



**Maddocks**

Lawyers  
140 William Street  
Melbourne Victoria 3000 Australia  
Telephone 61 3 9288 0555  
Facsimile 61 3 9288 0666  
info@maddocks.com.au  
www.maddocks.com.au  
DX 259 Melbourne

Date / /2012

**Section 173 Agreement**

Subject Land: Lot 2 PS543417L, 92-134 Abey Road, Melton South

Melton Shire Council  
and

Harness Racing Victoria

[801936: 8719768\_1]

Interstate office  
Sydney  
Affiliated offices around the world through the  
Advoc Asia network - www.advocasias.com



Maddocks

**Contents**

1.	<b>Definitions</b> .....	2
2.	<b>Interpretation</b> .....	4
3.	<b>Agreement under section 173 of the Act</b> .....	5
4.	<b>Effect of Agreement</b> .....	5
5.	<b>Successors in title</b> .....	6
6.	<b>Covenants of Owner</b> .....	6
7.	<b>Indemnity</b> .....	8
8.	<b>General</b> .....	8
	8.1 Notices .....	8
	8.2 Further Assurance .....	8
	8.3 No Waiver .....	8
	8.4 Severability.....	9
	8.5 No Fettering of Council's Powers.....	9
9.	<b>Right of retransfer</b> .....	9
10.	<b>Ending of agreement</b> .....	10
11.	<b>GST</b> .....	11
	11.1 GST Exclusive.....	11
	11.2 Increase in Consideration .....	11
	11.3 Payment of GST .....	11
	11.4 Reimbursements .....	11
	11.5 Tax Invoice.....	11
	11.6 Adjustments & Adjustment Notes .....	11
	11.7 Definitions .....	11
	<b>Schedule 1</b> .....	15
	<b>Schedule 2</b> .....	16
	<b>Schedule 3</b> .....	17

[801936: 8719768\_1]

Interstate office  
 Sydney  
 Affiliated offices around the world through the  
 Advoc Asia network - www.advocasia.com



Maddocks

---

## Section 173 Agreement

Dated / /2011

---

### Parties

Name	<b>Melton Shire Council</b>
Address	Civic Centre, 232 High Street, Melton, Victoria 3337
Short name	<b>Council</b>

Name	<b>Harness Racing Victoria</b>
Address	400 Epsom Road, Flemington, Victoria 3031
Short name	<b>Owner</b>

---

### Background

- A. The Owner is registered as proprietor of the subject land.
- B. The Council is the Responsible Authority pursuant to the Act for the Scheme.
- C. The Council has sold the subject land to the Owner and the Owner agreed to certain obligations in respect of development of the subject land as specified in the Original Agreement entered into by the parties.
- D. The parties have negotiated new dates for compliance with the development of the subject land and agreed to enter into the terms of this Agreement.
- E. The intention of the parties is that this Agreement be in substitution for the Original Agreement which is to be cancelled pursuant to sections 173 and 177(2) of the Act.
- F. The Council and the Owner have agreed that without limiting or restricting their respective powers to enter into this Agreement and insofar as it can be so treated, this Agreement is made pursuant to sections 173 and 177(2) of the Act.

[801936: 8719768\_1]

Interstate office  
Sydney  
Affiliated offices around the world through the  
Advoc Asia network - [www.advocasias.com](http://www.advocasias.com)

L - 0 - 10 - 10000000000000000000 - 000 - 0000

Maddocks

**THE PARTIES AGREE****1. Definitions**

In this Agreement unless expressed or implied to the contrary:

**Act** means the Planning and Environment Act 1987.

**approved** means approved in writing by the Council in its capacity as owner or former owner of the Property but not in its capacity as a responsible authority or planning authority under the Act.

**Cash Contract** means the Contract of Sale of Real Estate, a copy of which is attached in Schedule 1.

**Force Majeure Event** means any of the following events:

- (a) act of God;
- (b) war, terrorism, riot, insurrection, vandalism or sabotage;
- (c) strike, lockout, ban, limitation of work or other industrial disturbance; or
- (d) law, rule or regulation of any government or governmental agency, and executive or administrative order or act of general or particular application;
- (e) storm or other adverse weather conditions;
- (f) explosion;
- (g) civil commotion;
- (h) national emergency (whether in fact or law);
- (i) power surge or failure;
- (j) breakdown of plant, machinery or equipment;
- (k) shortage of labour, transportation, fuel, power or plant, machinery, equipment or material.

which:

- (l) is unforeseen by the Owner;
- (m) is beyond the control of the Owner; and
- (n) occurs without the fault or negligence of the Owner.

**Independent Certifier** means an independent qualified practising architect appointed at the cost equally of both parties by agreement between the parties prior to the commencement of construction of any Works or, in the absence of agreement, by the President for the time being of the Victorian Chapter of the Royal Australian Institute of Architects or his or her nominee;

## Maddocks

**Melton** means the Council acting in its capacity as a council but not as a responsible authority or a planning authority under the Act;

**Municipality** means the municipal district of the Shire of Melton;

**Original Agreement** means the agreement pursuant to section 173 of the Act registered in dealing no. AH444052V.

**Owner** means the person or persons entitled from time to time to be registered by the Registrar of Titles as proprietor or proprietors of an estate in fee simple of the subject land or any part of it.

**planning approval** shall mean and include any planning permit issued in accordance with the Act.

**Practical Completion** means and requires the following:

- (a) certification by the Independent Certifier that a development is complete (minor omissions and minor defects excepting) and fit for use and occupation and that all subdivisional works have been completed in accordance with the requirements of all referral authorities; and
- (b) the contractor for the Works has provided Melton with written confirmation from such contractor that all monies and payments due to subcontractors and suppliers have been made as requested under the *Building and Construction Industry Security of Payment Act 2002*.

**Preselling Contract** means the Contract of Sale of Real Estate, a copy of which is contained in Schedule 2.

**Racecourse Development** means the existing development of Lot 1 on Plan of Subdivision No. PS543417L adjoining the subject land for the purposes of a harness racing track and associated facilities.

**Scheme** means the Melton Planning Scheme.

**subject land** means Lot 2 on plan of subdivision No. PS543417L being the whole of the land in Certificate of Title Volume 10995 Folio 203 situated at and known as Lot 2 (PS543417L), 92-134 Abey Road, and Part of 28-52 Ferris Road, Melton South or any part of that land.

**Substantial Commencement** means the last to occur of the following:

- (a) the Owner entering into a binding contract with a registered building practitioner under the *Building Act 1993* for the construction of a development and all subdivisional works; and
- (b) the pouring of the concrete footings or concrete slab for all foundation works required for construction of such development to the reasonable satisfaction of the Owner's building surveyor.

**Superlot A** means lot A on the Superlot Plan.

**Superlot B** means lot B on the Superlot Plan.

**Superlot C** means lot C on the Superlot Plan.

**Superlot D** means lot D on the Superlot Plan.

Maddocks

**Superlot Plan** means the proposed plan of subdivision, a copy of which is contained in Schedule 3.

**Termination Date** means:-

- (a) in the case of Superlot A, the date upon which the Council must reasonably notify the Owner in writing that, in respect of Superlot A, either the Council no longer requires the Owner to comply with its obligations as specified in this Agreement or that the Owner has fully complied with all of its obligations as specified in this Agreement or that the Owner has remedied all breaches of this Agreement to the absolute satisfaction of the Council.
- (b) in the case of Superlot B, the date upon which the Council must reasonably notify the Owner in writing that, in respect of Superlot B, either the Council no longer requires the Owner to comply with its obligations as specified in this Agreement or that the Owner has fully complied with all of its obligations as specified in this Agreement or that the Owner has remedied all breaches of this Agreement to the absolute satisfaction of the Council.
- (c) in the case of Superlot C, the date upon which the Council must reasonably notify the Owner in writing that, in respect of Superlot C, either the Council no longer requires the Owner to comply with its obligations as specified in this Agreement or that the Owner has fully complied with all of its obligations as specified in this Agreement or that the Owner has remedied all breaches of this Agreement to the absolute satisfaction of the Council.
- (d) in the case of Superlot D, the date upon which the Council must reasonably notify the Owner in writing that, in respect of Superlot D, either the Council no longer requires the Owner to comply with its obligations as specified in this Agreement or that the Owner has fully complied with all of its obligations as specified in this Agreement or that the Owner has remedied all breaches of this Agreement to the absolute satisfaction of the Council.

**Toolern Development Plan** means the plan for development of the subject land and other land in the vicinity of the subject land comprising the Toolern North West Precinct as contained in the Toolern North West Precinct Development Plan prepared by Tract Landscape Architects, Urban Designers and Town Planners dated 4 July 2007 adopted by the Council pursuant to the provisions of the Scheme, a copy of which is available for inspection at the offices of the Council and includes:


- (a) any subsequently amended plan mutually agreed between the parties; and
- (b) any amendment or change made to it after the date of this Agreement as required in order to facilitate the rectification of any boundary misalignments between it and the subject land.

**Works** means any works which the Owner is required to perform pursuant to the terms of this Agreement.

---

## 2. Interpretation

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

  
Maddocks

- 2.4 If a party consists of more than one person this Agreement binds them jointly and each of them severally.
- 2.5 A reference to a statute shall include any statutes amending, consolidating or replacing same and any regulations made under such statutes.
- 2.6 All headings are for ease of reference only and shall not be taken into account in the construction or interpretation of this Agreement.
- 2.7 A reference in this Agreement to Melton means a reference to the Council in its capacity as a previous owner of the subject land and not in its capacity as the Responsible Authority under the Scheme. A reference in this Agreement to the Council means a reference to the Council in its capacity as the Responsible Authority under the Scheme and not in its capacity as the former owner of the subject land.
- 2.8 Wherever in this Agreement, the consent or agreement of Melton is required to be given, such consent must be writing and must be given by Melton acting as a Council and not as a Responsible Authority or planning authority.

---

### 3. Agreement under section 173 of the Act

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

---

### 4. Effect of Agreement

- 4.1 This Agreement is effective from the date of this Agreement.
- 4.2 The Owner's use and development of the subject land is subject to the conditions and obligations set out in this Agreement and is intended to achieve or advance the objectives of the Scheme.
- 4.3 The Owner's obligations will take effect as separate and several covenants which will be annexed to and run at law and equity with the subject land to bind the Owner and each successor, assign or transferee of the Owner, including the registered proprietor, the mortgagee in possession and the beneficial owner for the time being of the subject land.
- 4.4 It is agreed that upon:
- 4.4.1 the execution of this Agreement by both parties; and
  - 4.4.2 the recording in the Register on the folio of the Register which relates to the subject land, a memorandum of this Agreement,
- the Original Agreement is cancelled and of no further effect.
- 4.5 As soon as reasonably practicable after the date of this Agreement, the Council will at the request and at the cost of the Owner make application to the Registrar of Titles under Section 183(2) of the Act to cancel the recording of the Original Agreement on the Register.

Maddocks

---

**5. Successors in title**

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

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

---

**6. Covenants of Owner**

- 6.1 The Owner covenants and agrees that it must:
  - 6.1.1 achieve Substantial Commencement of construction of any form of development of Superlot A substantially consistent with the Toolern Development Plan by 30 June 2017 or such other date as the parties may agree to in writing;
  - 6.1.2 achieve Practical Completion of such development as is referred to in the preceding clause by 30 June 2018 or such other date as the parties may agree to in writing;
  - 6.1.3 achieve Substantial Commencement of construction of any form of development of Superlot B substantially consistent with the Toolern Development Plan by 30 June 2017 or such other date as the parties may agree to in writing;
  - 6.1.4 achieve Practical Completion of such development as is referred to in the preceding clause by 30 June 2018 or such other date as the parties may agree to in writing;
  - 6.1.5 achieve Substantial Commencement of construction of any form of development of Superlot C substantially consistent with the Toolern Development Plan by 30 June 2017 or such other date as the parties may agree to in writing;
  - 6.1.6 achieve Practical Completion of such development as is referred to in the preceding clause by 30 June 2018 or such other date as the parties may agree to in writing;
  - 6.1.7 achieve Substantial Commencement of construction of any form of development of Superlot D substantially consistent with the Toolern Development Plan by 30 June 2017 or such other date as the parties may agree to in writing;
  - 6.1.8 achieve Practical Completion of such development as is referred to in the preceding clause by 30 June 2018 or such other date as the parties may agree to in writing;
  - 6.1.9 the form of development required by the preceding clauses 6.1.1 to 6.1.8 (inclusive) can be a development which relates to or forms part of an extension of the Racecourse Development or can be a separate and distinct development but must in all circumstances be a development which is substantially consistent with the Toolern Development Plan;



## Maddocks

- 6.1.10 not sell, transfer or otherwise dispose of any of its interest in Superlot A, Superlot B, Superlot C or Superlot D or any part thereof until Harness Racing Victoria has fully complied with its obligations in respect of that Superlot as specified in clauses 6.1.1 to 6.1.8 (inclusive) of this Agreement;
- 6.1.11 bring this Agreement to the attention of all prospective purchasers, mortgagees, transferees and assigns;
- 6.1.12 carry out and comply with the requirements of all statutory authorities in relation to the development of the subject land and comply with all statutes, regulations, by-laws, local laws and planning controls in relation to the subject land;
- 6.1.13 do all things necessary including the signing of any further agreements, undertakings, covenants and consents, approvals or other documents necessary for the purpose of ensuring that the Owner carries out the Owner's covenants, agreements and obligations under this Agreement and to enable the Council to enforce the performance by the Owner of such covenants and undertakings;
- 6.1.14 consent to the Council making application to the Registrar of Titles to make a recording of this Agreement in the Register on the folio of the Register which relates to the subject land in accordance with section 181 of the Act and do all things necessary to enable the Council to do so including signing any further agreement, acknowledgment or document or procuring the consent to this Agreement of any mortgagee or caveator to enable the recording to be made in the Register under that section;
- 6.1.15 if the Owner has not complied with this Agreement within 45 days after service of a notice by the Council specifying such non-compliance, allow the Council its officers, employees, contractors or agents to enter the subject land and rectify such non-compliance;
- 6.1.16 if the Council exercises its powers to rectify the non-compliance, pay to the Council its reasonable legal costs and disbursements incurred as a result of the non-compliance subject to receiving a tax invoice supported by evidence reasonably establishing the amount of legal costs and disbursements claimed;
- 6.1.17 accept a certificate signed by the Chief Executive of the Council (or his nominee) as prima facie proof of the costs and expenses incurred by the Council to rectify the Owner's non-compliance with this Agreement;
- 6.1.18 pay interest at the rate of 2% above the rate prescribed under the *Penalty Interest Rates Act* 1983 on all moneys outstanding under this Agreement until they are paid in full;
- 6.1.19 agree that any payments made for the purposes of this Agreement shall be appropriated first in payment of any interest and any unpaid costs and expenses of the Council and shall then be applied in repayment of the principal sum;
- 6.1.20 comply with the requirements of this Agreement and complete all works required by the Agreement at its cost and to the reasonable satisfaction of the Council;
- 6.1.21 allow the Council and/or its officers, employees, contractors or agents (at any reasonable time and subject to reasonable written notice (except in the case of emergency when no notice should be required) to enter the subject land to assess compliance with this Agreement.
- 6.2 The Owner shall forthwith pay on demand to the Council the Council's costs and expenses (including legal expenses) of and incidental to:

## Maddocks

- 6.2.1 anything done in connection with the enforcement of any obligations imposed on the Owner under this Agreement;
- 6.2.2 any duties or fees payable in connection with any default of the Owner under this Agreement.
- 6.3 Despite anything in this Agreement the obligations of the Owner under this clause 6 (other than the obligation to pay money) are suspended during the time and to the extent that the owner is prevented from complying with them by a Force Majeure Event.

---

**7. Indemnity**

The Owner covenants and agrees that the Owner will indemnify and keep indemnified the Council, its officers, employees, agents, workmen and contractors from and against all costs, expenses, losses or damages whatsoever which the Council, its officers, employees, agents, workmen and contractors may sustain, incur or suffer or be or become liable for or in respect of any suit, action, proceeding, judgment or claim brought by any person whatsoever arising from the Owner's obligations contained in this Agreement save and except for any costs, expenses, losses or damages that arise as a result of the negligent act or default of the Council, its officers, employees, agents, workmen and contractors

---

**8. General****8.1 Notices**

- 8.1.1 A notice or other communication required or permitted to be served by a party on another party shall be in writing and may be served:
- (a) by delivering it personally to that party;
  - (b) by sending it by prepaid post addressed to that party at the address set out in this Agreement or subsequently notified to each party from time to time.
- 8.1.2 A notice or other communication is deemed served:
- (a) if delivered, on the next following business day; or
  - (b) if posted, on the expiration of two business days after the date of posting.

**8.2 Further Assurance**

Each of the parties to this Agreement shall respectively sign and execute all further documents and deeds and do all acts and things as the other parties shall reasonably require for completely effecting this Agreement.

**8.3 No Waiver**

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

  
Maddocks**8.4 Severability**

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

**8.5 No Fettering of Council's Powers**

It is acknowledged and agreed that this Agreement does not fetter or restrict the power or discretion of the Council to make or impose requirements or conditions in connection with the granting of any planning approval or certification of any plans of subdivision or consolidation applicable to the subject land.

---

**9. Right of retransfer**

9.1 For the purposes of this clause 9 and for no other purpose the following definitions shall apply:

9.1.1 **Land** means the following:

- (a) in the event of a failure to comply with clause 6.1.1 or clause 6.1.2, Superlot A; or
- (b) in the event of a failure to comply with clause 6.1.3 or clause 6.1.4, Superlot B; or
- (c) in the event of a failure to comply with clause 6.1.5 or clause 6.1.5, Superlot C; or
- (d) in the event of a failure to comply with clause 6.1.7 or clause 6.1.8, Superlot D.

9.1.2 **Specified Consideration** means the current market value of the Land, including the market value of any improvements constructed or being constructed on the Land by Harness Racing Victoria (**HRV**) since the date HRV first became the Owner of the Land which remain on the Land as at the date of exercise of the right of retransfer as determined by the Valuer General, the costs of which valuation must be borne by the Owner, at the time of Melton's exercise of its right of retransfer pursuant to this clause 9.2.

9.2 In the event of a failure to comply by the Owner of any of its obligations pursuant to clauses 6.1.1 to 6.1.8 (inclusive), the Owner shall at Melton's option, subject to the provision of written notice to do so, retransfer the Land to Melton as follows (but only if notice is given before the Owner has complied with its said obligations):

9.2.1 if at the time of Melton's exercise of this option a separate title exists for the Land, the Owner shall within thirty (30) days of the exercise of the option by Melton, submit to Melton or its solicitors a signed vendor's statement and a contract of sale for the Land in the form of the Cash Contract but completed by the insertion of the following:

- (a) the title particulars for the Land;
- (b) the lot number and plan of subdivision number for the Land on the cover page of the Cash Contract and in the Land description and Property Address contained in the Particulars of Sale;



Maddocks

- (c) the price, which shall be the Specified Consideration;
- (d) the deposit, which shall be 10% of the Specified Consideration;
- (e) the balance of the price, which shall be 90% of the Specified Consideration;  
and
- (f) the Day of Sale, being the date upon which the documents are delivered to Melton or its solicitors; or

9.2.2 if at the time of Melton's exercise of this option a separate title does not exist for the Land, the Owner shall within thirty (30) days of the exercise of the option, submit to Melton or its solicitors a signed vendor's statement and a Contract of Sale for the Land in the form of the Preselling Contract but completed by the insertion of the following information:

- (a) the title particulars for the Land;
- (b) the lot number and plan of subdivision number for the Land on the cover page of the Preselling Contract and in the Land description and Property Address contained in the Particulars of Sale;
- (c) the title particulars of the Land in the Particulars of Sale;
- (d) the price, which shall be the Specified Consideration;
- (e) the deposit, which shall be 10% of the Specified Consideration;
- (f) the balance which shall be 90% of the Specified Consideration; and
- (g) the Day of Sale, being the date upon which the documents are delivered to Melton or its solicitors,
- (h) and attach a subdivisional works plan in schedule 1.

9.3 Upon Melton receiving the sale documentation in accordance with the preceding clause 9.2, Melton shall promptly execute and both parties shall promptly arrange for an exchange of contracts and the payment of the deposit to the Owner.

9.4 The Owner must pay all reasonable and proper costs and reasonable and proper legal expenses (including duty if any) in connection with such retransfer of the Land.

9.5 For the purpose of giving full force and effect to this clause, the Owner hereby irrevocably appoints Melton as attorney of the Owner to do all things including completing, executing and delivering all documents necessary to sell and transfer to Melton any Land which Melton lawfully requires the Owner to sell and transfer to Melton pursuant to this clause and the Cash Contract or Preselling Contract (as the case may be) and the Owner hereby agrees to ratify and does hereby ratify all acts and things done by Melton pursuant to the power of attorney hereby granted.

## 10. Ending of agreement

10.1 This Agreement shall end on the Termination Date.

10.2 As soon as reasonably practicable after the Termination Date in respect of Superlot A, Superlot B, Superlot C or Superlot D (as applicable), the Council will at the request and at the cost of the Owner make application to the Registrar of Titles under section 183(2) of the



Maddocks

Act to cancel the recording of this Agreement in respect of Superlot A, Superlot B, Superlot C or Superlot D (as applicable), on the Register.

---

**11. GST****11.1 GST Exclusive**

Except as otherwise provided by this clause, all Consideration payable under this Agreement in relation to any Supply is exclusive of GST.

**11.2 Increase in Consideration**

To the extent that any Supply under this Agreement constitutes a Taxable Supply, the Consideration payable by the Recipient to the Supplier will be increased by the applicable amount of GST (**GST Amount**), which shall be calculated by multiplying the amount upon which GST is payable by the prevailing rate of GST.

**11.3 Payment of GST**

Any GST Amount must be paid by the Recipient to the Supplier at the same time and in the same manner as the relevant Consideration is paid or given under this Agreement, without any right of set-off or deduction (unless otherwise provided in this Agreement).

**11.4 Reimbursements**

If this Agreement requires the Recipient to pay, reimburse or contribute to any expense, loss or outgoing suffered or incurred by the Supplier, the amount which the Recipient must pay, reimburse or contribute will be the amount net of any Input Tax Credits to which the Supplier is entitled in respect of the Relevant Expense, together with any GST Amount if the payment, reimbursement or contribution constitutes a Taxable Supply by the Supplier to the Recipient.

**11.5 Tax Invoice**

The Supplier must provide to the Recipient a valid Tax Invoice at or prior to the time of payment of any GST Amount.

**11.6 Adjustments & Adjustment Notes**

To the extent that any Adjustment occurs in relation to a Taxable Supply, the Supplier must issue an Adjustment Note to the Recipient within 7 days of becoming aware of the Adjustment, and any payment necessary to give effect to such Adjustment must be made within 7 days after the date of receipt of the Adjustment Note.

**11.7 Definitions**

For the purposes of this clause:

**Adjustment** has the same meaning given to that term in the GST Act.

**Adjustment Note** has the same meaning given to that term in the GST Act.

**Consideration** means, except as otherwise provided, any consideration payable under this agreement in return for a Taxable Supply, but does not include any amount on account of GST.

**GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 (as amended).



### Maddocks

**GST** has the same meaning given to that term in the GST Act.

**Input Tax Credit** has the same meaning given to that term in the GST Act, but also includes a reduced input tax credit under Division 70 and an adjusted input tax credit under Division 132 of the GST Act.

**Real Property** has the same meaning given to that term in the GST Act.

**Recipient** has the same meaning given to that term in the GST Act.

**Supply** has the same meaning given to that term in the GST Act.

**Supplier** means the entity making a Supply to the Recipient.

**Tax Invoice** has the same meaning given to that term in the GST Act.

**Taxable Supply** has the same meaning given to that term in the GST Act.




Maddocks

**Signing Page**

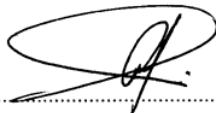
EXECUTED by the parties as a deed on the date specified.

THE COMMON SEAL OF THE MELTON SHIRE COUNCIL was hereunto affixed in the presence of:



X   
.....

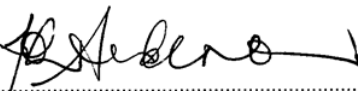
Councillor

X   
.....

Chief Executive Officer

THE COMMON SEAL OF HARNESS RACING VICTORIA was hereunto affixed in the presence of:



X   
.....  
Witness



Maddocks

No.                      dated                      as Mortgagee under Instrument of Mortgage  
  which encumbers the subject land  
consents to the Owner entering into this Agreement and agrees to be bound by the terms and  
conditions of this Agreement.





Maddocks

---

**Schedule 1**

**Cash Contract of Sale of Real Estate**



## Maddocks

Lawyers  
140 William Street  
Melbourne Victoria 3000 Australia  
Telephone 61 3 9288 0555  
Facsimile 61 3 9288 0666  
Email [info@maddocks.com.au](mailto:info@maddocks.com.au)  
[www.maddocks.com.au](http://www.maddocks.com.au)  
DX 259 Melbourne

Date / /2009

### Contract of Sale

Property: Lot ##[Number to be inserted] (PS##[Number to be inserted]) 92-134  
Abey Road, Melton South

Harness Racing Victoria  
and

Melton Shire Council

COPY

[801936: 4582095v1]

Interstate office  
Sydney  
Affiliated offices  
Adelaide, Auckland, Beijing, Brisbane,  
Colombo, Dubai, Hong Kong, Jakarta,  
Kuala Lumpur, Manila, Mumbai,  
New Delhi, Perth, Singapore, Tianjin



Published by the Law Institute of Victoria and the Real Estate Institute of Victoria Ltd.

Estate Agents (Contract)  
Regulations 1997, Form 2



Copyright — November 2005  
(With GST wordings.  
Approved VLRPA,  
EEA 1980, S53A 2001)

## CONTRACT OF SALE OF REAL ESTATE

### IMPORTANT NOTICE TO PURCHASERS

**Cooling-off period**

**Section 31 Sale of Land Act 1962**

If none of the exceptions listed below applies to you, you may end this contract within 3 clear business days of the day that you sign the contract.

To end this contract within this time, you must either give the vendor or the vendor's agent **written** notice that you are ending the contract or leave the notice at the address of the vendor or the vendor's agent.

If you end the contract in this way, you are entitled to a refund of all the money you paid EXCEPT for \$100 or 0.2% of the purchase price (whichever is more).

EXCEPTIONS – The 3-day cooling-off period does not apply if –

- You bought the property at or within 3 clear business days **before or after** a publicly advertised auction
- You received independent advice from a solicitor before signing the contract
- The property is used mainly for industrial or commercial purposes.
- The property is more than 20 hectares in size and is used mainly for farming
- You previously signed a similar contract for the same property
- You are an estate agent or a corporate body.

The conditions of this contract are contained in the attached –

Particulars of Sale,	and
Schedule,	and
General Conditions,	and
Special Conditions (if any).	

The vendor sells and the purchaser buys both the property and the chattels for the price and upon the conditions set out in this contract.

The Vendor's Statement required by section 32(1) of the *Sale of Land Act 1962* is attached to, and included in, this contract.

Where the signature of any party to this contract is secured by an agent, the parties acknowledge being given a copy of this contract by the agent at the time of signing.

..... Vendor

..... Purchaser

**GENERAL CONDITIONS ("GC")****Encumbrances**

- 1.1 The purchaser buys the property and the chattels subject to the encumbrances shown in Item 1 of the Schedule.
- 1.2 If the purchaser is taking over an existing mortgage –
  - (a) the purchaser assumes liability for the mortgage
  - (b) the price is satisfied to the extent of any mortgage money owing at the settlement date, and
  - (c) the vendor must treat any payment made by the purchaser under the mortgage as a payment made to the vendor under this contract.

**Loss or Damage Before Settlement**

- 2.1 The vendor carries the risk of loss or damage to the property and the chattels until settlement.
- 2.2 The vendor must deliver the property and the chattels to the purchaser at settlement date in their present condition (fair wear and tear excepted).
- 2.3 If any chattel is not in its present condition (fair wear and tear excepted) at settlement, the purchaser is only entitled to compensation from the vendor.

**Finance**

3. If a lender is nominated in the Particulars of Sale this contract is subject to the lender approving the loan on the security of the property by the approval date or any later approval date allowed by the vendor.  
The purchaser may end the contract if the loan is not approved by the approval date only if the purchaser –
  - (a) has made immediate application for the loan
  - (b) has done everything reasonably required to obtain approval of the loan
  - (c) serves written notice ending the contract on the vendor on or before 2 business days after the approval date, and
  - (d) is not in default under any other condition of this contract when the notice is given.
 All money must be immediately refunded to the purchaser if the contract is ended.

**Terms Contracts**

4. If this is a "terms contract" as defined in section 2(1) of the *Sale of Land Act 1962*, then –
  - (a) the vendor must arrange the discharge of any mortgage affecting the land by the settlement date
  - (b) all money payable under the contract must be paid to a duly qualified legal practitioner or licensed estate agent to be applied towards the discharging the mortgage
  - (c) the purchaser must pay interest to the vendor from the settlement date upon the balance outstanding at the rate, on the days, and with the adjustments set out in Item 2 of the Schedule
  - (d) the vendor must apply installments under this contract first to pay interest and then to reduce the balance owing.

**Nominee**

5. If the contract says that the property is sold to a named purchaser "and/or nominee" (or similar words), the named purchaser may, at least 14 days before settlement date, nominate a substitute or additional purchaser, but the named purchaser remains personally liable for the due performance of all the purchaser's obligations under this contract.

**Payment**

- 6.1 The purchaser must pay all money (except the deposit) to the vendor, the vendor's solicitor or at the direction of the vendor.
- 6.2 The purchaser must pay the deposit –
  - (a) to the vendor's estate agent or, if there is no estate agent, to the vendor's solicitor, or
  - (b) if the vendor directs, into a special purpose banking account specified by the vendor in the joint names of the purchaser and the vendor.
- 6.3 If the land sold is a lot on an unregistered plan of subdivision then the deposit –
  - (a) must not exceed 10% of the price, and
  - (b) must be paid –
    - (i) to the vendor's solicitor or estate agent to be held by the solicitor or estate agent on trust for the purchaser, or
    - (ii) if the vendor directs, into a special purpose banking account in Victoria specified by the vendor in the joint names of the purchaser and the vendor until the registration of the plan.

**Breach**

7. A party who breaches this contract must pay to the other party on demand –
  - (a) compensation for any reasonably foreseeable loss to the other party resulting from the breach, and
  - (b) any interest due under this contract as a result of the breach.

**Time**

8. If the time for performing any action expires on a Saturday, Sunday or bank holiday, then time is extended until the next business day.

**General Conditions in Legislation**

- 9.1 The general conditions in Table A of the Seventh Schedule of the *Transfer of Land Act 1958* apply if the land is under the operation of that Act.
- 9.2 The general conditions in the Third Schedule of the *Property Law Act 1958* apply if the land is not under the operation of the *Transfer of Land Act 1958*.
- 9.3 General Condition 9 in Table A or in the Third Schedule applies as if its second last sentence ended with the additional words, "as a resident Australian beneficial owner of the land".

**Conflict Between Conditions**

- 10 In case of a conflict between the conditions the order of priority is —
- (a) any special conditions in this contract
  - (b) general conditions in this contract
  - (c) general conditions in legislation.

**Conditions**

- 11 These conditions prevail over the conditions in any earlier contract and any requisitions and answers properly made and given under that contract are deemed to be requisitions and answers properly made and given under this contract.

**Service**

- 12 Any document served by post is deemed to be served on the next business day after posting unless proved otherwise.

**Transfer and Settlement**

- 13.1 The purchaser must provide the instrument of transfer required by General Condition 12 of Table A, or the assurance required by the Third Schedule (as the case may be), to the vendor or the vendor's solicitor at least 10 days prior to the settlement date.
- 13.2 The vendor must pay the bank fees on all bank cheques exceeding 3 that are required by the vendor for settlement.

**\*Law Institute of Victoria Property Law Dispute Resolution Committee Guidelines**

- 1 The Committee has been established to decide disputes relating to property law matters. Where one party does not have a solicitor representing them, the dispute cannot be heard until that party instructs a solicitor.
2. An *agreed* Statement of Facts must be signed by all parties and referring solicitors and must include:
- 2.1 A clear and concise statement of all the relevant *agreed* facts upon which the dispute is based. The Committee is unable to make any decision unless the facts are *agreed* between the parties.
  - 2.2 A copy of all relevant documents.
  - 2.3 The issues, based on the *agreed* facts, to be decided by the Committee.
  - 2.4 Applications for disputes to be decided by the Committee shall include an agreement by the referring Solicitors and the parties to be bound by the Committee's decision on any question of law or practice.
3. Applications in the appropriate form must be lodged with the Secretary of the Property Law Dispute Resolution Committee C/- the Law Institute of Victoria. The form may be obtained from the website of the Property Law Section of the Law Institute of Victoria.
- 4 An administration fee of \$100.00 for each referring solicitor must be paid to the Institute when the application is lodged.
- 5 The Committee's decision will be based upon the material contained in the Statement of Facts only. In making its decision the Committee shall act as an expert panel and not as an arbitrator.
- 6 The Committee reserves the right —
- (i) to call for further and better particulars in order to make a decision.
  - (ii) to refuse to decide any dispute, in which cases any fees will be refunded in full.
- 7 The Committee's written decision will be sent to the referring solicitors within seven days of the dispute being decided.

\* The Guidelines and forms required can be obtained from the Secretary of the Property Law Dispute Resolution Committee, Property & Environmental Law Section, Law Institute of Victoria. Tel: (03) 9607 9311.

CONTRACT OF SALE OF REAL ESTATE

Law Institute of Victoria / Corporate Print - item 2.1  
User is responsible for verifying form currency -  
current edition may be checked at [corprint.com.au](http://corprint.com.au)

**PARTICULARS OF SALE**

**VENDOR'S AGENT**

of  
Tel:

Fax:  
Ref:

Email

**VENDOR'S SOLICITOR**

Deacons of 485 Bourke Street Melbourne 3000

Tel: 8686 6000

Fax: 8686 6505

Email Justin.Lucas@Deacons.com.au

Ref: Justin Lucas

**PURCHASER'S SOLICITOR**

Maddocks of 140 William Street, Melbourne, Vic 3000

Tel: 9288 0555

Fax: 9288 0666

Email michael.dowling@maddocks.com.au Ref: Michael Dowling:801936

**VENDOR**

**HARNESS RACING VICTORIA** of 740 Mount Alexander Road, Moonee Ponds, 3039

**PURCHASER**

**MELTON SHIRE COUNCIL** of 232 High Street, Melton, Vic 3337

**LAND**

described in the attached certificate and plan and being the land in Volume ~~##[No. to be inserted]~~ Folio ~~##[No. to be inserted]~~

**PROPERTY ADDRESS**

the land together with any improvements known as Lot ~~##[No. to be inserted]~~, PS ~~##[Number to be inserted]~~, 92-134 Abey Road, Melton South

**CHATTELS**

Nil

**PRICE**

\$

plus any GST

**DEPOSIT**

\$

being 10% of the price payable on the signing of this contract

**BALANCE**

\$

plus any GST

**PAYMENT OF BALANCE**

Thirty (30) days from the day of sale or earlier by agreement

**SETTLEMENT DATE**

the date upon which vacant possession of the property is given (or receipt of their rents and profits) , namely, upon acceptance of title and payment in full of the price.

**DAY OF SALE**

the earlier of the date of this Contract or the acceptance date of any prior contract note, namely the \_\_\_\_\_ day of \_\_\_\_\_

[801936: 4582095v1]

**SCHEDULE OF ENCUMBRANCES TO BE ASSUMED BY THE PURCHASER****ITEM 1  
(GC 1.1)**

All registered easements and restrictive covenants (being the same encumbrances as were registered on title at the time the Purchaser first sold the Land to the Vendor).

An agreement pursuant to section 173 of the *Planning and Environment Act 1987*.

**SPECIAL CONDITIONS****1. Deposit**

1.1 The Purchaser authorises the Vendor's solicitor to place the deposit in an interest bearing trust account with the Commonwealth Bank of Australia (**Bank**) at its branch at 385 Bourke Street, Melbourne in the joint names of the Vendor and the Purchaser immediately after the signing of this contract. Alternatively, at the Vendor's option, the deposit will be held in the Vendor's solicitor's trust account.

1.2 If the deposit is invested in an interest bearing account, any interest which accrues on the deposit will be paid to the party entitled to the deposit. Any tax credit will belong to the party entitled to receive the interest on the deposit.

1.3 In this special condition, 'interest' means all interest accrued in respect of the interest bearing trust account less all stamp and other duties payable in respect of such account and any tax deducted from such account because of failure to supply a tax file number.

1.4 The Vendor and the Purchaser must do all things and sign all documents necessary to enable the Vendor's solicitor to open the interest bearing trust account with the Bank and to withdraw the deposit and accrued interest on the date on which the deposit is to be released and generally to give effect to the terms of this special condition including, but not limited to, supplying any relevant tax file numbers.

1.5 The Vendor's solicitor will not be responsible for any loss occasioned by the investment of the deposit and the party entitled to the deposit will bear the risk of the loss of the deposit.

**2. Section 32 of the Sale of Land Act 1962**

The Purchaser acknowledges that before signing this contract or any document in respect of the sale of the property which is intended legally to bind the Purchaser, the Purchaser was given a statement in writing containing the particulars required by section 32(2) of the *Sale of Land Act 1962* (as amended).

**3. Measurements**

The Purchaser admits that the land as offered for sale and inspected by the Purchaser is identical with that described in the title particulars specified above. The Purchaser is not entitled to make requisitions or claim compensation for any alleged



misdescription of the land or deficiency in its area or measurements or any patent or latent defects in the land or call upon the Vendor to amend title or to bear all or any part of the cost of doing so. Condition 3 of Table A of the *Transfer of Land Act 1958* (Table A) does not apply to this contract.

4. **Planning Restrictions**

The Purchaser buys subject to the *Planning and Environment Act 1987* and subject to all relevant planning controls and restrictions on the use and/or development of the property imposed by the planning scheme for the municipality in which the property is situated.

5. **No Warranties**

5.1 The Purchaser acknowledges having purchased the property as a result of the Purchaser's own inspection and inquiry. The Purchaser does not rely on any representation or warranty of any nature made by or on behalf of the Vendor or its agents or its consultants.

5.2 Without limiting the generality of special condition 5.1, the Purchaser is not entitled to make any objection, requisition or claim for compensation in respect of the state of repair and condition of any building on the land sold or any items located within such building.

6. **Whole Agreement**

The covenants provisions terms and agreements contained in this contract expressly or by statutory implication cover and comprise the whole of the agreement between the parties. The parties agree that no further or other covenants agreements provisions or terms will be deemed to be implied in this contract or to arise between the parties by way of collateral or other agreement by reason of any promise representation warranty or undertaking given or made by either party to the other on or before the execution of this contract.

7. **Execution of necessary documents**

Each party will execute and deliver all documents and instruments and will do or procure to be done all acts and things necessary, desirable or reasonable to give effect to this contract.

8. **Non-merger**

Any provision of this contract which is capable of taking effect after completion will not merge on completion but will continue in full force and effect.

9. **Indemnity**

Subject to any contrary provision in this contract, the Purchaser will indemnify and keep indemnified the Vendor against all claims, demands, proceedings, judgements, damages, costs and losses of any nature which the Vendor may suffer, sustain or incur relating to any liability, claim, action, demand, suit or proceedings however arising made or incurred on or after the settlement date or from events or occurrences arising on or after the settlement date in relation to the property or any act, matter or thing occurring on the property.

**10. Delivering the Transfer**

The Purchaser must deliver to the Vendor the duly executed instrument of transfer referred to in Condition 12 of Table A not less than 14 days before the settlement date. The Purchaser will be deemed to have defaulted in payment of the balance of the price if the duly executed instrument of transfer is not delivered as required by this special condition. Such default will be deemed to commence on the settlement date and terminate 14 days after the date on which the Vendor receives the instrument of transfer.

**11. Standard Requisitions**

- 11.1 Requisitions on title will be delivered only in the copyright form prepared by the Law Institute of Victoria (revised 2005).
- 11.2 No further or additional requisitions will be delivered except for those which arise out of the Vendor's answers to requisitions.
- 11.3 Nothing in this special condition will relieve the Vendor of its obligation to make good title to the property.

**12. Interpretation**

In this contract references to persons include corporations, references to the singular include the plural and vice versa, references to a gender include other genders and references to statutes include any statutes amending consolidating or replacing those statutes. Headings are for reference only and do not affect the construction of this contract.

**13. GST****13.1 GST Exclusive**

Except as otherwise provided by this clause, all Consideration payable under this Contract in relation to any Supply is exclusive of GST.

**13.2 Increase in Consideration**

To the extent that any Supply under this Contract constitute a Taxable Supply, the Consideration payable by the Recipient to the Supplier will be increased by the applicable amount of GST (**GST Amount**), which shall be calculated by multiplying the amount upon which GST is payable by the prevailing rate of GST.

**13.3 Payment of GST**

Any GST amount must be paid by the Recipient to the Supplier at the same time and in the same manner as the relevant Consideration is paid or given under this Contract, without any right of set off or deduction (unless otherwise provided in this Contract).

**13.4 Reimbursements**

If this Contract requires the Recipient to pay, reimburse or contribute to any expense, loss or outgoing suffered or incurred by the Supplier (**Relevant Expense**), the amount which the Recipient must pay, reimburse or

contribute will be the amount net of any Input Tax Credits to which the Supplier is entitled in respect of the Relevant Expense, together with any GST amount if the payment, reimbursement or contribution constitutes a Taxable Supply by the Supplier to the Recipient.

13.5 **Tax Invoice**

The Supplier must provide to the Recipient a valid Tax Invoice at or prior to the time of payment of any GST amount.

13.6 **Adjustments & Adjustment Notes**

To the extent that any Adjustment occurs in relation to a Taxable Supply, the Supplier must issue an Adjustment Note to the Recipient within 7 days of becoming aware of the Adjustment, and any payment necessary to give effect to such Adjustment must be made within 7 days after the date of receipt of the Adjustment Note.

13.7 **Definitions**

For the purposes of this clause:

**Adjustment** has the same meaning given to that term in the GST Act.

**Adjustment Note** has the same meaning given to that term in the GST Act.

**Consideration** means, except as otherwise provided, any consideration payable under this agreement in return for a Taxable Supply, but does not include any amount on account of GST.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (as amended).

**GST** has the same meaning given to that term in the GST Act.

**Input Tax Credit** has the same meaning given to that term in the GST Act, but also includes a reduced input tax credit under Division 70 and an adjusted input tax credit under division 132 of the GST Act.

**Real Property** has the same meaning given to that term the GST Act.

**Recipient** has the same meaning given to that term in the GST Act.

**Supply** has the same meaning given to that term in the GST Act.

**Supplier** means the entity making the Supply to the Recipient.

**Tax Invoice** has the same meaning given to that term in the GST Act.

**Taxable Supply** has the same meaning given to that term in the GST Act.

1 0 10 10000000000000000000 1000 1000

Maddocks

---

**Schedule 2**

**Preselling Contract of Sale of Real Estate**



**Maddocks**

Lawyers  
140 William Street  
Melbourne Victoria 3000 Australia  
Telephone 61 3 9288 0555  
Facsimile 61 3 9288 0666  
Email info@maddocks.com.au  
www.maddocks.com.au  
DX 259 Melbourne

Date / /2009

**Contract of Sale**

Property: Lot ##[Number to be inserted] (PS##[Number to be inserted]) 92-134  
Abey Road, Melton South

Harness Racing Victoria  
and

Melton Shire Council

COPY

Interstate office  
Sydney  
Affiliated offices  
Adelaide, Beijing, Brisbane, Colombo,  
Dubai, Hong Kong, Jakarta, Kuala Lumpur,  
Manila, Mumbai, New Delhi, Perth,  
Singapore, Tianjin

[12347: 4582062v1]



Published by the Law Institute of Victoria and the Real Estate Institute of Victoria Ltd.  
*Estate Agents (Contract)  
Regulations 1997, Form 2*



Copyright — November 2005  
(With GST wordings.  
Approved VLRPA,  
EEA 1980, S53A 2001)

**CONTRACT OF SALE OF REAL ESTATE**

**IMPORTANT NOTICE TO PURCHASERS**

**Cooling-off period**

**Section 31 Sale of Land Act 1962**

If none of the exceptions listed below applies to you, you may end this contract within 3 clear business days of the day that you sign the contract.

To end this contract within this time, you must either give the vendor or the vendor’s agent **written** notice that you are ending the contract or leave the notice at the address of the vendor or the vendor’s agent.

If you end the contract in this way, you are entitled to a refund of all the money you paid **EXCEPT** for \$100 or 0.2% of the purchase price (whichever is more).

**EXCEPTIONS** – The 3-day cooling-off period does not apply if –

- You bought the property at or within 3 clear business days **before or after** a publicly advertised auction
- You received independent advice from a solicitor before signing the contract
- The property is used mainly for industrial or commercial purposes.
- The property is more than 20 hectares in size and is used mainly for farming
- You previously signed a similar contract for the same property
- You are an estate agent or a corporate body.

The conditions of this contract are contained in the attached –

- Particulars of Sale,   and  
Schedule,   and  
General Conditions,   and  
Special Conditions (if any).

The vendor sells and the purchaser buys both the property and the chattels for the price and upon the conditions set out in this contract.

The Vendor’s Statement required by section 32(1) of the *Sale of Land Act 1962* is attached to, and included in, this contract.

Where the signature of any party to this contract is secured by an agent, the parties acknowledge being given a copy of this contract by the agent at the time of signing.

..... Vendor

..... Purchaser

**GENERAL CONDITIONS ("GC")****Encumbrances**

- 1.1 The purchaser buys the property and the chattels subject to the encumbrances shown in Item 1 of the Schedule.
- 1.2 If the purchaser is taking over an existing mortgage –
- (a) the purchaser assumes liability for the mortgage
  - (b) the price is satisfied to the extent of any mortgage money owing at the settlement date, and
  - (c) the vendor must treat any payment made by the purchaser under the mortgage as a payment made to the vendor under this contract.

**Loss or Damage Before Settlement**

- 2.1 The vendor carries the risk of loss or damage to the property and the chattels until settlement.
- 2.2 The vendor must deliver the property and the chattels to the purchaser at settlement date in their present condition (fair wear and tear excepted).
- 2.3 If any chattel is not in its present condition (fair wear and tear excepted) at settlement, the purchaser is only entitled to compensation from the vendor.

**Finance**

3. If a lender is nominated in the Particulars of Sale this contract is subject to the lender approving the loan on the security of the property by the approval date or any later approval date allowed by the vendor. The purchaser may end the contract if the loan is not approved by the approval date only if the purchaser –
- (a) has made immediate application for the loan
  - (b) has done everything reasonably required to obtain approval of the loan
  - (c) serves written notice ending the contract on the vendor on or before 2 business days after the approval date, and
  - (d) is not in default under any other condition of this contract when the notice is given.
- All money must be immediately refunded to the purchaser if the contract is ended.

**Terms Contracts**

4. If this is a "terms contract" as defined in section 2(1) of the *Sale of Land Act 1962*, then –
- (a) the vendor must arrange the discharge of any mortgage affecting the land by the settlement date
  - (b) all money payable under the contract must be paid to a duly qualified legal practitioner or licensed estate agent to be applied towards the discharging the mortgage
  - (c) the purchaser must pay interest to the vendor from the settlement date upon the balance outstanding at the rate, on the days, and with the adjustments set out in Item 2 of the Schedule
  - (d) the vendor must apply installments under this contract first to pay interest and then to reduce the balance owing.

**Nominee**

5. If the contract says that the property is sold to a named purchaser "and/or nominee" (or similar words), the named purchaser may, at least 14 days before settlement date, nominate a substitute or additional purchaser, but the named purchaser remains personally liable for the due performance of all the purchaser's obligations under this contract.

**Payment**

- 6.1 The purchaser must pay all money (except the deposit) to the vendor, the vendor's solicitor or at the direction of the vendor.
- 6.2 The purchaser must pay the deposit –
- (a) to the vendor's estate agent or, if there is no estate agent, to the vendor's solicitor, or
  - (b) if the vendor directs, into a special purpose banking account specified by the vendor in the joint names of the purchaser and the vendor.
- 6.3 If the land sold is a lot on an unregistered plan of subdivision then the deposit –
- (a) must not exceed 10% of the price, and
  - (b) must be paid –
    - (i) to the vendor's solicitor or estate agent to be held by the solicitor or estate agent on trust for the purchaser, or
    - (ii) if the vendor directs, into a special purpose banking account in Victoria specified by the vendor in the joint names of the purchaser and the vendor
- until the registration of the plan.

**Breach**

7. A party who breaches this contract must pay to the other party on demand –
- (a) compensation for any reasonably foreseeable loss to the other party resulting from the breach, and
  - (b) any interest due under this contract as a result of the breach.

**Time**

8. If the time for performing any action expires on a Saturday, Sunday or bank holiday, then time is extended until the next business day.

**General Conditions in Legislation**

- 9.1 The general conditions in Table A of the Seventh Schedule of the *Transfer of Land Act 1958* apply if the land is under the operation of that Act.
- 9.2 The general conditions in the Third Schedule of the *Property Law Act 1958* apply if the land is not under the operation of the *Transfer of Land Act 1958*.
- 9.3 General Condition 9 in Table A or in the Third Schedule applies as if its second last sentence ended with the additional words, "as a resident Australian beneficial owner of the land".

**Conflict Between Conditions**

- 10 In case of a conflict between the conditions the order of priority is —
- (a) any special conditions in this contract
  - (b) general conditions in this contract
  - (c) general conditions in legislation.

**Conditions**

- 11 These conditions prevail over the conditions in any earlier contract and any requisitions and answers properly made and given under that contract are deemed to be requisitions and answers properly made and given under this contract.

**Service**

- 12 Any document served by post is deemed to be served on the next business day after posting unless proved otherwise.

**Transfer and Settlement**

- 13.1 The purchaser must provide the instrument of transfer required by General Condition 12 of Table A, or the assurance required by the Third Schedule (as the case may be), to the vendor or the vendor's solicitor at least 10 days prior to the settlement date.
- 13.2 The vendor must pay the bank fees on all bank cheques exceeding 3 that are required by the vendor for settlement.

**\*Law Institute of Victoria Property Law Dispute Resolution Committee Guidelines**

- 1 The Committee has been established to decide disputes relating to property law matters. Where one party does not have a solicitor representing them, the dispute cannot be heard until that party instructs a solicitor.
2. An *agreed* Statement of Facts must be signed by all parties and referring solicitors and must include:
- 2.1 A clear and concise statement of all the relevant *agreed* facts upon which the dispute is based. The Committee is unable to make any decision unless the facts are *agreed* between the parties.
  - 2.2 A copy of all relevant documents.
  - 2.3 The issues, based on the *agreed* facts, to be decided by the Committee.
  - 2.4 Applications for disputes to be decided by the Committee shall include an agreement by the referring Solicitors and the parties to be bound by the Committee's decision on any question of law or practice.
3. Applications in the appropriate form must be lodged with the Secretary of the Property Law Dispute Resolution Committee C/- the Law Institute of Victoria. The form may be obtained from the website of the Property Law Section of the Law Institute of Victoria.
- 4 An administration fee of \$100.00 for each referring solicitor must be paid to the Institute when the application is lodged.
- 5 The Committee's decision will be based upon the material contained in the Statement of Facts only. In making its decision the Committee shall act as an expert panel and not as an arbitrator.
- 6 The Committee reserves the right —
- (i) to call for further and better particulars in order to make a decision.
  - (ii) to refuse to decide any dispute, in which cases any fees will be refunded in full.
- 7 The Committee's written decision will be sent to the referring solicitors within seven days of the dispute being decided.

\* The Guidelines and forms required can be obtained from the Secretary of the Property Law Dispute Resolution Committee, Property & Environmental Law Section, Law Institute of Victoria. Tel: (03) 9607 9311.



CONTRACT OF SALE OF REAL ESTATE

Law Institute of Victoria / Corporate Print - item 2.1  
User is responsible for verifying form currency -  
current edition may be checked at [corprint.com.au](http://corprint.com.au)

PARTICULARS OF SALE

VENDOR'S AGENT

of Tel:

Fax: Ref:

Email

VENDOR'S SOLICITOR

Deacons of RACV Tower, 485 Bourke Street, Melbourne 3000

Tel: 8686 6000

Fax: 8686 6505

Email: Justin.Lucas@Deacons.com.au

Ref: Justin Lucas

PURCHASER'S SOLICITOR

Maddocks of 140 Williams Street Melbourne 3000

Tel: (03) 9288 0555

Fax: (03) 9288 0666

Email michael.dowling@maddocks.com.au

Ref: Michael Dowling: 801936

Vendor

HARNESS RACING VICTORIA

of 740 Mount Alexander Road, Moonee Ponds, Victoria 3039

PURCHASER

MELTON SHIRE COUNCIL of 232 High Street, Melton, 3337

LAND

Lot ##[Number to be inserted] or Pan of Subdivision no. PS##[Number to be inserted] (Plan) being part of the land described in the attached Certificate of Title Volume ##[Number to be inserted] Folio ##[Number to be inserted]

PROPERTY ADDRESS

the land together with any improvements known as Lot ##[Number to be inserted], PS611302C, 92-134 Abey Road, Melton South.

CHATTELS

Nil

PRICE

\$

plus any GST

DEPOSIT

\$

being 10% of the price payable on the signing of this contract

BALANCE

\$

being 90% of the price plus any GST.

PAYMENT OF BALANCE

Fourteen (14) days after the date upon which the Vendor notifies the Purchaser of the registration of the Plan by the Registrar of Titles under the Subdivision Act 1988 or earlier by agreement (Settlement Date). Time will be the essence of this Contract regardless of whether any waiver given or indulgence was granted by the Vendor to the Purchaser

SETTLEMENT DATE

the date upon which vacant possession of the property is given (or receipt of their rents and profits), namely, upon acceptance of title and payment in full of the price.

DAY OF SALE

the earlier of the date of this Contract or the acceptance date of any prior contract note, namely the day of

[12347: 4582062v1]

**SCHEDULE OF ENCUMBRANCES TO BE ASSUMED BY THE PURCHASER****ITEM 1  
(GC 1.1)**

All registered easements and restrictive covenants (being the same encumbrances as were registered on title at the time the Purchaser first sold the Land to the Vendor); and

An agreement pursuant to section 173 of the *Planning and Environment Act 1987*.

**SPECIAL CONDITIONS****1. Deposit**

- 1.1 This sale is made pursuant to section 9AA of the *Sale of Land Act 1962* as amended (Act). Where there is any inconsistency between this special condition and any other provision in this contract, this special condition prevails to the extent of the inconsistency.
- 1.2 The deposit paid under this contract will be paid to the Vendor's solicitor or to the vendor's agent named in this Contract. The deposit will be held on trust for the Purchaser until the registration of the plan of subdivision (Plan) or will be held in an interest bearing trust account with the Commonwealth Bank of Australia (Bank) at its branch at 385 Bourke Street, Melbourne in the joint names of the Vendor and the Purchaser until the registration of the Plan. Alternatively, at the Vendor's option, the deposit will be held in the Vendor's solicitor's or the Vendor's agent's trust account.
- 1.3 If the deposit is invested in an interest bearing account, any interest which accrues on the deposit will be paid to the party entitled to the deposit. Any tax credit will belong to the party entitled to receive the interest on the deposit.
- 1.4 In this special condition, 'interest' means all interest accrued in respect of the interest bearing trust account less all stamp and other duties payable in respect of such account and any tax deducted from such account because of failure to supply a tax file number.
- 1.5 The Vendor and the Purchaser must do all things and sign all documents necessary to enable the Vendor's solicitor to open the interest bearing trust account with the Bank and to withdraw the deposit and accrued interest on the date on which the deposit is to be released and generally to give effect to the terms of this special condition including, but not limited to supplying any relevant tax file numbers.
- 1.6 Upon registration of the Plan, the deposit will be held or invested by the Vendor's solicitor or the Vendor's agent upon the terms in this special condition as stakeholder for the parties and will then be held or released in accordance with the Act.

**2. Contract Conditional upon Registration of Plan**

2.1 This Contract is conditional upon the Plan being registered by the Registrar of Titles within 18 months from the date of this Contract.

2.2 If the Plan is not registered within 18 months from the date of this Contract, either party may, have the right prior to the Plan being registered, give written notice to that effect to the other party to rescind this Contract. If the Contract is rescinded under this special condition:

(a) all amounts paid under this Contract less any occupation fees remaining unpaid by the Purchaser will be refunded to the Purchaser; and,

(b) neither party will have any action right, claim or demand against the other under this Contract or arising from or out of the rescission of this Contract or the failure of the Vendor to procure registration of the Plan.

2.3 The Vendor must at its own expense and with all reasonable expedition use its best endeavours to procure that the Plan is registered by the Registrar of Titles within 18 months from the date of this Contract.

**3. Amendments to Plan**

3.1 The Vendor may, in its absolute discretion, or as required by the Registrar of Titles as a condition of registering the Plan, make minor amendments to the Plan. The Purchaser must accept the property on the Plan as ultimately registered even if there are minor variations or discrepancies between the lot or lots sold and the lot or lots on the registered Plan. However, the Vendor must notify the Purchaser in writing of any proposed amendments made by the Vendor under this special condition.

3.2 The Purchaser will make no objection or requisition or claim any compensation in respect of any minor variation or discrepancy between the dimensions and position of the lot or lots sold on the Plan and the dimensions and position of the corresponding lot or lots on the registered Plan. However, if the Purchaser claims that any proposed amendment to the Plan materially affects the property and purports to rescind this contract, the Purchaser must serve a notice of rescission on the Vendor within 14 days from receiving advice from the Vendor of the amendments. The Vendor may, within 14 days of receiving a notice of rescission from the Purchaser, dispute that the proposed amendment materially affects the property and refer the dispute to an arbitrator for determination in accordance with section 14B of the Act.

**4. Purchaser to do all things necessary to obtain Registration of the Plan**

The Purchaser must, immediately on request, sign all documents, applications and consents and do all acts, matters and things which may be necessary or desirable to obtain registration of the Plan and give full effect to anything referred to in these special conditions.

[12347: 4582062v1]

5. **Measurements**

The Purchaser admits that the lot or lots offered for sale and inspected by the Purchaser is or are identical with the lot or lots described in the Plan. The Purchaser is not entitled to make any requisitions or claim compensation for any alleged misdescription of the lot or lots or deficiency in its or their area or measurements or any patent or latent defects in the lot or lots or call upon the Vendor to amend title or to bear all or any part of the cost of doing so. Condition 3 of the Table 'A' and the Third Schedule do not apply to this contract.

6. **Delivering the Transfer**

The Purchaser must deliver to the Vendor the duly executed instrument of transfer referred to in condition 12 of Table A not less than 7 business days before the settlement date. The Purchaser will be deemed to have defaulted in payment of the balance of the price if the duly executed instrument of transfer is not delivered as required by this special condition. Such default will be deemed to commence on the settlement date and terminate 7 business days after the date on which the Vendor receives the instrument of transfer.

7. **Standard Requisitions**

- 7.1 Requisitions on title will be delivered only in the copyright form prepared by the Law Institute of Victoria (revised 2005).
- 7.2 No further or additional requisitions will be delivered except for those which arise out of the Vendor's answers to requisitions.
- 7.3 Nothing in this special condition will relieve the Vendor of its obligation to make good title to the property.

8. **Section 32 of the Sale of Land Act 1962**

The purchaser acknowledges that prior to signing this Contract or any agreement or document in respect of the sale hereby made which is legally binding upon or intended legally to bind the Purchaser, the Purchaser has been given a Statement in writing containing the particulars required by Section 32(2) of the *Sale of Land Act* 1962 (as amended).

9. **Planning Restrictions**

The Purchaser buys subject to the *Planning and Environment Act* 1987 and to all relevant planning controls and restrictions on the use and/or development of the Property imposed by the Planning Scheme for the municipality in which the Property is situated.

10. **No Warranties**

The Purchaser acknowledges having purchased the property as a result of the Purchaser's own inspection and inquiry. The Purchaser does not rely on any representation or warranty of any nature made by or on behalf of the Vendor or its agents or its consultants.

**11. Whole Agreement**

The covenants provisions terms and agreements contained in this contract expressly or by statutory implication cover and comprise the whole of the agreement between the parties. The parties agree that no further or other covenants agreements provisions or terms will be deemed to be implied in this contract or to arise between the parties by way of collateral or other agreement by reason of any promise representation warranty or undertaking given or made by either party to the other on or before the execution of this contract.

**12. Execution of necessary documents**

Each party will execute and deliver all documents and instruments and will do or procure to be done all acts and things necessary, desirable or reasonable to give effect to this contract.

**13. Non-merger**

Any provision of this contract which is capable of taking effect after completion will not merge on completion but will continue in full force and effect.

**14. Indemnity**

Subject to any contrary provision in this contract, the Purchaser will indemnify and keep indemnified the Vendor against all claims, demands, proceedings, judgements, damages, costs and losses of any nature which the Vendor may suffer, sustain or incur relating to any liability, claim, action, demand, suit or proceedings however arising made or incurred on or after the settlement date or from events or occurrences arising on or after the settlement date in relation to the property or any act, matter or thing on the property.

**15. Interpretation**

In this contract, references to persons include corporations, references to the singular include the plural and vice versa, references to a gender include other genders and references to statutes include any statutes amending consolidating or replacing those statutes. Headings are for reference only and do not affect the construction of this contract.

**16. Disclosure of Works**

Attached in schedule 1 is a plan showing details of all works affecting the natural surface level of the land in the lot sold or any land abutting the lot sold in the same subdivision as the lot which:

- 16.1 have been carried out on that land after the certification of the Plan and before the date of this Contract; and
- 16.2 are at the date of this Contract being carried out or proposed to be carried out on that land.

**17. GST (Exclusive)****17.1 GST Exclusive**

Except as otherwise provided by this clause, all Consideration payable under this Contract in relation to any Supply is exclusive of GST.

**17.2 Increase in Consideration**

To the extent that any Supply under this Contract constitute a Taxable Supply, the Consideration payable by the Recipient to the Supplier will be increased by the applicable amount of GST (**GST Amount**), which shall be calculated by multiplying the amount upon which GST is payable by the prevailing rate of GST.

**17.3 Payment of GST**

Any GST amount must be paid by the Recipient to the Supplier at the same time and in the same manner as the relevant Consideration is paid or given under this Contract, without any right of set off or deduction (unless otherwise provided in this Contract).

**17.4 Reimbursements**

If this Contract requires the Recipient to pay, reimburse or contribute to any expense, loss or outgoing suffered or incurred by the Supplier (**Relevant Expense**), the amount which the Recipient must pay, reimburse or contribute will be the amount net of any Input Tax Credits to which the Supplier is entitled in respect of the Relevant Expense, together with any GST amount if the payment, reimbursement or contribution constitutes a Taxable Supply by the Supplier to the Recipient.

**17.5 Tax Invoice**

The Supplier must provide to the Recipient a valid Tax Invoice at or prior to the time of payment of any GST amount.

**17.6 Adjustments & Adjustment Notes**

To the extent that any Adjustment occurs in relation to a Taxable Supply, the Supplier must issue an Adjustment Note to the Recipient within 7 days of becoming aware of the Adjustment, and any payment necessary to give effect to such Adjustment must be made within 7 days after the date of receipt of the Adjustment Note.

**17.7 Definitions**

For the purposes of this clause:

**Adjustment** has the same meaning given to that term in the GST Act.

**Adjustment Note** has the same meaning given to that term in the GST Act.

**Consideration** means, except as otherwise provided, any consideration payable under this agreement in return for a Taxable Supply, but does not include any amount on account of GST.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (as amended).

**GST** has the same meaning given to that term in the GST Act.

**Input Tax Credit** has the same meaning given to that term in the GST Act, but also includes a reduced input tax credit under Division 70 and an adjusted input tax credit under division 132 of the GST Act.

**Real Property** has the same meaning given to that term the GST Act.

**Recipient** has the same meaning given to that term in the GST Act.

**Supply** has the same meaning given to that term in the GST Act.

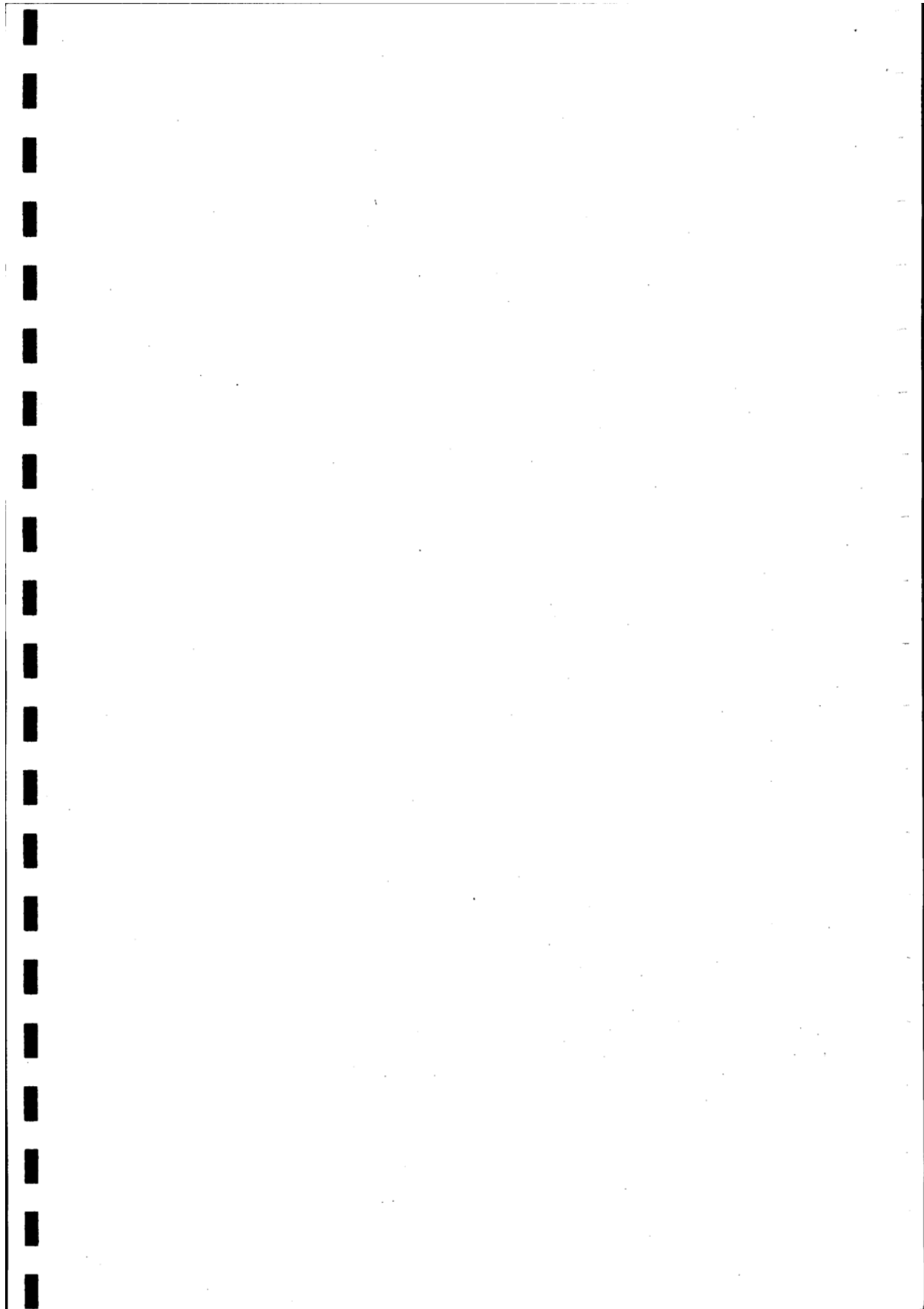
**Supplier** means the entity making the Supply to the Recipient.

**Tax Invoice** has the same meaning given to that term in the GST Act.

**Taxable Supply** has the same meaning given to that term in the GST Act.

COPY





**SCHEDULE 1**

---

**Subdivisional Works Plan**

**COPY**

[12347: 4582062v1]



Maddocks

---

**Schedule 3**

**Superlot Plan**

PLAN OF SUBDIVISION		STAGE No.	LRS USE ONLY	PLAN NUMBER
		--	EDITION	PS
<b>LOCATION OF LAND</b> PARISH: KOROROIT TOWNSHIP: SECTION: 11 CROWN ALLOTMENTS: B,C & D (PARTS) CROWN PORTION: TITLE REFERENCES: VOL.10642 FOL.201 LAST PLAN REFERENCE: LOT 2 ON P.S.543417L POSTAL ADDRESS: ABEY ROAD (at time of subdivision) MELTON SOUTH 3338 MGA CO-ORDINATES: E: 287108 ZONE: 55 (of approx. centre of plan) N: 5824709 DATUM: GDA94		<b>COUNCIL CERTIFICATION AND ENDORSEMENT</b> COUNCIL NAME: MELTON SHIRE COUNCIL REF: 1. THIS PLAN IS CERTIFIED UNDER SECTION 6 OF THE SUBDIVISION ACT 1988. 2. THIS PLAN IS CERTIFIED UNDER SECTION 11(7) OF THE SUBDIVISION ACT 1988. DATE OF ORIGINAL CERTIFICATION UNDER SECTION 6 / / . 3. THIS IS A STATEMENT OF COMPLIANCE ISSUED UNDER SECTION 21 OF THE SUBDIVISION ACT 1988. <b>OPEN SPACE</b> (i) A REQUIREMENT FOR PUBLIC OPEN SPACE UNDER SECTION 18 OF THE SUBDIVISION ACT 1988 HAS / HAS NOT BEEN MADE. (ii) THE REQUIREMENT HAS BEEN SATISFIED. (iii) THE REQUIREMENT IS TO BE SATISFIED IN STAGE COUNCIL DELEGATE COUNCIL SEAL DATE / / . RE-CERTIFIED UNDER SECTION 11(7) OF THE SUBDIVISION ACT 1988 COUNCIL DELEGATE COUNCIL SEAL DATE / / .		
<b>VESTING OF ROADS OR RESERVES</b>				
IDENTIFIER		COUNCIL/BODY/PERSON		
R1		MELTON SHIRE COUNCIL		
<b>NOTATIONS</b>				
DEPTH LIMITATION DOES NOT APPLY		STAGING THIS IS NOT A STAGED SUBDIVISION PLANNING PERMIT No.		
NOTES:		THIS SURVEY HAS BEEN CONNECTED TO PERMANENT MARKS No(s). IN PROCLAIMED SURVEY AREA No.		
SURVEY: THIS PLAN IS BASED ON SURVEY VIDE				
<b>EASEMENT INFORMATION</b>				<b>NOTATIONS</b>
LEGEND: A - APPURTENANT E - ENCUMBERING EASEMENT R - ENCUMBERING EASEMENT (ROAD)		ESTATE:		STAGE: No. OF LOTS: 4
EASEMENT REFERENCE	PURPOSE	WIDTH (METRES)	ORIGIN	LAND BENEFITED OR IN FAVOUR OF
				AREA: 29.57ha MEL: 343:B:1 LRS USE ONLY STATEMENT OF COMPLIANCE/ EXEMPTION STATEMENT RECEIVED <input type="checkbox"/> DATE / /
				LRS USE ONLY PLAN REGISTERED TIME DATE / /
				ASSISTANT REGISTRAR OF TITLES
				SHEET 1 OF 2 SHEETS
Breess Pitt Dixon Pty Ltd 1/19 Cato Street Hawthorn East Vic 3123 Ph: 8823 2300 Fax: 8823 2310 www.bpd.com.au Info@bpd.com.au		LICENSED SURVEYOR: GEOFF W HUMPHREY SIGNATURE: ..... DATE: 16/01/08 REF: 7529 VERSION: 2		DATE / / COUNCIL DELEGATE SIGNATURE ORIGINAL SHEET SIZE A3
CHECKED: MW	DATE: 16/01/08			

