the *date for practical completion* the *Superintendent* shall certify as due and payable to the *Contractor* the bonus in *Item 30(a)* for every day after the *date of practical completion* to and including the *date for practical completion*.

The *Contractor* hereby waives that part of a bonus exceeding the *Item 30(b)* amount.

#### 34.9 Delay damages

For every day the subject of an *EOT* for a *compensable cause* and for which the *Contractor* gives the *Superintendent* a claim for delay damages pursuant to subclause 41.1, damages certified by the *Superintendent* under subclause 41.3 shall be due and payable to the *Contractor*.

### 35 Defects liability

The *defects liability period* stated in *Item 32* shall commence on the *date of practical completion* at 4:00 pm.

The *Contractor* shall carry out rectification at times and in a manner causing as little inconvenience to the occupants or users of the *Works* as is reasonably possible.

As soon as possible after the *date of practical completion*, the *Contractor* shall rectify all *defects* existing at the *date of practical completion*.

During the *defects liability period*, the *Superintendent* may give the *Contractor* a *direction* to rectify a *defect* which:

- (a) shall identify the *defect* and the date for completion of its rectification; and
- (b) may state a date for commencement of the rectification and whether there shall be a separate *defects liability period* therefor (not exceeding that in *Item 32*, commencing at 4:00 pm on the date the rectification is completed and governed by this clause).

If the rectification is not commenced or completed by the stated dates, the *Principal* may have the rectification carried out by others but without prejudice to any other rights and remedies the *Principal* may have. The cost thereby incurred shall be certified by the *Superintendent* as moneys due and payable to the *Principal*.

## 36 Variations

### 36.1 Directing variations

The *Contractor* shall not vary *WUC* except as directed in writing.

The *Superintendent*, before the *date of practical completion*, may direct the *Contractor* to vary *WUC* by any one or more of the following which is nevertheless of a character and extent contemplated by, and capable of being carried out under, the provisions of the *Contract* (including being within the warranties in subclause 2.2):

- (a) increase, decrease or omit any part;
- (b) change the character or quality;
- (c) change the levels, lines, positions or dimensions;
- (d) carry out additional *work*;
- (e) demolish or remove material or *work* no longer required by the *Principal*.

### 36.2 Proposed variations

The *Superintendent* may give the *Contractor* written notice of a proposed *variation*.

The *Contractor* shall as soon as practicable, after receiving such notice, notify the *Superintendent* whether the proposed *variation* can be effected, together with, if it can be effected, the *Contractor's* estimate of the

- (a) effect on the *program* (including the *date for practical completion*); and
- (b) cost (including all warranties and time-related costs, if any) of the proposed *variation*.

The *Superintendent* may direct the *Contractor* to give a detailed quotation for the proposed *variation* supported by measurements or other evidence of cost.

The *Contractor's* costs for each compliance with this subclause shall be certified by the *Superintendent* as moneys due to the *Contractor*.

### 36.3 Variations for convenience of Contractor

If the *Contractor* requests the *Superintendent* to direct a *variation* for the convenience of the *Contractor*, the *Superintendent* may do so. The *direction* shall be written and may be conditional. Unless the *direction* provides otherwise, the *Contractor* shall be entitled to neither extra time nor extra money.

### 36.4 Pricing

The *Superintendent* shall, as soon as possible, price each *variation* using the following order of precedence:

- (a) prior agreement;

- (b) applicable rates or prices in the *Contract*;
- (c) rates or prices in a *schedule of rates* or schedule of prices, even though not *Contract* documents, to the extent that it is reasonable to use them; and
- (d) reasonable rates or prices, which shall include a reasonable amount for profit and overheads,

and any deductions shall include a reasonable amount for profit but not overheads.

That price shall be added to or deducted from the *contract sum*.

### 37 Payment

#### 37.1 Progress claims

The *Contractor* shall claim payment progressively in accordance with *Item 33*.

An early progress claim shall be deemed to have been made on the date for making that claim.

Each progress claim shall be given in writing to the *Superintendent* and shall include details of the value of *WUC* done and may include details of other moneys then due to the *Contractor* pursuant to provisions of the *Contract*.

#### 37.2 Certificates

The *Superintendent* shall, within 14 days after receiving such a progress claim, issue to the *Principal* and the *Contractor*:

- (a) a *progress certificate* evidencing the *Superintendent's* opinion of the moneys due from the *Principal* to the *Contractor* pursuant to the progress claim and reasons for any difference ('*progress certificate*'); and
- (b) a certificate evidencing the *Superintendent's* assessment of retention moneys and moneys due from the *Contractor* to the *Principal* pursuant to the *Contract*.

If the *Contractor* does not make a progress claim in accordance with *Item 33*, the *Superintendent* may issue the *progress certificate* with details of the calculations and shall issue the certificate in paragraph (b).

If the *Superintendent* does not issue the *progress certificate* within 14 days of receiving a progress claim in accordance with subclause 37.1, that progress claim shall be deemed to be the relevant *progress certificate*.

The *Principal* shall within 7 days after receiving both such certificates, or within 21 days after the *Superintendent* receives the progress claim, pay to the *Contractor* the balance of the *progress certificate* after setting off such of the certificate in paragraph (b) as the *Principal* elects to set off. If that setting off produces a negative balance, the *Contractor* shall pay that balance to the *Principal* within 7 days of receiving written notice thereof.

Neither a *progress certificate* nor a payment of moneys shall be evidence that the subject *WUC* has been carried out satisfactorily. Payment other than *final payment* shall be payment on account only.

#### 37.3 Unfixed plant and materials

The *Principal* shall not be liable to pay for unfixed plant and materials unless they are listed in *Item 34* and the *Contractor*:

- (a) provides the additional *security* in *Item 14(e)*; and

- (b) satisfies the *Superintendent* that the subject plant and materials have been paid for, properly stored and protected, and labelled the property of the *Principal*.

Upon payment to the *Contractor* and the release of any additional *security* in paragraph (a), the subject plant and materials shall be the unencumbered property of the *Principal*.

#### 37.4 Final payment claim and certificate

Within 28 days after the expiry of the last *defects liability period*, the *Contractor* shall give the *Superintendent* a written *final payment claim* endorsed 'Final Payment Claim' being a progress claim together with all other claims whatsoever in connection with the subject matter of the *Contract*.

Within 42 days after the expiry of the last *defects liability period*, the *Superintendent* shall issue to both the *Contractor* and the *Principal* a *final certificate* evidencing the moneys finally due and payable between the *Contractor* and the *Principal* on any account whatsoever in connection with the subject matter of the *Contract*.

Those moneys certified as due and payable shall be paid by the *Principal* or the *Contractor*, as the case may be, within 7 days after the debtor receives the *final certificate*.

The *final certificate* shall be conclusive evidence of accord and satisfaction, and in discharge of each party's obligations in connection with the subject matter of the *Contract* except for:

- (a) fraud or dishonesty relating to *WUC* or any part thereof or to any matter dealt with in the *final certificate*;
- (b) any *defect* or omission in the *Works* or any part thereof which was not apparent at the end of the last *defects liability period*, or which would not have been disclosed upon reasonable inspection at the time of the issue of the *final certificate*;
- (c) any accidental or erroneous inclusion or exclusion of any *work* or figures in any computation or an arithmetical error in any computation; and
- (d) unresolved issues the subject of any notice of *dispute* pursuant to clause 42, served before the 7th day after the issue of the *final certificate*.

#### 37.5 Interest

Interest in *Item 35* shall be due and payable after the date of default in payment.

#### 37.6 Other moneys due

The *Principal* may elect that moneys due and owing otherwise than in connection with the subject matter of the *Contract* also be due to the *Principal* pursuant to the *Contract*.

### 38 Payment of workers, consultants and subcontractors

#### 38.1 Workers, consultants and subcontractors

The *Contractor* shall give in respect of a progress claim, documentary evidence of the payment of moneys due and payable to:

- (a) workers of the *Contractor* and of the *subcontractors*;
- (b) *consultants*; and
- (c) *subcontractors*,

in respect of *WUC* the subject of that claim.

If the *Contractor* is unable to give such documentary evidence, the *Contractor* shall give other documentary evidence of the moneys so due and payable to workers, *consultants* and *subcontractors*.

Documentary evidence, except where the *Contract* otherwise provides, shall be to the *Superintendent's* satisfaction.

### 38.2 Withholding payment

Subject to the next paragraph, the *Principal* may withhold moneys certified due and payable in respect of the progress claim until the *Contractor* complies with subclause 38.1.

The *Principal* shall not withhold payment of such moneys in excess of the moneys evidenced pursuant to subclause 38.1 as due and payable to workers, *consultants* and *subcontractors*.

### 38.3 Direct payment

Before *final payment*, the *Principal*, if not aware of a relevant relation-back day (as defined in the Corporations Law) may pay unpaid moneys the subject of subclause 38.1 directly to a worker, *consultant* or *subcontractor* where:

- (a) permitted by law;
- (b) given a court order in favour of the worker, *consultant* or *subcontractor*; or
- (c) requested in writing by the *Contractor*.

Such payment and a payment made to a worker, *consultant* or *subcontractor* in compliance with a *legislative requirement* shall be deemed to be part-satisfaction of the *Principal's* obligation to pay pursuant to subclause 37.2 or 37.4, as the case may be.

## 39 Default or insolvency

### 39.1 Preservation of other rights

If a party breaches (including repudiates) the *Contract*, nothing in this clause shall prejudice the right of the other party to recover damages or exercise any other right or remedy.

### 39.2 Contractor's default

If the *Contractor* commits a substantial breach of the *Contract*, the *Principal* may, by hand or by registered post, give the *Contractor* a written notice to show cause.

Substantial breaches include, but are not limited to:

- (a) failing to:
  - ~~(i)~~(a) perform properly the *Contractor's* design obligations;
  - ~~(ii)~~(b) provide security;
  - ~~(iii)~~(c) provide evidence of insurance;
  - ~~(iv)~~(d) comply with a *direction* of the *Superintendent* pursuant to subclause 29.3; or
  - ~~(v)~~(e) use the materials or standards of *work* required by the *Contract*;
- (b) wrongful suspension of *work*;
- (c) substantial departure from a *program* without reasonable cause or the *Superintendent's* approval;

- (d) where there is no *program*, failing to proceed with due expedition and without delay; and
- (e) in respect of clause 38, knowingly providing documentary evidence containing an untrue statement.

### 39.3 Principal's notice to show cause

A notice under subclause 39.2 shall state:

- (a) that it is a notice under clause 39 of these General Conditions;
- (b) the alleged substantial breach;
- (c) that the *Contractor* is required to show cause in writing why the *Principal* should not exercise a right referred to in subclause 39.4;
- (d) the date and time by which the *Contractor* must show cause (which shall not be less than 7 clear days after the notice is received by the *Contractor*); and
- (e) the place at which cause must be shown.

### 39.4 Principal's rights

If the *Contractor* fails to show reasonable cause by the stated date and time, the *Principal* may by written notice to the *Contractor*:

- (a) take out of the *Contractor's* hands the whole or part of the *work* remaining to be completed and suspend payment until it becomes due and payable pursuant to subclause 39.6; or
- (b) terminate the *Contract*.

### 39.5 Take out

The *Principal* shall complete *work* taken out of the *Contractor's* hands and may:

- (a) use materials, equipment and other things intended for *WUC*; and
- (b) without payment of compensation to the *Contractor*:
  - (i)(a) take possession of, and use, such of the *construction plant* and other things on or in the vicinity of the *site* as were used by the *Contractor*;
  - (i)(b) contract with such of the *consultants* and *subcontractors*; and
  - (i)(c) take possession of, and use, such of the *design documents*,

as are reasonably required by the *Principal* to facilitate completion of *WUC* taken out.

If the *Principal* takes possession of *construction plant*, *design documents* or other things, the *Principal* shall maintain them and, subject to subclause 39.6, on completion of the *work* taken out, shall return such of them as are surplus.

The *Superintendent* shall keep records of the cost of completing the *work* taken out.

### 39.6 Adjustment on completion of work taken out

When *work* taken out of the *Contractor's* hands has been completed, the *Superintendent* shall assess the cost thereby incurred and shall certify as moneys due and payable accordingly the difference between that cost (showing the calculations therefor) and the amount which would otherwise have been paid to the *Contractor* if the *work* had been completed by the *Contractor*.

If the *Contractor* is indebted to the *Principal*, the *Principal* may retain *construction plant* or other things taken under subclause 39.5 until the debt is satisfied. If after reasonable notice, the *Contractor* fails to pay the debt, the *Principal* may sell the *construction plant* or other things and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess shall be paid to the *Contractor*.

### 39.7 Principal's default

If the *Principal* commits a substantial breach of the *Contract*, the *Contractor* may, by hand or by registered post, give the *Principal* a written notice to show cause.

Substantial breaches include, but are not limited to:

- (a) failing to:
  - ~~(i)(a)~~ provide *security*;
  - ~~(ii)(b)~~ produce evidence of insurance;
  - ~~(iii)(c)~~ rectify inadequate *Contractor's* access to the *site* if that failure continues for longer than the time stated in *Item 36(a)*;
  - ~~(iv)(d)~~ rectify inadequate *Contractor's* possession of the *site* if that failure continues for longer than the time stated in *Item 36(b)*; or
  - ~~(v)(e)~~ make a payment due and payable pursuant to the *Contract*; and
- (b) the *Superintendent* not giving a *certificate of practical completion* or reasons as referred to in subclause 34.6.

### 39.8 Contractor's notice to show cause

A notice given under subclause 39.7 shall state:

- (a) that it is a notice under clause 39 of these General Conditions;
- (b) the alleged substantial breach;
- (c) that the *Principal* is required to show cause in writing why the *Contractor* should not exercise a right referred to in subclause 39.9;
- (d) the date and time by which the *Principal* must show cause (which shall not be less than 7 clear days after the notice is received by the *Principal*); and
- (e) the place at which cause must be shown.

### 39.9 Contractor's rights

If the *Principal* fails to show reasonable cause by the stated date and time, the *Contractor* may, by written notice to the *Principal*, suspend the whole or any part of *WUC*.

The *Contractor* shall remove the suspension if the *Principal* remedies the breach.

The *Contractor* may, by written notice to the *Principal*, terminate the *Contract*, if within 28 days of the date of suspension under this subclause the *Principal* fails:

- (a) to remedy the breach; or
- (b) if the breach is not capable of remedy, to make other arrangements to the reasonable satisfaction of the *Contractor*.

Damages suffered by the *Contractor* by reason of the suspension shall be assessed by the *Superintendent*, who shall certify them as moneys due and payable to the *Contractor*.

### 39.10 Termination

If the *Contract* is terminated pursuant to subclause 39.4(b) or 39.9, the parties' remedies, rights and liabilities shall be the same as they would have been under the law governing the *Contract* had the defaulting party repudiated the *Contract* and the other party elected to treat the *Contract* as at an end and recover damages.

If Alternative 2 of subclause 10.2 applies and the *Principal* has terminated the *Contract*, the *Principal* may also, without payment of compensation, take possession of the *design documents*.

### 39.11 Insolvency

If:

- (a) a party informs the other in writing, or creditors generally, that the party is insolvent or is financially unable to proceed with the *Contract*;
- (b) execution is levied against a party by a creditor;
- (c) a party is an individual person or a partnership including an individual person, and if that person:

(i)(a) commits an act of bankruptcy;

(ii)(b) has a bankruptcy petition presented against him or her or presents his or her own petition;

(iii)(c) is made bankrupt;

(iv)(d) makes a proposal for a scheme of arrangement or a composition; or

(v)(e) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the Bankruptcy Act 1966 (Cwlth) or like provision under the law governing the *Contract*; or

- (d) in relation to a party being a corporation:

(i)(a) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;

(ii)(b) it enters a deed of company arrangement with creditors;

(iii)(c) a controller or administrator is appointed;

(iv)(d) an application is made to a court for its winding up and not stayed within 14 days;

(v)(e) a winding up order is made in respect of it;

(vi)(f) it resolves by special resolution that it be wound up voluntarily (other than for a member's voluntary winding up); or

(vii)(g) a mortgagee of any of its property takes possession of that property,

then, where the other party is:

- (A) the *Principal*, the *Principal* may, without giving a notice to show cause, exercise the right under subclause 39.4(a); or
- (B) the *Contractor*, the *Contractor* may, without giving a notice to show cause, exercise the right under subclause 39.9.

The rights and remedies given by this subclause are additional to any other rights and remedies. They may be exercised notwithstanding that there has been no breach of contract.



#### 40 Termination by frustration

If the *Contract* is frustrated:

- (a) the *Superintendent* shall issue a *progress certificate* for *WUC* carried out to the date of frustration, evidencing the amount which would have been payable had the *Contract* not been frustrated and had the *Contractor* been entitled to and made a progress claim on the date of frustration;
- (b) the *Principal* shall pay the *Contractor*:
  - ~~(i)(a)~~ the amount due to the *Contractor* evidenced by all unpaid certificates;
  - ~~(i)(b)~~ the cost of materials and equipment reasonably ordered by the *Contractor* for *WUC* and which the *Contractor* is liable to accept, but only if they will become the *Principal's* property upon payment; and
  - ~~(i)(c)~~ the costs reasonably incurred:
    - (A) removing *temporary works* and *construction plant*;
    - (B) returning to their place of engagement the *Contractor*, *consultants*, *subcontractors* and their respective employees engaged in *WUC* at the date of frustration; and
    - (C) by the *Contractor* in expectation of completing *WUC* and not included in any other payment; and
- (c) each party shall promptly release and return all *security* provided by the other.

#### 41 Notification of claims

##### 41.1 Communication of claims

The *prescribed notice* is a written notice of the general basis and quantum of the claim.

As soon as practicable after a party becomes aware of any claim in connection with the subject matter of the *Contract*, that party shall give to the other party and to the *Superintendent* the *prescribed notice* or a notice of *dispute* under subclause 42.1.

This subclause and subclause 41.3 shall not apply to any claim, including a claim for payment (except for claims which would, other than for this subclause, have been included in the *final payment claim*), the communication of which is required by another provision of the *Contract*.

##### 41.2 Liability for failure to communicate

The failure of a party to comply with the provisions of subclause 41.1 or to communicate a claim in accordance with the relevant provision of the *Contract* shall, inter alia, entitle the other party to damages for breach of the *Contract* but shall neither bar nor invalidate the claim.

##### 41.3 Superintendent's decision

If within 28 days of giving the *prescribed notice* the party giving it does not notify the other party and the *Superintendent* of particulars of the claim, the *prescribed notice* shall be deemed to be the claim.

Within 56 days of receipt of the *prescribed notice* the *Superintendent* shall assess the claim and notify the parties in writing of the decision. Unless a party within a further 28 days of such notification gives a notice of *dispute* under subclause 42.1 which includes such decision, the *Superintendent* shall certify the amount of that assessment to be moneys then due and payable.

## 42 Dispute resolution

### 42.1 Notice of dispute

If a difference or dispute (together called a 'dispute') between the parties arises in connection with the subject matter of the *Contract*, including a dispute concerning:

- (a) a *Superintendent's* direction; or
- (b) a claim:
  - (i) in tort;
  - (ii) under statute;
  - (iii) for restitution based on unjust enrichment or other quantum meruit; or
  - (iv) for rectification or frustration,
 or like claim available under the law governing the *Contract*.

then either party shall, by hand or by registered post, give the other and the *Superintendent* a written notice of *dispute* adequately identifying and providing details of the *dispute*.

Notwithstanding the existence of a *dispute*, the parties shall, subject to clauses 39 and 40 and subclause 42.4, continue to perform the *Contract*.

### 42.2 Conference

Within 14 days after receiving a notice of *dispute*, the parties shall confer at least once to resolve the *dispute* or to agree on methods of doing so. At every such conference each party shall be represented by a person having authority to agree to such resolution or methods. All aspects of every such conference except the fact of occurrence shall be privileged.

If the *dispute* has not been resolved within 28 days of service of the notice of *dispute*, that *dispute* shall be and is hereby referred to arbitration.

### 42.3 ~~Arbitration~~ Expert Determination

If within a further 14 days the parties have not agreed upon an ~~arbitrator~~ expert, the ~~arbitrator~~ expert shall be nominated by the person in *Item 37(a)*. The ~~arbitration~~ expert determination shall be conducted in accordance with the rules in *Item 37(b)*.

### 42.4. Summary relief

Nothing herein shall prejudice the right of a party to institute proceedings to enforce payment due under the *Contract* or to seek injunctive or urgent declaratory relief.

## 43 Waiver of conditions

Except as provided at law or in equity or elsewhere in the *Contract*, none of the terms of the *Contract* shall be varied, waived, discharged or released, except with the prior written consent of the parties.

## 44 Shared cost savings

The *Contract* includes a preliminary document entitled '*Cost Plan for the design and construction of the Tennyson Reach Parkland*' (**Cost Plan**) dated ~~{TBA}~~ 30 June 2011.

During the course of the design, the Contractor shall produce 3 cost estimates that are based on the **Cost Plan** but amended to reflect the latest design.

Upon completion of the design, the parties shall agree or the *Superintendent* shall determine cost estimate (**Budgeted Amount**) pursuant to clause 9.7 that sets out the contract sum

comprising all costs to carry out the Works, on a subcontractor and supplier basis, and shall include all of the Contractor's costs but shall not include profit.

Within 30 days of the date of practical completion for each separable portion, the Contractor must provide to the Principal the following Documents:

- (a) A copy of each subcontract and supply agreement;
- (b) A spreadsheet that sets out the amount shown in the Budgeted Amount cost plan (Budgeted Amount) and the actual subcontract or supply agreement amount (Actual Amount) for each subcontractor and supplier.
- (c) A calculation of the cost saving being the sum of the difference of the Budgeted Amount and the Actual Amount for each supplier and subcontractor that carried out any part of the Works.

The Principal must notify the Contractor within 28 days of receipt the Documents referred to above if it disagrees with the Contractor's calculation of the cost saving and provide its reasons, provided however that such time frame may be extended by the Principal by a further 28 business days to allow for requests for information (RFI's) and time to consider clarifications of responses to RFI's, such further 28 business days to commence from the date of receipt by the Principal of a full and detailed response by the Contractor to the RFI's.

If either party disagrees with the calculation of the cost savings, either party may serve on the other party a notice of dispute pursuant to clause 42.1.

The Contractor must pay the Principal 50% of the cost saving within 15 Business Days of receipt of the Principal's agreement of the cost savings or within 15 Business Days of a decision made by Expert Determination under clause 42.3.

#### 45 GST

Words or expressions used in this clause which are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cwth) (GST Act), have the same meaning in this clause.

Any consideration to be paid or provided for a supply made under or in connection with this Contract, does not include an amount on account of GST.

Despite any other provision in this Contract, if a party (Supplier) makes a supply under or in connection with this Contract on which GST is imposed:

- (a) the consideration payable or to be provided for that supply under this Contract but for the application of this clause (GST exclusive consideration) is increased by, and the recipient of the supply (Recipient) must also pay to the Supplier, an amount equal to the GST payable by the Supplier on that supply in accordance with the GST Act; and
- (b) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set-off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided;
- (c) if a payment to a party under this Contract is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense;
- (d) The Supplier will provide a tax invoice to the Recipient which complies with the GST Act;
- (e) The clause will not apply where any amount payable or other consideration to be provided under this Contract is expressly stated to be inclusive of GST.

#### 46 Entire Agreement

This Contract contains everything that the parties have agreed on in relation to the Works. No party can rely on an earlier document, or on anything said or done by another party (or by a director, officer, agent or employee of that party) before this Contract was executed.

#### 47 Maintenance

The Contractor shall fully maintain the Works at its sole cost and expense for a period of twelve (12) months for each stage of the Works commencing from the date of practical completion of each of the stages. The standard of care shall be minimum wear and tear.

#### 48 Access to Records

The Contractor must to permit and allow full access to its financial and project accounts relating to the Works for the purposes of audit and verification of payment claims. This access includes but is not limited to the taking of financial records, access to electronic records, and full disclosure.

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**ANNEXURE to the Australian Standard  
General Conditions of Contract for  
Design and Construct**

# Part A

This Annexure shall be completed and issued as part of the tender documents and, subject to any amendments to be incorporated into the *Contract*, is to be attached to the General Conditions of Contract and shall be read as part of the *Contract*.

*Item*

- |   |  |   |
|---|--|---|
| 1 | <i>Principal</i><br>(clause 1)                                   | <u>Brisbane City Council</u><br><u>ABN 72 002 765 795</u>   |
| 2 | <i>Principal's address</i>                                       | <u>[TBA]</u><br>Phone ..... Fax .....   |
| 3 | <i>Contractor</i><br>(clause 1)                                  | <u>Mirvac Constructions (Qld) Pty Limited</u><br><u>ABN 88 088 536 476</u>  |
| 4 | <i>Contractor's address</i>                                      | <u>Level 2, 164 Grey Street South Bank QLD 4101</u><br>Phone [TBA] Fax [TBA]  |
| 5 | <i>Superintendent</i><br>(clause 1)                              | <u>[TBA] Ray Dwyer</u><br>.....<br>ACN (N/A) ..... ABN (N/A) .....  |
| 6 | <i>Superintendent's address</i>                                  | <u>[TBA] Brisbane City Council, Level 3, 171 George St, Brisbane</u><br>Phone [REDACTED] .....<br>Email: [REDACTED] |
| 7 | (a) <i>Date for practical completion</i><br>(clause 1)           | <u>(Refer to details in separable Part A)</u>   |
|   | OR   |   |
|   | (b) <i>Period of time for practical completion</i><br>(clause 1) | <u>(Refer to details in separable Part A)</u>   |

† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A

8	Governing law (clause 1(h))	..... If nothing stated, that of the jurisdiction where the <i>site</i> is located
9	(a) Currency (clause 1(g))	..... If nothing stated, that of the jurisdiction where the <i>site</i> is located
	(b) Place for payments (clause 1(g))	..... If nothing stated, the <i>Principal's</i> address
	(c) Place of business of bank (clause 1(d))	..... If nothing stated, the place nearest to where the <i>site</i> is located
10	The <i>Principal's</i> project requirements 1 <i>Preliminary design</i> (if included in <i>Item</i> 11) are described in the following documents (clause 1)	2 <del>Schedule of rates</del> ..... 3 <del>Cost Plan for the design and construction of the Tennyson Reach Parkland (Cost Plan dated 30 June 2011 that is based on the PPRs Refer PPRs approved by Principal, which are attached as Schedule 2 to Part A)</del> ..... 4 ..... 5 .....
11	<i>Preliminary design</i> (clause 1)	(a) A <i>preliminary design</i> * is included * <del>is not included</del> in the <i>Principal's</i> project requirements. If neither deleted, a <i>preliminary design</i> is not included  (b) The <i>preliminary design</i> documents, which are attached as <u>Schedule 1 to Part A</u> , are:  1 <u>Drawing entitled 'Masterplan' referenced 110406 and dated 17/05/11</u>  2 <u>Specification entitled 'Schematic Design Package', referenced 110406, dated 5/12/11</u>  3 <u>Scope of works</u>  4 <u>Terms of Reference</u>  5
12	Quantities in <i>schedule of rates</i> , limits of accuracy (subclause 2.5)	Upper Limit  Lower Limit

\* Delete one

- 13 *Provisional sum, 105 %  
percentage for ~~profit and overheads,~~  
~~preliminaries and attendance~~  
(clause 3)*
- 14 *Contractor's security*
- (a) Form (clause 5) No security or retention is required under this contract
- (b) Amount or maximum percentage of *contract sum* (clause 5) NIL  
If nothing stated, 5% of the *contract sum*
- (c) If retention moneys, percentage of each *progress certificate* (clause 5 and subclause 37.2) NIL %, until the limit in *Item 14(b)*  
If nothing stated, 10%, until the limit in *Item 14(b)*
- (d) Time for provision (except for retention moneys) (clause 5) within ..... days after *date of acceptance of tender*  
If nothing stated, 28 days
- (e) Additional *security* for unfixed plant and materials (subclauses 5.4 and 37.3) ..... \$ .....
- (f) *Contractor's security* upon *certificate of practical completion* is reduced by (subclause 5.4) ..... % of amount held  
If nothing stated, 50% of amount held
- 15 *Principal's security*
- (a) Form (clause 5) No security or retention is required under this Contract
- (b) Amount or maximum percentage of *contract sum* (clause 5) .....  
If nothing stated, nil
- (c) Time for provision (clause 5) within ..... days after *date of acceptance of tender*  
If nothing stated, 28 days
- (d) *Principal's security* upon *certificate of practical completion* is reduced by (subclause 5.4) ..... % of amount held  
If nothing stated, 50% of amount held

† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A

16 *Principal-supplied documents*  
(subclause 8.2)

Document

No. of copies

- 1 *Principal's project requirements* .....
- 2 .....
- 3 .....
- 4 .....
- 5 .....

If nothing stated,  
5 copies

17 Documents, numbers of copies, and  
the times or stages at which they  
are to be supplied by the *Contractor*  
(subclause 8.3)

Document

No. of copies

Time/stage

- 1 .....
- 2 .....
- 3 .....
- 4 .....
- 5 .....

18 Time for *Superintendent's direction*  
about documents  
(subclause 8.3)

4-day

If nothing stated, 14 days

19 Subcontracting  
(subclause 9.2)

*Work by consultants*

*Work by others*

- .....
- .....
- .....
- .....



20 Novation  
(subclause 9.4)

Subcontractor or  
selected subcontractor,  
as the case may be

Particular part of the  
preliminary design or  
selected subcontract work,  
as the case may be

.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....

21 Intellectual property rights granted  
to the Principal,  
the Alternative applying  
(subclause 10.2)

If nothing stated, Alternative 1 applies

22 Legislative requirements

(a) Those excepted  
(subclause 11.1)

.....  
.....  
.....

(b) Identified WUC  
(subclause 11.2(a)(iii))

.....  
.....

23 Insurance of the Works  
(clause 16A)

(a) Alternative applying

If nothing stated, Alternative 1 applies

If Alternative 1 applies

(b) Provision for demolition and  
removal of debris

..... \$ .....

OR

..... % of the contract sum

(c) Provision for consultants' fees and  
Principal's consultants' fees

..... \$ .....

OR

..... % of the contract sum

(d) Value of materials or things to be supplied by the *Principal* .....  
..... \$ .....

(e) Additional amount or percentage .....  
..... \$ .....

OR

.....% of the total of (a) to (d) in clause 16A

24 Professional indemnity insurance (clause 16B and subclause 9.2(d))

(a) Levels of cover of *Contractor's* professional indemnity insurance shall be not less than .....  
..... \$ .....  
If nothing stated, \$5 000 000

(b) Period for which *Contractor's* professional indemnity insurance shall be maintained after issue of the *final certificate* .....  
If nothing stated, 6 years

Category	Levels of cover
.....	\$ .....
.....	\$ .....
.....	\$ .....
.....	\$ .....
	If nothing stated, \$1 000 000

(d) Period for which each *consultant's* professional indemnity insurance shall be maintained after issue of the *final certificate* .....  
If nothing stated, 6 years

25 Public liability insurance (clause 17)

(a) Alternative applying .....  
If nothing stated, Alternative 1 applies

If Alternative 1 applies

(b) Amount per occurrence shall be not less than .....  
..... \$ .....  
If nothing stated, \$10 000 000

- 26 (a) Time for giving access (subclause 24.1) within ..... days of *date of acceptance of tender*  
If nothing stated, 14 days
- (b) Time for giving possession (subclause 24.1) within ..... days of *date of acceptance of tender*  
If nothing stated, 14 days

27	The information, materials, documents or instructions and the times by, or periods within which they are to be given to the <i>Contractor</i> (clause 32)	Documents or instructions	Times/Periods
		1	.....
		2	.....
		3	.....
		4	.....
		5	.....

28 *Qualifying causes of delay* ~~causes being~~ causes of delay for which *EOTs* will not be granted (paragraph (b)(iii) of clause 1 and subclause 34.3) Unseasonal weather .....

29 Liquidated damages, rate (subclause 34.7) \$Nil Duration of Works/Contract sum for this stage per day

30 Bonus for early *practical completion* (subclause 34.8)

(a) Rate .....  
..... per day \$ ..... per day

(b) Limit .....  
..... \$ .....

OR  
.....% of *contract sum*  
If nothing stated, there is no waiver

† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A

† 31 Other compensable causes  
(paragraph (b) of clause 1 and  
subclause 34.9)

Nil Acts or omissions of the Principal that cause a delay to the Works

This compensable cause only relates to the Brisbane City Council (BCC) acting as the Principal under this contract and not as a statutory authority.

In other words if BCC caused any delay (excluding a delay arising out of carrying out BCC carrying out its statutory duty) it will be liable to pay delay damages pursuant to clause 34.9.

Alternatively, if BCC caused a delay because of its failure to provide a response to a development application pursuant to the Sustainable Planning Act 2009, BCC will not be liable for delay damages suffered by the Contractor.

The delivery of statutory approvals later than that which is prescribed by statute that cause delays to the Works

All time that is spent liaising with statutory authorities required to procure all statutory approvals for the design and construction of the Stage III Works that is in excess of 20 Business Days.

32 Defects Liability period  
(clause 35)

.....  
.....  
If nothing stated, 12 months

33 Progress Claims  
(subclause 37.1)

The contract sum is that amount that is set out as the contract sum in the Cost Plan including as amended pursuant to clause 9.8, 37 and 44 for all Stages is an absolute maximum of

(a) Times for progress claims

On the.....day each month for WUC

For work up to..... day of that month

OR

(b) Stages of WUC for progress claims

The Contractor may make a progress claim in accordance with clause 37 upon achieving the following milestone events:

The amounts set out alongside each of the milestones are estimates of the progress claims that will be made. Those amounts are subject to variation in accordance with clauses 9.8, 39.4 and 44.

estimated fully subject to the Budgeted Cost and to be proportionately reduced where the Budgeted Cost is less than \$6m.

Stage I

Completion of the bulk earthworks	\$3,054,000.00
At practical completion	\$1,500,000.00
At expiry of defects liability period of Stage I	\$ 500,000.00

Stage II

Completion of the bulk earthworks	\$ 750,000.00
At practical completion	\$ 100,000.00
At expiry of defects liability period of Stage II	\$ 90,000.00

Stage III

At practical completion	\$ 5,000.00
At expiry of defects liability period of Stage III	\$ 1,000.00

All of the above amounts are stated exclusive of GST.

- 34 Unfixed plant and materials for which payment claims may be made (subclause 37.3) .....
- 35 Interest rate on overdue payments (subclause 37.5) ..... % per annum  
If nothing stated, 18% per annum
- 36 (a) Time for *Principal* to rectify inadequate access (subclause 39.7(a)(iii)) ..... days  
If nothing stated, 14 days
- (b) Time for *Principal* to rectify inadequate possession (subclause 39.7(a)(iv)) ..... days  
If nothing stated, 14 days

37 Arbitration Expert Determination  
(subclause 42.3)

(a) Person to nominate an arbitration expert

.....  
.....  
.....

A1

If no-one stated, the President of the Institute of Arbitrators & Mediators Australia

(b) Rules for arbitration expert determination

.....  
.....  
.....  
.....  
.....

If nothing stated:

(a) rules 5–18 of the Rules of The Institute of Arbitrators & Mediators Australia for the Conduct of Commercial Arbitrations;

OR

(b) if one or more of the parties are nationals of and habitually resident in, incorporated in, or where the central management and control is exercised in, different countries as between the parties, then the UNCITRAL Arbitration Rules shall apply and the appointing authority shall be the person provided in *Item 37(c)*

(c) Appointing Authority under UNCITRAL Arbitration Rules

A1

.....  
.....

If no-one stated, the President of the Institute of Arbitrators & Mediators Australia

# Part A

## Separable Portions

- This section should be completed only if the *Contract* provides for *separable portions*.
- Complete separate pages for each *separable portion*, which should be numbered appropriately. Any balance of the *Works* should also be a *separable portion*.

<i>Separable portion</i> (clause 1)	Stage I
Description of <i>separable portion</i> (clause 1)	<u>the area shown as Stage I on drawing entitled 'Masterplan', referenced 110406 and dated 17/05/11</u>
<i>Item</i>	
7 (a) <i>Date for practical completion</i> (clause 1)	
OR	
(b) <i>Period of time for practical completion</i> (clause 1)	<u>57 weeks from the date that this contract is executed by both parties</u>
14 <i>Contractor's security</i>	
(a) <i>Form</i> (clause 5)	<u>The Contractor is not required to provide any security under this Contract</u>
(b) <i>Amount or maximum percentage value of this separable portion</i> (clause 5)	<u>Nil %</u> If nothing stated, 5% of value of this separable portion
(c) <i>If retention moneys, percentage of each progress certificate applicable to this separable portion</i> (clause 5 and subclause 37.2)	.....%, until the limit in <i>Item 14(b)</i> If nothing stated, 10%, until the limit in <i>Item 14(b)</i>
(d) <i>Time for provision (except for retention moneys)</i> (clause 5)	within ..... days after <i>date of acceptance of tender</i> If nothing stated, 28 days
(e) <i>Additional security for unfixed plant and materials</i> (subclauses 5.4 and 37.3)	..... \$ .....
(f) <i>Contractor's security upon certificate of practical completion is reduced by</i> (subclause 5.4)	.....% of amount held If nothing stated, 50% of amount held

15 *Principal's security*

(a) Form (clause 5) The Principal is not required to provide any security under this Contract

(b) Amount or maximum percentage of value of this separable portion (clause 5) .....  
If nothing stated, nil

(c) Time for provision (clause 5) within ..... days after date of acceptance of tender  
If nothing stated, 28 days

(d) *Principal's security upon certificate of practical completion* is reduced by (subclause 5.4) .....% of amount held  
If nothing stated, 50% of amount held

29 Liquidated damages, rate (subclause 34.7) \$ Nil per day

30 Bonus for early practical completion (subclause 34.8) \$ Nil

(a) Rate ..... per day \$..... per day

(b) Limit ..... \$.....

OR

.....% of value of this separable portion  
If nothing stated, there is no waiver

31 Other compensable causes (paragraph (b) of clause 1 and subclause 34.9)

Nil. Acts or omissions of the Principal that cause a delay to the Works

The Contractor may make a progress claim in accordance with clause 37 upon achieving the following milestone events:

The amounts set out alongside each of the milestones are estimates of the progress claims that will be made. These amounts are subject to variation in accordance with clauses 9.3, 36.1 and 44.

The delivery of statutory approvals later than that which is prescribed by statute that cause delays to the Works



## Part A

### Separable Portions

- This section should be completed only if the *Contract* provides for *separable portions*.
- Complete separate pages for each *separable portion*, which should be numbered appropriately. Any balance of the *Works* should also be a *separable portion*.

<i>Separable portion</i> (clause 1)	Stage II
Description of <i>separable portion</i> (clause 1)	<u>the area shown as Stage II on drawing entitled 'Masterplan', referenced 110406 and dated 17/05/11.</u>
 <i>Item</i>	
7 (a) <i>Date for practical completion</i> (clause 1)	
OR	
(b) <i>Period of time for practical completion</i> (clause 1)	<u>140 weeks from the date that this contract is executed by both parties</u>
 14 <i>Contractor's security</i>	
(a) <i>Form</i> (clause 5)	<u>The Contractor is not required to provide any security under this Contract</u>
(b) <i>Amount or maximum percentage value of this separable portion</i> (clause 5)	<u>Nil %</u> If nothing stated, 5% of value of this separable portion
(c) <i>If retention moneys, percentage of each progress certificate applicable to this separable portion</i> (clause 5 and subclause 37.2)	.....%, until the limit in <i>Item 14(b)</i> If nothing stated, 10%, until the limit in <i>Item 14(b)</i>
(d) <i>Time for provision (except for retention moneys)</i> (clause 5)	within ..... days after <i>date of acceptance of tender</i> If nothing stated, 28 days
(e) <i>Additional security for unfixed plant and materials</i> (subclauses 5.4 and 37.3)	..... \$ .....
(f) <i>Contractor's security upon certificate of practical completion is reduced by</i> (subclause 5.4)	.....% of amount held If nothing stated, 50% of amount held

- 15 *Principal's security*
  - (a) Form (clause 5) The Principal is not required to provide any security under this Contract
  - (b) Amount or maximum percentage of value of this separable portion (clause 5) .....  
If nothing stated, nil
  - (c) Time for provision (clause 5) within ..... days after *date of acceptance of tender*  
If nothing stated, 28 days
  - (d) *Principal's security upon certificate of practical completion is reduced by* ..... % of amount held  
(subclause 5.4) If nothing stated, 50% of amount held

29 Liquidated damages, rate (subclause 34.7) \$ ~~Duration of Works/Contract sum for this stage~~ Nil per day

30 Bonus for early practical completion (subclause 34.8) \$ Nil

(a) Rate .....  
..... per day \$ ..... per day

(b) Limit .....  
..... \$ .....

OR

..... % of value of this separable portion  
If nothing stated, there is no waiver

31 Other compensable causes (paragraph (b) of clause 1 and subclause 34.9) All Acts or omissions of the Principal that cause a delay to the Works

The Contractor may make a progress claim in accordance with clause 37 upon achieving the following milestone events:

The amounts set out alongside each of the milestones are estimates of the progress claims that will be made. Those amounts are subject to variation in accordance with clauses 9.8, 36.1 and 44.

the delivery of statutory approvals later than that which is prescribed by statute that cause delays to the Works

Special Condition:

If the Contractor fails achieve to meet the date of practical completion within 60 days of the amended date for practical completion for this a Stage of the Works, the Principal shall have the right to may:

- (a) novate the subcontractors to the Principal and take over this Stage of the Works and the total site to complete the Works;

- (b) deduct, as appropriate, the costs for completion of the relevant portion of the Contract pertaining to this Stage; and
- (c) provide accommodation for the Sales Office at commercial rates until the parkland is complete.

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**Part A**

**Separable Portions**

- This section should be completed only if the *Contract* provides for *separable portions*.
- Complete separate pages for each *separable portion*, which should be numbered appropriately. Any balance of the *Works* should also be a *separable portion*.

<p><u>Separable portion</u> (clause 1)</p> <p>Description of <u>separable portion</u> (clause 1)</p>	<p><u>Stage III</u></p> <p>the area shown as Stage III on drawing entitled 'Masterplan', referenced 110406 and dated 17/05/11</p>
<u>Item</u>	
<p>7 (a) <u>Date for practical completion</u> (clause 1)</p> <p>OR</p> <p>(b) <u>Period of time for practical completion</u> (clause 1)</p>	<p>57 weeks from the date that this contract is executed by both parties</p>
<p>14 <u>Contractor's security</u></p> <p>(a) <u>Form</u> (clause 5)</p> <p>(b) <u>Amount or maximum percentage value of this separable portion</u> (clause 5)</p> <p>(c) <u>If retention moneys, percentage of each progress certificate applicable to this separable portion</u> (clause 5 and subclause 37.2)</p> <p>(d) <u>Time for provision (except for retention moneys)</u> (clause 5)</p> <p>(e) <u>Additional security for unfixed plant and materials</u> (subclauses 5.4 and 37.3)</p> <p>(f) <u>Contractor's security upon certificate of practical completion is reduced by</u> (subclause 5.4)</p>	<p>The Contractor is not required to provide any security under this Contract</p> <p>Nil %</p> <p>If nothing stated, 5% of value of this separable portion</p> <p>.....%, until the limit in Item 14(b) If nothing stated, 10%, until the limit in Item 14(b)</p> <p>within ..... days after date of acceptance of tender If nothing stated, 28 days</p> <p>..... \$</p> <p>.....% of amount held If nothing stated, 50% of amount held</p>

15 Principal's security

(a) Form

(clause 5)

The Principal is not required to provide any security under this Contract

(b) Amount or maximum

percentage of value of this separable portion (clause 5)

.....  
If nothing stated, nil

(c) Time for provision

(clause 5)

within ..... days after date of acceptance of tender  
If nothing stated, 28 days

(d) Principal's security upon certificate of practical completion is reduced by (subclause 5.4)

..... % of amount held  
If nothing stated, 50% of amount held

29 Liquidated damages, rate (subclause 34.7)

~~Duration of Works/Contract sum for this stage - \$ Nil per day~~

30 Bonus for early practical completion (subclause 34.8)

\$ Nil

(a) Rate

.....  
..... per day \$..... per day

(b) Limit

.....  
\$.....

OR

..... % of value of this separable portion  
If nothing stated, there is no waiver

31 Other compensable causes (paragraph (b) of clause 1 and subclause 34.9)

~~Nil - Acts or omissions of the Principal that cause a delay to the Works~~

~~The Contractor may make a progress claim in accordance with clause 24.1 upon achieving the milestones set out in the schedule.~~

~~The amounts set out alongside each of the milestones are estimates of the progress claims that will be made. Those amounts are subject to variation in accordance with clauses 9.3, 36.1 and 44.~~

~~The delivery of statutory approvals later than that which is prescribed by statute that cause delays to the Works~~

~~All time that is spent liaising with statutory authorities required to procure all statutory approvals for the design and construction of the Stage III Works that is in excess of 60 days.~~

ANNEXURE to the Australian Standard  
General Conditions of Contract for  
Design and Construct

## Schedule 1 to Part A

This Annexure shall be completed and issued as part of the tender documents and, subject to any amendments to be incorporated into the Contract, is to be attached to the General Conditions of Contract and shall be read as part of the Contract.

Preliminary Design

ANNEXURE to the Australian Standard  
General Conditions of Contract for  
Design and Construct

# Schedule 1 to Part A

This Annexure shall be completed and issued as part of the tender documents and, subject to any amendments to be incorporated into the Contract, is to be attached to the General Conditions of Contract and shall be read as part of the Contract.

Cost Plan

DRAFT

**Annexure to the Australian Standard  
General Conditions of Contract for  
Design and Construct**

# Part B

- This form may also be used where the *Principal* is required to provide an unconditional undertaking, by substituting *Principal* for *Contractor* and vice versa, wherever occurring.

**Approved form of unconditional undertaking**

(clause 1 – security)

At the request of .....  
 ACN..... ABN ..... (the *Contractor*) and in consideration of  
 .....  
 ACN..... ABN ..... (the *Principal*) accepting this undertaking  
 in respect of the *Contract* for .....  
 ..... (the *Project*) .....  
 .....  
 ACN..... ABN ..... (the *Financial Institution*) unconditionally  
 undertakes to pay on demand any sum or sums which may from time to time be demanded by the *Principal* to a  
 maximum aggregate sum of .....  
 ..... (\$ ..... )

The undertaking is to continue until notification has been received from the *Principal* that the sum is no longer required by the *Principal* or until this undertaking is returned to the *Financial Institution* or until payment to the *Principal* by the *Financial Institution* of the whole of the sum or such part as the *Principal* may require.

Should the *Financial Institution* be notified in writing, purporting to be signed by .....  
 ..... for and on behalf of the *Principal* that the *Principal* desires payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the *Financial Institution* will make the payment or payments to the *Principal* forthwith without reference to the *Contractor* and notwithstanding any notice given by the *Contractor* not to pay same.

Provided always that the *Financial Institution* may at any time without being required so to do pay to the *Principal* the sum of .....  
 ..... (\$ ..... )

less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the *Principal* and thereupon the liability of the *Financial Institution* hereunder shall immediately cease.

Dated at ..... this ..... day of ..... 20.....



Annexure to the Australian Standard  
General Conditions of Contract for  
Design and Construct

# Part C

## Deed of novation

(subclause 9.2(c))

This Deed made the ..... day of ..... 20 .....  
between ..... (the *Principal*)  
of ..... ACN ..... ABN .....  
and ..... (the *Contractor*)  
of ..... ACN ..... ABN .....  
and ..... (the *Subcontractor*)  
of ..... ACN ..... ABN .....  
and ..... (the *Incoming Contractor*)  
of ..... ACN ..... ABN .....  
witness that:

- 1 Upon receipt by the *Subcontractor* of the sum certified by the *Superintendent* as owing under the prior contract described in the Schedule hereto:
  - (a) the prior contract shall be discharged;
  - (b) the *Subcontractor* shall release the *Contractor* from the further performance of the prior contract and from all claims and demands in connection with the prior contract;
  - (c) the *Incoming Contractor* shall punctually perform the obligations of the *Contractor* under the prior contract as far as they are not performed. The *Incoming Contractor* acknowledges itself bound by the provisions of the prior contract as if the *Incoming Contractor* had been named in the prior contract; and
  - (d) the *Subcontractor* shall punctually perform like obligations and be bound to the *Incoming Contractor* as if the provisions of the prior contract were incorporated herein.
- 2 The *Principal* and *Subcontractor* each warrant to the *Incoming Contractor* that:
  - (a) subcontract work carried out to the date hereof is in accordance with the provisions of the prior contract; and
  - (b) all claims and demands in connection with the prior contract have been made to the *Contractor*.
- 3 The *Principal* and *Subcontractor* each indemnifies the *Incoming Contractor* from all claims and demands of the *Contractor*, *Principal* and *Subcontractor* in connection with the prior contract.
- 4 A dispute between:
  - (a) the *Principal* and the *Subcontractor* in connection with the *Superintendent's* certification of the sum owing under the prior contract; or
  - (b) the *Incoming Contractor* and the *Subcontractor* in connection with clause 1(c) or 1(d), shall be resolved pursuant to the provisions of AS 4903—2000 Subcontract Conditions for Design and Construct which for the purposes of this clause 4 are incorporated herein.
- 5 This Deed shall be governed by the laws of the jurisdiction stated in *Item 8* of the *Contract* between the *Principal* and *Contractor*.

**Schedule**

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In witness whereof the parties have executed this DEED OF NOVATION by affixing their seals.

THE COMMON SEAL of the *Principal*  
was affixed to this document in the presence of:

.....  
Secretary/Director

.....  
Name (please print)

.....  
Director

.....  
Name (please print)

THE COMMON SEAL of the *Contractor*  
was affixed to this document in the presence of:

.....  
Secretary/Director

.....  
Name (please print)

.....  
Director

.....  
Name (please print)

THE COMMON SEAL of the *Subcontractor*  
was affixed to this document in the presence of:

.....  
Secretary/Director

.....  
Name (please print)

.....  
Director

.....  
Name (please print)

THE COMMON SEAL of the *Incoming Contractor*  
was affixed to this document in the presence of:

.....  
Secretary/Director

.....  
Name (please print)

.....  
Director

.....  
Name (please print)

**Annexure to the Australian Standard  
General Conditions of Contract for  
Design and Construct**

# Part D

**Note:** Usually the *continuing party* is the subcontractor, selected subcontractor or consultant, as the case may be.

## Deed of novation

(subclause 9.4)

This Deed made this ..... day of ..... 20 .....  
between ..... (the *outgoing party*)  
of ..... ACN ..... ABN .....  
and ..... (the *incoming party*)  
of ..... ACN ..... ABN .....  
and ..... (the *continuing party*)  
of ..... ACN ..... ABN .....  
witness that:

- 1 Upon receipt by the *continuing party* of all moneys owing under the prior contract:
  - (a) the *incoming party* shall punctually perform the obligations of the *outgoing party* under the prior contract described in the Schedule hereto as far as they are not performed. The *incoming party* acknowledges itself bound by the provisions of the prior contract as if the *incoming party* had been named as the *outgoing party* in the prior contract;
  - (b) the *continuing party* punctually perform like obligations and be bound to the *incoming party* as if the provisions of the prior contract were incorporated herein; and
  - (c) the *outgoing party* and *continuing party* shall each release and forever discharge the other from the further performance of the prior contract and from all claims and demands in connection with the prior contract.
- 2 The *outgoing party* and *continuing party* each warrant to the *incoming party* that *preliminary design* or *selected subcontract work*, as the case may be, carried out to the date hereof, is in accordance with the provisions of the prior contract.
- 3 This Deed shall be governed by the governing law of the prior contract between the *outgoing party* and *continuing party*.

**Schedule**

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In witness whereof the parties have executed this DEED OF NOVATION by affixing their seals.

THE COMMON SEAL of the *outgoing party* was affixed to this document in the presence of:

.....  
Secretary/Director

.....  
Name (please print)

.....  
Director

.....  
Name (please print)

THE COMMON SEAL of the *incoming party* was affixed to this document in the presence of:

.....  
Secretary/Director

.....  
Name (please print)

.....  
Director

.....  
Name (please print)

THE COMMON SEAL of the *continuing party* was affixed to this document in the presence of:

.....  
Secretary/Director

.....  
Name (please print)

.....  
Director

.....  
Name (please print)

**Annexure to the Australian Standard  
General Conditions of Contract for  
Design and Construct**

# Part E

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**Deletions, amendments and additions**

1 The following clauses have been deleted from AS 4902—2000

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2 The following clauses have been amended and differ from the corresponding clauses in AS 4902—2000

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3 The following clauses have been added to AS 4902—2000

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## † INDEX

<i>Clause</i>	<i>Clause</i>		
Acceleration .....	34.4(b)	fees and charges.....	11.2
Acceptance (see Approval)		interest .....	37.5
Acceptance of tender		liquidated damages .....	34.7
date of, defined.....	1	minerals, fossils and relics .....	24.3
formal instrument of agreement .....	6	omitted items .....	2.5
security—time for.....	5.1, <i>Items</i> 14(d), 15(c)	on completion of work taken out of the hands of the Contractor .....	39.6
Access (see also possession of site)		pricing variations.....	36.4
during defects liability period .....	35	protection of people and property.....	12
for Principal and others.....	24.2	provisional sums .....	3
for testing .....	30.1	quantities .....	2.5
Accident (see also Insurance, Urgent protection and Protection of persons and property)		set-offs by the Principal.....	37.2, 37.6
reinstatement of damage .....	14.2	suspension by Contractor .....	39.9
to employees.....	18	urgent protection.....	13
to third parties .....	15, 17		
to WUC .....	14, 16A	Agreement	
Accord and satisfaction .....	37.4	Contract in absence of formal instrument .....	6
Actions		formal instrument of .....	6
arbitration.....	42	interpretation of .....	1, 8.1
indemnification by Contractor .....	10, 15.1	rectification when dispute .....	42.1
indemnification by Principal.....	10, 15.2	Alignments (see Survey mark)	
Acts, (of Parliament) (see Legislative requirements)		Alternative clauses.....	10.2, 16A, 17
Additions and/or deductions		Ambiguity in documents .....	8.1
adjustment generally.....	2.1	Appliances (see Construction plant)	
care of survey marks .....	26.3	Approval	
changes in legislative requirements.....	11.2	effect of certificates .....	37.2
contract sum definition, excluded in .....	1	examination and testing .....	30
discrepancies in documents.....	8.1	extension of time .....	34.4, 34.5
error in setting out.....	26.2	of documents .....	8.3
generally.....	2.1	of form of security .....	1
legislative requirements.....	11.2	of insurance policies .....	16A, 17
minerals, fossils and relics .....	24.3	of media releases .....	8.6
order of work .....	32	of municipal and statutory authorities (see Legislative requirement)	
pricing variations generally .....	36.4	of subcontracting .....	9.2
programming .....	32	of variations of convenience .....	36.3
provisional sums .....	3	to suspension by Contractor .....	33.2
suspension .....	33.4	working days .....	31
variations.....	36.4	working hours.....	31
Address for service (see also Service).....	7	Approved form of unconditional undertaking	
change of.....	7	security .....	1
Contractor .....	7, <i>Item</i> 4	form of .....	Annexure Part B
Principal.....	7, <i>Item</i> 2	Arbitration	
Superintendent.....	7, <i>Item</i> 6	agreement to arbitrate .....	42.2
Adjustment (for)		ambit of dispute .....	42.1
actual quantities.....	2.5	conference .....	42.2
bonus .....	34.8	nomination of arbitrator .....	42.3, <i>Item</i> 37(a)
cost of suspension.....	33.4	rules of .....	42.3, <i>Item</i> 37(b)
cost of tests.....	30.7	Assessment (see Superintendent, assessments by)	
defective material and work .....	29.3	Assignment	
delay damages .....	34.9	of Contract.....	9.1
directions on order of work .....	32	of subcontract .....	9.2(a)
errors in documents .....	8.1	by subcontractor .....	9.2(b)
errors in setting out.....	26.2	Asterisk clauses .....	8.6, 29.2

† References to *Items* are to *Items* in Annexure Part A

<i>Clause</i>	<i>Clause</i>
Australasian Dispute Centre .....	Item 37(a), (c)
Authorisation (see Direction)	
Awards (see Legislative requirements)	
Bank guarantee (see Unconditional undertaking)	
Bank—place of business .....	1, Item 9(c)
Bankruptcy	
of Contractor .....	39.11
of Principal .....	39.11
Basis of payment .....	2.1
Bench mark (see Survey mark)	
Bonus	
for early practical completion .....	34.8, Item 30(a)
limit of .....	34.8, Item 30(b)
rate of .....	34.8, Item 30(a)
waiver of part of bonus .....	34.8, Item 30(b)
where separable portions .....	4(c)
Breach of contract	
claims for .....	41
default of the Contractor .....	39.2
default of the Principal .....	39.7
preservation of other rights .....	39.1
repudiation .....	39.10
substantial breaches .....	39.2, 39.7
By-laws (see Legislative requirements)	
Calendar days .....	1(a)
Care of WUC	
cleaning up .....	27
Contractor's obligations for .....	14.1
excepted risks .....	14.3
generally .....	14.1
reinstatement of loss or damage .....	14.2
urgent protection of .....	13
Certificate(s) (see also Direction and Payment)	
effect of .....	37.2
final certificate .....	37.4
of cost to complete on default by Contractor .....	39.6
of municipal and statutory authorities (see Legislative requirements)	
practical completion .....	34.6
progress certificate .....	37.2
Certificate of Practical Completion	
defined .....	1
issue of .....	34.6
meaning of .....	34.6
non-issue of .....	34.6
request for .....	34.6
Claims (see also Adjustment)	
arbitration of .....	42.3
compensation to third party .....	12
failure to notify, effect .....	41.2
for damages .....	41.1, 42.1
for EOT for practical completion .....	34.3
for final payment .....	37.4
for progress payment .....	37.1, Item 33
indemnity by Contractor .....	10.1, 15.1
indemnity by Principal .....	10.1, 15.2
notice of dispute .....	41.1, 41.3, 42.1
notice of potential claims on insurance policies .....	19.4
notification of .....	41
settlement of claims under policy of insurance .....	19.5
settlement of disputes .....	42
Superintendent's decision on .....	41.3
valuation of .....	37.2, 41.3
Clause headings—effect .....	1(c)
Cleaning up .....	27
Commencement of WUC	
generally .....	16A, 16B, 17, 18, 19.1
insurance, proof of .....	19.1, 24.1
possession of site .....	24.1
production of policies before .....	19.1
Communications between parties .....	1(c)
Compensable cause	
defined .....	1
delay damages for .....	34.9
others listed .....	Item 31
Completion	
by Principal on default .....	39.4, 39.5, 39.6
final certificate .....	37.4
practical (see Practical completion)	
Compliance	
with legislative requirements .....	11.1
with Superintendent's interpretation .....	8.1
Concurrent delay .....	34.4
Conditions, waiver of .....	43
Confidential information	
agreement as to .....	8.5
generally .....	8.5
Construction of Contract .....	1, 8.1
Construction plant	
care of .....	14.1
Contractor to supply .....	28
defined .....	1
insurance of .....	16A
not to be removed .....	28
removal of .....	27, 40
use by Principal .....	39.5, 39.6
WUC includes .....	1
Consultants	
defined .....	1
engagement of .....	9.2
insurance of WUC, included in .....	16A
notices to and from insurer .....	19.3
novation of .....	2.2(a)(iii), 2.3(b), 9.4
professional indemnity insurance .....	16B, Items 24(c), (d)
proof of payment of .....	38
public liability insurance .....	17
suspension because of .....	33.1(a)
workers compensation policy .....	18
Consultant fees	
in contract works policy .....	16A, Item 23(c)
Contingency sum (see Provisional sum)	
Contract	
assignment .....	9.1
breach of (see Breach of Contract)	
construction of .....	1
defined .....	1
disputes under .....	42

<i>Clause</i>	<i>Clause</i>
documents .....	8
evidence of .....	6
formal instrument of .....	6
frustration of .....	40, 42.1
governing law of .....	1(h), <i>Item</i> 8
interpretation of .....	1
nature of .....	2
rectification of .....	42.1
subcontracting .....	9.2
termination—effect of .....	39.10
termination of	
by Contractor .....	34.9, 39.11
by Principal .....	34.4, 39.11
work under the (WUC) .....	1
Contract documents .....	8
ambiguities in .....	8.1
construction of .....	8.1
discrepancies in .....	8.1
inconsistencies in .....	8.1
interpretation of .....	8.1
Contract sum	
defined .....	1
insurance of WUC .....	16A
Contract works insurance	
amount of cover of .....	16A, <i>Item</i> 23
Contractor controlled .....	16A Alt 1
exclusions in .....	16A
in joint names .....	16A
length of cover .....	16A
policy .....	16A
Principal controlled .....	16A Alt 2
Contractor	
access to site by .....	24.1
address of .....	<i>Item</i> 4
appointment of representative .....	22
default by .....	39.2
defined .....	1
design obligations defined .....	1
design, property in .....	10.2
licence to use design documents .....	10.2
named .....	<i>Item</i> 3
possession of site by .....	24.1
professional indemnity insurance .....	16B, <i>Item</i> 24(a), (b)
rights of .....	34.9, 39.11
security by .....	5, <i>Item</i> 14
service on .....	7
to insure .....	16A Alt 1, 16B, 17 Alt 1, 18
use of site by .....	24.1
warranties .....	2.2
warranties unaffected .....	2.3
Contractor-supplied documents	
approval of .....	8.3(b)
availability of .....	8.4
checking of .....	8.3(a)
copies of .....	8.3
rejection of .....	8.3(c)
responsibility for .....	8.3
submission of .....	8.3
suitability of .....	8.3(c)
supply of .....	8.3
Contractor's all risk insurance	
(see Contract works insurance)	
Contractor's design obligations	
defined .....	1
warranties, as to .....	2.2
warranties unaffected .....	2.3
Contractor's employees	
control of .....	23
death or injury .....	18
insurance of .....	18
liability for .....	9.5
payment of .....	38
removal of, from site .....	23
Contractor's representative .....	22
Contractor's responsibility (see also Contractor and Care of WUC)	
for employees (see Contractor's employees)	
for payment of workers and subcontractors .....	38
for selected subcontractors .....	9.5
for subcontractors .....	9.5
to carry out WUC .....	2.1
Contributory negligence	
indemnity, as to .....	15.1
reduction of liability for .....	15.1
Copyright (see Intellectual property right)	
Corporation (also see Person) .....	1(a), 5.6, 39.11(d)
Corporations Law .....	5.6, 38.3
Cost objective	
defined in Principal's project requirements .....	1
Cost(s) (see also Adjustment)	
added to contract sum .....	24.3, 26.2, 26.3
completion of work taken out	
of the hands of the Contractor .....	39.6
complying with legislative requirements .....	11.2
examination and testing .....	30.7
latent conditions .....	25.3
protection of person, etc. ....	12
provisional sums .....	3
reinstatement .....	14.2
set-offs by Principal .....	37.6
setting out .....	26.3
urgent protection .....	13
variations .....	36.2, 36.4
Covering up of WUC .....	30.2
Cross liability clause .....	19.6
Currency .....	1(g), <i>Item</i> 9(a)
Damage (see also care of the Works and Insurance)	
prevention of .....	12
protection of property, etc. ....	12
reinstatement of .....	14.2
to persons and property other than WUC .....	15.1
to WUC .....	14.1
urgent protection .....	13
Damages (see also Adjustment and Claims)	
delay damages .....	34.9
for breach of the Contract .....	39.1
for delay by Contractor .....	34.7, <i>Item</i> 29
for delay due to compensable cause .....	34.9
liquidated .....	34.7, <i>Item</i> 29
on insolvency .....	39.11
on termination of the Contract .....	39.10
Date	
for practical completion .....	1, <i>Item</i> 7, 34.7, 34.8
of acceptance of tender .....	1
of practical completion .....	1, 34.6, 34.7, 34.8, 35



<i>Clause</i>	<i>Clause</i>
Date of acceptance of tender	records of cost to complete ..... 39.5
defined ..... 1	retention of plant and materials ..... 39.6
Date for practical completion	rights of the Principal ..... 39.1–39.6, 39.9
bonus ..... 34.8	show cause notice to ..... 39.3
defined ..... 1, <i>Item 7</i>	substantial breach by ..... 39.2
effect of proposed variation on ..... 36.2(a)	substantial departure from construction
liquidated damages ..... 34.7	program ..... 39.2(c)
period of time for ..... 1, <i>Item 7</i>	suspension of payment on
Date of practical completion	when the Principal takes work
defects liability period ..... 35	out of hands of Contractor ..... 39.5, 39.6
defined ..... 1	Default of subcontractor ..... 9.5
generally ..... 34.6	Default or insolvency
liquidated damages ..... 34.7	by Contractor ..... 39.2, 39.11
Days	by Principal ..... 39.7, 39.11
mean calendar days ..... 1(a)	generally ..... 39
working ..... 31	preservation of other rights ..... 39.1
Debt due to the Principal ..... 12, 13, 27, 29.3, 34.7,	substantial breaches ..... 39.2, 39.7
35, 37.6, 39.6	show cause notices ..... 39.3, 39.8
Decision (see also Direction)	Defective work
Deed of guarantee, undertaking and substitution	acceptance of ..... 29.4
defined ..... 1	correction of ..... 29.3
provision of ..... 5.6	cost of rectification ..... 29.3
requirement for ..... 5.6	demolition of ..... 29.3
Deed of novation ..... 9.4	examination and testing of ..... 30
Deemed variation	generally ..... 29.3
as to acceptance of defective work ..... 29.4	includes material ..... 29.3
for latent condition ..... 25.3	not to delivery ..... 29.3
omission in schedule of rates ..... 2.5	quality assurance ..... 29.2
on adjustment of quantities ..... 2.5	reconstruction of ..... 29.3
reinstatement of damage ..... 14.2	removal of ..... 29.3
Default by Principal	replacement of ..... 29.3
Contractor's rights on ..... 39.9	testing of ..... 30
Contractor's show cause notice ..... 39.8	time of notice of ..... 29.5
generally ..... 39.7	Defects
in making due payment ..... 39.7(a)	costs of rectification ..... 29.3, 35
in providing evidence of insurance ..... 39.7(a)	defined ..... 1
in providing security ..... 39.7(a)	direction to rectify ..... 35
in rectifying inadequate access ..... 39.7(a), <i>Item 36(a)</i>	examination and testing for ..... 30
in rectifying inadequate	in design—excepted risk ..... 14.3(f)
possession ..... 39.7(a), <i>Item 36(b)</i>	in work ..... 29.3, 29.4, 35
on termination ..... 39.10	length of liability period ..... 35, <i>Item 32</i>
rights of the Contractor ..... 39.1, 39.7, 39.8, 39.9	material and work ..... 29.3, 29.4, 35
Superintendent not issuing	minor, practical completion ..... 1
certificate of practical completion ..... 39.7(b)	remedying ..... 29.3, 35
show cause on ..... 39.7, 39.8	removal and replacement ..... 29.3
Default by Contractor	times for rectification ..... 35
adjustment of costs on ..... 39.6	Defects liability period
assessment of cost to complete on ..... 39.6	defined ..... 1
failing to comply with a direction of the	duration of ..... 35, <i>Item 32</i>
Superintendent ..... 39.2(a)	generally ..... 35, <i>Item 32</i>
failing to maintain program ..... 39.2(c)	Definitions (generally) ..... 1
failing to proceed with due expedition	dispute ..... 42.1
and without delay ..... 39.2(d)	Delay
failing to properly perform design	concurrent ..... 34.4
obligations ..... 39.2(a)	construction program ..... 32, 39.2(c)
failing to provide evidence of insurance ..... 39.2(a)	damages ..... 4(c), 34.9
failing to use materials or standards of	further delay ..... 34.3
workmanship ..... 39.2(a)	in giving possession ..... 24.1
in providing documentary evidence ..... 39.2(e)	notice of ..... 34.2
in providing security ..... 39.2(a)	overlapping ..... 34.4
may use plant and materials on ..... 39.5	rate of progress ..... 34.1
on termination ..... 39.10	Delay damages
possession of plant and materials ..... 39.5	certified by Superintendent ..... 34.9
procedure on ..... 39.2–39.6	claim for ..... 34.9
	due and payable ..... 34.9

<i>Clause</i>	<i>Clause</i>
for compensable cause.....	34.9
other compensable causes.....	1, 34.9, <i>Item</i> 31
where separable portions.....	4(c)
Deletion of clauses, etc.—effect.....	1(i)
Deletions, amendments and additions (generally).....	1(i), Annexure Part E
Demand (see also <i>Direction</i> )	
Demolition and removal of debris in Contract works policy.....	16A(b), <i>Item</i> 23(b)
Deposit (see <i>Security</i> )	
Design	
defects in—excepted risk.....	14.3(f)
intellectual property rights in objectives, defined in Principal's project requirements.....	1
procurement methods explained.....	Preface
stated purpose.....	2.2
warranties, as to.....	2.2
warranties, as to by Principal.....	10.1
warranties unaffected.....	2.3
Design and Construct explained.....	Preface
Design, Development and Construct explained.....	Preface
Design documents	
ambiguities in.....	8.1
defined.....	1
direction not to copy.....	8.2
discrepancies in.....	8.1
included in Contractor's design obligations.....	1
inconsistencies in.....	8.1
licence to use.....	10.2
novation.....	9.4
ownership of.....	10.2
variation to, affect of.....	8.3
warranties, as to.....	2.2
warranties unaffected.....	2.3(c)
Design, Novate and Construct explained.....	Preface
Design objectives defined in Principal's project requirements.....	1
Determination (see also <i>Direction</i> )	
defined in direction.....	1
disputes.....	4.2
interpretation of discrepancy.....	8.1
pricing of variation.....	36.4
value of work.....	37.2
Determination of Contract (see <i>Termination of Contract</i> )	
Dimensions	
figured.....	8.1
scaled.....	8.1
Direct payment to subcontractor.....	38.3
Direction (see also <i>Approval</i> )	
construction program.....	32
covering up of work.....	30.2
defective materials or work.....	29.3, 29.4
defined.....	1
dispute as to.....	42.1(a)
examination and testing.....	30
oral, to be confirmed in writing.....	20
order of work.....	32
notice of tests.....	30.4
relating to Contractor's employees.....	23
relating to subcontractors.....	23
suspension of WUC.....	33.1
written.....	20
Discrepancies	
Contract documents.....	8.1
dimensions.....	8.1
Dispute (see <i>Dispute resolution</i> )	
Dispute resolution	
after final certificate.....	37.4(d)
ambit of.....	42.1
arbitration.....	42.3
conference.....	42.2
continue performance of Contract.....	42.1
dispute defined.....	1, 42.1
includes difference.....	42.1
meaning of dispute.....	1, 42.1
notice of dispute.....	37.4(d), 41.1, 42.1
summary relief.....	42.4
Documents	
ambiguities in.....	8.1
approval of the Superintendent.....	8.3
availability of.....	8.4
confidential information.....	8.5
construction of.....	8.1
Contractor-supplied.....	8.3
discrepancies in.....	8.1
evidencing Contract.....	6
generally.....	8
inconsistencies in.....	8.1
interpretation of.....	8.1
Principal-supplied.....	8.2
property in.....	8.2, 8.3
results of tests.....	30.6
service of.....	7
Due (see <i>Moneys due</i> )	
Due and owing (see <i>Moneys due and owing</i> )	
Due and payable (see <i>Moneys due and payable</i> )	
Emergency work.....	13
Employees	
control of.....	23
insurance of.....	17(c), 18
of Contractor (see <i>Contractor's employees</i> )	
of subcontractor.....	23
responsibility for.....	9.5
English language.....	1(e)
EOT (extension of time)	
application for.....	34.3
assessment of.....	34.4, 34.5
claim for.....	34.3
deemed assessment.....	34.5
defined.....	1
failure to apply for, effect.....	41.2
grant of.....	34.5
in event of further delay.....	34.3
partial grant of.....	34.5
qualifying cause of delay.....	1, 34.3
refusal of.....	34.5
time for applying for.....	34.3
Superintendent may direct.....	34.5

<i>Clause</i>	<i>Clause</i>
Equipment to be provided by Contractor (see Construction plant).....	28
Errors	
Contract documents .....	8.1
in schedule of rates .....	2.5
setting out .....	26.2
Escrow	
security transferred in .....	5.1
Examination and testing .....	30
Excepted risk	
defined .....	1
meaning .....	14.3
Explanation (see also Direction)	
Extension of time (see EOT)	
Failure of Contractor (see also Delay and Default by Contractor)	
to arrange urgent protection .....	13
to lodge security .....	5.1, 39.2(a)
to make claims .....	41.2
to produce proof of insurance .....	19.2, 39.2(a)
to show cause .....	39.3
Failure of Principal (see also Default of Principal)	
to give access .....	39.7(a)
to give possession of Site .....	39.7(a)
to insure .....	19.2, 39.2(a)
to make payment .....	37.5, 39.7(a)
Faulty work (see Defective material or work)	
Fees and charges (see Legislative requirements)	
Figured dimensions .....	8.1
Final certificate	
accord and satisfaction .....	37.4
defined .....	1
effect of .....	37.4
final payment claim for .....	37.4
generally .....	37.4
meaning .....	37.4
release of security .....	5.4
Final payment (see also Final certificate)	
defined .....	1
meaning .....	37
Final payment claim	
defined .....	1
endorsement of .....	37.4
includes all claims .....	37.4
meaning .....	1, 37.4
payment on account, excepted .....	37.2
prescribed notice, excluded .....	41.1
time for .....	37.4
Financial institution	
form of unconditional undertaking by .....	Annexure Part B
security provided by .....	1
Finding of minerals, fossils and relics .....	24.3
Fitness for stated purpose	
to be stated in Principal's project requirements (definition) .....	1
warranty, as to .....	2.2(a)(ii)
warranty as to preliminary design .....	2.2(a)(ii)
Float .....	34.4(a)
Formal instrument of agreement	
execution of .....	6
generally .....	6
stamping of .....	6
Form of unconditional undertaking .....	Annexure Part B
Fossils .....	24.3
Frustration	
generally .....	40
notice of dispute when .....	42.1(b)
payment on .....	40
release and return of security .....	40
termination by .....	40
Gender includes every gender .....	1(d)
Governing law .....	1, Item 8
Guarantee, etc., deed of .....	5.6
Headings of clauses .....	1(c)
Hours of work .....	31
Incompetence of employees, etc. ....	23
Indemnity	
by Contractor .....	10.1, 15.1
by Principal .....	10.1, 15.2
care of work .....	14
damage to persons and property .....	15
infringement of intellectual property rights .....	10.1
Information to be supplied	
advance notice .....	32
by Principal .....	32
confidential information .....	8.5
Contract documents .....	8
examination of information made available for tendering .....	25.1(a)
examination of information relevant to risks, contingencies, etc. ....	25.1(b)
for setting out the Works .....	26.1
latent conditions .....	25
particulars of materials and plant .....	28(a)
results of tests .....	30.6
to media .....	8.6
working hours and days .....	31
Injury to persons	
generally .....	12
indemnity by Contractor .....	15.1
insurance .....	17, 18
measures to prevent .....	12
Insolvency	
bankruptcy .....	39.11(c)
Contractor's rights on .....	39.11(B)
deed of arrangement .....	39.11(d)
generally .....	39.11
meeting of creditors .....	39.11(d)
mortgagee in possession .....	39.11(d)
Principal's rights on .....	39.11(A)
voluntary winding up .....	39.11(d)
when corporation .....	39.11(d)
when exercisable .....	39.11
when individual .....	39.11(c)
Inspection	
access for testing .....	30.1
access to Principal and others .....	24.2
insurance policies .....	19.1

<i>Clause</i>	<i>Clause</i>
testing .....30.1	payment to subcontractor under ..... 38.3
Institute of Arbitrators & Mediators Australia	payment to worker under ..... 38.3
rules of..... <i>Item 37(b)</i>	provision of services ..... 11.2(a)
Instruction (see also Direction)	satisfaction of ..... 11.1, <i>Item 22(a)</i>
Insurance	time of effect of ..... 11.2(b)
cross-liability.....19.6	variance in ..... 11.1
failure to provide proof of..... 19.2, 39.2(a), 39.7(a)	Level mark (see Survey mark)
inspection of policies.....19.1	Liability of the Contractor
notice of potential claims.....19.4	for care of WUC ..... 14
notices to and from insurer .....19.3	for compliance with legislative requirements ..... 11
of employees .....18	for selected subcontractors..... 9.5
of the Works ..... 16A, <i>Item 23</i>	for subcontractors ..... 9.5
professional indemnity..... 16B, <i>Item 24</i>	Licences (see Legislative requirements)
proof of insurance.....19.1	Limits of accuracy in schedule of rates ..... 2.5(b), <i>Item 12</i>
provisions of policies.....19.3	Liquidated damages
public liability .....17	certifying of..... 34.7
settlement of claims.....19.5	rate of ..... 34.7, <i>Item 29</i>
workers' compensation .....18	repayment of..... 34.7
Intellectual property rights	separable portions .....4(c)
Contractor's warranty as to .....10	Litigation..... 42.4
defined ..... 1	Local authorities ..... 11
design documents .....10.2	Loss or damage to WUC
indemnity as to .....10	care of WUC ..... 14.1
licence in .....10.2	excepted risks ..... 14.3
ownership of.....10.2	generally ..... 14
Principal's warranty as to .....10	protection .....12, 13
Interpretation of Contract documents ..... 1, 8.1	reinstatement ..... 14.2
Interest	urgent protection ..... 13
on security .....5.5	Lump sum ..... 2.1
overdue payments ..... 37.5, <i>Item 35</i>	Making good (see also Reinstatement) ..... 14.2, 29.3, 35
rate of ..... 37.5, <i>Item 35</i>	Materials (see also Work)
Issue of	acceptance of defective ..... 29.4
certificate of practical completion .....34.6	defective ..... 29.3, 29.4
final certificate .....37.4	examination and testing of ..... 30
payment certificate .....37.2	failure to use proper materials..... 39.2(a)
<i>Item</i>	manufacture and supply of ..... 28
defined ..... 1	not to remove from site..... 28
Labour	particulars of..... 28
provision by Contractor .....28	possession on default ..... 39.5
Language of Contract ..... 1(e)	provision of by Contractor ..... 28
Latent conditions	quality of ..... 29.1
costs of .....25.3	supply of ..... 28
deemed variation on .....25.3	testing of ..... 30
defined ..... 1	unfixed ..... 37.3
meaning .....25.1	upon frustration of Contract ..... 40
notification of .....25.2	use of new materials ..... 29.1
scope of .....25.1	Measurement
Law	generally ..... 37.2
compliance with legislative requirements .....11.1	of quantities ..... 1(f)
Corporations ..... 5.6, 38.3	Media releases ..... 8.6
governing the Contract ..... 1(h), <i>Item 8</i>	Minor defects
Legislative requirements	practical completion, in definition of ..... 1
change in Principal's project requirements..... 11.2(a)(i)	remedying ..... 29.3, 35
changes in ..... 11.2	Misconduct of employee ..... 23
changes to WUC ..... 11.2(a)(iii)	Monetary sum (see Provisional sum)
changes to the Works ..... 11.2(a)(ii)	Moneys due
compliance with ..... 11.1	claim for ..... 37.1
cost of ..... 11.2(c)	cleaning up costs ..... 27
defined ..... 1	cost of proposed variation ..... 36.2
excepted ..... 11.1, <i>Item 22(a)</i>	
fees and charges ..... 1, 11.2(a)	
identified WUC ..... 11.2, <i>Item 22(b)</i>	

<i>Clause</i>	<i>Clause</i>		
cost of protection .....	12	consultant .....	9.4, Item 20
cost of urgent protection .....	13	deed of .....	9.4
moneys certified due to Principal.....	37.2(b)	Deeds of .....	Annexure Parts C and D
on frustration .....	40(b)	of Principal's consultants .....	2.2(a)(iii)
other moneys due.....	37.6	selected subcontractor.....	9.4, Item 20
progress certificate .....	37.2(a)	subcontractor .....	9.2(c), 9.4, Item 20
progress claim .....	37.1	warranties unaffected by.....	2.3(b)
<b>Moneys due and owing</b>		<b>Omissions (see also Defects and Minor defects)</b>	
to Principal otherwise.....	37.6	at final certificate.....	37.4(b)
<b>Moneys due and payable</b>		schedule of rates .....	2.5
bonus .....	34.8	Opening up for examination and testing.....	30.1
claims generally.....	41.3	Oral direction .....	20
cost of defect rectification .....	35	Order (see also Direction)	
costs of suspension on breach .....	39.9	Order of work .....	32
delay damages .....	34.9	Orders (see Legislative requirements)	
final certificate .....	37.4	Ordinances (see Legislative requirements)	
interest .....	37.5	Ordinary working days .....	31
liquidated damages .....	34.7	Ordinary working hours .....	31
on work taken out of the hands of Contractor.....	39.6	Other moneys due.....	37.6
substantial breach .....	39.7(a)	Overlapping delays .....	34.4
to workers and subcontractors.....	38.2	Ownership of documents	
unpaid insurance premium.....	19.2	supplied by Contractor.....	8.3
<b>Nature of Contract</b> .....	2	supplied by Principal .....	8.2
<b>Negligence of employee</b> .....	23	<b>Patent (see Intellectual property right)</b>	
<b>Nominated subcontractor</b>		<b>Payment(s) (see also Adjustments)</b>	
(see Novation).....	9.3, 9.4	adjustment for errors in schedule of rates.....	2.5
<b>Notice (see also Direction, Notice of dispute)</b>		adjustment for fees to statutory authorities.....	11.2
for testing .....	30.4	and performance .....	2.1
for urgent protection .....	13	basis of .....	2.1
from or to insurer.....	19.3	bonus .....	34.8
of availability of site.....	24.1	calculated by rates .....	2.1
of claim for EOT .....	34.3	calculation of.....	37.2
of claims generally .....	41	certificates .....	37.2
of default by the Contractor.....	39.3	claims for.....	37.1
of default by the Principal.....	39.8	currency of .....	1(g), Item 9(a)
of delay .....	34.2	deductions .....	37.2
of discovery of minerals, fossils or relics.....	24.3	default by Principal.....	39.7(a)
of dispute.....	42.1	delay damages .....	34.9
of errors in setting out .....	26.2	during arbitration .....	42.1
of latent conditions .....	25.2	for defective materials and work .....	29.3, 35
of names of persons entitled to access.....	24.2	for progress certificates .....	37.2
of potential insurance claims .....	19.4	for unfixed plant and materials.....	37.3
of working hours .....	31	insurance premiums, proof of.....	19.2
oral or written .....	20	interest on overdue.....	37.5
prescribed .....	41.1	liquidated damages .....	34.7
service of.....	7	not evidence of satisfactory WUC.....	37.2
statutory authorities.....	11.2	of balance after set off.....	37.2
to suspend work.....	33.1	of security and retention moneys.....	5.1
<b>Notice of dispute</b>		of workers and subcontractors.....	38
arbitration.....	42.3	on completion by Principal .....	39.6
concerning claims.....	41.1, 41.3	on final certificate.....	37.4
conference following .....	42.2	payment certificate .....	37.2
generally.....	42	payment on account .....	37.2
how served .....	42.1	place for .....	1(g), Item 9(b)
includes difference .....	42.1	provisional sums .....	3
when final certificate .....	37.4(d)	retention moneys.....	5.1, Item 14(c)
<b>Notification of claims (see also Claims)</b>		set-offs by Principal.....	37.2, 37.6
failure to comply .....	41.2	suspension of by Principal .....	39.4
generally.....	41	to consultants.....	38
notice of dispute concerning .....	41.1, 41.3	to subcontractors.....	38
prescribed notice .....	41.1	to workers.....	38
Superintendent's decision on.....	41.3		
<b>Novation</b>			
acceptance of.....	2.2(a)(iii)		

<i>Clause</i>	<i>Clause</i>
urgent protection .....	13
within 7 days of certificate .....	37.2
within 21 days of claim .....	37.2
withholding by Principal .....	38.2
Payment to workers, consultants and subcontractors	
direct payment to .....	38.3
documentary evidence of .....	38.1
Principal may withhold payment .....	38.2
where required by law .....	38.3
withholding of payment .....	38.2
Performance and payment .....	2.1
Permission (see also Direction)	
Permits (see Legislative requirements)	
Person, meaning .....	1(a)
Persons	
death of .....	15.1
indemnity by Principal .....	15.2
injury to .....	15.1
insurance of .....	17, 18
protection of .....	12
suspension, to protect .....	33.1
urgent protection of .....	13
Place for payment .....	1(g), Item 9(b)
Place of business of bank (security) .....	1, Item 9(c)
Plant (see Construction plant) .....	1, 28, 39.5, 39.6
Plant and materials	
security for unfixed .....	5.4, 37.3, Item 14(e)
unfixed .....	37.3, Item 34
Possession of site (see also Access) .....	24.1
Practical completion	
certificate of .....	34.6
date for .....	1, 34.1, 34.6, 34.7
date of .....	1, 34.6, 34.7
defined .....	1
early practical completion .....	34.8
EOT for .....	34.3
request for certificate of .....	34.6
separable portions .....	4
Preliminary design	
copyright and ownership of design .....	10.2
defined .....	1
details of .....	Item 11
included in Contractor's design obligations .....	1
novation .....	9.4
warranties, as to .....	2.2(a)(ii)
warranties unaffected .....	2.3(a)
Prescribed notice	
defined .....	1
meaning .....	1, 41.1
Pricing	
variations .....	36.4
Prime cost item (see Provisional sum)	
Principal	
address of .....	Item 2
certificate to .....	37.2(b)
consultants, novation of .....	2.2(a)(iii), 9.4
default of .....	39.7
defined .....	1
dispute with Contractor .....	42.1
licence to use design documents .....	10.2
named .....	Item 1
ownership of design documents .....	10.2
project requirements defined .....	1
rights of .....	39.2, 39.3, 39.4, 39.5
security by .....	5, Item 15
set off by .....	37.2
Principal's project requirements	
change in legislative requirements .....	11.2(a)(i)
cost objectives .....	1
defined .....	1, Item 10
design objectives .....	1
details of .....	Item 10
inconsistency, etc. in .....	8.1
novation .....	9.4
preliminary design included .....	Item 11
stated purpose of .....	1, 2.2(a)(iv)
timing objectives .....	1
warranties, as to .....	2.2
warranties, as to by Principal .....	10.1
Principal-supplied documents	
availability of .....	8.2
copies of .....	8.2, Item 16
copying of .....	8.2
number of .....	8.2
property in .....	8.2
supply of .....	8.2, Item 16
Proclamation (see Legislative requirements)	
Profit and overheads/attendance	
in pricing variations .....	36.4
on provisional sums .....	3
Program	
defined .....	1
departure from .....	32
direction as to .....	32
failing to adhere to .....	39.2(c)
meaning of .....	32
proposed variation, effect on .....	36.2(a)
Programming (see Program)	
Progress certificate	
deemed .....	37.2
defined .....	1
issue of .....	37.2
meaning .....	1, 37.2
not evidence WUC is satisfactory .....	37.2
on account only .....	37.2
Progress claims	
early .....	37.1
generally .....	37.1
time for .....	37.1, Item 33
Progress, failure to maintain .....	39.2(c), 39.2(d)
Prompt payment discount .....	3(b)
Proper law of Contract .....	1(h), Item 8
Property	
damage to .....	12
indemnity as to .....	15
insurance of .....	17
loss of .....	15.1
protection of .....	12
unavoidable damage to .....	15.1(b)
Protected right (see Intellectual property right)	

<i>Clause</i>	<i>Clause</i>
Protection	included in definition of WUC ..... 1
of persons and property ..... 12	Removal of
of WUC ..... 14	construction plant ..... 28
suspension due to ..... 33.1	materials ..... 28
urgent ..... 13	Contractor's employees and subcontractors ..... 23
Provisional sum ..... 3	Repairs, urgent (see Urgent protection) ..... 13
defined ..... 1	Replacement (see Reinstatement)
included in contract sum ..... 1	Replacement of defective
included in schedule of rates ..... 1	materials or work ..... 29.3
meaning ..... 1, 3	Representative of
percentage for profit and attendance ..... 3, <i>Item</i> 13	Contractor ..... 22
Public authorities ..... 5.5, 11	Superintendent ..... 21
Public liability policy	Repudiation of Contract
alternative applying ..... 17, <i>Item</i> 25(a)	parties rights on ..... 39.1, 39.10
amount of ..... 17, <i>Item</i> 25(b)	Request (see also Direction)
defined ..... 1	Requirement (see also Direction)
meaning ..... 1, 17	Requirements of legislation ..... 11.1
Qualifying cause of delay	Responsibility
defined ..... 1	of Contractor for subcontractors ..... 9.5
excludes those in ..... <i>Item</i> 28	for performance ..... 2.1
EOT for ..... 34.3	Retention moneys (see Security)
further delay due to ..... 34.3	Risks
Quality ..... 29	excepted ..... 1, 14.3
Quality assurance ..... 29.2	Royalties (see Intellectual property rights)
Quality of materials and work	Schedule of prices
defective materials and work ..... 29.3	included in definition of schedule of rates ..... 1
examination and testing of ..... 30	variations priced by ..... 36.4(c)
generally ..... 29.1	Schedule of rates
Quality system ..... 29.2	defined ..... 1
Quantities	generally ..... 2.4, 2.5
errors in ..... 2.5	limits of accuracy in ..... 2.5(b), <i>Item</i> 12
estimated only ..... 2.4	omitted items in ..... 2.5
generally ..... 2.4, 2.5	payment by ..... 2.1
omitted items ..... 2.5	quantities in ..... 2.4
Rates (see also Schedule of rates)	variations priced by ..... 36.4(c)
adjustment of ..... 2.5	Security (includes Retention moneys)
limits of accuracy ..... 2.5(b), <i>Item</i> 12	change of ..... 5.3
payment of ..... 2.1	Contractor's ..... <i>Item</i> 14
provisional sums ..... 3	defined ..... 1
valuation of variations ..... 36.4(c)	form of ..... 5.1
Receiver ..... 39.11	generally ..... 5
Reference mark (see also Survey marks)	includes retention moneys ..... 1
defined ..... 1	interest earned on ..... 5.5
survey mark, included in ..... 1, 26.1	Principal's ..... <i>Item</i> 15
Registered design (see Intellectual property right)	provision of ..... 5.1, <i>Items</i> 14, 15
Regulations (see Legislative requirements)	purpose of ..... 5.1
Reinstatement of damage	recourse to ..... 5.2
excepted risks ..... 14.3	reduction of ..... 5.4, <i>Items</i> 14, 15
generally ..... 14.2	release of ..... 5.4
Rejection (see also Direction)	return of ..... 5.4
Rejection of materials or work ..... 29.3	substitution of ..... 5.3
Relation-back day	time of lodgement of ..... 5.1, <i>Items</i> 14, 15
concerning direct payment to workers and	trust ..... 5.5
subcontractors ..... 38.3	unfixed plant and materials ..... 5.4, 37.3(a), <i>Item</i> 14(c)
Release of security ..... 5.4	upon frustration of the Contract ..... 40(c)
Remedial work	Selected subcontract work
generally ..... 29.3, 35	defined ..... 1
	meaning ..... 1, 9.3

Clause	Clause
Selected subcontractor	warranty, as to ..... 2.2(a)(iv)
defined ..... 1	Statutory requirements (see Legislative requirements)
meaning ..... 1, 9.3	Subclause headings—effect ..... 1(c)
Separable portion(s) ..... 4, Annexure Part A	Subcontract work
date for practical completion ..... 4(b)	generally ..... 9
defects liability period ..... 35	requiring approval ..... 9.2, <i>Item</i> 19
defined ..... 1	Subcontractor
directed by Superintendent ..... 4	approval of ..... 9.2, <i>Item</i> 19
liquidated damages ..... 4(c)	Contractor's responsibility for ..... 9.5
security in ..... 4(c)	defined ..... 1
Service	includes consultant ..... 1
by fax ..... 7(b)(ii)	novation of ..... 9.2(c), 9.4, <i>Item</i> 20
by hand ..... 39.2, 39.7, 42.1	removal of ..... 23
by post ..... 7(b)(iii)	selected ..... 9.3, 9.4, <i>Item</i> 20
by registered post ..... 39.2, 39.7, 42.1	terms of approval ..... 9.2
by the Contractor on the Principal ..... 39.7	when Contract frustrated ..... 40(b)
by the Principal on the Contractor ..... 39.2	Subcontractor's employees
from or to the insurer ..... 19.3	control of ..... 9.5, 23
notification of latent conditions ..... 25.2	insurance of ..... 18
of appointment of Superintendent ..... 1	responsibility for ..... 9.5
of appointment of Superintendent's Representative ..... 21	Substantial breaches ..... 39.2, 39.7
of claims to the Superintendent ..... 41.1	Superintendent (see also Directions)
of finding of minerals, fossils and relics ..... 24.3	address of ..... <i>Item</i> 6
of notice of dispute ..... 42.1	appointment of ..... 20
of notice(s) (see also Notices) ..... 7	appointment of Superintendent's representative ..... 21
of potential (insurance) claims ..... 19.4	assessments by ..... 3, 8.1, 11.2, 14.2, 24.3, 26.2, 26.3, 32, 33.4, 34.5, 39.6, 39.9, 41.3
of taking the work out of the hands of Contractor ..... 39.4	certifications by ..... 12, 13, 19.2, 19.5, 27, 29.3, 34.7, 34.8, 34.9, 35, 36.2, 37.2, 37.4, 39.6, 39.9, 40(a), 41.3
of terminating the Contract ..... 39.4, 39.9	defined ..... 1
personal service ..... 7	directions of ..... 20
Set-off	generally ..... 20
by Principal ..... 37.2, 37.6	includes Superintendent's Representative ..... 1
election by Principal ..... 37.2	named ..... <i>Item</i> 5
generally ..... 37.2, 37.6	notice to in relation to dispute ..... 42.1
Setting out the Works	obligations of ..... 20
care of ..... 26.3	pricing by (deemed variation, etc.) ..... 2.5, 3, 14.2, 25.3, 36.4
disturbance to ..... 26.3	to confirm oral direction ..... 20
errors in ..... 26.2	valuations by ..... 4
generally ..... 26	Superintendent's Representative ..... 1
survey marks for ..... 26.1	appointment of ..... 21
Settlement	defined ..... 1
arbitration ..... 42.2	functions of ..... 21
notice of dispute ..... 42.1	notice of appointment of ..... 21(c)
of disputes ..... 42.1	objection to appointment of ..... 21(d)
Signal (see Survey mark)	termination of appointment of ..... 21(c)
Site	Survey mark
access to by Contractor ..... 24.1, <i>Item</i> 26(a)	care of ..... 26.3
access to by Principal, etc. .... 24.2	defined ..... 1
access to by Superintendent ..... 24.2	errors in ..... 26.2
cleaning up ..... 27	supply of ..... 26.1
commencement of work on ..... 24.1	Survey peg (see Survey mark)
defined ..... 1	Suspension
delay in making available ..... 24.1	by the Contractor ..... 33.2, 39.9
generally ..... 24	by the Superintendent ..... 33.1
latent conditions on ..... 25	cost of ..... 33.4, 39.9
materials, delivery to ..... 24.1	due to acts, etc. of Contractor ..... 33.1(a)
minerals, fossils, relics, etc. on ..... 24.3	due to acts, etc. of Principal ..... 33.1(a)
possession of ..... 24.1, <i>Item</i> 26(b)	effect of ..... 33.4
substantial breach in giving access of ..... 39.7(a), <i>Item</i> 36(a)	end of ..... 33.3
substantial breach in giving possession of ..... 39.7(a), <i>Item</i> 36(b)	protection or safety ..... 33.1(b)
Stated purpose	
in Principal's project requirements ..... 1	



<i>Clause</i>	<i>Clause</i>
generally.....	33
to comply with court order.....	33.1(c)
Suspension of payment by Principal.....	38.2, 39.4
Taking over of work by Principal.....	39.5
Temporary works	
care of.....	14.1
defined.....	1
insurance of.....	16A
removal of.....	27
Tender (see Acceptance of tender)	
date of acceptance, defined.....	1
Termination of the Contract (see Default, Frustration)	
by frustration.....	40
by the Contractor.....	39.9, 39.10
by the Principal.....	39.4, 39.10
insolvency.....	39.11
rights of parties on.....	39.10
Test	
completion of.....	30.6
costs of.....	30.7
covering up of work.....	30.2
defined.....	1
delay in testing.....	30.5
notice of.....	30.4
procedure if delayed.....	30.5
results of.....	30.6
Superintendent may direct.....	30.1
who conducts.....	30.3
Tests (see definition of Practical completion)	
Third party insurance	
(see Public liability insurance).....	17
Time (see also EOT)	
acceleration of work.....	34.4(b)
construction program.....	32
Contractor's float.....	34.4(a)
defects liability period.....	35, <i>Item 32</i>
delay damages.....	34.9
for access to site.....	24.1, <i>Item 26(a)</i>
for approval of Contractor's	
drawings.....	8.3(c), <i>Item 18</i>
for arbitration.....	42.2
for carrying of work.....	32
for claiming EOT.....	34.3
for cleaning up.....	27
for completing WUC.....	34.1
for doing any act.....	1(b)
for effecting insurance.....	16A, 16B, 17, 18
for executing formal instrument of agreement.....	6
for final payment.....	37.4
for granting an EOT.....	34.5
for lodging security.....	5.1, <i>Items 14, 15</i>
for making claims.....	41
for notice of latent condition.....	25.2
for notice of tests.....	30.4
for notice to show cause.....	39.3, 39.8
for notification of claims.....	41
for possession of Site.....	24.1, <i>Item 26(b)</i>
for practical completion.....	34.1, <i>Item 7</i>
for progress claims.....	37.1, <i>Item 33</i>
for progress payments.....	37.2
for release of security or retention.....	5.4
for service of notices.....	7
for Superintendent to confirm oral direction.....	20
for Superintendent's direction	
about documents.....	8.3, <i>Item 18</i>
for supply of construction program.....	32
for supply of Contractor's documents.....	8.3, <i>Item 17</i>
for supply of Principal's documents.....	32, <i>Item 27</i>
for testing.....	30.1
for urgent protection.....	13
suspension of work.....	33.1
to rectify inadequate access.....	39.7(a), <i>Item 36(a)</i>
to rectify inadequate possession.....	39.7(a), <i>Item 36(b)</i>
Timing objective	
defined in Principal's project requirements.....	1
Trademark or name (see Intellectual property right)	
Unconditional undertaking (see Security)	
approved form.....	Annexure Part B
UNCITRAL Rules.....	<i>Items 37(b), (c)</i>
Unfixed plant and materials	
additional security for.....	37.3(a), <i>Item 14(c)</i>
generally.....	37.3, <i>Item 34</i>
labelled.....	37.3(b)
payment for.....	37.3
Principal's liability for.....	37.3
security for.....	5.4, 37.3, <i>Item 14(c)</i>
stored and protected.....	37.3(b)
unencumbered property of Principal.....	37.3
Unpaid moneys.....	38.3
Urgent protection.....	13
Urgent relief.....	42.4
Valuation	
of final payment claims.....	37.4
of progress payment claims.....	37.2
pricing of variations.....	36.4
Variation	
character and extent of.....	36.1
cost of complying.....	36.2
cost of proposed.....	36.2
deductions—valuing.....	36.4
deemed.....	2.5, 14.2, 25.3, 29.4
defined.....	1
directing of.....	36.1
direction by Superintendent.....	36.1
estimate for.....	36.2
for convenience of Contractor.....	36.3
generally.....	36
meaning.....	1, 36.1
measurements.....	36.2
notice of proposed.....	36.2
order of precedence in pricing.....	36.4
pricing of.....	36.4
proposed.....	36.2
quotation for.....	36.2
scope of.....	36.1
valuation of.....	36.4
Wages	
of workers.....	38
Waiver of conditions	
generally.....	43
in writing.....	43
Warranties	
Contractor's.....	2.2
proposed variation, effect on.....	36.2
unaffected.....	2.3

<i>Clause</i>	
	variation, effect on.....2.3(d), 36.1, 36.2
Winding up.....	39.11
Words—singular includes plural and vice versa.....	1(d)
<b>Work (includes Materials)</b>	
acceptance of defective work .....	29.4
care of .....	14.1
deemed variation as to defective work .....	29.4
defective.....	29.3
defined .....	1
examination and testing of.....	30
not complying with the Contract.....	29.3
order of work.....	32
outside working hours.....	31
progress of.....	34
quality of.....	29.1
remedial .....	29.3, 35
subcontracting .....	9.2, <i>Item</i> 19
suspension of.....	33
testing of .....	30
times for work .....	32
under the Contract, defined (WUC) .....	1
variations (see Variations).....	36
<b>Work under the Contract (see WUC)</b>	
Workers' compensation .....	18
Workers, payment of .....	38
Working days .....	31
Working hours.....	31
<b>Works (see also care of WUC)</b>	
defined .....	1
design of, warranties.....	2.2
design, timing and cost objectives in Principal's project requirements.....	1
insurance of.....	16A
setting out of .....	26
stated purpose in Principal's project requirements .....	1
<b>WUC (work under the Contract)</b>	
acceleration of.....	34.4(b)
care of .....	14.1
damage to property other than.....	15
defined .....	1
delay to.....	34.2, 34.3
excepted risks .....	14.3
insurance of.....	16A
insurance of property other than .....	17
novation relating to.....	9.4, <i>Item</i> 20
order and time of carrying out.....	32
programming of.....	32
progress of.....	34.1
recommencement of.....	33.3
reinstatement of.....	14.2
suspension of.....	33, 39.9
urgent protection of.....	13

**AMENDMENT CONTROL SHEET**

**AS 4902—2000**

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**Amendment No. 1 (2005)**

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**REVISED TEXT**

*SUMMARY:* This Amendment applies to Clause 37 (a) and (c) of Annexure Part A.

Published on 30 March 2005.

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**DRAFT**

NOTES

DRAFT

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Dedicated to a better Brisbane

## Tennyson Riverside Parkland Project Weekly Report

Reporting Period: From: Mon 27 June 2011  
To: Friday 1 July 2011

Activity and achievements	
1	<p><b><u>Design and Construction</u></b></p> <p>Ongoing and intense discussions and meetings held for the preparation of the Contract AS4902 D&amp;C and Design Terms of Reference.</p>
	<p>The design and construction works will be delivered in three stages due to two levels of assessment and the use of the sales office by Mirvac. See attached 3 Stage Master Plan June 2011.</p> <ul style="list-style-type: none"> <li>• Stage I is Code Assessable and the period of time for practical completion is 57 weeks from 30 June 2011;</li> <li>• Stage II is Impact Assessable and the period of time for practical completion is 140 weeks 30 June 2011; and</li> <li>• Stage III is Code Assessable and the period of time for practical completion is 57 weeks 30 June 2011.</li> </ul>
2	The Contract was executed on 30 June 2011.
3	<p><b><u>Purchase of land</u></b></p> <p>On the 21 June the Stores Board endorsed;</p> <ul style="list-style-type: none"> <li>• The purchase of the vacant land; and</li> <li>• To enter into a Contract with Mirvac Constructions (Qld) Pty Ltd (Mircac Constructions) to construct a Parkland (Parkland Works).</li> </ul> <p>Without seeking competitive tenders from industry in accordance with Section 1.2(c), Sole or Select Tendering, of the Procurement Manual pursuant to the City of Brisbane Act 2010.</p>
4	The purchase settlement was executed on 30 June 2011.

Next week outlook	
1	<p><b><u>Design and Construction</u></b></p> <p>Continue ongoing discussions with Mirvac for the design and development application program.</p>
2	<p><b><u>Budget and Project Delivery</u></b></p> <p>Prepare Project Delivery Agreement between CP&amp;S and City Projects Office for the transfer of the project delivery and the budget.</p>



LAND TITLE ACT 1994

**REGISTRATION CONFIRMATION STATEMENT**

ENVIRONMENT AND RESOURCE MANAGEMENT, QUEENSLAND

Title Reference : 50710033

This is the current status of the title as at 11:00 on 13/07/2011

**REGISTERED OWNER**

Dealing No: 713954371 12/07/2011

BRISBANE CITY COUNCIL TRUSTEE  
UNDER INSTRUMENT 713954371**ESTATE AND LAND**

Estate in Fee Simple

LOT 3 SURVEY PLAN 195275  
County of STANLEY Parish of YEERONGPILLY  
Local Government: BRISBANE CITY**EASEMENTS, ENCUMBRANCES AND INTERESTS**

1. Rights and interests reserved to the Crown by  
Deed of Grant No. 40054677 (Lot 3 on SP 195275)
2. EASEMENT No 712884080 23/11/2009 at 16:17  
benefiting the land over  
EASEMENT U ON SP230021
3. CAVEAT No 713954377 12/07/2011 at 12:52  
MIRVAC QUEENSLAND PTY LIMITED A.C.N. 060 411 207

ADMINISTRATIVE ADVICES - NIL  
UNREGISTERED DEALINGS - NIL

CERTIFICATE OF TITLE ISSUED - No

DEALINGS REGISTERED  
713954371 TFR TO TTEE  
713954377 CAVEAT

Caution - Charges do not necessarily appear in order of priority

\*\* End of Confirmation Statement \*\*

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Registrar of Titles and Registrar of Water AllocationsLodgement No: 3024364  
Email: [REDACTED]  
BRISBANE CITY COUNCIL  
Office: BRISBANE  
Box: 259

LAND TITLE ACT 1994

**REGISTRATION CONFIRMATION STATEMENT**

ENVIRONMENT AND RESOURCE MANAGEMENT, QUEENSLAND

Title Reference : 50710034

This is the current status of the title as at 11:00 on 13/07/2011

**REGISTERED OWNER**

Dealing No: 713954371 12/07/2011

BRISBANE CITY COUNCIL TRUSTEE  
UNDER INSTRUMENT 713954371**ESTATE AND LAND**

Estate in Fee Simple

LOT 4 SURVEY PLAN 195275  
County of STANLEY Parish of YEERONGPILLY  
Local Government: BRISBANE CITY**EASEMENTS, ENCUMBRANCES AND INTERESTS**

1. Rights and interests reserved to the Crown by  
Deed of Grant No. 40054677 (Lot 4 on SP 195275)
2. CAVEAT No 713954377 12/07/2011 at 12:52  
MIRVAC QUEENSLAND PTY LIMITED A.C.N. 060 411 207

ADMINISTRATIVE ADVICES - NIL  
UNREGISTERED DEALINGS - NIL

CERTIFICATE OF TITLE ISSUED - No

DEALINGS REGISTERED  
713954371 TFR TO TTEE  
713954377 CAVEAT

Caution - Charges do not necessarily appear in order of priority

\*\* End of Confirmation Statement \*\*

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Page 1/1

LAND TITLE ACT 1994

**REGISTRATION CONFIRMATION STATEMENT**

ENVIRONMENT AND RESOURCE MANAGEMENT, QUEENSLAND

Title Reference : 50710035

This is the current status of the title as at 11:00 on 13/07/2011

**REGISTERED OWNER**

Dealing No: 713954371 12/07/2011

BRISBANE CITY COUNCIL TRUSTEE  
UNDER INSTRUMENT 713954371**ESTATE AND LAND**

Estate in Fee Simple

LOT 5 SURVEY PLAN 195275  
County of STANLEY Parish of YEERONGPILLY  
Local Government: BRISBANE CITY**EASEMENTS, ENCUMBRANCES AND INTERESTS**

1. Rights and interests reserved to the Crown by  
Deed of Grant No. 40054677 (Lot 5 on SP 195275)
2. CAVEAT No 713954377 12/07/2011 at 12:52  
MIRVAC QUEENSLAND PTY LIMITED A.C.N. 060 411 207

ADMINISTRATIVE ADVICES - NIL  
UNREGISTERED DEALINGS - NIL

CERTIFICATE OF TITLE ISSUED - No

DEALINGS REGISTERED  
713954371 TFR TO TTEE  
713954377 CAVEAT

Caution - Charges do not necessarily appear in order of priority

\*\* End of Confirmation Statement \*\*

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Page 1/1

LAND TITLE ACT 1994

**REGISTRATION CONFIRMATION STATEMENT**

ENVIRONMENT AND RESOURCE MANAGEMENT, QUEENSLAND

Title Reference : 50710040

This is the current status of the title as at 11:00 on 13/07/2011

**REGISTERED OWNER**

Dealing No: 713954371 12/07/2011

BRISBANE CITY COUNCIL TRUSTEE  
UNDER INSTRUMENT 713954371**ESTATE AND LAND**

Estate in Fee Simple

LOT 101 SURVEY PLAN 195275  
County of STANLEY Parish of YEERONGPILLY  
Local Government: BRISBANE CITY**EASEMENTS, ENCUMBRANCES AND INTERESTS**

1. Rights and interests reserved to the Crown by  
Deed of Grant No. 40054677 (Lot 101 on SP 195275)
2. EASEMENT IN GROSS No 709116788 08/11/2005 at 12:24  
burdening the land  
ENERGEX LIMITED A.C.N. 078 849 055  
over  
EASEMENT A ON SP184022
3. CAVEAT No 713954377 12/07/2011 at 12:52  
MIRVAC QUEENSLAND PTY LIMITED A.C.N. 060 411 207


ADMINISTRATIVE ADVICES - NIL  
UNREGISTERED DEALINGS - NIL


CERTIFICATE OF TITLE ISSUED - No

DEALINGS REGISTERED  
713954371 TFR TO TTEE  
713954377 CAVEAT

Caution - Charges do not necessarily appear in order of priority

\*\* End of Confirmation Statement \*\*

  
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Lodgement No: 3024364  
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Page 1/1



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**Brisbane City Council**

TO Acquisition, Disposals & Resumptions Distribution List

Brisbane City Legal Practice  
Office of the Lord Mayor & CEO  
Level 20, 266 George Street  
Brisbane Qld 4000  
GPO Box 1434  
Brisbane Qld 4001

FROM [REDACTED] DATE 11/07/2011

RE Tennyson Reach

Telephone [REDACTED]  
Facsimile [REDACTED]

File reference: 158/20/439/4

Our reference: OP303024

I advise that Brisbane City Council has acquired for parkland purposes from Mirvac Queensland Pty Ltd vacant land along the Tennyson Reach described as Lots 3, 4, 5 and 101 on SP195275.

The land has been acquired for the sum of \$9 million plus GST.

The sum of \$6 million plus the full \$900,000 GST was paid to Mirvac on 30 June, 2011 and the balance is to be paid at the start of the next financial year.

Mirvac still has a site office on the property and has entered into a lease back of Lots 4, 5 and 101 until commencement of stage 2 of the Parkland Works Project.

The date of transfer is deemed to be 30 June, 2011.

[REDACTED]  
Brisbane City Legal Practice  
**OFFICE OF THE LORD MAYOR & CEO**

*Emailed 1.45pm 11/7/2011*



Dedicated to a better Brisbane

## Tennyson Reach Parkland Project Weekly Report

Reporting Period: From: Mon 11 July 2011  
To: Friday 15 July 2011

Activity and achievements	
1	<p><b><u>Design and Construction</u></b></p> <p>The design and construction works will be delivered in three stages due to two levels of assessment and the use of the sales office in Stage II by Mirvac.</p> <ul style="list-style-type: none"> <li>• Stage I is Code Assessable and the period of time for practical completion is 57 weeks from 30 June 2011;</li> <li>• Stage II is Impact Assessable and the period of time for practical completion is 140 weeks from 30 June 2011; and</li> <li>• Stage III is Code Assessable and the period of time for practical completion is 57 weeks from 30 June 2011.</li> </ul>
2	<p>Information request issued to NES requesting the following information:</p> <ul style="list-style-type: none"> <li>• Anticipated future application of community centre (current sales office) to inform DA</li> <li>• Protocols for communications with nearby special needs school</li> <li>• BCC needs assessment for park</li> <li>• Treatment of various existing concrete structures in concept design</li> </ul>
3	<p>Discussion held with Francis Hudson and Brad Wilson to seek comments for consideration into the Communication and Stakeholders Management Plan.</p>
4	<p>Meeting arranged for ongoing review of the Master Plan between Mirvac and City Projects Office for Monday 18 July.</p>
5	<p>Ongoing discussion with Mirvac on needs assessment, treatment of tidal vegetation and flood modelling design parameters.</p>
6	<p>Discussion held with City Projects Office Flood Management on preferred flood modelling references.</p>
7	<p><b><u>Program</u></b></p> <p>Design work is scheduled to commence 18 July.</p> <p>Received a draft milestone program assuming project completion Dec 2012.</p> <p>Ongoing PMP development.</p>
8	<p><b><u>Budget</u></b></p> <p>The funding for this project is from Program 1 – Sustainable Green and Clean City. The approved budget for the design and construction is \$7m in 2011/12, \$4m in 2012/13 and \$1m in 2013/14. The total for the three years is \$12million. It should be noted that this does not include Council project delivery costs of \$344,000.</p> <p>The required level of funding is \$15million plus \$344,000 and will be sought in the next budget review.</p> <p>Currently a program is being finalised with Mirvac and when completed the cash flow projection will be developed. <b>Also, it should be noted that a communication allowance is required and will be included in the cash flow projection.</b></p>



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# project update

9	<p><b>Communication</b></p> <p>Mirvac advised from their experience during the construction of the tennis centre, we will need to be fully prepared to deal with two peak interest groups. The groups are the Power House Association and the Tennyson Residents Association. In addition we need to be cautious of other local community influences.</p> <ul style="list-style-type: none"> <li>• Kristen Ottoway has been assigned at the project Communication Manager.</li> <li>• Preparing a draft Communication and Stakeholders Management Plan for discussion with Mirvac and the Chair</li> <li>• Arranged meeting with Mirvac this Tue to discuss the draft Communication and Stakeholders Management Plan.</li> </ul>
10	<p><b>General</b></p> <p>On going discussion between CP&amp;S and City Projects Office of the Project Delivery Agreement for the transfer of the project delivery and the budget.</p>

## Next week outlook

1	<p><b>Design and Construction</b></p> <p>Continue ongoing discussions with Mirvac for the design and development application program.</p>
2	<p>Continue ongoing discussion with Francis Hudson and Brad Wilson regarding the parkland design</p>
3	<p><b>Budget</b></p> <p>Prepare Project cost plan and finalise the PMP</p>
4	<p><b>General</b></p> <p>Monitor the progress of the Project Delivery Agreement between CP&amp;S and City Projects Office.</p>



Phone  
Fax:  
Email



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VALUER\***  
REAL ESTATE VALUERS & PROPERTY PROFESSIONALS

ABN 25 329 474 597

13 Coates Court  
Brassall QLD 4305

VALUATION

of

REAL PROPERTY

SITUATED AT

LOTS 3, 4, & 5 KING ARTHUR TERRACE, TENNYSON

PREPARED FOR

BRISBANE CITY COUNCIL  
MAJOR LAND ACQUISITION  
MAJOR INFRASTRUCTURE PROJECTS OFFICE  
GPO BOX 1434  
BRISBANE QLD 4001

ATTENTION:



Date of Valuation: 19 June, 2011

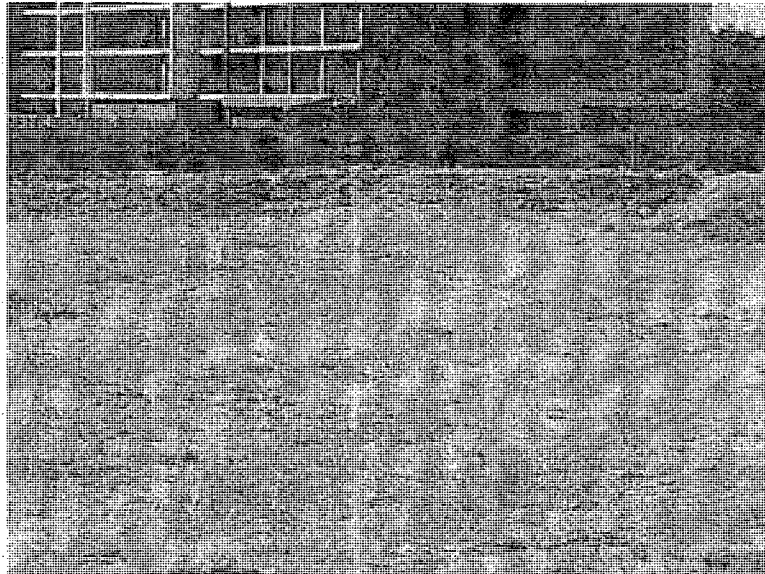
\*MIKAL QLD PTY LTD ACN 119 987 763 ATF THE MIKAL TRUST ABN 25 329 474 597 T/A SAVAS VARITIMOS VALUER

21



**CERTIFICATE OF VALUATION**

<u>ADDRESS</u>	Lot 3 King Arthur Terrace, Tennyson
<u>PURPOSE OF VALUATION</u>	Purchase purposes.
<u>METHOD OF VALUATION</u>	The method of valuation used in our report is the direct comparison approach on a rate/m <sup>2</sup> basis.
<u>PREPARED FOR</u>	Brisbane City Council
<u>BASIS OF VALUATION</u>	Market Value - Fee Simple Vacant Possession
<u>REGISTERED OWNER</u>	Mirvac Queensland Pty Limited A.C.N. 060 411 207
<u>REAL PROPERTY DESCRIPTION</u>	Lot 3 SP195275 County of Stanley, Parish of Yeerongpilly
<u>MARKET VALUE</u>	Three Million One Hundred Thousand Dollars (\$3,100,000) excluding GST



Lot 3 is located to the front of the buildings

Our Reference: 11091

Registered Valuer Qld 1908  
Certified Practising Valuer  
Savas Varitimos Valuer  
22 June, 2011

This valuation is subject to the qualifications, limitations and assumptions made within our report.

..3

**CERTIFICATE OF VALUATION**

ADDRESS Lot 4 King Arthur Terrace, Tennyson

PURPOSE OF VALUATION Purchase purposes.

METHOD OF VALUATION The method of valuation used in our report is the direct comparison approach on a rate/m<sup>2</sup> basis.

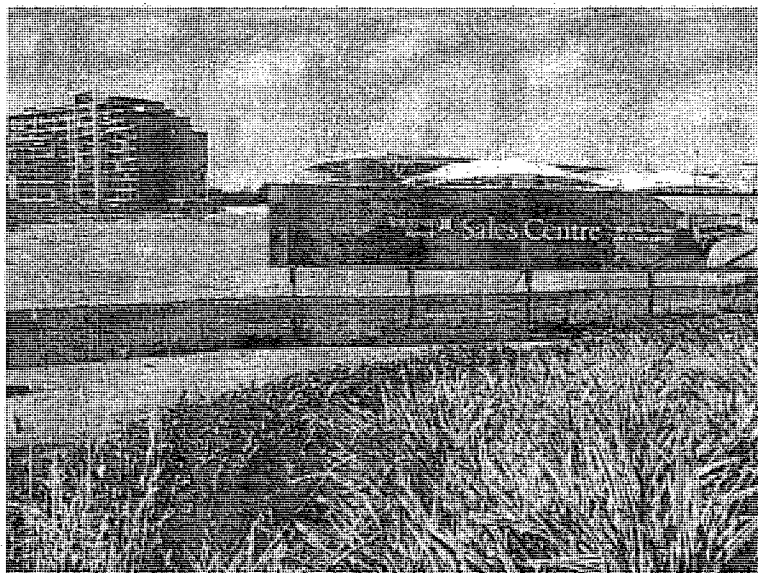
PREPARED FOR Brisbane City Council

BASIS OF VALUATION Market Value - Fee Simple Vacant Possession

REGISTERED OWNER Mirvac Queensland Pty Limited A.C.N. 060 411 207

REAL PROPERTY DESCRIPTION Lot 4 SP195275  
County of Stanley, Parish of Yeerongpilly

MARKET VALUE Four Million Dollars (\$4,000,000) excluding GST



Lot 4 includes the landscaping in the foreground and the area taken up by the sign.

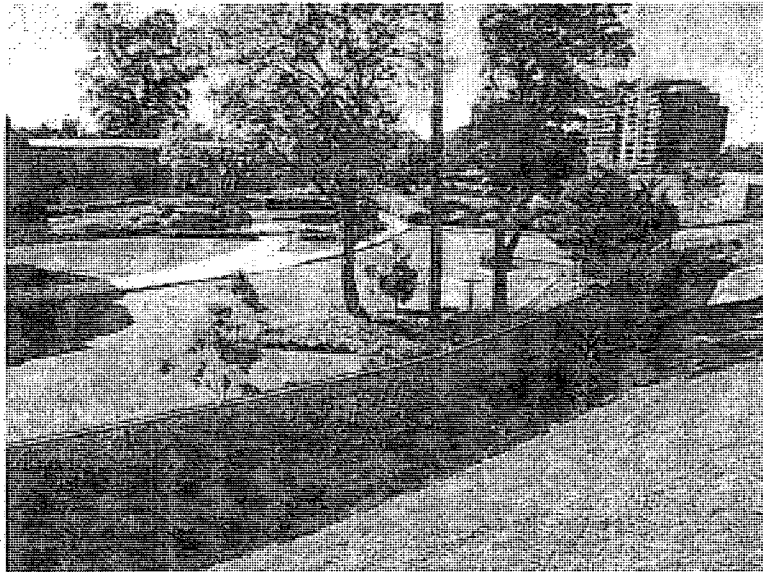
Our Reference: 11091

Registered Valuer Qld 1908  
Certified Practising Valuer  
Savas Varitimos Valuer  
22 June, 2011

This valuation is subject to the qualifications, limitations and assumptions made within our report.

**CERTIFICATE OF VALUATION**

<u>ADDRESS</u>	Lot 5 King Arthur Terrace, Tennyson
<u>PURPOSE OF VALUATION</u>	Purchase purposes.
<u>METHOD OF VALUATION</u>	The method of valuation used in our report is the direct comparison approach on a rate/m <sup>2</sup> basis.
<u>PREPARED FOR</u>	Brisbane City Council
<u>BASIS OF VALUATION</u>	Market Value - Fee Simple Vacant Possession
<u>REGISTERED OWNER</u>	Mirvac Queensland Pty Limited A.C.N. 060 411 207
<u>REAL PROPERTY DESCRIPTION</u>	Lot 5 SP195275 County of Stanley, Parish of Yeerongpilly
<u>MARKET VALUE</u>	Two Million and Fifty Thousand Dollars (\$2,050,000) excluding GST



Lot 5 includes the landscaping and carpark.

Our Reference: 11091

Registered Valuer Qld 1908  
Certified Practising Valuer  
Savas Varitimos Valuer  
22 June, 2011

This valuation is subject to the qualifications, limitations and assumptions made within our report.

**Lots 3, 4, & 5 King Arthur Terrace  
Tennyson  
Brisbane City Council**

OUR REFERENCE 11091  
DATE OF VALUATION 19 June, 2011  
DATE OF INSPECTION 19 June, 2011

PURPOSE OF VALUATION

As instructed by email dated 14 June, 2011 to assess the market value for purchase purposes of the following described land and improvements thereon.

'Market value is the estimated amount for which an asset should exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion.'

REAL PROPERTY DESCRIPTION

Lots 3, 4, & 5 SP195275  
County of Stanley, Parish of Yeerongpilly

The property has been identified by Cadastral Map, however, a detailed site survey has not been carried out and for the purpose of this valuation it has been assumed that all structural improvements have been erected within the title boundaries.

REGISTERED OWNER

MIRVAC QUEENSLAND PTY LIMITED

TITLE REFERENCES

Lot 3 50710033  
Lot 4 50710034  
Lot 5 50710035

Initial: 

**Lots 3, 4, & 5 King Arthur Terrace  
Tennyson  
Brisbane City Council**

EASEMENTS, ENCUMBRANCES & INTERESTS

Lot 3 on SP195275

1. Rights and interests reserved to the Crown by  
Deed of Grant No. 40054677 (Lot 3 on SP195275)
2. EASEMENT No 712884080 23/11/2009 at 16:17  
benefiting the land over  
EASEMENT U ON SP230021

ADMINISTRATIVE ADVICES - NIL  
UNREGISTERED DEALINGS - NIL

Lot 4 on SP195275

1. Rights and interests reserved to the Crown by  
Deed of Grant No. 40054677 (Lot 4 on SP195275)

ADMINISTRATIVE ADVICES - NIL  
UNREGISTERED DEALINGS - NIL

Lot 5 on SP195275

1. Rights and interests reserved to the Crown by  
Deed of Grant No. 40054677 (Lot 5 on SP195275)

ADMINISTRATIVE ADVICES - NIL  
UNREGISTERED DEALINGS - NIL

AREA OF LAND

Lot 3	4,429m <sup>2</sup>
Lot 4	5,725m <sup>2</sup>
Lot 5	<u>2,921m<sup>2</sup></u>
Total land area	13,075m <sup>2</sup>

Initial: [REDACTED]

..7

**Lots 3, 4, & 5 King Arthur Terrace  
Tennyson  
Brisbane City Council**

TOWN PLANNING

Lot 3

The land is designated Community Use Area CU8 – Utility Installation under the Brisbane City Council Town Plan.

Constraints

- Brisbane River Corridor
- Stephens District Local Plan

Lots 4 & 5

The land is designated Community Use Area CU8 – Utility Installation under the Brisbane City Council Town Plan.

Constraints

- Brisbane River Corridor
- Brisbane River Precinct 2
- Stephens District Local Plan
- Land Subject to Wetland Code

Approval

A Preliminary Approval (Council Reference No: A002824927) exists overriding the Planning Scheme for the Tennyson Reach Development. The approval includes the development of 191 units in 3 buildings referred to as Building A, B and C on the subject properties.

Council has advised that:

“As part of the Preliminary Approval, there is an approved Master Plan and associated documentation including a Code and Level of Assessment table which guides the “approved development” intent in accordance with the preliminary approval.”

Condition 149 of the Preliminary Approval relates to the minimum habitable floor level. “The condition provides that the minimum habitable floor levels are 500mm above the 100 year (ARI) flood level (river and creek flooding) or 500mm above the 50 year (ARI) (overland flowpath) whichever is the greater.”

Initial: 

**Lots 3, 4, & 5 King Arthur Terrace  
Tennyson  
Brisbane City Council**

TOWN PLANNING CONTINUED

“Development under the Preliminary Approval would not be required to adhere to the revised DFE that Council has imposed through the City Plan 2000 as the Preliminary Approval overrides the City Plan 2000 provisions.”

“Buildings A, B and C have an indicative building height of approximately 8 to 10 storeys which would be subject to detailed design that would be part of a Code Assessment Material Change of Use Application seeking a Development Permit.”

Town planning information was obtained from the Brisbane City Council Customer Service Centre and from correspondence provided. We recommend that this zoning or planning area should be verified by application to Council for the issue of a zoning certificate.

DEPARTMENT OF ENVIRONMENT & RESOURCE MANAGEMENT VALUATION

No site value is recorded against the subject properties.

LOCALITY

The subject properties are situated on the northern side of King Arthur Terrace. Lot 4 and 5 are inside allotments, and Lot 5 is located at the intersection of the King Arthur Terrace and Softstone Street roundabout. A site proposed for development as parkland separates the subject properties from the Brisbane River.

They are located within an established but developing locality. Surrounding properties include the Queensland Tennis Centre; modern residential towers; and dwellings of varying age, size, style and quality. Indooroopilly Golf Course is located to the northern side of the Brisbane River. The Brisbane Golf Club is located approximately 400 metres to the south.

They are within approximately 7 radial kilometres in a southerly direction of the Brisbane General Post Office.

Local amenities including convenience stores and schools are within approximately 2 radial kilometres. The Yeerongpilly Train Station is within approximately 700 radial metres.

SERVICES

All city services are available to the property including electricity, telephone, town water and sewerage.

Initial: 

..19

**Lots 3, 4, & 5 King Arthur Terrace  
Tennyson  
Brisbane City Council**

ROADS AND ACCESS

King Arthur Terrace is two (2) way, two (2) lane carriageway. It is bitumen sealed to the full width with concrete kerb and channel, and has a concrete footpath to its southern boundary.

Vehicular access is available but not provided to lots 3 and 4. For lot 5 it is provided over a concrete crossover.

NATURE OF LAND

All lots are irregular in shape and below street level. They fall gradually to a pad which slopes gentle to the rear. They are all identified as having been flooded in January, 2011 under the Council's Temporary Local Planning Instrument. At the peak of the flood it is understood that the maximum depth was 9.1 metres.

As stated above the Preliminary Approval overrides the Planning Scheme. The minimum habitable floor level based on the approval is 500mm above the 1 in 100 flood level being 8.4 metres. The minimum habitable floor level under the preliminary approval is below the level adopted under the Temporary Local Planning Instrument.

At ground level they have river views.

The table below provides the levels of the lots and various flood levels.

	<u>Lot 3</u>	<u>Lot 4</u>	<u>Lot 5</u>
Lowest level	3.7m	3.9m	6.1m
Highest level	9.6m	9.8m	13.7m
2% (50 year ARI)	6.6m	6.6m	6.6m
1% (100 year ARI or DFL)	7.9m	7.9m	7.9m
January 2011	9.1m	9.1m	9.1m

The present use of the property is not a prescribed use under the Contaminated Land Act nor is the use of the immediate adjoining property. We have not, however, undertaken nor requested an environmental audit of the site, nor a search of the Contaminated Site Register and cannot state that the land is not contaminated. If the site is found to be contaminated we reserve the right to alter this valuation and the advices contained herein.

Initial: [REDACTED]

./10



**Lots 3, 4, & 5 King Arthur Terrace  
Tennyson  
Brisbane City Council**

IMPROVEMENTS

Other than a carpark and part of a sales office used by Mirvac in marketing Tennyson Reach and located on lot 5, the properties are vacant land devoid of any significant improvements.

We consider the highest and best use of the subject properties is for their redevelopment and have therefore excluded the existing improvements from this report.

Initial: 

./11

**Lots 3, 4, & 5 King Arthur Terrace  
Tennyson  
Brisbane City Council**

## VALUATION

### Highest and Best Use

The highest and best use is defined as the most profitable use of an asset which is physically possible, appropriately justified, legally permissible, financially feasible and which results in the highest and best use of the asset being valued.

As previously stated a Preliminary Approval exists to develop residential apartment towers on each of the subject properties.

We consider the highest and best use of the subject properties is for their individual development subject to Council Approval and conditions.

### Rationale

As stated above a Preliminary Approval exists over the subject properties to develop each lot with residential apartments up to approximately 8 to 10 storeys. Advice obtained from Council Officers indicate that this places the subject property into a category similar to Medium Density, Multi-Purpose Centre MP3 or Multi-Purpose Centre MP4 designations.

We have valued the subject properties on a rate/m<sup>2</sup> basis having regard to the sales evidence contained herein. Consideration has been given to site characteristics, location, land area, zones and approvals in comparing the sales evidence to the subject property.

As the subject properties are held as three (3) separate lots, valuations have been undertaken on each lot. Whilst being held as three (3) lots creates an advantage in being able to market each separately, it also has a negative influence on value as each purchaser/developer is aware that they will potentially be competing with a neighbouring development. Further, purchasing three (3) lots in one line, as is the case here, has a negative impact on value.

Whilst the Approval creates some advantages and adds value, it is questionable as to whether or not development at the habitable floor levels conditioned into the approval (which is below the level adopted under the Temporary Local Planning Instrument) would occur.

Prior to the January, 2011 flood and subsequent to the peak in the property market in early 2008, there has been a distinct decrease in the number of high rise residential developments being undertaken and number of sales transacting. The development site market could best be described as patchy with in many cases sites being repossessed and sold by Mortgagees exercising their power of sale. There is a distinct lack of relativity in the market place which is largely driven by current economic conditions and the financial position of vendors.

Initial: [REDACTED]

../12

**Lots 3, 4, & 5 King Arthur Terrace  
Tennyson  
Brisbane City Council**

VALUATION CONTINUED

Rationale continued

Complicating matters even further has been the January, 2011 flood. To date no sales evidence are recorded on PDS live of flood affected residential development sites to gauge the implications the flood will have on value. Therefore, we can only rely on sales evidence which occurred prior to January, 2011. If available, which is not the case, we would have also referred to flood affected residential development site sales.

Sales evidence

In undertaking our valuation we have referred to known sales evidence of residential development sites. Some of the sales referred to are as follows:

1. 75 Kittyhawk Drive, Chermside

Sold 9 December, 2010 for \$11,367,000

Land area 14,780 m<sup>2</sup>

Analysis: \$769/m<sup>2</sup>

Vacant Multi-Purpose Centre MP2 zoned site sold by a Mortgagee exercising their power of sale. The land is slightly above street level, generally level in contour and irregular in shape. Sold with an approval to develop 5 affordable housing residential towers on the land ranging from 7 to 12 levels. The intent of the purchaser is reportedly to sub-divide the land into 6 smaller lots and develop each with 80 to 90 units. The sale price equates to \$769/m<sup>2</sup>. Considered slightly superior on a rate/m<sup>2</sup> basis due to its superior zone and approvals.

2. 35 Burdett Street, 60 Crosby Street and lots 121 & 122 Crosby Street, Albion

Sold 6 August, 2010 for \$15,608,848

Land area 17,576m<sup>2</sup>

Analysis: \$888/m<sup>2</sup>

Medium Density zoned site with 3 street frontages. Improved with industrial buildings of fair condition. Sold by a Mortgagee Exercising their power of sale in an off the market transaction. An approval has subsequently been obtained to develop 35 Burdett Street with multi unit dwellings over 6 levels. The property has some city views and is located opposite a concrete batching plant. The purchaser's intention is to develop 60 Crosby Street with a mixed use development and the smaller lots with executive residence. The sale price equates to \$888/m<sup>2</sup> including the added value of the improvements. Considered vastly superior on a rate per/m<sup>2</sup> basis due to its proximity to the city and elevation.

Initial: ██████

../13

**Lots 3, 4, & 5 King Arthur Terrace  
Tennyson  
Brisbane City Council**

VALUATION CONTINUED

3. 589 Fairfield Road, Yeronga

Sold 16 February, 2010 for \$1,600,000

Land area 1,591m<sup>2</sup>

Analysis: \$1,005/m<sup>2</sup>

Low-Medium density residential zoned site located on a corner, adjacent to existing residential units and within 500 metres of the Yeerongpilly Train Station. Purchased by the State for construction of residential units on the land. The sale price equates to \$1,005/m<sup>2</sup>. Considered vastly superior on a rate/m<sup>2</sup> basis due to its smaller land area and elevation.

4. 11 Stephens Street, Morningside

Sold 16 July, 2010 for \$2,140,000

Land area 2,023m<sup>2</sup>

Analysis: \$1,057/m<sup>2</sup>

Low-Medium Density zoned site improved with a dwelling in average condition. The land is generally level in contour and located opposite a school. An application has subsequently been made to develop multi-unit dwellings on the land. The sale price equates to \$1,057/m<sup>2</sup>. Considered vastly superior on a rate/m<sup>2</sup> basis due to its smaller land area.

5. 27, 29 & 31A Elizabeth Street, Toowong

Sold 22 September, 2010 for \$2,533,333

Land area 2,548m<sup>2</sup>

Analysis: \$994/m<sup>2</sup>

Three adjoining Low-Medium Density Residential zoned sites, improved with a dwelling and a lodge. The land is above street level and a hatchet access is provided to the rear. Sold with an approval to develop multi unit dwellings on the land. The purchaser has confirmed that his intention is to proceed with the development, however, he has applied to Council amending the units to three (3) bedrooms. The sale price equates to \$994/m<sup>2</sup> including the added value of the improvements. Considered vastly superior on a rate/m<sup>2</sup> basis due to its superior location and elevation.

6. 551, 557, 559 & 561 Ipswich Road, Annerley

Sold 27 September, 2010 for \$2,050,000

Land area 3,354m<sup>2</sup>

Analysis: \$611/m<sup>2</sup>

Four (4) adjoining sites each improved with a dwelling, zoned Low-Medium Residential and purchased in one line. The land has a gradual fall to the rear and one site is located on a corner. As advised by the marketing agent the property was sold by a Mortgagee exercising their power of sale. The sale price equates to \$611/m<sup>2</sup> including the added value of the improvements. Considered inferior on a rate/m<sup>2</sup> basis due to its inferior zone and location.

Initial: 

../14

**Lots 3, 4, & 5 King Arthur Terrace  
Tennyson  
Brisbane City Council**

VALUATION CONTINUED

7. 30 Chatsworth Road, Greenslopes

Sold 1 October, 2010 for \$1,450,000

Land area 2,074m<sup>2</sup>

Analysis: \$699m<sup>2</sup>

Low-Medium Density zoned site improved with a character home. The property is held as two (2) lots. An approval has subsequently been obtained to move the existing dwelling across the site and develop one lot with multi unit dwellings after realigning the boundaries. The property is elevated and has city views. The sale price equates to \$699/m<sup>2</sup> including the added value of the improvements. Considered comparable overall on a rate/m<sup>2</sup> basis due to its inferior zone and having regard to the implication of having to retain a character dwelling on the land.

Calculations

Having regard to the known sales evidence, we value the real property for the sum of **Nine Million One Hundred and Fifty Thousand Dollars (\$9,150,000) excluding GST**, which we reasonably determine as follows:

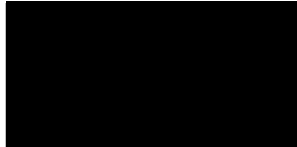
Lot 3 – 4,429m<sup>2</sup> @ \$700/m<sup>2</sup> = (\$3,100,300) Adopt \$3,100,000

Lot 4 – 5,725m<sup>2</sup> @ \$700/m<sup>2</sup> = (\$4,007,500) Adopt \$4,000,000

Lot 5 – 2,921m<sup>2</sup> @ \$700/m<sup>2</sup> = (\$2,044,700) Adopt \$2,050,000

\$9,150,000 excluding GST

This valuation has been undertaken having regard to the Preliminary Approval obtained from Council (Council Reference No: A002824927) allowing for the development of residential towers on the land. It is also undertaken having regard to sales evidence which took place prior to the January, 2011 flood. Searches using PDS live have not revealed sales evidence of similar sites to determine if the flood will have an impact on value. We reserve the right to alter our valuation and the advices contained herein if sales evidence of flood affected residential development sites with similar potential to the subject property become available. It may become apparent from sales evidence that the flood may have an impact on valuations.

  
Registered Valuer Qld 1908  
Certified Practising Valuer  
Savas Varitimos Valuer  
22 June, 2011

**Lots 3, 4, & 5 King Arthur Terrace  
Tennyson  
Brisbane City Council**

REMARKS

There are no recently recorded sales evidence of properties similar in zone, potential, constraints and elevation to the subject property.

The property market experienced a strong growth phase, peaking in early 2008. Since and due to a dramatic decline in economic conditions, developers have been shelving developments, lending institutions have been reluctant to lend money on commercial developments and many sites have been repossessed. These issues have had a detrimental impact on sales volumes with a lack of evidence available of sites similar in zone and potential to the subject property.

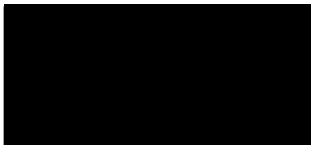
An extended marketing period may be required in selling a property of this type within this locality given the current state of the market.

We consider this valuation to be a reasonable interpretation of the available evidence and would be capable of realisation if offered for sale on the open market at the date of valuation.

This report is not to be used by the purchaser for pre-purchase advising or mortgage security purposes and no liability is extended in this regard.

This valuation is for the use only of the party to whom it is addressed and for no other purpose. No responsibility is accepted to any third party, who may use or rely on the whole of or any part of the content of this valuation and report without the written consent of the valuer.

In accordance with instructions we advise we do not have a pecuniary or other interest that would conflict with the proper valuation of the property.



Registered Valuer Qld 1908  
Certified Practising Valuer  
Savas Varitimos Valuer  
22 June, 2011

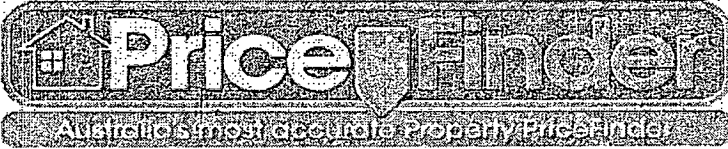
**Lots 3, 4, & 5 King Arthur Terrace  
Tennyson  
Brisbane City Council**

QUALIFICATIONS & LIMITATIONS

1. We state that this valuation is for the use only of the Brisbane City Council. It is provided to assist in negotiating the purchase of the subject property.
2. We assume that all approvals have been obtained from all authorities regarding structural improvements upon the property.
3. This report is for valuation assessment purposes and is not a structural survey of improvements.
4. This valuation assumes that there are no restrictions or onerous encumbrances other than those registered on Title.
5. We have not carried out a Contamination search or Investigation. Our assessment assumes that no contamination exists, and that the property complies with all environmental requirements set down by all relevant authorities.
6. In accordance with the International Valuation Standards Committee (IVSC) the definition of market value is as follows: "Market Value is the estimated amount for which an asset should exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion."
7. Copyright to this report is retained by Mikal Qld Pty Ltd as trustee for the Mikal Trust trading as Savas Varitimos Valuer and no copying or distribution of the valuation, either in full or in part, may be undertaken without the prior written consent of Mikal Qld Pty Ltd as trustee for the Mikal Trust trading as Savas Varitimos Valuer.
8. This valuation is current as at the date of valuation only. The value assessed herein may change significantly and unexpectedly over a relatively short period (including as a result of general market movement or factors specific to the particular property). We do not accept liability for losses arising from such subsequent changes in value. Without limiting the generality of the above comment, we do not assume any responsibility or accept any liability where this valuation is relied upon after the expiration of 45 days from the date of the valuation or such earlier date if you become aware of any factors that have any effect on the valuation.
9. In analysing the sales evidence referred to herein, it is noted that we have attempted to ascertain whether or not the sale price is inclusive or exclusive of Goods and Services Tax (GST). In relation to sales evidence, it is emphasised that Land Titles Offices in Australia do not currently differentiate between or record whether or not the sale price is inclusive or exclusive of GST. Where we have not been able to verify whether or not GST is included in the sale price, we have assumed that the record of sales price is exclusive of GST. Should this not be the case for any particular sale used as evidence, we reserve the right to reconsider our valuation.

Initial:

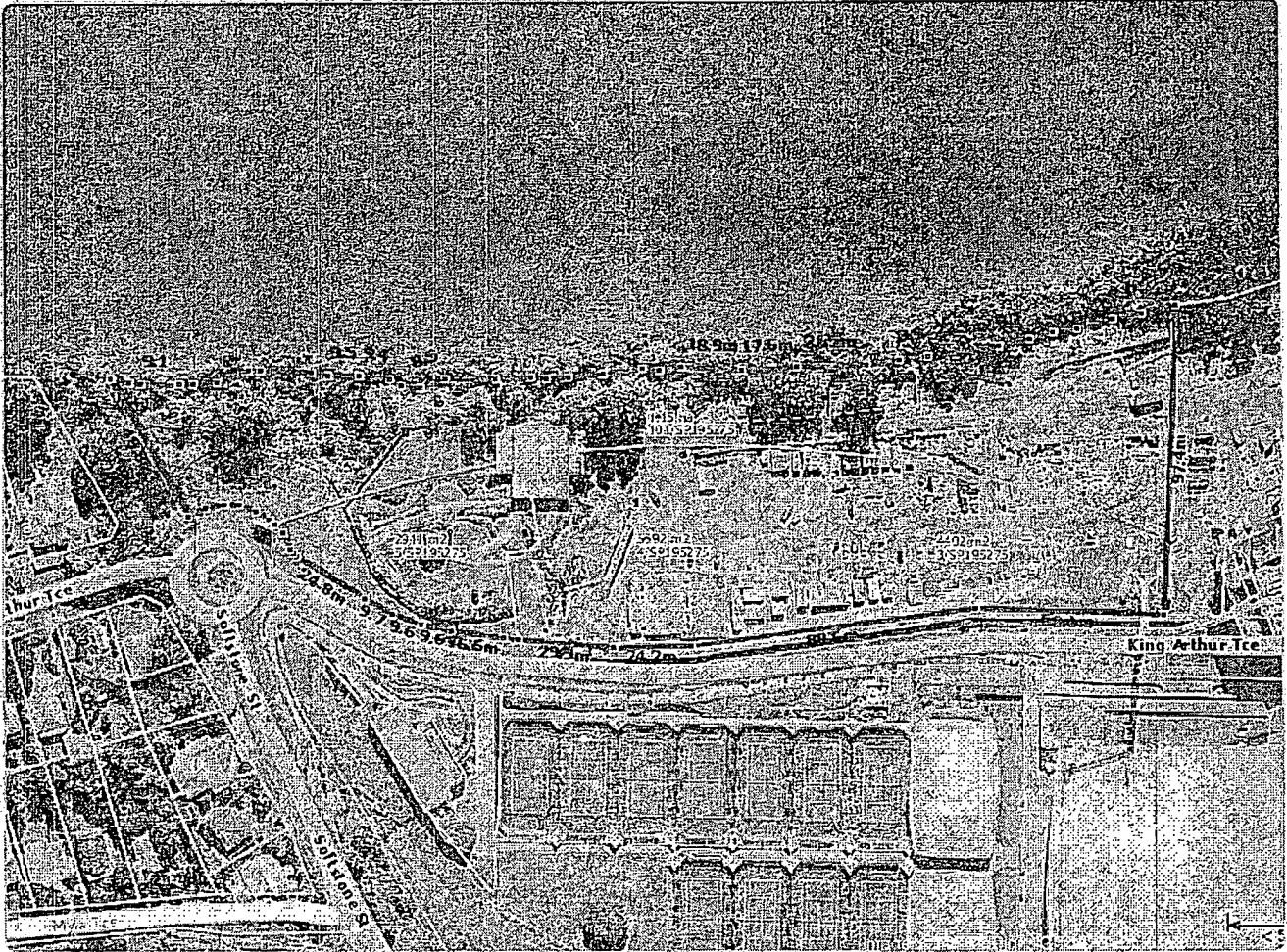




Algorithmo Simoni e Software Property Price Finder



167 KING ARTHUR TCE, TENNYSON, QLD 4105



Property Details

UBD Ref: 179-F15



RPD: L4-5,101 SP195275:PAR YEERONGPILLY

Valuation: \$ (Site Value)

Date: 30/06/2011

Property Type: Vacant Land

Valuation: \$ (Unimproved)

Date: 30/06/2010

Area: 2.04 ha

Pri Land Use: VACANT URBAN LAND

2nd Land Use: NONE

Tenure Type: Freehold (Issuing)

Local Authority: BCC [REDACTED]

Water/Sewerage:

Features:

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167 KING ARTHUR TCE, TENNYSON, QLD 4105



### Property Details

UBD Ref: 179-F15



RPD: L4-5,101 SP195275:PAR YEERONGPILLY

Valuation: \$ (Site Value) Date: 30/06/2011

Property Type: Vacant Land

Valuation: \$ (Unimproved) Date: 30/06/2010

Area: 2.04 ha

Pri. Land Use: VACANT URBAN LAND 2nd Land Use: NONE

Tenure Type: Freehold [Issuing]

Local Authority: BCC

Water/Sewerage:

Features:

This report has been compiled on 23/06/2011 by Mikal Qld Pty Ltd. © Property Data Solutions Pty Ltd 2011 - [www.pricefinder.com.au](http://www.pricefinder.com.au)

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**CURRENT TITLE SEARCH**

ENVIRONMENT AND RESOURCE MANAGEMENT, QUEENSLAND

Request No: 11753054  
Search Date: 20/06/2011 21:19Title Reference: 50710033  
Date Created: 18/03/2008

Previous Title: 50678543

**REGISTERED OWNER**

Dealing No: 712083650 03/12/2008

MIRVAC QUEENSLAND PTY LIMITED A.C.N. 060 411 207

**ESTATE AND LAND**

Estate in Fee Simple

LOT 3 SURVEY PLAN 195275  
County of STANLEY Parish of YEERONGPILLY  
Local Government: BRISBANE CITY  
COMMUNITY MANAGEMENT STATEMENT 39925**EASEMENTS, ENCUMBRANCES AND INTERESTS**

1. Rights and interests reserved to the Crown by  
Deed of Grant No. 40054677 (Lot 3 on SP 195275)
2. EASEMENT No 712884080 23/11/2009 at 16:17  
benefiting the land over  
EASEMENT U ON SP230021

ADMINISTRATIVE ADVICES - NIL  
UNREGISTERED DEALINGS - NIL

CERTIFICATE OF TITLE ISSUED - No

Corrections have occurred - Refer to Historical Search

Caution - Charges do not necessarily appear in order of priority

\*\* End of Current Title Search \*\*

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Requested By: D APPLICATIONS ABR

**CURRENT TITLE SEARCH**

ENVIRONMENT AND RESOURCE MANAGEMENT, QUEENSLAND

Request No: 11753051

Search Date: 20/06/2011 21:17

Title Reference: 50710034

Date Created: 18/03/2008

Previous Title: 50678543

**REGISTERED OWNER**

Dealing No: 712083650 03/12/2008

MIRVAC QUEENSLAND PTY LIMITED A.C.N. 060 411 207

**ESTATE AND LAND**

Estate in Fee Simple

LOT 4 SURVEY PLAN 195275  
County of STANLEY Parish of YEERONGPILLY  
Local Government: BRISBANE CITY

**EASEMENTS, ENCUMBRANCES AND INTERESTS**

1. Rights and interests reserved to the Crown by  
Deed of Grant No. 40054677 (Lot 4 on SP 195275)

ADMINISTRATIVE ADVICES - NIL  
UNREGISTERED DEALINGS - NIL

CERTIFICATE OF TITLE ISSUED - No

\*\* End of Current Title Search \*\*

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Requested By: D APPLICATIONS ABR

**CURRENT TITLE SEARCH**

ENVIRONMENT AND RESOURCE MANAGEMENT, QUEENSLAND

Request No: 11753053  
Search Date: 20/06/2011 21:17Title Reference: 50710035  
Date Created: 18/03/2008

Previous Title: 50678543

**REGISTERED OWNER**

Dealing No: 712083650 03/12/2008

MIRVAC QUEENSLAND PTY LIMITED A.C.N. 060 411 207

**ESTATE AND LAND**

Estate in Fee Simple

LOT 5 SURVEY PLAN 195275  
County of STANLEY Parish of YEERONGPILLY  
Local Government: BRISBANE CITY**EASEMENTS, ENCUMBRANCES AND INTERESTS**

1. Rights and interests reserved to the Crown by  
Deed of Grant No. 40054677 (Lot 5 on SP 195275)

ADMINISTRATIVE ADVICES - NIL  
UNREGISTERED DEALINGS - NIL

CERTIFICATE OF TITLE ISSUED - No

\*\* End of Current Title Search \*\*

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Requested By: D APPLICATIONS ABR

Land Title Act 1994; Land Act 1994  
Form 21 Version 2

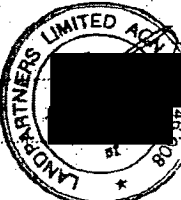
Sheet 1 of 8

PM	ORIGIN	BEARING	DIST	NO
21a - OPN	12/S/151517	267°59'40"	15.042	(S Pt, CR)
21b - OPN	42/S/146057	239°58'20"	27.052	(S Pt, CR)
				143344

STN	TO	ORIGIN	BEARING	DIST
1	0. Screw in light pole	6/RC165945	193°01'	8.753
9	0. Screw in Conc.	7/RC165945	173°34'	4.714

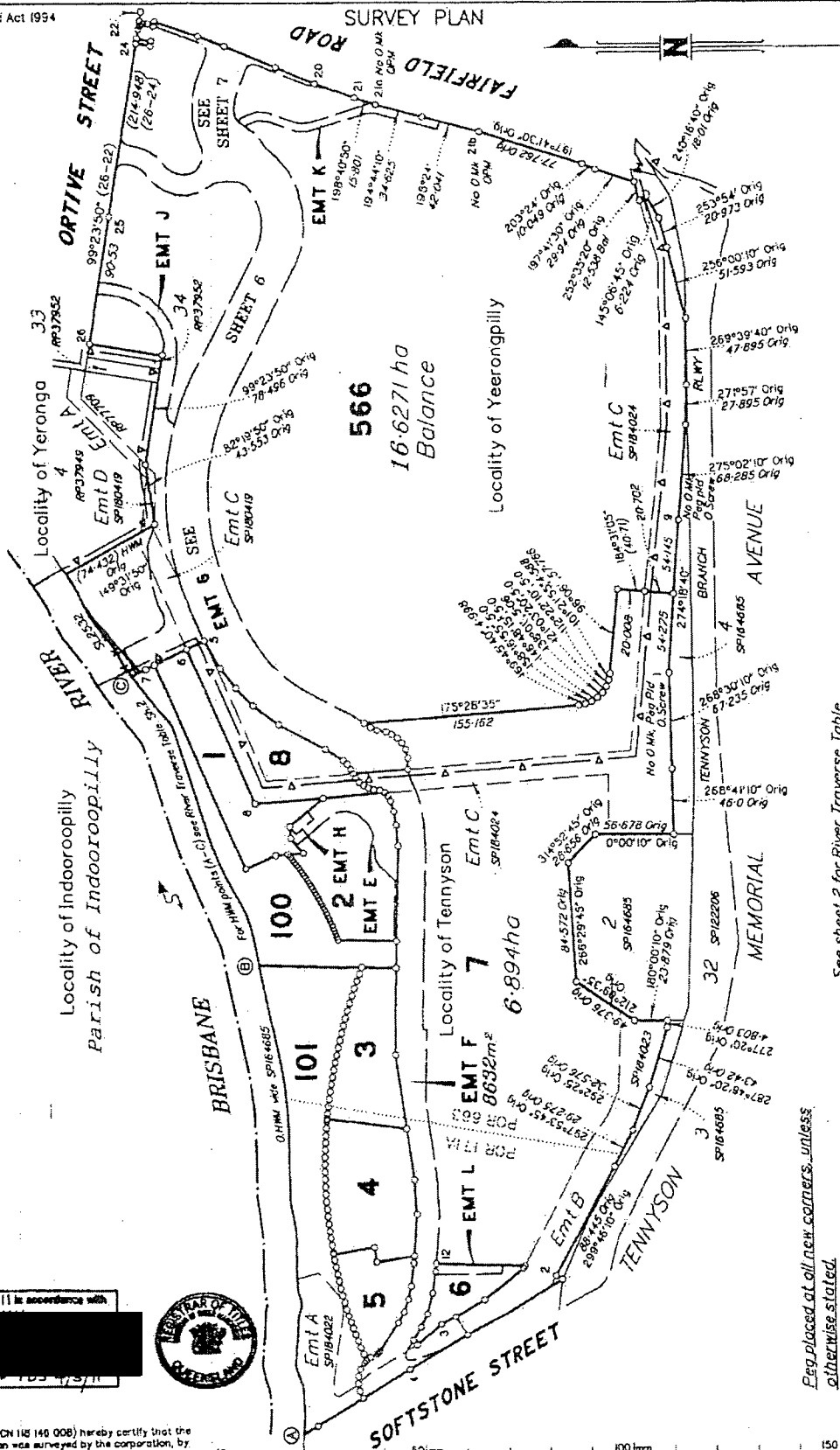
Cancellation made 4/13/11 in accordance with Section 16 Land Title Act 1994  
Section 281 Land Act 1994  
See Drafting No. 71374007  
Registrar of Titles

LandPartners Limited (ACN 148 140 008) hereby certify that the land comprised in this plan was surveyed by the corporation, by John Arthur DAVIS, cadastral surveyor for whose work the corporation accepts responsibility and that the plan is accurate, that the said survey was performed in accordance with the Survey and Mapping Infrastructure Act 2003 and Surveyors Act 2003 and associated Regulations and Standards and that the said survey was completed on 01/06/2007.



Director

Date: 13.6.07



Original information compiled from [SL 2592]  
SP104107 & SP164685 in the  
Department of Natural Resources & Water.

See sheet 2 for River Traverse Table.  
River Traverse between stns A & C  
is coincident with River Boundary  
and has not been marked.

Flag placed at all new corners, unless  
otherwise stated.  
See sheet 2 for Lots 5 & 6  
See sheet 3 for Lots 3 & 4  
See sheet 4 for Lots 2 & 8  
See sheet 5 for Lots 1 & 8  
See sheet 6 & 7 for Lots Emt G

Scale 1:3000 - Lengths are in Metres.

Plan of Lots 1-8, 100, 101, 566,  
Proposed Emt F in Lot 7,  
Proposed Emts E & H in Lot 2,  
Proposed Emts J, K & G in Lot 566  
& Proposed Emt L in Lot 6  
Cancelling Lot 1 on SP164685 & Lot 566 on SP104107

PARISH: YEERONGPILLY COUNTY: Stanley

Meridian: SP164685

F/N's: No

Scale: 1:3000  
Format: STANDARD



SP195275

Plan Status:

**WARNING : Folded or Mutilated Plans will not be accepted.**  
**Plans may be rolled.**  
**Information may not be placed in the outer margins.**

**710854319**

**NO FEE**

38/07/2007 11:00

CE 495

Registered

s. Lodged by

(Include address, phone number, reference, and Lodger Code)

**1. Certificate of Registered Owners or Lessees.**

*Details to be provided by the  
 Department of Natural Resources  
 and Water*

(Names in full)

\* as Registered Owners of this land agree to this plan and dedicate the Public Use Land as shown hereon in accordance with Section 50 of the Land Title Act 1994.

as Lessees of this land agree to this plan.

Signature of \*Registered Owners \*Lessees

*Plan in accordance with Land Act approval*

*Acting Senior Land Officer  
 Delegate of the Minister for  
 Natural Resources + Water  
 26.7.07*

\* Rule out whichever is inapplicable

**2. Local Government Approval.**

hereby approves this plan in accordance with the:  
 %

Dated this ..... day of .....

\* Insert the name of the Local Government. % Insert Integrated Planning Act 1997 or # Insert designation of signatory or delegation Local Government (Planning & Environment) Act 1990

**3. Plans with Community Management Statement :**

CMS Number :

Name :

**4. References :**

Dept File : 2007/007154  
 Local Govt :  
 Surveyor : AF3238-00

Existing			Created		
Title Reference	Lot	Plan	Lots	Emts	Road
49104467	1	SP164685	1-8, 100, 101 & 566	E,F,H,L	-
49005277	566	SP104107	7, 8 & 566	G,J,K	-

**ENCUMBRANCE EASEMENT ALLOCATIONS**

Easement	Lots to be Encumbered
709116788 (Emt A on SP184022)	7 & 101
709116788 (Emt B on SP184023)	7
709116788 (Emt C on SP184024)	7, 8 & 566
709232120 (Emt B on SP184023)	7
709171363 (Emt C on SP180419)	566
709171363 (Emt D on SP180419)	566

Rec. No. 3545133  
 RECEIVED \$ 456.20  
 DATE 19/7/07

**12. Building Format Plans only.**

I certify that:  
 • As far as it is practical to determine, no part of the building shown on this plan encroaches onto adjoining lots or road;  
 • Part of the building shown on this plan encroaches onto adjoining lots and road

Lots Orig

**7. Portion Allocation :**

8. Map Reference :  
 9542-44443

9. Locality :  
 TENNYSON & YEERONGPILLY

10. Local Government :  
 BRISBANE CITY COUNCIL

**11. Passed & Endorsed :**

By: LandPartner Limited  
 Date: 16/6/07  
 Signed: [Signature]  
 Designation: Director / Cadastral Surveyor

Cadastral Surveyor/Director \* Date  
 \* delete words not required

**13. Lodgement Fees :**

Survey Deposit \$ .....  
 Lodgement \$ .....  
 New Titles \$ .....  
 Photocopy \$ .....  
 Postage \$ .....  
 TOTAL \$ .....

14. Insert Plan Number **SP195275**

Land Title Act 1994 ; Land Act 1994  
Form 21A Version 1

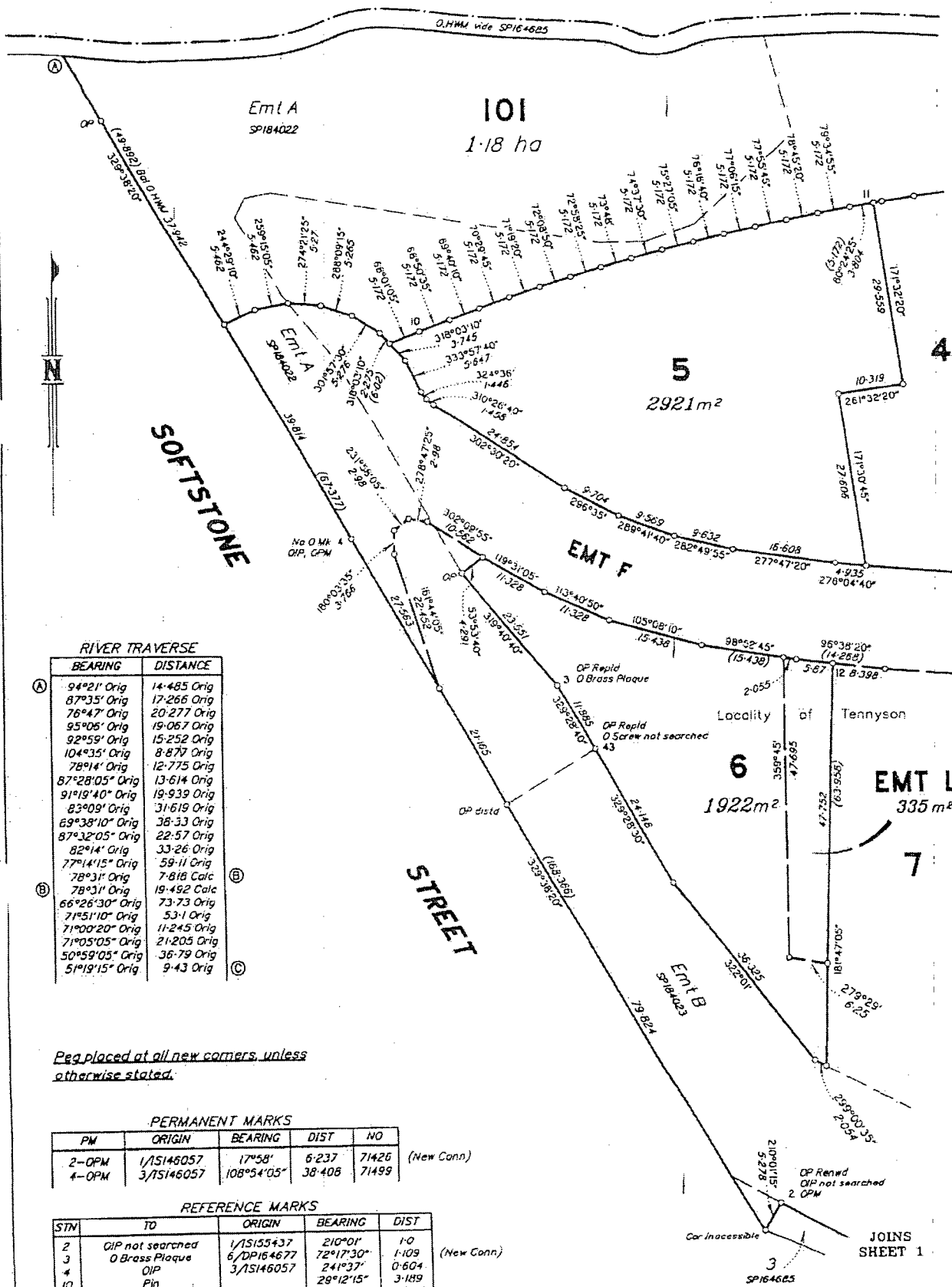
ADDITIONAL SHEET

Sheet 2 of 8

Locality of Indooeroopilly  
Parish of Indooeroopilly

BRISBANE

RIVER



RIVER TRAVERSE

BEARING	DISTANCE
94°21' Orig	14.485 Orig
87°35' Orig	17.266 Orig
76°47' Orig	20.277 Orig
95°06' Orig	19.067 Orig
92°59' Orig	15.252 Orig
104°35' Orig	8.877 Orig
78°14' Orig	12.775 Orig
87°28'05" Orig	13.614 Orig
91°19'40" Orig	19.939 Orig
83°09' Orig	31.619 Orig
89°38'10" Orig	38.53 Orig
87°32'05" Orig	22.57 Orig
82°14' Orig	33.26 Orig
77°14'15" Orig	59.11 Orig
78°31' Orig	7.816 Calc
78°31' Orig	18.492 Calc
66°26'30" Orig	73.73 Orig
71°51'10" Orig	53.1 Orig
71°00'20" Orig	11.245 Orig
71°05'05" Orig	21.205 Orig
50°59'05" Orig	36.79 Orig
51°19'15" Orig	9.43 Orig

Peg placed at all new corners, unless otherwise stated.

PERMANENT MARKS

PW	ORIGIN	BEARING	DIST	NO
2-OPM	1/15146057	17°58'	6.237	71426 (New Conn)
4-OPM	3/15146057	108°54'05"	38.408	71499

REFERENCE MARKS

STN	TD	ORIGIN	BEARING	DIST
2	OPM not searched	1/15155437	210°01'	1.0
3	0 Brass Plaque	6/DP164677	72°17'30"	1.109
4	OPM	3/15146057	241°37'	0.604
10	Pin		29°12'15"	3.189
11	Pin		53°17'55"	26.712
12	Screw in kerb		163°49'10"	24.317
18	0 Screw not searched	5/SP164578	104°57'	1.32

Scale 1:800 - Lengths are in Metres.

State copyright reserved.

Insert Plan Number SP195275

A73238-01-013.6 32380001





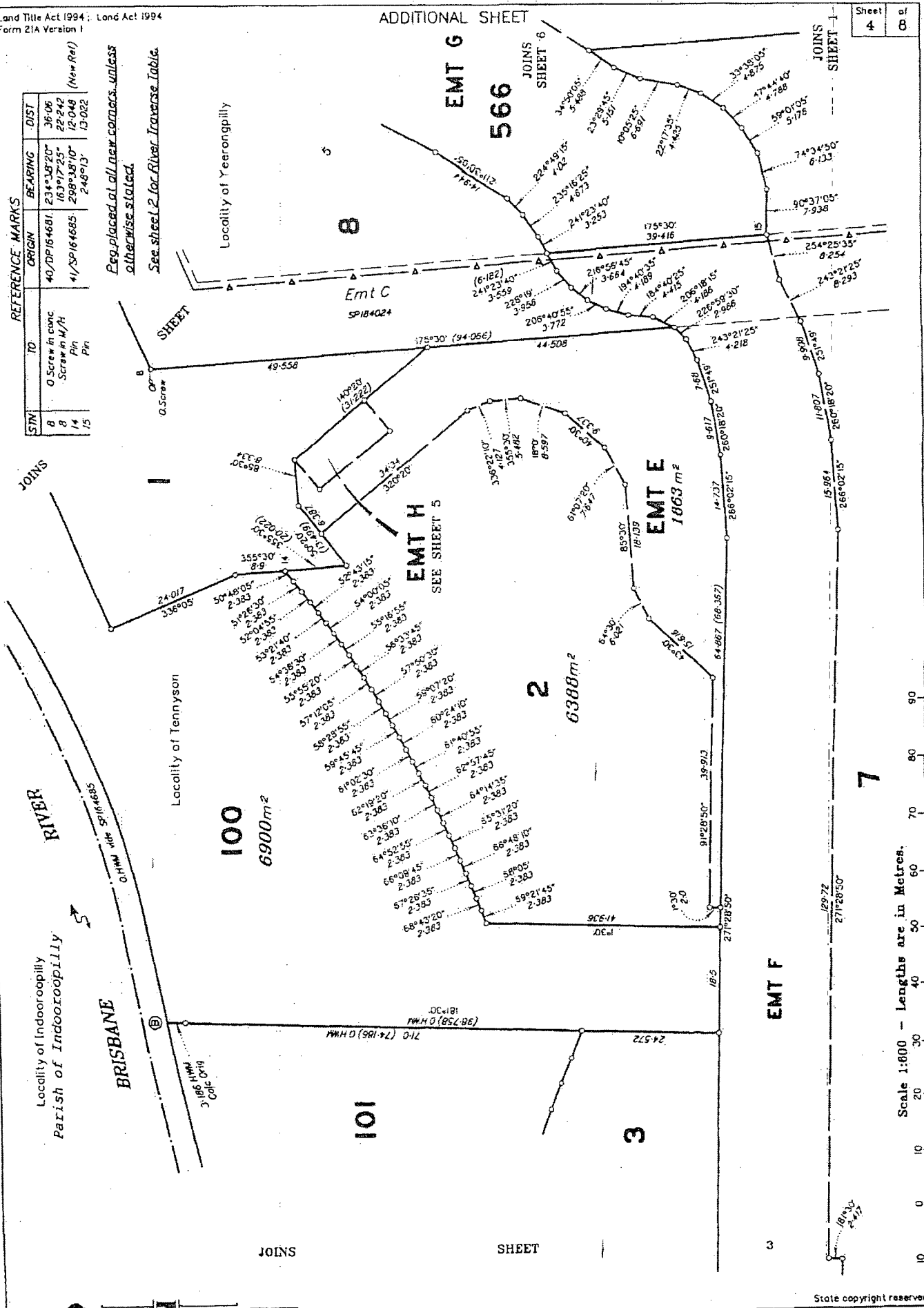
Land Title Act 1994, Land Act 1994  
Form 21A Version 1

ADDITIONAL SHEET

Sheet 4 of 8

STN	TD	REFERENCE MARKS	BEARING	DIST
B	0	0 Screws in conc	23°10'20"	36.06
B	1	Screws in M/H	163°17'25"	22.242
B	14		299°18'10"	12.048
B	15		248°0'13"	13.022

Placed at all new corners, unless otherwise stated.  
See sheet 2 for River Traverse Table.



Scale 1:800 - Lengths are in Metres.

State copyright reserved.

Insert Plan Number SP195275

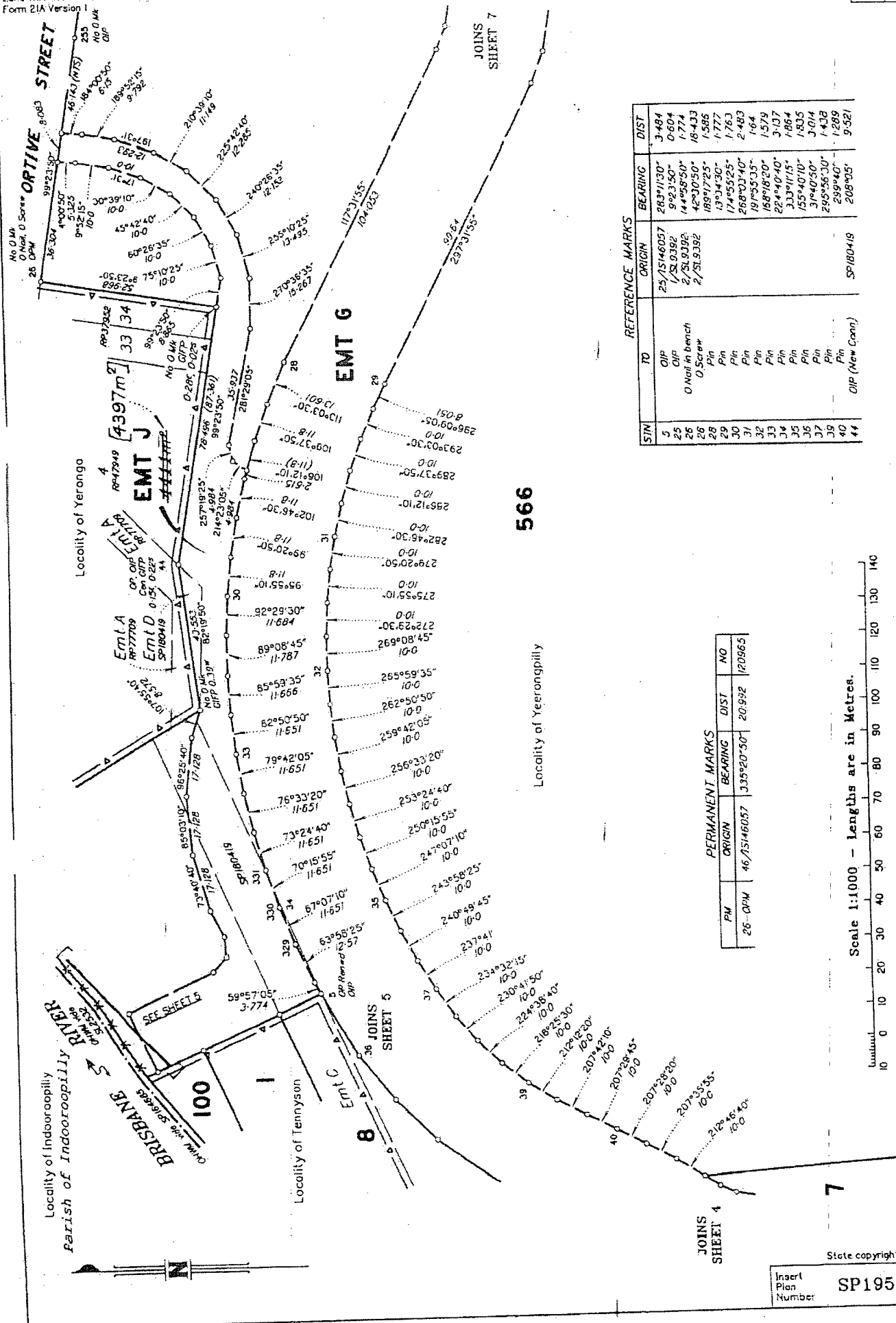
A73238-00-013.6 3238087



Land Title Act 1994 : Land Act 1994  
Form 21A Version 1

ADDITIONAL SHEET

Sheet 6 of 8

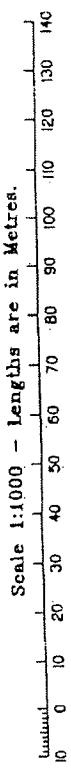


REFERENCE MARKS

STN	TO	ORIGIN	BEARING	DIST
5	OIP	25/15146057	283°11'30"	3.484
25	OIP	1/51.0392	9°23'50"	0.604
26	O Nail in bench	2/51.9392	14°58'50"	1.774
28	O Screw	2/51.9392	42°30'50"	16.433
29	Pin		189°17'25"	1.586
30	Pin		43°04'30"	1.777
31	Pin		174°55'25"	1.763
32	Pin		268°03'40"	2.483
33	Pin		19°55'35"	1.64
34	Pin		168°18'20"	1.579
35	Pin		22°40'40"	3.107
36	Pin		333°11'15"	1.864
37	Pin		155°40'10"	1.835
38	Pin		31°40'30"	3.814
39	Pin		295°36'30"	1.438
40	Pin		259°40'0"	1.289
44	OIP (New Conn)	SP180418	208°05'	9.521

PERMANENT MARKS

PM	ORIGIN	BEARING	DIST	NO
26-COPM	46/15146057	135°20'50"	20.932	120965



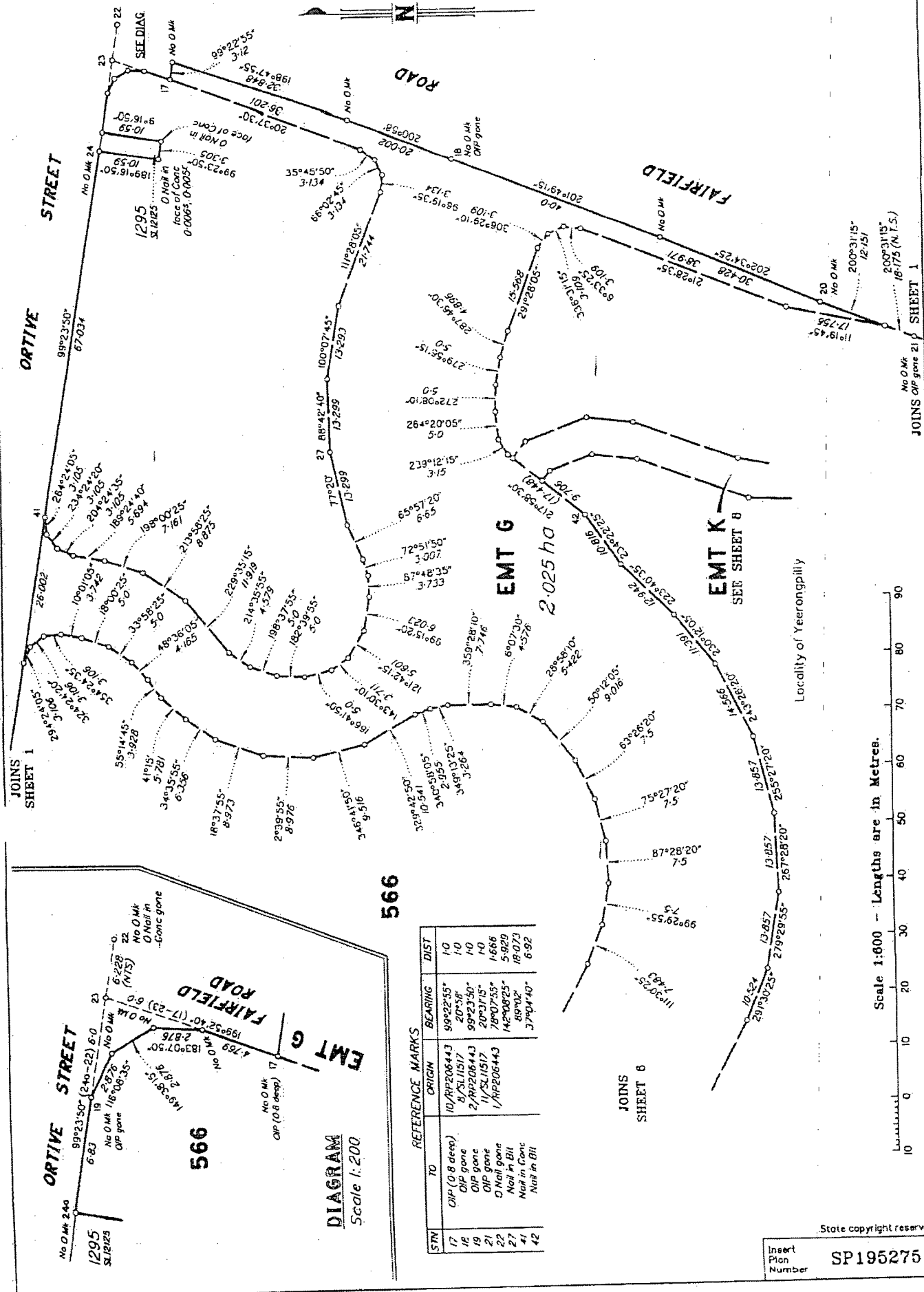
State copyright reserved.  
Insert Plan Number **SP195275**

453238-00-013 3230001

Land Title Act 1994 : Land Act 1994  
Form 21A Version 1

ADDITIONAL SHEET

Sheet 7 of 8

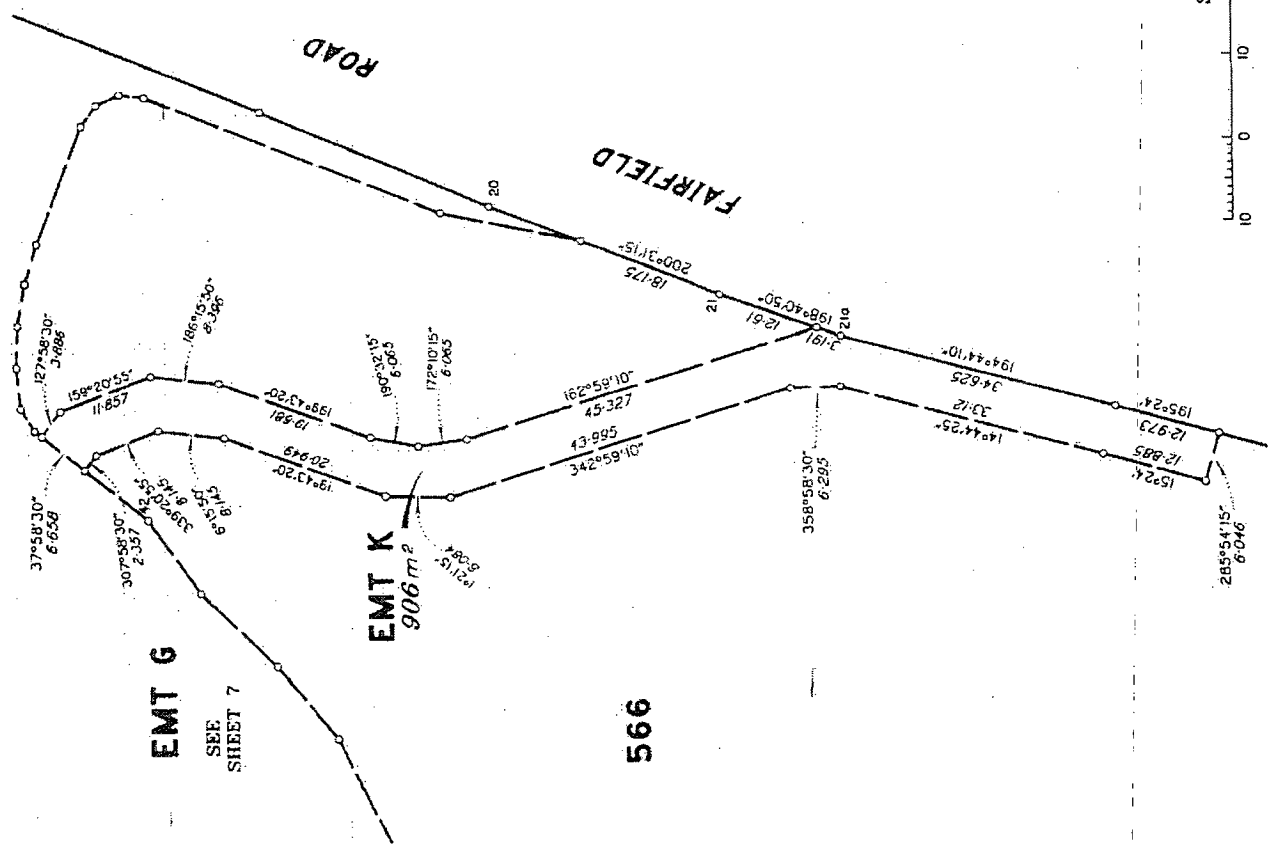
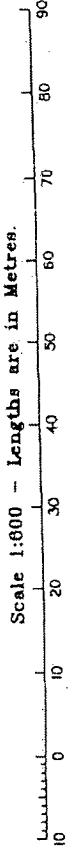


STN	TO	ORIGIN	BEARING	DIST
17	OMP (0.8 deep)	10/RP206443	99°22'55"	1.0
18	OMP gone	8/SL11517	20°58'	1.0
19	OMP gone	2/RP206443	99°23'50"	1.0
21	OMP gone	11/SL11517	20°31'15"	1.0
22	OMP gone	1/RP206443	78°07'55"	1.666
27	Nail in Bit	14/OMP25	14°20'25"	5.929
41	Nail in Conc	60°10'	60°10'	18.073
42	Nail in Bit	37°50'40"	37°50'40"	6.92

State copyright reserved.

Insert Plan Number **SP195275**

AC3238-00-0136 32JAN01



**EMT G**  
SEE  
SHEET 7

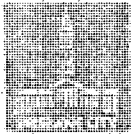
**EMT K**  
906 m<sup>2</sup>

566

State copyright reserved.

Insert  
Plan  
Number **SP195275**

AF3236-00-013 G 32360001



Brisbane City Council  
**FloodWise Property Report**

**Report Reference**  
 1699088  
 20/06/2011 19:33:30

*Dedicated to a better Brisbane*

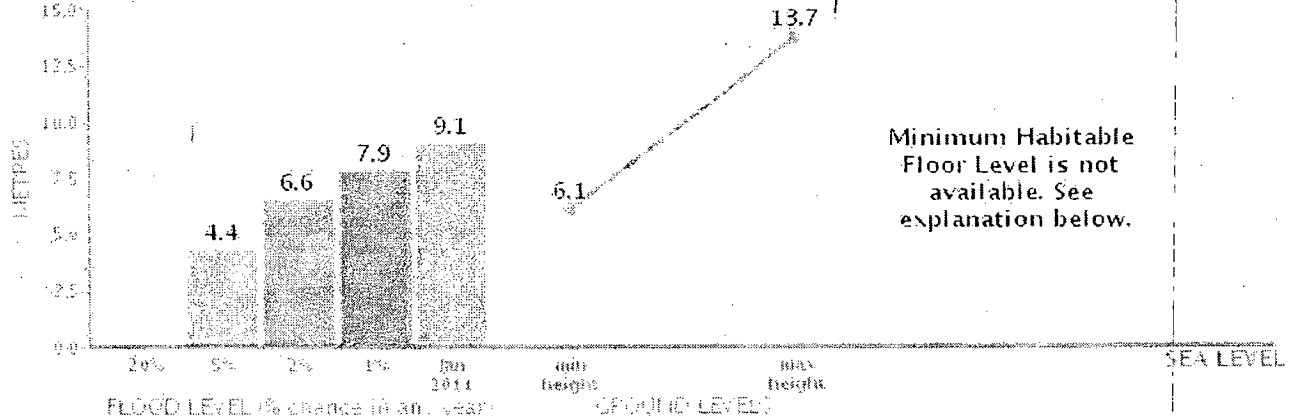
The FloodWise Property Report is a free report to inform Brisbane residents and professionals about flood risks for a specified lot or property so they may better prepare for flooding and to plan and build in accordance with Council requirements. A flood level higher than those shown below can occur in any year, although such events are rare.

To find out more about how the contents of this report may affect your ability to build or renovate, as well as Council advice on how to protect your property and family by being FloodWise, visit [www.brisbane.qld.gov.au](http://www.brisbane.qld.gov.au), a Customer Service Centre or call (07) 3403 8888.

**PROPERTY DETAILS**

**Address:** 167 KING ARTHUR TCE TENNYSON QLD 4105  
**Lot Details:** L.5/SP.195275

**FLOOD LEVEL INFORMATION**



**Flood Levels**

The blue bars in the graph above show the percentage chance of that level being reached or exceeded in any year. The orange bar shows the January 2011 flood level at this address or lot.

**Ground Levels (Min - Max)**

The line above shows this property's lowest and highest ground levels. Confirm with a surveyor.

**Minimum Habitable Floor Level**

If a property is in an overland flow path or a large allotment a minimum habitable floor level cannot be provided. See flood and property flag information over page.

For a detailed summary of anticipated flood levels and flags see technical summary over page.

**HIGHEST SOURCE OF FLOODING**

**RIVER** The highest source of flooding affecting this property originates from a river. For more information about flooding in your area you can view and download Council's Flood Flag Maps by visiting [www.brisbane.qld.gov.au/floodmap](http://www.brisbane.qld.gov.au/floodmap)

**FLOOD AND PROPERTY DEVELOPMENT FLAGS**

Current records indicate this property may be affected by one or more flood or property development flags. Please review the technical summary over page for more detail.

## Technical Summary

Use this summary to supply information about this property to surveyors, builders, certifiers, architects and engineers who may request this FloodWise Property Report. This summary has been designed to be easily read if scanned or faxed.

### Property Details

**Address:** 167 KING ARTHUR TCE TENNYSON QLD 4105

**Lot Details:** L.5/SP.195275

### Flooding Information

### Estimated Peak Flooding Levels

Minimum Ground Level (AHD)	6.1 m	ARI (Years)	% chance	Level (AHD)	Source
Maximum Ground Level (AHD)	13.7 m	5	20%	N/A	
Interim Residential Flood Level (IRFL)	9.1 m	20	5%	4.4 m	RIVER
Interim Residential Flood Level Source	RIVER	50	2%	6.6 m	RIVER
Minimum Habitable Floor Level (AHD)	N/A	100 or DFL	1%	7.9 m	RIVER
		January 2011		9.1 m	RIVER

Flooding may also occur from:

OVERLAND FLOW

### Flood and Property Development Flags

#### Overland Flow Path

Mapping indicates this property is in an overland flow path. Overland flow is the excess run-off during high rainfall events that travels overland following low-lying, natural drainage paths. Such flooding commonly occurs when underground drainage exceeds capacity. It is recommended you consult a Registered Professional Engineer of Queensland to determine this property's habitable floor level and flooding depth.

#### Large Allotment

This property is a Large Allotment of over 1000 square metres. Flood levels may vary significantly across allotments of this size. Further investigations may be warranted in determining the variation in flood levels and the minimum habitable floor level across this site. For more information or advice, it is recommended you engage a Registered Professional Engineer of Queensland.

## Disclaimer

- 1 Defined Flood Levels and Interim Residential Flood Levels, and the Minimum Habitable Floor Levels based on them, are determined from the information available to Council at the date of issue. These flood levels, for a particular property, may change if more detailed information becomes available or changes are made in the method of calculating flood levels.
- 2 Council makes no warranty or representation regarding the accuracy or completeness of a FloodWise Property Report. Council disclaims any responsibility or liability in relation to the use or reliance by any person on a FloodWise Property Report.

## Useful Definitions

**Australian Height Datum (AHD)** – The reference level for defining ground levels in Australia. The level of 0.0m AHD is approximately mean sea level.

**Average Recurrence Interval (ARI) or % Chance** – The probability of experiencing a flood of a particular magnitude. ARI can be interpreted in terms of years (frequency). ARI levels quoted in this report are measured in height above sea level (AHD). ARI can also be described as the percentage chance that a location will flood in any one year. For example, a 5 year ARI flood event corresponds to a 20% likelihood of a flood of this magnitude or greater occurring in any one year.

**Defined Flood Level (DFL)** – The flood level associated with a defined flood event. Commonly, the standard used is the 100 year ARI. For further information refer to the House Code in Brisbane City Plan 2000, specifically Table 1: House Flood Immunity Levels for residential property.

**Maximum and Minimum Ground Level** – Highest and lowest ground levels on the property based on available ground level information. A Registered Surveyor can confirm exact ground levels.

**Minimum Habitable Floor Level** – The minimum level above sea level at which habitable areas of development (generally including bedrooms, living rooms, kitchen, study, family and rumpus rooms) must be constructed.

**City Plan 2000** – City Plan 2000 sets out what you can build and where new development should go. Council assesses proposed new development against the City Plan 2000.

**Interim Residential Flood Level (IRFL)** – The flooding standard adopted by Council following the January 2011 flood event to be applied to new residential development.

## Find Out More

Whether you are building, buying, renting or preparing your property for flooding, obtaining a FloodWise Property Report is the first step in determining your property's flood risk. Council's 'Be FloodWise' series of publications can assist you to plan ahead, respond to and recover from flooding. They are available online at: <http://www.brisbane.qld.gov.au/floodwise> or by phoning Brisbane City Council on (07) 3403 8888.

The 'Be FloodWise' publications include:

### Preparing for Flooding

Assess your flood risk, prepare for and respond to, flood events.

**Be FloodWise - A guide for residents**

### Buying / Renting

Assess the flood risk of a property before making a decision to rent or buy.

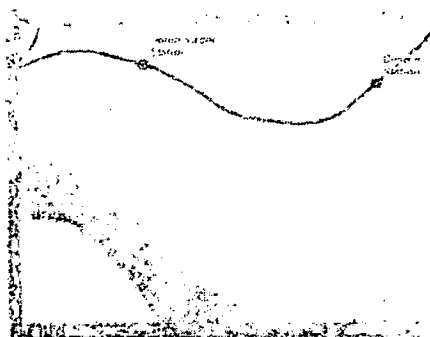
**Buying and renting fact sheet**

### Building or Renovating

Renovations around your home or business can impact on your flooding exposure. Ensure your house meets City Plan 2000 flood immunity

**Building and renovating fact sheet**

If you are planning to renovate or build, Council recommends you engage a Registered Professional Engineer of Queensland to undertake a thorough assessment of all flood risks specific to the property.







# Brisbane City Council FloodWise Property Report

Report Reference

1699087

20/06/2011 19:32:57

*Dedicated to a better Brisbane*

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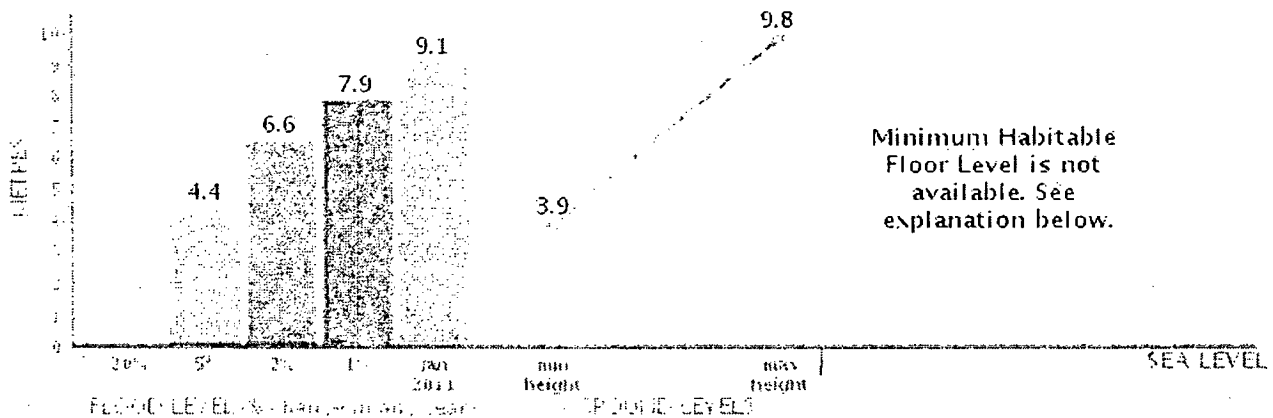
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## PROPERTY DETAILS

Address: 167 KING ARTHUR TCE TENNYSON QLD 4105

Lot Details: L.4/SP.195275

## FLOOD LEVEL INFORMATION



Minimum Habitable Floor Level is not available. See explanation below.

### Flood Levels

The blue bars in the graph above show the percentage chance of that level being reached or exceeded in any year. The orange bar shows the January 2011 flood level at this address or lot.

### Ground Levels (Min - Max)

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### Minimum Habitable Floor Level

If a property is in an overland flow path or a large allotment a minimum habitable floor level cannot be provided. See flood and property flag information over page.

For a detailed summary of anticipated flood levels and flags see technical summary over page.

## HIGHEST SOURCE OF FLOODING

**RIVER** The highest source of flooding affecting this property originates from a river. For more information about flooding in your area you can view and download Council's Flood Flag Maps by visiting [www.brisbane.qld.gov.au/floodmap](http://www.brisbane.qld.gov.au/floodmap)

## FLOOD AND PROPERTY DEVELOPMENT FLAGS

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# Technical Summary

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## Property Details

**Address:** 167 KING ARTHUR TCE TENNYSON QLD 4105

**Lot Details:** L.4/SP.195275

## Flooding Information

## Estimated Peak Flooding Levels

Minimum Ground Level (AHD)	3.9 m	ARI (Years)	% chance	Level (AHD)	Source
Maximum Ground Level (AHD)	9.8 m	5	20%	N/A	
Interim Residential Flood Level (IRFL)	9.1 m	20	5%	4.4 m	RIVER
Interim Residential Flood Level Source	RIVER	50	2%	6.6 m	RIVER
Minimum Habitable Floor Level (AHD)	N/A	100 or DFL	1%	7.9 m	RIVER
		January 2011		9.1 m	RIVER

Flooding may also occur from:

OVERLAND FLOW

## Flood and Property Development Flags

### Overland Flow Path

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If you are planning to renovate or build, Council recommends you engage a Registered Professional Engineer of Queensland to undertake a thorough assessment of all flood risks specific to the property.





Brisbane City Council  
**FloodWise Property Report**

**Report Reference**  
 1699086

20/06/2011 19:32:11

*Dedicated to a better Brisbane*

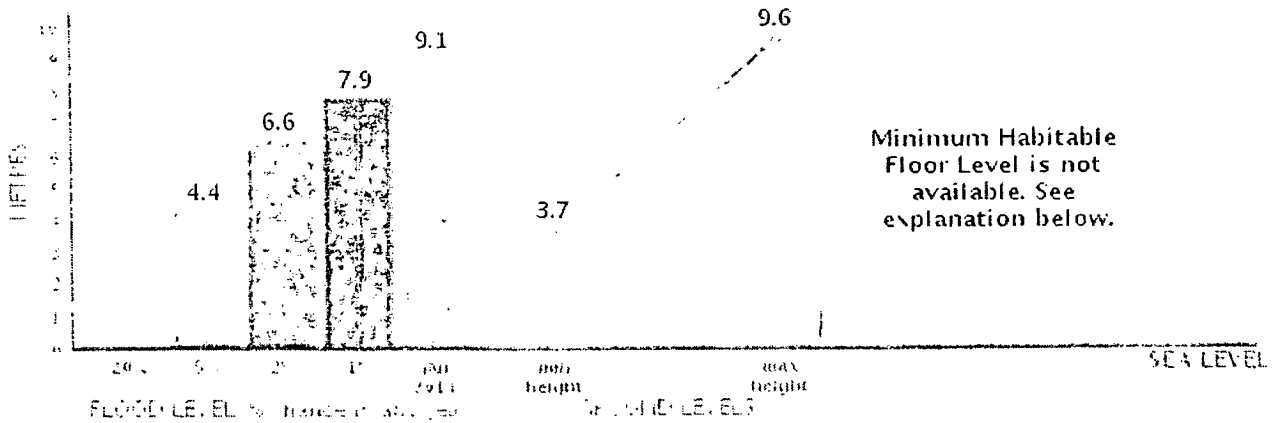
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**PROPERTY DETAILS**

**Address:** 185 KING ARTHUR TCE TENNYSON QLD 4105  
**Lot Details:** L.3/SP.195275

**FLOOD LEVEL INFORMATION**



**Flood Levels**

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# Technical Summary

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## Property Details

**Address:** 185 KING ARTHUR TCE TENNYSON QLD 4105

**Lot Details:** L.3/SP.195275

## Flooding Information

## Estimated Peak Flooding Levels

Minimum Ground Level (AHD)	3.7 m	ARI (Years)	% chance	Level (AHD)	Source
Maximum Ground Level (AHD)	9.6 m	5	20%	N/A	
Interim Residential Flood Level (IRFL)	9.1 m	20	5%	4.4 m	RIVER
Interim Residential Flood Level Source	RIVER	50	2%	6.6 m	RIVER
Minimum Habitable Floor Level (AHD)	N/A	100 or DFL	1%	7.9 m	RIVER
		January 2011		9.1 m	RIVER

Flooding may also occur from:

OVERLAND FLOW

## Flood and Property Development Flags

### Overland Flow Path

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## Disclaimer

- 1 Defined Flood Levels and Interim Residential Flood Levels, and the Minimum Habitable Floor Levels based on them, are determined from the information available to Council at the date of issue. These flood levels, for a particular property, may change if more detailed information becomes available or changes are made in the method of calculating flood levels.
- 2 Council makes no warranty or representation regarding the accuracy or completeness of a FloodWise Property Report. Council disclaims any responsibility or liability in relation to the use or reliance by any person on a FloodWise Property Report.

## Useful Definitions

**Australian Height Datum (AHD)** – The reference level for defining ground levels in Australia. The level of 0.0m AHD is approximately mean sea level.

**Average Recurrence Interval (ARI) or % Chance** – The probability of experiencing a flood of a particular magnitude. ARI can be interpreted in terms of years (frequency). ARI levels quoted in this report are measured in height above sea level (AHD). ARI can also be described as the percentage chance that a location will flood in any one year. For example, a 5 year ARI flood event corresponds to a 20% likelihood of a flood of this magnitude or greater occurring in any one year.

**Defined Flood Level (DFL)** – The flood level associated with a defined flood event. Commonly, the standard used is the 100 year ARI. For further information refer to the House Code in Brisbane City Plan 2000, specifically Table 1: House Flood Immunity Levels for residential property.

**Maximum and Minimum Ground Level** – Highest and lowest ground levels on the property based on available ground level information. A Registered Surveyor can confirm exact ground levels.

**Minimum Habitable Floor Level** – The minimum level above sea level at which habitable areas of development (generally including bedrooms, living rooms, kitchen, study, family and rumpus rooms) must be constructed.

**City Plan 2000** – City Plan 2000 sets out what you can build and where new development should go. Council assesses proposed new development against the City Plan 2000.

**Interim Residential Flood Level (IRFL)** – The flooding standard adopted by Council following the January 2011 flood event to be applied to new residential development.

## Find Out More

Whether you are building, buying, renting or preparing your property for flooding, obtaining a FloodWise Property Report is the first step in determining your property's flood risk. Council's 'Be FloodWise' series of publications can assist you to plan ahead, respond to and recover from flooding. They are available online at: <http://www.brisbane.qld.gov.au/floodwise> or by phoning Brisbane City Council on (07) 3403 8888.

The 'Be FloodWise' publications include:

### Preparing for Flooding

Assess your flood risk, prepare for and respond to, flood events.

**Be FloodWise - A guide for residents**

### Buying / Renting

Assess the flood risk of a property before making a decision to rent or buy.

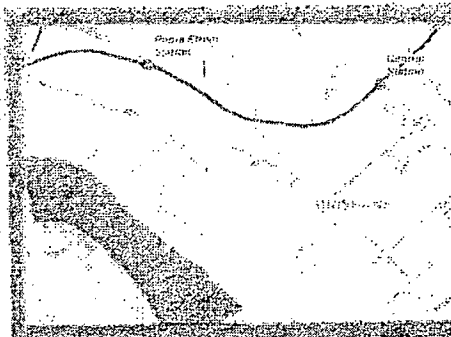
**Buying and renting fact sheet**

### Building or Renovating

Renovations around your home or business can impact on your flooding exposure. Ensure your house meets City Plan 2000 flood immunity

**Building and renovating fact sheet**

If you are planning to renovate or build, Council recommends you engage a Registered Professional Engineer of Queensland to undertake a thorough assessment of all flood risks specific to the property.



## Get a Free Flood Flag Map

Find out more about predicted flooding in your suburb or area by downloading a free Flood Flag Map. The map shows overland flow paths and where flooding may occur from creeks, rivers and storm tides on a suburb scale.

For more information visit [www.brisbane.qld.gov.au/floodmap](http://www.brisbane.qld.gov.au/floodmap) or visit a Council Customer Service Centre.