

ITEM NUMBER: 17.1

RELEASED
C280223/7360

CONFIDENTIAL REPORT

MINDA UPDATE

Pursuant to Section 83(5) of the Local Government Act 1999 the Report attached to this agenda and the accompanying documentation is delivered to the Council Members upon the basis that the Council consider the Report and the documents in confidence under Part 3 of the Act, specifically on the basis that Council will receive, discuss or consider:

- h. legal advice.**
- i. information relating to actual litigation, or litigation that the council or council committee believes on reasonable grounds will take place, involving the council or an employee of the council.**

RECOMMENDATION**Recommendation – Exclusion of the Public – Section 90(3)(h),(i), Order**

- 1** That pursuant to Section 90(2) of the *Local Government Act 1999* Council hereby orders that the public be excluded from attendance at this meeting with the exception of the Chief Executive Officer and Staff in attendance at the meeting in order to consider Report No: 234/17 in confidence.

 - 2.** That in accordance with Section 90(3) of the *Local Government Act 1999* Council is satisfied that it is necessary that the public be excluded to consider the information contained in Report No: 234/17 – Minda Update on the following grounds:
 - h.** pursuant to section 90(3)(h) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is legal advice relating to the settlement of the dispute with Minda.

In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in the continued non-disclosure of the information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information.

 - i.** pursuant to section 90(3)(i) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is information relating to actual litigation, regarding the settlement of the Dispute with Minda.

 - 3.** The Council is satisfied, the principle that the meeting be conducted in a place open to the public, has been outweighed by the need to keep the information or discussion confidential.
-

Item No: **17.1**

Subject: **MINDA UPDATE**

Date: 11 July 2017

Written By: Team Leader, Strategy

General Manager: Business Services, Mr Roberto Bria

SUMMARY

To progress the ongoing negotiations with Minda, Council is requested to endorse the *Deed of Settlement and Release* (the Deed). The Deed of Settlement has been negotiated to reflect the parameters specified by the In Principle Agreement (previously agreed by Council and Minda). A summary of the necessary actions and a site plan has been included for your reference.

Once all Deed conditions are met by Council and Minda, the dispute, primarily regarding the land adjacent to the Somerton Surf Life Saving Club and the Unmade Road Land will be resolved.

RECOMMENDATIONS

1. **Further to Motion C140217/676, that Council endorses the “Deed of Settlement and Release”, included in Report No: 234/17, presented as Attachment 1, the Council Land Encumbrance in Attachment 4, Minda Land Encumbrance in Attachment 5 and the ‘Area A’ Licence in Attachment 6.**
2. **That Council authorises the Chief Executive Officer and Mayor to execute the Deed of Settlement and Release as soon as practical, together with such other documents as are required from time to time to effect the transactions referred to in the Deed of Settlement and Release, including but not limited to the Council Land Encumbrance, Minda Land Encumbrance and “Area A” licence annexed to the Deed of Settlement and Release.**

RETAIN IN CONFIDENCE - Section 91(7) Order

3. **That having considered Agenda Item 17.1 Minda Update (Report No: 234/17) in confidence under section 90(2) and (3)(h) of the *Local Government Act 1999*, the Council, pursuant to section 91(7) of that Act orders that the report, attachments and minutes be retained in confidence for a minimum period of 5 years, in accordance with the Deed of Settlement and that this order be reviewed every 12 months.**
-

COMMUNITY PLAN

Placemaking: Housing a diverse population

Community: Building a healthy, active and resilient community

Culture: Supporting excellent, efficient operations

COUNCIL POLICY

Not Applicable.

STATUTORY PROVISIONS

Not Applicable.

BACKGROUND

On 3 February 2017, Minda and Council participated in formal mediation in an attempt to resolve certain issues.

Following the mediation, on Tuesday 14 February 17, Council confidentially resolved (Resolution Number C140217/676) the following in relation to negotiations regarding the encroachment of land under the Somerton Surf Life Saving Club (SLSC) building:

- “1. That Council notes, and indicates its support for, the “In Principle Agreement Subject to Ratification” reached with Minda at mediation, as set out in the Term Sheet and Annexures signed and dated 3 February 2017 located at Attachment 1 to Report Number 46/17.
2. That the Chief Executive Officer be given authority to liaise with the Somerton Surf Life Saving Club and, thereafter, to negotiate the terms of a final Deed of Settlement with Minda on the agreed basis, including suitable terms for a licence over Area A (Term 5) and the matters referred to in Terms 7, 8 and 13 of the In Principle Agreement.
3. That a final Deed of Settlement be brought back to the Council for ratification.
4. That the commencement of legal proceedings, and the making of any pre-action settlement offer, be deferred pending the above.”

The Deed of Settlement has now been negotiated between Minda (through their lawyers DMAW) and Council staff (through our lawyers Norman Waterhouse) and is awaiting execution following Council’s ratification.

Refer Attachment 1

REPORT

Upon ratification and execution of the Deed, Council will enter into a series of actions to fulfil its obligations. While the Deed contains the full details of the obligations and timings, a summary table and site map has been provided for your information.

Refer Attachments 2 and 3

Council staff and Minda have negotiated the details of the Deed in line with the terms specified in the previous *In Principle Agreement*. The Deed sets out the mechanism for how the terms in the In Principle Agreement will be achieved and includes the land encumbrances for both Council and Minda, and the Licence agreement for 'Area A'.

Refer Attachments 4-7

Primarily, Council will be responsible to:

- pay Minda the previously agreed sum of \$150,000 for the encroachment land;
- re-negotiate the lease with the Somerton SLSC including: Removing 'Area A', adding the encroachment land and other matters deemed pertinent to any lease re-negotiation (a further Council report will be provided);
- design and install a bin waste enclosure at the Somerton SLSC (at Council's cost);
- prepare and lodge a Plan of Division and Encumbrance details (at Council's cost);
- withdraw the S84 enforcement notice against Minda and approve the development application for the boundary fence posts (which is deemed appropriate subject to the boundary realignment).

Further to the land issues being progressively settled, executing the Deed will have the additional benefit of enabling Council to continue its work on the Minda Coast Park project.

BUDGET

There are no funds budgeted for in the 2017/18 budget for the Minda settlement or activities pertaining to the settlement.

In the immediate future, Council will need to fund:

- \$150,000 as a pre-settlement fee to Minda to purchase the Somerton SLSC encroachment land.
- Costs associated with the design and installation of a bin waste enclosure at the Somerton SLSC and with the lodgement of the encumbrances and boundary realignment.

The impact of the resolution will be to reduce the 2017/18 budgeted surplus (\$102,540) by the amount required to implement the action of the Deed of Settlement. The financial impact of the resolution will be included in the next quarterly budget review process.

Council may also wish to consider cost recovery opportunities arising from the future disposal of the unmade portions of Lynmouth and Lynton Avenues to Minda or a third party to help off-set the purchase of the SLSC land.

LIFE CYCLE COSTS

While there are no direct life-cycle costs associated with reaching a settlement with Minda in this matter, Council will incur costs associated with formalising and acting on the Terms included in the Deed of Settlement and Release.

CONCLUSION

The Deed of Settlement represents the resolution of the long-standing issues dating back decades in relation to Council and Minda land. The agreement for the first time gives certainty to the Somerton Surf Lifesaving Club and support for the life-saving work they perform for our community.

Council can now proceed with plans for the development of the Coast Park pathway, which will become a State treasure in terms of recreation and social activity now this matter has been put to rest.

CONFIDENTIAL

DEED OF SETTLEMENT AND RELEASE

MINDA INCORPORATED

CITY OF HOLDFAST BAY



DMAW Lawyers Pty Ltd
ABN 26 169 621 194

Level 3, 80 King William Street
Adelaide South Australia 5000
Phone +61 8 8210 2222
Facsimile + 61 8 8210 2233
Email: dmaw@dmawlawyers.com.au
CI Doc: 1580523

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DEED OF SETTLEMENT AND RELEASE

PARTIES

1. **MINDA INCORPORATED** (ABN 37 020 000 711) of 12-16 King George Avenue, North Brighton, in the State of South Australia 5048 (**Minda**)
2. **CITY OF HOLDFAST BAY** (ABN 62 551 270 492) of Brighton Civic Centre, 24 Jetty Road, Brighton in the State of South Australia 5048 (**Council**)

INTRODUCTION

- A. On 3 February 2017, Minda and the Council participated in a formal mediation in an attempt to resolve certain disputes between them (**Mediation**).
- B. At the Mediation, the parties reached an in-principle agreement in respect of certain existing disputes between them concerning:
 - (i) certain land on and adjacent to which the SLSC building is located, comprising both Council Land and Minda Land; and
 - (ii) the Unmade Road Land,(together, the **Dispute**).
- C. The parties have agreed to settle the Dispute and any and all disputes between them arising out of or in connection with the matters the subject of the Dispute, without admission of liability, on the terms set out in this deed.

OPERATIVE CLAUSES

1. Interpretation

In this deed, unless the context otherwise requires:

- 1.1 the Introduction is correct;
- 1.2 headings do not affect interpretation;
- 1.3 singular includes plural and plural includes singular;
- 1.4 words of one gender include any gender;
- 1.5 a reference to time is a reference to Adelaide, Australia time;
- 1.6 a reference to “dollars”, “\$A”, “A\$” or “\$” is a reference to Australian currency;
- 1.7 a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- 1.8 a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this deed, and a reference to this deed includes any schedule or annexure;
- 1.9 reference to a person includes a corporation, body corporate, joint venture, association, government body, firm and any other entity;

- 1.10 a reference to a party is to a party to this deed, and a reference to a party to an agreement includes the party's executors, administrators, successors and permitted assigns and substitutes;
- 1.11 reference to two or more people means each of them individually and all of them jointly;
- 1.12 a provision must not be construed against a party only because that party prepared it;
- 1.13 a provision must be read down to the extent necessary to be valid. If it cannot be read down to that extent, it must be severed;
- 1.14 the meaning of general words or provisions shall not be limited by references to specific matters that follow them (for example, introduced by words such as "including" or "in particular") or precede them or are included elsewhere in this deed;
- 1.15 if a thing is to be done on a day which is not a Business Day, it must be done on the next Business Day;
- 1.16 another grammatical form of a defined expression has a corresponding meaning; and
- 1.17 an expression defined in the Corporations Act has the meaning given by that Act at the date of this deed.

2. Definitions

Unless otherwise specified, in this deed:

Application for Deposit of Plan of Division means an application for deposit of the Plan of Division prepared by Council in a form capable of registration at the LTO, with Council as the applicant;

Approval Condition Date has the meaning given to that term in clause 3.2.3;

Area A means that portion of the Minda Land identified as "Area A – Carpark" on the Plan;

Authority means any government or any public, statutory, governmental, semi-governmental, local governmental, municipal or judicial body, tribunal, entity or authority and includes a Minister of the Crown (in any right), and any person, body, entity or authority exercising a power pursuant to an Act of Parliament and having proper jurisdiction and constitutional power in relation to the matter in question;

Board Condition Date has the meaning given to that term in clause 3.2.1;

Business Day means any day except a Saturday or a Sunday or other public holiday or bank holiday in South Australia;

Consideration means \$150,000;

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

Council Land means the whole of the land comprised in Certificate of Title Register Book Volume 5476 Folio 969;

Council Land Encumbrance means an encumbrance in the form set out in Annexure B;

Development Act means the *Development Act 1993* (SA);

Development Application means a development application or an application to amend an existing development application, made by Minda to Council in relation to Minda attaching shade cloth to the existing posts located on or near to the New Boundary (**Posts**) (such Development Application being in the appropriate form and being made by Minda promptly after the date of this deed);

Dispute has the meaning given to that term in paragraph B of the Introduction;

Enclosure has the meaning given to that term in clause 12.1;

Enforcement Notice means the enforcement notice issued by Council to Minda pursuant to section 84(2) of the Development Act dated 9 September 2016;

Final Application for Deposit of Plan of Division means the Application for Deposit of Plan of Division in the form approved by Minda in accordance with clause 5;

GST has the same meaning as it has in the GST Act;

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

Licence to Use means a licence in the form set out in Annexure D;

LTO means the South Australian Lands Titles Office;

Minda Approval Period has the meaning given to that term in clause 5.2;

Minda Board means the management committee of Minda;

Minda Land means the whole of the land comprised in Certificate of Title Register Book Volume 6182 Folio 301;

Minda Land Encumbrance means an encumbrance in the form set out in Annexure C;

New Boundary means the proposed new boundary between the Council Land and the Minda Land marked as "New Boundary" on the Plan;

Plan means the plan set out in Annexure A;

Plan of Division means a plan of division to effect a resubdivision of the Minda Land and the Council Land so that the boundary between the Minda Land and the Council Land follows the New Boundary, resulting in the area of the Council Land increasing by the aggregate of the areas marked as Area B, C, D, E, F, G, H and I on the Plan (as amended in accordance with clause 3.4.3, where applicable);

Posts has the meaning given to that term in the definition of "Development Application";

Real Property Act means the *Real Property Act 1886* (SA);

Settlement means occurrence of the acts set out in clause 6.2 to be performed on

the Settlement Date;

Settlement Date means the date that is 30 days after the date on which the Application for Deposit of Plan of Division is approved (or deemed to have been approved) by Minda in accordance with clause 5, or such other date as the parties agree in writing;

SLSC means Somerton Surf Lifesaving Club Incorporated (ABN 85 241 889 464) of Corner of Esplanade and Repton Rd, Somerton Park, in the State of South Australia 5044;

SLSC Lease means the existing lease between SLSC and Council in respect of SLSC's use of the Council Land (and certain portions of the Minda Land);

Sunset Date means the date that is the two (2) year anniversary of the date of this deed, or such other date as the parties agree in writing;

Term Sheet means the term sheet entered into between the parties setting out the terms of the in-principle agreement reached at the Mediation, dated 3 February 2017;

Unmade Road Land means the land comprising the unmade portions of Lynton Avenue and Lynmouth Avenue (respectively), located to the west of King George Avenue, North Brighton SA 5048.

3. Conditions precedent

3.1 With the exception of this clause 3, clause 4, clause 14.2 and clauses 17 to 29 (inclusive), this deed and the parties rights and obligations under it are subject to:

3.1.1 approval of this deed by the Minda Board;

3.1.2 Council and SLSC agreeing to vary the terms of the SLSC Lease to provide for:

(a) the excise of Area A from the scope of the SLSC Lease; and

(b) SLSC to vacate Area A on or before the date that is 90 days after the date of this deed;

3.1.3 Council withdrawing its Enforcement Notice and approving the Development Application (if any); and

3.1.4 Council obtaining a certificate under section 51 of the Development Act in respect of the division (within the meaning of the Development Act) of land to be effected by the Plan of Division,

(Conditions).

3.2 In respect of each of the Conditions, the parties agree as follows:

3.2.1 Minda must use its best endeavours to fulfil the Condition set out in clause 3.1.1 on or before the date that is 60 days after the date of this deed (**Board Condition Date**);

- 3.2.2 Council must use its best endeavours (but without fettering any statutory discretion it may have in connection with the Development Application) to fulfil the Conditions set out in clause 3.1.2 and clause 3.1.3 on or before the date that is 30 days after the Board Condition Date, and if they are not fulfilled by that date, must continue to use its best endeavours to fulfil each of those Conditions on or before the Sunset Date; and
- 3.2.3 on and from the date that the last of the Conditions in clause 3.1.1 and clause 3.1.2 is satisfied (or in the case of the Condition in clause 3.1.1, waived in accordance with clause 3.5) (**Approval Condition Date**), Council must use its best endeavours to fulfil the Condition set out in clause 3.1.4 on or before the date that is 180 days after the Approval Condition Date, and if it is not fulfilled by that date must continue to use its best endeavours to fulfil that Condition on or before the Sunset Date.
- 3.3 Each party must keep the other informed as to the status of each of the Conditions for which it is responsible and its progress and the actions it has taken in endeavouring to fulfill such Conditions, and must immediately notify the other in writing when it becomes aware of the satisfaction (or waiver) of such a Condition.
- 3.4 For the purposes of clause 3.2.3, the parties acknowledge and agree that:
- 3.4.1 Council is responsible for the following (which it must undertake in consultation with Minda):
- (a) preparing the Plan of Division; and
 - (b) arranging and obtaining (as the case may require) all development authorisations (within the meaning of the Development Act) and other consents and approvals necessary to obtain a certificate under section 51 of the Development Act in respect of the division (within the meaning of the Development Act) of land to be effected by the Plan of Division;
- 3.4.2 Minda must cooperate with, and provide all reasonable assistance to, Council in connection with the matters referred to in clause 3.4.1 (including signing documents and giving its consent, but is not required to consent to the Application for Deposit of Plan of Division until Settlement (and then only in accordance with clause 6)); and
- 3.4.3 if Council cannot satisfy the Condition in clause 3.1.4 unless minor amendments are made to the Plan of Division, then the Plan of Division may be so amended with the consent of each party, which consent must not be unreasonably withheld by a party (having regard to the impact and potential impact on that party's use and enjoyment of land).
- 3.5 Minda alone may waive either or both of the Conditions in clause 3.1.1 and clause 3.1.3 by notice to Council.
- 3.6 The Conditions in clause 3.1.2 and clause 3.1.4 cannot be waived, unless otherwise agreed between the parties in writing.

- 3.7 If any Condition is not either satisfied or waived in accordance with this deed prior to the Sunset Date, either party may (provided that party has complied with this clause 3) terminate this deed by written notice to the other party given on or after the Sunset Date.
- 3.8 If the Condition in clause 3.1.1 is not satisfied (or waived) by the Board Condition Date, either party may (provided that party has complied with this clause 3) terminate this deed by written notice to the other party.
- 3.9 If a party terminates this deed in accordance with clause 3.7 or 3.8, no party has further rights against the other party under this deed except in respect of default under this clause 3, clause 14.2 or clauses 17 to 29 (inclusive).

4. **Area A obligations**

- 4.1 On or before the Approval Condition Date, Council must vacate, and must procure that SLSC vacates, Area A in its entirety.
- 4.2 On the Approval Condition Date:
 - 4.2.1 Council must deliver to Minda an original counterpart of the Licence to Use, duly executed by Council in its capacity as licensee; and
 - 4.2.2 Minda must deliver to Council an original counterpart of the Licence to Use, duly executed by Minda in its capacity as licensor.
- 4.3 Council represents and warrants for the benefit of Minda that on and from the Approval Condition Date SLSC has no right or interest in Area A under or in connection with the SLSC Lease or any other agreement or arrangement with Council, other than the Licence to Use or any sub-licence properly granted pursuant to the Licence to Use.

5. **Preparation of Application for Deposit of Plan of Division**

- 5.1 Council must, not less than one (1) Business Day and not more than 15 Business Days after the date on which the last of all of the Conditions are either satisfied or waived, deliver to Minda for approval (which approval must not be unreasonably withheld) a copy of the Application for Deposit of Plan of Division.
- 5.2 Minda must, within 5 Business Days of receipt of the Application for the Deposit of Plan of Division (**Minda Approval Period**), consider for approval the Application for Deposit of Plan of Division and during that period Minda has the right (subject to clause 5.3) to require Council (by notice in writing to Council) to amend the Application for Deposit of Plan of Division to take into account issues raised by Minda that are consistent with the Term Sheet and this deed.
- 5.3 Minda must act reasonably and in good faith (having regard to the intentions of the parties in relation to the location of the New Boundary as set out in the Term Sheet) in considering the Application for Deposit of Plan of Division delivered to it by Council and in determining to either approve the Application for Deposit of Plan of Division or to raise issues and require amendments to address those issues.
- 5.4 If Minda:

- 5.4.1 does not issue Council with a notice in accordance with clause 5.2 requiring an amendment to the Application for Deposit of Plan of Division, the Application for Deposit of Plan of Division will be deemed to be approved by Minda at the expiry of the Minda Approval Period;
- 5.4.2 issues Council with a notice in accordance with clause 5.2 requiring an amendment to the Application for Deposit of Plan of Division, the Application for Deposit of Plan of Division will be deemed to be approved by Minda once the required amendments have been incorporated and Council has notified Minda of the same (provided a revised draft of the Application for Deposit of Plan of Division is also delivered to Minda at the time of such notification).

6. Settlement

6.1 Settlement will take place at 11:00am on the Settlement Date at the offices of DMAW Lawyers Pty Ltd, Level 3, 80 King William Street, Adelaide SA 5000, or at such other time and/or location as the parties agree in writing.

6.2 At or before Settlement:

6.2.1 Council must:

- (a) pay to Minda the Consideration;
- (b) deliver to Minda the following documents duly executed by Council:
 - (i) an original counterpart of the Minda Land Encumbrance (executed in its capacity as encumbrancee); and
 - (ii) an original counterpart of the Council Land Encumbrance (executed in its capacity as encumbrancer); and
- (c) deliver to Minda evidence of the consent of those parties (relevant to the Council Land) whose consent is required under section 223LH of the Real Property Act, sufficient to enable the Final Application for Deposit of Plan of Division to be lodged and registered at the LTO.

6.2.2 Minda must deliver to Council:

- (a) the following documents duly executed by Minda:
 - (i) an original counterpart of the Minda Land Encumbrance (executed in its capacity as encumbrancer);
 - (ii) an original counterpart of the Council Land Encumbrance (executed in its capacity as encumbrancee);and
 - (iii) an original copy of the Final Application for Deposit of Plan of Division (executed in its capacity as a consenting party); and

- (b) evidence of the consent of those parties (relevant to the Minda Land) whose consent is required under section 223LH of the Real Property Act, sufficient to enable the Final Application for Deposit of Plan of Division to be lodged and registered at the LTO.

7. **Simultaneous actions at Settlement**

In respect of Settlement:

- 7.1 the obligations of the parties under clause 6.2 are interdependent;
- 7.2 all actions required to be performed are, if performed on the Settlement Date, taken to have occurred simultaneously on the Settlement Date;
- 7.3 if either party fails to fully comply with its obligations under this deed in respect of Settlement and the other party does not waive those obligations then:
 - 7.3.1 each party must return to the other all documents delivered to it under this deed for Settlement; and
 - 7.3.2 each party must do everything reasonably required by the other party to reverse any action taken under clause 6.2,

without prejudice to any other rights any party may have in respect of that failure.

8. **Notice to complete**

If a party (**Defaulting Party**) fails to perform any of its obligations at Settlement on the Settlement Date and the other party is ready, willing and able to perform all of its obligations, then that party (**Non-Defaulting Party**) need not perform its obligations at Settlement and may give the Defaulting Party written notice setting a new date for Settlement that must be a Business Day not less than five (5) Business Days after the date originally scheduled for Settlement.

9. **Failure to complete**

If, on the new date scheduled for Settlement pursuant to clause 8, the Non-Defaulting Party remains ready, willing and able to perform all of its obligations in respect of Settlement and the Defaulting Party does not perform all of its material obligations, the Non Defaulting Party may, without affecting any other rights the Non-Defaulting Party may have against the Defaulting Party, terminate this deed by giving written notice to the Defaulting Party.

10. **Completion certificate**

The parties agree that a certificate signed by or on behalf of Minda and Council will constitute evidence of Settlement having occurred.

11. **Action following Settlement**

- 11.1 Without limiting clause 25:
 - 11.1.1 Council must:

- (a) immediately after Settlement, do all things necessary to enable the lodgement of the Final Application for Deposit of Plan of Division and Council Land Encumbrance at the LTO (and in the case of the Council Land Encumbrance, in accordance with the terms of the Council Land Encumbrance); and
- (b) immediately after Settlement, lodge the Final Application for Deposit of Plan of Division at the LTO; and
- (c) lodge the Council Land Encumbrance at the LTO, in series with, and immediately after, the Final Application for Deposit of Plan of Division (and otherwise in accordance with the terms of the Council Land Encumbrance); and

11.1.2 Minda must:

- (a) immediately after Settlement, do all things necessary to enable the lodgement of the Minda Land Encumbrance at the LTO in accordance with the terms of the Minda Land Encumbrance; and
- (b) lodge the Minda Land Encumbrance at the LTO, at the same time as (or immediately after) Council lodges the Final Application for Deposit of Plan of Division and the Council Land Encumbrance in accordance with clause 11.1.1 (and otherwise in accordance with the terms of the Minda Land Encumbrance).

12. Design and installation of waste bin enclosure

12.1 No later than 90 days after Settlement, Council must:

12.1.1 design in consultation with Minda; and

12.1.2 install on that part of the land marked "Area F" on the Plan,

an enclosure for the storage of waste bins for use by the SLSC (or any subsequent occupant of the Council Land) (**Enclosure**).

12.2 The Enclosure:

12.2.1 must not exceed:

- (a) 1.5 metres in height; and
- (b) 8 metres in length (running parallel to the SLSC building located on the Council Land);

12.2.2 must screen the view of the waste bins to be stored within it from the retirement apartments located on the Minda Land; and

12.2.3 must be in a form, and be constructed out of materials, that complement the style and colour of the SLSC building located on the Council Land.

13. **Boundary posts**

- 13.1 The parties each acknowledge and agree that Minda must, subject to approval of the Development Application:
- 13.1.1 promptly after Settlement do all things reasonably necessary to reinstate grass to a (approximately two (2) metres wide) channel in-line with, and to the east of, the roller door located on the eastern side of the SLSC building located on the Council Land; and
 - 13.1.2 on or before the first anniversary of the date on which Council approves the Development Application, remove the Posts (together with any attached shade cloth), whereupon the Council may undertake such works as it thinks fit within the Areas marked G, H and I on the Plan (subject to the Council Land Encumbrance and obtaining any necessary statutory approval) including, but not limited to, paving.
- 13.2 Subject to approval of the Development Application, Council, in its capacity as a party to this deed and not in its capacity as a statutory authority, must not do anything that might interfere with Minda validly undertaking the works contemplated in the Development Application.

14. **Unmade Road Land**

- 14.1 The parties acknowledge and agree that:
- 14.1.1 Minda has no property rights in respect of the Unmade Road Land; and
 - 14.1.2 Minda must, by the later of:
 - (a) 30 days after Settlement; or
 - (b) 14 months after the date of this deed,
 remove all fencing or similar barriers located the Unmade Road Land (or on its boundary) that were installed by Minda.
- 14.2 Council acknowledges and agrees that it is responsible for, and must maintain to a reasonable standard, the Unmade Road Land at all times on and from the date Minda completes the works contemplated in clause 14.1.2.

15. **End of dispute**

Upon Settlement occurring, the Dispute shall be treated as at an end and, subject to the terms of this deed, Council and Minda release, discharge and hold harmless each other, together with all servants, agents, contractors and associates (including those persons who were once but are no longer servants, officers, agents, contractors and associates), from any and all causes of action, claims, demands, suits, debts due, costs payable or proceedings, whether or not currently known or made and whether or not presently in existence or arising in the future, which in any way arise out of or in connection with the matters the subject of the Dispute.

16. Bar to proceedings

- 16.1 This deed may be pleaded as a bar to any actions, suits, claims, demands or legal proceedings arising out of or in connection with the matters the subject of releases and discharges described in clause 15.
- 16.2 The parties covenant that they will not commence any proceedings against each other arising out of or in connection with the subject of the releases and discharges described in clause 15, except for proceedings instituted for a breach of this deed.

17. Non-disparagement

Except as required by law, each party to this deed agrees that it will not, from the date of this deed, in respect of any matter arising out of or in connection with the subject of the Dispute, make, promote, cause or encourage any other person to make any comments or statements (whether verbal or in writing) which are disparaging, disapproving or critical of the other party to this deed.

18. Public statements and confidentiality

- 18.1 Subject to clauses 18.2 and 18.3, the parties shall not make, cause to be made or associate themselves with any public statement or comment in respect of the Dispute, or the resolution of the Dispute, other than a statement in terms that the Dispute has been finally resolved on agreed terms.
- 18.2 A party may only use the Confidential Information:
- 18.2.1 if necessary to perform that party's obligations under this deed, or to facilitate enforcement of this deed; or
 - 18.2.2 if the other party consents to its use.
- 18.3 A party may only disclose Confidential Information:
- 18.3.1 to the disclosing party's professional advisers;
 - 18.3.2 if required by law;
 - 18.3.3 if necessary to perform the disclosing party's obligations or exercise the disclosing party's rights under this deed;
 - 18.3.4 if the other party consents to the disclosure;
 - 18.3.5 if and to the extent the information is publicly available other than by a breach of the disclosing party of this deed, or any other agreement; or
 - 18.3.6 if the information is already in the possession of the disclosing party or comes into the possession of the disclosing party other than by breach of this deed, or any other agreement.
- 18.4 In this clause 18, the term "**Confidential Information**" means:
- 18.4.1 the terms and existence of this deed;
 - 18.4.2 any information belonging to a party that is marked "confidential"; and

- 18.4.3 any other information belonging to a party which is of a confidential nature.

19. GST

- 19.1 This clause applies if a party makes a taxable supply (within the meaning of any law imposing GST) in connection with this deed for consideration unless such consideration is expressly provided to be "GST inclusive".
- 19.2 Subject to this clause, the consideration payable by a party represents the value of the taxable supply.
- 19.3 Subject to clause 19.5, the party liable to pay for the taxable supply must also pay, at the same time and in the same manner as the value is otherwise payable, a further amount calculated by multiplying:
- 19.3.1 the amount otherwise payable; by
- 19.3.2 the GST rate for the time being.
- 19.4 If a payment to a party under this deed is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled on the acquisition of the supply for which that loss, cost or expense is incurred. The party is assumed to be entitled to full input tax credits unless it demonstrates that its entitlement is otherwise prior to the date on which payment must be made by the other party.
- 19.5 A party's right to payment under this clause is subject to a valid tax invoice being delivered to the party liable to pay for the taxable supply.

20. Consents and approvals

- 20.1 Unless otherwise provided, a party may give or withhold its determination, consent, agreement, authorisation or approval:
- 20.1.1 in that party's absolute discretion;
- 20.1.2 with or without conditions and without giving reasons;
- 20.1.3 when that party chooses.
- 20.2 A party's determination, consent, agreement, authorisation or approval is valid only if it is in writing and signed by that party or its authorised representative.

21. Notice

- 21.1 Notice must be in writing and in English, and may be given by an authorised representative of the sender.
- 21.2 Notice may be given to a person:
- 21.2.1 personally;
- 21.2.2 by leaving it at the person's address last notified;
- 21.2.3 by sending it by pre-paid mail to the person's address last notified;

21.2.4 by sending it by facsimile to the person's facsimile number last notified;

21.2.5 by sending it by electronic mail to the person's email address last notified.

21.3 Notice is deemed to be received by a person:

21.3.1 when left at the person's address;

21.3.2 if sent by pre-paid mail, six (6) Business Days after posting;

21.3.3 if sent by facsimile, at the time and on the day shown in the sender's transmission report, if it shows that the whole notice was sent to the person's facsimile number last notified;

21.3.4 if sent by electronic mail, on the day after the day the message is showing on the sender's electronic mail system as having been properly transferred or transmitted.

However, if the notice is deemed to be received on a day which is not a Business Day it is deemed to be received on the next Business Day.

21.4 If two or more people comprise a party, notice to one is effective notice to all.

22. **Assignment**

A party may only assign its rights or obligations under this deed with the written consent of the other party.

23. **No waiver**

23.1 A party may only waive a breach of this deed in writing signed by that party or its authorised representative.

23.2 A waiver is limited to the instance referred to in the writing (or if no instance is referred to in the writing, to past breaches).

24. **No merger**

The rights and obligations under this deed continue after Settlement.

25. **Further action**

25.1 Each party must do all things necessary to carry out this deed, including:

25.1.1 executing documents; and

25.1.2 ensuring its employees and agents perform their obligations.

25.2 A party must not do anything that will prevent this deed from being carried out.

26. **Entire agreement**

26.1 This document, with its annexures, records the entire agreement between the parties about its subject matter.

- 26.2 The parties exclude all terms implied by law, where possible.
- 26.3 Neither party has given any warranty or made any representation to the other party about the subject matter of this Deed, other than those warranties and representations appearing in this document.

27. Counterparts

- 27.1 This deed may be executed in any number of counterparts. A counterpart may be a facsimile.
- 27.2 Together all counterparts make up one document.
- 27.3 If this deed is executed in counterparts, it takes effect when each party has received the counterpart executed by each other party.

28. Governing law

- 28.1 This deed is governed by the law of South Australia.
- 28.2 The parties irrevocably submit to the jurisdiction of the courts of South Australia and the courts of appeal from them.
- 28.3 No party may object to the jurisdiction of any of those courts on the ground that it is an inconvenient forum or that it does not have jurisdiction.

29. Costs and expenses

- 29.1 Each party must pay its own costs and expenses incurred in connection with preparation, negotiation and execution of this deed and its own legal and conveyancing costs in connection with the transaction contemplated by this deed.
- 29.2 Subject to clause 29.1, Council is responsible for all costs and expenses incurred in connection with all transactions contemplated by this deed (including, boundary realignment costs, survey costs, stamp duty, LTO fees and all other fees and charges levied by any Authority in respect of such transactions).

EXECUTED as a deed on

2017

Executed by **MINDA INCORPORATED** in accordance with its constitution:

.....
Signature of authorised officer

.....
Signature of authorised officer

.....
Name of authorised officer

.....
Name of authorised officer

THE COMMON SEAL of **THE CITY OF HOLDFAST BAY** was affixed in the presence of:

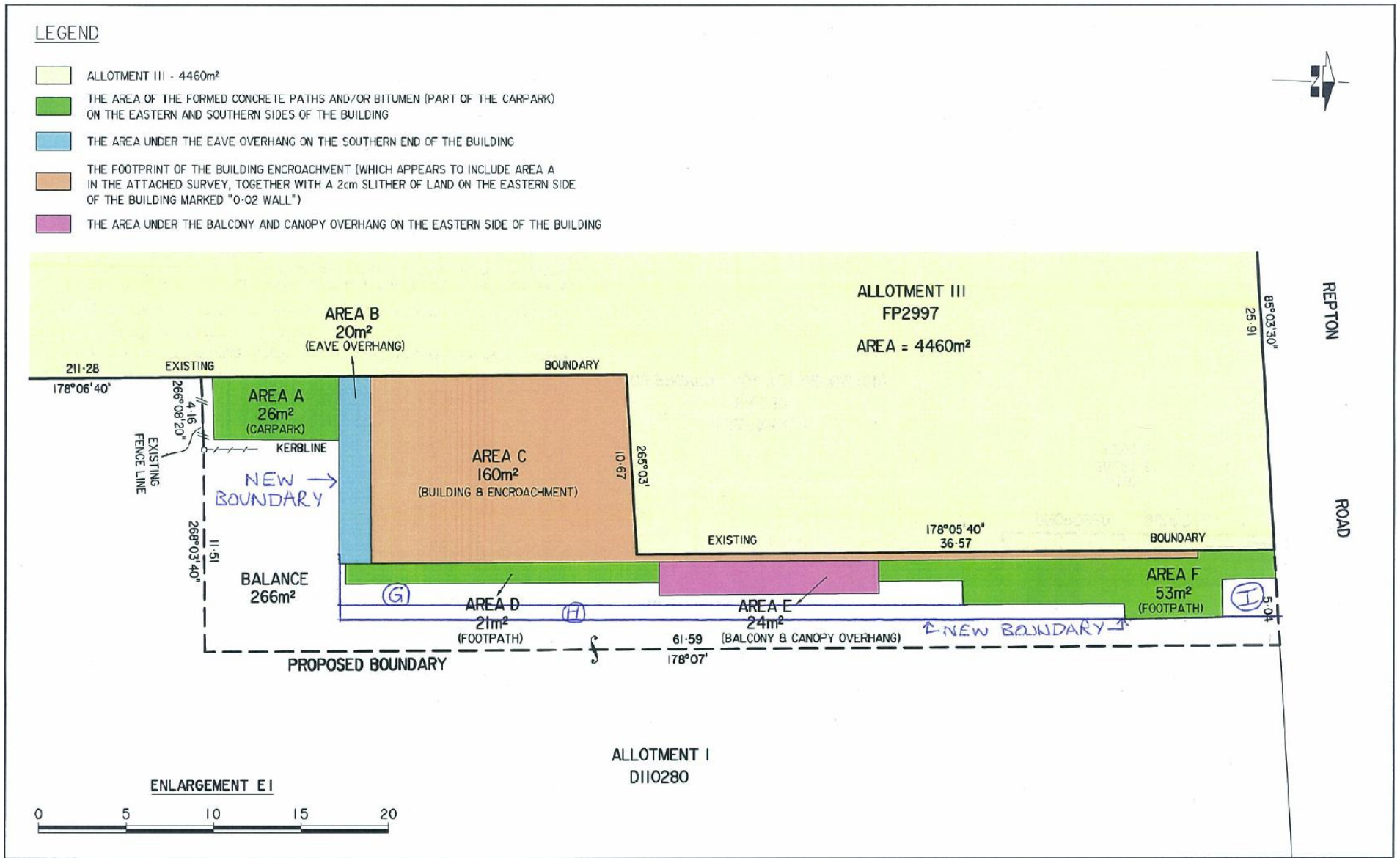
.....
Mayor

.....
Name (please print)

.....
Chief Executive Officer

.....
Name (please print)

Annexure A – Plan



Annexure B – Council Land Encumbrance

Annexure C – Minda Land Encumbrance

Annexure D – Licence to Use

Attachment 2 - CoHB and Minda Deed of Settlement – SUMMARY ACTION PLAN
June - July 2017

This document is a summary of significant items or actions, it does not replace the details contained within the Deed of Settlement Document.

*Approval Condition Date – date when conditions precedent (Items 2, 3 and 4) are met.

	ACTION	TIMELINE	RESPONSIBILITY	COMMENT	
PRE-SETTLEMENT					
1.	Execute Deed of Settlement: Enables Council to start meeting conditions precedent	Council and Minda to arrange suitable time following Council endorsing the Deed	Council and Minda		
CONDITIONS PRECEDENT	2.	Minda Board approve Deed	Within 60 days of Deed Execution	Minda	
	3.	Council and SLSC agree to amend the existing SLSC lease to remove the Area A Land from the scope of the lease	Within 30 days of Minda Board Approval	Council and SLSC	
	4.	Council and SLSC agree to amend the existing SLSC lease to provide for SLSC to vacate the Area A land	Within 90 days of Deed Execution	Council and SLSC	
	5.	Council withdraw S84 Enforcement notice for boundary posts	Within 30 days of Minda Board Approval	Council - DA officer	DA is in the system and both can be approved/ removed within 1 day.
	6.	Council approve Development Application for boundary posts	Within 30 days of Minda Board Approval	Council –DA officer	
	7.	Council obtain S51 certificate for Plan of Division	Within 180 days after the date that the last of the conditions set out at Items 2, 3 and 4 are satisfied (Approval Condition Date)	Council	
8.	SLSC to vacate Area A	By the date that the last of the conditions set out at Items 2, 3 and 4 are satisfied (Approval Condition Date)	SLSC		
9.	Council to provide Minda executed License to Use (Area A) (Minda to provide Council with their equivalent)	On or before the Approval Condition Date	Council and Minda		

Attachment 2 - CoHB and Minda Deed of Settlement – SUMMARY ACTION PLAN
June - July 2017






	ACTION	TIMELINE	RESPONSIBILITY	COMMENT
10.	Council to provide to Minda for approval the Application for Deposit of Plan of Division	Between one business day and 15 business days after the date on which the last of the conditions set out at Items 2, 3, 4 and 7 are satisfied. Note section 51 clearance is likely to be the last condition to be satisfied.	Council	
11.	Minda to consider the Application for approval and either approve or issue Council with a notice requiring amendment	Within five business days of receipt of the Application.	Minda	
12.	SETTLEMENT	Day, time location to be confirmed	Council and Minda	Dependencies 2-11
13.	Council to pay Minda \$150,000 for encroachment land	At Settlement	Council	
14.	Minda to provide to Council the original Application for Deposit of Plan of Division signed by Minda	At or before Settlement	Minda	
15.	Council to provide to Minda evidence of any third party consents required to the division, sufficient to enable the Application to be lodged (Minda to provide Council with their equivalents)	At or before settlement	Council and Minda	
16.	Council to provide to Minda executed counterparts of both the Minda Land Encumbrance (for the fire access to the SLSC) and the Council Land Encumbrance (for restricting development on 'Area I' the small) (Minda to provide Council with their equivalents)	At or before Settlement	Council and Minda	
POST-SETTLEMENT				
17.	Council lodge Final Application for Deposit of Plan of Division and Council Land Encumbrance with LTO	Immediately after Settlement	Council	Minda to lodge their encumbrance at the same time
18.	Minda to lodge the Minda Land Encumbrance	Immediately after Settlement	Minda	
19.	Design and install bin enclosure in 'Area F' at the SLSC at Council's cost.	Within 90 days of Settlement	Council (SLSC + Minda)	Council and SLSC design with Minda input – note maximum

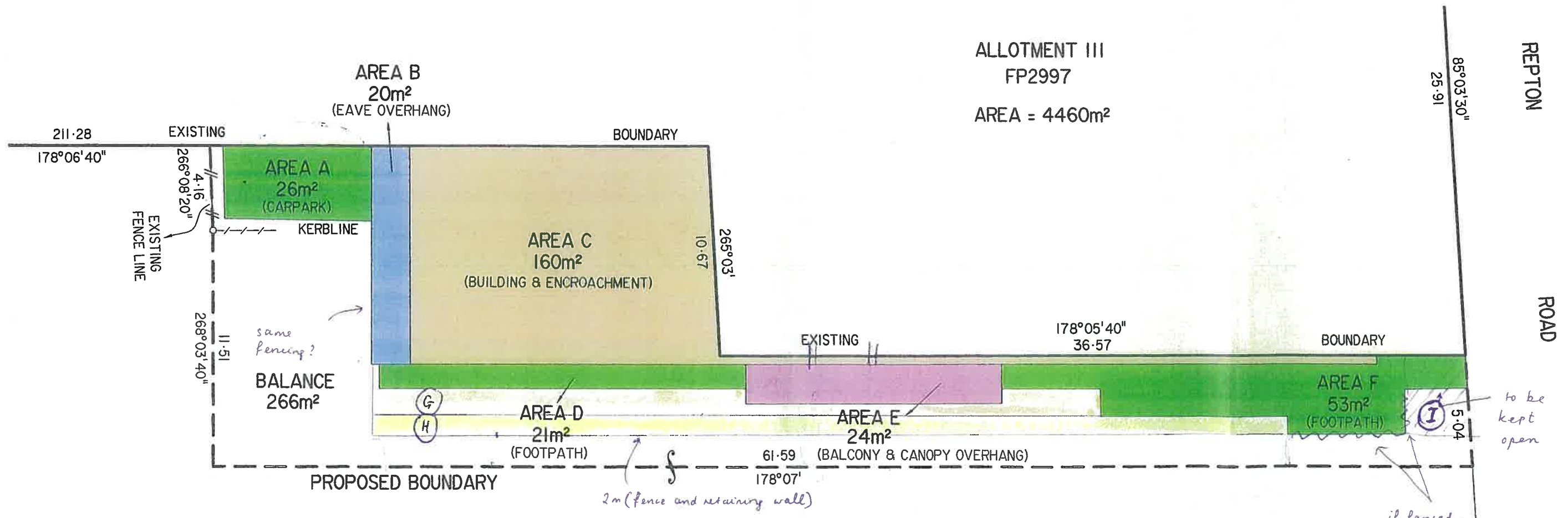
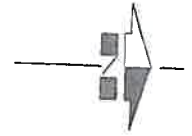
Attachment 2 - CoHB and Minda Deed of Settlement – SUMMARY ACTION PLAN
June - July 2017

	ACTION	TIMELINE	RESPONSIBILITY	COMMENT
				size not to be exceeded
20.	Minda to remediate Area A with 2m wide grass	Promptly after Settlement	Minda	
21.	Minda to remove posts together with any attached shade cloth	On or before the first anniversary of the date upon which Council approves the Development Application at Item 6	Minda	Council may then undertake such works as it thinks fit within Area G, H and I, including paving
22.	Minda to remove fencing or barriers on the Unmade Road Land or the Minda boundary	The later of 30 days after Settlement or 14 months of Deed Execution	Minda	
23.	Council to maintain Unmade Road Land	Ongoing from the date Minda removes the fencing or barriers	Council	

CONFIDENTIAL

LEGEND

-  ALLOTMENT 111 - 4460m²
-  THE AREA OF THE FORMED CONCRETE PATHS AND/OR BITUMEN (PART OF THE CARPARK) ON THE EASTERN AND SOUTHERN SIDES OF THE BUILDING
-  THE AREA UNDER THE EAVE OVERHANG ON THE SOUTHERN END OF THE BUILDING
-  THE FOOTPRINT OF THE BUILDING ENCROACHMENT (WHICH APPEARS TO INCLUDE AREA A IN THE ATTACHED SURVEY, TOGETHER WITH A 2cm SLITHER OF LAND ON THE EASTERN SIDE OF THE BUILDING MARKED "O-02 WALL")
-  THE AREA UNDER THE BALCONY AND CANOPY OVERHANG ON THE EASTERN SIDE OF THE BUILDING



ALLOTMENT I
D110280
(APPROVED - NOT YET DEPOSITED)

1. CT 5476/969
2. FOR ANY ANNOTATIONS OR EASEMENT DETAILS REFER TO CT 5476/969
3. FOR PREVIOUS SURVEY ON 13/04/2016 PLEASE REFER TO 25312VCO1-R0

ENLARGEMENT E1



FYFE Earth Partners
ACN 008 116 130

LEVEL 3, 80 FLINDERS STREET, ADELAIDE, SA, 5000
GPO BOX 2450 ADELAIDE SA 5001
TEL (08) 8201 9600
FAX (08) 8201 9650
E-mail info@fyfe.com.au

THIS IS NOT A CERTIFIED SURVEY FOR THE PURPOSES OF THE REGULATIONS UNDER THE SURVEY ACT, 1992
THIS PLAN WILL NOT BE EXAMINED FOR BOUNDARY DEFINITION OR OTHERWISE BY THE REGISTRAR-GENERALS OFFICE
FUTURE RE-SURVEY OF ADJOINING LANDS OR SUBSEQUENT REGISTRATION OF CERTIFIED SURVEY PLANS MAY ALTER THE BOUNDARY DEFINITION OR INFORMATION HEREON

REFERENCE 25312-1-2 DWG 25312VCO2-R0
DRAFTER KAJ SHEET 2 OF 2

SURVEYED BY FYFE PTY LTD ON 16/08/2016
DATE 22/08/2016
Licensed Surveyor

IDENTIFICATION SURVEY
ALLOTMENT 111 in F2997
57 REPTON ROAD
HUNDRED OF NOARLUNGA
NORTH BRIGHTON

LANDS TITLES REGISTRATION OFFICE

SOUTH AUSTRALIA

ENCUMBRANCE

FORM APPROVED BY THE REGISTRAR-GENERAL

PRIORITY NOTICE ID	
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SERIES NO	PREFIX
	E

BELOW THIS LINE FOR OFFICE & STAMP DUTY PURPOSES ONLY

AGENT CODE

LODGED BY:

CORRECTION TO:

SUPPORTING DOCUMENTATION LODGED WITH INSTRUMENT
(COPIES ONLY)

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- 2
- 3
- 4
- 5

CORRECTION	PASSED
REGISTERED	

ENCUMBRANCE

PRIVACY COLLECTION STATEMENT: The information in this form is collected under statutory authority and is used for maintaining publicly searchable registers and indexes. It may also be used for authorised purposes in accordance with Government legislation and policy requirements.

LAND DESCRIPTION

The whole of the land described in Certificate of Title Register Book Volume 5476 Folio 969

ESTATE & INTEREST

Estate in fee simple

ENCUMBRANCER (Full name and address)

CITY OF HOLDFAST BAY (ABN 62 551 270 492) of 24 Jetty Road, Brighton SA 5048

ENCUMBRANCEE (Full name, address and mode of holding)

MINDA INCORPORATED (ABN 37 020 000 711) of 16 King George Avenue, Brighton SA 5048

OPERATIVE CLAUSE

THE ENCUMBRANCER ENCUMBERS THE ESTATE AND INTEREST IN THE LAND DESCRIBED FOR THE BENEFIT OF THE ENCUMBRANCEE WITH AN ANNUITY OR RENT CHARGE OF

- | | |
|---|---|
| (a) Insert the amount of the annuity or rent charge | (a) \$0.10 (Ten cents) |
| (b) State the term of the annuity or rent charge. If for life use the words "during his or her lifetime" | (b) TO BE PAID TO THE ENCUMBRANCEE
annually as a yearly rent charge for a period of 3999 years commencing on the date of this Encumbrance. |
| (c) State the times appointed for payment of the annuity or rent charge. Any special covenants may be inserted. | (c) AT THE TIMES AND IN THE MANNER FOLLOWING
on the first day of January in each year commencing on the 1 st day of January following the date of this Encumbrance AND with the performance and observance of the following covenants |

1. Definitions

In this Encumbrance unless the contrary intention appears:

Area I Land means the part of the Land identified as area "I" in the Plan, including the boundary to that part of the Land;

Boundary means the boundary between that portion of the Land and the Minda Land that is shown and marked "New Boundary" in the Plan;

Business Day means any day except a Saturday or a Sunday or other public holiday or bank holiday in South Australia;

Deed of Settlement and Release means the deed of settlement and release entered into between the Encumbrancee and the Encumbrancer in or about June 2017 regarding the resolution of a dispute relating to the Land;

Final Application for Deposit of Plan of Division has the same meaning given to that term in the Deed of Settlement and Release;

Fundamental Obligations has the meaning given to that term in clause 5;

Land means the land the subject of this Encumbrance (as described above);

Minda Land means the whole of the land described in Certificates of Title Register Book Volume 6182 Folio 301 and Volume 6182 Folio 302;

Plan means the plan set out in Annexure A; and

Rent Charge means the rent charge described on page 1 of this Encumbrance.

2. Interpretation

In this Encumbrance, unless the contrary intention appears:

2.1 headings do not affect interpretation;

2.2 singular includes plural and plural includes singular;

2.3 words of one gender include any gender;

2.4 a reference to time is a reference to Adelaide, Australia time;

2.5 a reference to "dollars" or "\$" is a reference to Australian currency;

2.6 a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

2.7 a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this deed, and a reference to this deed includes any schedule or annexure;

2.8 a provision must not be construed against a party only because that party prepared it;

2.9 a provision must be read down to the extent necessary to be valid. If it cannot be read down to that extent, it must be severed;

2.10 the meaning of general words or provisions shall not be limited by references to specific matters that follow them (for example, introduced by words such as "including" or "in particular") or precede them or are included elsewhere in this deed; and

2.11 if a thing is to be done on a day which is not a Business Day, it must be done on the next Business Day.

3. **Benefit of Encumbrance**

The Encumbrancee is, as at the date of this Encumbrance, the registered proprietor of the Minda Land and the parties each acknowledge and agree that the covenants contained in this Encumbrance are intended to benefit the Minda Land.

4. **Rent charge**

4.1 The Encumbrancer must only pay the Rent Charge to the Encumbrancee if payment is demanded by the Encumbrancee.

4.2 The Encumbrancee may not demand payment of the Rent Charge so long as the Encumbrancer duly observes all of the covenants in this Encumbrance.

4.3 The provisions of this clause 4 do not in any way affect or prejudice the rights of the Encumbrancee to:

4.3.1 an injunction preventing or restraining any breach of the covenants of this Encumbrance; or

4.3.2 damages for any such breach.

5. **Fundamental obligations**

Unless with the Encumbrancee's consent, the Encumbrancer acknowledges and agrees that it must not:

5.1 erect, install, connect, fix, leave or place, or permit to be erected, installed, connected, fixed, left or placed; or

5.2 do, or permit to be done,

anything on, or directly above or on the boundary of, the Area I Land that would obstruct the view through the Area I Land (or the area immediately above it) or otherwise be inconsistent with the Area I Land remaining as open space; or

5.3 erect or install, or permit the erection or installation of, a fence, wall or any other form of barrier on, or adjacent to, the Boundary.

(Fundamental Obligations).

6. **Failure to comply with Fundamental Obligations**

6.1 If the Encumbrancer in any way breaches the Fundamental Obligations, the Encumbrancee may serve a notice (**Default Notice**) on the Encumbrancer requiring the Encumbrancer to remedy the breach within the period specified in the Default Notice (being a period of not less than 5 Business Days) (**Remedy Period**).

6.2 Without limiting any other rights it may have, if the Encumbrancer fails to remedy a breach that is the subject of a Default Notice within the Remedy Period, the Encumbrancee may take any action required to remedy that breach.

6.3 The Encumbrancer acknowledges, agrees and consents to the Encumbrancee entering the Land at any reasonable time for the purposes of taking action under clause 6.2.

6.4 The reasonable costs and expenses incurred by the Encumbrancee in taking action under clause 6.2 may be recovered by the Encumbrancee as a debt from the Encumbrancer.

7. Consent

If the Encumbrancer requests the consent of the Encumbrancee (including in a particular form) in relation to a proposed dealing with the Land by the Encumbrancer:

7.1 the Encumbrancee must not unreasonably withhold its consent, having regard to the interests of the Encumbrancee; and

7.2 in the event the proposed dealing does not directly impact the Encumbrancee's rights or interests under this Encumbrance, the Encumbrancee must not refuse to provide its consent.

8. Registration of Encumbrance

The Encumbrancer shall ensure that this Encumbrance is registered on the Certificate of Title for the Land free from any other estates or interests in the Land and where this Encumbrance is to be registered in a series of documents, this Encumbrance is to be registered in priority to any other document creating an estate or interest in the Land (excluding the Final Application for Deposit of Plan of Division).

9. Transfer or disposal of Land

The Encumbrancer shall not enter into any contract to sell and shall not transfer or otherwise dispose of its estate or interest in the Land or any part thereof hereby encumbered without first having given notice of this Encumbrance to the intending purchaser or transferee and making it a condition of such contract or transfer that the purchaser or transferee executes and lodges for registration immediately following the memorandum of transfer in respect of the Land a "Memorandum of Encumbrance" (to be prepared by the Encumbrancee's conveyancer or solicitor) in the same or substantially similar form as this Encumbrance in favour of the Encumbrancee.

10. Encumbrancee's rights under Real Property Act 1886

The Encumbrancee shall be entitled to all the powers, rights and remedies given to Encumbrancees by the *Real Property Act 1886* (SA).

11. Release and discharge

The Encumbrancer shall be released and discharged from the payment of the Rent Charge and from the observance and performance of the covenants, conditions, restrictions and stipulations set out in this Encumbrance upon the Encumbrancer ceasing to be the registered proprietor of the Land to the intent that the Rent Charge, covenants, conditions, restrictions and stipulations shall be binding only on the registered proprietor for the time being of the Land.

12. Notice

12.1 Notice must be in writing and in English, and may be given by an authorised representative of the sender.

12.2 Notice may be given to a person:

12.2.1 personally;

12.2.2 by leaving it at the person's address last notified;

12.2.3 by sending it by pre-paid mail to the person's address last notified;

-
- 12.2.4 by sending it by facsimile to the person's facsimile number last notified;
 - 12.2.5 by sending it by electronic mail to the person's email address last notified.

12.3 Notice is deemed to be received by a person:

- 12.3.1 when left at the person's address;
- 12.3.2 if sent by pre-paid mail, six (6) Business Days after posting;
- 12.3.3 if sent by facsimile, at the time and on the day shown in the sender's transmission report, if it shows that the whole notice was sent to the person's facsimile number last notified;
- 12.3.4 if sent by electronic mail, on the day after the day the message is showing on the sender's electronic mail system as having been properly transferred or transmitted.

However, if the notice is deemed to be received on a day which is not a Business Day it is deemed to be received on the next Business Day.

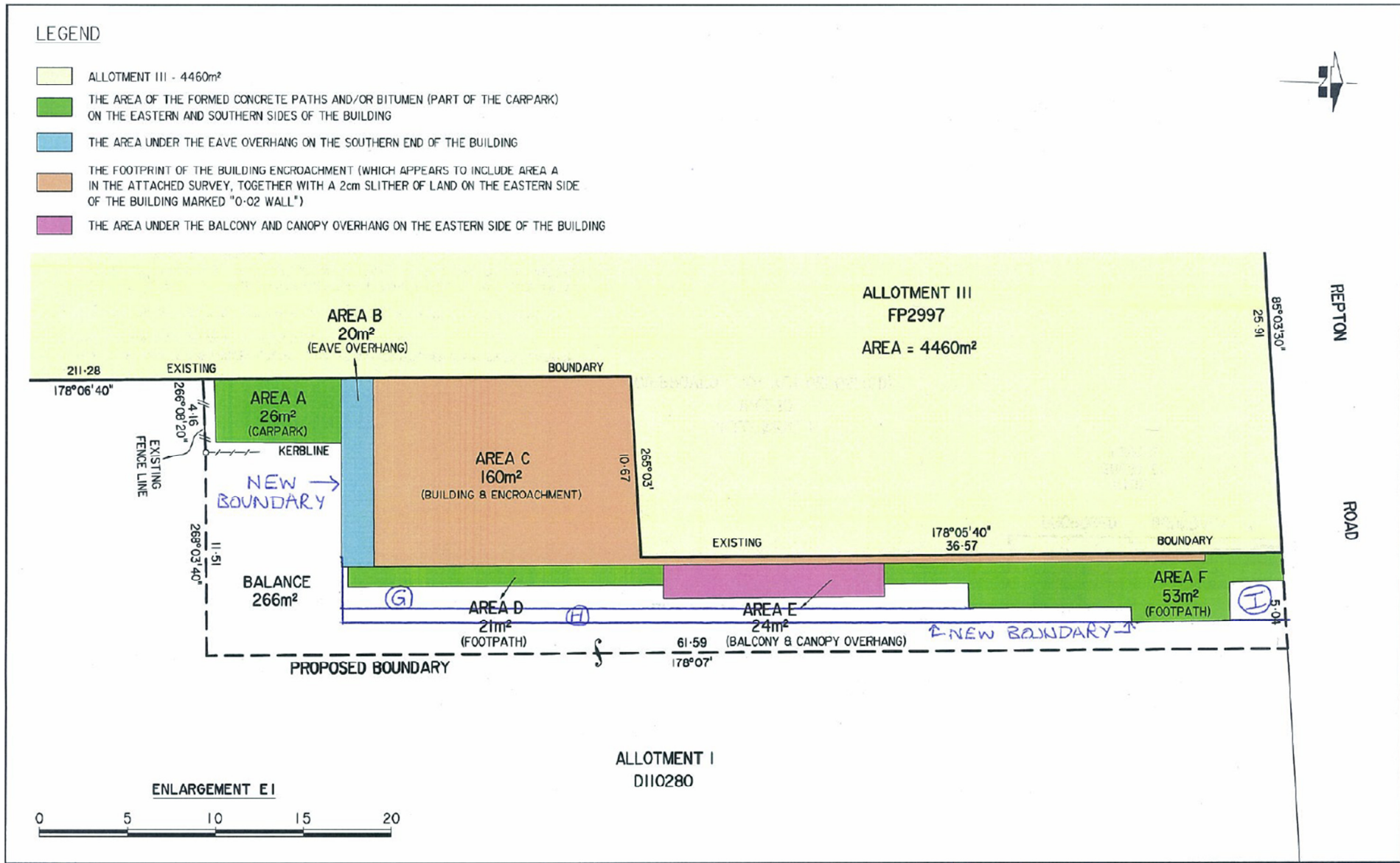
13. **Costs**

The parties shall bear all costs of and incidental to the preparation of this Encumbrance and the Encumbrancer shall bear all duty and registration costs in connection herewith.

14. **Governing law**

- 14.1 This Encumbrance is governed by the law of South Australia.
- 14.2 The Encumbrancer and Encumbrancee irrevocably submit to the non-exclusive jurisdiction of the courts of South Australia and the South Australian division of the Federal Court of Australia, and the courts of appeal from them.
- 14.3 Neither the Encumbrancer nor the Encumbrancee may object to the jurisdiction of any of those courts on the ground that it is an inconvenient forum or that it does not have jurisdiction.

Annexure A – Plan



** Delete the inapplicable*

IT IS COVENANTED BETWEEN THE ENCUMBRANCER AND ENCUMBRANCEE in accordance with the terms and conditions expressed ~~*herein / *in Memorandum No. _____ subject to such exclusions and amendments specified herein.~~

DATED

CERTIFICATION **Delete the inapplicable*

Encumbrancer(s)

- *The Prescribed Person has taken reasonable steps to verify the identity of the Encumbrancer.
- *The Prescribed Person holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
- *The Prescribed Person has retained the evidence to support this Registry Instrument or Document.
- *The Prescribed Person has taken reasonable steps to ensure that the Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Signed By:

<Name of certifying party>
<Capacity of certifying party>

for: <company name>

On behalf of the Encumbrancer

Encumbrancee(s)

- *The Prescribed Person has taken reasonable steps to verify the identity of the Encumbrancee.
- *The Prescribed Person holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
- *The Prescribed Person has retained the evidence to support this Registry Instrument or Document.
- *The Prescribed Person has taken reasonable steps to ensure that the Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Signed By:

Daniel Jenkinson
Lawyer

for: DMAW Lawyers Pty Ltd

On behalf of the Encumbrancee

LANDS TITLES REGISTRATION OFFICE

SOUTH AUSTRALIA

ENCUMBRANCE

FORM APPROVED BY THE REGISTRAR-GENERAL

PRIORITY NOTICE ID	
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SERIES NO	PREFIX
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BELOW THIS LINE FOR OFFICE & STAMP DUTY PURPOSES ONLY

AGENT CODE

LODGED BY:

CORRECTION TO:

SUPPORTING DOCUMENTATION LODGED WITH INSTRUMENT
(COPIES ONLY)

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- 2
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- 5

CORRECTION	PASSED
REGISTERED	

ENCUMBRANCE

PRIVACY COLLECTION STATEMENT: The information in this form is collected under statutory authority and is used for maintaining publicly searchable registers and indexes. It may also be used for authorised purposes in accordance with Government legislation and policy requirements.

LAND DESCRIPTION

The whole of the land described in Certificate of Title Register Book Volume 6182 Folio 301

ESTATE & INTEREST

Estate in fee simple

ENCUMBRANCER (Full name and address)

MINDA INCORPORATED (ABN 37 020 000 711) of 16 King George Avenue, Brighton SA 5048

ENCUMBRANCEE (Full name, address and mode of holding)

CITY OF HOLDFAST BAY (ABN 62 551 270 492) of 24 Jetty Road, Brighton SA 5048

OPERATIVE CLAUSE

THE ENCUMBRANCER ENCUMBERS THE ESTATE AND INTEREST IN THE LAND DESCRIBED FOR THE BENEFIT OF THE ENCUMBRANCEE WITH AN ANNUITY OR RENT CHARGE OF

- | | |
|---|--|
| (a) Insert the amount of the annuity or rent charge | (a) \$0.10 (Ten cents) |
| (b) State the term of the annuity or rent charge. If for life use the words "during his or her lifetime" | (b) TO BE PAID TO THE ENCUMBRANCEE annually as a yearly rent charge for a period of 3999 years commencing on the date of this Encumbrance. |
| (c) State the times appointed for payment of the annuity or rent charge. Any special covenants may be inserted. | (c) AT THE TIMES AND IN THE MANNER FOLLOWING on the first day of January in each year commencing on the 1 st day of January following the date of this Encumbrance AND with the performance and observance of the following covenants |

1. Definitions

In this Encumbrance unless the contrary intention appears:

Boundary means the boundary between that portion of the Land and the Council Land that is shown and marked “New Boundary” in the First Plan;

Business Day means any day except a Saturday or a Sunday or other public holiday or bank holiday in South Australia;

Council Land means the whole of the land described in Certificate of Title Register Book Volume 5476 Folio 969;

Emergency Services means emergency services provided by police, ambulance and fire services;

First Plan means the plan set out in Annexure A;

Fundamental Obligations has the meaning given to that term in clause 5;

Land means the land the subject of this Encumbrance (as described above);

Second Plan means the plan set out in Annexure B;

Rent Charge means the rent charge described on page 1 of this Encumbrance; and

Subject Land means that part of the Land hatched and labeled “Area A” in the Second Plan and for the avoidance of doubt, Area A extends in a westerly direction to the point at which it meets the “New Boundary” marked on the First Plan.

2. Interpretation

In this Encumbrance, unless the contrary intention appears:

2.1 headings do not affect interpretation;

2.2 singular includes plural and plural includes singular;

2.3 words of one gender include any gender;

2.4 a reference to time is a reference to Adelaide, Australia time;

2.5 a reference to “dollars” or “\$” is a reference to Australian currency;

2.6 a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

2.7 a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this deed, and a reference to this deed includes any schedule or annexure;

2.8 a provision must not be construed against a party only because that party prepared it;

2.9 a provision must be read down to the extent necessary to be valid. If it cannot be read down to that extent, it must be severed;

2.10 the meaning of general words or provisions shall not be limited by references to specific matters that follow them (for example, introduced by words such as “including” or “in particular”) or precede them or are included elsewhere in this deed; and

2.11 if a thing is to be done on a day which is not a Business Day, it must be done on the next Business Day

3. **Benefit of Encumbrance**

The Encumbrancee is, as at the date of this Encumbrance, the registered proprietor of the Council Land and the parties each acknowledge and agree that the covenants contained in this Encumbrance are intended to benefit the Council Land.

4. **Rent charge**

4.1 The Encumbrancer must only pay the Rent Charge to the Encumbrancee if payment is demanded by the Encumbrancee.

4.2 The Encumbrancee may not demand payment of the Rent Charge so long as the Encumbrancer duly observes all of the covenants in this Encumbrance.

4.3 The provisions of this clause 4 do not in any way affect or prejudice the rights of the Encumbrancee to:

4.3.1 an injunction preventing or restraining any breach of the covenants of this Encumbrance; or

4.3.2 damages for any such breach.

5. **Fundamental obligations**

5.1 Unless with the Encumbrancee's consent, the Encumbrancer acknowledges and agrees that it must not:

5.1.1 erect, install, connect, fix, leave or place, or permit to be erected, installed, connected, fixed, left or placed; or

5.1.2 do, or permit to be done,

anything on, or directly above or on the boundary of, the Subject Land that would prevent or otherwise hinder Emergency Services access to or across the Subject Land to or from the Council Land in the event of an emergency; or

5.1.3 erect or install, or permit the erection or installation of, a fence or any other form of barrier on, or adjacent to, the Boundary.

(Fundamental Obligations).

5.2 For the avoidance of doubt, nothing in clause 5.1 is to be interpreted as granting the Encumbrancee the right to access or otherwise use the Subject Land.

6. **Failure to comply with Fundamental Obligations**

6.1 If the Encumbrancer in any way breaches the Fundamental Obligations, the Encumbrancee may serve a notice (**Default Notice**) on the Encumbrancer requiring the Encumbrancer to remedy the breach within the period specified in the Default Notice (being a period of not less than 5 Business Days) (**Remedy Period**).

6.2 Without limiting any other rights it may have, if the Encumbrancer fails to remedy a breach that is the subject of a Default Notice within the Remedy Period, the Encumbrancee may take any action required to remedy that breach.

6.3 The Encumbrancer acknowledges, agrees and consents to the Encumbrancee entering the Land at any reasonable time for the purposes of taking action under clause 6.2.

6.4 The reasonable costs and expenses incurred by the Encumbrancee in taking action under clause 6.2 may be recovered by the Encumbrancee as a debt from the Encumbrancer.

7. Consent

If the Encumbrancer requests the consent of the Encumbrancee (including in a particular form) in relation to a proposed dealing with the Land by the Encumbrancer:

7.1 the Encumbrancee must not unreasonably withhold its consent, having regard to the interests of the Encumbrancee; and

7.2 in the event the proposed dealing does not directly impact the Encumbrancee's rights or interests under this Encumbrance, the Encumbrancee must not refuse to provide its consent

8. Registration of Encumbrance

The Encumbrancer shall ensure that this Encumbrance is registered on the Certificate of Title for the Land free from any other estates or interests in the Land and where this Encumbrance is to be registered in a series of documents, this Encumbrance is to be registered in priority to any other document creating an estate or interest in the Land.

9. Transfer or disposal of Land

The Encumbrancer shall not enter into any contract to sell and shall not transfer or otherwise dispose of its estate or interest in the Land or any part thereof hereby encumbered without first having given notice of this Encumbrance to the intending purchaser or transferee and making it a condition of such contract or transfer that the purchaser or transferee executes and lodges for registration immediately following the memorandum of transfer in respect of the Land a "Memorandum of Encumbrance" (to be prepared by the Encumbrancee's conveyancer or solicitor) in the same or substantially similar form as this Encumbrance in favour of the Encumbrancee.

10. Encumbrancee's rights under Real Property Act 1886

The Encumbrancee shall be entitled to all the powers, rights and remedies given to Encumbrancees by the *Real Property Act 1886* (SA).

11. Release and discharge

The Encumbrancer shall be released and discharged from the payment of the Rent Charge and from the observance and performance of the covenants, conditions, restrictions and stipulations set out in this Encumbrance upon the Encumbrancer ceasing to be the registered proprietor of the Land to the intent that the Rent Charge, covenants, conditions, restrictions and stipulations shall be binding only on the registered proprietor for the time being of the Land.

12. Notice

12.1 Notice must be in writing and in English, and may be given by an authorised representative of the sender.

12.2 Notice may be given to a person:

12.2.1 personally;

12.2.2 by leaving it at the person's address last notified;

12.2.3 by sending it by pre-paid mail to the person's address last notified;

12.2.4 by sending it by facsimile to the person's facsimile number last notified;

12.2.5 by sending it by electronic mail to the person's email address last notified.

12.3 Notice is deemed to be received by a person:

12.3.1 when left at the person's address;

12.3.2 if sent by pre-paid mail, six (6) Business Days after posting;

12.3.3 if sent by facsimile, at the time and on the day shown in the sender's transmission report, if it shows that the whole notice was sent to the person's facsimile number last notified;

12.3.4 if sent by electronic mail, on the day after the day the message is showing on the sender's electronic mail system as having been properly transferred or transmitted.

However, if the notice is deemed to be received on a day which is not a Business Day it is deemed to be received on the next Business Day.

13. **Costs**

The parties shall bear their own costs of and incidental to the preparation of this Encumbrance and the Encumbrancee shall bear all duty and registration costs in connection herewith.

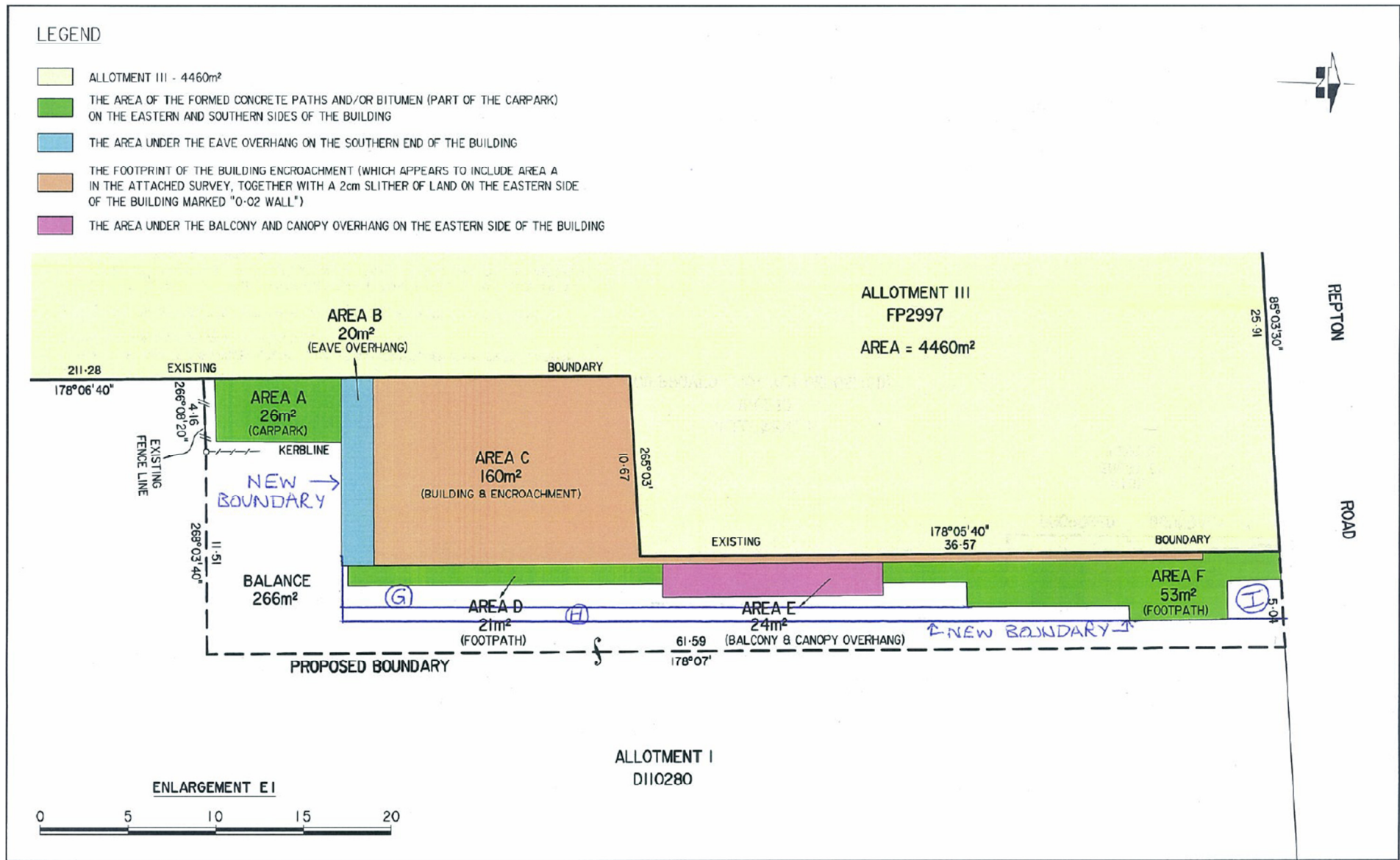
14. **Governing law**

14.1 This Encumbrance is governed by the law of South Australia.

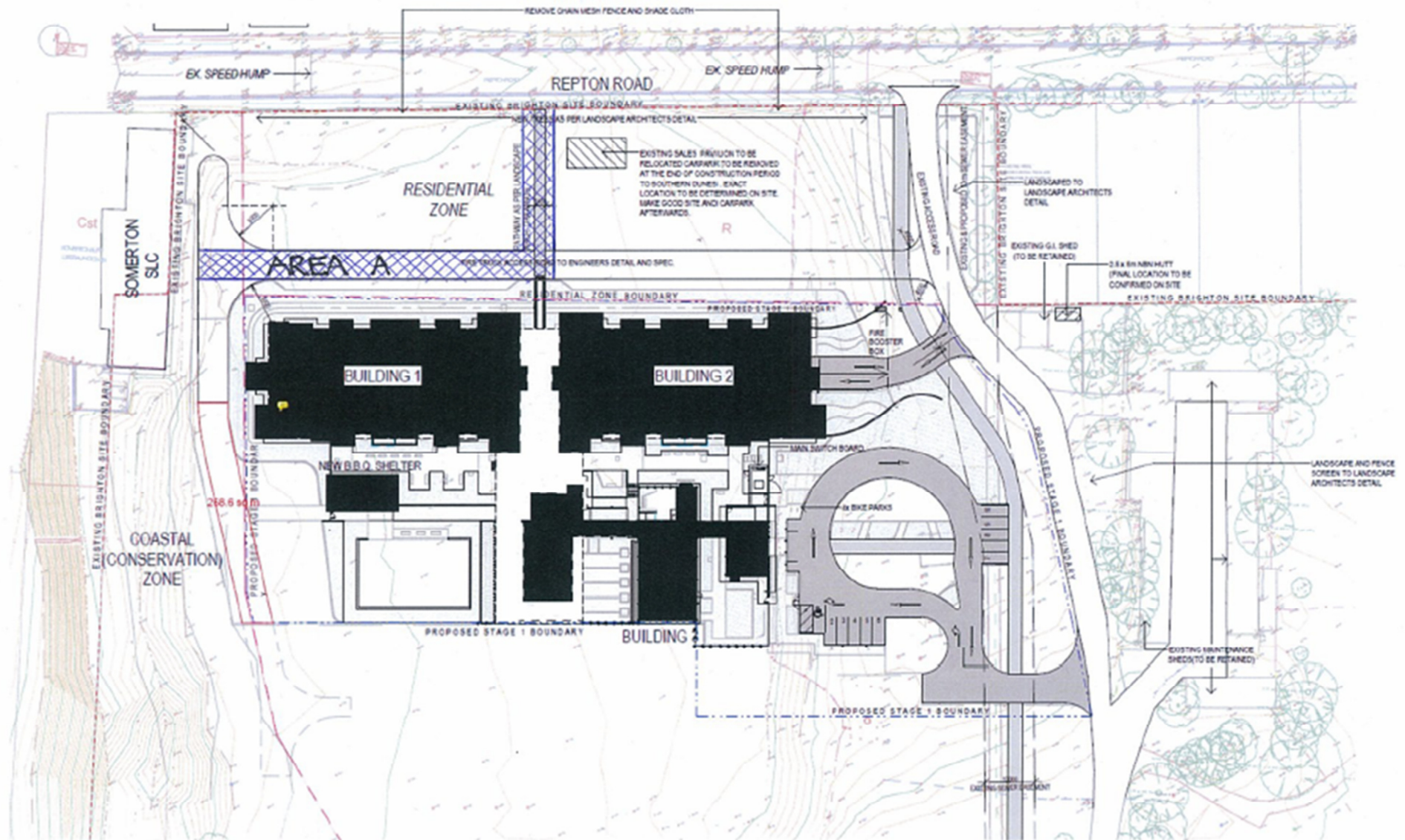
14.2 The Encumbrancer and Encumbrancee irrevocably submit to the non-exclusive jurisdiction of the courts of South Australia and the South Australian division of the Federal Court of Australia, and the courts of appeal from them.

14.3 Neither the Encumbrancer nor the Encumbrancee may object to the jurisdiction of any of those courts on the ground that it is an inconvenient forum or that it does not have jurisdiction.

Annexure A – First Plan



Annexure B – Second Plan



** Delete the inapplicable*

IT IS COVENANTED BETWEEN THE ENCUMBRANCER AND ENCUMBRANCEE in accordance with the terms and conditions expressed ~~*herein / *in Memorandum No. _____ subject to such exclusions and amendments specified herein.~~

DATED

CERTIFICATION **Delete the inapplicable*

Encumbrancer(s)

- *The Prescribed Person has taken reasonable steps to verify the identity of the Encumbrancer.
- *The Prescribed Person holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
- *The Prescribed Person has retained the evidence to support this Registry Instrument or Document.
- *The Prescribed Person has taken reasonable steps to ensure that the Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Signed By:

Daniel Jenkinson
Lawyer
for: DMAW Lawyers Pty Ltd
On behalf of the Encumbrancer

Encumbrancee(s)

- *The Prescribed Person has taken reasonable steps to verify the identity of the Encumbrancee.
- *The Prescribed Person holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
- *The Prescribed Person has retained the evidence to support this Registry Instrument or Document.
- *The Prescribed Person has taken reasonable steps to ensure that the Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Signed By:

<Name of certifying party>
<Capacity of certifying party>
for: <company name>
On behalf of the Encumbrancee

LICENCE

MINDA INCORPORATED

CITY OF HOLDFAST BAY



DMAW Lawyers Pty Ltd
ABN 26 169 621 194

Level 3, 80 King William Street
Adelaide South Australia 5000
Phone +61 8 8210 2222
Facsimile + 61 8 8210 2233
Email: dmaw@dmawlawyers.com.au
1570095

*Liability limited by a scheme approved under
professional standards legislation*

LICENCE

PARTIES

1. **MINDA INCORPORATED** (ABN 37 020 000 711) of 12-16 King George Avenue, North Brighton, in the State of South Australia 5048 (**Licensor**)
2. **CITY OF HOLDFAST BAY** (ABN 62 551 270 492) of Brighton Civic Centre, 24 Jetty Road, Brighton in the State of South Australia 5048 (**Licensee**)

INTRODUCTION

- A. The Licensor is the registered proprietor of the Land.
- B. The Licensor has agreed to allow the Licensee to use the Land on the terms and conditions contained in this Licence.

OPERATIVE CLAUSES

1. Definitions

The following definitions apply in this Licence:

Business Day means any day except a Saturday or Sunday or other public holiday or bank holiday in South Australia;

Commencement Date means the date that is 28 clear days after the later of:

- (a) the date that both the Licensee and the SLSC vacate the Land in accordance with the terms of both the Deed of Settlement and Release and the SLSC Lease; and
- (b) the date of this Licence;

Deed of Settlement and Release means the Deed of Settlement and Release entered into between the Licensor and the Licensee shortly before the date of this Licence, contemplating entry into this Licence;

Environment means environment within the meaning of section 3 *Environment Protection Act 1993* (SA);

Land means the land marked "Area A" in the plan annexed to this Licence;

Licence means the licence to use the Land under this agreement;

Licence Fee means \$1.00;

Licence Period means the period commencing on the Commencement Date and expiring twenty one (21) years from the Commencement Date, subject to earlier termination or surrender of this Licence;

Licensor's Works means any works in respect of the Land deemed necessary by the Licensor (at the Licensor's sole discretion) to enable the Land to be used for the Permitted Use, or for any other purpose;

Permitted Use means activities incidental to surf lifesaving, including:

- (a) ingress and egress over the Land with surf lifesaving equipment, boats and vehicles;
- (b) washing down boats;

but excluding:

- (c) parking boats or vehicles on the Land other than for a temporary purpose (such as for washing down boats); or
- (d) storage of equipment or any other items on the Land;

SLSC means Somerton Surf Lifesaving Club Incorporated (ABN 85 241 889 464) of Corner of Esplanade and Repton Rd, Somerton Park, in the State of South Australia 5044; and

SLSC Lease has the meaning given to that term in the Deed of Settlement and Release (as amended from time to time).

2. Interpretation

In this Licence, unless the context otherwise requires:

- 2.1 headings do not affect interpretation;
- 2.2 singular includes plural and plural includes singular;
- 2.3 reference to a person includes a corporation, body corporate, joint venture, association, government body, firm and any other entity;
- 2.4 a reference to a party is to a party to this agreement, and a reference to a party to an agreement includes the party's executors, administrators, successors and permitted assigns and substitutes;
- 2.5 reference to two or more people means each of them individually and all of them jointly;
- 2.6 a provision must not be construed against a party only because that party prepared it;
- 2.7 a provision must be read down to the extent necessary to be valid. If it cannot be read down to that extent, it must be severed;
- 2.8 the meaning of general words or provisions shall not be limited by references to specific matters that follow them (for example, introduced by words such as "including" or "in particular") or precede them or are included elsewhere in this agreement; and
- 2.9 another grammatical form of a defined expression has a corresponding meaning.

3. **Licensor's Works**

The Licensor shall complete the Licensor's Works before the Commencement Date.

4. **Licence**

The Licensor grants to the Licensee and the Licensee accepts a non-exclusive licence to use the Land on the terms set out in this Licence for the Licence Period.

5. **Licence Fee**

The Licensee must, if requested to do so by the Licensor, pay the Licence Fee to the Licensor.

6. **Licensee's obligations**

6.1 The Licensee must:

6.1.1 use the Land only for the Permitted Use;

6.1.2 keep the Land clean and tidy having regard to its condition at the Commencement Date;

6.1.3 promptly remove any goods, equipment, vehicles, boats or other items that are used on the Land in relation to the Permitted Use;

6.1.4 comply with all Acts, regulations, by-laws and all permits conditions consents and approvals under them relating to the Licensee's use of the Land.

6.2 The Licensee must not:

6.2.1 use or allow or cause the Land to be used for any illegal purpose;

6.2.2 cause any obstruction (including visual obstruction) on the Land (other than allowed in accordance with the Permitted Use);

6.2.3 cause or permit a nuisance or interference with the reasonable peace, comfort or privacy of another person who resides in the vicinity of the Land;

6.2.4 install machinery, equipment, fixtures or fittings on the Land; or

6.2.5 allow any rubbish to accumulate on the Land.

7. **Environmental damage**

7.1 The Licensee must not bring onto the Land, store on the Land, or use on the Land, any dangerous substances or any other substance which might pollute, contaminate, degrade or threaten or do any other thing which might pollute, contaminate, degrade or threaten:

7.1.1 the Land or any land or improvements near the Land;

7.1.2 the safety or health of any person in or near the Land; or

7.1.3 the Environment.

7.2 The Licensee must comply with any notices received by the Licensee or by the Licensor and notified to the Licensee, from any government or other competent body in respect of a substance, act or omission which might pollute, contaminate, degrade or threaten:

7.2.1 the Land or any land or improvements near the Land;

7.2.2 the safety or health of any person in or near the Land; or

7.2.3 the Environment,

which was caused by the Licensee.

7.3 The Licensee must immediately notify the Licensor about any such notice which the Licensee receives.

7.4 The Licensee must indemnify the Licensor against all claims and all costs, liability and expenses incurred by the Licensor because the Licensee does not comply with this clause. This indemnity is not affected by the Licensor:

7.4.1 giving consents under the previous clause;

7.4.2 giving consent to any act or omission which does not comply with this clause;

7.4.3 waiving any breach of the previous clause or this clause.

8. Insurance

The Licensor acknowledges that the Licensee is a member of the Local Government Association Mutual Liability Scheme (**Scheme**) and is bound by the rules of the Scheme pursuant to section 142 and Schedule 1, Part 1 of the *Local Government Act 1999* (SA). If:

8.1 the Licensee ceases to be a member of the Scheme; or

8.2 the Scheme ceases to provide a scope and level of insurance cover for the Licensee that is at least equivalent to public liability and occupier's liability insurance in respect of the Land, for at least \$30,000,000.00 per claim,

the Licensee must immediately effect and maintain public liability and occupier's liability insurance in respect of the Land, for at least \$30,000,000.00 per claim or any higher amount the Licensor reasonably requires. The insurance policy must be in the joint names of the Licensee and the Licensor for their respective interests and be with a reputable insurer. The Licensee must punctually pay all premiums for the insurance and deliver on demand to the Licensor a certificate of currency for that insurance. Without limiting the Licensor's rights, in the event that the Licensee fails to maintain such insurance, the Licensor may effect and pay for equivalent insurance in its own name, and the Licensee must promptly reimburse the Licensor for all costs of doing so.

9. Licensor's access

- 9.1 The Licensor and its agents, employees or contractors (including valuers and engineers) may enter, use and remain on the Land at any time for any reason but in doing so they must take reasonable steps to minimise disruption to the Licensee's activities.
- 9.2 By notice, the Licensor may require the Licensee to repair any defect in the Land for which the Licensee is responsible, within a reasonable time. If the Licensee does not do so, the Licensor and its agents, employees or contractors may enter the Land and carry out repairs, at the Licensee's cost.
- 9.3 If the Licensor is obliged to repair or alter the Land by a government or other competent authority, the Licensor may at all times enter the Land, and repair or alter it.

10. Release and indemnity

- 10.1 The Licensee uses the Land at the Licensee's risk.
- 10.2 The Licensee's goods, equipment, vehicles, boats and other items on the Land from time to time are at the Licensee's risk.
- 10.3 The Licensee releases the Licensor from all liability and claims in respect of loss of or damage to property (including fixtures, fittings and personal property) and in respect of injury to or illness or death of a person or in connection with the Land other than to the extent attributable to the negligence or wilful default of the Licensor.
- 10.4 The Licensee indemnifies and agrees to keep indemnified the Licensor against all claims and all costs, liability and expenses incurred by the Licensor, arising wholly or in part from the Licensee's use of the Land, the Licensee's breach of this agreement, or an act or omission of the Licensee or its employees, agents, sub-licenses or contractors (including a negligent act or omission, or an omission to prevent water leakage or overflow), in respect of:
- 10.4.1 loss of or damage to property;
- 10.4.2 injury to or illness or death of any person; or
- 10.4.3 damage to the Land, the land and improvements near the Land or the Environment,

except to the extent such claims, costs, liability and expenses are caused by the negligence or wilful default of the Licensor.

11. No interest in land or right to occupy

- 11.1 This agreement does not convey any proprietary interest in the Land to the Licensee.
- 11.2 This agreement does not convey a right for the Licensee to occupy the Land.

- 11.3 The parties are licensor and licensee. They are not principal and agent, partners or joint venturers.

12. Termination

- 12.1 This Licence shall automatically terminate with immediate effect if the Deed of Settlement and Release is terminated in accordance with clause 3.7, clause 3.8 or clause 9 of the Deed of Settlement and Release.
- 12.2 The Licensee acknowledges and agrees that the Licensor may terminate this Licence:
- 12.2.1 with immediate effect if the Licensee breaches this Licence and the breach cannot be remedied; or
 - 12.2.2 if the Licensee breaches this Licence and the breach can be remedied, but within seven (7) days after the Licensor gives the Licensee notice requiring the Licensee to remedy the breach, the Licensee does not remedy the breach.
- 12.3 Without limiting the Licensor's rights under clause 12.2, the Licensee acknowledges and agrees that the Licensor may terminate this Licence if the Licensee breaches, fails or is otherwise unable to meet, its obligations under this Licence on not less than six (6) occasions during any 12 month period during the Licence Period.
- 12.4 If this Licence terminates or is surrendered:
- 12.4.1 the Licensor has no further obligation to the Licensee under this Licence in respect of the Land; and
 - 12.4.2 the Licensee is not released from liability for any breach of this Licence before termination.

13. End of Licence

- 13.1 On the termination of this Licence the Licensee must:
- 13.1.1 peacefully cease using the Land;
 - 13.1.2 remove all goods, equipment, boats, vehicles and other items brought onto the Land by the Licensee;
 - 13.1.3 make good any damage to the Land caused by such removal; and
 - 13.1.4 yield up to the Licensor the Land in the same condition it was in at the Commencement Date with due allowance for fair wear and tear reasonably incurred due to the Licensee's use of the Land in accordance with the terms of this Licence.

14. Assignment and sub-licence by Licensee

- 14.1 This Licence is personal to the Licensee.
- 14.2 The Licensee must not assign, mortgage, charge, grant a security interest, encumber, hold on trust or otherwise dispose of its interest in this Licence.

- 14.3 The Licensee is permitted to sub-license the Land to the SLSC (but not to any other person), provided that the Licensee has provided the SLSC with a copy of this Licence and the terms of the sub-licence:
- 14.3.1 are consistent with the terms of this Licence;
 - 14.3.2 provide for the sub-licence to terminate not less than one day before the expiration or earlier termination or surrender of this Licence; and
 - 14.3.3 require SLSC to otherwise observe and perform the terms of this Licence (as if it were the Licensee).
- 14.4 The Licensee acknowledges that the Licensor's consent to the sub-licence:
- 14.4.1 does not release the Licensor from performance of the Licensor's obligations under this Licence and the Licensee will remain primarily responsible for compliance with this Licence;
 - 14.4.2 does not waive any breach of this Licence; and
 - 14.4.3 does not (expressly or impliedly) release, waive or vary the Licensee's obligations under this Licence.
- 14.5 The Licensee is responsible for all acts and omissions of the SLSC and any act or omission by the SLSC in connection with the Land which, if it were an act or omission by the Licensee, would be or cause a breach of this Licence, will be deemed to be a breach of this Licence by the Licensee.

15. **Representations and warranties**

The Licensor does not represent:

- 15.1 that the Land is suitable for the Permitted Use;
- 15.2 that any improvements on the Land are suitable for the Permitted Use; or
- 15.3 that the Land may lawfully be used for the Permitted Use.

16. **Notice**

- 16.1 Notice must be in writing and in English, and may be given by an authorised representative of the sender.
- 16.2 Notice may be given to a person:
- 16.2.1 personally;
 - 16.2.2 by leaving it at the person's address last notified;
 - 16.2.3 by sending it by pre-paid mail to the person's address last notified;
 - 16.2.4 by sending it by electronic mail to the person's email address last notified.
- 16.3 Notice is deemed to be received by a person:

- 16.3.1 when left at the person's address;
- 16.3.2 if sent by pre-paid mail, six (6) Business Days after posting;
- 16.3.3 if sent by electronic mail, on the day after the day the message is showing on the sender's electronic mail system as having been properly transferred or transmitted.

However, if the notice is deemed to be received on a day which is not a Business Day it is deemed to be received on the next Business Day.

- 16.4 If two or more people comprise a party, notice to one is effective notice to all.

17. **General**

- 17.1 This agreement is governed by the law of South Australia.
- 17.2 This document records the entire agreement between the parties about its subject matter.
- 17.3 A party may only waive a breach of this agreement in writing signed by that party or its authorised representative. A waiver is limited to the instance referred to in the writing (or if no instance is referred to in the writing, to past breaches).
- 17.4 This agreement may only be amended in writing signed by the parties.
- 17.5 Each party must do all things necessary to carry out this Licence, including:
 - 17.5.1 executing documents; and
 - 17.5.2 ensuring its employees and agents perform their obligations.
- 17.6 A party must not do anything that will prevent this Licence from being carried out.
- 17.7 This agreement may be executed in any number of counterparts. A counterpart may be a facsimile (including by any means of electronic production). Together all counterparts make up one document. If this agreement is executed in counterparts, it takes effect when each party has received the counterpart executed by each other party, or would be deemed to have received it if a notice.

EXECUTED as an agreement on

2017

Executed by **MINDA INCOROPRATED** in accordance with its constitution:

.....
Signature of authorised officer

.....
Signature of authorised officer

.....
Name of authorised officer

.....
Name of authorised officer

THE COMMON SEAL of **THE CITY OF HOLDFAST BAY** was affixed in the presence of:

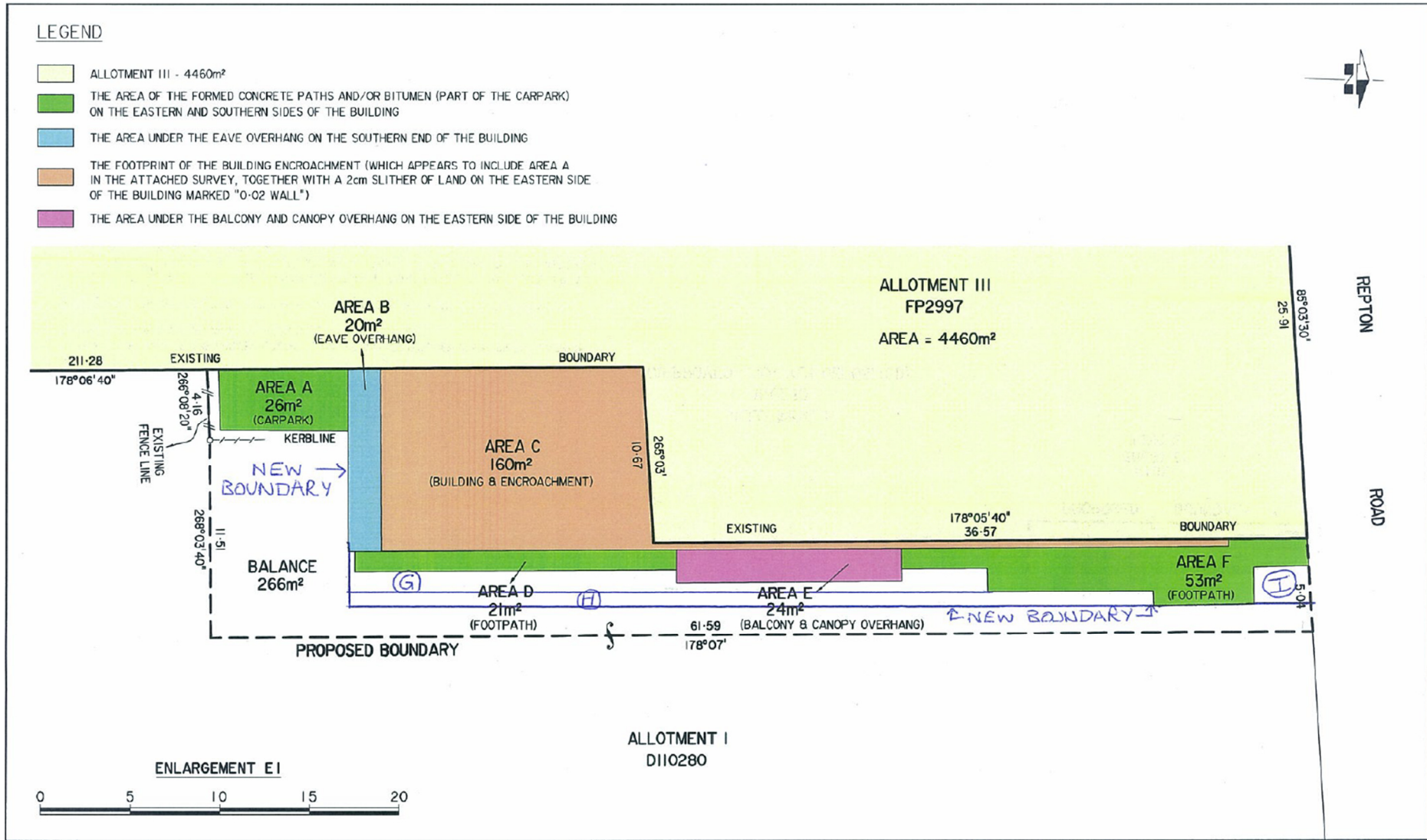
.....
Mayor

.....
Name (please print)

.....
Chief Executive Officer

.....
Name (please print)

Annexure A - Plan



TERM SHEET

IN PRINCIPLE AGREEMENT SUBJECT TO RATIFICATION

PARTIES

MINDA INCORPORATED (Minda)

THE CITY OF HOLDFAST BAY (Council)

TERMS

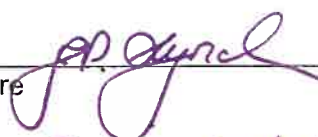
1. This "in principle" agreement is subject to approval of the board and association members of Minda and the elected members of Council. It is also subject to the Council obtaining consents to necessary variations of the lease from Somerton Surf Life Saving Club (**SLSC**), and approval of any subdivision and/or boundary realignment necessary to effect the transfer referred to in clause 2.
2. In final resolution of the claims raised by Council in the mediation in respect of the land shown on Annexure A, Minda will transfer to the Council those parts of the land identified in the attached Identification Survey dated 22 August 2016, drawing reference 25312 VC02-RO (Annexure A) (**Survey**) as follows:
 - 2.1 Area B (eave overhang, 20m²);
 - 2.2 Area C (portion of building, 160m²);
 - 2.3 Area D (footpath, 21m²);
 - 2.4 Area E (balcony & canopy overhang, 24m²);
 - 2.5 Area F (footpath, 53m²); and
 - 2.6 the additional parts of the land identified in the Survey marked Areas G, H and I.
3. In return for the transfer of the land identified in term 2 above, the Council will:
 - 3.1 pay to Minda the sum of \$150,000; and
 - 3.2 pay all boundary realignment costs, stamp duty, GST, LTO fees and all other statutory charges and taxes.
4. Each party to otherwise bear their own costs associated with the aforesaid transfer of land.
5. The Council/the SLSC to vacate the area marked "A" in the Survey (carpark, 26m²). Minda to remediate that area within 4 weeks of being granted access to that area. Minda to grant the Council a licence to allow the SLSC to undertake activities incidental to surf lifesaving (including washing down boats) in that area, but for the avoidance of doubt not including any storage or obstruction in that area.
6. The area marked "I" in the Survey is to remain as open space and the Council is not

area
Per
EM

to undertake any constructions or developments in that way nor to use that area in a way that would be inconsistent with it remaining as open space.

- 7. The parties are to negotiate with the intent that there will be constructed a waste removal bin enclosure in the area marked "F" in the Survey.
- 8. The parties agree to negotiate a mechanism to ensure that a right of way is maintained for the purpose of emergency vehicle access along the fire track as shown in Annexures B and C.
- 9. Minda to reinstate the grass channel in line with the roller door on the eastern side of the SLSC building.
- 10. There is not to be any fence on or adjacent to the boundary. Minda may attach shade cloth to the existing posts but must remove those posts within 12 months.
- 11. The parties agree to resolve the issue of the Council's Enforcement Notice and Minda's Development Application, including by making any amendments to the Development Application consistent with clause 10, above.
- 12. Minda will formally acknowledge it has no property rights in respect of the unmade roads at the end of Lynton and Lynmouth Avenues, and the parties will agree appropriate arrangements for the removal of fencing installed by Minda on that land within 14 months, and Council will agree that it will assume responsibility for the care and maintenance of that land.
- 13. The parties agree to negotiate the terms of a non-disparagement clause to be included in the final agreement.
- 14. Save to the extent necessary to finalise and seek all relevant approvals contemplated by these terms, the parties agree to keep negotiations confidential, consistent with the mediation agreement.

Executed by **CITY OF HOLDFAST BAY**


Signature 

Full Name JUSTIN LYNCH
3rd FEB '17


Witness Signature 

Full Name PETER PSALTIS

Executed by **MINDA INCORPORATED**






Signature 

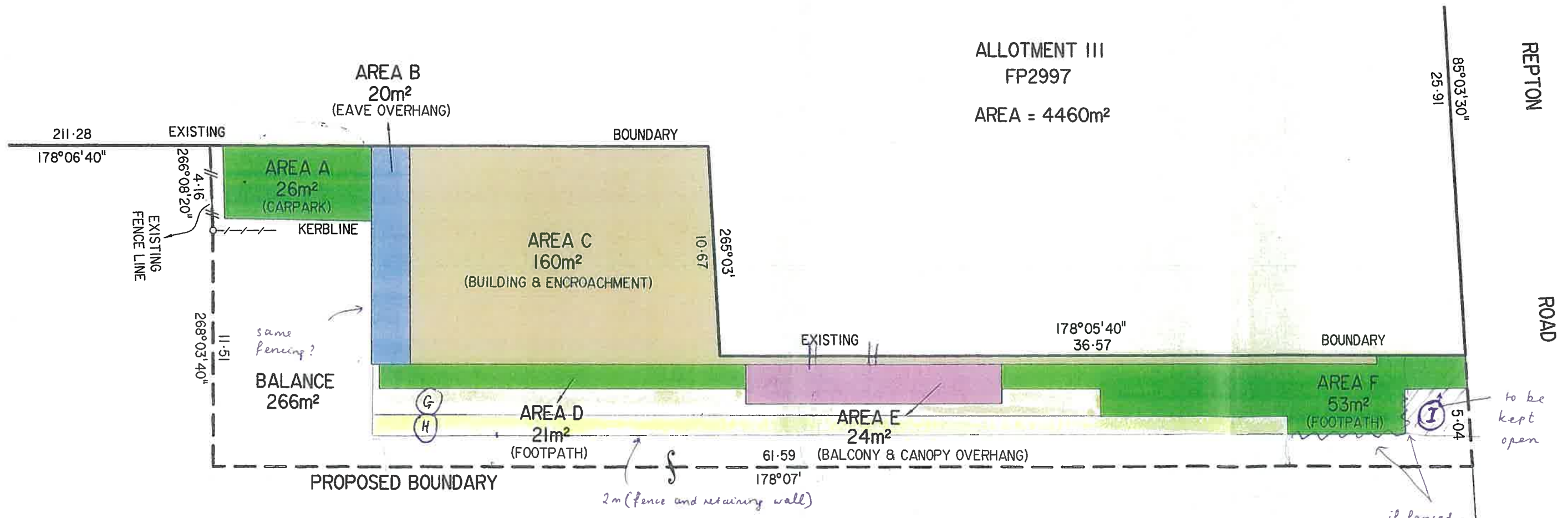
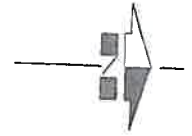
Full Name Catherine Ann Miller
3rd Feb 17

Witness Signature 

Full Name Daniel Jenkinson

LEGEND

-  ALLOTMENT 111 - 4460m²
-  THE AREA OF THE FORMED CONCRETE PATHS AND/OR BITUMEN (PART OF THE CARPARK) ON THE EASTERN AND SOUTHERN SIDES OF THE BUILDING
-  THE AREA UNDER THE EAVE OVERHANG ON THE SOUTHERN END OF THE BUILDING
-  THE FOOTPRINT OF THE BUILDING ENCROACHMENT (WHICH APPEARS TO INCLUDE AREA A IN THE ATTACHED SURVEY, TOGETHER WITH A 2cm SLITHER OF LAND ON THE EASTERN SIDE OF THE BUILDING MARKED "O-02 WALL")
-  THE AREA UNDER THE BALCONY AND CANOPY OVERHANG ON THE EASTERN SIDE OF THE BUILDING



ALLOTMENT I
D110280
(APPROVED - NOT YET DEPOSITED)

1. CT 5476/969
2. FOR ANY ANNOTATIONS OR EASEMENT DETAILS REFER TO CT 5476/969
3. FOR PREVIOUS SURVEY ON 13/04/2016 PLEASE REFER TO 25312VCO1-R0

ENLARGEMENT E1



FYFE Earth Partners
ACN 008 116 130

LEVEL 3, 80 FLINDERS STREET, ADELAIDE, SA, 5000
GPO BOX 2450 ADELAIDE SA 5001
TEL (08) 8201 9600
FAX (08) 8201 9650
E-mail info@fyfe.com.au

THIS IS NOT A CERTIFIED SURVEY FOR THE PURPOSES OF THE REGULATIONS UNDER THE SURVEY ACT, 1992
THIS PLAN WILL NOT BE EXAMINED FOR BOUNDARY DEFINITION OR OTHERWISE BY THE REGISTRAR-GENERALS OFFICE
FUTURE RE-SURVEY OF ADJOINING LANDS OR SUBSEQUENT REGISTRATION OF CERTIFIED SURVEY PLANS MAY ALTER THE BOUNDARY DEFINITION OR INFORMATION HEREON

REFERENCE 25312-1-2 DWG 25312VCO2-R0
DRAFTER KAJ SHEET 2 OF 2

SURVEYED BY FYFE PTY LTD ON 16/08/2016
DATE 22/08/2016
Licensed Surveyor

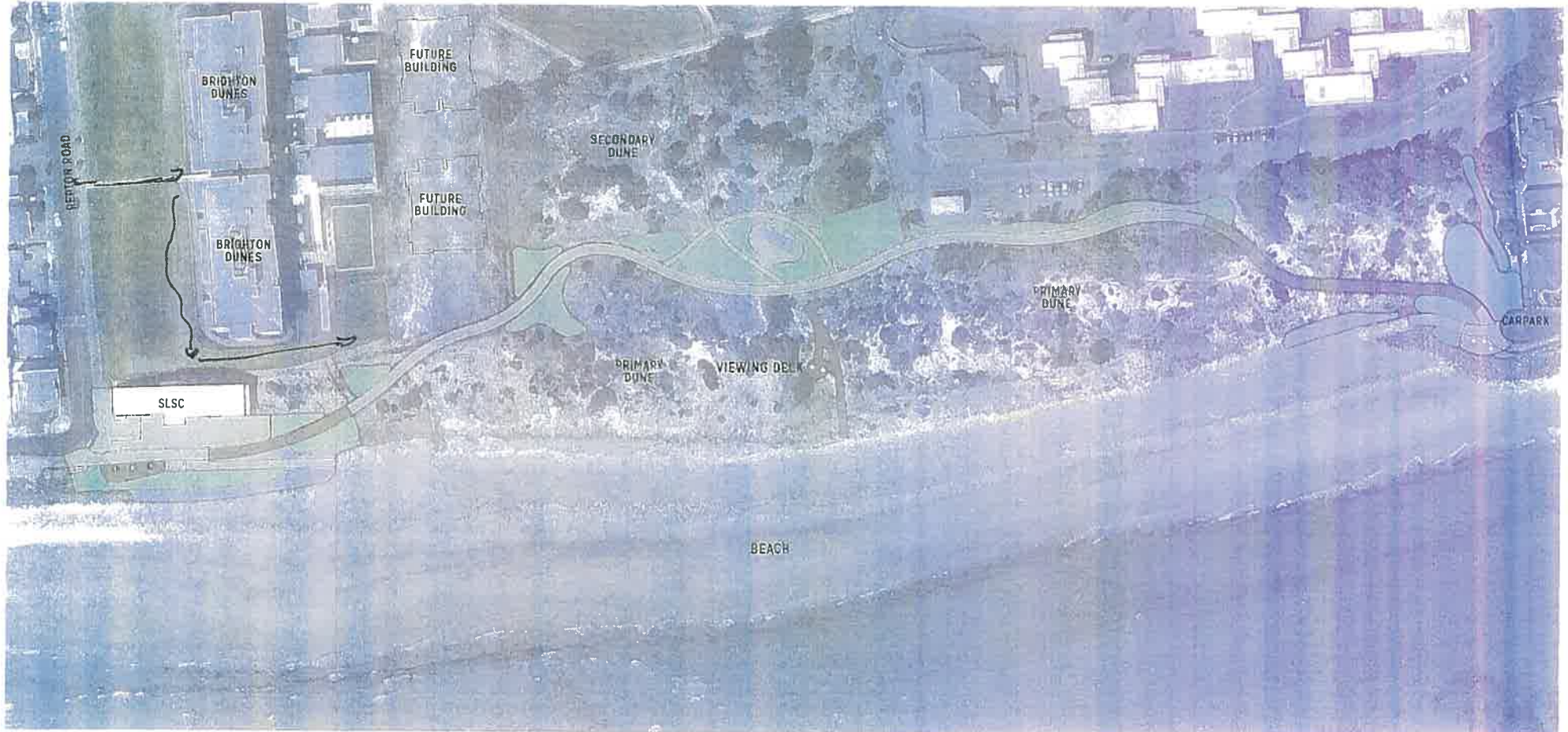
IDENTIFICATION SURVEY
ALLOTMENT 111 in F2997
57 REPTON ROAD
HUNDRED OF NOARLUNGA
NORTH BRIGHTON

Annexure B

MINDA COAST PARK AERIAL OVERLAY

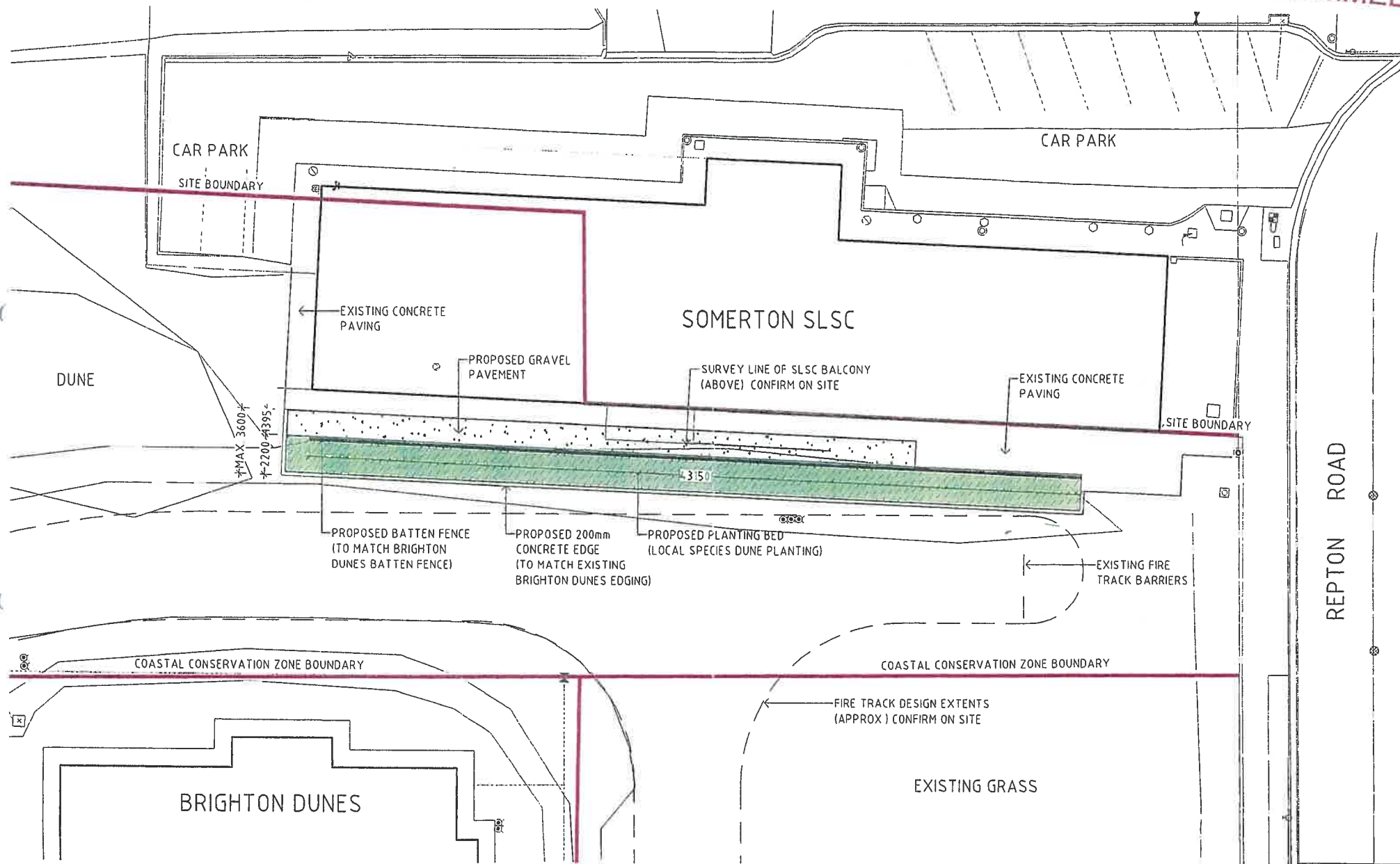
LEGEND

 Revegetation zone	 Secondary dune
 Timber decking	 Rock wall
 Concrete path	
 Primary dune	



Annexure C

TRIMMED



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