

Deed of Agreement for the Provision and Maintenance of Community Benefit Space

Town of Victoria Park

The Owners of Vic Quarter, Strata Plan 77900

Fowler Group Properties Pty Ltd



McLEODS

Barristers & Solicitors

Stirling Law Chambers | 220 Stirling Highway | CLAREMONT WA 6010

Tel: (08) 9383 3133 | Fax: (08) 9383 4935

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Ref: FG:VIC:45662

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Details

Parties

Town of Victoria Park

of Locked Bag No. 437, Victoria Park, Western Australia
(Town)

The Owners of Vic Quarter, Strata Plan 77900

of 660 Albany Highway, Victoria Park, Western Australia
(Strata Company)

Fowler Group Properties Pty Ltd (ACN 622 638 493)

of 433 Riverton Drive East Shelley, Western Australia
(Fowler Group)

Background

A Fowler Group, applied to the Town for development approval of multiple dwellings and one grouped dwelling on the Land (**Development**).

B The Development was approved by the Metro Central Joint Development Assessment Panel on 20 September 2017 subject to a number of conditions (**Approval**) including the following:

'(1) For the life of the building the subject of this approval, the applicant shall provide community meeting rooms for the use of the community under the supervision of the Town on the basis that no rent or occupation charges are to be levied for that community use, but the Town to meet all outgoings otherwise incurred by the applicant in respect of that use.'

(Community Benefit Condition)

C Fowler Group is registered as the proprietor in fee simple in land being Lot 115 on Strata Plan 77900 and being the whole of the land comprised in Certificate of Title Volume 2977 Folio 350 (**Lot 115**). The titles to the Land have since been cancelled following the strata-titling of the Development in accordance with Strata Plan 77900.

D The Strata Company and Fowler Group enter into this deed to ensure that the Community Benefit Space located within Lot 115 will be maintained and used in accordance with the Approval and the Community Benefit Condition for the lifetime of the Development and to satisfy the Town's requirements.

Agreed Terms

1. Defined Terms and Interpretation

1.1 Defined Terms

Approval is defined in background paragraph B and annexed hereto as **Annexure 1**;

Authorised Person includes:

- (a) the employees, agents, contractors and invitees of the Strata Company and Fowler Group; and
- (b) any person on Lot 115 by the authority of a person specified in paragraph (a);

CEO means the Chief Executive Officer for the time being of the Town or any person appointed by the Chief Executive Officer to perform any of her or his functions under this deed;

Common Property means the common property as shown on Strata Plan 77900;

Community Benefit Space means the community room and associated facility located within Lot 115;

Development is defined in background paragraph A;

Land means Lots 1, 2, 25, 26, 66, 327, 456 (646-660) Albany Highway and Lots 329 and 330 (1-3) Miller Street, Victoria Park;

Lot 115 means Lot 115 on Strata Plan 77900 and being the whole of the land comprised in Certificate of Title Volume 2977 Folio 350;

Party means the Town, Fowler Group or the Strata Company according to the context; and

Schedule means the Schedule to this deed;

Strata Company means a body corporate established under section 14 of the Strata Titles Act 1985.

1.2 Interpretation

In this deed unless the contrary intention appears:

- (a) reference to a person includes a reference to that person's personal representatives, successors and assigns;
- (b) reference to a person includes a natural person, partnership, trust, association and company;
- (c) reference to a company includes any incorporated body of any description;
- (d) an obligation or representation on the part of two or more persons binds them jointly and severally;
- (e) an obligation or representation in favour of two or more persons is for the benefit of them jointly and severally;
- (f) reference to a recital, clause, schedule or annexure is a reference to a recital, clause, schedule or annexure in this deed and a reference to this deed includes recitals, schedules and annexures;
- (g) reference to any statute in this deed includes a reference to that statute as amended, modified or replaced and includes orders, ordinances, regulations, rules and local laws made under or pursuant to that statute;
- (h) unless repugnant to the sense or context a reference to a party includes that party's executors, administrators, personal representatives, successors and assigns and if a party comprises two or more persons the executors, administrators, personal representatives, successors and assigns of each of those persons; and

- (i) headings are inserted for convenience only and do not affect the interpretation of this deed.

2. Use and Maintenance of Community Benefit Space

- (1) The Strata Company and Fowler Group acknowledge and agree with the Town that the general public will be permitted to access and use the Community Benefit Space which is located on Lot 115.
- (2) For the lifetime of the Development, the Strata Company and Fowler Group acknowledge and agree with the Town that:
 - (a) the Town must at its cost and expense keep and maintain the Community Benefit Space at all times:
 - (i) in good and safe order, repair and tenable condition consistent with standards applied by the Strata Company; and
 - (ii) in accordance with the specifications and to the satisfaction of the Town and the Strata Company;
 - (b) the Town must carry out any repairs as necessary to ensure that the Community Benefit Space is maintained in accordance with paragraph (a) of this clause, as expeditiously as possible and in accordance with any reasonable directions of Fowler Group and the Strata Company;
 - (c) the Strata Company and Fowler Group must ensure that any part of the Community Benefit Space is not altered (other than in accordance with a planning approval issued by the Town or the relevant authority) in any way or any other activity carried out in connection with the Development which might impact or affect the ability of the general public to use the Community Benefit Space;
 - (d) the Strata Company and Fowler Group must ensure the Community Benefit Space or any part thereof is only used for the purposes described in the Approval and the Community Benefit Condition, or for another purpose approved by the Town (in its absolute discretion) which provides a similar and adequate community benefit and which does not adversely impact on the Strata Company or the tenants or occupants of the Development;
 - (e) the Strata Company and Fowler Group must ensure that the Community Benefit Space is not to be used or tenanted without the prior written approval of the Town;
 - (f) the Strata Company and Fowler Group acknowledge and agree that the Town will be responsible for arranging bookings for the use of the Community Benefit Space;
 - (g) the Town will be responsible for all costs associated with the operation, administration and maintenance of the Community Benefit Space;
 - (h) the Town and/or the direct Community Benefit Space benefactor are not required pay any fee or charges for the use of the Community Benefit Space other than costs contemplated in the Community Benefit Condition;
 - (i) the Town must not nor suffer to permit a person to do or carry out any thing which causes a nuisance, damage or disturbance to the Strata Company or Fowler Group or to the owners or occupiers of any adjoining premises.
- (3) The Strata Company and Fowler Group acknowledge and agree with the Town:

- (a) that the Town is not required pay any start up or ongoing costs with respect to the Community Benefit Space other than the initial fit-out costs of the Community Benefit Space, and the Strata Levy which would be payable in respect of Lot 115 and to meet any council rates, water and sewerage rates, strata levies and land tax (on a single land holding basis) payable in respect of Lot 115; and
 - (b) the obligation to maintain the Community Benefit Space will only continue for the lifetime of the Development notwithstanding that the Land may be subsequently subject to a strata title or other form of subdivision.
- (4) The Town acknowledges that no parking bays are allocated to the Community Benefit Space and the Town will ensure users of the Community Benefit Space do not occupy the Fowler Group tenants or Strata Company Car Bays.

3. Failure to Repair and Maintain

If the Strata Company fails to undertake any repair or maintenance to any part of the Community Benefit Space which the Strata Company is required to undertake under **clause 2**, the Town may give the Strata Company a notice requiring the Strata Company to undertake that repair or maintenance. Similarly, if the Town fails to undertake and repair or maintenance of any part of the Community Benefit Space which the Town is responsible to undertake under **clause 2**, the Strata Company or the Fowler Group may give the Town a notice requiring the Town to undertake the repair or maintenance required under **clause 2**.

4. Insurance

- (1) The Town covenants and agrees with the Strata Company and Fowler Group that the Town must at all times:
- (a) effect and maintain with reputable insurers (noting the Town's rights and interests in the Community Benefit Space) adequate public liability insurance (**Policy**);
 - (b) ensure such public liability insurance shall be in the sum of not less than TWENTY MILLION DOLLARS (\$20,000,000.00) (Insured Sum) or any other amount stipulated by the Strata Company and/or Fowler Group from time to time;
 - (c) ensure the Policy shall cover the Town for the Insured Sum for any event in respect of injury or loss both to persons and to property;
 - (d) ensure the Policy shall cover the Town for all claims (but without limiting the generality of the foregoing) for loss or damage to property not owned by the Town and also for any loss or damage to property not under the physical or legal control of the Town and in respect of all claims relating to contractual liability and such other risks as the Town might reasonably nominate at the time of entry into this deed;
 - (e) promptly advise the Strata Company and Fowler Group of any changes to the Policy or any cancellation of the Policy;
 - (f) promptly upon request by the Strata Company and Fowler Group provide the Town with a certificate of currency in respect of the Policy referred to in this clause.
- (2) The Town covenants and agrees with the Strata Company and Fowler Group that the Town must at all times effect, maintain and keep current a policy of workers compensation insurance, in respect of all employees employed around or on the Community Benefit Space. Subject to complying with any relevant law, the Town may, at its sole discretion, be a self-insurer with respect to workers compensation insurance.

- (3) The Town agrees with Fowler Group and the Strata Company that Fowler Group and the Strata Company will not be liable for any payments whatsoever (including any excess on claims) in respect of such insurance under this **clause 4**.
- (4) The Town agrees that it shall take out and maintain contents insurance with respect to the Community Benefit Space within Lot 115.

5. Notice

- (1) Any notice to be given under this deed by one of the parties to the other must be in writing and is given for all purposes for delivery in person, by prepaid post or by facsimile addressed to the receiving Party at the address set out in this deed.
- (2) Any notice given in accordance with this deed will be deemed to be duly served in a case of posting at the expiration of three (3) Business Days after the date of posting and in the case of facsimile, on the first Business Day after the date of transmission (providing the sending Party receives a facsimile machine verification report indicating that the notice has been transmitted).

6. Variation

Subject to such consents as are required by this deed or at law, this deed may be varied by the agreement of the Parties in writing.

7. Waiver

7.1 No General Waiver

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.

7.2 Partial Exercise of Right, Power or Privilege

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.

8. Acts by Agents

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

9. Statutory Powers

The powers conferred on the Town 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 the Town in this deed.

10. 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.

11. 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.

12. 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.

13. 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.

14. Costs

Each party shall pay their own costs with respect to the preparation, negotiation and stamping of this Deed.

15. Disposal Restrictions

Fowler Group covenants and agrees with the Town that:

- (a) it will not sell, transfer, or otherwise dispose of or encumber or enter into any agreement for the sale, transfer or other disposition of Lot 115 or part thereof or any interest therein without advising in writing any purchaser or assignee of its obligations under this deed; and
- (b) it will not sell, transfer, mortgage, charge, assign or otherwise dispose of (excluding the grant of a lease or leases or similar right which is not permitted under the terms of this deed) or encumber Lot 115 or any part or interest therein to any person without first obtaining the Town's consent, which consent shall not be unreasonably withheld or delayed PROVIDED:
 - (i) Fowler Group has complied with its obligations under this deed; and
 - (ii) the person to whom any such right or interest in Lot 115 is to be granted has first executed a deed of covenant (or in the case of a mortgagee an undertaking) to be prepared by the Town's solicitors at the cost (reasonably and properly incurred) of Fowler Group whereby that person covenants to observe and perform such of the covenants conditions and stipulations herein contained (including this covenant) as the Town shall require as if that person had been a party to this deed.

16. Charge & Caveat

Fowler Group charges Lot 115 in favour of the Town with the performance of its obligations and the pursuant to this deed and with the payment of all monies owing to the Town or which may become payable to the Town pursuant to this deed and Fowler Group authorises the Town to lodge an absolute caveat at Landgate against the Certificate of Title to Lot 115 for the purpose of securing such obligations.

17. Withdrawal of Caveat

Subject to there being no subsisting or unremedied breach of any provision of this deed of which Fowler Group has had notice of and a reasonable opportunity to remedy, and subject to Fowler Group complying with **clause 15** hereof the Town agrees that on receipt of a written request from Fowler Group it shall provide to Fowler Group, at Fowler Group's cost and in registrable form, a duly executed withdrawal of any Caveat lodged by the Town pursuant to this deed to enable registration of any transfer, assignment or mortgage document, provided that the Town is entitled to reodge its caveat after the registration of such transfer, assignment or mortgage.

18. Quiet Enjoyment

Fowler Group agrees with the Town that the Town may peaceably possess and enjoy the Community Benefit Space located on Lot 115 without interruption or disturbance from the Fowler Group for the duration of this Deed.

19. Indemnities

- (1) The Town shall indemnify and hold harmless the Strata Company and Fowler Group and its respective directors, employees and agents from and against any, and the consequences of any, claims, losses, expenses, costs (including legal costs on a solicitor/client basis), fines, penalties or damages of whatsoever nature suffered or sustained as a result of any injury to or death of any person and any loss of or damage to property arising out of a breach of this Agreement or the use of the Community Benefit Space by the Town as noted in **clause 2**.
- (2) The indemnity contained in this clause :
 - (a) shall survive the expiry or sooner termination of this Deed;
 - (b) extends to the benefit of, and applies to any claims, losses, expenses, costs (including legal costs on a solicitor/client basis), fines, penalties or damages suffered or sustained by the Strata Company or Fowler Group under or in connection with this Deed;
 - (c) applies to the acts and omissions of the Town and its authorised officers; and
 - (d) does not apply to the extent that the relevant claim or loss is caused by or contributed to by the wrongful or negligent act of the Strata Company or Fowler Group, its employees, agents or any of the Strata Company's or Fowler Group's other contractors (other than the Town, its authorised officers or subcontractors).

Signing page

EXECUTED BY THE PARTIES AS A DEED

2022.

THE COMMON SEAL of THE OWNERS OF VIC QUARTER, STRATA PLAN 77900 was hereunto affixed on 03 June 2022 in the presence of:



Signature of Council Member

Full name of Council Member

Signature of Council Member

Full name of Council Member

The COMMON SEAL of the TOWN OF VICTORIA PARK was hereunto affixed by authority of a resolution of the Council in the presence of:

Signature of Mayor

Full name of Mayor

Signature of Chief Executive Officer

Full name of Chief Executive Officer

EXECUTED by FOWLER GROUP PROPERTIES PTY LTD (ACN 622 638 493) in accordance with section 127 of the Corporations Act:

Signature of Director

Full Name of Director

Signature of Director/Secretary*
(*Delete whichever designation is incorrect)

Full Name of Director/Secretary

Annexure 1 – Approval



Government of Western Australia
Development Assessment Panels

LG Ref: 5.2016.151.1
DAP Ref: DAP/16/01046
Enquiries: (08) 6551 9919

State Administrative Tribunal
565 Hay Street
PERTH WA 6000

Dear Sir/Madam

STATE ADMINISTRATIVE TRIBUNAL REVIEW OUTCOME – DR72/2017

Property Location:	Lots 1, 2, 25, 26, 66, 327 and 451 (646-660) Albany Highway and Lots 329 and 330 (1-3) Miller Street, Victoria Park
Application Details:	Multiple Dwellings and 1 Grouped Dwelling

Please be advised that the Metro Central Joint Development Assessment Panel reconsidered the above-mentioned development application, SAT ref DR72/2017, pursuant to section 31 of the *State Administrative Tribunal Act 2004* on 11 September 2017.

The Notice of Determination is attached.

Yours sincerely,

DAP Secretariat

20 September 2017

Encl: Amended DAP Determination Notice

Cc: Mr Bob Fowler
433 Riverton Drive East, Shelley WA 6148

State Solicitor's Office
GPO Box F317
PERTH WA 6001

Mr Julio Gonzalez
Town of Victoria Park

Planning Appeals



wa.gov.au

Postal address: Locked Bag 2506 Perth WA Street address: 140 William Street Perth WA 6000
Tel: (08) 6551 9919 Fax: (08) 6551 9961 TTY: 6551 9007 Infoline: 1800 626 477
daps@planning.wa.gov.au www.dph.wa.gov.au
ABN 68 565 723 484



Planning and Development Act 2005

Town of Victoria Park Town Planning Scheme No. 1

Metro Central Joint Development Assessment Panel

**Determination on Development Assessment Panel
Application for Planning Approval**

Property Location: Lots 1, 2, 25, 26, 66, 327 and 451 (646-660) Albany Highway and Lots 329 and 330 (1-3) Miller Street, Victoria Park

Application Details: Multiple Dwellings and 1 Grouped Dwelling

Pursuant to section 31 of the *State Administrative Tribunal Act 2004*, the Metro Central JDAP, at its meeting on 11 September 2017, has reconsidered its decision dated 21 September 2016 in respect to the above application, SAT Ref. DR72/2017 and has resolved to:

Reconsider its decision dated 27 July 2017 and approve the JDAP Application reference JDAP/16/01046 and accompanying amended plans dated received 25 August 2017 in accordance with Deemed Clause 68 of the *Planning and Development (Local Planning Schemes) Regulations 2015* and Clause 30 of the Metropolitan Region Scheme, for the proposed Amendment to Development Approval – Additional Partial Seventh Storey with 4 Multiple Dwellings, to the approved Mixed Use Development comprising Shops, Restaurants, Offices, Tavern, 101 Multiple Dwellings & One (1) Grouped Dwelling at 646-660 Albany Highway and 1-3 Miller Street, Victoria Park, subject to the following conditions:

Conditions

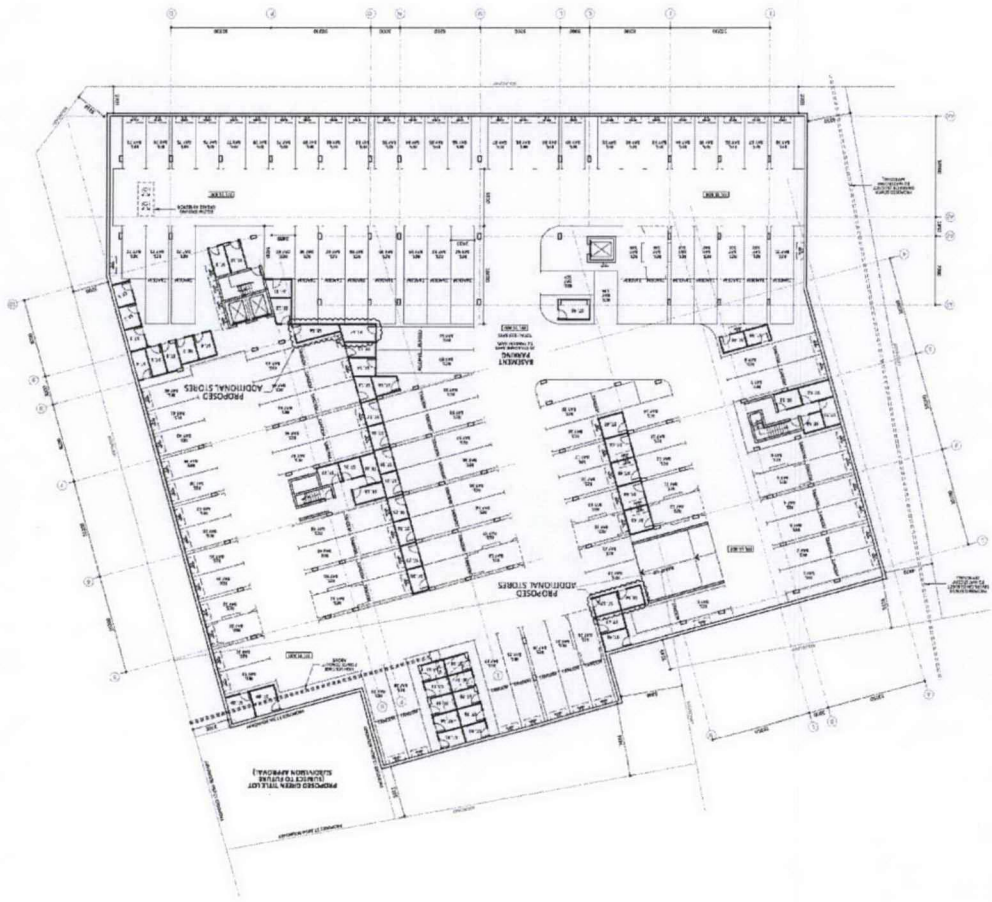
- (1) For the life of the building the subject of this approval, the applicant shall provide community meeting rooms for the use of the community under the supervision of the Town on the basis that no rent or occupation charges are to be levied for that community use, but the Town to meet all outgoings otherwise incurred by the applicant in respect to that use.
- (2) This approval is valid until 21 September 2019 only. If development is not substantially commenced within this period, further approval must be obtained before commencing or continuing the development.
- (3) Compliance with conditions 1 to 21 of Development Approval DA 5.2016.151.2 dated 21 September 2016, except as varied by Condition No. 2 above.

Advice Notes

- (1) Refer to Advice Notes contained in Development Approval DA 5.2016.151.2 dated 21 September 2016.
- (2) Any amendments or modifications to the approved drawings forming part of this development approval may require the submission of an application for amendment to development approval and reassessment of the proposal.

Where an approval has so lapsed, no development shall be carried out without further approval having first been sought and obtained, unless the applicant has applied and obtained Development Assessment Panel approval to extend the approval term under regulation 17(1)(a) of the *Planning and Development (Development Assessment Panels) Regulations 2011*.

BASEMENT FLOOR PLAN
 SCALE 1:500



DEVELOPMENT
 ASSESSMENT PANEL
 APPROVED
 11-Sep-2017

DATE: 11/09/2017
 TIME: 10:00 AM



DEVELOPMENT
ASSESSMENT PANEL
APPROVED
11-Sep-2017

SCALE: 1:500
DATE: 11-Sep-2017
DRAWN BY: [Name]
CHECKED BY: [Name]
PROJECT: [Name]

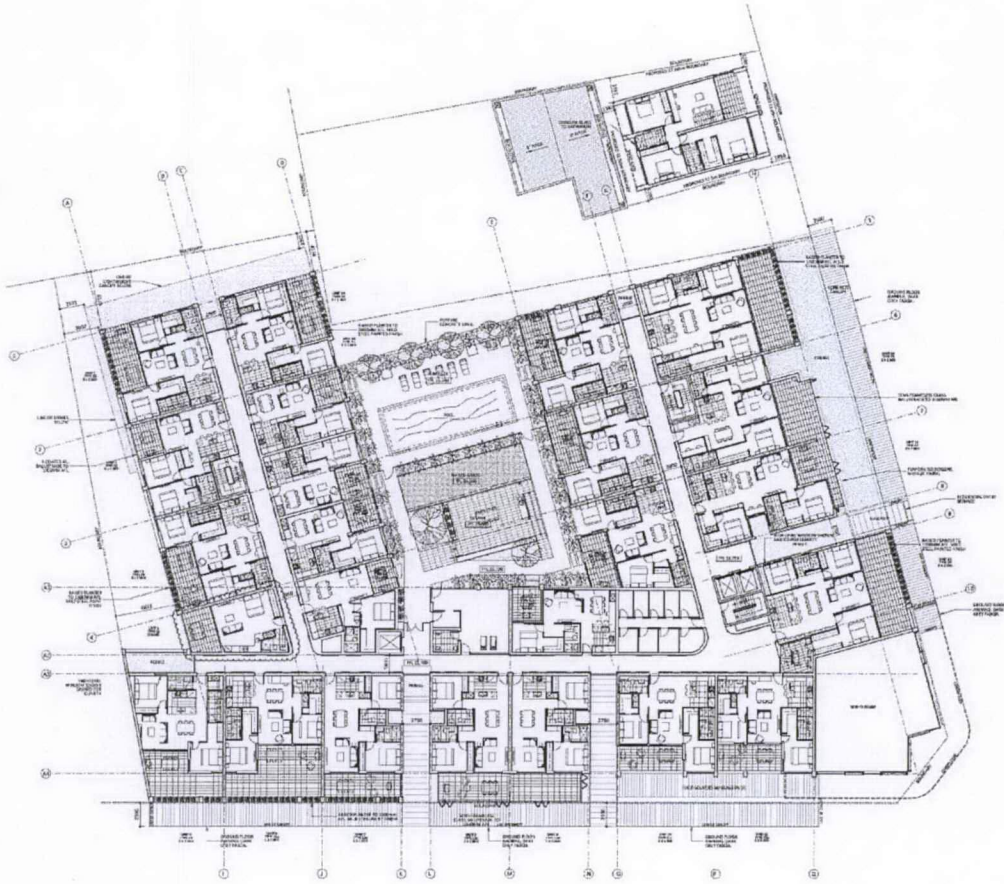
ALBANY HIGHWAY
MILLER STREET

GROUND FLOOR PLAN
DATE: 11-Sep-2017

MULTI-RESIDENTIAL DEVELOPMENT
[Address]
[City]

PLAN TO VISITOR MAP
PLAN NO. 22/06/017

DEVELOPMENT
ASSESSMENT PANEL
APPROVED
11-Sep-2017



LEVEL 1 FLOOR PLAN
SCALE: 1:300 (A1)

MULTI-RESIDENTIAL DEVELOPMENT
508-60 ALBANY (CORNER VICTORIA PARK)
PROJECT NO. 22/06/017

MILAN
ARCHITECTS

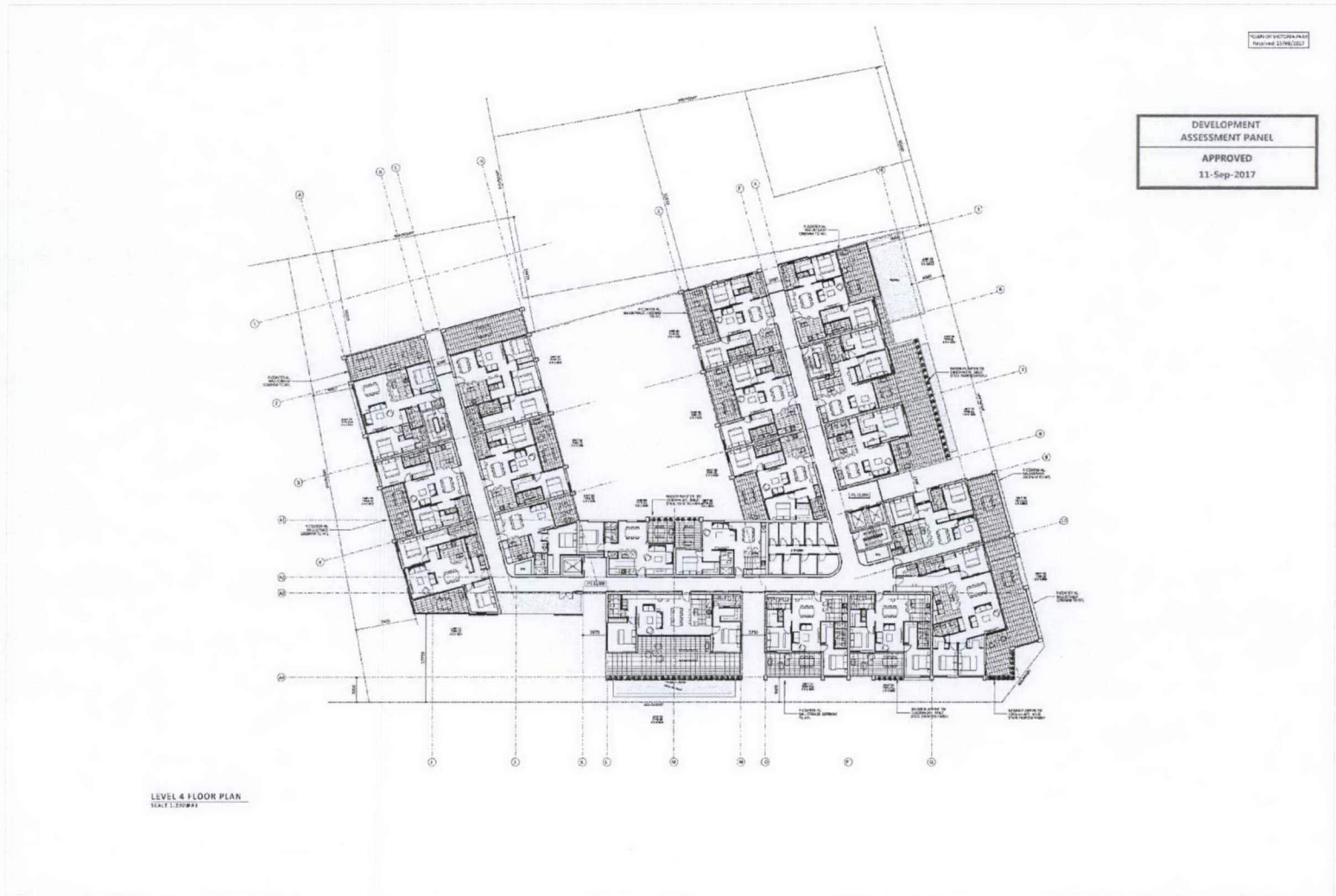
DATE: 25.08.17
DRAWING NO.: 25.08.17 - FIRST FLOOR PLAN
SHEET NO.: A2-33
REV: 1

LEVEL 3 FLOOR PLAN
SCALE: 1/8" = 1'-0"



DEVELOPMENT
ASSESSMENT PANEL
APPROVED
11-Sep-2017

REVISIONS



LEVEL 4 FLOOR PLAN
SCALE: 1/8"=1'-0"

DEVELOPMENT ASSESSMENT PANEL APPROVED 11-Sep-2017
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MULTI-RESIDENTIAL DEVELOPMENT
 14800 ALABAMA HIGHWAY 1000000 VICTORIA PARK
 PROJECT NO. 22-45662-006



DATE: 11/09/17
 PROJECT: 1300 W A1

DATE: 11/09/17
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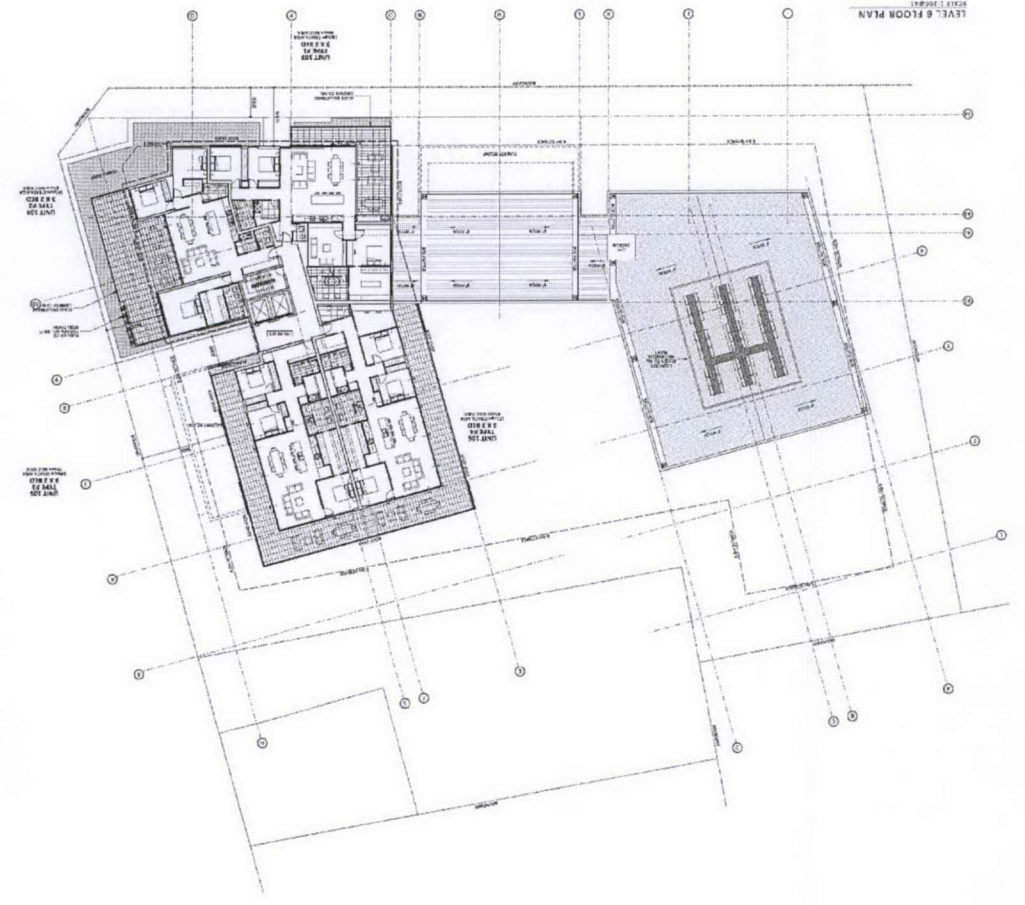
DATE: 11/09/17
 PROJECT: 1300 W A1

LEVEL 5 FLOOR PLAN



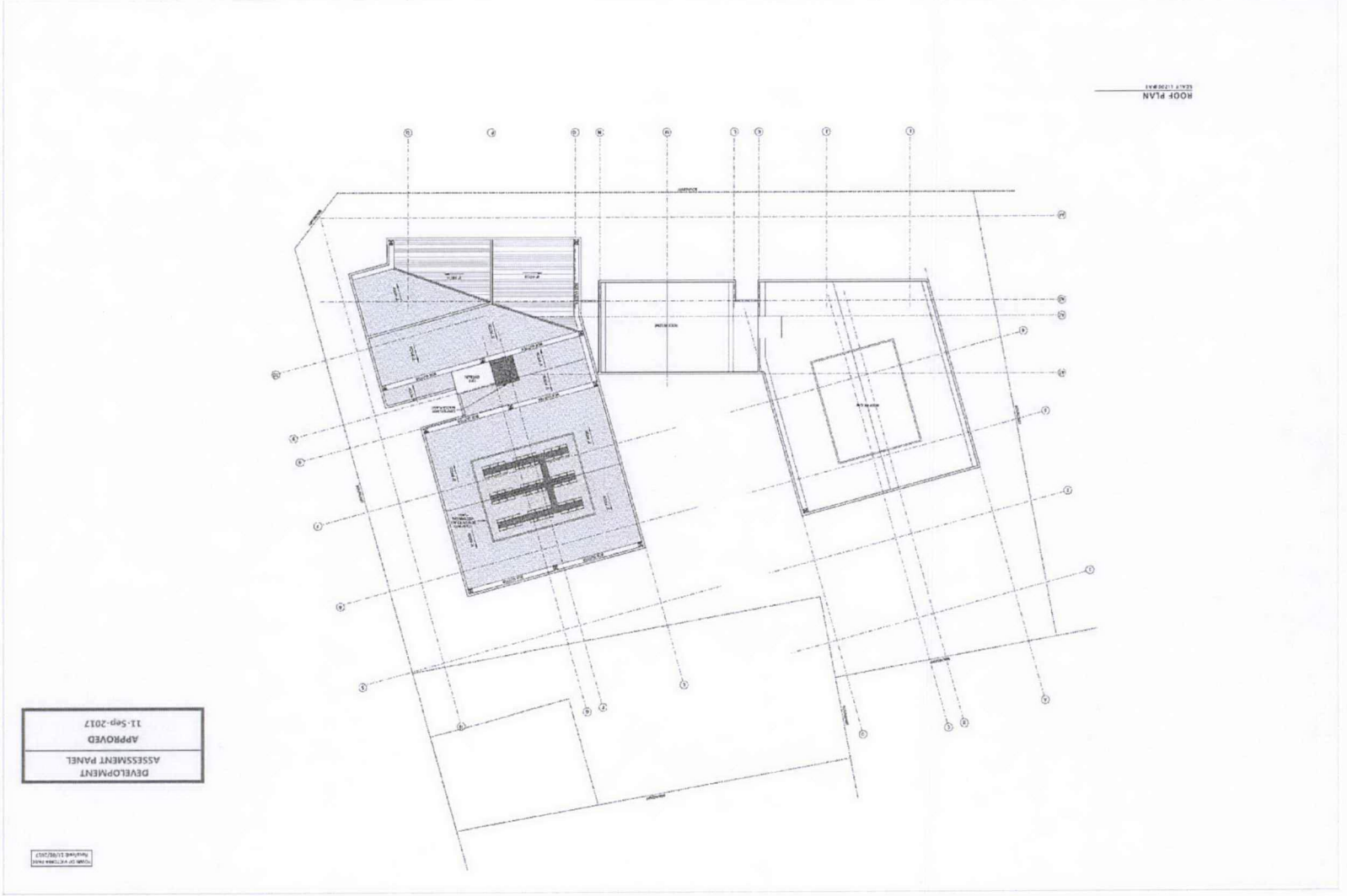
DEVELOPMENT
ASSESSMENT PANEL
APPROVED
11-Sep-2017

PROJECT NO. 22_45662



DEVELOPMENT
 ASSESSMENT PANEL
 APPROVED
 11-Sep-2017

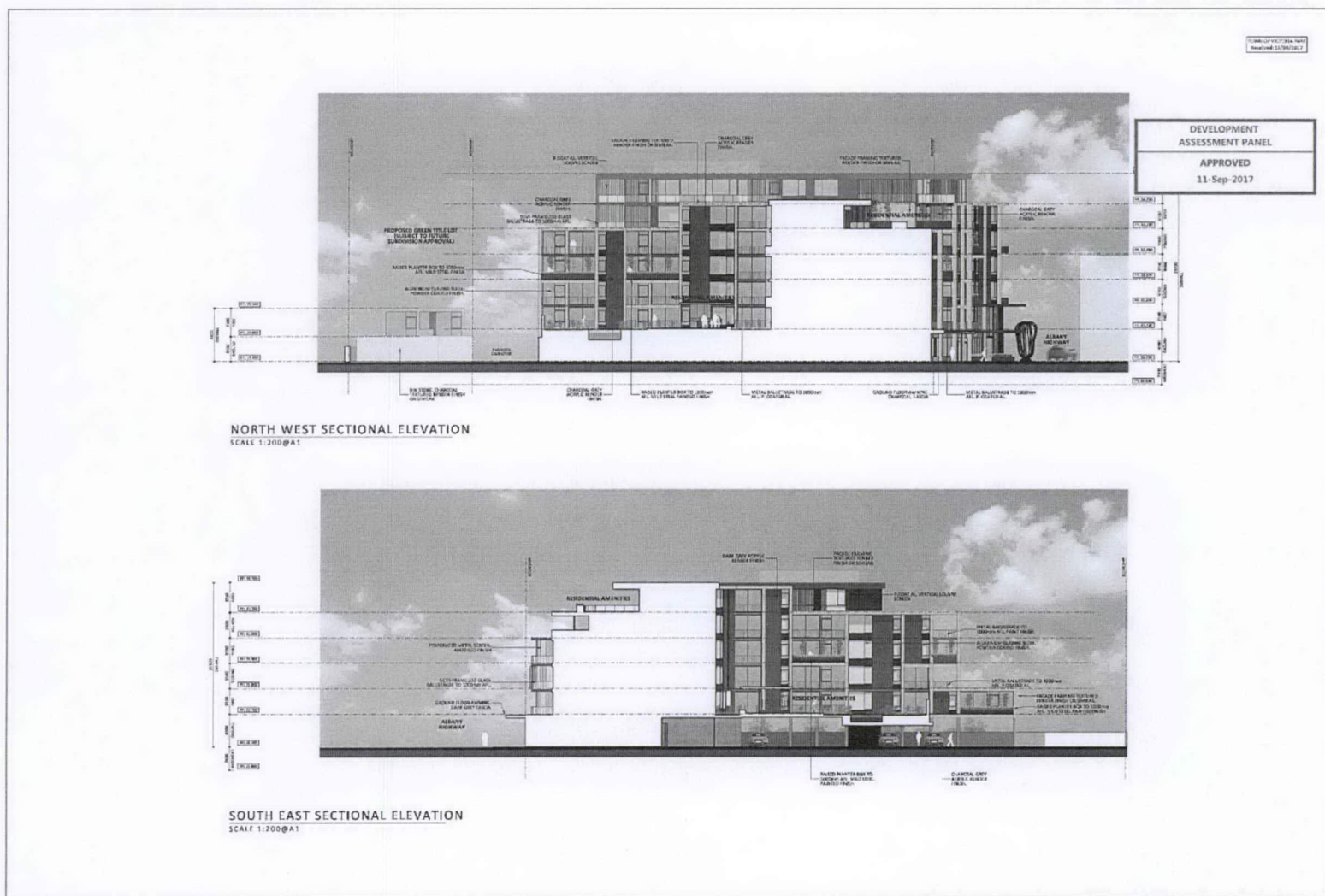
10/11/2017 10:00 AM



DEVELOPMENT
 ASSESSMENT PANEL
 APPROVED
 11-Sep-2017

11-09-2017
 11:00 AM





NORTH WEST SECTIONAL ELEVATION
SCALE 1:200@A1

SOUTH EAST SECTIONAL ELEVATION
SCALE 1:200@A1

MULTI-RESIDENTIAL DEVELOPMENT
RESIDENTIAL DEVELOPMENT
MCL eoods


 APPROVED
 11-Sep-2017
 SCALE 1:200 @ A1
 SHEET NO. 22-45662-006-003
 SHEET TITLE ELEVATION PANEL 3
 DATE 11-Sep-2017
 DRAWN BY AA-03
 CHECKED BY 0