CONFIDENTIAL

NOTICE OF MEETING

Pursuant to the provisions of section 88 (1) of the
Local Government Act 1999

Infrastructure and Environment Committee of the

Adelaide Plains Council

will be held by

electronic means

on

Wednesday 16 March 2022 at 6.00pm

James Miller
CHIEF EXECUTIVE OFFICER

In light of the ongoing COVID-19 public health emergency, and pursuant to section 302B of the Local Government Act 1999 and the Electronic Participation in Council Meetings Notice (No 1) 2020, **public access to all Council and Committee meetings will be facilitated via live stream on Council's YouTube channel**.
On the day of the meeting, a direct link to the live stream will be displayed on the homepage of Council's website www.apc.sa.gov.au

INDEX

		Page Number
1	**ATTENDANCE**	
2	**MINUTES**	
2.1	Confirmation of Minutes – Infrastructure and Environment Committee Meeting held 1 December 2021	4
3	**BUSINESS ARISING**	
4	**DECLARATION OF MEMBERS' INTEREST**	
5	**ADJOURNED BUSINESS**	
	Nil	
REPORTS		
6	**REPORTS FOR DECISION**	
6.1	Draft 2022-2026 – 4 Year Capital Program	11
7	**REPORTS FOR INFORMATION**	
7.1	Committee Resolutions	22
7.2	Mallala Resource Recovery Centre Site	27
7.3	Two Wells Township CWMS	29
7.4	Undergrounding of Power – Two Wells Main Street	31
MATTERS RAISED BY MEMBERS		
8	**QUESTIONS ON NOTICE**	
	Nil	
9	**QUESTIONS WITHOUT NOTICE**	
10	**MOTIONS ON NOTICE**	
	Nil	
11	**MOTIONS WITHOUT NOTICE**	

Page Number

12 URGENT BUSINESS

13 CONFIDENTIAL ITEMS

13.1 Mallala Road Roundabout – March 2022 33

14 NEXT MEETING

6.00pm Wednesday 15 June 2022

13 CLOSURE

Adelaide Plains Council	**2. Confirmation of Minutes**
Wednesday 16 March 2022	

2.1 "that the minutes of the Infrastructure and Environment Committee meeting held on Wednesday 1 December 2021 (MB Folios 76 to 81, inclusive), be accepted as read and confirmed."

MINUTES

of the

Infrastructure and Environment Committee

of the

Adelaide Plains Council

Pursuant to the provisions of section 88 (1) of the
Local Government Act 1999

HELD IN

Council Chamber
Redbanks Road
Mallala

on

Wednesday 1 December 2021 at 5.00pm

Subject to Confirmation

The Chairperson formally declared the meeting open at 5.02pm.

1. ATTENDANCE

1.1 **Present:**

Mr Richard Dodson	Chairperson
Mr Howard Lacy	Independent Member
Mayor Mark Wasley	Mayor
Councillor John Lush	Mallala/Dublin Ward
Councillor Terry-Anne Keen from 5.39pm	Mallala/Dublin Ward
Councillor Kay Boon	Two Wells Ward
Councillor Brian Parker	Lewiston Ward

Also in Attendance:

Chief Executive Officer	Mr James Miller
General Manager – Infrastructure and Environment	Mr Thomas Jones
Manager – Governance and Administration	Ms Alyssa Denicola
Administration and Executive Support Officer/Minute Taker	Ms Stacie Shrubsole

1.2 **Apologies**

Councillor Frank Maiolo	Two Wells Ward
Councillor Margherita Panella	Lewiston Ward

Subject to Confirmation

2. CONFIRMATION OF MINUTES

2.1 Infrastructure and Environment Committee Meeting – 4 August 2021

Committee Resolution

Moved Councillor Parker Seconded Mayor Wasley **2021/ 026**

"that the minutes of the Infrastructure and Environment Committee meeting held on Wednesday 4 August 2021 (MB Folios 71 to 75, inclusive), be accepted as read and confirmed."

CARRIED

3. BUSINESS ARISING

Nil

4. DECLARATION OF MEMBERS' INTERESTS (material, actual, perceived)

Nil

5. ADJOURNED ITEMS

Nil

6. REPORTS FOR DECISION

6.1 Mallala Community Wastewater Management Scheme

Committee Resolution

Moved Councillor Parker Seconded Mr Lacy **2021/ 027**

"that Infrastructure and Environment Committee, having considered Item 6.1 – *Mallala Community Wastewater Management Scheme*, dated 1 December 2021, receives and notes the report and in doing so recommends to Council that it:

1. **Instructs the Chief Executive Officer to engage a suitably qualified consultant in accordance with Council's Procurement Policy to quantify the current Mallala CWMS infrastructure shortfalls and**
2. **Acknowledges that an allocation of $15,000 will be incorporated into the second quarter 2021/2022 budget revision."**

CARRIED

Subject to Confirmation

6.2 Funding Opportunity – Coastal Settlements Adaptation Study Review

Committee Resolution

Moved Mayor Wasley Seconded Councillor Parker **2021/ 028**

"that the Infrastructure and Environment Committee, having considered Item 6.2 – *Funding Opportunity – Coastal Settlement Adaptation Study Review*, dated 1 December 2021, receives and notes the report and in doing so recommends to Council that it instructs the Chief Executive Officer to seek funding through the Preparing Australian Communities – Local Stream funding stream for the Coastal Settlements Adaptation Study review project."

CARRIED

7. REPORTS FOR INFORMATION

7.1 Committee Resolutions

Committee Resolution

Moved Councillor Lush Seconded Mayor Wasley **2021/ 029**

"that the Infrastructure and Environment Committee, having considered Item 7.1 – *Committee Resolutions*, dated 1 December 2021, receives and notes the report."

CARRIED

7.2 Mallala Road Roundabout

Committee Resolution

Moved Councillor Parker Seconded Councillor Lush **2021/ 030**

"that the Infrastructure and Environment Committee, having considered Item 7.2 – *Mallala Road Roundabout*, dated 1 December 2021, receives and notes the report."

Councillor Keen entered the meeting at 5.39pm.

CARRIED

MOTION WITHOUT NOTICE

Committee Resolution

Moved Councillor Lush Seconded Mayor Wasley **2021/ 031**

"that the Infrastructure and Environment Committee recommends that Council instructs the Chief Executive Officer to write to the Minister for Infrastructure and Transport demanding urgent action on the delivery of the Mallala Road roundabout."

CARRIED

Subject to Confirmation

7.3 Undergrounding of Power – Two Wells Main Street

Committee Resolution

Moved Councillor Keen Seconded Councillor Boon **2021/ 032**

"that the Infrastructure and Environment Committee, having considered Item 7.3 – *Undergrounding of Power – Two Wells*, dated 1 December 2021, receives and notes the report."

CARRIED

7.4 Two Wells Township Community Wastewater Management Scheme

Committee Resolution

Moved Councillor Boon Seconded Mayor Wasley **2021/ 033**

"that the Infrastructure and Environment Committee, having considered Item 7.4 – *Two Wells Township Community Wastewater Management Scheme*, dated 1 December 2021, receives and notes the report."

CARRIED

7.5 Gracewood Land Division – Mallala

Committee Resolution

Moved Councillor Parker Seconded Councillor Lush **2021/ 034**

"that the Infrastructure and Environment Committee, having considered Item 7.5 – *Gracewood Land Division – Mallala*, dated 1 December 2021, receives and notes the report."

CARRIED

7.6 River Light Alternative Crossing – Wasleys Road, Mallala

Committee Resolution

Moved Councillor Lush Seconded Councillor Parker **2021/ 035**

"that the Infrastructure and Environment Committee, having considered Item 7.6 – *River Light Alternative Crossing – Wasleys Road, Mallala*, dated 1 December 2021, receives and notes the report."

CARRIED

8. QUESTIONS ON NOTICE

Nil

9. QUESTIONS WITHOUT NOTICE

Not recorded in Minutes in accordance with Regulation 9(5) of the *Local Government (Procedures at Meetings) Regulations 2013.*

Subject to Confirmation

10. MOTIONS ON NOTICE

Nil

11. MOTIONS WITHOUT NOTICE

Nil

12. URGENT BUSINESS

Nil

13. CONFIDENTIAL ITEMS

Nil

14. NEXT MEETING

To be determined

15. CLOSURE

There being no further business, the Chairperson declared the meeting closed at 6.11pm.

Confirmed as a true record.

Chairperson:.....

Date: ____/____/____

Subject to Confirmation

Adelaide Plains Council	**6.1**	**Draft 2022-2026 – 4 Year Capital Program**
	Department:	**Infrastructure and Environment**
	Report Author:	**General Manager – Infrastructure and Environment**
Date: 16 March 2022	**Document Ref:**	**D22/10002**

EXECUTIVE SUMMARY

- The purpose of this report is for the Infrastructure and Environment Committee (the Committee) to consider, and make recommendations to Council in relation to, the proposed funding allocations across the various asset classes for the 2022-2026, 4 year capital program (the Draft Program).
- The Draft Program is based on Council's *Infrastructure and Asset Management Plan*, actual asset condition, proposed upgrades and the expectations of the community.
- It is recommended that the Committee, and Council, endorse the Draft Program.

RECOMMENDATION

"that the Infrastructure and Environment Committee, having considered Item 6.1 – *Draft 2022-2026 - 4 Year Capital Program, dated 16 March 2022,* receives and notes the report and in doing so recommends to Council that it adopts the draft 2022-2026, 4 Year Capital Renewal Program as presented at Attachment 1 to this Report subject to the following amendments:-

1._____"

BUDGET IMPACT

Estimated Cost:	**2022-2023** $11,150,559
	2023-2024 $5,617,000
	2024-2025 $5,265.000
	2025-2026 $3,520,000
Future ongoing operating costs:	Included in future routine maintenance costs
Is this Budgeted?	Yes

RISK ASSESSMENT

The financial challenge for Council, and the community, is to manage such a significant capital expenditure budget and finance/reduce the operating deficit, without leaving a financial burden for the future generation. The 4 year program illustrates the required funding to manage the Council's assets at agreed service levels over the next four years. This information is incorporated into Council's long term financial plan, which determines the method of funding for these activities.

Attachments

1. Draft 2022-2026, 4 Year Capital Renewal Program

DETAILED REPORT

Purpose

The purpose of this report is for the Infrastructure and Environment Committee (the Committee) to consider, and make recommendations to Council in relation to, the proposed funding allocations across the various asset classes for the 2022-2026, 4 year capital program.

Background/History

Each year the Infrastructure and Environment Department develops a Capital Works Program with input from Council Members, customer requests and information recorded in Council's asset database. This report provides a draft program for consideration.

Discussion

Each year a report is provided to Council outlining the amount of funds available in Council's *Long Term Financial Plan* (LTFP).

The framework to be adopted in compiling the 2*022/2023 Annual Business Plan, 2022/2023 Annual Budget* was presented to Council at its Ordinary Meeting on 31 January 2022.

The report to Council outlined the following key objectives:-

- The development of the 2022/2023 Annual Business Plan and Budget should continue to form the platform to position the Council to achieve "Financial Sustainability" that has been the fundamental focus of the Council during the preparation of 2022/2023 Budget; and
- Sound financial strategies need to be developed and implemented over a period of time and future decisions should be consistent with and supporting the current Council's Strategic Plan and any update thereof.

Upon development of Council's *Capital Works Program*, it has become evident the gap that previously existed between the Capital Works Program and the LTFP, caused by asset renewal deferral and the compounding effect into future capital works programs has now closed. The strategy outlined in this report attempts to undertake asset renewal close to their expiry date over a ten (10) year period, with consideration given to current internal resources capacity to deliver such program.

The LTFP includes a base Roads to Recovery allocation which is currently $1,580,183 over a five (5) year period, and has been included in the Draft Program. All Roads to Recovery allocations are currently directed to road renewal.

The Infrastructure and Asset Management Plan (IAMP) have now been reviewed and adopted by Council at its Ordinary Meeting on 25 October 2021.

Management have ensure outcomes from the Strategic Plan 2021-2024 document inform the IAMP and are used to generate the 4 year capital program in 2022-2026.

The allocations below have been developed based on currently services levels, expectations of the community, and importantly the *Infrastructure and Asset Management Plan* (IAMP).

Table 1: Asset Renewal - 2022-2026 4 Year Capital Works Program.

Asset Group	Year 1 - 2022-23	Year 2 - 2023-24	Year 3 - 2024-25	Year 4 - 2025-26
Assets Renewal				
Plant and Fleet	1,106,100	960,000	1,285,000	534,000
Street Scape	-	-	-	-
Pram Ramps	10,000	10,000	10,000	10,000
Kerbing	240,000	345,000	-	-
Sealed Roads	819,568	610,000	610,000	610,000
Unsealed Roads	1,171,972	975,000	1,000,000	1,000,000
Car Parks & Traffic Control	-	-	-	-
Bridges	370,000	-	-	-
Building	130,000	-	40,000	-
Site Improvements	650,000	450,000	360,000	280,000
Stormwater	10,000	-	60,000	-
CWMS	85,000	15,000	25,000	27,000
Operating	-	-	-	-
Total	**4,592,641**	**3,365,000**	**3,390,000**	**2,461,000**

Table 2: Asset Upgrade/New - 2021-2025 4 Year Capital Works Program.

Asset Group	Year 1 - 2022-23	Year 2 - 2023-24	Year 3 - 2024-25	Year 4 - 2025-26
Assets Upgrade/New				
Plant and Fleet	-	-	-	-
Street Scape	133,000	158,000	100,000	100,000
Pram Ramps	-	-	-	-
Kerbing	-	285,000	-	-
Sealed Roads	3,135,918	-	-	596,000
Unsealed Roads	-	-	-	-
Car Parks & Traffic Control	360,000	195,000	60,000	45,000
Bridges	-	-	-	-
Building	-	-	-	-
Site Improvements	530,000	1,110,000	1,420,000	220,000
Stormwater	15,000	380,000	50,000	55,000
CWMS	-	-	-	-
Operating	2,384,000	124,000	245,000	43,000
Total	**6,557,918**	**2,252,000**	**1,875,000**	**1,059,000**

Asset Group	Year 1 - 2022-23	Year 2 - 2023-24	Year 3 - 2024-25	Year 4 - 2025-26
Asset Renewal	4,592,641	3,365,000	3,390,000	2,461,000
Asset New/Upgrade	6,557,918	2,252,000	1,875,000	1,059,000
Total	**11,150,559**	**5,617,000**	**5,265,000**	**3,520,000**

Asset Renewal - 2022-2026 4 Year Capital Works Program.

The following discussion focuses on Capital Renewal in Year 1 of the 2022-2026 4 Year Capital Works Program.

Plant and Fleet

A (4) four year plant and fleet has been developed, identifying the assets that require renewal according to the estimated life expectancy considered for the asset at the time of its assessment and valuation.

Description	Type	Estimate Project Cost
Light vehicle (7x)	Renewal	294,000
Tractor	Renewal	170,000
Grader	Renewal	430,000
Skidsteer	Renewal	75,000
Combination Roller	Renewal	125,000
Mower deck	Renewal	12,100
	Total	**1,106,100**

Kerbing and Footpaths

A (4) four year kerbing and footpath program has been developed.

In regards to the renewal of kerbing assets, these priorities have been developed using standard asset lives and actual condition assessment.

Description	Type	Estimate Project Cost
Pram ramp renewal to DDA compliant	Renewal	10,000
Kerbing renewal - Balaklava Road - Lisieux Street to Aerodrome Road	Renewal	240,000
	Total	**250,000**

Sealed Roads

A four (4) year road sealing program has been developed. The program has been prioritised, ensuring that funds are directed to those roads that are most used or are regionally significant. It is proposed to renew all expired sealed roads that have either expired or will expire during that ten (10) year period, and to achieve this, **$608,917 per annum** is required.

Council's current four-year asset renewal and upgrade program contains a small percentage of upgrade/new projects, however the primary focus being renewal. It is important to identify the

successful application to the State Government - Local Government Infrastructure Partnership Program focusing on Rural Road sealing (Cheek Road, Barabba Road, Middle Beach Road and Aerodrome Road) with an estimated total cost of $4,680,000. Middle Beach will be undertaken in Year 1 of the 2022-2026 program.

Description	Type	Estimate Project Cost
Gawler River Road – Germantown Road to Boundary Road	Renewal	341,497
Bethesda Road – Hayman Road to Dawkins Road	Renewal	45,902
Port Gawler Road – Port Wakefield Road to Old Port Wakefield Road	Renewal	72,308
Port Parham Road - Port Wakefield Road to Beach Road	Renewal	259,859
Dawkins Road and Williams Road - Intersection Upgrade	Renewal	100,000
	Total	**819,568**

Sheeted Roads

A (4) four year road resheeting program has been developed, highlighting that there are insufficient funds within the budget to enable all of the roads to be treated as they fall due. The program has been prioritised, ensuring that funds are directed to those roads that are most used or are regionally significant. It is proposed to renew all expired unsealed roads that have either expired or will expire during that ten (10) year period, and to achieve this, **$973,919 per annum** is required.

Description	Type	Estimate Project Cost
Crabb Road - Port Wakefield Road to Kidman Road	Renewal	113,756
Feltwell Road - End of Seal to Hill Road	Renewal	77,303
Germantown Road - Simpkin Road to Richter Road	Renewal	138,461
Germantown Road - Richter Road to Verner Road	Renewal	50,792
Gilks Road - Lawrie Road to End	Renewal	15,087
Hamley Bridge Road - Barabba Road to Brady Road	Renewal	80,107
Hamley Bridge Road - Brady Road to Kain Road	Renewal	62,790
Harvey Road - Simpkin Road to Pratt Road	Renewal	27,073
Leilete Road - Dawkins Road to Coats Road	Renewal	15,972
Light Beach Road - Wylie Road to Quigley Road	Renewal	35,562
Light Beach Road - Quigley Road to McEvoy Road	Renewal	31,643
Long Plains Road - Old Dublin Road to Dublin Road	Renewal	76,033
Long Plains Road - Port Wakefield Road to Old Dublin Road	Renewal	74,396
Nairn Road - Hall Road to Powerline Road	Renewal	50,294
North Parham Road - Fabian Road to Saltbush Road	Renewal	45,093
North Parham Road - Gilberts Road to Fabian Road	Renewal	38,370
Secombs Road - Stanley Road to Prices Road	Renewal	15,033
Secombs Road - Port Wakefield Road to Stanley Road	Renewal	45,964
Stanley Road - Pritchard Road to Secombs Road	Renewal	35,312
Torelete Road - Dawkins Road to Coats Road	Renewal	15,964

Trim Road - Williams Road to Russell Road	Renewal	13,685
Verner Road - Day Road to Boundary Road	Renewal	69,434
Wasley Road - Pratt Road to Big Rabbit Road	Renewal	43,847
	Total	**1,171,972**

Should the above roads list be completed under budget then additional roads will be selected from the (4) four year program or roads that have deteriorated sooner than anticipated.

The roads have been based on their current condition and their ability to withstand another 12 months of traffic. Those roads not selected will be reviewed in the 2023/2024 financial year.

Buildings, Structures & Site Improvements

A (4) four year Buildings, Structures and Site improvement program has been developed, identifying the assets that require renewal according to the estimated life expectancy considered for the asset at the time of its assessment and valuation.

The data provided of assets requiring renewal is combined with the working knowledge and feedback from Council Members, Management and the community, being the users and occupiers of Council buildings to develop a program over a period of time where available funds can be directed. On occasions the program may be amended as priorities change throughout the year (i.e. some projects may be brought forward or others pushed back).

Description	Type	Estimate Project Cost
Lewiston Wetlands Playground - Toilet Block	Renewal	130,000
Two Wells Tennis/Netball court surface renewal	Renewal	300,000
Street & Reserves/Parks Furniture Program	Renewal	20,000
Dublin Playground Upgrade	Renewal	130,000
Site Improvements Renewal	Renewal	200,000
	Total	**780,000**

Bridges and Stormwater

A (4) four year bridges, stormwater, and pump stations program has been developed, with coastal levee projects being deferred until further research is undertaken.

In regards to the renewal of bridges, stormwater assets (culverts, pipes and pits), and pump stations, these priorities have been developed using standard asset lives and actual condition assessment.

Description	Type	Estimate Project Cost
Salt Creek Bridge - Repairs	Renewal	170,000
Wasleys Bridge – Repairs (dependant on grant application)	Renewal	200,000
Allocation - Pump Station, Pump Replacements	Renewal	10,000
	Total	**380,000**

CWMS

A (4) four year CWMS program has been developed, these priorities have been developed using standard asset lives and actual condition assessment.

Description	Type	Estimate Project Cost
Mallala - Replacement of Property Pumps	Renewal	15,000
Middle Beach - Allocation	Renewal	10,000
Mallala Treatment Plant (Chamber Protection Coating)	Renewal	60,000
	Total	**85,000**

New Assets - Asset Upgrades - 2021-2025 4 Year Capital Works Program.

The following discussion focuses on Capital Upgrade/New in Year 1 of the 2022-2026 4 Year Capital Works Program.

The footpaths identified below are considered new assets. Management's objective is to ensure a paved footpath exists on one (1) side of the road within the townships of Mallala, Two Wells and Dublin. In conjunction with the footpath works identified below it is proposed that street trees be installed as part of a street scape upgrade program.

Description	Asset Class	Type	Estimate Project Cost
Streetscape - Cameron Terrace - Dublin Road to Feltwell Road	Street Scape (Footpath, Kerbing and Street Trees)	New	39,000
Streetscape - Railway Avenue - Balaklava Road to Lindsay Street	Street Scape (Footpath, Kerbing and Street Trees)	New	25,000
Streetscape - Carmel Street - Balaklava Road to End of Seal	Street Scape (Footpath, Kerbing and Street Trees)	New	37,000
Streetscape - Calagora Street - Lisieux Street to Carmel Street	Street Scape (Footpath, Kerbing and Street Trees)	New	32,000
Sealing of Middle Beach Road	Sealed Roads	New	2,390,000
Sealing of Buckland Park Road	Sealed Roads	New	280,500
Sealing of Glover Road	Sealed Roads	New	465,418
Two Wells Mainstreet - Eastern End Car Parking and WSUD	Car Parks & Traffic Control	New	300,000
Longview Road and Gameau Road - Traffic calming devices	Car Parks & Traffic Control	New	60,000
Street & Reserves/Parks Furniture Program	Site Improvements	New	20,000
Streetscape and WSUD	Site Improvements	New	50,000
Council Boundary Signs - Allocation	Site Improvements	New	60,000

Stage 1 - Hart Reserve Development - Implementation (master planned 2020/21)	Site Improvements	New	400,000
Middle Beach - Tidal Drainage System	Stormwater	New	15,000
Roadside Vegetation Management Plan	Operating	New	100,000
Open Space & Recreation Strategy	Operating	New	60,000
Eden and Liberty Recycled Water	Operating	New	4,000
Parham Campground - Formalise Land	Operating	New	5,000
Parham - Old Playground Block (Sell or Develop Site)	Operating	New	5,000
Two Wells Oval - Master Plan - Design/Costing/Consultation	Operating	New	100,000
Donaldson Road - Design to include WSUD and open space elements	Operating	New	10,000
Mallala Stormwater Urban Management Plan (report)	Operating	New	65,000
Street/Verge Tree Planting	Operating	New	20,000
Two Wells Levee	Operating	New	2,015,000
		Total	**6,557,918**

Conclusion

The programs mentioned above are expected to achieve a good balance between all asset classes and deliver Infrastructure and Assets that meet the community expectations.

It is for the Committee to consider the Draft Program, and endorse, the Draft Program, and to make recommendations to Council.

References

Legislation

Local Government Act 1999

Council Policies/Plans

Infrastructure and Asset Management Plan

Long Term Financial Plan

Number	Asset Class	Expenditure	Project Description	2022/2023	2023/2024	2024/2025	2025/2026
1	Plant and Fleet	Renewal	Plant and Fleet Replacement	1,106,100	960,000	1,285,000	534,000
2	Street Scape (Footpath, Kerbir	New	Streetscape - Cameron Terrace - Dublin Road to Feltwell Road	39,000	-	-	-
3	Street Scape (Footpath, Kerbir	New	Streetscape - Railway Avenue - Balaklava Road to Lindsay Street	25,000	-	-	-
4	Street Scape (Footpath, Kerbir	New	Streetscape - Carmel Street - Balaklava Road to End of Seal	37,000	-	-	-
5	Street Scape (Footpath, Kerbir	New	Streetscape - Calagora Street - Lisieux Street to Carmel Street	32,000	-	-	-
6	Street Scape (Footpath, Kerbir	New	Streetscape - South Terrace (Dublin) - Old Port Wakefield Road to Seventh Street	-	46,000	-	-
7	Street Scape (Footpath, Kerbir	New	Streetscape - Jenkin Court - Butler Road to End	-	30,000	-	-
8	Street Scape (Footpath, Kerbir	New	Streetscape - Irish Street - Butler Street to Redbanks Road	-	35,000	-	-
9	Street Scape (Footpath, Kerbir	New	Streetscape - Calala Court - Old Port Wakefield Road to End	-	47,000	-	-
10	Street Scape (Footpath, Kerbir	New	Future Street Scape Program Allocation	-	-	100,000	-
11	Street Scape (Footpath, Kerbir	New	Future Street Scape Program Allocation	-	-	-	100,000
12	Pram Ramps	Renewal	Pram Ramp renewal to DDA compliant	10,000	10,000	10,000	10,000
13	Kerbing	Renewal	Balaklava Road - Lisieux Street to Aerodrome Road	240,000	-	-	-
14	Kerbing	Renewal	Windmill Road - Gawler Road to End	-	65,000	-	-
15	Kerbing	New	South Terrace (Dublin) - Old Port Wakefield Road to Seventh Street	-	285,000	-	-
16	Kerbing	Renewal	Redbanks Road - Butler Street to Irish Street	-	280,000	-	-
17	Sealed Roads	Renewal	Dawkins Road and Williams Road - Intersection Upgrade	100,000	-	-	-
18	Sealed Roads	Renewal	Various reseals	719,568	610,000	610,000	610,000
18	Sealed Roads	New	Sealing of Middle Beach Road	2,390,000	-	-	
18	Sealed Roads	New	Sealing of Buckland Park Road	280,500	-	-	-
19	Sealed Roads	New	Sealing of Glover Road	465,418	-	-	-
20	Sealed Roads	New	Sealing of Wasleys Road (Cheek Road To Boundary Road - Special Local Roads)	-	-	-	596,000
21	Unsealed Roads	Renewal	Various resheets	1,171,972	975,000	1,000,000	1,000,000
22	Car Parks & Traffic Control	New	Two Wells Mainstreet - Eastern End Car Parking and WSUD	300,000	-	-	-
23	Car Parks & Traffic Control	New	Two Wells Mainstreet - Pedestrian Refuges/Crossing	-	195,000	-	-
24	Car Parks & Traffic Control	New	Ruskin Road (Thompson Beach) - Car Parking	-	-	60,000	
25	Car Parks & Traffic Control	New	Coastal Carpark Formalise, Adelaide International Bird Sanctuary (AIBS)	-	-	-	45,000
26	Car Parks & Traffic Control	New	Longview Road and Gameau Road - Traffic calming devices	60,000	-	-	-
27	Bridges	Renewal	Salt Creek Bridge - Repairs	170,000	-	-	-
28	Bridges	Renewal	Wasleys Bridge - Repairs	200,000	-	-	-
29	Building	Renewal	Lewiston Wetlands Playground - Toilet Block	130,000	-	-	-
30	Building	Renewal	Mallala Office - Security System Upgrade	-	-	20,000	-
31	Building	Renewal	Two Wells Office - Security System Upgrade	-	-	20,000	-
40	Site Improvements	New	Street & Reserves/Parks Furniture Program	20,000	20,000	20,000	20,000
41	Site Improvements	New	Streetscape and WSUD	50,000	50,000	50,000	-
42	Site Improvements	New	Lewiston Wetland Trails - Seating, paths, signage	-	-	50,000	-
43	Site Improvements	New	Bakers Wetland - Seating, paths, signage	-	-	-	50,000
44	Site Improvements	New	Middle Beach - Foreshore upgrade	-	-	300,000	-
45	Site Improvements	New	Open Space & Recreation Strategy Outcomes (Allocation)	-	50,000	-	50,000
46	Site Improvements	New	Trail Strategy Outcomes (Allocation)	-	100,000	-	100,000
47	Site Improvements	New	Council Boundary Signs - Allocation	60,000	-	-	-
48	Site Improvements	New	Township Entrance Signs - Allocation	-	140,000	-	-
49	Site Improvements	New	Stage 1 - Hart Reserve Development - Implementation (master planned 2020/21)	400,000	-	-	-
50	Site Improvements	New	Stage 2 - Hart Reserve Development - Implementation (master planned 2020/21)	-	200,000	-	-
51	Site Improvements	New	Stage 2 - Two Wells/Mallala Ovals - Implementation	-	500,000	-	-

52	Site Improvements	New	Stage 2A - Two Wells/Mallala Ovals - Implementation	-	-	500,000	-
53	Site Improvements	New	Stage 3 - Two Wells Oval - Additions, Support to Area (Possible New Sport Facilities)	-	-	350,000	-
54	Site Improvements	New	Stage 1 - Police Block - Shelter, Skate Park, Masterplan/Concepts	-	50,000	-	-
55	Site Improvements	New	Stage 2 - Police Block - Shelter, Skate Park, Masterplan/Concepts	-	-	150,000	-
56	Site Improvements	Renewal	Two Wells Tennis/Netball court surface renewal	300,000	-	-	-
57	Site Improvements	Renewal	Street & Reserves/Parks Furniture Program	20,000	20,000	20,000	20,000
58	Site Improvements	Renewal	Open Space & Recreation Strategy Outcomes (Allocation)	-	50,000	-	50,000
59	Site Improvements	Renewal	Wetland Trails - Lewiston Shelter	-	-	10,000	-
60	Site Improvements	Renewal	Bakers Wetland - Shelter	-	-	-	10,000
61	Site Improvements	Renewal	Two Wells Mainstreet Playground Upgrade	-	180,000	-	-
62	Site Improvements	Renewal	Lewiston Playground Upgrade	-	-	130,000	-
63	Site Improvements	Renewal	Dublin Playground Upgrade	130,000	-	-	-
64	Site Improvements	Renewal	Future Site Improvements Renewal	200,000	200,000	200,000	200,000
71	Stormwater	New	Redbanks Road (005) from Mallala - Two Wells Road to Irish Street	-	100,000	-	-
72	Stormwater	New	Dublin Stormwater Capture Project	-	280,000	-	-
73	Stormwater	New	Mallala Stormwater Urban Management Plan Outcomes	-	-	50,000	55,000
74	Stormwater	New	Middle Beach - Tidal Drainage System	15,000	-	-	-
75	Stormwater	Renewal	Mallala Stormwater Urban Management Plan Outcomes	-	-	50,000	-
76	Stormwater	Renewal	Allocation - Pump Station, Pump Replacements	10,000	-	10,000	-
77	CWMS	Renewal	Mallala - Replacement of Property Pumps	15,000	15,000	15,000	20,000
78	CWMS	Renewal	Middle Beach - CWMS Shed	-	-	-	7,000
79	CWMS	Renewal	Middle Beach - Allocation	10,000	-	10,000	-
80	CWMS	Renewal	Mallala Treatment Plant (Chamber Protection Coating)	60,000	-	-	-
32	Operating	New	Roadside Vegetation Management Plan	100,000	-	-	-
33	Operating	New	Open Space & Recreation Strategy	60,000	-	-	-
34	Operating	New	Eden and Liberty Recycled Water	4,000	-	-	-
35	Operating	New	Parham Campground - Formalise Land	5,000	-	-	-
36	Operating	New	Parham - Old Playground Block (Sell or Develop Site)	5,000	-	-	-
37	Operating	New	Two Wells Oval - Master Plan - Design/Costing/Consultation	100,000	-	-	-
38	Operating	New	Donaldson Road - Design to include WSUD and open space elements	10,000	10,000	50,000	-
65	Operating	New	Mallala Stormwater Urban Management Plan (report)	65,000	-	-	-
39	Operating	New	Street/Verge Tree Planting	20,000	20,000	20,000	20,000
66	Operating	New	Levee, Hickinbotham - Component A5 - Area 6 Flood Management Timing Plan	-	94,000	-	-
67	Operating	New	Levee, Hickinbotham - Component A3 - Area 4 Flood Management Timing Plan	-	-	70,000	-
68	Operating	New	Levee, Hickinbotham - Component A4 - Area 5 Flood Management Timing Plan	-	-	105,000	-
69	Operating	New	Levee, Hickinbotham - Component A1 - Area 2 Flood Management Timing Plan	-		-	16,000
69	Operating	New	Levee, Hickinbotham - Component A2 - Area 3 Flood Management Timing Plan	-	-		7,000
70	Operating	New	Two Wells Levee	2,015,000	-	0	-
				11,150,559	**5,617,000**	**5,265,000**	**3,520,000**

Adelaide Plains Council	**7.1**	**Committee Resolutions**
	Department:	**Infrastructure and Environment**
	Report Author:	**General Manager – Infrastructure and Environment**
Date: 16 March 2022	**Document No:**	**D22/10001**

OVERVIEW

The purpose of this report is to provide an update in relation to the status of Committee resolutions currently being actioned, for Members' information and monitoring.

Attachment 1 provides a list of *ongoing* Committee Resolutions from February 2020, Resolutions that have been completed since the last Committee Meeting and *all* Committee Resolutions from the 1 December 2021 meeting.

RECOMMENDATION

"that the Infrastructure and Environment Committee, having considered Item 7.1 – *Committee Resolutions*, dated 16 March 2022, receives and notes the report."

Attachments

1. Resolution Register

References

Legislation

Local Government Act 1999

Other

N/A

Infrastructure & Environment Committee - Ongoing Resolutions

Meeting Date	Item Number	Title	Resolution Description	Resolution Number	Status/Comments ('Deferred, Ongoing, Agenda, Completed')
10-Feb-20	8.4	Community Empowerment Model for Facility Management	**"that the Infrastructure and Environment Committee, having considered Item 8.4 – Community Empowerment Model for Facility Management, dated 10 February 2020, receives and notes this report and recommends that Management carry out further costings and consultation to better assess the likelihood of success in implementing a Community Empowerment model for facility management."**	**2020/011**	Ongoing
03-Sep-20	13.2	Mallala CWMS Augmentation	**"that the Infrastructure and Environment Committee, having considered Item 13.2 – Mallala CWMS Augmentation, dated 3 September 2020, receives and notes the report and in doing so recommends to Council that it instruct the Chief Executive Officer to continue to negotiate with the developer with a view to having the Gracewood development connect into the existing Mallala CWMS, subject to the parties entering into a suitable legal instrument to ensure that Council's financial risks are mitigated."**	**2020/034**	Negotiations Ongoing. Note: Council, at its Ordinary Meeting on 26 October 2020, revoked the confidentiality order (Council Resolution 2020/358) and, accordingly, staff report, Attachment 1, Attachment 2 and Attachment 3 pertaining to Item 13.2 - Mallala CWMS Augmentation are now publicly available
15-Jun-21	2.1	Confirmation of Minutes	**"that the minutes of the Infrastructure and Environment Committee meeting held on Monday 14 December 2020 (MB Folios 54 to 57, inclusive), be accepted as read and confirmed."**	**2021/001**	Complete
15-Jun-21	6.1	Committee Resolutions	**"that the Infrastructure and Environment Committee, having considered Item 6.1 – Committee Resolutions, dated 15 March 2021, receives and notes the report."**	**2021/002**	Complete
15-Jun-21	7.1	Committee Resolutions	**"that the Committee, having considered Item 7.1 – Draft 2021-2025 – 4 Year Capital Program, dated 15 March 2021, receives and notes the report and in doing so recommends to Council that it adopt the draft 2021-2025, 4 Year Capital Renewal Program as presented at Attachment 1 to this Report."**	**2021/003**	Complete
4-Aug-21	2.1	Confirmation of Minutes	**"that the minutes of the Infrastructure and Environment Committee meeting held on Tuesday 15 June 2021 (MB Folios 63 to 70, inclusive), be accepted as read and confirmed."**	**2021/0020**	Complete
4-Aug-21	6.1	Committee Resolutions	**"that the Infrastructure and Environment Committee, having considered Item 6.1 – Committee Resolutions, dated 4 August 2021, receives and notes the report."**	**2021/021**	Complete
4-Aug-21	7.1	Draft Infrastructure Asset Management Strategy, and Plans	**"that Council, having considered Item 7.1 – Draft Infrastructure Asset Management Strategy, and Plans, dated 4 August 2021, receives and notes the report and in doing so, recommends to Council that it release the draft Infrastructure Asset Management Strategy and Plans for public consultation in accordance with Council's Public Consultation Policy."**	**2021/022**	Complete
4-Aug-21	7.2	Policy Review – Asset Management Policy	**"that Infrastructure and Environment Committee, having considered Item 7.2 – Policy Review – Asset Management Policy dated 4 August 2021, receives and notes the report and in doing so recommends to Council that it adopts the revised Asset Management Policy as presented in Attachment 1 to this report."**	**2021/023**	Complete

4-Aug-21	7.3	Wasleys Bridge Remediation Options	**"that Infrastructure and Environment Committee, having considered Item 7.3 – Wasleys Bridge Remediation Options, dated 4 August 2021, receives and notes the report and in doing so recommends to Council that it:** **1. Acknowledge the Tonkin Consulting Report - Wasleys Bridge Assessment, Load Capacity Assessment, presented as Attachment 1 to this Report, which strongly recommends the lowering of the Wasleys Bridge load limit from 12 tonne to 6.5 tonne and** **2. In acknowledging 1 above, lower the tonnage capacity of Wasleys Road Bridge to 6.5 tonne and implement measures to ensure single vehicle access at any one time."**	**2021/024**	Complete
4-Aug-21	7.3	Wasleys Bridge Remediation Options	**"that the Infrastructure and Environment Committee, having considered Item 7.3 – Wasleys Bridge Remediation Options, dated 4 August 2021, recommends that management bring back a further report to the Infrastructure and Environment Committee that deals with alternative options for the river crossing."**	**2021/025**	Completed

Infrastructure & Environment Committee - Resolutions from 1 December 2021

Meeting Date	Item Number	Title	Resolution Description	Resolution Number	Status/ Comments ('Deferred, Ongoing, Agenda, Completed')
1-Dec-21	2.1	Confirmation of Minutes	**"that the minutes of the Infrastructure and Environment Committee meeting held on Wednesday 4 August 2021 (MB Folios 71 to 75, inclusive), be accepted as read and confirmed."**	**2021/0026**	Completed
1-Dec-21	6.1	Mallala Community Wastewater Management Scheme	**"that Infrastructure and Environment Committee, having considered Item 6.1 – Mallala Community Wastewater Management Scheme, dated 1 December 2021, receives and notes the report and in doing so recommends to Council that it: 1. Instructs the Chief Executive Officer to engage a suitably qualified consultant in accordance with Council's Procurement Policy to quantify the current Mallala CWMS infrastructure shortfalls and 2. Acknowledges that an allocation of $15,000 will be incorporated into the second quarter 2021/2022 budget revision."**	**2021/027**	Completed
1-Dec-21	6.2	Funding Opportunity – Coastal Settlements Adaptation Study Review	**"that the Infrastructure and Environment Committee, having considered Item 6.2 – Funding Opportunity – Coastal Settlement Adaptation Study Review, dated 1 December 2021, receives and notes the report and in doing so recommends to Council that it instructs the Chief Executive Officer to seek funding through the Preparing Australian Communities – Local Stream funding stream for the Coastal Settlements Adaptation Study review project."**	**2021/028**	Completed
1-Dec-21	7.1	Committee Resolutions	**"that the Infrastructure and Environment Committee, having considered Item 7.1 – Committee Resolutions, dated 1 December 2021, receives and notes the report."**	**2021/029**	Completed
1-Dec-21	7.2	Mallala Road Roundabout	**"that the Infrastructure and Environment Committee, having considered Item 7.2 – Mallala Road Roundabout, dated 1 December 2021, receives and notes the report."**	**2021/030**	Completed
1-Dec-21		Motion Without Notice	**"that the Infrastructure and Environment Committee recommends that Council instructs the Chief Executive Officer to write to the Minister for Infrastructure and Transport demanding urgent action on the delivery of the Mallala Road roundabout."**	**2021/031**	Completed
1-Dec-21	7.3	Undergrounding of Power – Two Wells	**"that the Infrastructure and Environment Committee, having considered Item 7.3 – Undergrounding of Power – Two Wells, dated 1 December 2021, receives and notes the report."**	**2021/032**	Completed
1-Dec-21	7.4	Two Wells Township Community Wastewater Management Scheme	**"that the Infrastructure and Environment Committee, having considered Item 7.4 – Two Wells Township Community Wastewater Management Scheme, dated 1 December 2021, receives and notes the report."**	**2021/033**	Completed
1-Dec-21	7.5	Gracewood Land Division – Mallala	**"that the Infrastructure and Environment Committee, having considered Item 7.5 – Gracewood Land Division – Mallala, dated 1 December 2021, receives and notes the report."**	**2021/034**	Completed

1-Dec-21	7.6	River Light Alternative Crossing – Wasleys Road, Mallala	**"that the Infrastructure and Environment Committee, having considered Item 7.6 – River Light Alternative Crossing – Wasleys Road, Mallala, dated 1 December 2021, receives and notes the report."**	**2021/035**	Completed

Adelaide Plains Council	**7.2**	**Mallala Resource Recovery Centre Site**
	Department:	**Infrastructure and Environment**
	Report Author:	**General Manager - Infrastructure and Environment**
Date: 16 March 2022	**Document Ref:**	**D22/10000**

OVERVIEW

Purpose

The purpose of this report is to provide the Infrastructure and Environment Committee (the Committee) an update on the investigations into future land uses for the former Mallala Resource Recovery centre site.

Background

Council, at its Ordinary Meeting on 23 November 2020, resolved as follows:-

14.6 Mallala Resource Recovery Centre – Twelve Month Closure Review

Moved Councillor Di Troia Seconded Councillor Strudwicke ***2020/ 407***

"that Council, having considered Item 14.6 – Mallala Resource Recovery Centre – Twelve Month Closure Review, dated 23 November 2020, instructs the Chief Executive Officer to bring back a report to Council exploring future land use/disposal options in relation to the former Mallala Resource Recovery Centre site."

CARRIED

Discussion

Council has requested a report in relation to 'exploring future land use/disposal options' regarding the former Mallala Resource Recovery Centre site.

There are indeed various factors to consider, and investigations to undertake, including but not limited to:

- **Current Use** – The Mallala Resource Recovery Centre site is situated at 105 Limerock Road, Lower Light (the land), with the site being utilised by four (4) different activities those being;
    - Broad acre farming
    - Concrete recycling (x2)
    - Closed landfill site, and
    - Closed Resource Recovery Centre

- **Lease Agreements** – Three (3) of the above activities have existing commercial lease arrangements with Council.
- **Opportunities** – There are numerous opportunities that have arisen from the initial investigations, those being;
    - An unquantified rubble source opportunity exist within a portion of the land.
    - The land could potentially support initiative 2 of the Legatus Group Waste and Resource Recovery Strategy and Action Plan 2021-2026 endorsed by Council at its Ordinary Meeting on 31 January 2022;
        - Initiative 2 - Develop regional resource recovery infrastructure
    - The Two Wells Resource Recovery Centre site situated on Wells Road, Two Wells will ultimately be required for future growth of the township. The Mallala Resource Recovery Centre site is centrally located to the Council area and could potentially support initiative 3 and 4;
        - Initiative 3 – Increase regional collaboration to achieve financial and service improvements
        - Initiative 4 – Developing the circular economy.

Conclusion

A further report will be presented to the Infrastructure and Environment Committee, upon more information being gathered.

RECOMMENDATION

"that the Infrastructure and Environment Committee, having considered Item 7.2 – *Mallala Resource Recovery Centre Site*, dated 16 March 2022, receives and notes the report."

Attachments

Nil

References

Legislation

Local Government Act 1999

Council Policies/Plans

Council Strategic Plan

Infrastructure and Asset Management Plan

Long Term Financial Plan

Adelaide Plains Council	**7.3**	**Two Wells Township CWMS**
	Department:	**Infrastructure and Environment**
	Report Author:	**General Manager - Infrastructure and Environment**
Date: 16 March 2022	**Document Ref:**	**D22/9999**

OVERVIEW

Purpose

The purpose of this report is to provide the Infrastructure and Environment Committee (the Committee) an update on the Two Wells Township CWMS feasibility study being undertaken by the Local Government Association (LGA).

Background

Council, at its Ordinary Meeting on 24 February 2020, resolved as follows:-

12.3 Infrastructure and Environment Committee Meeting

Moved Councillor Parker Seconded Councillor Boon ***2020/ 046***

"that Council endorsed resolution 2020/009 of the Infrastructure and Environment Committee and in doing so instructs the Chief Executive Officer to write to the LGA CWMS Program Manager requesting that the Two Wells CWMS feasibility study be updated."

CARRIED

Following the above resolution of Council in February 2020, Management sent a written response outlining resolutions 2020/046 to the LGA CWMS Program Manager. On 9 April 2021 a written response was received from the LGA CWMS Program Manager. The correspondence outlining that the CWMS Management Committee Meeting held on the 16 March 2020 resolved to update the Two Wells Township CWMS feasibility study.

Discussion

Management have subsequently met to discuss the project, with Tonkin's being engaged by the LGA to undertake the feasibility study. Tonkin to date have undertaken detailed investigations into current systems in use and verification on ground, with this data being use to populate the final report.

Most recently, discussions with LGA CWMS Program Manager indicate that the feasibility study is currently being comprehensively reviewed by SA Health and will presented to the CWMS management committee meeting for consideration once the SA Health review has been completed.

Conclusion

A further report will be presented to the Infrastructure and Environment Committee, upon more information being gathered.

RECOMMENDATION

"that the Infrastructure and Environment Committee, having considered Item 7.3 – *Two Wells CWMS Project*, dated 16 March 2021, receives and notes the report."

Attachments

Nil

References

Legislation

Local Government Act 1999

Council Policies/Plans

Council Strategic Plan

Infrastructure and Asset Management Plan

Long Term Financial Plan

Adelaide Plains Council	**7.4**	**Undergrounding of Power – Two Wells Main Street**
	Department:	**Infrastructure and Environment**
	Report Author:	**Asset Engineer**
Date: 16 March 2022	**Document Ref:**	**D22/10083**

OVERVIEW

Purpose

The purpose of this report is to provide the Infrastructure and Environment Committee (the Committee) with an update on the undergrounding of power in the Two Wells main street – Old Port Wakefield Road.

Background

Generally, Power Line Environment Committee (PLEC) funding is managed by SAPN, and if successful the grant involves a 1/3 Council contribution, a 2/3 SAPN contribution. As part of the Council's Two Wells Main Street Public Realm Upgrade, stobie poles are proposed to be removed between Gawler Road and Drew Street. These stobie poles carry high voltage (HV) power and Low Voltage (LV) power along Old Port Wakefield Road. Apart from transmission of HV the stobie poles also supply local residents and business with NBN and low voltage (LV) power via pole mounted transformers.

Discussion

Management engaged a consultant, Wallbridge Gilbert Aztec (WGA), to undertake a concept design of a HV underground "backbone" with strategically located pad mounted transformers. This will not only form a critical part of the Two Wells Main Street Public Realm Upgrade, but will also allow for additional capacity to support future development opportunities.

Having received some preliminary feedback from SAPN regarding this concept design, Management invited two SAPN accredited civil contractors to provide indicative costs for contestable civil works only. These costing's were included as a budget allowance in discussions held recently between Management, the consultant and the SAPN PLEC Management. During the meeting Management "walked through" the proposal on google street view and the general discussion was that the scope and extent of works were appropriate, i.e. to commence in the north at Gawler Road intersection and terminate the southern extent just short of Drew Street.

During this meeting, SAPN verbally confirmed the suitability of this project for PLEC funding. Consequently, an expression of interest application will be submitted to the April PLEC committee meeting. Thereafter, SAPN will cost the electrical component to determine PLEC funding component.

Conclusion

A further report will be presented to the Infrastructure and Environment Committee, after PLEC response has been received to Councils expression of interest application.

RECOMMENDATION

"that the Infrastructure and Environment Committee, having considered Item 7.4 – *Undergrounding of Power - Two Wells*, dated 16 March 2021, receives and notes the report."

Attachments

Nil

References

Legislation

Local Government Act 1999

Council Policies/Plans

Infrastructure and Asset Management Plan

Long Term Financial Plan

Adelaide Plains Council	**13.1 Confidential Item**
16 March 2022	

13.1 Mallala Road Roundabout – March 2022

Released from Confidence

RECOMMENDATION

"that:

1. **Pursuant to section 90(2) of the Local Government Act 1999, the Infrastructure and Environment Committee orders that all members of the public, except Chief Executive Officer, General Manager – Governance and Executive Office, General Manager – Finance and Business, General Manager – Infrastructure and Environment, General Manager – Development and Community, Manager Governance and Administration, Administration and Executive Support Officer/Minute Taker and Information Technology Support Officer be excluded from attendance at the meeting of the Infrastructure and Environment Committee for Agenda Item 13.1 –** ***Mallala Road Roundabout – March 2022*****;**

2. **The Infrastructure and Environment Committee is satisfied that pursuant to section 90(3)(b) of the Local Government Act 1999, Item 13.1 –** ***Mallala Road Roundabout –March 2022*** **concerns commercial 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 to prejudice the commercial position of Council, being information relating to ongoing negotiations in relation to Mallala Road Roundabouts second deed of variation;**

3. **The Infrastructure and Environment Committee is satisfied that the principle that Committee meetings should be conducted in a place open to the public has been outweighed by the need to keep the information, matter and discussion confidential."**

Released from Confidence

Adelaide Plains Council	13.1	Mallala Road Roundabout – March 2022
	Department:	**Infrastructure and Environment**
	Report Author:	**General Manager – Infrastructure and Environment**
Date: 16 March 2022	**Document Ref:**	**D22/9996**

OVERVIEW

Purpose

The purpose of this report is to provide the Infrastructure and Environment Committee (the Committee) an overview of a second deed of variation for the Mallala Roundabout that has recently come to light.

Background

Council, at its Ordinary Meeting on 28 September 2020, resolved as follows:-

21.1 Mallala Road Roundabout

Moved Councillor Boon Seconded Councillor Keen ***2020/ 347***

"that that Council endorses resolution 2020/031 of the Infrastructure and Environment Committee and in doing so:

1. ***Adopts the Deed of Variation as presented at Attachment 1 to this Report; and***
2. ***Instructs the Chief Executive Officer to write to the Department for Infrastructure and Transport (DIT):***
   a. ***identifying the requirement for provisional infrastructure to provide safe pedestrian and vehicle access while the land acquisition and roundabout construction is delayed;***
   b. ***Determines that the provisional infrastructure design and construction costs be borne by DIT;***
   c. ***Request that DIT review the speed limit on Mallala Road with a view to reducing from 80kph to 50kph in the area where the roundabout is to be constructed until such time as it is constructed; and***
   d. ***That items identified in point b and c above be completed by Friday 22 January 2021."***

CARRIED

Released from Confidence

Discussion

The Mallala Road roundabout project is currently at land acquisition stage, this being a DIT responsibility as outlined within Deed of Variation endorsed by Council at its September 2020 meeting, and presented as **Attachment 1** to this report.

The second deed of variation presented as **Attachment 2** to this report, has recently come to light. Management have considered the second deed of variation, with significant concerns being identified, these being;

- Unknown 'Additional Roundabout Funding'
- Timing
- Secured funding through Heavy Vehicle Safety and Productivity Program Round 7 ($439,500) needs to be finalised before November 2022 and is at risk (timing and scope change), and
- Unknown reworking costs.

Management will provide a verbal update at the meeting.

RECOMMENDATION

"that the Infrastructure and Environment Committee, having considered Item 13.1 – *Mallala Road Roundabout – March 2022,* dated 16 March 2022, receives and notes the report."

Attachments

1. Copy of executed deed of variation.
2. Copy of draft second deed of variation.

Released from Confidence

RECOMMENDATION

"that the Infrastructure and Environment Committee, having considered the matter of Item 13.1 – *Mallala Road Roundabout – March 2022*, in confidence under sections 90(2), 90(3)(b) and 90(3)(h) of the *Local Government Act 1999,* resolves that:

1. **The report and Attachment 2 pertaining to Item 13.1 – *Mallala Road Roundabout – March 2022* remain confidential and not available for public inspection until further order of the Council;**
2. **Pursuant to section 91(9)(a) of the *Local Government Act 1999*, the confidentiality of the matter will be reviewed every 12 months; and**
3. **Pursuant to section 91(9)(c) of the *Local Government Act 1999,* the Committee delegates the power to revoke this confidentiality order to the Chief Executive Officer."**

Released from Confidence

DATED 2nd DAY OF OCTOBER 2020

28 OCT 2020

DEED OF VARIATION

Between

MINISTER FOR INFRASTRUCTURE AND TRANSPORT

(**Minister**)

-And-

COMMISSIONER OF HIGHWAYS

(**Commissioner**)

-And-

ADELAIDE PLAINS COUNCIL
ABN 58 384 968 672

(**Council**)

-And-

HICKINBOTHAM DEVELOPMENTS (TWO WELLS NO.1) PTY LTD
ACN 132 319 352

HICKINBOTHAM AGRICULTURAL PROJECTS PTY LTD
ACN 064 928 945

HICKINBOTHAM DEVELOPMENTS (TWO WELLS NO.4) PTY LTD
ACN 144 951 306

(**Developer**)

Released from Confidence

Released from Confidence

TABLE OF CONTENTS

1. DEFINITIONS 2
2. INTERPRETATION 2
3. CONDITION PRECEDENT TO VARIATION COMMENCEMENT DATE 2
4. VARIATION OF THE EXISTING DEED 3
5. RISK AND SECURITY 5
6. DISCRETION 5
7. DISPUTE RESOLUTION 5
8. RELEASE 6
9. PUBLIC DISCLOSURE 6

Released from Confidence

Released from Confidence

THIS DEED is made on day of 2020

Between:

MINISTER FOR INFRASTRUCTURE AND TRANSPORT a body corporate pursuant to the *Administrative Arrangements Act 1994* of Level 5, 50 Flinders Street, Adelaide, SA 5000 (**Minister**)

And

COMMISSIONER OF HIGHWAYS a body corporate pursuant to the *Highways Act 1926* of Level 5, 50 Flinders Street, Adelaide SA 5000 (Commissioner)

And

ADELAIDE PLAINS COUNCIL (ABN 58 384 968 672) a body corporate pursuant to the *Local Government Act 1999* of 2a Wasleys Road, Mallala SA 5502 (**Council**)

And

HICKINBOTHAM DEVELOPMENTS (TWO WELLS NO.1) PTY LTD (ACN 132 319 352); **HICKINBOTHAM AGRICULTURAL PROJECTS PTY LTD** (ACN 064 928 945) and **HICKINBOTHAM DEVELOPMENTS (TWO WELLS NO.4) PTY LTD** (ACN 144 951 306) all of 25 North Terrace, Hackney SA 5069 (**Developer**)

BACKGROUND:

A. The Minister, the Commissioner, the Council and the Developer are parties to the Road Infrastructure Design and Delivery Deed dated 18 July 2013 and attached as Annexure 1 **(Existing Deed)**.

B. The Existing Deed requires installation of a single lane roundabout at the intersection of Mallala Road and Old Port Wakefield Road to be funded equally by the Developer and the Council.

C. The location of the Roundabout will be the primary means of access to the residential development currently being undertaken by the Developer. Under the Existing Deed, the Roundabout is required at or before occupation of the first dwelling taking access from the intersection (unless obviated by alternative temporary access arrangements).

D. The Minister and the Commissioner require amendments to the design of the Roundabout as set out in the Existing Deed in order to allow for it to accommodate existing heavy vehicle routes, including B-Doubles and Over Size Over Mass vehicles. The Minister and the Commissioner also wish to facilitate access through the Roundabout by PBS Level 3B vehicles for through movements on Mallala Road, being for the right turn from Mallala Road to Old Port Wakefield Road (eastbound) and left turn from Old Port Wakefield to Mallala Road (southbound) to provide future heavy vehicle route connections.

E. To facilitate delivery of the Roundabout in accordance with the Minister and the Commissioner's requirements, the parties have agreed to vary the terms of the Existing

Released from Confidence

Released from Confidence

Deed in accordance with this Deed of Variation as and from the Variation Commencement Date.

It is agreed:

1. **DEFINITIONS**

The parties agree that the following definitions will apply in the Existing Deed and this Deed of Variation:

1.1 **Detailed Designs** means the detailed design drawings for the Roundabout, based on the concept plan in Annexure 4 of the Existing Deed with variations to the extent necessary to accommodate the requirements set out in paragraph D of the Background, as approved by or on behalf of the Commissioner;

1.2 **Land Acquisition** means any land acquisition required to be undertaken by the Commissioner (whether under the *Land Acquisition Act 1969* or otherwise) or the Minister to enable the Roundabout as shown in the Detailed Designs to be constructed;

1.3 **Land Acquisition Costs** means all of the costs associated with the Land Acquisition.

1.4 **Minister's Roundabout Contribution** means the fixed and maximum contribution payable by the Minister towards the Roundabout as ascribed to the Minister in the Contributions Schedule;

1.5 **Roundabout** means the roundabout specified in Item 1, column 3 (Treatment) in Annexure 1 (Traffic Intervention Schedule) required to be constructed under the Existing Deed at the intersection of Mallala Road and Old Port Wakefield Road, Two Wells and which is varied by, and in accordance with 4.4 to 4.6 inclusive, of this Deed of Variation.

1.6 **Variation Commencement Date** means the date on which the variations contemplated in clause 4 of this Deed of Variation take effect as described in clause 3 of this Deed of Variation.

2. **INTERPRETATION**

2.1 All words and expressions defined in this Deed of Variation will have the same meaning as in the Existing Deed.

2.2 The parties acknowledge and agree that the matters referred to in the Background of this Deed of Variation are true and correct in every material particular and that the Background will form part of this Deed of Variation.

2.3 To the extent of any inconsistency between this Deed of Variation and the Existing Deed, this Deed of Variation will prevail.

3. **CONDITION PRECEDENT TO VARIATION COMMENCEMENT DATE**

3.1 The parties agree that the Variation Commencement Date will only take effect upon the Commissioner notifying the other parties to this agreement in writing that the Commissioner has acquired the land necessary to construct the Roundabout.

3.2 If the Commissioner has not notified the other parties to this agreement that the Commissioner has acquired the land necessary to construct the Roundabout on or before 30 June 2021 (**Sunset Date**), then any party may elect to terminate

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this this Deed of Variation by at least 7 days written notice from the Sunset Date to the other parties.

3.3 If the Deed of Variation is terminated, the Existing Deed continues in full force and effect.

4. VARIATION OF THE EXISTING DEED

4.1 A new clause 2.1.10A is inserted into the Existing Deed as follows:

2.1.10A **Detailed Designs** has the meaning given to that term in the Deed of Variation between the parties to this Deed executed in or around July 2020.

4.2 A new clause 2.1.27A is inserted into the Existing Deed as follows:

2.1.27A **Roundabout** means the roundabout specified in Item 1, column 3 (Treatment) in Annexure 1 (Traffic Intervention Schedule).

4.3 A new clause 4.4 is inserted into the Existing Deed as follows:

4.4 *Notwithstanding any other provision of this clause 4, with respect to the Roundabout only:*

4.4.2 notwithstanding clause 12 of this Deed, the Minister will pay the Minister's Roundabout Contribution to the Developer following Practical Completion of the Roundabout by the Developer;

4.4.3 the:

4.4.3.1 Council will, notwithstanding clause 12 of this Deed, pay the Council's Contribution to the Developer upon Practical Completion of the Roundabout; and

4.4.3.2 Council's Contribution to the cost of construction of the Roundabout will comprise 50% of the balance of the cost of the Roundabout (that is 50% of the total cost less the Minister's Roundabout Contribution and the Land Acquisition Costs);

4.4.4 the:

4.4.4.1 Developer will undertake construction of the Roundabout in accordance with the Detailed Designs and any agreement required by the Minister or the Commissioner for the construction of public road infrastructure works; and

4.4.4.2 Developer's Contribution to the cost of construction of the Roundabout will comprise 50% of the balance of the cost of the Roundabout (that is 50% of the total cost less the Minister's Roundabout Contribution and the Land Acquisition Costs);

4.4.5 clauses 4.2.2 and 4.2.3 do not apply in respect of the Roundabout.

4.4 A new clause 5.9 is inserted into the Existing Deed as follows:

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5.9 *Notwithstanding any other provision of this clause 5 of this Deed:*

5.9.1 The Minister will, as soon as reasonably practicable following the Variation Commencement Date, finalise the Detailed Designs for the Roundabout (having consulted the Developer and the Council prior to such finalisation) and provide the Detailed Designs to the Developer and the Council.

5.9.2 The Detailed Designs, once provided to the Developer will satisfy clauses 5.1.1 to 5.1.3 (inclusive) of this Deed, as they relate to the Roundabout.

4.5 A new clause 12.3 is inserted into the Existing Deed as follows:

12.3 With respect to the Roundabout, clauses 12.1 and 12.2 do not apply, and the Developer will instead be entitled to render an invoice to the Council and the Minster for their respective Contributions towards the Roundabout upon Practical Completion of the Roundabout by the Developer. Any such invoice must be accompanied by a certificate of Practical Completion for the Roundabout.

4.6 The words in Item 1, column 3 (Treatment) in Annexure 1 (Traffic Intervention Schedule) of the Existing Deed are deleted in their entirety and replaced with:

Treatment
Installation of a single lane roundabout as shown on the Detailed Designs as provided by the Commissioner to the Developer in accordance with this Deed.

4.7 The words in Item 1, column 7 (Timing) in Annexure 1 (Traffic Intervention Schedule) of the Existing Deed are deleted in their entirety and replaced with:

Timing
1. The Roundabout must be operational prior to the earlier to occur of: *a. commencement of operation of a school on the Site; or* *b. occupation of more than 150 dwellings on the Site.* *2. Temporary alternative access to the Site will be permitted on the following terms and conditions:* *a. the Developer will complete sealing of Meaney Road (as approved by the responsible road authority) at or before occupation of the first dwelling on the Site;* *b. temporary access to the Site for passenger vehicles only being provided to Mallala Road via the upgraded Meaney Road; and* *c. temporary access to the Site for all heavy vehicles will occur via Sharpe Road; and* *d. both temporary access points noted above will be closed and/or reinstated by the Developer as required by the*

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responsible road authority as soon as practicable following Practical Completion of the Roundabout. 3. *For the purpose of this Item 1, the term "Site" is as defined in this Deed, but excludes that part of the Site situated to the east of Mallala Road.*

4.8 The words in Item 1, column 8, 9 and 10 (Contributions Schedule) in Annexure 1 (Traffic Intervention Schedule) of the Existing Deed are deleted in their entirety and replaced with:

Contributions Schedule		
Developer	***Minister***	***Council***
50% of the balance of the cost of construction of the Roundabout (that is 50% of the total cost of the Roundabout less the Minister's Roundabout Contribution and the Land Acquisition Costs)	*$0.731m Minister's Roundabout Contribution*	*50% of the balance of the cost of construction of the Roundabout (that is 50% of the total cost of the Roundabout less the Minister's Roundabout Contribution and the Land Acquisition Costs)*

5. RISK AND SECURITY

5.1 The actual cost of the Roundabout (with the exception of the Minister's Roundabout Contribution and the Land Acquisition Costs, and the costs of completing the Detailed Design) will be borne equally by the Council and the Developer, and otherwise in accordance with the Existing Deed.

5.2 The Minister's Roundabout Contribution will be borne by the Minister. The Land Acquisition Costs will be borne by the Minister and/or the Commissioner (as the case may be).

6. DISCRETION

6.1 The Commissioner's discretion and/or statutory powers regarding funding, procurement, design and delivery of the Roundabout (including land acquisition required for the Roundabout) is not limited by this Deed of Variation or the Existing Deed. The Commissioner cannot and will not act on behalf of or as agent of the Developer or the Council in progressing land acquisition or any other matter contemplated under this Deed of Variation or the Existing Deed.

6.2 The Minister's discretion and/or statutory powers regarding funding, procurement, design and delivery of the Roundabout (including Land Acquisition) is not limited by this Deed of Variation or the Existing Deed. The Minister cannot and will not act on behalf of or as agent of the Developer or the Council in progressing the Land Acquisition or any other matter contemplated under this Deed of Variation.

7. DISPUTE RESOLUTION

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Unless otherwise provided in this Deed of Variation, all disputes or differences between the parties in connection with:

7.1 this Deed of Variation; or

7.2 any other matter in any way relating to this Deed of Variation,

that are reasonably suitable for expert determination, will be dealt with in accordance with clause 15 of the Existing Deed.

8. RELEASE

Subject to payment of the Minister's Roundabout Contribution, the Developer and the Council releases the Minister and the Commissioner from all claims arising from or in relation to the funding, procurement, design and delivery of the Roundabout.

9. PUBLIC DISCLOSURE

Clause 21 of the Existing Deed applies to this Deed of Variation.

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EXECUTED as a **DEED**

By the Minister

SIGNED for and on behalf of)
THE MINISTER FOR
INFRASTRUCTURE AND
TRANSPORT)
)
)
)
on: 11 December 2020)
by its duly constituted)
Attorney under Power of Attorney) .....
No. 13145673)
)
)
in the presence of:)

.....
Witness (Witness to sign above)

Jim PSYRIDIS
[Witness to Print Name]

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By the Commissioner

THE COMMON SEAL of the
COMMISSIONER OF HIGHWAYS
was hereto affixed)
)
)
)
)
)
on: 17.12.2020) .....
in the presence of:)

.....
Witness (Witness to sign above)

Elicea Tomlinson
[Witness to Print Name]

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By the Council

THE COMMON SEAL of the
ADELAIDE PLAINS COUNCIL
(ABN 58 384 968 672)
was hereto affixed

on 21 October 2020
(Insert date above)
as attested by the Principal Member and
Chief Executive Officer



(affix seal above)

Signature: .....

Name: MARK WASLEY

Principal Member

Signature: .....

Name: JAMES MILLER

Chief Executive Officer

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By the Developer

SIGNED by

HICKINBOTHAM DEVELOPMENTS (TWO WELLS NO.1) PTY LTD
(ACN 132 319 352) pursuant to section 127 of the
Corporations Act 2001 (Cth) by its sole Director
and Company Secretary.

Signed: .....

Name: Michael Robb Hickinbotham

Position: Sole Director

HICKINBOTHAM AGRICULTURAL PROJECTS PTY LTD
(ACN 064 928 945) pursuant to section 127 of the
Corporations Act 2001 (Cth) by its sole Director
and Company Secretary.

Signed: .....

Name: Michael Robb Hickinbotham

Position: Sole Director

HICKINBOTHAM DEVELOPMENTS (TWO WELLS NO.4) PTY LTD
(ACN 144 951 306) pursuant to section 127 of the
Corporations Act 2001 (Cth) by its sole Director
and Company Secretary.

Signed: .....

Name: Michael Robb Hickinbotham

Position: Sole Director

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Annexure 1

Existing Deed

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DATED 18th DAY OF July 2013

ROAD INFRASTRUCTURE DESIGN AND DELIVERY DEED

BETWEEN

HICKINBOTHAM DEVELOPMENTS (TWO WELLS NO.1) PTY LTD
HICKINBOTHAM AGRICULTURAL PROJECTS PTY LTD
HICKINBOTHAM DEVELOPMENTS (TWO WELLS NO.4) PTY LTD

("Developer")

-AND-

MINISTER FOR TRANSPORT AND INFRASTRUCTURE

("Minister")

-AND-

COMMISSIONER OF HIGHWAYS

("Commissioner")

-AND-

THE DISTRICT COUNCIL OF MALLALA

(ABN 58 384 968 672)

("Council")

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Government of South Australia

CROWN SOLICITOR

Level 9, 45 Pirie Street, Adelaide SA 5000

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TABLE OF CONTENTS

1. ACKNOWLEDGEMENT 2
2. DEFINITIONS AND INTERPRETATION 2
3. CONDITION PRECEDENT 7
4. RESPONSIBILITY TO UNDERTAKE AND CONTRIBUTE TO THE COST OF ROAD INFRASTRUCTURE WORKS 8
5. DETAILED WORKS PLAN 9
6. CALCULATION OF NOMINATED COST OF CONTRIBUTION TO ROAD INFRASTRUCTURE WORKS 10
7. SECURITY 11
8. INCREASE OF SECURITY 12
9. PROGRESSIVE RELEASE OF SECURITY 13
10. DEFAULT BY RESPONSIBLE PARTY IN UNDERTAKING ROAD INFRASTRUCTURE WORKS COMPONENT 13
11. OPEN TENDER 14
12. PAYMENT FROM OTHER PARTIES 15
13. VARIATIONS TO CONSTRUCTION CONTRACTS 15
14. GOODS AND SERVICES TAX 15
15. DISPUTE RESOLUTION 16
16. TIME OF THE ESSENCE 18
17. VARIATION 18
18. COSTS 18
19. NOTICES 18
20. COUNTERPARTS 19
21. PUBLIC DISCLOSURE 19
22. MINISTER'S AND COMMISSIONER'S DISCRETION 19
23. TIMELINESS OF GOVERNMENT FUNDING 20
24. MEMORANDUM OF ENCUMBRANCE 20
25. ASSIGNMENT OF MINISTER'S RIGHTS AND OBLIGATIONS 22
26. ASSIGNMENT OF DEVELOPER'S RIGHTS AND OBLIGATIONS 22
27. SALE OR TRANSFER OF SITE 23

ANNEXURE 1 Traffic Intervention Schedule
ANNEXURE 2 Site
ANNEXURE 3 Form of Encumbrance
ANNEXURE 4 MFY Concept Plans

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THIS DEED is made on day of 2013

BETWEEN:

HICKINBOTHAM DEVELOPMENTS (TWO WELLS NO.1) PTY LTD (ACN 132 319 352), **HICKINBOTHAM AGRICULTURAL PROJECTS PTY LTD** (ACN 064 928 945) and **HICKINBOTHAM DEVELOPMENTS (TWO WELLS NO.4) PTY LTD** (ACN 144 951 306) each of 25 North Terrace, Hackney SA 5069 ("**Developer**")

AND

MINISTER FOR TRANSPORT AND INFRASTRUCTURE a body corporate pursuant to the *Administrative Arrangements Act* of Level 12, 136 North Terrace, Adelaide, South Australia 5000 ("**Minister**")

AND

COMMISSIONER OF HIGHWAYS a body corporate pursuant to the *Highways Act* of Level 12, 136 North Terrace, Adelaide, South Australia 5000 ("**Commissioner**")

AND

THE DISTRICT COUNCIL OF MALLALA (ABN 58 384 968 672) of 2A Wasleys Road, Mallala, South Australia 5502 ("**Council**").

BACKGROUND:

A. The Developer has the right, upon satisfaction of certain pre-conditions, to become the registered owner of the private land within the Site.

B. The Council is the Local Government authority responsible for the administration of the Site.

C. The Developer intends to develop the Site for residential purposes together with complementary community facilities, retail and commercial uses generally in accordance with the Concept Plan (**Proposed Development**). The Developer intends to acquire the private land within the Site as the Proposed Development progresses.

D. The Council and the Minister wish to encourage the development of the Site.

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E. A Development Plan Amendment (being the DPA) to the Development Plan for Two Wells has been prepared and endorsed by Council, but is yet to be approved by the Minister for Planning. The approval of the DPA by the Minister for Planning is a condition precedent to this Deed. The parties recognise that should the development of the Site proceed in the manner envisaged by the DPA and in accordance with the Proposed Development, certain road works will be required to support that development.

F. Attached to this Deed as Annexure 1 is a detailed schedule of the Road Infrastructure Works, together with timings, expected cost, and the Contributions Schedule), which identifies the affected roads and the traffic interventions required if the DPA is approved and the Proposed Development proceeds ("**Traffic Intervention Schedule**").

OPERATIVE PROVISIONS

1. ACKNOWLEDGEMENT

The parties agree both that the matters referred to in the Background of this Deed are true and correct in every material particular and that the Background will form part of this Deed.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

Unless the context requires otherwise, in this Deed:

2.1.1 **Administrator** has the same meaning as in the *Corporations Act 2001* (Cth);

2.1.2 **Agreed Cost Estimate** means the Agreed Cost Estimate for a Road Infrastructure Works Component determined in accordance with clause 5.5;

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

2.1.4 **Concept Plan** means the concept plan for the Proposed Development, as endorsed by Council, and as amended from time to time by agreement between the Developer and Council (or pursuant to any determination that is binding on the Developer and Council pursuant to any mechanism agreed between the Developer and Council for varying the Concept Plan);

2.1.5 **Construction Contract** means the construction contract entered into by the Responsible Party as principal for the carrying out of a Road Infrastructure Works Component (and possibly other work);

2.1.6 **Contractor** means a contractor under a Construction Contract;

2.1.7 **Contribution** means that proportion of the cost of a Road Infrastructure Works Component (whether undertaken by that party as the Responsible Party or undertaken by another party), which a party must bear, as ascribed to that party in the Contributions Schedule;

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2.1.8 **Contributions Schedule** means that part of the Traffic Intervention Schedule that specifies contributions to the funding of Road Infrastructure Works Components as between the parties;

2.1.9 **Defect** means any aspect of any Road Infrastructure Works Component which fails to meet the Responsible Road Authority's requirements or specifications in accordance with this Deed;

2.1.10 **Defects Liability Period** means a period of 12 months commencing on Practical Completion of the relevant Road Infrastructure Works Component;

2.1.11 **Detailed Works Plan** has the meaning given to that term in clause 5.1;

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

2.1.13 **Development Plan** means the Development Plan for the District Council of Mallala as amended by the DPA;

2.1.14 **DPA** means a Development Plan Amendment that is approved and in operation under the *Development Act 1993* (SA) as a result of a process initiated with the Draft DPA (whether in substantially the same form as the Draft DPA or in an amended form), and for the avoidance of doubt includes any amendment made to the DPA by the Minister for Planning pursuant to section 27(5) of the *Development Act 1993* (SA);

2.1.15 **DPA Amendment Gazettal** means a notice published in the South Australian Government Gazette pursuant to section 27(5)(a) of the Development Act amending the DPA;

2.1.16 **DPA Gazettal** means a notice published in the South Australian Government Gazette pursuant to section 25(17) of the Development Act approving the DPA;

2.1.17 **Draft DPA** means the Development Plan Amendment Titled "Two Wells Residential Development Plan Amendment" prepared by Council and released for public consultation under the Development Act on 29 March 2012;

2.1.18 **Hickinbotham Group** means Hickinbotham Holdings Pty Ltd (ACN 007 717 446) and each company that is a related body corporate (within the meaning of the *Corporations Act 2001* (Cth)) of Hickinbotham Holdings Pty Ltd from time to time;

2.1.19 **Insolvent** means being under administration or in provisional liquidation or liquidation, on the grounds of insolvency or anything analogous to or having a similar effect under the law of any relevant jurisdiction;

2.1.20 **Option to Purchase Interest** means the interest that the Developer has in each of the titles pertaining to private land within the Site;

2.1.21 **Practical Completion** means practical completion of the relevant Road Infrastructure Works Component as determined under the Construction Contract pursuant to which the Road Infrastructure Works Component is or is to be carried out;

2.1.22 **Program** means the timing and trigger points for construction of the Road Infrastructure Works as set out in the Traffic Intervention Schedule;

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2.1.23 **Proposed Development** has the meaning given to that term in paragraph C of the Background;

2.1.24 **Responsible Party** means the party nominated to undertake the construction of a Road Infrastructure Works Component in the Traffic Intervention Plan, being, in respect of each Road Infrastructure Works Component, the Developer;

2.1.25 **Responsible Road Authority** means the road authority responsible for maintaining the Road Infrastructure Works Component upon completion of the same in accordance with any relevant legislation;

2.1.26 **Road Infrastructure Works** means the works described in the Traffic Intervention Schedule to be carried out in accordance with this Deed;

2.1.27 **Road Infrastructure Works Component** means a component of the Road Infrastructure Works;

2.1.28 **Section 51 Certificate** means a certificate under section 51 of the Development Act;

2.1.29 **Security** means an irrevocable undertaking issued by a financial institution that is regulated by the Australian Prudential Regulation Authority and that has a long term issuer credit rating of at least A- (Standard and Poor's equivalent), and being the security described in clause 7;

2.1.30 **Site** means the development site identified in Annexure 2;

2.1.31 **Traffic Intervention Schedule** has the meaning given to that term in paragraph F of the Background.

2.2 **Interpretation**

Unless expressed to the contrary, in this Deed:

2.2.1 words denoting the singular or plural number include the plural number and the singular respectively;

2.2.2 words denoting a gender refer to both genders;

2.2.3 headings are for convenience only and shall not affect the interpretation of this Deed;

2.2.4 words denoting individuals include corporations and vice versa;

2.2.5 a reference to a party, the Background, clause, schedule, annexure or plan is a reference to a party, the Background, clause, schedule, annexure or plan of this Deed;

2.2.6 a reference to any act, regulation or by-law shall be deemed to include all amendments to them and all statutory provisions substituted thereafter;

2.2.7 a reference to a party includes a reference to that party's executors, administrators, successors and permitted assigns;

2.2.8 the use of **or** shall be that of the inclusive **or**, that is meaning one, some or all of a number of possibilities or alternatives;

2.2.9 an agreement on the part of or in favour of 2 or more persons binds or is for the benefit of each person jointly and individually;

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2.2.10 a reference to a matter, act or thing includes the whole event or any part of that matter, act or thing and reference to a group of matters, acts, things or persons includes each matter, act, thing or person in that group;

2.2.11 no rule of construction shall be applied in interpreting or construing this Deed *contra proferentem* against a party or otherwise to the disadvantage of a party on the basis that the party proposed or drafted this Deed or any provision of this Deed;

2.2.12 reference to a corporation, organisation or other body (whether or not incorporated), but excluding the parties is:

(a) if that corporation, organisation or other body is replaced by another corporation, organisation or other body, then to refer to that other corporation, organisation or other body; and

(b) if that corporation, organisation or other body ceases to exist, then to refer to the corporation, organisation or other body which most closely or substantially fulfil the same purposes or objects as the first mentioned corporation, organisation or other body;

2.2.13 the word **including** where used is deemed to be followed by the words **without limitation**;

2.2.14 reference to **month** means calendar month; and

2.2.15 unless expressed otherwise in this Deed, a reference to consent or approval is to prior written consent or approval which may be granted, conditionally or unconditionally, or withheld in a party's discretion.

2.3 Relationship between the parties

2.3.1 The parties acknowledge and agree that their relationship pursuant to this Deed shall be exclusively that of independent contractors with the rights, liabilities, duties and obligations set out in this Deed or, subject to this Deed, at law.

2.3.2 Nothing contained in this Deed shall be deemed or construed to constitute a party to be a partner, joint venturer, principal, agent, trustee (whether expressed, implied or constructive), beneficiary, lender, borrower, lessor, lessee, or fiduciary of another party.

2.3.3 No party has the authority to act for or incur any liability or obligation pursuant to this Deed as agent for or on behalf of any other party except as expressly provided in or contemplated by this Deed.

2.4 Proper law and jurisdiction

2.4.1 The proper law of this Deed shall be the law of South Australia and accordingly this Deed shall be governed by and construed in accordance with the laws of South Australia.

2.4.2 Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of South Australia and the courts of appeal from them for determining any dispute concerning this Deed. Each party waives any right it has to object to an action being brought in those courts, to claims that action has been brought in an inconvenient forum, or to claim those courts do not have jurisdiction.

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2.4.3 The parties agree that none of them shall institute or attempt to institute any proceedings in relation to any dispute or any other matter or thing arising out of or in connection with this Deed other than in a court of South Australia or, in respect of any proceedings in a Federal court, in the Adelaide registry of the relevant Federal court.

2.4.4 Without preventing any other mode of service, any documents in an action (including any writ of summons or other originating process or any third or other party notice) may be served on a party by being left or left for that party at its address for service of notices pursuant to this Deed.

2.5 **Waiver**

2.5.1 A waiver of a provision of this Deed must be both in writing and be signed by the party or parties granting the waiver and the party or parties benefiting by or from the waiver or by a person duly authorised to execute such a document on behalf of each such party.

2.5.2 No waiver by a party of a performance or observance of a provision or a breach of this Deed shall operate as a waiver of the performance observance or breach of any other provision of this Deed.

2.5.3 No forbearance, delay, indulgence or partial exercise by a party in enforcing the provisions of this Deed shall be a waiver of or prejudice or restrict the rights of that party in any way.

2.6 **Reading down and severance**

2.6.1 If a provision of this Deed is reasonably capable of an interpretation which would render that provision to be unenforceable, illegal, invalid or void and an alternative interpretation would not have one of those consequences, then that provision shall be interpreted or construed so far as is possible, to be limited and read down such that its meaning is that which does not render it unenforceable, illegal, invalid or void.

2.6.2 Subject to clause 2.6.1, if a provision of this Deed is for any reason illegal, void, invalid or unenforceable, then that provision shall be severed from this Deed without effecting the legality, validity or enforceability of the remainder of this Deed.

2.6.3 If a provision of this Deed is severed under clause 2.6.2, the parties agree to negotiate in good faith with a view to reaching agreement upon an amended provision as a replacement for the severed provision.

2.7 **Cumulative rights**

A right, power, remedy, entitlement or privilege given or granted to a party pursuant to this Deed is cumulative with, without prejudice to and not exclusive of any right, power, remedy, entitlement or privilege granted or given pursuant to this Deed or by the operation of law.

2.8 **Employees or agents**

Any act, matter or thing which is either required to be performed or done by a party may be performed or done by that party's duly authorised employees, agents, delegates or contractors.

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2.9 **Entire agreement**

2.9.1 This Deed contains the entire agreement between the parties in respect of the subject matter of this Deed and the parties agree that this Deed supersedes and extinguishes any prior agreement or understanding (if any) between the parties in respect of the subject matter of this Deed.

2.9.2 No other agreement, whether collateral or otherwise, shall be taken to have been formed between the parties by reason of any promise, representation, inducement or undertaking (if any) given or made by one party to the other prior to the date of this Deed.

2.10 **Auditor-General**

Nothing in this Deed derogates from the powers of the Auditor-General under the *Public Finance and Audit Act 1987* (SA).

3. **CONDITION PRECEDENT**

3.1 The obligations of the parties under this Deed (other than those in clauses 1, 2 and 3) are subject to and conditional on:

3.1.1 the Minister for Planning publishing the DPA Gazettal;

3.1.2 the validity of the DPA not being subjected to any challenge in a court of competent jurisdiction within six months of the Minister for Planning having published the DPA Gazettal; and

3.1.3 the DPA not being disallowed by either House of Parliament under section 27 of the Development Act within six months of the date of publication of the DPA Gazettal.

3.2 Nothing in this Deed obliges or shall be construed as obliging the Minister for Planning to approve the DPA.

3.3 The parties will be bound by this Deed notwithstanding any variations between the terms of the DPA and the Draft DPA.

3.4 If the Developer considers it has been materially adversely affected by variations between the Draft DPA and the DPA the Developer may give notice to the other parties within:

3.4.1 45 days of the publication of the DPA Gazettal (unless the Developer waives, by notice to the other parties, its entitlement to give such notice); and

3.4.2 30 days of publication of any DPA Amendment Gazettal (unless the Developer waives, by notice to the other parties, its entitlement to give such notice).

3.5 The Developer may only issue a notice under clause 3.4 of this Deed if the Developer reasonably forms the opinion that the DPA materially adversely affects (alone or in combination with any other facts or circumstances) the:

3.5.1 commercial viability of the Proposed Development to the Developer;

3.5.2 value of the Proposed Development in or to the business of the Developer; or

3.5.3 cost, revenue, cash flow, finance, sales rate, allotment yield, risk, market attraction or profit associated with the Proposed Development,

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and such notice must include or be accompanied by information in sufficient detail to reasonably support the Developer's opinion.

3.6 Subject to clause 3.3, in the event of a notice being given by the Developer, the parties agree to negotiate in good faith which may lead to variations to this Deed and the Encumbrance to address the impact of the variations made to the DPA on the Developer.

3.7 If the condition precedent in clause 3.1 is not satisfied by 1 November 2014 any party may terminate this Deed immediately by notice in writing to the other parties.

4. RESPONSIBILITY TO UNDERTAKE AND CONTRIBUTE TO THE COST OF ROAD INFRASTRUCTURE WORKS

4.1 In respect of the various Road Infrastructure Works Components set out in the Traffic Intervention Schedule:

4.1.1 the Responsible Party must undertake, if and when required under the Program, the construction of each Road Infrastructure Works Component; and

4.1.2 each party must pay the relevant Contribution (whether the relevant Road Infrastructure Works Component is undertaken by that party as the Responsible Party or undertaken by another party) ascribed to that party in the Contributions Schedule.

4.2 In relation to the carrying out of any Road Infrastructure Works:

4.2.1 before commencing any Road Infrastructure Works, the Responsible Party must procure all relevant approvals;

4.2.2 the Responsible Party must give the Council and the Minister a minimum of 12 months' prior written notice before commencing a Road Infrastructure Works Component in respect of which the Contributions Schedule requires the Council or the Minister (as the case may be) to Contribute; and

4.2.3 before commencing a Road Infrastructure Works Component in respect of which the Contributions Schedule requires the Minister to Contribute, the Responsible Party must obtain written agreement from the Minister to pay the Minister's Contribution in respect of that Road Infrastructure Works Component in accordance with the Contributions Schedule.

4.3 Notwithstanding any other provision of this Deed:

4.3.1 the Developer is not required to proceed with all or any part of the development of the Site (in accordance with the Proposed Development or otherwise); and

4.3.2 the Responsible Party is only required to undertake the construction of the Road Infrastructure Works Component ascribed to it in the Traffic Intervention Schedule as and when the trigger points set out in the Program for Road Infrastructure Works Components are reached (and for the avoidance of doubt if a trigger point in respect of a Road Infrastructure Works Component is not reached, the Responsible Party is not required to undertake construction of that Road Infrastructure Works Component).

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5. DETAILED WORKS PLAN

5.1 Prior to commencing any Road Infrastructure Works Component for which Contributions must be paid, the Responsible Party must submit to the Responsible Road Authority for approval, a detailed works plan for the construction of that Road Infrastructure Works Component ("**Detailed Works Plan**") which (unless otherwise directed by the Responsible Road Authority) includes:

5.1.1 the design brief that was issued to the relevant designer or consultant;

5.1.2 the identity of the relevant designer or designers;

5.1.3 the detailed construction specifications, drawings, plans and designs for the Road Infrastructure Works;

5.1.4 the proposed commencement and completion dates for the Road Infrastructure Works;

5.1.5 the identity of the person or entity proposed to undertake the Road Infrastructure Works;

5.1.6 a detailed estimate of the cost of the Road Infrastructure Works (including any appropriate allowances for contingencies) from an independent and appropriately qualified and experienced expert who is recognised as such an expert by the Responsible Road Authority ("**Detailed Cost Estimate**"); and

5.1.7 if clause 5.3 applies - written agreement from each party that is required to make a Contribution in respect of that particular Road Infrastructure Works Component (other than the Responsible Road Authority) to pay the excess Contribution in respect of that particular Road Infrastructure Works Component in accordance with that clause.

5.2 The items referred to in clause 5.1.3 must be prepared in accordance with either:

5.2.1 the Minister's and/or the Commissioner's standard requirements for plans and specifications in respect of arterial road infrastructure from time to time; or

5.2.2 the Council's standard requirements for plans and specifications in respect of local road infrastructure from time to time,

as the case may be (depending on whether the Minister, the Commissioner or the Council is the Responsible Road Authority for the Road Infrastructure Works Component).

5.3 In the event that the Detailed Cost Estimate is greater than the cost of the relevant Road Infrastructure Works Component (including contingency) as described in the Contributions Schedule then the Responsible Party must obtain the approval of each other party (if any) that is required to make a Contribution to that Road Infrastructure Works Component to ensure that each of such other parties will increase their Contributions to that Road Infrastructure Works Component by an amount which equals the proportion of the excess that party must pay in respect of that Road Infrastructure Works Component pursuant to the Contributions Schedule.

5.4 In the event that the Detailed Cost Estimate is less than the cost of the relevant Road Infrastructure Works Component as described in the Contributions Schedule then the contribution of each of the parties will decrease by an amount which equals the proportion that that party must pay

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in respect of that Road Infrastructure Works Component pursuant to the Contributions Schedule.

5.5 Subject to clause 5.3, the "**Agreed Cost Estimate**" will be the Detailed Cost Estimate as approved by the Responsible Road Authority as part of the approval of the Detailed Works Plan in accordance with clause 5.6.

5.6 The Responsible Road Authority will promptly consider each submitted Detailed Works Plan in the context of the Traffic Intervention Schedule and notify the Responsible Party and either the Minister or the Council (as the case may be) in writing within 90 days of receipt of the Detailed Works Plan of the Responsible Road Authority's decision to:

5.6.1 approve the Detailed Works Plan with or without conditions;

5.6.2 reject the Detailed Works Plan (with written reasons for the rejection); or

5.6.3 propose a modified Detailed Works Plan (with or without conditions) which the Responsible Road Authority would approve.

5.7 The Responsible Road Authority will also specify on the relevant approved Detailed Works Plan the:

5.7.1 standards to which the Road Infrastructure Works must comply in accordance with clause 5.2); and

5.7.2 the contractual arrangements (including but not limited to a requirement for the Responsible Party to execute a separate deed which the Responsible Road Authority (acting reasonably) deems necessary for the construction of the Road Infrastructure Works),

that the Minister or the Commissioner of Highways (as the case may be) determines are necessary for the construction of the relevant Road Infrastructure Works Component.

5.8 Nothing in this clause 5 excludes the requirement of the Responsible Party to obtain any and all other legislative approvals from the Responsible Road Authority to enable the Responsible Party to undertake the relevant Road Infrastructure Works.

6. CALCULATION OF NOMINATED COST OF CONTRIBUTION TO ROAD INFRASTRUCTURE WORKS

6.1 The **Nominated Cost** of a Road Infrastructure Works Component is the amount actually and reasonably incurred by the Responsible Party in undertaking that Road Infrastructure Works Component for which Contributions must be paid, and the Nominated Cost is calculated:

6.1.1 by including all expenses reasonably incurred by the Responsible Party in designing, procuring and undertaking the approved Road Infrastructure Works Component (but not including the costs of finance, any land owned by the Responsible Party or any opportunity cost); and

6.1.2 by excluding any expenses incurred because of the negligence, default, unreasonable delay or incompetence of the Responsible Party or its consultants or contractors or in undertaking any step, process or works that were not reasonably required to properly and reasonably complete the approved Road Infrastructure Works Component.

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6.2 If the Nominated Cost exceeds, or is in the Responsible Party's opinion reasonably likely to exceed, the Agreed Cost Estimate for the Road Infrastructure Works Component then the Responsible Party must not issue invoices (to the extent of the excess) to any of the other parties who must make a Contribution to that Road Infrastructure Works Component unless the Responsible Party first obtains the written approval of each of the other parties who must make a Contribution to that Road Infrastructure Works Component, to ensure that each of those other parties agrees to increase its Contribution to that Road Infrastructure Works Component, by an amount which equals the proportion of the excess that that relevant party must pay in respect of that Road Infrastructure Works Component pursuant to the Contributions Schedule.

6.3 As soon as reasonably practicable after determining the Nominated Cost, the Responsible Party will provide to the other parties who must make a Contribution to that Road Infrastructure Works Component, all documents and information reasonably evidencing the expenses incurred by the Responsible Party in undertaking the approved Road Infrastructure Works Component and, if requested by any of the parties, an opinion by an independent expert (obtained at the Responsible Party's cost and within a reasonable period after such request) in respect of the calculation of Nominated Cost for that Road Infrastructure Works Component under this Deed.

7. SECURITY

7.1 The Developer must, in respect of each Road Infrastructure Works Component, provide Security for an amount equal to its Contribution (if any) to the cost of that Road Infrastructure Works Component, based on the Agreed Cost Estimate for that Road Infrastructure Works Component. Such Security must be provided at the time required by clauses 7.3 or 7.4 (as the case may be).

7.2 The Security is to be provided to, and is to be expressed to be in favour of the Responsible Road Authority.

7.3 If the Responsible Party proposes to make a request to the Development Assessment Commission for the issue of a Section 51 Certificate for any proposed division of any land within the Site to create allotments which:

7.3.1 when created, would cause the trigger point for the Road Infrastructure Works Component identified as item (reference number) 2 in the Traffic Intervention Schedule to occur; or

7.3.2 when dwellings constructed thereon have been occupied, would (together with occupation of dwellings on other allotments that have been created within the Site) cause a trigger point for the Road Infrastructure Works Component identified as item (reference number) 1, 4, 5 or 6 in the Traffic Intervention Schedule to occur

the Responsible Party must not make such request until the following procedure has been carried out:

7.3.3 the Responsible Party is to notify the Responsible Road Authority of its intention to make a request to the Development Assessment Commission for the issue of that Section 51 Certificate for any such proposed division of any land within the Site;

Released from Confidence

7.3.4 as soon as practicable after receiving the notice under clause 7.3.3 the Responsible Road Authority is to notify the Developer that it must provide its Security in respect of the relevant Road Infrastructure Works Component (to the extent that it has not already done so);

7.3.5 the Developer must provide its Security (to the extent that it has not already done so) within 30 days of the Responsible Road Authority giving notice under clause 7.3.4; and

7.3.6 as soon as practicable after the Responsible Road Authority receives the Developer's Security, the Responsible Road Authority will notify the Responsible Party, which notified the Responsible Road Authority in accordance with clause 7.3.3 that it was intending to make a request to the Development Assessment Commission for the issue of a Section 51 Certificate, that it may proceed to do so.

7.4 In the case of the Responsible Party intending to enter into a Construction Contract for Road Infrastructure Works:

7.4.1 immediately prior to the Responsible Party entering into the Construction Contract for the Road Infrastructure Works Component, the Responsible Party is to notify the Responsible Road Authority;

7.4.2 as soon as practicable after receiving notice under clause 7.4.1, the Responsible Road Authority is to notify the Developer that it must provide its Security in respect of the Construction Contract for that Road Infrastructure Works Component;

7.4.3 the Developer must provide its Security in respect of the Construction Contract for that Road Infrastructure Works Component within 30 days of the Responsible Road Authority giving notice under clause 7.4.2; and

7.4.4 as soon as practicable after the Responsible Road Authority receives the Developer's Security, the Responsible Road Authority will notify the Responsible Party that it may proceed to enter into the Construction Contract in respect of that Road Infrastructure Works Component.

7.5 The Developer undertakes that it will not cause, suffer or permit the making of a request to the Development Assessment Commission for the issue of a Section 51 Certificate unless the Responsible Road Authority has issued a notice under either clause 7.3.6 or clause 7.4.4.

7.6 None of the Minister, the Commissioner, or Council need provide Security.

8. INCREASE OF SECURITY

8.1 Subject to clause 8.2 where the contract sum in respect of a Road Infrastructure Works Component is more than the Agreed Cost Estimate, the Responsible Road Authority may request and the Developer must, upon request made by the Responsible Road Authority, provide additional Security so that the amount of the Security provided by the Developer in respect of its liability to Contribute to the cost of that Road Infrastructure Works Component is equal to the Developer's proportion (as specified in the Contributions Schedule) of the contract sum for that Road Infrastructure Works Component.

8.2 If the Responsible Road Authority is of the opinion that the amount of any potential additional Security to be requested by the Responsible Road

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Authority under clause 8.1 is nominal, the Responsible Road Authority may elect not to require the additional Security.

9. PROGRESSIVE RELEASE OF SECURITY

9.1 The Responsible Road Authority must review (and return or release as appropriate) the Security held by it as Practical Completion of each Road Infrastructure Works Component is achieved (but having regard to the right of the Responsible Road Authority to retain a portion of the Security referred to in clause 9.3).

9.2 Subject to clause 9.3, the Responsible Road Authority shall return to a party (**Security Party**) so much of the Security provided by the Security Party to the Responsible Road Authority as relates to a Road Infrastructure Works Component for which:

9.2.1 Practical Completion has been achieved; and

9.2.2 the Security Party has contributed all of the Security Party's Contribution to the total cost of the Road Infrastructure Works Component.

9.3 The Responsible Road Authority is entitled to retain from the Security provided by the Security Party in respect of a Road Infrastructure Works Component so much of such Security as equates to 10% of the total amount of the Security provided for that Road Infrastructure Works Component, during the Defects Liability Period in respect of that Road Infrastructure Works Component. Upon the expiration of the Defects Liability Period, and subject to the rectification of all Defects in respect of the relevant Road Infrastructure Works Component in accordance with the relevant Construction Contract for that Road Infrastructure Works Component, the Responsible Road Authority must return or release (as appropriate) as soon as practicable to the Security Party the balance of the Security then held by it.

10. DEFAULT BY RESPONSIBLE PARTY IN UNDERTAKING ROAD INFRASTRUCTURE WORKS COMPONENT

10.1 If the Responsible Party for undertaking a Road Infrastructure Works Component:

10.1.1 fails to enter into as principal a Construction Contract for the Road Infrastructure Works Component by the relevant date or trigger point specified in the Program (as applicable) or by such other time as is agreed in writing between the Responsible Road Authority and the Responsible Party; or

10.1.2 the Construction Contract entered into by the Responsible Party as principal is terminated as a consequence of the insolvency of the Responsible Party as principal or as a consequence of a breach by the Responsible Party as principal,

then the Responsible Road Authority may give a direction to:

10.1.3 Council (in respect of land or roads that are under the control of Council);

10.1.4 Commissioner (in respect of land or roads that are under the control of the Commissioner),

Released from Confidence

to take those actions described in and in accordance with clause 10.2.

10.2 Following a direction given by the Responsible Road Authority as referred to in clause 10.1:

10.2.1 the Responsible Road Authority must step-in and assume the Responsible Party's rights and obligations in respect of the carrying out and completion of the Road Infrastructure Works Component;

10.2.2 the Responsible Road Authority may, subject to having first given each of the other parties not less than 14 days' written notice of its intention to do so, realise, resort to and call upon the Security given in respect of such Road Infrastructure Works Component in whole or to any extent at any time and from time to time and any such realising, resorting to or calling upon shall be without prejudice to the rights of Council (or any other party) against the Responsible Party; and

10.2.3 the Responsible Party must do whatever the Responsible Road Authority reasonably requires to facilitate the stepping-in by the Responsible Road Authority under clause 10.2.1 (including without limitation the grant to the Responsible Road Authority of a licence for no fee to enter upon the Site for the purpose of carrying out the relevant works).

11. OPEN TENDER

11.1 All Construction Contracts must be awarded by select or open tender. Where the tender is a select tender, the Responsible Party must invite a minimum of 3 potential tenderers to tender. If a Responsible Party's procurement process requires, then the Responsible Party may undertake an open tender.

11.2 If the price tendered by a Responsible Party's preferred Contractor for the carrying out of a particular Road Infrastructure Works Component is greater than the Agreed Cost Estimate, then the Responsible Party must obtain the approval of each other party (if any) who must make a Contribution to that Road Infrastructure Works Component before awarding the Construction Contract to that Contractor.

11.3 (a) Subject to clause 11.3(b), a Responsible Party in calling for tenders and entering into a Construction Contract or Construction Contracts can aggregate various Road Infrastructure Works Components (or combine a Road Infrastructure Works Component or Road Infrastructure Works Components with work other than Road Infrastructure Works).

(b) If a Responsible Party aggregates or combines a Road Infrastructure Works Component described in clause 11.3(a) it must require that potential Contractors in tendering apportion the tendered price so as to nominate a specific price for each Road Infrastructure Works Component and must ensure that the Construction Contract:

(i) ascribes a specific price to each Road Infrastructure Works Component; and

(ii) provides for the Road Infrastructure Works Component to be dealt with as a separable portion.

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11.4 Wherever possible, the actual cost for a subcontract to be entered into by the Contractor under the Construction Contract is to be discernible during an "open book" assessment of amounts paid or payable to subcontractors.

12. PAYMENT FROM OTHER PARTIES

12.1 As the Responsible Party proceeds with a Road Infrastructure Works Component for which a Contribution is required, the Responsible Party shall be entitled to render invoices on a monthly basis (or less frequently, if the Responsible Party so chooses) to the other parties who, in accordance with the Contributions Schedule, must make a Contribution to the cost of that Road Infrastructure Works Component.

12.2 Invoices rendered under clause 12.1 shall be for a party's proportion of the total cost of a progress claim or other claim rendered by the Contractor to the Responsible Party and for which payment has been made by the Responsible Party. Any such invoice shall be accompanied by written confirmation from the Contractor as to payment by the Responsible Party to the Contractor of the progress claim or other claim to which the invoice relates.

13. VARIATIONS TO CONSTRUCTION CONTRACTS

13.1 The Responsible Party may not initiate or allow a variation to the works under a Construction Contract without the prior written consent of:

13.1.1 each other party (if any) that is required to make a Contribution in respect of the relevant Road Infrastructure Works Component under the Contributions Schedule; and

13.1.2 the relevant Responsible Road Authority,

unless the variation will not increase the contract sum beyond the Agreed Cost Estimate nor result in any variation to the specifications set out in the approved Detailed Works Plan, in which case the Responsible Party may initiate such a variation without the consent of any other party.

13.2 The parties agree that in the event of any inconsistency and to the extent that any party is bound by a Construction Contract, as between the parties to this Deed, the terms of this Deed override the terms of any Construction Contract.

14. GOODS AND SERVICES TAX

14.1 Unless specifically described in this Deed as "GST inclusive", any sum payable (or amount included in the calculation of a sum payable), or consideration to be provided, under or in accordance with this Deed does not include any amount on account of GST.

14.2 Where any supply to be made by one party (**Supplier**) to another party (**Recipient**) under or in accordance with this Deed is subject to GST (other than a supply the consideration for which is specifically described in this Deed as "GST inclusive"):

14.2.1 the consideration payable or to be provided for that supply but for the application of this clause 14 (**GST Exclusive Consideration**) shall be increased by, and the Recipient shall pay to the Supplier, an amount equal to the GST payable by the Supplier in respect of that supply; and

Released from Confidence

14.2.2 the Recipient must pay that additional amount at the same time and in the same manner as the GST Exclusive Consideration payable or to be provided for that supply.

14.3 If any payment to be made to a party under or in accordance with this Deed is a reimbursement or indemnification of an expense or other liability incurred or to be incurred by that party, then the amount of the payment must be reduced by the amount of any input tax credit to which that party is entitled for that expense or other liability, such reduction to be effected before any increase in accordance with clause 14.2.

14.4 The Recipient need not make any payment for a taxable supply made by the Supplier under or in accordance with this Deed until the Supplier has given the Recipient a valid tax invoice in respect of that taxable supply.

14.5 If an adjustment event has occurred in respect of a taxable supply made under or in accordance with this Deed, any party that becomes aware of the occurrence of that adjustment event must notify each other party to that taxable supply as soon as practicable, and all of those parties agree to take whatever steps are necessary (including to issue an adjustment note), and to make whatever adjustments are required, to ensure that any GST or additional GST on that taxable supply, or any refund of GST (or part thereof), is paid no later than 28 days after the Supplier first becomes aware that the adjustment event has occurred.

14.6 A word or expression used in this clause 14 which is defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the same meaning in this clause 14.

15. DISPUTE RESOLUTION

15.1 Disputes to be dealt with under this clause

Unless otherwise provided in this Deed and subject to clause 15.7, all disputes or differences between the parties in connection with:

15.1.1 this Deed; or

15.1.2 any other matter in any way relating to this Deed,

(**Dispute**) that are reasonably suitable for expert determination will be dealt with in accordance with this clause 15 whenever the Dispute is raised.

15.2 Notice of Dispute

Any party (**Disputing Party**) may within 30 days after the Dispute arises, give a notice to the other parties (**Non-Disputing Parties**):

15.2.1 setting out details of the Dispute, the reason the Dispute should be resolved in favour of the Disputing Party, and any other matter that may, in the reasonable opinion of the Disputing Party, be relevant to the resolution of the Dispute; and

15.2.2 requiring the Non-Disputing Parties to, in good faith, seek to resolve the Dispute within 21 days of the date of the notice.

15.3 Referral of Dispute to an Expert

Subject to clause 15.7, if the Dispute is not resolved by agreement between the parties following notice given under clause 15.2, the determination of the Dispute (**Determination**) may be referred for determination by any party to any independent person (**Expert**) agreed between the parties (or in the

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absence of agreement within 7 days of any party proposing in writing an Expert, then the Expert shall be nominated at the request of any party by the President (or if there is not a President, then Chief Executive Officer or other person of like status) for the time being of The Law Society of South Australia (or if that body has ceased to exist then a body fulfilling substantially the same functions as the first mentioned body)).

15.4 **Expert**

The Expert is an expert and not an arbitrator.

15.5 **Final**

The Determination of the Expert is final and binding on the parties.

15.6 **Conduct of Determination**

Unless otherwise agreed by the parties in writing:

15.6.1 the place of the proceedings for purposes of the Determination will be Adelaide, South Australia;

15.6.2 each party is entitled to legal representation at all stages of the Determination;

15.6.3 the proceedings for the purposes of the Determination will be conducted in accordance with the laws of evidence;

15.6.4 each party will bear its own costs and expenses in relation to the Determination;

15.6.5 the parties will pay in equal shares the Expert's fees and expenses and the cost of the Determination including room hire (if any);

15.6.6 the parties must comply with all reasonable requests and produce all necessary documentation to the Expert to enable the Expert to make the Determination;

15.6.7 the parties may make submissions which the Expert must take into account when making the Determination;

15.6.8 the Expert must provide its Determination to the parties in writing, with reasons for the Determination and within 21 days of the appointment of the Expert; and

15.6.9 the provisions of the *Commercial Arbitration Act 2011* (SA) do not apply to the resolution of any Dispute under the provisions of this clause 15.

15.7 **Legal proceedings**

Nothing in this clause 15 prevents a party from issuing, or requires a party to delay issuing, legal proceedings in a court in respect of a Dispute if:

15.7.1 it is reasonably necessary for that party to seek urgent injunctive or other interlocutory relief in order to reasonably protect its position; or

15.7.2 the nature of the Dispute is such that it is not reasonably suitable for expert determination (for example, if the Dispute relates primarily to the interpretation of the provisions of this Deed and would not require reference to expert evidence if it were the subject of legal proceedings).

Released from Confidence

16. TIME OF THE ESSENCE

Time shall be of the essence in respect of any time, date or period specified in this Deed or in any notice served pursuant to this Deed.

17. VARIATION

No modification, variation or amendment of this Deed shall be of any force unless any such modification, variation or amendment is made by deed executed by each party.

18. COSTS

The parties will pay their own costs of and incidental to the preparation, negotiation and execution of this Deed and of any documents prepared and executed pursuant to this Deed, unless stated otherwise in those other documents.

19. NOTICES

19.1 A notice to a party must be in writing and may be served in the following manner:

19.1.1 delivering it personally to that party; or

19.1.2 addressing it to that party and either leaving it at, delivering it by courier (expenses prepaid) or mailing it by registered mail (return receipt requested) to:

(a) the address of that party appearing in this clause 19; or

(b) any other address in South Australia nominated in writing by that party from time to time; or

19.1.3 sending a facsimile copy of the notice to the facsimile copier number specified in this clause 19 or to any other numbering nominated in writing by that party.

19.2 A notice given in accordance with this clause 19 will be deemed to be received as follows:

19.2.1 in the case of personal delivery or by courier, when delivered;

19.2.2 in the case of service by leaving the notice at an address specified in this clause, when left at that address, unless the time of leaving the notice is not on a Business Day or is after 5.00pm on a Business Day, in which case it shall be deemed to be given, made or received on the next Business Day;

19.2.3 in the case of service by mail, on the second Business Day following the date of posting; and

19.2.4 in the case of service by facsimile, when transmitted, as evidenced by a transmission report produced by the sender's facsimile machine that the notice was sent to the addressee's facsimile number, unless the time of transmission is not on a Business Day or is after 5.00pm on a Business Day, in which case it will be deemed to be given, made or received on the next Business Day.

Released from Confidence

19.3 A notice given or served pursuant to this Deed by a party may be signed by a duly authorised employee, agent or delegate of the serving party. Notices may be served at the following addresses and facsimile number:

19.3.1 To the Developer

Address: 25 North Terrace, Hackney, SA 5069

Facsimile: 08 8362 7812

19.3.2 To the Minister:

Address: GPO Box 2969, Adelaide, SA 5001

Facsimile: 08 8226 0844

19.3.3 To the Commissioner for Highways:

Address: GPO 1533, Adelaide, SA 5001

Facsimile: 08 8463 6229

19.3.4 To District Council of Mallala:

Address: PO Box 18, Mallala, SA 5502

Facsimile: 08 8527 2242

19.4 A party may modify its address or facsimile number from time to time by a written notice served on the other party.

20. COUNTERPARTS

This document may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument. If so, the signed copies are treated as making up the one document.

21. PUBLIC DISCLOSURE

Any party may, at any time, disclose this Deed and/or information relating to this Deed in either printed or electronic form and either generally to the public or to a particular person as a result of a specific request. Nothing in this clause derogates from the obligations of a party under the *Freedom of Information Act 1991* (SA).

22. MINISTER'S AND COMMISSIONER'S DISCRETION

This Deed does not limit the Minister's (nor the Commissioner of Highways' where relevant) legislative powers to give directions to the Responsible Party about the manner of carrying out Road Infrastructure Works in respect of the relevant Road Infrastructure Works Component and notwithstanding the Program, the issuing of an approved Detailed Works Plan or the issuing of approval under clause 5, the Responsible Party may only undertake the works in accordance with any other necessary authorisation, arrangement or agreement with the Minister, or the Commissioner of Highways where relevant (or other relevant authority), relating to the undertaking of public road infrastructure works.

Released from Confidence

23. TIMELINESS OF GOVERNMENT FUNDING

Subject to this Deed the Minister will use his best endeavours to seek and if obtained, allocate, funding in respect of the Contributions ascribed to the Minister in the Contributions Schedule to allow the design and construction of the Road Infrastructure Works Component in respect of which the Minister is required to Contribute can occur in a timely manner generally in accordance with the Program to enable the proper, orderly and efficient development of the Site in accordance with the DPA, provided that at all times the Minister's and the Commissioner of Highways' (where relevant) absolute discretion (whether statutory or as required by law) in determining the funding of the Road Infrastructure Works Component in respect of which a Contribution is ascribed to the Minister is not fettered.

24. MEMORANDUM OF ENCUMBRANCE

24.1 It is a condition of this Deed that:

24.1.1 the Developer executes an encumbrance in the form attached to this Deed and marked Annexure 3, within 120 days of becoming the owner of any private land within the Site;

24.1.2 within 120 days of execution of this Deed, the Developer either procures the execution of an encumbrance in the form attached to this Deed and marked Annexure 3, in respect of each title of all the private land comprising the Site (**Encumbrances**), or complies with clause 24.2.

Notwithstanding the condition in this clause 24, the parties must continue to perform their obligations under this Deed pending satisfaction of that condition unless and until this Deed is validly terminated.

24.2 To the extent that the Developer is not the owner of a Certificate of Title in respect of private land comprising the Site, the Developer must:

24.2.1 in the first instance, use reasonable endeavours to procure from the owner of the relevant title within the Site, an executed Encumbrance, and provide the executed Encumbrance to the Minister; or

24.2.2 in the event that the Developer is unable to procure the Encumbrance in accordance with clause 24.2.1, lodge a caveat to protect the Developer's Option to Purchase Interest in respect of the relevant title; or

24.2.3 in the event that the Developer is unable to lodge a caveat to protect the Developer's Option to Purchase Interest in respect of any title, provide evidence satisfactory to the Minister and Commissioner that the Developer's interest in the relevant title has been adequately protected.

24.3 The Developer must do all things reasonably necessary in the event of the assignment of any interest in any title within the Site to secure the performance of the Developer's (or the Developer's assignee's) obligations under this Deed.

24.4 The preparation of the Encumbrances will be procured by the Minister. In respect of any Encumbrance obtained in accordance with this clause 24, the Developer must obtain, or ensure that the owner(s) of the relevant private land obtain, all appropriate consents (including from all holders of registered interests, rights or endorsements on the relevant Certificates of Title

Released from Confidence

pertaining to that land) and also pay any consent fees, stamp duty and registration costs on the Encumbrances.

24.5 The Developer:

24.5.1 must comply with this clause 24 within 120 days after the execution of this Deed; and

24.5.2 warrants that all consents required under clause 24.4 in respect of an Encumbrance will have been secured at the time of execution of that Encumbrance; and

24.5.3 must, on or after the time that an Encumbrance is registered on a Certificate of Title in respect of private land within the Site, ensure at any time thereafter during the term of this Deed that any financier or other person, with a registered interest on the Certificate of Title pertaining to private land within the Site in whole or in part that is registered in priority to the Encumbrance (and which interest enables that financier or person to exercise a power of sale with respect to the land), enters into a deed of covenant with the Minister or the Crown in the Right of the State of South Australia (as the case may be) and the owner of that land, to ensure that an encumbrance in the same form and on the same terms as the Encumbrance is executed by any incoming purchaser of that land in circumstances where a power of sale is exercised in respect of that land.

24.6 If the condition set out in this clause 24 has not been satisfied within the period specified in this clause 24 (in this regard time will be of the essence), the Developer may request in writing to the Minister prior to the expiry of such period, and the Minister may then provide written notice to the Developer, to extend the time for satisfaction of the condition set out in this clause 24 ("**extended period**").

24.7 If the condition referred to in this clause 24 has not been satisfied within the later of:

24.7.1 the period specified in clause 24.5.1; or

24.7.2 the extended period (if any),

then the Minister may by written notice to the other parties terminate this Deed.

24.8 On the termination of this Deed by the Minister in accordance with clause 24.7, neither the Minister nor the Developer will have any claim against the other arising directly or indirectly out of this Deed except in respect of any antecedent default.

24.9 In circumstances where an Encumbrance is registered on the title of any part of the Land, the Minister must (in his capacity as encumbrancee under that Encumbrance) upon the request of the Developer, consent to the deposit of a plan of division in respect of that part of the Land:

24.9.1 if the Developer is complying with (and not in breach of) its obligations under this Deed; and

24.9.2 conditional only on the execution and registration, in priority to all other registered interests on that title (other than the fee simple interest of the encumbrancer under the Encumbrance), of an Encumbrance on some or all of the titles to be created by the deposit of that plan of division (if and to the extent required by the Minister).

Released from Confidence

24.10 The Developer must provide the Minister and Commissioner with details of any removal, intended removal or potential removal of any caveat lodged to protect the Developer's Option to Purchase Interest in respect of any relevant title within the Site.

25. ASSIGNMENT OF MINISTER'S RIGHTS AND OBLIGATIONS

25.1 The parties acknowledge that the Minister reserves his right to assign any of his rights, benefits or obligations under this Deed to any instrumentality of the Crown in the right of South Australia (including but not limited to the Commissioner of Highways) who in the Minister's opinion will most appropriately deal with such right, benefit or obligation on terms acceptable to the Minister, without seeking the consent of any other party to this Deed.

25.2 The Minister will, at the completion of any development or works pursuant to this Deed, determine which instrumentality of the Crown, should own and maintain the relevant parts of the completed development or works pursuant to this Deed and do all things necessary to vest in the instrumentality such development or works on terms acceptable to the Minister.

26. ASSIGNMENT OF DEVELOPER'S RIGHTS AND OBLIGATIONS

26.1 Subject to clause 26.2, the Developer must not assign this Deed or any right under this Deed without the prior written consent of the other parties, which consent must not be unreasonably withheld or delayed.

26.2 The Developer (or any of the entities comprising the Developer) shall be entitled to assign this Deed or any right under this Deed without the consent of the other parties where the assignee is a member of the Hickinbotham Group.

26.3 Consent of a party will be taken to be unreasonably withheld in respect of a proposed assignment of any of the Developer's rights under this Deed if the proposed assignment is to a third party who:

26.3.1 has, or has access to, the financial capacity and the technical and management skills, resources and experience to meet the obligations of the relevant assignor under this Deed (to the extent of the proposed assignment); and

26.3.2 if required by the another party to do so, has entered into a deed or agreement undertaking with the other parties to meet the obligations of the proposing assignor (to the extent of the proposed assignment) under either or both of (as relevant to the right assigned):

(a) this Deed; or

(b) an agreement entered into pursuant to this Deed; and

26.3.3 in all other relevant respects is reasonably fit and suitable to take over the assignor's obligations under this Deed.

26.4 If the Developer wishes to assign its rights and interest under this Deed or any right under this Deed it must provide the other parties with all information reasonably necessary in order to enable the other parties to give due consideration to the granting of the consent required to be obtained by the Developer pursuant to clause 26.1 including:

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26.4.1 details of the proposed assignee's experience and ability to undertake and satisfy the Developer's obligations and responsibilities under this Deed and if the proposed assignee is a proprietary company, the same details in relation to the shareholders and principal officers of that company; and

26.4.2 such other information as may be reasonably required by the other parties with regard to the financial standing and business experience of the proposed assignee.

26.5 For the purposes of this clause 26, the Developer will be deemed not to have requested the consent of the other parties to any proposed assignment unless and until the Developer has provided all of the information set out or required by the other parties under clause 26.4.

26.6 Upon assignment by the Developer pursuant to this clause:

26.6.1 in respect of an assignment of all of the Developer's rights under this Deed – the Developer will be released from all further obligations under this Deed;

26.6.2 in respect of an assignment of some but not all of the Developer's rights under this Deed – the Developer will be released from all further obligations under this Deed to the extent that the assignee becomes bound by such obligations; and

26.6.3 if at the time of the assignment there is a Security in place which has been provided by the Developer in accordance with this Deed, and the Developer procures the assignee to provide a replacement Security of equivalent value and on similar terms to that provided by the Developer which is then held by the Responsible Road Authority, the Responsible Road Authority must return the Developer's Security to the Developer.

27. SALE OR TRANSFER OF SITE

If the Developer sells or transfers any part of the Site or its interest in the land comprising the Site at any time prior to that land becoming subject to a registered encumbrance in the form and to the effect set out in Annexure 3 it must (unless the other parties to this Deed agree otherwise in writing) procure that the purchaser or transferee enters into a deed or agreement to the satisfaction of the Minister undertaking with the other parties to meet the obligations of the Developer under this Deed in respect of that land.

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EXECUTED AS A DEED

Executed by **HICKINBOTHAM DEVELOPMENTS (TWO WELLS NO.1) PTY LTD** pursuant to section 127 of the *Corporations Act 2001*

Signature of Director	Signature of Director/Company Secretary *(Please delete as applicable)*
Name of Director (print)	Name of Director/Company Secretary (print)

Or

Signature of Sole Director and Sole Company Secretary

M. R. HICKINBOTHAM

Name of Sole Director and Sole Company Secretary (print)

Executed by **HICKINBOTHAM AGRICULTURAL PROJECTS PTY LTD** pursuant to section 127 of the *Corporations Act 2001*

Signature of Director	Signature of Director/Company Secretary *(Please delete as applicable)*
Name of Director (print)	Name of Director/Company Secretary (print)

Or

Signature of Sole Director and Sole Company Secretary

M. R. HICKINBOTHAM

Name of Sole Director and Sole Company Secretary (print)

Released from Confidence

Executed by **HICKINBOTHAM DEVELOPMENTS (TWO WELLS NO.4) PTY LTD** pursuant to section 127 of the *Corporations Act 2001*

.....	.....
Signature of Director	Signature of Director/Company Secretary *(Please delete as applicable)*
.....	.....
Name of Director (print)	Name of Director/Company Secretary (print)

Or

.....
Signature of Sole Director and Sole Company Secretary

M.R. HICKINBOTHAM
Name of Sole Director and Sole Company Secretary (print)

THE COMMON SEAL of the)
MINISTER FOR TRANSPORT)
AND INFRASTRUCTURE)
was hereunto affixed by the)
Authorised Officer of the Minister)
in the presence of:)

MINISTER FOR TRANSPORT AND INFRASTRUCTURE
COMMON SEAL
SOUTH AUSTRALIA

.....	.....
Witness	Full name of Authorised Officer
Robert Malinauskas	.....
Full Name of Witness	Office Held

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THE COMMON SEAL of the)
COMMISSIONER FOR HIGHWAYS)
was hereunto affixed by the)
Authorised Officer of the Commissioner)
in the presence of:)

.....
Witness

.....
Full name of Authorised Officer

NICOLE JONES
.....
Full Name of Witness

.....
Office Held

THE COMMON SEAL of **THE**)
DISTRICT COUNCIL OF MALLALA)
(ABN 58 384 968 672))
was hereunto affixed on)
the 18 day of February 2013)

.....
Mayor

.....
Chief Executive Officer

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THE COMMON SEAL of the
COMMISSIONER OF HIGHWAYS)
)
)
)
was affixed in the presence of:)

(Affix Seal Above)

Witness Signature: .....

.....
(Commissioner of Highways)

Print Name: ..NICOLE JONES.....

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Infrastructure and Environment Committee Meeting
Page 96 of 136
16 March 2022
INDEX

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ANNEXURE 1

Traffic Intervention Schedule

1. Reference	2. Road Infrastructure Works Component	3. Treatment	4. Qty (item)	5. Cost (2012) with Contingency ($million)	Contingency	Timing	Contributions Schedule		
							Developer	Minister	Council
1	Mallala Road / Old Port Wakefield Road Intersection	Installation of a single lane roundabout as shown on MFY Concept Plan - drawing number 11-0156_05_SK01 appearing in Annexure 4	1	2.00	60%	At or before occupation of first dwelling taking access from the intersection (unless obviated by alternative temporary access arrangements).	1.00 (50%)		1.00 (50%)
2	Port Wakefield Road / New Site Access Road Intersection	Installation of a rural seagull Intersection treatment with associated deceleration and acceleration lanes (left and right turn) as shown on MFY Concept Plans - drawing numbers 11-0156_11_SH01 and 11-0156_11_SH02 appearing in Annexure 4	1	4.43	20%	The new intersection is to be constructed prior to land division west of the rail line exceeding 1500 allotments.	4.43 (100%)		
3	Mallala Road / Site Access Road Intersection	Installation of a type CHR intersection treatment near Sharpe Road (west of railway line) as shown on MFY Concept Plan – drawing number 110156_10_SH01 appearing in Annexure 4	1	1.19	20%	The timing for this item if any will be determined by the Developer and notified to Council. The Developer may decide to not proceed with this item.	1.19 (100%)		

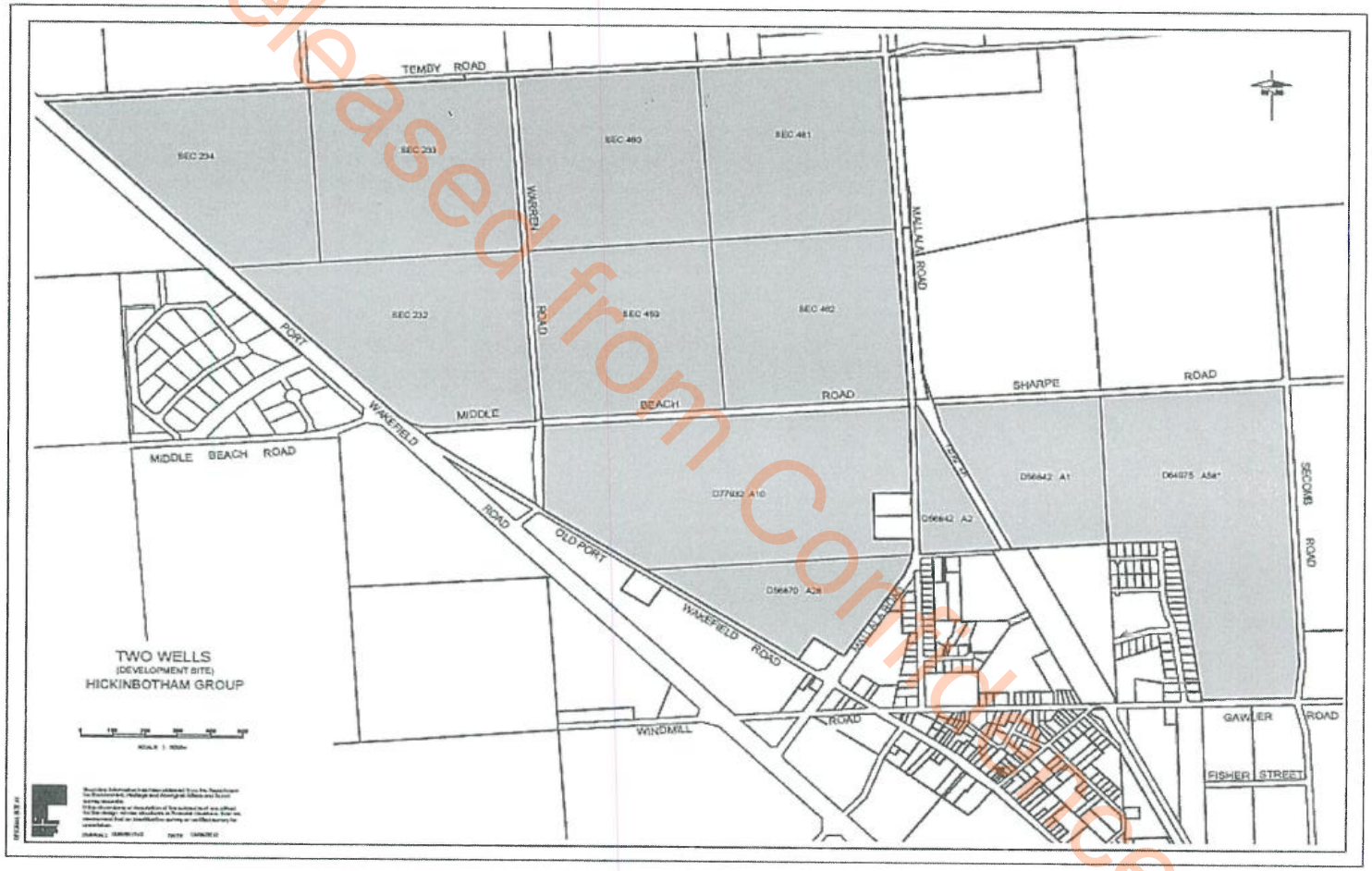
4	Port Wakefield Road / Mallala Road Intersection	Extension of southbound acceleration lane as shown on MFY Concept Plan - drawing number 11-0156_09_SH01 appearing in Annexure 4	1	1.21	20%	300 occupied dwellings in that area of the Development Site that is west of the rail line, provided, however, that if the Minister is unable to obtain and allocate funding to provide the Minister's Contribution to this Road Infrastructure Works Component to allow it to be constructed on or prior to 300 such occupied dwellings, the trigger point for this Road Infrastructure Works Component will be 500 occupied dwellings in that area of the Development Site that is west of the rail line.	0.61 (50%)	0.61 (50%)	
5	Gawler Road / Eastern Site Access Road Intersection	Installation of a type CHR intersection treatment as shown on MFY Concept Plan - drawing number 110156_08_SH01appearing in Annexure 4	1	0.85	20%	Before occupation of first dwelling east of the rail line and which takes access from Gawler Road.	0.85 (100%)		
6	Pedestrian / cycle crossing on Mallala Road	Uncontrolled crossing as shown on MFY Concept Plan - drawing no 11-0156_05_SK01 appearing in Annexure 4	1	0.09	20%	To be constructed at the same time as Item 1	0.03 (30%)		0.06 (70%)

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ANNEXURE 2

Site



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ANNEXURE 3

Form of Encumbrance

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Form M.2

MEMORANDUM OF ENCUMBRANCE

CERTIFICATE(S) OF TITLE BEING ENCUMBERED

The whole of the land comprised in Certificate of Title Volume [ ] Folio [ ].

ESTATE AND INTEREST	ENCUMBRANCES
In fee simple	[ ]

ENCUMBRANCER (Full Name and Address)

[***INSERT OWNER DETAILS***] of [*insert Owner address*].

ENCUMBRANCEE (Full Name, Address and Mode of Holding)

MINISTER FOR TRANSPORT AND INFRASTRUCTURE a body corporate pursuant to the *Administrative Arrangements Act 1994* (SA) of 178 North Terrace, Adelaide, South Australia 5000 for and on behalf of the Crown in right of the State of South Australia.

OPERATIVE CLAUSE

THE ENCUMBRANCER ENCUMBERS THE ESTATE AND INTEREST IN THE LAND ABOVE DESCRIBED FOR THE BENEFIT OF THE ENCUMBRANCEE SUBJECT TO THE ENCUMBRANCES AND OTHER INTERESTS AS SHOWN HEREON WITH THE SUM OF MONEY

(a) Insert the amount of the sum of money

(a) $1.10 (GST INCLUSIVE)

(b) State the term of the annuity or rent charge. If for life use the words "during his or her lifetime"

(b) TO BE PAID TO THE ENCUMBRANCEE

A single lump sum if demanded during a term of 100 years from the date of this Encumbrance

(c) State the times appointed for payment of the annuity or rent charge. Any special covenants may be inserted on page 2.

(c) AT THE TIMES AND IN THE MANNER FOLLOWING

A single lump sum when requested by the Encumbrancee

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IT IS COVENANTED BETWEEN THE ENCUMBRANCER AND ENCUMBRANCEE as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following definitions apply in this Encumbrance:

"**Deed of Agreement**" means the road infrastructure design and delivery deed entered into between, inter alia, the Developer and the Encumbrancee for the construction of the Road Infrastructure Works by the Developer dated [*INSERT*];

"**Developer**" means Hickinbotham Developments (Two Wells No. 1) Pty Ltd ACN 132 319 352, Hickinbotham Agricultural Projects Pty Ltd ACN 064 928 945 and Hickinbotham Developments (Two Wells No. 4) Pty Ltd ACN 144 951 306, each of 25 North Terrace, Hackney SA 5069, or their successors and permitted assigns pursuant to the Deed of Agreement;

"**development**" has the same meaning as in the *Development Act 1993* (SA);

"**Development Plan**" is the Development Plan of the District Council of Mallala in the form consolidated to include the DPA (if approved) and to avoid doubt a reference to any particular provision (Objective, Principle of Development Control, Map or Plan) of that Development Plan shall include reference to a provision to the same effect in a later consolidation even if the provision bears a different name, number or identifier;

"**Dispose**" means assign, transfer, otherwise dispose of or grant or permit or suffer the grant of any legal or equitable interest other than a grant of an interest that is registered subsequent to the Encumbrance (either in whole or in part) whether by sale, lease, declaration or creation of a trust or otherwise;

"**DPA**" means a Development Plan Amendment that is approved and in operation under the *Development Act 1993* (SA) as a result of a process initiated with the Draft DPA (whether in substantially the same form as the Draft DPA or in an amended form), and for the avoidance of doubt includes any amendment made to the DPA by the Minister for Planning pursuant to section 27(5) of the *Development Act 1993* (SA);

"**DPA Area**" means the area [to be rezoned or rezoned as Residential (Neighbourhood) Zone, Residential Zone or Light Industry Zone for residential and some commercial purposes] under the *Development Act 1993* by the DPA;

"**Draft DPA**" means the Development Plan Amendment Titled "Two Wells Residential Development Plan Amendment" prepared by Council and released for public consultation under the Development Act on 29 March 2012;

"**Encumbrancee**" means the Minister for Transport and Infrastructure and includes his successors and permitted assigns;

"**Encumbrancer**" means the party described as such on page 1 of this Encumbrance and includes its successors in title, permitted assigns and the registered proprietor for the time being of the Land;

"**Land**" means the land described on page 1 of this Encumbrance;

"**Practical Completion**" has the meaning ascribed in the Deed of Agreement;

"**Road Infrastructure Works**" means the works described in the Traffic Intervention Schedule to be carried out by the Developer in accordance with the Deed of Agreement;

"**Road Infrastructure Works Component**" means a component of the Road Infrastructure Works;

"**Traffic Intervention Schedule**" means the document comprising Annexure 1 to the Deed of Agreement.

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1.2 **Interpretation**

In this Encumbrance, unless it is stated to the contrary:

1.2.1 the singular includes the plural and conversely;

1.2.2 a gender includes all genders;

1.2.3 if a word or phrase is defined, its other grammatical forms have a corresponding meaning;

1.2.4 a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;

1.2.5 a reference to a clause is a reference to a clause of this Encumbrance;

1.2.6 a reference to an agreement or document (including this Encumbrance) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Encumbrance or that other agreement or document;

1.2.7 a reference to *writing* includes any method of representing or reproducing words, figures, drawings, or symbols in a visible form but excludes any communication using electronic mail;

1.2.8 a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;

1.2.9 a reference to conduct includes, an omission, statement or undertaking, whether or not in writing;

1.2.10 a reference to an *agreement* includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing;

1.2.11 a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind;

1.2.12 a reference to *dollars* and $ is to Australian currency;

1.2.13 a reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;

1.2.14 the meaning of general words is not limited by specific examples introduced by *including, or for example,* or similar expressions;

1.2.15 references to *agree, approve* or *consent* are references to agreement, approval or consent (as the case may be) in writing; and

1.2.16 nothing in this Encumbrance is to be interpreted against a party solely on the ground that the party put forward this Encumbrance or any part of it.

1.3 **Headings**

Headings do not affect the interpretation of this Encumbrance.

1.4 **Schedules and Annexures**

Schedules and Annexures form part of this Encumbrance.

2. **CONDITION PRECEDENT**

This Encumbrance is subject to, and only comes into operation if the condition precedent set out in the Deed of Agreement is satisfied in full and the Deed of Agreement comes into operation. Nothing in this Encumbrance obliges or will be construed as obliging the Minister for Planning to approve the DPA (that being a condition precedent to the operation of the Deed of Agreement).

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3. **CONSTRUCTION OF ROAD INFRASTRUCTURE WORKS SECURED**

3.1 This Encumbrance creates a charge over the Land.

3.2 The Developer has agreed pursuant to the Deed of Agreement to undertake the construction of the Road Infrastructure Works Components at its cost (subject to "Contributions" from third parties within the meaning of and in accordance with the Deed of Agreement) in accordance with, and if and when required by, the terms and conditions of the Deed of Agreement.

3.3 The Encumbrancer must not commence or proceed with or permit any other person to commence or proceed with any application or request for a certificate under section 51 of the *Development Act 1993* (SA) in relation to any division of the Land unless at the time of such an application or development and at all times during the development of the Land, the Developer is complying with the obligations referred to in clause 3.2.

4. **SUCCESSORS BOUND BY ENCUMBRANCE**

4.1 Subject to clause 4.2, without detracting in any way from this Encumbrance being binding on the successors of the Encumbrancer, the Encumbrancer must not Dispose of the Land in whole or in part to any person unless the Encumbrancer has first procured the grant by that person of an encumbrance in the same form and to the same effect as this Encumbrance which binds that person and is for the benefit of the Encumbrancee and which is to be registered on the Certificate of Title of the Land immediately after the discharge of this Encumbrance.

4.2 Nothing in this Encumbrance prevents or will be construed as preventing the Encumbrancer from Disposing of any parts of the Land which have received land division approvals to which the Developer's obligations with respect to the Road Infrastructure Works Components under the Deed of Agreement do not apply (being those allotments created, or to be created, prior to a trigger point set out in the Deed of Agreement being reached), without the need to procure an Encumbrance from the person to whom the Disposal is made.

5. **CONSEQUENCES OF BREACH**

5.1 If the Encumbrancer breaches any covenant of this Encumbrance or if the Developer breaches any provisions of the Deed of Agreement and the Encumbrancee gives written notice to the Encumbrancer of any such breach pursuant to this clause 5 and the breach is not remedied within 14 days of service on the Encumbrancer by the Encumbrancee, then the Encumbrancee may, without limiting any rights and remedies available to it at law and without limiting any rights or remedies available under the Deed of Agreement, elect to seek (whether separately or cumulatively):

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

5.1.2 an injunction preventing any development in respect of the Land that may reasonably be expected to affect a Road Infrastructure Works Component or the need for road transport infrastructure in or adjacent to the DPA Area from proceeding; or

5.1.3 in the case of a breach by the Encumbrancer of any covenant of this Encumbrance damages for any such breach;

at the Encumbrancer's cost.

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6. **RELEASE ON TRANSFER**

The Encumbrancer and its successors in title shall be successively released and discharged from the payment of the rent charge and from the observance of the covenants and other stipulations contained and implied in this Encumbrance upon ceasing to be registered as the proprietor of a portion of the Land to the intent that the rent charge and covenants and other stipulations will be binding only upon the registered proprietor for the time being of such portion of the Land.

7. **NOTICE**

7.1 **Form and execution**

Any notice, request or demand by the Encumbrancee under this Encumbrance must be:

7.1.1 in writing; and

7.1.2 signed by the Encumbrancee or by any employee or officer or contractor of the Encumbrancee or by the Solicitors for the Encumbrancee.

7.2 **Service**

Any notice, request or demand may be served upon the Encumbrancer either:

7.2.1 personally; or

7.2.2 by being sent by prepaid post under cover addressed to the Encumbrancer at the last known place of business or abode in South Australia of the Encumbrancer.

7.3 **When effective**

Any notice, request or demand takes effect and is in force from the second business day after the day on which it is served or posted whether or not the notice, request or demand comes to the hands or knowledge of the Encumbrancer.

7.4 **Other ways**

The provisions of this clause 7 are in addition to any other ways in which the Encumbrancee may be entitled, as a matter of law, to give the Encumbrancer any notice, request or demand in relation to this Encumbrance.

8. **ACKNOWLEDGMENTS**

8.1 **Deed of Agreement**

The Encumbrancer acknowledges for itself and its successors in title that the covenants in this Encumbrance are entered into and undertaken for the purposes of putting into effect the Deed of Agreement.

8.2 **Benefit of Covenants of Encumbrance**

The Encumbrancer acknowledges for itself and its successors in title that:

8.2.1 this Encumbrance is imposed as part of a scheme for the regulation of development of land within the DPA Area; and

8.2.2 the covenants of this Encumbrance are for the benefit of both the Encumbrancee and for the benefit of every other allotment within the DPA Area.

9. **DISCHARGE OF ENCUMBRANCE**

9.1 Upon:

9.1.1 Practical Completion of the Road Infrastructure Works Components identified as items (reference numbers) 1, 2, 4, 5 and 6 in the Traffic Intervention Schedule in accordance with the Deed of Agreement; or

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9.1.2 termination of the Deed of Agreement; and

9.1.3 a request from the Encumbrancer to discharge this Encumbrance in respect of the Land;

the Encumbrancee will execute and register a discharge of this Encumbrance in respect of the Land.

9.2 Upon request from the Encumbrancer in respect of any parts of the Land to which the Developer's obligations with respect to the Road Infrastructure Works Components under the Deed of Agreement do not apply (being the land in the form of allotments that have been created by deposit of a plan of division prior to a relevant trigger point set out in the Traffic Intervention Schedule occurring), the Encumbrancee will execute and register a discharge of this Encumbrance in respect of those parts of the Land.

10. REMEDIES

The Encumbrancee is entitled to all the powers rights and remedies given to encumbrancees by the *Real Property Act 1886* (SA).

11. SEVERANCE OF INVALID CLAUSES

11.1 If any clause of this Encumbrance is void or unenforceable then it must be read down so that it is not void or unenforceable.

11.2 If it cannot be read down, it must be severed (that is, treated as if cut out).

11.3 The rest of this Encumbrance is not affected if any clauses are read down or severed.

12. PAYMENT OF COSTS

The Encumbrancer and Encumbrancee must pay their own costs of and incidental to the preparation of this Encumbrance. Any stamp duty and registration fee on this Encumbrance must be paid by the Encumbrancer.

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DATED .....

EXECUTION

THE COMMON SEAL)
of [insert Encumbrancer details])
was affixed to this)
Encumbrance in the)
presence of:)

.....
[insert details]

.....
[insert details]

[or]

SIGNED by the ENCUMBRANCER – [INSERT NAME]

.....
in the presence of:

.....
Signature of WITNESS – Signed in my presence by the TRANSFEROR who is either personally known to me or has satisfied me as to his or her identity.

.....
Print full name of Witness (BLOCK LETTERS)

Address of Witness.....

.....

Business Hours Telephone Number.....

THE COMMON SEAL of)
MINISTER FOR TRANSPORT)
AND INFRASTRUCTURE)
was affixed to this Deed)
by authority of the Minister)
in the presence of:)

.....
Witness

*NB: A penalty of up to $2000 or 6 months imprisonment applies for improper witnessing.

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LANDS TITLES REGISTRATION OFFICE
SOUTH AUSTRALIA

MEMORANDUM OF ENCUMBRANCE

FORM APPROVED BY THE REGISTRAR-GENERAL

BELOW THIS LINE FOR OFFICE & STAMP DUTY PURPOSES ONLY

Prefix
E
Series No.

BELOW THIS LINE FOR AGENT USE ONLY

CERTIFIED CORRECT FOR THE PURPOSES OF THE REAL PROPERTY ACT 1886

_____
Solicitor/Registered Conveyancer/Encumbrancee

AGENT CODE

Lodged by:

Correction to:

TITLES, CROWN LEASES, DECLARATIONS ETC. LODGED WITH INSTRUMENT (TO BE FILLED IN BY PERSON LODGING)

1. .....
2. .....
3. .....
4. .....

PLEASE ISSUE NEW CERTIFICATE(S) OF TITLE AS FOLLOWS

1. .....
2. .....
3. .....
4 .....

DELIVERY INSTRUCTIONS (Agent to complete)
PLEASE DELIVER THE FOLLOWING ITEM(S) TO THE UNDERMENTIONED AGENT(S)

ITEM(S)	AGENT CODE

CORRECTION	PASSED
REGISTERED	
REGISTRAR-GENERAL	

R-G 250505 **CSO 128594 / 4963334**

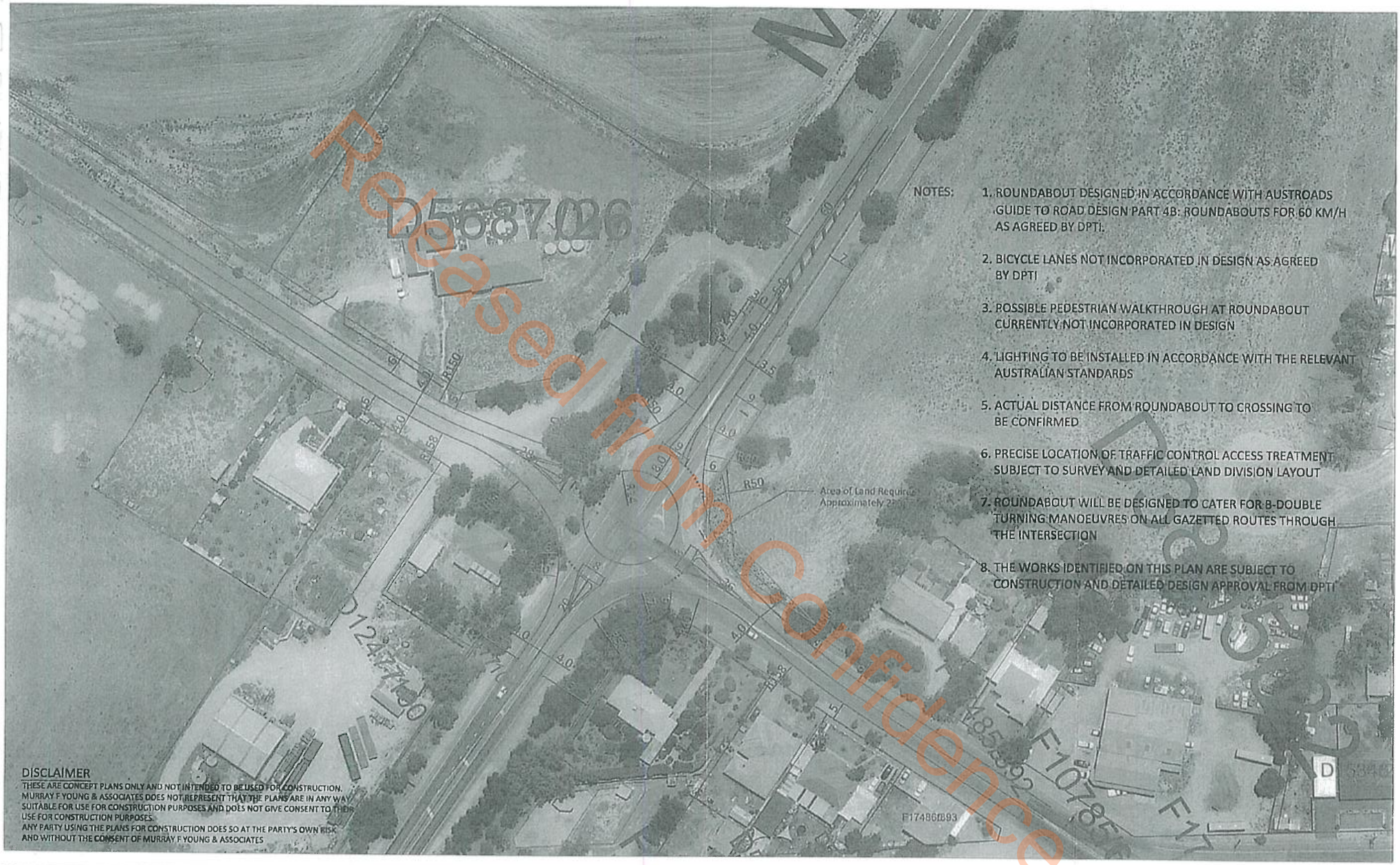
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ANNEXURE 4

MFY Concept Plans

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Two Wells Township Expansion DPA
Mallala Road - Old Port Wakefield Road
Concept Roundabout & Shared Crossing

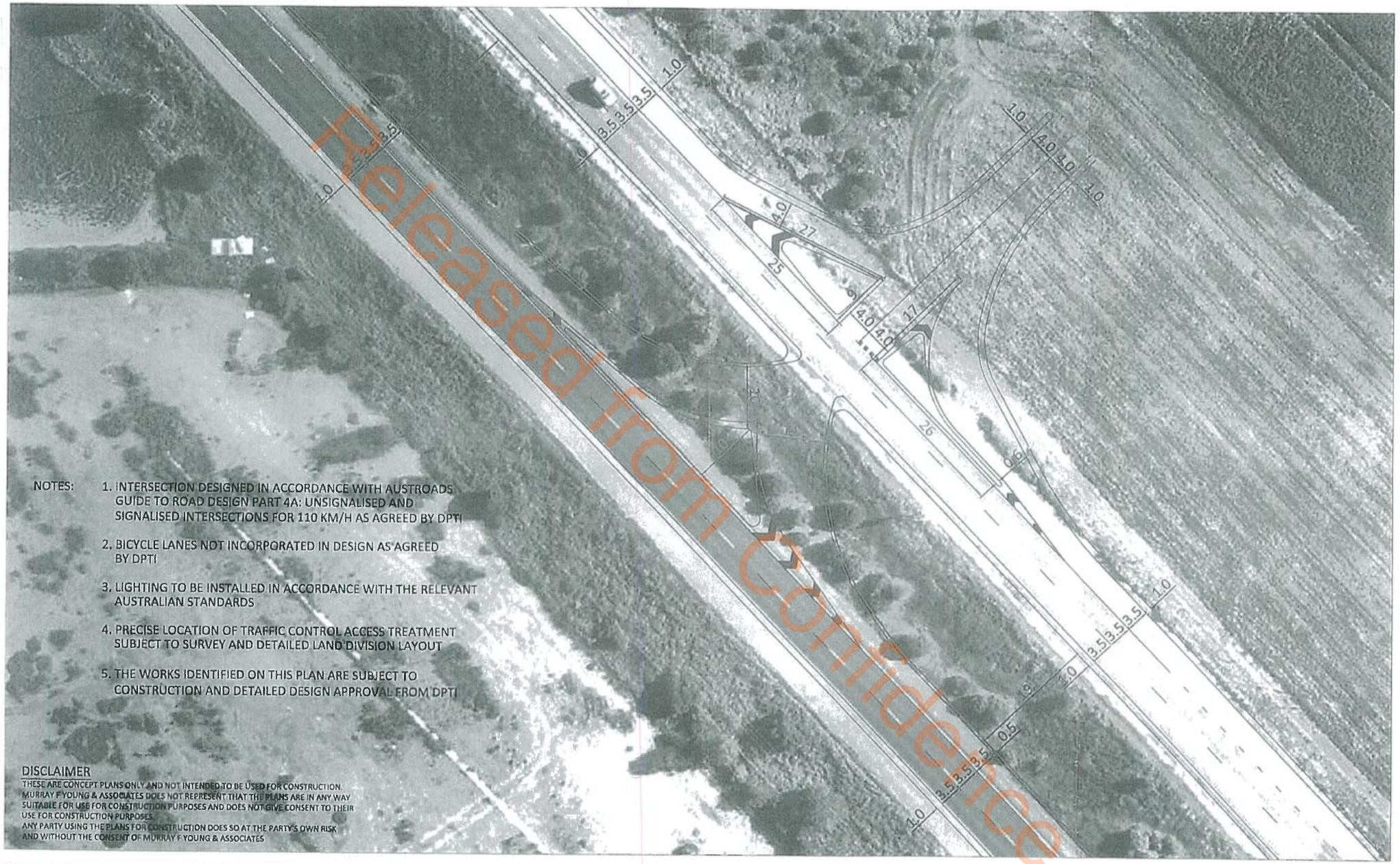
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Project Name:	Two Wells Township DPA	**Drawn:**	JC	**Scale:**	1:1000
Client:	Hickinbotham	**Date:**	08.02.2013	**Paper Size:**	A3

mfy
Traffic • Parking • Transport

Unit 6, 224 Glen Osmond Road
FULLARTON SA 5063
T: +61 8 8338 8888
E: mfya@mfy.com.au

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Two Wells Township Expansion DPA
Port Wakefield Road / New Road
Concept Intersection - Item 1.2 (Sheet1)

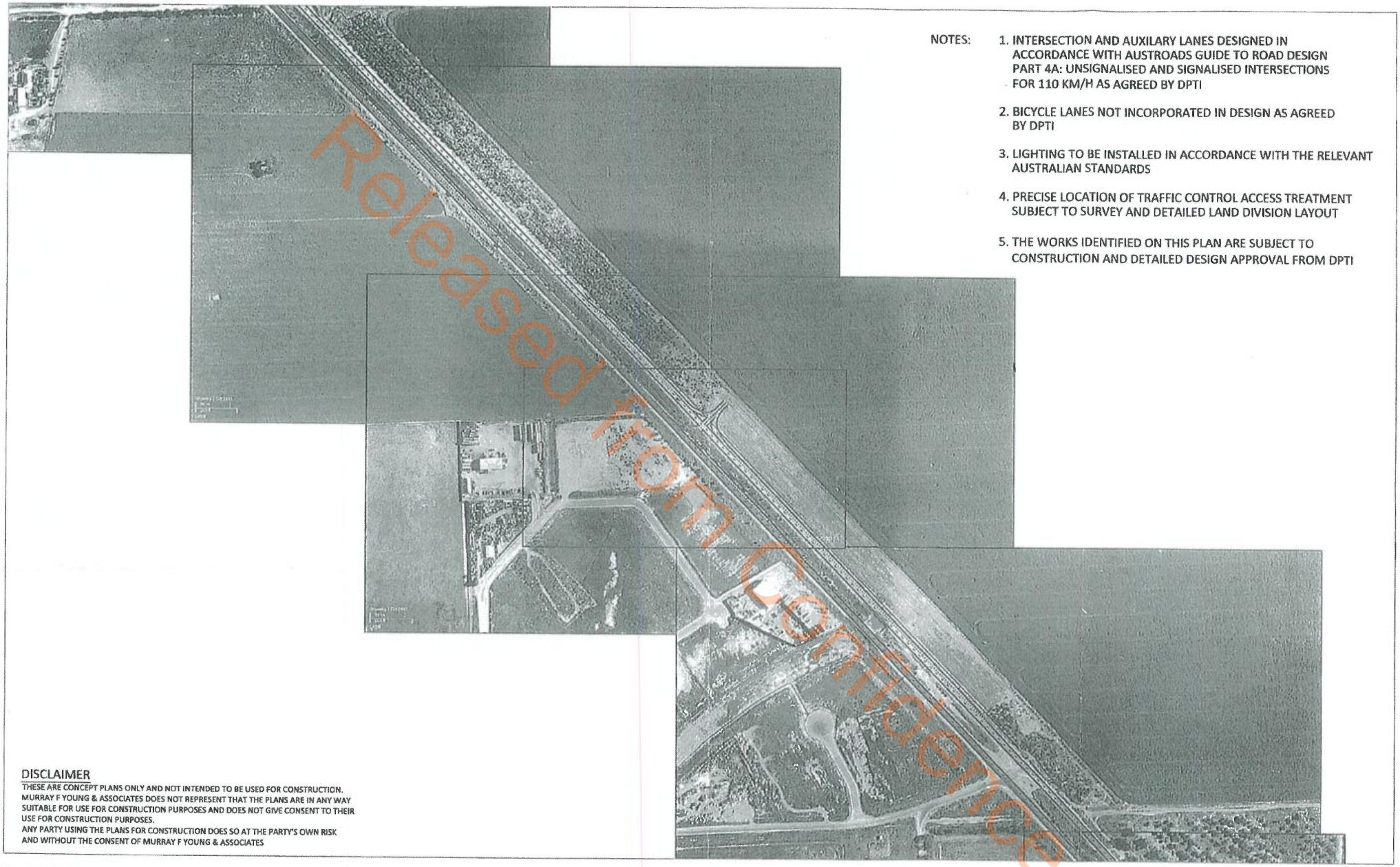
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Project Name:	Two Wells Township DPA	Drawn:	JC	Scale:	1:500
Client:	Hickinbotham	Date:	08.02.2013	Paper Size:	A3

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Unit 6, 224 Glen Osmond Road
FULLARTON SA 5063
T: +61 8 8338 8888
E: mfya@mfy.com.au

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NOTES:

1. INTERSECTION AND AUXILARY LANES DESIGNED IN ACCORDANCE WITH AUSTROADS GUIDE TO ROAD DESIGN PART 4A: UNSIGNALISED AND SIGNALISED INTERSECTIONS FOR 110 KM/H AS AGREED BY DPTI
2. BICYCLE LANES NOT INCORPORATED IN DESIGN AS AGREED BY DPTI
3. LIGHTING TO BE INSTALLED IN ACCORDANCE WITH THE RELEVANT AUSTRALIAN STANDARDS
4. PRECISE LOCATION OF TRAFFIC CONTROL ACCESS TREATMENT SUBJECT TO SURVEY AND DETAILED LAND DIVISION LAYOUT
5. THE WORKS IDENTIFIED ON THIS PLAN ARE SUBJECT TO CONSTRUCTION AND DETAILED DESIGN APPROVAL FROM DPTI

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DISCLAIMER

THESE ARE CONCEPT PLANS ONLY AND NOT INTENDED TO BE USED FOR CONSTRUCTION. MURRAY F YOUNG & ASSOCIATES DOES NOT REPRESENT THAT THE PLANS ARE IN ANY WAY SUITABLE FOR USE FOR CONSTRUCTION PURPOSES AND DOES NOT GIVE CONSENT TO THEIR USE FOR CONSTRUCTION PURPOSES.
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Two Wells Township Expansion DPA
Port Wakefield Road / New Road
Concept Intersection - Item 1.2(Sheet2)

Drawing:	11-0156_11_SH02	**Project Number:**	11-0156	**Revision:**	B
Project Name:	Two Wells Township DPA	**Drawn:**	JC	**Scale:**	1:5000
Client:	Hickinbotham	**Date:**	08.02.2013	**Paper Size:**	A3

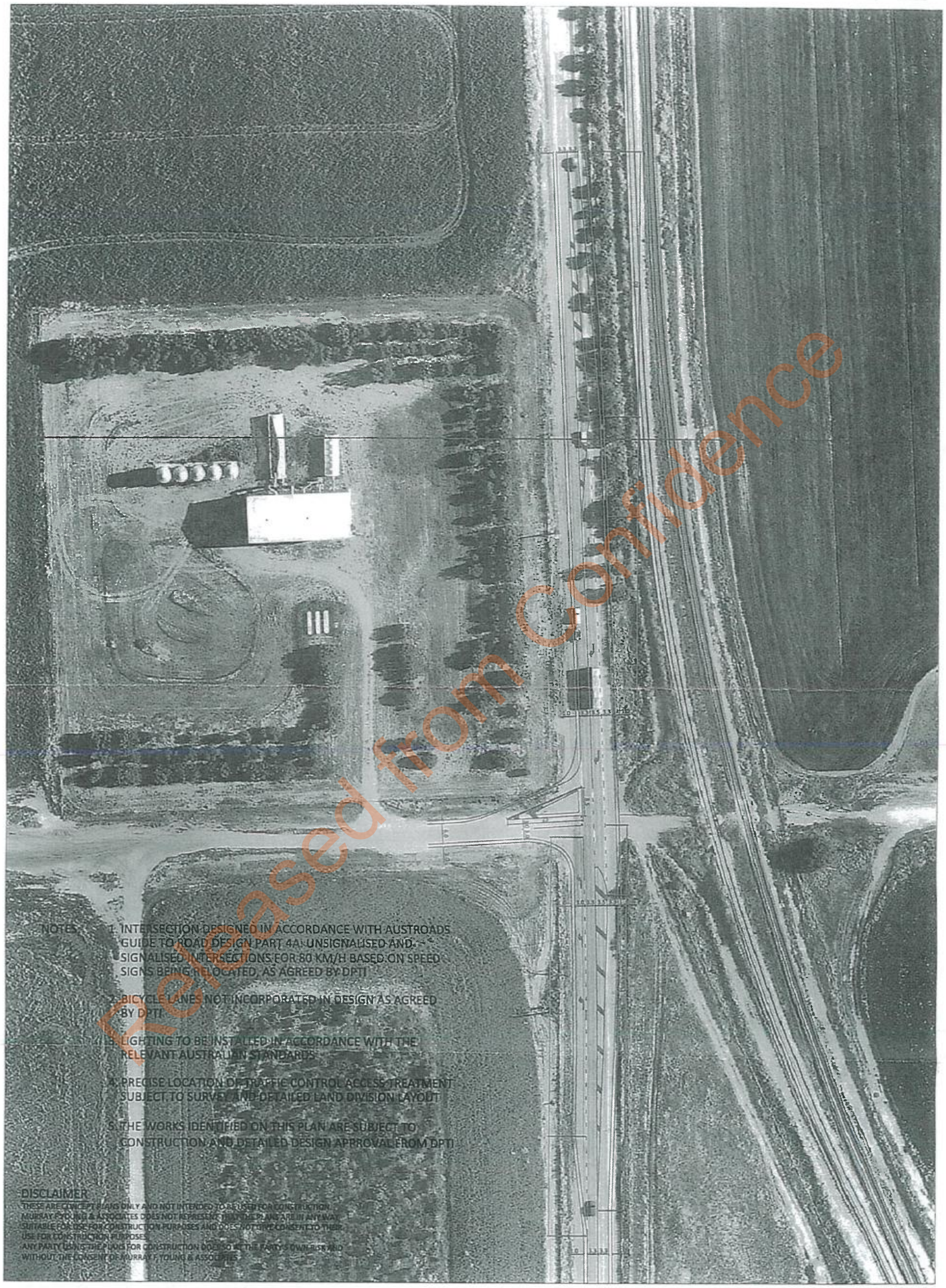
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Friday, 8 February 2013 2:02:03 PM

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INDEX

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NOTES:

1. INTERSECTION DESIGNED IN ACCORDANCE WITH AUSTROADS GUIDE TO ROAD DESIGN PART 4A: UNSIGNALISED AND SIGNALISED INTERSECTIONS FOR 80 KM/H BASED ON SPEED SIGNS BEING RELOCATED, AS AGREED BY DPTI
2. BICYCLE LANES NOT INCORPORATED IN DESIGN AS AGREED BY DPTI
3. LIGHTING TO BE INSTALLED IN ACCORDANCE WITH THE RELEVANT AUSTRALIAN STANDARDS
4. PRECISE LOCATION OF TRAFFIC CONTROL ACCESS TREATMENT SUBJECT TO SURVEY AND DETAILED LAND DIVISION LAYOUT
5. THE WORKS IDENTIFIED ON THIS PLAN ARE SUBJECT TO CONSTRUCTION AND DETAILED DESIGN APPROVAL FROM DPTI

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Mallala Road/Sharpe Road
Possible CHR Treatment - Item 1.3

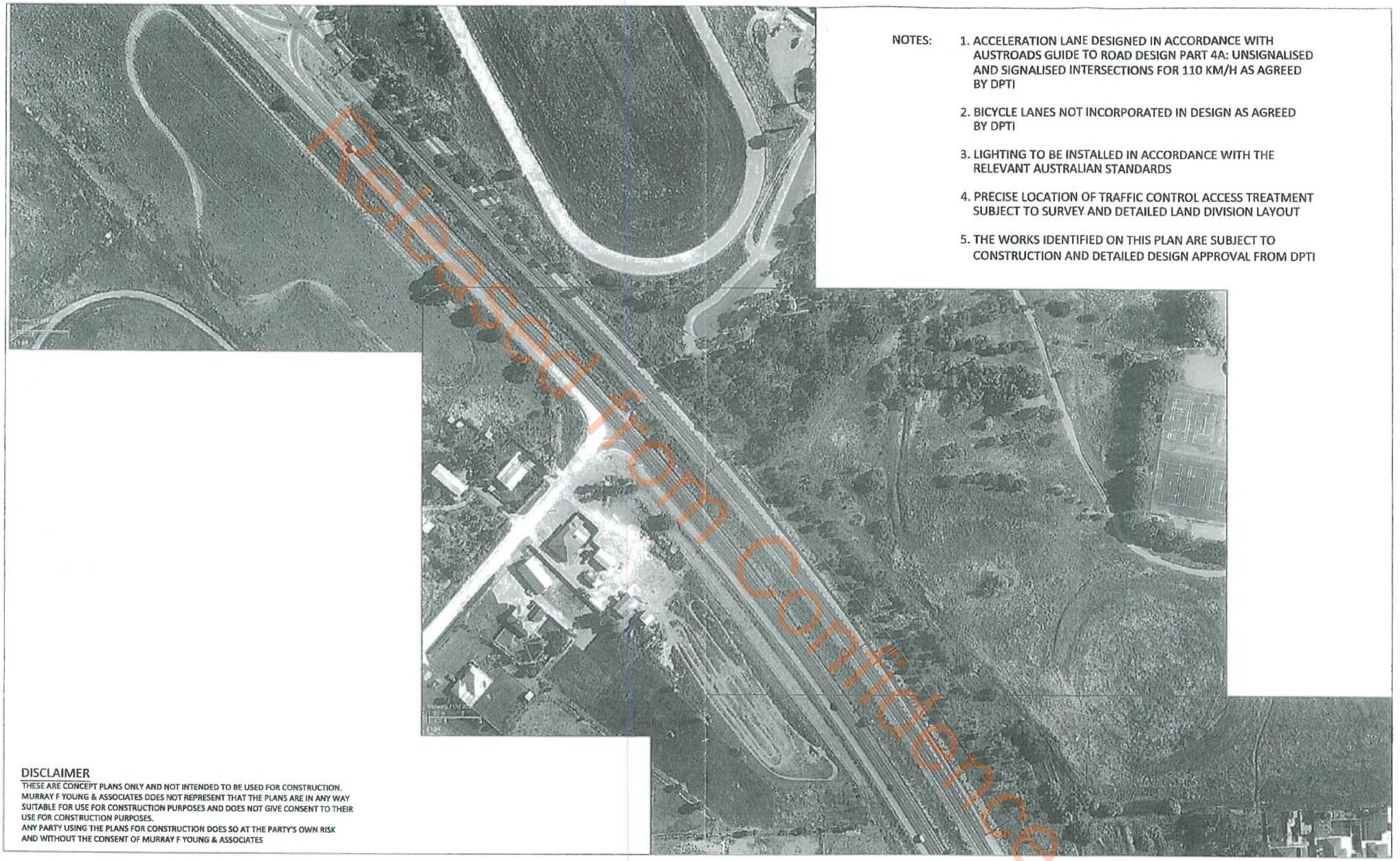
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Project Name:	Two Wells Township Expansion	Drawn:	JC	Scale:	1:1000
Client:	Hickinbotham	Date:	08.02.2013	Paper Size:	A3

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NOTES:

1. ACCELERATION LANE DESIGNED IN ACCORDANCE WITH AUSTROADS GUIDE TO ROAD DESIGN PART 4A: UNSIGNALISED AND SIGNALISED INTERSECTIONS FOR 110 KM/H AS AGREED BY DPTI
2. BICYCLE LANES NOT INCORPORATED IN DESIGN AS AGREED BY DPTI
3. LIGHTING TO BE INSTALLED IN ACCORDANCE WITH THE RELEVANT AUSTRALIAN STANDARDS
4. PRECISE LOCATION OF TRAFFIC CONTROL ACCESS TREATMENT SUBJECT TO SURVEY AND DETAILED LAND DIVISION LAYOUT
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Two Wells Township Expansion DPA
Port Wakefield Road - Acceleration Lane Concept Lane Extension - Item 1.4

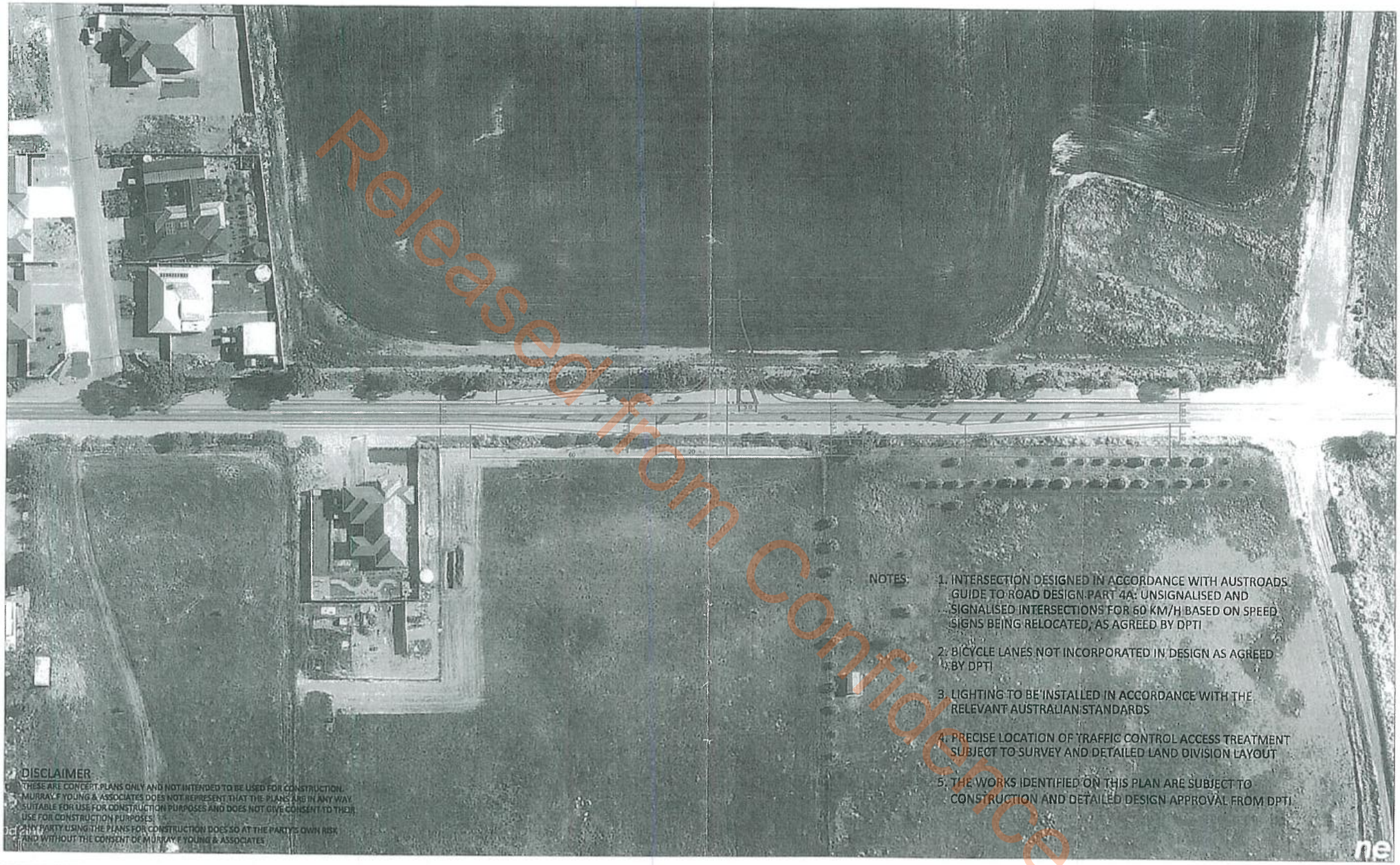
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Project Name:	Two Wells Township DPA	**Drawn:**	JC	**Scale:**	1:2000
Client:	Hickinbotham	**Date:**	08.02.2013	**Paper Size:**	A3

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Friday, 8 February 2013 11:06:07 AM

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NOTES:

1. INTERSECTION DESIGNED IN ACCORDANCE WITH AUSTROADS GUIDE TO ROAD DESIGN PART 4A: UNSIGNALISED AND SIGNALISED INTERSECTIONS FOR 60 KM/H BASED ON SPEED SIGNS BEING RELOCATED, AS AGREED BY DPTI
2. BICYCLE LANES NOT INCORPORATED IN DESIGN AS AGREED BY DPTI
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Two Wells Township Expansion DPA
New Access - Gawler Road
Possible CHR(S) Treatment - Item 1.5

Drawing:	110156_08_SH01	**Project Number:**	11-0156	**Revision:**	A
Project Name:	Two Wells Township Expansion	**Drawn:**	JC	**Scale:**	1:1000
Client:	Hickinbotham	**Date:**	08.02.2013	**Paper Size:**	A3

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DRAFT SECOND DEED OF VARIATION

Between

MINISTER FOR INFRASTRUCTURE AND TRANSPORT

(**Minister**)

-And-

COMMISSIONER OF HIGHWAYS

(**Commissioner**)

-And-

ADELAIDE PLAINS COUNCIL
ABN 58 384 968 672

(**Council**)

-And-

HICKINBOTHAM DEVELOPMENTS (TWO WELLS NO.1) PTY LTD
ACN 132 319 352

HICKINBOTHAM AGRICULTURAL PROJECTS PTY LTD
ACN 064 928 945

HICKINBOTHAM DEVELOPMENTS (TWO WELLS NO.4) PTY LTD
ACN 144 951 306

(**Developer**)

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TABLE OF CONTENTS

1. DEFINITIONS 1
2. INTERPRETATION 2
3. VARIATION OF THE EXISTING DEED 2
4. DISCRETION 5
5. DISPUTE RESOLUTION 5
6. PUBLIC DISCLOSURE 5

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THIS DEED is made on day of 2022

Between:

MINISTER FOR INFRASTRUCTURE AND TRANSPORT a body corporate pursuant to the *Administrative Arrangements Act 1994* of Level 5, 50 Flinders Street, Adelaide, SA 5000 (**Minister**)

And

COMMISSIONER OF HIGHWAYS a body corporate pursuant to the *Highways Act 1926* of Level 5, 50 Flinders Street, Adelaide SA 5000 (Commissioner)

And

ADELAIDE PLAINS COUNCIL (ABN 58 384 968 672) a body corporate pursuant to the *Local Government Act 1999* of 2a Wasleys Road, Mallala SA 5502 (**Council**)

And

HICKINBOTHAM DEVELOPMENTS (TWO WELLS NO.1) PTY LTD (ACN 132 319 352); **HICKINBOTHAM AGRICULTURAL PROJECTS PTY LTD** (ACN 064 928 945) and **HICKINBOTHAM DEVELOPMENTS (TWO WELLS NO.4) PTY LTD (**ACN 144 951 306) all of 25 North Terrace, Hackney SA 5069 (**Developer**)

BACKGROUND:

A. The Minister, the Commissioner, the Council and the Developer are parties to the Road Infrastructure Design and Delivery Deed dated 18 July 2013 and a Deed of Variation last executed on 17 December 2020 (**First Deed of Variation**) both of which are attached as Annexure 1 and Annexure 2 respectively (together '**Existing Deed**').

B. The parties have agreed to vary the terms of the Existing Deed in accordance with this Second Deed of Variation as and from the Second Variation Commencement Date.

It is agreed:

1. **DEFINITIONS**

The parties agree that the following definitions will apply in the Existing Deed and this Second Deed of Variation:

1.1 **Land Acquisition** means any land acquisition required to be undertaken by the Commissioner (whether under the *Land Acquisition Act 1969* or otherwise) or the Minister to enable the Roundabout as shown in the Detailed Designs to be constructed;

1.2 **Roundabout** means the roundabout defined in clause 1 of the First Deed of Variation;

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1.3 **Second Variation Commencement Date** means the date of execution of this Second Deed of Variation.

2. INTERPRETATION

2.1 All words and expressions defined in this Second Deed of Variation will have the same meaning as in the Existing Deed.

2.2 The parties acknowledge and agree that the matters referred to in the Background of this Second Deed of Variation are true and correct in every material particular and that the Background will form part of this Deed of Variation.

2.3 To the extent of any inconsistency between this Second Deed of Variation and the Existing Deed, this Second Deed of Variation will prevail.

3. VARIATION OF THE EXISTING DEED

3.1 Clause 1.6 of the First Deed of Variation is deleted and replaced with:

*1.6 **Variation Commencement Date** means the date of execution of the Second Deed of Variation to the Existing Deed (being in or around February 2022).*

3.2 The following additional definitions will apply to the Existing Deed and this Second Deed of Variation:

***Additional Roundabout Funding** means additional costs (if any) reasonably incurred by the Developer in construction of the Roundabout as a result of such construction occurring in two stages (being the Stage 1 Roundabout Works and the Stage 2 Roundabout Works, respectively) rather than in a single stage.*

***Original Roundabout Design** means the roundabout specified in Item 1, column 3 (Treatment) in Annexure 1 (Traffic Intervention Schedule) under the original form of the Road Infrastructure Design and Delivery Deed dated 18 July 2013 prior to any amendments to that deed taking effect. For the avoidance of doubt, the Treatment in the Original Roundabout Design is described as installation of a single lane roundabout as shown on MFY Concept Plan – drawing number 11–0156_05_SH01.*

***Original Roundabout Schedule** means the details in Item 1 in Annexure 1 (Traffic Intervention Schedule) under the original form of the Road Infrastructure Design and Delivery Deed dated 18 July 2013 prior to any amendments to that deed taking effect.*

***Stage 1 Roundabout Works** means such works relating to the preparation for, and construction of, the Roundabout as can reasonably be undertaken and progressed without:*

(a) requiring closure of Mallala Road; or

(b) requiring access to the land that is to be acquired pursuant to the Land Acquisition.

***Stage 2 Roundabout Works** means such works as are required to complete construction of the Roundabout following the Stage 1 Roundabout Works (being those works that either require closure of Mallala Road or require access to the*

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land that is to be acquired pursuant to the Land Acquisition, or which are dependent upon either of those things occurring first).

3.3 Clause 2.1.10A of the Existing Deed (as inserted by the First Deed of Variation) is varied by deleting the words *"July 2020"* and replacing them with the words *"December 2020"*.

3.4 Clause 4.4.3.2 of the Existing Deed (as inserted by the First Deed of Variation) is varied by deleting the words in parentheses and replacing them with: *"(that is 50% of the total cost less the Minister's Roundabout Contribution, the Land Acquisition Costs, design costs and the Additional Roundabout Funding)"*.

3.5 Clause 4.4.4.2 of the Existing Deed (as inserted by the First Deed of Variation) is varied by deleting the words in parentheses and replacing them with: *"(that is 50% of the total cost less the Minister's Roundabout Contribution, the Land Acquisition Costs, design costs and the Additional Roundabout Funding)"*.

3.6 Paragraph 1 (including sub-paragraphs a and b) in Item 1, column 7 (Timing) in Annexure 1 (Traffic Intervention Schedule) in the Existing Deed is deleted and replaced with:

"The Roundabout must be operational the earlier to occur of:

a. as soon as reasonably practicable after, and in any event within [12 months] after, the Commissioner notifies the parties that he has completed the Land Acquisition; or

b. as soon as reasonably practicable after, and in any event within [12 months] after, [12 months] after 30 June 2026."

3.7 Clause 3 of the First Deed of Variation is deleted and replaced with:

3. ***STAGING OF CONSTRUCTION OF THE ROUNDABOUT***

Notwithstanding any other provision of the Existing Deed:

3.1 *Construction of the Stage 1 Roundabout Works will commence as soon as practicable following the Variation Commencement Date.*

3.2 *Construction of the Stage 2 Roundabout Works will commence as soon as practicable after the Commissioner notifies the other parties to this agreement in writing that the Commissioner has acquired the land necessary to undertake those works. The Commissioner must give such notification as soon as possible after acquiring such land.*

3.3 *If the Commissioner has not notified the other parties to this agreement that the Commissioner has acquired the land necessary to undertake the Stage 2 Roundabout Works on or before 30 June 2026 (**Sunset Date**), then the variations contemplated in clauses 4 of the First Deed of Variation (including any amendments to that clause made by the Second Deed of Variation) and clause 3.9 of the Second Deed of Variation will be automatically void as and from the Sunset Date and in that event:*

3.3.1 the Developer may proceed to complete construction of the Roundabout in accordance with the Original

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Roundabout Design and the Original Roundabout Schedule will apply;

*3.3.2 the parties acknowledge that some of the Stage 1 Roundabout Works may be redundant or may require re-working to suit the Original Roundabout Design, which may increase the cost of constructing the Original Roundabout Design beyond what it would have cost had the design change under the First Deed of Variation or the staging under the Second Deed of Variation not occurred (**Reworking Costs**);*

3.3.3 the Minister agrees to contribute funding equal to the Reworking Costs incurred by the Developer, which funding will be payable to the Developer upon Practical Completion of the Roundabout (in accordance with the Original Roundabout Design); and

3.3.4 the Existing Deed (as otherwise varied by the First Deed of Variation and the Second Deed of Variation) continues in full force and effect.

3.7 Clause 5.1 of the First Deed of Variation is amended by deleting the words in the parentheses and replacing them with: *"(with the exception of the Minister's Roundabout Contribution, Additional Roundabout Funding, Land Acquisition Costs and the costs of completing the Detailed Design)"*.

3.8 Clause 8 of the First Deed of Variation is deleted and replaced with:

*"8. **RELEASE***

Subject to the Minister and the Commissioner complying with their obligations under the Existing Deed (as amended), the Developer and the Council release the Minister and the Commissioner from all claims arising from or in relation to the funding, procurement, design and delivery of the Roundabout."

3.9 The words in Item 1, column 8, 9 and 10 (Contributions Schedule) in Annexure 1 (Traffic Intervention Schedule) of the Existing Deed are deleted in their entirety and replaced with:

Contributions Schedule		
Developer	***Minister ****	***Council***
50% of the balance of the cost of construction of the Roundabout (that is 50% of the total cost of the Roundabout less the Minister's Roundabout Contribution, the Land Acquisition Costs, design costs and the Additional Roundabout Funding)	*$0.731m Minister's Roundabout Contribution*	*50% of the balance of the cost of construction of the Roundabout (that is 50% of the total cost of the Roundabout less the Minister's Roundabout Contribution, the Land Acquisition Costs, design costs and the Additional Roundabout Funding)*

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**The Minister will, in addition to the Minister's Roundabout Contribution, fund any design work, any additional works that are required as a consequence of any interim staging of the Roundabout and the Additional Roundabout Funding.*

4. DISCRETION

4.1 The Commissioner's discretion and/or statutory powers regarding funding, procurement, design and delivery of the Roundabout (including land acquisition required for the Roundabout) is not limited by this Second Deed of Variation or the Existing Deed. The Commissioner cannot and will not act on behalf of or as agent of the Developer or the Council in progressing land acquisition or any other matter contemplated under this Second Deed of Variation or the Existing Deed.

4.2 The Minister's discretion and/or statutory powers regarding funding, procurement, design and delivery of the Roundabout (including Land Acquisition) is not limited by this Second Deed of Variation or the Existing Deed. The Minister cannot and will not act on behalf of or as agent of the Developer or the Council in progressing the Land Acquisition or any other matter contemplated under this Second Deed of Variation.

5. DISPUTE RESOLUTION

Unless otherwise provided in this Second Deed of Variation, all disputes or differences between the parties in connection with:

5.1 this Second Deed of Variation; or

5.2 any other matter in any way relating to this Second Deed of Variation,

that are reasonably suitable for expert determination, will be dealt with in accordance with clause 15 of the Existing Deed.

6. PUBLIC DISCLOSURE

Clause 21 of the Existing Deed applies to this Second Deed of Variation.

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EXECUTED as a **DEED**

By the Minister

SIGNED for and on behalf of **THE MINISTER FOR INFRASTRUCTURE AND TRANSPORT**	)	
on:……	)	
by its duly constituted Attorney under Power of Attorney No.	)	……
in the presence of:	)	

……
Witness (Witness to sign above)

[Witness to Print Name]

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By the Commissioner

THE COMMON SEAL of the **COMMISSIONER OF HIGHWAYS** was hereto affixed	)))))))	
on:……	)	……
in the presence of:	)	

……
Witness (Witness to sign above)

[Witness to Print Name]

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By the Council

THE COMMON SEAL of the)
ADELAIDE PLAINS COUNCIL)
(ABN 58 384 968 672))
was hereto affixed)
)
)
)
on …….)
(Insert date above))
as attested by the Principal Member and)
Chief Executive Officer) (affix seal above)

Signature: …….....

Name: ……

Principal Member

Signature: ……

Name: ……..

Chief Executive Officer

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By the Developer

SIGNED by

HICKINBOTHAM DEVELOPMENTS (TWO WELLS NO.1) PTY LTD
(ACN 132 319 352) pursuant to section 127 of the
Corporations Act 2001 (Cth) by its sole Director
and Company Secretary.

Signed: .....

Name: ....

Position: .....

HICKINBOTHAM AGRICULTURAL PROJECTS PTY LTD
(ACN 064 928 945) pursuant to section 127 of the
Corporations Act 2001 (Cth) by its sole Director
and Company Secretary.

Signed: .....

Name: ....

Position: .....

HICKINBOTHAM DEVELOPMENTS (TWO WELLS NO.4) PTY LTD
(ACN 144 951 306) pursuant to section 127 of the
Corporations Act 2001 (Cth) by its sole Director
and Company Secretary.

Signed: .....

Name: ....

Position: .....

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Annexure 1

Road Infrastructure Design and Delivery Deed dated 18 July 2013

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Annexure 2

First Deed of Variation

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