



# BOTANICA

## GREEN

LAND INFORMATION

STAGES 2 & 3

**This report has been prepared by Spiire on behalf of Botanica Green Pty Ltd.**

16 Bridge Street, Bendigo, Victoria 3550 Australia

Issue Date	Revision No.	Author	Checked	Approved
Sep 2017	1	Spiire	PM	PM

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## **The purpose of this information?**

This information has been provided on behalf of the developer as a summary of the key features and requirements at Botanica Green Estate, White Hills.

The following information is included in this report:

- Earthworks - Level 1 Filling
- Soil Reports
- Easements
- Water & Sewer Property Connections
- Underground Electrical
- Gas Supply
- NBN Availability
- Bushfire Attack Level (BAL)
- Fencing
- Landscape Buffer - Lots 39 & 40
- Protective Covenants

## **Earthwork - Level 1 Filling**

Filling and compaction (Level 1 supervision) is in accordance with AS3798-1996, using selected imported clean material, including trimming to shape all as detailed on the drawings. Compaction shall be to a minimum 95% standard density ratio with moisture control within +/- 3% of Optimum Moisture Content.

Level 1 filling? What does this mean in simple terms? It means the filling is to be compacted to achieve a similar or better compaction and density than natural ground and a geotechnical engineer has supervised and approved these works. It should mean there will be no significant extra cost to build on the level 1 filled areas.

## **Soil Reports**

Individual lot soil reports will be undertaken by a qualified geotechnical engineer for each lot within the development. These reports will provide your builder with the appropriate information to undertake the slab / footing design of your home. To obtain a copy of your report please contact the selling agent Gavin Butler Real Estate, email: [sales@gavinbutler.com.au](mailto:sales@gavinbutler.com.au)

## **Easements**

An easement is a section of land registered on your title which gives someone the right to use the land for a specific purpose even though they are not the land owner. A common example of this is a sewer easement.

If you wish to build over an easement, you will need to get consent from whoever the easement is vested in e.g. Coliban Water. For information on easement locations please refer to your property title.

## **Water and Sewerage Property Connections**

Botanica Green Estate is serviced by town water and reticulation sewer. Each property has a sewer and water connection available. The sewer connections have been brought within the boundary of each property. Information of the location and depth of the property connection can be found at Coliban Water.

## **Underground Electrical**

Botanica Green Estate is serviced by underground electricity, each property has been supplied with an electrical pit at its boundary where connection is to be taken from. For any issues during connection please contact Powercor Australia.

## **Gas Supply**

Botanica Green Estate is serviced by underground Natural Gas, each property has a gas connection available. For any connection issues please contact AusNet Services.



## **NBN Availability**

Botanica Green Estate will be an NBN ready development. The **nbn** network is an exciting upgrade to Australia's existing landline phone and internet network. It's designed to provide every Australian with fast and reliable services for decades to come.

## **Bushfire Attack Level (BAL)**

Botanica Green Estate is not within a Bushfire Management Overlay (BMO), however as per normal requirements a basic Bushfire Attack Level (BAL) assessment will be required to be undertaken as part of your building permit process.

## **Fencing - Lots 39 & 40**

At part of the development works, the developer at their own cost, will be installing the rear fence (northern boundary) of lots 39 and 40 .

## **Fencing - Lots 41 to 52**

At part of the development works, the developer at their own cost, will be installing the rear fence (southern boundary) of lots 41 to 52 .

## **Landscape Buffer - Lots 39 & 40**

A 5m landscape buffer at the rear of lot 39 & 40 will be planted by the developer. The purpose of the landscape buffer is to provide a buffer between the habitable buildings to be built on lots 39 & 40 of the land and a Powercor depot. A legal covenant will be placed on your lot title to the effect of:

- a) No habitable buildings will be constructed within the Landscape Buffer without the prior consent of the Council; and
- b) the Landscape Buffer shall be maintained by the Owner to the satisfaction of the Council, unless with prior written consent of the Council.

The full agreement is attached in appendix D

## **Protective Covenants**

For information of the protective covenants at Botanica Green Estate please refer to Appendix A of this report.

## **Appendix A**

Protective Covenants



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**COVENANT TO BE INSERTED IN TRANSFER    Lot 52.**

AND the Transferee with the intention that the benefit of this Covenant shall be attached to and run at law and in equity with every Lot on Plan of Subdivision No PS 748504Y (the Plan) other than the Lot hereby transferred (burdened land) and that the burden of this Covenant shall be annexed to and run at law and in equity with the burdened land does hereby for himself, his heirs, executors, administrators and transferees, and as separate Covenant covenants with the Transferor and the registered proprietor or proprietors for the time being of every Lot on the Plan and every part or parts thereof other than the burdened land hereby transferred, that the Transferee, his heirs, executors, administrators and transferees shall not at any time

A. on the burdened land or any part or parts thereof:

- (a) build, construct or erect or cause or permit to be built, constructed or erected any building other than one private dwelling house (constructed of all new materials) having an area of not less than 130 square metres within the outer walls thereof (such area to be calculated by excluding the area of any carports, workshops, garages, terraces, patios, pergolas or verandahs attached to such house) provided that nothing herein contained shall prohibit the erection on the said land of a garage and/or other normal residential outbuildings where a private dwelling house is or is being erected on the said land.
  - (b) build, construct or erect or cause or permit to be built, constructed or erected any garage and/or normal residential outbuilding having a height greater than 4 metres which together have a total aggregate floor area greater than 60 square metres provided that in calculating such total aggregate area of 60 square metres,
    - (i) The floor area of any garage which is incorporated as an integral part of the structure of a dwelling house constructed on the said land shall be ignored and,
    - (ii) The floor area of any normal residential outbuilding with a floor area not exceeding 10 square metres shall be ignored,and further provided that nothing herein contained shall be construed as limiting the height of any garage which is incorporated as an integral part of the structure of a dwelling house constructed on the said land.
  - (c) build, construct or erect or cause to be built, constructed or erected any dwelling house, garage or normal residential outbuilding unless the whole of any such structure is situated not less than 4 metres from the front boundary thereof.
  - (d) build, construct or erect or cause or permit to be built constructed or erected any fence on the title boundaries (excluding the front boundary) other than a Colourbond fence of the colour "Monument" of 1.8 metres in height inclusive of a bottom plinth of 0.15 metres. This height shall reduce in accordance with normal fencing design in the first two panels of the south-east side boundary from the front boundary. This shall not apply to any part of the dwelling construction forming part of the title boundary.
  - (e) build, construct or erect or cause to be built, constructed or erected on the rear title boundary thereof any fence other than a Lysaght Mini orb fence of the colour "Monument" of 1.8 metres in height inclusive of a bottom plinth of 0.15 metres.
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- (f) build, construct or erect or cause to be built, constructed or erected within the rear boundary fence any gate, gateway or entry point.
- (g) move thereon any building which has been wholly or partly completed nor any part thereof.
- (h) build or construct or cause to be built or constructed any driveway unless such driveway is constructed from concrete, pressed bricks, pavers, asphalt or other durable all-weather surface
- (i) build, construct or erect or cause to be built, constructed or erected any hot water service which is visible from the street frontage.
- (j) permit or cause to be permitted or allow to be permitted recreational or commercial vehicles including but not limited to utility trucks, vans, boats caravans or motor cycles to be parked or accommodated where they can be visible from the street frontage.
- (k) accumulate or cause or permit to be accumulated any waste, rubbish, building or site excavations, grass clippings or pruning's.

B. Use the burdened land for business purposes (with the exception of "Home Occupation "as defined in the Greater Bendigo Planning Scheme) or as a depot.

C. Subdivide the burdened land.

PROVIDED always that the Transferor reserves the right to release, vary, add to or modify these Covenants in relation to other land of the Transferor including other land in the said Plan of Subdivision.

AND it is intended that the above Covenant shall appear on the Certificate of Title to issue for the burdened land and run at law and in equity with the burdened land.

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**COVENANT TO BE INSERTED IN TRANSFER    Lots 25 – 32.**

AND the Transferee with the intention that the benefit of this Covenant shall be attached to and run at law and in equity with every Lot on Plan of Subdivision No PS 748502D (the Plan) other than the Lot hereby transferred (burdened land) and that the burden of this Covenant shall be annexed to and run at law and in equity with the burdened land does hereby for himself, his heirs, executors, administrators and transferees, and as separate Covenant covenants with the Transferor and the registered proprietor or proprietors for the time being of every Lot on the Plan and every part or parts thereof other than the burdened land hereby transferred, that the Transferee, his heirs, executors, administrators and transferees shall not at any time

A . on the burdened land or any part of parts thereof:

- (a) build, construct or erect or cause or permit to be built, constructed or erected any building other than one private dwelling house (constructed of all new materials) having an area of not less than 150 square metres within the outer walls thereof (such area to be calculated by excluding the area of any carports, workshops, garages, terraces, patios, pergolas or verandahs attached to such house) provided that nothing herein contained shall prohibit the erection on the said land of a garage and/or other normal residential outbuildings where a private dwelling house is or is being erected on the said land.
  - (b) build, construct or erect or cause or permit to be built, constructed or erected any garage and/or normal residential outbuilding having a height greater than 4 metres which together have a total aggregate floor area greater than 60 square metres provided that in calculating such total aggregate area of 60 square metres,
    - (i) The floor area of any garage which is incorporated as an integral part of the structure of a dwelling house constructed on the said land shall be ignored and,
    - (ii) The floor area of any normal residential outbuilding with a floor area not exceeding 10 square metres shall be ignored,and further provided that nothing herein contained shall be construed as limiting the height of any garage which is incorporated as an integral part of the structure of a dwelling house constructed on the said land.
  - (c) build, construct or erect or cause to be built, constructed or erected any dwelling house, garage or normal residential outbuilding unless the whole of any such structure is situated not less than 4 metres from the front boundary thereof.
  - (d) build, construct or erect or cause or permit to be built constructed or erected any fence on the title boundaries (excluding the front boundary) other than a Colourbond fence of the colour "Monument" of 1.8 metres in height inclusive of a bottom plinth of 0.15 metres. This height shall reduce in accordance with normal fencing design in the first two panels of each side boundary from the front boundary. This shall not apply to any part of the dwelling construction forming part of the title boundary.
  - (e) move thereon any building which has been wholly or partly completed nor any part thereof.
  - (f) build or construct or cause to be built or constructed any driveway unless such driveway is constructed from concrete, pressed bricks, pavers, asphalt or other durable all-weather surface
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(g) build, construct or erect or cause to be built, constructed or erected any hot water service which is visible from the street frontage.

(h) permit or cause to be permitted or allow to be permitted recreational or commercial vehicles including but not limited to utility trucks, vans, boats caravans or motor cycles to be parked or accommodated where they can be visible from the street frontage.

(i) accumulate or cause or permit to be accumulated any waste, rubbish, building or site excavations, grass clippings or pruning's.

B. Use the burdened land for business purposes (with the exception of "Home Occupation "as defined in the Greater Bendigo Planning Scheme) or as a depot.

C. Subdivide the burdened land.

PROVIDED always that the Transferor reserves the right to release, vary, add to or modify these Covenants in relation to other land of the Transferor including other land in the said Plan of Subdivision.

AND it is intended that the above Covenant shall appear on the Certificate of Title to issue for the burdened land and run at law and in equity with the burdened land.

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**COVENANT TO BE INSERTED IN TRANSFER    Lots 42 – 51.**

AND the Transferee with the intention that the benefit of this Covenant shall be attached to and run at law and in equity with every Lot on Plan of Subdivision No PS 748503B (Lots 42 – 49) PS 748504Y (Lots 50-51) (the Plan) other than the Lot hereby transferred (burdened land) and that the burden of this Covenant shall be annexed to and run at law and in equity with the burdened land does hereby for himself, his heirs, executors, administrators and transferees, and as separate Covenant covenants with the Transferor and the registered proprietor or proprietors for the time being of every Lot on the Plan and every part or parts thereof other than the burdened land hereby transferred, that the Transferee, his heirs, executors, administrators and transferees shall not at any time

A. on the burdened land or any part or parts thereof:

- (a) build, construct or erect or cause or permit to be built, constructed or erected any building other than one private dwelling house (constructed of all new materials) having an area of not less than 130 square metres within the outer walls thereof (such area to be calculated by excluding the area of any carports, workshops, garages, terraces, patios, pergolas or verandahs attached to such house) provided that nothing herein contained shall prohibit the erection on the said land of a garage and/or other normal residential outbuildings where a private dwelling house is or is being erected on the said land.
  - (b) build, construct or erect or cause or permit to be built, constructed or erected any garage and/or normal residential outbuilding having a height greater than 4 metres which together have a total aggregate floor area greater than 60 square metres provided that in calculating such total aggregate area of 60 square metres,
    - (i) The floor area of any garage which is incorporated as an integral part of the structure of a dwelling house constructed on the said land shall be ignored and,
    - (ii) The floor area of any normal residential outbuilding with a floor area not exceeding 10 square metres shall be ignored,and further provided that nothing herein contained shall be construed as limiting the height of any garage which is incorporated as an integral part of the structure of a dwelling house constructed on the said land.
  - (c) build, construct or erect or cause to be built, constructed or erected any dwelling house, garage or normal residential outbuilding unless the whole of any such structure is situated not less than 4 metres from the Tussock Drive front boundary thereof.
  - (d) build, construct or erect or cause or permit to be built constructed or erected any fence on the title boundaries (excluding the front boundary) other than a Colourbond fence of the colour "Monument " of 1.8 metres in height inclusive of a bottom plinth of 0.15 metres . This height shall reduce in accordance with normal fencing design in the first two panels of each side boundary from the front boundary. This shall not apply to any part of the dwelling construction forming part of the title boundary.
  - (e) build, construct or erect or cause to be built, constructed or erected on the rear title boundary thereof any fence other than a Lysaght Mini orb fence of the colour "Monument" of 1.8 metres in height inclusive of a bottom plinth of 0.15 metres.
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- (f) build, construct or erect or cause to be built, constructed or erected within the rear boundary fence any gate, gateway or entry point.
- (g) move thereon any building which has been wholly or partly completed nor any part thereof.
- (h) build or construct or cause to be built or constructed any driveway unless such driveway is constructed from concrete, pressed bricks, pavers, asphalt or other durable all-weather surface
- (i) build, construct or erect or cause to be built, constructed or erected any hot water service which is visible from the street frontage.
- (j) permit or cause to be permitted or allow to be permitted recreational or commercial vehicles including but not limited to utility trucks, vans, boats caravans or motor cycles to be parked or accommodated where they can be visible from the street frontage.
- (k) accumulate or cause or permit to be accumulated any waste, rubbish, building or site excavations, grass clippings or pruning's.

B. Use the burdened land for business purposes (with the exception of "Home Occupation "as defined in the Greater Bendigo Planning Scheme) or as a depot.

C. Subdivide the burdened land.

PROVIDED always that the Transferor reserves the right to release, vary, add to or modify these Covenants in relation to other land of the Transferor including other land in the said Plan of Subdivision.

AND it is intended that the above Covenant shall appear on the Certificate of Title to issue for the burdened land and run at law and in equity with the burdened land.

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**COVENANT TO BE INSERTED IN TRANSFER    Lot 39.**

AND the Transferee with the intention that the benefit of this Covenant shall be attached to and run at law and in equity with every Lot on Plan of Subdivision No PS 748502D (the Plan) other than the Lot hereby transferred (burdened land) and that the burden of this Covenant shall be annexed to and run at law and in equity with the burdened land does hereby for himself, his heirs, executors, administrators and transferees, and as separate Covenant covenants with the Transferor and the registered proprietor or proprietors for the time being of every Lot on the Plan and every part or parts thereof other than the burdened land hereby transferred, that the Transferee, his heirs, executors, administrators and transferees shall not at any time

A . on the burdened land or any part or parts thereof:

- (a) build, construct or erect or cause or permit to be built, constructed or erected any building other than one private dwelling house (constructed of all new materials) having an area of not less than 150 square metres within the outer walls thereof (such area to be calculated by excluding the area of any carports, workshops, garages, terraces, patios, pergolas or verandahs attached to such house) provided that nothing herein contained shall prohibit the erection on the said land of a garage and/or other normal residential outbuildings where a private dwelling house is or is being erected on the said land.
  - (b) build, construct or erect or cause or permit to be built, constructed or erected any garage and/or normal residential outbuilding having a height greater than 4 metres which together have a total aggregate floor area greater than 60 square metres provided that in calculating such total aggregate area of 60 square metres,
    - (i) The floor area of any garage which is incorporated as an integral part of the structure of a dwelling house constructed on the said land shall be ignored and,
    - (ii) The floor area of any normal residential outbuilding with a floor area not exceeding 10 square metres shall be ignored,and further provided that nothing herein contained shall be construed as limiting the height of any garage which is incorporated as an integral part of the structure of a dwelling house constructed on the said land.
  - (c) build, construct or erect or cause to be built, constructed or erected any dwelling house, garage or normal residential outbuilding unless the whole of any such structure is situated not less than 4 metres from the front boundary of the burdened land.
  - (d) build, construct or erect or cause or permit to be built constructed or erected any fence on the title boundaries (excluding the front and rear boundaries) other than a Colourbond fence of the colour "Monument " of 1.8 metres in height inclusive of a bottom plinth of 0.15 metres . This height shall reduce in accordance with normal fencing design in the first two panels of each side boundary from
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the front boundary. This shall not apply to any part of the dwelling construction forming part of the title boundary.

- (e) Build, construct or erect or cause to be built, constructed or erected on the rear title boundary thereof any fence other than a timber fence of standard vertical panels 1.8 metres in height plus a bottom plinth of 0.15 metres
- (f) move thereon any building which has been wholly or partly completed nor any part thereof.
- (g) build or construct or cause to be built or constructed any driveway unless such driveway is constructed from concrete, pressed bricks, pavers, asphalt or other durable all-weather surface
- (h) build, construct or erect or cause to be built, constructed or erected any hot water service which is visible from the street frontage.
- (i) permit or cause to be permitted or allow to be permitted recreational or commercial vehicles including but not limited to utility trucks, vans, boats caravans or motor cycles to be parked or accommodated where they can be visible from the street frontage.
- (j) accumulate or cause or permit to be accumulated any waste, rubbish, building or site excavations, grass clippings or pruning's.

B. Use the burdened land for business purposes (with the exception of "Home Occupation "as defined in the Greater Bendigo Planning Scheme) or as a depot.

C. Subdivide the burdened land.

PROVIDED always that the Transferor reserves the right to release, vary, add to or modify these Covenants in relation to other land of the Transferor including other land in the said Plan of Subdivision.

AND it is intended that the above Covenant shall appear on the Certificate of Title to issue for the burdened land and run at law and in equity with the burdened land.

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**COVENANT TO BE INSERTED IN TRANSFER    Lot 40**

AND the Transferee with the intention that the benefit of this Covenant shall be attached to and run at law and in equity with every Lot on Plan of Subdivision No PS 748502D (the Plan) other than the Lot hereby transferred (burdened land) and that the burden of this Covenant shall be annexed to and run at law and in equity with the burdened land does hereby for himself, his heirs, executors, administrators and transferees, and as separate Covenant covenants with the Transferor and the registered proprietor or proprietors for the time being of every Lot on the Plan and every part or parts thereof other than the burdened land hereby transferred, that the Transferee, his heirs, executors, administrators and transferees shall not at any time

A . on the burdened land or any part of parts thereof:

- (a) build, construct or erect or cause or permit to be built, constructed or erected any building other than one private dwelling house (constructed of all new materials) having an area of not less than 150 square metres within the outer walls thereof (such area to be calculated by excluding the area of any carports, workshops, garages, terraces, patios, pergolas or verandahs attached to such house) provided that nothing herein contained shall prohibit the erection on the said land of a garage and/or other normal residential outbuildings where a private dwelling house is or is being erected on the said land.
  - (b) build, construct or erect or cause or permit to be built, constructed or erected any garage and/or normal residential outbuilding having a height greater than 4 metres which together have a total aggregate floor area greater than 60 square metres provided that in calculating such total aggregate area of 60 square metres,
    - (i) The floor area of any garage which is incorporated as an integral part of the structure of a dwelling house constructed on the said land shall be ignored and,
    - (ii) The floor area of any normal residential outbuilding with a floor area not exceeding 10 square metres shall be ignored,and further provided that nothing herein contained shall be construed as limiting the height of any garage which is incorporated as an integral part of the structure of a dwelling house constructed on the said land.
  - (c) build, construct or erect or cause to be built, constructed or erected any dwelling house, garage or normal residential outbuilding unless the whole of any such structure is situated not less than 4 metres from the front boundary of the burdened land.
  - (d) build, construct or erect or cause or permit to be built constructed or erected any fence on the title boundaries (excluding the front and rear boundaries) other than a Colourbond fence of the colour "Monument "of 1.8 metres in height inclusive of a bottom plinth of 0.15 metres . This height shall reduce in accordance with normal fencing design in the first two panels of the south-east side
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boundary from the front boundary. This shall not apply to any part of the dwelling construction forming part of the title boundary.

- (e) Build, construct or erect or cause to be built, constructed or erected on the rear title boundary thereof any fence other than a timber fence of standard vertical panels 1.8 metres in height plus a bottom plinth of 0.15 metres
- (f) move thereon any building which has been wholly or partly completed nor any part thereof.
- (g) build or construct or cause to be built or constructed any driveway unless such driveway is constructed from concrete, pressed bricks, pavers, asphalt or other durable all-weather surface
- (h) build, construct or erect or cause to be built, constructed or erected any hot water service which is visible from the street frontage.
- (i) permit or cause to be permitted or allow to be permitted recreational or commercial vehicles including but not limited to utility trucks, vans, boats caravans or motor cycles to be parked or accommodated where they can be visible from the street frontage.
- (j) accumulate or cause or permit to be accumulated any waste, rubbish, building or site excavations, grass clippings or pruning's.

B. Use the burdened land for business purposes (with the exception of "Home Occupation "as defined in the Greater Bendigo Planning Scheme) or as a depot.

C. Subdivide the burdened land.

PROVIDED always that the Transferor reserves the right to release, vary, add to or modify these Covenants in relation to other land of the Transferor including other land in the said Plan of Subdivision.

AND it is intended that the above Covenant shall appear on the Certificate of Title to issue for the burdened land and run at law and in equity with the burdened land.

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**COVENANT TO BE INSERTED IN TRANSFER    Lot 41**

AND the Transferee with the intention that the benefit of this Covenant shall be attached to and run at law and in equity with every Lot on Plan of Subdivision No PS 748503B (the Plan) other than the Lot hereby transferred (burdened land) and that the burden of this Covenant shall be annexed to and run at law and in equity with the burdened land does hereby for himself, his heirs, executors, administrators and transferees, and as separate Covenant covenants with the Transferor and the registered proprietor or proprietors for the time being of every Lot on the Plan and every part or parts thereof other than the burdened land hereby transferred, that the Transferee, his heirs, executors, administrators and transferees shall not at any time

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  - (b) build, construct or erect or cause or permit to be built, constructed or erected any garage and/or normal residential outbuilding having a height greater than 4 metres which together have a total aggregate floor area greater than 60 square metres provided that in calculating such total aggregate area of 60 square metres,
    - (i) The floor area of any garage which is incorporated as an integral part of the structure of a dwelling house constructed on the said land shall be ignored and,
    - (ii) The floor area of any normal residential outbuilding with a floor area not exceeding 10 square metres shall be ignored,and further provided that nothing herein contained shall be construed as limiting the height of any garage which is incorporated as an integral part of the structure of a dwelling house constructed on the said land.
  - (c) build, construct or erect or cause to be built, constructed or erected any dwelling house, garage or normal residential outbuilding unless
    - (i) the whole of any such structure is situated not less than 4 metres from the Tussock Drive front boundary thereof and
    - (ii) the whole of any standalone garage or other normal residential outbuilding is situated not less than 4 metres from the south-east boundary thereof.
  - (d) build, construct or erect or cause or permit to be built constructed or erected any fence on the title boundaries (excluding the front and rear boundaries) other than a Colourbond fence of the colour "Monument " of 1.8 metres in height inclusive of a bottom plinth of 0.15 metres . This height shall reduce in accordance with normal fencing design in the first two panels of each side boundary from the front boundary. This shall not apply to any part of the dwelling construction forming part of the title boundary.
  - (e) build, construct or erect or cause to be built, constructed or erected on the rear title boundary thereof any fence other than a Lysaght mini orb fence of the colour "Monument "of 1.8 metres in height inclusive of a bottom plinth of 0.15metres.
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- (f) build, construct or erect or cause to be built, constructed or erected within the rear boundary fence any gate, gateway or entry point.
- (g) move thereon any building which has been wholly or partly completed nor any part thereof.
- (h) build or construct or cause to be built or constructed any driveway unless such driveway is constructed from concrete, pressed bricks, pavers, asphalt or other durable all-weather surface
- (i) build, construct or erect or cause to be built, constructed or erected any hot water service which is visible from the street frontage.
- (j) permit or cause to be permitted or allow to be permitted recreational or commercial vehicles including but not limited to utility trucks, vans, boats caravans or motor cycles to be parked or accommodated where they can be visible from the street frontage.
- (k) accumulate or cause or permit to be accumulated any waste, rubbish, building or site excavations, grass clippings or pruning's.

B. Use the burdened land for business purposes (with the exception of "Home Occupation "as defined in the Greater Bendigo Planning Scheme) or as a depot.

C. Subdivide the burdened land.


PROVIDED always that the Transferor reserves the right to release, vary, add to or modify these Covenants in relation to other land of the Transferor including other land in the said Plan of Subdivision.

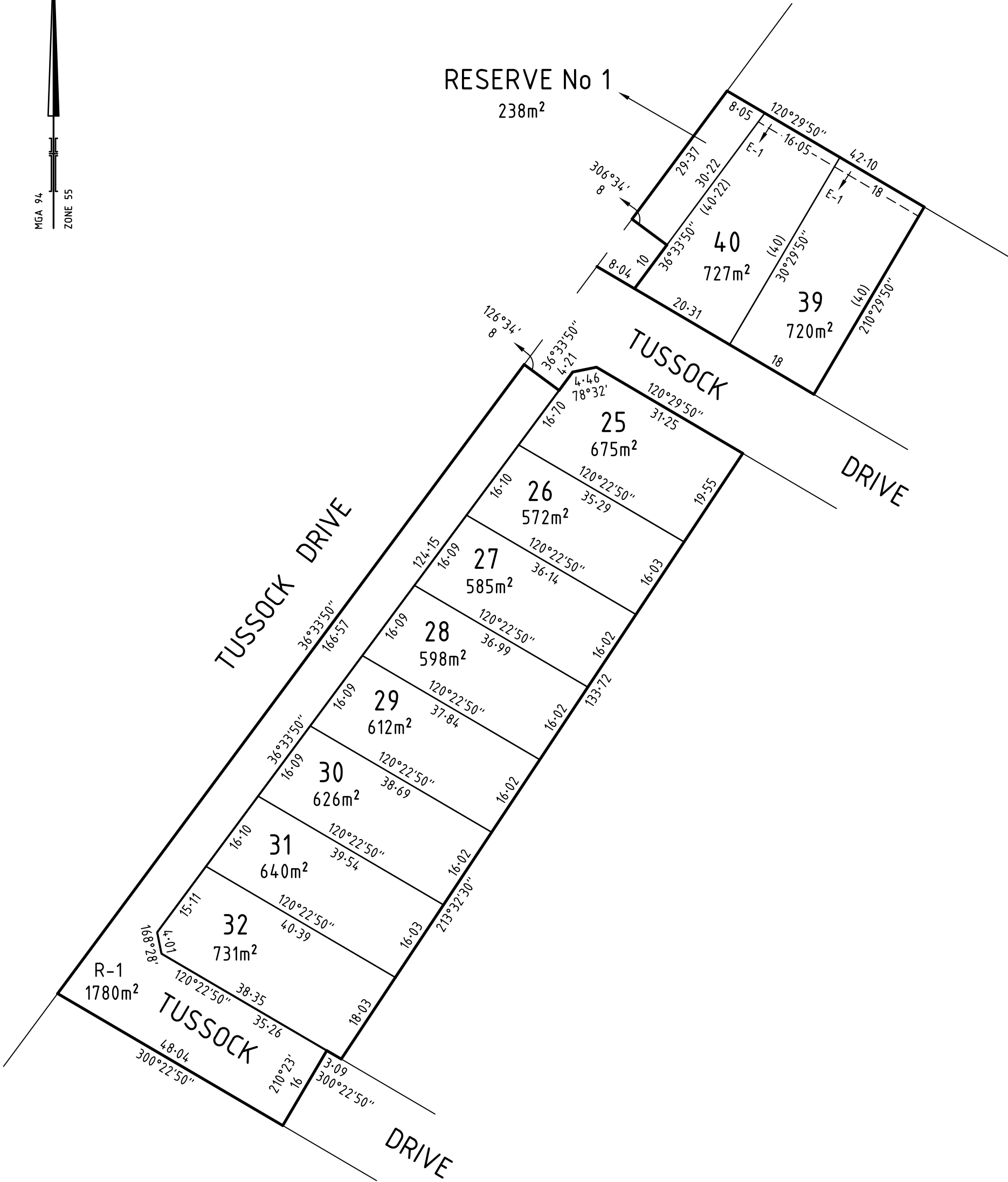
AND it is intended that the above Covenant shall appear on the Certificate of Title to issue for the burdened land and run at law and in equity with the burdened land.

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## **Appendix B**

Plan of Subdivision

PLAN OF SUBDIVISION				EDITION 1		PS748502D	
LOCATION OF LAND  PARISH: Sandhurst at Bendigo  TOWNSHIP: -  SECTION: 15 17  CROWN ALLOTMENT: 1 (PT), 2 (PT), 3 (PT) 5 (PT) & 5A (PT)  CROWN PORTION: -  TITLE REFERENCE: C/T VOL FOL    LAST PLAN REFERENCE: Lots B & C on PS719969Q    POSTAL ADDRESS: 29 Priest Street (at time of subdivision) White Hills   MGA94 CO-ORDINATES: E: 259 615 ZONE: 55 (of approx centre of land in plan) N: 5 932 676				Council Name: Greater Bendigo City Council  SPEAR Reference Number: S108108V			
VESTING OF ROADS AND/OR RESERVES				Notations			
IDENTIFIER		COUNCIL/BODY/PERSON		DEPTH LIMITATION 15.24 metres below the surface (Applies only to Crown Allotment 5A, Section 17)  Lots 1 to 24 (both inclusive) and 33 to 38 (both inclusive) have been omitted from this plan.  Creation of Restriction applies to Lots in this Plan.			
ROAD R-1 RESERVE No. 1		CITY OF GREATER BENDIGO CITY OF GREATER BENDIGO					
NOTATIONS							
SURVEY: This plan is based on survey  STAGING: This is not a staged subdivision Planning Permit No. DS/431/2010  This survey has been connected to permanent marks No(s). 462, 463, 1346 & 2017 In Proclaimed Survey Area No. 34							
EASEMENT INFORMATION							
LEGEND: A - Appurtenant Easement E - Encumbering Easement R - Encumbering Easement (Road)							
Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited/In Favour of			
E-1	DRAINAGE	2	PS719969Q	City of Greater Bendigo			
BOTANICA GREEN ESTATE - STAGE 3 (10 LOTS) AREA OF STAGE - 0.931ha							
 <div>16 Bridge Street PO Box 1064 Bendigo Vic 3550 T 61 3 5448 2500 spiire.com.au</div>			SURVEYORS FILE REF: 303287SV01		ORIGINAL SHEET SIZE: A3	SHEET 1 OF 3	
			Licensed Surveyor: Michael Meehan Version: 2				




CREATION OF RESTRICTION

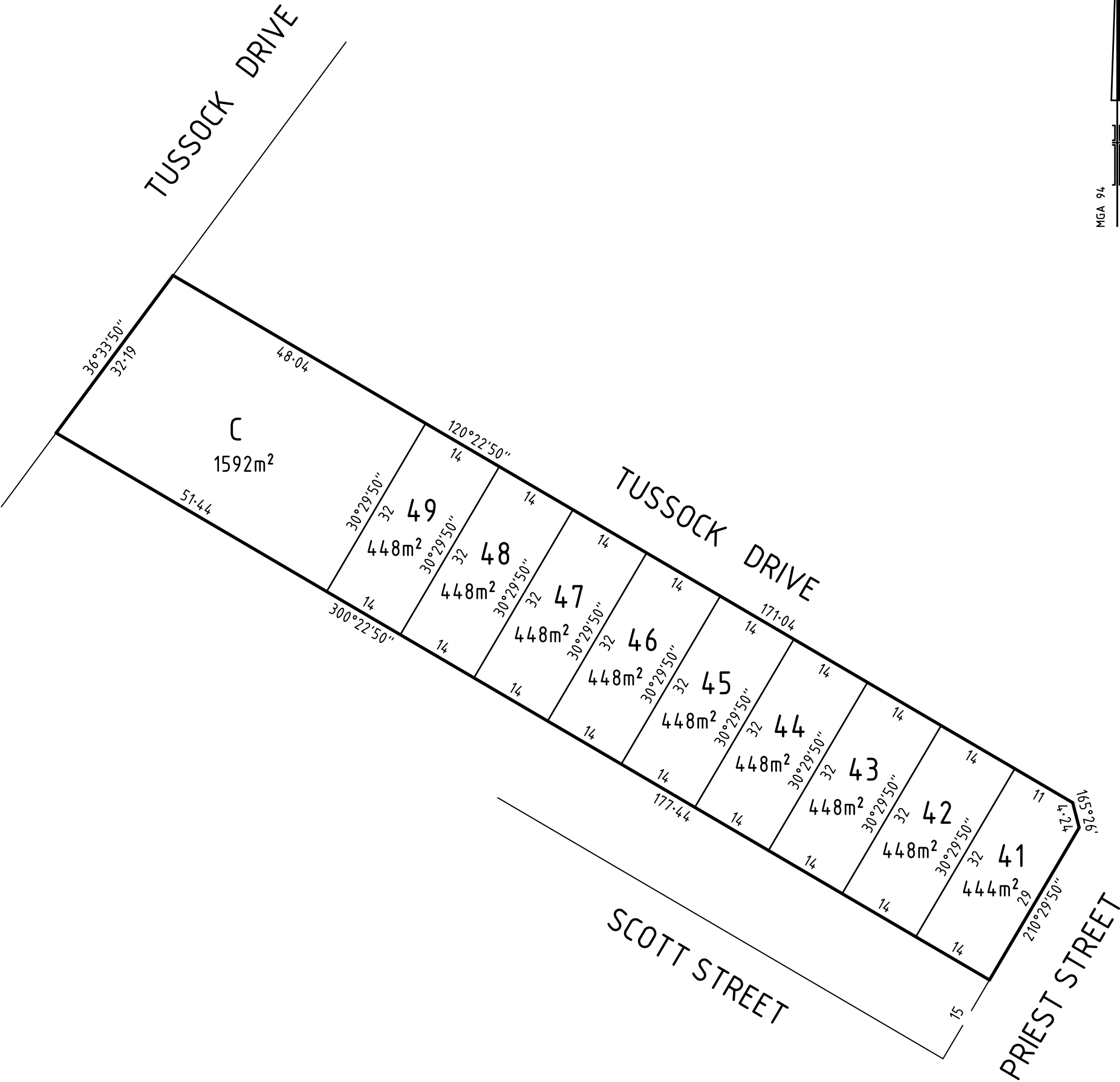
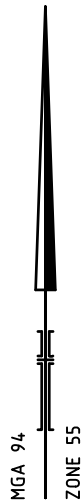
Restriction No 1  
Upon registration of this plan the following restriction is created  
Land to benefit: Lots 25 to 32 and Lots 39 to 40 (all inclusive)  
Land to be burdened: Lots 25 to 32 and Lots 39 to 40 (all inclusive)

Description of Restriction  
The registered proprietor or proprietors for the time being of Lots 25 to 32 and Lots 39 to 40 (all inclusive) on this plan shall not construct any dwelling with a floor level less than that shown below.

Lot 25	194.6 m AHD
Lot 26	194.7 m AHD
Lot 27	194.8 m AHD
Lot 28	194.8 m AHD
Lot 29	194.9 m AHD
Lot 30	194.9 m AHD
Lot 31	195.0 m AHD
Lot 32	195.1 m AHD
Lot 39	194.5 m AHD
Lot 40	194.5 m AHD



PLAN OF SUBDIVISION				EDITION 1		PS748503B	
LOCATION OF LAND  PARISH: Sandhurst at Bendigo  TOWNSHIP: -  SECTION: 15  CROWN ALLOTMENT: 1 (PART) & 6 (PART)  CROWN PORTION: -  TITLE REFERENCE: C/T VOL FOL   LAST PLAN REFERENCE: Lot A on PS719969Q   POSTAL ADDRESS: 29 Priest Street (at time of subdivision) White Hills 3550   MGA94 CO-ORDINATES: E: 259 600 ZONE: 55 (of approx centre of land in plan) N: 5 932 550				Council Name: Greater Bendigo City Council  SPEAR Reference Number: S108099P			
VESTING OF ROADS AND/OR RESERVES				Notations			
IDENTIFIER		COUNCIL/BODY/PERSON		Lots 1 to 40 (both inclusive) have been omitted from this plan.			
Nil		Nil					
NOTATIONS							
DEPTH LIMITATION Does Not Apply							
SURVEY: This plan is based on survey  STAGING: This is not a staged subdivision Planning Permit No. DS431/2010  This survey has been connected to permanent marks No(s). 462, 463, 1346 & 2017 In Proclaimed Survey Area No. 34							
EASEMENT INFORMATION							
LEGEND: A - Appurtenant Easement E - Encumbering Easement R - Encumbering Easement (Road)							
Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited/In Favour of			
Botanica Green Stage 2 (9 Lots)				AREA OF STAGE 4028m²			
 <div>16 Bridge Street PO Box 1064 Bendigo Vic 3550 T 61 3 5448 2500 spiire.com.au</div>			SURVEYORS FILE REF: 303287SV02		ORIGINAL SHEET SIZE: A3		SHEET 1 OF 3
			Licensed Surveyor: Michael Meehan Version: 1				




CREATION OF RESTRICTION

Restriction No 1  
Upon registration of this plan the following restriction is created  
Land to benefit: Lots 41 to 49 (all inclusive)  
Land to be burdened: Lots 41 to 49 (all inclusive)

Description of Restriction  
The registered proprietor or proprietors for the time being of Lots 41 to 49 (all inclusive)  
on this plan shall not construct any dwelling with a floor level less than that shown below.

Lot 41	195.3 m AHD
Lot 42	195.3 m AHD
Lot 43	195.3 m AHD
Lot 44	195.3 m AHD
Lot 45	195.3 m AHD
Lot 46	195.3 m AHD
Lot 47	195.3 m AHD
Lot 48	195.3 m AHD
Lot 49	195.3 m AHD

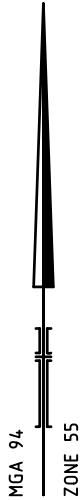
PLAN OF SUBDIVISION				EDITION 1		PS748504Y	
LOCATION OF LAND  PARISH: Sandhurst at Bendigo  TOWNSHIP: -  SECTION: 15  CROWN ALLOTMENT: 1 (PART)  CROWN PORTION: -  TITLE REFERENCE: C/T VOL FOL   LAST PLAN REFERENCE: Lot C on PS748503B   POSTAL ADDRESS: Tussock Drive (at time of subdivision) White Hills 3550   MGA94 CO-ORDINATES: E: 259 550 ZONE: 55 (of approx centre of land in plan) N: 5 932 580				Council Name: Greater Bendigo City Council  SPEAR Reference Number: S108109S			
VESTING OF ROADS AND/OR RESERVES				Notations			
IDENTIFIER		COUNCIL/BODY/PERSON		Lots 1 to 49 (both inclusive) have been omitted from this plan.			
Reserve No. 1		City of Greater Bendigo					
NOTATIONS							
DEPTH LIMITATION Does Not Apply							
SURVEY: This plan is based on survey  STAGING: This is not a staged subdivision Planning Permit No. DS431/2010  This survey has been connected to permanent marks No(s). 462, 463, 1346 & 2017 In Proclaimed Survey Area No. 34							
EASEMENT INFORMATION							
LEGEND: A - Appurtenant Easement E - Encumbering Easement R - Encumbering Easement (Road)							
Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited/In Favour of			
Botanica Green Stage 4 (3 Lots)				AREA OF STAGE 1592m²			
 <div>16 Bridge Street PO Box 1064 Bendigo Vic 3550 T 61 3 5448 2500 spiire.com.au</div>			SURVEYORS FILE REF: 303287SV03		ORIGINAL SHEET SIZE: A3	SHEET 1 OF 2	
			Licensed Surveyor: Michael Meehan Version: 1				

CREATION OF RESTRICTION

Restriction No 1  
Upon registration of this plan the following restriction is created  
Land to benefit: Lots 50 to 52 (all inclusive)  
Land to be burdened: Lots 50 to 52 (all inclusive)

Description of Restriction  
The registered proprietor or proprietors for the time being of Lots 50 to 52 (all inclusive)  
on this plan shall not construct any dwelling with a floor level less than that shown below.

Lot 50	195.3 m AHD
Lot 51	195.3 m AHD
Lot 52	195.3 m AHD



## **Appendix C**

Engineering Detail Plans



# BOTANICA GREEN STAGES 1 & 2

## PRIEST ST. WHITE HILLS

### BOTANICA GREEN PTY LTD

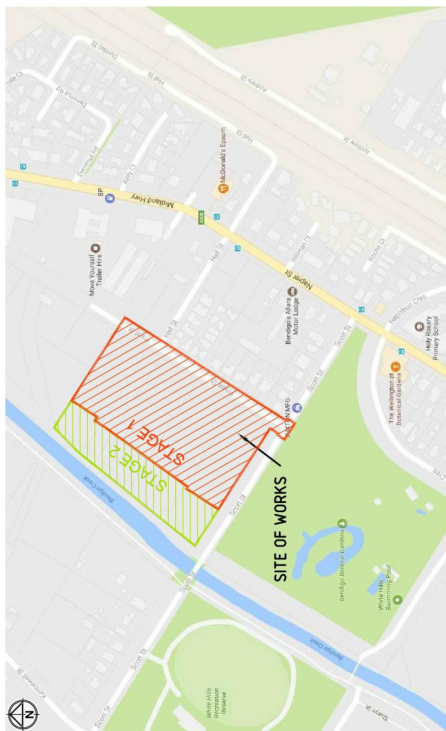
#### GENERAL NOTES

- ALL WORK TO BE CARRIED OUT TO CITY OF GREATER BENGO SPECIFICATIONS, STANDARD DRAWINGS AND TO THE SATISFACTION OF COMPLEX SENIOR SUPERVISOR OFFICER OR HIS REPRESENTATIVE.
- ALL LEVELS ARE TO AUSTRALIAN HEIGHT DATUM AND ALL COORDINATES ARE TO MAP GRID OF AUSTRALIA 1984.
- THE LOCATION OF EXISTING SERVICES SHOULD BE DETERMINED BY THE CONTRACTOR PRIOR TO COMMENCING ANY EXCAVATION WORK. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE LOCATION AND DEPTH OF ALL EXISTING SERVICES SHOWN ON THESE DRAWINGS AND ANY SERVICES NOT SHOWN ON THESE DRAWINGS ARE OFFERED AS A GUIDE ONLY AND ARE NOT GUARANTEED AS CORRECT.
- ALL AREAS ARE TO BE FILLERED TO TOPSOIL, FILLING AND ONLY BE TOPSOILED ON THE DIRECTION OF THE ENGINEER, TO THE FINAL FILL LEVELS SHOWN ON THE DRAWINGS. ALL FILLING IS TO BE:
  - FILLERED TO TOPSOIL TO THE SPECIFIED FILLING LEVEL.
  - PLACED IN LAYERS NOT EXCEEDING 200MM LAYER THICKNESS.
  - POSITIVE CONDITIONED TO WITHIN 85% TO 105% OF OPTIMUM MOISTURE CONTENT.
  - FILLERED TO TOPSOIL TO THE SPECIFIED FILLING LEVEL.
  - PLACED UNDER "LEVEL 1" SUPERVISION IN ACCORDANCE WITH AS 3798-1996.
- EXISTING DEPRESSIONS & DRAINS TRaversing THE SITE ARE TO BE CLEANED OUT AND DEFLAGGED TO FIRM BASE AND FILL TO FINISH SURFACE LEVELS TO THE SPECIFIED COMPACTION STANDARDS.
- TOPS TO BE RE-ESTABLISHED BY THE LICENSED SURVEYOR IF FOUND TO BE MISSING AT THE COMMENCEMENT OF CONSTRUCTION. THE CONTRACTOR WILL BE RESPONSIBLE FOR CARE AND MAINTENANCE OF TOPS THEREAFTER.
- POSITION CONDITIONS SO THAT A MINIMUM DISTANCE BETWEEN TAPPING OF SAP CONDUITS TO BE LOCATED MINIMUM BETWEEN TREE LINE OF LOT UNLESS OTHERWISE SHOWN.
- WHERE COMPENSATION WORK ON EXCAVATIONS IN EXCESS OF 1.5M DEPTH, THE REQUIRED NOTICE IS TO BE SENT TO THE VICTORIAN ROAD MANAGEMENT AUTHORITY (VRMA) AT LEAST 14 DAYS PRIOR TO COMMENCING ANY EXCAVATION WORK. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE LOCATION AND DEPTH OF ALL EXISTING SERVICES SHOWN ON THESE DRAWINGS AND ANY SERVICES NOT SHOWN ON THESE DRAWINGS ARE OFFERED AS A GUIDE ONLY AND ARE NOT GUARANTEED AS CORRECT.
- NO EXCAVATION IS PERMITTED WITHIN THE CITY OF GREATER BENGO WITHOUT OBTAINING COUNCIL'S SPECIAL DISPOSITION.
- EXCAVATED MATERIAL SURPLUS TO FILLING REQUIREMENTS OF THE WORKS SHALL BE REMOVED FROM SITE AS SPECIFIED.
- ALL SURPLUS ROCK, CONCRETE AND BITUMINOUS RUBBLE SHALL BE DISPOSED OF OFF SITE AS SPECIFIED. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE LOCATION AND DEPTH OF ALL EXISTING SERVICES SHOWN ON THESE DRAWINGS AND ANY SERVICES NOT SHOWN ON THESE DRAWINGS ARE OFFERED AS A GUIDE ONLY AND ARE NOT GUARANTEED AS CORRECT.
- ALL MATERIALS AND ALL AREAS OF CUT OUTSIDE ROAD RESERVE TO BE SUPPLIED WITH 100MM HUNTER COMPACTED LAYER OF TOPSOIL.

#### SERVICE LOCATION TABLE

ROAD NAME	POTABLE WATER		GAS		TELECOMS		ELECTRICITY		SEWER	
	SIZE	DEPTH	SIZE	DEPTH	SIZE	DEPTH	SIZE	DEPTH	SIZE	DEPTH
TUSOCK DRIVE NORTH	N 2.0	1.50	S 0.8	0.8	S 1.5	1.50	S 0.8	0.8	N 2.0	1.50
TUSOCK DRIVE SOUTH	N 2.0	1.50	S 0.8	0.8	S 1.5	1.50	S 0.8	0.8	N 2.0	1.50
PERIPHERIES STREET	N 2.0	1.50	E 1.5	1.50	E 1.5	1.50	E 1.5	1.50	E 1.5	1.50
PERIPHERIES STREET	N 2.0	1.50	E 1.5	1.50	E 1.5	1.50	E 1.5	1.50	E 1.5	1.50
PRIEST STREET (LOT 102-103)	N 2.0	1.50	E 1.5	1.50	E 1.5	1.50	E 1.5	1.50	E 1.5	1.50
PRIEST STREET (LOT 102-103)	N 2.0	1.50	E 1.5	1.50	E 1.5	1.50	E 1.5	1.50	E 1.5	1.50

- TELETRA AND ELECTRICITY CABLES TO BE CONSTRUCTED IN A COMMON TRENCH IN ACCORDANCE WITH ELECTRICITY AUTHORITY STANDARD DRG. 1.
- ALL SERVICES TO BE CONSTRUCTED IN A COMMON TRENCH.
- ALL SERVICES TO BE CONSTRUCTED IN A COMMON TRENCH.



#### LOCALITY PLAN

NOT TO SCALE  
SCALE: 1:500

REFERENCE	DESCRIPTION	SHEET NO.	REVISION
CD000	FACE SHEET	1 OF 25	A
CD001	FACE PLAN	2 OF 25	A
CD002	CONTROL DATA	3 OF 25	A
CD003	TUSOCK DRIVE	4 OF 25	A
CD004	PERIPHERIES STREET	5 OF 25	A
CD005	STAGE 1 - TUSOCK DRIVE	6 OF 25	A
CD006	STAGE 1 - TUSOCK DRIVE	7 OF 25	A
CD007	STAGE 1 - PERIPHERIES STREET	8 OF 25	A
CD008	STAGE 1 - PERIPHERIES STREET	9 OF 25	A
CD009	STAGE 1 - PERIPHERIES STREET	10 OF 25	A
CD010	STAGE 1 - PERIPHERIES STREET	11 OF 25	A
CD011	STAGE 1 - PERIPHERIES STREET	12 OF 25	A
CD012	STAGE 1 - PERIPHERIES STREET	13 OF 25	A
CD013	STAGE 1 - PERIPHERIES STREET	14 OF 25	A
CD014	STAGE 1 - PERIPHERIES STREET	15 OF 25	A
CD015	STAGE 1 - PERIPHERIES STREET	16 OF 25	A
CD016	STAGE 1 - PERIPHERIES STREET	17 OF 25	A
CD017	STAGE 1 - PERIPHERIES STREET	18 OF 25	A
CD018	STAGE 1 - PERIPHERIES STREET	19 OF 25	A
CD019	STAGE 1 - PERIPHERIES STREET	20 OF 25	A
CD020	STAGE 1 - PERIPHERIES STREET	21 OF 25	A
CD021	STAGE 1 - PERIPHERIES STREET	22 OF 25	A
CD022	STAGE 1 - PERIPHERIES STREET	23 OF 25	A
CD023	STAGE 1 - PERIPHERIES STREET	24 OF 25	A
CD024	STAGE 1 - PERIPHERIES STREET	25 OF 25	A



**WARNING**  
BEWARE OF UNDERGROUND/OVERHEAD SERVICES  
AND THEIR EXACT POSITION SHOULD BE PROVIDED  
SITE NO GUARANTEE IS GIVEN THAT ALL EXISTING  
SERVICES ARE SHOWN ON THESE DRAWINGS.  
UNLESS OTHERWISE NOTED, THE CONTRACTOR  
SHOULD BE GIVEN TO CONSTRUCTION PROCEDURES.  
UNDER OVERHEAD ELECTRICITY TRANSMISSION LINES.

**LEGEND**

**EXISTING**

**PROPOSED**

WATER MAIN, VALVE AND HYDRANT

WATER RECYCLED

UNDERGROUND ELECTRICITY

OVERHEAD ELECTRICITY & POLE

TELETRA & SERVICE PIT

TELETRA

DIVIDED TELSTRA

GAS MAIN

BRANCH SEWER & MANHOLE

SEWER & MANHOLE

SEWER RISING MAIN

COUNCIL STORMWATER DRAIN & PIT

COUNCIL STORMWATER DRAIN

COUNCIL STORMWATER PITS

HOUSE DRAIN

AG DRAIN AND FLUSHER

PMK STORMWATER DRAIN & PIT

PMK STORMWATER PITS

STORMWATER DRAINAGE PIT NUMBER

GAS & WATER CONDUITS

CONCRETE VEHICLE CROSSING

PAVEMENT LAYOUT LINE

ROOF / CHANGE OF GRADE LINE

SURFACE COUNTER HOUR

SURFACE LEVEL

BATTER LEVEL (TOP / TOE)

EARTHWORKS GRADE

LIGHT & POLE (BY OTHERS)

STREET SIGN

PERMANENT SURVEY MARK

TEMPORARY BENCH MARK

BOLLARD

ROAD CHANGES

LOT CHANGE

SETOUT POINT

LIMIT OF WORKS

BATTER

EXCAVATION GREATER THAN 8.2m

FILLING GREATER THAN 0.2m

FILL EXTENTS

ROCK BEACHING

PARKING BAY / PAVED AREA

RETAINING WALL - THUNDER

RETAINING WALL - CONCRETE

RETAINING WALL - ROCK/STONE

GRAVELLED MAINTENANCE ACCESS TRACK

GRAVEL MAINTENANCE ACCESS TRACK

FENCE - TREE PROTECTION

FENCE - VEHICLE EXCLUSION

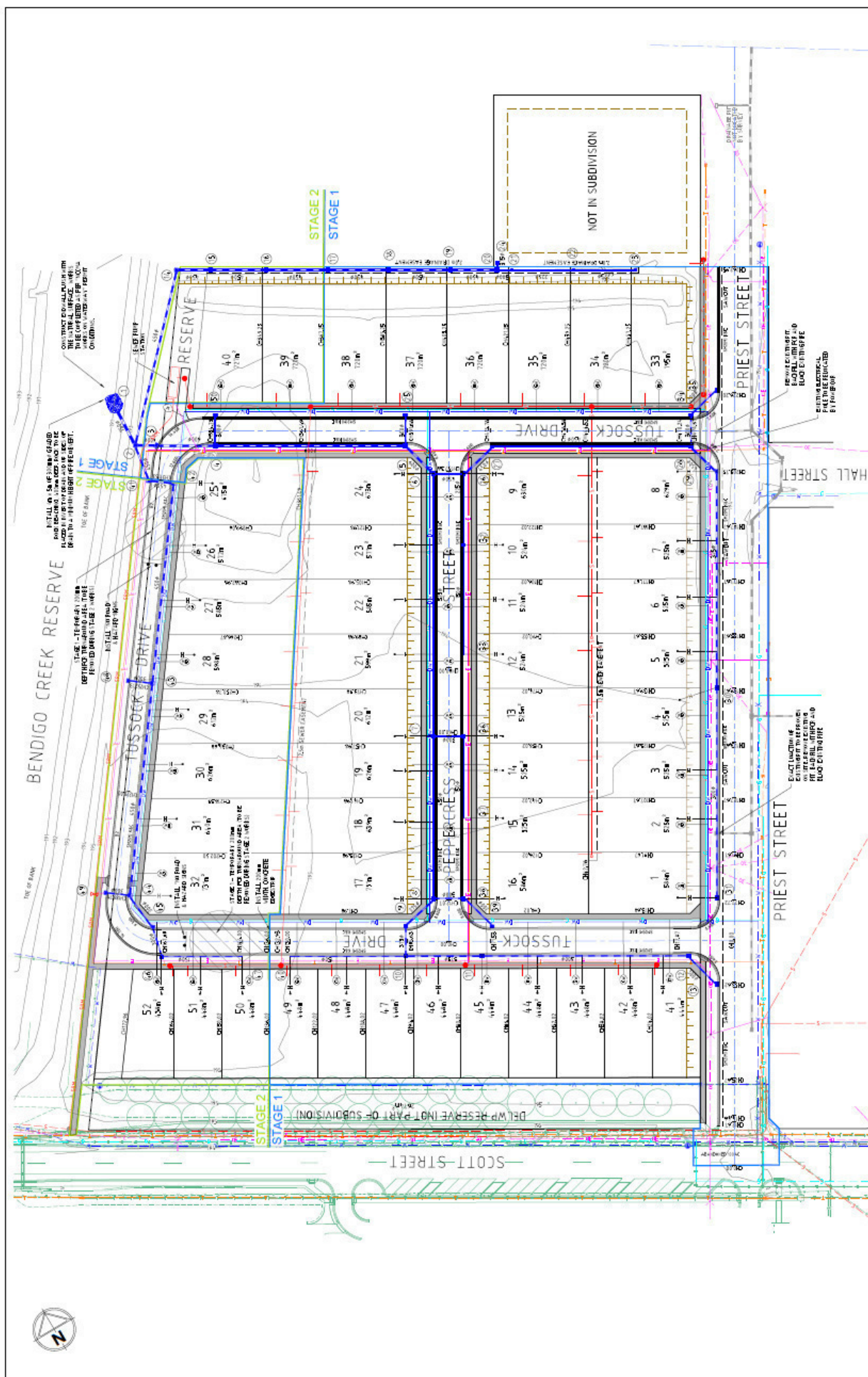
FENCES

GUARD RAIL

TREE (IS SURVEYED CANOPY) TO BE RETAINED

TREE TO BE REMOVED

VEGETATION LINE



## **Appendix D**

Landscape Buffer - Legal Agreement



# Section 173 Agreement— Applicable to Lots 39 & 40



Section 173 Agreement – Lots 33-40, Tussock Drive White Hills 3550

THIS AGREEMENT is made the \_\_\_\_\_ day of \_\_\_\_\_ 2017

## PARTIES:

GREATER BENDIGO CITY COUNCIL of Lyttleton Terrace Bendigo, Victoria, 3550  
(the Council)

## AND

LYNDALE DEVELOPMENTS PTY LTD whose registered address is 61 Bull Street Bendigo, Victoria, 3550  
(the Owner)

## BACKGROUND:

- A. The Owner is the registered proprietor of the Land.
- B. The Council is the authority responsible for administering the Scheme.
- C. On 3 August 2011 the Council issued the Planning Permit permitting a forty one lot subdivision of the Land.
- D. Condition 3 (b) of the Planning Permit provides that a landscape plan detailing a landscape buffer at the rear of lots 33 to 40 on the Land must be submitted to Council for approval prior to the issue of a statement of compliance for the staged subdivision of the Land. The purpose of the landscape buffer is to provide a buffer between the habitable buildings to be built on lots 33 to 40 of the Land and a powercor depot at the rear of lots 33 to 40 of the Land.
- E. The Council has requested the Owner enter into an Agreement pursuant to Section 173 of the Act to be registered on title to the Land to satisfy the requirements of Council in respect of the landscape buffer.
- F. The parties acknowledge that this Agreement provides for:
  - (a) the restriction and regulation of the use of the Land;
  - (b) matters intended to achieve and advance the objectives of planning in Victoria; and
  - (c) matters intended to achieve and advance the objectives of planning in the Greater Bendigo Planning Scheme, and is made pursuant to and in accordance with Section 173 of the Act.

## 1. DEFINITIONS

In this Agreement:

**Act** means the *Planning and Environment Act 1987 (Vic)*.

**Agreement** means this Agreement, including any annexures and the Background to this Agreement.

**Business Day** means Monday to Friday excluding public holidays in Bendigo, Victoria.

**Land** means all that piece of land being Crown Allotments 2, 3, 4 and 5 Section 15, Crown Allotments 4, 5 and 5A Section 17 Parish of Sandhurst and more particularly described as the land in Certificate of Title Volume 11328 Folio 993 and Lots 2 and 3 on Plan of Subdivision 438829X and more particularly described as the land in Certificates of Title Volume 11328 Folios 828 and 829.

**Landscape Buffer** means all land within five metres of the rear boundary of each of the lots.

**Lot** means lots 33-40 (inclusive) as shown on the endorsed plans accompanying the Planning Permit from time to time.

**Mortgagee** means the person or persons registered (if any) or entitled from time to time to be registered (if any) by the Registrar of Titles as Mortgagee of the Land or any part of it.

**Planning Permit** means Planning Permit AM/431/2010/C.

**Scheme** means the Greater Bendigo Planning Scheme or any other planning scheme which applies to the Land from time to time.

## **2. INTERPRETATION**

The parties agree and acknowledge that in this Agreement:

- 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 the reference to a person includes a reference to a firm, corporation, association or other entity and their successors in law;
- 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 includes any statute amending, consolidating or replacing that statute and includes any subordinate instruments made under that statute; and
- 2.6 the Background to this Agreement is and will be deemed to form part of this Agreement including any terms defined within the Background.

## **3. COMMENCEMENT**

This Agreement comes into force on the date it is signed by both parties as set out above or otherwise upon registration of this Agreement on the certificate of title to the Land.

## **4. OWNER'S COVENANTS**

The Owner covenants with the Council that:

- (a) No habitable buildings will be constructed within the Landscape Buffer without the prior consent of the Council; and
- (b) the Landscape Buffer shall be maintained by the Owner to the satisfaction of the Council, unless with prior written consent of the Council.

## **5. FURTHER AGREEMENT BETWEEN THE PARTIES**

The parties agree that:

- (a) Ground fuel reduction may be carried out as required within the Landscape Buffer, including mowing and the removal of undergrowth;
- (b) A tree within the Landscape Buffer may be removed or lopped without prior written consent of the Council if its condition constitutes an immediate threat to life or property; and

- (c) Vegetation may be removed within the Landscape Buffer without prior written consent of the Council to undertake works by or on behalf of a public service authority

## **6. REGISTRATION OF AGREEMENT ON TITLE**

The Council shall as soon as practicable after the execution of this Agreement make application to the Registrar of Titles pursuant to section 181 of the Act to register this Agreement on the certificate of title to the Land.

## **7. FURTHER OBLIGATIONS ON THE OWNER**

### **7.1 Covenants run with the Land**

The Owner's obligations in this Agreement are intended to take effect as covenants which shall be annexed to and run at law and in equity with the Land and every part of it, and bind the Owner and its successors, assignees and transferees, the registered proprietor or proprietors for the time being of the Land and every part of the Land.

### **7.2 Successors in title**

Until this Agreement is recorded on the folio of the Register which relates to the Land pursuant to Section 181 of the Act, the Owner must ensure that any successors in title give effect to and do all acts and sign all documents which will require those successors to give effect to this Agreement including requiring the successors in title to execute a deed agreeing to be bound by the terms of this Agreement. Until that deed is executed, the Owner, being a party to this Agreement, remains liable to perform all of the Owner's obligations contained in this Agreement.

### **7.3 Further assurance**

The Owner agrees to do all that is necessary to enable the Council to make an application to the Registrar of Titles to make a recording of this Agreement on the Certificate of Title to the Land in accordance with section 181 of the Act, including the signing of any further agreement, acknowledgement or other document which relates to the Land.

### **7.4 Payment of Council's costs**

The Owner agrees to pay on demand to the Council the Council's costs and expenses incurred and incidental to the preparation, execution and registration of this Agreement pursuant to section 181 of the Act, together with all costs of enforcing this Agreement if deemed necessary by the Council.

### **7.5 Mortgagee to be bound**

The Owner agrees to obtain the consent of any Mortgagee to be bound by the covenants in this Agreement if the Mortgagee becomes mortgagee in possession of the Land.

### **7.6 Indemnity**

The Owner agrees to indemnify and keep the Council, its officers, employees, agents, workmen and contractors indemnified from and against all costs, expenses, losses or damages which any of them 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 arising from any non-compliance with this Agreement.

#### **7.7 Non-compliance**

If the Owner has not complied with this Agreement within 14 days after the date of service on the Owner by the Council of a notice which specified the Owner's failure to comply with any provision of this Agreement, the Owner agrees:

- 7.7.1 to allow the Council's officers, employees, contractors or agents to enter the Land and rectify the non-compliance;
- 7.7.2 to pay to the Council on demand, the Council's reasonable costs and expenses incurred as a result of the Owner's non-compliance; and
- 7.7.3 to pay interest at the rate of 2% above the rate prescribed under Section 2 of the *Penalty Interest Rates Act 1983* on all monies which are due and payable but remain owing under this Agreement until they are paid in full.
- 7.7.4 If requested to do so by Council, to promptly execute in favour of it a mortgage to secure the Owner's obligations under this Agreement.

and the Owner agrees:

- 7.7.5 to accept a certificate signed by the Chief Executive Officer of the Council (or any nominee of the Chief Executive Officer) as prima facie proof of the costs incurred by the Council in rectifying the Owner's non-compliance with this Agreement;
- 7.7.6 that any payments made for the purposes of this Agreement shall be appropriated first in payment of any interest and any unpaid costs of the Council and then applied in repayment of the principal sum;
- 7.7.7 that all costs or other monies which are due and payable under this Agreement but which remain owing shall be a charge on the Land until they are paid in full; and
- 7.7.8 if the Owner executes a mortgage as required by clause 7.7.4, any breach of this Agreement is deemed to be a default under that mortgage.

#### **7.8 Council access**

The Owner agrees to allow the Council and its officers, employees, contractors or agents or any of them to enter the Land (at any reasonable time) to assess compliance with this Agreement.

#### **7.9 Owner's warranty**

The Owner warrants and covenants that:

- 7.9.1 the Owner is the registered proprietor (or is entitled to become the registered proprietor) of the Land and is also the beneficial owner of the Land;
- 7.9.2 there are no mortgages, liens, charges or other encumbrances or leases or any rights inherent in any person other than the Owner affecting the Land which have not been disclosed by the usual searches of the folio of the Register for the Land or notified to the Council;

- 7.9.3 no part of the Land is subject to any rights obtained by adverse possession or subject to any easements or rights described or referred to in Section 42 of the *Transfer of Land Act 1958*; and
- 7.9.4 until this Agreement is recorded on the folio of the Register which relates to the Land, the Owner will not sell, transfer, dispose of, assign, mortgage or otherwise part with possession of the Land or any part of the Land without first disclosing to any intended purchaser, transferee, assignee or mortgagee the existence and nature of this Agreement.

## **8. GENERAL**

### **8.1 Council powers not restricted**

This Agreement does not fetter or restrict the Council's power or discretion in respect of any of the Council's decision making powers including but not limited to an ability to make decisions under the *Local Government Act 1989*, and the Act or to make or impose requirements or conditions in connection with any use or development of the Land or the granting of any planning permit, the approval or certification of any plans of subdivision or consolidation relating to the Land or the issue of a Statement of Compliance in connection with any such plans.

### **8.2 Time of the essence**

Time is of the essence as regards all dates, periods of time and times specified in this Agreement.

### **8.3 Governing law and jurisdiction**

This Agreement is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts and tribunals of Victoria and waives any right to object to proceedings being brought in those courts or tribunals.

### **8.4 Enforcement and severability**

8.4.1 This Agreement shall operate as a contract between the parties and be enforceable as such in a court of competent jurisdiction regardless of whether, for any reason, this Agreement were held to be unenforceable as an Agreement pursuant to Division 2 of Part 9 of the Act.

8.4.2 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.

## **9. NOTICES**

### **9.1 Service of notice**

A notice or other communication required or permitted to be served by a party on another party must be in writing and may be served:

- 9.1.1 by delivering it personally to that party;

9.1.2 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; or

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

**9.2 Time of service**

A notice or other communication is deemed served;

8.2.1 if delivered, on the next following Business Day;

8.2.2 if posted, on the expiration of two Business Days after the date of posting; or

8.2.3 if sent by facsimile, on the next following Business Day unless the receiving party has requested re-transmission before the end of that Business Day.