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**DRAFT CURRENT AT 15.05.2023**

**NB Subject to Council Approval**

**TOWN OF VICTORIA PARK**

AND

**BLACKOAK CAPITAL – ELIZABETH BAILLIE PTY LTD**

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**AGREEMENT FOR LEASE  
EDWARD MILLEN ADAPTIVE HERITAGE REDEVELOPMENT**

**Part of the Edward Millen Precinct  
15 Hill View Terrace  
East Victoria Park, Western Australia**

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Ref: BC/4727270

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THIS AGREEMENT is made the

day of

2023

## PARTIES

**TOWN OF VICTORIA PARK (ABN 77 284 859 739)** of 99 Shepperton Road, Victoria Park, Western Australia, 6100 (**Landlord**)

AND

**BLACKOAK CAPITAL – ELIZABETH BAILLIE PTY LTD (ACN 651 448 583)** of 179 St Georges Terrace, Perth, Western Australia, 6000 (**Tenant**)

## RECITALS

- A. The Landlord is the registered proprietor of the Land subject to section 75 of the *Land Administration Act 1995*.
- B. Subject to the consent of the Minister for Lands, the Landlord proposes to grant a licence of the Premises for the Tenant to undertake the Tenant's Works to carry out the Redevelopment.
- C. The Tenant is desirous of leasing the Premises from the Landlord and the Landlord has agreed to lease the Premises to the Tenant once the Redevelopment is completed.
- D. The Landlord and the Tenant enter into this Contract to set out their respective rights and obligations in connection with the Redevelopment, the Lease, and the Premises.

## THE PARTIES COVENANT AND AGREE:

### 1 DICTIONARY & INTERPRETATION

#### 1.1 Dictionary

In this Contract, unless stated otherwise:

**Application** means an application for Development Approval;

**Approvals** means all approvals, orders, certificates or directions from any Authority necessary for the Tenant's Works as the case may be and, for the removal of doubt, includes the Development Approval, the Heritage Approval, the Building Permit and the Occupancy Permit;

**Authorised Person** means an agent, employee, licensee, contractor or invitee of the Tenant;

**Authority** means a person or body whose consent is required to carry out and complete the Tenant's Works, or to use the Premises for the Permitted Use, and includes each government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, statutory or public authority, tribunal, agency or entity, whether local, state, federal or otherwise;

**Bank Guarantee** means an unconditional and irrevocable undertaking to pay to the Landlord a specified sum in Australian dollars:

- (a) issued by an Australian bank approved by the Landlord;
- (b) that is on terms that are acceptable to the Landlord (acting reasonably); and
- (c) which has an expiry date that is expressed to be not earlier than 12 months after the Estimated Practical Completion Date;

**Brief** means the brief for the Redevelopment attached at Annexure C;

**Buildings** means all buildings and other structural improvements forming part of the Premises, including Edward Millen House (rotunda hospital building), the Mildred Creek building and the incinerator and outbuildings constructed and located on the Premises;

**Building Permit** means the approval and permit issued (or to be issued) by an Authority under the *Building Act 2011* (WA) for the Tenant's Works;

**Business Day** means a day on which banks are generally open for business in Western Australia;

**Commencement Date** means the later of the Contract Date and the date on which the Ministerial Approval is granted;

**Commonwealth** means The Commonwealth of Australia as represented by the Department of Infrastructure, Transport, Regional Development and Communications;

**Conditions Precedent** means conditions precedent specified in clause 2;

**Construction Commencement Date** has the meaning given in Item 5(a) of the Schedule;

**Contract** means this agreement to lease as amended from time to time and the schedules and annexures to it;

**Contract Date** means the date on which the last party to execute so executes this Contract;

**Corporations Act** means the *Corporations Act 2001* (Cth);

**Default Notice** has the meaning given in clause 17(b);

**Defect** means any error, omission or defect in the Tenant's Works (including where due to faulty materials or workmanship) which adversely affects the Premises;

**Defects Liability Period** means the period of 12 months after Practical Completion;

**Development Approval** means the approval of the Redevelopment under the Scheme and the Metropolitan Region Scheme, if applicable, including all conditions attaching to the same;

**Development Approval Period** means the period expiring at 5pm on the date that is 6 months after the Contract Date and where Development Approval has been granted but that has been appealed, means the period expiring at 5pm on the date that is 10 Business Days after the final determination of the appeal;

**Estimated Practical Completion Date** means the estimated practical completion date specified in Item 5(c) of the Schedule, subject to clause 10.6(a);

**Event of Default** has the meaning given in clause 16;

**Funding** means \$4,000,000 exclusive of GST to be paid by the Commonwealth under the Funding Agreement towards the activity specified in Item A.5. of Schedule 1 of the Funding Agreement;

**Funding Agreement** means the Funding Agreement in Relation to the Edward Millen Redevelopment Project between the Commonwealth and the Landlord executed on 24 February 2022, a copy of which is annexed to this Contract in Annexure D;

**Funding Budget** has the meaning given to 'Budget' in the Funding Agreement;

**Funding Milestone** has the meaning given to 'Milestone' in the Funding Agreement;

**Funding Reports** means the reports referred to in Item D of Schedule 1 of the Funding Agreement;

**Good Building Practices** means the practices, methods and acts engaged in or approved by a firm or body corporate, who, in the conduct of building works, exercises that degree of diligence, prudence and foresight reasonably and ordinarily exercised by skilled and experienced Australian operators engaged in building works in the same or similar circumstances and conditions and includes complying with:

- (a) recognised Australian standards pertaining to building works;
- (b) the provisions of all relevant Laws and in accordance with the requirements of all relevant Authorities;
- (c) the terms of this Contract; and
- (d) taking all reasonable steps to ensure that:
  - (i) adequate materials, resources and supplies are available; and
  - (ii) having sufficient experienced and trained operating personnel to undertake the responsibilities of the Tenant under this Contract;

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

**GST, tax invoice** and **taxable supply** have the meanings given to those terms in the GST Act;

**Heritage Act** means the *Heritage Act 2018* (WA);

**Heritage Agreement** means the Heritage Agreement between the Heritage Council and State Housing Commission made on 30 August 2005 and certified under section 32(1) of the former *Heritage of Western Australia Act 1990* (WA) and which is attached to Memorial J439754;

**Heritage Approval** means any approval of the Heritage Council required under the Heritage Agreement or the Heritage Act for the Redevelopment;

**Heritage Council** has the meaning given to 'Council' in the Heritage Act;

**Heritage Scope** means the Proposed Heritage Scope as approved by the Landlord and the Commonwealth under clause 2.2;

**Heritage Works** means the works the subject of the Heritage Scope;

**Heritage Works Completion Date** has the meaning given in Item 5(b) of the Schedule;

**Insolvency Event** means one of the following occurs to the Tenant:

- (a) it is unable to pay its debts as and when they fall due for payment;
- (b) it fails to comply with a statutory demand under section 459F of the Corporations Act;
- (c) a meeting is convened to place it in voluntary liquidation or to appoint an administrator;
- (d) an application is made for it to be wound up;

- (e) it becomes an insolvent under administration or a controller under section 9 of the Corporations Act is appointed to any of its assets;
- (f) it proposes to enter into or enters into any form of arrangement of understanding with any of its creditors; or
- (g) the Tenant is an individual and one or more of them:
  - (i) commits an act of bankruptcy under the Bankruptcy Act 1966 (Cth) or becomes a bankrupt; or
  - (ii) dies or becomes permanently incapacitated and the Tenant cannot secure an alternative form of security satisfactory to the Landlord within 30 days of death or permanent incapacity;

**Item** means an item in the Schedule;

**Land** means the land described in Item 3;

**Landgate** means the authority established under section 5 of the *Western Australian Land Information Authority Act 2006* (WA);

**Law** includes all Acts and statutes (State or Federal) for the time being enacted and all regulations, town planning schemes, ordinances, local laws, by-laws, requisitions, orders, rules, regulations or statutory instruments made under any Act or statute from time to time by any Authority;

**Lease** means the form of lease annexed to this Contract in Annexure E completed in accordance with the requirements contained in this Contract;

**Lease Commencement Date** means the commencement date of the Lease as specified in or determined in accordance with the provisions of Item 5(d);

**Licence** means the licence granted under clause 5(a) or 5(b) as the context requires;

**Liquor Licence** means a special facility licence or a restricted tavern licence on terms satisfactory to the Tenant (acting reasonably) under the *Liquor Control Act 1988* (WA);

**Local Government Law** includes:

- (a) *Building Act 2011* (WA);
- (b) *Environmental Protection Act 1986* (WA);
- (c) *Food Act 2008* (WA);
- (d) *Health (Miscellaneous Provisions) Act 1911* (WA)
- (e) *Health Services Act 2016* (WA);
- (f) Heritage Act;
- (g) *Liquor Control Act 1988* (WA);
- (h) *Local Government Act 1995* (WA);
- (i) *Local Government (Miscellaneous Provisions) Act 1960* (WA);
- (j) *Planning and Development Act 2005* (WA); and

(k) the Scheme;

**Minister** means the Minister of the Crown responsible for the administration of the *Land Administration Act 1997 (WA)*;

**Ministerial Approval** means the approval of the Minister or his or her delegate to this Contract (including the Lease);

**Ministerial Approval Period** means the period expiring at 5pm on the day that is 3 months after the Contract Date;

**Occupancy Permit** has the meaning given to that term in the *Building Act 2011 (WA)*;

**Owen Quantity Survey** means the schedule of proposed conservation works prepared by Owen Consulting dated 8 May 2019 forming part of the Brief;

**Party** means a party to this Contract;

**Permitted Use** has the meaning given to that term in the Lease;

**Practical Completion** means practical completion of the Redevelopment (save for minor defects and omissions), as determined by the Project Manager acting reasonably;

**Premises** means the premises specified in Item 4;

**Premises Plan** means the plan of the Premises contained in Annexure A;

**Project Manager** includes any person appointed by the Landlord to supervise or review the performance of the Tenant's Works, who may be replaced from time to time;

**Proposed Heritage Scope** has the meaning given to it in clause 2.2(a);

**Recitals** means the recitals to this Contract;

**Redevelopment** means the adaptive heritage redevelopment of the Buildings as a result of the Tenant's Works as generally shown on the Tenant's Plans and includes:

- (a) the works referred to in the Heritage Scope;
- (b) the Tenant's Fixtures and Fittings;
- (c) the Services, such that the Premises can be used for the Permitted Use, including:
  - (i) any upgrades to the Services;
  - (ii) new or additional sewer connections and grease traps;
  - (iii) any water or sewer headworks;
  - (iv) the installation of any meters required to separately measure utilities consumed by the Tenant or any Authorised Person in carrying out the Tenant's Works, subject to the approval of any supplier or Relevant Authority; and
  - (v) the installation of any meters required to separately measure utilities consumed by future sub-tenants;
- (d) any signage to be constructed or installed by the Tenant; and



- (e) landscaping and ancillary development on the Premises consistent with the design in the Development Approval as indicatively shown on the Premises Plan;

**Registered Office** has the meaning that is given to that term in the Corporations Act;

**Rent** means the rent payable pursuant to the provisions of the Lease (being, as at the Lease Commencement Date, the sum specified in Item 7 as otherwise adjusted and reviewed pursuant to the provisions of the Lease);

**Second Default Notice** has the meaning given in clause 17(d)(ii);

**Schedule** means the schedule to this Contract;

**Scheme** means the *Town of Victoria Park Town Planning Scheme No 1*;

**Services** means a service, convenience or amenity to, from, or of the Land (including transformer, sewer, pipe, gas, electricity, telephone system, water, electricity, gas, air conditioning, oil, fuel, fire detection, fighting and alarm systems, lifts or other similar commodity, facility or service) provided by an Authority or by, or on behalf of, the Landlord, and any plant, equipment, or other item relating to those services;

**Special Conditions** means the special conditions specified in Item 8;

**Specified Encumbrances** means each of the following:

- (a) T370/1953 Easement to State Energy Commission of Western Australia for Electricity Purposes. See Deposited Plan 41207. Registered 11/3/1953;
- (b) F409312 Memorial. Heritage of Western Australia Act 1990. Lodged 24/12/1993;
- (c) Easement Burden created under section 27A of the Town Planning and Development Act – See Deposited Plan 41207;
- (d) J439754 Memorial. Heritage of Western Australia Act 1990. Lodged 20/9/2005;
- (e) O542893 Conditional Tenure Land. Land subject to conditions pursuant to s75LAA Minister's consent required to transfer or encumber land. See instrument O548293. Registered 9/11/2020;
- (f) P153666 Memorial. Land Administration Act 1997. Section 16. Registered 23/5/2022;
- (g) Statutory Encumbrances;

**Statutory Encumbrances** has the meaning given in the Special Condition in Item 8(3) of the Schedule;

**Tenant's Fixtures and Fittings** means all plant, machinery, fixtures, fittings, finishes, furnishings, equipment, and other property that the Tenant provides and installs in the Premises as part of the Redevelopment, being items that shall remain in the ownership of the Tenant whether or not they form part of the Premises under the law of fixtures;

**Tenant's Obligations** means each covenant, obligation and duty contained or implied in this Contract or required by Law to be performed by the Tenant;

**Tenant's Plans** means the Tenant's drawings, plans and specifications in respect of the Redevelopment, prepared by the Tenant having regard to the Brief, and contained in Annexure B, as amended from time to time in accordance with clause 10;

**Tenant's Works** means the Tenant's works to carry out the Redevelopment generally in accordance with the Tenant's Plans;

**Term** means the term specified in item 3 of the Lease;

**Termination Payment** has the meaning in clause 19.3;

**Valuer** means an independent valuer who is a fellow or an associate, of not less than 10 years' standing of the Australian Property Institute and is practising and licensed under the *Land Valuers Licensing Act 1978 (WA)* at the time of appointment;

**Varied Funding Agreement** means the Funding Agreement which has been varied on terms acceptable to the Tenant (acting reasonably) to extend the timeframes for the delivery obligations of the Landlord under the Funding Agreement;

**WAPC** means the Western Australian Planning Commission;

**WAPC Approval** means the approval of the WAPC under the provisions of section 136 of the *Planning and Development Act 2005 (WA)* to entry into this Contract and the Lease; and

**WH&S Act** means the *Work Health and Safety Act 2020 (WA)*.

## 1.2 Interpretation

In this Contract, unless stated otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a reference to the Tenant includes, if a natural person, his or her executors administrators and permitted assigns, and, if a corporation, its successors and permitted assigns, and, in either case, its Authorised Persons;
- (c) a reference to a statute, ordinance, code, or other Law, includes all regulations and other instruments under it and consolidations, amendments, re-enactments, or replacements, of any of them;
- (d) a reference to a section, clause, recital, schedule, appendix, or annexure, is to a section, clause, recital, schedule, appendix, or annexure, in this Contract;
- (e) a reference to a paragraph in a clause is a reference to a paragraph in that clause, and a reference to a subparagraph in a paragraph is a reference to a subparagraph in that paragraph;
- (f) the word person includes a firm, a body corporate, an unincorporated association, an authority, or other entity;
- (g) a reference to a person includes a body recognised at Law whether or not incorporated and is a reference to the person's executors, administrators, successors and permitted assigns;
- (h) an agreement, representation, or warranty, in favour of two or more persons is for the benefit of them jointly and severally and an agreement, representation, or warranty, on the part of two or more persons binds them jointly and severally and may be enforced against any one or any two or more of them;
- (i) if the word "including" or "includes" is used, the words "without limitation" are deemed to follow immediately;

- (j) when the day or last day for doing an act is not a Business Day, the day or last day for doing the act will be the next following Business Day;
- (k) when the reference to a “day” in this Contract is not a reference to a “Business Day” in computing time, days which are not Business Days are to be included in that computation;
- (l) a reference to money or a “\$” sign is a reference to Australian dollars;
- (m) a provision of this Contract shall not be construed against a Party merely because that Party was responsible for drafting this Contract or for the inclusion of that provision;
- (n) a reference to a statutory, professional, or industry body includes a reference to a successor or substitute for that body;
- (o) a general description of any matter or thing whatever shall not be read down if followed by any specific examples of that matter or thing; and
- (p) unless repugnant to the context, a covenant by the Tenant to do or omit to do anything includes a covenant by an Authorised Person to do or omit to do that thing, and the Tenant is liable for all acts or omissions of an Authorised Person.

## 2 CONDITIONS PRECEDENT

### 2.1 Conditions Precedent

- (a) This Contract and the Lease are subject to and conditional on:
  - (i) the Landlord obtaining the grant of Ministerial Approval within the Ministerial Approval Period (**Ministerial Approval Condition Precedent**);
  - (ii) where the Landlord elects to do so, the Landlord completing either the notification, submission and determination process under either section 3.58 or section 3.59 of the Local Government Act 1995 (WA) within the Ministerial Approval Period (**LGA Condition Precedent**);
  - (iii) a variation to timeframes for the delivery obligations of the Landlord under the Funding Agreement on terms acceptable to the Tenant (acting reasonably) being executed by the Commonwealth and the Landlord within the Development Approval Period (**Funding Agreement Condition Precedent**);
  - (iv) the grant of Development Approval within the Development Approval Period on terms and conditions to the Parties' satisfaction acting reasonably (**Development Approval Condition Precedent**);
  - (v) the Landlord obtaining the WAPC Approval if that is required prior to the Construction Commencement Date subject to paragraph (c) (**WAPC Approval Condition Precedent**); and
  - (vi) the grant of any required Heritage Approval within the Development Approval Period on terms and conditions to the Parties' satisfaction acting reasonably (**Heritage Approval Condition Precedent**); and
  - (vii) the grant of the Liquor Licence prior to the Construction Commencement Date (**Liquor Licence Condition Precedent**).
- (b) The Landlord must use reasonable endeavours to satisfy:
  - (i) the Ministerial Approval Condition Precedent;

- (ii) the LGA Condition Precedent, if that is not waived by the Landlord;
  - (iii) the Funding Agreement Condition Precedent; and
  - (iv) the WAPC Approval Condition Precedent and must apply for the WAPC's approval to this Contract (if that is required) not later than 3 months after the Contract Date.
- (c) The Landlord and Tenant agree that for the purpose of section 140(3)(a) of the *Planning and Development Act 2005* (WA), the period allowed for the WAPC to give its approval to this Contract is the period up to and including the date of Practical Completion.
- (d) The Tenant must use reasonable endeavours to satisfy the Development Approval Condition Precedent, the Heritage Approval Condition Precedent and the Liquor Licence Condition Precedent.
- (e) Each Party must promptly notify the other Party in writing if it becomes aware that a Condition Precedent has been satisfied.
- (f) If a Condition Precedent is not satisfied by its respective satisfaction date:
- (i) a Party may, acting reasonably, request an extension of the respective satisfaction date, and the other Party shall not unreasonably refuse to agree to the extension; or
  - (ii) either Party may terminate this Contract by giving at least 10 Business Days' written notice to the other Party, and the termination will be effective on the date specified in the notice unless prior to termination the Condition Precedent is satisfied.
- (g) On termination of this Contract under paragraph (f) the Parties are relieved of their respective obligations under this Contract, and a Party shall have no claim against the other under this Contract at law or in equity, except in relation to any breach occurring prior to termination.
- (h) Notwithstanding paragraph (f), where the Liquor Licence Condition Precedent is not satisfied:
- (i) each Party agrees to negotiate in good faith amendments to this Contract and the Lease so as to enable the Redevelopment to proceed; and
  - (ii) neither Party may terminate this Contract unless good faith negotiations in respect of this Contract and the Lease do not conclude on terms satisfactory to the Parties within 12 months of the Construction Commencement Date.

## 2.2 Heritage Works

- (a) The Tenant must prepare a scope for the initial repairs and refurbishment of the Buildings consistent with the Owen Quantity Survey and submit that to the Landlord for review within 1 month of the Contract Date (**Proposed Heritage Scope**).
- (b) To the extent that Proposed Heritage Scope differs from the Owen Quantity Survey on the basis that it is inconsistent with the Tenant's Works, the Landlord:
- (i) must not unreasonably withhold its approval to the Proposed Heritage Scope; and

- (ii) may withhold its approval to the extent that the Proposed Heritage Scope differs from the 'Activity' as defined in the Funding Agreement.
- (c) The Tenant must:
  - (i) give full and proper consideration to any comments made by the Landlord;
  - (ii) promptly incorporate into the Proposed Heritage Scope any reasonable amendments proposed by the Landlord; and
  - (iii) promptly submit the revised Proposed Heritage Scope to the Landlord for the Landlord to again make comments and propose amendments.
- (d) The Parties agree that the process in paragraphs (b) and (c) will be repeated for so long as the Landlord wishes to make comments and propose amendments to the Proposed Heritage Scope and until the Landlord approves the Proposed Heritage Scope.
- (e) The Tenant acknowledges and agrees that the Landlord owes no duty and has no responsibility to the Tenant to review the Proposed Heritage Scope for errors, design defects, omissions, compliance with any Laws, or compliance with the requirements of this Contract.
- (f) The Tenant must obtain the approval of the Commonwealth to the Heritage Scope under the Funding Agreement before commencing any works under the Heritage Scope.
- (g) The Tenant must not make any alterations to the Heritage Scope during the process of obtaining Development Approval and any Heritage Approval without the Landlord's and the Commonwealth's consent.

### **2.3 Development Approval**

- (a) The Tenant must prepare the Application generally in accordance with the Tenant's Plans and the Heritage Scope and submit that to the Landlord for review within 3 months of the Contract Date.
- (b) In its capacity as the registered proprietor of the Land, the Landlord may comment on and propose amendments to the Application.
- (c) The Tenant must:
  - (i) give full and proper consideration to any comments made by the Landlord;
  - (ii) promptly incorporate into the Application any reasonable amendments proposed by the Landlord; and
  - (iii) promptly submit the revised Application to the Landlord for the Landlord to again make comments and propose amendments.
- (d) The Parties agree that the process in paragraphs (b) and (c) will be repeated for so long as the Landlord wishes to make comments and propose amendments to the Application and until the Landlord signs the Application.
- (e) The Tenant acknowledges and agrees that the Landlord, in its capacity as the registered proprietor of the Land, owes no duty and has no responsibility to the Tenant to review the Application for errors, design defects, omissions, compliance with any Laws, or compliance with the requirements of this Contract.

- (f) The Tenant must submit the Application for approval under the Scheme within 10 Business Days of the Landlord signing the Application.
- (g) The Tenant must not make any alterations to the Application during the process of obtaining Development Approval without the Landlord's consent which is not to be unreasonably withheld.

## 2.4 Heritage Approval

- (a) The Tenant must prepare any applications for Heritage Approval that may be required to carry out the Tenant's Works and submit those to the Landlord for review within 10 Business Days of the Landlord approving the Proposed Heritage Scope (**Heritage Applications**).
- (b) In its capacity as the registered proprietor of the Land, the Landlord may comment on and propose amendments to the Heritage Applications.
- (c) The Tenant must:
  - (i) give full and proper consideration to any comments made by the Landlord;
  - (ii) promptly incorporate into the Heritage Applications any reasonable amendments proposed by the Landlord; and
  - (iii) promptly submit the revised Heritage Applications to the Landlord for the Landlord to again make comments and propose amendments.
- (d) The Parties agree that the process in paragraphs (b) and (c) will be repeated for so long as the Landlord wishes to make comments and propose amendments to the Heritage Applications and until the Landlord approves the submission of or signs the Heritage Applications.
- (e) The Tenant acknowledges and agrees that the Landlord, in its capacity as the registered proprietor of the Land, owes no duty and has no responsibility to the Tenant to review the Heritage Applications for errors, design defects, omissions, compliance with any Laws, or compliance with the requirements of this Contract.
- (f) The Tenant must submit the Heritage Applications for approval by the Heritage Council within 10 Business Days of the Landlord approving the submission of or signing the Heritage Applications.
- (g) The Tenant must not make any alterations to the Heritage Applications once submitted to the Heritage Council without the Landlord's consent which is not to be unreasonably withheld.

## 3 PRECINCT MANAGEMENT PRACTICE

Subject to the satisfaction of the Conditions Precedent, the Landlord agrees to develop a management practice in consultation with the Tenant and other stakeholders, as to the overall management of the Land following completion of the Tenant's Works and the Landlord's works on the balance of the Land excluding the Premises, including as to interactions between the Premises and the balance of the Land and activities thereon.

## 4 NO FETTERING

Nothing in or arising out of this Contract in any way:

- (a) diminishes the Landlord's rights and powers; or

- (b) fetters any discretion that the Landlord has,  
under a Local Government Law.

## **5 GRANT OF LICENCE**

- (a) The Landlord, subject to the terms and conditions of this Contract, grants to the Tenant, together with its personnel, contractors, equipment and vehicles, a non-exclusive licence to enter upon, use and occupy the Premises for the purpose of satisfying the Conditions Precedent, for the period commencing the Commencement Date until the date the Conditions Precedent are satisfied, but not for any other purpose.
- (b) The Landlord, subject to the terms and conditions of this Contract, grants to the Tenant, together with its personnel, contractors, equipment and vehicles, an exclusive licence to enter upon, use and occupy the Premises for the purpose of carrying out the Tenant's Works, for the period commencing on the date the Conditions Precedent are satisfied until the Lease Commencement Date, but not for any other purpose.
- (c) The Landlord may by its employees, agents, contractors and consultants enter upon the Premises during the term of each Licence, provided that in so doing after the commencement of the Tenant's Works, they follow any reasonable occupational health and safety directions of the Tenant.

## **6 GRANT OF LEASE**

Subject to the satisfaction (or, to the extent permitted, waiver) of the Conditions Precedent and in consideration of the Tenant performing the Tenant's Obligations, including but not limited to the completion of the Tenant's Works, the Landlord agrees to grant and the Tenant agrees to accept a lease of the Premises on and from the Lease Commencement Date in the form of the Lease, subject to the terms and conditions of this Contract.

## **7 VARIED FUNDING AGREEMENT**

- (a) Subject to the satisfaction of the Funding Agreement Condition Precedent, the Tenant acknowledges that it is aware of the provisions of the Varied Funding Agreement, and of the Landlord's obligations under the Varied Funding Agreement.
- (b) The Tenant acknowledges that in order to carry out the Heritage Works, the Commonwealth has made the Funding available under the Varied Funding Agreement, and that the Tenant can choose to avail itself of the Funding if it complies with clauses 7 and 8.
- (c) The Tenant agrees to and must, in order to avail itself of the Funding:
- (i) comply with the Landlord's obligations under the Varied Funding Agreement;  
and
  - (ii) without limiting subparagraph (i):
    - (A) provide to the Landlord such information and evidence as it may reasonably request to satisfy its obligations under the Varied Funding Agreement;
    - (B) in accordance with clause 2.3.6 of the Varied Funding Agreement, include in each contract placed with a contractor a right to terminate if the Commonwealth directs the Landlord to terminate that contract or if the Commonwealth terminates the Varied Funding Agreement;

- (C) include in each contract placed with a contractor a requirement for public liability and worker's compensation insurance and, where appropriate, contract works insurance on a full replacement cost basis including the costs of demolition and removal of debris and the costs of architects, engineers and other consultants, and provide proof of the same on request;
  - (D) not engage a contractor named by the Director of the Workplace Gender Equality Agency as an employer currently not complying with the *Workplace Gender Equality Act 2012* (Cth); and
  - (E) comply with clause 14.1.1 and Item H of Schedule 1 of the Varied Funding Agreement in relation to signage and acknowledgement of the Funding.
- (d) Notwithstanding clause 7(c), the Landlord must perform the Landlord's obligations under the Varied Funding Agreement that either the Landlord is the only person capable of performing or the Landlord is the most appropriate person to perform, including without limitation:
- (i) all liaison and communication with the Commonwealth required under the Varied Funding Agreement;
  - (ii) satisfying the preconditions of entitlement to the Funding referred to in 'E' of the Context section of the Varied Funding Agreement;
  - (iii) Clause 13 Confidential Information of the Varied Funding Agreement; and
  - (iv) Clause 14 Acknowledgement and publicity of the Varied Funding Agreement,
- subject to the Tenant providing such assistance as may be reasonably requested by the Landlord to enable it to comply with those obligations.

## **8 FUNDING AND PAYMENT**

- (a) The Funding will be paid by the Commonwealth in accordance with the Varied Funding Agreement, which requires, among other things, the satisfaction of the Funding Milestones and provision of the Funding Reports.
- (b) The Tenant must satisfy the Funding Milestones and provide the Funding Reports in accordance with the Varied Funding Agreement.
- (c) The Landlord must pay any Funding received under the Varied Funding Agreement from the Commonwealth either:
  - (i) subject to clauses 8(d) and 8(e), as directed by the Tenant directly to the relevant contractor; or
  - (ii) to the Tenant but only in the Tenant's capacity as the manager of the 'Activity' to be performed by the Landlord in Item A.5 in Schedule 1 of the Varied Funding Agreement;

subject to provision by the Tenant or the contractor of:

  - (iii) an invoice addressed in accordance with the requirements of the Varied Funding Agreement; and



- (iv) such supporting documentation as may be required under the Varied Funding Agreement and, otherwise, supporting documentation to the reasonable satisfaction of the Landlord.
- (d) For the purposes of clause 8(c)(i), the Tenant agrees:
- (i) in addition to any invoice which may be issued by a contractor in satisfaction of clause 8(c)(iii) (**Contractor Invoice**), to give the Landlord a payment direction identifying the contractor, the Contractor Invoice reference number, the payment amount inclusive of GST, and the destination bank account details (**Payment Direction**);
  - (ii) to ensure that the Payment Direction and the Contractor Invoice are consistent and do not contain conflicting information, and if not, to cause the Payment Direction and the Contractor Invoice to be reissued so that they are consistent and do not contain conflicting information;
  - (iii) to give the Payment Direction to the Town in such manner as may be required by the Town, including by issue to a specified email address;
  - (iv) to give the Landlord no more than one Payment Direction each month with each Payment Direction to only require one payment;
  - (v) that the Landlord is not required to confirm any liability of the Tenant to pay the contractor or to verify the details contained in the Payment Direction including the identity of the contractor, the amount to be paid or the destination bank account details, and that by giving a Payment Direction the Tenant warrants the correctness of the Payment Direction;
  - (vi) that if the Landlord pays in accordance with a Payment Direction, the Tenant will have no recourse against the Landlord for the amount so paid, and the payment will be in full and final satisfaction of the Landlord's obligation under this Contract to pay the amount of the Funding so paid;
  - (vii) that the Landlord gives no tax advice and makes no representations as to taxation matters when making payment in accordance with a Payment Direction;
  - (viii) to ensure that any contractor issuing a Contractor Invoice has agreed with the payment timeframes set out in paragraphs (xi) to (xiii);
  - (ix) to indemnify the Landlord against any claim made against the Landlord by a contractor relating to a Contractor Invoice, where the Landlord has made payment in accordance with a Payment Direction relating to that Contractor Invoice; and
  - (x) that by making the payment in accordance with a Payment Direction, the Landlord incurs no liability under, and does not become a party to, the contract between the Tenant and the contractor,

and the Tenant acknowledges that:

- (xi) the Commonwealth must receive a Contractor Invoice, among other things, before it will make payment of any Funding in respect of a Funding Milestone;
- (xii) the due dates for payment of any Funding by the Commonwealth to the Landlord in respect of a Funding Milestone fall approximately 6 weeks after the Funding Milestone has been achieved; and

- (xiii) the Landlord will take at least 10 Business Days after receipt of any Funding in respect of a Funding Milestone to pay all or part of that Funding in accordance with a related Payment Direction.
- (e) The Tenant agrees that the Landlord may, from time to time, in respect of clause 8(d):
  - (i) issue, in writing, more detailed instructions and requirements for processing payment of the Funding; and
  - (ii) alter, in writing, the process under clause 8(d) and any detailed instructions and requirements that may have been issued,

and the Tenant agrees to comply with, and to cause its contractors to comply with, any issued or altered instructions, requirements and process.
- (f) The Tenant agrees that it prepared the Funding Budget and that it will only spend the Funding in accordance with the Funding Budget.
- (g) If the Commonwealth becomes entitled to repayment of any of the Funding under the Varied Funding Agreement by reason of the Tenant's non-compliance with the Funding Milestones or breach of this Contract, the Tenant must repay that Funding to either the Landlord or the Commonwealth together with the interest referred to in clause 5 of the Varied Funding Agreement within the time limited by that clause.
- (h) The intention of the Tenant is that:
  - (i) the consideration for the Heritage Works being undertaken pursuant to this Contract is the grant of the Lease by the Landlord to the Tenant; and
  - (ii) nothing in this clause requires the Landlord to pay the Tenant any instalment of the Funding unless the Landlord has received those funds from the Commonwealth and the Tenant has issued a Payment Direction.

## **9 OWNERSHIP OF WORKS**

- (a) The Tenant agrees to pay for any Heritage Works that remain to be completed once the Funding has been fully utilised.
- (b) Notwithstanding any other provision of this Contract:
  - (i) to the extent the Heritage Works are funded:
    - (A) by the Funding, those works will be owned by the Landlord; or
    - (B) by the Tenant pursuant to clause (g)(a), those works will be owned by the Tenant; and
  - (ii) the Tenant shall own the Tenant's Works.

## **10 TENANT'S WORKS**

### **10.1 Variations to Tenant's Works**

With the Landlord's consent, which is not to be unreasonably withheld, the Tenant may vary, amend, or make changes to:

- (a) the Tenant's Plans; and
- (b) the Tenant's Works,

which are necessary:

- (c) to comply with any Approval or the requirement of any Authority;
- (d) dictated by Good Building Practice or the availability of materials;
- (e) due to matters beyond the Tenant's reasonable control; or
- (f) to substitute the fixtures, fittings, finishes, and appliances specified in the Tenant's Plans with fixtures, fittings, finishes, and appliances of like quality,

or where such variation, amendment, or change is otherwise desired by the Tenant and has no material adverse impact on the Landlord.

## **10.2 Tenant to commence and complete the Heritage Works**

The Tenant must commence the Heritage Works on or before the Construction Commencement Date and complete those works on or before the Heritage Works Completion Date.

## **10.3 Tenant to carry out Tenant's Works**

The Tenant must carry out and complete the Tenants Works:

- (a) in accordance with the Approvals;
- (b) where not inconsistent with paragraph (a), substantially in accordance with the Tenant's Plans and the Brief;
- (c) in a proper and workmanlike manner, in accordance with relevant Australian Standards and relevant provisions of the Building Code of Australia;
- (d) at its own cost;
- (e) using reputable and suitably qualified consultants, builders and contractors, ensuring that such have sufficient experience, skill and expertise in completing developments comparable to the Tenant's Works;
- (f) in a professional and workmanlike manner;
- (g) in accordance with all relevant Laws and the requirements of all relevant Authorities;
- (h) in accordance with Good Building Practice;
- (i) using good quality, new and undamaged materials or appropriate heritage materials;
- (j) in accordance with all directions of, and to the satisfaction of the Landlord (acting reasonably) in accordance with this Contract; and
- (k) subject to clause 10.6, by the Estimated Practical Completion Date.

## **10.4 Occupational Health and Safety**

The Tenant acknowledges and agrees that, from the Commencement Date, the Tenant:

- (a) has management and control of the Premises for the purposes of the WH&S Act;

- (b) must give written notice to the Landlord as soon as possible after the Tenant becomes aware of any potential (or actual) issue in relation to an occupational health and safety issue affecting the Premises or the Buildings or arising under the WH&S Act; and
- (c) must indemnify the Landlord and keep the Landlord indemnified in respect of all claims, actions, suits, demands, judgments or costs made or incurred by the Landlord in relation to occupational health and safety in the Premises and the Building arising from occupation of the Premises by the Tenant or the Authorised Persons or any breach by the Tenant or the Authorised Persons of the WH&S Act save to the extent caused or contributed to by the Landlord.

#### **10.5 Inspection by the Landlord of Tenant's Works before completion**

- (a) The Landlord may request to inspect and review the progress of the Tenant's Works at any time or stage by giving a notice at least 48 hours before an inspection.
- (b) The Landlord may by written notice to the Tenant, request a meeting between the parties to discuss the progress of the Tenant's Works at any time or stage, which must be arranged and undertaken within 7 Business Days of the Landlord's written request.
- (c) The Tenant must notify the Landlord at least 14 days before the anticipated date of Practical Completion.
- (d) The Landlord may by written notice to the Tenant, within 48 hours of an inspection, request the Tenant (acting reasonably) to rectify any item which is not in accordance with the Landlord's directions/requirements or the Tenant's Plans and the Tenant must rectify such item to the Landlord's reasonable satisfaction prior to completion of the Tenant's Works.

#### **10.6 Delay in completion of the Tenant's Works**

- (a) The Tenant shall complete the Tenant's Works by the Estimated Practical Completion Date, but the Tenant may by notice to the Landlord postpone the Estimated Practical Completion Date to such later date as the Tenant acting reasonably considers necessary to complete the Tenant's Works and, subject to clause 10.6(b), the Landlord shall have no claim against the Tenant whatsoever in respect of the postponement of the Estimated Practical Completion Date if the Tenant is unable to complete the Tenant's Works by the Estimated Practical Completion Date for reasons beyond the Tenant's reasonable control, including but not limited to:
  - (i) adverse weather conditions which prevent the Tenant's builder from proceeding with the Tenant's Works;
  - (ii) loss or damage by fire, explosion, earthquake, lightning, storm, tempest, civil commotion, or some other similar cause;
  - (iii) disputes between employers and employees or strikes or lockouts affecting the trades employed in the carrying out of the Tenant's Works;
  - (iv) shortage or delay in the supply of materials required to carry out the Tenant's Works;
  - (v) delay by an Authority in granting any necessary Approval if the Tenant has taken all reasonable steps to obtain that Approval;
  - (vi) alterations or additions to the Tenant's Works requested by the Landlord;
  - (vii) any prohibition or embargo imposed by any Law;

- (viii) any delay by the Landlord in complying with its obligations under this Contract;
  - (ix) COVID-19; or
  - (x) any combination of the above.
- (b) If the Estimated Practical Completion Date is postponed pursuant to paragraph (a), the Tenant shall within 10 Business Days of the extent of the delay being known, advise the Landlord of the reason for the delay and the expected period of the delay.
- (c) If Practical Completion does not occur within 6 months after the Estimated Practical Completion Date, then, either the Landlord may terminate this Contract by giving notice to the Tenant (but not if Practical Completion occurs before the notice is given), and without limiting any other remedy available to it, may call on the Bank Guarantee so as to achieve Practical Completion and to satisfy any other of the Tenant's Obligations which remain unperformed.

#### **10.7 Defects**

- (a) The Landlord may notify the Tenant in writing of any Defect discovered by the Landlord within the Defects Liability Period, such notice to be given within the Defects Liability Period.
- (b) The Tenant must make good the Defect notified to it under clause 10.7(a):
- (i) within 5 Business Days after receiving the notice from the Landlord, or within such longer period of time as the Parties may agree acting reasonably; and
  - (ii) using its reasonable endeavours to have the work performed outside of the usual trading hours of any business on the Premises.
- (c) The Tenant indemnifies and must keep the Landlord indemnified in respect of any financial loss suffered by the Landlord as a result of any delay to the completion of the Tenant's Works that is caused by:
- (i) an act of the Tenant or an Authorised Person; and/or
  - (ii) delay by the Tenant in complying with its obligations under this Contract.

#### **10.8 Cost of Tenant's Works**

Subject to the provision of the Funding, the Tenant agrees to pay for all expenses, fees, costs and charges incurred in:

- (a) engaging all consultants, including but not limited to all builders, surveyors, building surveyors, structural engineers and architects;
- (b) obtaining any expert reports;
- (c) applying for and obtaining the Approvals;
- (d) making any application for review or first instance appeal at the relevant court or tribunal;
- (e) carrying out all the Tenant's Works (including supplying all equipment, materials, labour and project management);
- (f) completing any variations to the Tenant's Works as approved by the Landlord;

- (g) approving any variations, plans or specifications;
- (h) taking out any insurance policies reasonably necessary to undertake the Tenant's Works, including the Landlord's Insurance;
- (i) respect of any Services consumed by the Tenant or any Authorised Person in carrying out the Tenant's Works.

## 10.9 Services

For the purposes of clause 10.8(i), the Tenant shall duly and punctually pay to the Landlord, or to the supplier or Relevant Authority if the supplier or Relevant Authority invoices the Tenant direct, all expenses, fees, costs and charges for such Services and the Tenant agrees:

- (a) that in the absence of a separate meter the Landlord may make reasonable estimates of these expenses, fees, costs and charges which shall be final and binding; and
- (b) to cooperate and act reasonably with regards to the charging, recovery and payment of these expenses, fees, costs and charges.

## 11 INSURANCE

- (a) On and from the Commencement Date the Tenant must maintain at all times, and ensure that each Authorised Person engaged by the Tenant to carry out the Tenant's Works maintains at all times:
  - (i) a contractors' all risks policy (noting the Landlord and the Tenant as interested parties) with all extensions required by the Landlord including, but not limited to:
    - (A) public risk for a minimum cover of twenty million dollars (\$20,000,000.00) for any one claim but unlimited in the aggregate;
    - (B) damage or destruction to motor vehicles and plant and equipment; and
    - (C) damage or destruction to contract works for their full replacement cost including the costs of demolition and removal of debris and the costs of architects, engineers and other consultants,

which notes the interest of the Landlord; and
  - (ii) adequate workers' compensation insurance.
- (b) On and from the Commencement Date until the Lease Commencement Date, the Tenant must insure the Buildings for their full replacement value against loss, damage, or destruction by fire, rain, storm, explosion, aircraft or other aerial devices, strikes, riots, civil commotion, malicious damage, break in, burglary, graffiti, flood, impact, damage, earthquake, water damage and fusion and otherwise on such terms and conditions as the Landlord reasonably requires.
- (c) The insurance to be effected pursuant to paragraph (b) must be in the name of the Landlord and the Tenant and upon request from the Landlord, the Tenant must give the Landlord a certificate of currency in respect of that insurance and a copy of the policy.
- (d) The Tenant must ensure any architect, engineer or other professional engaged by the Tenant or any Authorised Person in relation to the Tenant's Works effects and

maintains with a responsible and reputable insurance company professional indemnity insurance.

- (e) The Tenant shall:
- (i) upon request from the Landlord, give the Landlord a certificate of currency in respect of the insurance policies referred to in clause 11(a) and a copy of the policies;
  - (ii) maintain the policies effected under clause 11(a):
    - (A) until the Lease Commencement Date, in respect of the Tenant's Works; and
    - (B) until the expiration of the Defects Liability Period, and any extension of that period, in respect of public liability insurance;
  - (iii) apply the proceeds of the Tenant's insurances for the purposes of repairing, restoring or rebuilding the Tenant's Works if the Tenant's Works are destroyed or damaged before the Lease Commencement Date;
  - (iv) not do any act, matter or thing which may vitiate or render void or voidable any insurances effected pursuant to clause 11(a) nor any other insurances effected by the Landlord in respect of the Redevelopment or the Premises; and
  - (v) not do any act, matter or thing that may increase the rate of any insurance taken out by the Landlord in respect of the Redevelopment or the Premises.

## **12 TENANT'S ACKNOWLEDGEMENTS**

### **12.1 Due Diligence**

The Tenant acknowledges that prior to entering into this Contract it has, and is taken to have, satisfied itself:

- (a) by physical examination and inspection, of the state of repair and condition and the quality and quantity of the Premises;
- (b) of the use to which the Premises may be put and its zoning and of any development which may take place and the manner in which it may be carried out and of all restrictions relating to development;
- (c) as to the cost of the Redevelopment and as to the financing of that cost;
- (d) by perusal, examination and enquiry of the terms, covenants and conditions of and the rights, interests and obligations and liabilities arising from any Specified Encumbrances;
- (e) by its own examination of the present and future economic feasibility, viability and economic return of the Premises including any rent that may be obtained on any subletting of the Premises;
- (f) by physical examination and enquiry as to the fitness and suitability of the Premises for any particular purpose,

and the Tenant enters and is deemed to enter into this Contract in reliance solely upon the examination, inspection and enquiry and not upon any or any alleged statement, warranty,

condition or representation whatsoever made to or alleged to have been made to the Tenant by the Landlord.

## **12.2 No Claim**

The Tenant may not make a claim or terminate this Contract because of anything in connection with:

- (a) any of the matters in clause 12.1;
- (b) loss, damage, dilapidation, infestation (if any), defect (latent or patent) or mechanical breakdown which may affect the Premises after the date of this Contract;
- (c) the lack of repair or the existence of any structural defect in the Buildings;
- (d) the presence in or on the Buildings of asbestos or other hazardous substances and any contaminants;
- (e) whether the Buildings comply with all Laws and the requirements of any Authority;
- (f) the condition or existence or non-existence of the Services; and
- (g) any demand, order, requisition or requirement relating to the Premises made by an Authority.

## **13 COMPLETION OF LEASE**

### **13.1 Preparation and completion of the Lease**

As soon as practicable after the Lease Commencement Date, the Landlord must:

- (a) prepare a lease (3 copies) in the form of the Lease in Landgate registrable form;
- (b) complete the Lease by filling in blanks including those for the Lease Commencement Date and the Expiry Date;
- (c) attach a survey quality plan of the Premises to the Lease;
- (d) amend the Land details if the Land is amalgamated, subdivided and/or strata titled after the date of this Contract; and
- (e) make any other changes to the Lease necessary to give effect to the requirements of this Contract.

### **13.2 Execution of Lease**

Within 14 days of receiving the Lease from the Landlord or the Landlord's solicitors, the Tenant shall:

- (a) execute the Lease; and
- (b) deliver the executed Lease to the Landlord or the Landlord's solicitors,

and within 14 days of receipt of the executed Lease the Landlord shall execute and date the Lease and provide a copy of the same to the Tenant and the Guarantor.



### 13.3 Registration

- (a) The Landlord must seek the consent of the Minister or his or her delegate to the grant of the Lease pursuant to s75(6) of the *Land Administration Act 1995*. Subject to such consent being granted, the Landlord will register the Lease.
- (b) The Tenant shall bear the Landlord's costs of registering this Lease and of seeking any required consents.

### 13.4 Parties bound

The Parties are bound by the Lease from and including the Lease Commencement Date, even though a Party may not have signed the Lease, it may not have been completed in accordance with clause 13.1 or it may not have been registered.

## 14 COMMENCEMENT OF PERMITTED USE

Despite the fact that the Lease may have commenced, the Tenant may not use or occupy the Premises for any purpose other than the Tenant's Works until the later of:

- (a) the date when the Landlord receives from the Tenant a full and effective Lease which has been duly signed by the Tenant and any Guarantors in the original;
- (b) the date when Landlord has received all money payable to it by the Tenant under this Contract (if any);
- (c) the date when the Tenant has received all Approvals for the Tenant's Works and the Permitted Use;
- (d) the date of issue of the Occupancy Permit from the relevant Authority for the Premises;
- (e) the date when the Tenant gives to the Landlord a Bank Guarantee in such an amount as is required by the Lease (if any such Bank Guarantee is so required);
- (f) the date when the Tenant gives to the Landlord certificates of currency for all insurances required under the Lease; and
- (g) the Lease Commencement Date,

but nothing in this clause shall operate to relieve the Tenant of any of the Tenant's Covenants under the Lease.

## 15 CAVEATS

- (a) The Tenant shall not lodge any absolute caveat against the Certificate of Title to the Land to protect any proprietary interest of the Tenant under this Contract (if any) and shall withdraw a caveat lodged in respect of this Contract on execution of the Lease.
- (b) The Tenant:
  - (i) irrevocably appoints the Landlord and every officer of the Landlord as defined by the Corporations Act to be the Attorney of the Tenant, in the name and on behalf of the Tenant, and as the act and deed of the Tenant to sign and lodge at Landgate a withdrawal:
    - (A) of any absolute caveat lodged by or on behalf of the Tenant; and

- (B) on execution of the Lease, of any caveat lodged in respect of this Contract;
- (ii) undertakes to ratify all that the attorney does or causes to be done under this clause 15; and
- (iii) indemnifies the Landlord in respect of:
  - (A) losses arising from any act done under this clause 15; and
  - (B) the Landlord's costs and expenses of and incidental to the withdrawing of any caveat mentioned in this clause 15.

## 16 DEFAULT

An Event of Default occurs if:

- (a) the Tenant abandons the Premises;
  - (b) the Tenant suffers an Insolvency Event;
  - (c) the Tenant fails to obtain or maintain any insurance policy required to be obtained or maintained under this Contract and does not remedy that failure within 1 month of the Landlord notifying the Tenant of the default;
  - (d) the Tenant assigns or purports to assign its interest under this Contract other than with the prior consent of the Landlord;
  - (e) the Tenant has not completed the 'Activity' (as that term is defined in the Funding Agreement) by the Heritage Works Completion Date;
  - (f) the Tenant has not completed the Tenant's Works within 6 months following the Estimated Practical Completion Date; or
  - (g) the Tenant fails to pay any money payable under this Contract within 10 Business Days of demand,
- (each an **Event of Default**).

## 17 DEFAULT PROCEDURE

- (a) If an Event of Default occurs and the Landlord wishes to terminate this Contract, the Landlord must do so in accordance with the procedures set out in this clause 17 and the termination will only be valid if the Landlord does so in accordance with clause 17.
- (b) If an Event of Default occurs, the Landlord may give a notice (**Default Notice**) to the Tenant setting out the material details of the Event of Default and requiring the Tenant to either:
  - (i) remedy the Event of Default; or
  - (ii) pay the Landlord reasonable compensation for the Loss the Landlord has suffered as a result of the Event of Default.
- (c) The Default Notice must specify:
  - (i) details of what the Landlord considers needs to be undertaken such that the Event of Default can be considered remedied; or

(ii) the compensation reasonably determined by the Landlord as being payable for the Loss the Landlord has suffered as a result of the Event of Default.

(d) If the Tenant fails to:

- (i) remedy the Event of Default; or
- (ii) pay reasonable compensation to the Landlord,

within 1 month of receiving the Default Notice (or such longer period of time as may be specified in the Default Notice), the Landlord may give the Tenant a second written notice (**Second Default Notice**) specifying:

- (iii) the material details of the Event of Default;
- (iv) that the Event of Default has not been remedied in accordance with the Default Notice; and
- (v) that the Landlord intends to terminate this Contract if the Event of Default is not remedied or reasonable compensation is not paid to the Landlord for the Loss the Landlord has suffered as a result of the Event of Default.

## **18 TERMINATION**

### **18.1 Termination**

(a) If the Tenant fails to:

- (i) remedy the Event of Default; or
- (ii) pay reasonable compensation to the Landlord,

within 2 months of receiving the Second Default Notice (or such longer period of time as may be specified in the Second Default Notice), the Landlord may:

- (iii) terminate this Contract; and/or
- (iv) sue the Tenant for damages for default.

(b) Subject to clause 2, the Landlord may not terminate this Contract except as set out in this clause 18.1.

### **18.2 Preservation**

Instead of termination pursuant to clause 18.1(a), the Landlord may affirm this Contract and sue the Tenant for:

- (a) specific performance of this Contract; or
- (b) damages for default in addition to or instead of specific performance.

### **18.3 Tenant's obligations on termination**

If this Contract is terminated prior to Practical Completion, the Tenant must:

- (a) vacate the Premises on the date this Contract is terminated;
- (b) leave the Premises in a safe and secure condition;

- (c) remove all rubbish from the Premises and leave it clean and tidy; and
- (d) to the extent capable of assignment, assign to the Landlord all of the Tenant's interest in any Approvals obtained by the Tenant, and any design documents prepared by or for the Tenant, in connection with the Redevelopment.

## **19 TERMINATION PAYMENT**

### **19.1 Landlord to pay Termination Payment**

If this Contract is terminated by the Landlord, the Landlord must pay the Termination Payment to the Tenant in accordance with this clause 19.

### **19.2 When the Termination Payment is calculated**

The Termination Payment will be calculated within 6 months of the date of termination.

### **19.3 Calculation of Termination Payment**

- (a) The termination payment will be an amount equal to the lesser of the following determined as at the date of termination:
  - (i) the value of the Tenant's Works completed as determined by a Valuer; and
  - (ii) the cost of the Tenant's Works completed as borne by the Tenant out of the Tenant's own money (excluding any costs paid by or reimbursed from the Funding),

**(Termination Payment).**
- (b) For the removal of doubt, if the Termination Payment amount calculated or determined in accordance with this clause 19 is negative, then no Termination Payment is due from the Landlord or the Tenant.
- (c) The Valuer for the purposes of clause 19.3(a) will be appointed by the Tenant and Landlord jointly (at the cost of both parties equally) on the basis of a valuation brief agreed by the Tenant and the Landlord. If the parties are unable to agreed on the appointment or the valuation brief clause 29 will apply.

### **19.4 When Termination Payment is payable**

- (a) The Termination Payment is payable to the Tenant 30 days following the Tenant notifying the Landlord of the Tenant's calculation of the Termination Payment calculated pursuant to clause 19.3(a) and providing supporting evidence in relation to the Tenant's calculation of the Termination Payment.
- (b) If there is a dispute about the amount of the Termination Payment, then the Landlord must on the date for payment of the Termination Payment under clause 19.4(a) pay that part of the Termination Payment which is not in dispute and pay the balance of the Termination Payment within 30 days of the amount being determined pursuant to clause 29.

## **20 LANDLORD'S POWERS ON DEFAULT**

On the occurrence of an Event of Default referred to in clause 16(c), 16(e), 16(f) or 16(g), subject to first complying with clause 17, the Landlord may, without affecting any of the Landlord's other rights against the Tenant, remedy that default on behalf of the Tenant (and recover the costs of doing so as a debt payable on demand).

**21 INDEMNITY**

The Tenant shall indemnify and keep indemnified the Landlord against all losses, claims, damages, demands, costs and expenses for which the Landlord becomes liable in respect of loss or damage to property or death or injury of any nature and however or wherever sustained:

- (a) as a result of the breach of the Tenant's Obligations by the Tenant or the Authorised Persons under this Contract;
- (b) which are caused or contributed to by the use or occupancy of the Premises, except to the extent caused or contributed to by the Landlord;
- (c) resulting from an act or omission of the Tenant or the Authorised Persons; or
- (d) resulting from a notice, claim or demand against the Tenant to do or refrain from doing anything.

**22 LANDLORD NOT RESPONSIBLE FOR LOSS**

The Landlord shall not be responsible for:

- (a) any damage or loss of any kind suffered by the Tenant or any of the Authorised Persons; or
- (b) any injury sustained by the Tenant or any of the Authorised Persons,

arising from or relating to the Tenant's use and occupation of the Premises during the term of each Licence, save to the extent caused or contributed to by the Landlord.

**23 NO ASSIGNMENT**

The Tenant shall not assign, transfer or charge its rights under this Contract to any other person without the Landlord's prior written consent, and sections 80 and 82 of the *Property Law Act 1969 (WA)* are expressly excluded.

**24 COSTS AND EXPENSES**

- (a) Each Party must pay their own costs in relation to the preparation, negotiation, and execution of this Contract.
- (b) The Tenant must pay to the Landlord on demand the Landlord's reasonable costs incurred in relation to the preparation and service of any default notice and any related correspondence.

**25 BANK GUARANTEE**

- (a) Within 5 Business Days of the satisfaction of the Conditions Precedent, the Tenant shall deliver a Bank Guarantee in the amount specified in Item 6(a) to the Landlord.
- (b) If the Tenant does not comply with any of its obligations under this Contract, then the Landlord may call on the Bank Guarantee without notice to the Tenant.
- (c) If the Landlord calls on the Bank Guarantee, then no later than five (5) Business Days after the Landlord gives the Tenant a notice requesting the same, the Tenant shall deliver to the Landlord a replacement or an additional Bank Guarantee so that the amount guaranteed is not less than the amount specified in Item 6(a).

- (d) A Bank Guarantee supplied by the Tenant under this clause 25 shall also serve as a bank guarantee for the purposes of the Lease on and from the Lease Commencement Date pending the provision of the bank guarantee required under the Lease, but if the amount that is available to be called on by the Landlord under the Bank Guarantee given under this clause 25 is less than that which is required in respect of a bank guarantee required by the Lease, then the Tenant must provide an additional bank guarantee to the Landlord before the Lease Commencement Date so as to ensure that, as at the Lease Commencement Date, the Landlord holds bank guarantees totalling the full amount required by the Lease. For the avoidance of any doubt, this clause 25(d) does not prevent the Landlord from calling on the Bank Guarantee referred to in clause 25(c) for the purposes of that provision after the Lease Commencement Date.
- (e) Following Practical Completion and subject to the provision of the bank guarantee under the Lease and a Bank Guarantee for the Defects Liability Period in the amount specified in Item 6(b) (**Defects Bank Guarantee**), the Landlord must return any Bank Guarantee held under this Contract to the Tenant.
- (f) If the Tenant does not comply with clause 10.7, then the Landlord may call on the Defects Bank Guarantee without notice to the Tenant.
- (g) If the Landlord calls on the Defects Bank Guarantee, then no later than five (5) Business Days after the Landlord gives the Tenant a notice requesting the same, the Tenant shall deliver to the Landlord a replacement or an additional Defects Bank Guarantee so that the amount guaranteed is not less than the amount specified in Item 6(b).
- (h) Following the expiry of the Defects Liability Period, the Landlord must return any Defects Bank Guarantee held under this Contract to the Tenant.
- (i) Clauses 25(a) and 25(c) are essential terms of this Contract but that shall not be taken to mean that there are no other essential terms in this Contract.

## 26 GST

- (a) Except where this Contract states otherwise, each amount payable by a Party under this Contract in respect of a taxable supply by the other Party is expressed as a GST exclusive amount and the recipient of the supply must, in addition to the amount of that supply and at the same time, pay to the supplier GST payable in respect of that supply.
- (b) A Party must issue a tax invoice to the other Party in respect of a taxable supply no later than 7 days following payment of the GST inclusive consideration for that taxable supply.
- (c) A written statement given to the Tenant of the amount of GST that the Landlord has paid or is liable to pay is conclusive as between the Parties except in the case of an obvious error or omission.
- (d) The Tenant must do everything reasonably requested by the Landlord to ensure this Contract is treated as taxable for the purposes of the GST.
- (e) The provisions of this clause 26 prevail over any conflicting provisions elsewhere in this Contract.

## 27 SPECIAL CONDITIONS

The Special Conditions (if any) form part of this Contract. In the event of any inconsistency between any Special Condition and the other terms of this Contract, the Special Conditions shall prevail to the extent of that inconsistency.

## 28 DISPUTE RESOLUTION- PRACTICAL COMPLETION

- (a) If there is a difference or dispute between the Parties in connection with the determination of whether Practical Completion has been achieved, or as to any matter in connection with clause 10, then either Party may give notice and particulars of the dispute to the other Party and may require that the dispute be resolved by an independent expert acceptable to the Parties.
- (b) If the Parties do not agree on an independent expert within 10 Business Days of notice of the dispute, either Party may request the president of the Australian Institute of Architects (WA Chapter) to nominate an appropriate person to determine the matters in dispute.
- (c) The independent expert:
  - (i) need not be an architect and should be of a discipline most closely associated with the type of issue in dispute;
  - (ii) may call for written submissions from the Parties in connection with the dispute;
  - (iii) may determine other rules that are to apply to the determination of the dispute under this clause;
  - (iv) may (after consultation with the Parties) engage other consultants to advise them if they consider it necessary;
  - (v) will act as an expert and not as an arbitrator and his decision will be final and binding upon the Parties, except for manifest error or if their decision is one regarding a matter of law; and
  - (vi) may determine the proportions in which his fees (and the fees of any other consultants that they may engage) are to be borne by the Parties, in which case the fees must be paid by the Parties in their respective proportions.
- (d) Except for urgent injunctive relief, neither Party will be entitled to commence or maintain any action relating to a disputed matter to which this clause applies until it has been referred and determined as provided in this clause.
- (e) If the independent expert declines to accept the nomination or for any reason ceases to act, the president of the Australian Institute of Architects (WA Chapter) must appoint a replacement on the application of either Party.

## 29 DISPUTE RESOLUTION - GENERAL

- (a) This clause does not apply where clause 28 applies.
- (b) If any dispute or difference arises between the Parties as to the interpretation or performance of this Deed (**Dispute**), the Parties agree to resolve it in the manner set out in this clause, and a Party may not commence court proceedings concerning the Dispute unless:
  - (i) that Party has complied with this clause; or
  - (ii) that Party seeks urgent interlocutory relief.
- (c) In the event of any Dispute, a Party may give written notice to the other Parties that:
  - (i) states that the notice is given under this clause;

- (ii) describes the nature of the issue under dispute; and
  - (iii) requests a meeting of representatives of the Parties to take place to seek to resolve the Dispute.
- (d) The Parties shall make every effort to negotiate a settlement of any notified Dispute. Nominated representatives of all Parties shall meet within 10 Business Days of the notice being given and endeavour to resolve, in good faith, the Dispute within 10 Business Days or such other time as may be agreed by the Parties.
- (e) If after 10 Business Days from the date of the notice is given, or such other time as may be mutually agreed by the Parties, the Dispute has not been resolved to the satisfaction of the Parties any Party may refer the Dispute to arbitration by giving written notice to the other Party.
- (f) If a Dispute is referred to arbitration, the following provisions apply:
- (i) the Institute of Arbitrators and Mediators Australia Arbitration Rules shall apply;
  - (ii) the place of arbitration will be Perth, Western Australia;
  - (iii) within 10 Business Days of a notice being given under paragraph (d) above (or such longer period as may be agreed by the Parties), the Parties must by mutual agreement appoint an arbitrator to whom the dispute will be referred;
  - (iv) if the Parties fail to agree on an arbitrator, any Party may request the Institute of Arbitrators and Mediators Australia to appoint an arbitrator to whom the Dispute will be referred and the appointment must be made within 10 Business Days of the request being made; and
  - (v) any decision or award made in any arbitration under this clause is final and binding on the Parties.
- (g) This clause survives the termination of this Deed.

### **30 REPRESENTATIONS AND WARRANTIES**

The Tenant makes the following representations and warranties:

- (a) the Tenant has the skills, expertise and experience required to plan, manage, undertake construct and complete the Redevelopment; and
- (b) the Tenant has the skills, expertise, experience and financial capacity required to undertake and complete the Redevelopment.

### **31 MISCELLANEOUS**

#### **31.1 Recitals and Schedule**

The Recitals and the Schedule form part of this Contract.

#### **31.2 Landlord's consent**

Unless otherwise provided, the Landlord must not unreasonably withhold or unreasonably delay its consent or approval and must act reasonably in giving a conditional or unconditional consent or approval to any matter in this Contract.



### 31.3 Proper Law

This Contract is governed by the law in force in Western Australia, and where applicable, the Commonwealth of Australia.

### 31.4 Exercise of rights by Landlord

The Landlord may exercise each right, power or remedy at its discretion, separately or concurrently with any other right, power or remedy, and:

- (a) a single or partial exercise of a right, power or remedy does not prevent a further exercise of that right, power or remedy;
- (b) a failure to exercise or any delay in the exercise of a right, power or remedy does not prevent its exercise; and
- (c) the rights, powers and remedies of the Landlord are cumulative with and not exclusive of the rights, powers and remedies provided by law.

### 31.5 Landlord may act by agent

All acts and things which may be done by the Landlord may be done by a solicitor, agent, employee or contractor of the Landlord.

### 31.6 Variation

This Contract may not be varied except in writing signed by all of the Parties.

### 31.7 Giving of notice

- (a) Subject to paragraph (b), a notice, approval, consent, information or request that must or may be given or made to a Party under this Contract (**Notice**) is only given or made if it is in writing and signed by or on behalf of the Party giving or making it and is delivered, posted or emailed to the Party to whom it is directed at the address for the Party stated in Item 1 or Item 2 as appropriate, (or at such other address as may have been notified by that Party to each other Party, from time to time) or that Party's solicitor.
- (b) In the case of a Party that is a corporation, a Notice signed in the manner specified in paragraph (a), may also be given by delivering or posting it to the address of the Party's Registered Office.
- (c) A Notice is to be treated as given or made in accordance with the following rules:
  - (i) if it is delivered, when it is left at the relevant address;
  - (ii) if it is sent by post, 3 Business Days after being posted; and
  - (iii) in the case of email transmission, at the time sent by the sender if sent before 5pm on a Business Day or otherwise at 9am on the first Business Day following transmission, unless the sender's email account receives notification that the recipient did not receive the relevant email.
- (d) A Notice is to be treated as having been given or made at 9.00am the next Business Day where it is delivered or sent after the normal business hours of the Party to whom it is delivered or sent.

### 31.8 Further assurances

Each Party to this Contract must execute and do all acts and things necessary to give full force and effect to this Contract.

### 31.9 Effect of execution

This Contract binds each person who executes it notwithstanding the failure by any other person to execute this Contract and to perform its obligations under it.

### 31.10 Severance

If any part of this Contract is or becomes unenforceable or void or voidable, that part will be severed from this Contract and those parts that are unaffected shall continue to have full force and effect.

### 31.11 Entire agreement

- (a) This Contract constitutes the entire agreement between the Parties and contains all the representations, warranties, covenants and agreements of the Parties in relation to the subject matter of this Contract.
- (b) The Tenant acknowledges that to the maximum extent permitted by Law:
  - (i) the terms of this Contract constitute the entire agreement between the Parties notwithstanding any negotiations or discussions held or brochures produced prior to or on the date of this Contract;
  - (ii) it does not rely upon any warranty, statement or representation (whether oral or in writing) made or given by or on behalf of the Landlord; and
  - (iii) the Tenant is relying entirely upon the Tenant's own independent enquiries and investigations in relation to the Lease and the Premises.
- (c) No oral explanation or information provided by any Party to another:
  - (i) affects the meaning or interpretation of this Contract; or
  - (ii) constitutes any collateral agreement, warranty or understanding between any of the Parties.

### 31.12 Headings

Except in the Schedule, the headings used in this Contract are for reference only and shall not affect the interpretation of this Contract.

## 32 TRUST WARRANTIES

- (a) If the Tenant enters into this Contract as the trustee of a trust, the Tenant is bound both personally and as trustee of the trust.
- (b) In respect of any trust of which the Tenant (solely or jointly) is acting or in the future acts as trustee of (**Trust**) the Tenant covenants and warrants that:
  - (i) the Tenant has full power and authority pursuant to its Constitution (if any) and the deed of trust (**Trust Deed**) to act when entering into this Contract and the Tenant has obtained the consents and approvals of all persons necessary to bind the property of the Trust;

- (ii) the Trust is lawfully and validly constituted and the Trust Deed has been properly executed;
- (iii) the Trust and the Trust Deed will not be revoked or varied other than with the prior written consent of the Landlord which may not be unreasonably withheld or delayed;
- (iv) the assets of the Trust and the assets of the Tenant will at all times be and remain available to satisfy the Tenant's Obligations;
- (v) no action has been taken or proposed to remove it as trustee of the Trust or alter the powers it has as trustee of the Trust; and
- (vi) no action has been taken or threatened to wind up or terminate the Trust.

**33 NO MERGER**

The Parties' obligations that remain to be complied with after the Lease commences do not merge with that commencement.

## SCHEDULE

**Item 1 Landlord's Details**

**TOWN OF VICTORIA PARK (ABN 77 284 859 739)** of 99 Shepperton Road, Victoria Park, Western Australia, 6100

Email: admin@vicpark.wa.gov.au

**Item 2 Tenant's Details**

**BLACKOAK CAPITAL – ELIZABETH BAILLIE PTY LTD (ACN 651 448 583)** of 179 St Georges Terrace, Perth, Western Australia 6000

Email: notices@blackoakcapital.com.au

**Item 3 Land**

Lot 9000 on Deposited Plan 41207 being the whole of the land in Certificate of Title Volume 2992 Folio 139, more commonly known as 15 Hill View Terrace, East Victoria Park, Western Australia.

**Item 4 Premises**

That part of the Land having an area of approximately 1.3675 hectares that is outlined in black and hachured on the Premises Plan and includes the Buildings and the Landlord's Equipment.

**Item 5 Relevant Dates**

(a) **Construction Commencement Date**

The date by which the Landlord is required to 'Commence Construction' under clause 2A.3 of the Varied Funding Agreement

(b) **Heritage Works Completion Date**

The date specified in item A.2 of the Schedule of the Varied Funding Agreement as the 'Project Completion Date'.

(c) **Estimated Practical Completion Date**

18 months from the satisfaction or waiver of all Conditions Precedent.

(d) **Lease Commencement Date**

The date of Practical Completion.

**Item 6 Bank Guarantee Amount**

(a) **Clause 25(a)**

\$2,000,000.00.

(b) **Clause 25(e)**

\$500,000.00.

**Item 7 Rent**

During the initial Term no Rent is payable.

On and from the commencement of the First Further Term, Rent is payable yearly in advance in the amount of \$122,500.00 per annum plus GST reviewed in accordance with clause 2 of Schedule 2 of the Lease on each anniversary of the Lease Commencement Date to the date of commencement of the First Further Term.

**Item 8 Special Conditions****(1) Subdivide**

The Landlord reserves the right, having obtained the requisite approvals to subdivide and/or strata title the Land, whether before or after the Contract Date, and the Tenant agrees not to object to that provided that it does not prevent or materially interfere with the Permitted Use.

**(2) Contribution Payment**

- (a) The Tenant agrees to pay to the Landlord \$2,000,000.00 plus GST by way of a contribution to the cost of the works being undertaken by the Landlord to the Land (excluding the Premises), which payment is to be made within 6 months of the date on which the Conditions Precedent are satisfied and subject to provision of a tax invoice by the Landlord (**Contribution**).
- (b) The Landlord must only expend the Contribution for the purpose stated in paragraph (a).

**(3) Statutory Works**

- (a) The Tenant acknowledges that to facilitate the redevelopment of 384 Berwick Street, East Victoria Park (**Lot 3**) which adjoins the Land:
  - (i) after the Contract Date, Electricity Networks Corporation (Western Power) will relocate and upgrade a district transformer from Lot 3 onto the Premises in accordance with the plans attached at Annexure F (**District Transformer**); and the Tenant acknowledges development within 18 metres of the District Transformer may be restricted; and
  - (ii) the Water Corporation has realigned and upgraded a sewer pipeline and associated infrastructure on the Premises as depicted on the plan attached at Annexure G (**Sewer**),
 (together the **Statutory Works**).
- (b) The Tenant acknowledges that:
  - (i) Electricity Networks Corporation may register an easement or restrictive covenant against the certificate of title to the Land in respect of the District Transformer; and
  - (ii) Water Corporation may register an easement against the certificate of title to the Land in respect of the Sewer,
 (together the **Statutory Encumbrances**).
- (c) The Tenant agrees:
  - (i) not to object to or to make any claim in respect of the carrying out of the Statutory Works or the registration of the Statutory Encumbrances;

- (ii) to allow the Water Corporation to access the Premises to maintain the Sewer; and
  - (iii) if the Lease is registered prior to the Statutory Encumbrances, the Tenant agrees to consent to the registration of those Statutory Encumbrances to the extent necessary for them to be registered.
- (d) At the request of the Tenant, the Landlord will facilitate any discussions with Electricity Networks Corporation and the Water Corporation in respect of the Statutory Works and their effect on the Tenant's Works.

**(4) Bank Guarantee**

Notwithstanding clause 25, the Parties agree that the amount specified in Item 6(a) is to be reduced as each Funding Milestone is satisfied and where the cost of the Tenant's Works remaining to be carried out is less than amount specified in Item 6(a), such reduction to be agreed by the Parties acting reasonably, and the Landlord agrees to:

- (a) return the then current Bank Guarantee to the Tenant if provided with a replacement Bank Guarantee in the agreed reduced amount which must not be less than the amount of the bank guarantee required under the Lease and the amount of the Defects Bank Guarantee specified in Item 6(b); and
- (b) return the then current Bank Guarantee to the Tenant on Practical Completion if provided with the bank guarantee required under the Lease and the Defects Bank Guarantee.

**(5) Electricity Supply Upgrade**

- (a) The Parties acknowledge that as at the Contract Date the electricity supply to the Land is not adequate for:
  - (i) the Landlord's future requirements for the park on the Land (excluding the Premises); and
  - (ii) the Redevelopment and the Permitted Use (specifically the proposed hospitality and child care centre uses),
 and needs to be upgraded by way of the installation of a new substation on the Land by Electricity Networks Corporation (**Upgrade**).
- (b) The Parties agree to contribute to the cost of the Upgrade in proportion to their respective need for the Upgrade.
- (c) For the purposes of paragraph (b), as at the Contract Date, it is estimated that the respective proportions are as follows:
  - (i) the Landlord: 38%;
  - (ii) the Tenant: 62%,

and the Parties agree to finalise the respective proportions prior to the commencement of the Upgrade works, and to pay Electricity Networks Corporation's costs when due in those respective proportions.

**EXECUTED BY THE PARTIES AS A DEED ON THE DATE LAST MENTIONED BELOW:**

The COMMON SEAL of **TOWN OF VICTORIA** )  
**PARK** was hereunto affixed in the presence )  
of: )  
)

\_\_\_\_\_  
Signature of Mayor

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

\_\_\_\_\_  
Print name of Mayor

\_\_\_\_\_  
Print name of Chief Executive Officer

\_\_\_\_\_  
Date

Executed by **BLACKOAK CAPITAL – ELIZABETH BAILLIE PTY LTD (ACN 651 448 583)** in accordance with section 127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Print name of Director

\_\_\_\_\_  
Print name of Director/Secretary

\_\_\_\_\_  
Date

**ANNEXURE A - PREMISES PLAN**

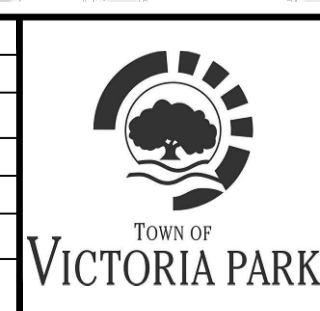
**[Insert plan from 10.11.2021]**

DRAFT





Amendments	No	Date	FOR INFORMATION ONLY	REVISION	R.G	P.S
	0	09/21				
					By	App'd



TOWN OF VICTORIA PARK

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DESIGNED	SCALE 1:750 @ A1
DRAWN	DATUM
CHECKED	APPROVED
RECOMMENDED	

EDWARD MILLEN LEASE		SHEET 1 OF 3
		DRAWING No.
		Job No.
		A 1

**ANNEXURE B - TENANT'S PLANS**

DRAFT

**Blackoak**  
CAPITAL VENTURES



# Edward Millen

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HERITAGE  
REDEVELOPMENT  
UPDATED OVERVIEW

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August 2022

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# Edward Millen Heritage Redevelopment

## MASTER PLANNING OVERVIEW

### THE OPPORTUNITY

This project offers a once in a generation opportunity to reactivate and reposition the iconic Edward Millen historic buildings, to complement the surrounding parklands, provide services and enjoyment to the community, and preserve the heritage fabric of the site.

With this comes the opportunity to reimagine what "Edward Millen" means to the Victoria Park community.

### PROJECT PROGRESS

Blackoak Capital Ventures have been working with Benson Studio in determining the optimal design and uses for the site that will deliver a world-class destination that preserves the rich history of the Edward Millen buildings. Blackoak Capital Ventures has run this process in parallel with the finalisation of the lease negotiations with the Town of Victoria Park. As a group we have taken on board feedback from the Town of Victoria Park, Heritage and other stake holders and as such have evolved the master plan solution. The revised design reduces heritage impacts and increases the weekday, community activation of the site.

At this point, the determined uses that generate a creative mix that is consistent with the January 2021 proposal to council are:

1. Mixed Hospitality Venue (artisan café, garden bistro, gastro pub, nano brewery)
2. Farmers and Community Market
3. Market Gardens and Orchard
4. Woodfire Bakery
5. Childcare Centre
6. Internal and External Events and Function Spaces
7. Museum and Gallery space
8. Art and Artisan Makers Studios

All uses encapsulate the theme of local makers, with key products being produced on site, embracing the **circular economy** philosophy with food being grown on site, consumed on site and waste being used to grow more. Solar energy will also be used to generate electricity for part of the project. The educational benefits of the circular economy could also be taught to children on site and the neighbouring Carson Street School.

Site activation through day and night, weekdays and weekends, catering for all community demographics in the reposition of the iconic site was a careful consideration of the master plan.



Image: Artist impression of Mixed Hospitality Venues

# Edward Millen Heritage Redevelopment

# Blackoak

## MASTER PLAN



# Edward Millen Heritage Redevelopment

MIXED HOSPITALITY ARRIVAL EXPERIENCE

**Blackoak**  
CAPITAL VENTURES



# Edward Millen Heritage Redevelopment

MIXED HOSPITALITY VENUE AFRESCO GARDEN- CREATIVE PLAY

**Blackoak**  
CAPITAL VENTURES



# Edward Millen Heritage Redevelopment

BAILLIE LANE- CONNECTING THE SITE & ACTIVATING HERITAGE

**Blackoak**  
CAPITAL VENTURES





# Edward Millen Heritage Redevelopment

COMMUNITY & FARMERS MARKET

**Blackoak**  
CAPITAL VENTURES



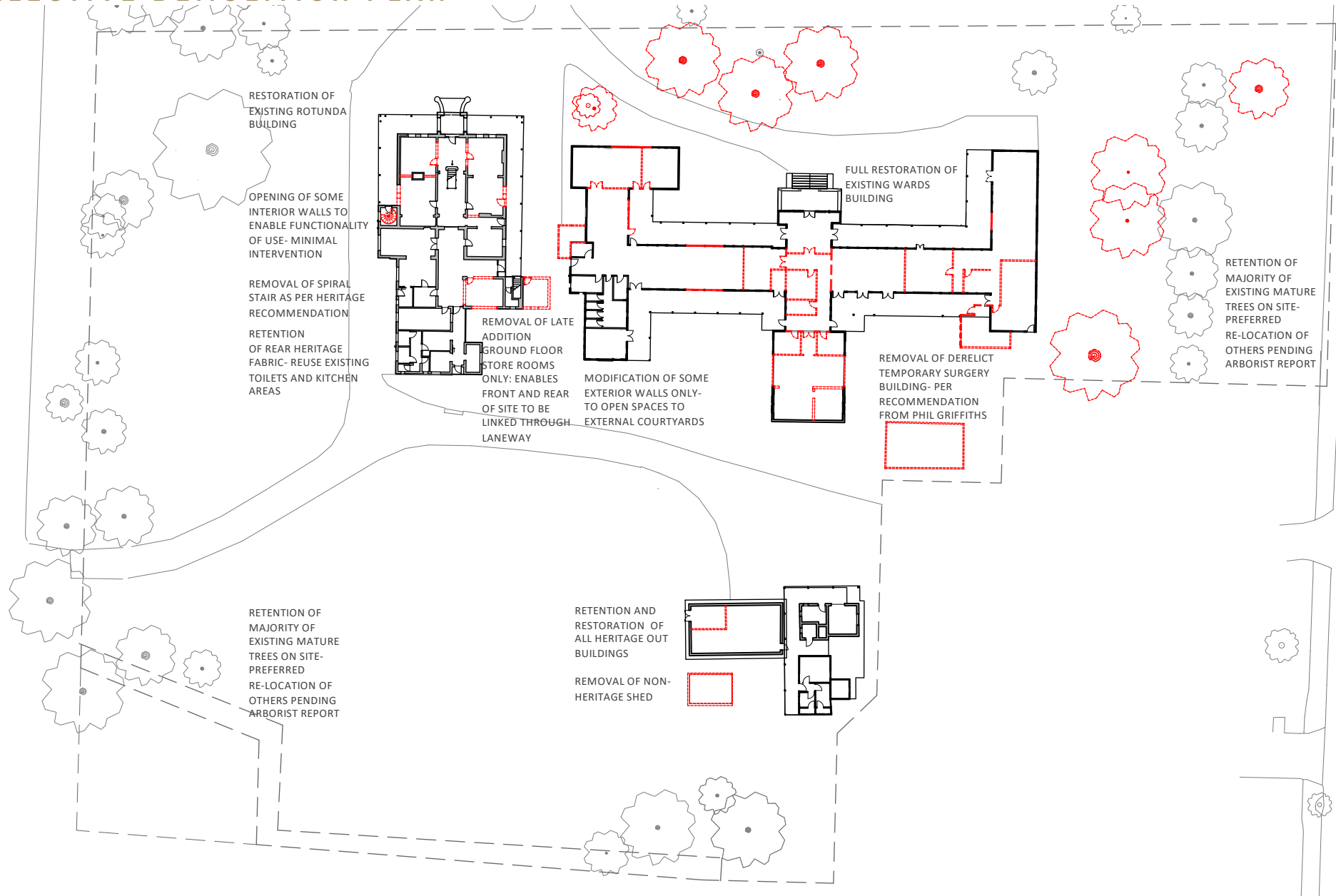
# Edward Millen Heritage Redevelopment

## ILLUSTRATIVE MASTER PLAN



# Edward Millen Heritage Redevelopment

## SELECTIVE DEMOLITION PLAN



# Edward Millen Heritage Redevelopment

## ENVIRONMENT & COMMUNITY

### SUSTAINABLE OUTLOOK THROUGHOUT A CIRCULAR ECONOMY PHILOSOPHY

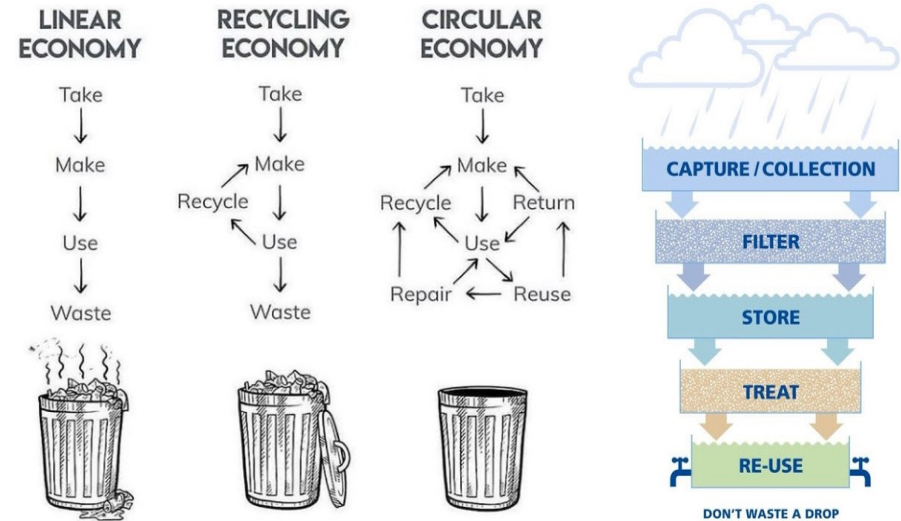
Adopting a circular economy approach that favours activities that preserve value in the form of energy, labour, and materials, the project will be designed with a key focus for durability, reuse, remanufacturing and recycling to keep products, components and materials circulating within the Edward Millen economy. Initiatives will include:

#### ENVIRONMENT

- **Solar Energy** – using solar as the main power source (supported by battery storage) while incorporating solar design measures to optimise heat storage in winter and reduce heat transfer in summer.
- **Local Grown Produce** – offering products grown and produced on site, as well as focusing on offering other locally grown and produced products. These will be used in the childcare centre (e.g. bread baked on site used for lunches) and the hospitality venues.
- **Tree Planting** – planting additional trees that are native to the environment in locations that would benefit from greater shade. Most large trees to be retained on site with possible relocation of others on the site, pending arborist report
- **Recycling Organic Waste** – hospitality venue using food scraps to feed animals on site.

#### COMMUNITY

- **Community & Farmers Market** – local community coming to the weekend markets, supporting local businesses and produce.
- **Community & Function Space** – large space to cater for community meetings, weddings and events.
- **Museum and Gallery**– dedicated spaces to display site heritage.
- **Kid Activation** – play equipment for kids of all ages.
- **Integration With Park** – hospitality venue connected to amphitheater to cater for park community events, bands and festivals.
- **Local School Excursions** – Carson Street School could have field trips to pick food and collect eggs to transport to on site bakery and hospitality venue.
- **On site Produce Circulation** – bakery providing Childcare and Carson Street School freshly cooked bread in exchange for deliveries.
- **Daily Activation** – strategically picked operations and uses to accommodate site activation and community engagement for all hours of the day. Including childcare, café and bakery.





**ANNEXURE C - BRIEF**

To include the Owen Consulting Quantity Survey dated 8 May 2019

DRAFT

# owenconsulting

quantity surveyors + construction consultants

8 May 2019

## EDWARD MILLEN

### Proposed Conservation Works

#### Indicative (order of magnitude) cost estimate

A Block - Former Rotunda Hospital	\$ 260,000.00
B Block - Former Ward Block	\$ 1,620,000.00
D, G AND H Block	\$ 270,000.00
External Works and Services	\$ 450,000.00
<b>Construction Cost (excl GST)</b>	<b>\$ 2,600,000.00</b>
Design and construction contingency	\$ 500,000.00
Consultant Fees	\$ 300,000.00
<b>Total Cost (excl GST)</b>	<b>\$ 3,400,000.00</b>
<u>Exclusions</u>	
<i>Loose furniture and equipment</i>	
<i>Council fees and charges</i>	
<i>Council PM fees</i>	
<i>Public art</i>	
<i>Cost escalation to tender (past 2019)</i>	

#### Notes

\* This estimate is 'order of magnitude' only based on Griffiths Architects' concept drawings dated 15.04.2019

#### Specific estimate exclusions (in addition to items noted above)

*Note - the following costs are all-up incl. contingency and fees*

- \* Western Power transformer upgrade (\$130,000) - assumed not required
- \* Fire pumps and tanks (\$320,000) - assumed street pressure is sufficient
- \* Landscaping works (\$1,300,000) - by others
- \* Disability access upgrade - Rotunda lift (\$200,000)
- \* Disability access upgrade - ramps (\$50,000)
- \* C Block demolition and site clearance (\$130,000)
- \* Replacement of removed ceilings (tenant fitout)
- \* Internal painting (tenant fitout)
- \* Electrical services tenant fitout (except DB, FIP/smoke, security, emergency/exit lighting)
- \* Mechanical services tenant fitout
- \* Internal plumbing tenant fitout (existing fixtures removed and services capped)

Project: 19027 - Edward Millen

Details: Indicative cost estimate

Building: Conservation Works

Item	Description	Quantity	Unit	Rate	Total
<b>A BLOCK - FORMER ROTUNDA HOSPITAL</b>					
<b>PR - Preliminaries</b>					
1	Allowance for builders preliminaries costs		item		40,000
2	Access equipment and scaffolding		item		10,000
<b>DE - Demolition</b>					
3	Demolition and strip out - A.13, 14, 15, 16, 17		item		10,000
4	Demolition and strip out - A.18, 19, 21		item		12,000
5	Demolition and strip out - A1.5, 1.6, 1.7		item		4,000
6	Demolish existing link roof and cut back concrete walkway		item		7,500
7	Remove existing timber ramp		item		2,500
8	Services demolition		note		refer HY/EL
					<b>36,000</b>
<b>SB - Substructure</b>					
9	Make good GFL tile substrate ready for fitout (by others)	135	m2	50.00	6,750
					<b>6,750</b>
<b>CL - Columns</b>					
10	Painting to existing GFL verandah posts	16	no	350.00	5,600
11	Painting to existing FFL verandah posts	16	no	350.00	5,600
					<b>11,200</b>
<b>UF - Upper Floors</b>					
12	Make good FFL tile substrate ready for fitout (by others)	20	m2	50.00	1,000
13	Paint verandah floor (existing painted) soffit	130	m2	30.00	3,900
14	Paint verandah floor (existing painted) beams and fretwork	47	m	50.00	2,350
					<b>7,250</b>
<b>RF - Roof</b>					
15	Paint FFL verandah (existing painted) roof beams and fretwork	48	m	50.00	2,400
					<b>2,400</b>
<b>EW - External Walls</b>					
16	Make good tuck pointing to FFL verandah		item		3,000
17	Make good where redundant services removed		item		2,400
18	Paint to existing FFL verandah balustrade	48	m	150.00	7,200
					<b>9,600</b>
<b>FF - Floor Finishes</b>					
19	Sand and seal FFL timber floors	230	m2	60.00	13,800
20	Sand and seal FFL timber floors - verandah		note		excluded
					<b>13,800</b>
<b>HY - Hydraulic Services</b>					
21	Remove, cap and seal existing services		item		10,000
22	Replace stormwater drainage from roof areas		item		30,000



**Project:** 19027 - Edward Millen

**Details:** Indicative cost estimate

**Building:** Conservation Works

Item	Description	Quantity	Unit	Rate	Total
<b>A BLOCK - FORMER ROTUNDA HOSPITAL (Continued)</b>					<b>40,000</b>
<b>EL - Electrical Services</b>					
23	Remove, cap and seal existing services		item		10,000
24	Install new DB		item		20,000
25	Fire and smoke detection		item		15,000
26	Monitored security system		item		10,000
27	Emergency and exit lighting		item		5,000
28	New external lighting		item		15,000
					<b>75,000</b>
<b>FP - Fire Protection</b>					
29	Remove, cap and seal existing services		item		5,000
30	New fire sprinklers and hose reels		note		excluded
					<b>5,000</b>
<b>A BLOCK - FORMER ROTUNDA HOSPITAL</b>					<b>260,000</b>

Project: 19027 - Edward Millen

Details: Indicative cost estimate

Building: Conservation Works

Item	Description	Quantity	Unit	Rate	Total
<b>B BLOCK - FORMER WARD BLOCK</b>					
<b>PR - Preliminaries</b>					
31	Allowance for builders preliminaries costs		item		<b>200,000</b>
<b>DE - Demolition</b>					
32	Demolish toilet block		item		5,000
33	Internal demolition and strip out		item		50,000
34	Remove existing roofing		item		75,000
35	Remove existing concrete verandahs		item		10,000
36	Remove boarding/screens to windows and doors		item		5,000
37	Remove asbestos cladding and internal asbestos wall linings		item		45,000
38	Remove weatherboards		item		10,000
39	Services demolition		note		refer HY/EL
					<b>200,000</b>
<b>SB - Substructure</b>					
40	Jack and re-stump timber floors (as noted)	25	m2	100.00	2,500
41	Repairs to existing timber floors ready for sanding (msd.sep)	650	m2	50.00	32,500
42	Rebuild existing timber verandahs	170	m2	350.00	59,500
43	Repair timber verandah edge	50	m		included
44	Reinstate timber verandahs (new)	180	m2	350.00	63,000
45	Repair cracked grano stair		item		5,000
46	Termite treatment		item		10,000
					<b>172,500</b>
<b>CL - Columns</b>					
47	Refurbish and paint existing verandah posts	30	no	500.00	15,000
48	New verandah posts (reinstated verandah)	6	no	750.00	4,500
49	Repair main entry columns and capitals	4	no	1,000.00	4,000
					<b>23,500</b>
<b>RF - Roof</b>					
50	New roof tiles including gutters and downpipes	1,500	m2	100.00	150,000
51	Roof framing repairs and new battens	1,500	m2	80.00	120,000
52	Rebuild roof where toilets removed	30	m2	350.00	10,500
53	Repair/replace and paint birdboards	290	m	150.00	43,500
54	Repair/replace and paint fascias/barges	400	m	100.00	40,000
55	Repair/replace and paint beams - verandahs	50	m	150.00	7,500
56	Rebuild roof vents	5	no	1,000.00	5,000
57	New painted cfc soffit linings to verandahs to replace asbestos (removal msd.sep)	420	m2	100.00	42,000
					<b>418,500</b>
<b>EW - External Walls</b>					
58	Re-use/replace weatherboards and paint (removal msd.sep)	250	m2	160.00	40,000

Project: 19027 - Edward Millen

Details: Indicative cost estimate

Building: Conservation Works

Item	Description	Quantity	Unit	Rate	Total
<b>B BLOCK - FORMER WARD BLOCK (Continued)</b>					
59	Re-use/replace weatherboard dado trim and paint (removal msd.sep)	250	m	80.00	20,000
60	New painted cfc cladding to replace asbestos (removal msd.sep)	370	m2	100.00	37,000
61	Re-use/replace timber slats and paint	60	m2	250.00	15,000
62	New timber slat infill	15	m2	400.00	6,000
63	Repairs to existing wall framing	600	m2	25.00	15,000
64	New insulation to wall frames	600	m2	20.00	12,000
65	New internal plasterboard lining	600	m2	45.00	27,000
66	Temporary balustrade to verandah (12)	20	m	450.00	9,000
					<b>181,000</b>
<b>WW - Windows</b>					
67	Refurbish and paint existing windows (new glazing)	180	m2	600.00	108,000
					<b>108,000</b>
<b>ED - External Doors</b>					
68	Refurbish and paint existing doors, frames (new hardware)	60	m2	500.00	30,000
					<b>30,000</b>
<b>NW - Internal Walls</b>					
69	New wall to B.28	10	m2	150.00	1,500
70	New plasterboard wall lining to replace asbestos (removal msd.sep)	500	m2	45.00	22,500
71	Repairs to existing wall framing	250	m2	20.00	5,000
72	New insulation to wall frames	250	m2	20.00	5,000
					<b>34,000</b>
<b>ND - Internal Doors</b>					
73	Refurbish and paint existing doors, frames (new hardware)	50	m2	500.00	25,000
					<b>25,000</b>
<b>WF - Wall Finishes</b>					
74	Painting to internal walls		note		excluded
<b>FF - Floor Finishes</b>					
75	Sand and seal existing timber floors	650	m2	60.00	39,000
					<b>39,000</b>
<b>CF - Ceiling Finishes</b>					
76	Retain and repair ceilings	70	m2	50.00	3,500
77	Replace removed ceilings		note		excluded
78	Painting to ceilings		note		excluded
					<b>3,500</b>
<b>FT - Fitments</b>					
79	Reinstate lettering to entablature		item		5,000
					<b>5,000</b>

Project: 19027 - Edward Millen

Details: Indicative cost estimate

Building: Conservation Works

Item	Description	Quantity	Unit	Rate	Total
<b>B BLOCK - FORMER WARD BLOCK (Continued)</b>					
<b>HY - Hydraulic Services</b>					
80	Remove, cap and seal existing services		item		10,000
81	New stormwater drainage from roof areas		item		55,000
					<b>65,000</b>
<b>EL - Electrical Services</b>					
82	Remove, cap and seal existing services		item		10,000
83	Install new DB		item		25,000
84	Fire and smoke detection		item		15,000
85	Monitored security system		item		10,000
86	Emergency and exit lighting		item		5,000
87	New external lighting		item		25,000
					<b>90,000</b>
<b>FP - Fire Protection</b>					
88	Remove, cap and seal existing services		item		5,000
89	New fire sprinklers and hose reels		note		excluded
					<b>5,000</b>
<b>XP - Site Preparation</b>					
90	Remove external stairs, ramps, paving and walls		item		10,000
91	Remove debris and lower ground levels around building		item		10,000
					<b>20,000</b>
<b>B BLOCK - FORMER WARD BLOCK</b>					<b>1,620,000</b>

Project: 19027 - Edward Millen

Details: Indicative cost estimate

Building: Conservation Works

Item	Description	Quantity	Unit	Rate	Total
<b>D, G AND H BLOCK</b>					
<b>PR - Preliminaries</b>					
92	Allowance for builders preliminaries costs		item		<b>35,000</b>
93	Access equipment and scaffolding		item		
<b>DE - Demolition</b>					
94	Demolish Block D		item		12,500
95	Demolish Block H		item		7,500
96	Demolition and strip out - G.2, G.5		item		2,500
97	Asbestos removal		item		10,000
98	Remove existing roofing		item		10,000
99	Remove boarding/screens to windows		item		2,000
100	Remove weatherboards		item		2,000
101	Remove bitumen paving around buildings		item		2,000
102	Remove remnant concrete slab		item		1,500
103	Services demolition		note		refer HY/EL
					<b>50,000</b>
<b>CL - Columns</b>					
104	Refurbish and paint existing verandah posts	9	no	500.00	4,500
					<b>4,500</b>
<b>RF - Roof</b>					
105	New roof tiles including gutters and downpipes	100	m2	100.00	10,000
106	New corrugated roofing including gutters and downpipes	150	m2	80.00	12,000
107	Roof framing repairs and new battens	250	m2	60.00	15,000
108	Repair/replace and paint fascias/barges	100	m	100.00	10,000
109	Repair/replace and paint beams - verandahs	30	m	150.00	4,500
110	Replace missing bricks to chimney		item		3,000
					<b>54,500</b>
<b>EW - External Walls</b>					
111	Replace missing bricks		item		1,500
112	Re-point brickwork	70	m2	150.00	10,500
113	Re-point brickwork - below DPC	35	m	120.00	4,200
114	Clean existing brickwork	100	m2	15.00	1,500
115	New painted cfc cladding to replace asbestos (removal msd.sep)	40	m2	100.00	4,000
116	New painted weatherboards and paint (removal msd.sep)	30	m2	150.00	4,500
117	Repairs to existing wall framing	70	m2	25.00	1,750
118	New insulation to wall frames	70	m2	20.00	1,400
119	New internal plasterboard lining	70	m2	45.00	3,150
					<b>32,500</b>
<b>WW - Windows</b>					

Project: 19027 - Edward Millen

Details: Indicative cost estimate

Building: Conservation Works

Item	Description	Quantity	Unit	Rate	Total
<b>D, G AND H BLOCK (Continued)</b>					
120	Refurbish and paint existing windows (new glazing)	18	m2	600.00	10,800
121	New windows to match existing	3	m2	900.00	2,700
					<b>13,500</b>
<b>ED - External Doors</b>					
122	Refurbish and paint existing doors, frames (new hardware)	14	m2	500.00	7,000
123	Clean and rust treat incinerator door	1	no	400.00	400
					<b>7,400</b>
<b>NW - Internal Walls</b>					
124	New plasterboard wall lining to replace asbestos (removal msd.sep)	120	m2	45.00	5,400
125	Repairs to existing wall framing	60	m2	20.00	1,200
126	New insulation to wall frames	60	m2	20.00	1,200
					<b>7,800</b>
<b>ND - Internal Doors</b>					
127	Refurbish and paint existing doors, frames (new hardware)	10	m2	350.00	3,500
					<b>3,500</b>
<b>WF - Wall Finishes</b>					
128	Internal painting to walls		note		excluded
<b>FF - Floor Finishes</b>					
129	Sand and seal existing timber floors (G.6)	15	m2	60.00	900
					<b>900</b>
<b>CF - Ceiling Finishes</b>					
130	Replace removed ceilings		note		excluded
131	Painting to ceilings		note		excluded
<b>HY - Hydraulic Services</b>					
132	Remove, cap and seal existing services		item		3,000
133	New stormwater drainage from roof areas		item		10,000
					<b>13,000</b>
<b>EL - Electrical Services</b>					
134	Remove, cap and seal existing services		item		3,000
135	Install new DB		item		10,000
136	Fire and smoke detection		note		10,000
137	Monitored security system		item		7,500
138	Emergency and exit lighting		item		2,500
139	New external lighting		item		7,000
					<b>40,000</b>
<b>XP - Site Preparation</b>					

<b>Project:</b> 19027 - Edward Millen	<b>Details:</b> Indicative cost estimate
<b>Building:</b> Conservation Works	

Item	Description	Quantity	Unit	Rate	Total
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**D, G AND H BLOCK  
(Continued)**

140	Remove debris and lower ground levels around buildings		item		3,000
					<b>3,000</b>
	<b>XR - Roads and Paving</b>				
141	New paving around building	55	m2	80.00	4,400
					<b>4,400</b>

D, G AND H BLOCK 270,000

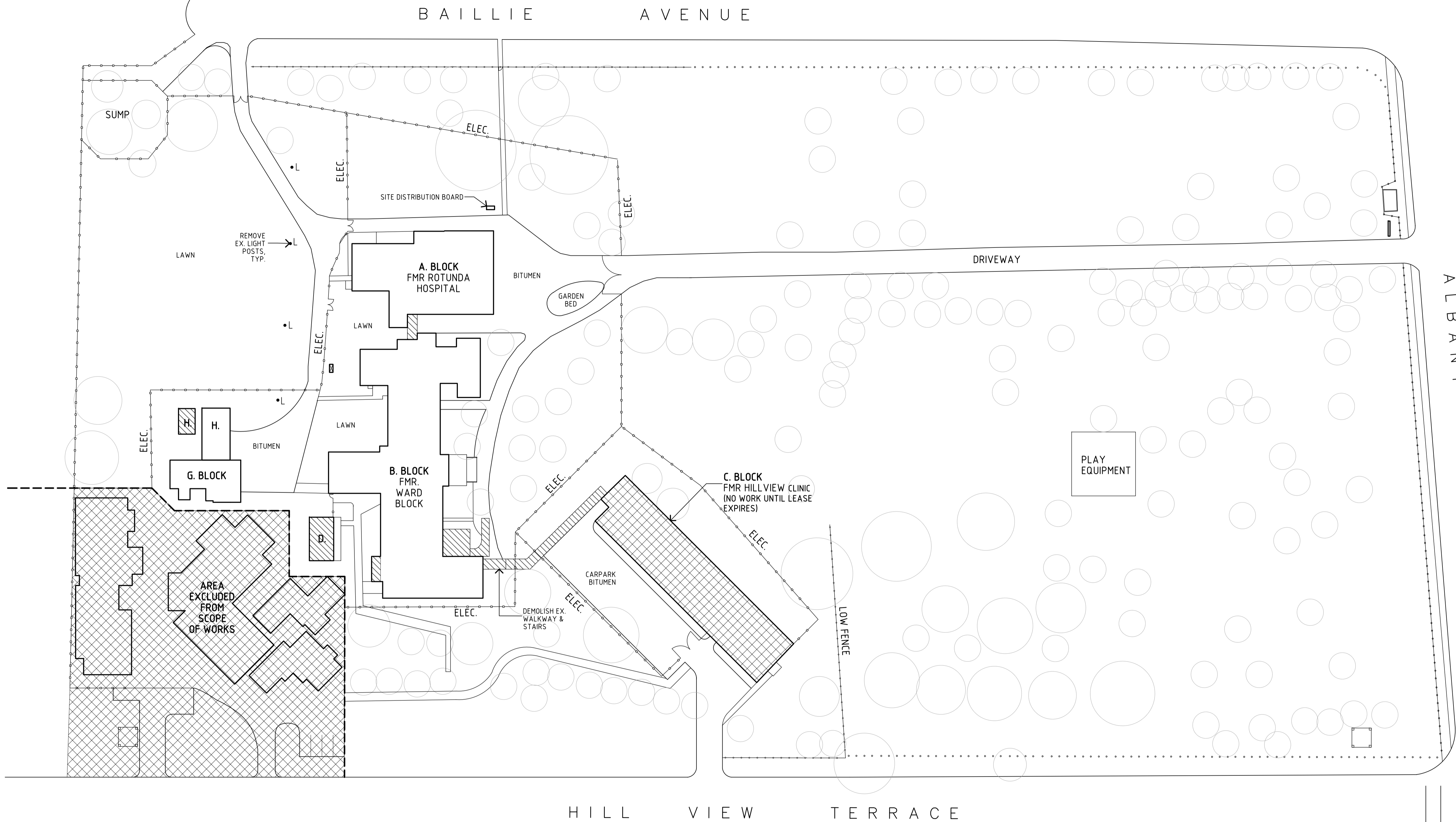
Project: 19027 - Edward Millen

Details: Indicative cost estimate

Building: Conservation Works

Item	Description	Quantity	Unit	Rate	Total
<b>EXTERNAL WORKS AND SERVICES</b>					
<b>PR - Preliminaries</b>					
142	Allowance for builders preliminaries costs		item		<b>60,000</b>
<b>XR - Roads, Footpaths &amp; Paved Areas</b>					
143	Re-surface existing bitumen	1,500	m2	40.00	60,000
					<b>60,000</b>
<b>XL - Landscaping &amp; Improvements</b>					
144	Landscaping works		note		excluded
<b>XH - External Hydraulic Services</b>					
145	Demolition/removal of existing in-ground services		item		20,000
146	Replace existing sewer drainage		item		30,000
147	New grease trap		item		20,000
148	Replace existing water service		item		30,000
149	Replace existing gas service (to suit commercial kitchen)		item		30,000
150	External fire service upgrade (new hydrants)		item		50,000
151	Fire pumps and tanks		note		excluded
					<b>180,000</b>
<b>XE - External Electrical Services</b>					
152	Remove existing light poles		item		10,000
153	Site lighting		item		30,000
154	SMSB upgrade		item		35,000
155	New submain from SMSB to buildings		item		75,000
156	Western Power headworks (transformer upgrade)		note		excluded
					<b>150,000</b>
<b>EXTERNAL WORKS AND SERVICES</b>					<b>450,000</b>





- GENERAL NOTES**
1. COMPLETELY DEMOLISH EX. STRUCTURES WHERE SHOWN.
  2. ALLOW FOR SITE LIGHTING
  3. ELECTRIC FENCE TO REMAIN INSITU UNTIL COMPLETION OF WORKS AND LEASING OF BUILDINGS.
  4. RETAIN IN OPERATIONAL STATE SITE MAINS SERVICES, INCLUDING, POWER, GAS, SEWER, AND WATER
  5. RESURFACE ALL EXISTING BITUMEN.
  6. LANDSCAPE WORKS EXCLUDED - LANDSCAPING BY OTHERS

- LEGEND**
- NO WORK TO AREA INDICATED
  - EXTENT OF DEMOLITION OF STRUCTURE
  - FENCE LINE
  - APPROX. ELEC. EX. / X APPROXIMATE ELECTRIC EXISTING
  - L EX. LIGHT POLE, TO BE REMOVED

- SITE SERVICES**
1. UPGRADE FIRE SERVICES/ HYDRANT COVERAGE.
  2. UPGRADE GAS METER/ SUPPLY TO SUIT COMMERCIAL KITCHEN.
  3. PROVIDE NEW SITE MAIN SWITCH BOARD.
  4. PROVIDE FIRE DETECTION TO ALL BUILDINGS.
  5. PROVIDE SECURITY SYSTEMS TO ALL BUILDINGS.

-	ISSUED TO CLIENT	1-5-2019
REV	DESCRIPTION	DATE
THIS DRAWING SHOULD BE READ IN CONJUNCTION WITH ALL RELEVANT CONTRACTS, SPECIFICATIONS AND DRAWINGS. CONTRACTORS MUST VERIFY ALL DIMENSIONS AT THE JOB BEFORE COMMENCING ANY WORK OR MAKING ANY SHOP DRAWINGS.		



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**Griffiths Architects**

**HILLVIEW, VICTORIA PARK, WA  
 CONSERVATION WORKS  
 SITE PLAN**

DRAWN	GA	DESIGNED	-	REDUCTION
CHECKED	PG	PRINCIPAL		0 12.5m
APPROVED	PG			
SCALE	1:500 (A1)	DATE	APRIL 2019	DRAWING No.
PROJ No.	19123	FILE No.	-	<b>A.01</b>





1 EAST ELEVATION  
A.02



2 NORTH ELEVATION  
A.02



3 WEST ELEVATION  
A.02



4 SOUTH ELEVATION  
A.02

GENERAL NOTES

1. REMOVE REDUNDANT SERVICES. STRIP OUT ALL EXISTING ELECTRICS, LIGHT FITTINGS AND FIXTURES. INSTALL NEW DISTRIBUTION BOARD FOR FUTURE TENANT. LOCATION TBC. RETAIN EX. LIGHT FITTINGS TO VERANDAH CEILINGS.
2. PROVIDE NEW EXTERNAL LIGHTING. DESIGN TO BE DETERMINED ON COMPLETION OF LANDSCAPE PLAN.
3. REPAINT ALL EX. VERANDAH JOINERY.
4. LANDSCAPE WORKS EXCLUDED - LANDSCAPING BY OTHERS
5. DISABILITY ACCESS WORKS EXCLUDED FROM SCOPE OF WORKS

SITE WORKS

6. DECOMMISSION EX. STORMWATER SYSTEM. INSTALL NEW STORMWATER SYSTEM, INCLUDING NEW SOAK WELLS. CONNECT EX. DOWNPIPES TO NEW SYSTEM.

REV	DESCRIPTION	DATE
-	ISSUED TO CLIENT	1-5-2019

THIS DRAWING SHOULD BE READ IN CONJUNCTION WITH ALL RELEVANT CONTRACTS, SPECIFICATIONS AND DRAWINGS. CONTRACTORS MUST VERIFY ALL DIMENSIONS AT THE JOB BEFORE COMMENCING ANY

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HILLVIEW, VICTORIA PARK, WA  
CONSERVATION WORKS  
'A' BLOCK - FORMER ROTUNDA HOSPITAL  
ELEVATIONS

DRAWN BP	DESIGNED -	REDUCTION
CHECKED PG	PRINCIPAL	0 2.5m
APPROVED PG	DATE APRIL 2019	DRAWING No. A.03
SCALE 1:100 (A1) 1:200 (A3)	FILE No. -	
PROJ No. 19123		

**GENERAL NOTES**

- REMOVE ALL CEILINGS UNLESS NOTED OTHERWISE.
- REBUILD BOARDING TO ALL WINDOWS. REBUILD/REPAIR WINDOWS AS REQUIRED. WINDOWS SHELTERED BY VERANDAHS TO BE REGLAZED AND PAINTED ONLY. ALL OTHER WINDOWS WILL REQUIRE ASSESSMENT ON SITE, AND MAY REQUIRE PIECING IN OF NEW TIMBER. REGLAZE ALL WINDOWS AND PAINT.
- REPAIR AND REFURBISH EXISTING EXTERNAL DOORS. INSTALL NEW HARDWARE.
- CONNECT ALL EXISTING DOWNPIPES TO NEW STORM WATER SYSTEM.
- REMOVE ALL ASBESTOS, INCLUDING REPLACING EX. ASBESTOS LINING SHEET WITH NEW CFC TO MATCH (INTERIOR AND EXTERIOR). PAINT.
- REMOVE REDUNDANT SERVICES. STRIP OUT ALL ELECTRICS, EXISTING LIGHT FITTINGS AND FIXTURES. PROVIDE NEW DISTRIBUTION BOARD FOR TENANT.
- PROVIDE NEW EXTERNAL LIGHTING.
- CLEAR DEBRIS AROUND BUILDINGS.
- REMOVE ALL FLOOR FINISHES, SAND AND SEAL TIMBER.
- REEROOF WITH NEW TILES TO MATCH EXISTING.
- REBUILD ROOF VENTS AS REQUIRED.
- REFIX BIRD BOARDS.
- REPLACE DAMAGED JOINERY THROUGHOUT. PAINT ALL JOINERY, CLADDING, POSTS, AND OTHER SURFACES THAT HAVE BEEN PREVIOUSLY PAINTED.
- REMOVE ALL EX. VERANDAHS.
- ALLOW TO REMOVE AND REPLACE ALL EXISTING WEATHERBOARDS WITH NEW TO MATCH, INCLUDING TIMBER TRIMS. ASSESSMENT OF BOARDS ABLE TO BE REINSTATED TO BE ASSESSED ON SITE.
- STRIP OUT EXISTING TOILETS, CAP SERVICES, AND LEAVE CLEAN AND LEVEL FOR FUTURE FITOUT BY TENANT.
- LANDSCAPE WORKS EXCLUDED - LANDSCAPING BY OTHERS.
- DISABILITY ACCESS WORKS EXCLUDED, TO BE INSTALLED BY TENANT.

**SITE WORKS**

- LOWER ACCRETED GROUND LEVELS AROUND BUILDING AS REQUIRED.
- REMOVE CONCRETE & BITUMEN PAVING CLOSE TO BUILDING.
- DECOMMISSION EX. STORMWATER SYSTEM. INSTALL NEW STORMWATER SYSTEM, INCLUDING NEW SOAK WELLS. CONNECT EX. DOWNPIPES TO NEW SYSTEM.

**LEGEND**

- BOARDED UP WINDOW.
- SWITCHBOARD.
- FIRE HOSE REEL.
- REPAIR CRACKED RENDER.
- REPAIR TIMBER VERANDAH EDGE.
- REBUILD TIMBER VERANDAH DECK.
- B# ROOM NUMBER.

ISSUED TO CLIENT 15-2019  
 REV DESCRIPTION DATE  
 THIS DRAWING SHOULD BE READ IN CONJUNCTION WITH ALL RELEVANT CONTRACTS, SPECIFICATIONS AND DRAWINGS. CONTRACTORS MUST VERIFY ALL DIMENSIONS AT THE JOB BEFORE COMMENCING ANY WORK OR MAKING ANY SHOP DRAWINGS.

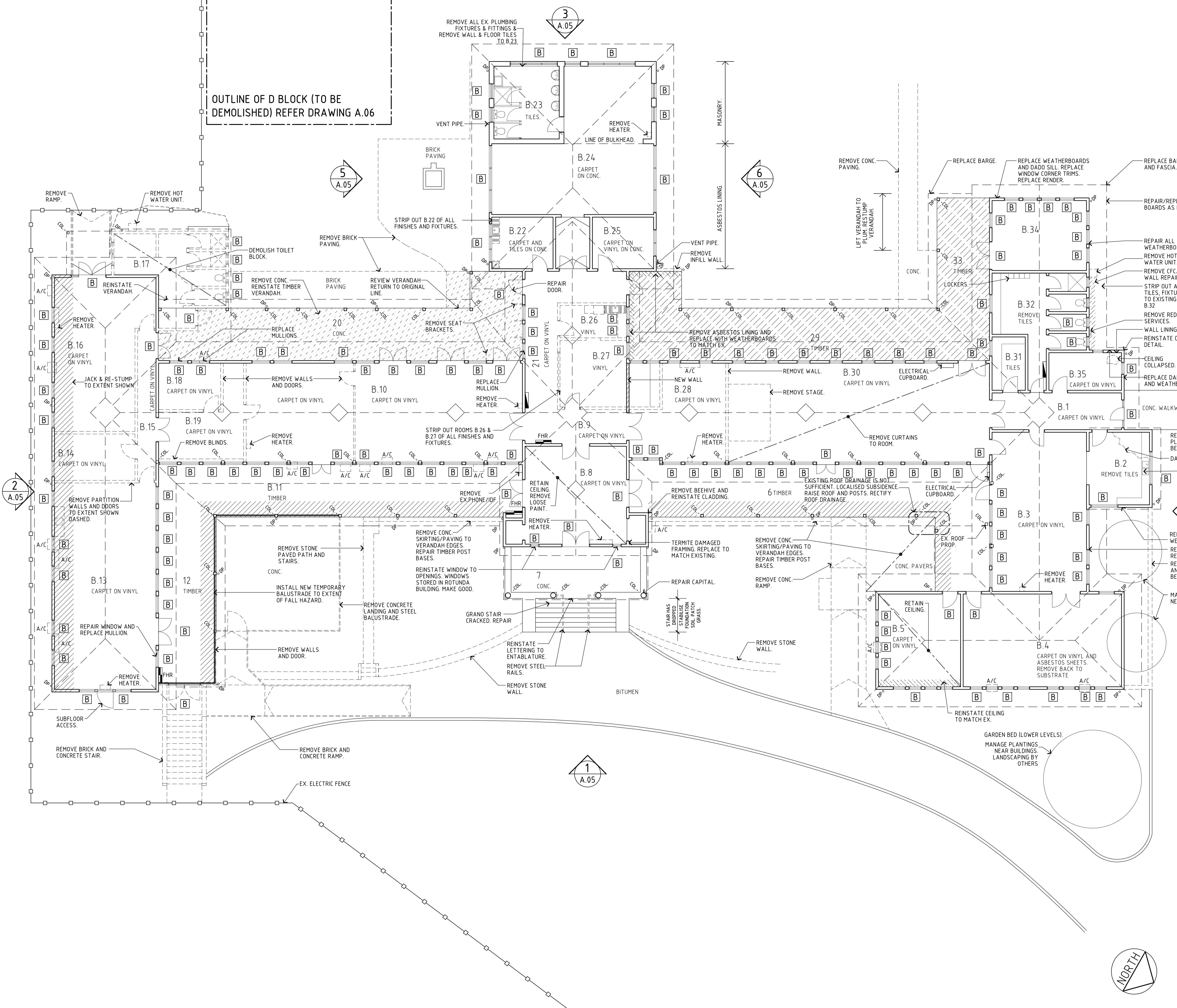
Unit 1/315 Rokeby Road Subiaco  
 Western Australia 6008  
 Telephone 08 9381 1666  
 Facsimile 08 9381 1566  
 mail@griffithsarchitects.com.au  
 ABN 91 277 671 706

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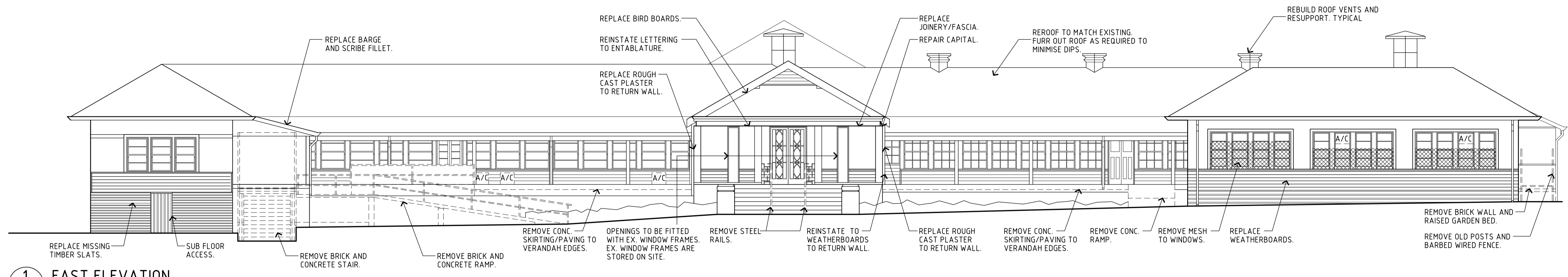
**HILLVIEW, VICTORIA PARK, WA  
 CONSERVATION WORKS  
 'B' BLOCK - FORMER WARD BLOCK  
 GROUND FLOOR PLAN**

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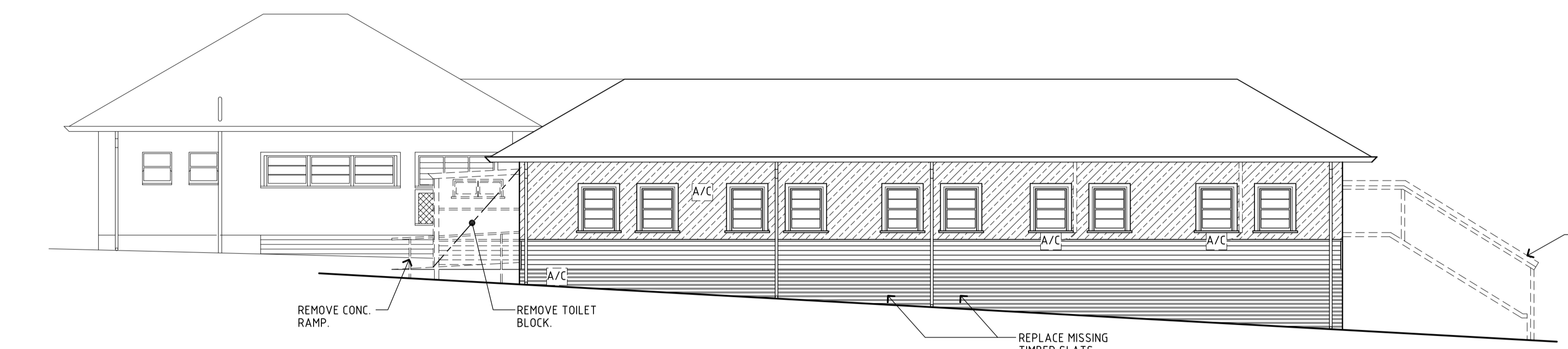
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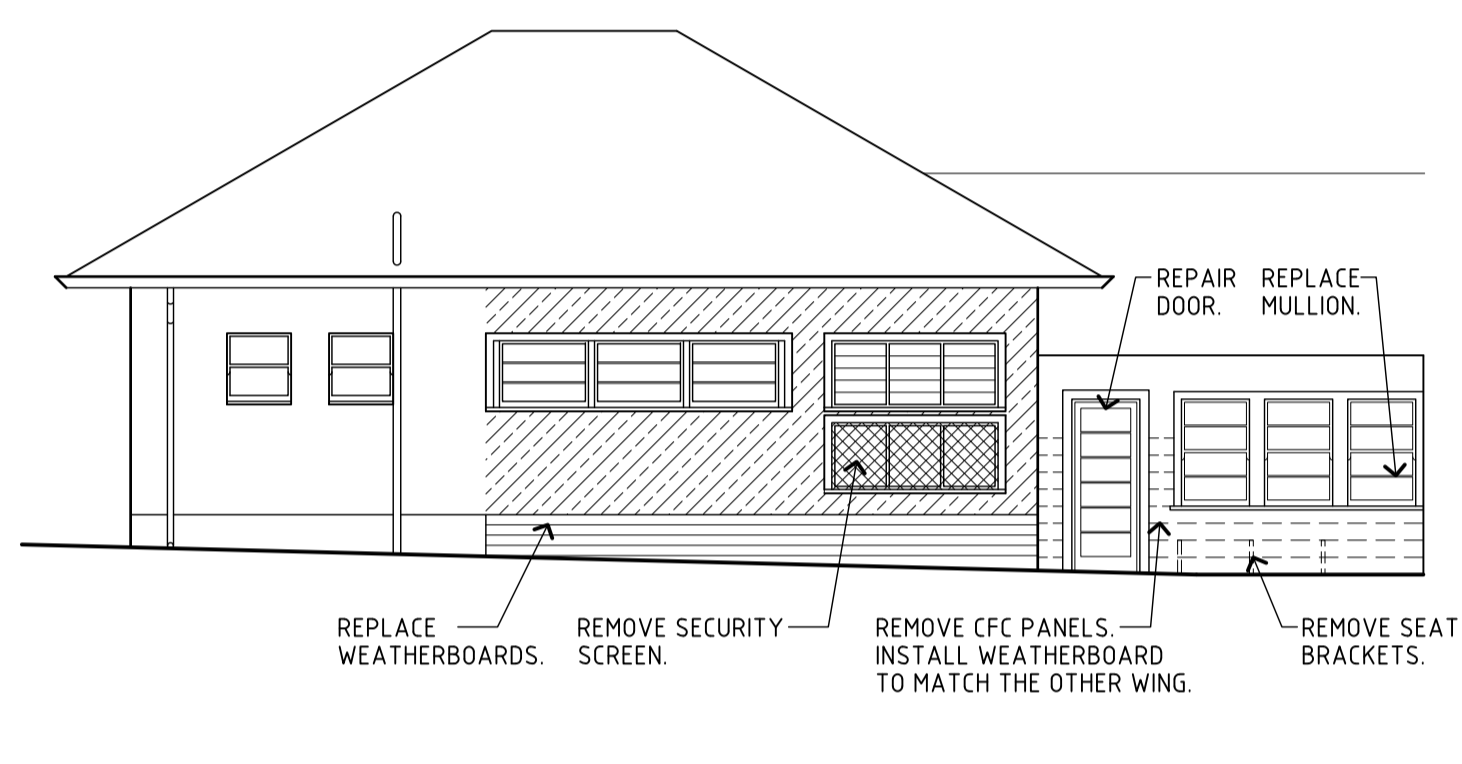
OUTLINE OF D BLOCK (TO BE DEMOLISHED) REFER DRAWING A.06



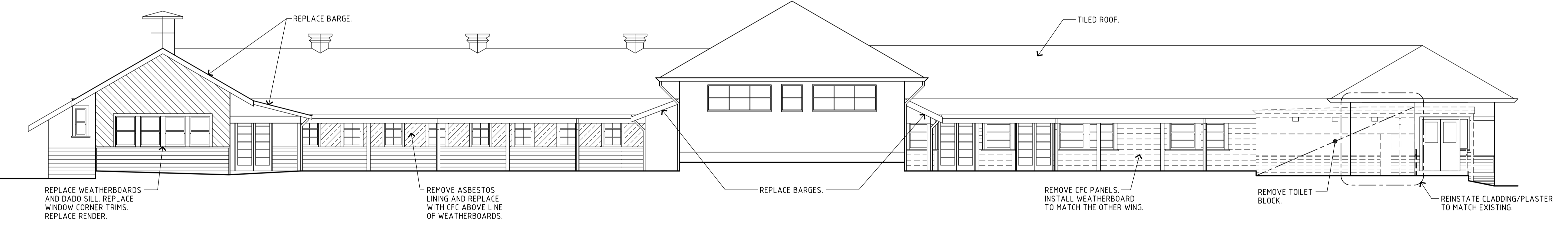
1 EAST ELEVATION  
A.04



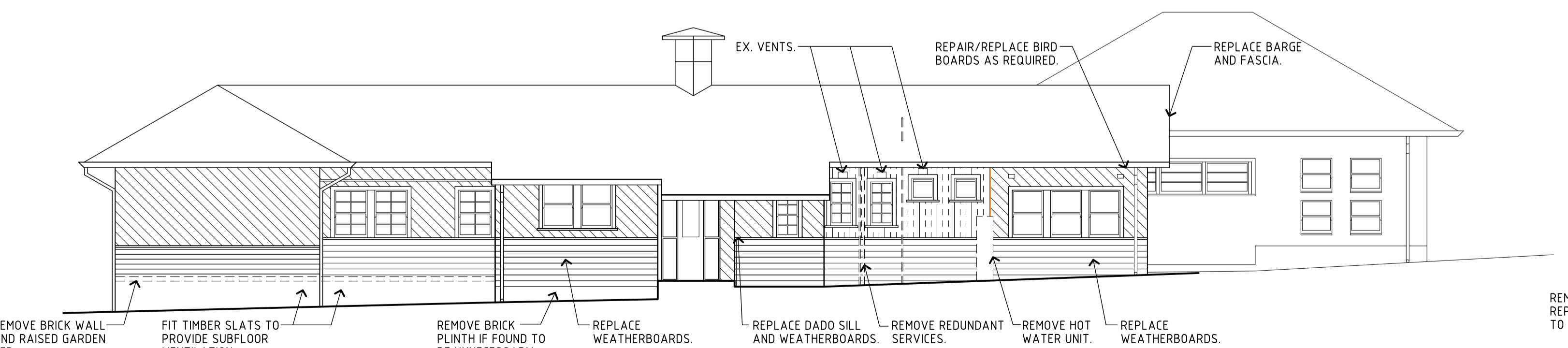
2 SOUTH ELEVATION  
A.04



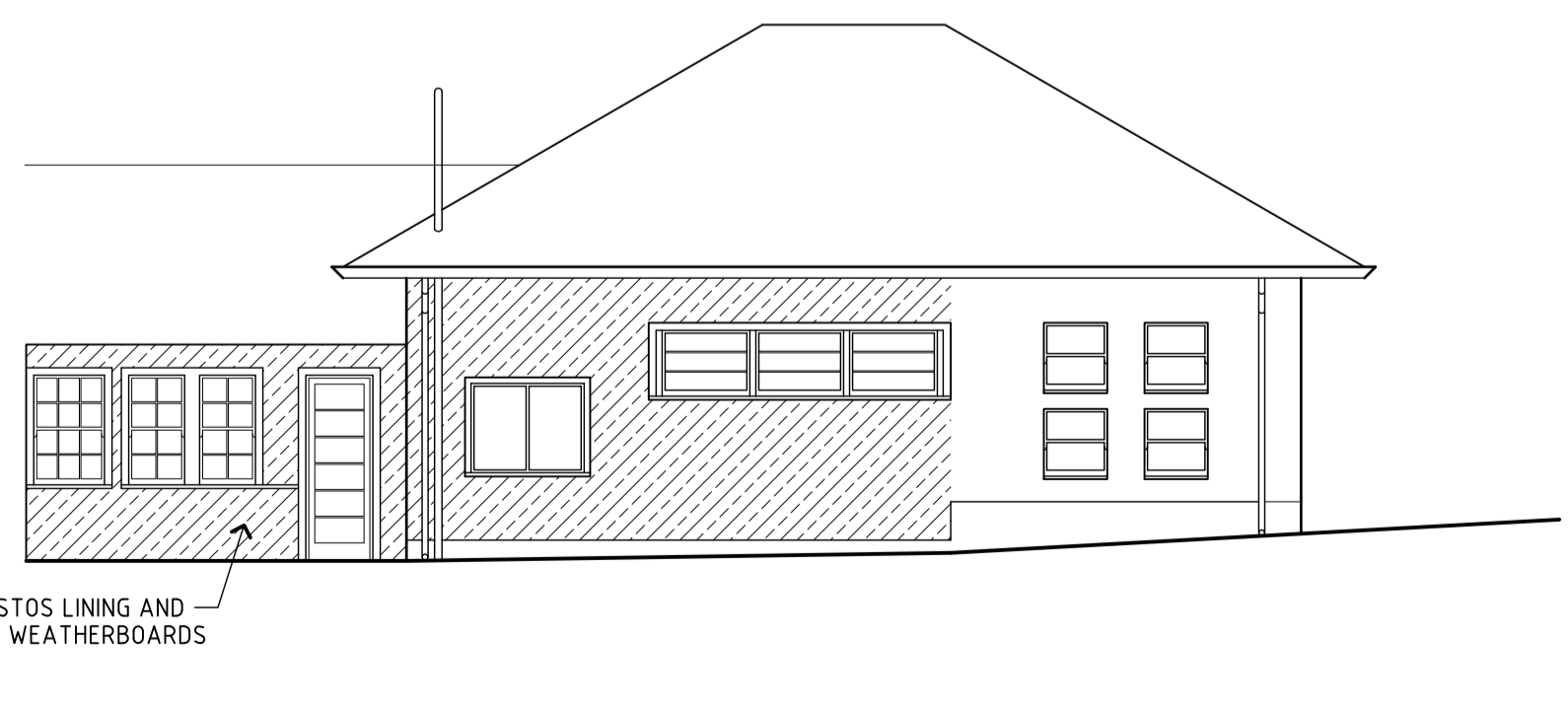
5 SOUTH ELEVATION  
A.04



3 WEST ELEVATION  
A.04



4 WEST ELEVATION  
A.04



6 WEST ELEVATION  
A.04

- GENERAL NOTES**
- REMOVE BOARDING TO ALL WINDOWS. REBUILD/REPAIR WINDOWS AS REQUIRED. WINDOWS SHELTERED BY VERANDAHS TO BE REGLAZED AND PAINTED ONLY. ALL OTHER WINDOWS WILL REQUIRE ASSESSMENT ON SITE, AND MAY REQUIRE PIECING IN OF NEW TIMBER. REGLAZE ALL WINDOWS AND PAINT.
  - REPAIR AND REFURBISH EXTERNAL DOORS. INSTALL NEW HARDWARE.
  - CONNECT ALL EXISTING DOWNPIPES TO NEW STORM WATER SYSTEM.
  - REMOVE ALL ASBESTOS, INCLUDING REPLACING EX. ASBESTOS LINING SHEET WITH NEW CFC TO MATCH. (INTERNAL AND EXTERNAL) PAINT
  - REMOVE REDUNDANT SERVICES. STRIP OUT ALL ELECTRICS. EXISTING LIGHT FITTINGS AND FIXTURES. PROVIDE NEW DISTRIBUTION BOARD FOR TENANT.
  - PROVIDE NEW EXTERNAL LIGHTING
  - CLEAR DEBRIS AROUND BUILDINGS.
  - REMOVE ALL FLOOR FINISHES, SAND AND SEAL TIMBER
  - REEROOF WITH NEW TILES TO MATCH EXISTING
  - REBUILD ROOF VENTS AS REQUIRED.
  - REFIX BIRD BOARDS.
  - REPLACE DAMAGED JOINERY THROUGHOUT. PAINT ALL JOINERY, CLADDING, POSTS, AND OTHER SURFACES THAT HAVE BEEN PREVIOUSLY PAINTED.
  - REBUILD ALL EX. VERANDAHS
  - ALLOW TO REMOVE AND REPLACE ALL EXISTING WEATHERBOARDS WITH NEW TO MATCH, INCLUDING TIMBER TRIMS. ASSESSMENT OF BOARDS ABLE TO BE REINSTATED TO BE ASSESSED ON SITE.
  - STRIP OUT EXISTING TOILETS, CAP SERVICES, AND LEAVE CLEAN AND LEVEL FOR FUTURE FITOUT BY TENANT
  - LANDSCAPE WORKS EXCLUDED - LANDSCAPING BY OTHERS
  - DISABILITY ACCESS EXCLUDED, TO BE INSTALLED BY TENANT

- ELEVATION NOTES**
- CLEAN BORE STAINING.
  - REPLACE ALL BARGES AND SCRIBE FILLET.
- SITE WORKS**
- LOWER ACCRETED GROUND LEVELS AROUND BUILDING AS REQUIRED.
  - REMOVAL OF CONCRETE PAVING CLOSE TO BUILDING.
  - LOCATE AND INVESTIGATE OPERATION OF STORM WATER SYSTEM. RETURN TO OPERATION OR PROVIDE NEW.

- LEGEND**
- TIMBER WEATHER BOARD.
  - TIMBER SLATS.
  - REMOVE CFC/RENDER WALL REPAIR AND REINSTATE
  - ROUGH CAST RENDER
  - REPLACE DAMAGED ROUGH CAST RENDER
  - REMOVE ASBESTOS LINING AND REPLACE WITH CFC. PAINT

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REV	DESCRIPTION	DATE
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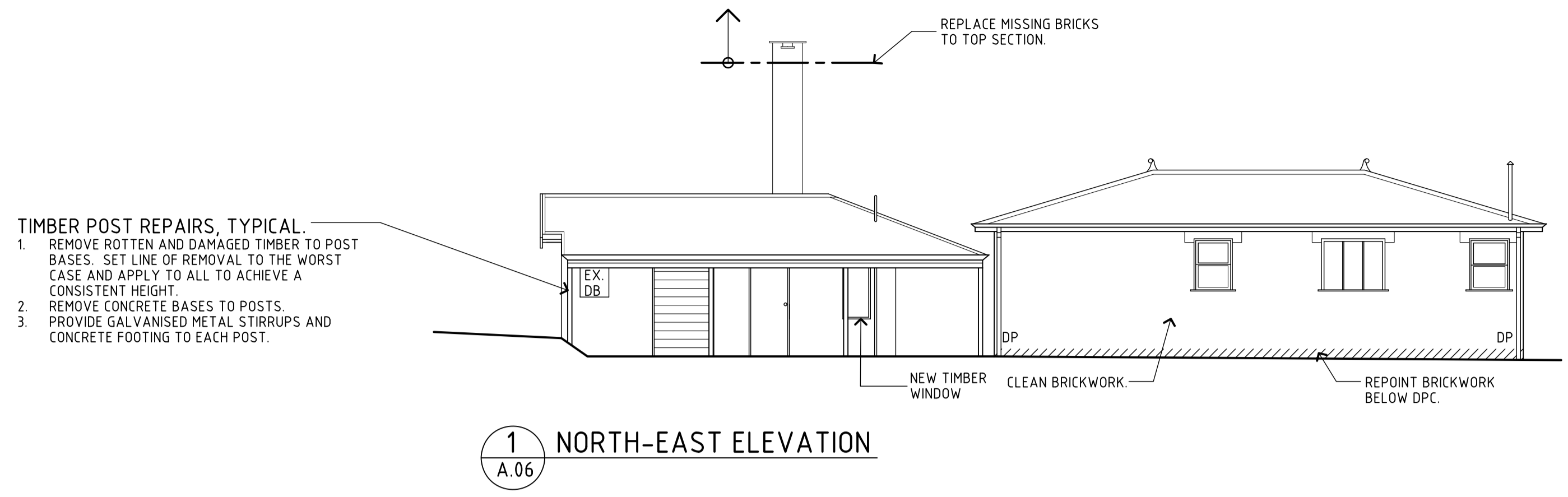
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ABN 91 277 671 706

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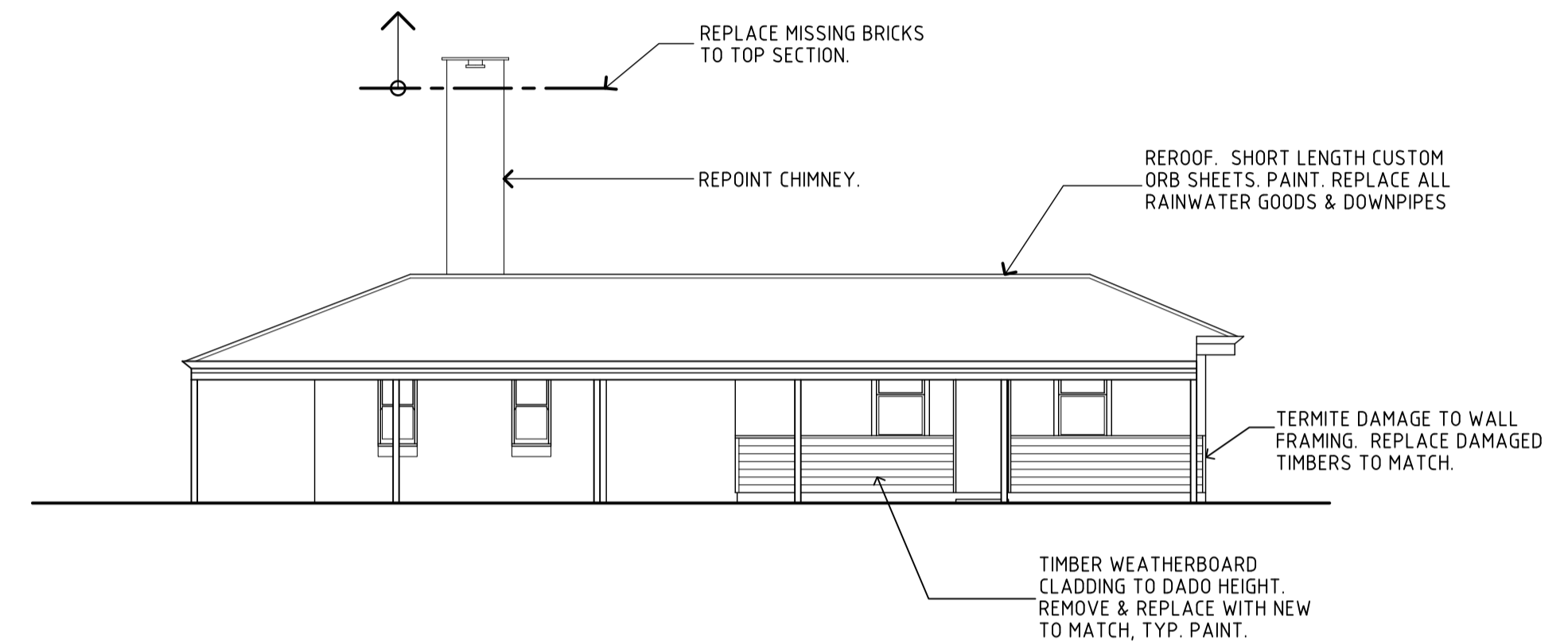
**HILLVIEW, VICTORIA PARK, WA  
CONSERVATION WORKS  
'B' BLOCK - FORMER WARD BLOCK  
ELEVATIONS**

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PROJ No.	19123	FILE No.	-	<b>A.05</b>

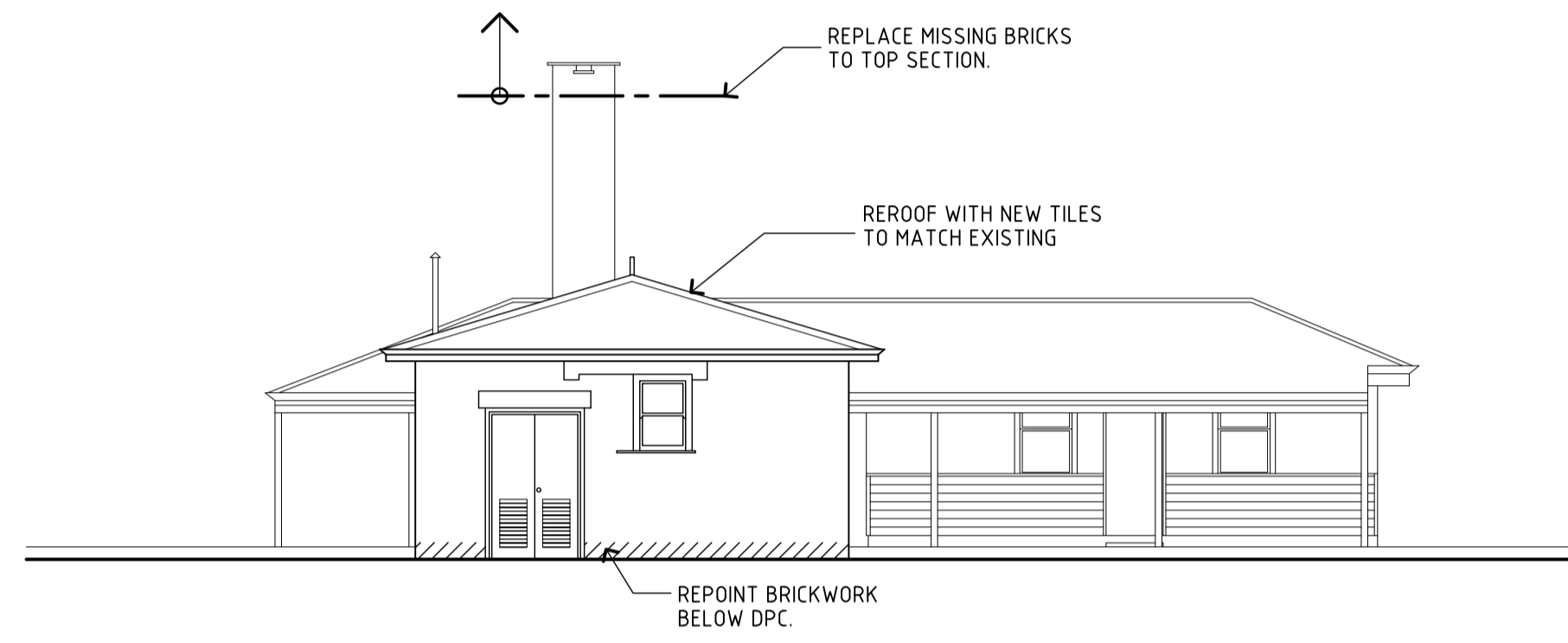




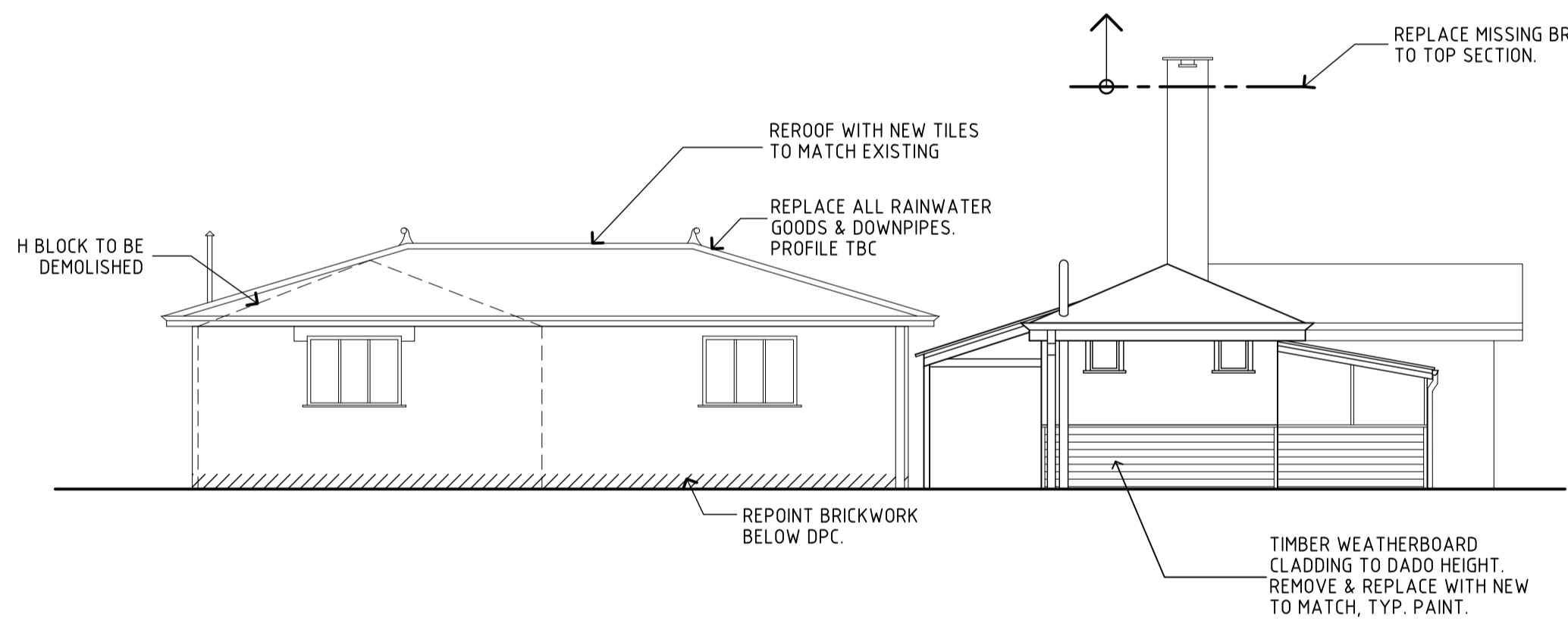
1 NORTH-EAST ELEVATION  
A.06



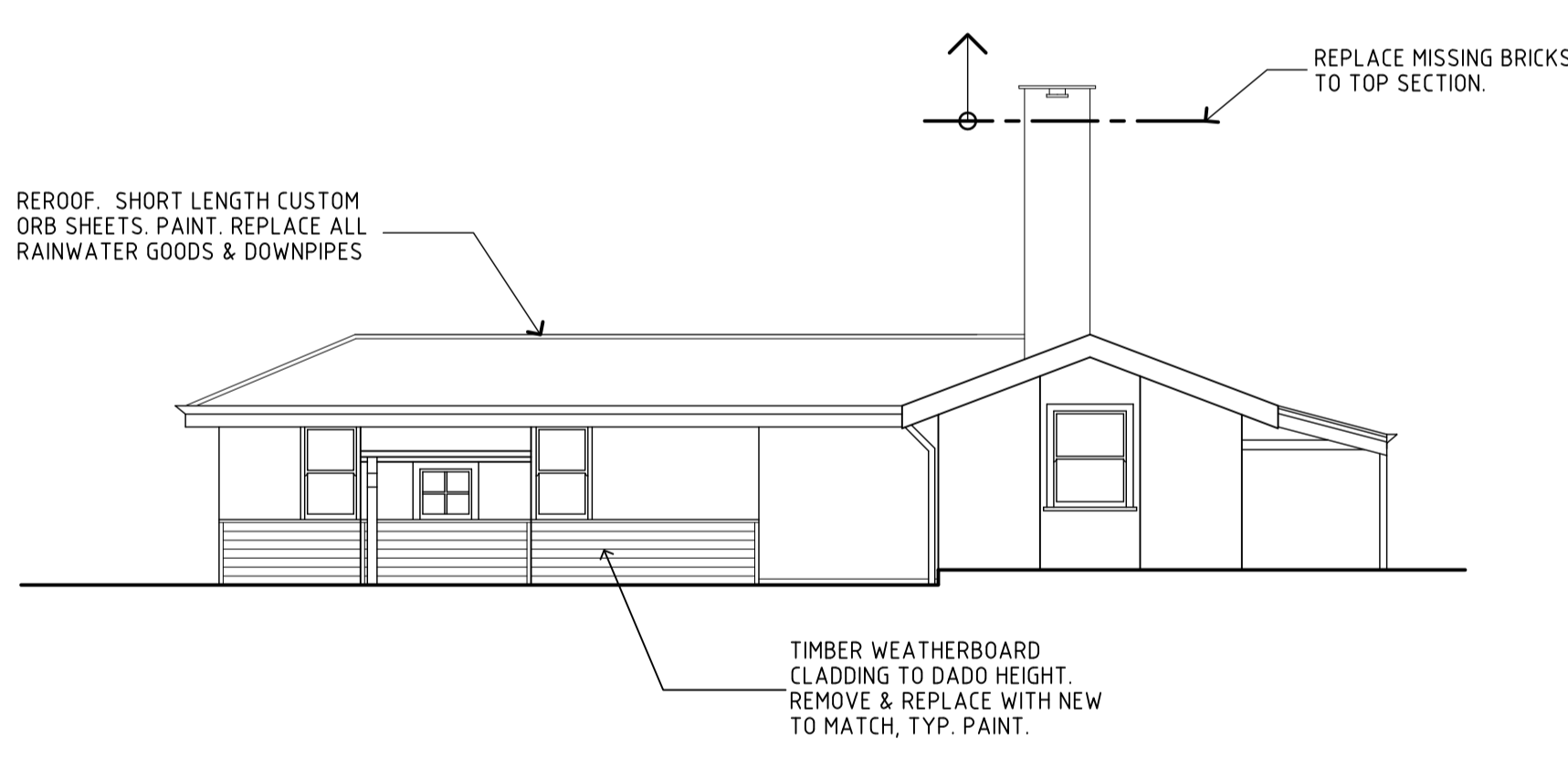
2 NORTH-WEST ELEVATION  
A.06



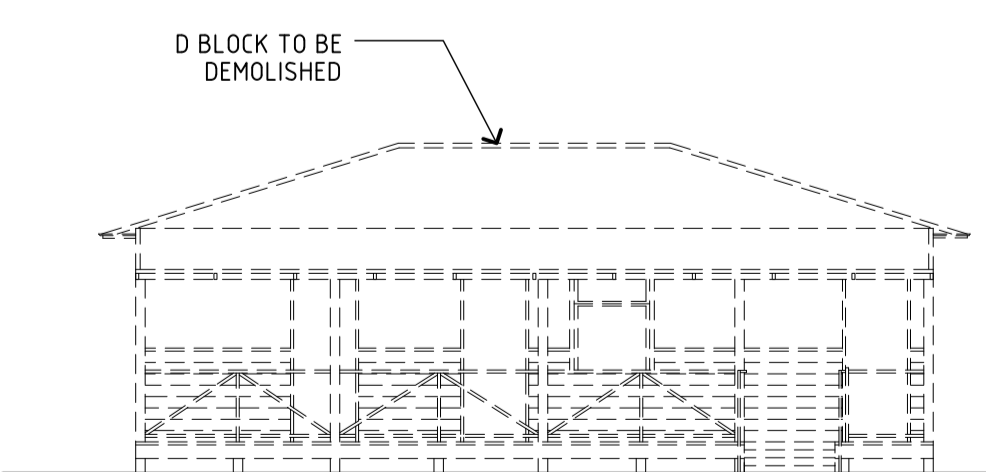
3 NORTH-WEST ELEVATION  
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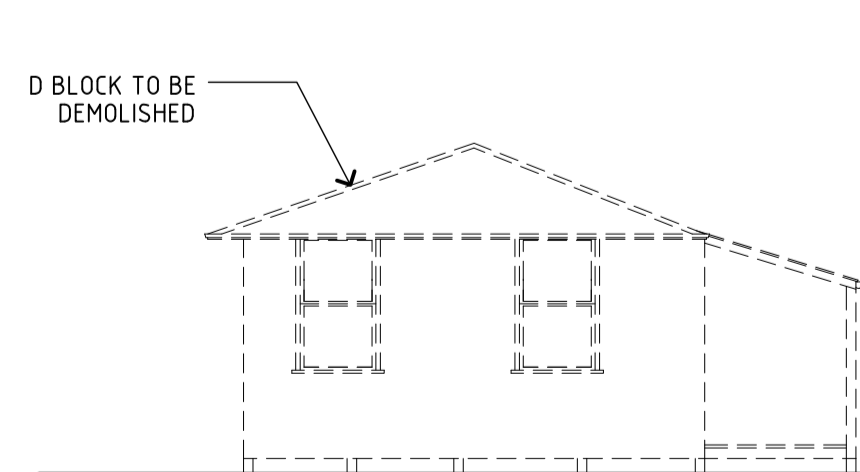
4 SOUTH-WEST ELEVATION  
A.06



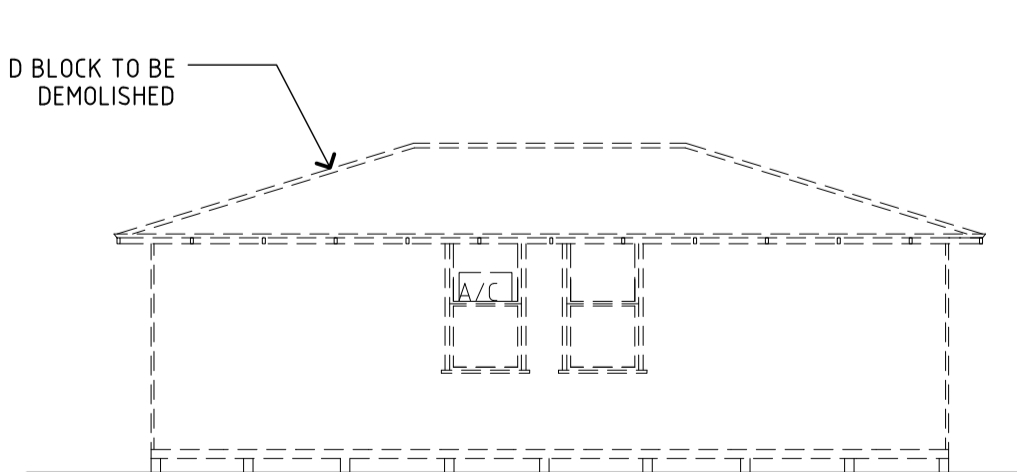
5 SOUTH-EAST ELEVATION  
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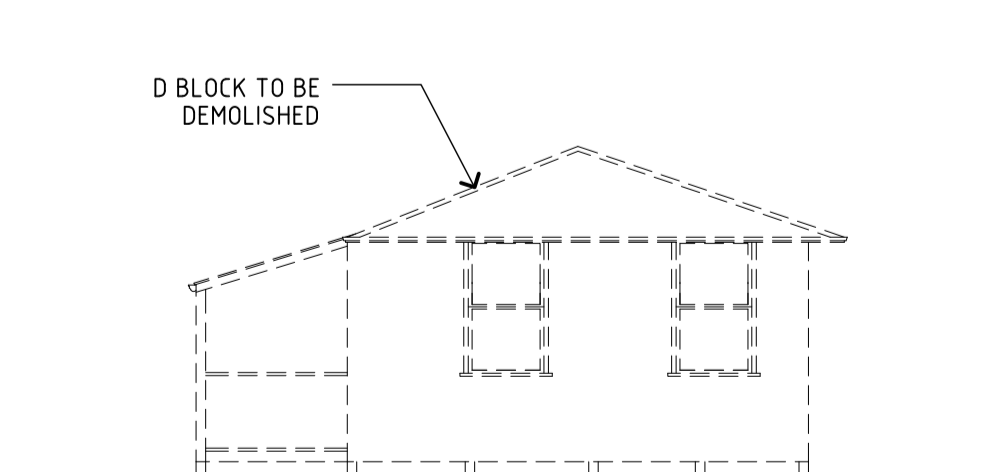
6 NORTH-EAST ELEVATION  
D BLOCK



7 SOUTH-EAST ELEVATION  
D BLOCK



8 SOUTH-WEST ELEVATION  
D BLOCK



9 NORTH-WEST ELEVATION  
D BLOCK

GENERAL NOTES

1. REMOVE ALL CEILINGS UNLESS NOTED OTHERWISE.
2. REMOVE BOARDING TO ALL WINDOWS. REBUILD/REPAIR WINDOWS AS REQUIRED. WINDOWS WILL REQUIRE ASSESSMENT ON SITE, AND MAY REQUIRE PIECING IN OF NEW TIMBER. REGLAZE ALL WINDOWS AND PAINT.
3. REPAIR/ REPLACE EXTERNAL DOORS. INSTALL NEW HARDWARE.
4. CONNECT ALL EXISTING DOWNPIPES TO NEW STORM WATER SYSTEM.
5. REMOVE ALL ASBESTOS, INCLUDING REPLACING EX. ASBESTOS LINING SHEET WITH NEW CFC TO MATCH PAINT.
6. REMOVE REDUNDANT SERVICES. STRIP OUT ALL ELECTRICS, EXISTING LIGHT FITTINGS AND FIXTURES. PROVIDE NEW DISTRIBUTION BOARD FOR TENANT.
7. PROVIDE NEW EXTERNAL LIGHTING.
8. CLEAR DEBRIS AROUND BUILDINGS.
9. REMOVE ALL FLOOR FINISHES, SAND AND SEAL TIMBER.
5. REROOF ALL BUILDINGS WITH NEW TO MATCH EX. ROOF MATERIAL, RAIN WATER GOODS, GUTTERING, FLASHING, DOWNPIPES ETC.
6. REPLACE DAMAGED JOINERY THROUGHOUT. PAINT ALL JOINERY, CLADDING, POSTS, AND OTHER SURFACES THAT HAVE BEEN PREVIOUSLY PAINTED.
7. ALLOW TO REMOVE AND REPLACE ALL EXISTING WEATHERBOARDS WITH NEW TO MATCH, INCLUDING TIMBER TRIMS. ASSESSMENT OF BOARDS ABLE TO BE REINSTATED TO BE ASSESSED ON SITE.
8. STRIP OUT EXISTING TOILETS, CAP SERVICES, AND LEAVE CLEAN AND LEVEL FOR FUTURE FITOUT BY TENANT.
9. LANDSCAPE WORKS EXCLUDED - LANDSCAPING BY OTHERS.
10. DISABILITY ACCESS WORKS EXCLUDED, TO BE INSTALLED BY TENANT.

SITE WORKS

1. REMOVE CONCRETE & BITUMEN PAVING CLOSE TO BUILDING WHERE NOTED, AND REPLACE WITH NEW.
2. DECOMMISSION EX. STORMWATER SYSTEM. INSTALL NEW STORMWATER SYSTEM, INCLUDING NEW SOAK WELLS. CONNECT EX. DOWNPIPES TO NEW SYSTEM.

LEGEND

- DB DISTRIBUTION BOARD
- DPC DAMP PROOF COURSE
- EX. EXISTING

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ABN 91 277 671 706

**Griffiths Architects**

HILLVIEW, VICTORIA PARK, WA  
CONSERVATION WORKS  
D, G AND H BLOCK  
ELEVATIONS

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CHECKED	PG	PRINCIPAL		0 2.5m
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SCALE	1:100 @ A1	DATE	APRIL 2019	DRAWING No.
PROJ No.	19123	FILE No.	-	<b>A.07</b>

**ANNEXURE D - FUNDING AGREEMENT**

DRAFT





**Australian Government**

**Department of Infrastructure, Transport,  
Regional Development and Communications**

**DEED OF AGREEMENT**

**FUNDING AGREEMENT IN RELATION TO THE EDWARD MILLEN  
REDEVELOPMENT PROJECT**

The Commonwealth of Australia as represented by the Department of  
Infrastructure, Transport, Regional Development and Communications  
ABN 86 267 354 017

Town of Victoria Park ABN 77 284 859 739

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**FUNDING AGREEMENT (LONG FORM)**

**FUNDING AGREEMENT IN RELATION TO THE EDWARD MILLEN REDEVELOPMENT PROJECT (CDG1529)**

**Parties**

---

This Funding Agreement is made between and binds the following parties:

1. **The Commonwealth of Australia** as represented by the Department of Infrastructure, Transport, Regional Development and Communications  
ABN 86 267 354 017, 111 Alinga Street, Canberra, Australian Capital Territory  
(**Commonwealth**)
2. **Town of Victoria Park**  
ABN 77 284 859 739, Locked Bag 347, Victoria Park, WA, 6979  
(**Recipient**)

**Context**

---

- A. The Commonwealth is undertaking the Community Development Grants programme, which was to support needed infrastructure that promotes stable, secure and viable local and regional economies.
- B. The Recipient submitted an application to obtain funding under the Programme to conduct the Activity. The Activity will contribute to the completion of the Project, and will help achieve the objectives of the Programme.
- C. The Commonwealth has agreed to provide Funding to the Recipient to support the carrying out of the Activity.
- D. The Recipient agrees to accept the Funding for the purposes, and subject to the terms and conditions, set out in this Agreement.
- E. The Recipient agrees that it is a precondition of entitlement to the Funding that the Recipient must:
  - a. provide to the Commonwealth with satisfactory evidence that the Recipient is registered with a Commonwealth, State or Territory Regulatory Body or satisfactory evidence of the Recipient's correct statutory authority name;
  - b. correctly use the Recipient's name on all documentation provided to the Commonwealth;
  - c. have an Australian Business Number (ABN);
  - d. immediately notify the Commonwealth if the Recipient ceases to hold an ABN;
  - e. correctly quote the Recipient's ABN on all documentation provided to the Commonwealth;
  - f. supply proof of the Recipient's GST status, if requested by the Commonwealth; and
  - g. immediately notify the Commonwealth of changes to the Recipient's GST status.

---

## **Operative provisions**

---

In consideration of the mutual promises contained in this Agreement, the parties to this Funding Agreement agree as follows:

### **1. Interpretation**

---

#### **1.1. Definitions**

1.1.1. In this Agreement, unless the context indicates otherwise:

- |                                 |   |
|---------------------------------|---|
| <b>ABN</b>                      | means (Australian Business Number) as set out in section 41 of the A New Tax System (Australian Business Number) Act 1999 (Cth).  |
| <b>Activity</b>                 | means the Activity described in Item A and includes the provision to the Commonwealth of the Activity Material;   |
| <b>Activity Completion date</b> | means the date that the Activity must be completed by as set out in item A.5 of the Schedule.   |
| <b>Activity Material</b>        | means any Material:<br>a. created by the Recipient for the purpose of this Agreement;<br>b. provided or required to be provided to the Commonwealth under the Agreement; or<br>c. derived at any time from the Material referred to in paragraphs a or b,<br>and includes<br>d. any Existing Material incorporated in the Material referred to in paragraphs b or c; and<br>e. any Reports; |
| <b>Activity Objectives</b>      | means the objectives of the Activity described in Item A.6 of the Schedule;   |
| <b>Activity Period</b>          | means the period specified in Item A during which the Activity must be completed;   |
| <b>Agreement</b>                | means this document and includes any Schedules and Annexures;   |
| <b>Annexure</b>                 | means any annexure to Schedule 1;   |

<b>Approved Auditor</b>	means a person who is: <ul style="list-style-type: none"><li>a. registered as a company auditor under the Corporations Act 2001 (Cth) or an appropriately qualified member of the Institute of Chartered Accountants in Australia or of CPA Australia;</li><li>b. not a principal, member, shareholder, officer, agent, subcontractor, employee or related entity of the Recipient or of a related body corporate (the terms 'related entity' and 'related body corporate' have the same meaning as in section 9 of the Corporations Act 2001 (Cth)); and</li><li>c. not the Recipient's Qualified Accountant;</li></ul>
<b>Asset</b>	means any item of property, purchased, leased, hired, financed, created or otherwise brought into existence either wholly or in part with use of the Funding, which has a value of over \$5,000 exclusive of GST, but excludes any Intellectual Property Rights and Real Property (including any property once it becomes part of the structure of Real Property).
<b>Auditor-General</b>	means the office established under the Auditor-General Act 1997 (Cth) and includes any other entity that may, from time to time, perform the functions of that office;
<b>Australian Accounting Standards</b>	refers to the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the Australian Securities and Investments Commission Act 2001 (Cth);
<b>Australian Auditing Standards</b>	refers to the standards made by the Auditing and Assurance Standards Board created by section 227A of the Australian Securities and Investments Commission Act 2001 (Cth);
<b>Australian Privacy Principle</b>	has the same meaning as it has in the Privacy Act 1988 (Cth).
<b>Budget</b>	means the budget set out in Annexure B of the Schedule;
<b>Business Day (in a place)</b>	means a weekday other than a public holiday in the place specified or, if no place is specified, in the State or Territory specified in Item M of the Schedule;
<b>Capital Works</b>	means any part of the Activity that comprises construction and building activities and includes the Capital Works listed at item E.2.2 of the Schedule.



<b>Commence Construction</b>	means to begin a continuous programme of on-site construction for the Activity's Capital Works. For the purposes of this definition, only significant and continuous site preparation work such as major clearing or excavation or placement or assembly, or installation of facilities or equipment at the site constitute a programme of on-site construction.
<b>Commonwealth</b>	where the context permits, includes officers, delegates, employees and agents and successors of the Department of Infrastructure, Transport, Regional Development and Communications;
<b>Commonwealth Material</b>	means any Material: a. provided by the Commonwealth to the Recipient for the purposes of this Agreement; or b. derived at any time from the Material referred to in paragraph a;
<b>Completion Date</b>	means the day after the Recipient has done all that it is required to do under clauses 2 and 6 of this Agreement to the satisfaction of the Commonwealth;
<b>Constitution</b>	means (depending on the context): a. a company's constitution, which (where relevant) includes rules and any amendments that are part of the company's constitution, or b. in relation to any other kind of body: i. the body's charter, rules or memorandum, or ii. any instrument or Law constituting or defining the constitution of the body or governing the activities of the body or its members.
<b>Cost Estimate</b>	means the estimate for the Project which is the sum of the Funding and Other Contributions specified in Annexure B to the Schedule.
<b>Cost Item</b>	means an item of expenditure specified in the Budget at Annexure B to the Schedule.

<b>Confidential Information</b>	means: <ul style="list-style-type: none"><li>a. the information described in Item N; and</li><li>b. information that the parties agree in writing after the Date of this Agreement is confidential information for the purposes of this Agreement;</li></ul>
<b>Date of this Agreement</b>	means the date written on the execution page of this Agreement, or if no date or more than one date is written there, then the date on which the Agreement is signed by the last party to do so;
<b>Depreciated</b>	means the amount representing the reduction in value of an Asset calculated in accordance with Australian Accounting Standards;
<b>Director</b>	means any of the following: <ul style="list-style-type: none"><li>a. a person appointed to the position of a director or alternate director and acting in that capacity for a body corporate within the meaning of the Corporations Act 2001 (Cth) regardless of the name given to their position;</li><li>b. a member of the governing committee of an Aboriginal and Torres Strait Islander corporation under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth);</li><li>c. a member of the committee of an organisation incorporated pursuant to State or Territory laws relating to the incorporation of associations; or</li><li>d. a member of the board, committee or group of persons (however described) that is responsible for managing or overseeing the affairs of the body corporate;</li></ul>
<b>Dispose</b>	means to sell, licence, lease or sublease, or otherwise transfer or give up ownership or the right to occupy or use, or to enter into an agreement to do any of the preceding acts and 'Disposal' means the method of so disposing;
<b>Existing Material</b>	means all Material in existence prior to the Date of this Agreement: <ul style="list-style-type: none"><li>a. incorporated in;</li><li>b. supplied with, or as part of; or</li><li>c. required to be supplied with, or as part of, the Activity Material;</li></ul>

- Financial Year** means each period from 1 July to the following 30 June occurring during the Term, or any part of such a period occurring at the beginning or end of the Term;
- Funding** means:
- a. the amount or amounts (in cash or kind) payable by the Commonwealth under this Agreement as specified in Item A.7 and Annexure A of this Agreement, and
  - b. any interest earned on the Funding once paid by the Commonwealth to the Recipient;
- GST** has the meaning that it has in the A New Tax System (Goods and Services Tax) Act 1999 (Cth);
- Information Officer** means any of the information officers appointed under the Australian Information Commissioner Act 2010 (Cth) when performing privacy functions as defined in that Act;
- Intellectual Property** includes:
- a. all copyright (including rights in relation to phonograms and broadcasts);
  - b. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs, circuit layouts; and
  - c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;
- but does not include:
- d. Moral Rights;
  - e. the non-proprietary rights of performers; or
  - f. rights in relation to confidential information;

<b>Law</b>	<p>includes:</p> <ol style="list-style-type: none"><li>a. Acts of the Commonwealth and the State(s) and Territory(s) in which the Activity will be undertaken, and any other relevant State or Territory;</li><li>b. ordinances, regulations, by-laws, orders and proclamations or other instruments of legal effect made under those Acts referred to in paragraph (a);</li><li>c. directions by any person exercising statutory powers regarding the Recipient or the Activity, including the Real Property; and</li><li>d. all the requirements, standard, approvals, licences, registrations or permits of any government (including local government) department, authority, agency or regulatory body that apply to the Activity, including the Real Property;</li></ol>
<b>Material</b>	<p>means anything in relation to which Intellectual Property rights arise;</p>
<b>Milestone</b>	<p>means a milestone or stage of completion of the Activity as set out in Annexure A of this Agreement;</p>
<b>Moral Rights</b>	<p>includes the following rights of an author of copyright Material:</p> <ol style="list-style-type: none"><li>a. the right of attribution of authorship;</li><li>b. the right of integrity of authorship; and</li><li>c. the right not to have authorship falsely attributed;</li></ol>
<b>Open Access Licence</b>	<p>means a licence to the public on broad open access terms that allows any member of the public to perform a wide range of acts in respect of the material subject to certain restrictions. An Open Access Licence includes any Australian Government open access licence and any Creative Commons Attribution licence (see <a href="http://creativecommons.org.au/learn-more/licences">http://creativecommons.org.au/learn-more/licences</a>);</p>
<b>Operational</b>	<p>means that the completed Project is operating in a way that enables it to achieve its Purpose;</p>
<b>Operational Period</b>	<p>means the period during which the Recipient must keep the completed Project Operational;</p>

<b>Other Contributions</b>	means financial or in-kind resources (with in-kind resources valued at cost other than the Funding, which are specified in Item C and Annexure B of the Schedule and are to be used by the Recipient to perform the Activity or the Project;
<b>Personnel</b>	means: <ol style="list-style-type: none"><li>in relation to the Recipient - any natural person who is an officer, employee, agent, or professional advisor of the Recipient or its subcontractors; and</li><li>in relation to the Commonwealth - any natural person, other than a person referred to in paragraph a, who is an officer, employee, agent or professional advisor of the Commonwealth;</li></ol>
<b>Privacy Act</b>	refers to the Privacy Act 1988 (Cth);
<b>Programme</b>	means the Community Development Grants programme under which the Commonwealth is able to provide Funding to the Recipient.
<b>Programme Guidelines</b>	refers to the guidelines for the Programme, if any, as described in Item A of the Schedule;
<b>Programme Objectives</b>	means the objectives of the Programme, as set out in the Programme Guidelines or otherwise in Item A of the Schedule;
<b>Project</b>	has the meaning given in Item A.2 of the Schedule and includes the Activity;
<b>Project Completion Date</b>	means the date specified in item A.2 of the Schedule, which is the date by which the Recipient must complete the Project;
<b>Purpose</b>	means the purpose of the Project as set out at item A.3 of the Schedule;
<b>Qualified Accountant</b>	means a person who is a member of the Institute of Chartered Accountants in Australia or of CPA Australia;
<b>Recipient</b>	includes, where the context permits, the officers, employees, agents, volunteers and subcontractors, and successors of the Recipient;
<b>Records</b>	includes documents, information and data stored by any means and all copies and extracts of the same;

<b>Report</b>	means Activity Material that is provided to the Commonwealth for reporting purposes as stipulated in Item D of the Schedule;
<b>Real Property</b>	means: a. any land, buildings or fixtures including the Capital Works (both during and after completion) and the Works Locations; and b. any interest in the property specified in paragraph (a); that are purchased, leased, upgraded or otherwise created or brought into existence wholly or in part with the use of the Funding and includes the property listed at item E.2.1 of the Schedule.
<b>Schedule</b>	means the schedule to this Agreement and may include Annexures and incorporate other documents by reference;
<b>Specified Personnel</b>	means the Recipient's Personnel specified in Item I as Personnel required to undertake all or any part of the Activity;
<b>Term</b>	refers to the period described in clause 1.4.1 of this Agreement;
<b>Third Party Interest</b>	means any legal or equitable right, interest, power or remedy in favour of any person other than the Commonwealth or the Recipient in connection with the Agreement, including any right of possession, receivership, control or power of sale, and any mortgage, charge, security or other interest;
<b>Undepreciated</b>	in relation to the value of an Asset, means the value of the Asset which has not been Depreciated; and
<b>Works Location</b>	means a location where the Capital Works are to be undertaken including any premises in, or land on, which those Capital Works are to be undertaken and includes a Works Location listed in item E.2.3 of the Schedule.

## 1.2. Interpretation

1.2.1. In this Agreement, unless the contrary intention appears:

- a. words importing a gender include any other gender;
- b. words in the singular include the plural and words in the plural include the singular;

- c. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- d. words importing a person include a partnership and a body whether corporate or otherwise;
- e. a reference to dollars is a reference to Australian dollars;
- f. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- g. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- h. the use of the word “includes” or “including” in relation to a right or obligation of a party, does not limit or restrict the scope of that right or obligation;
- i. a reference to a clause is a reference to a clause in this Agreement;
- j. a reference to an Item is a reference to an Item in the Schedule;
- k. the Schedule and any attachments form part of the Agreement;
- l. if any conflict arises between the terms and conditions contained in the clauses of this Agreement and any part of the Schedule (and attachments if any), the terms and conditions of the clauses prevail; and
- m. if any conflict arises between any part of the Schedule and any part of an attachment, the Schedule prevails.

### 1.3. **Guidance on construction of Agreement**

- 1.3.1. This Agreement records the entire agreement between the parties in relation to its subject matter.
- 1.3.2. As far as possible all provisions of this Agreement will be construed so as not to be void or otherwise unenforceable.
- 1.3.3. If any clause in this Agreement is void or otherwise unenforceable then that clause will be severed to the extent it is void and unenforceable and the rest of the Agreement remains in force.
- 1.3.4. A provision of this Agreement will not be construed to the disadvantage of a party solely on the basis that it proposed or prepared that provision.
- 1.3.5. This Agreement may be executed in counterparts. All executed counterparts constitute one document.

### 1.4. **Duration of Term**

- 1.4.1. The Term of this Agreement commences on the Date of the Agreement and, unless terminated earlier, it expires on the Completion Date.

## **2. Activity, Project and Operational Period**

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### **2.1. Conduct of Activity**

2.1.1. The Recipient agrees to carry out the Activity:

- a. to achieve the Activity Objectives;
- b. to assist the Programme to meet the Programme Objectives;
- c. to meet the Milestones;
- d. within the Activity Period;
- e. in an efficient, effective, economical and ethical manner;
- f. in accordance with this Agreement; and
- g. diligently and to a high standard.

2.1.2. Where the Commonwealth is satisfied that the Recipient does not have the capacity to adequately:

- a. manage the Funding; or
- b. undertake the Activity in accordance with this Agreement,  
the Commonwealth may by written notice immediately:
- c. suspend, reduce or cease the release of Funding to the Recipient; and/or
- d. require the Recipient to refund some or all of the Funding to the Commonwealth; or
- e. terminate the Agreement in accordance with the provisions of clause 17.

### **2.2. Liaison and monitoring**

2.2.1. The Recipient agrees to:

- a. liaise with and provide information to the Commonwealth as reasonably notified by the Commonwealth; and
- b. comply with all of the Commonwealth's reasonable requests, directions or monitoring requirements.

2.2.2. In relation to conducting a review and final evaluation of the Programme, the Recipient agrees to:

- a. provide all reasonable assistance required by the Commonwealth;
- b. respond to all of the Commonwealth's reasonable requests; and
- c. provide any information the Commonwealth reasonably requires.

2.2.3. Each of the parties may nominate, from time to time, a person who has authority to receive and sign notices and written communications for each of them under this Agreement and accept any request or direction in relation to the Activity.



**2.3. Subcontractors**

- 2.3.1. The Recipient is fully responsible for the performance of the Recipient's obligations under this Agreement, even though the Recipient may have subcontracted any of them.
- 2.3.2. Unless the Commonwealth agrees otherwise, the Recipient must have a written contract with each of the Recipient's subcontractors (subcontract) and ensure that each subcontract is consistent with, and allows the Recipient to give effect to, the Recipient's obligations under this Agreement. If requested by the Commonwealth, the Recipient must notify the Commonwealth of any subcontractors appointed to carry out any of the Recipient's obligations under this Agreement. The Recipient must notify the Commonwealth no later than 20 Business Days after the request from the Commonwealth.
- 2.3.3. The Recipient is responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out and for ensuring that such work meets the requirements of this Agreement. The Commonwealth may direct the Recipient to terminate a subcontracting arrangement by notifying the Recipient in writing.
- 2.3.4. Upon receipt of a written notice from the Commonwealth directing the Recipient to terminate a subcontracting arrangement, the Recipient must, as soon as practicable (or as the Commonwealth may direct in the notice), cease using that subcontractor to perform any of the Recipient's obligations unless the Commonwealth directs that the subcontractor be replaced immediately, in which case the Recipient must comply with the direction.
- 2.3.5. If the Commonwealth directs the Recipient to terminate a subcontracting arrangement, the Recipient remains liable under this Agreement for the past acts or omissions of the Recipient's subcontractors as if they were current subcontractors.
- 2.3.6. The Recipient must, in any subcontract placed with a subcontractor, reserve a right of termination to take account of:
- a. The Commonwealth's right to direct the Recipient to terminate that subcontract under subclause 2.3; and
  - b. The Commonwealth's right of termination under clause 17,
- and the Recipient must make use of that right in the event of a termination by the Commonwealth.
- 2.3.7. The Recipient must, in any subcontract placed with a subcontractor, include a requirement for insurance that is consistent with the requirement for insurance under clause 21.5.
- 2.3.8. The Recipient must not enter into a subcontract under this Agreement with a subcontractor named by the Director of the Workplace Gender Equality Agency as an employer currently not complying with the Workplace Gender Equality Act 2012 (Cth).
- 2.3.9. For the purpose of this Agreement, 'subcontractor' includes any other member of the Recipient's consortium who is involved in the performance of the Activity.

2.4. **Reserved**

2.5. **Responsibility of the Recipient**

2.5.1. The Recipient is fully responsible for the performance of the Activity and for ensuring compliance with the requirements of this Agreement, and will not be relieved of that responsibility because of any:

- a. involvement by the Commonwealth in the performance of the Activity;
- b. subcontracting of the Activity;
- c. acceptance by the Commonwealth of Specified Personnel; or
- d. payment of any amount of Funding to the Recipient.

2.6. **Reports**

2.6.1. The Recipient agrees to provide to the Commonwealth written Reports in the manner specified in Item D of the Schedule.

2.7. **Project**

2.7.1. The Recipient must complete the Project by the Project Completion Date.

2.8. **Operational Period**

2.8.1. The Recipient must keep the completed Project Operational during the Operational Period specified in Item A.4 of the Schedule.

**2A. Capital Works**

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2A.1. **Performance**

2A.1.1 The Recipient must perform the Capital Works:

- a. in accordance with the designs and plans submitted by the Recipient to the Commonwealth;
- b. in a good and workmanlike manner by qualified tradespeople; and
- c. with a minimum of delay.

2A.2. **Applicable Laws**

2A.2.1 The Recipient warrants and agrees that the Capital Works (whether undertaken before, on or after the Date of this Agreement) have been (if applicable) and will be carried out in accordance with all applicable Laws including, but not limited to, all necessary planning and regulatory approvals.

2A.2.2 The Recipient agrees to ensure that:

- a. the Works Locations comply at all times with all applicable Laws regarding their use as a site for the Capital Works; and
- b. the completed Capital Works comply with all Laws relating to their ongoing use throughout the Operational Period.

### 2A.3. **Commence Construction**

- a. The Recipient must Commence Construction required for the Activity within twelve months of the Date of this Agreement;
- b. The Recipient must notify the Commonwealth that the Recipient has Commenced Construction for the Activity, within five (5) Business Days of Commencing Construction; and
- c. If the Recipient fails to Commence Construction required for the Activity within twelve months of the Date of this Agreement, the Commonwealth may give the Recipient notice requiring the Recipient to repay the Commonwealth all or part of the Funding that the Commonwealth has previously paid to the Recipient within the period specified in the notice.

### 2A.4. **Completion**

#### 2A.4.1 The Recipient must:

- a. plan, control, manage, co-ordinate and carry out the Capital Works in a manner that enables completion of all activities comprising the Capital Works by the Project Completion Date;
- b. in addition to the Recipient's reporting obligations under item D of Schedule 1, the Recipient must provide the Commonwealth with written evidence satisfactory to the Commonwealth of the completion of the Capital Works, no later than 10 Business Days after the end of the Project Completion Date; and
- c. consult the Commonwealth in advance about any proposed change to, the scope or timing of the Capital Works which is likely to delay the completion of the Capital Works, detailing the extent, or likely extent, of the change and the reasons for it.

## 3. **Funding**

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### 3.1. **Payment of Funding**

- 3.1.1. Subject to sufficient funds being available, and compliance by the Recipient with this Agreement, the Commonwealth agrees to provide the Recipient with the Funding at the times and in the manner specified in Annexure A.
- 3.1.2. The Commonwealth is not responsible for the provision of additional money to meet any expenditure in excess of the Funding.

### 3.2. **Commonwealth's right to suspend payment or reduce the amount of Funding**

- 3.2.1. Without limiting the Commonwealth's rights, the Commonwealth may suspend any payment in whole or in part until the Recipient has performed its obligations under this Agreement.
- 3.2.2. Reserved.
- 3.2.3. The Commonwealth may reduce the amount of Funding payable under this Agreement where the Recipient:

- a. owes money to the Commonwealth, or
- b. has money that the Recipient should have, but has not yet, acquitted

under any arrangement with the Commonwealth (whether contractual, statutory or otherwise).

- 3.2.4. Notwithstanding such suspension of any payments or reduction in the amount of the Funding, the Recipient agrees to continue to perform any obligations under this Agreement.

#### **4. Taxes, duties and government charges**

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- 4.1.1. Except as provided by clause 4, the Recipient agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement.
- 4.1.2. Unless otherwise indicated, any Funding and all other consideration for any supply made under this Agreement is exclusive of any GST imposed on the supply.
- 4.1.3. If one party (the supplier) makes a taxable supply to the other party (the taxable supply recipient) under this Agreement, on receipt of a tax invoice from the supplier, the taxable supply recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.
- 4.1.4. No party may claim or retain from the other party any amount in relation to a supply made under this Agreement for which the first party can obtain an input tax credit or decreasing adjustment.

#### **5. Debt and Interest**

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- 5.1.1. In this clause 5, '**Interest**' means interest calculated at an interest rate equal to the general interest charge rate for a day pursuant to section 8AAD of the *Taxation Administration Act 1953 (Cth)*, on a daily compounding basis.
- 5.1.2. The Recipient agrees, upon request of the Commonwealth, to pay any amount owed or payable to the Commonwealth or which the Commonwealth is entitled to recover from the Recipient under this Agreement, including if demanded by the Commonwealth any Interest, as a debt due by the Recipient without further proof of the debt by the Commonwealth being necessary. Such payment is without prejudice to any other rights available to the Commonwealth under the Agreement, under statute, at law or in equity.
- 5.1.3. If the Commonwealth notifies the Recipient that an amount is to be refunded or otherwise paid to the Commonwealth and the amount is not refunded or paid within 20 Business Days, or as otherwise notified by the Commonwealth, the Recipient agrees to pay Interest, unless the Commonwealth notifies the Recipient otherwise, on the amount outstanding after the expiry of the date it was due, until the amount is paid in full.
- 5.1.4. In respect to any obligation the Recipient may have under this Agreement to pay the Commonwealth any Interest, the Recipient agrees that the Interest represents a reasonable pre-estimate of the loss incurred by the Commonwealth.

## **6. Management of Funding**

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6.1.1. The Recipient agrees to spend the Funding only for the Activity in accordance with this Agreement.

### **6.2. Budget**

6.2.1. The Recipient agrees to only spend the Funding for the Activity and in accordance with the Budget.

6.2.2. Subject to clauses 6.2.3 and 6.2.4, the Recipient may spend the Funding on any separate category of expenditure item within the Budget.

6.2.3. The Recipient agrees to obtain prior written approval from the Commonwealth for any transfer of Funding between categories of expenditure items within the Budget which exceed a percentage of the total Budget as specified in Item B of the Schedule.

6.2.4. The total amount of transfers in any Financial Year must also not exceed the percentage of the Budget specified in Item B of the Schedule.

### **6.3. Account and financial records**

6.3.1. The Recipient agrees to ensure that the Funding is held in an account in the Recipient's name and which the Recipient solely controls, with an authorised deposit-taking institution authorised under the Banking Act 1959 (Cth) to carry on banking business in Australia and that is an account that complies with any other requirements specified in Item A.7 in the Schedule.

6.3.2. Reserved

6.3.3. The Recipient must, in relation to the account referred to in clause 6.3.1:

- a. notify the Commonwealth, prior to the receipt of any Funding, of details sufficient to identify the account;
- b. on notification from the Commonwealth, provide the Commonwealth and the authorised deposit-taking institution with a written authority for the Commonwealth to obtain any details relating to any use of the account;
- c. if the account changes, notify the Commonwealth within 10 Business Days of the change occurring and provide the Commonwealth with details of the new account;
- d. Reserved.

6.3.4. The Recipient agrees to:

- a. keep financial accounts and records relating to the Funding and the Project and Activity that identify
  - i. all receipts and payments related to the Project and Activity; and
  - ii. all interest earned on the Funding.
- b. unless otherwise notified by the Commonwealth, prepare financial statements for the Project and Activity in accordance with Australian Accounting Standards including:

- i. Reserved; and
- ii. a register of the Assets and a register of Real Property created, acquired, written-off or Disposed of during the Financial Year to date compared with the Budget; and
- c. arrange for the audit of those accounts and records in accordance with Australian Auditing Standards.

6.4. **Use as security**

6.4.1. Except with the prior written approval of the Commonwealth, the Recipient agrees not to use any of the following as any form of security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest, or for the preparation of, or in the course of, any litigation:

- a. the Funding;
- b. this Agreement or any of the Commonwealth's obligations under the Agreement; or
- c. any Assets or Intellectual Property Rights in the Activity Material.

6.5. **Refunds of unexpended and misspent Funds**

6.5.1. If at any time during the term of this Agreement (including on the Completion Date):

- a. there remains an amount of Funding that has not been spent or legally committed for expenditure in accordance with the Agreement and the period in which that Funding was expected to be spent or legally committed has passed; or

- b. an amount of Funding has been spent in contravention of the Agreement,

the Commonwealth may (at its discretion and in addition to any other rights it may have) by notice in writing to the Recipient:

- c. require the Recipient to refund this amount to the Commonwealth within 20 Business Days (or other such period specified in the notice); or
- d. reduce any further payments of Funding to the Recipient (if applicable) by an amount up to this amount.

6.5.2. If clause 6.5.1.a applies, the Commonwealth may by notice in writing require the Recipient to otherwise deal with this amount in accordance with any conditions that the Commonwealth considers appropriate, including conditions relating to the ongoing use and expenditure by the Recipient of that amount for particular goals or objectives associated with the Activity.

6.5.3. The Recipient must immediately notify the Commonwealth in writing if any of the events in clauses 6.5.1.a or 6.5.1.b occurs.

6.5.4. If the completed Project ceases to be Operational during the Operational Period, the Commonwealth may give the Recipient notice requiring the Recipient to repay all or part of the Funding to the Commonwealth within the period specified in the notice and the Recipient must comply with that notice.

6.5.5. On completion of the Project, if the cost of the completed Project is less than the Cost Estimate, the Commonwealth may give the Recipient notice requiring the Recipient to return any unexpended Funding to the Commonwealth within the period specified in the notice and the Recipient must comply with that notice.

6.5.6. This clause survives termination or expiry of the Agreement.

## **7. Other Contributions and Cost Savings**

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### **7.1. Other Contributions**

7.1.1. The Recipient must, within six (6) months of the date of the Agreement provide to the Commonwealth satisfactory written evidence that confirms the Other Contributions identified in Item C and detailed in Annexure B of the Schedule, including the amounts to be provided, the due dates for each of these amounts and the terms and conditions of the provision of the Other Contributions.

7.1.2. If, for any reason, the Recipient is not able to obtain the Other Contributions (including any part thereof) as required under this Agreement, then the Commonwealth may:

- a. suspend payment of the Funding or an instalment of the Funding until the Other Contributions are obtained (as the case may be);
- b. reduce the total Funding payable under this Agreement by an amount that, in the Commonwealth's opinion, represents an equivalent proportion of the overall reduction in the total value of the Other Contributions (as the case may be) resulting from the failure; or
- c. terminate this Agreement in accordance with clause 17.2.

7.1.3. The Recipient must notify the Commonwealth in writing as soon as possible after it becomes aware of any likely or actual failure (for any reason) to obtain the Other Contributions (including any part thereof) as required under this Agreement.

7.1.4. The Recipient agrees to notify the Commonwealth within 10 Business Days of entering into any arrangement under which the Recipient is entitled to receive any additional monetary or in-kind contributions in respect of the Project and Activity that are not identified as Other Contributions in Item C and Annexure B of the Schedule. Any such additional contribution that the Recipient becomes entitled to receive after the Date of this Agreement constitutes Other Contributions for the purposes of the Agreement (and Schedule 1 is deemed to be varied accordingly) on the date on which the Recipient notifies the Commonwealth of that contribution under this clause 7.1.4.

7.1.5. If the Recipient is provided with or obtains (and/or was required to provide or obtain) any Other Contributions and the cost of the completed Project is less than the Cost Estimate, the Commonwealth may give the Recipient notice requiring the Recipient to return to the Commonwealth, within the period specified in the notice, an amount equal to the Commonwealth's Proportion of the Cost Savings. In this subclause 7.1.5, 'the Commonwealth's Proportion of the Cost Savings' means  $\text{savings} \times \% \text{ where:}$

- a. savings = (the Cost Estimate – the actual cost of the Project - any Funds previously repaid to the Commonwealth under this Agreement); and
- b. % = (the Funding ÷ (the maximum Funding + the maximum Other Contributions excluding any in-kind Other Contributions).

7.1.6. If the Recipient receives a notice given by the Commonwealth under subclause 18, the Recipient must comply with the notice within the period specified within the notice.

## 7.2. **Cost Savings**

7.2.1. Subject to compliance with this Agreement, the Recipient must:

- a. continually identify any costs saving or efficiency measures in carrying out the Activity; and
- b. in consultation with the Commonwealth:
  - i. implement those costs saving or efficiency measures;
  - ii. ensure that any reductions in expenditure for the Activity that result from those costs saving or efficiency measures are accounted for and allocated equitably in proportion to the relative total values of the Funding, the Recipient Contributions and the Other Contributions (as applicable) as committed to the Activity.

## 8. **Statutory Approvals**

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8.1 The Recipient must obtain all necessary statutory approvals in relation to the Project, including those specified in item K of the Schedule, and the Recipient must give the Commonwealth, within twelve (12) months after the Date of this Agreement, satisfactory written evidence that these statutory approvals have been obtained.

8.1A The Recipient must also provide satisfactory written evidence that the statutory approvals obtained under subclause 8.1 are sufficient for the Recipient to Commence Construction within twelve months after the Date of this Agreement.

8.2 If the Recipient does not comply with the requirement in subclause 8.1, the Commonwealth may at the Commonwealth's sole discretion:

- a. suspend payment of the Funding until the evidence of the statutory approvals referred to in subclause 8.1 has been received; or
- b. terminate this Agreement in accordance with clause 17.2.

## 9. **Assets**

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### 9.1. **Acquisition of Asset**

9.1.1. The Recipient agrees not to use the Funding to acquire or create any Asset, apart from those detailed in the Item E, without obtaining the Commonwealth's prior written approval. Approval may be given subject to any conditions the Commonwealth may impose.



9.1.2. Unless it is specified in Item E that the Commonwealth or a third party owns the Asset or the Commonwealth provides written consent to a third party owning the Asset, then the Recipient must ensure that it owns any Asset acquired with the Funding.

9.2. **Terms applicable to Asset**

9.2.1. If the Commonwealth owns the Asset clauses 9.4 and 9.6.2 do not apply.

9.2.2. If the Asset is owned by a third party then the Recipient agrees to ensure that the terms of the lease, hire or finance arrangement are consistent with clause 9.3, and clauses 9.4, 9.5 and 9.6 do not apply.

9.3. **Recipient's responsibilities for Asset**

9.3.1. Throughout the Term, the Recipient agrees to:

- a. use any Asset in accordance with this Agreement and for the purposes of the Activity;
- b. not encumber or Dispose of any Asset, or deal with or use any Asset other than in accordance with this clause 9 without the Commonwealth's prior written approval;
- c. hold all Assets securely and safeguard them against theft, loss, damage, or unauthorised use;
- d. maintain all Assets in good working order;
- e. maintain all appropriate insurances for all Assets to their full replacement cost noting the Commonwealth's interest, if any, in the Asset under the Agreement;
- f. if required by law, maintain registration and licensing of all Assets;
- g. be fully responsible for, and bear all risks relating to, the use or Disposal of all Assets; and
- h. if specified in Item E, maintain an Assets register in the form and containing the details as described in Item E and as and when requested by the Commonwealth, provide copies of the Assets register to the Commonwealth.

9.4. **Sale or Disposal of Asset during Term**

9.4.1. If the Recipient Disposes of an Asset during the Term of this Agreement, the greater of the following proportions must, unless the Commonwealth otherwise directs, be accounted for as Funding and used for the Activity:

- a. the proportion of the sale proceeds from the Asset; or
- b. the proportion of the Undepreciated value of the Asset,

that is equivalent to the proportion of the cost of the Asset that was funded from the Funding.

**9.5. Loss, damage, etc of Asset**

9.5.1. If any of the Assets are lost, damaged or destroyed, the Recipient agrees to promptly reinstate the Assets including from the proceeds of the insurance, and this clause 9 continues to apply to the reinstated Assets. The proportion of any surplus from the proceeds of the insurance, which reflects the proportion of the cost of the Asset that was funded from the Funding, must be notified to the Commonwealth and accounted for as Funding and used for the Activity.

**9.6. Dealing with Asset**

9.6.1. On expiry of the Activity Period or earlier termination of the Agreement, the Commonwealth may require the Recipient to deal with an Asset as the Commonwealth may, at the sole discretion of the Commonwealth, notify the Recipient.

9.6.2. Subject to clause 9.6.1, if on expiry of the Activity Period or the earlier termination of this Agreement, an Asset has not been fully Depreciated, the Commonwealth may, by written notice, require the Recipient to:

- a. pay to the Commonwealth within 20 Business Days of the expiry of the Activity Period or earlier termination of the Agreement, an amount equal to the proportion of the Undepreciated value of the Asset that is equivalent to the proportion of the cost of the Asset that was funded from the Funding;
- b. sell the Asset for the best price reasonably obtainable and pay to the Commonwealth within 20 Business Days of the sale the proportion of the proceeds of the sale that is equivalent to the proportion of the cost of the Asset (less an amount equal to the reasonable Disposal costs incurred by the Recipient) that was funded from the Funding; or
- c. continue to use the Asset for the purposes, and in accordance with any conditions, notified by the Commonwealth.

**10. Real Property**

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**10.1. Approval**

10.1.1 The Recipient must obtain the Commonwealth's prior written approval to spend the Funding on any Real Property that is not specifically identified in the Budget. The Commonwealth may grant that approval subject to conditions.

**10.2. Outgoings**

10.2.1 The Recipient must pay all rents, rates, taxes, levies and other outgoings of any nature in relation to the Real Property. The Funding must not be used to pay rent.

**10.3. Recipient's Responsibilities for Real Property**

10.3.1 Throughout the Term of this Agreement, including the Operational Period, the Recipient agrees to:

- a. hold the Real Property securely and safeguard it against theft, loss, damage, or unauthorised use;

- b. maintain the Real Property in good condition;
- c. maintain all appropriate insurances for the Real Property to its full replacement cost and use that insurance to rectify any damage to or destruction to the Real Property and this clause 10.3.1 continues to apply to the Real Property once rectified. The Recipient must notify the Commonwealth of any surplus from the proceeds of this insurance and the Recipient must use and account for that surplus as Funding under this Agreement;
- d. if required by any Law, maintain registration and licensing of the Real Property;
- e. be fully responsible for, and bear all risks relating to, the use or Disposal of all Real Property;
- f. if specified in item E.2 of the Schedule, maintain a Real Property register in the form and containing the details as described in that item of the Schedule; and
- g. as and when requested by the Commonwealth, provide copies of the Real Property register to the Commonwealth.

#### 10.4. **Recipient's Use of Real Property**

10.4.1. The Recipient agrees to ensure that:

- a. the Real Property is used for, and is fit to be used for, the Purpose specified in item A.3 of the Schedule throughout the Operational Period; and
- b. the use of the Real Property for the Purpose specified in item A.3 of the Schedule throughout the Operational Period, does not infringe any conditions of the Recipient's ownership or occupation of the Real Property.

10.4.2. Throughout the Operational Period, the Recipient must use the Real Property for the Purpose specified in item A.3 of the Schedule.

10.4.3. If the Commonwealth requests, the Recipient must take all action necessary to grant the Commonwealth a security, including in the form of a charge or mortgage, over the Real Property and on terms acceptable to the Commonwealth.

#### 10.5. **Third Party Interests**

10.5.1. If a third party has proprietary or other rights or interests in relation to any Real Property, the Recipient agrees to:

- a. enter into legally binding written agreements under which all such third parties agree to:
  - i. the use of the Works Locations to undertake the Capital Works throughout the Activity Period;

- ii. the use of the Works Locations, and completed Capital Works for the Purpose specified in item A.3 of the Schedule throughout the Operational Period; and
  - iii. the use of any other Real Property for the Activity throughout the Activity Period and for the Purpose specified in item A.3 of the Schedule throughout the Operational Period;
- b. not do anything that would give any such third party a right to rescind its agreement to one or more of the uses specified in paragraph (a); and
  - c. within 10 Business Days of a request from the Commonwealth, provide evidence to the Commonwealth that the Recipient has complied with the requirements of this subclause 10.5.

**10.6. Dealing with Real Property**

**10.6.1. If:**

- a. the Agreement is terminated under clause 17.2 and some or all of the Funding has been provided to the Recipient for expenditure on Real Property;
- b. the Recipient fails to Commence Construction for the Activity within twelve months of the Date of this Agreement;
- c. the Recipient Disposes of any Real Property during the Term of this Agreement; or
- d. the Recipient fails to or ceases to use any Real Property for the Purpose specified in item A.3 of the Schedule at any time during the Operational Period

then:

- e. the Recipient must notify the Commonwealth at least 20 Business Days prior to the event in paragraph (b), (c) or (d) occurring; and
- f. the Commonwealth may give the Recipient a notice requiring the Recipient to repay the Commonwealth some or all of the Funding provided under this Agreement and the Recipient must repay the amount specified in any such notice within the period specified in that notice.

**10.6.2. If the Recipient fails to pay the Commonwealth an amount as required by a notice given under subclause 10.6.1:**

- a. the Recipient must pay the Commonwealth the Interest on the unpaid amount from the date it was due, for the period it remains unpaid; and
- b. that amount, and Interest owed under this subclause 10.6.2, will be recoverable by the Commonwealth as a debt due to the Commonwealth by the Recipient.

**10.6.3. The provisions relating to this clause 10 shall survive the termination or expiration of this Agreement.**

## **11. Records**

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### **11.1. Keeping Records**

- 11.1.1. The Recipient must create and maintain full and accurate accounts and records of the conduct of the Project and Activity including, without limitation, all:
- a. progress against the Milestones;
  - b. receipt and use of Funding;
  - c. Other Contributions (if any); and
  - d. creation, acquisition and Disposal of Assets or Real Property.

### **11.2. Retention of Records**

- 11.2.1. The Recipient agrees to create and maintain records and accounts under clause 11.1.1 and retain them for a period of no less than seven (7) years after the end of the Term.

## **12. Intellectual Property**

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### **12.1. Use of Commonwealth Material**

- 12.1.1. The Commonwealth grants a royalty-free, non-exclusive licence for the Recipient to use, reproduce and adapt the Commonwealth Material for the purposes of this Agreement.
- 12.1.2. The Recipient agrees to use the Commonwealth Material strictly in accordance with any conditions or restrictions the Commonwealth may notify to the Recipient.

### **12.2. Rights in Activity Material**

- 12.2.1. Subject to this clause 12, Intellectual Property in Activity Material vests or will vest in the Recipient.
- 12.2.2. Clause 12.2.1 does not affect the ownership of Intellectual Property in any Commonwealth Material incorporated into the Activity Material.
- 12.2.3. The Recipient grants to (or will procure for) the Commonwealth a permanent, irrevocable, royalty-free, worldwide, non-exclusive licence (including a right of sublicense) to use, reproduce, exploit, communicate, adapt and distribute the Activity Material for any purpose.
- 12.2.4. The Recipient agrees that the licence granted in clause 12.2.3 includes a right for the Commonwealth to licence the Activity Material to the public under an Open Access Licence.
- 12.2.5. The Recipient agrees, on request by the Commonwealth, to create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 12.
- 12.2.6. The Recipient warrants that:
- a. it is entitled; or
  - b. it will be entitled at the relevant time,

to deal with the Intellectual Property in the Activity Material in the manner provided for in this clause 12.

12.3. **Moral Rights**

12.3.1. In this clause 12.3:

- Permitted Acts** means any of the following classes or types of acts or omissions:
- a. using, reproducing, adapting or exploiting all or any part of the Activity Material, with or without attribution or authorship;
  - b. supplementing the Activity Material with any other Material;
  - c. using the Activity Material in a different context to that originally envisaged; and
  - d. releasing the Activity Material to the public under an Open Access Licence;

but does not include false attribution of authorship.

12.3.2. Where the Recipient is a natural person and the author of the Activity Material he or she:

- a. consents to the performance of the Permitted Acts by the Commonwealth or any person claiming under or through the Commonwealth (whether occurring before or after the consent is given); and
- b. acknowledges that their attention has been drawn to the Commonwealth's general policies and practices regarding Moral Rights.

12.3.3. Where clause 12.3.1 does not apply, the Recipient agrees:

- a. to obtain from each author a written consent which extends directly or indirectly to the performance of the Permitted Acts by the Commonwealth or any person claiming under or through the Commonwealth (whether occurring before or after the consent is given) and, upon request, will provide the executed original of any such consent to the Commonwealth; and
- b. to ensure that each author's attention is drawn to the Commonwealth's general policies and practices regarding Moral Rights.

12.3.4. This clause 12.3 does not apply to any Commonwealth Material incorporated in the Activity Material.

13. **Confidential Information**

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13.1. **Confidential Information not to be disclosed**

13.1.1. Subject to clause 13.2.1, a party must not, without the prior written consent of the other party, disclose any Confidential Information of the other party to a third party.

13.2. **Written Undertakings**

- 13.2.1. The Recipient must, on request by the Commonwealth at any time, arrange for:
- a. its Personnel; or
  - b. any person with a Third Party Interest,
- to give a written undertaking in a form acceptable to the Commonwealth relating to the use and non-disclosure of the Commonwealth's Confidential Information.

13.3. **Exceptions to Obligations**

- 13.3.1. The obligations on the parties under this clause 13.3 will not be taken to have been breached to the extent that Confidential Information:
- a. is disclosed by a party to its Personnel solely in order to comply with obligations, or to exercise rights, under this Agreement;
  - b. is disclosed to a party's internal management Personnel, solely to enable effective management or auditing of Agreement-related activities;
  - c. is disclosed by the Commonwealth to the responsible Minister;
  - d. is disclosed by the Commonwealth, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
  - e. is shared by the Commonwealth (including other agencies), where this serves the Commonwealth of Australia's legitimate interests;
  - f. is authorised or required by law to be disclosed; or
  - g. is in the public domain otherwise than due to a breach of this clause 13.3.
- 13.3.2. Where a party discloses Confidential Information to another person pursuant to clauses 13.3.1.a - 13.3.1.e, the disclosing party must notify the receiving person that the information is confidential.
- 13.3.3. In the circumstances referred to in clauses 13.3.1.a, 13.3.1.b and 13.3.1.e, the disclosing party agrees not to provide the information unless the receiving person agrees to keep the information confidential (subject to the exceptions in this clause 13.3).
- 13.3.4. The Recipient agrees to secure all of the Commonwealth's Confidential Information against loss and unauthorised access, use, modification or disclosure.

13.4. **Period of Confidentiality**

- 13.4.1. The obligations under this clause 13.4 will continue, notwithstanding the expiry or termination of this Agreement:
- a. in relation to an item of information described in Item N – for the period set out in respect of that item; and
  - b. in relation to any item of information agreed after the Date of this Agreement to be Confidential Information – for the period agreed by the parties in writing in respect of that item, and if no such period is agreed by the parties, in perpetuity.

**13.5. No reduction in Privacy Obligations**

13.5.1. This clause 13 does not detract from any of the Recipient's obligations under the Privacy Act or under clause 21.2.

**14. Acknowledgement and publicity**

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**14.1. Acknowledgement of support**

14.1.1. Unless otherwise notified by the Commonwealth, the Recipient agrees, in all publications, promotional and advertising materials, public announcements and activities by the Recipient or on the Recipient's behalf in relation to the Activity, or any products, processes or inventions developed as a result of it, to acknowledge the financial and other support the Recipient has received from the Australian Government, in the manner set out in Item H of the Schedule, or as otherwise approved by the Commonwealth prior to its use.

14.1.2. Where the Recipient has been provided with Funding to produce any publication, a copy of the publication must, on request, be provided to the Commonwealth.

**14.2. Right to publicise Funding**

14.2.1. The Commonwealth reserves the right to publicise and report on the awarding of Funding to the Recipient. The Commonwealth may do (but is not limited to doing) this by including the Recipient's name, the amount of the Funding given to the Recipient, the date the Agreement commences and its term, and the title, location, purpose and a brief description of the Activity in media releases, general announcements about the Funding, annual reports or through any other means as determined by the Commonwealth.

**14.3. No restriction on advocacy activities**

14.3.1. The Commonwealth confirms that, subject to clause 14.3.2:

- a. no right or obligation arising under this Agreement should be interpreted as limiting the Recipient's ability to enter into public debate or criticism of the Commonwealth of Australia or its agencies, employees, servants or agents;
- b. the Commonwealth does not require the Recipient to obtain advance approval of any involvement by the Recipient in public debate or advocacy activities.

14.3.2. Nothing in this clause 14.3 limits or derogates from the Recipient's obligations under clauses 13 and 21.2.

**15. Liability**

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**15.1. Proportionate liability regime**

15.1.1. To the extent permitted by law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against the Recipient under or in connection with this Agreement.



**15.2. Indemnity**

15.2.1. The Recipient indemnifies the Commonwealth from and against any:

- a. cost or liability incurred by the Commonwealth;
- b. loss of or damage to property of the Commonwealth; or
- c. loss or expense incurred by the Commonwealth in dealing with any claim against it, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by the Commonwealth,

arising from:

- d. any breach by the Recipient of the Agreement;
- e. any act or omission involving fault by the Recipient in connection with this Agreement;
- f. the use of Assets or Real Property; or
- g. the use by the Commonwealth of the Activity Material, including any claims by third parties about the ownership or right to use the Intellectual Property in the Activity Material.

15.2.2. The Recipient's liability to indemnify the Commonwealth under clause 15.2.1 will be reduced proportionally to the extent that any act or omission involving fault on the part of the Commonwealth or its Personnel contributed to the relevant cost, liability, loss, damage or expense.

15.2.3. The right of the Commonwealth to be indemnified under this clause 15.2 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Commonwealth is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.

**15.3. Meaning of 'fault'**

15.3.1. In this clause 15, 'fault' means any negligent or unlawful act or omission or wilful misconduct.

**16. Dispute resolution**

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**16.1. Procedure for dispute resolution**

16.1.1. The parties agree that a dispute arising under this Agreement will be dealt with as follows, and that, subject to clause 16.4, neither party will commence legal proceedings in relation to that dispute until this procedure is completed:

- a. the party claiming that there is a dispute will give the other party a notice setting out the nature of the dispute;
- b. within five (5) Business Days (or such other period as agreed by the parties in writing) each party will nominate a representative not having any prior involvement in the dispute;
- c. the representatives will try to settle the dispute by direct negotiation between them;

- d. failing settlement within a further 10 Business Days or such other period as agreed by the parties in writing (or failure of one or both parties to nominate a representative within the period set out in clause 16.1.1.b), the parties may agree to refer the dispute to an independent third person with power:
  - i. to intervene and direct some form of resolution, in which case the parties will be bound by that resolution; or
  - ii. to mediate and recommend some form of non-binding resolution;
- e. the parties will co-operate fully with any process instigated under clause 16.1.1.d in order to achieve a speedy resolution; and
- f. if the parties have been unable to agree to refer the dispute to an independent third person, or they have agreed and a resolution is not reached within a further 20 Business Days (or such other period as the parties) may agree in writing), either party may commence legal proceedings.

**16.2. Costs**

- 16.2.1. Each party will bear its own costs of complying with this clause 16 Dispute resolution, and the parties will bear equally the cost of any third person engaged under clause 16.1.1.d.

**16.3. Continued performance**

- 16.3.1. Despite the existence of a dispute, the Recipient will (unless requested in writing by the Commonwealth not to do so) continue to perform the Recipient's obligations under this Agreement.

**16.4. Application of clause**

- 16.4.1. This clause 16 does not apply to:
- a. legal proceedings by either party for urgent interlocutory relief; or
  - b. action by the Commonwealth under or purportedly under clauses 3, 6, 17 and 21.2.

**17. Termination or reduction in scope of Agreement**

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**17.1. Termination for convenience**

- 17.1.1. The Commonwealth may by notice, at any time and in its absolute discretion, terminate this Agreement or reduce the scope of the Agreement immediately.
- 17.1.2. The Recipient agrees, on receipt of a notice of termination or reduction, to:
- a. stop or reduce the performance of the Recipient's obligations as specified in the notice;
  - b. take all available steps to minimise loss resulting from that termination or reduction;
  - c. continue performing any part of the Activity not affected by the notice; and

- d. immediately return to the Commonwealth any Funding in accordance with clause 17.1.5, or deal with any such Funding as directed by the Commonwealth.
- 17.1.3. In the event of termination under clause 17.1.1, the Commonwealth will be liable only:
- a. to pay Funding due and owing to the Recipient under the payment provisions of the Agreement before the date of the notice of termination; and
  - b. to reimburse any expenses the Recipient unavoidably incurs that relate directly and entirely to the Activity and not covered by clause 17.1.3.a.
- 17.1.4. The Commonwealth will not be liable to pay amounts under 17.1.3.a and 17.1.3.b which would, added to any payments already paid to the Recipient under this Agreement, together exceed the Funding set out in Item A.7 of the Schedule and Annexure A.
- 17.1.5. The Commonwealth will be entitled to recover from the Recipient any part of the Funding which:
- a. is not legally committed for expenditure by the Recipient in accordance with the Agreement and due and payable by the Recipient by the date that the notice of termination is received; or
  - b. has not, in the Commonwealth's opinion, been spent by the Recipient in accordance with the Agreement.
- 17.1.6. In the event of a reduction in the scope of the Agreement under clause 17.1.1, the Commonwealth's liability to pay any part of the Funding will, unless there is agreement in writing to the contrary, reduce in accordance with the reduction in the Activity.
- 17.1.7. The Commonwealth's liability to pay any compensation under or in relation to this clause 17.1 is subject to:
- a. the Recipient's compliance with this clause 17.1; and
  - b. the Recipient's substantiation of any amount claimed under clause 17.1.3.b.
- 17.1.8. The Recipient will not be entitled to compensation for loss of prospective profits or loss of any benefits that would have been conferred on the Recipient.
- 17.2. **Termination for fault**
- 17.2.1. If the Recipient does not comply with any of its obligations under this Agreement, then the Commonwealth:
- a. *if it considers that the non-compliance is not capable of remedy* - may by notice terminate this Agreement immediately;
  - b. *if it considers that the non-compliance is capable of remedy* - may, by notice require that the non-compliance be remedied within the time specified in the notice, and if not remedied within that time, may terminate the Agreement immediately by giving a second notice.

- 17.2.2. The Commonwealth may also by notice terminate this Agreement immediately if:
- a. the Recipient comes under one of the forms of external administration referred to in Chapter 5 of the Corporations Act 2001 (Cth) or equivalent provisions in legislation of the States and Territories pertaining to incorporated associations or Chapter 11 of the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth) or has an order made against it for the purpose of placing it under external administration;
  - b. the Recipient is unable to pay all its debts as and when they become due and payable or it fails to comply with a statutory demand within the meaning of sections 459E and 459F of the Corporations Act 2001 (Cth);
  - c. proceedings are initiated with a view to obtaining an order for winding up the Recipient, or any shareholder, member or director convenes a meeting for the purpose of considering or passing of any resolution for winding up the Recipient;
  - d. in relation to this Agreement, the Recipient breaches any law of the Commonwealth of Australia, or of a State or Territory;
  - e. the Recipient becomes bankrupt or enters into a scheme of arrangement with creditors;
  - f. another clause of this Agreement allows for termination under this clause 17.2; or
  - g. the Commonwealth is satisfied that any statement made in the Recipient's application for Funding is incorrect, incomplete, false or misleading in a way which would have affected the original decision to approve the Funding.
- 17.2.3. Where the Commonwealth terminates this Agreement under clause 17.2 the Commonwealth:
- a. will be liable only to pay Funding due and owing to the Recipient under the payment provisions of the Agreement before the date of the notice of termination; and
  - b. will be entitled to recover from the Recipient any part of the Funding which:
    - i. is not legally committed for expenditure by the Recipient in accordance with the Agreement and payable by the Recipient by the date that the notice of termination is received; or
    - ii. has not, in the Commonwealth's opinion, been spent by the Recipient in accordance with the Agreement.
- 17.3. **Preservation of other rights**
- 17.3.1. Clause 17.2 does not limit or exclude any of the Commonwealth's other rights under this Agreement.

## **18. Notices**

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### **18.1. Format, addressing and delivery**

18.1.1. A notice under this Agreement is only effective if it is in writing, and addressed as follows:

- a. *if given by the Recipient to the Commonwealth* - addressed to the Commonwealth at the address specified in Item L of the Schedule, or other address as notified by the Commonwealth; or
- b. *if given by the Commonwealth to the Recipient* - given by the Commonwealth and addressed as specified in Item L of the Schedule, or other address as notified by the Recipient.

18.1.2. Any such notice must be delivered to the other party by hand, prepaid post or transmitted electronically (via email or facsimile) and be signed by the sending party. For the avoidance of doubt, an electronic signature on an email will be taken to be a signed notice for the purpose of this clause 18.

### **18.2. When received**

18.2.1. Subject to clause 18.2.2, a notice is deemed to be received:

- a. *if delivered by hand* - upon delivery to the relevant address;
- b. *if sent by prepaid post* - upon delivery to the relevant address; or
- c. *if transmitted electronically* - upon receipt by the sender of either an electronic receipt notification (generated by the system transmitting the notice) or an acknowledgement from the other party that it has received the notice (whichever is earlier).

18.2.2. If a notice is received:

- a. after 5.00 pm on any Business Day; or
- b. on a day that is not a Business Day,

it is deemed to be received at 9:00am on the next Business Day for the purposes of this clause 18.

## **19. Reserved**

## **20. Work Health and Safety**

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### **20.1. Use of Commonwealth's premises**

20.1.1. The Recipient agrees, when using the Commonwealth's premises or facilities, to comply with all reasonable directions and procedures relating to work health and safety and security in effect at those premises or in regard to those facilities, as notified by the Commonwealth or as might reasonably be inferred from the use to which the premises or facilities are being put.

### **20.2. Assistance to the Commonwealth**

20.2.1. Without limiting clause 2.2 of this Agreement, the Recipient agrees to, on request, give all reasonable assistance to the Commonwealth, by way of

provision of information and documents, to assist the Commonwealth and its officers (as defined in the Work Health and Safety Act 2011 (WHS Act)) to comply with the duties imposed on them under the WHS Act.

20.2.2. The Recipient acknowledges that the Commonwealth may direct the Recipient to take specified measures in connection with the Recipient's work under this Agreement or otherwise in connection with the Activity that the Commonwealth considers reasonably necessary to deal with an event or circumstance that has, or is likely to have, an adverse effect on the health or safety of persons. The Recipient must comply with the direction. The Recipient agrees that it is not entitled to an adjustment to the Funding merely because of compliance with the direction.

20.3. **Reserved**

## 21. **General Provisions**

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21.1. **Reserved**

### 21.2. **Obligations of Recipient in relation to privacy**

21.2.1. The Recipient agrees, in conducting the Activity:

- a. not to do any act or engage in any practice which, if done or engaged in by the Commonwealth, would be a breach of an Australian Privacy Principle; and
- b. to comply with any directions, guidelines, determinations or recommendations of the Commonwealth, to the extent that they are consistent with the Australian Privacy Principles.

21.2.2. The Recipient agrees to notify the Commonwealth immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 21.2.

21.2.3. The provisions of this clause 21.2 survive the termination or expiration of this Agreement.

### 21.3. **Audit and Access**

21.3.1. The Recipient agrees:

- a. to give the Commonwealth, or any persons authorised in writing by the Commonwealth, access to premises where obligations under this Agreement are being carried out; and
- b. to permit those persons to inspect and take copies of any Material relevant to this Agreement.

21.3.2. The rights referred to in clause 21.3.1. are subject to:

- a. the Commonwealth providing reasonable prior notice; and
- b. the reasonable security procedures in place at the premises.

21.3.3. The Auditor-General and Information Officer (and their delegates) are persons authorised for the purposes of clause 21.3.1.

21.3.4. This clause 21.3 does not detract from the statutory powers of the Auditor-General or Information Officer.

21.4. **Access to Documents**

21.4.1. In this clause 21.4, 'document' and 'Commonwealth contract' have the same meaning as in the Freedom of Information Act 1982 (Cth). This clause 21.4 only applies if this Agreement is a 'Commonwealth contract', as defined in the Freedom of Information Act 1982 (Cth).

21.4.2. Where the Commonwealth has received a request for access to a document created by, or in the possession of, the Recipient or any subcontractor that relates to the performance of this Funding Agreement (and not to the entry into the Funding Agreement), the Commonwealth may at any time by written notice require the Recipient to provide the document to the Commonwealth and the Recipient must, at no additional cost to the Commonwealth, promptly comply with the notice.

21.4.3. The Recipient must include in any subcontract relating to the performance of this Agreement provisions that will enable the Recipient to comply with its obligations under this clause 21.4.

21.5. **Insurance**

21.5.1. The Recipient agrees:

- a. to effect and maintain the insurance specified in Item F and
- b. on request, to provide proof of insurance acceptable to the Commonwealth.

21.5.2. This clause 21.5 continues in operation for so long as any obligations remain in connection with this Agreement.

21.6. **Extension of provisions to subcontractors and Personnel**

21.6.1. In this clause 21.6:

**Requirement** means an obligation, condition, restriction or prohibition binding on the Recipient under this Agreement.

21.6.2. The Recipient agrees to ensure that:

- a. its subcontractors and Personnel comply with all relevant Requirements; and
- b. any contract entered into in connection with this Agreement imposes all relevant Requirements on the other party.

21.6.3. The Recipient agrees to exercise any rights it may have against any of its subcontractors, Personnel or third parties in connection with a Requirement in accordance with any direction by the Commonwealth.

21.7. **Conflict of interest**

21.7.1. In this clause 21.7:

**Conflict** means any matter, circumstance, interest or activity involving or affecting the Recipient, its Personnel or subcontractors which may or may appear to impair the ability of the Recipient to perform the Activity diligently and independently.

21.7.2. The Recipient warrants that, to the best of its knowledge after making diligent inquiry, at the Date of this Agreement no Conflict exists or is likely to arise in the performance of the Recipient's obligations under the Agreement.

21.7.3. If during the Term a Conflict arises, the Recipient agrees to:

- a. notify the Commonwealth immediately;
- b. make full disclosure of all relevant information relating to the Conflict; and
- c. take any steps the Commonwealth reasonably requires to resolve or otherwise deal with that Conflict.

21.8. **Relationship of parties**

21.8.1. The Recipient is not by virtue of this Agreement an officer, employee, partner or agent of the Commonwealth, nor does the Recipient have any power or authority to bind or represent the Commonwealth.

21.8.2. The Recipient agrees:

- a. not to misrepresent its relationship with the Commonwealth; and
- b. not to engage in any misleading or deceptive conduct in relation to the Activity.

21.9. **Waiver**

21.9.1. A failure or delay by a party to exercise any right or remedy it holds under this Agreement or at law does not operate as a waiver of that right.

21.9.2. A single or partial exercise by a party of any right or remedy it holds under this Agreement or at law does not prevent the party from exercising the right again or to the extent it has not fully exercised the right.

21.10. **Variation of Agreement**

21.10.1. No variation of this Agreement is binding unless it is agreed in writing and signed by both parties.

21.11. **Assignment**

21.11.1. The Recipient cannot assign its obligations, and agrees not to assign its rights, under this Agreement without the Commonwealth's prior written approval.

21.11.2. The Recipient agrees not to enter into negotiations with any other person for the purposes of entering into an arrangement that will require novation of this Agreement without first consulting the Commonwealth.



21.12. **Survival**

21.12.1. Unless the contrary intention appears, the expiry or earlier termination of this Agreement will not affect the continued operation of any provision relating to:

- a. Intellectual Property;
- b. confidentiality;
- c. security;
- d. privacy;
- e. dealing with copies;
- f. books and records;
- g. audit and access;
- h. an indemnity;
- i. acknowledgement and publicity;
- j. rights or obligations following termination or expiry of the Agreement; or
- k. any other provision which expressly or by implication from its nature is intended to continue.

21.13. **Compliance with Legislation and Policies**

21.13.1. In this clause 21.13:

**Legislation** means a provision of a statute or subordinate legislation of the Commonwealth of Australia, or of a State, Territory or local authority.

21.13.2. The Recipient agrees to comply with any Legislation applicable to its performance of this Agreement.

21.13.3. The Recipient agrees, in carrying out its obligations under this Agreement, to comply with any of the Commonwealth's policies as notified, referred or made available by the Commonwealth to the Recipient (including by reference to an internet site), including those listed in Item J.

21.14. **Applicable law and jurisdiction**

21.14.1. This Agreement is to be construed in accordance with, and any matter related to it is to be governed by, the law of the Australian Capital Territory specified in Item M.

21.14.2. The parties submit to the jurisdiction of the courts of the Australian Capital Territory.

21.15. **Child Safety**

In this Agreement:

**Child** means an individual(s) under the age of 18 years and Children has a similar meaning;

**Child-Related Personnel**

means officers, employees, contractors (including subcontractors), agents and volunteers of the Grantee involved with the Activity who as part of that involvement may interact with Children;

**Legislation** means a provision of a statute or subordinate legislation of the Commonwealth, or of a State, Territory or local authority;

**National Principles for Child Safe Organisations**

means the National Principles for Child Safe Organisations, which have been endorsed in draft form by the Commonwealth Government (available at: <https://www.humanrights.gov.au/national-principles-child-safe-organisations>) and subsequently, from the time of their endorsement by the Council of Australian Governments, the final National Principles for Child Safe Organisations as published by the Australian Government;

**Relevant Legislation**

means Legislation in force in any jurisdiction where any part of the Activity may be carried out;

**Working With Children Check or WWCC**

means the process in place pursuant to Relevant Legislation to screen an individual for fitness to work with Children.

***Relevant Checks and authority***

21.15.1. The Grantee must:

- a. comply with all Relevant Legislation relating to the employment or engagement of Child-Related Personnel in relation to the Activity, including all necessary Working With Children Checks however described; and
- b. ensure that Working With Children Checks obtained in accordance with this clause 21.15.1 remain current and that all Child-Related Personnel continue to comply with all Relevant Legislation for the duration of their involvement in the Activity.

***National Principles for Child Safe Organisations and other action for the safety of Children***

21.15.2. The Grantee agrees in relation to the Activity to:

- a. implement the National Principles for Child Safe Organisations;
  - b. ensure that all Child-Related Personnel implement the National Principles for Child Safe Organisations;
  - c. complete and update, at least annually, a risk assessment to identify the level of responsibility for Children and the level of risk of harm or abuse to Children;
  - d. put into place and update, at least annually, an appropriate risk management strategy to manage risks identified through the risk assessment required by this clause 21.15.2;
  - e. provide training and establish a compliance regime to ensure that all Child-Related Personnel are aware of, and comply with:
    - i. the National Principles for Child Safe Organisations;
    - ii. the Grantee's risk management strategy required by this clause 21.15.2;
    - iii. Relevant Legislation relating to requirements for working with Children, including Working With Children Checks;
    - iv. Relevant Legislation relating to mandatory reporting of suspected child abuse or neglect, however described; and
  - f. provide the Commonwealth with an annual statement of compliance with clauses 21.15.1 and 21.15.2, in such form as may be specified by the Commonwealth.
- 21.15.3. With reasonable notice to the Grantee, the Commonwealth may conduct a review of the Grantee's compliance with this clause 21.15.
- 21.15.4. The Grantee agrees to:
- a. notify the Commonwealth of any failure to comply with this clause 21.15;
  - b. co-operate with the Commonwealth in any review conducted by the Commonwealth of the Grantee's implementation of the National Principles for Child Safe Organisations or compliance with this clause 21.15; and
  - c. promptly, and at the Grantee's cost, take such action as is necessary to rectify, to the Commonwealth's satisfaction, any failure to implement the National Principles for Child Safe Organisations or any other failure to comply with this clause 21.15.

**Executed as a deed**

Executed by the parties as evidence of their agreement.

SIGNED for and on behalf of the )  
**COMMONWEALTH OF AUSTRALIA,** )  
as represented by and acting through )  
the **Department of Infrastructure,** )  
**Transport, Regional Development**  
**and Communications :**  
ABN 86 267 354 017

MEGHAN HIBBERT

ASSISTANT SECRETARY

Name of signatory

Meghan Hibbert  
Position

In the presence of:

Henry Gibbs  
Name of witness

[Signature]

Signature

24/2/22

Insert Date

[Signature]

Signature of witness

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



*[Handwritten Signature]*

18 FEBRUARY 2022

Signature of Mayor

Insert Date

KAREN ANN VERNON

Full Name of Mayor

*[Handwritten Signature]*

21 FEBRUARY 2022

Insert Date

Signature of Chief Executive Officer

ANTHONY JOHN VULETA

Full Name of Chief Executive Officer

In the presence of:

ALISON MAREE PODMORE

Name of witness

*[Handwritten Signature]*

Signature of witness

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



18 FEBRUARY 2022

*Memo*

Signature of Mayor

Insert Date

KAREN ANN VERNON

Full Name of Mayor

*[Handwritten Signature]*

21 FEBRUARY 2022

Insert Date

Signature of Chief Executive Officer

ANTHONY JOHN VULETA

Full Name of Chief Executive Officer

In the presence of:

ALISON MAREE PODMORE

Name of witness

*[Handwritten Signature]*

Signature of witness

## SCHEDULE 1 PARTICULARS

### A. Programme, Project, Purpose, Activity and Funding and Payment (Recital A, clauses 1.1.1 and 2.1.1)

#### A.1. Programme

The Commonwealth is undertaking the Community Development Grants programme, which was to support needed infrastructure that promotes stable, secure and viable local and regional economies.

#### A.2. Project

The project to be undertaken by the Recipient is Edward Millen Redevelopment Project located at 999 Albany Hwy, East Victoria Park, WA, 6101. The Project will include the Activity that the Programme will fund, defined in more detail in item A.5 of the Schedule.

The Project Completion Date is **2 January 2024**.

#### A.3. Purpose

The Purpose for which the completed Project is required to be used is: to restore and repurpose the Edward Millen Hospital series of heritage buildings in order to both protect the heritage of the site, and activate certain areas for new purposes, thereby stimulating local commerce and investment.

#### A.4. Operational Period

The Operational Period commences on the date the Commonwealth accepts the Project Completion Report, to the Commonwealth's satisfaction. The duration of the Operational Period is dependent on the amount of Funding provided by the Commonwealth under this Agreement. The thresholds are set out in the table below:

Amount of Funding	Duration of Operational Period
Over \$1,000,000	Five (5) years

During the Operational Period, the Recipient must, if requested by the Commonwealth to do so, promptly provide evidence satisfactory to the Commonwealth that the Project is Operational.

#### A.5. Activity

The Activity to be undertaken by the Recipient is heritage restoration work which will restore Edward Millen Hospital building including The Rotunda Hospital, The Mildred Creak Centre, Hillview Clinic, former operating theatre and the boiler room house to allow repurposing for new uses while protecting the significant heritage site.

The activity includes:

#### **Edward Millen House (The Rotunda Hospital)**

- Strip out fixtures and fittings;
- Painting walls, ceilings and external surfaces and repair, sand and seal all timber floors;
- Upgrade electrical infrastructure, existing fire panel, smoke detection, emergency warning systems, and hydraulic serviced.

#### **Mildred Creek Building**

- Remove existing tiled roof, cladding materials and windows;
- Internal demolition and strip out area identified as having little heritage significance and all materials containing asbestos;
- Demolish all services;
- Remove existing external stairs, ramps, paving and walls;
- Repair existing timber floors, repair rebuild timber verandas, repair roof timbers, existing concrete entry stairs, columns, and porticos. Refurbish and paint windows, replace internal walls, repair replace ceilings as required;
- Upgrade electrical infrastructure, external lighting, existing fire panel, smoke detection, emergency warning systems, and hydraulic serviced.

#### **Hill View Clinic (not subject to Commonwealth Funding Agreement)**

- Demolish Hill View Clinic (C Block);
- Site clearance.

#### **Boiler Room House (G Block)**

- Demolish all services in G Block;
- Remove all asbestos, roofing materials, external weather board, screens to windows and doors, existing paving surrounding the building and concrete slab;
- Upgrade electrical infrastructure, external lighting, existing fire panel, smoke detection, emergency warning systems, and hydraulic serviced if required;
- Repair existing chimney;
- Replace missing brickwork and repoint;
- Refurbish and pant existing windows and doors install new glazing and hardware;
- Repair or replace internal walls and ceilings;
- Paint internal and external areas;
- Install new roofing.

#### **Out Buildings (H Block)**

- Demolish H block;
- Site clearance.

#### **Former Operating Theatre (D Block)**

- Demolish old emergency operating theatre (D block)

#### **External works and services**

- Western Power headworks - upgrade to the district transformer;
- Replacement of site main switchboard;
- External fire services upgrade (fire hydrants and pipe work).



The above works will allow for the overall adaptive re-use of the site. The Activity Period commences on the Date of this Agreement and ends on the Activity Completion Date which is **2 January 2024**.

**A.6. Reserved**

**A.7. Funding and Payment**

**(clauses 1.1.1, 3.1, 6)**

The total Funding for the Activity is **\$4,000,000** GST exclusive. The Funding will be paid as follows:

1. The first payment of Funding specified in the table at Annexure A will not be made until:
  - a) this Agreement has been executed by all Parties and all Milestones specified in the table at Annexure A that relate to the first payment have been achieved to the Commonwealth's satisfaction; and
  - b) all Reports identified in item D of the Schedule as being due on or before the due date for the first payment have been received and accepted by the Commonwealth; and
2. The second and each subsequent payment specified in the table at Annexure A will not be made until:
  - a) all Milestones specified in the table at Annexure A that relate to the relevant payment have been achieved to the Commonwealth's satisfaction;
  - b) all Reports identified in item D of this Schedule as being due on or before the due date for the relevant payment have been received and accepted by the Commonwealth; and
  - c) the Recipient has provided the Commonwealth with evidence that all previously paid Funds have been expended or committed.

Invoicing

The Commonwealth must receive a properly rendered invoice or, if required a tax invoice which meets the requirements of the Australian Taxation Office for the amount of the payment and;

The Recipient must provide the Commonwealth with evidence that all previous paid Funding has been expended or committed.

**B. Budget**

**(clause 6.2)**

The Budget for the Activity, identifying the Funding and Other Contributions, is at Annexure B.

The percentage of the Budget (Total Cost) below which Funding may be transferred between Cost items without the Commonwealth's approval is 10%.

The percentage of the Budget (Total Cost) which must not be exceeded in total transfers between expenditure items per Financial Year is 20%.

**C. Other Contributions**  
**(clause 7)**

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**C.1. Other Contributions**

Other Contributions are specified at the table titled "Other Contributions" in Annexure B. Any financial or in-kind assistance that the Recipient has received from the Commonwealth of Australia or a State, Territory or local government and which the Recipient intends to, or is required to, use to perform the Activity must be identified in Other Contributions.

**D. Reporting**  
**(clauses 1.1.1, 2.6)**

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**D.1. Progress Reports, Activity Completion Report and Project Completion Report**

D.1.1 The Recipient must give the Commonwealth the Progress Reports, the Activity Completion Report and Project Completion Report by the times specified in the Table of Milestones, Reports and Payments relating to the Activity at Annexure A.

D.1.2 Each Progress Report must contain:

- a. details of progress and performance against the Activity, and the Project (to the extent that it is directly related to the relevant part of the Activity which is being covered by that Progress Report) and evidence of completion of the Milestones listed in Annexure A of the Schedule that are due for completion (including but not limited to photographs to demonstrate completion of Milestones) during the period between the Recipient's previous Progress Report and the due date of this Progress Report (or in the case of the first Progress Report, the period between the Date of this Agreement and the due date of the first Progress Report);
- b. details of mitigating circumstances and remedial action undertaken in the event a Milestone is not met or completed in the manner and/or by the time specified;
- c. copies of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Project;
- d. evidence that the Recipient has obtained and/or utilised in-kind Other Contributions specified in the table at Annexure B;
- e. a statement of receipts (which separately identifies any interest earned on the Funding) and expenditure to date in respect of the Funding; and
- f. a statement of receipts and expenditure to date in respect of Other Contributions (excluding in-kind).

D.1.3 The Activity Completion Report must contain:

- a. evidence that the Activity and the Milestones have been completed;
- b. an analysis of the planning, implementation and overall process the Recipient followed to deliver the Activity;

- c. any recommendations on improved practice, relevant to the Recipient's and the Commonwealth's practices, that may assist in the delivery of future projects;
- d. a copy of the current Assets register described in item E.1.2 of this Schedule and a copy of the Real Property register described in item E.2.4 of this Schedule;
- e. evidence that the Recipient has obtained in-kind Other Contributions for the Activity specified in the table at Annexure B;
- f. an up to date Audited Financial Report in respect of the Activity; and
- g. copies of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Activity, not already included in the Progress Report/s.
- h. a copy of the Assets register described in item E.1 of this Schedule and a copy of the Real Property register described in item E.2 of this Schedule.

D.1.4 The Project Completion Report must contain:

- a. evidence that the Project has been completed;
- b. an analysis of the planning, implementation and overall process the Recipient followed to deliver the Project;
- c. any recommendations on improved practice, relevant to the Recipient's and the Commonwealth's practices, that may assist in the delivery of future projects;
- d. a copy of the Assets register described in item E.1 of this Schedule and a copy of the Real Property register described in item E.2 of this Schedule.
- e. evidence that the Recipient obtained in-kind contributions specified in the table at Annexure B;
- f. an Audited Financial Report and
- g. copies of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Project, not already included in the Progress Report/s.

In addition, the Project Completion Report must also:

- h. describe the Recipient's activities during the Term;
- i. discuss in detail the conduct, benefits and outcomes of the Activity as a whole and the Activity's results and findings; and
- j. Reserved

The Recipient must also include in the Project Completion Report a discussion of any other matters relating to the performance of the Project and Activity, which the Commonwealth notifies the Recipient is required to be included in the Project Completion Report. Any such requirement will be notified to the Recipient at least 20 Business Days before the Project Completion Report is due.

D.1.5. Unless otherwise agreed by the Commonwealth in writing, all Reports must be:

- a. supplied in hard copy or electronic form;
- b. supplied in a format that is acceptable to the Commonwealth; and

- c. signed by the Recipient's Chief Executive Officer, Chief Financial Officer or other person authorised by the Recipient to execute documents and legally bind the Recipient by their execution.

## **D.2. Audit and certification**

D.2.1. The Activity Completion Report and Project Completion Report must be accompanied by a copy of a letter to the Recipient from the Approved Auditor, or a report from the Approved Auditor, that includes:

- a. separate audited statements of receipts and expenditure in respect of the Funding and Other Contributions (excluding in-kind), which must:
  - i. comply with all relevant Australian Accounting Standards
  - ii. separately identify any interest earned on the Funding
  - iii. include a definitive statement made by an Approved Auditor as to whether:
    - 1. the statements of receipts and expenditure are fair and true
    - 2. Funding and Other Contributions (excluding in-kind) were held and expended in accordance with this Agreement
- b. a certificate, signed by the Recipient's Chief Executive Officer, Chief Financial Officer or a person authorised by the Recipient to execute documents and legally bind the Recipient by their execution, that:
  - i. all Funding and Other Contributions (excluding in-kind) received was expended for the purpose of the Activity and Project and expended and held in a manner in accordance with this Agreement
  - ii. salaries and allowances paid to persons involved in the Activity are in accordance with any applicable award or agreement in force under any relevant Law on industrial or workplace relations.

## **D.3. Other Reports**

Throughout the Term, the Commonwealth may require the Recipient to provide ad-hoc Reports concerning:

- a. any significant developments concerning the Activity;
- b. any significant delays or difficulties encountered in performing the Activity in accordance with the Agreement; and
- c. the outcomes and outputs of the project as listed in the application.

The Recipient must provide any such ad-hoc Reports within the timeframe notified by the Commonwealth.

## **E. Assets and Real Property (clauses 1.1.1 and 9)**

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### **E.1. Assets**

E.1.1. For the purposes of Clause 9, the Recipient may create, acquire or upgrade the

following Assets: None specified

- E.1.2. The Recipient must for the Term of this Agreement maintain an Asset Register in the following form and containing the following information:
- a. Asset description;
  - b. acquisition, upgrade or creation price or total lease cost;
  - c. date of acquisition, creation, upgrade or lease;
  - d. if leased, type and term of lease;
  - e. location of Asset;
  - f. date of Disposal;
  - g. disposal method; and
  - h. if the Asset was partly created, acquired or upgraded using the Funding, the proportion of that creation, acquisition or upgrade that was paid for with the Funding.
- E.1.3. The Recipient must use the Assets created, acquired, or upgraded under this Agreement for the Purpose set out in item A.3 of the Schedule for the duration of the Operational Period.
- E.2. Real Property**
- E.2.1. The Real Property includes the Edward Millen Redevelopment Project.
- E.2.2. The Capital Works includes the restoration and repurposing of the Real Property at the Works Location.
- E.2.3. The Works Locations includes 99 Albany Highway, Lot 9000 DP41207, East Victoria Park, WA, 6101.
- E.2.4. The Recipient must for the Term of this Agreement maintain a Real Property Register in the following form and containing the following information:
- a. Real Property description;
  - b. acquisition, upgrade or creation price or total lease cost;
  - c. date of acquisition, creation, upgrade or lease;
  - d. if leased, type and term of lease;
  - e. location of Real Property;
  - f. date of Disposal;
  - g. disposal method; and
  - h. if the Real Property was partly created, acquired or upgraded using the Funding, the proportion of that creation, acquisition or upgrade that was paid for with the Funding.
- E.2.5. The Recipient must use the Real Property created, acquired, or upgraded under this Agreement for the Purpose set out in item A.3 of the Schedule for the duration of the Operational Period.

**F. Insurance**  
**(clause 21.5)**

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The Recipient must maintain:

- a. workers compensation insurance as required by law where the Recipient carries out activities under this Agreement;
- b. public liability insurance to the value of at least \$10 million for each and every claim, or occurrence giving rise to a claim, in respect to activities undertaken under this Agreement, where occurrence means either a single occurrence or a series of occurrences if these are linked or occur in connection with one another from one original cause, as the case may be; and
- c. insurance against any loss or damage to an Asset or Real Property for its full replacement cost including where relevant the costs of demolition and removal of debris and the cost of architects, engineers and other consultants.

**G. Reserved**

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**H. Acknowledgement and publicity**  
**(clause 14)**

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- H.1.1 If the Recipient erects or maintains any signage in relation to the Project, the signage must be approved by the Commonwealth prior to use and contain an acknowledgement of the Funding as required under Clause 14 of this Agreement. Any signage must remain in place during the Operational Period for the Project as specified in Item A.4. Signage for the Activity may be paid from the Budget if approved by Us. Signage for any other part of the Project must be at the Recipient's own cost.
- H.1.2 If a Federal, State or Local Government election is announced, the Recipient must cover any sign that is displayed within 100 metres of a polling place with an opaque (impenetrable to sight), durable and water repellent material from a period not less than 48 hours before the commencement of polling at that polling place until the polls close.
- H.1.3 The Recipient must include the Commonwealth logo in all signage, publications and promotional activities related to the Activity.
- H.1.4 The Recipient must not use the Commonwealth's logo without the Commonwealth's approval. If the Commonwealth provides approval for the Recipient's use of the Commonwealth's logo, the Recipient must use it in accordance with the Commonwealth's Print Style Guidelines (as advised by the Commonwealth).
- H.1.5 All the Recipient's publicity, announcements and media releases relating to the Activity must be cleared through the Commonwealth's contact officer specified at item L of the Schedule with at least 10 Business Days' notice, before release.

- H.1.6 The Commonwealth reserves the right to publicise and report on the provision of Funding to the Recipient, including progress on completing the Activity and the Project. The Commonwealth may do this by including the information specified in clause 14.2 in media releases, general announcements about the Funding and in annual reports and in electronic media.
- H.1.7 The Recipient must conduct an official opening of the completed Activity and Project unless otherwise agreed by the Commonwealth.
- H.1.8 The Recipient must provide to the Commonwealth with at least 3 options for dates for the official opening, or any other milestone events that the Recipient chooses to conduct (e.g. stage completion), for the Activity and the Project. These dates must be provided at least 56 days prior to the first proposed date for each event to be conducted.
- H.1.9 The date of official openings or other official public function for the completed Activity and Project must be agreed by the Commonwealth.
- H.1.10 The Recipient must invite the Commonwealth's representative to officiate at any official opening or other official public function relating to the Activity or the Project.
- H.1.11 The Commonwealth Minister's prior agreement must be sought, to invite any other Commonwealth or State elected official or other officials to attending either function. This invitation must be provided to the Commonwealth no later than 56 days before the date of the official opening or other official public function relating to the Activity or the Project.
- H.1.12 The Recipient must coordinate requests for the Commonwealth's agreement to the date of official openings and requests for Commonwealth representation at official openings or other official functions relating to the Activity or the Project through the Commonwealth's contact officer specified at item L of the Schedule.

**I. Reserved**

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**J. Compliance with laws and policies  
(clause 21.13)**

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The Recipient must comply with the following laws and policies in carrying out the Activity:

- Crimes Act 1914;
- Criminal Code of Conduct 1995;
- Disability Discrimination Act 1992;
- Workplace Gender Equality Act 2012;
- Building and Construction Industry (Improving Productivity) Act 2016;
- Racial Discrimination Act 1975;
- Sex Discrimination Act 1984;
- Migration Act 1958
- Work Health and Safety Act 2011.

For the purposes of clause 21.13, the following policies are identified:

Community Development Grants Programme – Grant Programme Guidelines

**K. Statutory Approvals**

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**(clause 2A.2)**

For the purposes of subclause clause 2A.2, the Recipient must obtain statutory approvals for the Project.

**L. Notices**

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**(clause 18.1)**

The Commonwealth's details for notices are as follows:

Name: Program Manager  
Regional Programs Branch

Address: Department of Infrastructure, Transport, Regional Development and Communications  
GPO Box 594  
CANBERRA ACT 2601

Email: CDG.Projects@infrastructure.gov.au

The Recipient's details for notices are as follows:

Position: Strategic Projects Manager, Jack Bidwell

Address: C/- Locked Bag No.437, Victoria Park, WA, 6979

Telephone: 08 9311 8111

E-mail: admin@vicpark.wa.gov.au

**M. Applicable Law**

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**(clause 21.14)**

The Laws of the Australian Capital Territory apply to this Agreement.

**N. Confidential Information**

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**(clause 13)**

**Commonwealth's Confidential Information**

Agreement Provisions/Schedules/Attachments

None specified

Agreement related material

None specified

**Recipient's Confidential Information**

Agreement Provisions/Schedules/Attachments



None specified

Agreement related material

None specified

**ANNEXURE A**

**Table of Milestones, Reports and Funding payments relating to the Activity \$4,000,000.**

<b>Report</b>	<b>Milestone(s) / Information covered by the Report</b>	<b>Milestone Completion Date</b>	<b>Payment amount (GST Exclusive)</b>	<b>Due Date for Report</b>	<b>Due Date for Funding Payment</b>
Progress Report 1	Evidence acceptable to the Commonwealth that the following have been achieved: <ul style="list-style-type: none"> <li>• Update on project progress</li> </ul>	1 April 2022	\$0	2 May 2022	16 May 2022
Progress Report 2	Evidence acceptable to the Commonwealth that the following have been achieved: <ul style="list-style-type: none"> <li>• Update on project progress</li> </ul>	1 September 2022	\$0	3 October 2022	17 October 2022
Progress Report 3	Evidence acceptable to the Commonwealth that the following have been achieved: <ul style="list-style-type: none"> <li>• Confirmation of final costs;</li> <li>• Confirmation of final designs;</li> <li>• A variation request is submitted to vary the activity at A.5 in line with final designs;</li> <li>• 15% per cent of the Activity is completed and certified by the Project Manager, Quantity Surveyor, or similar.</li> </ul>	1 March 2023	\$600,000	3 April 2023	17 April 2023

<b>Report</b>	<b>Milestone(s) / Information covered by the Report</b>	<b>Milestone Completion Date</b>	<b>Payment amount (GST Exclusive)</b>	<b>Due Date for Report</b>	<b>Due Date for Funding Payment</b>
Progress Report 4	Evidence acceptable to the Commonwealth that the following have been achieved: <ul style="list-style-type: none"> <li>30 per cent of the Activity is completed and certified by the Project Manager, Quantity Surveyor, or similar.</li> </ul>	1 May 2023	\$600,000	1 June 2023	15 June 2023
Progress Report 5	Evidence acceptable to the Commonwealth that the following have been achieved: <ul style="list-style-type: none"> <li>50 per cent of the Activity is completed and certified by the Project Manager, Quantity Surveyor, or similar.</li> </ul>	4 July 2023	\$800,000	1 August 2023	15 August 2023
Progress Report 6	Evidence acceptable to the Commonwealth that the following have been achieved: <ul style="list-style-type: none"> <li>an Event Invitation has been submitted to the Department as required at Item H of the Schedule;</li> </ul> <p>75% per cent of the Activity is completed and certified by the Project Manager, Quantity Surveyor, or similar.</p>	1 September 2023	\$1,000,000	2 October 2023	16 October 2023

Report	Milestone(s) / Information covered by the Report	Milestone Completion Date	Payment amount (GST Exclusive)	Due Date for Report	Due Date for Funding Payment
Progress Report 7	<p>Evidence acceptable to the Commonwealth that the following have been achieved:</p> <ul style="list-style-type: none"> <li>• an Event Invitation has been submitted to the Department as required at Item H of the Schedule;</li> </ul> <p>95% per cent of the Activity is completed and certified by the Project Manager, Quantity Surveyor, or similar.</p>	1 November 2023	\$600,000	1 February 2024	14 February 2024
Project Completion Report	<p>Evidence acceptable to the Commonwealth that the following has been achieved:</p> <ul style="list-style-type: none"> <li>• the Activity, at Item A.5 of the Schedule, is complete;</li> <li>• the Project, at Item A.2 of the Schedule, is complete;</li> <li>• all approvals required to enable public access and use of the facility have been met; and</li> <li>• the Project is fully Operational.</li> </ul>	2 January 2024	\$400,000	2 April 2024	16 April 2024

**ANNEXURE B**

<b>BUDGET FOR THE EXPENDITURE OF CDG FUNDING</b>		
Cost item	Description	Amount (GST exclusive)
Heritage restoration works	Edward Millen Redevelopment Project	\$4,000,000
<b>Funding (A)</b>		<b>\$4,000,000</b>

<b>OTHER CONTRIBUTIONS (FINANCIAL)</b>			
Name of Contributor	Cost Item	Description of item	Amount (GST exclusive)
Town of Victoria Park	Demolition	Demolition and site clearing of Block C – Hillview Clinic	\$150,000
<b>Other Contributions (Financial) (B)</b>			<b>\$150,000</b>

<b>TOTAL COST ESTIMATE (A + B) (GST exclusive):</b>	<b>\$4,150,000</b>
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**ANNEXURE E - LEASE**

DRAFT

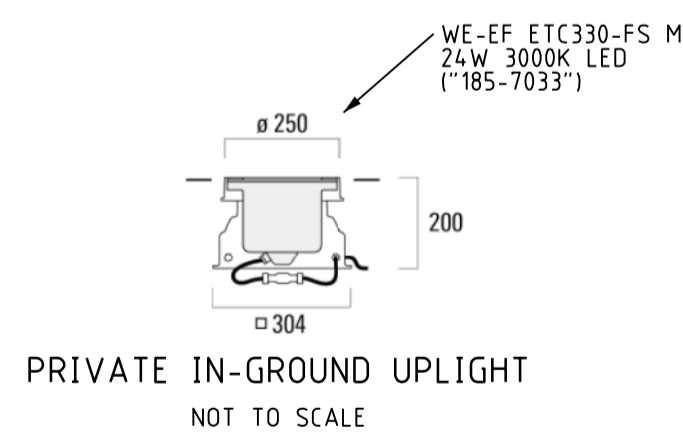
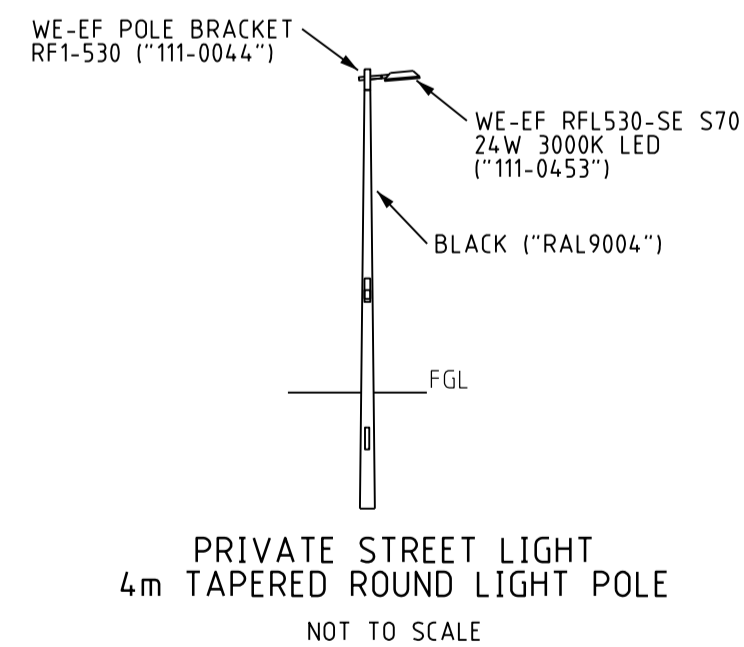
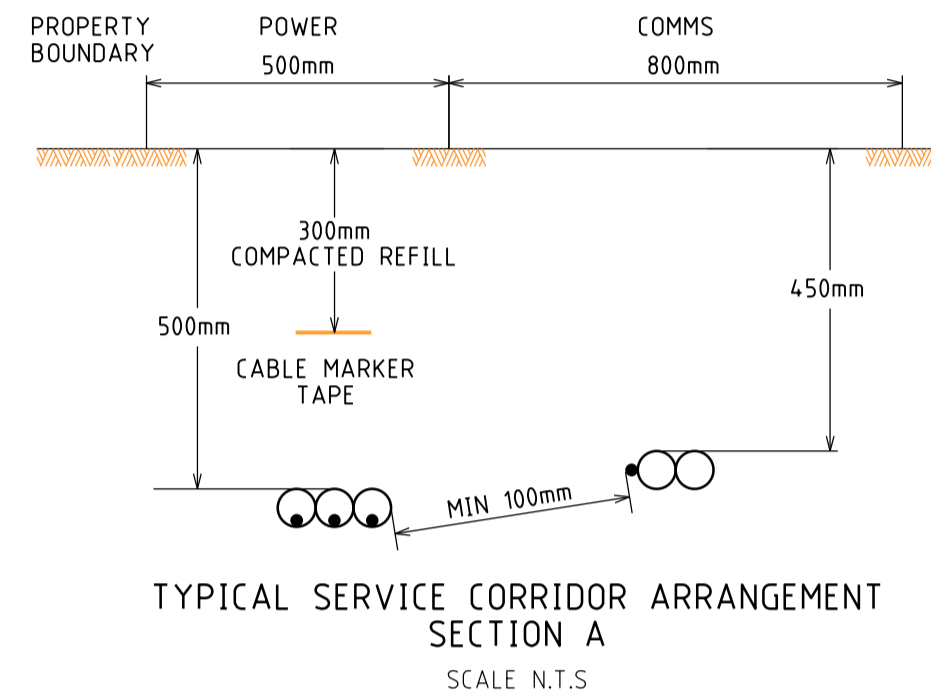
**ANNEXURE F - WESTERN POWER DISTRICT TRANSFORMER RELOCATION PLANS**

DRAFT

**DESIGNED TO BE CONSTRUCTED DE-ENERGISED**

- NOTES FOR CONTRACTOR:**
- REFER TO CIVIL ENGINEER DRAWINGS & SECTION A DETAIL FOR SERVICES CORRIDOR TRENCH ALIGNMENT DETAILS.
  - ALL ELECTRICAL WORKS TO BE DONE TO AS 3000, WAER & WP REQUIREMENTS.
  - LIAISE & COORDINATE ELECTRICAL WORKS WITH WESTERN POWER & OTHER SERVICES.
  - LOCATE AND PROTECT EXISTING SERVICES DURING CONSTRUCTION.
  - REFER TO CLIENT SITE PLANS FOR PROPOSED LOCATIONS OF WP SUBSTATION SITE, WP DEDICATED PILLARS AND SITE MAIN SWITCHBOARD.
  - ANY AND ALL PITS TO BE INSTALLED FLUSH WITH FINISHED GROUND LEVEL.
  - ALL CABLES TO BE LAID MINIMUM 500mm DEEP WITHIN ORANGE HD CONDUIT. MARKER TAPE TO BE 300mm BELOW FINISHED GROUND LEVEL.
  - INSTALL HEATSHRINK "END CAP" AT ALL CABLE ENDS.
  - DISTRIBUTED MASTER METERING ARRANGEMENT FOR GHS LOT 1 (39-UNITS). INDIVIDUAL WP DIRECT METERS TO BE INSTALLED IN EACH HOUSE'S DISTRIBUTION BOARD - BY OTHERS (HOUSE BUILDER).
  - SITE MAIN SWITCHBOARD DIMENSIONS & CONCRETE PLINTH DETAILS TO BE PROVIDED BY MANUFACTURER.
  - SITE MAIN SWITCHBOARD MEN LINK TO BE RATED TO A MINIMUM OF 25kA.
  - CONTRACTOR TO SUPPLY SUITABLE LUGS AND CRIMPING TOOLS TO WP FOR TERMINATION OF NEW CONSUMER MAINS CABLES TO WP ASSETS.
  - HOUSE SUB-MAINS CABLES TO BE INSTALLED FROM POINT OF SUPPLY TO HOUSE DISTRIBUTION BOARDS - BY OTHERS (HOUSE BUILDERS).
  - UNLESS NOTED OTHERWISE, MINIMUM HOUSE SUB-MAINS CABLES TO BE CIRCULAR 1x2C 10mm<sup>2</sup> Cu XLPE/PVC FOR SINGLE PHASE CONNECTIONS OR CIRCULAR 1x4C 6mm<sup>2</sup> Cu XLPE/PVC FOR THREE PHASE CONNECTIONS.
  - CONSUMER MAINS AND SUB-MAINS CABLES TO BE SPACED NOT LESS THAN 100mm FROM OTHER UNDERGROUND SERVICES.
  - ALL CONDUITS TO BE INSTALLED WITH DRAW ROPE TO ALLOW FOR FUTURE CABLE HAULING BY OTHERS.
  - BUILDER ELECTRICIAN TO EXTEND ELECTRICAL SERVICE LEAD-IN CONDUIT FROM POINT OF SUPPLY TO HOUSE DB.
  - BUILDER ELECTRICIAN TO ALTERNATE PHASING OF HOUSE SUB-MAINS CONNECTIONS WHEN TERMINATING TO POINT OF SUPPLY.
  - BUILDER ELECTRICIAN TO DESIGN & CONSTRUCT HOUSE DISTRIBUTION BOARDS AS PART OF BUILDING WORKS.
  - ALL PRIVATE STREET LIGHTS TO BE INSTALLED A MINIMUM OF 1m FROM EDGE OF KERB.
  - CONTRACTOR TO INSTALL SPARE 32mm ELECTRICAL HD CONDUIT BETWEEN SITE MAIN SWITCHBOARD & CABLE HAULING PIT AS SHOWN FOR FUTURE IRRIGATION DB SUPPLY.
  - CONTRACTOR TO COORDINATE DISCONNECTION & RECONNECTION/RESUPPLY OF EXISTING EDWARD MILLEN PARK MAIN SWITCHBOARD:
    - DISCONNECT EXISTING EDWARD MILLEN PARK MSB CONSUMER MAINS CABLE FROM EXISTING WP 500kVA TRANSFORMER WITHIN BRICK COMPOUND.
    - CUT BACK & COIL EXISTING EDWARD MILLEN PARK MSB CONSUMER MAINS CABLE AND PROVIDE TEMPORARY POWER SUPPLY THROUGHOUT WP TRANSFORMER RELOCATION & COMMISSIONING WORKS.
    - UNCOIL & TERMINATE EXISTING EDWARD MILLEN PARK MSB CONSUMER MAINS CABLE TO NEWLY COMMISSIONED WP TRANSFORMER LV KIOSK IN CONJUNCTION WITH WESTERN POWER.
    - DEMOLISH & REMOVE EXISTING BRICK COMPOUND FROM SITE UPON COMPLETION OF WP TRANSFORMER RELOCATION & COMMISSIONING WORKS.
  - FREEHOLD-TITLE LOT 2 (AKA LOT 9) APARTMENT BUILDING SITE TO BE SUPPLIED VIA DEDICATED WP UNI-PILLAR AS SHOWN. REFER TO FORTH BUILDING SERVICES PLANS AND MATTHEWS & SCAVALLI ARCHITECTURAL PLANS FOR FURTHER DETAILS.
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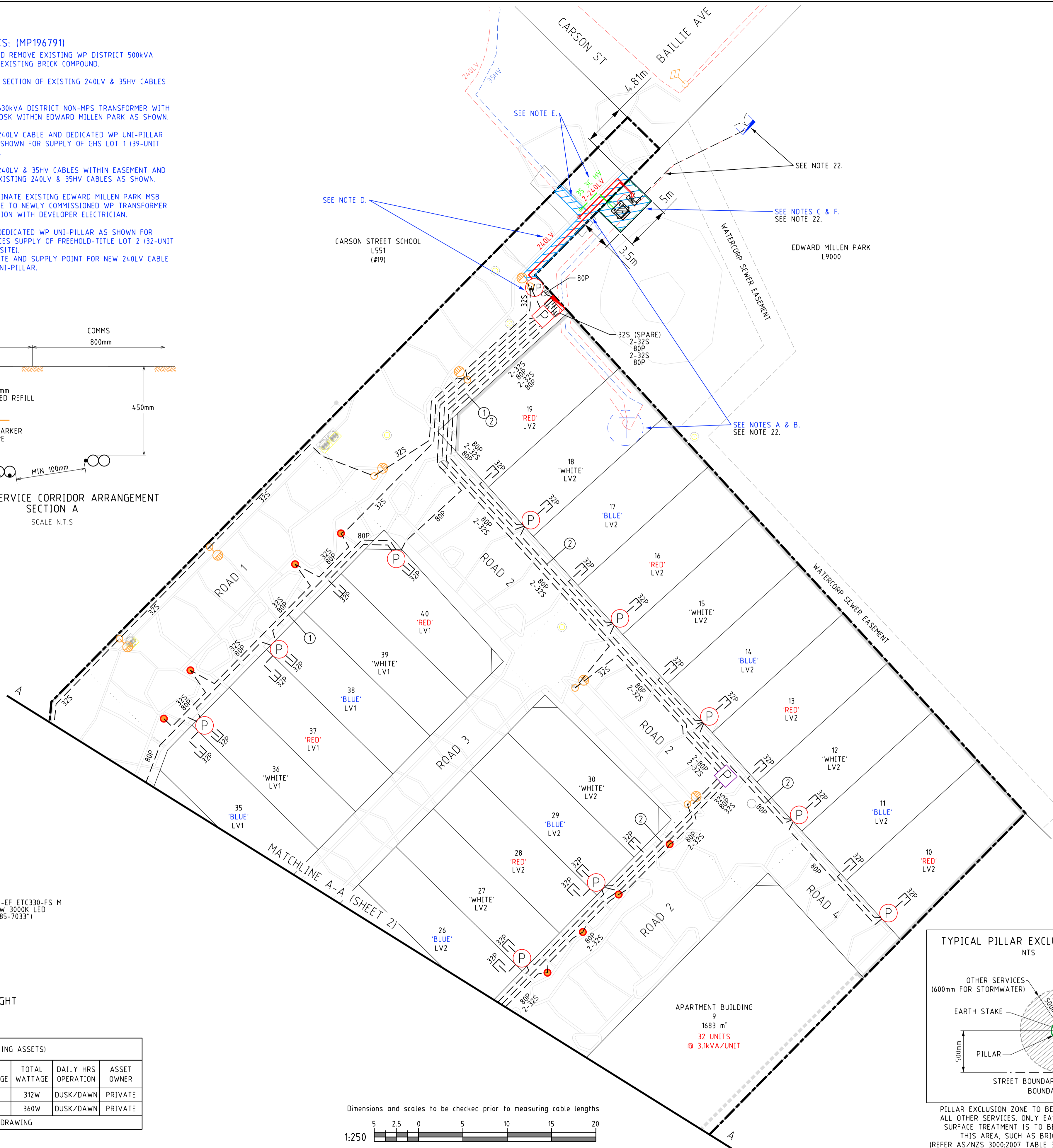
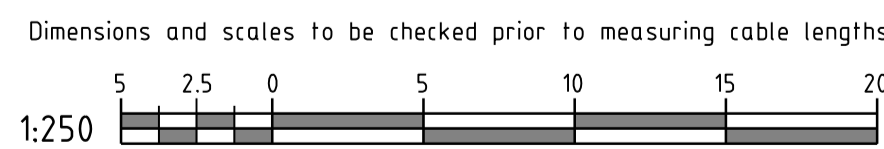
- WP SCOPE OF WORKS: (MP196791)**
- WP TO DISCONNECT AND REMOVE EXISTING WP DISTRICT 500kVA TRANSFORMER WITHIN EXISTING BRICK COMPOUND.
  - WP TO CUT & REMOVE SECTION OF EXISTING 240LV & 35HV CABLES AS SHOWN.
  - WP TO INSTALL NEW 630kVA DISTRICT NON-MPS TRANSFORMER WITH TYPE 2.1 PENDA LV KIOSK WITHIN EDWARD MILLEN PARK AS SHOWN.
  - WP TO INSTALL NEW 240LV CABLE AND DEDICATED WP UNI-PILLAR WITHIN EASEMENT AS SHOWN FOR SUPPLY OF GHS LOT 1 (39-UNIT SURVEY STRATA SITE).
  - WP TO INSTALL NEW 240LV & 35HV CABLES WITHIN EASEMENT AND INTERCONNECT WITH EXISTING 240LV & 35HV CABLES AS SHOWN.
  - WP TO UNCOIL & TERMINATE EXISTING EDWARD MILLEN PARK MSB CONSUMER MAINS CABLE TO NEWLY COMMISSIONED WP TRANSFORMER LV KIOSK IN CONJUNCTION WITH DEVELOPER ELECTRICIAN.
  - WP TO INSTALL NEW DEDICATED WP UNI-PILLAR AS SHOWN FOR WAPC 159500 CLEARANCES SUPPLY OF FREEHOLD-TITLE LOT 2 (32-UNIT APARTMENT BUILDING SITE). WP TO DETERMINE ROUTE AND SUPPLY POINT FOR NEW 240LV CABLE TO SUPPLY NEW WP UNI-PILLAR.



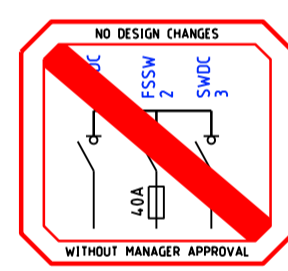
NOTE: ALL UNMETERED SUPPLIES (Including PRIVATE AND WESTERN POWER STREETLIGHTING ASSETS)

TYPE OF EQUIPMENT (POLES & LUMINAIRES - REFER TO LEGEND & SEE NOTE 24.)	NO OF UNITS	UNIT WATTAGE	TOTAL WATTAGE	DAILY HRS OPERATION	ASSET OWNER
WE-EF 4m TAPERED ROUND SOR LIGHT POLE + RFL530-SE S70 24W 3000K LED LUMINAIRE (BLACK)	13	24W	312W	DUSK/DAWN	PRIVATE
WE-EF ETC330-FS M 24W 3000K LED IN-GROUND UPLIGHT (STAINLESS STEEL)	15	24W	360W	DUSK/DAWN	PRIVATE

NOTE: ALL UNMETERED SUPPLIES and STREETLIGHTS MUST BE INCLUDED IN DESIGN DRAWING



- LEGEND**
- PROPOSED WP SUBSTATION SITE (3.5m x 5m) NON-MPS TRANSFORMER & LV KIOSK (INSTALLED BY WP)
  - PROPOSED WP DEDICATED UNI-PILLAR (INSTALLED BY WP)
  - EXISTING EDWARD MILLEN PARK MAIN SWITCH BOARD (MSB)
  - SITE MAIN SWITCHBOARD (SMSB)
  - PRIVATE SERVICE PILLAR
  - CLASS 'B' ELECTRICAL PIT & LID. CONTRACTOR TO SELECT & SIZE PIT TO SUIT SITE CONDITIONS & CONSTRUCTION REQUIREMENTS.
  - CLASS 'C' ELECTRICAL PIT & LID. CONTRACTOR TO SELECT & SIZE PIT TO SUIT SITE CONDITIONS & CONSTRUCTION REQUIREMENTS.
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  - 1m WIDE POWER SERVICES EASEMENT UNDER SECTION 136C OF THE TRANSFER OF LAND ACT 1893.
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S (Electrical Services HD Conduit)  
C (Class 12 Communications Conduit)  
T (Telstra Conduit)  
Conduit Size  
No. of Conduits
  - LV FEEDER SUB-MAIN CIRCUIT NUMBER
  - INSTALL LEAD-IN CONDUIT TO PROPOSED LOCATION. CAP AND SEAL AT 300mm ABOVE GROUND AND LABEL WITH DESCRIPTOR "POWER" UNTIL CABLE IS INSTALLED BY BUILDER TO HOUSE DB.
  - EXISTING WP STREET LIGHT:  
6.5m WP STANDARD POLE + 80W 4000K LED WP ROADFLAIR LUMINAIRE (HAWTHORN GREEN)
  - EXISTING WP STREET LIGHT:  
10.5m WP STANDARD POLE + 250W HPS WP STANDARD LUMINAIRE (HAWTHORN GREEN)
  - PROPOSED PRIVATE STREET LIGHT: (SEE NOTE 24.) WE-EF RFL530-SE S70 24W 3000K LED ("111-0453") WITH RFL1-530 ("111-0044") SINGLE POLE BRACKET ON 4m TAPERED ROUND POLE (BLACK - "RAL9004")
  - PROPOSED PRIVATE IN-GROUND UPLIGHT: (SEE NOTE 24.) WE-EF ETC330-FS M 24W 3000K LED ("185-7033") (STAINLESS STEEL)



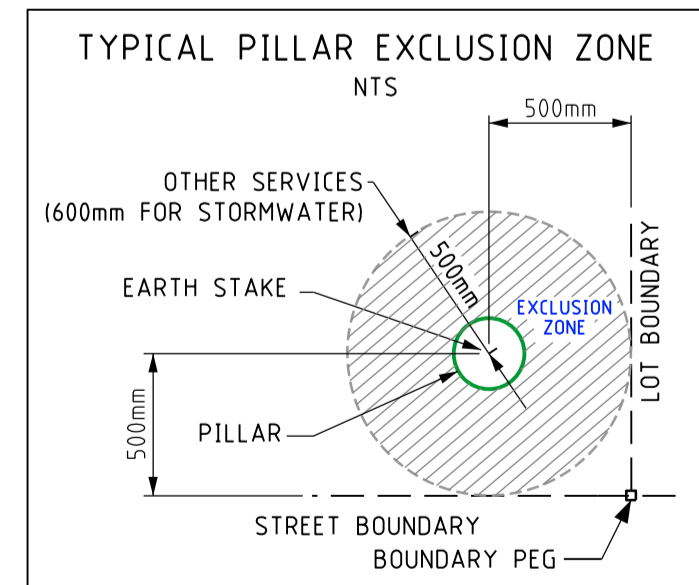
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**INSTRUCTION TO CONSTRUCTION CREWS**  
IT IS A REQUIREMENT OF WESTERN POWER THAT ALL EXISTING CONDUIT / CABLES SIZES ARE CONFIRMED ON SITE TO ENSURE THAT ALL FITTINGS ARE OF THE APPROPRIATE SIZE AND ARE INSTALLED CORRECTLY IN ACCORDANCE TO Distribution Construction Standards Handbook

**FOR CONSTRUCTION**



PILLAR EXCLUSION ZONE TO BE KEPT CLEAR OF ALL OTHER SERVICES. ONLY EASILY REMOVABLE SURFACE TREATMENT IS TO BE INSTALLED IN THIS AREA, SUCH AS BRICK PAVING. (REFER AS/NZS 3000:2007 TABLE 3.7 AND UDS 5.3.5.2)

Rev.	AMENDMENT	DRN	DESIGN	CHKD	ENG	ISSUED BY	ISSUED DATE
0	CLIENT APPROVED REV 'C' DESIGN ISSUED TO CLIENT FOR CONSTRUCTION.	ML	B.T.L	B.T.L	-	B.T.L	06/09/21
C	LOT 9 APARTMENT BUILDING SITE SUPPLY CHANGED TO 32.1kVA/UNIT & WP UNI-PILLAR LOCATION UPDATED AS PER CLIENT REQUEST	ML	B.T.L	B.T.L	-	B.T.L	30/03/21
B	DESIGN AMENDED TO SUIT LATEST CIVIL BASE PLANS AND CLIENT PREFERRED SERVICING LAYOUT.	ML	B.T.L	B.T.L	-	B.T.L	24/02/21
A	PRELIMINARY DESIGN ISSUED TO CLIENT FOR COMMENT.	ML	B.T.L	B.T.L	-	B.T.L	03/12/20

**APD ENGINEERING**  
T: 1300 273 797 | E: admin@APDeng.com.au  
www.APDeng.com.au

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**LOT DETAILS**  
Residential Lots : 0  
Group Housing : 39 @ 3.1kVA/UNIT  
Commercial : 0  
Pumps : 0  
Apartment Complex: 32 @ 3.1kVA/UNIT

**SITE LOCATION**  
Lat : 31° 59' 38" S  
Long : 115° 54' 24" E

**STREET SMART**  
Page : 404  
Map Ref : A1

**PROJECT NAME**  
LOT 3 (384) BERWICK ST,  
EAST VICTORIA PARK  
ELECTRICAL & LIGHTING LAYOUT

**LOCAL AUTHORITY**  
TOWN OF VICTORIA PARK

**CLIENT/DEVELOPER**  
BERWICK EVP PTY LTD

W.A.P.C. REFERENCE No.  
**159500 & 285-20**

WESTERN POWER REFERENCE No.  
**MP196791**

SCALE: AS NOTED 1 : 250 @ A1  
DATE: 03/12/2020

DRAWING No.  
**W\_APD05665.01-EL01**

REVISION  
**0**

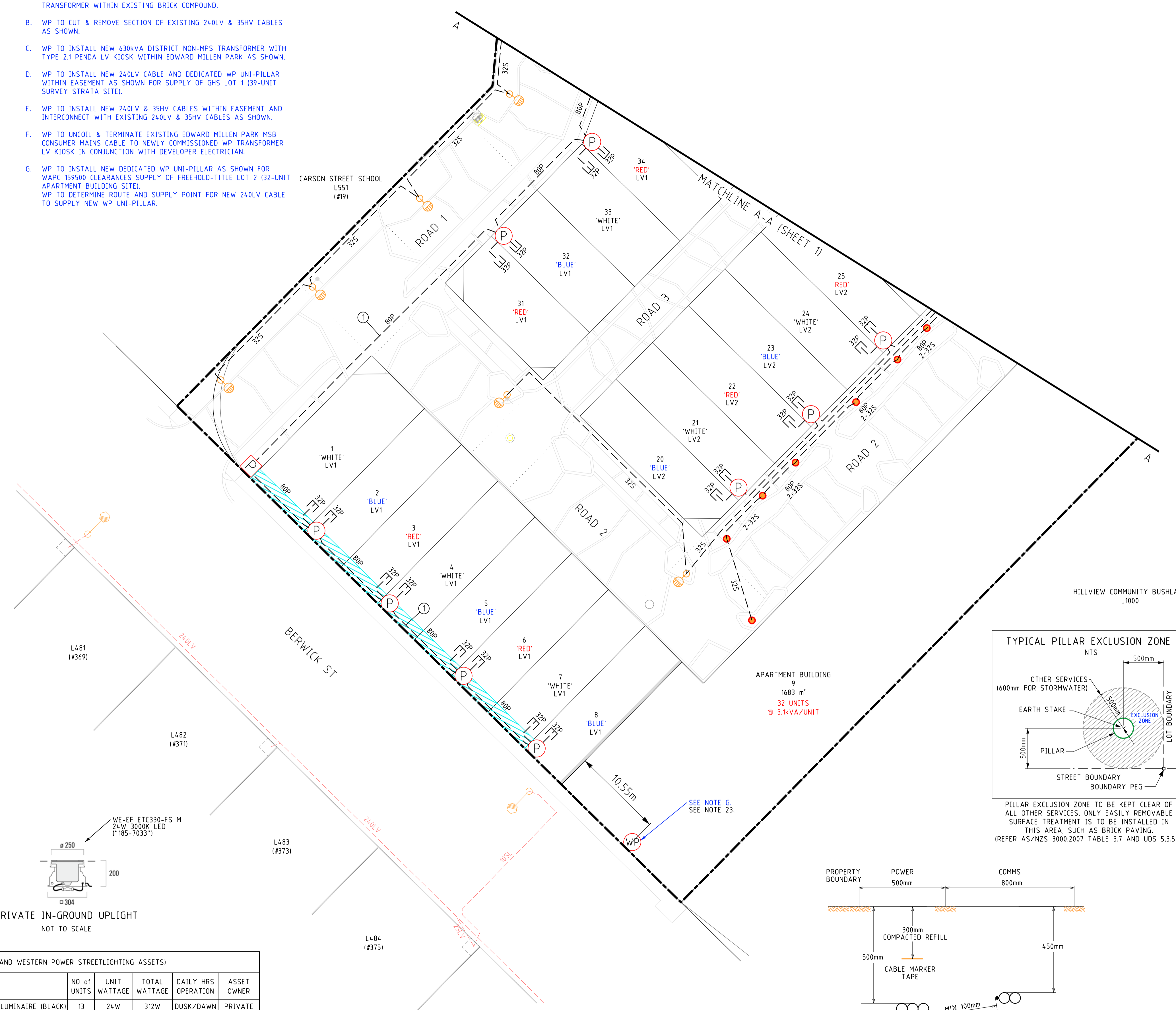
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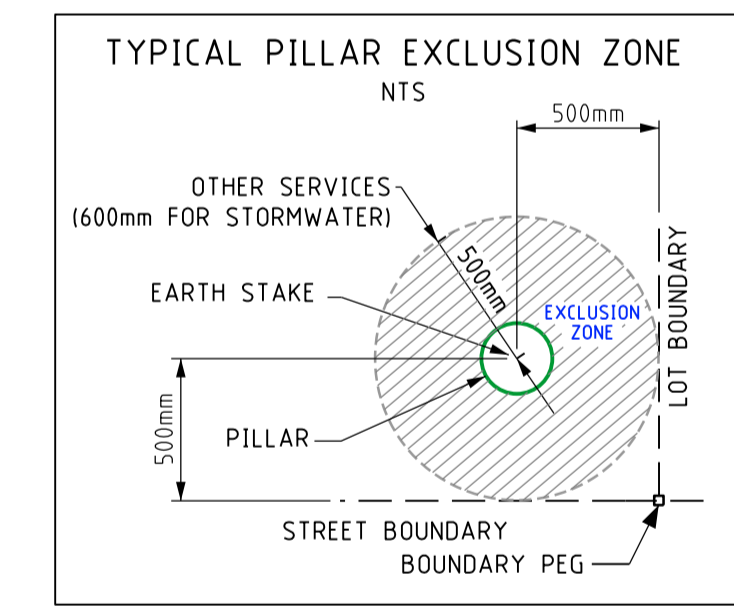
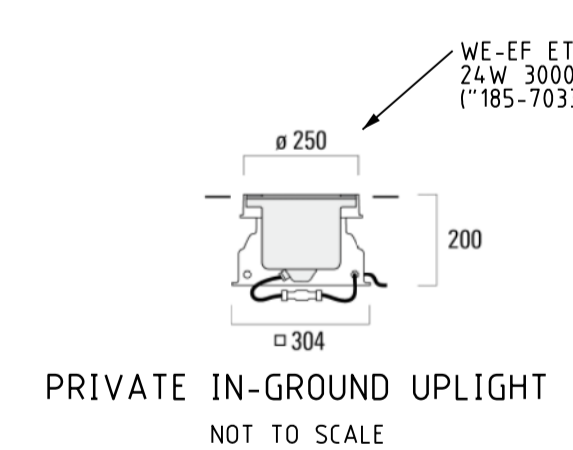
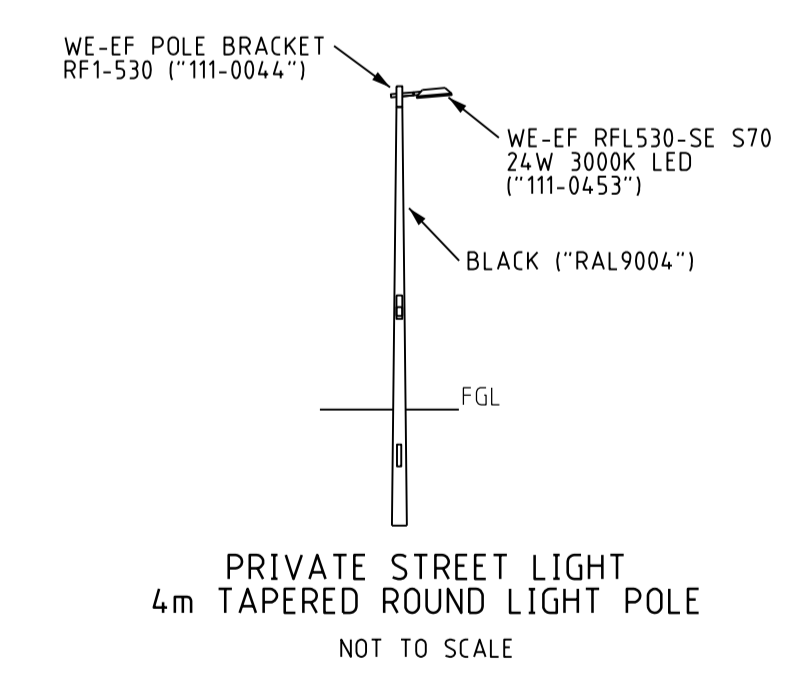
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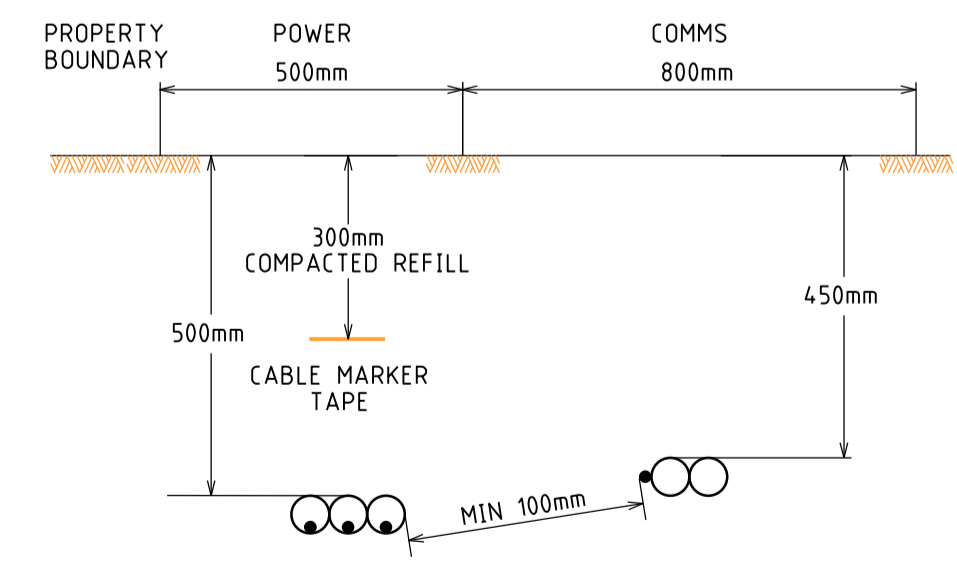
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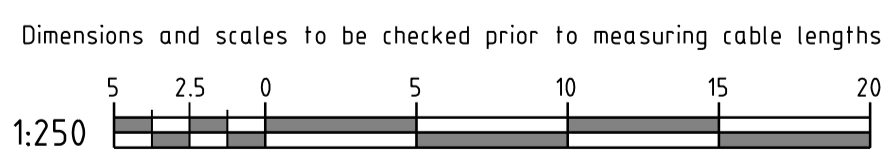
**INSTRUCTION TO CONSTRUCTION CREWS**  
IT IS A REQUIREMENT OF WESTERN POWER THAT ALL EXISTING CONDUCTOR / CABLES SIZES ARE CONFIRMED ON SITE TO ENSURE THAT ALL FITTINGS ARE OF THE APPROPRIATE SIZE AND ARE INSTALLED CORRECTLY IN ACCORDANCE TO Distribution Construction Standards Handbook

**FOR CONSTRUCTION**

NOTE: ALL UNMETERED SUPPLIES (Including PRIVATE AND WESTERN POWER STREETLIGHTING ASSETS)

TYPE OF EQUIPMENT (POLES & LUMINAIRES - REFER TO LEGEND & SEE NOTE 24.)	NO OF UNITS	UNIT WATTAGE	TOTAL WATTAGE	DAILY HRS OPERATION	ASSET OWNER
WE-EF 4m TAPERED ROUND SOR LIGHT POLE + RFL530-SE S70 24W 3000K LED LUMINAIRE (BLACK)	13	24W	312W	DUSK/DAWN	PRIVATE
WE-EF ETC330-FS M 24W 3000K LED IN-GROUND UPLIGHT (STAINLESS STEEL)	15	24W	360W	DUSK/DAWN	PRIVATE

NOTE: ALL UNMETERED SUPPLIES and STREETLIGHTS MUST BE INCLUDED IN DESIGN DRAWING



Rev.	AMENDMENT	DRN	DESIGN	CHKD	ENG	ISSUED BY	ISSUED DATE
0	CLIENT APPROVED REV 'C' DESIGN ISSUED TO CLIENT FOR CONSTRUCTION.	ML	B.T.L	B.T.L	-	B.T.L	06/09/21
C	LOT 9 APARTMENT BUILDING SITE SUPPLY CHANGED TO 32.1kVA/UNIT & WP UNI-PILLAR LOCATION UPDATED AS PER CLIENT REQUEST	ML	B.T.L	B.T.L	-	B.T.L	30/03/21
B	DESIGN AMENDED TO SUIT LATEST CIVIL BASE PLANS AND CLIENT PREFERRED SERVICING LAYOUT.	ML	B.T.L	B.T.L	-	B.T.L	24/02/21
A	PRELIMINARY DESIGN ISSUED TO CLIENT FOR COMMENT.	ML	B.T.L	B.T.L	-	B.T.L	03/12/20

**APD ENGINEERING**  
T: 1300 273 797 | E: admin@APDeng.com.au  
www.APDeng.com.au

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**LOT DETAILS**  
Residential Lots : 0  
Group Housing : 39 @ 3.1kVA/UNIT  
Commercial : 0  
Pumps : 0  
Apartment Complex: 32 @ 3.1kVA/UNIT

**SITE LOCATION**  
Lat : 31° 59' 38" S  
Long : 115° 54' 24" E

**STREET SMART**  
Page : 404  
Map Ref : A1

**PROJECT NAME**  
LOT 3 (384) BERWICK ST,  
EAST VICTORIA PARK  
ELECTRICAL & LIGHTING LAYOUT

**LOCAL AUTHORITY**  
TOWN OF VICTORIA PARK

**CLIENT/DEVELOPER**  
BERWICK EVP PTY LTD

W.A.P.C. REFERENCE No.  
**159500 & 285-20**

WESTERN POWER REFERENCE No.  
**MP196791**

SCALE: AS NOTED 1 : 250 @ A1

DATE: 03/12/2020

DRAWING No.  
**W\_APD05665.01-EL01**

REVISION  
**0**

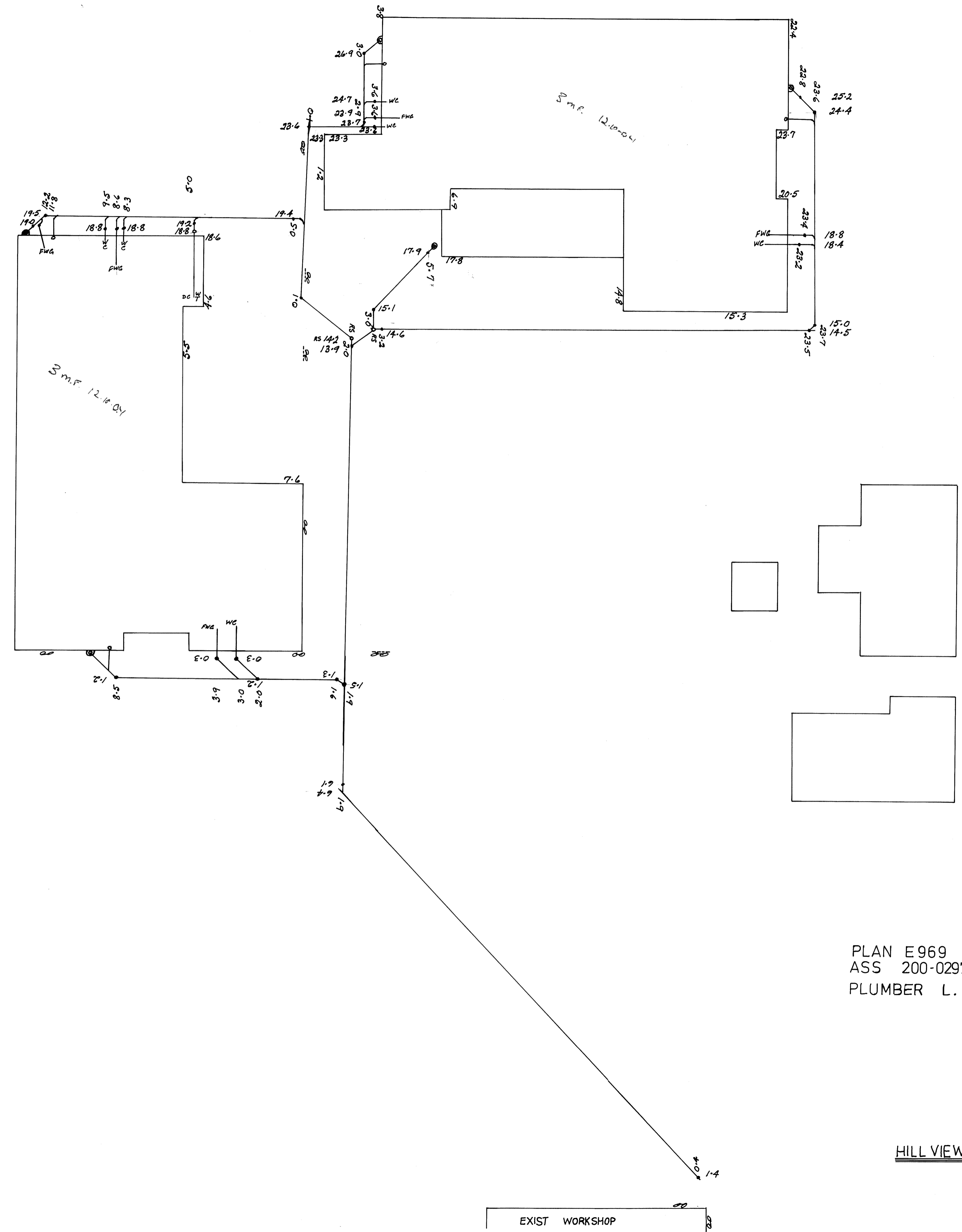
**A1**

**ANNEXURE G - WATER CORPORATION WASTEWATER RETICULATION PLAN**

DRAFT



ADDITIONAL INF  
PLUMBING  
INSPECTION OFFICE



PLAN E 969  
ASS 200-029725-9  
PLUMBER L. FLYNN

HILL VIEW CENTRE

Drawn	Checked	Book No.	Page No.	Book Title	Page No.

EXIST WORKSHOP