

CONFIDENTIAL ITEMS 2003 – SEPTEMBER 2013

#	Date	Item Title	Confidential Order Details	Item being kept confidential - Agenda/ Attachment/ Minutes	Reason regarding retention or recommend-action to release	Resolution Regarding Action	Last Review Date	Next Review Date	Date Released
81	16 Sept 2013 RO Brian C	Disposal of Council Land	<p>Section 90 (3) (b) Order</p> <p>Pursuant to Section 90(3)(b) Pursuant to Section 90(2) of the Local Government Act 1999 the Council orders that all members of the public except the Chief Executive Officer, Acting General Manager Council Services, General Manager Corporate Services, General Manager Infrastructure & Projects and Minute Secretary be excluded from attendance at the meeting for Agenda Item 16.1 Disposal of Council Land.</p> <p>The Council is satisfied that pursuant to Section 90(3)(b) of the Act, the information to be received, discussed or considered in relation to this Agenda item is information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the Council is:</p> <ul style="list-style-type: none"> - conducting business; or - proposing to conduct business; or - would prejudice the commercial position of the Council in that the information to be considered includes detailed costing for the sale of land and other financial information, the disclosure of which could prejudice the 	<p>Council report, related documents and all minutes be retained in confidence</p>	<p>until a contract for the sale of the land is executed</p>	<p>Section 91(7) Order</p> <p>Pursuant to Section 90 (3) (b) & (d) That having considered Agenda Item 16.1 Disposal of Council Land in confidence under 90(2) and (3)(b) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders that the council report, related documents and all minutes be retained in confidence until a contract for the sale of the land is executed</p>			<p>Released and on web 28/10/13</p>

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#	Date	Item Title	Confidential Order Details	Item being kept confidential -Agenda/ Attachment/ Minutes	Reason regarding retention or recommend-action to release	Resolution Regarding Action	Last Review Date	Next Review Date	Date Released
			<p>Council's commercial position during negotiations.</p> <p>In addition the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in continued non-disclosure of this information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information. The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the disclosure of Council's commercial position may severely prejudice Council's ability to be able to negotiate a cost-effective proposal for the benefit of the Council and the community in this matter and in relation to other contract negotiations.</p>						

14. INFORMATION REPORTS

Moved Councillor Irvine that the following reports be noted en bloc.

- 14.1 **REPORT TITLE: MANAGING GROWTH UPDATE**
 DATE OF MEETING: 16 SEPTEMBER 2013
 FILE NUMBER: 48/030/064
- 14.2 **REPORT TITLE: MORPHETT HUTCHINSON STREETSCAPE**
 IMPROVEMENT UPDATE
 DATE OF MEETING: 16 SEPTEMBER 2013
 FILE NUMBER: 48/020/211
- 14.3 **REPORT TITLE: MDPA SEPARATE RATE REVENUE**
 DATE OF MEETING: 16 SEPTEMBER 2013
 FILE NUMBER: 30/050/060
- 14.4 **REPORT TITLE: APPROVAL OF THE ELECTOR**
 REPRESENTATION REVIEW
 DATE OF MEETING: 16 SEPTEMBER 2013
 FILE NUMBER: 13/082311

Seconded Councillor Hamilton

CARRIED
OM20130916.07

15. QUESTIONS ARISING FROM COUNCIL MEETING

Mr Nathan Rogers asked questions regarding Item 12.1 – Expressions of Interest for Office Accommodation and Multi-storey Car Park.

Mr Andrew Stuart, Chief Executive Officer provided responses at the meeting.

Mr Laurie Gellon asked questions regarding Item 14.3 – MDPA Separate Rate Revenue.

Mr David Peters, General Manager Corporate Services provided responses at the meeting.

16. CONFIDENTIAL REPORTS

- 16.1 **REPORT TITLE: CONFIDENTIAL REPORT - DISPOSAL OF**
 COUNCIL LAND AT LITTLE DUBLIN ROAD
 DATE OF MEETING: 16 SEPTEMBER 2013
 FILE NUMBER: 10/130/172

Moved Councillor Heath that Council:

Section 90 (3) (b) Order

Pursuant to Section 90(3)(b)

Pursuant to Section 90(2) of the Local Government Act 1999 the Council orders that all members of the public except the Chief Executive Officer, Acting General Manager Council Services, General Manager Corporate Services, General Manager Infrastructure & Projects and Minute Secretary be excluded from attendance at the meeting for Agenda Item 16.1 Disposal of Council Land at Little Dublin Road.

The Council is satisfied that pursuant to Section 90(3)(b) of the Act, the information to be received, discussed or considered in relation to this Agenda item is information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the Council is:

- conducting business; or
- proposing to conduct business; or
- would prejudice the commercial position of the Council

in that the information to be considered includes detailed costing for the sale of land and other financial information, the disclosure of which could prejudice the Council's commercial position during negotiations.

In addition the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in continued non-disclosure of this information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information. The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the disclosure of Council's commercial position may severely prejudice Council's ability to be able to negotiate a cost-effective proposal for the benefit of the Council and the community in this matter and in relation to other contract negotiations.

Seconded Councillor Westwood

CARRIED
OM20130916.08

Moved Councillor Campbell that Council:

1. Authorise the CEO or his delegate to make a counter offer to the Samwell Family of \$675,000 (ex GST) for the sale of the Council property at Little Dublin Road.
2. Delegate to the Chief Executive Officer or his delegate to negotiate with the Samwell Family a price of not less than \$650,000 (ex GST) and terms for the sale of the Council property at Little Dublin Road.

3. Delegate to the CEO or his delegate to finalise contract terms and executive a contract with the Samwell Family and other required documents to finalise the sale of the Council property at Little Dublin Road subject to the agreement of terms.
4. Indicate to the Samwell Family that the price of treated wastewater is to be adjusted by Council with a timeframe for decision making of end November 2013 and that the Family is invited to submit any information regarding this as soon as practicable.

Seconded Councillor Heath

CARRIED
OM20130916.09

Moved Councillor Westwood that Council:

Section 91(7) Order

Pursuant to Section 90 (3) (b) & (d)

That having considered Agenda Item 16.1 Disposal of Council Land at Little Dublin Road in confidence under 90(2) and (3)(b) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders that the council report, related documents and all minutes be retained in confidence until a contract for the sale of the land is executed with the Samwell Family or another party.

Seconded Councillor Heath

CARRIED
OM20130916.10

MEETING DECLARED CLOSED AT 8.48PM

MAYOR

DATE

16. CONFIDENTIAL REPORTS

16.1 REPORT TITLE: CONFIDENTIAL REPORT - DISPOSAL OF COUNCIL LAND AT LITTLE DUBLIN ROAD

DATE OF MEETING: 16 SEPTEMBER 2013

FILE NUMBER: 10/130/172

Strategic Plan 2012-2017 Ref:

1.8 Promote and enhance the capacity of producers, regional stakeholders and industry groups to grow, showcase and add value to local food, wine and associated industries

Purpose:

To seek delegation for the Chief Executive Officer or nominee to finalise terms for the sale of the property at Little Dublin Road.

Summary – Key Issues:

- An increased offer of \$650,000 has been received from the Samwell Family.
- There has been no other genuine interest in the property since tenders closed in February 2013.
- Delegation is sought for the CEO or nominee to finalise terms for the sale.

Recommendation:

That Council:

Section 90 (3) (b) Order

1. Pursuant to Section 90(3)(b)
Pursuant to Section 90(2) of the Local Government Act 1999 the Council orders that all members of the public except the Chief Executive Officer, Acting General Manager Council Services, General Manager Corporate Services, General Manager Infrastructure & Projects and Minute Secretary be excluded from attendance at the meeting for Agenda Item 16.1 Disposal of Council Land at Little Dublin Road.

The Council is satisfied that pursuant to Section 90(3)(b) of the Act, the information to be received, discussed or considered in relation to this Agenda item is information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the Council is:

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in that the information to be considered includes detailed costing for the sale of land and other financial information, the disclosure of which could prejudice the Council's commercial position during negotiations.

In addition the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in continued non-disclosure of this information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information. The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the disclosure of Council's commercial position may severely prejudice Council's ability to be able to negotiate a cost-effective proposal for the benefit of the Council and the community in this matter and in relation to other contract negotiations.

2. Authorise the CEO or his delegate to make a counter offer to the Samwell Family of \$675,000 (ex GST) for the sale of the Council property at Little Dublin Road.
3. Delegate to the Chief Executive Officer or his delegate to negotiate with the Samwell Family a price of not less than \$650,000 (ex GST) and terms for the sale of the Council property at Little Dublin Road.
4. Delegate to the CEO or his delegate to finalise contract terms and execute a contract with the Samwell Family and other required documents to finalise the sale of the Council property at Little Dublin Road subject to the agreement of terms.
5. Indicate to the Samwell Family that the price of treated wastewater is to be adjusted by Council with a timeframe for decision making of end November 2013 and that the Family is invited to submit any information regarding this as soon as practicable.

Section 91(7) Order

6. Pursuant to Section 90 (3) (b) & (d)
That having considered Agenda Item 16.1 Disposal of Council Land at Little Dublin Road in confidence under 90(2) and (3)(b) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders that the council report, related documents and all minutes be retained in confidence until a contract for the sale of the land is executed with the Samwell Family or another party.
-

Background:

1. Council purchased the subject land as part of a larger parcel of 17.6 ha for \$985,000 in January 2009 in order to obtain a suitable parcel of land for the construction of wastewater storage and treatment for the Callington Pipeline project.
2. Following the construction of a 117 megalitre (ML) storage on the site, a boundary adjustment has created a separate allotment of 10.09 hectares which is now surplus to Council's requirements.
3. The land has a frontage to Little Dublin Rd, includes a modern 4 bedroom house, shedding and is planted with olive trees. It is excluded from classification as Community Land.
4. Late in 2012 a Confidential Memo was issued to all Council members to advise of the intention to commence a process for the sale of the surplus property.
5. Council offered the property (see Attachment 1 for site plan) for sale by tender through James Sexton of Re/MAX. Tenders closed on 20 February 2013. The legal description of the land is Allotment 120 in Deposited Plan 90801 in the area named Nairne, Hundred of Macclesfield.
6. One formal tender was received from Mr Leigh Samwell for \$625,000 with an informal offer from S and S McAllister for \$350,000.
7. Prior to marketing, Re/MAX's advice was that Council could expect to achieve a price in the range of \$695,000 to \$765,000. Comparative proposals from two other agents indicated similar ranges with minimum values down to \$655,000.
8. Following the tender, Re/MAX advised that due to adverse reaction to the expected construction of a new Freeway Interchange next to the property and the limited interest in olive trees which cover the property, a revised market value for the property should be \$625,000 to \$650,000 (Attachment 2).
9. The Samwell Family also indicated a requirement to negotiate a contract for provision by Council of treated wastewater to the land given the intended use of the land.
10. Council officers entered into direct discussions with the Samwell Family and Elected Members were invited to an inspection of the Samwell operations in recent weeks.
11. Council officers indicated to the Samwell Family that the offer of \$625,000 was considered low and the property would not be recommended for sale at that amount.

12. Leigh Samwell has now submitted a revised offer as follows:

- \$650,000 with prompt settlement
- Council to support the purchaser's application to the Department of Environment, Water and Natural Resources (DEWNR) to either transfer Council's current interim bore approval on its neighbouring allotment or for approval of a new DEWNR allocation for the land being purchased.
- Council to enter into 'good faith' negotiations to provide treated wastewater to top up total availability for the land being purchased of 25 megalitres after any allocation approved by DEWNR.
- Negotiation of the Council treated wastewater supply and cost to be concluded by end of November 2013.

Discussion:

13. There has been no further market interest in the land since the close of tenders 7 months ago. The real estate market in SA has been weak for some time.
14. The 10.09 ha being offered for sale is 57.3% of the original 17.6 ha purchased. The \$650,000 offer represents 66% of the original purchase price. Apart from the land now used for a wastewater storage dam Council also retains a 4.39 ha allotment on the corner of Little Dublin and Bald Hills Roads pending the construction of a freeway interchange ramp.
15. The Samwell Family is a genuine purchaser and as an adjoining owner has the capacity and ability to use the land for improved economic activity namely horticultural production.
16. The Samwell Family has been a long-term supporter of Council by taking treated wastewater at critical times for irrigation of horticultural crops. This has enabled Council to avoid discharge to Mount Barker Creek in contravention of EPA license requirements. Although the Samwell Family wastewater supply agreement with Council expired on 30 June 2012, Council has continued to supply them at the historical low price.
17. When Council purchased the land it had an existing groundwater allocation for the irrigation of the olive grove.
18. A Special Condition in the Samwell Family contract as drafted requests that Council 'transfer the overall water entitlement to the new owner of that portion of land described as Lot 120 in Annexure A' (the 10.09 hectare allotment).

19. There is some ambiguity in the Special Condition as drafted. Council officers recommend against transfer of the total allocation as it has commercial value to Council. Under the circumstances Council officers will work proactively with the Samwell Family to secure a water allocation in their own right. In the unlikely event that such allocation is refused, Council can agree to transfer sufficient of the existing water allocation to provide 25 mega litres per annum (ML/a) to the Samwell Family or to provide treated wastewater (at Council's discretion) at a price to be agreed.
20. It is recommended that Council move to finalise negotiations for the sale and accept a price of no less than \$650,000 (ex GST) subject to resolution of ambiguities in the Special Condition (Water Allocation) clause and give authority to the CEO or his delegate to conclude a contract.
21. Under the historical price arrangement, the Samwell Family continue to pay significantly less than other end-users for the supply of treated wastewater. Discussions to enable gradual reform to this price need to be brought to a conclusion. It is anticipated that the Samwell Family requirements of a maximum of 25ML/a for the Little Dublin Road property can be accommodated by Council.
22. The Samwell Family have previously indicated that they are not prepared to provide financial information regarding their business to enable informed decision making by Council as to their capacity to pay an increased price for treated wastewater.
23. Council officers were expecting that the offer to purchase the land would be accompanied by a proposal from the Samwell Family regarding an increase in the price of treated wastewater but this has not occurred. Negotiations with the Samwell Family will continue in order to bring this matter to an amicable conclusion.
24. A further agenda item will be prepared by end November 2013 for Council to determine the price to be payable by the Samwell Family for treated wastewater.

Community Engagement:

Not applicable.

Policy:

Disposal of Council Assets

Budget:

No sales income has been budgeted for 2013/14.

Statutory/Legal:

The land is excluded from the classification as community land via Council resolution 14 July 2008.

Staff Resource Requirements:

Not applicable.

Environmental:

Not applicable.

Social:

Not applicable.

Risk Assessment:

A genuine purchaser has been identified for the land. If a sale is not completed at this point, there is a risk that Council will not be able to find another buyer at the same price for some time.

Asset Management:

If approved, a sale would dispose of a Council asset. The asset is surplus to Council's requirements.

Conclusion:

An improved offer of \$650,000 has been received for the property. It is proposed that the CEO be given delegation to negotiate a sale at no less than that amount.

Key Contact

David Morton, Manager Projects, Infrastructure and Projects Department

Manager or Sponsor of Project

Brian Clancey, General manager Infrastructure and Projects Department

Attachments

1. Site Plan 13/085635
2. Letter from Re/MAX 13/015386

District Council of Mount Barker



District Council of Mount Barker

6 Dutton Road

Mount Barker SA 5251

Telephone (08) 8381 7200

Facsimile (08) 8381 7299

Map Zoom: 981.4 m

Map Scale: 1:2,424

Created on: Tuesday, 20 November 2012 By: mb



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SCANNED
21 FEB 2013

DC Mt Barker
File No: 48/030/132
21 FEB 2013
Doc No: _____

February 21, 2013

District Council of Mount Barker
C/- Mr M Graham
PO Box 54
MOUNT BARKER SA 5251

Dear Matt,

Re: Tender – Lot 120 Little Dublin East Road, Nairne

Over the last 8 week period the property has been broadly marketed as the proposed marketing plan, including:

- Direct mail to database.
- Newspaper Advertisements (Courier, Advertiser & Stock Journal).
- Internet - 5 x high profile websites.
- Signage on the property.

This has resulted in a number of enquiries and we have had the pleasure of facilitating a series of inspections (781 page visits realestate.com / 12 genuine enquiries / 5 x parties inspected). The feedback from the market however has been almost unanimous in siting the proximity of the Freeway and potential for negative impact with the proposed interchange as being their primary concerns. Also of consideration was the limited interest in the olive trees which for most buyers created a liability both with the cost of removal & time associated.

Our initial price expectations ranged between \$695,000 - \$765,000 however from the concerns already raised, it is evident that these issues have had a far more significant impact than initially allowed for.

Based on the market feedback & also with some consideration of current market conditions, we estimate that a revised market value for the property should be between \$625,000 - \$650,000.

As you are already aware, by 4pm yesterday (Wednesday 20th) no formal Tenders were received however 2 offers were submitted for your consideration. One significantly less than the other, it is clear that the remaining offer is to a neighbouring farmer who is endeavouring to maintain his viability in the tough rural horticultural industry.

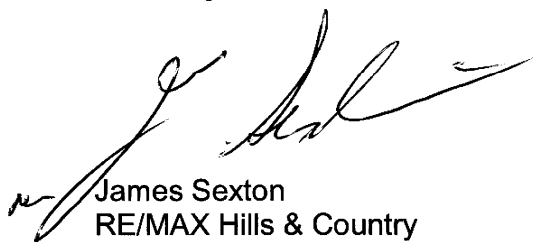
The benefit of the offer is that they are major farmers utilising the land for genuine horticultural activities and are well known to Council.

We would recommend that the proposed changes to the bore access, including creation of an Easement be investigated by the Council and some clarification provided regarding whether or not the Council will require any access to the bore water for its long term plans.

Upon receipt of this information we look forward to meeting with the prospective buyers to negotiate an offer acceptable to the Council.

Please feel free to contact me with any queries on 0418 827 669.

Kind Regards,



James Sexton
RE/MAX Hills & Country
Ph: 08 83981603
Mob: 0418 827 669
Email: jamessexton@remax.com.au

Nathan Watts

From: sarah mcallister <sare_1979@yahoo.com>
Sent: Wednesday, 20 February 2013 3:53 PM
To: Nathan Watts
Subject: Re: Enquiry for Property ID: 7503387, Lot 120 Little Dublin East Rd, Nairne, SA 5252, Listing Agent James Sexton

Hi Nathan,

Sorry about the delay, we would be willing to purchase the property for \$350,000.00 subject to finance and building inspection.

Thanks
Kind Regards,
Shem and Sarah McAllister

From: Nathan Watts <nathanwatts@remax.com.au>
To: "sare_1979@yahoo.com" <sare_1979@yahoo.com>
Sent: Wednesday, 20 February 2013 1:30 PM
Subject: RE: Enquiry for Property ID: 7503387, Lot 120 Little Dublin East Rd, Nairne, SA 5252, Listing Agent James Sexton

Hi Sarah,

As per our telephone conversation a short time ago, this is simply a brief email to follow up to our earlier conversations regarding this property.

Given that Tenders close this afternoon at 4pm and we appreciate that you are not in the position to sign a formal Tender, could you please confirm for us the details of your offer, including price & conditions?

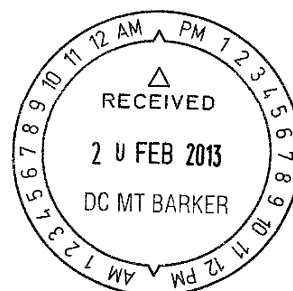
We look forward to providing you with a response from the Council tomorrow.

Kind regards,
Nathan




Nathan Watts
Sales Manager
40 Adelaide Road, Mt Barker, SA 5251
nathanwatts@remax.com.au
M: 0408 826 005 D: 08 8398 1640
www.realestateinthehills.com





From: realestate.com.au@realestate.com.au [mailto:realestate.com.au@realestate.com.au]
Sent: Friday, 18 January 2013 2:55 PM
To: James Sexton
Subject: Enquiry for Property ID: 7503387, Lot 120 Little Dublin East Rd, Nairne, SA 5252, Listing Agent James Sexton

James Sexton


You have received a new lead from realestate.com.au for

Property id: 7503387

Property address: Lot 120 Little Dublin East Rd, Nairne, SA 5252

Property URL: www.realestate.com.au/7503387

User Details:

Name: Sarah McAllister

Email: sare_1979@yahoo.com

Phone: 08-82664994

About me:

I would like to: Get an indication of price, Be contacted about similar properties

Comments: Hi, I was just wondering what kind of yield/earning potential the olives on this farm bring in?

Also, how many olive trees are there and what is their age?

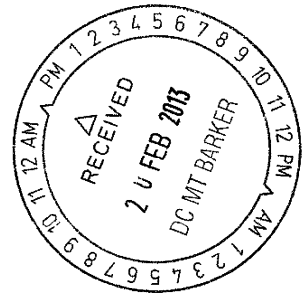
realestate.com.au Pty Ltd (ACN 080 195 535)
Ground Floor, 678 Victoria Street, Richmond, Victoria 3121
Contact Number: 1300 134 174 (8.00am - 7.00pm ESDST)

Message sent from www.realestate.com.au

TENDER

SALE OF LAND

LOT 120, LITTLE DUBLIN EAST ROAD
NAIRNE
SOUTH AUSTRALIA



2.

Emilie
J. S. S. S.

PP:123297

30 JAN 2013

mellor OLSSON *lawyers* (incorporating Bonnins) ABN 44 157 825 957
Level 5, 80 King William Street, Adelaide SA 5000
GPO BOX 74 Adelaide, SA 5001
Telephone Australia (08) 8414 3400 Int. +618 8414 3400
Facsimile Australia (08) 8414 3444 Int. +618 8414 3444
Website: www.mellorolsson.com.au Email: lawyers@mellorolsson.com.au

mellor
OLSSON

lawyers

TENDER CONDITIONS

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TENDER CONDITIONS REFERRED TO IN THE DOCUMENT HEADED
FORM OF TENDER

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In the interpretation of this document unless the contrary intention appears or the context otherwise requires or admits the following expressions shall have the following meanings respectively:

- 1.1.1 "the Acceptance Date" means the date of service of a Notice of Acceptance;
- 1.1.2 "the Agent" means RE/MAX Hills and Country of 40 Adelaide Road, Mount Barker South Australia 5251;
- 1.1.3 "Alternate Tender" means a Non-Conforming Tender submitted pursuant to and in accordance with these Tender Conditions;
- 1.1.4 "Bank Cheque" means a cheque drawn by a Bank upon itself being a Bank as defined in the *Banking Act 1969* of the Commonwealth of Australia or an Act of the Parliament of South Australia;
- 1.1.5 "Business Day" means a day on which banks are open for business in the City of Adelaide and the expression "business days" has a corresponding meaning;
- 1.1.6 "the Closing Time" means 4.00 pm on Wednesday, 20 February 2013 or such other time and/or date as may be nominated pursuant to these Tender Conditions;
- 1.1.7 "the Contract Deposit" means the moneys required to be paid as a deposit by the Successful Tenderer in accordance with clause 17 of the Tender Conditions;
- 1.1.8 "the Land" means the whole of the Land as is more particularly described in the relevant Purchase Contract and the Tender Form;
- 1.1.9 "the Notice of Acceptance" means a notice given pursuant to clause 16 of the Tender Conditions;
- 1.1.10 "the Purchase Contract" means the contract annexed to these Tender Conditions as Attachment A and marked "Purchase Contract" which contains the terms and conditions between the Vendor and the Successful Tenderer as purchaser upon acceptance of its Tender for the Land but subject to any additional terms which do not conflict with that Purchase Contract contained in these Tender Conditions (or as otherwise agreed in writing between the Vendor and the Successful Tenderer);
- 1.1.11 "the Security Deposit" means the monetary sum equivalent to the one percent (1%) of the total purchase price for the Land which sum is required to be paid as a Security Deposit by a Tenderer contemporaneously with the lodgement of a Tender Form in accordance with clause 5 of these Tender Conditions;
- 1.1.12 "the Tender Form" means the Form of Tender attached to this document;
- 1.1.13 "the Tender Conditions" means the terms and conditions of Tender as set out in this document and includes the Purchase Contract;
- 1.1.14 "Tenderer" means a person who lodges a Tender;
- 1.1.15 "the Vendor" means **THE DISTRICT COUNCIL OF MOUNT BARKER**; and

- 1.1.16 "the Vendor's Solicitors" means Mellor Olsson, Lawyers, Level 5, 80 King William Street, Adelaide South Australia 5000.

1.2 General interpretation

Unless the contrary intention appears:

- 1.2.1 Reference to a Statute shall include all amendments or replacement of it and all statutory instruments issued under it.
- 1.2.2 Words importing the singular shall include the plural and vice versa.
- 1.2.3 A reference to a person shall be deemed to include a corporate body and vice versa.
- 1.2.4 A reference to a person shall include their successors or assigns or heirs and executors.
- 1.2.5 Headings are for convenience of reference only and shall not affect the interpretation of this document.
- 1.2.6 Any consent or approval of the Vendor required under these Tender Conditions to any act matter or thing shall be given in writing and may be withheld by the Vendor in its absolute discretion in the absence of any express stipulations to the contrary.
- 1.2.7 Each and every provision contained in this document and each and every part thereof shall unless the contrary otherwise necessarily requires be read and construed as a separate and separable part thereof that if any provision or part thereof shall be illegal void or otherwise unenforceable for any reason whatsoever then such provision or part thereof as the case may be shall not only be severed but the remainder of this document shall be read and construed as if the severed provision or part thereof had always been omitted.
- 1.2.8 A reference to a schedule or annexure means the schedule or annexure to the Purchase Contract.
- 1.2.9 Any expression or term which is used in these Tender Conditions and which is defined in the Purchase Contract shall have the meaning assigned thereto under the Purchase Contract unless otherwise expressly stated.
- 1.2.10 Any reference in this Agreement to a time shall mean that time in the Australian Central Standard Time Zone.

2. Invitation to tender

Tenders are invited for the purchase of the Land subject to and upon these Tender Conditions and any person submitting a Tender shall be bound by these Tender Conditions.

3. Manner of completion and execution

3.1 Form of tender

The relevant Tender Form is attached to these Tender Conditions and headed "Form of Tender".

3.2 Tender Form to nominate purchase price

The Tenderer must specify the purchase price for the Land.

3.3 Currency

The price tendered in this Tender shall be expressed in Australian Dollars.

3.4 Address for service

The Address for Service of a Tenderer inserted in a Tender shall be an address within South Australia.

3.5 Completion of Tender Form

Tenderers must type or write in block letters in the Tender Form the following information:

3.5.1 *Item 1*

- (a) the full name of the person, persons, body corporate, and/or bodies corporate lodging the Tender;
- (b) (as applicable) the Australian Company Number (ACN) or Australian Business Number (ABN) of the Tenderer; and
- (c) The address of the person or each of the persons lodging the Tender or in the case of any body corporate or bodies corporate the registered or principal office and/or registered or principal offices thereof respectively.

3.5.2 *Item 2*

one address only to which notification of the result of the Tender is to be sent being the address for service of the Tenderer which must be an address within South Australia.

3.6 Manner of execution of Tender Form and Purchase Contract

The Tender Form need only be executed once in the place provided for execution.

The Purchase Contract must also be executed and lodged with the Tender Form.

Execution of the Tender Form shall be as follows:

3.6.1 *Natural persons*

Natural persons shall execute the Tender Form and the Purchase Contract in the following manner:

"SIGNED by the said ... (1))
 in the presence of:) (6)
 Independent witness ... (2)
 Name ... (3)
 Address ... (4)
 Occupation ... (5)

and insert the following information for each person executing:

- (a) Full name typed or written in block letters of Tenderer at position "(1)";
- (b) Signature of witness at position "(2)";
- (c) Full name of witness at position "(3)";
- (d) Address of witness at position "(4)";
- (e) Occupation of witness at position "(5)";
- (f) Signature of Individual Tenderer at position "(6)".

3.6.2 *Bodies corporate*

A body corporate must execute the Tender Form and the Purchase Contract by affixing its Common Seal in accordance with its Constitution, Articles of Association or other document of constitution or by executing in accordance with Section 127 of the *Corporations Act 2001*.

Execution by a body corporate under Power of Attorney or other form of agency may be accepted by the Vendor if the relevant Power of Attorney or agency authority is produced to the Vendor with the Tender and contains adequate powers and authority authorising the person who executes the Tender on behalf of such body corporate to submit and execute the Tender. The adequacy of such powers shall be determined by the Vendor in its absolute discretion.

3.6.3 *Date*

The date of execution of the Tender Form must be inserted where indicated in the Tender Form.

3.6.4 *Initials*

Every person who is a party to the Tender as a Tenderer must initial every page of the Tender Form and any annexures thereto including these Tender Conditions and they shall also execute the Purchase Contract.

In the event that the Tenderer is a body corporate the persons attesting the affixing of the Common Seal of such body corporate or the person or persons executing the Tender Form on behalf of such body corporate must initial every page of the Tender Form and any annexures thereto.

4. **Closing time for Tender**

The Tender Form shall be delivered, together with the Tender Conditions and the Purchase Contract executed by the Tenderer and all other annexures hereto, in a sealed envelope to RE/MAX Hills and Country, 40 Adelaide Road, Mt Barker SA 5251 marked to the attention of "The Manager Projects, District Council of Mount Barker" in an envelope marked "Tender for Lot 120 Little Dublin East Road Property" before **4.00 pm on Wednesday, 20 February 2013** which shall be the Closing Time unless otherwise decided by the Vendor in its absolute discretion.

5. **Lodgement of Security Deposit with Tender Form**

- 5.1 The Tenderer shall at the time of lodgement of the Tender Form lodge with the Vendor's Solicitor a Security Deposit equivalent to one percent (1%) of the total purchase price in respect to the Land by bank cheque made payable to "Mellor Olsson Trust Account".

- 5.2 If a Tenderer's offer is accepted, the Security Deposit will be treated as a payment on account of the purchase price to be dealt with as part of the deposit payable.

6. Legal practitioner's certificate – natural persons

The Tenderer (if a natural person) shall, prior to the lodging of the Tender Form, procure a certificate from a legal practitioner entitled to practise in South Australia to the effect that independent advice has been given and shall lodge such certificate with the Tender Form together with the executed Purchase Contract for the purpose of satisfying the provisions of section 5 of the *Land and Business (Sale and Conveyancing) Act 1994*.

7. Section 7 statement

The Form One Statement pursuant to the *Land and Business (Sale and Conveyancing) Act 1994* is attached hereto as Attachment B. Each Tenderer is deemed to acknowledge receipt of such Statement prior to submission of a tender.

The Vendor or the Vendor's Solicitors may deliver any notice of amendment pursuant to section 10 of the *Land and Business (Sale and Conveyancing) Act 1994* at any time including after delivery of the Notice of Acceptance if the Vendor considers such notice is desirable.

8. Vendor not bound to accept any tender

8.1 No obligation on vendor to accept tender

Neither the highest nor any other Tender (whether conforming or otherwise) shall necessarily be accepted by the Vendor, and the Vendor may, at its absolute discretion, select either a Tenderer or another interested Purchaser who has not tendered but otherwise makes an offer on such terms and conditions as may be agreed either before or after the Closing Time for Tenders.

8.2 Vendor may withdraw or vary tender

The Vendor may withdraw from the Tender or vary its terms and conditions at any time (either before or after Closing Time) or accept a non-conforming Tender and at all times reserves its rights to negotiate a sale of the Land without reference to or compliance with the Tender Conditions.

8.3 Alternate Tender

Any alternate or non-conforming Tender should include adequate information in reasonable detail in order to permit and facilitate a proper and reasonable assessment and appraisal of those aspects of such alternate Tender including any conditions precedent or other limitations sought by the Tenderer which do not conform with these Tender Conditions including the annexed Purchase Contract.

8.4 No claim for damages against Vendor

No Tenderer or prospective Tenderer shall have any right or claim of any kind whatsoever against the Vendor or its agents, employees, advisers or contractors if the Vendor exercises any of its rights pursuant to these Tender Conditions notwithstanding the Tenderer or prospective Tenderer might have incurred costs or suffered loss or damage as a result of the Vendor exercising its rights.

8.5 No implied acceptance

No Tender shall be deemed to have been accepted unless and until the fact of such acceptance has been notified to the Tenderer in writing by the Vendor or for and on behalf of

the Vendor by its Solicitors, Agents or some other authorised person notwithstanding any verbal communication to the contrary by the Vendor, its Solicitors, Agents or any other authorised person.

9. Extension of Closing Time

Without limiting the generality of clause 8 of these Tender Conditions, the Vendor shall have the right at any time in its absolute discretion to extend the Closing Time for any Tender in respect to the Land. More than one Extension may be given. There is no obligation on the Vendor to advertise or notify any or all Tenderers or other interested parties where it elects to extend the Closing Time, withdraw the Tender or vary the Tender Conditions or otherwise.

10. Late tender

Without limiting the generality of clause 9 of these Tender Conditions, any Tender which is lodged at the office of the Vendor's Solicitors after the Closing Time may be accepted by the Vendor, if the Vendor in its absolute discretion so decides, notwithstanding that the Vendor has made no decision to extend the Closing Time.

11. Inspection arrangements

Each Tenderer shall only inspect the Land in the company of a duly authorised representative of the Vendor's Agent, the Vendor's employees or other authorised person and at a time arranged by and suitable to the Vendor's Agent and the Vendor.

12. Deemed inspection of the Land

Each Tenderer, by submission of a Tender, shall be deemed to have inspected the tendered Land and to have gained a thorough knowledge of the Land and to be fully apprised of the physical conditions and characteristics of the Land, whether such Tenderer shall have in fact inspected the Land or not.

13. Advice

Each Tenderer shall be deemed to have sought and obtained its own expert advice in respect of:

- (a) the terms and legal effect of these Tender Conditions including the Purchase Contract;
- (b) the terms of any lease or licence in respect of the Land;
- (c) the nature, character, soundness and structural integrity of the buildings, improvements, plant and equipment situated on the Land;
- (d) the environmental issues in respect to the Land including contamination or salinity of the soil, asbestos and any other hazardous or dangerous or potentially hazardous or dangerous materials or substances of any kind;
- (e) the planning, heritage, water licences, easements and other restrictions on the present and future use of the Land for any purpose whatsoever;
- (f) the state of repair, condition and characteristics of all plant and equipment and other property sold herein (if any); and
- (g) the effect of the removal of any items of property referred to in the Purchase Contract not being sold to the Tenderer;

AND shall be deemed to have done so whether such Tenderer shall have in fact sought and/or obtained and/or considered such expert advice.

14. Discrepancies errors omissions in and variations to the Tender documents

14.1 Notification

A Tenderer, upon discovering a discrepancy error or omission in the Tender documents, shall notify the Vendor's Solicitors in writing of such discrepancy error or omission immediately after discovering the same.

14.2 Variation

On receipt of the notice pursuant to the immediately preceding clause and upon verification of any such discrepancy, error or omission in the Tender documents, the Vendor's Solicitors may, in the Vendor's absolute discretion, vary the Tender terms and conditions and if it sees fit give notice thereof and all such variations shall be binding on each Tenderer notified of the variation as if the same had been originally included in the Tender documents.

15. Improper completion and execution of Tender

In the event of the Vendor or the Vendor's Solicitors deciding that any Tender Form (including the Purchase Contract) has been improperly completed or executed, the Vendor or the Vendor's Solicitors may at any time require that such Tender form (or the Purchase Contract) be executed and completed in the form and manner required by the Vendor or the Vendor's Solicitors to comply with these Tender Conditions and the relevant Tenderer shall do execute and perform all such deeds matters acts and things as may be reasonably required by the Vendor and/or the Vendor's Solicitors to properly complete and execute the same.

16. Acceptance of Tender

16.1 Time and manner of acceptance

A Tender shall not be deemed to be accepted unless and until the Vendor, either by itself or through the Vendor's Solicitors or Agents, shall by notice in writing to the Tenderer notify the Tenderer of acceptance of its Tender (or its Tender in such amended form as may have been agreed by the Vendor and the Tenderer) ("the Notice of Acceptance").

16.2 Service of Notice of Acceptance

The Notice of Acceptance may be delivered, sent by pre-paid post or by facsimile to the address for service of the Successful Tenderer nominated in its Tender Form.

16.3 Date of service

The date of service of a Notice of Acceptance ("the Acceptance Date") shall be:

- (a) in the event that the Notice of Acceptance is served personally on a Tenderer or left at the address for service of the Tenderer specified in its Tender, the date upon which the Notice of Acceptance is handed to the Tenderer or left at the address for service of such Tenderer as the case may be; or
- (b) in the event that the Notice of Acceptance is sent by pre-paid post to a Tenderer, the date of posting of a Notice of Acceptance; or
- (c) in the event that the Notice of Acceptance is sent by facsimile, the date on the transmission report issued by the machine from which the facsimile was sent and

which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient notified for the purposes of this clause.

16.4 Deemed Contract

As and from the Acceptance Date there shall be deemed to be a binding Purchase Contract between the Vendor and the Successful Tenderer (as purchaser) for the sale by the Vendor (as vendor) and the purchase by the purchaser of the Land for the purchase price tendered by the Successful Tenderer in its Tender Form subject to and upon the respective covenants, terms and conditions contained in the Purchase Contract or as varied by the Tenderer in its Alternate Tender or in subsequent negotiations and on such other terms and conditions as may have been agreed in writing.

16.5 Date of Purchase Contract

The date of the Purchase Contract shall be deemed to be the Acceptance Date referred to in these Tender Conditions.

16.6 Parties bound

As and from the Acceptance Date the Successful Tenderer (as the purchaser) and the Vendor (as the vendor) shall be bound by the respective covenants terms and conditions and agreements set out in the Purchase Contract and as otherwise specified in clause 16.4 or elsewhere as if the Purchase Contract had been duly executed by both the Successful Tenderer and the Vendor on the Acceptance Date. The Successful Tenderer (as purchaser) and the Vendor (as vendor) shall duly observe and perform the respective covenants terms and conditions and agreements to be observed or performed by them under the Purchase Contract as and from the Acceptance Date.

16.7 Completion of Purchase Contract/settlement date

The Tenderer must prior to executing the Purchase Contract for the sale of the Land insert the following details in the Purchase Contract:

- (a) the name and address of the Successful Tenderer as purchaser;
- (b) the amount of the purchase price being the purchase price tendered by the Successful Tenderer;
- (c) the amount of the deposit being ten per cent (10%) of the purchase price in the Purchase Contract;
- (d) the balance of the purchase price payable at settlement being an amount equal to the full purchase price tendered by the Successful Tenderer less the deposit of ten per cent (10%) of the purchase price together with any applicable goods and services tax;
- (e) the date of the signing of the Purchase Contract; and
- (f) the addition of such other terms and conditions as referred to in clause 16.4 of these Tender Conditions.

17. Successful Tenderer to pay full deposit

Within three (3) business days following the Acceptance Date the Successful Tenderer shall deliver to the Vendor's Solicitors a Bank Cheque drawn in favour of the Vendor's Solicitors Trust Account or any Bank account nominated by the Vendor in the Purchase Contract in the amount (additional to the amount already paid in accordance with clause 5.1) necessary to comprise the total deposit of ten per cent (10%) of the purchase price for the tendered Land.

18. Default and forfeiture

In the event that the Successful Tenderer shall fail to comply with clauses 15 or 17 of these Tender Conditions then the Security Deposit lodged by the Tenderer with the Vendor's Solicitors for the Land shall be forfeited to the Vendor forthwith without prejudice to any other rights or remedies whatsoever which the Vendor may have against the Successful Tenderer including an agreed right to claim either the full deposit otherwise payable for the Land or its actual damages as a result of the purchaser's breach, whichever is the greater.

19. Revocation withdrawal or variation

19.1 No revocation withdrawal or variation

In consideration of the sum of one dollar (\$1.00) paid or to be paid by or on behalf of the Vendor to the Tenderer upon request by the Tenderer for same, the Tenderer on lodgement of a Tender shall:

- 19.1.1 not withdraw or revoke its Tender either before or after the Closing Time specified in these Tender Conditions save as provided in clause 19.2 of these Tender Conditions; and/or
- 19.1.2 not vary, amend or modify its Tender either before or after Closing Time save as otherwise provided in these Tender Conditions; and
- 19.1.3 such Tenderer shall comply with all of these Tender Conditions to the extent that they are to be complied with by Tenderers; this does not preclude the Tenderer lodging an Alternate Tender.

19.2 Time limit

Each Tender lodged pursuant to these Tender Conditions shall remain open and shall be capable of acceptance until and shall not be revoked or withdrawn or varied before the expiration of twenty-eight (28) days after the date specified as the Closing Time herein except if otherwise agreed in writing by the Vendor in the exercise of its absolute discretion.

20. Cancellation of Tender

Without limiting the generality of clause 8 of these Tender Conditions, the Vendor reserves its right at any time, whether before or after Closing Time, to withdraw or revoke its invitation to Tender, whether notice has or has not been given, and in that event no Tenderer or any other person shall have any right or claim against the Vendor or its Agents, employees advisers or contractors notwithstanding the Tenderer or prospective Tenderer might have incurred costs or suffered loss or damage as a result of the Vendor exercising its rights.

21. Refund of Security Deposits to unsuccessful Tenderers

The Security Deposit paid by a Tenderer pursuant to these Tender Conditions shall be refunded to the Tenderer (unless such Tenderer is a Successful Tenderer) as soon as reasonably practicable after such Tenderer has been notified that its Tender has been unsuccessful.

22. Time of the essence

Time shall be of the essence as regards due observance and performance by the Tenderer of its duties and obligations pursuant to these Tender Conditions and the Purchase Contract.

23. Guarantee and Indemnity

If the Successful Tenderer is or includes a corporation that is not:

- (a) listed on a recognised Australian Stock Exchange, or
- (b) a recognised Life Assurance Company, or
- (c) a statutory authority of the Commonwealth of Australia or any State or Territory of Australia,

then the Successful Tenderer shall procure every director of each such company or companies to sign a Deed of Guarantee and Indemnity in respect of the Purchase Contract in the form annexed to these Tender Conditions as Attachment C. The Successful Tenderer shall deliver the Deed of Guarantee and Indemnity, duly executed by such directors, to the Vendor or the Vendor's Solicitors with the Tender Form and the executed Purchase Contract.

24. Compliance with legislation

The Tenderer:

- (a) acknowledges the current and previous use of the Land;
- (b) will make no claim against the Vendor or the current occupier of the Land or require any action relating to contamination, the presence of asbestos and any other hazardous or dangerous or potentially hazardous or dangerous materials or substances of any kind in respect to the Land;
- (c) agrees to indemnify and keep indemnified the Vendor and the current occupier of the Land against any liability under any legislation or regulation or otherwise in respect of the matters referred to in clause 24(a) above; and
- (d) without limiting the generality of clause 24(b), if the Vendor or the occupier is notified that it is required to comply with any legislation or regulation (including, but not limited to, legislation covering the issues referred to in clause 24(a)) or otherwise after the Acceptance Date then the Tenderer (if its Tender is accepted) shall be required to reimburse the Vendor (or the occupier as the case may be) for any expenditure costs or liability arising as a result thereof.

25. Conflict

In the event of any conflict between these Tender Conditions and the Purchase Contract the Purchase Contract shall, to the extent of any such conflict, override these Tender Conditions unless otherwise agreed in writing by the Vendor.

26. Confidentiality

- 26.1 The person receiving these Tender Conditions agrees not at any time without the consent of the Vendor to divulge or permit its employees, consultants or agents to divulge to any person (other than its employees, consultants or agents who require the same in the conduct of their employment with it) the contents of these Tender Conditions or any attached Purchase Contract or other documents handed to it or the commercial basis thereof or any other information relating to any subsequent negotiations concerning the same or any information which may come to its knowledge in the course of any such negotiations or otherwise concerning the operations, dealings, transactions, contracts, commercial or financial arrangements or affairs of the Vendor except:

26.1.1 that information which has already been divulged to the public by the Vendor;

26.1.2 the purchase of the Land in the event that its Tender is accepted

provided always that any information in respect to the sale price for the Land shall require the prior written consent of the Vendor.

- 26.2 The person receiving the confidential information shall ensure that its respective employees, consultants or agents who receive any such confidential information shall undertake to keep it confidential.
- 26.3 The disclosure of any particular information that is required to be disclosed pursuant to the requirements of the Australian Stock Exchange Limited or by some other regulatory body or by law or hereafter comes into the public domain shall not be subject to this restriction.
- 26.4 The restriction on disclosure of information shall include any information contained in any other contracts that may be handed over by the Vendor during the Tender process.
- 26.5 The provisions of this clause shall continue to apply notwithstanding that the recipient of these Tender Conditions may, after considering this information, not proceed to lodge a Tender.

27. **Governing law**

The Tender shall be governed by the laws of the State of South Australia and, if applicable, the Commonwealth of Australia and, in the event of any dispute or difference arising hereunder, the Courts of the State of South Australia or, if applicable, the High Court or Federal Court of Australia shall have jurisdiction in respect of such difference or dispute to the exclusion of any other Courts whether in the Commonwealth of Australia or elsewhere.

TENDER FORM WITH ANNEXURES

1. **Definitions**

In this Tender Form, terms have the meanings given to them in the Tender Conditions or the Purchase Contract (as the case may be).

2. **Offer to purchase – Tender Agreement**

The Tenderer referred to in the Form of Tender hereby:

- (a) irrevocably offers to purchase from the Vendor the Land referred to in the Tender Conditions on the terms and provisions of the Tender Conditions and the Purchase Contract for the offer price set out in the Form of Tender; and
- (b) submits with this Tender Form the Purchase Contract duly executed by the Tenderer.

3. **Tender conditions**

This Tender is made in accordance with the Tender Conditions and is accompanied by a bank cheque in favour of the Vendor's Solicitor's Trust Account for the Security Deposit.

4. **Notices**

The Tenderer's address for service of notices as provided for in the Tender Conditions is set out in Item 4 of the Tender Form.

FORM OF TENDER

Tenderer to insert
name and address

1. I/We, Leigh Samwell Andon Nominees
(insert name)
of 96 270 Bald Hills Road Mr Bunker
(insert address)

(insert name)

of _____
(insert address)

HEREBY OFFER to purchase from the registered proprietor the
land described in Item 2 of this Tender Form.

Land description

2. The whole of Allotment 120 in DP 90801 being portion of the land
comprised in Certificate of Title Register Book Volume 6074 Folio
595 ("the Land")

Insert purchase price

3. \$625000

DOLLARS (\$ 625000) (plus goods and services tax)

(insert purchase price)

Insert address for
service of notice

4. 270 Bald Hills Road
Mr Bunker
Address for Service of Notice
(please provide facsimile number)

A security deposit
must be lodged

5. I/WE NOW LODGE herewith the sum of _____
DOLLARS (\$)

with the Vendor's Solicitors made payable to the Vendor's
Solicitors' Trust Account being on account of the purchase price
offered in order to bind the Tenderer to this offer for the Land.

If this offer is accepted then this sum shall be treated as part of the
deposit under the Purchase Contract.

If this offer is not accepted then the said sum shall be returned to
me/us as soon as reasonably practicable after I/we have been
notified that my/our Tender has been unsuccessful.

AND I/we AGREE that this offer shall remain open and unrevoked
for a period of twenty eight (28) days after the Closing Time and
that upon acceptance of this offer (which is made in accordance
with the Tender Conditions) I/we will be bound by the Tender
Conditions (which incorporates the Purchase Contract).

DATED the

14th

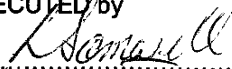
day of

February

2013

Execution clause
(Refer to clause 3 of
the Tender
Conditions)

EXECUTED by



in accordance with the Corporations Act
2001 in the presence of:

.....
Director

.....
Print full name

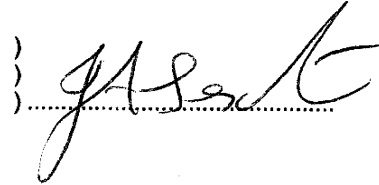
.....
Director/Secretary

.....
Print full name

**If only 1 person has signed that person states that he/she is the sole director and
sole secretary of the company*

SIGNED by the said

in the presence of:

} 

.....
Independent witness

James Sexton

.....
Print full name of witness

.....
Address of witness

.....
Occupation of witness

SIGNED by the said)
in the presence of:)

.....
Independent witness

.....
Print full name of witness

.....
Address of witness

.....
Occupation of witness

ATTACHMENT A

PURCHASE CONTRACT

Annexure D

WATER AGREEMENT

The full water authorisation will be transferred to the purchaser and a easement of 4 m² to the bore is to be provided by the Vendor. Full operational and maintenance of the bore including power, pumps will be the purchasers responsibility and costs.

In the event that the freeway interchange takes in the existing bore then the vendor agrees to replace the bore on the purchasers property.

(18)

