



Our Ref: DECD18/00001

Freedom of Information
Information Release Unit
Customer Services and Business Support

31 Flinders Street
Adelaide SA 5000

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Adelaide SA 5001
DX 541

Tel 08 8226 3231
Email decd.foi@sa.gov.au
www.decd.sa.gov.au

Dear

RE Freedom of Information - Determination

I refer to your Freedom of Information (FOI) application received by the Department for Education and Child Development (DECD) on 1 January 2018, seeking:

'the sale of the former Taperoo Primary School site to the Port Adelaide Council'

This scope was clarified via email to you on 10 January 2018 to be

'In relation to the sale of the former Taperoo Primary School, any document that details a formalised agreement between the relevant parties regarding the responsibility to bear cost of site remediation.'

Searches have been conducted for information in relation to your request. One document was located that has been identified as matching the scope of your application.

I have considered the document, with reference to the *Freedom of Information Act 1991* (the Act), and have determined to release the document to you in full.

In accordance with the requirements of Premier and Cabinet Circular PC045, details of your FOI application, a copy of your notice of determination, and the documents to which you are given access, will be published in the agency's disclosure log. Prior to publication, your name and personal address will be removed from this notice to maintain your privacy.

A copy of PC045 can be found at <http://dpc.sa.gov.au/what-we-do/services-for-government/premier-and-cabinet-circulars>. If you disagree with publication, please advise the undersigned at decd.foi@sa.gov.au within 7 business days from the date of notice of determination.

Should you require further information or clarification on this matter, please contact me on telephone 8226 3231.

Yours sincerely

A handwritten signature in black ink, appearing to be 'CA', written over the printed name.

Chrissie Argitis
ACCREDITED FREEDOM OF INFORMATION OFFICER

Date: 9 February 2018



THE LAW SOCIETY
OF SOUTH AUSTRALIA

CONTRACT

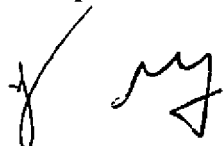
**FOR THE SALE AND
PURCHASE OF LAND**

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INTERPRETATION

1. (1) In this Agreement any reference to an item with an accompanying number is a reference to the particulars set opposite the item number referred to in the schedule to this Agreement. If no item with the number referred to is contained in the schedule or no particulars appear in the schedule opposite the item number, this Agreement shall be read and construed as if the word 'nil' or the words 'not applicable', as the context shall admit or require, are contained in the schedule opposite the item number.
- (2) The terms set opposite item numbers in the schedule shall not govern or affect the particulars set opposite those terms in the schedule and, except where otherwise provided in this Agreement, any short description of the subject matter of any item appearing in the schedule shall not affect the construction of this Agreement.
- (3) Headings to clauses are for convenience only and shall not affect the construction of this Agreement.
- (4) In this Agreement, unless the context otherwise requires:-
 - (a) reference to a party includes the party's executors, administrators and assigns and, where the party is a body corporate, its successors and assigns but does not authorise devolution or assignment where the same is subject to the other party's permission or any other condition contained in this Agreement or otherwise;
 - (b) reference to the singular includes the plural and vice-versa;
 - (c) reference to any gender includes the other gender and neuter;
 - (d) where two or more persons are designated as "the Vendor" the agreements on their part in this Agreement bind them and every two or greater number of them jointly and each of them severally;
 - (e) where two or more persons are designated as the "the Purchaser" the agreements on their part in this Agreement bind them and every two or greater number of them jointly and each of them severally;
 - (f) expressions importing persons include bodies corporate;
 - (g) reference to any statute includes all statutes amending, consolidating or replacing the statute referred to;
 - (h) any reference to the schedule to this Agreement includes any schedule of particulars referred to in any special condition annexed to, or forming part of, this Agreement;
 - (i) "Business Day" means a day other than a Saturday, Sunday or Public Holiday in South Australia within the meaning of the *Holidays Act 1910*;
 - (j) "Business Hours" means the hours between 9:00am and 5:00pm (South Australian time) on a Business Day;
 - (k) "Cooling-off Period" means the period from the date of this Agreement to the expiration of "the prescribed time" within the meaning of section 5 of the *Land and Business (Sale and Conveyancing) Act 1994*;
 - (l) "Default Rate" means 2% above the published BankSA Variable Business Loan Rate;
 - (m) "Goods and Services Tax" and "GST" mean a goods and services tax, a value-added tax or any similar or comparable tax imposed in Australia, and for the present purposes the expressions mean the goods and services tax imposed under the *A New Tax System (Goods and Services Tax) Act 1999* and any other Act or Regulation pursuant to, associated with, amending or replacing that Act (together the "GST Law");
 - (n) "Land" includes the included property referred to in Item 4 and the included chattels referred to in Item 5;
 - (o) "Purchase Price" means the Purchase Price in Item 11 including the deposit but not including any GST applicable; and

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(p) "Settlement Day" means the Settlement Day in Item 15.

SALE OF THE LAND

2. The Vendor agrees to sell and the Purchaser agrees to purchase from the Vendor the Land described in Item 3 upon and subject to the terms and conditions contained in this Agreement.

RIGHTS AND PROPERTY INCLUDED

3. The Land is sold together with:-
- (a) any easements, rights, privileges and other appurtenances referred to in the certificate or other muniment of title for the Land;
 - (b) all improvements and fixtures on the Land; and
 - (c) the included property referred to in Item 4, if any.

CHATTELS

4. (1) The Vendor also agrees to sell and the Purchaser agrees to purchase the included chattels referred to in Item 5, if any, for the amount payable for the included chattels set out in Item 11.
- (2) The Purchaser acknowledges that the excluded property referred to in Item 7, if any, is not included in the sale.

ENCUMBRANCES

5. The Land is sold subject to:-
- (a) any statutory easement pursuant to the *Electricity Trust of South Australia Act 1946*;
 - (b) any easements and rights to which the Land is subject referred to in the certificate or other muniment of title for the Land and any exceptions and reservations referred to therein;
 - (c) the exceptions and reservations referred to in Item 8, if any;
 - (d) the mortgages, encumbrances, liens, charges and interests referred to in item 9, if any; and
 - (e) the tenancies or other interests referred to in Item 10, if any.

PURCHASE PRICE

6. Subject to clause 32, the Purchaser shall pay the Purchase Price to the Vendor for the Land.

PAYMENT OF PURCHASE PRICE

7. (1) The Purchaser shall pay the Purchase Price, together with any GST applicable, in the following manner:-
- (a) the deposit set out in Item 12 in the manner and at the time specified in Item 12 to the Deposit Holder specified in Item 14 or, if no Deposit Holder is specified, to the Vendor; and
 - (b) the balance set out in Item 13 to the Vendor, or as the Vendor may in writing direct, at settlement.
- (2) If it is so specified in Item 14, the Deposit Holder shall hold the deposit as a stakeholder.

- (3) The receipt of any person paid at the direction of the Vendor shall be a sufficient discharge to the Purchaser for the amount paid to that person.

SETTLEMENT

8. (1) Settlement shall take place on the Settlement Day specified in Item 15 at the Lands Titles Registration Office at Adelaide or at any other place agreed between the Vendor and the Purchaser.
- (2) Not less than seven days before the Settlement Day, or within such shorter period as the Vendor may allow, the Purchaser shall deliver to the Vendor or the Vendor's agent, for execution by the Vendor, a memorandum of transfer of the Land duly executed by the Purchaser and any assignment or assignments required by the Purchaser.
- (3) Failing due delivery of a memorandum of transfer or assignment, the Vendor may at any time thereafter prepare a memorandum of transfer at the expense in all things of the Purchaser, based upon the scale of fees provided in the applicable *Supreme Court Rules*.
- (4) Upon payment by the Purchaser of all moneys required to be paid by the Purchaser at or before settlement and upon compliance by the Purchaser in all other respects with the provisions of this Agreement to be complied with by the Purchaser at or before settlement, the Vendor shall execute in favour of the Purchaser, or as the Purchaser shall direct, and deliver to the Purchaser -
 - (a) the memorandum of transfer of the Land free of all mortgages, encumbrances, liens, charges, tenancies, licences and other interests except those referred to in clause 5; and
 - (b) such other assignments of the Land as the Purchaser may reasonably require; and
 - (c) any declaration application or certificate which the Vendor may be required to make or give under any Act or Regulation in order to enable the memorandum of transfer to be registered.
- (5) The memorandum of transfer shall be in a form registrable under the provisions of the *Real Property Act 1886*.
- (6) The provisions stated in Item 16, so far as applicable, shall apply to the mortgages, encumbrances, liens and charges referred to in Item 9 and the tenancies and other interests referred to in Item 10.

POSSESSION

9. Vacant possession of the Land and delivery of the included property and the included chattels shall be given and taken on settlement, or at such other time as the Vendor and Purchaser may mutually agree, subject to the tenancies and other interests referred to in Item 10.

ADJUSTMENTS

10. (1) Subject to clauses 21(6) and 21(7) all rates and taxes, including land tax, all other outgoings in respect of the Land and all rents and other income arising from the Land shall be adjusted to midnight on the day preceding settlement. After settlement the Purchaser shall pay all such rates, taxes and other outgoings and shall indemnify the Vendor in respect thereof and the Purchaser shall be entitled to all such rents and other income arising after settlement.
- (2) Land tax shall be adjusted on the amount of tax that would be payable in respect of the Land if the Vendor owned no other land liable to be assessed.
- (3) Before settlement, the Vendor shall pay and discharge all land tax, including any differential land tax, which has or will become payable in respect of the Land in the rating year in which settlement occurs and in all previous rating years. Such land tax shall be paid whether the tax is then due and payable or not.
- (4) The cost or charge for the consumption of water upon the Land shall be adjusted between the Vendor and the Purchaser as follows:

- (a) Where the Land receives an annual water allowance that allowance shall be adjusted on a daily basis to the settlement date whereupon the Vendor shall pay for consumption of water exceeding the allowance so calculated in the proportion of the number of days from the commencement of the consumption year to the settlement date calculated upon the current water rate for water supplied to the Land.
- (b) Where water is supplied to the Land on the basis of a charge for such consumption (including incremental charges based upon volume consumed) the volume of water supplied, and if applicable, such volume to which an incremental rate is applicable, shall be adjusted on a daily basis calculated from the date of the commencement of the consumption year to the settlement date whereupon the Vendor shall pay for all water supplied to the Land apportioned from the commencement of the consumption year to the settlement date and, if the case so requires, at each incremental rate for the volume of water consumed.
- (c) Where more than one official meter reading is obtained the meter reading made on the day nearest to the settlement date shall be used in making the adjustment.
- (d)
 - (i) If an official meter reading is not obtained by either of the parties before settlement, if so required by the Purchaser, the Vendor shall lodge the sum specified in Item 17, or, if no sum is specified in Item 17, the sum of \$300 with the Vendor's solicitor, or if the Vendor is not represented by a solicitor, the Purchaser's solicitor, at or before settlement.
 - (ii) The solicitor shall hold the sum lodged with him or her upon trust until the official meter reading is obtained.
 - (iii) Upon the official meter reading being obtained, the solicitor shall pay to the Purchaser the amount, if any, payable by the Vendor to the Purchaser for water consumed or for water used in excess of the annual water allowance and pay the balance, if any, of the money lodged with him or her to the Vendor and.
 - (iv) If the amount lodged with the solicitor is less than the amount payable by the Vendor to the Purchaser, the Vendor shall pay the deficiency to the Purchaser.
- (5) Where the Vendor has received, or is entitled to receive, a remission in respect of any rate, the amount of the rate for the purposes of this clause shall be deemed to be the amount of the rate which the Vendor would be liable to pay if no remission were applicable.

TITLE

- 11. The Certificate of the Title under the *Real Property Act 1886* or other muniment of title in the name of the Vendor or the other person named in Item 1 as owner of the Land shall be deemed conclusive evidence of title and the Purchaser shall not be entitled to an abstract of title nor to take any objection thereto nor to make any requisition thereon and no evidence of the identity of the Land shall be required other than that afforded by comparison of the description contained in this Agreement with that contained in the said Certificate of Title.

INCORRECT DESCRIPTION

- 12.
 - (1) The Land is believed by the Vendor, and shall be taken by the Purchaser, to be correctly described but this sub-clause is without prejudice to the rights of the Purchaser under sub-clause (2).
 - (2)
 - (a) No error, omission or improper or imperfect description shall annul the sale or affect the obligation of the parties to settle on the Settlement Day.
 - (b) If any error, omission or improper or imperfect description of the Land is notified by one of the parties to the other before settlement, but not afterwards, the same shall be subject to compensation to be received or paid by one party or the other as the case may require.
 - (3) The Purchaser acknowledges that the Vendor makes no representation or warranty in respect of the Land or any part of the Land except as set out in this Agreement.

 INITIALS

STATUTORY REQUIREMENTS

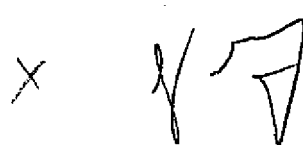
13. (1) The Vendor warrants that at the date of this Agreement no notices, orders, requirements or demands in relation to the Land have been given or made under the provisions of any Act Regulation or by-law which have not been fully complied with or which adversely affect the Land, except those referred to in Item 18.
- (2) Prior to the Settlement Day the Vendor shall comply with the matters referred to in paragraph (i) of Item 18.
- (3) The Purchaser shall comply with and indemnify the Vendor in respect of the matters referred to in paragraph (ii) of Item 18.
- (4) (a) The Purchaser shall indemnify the Vendor against all liability incurred or obligations created by any notice, order, requirement, declaration or demand relating to the Land made or given after the date of this Agreement.
(b) If the Vendor complies with any such notice, order, requirement, declaration or demand, the Purchaser shall reimburse to the Vendor upon demand or, if no prior demand is made, on settlement all amounts paid in complying with the notice, order, requirement, declaration or demand.
- (5) (a) The Vendor shall pay all charges against the Land for the forming making and paving of roads, kerbs, footpaths and water tables in respect of work commenced before the date of this Agreement and any interest or fines payable in respect thereof.
(b) The Purchaser shall pay all such charges, interest and fines in respect of work commenced on or after the date of this Agreement and shall indemnify and keep the Vendor indemnified in respect thereof.

CHATTELS ON HIRE

14. (1) The Purchaser acknowledges that the chattels and other property described in Item 6 are on hire or lease to the Vendor or are subject to a consumer mortgage or bill of sale granted by the Vendor.
- (2) The Purchaser shall, as from settlement, take over the obligations of the Vendor under the agreement for the hire or lease of the said chattels or property or the consumer mortgage or bill of sale to which the said chattels or property are subject and shall indemnify the Vendor against all liability in respect thereof arising after settlement.
- (3) At settlement or at any time thereafter, at the request and expense of the Purchaser (but subject to the consent, if required, of the owner of the chattels or property or the mortgagee or grantee under the said consumer mortgage or bill of sale, as the case may be) the Vendor shall execute and deliver to the Purchaser such assignment of the Vendor's interest in the agreement, consumer mortgage or bill of sale and in the chattels or property comprised therein as the Purchaser may reasonably require.

LEASES

15. (1) The Purchaser shall carry out, observe and perform all the covenants terms and conditions contained in the leases and tenancy agreements relating to the tenancies or other interests referred to in Item 10 and on the part of the lessor or the landlord to be carried out, observed or performed (herein called "the Lessor's Covenants") and shall indemnify and keep the Vendor indemnified from and against any and all actions, proceedings, claims and demands which may be made or taken against the Vendor in respect of any breach of any of the Lessor's Covenants occurring after settlement. The Vendor shall carry out, observe and perform all of the Lessor's Covenants to be carried out, observed or performed prior to settlement and shall indemnify and keep the Purchaser indemnified from and against any and all actions, proceedings, claims and demands which may be made or taken against the Purchaser in respect of any breach of any of the Lessor's covenants to be carried out, observed or performed prior to settlement.
- (2) At any time whether before or after settlement the Vendor or the Purchaser may give notice to the other party requiring that the parties enter into a Deed of assignment of the leases or agreements relating to the tenancies or other interests referred to in Item 10, which Deed shall include the indemnities specified in the preceding sub-clause. The Vendor shall use best endeavours to procure the execution of such Deed by the

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lessee. The said Deed shall be prepared by the party who gives the said notice with the cost of preparation of such Deed to be payable by the party giving the said notice.

- (3) At the same time or following the giving of the notice referred to in the preceding sub-clause, the party giving the notice shall deliver to the other party a Deed executed by the party giving the said notice. The said Deed shall be executed by the other party within 7 days of receipt, and if the Deed is so received by the other party not less than 7 days before settlement it shall be executed by such party prior to settlement.

EXCLUDED PROPERTY

16. Before settlement:

- (a) the Vendor may remove from the Land the excluded property referred to in Item 7; and
- (b) the Vendor shall make good any damage done to the Land by or in consequence of the installation or removal of the excluded property.

RISK

17. From the date of this Agreement the Land shall be at the risk of the Purchaser in all respects but, if and for so long as the Vendor occupies the Land, the Vendor shall use the Land with all reasonable care.

CONSENTS

18. (1) If this Agreement or the performance of this Agreement would otherwise contravene the provisions of the *Real Property Act 1886* or any other Act, this Agreement is subject to the obtaining of all consents and to the deposit of all plans required by law to be obtained or deposited by either party, whether or not such consents are mentioned in Item 19.
- (2) Without limiting the generality of sub-clause (1), this Agreement is subject to -
 - (a) the approval in writing of the relevant planning authority pursuant to the *Strata Titles Act 1988*; or
 - (b) the Development Assessment Commission issuing a certificate under section 51 of the *Development Act 1993* or any other consent necessary under the provisions of that Act being given; or
 - (c) the deposit of a plan of division or a strata plan or a plan of community division pursuant to the *Community Titles Act 1996*;where it is necessary by virtue of the provisions of any of the Acts referred to in this clause to obtain the approval, certificate or consent or to deposit the plan.
- (3) The grant, transfer, conveyance, mortgage or encumbrance of any estate or interest in the Land pursuant to this Agreement shall not have effect until the plan of division or the strata plan or plan of community division contemplated by the parties has been deposited if the grant, sale, transfer, conveyance, mortgage or encumbrance thereof would otherwise contravene the provisions of the *Real Property Act 1886*.
- (4) The parties shall use their best endeavours to obtain all such consents and to procure the deposit of all such plans as are required by Item 19 to be obtained or procured and all such other consents as they may be required to obtain under this clause and to have any such plan of division or strata plan or plan of community division deposited.
- (5) If default is made by either party in carrying out any of his or her obligations under this clause, the provisions of clause 20 shall apply.
- (6) (a) Subject to sub-clause (8), if all the consents referred to in this clause are not obtained or if any such plan is not deposited within the period or respective periods specified in Item 19 or, if no period is specified in Item 19, within one calendar month from the date of this Agreement, either party, upon giving 14 days' notice in writing to the other, may determine this Agreement.

- (b) This Agreement shall determine immediately upon the expiration of such notice, unless the consents are obtained or the plan is deposited in the meantime.
- (7) (a) Except where otherwise provided in this Agreement, upon the determination of this Agreement under sub-clause (6), all moneys paid by the Purchaser under this Agreement shall be refunded,
 - (b) the Vendor shall be liable to pay to the Purchaser the amount of any moneys paid by the Purchaser to the Deposit Holder if -
 - (i) the Deposit Holder to whom the moneys were paid is the agent of the Vendor; and
 - (ii) the Deposit Holder does not refund the money within 14 days of the receipt by the Deposit Holder of notice that this Agreement has been determined; and
 - (c) except as provided in paragraph (b), neither party shall have any recourse against the other consequent upon the determination of this Agreement under this clause.
- (8) If any consent mentioned in this clause is not obtained or any plan mentioned in this clause is not deposited due to the failure of the party required by Item 19 to obtain the consent or to procure the deposit of the plan, then the party who is in default shall not be entitled to determine this Agreement under sub-clause (6); any such determination by the party who is not in default shall not prejudice any other rights or remedies which the party may have against the other party.
- (9) In this clause, "consent" includes approval, certificate or other permission or authorisation and "deposited" means deposited in the Lands Titles Registration Office by the Registrar-General.

INTEREST ON DEFAULT

- 19. (1) If, by reason of the neglect or default of the Purchaser, the purchase is not completed on the Settlement Day the Purchaser shall pay to the Vendor interest on the Purchase Price, or on so much of the Purchase Price as from time to time remains unpaid, at the rate specified in Item 20 or, if no rate is specified in Item 20, at the Default Rate, computed from the Settlement Day until either the date of completion or the date of the determination of this Agreement.
- (2) If, by reason of the neglect or default of the Vendor, the purchase is not completed on the Settlement Day, the Vendor shall pay the Purchaser interest on the deposit and so much of the Purchase Price as has from time to time been paid, at the rate specified in Item 20 or, if no rate is specified in Item 20, at the Default Rate, computed from the Settlement Day until either the date of completion or the date on which the money paid by the Purchaser is repaid to him or her.
- (3) The payment of interest under this clause shall be in addition and without prejudice to any other rights or remedies the parties may have by reason of any default.

DEFAULT PRIOR TO SETTLEMENT

- 20. (1) If either party to this Agreement (herein called "the Defaulting Party") makes default in the due payment of the deposit or any part of the deposit, or in the due observance or performance of any of the terms and conditions contained in this Agreement and on the part of the Defaulting Party to be observed or performed prior to settlement, the other party (herein called "the Complying Party") may give notice of default to the Defaulting Party.
- (2) Notice of default under sub-clause (1)
 - (a) may be given at any time after the occurrence of the default;
 - (b) shall be without prejudice to any other rights or remedies the Complying Party may have; and
 - (c) shall

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- (i) require the Defaulting Party to remedy the default within a period of three Business Days from the service of the notice or within such longer period as the Complying Party may specify in the notice; and
 - (ii) state that, unless the default is remedied within the period specified in the notice, this Agreement will automatically determine.
- (3) If the default is not remedied within the period specified in the notice of default, this Agreement shall automatically determine at the expiration of that period unless, in the meantime, the notice is withdrawn by the Complying Party by notice to the Defaulting Party.
- (4) Notice of default under this clause may be given on more than one occasion.

DEFAULT AT SETTLEMENT

21. (1) If

- (a) either party to this Agreement (herein called "the Defaulting Party") makes default in the due observance or performance of any of the terms and conditions contained in this Agreement and on the part of the Defaulting Party to be observed and performed at settlement; and
- (b) the default continues unremedied for a period of not less than three Business Days;

the other party (herein called "the Complying Party"), at any time thereafter, may give notice of completion to the Defaulting Party.

- (2) Notice of completion shall appoint a time for settlement, which shall be a time during Business Hours on a Business Day, and shall require the Defaulting Party to settle at the time appointed in the notice.
- (3) If the time for settlement appointed in a notice of completion is not less than fourteen days after the date of service of the notice, the period of notice given shall for all purposes be deemed fair and reasonable and the Defaulting Party shall be precluded from raising any objection to the period of notice given notwithstanding the absence of any unreasonable, unnecessary or improper delay on the part of the Defaulting Party.
- (4) (a) If the Defaulting Party fails to carry out observe and perform the obligations on his or her part to be observed and performed at settlement at the time appointed in a notice of completion, the Complying Party may determine this Agreement by notice to the Defaulting Party.
- (b) Notice under this sub-clause:
- (i) may be given at any time after the time appointed for settlement in the notice of completion; and
 - (ii) shall be without prejudice to any other rights or remedies the Complying Party may have.
- (5) Notice of completion under this clause may be given on more than one occasion.
- (6) Where settlement is postponed as a result of the default of the Vendor, all rents and other income arising from the Land shall be adjusted to midnight on the day preceding the Settlement Day. Rates, taxes and other outgoings shall continue to be adjusted pursuant to clause 10(1).
- (7) Where settlement is postponed as a result of the default of the Purchaser, all rates, taxes and other outgoings in respect of the Land shall be adjusted to midnight on the day preceding the Settlement Day. Rents and other income shall continue to be adjusted pursuant to clause 10(1).
- (8) The reasonable costs of preparation and service of any notice given under this clause (being the amount of \$300 together with any applicable GST) together with any incidental costs reasonably incurred (including the costs of service) shall be paid by the Defaulting Party at settlement or on termination of this Agreement.

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TIME

22. Time shall in all respects be of the essence in respect of any time appointed under clauses 20 and 21, any period of notice fixed under those clauses and any notice given pursuant to those clauses.

EFFECT OF DETERMINATION

23. (1) If this Agreement is determined by the Vendor under clause 20 or clause 21:
- (a) all monies paid or payable by the Purchaser under this Agreement by way of deposit shall be forfeited to the Vendor absolutely; and
 - (b) the Vendor, at the Vendor's option, may either:-
 - (i) retain the Land and sue the Purchaser for damages for breach of contract; or
 - (ii) resell the Land, together or in lots, either by public auction or private contract, and the deficiency, if any, in price upon the resale together with all charges and expenses of and incidental to the resale, any attempted resale and the Purchaser's default shall immediately after the resale be made good by the Purchaser under this Agreement; and
 - (c) in the case of non-payment of the deficiency, charges and expenses, the whole thereof shall be recoverable by the Vendor as and by way of liquidated damages with the Purchaser receiving credit for any deposit paid provided that proceedings for the recovery of the deficiency, charges and expenses shall be commenced within 12 calendar months after the determination of this Agreement; and
 - (d) the Vendor shall be entitled to any increase in price on any resale.
- (2) If this Agreement is determined by the Purchaser under clause 20 or clause 21:
- (a) the Vendor shall re-pay to the Purchaser all moneys paid by the Purchaser under this Agreement by way of deposit or otherwise; and
 - (b) the Purchaser may sue the Vendor for damages for breach of contract provided that proceedings for the recovery of the damages shall be commenced within 12 calendar months after the determination of this Agreement.
- (3) It shall not be necessary for the Complying Party to first tender a transfer to the Defaulting Party before determining this Agreement or before exercising any other rights or remedies of the Complying Party.

REMEDIES NOT EXCLUSIVE

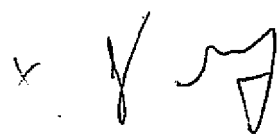
24. The remedies provided in this Agreement are in addition to and without prejudice to any other rights or remedies that the parties may have by reason of any default.

FURTHER DOCUMENTS

25. The parties to this Agreement shall promptly do and execute all such further acts, documents and things as may be required to give effect to this Agreement.

NOTICES

26. (1) Any notice or demand to be given to, or made upon, any party to this Agreement shall be in writing and shall be signed by the party giving the notice or making the demand or signed for and on behalf of that party by his or her solicitor or authorised agent.
- (2) Any notice or demand may be served upon the party intended to receive the notice or demand (herein called "the intended recipient"):



- (a) by leaving the notice or demand at the address of the intended recipient stated in Item 1 or Item 2 as the case may be; or
 - (b) by sending the notice or demand by the ordinary course of post in a prepaid envelope addressed to the intended recipient at the address of the intended recipient stated in Item 1 or Item 2 as the case may be and posted in South Australia; or
 - (c) by sending the notice or demand addressed to the intended recipient by facsimile to the facsimile number of the intended recipient stated in Item 1 or Item 2 as the case may be.
- (3) Any notice or demand served by post shall be deemed to have been duly served at noon on the second Business Day after the day on which the envelope containing the notice or demand was posted and in proving service of the notice or demand it shall be sufficient to prove that the envelope containing the notice or demand was properly addressed, stamped and posted.
 - (4) Any notice or demand served by facsimile shall be deemed to have been duly served on the day and time when the sender's facsimile machine reports that the transmission was completed without error.
 - (5) Where there is more than one Purchaser or Vendor, a notice or demand duly served on any one Purchaser or Vendor shall be deemed to have been duly served upon both or all of the Purchasers or Vendors as the case may be.
 - (6) Service effected in accordance with this clause shall be valid and effectual notwithstanding that, at the time of service, the intended recipient was dead, bankrupt or legally incapacitated, or, where the intended recipient is a corporation, notwithstanding that the corporation was in liquidation or wound up or in the process of being wound up, and notwithstanding any other matter or event.
 - (7) Any party may from time to time change his or her address for the service of notices or demands pursuant to this clause by notice in writing to the other party and, in that event, the address so notified shall apply in lieu of the address stated in Item 1 or Item 2 or the address last notified.

COSTS OF AGREEMENT

27. Unless it is otherwise provided in Item 21 or elsewhere in this Agreement:


- (a) the Vendor shall pay the costs of and incidental to the preparation of this Agreement and any costs associated with the discharge, surrender or withdrawal of any mortgage, encumbrance, caveat or lien existing in respect of the Land at settlement and required to be discharged, surrendered or withdrawn to enable the Vendor to give good title to the Purchaser; and
- (b) the Purchaser shall pay the costs of and incidental to the preparation of the memorandum of transfer and any assignment, mortgage or other document to be executed pursuant to this Agreement and all surveyor's fees, stamp duty, registration fees and Government fees.

ANNEXED SPECIAL CONDITIONS

28. (1) The special conditions, if any, referred to in Item 22 and annexed to this Agreement shall be incorporated into this Agreement and in the event of any inconsistency between the special conditions and any other provision contained in this Agreement the special conditions shall prevail.
- (2) Any reference to "this Agreement" in any special condition annexed to this Agreement shall be deemed to refer to this Agreement, the special conditions and the schedule to this Agreement.

LEGAL TENDER

29. Any payment due under this Agreement may be made or tendered either in cash or by cheque in Australian dollars drawn by a body corporate which is entitled to carry on a "banking business", as defined in the *Banking Act 1959* (Cth).

x 

NON-MERGER

30. The provisions of this Agreement shall continue to have effect notwithstanding settlement.

RESCISSION UNDER THE LAND AND BUSINESS (SALE AND CONVEYANCING) ACT 1994

31. If this Agreement is rescinded by the Purchaser pursuant to section 5 of the *Land and Business (Sale and Conveyancing) Act 1994*, the Vendor may retain any moneys, not exceeding \$50, paid by the Purchaser by way of deposit.

GOODS AND SERVICES TAX

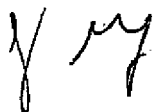
32. (1) The Vendor and the Purchaser acknowledge and agree respectively that, for the purpose of the GST Law, the Land is as described in Item 23.
- (2) If GST has application to a taxable supply made under this Agreement by either the Vendor or the Purchaser then:
- (a) the amount payable under this Agreement in respect of the taxable supply (including the taxable supply of the Land) ("Payment") is exclusive of GST; and
 - (b) the Supplier may in addition to the Payment, recover from the Recipient (and the Recipient shall pay or reimburse the Supplier) an additional amount on account of GST equal to 10% of the Payment (the "GST Amount") which GST Amount must be paid or reimbursed:
 - (i) at settlement; or
 - (ii) in the event that the GST Amount is payable by the Supplier otherwise than in respect of the tax period of the Supplier during which settlement occurs, upon written demand made by the Supplier to the Recipient; and
 - (c) subject to clause 32(4)(c), the Supplier shall, in respect of the taxable supply, provide the Recipient with a tax invoice at settlement or upon written request by the Recipient if settlement does not occur.

Going Concern

- (3) If the sale of the Land is the supply of a going concern or the supply of something which comprises part of the supply of a going concern (the "Arrangement") then:
- (a) the sale of the Land under or pursuant to this Agreement is made under the Arrangement;
 - (b) the Vendor is supplying to the Purchaser all of the things that are necessary for the continued operation of an enterprise;
 - (c) the Vendor carries on, or will carry on, the enterprise until settlement;
 - (d) the Purchaser is registered or required to be registered under the GST Law and provides evidence thereof to the Vendor's satisfaction; and
 - (e) the Payment will not be increased on account of GST.

Margin Scheme

- (4) If the margin scheme applies to the sale of the Land then:
- (a) the Vendor and the Purchaser agree to apply the margin scheme to the sale;
 - (b) the Purchaser's obligation to pay or reimburse the Vendor GST under clause 32(2)(b) shall be 10% of the margin under the margin scheme;

X  INITIALS

- (c) the Purchaser shall, where a valuation is required under Division 75 of the GST Law:
 - (i) obtain at its expense, in the name of the Vendor, a valuation of the Land which complies with the requirements of Division 75 of the GST Law using the valuation method approved by the Vendor; and
 - (ii) provide the valuation to the Vendor not less than 7 days prior to settlement;
- (d) the Vendor is not required to provide the Purchaser with a tax invoice at settlement; and
- (e) the Purchaser acknowledges that the acquisition of the Land is not a creditable acquisition and it is not entitled to claim an input tax credit.

GST Liability for Vendor

- (5) If this Agreement provides that the sale of the Land:
 - (a) is not a taxable supply and the Purchaser uses the Land in a way that makes the sale a taxable supply; or
 - (b) is the supply of a going concern and the sale is not such a supply (other than by virtue of a breach by the Vendor of clauses 32(3)(b) or (c)),

the Purchaser shall pay to the Vendor on written demand (which the Vendor is entitled to make notwithstanding that settlement of the sale and purchase of the Land pursuant to this Agreement has, or may have occurred) an amount equal to 10% of the Payment, together with any interest or penalties assessed to the Vendor (whether under the GST Law or otherwise) arising from or in respect of the sale.

Adjustment to GST

- (6) (a) The parties acknowledge that the Purchase Price set out in Item 11 has been negotiated on the basis that the sale is wholly a taxable supply under the GST Law and that (subject to box (h) in Item 23 being marked as "yes") in calculating its liability to GST the Vendor and the Purchaser agree not to apply the margin scheme.
- (b) If the supply is negotiated by the parties and represented in this Agreement as either wholly taxable or wholly non-taxable (as evidenced by the omission to complete Item 24), and the supply is found after settlement to be partly taxable and partly non-taxable, then the Purchaser shall either pay to the Vendor or be reimbursed by the Vendor (as is appropriate) the amount of the adjustment in the Vendor's GST liability as determined by the Australian Taxation Office, within one month of such determination. The Purchaser shall pay to the Vendor any interest and/or penalties associated with any such adjustment provided an adjustment note is provided.

Interpretation

- (7) In this clause 32:
 - (a) any expression used that is also used in the GST Law shall have, for the purposes of this Agreement, the meaning used in or attributed to that expression by the GST Law from time to time;
 - (b) "Recipient" means a person who acquires or receives or is entitled to acquire or receive a taxable supply under this Agreement and includes the Purchaser; and
 - (c) "Supplier" means a person who supplies or is required to supply a taxable supply under this Agreement and includes the Vendor.

SEVERABILITY OF CLAUSES

- 33. Each clause and sub-clause of this Agreement is severable from each other clause and sub-clause, and the invalidity or unenforceability of any clause or sub-clause shall not prejudice or affect the validity or enforceability of any other clause or sub-clause.

X  INITIALS

FOREIGN INTERESTS

34. Unless otherwise provided, the Purchaser warrants that:

- (a) the Purchaser is not a "foreign person" within the meaning of section 21A of the *Foreign Acquisitions and Takeovers Act 1975* (Cth) as the meaning of that expression is extended by the operation of section 4(6) of that Act; and
- (b) the Purchaser is not a "person to whom this section applies" within the meaning of that expression in section 26A of the *Foreign Acquisitions and Takeovers Act 1975* (Cth) as that section is affected by section 5A of that Act.

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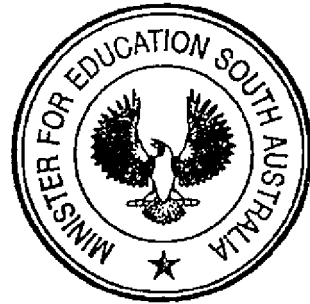
EXECUTION CLAUSES (Insert respective dates)

VENDOR

Dated the 7th day of December 2009

THE COMMON SEAL of
MINISTER FOR EDUCATION

~~SIGNED for and on behalf of~~
~~MINISTER FOR EDUCATION~~ was hereunto affixed by
by..... authority of the Minister in
an authorised delegate, in the presence of: the presence of:



[Handwritten signature]
Witness

[Handwritten signature]
Print Name J.A. BARNARD

[Handwritten signature]
Signature of authorised delegate

PURCHASER

Dated the 27 day of October 2009

SIGNED for and on behalf of
CITY OF PORT ADELAIDE ENFIELD
by..... MAL JONAS.....
an authorised delegate, in the presence of:

[Handwritten signature]
Witness

MALCOLM G JONAS
Print Name

[Handwritten signature]
Signature of authorised delegate

[Handwritten initials]
INITIALS



**THE LAW SOCIETY
OF SOUTH AUSTRALIA**

CONTRACT

FOR THE SALE AND PURCHASE OF LAND

For the use of Law Society of South Australia members only
Reprinted 2006

SCHEDULE

This Schedule is to be read in conjunction with the Contract Terms and Conditions.

The terms opposite the item numbers 1 to 22 have the respective meanings as detailed in the particulars in the Schedule.

THIS AGREEMENT IS MADE BETWEEN THE VENDOR AND THE PURCHASER NAMED AND DESCRIBED IN THE SCHEDULE.


THE VENDOR AND THE PURCHASER AGREE as follows:

Item	Term	Particulars
1.	Vendor (Name, address and description)	MINISTER FOR EDUCATION of 31 Flinders Street Adelaide SA 5000
	Facsimile:	
2.	Purchaser (Name, address and description)	CITY OF PORT ADELAIDE ENFIELD of 163, St Vincent Street, Port Adelaide SA 5015
	Facsimile:	
3.	The Land (Description of the Land) (Clause 2)	An estate in fee simple in the whole of the land comprised in Certificate of Title Volume 5096 Folio 832
	Property address:	Lot 2, Seabourne Road, Taperoo SA 5017

9.	Mortgages, encumbrances etc. (Mortgages, encumbrances, liens and interests) (Clause 5)	Nil	
10.	Tenancies and other interests (Clauses 5, 15)	Nil	
11.	Purchase Price (Clauses 4, 6)	Amount payable for the Land: (in words) SIX HUNDRED AND TWENTY FIVE THOUSAND DOLLARS	<u>\$ 625,000.00</u>
		Amount payable for the included chattels: (in words) Nil	<u>Nil</u>
		Purchase Price: (in words) SIX HUNDRED AND TWENTY FIVE THOUSAND DOLLARS	<u>\$ 625,000.00</u>
	GST (Clause 32)	GST (if applicable): (in words) SIXTY TWO THOUSAND FIVE HUNDRED DOLLARS	<u>\$ 62,500.00</u>
		See Special Condition 3	
		Total	<u>\$687,500.00</u>
12.	Deposit (Clause 7)	Nil	<u>Nil</u>
13.	Balance (including GST, if applicable) (Clause 7)	SIX HUNDRED AND EIGHTY SEVEN THOUSAND FIVE HUNDRED DOLLARS	<u>\$687,500.00</u>
14.	Deposit Holder (Clause 7)	Not applicable	
15.	Settlement Day (Clause 8)	The day that is 30 days after the date of this contract.	
16.	Provisions applying to mortgages, tenancies etc. (Provisions which apply to the mortgages, encumbrances, liens, charges, tenancies, licences and other interests referred to in Items 9 and 10) (Clause 8(6))	Not applicable	

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17. Water Allowance (Clause 10(4)(d))	In accordance with clause 10(4)(d)
<small>(Caution should be exercised to ensure that the sum in this item relates to water use, otherwise the sum in clause 10(4)(d) provides for \$300 to be retained)</small>	
18. Notices and orders (Clause 13)	(i) Matters to be discharged by the Vendor: Nil (ii) Matters to be discharged by the Purchaser: Nil
19. Consents (Consents to which this Agreement is subject) (Clause 18)	(i) To be obtained by the Vendor: Nil Period within which to be obtained: Not applicable (ii) To be obtained by the Purchaser: Nil Period within which to be obtained: Not applicable
20. Interest Rate (Interest rate on unpaid money if not in accordance with Clause 19)	In accordance with clause 19
21. Costs (Liability for costs if not in accordance with Clause 27)	The parties shall bear their own costs of and incidental to the preparation, negotiation, engrossment and execution of this agreement, and otherwise in accordance with clause 27
22. Annexures (Annexures forming part of this contract) (Clause 28)	Annexure A - Special Conditions Annexure B - EPA Notice

x 

23.

GST

(Clause 22)

[Please place a cross in the appropriate box below. Only one (1) box can be selected as 'Yes']

The Land sold by the Vendor to the Purchaser under this Agreement:

- (a) ~~comprises a taxable supply and is not subject to the margin scheme (sections 9-5 and 195-1 of the GST Law)~~ No Yes
- (b) ~~comprises residential premises (other than new residential premises), and which are to be used by the Purchaser predominantly for residential accommodation (sections 40-65 and 195-1 of the GST Law)~~ No Yes
- (c) ~~comprises a taxable supply of new residential premises (sections 40-65, 40-75 and 195-1 of the GST Law)~~ No Yes
- (d) ~~comprises commercial residential premises (sections 40-65 and 195-1 of the GST Law)~~ No Yes
- (e) ~~comprises subdivided farm land (sections 38-475 and 195-1 of the GST Law)~~ No Yes
- (f) ~~comprises farm land supplied for farming (sections 38-480 and 195-1 of the GST Law)~~ No Yes
- (g) ~~is the supply of a going concern (sections 38-325 and 195-1 of the GST Law)~~ No Yes
- (h) ~~is subject to the margin scheme (Division 75 and section 195-1 of the GST Law)~~ No Yes
- (i) ~~comprises a supply which is partly taxable and a supply which is partly non-taxable. The GST exclusive values of these respective supplies are detailed in Item 24.~~ No Yes

24

GST (Where the Land comprises partly a taxable supply and partly a non-taxable supply)
(Item 23(i))

Taxable Supply

Description of property _____

GST exclusive value _____ \$ _____

Non-Taxable Supply

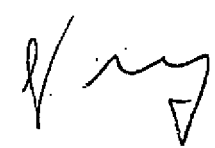
Description of property _____

GST exclusive value _____ \$ _____

Total _____ \$ _____

Note total is to be the same as the Purchase Price in Item 11.

GST not applicable

x 



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Annexure A

Special conditions
Law Society of South Australia Contract
for the sale and purchase of land

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LAWYERS

Annexure A - Special conditions

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Annexure A - Special conditions

1. Definitions and interpretation

In these special conditions unless the context requires a contrary interpretation:

1.1 Definitions

Confidential Information means:

- (a) the existence and terms of this agreement;
- (b) all information exchanged between the parties under this agreement or during the negotiations preceding the formation of this agreement;
- (c) the Property Information and any other information relating to the Property provided by or on behalf of the Vendor; and
- (d) all other information treated by the Vendor as confidential.

Contamination includes any adverse effect on the land air water organisms or ecosystems or the amenity of an area that is caused or contributed to by any thing or substance (whether living or not living) and whether in solid liquid or gaseous form (or any combination of them) including waste and pollution, and **Contaminant** has a corresponding meaning.

Costs includes:

- (a) costs, charges and expenses, including those incurred in connection with advisors, experts and consultants (including legal costs calculated on a solicitor and own client basis);
- (b) claims, damages, liability, losses (including consequential or economic losses) and injury (actual or contingent) suffered or incurred by a party; and
- (c) fines, penalties, interest or anything similar imposed by legislation.

Environmental Condition of the Property means the condition of the Property at the date of this agreement, including the presence of any Contaminant in or under or emanating from the Property or groundwater.

Environmental Law means the Law dealing with pollution, contamination of air, land or water, or the protection of health or the environment.

Environmental Report means the report titled 'Environmental Site Assessment Report – Phase 1 for the former Taperoo Primary School' by Resource & Environmental Management Pty Ltd dated 3 June 2003.

Environment Protection Act means the *Environment Protection Act 1993* (SA).

Included Chattels means the chattels described in Item 5 of the Schedule.

Included Property means the property described in Item 4 of the Schedule.

Land means:

- (a) the land and interests described in Item 3 of the Schedule and any part of the Land; and
- (b) where the context permits, the Included Property and any other fixtures or improvements on the Land.

Law means:

- (a) any statute, regulation, ordinance, by-law or subordinate legislation in force from time to time, whether made by state, territory, federal or local government;
- (b) any other regulatory instruments applying to the Land; and
- (c) the common law applicable from time to time in South Australia.

LTO means the Lands Titles Office, Adelaide, situated at 101 Grenfell Street Adelaide South Australia.

Property means the Land, the Included Chattels, the Included Property and all the rights and interests, whether contractual or not, of the Vendor as the owner, proprietor and operator of the Land.

Property Information means all documents, information and other items provided to the Purchaser or its consultants and advisors in respect of the Property.

Relevant Authority means any public, governmental, semi-governmental, statutory or regulatory authority, department or other body (including the Relevant Authority which assesses applications under the *Development Act 1993* (SA)).

Schedule means the schedule to the Law Society of South Australia Contract for the Sale and Purchase of Land, which forms part of this agreement.

Services means any fixtures, fittings, services and improvements situated on or in or serving the Land (including telephone, electrical, plumbing, air-conditioning, gas, fire prevention, fire safety, lifts, escalators, computers and building management systems).

Settlement means the date that settlement is actually effected under this agreement.

Settlement Day means the date set out in Item 15 of the Schedule.

Tax Act means the *Income Tax Assessment Act 1936* (Cth) or the *Income Tax Assessment Act 1997* (Cth) (as appropriate).

Title means the duplicate certificate of title for the Land.

Vendor's Agent means a director, employee, servant, agent, contractor or advisor of the Vendor from time to time and includes the Vendor's solicitor.

1.2 Interpretation

- (a) Reading down

If a provision of this agreement is void, voidable, unenforceable or illegal, that provision must be read down to the extent required to give the provision legal effect. If the provision is unable to be read down in that way, the provision may be severed from this agreement and the remaining provisions of this agreement remain in full effect.

- (b) Reference to Acts

A reference to 'Act' or a particular Act includes any regulations codes and by laws and any notice demand order direction requirement agreement undertaking or obligation under the Act.

- (c) Reference to things

A reference to a thing (including an amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually.

- (d) Joint and several obligations

An agreement, representation, right, entitlement, power or warranty in favour of two or more persons is for the benefit of them jointly and severally and an agreement, representation, duty, obligation or warranty on the part of two or more persons binds them jointly and severally.

(e) Inclusions

The meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions.

(f) *Corporations Act 2001* (Cth)

A word or expression defined in the *Corporations Act 2001* (Cth) has the meaning given to it in that Act.

2. Amendment of printed terms

The printed terms of this agreement are amended:

- (a) by deleting clause 1(4)(m);
- (b) by deleting from clause 6 the words "Subject to clause 32,";
- (c) by deleting from clause 7(1) the words "together with any GST applicable,";
- (d) by deleting clause 32;
- (e) by deleting clause 13(5)(a).

3. Goods and services tax

3.1 General GST provisions

- (a) Unless specifically described in this agreement 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 agreement does not include any amount on account of GST.
- (b) Where any supply to be made by one party (**Supplier**) to another party (**Recipient**) under or in accordance with this agreement is subject to GST (other than a supply the consideration for which is specifically described in this agreement as 'GST inclusive'):
 - (i) the consideration payable or to be provided for that supply but for the application of this special condition (**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 (**GST Amount**); and
 - (ii) the Recipient must pay the GST Amount at the same time and in the same manner as the GST Exclusive Consideration payable or to be provided for that supply.
- (c) Notwithstanding any other provision of this agreement, the Recipient need not make any payment for a taxable supply made by the Supplier under or in accordance with this agreement (other than a taxable supply to which the margin scheme is applied) until the Supplier has given the Recipient a tax invoice in respect of that taxable supply.

3.2 Margin scheme

The Vendor and the Purchaser agree that the margin scheme will not apply in working out the amount of GST on the supply of the Land.

3.3 Other provisions

- (a) In this special condition, 'GST Act' means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (b) A word or expression used in this special condition which is defined in the GST Act has the same meaning in this special condition.
- (c) This special condition shall survive settlement and any termination of this agreement by either party.
- (d) For the avoidance of doubt, this special condition binds any other entity who is or becomes a supplier or recipient for GST purposes under or by reason of any assignment of this agreement.

4. If Title unavailable

If the Title is held at the LTO at Settlement for any reason, the Purchaser must:

- (a) not refuse to settle, and not withhold funds or seek compensation, on that account; and
- (b) at Settlement accept from the Vendor or the Vendor's solicitors an authority for lodgement on pick-up in lieu of the Title.

5. Settlement

5.1 Possession

Possession of the Property must be given at Settlement or at any other time the Vendor and Purchaser agree.

5.2 Each party to assist settlement

Each party must do all acts and execute all documents required by this agreement or reasonably required by the other party to be done or executed at settlement to vest in the Purchaser the full possession and benefit of the Property (subject to those interests referred to in Item 8 of the Schedule or any Form 1 statement made by the Vendor under section 7 of the *Land and Business (Sale and Conveyancing) Act 1994*).

6. Vendor's warranties

- (a) The Vendor warrants to the Purchaser that immediately before Settlement the Vendor will be the beneficial owner of the Property free from any mortgage, charge, lien, option, encumbrance or other adverse claim or interest, other than the interests referred to in Item 8 of the Schedule or any Form 1 statement made by the Vendor under section 7 of the *Land and Business (Sale and Conveyancing) Act 1994*.
- (b) This special condition does not merge on settlement or on any earlier termination of this agreement.

7. Purchaser's own enquiries

7.1 Property Information and Property inspection

The Purchaser acknowledges, warrants and represents to the Vendor that:

- (a) it has been given an opportunity to inspect the Property and to make enquiries of the Vendor and its officers, employees, agents, advisers and consultants about the Property;
- (b) it has undertaken an extensive review of the Property and the Property Information;

- (c) it relies on its own judgement and professional advice (including any inspection of the Property and enquiries), in deciding to purchase the Property;
- (d) it does not rely on any representation or warranty (express or implied) by the Vendor or any of its officers, employees, advisors, consultants and agents as to the accuracy, completeness, currency or reliability of the Property Information;
- (e) it purchases the Property in its existing condition and state of repair (including the presence of any Contaminant in or under or emanating from the Land);
- (f) it has satisfied itself by physical examination, either by itself or through engaging a licensed surveyor, that the land offered for sale is identical to the land described in Item 3 of the Schedule, and that any structures on the Land at the date of this agreement are within the boundaries of the Land;
- (g) it has satisfied itself as to the value of the Property from its own independent valuations and reports;
- (h) it has examined all information relevant to the risks contingencies and other circumstances affecting its decision to purchase the Property;
- (i) it has satisfied itself as to the absence or extent of defects (latent and patent) in the Property;
- (j) it has satisfied itself as to the nature and effect of any Laws restricting the use of the Property, in respect of existing or future improvements, and as to all other Laws in respect of the Property;
- (k) it is aware of the terms of any approval, consent or permit of any Relevant Authority of a building, planning and development nature in respect of the Property;
- (l) it has made its own enquiries about the use of the Property;
- (m) no statement, representation or warranty (expressed or implied) was made by or on behalf of the Vendor about the Property, including about:
 - (i) the suitability of the Property for any purpose;
 - (ii) the present state of repair or other condition of the Property;
 - (iii) what items are owned by tenants;
 - (iv) the compliance of the Land with Environmental Laws;
 - (v) the presence of any encroachment, either from the Land onto an adjoining property, or from an adjoining property onto the Land,and if any such representation or warranty (expressed or implied) was made or is deemed by law to have been made by or on behalf of the Vendor, the Purchaser does not rely on it in deciding to purchase the Property; and
- (n) to the extent that any information provided by or on behalf of the Vendor (including the Property Information) includes forecasts, estimates or the like (Forecasts), no representation or warranty was made by or on behalf of the Vendor that the Forecasts will be achieved and the Purchaser accepts that actual events may vary significantly from the Forecasts.

7.2 No requisition

The Purchaser must not make any requisition or objection, claim compensation or damages, refuse or delay settlement or refuse or delay payment of the purchase price (or any portion of the purchase price) for any reason connected with:

- (a) any error omission or misdescription in the Property Information or other information provided to the Purchaser by or on behalf of the Vendor, or the Purchaser relying on it, or its accuracy completeness or currency;
- (b) any misdescription of the Property or inaccuracy in its area or measurement;
- (c) the present state of repair or condition of the Property;
- (d) any malfunction, failure to function, interruption of or damage to any of the Included Chattels, Included Property or Services occurring after the date of this agreement;
- (e) any failure by any person to comply with the Law in respect of or affecting the Property;
- (f) the presence of or obligation to remove, treat or otherwise deal with or manage any asbestos or Contaminants in or on the Property or Contamination of or under the Land (including Contamination of groundwater) or any adjoining land;
- (g) the suitability or non-suitability of the Property for any purpose;
- (h) fences or structures not being on the true boundaries of the Land;
- (i) the existence or terms of any heritage order or restriction affecting the Property;
- (j) the absence of any Services to or on or under the Land;
- (k) the presence of or obligation to remove or otherwise deal with any encroachment of improvements on the Land onto adjoining land;
- (l) the presence of or obligation to remove or otherwise deal with any encroachment of improvements on adjoining land onto the Land;
- (m) any restriction imposed by the *Development Act 1993* or other Law or a Relevant Authority in respect of the use of the Land;
- (n) any permit, consent, approval, licence or authority, or any term, condition, restriction, obligation or requirement of any of them, in respect of the use of the Land;
- (o) a failure by any person to obtain any permit, consent, approval, licence or authority in respect of the Land or its use;
- (p) any encumbrance, easement, right, exception or reservation relating to the Land;
- (q) any requirement of any public or statutory authority to improve the condition of the Land or any improvements on the Land;
- (r) any claim regarding right of support.

7.3 No merger

This special condition does not merge on settlement or on any earlier termination of this agreement.

8. Environmental compliance

8.1 Environmental Report

Without limiting special condition 7, the Purchaser acknowledges and agrees that:

- (a) the Purchaser inspected or had the opportunity to inspect the Environmental Report before executing this agreement and is aware of its contents; and
- (b) the Vendor does not warrant the accuracy of the Environmental Report.

8.2 Environmental Condition of the Property

Without limiting special condition 7:

- (a) the Purchaser is aware of and accepts the Environmental Condition of the Property;
- (b) the Purchaser acknowledges and agrees that:
 - (i) despite anything contained in the Environmental Report, no representation or warranty (expressed or implied) was made by or on behalf of the Vendor about the Environmental Condition of the Property or compliance of the Property with Environmental Law;
 - (ii) if any such representation or warranty (expressed or implied) was made or is deemed by law to have been made by or on behalf of the Vendor, the Purchaser does not rely on it in deciding to purchase the Property; and
 - (iii) on and from Settlement, to the extent permitted by Law, the Purchaser assumes all responsibility and liability for the Environmental Condition of the Property.

8.3 Vendor not liable for site contamination under the EPA

- (a) The Purchaser acknowledges and agrees for the purposes of section 103E of the Environment Protection Act that:
 - (i) the Land is being sold subject to an agreement under which the Purchaser assumes liability for all site contamination on or under the Land; and
 - (ii) the Vendor has before the Purchaser entered into this agreement given the Purchaser a notice in the form of the Notice in Annexure B to this Agreement setting out the legal effect of this agreement under that section and that notice has been lodged with the Environment Protection Authority; and
 - (iii) the Purchaser is acquiring the Property in a genuine arms length transaction.
- (b) In this special condition 8.3, a reference to 'site contamination' has the meaning given to it under the Environment Protection Act.

8.4 Vendor not liable for remediation

- (a) As between the Vendor and Purchaser, on and from Settlement, the Purchaser is solely responsible to remediate, make good, rectify and make safe the Property in respect of Contaminants in or under or emanating from the Property.
- (b) If, as a matter of law, the Vendor is required to undertake or pay for any such remediation works then the Purchaser must reimburse and compensate the Vendor for doing so.

8.5 No requisition

The Purchaser must not make any requisition or objection, claim compensation or damages, refuse or delay settlement or refuse or delay payment of the purchase price (or any portion of the purchase price) for any reason connected with the Environmental Condition of the Property.

8.6 Indemnity

Without limiting special condition 11.2, the Purchaser must indemnify and keep indemnified the Vendor against all Costs incurred by the Vendor (or any of its officers, employees, agents, contractors and consultants) resulting from:

- (a) the Environmental Condition of the Property;
- (b) a change in the Environmental Condition of the Property or the condition of adjoining land and surrounding areas occurring after Settlement; and
- (c) a failure of the Purchaser to comply with any Environmental Law.

The Vendor need not incur an expense or make a payment before enforcing its right of indemnity.

8.7 Release

The Purchaser releases the Vendor from all present and future claims, demands and actions (arising before or after Settlement) in respect of:

- (a) the Environmental Condition of the Property;
- (b) the existence of any Contaminants in or under the Land or adjacent land including groundwater;
- (c) the existence of any asbestos in the Property;
- (d) the Environmental Reports; or
- (e) any Environmental Law.

8.8 No merger

This special condition does not merge on settlement or on any earlier termination of this agreement.

9. Community Land

9.1 Purchaser's acknowledgements

The Purchaser acknowledges and agrees that at Settlement the Land will constitute community land within the meaning of the *Local Government Act 1999* and that the Purchaser will not take any action prior to Settlement that excludes the Land from classification as community land.

9.2 No merger

This special condition does not merge on settlement or on any earlier termination of this agreement.

10. Rectification of title

- (a) The Purchaser must not call upon the Vendor to amend title, rectify a failure to comply with a Law applicable to the Land or a requirement of a Relevant Authority, improve the condition of the Property or to pay the Costs of doing so.
- (b) This special condition does not merge on settlement or on any earlier termination of this agreement.

11. Release and indemnity

11.1 Vendor's release

The Purchaser releases the Vendor from all present and future claims, demands and actions (arising before or after Settlement) in respect of any matter referred to in special condition 7.2.

11.2 Indemnity

The Purchaser must indemnify and keep indemnified the Vendor against all Costs incurred by the Vendor (or any of its officers, employees, agents, contractors and consultants) in respect of:

- (a) the Property;
- (b) any matter referred to in special condition 7.2; or
- (c) a failure by the Purchaser to comply with any of its obligations under this agreement.

11.3 No merger

This special condition does not merge on settlement or on any earlier termination of this agreement.

12. Damage and destruction

This agreement is not affected by any loss of or damage to the Property arising from fire storm tempest or flood or by any diminution of the value of the Property from any cause (other than wilful neglect by the Vendor) between the date of this agreement and Settlement.

13. Vendor's delay in settlement

The Vendor is not liable for any damages or penalty for delay in settlement or for failure to give notice of delay when the delay is due to or substantially contributed to by causes beyond the reasonable control of the Vendor. The Vendor may postpone Settlement without penalty for a period equal to the time lost due to the delay.

14. Death, bankruptcy or insolvency

14.1 Purchaser is a natural person

The Vendor may terminate this agreement by giving notice to the Purchaser if, before Settlement the Purchaser (and if more than one, any of them) being a natural person:

- (a) dies; or
- (b) becomes a person whose estate is liable to be dealt with under the laws relating to mental health; or
- (c) is declared bankrupt or enters into any scheme of arrangement or makes any assignment for the benefit of creditors.

14.2 Purchaser is a corporation

The Vendor may terminate this agreement by giving notice to the Purchaser if, before Settlement the Purchaser (and if more than one, any of them) being a corporation:

- (a) resolves to go into liquidation; or
- (b) has an application presented for its winding up; or
- (c) enters into any scheme of arrangement with its creditors under Part 5.1 of the *Corporations Act 2001* (Cth); or
- (d) has appointed any administrator, liquidator, receiver or receiver and manager.

14.3 Termination

- (a) Each party's obligations of confidentiality under this agreement continue to apply after termination of this agreement.
- (b) Termination of this agreement does not affect any accrued rights or remedies of a party.
- (c) If the Vendor does not terminate this agreement under this special condition, this agreement becomes unconditional.

15. Purchaser - nominee

- (a) Despite the fact that the Purchaser may nominate or may have nominated another person to complete the purchase of the Property (or that another person may have nominated the Purchaser to complete the purchase of the Property on that other person's behalf) the Purchaser remains fully liable as a principal for the performance of the Purchaser's obligations under this agreement.
- (b) This special condition does not merge on settlement or on any earlier termination of this agreement.

16. No assignment by Purchaser

- (a) This agreement is personal to the Purchaser and may not be assigned without the Vendor's written consent.
- (b) The Vendor may withhold its consent if it is reasonable to do so. It is reasonable for the Vendor to withhold consent if it is not satisfied in its absolute discretion that:
 - (i) the proposed assignee has the financial ability to perform the Purchaser's obligations under this agreement; and
 - (ii) the assignment is unlikely to delay settlement.
- (c) Despite any assignment or purported assignment of this agreement by the Purchaser, the Purchaser remains liable to the Vendor under this agreement.
- (d) The Purchaser must pay all Costs (including the Vendor's Costs) and all stamp duty in respect of any assignment of this agreement by the Purchaser with the Vendor's consent.

17. Notices

A notice under this agreement:

- (a) must be in writing, in English and signed by or on behalf of the party giving notice;
- (b) must be served by personal delivery, facsimile, courier or pre paid ordinary post, to:
 - (i) the Vendor, c/- Minter Ellison Level 10, 25 Grenfell Street Adelaide 5000
Attention: Sacha Wainwright, facsimile (08) 8233 5556 (international fax dial +61 8 8233 5556), marked urgent; or
 - (ii) the Purchaser at its address for service of notices set out in Item 2 of the Schedule;
- (c) is deemed to have been served:
 - (i) if personally delivered or by courier, immediately upon delivery;
 - (ii) if sent by facsimile, upon receipt by the sender of confirmation of successful transmission; and
 - (iii) if sent by post, on the third business day after posting,

but if the delivery, receipt or transmission is not on a business day or is after 5.00pm on a business day, the notice is deemed to be received at 9.00am on the next business day.

18. General

18.1 Interpretation of times

References in this agreement to dates or times are references to the relevant date or time in South Australia.

18.2 Governing law

This agreement is governed by the laws in South Australia and the parties irrevocably submit to the jurisdiction of the courts of South Australia.

18.3 Preservation of rights other than agreement

Any rights conferred by this agreement are additional to and without prejudice to all other rights and remedies available to the parties. No exercise or lack of exercise of a right constitutes a waiver by a party of any other right or remedy.

18.4 Effect of failure to enforce rights

A failure or delay by a party to enforce or require the strict compliance with a provision of this agreement does not affect that provision or the right of the party to a remedy for breach of that provision.

18.5 Variations in writing

No variation, modification, waiver or consent to the departure by a party from the provisions of this agreement is of any effect unless in writing and signed by the parties.

18.6 Entire agreement

This agreement including its schedules and annexures:

- (a) constitutes the entire agreement between the parties as to its subject matter; and
- (b) in relation to that subject matter, supersedes any prior understanding or agreement between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by a party.

18.7 Counterparts

This agreement may be executed in counterparts. Each executed counterpart is deemed an original of this agreement.

18.8 Execution by facsimile

A facsimile copy of an executed agreement or counterpart is deemed an original of this agreement or counterpart.

18.9 Warranties excluded

All warranties and conditions which would otherwise be implied in this agreement are excluded to the maximum extent permitted by law.

18.10 Stamp duty

The Purchaser must indemnify and keep indemnified the Vendor against all Costs incurred by the Vendor in respect of stamp duty payable under clause 27(b) of this agreement.

Annexure B

EPA Notice

MinterEllison

LAWYERS

Notice of legal effect of agreement to assume liability for site contamination



Notice for the purposes of section 103E(2)(a)(i) of the *Environment Protection Act 1993 (SA)*.

Use **BLOCK LETTERS** and all sections must be completed

Type of transaction

Please mark one box only:

sale transfer

Vendor/transferor details	Purchaser/transferee details
Full name and address Minister for Education of 31 Flinders Street Adelaide SA 5000	Full name and address City of Port Adelaide Enfield of 163 St Vincent Street Port Adelaide SA 5015
Contact details Tel: 8207 0836 Fax: 8207 0830 Email: white.chris@lmc.sa.gov.au	Contact details Tel: 8405 6600 Fax: 8405 6666 Email: custserv@portenf.sa.gov.au

Site Information

Site name (if applicable):

Site address: Lot 2, Seaborne Road, Taperoo SA 5017

Certificate of Title number(s): Volume 5096 Folio 832

(must be correct at the time of transaction)

Provide details of all existing site contamination (as defined by the EP Act) for which liability is being transferred. (Note that the requirements of section 103E will not be met and subsequently the EPA will not record an agreement on the Public Register unless it is satisfied that definition of 'site contamination' in s 5B of the EP Act is met.)

Responsibility and liability for site contamination (VERY IMPORTANT)

The cost to assess and/or remediate site contamination can far exceed the property value.

Where an agreement is made under section 103E(1) of the *Environment Protection Act 1993*, the purchaser or transferee is to be taken to have assumed the vendor's or transferor's liability for the site contamination in accordance with the agreement and the Act applies as if the purchaser or transferee (and not the vendor or transferor) had caused the site contamination or, as the case may be, the specified part of the site contamination

The legislation allows for you to accept all liability for site contamination—both in soils and in groundwater and both on and offsite. The EPA recommends that you seek independent legal counsel before signing the agreement.

If you are liable for site contamination, the EPA can, where site contamination exists:

- order you to assess the site contamination,
- order you to remediate site contamination,
- assess or remediate the site and recover the costs from you,
- register the costs incurred by the Authority, together with any interest (at 24%pa) so payable, in assessing or remediating the site contamination against this land and any other land that you own in relation to which the site contamination assessment order or site remediation order.

Declaration

I/we, as purchaser / transferee hereby declare that I/we have been given and have read both the EPA Information Sheet, *Site contamination: Transfer of liability for site contamination* and this form. I/we understand that the Environment Protection Authority has powers to enforce a person's liability for site contamination.

Name: _____ Signature: _____

Name: _____ Signature: _____

Date: _____

NOTE: The provisions of section 103E(1) of the EP Act do not apply to an agreement—

- (a) unless, in the case of an agreement entered into on or after the commencement of Part 10A of the EP Act (1 July 2009) —
 - (i) the person has first given the purchaser or transferee a notice in a form approved by the Authority for the purposes of section 103E(2)(i) setting out the legal effect of the agreement under section 103E; and
 - (ii) a copy of the agreement is lodged with the Authority; or
 - (b) if the Environment Resources and Development Court determines, on application by the Authority, that the purchaser or transferee did not acquire the land in a genuine arms length transaction.
-

EPA use only

Date received:

EPA reference number:

Received by (print name and sign):