

Land Management Agreement

TOWN OF GAWLER

MILTADIS CHRIST VADOULIS

MARGARET HARA AGAPY LESKE

MARIANTHY VADOULIS

550 MAIN NORTH ROAD PTY LTD

THIS AGREEMENT is made the _____ day of _____ 2023

BETWEEN

TOWN OF GAWLER of 43 High Street, Gawler East SA 5118 ("the Council")

AND

MILTADIS CHRIST VADOULIS [REDACTED]

AND

MARGARET HARA AGAPY LESKE of [REDACTED]

AND

MARIANTHY VADOULIS of [REDACTED]

AND

550 MAIN NORTH ROAD PTY LTD [REDACTED]
5000.

BACKGROUND

- A. The Council is a designated authority for the purposes of section 192(19) of the *Planning, Development and Infrastructure Act 2016* ("the Act").
- B. Miltiadis Christ Vadoulis is the registered proprietor of the land comprised in Certificate of Title Register Book Volume 5719 Folio 768 known as 550 Main North Road, Evanston Park.
- C. Margaret Hara Agapy Leske and Marianthy Vadoulis as executors with leave being reserved of Dionysia Vadoulis who died 06/01/2019 are the registered proprietors of the land comprised in Certificate of Title Register Book Volume 5821 Folio 328 known as 554 Main North Road, Evanston Park
- D. 550 Main North Road, Evanston Park and 554 Main North Road, Evanston Park (together, "the Land") are adjacent to each other and have street frontages to Main North Road on their western boundaries. Presently located on the Land is a detached dwelling and associated outbuilding and curtilage and the Vadoulis Garden Centre.
- E. Miltiadis Christ Vadoulis, Margaret Hara Agapy Leske and Marianthy Vadoulis (together, "the Owner") have entered into arrangements with 550 Main North Road Pty Ltd (ACN 645 857 174) ("the Proponent") for the possible sale of the Land.
- F. The Proponent, through their planning consultants, Future Urban, applied to the Minister for Planning to initiate an amendment to the Planning and Design Code ("the Code") under the Act to rezone the Land from General Neighbourhood Zone to Employment Zone.
- G. The Council was advised of the intention to initiate a Code amendment ahead of the formal application being made and confirmed its in-principle support by way of letter to Mr Michael

Osborn of Future Urban dated 11 May 2022, which letter forms **Annexure 1** to this Agreement.

- H. By way of letter dated 30 August 2022, the Minister for Planning advised the Council of his decision to approve the “*Proposal to Initiate the 550-554 Main North Road, Evanston Park Code Amendment*” submitted by Future Urban. A copy of this letter forms **Annexure 2** to this Agreement.
- I. In Annexure 2, the Minister for Planning states as follows:

“Prior to approval of the Code Amendment, the Designated Entity must demonstrate to my satisfaction that all necessary arrangements or deeds are fully executed as required to secure the funding and/or delivery of all infrastructure required to secure the funding and/or delivery of all infrastructure as proposed by the Code Amendment (to the satisfaction of all relevant infrastructure providers)”.
- J. In accordance with the investigations undertaken for the Code Amendment, future development of the Land is anticipated to require infrastructure upgrades to Council-owned land if the Code Amendment is approved, including the construction of stormwater and flood management infrastructure as well as to road and road verge upgrades to Main North Road and to Sheriff Street to the north of the Land.
- K. Further, in the event that the Code Amendment is approved and the Land is rezoned to the Employment Zone, the Council wishes to ensure that a number of design requirements are incorporated into future development applications lodged for the Land.
- L. The parties have entered into this Agreement as a Land Management Agreement pursuant to section 192(1) of the Act to agree matters relating to the development, management, preservation or conservation of the Land, on the terms and conditions which follow.

DEFINITIONS AND INTERPRETATION

- 1. The parties acknowledge that the matters set out in the Background to this Agreement are true and accurate and agree that they form part of the terms of this Agreement.
- 2. In this Agreement:
 - 2.1 **Act** means the Planning, Development and Infrastructure Act 2016 (SA).
 - 2.2 **Agreement** means this Agreement as executed by the parties.
 - 2.3 **Code** means the Planning and Design Code.
 - 2.4 **Fast food restaurant** means a quick-service restaurant which has minimal table service, offers food comprising of standardised ingredients and/or partially pre-prepared food which is cooked in advance and kept hot being finished and packaged to order and offered for takeaway and/or drive-through orders in addition to an internal seating provided.
 - 2.5 **Land** means the whole or any part of the land now comprised in Certificate of Title Register Book Volume 5719 Folio 768 and Certificate of Title Register Book Volume 5821 Folio 328.

- 2.6 **Notice** means a notice, demand, consent, approval or communication issued under this Agreement.
- 2.7 **Owner** means any person who is, or is entitled to become, the registered proprietor of an estate in fee simple of the Land, or any part of the Land, and includes a successor in title to an estate in fee simple to the Land.
- 2.8 **Proponent** means 550 Main North Road Pty Ltd (ACN 645 857 174).
- 2.9 **Regulations** means the Planning, Development and Infrastructure (General) Regulations 2017.
3. In this Agreement unless the context otherwise requires:
- 3.1 A term, other than a term defined in the Background or in Clause 2, has the same meaning as in a provision of the Act or the Regulations as in force at the date of this Agreement. A term which is defined in the Background or in Clause 2 has the meaning there defined;
- 3.2 headings do not affect interpretation;
- 3.3 the term “person” includes a corporate body, partnership, association, government body or other entity;
- 3.4 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 3.5 singular includes plural and plural includes singular;
- 3.6 where two or more persons are bound by this Agreement to observe or perform any obligation or agreement whether express or implied then they shall be bound jointly and also severally;
- 3.7 a reference to any statute or subordinate legislation includes all statutes and subordinate legislation amending, consolidating or replacing the statute or subordinate legislation referred to; and
4. The requirements of this Agreement are to be construed as additional to any requirements upon either party in relation to the Land under the Act or any other legislation.

OWNER’S UNDERTAKINGS AND OBLIGATIONS

5. The Owner is liable to the Council for any act or omission on the part of an officer, employee, contractor, agent, invitee, lessee or licensee of the Owner which, if done or not done by the Owner would constitute a breach of this Agreement.
6. Where a person ceases to be an Owner, such person ceases to be a party to this Agreement, but without prejudice to rights or obligations already accrued.
7. The Owner warrants and represents that all persons with a legal interest in the Land consent to the Owner entering into this Agreement.

8. The Owner acknowledges and agrees the following in relation to the future development of the Land:
- 8.1 that it will be required to incorporate stormwater management into the design of any future development application to ensure that post development stormwater flows from the Land will not exceed the current stormwater flows from the Land (for example proposed development will include onsite stormwater detention) to the reasonable satisfaction of Council (acting reasonably);
 - 8.2 that it:
 - 8.2.1 has, at its own cost, obtained the “(P)reliminary Concept – Storm Drain Review” plan, drawing number C202 Revision B (**Annexure 3**) which depicts a solution to improve existing flood infrastructure in the vicinity of the Land; and
 - 8.2.2 that it will make a financial contribution of \$520,000 to the Council within 120 days of the approval of the Code Amendment for the purposes of clause 12 below;
 - 8.3 that it will be required to incorporate into the design of any future development application road upgrade works to the extent reasonably required and to the reasonable satisfaction of the Council and/or the Commissioner of Highways (as relevant) to Main North Road and Sheriff Street (including junction modification of Sheriff Street as it intersects with Main North Road) to accommodate traffic movements generated by the proposed development including traffic lights and other intersection works required to ensure safe and convenient access to proposed development on the Land as well as traffic movements through Sheriff Street;
 - 8.4 that the works described at clause 8.3 above must be approved by the Council (acting reasonably) in its capacity as a party to this Agreement, as well as the owner of public roads which are not subject to dedication to the Commissioner of Highways under the *Highways Act 1926* and council land in its area pursuant to the *Local Government Act 1999*;
 - 8.5 that the works described at clause 8.3 above and any other works to occur within any road reserve under the care, control and management of the Council, will need to be secured through an Infrastructure Agreement executed with the Council in a form and with terms similar to **Annexure 4** to this Agreement together with such amendments as may be agreed between the parties acting reasonably prior to the grant of development approval for any development application lodged for the Land;
 - 8.6 that any works which are required to take place on public roads under the care, control and management of the Council must not occur without first obtaining an authorisation from the Council pursuant to section 221 of the *Local Government Act 1999*;
 - 8.7 that future development applications for the Land must:
 - 8.7.1 not include as land uses, fast food restaurants, retail fuel outlets, automotive collision repair facilities or industry;

- 8.7.2 not incorporate more than 2 pylon signs, which signs must not exceed 8 metres in height from finished ground level;
- 8.7.3 incorporate, where possible, reasonable endeavours to preserve and protect existing trees on the Land and as identified in (**Annexure 5**);
- 8.7.4 incorporate:
- (a) the construction of footpaths and a double side entry pit and junction box with kerb and gutter on Sheriff Street boundary;
 - (b) appropriate noise attenuation measures including:
 - (i) covered loading bays; and
 - (ii) acoustic fencing placed 3 metres within the eastern and southern boundaries of the Land as shown in the Concept Plan forming **Annexure 6** to this Agreement;
 - (c) an acoustic treatment wall, not built to the road reserve boundary, along the northern frontage of the Land which:
 - (i) contains appropriate articulation so that the wall does not appear as a blank façade when viewed in the locality of the Land;
 - (ii) considers tree retention and/or additional tree planting so that views to the northern frontage achieve an appropriate interface with adjacent residential properties;
 - (iii) manages the scale and bulk of future development relative to adjacent residential properties;
 - (d) vehicle access, landscaping and building exclusion areas as depicted in **Annexure 6** and subject to the following requirements:
 - (i) incorporation of a 3-metre-wide landscaping buffer which includes trees that are capable of reaching a minimum height of 6 metres along the southern and eastern boundaries of the site prior to occupation of the development;
 - (ii) incorporation of a minimum 3 metre landscape buffer along the Main North Road boundary of the site;
 - (e) to the extent that is reasonably possible, non-deciduous plant and tree species in proposed landscaping;
 - (f) measures to ensure that landscaping minimises interference and/or damage to existing Council-owned infrastructure; and
 - (g) junction modification to Sheriff Street and First Street intersections and the subsequent installation of new footpaths and kerb ramps, new gutters and reinstatement of verge and asphalt.

- 8.7.5 for any works outside of the Land required for a proposed development incorporate water sensitive urban design techniques, to the satisfaction of the Council acting reasonably provided that such techniques must be economically viable to implement and consistent with the nature of the proposed development;
 - 8.7.6 incorporate photovoltaic solar panel systems and batteries to the satisfaction of the Council acting reasonably provided that such incorporation must be economically viable to implement and consistent with the nature of the proposed development;
 - 8.7.7 ensure that the maximum building height is no greater than 10.5 metres;
9. The Owner acknowledges and agrees that the requirements of clause 8 above are in addition to any provisions of the Planning and Design Code under the Act or any planning assessment criteria under any other Act and that these requirements will be given appropriate weight having regard to the nature of the development in the assessment of any development application made in respect of the Land.
10. The Owner acknowledges and agrees that preliminary costings for the agreed infrastructure and other works and preliminary contributions mentioned at clause 8 above and clause 12 below are those depicted in **Annexure 7** to this Agreement. The costings in Annexure 7 are preliminary in nature only, are provided to be indicative only and are subject to change and further negotiation between the parties in future. Final costings will be incorporated into future Infrastructure Agreement arrangements and will, for the purposes of security required by such Agreement(s) incorporate indexation and/or interest and appropriate defects liability arrangements.

PROPONENT ACKNOWLEDGEMENT IN FAVOUR OF OWNER

11. The Proponent acknowledges and agrees with the Owner that with respect to the obligations imposed on the Owner pursuant to this Agreement including without limitation the provisions of clause 8, that as between the Owner and the Proponent the Proponent shall be responsible at its cost and expense to comply with the provisions of clause 8 of this Agreement in respect of any development which the Proponent undertakes on the Land.

COUNCIL'S POWERS AND OBLIGATIONS

12. The Council agrees that:
- 12.1 it will utilise the contribution paid to it under clause 8.2.2 towards achieving improvements to flooding in the localised area as demonstrated in **Annexure 3** such that water directed under Main North Road/Adelaide Road is progressed or otherwise dealt with appropriately, and other improvements progressed to completion in due course as considered reasonable and appropriate by the Council;
 - 12.2 in undertaking the activities described at clause 12.1 above that it will provide quarterly updates on amounts expended by it, in writing, to the Proponent, or, should the Proponent no longer have an interest in the Land, the Owner;

- 12.3 should the costs associated with the activities described at clause 8.2.2 above be less than the estimate provided for in Annexure 7, then the Council will pay to the Proponent, or, should the Proponent no longer have an interest in the Land, the Owner, 50% of the difference between the estimated amount and the actual costs incurred by the Council;
- 12.4 it will not seek any further contributions (financial or otherwise) to the works in clause 12.1 above once the agreed amount of \$520,000 is paid to it in accordance with clause 12.1.
13. The Council, including any employee or agent of the Council authorised by the Council, may at any reasonable time enter the Land for the purpose of:
- 13.1 inspecting the Land and any building or structure on the Land; or
- 13.2 exercising any other powers of the Council under this Agreement, or pursuant to any other law.
14. If the Owner is in breach of this Agreement, the Council may, by Notice served on the Owner specifying the nature of the breach, require the Owner to remedy the breach within such time as is specified in the Notice. If the Owner fails to comply with the Notice, the Council (or its servants or agents) may enter the Land and cause the works or requirements specified in the Notice to be carried out and may recover its costs of doing so against the Owner.
15. Without providing a Notice to the Owner, the Council may apply to the Registrar-General to note this Agreement against the Certificate of Title of the Land.
16. In the event of a breach or threatened breach of the Agreement by the Owner, the Council may (without limiting any other remedy available to the Council, including under Part 11 of the Act), obtain an injunction restraining the Owner from committing a breach of the Agreement without proving any actual damage has or will be sustained by the Council. The parties agree that a breach of this Agreement by the Owner may cause injury for which damages may not be an adequate remedy to the Council.

OPERATION AND APPLICATION OF THE AGREEMENT

17. Upon execution, this Agreement is effective as an Agreement.
18. The parties intend that this Agreement will be effective as a Land Management Agreement pursuant to section 192(1) of the Act upon being registered under the *Real Property Act 1886* as a note against the instrument of title to the Land.
19. This Agreement is the whole agreement between the parties in relation to the matters contained within it. This Agreement may only be varied by a supplementary agreement executed by the Council and the Owner.

NOTING OF THIS AGREEMENT

20. Each party shall do and execute all such acts, documents and things necessary so that as soon as practicable following the execution of this Agreement by all parties, the Agreement

is noted against the Certificate of Title for the Land pursuant to the provisions of Section 192(12) of the Act in priority to any other registered instrument.

21. The Council agrees that if the amendment to the Code to rezone the Land from General Neighbourhood Zone to Employment Zone does not proceed for any reason cause this Agreement to be rescinded and the notation against the Certificates of Title for the Land to be removed with the Proponent to cover reasonable costs and expenses.

WAIVER

22. The Council may, conditionally or unconditionally, waive compliance by the Owner with the whole or any part of the Owner's past or future obligations under this Agreement.
23. To be effective, a waiver must be in writing and signed by the Council.
24. The failure, delay, relaxation or indulgence by a party in exercising a power or right under this Agreement is not a waiver of that power or right.
25. An exercise of a power or right under this Agreement does not preclude a further exercise of it or the exercise of another right or power.

SEVERANCE

26. Where a clause or part of a clause in this Agreement would, but for this clause, be unenforceable:
 - 26.1 the clause or part of the clause shall be read down to the extent necessary to avoid that result; or
 - 26.2 where the clause or part of the clause cannot be read down, it may be severed from this Agreement and the remainder of the clause or of the Agreement shall continue in force, unless this would result in a material change to the intended effect of the Agreement.

GOVERNING LAW

27. This Agreement is governed by the law in South Australia.

NOTICES

28. A Notice must be in writing, be signed by the party issuing the Notice, and be hand delivered or sent by pre-paid post to the recipient's address as stated in this Agreement, or as last notified.
29. A Notice is deemed to be received:
 - 29.1 if hand delivered, on delivery; and
 - 29.2 if sent by pre-paid post, two (2) business days after posting.
30. If two (2) or more people comprise a party, providing a Notice to one is effective as notice to all.

ABOUT THE COUNCIL

31. The Council may delegate any of its powers under this Agreement or pursuant to law.
32. The Council enters into this Agreement as a council acting under section 192(1) of the Act and not in any other capacity. This Agreement does not preclude or pre-empt the exercise by the Council of any other regulatory function of power.

COSTS

33. The Owner must pay to the Council on demand the Council's reasonable costs and expenses (including legal costs and expenses) of preparing, stamping and noting this Agreement.
34. The Proponent agrees with the Owner that the Proponent will reimburse the Owner for all costs reasonably incurred by the Owner pursuant to clause 33.

COUNTERPARTS

35. This Agreement may be executed in any number of counterparts which together will constitute one instrument. A party may execute this Agreement by signing any counterpart.
-

MORTGAGEE CONSENT

Westpac Banking Corporation who has a legal interest in Certificate of Title Register Book Volume 5719 Folio 768 by virtue of Memorandum of Mortgage Registration number 8781052 and Memorandum of Mortgage Registration number 8826745 hereby consents to Miltiadis Christ Vadoulis entering into this Land Management Agreement.

SIGNED by

.....
Signature

.....
Name

.....
Position

EXECUTED AS A LAND MANAGEMENT AGREEMENT**Executed** by Miltiadis Christ Vadoulis.....
Signature

In the presence of:

.....
Witness Signature.....
Witness Name.....
Date**Executed** by Margaret Hara Agapy Leske.....
Signature

In the presence of:

.....
Witness Signature.....
Witness Name.....
Date

Executed by Marianthy Vadoulis

.....
Signature

In the presence of:

.....
Witness Signature

.....
Witness Name

.....
Date

Executed under delegated authority by Henry Inat, Chief Executive Officer of the Town of
Gawler:

.....
Chief Executive Officer
Henry Inat

ANNEXURE 1

Letter to Mr Michael Osborn of Future Urban dated 11 May 2022

Contact: Mr Jack Darzanos

Ref: JD:jd
CC21/1277

11 May 2022

Mr Michael Osborn
Level 1, 74 Pirie Street
ADELAIDE SA 5000

Gawler



Town of Gawler Administration Centre

43 High Street
Gawler East SA 5118
PO Box 130
Gawler SA 5118
Phone: (08) 8522 9211
council@gawler.sa.gov.au
gawler.sa.gov.au

Dear Mr Osborn

Re: 550& 554 Main North Road Evanston Park - Proponent Initiated Code Amendment

As you are aware Council's Infrastructure, Environmental and Services (IES) Committee considered a report and a presentation relative to the proponent-initiated Code Amendment, seeking to rezone 550 & 554 Main North Road Evanston Park. Ultimately the rezoning will look to support a Bulky Goods Outlet style Development.

The following resolution was adopted by the committee:

COMMITTEE RESOLUTION 2022:05:IES011

Moved: Mayor K Redman

Seconded: Cr B Sambell

That the Infrastructure & Environmental Services Committee:

1. *Notes the report relative to the Proponent Funded Code Amendment seeking to rezone land located a 550&554 Main North Road Evanston Park.*
2. *Notes the presentation provided by the proponent's consultant.*
3. *Notes that the Proposal to Initiate is currently being finalised and is yet to be sent to the Minister for Planning for consideration.*
4. *Notes the administration's preliminary synopsis of issues needing to be addressed relative to the proposal.*
5. *Delegates to the CEO authority to prepare a letter to accompany the proponent's Proposal to initiate, confirming that Council have been briefed relative to the proposal and highlighting all matters which Council believe require consideration as part of this process moving forward, including appropriate investigations, the importance of legal documents such as deeds and Land Management Agreements, infrastructure and a suitable level of engagement for the Council.*
6. *Seeks for the administration to work collaboratively with the proponent in the best interest of the community.*

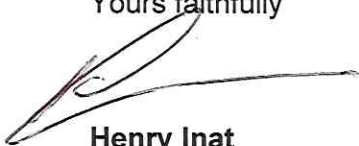
It is Council's understanding that this letter will accompany the proponent's 'Proposal to Initiate' which is to be forwarded the State Planning Commission and the Minister for Planning for their consideration. As highlighted in the resolution, I can confirm that in line with best practice Council have been briefed relative to this Code Amendment.

Council is generally supportive of the initiative, however, have identified several planning and infrastructure related matters requiring attention through the development of the Code Amendment. These matters are listed below for the proponent's consideration:

1. Flooding – Determine potential impacts of localised flooding as well as mitigations measures relative to the proposed land use.
2. Stormwater – Determine potential impacts on the localised stormwater network as well as mitigations measures relative to the proposed land use.
3. Traffic – Determine potential impacts on the localised road network as well as mitigations measures relative to the proposed land use.
4. Pedestrian systems – Investigate and promote local connectivity opportunities within and external to the site to promote active living.
5. Streetscape – Investigate options relative to connecting with the streetscape and promoting good design outcomes.
6. Regulated Tree Assessment – Determine extent of regulated trees on site.
7. Land Use Interface - Investigate impacts relative sharing a boundary with a Residential Zone and mitigation approaches to reduce any negative impacts of either user (e.g. noise, light spill, overshadowing, hours of operation etc.)
8. High Level Infrastructure (Water, wastewater, power etc.) – Determine extent of services available to the site and area more generally.
9. Infrastructure Agreement - A commitment to entering into an infrastructure agreement relative to the infrastructure deemed necessary as a consequence of investigations to take place.
10. Securing the Desired Land Use - A commitment from the proponent to exploring legal options (e.g. LMA) to ensure a desirable land use is achieved.

I trust the above information is of assistance. Council is looking forward to working collaboratively with the proponent through this process. If you require any further information, I encourage you to contact Mr. Jack Darzanos, Acting Manager Development, Environment and Regulatory Services on (08) 8522 9257 or via e-mail jack.darzanos@gawler.sa.gov.au

Yours faithfully



Henry Inat
Chief Executive Officer

Direct line: (08) 8522 9221
Email: henry.inat@gawler.sa.gov.au

ANNEXURE 2

Letter dated 30 August 2022 from the Minister for Planning



**Government
of South Australia**

Minister for Trade and
Investment

Minister for Housing and
Urban Development

Minister for Planning

GPO Box 11032
ADELAIDE SA 5001

T: (08) 8235 5580

E: ministerchampion@sa.gov.au

22EXT0138

Mr Henry Inat
Chief Executive Officer
Town of Gawler

By email: henry.inat@gawler.sa.gov.au

Dear Mr Inat

I write to advise that under section 73(2)(b)(vii) of the *Planning, Development and Infrastructure Act 2016* (the Act), I have considered the advice of the State Planning Commission (the Commission) and approved the Proposal to Initiate the 550-554 Main North Road, Evanston Park Code Amendment. This Code Amendment seeks to affect land in your council area

A copy of the signed Proposal to Initiate is enclosed for your reference.

The initiation approval is on the basis that under section 73(4)(a) of the Act, 550 Main North Road Pty Ltd will be the Designated Entity responsible for undertaking the Code Amendment process.

Pursuant to section 73(5) of the Act, the approval is also subject to the following conditions:

- The scope of the proposed Code Amendment does not include the creation of new planning rules, and is limited to the spatial application of zones, subzones, overlays, or technical and numerical variations provided for under the published Planning and Design Code (the Code) on the date the Amendment is released for consultation. This includes the creation of new Technical and Numerical Variation (TNV) capabilities.
- The Designated Entity must seek approval from the Commission prior to the commencement of community engagement on the draft Code Amendment.
- The Code Amendment is prepared by a person with qualifications and experience that is equivalent to an Accredited Professional—Planning Level 1 under the Act.
- Prior to approval of the Code Amendment, the Designated Entity must demonstrate to my satisfaction that all necessary agreements or deeds are fully executed as required to secure the funding and/or delivery of all infrastructure required to accommodate the development of the affected area as proposed by the Code Amendment (to the satisfaction of all relevant infrastructure providers).



In addition, the Commission has specified under section 73(6)(e) of the Act that the Designated Entity must consult with the following stakeholders:

- Department for Infrastructure and Transport
- Department for Environment and Water – Heritage
- Utility providers including SA Power Networks, ElectraNet, APA Group, SA Water, Epic Energy, NBN, and other telecommunications providers
- State Members of Parliament for the electorates in which the proposed Code Amendment applies.

Further, the Commission has, under section 73(6)(f) of the Act, resolved to specify the following further investigations or information requirements in addition to those outlined in the Proposal to Initiate:

- Analysis of the suitability of existing zones in the Code besides the Employment Zone for large format employment generating land uses.
- Investigations to consider the interface with the adjacent residential uses and how amenity can be maintained for adjacent residential land uses.
- A search of the Register of Aboriginal Sites and Objects (Taa wika) to identify relevant Aboriginal heritage considerations, including any identified cultural sites and objects.

In addition, further investigations may be required in response to feedback or advice received through the engagement process.

It is noted that the intention to retain all current Overlays may not accord with Code drafting principles, depending on Zone selection. In particular, it may be necessary to propose removal of the following Overlays if, for instance, the Employment Zone is ultimately proposed for application to the area affected:

- Stormwater Management
- Urban Tree Canopy.

Pursuant to section 44(6) and 73(6)(d) of the Act, consultation in writing must be undertaken with:

- The Town of Gawler
- Owners or occupiers of the land and adjacent land, in accordance with Regulation 20 of the *Planning, Development and Infrastructure (General) Regulations 2017*.

Engagement must be undertaken on the Code Amendment in accordance with the Community Engagement Charter. More information on the Community Engagement Charter is available in the Community Engagement Charter toolkit at https://plan.sa.gov.au/resources/learning_and_toolkits/community_engagement_charter_toolkit/overview.

I will make a determination on whether to approve the proposed amendments at the completion of the Code Amendment process.

For further information, please contact Ms Monika Matej from Planning and Land Use Services on (08) 7109 7020 or via email at Monika.Matej@sa.gov.au.

Yours sincerely



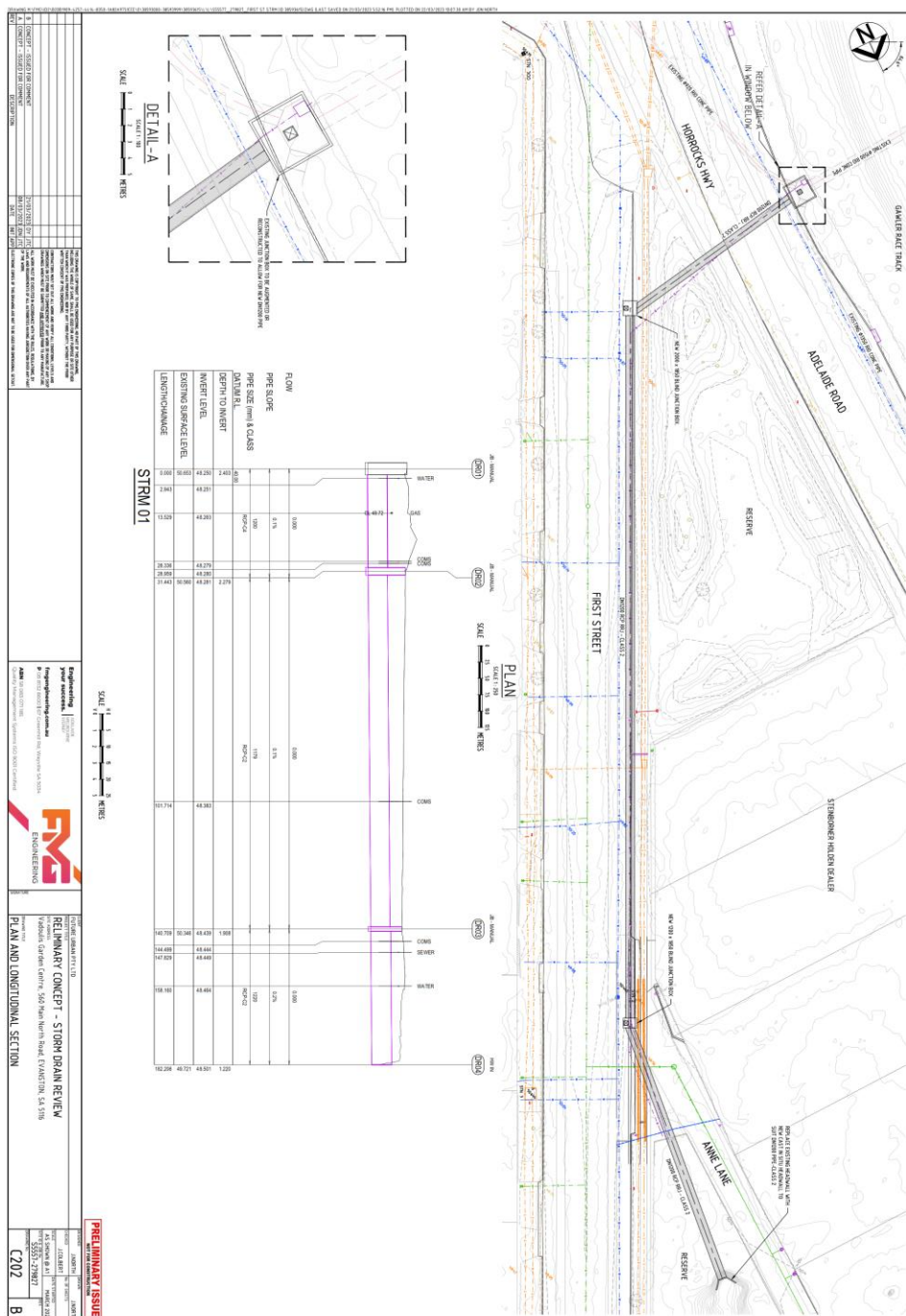
Hon Nick Champion MP
Minister for Planning

30/8/2022

Encl: Signed Proposal to Initiate the 550-554 Main North Road, Evanston Park Code Amendment
Cc: Jack Darzanos, Acting Manager Development, Environment and Regulatory Services,
(jack.darzanos@gawler.sa.gov.au)

ANNEXURE 3

Flood Mitigation Concept Plans



ANNEXURE 4

Example Infrastructure Agreement

INFRASTRUCTURE AGREEMENT

BETWEEN

TOWN OF GAWLER

And

XXXXXXXXXXXX PTY LTD

DA [INSERT]

DATE

PARTIES

TOWN OF GAWLER ABN 29 861 749 581 of 89 Murray Street, Gawler SA 5118 (**Council**)

XXXXXXXX PTY LTD ACN XXX XXX XXX of address (**Developer**)

BACKGROUND

- A. The Developer [is or is entitled to be registered as the proprietor of an estate in fee simple in the Land OR has an interest in the development of the Land].
- B. The Land is located within Council's area.
- C. The Developer has lodged the Development Application for the Proposed Development.
- D. The Developer has agreed to undertake certain works as part of the Proposed Development on or externally to the Land and to the satisfaction of Council.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this agreement:

Act means the *Planning, Development and Infrastructure Act 2016* (SA).

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

Completion Date means the date for completion of the Works being the date specified in Item 4 of the Schedule

Certificate of Practical Completion means the certificate issued by the Council pursuant to clause 4.2.1.

Defect in relation to the Works includes any damage to or deterioration of the Works other than any damage or deterioration caused by normal aging or ordinary wear arising from the normal use of the Works concerned for their intended purpose.

Developer means the party described as the "Developer" on page 1 of this agreement or its successors or assigns from time to time.

Development Application means the development application specified in Item 2 of the Schedule.

Defects Liability Period means, subject to any extension of that period under this agreement, the period of 12 calendar months commencing on the date of issue of the Certificate of Practical Completion.

Land means the land specified in Item 1 of the Schedule.

Practical Completion of the Works means the state of being substantially complete and fit for use by Council and members of the public, all performance or structural tests required by Council having been satisfactorily completed and omissions or defects being limited to items:

- (a) the immediate making good of which by the Developer is accepted by Council as not being practicable;
- (b) the existence of which or the subsequent making good of which is accepted by Council as not likely to significantly inconvenience the Council or the members of the public using the Works taking into account the use or intended use of the works concerned and the areas in which they exist; and
- (c) that Council accepts do not cause any legal impediment to the use of the Works by Council and members of the public.

Proposed Development means the development specifically detailed in the Development Application.

Security means an unconditional and irrevocable undertaking in favour of Council and in a form and on terms approved by Council in its absolute discretion.

Works means the works on or external to the Land specified in Item 3 of the Schedule.

1.2 Interpretation

In this agreement, unless the context otherwise requires:

- 1.2.1 headings do not affect interpretation;
- 1.2.2 singular includes plural and plural includes singular;
- 1.2.3 words of one gender include any gender;
- 1.2.4 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 1.2.5 a reference to a person includes a partnership, corporation, association, government body and any other entity;
- 1.2.6 a reference to this agreement includes any schedules and annexures to it;
- 1.2.7 an agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;

Defects Liability Period means, subject to any extension of that period under this agreement, the period of 12 calendar months commencing on the date of issue of the Certificate of Practical Completion.

Land means the land specified in Item 1 of the Schedule.

Practical Completion of the Works means the state of being substantially complete and fit for use by Council and members of the public, all performance or structural tests required by Council having been satisfactorily completed and omissions or defects being limited to items:

- (a) the immediate making good of which by the Developer is accepted by Council as not being practicable;
- (b) the existence of which or the subsequent making good of which is accepted by Council as not likely to significantly inconvenience the Council or the members of the public using the Works taking into account the use or intended use of the works concerned and the areas in which they exist; and
- (c) that Council accepts do not cause any legal impediment to the use of the Works by Council and members of the public.

Proposed Development means the development specifically detailed in the Development Application.

Security means an unconditional and irrevocable undertaking in favour of Council and in a form and on terms approved by Council in its absolute discretion.

Works means the works on or external to the Land specified in Item 3 of the Schedule.

1.2 Interpretation

In this agreement, unless the context otherwise requires:

- 1.2.1 headings do not affect interpretation;
- 1.2.2 singular includes plural and plural includes singular;
- 1.2.3 words of one gender include any gender;
- 1.2.4 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 1.2.5 a reference to a person includes a partnership, corporation, association, government body and any other entity;
- 1.2.6 a reference to this agreement includes any schedules and annexures to it;
- 1.2.7 an agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;

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- 1.2.8 an agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
 - 1.2.9 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
 - 1.2.10 an unenforceable provision or part of a provision may be severed, and the remainder of this agreement continues in force, unless this would materially change the intended effect of this agreement;
 - 1.2.11 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
 - 1.2.12 where two or more terms are connected with the word 'or', any one or more, or all of those terms are referred to.

1.3 Background

The Background forms part of this agreement and is correct.

2. DESIGN OF WORKS

- 2.1 The Developer must engage at its own expense appropriately qualified surveyors and engineers to prepare detailed construction plans and specifications for the Works in accordance with recognised standards of traffic and construction engineering and the standards applied by Council (**Plans and Specifications**) and submit the Plans and Specifications to Council for Council's written approval.
- 2.2 Council must not unreasonably withhold its approval of the Plans and Specifications. Council is taken to have unreasonably withheld its approval of the Plans and Specifications if the Council does not give notice in writing within 20 Business Days after the receipt of the Plans and Specifications from the Developer that it either approves or does not approve the Plans and Specifications.
- 2.3 If Council gives notice that it does not approve the Plans and Specifications submitted by the Developer under clause 2.1, Council must specify in that notice the matters and things required to be addressed by the Developer for the Plans and Specifications to be granted approval and the process set out in clauses 2.1 and 2.2 will again apply (with appropriate modifications).
- 2.4 If Council approves the Plans and Specifications (or the resubmitted Plans and Specifications) Council will give notice to the Developer accordingly. . The provision of this notice constitutes the issue of an authorisation for the Works pursuant to section 221 of the *Local Government Act 1999* in the form contained within Annexure A to this agreement. The date of the notice is the date upon which the authorisation is issued.
- 2.5 The Developer must obtain and comply with all authorisations, consents and approvals required for the construction of the Works not otherwise included in this agreement, including any approvals required from Council in its capacity as statutory authority under the Act or rights of access required to be granted by

Council in its capacity as owner of adjoining land or public roads, prior to commencement of the Works.

- 2.6 The Developer acknowledges that Council is not bound to check any of the Plans and Specifications or Works for errors, omissions, or compliance with the requirements of this agreement and Council's receipt or assessment of any documentation and inspection of any work pursuant to this clause does not relieve the Developer from responsibility for meeting its obligations under this agreement.

3. DEVELOPER TO CARRY OUT WORKS

The Developer must carry out or cause to be carried out the Works and must achieve Practical Completion of the Works:

- 3.1 in strict accordance with the Plans and Specifications approved by Council under clause 2 of this agreement;
- 3.2 to the reasonable satisfaction of Council;
- 3.3 at the expense of the Developer; and
- 3.4 on or before the Completion Date.

4. CERTIFICATE OF PRACTICAL COMPLETION

- 4.1 When the Developer considers that it has achieved Practical Completion of the Works it must give written notice to Council accordingly.
- 4.2 Council must inspect the Works as soon as reasonably practicable and within 14 days of inspection either:
 - 4.2.1 give to the Developer a Certificate of Practical Completion:
 - 4.2.1.1 stating that the Developer has achieved Practical Completion of the Works to the satisfaction of Council; and
 - 4.2.1.2 specifying the omissions or defects which the Developer must attend to within the Defects Liability Period or any shorter specified period; or
 - 4.2.2 give to the Developer a written notice stating that Council is not satisfied that the Developer has achieved Practical Completion of the Works and specifying the omissions or defects which the Developer must attend to before Council will issue its Certificate of Practical Completion in respect of the Works.
- 4.3 If the Council does not give to the Developer either a Certificate of Practical Completion under clause 4.2.1 or a notice under clause 4.2.2 within the timeframe set out in clause 4.2, the Developer may give to the Council a further written notice requiring the Council to issue a Certificate of Practical Completion clause 4.2.1 or a notice under clause 4.2.2 within five Business Days after receipt of the further notice from the Developer. If the Council does not issue respond to the further notice within five Business Days, it is taken to

have given a Certificate of Practical Completion of the Works under clause 4.2.1.

4.4 The Developer may give a notice to the Council under clause 4.1 more than once.

4.5 The Developer must provide Council with “As Constructed” drawings promptly following a Certificate of Practical Completion being issued.

5. COMPLETION AND MAINTENANCE OF THE WORKS AFTER PRACTICAL COMPLETION

5.1 The Developer must complete the Works and must during the Defects Liability Period rectify and make good any Defect in the Works:

5.1.1 resulting from faulty materials or workmanship; or

5.1.2 arising at any time before the expiry of the Defects Liability Period and however caused (including, for the avoidance of doubt, any defect arising from or out of any act, activity or omission, whether intentional, negligent or otherwise on the part of any other person other than an employee or agent of Council).

5.2 If any Defect in the Works exists or becomes apparent during the Defects Liability Period and Council gives written notice to the Developer within the Defects Liability Period specifying the nature of the Defect and requiring the rectification and making good of the Defect the Developer must comply with the requirements of the notice within any period reasonably specified in that notice or, if no period is specified, within two calendar months after receipt of the notice.

5.3 Clauses 5.1 and 5.3 again apply with any modifications appropriate in the circumstances in respect of the practical completion of the rectification and making good of any Defect by the Developer under clause 5.2. The Developer must maintain and must rectify and make good any Defect in any further work carried out under clause 5.2 for the additional period of six calendar months commencing on the date of issue of a Certificate of Practical Completion in respect of the further work if in the reasonable opinion of Council that work is of a major or substantial nature.

6. DAMAGE TO COUNCIL INFRASTRUCTURE

6.1 If at any time during the construction of the Works or during the Defects Liability Period, any damage is caused to:

6.1.1 any land (including any road or other infrastructure thereon) that is or is to be vested in Council in consequence of the deposit of a plan of division of the Land or any part of the Land; or

6.1.2 any infrastructure vested in Council or under Council's care, control and management on the Land or on any land adjacent to the Land;

by the Developer or any agent or contractor of the Developer Council may by notice in writing to the Developer providing reasonable particulars of the damage require the Developer at Council's absolute discretion to either:

- 6.1.3 take such steps as Council may reasonably require to repair the damage within a period stated in the notice; or
 - 6.1.4 pay to Council an amount representing a reasonable cost of repairing the damage on or before a date specified in the notice (being no earlier than 10 Business Days after the giving of the notice).
- 6.2 If the Developer does not comply with a notice given to the Developer under clause 6.1 Council may:
- 6.2.1 recover an amount representing a reasonable cost of repairing the damage from the Developer as a debt; and
 - 6.2.2 if Council sees fit, call upon any Security provided by the Developer under clause 11 of this agreement to discharge in whole or in part any liability incurred by the Developer under this clause 6.

7. REPLACEMENT OR RE-EXECUTION BY THE DEVELOPER OF INFERIOR MATERIALS OR WORK

- 7.1 If any of the materials supplied by the Developer are or any of the work executed by the Developer in the performance or maintenance of the Works before or after the issue of a Certificate of Practical Completion is of an inferior quality or in any other respect not in compliance with this agreement, the Developer must upon receipt of a written notice from Council specifying the nature of the non-compliance and requiring the rectification and making good of the non-compliance remove the materials from the Works or re-execute the work within any period reasonably specified in that notice, or if no period is specified, within two calendar months after receipt of the notice, at the Developer expense so that the materials or work comply with this agreement.
- 7.2 Council may issue a notice under clause 7.1 more than once during the performance of the Works or before the expiry of the Defects Liability Period.

8. DEVELOPER'S SAFETY REQUIREMENTS

- 8.1 As from the date of commencement of the Works and until the expiry of the Defects Liability Period, the Developer must at its own expense, and subject to and in accordance with any reasonable directions given by Council:
 - 8.1.1 erect and at all times during the day and night maintain on or around the Works fences or barriers restricting the unauthorised entry of vehicles or persons upon the site of the Works; or
 - 8.1.2 suitable signs warning the public of the carrying on of the Works; and
 - 8.1.3 during all hours of darkness keep all machinery and other obstructions or traps created by the Works adequately fenced or illuminated for the protection of the public.

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- 8.2 The Developer must comply with all statutory requirements (including in particular, all requirements under the *Work Health and Safety 2012*) applicable to any activity undertaken by the Developer on or in the vicinity of the Land for the purposes of or incidental to the construction or maintenance of the Works.

9. DEVELOPER'S INDEMNITY TO THE COUNCIL AND INSURANCE

- 9.1 The Developer must indemnify Council at all times against:
- 9.1.1 all losses damages costs and expenses suffered or incurred by Council at any time which are caused by or arise out of any execution rectification or maintenance of the Works or the state or condition of the Works as a consequence of any execution rectification or maintenance of the Works by the Developer or any person for whom the Developer is responsible; and
 - 9.1.2 all actions proceedings claims and demands which may be brought or made against Council at any time in respect of the death of or any injury to any person or any loss of or damage to any property caused by or arising from:
 - 9.1.2.1 any execution rectification or maintenance of the Works or any activity associated there with before the conclusion of the Defects Liability Period; or
 - 9.1.2.2 from the state or condition of the Works as a consequence of any execution, rectification or maintenance of the Works by the Developer or by any person for whom the Developer is responsible before the conclusion of the Defects Liability Period;
- except to the extent caused or contributed to by the negligence or default of Council.
- 9.1.3 This indemnity is not limited to any negligence or breach of this agreement by the Developer or those for whom the Developer is responsible.
- 9.2 Before commencing any part of the Works the Developer must have or must effect or procure for the benefit of Council and the Developer a policy of public risk insurance that is satisfactory to Council for cover of not less than \$20,000,000 in respect of any one claim with a registered insurer carrying on business in South Australia. The Developer must ensure that such policy is kept current at all times until expiry of the Defects Liability Period and must furnish to Council a copy of such policy and such evidence of its currency as Council may from time to time require.

10. PERFORMANCE OF THE WORKS BY COUNCIL

- 10.1 If the Developer:
- 10.1.1 fails to comply with any notice from Council issued pursuant to clause 5.2 or 7.1; or

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- 10.1.2 purports to comply with any notice from Council issued pursuant to clause 5.2 or 7.1 and Council remains dissatisfied with the state of the Works; or
 - 10.1.3 fails to complete the Works within the time fixed by the Council for Practical Completion of the Works pursuant to this agreement; or
 - 10.1.4 at any time prior to or during the performance of the Works by notice in writing requests Council to execute or complete the Works or any part thereof (as the case may be) and Council in its absolute discretion agrees to such request,

then but not otherwise Council may immediately and without prior notice to the Developer enter upon the Land (if necessary) and take possession of the Works. This determines the Developer's right to perform or continue to perform the Works.

- 10.2 Upon the exercise by Council of any of those rights Council must at its option either:

- 10.2.1 perform or complete the Works which remain incomplete or carry out the repair of defects therein (as the case may be) using Council's own employees plant and equipment; or
- 10.2.2 cause the Works or the repair of defects (as the case may be) to be carried out or completed by an independent contractor chosen by Council in its absolute discretion; and

at any time or times during or after the performance of the Works, Council may serve upon the Developer a written demand or several progressive written demands for payment of the costs (actual or contingent) incurred by Council in so doing. The Developer must pay to Council those costs within five Business Days of receipt of the demand.

- 10.3 Council must in a reasonable and competent manner procure the performance of the Works within a reasonable time taking into account the nature and amount of the Works to be performed, the weather and all other relevant factors.

11. SECURITY

- 11.1 Immediately upon signing this agreement the Developer must (if and to the extent that the Developer has not already done so) provide to Council the Security or Securities specified in Item 5 of the Schedule payable to Council each for at least the amount specified in Item 5 of the Schedule.

- 11.2 Without limiting clause 11.6 Council may call upon:

- 11.2.1 the Security specified in Item 5 of the Schedule as being related to the construction of a particular class of Works to discharge or partially discharge any liability or potential liability of the Developer to the Council as a result of the failure of the Developer to perform its obligations under this agreement in relation to the construction of any Works of that class; and

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- 11.2.2 the Security specified in Item 5 of the Schedule as being related to the maintenance of Works of a particular class of Works to discharge or partially discharge any liability or potential liability of the Developer to the Council as a result of the failure of the Developer to perform its obligations under this agreement in relation to the maintenance of any Works of that class.
- 11.3 Where a Security is expressed in Item 5 of the Schedule to relate to a particular class of Works and there is no separate Security in relation to the maintenance of Works of that class, 10 % of the amount reasonably assessed by Council as the value of the Works to which the Security relates will, for the purposes of clauses 11.2.2 and 11.7, be taken to relate to the maintenance of that class of Works.
- 11.4 Council may call upon a Security at any time upon becoming entitled under this agreement to do so without reference to the Developer but will notify the Developer as soon as reasonably practicable that Council has called upon such Security.
- 11.5 Subject to clause 11.6, where Council has not called upon a Security for the construction works Council will upon request of the Developer, and within 10 Business Days following the acceptance by Council of the Certificate of Practical Completion for that class of the Works to which the Security relates (or if more than one Certificate of Practical Completion is issued and accepted for the Works of the relevant class, following the acceptance of the last such Certificate) return the relevant Security to the Developer.
- 11.6 Notwithstanding:
- 11.6.1 any allocation of a Security to the construction or maintenance of any particular Works under clause 11.2 and Item 5 of the Schedule or under clause 11.3; or
- 11.6.2 any obligation Council may otherwise have under clauses 11.5 and 11.7 to return a Security to the Developer,
- Council may:
- 11.6.3 call in any Security for the purposes of discharging a liability under clause 6 of this agreement; and
- 11.6.4 may retain any Security if Council has reasonable cause to believe that the retention of the Security may be required to meet a liability or prospective liability under that clause.
- 11.7 Subject to clause 11.6, where Council has not called upon a Security for the maintenance of any Works, Council will upon request of the Developer, and following the expiry of the relevant Defects Liability period (subject to any extension of the Defects Liability period in accordance with this agreement) return the relevant Security to the Developer.

12. ASSIGNMENT

12.1 The Developer must not assign this agreement or any right or obligation under this agreement (including by sale of the Land) without the prior written consent of Council, which consent will not be unreasonably withheld.

12.2 It will be unreasonable for Council to withhold its consent to an assignment of the Developer's rights and obligations under this agreement to a third party who, if required by Council, has entered into an agreement with Council supported by adequate Security undertaking with Council to meet the obligations of the proposing assignor under any or all of:

12.2.1 this agreement; or

12.2.2 any other agreement entered into pursuant to or in connection with this agreement.

13. INTEREST UPON MONEYS OUTSTANDING

Any amount payable by the Developer to Council under this agreement bears interest at the rate charged by Council's bank upon an overdraft account of \$100,000 plus 2% from the date on which the amount falls due for payment (and where that date is not specified in this agreement, from the date on which Council makes written demand) until payment of the amount in full.

14. GST

14.1 In this clause an expression defined in the *A New Tax System (Goods and Service Tax) Act 1999* (Cth) has the meaning given to it in that Act.

14.2 If a party makes a supply under or in connection with this agreement in respect of which GST is payable, the consideration for the supply is increased by an amount equal to the GST payable by the supplier on the supply.

14.3 A party need not make a payment for a taxable supply under or in connection with this agreement until it receives a tax invoice for the supply.

15. NOTICES

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

15.1.1 in writing and in English;

15.1.2 in the case of Notice by Council, signed by a person authorised or with delegation to sign such notices;

15.1.3 in the case of Notice by the Developer, signed by a person authorised by the Developer; and

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

15.2 A Notice is deemed to be received:

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- 15.2.1 if hand delivered, on delivery;
 - 15.2.2 if sent by prepaid mail, three Business Days after posting (or five Business Days after posting if posting to or from a place outside Australia);
 - 15.2.3 if sent by facsimile, at the time and on the day shown in the sender's transmission report, if it shows that the entire Notice was sent to the recipient's facsimile number last Notified by the recipient to the sender;

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

- 15.3 A Notice by Council, stating the amount of money owing or payable or any other matter, is sufficient evidence of the matter unless proved incorrect.

16. COSTS OF THIS AGREEMENT

The Developer must pay Council's costs of and incidental to the preparation, negotiation and execution of this agreement and any document required to be entered into pursuant to this agreement.

17. SPECIAL CONDITIONS

The special conditions (if any) in Item 6 of the Schedule form part of this agreement. If there is any inconsistency between those special conditions and the above provisions, those special conditions govern to the extent of the inconsistency.

18. SECTION 221 AUTHORISATION

- 18.1 This Agreement does not preclude any rights or obligations of the parties under Part 2 of the *Local Government Act 1999*.
- 18.2 In the event that any conditions imposed on the section 221 authorisation in Annexure A to this agreement are inconsistent with the terms of this agreement, this agreement prevails to the extent of any inconsistency.

Schedule

Item 1

Land

Allotment XX in DP XXXXX being the whole of the land comprised in Certificate of Title Volume XXXX Folio XXX

Item 2

Development Application

Development Application No. [insert]

Item 3

Works

The Developer covenants that it will, at its cost and in conjunction with Council (unless the Developer and the Council agree other arrangements);

1. Prepare detailed designs, plans and specifications for all the works specified in Annexure B of this agreement (being **the Works**), as acceptable and approved in writing by Council; and
2. Construct those works in accordance with the detailed designs, plans and specifications approved in writing by Council and in accordance with the terms of this agreement; and
3. At the completion of works, vest all relevant infrastructure in the Council.

Concept Plan of works; refer to Annexure C for details.

Item 4

Completion Date

Being that date on or prior to the date of Certificate of Practical Completion has been issued in relation to the Approved Development and a Certificate of Occupancy is issued, unless otherwise agreed in writing by Council.

Item 5

Security

\$ XX,XXX.00 Performance Bond

(90% of the Estimated Total in Annexure B)

\$ X,XXX.00 Defects Liability Bond

(10% of the Estimated Total in Annexure B)

Bonds subject to Local Government CPI (Roads and Bridges) rates increases.

Item 6

Special conditions

Council request the form of Security in Item 5 be in the form of two separate Bank Guarantees.

EXECUTED as an agreement

Signed for **Town of Gawler** by its
authorised delegate in the presence of:

.....
Signature of Person of Authority

.....
Signature of Witness

.....
Name of Person of Authority (print)

.....
Name of Witness(print)

DEVELOPER

Executed by **XXXXXXXXXXXX** in accordance with section 127(1) of the *Corporations Act* by
the authority of its directors:

.....
Print Name of Director

.....
Signature of Director

.....
Print Name of Director/Secretary

.....
Signature of Director/Secretary

Annexure A Section 221 Authorisation

AUTHORISATION TO MAKE AN ALTERATION TO A PUBLIC ROAD Section 221 *Local Government Act 1999*

Authorisation is provided to [INSERT] to undertake the Works as defined in this Agreement subject to the following conditions as may be relevant to the Works:

1. Any authorisation issued does not confer on the permit holder any exclusive right, entitlement or interest in, over or under the road and does not derogate from the Council's powers arising under the *Local Government Act 1999* or any other laws or policy. Nothing in the authorisation is intended to restrict or limit the Council's rights to access the road at any time.
2. The permit holder is responsible for all works associated with the proposal, including the costs of altering any infrastructure required to enable the works to proceed. The Council will not contribute to the cost of the works, nor any associated authorisations or permits, nor any further alterations necessary through road widening or other works.
3. The permit holder must maintain the permitted alteration in good repair and safe condition at all times while it remains on, over or under the road. The permitted alterations remain the property of the Permit Holder pursuant to Section 209 of the Act.
4. The authorisation will expire:
 - a. 5 years from the date that the Permit is granted by the Council; or
 - b. if the Permit Holder ceases to hold the required insurance policy; or
 - c. if it is surrendered by the Permit Holder by written notice to the Council.
5. The permit holder must comply with and give all notices required by any Act of Parliament, ordinances, regulations or by-laws relating to the activity.
6. The permit holder must comply with the applicable environmental, industry or health and safety standards applicable to the activity authorised and ensure that the activity be conducted in a safe and responsible manner.
7. The permit holder shall comply with any reasonable directions made by Council in respect to the activity or public safety or prevention / mitigation of damage to the road or any other Council property.
8. Any authorisation conferred pursuant to this application is not transferrable.
9. The permit holder must notify Council as soon as practicable if on-site conditions require the scope of the authorised works to be altered in any way and receive Council's written approval of such alterations.
10. The permit hold **MUST** keep the works safe - public safety is Council's highest priority. No structures, such as fences, walls and letterboxes within the verge area are permitted. Australia Post also requires all letterboxes to be located on the property boundary.

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11. The permit holder must ensure that the work site and hoardings are adequately illuminated between sunset and sunrise and that all appropriate barriers, barricades and warning devices are installed so as to protect the public from injury or damage.
 12. Where approval has been given for street works involving concrete the following conditions shall apply:
 - a. No concrete equipment shall be cleaned in the street and no cement slurry or other materials to be allowed to enter the stormwater system or adjacent properties;
 - b. On completion of concrete works the street is to be thoroughly cleansed of all cement and other materials or rubbish associated with the work; and
 - c. In heavily trafficked streets, vehicles associated with concrete works shall NOT be maneuvered to or from the site during weekday peak traffic periods of 8 to 9am and 4 to 6pm. Prior to the commencement of any works Council will confirm whether the street involved in this authorisation is heavily trafficked.
 13. The permit holder uses and alters the road at its own risk.
 14. The permit holder acknowledges that Council does not warrant that the road will, at any time, be structurally or otherwise suitable for the permitted alteration.
 15. The permit holder indemnifies the Council from and against all actions, costs, claims, loss and damages, which may be brought or claimed against Council or incurred by Council arising out of, or in relation to, the granting of this permit and the permitted alteration.
 16. The permit holder indemnifies Council from any liability or claim resulting directly or indirectly from any accident, damage, loss or injury occurring or arising from the permitted alteration, the permit holder's use and alteration of the road or any damage caused to the permitted alteration.
 17. The permit holder must remove any structure, object or substance erected, placed or installed under the authorisation of this permit at the expiry or cancellation of the permit.
 18. Council may, at the permit holder's cost, do anything which the permit holder should have done under this permit but which the permit holder has not done or which the Council reasonably considers the permit holder has not done properly.
 19. The permit holder must ensure that the permitted alteration does not interfere with or cause damage to or affect in any way:
 - a. any adjoining property (except with the written consent of the owner and occupier of the affected adjoining property);
 - b. any wire, post, cable, pipe or other property or infrastructure belonging to Council, a service provider (including but not limited to Telstra, SA Water, United Water, Boral, SA Power Networks, Origin Energy Limited or any federal, state or local government department or authority) or any adjoining property owner; and
 - c. the use of the road or adjoining area by the public or any person legally entitled to use the road or other adjoining area.

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20. If the permit holder causes or contributes to any damage or interference described in item 19 above, the permit holder must immediately notify Council in the event of any damage to any Council owned property, water, gas, electric, telephone, any other service, roadway or footpath within the area or connected to the activity. The permit holder indemnifies Council to the full extent permitted by law against any claim made against Council for such damage or interference and the permit holder must, at Council's election, make good any damage or reimburse Council for any cost or expense it incurs in making good the damage.
21. The permit holder shall not commence any works under any authorisation until the permit holder has provided to Council evidence of a public risk insurance to a minimum value of \$10,000,000 (except for landscaping works by residents) and such policy must:
- a. be with an insurer and on terms approved by the Council;
 - b. be in the name of the permit holder and note the interest of the Council;
 - c. have no limit on the number of claims that can be made under it;
 - d. cover events occurring during the policy's currency regardless of when claims are made;
 - e. note that despite any similar policies of the Council, the permit holder's policy will be the primary policy; and
 - f. require the insurer to notify the Council if the policy is varied or allowed to lapse.
22. The aforementioned public risk insurance policy must be current for the entire period of the works.
23. The Council may terminate an authorisation at any time and for any reason on seven (7) days' notice in writing to the permit holder.
24. On expiry of the term or earlier termination of the authorisation, the permit holder will be responsible for reinstating the works site to a standard acceptable to the Council, including removing all rubbish and other material and will be responsible for all costs associated with the same.
25. Dispute Resolution Procedure: If a dispute arises between the Permit Holder and the Council with respect to any matter under this Permit, the Permit Holder and the Council must comply with this clause and in accordance with the Councils Complaints Resolution Policy requirements available from its website at www.gawler.sa.gov.au.
26. The Permit Holder must comply with all specific conditions contained in the authorisation (if any).

General Conditions and Provisions

27. CONDITIONS APPLICABLE TO STORMWATER CONNECTIONS

- a. All stormwater surface runoff from the property and buildings must be contained within the property boundaries, collected and overflow discharged to the kerb and water table (gutter). A drain must be laid either level with or with fall to the street water-table.
- b. The permit holder is responsible for all matters associated with ensuring that the system used to discharge stormwater from private property is adequate to meet the needs of the property concerned and does not obstruct the road or cause a

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- safety risk or public nuisance. This includes determination of pipe size, the need for inspection pits, risers, pipe layout etc.
- c. Drains must be constructed of either sewer-grade uPVC or galvanised steel (box section). The minimum allowable size of an uPVC pipe is 80mm.
 - d. Galvanised steel kerb adaptors must be used where the stormwater pipe meets the kerb. The kerb shall be saw-cut to fit the kerb adaptor and the adaptor shall be fixed in place with a concrete adhesive or grouted as required.
 - e. For residential properties where the stormwater pipe will not be subject to vehicular traffic a sewer grade PVC pipe is required.
 - f. For properties where 80mm of cover above top of pipe cannot be provided a tubular or box section zincalume steel or similar approved cover shall be used.
 - g. Drains should be installed at right angles to the kerb wherever possible.
 - h. Trenches shall be backfilled with rubble and compacted to Council's satisfaction.
 - i. The disturbed footpath surface shall be reinstated using the same surface material as the existing footpath (concrete, asphalt or brick paving as applicable) to industry standards.
 - j. Where sufficient depth cannot be achieved to enable the proper reinstatement of a brick paved or concrete footpath over the stormwater pipe, a galvanised steel pipe cover ("top-hat" profile) with a chequer plate surface shall be installed over the pipe, flush with the footpath surface.
 - k. If it is not possible to reinstate the footpath surface at the time of the installation, the compacted rubble shall be left flush with the footpath surface. The final surface reinstatement shall occur within seven (7) days of the installation of the stormwater drain.
 - l. Stormwater pipes from private property must only be used to carry clean stormwater. The discharge of air conditioner run-off, mains water or swimming pool water contravenes environmental and health legislation. Such discharge must be directed to the sewer system.
 - m. The permit holder will be liable for any damage to Council's stormwater drainage system caused by the discharge.
 - n. The permit holder is responsible for the ongoing maintenance (including damage and general wear and tear) of all items covered in any authorisation issued by Council.

28. CONDITIONS APPLICABLE TO LANDSCAPING

- a. The *Local Government Act 1999* requires that all private development of the verge has Council approval prior to commencement of any works.
- b. Property owners may only develop their verge areas, if the type or form of development maintains the following:
 - i. Pedestrian access along the verge area is provided / maintained in preference to walking on the roadway, regardless of whether a footpath has been constructed or not;
 - ii. Existing drivers' sight line distances;
 - iii. Service authority and Council access for installation of new services and maintaining services; and
 - iv. Provision is made for Council street tree/s as per the Council's street tree planting program.
- c. The following verge treatments are permitted and are suitable for safe pedestrian access:
 - i. Mulch beds (other than trafficable surfaces);
 - ii. Rubble path (compacted);
 - iii. Low plants (maximum 500mm height);

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- iv. Paved footpath 1.5 metre minimum width to be constructed to Council's standards and manufacturers specifications at residents cost;
 - v. Turf (irrigated and unirrigated); and
 - vi. Synthetic turf (to manufacturer's specifications and Council approval).
- d. Where a property owner seeks to install a synthetic / artificial turf treatment to the verge, it is to be with a product and in a manner that complies with the following conditions:
- i. A pile length of between 25-40mm with a sand or rubber particle infill to ensure the pile remains upright;
 - ii. To comprise of bicolour filaments / tufts;
 - iii. To be installed as per manufacturers' specifications ensuring that any excavation does not damage Council infrastructure eg. footpath, kerb and gutter or street trees;
 - iv. The finished surface level and ground fixing method of the product is to be flush with adjacent levels limiting potential trip hazards; and
 - v. The base construction and chosen product is water permeable and where a street tree exists the finished surface is to grade towards the tree.
- e. Trees or vegetation on Council controlled land must not be removed to enable the proposed works to proceed unless Council approval is granted prior to the works being undertaken.
- f. Verge landscaping must be maintained wholly within the verge. That is, vegetation must not encroach on the adjacent footpath or roadway.
- g. Verge landscaping must be maintained to a height of no more than 0.5 metre from ground level and in a neat, tidy and weed-free manner.
- h. When the verge is landscaped with lawn or grass, it must be regularly mown to maintain a neat and tidy appearance. The height of lawn or grass shall not be allowed to exceed 0.1 metre and must not be allowed to grow over the kerb or footpath.
- i. Verges must not be mounded up with soil. The existing ground level must be maintained.
- j. Verge landscaping must be maintained such that they do not prevent the access on the passenger side of vehicles parked alongside the kerb. Permit holders are advised to keep plantings at least 0.5 metre from the kerb.
- k. At any time, the Council may require part or the entire verge landscaping to be altered or removed for any reason. If such works are required in order to satisfy the conditions of any authorisation, the responsibility for the works (including costs) will rest with the permit holder.
- l. Where the verge is not consistently maintained in accordance with these conditions, Council may remove the verge landscaping at the permit holder's cost.
- m. Only plant species listed by the permit holder and approved by Council may be planted.
- n. Plant species which may not be approved include:
- i. Those which may cause an obvious hazard to road users or pedestrians, such as thorny roses, cacti and other prickly or toxic species;
 - ii. Those which are likely to be difficult to maintain to a height of less than 0.5 metre;
 - iii. Those which may negatively affect the amenity of the local streetscape; and
 - iv. In any case, plants declared as pest plants pursuant to Landscape South Australia Act 2019 must not be planted.
- o. The permit holder may install below-ground irrigation systems (including pop-up sprinklers, below ground drippers and 'leaky-pipe' systems) if authorised to do

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- so, provided the property owner accepts all responsibility for all on going repairs and maintenance.
- p. When any development of a verge is altered or removed by the activity of a Service Authority, reinstatement will be subject to negotiation between the property owner and that Service Authority.

General Conditions and Provisions

- q. Where a Council activity or operation alters or removes a conforming verge development, Council will endeavour to restore the verge to a reasonable standard.

29. CONDITIONS APPLICABLE TO UNDERGROUND SERVICE CONNECTIONS

- a. Cables shall be laid in accordance with the requirements of SA Power Networks Utilities. It is the permit holder's responsibility to inform him/her of any legal and technical requirements with respect to the installation of underground electrical supplies.
- b. Underground cabling shall be laid at a minimum depth of 600mm below the existing surface level.
- c. Underground cabling shall be laid from the SA Power Networks Utilities pole to the property at 90 degrees to the kerb line or as otherwise shown and approved on this application and approval form.
- d. Any trench created to lay cable shall be backfilled and compacted to the requirements of SA Power Networks.
- e. The disturbed footpath surface shall be reinstated using the same material as the existing footpath (concrete, asphalt or brick paving as applicable) to the relevant industry standard.
- f. If it is not possible to reinstate the footpath surface at the time of the installation, the compacted rubble shall be left flush with the footpath surface. The final surface reinstatement shall occur within seven (7) days of the installation of the cabling.
- g. No responsibility will be accepted by the Council for any damage to the service from any causes whatsoever.
- h. Prior to undertaking the Works, the permit holder or contractor shall contact Dial Before You Dig, SA Power Networks, Telstra and other appropriate organisations to ascertain the location of underground plant and any special precautions necessary.
- i. The permit holder is responsible for the ongoing maintenance (including damage and general wear and tear) of all items covered in any authorisation issued by Council.

30. CONDITIONS APPLICABLE TO ALTER DRIVEWAY CROSSOVERS AND FOOTPATHS

- a. Driveway crossover and invert works must comply with the Council's current specification and drawings relevant to the work.
- b. Heavy duty crossovers are required to all driveways other than residential properties.
- c. The Council will require the permit holder to make good, at the permit holder's cost, any work completed which does not comply with the Council's specifications, drawings or any other terms and conditions of the approval.

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- d. At any time, the Council may require part or the entire crossing place to be altered or removed for any reason. If such works are required in order to satisfy the conditions of this approval, the responsibility for the works (including costs) will rest with the permit holder.
 - e. If the installation or alteration of a driveway crossover renders another crossover to the same property redundant, the permit holder shall remove the redundant crossover and kerb invert and reinstate to match adjacent footpath and kerbing.
 - f. An area (nominal width of 1.5 metres) to serve as a pedestrian refuge is to be left clear for general pedestrian access. This area should be levelled grass or lawn or compacted rubble surface or sealed by paving. Any development of the verge with an existing concrete or block paver footpath must allow for the possible future construction of a footpath by Council.
 - g. Where an permit holder desires as part of a verge development to construct a paved footpath (where no paved footpath exists on adjoining verges) its location within the verge and the materials used for its construction shall be parallel to the road pavement at an even spacing from its edge, and of a consistent width, with variations only to avoid objects including trees, major telecommunication pits and electricity poles and shall be to Council specification. Construction shall be at the property owner's cost and shall be maintained by the permit holder, in a safe and trafficable condition at all times.
 - h. Pavers shall be approved by Council and be laid flat with levels matching connecting infrastructure and pits e.g. Telco service pits. Service pits must be brought up to height if required at the permit holders cost. Council will inspect service pit integration and will on charge permit holders if required.
 - i. The permit holder is responsible for the ongoing maintenance (including damage and general wear and tear) of all items covered in any authorisation issued by Council.

31. CONDITIONS APPLICABLE TO ALTER ROAD CARRIAGEWAYS AND/OR PAVEMENTS

- a. All road work must be approved by Council (and notice given to Council) before commencement of the work.
- b. A Traffic Management Plan showing all signage and traffic control devices around the works area shall be submitted and approved 10 working days prior to the commencement of works.
- c. Five days prior to the activity commencing the permit holder shall provide to the Council a satisfactory dilapidation report which records the state of the Council land and any improvements thereon.
- d. No material shall be stockpiled on the road or footpath. All work must be completed in a professional manner and the site, adjoining road and footpath cleared of all rubbish, spillage, excess fill or material and form work as it accumulates.
- e. The work site area shall be protected and kept safe for pedestrians and road users at all times. Failure to address public safety may expose the owner to potential public liability claims. No street furniture (e.g. street signs, traffic signs, etc.) may be removed for any purpose except within the approval of a Council delegated officer or relevant authority.
- f. Obstruction of public infrastructure such as traffic signs and parking bays within the road reserve is not permitted without prior consent by Council. The removal or relocation of any of these devices will be at the cost of the property owner.
- g. All finished work should be free of obstructions and trip points.

32. CONDITIONS APPLICABLE TO USE OF ROAD FOR OBSTACLES,
STRUCTURES OR SKIP BINS

- a. The permit holder must take all reasonable precautions to avoid damage on, over and under the road and any improvements and structures located on, over or under the road and/or in the area.
- b. The permit holder must immediately notify the Council of damage to the area or any Council owned property located within or adjacent to the area.
- c. The permit holder will be responsible to reimburse the Council for all its reasonable costs to repair or rectify any damage caused as a result of the permit holder's use or misuse of the area.
- d. The permit holder agrees that the Council will have no responsibility or liability for any loss or damage to the permit holder's fixtures or fittings or personal property.
- e. Reflectors to be placed on all sides of the skip.
- f. Public access along the verge is to be available at all times.

Annexure B List of Requirements to be Met

1. Prepare detailed designs, plans and specifications of works in conjunction with and approved by Council and installed at the developer's expense by 'Completion Date' unless otherwise agreed between Council and the Developer.
2. Prepare a Traffic Management Plan and provide to Council for written acceptance prior to commencing any traffic management activities in the road reserve.
3. Construction of;
 - a. Stormwater infrastructure in
 - b. Road infrastructure in.....
 - c. Pedestrian footpaths (1.5m wide) external to the site as identified on the Concept Plan (refer Annexure C).
 - d. Landscaping works to
4. Implement a detailed landscaping scheme which includes tree planting within reserve (not be limited to; trees, groundcovers etc). Such landscaping shall be undertaken in line with Gawler Councils Standards and Requirements for Land Development document and to the satisfaction of Council.

Works Schedule Cost Breakdown

No.	Works Description	Cost
1	Traffic Management (Provisional Sum)	\$ X,000
2	Footpaths (125m of 1.5m Council Standard concrete footpath)	\$XX,000
3	Stormwater a. New 600x600 Junction Box b. 85m length of 375mm diameter reinforced concrete pipe to existing pit on northern verge of the road reserve in Dean Street.	\$ X,000 \$XX,000
4	Public Realm a. Reserve landscaping works (Provisional Sum) b. 5 x Street trees in road reserves	\$XX,000 \$ X,000
5	PC Sum (lighting upgrade)	\$ 2,000
	Sub Total	\$XX,000
6	Project Management (approx.. 10%)	\$X,000
	Sub Total	\$XX,000
7	Contingency (20%)	\$XX,000
	Estimated Total	\$XX,000

Annexure B Concept Plan

ANNEXURE 5

Tree plan



Tree Number as per arboreal reports	Tree Name
1	Red Ironbark – <i>Eucalyptus sideroxylon</i>
2	Rough Barked Apple – <i>Angophora floribunda</i>
3	<i>Ficus elastica</i> - large
3 a	<i>Ficus elastica</i> - small
3 b	<i>Ficus elastica</i> - small
4	<i>Ficus elastica</i> - large
5	<i>Ficus elastica</i> - large
6	Sugar Gum – <i>Eucalyptus cladocalyx</i>

ANNEXURE 6

Concept Plan



- Concept Plan Boundary
- No vehicle access
- Landscaping (minimum depth of 1.5 metres)
- Landscaping (minimum depth of 3 metres)
- - - Acoustic barrier
- /// Building Exclusion Area (9 metres from boundary)
- ↔ Signalised vehicle access



Concept Plan #
MAIN NORTH ROAD

ANNEXURE 7

Preliminary costings table

Infrastructure	Detail of project	% Proponent Contribution	Estimated Cost (total)	Action
Flood Mitigation	Infrastructure design and works to improve local flood mitigation at First and Sheriff Streets.	Amount specified in clause 8.2 of the LMA	\$1,040,000	Preferred infrastructure is full upgrade of 1,200mm diameter pipe from the First Street detention basin to western side of Main North Road (MNR). Minimum infrastructure, new 1,200mm diameter pipeline under Main North Road with balance of contribution for detailed design and/or works for additional flood mitigation infrastructure. Contribution to be paid as per clause 8.2.2 of the LMA
Traffic Management	Sheriff and First Street – junction modification to MNR	50%	\$128,000	Junction modification to Sheriff and First Street intersection with MNR. New footpath and kerb ramps. New gutter and reinstate verge and asphalt.
Boundary with Sheriff Street	Install footpath, kerb and gutter lighting. Landscaping, tree planting and acoustic treatment.	100%	\$166,000	Footpath 1.5m wide. Kerb, gutter and drain with SEP and JB on the boundary with Sheriff Street. Landscaping, tree planting and acoustic treatment required Existing trees within road reserve to be augmented or replaced by suitable species that at maturity achieve min. 6m height upon completion of footpath construction to kerb edge being completed.
Traffic lights Main North Road	Installation of traffic lights and entrance to the site.	100%		Proponent to engage in separate Deed with DIT.

Footpath on Main North Road Frontage	Main North Road Frontage/Business footpath with kerb and gutter to be replaced as part of new access and traffic light installation.	100%		Footpath, kerb and gutter, stormwater, ramps and landscape and trees to be detailed in Deed. Vested with Council at end of the construction project.
Boundary with Gawler Barossa Jockey Club (GBJC)	Relocate fencing and shared path	100%		To be included in DIT deed with GBJC. Deed to make reference to reinstatement.
Acoustic Treatment	As per Concept Plan	100%		Acoustic fencing 3.5m and other treatments to be included in LMA.