


Orig. **AG 12903435**



14:48 06-Apr-2018
1 of 1

LANDS TITLES REGISTRATION OFFICE

SOUTH AUSTRALIA

**APPLICATION TO NOTE LAND
MANAGEMENT AGREEMENT**
(Pursuant to s 57(5) of the *Development Act*
1993)

FORM APPROVED BY THE REGISTRAR-GENERAL

PRIORITY NOTICE ID	
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**BELOW THIS LINE FOR OFFICE &
STAMP DUTY PURPOSES ONLY**



SERIES NO	PREFIX

AGENT CODE

LODGED BY: *City of Marion LCM9P*

CORRECTION TO: *city of Marion LCM9P*

CORRECTION	PASSED <i>KS</i>
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ENTERED <u>18 APR 2018</u>
AND NOTICES SENT TO THE CAVEATEE
 Pro  REGISTRAR-GENERAL

TYPE OF DOCUMENT APPLICATION TO NOTE LAND MANAGEMENT AGREEMENT

(Pursuant to s 57(5) of the *Development Act 1993*)

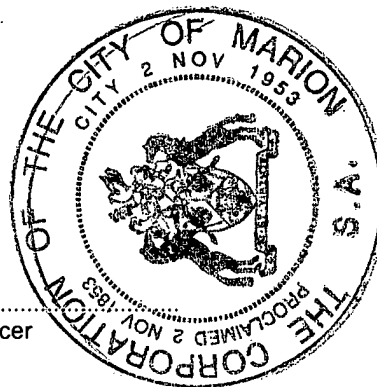
PRIVACY COLLECTION STATEMENT: The information in this form is collected under statutory authority and is used for maintaining publicly searchable registers and indexes. It may also be used for authorised purposes in accordance with Government legislation and policy requirements.

To the Registrar-General:

KS
18.4.2018
P2026

1. **The Corporation of the City of Marion (Council)** of 245 Sturt Road, Sturt SA 5047 has entered into the attached Land Management Agreement dated *3 February 2018* (**Agreement**) with **Perpetual Nominees Ltd** of Angel Place, 123 Pitt Street, Sydney NSW 2000 and **Minister for Transport and Infrastructure** a body corporate pursuant to the *Administrative Arrangements Act* of Level 9, 136 North Terrace, Adelaide, South Australia 5000 pursuant to s 57(2) of the *Development Act 1993* (SA) (**Act**).
2. The Agreement relates to the whole of the land comprised in Certificates of Title Volume 5461 Folio 792, Volume 5824 Folio 530, Volume 5669 Folio 60, Volume 5505 Folio 790, Volume 5505 Folio 791, Volume 5615 Folio 324, Volume 5875 Folio 770, Volume 5461 Folio 817, Volume 5822 Folio 26, Volume 5666 Folio 500, Volume 5501 Folio 166, Volume 5804 Folio 903, Volume 5804 Folio 902, Volume 5656 Folio 612, Volume 5649 Folio 591, Volume 5494 Folio 212, Volume 5804 Folio 382, Volume 5411 Folio 384, Volume 5804 Folio 381 and Volume 5409 Folio 849 (**Land**).
3. The Council applies pursuant to s 57(5) of the Act to note the Agreement against the Land.

The common seal of The Corporation of the City of Marion was affixed in the presence of:



X *[Signature]*
Signature of Mayor

X *[Signature]*
Signature of Chief Executive Officer

X *Saret Byron*
Name of Mayor (print)

X *ADRIAN STONE*
Name of Chief Executive Officer (print)

DATED *5 February 2018*

Land Management Agreement

PARTIES

MINISTER FOR TRANSPORT AND INFRASTRUCTURE a body corporate pursuant to the *Administrative Arrangements Act* of Level 12, Roma Mitchell House, 136 North Terrace, Adelaide, South Australia 5000 (**Minister**)

AND

THE CORPORATION OF THE CITY OF MARION of 245 Sturt Road, Sturt SA 5047 (**Council**)

AND

The party specified as the Owner in Schedule 1 (**Owner**)

BACKGROUND

- A. The Owner is the registered proprietor of the Site.
- B. The Owner is proposing to develop the Site for the Development.
- C. Council, the Minister and the Owner have entered into or propose to enter into the Interim Road Infrastructure Design and Delivery Deed pursuant to which (and subject to the Minister for Planning authorising the DPA and to the extent that the Owner proceeds with the Development), the Owner has agreed to provide certain infrastructure required by the Development.
- D. The infrastructure identified in the Interim Road Infrastructure Design and Delivery Deed is required to directly service or will otherwise directly and indirectly benefit the Site.
- E. Council, the Minister and the Owner agree that the obligations under this deed are intended to be complied with by all occupiers and persons having enjoyment from time to time of the Site and that it is the Owner's responsibility to ensure that all such persons comply with the terms of this deed.
- G. Pursuant to section 57(2) of the Act, the Owner, the Council and the Minister have agreed to enter into this deed relating to the development, management, preservation or conservation of the Site subject to the terms and conditions of this deed.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this deed:

Act means the *Development Act 1993 (SA)*.

Business Day means a day that is not a Saturday, Sunday or public holiday in South Australia.

Development has the meaning given to it in the Interim Road Infrastructure Design and Delivery Deed.

Development Plan means the Development Plan for Council as amended by the DPA.

DPA means a Development Plan Amendment that is approved and in operation under the *Development Act 1993 (SA)* as a result of a process initiated with the Draft DPA and for the avoidance of doubt includes any amendment made to the DPA by the Minister for Planning pursuant to section 27(5) or section 26(8)(d) of the *Development Act 1993 (SA)*.

DPA Condition means the condition which is set out in clause 3 of the Interim Road Infrastructure Design and Delivery Deed.

Draft DPA means the Development Plan Amendment titled "Castle Plaza Activity Centre Development Plan Amendment" prepared by Council and endorsed by Council for approval of the Minister for Planning on 25 July 2017.

Interim Road Infrastructure Design and Delivery Deed means a deed substantially in the form of the deed attached as Annexure A or as otherwise agreed between the parties to that deed from time to time and for the avoidance of doubt includes any final road infrastructure deed entered into pursuant to the terms of the Interim Road Infrastructure Design and Delivery Deed.

Owner means the registered proprietor in fee simple of the Site and includes a transferee or assignee of the Owner from time to time.

Site means the land owned by the Owner and which is identified in Schedule 1.

1.2 Interpretation

In this deed, unless the context otherwise requires:

- 1.2.1 headings do not affect interpretation;
- 1.2.2 singular includes plural and plural includes singular;
- 1.2.3 words of one gender include any gender;
- 1.2.4 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 1.2.5 a reference to the Owner includes each person registered or entitled to be registered as a proprietor of an estate in fee simple of the Site.
- 1.2.6 a reference to a person includes a partnership, corporation, association, government body and any other entity;
- 1.2.7 an agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- 1.2.8 an agreement, representation, warranty, or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) benefits them jointly and severally;
- 1.2.9 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- 1.2.10 a provision is not construed against a party only because that party drafted it;
- 1.2.11 an unenforceable provision or part of a provision may be severed, and the remainder of this deed continues in force, unless this would materially change the intended effect of this deed;
- 1.2.12 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- 1.2.13 an expression defined in the Act has the meaning given by the Act at the date of this deed.

1.3 Background

The Background forms part of this deed and is correct at the date of this deed.

1.4 Legislation

The requirements of the deed are to be construed as additional to the requirements of the Act and any other legislation affecting the Site.

2. UNDERTAKINGS OF THE OWNER

To the extent that the Interim Road Infrastructure Design and Delivery Deed is fully executed and subject to satisfaction of the DPA Condition, the Owner must comply with

the Owner's obligations relating to land division or development under this deed and the Interim Road Infrastructure Design and Delivery Deed.

3. CONTRAVENTION OF LMA

3.1 The Owner acknowledges and agrees that:

3.1.1 a contravention or threatened contravention of this deed is regarded as a breach of Part 11, Division 1, section 83(b) of the Act and that the Council, whether on its own accord or at the request of the Minister, is entitled to exercise any enforcement mechanism provided for and in accordance with the Act or at law;

3.1.2 the Council may or the Minister may require the Council to appoint an authorised officer in accordance with section 18 of the Act to enable the Council to enter and inspect the Site or any building on the Site and exercise any of the powers conferred and in accordance with section 19 of the Act.

3.2 Council may delegate any of its powers under this deed to any person.

3.3 The Minister may delegate any of its powers under this deed to any person.

4. VARIATION AND WAIVER

4.1 This deed may not be varied except by a supplementary deed signed by Council, the Minister and the Owner.

4.2 Council and the Minister together may waive compliance by the Owner with the whole or any part of the obligations on the Owner's part herein contained provided that no such waiver is effective unless expressed in writing and signed by Council and the Minister.

5. RESCISSION OF THIS DEED

5.1 If:

5.1.1 the Owner has complied with the Owner's obligations under the Interim Road Infrastructure Design and Delivery Deed; and

5.1.2 the Owner has requested Council and the Minister in writing to rescind or amend this deed as it applies to the relevant portion of the Site,

Council and the Minister must request that the Registrar-General of the Lands Titles Office register a rescission or amendment (as the case may be) of this deed in relation to that portion of the Site within 28 days of receipt of the Owner's request.

5.2 If the DPA Condition of the Interim Road Infrastructure Design and Delivery Deed is not satisfied in accordance with clause 3 of the Interim Road Infrastructure Design and Delivery Deed Council and the Minister must rescind this deed.

5.3 Where this deed is rescinded in relation to the Site or any part of it:

5.3.1 Council, the Minister and the Owner will do all things that are required for a note of the rescission of this deed to be entered on the relevant Certificates of Title; and

5.3.2 the Owner must pay Council's and the Minister's costs of and incidental to the rescission of this deed and the noting of the rescission by the Registrar-General.

6. CONSENTS

The Owner warrants that no person has a legal interest in the Site except the persons whose consents to this deed appear in Annexure B.

7. NOTING OF THIS DEED

Each party must at its own cost do and execute all such acts documents and things as are necessary to ensure that as soon as is practicable after the execution of this deed by all necessary parties this deed is noted against the Certificates of Title for the Site under section 57(5) of the Act.

8. MISCELLANEOUS

8.1 Waiver

A waiver of a provision of or right under this deed:

8.1.1 must be in writing signed by the part giving the waiver;

8.1.2 is effective only to the extent set out in the written waiver.

8.2 Exercise of power

8.2.1 The failure, delay, relaxation or indulgence by a party in exercising a power or right under this deed is not a waiver of that power or right.

8.2.2 An exercise of a power or right under this deed does not preclude a further exercise of it or the exercise of another right or power.

8.3 Survival

Each indemnity, obligation of confidence and other term capable of taking effect after the expiration or termination of the deed, remains in force after the expiration or termination of this deed.

8.4 Governing law

This deed is governed by the law of South Australia.

8.5 Severance

Part or all of any provision of this deed that is illegal or unenforceable may be severed from the deed however the remaining provisions of the deed will continue in full force and effect.

9. NOTICES

9.1 A notice, demand, consent, approval or communication under this deed (**Notice**) must be:

9.1.1 in writing, in English and signed by a person authorised by the sender; and

9.1.2 hand delivered or sent by pre-paid post to the recipient's address specified in this deed, as varied by any Notice given by the recipient to the sender.

9.2 A Notice is deemed to be received:

9.2.1 if hand delivered, on delivery; and

9.2.2 if sent by prepaid mail, three Business Days after posting,

however if the Notice is deemed to be received on a day that is not a Business Day or after 5:00pm, the Notice is deemed to be received at 9:00am on the next Business Day.

9.3 If two or more persons comprise a party, Notice to one is effective Notice to all.

10. COSTS

The parties will bear their own costs of and incidental to preparing and negotiating this deed and the Owner will bear the cost associated with stamping and noting this deed.

EXECUTED as a deed (on the date specified above the Minister's Execution clause at Schedule 2)

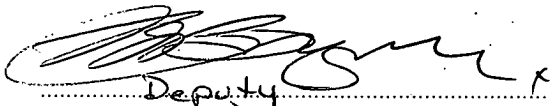
FOR THE LANDOWNER'S EXECUTION CLAUSE SEE SCHEDULE 1

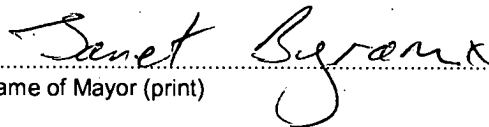
FOR THE MINISTER'S EXECUTION CLAUSE SEE SCHEDULE 2

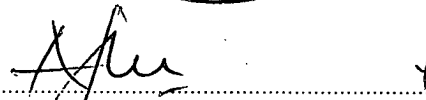
COUNCIL

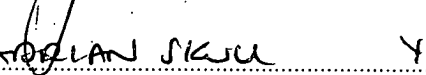
The common seal of The Corporation
of the City of Marion was affixed in the
presence of:




Deputy
Signature of Mayor

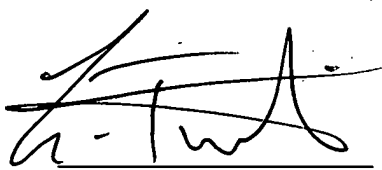

Name of Mayor (print)


Signature of Chief Executive Officer


Name of Chief Executive Officer (print)

SCHEDULE 1

OWNER'S DETAILS AND EXECUTION CLAUSE

Item 1 Minister's contact details	Site address: Level 9, 136 North Terrace, Adelaide SA 5000 Facsimile number: (08) 8402 1991
Item 2 Council's contact details	Site address: 245 Sturt Road, Sturt SA 5047 Postal address: PO Box 21, Oaklands Park SA 5046 Facsimile number: (08) 8375 6699 Attention: Chief Executive Officer
Item 3 Owner and Owner's contact details	PERPETUAL NOMINEES LIMITED ACN 000 733 700 IN ITS CAPACITY AS CUSTODIAN OF THE VICINITY RETAIL SUB TRUST ABN 18 069 221 615 AND VICINITY FUNDS MANAGEMENT PTY LTD ACN 167 606 939 IN ITS CAPACITY AS TRUSTEE OF THE VICINITY RETAIL SUB TRUST ABN 18 069 221 615 Postal address: Level 18, 123 Pitt Street, Sydney NSW 2000
Item 4 Site	The whole of the land comprised in Certificates of Title Volume 5461 Folio 792, Volume 5824 Folio 530, Volume 5669 Folio 60, Volume 5505 Folio 790, Volume 5505 Folio 791, Volume 5615 Folio 324, Volume 5875 Folio 770, Volume 5461 Folio 817, Volume 5822 Folio 26, Volume 5666 Folio 500, Volume 5501 Folio 166, Volume 5804 Folio 903, Volume 5804 Folio 902, Volume 5656 Folio 612, Volume 5649 Folio 591, Volume 5494 Folio 212, Volume 5804 Folio 382, Volume 5411 Folio 384, Volume 5804 Folio 381 and Volume 5409 Folio 849
Item 5 Execution	<p>SIGNED for and on behalf of:</p> <p>Perpetual Nominees Limited ACN 000 733 700</p> <p>Zoran Trimcevski</p> <div style="display: flex; justify-content: space-between; align-items: flex-end; margin-top: 10px;"> <div style="text-align: center;"> <p>_____</p> <p>Name (please print)</p> </div> <div style="text-align: center;">  <p>_____</p> <p>Signature</p> </div> </div> <p>who is authorised by Power of Attorney dated 03 August 2016 (Registered 12591002) and who declares that they have at the time of execution of this document no notice of its revocation.</p>

SIGNED for and on behalf of:

Vicinity Funds Management Pty Ltd ACN 167 606 939

Zoran Trimcevski

Name (please print)

Signature

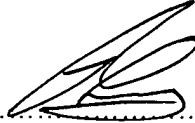
who is authorised by Power of Attorney dated 01 October 2015
and who declares that they have at the time of execution
of this document no notice of its revocation.

SCHEDULE 2

MINISTER'S EXECUTION CLAUSE

DATE 8 FEBRUARY 2018

SIGNED for and on behalf of the
**MINISTER FOR TRANSPORT AND
INFRASTRUCTURE** by his duly
constituted Attorney pursuant to Power of
Attorney No. 12317028, who has not
received a notice of the revocation of that
Power of Attorney, in the presence of:



Department of Planning, Transport and
Infrastructure

C. McGlashan
Witness

Claire McGlashan
Full Name of Witness
Address:
C/- DPTI
GPO Box 1533
ADELAIDE SA 5001
Tel: 8343 2222

PHILIP EDON LAWES
Full Name of Attorney
Address:
C/- DPTI
GPO Box 1533
ADELAIDE SA 5001
Tel: 8343 2222

ANNEXURE A

Interim Road Infrastructure Design and Delivery Deed

DATED _____ DAY OF 2018

INTERIM ROAD INFRASTRUCTURE DESIGN AND DELIVERY DEED

BETWEEN

**PERPETUAL NOMINEES LIMITED ACN 000 733 700 IN ITS CAPACITY AS CUSTODIAN
OF THE VICINITY RETAIL SUB TRUST ABN 18 069 221 615 AND VICINITY FUNDS
MANAGEMENT PTY LTD ACN 167 606 939 IN ITS CAPACITY AS TRUSTEE OF THE
VICINITY RETAIL SUB TRUST ABN 18 069 221 615**

("Owner")

-AND-

MINISTER FOR TRANSPORT AND INFRASTRUCTURE

("Minister")

-AND-

THE CORPORATION OF THE CITY OF MARION

("Council")

**CROWN SOLICITOR
Level 9, 45 Pirie Street, Adelaide SA 5000**

THIS DEED is made on 8 day of February 2018

BETWEEN:

Perpetual Nominees Limited ACN 000 733 700 in its capacity as custodian of the Vicinity Retail Sub Trust ABN 18 069 221 615 and Vicinity Funds Management Pty Ltd ACN 167 606 939 in its capacity as trustee of the Vicinity Retail Sub Trust ABN 18 069 221 615 of Angel Place, 123 Pitt Street, Sydney NSW 2000 ("Owner")

AND

MINISTER FOR TRANSPORT AND INFRASTRUCTURE a body corporate pursuant to the *Administrative Arrangements Act* of Level 12, Roma Mitchell House, 136 North Terrace, Adelaide, South Australia 5000 ("**Minister**")

AND

THE CORPORATION OF THE CITY OF MARION of 245 Sturt Road, Sturt SA 5047 ("**Council**")

BACKGROUND:

- A. The Owner is the registered proprietor of an estate in fee simple in the Land which is located within the municipal area of the Council.
- B. The Owner wishes for the Land to be rezoned in accordance with the Draft DPA.
- C. The Minister and Council wish to encourage the development of the Land in accordance with the Draft DPA and the Owner wishes to develop the Land for a range of land uses in accordance with the Draft DPA (**Development**).
- D. The parties acknowledge and agree that the Development of the Land will provide for the expansion of retail, commercial and residential use of the Land, creating the opportunity for jobs, new businesses and new dwellings in close proximity to public transport links and activity centre facilities, supporting the primary objectives of each of the parties.
- E. The parties recognise that should the Development of the Land proceed in the manner envisaged by the Draft DPA, new and upgraded road infrastructure will be required.

- F. The Owner has undertaken investigations, identified road infrastructure works and agreed to fund certain road infrastructure works required for Stage 1 of the Development, subject to the Development of the Land proceeding in the manner envisaged by the Draft DPA.
- G. If the Development of the Land proceeds as envisaged by the Draft DPA, the parties propose to enter into a further infrastructure deed for Stage 1 which will detail the road infrastructure works required for Stage 1.
- H. As at the date of this Deed, the Owner has undertaken preliminary investigations and identified possible road infrastructure works required for Stage 2 of the Development. The parties acknowledge and agree that further investigations will be required to identify the road infrastructure works required for Stage 2, prior to implementation of Stage 2.
- I. The parties agree to enter into a further infrastructure deed for Stage 2 which will detail the road infrastructure works required for Stage 2.
- J. The Minister for Planning requires that the parties enter into this interim Deed prior to the Minister for Planning providing final approval of the Draft DPA to ensure that there is an agreed process leading to the preparation of a detailed road analysis and the agreement and execution of a final deed detailing the Owner's obligations to undertake the infrastructure works required for the Development of the Land (**Final Deed**).

OPERATIVE PROVISIONS:

1. ACKNOWLEDGEMENT

The parties agree both that the matters referred to in the Background of this Deed are true and correct in every aspect and that the Background will form part of this Deed.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

Unless the subject or context required otherwise in this Deed:

- 2.1.1 **Administrator** has the same meaning as in the Corporations Act 2001 (Cth);
- 2.1.2 **Austroads Guidelines** means Austroads guidelines of the day and only varied where necessary to reflect standard practice in South Australia or to address a specific safety related issue at the location;
- 2.1.3 **Business Day** means a day that is not a Saturday, Sunday or a public holiday in Adelaide, South Australia;
- 2.1.4 **Commissioner of Highways** means the person appointed as such from time to time by the Minister;

- 2.1.5 **Construction Contract** means the construction contract entered into by the Responsible Party as principal for the carrying out of a Road Infrastructure Works Component (and possibly other work);
- 2.1.6 **Contractor** means a contractor under a Construction Contract;
- 2.1.7 **Council** means the City of Marion or its statutory permitted assigns;
- 2.1.8 **D&C Terms** means the terms set out in ANNEXURE 2 of this Deed;
- 2.1.9 **Defect** means any part of any Road Infrastructure Works Component which does not satisfactorily meet the Responsible Road Authority's requirements or specifications in accordance with this Deed;
- 2.1.10 **Defects Liability Period** means a period of 24 months commencing on Practical Completion of the relevant Road Infrastructure Works Component;
- 2.1.11 **Detailed Works Plan** has the meaning given to that term in clause 20.1;
- 2.1.12 **Development Act** means the Development Act 1993 (SA);
- 2.1.13 **Development Plan** means the Development Plan for the Council as amended by the DPA;
- 2.1.14 **DPA** means a Development Plan Amendment that is approved and in operation under the Development Act 1993 (SA) as a result of a process initiated with the Draft DPA (whether in substantially the same form as the Draft DPA or in an amended form), and for the avoidance of doubt includes any amendment made to the DPA by the Minister for Planning pursuant to section 27(5) of the Development Act 1993 (SA);
- 2.1.15 **DPA Gazettal** means a notice published in the South Australian Government Gazette pursuant to section 25(17) of the Development Act approving the DPA;
- 2.1.16 **DPTI** means the 'Department of Planning, Transport and Infrastructure';
- 2.1.17 **Draft DPA** means the Development Plan Amendment Titled "Castle Plaza Activity Centre DPA" prepared by the Council and endorsed by the Council for Minister's approval on 25 July 2017;
- 2.1.18 **Final Deed** means the deed that the parties intend to negotiate in good faith and enter into in accordance with this Deed, which will specify the obligations of each of the parties in respect of the Traffic Intervention Plan for the relevant stage of Development and must include those obligations outlined in clauses 19-27 inclusive of this Deed and the D&C Terms;
- 2.1.19 **Infrastructure Contribution** means a monetary contribution negotiated with the Responsible Road Authority and to be paid to the

Response Road Authority in lieu of undertaking a Road Infrastructure Works Component;

- 2.1.20 **Insolvent** means being under administration or in provisional liquidation or liquidation, on the grounds of insolvency or anything analogous to or having a similar effect under the law of any relevant jurisdiction;
- 2.1.21 **Land** means the whole of the land comprised in the Certificates of Title shown on the plan attached at ANNEXURE 4;
- 2.1.22 **LMA** means a land management agreement pursuant to section 57 of the Development Act between the Owner, the Minister and the Council in respect of each of the Certificates of Title comprising the Land, to be prepared and executed in accordance with clause 13 in the form comprised in ANNEXURE 5;
- 2.1.23 **Practical Completion** means practical completion of the relevant Road Infrastructure Works Component as determined under the Construction Contract pursuant to which the Road Infrastructure Works Component is or is to be carried out;
- 2.1.24 **Program** means the timing of construction of the Road Infrastructure Works referred to in the Traffic Intervention Plan;
- 2.1.25 **Responsible Party** means the Owner;
- 2.1.26 **Responsible Road Authority** means the road authority responsible for maintaining the Road Infrastructure Works Component upon completion of the same in accordance with any relevant legislation;
- 2.1.27 **Road Infrastructure Objectives** mean the objectives of the Minister and Council for the Road Infrastructure Works as set out at ANNEXURE 1 or as otherwise determined by the Minister and Council (acting reasonably);
- 2.1.28 **Road Infrastructure Works** means the works related to street scaping, tree planting, traffic controls, footpaths, cycle paths, street furniture, medians, lighting, signage and stormwater drainage and roads to be carried out in accordance with this Deed and the Final Deed;
- 2.1.29 **Road Infrastructure Works Component** means a component of the Road Infrastructure Works;
- 2.1.30 **Section 51 Certificate** means a certificate under section 51 of the Development Act;
- 2.1.31 **Security** means an irrevocable and unconditional undertaking issued by a financial institution that is regulated by the Australian Prudential Regulation Authority and that has a long term issuer credit rating of at least A- (Standard and Poor's equivalent), on terms acceptable to the

Responsible Road Authority and Responsible Party acting reasonably and being the security described in clause 21;

- 2.1.32 **Stage 1** means the stage of the Development and Road Infrastructure Works identified in ANNEXURE 6 as Stage 1;
- 2.1.33 **Stage 1 Detailed Road Analysis** has the meaning given to that term in clause 4.1;
- 2.1.34 **Stage 2** means the area identified in ANNEXURE 6 as Stage 2;
- 2.1.35 **Stage 2 Detailed Road Analysis** has the meaning given to that term in clause 5.1;
- 2.1.36 **Traffic Intervention Plan** means the document which:
 - 2.1.36.1 will be attached to the Final Deed for the relevant stage; and
 - 2.1.36.2 will be prepared by the Minister in consultation with, and with the agreement of, the Owner and the Council (all parties acting reasonably) in accordance with this Deed and following the due and proper consideration of the Stage 1 Detailed Road Analysis and Stage 2 Detailed Road Analysis (as the case may be); and
 - 2.1.36.3 will be a detailed schedule of the relevant stage of the Road Infrastructure Works for the Land and adjacent areas, meeting the Road Infrastructure Objectives, describing the traffic interventions required, identifying the affected roads, together with timings and the expected cost for each Stage.

2.2 Interpretation

Unless expressed to the contrary, in this Deed:

- 2.2.1 words denoting the singular or plural number include the plural number and the singular respectively;
- 2.2.2 words denoting a gender refer to both genders;
- 2.2.3 headings are for convenience only and shall not affect the interpretation of this Deed;
- 2.2.4 words denoting individuals include corporations and vice versa;
- 2.2.5 a reference to a party, the Background, clause, schedule, annexure or plan is a reference to a party, the Background, clause, schedule, annexure or plan of this Deed;
- 2.2.6 a reference to any act, regulation or by-law shall be deemed to include all amendments to them and all statutory provisions substituted thereafter;

- 2.2.7 a reference to a party includes a reference to that party's executors, administrators, successors and permitted assigns;
- 2.2.8 the use of or shall be that of the inclusive or, that is meaning one, some or all of a number of possibilities or alternatives;
- 2.2.9 an agreement on the part of or in favour of 2 or more persons binds or is for the benefit of each person jointly and individually;
- 2.2.10 a reference to a matter, act or thing includes the whole event or any part of that matter, act or thing and reference to a group of matters, acts, things or persons includes each matter, act, thing or person in that group;
- 2.2.11 no rule of construction shall be applied in interpreting or construing this Deed contra proferentem against a party or otherwise to the disadvantage of a party on the basis that the party proposed or drafted this Deed or any provision of this Deed;
- 2.2.12 reference to a corporation, organisation or other body (whether or not incorporated), but excluding the parties is:
 - 2.2.12.1 if that corporation, organisation or other body is replaced by another corporation, organisation or other body, then to refer to that other corporation, organisation or other body; and
 - 2.2.12.2 if that corporation, organisation or other body ceases to exist, then to refer to the corporation, organisation or other body which most closely or substantially fulfil the same purposes or objects as the first mentioned corporation, organisation or other body;
- 2.2.13 the word including where used is deemed to be followed by the words without limitation; and
- 2.2.14 reference to month means calendar month.

2.3 Relationship between the parties

- 2.3.1 The parties acknowledge and agree that their relationship pursuant to this Deed shall be exclusively that of independent contractors with the rights, liabilities, duties and obligations set out in this Deed or, subject to this Deed, at law.
- 2.3.2 Nothing contained in this Deed shall be deemed or construed to constitute a party to be a partner, joint venturer, principal, agent, trustee (whether expressed, implied or constructive), beneficiary, lender, borrower, lessor, lessee, or fiduciary of another party.
- 2.3.3 No party has the authority to act for or incur any liability or obligation pursuant to this Deed as agent for or on behalf of any other party except as expressly provided in or contemplated by this Deed.

2.4 Proper law and jurisdiction

- 2.4.1 The proper law of this Deed shall be the law of South Australia and accordingly this Deed shall be governed by and construed in accordance with the laws of South Australia.
- 2.4.2 Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of South Australia and the courts of appeal from them for determining any dispute concerning this Deed. Each party waives any right it has to object to an action being brought in those courts, to claims that action has been brought in an inconvenient forum, or to claim those courts do not have jurisdiction.
- 2.4.3 The parties agree that none of them shall institute or attempt to institute any proceedings in relation to any dispute or any other matter or thing arising out of or in connection with this Deed other than in a court of South Australia or, in respect of any proceedings in a Federal court, in the Adelaide registry of the relevant Federal court.
- 2.4.4 Without preventing any other mode of service, any documents in an action (including any writ of summons or other originating process or any third or other party notice) may be served on a party by being left or left for that party at its address for service of notices pursuant to this Deed.

2.5 Waiver

- 2.5.1 A waiver of a provision of this Deed must be both in writing and be signed by the party or parties granting the waiver and the party or parties benefiting by or from the waiver or by a person duly authorised to execute such a document on behalf of each such party.
- 2.5.2 No waiver by a party of a performance or observance of a provision or a breach of this Deed shall operate as a waiver of the performance observance or breach of any other provision of this Deed.
- 2.5.3 No forbearance, delay, indulgence or partial exercise by a party in enforcing the provisions of this Deed shall be a waiver of or prejudice or restrict the rights of that party in any way.

2.6 Reading down and severance

- 2.6.1 If a provision of this Deed is reasonably capable of an interpretation which would render that provision to be unenforceable, illegal, invalid or void and an alternative interpretation would not have one of those consequences, then that provision shall be interpreted or construed so far as is possible, to be limited and read down such that its meaning is that which does not render it unenforceable, illegal, invalid or void.
- 2.6.2 Subject to clause 2.6.1, if a provision of this Deed is for any reason illegal, void, invalid or unenforceable, then that provision shall be severed from this Deed without effecting the legality, validity or enforceability of the remainder of this Deed.

- 2.6.3 If a provision of this Deed is severed under clause 2.6.2, the parties agree to negotiate in good faith to reach agreement upon an amended provision as a replacement for the severed provision.

2.7 Cumulative rights

A right, power, remedy, entitlement or privilege given or granted to a party pursuant to this Deed is cumulative with, without prejudice to and not exclusive of any right, power, remedy, entitlement or privilege granted or given pursuant to this Deed or by the operation of law.

2.8 Employees or agents

Any act, matter or thing which is either required to be performed or done by a party may be performed or done by that party's duly authorised employees, agents, delegates or contractors.

2.9 Entire agreement

2.9.1 This Deed contains the entire agreement between the parties in respect of the subject matter of this Deed and the parties agree that this Deed supersedes and extinguishes any prior agreement or understanding (if any) between the parties in respect of the subject matter of this Deed.

2.9.2 No other agreement, whether collateral or otherwise, shall be taken to have been formed between the parties by reason of any promise, representation, inducement or undertaking (if any) given or made by one party to the other prior to the date of this Deed.

2.10 Auditor-General

Nothing in this Deed derogates from the powers of the Auditor-General under the *Public Finance and Audit Act 1987* (SA).

3. CONDITIONS OF THE DEED

3.1 DPA

3.1.1 The obligations of the parties under this Deed are subject to and conditional on:

- (a) the Minister for Planning approving the DPA for the Land;
- (b) the Minister for Planning publishing the DPA Gazettal;
- (c) the validity of the DPA not being subjected to any challenge in a court of competent jurisdiction within six months of the Minister for Planning having published the DPA Gazettal; and
- (d) the DPA not being disallowed by either House of Parliament under section 27 of the Development Act within six months of the date of publication of the DPA Gazettal.

- 3.1.2 The Owner acknowledges that nothing in this Deed can oblige or shall be construed as obliging the Minister for Planning to approve the DPA.

4. **RESPONSIBILITY TO UNDERTAKE INVESTIGATIONS AND ANALYSIS OF ROAD INFRASTRUCTURE WORKS STAGE 1**

4.1 The parties acknowledge and agree that:

- 4.1.1 as at the date of this Deed, the Owner has undertaken investigations and identified the Road Infrastructure Works components for Stage 1 of the Development which are described in ANNEXURE 3.
- 4.1.2 as at the date of this Deed, the Owner is unable to provide sufficient detail regarding the scope, timing and staging of the Road Infrastructure Works components for Stage 1 of the Development and while the parties have agreed the D&C Terms, it is not possible for the Traffic Intervention Plan to be finalised for Stage 1 of the Development;
- 4.1.3 additional and detailed investigations, modelling and analysis must be prepared or cause to be prepared by the Owner in accordance with the Road Infrastructure Objectives in ANNEXURE 1 (to the Minister's and Council's satisfaction, acting reasonably), in order to identify the scope, timing and staging of the Road Infrastructure Works that will be required for Stage 1 of the Development, including whether a roundabout or T junction is appropriate at the intersection of the new link road and Raglan Avenue, to be determined following completion of a Road Safety Audit (**Stage 1 Detailed Road Analysis**);
- 4.1.4 the Stage 1 Detailed Road Analysis will be prepared following consultation with the Minister regarding the status of the Minister's potential development of the North-South Corridor;
- 4.1.5 the Owner may negotiate with the Responsible Road Authority to identify Infrastructure Contributions in lieu of road infrastructure upgrades/interventions (which may be accepted at the Responsible Road Authority's discretion);
- 4.1.6 after the completion of, and the due and proper consideration of, the Stage 1 Detailed Road Analysis, the parties will negotiate in good faith with a view to agreeing the Traffic Intervention Plan and entering into the Final Deed (which will include the D&C Terms).

4.2 The Owner acknowledges and agrees that (without limiting the obligation set out in clause 4.1) the Owner must not make an application:

- 4.2.1 to enable the deposit of a Plan of Division creating allotments in relation to any portion of Stage 1; or
- 4.2.2 for development authorisation from the relevant authority under the Development Act for a development (other than land division), that involves construction of buildings and structures and requires building

rules consent (as those terms are defined in the Development Act), on any portion of Stage 1,

until:

- 4.2.3 the Owner completes the Stage 1 Detailed Road Analysis;
 - 4.2.4 the Owner liaises with the Minister regarding the status of the Minister's potential development of the North-South Corridor;
 - 4.2.5 the parties agree to the Traffic Intervention Plan for Stage 1 and/or Infrastructure Contributions; and
 - 4.2.6 the parties have executed the Final Deed.
- 4.3 The obligation in clause 4.1 and the prohibition in clause 4.2 and all other terms of the LMA and this Deed:
- 4.3.1 do not apply to a development comprising a temporary use of the Land while it is vacant; and
 - 4.3.2 do not apply to a development comprising the continuation or expansion of a lawful development that existed on the Land prior to the DPA being gazetted for the Land.
- 4.4 Without limiting clauses 4.1 or 4.2 the Owner must facilitate the upgrade of the intersection of South Road, Ackland Avenue and Edwards Street prior to the commencement of Stage 2 of the Proposed Development.

5. **RESPONSIBILITY TO UNDERTAKE INVESTIGATIONS AND ANALYSIS OF ROAD INFRASTRUCTURE WORKS STAGE 2**

- 5.1 The parties acknowledge and agree that:
- 5.1.1 as at the date of this Deed, the Owner is unable to provide sufficient detail regarding the final layout and configuration of Stage 2 of the Development and while the parties have agreed the D&C Terms, it is not possible for the Traffic Intervention Plan to be finalised for Stage 2 of the Development;
 - 5.1.2 as at the date of this Deed, additional and detailed investigations, modelling and analysis must be prepared or cause to be prepared by the Owner (to Minister's and Council's satisfaction, acting reasonably) in accordance with the Road Infrastructure Objectives in ANNEXURE 1, in order to identify the scope, timing and staging of the Road Infrastructure Works that will be required as a result of Stage 2 of the Development (**Stage 2 Detailed Road Analysis**);
 - 5.1.3 the analysis will be prepared following consultation with the Minister regarding the status of the Minister's potential development of the North-South Corridor;

- 5.1.4 the Stage 2 Detailed Road Analysis must consider the Development of the entire Land;
 - 5.1.5 the Owner must identify the required road upgrades/interventions for Stage 2 and the surrounding road network based on the Stage 2 Detailed Road Analysis;
 - 5.1.6 the Owner may negotiate with the Responsible Road Authority to identify Infrastructure Contributions in lieu of road upgrades/interventions (which may be accepted at the Responsible Road Authority's discretion);
 - 5.1.7 after the completion of, and the due and proper consideration of, the Stage 2 Detailed Road Analysis, the parties will negotiate in good faith with a view to agreeing the Traffic Intervention Plan for the Road Infrastructure Works Components in the Traffic Intervention Plan, and entering into the Final Deed (which will include the D&C Terms).
- 5.2 The Owner acknowledges and agrees that (without limiting the obligation set out in clause 5.15.1) the Owner must not make an application:
- 5.2.1 to enable the deposit of a Plan of Division creating allotments in relation to any portion of Stage 2; or
 - 5.2.2 for development authorisation from the relevant authority under the Development Act for a development (other than land division), that involves construction of buildings and structures and requires building rules consent (as those terms are defined in the Development Act), on any portion of Stage 2,
- until:
- 5.2.3 the Owner completes the Stage 2 Detailed Road Analysis;
 - 5.2.4 the Owner liaises with the Minister regarding the status of the Minister's potential development of the North-South Corridor;
 - 5.2.5 the parties agree to the Traffic Intervention Plan for Stage 2 and/or Infrastructure Contributions; and
 - 5.2.6 the parties have executed the Final Deed.
- 5.3 The obligation in clause 5.1 and the prohibition in clause 5.2 and all other terms of the LMA and this Deed:
- 5.3.1 do not apply to a development comprising a temporary use of the Land while it is vacant; and
 - 5.3.2 do not apply to a development comprising the continuation or expansion of a lawful development that existed on the Land prior to the DPA being gazetted for the Land.

6. SALE OR TRANSFER OF LAND OR ASSIGNMENT OF DEED

- 6.1 If the Owner intends to transfer any portion of the Land or wishes to assign this Deed prior to having undertaken the Road Infrastructure Works relating to that portion of the Land, the Owner must prior to any such transfer or assignment, procure the intended transferee of that portion of the Land to enter into a deed on the same terms as this Deed and deliver that signed deed to the Minister for execution by the Minister and Council.
- 6.2 The Owner indemnifies the Minister and Council from and against all loss and damage resulting from a breach of clause 6.1 by the Owner.
- 6.3 Without limiting the indemnity in clause 6.2, the Minister and Council are entitled to seek orders from a Court for specific performance of the obligations specified in this clause 6.
- 6.4 A transfer of any portion of the Land or an assignment of this Deed does not breach clause 6.1 if the transmission of the title relating to any portion of the Land occurs as a result of enforcement of a will, or by intestacy for that portion of the Land.
- 6.5 If the Owner transfers any portion of the Land or assigns this Deed having met the obligations specified in clause 6.1, then the Minister and Council shall release the Owner in respect of the Owner's obligations under this Deed except for the obligations of indemnity contained in clauses 6.2 and 6.3.

7. DISPUTE RESOLUTION

7.1 Disputes to be dealt with under this clause

Unless otherwise provided in this Deed all disputes or differences between the parties in connection with:

- 7.1.1 this Deed; or
- 7.1.2 any other matter in any way relating to this Deed,

(Dispute) will be dealt with in accordance with this clause 7 whenever the Dispute is raised.

7.2 Notice of Dispute

Any party (**Disputing Party**) may within 30 days after the Dispute arises, give a notice to the other parties (**Non-Disputing Parties**):

- 7.2.1 setting out details of the Dispute, the reason the Dispute should be resolved in favour of the Disputing Party, and any other matter that may, in the reasonable opinion of the Disputing Party, be relevant to the resolution of the Dispute; and
- 7.2.2 requiring the Non-Disputing Parties to, in good faith, seek to resolve the Dispute within 21 days of the date of the notice.

7.3 Referral of Dispute to an Expert

Subject to clause 7.7, if the Dispute is not resolved by agreement between the parties following notice given under clause 7.2, the determination of the Dispute (Determination) may be referred for determination by any party to any independent person (**Expert**) agreed between the parties (or in the absence of agreement within 7 days of any party proposing in writing an Expert, then the Expert shall be nominated at the request of any party by the President (or if there is not a President, then Chief Executive Officer or other person of like status) for the time being of The Law Society of South Australia (or if that body has ceased to exist then a body fulfilling substantially the same functions as the first mentioned body)).

7.4 Expert

The Expert is an expert and not an arbitrator.

7.5 Final

The Determination of the Expert is final and binding on the parties.

7.6 Conduct of Determination

Unless otherwise agreed by the parties in writing:

- 7.6.1 the place of the proceedings for purposes of the Determination will be Adelaide, South Australia;
- 7.6.2 each party is entitled to legal representation at all stages of the Determination;
- 7.6.3 the proceedings for the purposes of the Determination will be conducted in accordance with the laws of evidence;
- 7.6.4 each party will bear its own costs and expenses in relation to the Determination;
- 7.6.5 the parties will pay in equal shares the Expert's fees and expenses and the cost of the Determination including room hire (if any);
- 7.6.6 the parties must comply with all reasonable requests and produce all necessary documentation to the Expert to enable the Expert to make the Determination;
- 7.6.7 the parties may make submissions which the Expert must take into account when making the Determination;
- 7.6.8 the Expert must provide its Determination to the parties in writing, with reasons for the Determination and within 21 days of the appointment of the Expert; and

- 7.6.9 the provisions of the Commercial Arbitration Act 1986 (SA) do not apply to the resolution of any Dispute under the provisions of this clause 7.

7.7 Legal proceedings

Nothing in this clause 7 prevents a party from issuing, or requires a party to delay issuing, legal proceedings in a court in respect of a Dispute if:

- 7.7.1 it is reasonably necessary for that party to seek urgent injunctive or other interlocutory relief in order to reasonably protect its position; or
- 7.7.2 the nature of the Dispute is such that it is not reasonably suitable for expert determination (for example, if the Dispute relates only the interpretation of the provisions of this Deed and will not require reference to expert evidence).

8. TIME OF THE ESSENCE

Time shall be of the essence in respect of any time, date or period specified in this Deed or in any notice served pursuant to this Deed.

9. VARIATION

No modification, variation or amendment of this Deed shall be of any force unless any such modification, variation or amendment is made by deed executed by each party.

10. COSTS

The parties will pay their own costs of and incidental to the preparation, negotiation and execution of this Deed and of any documents prepared and executed pursuant to this Deed, unless stated otherwise in this Deed or those other documents.

11. NOTICES

- 11.1 A notice to a party must be in writing and may be served in the following manner:

- 11.1.1 delivering it personally to that party; or
- 11.1.2 addressing it to that party and either leaving it at, delivering it by courier (expenses prepaid) or mailing it by registered mail (return receipt requested) to:
- (a) the address of that party appearing in this clause 11; or
 - (b) any other address in South Australia nominated in writing by that party from time to time; or
- 11.1.3 sending a facsimile copy of the notice to the facsimile copier number specified in this clause 11 or to any other numbering nominated in writing by that party.

11.2 A notice given in accordance with this clause 11 will be deemed to be received as follows:

11.2.1 in the case of personal delivery or by courier, when delivered;

11.2.2 in the case of service by leaving the notice at an address specified in this clause, when left at that address, unless the time of leaving the notice is not on a Business Day or is after 5.00pm on a Business Day, in which case it shall be deemed to be given, made or received on the next Business Day;

11.2.3 in the case of service by mail, on the third Business Day following the date of posting; and

11.2.4 in the case of service by facsimile, when transmitted, as evidenced by a transmission report produced by the sender's facsimile machine that the notice was sent to the addressee's facsimile number, unless the time of transmission is not on a Business Day or is after 5.00pm on a Business Day, in which case it will be deemed to be given, made or received on the next Business Day.

11.3 A notice given or served pursuant to this Deed by a party may be signed by a duly authorised employee, agent or delegate of the serving party. Notices may be served at the following addresses and facsimile number:

11.3.1 To the Owner:

Postal Address: Level 18, 123 Pitt Street, Sydney NSW 2000

Facsimile: N/A.

11.3.2 To the Council

Site address: 245 Sturt Road, Sturt SA 5047

Postal address: PO Box 21, Oaklands Park SA 5046

Facsimile: (08) 8375 6699

Attention: Chief Executive Officer

11.3.3 To the Minister:

Level 12, Roma Mitchell House, 136 North Terrace, Adelaide, South Australia 5000

Facsimile: (08) 8402 1991

11.4 A party may modify its address or facsimile number from time to time by a written notice served on the other party.

12. COUNTERPARTS

This document may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument. If so, the signed copies are treated as making up the one document.

13. LAND MANAGEMENT AGREEMENT

- 13.1 On or before the date of execution of this Deed, the Owner must:
 - 13.1.1 execute a land management agreement in accordance with the land management agreement attached to this Deed and marked ANNEXURE 5, in respect of each Certificate of Title comprising the Land (**LMA**); and
 - 13.1.2 deliver that LMA to the Council for execution by the Minister and Council and lodgement at the Lands Titles Office by the Council.
- 13.2 The Owner must obtain all appropriate consents (including from all holders of registered interests rights or endorsements on the relevant Certificates of Title pertaining to the Land) and also pay any consent fees, stamp duty and registration costs on the LMA.
- 13.3 The parties acknowledge and agree that a further or supplementary land management agreement similar to the LMA, on terms imposing no greater liability on the Owner than the existing LMA, this Deed and the Final Deed, will need to be entered into by the parties and noted on each Certificate of Title comprising the Land at around the same time that the Final Deed is executed by the parties to ensure that the obligations contained in the Final Deed will be complied with by any future owner of the Land.

14. ASSIGNMENT OF MINISTER'S RIGHTS AND OBLIGATIONS

- 14.1 The parties acknowledge that the Minister for Transport and Infrastructure reserves his right to assign any of his rights, benefits or obligations under this Deed to any instrumentality of the Crown in the right of South Australia (including but not limited to the Commissioner of Highways) who in the Minister's opinion will most appropriately deal with such right, benefit or obligation on the same terms as this Deed, on providing prior written notice to the Owner and without seeking the consent of any other party to this Deed.
- 14.2 The Minister will, at the completion of any development or works pursuant to this Deed, determine which instrumentality of the Crown (including the Council), should own and maintain the relevant parts of the completed development or works pursuant to this Deed and do all things necessary to vest in the instrumentality such development or works on terms acceptable to the Minister.

15. LIMITATIONS ON OPERATION OF DEED

- 15.1 Notwithstanding any other provision of this Deed, this Deed is subordinate to the provisions of the *Development Act and the Highways Act 1926 (Highways Act)*, and that Council's and the Commissioner of Highways' discretion with

regard to any process whatsoever in relation to development approval or authorisation provided by the Development Act or with regard to the Commissioner of Highways' responsibilities under the Highways Act, must not be fettered.

15.2 The dispute resolution provision outlined in clause 7 of this Deed does not apply for any dispute arising from a matter arising from the operation of this Deed:

15.2.1 which relates to any Development Act approvals or authorisation and/or any conditions placed on a party as a part of the Development Act approval or authorisation process; or

15.2.2 which relates to Council, the Minister or the Commissioner of Highways exercising statutory functions and duties.

16. LIMITATION OF LIABILITY

16.1 Limitation of liability of Custodian

16.1.1 The Custodian enters into this Document only as agent of the Trustee. The Custodian can only act in accordance with the terms of the agreement under which it is appointed as the Trustee's agent and is not liable under any circumstances to any party under this Document. This limitation of the Custodian's liability applies despite any other provision of this Document and extends to all liabilities and obligations of the Custodian in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Document. The Custodian is not obliged to do or refrain from doing anything under this Document (including, without limitation, incur any liability) unless the Custodian's liability is limited in the same manner as set out in this clause 16.1.

16.1.2 No attorney, agent, receiver or receiver and manager appointed in accordance with this Document has authority to act on behalf of the Custodian in a way which exposes the Custodian to any liability.

16.1.3 If, whether by the express provisions of this Document or by implication of law, the Custodian makes or is taken to have made any representation or warranty then, except for the representations and warranties that can only be within the Custodian's actual corporate knowledge, those representations and warranties are taken to have been made by the Trustee.

16.2 Limitation of liability of Trustee

16.2.1 Unless otherwise specifically contemplated in this Document, and subject to clause 16.2.3, the Trustee enters into this Document only in its capacity as trustee of the Trust and in no other capacity. A liability arising under or in connection with this Document can be enforced against the Trustee only to the extent to which the Trustee is actually indemnified for the liability out of the property of the Trust. The

limitation of the Trustee's liability applies and extends to all liabilities and obligations of the Trustee in any way connected with any representations, warranties, conduct, omission, agreement, or transaction related to this Document.

16.2.2 Unless otherwise specifically contemplated in this Document, and subject to clause 16.2.3, a party to this Document may not sue the Trustee in any capacity other than as trustee in respect of the Trust, including seeking the appointment to the Trustee of a receiver (except in relation to property of the Trust), a liquidator, administrator or any similar person or proving in any liquidation, administration or arrangement of or affecting the Trustee (except in relation to the Trust).

16.2.3 The provisions of this clause 16.2 do not apply to any obligation or liability of the Trustee to the extent that it is not satisfied because under the trust deed establishing the Trust, or by operation of law, there is a reduction in the extent, or elimination of, the Trustee's right of indemnification out of the assets of the Trust, or such right does not exist at all, as a result of:

- (a) in the case of the Trustee, having incurred the obligation or liability as a result of fraud, gross negligence, wilful default or breach of trust by the Trustee; or
- (b) the failure of the Trustee to exercise any right of indemnity it has under the trust deed establishing the Trust in respect of that obligation or liability.

16.3 Definitions

In this clause 16:

16.3.1 **Custodian** means Perpetual Nominees Limited ACN 000 733 700.

16.3.2 **Document** means the document of which these Limitation of Liability Provisions are a part.

16.3.3 **Trust** means Vicinity Retail Sub Trust ABN 18 069 221 615.

16.3.4 **Trustee** means Vicinity Funds Management Pty Ltd ACN 167 606 939.

17. CUSTODIAN AND TRUSTEE WARRANTIES

17.1 Definitions

In this clause 17:

17.1.1 **Custodian** means Perpetual Nominees Limited ACN 000 733 700.

17.1.2 **Trust** means Vicinity Retail Sub Trust ABN 18 069 221 615.

17.1.3 **Trustee** means Vicinity Funds Management Pty Ltd ACN 167 606 939.

17.2 The Custodian and Trustee have entered into this Deed as Custodian and Trustee (respectively) of the Trust and each warrants that:

17.2.1 it properly enters into this Deed in accordance with the terms of the Trust;

17.2.2 the Trust has and will continue to have sufficient resources to satisfy its obligations under this Deed; and

17.2.3 the Trust is registered pursuant to the GST Law and is entitled to be treated as the maker of any Taxable Supply and the recipient of any Taxable Supply pursuant to this Deed (if any) for the purposes of the GST Law.

18. **FINAL DEED TERMS**

The parties acknowledge and agree that the rights and obligations set out in clauses 19-27 inclusive of this Deed do not form part of the terms and conditions of this Deed but will form a part of the Final Deed (as amended by agreement between the parties to take into account any amendments required after completion of the Detailed Road Analysis and Traffic Intervention Plan for the relevant stage) and a reference to "this Deed" in these clauses is a reference to such Final Deed.

19. **RESPONSIBILITY TO UNDERTAKE AND CONTRIBUTE TO THE COST OF ROAD INFRASTRUCTURE WORKS**

19.1 In respect of the various Road Infrastructure Works Components set out in the Traffic Intervention Plan the Responsible Party must fund and undertake, in accordance with the Program and the Traffic Intervention Plan, the construction of each Road Infrastructure Works Component.

19.2 In relation to the carrying out of any Road Infrastructure Works Component the Responsible Party must:

19.2.1 before commencing any Road Infrastructure Works Component, procure all relevant approvals including the approval of the Responsible Road Authority; and

19.2.2 enter into such contractual arrangements (including but not limited to a requirement for the Owner to execute a separate deed) as reasonably required and with such conditions that the Minister or Commissioner of Highways or Council, as the case may be, deems necessary for the construction of the Road Infrastructure Works.

19.3 Council or the Minister is not responsible for undertaking or providing any Contribution to the Road Infrastructure Works.

20. DETAILED WORKS PLAN

- 20.1 Prior to commencing any Road Infrastructure Works, the Responsible Party must submit to the Responsible Road Authority for approval, a detailed works plan for the design and or construction of that Road Infrastructure Works Component (**Detailed Works Plan**) which (unless otherwise directed by the Responsible Road Authority) includes:
 - 20.1.1 the detailed construction specifications, drawings, plans and designs for the Road Infrastructure Works;
 - 20.1.2 the proposed commencement and completion dates for the Road Infrastructure Works;
 - 20.1.3 the identity of the person or entity proposed to undertake the Road Infrastructure Works;
 - 20.1.4 a detailed estimate of the cost of the Road Infrastructure Works (including any appropriate allowances for contingencies) from an independent and appropriately qualified and experienced expert who is recognised as such an expert by the Responsible Road Authority (Detailed Cost Estimate); and
 - 20.1.5 a statement of the extent to which the Road Infrastructure Works will be undertaken in accordance with the Program.
- 20.2 A Detailed Works Plan must be prepared in accordance with either:
 - 20.2.1 the Minister's and/or the Commissioner's standard requirements for plans and specifications in respect of arterial road infrastructure from time to time; or
 - 20.2.2 the Council's standard requirements for plans and specifications in respect of local road infrastructure from time to time;

as the case may be (depending on whether the Minister, the Commissioner or the Council is the Responsible Road Authority for the Road Infrastructure Works Component).
- 20.3 The Responsible Road Authority will promptly consider a Detailed Works Plan and the Program and notify the Responsible Party in writing within 90 days of receipt of the Detailed Works Plan of the Responsible Road Authority's decision to:
 - 20.3.1 approve the Detailed Works Plan with or without conditions;
 - 20.3.2 reject the Detailed Works Plan (with written reasons for the rejection); or
 - 20.3.3 propose a modified Detailed Works Plan (with or without conditions) which the Responsible Road Authority would approve.

20.4 The Responsible Road Authority will also specify on the relevant approved Detailed Works Plan the:

20.4.1 standards to which the Road Infrastructure Works must comply; and

20.4.2 the contractual arrangements (including but not limited to a requirement for the Responsible Party to execute a separate deed which the Responsible Road Authority deems necessary for the construction of the Road Infrastructure Works);

that the Minister, the Commissioner of Highways or Council (as the case may be) determines are necessary for the construction of the relevant Road Infrastructure Works Component.

20.5 Clause 20.4 does not exclude the requirement of the Responsible Party to obtain any and all other necessary approvals from the Responsible Road Authority to enable the Responsible Party to undertake the relevant Road Infrastructure Works.

21. SECURITY

21.1 The Responsible Party must, in respect of each Road Infrastructure Works Component that the Responsible Party is responsible for, provide Security for an amount equal to the cost of the relevant Road Infrastructure Works Component, based on the Detailed Cost Estimate (plus any contingency required by the Responsible Road Authority) for that Road Infrastructure Works Component.

21.2 For the avoidance of doubt, the Responsible Road Authority will not require the Owner to provide Security under this clause 21 if a bond under section 51 of the Development Act is provided in respect of a Road Infrastructure Works Component.

21.3 The Security is to be provided to, and is to be expressed to be in favour of the Responsible Road Authority.

21.4 In the case of a Responsible Party making a request to the State Commission Assessment Panel for the issue of a Section 51 Certificate for any proposed division of any land within the Land:

21.4.1 immediately prior to the Responsible Party making a request to the State Commission Assessment Panel for the issue of a Section 51 Certificate for any proposed division of any land within the Land, that party is to notify the Responsible Road Authority;

21.4.2 as soon as practicable after receiving the notice under clause 21.4.1 the Responsible Road Authority is to notify the Responsible Party that they must provide all of their respective Securities (to the extent that they have not already done so);

21.4.3 the Responsible Party must provide all of their respective Securities (to the extent that they have not already done so) within 30 days of the Responsible Road Authority giving notice under clause 21.4.2; and

- 21.4.4 as soon as practicable after the Responsible Road Authority receives the Responsible Party's Security, the Responsible Road Authority will notify the Responsible Party that it may proceed to make a request to the State Commission Assessment Panel for the issue of a Section 51 Certificate.
- 21.5 The Responsible Party undertakes that it will not cause, suffer or permit the making of a request to the State Commission Assessment Panel for the issue of a Section 51 Certificate unless the Responsible Road Authority has issued a notice under clause 21.4.4
- 21.6 None of the Minister, the Commissioner, or Council need provide Security provided that nothing in this clause 21 will require the Owner to provide Security for any Road Infrastructure Works Component other than the Road Infrastructure Works Component for which the Owner is responsible.
- 22. INCREASE OF SECURITY**
- 22.1 Subject to clause 22.2 where the contract sum in respect of a Road Infrastructure Works Component is more than the Detailed Cost Estimate, the Responsible Road Authority must request and the Owner must, upon request made by the Responsible Road Authority, provide additional Security so that the amount of the Security provided by the Owner in respect of its liability to contribute to the cost of that Road Infrastructure Works Component is equal to the Owner's proportion (as specified in the Traffic Intervention Plan) of the contract sum for that Road Infrastructure Works Component.
- 22.2 If the Responsible Road Authority is of the opinion that the amount of any potential additional Security to be requested by the Responsible Road Authority under clause 22.1 is nominal, the Responsible Road Authority may elect not to require the additional Security.
- 23. PROGRESSIVE RELEASE OF SECURITY**
- 23.1 The Responsible Road Authority must review (and return or release as appropriate) the Security held by it as Practical Completion of each Road Infrastructure Works Component is achieved (but having regard to the right of the Responsible Road Authority to retain a portion of the Security referred to in clause 23.3).
- 23.2 Subject to clause 23.3, the Responsible Road Authority shall return to a party (**Security Party**) so much of the Security provided by the Security Party to the Responsible Road Authority as relates to a Road Infrastructure Works Component for which:
- 23.2.1 Practical Completion has been achieved; and
- 23.2.2 the Security Party has contributed all of the Security Party's Contribution to the total cost of the Road Infrastructure Works Component.
- 23.3 The Responsible Road Authority is entitled to retain from the Security provided by the Security Party in respect of a Road Infrastructure Works Component so

much of such Security as is required to cover rectification of defects during the Defects Liability Period in respect of that Road Infrastructure Works Component.

- 23.4 Upon the expiration of the Defects Liability Period, and subject to the rectification of all Defects in respect of the relevant Road Infrastructure Works Component in accordance with the relevant construction contract for that Road Infrastructure Works Component, the Responsible Road Authority must return or release (as appropriate) as soon as practicable to the Security Party the balance of the Security then held by it.

24. DEFAULT BY RESPONSIBLE PARTY IN UNDERTAKING ROAD INFRASTRUCTURE WORKS COMPONENT

24.1 If:

- 24.1.1 the Responsible Party fails to enter into as principal a construction contract for the Road Infrastructure Works Component by the relevant date or trigger point specified in the Program (as applicable) or by such other time as is agreed in writing between the Responsible Road Authority and the Responsible Party;
- 24.1.2 the construction contract entered into by the Responsible Party as principal is terminated as a consequence of the insolvency of the Responsible Party as principal or as a consequence of a breach by the Responsible Party as principal; or
- 24.1.3 the Responsible Party fails to achieve Practical Completion of the Road Infrastructure Works Component within the timeframes agreed in writing;

then the Responsible Road Authority may give a direction to:

- 24.1.4 Council (in respect of land or roads that are under the control of Council);
- 24.1.5 Commissioner (in respect of land or roads that are under the control of the Commissioner),

to take those actions described in and in accordance with clause 24.2.

- 24.2 Following a direction given by the Responsible Road Authority as referred to in clause 24.1:

- 24.2.1 the Responsible Road Authority must step-in and assume the Responsible Party's rights and obligations in respect of the carrying out and completion of the Road Infrastructure Works Component;
- 24.2.2 the Responsible Road Authority may, subject to having first given each of the other parties not less than 14 days' written notice of its intention to do so, realise, resort to and call upon the Security given in respect of such Road Infrastructure Works Component in whole or to any extent at any time and from time to time and any such realising,

resorting to or calling upon shall be without prejudice to the rights of Council (or any other party) against the Responsible Party; and

- 24.2.3 the Responsible Party must do whatever the Responsible Road Authority reasonably requires to facilitate the stepping-in by the Responsible Road Authority under clause 24.2.1 (including without limitation the grant to the Responsible Road Authority of a licence for no fee to enter upon the Land for the purpose of carrying out the relevant works).

25. SALE OR TRANSFER OF LAND OR ASSIGNMENT OF DEED

- 25.1 If the Owner intends to transfer any portion of the Land or wishes to assign the Final Deed prior to having undertaken the Road Infrastructure Works relating to that portion of the Land, the Owner must prior to any such transfer or assignment, procure the intended transferee of that portion of the Land to enter into a deed on the same terms as this Deed and deliver that signed deed to the Minister for execution by the Minister and Council.
- 25.2 The Owner indemnifies the Minister and Council from and against all loss and damage resulting from a breach of clause 25.1 by the Owner.
- 25.3 Without limiting the indemnity in clause 25.2, the Minister and Council are entitled to seek orders from a Court for specific performance of the obligations specified in this clause 25.
- 25.4 A transfer of any portion of the Land or an assignment of this Deed does not breach clause 25.1 if the transmission of the title relating to any portion of the Land occurs as a result of enforcement of a will, or by intestacy for that portion of the Land.
- 25.5 If the Owner transfers any portion of the Land or assigns this Deed having met the obligations specified in clause 25.1 then the Minister and Council shall release the Owner in respect of the Owner's obligations under this Deed except for the obligations of indemnity contained in clauses 25.3 and 25.3.
- 25.6 The parties acknowledge and agree that:

26. GOODS AND SERVICES TAX

- 26.1 Unless specifically described in this Deed as "GST inclusive", any sum payable (or amount included in the calculation of a sum payable), or consideration to be provided, under or in accordance with this Deed does not include any amount on account of GST.
- 26.2 Where any supply to be made by one party (Supplier) to another party (Recipient) under or in accordance with this Deed is subject to GST (other than a supply the consideration for which is specifically described in this Deed as "GST inclusive"):
- 26.2.1 the consideration payable or to be provided for that supply but for the application of this clause 26 (GST Exclusive Consideration) shall be increased by, and the Recipient shall pay to the Supplier, an amount

equal to the GST payable by the Supplier in respect of that supply;
and

- 26.2.2 the Recipient must pay that additional amount at the same time and in the same manner as the GST Exclusive Consideration payable or to be provided for that supply.
- 26.3 If any payment to be made to a party under or in accordance with this Deed is a reimbursement or indemnification of an expense or other liability incurred or to be incurred by that party, then the amount of the payment must be reduced by the amount of any input tax credit to which that party is entitled for that expense or other liability, such reduction to be effected before any increase in accordance with clause 26.2.
- 26.4 The Recipient need not make any payment for a taxable supply made by the Supplier under or in accordance with this Deed until the Supplier has given the Recipient a valid tax invoice in respect of that taxable supply.
- 26.5 If an adjustment event has occurred in respect of a taxable supply made under or in accordance with this Deed, any party that becomes aware of the occurrence of that adjustment event must notify each other party to that taxable supply as soon as practicable, and all of those parties agree to take whatever steps are necessary (including to issue an adjustment note), and to make whatever adjustments are required, to ensure that any GST or additional GST on that taxable supply, or any refund of GST (or part thereof), is paid no later than 28 days after the Supplier first becomes aware that the adjustment event has occurred.
- 26.6 A word or expression used in this clause 26 which is defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) has the same meaning in this clause 26.

27. MINISTER'S, COMMISSIONER'S AND COUNCIL'S DISCRETION

- 27.1 This Deed does not limit the Minister's (nor the Commissioner of Highways' where relevant) or Council's legislative powers (as applicable) to give directions to the Responsible Party about the manner of carrying out Road Infrastructure Works in respect of the relevant Road Infrastructure Works Component and notwithstanding the Program, the issuing of an approved Detailed Works Plan or the issuing of approval under clause 20, the Responsible Party may only undertake the works in accordance with any other necessary authorisation, arrangement or agreement with the Minister (or the Commissioner of Highways where relevant) or Council relating to the undertaking of public road infrastructure works.
- 27.2 The parties acknowledge and agree that any approval given by the Council, in its capacity as a party to this Deed and/or a Responsible Road Authority (as the case may be), does not fetter its discretion in determining whether to grant approval in its capacity as planning authority under the Development Act and the reverse applies.

EXECUTED AS A DEED

EXECUTED by

PERPETUAL NOMINEES LIMITED

(ACN 000 733 700) in its capacity

as custodian of the Vicinity Retail

Sub Trust ABN 18 069 221 615

pursuant to section 127 of the
Corporations Act 2001

.....
Signature of Director

.....
Signature of Secretary

.....
Name of Director
(Please print)

.....
Name of Secretary
(Please print)

EXECUTED by

VICINITY FUNDS MANAGEMENT PTY LTD

(ACN 167 606 939) in its capacity

as trustee of the Vicinity Retail

Sub Trust ABN 18 069 221 615

pursuant to section 127 of the
Corporations Act 2001

.....
Signature of Director

.....
Signature of Secretary

.....
Name of Director
(Please print)

.....
Name of Secretary
(Please print)

SIGNED for and on behalf of the
MINISTER FOR TRANSPORT AND
INFRASTRUCTURE by his duly
constituted Attorney pursuant to Power of
Attorney No. 12317028, who has not
received a notice of the revocation of that
Power of Attorney, in the presence of:

.....
Department of Planning, Transport and
Infrastructure

.....
Witness

.....
Full Name of Attorney
Address:
C/- DPTI
GPO Box 1533
ADELAIDE SA 5001
Tel: 8343 2222

.....
Full Name of Witness
Address:
C/- DPTI
GPO Box 1533
ADELAIDE SA 5001
Tel: 8343 2222

THE COMMON SEAL of)
THE CORPORATION OF THE CITY)
OF MARION was hereunto affixed)
in the presence of:)

.....
Signature of Mayor

.....
Full name of Mayor

.....
Signature of Chief Executive Officer

.....
Name of Chief Executive Officer

ANNEXURE 1

Road Infrastructure Objectives

These objectives of the Minister and Council for the Road Infrastructure Works are indicative only and are subject to change following additional and detailed investigations and analysis required in relation to the relevant stage.

1. INFRASTRUCTURE

- a) Facilitate the construction and operation of the proposed Development in stages.
- b) Provide safe and efficient access for all modes of transport between the Development and the external road network.
- c) Facilitate the travel of visitor, commuter and freight traffic to the Development.
- d) Ensure safe and efficient functioning of the road network (all assets) on and around the Land both during and after construction of the Development, in accordance with the Minister's requirements and the Council's requirements.

2. INTERNAL CIRCULATION

- a) Internal circulation roads should not allow direct access to parking bays from access points and should not require vehicles to reverse into traffic aisles close to access points.
- b) The configuration of the internal circulation shall not adversely impact on the operation of the arterial road network and local road network.
- c) The Wilfrid Street/Raglan Avenue intersection should be converted to left in/left out function to improve safety of this junction adjacent the rail crossing and emphasise the new link road's primacy in the east-west movement.

3. PEDESTRIAN AND CYCLIST ACCESS

- a) Development should ensure internal pathway connections to a permeable street and path network that encourages walking and cycling through the provision of safe, convenient and attractive routes to pedestrian crossing points on arterial roads.
- b) Driveway crossovers affecting pedestrian footpaths should maintain the level of the footpath and be constructed in accordance with the Council's standards.
- c) Pedestrian and cycling facilities and networks should be designed and provided in accordance with relevant provisions of the Australian Standards and Austroads Guidelines.

4. PUBLIC TRANSPORT

The Development should provide convenient and safe pathway connections to existing transport set-down and pick-up points.

5. SOUTH ROAD INTERSECTIONS

- a) South Road / Ackland Road intersection to be upgraded to an equal level of delay with the Development in place, when compared to the location without the Development, at the proposed time of completion of the Development.
- b) Traffic calming and streetscape works along Raglan Avenue to maintain the performance and operation of the existing South Road / Raglan Avenue intersection.

6. NEW LINK ROAD, RAGLAN AVENUE AND ACKLAND STREET

- a) Road reserve widths and roadway and footpath designs that are able to accommodate:
 - a. footpaths, stormwater management/Water Sensitive Urban Design measures, street tree plantings and garden beds of widths consistent with Council's Streetscape Guidelines in place at the relevant time;
 - b. on-street parking in indented bays;
 - c. bike lanes;
 - d. the necessary road junction treatments at Raglan Avenue and Ackland Street in accordance with Austroads Guidelines.
- b) The creation of a core traffic calmed portion of Raglan Avenue that is pedestrian friendly with designated pedestrian crossing points, wide footpaths and paved areas capable of being utilised for outdoor dining.

7. ARTERIAL ROAD ACCESS POINTS

7.1 South Road

- a) All access to the Land on South Road, including the number of access points, their location, configuration, design and construction to be in accordance with Austroads Guidelines.
- b) Access points are to be designed in accordance with Austroads Guidelines, to ensure safe and efficient access to the development, while maintaining safe and efficient conditions for all other road users on the adjacent arterial road network and local road network.
- c) The provision of the specific turning movements for vehicles entering/exiting the Land via any potential access points will be based on Austroads Guidelines
- d) Acceleration/deceleration lanes to be considered for any access points, the provision and length of which are to be in accordance with Austroads Guidelines.

ANNEXURE 2

D&C Terms

1. LAND ACQUISITION

The Owner is responsible for acquisition and for the costs of acquisition of such additional land as is required to enable the completion of the Road Infrastructure Works.

2. SPECIFICATIONS AND ENGINEERING STANDARDS

The Owner must comply with standard specifications applied by the Relevant Road Authority such as, but not limited to, materials, lanes, width of road, lighting, signs, paths and engineering standards.

3. AIRPORT REQUIREMENTS FOR OBSTACLE LIMITATION SURFACES

The Owner must comply with the requirements of the Obstacle Limitation Surfaces relating to the airport during construction.

4. SECURITY

The Owner must provide reasonable security for the Owner's obligations to construct and maintain the Road Infrastructure Works including the requirements and arrangements relating to responsibility for and management of post-construction risks and defects.

5. APPROVALS

The Owner is responsible to obtain specific authorisations, consents, approvals required to be obtained from the Department of Planning, Transport and Infrastructure or Council (as the case may be) for the Road Infrastructure Works.

6. VARIATIONS

The parties must agree the requirements and arrangements relating to any material variations to the agreed scope of the Infrastructure Works or the agreed design documents for the Infrastructure Works.

7. REPORTING

The Owner is to keep the Department of Planning, Transport and Infrastructure and Council informed of the progress of the Road Infrastructure Works and invite the Department of Planning, Transport and Infrastructure and Council (where appropriate) to be involved in Land meetings between the Owner and its contractors.

8. INSURANCE

Appropriate insurance is to be obtained and maintained by the Owner.

9. ACCESS AND INSPECTION

The Owner will grant access to the Land (if applicable) to facilitate the Road Infrastructure Works to the extent reasonably necessary and subject to the reasonable requirements of the Owner.

The Owner will be provided with reasonable access to such other land as is affected by the Infrastructure Works to carry out (so far as it is required to do so) and to inspect the Infrastructure Works

Road Infrastructure Works



Stage 1 Roadworks Plan
Castle Plaza Activity Centre DPA and Interim Deed

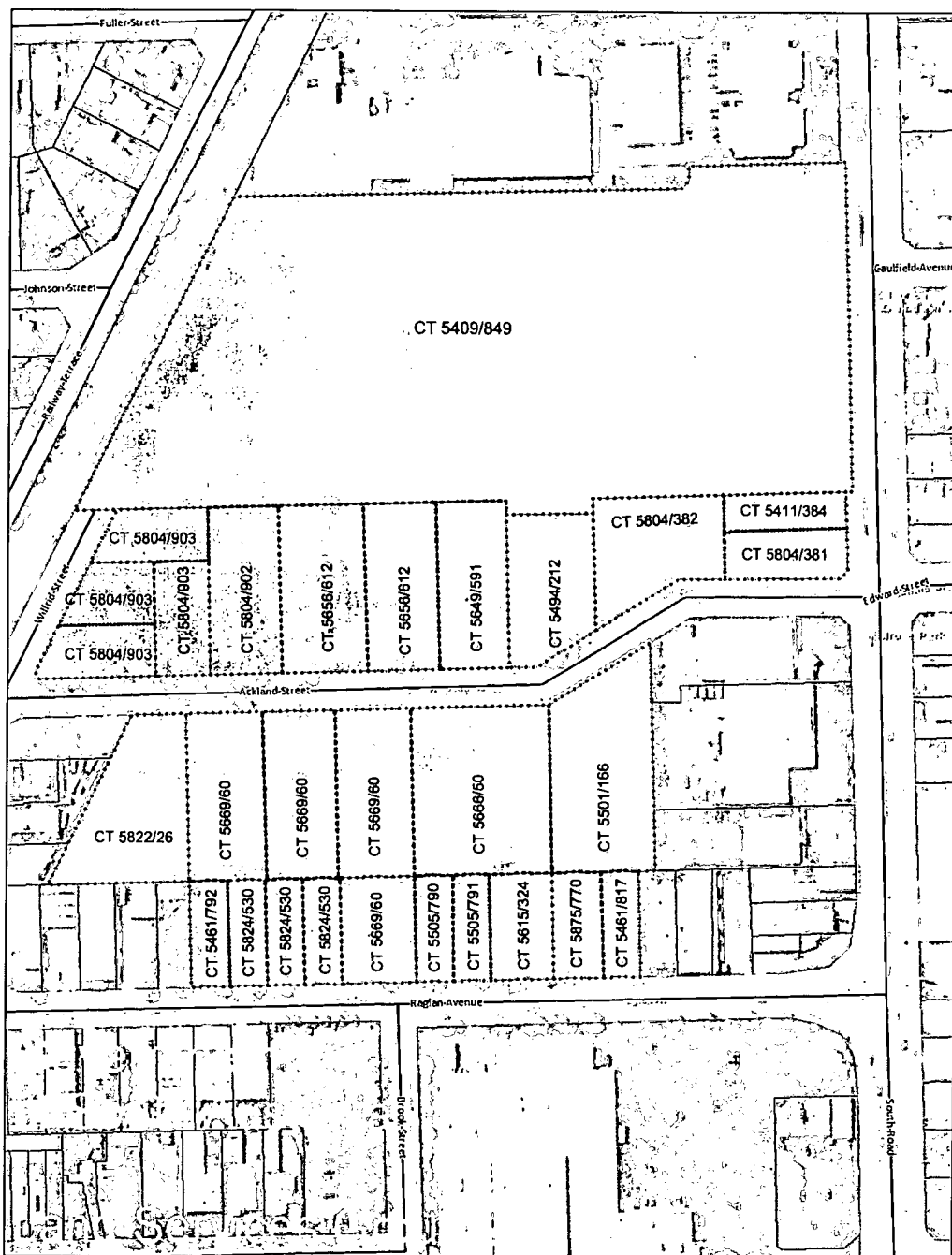
Land

Date created:
January 30, 2018

The Property Location Browser is available on the Land Services Group Website: www.sa.gov.au/landservices



Government of South Australia
Department of Planning,
Transport and Infrastructure

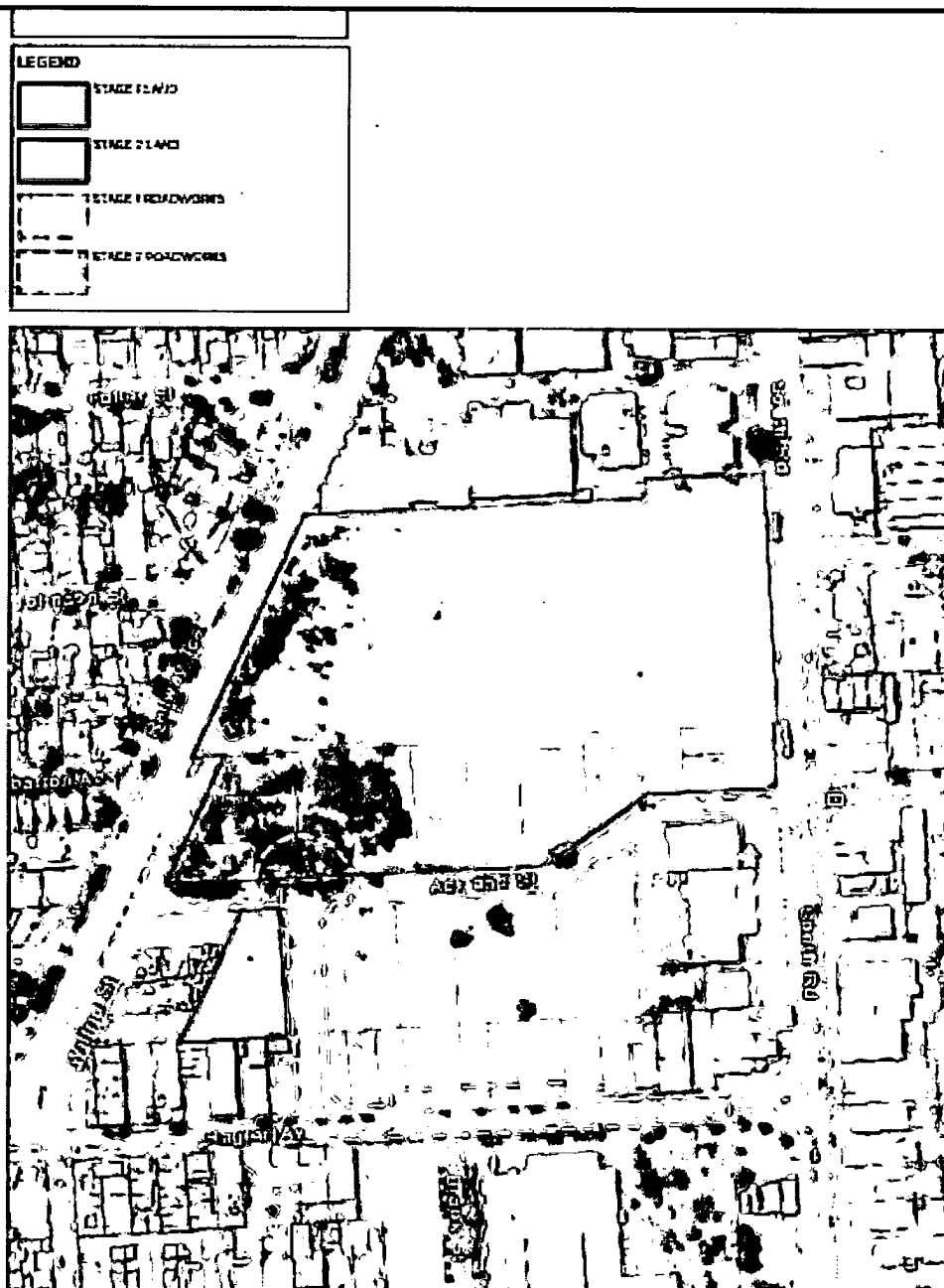


Disclaimer: The information provided above, is not represented to be accurate, current or complete at the time of printing this report. The Government of South Australia accepts no liability for the use of this data, or any reliance placed on it.

ANNEXURE 5

Form of LMA

Stage Plan



JANUARY 2016
REV. A
P0370
MTS



JENSEN⁺
PLUS

Staging Land and Roadworks Land
Castle Plaza Activity Centre DPA and Interim Deed

ANNEXURE B

Consents

Nil