

THE TRANSFEROR for the consideration herein expressed HEREBY TRANSFERS TO THE TRANSFEREE the estate and interest herein specified in the land above described, subject to the encumbrances as shown herein. (Instruction 2)

1 Restrictive Covenant

(a) In this clause:

"Benefited Land" means the land hereby transferred by the Transferor to the Transferee;

"Bulky Goods Retailing" means:

- (i) the undertaking of any activity which requires a large display area (usually comprising, but not limited to, floor areas in excess of 500m²) usually associated with, but not limited to, white goods, furniture, sporting, leisure or recreational goods and equipment, lighting, office plant and equipment and supplies, computers, carpets, electrical goods, toys and gardening products; and
- (ii) DIY homewares and home improvement stores incorporating hardware and building materials on a large scale of greater than 3,000m²;

"Burdened Land" means the land specified in the Schedule;

"Commercial Enterprise Use" means use for:

- (i) car park;
- (ii) car sales lot;
- (iii) car sales showroom;
- (iv) consulting rooms;
- (v) consulting rooms: group;
- (vi) convenience store of a floor space not exceeding 300m²;
- (vii) cultural use;
- (viii) dwelling: multiple;
- (ix) education establishment;
- (x) factory tenement building;
- (xi) funeral parlour;
- (xii) hire services - industrial;
- (xiii) hire services - non-industrial;
- (xiv) industry - cottage;
- (xv) industry - light;
- (xvi) industry - service;
- (xvii) medical centre;
- (xviii) motor repair station not part of a service station;
- (xix) motor vehicle assembly;
- (xx) nursery;
- (xxi) office: general;

- (xxii) office: professional
- (xxiii) vehicle sales and services; and
- (xxiv) veterinary hospital;

"Core Retail Purpose" means any retail use whatsoever, including but not limited to:

- (i) the retail uses specified in Appendix 4 of the Policy Statement;
- (ii) any retail use involving the retail sale or supply of homewares, whitegoods, sporting, leisure or recreational goods and equipment, furniture (including bedding and baby furniture), lighting, office plant and equipment and supplies, computers, carpets, electrical goods and toys;
- (iii) any use as a supermarket, store selling food and other ancillary items, video store, amusement parlour, betting agency, fast food outlet, variety discount store, factory outlet, service station, car wash or tavern; and
- (iv) Bulky Goods Retailing;

"Core Retail Purpose" and "Bulky Goods Retailing" shall in no circumstances include:

- (i) any use or retail use involving:
 - (A) a medical centre;
 - (B) a cinema;
 - (C) DIY homewares and home improvement stores incorporating hardware and building materials on a scale of less than 3,000m²;
 - (D) a home based business carried on, on a residential lot; and
 - (E) a Commercial Enterprise Use provided that in relation to the uses described in sub-paragraph (i), (iv), (v), (vii)-(xix) (inclusive) and (xxi)-(xxiv) (inclusive) of the definition of "Commercial Enterprise Use" any retail use or retail component of that use must be ancillary to that use; and
- (ii) after 31 December 2010, DIY homewares and home improvement stores incorporating hardware and building materials on a large scale of greater than 3,000m²;

"Development" means the construction of a retail complex on the Benefited Land;

"District Centre" has the same meaning as specified in the Policy Statement;

"DSTM" means the total available department store type merchandise spend for the main trade area discount department stores referred to in Table 5.1 of the Jebb Report;

"Jebb Report" means the report prepared by Jebb Holland Dimasi for LWP Property Group Pty Limited for the Ellenbrook Town Centre dated July 2001 entitled "Assessment of Retail Potential";

"Neighbourhood Centre", subject to the proviso to this definition, has the same meaning as specified in the Policy Statement provided that a Neighbourhood Centre must have a total floor space greater than 2,000m²;

"Policy Statement" means the Metropolitan Centres Policy Statement for the Perth Metropolitan Region prepared by the Western Australian Planning Commission and Gazetted on 17 October 2000;

"Restrictive Covenant" means the restrictive covenant granted by the Transferor to the Transferee set out in paragraph (c);

"Stage One of the Development" means the first stage of the Development comprising no less than 5,000m² of retail floor area;

"Stage Two of the Development" means the second stage of the Development comprising not less than 10,000m² of retail floor area which does not include Stage 1 of the Development but shall include any construction after the completion of Stage One of the Development;

"Stage Three of the Development" means the third stage of the Development being the development of the balance of the Benefited Land.

- (b) In interpreting this Deed, unless the contrary intention appears:

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- (i) a references to a paragraph is a reference to a paragraph of this clause; and
- (ii) a reference to the Transferee or Transferor shall include a reference to their permitted assigns and successors in title, or legal personal representatives as the case may be.

(c) The Transferor as the registered proprietor of the Burdened Land covenants with the Transferee as the registered proprietor of the Benefited Land that, until the earlier of:

- (i) 31 December 2018;
- (ii) the date that the resident population of the main trade area (which is shown on Map 2.2 in the Jebb Report as the aggregate of the "Primary Trade Area" and the "Secondary Trade Area" and detailed in Table 2.8 of the Jebb Report as the "Main Trade Area") reaches 63,300; or
- (iii) the date that the Transferee notifies the Transferor that the Transferee does not intend to proceed with Stage Three of the Development,

the Transferor shall not:

- (iv) use or permit or suffer to be used the whole or any part of the Burdened Land for a Core Retail Purpose or any purpose incidental or ancillary to a Core Retail Purpose, except that the Transferor shall notify the Transferee of all proposals received for Bulky Goods Retailing within the Burdened Land and give the Transferee 14 business days within which to consider whether the proposal is suitable in the reasonable discretion of the Transferee for the Development, and if the Transferee considers that the proposal is not suitable, the Transferee shall notify the Transferor that the particular proposal (on the terms contained therein) is excluded from the application of this clause 1(c);
- (v) sell or enter into any contract, arrangement or understanding to sell or otherwise dispose of the whole or any part of the Burdened Land to any person or entity who intends to or whom it would be reasonable for the Transferor to expect would intend to develop or otherwise use the land for a Core Retail Purpose or any purpose incidental or ancillary to a Core Retail Purpose; or
- (vi) develop or create or permit or suffer to be developed or created in any part of the Burdened Land a District Centre or a Neighbourhood Centre;

provided that:

- (vii) the Transferee completes Stage Two of the Development by 31 December 2010 or such later date having regard to Stage Two of the Development not commencing until the resident population of the main trade area (which is shown on Map 2.2 in the Jebb Report as the aggregate of the "Primary Trade Area" and the "Secondary Trade Area" and detailed in Table 2.8 of the Jebb Report as the "Main Trade Area") reaches 44,600 and the DSTM is no less than the DSTM specified in table 5.1 of the Jebb Report for 2010/11. Early commencement of Stage Two of the Development shall not affect the completion date contemplated in this clause;
- (viii) the Transferor may permit the establishment of a small stand alone delicatessen or corner convenience store or stores to service local needs including (but not limited to) coffee shops and hairdressers with a floor space of less than 300 m² or medical centre where the establishment of such delicatessen or convenience store or stores to service local needs or medical centre does not thereby result in the development or creation of a District Centre or Neighbourhood Centre;
- (ix) if the Transferee does not by 31 December 2007 develop the Benefited Land or any part of the Benefited Land for use as a car wash, fast food outlet, service station and a tavern, then this clause 1(c) (iv) to (vi) shall cease to apply in respect to the development or use of any part of the Burdened Land by the Transferor as a car wash, fast food outlet, service station or a tavern to the extent that the Transferee has not developed the Benefited Land for that use; and
- (x) after 31 December 2014, the Transferor may permit the establishment of a small stand alone delicatessen or corner convenience store or stores to service local needs including (but not limited to) coffee shops and hairdressers with a floor space of less than 1,000m² or medical centre where the establishment of such delicatessen or convenience store or stores to service local needs or medical centre does not thereby result in the development or creation of a District Centre or Neighbourhood Centre.

(d) The Restrictive Covenant shall bind the Transferor and its successors in title as the registered proprietor or proprietors of the Burdened Land or any part or parts of it with the intent that the Restrictive Covenant will enure only for the benefit of the Transferee and its successors in title as the registered proprietor or proprietors of the Benefited Land or any part or parts of it. Without limiting the generality of this paragraph (d), the Restrictive Covenant will not enure for the benefit of any tenant for the time being of the Benefited Land or any part or parts of it.

(e) Notwithstanding any other provision of the Restrictive Covenant to the contrary, upon subdivision of any part of the Burdened Land which results in the creation of residential lots of not more than 1,000m² in size each, this Restrictive Covenant shall cease to apply to those residential lots upon an application for subdivision and the creation of new titles for those residential lots being registered at the Department of Land Information.

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Schedule

- 1 Lot 9002 on Deposited Plan 26377 being the whole of the land in Certificate of Title Volume 2212 Folio 294
- ~~2 Lot 9002 on Deposited Plan 26377 being the whole of the land in Certificate of Title Volume 2500 Folio 393~~
- 3 Lot 9027 on Deposited Plan 33974 being the whole of the land in Certificate of Title Volume 2530 Folio 88
- 4 Swan Location 12453 being the whole of the land in Certificate of Title Volume 2070 Folio 91
- 5 Swan Location 2950 being the whole of the land in Certificate of Title Volume 1271 Folio 713
- 6 Lot 9027 on Deposited Plan 37971 being the whole of the land in Certificate of Title Volume 2544 Folio 789
- 7 Lot 9028 on Deposited Plan 37971 being the whole of the land in Certificate of Title Volume 2544 Folio 790
- 8 Lot 9030 on Deposited Plan 39242 being the whole of the land in Certificate of Title Volume 2226 Folio 367
- 9 Lot 9031 on Deposited Plan 39242 being the whole of the land in Certificate of Title Volume 2226 Folio 368
- 10 Lot 9032 on Deposited Plan 39242 being the whole of the land in Certificate of Title Volume 2226 Folio 377

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ENCUMBRANCES

CAVEATS I 543633, I 543634, H 422967,
 I 543631, I 543635.
 P/P H 455882

MEMORANDA - WATER AGENCIES ACT AS SHOWN ON
 DIAGRAM 99608

6641037 - EASEMENT.

H 609998 - SCHEDULE

6641038 - EASEMENT

6641039 - EASEMENT

See too

