

**Planning Permit Application: TP-2018-872**  
**Reserve 113-115 Epsom Road & 8-32 Howlett Street, Kensington**

1 October 2019

**Presenter:** Evan Counsel, Acting Manager Planning and Building

**Purpose and background**

1. The purpose of this report is to advise the Future Melbourne Committee of an application for planning permit which seeks to change the status of land to reflect the as built conditions located at 8-32 Howlett Street, Kensington and the adjoining Council Reserve at 113-115 Epsom Road, Kensington (refer to Attachment 2 – Locality Plan).
2. The applicant is Reeds Consulting Pty Ltd on behalf of the Council. The owners are the Council and Owners Corporation 1 on PS428643U and others. The plans have been prepared by Paroissien Grant & Associates.
3. The land is located within the General Residential Zone Schedule 1 and Public Park and Recreation Zone and is not affected by any overlays.
4. It is proposed to remove the Reserve status from part of Reserve No. 4 on PS340235Y and Reserve No. 1 on PS347552X under provisions of Section 24A of the *Subdivision Act 1988* and include part of common property No. 1 on PS428643U in the reserves (refer to Attachment 3 - Plans).
5. A S173 Agreement is registered on the title to the property at 8-32 Howlett Street, Kensington. The agreement was put in place to manage several matters which arose as a part of the development approval process (refer to Attachment 4).
6. Public notice of the application was undertaken, no objections have been received to date.

**Key issues**

7. The application seeks to regularise the ownership, status and use of the land as required by the S173 agreement registered on title by realigning the Reserve and property boundaries to reflect the as-built use and development.
8. The application is a predominantly an administrative process pursuant to Section 24A of the *Subdivision Act 1988*.

**Recommendation from management**

9. That the Future Melbourne Committee resolves that a Planning Permit be issued subject to the conditions set out in the delegate report (refer to Attachment 4).

**Attachments**

1. Supporting Attachment (Page 2 of 37)
2. Locality Plan(Page 3 of 37)
3. Plans (Page 4 of 37)
4. Delegate Report (Page 33 of 37)

## Supporting Attachment

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### Legal

1. Pursuant to Clause 67, in accordance with Section 6(2)(ka) of the *Planning and Environment Act 1987*, Class 3 applications are exempted from Section 96(1) and 96(2) of the *Planning and Environment Act 1987*.
2. Pursuant to Clause 52.02, a permit is required before a person proceeds under Section 24A of the *Subdivision Act 1988* to lodge a certified plan to remove a reservation from land set aside as a reserve on a certified and registered plan.

### Finance

3. There are no direct financial issues arising from the recommendations contained within this report.

### Conflict of interest

4. No member of Council staff, or other person engaged under a contract, involved in advising on or preparing this report has declared a direct or indirect interest in relation to the matter of the report.

### Health and Safety

5. There are no direct health and safety issues arising from the recommendations contained within this report.

### Stakeholder consultation

6. Pursuant to Clause 52.02 (Easements, Restrictions and Reserves) and Clause 67.02 (Notice Requirements) of the Melbourne Planning Scheme, this application is not exempt from public notice and review, the responsible authority must give notice to owners and occupiers of adjoining land, and the responsible authority must consider the interests of affected people.
7. Notice of the proposal was given by ordinary mail to the owners and occupiers of surrounding properties. No objections or submissions were received.

### Relation to Council policy

8. Relevant Council policies are discussed in the attached delegate report (refer to Attachment 4).

### Environmental sustainability

9. Clause 22.19 Energy, Water and Waste Efficiency and Clause 22.23 Stormwater Management (Water Sensitive Urban Design) do not apply to this application.

# Locality Plan

## RESERVE 113-115 EPSOM ROAD & 8-32 HOWLETT STREET, KENSINGTON



**PLAN OF SUBDIVISION**  
 UNDER SECTION 35 OF THE SUBDIVISION ACT

Page 4 of 38  
**EDITION 1**

PLAN NUMBER  
**PS428643U**

**Attachment 3**  
**Agenda item 6.1**  
**Future Melbourne Committee**  
**1 October 2019**

**LOCATION OF LAND**

**PARISH:** DOUTTA GALLA  
**TOWNSHIP:**  
**SECTION:** 2  
**CROWN ALLOTMENT:** 23C (PART)  
**CROWN PORTION:**  
**TITLE REFERENCES:** VOL. 10593 FOL. 830, VOL. 10245 FOL. 489,  
 VOL. 10245 FOL. 434  
**LAST PLAN REFERENCE:** COMMON PROPERTY No.1 ON PS428643U,  
 RESERVE No. 4 ON PS340235Y &  
 RESERVE No.1 ON PS347552X  
**POSTAL ADDRESS:** 8-32 HOWLETT STREET, KENSINGTON, 3031  
 (at time of subdivision)  
**AMG CO-ORDINATES:** E 316950 ZONE: 55  
 (of approximate centre of land in plan) N 5815280

Council Name: Melbourne City Council  
 SPEAR Reference Number: S130930P

**VESTING OF ROADS OR RESERVES**

IDENTIFIER	COUNCIL / BODY / PERSON
RESERVE No. 40 RESERVE No. 41	MELBOURNE CITY COUNCIL MELBOURNE CITY COUNCIL

**DEPTH LIMITATION:** 15m BELOW THE SURFACE

**NOTATIONS**

SEE SHEET 2 FOR NOTATION PARTICULARS

**EASEMENT INFORMATION**

**LEGEND:** A - APPURTENANT EASEMENT E - ENCUMBERING EASEMENT R - ENCUMBERING EASEMENT (ROAD)

EASEMENTS AND RIGHTS IMPLIED BY SECTION 12(2) OF THE SUBDIVISION ACT 1988 APPLY  
 TO THE WHOLE OF THE LAND IN THIS PLAN

EASEMENT REFERENCE	PURPOSE	WIDTH (METRES)	ORIGIN	LAND BENEFITED /IN FAVOUR OF

**STAGING:**  
 THIS IS NOT A STAGED  
 SUBDIVISION  
 PLANNING PERMIT  
 No.

**SURVEY:**  
 THIS PLAN IS BASED  
 ON SURVEY  
  
 THIS SURVEY HAS BEEN  
 CONNECTED TO PERMANENT  
 MARKS No(s). 375 & 380  
  
 IN PROCLAIMED  
 SURVEY AREA No. -----

REF: **23293** VERSION: **A** DATE: 09/10/18  
 23293-1-TF-A.DGN

ORIGINAL SHEET  
 SIZE A3

SHEET 1 OF 6 SHEETS



Reeds Consulting Pty Ltd  
 Lvl 6, 440 Elizabeth Street  
 Melbourne Victoria 3000  
 p [03] 8660 3000  
 www.reedsconsulting.com.au  
 survey@reedsconsulting.com.au

Digitally signed by: Marc Antonio Centofanti, Licensed  
 Surveyor,  
 Surveyor's Plan Version (A),  
 15/10/2018, SPEAR Ref: S130930P

**PLAN OF SUBDIVISION**  
 UNDER SECTION 35 OF THE SUBDIVISION ACT

Page 5 of 38  
**EDITION 1**

PLAN NUMBER  
**PS428643U**

**NOTATIONS**

**BOUNDARIES**

BOUNDARIES SHOWN AS THICK CONTINUOUS LINES ARE DEFINED BY BUILDINGS:

LOCATION OF BOUNDARIES DEFINED BY BUILDING.

MEDIAN -: BOUNDARIES DENOTED M

INTERIOR FACE-: ALL OTHER BOUNDARIES.

Ba: DENOTES A BALCONY WITHIN THE LOT.

**COMMON PROPERTY**

COMMON PROPERTY No.1 IS ALL THE LAND IN THIS PLAN EXCEPT LOTS

IT INCLUDES THE STRUCTURE OF THOSE WALLS (EXCEPT WHERE THE LOT BOUNDARY IS THE MEDIAN), FLOORS AND CEILINGS THAT DEFINE THE LOT BOUNDARIES.

ALL INTERNAL COLUMNS, SERVICE DUCTS, CONDUITS, PIPE SHAFTS, VENTS AND CABLES WITHIN THE BUILDING ARE DEEMED TO BE PART OF COMMON PROPERTY No. 1.

THE POSITION OF SOME OR ALL OF THESE ITEMS HAVE NOT BEEN SHOWN ON THIS PLAN.

**PURPOSE OF THIS PLAN**

1. TO ACQUIRE RESERVE No.40 & No.41 TO VEST IN MELBOURNE CITY COUNCIL, VIDE SECTION 35 OF THE SUBDIVISION ACT 1988 BY AGREEMENT.

OTHER PURPOSES OF THIS PLAN

TO REMOVE THE RESERVE STATUS FROM RESERVE No.4 ON PS340235Y & RESERVE No. 1 ON PS347552X BY DIRECTION OF PLANNING PERMIT ..... UNDER PROVISIONS OF SECTION 24A OF THE SUBDIVISION ACT 1988.

LOT ENTITLEMENTS AND LIABILITIES FOR ALL LOTS ON PS428643U ARE NOT AFFECTED BY THIS PLAN.

**LAND TO BE ACQUIRED BY AGREEMENT:** RESERVE NO. 40 & 41

**LAND TO BE ACQUIRED BY COMPULSORY PROCESS:** NIL

**VESTING DATES AND TRANSFER REGISTRATION DATES OF ACQUIRED LAND**

LAND AFFECTED	LAND ACQUIRED BY COMPULSORY PROCESS PRIOR TO CERTIFICATION			LAND ACQUIRED BY COMPULSORY PROCESS AFTER REGISTRATION OF PLAN				LAND ACQUIRED BY AGREEMENT	LRS REFERENCE OF TRANSFERS OR NOTIFICATIONS OF VESTING DATES	ASSISTANT REGISTRAR OF TITLES SIGNATURE
	VESTING DATE	GOV'T GAZ.		DATE OF RECORDING OF VESTING DATE	VESTING DATE	GOV'T GAZ.		DATE OF REGISTRATION OF TRANSFER		
		PAGE	YEAR			PAGE	YEAR			
RESERVE No. 40 RESERVE No. 41										

REF: **23293**      VERSION: **A**      DATE: 09/10/18  
 23293-1-TF-A.DGN

ORIGINAL SHEET  
 SIZE A3

SHEET 2

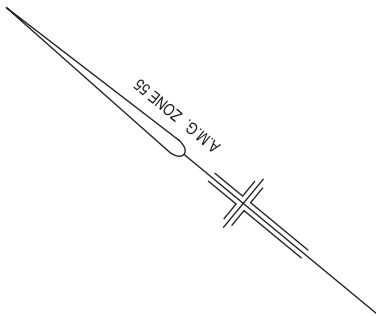


Reeds Consulting Pty Ltd  
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 Melbourne Victoria 3000  
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 www.reedsconsulting.com.au  
 survey@reedsconsulting.com.au

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 Surveyor's Plan Version (A),  
 15/10/2018, SPEAR Ref: S130930P

PLAN NUMBER

**PS428643U**



**SMITHFIELD ROAD**

RESERVE No. 40

SEE SHEET 4

N.I.S.

SEE SHEET 5

N.I.S.

SEE SHEET 6

LOTS & COMMON PROPERTY No. 1

RESERVE No. 41

SEE SHEET 6

RESERVE No. 41

**HOWLETT STREET**

**MAWBEY STREET**

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survey@reedsconsulting.com.au



SCALE  
**1:500**



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ORIGINAL SHEET  
SIZE A3

SHEET 3

PLAN NUMBER

**PS428643U**

**SMITHFIELD ROAD**

50°26' 222.11  
127.98

226°14'20"  
43.61

RESERVE No. 40

921m<sup>2</sup>

RESERVE No. 40



80  
230°26'

N.I.S.

320°26'  
30.81  
29  
140°26'

320°26'

29  
29  
140°26'

Page 7 of 38  
SHEET 5

230°26'

230°26'

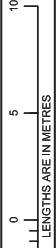
**HOWLETT STREET**

REF: **23293** VERSION: **A** DATE: 09/10/18  
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SCALE  
1:250



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Surveyor's Plan Version (A).  
15/10/2018, SPEAR Ref: S130930P

ORIGINAL SHEET  
SIZE A3

SHEET 4

PLAN NUMBER

**PS428643U**

**SMITHFIELD ROAD**

222.11

127.98

RESERVE No. 40

57.48

230°26' 55

921m<sup>2</sup>

RESERVE No. 40

27.83

50°33'

140°22'

1.08

50°27'

0.38

2.46

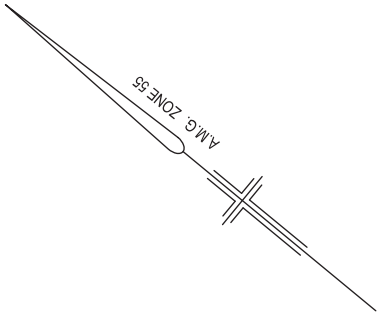
0.33

140°26'

SEE SHEET 4

50°26'

320°26'



140°26'

29

29

320°26'

N.I.S.

320°26'

29

LOTS & COMMON PROPERTY No.1

3

230°26'

80

50°26'

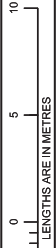
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**STREET**

REF: **23293** VERSION: **A** DATE: 09/10/18  
23293-1-TF-A.DGN

**REEDS**  
CONSULTING  
Reeds Consulting Pty Ltd  
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Melbourne Victoria 3000  
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www.reedsconsulting.com.au  
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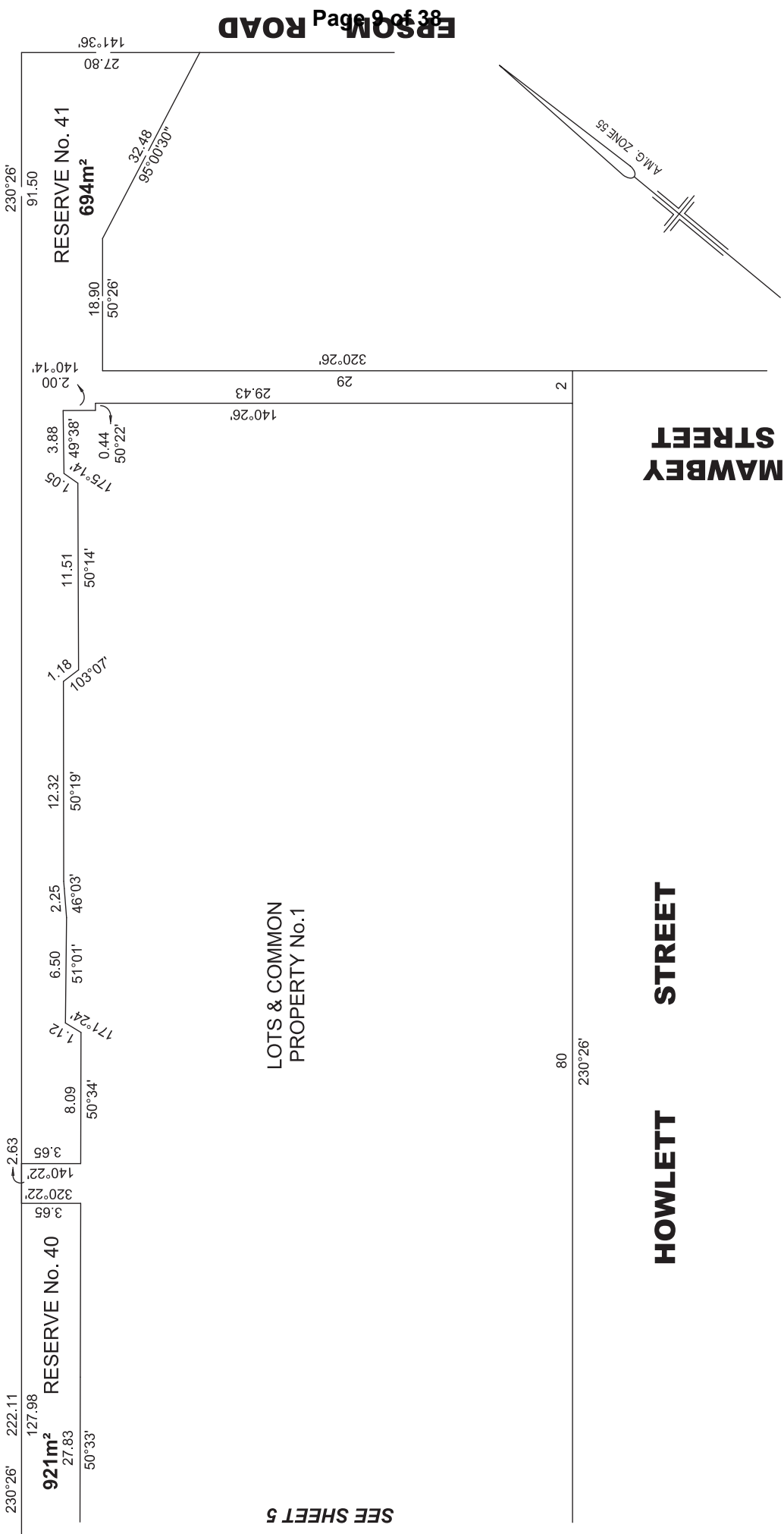
ORIGINAL SHEET SIZE A3

SHEET 5



PLAN NUMBER  
**PS428643U**

**SMITHFIELD ROAD**



SEE SHEET 5

**HOWLETT STREET**  
**MAWBEY STREET**

REF: <b>23293</b>	VERSION: <b>A</b>	DATE: 09/10/18	23293-1-TF-A.DGN
		Reeds Consulting Pty Ltd Lvl 6, 440 Elizabeth Street Melbourne Victoria 3000 p (03) 8660 3000 www.reedsconsulting.com.au survey@reedsconsulting.com.au	
SCALE: <b>1:250</b>		ORIGINAL SHEET SIZE: A3	SHEET 6
Digitally signed by: Marc Antonio Centofanti, Licensed Surveyor Surveyor's Plan Version (A) 15/10/2018, SPEAR Ref: S130930P			

WITHDRAWN &  
06 MAR 2002  
Form 13 RELOADED

X663864P  
AB121379Q  
06/03/2002 \$0 173

**APPLICATION BY A RESPONSIBLE AUTHORITY FOR THE  
MAKING OF A RECORDING OF AN AGREEMENT**

**Planning and Environment Act 1987**

Lodged at the Land Titles Office by:

Name:

MALLESONS STEPHEN JAQUES

Phone:

(03) 9643 4000

L 28 Rialto 525 Collins St Melbourne 3000

Address:

1177B

Ref:

Customer Code: ~~555~~

The Authority having made an agreement referred to in section 181(1) of the Planning and Environment Act 1987 requires a recording to be made in the Register of the land.

Land:

8 - 32 Howlett Street Kensington

Certificates of Title Volume ~~10267 Folio 708~~ and Volume ~~10267 Folio 715~~

Authority:

10593-785 to 10593-829 (INC)

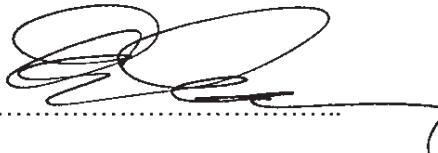
**Melbourne City Council  
Town Hall, 90 Swanston Street  
Melbourne Vic 3000**

Section and Act under which agreement made:

**Section 173 of the Planning and Environment Act 1987.**

A copy of the Agreement is attached to this Application.

Signature for the Authority:



Name of Officer:

Peter Norris

Title of Officer:

Executive Corporate Solicitor  
Governance Services

Date:

24/7/01

AMENDED  
5 MAR 2002  
With consent of  
Current Practitioner for  
Applicant  
P.



DAB1213790-1-1

297445

20/08/01

Dated the 23<sup>rd</sup> day of July 2001

**MELBOURNE CITY COUNCIL**

and

**WESTWATER CORPORATION PTY LTD and FINROCK PTY LTD**

Agreement under Section 173 of the *Planning and Environment Act 1987*

**Land** Nos. 8-32 Howlett Street, Kensington



~~X663864P~~

**AB121379Q**

06/03/2002 \$0 173



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DATE:

23 July 2001



DAB1213790-4-5

PARTIES:

MELBOURNE CITY COUNCIL of Town Hall, Swanston Street,  
Melbourne, Victoria 3000 ("Council")

and

The Party referred to in Item 1 of the Schedule ("Owner")

**RECITALS:**

- A. The Council is the responsible authority for the administration of the Melbourne Planning Scheme pursuant to the provisions of the Planning and Environment Act 1987.
- B. The Owner is or is entitled to be the registered proprietor of the land referred to in Item 2 of the Schedule.
- C. The Council issued the Planning Approval referred to in Item 3 of the Schedule.
- D. The Planning Approval allows the use or development referred to in Item 4 of the Schedule.
- E. The Planning Approval is conditional on the Owner entering into an Agreement under Section 173 of the *Planning and Environment Act 1987* with the responsible authority. The Agreement must provide for the matters referred to in Item 5 of the Schedule.
- F. The parties acknowledge that prior to the completion of the exchange of the lands the Council must complete the procedures prescribed by the Local Government Act, particularly those under Section 223 of that Act, and that any agreement (relating to the exchange of lands) must be conditional upon this being done.

**OPERATIVE PROVISIONS:****1. DEFINITIONS**

- 1.1. In this Agreement the terms and words set out in this clause shall have the following meanings unless otherwise indicated by the context:
- 1.2. "Act" means the Planning and Environment Act 1987.
- 1.3. "Approved Landscaped Works" means the landscape works approved by the Council and shown on the Landscape Plans.
- 1.4. "Body Corporate" means the body corporate that is incorporated upon registration of the Plan of Subdivision.
- 1.5. "Commencement Date" means the date on which this Agreement commences and referred to in Item 7 of the Schedule
- 1.6. "Council's Representative" means the person referred to in Item 8 of the Schedule.

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06/03/2002 \$0 173





- 1.7. **"Exchanged Land Part A"** means the land to be vested (by transfer or otherwise) in the Owner or the Body Corporate as a result of registration of the Section 24A Plan.
- 1.8. **"Exchanged Land Part B"** means the land to be vested (by transfer or otherwise) in the Council as a result of registration of the Section 24A Plan.
- 1.9. **"Land"** means the land described in Item 2 of the Schedule.
- 1.10. **"Landscape Plans"** means the landscape plans by John Patrick Landscape Architects, drawings numbered 01-073LP and 01-073PP.
- 1.11. **"Lot"** means a lot on the Plan
- 1.12. **"Owner"** means the person or persons entitled from time to time to be registered by the Registrar of Titles as proprietor or proprietors of an estate in fee simple of the subject land or any part of it.
- 1.13. **"Permit"** shall mean and include any planning permit issued in accordance with the Act.
- 1.14. **"Plan"** means the Plan of Subdivision referred to in Item 9 of the Schedule
- 1.15. **"Planning Approval"** means the Planning Approval referred to in Item 3 of the Schedule
- 1.16. **"Retaining Walls and Steps"** means the retaining walls and centrally located steps leading to Smithfield Road, together with associated posts, rails and works, shown on the Landscape Plans.
- 1.17. **"Scheme"** means the Melbourne Planning Scheme.
- 1.18. **"Section 24A Plan"** means Plan of Subdivision No. PS447491J a copy of which is annexed to this Agreement being prepared by Paroissien Grant & Associates Pty. Ltd. and identified by the reference "M01091", which creates a boundary realignment of the Land and land owned by the Council immediately adjacent to the north-west, being part of Reserve No 4 on PS340253Y.
- 1.19. **"Section 32 Plan"** means the Plan annexed to this Agreement, being prepared by Paroissien Grant & Associates Pty. Ltd. and identified by the reference "M01092" which creates a multi-lot plan and which will vary the Plan of Subdivision upon the Body Corporate passing a unanimous resolution approving the Section 32 Plan.
- 1.20. **"Service Authorities"** means the authorities that will be required to give consent to the Section 24A Plan, being the referral authorities under the Scheme and the Subdivision Act 1988.
- 1.21. **"Termination Date"** means the date or specified event referred to in Item 10 of the Schedule on which this Agreement shall end in accordance with Section 177 of the Act.
- 1.22. **"Works"** means the works referred to in Item 11 of the Schedule to be carried out pursuant to the Planning Approval and this Agreement.

## 2. INTERPRETATION

- 2.1. Unless the context provides otherwise, the singular includes the plural and the plural includes the singular.
- 2.2. A reference to a gender includes a reference to each other gender.
- 2.3. A reference to a person includes a reference to a firm, corporation or other corporate body.

**AB121379Q**



- 2.4. If the owner is more than one person this Agreement binds them jointly and each of them severally.
- 2.5. A reference to legislation includes a modification or re-enactment of it, a legislative provision substituted for it or amendment of it, and a regulation or statutory instrument issued under it.
- 2.6. All headings are for ease of reference only and shall not be taken into account in the construction or interpretation of this Agreement.
- 2.7. The recitals to this Agreement are and will be deemed to form part of this Agreement.
- 2.8. Any reference in this Agreement to the Council includes its agents, officers, employees, servants, workers and contractors.
- 2.9. Any reference to a Plan in this Agreement includes a reference to that Plan as amended from time to time by agreement between the parties,

**3. AGREEMENT UNDER SECTION 173 OF THE ACT**

The Council and the Owner agree that without limiting or restricting their respective powers to enter into this Agreement and insofar as it can be so treated, this Agreement is made pursuant to Section 173 of the Act.

**4. EFFECT OF AGREEMENT**



**4.1. Agreement runs with the Land**

This Agreement shall be deemed to come into force and effect as from the Commencement Date and the benefit and burden of this Agreement shall run with and be annexed to the Land.

**4.2. Planning Objectives**

The parties acknowledge that the provisions of this Agreement are intended to achieve or advance the objectives of planning in Victoria and the objectives of the Scheme and any matters incidental thereto.

**4.3. Binding Covenants**

The obligations of the Owner under this Agreement will take effect as separate and several covenants which shall be annexed to and run at law and equity with the Land to bind the Owner and each successor, assign or transferee of the Owner, the registered proprietor, the mortgagee in possession and the beneficial owner for the time being of the Land and every part of the Land.

**5. SUCCESSORS IN TITLE**

Without limiting the operation or effect which this Agreement has, the Owner shall until such time as a memorandum of this Agreement is registered on the title to the Land ensure that the Owner's successors in title:

- 5.1. give effect to and do all acts and sign all documents which will require those successors to give effect to this Agreement; and
- 5.2. execute under seal a deed agreeing to be bound by the terms of this Agreement and upon such execution this Agreement shall continue as if executed by such successors as well as by the parties to this Agreement as if the successor's name appeared in each clause in which the name of the Owner appears and in addition to the name of the Owner.





**AB121379Q**



**6. COVENANTS OF OWNER**

6.1. The Owner covenants and agrees that:

- 6.1.1. it will complete the items set out in the Appendix to this Agreement in a diligent and timely manner; and
- 6.1.2. there are no mortgages, liens charges or other encumbrances or leases or any rights inherent in any person other than the owner affecting the Land not disclosed by the usual searches or notified to the Council; and
- 6.1.3. no part of the Land is subject to any rights obtained by adverse possession or subject to any easements or rights described or referred to on Section 42 of the Transfer of Land Act; and
- 6.1.4. it will do all things necessary including the signing of any further agreements, undertakings, covenants and consents, approvals or other documents necessary for the purpose of ensuring that the Owner carries out the Owner's covenants, agreements and obligations under this Agreement and to enable the Council to enforce the performance by the Owner of such covenants and undertakings; and
- 6.1.5. consent to the Council making application to the Registrar of the Land Titles Office to make a recording of this Agreement in the Register on the folio of the Register which relates to the Land in accordance with Section 181 of the Act and do all things necessary to enable the Council to do so including signing any further agreement, acknowledgment or document or procuring the consent to this Agreement of any mortgagee or caveator to enable the recording to be made in the Register under that Section; and
- 6.1.6. the Owner will indemnify and keep indemnified the Council and the Council's agents in relation to all costs, expenses, losses or damages whatsoever which the Council or its agents may sustain, incur or suffer or be or become liable for in respect of any suit, action, proceeding, judgment or claim brought by any person whatsoever arising from or referable to the matters referred to in this Agreement or any breach of this Agreement.
- 6.1.7. it will bring this Agreement to the attention of all prospective purchasers, mortgagees, transferees and assigns.

**6.2. Costs**

The Owner shall forthwith pay on demand to the Council the Council's reasonable costs and expenses including legal expenses of and incidental to:

- 6.2.1. the negotiation, preparation, execution registration and enforcement of this Agreement including all moneys, costs (including charges for consultants, architects and legal advice and assistance) charges and expenses for which the Council may pay, incur or expend, in consequence of any default in the performance and observance of any covenant, proviso, condition or agreement herein contained or implied and on the Owner's part to be performed and observed or under or in exercise or enforcement or attempted exercise or enforcement of any right, power or remedy herein contained; and
- 6.2.2. administration and supervision costs of the Council properly and reasonably incurred in relation to this Agreement except for administration and supervision which the Council is obliged to undertake pursuant to its statutory duties; and
- 6.2.3. any request by the Owner for the Council's consent or approval where such consent or approval is required under any covenant, proviso, condition or agreement herein contained or implied immediately the Council shall have expended or incurred the same.

**7. DEFAULT OF OWNER**

In the event of the Owner defaulting or failing to perform any of the Owner's obligations under





this Agreement, the Council may without prejudice to any other remedies rectify such default and the cost of any works undertaken by the Council to rectify any default shall be borne by the Owner and any such costs shall be capable of being recovered by the Council in any Court of competent jurisdiction as a civil debt recoverable summarily.

**8. COUNCIL'S POWERS**



**8.1. Default Notice**

8.1.1. Should the Owner fail or neglect to carry out or complete the works described in Item 11 of the Schedule and referred to in the Permit the Council's Representative may cause to be served on the Owner a notice in writing ("the notice") specifying the works in respect of which the Owner is in default.

8.1.2. Should the default continue for a period of 14 days after the service of the notice the Council may enter upon the land and cause the works to be constructed or completed and made good or cause any faults defects or failures in the works which have developed appeared or occurred within a period of six months from the date of completion of construction of the works to be maintained repaired or made good and for any such purpose the Council may employ a contractor or contractors and professional advisers.

8.1.3. The notice may set out the cost as estimated by the Council's Representative of constructing or completing the construction of the works. If the Owner does not comply with the notice to remedy the default the Council's Representative may cause to be served on the Owner a demand in writing ("the demand") for the amount of the costs specified in the notice.

8.1.4. The costs specified in the demand shall be paid forthwith by the Owner to the Council and the Council may exercise its rights under any Bank Guarantees provided by the Owner to the Council in order to recover the costs.

**8.2. Completion of Works**

8.2.1. As soon as practicable after the completion of the work the Council's Representative shall certify the actual costs of the work to the Council. The certificate of the Council's Representative shall be final, binding and conclusive as between the parties to this Agreement. The difference between the actual cost and the estimated cost paid to the Council pursuant to this Clause shall be paid by the Owner to the Council or by the Council to the Owner as the case may require.

8.2.2. If the notice does not require the Owner to pay the estimated costs, the actual costs of any works carried out by or on behalf of the Council pursuant to this Clause of this Agreement shall be paid on demand by the Owner to the Council.

8.2.3. If any Bank Guarantee referred to above is insufficient to recover the actual cost of the work carried out by or on behalf of the Council pursuant to this Clause such cost shall be capable of being recovered by the Council in any Court of competent jurisdiction as a civil debt recoverable summarily.

8.2.4. The Owner covenants and agrees that the Owner will indemnify and keep indemnified the Council from and against all costs, expenses, losses or damages whatsoever which they may sustain, incur or suffer or be or become liable for or in respect of any suit, action, proceeding, judgment or claim brought by any person whatsoever arising from or referable to the carrying out of works referred to in this Clause.

**9. SPECIFIC OBLIGATIONS OF COUNCIL**

The Council agrees that:

9.1. it shall subject to clause 13 and provided that the owner pays the reasonable costs of the

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Council, act expeditiously in giving its approval or consent that is required or contemplated under this Agreement or is requested by the Owner under or in order to carry out the provisions of this Agreement; and

- 9.2. without limiting the foregoing, it shall provide its written consent to registration of the Section 24A Plan and the Section 32 Plans promptly upon request by the Owner; and
- 9.3. it will vest (by transfer or otherwise) the Exchanged Land Part A in appropriate parts in accordance with the Section 32 Plan to the Body Corporate or abutting Lot owner in exchange for a transfer by the Owner, or the Body Corporate (as the case requires) of Exchanged Land Part B.

**10. INTEREST AND CHARGE**

- 10.1. If any of the monies payable pursuant to this Agreement are not paid by the due date, the amount then due and unpaid shall attract interest from the relevant due date until the date when such money is paid at the rate of interest from time to time which the Council may be authorised by legislation to charge as interest on any unpaid rates and charges.
- 10.2. Any payments made for the purposes of this Agreement shall be appropriated first in payment of any interest and unpaid costs and expenses of the Council and shall then be applied in repayment of the unpaid sum.

**11. NOTICES**

11.1. A notice or other communication required or permitted to be served by a party on another party shall be in writing and may be served at the address, telephone or facsimile details of the parties are set out in Item 12 of the Schedule,

11.1.1. by delivering it personally to that party;

11.1.2. by sending it by prepaid post; or

11.1.3. by sending it by facsimile provided that a communication sent by facsimile shall be confirmed immediately in writing by the sending party by hand delivery or prepaid post,

11.2. and notice or other communication is deemed served:

11.2.1. if delivered, on the next following business day;

11.2.2. if posted, on the expiration of two business days after the date of posting; or

11.2.3. if sent by facsimile, at the time recorded by the facsimile machine of the party receiving the transmission provided always that if the time recorded is after business hours, the time will be deemed to be 9.00am on the business day following the transmission.



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**12. FURTHER ASSURANCE**

Each of the parties to this Agreement shall respectively sign and execute all further documents and deeds and do all acts and things as shall reasonably be required to effect the terms and conditions contained in this Agreement.

**13. OWNER'S ACKNOWLEDGMENT**

The Owner expressly acknowledges and agrees that nothing in this Agreement nor the performance by the Owner of any of its obligation under this Agreement does or will restrain, limit or otherwise fetter the exercise by the Council of the powers, duties and discretions which the Council has or may have under the Scheme to consider, approve amend or to



further information in respect of any plans or applications relating to the use or development allowed by the Permit or the land generally.

**14. NO WAIVER**

Any time or other indulgence granted by the Council to the Owner or any variation of the terms and conditions of this Agreement or any judgment or order obtained by the Council against the Owner will not in any way amount to a waiver of any of the rights or remedies of the Council in relation to the terms of this Agreement.

**15. SEVERABILITY**

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

**16. MORATORIUM**

To the fullest extent to which it may from time to time be lawful so to do the provisions of all statutes (including moratorium statutes) whether now existing or hereafter to come into force and operating directly or indirectly to lessen or otherwise modify or vary or affect in favour of any party the obligation of that party or stay, postpone or otherwise prevent or prejudicially affect the exercise by a party of all or any of the rights, powers and remedies conferred on the party by this Agreement are hereby expressly negated and excluded from this Agreement.

**17. COUNTERPARTS**

This Agreement may be executed in any number of counterparts each of which when so executed shall be deemed to be an original and such counterparts shall together constitute but one agreement.

**18. GOVERNING LAW**

This Agreement takes effect, is governed by and shall be construed in accordance with the laws from time to time in force in the State of Victoria.

**19. ENDING OF AGREEMENT**

19.1. This Agreement shall cease to operate on the Termination Date or otherwise as contemplated in Item 10 of the Schedule.

19.2. As soon as reasonably practicable after the Agreement has ended the Council will at the request and at the cost of the Owner make application to the Registrar of Titles under Section 183 (2) of the Act to cancel the recording of this Agreement on the Register.

**EXECUTED as a DEED**

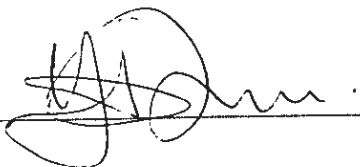
**SIGNED SEALED AND DELIVERED** by JOHN NOONAN, Group Manager Development and Statutory Services pursuant to an Instrument of Delegation authorised by Resolution of Council. )  
)  
)  
)

*John Noonan*

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06/03/2002 \$0 173  


  
**DAB121379Q-10-3**

Witness



THE COMMON SEAL of WESTWATER CORPORATION PTY LTD (ABN 14 077 898) was hereunto affixed in accordance with its Articles of Association in the presence of:

)  
)  
)  
)



Director (Sole)

Director/Secretary

THE COMMON SEAL of FINROCK PTY LTD (ACN 088 460 815) was hereunto affixed in accordance with its Articles of Association in the presence of:

)  
)  
)  
)



Director (Sole)

Director/Secretary



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**AB121379Q**

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SCHEDULE



DAB121379Q-12-1

ITEM NO.	ISSUE	SPECIFICATION
1.	Owner	Westwater Corporation Pty Ltd (ABN 14 077 898 009) and Finfock Pty Ltd (ACN 088 460 815)
2.	Land description by address and Certificate of Title details	8-32 Howlett Street, Kensington. Certificates of Title Volume 10267 Folio 708 to Volume 10267 Folio 715 (both inclusive).
3.	Planning Approval and date given	Lynch's Bridge Development Plan Approval No. 210/3/25 and accompanying letter dated 12 July 1999 by the Council to Louis Chiodo and Associates
4.	What the Planning Approval allows	The construction of 45 apartments on the Land with associated infrastructure, carparking and landscaping works.
5.	What the condition requiring the Agreement provides for	<p>A legally binding agreement under Section 173 of the Planning and Environment Act 1987 being entered into between the land owner and the Responsible Authority prior to the issue of the statement of compliance for the plan, to ensure matters including the following are addressed:</p> <ul style="list-style-type: none"> <li>• The section 24A and section 32 plans are registered at the Land Registry (this includes obligating the body corporate of the multi-lot plan to provide all necessary consents to the lodging and registration of all documents pertinent to the section 24A and section 32 plans at Council and at the Land Registry);</li> <li>• The retaining walls and steps are constructed in accordance with all necessary plans and approvals to be first obtained from Council;</li> <li>• The retaining walls and steps are maintained to Council's satisfaction and that no works or actions will be carried out to the walls without first receiving Council's written approval to such;</li> <li>• Council is indemnified against all claims associated with the retaining walls and steps;</li> <li>• That any damage to, or loss of, Council assets as a result of the walls or steps will be rectified/replaced to Council's satisfaction, all at the cost of the body corporate of the multi-lot plan;</li> <li>• that all maintenance or replacement works and actions to the retaining walls and steps are at the cost of the body corporate of the multi-lot plan.</li> </ul> <p>The agreement must also contain such other conditions as may be advised by Council's solicitors. The owner of the land being subdivided must pay all of Council's reasonable legal costs and expenses for this agreement,</p>

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**AB121379Q**  
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		including Land Registry registration fees.
6.	Mortgage details including name and address of Mortgagee, date mortgage registered and registered number	<p>First Mortgagee: Oversea-Chinese Banking Corporation Limited, Level 3, 565 Bourke Street, Melbourne, 3000.                      Registration No: W744506K                      Registration Date: 27 April 2000</p> <p>Second Mortgagee: Trenwick International Ltd, 16 Eastcheap, London, EC3M1. NB: UK and in Australia C/- Gadens, Lawyers, 333 Collins Street, Melbourne                      Registration No: X003919M                      Registration date: 28 August 2000.</p>
7.	Commencement Date	The date of this agreement
8.	Council's Representative is:	Christopher Blackwood Team Leader Land Survey
9.	Plan of Subdivision Reference Number	PS428643U
10.	Termination date or specified event	By agreement between parties
11.	Works to be carried out under the Planning Approval and this Agreement	Works set out in Parts C and D in the Appendix to this Agreement
12.	Address, phone and facsimile of Council	Melbourne City Council Town Hall, Swanston Street Melbourne Ph: 9658 8581 Facsimile: 9658 9179
13.	Address, phone and facsimile of Owner	Westwater Corporation Pty Ltd and Finrock Pty Ltd 128-130 North Road Brighton Vic. 3186 Ph: 0500 888 277 Fax: 0500 888 278

*Handwritten mark*



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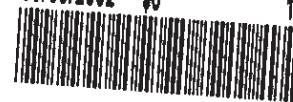




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**THE APPENDIX**

**PART A - SECTION 24A SUBDIVISION ACT**

- A1 The owner shall lodge the Section 24A Plan for registration at Land Victoria as soon as possible.
- A2 In so doing, the Owner shall obtain all necessary consents including from the Services Authorities to effect registration of the Section 24A Plan at Land Victoria.
- A3 The Owner shall not without the written consent of the Council, withdraw the Section 24A Plan once it is lodged at Land Victoria.
- A4 Subject to the successful completion by the Council of all statutory procedures, the Owner shall cause the Body Corporate to take a transfer from the Council (at no cost to the Council) of the Exchanged Land Part A in exchange for the Exchanged Land Part B upon registration or as soon as practicable thereafter of the Plan of Subdivision and the Section 24A Plan.

**PART B – SECTION 32 SUBDIVISION ACT**

- B1 As soon as practicable after registration of the Plan of Subdivision the Owner shall cause the Body Corporate to unanimously resolve pursuant to Section 32 of the Subdivision Act to approve the Section 32 Plan and to the extent necessary to:
  - alter the boundaries of any land affected by the Body Corporate (pursuant to Section 32(1)(c));
  - create new lots or common property (pursuant to Section 32(1)(d));
  - create and name a body corporate and specify the land to be affected by that new body corporate and specify lot entitlement and lot liability in relation to that new body corporate (pursuant to Section 32(1)(f));
  - create roads or reserves (pursuant to Section 32(1)(m)); and
  - generally do such things,
 so as to give effect to the Section 32 Plan.
- B2 The foregoing are subject to the exercise of Council's powers in certifying the Section 32 Plan under the Subdivision Act 1988.
- B3 In so doing, the Owner shall obtain all necessary consents including from the Services Authorities to the effect registration of the Section 32 Plan at Land Victoria.
- B4 The Owner shall not without the written consent of the Council, withdraw the Section 32 Plan once it is lodged at Land Victoria.

**PART C – RETAINING WALLS AND STEPS**

- C1 The Owner shall construct the retaining walls and steps in accordance with the plans and approvals granted by the Council.
- C2 The Owner and from its incorporation and in substitution thereafter for the Owner, the Body Corporate shall maintain the retaining walls and steps to the satisfaction of the Council PROVIDED THAT no work or action (except repairs or works of an urgent or emergency nature) will be carried out to the retaining walls without the Owner or the Body Corporate (as the case may be) having first obtained the written approval of the Council to such proposed work or actions. All such maintenance and work or action (including for

these purposes repairs or works of an urgent or emergency nature) shall be at the cost of the Owner or the Body Corporate (as the case may be).

C3 The Owner or the Body Corporate (as the case may be) shall indemnify and hold harmless the Council in respect of loss, cost or expense suffered by or claim made against the Council that is associated with the retaining walls or steps or any part thereof.

C4 The Owner or the Body Corporate (as the case may be) shall rectify or replace to the satisfaction of the Council (acting reasonably) any damage to or loss of assets of the Council that results from the construction or maintenance of the retaining walls and steps.

C5 The Owner or the Body Corporate (as the case may be) shall maintain a policy or policies of insurance, the terms and conditions of which must be to the reasonable satisfaction of the Council, in respect of liability for loss injury or damage to any person or property whatsoever (including but without being limited to the person or property of the Council, its respective employees, officers, servants, agents, contractors and invitees) on or in relation to the walls and steps or from any works or use relating to the walls or steps, for a sum not less than \$10,000,000 in order to effect a sufficient and proper cover in respect of any single accident or event and extended by a cross-liability clause.

C6 In addition, the Owner or the Body Corporate (as the case may be) agrees that the policy (or policies) of insurance referred to in C5 will be extended to include any balconies that are within any building constructed on the Land which protrude above the area or space of the reserve set out in the Section 24A Plan.

C7 The liability of the Owner under provisions C2-C6 shall cease upon provision C1 being satisfied and the registration of the Section 32 Plan (whereupon the Body Corporate shall assume responsibility).

**PART D – PLANNING APPROVAL WORKS**

D1 The Owner shall comply with the Kensington Banks Development Plan in completing the works under the Planning Approval, to the satisfaction of the Council.





**PLAN OF SUBDIVISION**  
PURSUANT TO SECTION 24A OF  
THE SUBDIVISION ACT 1988

LAND REGISTRY USE ONLY

PLAN NUMBER

EDITION

PS447491J

**LOCATION OF LAND**

PARISH: DOUTTA GALLA  
TOWNSHIP: -----  
SECTION: 2  
CROWN ALLOTMENT: 23C (Part)  
CROWN PORTION: -----  
LTO BASE RECORD: DCMB  
TITLE REFERENCE: Volume 10245 Folio 489

LAST PLAN REFERENCE: PS340235Y Res No.4  
POSTAL ADDRESS: 201-251 SMITHFIELD ROAD  
KENSINGTON VIC 3031

AMG CO-ORDINATES E 316900 ZONE: 55  
(of approx centre of land in plan) N 5815250

**VESTING OF ROADS AND/OR RESERVES**

IDENTIFIER	COUNCIL/BODY/PERSON
RESERVE No.1	CITY OF MELBOURNE

**PURPOSE OF THE PLAN**

1. TO REMOVE THE RESERVE STATUS FROM THE REMAINDER OF RESERVE No.4 FOR PUBLIC OPEN SPACE ON PS340235Y.
2. TO CREATE A NEW RESERVE FOR PUBLIC OPEN SPACE OVER PART OF THE LAND.
3. TO CREATE LOT 1.

**GROUNDS FOR REMOVAL**

CITY OF MELBOURNE PLANNING PERMIT No. ....

LOT 1 COMPRISES 4 PARTS.  
RESERVE No.1 COMPRISES 2 PARTS.

**COUNCIL CERTIFICATION AND ENDORSEMENT**

**Council Name:** City of Melbourne **Ref:**

1. This plan is certified under section 6 of the Subdivision Act 1988.
2. This plan is certified under section 11(7) of the Subdivision Act 1988.  
Date of original certification under section 6 / /
3. This is a statement of compliance issued under section 21 of the Subdivision Act 1988.

Council Delegate  
Council Seal  
Date / /

Re-certified under section 11(7) of the Subdivision Act 1988.

Council Delegate  
Council Seal  
Date / /

**NOTATIONS**

**DEPTH LIMITATION** 15m BELOW THE SURFACE.

**SURVEY** THIS PLAN IS BASED ON SURVEY  
THIS SURVEY HAS BEEN CONNECTED TO PERMANENT  
MARKS No.(S) 378 and 380  
IN PROCLAIMED SURVEY AREA No. -----

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**EASEMENT INFORMATION**

**LEGEND:** A - Appurtenant Easement E - Encumbering Easement R - Encumbering Easement (Road)

Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of
E-1	DRAINAGE	1	THIS PLAN	LAND IN PS428643U



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LAND REGISTRY USE ONLY

Statement of Compliance/  
Exemption Statement

Received   
Date / /

PLAN REGISTERED

Time  
Date / /

Assistant Registrar of Titles

Sheet 1 of 2 Sheets

**Parissalen Grant & Associates Pty. Ltd.**

CONSULTING ENGINEERS AND SURVEYORS  
SUITE 10, 131 BULLEEN ROAD, NORTH BALWYN 3104  
Phone: 9859 6400 Facsimile: 9859 5022  
ACN 005 270 673

LICENSED SURVEYOR Robert David Macaulay  
(PRINT)

SIGNATURE **DRAFT** DATE / /

REF. M01091; 26.06.01 VERSION 1

DATE / /

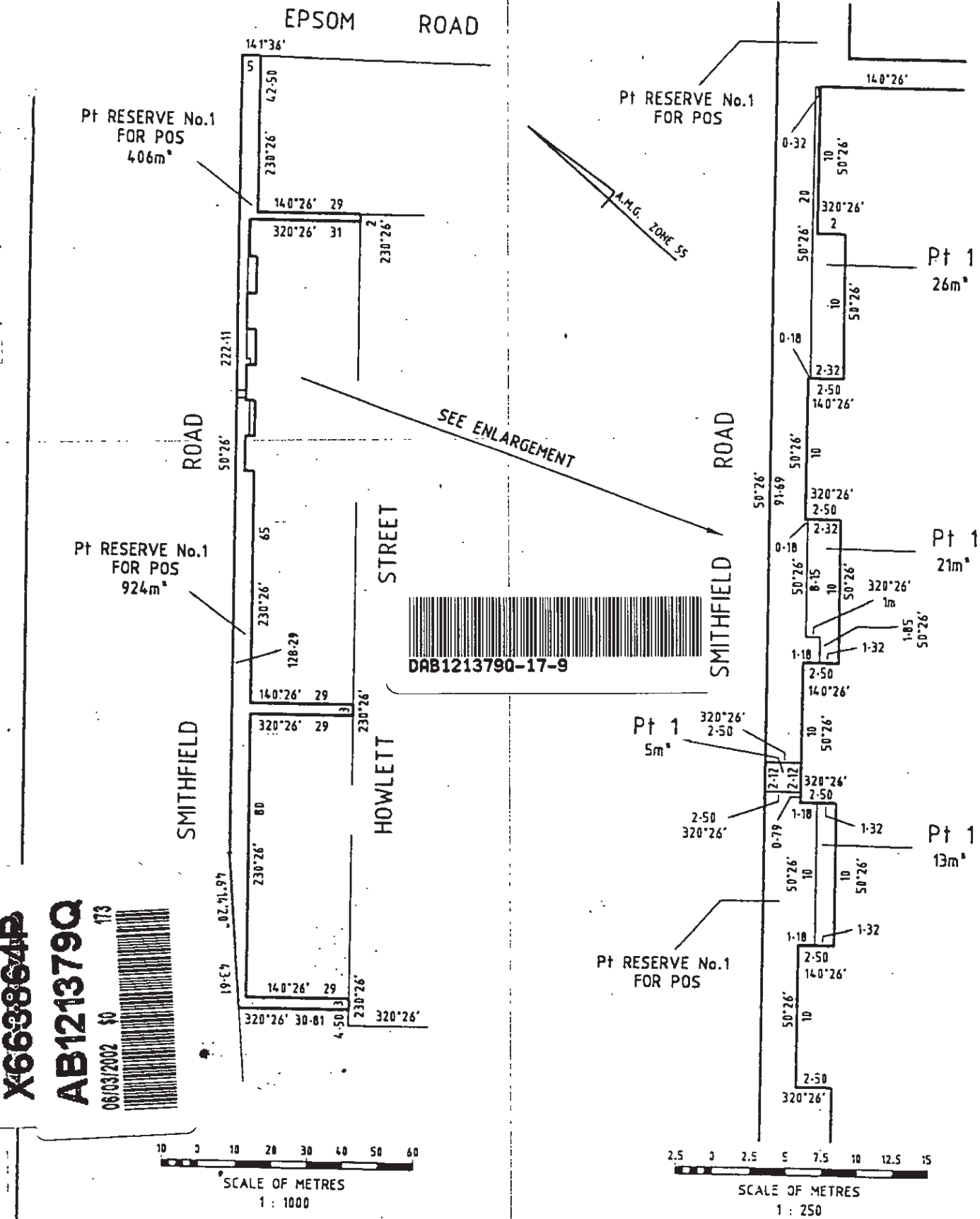
COUNCIL DELEGATE SIGNATURE

Original sheet size A3

Associates Pty. Ltd.  
ENGINEERS AND SURVEYORS  
100 WILSON ROAD, NORTH BALWYN 3104  
6400 Facsimile : 859 5022  
ADN 185 270 473

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**PLAN OF SUBDIVISION**  
PURSUANT TO SECTION 24A OF  
THE SUBDIVISION ACT 1988

PLAN NUMBER  
**PS447491J**



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**AB1213790**  
06/03/2002 173

SCALE OF METRES  
1 : 1000

SCALE OF METRES  
1 : 250

ORIGINAL SCALE AS SHOWN	SHEET SIZE A3	SCALE AS SHOWN LENGTHS ARE IN METRES	LICENSED SURVEYOR Robert David Macaulay (PRINT) SIGNATURE <b>DRAFT</b> DATE / / REF. M01071 2600.0 VERSION 2	Sheet 2 of 2 Sheets ..... DATE / / COUNCIL DELEGATE SIGNATURE
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<b>PLAN UNDER SECTION 32 OF THE SUBDIVISION ACT 1988</b>		LAND REG <b>EDITION</b>				
<p style="text-align: center;"><b>LOCATION OF LAND</b></p> <p>Parish: <b>DOUTTA GALLA</b>                  Township: -----                  Section: <b>2</b>                  Crown Allotment: <b>23C (Part)</b>                  Crown Portion: -----                  LTO Base Record: <b>DCMB</b>                  Title Reference: <b>Volume Folio Folio</b>                  Volume <b>Folio</b></p> <p>Last Plan Reference: <b>PS428643U</b>  <b>PS447491J</b></p> <p>Postal Address: <b>20 HOWLETT STREET</b>                  (at time of subdivision) <b>KENSINGTON 3031</b></p> <p>AMG Co-ordinates <b>E 318950</b>                  (at approx. centre of land in plan) <b>N 6618280</b> <b>ZONE: 85</b></p>		<p style="text-align: center;"><b>COUNCIL CERTIFICATE AND ENDORSEMENT</b></p> <p>Council Name: <b>CITY OF MELBOURNE</b> Ref:</p> <ol style="list-style-type: none"> <li>1. This plan is certified under section 4 of the Subdivision Act 1988.</li> <li>2. This plan is certified under section 11(7) of the Subdivision Act 1988.</li> <li>3. This is a statement of compliance issued under section 21 of the Subdivision Act 1988.</li> </ol> <p><b>OPEN SPACE</b></p> <ol style="list-style-type: none"> <li>(i) A requirement for public open space under section 18 of the Subdivision Act 1988 has/have not been made.</li> <li>(ii) The requirement has been satisfied.</li> <li>(iii) The requirement is to be satisfied in Stage.....</li> </ol> <p>Council Delegate                  Council Seal                  Date / /</p> <p>Re-certified under section 11(7) of the Subdivision Act 1988.</p> <p>Council Delegate                  Council Seal                  Date / /</p>				
<p style="text-align: center;"><b>VESTING OF ROADS AND / OR RESERVES</b></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th style="width: 20%;">Identifier</th> <th style="width: 80%;">Council/Body/Person</th> </tr> <tr> <td>RESERVE No.1</td> <td>CITY OF MELBOURNE</td> </tr> </table>		Identifier	Council/Body/Person	RESERVE No.1	CITY OF MELBOURNE	<p style="text-align: center;"><b>NOTATIONS</b></p> <p><b>DEPTH LIMITATION</b> 15 metres below the surface.</p> <p><b>SURVEY</b> This plan is based on survey.                  This survey has been connected to permanent marks no(s).                  378 and 380                  In Proclaimed Survey Area No. ----</p> <p><b>BOUNDARIES</b>                  Boundaries shown as thick continuous lines are defined by buildings.                  Location of boundaries defined by building.                  Median -- boundaries denoted M                  Interior face -- all other boundaries.                  Ba: Denotes a balcony within the lot.</p> <p><b>COMMON PROPERTY</b>                  Common Property No.1 is all the land in PS428643U except for lots 4-5, 6A, 7, 8A, 9, 10A, 11-33, 34A, 35, 36A, 37, 38A, 39-43 and Reserve No.1. It includes the structure of those walls (except where the lot boundary is the median), floors and ceilings that define the lot boundaries.                  All internal columns, service ducts, conduits, pipe shafts, vents and cables within the building are deemed to be part of Common Property No.1.                  The position of some or all of these items have not been shown on this plan.</p>
Identifier	Council/Body/Person					
RESERVE No.1	CITY OF MELBOURNE					
<p style="text-align: center;"><b>PURPOSE OF PLAN</b></p> <ol style="list-style-type: none"> <li>1. To create Reserve No.1.</li> <li>2. To remove the easements implied by Section 12(2) of the Subdivision Act 1988 that apply to the land shown as Reserve No.1.</li> <li>3. To include the land in lot 1 on PS447491J in this plan. Part of this land is to be added to the existing Common Property No.1. Parts of this land are to be consolidated with the existing lots 6, 8, 10, 34, 36 and 38; to create the new lots 6A, 8A, 10A, 34A, 36A and 38A.</li> </ol>						
<b>EASEMENT INFORMATION</b>						
<p><b>EASEMENTS AND RIGHTS IMPLIED BY SECTION 12(2) OF THE SUBDIVISION ACT 1988 APPLY TO THE WHOLE OF THE LAND IN THIS PLAN, EXCEPT FOR RESERVE No.1</b></p>		<p>Land Registry use only                  Statement of Compliance/                  Exemption Statement</p>				
Legend:	A - Appurtenant Easement E - Encumbering Easement R - Encumbering Easement (Road)		Received <input type="checkbox"/>			
Easement Reference	Purpose	Width (Metres)	Date / /			
---	---	---	---			
---	---	---	---			
		<p>Land Registry use only  <b>PLAN REGISTERED</b></p> <p>Time                  Date / /</p> <p>Assistant Registrar of Titles</p> <p style="text-align: right;">Sheet 1 of 5 Sheets</p>				
<p><b>Paroleman Grant &amp; Associates Pty. Ltd.</b>                  CONSULTING ENGINEERS AND SURVEYORS                  SUITE 10, 131 BILLEEN ROAD, NORTH BALWYN 3104                  Phone: 9859 6400 Facsimile: 9859 5022                  ACN 188 278 473</p>		<p>LICENSED SURVEYOR <b>Robert Gray Macaulay</b>.....                  (PRINT)</p> <p>SIGNATURE <b>DRAFT</b> DATE / /</p> <p>REF. M01092 26.06.01 VERSION 1</p>				
		<p>DATE / /</p> <p>COUNCIL DELEGATE SIGNATURE                  Original sheet size A3</p>				





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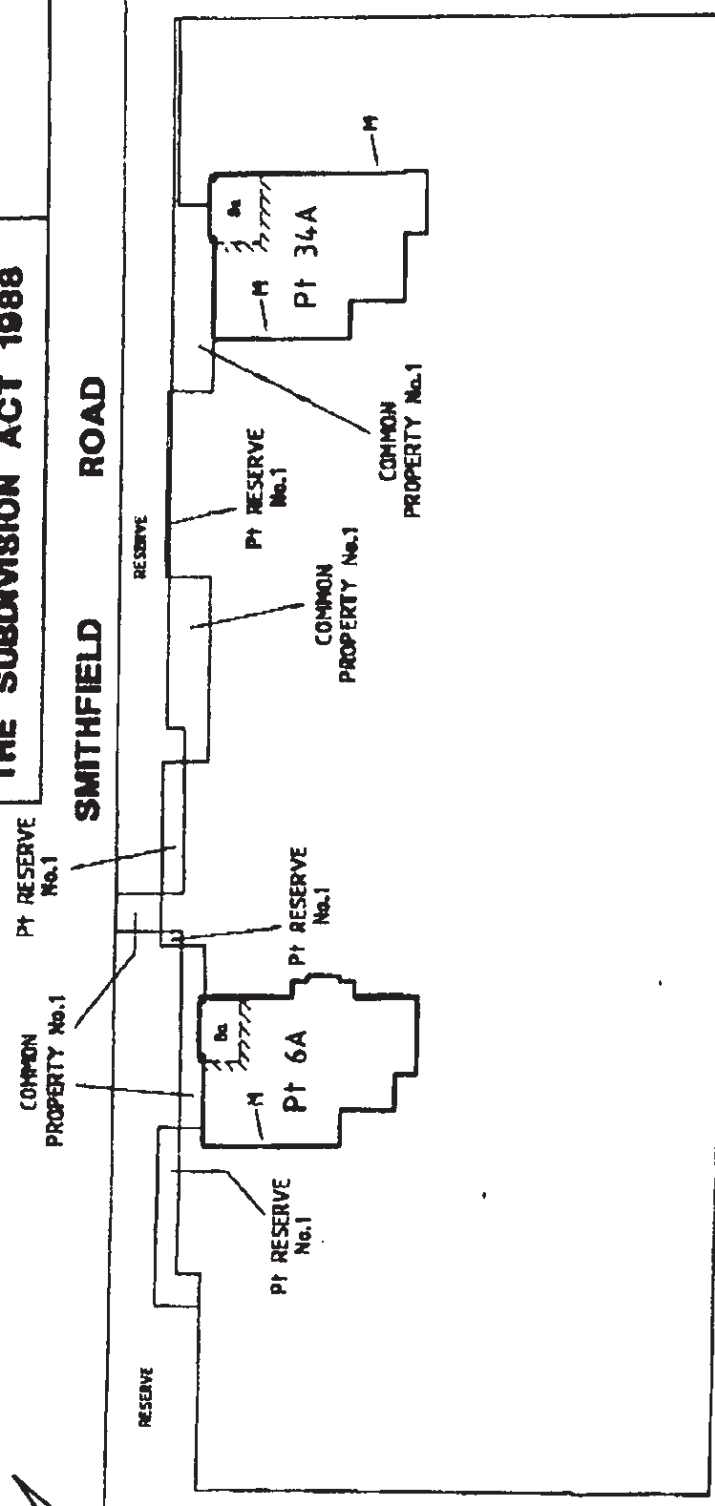


LAND REGISTRY USE ONLY

PLAN UNDER SECTION 32 OF THE SUBDIVISION ACT 1988

SMITHFIELD ROAD

HOWLETT STREET



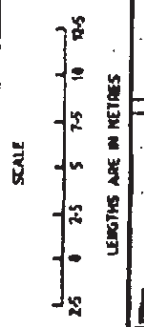
KAWLEY STREET

FIRST STOREY

A.M.C. ZONE 55

LICENCED SURVEYOR Robert David Macaulay  
 (PRINT)  
 SIGNATURE  
 REFERENCE M09872 26.06.01  
 DATE / /  
 OFFICER DELEGATE SIGNATURE  
 SHEET 3 OF 5

LICENCED SURVEYOR Robert David Macaulay  
 (PRINT)  
 SIGNATURE  
 REFERENCE M09872 26.06.01  
 DATE / /  
 OFFICER DELEGATE SIGNATURE  
 SHEET 3 OF 5



ORIGINAL SCALE 1:250  
 SHEET SIZE A3

Parotables Grant & Associates Pty. Ltd.  
 CONSULTING ENGINEERS AND SURVEYORS  
 SUITE 70, 131 BULLHEEN ROAD, NORTH BALWYN 3104  
 Phone: 9659 6400 Facsimile: 9659 5072  
 A.C.N. 045 278 473

NOTES  
 Boundary detailed Ba.

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DAB1213790-21-5

LAND REGISTRY USE ONLY

PLAN UNDER SECTION 32 OF THE SUBDIVISION ACT 1988

SMITHFIELD ROAD

COMMON PROPERTY No.1

PT RESERVE No.1

RESERVE

PT RESERVE No.1

PT RESERVE No.7

COMMON PROPERTY No.1

COMMON PROPERTY No.1

PT RESERVE No.1

COMMON PROPERTY No.1

PT 8A

PT 36A

ANG. ZONE 55

RESERVE

HOWLETT STREET

SECOND STOREY

MAMBEY STREET

X663864P  
AB121379Q  
06/03/2002 \$0 173

NOTES

Boundary demarcated by...

Parochian Grant & Associates Pty. Ltd.  
CONSULTING ENGINEERS AND SURVEYORS

SUITE 10, 131 BULLEEN ROAD, NORTH BALWYN 3104  
Phone: 9659 6488 Facsimile: 9659 5022  
A/CN 005 279 473

ORIGINAL

SCALE 1:250

SHEET SIZE A3

SCALE



LENGTHS ARE IN METRES

LICENSED SURVEYOR Robert David Macaulay

SIGNATURE

DATE / /

COUNCIL DELEGATE SIGNATURE

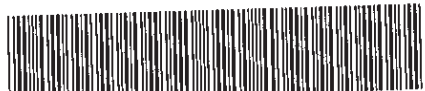
DATE / /

**DRAFT**  
REFERENCE M01892 26.06.01

Sheet 6 OF 5

Sheets

0 10 20 30 40 50 60 70 80 90 100 110 120 130 140 150 160 170 180 190 200



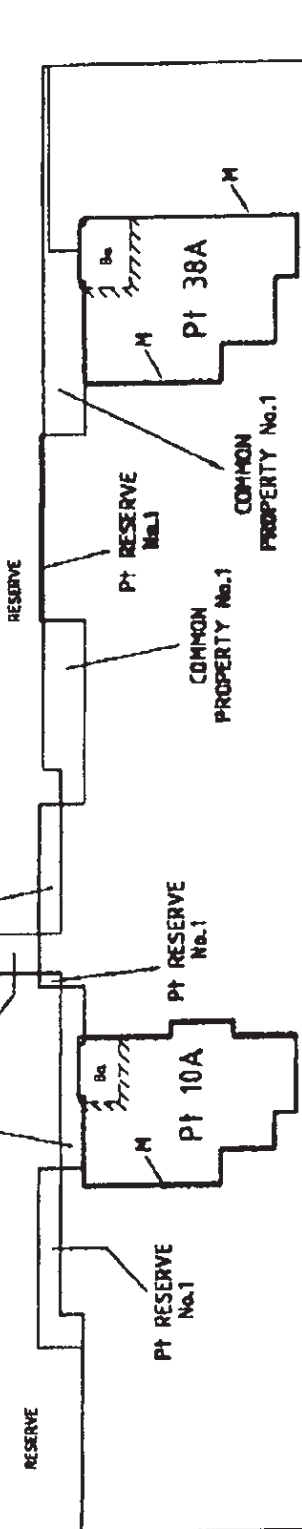
DAB1213790-22-9

LAND REGISTRY USE ONLY

# PLAN UNDER SECTION 32 OF THE SUBDIVISION ACT 1988

## SMITHFIELD ROAD

COMMON PROPERTY No.1  
PT RESERVE No.1



## HOWLETT STREET

## TOPMOST STOREY

MADEBY STREET

2482530

ANG ZONE 55

X668864P

AB121379Q



06/03/2002 \$0

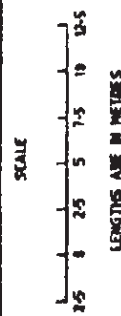
173

### NOTES

Battery detailed Ba.

**Perdition Grant & Associates Pty. Ltd.**  
 CONSULTING ENGINEERS AND SURVEYORS  
 SUITE 10, 131 BULLER ROAD, NORTH BALWYN 3186  
 Phone: 9659 4410 Facsimile: 9659 5422  
 ACR 895 278 473

ORIGINAL SCALE 1:250  
 SHEET SIZE A3



LICENSED SURVEYOR (PRINT)  
 SIGNATURE  
 REFERENCE: M1992 28JF6.01

LICENSED SURVEYOR Robert David Macaulay  
 DATE / /  
 COUNCIL DELEGATE SIGNATURE  
 Sheet 5 OF 5 Sheets

# DRAFT





DAB121379Q-23-2

**CONSENTS OF MORTGAGEES**

The following mortgagees by their endorsement of consent **CONSENT** to this section 173 Agreement and the registration of the Agreement on the relevant titles.

Oversea-Chinese Banking Corporation Ltd as Mortgagee under Mortgage W744506K.

**Executed by Oversea-Chinese Banking Corporation Ltd** by being Signed by its Attorney Ramona Enconniere under Power of Attorney dated 17 May 1996 a certified copy of which is filed in Permanent Order Book No.277 at Page 011 in the presence of:

**AIS INTERNATIONAL**  
For and on behalf of  
**Trenwick International Limited**

Trenwick International Ltd under Mortgage X003919M

**Brendon Davis**  
Authorized Signatory

**XCC296AD**  
**AB121379Q**  
06/03/2002 \$0 173



## DELEGATE REPORT

### PLANNING PERMIT APPLICATION

<b>Application No:</b>	TP-2018-872
<b>Plan No:</b>	PS303463U
<b>Applicant</b>	Reeds Consulting Pty Ltd on behalf of City of Melbourne.
<b>Owner:</b>	The owners are City of Melbourne, Owners Corporation 1 on PS428643U and others.
<b>Address:</b>	Council Reserve 113-115 Epsom Road and 8-32 Howlett Street, Kensington
<b>Proposal:</b>	Remove the Reserve status on the land to reflect the as built conditions  'Remove the Reserve status from part of Reserve No. 4 on PS340235Y and Reserve No. 1 on PS347552X under the provisions of Section 24A of the Subdivision Act 1988 and include part of common property No. 1 on PS428643U in the reserves in accordance with endorsed plans'.
<b>Date of Application:</b>	15 October 2018

#### 1 SUBJECT SITE AND SURROUNDS

The subject land includes a portion of the Council Reserve at 113-115 Epsom Road, Kensington and portion of the property at 8-32 Howlett Street, Kensington.

The reserve is located on the south side of Smithfield Road, west of the Smithfield Road and Epsom Road intersection. The reserve is, for the most part, linear in shape, has a 265 metre frontage to Smithfield Road and is approximately 5 meters deep. The total area of the reserve is 1,676.4m<sup>2</sup>.

The portion of reserve that forms part of the application (subject land) is north of 8-32 Howlett Street. This section of the reserve is landscaped with tanbark, under storey vegetation and mature peppercorn and Moreton Bay fig trees.

Abutting the reserve to the south is 8-32 Howlett Street. This site is significantly lower (approximately 3-4 metres) than the reserve and is currently developed with a four storey apartment building with forty five units and ground level parking. The development was built and subdivided in 2001.

8-32 Howlett is not affected by any easements however is burdened by restrictive covenants that prohibit any building or structures being constructed on the land which do not comply with the Geotechnical Guidelines for Builders and the planting of any tree or shrub closer to the building than the distance specified in the Covenant. Given that the proposal is not an application for building and works or landscaping, it will not result in a breach of the registered restrictive covenant.

A registered S173 agreement (AB121379Q) also applies to 8-32 Howlett Street. The agreement was entered into between the then developer and Council to manage several matters that arose as a part of the development approval process. The current proposal seeks to regularise the ownership, status and use of the land as a Reserve by enforcing the requirements of the agreement.



COMPASS Locality Plan



Subject land and Smithfield Road – September 2019





Subject land and Smithfield Road – September 2019



Interface between 8-32 Howlett Street and the reserve – September 2019

## **2 BACKGROUND AND HISTORY**

### **2.1 Planning Application History**

On the 12 July 1999 Council issued Lynch's Bridge Development Plan Approval No. 210/3/25 for the construction of 45 apartments on the land with associated infrastructure, car parking and landscaping works.

A S173 Agreement was entered into between the then developer and Council to manage several issues that arose as a part of the development approval process. The most significant of these, was that the works (namely retaining walls) which serve the property were partly constructed within the Council owned reserve and vice versa, the reserve constructed within Common Property.

The following sections of the S173 Agreement are the most relevant to this planning application and require the following:

- *Clause 6: The section 24A and Section 32 plans are registered at the Land Registry (this includes obligating the body corporate of the multi-lot plan to provide all necessary consents to the lodging and registration of all documents pertinent to the section 24A and section 32 plans at Council and at Land Registry);*
- *Clause 9: The Council agrees that:*
  - *Without limiting the foregoing, it shall provide its written consent to registration of the Section 24A Plan the Section 32 Plans promptly upon request by the Owner; and*
  - *It will vest (by transfer or otherwise) the Exchanged Land Part A in appropriate parts in the accordance with Section 32 Plan to the Body Corporate or abutting Lot owner in exchange for a transfer by the Owner, or the Body Corporate (as the case requires) of Exchanged Lane Part B.*

The agreement contains obligations to rectify the titles associated with the development. The City of Melbourne has been working with the current Owners Corporation to close out the agreement and has engaged a land surveying consultant to prepare a plan to accord with the requirements of the S173 agreement.

It is noted that all other obligations of the S173 agreement, such as the carrying out of works associated with the reserve and body corporate land have been satisfied.

### **3 PROPOSAL**

The application seeks approval to remove the Reserve status on land to allow for future realignment of the boundaries of the Reserve and private property boundaries to reflect the as built conditions. The application uses the provisions of Section 24A of the Subdivision Act 1988 in accordance with the obligations under the current S173 agreement.

For this to be achieved the following is required:

- To remove the Reserve status from Reserve No.4 on PS340235Y and Reserve No. 1 on PS347552X under provisions of Section 24A of the Subdivision Act 1988;
- To acquire part of the common property no. 1 under provisions of Section 35 of the Subdivision Act, via agreement to include this into the new reserve. An application pursuant to Section 35 of the Subdivision Act (an application by an authority acquiring the land which does not create an additional lot) is exempt from a permit pursuant to Clause 62.04 and therefore does not require a permit.

This would result in approximately 69m<sup>2</sup> of reserve land being excised to private common property and 26m<sup>2</sup> of the private land being excised from private common property to reserve land. The reserved land will be owned and managed by the City of Melbourne.

The plan is based on a recent site survey and accords in principle with past feature plans prepared by Paroissien Grant & Associates annexed to the registered agreement.

#### 4 STATUTORY CONTROLS

The following controls in the Melbourne Planning Scheme are relevant to this proposal:

Clause	Permit Requirements
Clause 32.08-3 General Residential Zone	Pursuant to Clause 32.08-3, a permit is not required to realign the reserve and property boundaries using the provision of Section 24A of the Subdivision Act 1988.
Clause 36.02-2 Public Park and Recreation Zone	Pursuant to Clause 36.02-2, a permit is not required to realign the reserve and property boundaries using the provision of Section 24A of the Subdivision Act 1988.
Clause 52.02 Easements, Restrictions and Reserves	<p>Pursuant to Clause 52.02, a permit is required before a person proceeds:</p> <ul style="list-style-type: none"> <li>• Under Section 24A of the <i>Subdivision Act 1988</i>.*</li> </ul> <p>Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider the interests of affected people.</p>
Clause 67 Applications under Section 96 of the Act	Pursuant to Clause 67, in accordance with Section 6(2)(ka) of the Planning and Environment Act 1987, Class 3 applications are exempted from Section 96(1) and 96(2) of the Planning and Environment Act 1987.

Note: This application is not defined as subdivision for the reason that it does not create two or more additional separately disposable parts which can be disposed of separately.

\*Section 24A of the *Subdivision Act 1988* states that:

The person or body in whom or in which the land is vested may lodge at the Titles Office for registration a certified plan to remove a reservation from land set aside as a reserve on a certified and registered plan.

#### 5 PUBLIC NOTIFICATION

Pursuant to Clause 52.02 (Easements, Restrictions and Reserves) and Clause 67.02 (Notice Requirements) of the Melbourne Planning Scheme, this application is not exempt from public notice and review, the responsible authority must give notice to owners and occupiers of adjoining land, and the responsible authority must consider the interests of affected people.

Notice of the proposal was therefore given by ordinary mail to the owners and occupiers of surrounding properties, in accordance with Section 52 of the Planning and Environment Act 1987.

At time of writing this report no objections have been received.

## 6 REFERRALS

Pursuant to Clause 66.01-2 (Subdivision Referrals) of the Melbourne Planning Scheme the application for removing the reserve status of the land was not required to be referred.

## 7 ASSESSMENT

Pursuant to Clause 52.02 (Easements, Restrictions and Reserves) the responsible authority must consider the interests of affected people and the decision guidelines of Clause 65.

It is considered that the proposal will not result adversely affect any person and satisfies the relevant decision guidelines at Clause 65 for the following reasons:

- the proposal will regularise the ownership, status and use of the land.
- the application seeks to take effect of a registered S173 Agreement by realigning the reserve and the private property boundaries in accordance with the obligations of the agreement and existing land uses and development.
- the subdivision plan of has been assessed against the requirements of agreement and the layout of the common property and the reserve accord with the as constructed layout.
- Council has given notice of the application and has received no objections to the proposal.
- Although the application results in a relatively minor loss of land classified as a 'reserve', that land currently offers no public utility and is not accessible, hence the former 1999 development approval and subsequent S173 being appropriate.

It is considered that the proposal is consistent with Clause 52.02 (Easements, Restrictions and Reserves) and Clause 65 (Decision Guidelines) of the Melbourne Planning Scheme and is supported.

## 8 RECOMMENDATION

That a Planning Permit be issued subject to the following conditions:

1. The layout and site dimensions of the proposed plan as shown on the endorsed plan(s) shall not be altered or modified without the consent of the Responsible Authority.
2. Any like plan submitted for certification under the provisions of the *Subdivision Act 1988*, ("the certified plan") shall be to the satisfaction of the Responsible Authority.
3. Prior to certification of the plan the unanimous consent of the owners corporation must be provided to the satisfaction of the Responsible Authority.
4. In accordance with section 68 of the *Planning and Environment Act 1987*, this permit will expire if one of the following circumstances applies:
  - a) The plan is not certified under the *Subdivision Act 1988* within two years of the date of issue of this permit. The Responsible Authority may extend this time if a request is made in writing before the permit expires, or within six months afterwards.
  - b) The registration of the plan is not completed within five years of the date of certification. The time for registration of the plan cannot be extended.