



# AGENDA

**Special Council Meeting**

30 April 2024

## **NOTICE OF MEETING**

Notice is hereby given that a Special Council Meeting will be held in the Council Chambers at the Gingin Administration Centre on 30 April 2024 commencing at 3:30 pm.

**Aaron Cook  
CHIEF EXECUTIVE OFFICER**

## **DISCLAIMER**

Members of the public are advised that Council agendas, recommendations, minutes and resolutions are subject to confirmation by Council and therefore, prior to relying on them, one should refer to the subsequent meeting of Council with respect to their accuracy.

No responsibility whatsoever is implied or accepted by the Shire of Gingin for any act, omission or statement or intimation occurring during Council meetings or during formal/informal conversations with staff.

The Shire of Gingin disclaims any liability for any loss whatsoever and howsoever caused arising out of reliance by any person or legal entity on any such act, omission or statement or intimation occurring during Council meetings or discussions. Any person or legal entity who acts or fails to act in reliance upon any statement does so at that person's or legal entity's own risk.

Applicants and other interested parties should refrain from taking any action until such time as written advice is received confirming Council's decision with respect to any particular issue.

## **ACKNOWLEDGEMENT OF COUNTRY**



The Shire of Gingin would like to acknowledge the Yued people who are the traditional custodians of this land. The Shire would like to pay respect to the Elders past, present and emerging of the Yued Nation and extend this respect to all Aboriginal people. The Shire also recognises the living culture of the Yued people and the unique contribution they have made to the Gingin region.

## TABLE OF CONTENTS

1	DECLARATION OF OPENING .....	4
2	RECORD OF ATTENDANCE, APOLOGIES AND LEAVE OF ABSENCE .....	4
2.1	ATTENDANCE .....	4
2.2	APOLOGIES.....	4
2.3	LEAVE OF ABSENCE.....	4
3	DISCLOSURES OF INTEREST .....	4
4	PUBLIC QUESTION TIME .....	4
4.1	RESPONSES TO PUBLIC QUESTIONS PREVIOUSLY TAKEN ON NOTICE .....	4
4.2	PUBLIC QUESTIONS.....	4
5	PUBLIC STATEMENT TIME .....	4
6	PETITIONS.....	4
7	APPLICATIONS FOR LEAVE OF ABSENCE.....	4
8	ANNOUNCEMENTS BY THE PRESIDING MEMBER.....	4
9	UNRESOLVED BUSINESS FROM PREVIOUS MEETINGS.....	4
10	QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN .....	4
11	REPORTS - OFFICE OF THE CEO .....	5
12	REPORTS - CORPORATE AND COMMUNITY SERVICES .....	5
13	REPORTS - REGULATORY AND DEVELOPMENT SERVICES.....	6
13.1	TEMPORARY WITHDRAWAL OF CAVEAT - LOT 9000, 9001 AND 1 LANCELIN ROAD, LANCELIN (LANCELIN SOUTH).....	6
14	REPORTS - OPERATIONS AND ASSETS .....	146
15	MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN .....	146
16	COUNCILLORS' OFFICIAL REPORTS.....	146
17	NEW BUSINESS OF AN URGENT NATURE.....	146
18	MATTERS FOR WHICH MEETING IS TO BE CLOSED TO THE PUBLIC .....	146
19	CLOSURE.....	146

## **ORDER OF BUSINESS**

### **1 DECLARATION OF OPENING**

### **2 RECORD OF ATTENDANCE, APOLOGIES AND LEAVE OF ABSENCE**

#### **2.1 ATTENDANCE**

#### **2.2 APOLOGIES**

#### **2.3 LEAVE OF ABSENCE**

Nil

### **3 DISCLOSURES OF INTEREST**

### **4 PUBLIC QUESTION TIME**

#### **4.1 RESPONSES TO PUBLIC QUESTIONS PREVIOUSLY TAKEN ON NOTICE**

Nil

#### **4.2 PUBLIC QUESTIONS**

### **5 PUBLIC STATEMENT TIME**

#### **OFFICER RECOMMENDATION**

**That Council resolve to amend the order of business for the meeting to include Public Statement Time.**

### **6 PETITIONS**

### **7 APPLICATIONS FOR LEAVE OF ABSENCE**

### **8 ANNOUNCEMENTS BY THE PRESIDING MEMBER**

### **9 UNRESOLVED BUSINESS FROM PREVIOUS MEETINGS**

Nil

### **10 QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN**

Nil

**11 REPORTS - OFFICE OF THE CEO**

Nil

**12 REPORTS - CORPORATE AND COMMUNITY SERVICES**

Nil

**13 REPORTS - REGULATORY AND DEVELOPMENT SERVICES**

**13.1 TEMPORARY WITHDRAWAL OF CAVEAT - LOT 9000, 9001 AND 1 LANCELIN ROAD, LANCELIN (LANCELIN SOUTH)**

File	LND/137
Author	James Bayliss – Manager Planning and Building
Reporting Officer	Bob Kelly - Executive Manager Regulatory and Development Services
Refer	Nil.
Appendices	<ol style="list-style-type: none"> <li>1. Letter Shire Gingin Caveat Request 17 April 24 [13.1.1 - 2 pages]</li> <li>2. Letter to McLeods requesting to withdraw Shire Caveat [13.1.2 - 3 pages]</li> <li>3. Final Deed of Variation to Replacement Agreement [13.1.3 - 114 pages]</li> <li>4. ASIC Asic Organisation Extract Comprehensive - VIMG WA LANCELIN CITY PTY LTD ACN 676 03 [13.1.4 - 16 pages]</li> </ol>

**DISCLOSURES OF INTEREST**

**PURPOSE**

To consider authorising the temporary withdrawal of a caveat (M468287) lodged against the following Certificates of Title:

- Lot 2914 on Diagram 24526;
- Lot 9000 on Deposited Plan 73642; and
- Lot 9001 on Deposited Plan 73642.

**BACKGROUND**

The Shire entered into a Deed of Agreement (DoA) in 2001 with the then developer of Lancelin South. The DoA largely addressed community infrastructure to be provided for the Lancelin South Structure Plan (LSSP) area, however it also includes provisions regarding an additional lime sand haulage route and remedial works to Old Ledge Point Road. The LSSP provides for ~1250 residential lots, 54 industrial lots and associated public open space (POS).

The officer understands that Stage 1 of Lancelin South was developed in ~2012 with Council providing subdivision clearance at its meeting on 21 May 2013 for 51 lots. Land did not sell as intended, and as such further subdivision was not actioned until ~2021.

The DoA contains various trigger points for community infrastructure to be installed by the developer, however given the slow uptake the trigger points are yet to be reached.

The original Deed (2001) has undergone various revisions as outlined below:

- 5 March 2001;
- Deed of Variation – 14 May 2010;
- Deed of Variation - 22 July 2011;
- Replacement Agreement - 1 December 2021;
- Deed of Variation of Replacement Agreement - 15 March 2022; and
- Deed of Variation of Replacement Agreement - 20 June 2022.

The Deed is secured on the land titles by way of a Caveat registered to the Shire, to secure the Shire's interests and ensure VIMG WA (the current landowner) performs its obligations as required under the Deed.

The landowner is seeking to transfer Lot 1 and Lot 9001 (being the residential land) to VIMG WA Lancelin City Pty Ltd as trustee for VIMG WA Lancelin City Unit Trust.

Lot 9000 (the industrial lots) is to be transferred to another entity, being the Lancelin South Service Commercial Entity.

In order for the above to occur, the Shire will need to temporarily lift the caveat which applies to the land titles. Once the land transfer has taken place, the caveat will be re-logged over the landholdings.

Various documents forming part of the Landowner's request are provided (**see appendices**).

## **COMMENT**

### Council Policy 2.33 – Execution of Documents

This policy establishes guidelines for the execution of documents and the application of the Shire of Gingin Common Seal, in accordance with s.9.49A of the *Local Government Act 1995*.

Section 9.49A of the *Local Government Act 1995* requires that, in order for a document to be executed by a local government, there must either be:

1. *A Council resolution to:*
  - a. *apply the Common Seal to that particular document; or*
  - b. *permit the application of the Seal to a range of documents which includes the document in question; or*
2. *A Council resolution authorising the Chief Executive Officer or another employee, or an agent of the Shire, to sign documents on behalf of the Shire.*

The withdrawal of a caveat is classified as a category 1B document under the Policy, which means that although a specific Council resolution to affix the Seal is not required, a Council decision may be required sanctioning a particular course of action that results in the document requiring execution. In this instance, the course of action is to temporarily withdraw the caveat.

**Officer Comment:**

Clause 3.18 of the DoA states:

*Prior to Clearance of subdivision for the first lot of the Subdivision, the Shire will require and the Developer shall provide to the Shire a bank guarantee or bond, as mutually agreed, **for an amount no less** than the cost of the construction of:*

- a) The Northern Coastal Link;*
- b) Coastal Facilities including provision of power, water, telephone services, car park lighting and ablution facilities;*
- c) A Dual Use Pathway linking the Development area to the Lancelin Community Sporting Club Rooms and from the Lancelin Community Sporting Club Rooms to the existing Dual Use Path System I the Lancelin Town site; and*
- d) The Southern Coastal Link.*

The officer informed the Developer on 27 March 2024 that the existing bank guarantee (\$475,960) does not reflect '**an amount no less**' than the cost of construction of the various community facilities. On face value, the amount appears to be wholly inadequate.

The appropriate process for the bank guarantee to be updated may be part of the subdivision clearance process, as per the Deed provision, as opposed to the temporary lifting of the caveat process.

Clause 3.18 highlights that it was always the intention that the bank guarantee should reflect the cost of construction of the items referenced under a, b, c and d. The officer notes that the original Developer advised Council at the time (2013) that the bank guarantee would be updated at the commencement of subdivisional stages (i.e. prior to clearance of the first lot of the subdivision per the Deed), with the earlier bank guarantee to be cancelled.

It is noted that each stage is a separate subdivision. The officer understands that the Shire has made decisions on this basis on advice from the original Developer, and the 2021 replacement agreement was seemingly entered into by the Shire on this understanding.



It would likely be the case that the DoA would need updating if and when the overall LSSP is to be renewed given its impending expiry. Given that some 23 years has elapsed since the initial Deed in 2001, this approach may be warranted and it will be considered at the relevant time on its merits.

It is also pertinent to note that clause 3.11 of the DoA states:

*The Community Facilities will be constructed in accordance with priorities set by the Shire.*

The officer understands from earlier discussions with Council that the Shire’s priority is for the dual use pathway linking the development area with the Lancelin townsite to be constructed first, notwithstanding construction could occur simultaneously for the various facilities.

The new entities outlined by the landowner must become a party to the Deed, prior to the caveat being temporarily lifted.

**STATUTORY/LOCAL LAW IMPLICATIONS**

*Local Government Act 1995*  
Part 9 – Miscellaneous provisions  
Division 3 – Documents  
Section 9.49A – Execution of documents

**POLICY IMPLICATIONS**

Policy 2.33 – Execution of Documents

**BUDGET IMPLICATIONS**

**STRATEGIC IMPLICATIONS**

Shire of Gingin Strategic Community Plan 2022-2032

<b>Aspiration</b>	3. Planning & Sustainability - Plan for Future Generations
<b>Strategic Objective</b>	3.3 Planning & Land Use - Plan the use of the land to meet future requirements incorporating economic development objectives and community amenity

**VOTING REQUIREMENTS - SIMPLE MAJORITY**

**OFFICER RECOMMENDATION**

**That Council:**

- 1. Agree to temporarily lift the caveat relating to Lot 2914 on Diagram 24526, Lot 9000 on Deposited Plan 73642 and Lot 9001 on Deposited Plan 73642 subject to the following conditions:
  - a. The new entities are to enter into a Replacement Agreement to secure the terms of the Deed prior to lifting of the caveat; and**
  - b. The caveat is to be replaced on the land titles upon transfer of the lots to the new entities.****
- 2. Advise VIMG WA that the dual use pathway linking the development area to the Lancelin townsite and the recreation grounds is the priority when considering timing for construction of the Community Facilities.**
- 3. Encourage VIMG WA to secure all relevant statutory approvals for the construction of the Community Facilities as a matter of urgency, to ensure construction work is able to commence in a timely manner upon the trigger points outlined under the Deed being reached.**



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17 April 2024

James Bayliss  
Manager Planning and Building  
Shire of Gingin  
PO Box 510  
GINGIN WA 6503

By email James.Bayliss@gingin.wa.gov.au

Dear James

**Lancelin South  
Request to Withdraw Caveat P202000 ('Caveat')**

Further to our recent emails, I confirm that we wish to transfer the following lots to development entities within the VIMG Group and refinance these to progress the Lancelin South development:

1. Lot 1 on Diagram 24526, Certificate Volume 1240 Folio 35 (**Lot 1**);
2. Lot 9000 on Deposited Plan 73642, Certificate Volume 2816 Folio 595 (**Lot 9000**); and
3. Lot 9001 on Deposited Plan 73642, Certificate Volume 2816 Folio 596 (**Lot 9001**).

We wish to transfer Lot 1 and Lot 9001, which are to be developed into residential lots, to VIMG WA Lancelin City Pty Ltd (ACN 676 032 769) as trustee for the VIMG WA Lancelin City Unit Trust (**VIMG WA Lancelin City**).

We wish to transfer Lot 9000, which is intended for commercial development, to a different development entity within the VIMG Group. This entity is in the process of being finalised and I will provide these details following finalisation.

It is likely that we will obtain separate finance for the development of Lot 1 and Lot 9001 to that for the development of Lot 9000. This finance will involve the discharge of the existing mortgage effecting these lots and registration of new mortgages. We are also in the process of finalising these financiers and I will provide you with these details once finalised.

We have had our solicitors write to yours requesting the Shire's consent to this intended transfer and refinance and the associated withdrawal and re-registration of the Shire's caveat. Please find attached a copy of this letter.

As the lifting of the caveat is required for finance for construction of the Lancelin South development, we respectfully request the caveat be lifted within **7** business days of this correspondence.

Additionally, I wish to draw your attention to our solicitor's comments concerning the Bank Guarantee we have provided for the Lancelin South development and this being a fixed agreed amount and not subject to review as part of this process.

**AGENDA  
SPECIAL COUNCIL MEETING  
30 APRIL 2024**

**APPENDIX 13.1.1**



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If you have any queries or wish for any further information, please do not hesitate to contact me on 0418 116 216 or [sam.williams@vimg.com.au](mailto:sam.williams@vimg.com.au).

Yours sincerely

A handwritten signature in black ink, appearing to read "Sam Williams".

Sam Williams  
Project Director - WA  
VIMG WA





**Darryl Kipping**  
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17 April 2024

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McLeods Barristers & Solicitors  
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By email [abrocklehurst@mcleods.com.au](mailto:abrocklehurst@mcleods.com.au);  
[fgrgich@mcleods.com.au](mailto:fgrgich@mcleods.com.au)

Our ref: D Kipping/43077471

Dear Madams

**Development Deed – Lancelin South  
Request to Withdraw Caveat P202000 ('Caveat')**

1. We act on behalf VIMG WA Pty Ltd (ACN 652 406 981) (**VIMG WA**), the registered proprietor of the following lots being developed as part of the Lancelin South development (**Development Lots**):
  - (a) Lot 1 on Diagram 24526, Certificate Volume 1240 Folio 35 (**Lot 1**);
  - (b) Lot 9000 on Deposited Plan 73642, Certificate Volume 2816 Folio 595 (**Lot 9000**); and
  - (c) Lot 9001 on Deposited Plan 73642, Certificate Volume 2816 Folio 596 (**Lot 9001**).
2. The Development Lots are situated within the Shire of Gingin (**Shire**) who has informed VIMG WA that you will be representing them in this matter.
3. We refer to the following documents, copies of which are enclosed for your information:
  - (a) 'Replacement Agreement Lot 9001 on Deposited Plan 73642, Lot 9000 on Deposited Plan 73642 and Lot 1 on Diagram 24526' entered into by VIMG WA as 'Buyer', the Shire and Anthony Scott David as trustee for the Matthaus Ltd Partnership dated 15 March 2022, and as varied by a 'Deed of Variation of Replacement Agreement – Lot 9001 on Deposited Plan 73642, Lot 9000 on Deposited Plan 73642 and Lot 1 on Diagram 24526' dated 30 June 2022 (**Development Deed**);
  - (b) Caveat P202000 registered by the Shire against the Development Lots to secure VIMG WA's performance of its obligations under the Development Deed; and
  - (c) the email correspondence between Sam Williams of VIMG WA and James Bayliss of the Shire between 6 February 2024 and 27 March 2024 concerning the intention of

Zaanouni Law Firm & Associates > LuatViet > Fernanda Lopes & Associados > Guevara & Gutierrez > Paz Horowitz Abogados > Sirote > Adepetun Caxton-Martins Agbor & Segun > Davis Brown > East African Law Chambers > For more information on the firms that have come together to form Dentons, go to [dentons.com/legacyfirms](https://www.dentons.com/legacyfirms)

107914154.1

VIMG WA to undertake the following to facilitate construction of the Lancelin South development:

- (i) transfer the Development Lots to special purpose vehicles forming part of the development arm of the VIMG corporate group; and
  - (ii) grant security over the Development Lots to obtain funding for development of the Development Lots (**Development Funding**).
4. VIMG WA wishes to transfer the Development Lots to the following special purpose vehicles that will be wholly owned by the VIMG Group:
  - (a) Lot 1 and Lot 9001 (being within the residential development zone) to VIMG WA Lancelin City Pty Ltd (ACN 676 032 769) as trustee for the VIMG WA Lancelin City Unit Trust (**VIMG WA Lancelin City**). A company search of Lancelin City Pty Ltd is also enclosed for your records; and
  - (b) Lot 9000 (all or part of which is intended for commercial development such as light industrial), to another wholly owned entity of the VIMG Group that is yet to be established. VIMG WA is in the process of finalising its intended corporate structure concerning Lot 9000, for which it intends seeking separate funding from the residential development of Lot 1 and Lot 9001.
5. VIMG WA is still in the process of finalising which financiers it will use to provide the Development Funding, however:
  - (a) the Development Funding will involve the discharge of Mortgage P201999 registered over the Development Lots and its replacement with new mortgage security; and
  - (b) the timing and provider of the Development Funding for Lot 1 and Lot 9001 is expected to be different to that for the Development Funding for Lot 9000.
6. In accordance with the terms of the Development Deed and in particular clauses 3 and 4, we request the Shire:
  - (a) consent to the transfer of Lot 1 and Lot 9001 to VIMG WA Lancelin City;
  - (b) consent to the transfer of Lot 9000 to another entity within the VIMG Group, once the details of the transferee are finalised (such details to be provided in due course);
  - (c) consent to the granting of security over the Development Lots for the Development Funding, once this has been finalised;
  - (d) withdraw Caveat P202000 to facilitate the transfers and registration of security referred to in paragraphs (a) – (c), at settlement of those transfers and registration of security, with the Shire to register a replacement caveat; and
  - (e) commence its internal processes, including preparing any necessary documentation required for this, such as the undertaking as referred to in clause 3 of the Development Deed.
7. It would be appreciated if this request could be processed as a matter of priority as it will impact on timing for completion of the next stage of the Lancelin South development. VIMG WA is in the process of concluding its tender process for construction of this stage, which is to be undertaken on Lot 9001 and VIMG WA hopes to be complete late 2024 early 2025.
8. We also note in Mr Bayliss' email of 27 March 2024 he refers to a need to increase the present bank guarantee provided by VIMG WA to the Shire under clause 5 of the Development Deed (**Development Bank Guarantee**).

Page 3

9. The Development Deed does not provide for any increase or review of the Development Bank Guarantee.
10. The Development Bank Guarantee is for a fixed amount of \$475,960.00 as agreed with the Shire and which was required, and provided, to replace the lapsed bank guarantee previously provided by the late Joseph Beck Matthews under the original deeds entered into between Mr Matthews and the Shire.
11. If you have any questions concerning this matter, please contact Darryl Kipping or Lin Sheh of our office on 08 9323 0999 or email [darryl.kipping@dentons.com](mailto:darryl.kipping@dentons.com) or [lin.sheh@dentons.com](mailto:lin.sheh@dentons.com).

Yours sincerely

*Dentons Australia*

Darryl Kipping  
**Partner**  
Dentons Australia

Enc

**Deed of Variation of  
Replacement Agreement - Lot  
9001 on Deposited Plan 73642,  
Lot 9000 on Deposited Plan  
73642 and Lot 1 on Diagram  
24526**

VIMG WA Pty Ltd (ACN 652 406 981)

Shire of Gingin

Anthony Scott Davis as trustee for the Matthaus Ltd  
Partnership



**McLEODS**

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## Copyright notice

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## Table of Contents

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<b>Copyright notice</b>	<b>i</b>
<b>Details</b>	<b>1</b>
<b>Agreed Terms</b>	<b>1</b>
<b>1. Definitions &amp; Interpretation</b>	<b>1</b>
1.1 Definitions	1
1.2 Interpretation	1
1.3 Headings	1
<b>2. Variation and Amendment of Replacement Agreement</b>	<b>1</b>
<b>3. General Provisions</b>	<b>1</b>
3.1 Acts by agents	1
3.2 Severance	1
3.3 Moratorium	1
3.4 Further assurance	1
3.5 Waiver	1
3.6 Counterparts	1
3.7 Statutory powers	1
3.8 Governing law	1
<b>Signing page</b>	<b>1</b>
<b>Annexure 1 – Replacement Agreement</b>	<b>1</b>

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## Details

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### Parties

**VIMG WA Pty Ltd (ACN 652 406 981)** of Suite 12, Pier 2/3, 13 Hickson Road DAWES POINT NSW 2000  
(Buyer)

**Shire of Gingin**

of 7 Brockman Street GINGIN WA 6503  
(Shire)

**Anthony Scott Davis as trustee for the Matthauss Ltd Partnership**

of c/- McWilliams Davis Lawyers of Level 3, 172 St Georges Terrace PERTH WA 6000  
(ASD)

### Background

- A The Buyer, the Shire and ASD are parties to a Replacement Agreement dated 15 March 2022 (**Replacement Agreement**) in respect of a purchase of the Land, a copy of which is annexed hereto as **Annexure 1**.
- B Clause 5 of the Replacement Agreement provides that the Buyer is to provide the Shire with an unconditional bank guarantee of \$475,960.00 to replace the lapsed bank guarantee.
- C The Parties have agreed to modify clause 5 to reflect that the Shire will accept a new bank guarantee with an expiry date, conditional on the Buyer procuring a replacement bank guarantee at least three (3) months prior to the expiry of the first bank guarantee.
- D The Parties enter into this deed to record the terms of their agreement as more specifically set out in paragraph C of this Deed.

## Agreed Terms

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### 1. Definitions & Interpretation

#### 1.1 Definitions

Except as otherwise defined herein, all terms and phrases used in this Deed that are defined in the Replacement Agreement shall have the same meaning as in the Replacement Agreement .

#### 1.2 Interpretation

In this Deed, unless expressed to the contrary:

- (a) words importing:
  - (i) the singular includes the plural and vice versa; and
  - (ii) a gender or genders include each other gender;

- (b) if a word or phrase is assigned a particular meaning, other grammatical forms of that word or phrase have a corresponding meaning;
- (c) a reference to:
  - (i) a natural person includes a body corporate or local government;
  - (ii) a body corporate or local government includes a natural person;
  - (iii) a professional body includes a successor to or substitute for that body;
  - (iv) a Party includes its legal personal representatives, successors and assigns and if a Party comprises two or more persons, the legal personal representatives, successors and assigns of each of those persons;
  - (v) a statute includes an ordinance, code, regulation, award, local planning scheme, regulation, local law, by-law, requisition, order or other statutory instruments made under any of them and a reference to any of them, whether or not by name, includes any amendments to, re-enactments of or replacements of any of them from time to time in force;
  - (vi) a right includes a benefit, remedy, discretion, authority or power;
  - (vii) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
  - (viii) this Deed or provision of this Deed or any other deed, agreement, instrument or contract includes a reference to:
    - (A) both express and implied provisions; and
    - (B) that other deed, agreement, instrument or contract as varied, supplemented, replaced or amended;
  - (ix) Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
  - (x) any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them; and
  - (xi) a subparagraph, paragraph, subclause, clause, Item, Schedule or Annexure is a reference to, respectively, a subparagraph, paragraph, subclause, clause, Item, Schedule or Annexure of this Deed;
- (d) the meaning of general words or phrases is not limited by specific examples introduced by ‘including’, ‘for example’ or similar expressions; and
- (e) if a Party comprises two or more persons, the covenants and agreements on their part bind them and must be observed and performed by them jointly and each of them severally, and may be enforced against any one or more of them.

### **1.3 Headings**

Except in the Schedule, headings do not affect the interpretation of this Deed.

## 2. Variation and Amendment of Replacement Agreement

The Parties hereby agree to vary and amend the Replacement Agreement by deleting clause 5 of the Replacement Agreement and replacing clause 5 with the following clause:

- “(1) *The Buyer covenants and agrees with the Shire to provide the Shire with an unconditional bank guarantee in the sum of \$475, 960.00 (Four Hundred and Seventy Five Thousand Nine Hundred and Sixty Dollars) (**Buyer Guarantee**) to replace the bank guarantee supported by JBM.*
- (2) *At least three (3) months prior to the lapse of the Buyer Guarantee, the Buyer covenants and agrees with the Shire to procure a replacement bank guarantee in the sum equivalent to the Buyer Guarantee”*

## 3. General Provisions

### 3.1 Acts by agents

All acts and things which a party is required to do under this Deed may be done by the party, the CEO, an officer or the agent, solicitor, contractor or employee of the party.

### 3.2 Severance

If any part of this Deed is or becomes void or unenforceable, that part is or will be severed from this Deed to the intent that all parts that are not or do not become void or unenforceable remain in full force and effect and are unaffected by that severance.

### 3.3 Moratorium

The provisions of a statute which would but for this clause extend or postpone the date of payment of money, reduce the rate of interest or abrogate, nullify, postpone or otherwise affect the terms of this Deed do not, to the fullest extent permitted by law, apply to limit the terms of this Deed.

### 3.4 Further assurance

The Parties must execute and do all acts and things necessary or desirable to implement and give full effect to the terms of this Deed.

### 3.5 Waiver

- (1) Failure to exercise or delay in exercising any right, power or privilege in this Deed by a Party does not operate as a waiver of that right, power or privilege.
- (2) A single or partial exercise of any right, power or privilege does not preclude any other or further exercise of that right, power or privilege or the exercise of any other right, power or privilege.

### 3.6 Counterparts

This Deed may consist of a number of counterparts. The counterparts taken together constitute one instrument.

### 3.7 Statutory powers

The powers conferred on any party by or under any statutes for the time being in force are, except to the extent that they are inconsistent with the terms and provisions expressed in this Deed, in addition to the powers conferred on any party in this Deed.

**3.8 Governing law**

This Deed is governed by and is to be interpreted in accordance with the laws of Western Australia and, where applicable, the laws of the Commonwealth of Australia.

**4. Costs**

The Buyer shall pay the reasonable costs of the Shire and ASD's solicitors for:

- (a) the preparation, execution and stamping of this Deed and all stamp duties payable hereon; and
- (b) the preparation and lodging of any caveat lodged pursuant to the terms of this Deed and any withdrawal or replacement thereof.

**5. Limitation of Liability**

**5.1 Trustee Limitation of Liability**

- (a) The Trustee enters into the Deed in its capacity as trustee of the Seller Trust and in no other capacity.
- (b) The parties acknowledge that the Trustee incurs the Trustee Liabilities solely in its capacity as trustee of the Seller Trust and agrees that (to the maximum extent permitted by law) the Trustee will cease to have any Trustee Liability if the Trustee ceases for any reason to be trustee of the Seller Trust.
- (c) A Trustee Liability may be enforced against the Trustee only to the extent to which:
  - (i) the Trustee is actually indemnified in respect of that Trustee Liability out of the property of the Seller Trust; and
  - (ii) there is sufficient property held by the Trustee as trustee at the time, which is available to meet that indemnity (after all Seller Trust assets have been allocated to meet the indemnity and any other valid claims).
- (d) Subject to subclause 5.1(e), no person will be entitled to:
  - (i) claim from or commence proceedings against the Trustee in respect of any Trustee Liability in any capacity other than as trustee of the Seller Trust,
  - (ii) enforce or seek to enforce any judgment in respect of any Trustee Liability against any property of the Trustee other than property held by the Trustee as trustee of the Seller Trust;
  - (iii) take any steps to procure or support the appointment of a liquidator, administrator or any other similar office holder to the Trustee on the basis of a Trustee Liability, or prove in any liquidation, administration or arrangement of or affecting the Trustee; or
  - (iv) in respect of a Trustee Liability, appoint or take any steps to procure or support the appointment of a receiver or receiver and manager to any property of the Trustee, other than property which is held by it in its capacity as trustee of the Seller Trust.
- (e) The restrictions in subclauses 5.1(c) and 5.1(d) do not apply to any Trustee Liability to the extent to which there is, whether under the Seller Trust deed or by operation of law, a reduction in the extent of the Trustee's indemnification, or in respect of which the Trustee

is not entitled to be indemnified, out of the property of the Seller Trust, as a result of the Trustee's fraud, negligence or breach of trust.

- (f) Each other party to the Deed agrees that no act or omission of the Trustee (including any related failure to satisfy any Trustee Liabilities) will constitute fraud, negligence or breach of trust of the Trustee for the purposes of clause 5.1(e) to the extent to which the act or omission was caused or contributed to by any failure of that party to fulfil its obligations relating to the Seller Trust or by any other act or omission of that party.
- (g) No attorney, agent or other person appointed in accordance with the Deed has authority to act on behalf of the Trustee in a way which exposes the Trustee to any personal liability, and no act or omission of such a person will be considered fraud, negligence or breach of trust of the Trustee for the purposes of clause 5.1(e).
- (h) This limitation of the Trustee's Liability applies despite any other provisions of the Deed and extends to all Trustee Liabilities of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to the Deed or its performance.
- (i) The Trustee is not obliged to do or refrain from doing anything under the Deed (including incur any liability) unless the Trustee's liability is limited in the same manner as set out in clauses 5.1(a) to 5.1(h).
- (j) All the benefits and protections provided to the Trustee under this clause 5 are taken to apply to and be provided to (and may be enforced by) FIRST FINANCIAL TRUST & ASSET MANAGEMENT CO. COMPANY NUMBER 0013202600 in its capacity as executor of the estate of JBM (FFTAM).
- (k) Nothing in this clause 5 is taken to impose any liability, duty or obligation on FFTAM.

## **5.2 Definitions in this clause 5**

In this clause:

- (a) **Seller Trust** means the trust on which the Trustee holds the Property for the benefit of the Matthaus Limited Partnership;
- (b) **Trustee** means ANTHONY SCOTT DAVIS; and
- (c) **Trustee Liability** means any liability or obligation (of any kind including, without limitation, for negligence, in tort, in equity, or under statute) of the Trustee which arises in any way under or in connection with the Deed or its performance, or any representation, warranty, conduct, omission, agreement or transaction made under or in connection with the Deed or its performance.

## Signing page

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EXECUTED by the parties as a deed

2022

EXECUTED by **VIMG WA Pty Ltd (ACN 652 406 981)** pursuant to Section 127 of the Corporations Act:

YI QIANG

Full Name of Sole Director & Sole Secretary



Signature of Sole Director & Sole Secretary

The COMMON SEAL of the SHIRE OF GINGIN was hereunto affixed in the presence of –

\_\_\_\_\_  
Signature of President

\_\_\_\_\_  
Full Name of President

\_\_\_\_\_  
Signature of Chief Executive Officer

\_\_\_\_\_  
Full name of Chief Executive Officer

**SIGNED** by **ANTHONY SCOTT DAVIS** as trustee for the Matthaus Limited Partnership in the presence of: )  
)  
)

\_\_\_\_\_  
Signature of **ANTHONY SCOTT DAVIS**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness name

\_\_\_\_\_  
Witness address

\_\_\_\_\_  
Witness occupation



## Annexure 1 – Replacement Agreement

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Replacement Agreement  
Lot 9001 on Deposited Plan  
73642, Lot 9000 on Deposited  
Plan 73642 and Lot 1 on  
Diagram 24526

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VIMG WA Pty Ltd (ACN 652 406 981)

Shire of Gingin

Anthony Scott Davis as trustee for the Matthaus Ltd  
Partnership



McLEODS  
Barristers & Solicitors  
Stirling Law Chambers | 220 Stirling Highway | CLAREMONT WA 6010  
Tel: (08) 9383 3133 | Fax: (08) 9383 4935  
Email: [mcleods@mcleods.com.au](mailto:mcleods@mcleods.com.au)  
Ref: FB/ACB/GING/12063

replacement agreement (tracked changes - 21.12.2021).docx v2

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## Table of Contents

---

Copyright notice	i
Details	1
Agreed Terms	2
1. Buyer's Covenants	2
2. Charge and Caveat	2
3. Restrictions on Disposal	2
4. Withdrawal of Caveat	2
5. Provision of Bank Guarantee	2
6. Withdrawal of the Caveats	3
7. Release	3
8. Costs	3
9. Limitation of Liability	3
9.1 Trustee Limitation of Liability	3
9.2 Definitions in this clause 9	4
10. Interpretation	5
Signing page	6
Annexure 1 – Original Deeds	7

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## Details

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### Parties

**VIMG WA Pty Ltd (ACN 652 406 981)** of Suite 12, Pier 2/3, 13 Hickson Road DAWES POINT NSW 2000  
(Buyer)

**Shire of Gingin**  
of 7 Brockman Street GINGIN WA 6503  
(Shire)

**Anthony Scott Davis as trustee for the Matthaus Ltd Partnership**  
of c/- McWilliams Davis Lawyers of Level 3, 172 St Georges Terrace PERTH WA 6000  
(ASD)

### Background

- A The Buyer is entitled to be registered as the proprietor of an estate in fee simple in land being:
- (a) Lot 9001 on Deposited Plan 73642 and being the whole of the land comprised in Certificate of Title Volume 2816 Folio 596;
  - (b) Lot 9000 on Deposited Plan 73642 and being the whole of the land comprised in Certificate of Title Volume 2816 Folio 595;
  - (c) Lot 1 on Diagram 24526 and being the whole of the land comprised in Certificate of Title Volume 1240 Folio 35.
- (together, the **Lots**).
- B Caveats O970371 and O970372 (together, the **Caveats**) encumbers the Lots in favour of the Shire and is supported by the terms of a deed dated 1 December 2021 between Anthony Scott Davis and the Shire which in turn is supported by the terms of the following deeds:
- (a) Deed dated 6 March 2001 between Joseph Beck Matthews and the Shire;
  - (b) Deed of Variation dated 14 May 2010 between JBM and the Shire; and
  - (c) Deed dated 13 December 2013 between JBM and the Shire.
- (together, the **Original Deeds**), copies of which are annexed hereto as Annexure 1 and forms part of this Deed. For the avoidance of doubt the term "Original Deeds" includes the deed dated 1 December 2021 between Anthony Scott Davis and the Shire.
- C Joseph Beck Matthews (**JBM**) died on 3 January 2020.
- D JBM owned the Lots on trust for the Matthaus Ltd Partnership (**MLP**).
- E Anthony Scott Davis was appointed the Administrator of the estate of JBM and subsequently the trustee of MLP.

- F ASD has sold the Lots pursuant to a contract of sale with the Buyer. ASD has requested that the Shire provide a withdrawal of the Caveats to allow for the transfer of the Lots to the Buyer.
- G The Shire has agreed to ASD's request and the Shire has agreed subject to the Buyer entering into this deed to secure compliance by the Buyer with the obligations set out in the Original Deeds and the provision of a bank guarantee to replace the lapsed bank guarantee in the sum of \$475,960.00 (Four Hundred and Seventy Five Thousand Nine Hundred and Sixty Dollars).

## **Agreed Terms**

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### **1. Buyer's Covenants**

The Buyer **HEREBY COVENANTS AND AGREES** with the Shire that the Buyer agrees to perform and be bound by the obligations of JBM under the Original Deeds, as if the Buyer had been a party to the Original Deeds.

### **2. Charge and Caveat**

The Buyer **HEREBY CHARGES** the Buyer's interest in the Lots in favour of the Shire with the performance of the Buyer's obligations pursuant to this Deed and the Original Deeds and with the payment of all or any monies payable or which may become payable by the Buyer to the Shire and for the purpose of securing such obligations authorises the Shire to lodge an absolute caveat at the Western Australian Land Information Authority trading as Landgate against the Certificate of Title to the Lots in order to protect the rights and interests of the Shire under this Deed.

### **3. Restrictions on Disposal**

The Buyer shall not sell, transfer, mortgage, charge, assign or otherwise dispose of or encumber the Lots or any part thereof without the prior written consent of the Shire, which consent the Shire will not withhold if the person to whom any such right or interest in the Lots of any part thereof is to be granted, enters into a Deed (or in the case of a mortgage, a specific undertaking) with the Shire, whereby such person covenants to observe and perform the covenants on the part of the Buyer herein contained to ensure that any successor observes such obligations, such Deed or undertaking to be prepared by the Shire's solicitors at the expense of the Buyer.

### **4. Withdrawal of Caveat**

Subject to there being no existing or unremedied breach of any condition of this Deed and subject to:

- (a) the Buyer complying with clause 3 of this Deed the Shire will at the request of the Buyer and at the Buyer's cost provide to the Buyer a withdrawal of any caveat lodged by the Shire pursuant to this Deed sufficient to enable the registration of any mortgage or charge the Lots provided that the Shire is entitled to reodge its absolute caveat following the registration of such mortgage or charge;
- (b) the Buyer having complied with the obligations set out under the Original Deeds to the Shire's satisfaction the Shire shall provide on receipt of a written request and at the cost of the Buyer a withdrawal of any caveat lodged by the Shire pursuant to this Deed.

### **5. Provision of Bank Guarantee**

The Buyer covenants and agrees with the Shire to provide the Shire with an unconditional bank guarantee in the sum of \$475,960.00 (Four Hundred and Seventy Five Thousand Nine Hundred and Sixty Dollars) to replace the lapsed bank guarantee supported by JBM.

**6. Withdrawal of the Caveats**

- (a) Subject to the Buyer having complied with its obligations under this Deed, the Shire must promptly, when requested by the Buyer or ASD, take all necessary action for the Caveats to be withdrawn.
- (b) The Buyer must on demand pay the Shire's reasonable costs (including legal costs and registration fees) associated with the Caveats being withdrawn.

**7. Release**

- (a) On and from the date of this Deed, the Shire absolutely releases and discharges the estate of JBM and ASD from any and all liability whatsoever in respect of the Original Deeds.
- (b) Nothing in this Deed or the Original Deeds is taken to create a personal obligation on Anthony Scott Davis.

**8. Costs**

The Buyer shall pay the reasonable costs of the Shire's solicitors for:

- (a) the preparation, execution and stamping of this Deed and all stamp duties payable hereon; and
- (b) the preparation and lodging of any caveat lodged pursuant to the terms of this Deed and any withdrawal or replacement thereof.

**9. Limitation of Liability**

**9.1 Trustee Limitation of Liability**

- (a) The Trustee enters into the Deed in its capacity as trustee of the Seller Trust and in no other capacity.
- (b) The parties acknowledge that the Trustee incurs the Trustee Liabilities solely in its capacity as trustee of the Seller Trust and agrees that (to the maximum extent permitted by law) the Trustee will cease to have any Trustee Liability if the Trustee ceases for any reason to be trustee of the Seller Trust.
- (c) A Trustee Liability may be enforced against the Trustee only to the extent to which:
  - (i) the Trustee is actually indemnified in respect of that Trustee Liability out of the property of the Seller Trust; and
  - (ii) there is sufficient property held by the Trustee as trustee at the time, which is available to meet that indemnity (after all Seller Trust assets have been allocated to meet the indemnity and any other valid claims).
- (d) Subject to subclause 9.1(e), no person will be entitled to:
  - (i) claim from or commence proceedings against the Trustee in respect of any Trustee Liability in any capacity other than as trustee of the Seller Trust.
  - (ii) enforce or seek to enforce any judgment in respect of any Trustee Liability against any property of the Trustee other than property held by the Trustee as trustee of the Seller Trust.

- (iii) take any steps to procure or support the appointment of a liquidator, administrator or any other similar office holder to the Trustee on the basis of a Trustee Liability, or prove in any liquidation, administration or arrangement of or affecting the Trustee; or
- (iv) in respect of a Trustee Liability, appoint or take any steps to procure or support the appointment of a receiver or receiver and manager to any property of the Trustee, other than property which is held by it in its capacity as trustee of the Seller Trust.
- (e) The restrictions in subclauses 9.1(c) and 9.1(d) do not apply to any Trustee Liability to the extent to which there is, whether under the Seller Trust deed or by operation of law, a reduction in the extent of the Trustee's indemnification, or in respect of which the Trustee is not entitled to be indemnified, out of the property of the Seller Trust, as a result of the Trustee's fraud, negligence or breach of trust.
- (f) Each other party to the Deed agrees that no act or omission of the Trustee (including any related failure to satisfy any Trustee Liabilities) will constitute fraud, negligence or breach of trust of the Trustee for the purposes of clause 9.1(e) to the extent to which the act or omission was caused or contributed to by any failure of that party to fulfil its obligations relating to the Seller Trust or by any other act or omission of that party.
- (g) No attorney, agent or other person appointed in accordance with the Deed has authority to act on behalf of the Trustee in a way which exposes the Trustee to any personal liability, and no act or omission of such a person will be considered fraud, negligence or breach of trust of the Trustee for the purposes of clause 9.1(e).
- (h) This limitation of the Trustee's Liability applies despite any other provisions of the Deed and extends to all Trustee Liabilities of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to the Deed or its performance.
- (i) The Trustee is not obliged to do or refrain from doing anything under the Deed (including incur any liability) unless the Trustee's liability is limited in the same manner as set out in clauses 9.1(a) to 9.1(h).
- (j) All the benefits and protections provided to the Trustee under this clause 9 are taken to apply to and be provided to (and may be enforced by) FIRST FINANCIAL TRUST & ASSET MANAGEMENT CO. COMPANY NUMBER 0013202600 in its capacity as executor of the estate of JBM (FFTAM).
- (k) Nothing in this clause 9 is taken to impose any liability, duty or obligation on FFTAM.

**9.2 Definitions in this clause 9**

In this clause:

- (a) **Seller Trust** means the trust on which the Trustee holds the Property for the benefit of the Mathaus Limited Partnership;
- (b) **Trustee** means ANTHONY SCOTT DAVIS; and
- (c) **Trustee Liability** means any liability or obligation (of any kind including, without limitation, for negligence, in tort, in equity, or under statute) of the Trustee which arises in any way under or in connection with the Deed or its performance, or any representation, warranty, conduct, omission, agreement or transaction made under or in connection with the Deed or its performance.

**10. Interpretation**

In this Deed:

Reference to the parties includes their personal representatives, successors and lawful assigns.

Where a reference to a party includes more than one person the rights and obligations of those persons shall be joint and several.

Headings have been inserted for guidance only and shall be deemed not to form part of the context.

The Schedule and Annexures (if any) form part of the Deed.





Annexure 1 – Original Deeds

Replacement Agreement  
Lot 9001 on Deposited Plan  
73642, Lot 9000 on Deposited  
Plan 73642 and Lot 1 on  
Diagram 24526

Shire of Gingin

Anthony Scott Davis as trustee for the Matthaus Ltd  
Partnership



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## Table of Contents

---

<b>Copyright notice</b>	<b>i</b>
<b>Details</b>	<b>1</b>
<b>Agreed Terms</b>	<b>2</b>
1. ASD's Covenants	2
2. Charge and Caveat	2
3. Restrictions on Disposal	2
4. Withdrawal of Caveat	2
5. Bank Guarantee	2
6. Withdrawal of the Caveats	3
7. Costs	3
8. Interpretation	3
9. Limitation of Liability	3
9.1 Trustee Limitation of Liability	3
9.2 Definitions in this clause 9	4
10. Counterparts	5
<b>Signing page</b>	<b>6</b>
<b>Annexure 1 – Original Deeds</b>	<b>7</b>

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## Details

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### Parties

#### Shire of Gingin

of 7 Brockman Street GINGIN WA 6503  
(Shire)

#### Anthony Scott Davis as trustee for the Matthaus Ltd Partnership

of c/- McWilliams Davis Lawyers of Level 3, 172 St Georges Terrace PERTH WA 6000  
(ASD)

### Background

- A Joseph Beck Matthews is registered as the proprietor of an estate in fee simple in land being:
- (a) Lot 9001 on Deposited Plan 73642 and being the whole of the land comprised in Certificate of Title Volume 2816 Folio 596;
  - (b) Lot 9000 on Deposited Plan 73642 and being the whole of the land comprised in Certificate of Title Volume 2816 Folio 595;
  - (c) Lot 1 on Diagram 24526 and being the whole of the land comprised in Certificate of Title Volume 1240 Folio 35,
- (together, the **Lots**).
- B Caveats M664268, M342059 and H712992 (together, the **Caveats**) encumbers the Lots in favour of the Shire and is supported by the terms of the following deeds of a:
- (a) deed dated 6 March 2001 between Joseph Beck Matthews and the Shire;
  - (b) Deed of Variation dated 14 May 2010 between JBM and the Shire; and
  - (c) Deed dated 13 December 2013 between JBM and the Shire,
- (together, the **Original Deeds**), copies of which are annexed hereto as Annexure 1 and forms part of this Deed.
- C Joseph Beck Matthews (**JBM**) died on 3 January 2020.
- D JBM owned the Lots on trust for the Matthaus Ltd Partnership (**MLP**).
- E Anthony Scott Davis was appointed the Administrator of the estate of JBM and subsequently the trustee of MLP.
- F ASD has requested that the Shire provide a withdrawal of the Caveats to allow for the transfer of the Lots to him as the trustee of MLP.
- G The Shire has agreed to ASD's request and the Shire has agreed subject to ASD entering into this deed to secure compliance by ASD with the obligations set out in the Original Deeds.

## Agreed Terms

---

### 1. ASD's Covenants

ASD HEREBY COVENANTS AND AGREES with the Shire that ASD agrees to perform and be bound by the obligations of JMB under the Original Deeds, as if ASD had been a party to the Original Deeds.

### 2. Charge and Caveat

ASD HEREBY CHARGES ASD's interest in the Lots in favour of the Shire with the performance of ASD's obligations pursuant to this Deed and the Original Deeds and with the payment of all or any monies payable or which may become payable by ASD to the Shire and for the purpose of securing such obligations authorises the Shire to lodge:

(a) an absolute caveat in respect of the land that caveats M664268 and H712992 is registered against; and

(b) a subject to claim caveat in respect of the land that caveat M342059 is registered against;

at the Western Australian Land Information Authority trading as Landgate in order to protect the rights and interests of the Shire under this Deed.

### 3. Restrictions on Disposal

ASD shall not sell, transfer, mortgage, charge, assign or otherwise dispose of or encumber the Lots or any part thereof without the prior written consent of the Shire, which consent the Shire will not withhold if the person to whom any such right or interest in the Lots of any part thereof is to be granted, enters into a Deed (or in the case of a mortgagee, a specific undertaking) with the Shire, whereby such person covenants to observe and perform the covenants on the part of ASD herein contained to ensure that any successor observes such obligations, such Deed or undertaking to be prepared by the Shire's solicitors at the expense of ASD.

### 4. Withdrawal of Caveat

Subject to there being no existing or unremedied breach of any condition of this Deed and subject to:

(a) ASD complying with clause 3 of this Deed the Shire will at the request of ASD and at ASD's cost provide to ASD a withdrawal of any caveat lodged by the Shire pursuant to this Deed sufficient to enable the registration of any mortgage or charge the Lots provided that the Shire is entitled to reledge its absolute caveat following the registration of such mortgage or charge;

(b) ASD having complied with the obligations set out under the Original Deeds to the Shire's satisfaction the Shire shall provide on receipt of a written request and at the cost of ASD a withdrawal of any caveat lodged by the Shire pursuant to this Deed.

### 5. Bank Guarantee

ASD and the Shire agree that:

(a) notwithstanding the terms of the Original Deeds, ASD is not required to provide the Shire with any bank guarantees or other similar security referred to in the Original Deeds; and

- (b) ASD must use reasonable endeavours to assist the Shire to ensure that any transferee or buyer of the Lots shall provide the bank guarantees or similar security as referred to in the Original Deed prior to the transfer of the Lots to the buyer/transferee and that any buyer/transferee is made aware of the Shire's requirement in this regard.

## **6. Withdrawal of the Caveats**

- (a) Subject to ASD having complied with his obligations under this Deed, the Shire must promptly, when requested by ASD, take all necessary action for the Caveats to be withdrawn.
- (b) ASD must on demand pay the Shire's reasonable costs (including legal costs and registration fees) associated with the Caveats being withdrawn.

## **7. Costs**

ASD shall pay the reasonable costs of the Shire's solicitors for:

- (a) the preparation, execution and stamping of this Deed and all stamp duties payable hereon; and
- (b) the preparation and lodging of any caveat lodged pursuant to the terms of this Deed and any withdrawal or replacement thereof.

## **8. Interpretation**

In this Deed:

Reference to the parties includes their personal representatives, successors and lawful assigns.

Where a reference to a party includes more than one person the rights and obligations of those persons shall be joint and several.

Headings have been inserted for guidance only and shall be deemed not to form part of the context.

The Schedule and Annexures (if any) form part of the Deed.

## **9. Limitation of Liability**

### **9.1 Trustee Limitation of Liability**

- (a) The Trustee enters into the Deed in its capacity as trustee of the Seller Trust and in no other capacity.
- (b) The parties acknowledge that the Trustee incurs the Trustee Liabilities solely in its capacity as trustee of the Seller Trust and agrees that (to the maximum extent permitted by law) the Trustee will cease to have any Trustee Liability if the Trustee ceases for any reason to be trustee of the Seller Trust.
- (c) A Trustee Liability may be enforced against the Trustee only to the extent to which:
  - (i) the Trustee is actually indemnified in respect of that Trustee Liability out of the property of the Seller Trust; and
  - (ii) there is sufficient property held by the Trustee as trustee at the time, which is available to meet that indemnity (after all Seller Trust assets have been allocated to meet the indemnity and any other valid claims).

- (d) Subject to subclause 9.1(e), no person will be entitled to:
- (i) claim from or commence proceedings against the Trustee in respect of any Trustee Liability in any capacity other than as trustee of the Seller Trust;
  - (ii) enforce or seek to enforce any judgment in respect of any Trustee Liability against any property of the Trustee other than property held by the Trustee as trustee of the Seller Trust;
  - (iii) take any steps to procure or support the appointment of a liquidator, administrator or any other similar office holder to the Trustee on the basis of a Trustee Liability, or prove in any liquidation, administration or arrangement of or affecting the Trustee; or
  - (iv) in respect of a Trustee Liability, appoint or take any steps to procure or support the appointment of a receiver or receiver and manager to any property of the Trustee, other than property which is held by it in its capacity as trustee of the Seller Trust.
- (e) The restrictions in subclauses 9.1(e) and 9.1(d) do not apply to any Trustee Liability to the extent to which there is, whether under the Seller Trust deed or by operation of law, a reduction in the extent of the Trustee's indemnification, or in respect of which the Trustee is not entitled to be indemnified, out of the property of the Seller Trust, as a result of the Trustee's fraud, negligence or breach of trust.
- (f) Each other party to the Deed agrees that no act or omission of the Trustee (including any related failure to satisfy any Trustee Liabilities) will constitute fraud, negligence or breach of trust of the Trustee for the purposes of clause 9.1(e) to the extent to which the act or omission was caused or contributed to by any failure of that party to fulfil its obligations relating to the Seller Trust or by any other act or omission of that party.
- (g) No attorney, agent or other person appointed in accordance with the Deed has authority to act on behalf of the Trustee in a way which exposes the Trustee to any personal liability, and no act or omission of such a person will be considered fraud, negligence or breach of trust of the Trustee for the purposes of clause 9.1(e).
- (h) This limitation of the Trustee's Liability applies despite any other provisions of the Deed and extends to all Trustee Liabilities of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to the Deed or its performance.
- (i) The Trustee is not obliged to do or refrain from doing anything under the Deed (including incur any liability) unless the Trustee's liability is limited in the same manner as set out in clauses 9.1(a) to 9.1(h).
- (j) All the benefits and protections provided to the Trustee under this clause 9 are taken to apply to and be provided to (and may be enforced by) FIRST FINANCIAL TRUST & ASSET MANAGEMENT CO. COMPANY NUMBER 0013202600 in its capacity as executor of the estate of JBM (FFTAM).
- (k) Nothing in this clause 9 is taken to impose any liability, duty or obligation on FFTAM.

**9.2 Definitions in this clause 9**

In this clause:

- (a) **Seller Trust** means the trust on which the Trustee holds the Property for the benefit of the Mathaus Limited Partnership;



- (b) **Trustee** means ANTHONY SCOTT DAVIS; and
- (c) **Trustee Liability** means any liability or obligation (of any kind including, without limitation, for negligence, in tort, in equity, or under statute) of the Trustee which arises in any way under or in connection with the Deed or its performance, or any representation, warranty, conduct, omission, agreement or transaction made under or in connection with the Deed or its performance.

## 10. Counterparts

This Deed may be executed in any number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same instrument which is deemed to be dated on the date the last party executes their counterparts. The counterparts may be exchanged electronically but the parties must exchange original signed counterparts as soon as practicable after execution.

**Signing page**

EXECUTED by the parties as a deed

1<sup>st</sup> DECEMBER

2021

The COMMON SEAL of the SHIRE OF GINGIN was hereunto affixed in the presence of –



[Signature]  
Signature of President

COLIN WAYNE FEWSTER  
Full Name of President

[Signature]  
Signature of Chief Executive Officer

AARON JOSEPH COOK  
Full name of Chief Executive Officer

SIGNED by ANTHONY SCOTT DAVIS as trustee for the Matthaus Limited Partnership in the presence of: ) ) )

[Signature]  
Signature of ANTHONY SCOTT DAVIS

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness name

\_\_\_\_\_  
Witness address

\_\_\_\_\_  
Witness occupation

## Signing page

EXECUTED by the parties as a deed

2021

The COMMON SEAL of the SHIRE OF GINGIN was heretofore affixed in the presence of –

Signature of President

Full Name of President

Signature of Chief Executive Officer

Full name of Chief Executive Officer

SIGNED by ANTHONY SCOTT DAVIS as trustee for the Mattheus Limited Partnership in the presence of:

Signature of ANTHONY SCOTT DAVIS

Witness

REBECCA SUE SHARKEY

Witness name

CI- LEVEL 3, 172 ST GEORGETICE  
PERTH WA 6000

Witness address

EXECUTIVE ASSISTANT

Witness occupation

Annexure 1 – Original Deeds

**Annexure 1 – Original Deeds**

DATED \_\_\_\_\_ 2001

JOSEPH BECK MATTHEWS

AND

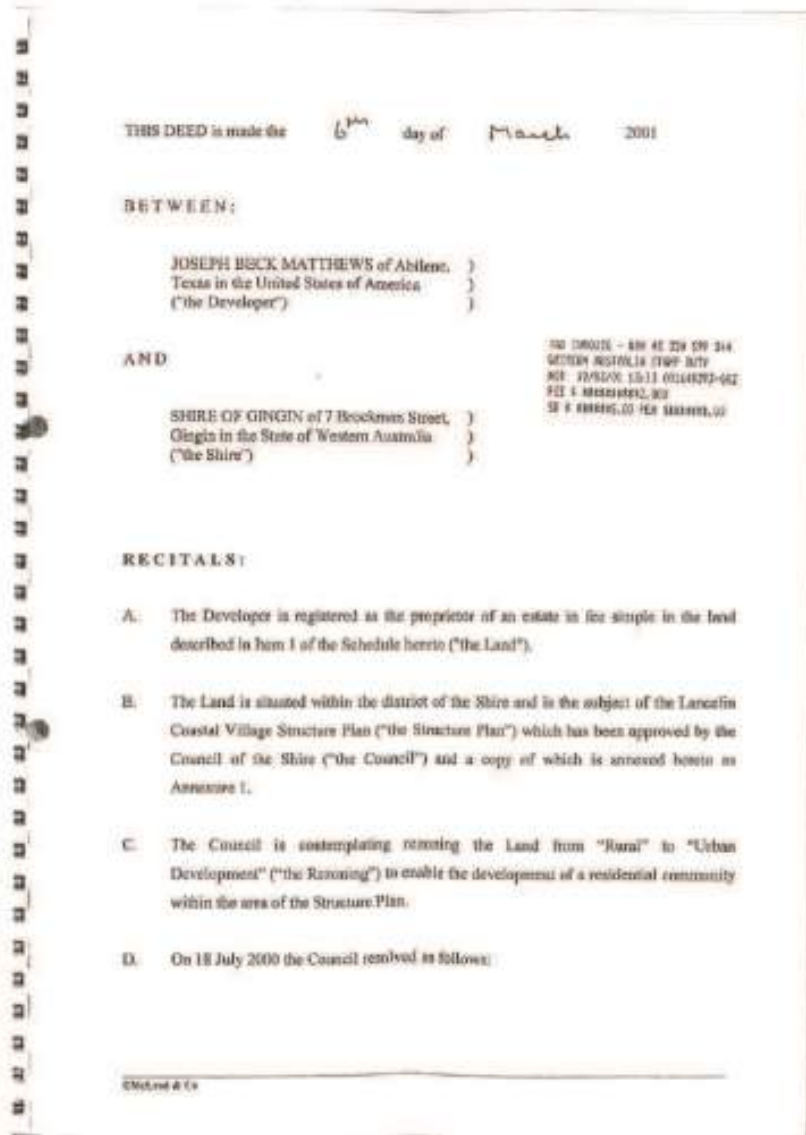
SHIRE OF GINGIN

DEED

McLEOD & CO  
SOLICITORS  
220-222 STUBBING HIGHWAY  
CLAREMONT WA 6010  
Telephone: 9383 3123  
Facsimile: 9385 2693  
Reference: McLNE 12063  
1998  
© McLeod & Co

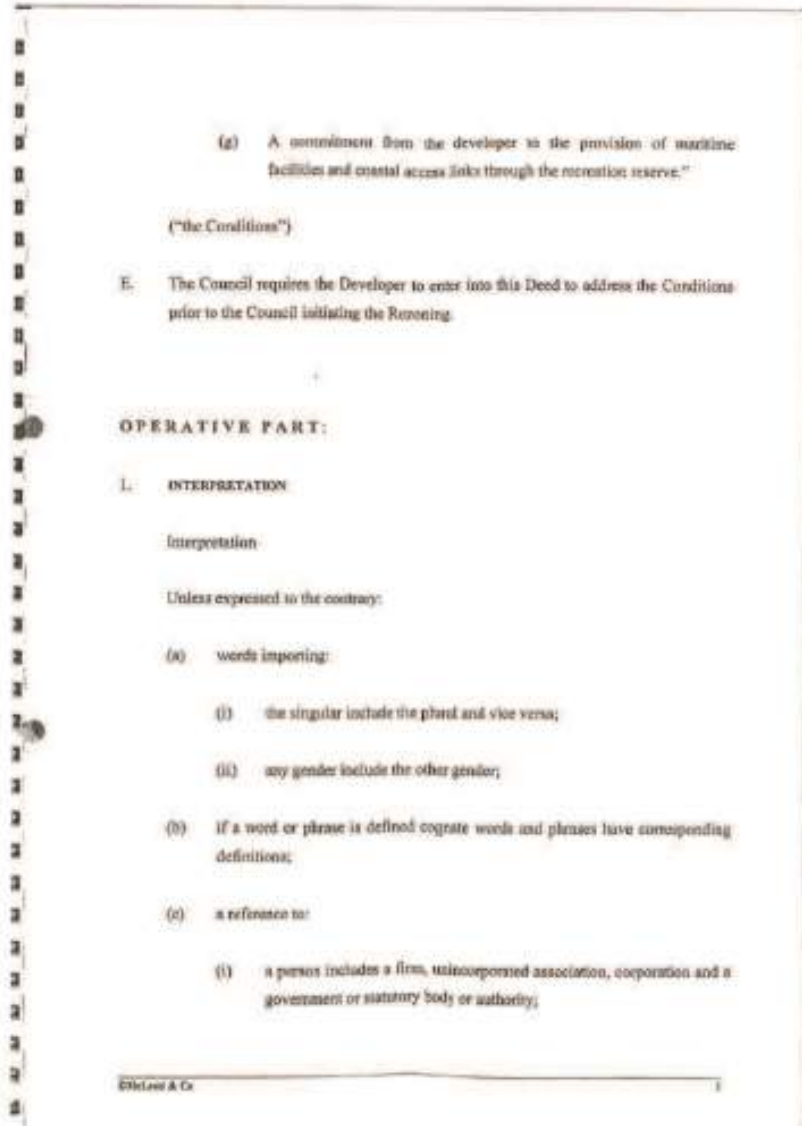
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Page 3



1. Where Council is satisfied that an adequate mechanism for community facility provision has been achieved, Council is unlikely to insist on a staged rezoning of the structure plan area;
2. Council accepts the applicant's suggestion for a managed strategy, whereby a community facilities contribution for facilities within the development is made on a per lot basis, matched by the local authority, and paid into a Reserve fund;
3. A Deed of Agreement would need to be prepared by Council's solicitors, with legal costs shared equally between both parties, and should include:
  - (a) Common understanding that the agreement is based on the Lancelin Coastal Village Structure Plan and any urban development zoning and subdivision that may occur within the context of this Plan;
  - (b) Details for establishment of a Reserve Fund and the management structure for this fund, with Council being the administrator of the Reserve. A Community Management Group will be established and constituted as an advisory committee of Council, and will make recommendations to Council with respect to expenditure from this Reserve;
  - (c) Statement of purpose, namely, the establishment of a mechanism for the funding and staged implementation of community facilities to service the Lancelin Coastal Village Structure Plan area;
  - (d) A list of possible community facilities;
  - (e) A mutual commitment to contribute the equivalent of a single vacant lot minimum annual residential rate, payable into the Reserve Fund upon the sale of each lot within the subdivision area;
  - (f) Other contingencies considered necessary by Council solicitors.

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(ii)	a person includes its legal personal representatives, successors or assignee;
(iii)	a statute, ordinance, code, regulation, award or other law includes regulations and other statutory instruments made or issued under them and consolidations, amendments, re-enactments or replacements or any of them;
(iv)	a right includes a benefit, remedy, discretion, authority or power;
(v)	an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
(vi)	provisions or terms of this Deed or another document, agreement, understanding or arrangement include a reference to both express and implied provisions and terms;
(vii)	time is to be local time in Perth, Western Australia;
(viii)	"\$" or "dollar" is a reference to the lawful currency of Australia;
(ix)	this or any other document includes the document as varied or replaced and notwithstanding any change in the identity of the parties;
(x)	writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmissions;
(xi)	any thing (including, without limitation, any amount) is a reference to the whole or any part of that thing and a reference to a group of things or persons is a reference to any one or more of them.

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32	<b>Headings</b>
33	Headings do not affect the interpretation of this Deed.
34	
35	<b>Schedule</b>
36	The Schedule and Annexure form part of this Deed.
37	
38	<b>2. ACKNOWLEDGEMENTS AND COVENANTS RELATING TO REZONING AND SUBDIVISION</b>
39	
40	<b>2.1</b> The Developer HEREBY ACKNOWLEDGES that the Shire's agreement to
41	initiate the Rezoning, is based on the provisions of the Structure Plan and the
42	Shire being satisfied that:
43	
44	(a) an adequate mechanism for the provision of community facilities is put
45	in place;
46	
47	(b) adequate and appropriate reserve funds are established to be
48	administered by the Shire with advice being provided by a community
49	management group or an advisory committee to the Council on the
50	allocation and expenditure of funds from the reserve fund relating to the
51	community facilities.
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53	<b>2.2</b> The Developer agrees with the Shire that:
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55	(a) within three years of the date of gazettal of the Rezoning, the Developer
56	must:
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58	(i) seek and obtain approval from the Western Australian Planning
59	Commission for the Subdivision;
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and/or maintenance of community facilities ("the Community Facilities") to service each part of the Structure Plan area as it is created by the subdivision of the Land ("the Subdivision");

3.3 on the sale of the fifthth (50<sup>th</sup>) lot forming part of the Subdivision he will establish a community management group which will be created as an incorporated association ("the Community Association") the rules of which must be satisfactory to the Shire and which will become an advisory committee to the Council to make recommendations with respect to expenditure from the Community Facilities Fund for the provision of the Community Facilities;

3.4 he will ensure that the rules of the Community Association provide *inter alia*:

- (i) that the purchaser or occupier of any residential lot within the Subdivision will be eligible to become a member of the Community Association; and
- (ii) that a committee be elected and that membership of the committee shall include one Councillor of the Council and an officer of the Shire both appointed by the Council and a representative of the Developer; and
- (iii) that the committee of the Community Association must liaise with the Shire in regard to the construction and cost of the Community Facilities specified in the Structure Plan Report for each part of the Subdivision as that part of the Subdivision is created;

3.5 on the sale of each residential lot within the Subdivision the Developer will contribute to the Community Facilities Fund an amount equivalent to the single vacant lot minimum annual residential rate applicable at the time of sale;

3.6 the Community Facilities will be constructed in accordance with priorities set by the Shire in consultation with Developer and the Community Association, or, when the Developer is no longer involved, the Community Association, and

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although the Shire shall have due regard to the recommendations of the Community Association, it shall not be bound to draw funds from the Community Facilities Fund in accordance with any recommendation made to it.

- 3.7 In the event that the Community Association becomes defunct or ceases to operate effectively because of lack of membership then the Shire shall be the sole arbiter of the need for Community Facilities and shall have the power to draw on the Community Facilities Fund for the construction and/or maintenance of the Community Facilities;

Maritime Facilities

- 3.8 (i) the Developer on the sale of each residential lot within the Subdivision shall contribute the amount specified in paragraph (ii) of this clause into another reserve fund ("the Maritime Facilities Fund") under the control of the Shire and the monies in the Maritime Facilities Fund shall be used for the construction and/or maintenance by the Shire of maritime facilities in the Upper Coastal Ward within the local government district of the Shire which maritime facilities may include, without limitation, boat launching facilities and boat launching facility access as and when determined necessary by the Shire.
- (ii) in the 2001 calendar year the Developer shall contribute \$140 to the Maritime Facilities Fund upon the sale of a residential lot within the Subdivision, and in each subsequent calendar year the amount to be contributed shall be increased cumulatively by an amount proportional to the percentage annual increase in the minimum single vacant lot annual residential rate.

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Link Road and Coastal Facilities

3.9 he will prepare and submit to the Shire prior to the Subdivision of the Land a Coastal Access and Development Plan to the satisfaction of the Shire showing:

- (i) the pedestrian/vehicular link shown in the Structure Plan for access from the Land to the coast ("Link Road"); and
- (ii) provision for beach-front vehicle parking and associated infrastructure and facilities ("Coastal Facilities").

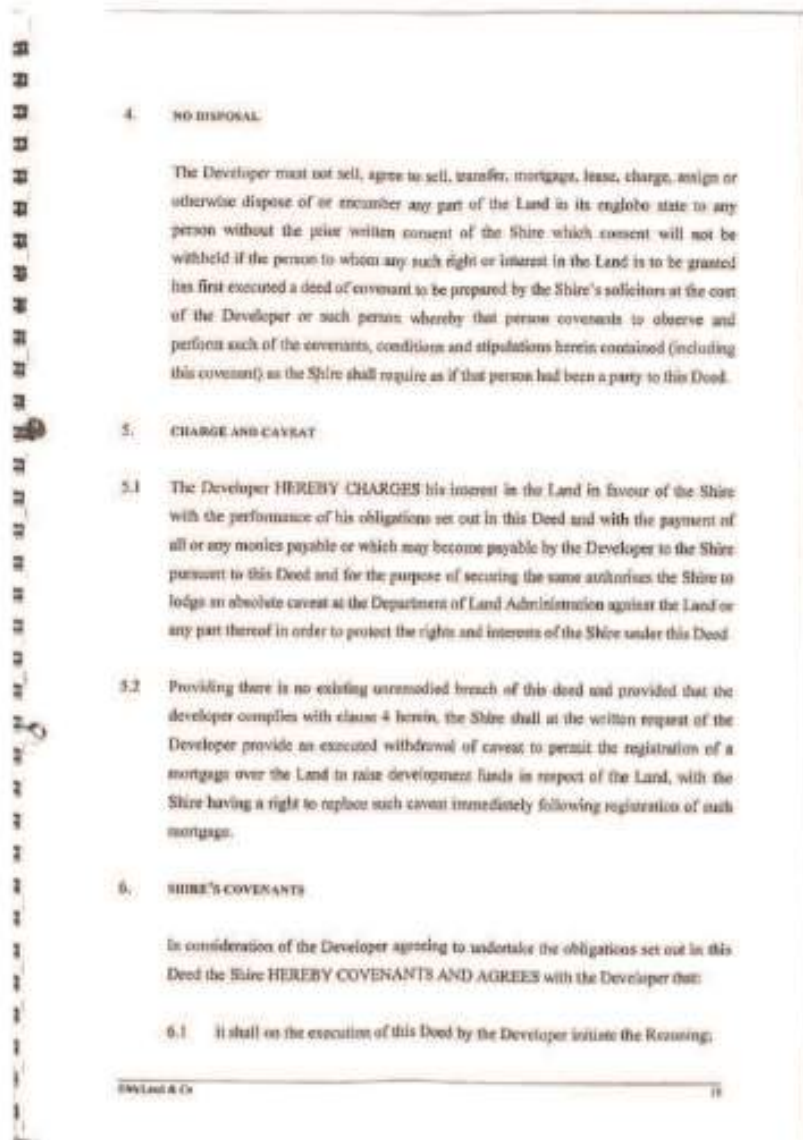
3.10 the construction of the Link Road and Coastal Facilities will include a dual use path incorporated with the Link Road, provision for and construction of power and telephone services, pathway access to the beach and two beach carparks with a total of 80 car bays.

3.11 subject to obtaining all necessary approvals, he will construct the Link Road and Coastal Facilities (including the associated infrastructure referred to in clause 3.10) in accordance with the Coastal Access and Development Plan referred to above as modified from time to time by the Developer with the written approval of the Shire;

Expenditure by Shire

3.12 if, for any reason the funds held by the Shire in the Community Facilities Fund or the Maritime Facilities Fund are in the opinion of the Shire in excess of that required for the reasonable construction and/or maintenance of the Community Facilities or the Maritime Facilities, the Shire may expend monies from either Fund at its absolute discretion towards any developments or works within the Upper Coastal Ward, whether or not the expenditure is connected with the Subdivision.

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4. NO DISPOSAL

The Developer must not sell, agree to sell, transfer, mortgage, lease, charge, assign or otherwise dispose of or encumber any part of the Land in its englobe state to any person without the prior written consent of the Shire which consent will not be withheld if the person to whom any such right or interest in the Land is to be granted has first executed a deed of covenant to be prepared by the Shire's solicitors at the cost of the Developer or such person whereby that person covenants to observe and perform such of the covenants, conditions and stipulations herein contained (including this covenant) as the Shire shall require as if that person had been a party to this Deed.

5. CHARGE AND CAVENANT

5.1 The Developer HEREBY CHARGES his interest in the Land in favour of the Shire with the performance of his obligations set out in this Deed and with the payment of all or any monies payable or which may become payable by the Developer to the Shire pursuant to this Deed and for the purpose of securing the same authorises the Shire to lodge an absolute caveat at the Department of Land Administration against the Land or any part thereof in order to protect the rights and interests of the Shire under this Deed

5.2 Providing there is no existing unremedied breach of this deed and provided that the developer complies with clause 4 herein, the Shire shall at the written request of the Developer provide an executed withdrawal of caveat to permit the registration of a mortgage over the Land to raise development funds in respect of the Land, with the Shire having a right to replace such caveat immediately following registration of such mortgage.

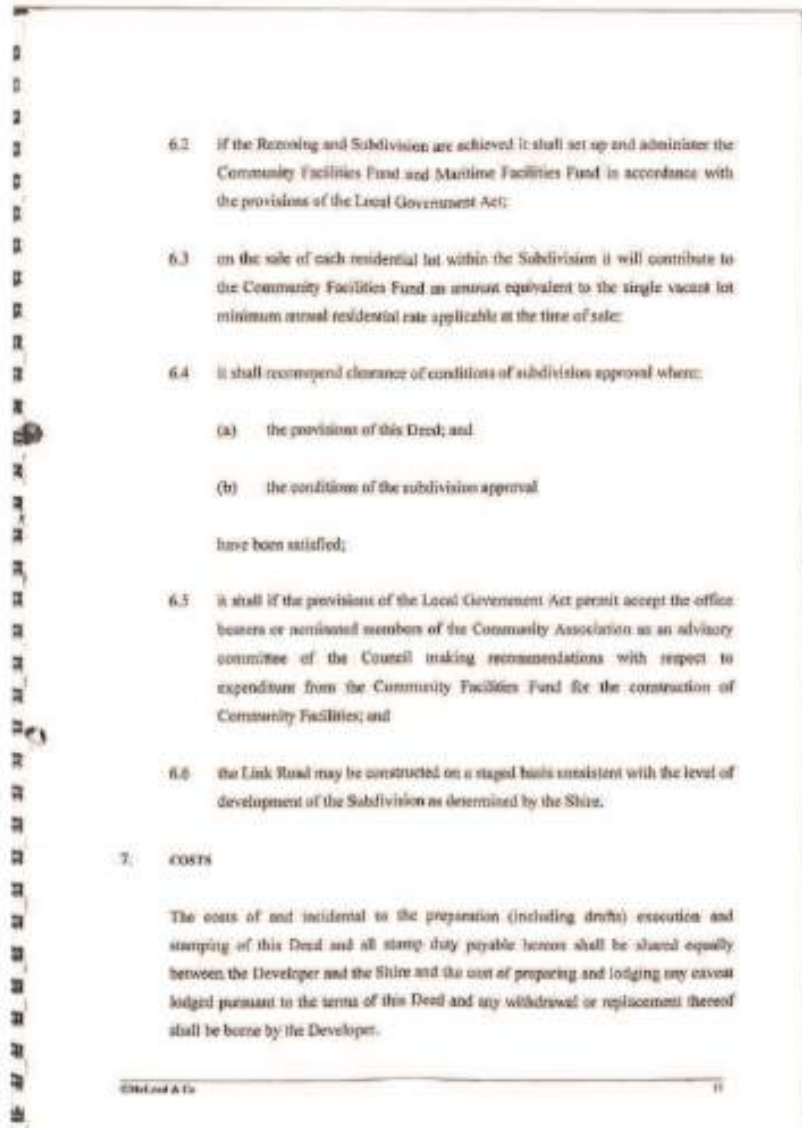
6. SHIRE'S COVENANTS

In consideration of the Developer agreeing to undertake the obligations set out in this Deed the Shire HEREBY COVENANTS AND AGREES with the Developer that:

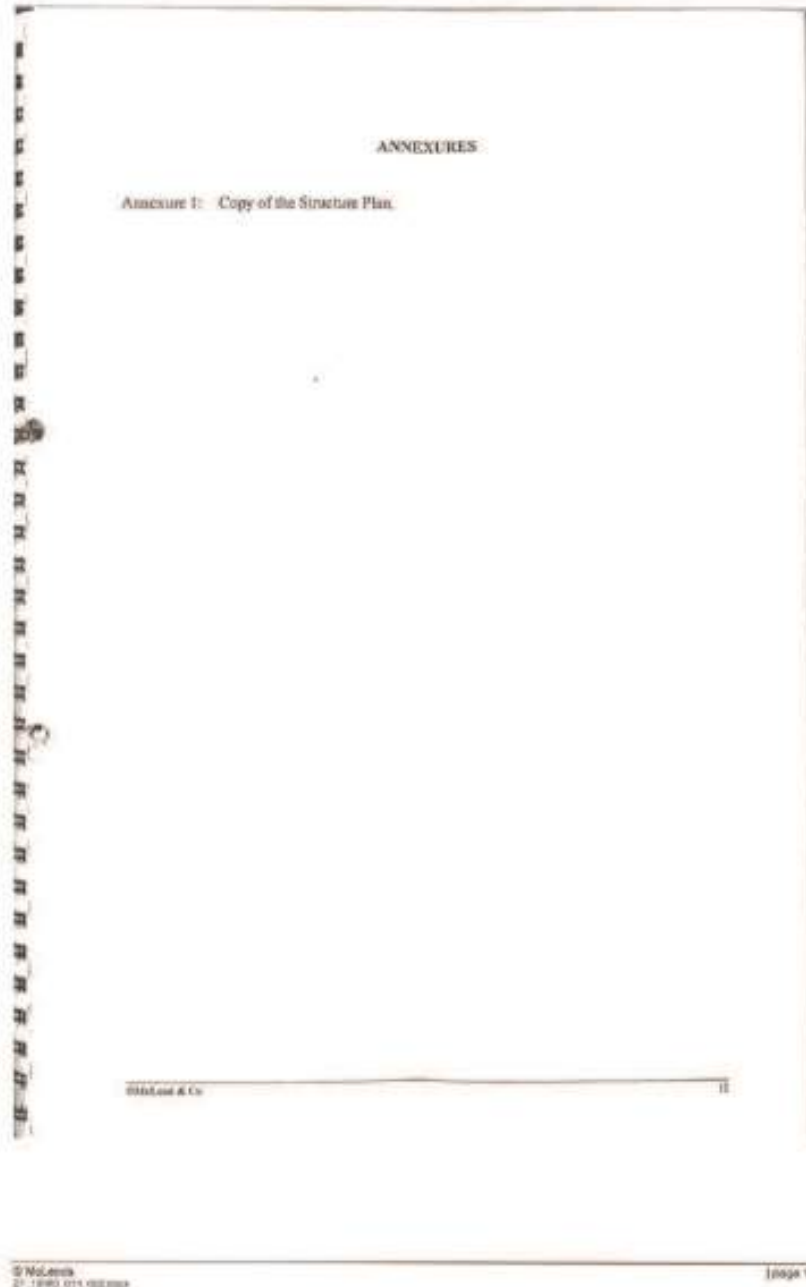
6.1 It shall on the execution of this Deed by the Developer initiate the Rezoning;

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**SCHEDULE**

ITEM 1: LAND

Lot 1 the subject of Diagram 24526 and being the whole of the land comprised in Certificate of Title Volume 1240 Folio 35

Portion of Swan Location 3205 and being the whole of the land comprised in Certificate of Title Volume 2159 Folio 226  
2.52 819

Portion of Swan Location 5243 and being the whole of the land comprised in Certificate of Title Volume 1684 Folio 283

Handwritten notes: *Paul Stanton*  
*Chairs which are used by members of the purpose.*

EXECUTED BY THE PARTIES as a DEED:

SIGNED by the said JOSEPH BECK MATTHEWS in the presence of: *Joseph Beck Matthews*

WITNESS SIGN: *Tony Nicholls*

PRINT NAME: **TONY JAMES NICHOLLS**

ADDRESS: **60 DOWER ROAD, SCARBOROUGH, WA. 6019,**

OCCUPATION: **SOLICITOR,**

THE COMMON SEAL of the SHIRE OF GINGIN was duly affixed hereto in the presence of:

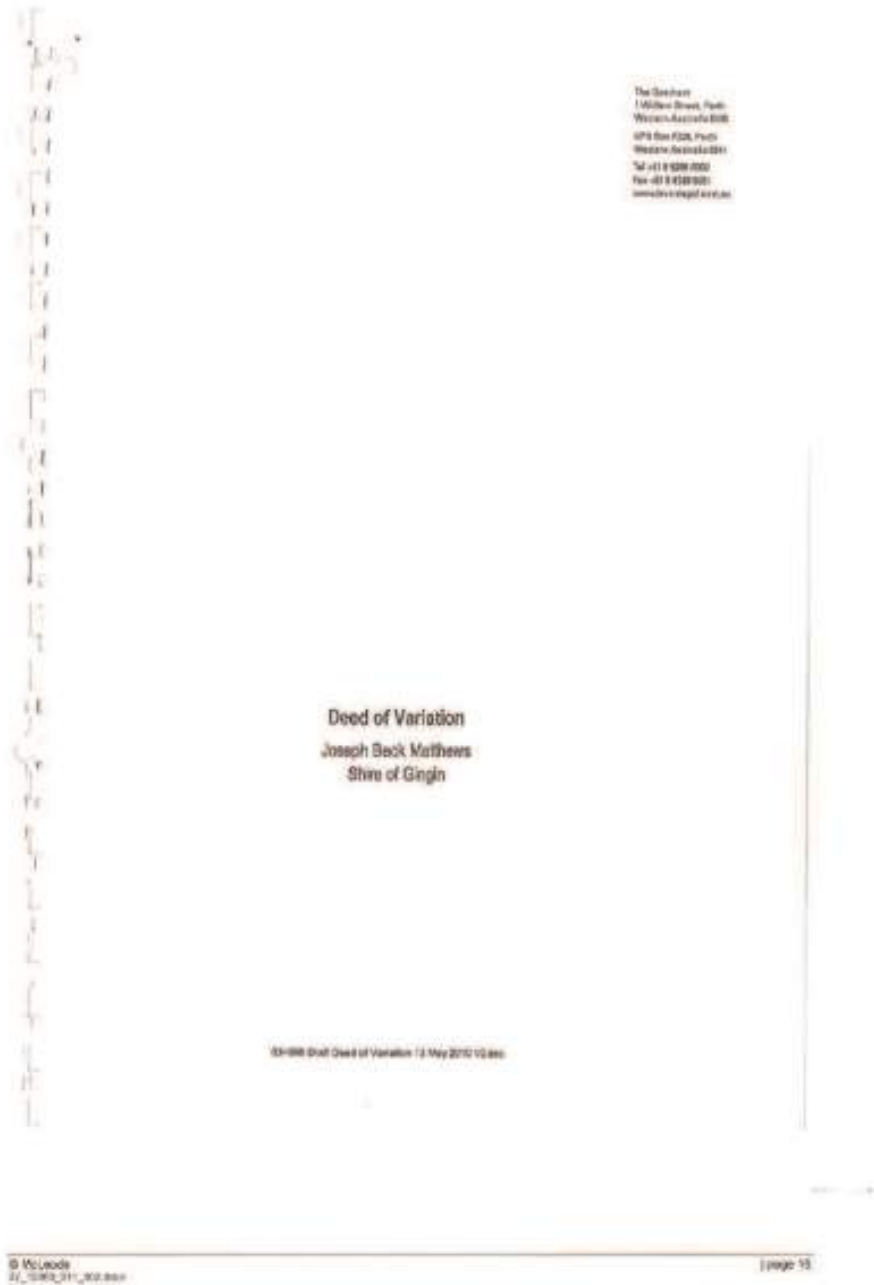
*[Signature]*  
PRESIDENT

*[Signature]*  
CHIEF EXECUTIVE OFFICER



11/04/2024

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**Parties**

Joseph Beck Matthews of Abilene, Texas in the United States of America (the Developer)  
care of Lavin Legal 1 William Street Perth in the State of Western Australia

Shire of Gingin of 7 Brockman Street, Gingin in the State of Western Australia (the Shire)

**Background**

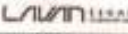
- A. The Parties entered into a Deed of Agreement dated 6 March 2001, a copy of which is annexed hereto as Annexure 1 (Agreement) concerning the future provision for community and other facilities for the Developer's land as described in Item 1 of the Schedule to the Agreement (the Land), then the subject of the Lancelin Coastal Village Structure Plan (LCVSP).
- B. In October 2007 the Shire adopted a new Structure Plan in respect of the Land known as the Lancelin South Structure Plan (LSSP) replacing the LCVSP and initiated a rezoning amendment described as Amendment No. 03 (Rezoning Amendment) to the Shire's Local Planning Scheme No. 6 (Scheme) to rezone the Land from Rural zone to Urban Development zone.
- C. On 20 April 2010 the Council of the Shire granted its final approval to the Rezoning Amendment. The resolution of Council is attached as Annexure 2 (Council Resolution 10.8889). In order to satisfy the requirements of Council Resolution 10.0090 and the LSSP, the parties have agreed to amend the Agreement by this Deed of Variation on the terms and conditions set out herein.

**1 Variations to Agreement**

The Agreement is varied as follows:

- 1.1 References to "the Rezoning" where it appears in the Agreement shall be taken to be a reference to the Rezoning Amendment and the definition of "Rezoning" in Recital C as denoted by the text "(the Rezoning)" is deleted.
- 1.2 References to "the Structure Plan" where it appears in the Agreement shall be taken to be a reference to the LSSP and the definition of "Structure Plan" in Recital B as denoted by the text "(the Structure Plan)" is deleted.
- 1.3 References to "Upper Coastal Ward" where it appears in the Agreement shall be taken to be a reference to the Lancelin town site and surrounds.
- 1.4 Clause 2.1(b) to be amended to read as follows:
  - 1.4.1 (b) adequate and appropriate reserve funds paid or payable by the Developer are established to be administered by the Shire;
- 1.5 Both clauses 3.3 and 3.4 are deleted.

02-428 Deed Deed of Variation 12 May 2010 V01.doc



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1.6. See clause 3.6 to be amended to read as follows:

1.6.1 The Community Facilities will be constructed in accordance with priorities set by the Shire.

1.7. Sub-clause 3.7 to be deleted.

1.8. Sub-Clause 3.8(i) to be amended by deleting '2011' and substituting that with '2010' and deleting 'S140' and substituting that with 'S207'.

1.9. All references in the Agreement to 'Line Road' shall be substituted with 'Coastal Link'.

1.10. Clause 3.9 shall be substituted with the following:

The will prepare and submit to the State prior to the Subdivision of the Land a Coastal Access and Development Plan to the satisfaction of the Shire showing:

- (i) the vehicle/pedestrian/bicycle link depicted in the LSSP as the Southern Coastal Link ('Southern Coastal Link') and the dual use path link depicted in the LSSP as the Northern Coastal Link ('Northern Coastal Link'), as generally shown in the LSSP for access from the Land to the coast (together 'The Coastal Links'); and
- (ii) provision for beachfront vehicle parking and associated infrastructure and facilities ('Coastal Facilities').

1.11. Clause 3.10 shall be substituted with the following:

The construction of the Coastal Links and Coastal Facilities will include a dual use path linking the area the subject of the LSSP to Lancelin town site, provision for and construction of power, water and telephone services, abseiling facilities, pathway access to the beach and two beach cartrucks with a total of 80 car keys.

1.12. Delete the words 'Department of Land Administration' in sub-classes 5.1 and substitute with 'Landgate'.

1.13. Sub-classes 5.1, 5.2 and 5.3 are deleted.

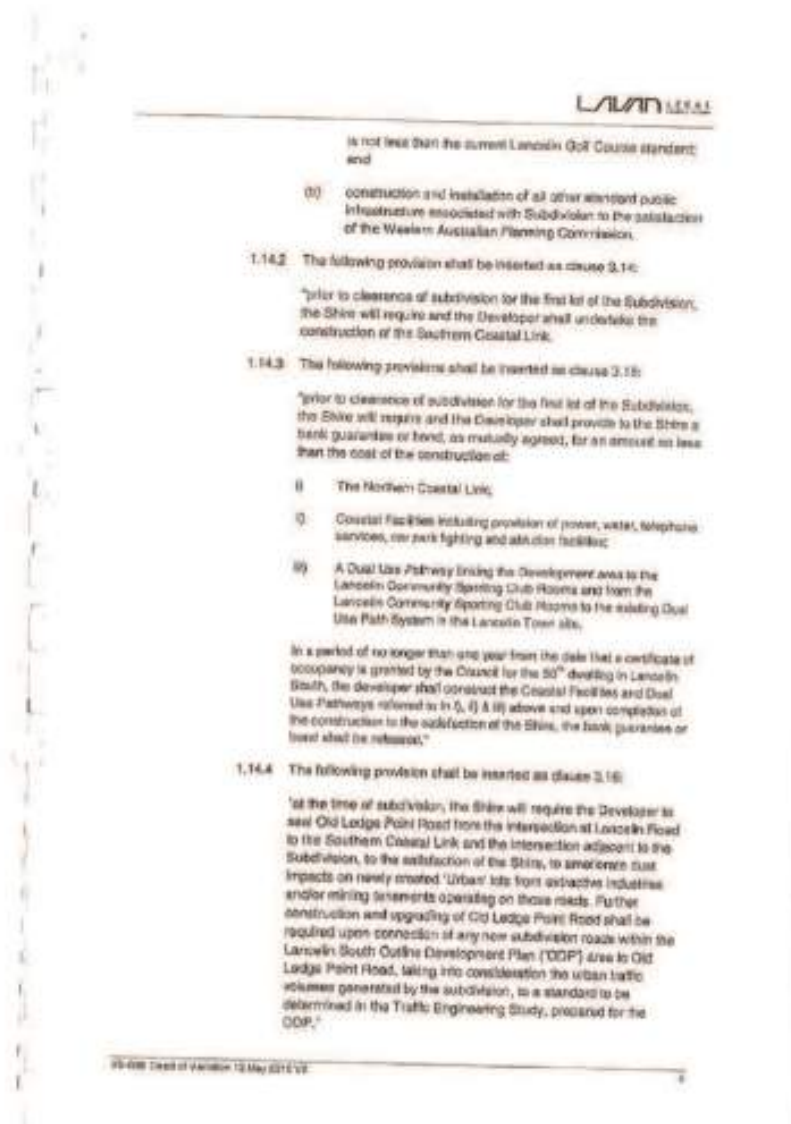
1.14. The Agreement shall incorporate the following provisions:


1.14.1 The following provision shall be inserted as clause 3.13:

In addition to the Developer's other commitments the Developer will also be required to undertake the following:

- (A) Relocation and re-establishment of the fairways and greens of the Lancelin Golf Course following decommissioning as a result of construction of the Coastal Links to a condition that

27-061 Draft Deed of Sublease 12 May 2016 V2.doc





**LAWN LEGAL**

1.14.3 The following provision shall be inserted as clause 3.17:

Prior to clearance of the first lot of the subdivision, the Developer shall provide an Acoustic Report for that portion of the Land the subject of Stage 1 of the Subdivision, in order to determine those lots which may be adversely affected by noise as a result of being located adjacent to Limited Haulage Routes. Each lot so affected will be required, at a minimum, to have a notification pursuant to section 75A of the Transfer of Land Act 1993 lodged on its certificate of title to notify prospective purchasers of the potential for adverse amenity impact as a result of being located adjacent to Limited Haulage Routes and nearby Extractive Industries.

**2 Agreement to remain in effect**

The Agreement remains in full force and effect, as varied by this document.

**3 Inconsistency**

If there is any inconsistency between the terms of the Agreement and this document, then this document will prevail to the extent of any inconsistency.

**4 When variations effective**

The variations to the Agreement set out in this document come into effect on the date of execution of this document.

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13-188 Draft Deed of Variation 12 May 2019 (v2) (doc)

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| page 23

**LVTN**

**Execution**  
Executed as a Deed of Variation  
Date: 17/04/24 2018

Joseph Beck Matthews  
in the presence of

[Signature] \_\_\_\_\_  
Signature Signature

DIANE M FLYNN \_\_\_\_\_  
Name Name

ADMIN ASSISTANT \_\_\_\_\_  
Position Position


Shire of Gingin  
The Common Seal of the  
Shire of Gingin  
is affixed in the presence of:

[Signature] \_\_\_\_\_  
Signature Signature

DAVID T ROE \_\_\_\_\_  
Name Name

CHIEF EXECUTIVE OFFICER \_\_\_\_\_  
Position Position

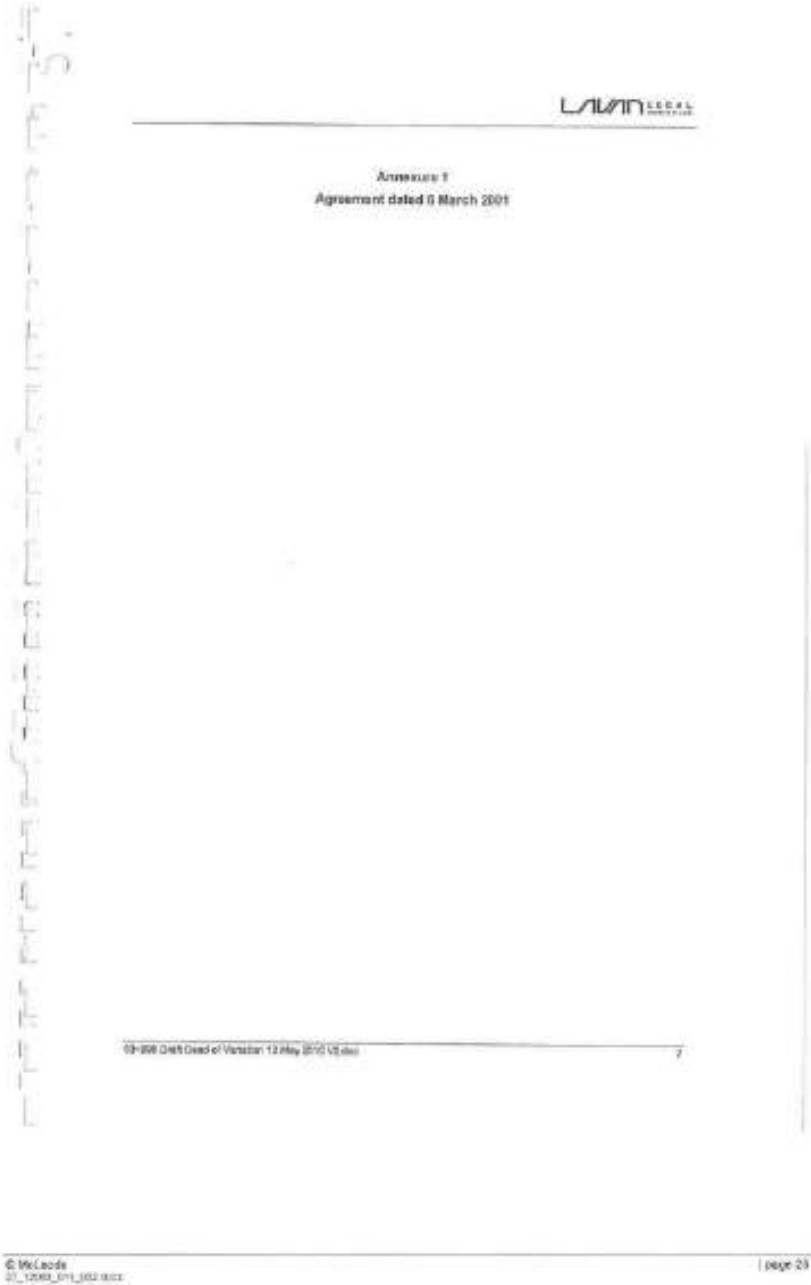
ACTIVE SHIRE PRESIDENT \_\_\_\_\_  
Position Position

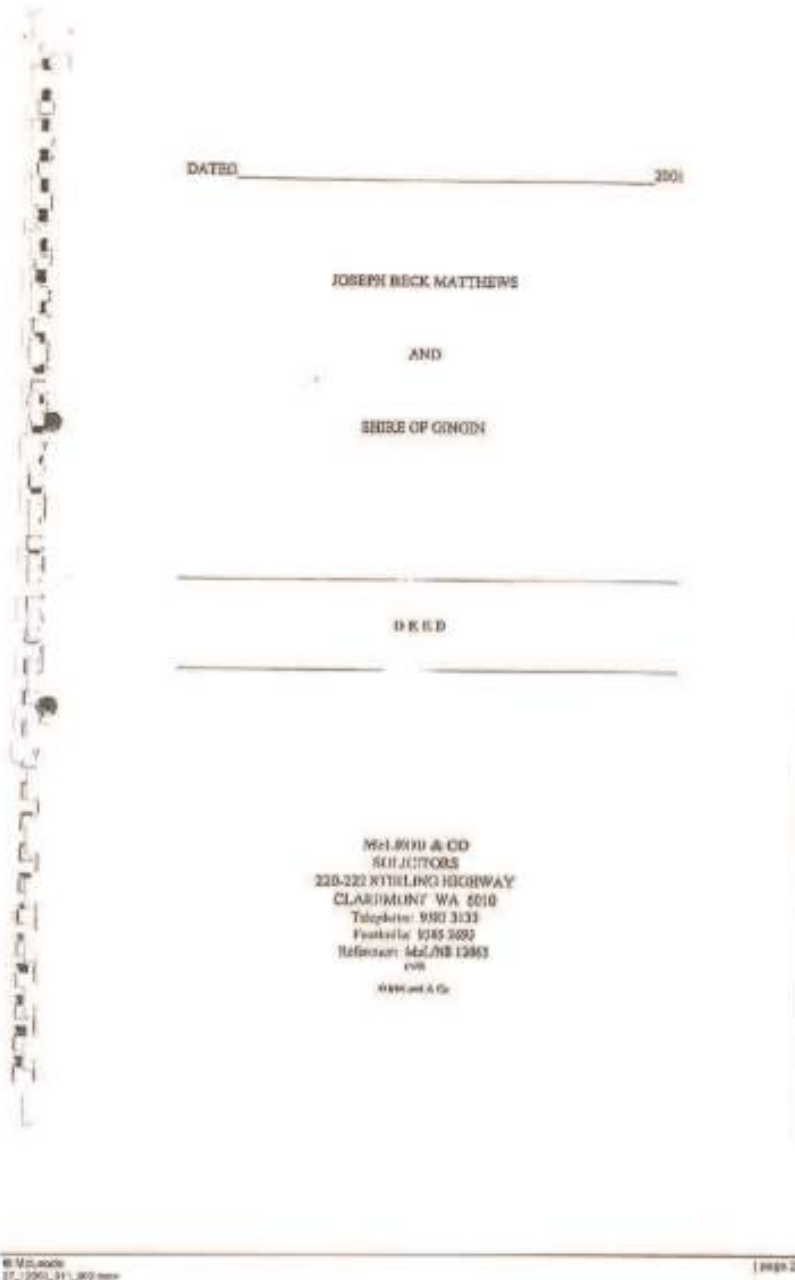


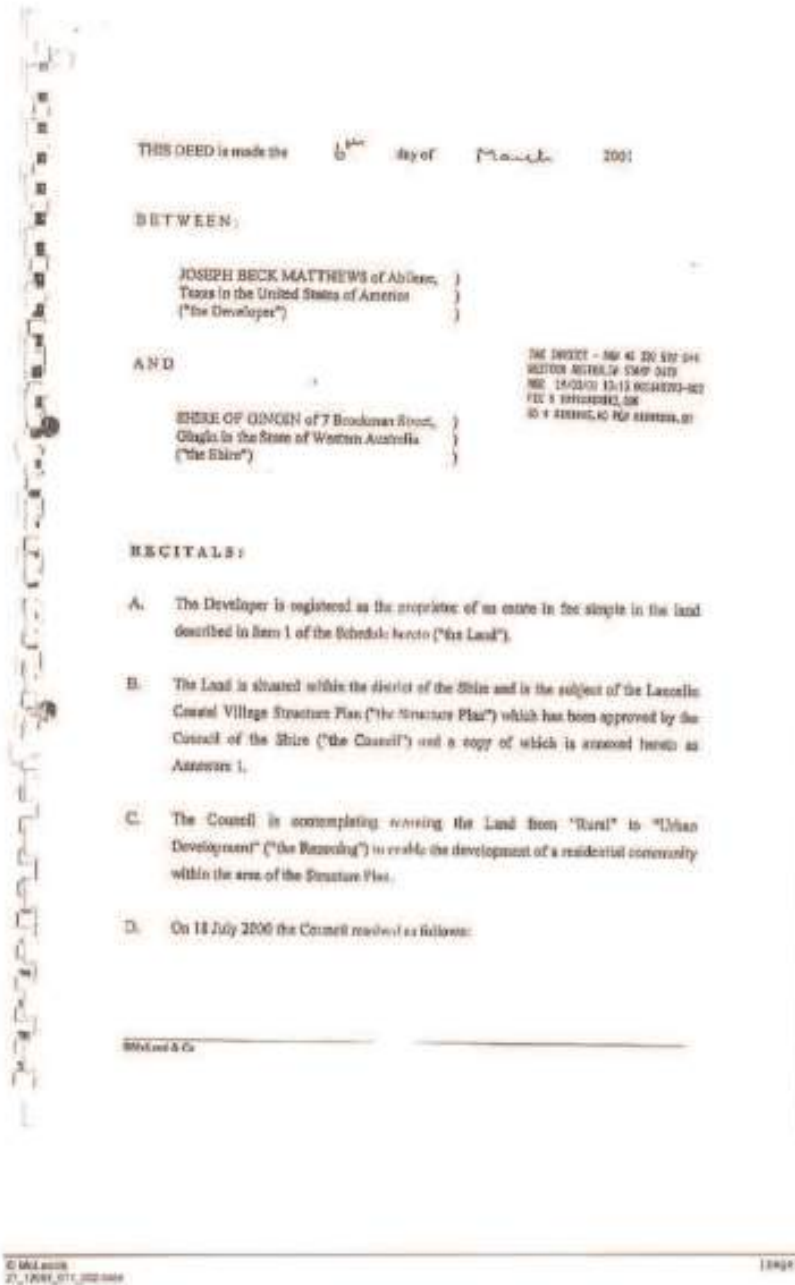
SHIRE OF GINGIN  
LOCAL GOVERNMENT  
COUNCIL  
SHIRE OF GINGIN

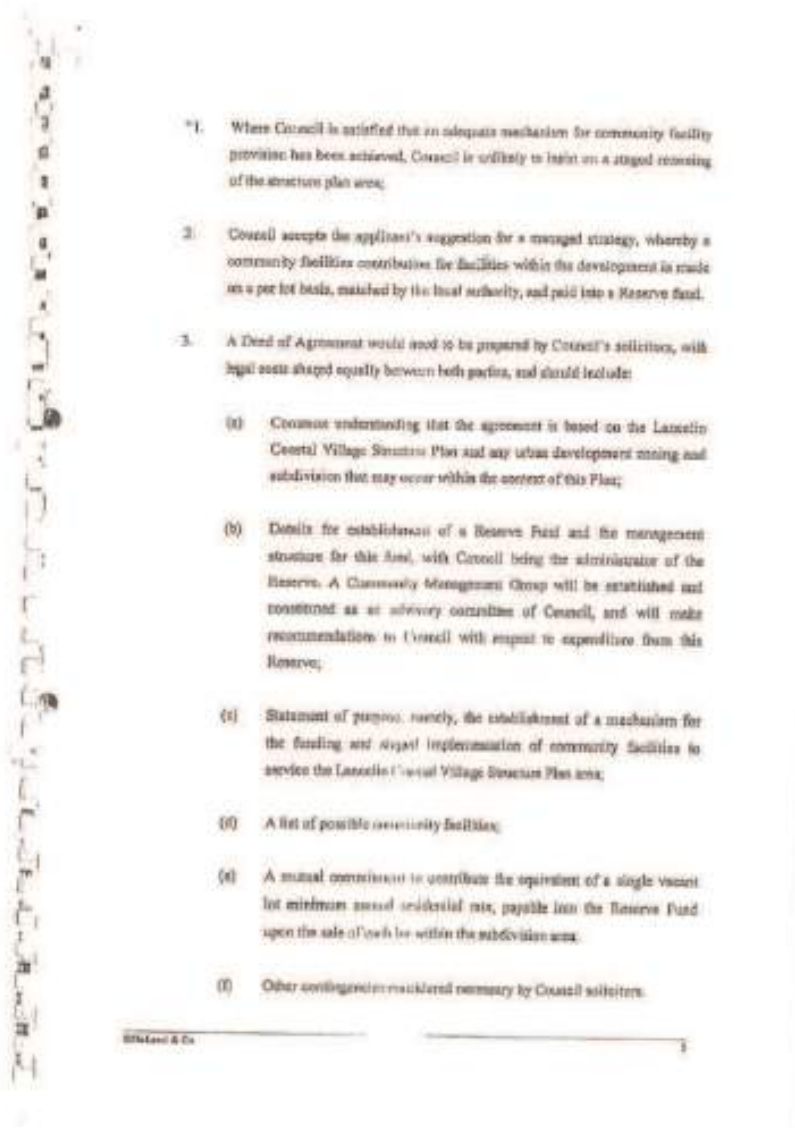
10-188 Deed of Variation 12 May 2018 (2/2)

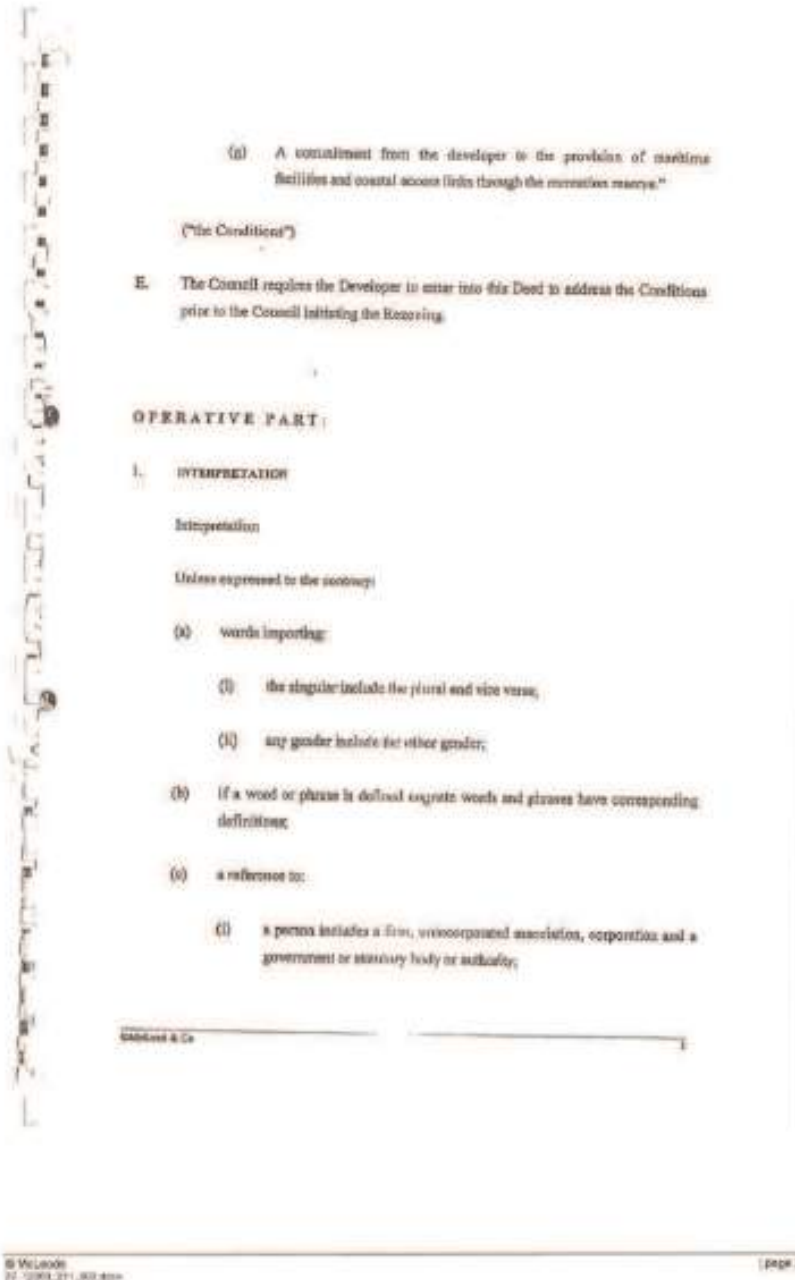









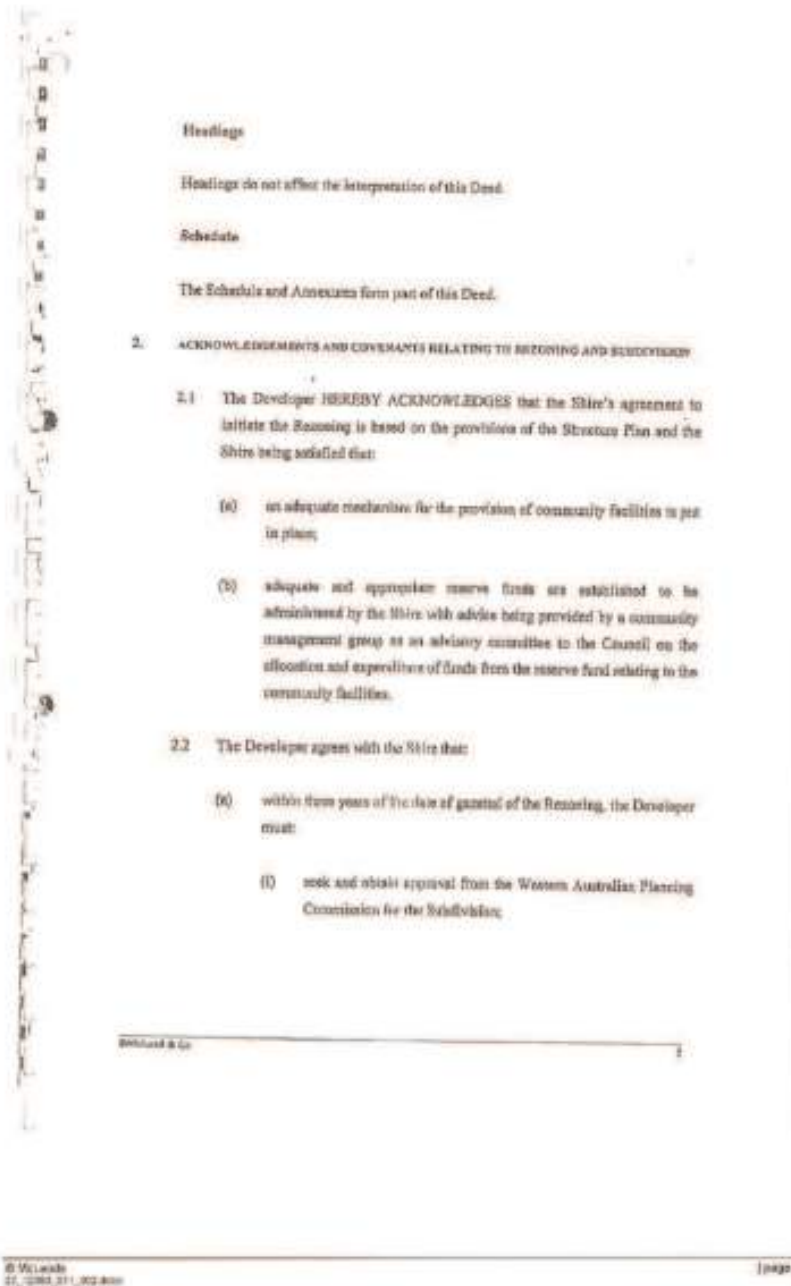






(i)	a person includes its legal personal representatives, successors or assigns;
(ii)	a statute, ordinance, code, regulation, award or other law includes regulations and other statutory instruments made or issued under them and amendments, amendments, re-enactments or replacements or any of them;
(iv)	a right includes a benefit, remedy, discretion, authority or power;
(v)	an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
(vi)	provisions or terms of this Deed or another document, agreement, understanding or arrangement include a reference to both express and implied provisions and terms;
(vii)	time is to be local time in Perth, Western Australia;
(viii)	"\$" or "dollar" is a reference to the lawful currency of Australia;
(ix)	this or any other document includes the document as varied or replaced and notwithstanding any change in the identity of the parties;
(x)	writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmissions;
(xi)	any thing (including, without limitation, any amount) is a reference to the whole or any part of that thing and a reference to a group of things or persons is a reference to any one or more of them.

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(d) act on the Subdivision approval by commencing and using its best endeavours to complete the development works contemplated by the conditions of Subdivision approval; and

(e) use his best endeavours to comply with and obtain certificates of clearance for the conditions of subdivision approval.

(f) If the Developer does not comply with subclause 2.2(a) the Shire may again reverse the Land without complaint from or liability to the Developer;

2.3 The Shire agrees that if the Developer is unable to comply with subclause 2.2(a) because of delay which in the opinion of the Shire is not attributable to the Developer, the Shire will allow a further period of time that the Shire considers reasonable to enable the Developer to fulfil his obligations under subclause 2.2(a).

2.4 The Developer acknowledges that nothing in this Deed affects or purports to fetter the statutory discretion of the Shire.

3. DEVELOPER'S COVENANTS

In consideration of the Shire agreeing to initiate the Resolving the Developer HEREBY COVENANTS AND AGREES with the Shire that:

3.1 any subdivision and development of the Land shall be in accordance with the Structure Plan and the requirements of the Shire;

Community Facilities

3.2 he will facilitate the establishment by the Shire of a reserve fund ("the Community Facilities fund") in accordance with the provisions of the Local Government Act 1992 from which funds will be drawn for the construction

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and/or maintenance of community facilities ("the Community Facilities") to service each part of the Structure Plan area as it is created by the subdivision of the Land ("the Subdivision");

3.3 on the sale of the fifth (5<sup>th</sup>) lot forming part of the Subdivision he will establish a community management group which will be created as an incorporated association ("the Community Association") the rules of which must be satisfactory to the Shire and which will become an advisory committee to the Council to make recommendations with respect to expenditure from the Community Facilities Fund for the provision of the Community Facilities;

3.4 he will ensure that the rules of the Community Association provide inter alia:

- (i) that the purchaser or occupier of any residential lot within the Subdivision will be eligible to become a member of the Community Association; and
- (ii) that a committee be elected and that membership of the committee shall include one Councillor of the Council and an officer of the Shire both appointed by the Council and a representative of the Developer; and
- (iii) that the committee of the Community Association must liaise with the Shire in regard to the construction and cost of the Community Facilities specified in the Structure Plan Report for each part of the Subdivision as that part of the Subdivision is created;

3.5 on the sale of each residential lot within the Subdivision the Developer will contribute to the Community Facilities Fund an amount equivalent to the single vacant lot creation annual residential rate applicable at the time of sale;

3.6 the Community Facilities will be constructed in accordance with priorities set by the Shire in consultation with Developer and the Community Association, or, when the Developer is no longer involved, the Community Association, and

BY CLAUSE 6.5

although the Shire shall have due regard to the recommendations of the Community Association, it shall not be bound to draw funds from the Community Facilities Fund in accordance with any recommendation made to it.

- 3.7 In the event that the Community Association becomes defunct or ceases to operate effectively because of lack of membership then the Shire shall be the sole arbiter of the need for Community Facilities and shall have the power to draw on the Community Facilities Fund for the construction and/or maintenance of the Community Facilities;

Maritime Facilities

- 3.8 (i) the Developer on the sale of each residential lot within the Subdivision shall contribute the amount specified in paragraph (ii) of this clause into another reserve fund ("the Maritime Facilities Fund") under the control of the Shire and the monies in the Maritime Facilities Fund shall be used for the construction and/or maintenance by the Shire of maritime facilities in the Upper Coastal Ward within the local government district of the Shire which maritime facilities may include, without limitation, boat launching facilities and boat launching facility access as and when determined necessary by the Shire.
- (ii) In the 2001 calendar year the Developer shall contribute \$140 to the Maritime Facilities Fund upon the sale of a residential lot within the Subdivision, and in each subsequent calendar year the amount to be contributed shall be increased cumulatively by an amount proportional to the percentage annual increase in the estimated single vacant lot annual residential rate.

ENCLOSURE A 23

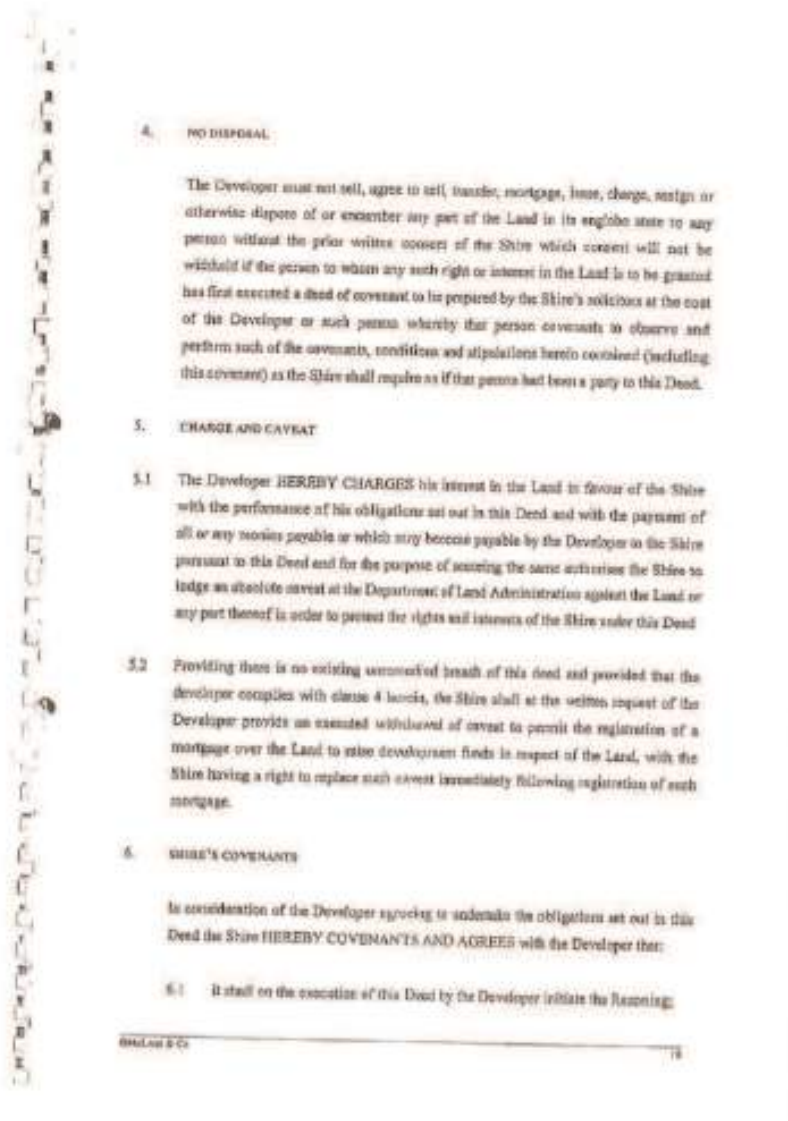
Link Road and Coastal Facilities

- 3.9 he will prepare and submit to the Shire prior to the Subdivision of the Land a Coastal Access and Development Plan to the satisfaction of the Shire showing:
- (i) the pedestrian/vehicular link shown in the Structure Plan for access from the Land to the coast ("Link Road"); and
  - (ii) provision for beach-front vehicle parking and associated infrastructure and facilities ("Coastal Facilities").
- 3.10 the construction of the Link Road and Coastal Facilities will include a dual use path incorporated with the Link Road, provision for and construction of power and telephone services, pathway access to the beach and two beach cupolas with a total of 80 car bays.
- 3.11 subject to obtaining all necessary approvals, he will construct the Link Road and Coastal Facilities (including the associated infrastructure referred to in clause 3.10) in accordance with the Coastal Access and Development Plan referred to above as modified from time to time by the Developer with the written approval of the Shire;

Expenditure by Shire

- 3.12 if, for any reason, the funds held by the Shire in the Community Facilities Fund or the Maritime Facilities Fund are in the opinion of the Shire in excess of that required for the reasonable construction and/or maintenance of the Community Facilities or the Maritime Facilities, the Shire may expend monies from either Fund at its absolute discretion towards any developments or works within the Upper Coastal Ward, whether or not the expenditure is connected with the Subdivision.

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6.2 if the financing and Subdivision are achieved it shall set up and administer the Community Facilities Fund and Maritime Facilities Fund in accordance with the provisions of the Local Government Act;

6.3 on the sale of each residential lot within the Subdivision it will contribute to the Community Facilities Fund an amount equivalent to the single vacant lot minimum annual residential rate applicable at the time of sale;

6.4 it shall reconspend clearance of conditions of subdivision approval where:

- (a) the provisions of this Deed; and
- (b) the conditions of the subdivision approval.

have been satisfied;

6.5 it shall if the provisions of the Local Government Act permit accept the office bearer or nominated members of the Community Association as an advisory committee of the Council making recommendations with respect to expenditure from the Community Facilities Fund for the construction of Community Facilities; and

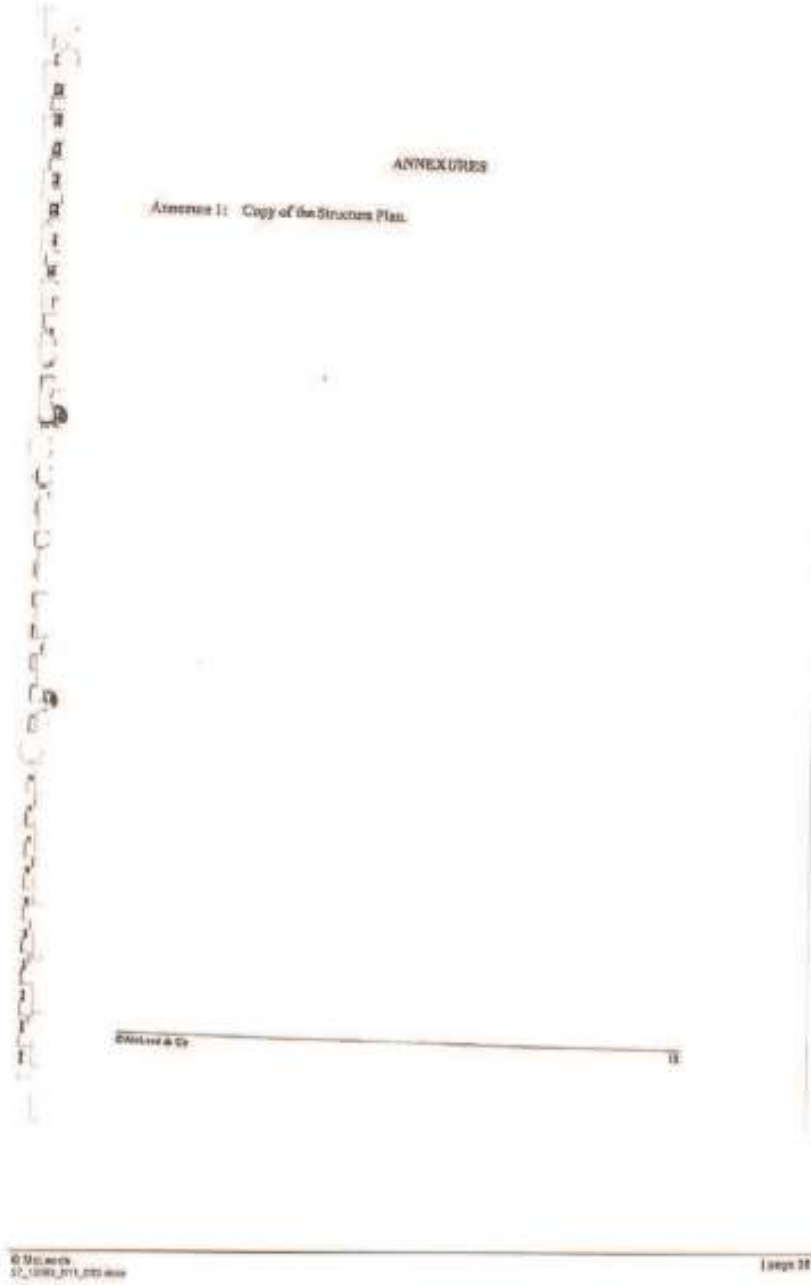
6.6 the Link Road may be constructed on a staged basis consistent with the level of development of the Subdivision as determined by the Shire.

#### 7. COSTS

The costs of and incidental to the preparation (including drafts) execution and stamping of this Deed and all stamp duty payable hereon shall be shared equally between the Developer and the Shire and the cost of preparing and lodging any caveat lodged pursuant to the terms of this Deed and any withdrawal or replacement thereof shall be borne by the Developer.

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11



**SCHEDULE**

ITEM 1: **LAND**

Lot F the subject of Diagram 24526 and being the whole of the land comprised in Certificate of Title Volume 1240 Folio 35

Portion of Swan Location 3203 and being the whole of the land comprised in Certificate of Title Volume 2439 Folio 294  
2.92 294

Portion of Swan Location 5243 and being the whole of the land comprised in Certificate of Title Volume 1474 Folio 283  
2.92 294

*Part of the land is subject to a mortgage in favour of the Commonwealth Bank of Australia.*

**EXECUTED BY THE PARTIES as a DEED:**

SIGNED by the said JOSEPH BECK MATTHEWS in the presence of: } *Joseph Beck Matthews*

Witness seen: } *Tony Nicholas*

PRINT NAME: } **TONY JAMES NICHOLS**

ADDRESS: } **60 DUNDAS ROAD, SURBROOKHAM, WA, 6019.**

OCCUPATION: } **SOLICITOR.**

THE COMMON SEAL of the SHIRE OF GINGIN was duly affixed hereto in the presence of: }

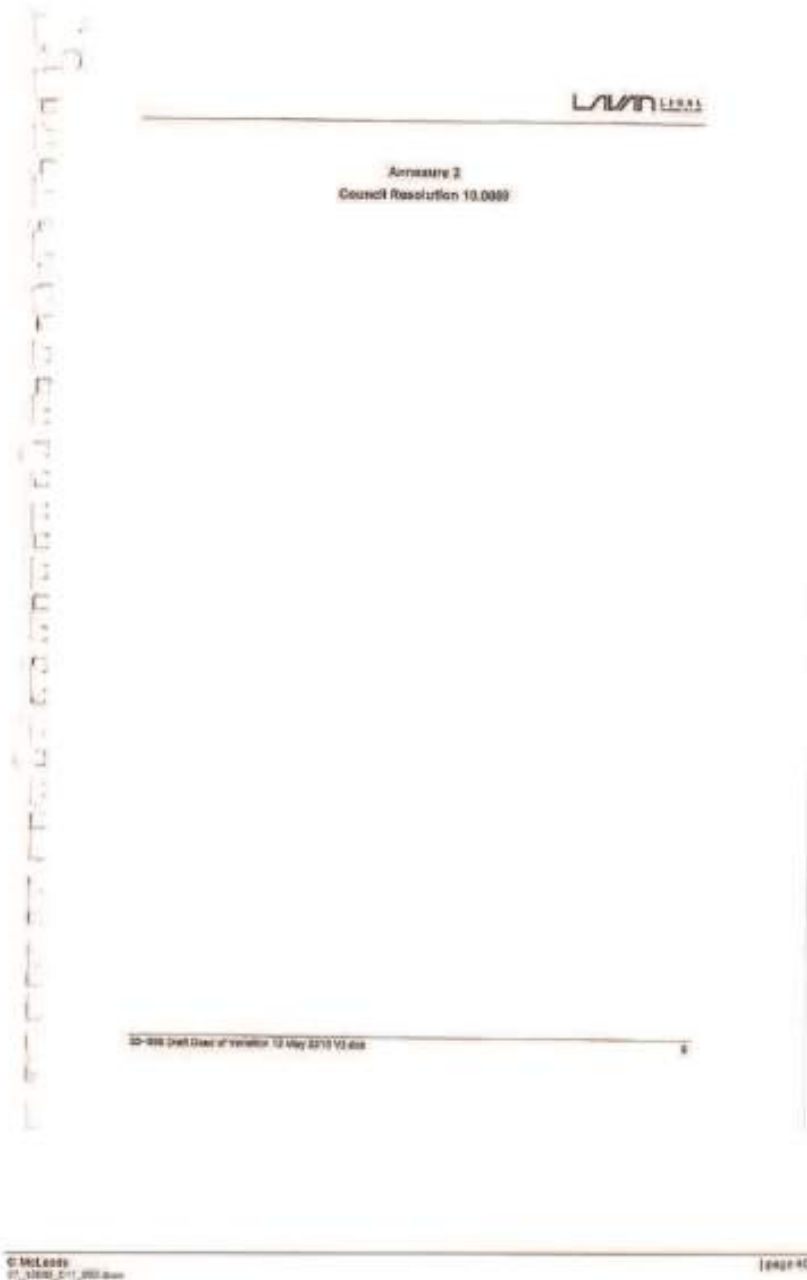
*[Signature]*  
PRESIDENT

*[Signature]*  
CHIEF EXECUTIVE OFFICER

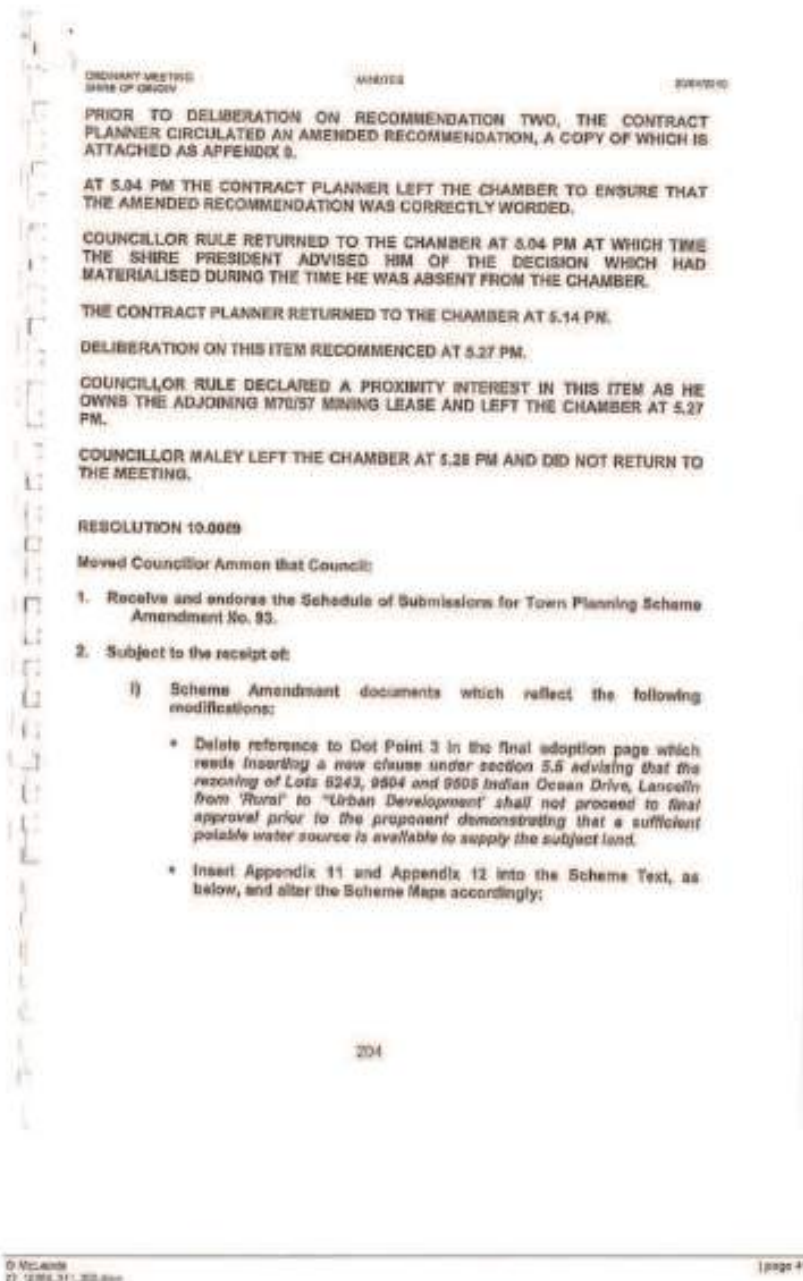


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*[Signature]*  
Gibson & Co







ORDINARY MEETING  
SHIRE OF GARDNER

MINUTES

22/04/2024

**Appendix 11- Developer Contribution Area**

Area of Subject Land	Provisions
<p>DCA No.1</p> <p>Lots 9243, 9204 and 9265 commonly known as "Lancelin South" and Reserve 7269 Old Ledge Point Road and Lancelin Road</p> <p>Stage 1</p>	<p>The Developer will be required to provide for:</p> <ul style="list-style-type: none"> <li>- Community Facilities Fund;</li> <li>- Coastal links;</li> <li>- Dual Use Pathway linking the Development area to the Lancelin Community Sporting Club Rooms and from the Lancelin Community Sporting Club Rooms to the existing Dual Use Path System in the Lancelin Townsite;</li> <li>- Maritime Fund;</li> <li>- Coastal amenities including provision of power, water, telephone services, car park, car park lighting and ablation facilities;</li> <li>- Relocation and re-establishment of the fairways and greens following decommissioning as a result of construction of the coastal links to a condition that is not less than the current Lancelin Golf Course standard; and</li> <li>- All other standard public infrastructure associated with Subdivision to the satisfaction of the Western Australian Planning Commission,</li> </ul> <p>as referenced in the Deed of Agreement made between the Shire and the Developer,</p> <p>Prior to clearance of the subdivision for the first lot Council will require the construction of:</p>

205

ORDINARY MEETING SHIRE OF GRANGE	MINUTES	2004/0018
	<p>i) A coastal link for vehicle, pedestrian, bicycle use and carparking as referred to in the Deed of Agreement made between the Shire and the Developer for Developer Contributions for Community Facilities; and</p> <p>Prior to the clearance of subdivision conditions for the first Lot, the Council will require a bond mutually agreed for an amount no less than the cost of the construction of:</p> <p>i) A Coastal link in the form of a Dual Use Path;</p> <p>ii) A Dual Use Pathway linking the Development area to the Lancelin Community Sporting Club Rooms and from the Lancelin Community Sporting Club Rooms to the existing Dual Use Path System in the Lancelin Town site; and</p> <p>iii) Coastal amenities including provision of power, water, telephone services, car park lighting and ablution facilities.</p> <p>In a period of no longer than one year from the date that a certificate of occupancy is granted by the Council for the 50th dwelling in Lancelin South, the developer shall construct the Dual Use Pathways and Coastal Amenities referred to in i), ii) and iii) above and the bond shall therefore be released.</p> <p>If, in the opinion of Council, the Deed of Agreement for Developer Contributions for Community Facilities is considered unsuitable at later stages of rezoning, the Shire reserves</p>	

ORDINARY MEETING  
SCHEDULE OF CHAIR

MINUTES

ISSUING

	<p>the right to require a new Deed to be prepared to ensure the appropriate delivery of Community Infrastructure for the Development site. As an alternative, the Applicant may prepare a Development Contribution Plan, in accordance, generally, with the provisions of State Planning Policy for Developer Contributions.</p>
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**Appendix 12 – Environmental Constraints**

Area of subject Land	Provisions
<p>Lots 5243, 5504 and 9505 commonly known as "Lancelin South"</p> <p>Old Ledge Point Road and Lancelin Road</p>	<p>At the time of Subdivision, Council will require the Applicant to provide an Acoustic Report for the land, the subject of Stage 1, in order to determine those Lots which may be adversely affected by noise as a result of being located adjacent to Limesand Haulage Routes. The Lots, if applicable, will be required, at a minimum, to have Memorials placed on Title to notify prospective purchasers of the potential for adverse amenity impact as a result of being located adjacent to Limesand Heavy Haulage Routes and nearby Extractive Industries.</p> <p>At the time of Subdivision, as a minimum, Council will require the Developer to seal Old Ledge Point Road from the intersection at Lancelin Road to the coastal access link and the intersection adjacent to the Subdivision to ameliorate dust impacts on newly created "Urban" Lots from extractive industries and/or mining tenements operating on these roads.</p>

ii) A modified Deed of Agreement/Draft Deed of Variation to be altered to the satisfaction of the Shire's Acting Chief Executive Officer to incorporate provision for the satisfactory construction and delivery of the Community Infrastructure, including all items referenced in Appendix 11.

3. Provided the amended and executed Scheme Amendment documents and Deed of Agreement/Deed of Variation (which includes provisions for items listed in Appendix 11), is submitted to the Shire by 12 May 2016, resolve, under Section 87 of the Planning and Development Act 2005, to give final adoption to its Town Planning Scheme Amendment No. 93, with modification, to:

i) Rezone portions of Lots 9504 and 9505 Indian Ocean Drive, Lancelin from 'Rural' to 'Urban Development' Zone.

ii) Deleting the notation 'AA' from the Use Class Dwelling and Grouped Dwellings in column 9 (Urban Development Zone) of Table 1 – Zoning Table and insert the following text in the entire column applying to all Use Classes for the Urban Development zone:

The permissibility of uses in the Urban development zone shall be determined in accordance with the provisions of the adopted Outline Development Plan for the land which has been prepared and adopted in accordance with the relevant provisions of the Local Planning Scheme.

iii) Insert Appendix 11 and Appendix 12 into the Scheme Text, as below, and amend the Scheme Maps accordingly:

Appendix 11- Developer Contribution Area

Area of Subject Land	Provisions
DCA No.1  Lots 9243, 9504 and 9505 commonly known as "Lancelin South" and Reserve 7299 Old Ledge Point Road and Lancelin Road	The Developer will be required to provide for:  - Community Facilities Fund;  - Coastal links;
Stage 1	- Dual Use Pathway linking the Development area to the Lancelin Community Sporting Club Rooms and from the Lancelin Community Sporting Club Rooms to the existing Dual Use Path System in the Lancelin Township;  - Maritime Fund;

ORDINARY MEETING SHIRE OF GARDNER	MINUTES	1394000
	<ul style="list-style-type: none"> <li>- Coastal amenities including provision of power, water, telephone services, car park, car park lighting and ablation facilities;</li> <li>- Relocation and re-establishment of the fairways and greens following decommissioning as a result of construction of the coastal links to a condition that is not less than the current Lincoln Golf Course standard; and</li> <li>- All other standard public infrastructure associated with Subdivision to the satisfaction of the Western Australian Planning Commission.</li> </ul> <p>as referenced in the Deed of Agreement made between the Shire and the Developer.</p> <p>Prior to clearance of the subdivision for the first lot Council will require the construction of:</p> <p>i) A coastal link for vehicle, pedestrian, bicycle use and carparking as referred to in the Deed of Agreement made between the Shire and the Developer for Developer Contributions for Community Facilities; and</p> <p>Prior to the clearance of subdivision conditions for the first Lot, the Council will require a bond mutually agreed for an amount no less than the cost of the construction of:</p> <p>i) A Coastal link in the form of a Dual Use Path;</p>	

ORDINARY MEETING 30 APRIL 2024	MINUTES	30/4/2024
	<p>ii) A Dual Use Pathway linking the Development area to the Lancelin Community Sporting Club Rooms and from the Lancelin Community Sporting Club Rooms to the existing Dual Use Path System in the Lancelin Town site; and</p> <p>iii) Coastal amenities including provision of power, water, telephone services, car park lighting and ablation facilities</p> <p>In a period of no longer than one year from the date that a certificate of occupancy is granted by the Council for the 50<sup>th</sup> dwelling in Lancelin South, the developer shall construct the Dual Use Pathways and coastal amenities referred to in i), ii) and iii) above and the bond shall therefore be released.</p> <p>If, in the opinion of Council, the Deed of Agreement for Developer Contributions for Community Facilities is considered unsuitable at later stages of rezoning, the Shire reserves the right to require a new Deed to be prepared to ensure the appropriate delivery of Community Infrastructure for the Development site. As an alternative, the Applicant may prepare a Development Contribution Plan, in accordance, generally, with the provisions of State Planning Policy for Developer Contributions.</p>	

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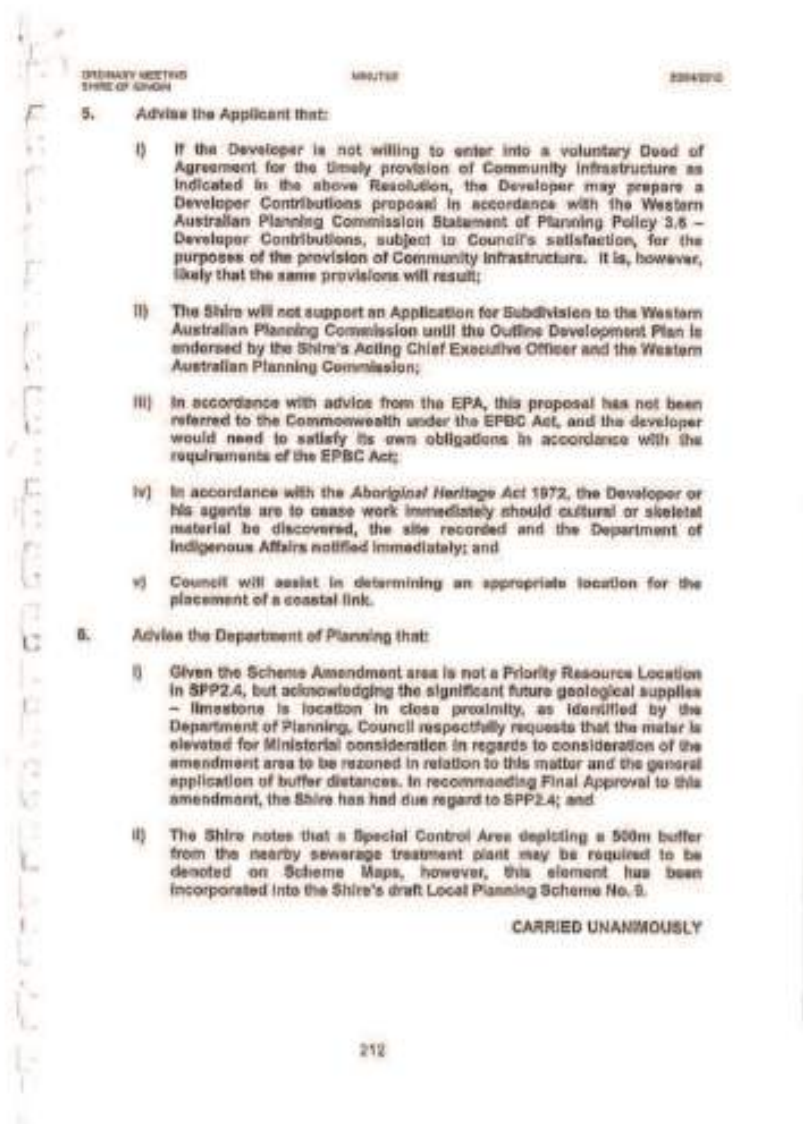
2024/2025

Appendix 12 – Environmental Constraints

Area of subject Land	Provisions
<p>Lots 5243, 9564 and 9565 commonly known as "Lancelin South"</p> <p>Old Ledge Point Road and Lancelin Road</p>	<p>At the time of Subdivision, Council will require the Applicant to provide an Acoustic Report for the land, the subject of Stage 1, in order to determine those Lots which may be adversely affected by noise as a result of being located adjacent to Limesand Heavy Haulage Routes. The Lots, if applicable, will be required, at a minimum, to have Memorials placed on Title to notify prospective purchasers of the potential for adverse amenity impact as a result of being located adjacent to Limesand Heavy Haulage Routes and nearby Extractive Industries.</p> <p>At the time of Subdivision, as a minimum, Council will require the Developer to seal Old Ledge Point Road from the intersection at Lancelin Road to the coastal access link and the intersection adjacent to the Subdivision to ameliorate dust impacts on newly created "Urban" Lots from extractive industries and/or mining tenements operating on those roads.</p>

4. Refuse to approve Scheme Amendment No. 83, should the modified documents referenced in Dot Point 2, above, not be submitted to the Shire by 12 May 2010, given that Council is concerned that:
- i) The Deed of Agreement does not provide adequately for the timely delivery of Community Infrastructure, particularly the Coastal Access Link and Associated Coastal Infrastructure as a component of the clearance of the first Lot of subdivision; and
  - ii) The sealing of a portion of Old Ledge Point Road is required to ameliorate the dust impacts on newly created "Urban" Lots from Extractive Industries and/or mining tenements operating on those roads.





ORDINARY MEETING  
SHIRE OF GNOW

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5. Advise the Applicant that:

- i) If the Developer is not willing to enter into a voluntary Deed of Agreement for the timely provision of Community Infrastructure as Indicated in the above Resolution, the Developer may prepare a Developer Contributions proposal in accordance with the Western Australian Planning Commission Statement of Planning Policy 3.6 – Developer Contributions, subject to Council's satisfaction, for the purposes of the provision of Community Infrastructure. It is, however, likely that the same provisions will result;
- ii) The Shire will not support an Application for Subdivision to the Western Australian Planning Commission until the Outline Development Plan is endorsed by the Shire's Acting Chief Executive Officer and the Western Australian Planning Commission;
- iii) In accordance with advice from the EPA, this proposal has not been referred to the Commonwealth under the EPBC Act, and the developer would need to satisfy its own obligations in accordance with the requirements of the EPBC Act;
- iv) In accordance with the Aboriginal Heritage Act 1972, the Developer or his agents are to cease work immediately should cultural or skeletal material be discovered, the site recorded and the Department of Indigenous Affairs notified immediately; and
- v) Council will assist in determining an appropriate location for the placement of a coastal link.

6. Advise the Department of Planning that:

- i) Given the Scheme Amendment area is not a Priority Resource Location in SPP2.4, but acknowledging the significant future geological supplies – limestone is located in close proximity, as identified by the Department of Planning, Council respectfully requests that the matter be elevated for Ministerial consideration in regards to consideration of the amendment area to be rezoned in relation to this matter and the general application of buffer distances. In recommending Final Approval to this amendment, the Shire has had due regard to SPP2.4; and
- ii) The Shire notes that a Special Control Area depicting a 500m buffer from the nearby sewerage treatment plant may be required to be denoted on Scheme Maps, however, this element has been incorporated into the Shire's draft Local Planning Scheme No. 9.

CARRIED UNANIMOUSLY

312

**COPY**

## Development Deed

Lancelin South

Joseph Beck Mathews (Developer)

Shire of Gingin (Shire)

**CORMISTON LEGAL**

contact: Sam Pitt  
email: sam.pitt@cormistonlegal.com.au  
phone: 9438 262 277  
web: www.cormistonlegal.com.au  
fax: 947 13171

Cormiston Legal | 097 13071

Development Deed | page 1

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**CONTENTS**

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Information table	3
<b>AGREED TERMS</b>	<b>3</b>
1 Interpretation	3
2 Acknowledgements	4
3 Developer's Covenants	4
4 Dispute Resolution	9
5 Outstanding Amounts	10
6 Charge and Caveat	10
7 Shire's Covenants	10
8 Costs	11

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**Information table**

**COPY**

**Date**

**Parties**

**Name** Joseph Beck Matthews  
**Short form name** Developer  
**Notice details** Care of Saint Williams, PO Box 69, Doornick, Western Australia 6333

**Name** Shire of Gingin  
**Short form name** Shire  
**Notice details** 7 Trinchman Street, Gingin, Western Australia 6305

**INTRODUCTION**

- A The Developer is the registered proprietor of an estate in fee simple in certificate of title volume 2016 folio 598 ('Land').
- B The Land is situated in the district of the Shire and is the subject of the Lancelin Social Structure Plan ('LSSP') which has been approved by the Council of the Shire (Council) a copy of which is contained in Annexure 1. That portion of the Land shown in Annexure 4 has been rezoned to 'Urban Development' under Amendment 93 to the Shire of Gingin Town Planning Scheme ('Amendment 93').
- C Amendment 93 incorporated the terms of a Deed of Variation dated 14 May 2010 made between the Developer and the Shire ('Deed of Variation'). This Deed supersedes the Deed of Variation. All of the Developer's covenants as outlined in this Deed apply to the land outlined in Amendment 93.
- D The Shire is contemplating rezoning the portion of the Land currently zoned 'Rural' to 'Urban Development' ('Rezoning') to enable the development of a residential community within the area of the LSSP.
- E On 18 June 2013 the Shire granted final approval to the Rezoning ('Council Resolution').
- F In order to satisfy the requirements of the Council Resolution, the parties have agreed to enter into this Deed.

**AGREED TERMS**

**1 Interpretation**

Unless expressed to the contrary:

- (a) Words importing:
  - (i) the singular includes the plural and vice versa;
  - (ii) any gender includes the other gender;
- (b) if a word or phrase is defined cognate words and phrases have corresponding definitions;
- (c) a reference to:

Version: legal (REP - 03/2)

Development Deed (page 1)

- (d) a person including a firm, unincorporated association, corporation and a government or statutory body or authority;
  - (e) a person includes its legal personal representative, successors or assigns;
  - (f) a statute, ordinance, code, regulation, award or other law includes regulations and other statutory instruments made or issued under them and consolidations, amendments, re-enactments or replacements or any of them;
  - (g) a right includes a benefit, remedy, discretion, authority or power;
  - (h) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
  - (i) provisions or terms of this Deed or another document, agreement, understanding or arrangement include a reference to both express and implied provisions and terms;
  - (j) time is to be local time in Perth, Western Australia;
  - (k) 'The Dollars' is a reference to the lawful currency of Australia;
  - (l) this or any other document includes the document as varied or replaced and notwithstanding any change in the identity of the parties;
  - (m) writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions;
  - (n) any thing (including, without limitation, any amount) is a reference to the whole or any part or that thing and a reference to a group of things or persons is a reference to any one or more of them.
- (4) Headings do not affect the interpretation of this Deed.
- (5) The Annexures form part of this Deed.

**2 Acknowledgements**

The Developer acknowledges that the Shire's agreement to initiate the Rezoning is based on the provisions of the LSSP and the Shire being satisfied that:

- (a) an adequate provision for the provision of community facilities is put in place, deemed necessary as a result of the development at Lancelin South; and
- (b) adequate and appropriate reserve funds paid or payable by the Developer are established to be administered by the Shire.

**3 Developer's Covenants**

In consideration of the Shire agreeing to initiate the Rezoning the Developer covenants and agrees with the Shire that:

- 3.1 Any subdivision and development of the Land shall generally be in accordance with the LSSP and the requirements of the Shire.

The Developer must submit plans for Community Infrastructure:

- (a) Prior to commencing works on or over Community Infrastructure the Developer must submit for the Shire's approval the proposed design and specifications for that item;
- (b) The Shire will use its best endeavours to review the design and specifications within 28 days of receipt and may require amendments to the design or specifications if in the Shire's opinion the design and/or specifications do not comply with the specifications and requirements as outlined in this Deed.

- (c) If the Shire requires amendments or further details pursuant to paragraph 3.1 of this Deed, the Developer will provide further details or amended design and/or specifications as soon as possible.
- (d) The Developer must carry out the works necessary to complete the Community Infrastructure in accordance with any plans approved by the Shire unless otherwise agreed by the Shire.
- (e) The Developer agrees to obtain at its expense all necessary statutory approvals for the Community Infrastructure and the Works.

**Quality of Works**

3.2 The Developer must in carrying out the Works:

- (a) use workmanship:
  - (i) in accordance with any standard prescribed in the Deed or in plans and specifications approved by the Shire, or to the extent it is not so prescribed to a standard consistent with the best industry standards for work of a nature similar to the Works; and
  - (ii) which is fit for purpose;
- (b) use materials:
  - (i) which comply with any relevant requirement of this Deed and any plans and specifications approved by the Shire; or if not fully described, materials which are new and consistent with the best industry standards for work of a nature similar to the Works;
  - (ii) comply with the requirements of this Deed; and
  - (iii) comply with the requirements of the Building Code of Australia and all relevant standards of Standards Australia, if applicable; and
  - (iv) if the quality of work or material is not in accordance with the requirements of this clause then the Developer must remove and/or recreate and/or replace any such work or materials and rectify good any defect at the Developer's expense.

**Notices of Variance or Completion of Works**

3.3 The Developer agrees to provide the Shire with written notice:

- (a) in the event that the nature or quality of the Works varies from the design and/or specifications approved by the Shire; and
- (b) following completion of the Works.

**Completion Date**

3.4.1 The completion dates identified in this Deed may be varied with the Shire's written permission for a reason or reasons beyond the control of the Developer, including but not limited to:

- (a) unusual market forces;
- (b) acts of God, including fire, hail/fire, lightning, storm, tidal waves, cyclone, hurricanes, tsunamis, landslides, mudslides, warbooms and flood;
- (c) epidemics, public health orders or outbreaks of disease;
- (d) war, revolution or other state or armed hostility of a like nature;
- (e) insurrection, civil disturbances or riot; and
- (f) unavailability or lack of reasonable availability in Western Australia of labour and/or building and construction materials.

Common Law (2017-2021)

Development Deed - Page 8

3.4.2 In accordance with 3.4.1 above the parties agree to consult on a regular basis to provide the earliest practicable completion notice of any likely extension of time for the completion date.

**Practical Completion**

3.5.1 If the Developer considers an item of Community Infrastructure to be completed it must issue to the Shire a notice of completion.

3.5.2 Within 28 days of receipt of a notice pursuant to clause 3.5.1 the Shire will:

- (a) issue to the Developer a certificate of practical completion in the event the item of infrastructure has in the reasonable opinion of the Shire been carried out in accordance with the approved plans and the standards referred to in this Deed and is suitable for its proposed use;
- (b) issue to the Developer a written list of outstanding items that must be completed before the certificate of practical completion can be issued. Upon the Shire being satisfied that the outstanding items have been completed it will issue a certificate of practical completion for the item of infrastructure.

**Risk and Liability**

3.6 The Developer covenants and agrees with the Shire that until a certificate of practical completion is issued in respect of infrastructure the Works shall in all respects be at the risk of the Developer and until that date the Developer is liable for and indemnifies the Shire against:

- (a) any liability loss claims or proceedings in respect of any injury loss or damage whatsoever to any property real or personal insofar as such injury loss or damage arises out of or in the course of or by reason of the carrying out the Works except to the extent that any liability loss claim or proceeding is caused or contributed to by the negligent act or omission of the Shire or any employee, contractor or agent of the Shire; and
- (b) any liability loss claims or proceedings whatsoever arising under any statute or of common law in respect of personal injury to or death of any person whatsoever arising out of or in the course of or caused by such Works except to the extent that any liability loss claim or proceeding is caused or contributed to by the negligent act or omission of the Shire or any employee, contractor or agent of the Shire.

**Defects Liability**

3.7 The Developer agrees with the Shire that any defects, shortcomings or other faults in any item of infrastructure which may be evident and be notified in writing by the Shire to the Developer within 12 months after the date of completion of those works shall upon the issue of written instructions from the Shire be made good by the Developer within a reasonable time but in any event within 3 months after the issue of the instructions.

**Developer Default and Shire's Right to Complete Community Infrastructure**

3.8 If the Developer fails to complete any item of Community Infrastructure by the relevant completion date and the completion date has not been extended pursuant to clause 3.5.2(b) the:

- (a) the Shire may issue to the Developer a notice requiring the Developer to complete any item of Community Infrastructure within 60 days period or such longer period as determined by the Shire acting reasonably (Default Notice); and

- (b) If the Developer fails to complete any item of Community Infrastructure within the period specified in the Default Notice, then the Shire may by written notice:
  - (i) enter onto the Land and take all action necessary to carry out and complete any item of Infrastructure; and
  - (ii) Recover the costs of completing any item of Community Infrastructure from the Developer and the parties agree that such costs shall either be a liquidated debt recoverable in a court of competent jurisdiction.
- 3.8.1 The Shire must take reasonable steps to reimburse the Developer's costs of carrying out and completing any item of Community Infrastructure.
- 3.8.2 If the Shire elects to exercise its rights pursuant to 3.8(b) then the Developer must do all things reasonably required by the Shire to assist the Shire in completing any item of Community Infrastructure, including without limitation promptly answering or assigning to the Shire any contracts with third parties related to the Infrastructure upon written request of the Shire.
- 3.9 The Developer will facilitate the establishment by the Shire of a reserve fund ('Community Facilities Fund') in accordance with the provisions of the *Local Government Act 1993* from which funds will be drawn for the construction and/or maintenance of community facilities ('Community Facilities') to service each part of the LSSP area as it is created by the subdivision of the Land ('Subdivision');
- 3.10 On the settlement of the sale of each residential lot within the Subdivision the Developer will contribute to the Community Facilities Fund an amount equivalent, plus 50% to the stamp duty for residential annual residential rate applicable at the time of sale - for example if the rate applicable is \$1,500 he will contribute \$1,500, the timing of the payments by the Developer is outlined in clause 3.9;
- 3.11 The Community Facilities will be constructed in accordance with priorities set by the Shire;
- 3.12 (a) the Developer on the settlement of the sale of each residential lot within the Subdivision shall contribute the amount specified in paragraph (i) of this clause into another reserve fund ('Maritime Facilities Fund') under the control of the Shire and the monies in the Maritime Facilities Fund shall be used for the construction and/or maintenance by the Shire of maritime facilities in the Upper Coastal Ward within the local government district of the Shire which maritime facilities may include, without limitation, boat launching facilities and boat launching facility access as and when determined necessary by the Shire;
- (b) the Developer shall contribute \$207 to the Maritime Facilities Fund upon the settlement of the sale of a residential lot within the Subdivision, and in each subsequent calendar year the amount to be contributed shall be increased cumulatively by an amount proportional to the percentage annual increase in the maximum single vacant lot annual residential rate, the timing of the payments by the Developer is outlined in clause 3.9;
- 3.13 The Developer will prepare and submit to the Shire prior to the Subdivision of the Land a Coastal Access and Development Plan to the satisfaction of the Shire showing:
  - (a) the vehicle/pedestrian/bicycle link depicted in the LSSP as the Southern Coastal Link ('Southern Coastal Link') and the dual use path link depicted in the LSSP as the Northern Coastal Link ('Northern Coastal Link'), or generally shown in the LSSP as access from the Land to the coast (together 'Coastal Links'); and
  - (b) provision for beachfront vehicle parking and associated infrastructure and facilities ('Coastal Facilities');
- 3.14 The construction of the Coastal Links and Coastal Facilities will include a dual use path linking the area the subject of the LSSP to Lancelin town site, provision for and construction of solar power and non-potable water services, situation facilities, pathway access to the beach and two beach carparks with a total of 40 car bays.

Document Code: DDP 1307

Development Board | page 7



- 3.15 Subject to obtaining all necessary approvals, in a period of no longer than one year from the date that a building licence is granted by the Council for the 50th dwelling on the Land, the Developer will construct the Link Road and Coastal Facilities (including the associated infrastructure referred to in clause 3.14) in accordance with the Coastal Access and Development Plan referred to above as modified from time to time by the Developer with the written approval of the Shire.
- 3.16 If, for any reason the funds held by the Shire in the Community Facilities Fund or the Maritime Facilities Fund are in the opinion of the Shire in excess of that required for the reasonable construction and/or maintenance of the Community Facilities or the Maritime Facilities, the Shire may only expend monies from either Fund towards any developments or works within the LSP.
- 3.17 In addition to the Developer's other commitments the Developer will also be required to undertake the:
- (a) relocation and re-establishment of the fairways and greens of the Lancelin Golf Course following decommissioning if as a result of construction of the Coastal Links district the golf course fairways to a condition that is not less than the current Lancelin Golf Course standard. If the Coastal Link is not required to district any fairways then this clause is not applicable; and
  - (b) construction and installation of all other standard public infrastructure, including change rooms and ablution facilities at a time when the sporting fields are required, associated with Subdivision, as outlined in Annexure 3 under the heading "Developer Commitments". The construction and installation of the infrastructure is to be at a time when the population of Lancelin South meets the ratios outlined in Annexure 3, and standard of works must be to the satisfaction of the Western Australian Planning Commission and the State. The location for these facilities and any "grouping" of these facilities is to be agreed between the Developer and the Shire at the time the facilities are required in accordance with the ratios noted in Annexure 3. For the avoidance of any doubt, the responsibility for the construction of the community centre, library, seniors centre and community health clinic will not be on the Developer. However, the Developer will set aside a portion of the Land, in the ratio marked by the Shire, to enable the Shire to construct or these facilities. This land will be provided at the time of subdivision when the population of Lancelin South meets the ratios noted in Annexure 3. For the avoidance of any doubt, the Shire may construct any community facilities, on the Land set aside by the Developer under this clause, that it determines are relevant.
- 3.18 Prior to clearance of subdivision for the first lot of the Subdivision, the Shire will require and the Developer shall provide to the Shire a bank guarantee or bond, as mutually agreed, for an amount no less than the cost of the construction of:
- (a) the Northern Coastal Link;
  - (b) Coastal Facilities including provision of power, water, telephone services, air park lighting and station facilities;
  - (c) a Dual Use Pathway linking the Development area to the Lancelin Community Sporting Club Rooms and from the Lancelin Community Sporting Club Rooms to the existing Dual Use Path System in the Lancelin Town site; and
  - (d) the Southern Coastal Link.
- In a period of no longer than one year from the date that a 50th Building Licence is issued by the Shire for a Dwelling Lancelin South, the Developer shall construct the Coastal Facilities and Dual Use Pathways referred to in (a), (b) (c) and (d) above and upon completion of the construction to the satisfaction of the Shire, the bank guarantee or bond shall be returned.
- 3.19 One year after the 50<sup>th</sup> dwelling in Lancelin South has been granted a building licence, the Shire will require the Developer to construct Old Lodge Point Road from the intersection of Lancelin Road to the Southern Coastal Link for the traffic of haulage and conventional vehicles. The construction of Old Lodge Point Road, south of the Southern Coastal Link,

Development Plan 2022

Development Plan 2022

will be undertaken in accordance with the requirements of clause 3.13 and not before the time provided by clause 3.11. Construction is to be to the reasonable satisfaction of the Shire.

- 3.20 When the 1250<sup>th</sup> building licence has been granted in the Development, the Developer will construct a Heritage Reserve south of the Southern Coastal Link in a location to be agreed between the Shire and the Developer.
- 3.21 The Developer will only be required to pay the amounts pursuant to clauses 3.15 and 3.12(b) (i) biannually, being on or before 1 January and on or before 1 July in each year which the terms of this Deed apply.
- 3.22 The Developer will advise the Shire of the location for the Community Facilities and will produce to the Shire a Community Facilities Concept Plan ("CFCP") indicating the location of the Community Facilities within 6 months of the granting of the Rezoning.
- 3.23 Definitions - for the purpose of this clause 3, the following definitions apply:

**Community Infrastructure** means those items of community infrastructure more particularly set out in the Community Infrastructure matrix annexed to this Deed at Annexure 3.

**Completion Date** means the date for completion of an item of selected infrastructure as specified in Annexure 3.

**Works** means those works necessary to construct and complete the Community Infrastructure.

#### 4 Dispute Resolution

- 4.1 Until the parties have complied with this clause, a party must not commence any action, bring any proceedings or seek any relief or remedy in a court, except seeking, interlocutory or equitable relief from a court. Where any Dispute arises, a party may give notice in writing of the Dispute to the other party's representative setting out the material particulars of the Dispute. The representatives must act in good faith to try to resolve the Dispute quickly.
- 4.2 If the Dispute has not been resolved within 14 days of the Dispute Notice (or any longer period the Representatives agree), each party must refer the Dispute to its Dispute Resolution Representative who must act in good faith to try to resolve the Dispute quickly.
- 4.3 If the parties have not:
- (a) resolved the Dispute; or
  - (b) agreed in an alternative method of resolving the Dispute,
- within 14 days after the Dispute is referred to the Dispute Resolution Representatives (or any longer period the Dispute Resolution Representatives agree), either party may submit the Dispute to mediation.
- 4.4 If the Dispute is submitted to mediation and the parties do not, within 14 days (or any longer period the parties agree) after the Dispute is submitted to mediation, agree on:
- (a) a mediator and the mediator's compensation;
  - (b) the procedure for the mediation; or
  - (c) the timetable of each step of the procedure,
- the mediation will be conducted in accordance with the Australian Commercial Dispute Centre's Mediation Guidelines as then at the time that the Dispute is referred.

4.2 If a Dispute is not resolved within 10 days after the Dispute Notice or, where a Party has submitted the dispute to mediation, 60 days after the Dispute Notice (or any longer period the parties agree), either party who has complied with this clause may end the dispute resolution process and commence court proceedings in relation to the Dispute.

#### **5 Outstanding Amounts**

The Shire and the Developer covenant and agree that if any amount payable by:

- (a) the Developer to the Shire; or
- (b) the Shire to the Developer,

pursuant to the terms of the Deed is unpaid for 21 days after becoming due, such amount shall be a liquidated debt recoverable by the party owed the amount in a court of competent jurisdiction, unless the outstanding amount is the subject of a Dispute in which case the parties must not commence proceedings until they have complied with the terms of clause 4.

#### **6 Charge and Caveat**

6.1 The Developer charges (as interest in the Land in favour of the Shire with the performance of his obligations set out in this Deed and with the payment of all or any monies payable or which may become payable by the Developer to the Shire pursuant to this Deed) and for the purpose of securing the same authorises the Shire to lodge an absolute caveat at the Landgate against the Land or any part thereof in order to protect the rights and interests of the Shire under this Deed.

6.2 Providing there is no existing covenanted branch of this Deed, the Shire shall at the written request of the Developer provide an immediate withdrawal of caveat to permit the:

- (a) registration of a mortgage over the Land to raise development funds in respect of the Land; and
- (b) issue of new titles in relation to any new subdivision of the Land

with the Shire having a right to replace such caveat immediately following registration of such mortgage.

6.3 Any caveat lodged by the Shire is only to apply to the present title resultant from subdivision and must not be relied on any new titles being created.

#### **7 Shire's Covenants**

In consideration of the Developer agreeing to undertake the obligations set out in this Deed the Shire covenants and agrees with the Developer that:

7.1 If the Rezoning and Subdivision are achieved it shall set up and administer the Community Facilities Fund and Maritime Facilities Fund in accordance with the provisions of the Local Government Act 1995; and

7.2 It shall ensure the clearance of conditions of subdivision approved where:

- (a) the provisions of this Deed; and
- (b) the conditions of the subdivision approved,

have been satisfied.

**8 Costs**

The Developer must pay the State's reasonable legal costs relating to the preparation, negotiation and execution of this document, all duty payments and the reasonable cost of preparing and lodging a caveat) and any withdrawal of caveat or replacement(s) caveats.

EXECUTED as a deed 13 December 2013

Signed by Joseph Beck Matthews  
in the presence of

R. Williams  
Signature of Witness

[Signature]  
Signature

Rachel Louise Williams  
Name of Witness

The Custodian Seal of the  
Shire of Gingin  
is affixed in the presence of:

[Signature]  
Signature of Chief Executive Officer



[Signature]  
Signature of Shire President

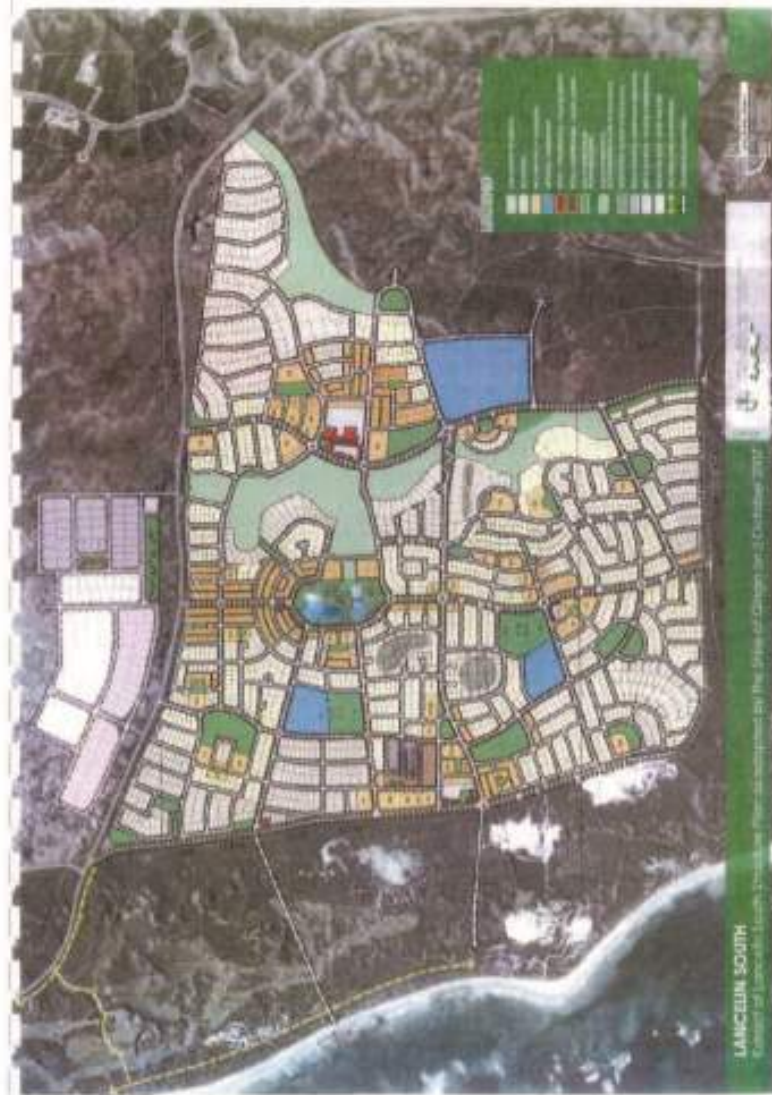
JEREMY EDWARDS  
Name of Chief Executive Officer

MICHAEL SPINALL  
Name of Shire President

## Annexure 1

Lancelin South Structure Plan

Annexure to Deed



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| page 85

## Annexure 2

Council Resolution

Annexure to Deed



**11.3.4 PROPOSED LOCAL PLANNING SCHEME AMENDMENT NO. 3 -  
PROPOSAL TO REZONE LOTS 1 AND 9505 LANCELIN ROAD,  
LANCELIN FROM 'GENERAL RURAL' ZONE TO FUTURE  
DEVELOPMENT ZONE AND 'CONSERVATION' ZONE**

**FILE:** LND/634  
**APPLICANT:** TAYLOR BURRELL BARNETT  
**LOCATION:** LOTS 1 AND 9505 LANCELIN ROAD, LANCELIN  
**OWNER:** JB MATTHEWS  
**ZONING:** RURAL  
**REPORTING OFFICER:** KEVIN TANG - PLANNING OFFICER  
**REPORT DATE:** 18 JUNE 2013  
**REFER:** ITEM 11.3.3 2 OCTOBER 2007

**THIS MATTER WAS DELIBERATED ON BEFORE ITEM 11.1.1.**

**COUNCILLOR RULE DECLARED A PROXIMITY INTEREST IN THIS ITEM AS HE IS THE OWNER OF MINING TENEMENT 7957 WHICH IS ADJACENT TO THIS DEVELOPMENT AND LEFT THE CHAMBER AT 3.15 PM.**

**OFFICER INTEREST DECLARATION**

Nil

**PURPOSE**

To consider a new Deed of Agreement between JB Matthews and the Shire of Gagin for the provision of Community infrastructure, additional fine sand haulage route and Old Ledge Point Road.

To consider the initiation of the Scheme Amendment No. 3 in the Shire of Gagin Local Planning Scheme No. 9 that would result in the rezoning of Lots 9505 and 1 Lancelin Road, Lancelin (the subject land) from the current zone of 'General Rural' to 'Future Development' and 'Conservation' zone.

**BACKGROUND**

Development of Lancelin South is being progressed under the Lancelin to Ledge Point Overall Structure Plan and the Lancelin South Structure Plan (LSSP). Both documents have been endorsed by Council and the Western Australian Planning Commission (WAPC).

The area currently zoned for Future Development provides for a maximum of 1250 new residential Lots, 54 Industrial Lots and Public Open Space. Currently, there is a Subdivision approval in place for 206 residential Lots, one grouped housing site and 24 mixed business/industrial Lots. Construction and sale of 51 Lots has commenced and the Shire approved clearance of Subdivision conditions at its Meeting of 21 May 2013 for these 51 Lots.

The Proponent seeks Council's approval to endorse an alternate Proposal titled "Master Plan" which does not seek to increase the number of Lots produced, but considers environmental matters, including separation distances between urban development and lime sand industries in the area.

A copy of the proposed Scheme Amendment and proposed Draft Deed of Agreement has been provided to Councilors on the Agenda thumb drive.

A copy of the new proposed Master Plan is attached as **Appendix 1**.

A copy of the Lancelin South Structure Plan, proposed to be superseded, is attached as **Appendix 2**.

This Proposal would finalise the matters between the Shire of Grogin and the Developer in terms of local community infrastructure provision and the Scheme Amendment process pertinent to Lancelin South development.

#### **PLANNING FRAMEWORK**

##### Strategic Plan/Structure Plan

Council and the WAPC has previously approved the LSSP, dated September 2009, which provides the strategic basis to support the current Proposal to extend Lancelin South development. It is prudent to mention that a portion of the south corner, proposed to be rezoned, is not reflected directly in the LSSP. However, it is reflected satisfactorily in the broader Lancelin to Ledge Point Structure Plan. Consultation with Department of Planning Staff indicates that this is not an issue and a new Structure Plan for this area should not be required.

This Plan identifies development in the subject area and indicates provision for an alternative lime sand haulage route (LSHR). It is questionable if the LSHR is, at this time, an acceptable scenario and full consultation would need to occur with the lime sand operators in the vicinity.

A copy of the map, which supports the Lancelin to Ledge Point Structure Plan, is attached as **Appendix 3**.

##### Local Planning Scheme No. 9

The subject land is to be zoned "General Rural" under Local Planning Scheme No. 9 (LPS No. 9). LPS No. 9 also provides the statutory requirements for the preparation of Structure Plans. Officers have communicated with the Department of Planning Staff who confirm that the Proposal would not warrant the preparation of a new Structure Plan.

Draft Local Planning Strategy

The subject land has been identified in the draft Local Planning Strategy (dLPS), Figure 5, as an area earmarked for urban formable expansion subject to environmental assessments and Structure Planning, which addresses townsite links, function of urban areas and employment. The Proposal is, therefore, consistent with the dLPS.

Council Policies

Council Policies may apply at the time of subdivision of the land.

External Policies

Council and the Developer have previously entered into a Deed of Agreement for the timely delivery and construction of certain community facilities. A review of those provisions between Officers and the Proponent has resulted in a new draft Deed which provides for additional local community facilities that would reasonably be expected by a new population. This reflects contemporary planning principles to create community.

A copy of such commitment has been provided in writing from Sam Williams on behalf of JB Matthews. The current Rezoning Report, provided by Taylor Burnell Bennett, does not include this new position.

The Developer, whilst increasing the provision for both the Community Facilities Fund and the Maritime Fund, has stated that the Shire would be required to fund the following:

- One (1) Local Community Centre;
- One (1) Local Library;
- One (1) Seniors' Centre; and
- One (1) Community Health Clinic.

It is expected that the revenue from the Community Facilities Fund will fund the infrastructure. Council has no cost scenarios for this infrastructure and it is important that the Deed does not bind Council absolutely, given that those facilities may be provided for in the current Lancelin Townsite or may not be required.

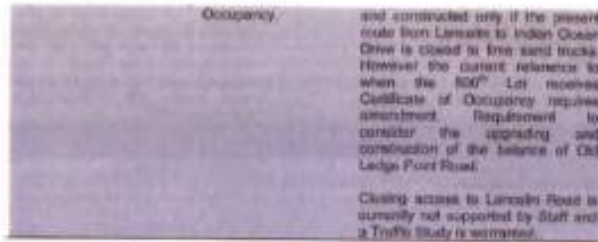
The below Table 1 provides a comparative analysis of the present Deed of Agreement provisions and the draft Deed of Agreement provisions (recommended to yet be refined).

**Deed of Agreement Comparison Analysis Table 1.**

Item Listed in current	Delivery	Item Listed in proposed Deed 5.
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Deed		Officer Comment
Northern coastal link, coastal facilities, dual use pathways to include up to Lancelin townsite, 50 bay carpark, construction and provision of power, water and telephone services.	Period of no longer than one year after the date of occupancy is granted for the 50 <sup>th</sup> house. Voted by Council Resolution for alternate services.	Provision for construction of solar panels, potable water services, ablation facilities, pathway access to the beach and two beach carpets of 50 bays.  Requires Deed to reflect another critical milestone for delivery; certificate of occupancy no longer issued necessarily for dwellings.
<b>Community Facilities Fund (Currently minimum rate fee applies)</b>		
Maritime Fund	\$207 per Lot to be reviewed proportionally with the annual increase in the minimum single Lot annual residential rate.	Linked to use in the upper coastal ward and includes expenditure on boat launching facility associated launching. \$207 per Lot increased proportionally to rate increase.
Coastal Access and Development Plan (can be modified from time to time by Council and the Developer).	Prior to subdivision show on plan southern vehicle link, DUF northern link, vehicle parking and coastal facilities.	Same provision.
Relocation and re-establishment of the fairways and greens at Lancelin Golf Course following decommissioning, as a result of construction of the Coastal Links, to a condition not less than the current standard.		Same provision.
Construction of Old Ledge Point Road shall be required upon completion of any new subdivisional roads within the Lancelin South GDP area to Old Ledge Point Road taking into consideration the urban traffic volumes generated by the Subdivision to a		Offers that suppression only on Old Ledge Point Road. Suggest word 'and' altered. Engineering staff consider the construction standard considers to heavy haulage vehicle use to prevent failure and maintenance facilities to pot holes.  Review of provision required, having consideration for comments and standards advised by Shire

standard determined in the traffic Engineering Study prepared for the ODP.	Security	Engineer. On Lodge Park Road is required for access to the Southern Coastal Link and will form the development fence needs to be upgraded also having regard for the heavy vehicle traffic not restricted to the "urban" traffic.
Charge and Cost of Deed between Shire and Developer; Cost of Deed borne by Developer	Security	Security placed at balance of Title
Nil		Charged to Developer
Nil		<p>15.40ha sporting fields 2.58 Active Open Space 4,172 Local Park playground 1.06 Neighbourhood Parks 8.34 Tennis courts, 2.08 netball courts, 2.08 basketball courts, 2.08 soccer fields, 1.88 AFL fields, 2.78 cricket ovals 5.83 skate park</p>
Nil		<p>The location of facilities and pricing of facilities is to be agreed between the Developer and the Shire at the time the facilities are required, in accordance with population ratios noted in Annexure 3 of the draft Deed.</p> <p>Reference to sporting Change Rooms/Abilities added to new Deed.</p> <p>New Deed should consider appropriate trigger to deliver infrastructure, given the population data only verified through Census data. Possibility to consider trigger based on the number of Lots created/sold.</p>
Nil		<p>Community Centre, library, Senior Centre, and Community Health Clinic (land will be set aside by the Developer at Lincoln South). Facilities are required in accordance with population ratio noted in Annexure 3.</p>
Nil	Issue of ODP Certificate of	Leisureland Heritage Rules located at Lot 122. Resubmission to be provided



State Planning Policies

Several State Planning policies have relevance to this request. They include:

- SPP3-Urban Growth and Settlements;
- SPP2.6-State Coastal Planning Policy; and
- WAPC Planning for Bushfire Protection Guidelines.

Community Consultation

If the amendment is initiated, it will be advertised in accordance with the provisions of the Planning and Development Act 2005 and Town Planning Regulations 1997.

**PHYSICAL ASSESSMENT**

Land Capability

Information on land capability, buffers, landform, vegetation, flora and fauna, surface and groundwater are provided in the proposed rezoning document, the subject of this Report.

Services

- Water and Sewer

An independent licensed provider is proposed to deliver water and sewer to the residents of Lancelin South. The sewer is proposed to be treated at a private facility on the developer's land where a wastewater treatment plant will be constructed approximately 500m from the Water Corporation treatment ponds.

- Power Supply

The development will use the existing Western Power infrastructure. Three phase power is available for the proposed Development.

- Telecommunications

Telstra network cables are accessible to the site and NBN Co. will deliver the National Broadband Network to the site. Individual landowners will be responsible for the cost of servicing their own properties.

- Engineering

All engineering works will be assessed for compliance with Council's Engineering Policy at the time of subdivision.

- Road Layout

The rezoning documents refer to previous traffic studies undertaken. The most recent, completed in 2010, which investigated the future design standard for Lancelin Road and staging of South Lancelin Stage 1 Outline Development Plan intersections along Lancelin Road. Given that this Study relates to Stage 1 only and there appears to be outstanding matters in relation to the construction of Old Ledge Point Road and an alternate lime sand haulage route, Officers are of the view that a Traffic Study dealing with the entire site is warranted at this time.

*Old Ledge Point Road*

Bruce Aulsebaugh's "South Lancelin Stage 1: Traffic and Intersection Design" Report of July 6 2010, provides comment as stated below:

*Review of the Riley Report shows traffic on Old Ledge Point Road is only expected to reach 1400 per day. This level of traffic can be treated with a bitumen seal project to ameliorate dust problems associated with existing rock activity. However, when Stage 1 ODP subdivision traffic starts using Ledge Point Road, (via subdivisional road connections) it is recommended that Ledge Point Road be upgraded to the final recommended standard (7.0 to 7.5m) surfaced travel way.*

*Finally, at the time that Stage 1 ODP subdivision traffic is expected to use Ledge Point Road, the intersection of Lancelin Road should be reconstructed at its final location with suitable intersection angle.*

The Shire's Engineer has considered the current provisions pertinent to Old Ledge Point Road whereby the Deed of Agreement states that the road should be sealed to stop dust impacts to the new dwellings at Lancelin South. Pot holing and inferior sealing has been experienced at Stage 1 and the Shire has received complaints in relation to the standard applied. The Proponent has suggested that the Developer would assume responsibility for the "seal"

Officers, however, are of the view that this issue needs to be rectified, particularly given the traffic numbers presently using the road.

The Shire's Engineer provides the following comments:

*At the time of subdivision, the Shire will require the Developer to construct (as per Council Policy 7.8 – Guidelines for Roadworks, Drainage and Subdivision Development) and seal Old Ledge Point Road from the intersection of Lancelin Road to the Southern Coastal Link to an 8m wide two coat seal standard (to Main Roads WA Standards) to the satisfaction of the Shire, to ameliorate dust impacts on newly created 'Urban' Lots from extractive industries and/or mining operations operating on these roads. Further construction and upgrading of Old Ledge Point Road shall be required upon connection of any new subdivision roads within the Lancelin South Outline Development Plan (ODP) area to Old Ledge Point Road, taking into consideration the proposed and actual urban traffic volumes generated by the Subdivision (reference Figure 19 in the ODP).*

In this regard, Clause 3.12 of the Deed should be amended to reflect the standard and timing required to deliver a quality road capable of suppressing dust and accommodating heavy haulage and domestic traffic. Old Ledge Point Road will service the coastal access node. This issue will need to be resolved prior to Council initiating a Scheme Amendment.

#### *Alternate Lime Sand Haulage Route (LSHR)*

The construction of an alternate LSHR is reliant on the Shire enforcing closure of the present Lancelin Road to Indian Ocean Drive as requested by the Developer. This scenario has not been discussed with present lime sand operators who operate in close proximity to the Lancelin townsite. It is questionable whether the scenario of "closing" current access would be acceptable. In this regard, the LSHR may be premature, however, in the event that all parties agree, it is certainly possible. Regardless, the Proposal may have merit in attempting to remove up to 50% of heavy traffic from Lancelin Road generally. Given that the LSHR has a direct relationship with Old Ledge Point Road, Officers are of the view that the arrangement needs refining in that, either way, the domestic traffic can interact with heavy haulage vehicles present in the Lancelin area. This is an issue and needs to be clarified through the Deed. Presently the new Deed states:

*When a dwelling has been erected on Lot 500 in the development and dwelling (sic) has been issued with a certificate of occupancy, the Developer will construct a Limestone Haulage Route in a location to be agreed between the*



Shire and the Developer: To facilitate the construction of the Limestone Haulage Road the Shire must co-operate with the Developer in arranging for the closure of Lancelotti Road from the Old Ledge Point Road intersection to the Indian Ocean Drive for heavy vehicles (Limestone Haulage operations).

Officers suggest the reference to Certificates of Occupancy is omitted given that they are no longer required to be issued for dwellings. Further, construction needs to include consideration of the heavy haulage vehicles given that they are operating on the road.

- **Community infrastructure**

The provision for Community infrastructure will be delivered by way of a Deed of Agreement between the Developer and the Shire (a Deed has been in place for certain provisions since 2001 and varied accordingly over time). A new Deed is presented for Council's consideration, a copy of which has been included under separate cover for Council's information. Currently, the trigger for provision relies on population data which could only be ascertained by census data. Officers consider that the trigger for delivery should be based on the number of lots created.

**Environmental Impact**

This Proposal has not been assessed by the Environmental Protection Authority (EPA) at this stage. Nevertheless, details on the environmental features of the site have been provided in the Scheme Amendment document. Further, the Proponent has had extensive discussions with the EPA during the rezoning phase of Stage 1 which resulted in the introduction of a "Conservation" zone into the Scheme. The Proposal includes a 40ha area of "Conservation" zone to be retained in the south west corner of the site which is to be retained in private ownership. The previous scheme amendment resulted in 22ha being set aside as "Conservation" zone following negotiations with the EPA and the Department of Environment and Conservation.

**Design**

The previous rezoning for Lancelotti South provided for approximately 1250 dwellings. The proposed Lots are, on average, larger than the previous Lots portrayed in the LSSP. The subject Proposal would result in a total of approximately 4000 residential Lots.

The components of the Development are outlined below:

- Residential: 375ha ranging from R2.5 to R2040
- Commercial (Village Centre): 2ha
- 2 Primary School sites and 1 High School site

- 80ha Public Open Space
- 62ha of Conservation under private ownership.

The design attempts to be sympathetic to the site and its topography. The larger ridgelines and some vegetation will be retained. It should be noted that there will still be a need for large-scale vegetation clearing and major earthworks to create level building Lots.

Council will note the submitted new Masterplan differs from the approved LSSP due to an extension of the "Residential" zone on the east of the site. The Proponent contends that the easterly expansion is partially attributed to the additional conservation zone and the need to provide sufficient buffer separation distances.

Further, the location of the Public Open Space (POS) has altered and now includes the significant ridgelines as POS component as well as a buffer which would separate the development site from Indian Ocean Drive. Council will inherit the management of those POS's.

Economic Implications

The economic implications are as follows:

Expected revenue/assets	Liabilities/expenses
Rates on new Lots.	Management and servicing infrastructure include road reserves, community infrastructure and public open space POS (up to 80% as previously agreed through structure planning).
Minimum rate equivalent plus 50% (Community Facilities Fund) is: 4000 Lots @ \$1500 = \$6 million (approx.).	Provision of a Community Centre, Library, Seniors' Centre and Community Health Clinic if required.
Maritime Fund \$207 per lot plus incremental increase equal to rate increase proportion i.e. minimum total of approx. \$840 000.	Whole of life cycle costs on community infrastructure including playgrounds, sporting facilities, coastal nodes, etc.
15.3ha Sporting fields incorporating: <ul style="list-style-type: none"> <li>• 2 Active open space/ovals for AFL/cricket purposes</li> <li>• 2 Netball courts delivered in a staged manner, possibly located with future schools</li> <li>• 2 Basketball courts delivered in a staged manner, possibly located with future schools</li> <li>• 2 Soccer fields</li> <li>• 8 Tennis courts delivered in a staged manner, possibly located with future schools.</li> </ul>	Ongoing maintenance like sand haulage route, if provided for.

- 4 Local parks/Playground - 2.5ha total
- 2 Neighbourhood parks - 5ha total

Line and haulage route road reserve and construction

Coastal Facilities: coastal links, coastal node with services,

Dual use pathway to Lancelin townsite

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#### Social Implications

Previous consultation indicated that the Lancelin community were very positive and encouraging with regard to the Lancelin South development. The level of servicing provided by the Developer, including provision of local Community Facilities, will ensure that the Development provides the general level of those facilities expected by a new population.

Whilst Council will have the responsibility to use the Community Facilities Fund for certain built form, control over such will ensure that a well-designed public building may be delivered which reflects the fundamental requirements of that community.

#### **CONCLUSION**

In summary, Officers are of the view that Council should initiate the rezoning provided it is satisfied that the new Deed of Agreement will deliver the community infrastructure and service infrastructure required to support the new population.

This Proposal includes the delivery of sporting facilities from the Developer which were not previously identified, however, also states that Council must utilise the Community Infrastructure Funds to deliver certain facilities including: Community Centre, Library, Senior Centre and Community Health Clinic.

The delivery of a solution to the interaction of domestic traffic and current heavy haulage traffic in respect of Old Ledge Point Road and the proposed LSHR needs clarification so that delivery of the infrastructure is secured. In this regard, a Traffic Study should be undertaken to support the Scheme Amendment. It is suggested that Council authorise the Shire's Chief Executive Officer to execute the new Deed once the Proponent has satisfactorily demonstrated how, what and when infrastructure will be delivered.

It is prudent to note that the proposed Masterplan will supersede the Lancelin Structure Plan and, in this regard, Council should require the Proponent to have the Lancelin South Structure Plan updated to include reference to the new Masterplan.

**VOTING REQUIREMENTS- SIMPLE MAJORITY**

**RECOMMENDATION**

It is recommended that Council:

1. Require the Proponent to submit the following, to the satisfaction of the Chief Executive Officer:
  - i. A Traffic Study to support the Scheme Amendment request and include it in the Appendices. The Traffic Study shall, at a minimum, consider construction and delivery of an additional Lime Sand Haulage route and Old Ledge Point Road;
  - ii. An amended draft Deed of Agreement - prepared by Corntison Legal, ref SEP13071, which, at a minimum, includes provision for the construction and funding of an additional Lime Sand Haulage Route and Old Ledge Point Road and considers an alternative to "Occupancy Certificates" and population statistics as a trigger point for delivery of certain items.
  - iii. Appropriate fees and revised rezoning documents, including reference to the provisions contained in the new Deed of Agreement referring to community facilities and road infrastructure.
2. Adopt the "Revised Masterplan" as identified in the - Lancelin South (Balance Rezoning) Scheme Amendment Request prepared by Taylor Burnell Barnett subject to the inclusion of such with appropriate reference being included in the Lancelin South Structure Plan with appropriate notations and explanations (acknowledging that such Plan replaces the Lancelin South Structure Plan as adopted by Council 2 October 2007) to the satisfaction of the Shire's Chief Executive Officer; and
3. Subject to receipt of the items referred to in dot point 2 (above), resolve to initiate Scheme Amendment No. 3 to the Shire of Gingin Local Planning Scheme No. 9 and the provisions of Section 75 of the Planning and Development Act 2005 which:
  - i) Rezones Lot 6606 and Lot 1 Lancelin Road, Lancelin from "General Rural" zone to "Future Development" zone and "Conservation" zone; and
  - ii) Amends the Scheme Map accordingly.

4. Authorise the Chief Executive Officer and Shire President to execute all necessary documentation relevant to the above Scheme Amendment.

**RESOLUTION**

Moved Councillor Ammon that Council:

1. Require the Proponent to submit the following, to the satisfaction of the Chief Executive Officer:
  - I. A Traffic Study to support the Scheme Amendment request and include it in the Appendixes. The Traffic Study shall, at a minimum, consider construction and delivery of an additional Lime Sand Haulage route and Old Ledge Point Road;
  - II. An amended draft Deed of Agreement - prepared by Cormiston Legal, ref SEP13071, which, at a minimum, includes provision for the construction and funding of an additional Lime Sand Haulage Route and Old Ledge Point Road and considers an alternative to "Occupancy Certificates" and population statistics as a trigger point for delivery of certain items.
  - III. Appropriate fees and revised rezoning documents, including reference to the provisions contained in the new Deed of Agreement referring to community facilities and road infrastructure.
2. Adopt the "Revised Masterplan" as identified in the - Lancelin South (Balance Rezoning) Scheme Amendment Request prepared by Taylor Burrell Barnett subject to the inclusion of such with appropriate reference being included in the Lancelin South Structure Plan with appropriate notations and explanations (acknowledging that such Plan replaces the Lancelin South Structure Plan as adopted by Council 2 October 2007) to the satisfaction of the Shire's Chief Executive Officer; and
3. Subject to receipt of the items referred to in dot point 2 (above), resolve to initiate Scheme Amendment No. 3 to the Shire of Gingin Local Planning Scheme No. 9 and the provisions of Section 75 of the Planning and Development Act 2005, which:
  - I. Rezones Lot 9565 and Lot 1 Lancelin Road, Lancelin from "General Rural" zone to " Future Development" zone and "Conservation" zone; and
  - II. Amends the Scheme Map accordingly.

4. Authorise the Chief Executive Officer and Shire President to execute all necessary documentation relevant to the above Scheme Amendment.

CARRIED UNANIMOUSLY

COUNCILLOR RULE RETURNED TO THE CHAMBER AT 3.16 PM AT WHICH TIME THE SHIRE PRESIDENT ADVISED HIM OF THE DECISION WHICH HAD MATERIALISED DURING HIS ABSENCE FROM THE CHAMBER.

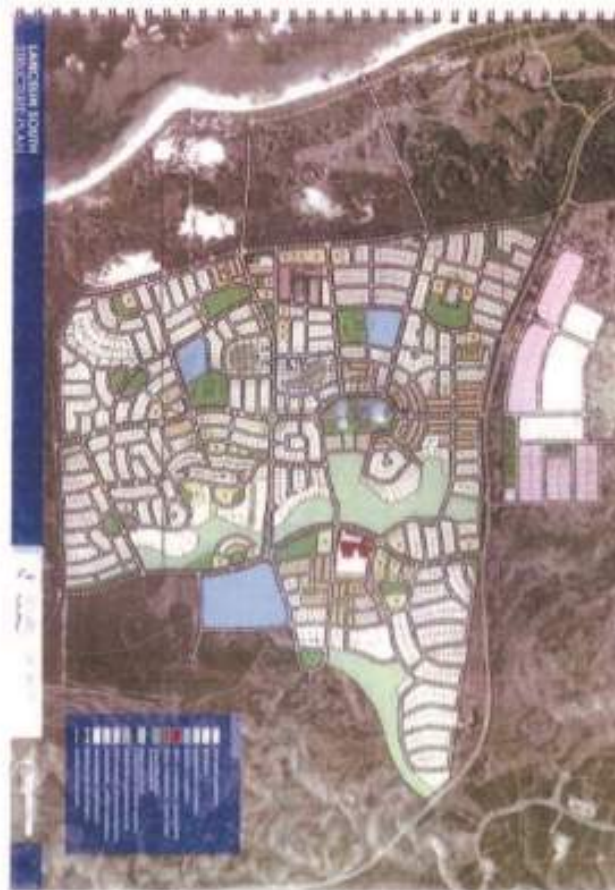
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**APPENDIX 1**





**APPENDIX 2**



**APPENDIX 3**



## Annexure 3

Community Infrastructure - Accepted Ratios and Demand

Annexure to Deed

Lowest bid is 0.000 per sqm. Competitively Reflected in Accepted Bids and Lowest Bidder's Bid is 0.000 per sqm. The following are the proposed contract values for the 100 lots and the 100 lots are being offered in 100 lots. The following are the proposed contract values for the 100 lots and the 100 lots are being offered in 100 lots. The following are the proposed contract values for the 100 lots and the 100 lots are being offered in 100 lots.

PROPERTY	NO. OF LOTS	NO. OF LOTS	NO. OF LOTS	NO. OF LOTS
Block 100	100	100	100	100
Block 101	100	100	100	100
Block 102	100	100	100	100
Block 103	100	100	100	100
Block 104	100	100	100	100
Block 105	100	100	100	100
Block 106	100	100	100	100
Block 107	100	100	100	100
Block 108	100	100	100	100
Block 109	100	100	100	100
Block 110	100	100	100	100
Block 111	100	100	100	100
Block 112	100	100	100	100
Block 113	100	100	100	100
Block 114	100	100	100	100
Block 115	100	100	100	100
Block 116	100	100	100	100
Block 117	100	100	100	100
Block 118	100	100	100	100
Block 119	100	100	100	100
Block 120	100	100	100	100
Block 121	100	100	100	100
Block 122	100	100	100	100
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Block 145	100	100	100	100
Block 146	100	100	100	100
Block 147	100	100	100	100
Block 148	100	100	100	100
Block 149	100	100	100	100
Block 150	100	100	100	100



## Annexure 4

Amendment 93

Amendment to Deed







**ASIC EXTRACT SNAPSHOT**

**CURRENT ORGANISATION DETAILS**

Date Extracted	16/04/2024
ACN	676 032 769
ABN	-
Current Name	VIMG WA LANCELIN CITY PTY LTD
Registered In	Western Australia
Registration Date	22/03/2024
Review Date	22/03/2025
Company Type	ACN (Australian Company Number)
Current Directors	1
Current Secretaries	1

Start Date	22/03/2024
Name	VIMG WA LANCELIN CITY PTY LTD
Name Start Date	22/03/2024
Status	Registered
Type	Australian Proprietary Company
Class	Limited By Shares
Sub Class	Proprietary Company
Disclosing Entity	No

**Share Structure** (Displaying Top 4 Only)

[Go to Full ASIC Results](#)

Class	Class Type	Shares Issued	Amount Paid
ORD	ORDINARY	10000	\$1,000.00

**(creditor)watch - Credit Score (578)**

[Go to Full Credit Report](#)

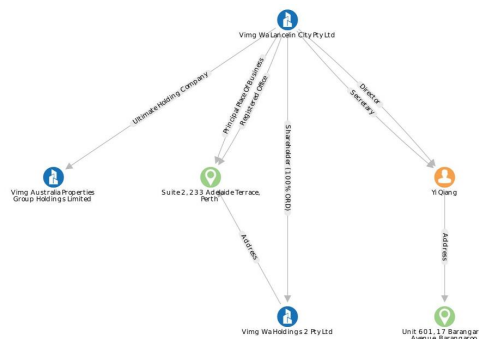


**Risk Data Summary**

Court Judgments	0	Payment Defaults	0	Insolvency Notices	0	Mercantile Enquiries	0	Credit Enquiries	1
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**REVEAL** - Company Visualisation

[Go to full workspace](#)



**InfoTrack**

www.infotrack.com.au  
1800 738 524

**ASIC  
Current Organisation Extract**



**ASIC Data Extracted 16/04/2024 at 18:56**

This extract contains information derived from the Australian Securities and Investment Commission's (ASIC) database under section 1274A of the Corporations Act 2001. Please advise ASIC of any error or omission which you may identify.

**- 676 032 769 VIMG WA LANCELIN CITY PTY LTD -**

<b>ACN (Australian Company Number):</b>	676 032 769	<b>Document No.</b>
<b>ABN:</b>		
<b>Current Name:</b>	VIMG WA LANCELIN CITY PTY LTD	
<b>Registered in:</b>	Western Australia	
<b>Registration Date:</b>	22/03/2024	
<b>Review Date:</b>	22/03/2025	
<b>Company Bounded By:</b>		

**- Current Organisation Details -**

<b>Name:</b>	VIMG WA LANCELIN CITY PTY LTD
<b>Name Start Date:</b>	22/03/2024
<b>Status:</b>	Registered
<b>Type:</b>	Australian Proprietary Company
<b>Class:</b>	Limited By Shares
<b>Sub Class:</b>	Proprietary Company

**- Company Addresses -**

<b>- Registered Office</b>		6EAHQ5543
<b>Address:</b>	SUITE 2 233 ADELAIDE TERRACE PERTH WA 6000	
<b>Start Date:</b>	22/03/2024	

<b>- Principal Place of Business</b>		6EAHQ5543
<b>Address:</b>	SUITE 2 233 ADELAIDE TERRACE PERTH WA 6000	
<b>Start Date:</b>	22/03/2024	

**- Company Officers -**

**Note:**

A date or address shown as UNKNOWN has not been updated since ASIC took over the records in 1991. For details, order the appropriate historical state or territory documents, available in microfiche or paper format.

\* Check documents listed under ASIC Documents Received for recent changes.

**Director**

**AGENDA  
SPECIAL COUNCIL MEETING  
30 APRIL 2024**

**APPENDIX 13.1.4**

**Name:** YI QIANG 6EAHQ5543  
**Address:** UNIT 601 17 BARANGAROO AVENUE BARANGAROO NSW 2000  
**Birth Details:** 08/02/1983 JIANGSU CHINA  
**Appointment Date:** 22/03/2024  
**Cease Date:** //

**Secretary**

**Name:** YI QIANG 6EAHQ5543  
**Address:** UNIT 601 17 BARANGAROO AVENUE BARANGAROO NSW 2000  
**Birth Details:** 08/02/1983 JIANGSU CHINA  
**Appointment Date:** 22/03/2024  
**Cease Date:** //

**Ultimate Holding Company**

**Name:** 612 924 106 VIMG AUSTRALIA PROPERTIES GROUP HOLDINGS LIMITED 6EAHQ5543  
**Address:**  
**Appointment Date:** //  
**Cease Date:** //  
**Abn:** 45 612 924 106

**- Share Structure -**

**Current**

**Class:** ORDINARY 6EAHQ5543  
**Number of Shares Issued:** 10000  
**Total Amount Paid / Taken to be Paid:** \$1,000.00  
**Total Amount Due and Payable:** \$0.00

---

**Note:**

For each class of shares issued by a company, ASIC records the details of the twenty members of the class (based on shareholdings). The details of any other members holding the same number of shares as the twentieth ranked member will also be recorded by ASIC on the database. Where available, historical records show that a member has ceased to be ranked amongst the twenty members. This may, but does not necessarily mean, that they have ceased to be a member of the company.

---

**- Share/Interest Holding -**

**Current**

---

**- Holding -**

<b>Class:</b>	ORD	<b>Number Held:</b>	10000	6EAHQ5543
<b>Beneficially Owned:</b>	Yes	<b>Fully Paid:</b>	Yes	

**- Members -**

**Name:** VIMG WA HOLDINGS 2 PTY LTD  
**ACN:** 676 032 090  
**Address:** SUITE 2 233 ADELAIDE TERRACE PERTH WA 6000  
**Joint Holding:** No

**- External Administration Documents -**

[There are no external administration documents held for this organisation.](#)

**- Charges -**

[There are no charges held for this organisation.](#)

**Notes:**

On 30 January 2012, the Personal Property Securities Register (PPS Register) commenced. At that time ASIC transferred all details of current charges to the PPS Registrar. ASIC can only provide details of satisfied charges prior to that date. Details of current charges, or charge satisfied since 30 January 2012 can be found on the PPS Register, [www.ppsr.gov.au](http://www.ppsr.gov.au). InfoTrack may cap documents for on-file searches to 250.

**- Document List -**

**Notes:**

- \* Documents already listed under Registered Charges are not repeated here.
- \* Data from Documents with no Date Processed are not included in this Extract.
- \* Documents with '0' pages have not yet been imaged and are not available via DOCIMAGE. Imaging takes approximately 2 weeks from date of lodgement.
- \* The document list for a current/historical extract will be limited unless you requested ALL documents for this extract.
- \* In certain circumstances documents may be capped at 250.

<b>Form Type</b>	<b>Date Received</b>	<b>Date Processed</b>	<b>No. Pages</b>	<b>Effective Date</b>	<b>Document No.</b>
201	22/03/2024	22/03/2024	3	22/03/2024	6EAHQ5543
201C	Application For Registration as a Proprietary Company				

**- Company Contact Addresses -**

**- Contact Address for ASIC use only**

**Address:** PO BOX 6415 POINT COOK VIC 3030  
**Start Date:** 15/04/2024









\*\*\* End of Document \*\*\*

**(creditor)watch**  
Credit Report


<b>Name</b>	VIMG WA LANCELIN CITY PTY LTD
<b>ACN</b>	676032769
<b>Document Type</b>	Credit Report
<b>Report Generated</b>	16-04-2024 at 18:57
<b>ASIC Extract</b>	Not Included
<b>ASIC Extract Status</b>	Not Included

<b>Credit Report</b>	✓ Included
<b>RiskScore</b>	✓ Included
<b>Payment Rating</b>	✗ Not Included
<b>CW Bankruptcy Check (PIRS)</b>	✗ Not Included
<b>ASIC Data (On File)</b>	✗ Not Included
<b>ASIC Current Extract</b>	✗ Not Included
<b>ASIC Current &amp; Historical</b>	✗ Not Included
<b>PPSR ACN</b>	✗ Not Included
<b>PPSR Business Name</b>	✗ Not Included
<b>Append Docs Lodged</b>	✓ Included
<b>Append Business Names</b>	✓ Included
<b>Append Credit Enquiries</b>	✓ Included

Summary

 <p><b>C1 / 578</b> Neutral Risk</p>	<p><b>1</b> Credit Enquiries</p>	<p> Registered</p>
<p> No Registered Defaults</p>	<p> No Court Actions</p>	<p> No Mercantile Enquiries</p>
<p> No ASIC Published Notices</p>	<p> No Critical ASIC Documents</p>	<p> Important Cross Directorships Not Available</p>

Adverse

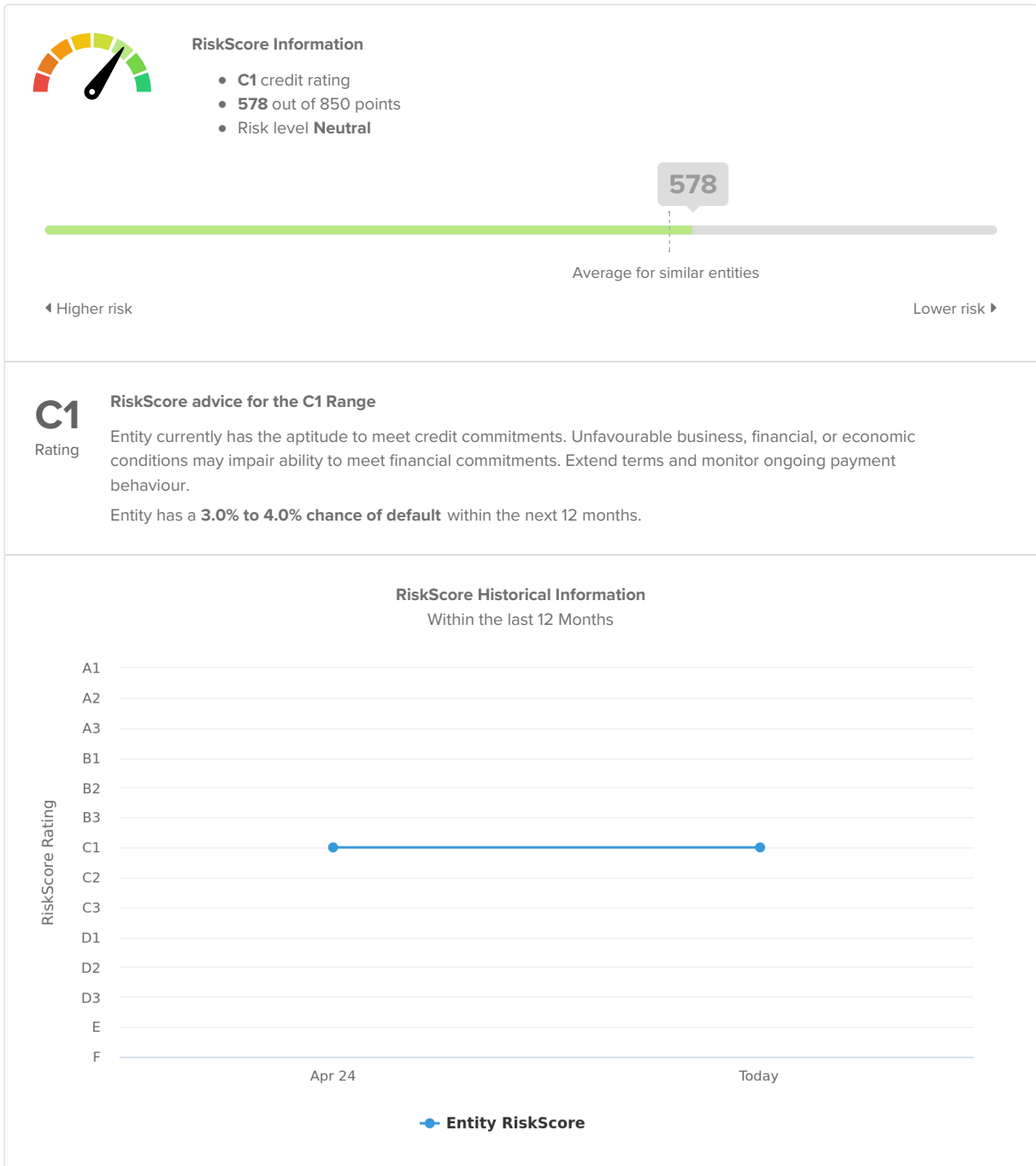
Risk Category	Risk Level	Risk Overview
<p style="text-align: center;"> No Adverse Information Found</p>		

ASIC Data

<b>Name</b>	VIMG WA LANCELIN CITY PTY LTD
<b>Registered Office Address</b>	SE 2 233 ADELAIDE TCE PERTH 6000
<b>ACN</b>	676 032 769
<b>Registered Date</b>	22-03-2024
<b>Next Review Date</b>	22-03-2025
<b>Status</b>	Registered
<b>Company Type</b>	Australian Proprietary Company
<b>Class</b>	Limited By Shares
<b>Subclass</b>	Proprietary Company
<b>Locality</b>	PERTH WA 6000
<b>Regulator</b>	Australian Securities & Investments Commission



RiskScore



**i** The CreditorWatch RiskScore is the most advanced algorithm in the market and is designed to ensure you make the right decision. The RiskScore has been developed using the latest machine learning techniques in combination with CreditorWatch's extensive data. The CreditorWatch RiskScore should be used in partnership with your internal credit procedures and policies.

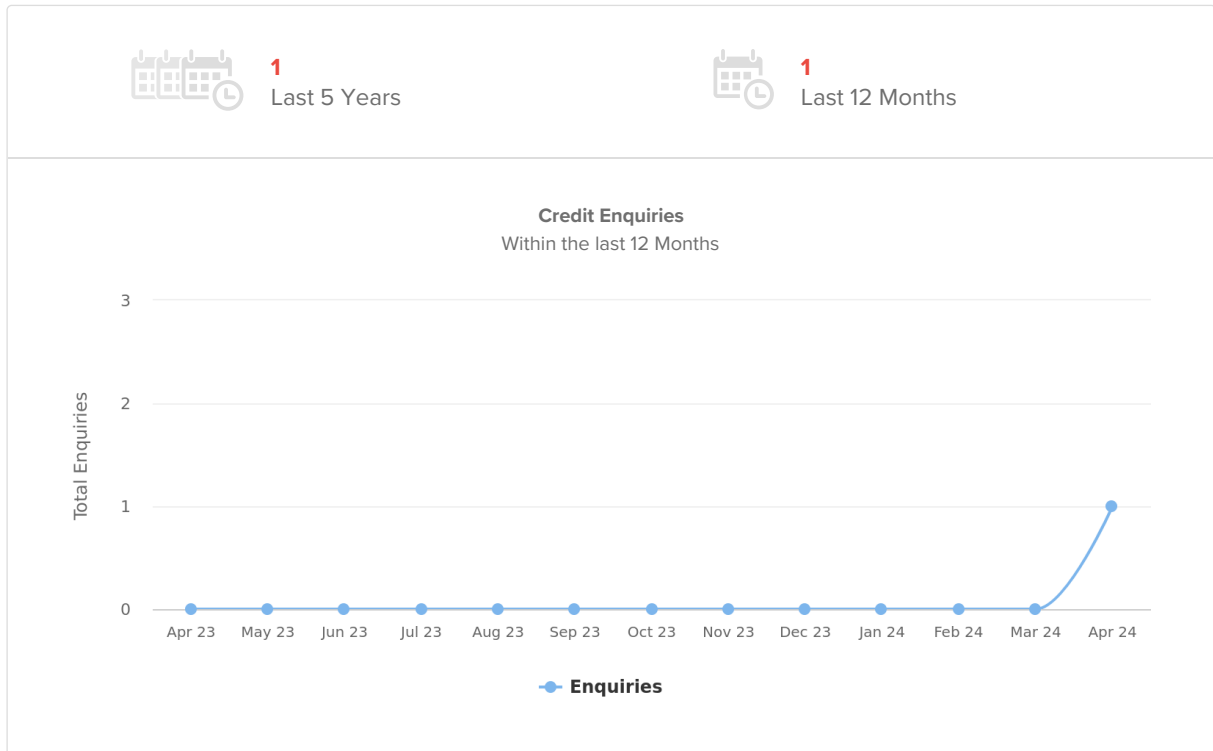
What is "probability of default"?  
This is the likelihood that an entity will NOT be able to meet their financial commitments in the next 12 months eg: pay an invoice.

Score Recommendations

RiskScore Rating	Risk Level	Recommendation
A1, A2, A3	Very Low	Very strong credit quality based on behavioural and business demographics. Likelihood of default or insolvency is considered very low. Extend terms within consideration.
B1, B2	Low	Strong credit quality based on behavioural and business demographics. Likelihood of default or insolvency is considered very low. Extend terms within consideration.
B3, C1	Neutral	Lower than average default risk for an Australian business. Business demographics and behaviours indicative of low likelihood of default or insolvency in the short to medium term. Extend terms and monitor ongoing payment behaviour.
C2	Acceptable	Average default risk for an Australian business. Standard underwriting criteria and due diligence recommended prior to extending credit. Extend terms, closely monitor ongoing payment behaviour.
C3	Potential Risk	Behaviours and business demographics may indicate increased risk for some businesses in this group. Assessment of the entity's financial position and cashflow is recommended prior to extending material unsecured credit.
D1, D2, D3	High	Risk of default or insolvency is significantly higher than the average for Australian businesses. COD trading highly recommended.
E	Impaired	Entity is highly vulnerable to default or insolvency in the short term.
F	Defaulted	One or more creditors has initiated legal proceedings or other significant actions in response to unpaid debt obligations, or the entity is entering or has entered insolvency.

**i** Please note that the rating and recommendation should be used in partnership with your company's internal credit procedures and policies. The rating should not be used as the sole reason in making decision about the entity.

### Credit Enquiries



### Enquiries Ordered by Industry

Industry (ANZSIC Division)	No of Enquiries
Information Media and Telecommunications (J)	1
<b>Total Enquiries (within the last 12 months)</b>	<b>1</b>


### Enquiries Ordered by Date

Industry (ANZSIC Division)	Date
Information Media and Telecommunications (J)	16-04-2024

**i** Credit enquiries provide an indication of the number of times an entity's credit file has been accessed. For credit enquiries performed in the last 12 months, the date of the enquiry and the industry of the business, sole trader or individual performing the credit enquiry is detailed in the graph and table.


## Risk Data

### Court Actions

Court Details	Plaintiff	Action	Nature of the Claim	Amount
 No Court Actions				


**i** CreditorWatch aggregate data from courts around Australia to provide a summary of court actions against an entity. When available, details of the action include location, case number, state, plaintiff, nature of the claim, action type and dollar amount.

### Payment Defaults

Added	Invoice Due	Submitted By	Amount	Status
 No Payment Defaults Lodged				


**i** A default indicates that the debtor has failed to make a payment for goods or services. Payment Defaults are unique to CreditorWatch and can have one of three statuses: outstanding, partial payment or settled.

### Tax Defaults

Date Added	Date Updated	Submitted By	Status	Amount
 No Tax Defaults Lodged				

**i** A tax default indicates that a business has overdue tax payments and has failed to respond to a notice of disclosure by The Australian Taxation Office (ATO). Tax defaults are only lodged on debts that are over 90 days overdue and are over a value of \$100,000.

Mercantile Enquiries

Enquiry Date	Mercantile Agent
 No Mercantile Enquiries Lodged	

**i** A Mercantile enquiry is an indication that a mercantile agency (or debt collection agency) has conducted an enquiry on this entity for the purpose of debt collection.

## Status Changes

### ASIC Entity Status Changes

Change Date	ASIC Status
22-03-2024	Registered (Current status)

**i** The most common ASIC entity statuses are: registered, deregistered, external administration and strike-off action in progress. This section identifies if there have any been changes to the status of the entity's ACN, and the date the changes have occurred.

## Business Names

### Registered Business Index

Business Name	Status	Registered Number	Address
There are no business name extracts registered to this company			

### Registered Business Names

Name	Business Name Type	Source
There are no names registered for this company		

**i** Business names are derived from two data sources, one of which is basic information provided by ABR. The other comes from the business names extract index which, when available, includes the owner of the business name and registered business address.

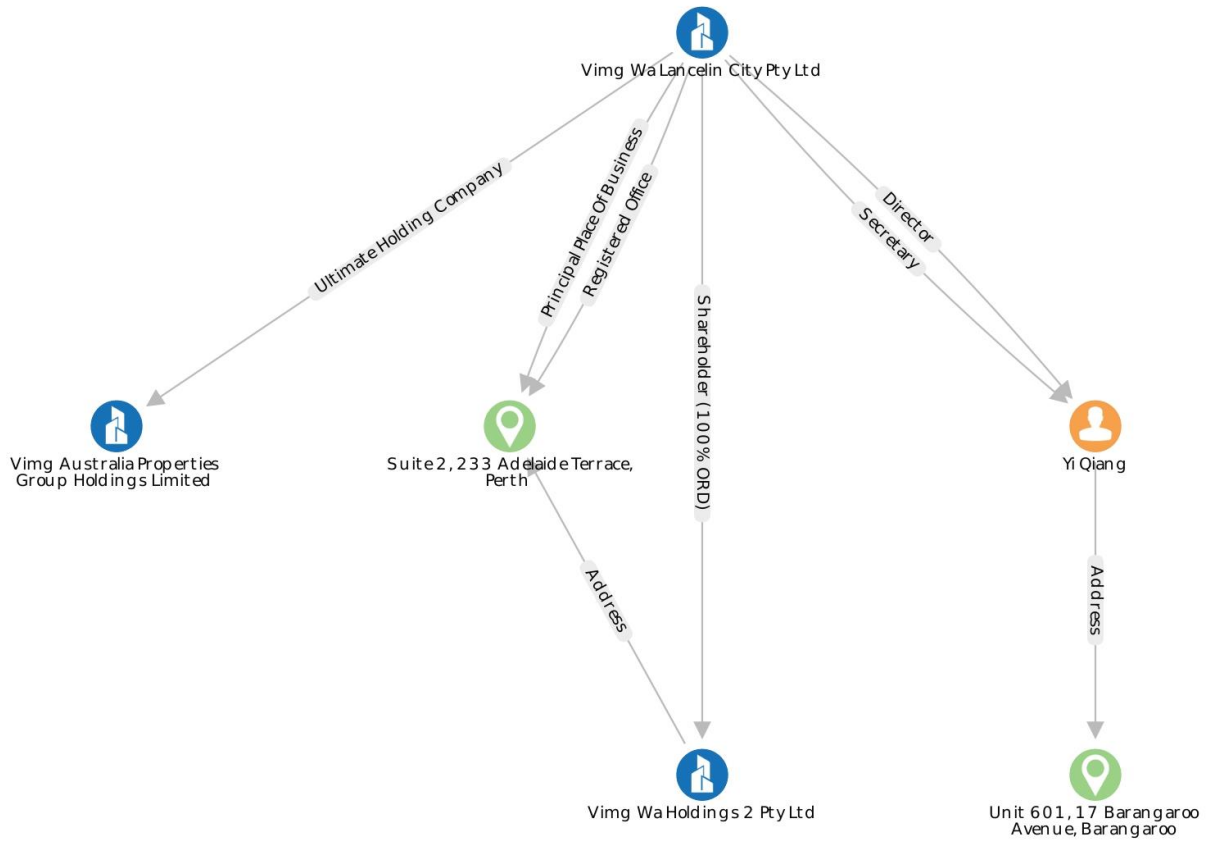
## Appendix

### Disclaimer

CreditorWatch is committed to ensuring that the information provided is accurate and comprehensive however due to data being received from sources not controlled by CreditorWatch we cannot guarantee that it is complete, verified or free of errors. To the extent permitted by law, CreditorWatch will not be held responsible for any errors or omissions therein concerning the information sourced and published in its publications, websites, API or emails.



**Workspace:** VIMG WA LANCELIN CITY PTY LTD ACN 676 032 769  
**Matter:** 43077471  
**Created:** 16/04/2024 6:57 PM



InfoTrack shall not be liable to the User in negligence or otherwise in respect of anything done, omitted, modified or done by the User in reliance in whole or in part on the Service including any assistance or demonstration provided to the User by InfoTrack and InfoTrack's liability to the User shall in any event be limited to the amount of the fees charged for the particular service to which such liability relates.

**14 REPORTS - OPERATIONS AND ASSETS**

Nil

**15 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

Nil

**16 COUNCILLORS' OFFICIAL REPORTS**

**17 NEW BUSINESS OF AN URGENT NATURE**

Two Items will be submitted at the meeting for acceptance as New Business of an Urgent Nature as follows:

1. Independent Panel Member Selection; and
2. CEO Position Description, Selection Criteria and Advertisement.

Reports for each item will be circulated to Councillors following the CEO Selection Panel Meeting which will take place on 30 April 2024 prior to the Special Council Meeting.

**18 MATTERS FOR WHICH MEETING IS TO BE CLOSED TO THE PUBLIC**

Nil

**19 CLOSURE**