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Privacy acknowledgement: \*

I have read and acknowledge how Council will use and disclose my personal information.

Name: \*

Choon Tang

Email address: \*

[alec.tang@yahoo.com](mailto:alec.tang@yahoo.com)

Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \*

Council meeting

Date of meeting: \*

Tuesday 15 October 2019

Agenda item title: \*

PLANNING PERMIT APPLICATION TP-2019-342

Please write your submission in the space provided below and submit by no later than 10am on the day of the scheduled meeting.

We encourage you to make your submission as early as possible.

ISSUE WITH PRIVACY, NOISE ON ROOF TOP LEVEL

– With the plan to have roof top eatery on added levels on top of the building, this will result in having residents in our building's top floor losing our privacies as patrons could directly look into our living rooms and bedrooms. The noise generated from these could impact our daily life. Please note we are FULLY RESIDENTIAL building, not a guest house or hotel.

---

Privacy acknowledgement: \*

I have read and acknowledge how Council will use and disclose my personal information.

Name: \*

Amanda Broadbent

Email address: \*

[abclovesu@hotmail.com](mailto:abclovesu@hotmail.com)

Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \*

Future Melbourne Committee meeting

Date of meeting: \*

Tuesday 15 October 2019

Agenda item title: \*

TP 2019-342 10-16 McKillop St

Please write your submission in the space provided below and submit by no later than 10am on the day of the scheduled meeting.

We encourage you to make your submission as early as possible.

As a resident of the Excelsior building, directly opposite the proposed site, I would like to submit that our building has been excluded from the 'details of surrounding properties'.

I would like the council to take into account the close proximity of the building in relation to our home.

Regards

Amanda Broadbent

Please indicate whether you would like to address the Future Melbourne Committee or the Submissions (Section 223) Committee in support of your submission:

Yes

*(No opportunity is provided for submitters to be heard at Council meetings.) \**

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Privacy acknowledgement: \*

I have read and acknowledge how Council will use and disclose my personal information.

Name: \*

Jennifer Boyle

Email address: \*

[jenniboyle204@gmail.com](mailto:jenniboyle204@gmail.com)

Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \*

Future Melbourne Committee meeting

Date of meeting: \*

Tuesday 15 October 2019

Agenda item title: \*

Application TP-2019-342, 10-16 McKillop Street

Alternatively you may attach your written submission by uploading your file here:



[submission\\_for\\_tp2019342.pdf](#) 946.48 KB • PDF

Please indicate whether you would like to address the Future Melbourne Committee or the Submissions (Section 223) Committee in support of your submission:

No

*(No opportunity is provided for submitters to be heard at Council meetings.) \**

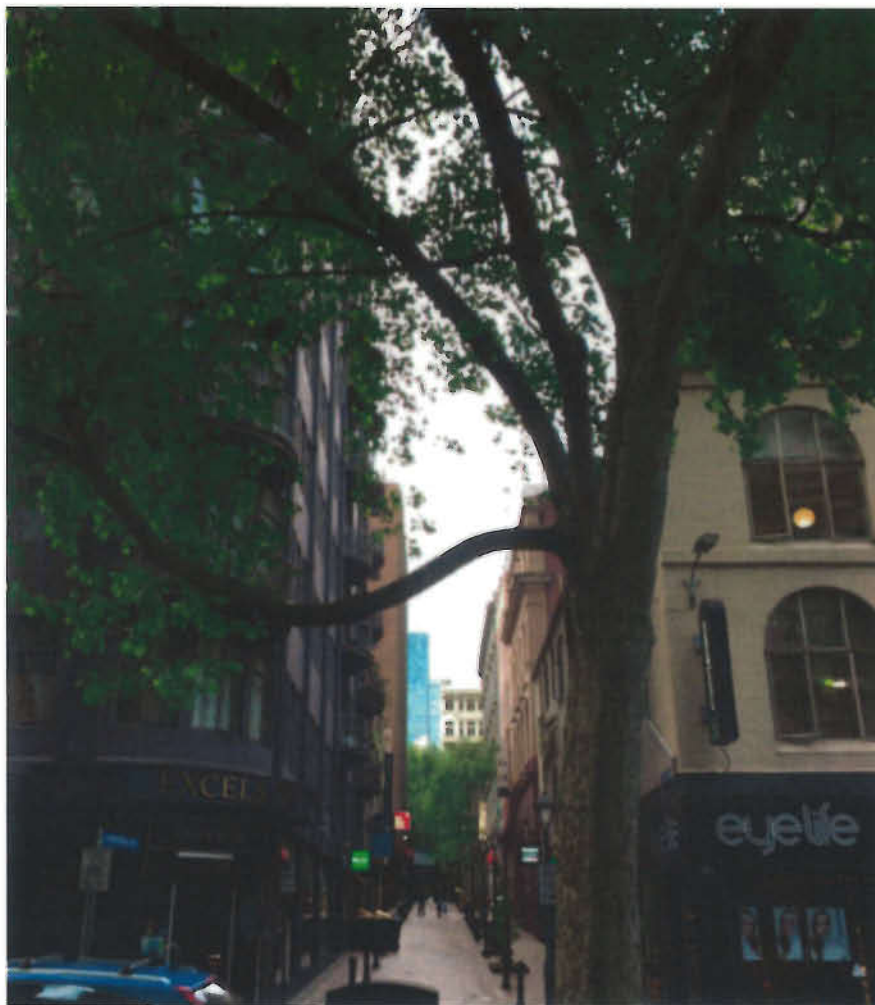
In reference to the Report to the Future Melbourne (Planning) Committee re: Application TP-2019-342, 10-16 McKillop Street, it is important to note the Excelsior Apartment Building located on the corner McKillop and Little Collins Street has been omitted from 'Details of surrounding properties' as outlined in attachment 4, 1. Subject Site and Surrounds.

The omission of the Excelsior Apartment Building, undermines the consideration of objectors as set out in the delegate report under Health and Safety and Stakeholder consultation.

The omission implies a 'downplaying' of impact to amenity for residents whose apartments face the proposed development site.

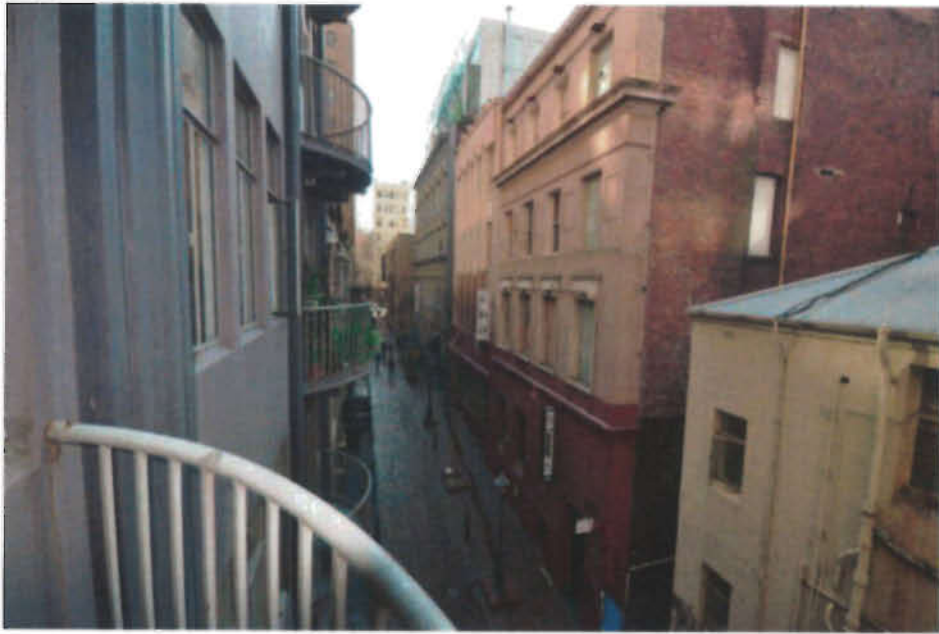
Images included for review by the committee in context of proximity to proposed development.

\*Images supplied by residents of the Excelsior Building.



**390 LITTLE COLLINS STREET/9 MCKILLOP STREET**





**APARTMENT 303**



**APARTMENT 304**



**APARTMENT 502**



**APARTMENT 702**



**APARTMENT 603**



**APARTMENT 704**



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\*

Name: \* Michael Munson

Email address: \* [michaelgmunson@yahoo.com.au](mailto:michaelgmunson@yahoo.com.au)

Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \*

Date of meeting: \* Tuesday 15 October 2019

Agenda item title: 6.2 Planning Permit Application: TP-2019-342, 10-16 McKillop Street, Melbourne

\*

Please write your submission in the space provided below and submit by no later than 10am on the day of the scheduled meeting. We encourage you to make your submission as early as possible.

My family and I have lived in the Excelsior apartment building for many years and have a very good knowledge of the area, including the realities of the noise from restaurants, the clubs, the rubbish trucks and the building developments. We spend a lot of time here and I believe we are very understanding.

Regarding the delegate report:

"It is acknowledged that there may be noise generated from patrons entering and exiting the restaurant, however given the location of the site in the central CBD this is not considered to be uncommon or unacceptable"

The cumulative effect of additional noise over time causes more and more stress on residents which creates an ongoing impact that I believe is unacceptable.



[In relation to Excelsior being ignored] "These inconsistencies are of limited weight to the overall assessment of the proposal, being predominately for informational purposes, and this has been considered as a part of the assessment of the application"

The 41 apartments in the Excelsior building are ignored in the original plans, the revised plans and the delegate report which also misrepresents the close proximity of the Excelsior apartments.

Page 29 of report – details of surrounding properties: The West side. This again completely ignores the Excelsior Building.

"The report acknowledge the existing building height is already non-compliant at 22.21m"

It seems odd to me that this can be downplayed?

Regarding the proposed building plans:

Then entrance/exit to the Basement is right outside our entrance door – the proposed development is 7 meters away and I wonder if the basement entrance could be connected to the proposed main entrance at ground level?

I would like to ask that the windows closest to Excelsior be frosted for our privacy.

Many thanks.

Please indicate      No  
whether you  
would like to  
address the Future  
Melbourne  
Committee or the  
Submissions  
(Section 223)  
Committee in  
support of your  
submission:

*(No opportunity is  
provided for  
submitters to be  
heard at Council*

*meetings.)\**

---

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\*

Name: \* Deanne Butterworth

Email address: \* [deanne@deannebutterworth.com](mailto:deanne@deannebutterworth.com)

Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \*

Date of meeting: \* Tuesday 15 October 2019

Agenda item title: Planning Permit Application: TP-2019-342, 10-16 McKillop Street, Melbourne

\*

Please write your submission in the space provided below and submit by no later than 10am on the day of the scheduled meeting. We encourage you to make your submission as early as possible.

I live at The Excelsior apartments 9 McKillop Street which is opposite 10-16 McKillop Street. I cannot attend the meeting October 15 as I will be looking after my young son.

McKillop Street is used for commercial, retail, residential, and hospitality.

McKillop Street has a high proportion of domestic residences and the Excelsior building in particular has a high proportion of families with young children. McKillop Street is a narrow laneway just 7 meters wide. The current character of this area is one of lively daytime activity and relative peace and quiet in the evenings when most of the residents return home. The Excelsior was built in 1939, converted to apartments in 1995 and is a success story of the Postcode 3000 strategy supported by City of Melbourne and State Government in the 1990s. The building is not

double glazed– its has original steel framed windows. It is not sound proofed like the newer apartments buildings with double glazed windows and balconies. Many apartments do not have air-conditioning so they rely on open windows for ventilation in warmer months.

The Excelsior contains 41 apartments– 33 of the 41 apartments have a frontage to McKillop Street and will be directly affected by these plans. The Excelsior building is ignored in the original plans, the revised plans, and the delegate report also misrepresents the close proximity of the Excelsior apartments. The application has focussed a lot on current and future development in the area. The current development at 405 Bourke Street affects residents but it is short term– once construction is complete there will be no ongoing noise, and it will not adversely affect the health and wellbeing of residents in the vicinity. The development at 10–16 McKillop Street will affect directly affect me after completion due to the following factors:

1. Noise Impact: The Entrance/exit to the basement restaurant is right outside our window. Restaurant patrons coming and going on McKillop Street will contribute to the noise that will echo through the immediate area. There are clear studies showing the impact of noise over time. Noise bleeds upwards and outwards and will affect many residents impacting their physical and mental health and wellbeing.

2. Privacy: the large ground floor restaurant will create serious privacy issues for residents on lower levels of the Excelsior. The proposed commercial tenancies from level 1 upwards will also create privacy issues. Offices and restaurants will be just 7 meters away from bedrooms and living rooms.. Example– If I sit at my dining table or if I lie on my bed I have a clear line of sight to windows on the 2nd level and vice versa. There has been no consideration for resident's privacy.

I propose the windows closest to the apartment building are fitted with sound proof fluted glass.

3. Health: Bedrooms and living rooms are located along McKillop Street. Noise from a basement and ground floor restaurant and those patrons entering and leaving the premises will affect residents sleep. Restaurant patrons who gather outside to smoke will directly affect the health of residents who have their windows open in a narrow laneway. I propose that McKillop Street becomes 'smoke-free' joining the other two laneways in very close proximity to this area – Equitable Place and Collins Way.

Please indicate      No  
whether you  
would like to  
address the Future  
Melbourne  
Committee or the



**Submissions**

**(Section 223)**

**Committee in  
support of your  
submission:**

***(No opportunity is  
provided for  
submitters to be  
heard at Council  
meetings.) \****

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\*

Name: \* Elle Harrington

Email address: \* [eharrington@sjbplanning.com.au](mailto:eharrington@sjbplanning.com.au)

Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \*

Date of meeting: \* Tuesday 15 October 2019

Agenda item title: Ministerial Planning Referral: TPM-2018-23, 28-38 Pearl River Road and 3-43 Waterfront Way, Docklands

Please write your submission in the space provided below and submit by no later than 10am on the day of the scheduled meeting. We encourage you to make your submission as early as possible.

My name is Elle Harrington of SJB Planning; the planning consultants assisting the applicant with this proposal. I am speaking in support of the proposal.

The Addendum before you tonight is the realisation of the extensive work undertaken by our client and the project team over the past two years in consultation with officers from the City of Melbourne, DELWP, Development Victoria, local traders and the local community.

The positive components of the Addendum are as follows:

- Provision of maximum building heights for each site
- Provision of maximum GFA requirements for each site

- Prescriptive building setback and separation controls
- Commercial land use locked in for SW tower

Our client respectfully requests the Committee lends its support tonight in line with the recommendation of officers.

Please indicate      Yes  
whether you  
would like to  
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Melbourne  
Committee or the  
Submissions  
(Section 223)  
Committee in  
support of your  
submission:

*(No opportunity is  
provided for  
submitters to be  
heard at Council  
meetings.) \**

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Privacy acknowledgement: \*

I have read and acknowledge how Council will use and disclose my personal information.

Name: \*

rohan storey

Email address: \*

[melbourneheritageaction@gmail.com](mailto:melbourneheritageaction@gmail.com)

Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \*

Future Melbourne Committee meeting

Date of meeting: \*

Tuesday 15 October 2019

Agenda item title: \*

6.4 Planning Permit Application: TPM-2019-1, 423 Bourke Street, 140 Queen Street, 150 Queen Street and 21-27 McKillop Street, Melbourne

Please write your submission in the space provided below and submit by no later than 10am on the day of the scheduled meeting. We encourage you to make your submission as early as possible.

MHA believes that the facade of 140 Queen Street should be reproduced as recommended by Council's heritage advisor, rather than a new facade 'referencing' the original. Alternatively, at least one row of original facade panels should be retained and repaired and used as part of the facade.

Alternatively you may attach your written submission by uploading your file here:



[2019\\_10\\_140150\\_queen\\_street\\_melbourne\\_mha\\_objection\\_final.docx](#)

5.26 MB • DOCX

Please indicate whether you would like to address the Future Melbourne Committee or the Submissions (Section 223) Committee in support of your submission:

No

*(No opportunity is provided for submitters to be heard at Council meetings.) \**



14 October 2019



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[www.melbourneheritage.org.au](http://www.melbourneheritage.org.au)  
[melbourneheritageaction@gmail.com](mailto:melbourneheritageaction@gmail.com)

City of Melbourne  
City Planning and Infrastructure,  
PO Box 1603  
Melbourne Vic 3001  
[planning@melbourne.vic.gov.au](mailto:planning@melbourne.vic.gov.au)

**RE : APPLICATION NUMBER: PA1800482 / TPMR-2019**  
**140 QUEEN STREET MELBOURNE VIC 3000**

#### **DEMOLITION AND CONSTRUCTION OF MIXED USE DEVELOPMENT**

Melbourne Heritage Action wishes to object to the demolition of this building, and its currently proposed replacement, unless further clarification is forthcoming.

140 Queen Street, designed by the leading firm of Yuncken Freeman, and built in 1966, is an important example of Mid Century Modern city buildings, and has only just been protected by permanent heritage control HO1213.

As the citation notes, "It is an innovative and early example of the return to more massive construction, and a departure from the wholly-glazed expression of office buildings of the previous decade. While its rigid geometry and the incorporation of an entry forecourt (the colonnade) reveal its roots in the International Style, its three dimensional quality, achieved through more assertive textures and the use of sculptural, moulded pre-cast concrete rather than a flat glass exterior, provides a successful Modernist outcome."

The Council's officer report states that an engineering assessment, which has been peer reviewed, found that the facade panels are 'in poor form and has a limited life expectancy' and 'deteriorated to a point that makes its retention unworkable from a building safety perspective.' The engineers report is not included, so we are unable to properly assess these statements.

Council's heritage advisor appears to accept the inability to preserve the façade panels, or even a sample number, and recommends that the façade panels are reproduced, an action that seems extreme, but has been done for Modernist curtain wall buildings where the curtain wall has failed, and its elements beyond repair. The UN building and Level House in New York are two examples where the curtain wall is entirely new, reproducing the original in appearance, but upgrading thermal efficiency and waterproofing. This kind of repair for a heritage listed Modernist building has not yet been attempted in Australia.

The planners have not accepted this course of action, but have taken the idea on board somewhat, as shown in the 'façade strategy' that would see the façade where the building would be demolished redesigned as 'a modern interpretation of the existing façade by referencing its vertical and horizontal geometry elements.' in GRC precast panels, where the 'detail of jointing and articulation

will reference original jointing between concrete modules'. It is unclear what exactly this would be like, with a variety of diagrams included. The last one is the closest to the original, however with 2 panels / bay instead of 3, even though the original proposed façade had ribbing that was 3 / bay, which is much closer to the original building.

If this last diagram is acceptable, then seems to be only a small extra step to make sure the proportions are as close as possible to the original, by simply ensuring there are 3/bay rather than 2. Why 'reference' the original when it is just as easy to be very closely similar to the original ?

We are also concerned that unless the panels are also as deep as the original, which would mean either setting the glass well into the site, or projecting the panels beyond the building line as per the existing, then much of the delicacy and lightness of the original will be lost.

We also note that reproducing the panels is not as good a result as retaining them. While we have not seen the engineers report, it would seem probable that at least one row could be carefully removed and repaired, complete with glass panels. They could then be reused as the bottom row of the new façade, in which case the remaining façade could be more 'referential', and what it referenced would be clear.

Yours sincerely,

Rohan Storey  
Vice President  
Melbourne Heritage Action



Scottish Amicable in 1965.



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Privacy acknowledgement: \*

I have read and acknowledge how Council will use and disclose my personal information.

Name: \*

Cian Davis

Email address: \*

[cdavis@batessmart.com](mailto:cdavis@batessmart.com)

Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \*

Future Melbourne Committee meeting

Date of meeting: \*

Tuesday 15 October 2019

Agenda item title: \*

Planning Permit Application: TPM-2019-1, 423 Bourke Street, 140 Queen Street, 150 Queen Street and 21-27 McKillop Street, Melbourne

Please write your submission in the space provided below and submit by no later than 10am on the day of the scheduled meeting.

I am acting for the permit applicant, Cbus Property Pty Ltd, and wish to address the Council in relation to this item.

We encourage you to make your submission as early as possible.

Please indicate whether you would like to address the Future Melbourne Committee or the Submissions (Section 223) Committee in support of your submission:

Yes

*(No opportunity is provided for submitters to be heard at Council meetings.) \**



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Privacy acknowledgement: \* I have read and acknowledge how Council will use and disclose my personal information.

Name: \* sarah horsfield

Email address: \* [sarah.horsfield@urbis.com.au](mailto:sarah.horsfield@urbis.com.au)

Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \* Future Melbourne Committee meeting

Date of meeting: \* Tuesday 15 October 2019

Agenda item title: \* Planning Permit Application: TPM-2019-1, 423 Bourke Street, 140 Queen Street, 150 Queen Street and 21-27 McKillop Street, Melbourne

Please write your submission in the space provided below and submit by no later than 10am on the day of the scheduled meeting. We encourage you to make your submission as early as possible.

I am acting on behalf of the permit applicant, Cbus Property Pty Ltd, and propose to make a short presentation to the FMC meeting

Please indicate whether you would like to address the Future Melbourne Committee or the Submissions (Section 223) Committee in support of your submission: Yes

*(No opportunity is provided for submitters to be heard at Council meetings.) \**



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\*

Name: \*      Ciro Figaro

Email address: \*      [ciro@stratatitlelawyers.com.au](mailto:ciro@stratatitlelawyers.com.au)

Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \*

Date of meeting: \*      Tuesday 15 October 2019

Agenda item title: \*      AGENDA ITEM 6.4– Ministerial Planning Referral: TPMR–2019–1 423 Bourke Street, 140 Queen Street, 150 C and 21–27 McKillop Street, Melbourne

Alternatively you may attach your written



submission by [submissions\\_by\\_fairfax\\_house\\_future\\_melbourne\\_planning\\_committee\\_melbourne\\_city\\_council\\_finalcor](#)  
uploading your 2.11 MB • PDF  
file here:

Please indicate whether you would like to address the Future Melbourne Committee or the Submissions

(Section 223)

Committee in  
support of your  
submission:

*(No opportunity is  
provided for  
submitters to be  
heard at Council  
meetings.) \**



14 October 2019

**Future Melbourne (Planning) Committee – Melbourne City Council**  
 90-120 Swanston Street,  
 Melbourne VIC 3000

Sent by email: [com.meetings@melbourne.vic.gov.au](mailto:com.meetings@melbourne.vic.gov.au)

**MINISTERIAL PLANNING REFERRAL TPMR-2019-1 (423 BOURKE STREET, 140 QUEEN STREET, 150 QUEEN STREET AND 21-27 MCKILLOP STREET, MELBOURNE).**

**SUBMISSIONS BY THE OWNERS CORPORATION PS 336302 K (392 - 396 LITTLE COLLINS STREET, MELBOURNE - FAIRFAX HOUSE).**

We act for Owners Corporation PS336302K located at 392-396 Little Collins Street, Melbourne ("The Owners Corporation").

The following Submissions, submitted on behalf of the Owners Corporation, relate to the Planning Application for 435 Bourke Street, Melbourne (PA1800482 for the site bounding 423 Bourke Street, 140 Queen Street, 150 Queen Street and 21-27 McKillop Street, Melbourne) lodged by Cbus Property Pty Ltd C/- Urbis Pty Ltd ("CBUS") and for the consideration of the Future Melbourne (Planning) Committee Meeting of 15 October 2019 at 5.30 PM (Meeting No 66).

Having reviewed the Report to the Future Melbourne (Planning Committee) being item 6.4 of the Agenda for the Meeting of 15 October 2019 and having carefully analysed the Planning Application for 435 Bourke Street Melbourne, the Owners Corporation notes the following concerns:

- A. the potential for the Pedestrian Link between McKillop Street and Penfold Place to disappear as a result of the proposed development; and the lack of a proper assessment as to the grounds and authority to remove it; and
- B. the insufficient attention of CBUS and the town planners to the express warranties contained in a registered light and air easement that benefits the Owners Corporation.

I note that the Submissions in reference to the Pedestrian Link are made of (i) the following Legal Submissions and (ii) the Owners Submissions attached as Annexure "A".

## A. The Pedestrian Link between McKillop Street and Penfold Place.

### A.1 *The legal framework of the Pedestrian link.*

On the southern boundaries of TP861285N, 21- 27 McKillop Street, (the "Land") adjacent to the Northern boundaries of PS336302K there is the "Pedestrian Link" between McKillop Street and Penfold Place.

Such "Pedestrian Link" is part of the land TP861285N, it is registered on its Certificate of Title as Dealing AH494607S and was created on 27 August 2010 by an Agreement under section 173 of the *Planning and Environment Act 1987* (the "Act").

Clause 1.11 of the section 173 Agreement (AH494607S) defines the "Pedestrian Link" as a 3.8-metre-wide (approximately) portion of the Land running from North East (McKillop Street) to South West (Penfold Place), generally shown hatched on the plan attached to Annexure 1.

The purpose of this Dealing AH494607S is clearly stated in the Recital E: *On 29 October 2008, Council resolved to discontinue and sell the Penfold Place Land, by private treaty, to the Owner, on condition that the Owner enters into an agreement pursuant to section 173 of the Act imposing conditions in respect of the use and the development of the Penfold Place Land.*

Section 79A of the Property Law Act 1958 states: *"It is hereby declared that when the benefit of a restriction as to the user of or the building on any land is or has been annexed or purports to be annexed by any instrument to other land the benefit shall, unless it is expressly provided to the contrary, be deemed to be and always to have been annexed to the whole and to each and every part of such other land capable of benefiting from such restriction".*

The above effectively means that the Council sold the Land, on the condition of expressly reserving the rights upon the newly created Pedestrian Link, such rights were reserved by way of imposing a covenant upon the use of the part of the Land identified as the Pedestrian Link.

Pursuant to section 182 of the *Planning and Environment Act 1987* (Vic) once a section 173 Agreement is recorded by the Registrar, it runs with the land and is enforceable by the responsible authority against 'any person who derives title from the person who entered into It'. Indeed, the agreement can be used to ensure that permit conditions are enforceable against not only the permit holder but all subsequent owners of the land.

Consistently, clause 4.1 of the section 173 Agreement (AH494607S) provides that: *"The Agreement shall be deemed to come into force and effect as from the date of*

*commencement of the Agreement and the benefit and burden of this Agreement shall run with and be annexed to the Land."*

Finally, and ultimately, in equity and under the common law, *Haywood v Brunswick Permanent Benefit Building Society* (1881) 2 QB 403 applies in Victoria the same english principles of *Tulk v Moxhay*; namely, that a covenant is enforceable against the covenantor's successors who took the burdened land with notice of the covenant.

Accordingly, the Statutory Agreement under section 173 (Dealing AH494607S) imposes covenants related to the Pedestrian Link (positive and negative obligations) upon CBUS, the current Owner of the Land.

#### **A.2. The relevant Covenants**

As the covenants are all imposed under section 173 Agreement, the distinction between positive and negative covenants for the purpose of its enforceability against the successors under the *Austerberry rule*<sup>1</sup> is irrelevant: all of the covenants are enforceable under the current section 173 Agreement.

Clause 6.2 of the Section 173 Agreement states:

*The Owner will, at its own cost and expense, keep and maintain the Pedestrian Link, including structures above and below the Pedestrian Link, in a good, safe and orderly state of condition and repair to Council's satisfaction (including, without limitation, undertaking any make good, replacement or renewal necessary to maintain the Pedestrian Link in structurally sound and safe condition and to Council's satisfaction).*

Clause 6.3 of the Section 173 Agreement states:

*The Pedestrian Link will be open and accessible to the public daily during the hours of 6.30AM to 9.00PM.*

Clause 6.9 of Section 173 Agreement states:

*the Owner will ensure that no obstructions are placed, left or erected within or on Penfold Place Land so as to prevent or diminish emergency service access to the Land, the Penfold Place Land and the Adjoining Property.*

#### **A.3. The Variations and Termination of the Covenants.**

There is no provision under the section 173 Agreement that allows for the variation or removal of the covenants related to the Pedestrian Link unilaterally by its Owner.

Instead the following clause restricts unilateral variations or termination:

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<sup>1</sup> *Austerberry v Corporation of Oldham* (1885) 29 Ch D 750.



Clause 8.1 states that: *despite the Owner's obligations in clause 6.3 of this Agreement the Owner may close the Pedestrian Link for a minimum period to prevent any part of the Pedestrian Link becoming dedicated to the public as a result of its continuing use by the public. The parties acknowledge at the date of this agreement the minimum period for the purpose of this clause is no more than one day in every calendar year.*

It is noted that clause 8.2 states that: *the Owner's obligation under clause 6.3 of this Agreement may be reviewed from time to time by the parties and a party acting reasonably may request the other party to consider a variation of that obligation. A party must act reasonably in considering a request made by the other party to consider a variation.*

Clause 8.2, is restrained to the operation of section 6.3 meaning that clause 8.2 only allows the parties to *reconsider the hours* during which the Pedestrian Link should be accessed, but not to remove the covenant *at large*.

Indeed, clause 8.1 makes it clear that the minimum period for the Pedestrian Link to be closed is no more than 1 day every calendar year and clause 6.9 disposes that no obstructions are to be erected within or on the Penfold Place Land (being part of the development site) so as to diminish emergency service access to effectively all of the adjoining properties.

From the context of the Agreement it is not possible to remove the access altogether by agreeing to amend the hours of operation.

The only way to effectively remove the Pedestrian Link would be by ending the section 173 Agreement in accordance with clause 21 and Schedule 10 with the agreement of the parties which means with the Consent of the Council and Department of Planning.

Indeed, in *Dukovski v Banyule City Council* (2003) VCAT 190 it was held that a restrictive covenant can be varied by amending the terms to modify the restriction.

Consistently *Part 4 of the Planning and Environment Act* provides that the permit to a variation of a statutory covenant must be provided by a 'responsible authority', being the Council or the Minister.

As at the date of these Submissions, such consent has not been granted and the covenants under section 173 Agreement Dealing AH494607S, remain in force on the Certificate of Title of the land.

Alternatively, in accordance with the Victorian Planning Scheme, a restrictive covenant can be removed or varied by registration of a plan under section 23 of the Subdivision Act 1988 (Vic) (Subdivision Act).

Clause 52.02 of the applicable planning Scheme disposes that a permit is not required to remove or vary a restriction (covenant) in the following circumstances:

- *If the action is required or authorised by the schedule to this clause.*
- *In the circumstances set out in Section 6A (3) of the Planning and Environment Act 1987.*
- *If the person proceeds under Section 362A of the Land Act 1958.*
- *In the case of a person proceeding under Section 36 of the Subdivision Act 1988, if the council or a referral authority gives a written statement in accordance with Section 36(1)(a) or (b) of the Subdivision Act 1988.*

#### **A.4. Objection to Variation or Removal of Pedestrian Link.**

For the Reasons specified in the Submissions attached to this letter as **Annexure "A"** the Owners Corporation anticipates its objection to be a substantive variation or removal of the covenants constituting the Pedestrian Link.

In addition, the Owners Corporation notes that the removal of an urban linkage would constitute a breach of the following Standards under the Melbourne Planning Scheme:

- Standard C12. (Urban Landscape): *a landscape design should Protect and link areas of significant local habitat where appropriate*
- Standard C15. (Walking and cycling network objectives):
  - *Link to any existing pedestrian and cycling networks.*
  - *Provide safe walkable distances to activity centres, community facilities, public transport stops and public open spaces.*
  - *Provide an interconnected and continuous network of safe, efficient and convenient footpaths, shared paths, cycle paths and cycle lanes based primarily on the network of arterial roads, neighbourhood streets and regional public open spaces.*
- Standard D5. (Integration with street objective): *Developments should provide adequate vehicle and pedestrian links that maintain or enhance local accessibility.*

#### **A.5. Conclusions:**

For all of the above reasons, the Owners Corporation's submissions are that the Future Committee (Planning) Scheme (before making a decision on this matter) should first ascertain that:

1. CBUS has demonstrated that CBUS either (i) is capable of obtaining the consent by the Council or the Department of Planning to vary or remove the Pedestrian Link or (ii) it is permitted under the Planning Scheme to vary or remove the Pedestrian Link, or (iii) it has obtained an order under section 84(1) of the Property Law Act 1958 (Vic) to 'discharge' or 'modify' the covenant.

2. A review of the Planning and Environment Act in 2009 by the Department of Planning and Community Development found that the provisions for removal and variation of section 173 agreements, other than by consent, are inadequate<sup>2</sup>
3. The Owners Corporation objects to any substantial variations (or removal) of the Pedestrian Link which is considered an important urban linkage in Melbourne.

Finally, it is noted that pursuant to section 114 of the Planning and Environment Act 1987 (Vic), *any person* may apply to VCAT for an enforcement order if a use or development of land contravenes a section 173 Agreement. Therefore, a disregard of the concerns raised in relation to the affectation of this planning proposal on Pedestrian Link could potentially facilitate legal actions by any member of the public.

For your reference, a copy of the section 173 Agreement is enclosed with this letter and with our letter to CBUS in relation to aspects connected with these submissions as **Annexure "B"**.

#### **B. Light and Air Easement.**

As disclosed in the Planning Application submitted by CBUS object of these submissions, there are number of North-facing windows that form part of the Owners Corporation's land which are protected by an easement of light and air.

In particular, the Plan of subdivision PS336302K presents: (i) an Easement A-1 of Light and Air in favour of all land in this plan and (ii) an easement E-1 of light and air restricted to above 19.29 metres.

CBUS's Shadow Analysis drawings, must ensure not to infringe the area currently protected by the 'light and air easement' registered on the Certificate of Title of the Owners Corporation.

In assessing this aspect of the matter, the Future Melbourne (Planning) Committee should consider the following aspects:

1. The Melbourne Planning Scheme<sup>3</sup> provides for the variation or removal of easements by way of permit.<sup>4</sup> In the circumstances, where the Department

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<sup>2</sup> See Mark Dwyer, Review of section 173 agreements, Discussion Paper (2004); Department of Planning and Community Development, Modernising Victoria's Planning Act: discussion paper on opportunities to improve the Planning and Environment Act 1987, (2009). Section 173 agreements are not 'restrictions' for purposes of the Subdivision Act so cannot be removed under s 23 of that Act: Van Der Heyden v Mansfield SC (2003) VCAT 102.

<sup>3</sup> <http://planningschemes.dpcd.vic.gov.au/schemes/melbourne>

<sup>4</sup> Clause 52.02.

may make decisions to consent to vary, modify or remove privately-held easements without the consent of the owner of the land benefitted, being the Owners Corporation these submissions shall be carefully considered.<sup>5</sup>

2. If the Shadow analysis is insufficient to satisfy the Department that the neighbouring rights be preserved, the consent shall not be lightly granted.

The right of light and air is a fundamental proprietary right subject to compensation under *Land Acquisition and Compensation Act 1986* (VIC) "*claims for compensation on the removal of the easement by persons having an interest in land benefitted by the easement ... as if ... by compulsory process.*"<sup>6</sup>

3. If, CBUS applies to the Victorian Civil and Administrative Tribunal (VCAT) for leave to remove the easement compulsorily, a precondition for an application is a written statement by the Council or referral authority that the proposed action is required for the "economical and efficient ... servicing of, or access to, land ... and that the removal or acquisition will not result in an unreasonable loss of amenity in the area affected by the removal or acquisition."<sup>7</sup>

*Echuca Workers & Services Club Ltd v Campaspe SC*<sup>8</sup> established that in making its decision, VCAT will consider the following:

- (a) An easement is a property right, and property rights should not be extinguished lightly.<sup>9</sup>
- (b) The test expounded in *K J Barge & Associates v City of Prahran* (1992) 10 AATR 345 ("The Barge test"), which consists of two limbs:
  - Limb 1: Whether the "current use of or the current state of condition" of the benefitted lot "indicates a need or requirement for the easement to continue."
  - Limb 2: Whether the owner of the benefitted land would suffer any "material detriment".
4. An application to vary or remove an easement will affect matters set out in s 60 of the *Environmental Planning and Assessment Act 1987* (VIC), which include:
  - The provisions of the Melbourne Planning Scheme;
  - Victorian planning objectives;

<sup>5</sup> Planning and Environmental Act 1987 (Vic) s 6(1)(g), Subdivision Act 1998 (VIC) s 23(2)

<sup>6</sup> *Subdivision Act 1998* (VIC) s 36(2)(b)(ii).

<sup>7</sup> *Subdivision Act 1998* (VIC) s 36(1).

<sup>8</sup> [2009] VCAT 1633.

<sup>9</sup> *Jordan v Stonnington CC* [2005] VCAT 1832 at 79.



- Objections to the application; and
  - Environmental, social and economic effects.
5. Finally, as an integral part of these submissions I enclose with this letter as **Annexure "C"** the bundle of the following correspondence:
- Letter to Colliers International dated 1 December 2017
  - Letter to Department of Environment, Land, Water & Planning dated 6 December 2017
  - letter to Hon. Richard Wynne MP dated 25 February 2019
  - Letter to CBUS dated 25 February 2019

We trust that the above provides the Committee with the valuable information to properly assess this matter.

We would appreciate the opportunity to be heard further, and orally at the next Meeting should circumstances permit.

Please contact our Firm if you require any further information.

Yours faithfully,



Tom Bacon  
CEO & Principal Lawyer  
[tom@stratatitlelawyers.com.au](mailto:tom@stratatitlelawyers.com.au)



Ciro Figaro  
Associate Lawyer  
[ciro@stratatitlelawyers.com.au](mailto:ciro@stratatitlelawyers.com.au)

**Submission Future Melbourne Committee 15  
October 2019 Planning Permit Application: TPM-  
2019-1, 423 Bourke Street, 140 Queen Street, 150  
Queen Street and 21-27 McKillop Street, Melbourne**

This submission is being made on behalf of the Owners Corporation of 392 Lt Collins which as an adjacent building will be directly impacted by this development proposal.

We have reviewed the plans and the proposed modifications by the Future of Melbourne Committee. We feel that there is a very serious omission regarding the contractual obligations that CBUS has to the council to maintain a pedestrian access way between McKillop Street and Penfold Place. As you will see in the attached document this agreement comes under section 173 of the Planning and Environment Act 1987.

While lawyers *Strata Title Lawyers* are writing to your Committee about legal aspects of this matter, we would like to provide evidence to the committee of the importance of maintaining a pedestrian link as part of any future development on this site.

**1. *Incompatibility with City of Melbourne's walking plan***

Firstly, we would note that the City of Melbourne has a *WALKING PLAN 2014-17* which designed to promote an enjoyable and safe walking environment for residents, workers and visitors. We note that the Future Melbourne Committee endorsed this plan on 18 November 2014. A key feature of this plan is to "accommodate increasing amounts of walking in Melbourne". We would argue that the removal of an existing right of pedestrian access (that results from contractual obligations to the Council) between McKillop Street and Penfold Place is incompatible with the *WALKING PLAN 2014-17*.

**2. *Safety of the residents and workers in the CBD***

Melbourne CBD has been subject to several major terrorist and civil incidents involving multiple injuries and fatalities (including on last year on Bourke St, a few hundred metres from our building). In addition, there have been recent fires in both our building (i.e. in Feb 2019) and in surrounding buildings which have involved full evacuation in some case of several buildings in the vicinity.

When similar incidences occur in future, it may be critical for pedestrians to egress or emergency workers to access Lt Collins st, or Bourke St via this pedestrian access

route. This is particularly important at the moment give the ongoing construction in city which often means that major streets are blocked by construction and so pedestrian only access routes may sometime be the fastest way to access parts of the city. Further we feel that pedestrian access should be maintained for the duration of construction of the new building.

We note that that Clause 6.9 of the Section 173 agreement states: “the Owner will ensure that no obstructions are placed, left or erected within or on Penfold Place Land so as to prevent or diminish emergency service access to the Land, the Penfold Place Land and the Adjoining Property”.

### **3. *Potential impact of removal pedestrian link on the safety and amenity of proposed new development***

While the development application contains a reference to contractual obligations to the council under its Section 173 agreement (see p. 62) there is no discussion or analysis of how these have been taken into account in the development proposal.

While the proposal indicates that the current design is “pedestrian orientated” e.g. “McKillop Streets have been designed so that they are attractive and pedestrian oriented frontages.”(p. 89) there is no discussion of how the removal of a pedestrian link would impact on such a “pedestrian orientated” building.

Further, we note that there have been several recent fires in tall buildings in Melbourne CBD (eg. due poor construction and cladding). So again, it is extremely surprising that the development proposal contains no evidence from the emergency services of how the remove of pedestrian link would impact on the safety e.g. evacuation, or impede access for fire-fighting and rescue.

### **4. *The potential for other contractual obligations that relate to the current proposal***

Finally, we must express our concern that the failure of CBUS to directly address its contractual obligations to provide a pedestrian access link, may indicate that it has neglected to fully establish its contractual obligations regarding other Restrictive Covenants.

In these circumstances we feel that the Future Melbourne Committee needs to defer consideration of this proposal until CBUS can explain why information regarding the loss of the pedestrian link was not made available to the Committee. Further it needs to develop the proposal further to ensure it is compliant with all relevant covenant for the amenity and safety of residents, workers and visitors to the Melbourne CBD

Ms Sonia Audino

On Behalf of the Owners Committee 392 Lt Collins St.

# ANNEXURE "B" - S 173 AGREEMENT

11

## Register Search Statement - Volume 11435 Folio 182

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REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958

VOLUME 11435 FOLIO 182

Security no : 124075344184C  
Produced 12/12/2018 12:01 PM

### LAND DESCRIPTION

-----  
Lots 1 and 2 on Title Plan 861285N.  
PARENT TITLE Volume 08955 Folio 500  
Created by instrument AK468283P 17/07/2013

### REGISTERED PROPRIETOR

-----  
Estate Fee Simple  
Sole Proprietor  
CBUS PROPERTY MELBOURNE Q PTY LTD of UNIT 7 550 BOURKE STREET MELBOURNE VIC  
3000  
AR246963T 16/07/2018

### ENCUMBRANCES, CAVEATS AND NOTICES

-----  
Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

AGREEMENT Section 173 Planning and Environment Act 1987  
AH494607S 14/09/2010

### DIAGRAM LOCATION

-----  
SEE TP861285N FOR FURTHER DETAILS AND BOUNDARIES

### ACTIVITY IN THE LAST 125 DAYS

-----  
NIL

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

### ADMINISTRATIVE NOTICES

-----  
NIL

eCT Control 16667Y GADENS LAWYERS  
Effective from 16/07/2018

DOCUMENT END

Delivered from the LANDATA® System by SAI Global Property Division Pty Ltd





13

# Application by a Responsible Authority for the making of a Recording of an Agreement

Section 181 Planning and Environment Act 1987

**AH494607S**

14/09/2010 \$105.20 173



Form 18

Lodged by:

Name: MADDOCKS  
Phone: 9288 0555  
Address: Level 6, 140 William Street, Melbourne, Victoria, 3000  
Ref: MAN:CCB:5182714  
Customer Code: 1167E

The Responsible 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.

Land: Certificates of title volume 8479 folio 439 and 8955 folio 500

Responsible Authority: Melbourne City Council Town Hall, 90 Swanston Street  
Melbourne 3000

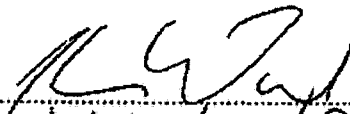
Section and Act under which agreement made: Section 173 of the *Planning and Environment Act 1987*

A copy of the Agreement is attached to this Application

Date: 27.8.10

Signature for Responsible Authority:

Name of officer:

  
Kim Robertson 27/8/10

**AH494607S**

14/09/2010 \$105.20 173



Dated the 27<sup>th</sup> day of August, 2010

**MELBOURNE CITY COUNCIL**

and

**COLONIAL RANGE PTY LTD ACN 070 855 220**

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

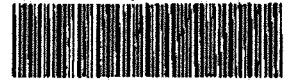
**Land**

Land at 128-148 Queen Street and 21-27 McKillop Street, Melbourne, being the land described in Certificates of Title Volume 8479 Folio 439 and Volume 8955 Folio 500.

**MELBOURNE CITY COUNCIL**  
Legal Services Branch  
3<sup>rd</sup> Floor Town Hall  
90 Swanston Street  
MELBOURNE VIC 3000

**AH494607S**

14/09/2010 \$105.20 173



## SECTION 173 AGREEMENT CONTENTS

DESCRIPTION	Page
<b>RECITALS:</b>	<b>1</b>
<b>OPERATIVE PROVISIONS:</b>	<b>1</b>
1. DEFINITIONS	1
2. INTERPRETATION	2
3. AGREEMENT UNDER SECTION 173 OF THE ACT	3
4. EFFECT OF AGREEMENT	3
5. SUCCESSORS IN TITLE	3
6. COVENANTS OF OWNER	3
7. COVENANTS OF OWNER AND COUNCIL	4
8. COSTS	5
9. DEFAULT OF OWNER	5
10. COUNCIL'S POWERS	6
11. INTEREST AND CHARGE	6
12. NOTICES	7
13. FURTHER ASSURANCE	7
14. OWNER'S ACKNOWLEDGMENT	7
15. NO WAIVER	7
16. SEVERABILITY	7
17. MORATORIUM	8
18. COUNTERPARTS	8
19. GOVERNING LAW	8
20. ENDING OF AGREEMENT	8
<b>SCHEDULE</b>	<b>11</b>

SECTION 173 AGREEMENT

DATE:

**AH494607S**



**PARTIES:** **MELBOURNE CITY COUNCIL** of Town Hall, 90 Swanston Street,  
Melbourne, Victoria 3000 ("Council")

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

**RECITALS:**

- A. The Council is a responsible authority for the administration of the Scheme pursuant to the provisions of the Act.
- 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 Minister for Planning has issued the Permit for the purpose set out in Item 4 of the Schedule.
- D. The Permit is conditional upon:
  - (a) the discontinuance and transfer of the Penfold Place Land from Council to the Owner; and
  - (b) the Owner entering into an Agreement under section 173 of the *Planning and Environment Act 1987* with Council, which provides for the matters referred to in Item 5 of the Schedule.
- E. On 29 October 2008, Council resolved to discontinue and sell the Penfold Place Land, by private treaty, to the Owner, on condition that the Owner enters into an agreement pursuant to section 173 of the Act imposing conditions in respect of the use and development of the Penfold Place Land.
- F. The Land is encumbered by a Mortgage, details of which are referred to in Item 6 of the Schedule.
- G. Council and the Owner have agreed that without limiting or restricting their respective powers to enter into this Agreement, and in so far as it can be so treated, this Agreement is made pursuant to section 173 of the Act.

**OPERATIVE PROVISIONS:**

**1. DEFINITIONS**

In this Agreement the terms and words set out in this clause shall have the following meanings unless otherwise indicated by the context:

- 1.1. "Act" means the *Planning and Environment Act 1987*.
- 1.2. "Adjoining Property" means all of the land commonly known as 150 Queen Street, Melbourne.



SECTION 173 AGREEMENT

- 1.3. "Agreement" means this agreement and any agreement executed by the parties expressed to be supplemental to this agreement.
- 1.4. "business day" means Monday to Friday excluding public holidays in Victoria;
- 1.5. "Commencement Date" means the date on which this Agreement commences and referred to in Item 7 of the Schedule.
- 1.6. "Contract of Sale" means a contract of sale made between Council as vendor and the Owner as purchaser for the sale to the Owner of the Penfold Place Land;
- 1.7. "Council's Representative" means the person referred to in Item 8 of the Schedule.
- 1.8. "Land" means the land described in Item 2 of the Schedule.
- 1.9. "Lot" means a lot on the Plan.
- 1.10. "Owner" means the person or persons entitled from time to time to be registered by the Registrar of the Land Titles Office as proprietor or proprietors of an estate in fee simple of the Land or any part of it.
- 1.11. "Pedestrian Link" means a 3.8 metre wide (approximately) portion of the Land running from north east (McKillop Street) to south west (Penfold Place), generally shown hatched on the plan attached to Annexure 1.
- 1.12. "Penfold Place Land" means part of Crown Grant no. 25 Allotment 18 and Crown Grant no 24 Allotment 19, being the land more particularly shown cross-hatched on the plan attached as Annexure 1.
- 1.13. "Permit" means the Planning Permit referred to in Item 3 of the Schedule.
- 1.14. "Planning Approval" shall mean and include any planning permit issued in accordance with the Act.
- 1.15. "Scheme" means the Melbourne Planning Scheme.
- 1.16. "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.
- 1.17. "Works" means the works referred to in Clause 6.1.

**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.
- 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.

**AH494607S**



SECTION 173 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. A reference to a "planning scheme" or "the Scheme" includes any amendment, consolidation, or replacement of such scheme and any document incorporated by reference into such scheme.

**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 date of commencement of the Agreement 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.

**6. COVENANTS OF OWNER**

The Owner covenants and agrees that:

- 6.1. the Owner will, at its own cost and expense, construct the Pedestrian Link in accordance with the Permit and all applicable laws and legal requirements;

**AH494607S**



SECTION 173 AGREEMENT

- 6.2. the Owner will, at its own cost and expense, keep and maintain the Pedestrian Link, including structures above and below the Pedestrian Link, in a good, safe and orderly state of condition and repair to Council's satisfaction (including, without limitation, undertaking any make good, replacement or renewal necessary to maintain the Pedestrian Link in a structurally sound and safe condition and to Council's satisfaction);
- 6.3. the Pedestrian Link will be open and accessible to the public daily during the hours of 6:30 am to 9:00 pm;
- 6.4. the Owner will only develop and use the Land and the Penfold Place Land, in accordance with the Permit;
- 6.5. the Owner's use and development of the Land (as allowed by the Permit) shall meet all relevant building surveying standards to the satisfaction of Council's Municipal Building Surveyor;
- 6.6. the Owner shall indemnify and keep indemnified the Council, its officers, employees, agents, workers and contractors from and against all costs, expenses, losses or damages which they or any of them may sustain, incur or suffer or become liable for in respect of the road discontinuance of the Penfold Place Land and the sale of the Penfold Place Land to the Owner;
- 6.7. the Owner shall grant access and servicing rights (as and when necessary) in favour of the Adjoining Property over the Penfold Place Land; which rights must comprise a re-instated access way no less than 5 metre high, to Council's satisfaction;
- 6.8. the Owner will procure the registration of <sup>that part of</sup> a plan of consolidation or plan of subdivision which consolidates the Penfold Place Land with the Land, no later than 12 months from the date of this Agreement, to Council's satisfaction; and *contained in certificate of title volume 8679 folio 439, 40*
- 6.9. the Owner will ensure that no obstructions are placed, left or erected within or on the Penfold Place Land so as to prevent or diminish emergency service access to the Land, the Penfold Place Land and the Adjoining Property.

7. FURTHER COVENANTS OF OWNER

The Owner further covenants and agrees that:

- 7.1. Council and its officers, employees, contractors or agents or any of them may enter the Pedestrian Link and the Penfold Place Land (at any reasonable time) without notice to assess compliance with this Agreement;
- 7.2. so far as the Owner is aware, there are no mortgages, liens charges or other encumbrances 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;
- 7.3. so far as the Owner is aware, 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 1958* other than the rights referred to in section 42(2)(e) of the *Transfer of Land Act 1958*;
- 7.4. 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;
- 7.5. it consents 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



SECTION 173 AGREEMENT

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

- 7.6. it 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.

**8. COVENANTS OF OWNER AND COUNCIL**

The Owner and Council covenant and agree that:

- 8.1. despite the Owner's obligations in clause 6.3 of this Agreement the Owner may close the Pedestrian Link for a minimum period to prevent any part of the Pedestrian Link becoming dedicated to the public as a result of its continuing use by the public. The parties acknowledge at the date of this Agreement the minimum period for the purposes of this clause is no more than one day in every calendar year;
- 8.2. the Owner's obligation under Clause 6.3 of this Agreement may be reviewed from time to time by the parties and a party acting reasonably may request the other party to consider a variation of that obligation. A party must act reasonably in considering a request made by the other party to consider a variation; and
- 8.3. subject to Council's rights over the Pedestrian Link, the Owner has the control care and management of the Pedestrian Link.

**9. COSTS**

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

- 9.1.1. 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;
- 9.1.2. 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
- 9.1.3. 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.

**10. 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

AH494607S



of competent jurisdiction as a civil debt recoverable summarily.

**AH494607S**

14/09/2010 \$105.20 173



## 11. COUNCIL'S POWERS

### 11.1. Default Notice

- 11.1.1. 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.
- 11.1.2. Should the default continue for a period of 21 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.
- 11.1.3. 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.
- 11.1.4. 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.

### 11.2. Completion of Works

- 11.2.1. 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.
- 11.2.2. 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.
- 11.2.3. 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.
- 11.2.4. 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.

## 12. INTEREST AND CHARGE

- 12.1. 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.



SECTION 173 AGREEMENT

- 12.2. 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.

**13. NOTICES**

- 13.1. 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 the Schedule.

13.1.1. by delivering it personally to that party;

13.1.2. by sending it by prepaid post; or

13.1.3. 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,

- 13.2. and notice or other communication is deemed served:

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

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

13.2.3. 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.

**14. 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.

**15. OWNER'S ACKNOWLEDGMENT**

The Owner expressly acknowledges and agrees that nothing in this Agreement nor the performance by the Owner of any of its obligations 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 require further information in respect of any plans or applications relating to the use or development allowed by the Permit or the Land generally.

**16. NO WAIVER**

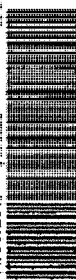
Any time or other indulgence granted by the Council to the Owner or any variation of the terms and conditions of this Agreement or any judgment or order obtained by the Council against the Owner will not in any way amount to a waiver of any of the rights or remedies of the Council in relation to the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

**17. 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.

**AH494607S**

14/09/2016 14:05:20 173



**AH494607S**

**23**

14/09/2010 \$105.20 173

**SECTION 173 AGREEMENT**



**18. 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 to the rights, powers and remedies conferred on the party by this Agreement are hereby expressly negated and excluded from this Agreement.

**19. 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.

**20. 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.

**21. ENDING OF AGREEMENT**

- 21.1. This Agreement shall cease to operate on the termination date or otherwise as contemplated in Item 10 of the Schedule.
- 21.2. 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.

SECTION 173 AGREEMENT

AH494607S



EXECUTED as a DEED

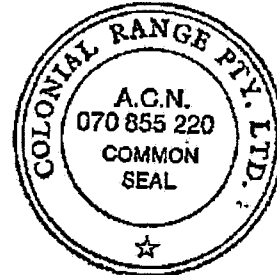
SIGNED SEALED AND DELIVERED by Chris Leon  
Blackwood, Team Leader Land Survey  
pursuant to an Instrument of Delegation  
authorised by Resolution of Council.

*[Signature]*

L. John Hay  
Witness

Y. H. H.  
Witness

THE COMMON SEAL of  
COLONIAL RANGE PTY LTD ACN 070 855  
220 was hereunto affixed in the presence of  
authorised persons:



[Signature]  
INDRITA TSAROUKAKI  
99 BUKIT TIMAH ROAD #02-06/07, SINGAPORE

Director

Full name

Usual address

Director (or Company Secretary)

Full name

Usual address

TONY CHOW  
99 BUKIT TIMAH ROAD #02-06/07, SINGAPORE

SECTION 173 AGREEMENT

Mortgagee's consent

Westpac Banking Corporation as Mortgagee under Instrument of Mortgage No. AF683974C and AF683959X dated 28 February 2008 which encumbers the Land consents to the Owner entering into this Agreement and agrees to be bound by the terms and conditions of this Agreement.

AH494607S

14/09/2010 \$105.20 173



SIGNED, SEALED and DELIVERED by DEAN JOSEPH  
..... who holds the position of Tier  
Three Attorney for Westpac Banking Corporation under power  
of attorney dated 17 January 2001, a certified copy of which  
is filed in the Permanent Order Book, No. 277, Page 16

Signature

By executing this agreement the attorney states that the  
attorney has received no notice of the revocation of the power  
of attorney.

Signature of Witness

26  
**AH494607S**

14/09/2010 \$105.20

173

**SCHEDULE**

ITEM NO.	ISSUE	SPECIFICATION
1.	Owner	<b>COLONIAL RANGE PTY LTD ACN 070 855 220</b> of Level 4 "Centrapoint" 283-297 Bourke Street, Melbourne, Victoria
2.	Land description by address and Certificate of Title details	Land at 128-146 Queen Street and 21-27 McKillop Street, Melbourne, being the land described in certificates of title volume 8479 folio 439 and volume 8955 folio 500.
3.	Permit Number and date issued	Permit No. 2008/0786 issued by the Minister for Planning on 11 September 2008
4.	What the Permit allows	The Permit allows demolition of the existing buildings and development of the Land and the Penfold Place Land for the purpose of residential hotel and Retail premises (other than an Adult sex bookshop, department store, hotel, supermarket and tavern) with associated car parking. The Approval allows the discontinuance and sale of the Penfold Place Land.
5.	What the conditions requiring the Agreement provide for	A registered agreement under section 173 of the Act between the Owner and Council regarding: <ul style="list-style-type: none"> <li>• public pedestrian access rights over the Pedestrian Link;</li> <li>• completion of the development allowed in the Permit;</li> <li>• creation of easements over the Penfold Place Land in favour of the Adjoining Property at No. 150 Queen Street;</li> <li>• consolidation of the Penfold Place Land with the Land; and</li> <li>• keeping the Penfold Place Land free of obstructions.</li> </ul>
6.	Mortgage details including name and address of Mortgagee, date mortgage registered and registered number	Westpac Banking Corporation pursuant to mortgage no. AF683974C and AF683959X dated 28 February 2008
7.	Commencement date	The date of this Agreement
8.	Council's Representative is:	Chris Blackwood, Team Leader Land Survey
9.	Plan of Subdivision Reference Number	Not applicable
10.	Termination date or specified event	By agreement between the parties
11.	Not Applicable	


12.	Address, phone and facsimile of Council	Melbourne City Council Town Hall, 90 Swanston Street Melbourne Ph: 9658 8581 Facsimile: 9658 9179
13.	Address, phone and facsimile of Owner	Level 4 "Centrepoint" 283-297 Bourke Street Melbourne Ph: +65 6339 3022 Facsimile: +65 6339 2314

**AH494607S**

14/09/2010 \$105.20 173





28  
**AH494607S**  
14/09/2010 \$105.20 173  


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## Annexure 1

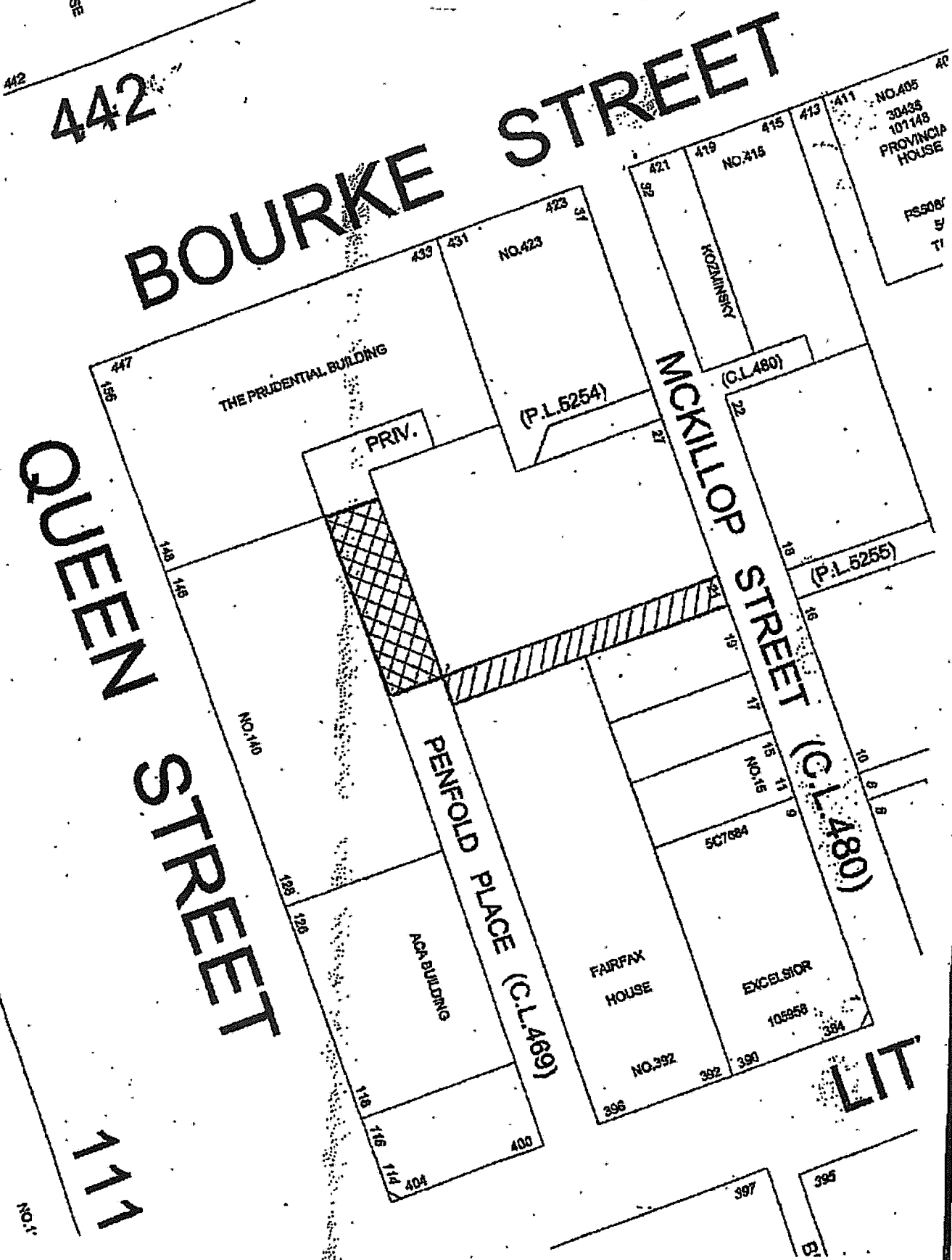
Plan

AH494607S

14/09/2010 \$105.20 173

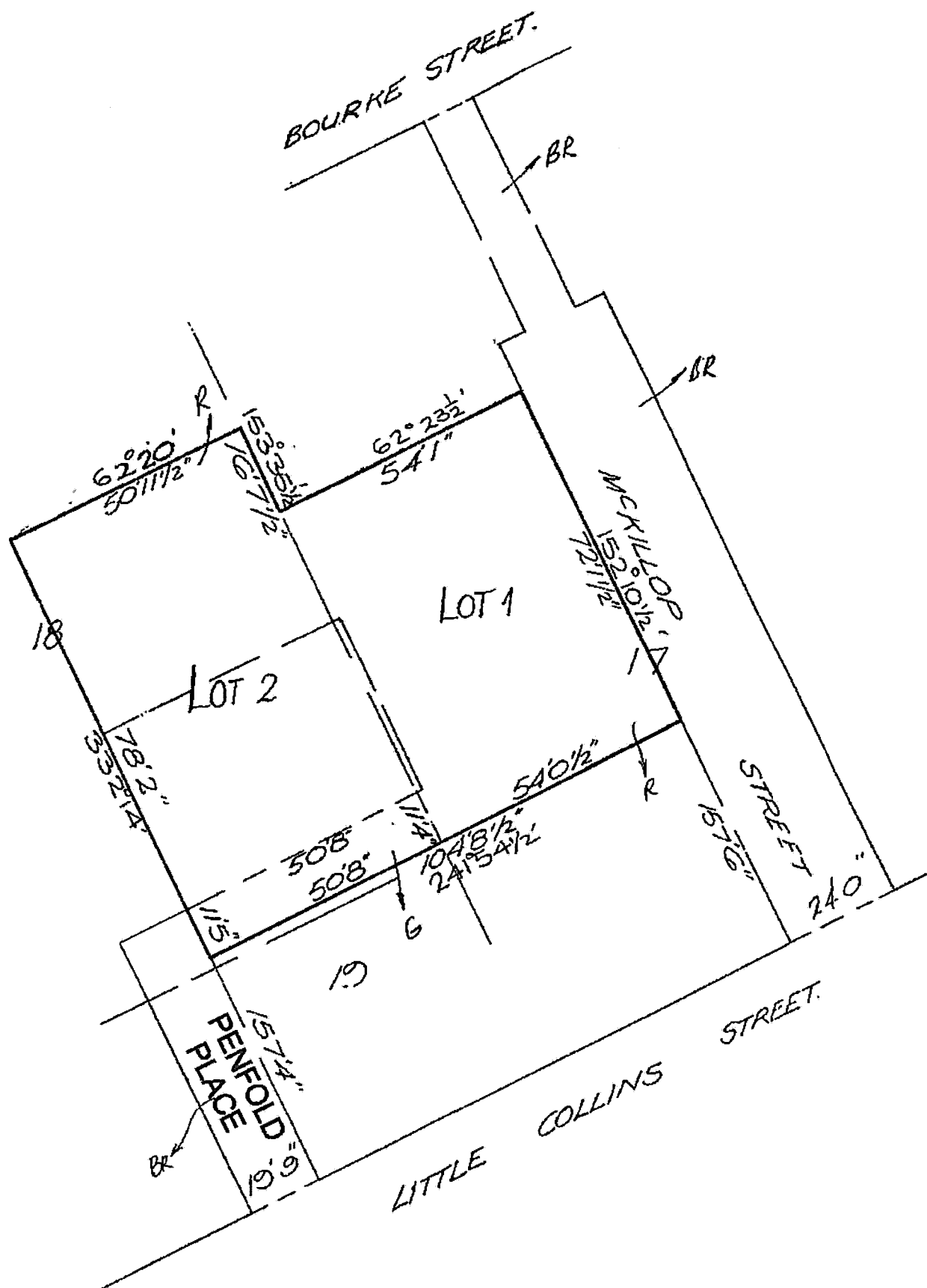


29



<b>TITLE PLAN</b>	<b>EDITION 3</b>	<b>TP 861285N</b>			
<b>Location of Land</b> Parish : CITY OF MELBOURNE PARISH OF MELBOURNE NORTH Section : 13 Crown Allotment : 17 (PT) & 18 (PT) Crown Portion : -  Last Plan Reference : - Derived From : VOL. 8955 FOL. 500  Depth Limitation : NIL		<b>Notations</b>     ANY REFERENCE TO MAP IN THE TEXT MEANS THE DIAGRAM SHOWN ON THIS TITLE PLAN			
<b>Description of Land/ Easement Information</b>  Together with a - - - right of carriage way over the roads coloured brown on the said map As to - the land coloured red Together with a right of carriage way over the land - coloured green on the map on Certificate of Title Vol.8881 Fol.499 and - - - Together with a right to use for the purposes of light drainage and - - - - sewerage the said land coloured green on the map on Certificate of Title - - Vol.8881 Fol.499 - - - - -  <b>ENCUMBRANCES</b> As to the land coloured green - - - - <u>THE EASEMENT</u> relating to access of -- light and air created by - - - - - Instrument 705309 - - - - -		THIS PLAN HAS BEEN PREPARED BY LAND REGISTRY, LAND VICTORIA FOR TITLE DIAGRAM PURPOSES  COMPILED: Date 11/08/06 VERIFIED: A. DALLAS <i>Assistant Registrar of Titles</i>  <b>COLOUR CODE</b> BL=BLUE G=GREEN BR=BROWN P=PURPLE Y=YELLOW R=RED			
<b>FOR DIAGRAM SEE SHEET 2</b>					
<table border="1" style="margin: auto; border-collapse: collapse;"> <tr> <th style="padding: 5px;">TABLE OF PARCEL IDENTIFIERS</th> </tr> <tr> <td style="padding: 5px; font-size: small;">                     WARNING: Where multiple parcels are referred to or shown on the Title Plan this does                      Not imply separately disposable parcels under Section 8A of the Sale of Land Act 1962                 </td> </tr> <tr> <td style="padding: 5px;">                     LOT 1 = C. A. 17 (PT) SECTION 13                      LOT 2 = C. A. 18 (PT) SECTION 13                 </td> </tr> </table>			TABLE OF PARCEL IDENTIFIERS	WARNING: Where multiple parcels are referred to or shown on the Title Plan this does Not imply separately disposable parcels under Section 8A of the Sale of Land Act 1962	LOT 1 = C. A. 17 (PT) SECTION 13 LOT 2 = C. A. 18 (PT) SECTION 13
TABLE OF PARCEL IDENTIFIERS					
WARNING: Where multiple parcels are referred to or shown on the Title Plan this does Not imply separately disposable parcels under Section 8A of the Sale of Land Act 1962					
LOT 1 = C. A. 17 (PT) SECTION 13 LOT 2 = C. A. 18 (PT) SECTION 13					
LENGTHS ARE IN FEET AND INCHES	Metres = 0.3048 x Feet Metres = 0.201168 x Links	Sheet 1 of 2 Sheets			

## TITLE PLAN

TP 86<sup>31</sup>285N

LENGTHS ARE IN  
FEET AND INCHES

Metres = 0.3048 x Feet  
Metres = 0.201168 x Links

Sheet 2 of 2 Sheets

### RECORD OF ALL ADDITIONS OR CHANGES TO THE PLAN

**TP861285N**

[illegible]

# ANNEXURE "B"- PS 336302K CONTAINING EASEMENTS

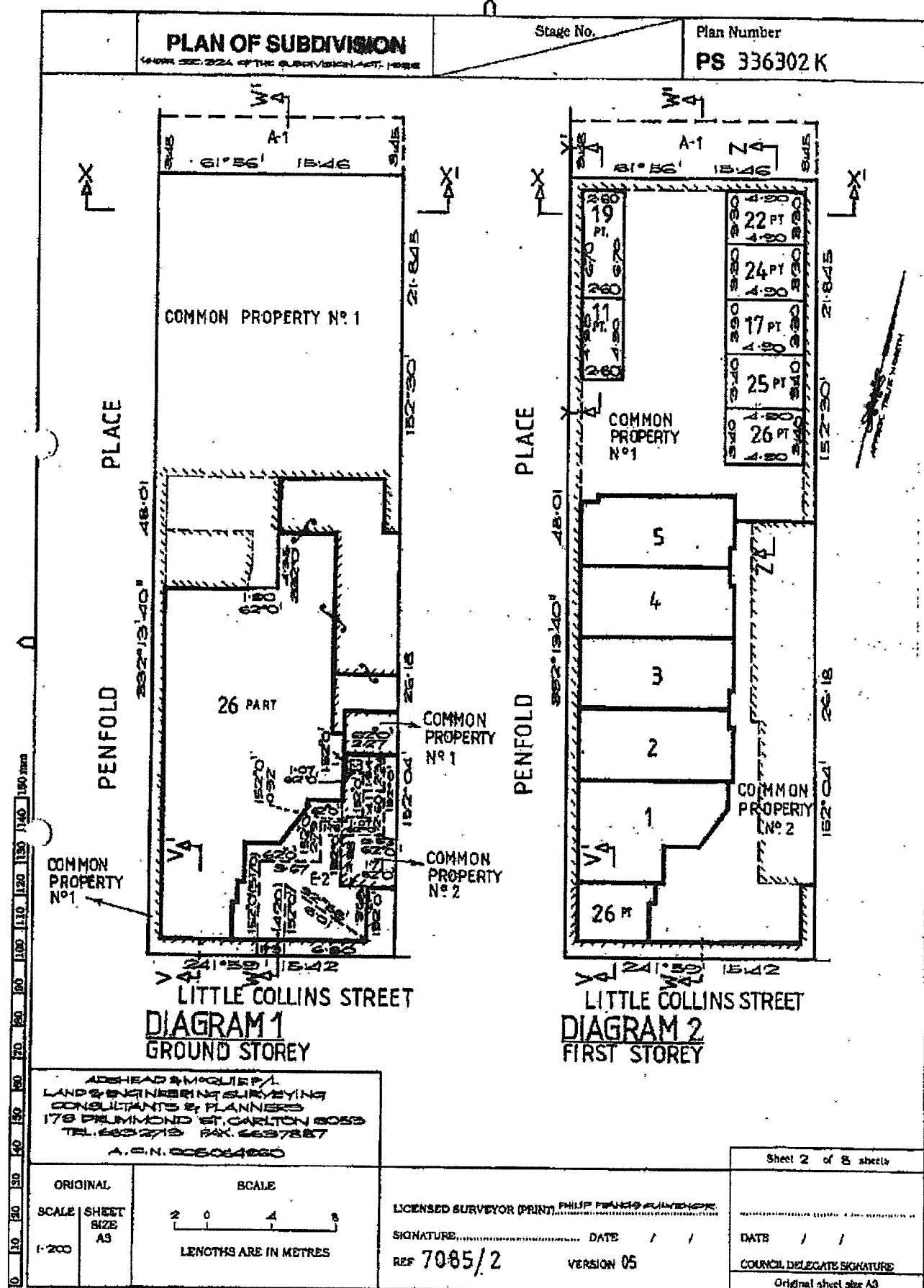
33

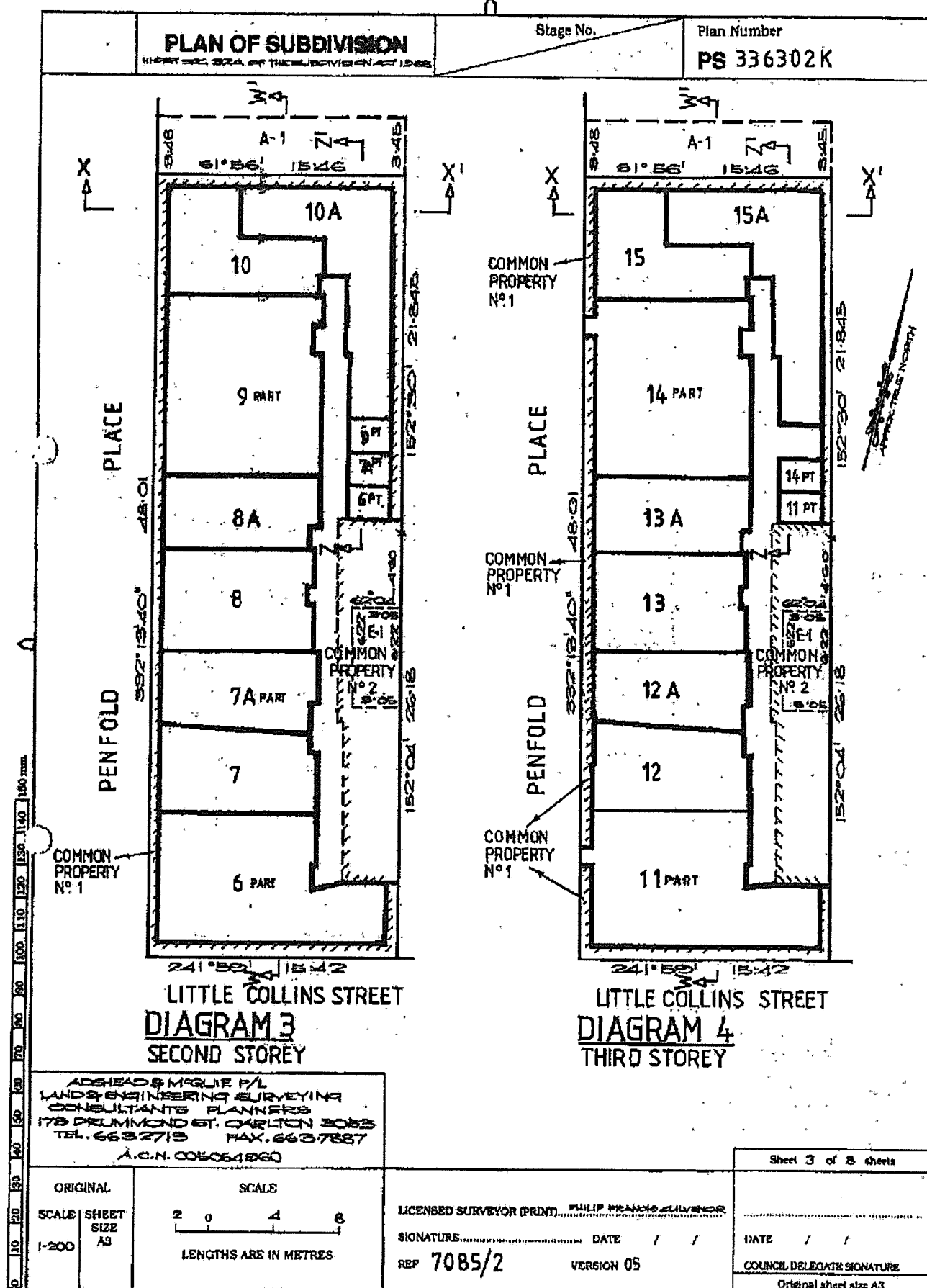
Delivered by LANDATA®. Land Victoria timestamp 13/12/2007 11:25 Page 1 of 11

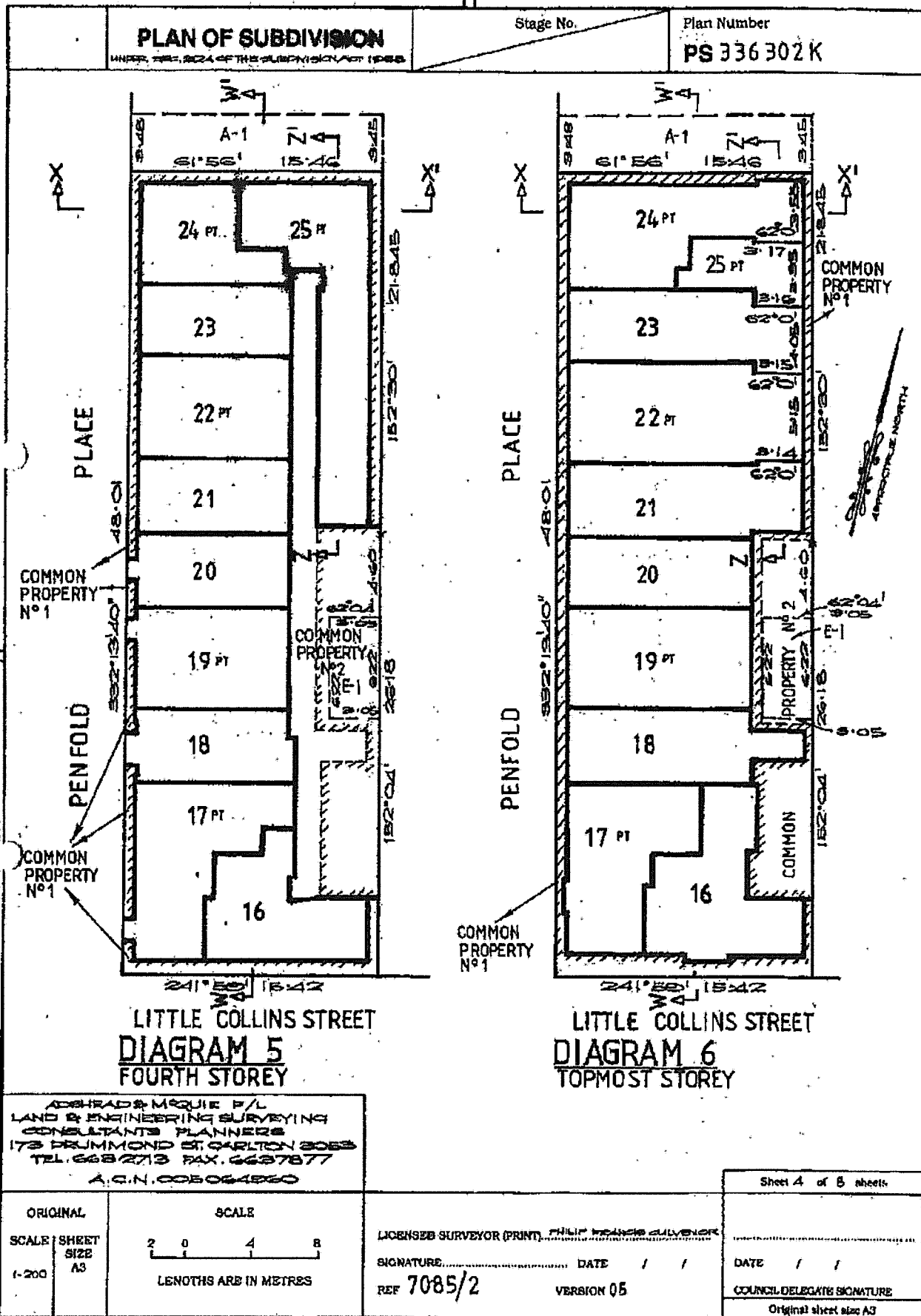
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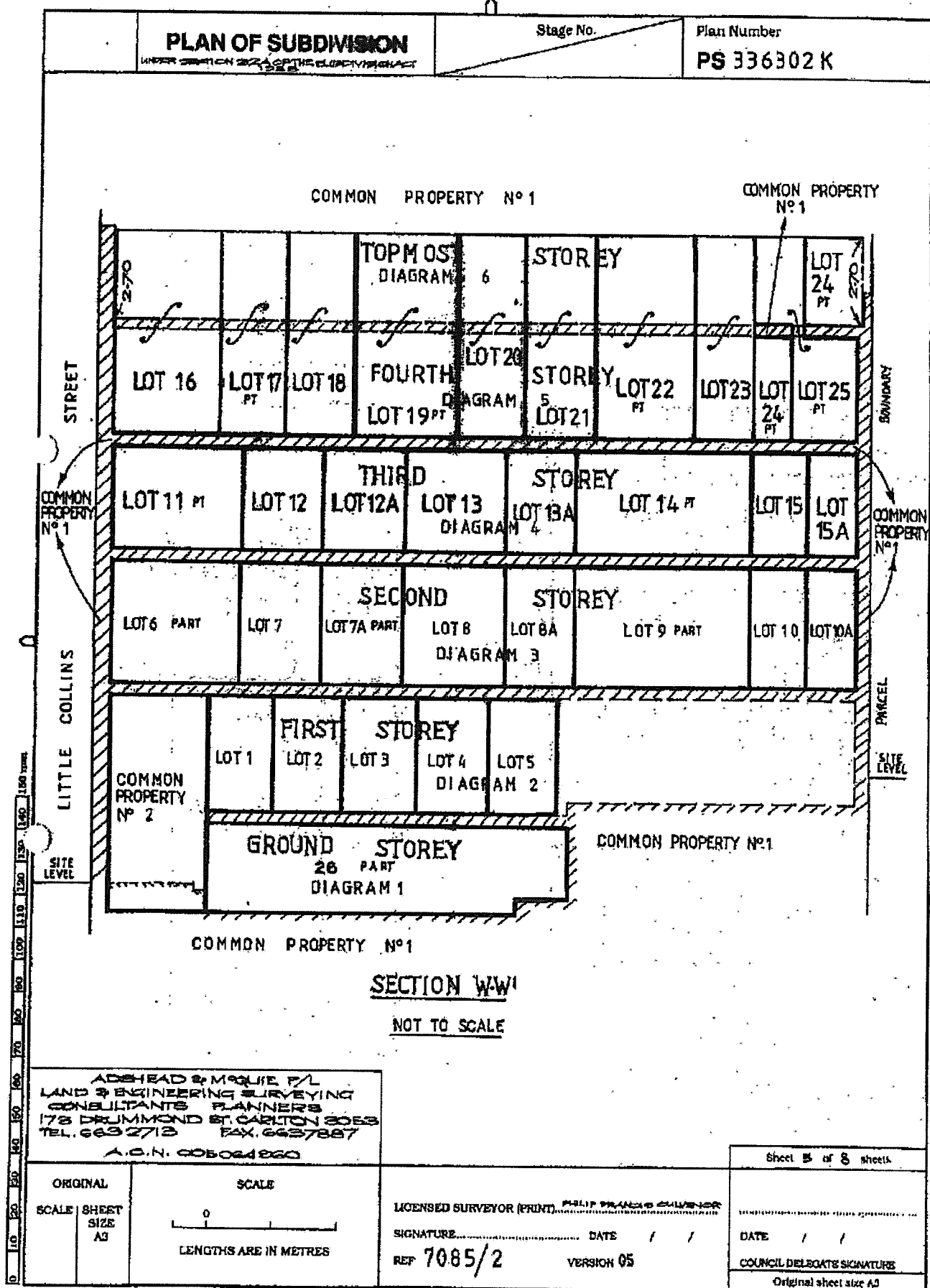
<b>PLAN OF SUBDIVISION</b>		<b>STAGE NO.</b>	<b>LTO use only</b>	<b>Plan Number</b>
		<b>EDITION 2</b>		<b>PS 336302 K</b>
<p><b>Location of Land</b></p> <p>Parish: <b>MELBOURNE NORTH</b></p> <p>Township: <b>CITY OF MELBOURNE</b></p> <p>Section: <b>13</b></p> <p>Crown Allotment: <b>18(PART) &amp; 19(PART)</b></p> <p>Crown Portion:</p> <p>LTO Base Record: <b>CHART 16 3083</b></p> <p>Title Reference: VOL. 10170 FOLS. 524 to 590</p> <p>Last Plan Reference: <b>PS 327584 W</b></p> <p>Postal Address: <b>392-396 LITTLE COLLINS STREET</b> (at time of subdivision) <b>MELBOURNE, 3000</b></p> <p>AMG Co-ordinates <b>E 320500</b> Zone: <b>55</b> (of approx. centre of land in plan) <b>N 5812520</b></p>		<p><b>Council Certificate and Endorsement</b></p> <p>Council Name: <b>CITY OF MELBOURNE</b> Ref: <b>TP 95/772(200)</b></p> <p>1. This plan is certified under section 6 of the Subdivision Act 1988.</p> <p>2. This plan is certified under section 14(1) of the Subdivision Act 1988.</p> <p>3. This is a statement of compliance issued under section 21 of the Subdivision Act 1988.</p> <p><b>OPEN SPACE</b></p> <p>(i) A requirement for public open space under section 10 of the Subdivision Act 1988 has/has not been made.</p> <p>(ii) The requirement has been satisfied.</p> <p>(iii) The requirement is to be satisfied in Stage _____</p> <p>Council delegate _____ Council seal _____ Date <b>9/10/95</b> Re-certified under section 13(1) of the Subdivision Act 1988.</p> <p>Council Delegate _____ Council Seal _____ Date / /</p>		
<b>Vesting of Roads and/or Reserves</b>		<b>Notations</b>		
Identifier	Council/Body/Person	<p><b>Staging</b> This is/ is not a staged subdivision. Planning Permit No. _____</p> <p><b>Depth Limitation</b> <b>DOES NOT APPLY</b></p> <p><b>OTHER NOTATIONS</b></p> <p><b>AUSTRALIAN HEIGHT DATUM LEVELS ARE RELATED TO MELBOURNE WATER BENCH MARK No. 370 R.L. 9.415 AT THE INTERSECTION OF QUEEN AND COLLINS STREETS. (31-5-93 &amp; 4-10-95)</b></p> <p><b>Survey</b> This plan is/is not based on a survey. This survey has been connected to permanent marks No(s) _____ In Proclaimed Survey Area No. _____</p>		
NIL	NIL	<p><b>LOCATION OF BOUNDARIES DEFINED BY BUILDINGS:</b></p> <p><b>INTERIOR FACE - ALL BOUNDARIES</b></p> <p><b>BOUNDARIES SHOWN BY THICK CONTINUOUS LINES ARE DEFINED BY BUILDINGS.</b></p> <p><b>THE WALLS DEFINING THE LOTS ARE CONTAINED IN COMMON PROPERTY NO.1</b></p>		
<b>Easement Information</b>		<b>LTO use only</b>		
<p>Legend: E - Encumbering Easement or Condition in Crown Grant in the Nature of an Easement. A - Appurtenant Easement R - Encumbering Easement Road.</p>		<b>Statement of Compliance/Exemption Statement</b>		
<b>SEC. 12(2) SUBDIVISION ACT 1988 APPLIES TO ALL THE LAND IN THIS PLAN.</b>		<p><b>Received</b> <input checked="" type="checkbox"/></p> <p><b>Date</b> <b>20/10/95</b></p> <p><b>LTO use only</b></p> <p><b>PLAN REGISTERED</b></p> <p><b>TIME</b></p> <p><b>DATE</b> <b>1/11/95</b></p> <p><i>J. Stegmann</i> Assistant Registrar of Titles</p> <p>Sheet 1 of 8 Sheets</p>		
Easement Reference	Purpose	Width (Metres)	Origin	Land Benefitted/in Favour of
A - 1	LIGHT & AIR	SEE DIAG.	INS. 705309	ALL LAND IN THIS PLAN
E - 1	LIGHT & AIR RESTRICTED TO ABOVE 19.29 A.H.D.	3.05	L.P. 36667	LOT 2 ON L.P. 36667
E - 2	WAY- RESTRICTED TO BELOW R.L. 15.10 A.H.D.	SEE DIAG.	THIS PLAN	LOT 26 ON THIS PLAN
E - 3	WAY- RESTRICTED TO BELOW R.L. 14.10 A.H.D.	SEE DIAG.	THIS PLAN	LOT 26 ON THIS PLAN
<p><b>ADSHEAD &amp; McQUE PTY. LTD.</b></p> <p><b>LAND &amp; ENGINEERING SURVEYING CONSULTANTS, PLANNERS</b></p> <p>173 ORCHAMOND STREET, CARLTON 3053</p> <p>TEL. 463 8713 FAX. 463 7847</p> <p>A.C.N. 605064968</p>		<p><b>LICENSED SURVEYOR (PRINT) PHILIP FRANCIS CLAVENOR</b></p> <p>SIGNATURE _____ DATE / /</p> <p>REF: <b>7085/2</b> VERSION: <b>05</b></p> <p>DATE / /</p> <p>COUNCIL DELEGATE SIGNATURE _____</p> <p>Original sheet size A3</p>		

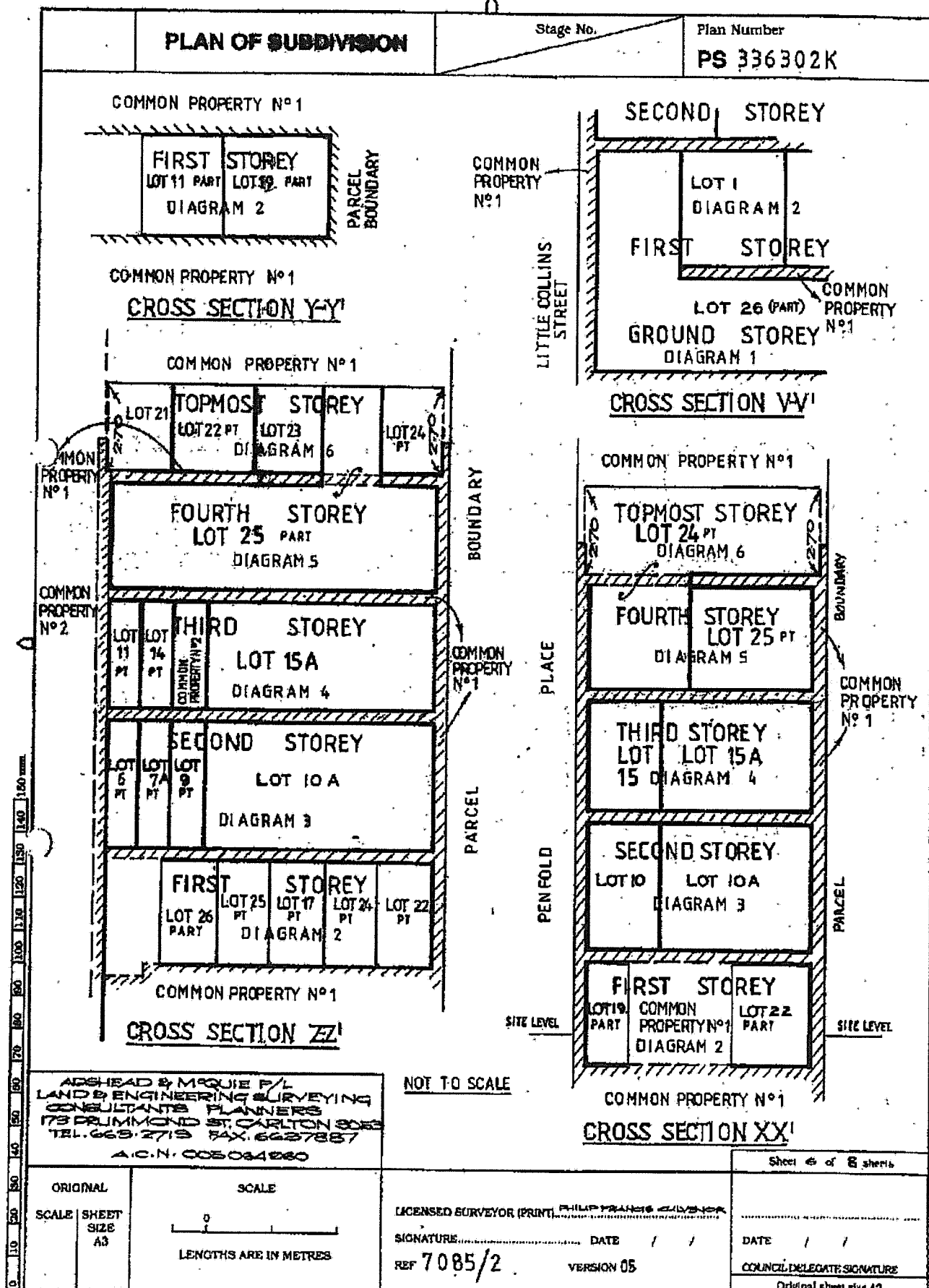












PS336302K

**FOR CURRENT BODY CORPORATE DETAILS  
SEE BODY CORPORATE SEARCH REPORT**

Sheet 7



PS336302K

**FOR CURRENT BODY CORPORATE DETAILS  
SEE BODY CORPORATE SEARCH REPORT**

Sheet 8





27 September 2019

**Cbus Property**

Level 7

550 Bourke Street

Melbourne VIC 300

**Attention:**

*The Project Manager*

**Sent via email:**

[reception@cbusproperty.com.au](mailto:reception@cbusproperty.com.au)

COPY TO:

Red Spice Road Pty Ltd

27 McKillop Street

Melbourne VIC 3000

**Attention:**

*The Directors*

**Sent via:**

[info@redspiceroad.com](mailto:info@redspiceroad.com)

**392 - 396 LITTLE COLLINS STREET, MELBOURNE (PS336302K) – AND- 21-27 MCKILLOP STREET, MELBOURNE (TP861285N) | RED SPICE ROAD PTY LTD.**

I act for the Owners Corporation of the building located at 392-396 Little Collins Street, Melbourne, also known as Fairfax House ("PS 336302K") and I write to you in your capacity as the proprietor of the premises located at 21-27 McKillop Street, Melbourne ("TP 861285N").

I am instructed that Red Spice Road Pty Ltd (ACN 126 393 182) is the tenant operating in the premises TP 861285N, and that it is about to vacate your premises.

Since its operation Red Spice Road Pty Ltd has, **without my client's consent:**

1. affixed and bolted a large metal gate onto the Northern boundary walls of my client's building so as to close off the access to McKillop Street from Penfold Place.
2. attached a water pipe, rain head and an outlet part of a guttering system, directly on the Northern boundary walls of my client's building.
3. attached creeper plants on the Northern boundary walls of my client's building;
4. painted the Northern boundary walls of my client's building in a red colour to match their restaurant motif.

Liability limited by a scheme approved under professional standards legislation

**SYDNEY** Level 10, 46 Market Street, Sydney NSW 2000

T: 02 9091 8068

**MELBOURNE** Level 2, 710 Collins Street, Docklands VIC 3000

T: 03 9097 1618

[www.stratatitlelawyers.com.au](http://www.stratatitlelawyers.com.au)

The photographs *enclosed* with this letter show the current condition of the Northern boundary walls of my client's building.

**The Encroachments and Damages to PS336302K:**

By perforating my client's building walls to allow all of the abovementioned structures to be affixed, my client's land has been trespassed and damaged.

By painting the walls of a colour that detracts from the outward appearance of the building, my client's property has been effectively damaged with a potential repercussion on its market value.

The **trespass** by the objects installed by perforating my client's building's walls, without my client's consent, is an intentional and direct interference with my client's exclusive possession of the its land which has been carried out in absence of lawful justification<sup>1</sup> (such as an easement, a licence, an agreement etc.).

The continuation of an object's presence on my client's land is a continuing trespass giving rise to a new cause of action arising from day to day.<sup>2</sup>

At law, the **physical damage to property** is intended as always unreasonable and therefore actionable in private nuisance as a form of strict liability.<sup>3</sup>

As a result, my client can seek that the Magistrate's Court grants a mandatory injunction to require the removal of the encroachment and award damages, including damages for a continuing trespass.

**Breaches of the Section 173 Agreement:**

On the southern boundaries of TP861285N, adjacent to the Northern boundaries of PS336302K there is the "Pedestrian Link" between McKillop Street and PenfoldPlace.

Such "Pedestrian Link" is part of your land and has been created by an Agreement under section 173 of the *Planning and Environment Act 1987* (the "Act"). This agreement is attached to the Certificate of Title of TP 861285N (Dealing AH494607S) and enclosed with this letter.

Clause 6.2 of the Section 173 Agreement states:

*the Owner will, at its own cost and expense, keep and maintain the Pedestrian Link, including structures above and below the Pedestrian Link, in a good, safe and orderly state of condition and repair to Council's satisfaction (including, without limitation, undertaking any make good, replacement or renewal necessary to maintain the Pedestrian Link in structurally sound and safe condition and to Council's satisfaction).*

---

<sup>1</sup> *New South Wales v Ibbet* (2006) 81 ALJR

<sup>2</sup> *Konskier v B Goodman Ltd* [1928] 1 KB 421

<sup>3</sup> *Harris v Carnegie's Pty Ltd* [1917] VLR 95.

The presence of pipe works, creeper plants, and non-matching colour paint on my client's building's walls facing the Pedestrian Link does not ensure a good and orderly state.

Clause 6.3 of the Section 173 Agreement states:

*The Pedestrian Link will be open and accessible to the public daily during the hours of 6.30AM to 9.00PM.*

Clause 6.9 of the Section 173 Agreement states:

*the Owner will ensure that no obstructions are placed, left or erected within or on Pendolf Place Land so as to prevent or diminish emergency service access to the Land, the Pendolf Place Land and the Adjoining Property.*

Upon the vacancy of the premises by Red Spice Road, the gate which will be closed within the hours when access must be granted. Moreover, the creeper plants are obstructing the passage during such hours.

A contravention of a planning scheme, permit or agreement under section 173 of the Act is an offence pursuant to section 126(1) of the Act carrying fines up to 1200 penalty units.

I am unaware of the conditions of the lease between Cbus Property and Red Spice Road Pty Ltd, but in line with the governing legislation, a lease agreement usually includes clauses for the reinstatement of the original condition of the premises. My client fears that upon the imminent vacation of the premises by Red Spice Road, the original condition of my client's building's walls will not be reinstated.

**As the matter stands, my client hereby requests that Cbus Property ensures that:**

- 1. the pipe works, the creeper plants and the gate be removed from my client's building's walls; and**
- 2. paints my client's building walls adjacent to your land to its original colour, or where not possible to a colour which is in keeping with the outward appearance of the building.**

Shall my client's request not be addressed and an undertaking to the above effect not be provided within 14 days of the date of this letter, I am instructed to take the necessary legal steps to protect my client's rights.

Yours faithfully,



Tom Bacon  
CEO & Principal Lawyer  
[tom@stratatitlelawyers.com.au](mailto:tom@stratatitlelawyers.com.au)



Ciro Figaro  
Associate Lawyer  
[ciro@stratatitlelawyers.com.au](mailto:ciro@stratatitlelawyers.com.au)



1 December 2017

Colliers International  
Mr. Matthew Stagg  
Director  
Melbourne City Sales

Sent by email: Matthew.Stagg@colliers.com

**392 - 396 LITTLE COLLINS STREET, MELBOURNE | FAIRFAX HOUSE  
EASEMENT FOR LIGHT AND AIR**

We act for the Owners Corporation at 392-396 Little Collins Street, Melbourne. We have been instructed to write to you regarding the sale of the large development site at Queen Street, Melbourne.

We understand that Colliers International are the agents acting to sell the site to developers and that there are three properties, to be sold in one line, comprising 2551 square meters.

Please be advised that my client has an easement registered for light and air rights, which adjoins with the development site. We **enclose** my client's Plan of Subdivision which denotes that easement as A1. The size of the easement is 15.46 meters long by 3.45 meters wide.

Please ensure that any prospective developer is aware of the easement. The easement must be protected from intrusion or development. Please provide a copy of this letter and the Plan of Subdivision to any prospective purchaser.

Please contact our Firm if you have any questions in relation to the above information.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Tom Bacon'.

Tom Bacon  
CEO & Principal Lawyer  
[tom@stratatitlelawyers.com.au](mailto:tom@stratatitlelawyers.com.au)



**Cc. Melbourne City Council**  
**planning@melbourne.vic.gov.au**



6 December 2017

Department of Environment, Land, Water & Planning  
PO Box 500  
East Melbourne VIC 8002

Sent by email: [planning.info@delwp.vic.gov.au](mailto:planning.info@delwp.vic.gov.au)

**392 - 396 LITTLE COLLINS STREET, MELBOURNE | FAIRFAX HOUSE  
EASEMENT FOR LIGHT AND AIR | DEVELOPMENT OF 148-156 QUEEN  
STREET MELBOURNE | 2012/002933**

We act for the Owners Corporation at 392-396 Little Collins Street, Melbourne. We have been instructed to write to you regarding the sale of the large development site at 148-156 Queen Street, Melbourne and its possible effect on my client's easement for light and air.

We **enclose** our letter dated 1 December 2017, addressed to Estate Agents, Colliers International. We cc'd that letter to the Melbourne City Council. The Melbourne City Council have saved our correspondence on their database for future reference. However, they have also suggested that we forward the letter to the attention of your Department. I understand there is an existing reference number with your Department in relation to that site, which is 2012/002933.

Please note the enclosed letter and include it on your file, for reference in the case that your Department are involved in any Development of the site. It is important to my client that their easement for light and air, which adjoins that site, is protected.

Please contact our Firm if you require any further information.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Tom Bacon'.

Tom Bacon  
CEO & Principal Lawyer  
[tom@stratatitlelawyers.com.au](mailto:tom@stratatitlelawyers.com.au)





25 February 2019

Cbus Property  
Level 7  
550 Bourke Street  
Melbourne VIC 300

**Attention: The Project Manager**

Sent via email: [reception@cbusproperty.com.au](mailto:reception@cbusproperty.com.au)

**392 - 396 LITTLE COLLINS STREET, MELBOURNE | FAIRFAX HOUSE | PLAN  
OF SUBDIVISION 336302K  
EASEMENT FOR LIGHT AND AIR**

**DEVELOPMENT OF 148-156 QUEEN STREET MELBOURNE  
DEVELOPMENT APPLICATION NO. 2012/002933**

We act for the Owners Corporation at 392-396 Little Collins Street, Melbourne. We have been instructed to write to you regarding the recent acquisition of the large development site at 148-156 Queen Street, Melbourne.

In late 2017, we wrote the following two letters in respect of an easement for light and air benefitting our client's land:

1. Letter to Colliers International dated 1 December 2017; and
2. Letter to the Department of Environment, Land, Water & Planning dated 6 December 2017.

Both letters are **attached** for your reference.

As noted in our abovementioned letter to Colliers International, our client has an easement registered for light and air rights, which adjoins with the development site.

We further **attach**:

1. our client's Plan of Subdivision which denotes the easement as A-1. The size of the easement is 15.46 meters long by 3.45 meters wide.

2. The Deed of Easement, which was registered on 11 March 1913, and states that:

"[the land is transferred] together with the access of light and air *as at present enjoyed* in connection with the said premises at all times hereafter in over and upon the piece of land colored yellow on the said map... [emphasis added]"

Again, as noted in our letter to Colliers International, our client's easement must be protected from intrusion or development. **The effect of this is that no shadowing or shading of our client's building can occur.**

Please confirm that our client's rights shall be observed and protected as part of any redevelopment planned by you or your joint venture partners.

A copy of this letter and its attachments shall be provided to the Department of Environment, Land, Water & Planning.

If necessary, our client shall take the necessary legal steps to protect its rights, which we note have been in existence for over 100 years.

Yours faithfully,



Tom Bacon  
CEO & Principal Lawyer  
[tom@stratatitlelawyers.com.au](mailto:tom@stratatitlelawyers.com.au)



Hayley Sutherland  
Lawyer  
[hayley@stratatitlelawyers.com.au](mailto:hayley@stratatitlelawyers.com.au)



1 December 2017

Colliers International  
Mr. Matthew Stagg  
Director  
Melbourne City Sales

Sent by email: [Matthew.Stagg@colliers.com](mailto:Matthew.Stagg@colliers.com)

**392 - 396 LITTLE COLLINS STREET, MELBOURNE | FAIRFAX HOUSE  
EASEMENT FOR LIGHT AND AIR**

We act for the Owners Corporation at 392-396 Little Collins Street, Melbourne. We have been instructed to write to you regarding the sale of the large development site at Queen Street, Melbourne.

We understand that Colliers International are the agents acting to sell the site to developers and that there are three properties, to be sold in one line, comprising 2551 square meters.

Please be advised that my client has an easement registered for light and air rights, which adjoins with the development site. We **enclose** my client's Plan of Subdivision which denotes that easement as A1. The size of the easement is 15.46 meters long by 3.45 meters wide.

Please ensure that any prospective developer is aware of the easement. The easement must be protected from intrusion or development. Please provide a copy of this letter and the Plan of Subdivision to any prospective purchaser.

Please contact our Firm if you have any questions in relation to the above information.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Tom Bacon'.

Tom Bacon  
CEO & Principal Lawyer  
[tom@stratatitlelawyers.com.au](mailto:tom@stratatitlelawyers.com.au)

**Cc. Melbourne City Council**  
**planning@melbourne.vic.gov.au**



6 December 2017

Department of Environment, Land, Water & Planning  
PO Box 500  
East Melbourne VIC 8002

Sent by email: [planning.info@delwp.vic.gov.au](mailto:planning.info@delwp.vic.gov.au)

**392 - 396 LITTLE COLLINS STREET, MELBOURNE | FAIRFAX HOUSE  
EASEMENT FOR LIGHT AND AIR | DEVELOPMENT OF 148-156 QUEEN  
STREET MELBOURNE | 2012/002933**

We act for the Owners Corporation at 392-396 Little Collins Street, Melbourne. We have been instructed to write to you regarding the sale of the large development site at 148-156 Queen Street, Melbourne and its possible effect on my client's easement for light and air.

We **enclose** our letter dated 1 December 2017, addressed to Estate Agents, Colliers International. We cc'd that letter to the Melbourne City Council. The Melbourne City Council have saved our correspondence on their database for future reference. However, they have also suggested that we forward the letter to the attention of your Department. I understand there is an existing reference number with your Department in relation to that site, which is 2012/002933.

Please note the enclosed letter and include it on your file, for reference in the case that your Department are involved in any Development of the site. It is important to my client that their easement for light and air, which adjoins that site, is protected.

Please contact our Firm if you require any further information.

Yours faithfully,

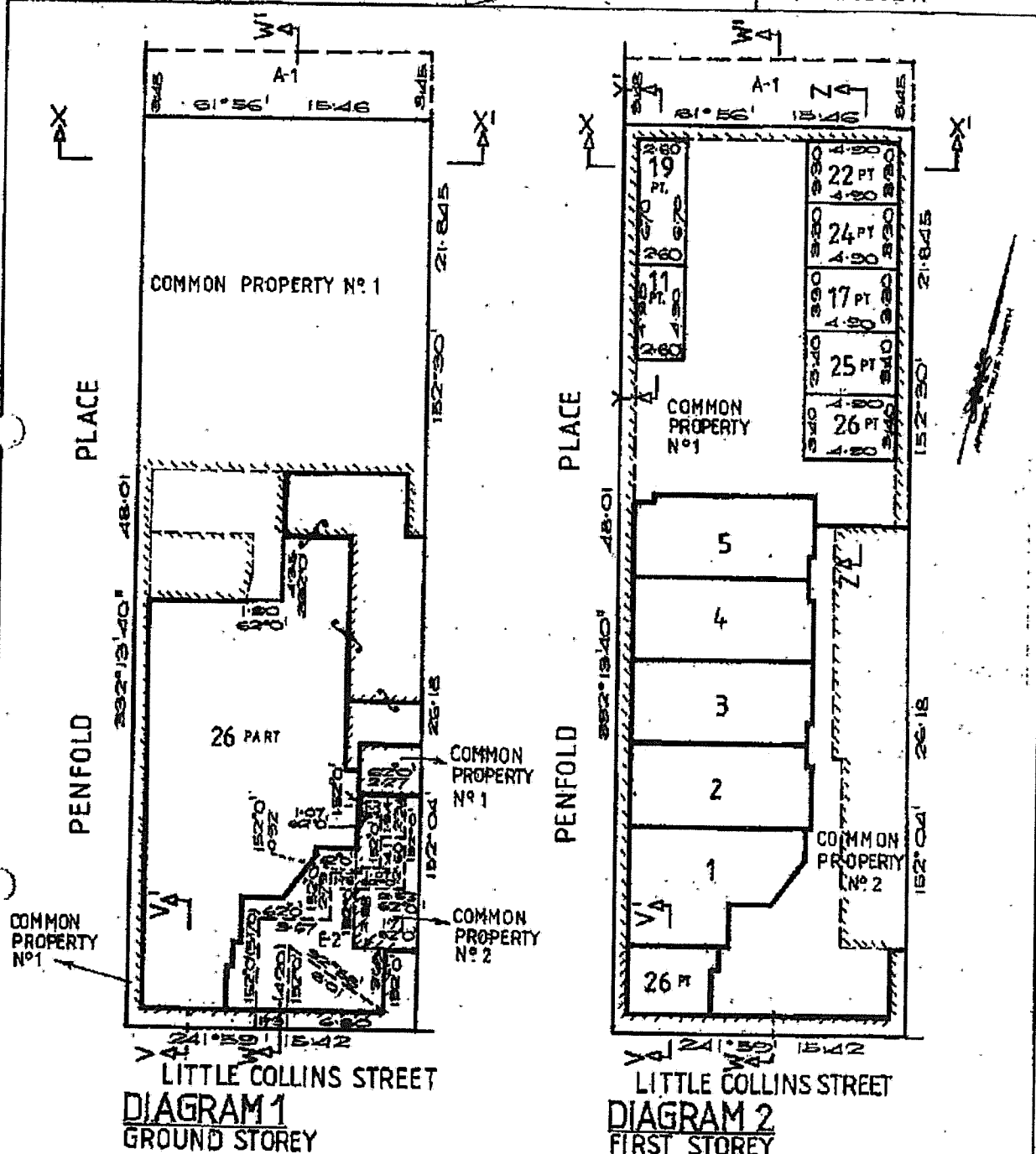
A handwritten signature in black ink, appearing to read 'Tom Bacon'.

Tom Bacon  
CEO & Principal Lawyer  
[tom@stratatitlelawyers.com.au](mailto:tom@stratatitlelawyers.com.au)



<b>PLAN OF SUBDIVISION</b>		<b>STAGE NO.</b>	<b>LTO use only</b>	<b>Plan Number</b>
		<b>EDITION 2</b>		<b>PS 336302 K</b>
<p>Location of Land</p> <p>Parish: <b>MELBOURNE NORTH</b></p> <p>Township: <b>CITY OF MELBOURNE</b></p> <p>Section: <b>13</b></p> <p>Crown Allotment: <b>18(PART) &amp; 19(PART)</b></p> <p>Crown Portion: _____</p> <p>LTO Base Record: <b>CHART 16 3083</b></p> <p>Title Reference: <b>VOL. 10170 FOLS. 524 to 550</b></p> <p>Last Plan Reference: <b>P5 327584 W</b></p> <p>Postal Address: <b>392-396 LITTLE COLLINS STREET</b> (at time of subdivision <b>MELBOURNE, 3000</b>)</p> <p>AMG Co-ordinates <b>E 320500</b> (of approx. centre of land in plan) <b>N 5812520</b>      Zone: <b>55</b></p>		<p style="text-align: center;"><b>Council Certificate and Endorsement</b></p> <p>Council Name: <b>CITY OF MELBOURNE</b>      Ref: <b>TP 45/772(700)</b></p> <p>1. This plan is certified under section 6 of the Subdivision Act 1988.</p> <p><del>2. This plan is certified under section 11(2) of the Subdivision Act 1988.</del></p> <p><del>Date of original certification under section 6</del></p> <p><del>3. This is a statement of compliance issued under section 21 of the Subdivision Act 1988.</del></p> <p style="text-align: center;"><b>OPEN SPACE</b></p> <p>(i) A requirement for public open space under section 10 of the Subdivision Act 1988 has/has not been made.</p> <p>(ii) The requirement has been satisfied.</p> <p>(iii) The requirement is to be satisfied in Stage _____</p> <p>Council delegate _____</p> <p>Council seal _____</p> <p>Date <b>9/10/95</b></p> <p>Re-certified under section 127 of the Subdivision Act 1988.</p> <p>Council Delegate _____</p> <p>Council Seal _____</p> <p>Date / /</p>		
<b>Vesting of Roads and/or Reserves</b>				
Identifier	Council/Body/Person			
NIL	NIL			
<p><b>LOCATION OF BOUNDARIES DEFINED BY BUILDINGS:</b></p> <p><b>INTERIOR FACE - ALL BOUNDARIES</b></p> <p><b>BOUNDARIES SHOWN BY THICK CONTINUOUS LINES ARE DEFINED BY BUILDINGS.</b></p> <p><b>THE WALLS DEFINING THE LOTS ARE CONTAINED IN COMMON PROPERTY NO.1</b></p>		<p style="text-align: center;"><b>Notations</b></p> <p><b>Staging</b>      This is/ is not a staged subdivision. Planning Permit No. _____</p> <p><b>Depth Limitation</b>      <b>DOES NOT APPLY</b></p> <p style="text-align: center;"><b>OTHER NOTATIONS</b></p> <p><b>AUSTRALIAN HEIGHT DATUM LEVELS ARE RELATED TO MELBOURNE WATER BENCH MARK No. 370 R.L. 9.415 AT THE INTERSECTION OF QUEEN AND COLLINS STREETS. (31-5-93 &amp; 4-10-95)</b></p> <p><b>Survey</b>      This plan is/is not based on survey.</p> <p>This survey has been connected to permanent marks No(s) _____</p> <p>In Proclaimed Survey Area No. _____</p>		
<b>Easement Information</b>				
<p><b>Legend</b></p> <p><b>E - Encumbering Easement or Condition in Crown Grant in the Nature of an Easement.</b></p> <p><b>A - Appurtenant Easement</b>      <b>R - Encumbering Easement (Road).</b></p>		<p style="text-align: center;"><b>SEC. 12(2) SUBDIVISION ACT 1988 APPLIES TO ALL THE LAND IN THIS PLAN.</b></p>		
Easement Reference	Purpose	Width Metres	Origin	Land Benefitted/in Favor of
A - 1	LIGHT & AIR	SEE DIAG.	INS. 705309	ALL LAND IN THIS PLAN
E - 1	LIGHT & AIR RESTRICTED TO ABOVE 19.29 A.H.D.	3.05	L.P. 36667	LOT 2 ON L.P. 36667
E - 2	WAY- RESTRICTED TO BELOW R.L. 15.10 AHD.	SEE DIAG.	THIS PLAN	LOT 26 ON THIS PLAN
E - 3	WAY- RESTRICTED TO BELOW R.L. 14.10 AHD.	SEE DIAG.	THIS PLAN	LOT 26 ON THIS PLAN
<p><b>ADSHEAD &amp; McQUIE PTY. LTD.</b></p> <p><b>LAND &amp; ENGINEERING SURVEYING CONSULTANTS, PLANNERS</b></p> <p><b>173 ORLANDO STREET, CARLTON 3053</b></p> <p><b>TEL. 463 8700      FAX. 463 7887</b></p> <p><b>A.C.N. 805064368</b></p>			<p><b>LICENSED SURVEYOR (PRINT) PHILIP FRANCIS OLVEHOE</b></p> <p>SIGNATURE _____ DATE / /</p> <p>REF: <b>7085/2</b>      VERSION: <b>05</b></p>	
<p style="text-align: right;"><b>LTO use only</b></p> <p style="text-align: right;"><b>Statement of Compliance/Exemption Statement</b></p> <p>Received <input checked="" type="checkbox"/>      Date <b>23/10/95</b></p> <p style="text-align: right;"><b>LTO use only</b></p> <p style="text-align: right;"><b>PLAN REGISTERED</b></p> <p style="text-align: right;"><b>TIME</b></p> <p style="text-align: right;"><b>DATE 1/11/95</b></p> <p style="text-align: right;"><i>V. Sweeney</i> Assistant Registrar of Titles</p> <p style="text-align: right;">Sheet 1 of 8 Sheets</p> <p style="text-align: right;">DATE / /</p> <p style="text-align: right;">COUNCIL DELEGATE SIGNATURE</p> <p style="text-align: right;">Original sheet size A3</p>				

<b>PLAN OF SUBDIVISION</b> <small>1440/1998, 3367, 2922A OF THE SUBDIVISION ACT, 1988</small>		Stage No.	Plan Number <b>PS 336302 K</b>
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ADHEAD & MOULDER  
LAND & ENGINEERING SURVEYING  
CONSULTANTS & PLANNERS  
178 DRUMMOND ST. CARLTON 3053  
TEL: 663 2713 FAX: 663 7887  
A.P.N. DCE064890

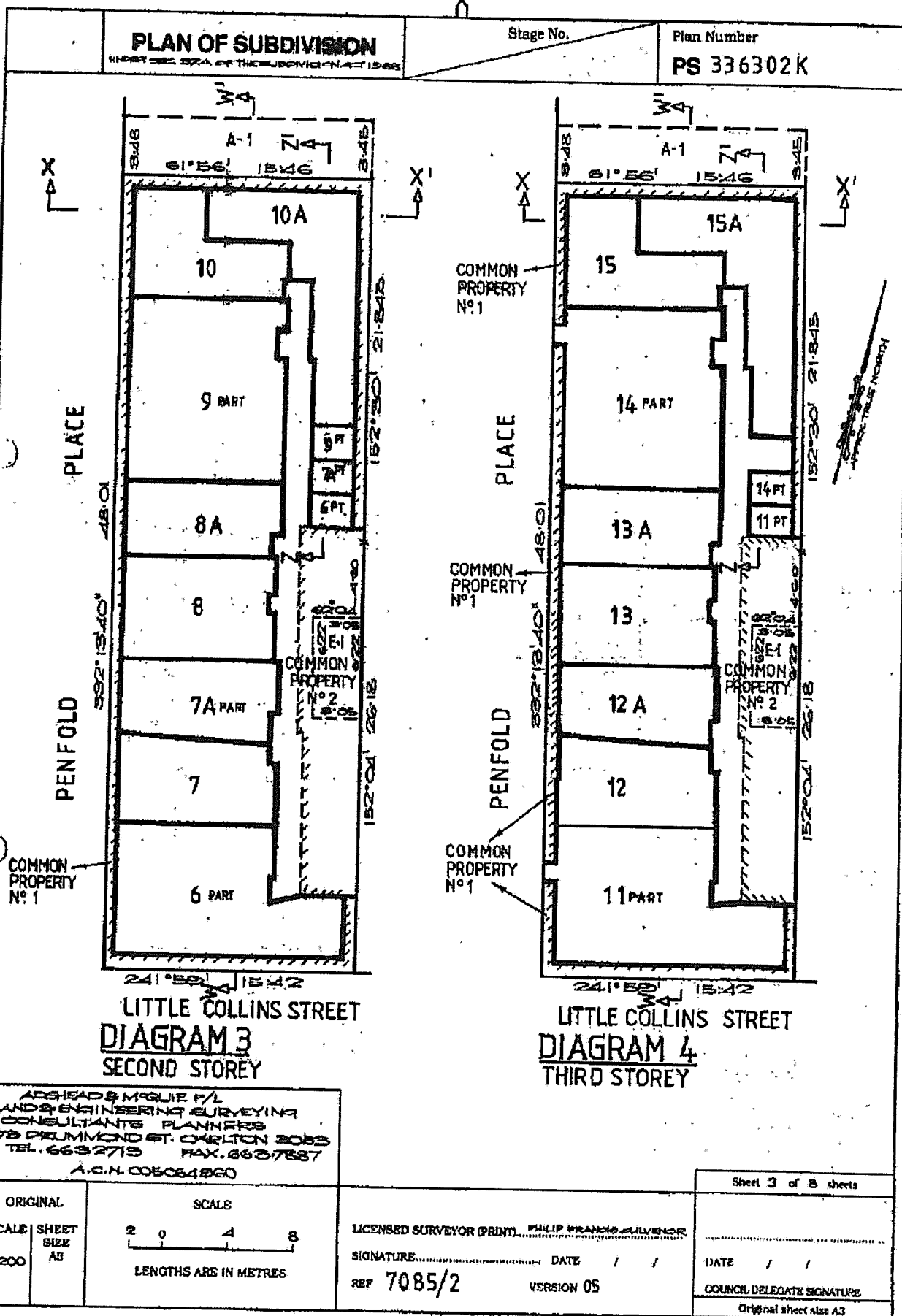
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SCALE SHEET  
SIZE A3  
1:200

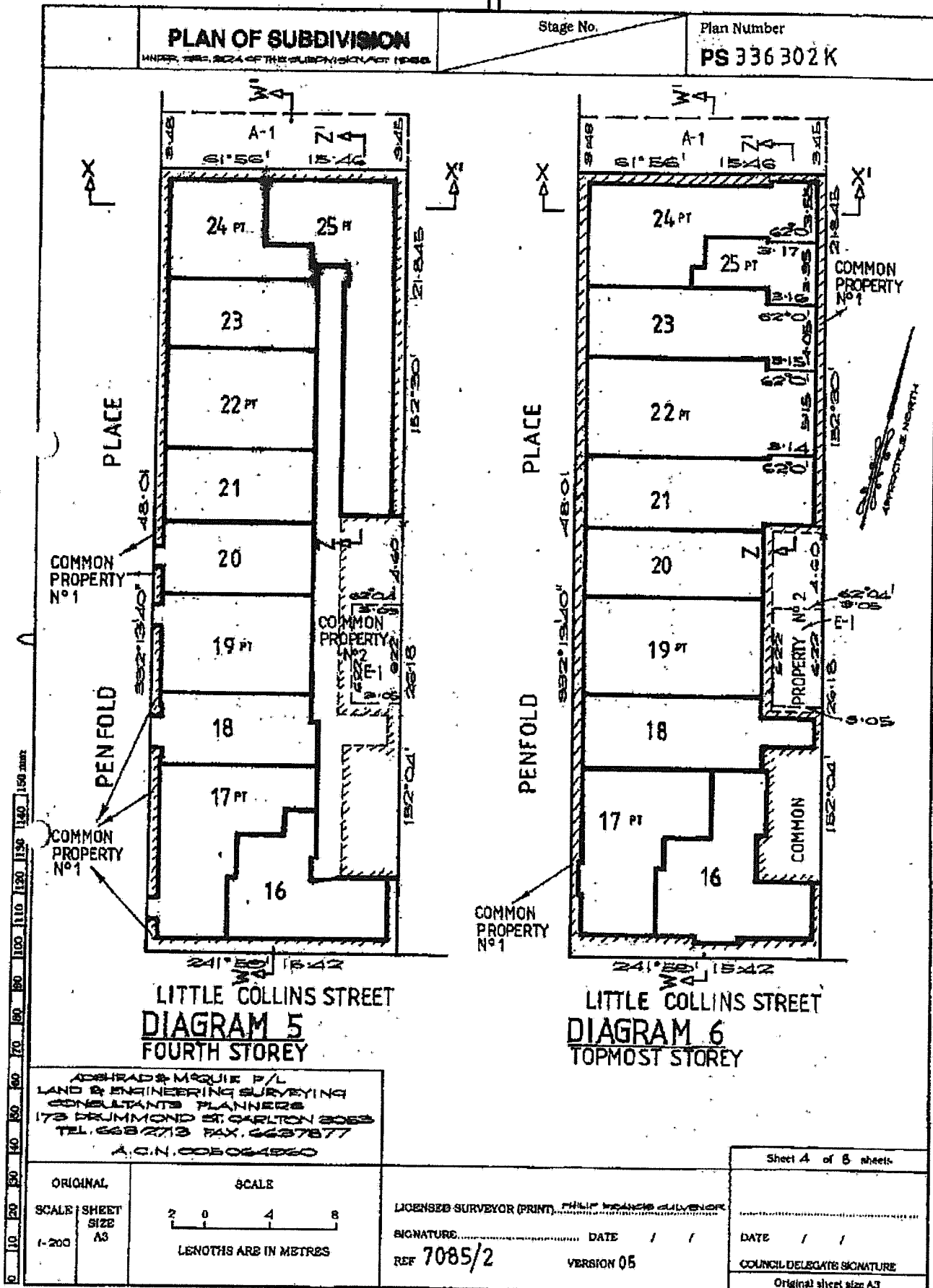
SCALE  
2 0 4 8  
LENGTHS ARE IN METRES

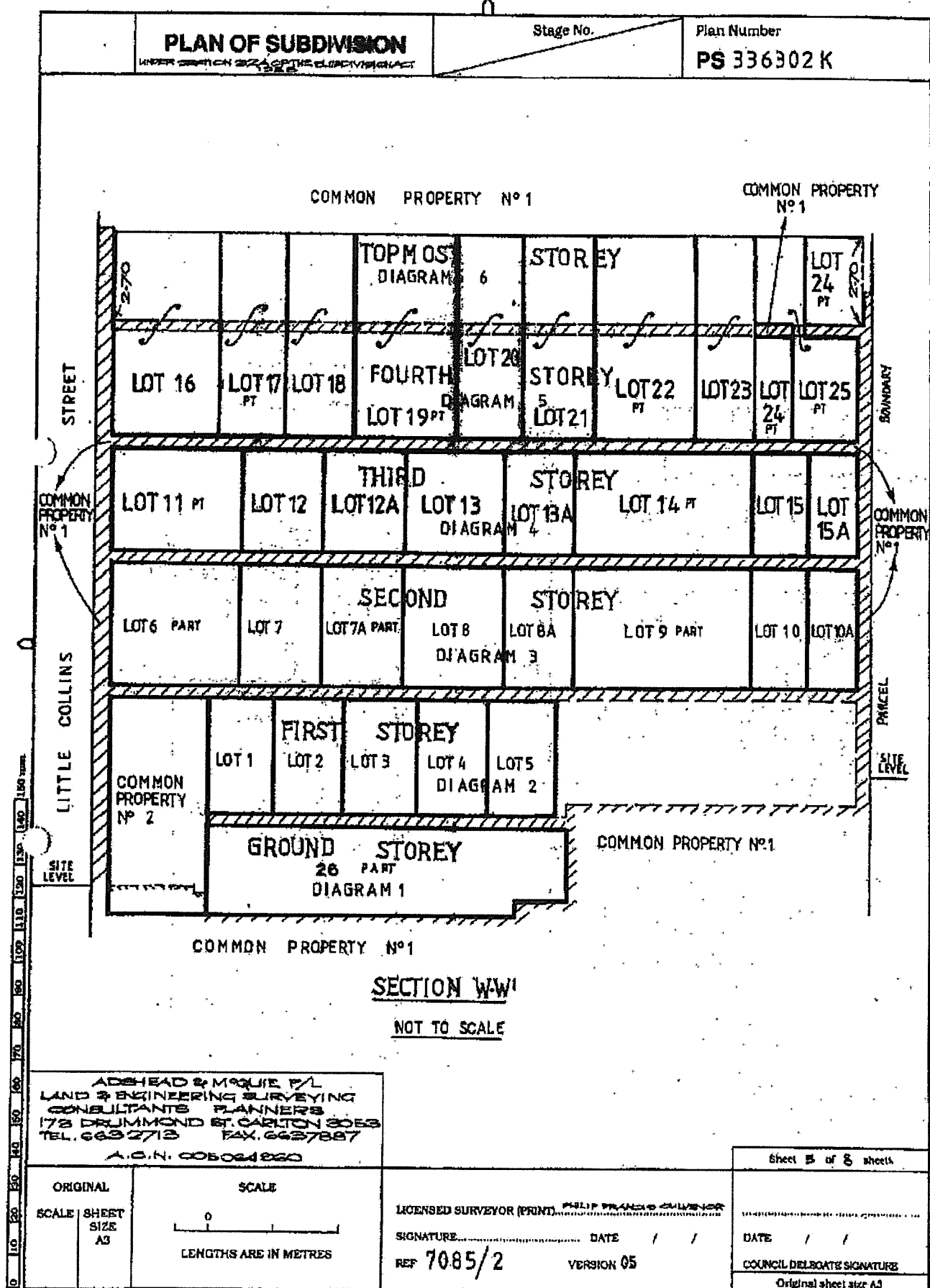
LICENSED SURVEYOR (PRINT) PHILIP FRANKS SURVEYOR  
SIGNATURE \_\_\_\_\_ DATE / /  
REF 7085/2 VERSION 05

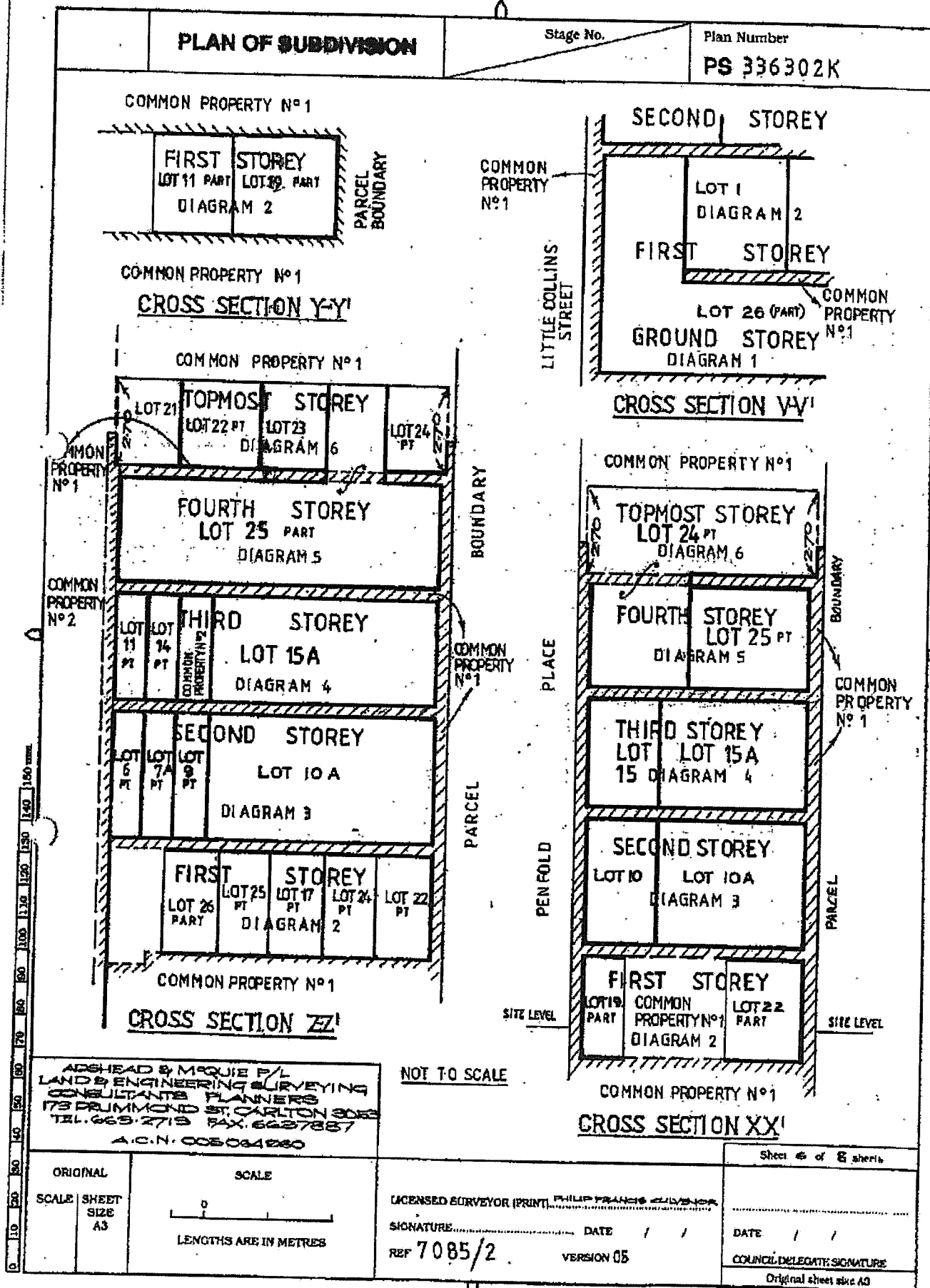
Sheet 2 of 8 sheets

DATE / /  
COUNCIL DELEGATE SIGNATURE  
Original sheet size A3









PS336302K

FOR CURRENT BODY CORPORATE DETAILS  
SEE BODY CORPORATE SEARCH REPORT

Sheet 7

PS336302K

FOR CURRENT BODY CORPORATE DETAILS  
SEE BODY CORPORATE SEARCH REPORT

Sheet 8





1566489

1574683

705309

*Blake & Riggall*

3.6pm  
11 MAR 1913

Whitting & Aitken

10/-  
T. O.

V I C T O R I A  
T R A N S F E R O F L A N D



THE TRUSTEES TRUSTEES AND AGENCY COMPANY LIMITED of Collins Street Melbourne being registered as the proprietor of an estate in fee simple in the land hereinafter described subject to the - - - - - encumbrances notified hereunder in consideration of the sum of - - - - - thirty thousand pounds paid to it by R. L. YENOKEN AND COMPANY PROPRIETARY LIMITED of Little Collins Street Melbourne NOW hereby transfer to the said R. L. Yenoken and Company Proprietary Limited all its estate and interest in all that piece of land delineated - - - - - and colored red on the map enclosed hereon being part of Crown - - - - - Allotments 17, 18 and 19 Section 13 City of Melbourne Parish of - - - - - North Melbourne County of Bourke and part of the land described in Certificate of Title Volume 3034 Folio 605627 together with the - - - - - access of light and air as at present enjoyed in connection with the said premises at all times hereafter in over and upon the piece of land colored yellow on the said map enclosed hereon and together also with a right of carriage way over the roads colored yellow and brown on the map in the margin of the said Certificate of Title.

DATED the Twelfth day of March one thousand nine - - - - - hundred and twelve.

The Common Seal of The Trustees Executors and Agency Company Limited was hereto affixed by authority of the Board of Directors by

*W. L. Yenoken*  
*J. B. Douglas*

The Common Seal of R. L. Yenoken and Company Proprietary Limited was hereto affixed by J. B. Douglas one of the Directors of the Company in the presence of W. L. Yenoken Secretary

*W. L. Yenoken Secretary*

*J. B. Douglas Director*



Encumbrances

Table Number 2412 is correct



R. L. YENOKEN & CO. PROPRIETARY LIMITED

*J. B. Douglas*  
*W. L. Yenoken*

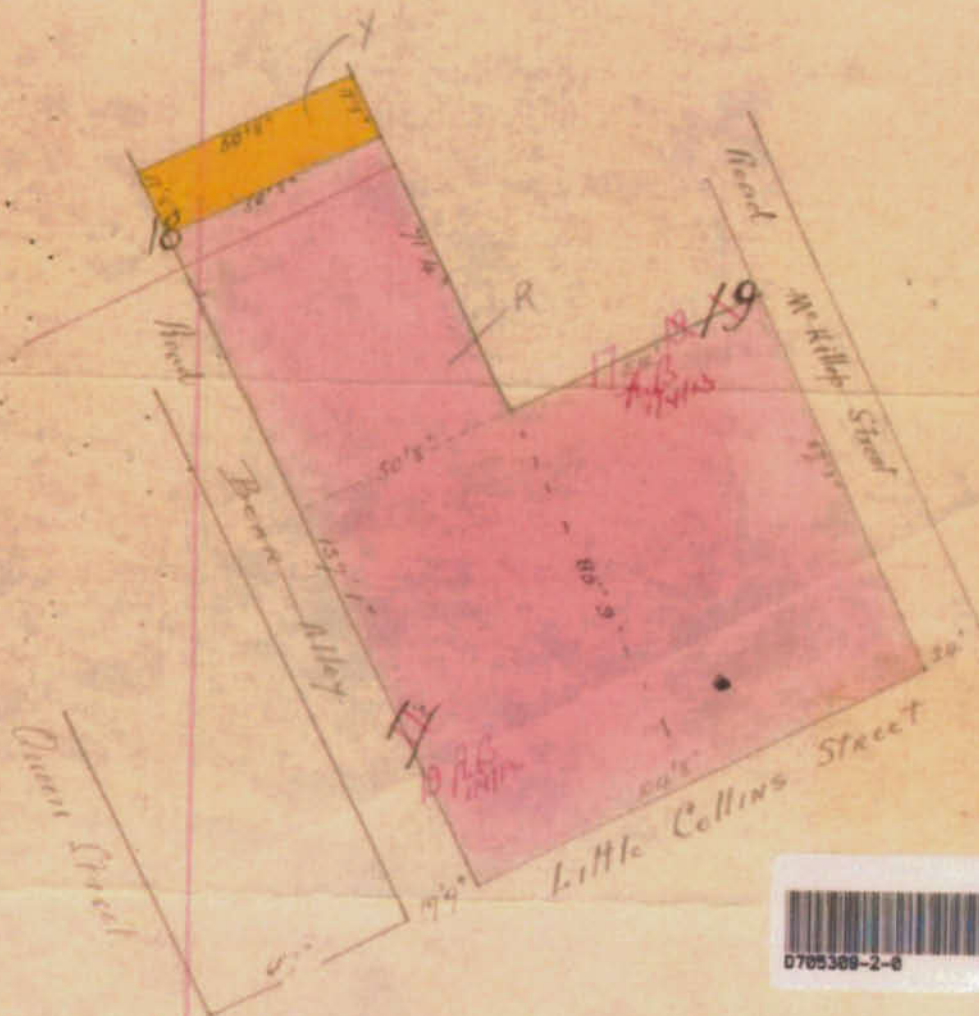






66

705309



**COLOUR CODE**

Y=Yellow BR=Brown G=Green  
R=Red BL=Blue P=Purple  
H=Hatched CH=Cross Hatched



0705309-2-0



WRITING & ADDRESS

THANKS

E. L. YENCKEN AND CO PTY LTD

TELEPHONE 22222222 AND ADDRESS  
COMPANY LIMITED

dated 1918

MEMORIAL OF INSTRUMENT.

NATURE OF INSTRUMENT	TIME OF ITS PRODUCTION FOR REGISTRATION	NAMES OF THE PARTIES THERETO	NUMBER OR SYMBOL THEREON
Transfer as to part and Creation of Easement	THE 11 <sup>th</sup> DAY OF March 1918 AT 3.6 O'CLOCK IN THE AFTER NOON	The Trustees Executors and Agency Company Limited - to - E. L. Yencken and Company Proprietors Limited	705209
<p><i>[Signature]</i> ASSISTANT REGISTRAR OF TITLES.</p>			
<p>3 Certs. THAT A MEMORIAL OF THE WITHIN INSTRUMENT WAS ENTERED AT THE TIME LAST ABOVE MENTIONED IN THE REGISTER BOOK VOL. 2034 FOL. 106627.</p> <p><i>[Signature]</i> ASSISTANT REGISTRAR OF TITLES</p>			



0705309-2-0



25 February 2019

The Hon Richard Wynne MP  
Department of Environment, Land, Water & Planning  
PO Box 500  
East Melbourne VIC 8002

Sent by email: [planning.info@delwp.vic.gov.au](mailto:planning.info@delwp.vic.gov.au);  
[richard.wynne@parliament.vic.gov.au](mailto:richard.wynne@parliament.vic.gov.au)

Dear Sir,

**392 - 396 LITTLE COLLINS STREET, MELBOURNE | FAIRFAX HOUSE | PLAN  
OF SUBDIVISION 336302K  
EASEMENT FOR LIGHT AND AIR**

**DEVELOPMENT OF 148-156 QUEEN STREET MELBOURNE  
DEVELOPMENT APPLICATION NO. 2012/002933**

We act for the Owners Corporation at 392-396 Little Collins Street, Melbourne.

We refer to our letter to your department of 6 December 2017 regarding the sale of the large development site at 148-156 Queen Street, Melbourne ("Development Site") and its possible effect on our client's easement for light and air. A copy of the letter is **attached** for your reference.

We also **attach**:

1. our client's Plan of Subdivision which denotes the easement as A-1. The size of the easement is 15.46 meters long by 3.45 meters wide.
2. The Deed of Easement, which was registered on 11 March 1913, and states that:

"[the land is transferred] together with the access of light and air as at present enjoyed in connection with the said premises at all times hereafter in over and upon the piece of land colored yellow on the said map..."

Note that the words "as at present enjoyed" are to be read as at the date of registration of the easement, being 11 March 2013.

Following media reports of the purchase of the development site by Cbus Property, we have again been instructed to write to you re this issue.

We further **attach** our letter dated 25 February 2019, addressed to Cbus Property. Please take careful note of this letter as it is important to our client that their easement for light and air, which adjoins that site, is protected, and that no shading of our client's building shall occur.

As our client's land will be directly affected by any building approval, you are obliged to notify us and allow for our client's participation in the development process in respect of any application or approval in respect of the Development Site.

Please contact our Firm if you require any further information.

Yours faithfully,



Tom Bacon  
CEO & Principal Lawyer  
[tom@stratatitlelawyers.com.au](mailto:tom@stratatitlelawyers.com.au)



Hayley Sutherland  
Lawyer  
[hayley@stratatitlelawyers.com.au](mailto:hayley@stratatitlelawyers.com.au)



1 December 2017

Colliers International  
Mr. Matthew Stagg  
Director  
Melbourne City Sales

Sent by email: [Matthew.Stagg@colliers.com](mailto:Matthew.Stagg@colliers.com)

**392 - 396 LITTLE COLLINS STREET, MELBOURNE | FAIRFAX HOUSE  
EASEMENT FOR LIGHT AND AIR**

We act for the Owners Corporation at 392-396 Little Collins Street, Melbourne. We have been instructed to write to you regarding the sale of the large development site at Queen Street, Melbourne.

We understand that Colliers International are the agents acting to sell the site to developers and that there are three properties, to be sold in one line, comprising 2551 square meters.

Please be advised that my client has an easement registered for light and air rights, which adjoins with the development site. We **enclose** my client's Plan of Subdivision which denotes that easement as A1. The size of the easement is 15.46 meters long by 3.45 meters wide.

Please ensure that any prospective developer is aware of the easement. The easement must be protected from intrusion or development. Please provide a copy of this letter and the Plan of Subdivision to any prospective purchaser.

Please contact our Firm if you have any questions in relation to the above information.

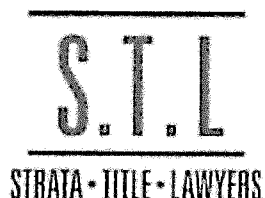
Yours faithfully,

A handwritten signature in black ink, appearing to read 'Tom Bacon'.

Tom Bacon  
CEO & Principal Lawyer  
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**Cc. Melbourne City Council**  
**[planning@melbourne.vic.gov.au](mailto:planning@melbourne.vic.gov.au)**



6 December 2017

Department of Environment, Land, Water & Planning  
PO Box 500  
East Melbourne VIC 8002

Sent by email: [planning.info@delwp.vic.gov.au](mailto:planning.info@delwp.vic.gov.au)

**392 - 396 LITTLE COLLINS STREET, MELBOURNE | FAIRFAX HOUSE  
EASEMENT FOR LIGHT AND AIR | DEVELOPMENT OF 148-156 QUEEN  
STREET MELBOURNE | 2012/002933**

We act for the Owners Corporation at 392-396 Little Collins Street, Melbourne. We have been instructed to write to you regarding the sale of the large development site at 148-156 Queen Street, Melbourne and its possible effect on my client's easement for light and air.

We **enclose** our letter dated 1 December 2017, addressed to Estate Agents, Colliers International. We cc'd that letter to the Melbourne City Council. The Melbourne City Council have saved our correspondence on their database for future reference. However, they have also suggested that we forward the letter to the attention of your Department. I understand there is an existing reference number with your Department in relation to that site, which is 2012/002933.

Please note the enclosed letter and include it on your file, for reference in the case that your Department are involved in any Development of the site. It is important to my client that their easement for light and air, which adjoins that site, is protected.

Please contact our Firm if you require any further information.

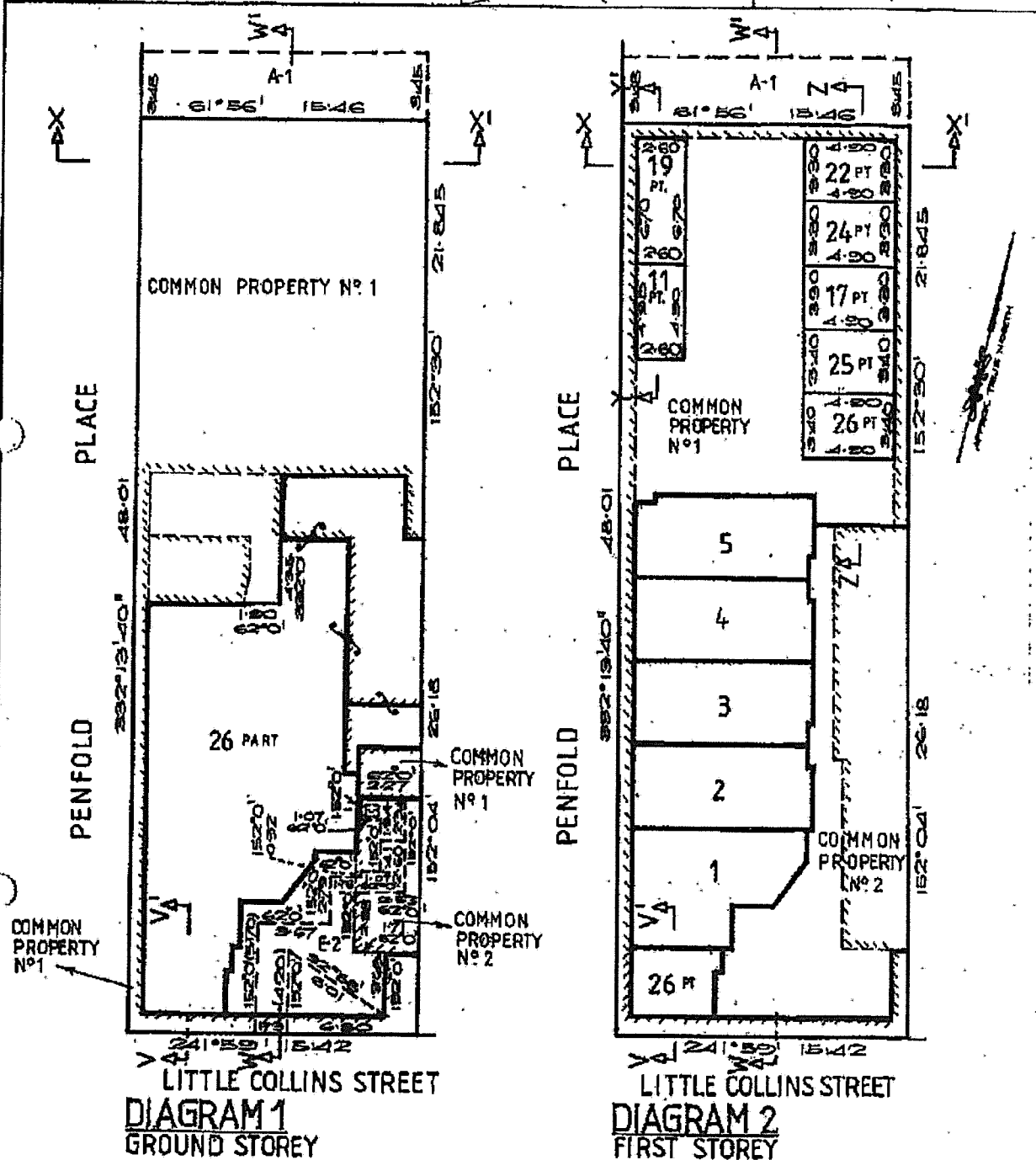
Yours faithfully,

A handwritten signature in black ink, appearing to read 'Tom Bacon'.

Tom Bacon  
CEO & Principal Lawyer  
[tom@stratatitlelawyers.com.au](mailto:tom@stratatitlelawyers.com.au)

<b>PLAN OF SUBDIVISION</b>		<b>STAGE NO.</b>	<b>LTO use only</b>	<b>Plan Number</b>
			<b>EDITION 2</b>	<b>PS 336302 K</b>
<b>Location of Land</b> Parish: <b>MELBOURNE NORTH</b> Township: <b>CITY OF MELBOURNE</b> Section: <b>13</b> Crown Allotment: <b>18(PART) &amp; 19(PART)</b> Crown Portion: LTO Base Record: <b>CHART 16 3083</b> Title Reference: Vol. 10170 Fols. 524 to 590 Last Plan Reference: <b>PS 327584 W</b> Postal Address: <b>392-396 LITTLE COLLINS STREET</b> (at time of subdivision) <b>MELBOURNE, 3000</b> AMG Co-ordinates <b>E 320500</b> Zone: <b>55</b> (of approx centre of land in plan) <b>N 5812520</b>		<b>Council Certificate and Endorsement</b> Council Name: <b>CITY OF MELBOURNE</b> Ref: <b>TP 95/772(200)</b> 1. This plan is certified under section 6 of the Subdivision Act 1988. <del>2. This plan is certified under section 14(2) of the Subdivision Act 1988.</del> <del>Date of original certification under section 6</del> 3. This is a statement of compliance issued under section 21 of the Subdivision Act 1988. <b>OPEN SPACE</b> (a) A requirement for public open space under section 19 of the Subdivision Act 1988 has/has not been made. (b) The requirement has been satisfied. (c) The requirement is to be satisfied in Stage Council delegate Council seal Date <b>9/10/95</b> Re-certified under section 14(1) of the Subdivision Act 1988. Council Delegate Council Seal Date / /		
<b>Vesting of Roads and/or Reserves</b>				
Identifier	Council/Body/Person			
<b>NIL</b>	<b>NIL</b>			
<b>LOCATION OF BOUNDARIES DEFINED BY BUILDINGS:</b> <b>INTERIOR FACE - ALL BOUNDARIES</b> <b>BOUNDARIES SHOWN BY THICK CONTINUOUS LINES ARE DEFINED BY BUILDINGS.</b> <b>THE WALLS DEFINING THE LOTS ARE CONTAINED IN COMMON PROPERTY NO.1</b>		<b>Notations</b> <b>Staging</b> This is/ is not a staged subdivision. Planning Permit No. <b>Depth Limitation</b> <b>DOES NOT APPLY</b> <b>OTHER NOTATIONS</b> <b>AUSTRALIAN HEIGHT DATUM LEVELS ARE RELATED TO MELBOURNE WATER BENCH MARK No. 370 R.L. 9.415 AT THE INTERSECTION OF QUEEN AND COLLINS STREETS. (31-5-93 &amp; 4-10-95)</b> <b>Survey</b> This plan is/is not based on a survey. This survey has been connected to permanent marks No(s) In Proclaimed Survey Area No.		
<b>Easement Information</b>				
Legend	E - Encumbering Easement or Condition in Crown Grant in the Nature of an Easement. A - Appurtenant Easement R - Encumbering Easement (Road).			
<b>SEC. 12(2) SUBDIVISION ACT 1988 APPLIES TO ALL THE LAND IN THIS PLAN.</b>				
<b>Easement Reference</b>	<b>Purpose</b>	<b>Width Metres</b>	<b>Origin</b>	<b>Land Benefitted/in Favour Of</b>
<b>A - 1</b>	<b>LIGHT &amp; AIR</b>	<b>SEE DIAG.</b>	<b>INS. 705309</b>	<b>ALL LAND IN THIS PLAN</b>
<b>E - 1</b>	<b>LIGHT &amp; AIR</b>	<b>3.05</b>	<b>L.P. 36667</b>	<b>LOT 2 ON L.P. 36667</b>
	<b>RESTRICTED TO ABOVE 19.29 A.H.D.</b>			
<b>E - 2</b>	<b>WAY-RESTRICTED TO BELOW R.L.15.10 AHD.</b>	<b>SEE DIAG.</b>	<b>THIS PLAN</b>	<b>LOT 26 ON THIS PLAN</b>
<b>E - 3</b>	<b>WAY- RESTRICTED TO BELOW R.L.14.10 AHD.</b>	<b>SEE DIAG.</b>	<b>THIS PLAN</b>	<b>LOT 26 ON THIS PLAN</b>
<b>ADSHEAD &amp; McQUIE PTY. LTD.</b> <b>LAND &amp; ENGINEERING SURVEYING CONSULTANTS, PLANNERS</b> <b>173 ORPINGTON STREET, CARLTON 3053</b> <b>TEL. 643 8713 FAX. 643 7847</b> <b>A.C.N. 805064360</b>			<b>LICENSED SURVEYOR (PRINT) PHILIP FRANKS CLAYTON</b> <b>SIGNATURE</b> _____ <b>DATE</b> / / <b>REF: 7085/2</b> <b>VERSION: 05</b>	
<b>LTO use only</b> <b>Statement of Compliance/Exemption Statement</b> <b>Received</b> <input checked="" type="checkbox"/> <b>Date</b> <b>23/10/95</b> <b>LTO use only</b> <b>PLAN REGISTERED</b> <b>TIME</b> <b>DATE</b> <b>1/11/95</b> <b>Assistant Registrar of Titles</b> <b>Sheet 1 of 8 Sheets</b>				
<b>DATE</b> / / <b>COUNCIL DELEGATE SIGNATURE</b> <b>Original sheet size A3</b>				

<b>PLAN OF SUBDIVISION</b> <small>SECTION 32.02A OF THE SUBDIVISION ACT, 1988</small>	Stage No.	Plan Number <b>PS 336302 K</b>
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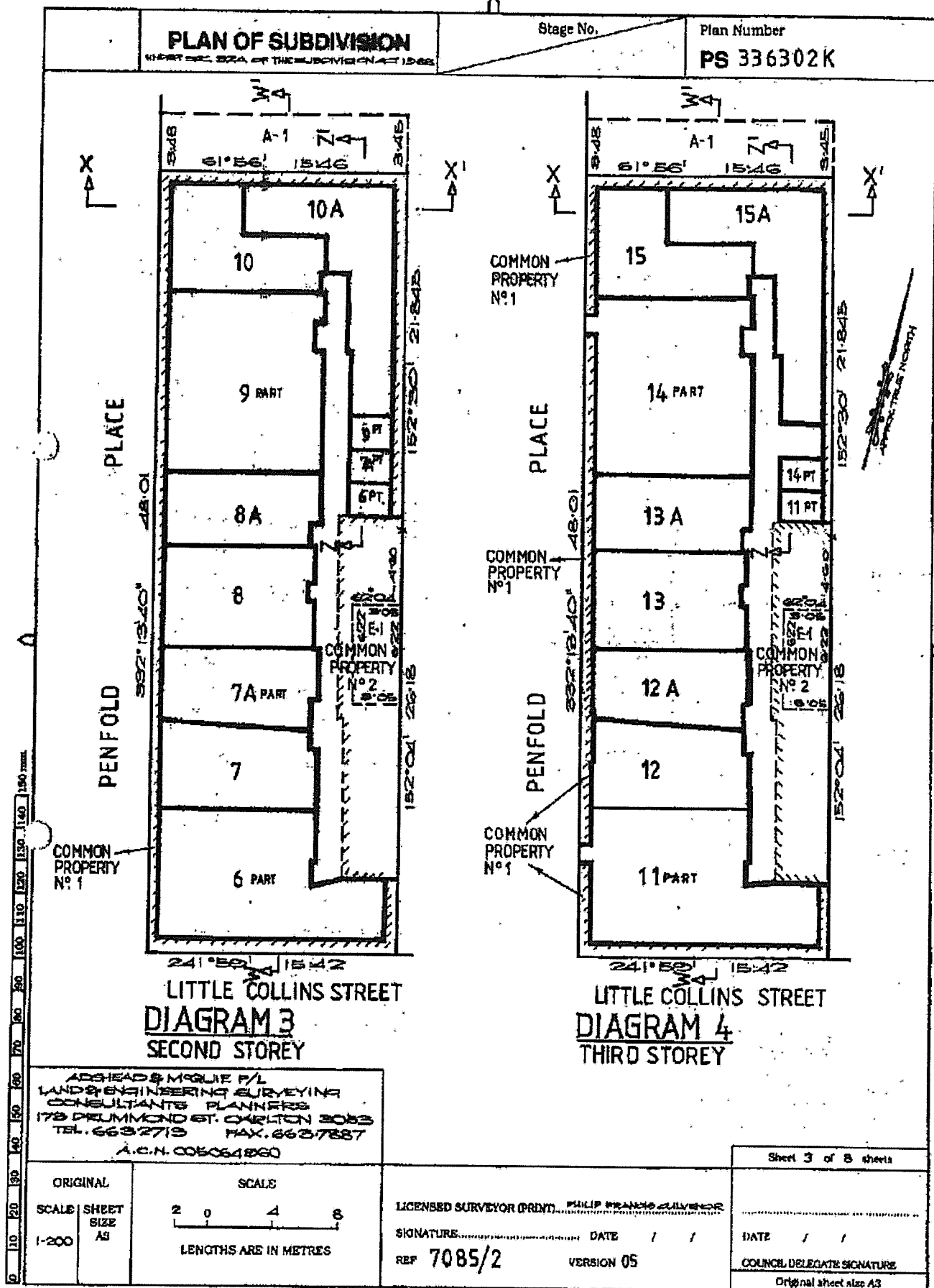


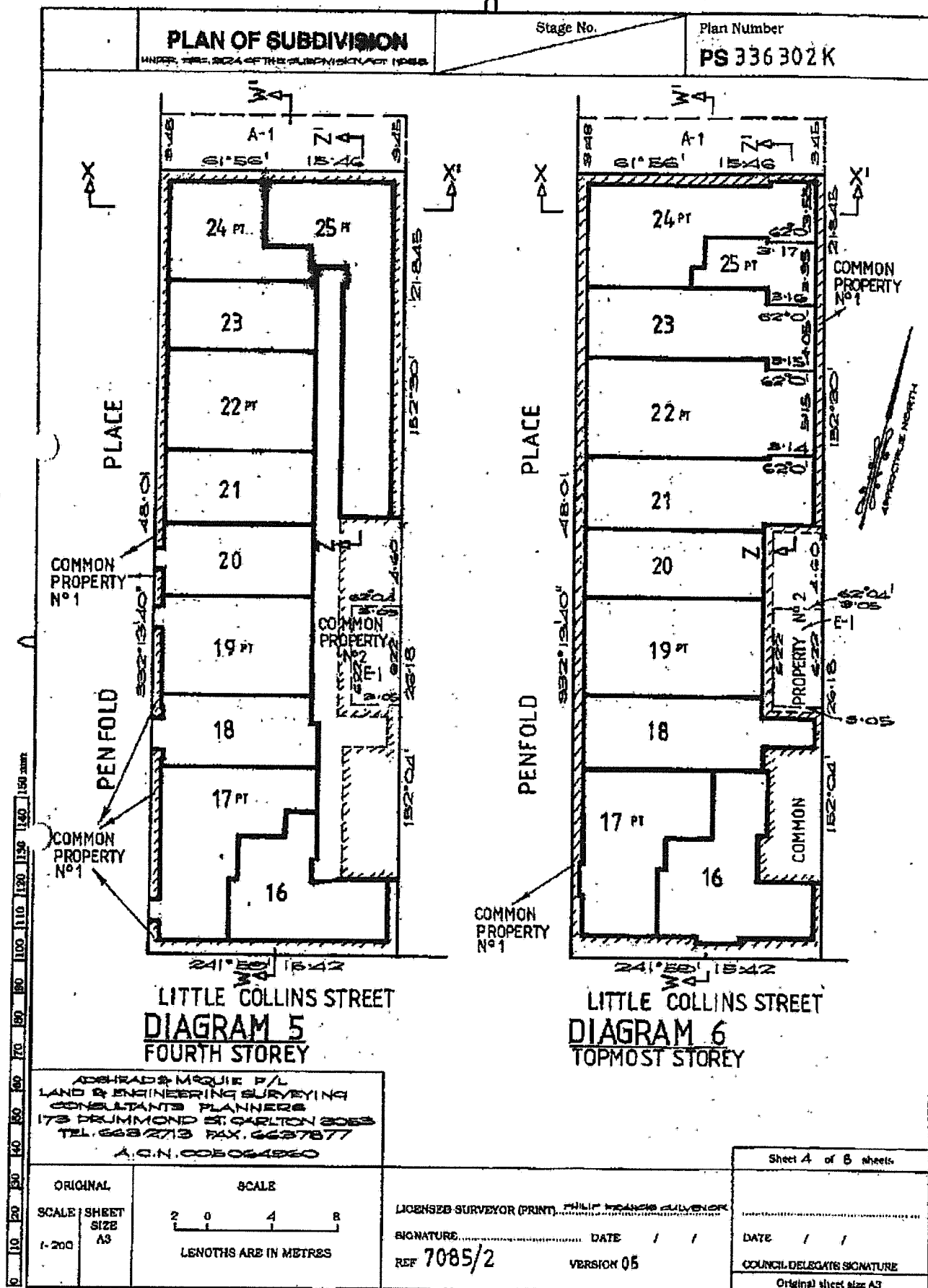
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 LAND & ENGINEERING SURVEYING  
 CONSULTANTS & PLANNERS  
 178 DILMOND ST, CARLTON 3053  
 TEL 6632713 FAX 6637887  
 A.P.N. 005064960

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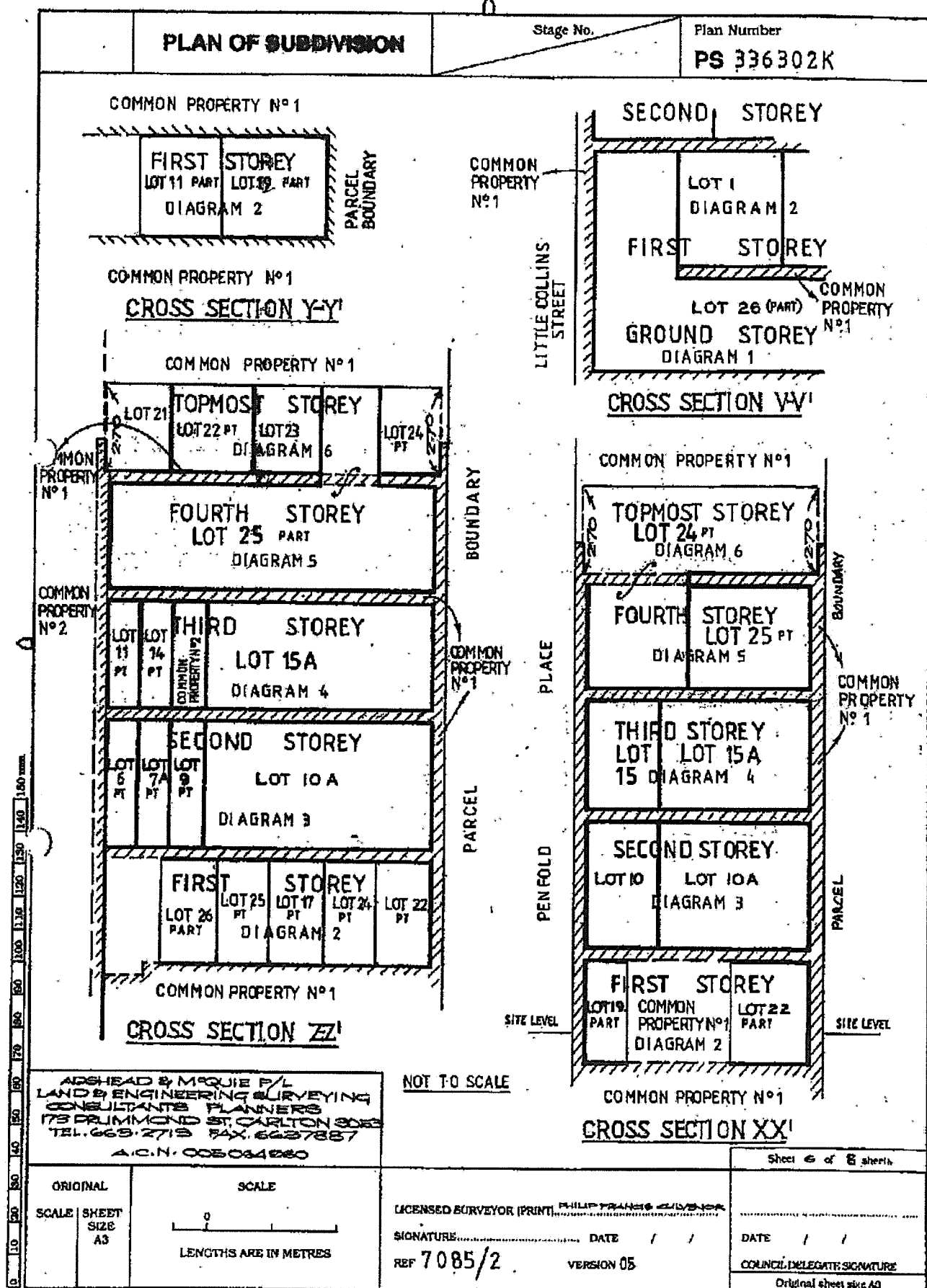
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REF 7085/2	VERSION 05

Sheet 2 of 8 sheets
DATE / / COUNCIL DELEGATE SIGNATURE Original sheet size A3





**TQ.2**





PS336302K

FOR CURRENT BODY CORPORATE DETAILS  
SEE BODY CORPORATE SEARCH REPORT

Sheet 7

PS336302K

**FOR CURRENT BODY CORPORATE DETAILS  
SEE BODY CORPORATE SEARCH REPORT**

Sheet 8



1566489

1574683

705309

*Blake & Riggall*

10/-  
T. O.

3 6pm  
11 MAR 1913

Whiting & Alken

VICTORIA  
TRANSFER OF LAND



THE TRUSTEES (TRUSTEES AND ASSOCIATE COMPANY LIMITED of Collins Street Melbourne being registered as the proprietor of an estate in fee simple in the land hereinafter described subject to the - - - - - encumbrances notified hereunder in consideration of the sum of - - - - - thirty thousand pounds paid to it by E. L. YENCKEN AND COMPANY - PROPRIETARY LIMITED of Little Collins Street Melbourne DOVE hereby transfer to the said E. L. Yencken and Company Proprietary Limited all its estate and interest in all that piece of land delineated - - - - - and colored red on the map endorsed hereon being part of Crown - - - - - allotments 17, 18 and 19 Section 13 City of Melbourne Parish of - - - - - North Melbourne County of Bourke and part of the land described in Certificate of Title Volume 3034 Folio 506627 together with the - - - - - access of light and air as at present enjoyed in connection with the said premises at all times hereafter in over and upon the piece of land colored yellow on the said map endorsed hereon and together also with a right of carriage way over the roads colored yellow and brown on the map in the margin of the said Certificate of Title.

DATED the fourth day of March one thousand nine - - - - - hundred and twelve.

The Common Seal of the Trustees (Executors and) Associate Company Limited was hereto affixed by authority of the Board of Directors by

*W. L. B. Broun*  
*W. L. B. Broun*

The Common Seal of E. L. Yencken and Company Proprietary Limited was hereto affixed by J. B. Douglas one of the directors of the Company in the presence of W. L. B. Broun Secretary

*W. L. B. Broun* Secretary

*J. B. Douglas* Director



Encumbrances

Trans No 9482 to 9485



E. L. YENCKEN & CO. LTD. LIMITED

*J. B. Douglas*  
*W. L. B. Broun*



13



83

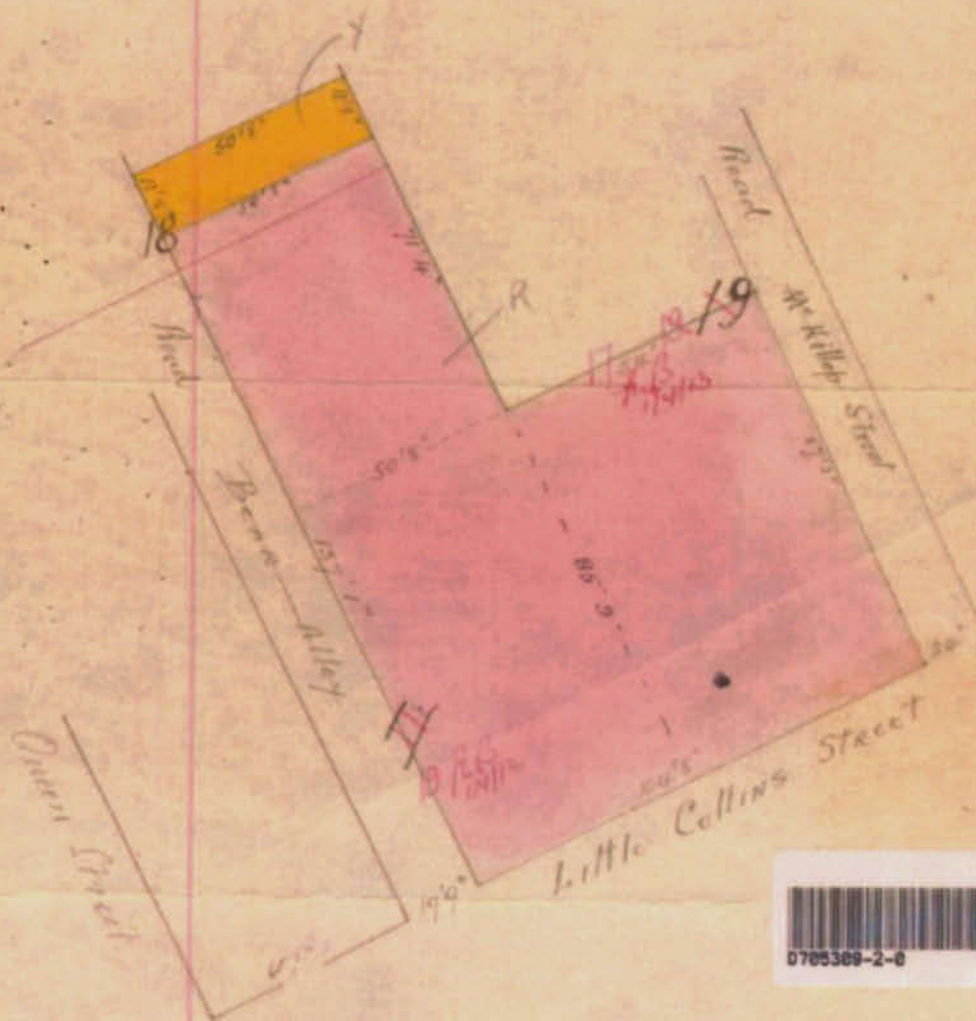
30/06/27 Dr. G.  
Museum on site  
Up and down  
up to 1000 ft high  
and on the  
side of the

20/06/27  
20/06/27  
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20/06/27



84

705309



0705309-2-0

**COLOUR CODE**

Y=Yellow BR=Brown G=Green  
R=Red BL=Blue P=Purple  
H=Hatched CH=Cross Hatched



Writing & Address

TRANSFER

E. L. YERGEN AND CO PTY LTD

COMPANY LIMITED

TRUSTEES YERGEN AND AGENCY

1912

MEMORIAL OF INSTRUMENT.

NATURE OF INSTRUMENT	TIME OF ITS PRODUCTION FOR REGISTRATION	NAMES OF THE PARTIES THERETO	NUMBER OR SYMBOL THEREON
Transfer of land and creation of mortgage	THE 1 <sup>st</sup> DAY OF March 1913 AT 12 O'CLOCK IN THE AFTER NOON.	The Trustees Executors and Agency Company Limited - b - E. L. Yergen and Company Proprietors Limited	705209
<p><i>[Signature]</i> ASSISTANT REGISTRAR OF TITLES.</p>			
<p>I Certify THAT A MEMORIAL OF THE WITHIN INSTRUMENT WAS ENTERED AT THE TIME LAST ABOVE MENTIONED IN THE REGISTER BOOK VOL. 3024 FOL. 60627.</p>			
<p><i>[Signature]</i> ASSISTANT REGISTRAR OF TITLES.</p>			



0705300-2-0



25 February 2019

Cbus Property  
Level 7  
550 Bourke Street  
Melbourne VIC 300

**Attention: The Project Manager**

Sent via email: [reception@cbusproperty.com.au](mailto:reception@cbusproperty.com.au)

**392 - 396 LITTLE COLLINS STREET, MELBOURNE | FAIRFAX HOUSE | PLAN  
OF SUBDIVISION 336302K  
EASEMENT FOR LIGHT AND AIR**

**DEVELOPMENT OF 148-156 QUEEN STREET MELBOURNE  
DEVELOPMENT APPLICATION NO. 2012/002933**

We act for the Owners Corporation at 392-396 Little Collins Street, Melbourne. We have been instructed to write to you regarding the recent acquisition of the large development site at 148-156 Queen Street, Melbourne.

In late 2017, we wrote the following two letters in respect of an easement for light and air benefitting our client's land:

1. Letter to Colliers International dated 1 December 2017; and
2. Letter to the Department of Environment, Land, Water & Planning dated 6 December 2017.

Both letters are **attached** for your reference.

As noted in our abovementioned letter to Colliers International, our client has an easement registered for light and air rights, which adjoins with the development site.

We further **attach**:

1. our client's Plan of Subdivision which denotes the easement as A-1. The size of the easement is 15.46 meters long by 3.45 meters wide.



2. The Deed of Easement, which was registered on 11 March 1913, and states that:

"[the land is transferred] together with the access of light and air *as at present enjoyed* in connection with the said premises at all times hereafter in over and upon the piece of land colored yellow on the said map... [emphasis added]"

Again, as noted in our letter to Colliers International, our client's easement must be protected from intrusion or development. **The effect of this is that no shadowing or shading of our client's building can occur.**

Please confirm that our client's rights shall be observed and protected as part of any redevelopment planned by you or your joint venture partners.

A copy of this letter and its attachments shall be provided to the Department of Environment, Land, Water & Planning.

If necessary, our client shall take the necessary legal steps to protect its rights, which we note have been in existence for over 100 years.

Yours faithfully,



Tom Bacon  
CEO & Principal Lawyer  
[tom@stratatitlelawyers.com.au](mailto:tom@stratatitlelawyers.com.au)



Hayley Sutherland  
Lawyer  
[hayley@stratatitlelawyers.com.au](mailto:hayley@stratatitlelawyers.com.au)

---

Privacy acknowledgement: I have read and acknowledge how Council will use and disclose my personal information.

Name: \* Catherine Barber

Email address: \* [pilligascrub@gmail.com](mailto:pilligascrub@gmail.com)

Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \*

Date of meeting: \* Tuesday 15 October 2019

Agenda item title: 6.4 TPM-2019-1

Please write your submission in the space provided below and submit by no later than 10am on the day of the scheduled meeting. We encourage you to make your submission as early as possible.

I make this submission on behalf of the 31 individual apartment owners at 392 Little Collins Street (Fairfax House). We have 12 owner occupiers in residence, 14 owners whose apartments are rented out, and 5 owners who run short-term rentals. We have an active and engaged Owners Corporation. We are not in any way a 'guest house'.

Our building flanks the entire Eastern side of Penfold Place, and this laneway is designated as the back-of-house thoroughfare for the development under consideration. 56 of our apartment windows overlook this lane. At ground level, 5 studio apartments with a single window each, currently suffer the presence of a row of restaurant garbage bins positioned below their only source of ventilation and natural light. In addition, the 2-3 loading zone spaces located in the lane are much in demand, but often occupied by garbage bins.

We believe the lane is barely sufficient to service current needs, let alone the large truck movements that will attach to such a massive development.

Can the Queen Street car park entry be considered as an alternative entry point for service vehicles.

The back of Fairfax House will share a border with the completed development (the southern interface). We have previously approached CBUS/URBIS to discuss our difficulties with the design of this area, proposing that we meet to discuss the possibility of a 'buffer zone' running from Penfold Place through to McKillop Street. The reply was that the loss of floor space would render the Health and Wellness Centre unviable, and interfere with the operation of the proposed loading dock.

We foresee problems with this loading dock. According to current plans the loading dock entry portal abuts the North West corner of Fairfax House. This space comes with access doors, and a truck turntable situated directly below bedrooms located over 4 floors on this corner of Fairfax House. In addition to the operations of this machinery, trucks will idle on the threshold as doors open, and start off in low gear as they exit. A very noisy affair.

It is our conviction that the developer's project designers can develop a more harmonious and functional plan for their southern boundary.

Furthermore, Council sold a large portion of Penfold Place some years ago to accommodate a prior developer, with the proviso that a 3.8 metre wide 'Pedestrian Link' be created between Penfold Place and McKillop Street. If Council could make good on this earlier plan, there are many benefits

- a more pleasing aesthetic result
- the showcasing the Heritage buildings on the southern interface
- the opportunity to introduce a green walkway at ground level
- grateful and contented workers and residents

Thank you for your consideration

Catherine Barber

Committee Member

Owners Corporation PS 336302K

Please indicate      Yes  
whether you  
would like to  
address the Future

Melbourne  
Committee or the  
Submissions  
(Section 223)  
Committee in  
support of your  
submission:

*(No opportunity is  
provided for  
submitters to be  
heard at Council  
meetings.) \**

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Privacy acknowledgement: \*

I have read and acknowledge how Council will use and disclose my personal information.

Name: \*

Sonia AUDINO

Email address: \*

[soniaaudino@mail.com](mailto:soniaaudino@mail.com)

Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \*

Future Melbourne Committee meeting

Date of meeting: \*

Tuesday 15 October 2019

Agenda item title: \*

Ministerial Planning Referral: TPMR-2019-1 423 Bourke Street, 140 Queen Street, 150 Queen Street and 21-27 McKillop

Alternatively you may attach your written submission by uploading your file here:



[submission\\_future\\_melbourne\\_planning\\_permit\\_application.pdf](#) 83.83 KB

• PDF

Please indicate whether you would like to address the Future Melbourne Committee or the Submissions (Section 223) Committee in support of your submission:

Yes

*(No opportunity is provided for submitters to be heard at Council meetings.) \**

**Submission Future Melbourne Committee 15 October 2019**  
**Planning Permit Application: TPM-2019-1, 423 Bourke Street,**  
**140 Queen Street, 150 Queen Street and 21-27 McKillop Street,**  
**Melbourne**

This submission is being made on behalf of the Owners Corporation 336302K of 392 Lt Collins St, Melbourne which as an adjacent building will be directly impacted by this development proposal.

We have reviewed the plans and the proposed modifications by the Future of Melbourne Committee. We feel that there is a very serious omission regarding the contractual obligations that CBUS has to the council to maintain a pedestrian access way between McKillop Street and Penfold Place.

Such "Pedestrian Link" is part of your land and has been created by an Agreement under section 173 of the Planning and Environment Act 1987 (the "Act"). This agreement is the Certificate of Title of TP 861285N (Dealing AH494607S).

While lawyers *Strata Title Lawyers* are writing to your Committee about legal aspects of this matter, we would like to provide evidence to the committee of the importance of maintaining a pedestrian link as part of any future development on this site.

*Incompatibility with City of Melbourne's walking plan*

Firstly, we would note that the City of Melbourne has a *WALKING PLAN 2014–17* which designed to promote an enjoyable and safe walking environment for residents, workers and visitors. We note that the Future Melbourne Committee endorsed this plan on 18 November 2014. A key feature of this plan is to "accommodate increasing amounts of walking in Melbourne". We would argue that the removal of an existing right of pedestrian access (that results from contractual obligations to the Council) between McKillop Street and Penfold Place is incompatible with the *WALKING PLAN 2014-17*.

*Safety of the residents and workers in the CBD*

Melbourne CBD has been subject to several major terrorist and civil incidents involving multiple injuries and fatalities (including on last year on Bourke St, a few hundred metres from our building). In addition, there have been recent fires in both our building (i.e. in Feb 2019) and in surrounding buildings which have involved full evacuation in some case of several buildings in the vicinity.

When similar incidences occur in future, it may be critical for pedestrians to egress or emergency workers to access Lt Collins St, or Bourke St via this pedestrian access route. This is particularly important at the moment give the ongoing construction in

city which often means that major streets are blocked by construction and so pedestrian only access routes may sometime be the fastest way to access parts of the city. Further we feel that pedestrian access should be maintained for the duration of construction of the new building.

We note that that Clause 6.9 of the Section 173 agreement states: “the Owner will ensure that no obstructions are placed, left or erected within or on Penfold Place Land so as to prevent or diminish emergency service access to the Land, the Penfold Place Land and the Adjoining Property”.

*Potential impact of removal pedestrian link on the safety and amenity of proposed new development*

While the development application contains a reference to contractual obligations to the council under its Section 173 agreement (see p. 62) there is no discussion or analysis of how these have been taken into account in the development proposal.

While the proposal indicates that the current design is “pedestrian orientated” e.g. “McKillop Streets have been designed so that they are attractive and pedestrian oriented frontages.”(p. 89) there is no discussion of how the removal of a pedestrian link would impact on such a “pedestrian orientated” building.

Further, we note that there have been several recent fires in tall buildings in Melbourne CBD (eg. due poor construction and cladding). So again, it is extremely surprising that the development proposal contains no evidence from the emergency services of how the remove of pedestrian link would impact on the safety e.g. evacuation, or impede access for fire-fighting and rescue.

*The potential for other contractual obligations that relate to the current proposal*

Finally, we must express our concern that the failure of CBUS to directly address it's contractual obligations to provide a pedestrian access link, may indicate that it has neglected to fully establish its contractual obligations regarding other Restrictive Covenants.

In these circumstances we feel that the Future Melbourne Committee needs to defer consideration of this proposal until CBUS can explain why information regarding the loss of the pedestrian link was not made available to the Committee. Further it needs to develop the proposal further to ensure it is compliant with all relevant covenant for the amenity and safety of residents, workers and visitors to the Melbourne CBD.

Ms Sonia Audino

Chair

On Behalf of the Owners Committee 336302K

392 Lt Collins St, Melbourne





---

Privacy acknowledgement: I have read and acknowledge how Council will use and disclose my personal information.

Name: \* Heather Wellington

Email address: \* [hpa@internode.on.net](mailto:hpa@internode.on.net)

Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \*

Date of meeting: \* Tuesday 15 October 2019

Agenda item title: Ensuring safety of children at places of worship \*

Please write your submission in the space provided below and submit by no later than 10am on the day of the scheduled meeting. We encourage you to make your submission as early as possible.

Dear Councillors. I am one of your ratepayers. I expect you to use my rates well to improve infrastructure and services that are the business of local government. State government is responsible for enforcing state law. I abhor child abuse and strongly support mandatory reporting but compliance is an issue for the state, not MCC. Please do your job well and use my resources for the purposes for which they are collected. That does not extend to broad social commentary or enforcement of compliance with child protection laws, for which the state has both capability and responsibility. Not does it extend to declarations of emergencies, climate or otherwise. I feel the community is losing patience with councillors who ignore the scope of their roles and use their positions as platforms for all sorts of issues that are not the business of local government. That diminishes all the good work councils do within the scope of their responsibilities. Thank you Heather Wellington MCC ratepayer, councillor Surf Coast Shire)

Please indicate      No  
whether you  
would like to  
address the Future  
Melbourne  
Committee or the  
Submissions  
(Section 223)  
Committee in  
support of your  
submission:

*(No opportunity is  
provided for  
submitters to be  
heard at Council  
meetings.) \**

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Privacy acknowledgement: I have read and acknowledge how Council will use and disclose my personal information.

\*

Name: \* Briony Russell

Email address: \* [brussell16@outlook.com](mailto:brussell16@outlook.com)

Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \*

Date of meeting: \* Tuesday 15 October 2019

Agenda item title: Warning sign on Catholic church

\*

Please write your submission in the space provided below and submit by no later than 10am on the day of the scheduled meeting. We encourage you to make your submission as early as possible.

Mr Gilley

I'm a believer in the catholic faith and traditions.

Please reconsider your motives for placing this type of sign on our holy place of worship which I take my children to every week. The sentiment is that I am putting my beautiful children in danger.

My son attends a Catholic school with a church on the grounds. How would the children, teachers and parents feel about this sign? Do you think it will be met with acceptance and smiles that someone really cares and is trying to

protect them?

Don't condemn us for our beliefs and sacraments. We don't need you to warn us. We know why we attend church and we feel comfortable about walking through those doors. I can tell you now not one church-goer will be happy to see a sign like this.

If you want to place a sign on the Catholic Church you will have to place a sign on every single building that does not mandate reporting of child abuse otherwise your gesture is merely anti-Catholic.

Maybe one day you will have to attend a baptism, confirmation or first holy communion of a family member at a Catholic Church. Would you proudly stand in front the proposed sign with the newly blessed baby or child?

Regards

Briony Russell

---

Privacy acknowledgement: \*

I have read and acknowledge how Council will use and disclose my personal information.

Name: \*

Jacinta Bright

Email address: \*

[jacintabright2@gmail.com](mailto:jacintabright2@gmail.com)

Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \*

Future Melbourne Committee meeting

Date of meeting: \*

Tuesday 15 October 2019

Agenda item title: \*

Agenda Item 7.1 Notice of Motion, Councillor Nicolas Frances Gilley, Ensuring safety of children at places of worship in our municipality

Alternatively you may attach your written submission by uploading your file here:



[to the members of the future melbourne committee.docx](#)

17.08 KB • DOCX

Please indicate whether you would like to address the Future Melbourne Committee or the Submissions (Section 223) Committee in support of your submission:

No

*(No opportunity is provided for submitters to be heard at Council meetings.) \**

To the members of the Future Melbourne Committee,

My name is Jacinta Bright and I am a Pastoral Associate in a Catholic parish in Greensborough. However, I write to you here, as a Catholic, who is deeply ashamed by what has emerged in relation to sexual abuse in connection with our Church. I state my professional position because this position informs me of the steps taken to make our churches and other entities safe for children and gives me a very clear view of the damage you would wreak upon the Catholic community of Melbourne and its wider environs, should you go ahead with Cr Frances Gilley's proposal.

I understand that the proposal is aimed at the Catholic Church, because of the Church's stance on the seal of confession. I am not addressing the seal of confession in this submission, but I question the reasonableness of the Councillor's proposal and suggest that if this proposal is carried out, the Melbourne City Council and any other Councils who take this up, would be demonising the Catholic Church. We already have enough hate speech in the world as it is and we see how this fragments society. In saying this I do not back away from the significant damage the Church has brought upon society and the resulting damage it has caused to our own credibility. I am asking, here, that the Melbourne City Council seriously considers the ramifications to Catholics in Melbourne, of any action it decides to take and that you remember your responsibility to create and nurture social cohesion.

Firstly, I would like to address what I see as an unreasonable argument in support of Cr Frances Gilley's proposal; which suggests the danger located in a specific location; a church building. Should someone come to confess child sexual abuse, they are confessing an act that has been committed retrospectively; it is not confessed whilst they are in the midst of, or about to commit this heinous act. If the Council was to erect such signs in front of church buildings, you would be suggesting there is a risk that predators are inside.

You would know, or should know, that strong preventative measures have been taken in the Catholic Church to guard against sexual abuse occurring, not only as a reaction to revelations in the Royal Commission, but because we want to protect children and vulnerable adults because of who we are called to be, as Christians. Every person who is actively engaged in the Church, is to have a WWC Check and also Police Checks in some cases. Our Professional Standards Unit has developed policies and protocols that meet and often surpass the National Standards. This makes Catholic churches as safe as the Melbourne City Council offices.

In approving this proposal you would be creating fear and stoking suspicion. Do you realise what it's like for every good priest to be considered with contempt because of what others have done? Do you know what it's like to be the butt of jokes, seen as gullible; to be metaphorically spat upon and to be hated? Do you realise what it is like for all the Catholics who want so much for our Church to be all we proclaim - how ashamed we are of what has happened - and how we are working incredibly hard to bring about a better, more healthy and whole Church? I am talking about us; Catholics, who are members of our Australian society and who are also hurting because we feel deeply what has happened to innocent children who have been sexually abused by Church personnel.

Rather than Cr Frances Gilley making misleading claims, if Council wants to address the issue of the confessional seal, do so professionally. Rather than attacking, speak directly and respectfully, with the hierarchy of the Church. Having said that, as you would know, the Melbourne Catholic Church is not able to make those changes on its own. Church teaching on the matter is decided in Rome. This limitation of the Melbourne Church is known, which further makes me wonder why you would be trying to place us in a corner, when there is no way out... unless this is about trying to bring down the Catholic Church, in which case the motives should be brought out into the light. I am not saying

the seal cannot be changed. I don't know if it can, but don't perpetrate violence yourselves in trying to bring about change.

Demonising, or contributing to the demonization of ordinary Catholics, would be a destructive act towards our Catholic community, and it would contribute to furthering hatred within our society. A decision to erect such signs would have a polarising effect in Melbourne when you, like any council, have a responsibility to build cohesion.

I am deeply distressed at the prospect of such an initiative and I will not be alone if this goes ahead. Melbourne City Council should know now, if you don't already know, that such a decision would be destructive.

I reiterate that if the proposal comes from a position of trying to bring down the Catholic Church, then you should realise that's the case and let that be known to the people of Melbourne. The purpose for an organisation's actions, in any situation, should never emanate from a destructive intention. I call upon you to act with integrity.

In my view if the Melbourne City Council accepts this motion, the erection of signs as proposed would be religious vilification.

How will you support Catholics within the City of Melbourne?

Jacinta Bright



---

Privacy acknowledgement: I have read and acknowledge how Council will use and disclose my personal information.

\*

Name: \* Chris Pearce

Email address: \* [chris.r.pearce@gmail.com](mailto:chris.r.pearce@gmail.com)

Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \*

Date of meeting: \* Tuesday 15 October 2019

Agenda item title: Signage Outside Catholic Churches

\*

Please write your submission in the space provided below and submit by no later than 10am on the day of the scheduled meeting. We encourage you to make your submission as early as possible.

I support Cr Gilley's motion. It is a legitimate use of Council resources and property. Ratepayers in the City of Melbourne need to know that an institution has chosen to ignore mandatory reporting laws when deciding who and how their children should be cared for.

Mandatory reporting laws intrude into a broad range of confidential and therapeutic relationships including doctor/patient. There is no basis for the catholic church to argue that the relationship between priest and parishioner is so much more important than that between a doctor and patient to merit it being used to protect people who have raped children, among other heinous crimes.

Council is one of the only bodies with the ability to take meaningful action in this situation. The nature of the

offending, as the royal commission how so sadly shown us, is unlikely to come to light in the ordinary course. This action by Council and consequent higher levels of vigilance by parents and caregivers is one of the only ways to reduce the risk to children, given the attitude of parts of the catholic church.