



Department of Environment, Land, Water & Planning

Electronic Instrument Statement

Copyright State of Victoria. No part of this publication may be reproduced except as permitted by the Copyright Act 1968 (Cth), to comply with a statutory requirement or pursuant to a written agreement. The information is only valid at the time and in the form obtained from the LANDATA REGD TM System. None of the State of Victoria, its agents or contractors, accepts responsibility for any subsequent publication or reproduction of the information.

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

Produced 21/05/2025 09:45:25 AM

Status	Registered	Dealing Number	AY188887S
Date and Time Lodged	09/07/2024 04:34:49 PM		

Lodger Details

Lodger Code	18776H
Name	HARWOOD ANDREWS
Address	
Lodger Box	
Phone	
Email	
Reference	22402177-7cmm

APPLICATION TO RECORD AN INSTRUMENT

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

Privacy Collection Statement

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

Estate and/or Interest

FEE SIMPLE

Land Title Reference

10302/290

Instrument and/or legislation

RECORD - AGREEMENT - SECTION 173
Planning & Environment Act - section 173

Applicant(s)

Name	BRIMBANK CITY COUNCIL
Address	
Street Number	301
Street Name	HAMPSHIRE
Street Type	ROAD
Locality	SUNSHINE
State	VIC
Postcode	3020

**ADVERTISED
PLAN**

Additional Details



Department of Environment, Land, Water & Planning

Electronic Instrument Statement

Refer Image Instrument

The applicant requests the recording of this Instrument in the Register.

Execution

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

Executed on behalf of	BRIMBANK CITY COUNCIL
Signer Name	CLARE MARGARET MCKENNA
Signer Organisation	THE LANTERN LEGAL GROUP PTY LTD
Signer Role	LAW PRACTICE
Execution Date	09 JULY 2024

File Notes:

NIL

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

Statement End.

**This copied document to be made available
for the sole purpose of enabling
its consideration and review as
part of a planning process under the
Planning and Environment Act 1987.
The document must not be used for any
purpose which may breach any
copyright**

**ADVERTISED
PLAN**

Imaged Document Cover Sheet

The document following this cover sheet is an imaged document supplied by LANDATA®, Secure Electronic Registries Victoria.

Document Type	Instrument
Document Identification	AY188887S
Number of Pages (excluding this cover sheet)	15
Document Assembled	21/05/2025 09:45

Copyright and disclaimer notice:

© State of Victoria. This publication is copyright. No part may be reproduced by any process except in accordance with the provisions of the Copyright Act 1968 (Cth) and for the purposes of Section 32 of the Sale of Land Act 1962 or pursuant to a written agreement. The information is only valid at the time and in the form obtained from the LANDATA® System. None of the State of Victoria, LANDATA®, Secure Electronic Registries Victoria Pty Ltd (ABN 86 627 986 396) as trustee for the Secure Electronic Registries Victoria Trust (ABN 83 206 746 897) accept responsibility for any subsequent release, publication or reproduction of the information.

The document is invalid if this cover sheet is removed or altered.

**This copied document to be made available
for the sole purpose of enabling
its consideration and review as
part of a planning process under the
Planning and Environment Act 1987.
The document must not be used for any
purpose which may breach any
copyright**

**ADVERTISED
PLAN**



ADVERTISED PLAN

BRIMBANK CITY COUNCIL

and

SMA No. 18 Pty Ltd ACN 616 079 004

This copied document to be made available for the sole purpose of enabling its consideration and review as part of a planning process under the Planning and Environment Act 1987. The document must not be used for any purpose which may breach any copyright

**AGREEMENT MADE PURSUANT TO
SECTION 173 OF THE PLANNING AND
ENVIRONMENT ACT 1987**

Land: 99 Derby Road, Sunshine

Condition 2 of planning permit P559/2021

Russell Kennedy Pty Ltd ACN 126 792 470 ABN 14 940 129 185
Level 12, 469 La Trobe Street, Melbourne VIC 3000 Australia PO Box 5146, Melbourne VIC 3001 Australia
T +61 3 9609 1555 F +61 3 9609 1600 info@rk.com.au russellkennedy.com.au

Liability limited by a scheme approved under Professional Standards Legislation.

An international member of

Ailly Law

ADVERTISED PLAN

THIS AGREEMENT IS DATED

9 July

2024

PARTIES

- 1 **BRIMBANK CITY COUNCIL**
of Brimbank Community and Civic Centre, 301 Hampshire Road, Sunshine, Victoria 3020
(Council)
- 2 **SMA NO. 18 PTY LTD**
ACN 616 079 004
of Suite 2, Level 2, 51-65 Clarke Street, Southbank, Victoria 3006 c/o Lombardi Partners,
Suite 2, Level 11, 555 Lonsdale Street, Melbourne 3000
(Owner)

RECITALS

- A The Council is the responsible authority under the Act for the administration and enforcement of the Scheme. Council is also the Collecting Agency and the Development Agency under the Development Contributions Plan.
- B The Owner is registered or is entitled to be registered as proprietor of the Land.
- C The Development Contributions Plan applies to the Land. It specifies the development contributions required to be paid by those developing land within the area covered by the Development Contributions Plan.
- D The Owner has obtained the Development Permits in respect of the Land.
- E The Owner proposes to:
- (i) subdivide the Land in accordance with the Subdivision Permit; and
 - (ii) carry out works on the Land in accordance with the Development Permits as amended from time to time, if applicable.
- F Condition 2 of the Subdivision Permit provides as follows:
- Prior to the issue of the Statement of Compliance for this subdivision, the owner of the land must enter into an agreement with the Responsible Authority pursuant to Section 173 of the Planning and Environment Act 1987 and such agreement shall require that:*
- (a) *Prior to the commencement of development of each lot, unless otherwise agreed in writing, the applicant or owner of that lot must pay to the Responsible Authority the Development Contribution as detailed in Clause 45.06 Schedule 2 of the Brimbank Planning Scheme.*
- Before the issue of the Statement of Compliance for this subdivision, application must be made to the Registrar of Titles to register the Section 173 Agreement on the title to the land under Section 181 of the Act.*
- The owner of the land must pay the reasonable costs of the preparation, execution and registration of the Section 173 Agreement.*
- G The parties acknowledge and agree that the reference to "Clause 45.06 Schedule 2" of the Scheme in condition 2 of the Subdivision Permit should be a reference to "Clause 45.06

ADVERTISED PLAN

2

Schedule 1 of the Scheme, as the Land is contained within the area set out in the STCSP to which Schedule 1 to Clause 45.06 of the Scheme applies.

- H Council acting in its capacity as Collecting Agency has agreed to vary the time within which payment of development contributions required under Schedule 1 to Clause 45.06 of the Scheme for the Land must be made from that provided in condition 2(a) to that provided in this Agreement.
- I This Agreement has been entered into in order to:
- (i) comply with condition 2 of the Subdivision Permit;
 - (ii) achieve and advance the objectives of planning in Victoria or the objectives of the Scheme in relation to the Land.
- J This Agreement is made under Division 2 of Part 9 of the Act.
- K As at the date of this Agreement, the Land is encumbered by a mortgage No. AX557169D in favour of Westpac Banking Corporation as the Mortgagee. The Mortgagee consents to the Owner entering into this Agreement, as evidenced by its consent on the attestation page.

OPERATIVE PROVISIONS

1 DEFINITIONS

In this Agreement:

- (a) **Act** means the *Planning and Environment Act 1987* (Vic).
- (b) **Agreement** means this Agreement, including the recitals and any annexures to this Agreement, and any agreement executed by the parties varying or expressed to be supplemental to this Agreement.
- (c) **Building Permit** means a building permit issued under the *Building Act 1993* (Vic) or any regulations or code made under the *Building Act 1993* (Vic).
- (d) **Business Day** means Monday to Friday excluding public holidays in Victoria.
- (e) **Collecting Agency** has the same meaning as in section 46H of the Act.
- (f) **Council** means Brimbank City Council in its capacity as:
- the authority responsible for administering and enforcing the Planning Scheme; and
 - the Collecting Agency and Development Agency,
- and includes its agents, officers, employees, servants, workers and contractors and any subsequent person or body which is the responsible authority or municipal council.
- (g) **CPI** means the annual Consumer Price Index (All Groups-Melbourne) as published by the Australian Bureau of Statistics, or, if that index number is no longer published, its substitute as a cumulative indicator of the inflation rate in Australia, as determined by Council in its capacity as Collecting Agency from time to time.

ADVERTISED PLAN

3

This copied document to be made available for the sole purpose of enabling its consideration and review as part of a planning process under the Planning and Environment Act 1987. The document must not be used for any purpose which may breach any copyright

(h) **Current Address for Service**

- for the Council means the address shown under the heading "Parties" in this Agreement, or any other principal office address listed on the website of the Council; and
- for the Owner means the address shown under the heading "Parties" in this Agreement or any other address provided by the Owner to the Council for any purpose or purposes relating to the Land.

(i) **Current Email Address for Service**

- for the Council means any email address listed on the website of the Council; and
- for the Owner means any email address provided by the Owner to the Council for the express purpose of electronic communication regarding this Agreement.

(j) **Development Agency** has the same meaning as in section 46H of the Act.

(k) **Development Contributions Levy** means the development infrastructure levy payable at the rate specified in the Development Contributions Plan for the Land other than the amount payable in respect of the Proposed Hotel, which as at the date of this Agreement is:

- (i) \$3,334.97 per dwelling;
- (ii) \$45.05 per square metre of retail floor space; or
- (iii) \$34.75 per square metre of commercial floor space,

subject to Indexation in accordance with the Development Contributions Plan.

(l) **Development Contributions Plan** or **DCP** means the Sunshine Town Centre Development Contributions Plan dated November 2013 (amended December 2023), which is an incorporated document within the Scheme.

(m) **Development Permits** mean, collectively:

- (i) the Subdivision Permit;
- (ii) the Hotel Permit; and
- (iii) the Residential Development Permit,

and **Development Permit** means any one of them, as required by context.

(n) **GST** means the goods and services tax as provided for by the GST Law, including penalties and interest. If under or in relation to the *National Taxation Reform (Consequential Provisions) Act 2000* (Vic) or a direction given under section 6 of that Act, the supplier makes voluntary or notional payments, the definition of "GST" includes those voluntary or notional payments and expressions containing the term "GST" have a corresponding expanded meaning.

(o) **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time.

- (p) **GST Law** has the same meaning as in the GST Act.
- (q) **GST Regulations** means the *New Tax System (Goods and Services Tax) Regulations 2019* (Cth), as amended from time to time.
- (r) **Hotel Permit** means planning permit P96/2020 issued in respect of the Land by Council on 18 August 2021 (amended 20 September 2022 and 22 June 2023) allowing for "*use and development of part of the land for a residential hotel in accordance with the endorsed plans*".
- (s) **Indexation** means an annual adjustment to the Development Contributions Levy effective from 1 July of the relevant calendar year by applying CPI (**Indexation Date**) .
- (t) **Input Tax Credit** in relation to a supply, means a credit under the GST Act for the GST payable by the recipient in respect of the supply.
- (u) **Land** means the land known as 99 Derby Road, Sunshine being the whole of the land more particularly described in certificates of title volume 10302 folio 290 and volume 9969 folio 938.
- (v) **Lot** means a lot created pursuant to the Subdivision Permit.
- (w) **Mortgagee** means the person or persons registered or entitled from time to time to be registered by the Registrar as mortgagee of the Land or any part of it.
- (x) **Occupancy Permit** means the issue of an occupancy permit under the *Building Act 1993* (Vic).
- (y) **Owner** means the person or persons who are registered or are entitled to be registered as proprietor of land in the Land from time to time or any part thereof, and includes a mortgagee in possession.
- (z) **Owner's Obligations** means the covenants, promises, agreements, indemnities, undertakings and warranties given by the Owner under this Agreement including the specific obligations imposed in this Agreement.
- (aa) **Proposed Hotel** means the six-storey residential hotel proposed to be constructed on that part of the Land described as Lot S300 on the Plan of Subdivision pursuant to the Hotel Permit.
- (bb) **Plan of Subdivision** means a plan of subdivision under the *Subdivision Act 1988* (Vic) of or affecting the Land.
- (cc) **Register** means the register of land kept and maintained by the Registrar pursuant to the *Transfer of Land Act 1958* (Vic).
- (dd) **Registrar** means the Registrar of Titles for the purpose of the *Transfer of Land Act 1958* (Vic).
- (ee) **Residential Development Permit** means planning permit P780/2021 issued in respect of the Land by Council on 23 December 2022 (amended 12 July 2023) allowing for "*development and use of the land for dwellings in townhouse and apartment built forms, development of a food and drink premises and a reduction in the associated car parking requirement in accordance with the endorsed plans*".

ADVERTISED PLAN

5

- (ff) **Scheme** means the Brimbank Planning Scheme and any successor instrument or any other planning scheme which applies to the Land from time to time.
- (gg) **Stage** means:
- (i) any stage of subdivision under the Subdivision Permit; or
 - (ii) where the development approved under the Residential Development Permit is carried out in stages, such part of the development for which a building permit is sought.
- (hh) **Statement of Compliance** means a statement of compliance issued under the *Subdivision Act 1988* (Vic).
- (ii) **STCSP** means the Sunshine Town Centre Structure Plan adopted by Council on 2 October 2012.
- (jj) **Stage 1** means the first stage of subdivision approved under the Subdivision Permit in accordance with the plan of subdivision for Stage 1 approved under the Subdivision Permit, which creates Lot S200 and Lot S300 and easements.
- (kk) **Subdivision Permit** means planning permit P559/2021 issued in respect of the Land by Council on 11 November 2022 (amended on 19 October 2023) allowing for "Stage residential subdivision (PS900052N) and creation of easements E7 – carriageway and light & air and easements E8 & E9 – light & air in accordance with the endorsed plans"
- (ll) **Tax Invoice** in relation to a supply, means an invoice for the supply required by the GST Act to support a claim by the recipient for an Input Tax Credit for the GST on the supply.

2 COMMENCEMENT

This Agreement comes into force on the date it was made as set out above, or if it bears no date, on the date it is recorded in the Register.

3 ENDING OR AMENDING AGREEMENT

3.1 Ending or amending

This Agreement may be ended by mutual agreement between the parties. Otherwise, this Agreement ends or may be amended in accordance with the Act.

3.2 Cancellation or alteration of recording

As soon as reasonably practicable after this Agreement has ended or has been amended, the Council must, at the request and at the cost of the Owner, apply to the Registrar under the Act to cancel or alter the recording of this Agreement on the folio of the Register to the Land.

4 OWNER'S COVENANTS

4.1 Payment of Development Contributions Levy

- 4.1.1 The Owner covenants and agrees that the Owner must pay the Development Contributions Levy in cash (unless otherwise agreed by Council, acting in its capacity as Collecting Agency, in writing):

ADVERTISED PLAN

6

This copied document to be made available for the sole purpose of enabling its consideration and review as part of a planning process under the Planning and Environment Act 1987. The document must not be used for any purpose which may breach any copyright

(a) prior to the earlier of:

(1) the issue of a Building Permit for any Stage of development under the Residential Development Permit (in which event, the liability to pay the Development Contribution Levy is limited to that part of the development for which the Building Permit is sought); or

(2) the issue of a Statement of Compliance for any Stage of subdivision under the Subdivision Permit other than the Stage 1 (in which event, the liability to pay the Development Contribution Levy is limited to that part of the Land for the Stage in respect of which the Statement of Compliance is sought);

(b) In the event that the Owner develops the land other than in accordance with the Development Permits, prior to the earlier of:

(1) the issue of any Building Permit for such development; or

(2) the issue of any Statement of Compliance for the subdivision of land other than Stage 1.

(c) such other time(s) as agreed in writing with Council acting in its capacity as Collecting Agency;

4.1.2 For the avoidance of doubt

payment of the Development Contributions Levy for a Stage does not exempt further Stage(s) from payment of the Development Contributions Levy. Each Stage is subject to payment of the applicable Development Contributions in accordance with this Agreement and the Development Contributions Plan.

4.2 Acknowledgement of prior levies paid

The parties acknowledge and agree that the Owner has paid, and Council has received, the levy amount payable under the Development Contributions Plan for the Land with respect to the Proposed Hotel.

4.3 No deemed satisfaction of other obligations

The parties acknowledge and agree that this Agreement is only intended to deal with the satisfaction of Clause 45.06 of the Scheme.

4.4 Successors in title

Until this Agreement is recorded on the folio of the Register which relates to the Land pursuant to section 181 of the Act, the Owner must ensure that the Owner's successors in title give effect to and do all acts and sign all documents which will require those successors to give effect to this Agreement including requiring the successors in title to execute a deed agreeing to be bound by the terms of this Agreement. Until that deed is executed, the Owner, being a party to this Agreement, remains liable to perform all of the Owner's obligations contained in this Agreement.

4.5 Further assurance

The Owner must do all things necessary (including signing any further agreement, acknowledgment or document) to give full effect to the terms of this Agreement and to enable the Council to record this Agreement on the folio of the Register which relates to the Land.

ADVERTISED PLAN

7

This copied document to be made available for the sole purpose of enabling its consideration and review as part of a planning process under the Planning and Environment Act 1987. The document must not be used for any purpose which may breach any copyright

4.6 Payment of costs

The Owner agrees to pay on demand to the Council the Council's reasonable costs and expenses (including any legal fees incurred on a solicitor-client basis) of and incidental to:

- the preparation, execution, recording, removal, amendment and enforcement of this Agreement.
- assessment, negotiation, preparation, execution and recording of any proposed amendment to this Agreement; and
- determination of whether any of the Owner's obligations have been undertaken to the satisfaction of the Council or to give consent to anything under this Agreement.

To the extent that such costs and expenses constitute legal professional costs, the Council may at its absolute discretion have these costs assessed by the Law Institute of Victoria and in that event the parties will be bound by the amount of that assessment, with any fee for obtaining such an assessment being borne equally by the Council and the Owner. Such costs payable by the Owner will include the costs and disbursements associated with the recording, cancellation or alteration of this Agreement in the Register.

4.7 Mortgagee to be bound

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

4.8 Covenants run with the Land

The Owner's obligations in this Agreement are intended to take effect as covenants which shall be annexed to and run at law and in equity with the Land and every part of it, and bind the Owner and its successors, assignees and transferees, the registered proprietor or proprietors for the time being of the Land and every part of the Land.

4.9 Owner's warranty

The Owner warrants and covenants that:

- 4.9.1 the Owner is the registered proprietor of the Land;
- 4.9.2 there are no mortgages, liens, charges or other encumbrances or leases or any rights inherent in any person other than the Owner affecting the Land which have not been disclosed by the usual searches of the folio of the Register for the Land or notified to the Council;
- 4.9.3 no part of the Land is subject to any rights obtained by adverse possession or subject to any easements or rights described or referred to in the *Transfer of Land Act 1958* (Vic);
- 4.9.4 the Owner will do all that is necessary to enable the Council to make application to the Registrar of Titles to record this Agreement in the Register in accordance with the Act, including the signing of any further agreement, acknowledgment or other document.
- 4.9.5 until this Agreement is recorded on the folio of the Register which relates to the Land, the Owner will not effect a settlement, transfer, dispose of, assign, mortgage or otherwise part with possession of the Land or any part of the Land without first

disclosing to any intended transferee, assignee or mortgagee the existence and nature of this Agreement.

5 GOODS AND SERVICES TAX

5.1 GST

The Parties agree that:

- 5.2 unless there is a contrary indication, expressions used in this clause which are not defined for the purposes of this Agreement but which have a defined meaning in the GST Law have the same meanings as when used in the GST Law;
- 5.3 GST does not apply to a supply under this Agreement of in-kind contributions of any kind provided or required to be provided by the Owner to the Council for the supply by the Council to the Owner of a right to develop land;
- 5.4 the supply by the Council to the Owner of a right to develop the Land is not treated as consideration to the extent that it is made in return for another supply that complies with the requirements imposed by or under an Australian law;
- 5.5 payments, fees, charges levies or other amounts payable (the amount payable) by the Owner to the Council are not the provision of consideration for GST purposes to the extent the amount payable:
- This copied document to be made available
for the sole purpose of enabling
its consideration and review as
part of a planning process under the
Planning and Environment Act 1987.
The document must not be used for any
purpose which may breach any
copyright
- 5.5.1 is a payment of an Australian tax under subsection 81-5(1) of the GST Act; or
- 5.5.2 is an amount that is subject to subsection 81-10(1) of the GST Act and is not an amount listed in regulation 81-10.01 of the GST Regulations; or
- 5.5.3 is an amount that is listed in regulation 81-15.01 of the GST Regulations; or
- 5.5.4 is an amount that is listed in sections 81-10.01(1)(g) and 81-15.01 of the GST Regulations;
- 5.6 the recipient of a taxable supply made under or in respect of this Agreement must pay to the supplier, at the same time and in the same manner as the GST-exclusive consideration for the supply is payable or to be provided, an amount equal to the GST payable in respect of the supply (**GST Amount**). This obligation extends to a supply consisting of a party's entry into this document;
- 5.7 a Party is not obliged, under Clause 20.5, to pay the GST Amount on a taxable supply to it until given a tax invoice for the supply;
- 5.8 if an adjustment event arises in respect of a supply made by a supplier under or in connection with this Agreement, the GST Amount will be calculated or recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires;
- 5.9 where a party is required under or in connection with this Agreement to pay for, reimburse or contribute to any expense, loss, liability or outgoing suffered or incurred by another party or indemnify another party in relation to such an expense, loss, liability or outgoing (**Reimbursable Expense**), the amount required to be paid, reimbursed or contributed by the first party will be reduced by the amount of any input tax credit entitlement in respect of the Reimbursable Expense; and
- 5.10 clause 20.8 does not limit the application of clause 20.5, if appropriate, to the Reimbursable Expense as reduced in accordance with clause 20.8.

ADVERTISED PLAN

9

This copied document to be made available for the sole purpose of enabling its consideration and review as part of a planning process under the Planning and Environment Act 1987. The document must not be used for any purpose which may breach any copyright

6 GENERAL

6.1 No fettering of Council's powers

The parties acknowledge and agree that this Agreement does not fetter or restrict the Council's power or discretion in respect of any of the Council's decision making powers including but not limited to an ability to make decisions under the *Local Government Act 2020* (Vic), and the Act or to make or impose requirements or conditions in connection with any use or development of the Land or the granting of any planning permit, the approval or certification of any plans of subdivision or consolidation relating to the Land or the issue of a statement of compliance in connection with any such plans.

6.2 Time of the essence

Time is of the essence as regards all dates, periods of time and times specified in this Agreement.

6.3 Governing law and jurisdiction

This Agreement is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts and tribunals of Victoria and waives any right to object to proceedings being brought in those courts or tribunals.

6.4 Enforcement and severability

6.4.1 This Agreement shall operate as a contract between the parties and be enforceable as such in a court of competent jurisdiction regardless of whether, for any reason, this Agreement were held to be unenforceable as an agreement pursuant to Division 2 of Part 9 of the Act.

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

6.5 No Waiver

No waiver by any party of any default in the strict and literal performance of or compliance with any provision, condition or requirement in this Agreement will be deemed to be a waiver of strict and literal performance of and compliance with any other provision, condition or requirement of this Agreement nor to be a waiver of or in any way release any party from compliance with any provision, condition or requirement in the future nor will any delay or omission of any party to exercise any right under this Agreement in any manner impair the exercise of such right accruing to it thereafter.

6.6 Interest on Overdue Money

Any amount due under this Agreement but unpaid by the due date incurs interest at the rate prescribed under section 120 of the *Local Government Act 2020* (Vic) and any payment made shall be first directed to payment of interest and then principal amount owing.

6.7 Costs on Default

If the Owner defaults in the performance of any obligations under this Agreement it will pay to the Council its reasonable costs of action taken to achieve compliance with this Agreement.

ADVERTISED PLAN

10

This copied document to be made available for the sole purpose of enabling its consideration and review as part of a planning process under the Planning and Environment Act 1987. The document must not be used for any purpose which may breach any copyright

6.8 Invalidity of any Clause

Notwithstanding anything to the contrary in this Agreement, if any provision of this Agreement will be invalid and not enforceable in accordance with its terms, all other provisions which are self-sustaining and capable of separate enforcement without regard to the invalid provisions will be and continue to be valid and enforceable in accordance with those terms.

6.9 Agreement Binding on Successors of Owners

This Agreement will extend to and bind the Owner's successors, assigns, administrators, transferees and legal personal representatives and the obligations imposed upon them will also be binding on their successors, transferees, purchasers, mortgagees and assigns as if each of them had separately executed this Agreement.

6.10 Joint Obligations

In the case of each party that consists of more than one person (including in that expression any corporation) each of those persons covenants, agrees and declares that all of the covenants, agreements, declarations and consents contained in this Agreement and made and given by that party have been entered into, made and given and are binding upon that person both severally and also jointly with the other person or persons constituting that party.

6.11 Entire Agreement

This Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

7 ELECTRONIC EXECUTION, WITNESSING AND EXCHANGE OF AGREEMENT

7.1 This clause applies if this Agreement has been executed, witnessed and/or exchanged by using electronic means, including an electronic execution service (EES) and/or witnessing over audio visual link.

7.2 By signing this Agreement, the parties consent to this Agreement being executed, witnessed and exchanged by way of electronic means.

7.3 Each party and any witness may execute the Agreement in physical paper format or electronically or a combination of both. This Agreement may be exchanged electronically or in physical paper format or a combination of both. In each case this Agreement will be legally binding upon the parties.

7.4 If using an EES, the parties:

7.4.1 must comply, and must ensure that its authorised representatives comply with all processes and instructions concerning the use of the EES to execute and to give effect to this Agreement;

7.4.2 must refrain from engaging in any conduct which may place any party in breach of their obligations under any agreement with the provider of the EES for the provision of the EES; and

7.4.3 acknowledge and agree that the date, time and location of the electronic execution by or on behalf of the parties may be recorded by the provider of the EES and may be used by the parties in establishing when and where this Agreement was executed by or on behalf of other parties.

ADVERTISED PLAN

11

- 7.5 Each party must do all things necessary and must ensure that party's employees and agents do all things necessary in order to give effect to this Agreement, including signing and delivering to other parties electronic or hard copies of this Agreement.
- 7.6 If a party is a company and execution of this Agreement under section 127 of the *Corporations Act 2001* (Cth) (**Corporations Act**) is void or not enforceable:
- 7.6.1 the signatories for that party sign this Agreement pursuant to sections 126 and 127(4) of the Corporations Act; and
- 7.6.2 that party warrants (and the signatories for that party separately warrant) to the other parties that the other parties may rely on the assumptions in section 129 of the Corporations Act.
- 7.7 Any witness, by signing this Agreement and having witnessed the execution of a party over audio visual link, is taken to have confirmed the following when signing or applying any form of electronic or digital signature:
- 7.7.1 the witness witnessed the relevant signatory sign this document over audio visual link;
- 7.7.2 the witness was reasonably satisfied that the document they signed as witness was the same document or a copy of the document signed by the relevant signatory;
- 7.7.3 all requirements for witnessing the signing of this document by the relevant signatory by audio visual link have occurred on the same day,
- in accordance with section 122 of the *Electronic Transactions (Victoria) Act 2000* (Vic) and any other prescribed requirements.
- 8 NOTICES**
- 8.1 **Service of notice**

A notice or other communication required or permitted, under this Agreement, to be served on a person must be in writing and may be served:

- 8.1.1 personally on the person;
- 8.1.2 by leaving it at the person's address set out in this Agreement;
- 8.1.3 by posting it by prepaid post addressed to that person at the person's current address for service;
- 8.1.4 by email to the person's current email address notified to the other party; or
- 8.1.5 by facsimile to the person's current number notified to the other party.

8.2 Time of service

A notice or other communication is deemed served:

- 8.2.1 if served personally or left at the person's address, upon service;
- 8.2.2 if posted within Australia to an Australian address by express post, two Business Days; by standard post, six Business Days after posting;

ADVERTISED PLAN

12

- 8.2.3 if sent by email, subject to the clause 8.2.5, at the time of receipt as specified in section 13A of the *Electronic Transactions (Victoria) Act 2000* (Vic);
- 8.2.4 if served by facsimile, subject to the clause 8.2.5, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile; and
- 8.2.5 if received after 5.00 pm in the place of receipt or on a day which is not a Business Day, at 9.00 am on the next Business Day.

8.3 Proof of receipt of notice by email

In proving that a notice given by email has been received by the recipient, it is sufficient to produce an acknowledgement or receipt that the email has reached the recipient's email address.

9 INTERPRETATION

In this Agreement, unless the contrary intention appears:

- 9.1 the singular includes the plural and vice versa;
- 9.2 A reference to a gender includes a reference to all other genders.
- 9.3 a reference to a document or instrument, including this Agreement, includes a reference to that document or instrument as novated, altered or replaced from time to time;
- 9.4 a reference to an individual or person includes a partnership, body corporate, government authority or agency and vice versa;
- 9.5 a reference to a party includes that party's executors, administrators, successors, transferees, heirs, liquidators, substitutes, permitted assigns and legal personal representatives as the case may be
- 9.6 other grammatical forms of defined words, phrases or expressions have corresponding meanings;
- 9.7 a covenant, undertaking, representation, warranty, indemnity or agreement made or given by:
- 9.7.1 two or more parties; or
- 9.7.2 a party comprised of two or more persons,
- is made or given and binds those parties or persons jointly and severally;
- 9.8 a reference to a statute, code or other law includes regulations and other instruments made under it and includes consolidations, amendments, re-enactments or replacements of any of them;
- 9.9 a recital, schedule, annexure or description of the parties forms part of this Agreement;
- 9.10 if an act must be done on a specified day that is not a Business Day, the act must be done instead on the next Business Day;
- 9.11 if an act required to be done under this Agreement on a specified day is done after 5.00 pm on that day in the time zone in which the act is performed, it is taken to be done on the following day;

- 9.12 a reference to an authority, institution, association or body (original entity) that has ceased to exist or been reconstituted, renamed or replaced or whose powers or functions have been transferred to another entity, is a reference to the entity that most closely serves the purposes or objects of the original entity;
- 9.13 headings and the provision of a table of contents are for convenience only and do not affect the interpretation of this Agreement;
- 9.14 Words (including defined expressions) denoting persons will be deemed to include all trusts, bodies and associations, corporate or unincorporated, and vice versa.
- 9.15 Where a word or phrase is not defined in this Agreement, it has the meaning as defined in the Act, or, if it is not defined in the Act, it has its ordinary meaning.

EXECUTED pursuant to Division 2 of Part 9 of the Act.

SIGNED SEALED AND DELIVERED BY)
and on behalf of **BRIMBANK CITY**)
COUNCIL by the Manager City Development)
Services pursuant to an S6 Instrument of)
Delegation from Council to Members of)
Council Staff dated 12 December 2023)

Witness Signature

Adam Johnson

Witness Name*

301 Hampshire Rd Sunshine VIC 3020

Usual address

By witnessing the Agreement, the above witness confirms that either:

- this Agreement was signed physically in their presence; or
- where this Agreement was witnessed via audio-visual link, the requirement for witnessing by audio-visual link under section 12 of the *Electronic Transactions (Victoria) Act 2000* (Vic) have been met.

EXECUTED by **SMA NO. 18 PTY LTD ACN 616 079 004** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

Martin Anthony Strode, sole director and sole company secretary

Date: 5 July 2024

**ADVERTISED
PLAN**

This copied document to be made available for the sole purpose of enabling its consideration and review as part of a planning process under the Planning and Environment Act 1987. The document must not be used for any purpose which may breach any copyright

MORTGAGEE CONSENT

Westpac Banking Corporation as Mortgagee under Instrument of Mortgage No. No. AX557169D consents to the Owner entering into this Agreement and agrees to be bound by the terms and conditions of this Agreement.

DATED: 5 July 2024

~~Executed for and on behalf of~~

~~Westpac Banking Corporation~~

Signed on behalf of Bank of Melbourne (a division of WESTPAC BANKING CORPORATION) by its attorney under power of attorney dated 17 January 2001 in the presence of:

By executing this document the attorney states that they have received no notice of revocation of the power of attorney.


Witness signature

CORNELIA BUCHWALD
Name of Witness (print)


Attorney signature

Luke Dobbyn TIER 3
Name and Tier of Attorney (print)

**ADVERTISED
PLAN**

This copied document to be made available for the sole purpose of enabling its consideration and review as part of a planning process under the Planning and Environment Act 1987. The document must not be used for any purpose which may breach any copyright