

# **LAND MANAGEMENT AGREEMENT BY DEED**

DISTRICT COUNCIL OF MOUNT BARKER

MATON INVESTMENTS PTY LTD

**Norman  
Waterhouse**  
LAWYERS

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## DATE

## PARTIES

**DISTRICT COUNCIL OF MOUNT BARKER** of 6 Dutton Road Mount Barker SA 5251  
(Council)

**MATON INVESTMENTS PTY LTD** of c/- Terry Dickson & Associates 121 King William Road  
UNLEY SA 5061 (Owner)

## BACKGROUND

- A. The Owner is the proprietor of an estate in fee simple in the Land.
- B. By Development Application numbered 580/D024/08 the Owner sought from the Council development plan consent, land division consent and development approval pursuant to the Act to develop the Land by creating seventy five (75) additional allotments and three reserves on the Land being the land otherwise known as 19A Parr Street, Narine.
- C. The Land is located within the Residential Zone within Council's Development Plan consolidated 1 March 2007.
- D. Located immediately to the south of the Land is an existing railway line.
- E. In accordance with section 37 of the Act the Development Application was referred to the EPA. The EPA has raised a concern that noise emissions from railway locomotives using the existing railway line will seriously impair the amenity for future occupiers of any future dwellings which may be constructed on the Allotments on the Land.
- F. On behalf of the Owner, Vipac Engineers & Scientists Limited prepared an acoustic report dated 29 August 2008 which said report forms part of the Development Application documents.
- G. The Vipac Report calculates the noise impact from railway locomotives using the existing railway line upon the Allotments and provides for recommended works to be undertaken by the Owner to minimise noise impact for future occupiers of any future dwellings which may be constructed on the Allotments on the Land.
- H. The Council wishes to ensure that the recommended works set out in the Vipac Report are undertaken on the Land so as to ensure that the amenity of all future occupiers of any future dwellings which may be constructed on the Allotments on the Land is not compromised.
- I. The Council and the Owner agree that the obligations under this deed are intended to be complied with by all occupiers and persons having enjoyment from time to time of the Land and that it is the Owner's responsibility to ensure that all such persons comply with the terms of this deed.
- J. Pursuant to section 57(2) of the Act the Owner has agreed with the Council to enter into this deed relating to the development, management, preservation or conservation of the Land.

## AGREED TERMS

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this deed:

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

**Allotment** means an allotment proposed to be created on the Land and as depicted in the Plan of Division described as allotments 1-76.

**Development Application** means development application number 580/D024/08 being a development application pursuant to the Act to develop the Land by creating seventy five (75) additional allotments and three reserves.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in South Australia.

**EPA** means the Environment Protection Authority.

**Land** means the whole of the land comprised in Certificate of Title Volume 6019 Folio 97 and includes any part or parts of it.

**Acoustic Buffer Landscape Plan** means the plan prepared by Herkes Associates Landscape Architects forming part of the Development Application which is described in Schedule 3.

**Plan of Division** means the plan of division forming part of the Development Application which is described in Schedule 1.

**Vipac Report** means the report dated 29 August 2008 prepared on behalf of the Owner by Vipac Engineers & Scientists Limited forming part of the Development Application which is described in Schedule 2.

#### 1.2 Interpretation

In this deed, unless the context otherwise requires:

- 1.2.1 headings do not affect interpretation;
- 1.2.2 singular includes plural and plural includes singular;
- 1.2.3 words of one gender include any gender;
- 1.2.4 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 1.2.5 a reference to the Owner includes each person registered or entitled to be registered as a proprietor of an estate in fee simple of the Land;
- 1.2.6 a reference to a person includes a partnership, corporation, association, government body and any other entity;

- 1.2.7 an agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- 1.2.8 an agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- 1.2.9 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- 1.2.10 a provision is not construed against a party only because that party drafted it;
- 1.2.11 an unenforceable provision or part of a provision may be severed, and the remainder of this deed continues in force, unless this would materially change the intended effect of this deed;
- 1.2.12 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- 1.2.13 an expression defined in the Act has the meaning given by the Act at the date of this deed.

### **1.3 Background**

The Background forms part of this deed and is correct at the date of this deed.

### **1.4 Legislation**

The requirements of this deed are to be construed as additional to the requirements of the Act and any other legislation affecting the Land.

## **2. OWNER'S OBLIGATIONS**

### **Solid noise acoustic barrier**

- 2.1 The Owner shall at the Owner's cost:
  - 2.1.1 construct a three (3.0) metre high solid noise acoustic barrier adjacent the southern boundary of the Land which shall be located on the Land in accordance with the plan described in Appendix B within the Vipac Report;
  - 2.1.2 construct the said barrier to the satisfaction of the Council and
  - 2.1.3 maintain and repair the said barrier to the satisfaction of the Council.
- 2.2 The Owner agrees and it shall ensure that:
  - 2.2.1 the said barrier shall comprise a 1.2 metre high rock wall beneath a 1.8 metre high fence and the said wall and fence shall be constructed using a minimum 9mm compressed fibre cement or equivalent with no holes or gaps in the entire extent of the said barrier.

## **Landscape buffer**

2.3 The Owner shall at the Owner's cost:

- 2.3.1 plant a five (5) metre deep acoustic landscape buffer adjacent the southern boundary of the Land in accordance with the Acoustic Buffer Landscape Plan;
- 2.3.2 plant the acoustic landscape buffer using a mixture of trees, shrubs, groundcovers and grasses in accordance with the species identified in the Acoustic Buffer Landscape Plan;
- 2.3.3 maintain the landscaping buffer in accordance with the Acoustic Buffer Landscape Plan;
- 2.3.4 replace any dead, damaged or diseased plants forthwith to the satisfaction of the Council.

## **Construction of buildings on the Allotments**

2.4 in relation to Allotments 41-47, the Owner shall at the Owner's cost:

### **Facade**

- 2.4.1 construct the façade of any building with either:
  - 2.4.1.1 9mm compressed fibre cement to the external side of minimum 92mm steel studs and one layer of 16mm fire rated plasterboard to the internal side with cavity infill of 50mm, 14kg/m<sup>3</sup> glasswool or equivalent namely, 50mm rockwool 38kg/m<sup>3</sup> or 900gsm polyester or
  - 2.4.1.2 Brick veneer construction, namely 110mm clay brick with 10mm plasterboard lining internally fixed to steel/timber studs and cavity infill of 50mm, 14kg/m<sup>3</sup> glasswool or equivalent namely, 50mm rockwool 38kg/m<sup>3</sup> or 900gsm polyester;

### **Glazing**

- 2.4.2 construct any windows of any bedroom, living room or study located on the ground floor of any building using 6mm laminated glass and such windows shall be installed with acoustic seals and in particular, Raven or Schlegel ranges;
- 2.4.3 construct any east, south and west facing windows of any bedroom, living room or study located on the first floor of any building using 6mm laminated glass and such windows shall be fixed;
- 2.4.4 construct any north facing windows of any bedroom, living room or study located on the first floor of any building using 6mm laminated glass and such windows shall be installed with acoustic seals and in particular, Raven or Schlegel ranges;

## Roofs

2.4.5 construct all roofs using conventional metal sheet roofing with R1.5 insulation blanket or concrete tiles and in addition such roofing shall be treated in one of the following three ways:

2.4.5.1 one layer of 10mm plasterboard to be fixed to the underside of the purlins or

2.4.5.2 the ceiling shall be constructed of one layer of 10mm plasterboard with 100mm thick 38kg/m<sup>3</sup> insulation or

2.4.5.3 the ceiling shall be constructed of 1 layer 13mm plasterboard with standard ceiling overlay namely R2.0 glass wool insulation batts.

2.5 in relation to Allotments 1-40 and Allotments 48-76, the Owner shall at the Owner's cost:

## Facade

2.5.1 construct the facade of any building with either:

2.5.1.1 9mm compressed fibre cement to the external side of minimum 92mm steel studs and one layer of 10mm fire rated plasterboard to the internal side with cavity infill of 50mm, 14kg/m<sup>3</sup> glasswool or equivalent namely 50mm rockwool 38kg/m<sup>3</sup> or 900gsm polyester or;

2.5.1.2 Brick veneer construction namely 110mm clay brick with 10mm plasterboard lining internally fixed to steel/timber studs and cavity infill of 50mm, 14kg/m<sup>3</sup> glasswool or equivalent namely 50mm rockwool 38kg/m<sup>3</sup> or 900gsm polyester;

## Glazing

2.5.2 construct any windows of any bedroom, living room or study located on the ground floor of any building using 6mm laminated glass and such windows shall be installed with acoustic seals and in particular, Raven or Schlegel ranges;

2.5.3 construct any east, south and west facing windows of any bedroom living room or study located on the first floor of any building using 6mm laminated glass and such windows shall be installed with acoustic seals and in particular, Raven or Schlegel ranges;

2.5.4 construct any north facing windows of any bedroom, living room or study located on the first floor of any building using 6mm laminated glass and such windows shall be installed with acoustic seals and in particular, Raven or Schlegel ranges;

## Roofs

- 2.5.5 Construct all roofs using conventional metal sheet roofing with R1.5 insulation blanket and one layer of 10mm plaster board ceiling or concrete tiles and in addition in relation to allotments 22 – 52 and allotments 63-70 the Owner shall at the Owner's cost ensure that such roofing shall be treated in one of the following three ways:
- 2.5.5.1 one layer of 10mm plasterboard to be fixed to the underside of the purlins or
  - 2.5.5.2 the ceiling shall be constructed of one layer of 10mm plasterboard with 100mm thick 38kg/m<sup>3</sup> insulation or;
  - 2.5.5.3 the ceiling shall be constructed of 1 layer 13mm plasterboard with standard ceiling overlay namely R2.0 glass wool insulation batts.

### Provision of this deed

- 2.6 provide a copy of this deed to any person commencing occupation of the Land before commencement of that occupation.

## 3. COUNCIL MAY WAIVE COMPLIANCE WITH THE REQUIREMENTS OF THIS DEED SUBJECT TO THE RECEIPT OF AN INDEPENDENT REPORT FROM A SUITABLY QUALIFIED PERSON

- 3.1 Council in its absolute discretion may waive compliance with the requirements of this deed subject to the Owner providing Council with a report from a suitably qualified person which said report may recommend alternative acceptable noise attenuation works and measures that may be undertaken on the Land which will achieve the objectives of this deed.

## 4. RESTRICTION ON LEASING AND OTHER DEALINGS

The Owner must not grant any lease licence easement or other right which may give any person the right to possession or control of or entry on to the Land which right would enable such person to breach any of the obligations imposed on the Owner by this deed unless such grant:

- 4.1 is expressed in writing;
- 4.2 is made with the previous written consent of the Council; and
- 4.3 contains as an essential term a covenant by the grantee not to do or omit to do (or suffer or permit any other person to do or omit to do) any act matter or thing which would constitute a breach by the Owner of the Owner's obligations under this deed.

## 5. COUNCIL'S POWERS OF ENTRY

- 5.1 The Council and any employee or agent of the Council authorised by the Council may at any reasonable time enter the Land for the purpose of:
- 5.1.1 inspecting the Land and any building or structure on the Land;

5.1.2 exercising any other powers of the Council under this deed or pursuant to law.

5.2 If the Owner is in breach of any provision of this deed, the Council may, by notice served on the Owner, specify the nature of the breach and require the Owner to remedy the breach within such time as may be nominated by the Council in the notice (being at least 28 days from the date of service of the notice). If the Owner fails so to remedy the breach, the Council or its servants or agents may carry out the requirements of the notice and in doing so may enter and perform any necessary works upon the Land and recover any costs thereby incurred from the Owner.

5.3 If in a notice referred to in clause 4.2 the Council requires the removal of the building or structure from the Land, the Council and its servants or agents are authorised and empowered by the Owner to enter and remove the building or structure from the Land and to dispose of it in any manner determined by the Council provided that if the building or structure has any monetary value then the Council must use its best endeavours to realise that monetary value and must after the disposal account to the Owner and pay to the Owner the realised value less all expenses incurred.

5.4 The Council may delegate any of its powers under this deed to any person.

## 6. NOTATION OF THIS DEED

Each party must do and execute all acts documents and things necessary to ensure that as soon as possible after the execution of this deed by all necessary parties this deed is noted by the Registrar-General on the Certificate of Title for the Land pursuant to section 57(5) of the Act.

## 7. MISCELLANEOUS

### 7.1 Alteration

This deed may be altered only by a supplementary deed signed by the Council and the Owner.

### 7.2 Approvals and consents

Unless otherwise provided, a party may in its discretion give (conditionally or unconditionally) or withhold any approval or consent under this deed.

### 7.3 Entire agreement

This deed:

7.3.1 constitutes the entire agreement between the parties about its subject matter;

7.3.2 supersedes any prior understanding, agreement, condition, warranty, indemnity or representation about its subject matter.

### 7.4 Waiver

A waiver of a provision of or right under this deed:

- 7.4.1 must be in writing signed by the party giving the waiver;
- 7.4.2 is effective only to the extent set out in the written waiver.

#### **7.5 Exercise of power**

- 7.5.1 The failure, delay, relaxation or indulgence by a party in exercising a power or right under this deed is not a waiver of that power or right.
- 7.5.2 An exercise of a power or right under this deed does not preclude a further exercise of it or the exercise of another right or power.

#### **7.6 Survival**

Each indemnity, obligation of confidence and other term capable of taking effect after the expiration or termination of this deed, remains in force after the expiration or termination of this deed.

#### **7.7 Governing law**

- 7.7.1 This deed is governed by the law in South Australia.
- 7.7.2 The parties irrevocably submit to the non-exclusive jurisdiction of the courts in South Australia.

### **8. NOTICES**

- 8.1 A notice, demand, consent, approval or communication under this deed (**Notice**) must be:
  - 8.1.1 in writing, in English and signed by a person authorised by the sender; and
  - 8.1.2 hand delivered or sent by pre paid post to the recipient's address or specified below, as varied by any Notice given by the recipient to the sender, or affixed in a prominent position on the Land.
- 8.2 At the date of this deed, the address and facsimile number for Notices to the Owner are:

**MATON INVESTMENTS PTY LTD**

Address: c/- Terry Dickson & Associates 121 King William Road UNLEY  
SA 5061
- 8.3 A Notice is deemed to be received:
  - 8.3.1 if hand delivered or affixed in a prominent position on the Land, on delivery or affixing;
  - 8.3.2 if sent by prepaid mail, two Business Days after posting (or seven Business Days after posting if posting to or from a place outside Australia);

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However if the Notice is deemed to be received on a day that is not a Business Day or after 5:00pm, the Notice is deemed to be received at 9:00am on the next Business Day.

8.4 If two or more persons comprise a party, Notice to one is effective Notice to all.

**9. COSTS**

The Owner must pay to the Council on demand the Council's costs and expenses (including legal costs and expenses) of preparing, stamping and noting this deed.

**EXECUTED** as a deed