

# Contract for Houses and Residential Land

Sixteenth Edition

This document has been approved by The Real Estate Institute of Queensland Limited and the Queensland Law Society Incorporated as being suitable for the sale and purchase of houses and residential land in Queensland except for new residential property in which case the issue of GST liability must be dealt with by special condition.

The Seller and Buyer agree to sell and buy the Property under this contract.

## REFERENCE SCHEDULE

<b>Contract Date:</b>				
<b>Seller's Agent:</b>				
NAME:				
ABN:			LICENCE NO.:	
ADDRESS:				
SUBURB:			STATE:	POSTCODE:
PHONE:	MOBILE:	FAX:	EMAIL:	

<b>Seller:</b>	NAME:	Farriers Creek Pty Ltd ACN 639 414 323		ABN:	
	ADDRESS:	Level 2, 117 McLachlan Street			
	SUBURB:	Fortitude Valley QLD		STATE:	POSTCODE: 4006
	PHONE:	MOBILE:	FAX:	EMAIL:	

NAME:				ABN:	
ADDRESS:					
SUBURB:				STATE:	POSTCODE:
PHONE:	MOBILE:	FAX:	EMAIL:		

▪ or any other solicitor notified to the Buyer

<b>Seller's Solicitor:</b>	NAME:	JMh LEGAL			
	REF:			CONTACT:	Jeff Hall
	ADDRESS:	PO Box 2318			
	SUBURB:	Fortitude Valley		STATE:	QLD POSTCODE: 4006
	PHONE:	MOBILE:	FAX:	EMAIL:	
	1300 965 159			jeffh@jmhlegal.com.au	

INITIALS (Note: Initials not required if signed with Electronic Signature)

**Buyer:** NAME: \_\_\_\_\_ ABN: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_  
 SUBURB: \_\_\_\_\_ STATE: \_\_\_\_\_ POSTCODE: \_\_\_\_\_  
 PHONE: \_\_\_\_\_ MOBILE: \_\_\_\_\_ FAX: \_\_\_\_\_ EMAIL: \_\_\_\_\_

NAME: \_\_\_\_\_ ABN: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_  
 SUBURB: \_\_\_\_\_ STATE: \_\_\_\_\_ POSTCODE: \_\_\_\_\_  
 PHONE: \_\_\_\_\_ MOBILE: \_\_\_\_\_ FAX: \_\_\_\_\_ EMAIL: \_\_\_\_\_

**Buyer's Agent:** *(if applicable)*

NAME: \_\_\_\_\_  
 ABN: \_\_\_\_\_ LICENCE NO: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_  
 SUBURB: \_\_\_\_\_ STATE: \_\_\_\_\_ POSTCODE: \_\_\_\_\_  
 PHONE: \_\_\_\_\_ MOBILE: \_\_\_\_\_ FAX: \_\_\_\_\_ EMAIL: \_\_\_\_\_

▪ or any other solicitor notified to the Seller

**Buyer's Solicitor:**

NAME: \_\_\_\_\_  
 REF: \_\_\_\_\_ CONTACT: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_  
 SUBURB: \_\_\_\_\_ STATE: \_\_\_\_\_ POSTCODE: \_\_\_\_\_  
 PHONE: \_\_\_\_\_ MOBILE: \_\_\_\_\_ FAX: \_\_\_\_\_ EMAIL: \_\_\_\_\_

**PROPERTY**

**Land:** ADDRESS: Proposed Lot "Farriers Creek Estate" (which Estate is situated at 45 Ogilvy Road and 120  
 Coutts Drive)  
 SUBURB: Burpengary STATE: QLD POSTCODE: 4560  
 Vacant  Built On

Description: Lot: \_\_\_\_\_  
 on: A proposed Plan of Subdivision being created upon the cancellation of Lot 2 on RP 189017 and Lot 51 on RP 82952

Title Reference: To issue from 16495156 and 13171208

Area: \_\_\_\_\_ (more or less) Land sold as:  Freehold  Leasehold ▪ if neither is selected, the land is treated as being Freehold

Present Use: Vacant Residential

Local Government: Moreton Bay Regional Council

Excluded Fixtures: \_\_\_\_\_

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Included Chattels:

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**PRICE**

Deposit Holder:	JMh Legal		
Deposit Holder's Trust Account:	JMh Legal Law Practice Trust Account		
Bank:	CBA		
BSB:	064 119	Account No:	1027 0591
Purchase Price:	\$ <span style="float: right;">▪ Unless otherwise specified in this contract, the Purchase Price includes any GST payable on the supply of the Property to the Buyer.</span>		
Deposit:	\$ <span style="float: right;">Initial Deposit payable on the day the Buyer signs this contract unless another time is specified below</span>		
	\$ to make the full Deposit equivalent to 5% of Purchase Price	Balance Deposit (if any) payable on:	Satisfaction or waiver of Finance Condition
Default Interest Rate:	%	▪ If no figure is inserted, the Contract Rate applying at the Contract Date published by the Queensland Law Society Inc will apply.	

**FINANCE**

Finance Amount:	\$ Sufficient to Complete	▪ Unless all of "Finance Amount", "Financier" and "Finance Date" are completed, this contract is not subject to finance and clause 3 does not apply.
Financier:	Of Buyer's Choice	
Finance Date:	21 days after Contract Date	

**BUILDING AND/OR PEST INSPECTION DATE**

Inspection Date:		▪ If "Inspection Date" is not completed, the contract is not subject to an inspection report and clause 4.1 does not apply.
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**MATTERS AFFECTING PROPERTY**

**Title Encumbrances:**

Is the Property sold subject to any Encumbrances?  No  Yes, listed below:

Encumbrances (including but not limited to easements) may be granted to the Local Authority and Utility Providers for the purpose of drainage, sewerage or right of way and may also be granted in terms of Special Condition 4.

▪ **WARNING TO SELLER:** You are required to disclose all Title Encumbrances which will remain after settlement (for example, easements on your title and statutory easements for sewerage and drainage which may not appear on a title search). Failure to disclose these may entitle the Buyer to terminate the contract or to compensation. It is NOT sufficient to state "refer to title", "search will reveal", or similar.

**Tenancies:**

TENANTS NAME: ▪ If the property is sold with vacant possession from settlement, insert 'Nil'. Otherwise complete details from Residential Tenancy Agreement.

**TERM AND OPTIONS:**

STARTING DATE OF TERM:	ENDING DATE OF TERM:	RENT:	BOND:
		\$ 0.00	\$ 0.00

INITIALS (Note: Initials not required if signed with Electronic Signature)

**Managing Agent:**

AGENCY NAME:

PROPERTY MANAGER:

ADDRESS:

SUBURB:

STATE:

POSTCODE:

PHONE:

FAX:

MOBILE:

EMAIL:

**POOL SAFETY**

**Q1.** Is there a pool on the Land or on an adjacent land used in association with the Land?

Yes

No Clause 4.2 of this contract does not apply

**Q2.** If the answer to Q1 is Yes, is there a Compliance or Exemption Certificate for the pool at the time of contract?

Yes Clause 5.3(1)(f) applies

No Clause 4.2 applies (except for auction and some other excluded sales)

**Q3.** If the answer to Q2 is No, has a Notice of No Pool Safety Certificate been given prior to contract?

Yes

No

- **WARNING TO SELLER:** Failure to comply with the Pool Safety Requirements is an offence with substantial penalties.
- **WARNING TO BUYER:** If there is no Compliance or Exemption Certificate at settlement, the Buyer becomes responsible at its cost to obtain a Pool Safety Certificate within 90 days after settlement. The Buyer can also become liable to pay any costs of rectification necessary to comply with the Pool Safety Requirements to obtain a Pool Safety Certificate. The Buyer commits an offence and can be liable to substantial penalties if the Buyer fails to comply with this requirement.
- If there is a pool on the Land and Q2 is not completed then clause 4.2 applies.
- Note: This is an obligation of the Seller under Section 16 of the Building Regulation 2006.

**POOL SAFETY INSPECTOR**

Pool Safety Inspector:

- The Pool Safety Inspector must be licensed under the Building Act 1975 and Building Regulation 2006.

Pool Safety Inspection Date:

- Clause 4.2(2) applies except where this contract is formed on a sale by auction and some other excluded sales.

**ELECTRICAL SAFETY SWITCH AND SMOKE ALARM**

*This section must be completed unless the Land is vacant.*

The Seller gives notice to the Buyer that an Approved Safety Switch for the General Purpose Socket Outlets is:

*(select whichever is applicable)*

installed in the residence

not installed in the residence

- **WARNING:** By giving false or misleading information in this section, the Seller may incur a penalty. The Seller should seek expert and qualified advice about completing this section and not rely on the Seller's Agent to complete this section.

The Seller gives notice to the Buyer that a Compliant Smoke Alarm(s) is/are:

*(select whichever is applicable)*

installed in the residence

not installed in the residence

- **WARNING:** Failure to install a Compliant Smoke Alarm is an offence under the Fire and Emergency Services Act 1990.

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## NEIGHBOURHOOD DISPUTES (DIVIDING FENCES AND TREES) ACT 2011

The Seller gives notice to the Buyer in accordance with Section 83 of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* that the Land:

(select whichever is applicable)

- is not affected by any application to, or an order made by, the Queensland Civil and Administrative Tribunal (QCAT) in relation to a tree on the Land or
- is affected by an application to, or an order made by, QCAT in relation to a tree on the Land, a copy of which has been given to the Buyer prior to the Buyer signing the contract.

■ **WARNING:** Failure to comply with s83 *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* by giving a copy of an order or application to the Buyer (where applicable) prior to Buyer signing the contract will entitle the Buyer to terminate the contract prior to Settlement.

## GST WITHHOLDING OBLIGATIONS

Is the Buyer registered for GST and acquiring the Land for a creditable purpose?  
(select whichever is applicable)

- Yes
- No

[Note: An example of an acquisition for a creditable purpose would be the purchase of the Land by a building contractor, who is registered for GST, for the purposes of building a house on the Land and selling it in the ordinary course of its business]

■ **WARNING:** the Buyer warrants in clause 2.5(6) that this information is true and correct.

■ **WARNING:** All sellers of residential premises or potential residential land are required to complete this notice. Section 14-250 of the *Withholding Law* applies to the sale of 'new residential premises' or 'potential residential land' (subject to some exceptions) and requires an amount to be withheld from the Purchase Price and paid to the ATO. The Seller should seek legal advice if unsure about completing this section.

The Seller gives notice to the Buyer in accordance with section 14-255(1)(a) of the *Withholding Law* that:  
(select whichever is applicable)

<input type="checkbox"/>	the Buyer <i>is not</i> required to make a payment under section 14-250 of the <i>Withholding Law</i> in relation to the supply of the Property
<input checked="" type="checkbox"/>	the Buyer <i>is</i> required to make a payment under section 14-250 of the <i>Withholding Law</i> in relation to the supply of the Property. Under section 14-255(1) of the <i>Withholding Law</i> , the Seller is required to give further details prior to settlement.

**SPECIAL CONDITIONS**

The following Annexures form Part of this Contract:

- Annexure A Special Conditions
- Annexure B Building Design Guidelines
- Annexure C Guarantee & Indemnity
- Annexure D Bushfire Management Report

**SETTLEMENT**

SETTLEMENT DATE:	SEE SPECIAL CONDITIONS	<ul style="list-style-type: none"> <li>▪ <i>or the next Business Day if that is not a Business Day in the Place for Settlement</i></li> <li>▪ <i>If Brisbane is inserted this is a reference to Brisbane CBD</i></li> </ul>
PLACE FOR SETTLEMENT:	BRISBANE CBD OR PEXA	

**SIGNATURES**

**The contract may be subject to a 5 business day statutory cooling-off period. A termination penalty of 0.25% of the purchase price applies if the Buyer terminates the contract during the statutory cooling-off period.**  
**It is recommended the Buyer obtain an independent property valuation and independent legal advice about the contract and his or her cooling-off rights, before signing.**

BUYER: \_\_\_\_\_ WITNESS: \_\_\_\_\_

BUYER: \_\_\_\_\_ WITNESS: \_\_\_\_\_

By placing my signature above I warrant that I am the Buyer named in the Reference Schedule or authorised by the Buyer to sign.

[Note: No witness is required if the Buyer signs using an Electronic Signature]

Farriers Creek Pty Ltd ACN 639 414 323

SELLER: \_\_\_\_\_ WITNESS: \_\_\_\_\_

SELLER: \_\_\_\_\_ WITNESS: \_\_\_\_\_

By placing my signature above I warrant that I am the Seller named in the Reference Schedule or authorised by the Seller to sign.

[Note: No witness is required if the Seller signs using an Electronic Signature]

DEPOSIT HOLDER: \_\_\_\_\_

- *Who acknowledges having received the Initial Deposit and agrees to hold that amount and any Balance Deposit when received as Deposit Holder for the parties as provided in the Contract.*

# TERMS OF CONTRACT

## FOR HOUSES AND RESIDENTIAL LAND

### 1. DEFINITIONS

#### 1.1 In this contract:

- (1) terms in **bold** in the Reference Schedule have the meanings shown opposite them; and
- (2) unless the context otherwise indicates:
  - (a) **“Approved Safety Switch”** means a residual current device as defined in the *Electrical Safety Regulation 2013*;
  - (b) **“ATO”** means the Australian Taxation Office;
  - (c) **“ATO Clearance Certificate”** means a certificate issued under s14-220(1) of the Withholding Law which is current on the date it is given to the Buyer;
  - (d) **“Balance Purchase Price”** means the Purchase Price, less the Deposit paid by the Buyer, adjusted under clause 2.6;
  - (e) **“Bank”** means an authorised deposit-taking institution within the meaning of the *Banking Act 1959 (Cth)*;
  - (f) **“Bond”** means a bond under the Residential Tenancies and Rooming Accommodation Act 2008;
  - (g) **“Building Inspector”** means a person licensed to carry out completed residential building inspections under the *Queensland Building and Construction Commission Regulations 2003*;
  - (h) **“Business Day”** means a day other than:
    - (i) a Saturday or Sunday;
    - (ii) a public holiday in the Place for Settlement; and
    - (iii) a day in the period 27 to 31 December (inclusive);
  - (i) **“CGT Withholding Amount”** means the amount determined under section 14-200(3)(a) of the Withholding Law or, if a copy is provided to the Buyer prior to settlement, a lesser amount specified in a variation notice under section 14-235;
  - (j) **“Compliance or Exemption Certificate”** means:
    - (i) a Pool Safety Certificate; or
    - (ii) a building certificate that may be used instead of a Pool Safety Certificate under section 246AN(2) of the *Building Act 1975*; or
    - (iii) an exemption from compliance on the grounds of impracticality under section 245B of the *Building Act 1975*;
  - (k) **“Compliant Smoke Alarm”** means a smoke alarm complying with the requirements for smoke alarms in domestic dwellings under the *Fire and Emergency Services Act 1990*;
  - (l) **“Contract Date”** or **“Date of Contract”** means the date inserted in the Reference Schedule;
  - (m) **“Court”** includes any tribunal established under statute.
  - (n) **“Electronic Signature”** means an electronic method of signing that identifies the person and indicates their intention to sign the contract;
  - (o) **“Encumbrances”** includes:
    - (i) unregistered encumbrances;
    - (ii) statutory encumbrances; and
    - (iii) Security Interests.
  - (p) **“Essential Term”** includes, in the case of breach by:
    - (i) the Buyer: clauses 2.2, 2.5(1), 2.5(5), 5.1 and 6.1; and
    - (ii) the Seller: clauses 2.5(5), 5.1, 5.3(1)(a)-(d), 5.3(1)(e)(ii) & (iii), 5.3(1)(f), 5.5 and 6.1;
 but nothing in this definition precludes a Court from finding other terms to be essential.
  - (q) **“Financial Institution”** means a Bank, building society or credit union;
  - (r) **“General Purpose Socket Outlet”** means an electrical socket outlet as defined in the *Electrical Safety Regulations 2013*;
  - (s) **“GST”** means the goods and services tax under the GST Act;
  - (t) **“GST Act”** means *A New Tax System (Goods and Services Tax) Act* and includes other GST related legislation;
  - (u) **“GST Withholding Amount”** means the amount (if any) determined under section 14-250 of the Withholding Law required to be paid to the Commissioner of Taxation.
  - (v) **“Improvements”** means fixed structures on the Land and includes all items fixed to them (such as stoves, hot water systems, fixed carpets, curtains, blinds and their fittings, clothes lines, fixed satellite dishes and television antennae, in-ground plants) but does not include the Reserved Items;
  - (w) **“Keys”** means keys, codes or devices in the Seller’s possession or control for all locks or security systems on the Property or necessary to access the Property;
  - (x) **“Notice of no pool safety certificate”** means the Form 36 under the *Building Regulation 2006* to the effect that there is no Pool Safety Certificate issued for the Land;
  - (y) **“Notice of nonconformity”** means a Form 26 under the *Building Regulation 2006* advising how the pool does not comply with the relevant pool safety standard;
  - (z) **“Outgoings”** means rates or charges on the Land by any competent authority (for example, council rates, water rates, fire service levies) but excludes land tax;
  - (aa) **“Pest Inspector”** means a person licensed to undertake termite inspections on completed buildings under the *Queensland Building and Construction Commission Regulations 2003*;
  - (bb) **“Pool Safety Certificate”** has the meaning in section 231C(a) of the *Building Act 1975*;
  - (cc) **“Pool Safety Inspection Date”** means the Pool Safety Inspection Date inserted in the Reference Schedule. If no date is inserted in the Reference Schedule, the Pool Safety Inspection Date is taken to be the earlier of the following:
    - (i) the Inspection Date for the Building and/or Pest Inspection; or
    - (ii) 2 Business Days before the Settlement Date
  - (dd) **“Pool Safety Requirements”** means the requirements for pool safety contained in the *Building Act 1975* and *Building Regulation 2006*;
  - (ee) **“Pool Safety Inspector”** means a person authorised to give a Pool Safety Certificate;
  - (ff) **“PPSR”** means the Personal Property Securities Register established under *Personal Property Securities Act 2009 (Cth)*;
  - (gg) **“Property”** means:
    - (i) the Land;
    - (ii) the Improvements; and
    - (iii) the Included Chattels;
  - (hh) **“Rent”** means any periodic amount payable under the Tenancies;
  - (ii) **“Reserved Items”** means the Excluded Fixtures and all chattels on the Land other than the Included Chattels;
  - (jj) **“Security Interests”** means all security interests registered on the PPSR over Included Chattels and Improvements;
  - (kk) **“Transfer Documents”** means:

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- (i) the form of transfer under the *Land Title Act 1994* required to transfer title in the Land to the Buyer; and
- (ii) any other document to be signed by the Seller necessary for stamping or registering the transfer;
- (ll) **“Transport Infrastructure”** has the meaning defined in the *Transport Infrastructure Act 1994*; and
- (mm) **“Withholding Law”** means Schedule 1 to the *Taxation Administration Act 1953 (Cth)*.

## 2. PURCHASE PRICE

### 2.1 GST

- (1) Unless otherwise specified in this contract, the Purchase Price includes any GST payable on the supply of the Property to the Buyer.
- (2) If a party is required to make any other payment or reimbursement under this contract, that payment or reimbursement will be reduced by the amount of any input tax credits to which the other party (or the representative member for a GST group of which it is a member) is entitled.

### 2.2 Deposit

- (1) The Buyer must pay the Deposit to the Deposit Holder at the times shown in the Reference Schedule. The Deposit Holder will hold the Deposit until a party becomes entitled to it.
- (2) The Buyer will be in default if it:
  - (a) does not pay the Deposit when required;
  - (b) pays the Deposit by a post-dated cheque; or
  - (c) pays the Deposit by cheque which is dishonoured on presentation.
- (3) The Seller may recover from the Buyer as a liquidated debt any part of the Deposit which is not paid when required.

### 2.3 Investment of Deposit

- If:
- (1) the Deposit Holder is instructed by either the Seller or the Buyer; and
  - (2) it is lawful to do so;
- the Deposit Holder must:
- (3) invest as much of the Deposit as has been paid with any Financial Institution in an interest-bearing account in the names of the parties; and
  - (4) provide the parties' tax file numbers to the Financial Institution (if they have been supplied).

### 2.4 Entitlement to Deposit and Interest

- (1) The party entitled to receive the Deposit is:
  - (a) if this contract settles, the Seller;
  - (b) if this contract is terminated without default by the Buyer, the Buyer; and
  - (c) if this contract is terminated owing to the Buyer's default, the Seller.
- (2) The interest on the Deposit must be paid to the person who is entitled to the Deposit.
- (3) If this contract is terminated, the Buyer has no further claim once it receives the Deposit and interest, unless the termination is due to the Seller's default or breach of warranty.
- (4) The Deposit is invested at the risk of the party who is ultimately entitled to it.

### 2.5 Payment of Balance Purchase Price

- (1) On the Settlement Date, the Buyer must pay the Balance Purchase Price by bank cheque as the Seller or the Seller's Solicitor directs.
- (2) Despite any other provision of this contract, a reference to a "bank cheque" in clause 2.5:
  - (a) includes a cheque drawn by a building society or credit union on itself;
  - (b) does not include a cheque drawn by a building society or credit union on a Bank;

and the Seller is not obliged to accept a cheque referred to in clause 2.5(2)(b) on the Settlement Date.
- (3) If both the following apply:
  - (a) the sale is not an excluded transaction under s14-215 of the Withholding Law; and
  - (b) the Seller has not given the Buyer on or before settlement for each person comprising the Seller either:
    - (i) an ATO Clearance Certificate; or

- (ii) a variation notice under s14-235 of the Withholding Law which remains current at the Settlement Date varying the CGT Withholding Amount to nil,

then:

- (c) for clause 2.5(1), the Seller irrevocably directs the Buyer to draw a bank cheque for the CGT Withholding Amount in favour of the Commissioner of Taxation or, if the Buyer's Solicitor requests, the Buyer's Solicitor's Trust Account;
- (d) the Buyer must lodge a Foreign Resident Capital Gains Withholding Purchaser Notification Form with the ATO for each person comprising the Buyer and give copies to the Seller with the payment reference numbers (PRN) on or before settlement;
- (e) the Seller must return the bank cheque in paragraph (c) to the Buyer's Solicitor (or if there is no Buyer's Solicitor, the Buyer) at settlement; and
- (f) the Buyer must pay the CGT Withholding Amount to the ATO in accordance with section 14-200 of the Withholding Law and give the Seller evidence that it has done so within 2 Business Days of settlement occurring.
- (4) For clause 2.5(3) and section 14-215 of the Withholding Law, the market value of the CGT asset is taken to be the Purchase Price less any GST included in the Purchase Price for which the Buyer is entitled to an input tax credit unless:
  - (a) the Property includes items in addition to the Land and Improvements; and
  - (b) no later than 2 Business Days prior to the Settlement Date, the Seller gives the Buyer a valuation of the Land and Improvements prepared by a registered valuer, in which case the market value of the Land and Improvements will be as stated in the valuation.
- (5) If the Buyer is required to pay the GST Withholding Amount to the Commissioner of Taxation at settlement pursuant to section 14-250 of the Withholding Law:
  - (a) the Seller must give the Buyer a notice in accordance with section 14-255(1) of the Withholding Law;
  - (b) prior to settlement the Buyer must lodge with the ATO:
    - (i) a *GST Property Settlement Withholding Notification* form ("Form 1"); and
    - (ii) a *GST Property Settlement Date Confirmation* form ("Form 2");
  - (c) on or before settlement, the Buyer must give the Seller copies of:
    - (i) the Form 1;
    - (ii) confirmation from the ATO that the Form 1 has been lodged specifying the Buyer's lodgement reference number and payment reference number;
    - (iii) confirmation from the ATO that the Form 2 has been lodged; and
    - (iv) a completed ATO payment slip for the Withholding Amount;
  - (d) the Seller irrevocably directs the Buyer to draw a bank cheque for the GST Withholding Amount in favour of the Commissioner of Taxation and deliver it to the Seller at settlement; and
  - (e) the Seller must pay the GST Withholding Amount to the ATO in compliance with section 14-250 of the Withholding Law promptly after settlement.
- (6) The Buyer warrants that the statements made by the Buyer in the Reference Schedule under GST Withholding Obligations are true and correct.

### 2.6 Adjustments to Balance Purchase Price

- (1) The Seller is liable for Outgoings and is entitled to Rent up to and including the Settlement Date. The Buyer is liable for Outgoings and is entitled to Rent after the Settlement Date.
- (2) Subject to clauses 2.6(3), 2.6(5) and 2.6(14), Outgoings for periods including the Settlement Date must be adjusted:
  - (a) for those paid, on the amount paid;
  - (b) for those assessed but unpaid, on the amount payable (excluding any discount); and
  - (c) for those not assessed:

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- (i) on the amount the relevant authority advises will be assessed (excluding any discount); or
  - (ii) if no advice on the assessment to be made is available, on the amount of the latest separate assessment (excluding any discount).
- (3) If there is no separate assessment of rates for the Land at the Settlement Date and the Local Government informs the Buyer that it will not apportion rates between the Buyer and the Seller, then:
- (a) the amount of rates to be adjusted is that proportion of the assessment equal to the ratio of the area of the Land to the area of the parcel in the assessment; and
  - (b) if an assessment of rates includes charges imposed on a "per lot" basis, then the portion of those charges to be adjusted is the amount assessed divided by the number of lots in that assessment.
- (4) The Seller is liable for land tax assessed on the Land for the financial year current at the Settlement Date. If land tax is unpaid at the Settlement Date and the Office of State Revenue advises that it will issue a final clearance for the Land on payment of a specified amount, then the Buyer may deduct the specified amount from the Balance Purchase Price at settlement and must pay it promptly to the Office of State Revenue.
- (5) Any Outgoings assessable on the amount of water used must be adjusted on the charges that would be assessed on the total water usage for the assessment period, determined by assuming that the actual rate of usage shown by the meter reading made before settlement continues throughout the assessment period. The Buyer must obtain and pay for the meter reading.
- (6) If any Outgoings are assessed but unpaid at the Settlement Date, then the Buyer may deduct the amount payable from the Balance Purchase Price at settlement and pay it promptly to the relevant authority. If an amount is deducted under this clause, the relevant Outgoing will be treated as paid at the Settlement Date for the purposes of clause 2.6(2).
- (7) Arrears of Rent for any rental period ending on or before the Settlement Date belong to the Seller and are not adjusted at settlement.
- (8) Unpaid Rent for the rental period including both the Settlement Date and the following day ("**Current Period**") is not adjusted until it is paid.
- (9) Rent already paid for the Current Period or beyond must be adjusted at settlement.
- (10) If Rent payments are reassessed after the Settlement Date for periods including the Settlement Date, any additional Rent payment from a Tenant or refund due to a Tenant must be apportioned under clauses 2.6(7), 2.6(8) and 2.6(9).
- (11) Payments under clause 2.6(10) must be made within 14 days after notification by one party to the other but only after any additional payment from a Tenant has been received.
- (12) The cost of Bank cheques payable at settlement:
- (a) to the Seller or its mortgagee are the responsibility of the Buyer; and
  - (b) to parties other than the Seller or its mortgagee are the responsibility of the Seller.
- (13) The Seller is not entitled to require payment of the Balance Purchase Price by means other than Bank cheque without the consent of the Buyer.
- (14) Upon written request by the Buyer, the Seller will, prior to Settlement, give the Buyer a written statement, supported by reasonable evidence, of –
- (a) all Outgoings and all Rent for the Property to the extent they are not capable of discovery by search or enquiry at any office of public record or pursuant to the provisions of any statute; and
  - (b) any other information which the Buyer may reasonably require for the purpose of calculating or apportioning any Outgoings or Rent under this clause 2.6.

If the Seller becomes aware of a change to the information provided the Seller will as soon as practicably provide the updated information to the Buyer.

### 3. FINANCE

- 3.1 This contract is conditional on the Buyer obtaining approval of a loan for the Finance Amount from the Financier by the Finance

Date on terms satisfactory to the Buyer. The Buyer must take all reasonable steps to obtain approval.

- 3.2 The Buyer must give notice to the Seller that:
- (1) approval has not been obtained by the Finance Date and the Buyer terminates this contract; or
  - (2) the finance condition has been either satisfied or waived by the Buyer.
- 3.3 The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 3.2 by 5pm on the Finance Date. This is the Seller's only remedy for the Buyer's failure to give notice.
- 3.4 The Seller's right under clause 3.3 is subject to the Buyer's continuing right to give written notice to the Seller of satisfaction, termination or waiver pursuant to clause 3.2.

## 4. BUILDING AND PEST INSPECTION REPORTS AND POOL SAFETY

### 4.1 Building and Pest Inspection

- (1) This contract is conditional upon the Buyer obtaining a written building report from a Building Inspector and a written pest report from a Pest Inspector (which may be a single report) on the Property by the Inspection Date on terms satisfactory to the Buyer. The Buyer must take all reasonable steps to obtain the reports (subject to the right of the Buyer to elect to obtain only one of the reports).
- (2) The Buyer must give notice to the Seller that:
  - (a) a satisfactory Inspector's report under clause 4.1(1) has not been obtained by the Inspection Date and the Buyer terminates this contract. The Buyer must act reasonably; or
  - (b) clause 4.1(1) has been either satisfied or waived by the Buyer.
- (3) If the Buyer terminates this contract and the Seller asks the Buyer for a copy of the building and pest reports, the Buyer must give a copy of each report to the Seller without delay.
- (4) The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 4.1(2) by 5pm on the Inspection Date. This is the Seller's only remedy for the Buyer's failure to give notice.
- (5) The Seller's right under clause 4.1(4) is subject to the Buyer's continuing right to give written notice to the Seller of satisfaction, termination or waiver pursuant to clause 4.1(2).

### 4.2 Pool Safety

- (1) This clause 4.2 applies if:
  - (a) the answer to Q2 of the Reference Schedule is No or Q2 is not completed; and
  - (b) this contract is not a contract of a type referred to in section 160(1)(b) of the *Property Occupations Act 2014*.
- (2) This contract is conditional upon:
  - (a) the issue of a Pool Safety Certificate; or
  - (b) a Pool Safety Inspector issuing a Notice of nonconformity stating the works required before a Pool Safety Certificate can be issued,
 by the Pool Safety Inspection Date.
- (3) The Buyer is responsible for arranging an inspection by a Pool Safety Inspector at the Buyer's cost. The Seller authorises:
  - (a) the Buyer to arrange the inspection; and
  - (b) the Pool Safety Inspector to advise the Buyer of the results of the inspection and to give the Buyer a copy of any notice issued.
- (4) If a Pool Safety Certificate has not issued by the Pool Safety Inspection Date, the Buyer may give notice to the Seller that the Buyer:
  - (a) terminates this contract; or
  - (b) waives the benefit of this clause 4.2;
 The Buyer must act reasonably.
- (5) The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 4.2(4) by 5pm on the Pool Safety Inspection Date.
- (6) The Seller's right under clause 4.2(5) is subject to the Buyer's continuing right to give written notice to the Seller of termination or waiver pursuant to clause 4.2(4).
- (7) The right of a party to terminate under this clause 4.2, ceases upon receipt by that party of a copy of a current Pool Safety Certificate.

- (8) If the Buyer terminates this contract under clause 4.2(4)(a), and the Seller has not obtained a copy of the Notice of nonconformity issued by the Pool Safety Inspector, the Seller may request a copy and the Buyer must provide this to the Seller without delay.

## 5. SETTLEMENT

### 5.1 Time and Date

- (1) Settlement must occur between 9am and 4pm AEST on the Settlement Date.
- (2) If the parties do not agree on where settlement is to occur, it must take place in the Place for Settlement at the office of a solicitor or Financial Institution nominated by the Seller, or, if the Seller does not make a nomination, at the land registry office in or nearest to the Place for Settlement.

### 5.2 Transfer Documents

- (1) The Transfer Documents must be prepared by the Buyer's Solicitor and delivered to the Seller a reasonable time before the Settlement Date.
- (2) If the Buyer pays the Seller's reasonable expenses, it may require the Seller to produce the Transfer Documents at the Office of State Revenue nearest the Place for Settlement for stamping before settlement.

### 5.3 Documents and Keys at Settlement

- (1) In exchange for payment of the Balance Purchase Price, the Seller must deliver to the Buyer at settlement:
  - (a) any instrument of title for the Land required to register the transfer to the Buyer; and
  - (b) unstamped Transfer Documents capable of immediate registration after stamping; and
  - (c) any instrument necessary to release any Encumbrance over the Property in compliance with the Seller's obligation in clause 7.2; and
  - (d) if requested by the Buyer not less than 2 clear Business Days before the Settlement Date, the Keys; and
  - (e) if there are Tenancies:
    - (i) the Seller's copy of any Tenancy agreements;
    - (ii) a notice to each tenant advising of the sale in the form required by law; and
    - (iii) any notice required by law to transfer to the Buyer the Seller's interest in any Bond; and
  - (f) if the answer to Q2 in the Reference Schedule is Yes, a copy of a current Compliance or Exemption Certificate, if not already provided to the Buyer.
- (2) If the instrument of title for the Land also relates to other land, the Seller need not deliver it to the Buyer, but the Seller must make arrangements satisfactory to the Buyer to produce it for registration of the transfer.
- (3) If the Keys are not delivered at Settlement under clause 5.3(1)(d), the Seller must deliver the Keys to the Buyer. The Seller may discharge its obligation under this provision by authorising the Seller's Agent to release the Keys to the Buyer.

### 5.4 Assignment of Covenants and Warranties

- At settlement, the Seller assigns to the Buyer the benefit of all:
- (1) covenants by the tenants under the Tenancies;
  - (2) guarantees and Bonds (subject to the requirements of the *Residential Tenancies and Rooming Accommodation Act 2008*) supporting the Tenancies;
  - (3) manufacturers' warranties regarding the Included Chattels; and
  - (4) builders' warranties on the Improvements;
- to the extent they are assignable. However, the right to recover arrears of Rent is not assigned to the Buyer and section 117 of the *Property Law Act 1974* does not apply.

### 5.5 Possession of Property and Title to Included Chattels

On the Settlement Date, in exchange for the Balance Purchase Price, the Seller must give the Buyer vacant possession of the Land and the Improvements except for the Tenancies. Title to the Included Chattels passes at settlement.

### 5.6 Reservations

- (1) The Seller must remove the Reserved Items from the Property before settlement.
- (2) The Seller must repair at its expense any damage done to the Property in removing the Reserved Items. If the Seller fails to do so, the Buyer may repair that damage.
- (3) Any Reserved Items not removed before settlement will be considered abandoned and the Buyer may, without limiting its

other rights, complete this contract and appropriate those Reserved Items or dispose of them in any way.

- (4) The Seller indemnifies the Buyer against any damages and expenses resulting from the Buyer's actions under clauses 5.6(2) or 5.6(3).

## 5.7 Consent to Transfer

- (1) If the Land sold is leasehold, this contract is subject to any necessary consent to the transfer of the lease to the Buyer being obtained by the Settlement Date.
- (2) The Seller must apply for the consent required as soon as possible.
- (3) The Buyer must do everything reasonably required to help obtain this consent.

## 6. TIME

### 6.1 Time of the Essence

Time is of the essence of this contract, except regarding any agreement between the parties on a time of day for settlement.

### 6.2 Suspension of Time

- (1) This clause 6.2 applies if a party is unable to perform a Settlement Obligation solely as a consequence of a Delay Event but does not apply where the inability is attributable to:
  - (a) damage to, destruction of or diminution in value of the Property or other property of the Seller or Buyer; or
  - (b) termination or variation of any agreement between a party and another person whether relating to the provision of finance, the release of an Encumbrance, the sale or purchase of another property or otherwise.
- (2) Time for the performance of the parties' Settlement Obligations is suspended and ceases to be of the essence of the contract and the parties are deemed not to be in breach of their Settlement Obligations.
- (3) An Affected Party must take reasonable steps to minimise the effect of the Delay Event on its ability to perform its Settlement Obligations.
- (4) When an Affected Party is no longer prevented from performing its Settlement Obligations due to the Delay Event, the Affected Party must give the other party a notice of that fact, promptly.
- (5) When the Suspension Period ends, whether notice under clause 6.2(4) has been given or not, either party may give the other party a Notice to Settle.
- (6) A Notice to Settle must be in writing and state:
  - (a) that the Suspension Period has ended;
  - (b) a date, being not less than 5 nor more than 10 Business Days after the date the Notice to Settle is given, which shall become the Settlement Date; and
  - (c) that time is of the essence.
- (7) When Notice to Settle is given, time is again of the essence of the contract.
- (8) In this clause 6.2:
  - (a) **"Affected Party"** means a party referred to in clause 6.2(1);
  - (b) **"Delay Event"** means:
    - (i) a tsunami, flood, cyclone, earthquake, bushfire or other act of nature;
    - (ii) riot, civil commotion, war, invasion or a terrorist act;
    - (iii) an imminent threat of an event in paragraphs (i) or (ii); or
    - (iv) compliance with any lawful direction or order by a Government Agency;
  - (c) **"Government Agency"** means the government of the Commonwealth of Australia or an Australian State, Territory or local government and includes their authorities, agencies, government owned corporations and authorised officers, courts and tribunals;
  - (d) **"Settlement Obligations"** means, in the case of the Buyer, its obligations under clauses 2.5(1) and 5.1(1) and, in the case of the Seller, its obligations under clauses 5.1(1), 5.3(1)(a) – (e) and 5.5;
  - (e) **"Suspension Period"** means the period during which the Affected Party (or if both the Buyer and Seller are Affected Parties, either of them) remains unable to perform a Settlement Obligation solely as a consequence of a Delay Event.

## 7. MATTERS AFFECTING THE PROPERTY

### 7.1 Title

The Land is sold subject to:

- (1) any reservations or conditions on the title or the original Deed of Grant (if freehold); or
- (2) the Conditions of the Crown Lease (if leasehold).

### 7.2 Encumbrances

The Property is sold free of all Encumbrances other than the Title Encumbrances and Tenancies.

### 7.3 Requisitions

The Buyer may not deliver any requisitions or enquiries on title.

### 7.4 Seller's Warranties

- (1) The Seller warrants that, except as disclosed in this contract at settlement:
  - (a) if the Land is freehold: it will be the registered owner of an estate in fee simple in the Land and will own the rest of the Property;
  - (b) if the Land is leasehold: it will be the registered lessee, the lease is not liable to forfeiture because of default under the lease, and it will own the rest of the Property;
  - (c) it will be capable of completing this contract (unless the Seller dies or becomes mentally incapable after the Contract Date); and
  - (d) there will be no unsatisfied judgment, order (except for an order referred to in clause 7.6(1)(b)) or writ affecting the Property.
- (2) The Seller warrants that, except as disclosed in this contract at the Contract Date and at settlement there are no current or threatened claims, notices or proceedings that may lead to a judgment, order or writ affecting the Property.
- (3)(a) The Seller warrants that, except as disclosed in this contract or a notice given by the Seller to the Buyer under the *Environmental Protection Act 1994* ("EPA"), at the Contract Date:
  - (i) there is no outstanding obligation on the Seller to give notice to the administering authority under EPA of notifiable activity being conducted on the Land; and
  - (ii) the Seller is not aware of any facts or circumstances that may lead to the Land being classified as contaminated land within the meaning of EPA.
- (b) If the Seller breaches a warranty in clause 7.4(3), the Buyer may:
  - (i) terminate this contract by notice in writing to the Seller given within 2 Business Days before the Settlement Date; or
  - (ii) complete this contract and claim compensation, but only if the Buyer claims it in writing before the Settlement Date.
- (4) If the Seller breaches a warranty in clause 7.4(1) or clause 7.4(2), the Buyer may terminate this contract by notice to the Seller.
- (5) The Seller does not warrant that the Present Use is lawful.

### 7.5 Survey and Mistake

- (1) The Buyer may survey the Land.
- (2) If there is:
  - (a) an error in the boundaries or area of the Land;
  - (b) an encroachment by structures onto or from the Land; or
  - (c) a mistake or omission in describing the Property or the Seller's title to it;which is:
  - (d) immaterial; or
  - (e) material, but the Buyer elects to complete this contract;the Buyer's only remedy against the Seller is for compensation, but only if claimed by the Buyer in writing on or before settlement.
- (3) The Buyer may not delay settlement or withhold any part of the Balance Purchase Price because of any compensation claim under clause 7.5(2).
- (4) If there is a material error, encroachment or mistake, the Buyer may terminate this contract before settlement.

### 7.6 Requirements of Authorities

- (1) Subject to clause 7.6(5), any valid notice or order by any competent authority or Court requiring work to be done or money spent in relation to the Property ("Work or Expenditure") must be fully complied with:
  - (a) if issued before the Contract Date, by the Seller before the Settlement Date;
  - (b) if issued on or after the Contract Date, by the Buyer.
- (2) If any Work or Expenditure that is the Seller's responsibility under clause 7.6(1)(a) is not done before the Settlement Date, the Buyer is entitled to claim the reasonable cost of work done by the Buyer in accordance with the notice or order referred to in clause 7.6(1) from the Seller after settlement as a debt.
- (3) Any Work or Expenditure that is the Buyer's responsibility under clause 7.6(1)(b), which is required to be done before the Settlement Date, must be done by the Seller unless the Buyer directs the Seller not to and indemnifies the Seller against any liability for not carrying out the work. If the Seller does the work, or spends the money, the reasonable cost of that Work or Expenditure must be added to the Balance Purchase Price.
- (4) The Buyer may terminate this contract by notice to the Seller if there is an outstanding notice at the Contract Date under sections 246AG, 247 or 248 of the *Building Act 1975* or sections 167 or 168 of the *Planning Act 2016* that affects the Property.
- (5) Clause 7.6(1) does not apply to orders disclosed under section 83 of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*.

### 7.7 Property Adversely Affected

- (1) If at the Contract Date:
  - (a) the Present Use is not lawful under the relevant town planning scheme;
  - (b) the Land is affected by a proposal of any competent authority to alter the dimensions of any Transport Infrastructure or locate Transport Infrastructure on the Land;
  - (c) access or any service to the Land passes unlawfully through other land;
  - (d) any competent authority has issued a current notice to treat, or notice of intention to resume, regarding any part of the Land;
  - (e) there is an outstanding condition of a development approval attaching to the Land under section 73 of the *Planning Act 2016* or section 96 of the *Economic Development Queensland Act 2012* which, if complied with, would constitute a material mistake or omission in the Seller's title under clause 7.5(2)(c);
  - (f) the Property is affected by the *Queensland Heritage Act 1992* or is included in the World Heritage List;
  - (g) the Property is declared acquisition land under the *Queensland Reconstruction Authority Act 2011*;
  - (h) there is a charge against the Land under s104 of the *Foreign Acquisitions and Takeovers Act 1975*, and that has not been disclosed in this contract, the Buyer may terminate this contract by notice to the Seller given on or before settlement.
- (2) If no notice is given under clause 7.7(1), the Buyer will be treated as having accepted the Property subject to all of the matters referred to in that clause.
- (3) The Seller authorises the Buyer to inspect records held by any authority, including Security Interests on the PPSR relating to the Property.

### 7.8 Dividing Fences

Notwithstanding any provision in the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*, the Seller need not contribute to the cost of building any dividing fence between the Land and any adjoining land owned by it. The Buyer waives any right to claim contribution from the Seller.

## 8. RIGHTS AND OBLIGATIONS UNTIL SETTLEMENT

### 8.1 Risk

The Property is at the Buyer's risk from 5pm on the first Business Day after the Contract Date.

## 8.2 Access

After reasonable notice to the Seller, the Buyer and its consultants may enter the Property:

- (1) once to read any meter;
- (2) for inspections under clause 4;
- (3) once to inspect the Property before settlement; and
- (4) once to value the Property before settlement.

## 8.3 Seller's Obligations After Contract Date

- (1) The Seller must use the Property reasonably until settlement. The Seller must not do anything regarding the Property or Tenancies that may significantly alter them or result in later expense for the Buyer.
- (2) The Seller must promptly upon receiving any notice, proceeding or order that affects the Property or requires work on the Property, give a copy to the Buyer.
- (3) Without limiting clause 8.3(1), the Seller must not without the prior written consent of the Buyer, give any notice or seek or consent to any order that affects the Property or make any agreement affecting the Property that binds the Buyer to perform.

## 8.4 Information Regarding the Property

Upon written request of the Buyer but in any event before settlement, the Seller must give the Buyer:

- (1) copies of all documents relating to any unregistered interests in the Property;
- (2) full details of the Tenancies to allow the Buyer to properly manage the Property after settlement;
- (3) sufficient details (including the date of birth of each Seller who is an individual) to enable the Buyer to undertake a search of the PPSR; and
- (4) further copies or details if those previously given cease to be complete and accurate.

## 8.5 Possession Before Settlement

If possession is given before settlement:

- (1) the Buyer must maintain the Property in substantially its condition at the date of possession, fair wear and tear excepted;
- (2) entry into possession is under a licence personal to the Buyer revocable at any time and does not:
  - (a) create a relationship of landlord and tenant; or
  - (b) waive the Buyer's rights under this contract;
- (3) the Buyer must insure the Property to the Seller's satisfaction; and
- (4) the Buyer indemnifies the Seller against any expense or damages incurred by the Seller as a result of the Buyer's possession of the Property.

## 9. PARTIES' DEFAULT

### 9.1 Seller and Buyer May Affirm or Terminate

Without limiting any other right or remedy of the parties including those under this contract or any right at law or in equity, if the Seller or Buyer, as the case may be, fails to comply with an Essential Term, or makes a fundamental breach of an intermediate term, the Seller (in the case of the Buyer's default) or the Buyer (in the case of the Seller's default) may affirm or terminate this contract.

### 9.2 If Seller Affirms

If the Seller affirms this contract under clause 9.1, it may sue the Buyer for:

- (1) damages;
- (2) specific performance; or
- (3) damages and specific performance.

### 9.3 If Buyer Affirms

If the Buyer affirms this contract under clause 9.1, it may sue the Seller for:

- (1) damages;
- (2) specific performance; or
- (3) damages and specific performance.

### 9.4 If Seller Terminates

If the Seller terminates this contract under clause 9.1, it may do all or any of the following:

- (1) resume possession of the Property;
- (2) forfeit the Deposit and any interest earned;
- (3) sue the Buyer for damages;
- (4) resell the Property.

### 9.5 If Buyer Terminates

If the Buyer terminates this contract under clause 9.1, it may do all or any of the following:

- (1) recover the Deposit and any interest earned;
- (2) sue the Seller for damages.

## 9.6 Seller's Resale

- (1) If the Seller terminates this contract and resells the Property, the Seller may recover from the Buyer as liquidated damages:
  - (a) any deficiency in price on a resale; and
  - (b) its expenses connected with any repossession, any failed attempt to resell, and the resale;provided the resale settles within 2 years of termination of this contract.

- (2) Any profit on a resale belongs to the Seller.

## 9.7 Seller's Damages

The Seller may claim damages for any loss it suffers as a result of the Buyer's default, including its legal costs on an indemnity basis and the cost of any Work or Expenditure under clause 7.6(3).

## 9.8 Buyer's Damages

The Buyer may claim damages for any loss it suffers as a result of the Seller's default, including its legal costs on an indemnity basis.

## 9.9 Interest on Late Payments

- (1) The Buyer must pay interest at the Default Rate:
  - (a) on any amount payable under this contract which is not paid when due; and
  - (b) on any judgement for money payable under this contract.
- (2) Interest continues to accrue:
  - (a) under clause 9.9(1)(a), from the date it is due until paid; and
  - (b) under clause 9.9(1)(b), from the date of judgement until paid.
- (3) Any amount payable under clause 9.9(1)(a) in respect of a period prior to settlement must be paid by the Buyer at settlement. If this contract is terminated or if any amount remains unpaid after settlement, interest continues to accrue.
- (4) Nothing in this clause affects any other rights of the Seller under this contract or at law.

## 10. GENERAL

### 10.1 Seller's Agent

The Seller's Agent is appointed as the Seller's agent to introduce a buyer.

### 10.2 Foreign Buyer Approval

The Buyer warrants that either:

- (1) the Buyer's purchase of the Property is not a notifiable action; or
- (2) the Buyer has received a no objection notification, under the *Foreign Acquisitions and Takeovers Act 1975*.

### 10.3 Duty

The Buyer must pay all duty on this contract.

### 10.4 Notices

- (1) Notices under this contract must be in writing.
- (2) Notices under this contract or notices required to be given by law may be given and received by the party's solicitor.
- (3) Notices under this contract or required to be given by law may be given by:
  - (a) delivering or posting to the other party or its solicitor; or
  - (b) sending it to the facsimile number of the other party or its solicitor stated in the Reference Schedule (or another facsimile number notified by the recipient to the sender); or
  - (c) sending it to the email address of the other party or its solicitor stated in the Reference Schedule (or another email address notified by the recipient to the sender).
- (4) Subject to clause 10.4(5), a notice given after this contract is entered into in accordance with clause 10.4(3) will be treated as given:
  - (a) 5 Business Days after posting;
  - (b) if sent by facsimile, at the time indicated on a clear transmission report; and
  - (c) if sent by email, at the time it is sent.
- (5) Notices given by facsimile, by personal delivery or by email between 5pm on a Business Day (the "first Business Day") and 9am on the next Business Day (the "second Business Day") will be treated as given or delivered at 9am on the second Business Day.
- (6) If two or more notices are treated as given at the same time under clause 10.4(5), they will be treated as given in the order in which they were sent or delivered.

- (7) Notices or other written communications by a party's solicitor (for example, varying the Inspection Date, Finance Date or Settlement Date) will be treated as given with that party's authority.
- (8) For the purposes of clause 10.4(3)(c) and clause 12.2 the notice or information may be contained within an email, as an attachment to an email or located in an electronic repository accessible by the recipient by clicking a link in an email.

#### 10.5 Business Days

- (1) If anything is required to be done on a day that is not a Business Day, it must be done instead on the next Business Day.
- (2) If the Finance Date or Inspection Date fall on a day that is not a Business Day, then it falls on the next Business Day.

#### 10.6 Rights After Settlement

Despite settlement and registration of the transfer, any term of this contract that can take effect after settlement or registration remains in force.

#### 10.7 Further Acts

If requested by the other party, each party must, at its own expense, do everything reasonably necessary to give effect to this contract.

#### 10.8 Severance

If any term or part of a term of this contract is or becomes legally ineffective, invalid or unenforceable in any jurisdiction it will be severed and the effectiveness, validity or enforceability of the remainder will not be affected.

#### 10.9 Interpretation

##### (1) Plurals and Genders

Reference to:

- (a) the singular includes the plural and the plural includes the singular;
- (b) one gender includes each other gender;
- (c) a person includes a body corporate; and
- (d) a party includes the party's executors, administrators, successors and permitted assigns.

##### (2) Parties

- (a) If a party consists of more than one person, this contract binds them jointly and each of them individually.
- (b) A party that is a trustee is bound both personally and in its capacity as a trustee.

##### (3) Statutes and Regulations

Reference to statutes includes all statutes amending, consolidating or replacing them.

##### (4) Inconsistencies

If there is any inconsistency between any provision added to this contract and the printed provisions, the added provision prevails.

##### (5) Headings

Headings are for convenience only and do not form part of this contract or affect its interpretation.

#### 10.10 Counterparts

- (1) This contract may be executed in two or more counterparts, all of which will together be deemed to constitute one and the same contract.
- (2) A counterpart may be electronic and signed using an Electronic Signature.

### 11. ELECTRONIC SETTLEMENT

#### 11.1 Application of Clause

- (1) Clause 11 applies if the Buyer, Seller and each Financial Institution involved in the transaction agree to an Electronic Settlement using the same ELNO System and overrides any other provision of this contract to the extent of any inconsistency.
- (2) Acceptance of an invitation to an Electronic Workspace is taken to be an agreement for clause 11.1(1).
- (3) Clause 11 (except clause 11.5(3)) ceases to apply if either party gives notice under clause 11.5 that settlement will not be an Electronic Settlement.

#### 11.2 Completion of Electronic Workspace

- (1) The parties must:
  - (a) ensure that the Electronic Workspace is completed and all Electronic Conveyancing Documents and the Financial Settlement Schedule are Digitally Signed prior to settlement; and

- (b) do everything else required in the Electronic Workspace or otherwise to enable settlement to occur on the Settlement Date.
- (2) If the parties cannot agree on a time for settlement, the time to be nominated in the Workspace is 4pm AEST.
- (3) If any part of the Purchase Price is to be paid to discharge an Outgoing:
  - (a) the Buyer may, by notice in writing to the Seller, require that the amount is paid to the Buyer's Solicitor's trust account and the Buyer is responsible for paying the amount to the relevant authority;
  - (b) for amounts to be paid to destination accounts other than the Buyer's Solicitor's trust account, the Seller must give the Buyer a copy of the current account for the Outgoing to enable the Buyer to verify the destination account details in the Financial Settlement Schedule.
- (4) If the Deposit is required to discharge any Encumbrance or pay an Outgoing at settlement:
  - (a) the Deposit Holder must, if directed by the Seller at least 2 Business Days prior to Settlement, pay the Deposit (and any interest accrued on investment of the Deposit) less commission as clear funds to the Seller's Solicitor;
  - (b) the Buyer and the Seller authorise the Deposit Holder to make the payment in clause 11.2(4)(a);
  - (c) the Seller's Solicitor will hold the money as Deposit Holder under the Contract;
  - (d) the Seller and Buyer authorise the Seller's Solicitor to pay the money as directed by the Seller in accordance with the Financial Settlement Schedule.

#### 11.3 Electronic Settlement

- (1) Clauses 5.1(2) and 5.2 do not apply.
- (2) Payment of the Balance Purchase Price electronically as directed by the Seller's Solicitor in the Financial Settlement Schedule satisfies the Buyer's obligation in clause 2.5(1).
- (3) The Seller and Buyer will be taken to have complied with:
  - (a) clause 2.5(3)(c),(e) and (f); and
  - (b) clause 2.5(5)(d) and (e),
 (as applicable) if at settlement the Financial Settlement Schedule specifies payment of the relevant amount to the account nominated by the Commissioner of Taxation.
- (4) The Seller will be taken to have complied with clause 5.3(1)(b), (c), (d), (e) and (f) if:
  - (a) in relation to documents which are suitable for Electronic Lodgement in the Land Registry at settlement, the documents are Digitally Signed within the Electronic Workspace; and
  - (b) in relation to any other document or thing, the Seller's Solicitor:
    - (i) confirms in writing prior to settlement that it holds all relevant documents which are not suitable for Electronic Lodgement and all Keys (if requested under clause 5.3(1)(d)) in escrow on the terms contained in the QLS E-Conveyancing Guidelines; and
    - (ii) gives a written undertaking to send the documents and Keys (if applicable) to the Buyer or Buyer's Solicitor no later than the Business Day after settlement; and
    - (iii) if requested by the Buyer, provides copies of documents in the Seller's Solicitors possession.
- (5) A party is not in default to the extent it is prevented from complying with an obligation because the other party or the other party's Financial Institution has not done something in the Electronic Workspace.
- (6) Any rights under the contract or at law to terminate the contract may not be exercised during the time the Electronic Workspace is locked for Electronic Settlement.
- (7) Electronic Settlement is taken to occur when Financial Settlement is effected, whether or not Electronic Lodgement has occurred.

#### 11.4 Computer System Unavailable

If settlement fails and cannot occur by 4pm AEST on the Settlement Date because a computer system operated by the Land Registry, Office of State Revenue, Reserve Bank, a Financial Institution or the relevant ELNO System is inoperative, neither party is in default and the Settlement Date is deemed to be the next Business Day. Time remains of the essence.

#### 11.5 Withdrawal from Electronic Settlement

- (1) Either party may elect not to proceed with an Electronic Settlement by giving written notice to the other party.
- (2) A notice under clause 11.5(1) may not be given later than 5 Business Days before the Settlement Date unless an Electronic Settlement cannot be effected because:
  - (a) the transaction is not a Qualifying Conveyancing Transaction; or
  - (b) a party's solicitor is unable to complete the transaction due to death, a loss of legal capacity or appointment of a receiver or administrator (or similar) to their legal practice or suspension of their access to the ELNO System; or
  - (c) the Buyer's or Seller's Financial Institution is unable to use the relevant ELNO System to effect Electronic Settlement.
- (3) If clause 11.5(2) applies:
  - (a) the party giving the notice must provide satisfactory evidence of the reason for the withdrawal; and
  - (b) the Settlement Date will be extended to the date 5 Business Days after the Settlement Date.

#### 11.6 Costs

Each party must pay its own fees and charges of using the relevant ELNO System for Electronic Settlement.

#### 11.7 Definitions for clause 11

In clause 11:

**"Digitally Sign"** and **"Digital Signature"** have the meaning in the ECNL.

**"ECNL"** means the Electronic Conveyancing National Law (Queensland).

**"Electronic Conveyancing Documents"** has the meaning in the *Land Title Act 1994*.

**"Electronic Lodgement"** means lodgement of a document in the Land Registry in accordance with the ECNL.

**"Electronic Settlement"** means settlement facilitated by an ELNO System.

**"Electronic Workspace"** means a shared electronic workspace within an ELNO System that allows the Buyer and Seller to effect Electronic Lodgement and Financial Settlement.

**"ELNO"** has the meaning in the ECNL.

**"ELNO System"** means a system provided by the ELNO for facilitating Financial Settlement and Electronic Lodgement.

**"Financial Settlement"** means the exchange of value between Financial Institutions facilitated by an ELNO System in accordance with the Financial Settlement Schedule.

**"Financial Settlement Schedule"** means the electronic settlement schedule within the Electronic Workspace listing the source accounts and destination accounts.

**"Qualifying Conveyancing Transaction"** means a transaction that is not excluded for Electronic Settlement by the rules issued by the relevant ELNO, Office of State Revenue, Land Registry, or a Financial Institution involved in the transaction.

## 12. ELECTRONIC CONTRACT AND DISCLOSURE

### 12.1 Electronic Signing

If this contract is signed by any person using an Electronic Signature, the Buyer and the Seller:

- (a) agree to enter into this contract in electronic form; and
- (b) consent to either or both parties signing the contract using an Electronic Signature.

### 12.2 Pre-contract Disclosure

The Buyer consents to the Seller's use of electronic communication to give any notice or information required by law to be given to the Buyer and which was given before the Buyer signed this contract.

# Annexure A

## Special Conditions

## ANNEXURE A

### SPECIAL CONDITIONS

#### 1. STANDARD CONDITIONS

- 1.1 The Standard Conditions of Sale for Houses and Land (Sixteenth Edition) adopted by the Real Estate Institute of Queensland Limited and approved by the Queensland Law Society Incorporated ("Standard Conditions") apply to this Contract unless excluded expressively or by implication. The Seller and the Buyer acknowledge having received a copy of the Standard Conditions prior to signing this Contract.

#### 2. REGISTRATION OF PLAN

- 2.1 This Contract is subject to and conditional upon the Seller causing the completion of the physical execution of the development and a survey plan of reconfiguration to be registered at the Department of Natural Resources and Mines so a separate Certificate of Title is issued by the Department of Natural Resources and Mines for the Land by the date which is 18 calendar months from the Contract Date ("Sunset Date").
- 2.2 The Seller must take all reasonably available steps to satisfy the Condition Precedent. If any competent authority refuses to grant or revokes any necessary permit or approval or refuses to seal the survey plan of reconfiguration or imposes any conditions on any permit, certificate or approval with which the Seller is unwilling to comply, then the Seller may cancel this Contract by notice to the Buyer. In such circumstances the Buyer's sole right is to recover the deposit.
- 2.3 If the Condition Precedent is not satisfied by the Sunset Date then either party may terminate this Contract by notice to the other.

#### 3. VARIATIONS AND ALTERATIONS

- 3.1 The Seller may make variations to the Land as required by a competent authority as a condition to any permit or approval or the sealing or the registration of the plan of reconfiguration to create the Land. Subject to the Buyer's statutory right to terminate this Contract if it is materially adversely prejudiced, the Buyer has no right to object, claim compensation, withhold any part of the Purchase price or delay settlement because of any variation.
- 3.2 If the Buyer is entitled to terminate this Contract due to being materially adversely prejudiced by some alteration then the Buyer's sole right is to terminate this Contract and recover the Deposit. The Buyer has no right to damages arising out of such termination, nor any right to require specific performance of this Contract.
- 3.3 The Seller may make minor variations to the location or the design of the Land, if in the reasonable opinion of the Seller the variations are necessary for the proper execution of the development of the Land. So long as such variations are minor in nature, the Buyer has no right to avoid this Contract, nor to require any compensation be paid, nor withhold any part of the Purchase Price nor to delay settlement as a result of such variation.
- 3.4 The Buyer warrants that before executing this Contract it received from the Seller or the Seller's agent the Disclosure Plan and Disclosure Statement in accordance with sections 10, 11 and 12 of the *Land Sales Act (Qld) 1984 (the "Act")*.
- 3.5 If the information given by the Seller in the Disclosure Statement was inaccurate at

the date it was given or has subsequently become inaccurate the Seller must give the Buyer a written notice of variation of the information given in the Disclosure Statement in accordance with section 13 of the Act (the "Further Statement") and despite any other provision of this Contract the Buyer shall not be required to complete Settlement until 21 days have passed after the giving of the Further Statement.

#### **4. WARRANTIES AND TITLE**

4.1 The Buyer accepts title to the Land subject to and is not entitled to claim compensation because of:

- (a) any easement either benefiting or burdening the Land for:
  - (i) the passage or provision of any service through or by means of any pipes, poles, wires, cables or any other forms of carriage or ducts to be laid down or erected in or over the Land; and
  - (ii) access;
- (b) any notification, easement or restriction (other than a mortgage) in relation to the Land reasonably required in order to satisfy the requirements of the Local Government as a condition precedent to approving the registration of the plans of reconfiguration to create the Land or the approval of any development permit under the *Sustainable Planning Act*,

that has no material adverse impact upon the lot the subject of this Contract.

#### **5. SERVICES AND AMENITIES**

5.1 The Buyer acknowledged that:

- (a) Under the approvals granted to the Seller for the development of the subdivision of which the Land forms part:
  - (i) various statutory authorities; or
  - (ii) the Seller under arrangements made with those authorities;

are to provide services and amenities; and

- (b) Settlement will not be delayed if any of the services or amenities are not provided before the Settlement Date.

5.2 The Seller must use its best endeavours to ensure that the services and amenities are provided on or before the Settlement Date but if the services and amenities are not provided on or before the Settlement Date the Buyer has no right to object, claim compensation, withhold any part of the Purchase Price or delay settlement and the Seller shall cause the services and amenities to be provided as soon as practicable after the Settlement Date.

#### **6. SETTLEMENT DATE**

6.1 When the Condition Precedent in Special Condition 2 is satisfied the Seller must give notice to the Buyer that the Condition Precedent has been satisfied.

6.2 Subject to Special Condition 3.5, Settlement must take place fourteen (14) days after the later of:

- (a) the dates the Seller gives that notice that the Condition Precedent in

Special Condition 2 is satisfied; or

- (b) the date the Buyer gives notice to the Seller finance approval has been obtained.

If the Condition Precedent in Special Condition 2 has already been satisfied by the Contract Date then settlement shall be due 14 days after Contract Date or 14 days after the date the Buyer gives notice to the Seller finance approval has been obtained, whichever is the later.

- 5.3 Settlement must take place in Brisbane at a place to be nominated by the Seller at a time nominated by the Seller.

## **7. BUILDING COVENANTS AND DESIGN APPROVALS**

- 7.1 The Buyer acknowledges that the Land forms part of a quality residential community and that it is necessary and in the interest of all Buyers of land in the development that the Seller exercise supervision and control to ensure quality both in respect of the design and construction standard of buildings in the development.
- 7.2 In consideration for the Seller entering into this Contract the Buyer covenants and agrees with the Seller to the terms of the building guidelines attached and marked Annexure "B"
- 7.3 The Buyer covenants and agrees not to sell, transfer, dispose of, lease or in any other way part with possession of the Land without first obtaining a covenant from any assignee agreeing to be bound by the building guidelines.
- 7.4 The Buyer acknowledges that the Seller has the right to vary, exclude or elect not to enforce any of the building guidelines in respect of any property. The Buyer specifically absolves the Seller from any liability of any nature for any action taken in varying, electing not to enforce or excluding any building guideline.

## **8. ADJUSTMENTS**

- 8.1 Standard Condition 2.6 (1( to (5) inclusive and (13) are deleted and replaced with:

### **"2.6 ADJUSTMENT TO BALANCE PURCHASE PRICE**

- 2.6.1 All rates and taxes, assessments and other outgoings relating to the Land shall be paid by the Seller up to and including the Settlement Date and thereafter by the Buyer and, if necessary, shall be apportioned between the parties.
- 2.6.2 If at the Settlement Date the Local Authority has not issued a separate

rates assessment in respect of the Land and/or Urban Utilities have not issued a separate water and sewerage access charge assessment in respect of the Land then an apportionment in respect of the general, sewerage and water rates now or subsequently payable to Urban Utilities and to the Local Authority in whose area the Land is situated shall be calculated on the basis that the Seller has paid the assessment for the Land for the rating period in which the Settlement Date occurs at the rate of \$1,800 per annum for the Land regardless of the actual assessment now or subsequently issued by Urban Utilities and the Local Authority and irrespective of whether or not a separate assessment has issued for the rate period current as at the Settlement Date for the land or for the parcel of which the Land forms part.

- 2.6.3 The Seller undertakes to pay to the relevant Local Authority the amount assessed for water, sewerage and general rates for the rate period current as at the Settlement Date.
- 2.6.4 Land Tax shall be apportioned on the basis that, as at Midnight on the previous 30<sup>th</sup> of June, the Seller was a Company resident in Queensland. If at the Settlement Date the Office of State Revenue has not issued a separate land tax assessment in respect of the subject Land then Land Tax shall be apportioned between the Seller and Buyer based on the proportion the area of the subject Land bears to the aggregate of area of the lots being created upon the registration of the survey plan referred to in Special Condition 2, multiplied by the land tax assessed on the parent parcel from which those lots is created.
- 2.6.5 After the Settlement Date the Buyer shall pay all rates, taxes and outgoings charged upon the Land or upon the owner or occupier thereof and in the event of the Buyer failing to do so the Seller may pay all such rates, taxes and outgoings and any amount so paid shall be recoverable forthwith by the Seller from the Buyer. In the event that after the Settlement Date the Land is included in a bulk assessment issued to the Seller (and any successor in title to the Seller) then the Buyer's portion shall be calculated as set out in clause 2.5.2 whilst the Land is included in a bulk assessment and the Seller may at any time pay the bulk assessment irrespective of whether the Buyer has reimbursed the Seller or not."

- 8.2 Clause 9.9 of the Standard Conditions is amended by inserting a new clause 9.9(4) as follows:

*"If the Settlement Date is extended on any occasion(s) by reason of or at the request of the Buyer then the Balance Purchase Price shall, for the purpose of clause 9.9(1) be deemed to have been due for payment on the initial Settlement Date without regard to the extension".*

- 8.3 Clause 2.6(12) of the Standard Conditions is deleted.
- 8.4 At the end of clause 2.6(13) the words "*however the Seller may direct that some of the funds payable at Settlement may be paid by a cheque drawn on a trust account operated by a solicitor lawfully entitled to practice law in Queensland*" are added.

## **9. NO CAVEAT**

- 9.1 If there is no separate indefeasible title to the Land on the Contract Date, the Buyer must not lodge a caveat over the land until after a separate indefeasible title to the Land is created. The Buyer irrevocably appoints the Seller and the Seller's directors and secretary, severally, to be the Buyer's attorney for the purpose of signing a withdrawal of caveat lodged by the Buyer contrary to this special condition.

## **10. BUYER STATUS**

- 10.1 The Buyer warrants to the Seller that it is not buying the property as undisclosed Trustee of any Trust;
- 10.2 If the Buyer is described in the Reference Schedule as being Trustee of a Trust, then the Buyer warrants to the Seller that:
- (a) It is sole trustee of the Trust;
  - (b) It makes this Contract for the sole benefit of the beneficiaries of the Trust;
  - (c) It has taken all steps necessary to entitle it to be indemnified from the assets of the Trust;
  - (d) It will, upon request, deliver to the Seller copies of all constituent documents of the Trust.
- 10.3 If the Buyer is a Company or Trustee then the Buyer must cause and ensure that the Buyer's performance is guaranteed by all of the Directors of the Buyer Company and procure the execution of the Guarantee in Annexure C by those individual(s).

## **11. GST**

- 11.1 Any GST payable on the Purchase Price of the Property will be calculated by the Seller using the Margin Scheme pursuant to the provisions of Division 75 of the A New Tax System (Goods and Services Tax Act 1999).
- 11.2 The Purchase Price is inclusive of GST and the Buyer shall not be required to pay any additional amount on account of GST.

## **12 DEPOSIT**

- 12.1 The parties agree that the Deposit payable under this Contract shall be paid to:
- (a) a real estate agent duly licensed under the *Property Occupations Act (Qld)* and shall be held by that agency in a trust account kept for the purposes of the *Land Sales Act 1984* and dealt with in accordance with section 11 of that Act; or
  - (b) a law practice at its office in Queensland and held in a trust account maintained by that law practice for the purposes of the *Land Sales Act 1984* and dealt with in accordance with section 11 of that Act.

## **13 FOREIGN INVESTMENT AND TAKEOVERS ACT 1975**

- 13.1 If the Buyer is a foreign person within the meaning of the Foreign Acquisitions and Takeovers Act 1975 (Cth) (the "Act") then this Contract is subject to and conditional upon the Purchaser, within 30 days of the date of this Contract, obtaining any and all necessary consent required under the Act, to the acquisition that will be made by the Purchaser under this Contract. Unless the Buyer gives written notice to the Seller by the date which is 5 Business Days after the date of this Contract the Buyer is taken not to be a foreign person within the meaning referred to above.

## **14 SETTLEMENT BY PEXA**

If the Buyer's solicitor requests Settlement take place electronically using the Pexa platform the Seller shall cause its solicitor to participate provided the Buyer pays the Seller's Pexa participation fee at Settlement by way of an adjustment in the settlement statement.

## **15 CHARGES FOR SETTLEMENT EXTENSIONS**

If the Buyer requests an extension of the Settlement Date and the Seller grants that extension the Seller shall be entitled to charge the Buyer and the Buyer agrees to pay a fee of \$1,000 (including GST) at Settlement (by way of an adjustment in the settlement statement) to contribute to the additional costs incurred by the Seller arising out of the extension.

**16 DIVIDING FENCES**

The Buyer acknowledges and agrees that the Seller, if the Seller is the owner of any land that adjoins the land the subject of this Contract, shall not be required to make any contribution towards installing or maintaining any boundary fencing.

**17 BUSHFIRE MANAGEMENT PLAN**

17.1 The Seller discloses that the conditions of development approval pursuant to which the Seller is carrying out the subdivision works to create the Land will require that the Seller commission the preparation of a Bushfire Hazard and Management Plan specifying any design requirements that must be observed and complied with in connection with the construction of a dwelling house on the Land. Without limitation the Buyer acknowledges that and that complying with that Bushfire Hazard and Management Plan in the design and construction of the dwelling house on the land may require the incorporation design requirements and materials upon and in the construction of a dwelling house on the Land. A copy of the Bushfire Hazard and Management Plan is annexed as Annexure D.

**18. PPSR SECURITY INTERESTS**

The Buyer acknowledges that the subject matter of this Contract is vacant land and despite any PPSR Security Interest recorded over any or all past and present assets owned by the Seller the Buyer is not prejudiced by any PPSR Security Interest given the Buyer is purchasing only vacant land. The Seller shall not be required to provide any release or instrument in connection with any PPSR Security Interest.

**19. SELLER'S PURCHASE OF PARENT LAND**

The Seller discloses and the Buyer acknowledges that the Seller may not, at the Contract Date, be the owner of the parent land from which the Land is being subdivided. This Contract is subject to and conditional upon the Seller becoming the owner of the parent land from which the Land is being created, being Lots 2 on RP 189017 and Lot 51 on RP 82952 by the Sunset Date referred to in Special Condition 2. If this condition has not been satisfied by the Sunset Date then either party may terminate this Contract by notice in writing to the other. The Seller discloses it is party to a contract for the purchase of the parent land.

**20. SELLER DISCLOSURES RE CONDITIONS OF DEVELOPMENT PERMIT**

The Seller discloses that a condition of the development for the subdivision to create the Estate in which the Land is situated there will be a requirement that the Seller construct a sewer pump station in or within close proximity to estate. The Seller has had an assessment commissioned to confirm the odour concentrations are below the criteria which would trigger a need for a further buffer between the nearest residential lot within the estate subdivision, and the sewer pump station.

# Annexure B

## Building Design Guidelines



# FARRIERS CREEK



## DESIGN GUIDELINES

### APPLICATION SUBMISSION

All applications are to be sent to PO Box 663, Fortitude Valley QLD 4006 OR [covenant@cfmgcapital.com.au](mailto:covenant@cfmgcapital.com.au)

## I DISCLAIMER

We advise any information provided in the design guidelines below do not remove any obligations under other legal or local authority requirements. We recommend you seek assistance from your building certifiers to confirm current policy standards. Information in this document is given with care, but without responsibility. Purchasers and owners of allotments are responsible for the implementation of the Design Guidelines.

## II DEFINITIONS

Allotment	The land on which the dwelling is to be constructed.
Building Height	The vertical distance between the natural ground level and the peak of the roof of the dwelling (not including antennae, flues or chimneys).
Design Control Group (DCG)	All plans of proposed structures are to be assessed and approved by the DCG prior to the commencement of any construction.
Dwelling Sizes	Dwelling size does not include garage, porch, verandah, pergola, or balcony areas and is to be measured inclusive of external wall faces.
Habitable Rooms	A room used for living activities e.g. family room, living room, meals, bedrooms.
Private Open Spaces	The external open areas around a dwelling that are intended for the residents' use for recreational purposes of the demand dwelling.
Setback	The minimum distance where a wall is required to be placed from the property boundary.
Street Frontage	The front boundary of an allotment that fronts the road. On a corner allotment, the principal street frontage is deemed the shorter side.

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- 1.2 Allowable Use and Construction Time
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## 3.0 APPLICATION

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- 3.2 Application documents required for submission
- 3.3 Application submission

# 1.0 INTRODUCTION

## 1.1 PURPOSE

Farriers Creek, Burpengary is a neighbourhood created by CFMG Residential Communities. The objective of these design guidelines is to create a pleasant living environment with visual quality, whilst providing for a variety of housing solutions. The Design Guidelines may be revised from time to time at the discretion of DCG and will apply to all residential properties within the estate.

The Design Guidelines encourage a variety of styles and designs that will be harmonious, whilst not being onerous by stifling creativity in design. A range of building materials, colours and siting solutions may be used to result in distinctive character for each home. A standard solution for every allotment is not encouraged.

## 1.2 ALLOWABLE LAND USE AND CONSTRUCTION TIME

The Design Guidelines prohibit relocatable homes and the construction of more than one dwelling on each allotment (unless otherwise approved as a 'dual occupancy' by local authority and DCG). These are mandatory requirements and will not be varied under any circumstances.

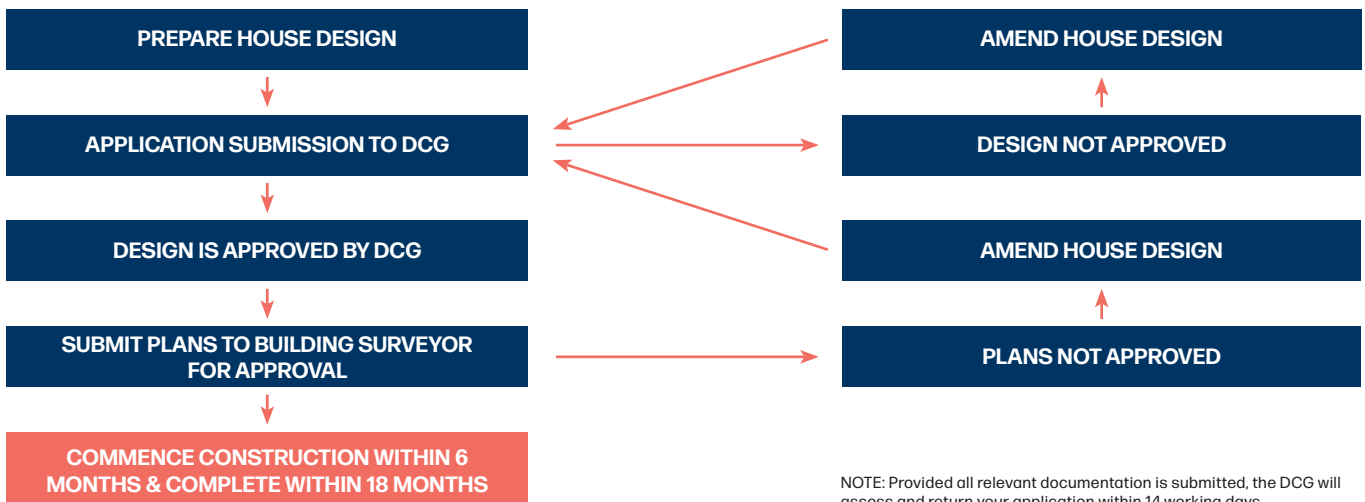
## 1.3 FARRIERS CREEK PLAN APPROVAL PROCEDURES

Approval is required under these guidelines by the DCG for the construction of new dwellings, garages and fences prior to any commencement of construction. A copy of the Design Guidelines should be provided to your building designer or architect for their use.

Approval will not be processed without all required plans. An initial review will be carried out by the DCG and feedback of required changes (if any) will be provided to the applicant.

The DCG approved plans are NOT a building permit. The approved plans will form part of the documents for the owners to obtain a building permit from their nominated building surveyor. Following the completion of Farriers Creek by CFMG Residential Communities and the eventual dissolution of the DCG, any further alterations and/or additions are to be submitted directly to the nominated building surveyor for approval. The guidelines and any approval made by the DCG do not remove obligations under other legal requirements such as local authority, applicable planning permits, BSA or documents current at the time.

## 1.4 DESIGN REVIEW SUMMARY



NOTE: Provided all relevant documentation is submitted, the DCG will assess and return your application within 14 working days.

# 2.0 THE DESIGN GUIDELINES

## 2.1 ORIENTATION, SITING AND SETBACKS

Subject to final approval by Moreton Bay Regional Council, siting and setback plans apply in accordance with the Queensland Development Code (QDC) and the approved plan of development.

All dwellings must face a principle street and have an identifiable entrance to the street. All building setbacks are to be measured from the outer most projection. Setbacks, site coverage, open space per the approved development plan.

### Porches & Verandas

- Porches and verandas that are less than 3.6m high may encroach no more than 2m into the front setback.

### Built to Boundary Walls

- For all allotments, walls built to boundary are permitted to a maximum length of 9m.
- All built to boundary walls must be for non-habitable rooms only.
- Walls built to boundary shall have an average height of 3m (max 3.5m at any point).

### Dwelling Heights and Eaves

- The dwelling height on all allotments is to be a maximum of 9m (two storeys) inclusive of roof form.
- Eaves shall be a minimum of 450mm wide over all habitable rooms.

### Site Coverage

- Site cover shall not exceed 60% for lots less than 450m<sup>2</sup> and 50% for lots equal to or greater than 450m<sup>2</sup>.
- Site cover does not include eaves, verandahs or overhangs.
- Each detached dwelling has a defined outdoor living space which must have:
  - an area of at least 16m<sup>2</sup>
  - no dimension less than 4m
  - a maximum gradient not exceeding 1 in 10
  - an access from the living area
  - visual privacy from another outdoor living space by a window/balcony screen.
- Houses should be sited so habitable windows and secluded private open spaces face north to receive maximum solar energy.
- For buildings constructed after April 2011, dwellings are required to hold a maximum 6-star energy rating.
- An energy report using the appropriate software will be required to determine the building's energy rating to satisfy the current provisions.

## 2.2 CORNER ALLOTMENTS

Both single and double storey dwellings on corners must be designed to have feature elements that address both street frontages. This may be with the appropriate use of windows, porticos and the like. Blank walls facing the streets are not permitted. The secondary frontage is deemed to be the lower order road or, if both roads are of the same order, the second frontage is the frontage with the greatest dimension. For corner allotment fencing see guideline 2.9 (corner allotments).

## 2.3 VEHICLE ACCOMMODATION

A minimum of two car side by side double lock up garage spaces must be provided per dwelling. Garages must reflect the architectural design elements of the main dwelling. Garage doors shall not dominate the architectural design. Garage doors are to be panel lift or sectional doors ONLY. Roller doors are not permitted.

Garages must be set back a minimum of 0.5m behind the main building alignment. The roof pitch of the garage is to match the house. Garages must be positioned behind the main dwelling face, and must be attached to the main dwelling. Colours and materials used are to be the same as the main dwelling.

Carports will only be approved at the discretion of the DCG. Garages shall occupy no more than 50% of the total lot frontage.

## 2.4 DRIVEWAYS AND PATHS

Driveways must be fully constructed prior to the occupation of the dwelling. Acceptable construction materials are coloured concrete, brick or concrete pavers, concrete with exposed aggregate, stone or slate. Plain concrete driveways and front paths are not permitted. The driveway shall be no wider than the total width of the garage and tapering to a maximum 3m wide at the front boundary line. A minimum allowance of 500mm of garden planting is required between driveway and side boundary.

Only one driveway per dwelling to comply with Moreton Bay Regional Council (MBRC) guidelines at the time of construction.

## 2.5 ROOFING MATERIAL AND PITCHES

Acceptable roofing materials include terracotta, slate or concrete tiles and Colorbond metal sheeting in a non-reflective colour. Galvanised iron and zincalume is not permitted.

A variety of roof forms and pitches are highly desirable. Gables, hips or a combination are encouraged. The roof form of verandahs and porticos should also be part of your overall design. Gutters and down pipes are to complement the house colour.

Roof pitch is to be a minimum of 20 degrees with higher pitches preferred. Dwellings must have 450mm wide eaves over all habitable areas.

A variety of roof form such as skillion roofing is encouraged. The roof form of verandahs and porticos should also form part of your overall design.

## 2.6 PRIVACY

Habitable room windows must not directly face:

- an access way, footpath or communal open space within 3m or

Habitable room windows:

- Have a fixed obscure glazing in any part of the window below 1.5m above floor level; or
- Have privacy screens that cover a minimum of 50% window view.

Note: 'directly face' means an angle within 45° either horizontally or vertically.

## 2.7 BUILDING MATERIALS AND COLOUR SELECTION

To ensure the external colour schemes of your home complement the remainder of Farriers Creek development all exterior aspects will require consideration, including paving, fencing and decks.

A mix of external cladding to the Front Facade is encouraged. Materials of either rendered brick or light weight cladding such as Hebel, Linea Board or Blueboard with a rendered finish. Face brick is permitted to the front façade but not as a primary cladding unless a specialty brick is specified.

Secondary Front Facade external cladding can be constructed of either timber, texture coated fibre cement, profiled FC weatherboards (e.g. Primeline & Linea boards), stone or face brick.

External front facade finishes must continue 1m on the side external wall returns. The external façade treatment is subject to the approval from the DCG.

## 2.8 TELECOMMUNICATIONS

Farriers Creek meets current NBN criterion. Builders within the estate will need to ensure they meet the current guidelines for NBN telecommunications wiring. This documentation can be found on the NBN Co website: [www.nbnco.com.au](http://www.nbnco.com.au).

## 2.9 FENCING

For all allotments, Colorbond/steel fencing is not permitted. Approval of all fencing is required from the DCG.

### Front Fencing

Front fencing is not permitted unless approved by the DCG. To promote integrated housing and streetscapes, the design is to provide an open visual character to the front boundary.

### Side fencing (all allotments)

Side and rear fences are to be constructed of 1.8m high timber palings or materials approved by the DCG. Side fences that are constructed forward of the main line of the dwelling shall be designed to provide an open visual character.

### Side fencing (corner allotments)

Side fencing of a solid or closed nature on corner allotments (that front the street) cannot exceed 50% of the lot boundary.

Where the only opportunity to provide a private north facing open space is forward of the house, approval may be given for a solid 1.8m high paling fence with exposed posts and capping and a minimum 1m setback from the principle street frontage at the discretion of the DCG.

### Retaining Walls

Retaining walls may be constructed from stone or brick. It is ideal to plant out the retaining walls with ground cover landscaping.

## 2.10 ANCILLARY BUILDINGS AND STRUCTURES

External hot water services, ducted heating units, rainwater tanks, fuel storage tanks, clotheslines, utility meters and sheds are not to be visible from streets or reserves. The maximum wall height of sheds is 2m, and must be constructed from steel or painted timber only. Untreated or unfinished surfaces must not be used, including reflective materials such as galvanised iron or aluminium. The maximum floor areas of sheds are 9m<sup>2</sup>. These may be placed outside the building envelope, but should be hidden from the street.

Any roof mounted satellite dishes and television aerials are to be located to the rear of the house and be as low as possible on the roof.

Letterbox type, colour and specifications to be nominated with submission to DCG for approval.

## 2.11 MECHANICAL EQUIPMENT

Air-conditioning units, hot water systems are to be located away from public view. Any roof-mounted air-conditioners, evaporative coolers, etc. are to be located to the rear of the house, be of low profile, coloured to match the roof, and installed below the ridgeline.

## 2.12 LANDSCAPING LOTS

All applications must include a clear landscaping plan showing:

- The siting of the dwelling;
- Driveways and paths;
- Planting location and planting schedule;
- Any proposed retaining walls or fencing (including type);
- A letterbox constructed of material consistent with those used to construct the dwelling;
- Detail of all surface treatments; and
- Any other significant landscape features.

As a minimum, all landscaping of garden areas including the front verges within the public view must be completed within three months of practical completion of the dwelling. The front yard must contain a minimum of 15m<sup>2</sup> of garden.

The garden must have a planting density of no less than 5 plants/m<sup>2</sup>; with all grassed areas to be turfed (not grass seeded). Various forms of commercially available sterile bark mulches are considered acceptable for residential use, of which the preferred are medium grade hoop pine mulch, pine bark mulch or forest mulch. Mulch is to be installed to a minimum settled depth of 100mm.

Plants are to be supplied in the following minimum pot sizes: trees - 300mm diameter pots, with at least one 25L size specimen per lot; shrubs - 140mm diameter pots, with at least 50% of specimens supplied within 200mm diameter pots or greater; and groundcovers - 100mm diameter pots, with at least 50% of specimens supplied within 140mm diameter pots or greater.

Owners are encouraged to use native Australian plants in landscaping. Some recommendations include:

- Ivory Curl Flower
- Golden Penda
- Dwarf Paperbark
- Tuckeroo
- Dwarf Bottlebrush
- Blue Tongue
- Blueberry Ash
- Pointed - leaf Hovea
- Pultanaea
- Palm Tree

Environmental weeds are discouraged from being included in the landscaping. The verge, if disrupted, will be reinstated with turf upon practical completion of the house.

## 2.13 INNOVATIVE DESIGN

The Developer at its discretion has the authority to approve on its merits any innovative or diverse designs that do not meet the requirements of the Covenant.

## 2.14 NON-DUPLICATION

In order to comply with the Developer's requirements for non-duplication of homes in the estate, the home constructed on the land must not be substantially the same in design, colour or construction as any other home or proposed home that is situated within 2 lots on either side of, or on an opposite lot to the home constructed on the land.

## 2.15 RESERVATION

The Owner acknowledges and agrees that the Developer has the right to vary, exclude or elect not to enforce any of the Covenants in respect of the land and any other lots in the estate. The Owner specifically absolves the Developer from any liability of any nature for any action taken in varying, electing not to enforce or exclude any part of the Covenant.

## 2.16 SIGNAGE

Signage and hoarding boards advertising businesses and products are not permitted. Builders' signs of a maximum size of 600mm<sup>2</sup> are permitted as required on allotments during the course of construction, and must be removed upon completion of construction.

## **2.17 TEMPORARY STRUCTURES**

Builders' structures such as site sheds, site toilets and power generators are permitted as necessary on allotments during the course of construction, and must be removed upon completion of construction.

## **2.18 RUBBISH DISPOSAL AND ALLOTMENT MAINTENANCE**

The purchaser is to ensure rubbish (including building materials and site excavation material) is stored in the correct bins and collected promptly. Dumping of rubbish (including building materials and site excavation material) on vacant allotments is illegal. Grass and weed growth on vacant allotments is to be slashed or mowed at regular intervals so that growth does not exceed 200mm in height, or as required by council or the Country Fire Authority.

# 3.0 APPLICATION

## 3.1 APPLICATION FORM FOR DESIGN APPROVAL

Please detach this form and complete the details for the submission to the Design Control Group for plan approval.

### Property Details:

Lot Number:	
Street Address:	

### Owner(s) Details:

Name:	
Name:	
Current Address:	
Telephone:	
Email:	

### Applicant Details:

Name:	
Company:	
Address:	
Telephone:	
Email:	

Allow a minimum of 14 working days for processing and assessment on the provision all required documentation is submitted. Include the following documents (tick box):

## 3.2 APPLICATION DOCUMENTS REQUIRED FOR SUBMISSION

- Site plan for the lot and proposed structure(s) showing setbacks from all boundaries, eaves overhang, fence details, outbuildings, driveway access and path details. Fence details are to show material and height. Minimum scale 1:200.
- Floor plans, including roof plan. Minimum scale 1:100.
- Elevations from all sides of the structure(s), including building heights, roof forms and roof pitch. Minimum scale 1:100.
- Schedule of external materials, colours and finishes, including driveway. This is to be in the form of a colour board with samples attached.
- Application Form for Design Approval.

## 3.3 APPLICATION SUBMISSION

All applications are to be sent to PO Box 663, Fortitude Valley QLD 4006 OR [covenant@cfmgcapital.com.au](mailto:covenant@cfmgcapital.com.au)



# FARRIERS CREEK



120 Coutts Drive, Burpengary QLD 4505  
**1800 947 900 | [farrierscreek.com.au](http://farrierscreek.com.au)**

Proudly developed by



**CFMG**  
Residential  
Communities

Annexure C  
Guarantee & Indemnity

**Annexure C**

**Guarantee & Indemnity**

**To: Farriers Creek Pty Ltd**

**From:**

**(the "Guarantors")**

1. In consideration of the Seller agreeing at the request of the Guarantors to sell the Property to the Buyer, the Guarantors guarantee the performance of the Buyer under the Contract and indemnify the Seller as described below.
2. The Guarantors guarantee to the Seller that the Buyer will duly perform its obligations under the Contract.
3. The Guarantors agree to indemnify the Seller against all damages, costs, expenses and losses of any kind (including legal fees on an indemnity basis) which the Seller may suffer as a result of any breach of the Contract by the Buyer.
4. The Guarantors agree that their obligations under this Guarantee and Indemnity are continuing, regardless of any:
  - (a) termination of the Contract by the Seller as a result of any breach by the Buyer;
  - (b) insolvency, bankruptcy or Winding up of the Buyer;
  - (c) assignment of the Contract by the Buyer or the Seller;
  - (d) grant of time or other concession to the Buyer by the Seller;
  - (e) compromise, waiver or variation of any of the rights of the Seller against the Buyer under the Contract;
  - (f) delay by the Seller in exercising its rights.
  - (g) other matter which, but for this clause, might have released the Guarantors from their obligations to the Seller.
5. The Guarantors warrant to the Seller that they have read this Guarantee and the Contract and have taken whatever legal advice they think necessary.
6. This Guarantee binds each of the Guarantors individually and all of them jointly.
7. Any terms defined in the Contract have the same meaning when used in this Guarantee and Indemnity.

**Guarantor's Signature**

**WARNING:** If you sign as Guarantor then you are agreeing to be liable for the performance of the Buyer under the Contract.

**SIGNED** by the Gurantor(s) named above in the presence of: ) .....  
 ) .....  
 ) .....

Witness

**NOTE:**

1. All directors of Buyer company must sign this Guarantee and Indemnity; and
2. The signing of this Guarantee and Indemnity must be witnessed. Witness must be 18 years or over and not a co-guarantor or party to the Contract.

Annexure D  
Bushfire Management Report



# BUSHFIRE HAZARD ASSESSMENT (BHA)

## Property

120 Coutts Drive and 48 Ogilvy Road, Burpengary  
Lot 51 on RP82952 and Lot 2 on RP189017

Farriers Creek Pty Ltd

July 2021

- + Bushfire assessments
- + Property vegetation assessments
- + Site planning for bushfire
- + Property management for bushfire
- + Bushfire management plans

[qldbushfireplanning.com.au](http://qldbushfireplanning.com.au)

**Disclaimer**

This document has been prepared for the benefit of Farriers Creek Pty Ltd. This report is prepared for the benefit of the named client only. No third party may rely upon any advice or work done by Queensland Bushfire Planning (QBP) in relation to the services, including this report, except to the extent expressly agreed to in writing by QBP.

It is acknowledged and agreed that the site may be subject to a degree of bushfire hazard. The client acknowledges and agrees that QBP has not created or contributed to the creation of this hazard and the client indemnifies QBP for claims arising out of or result from a bushfire event except to the extent attributable to the negligence of QBP.

The client agrees that QBP shall have no liability in respect of any damage or loss incurred as a result of bushfire. Compliance with this report shall be the responsibility of the client and/or the land-owners. This disclaimer shall apply notwithstanding the report may be made available to the relevant Local Government Authority and other persons for an application for permission or approval to fulfill a legal requirement.



## EXECUTIVE SUMMARY

A 91 Lot subdivision and included drainage, parkland and open space (Lots 900, 901, 902) has been proposed at 120 Couatts Drive and 48 Ogilvy Road, Burpengary, Lot 51 on RP82952 and Lot 2 on RP189017. The site is identified by the Moreton Bay Regional Council State Planning Policy Natural Hazards and Resilience - *Bushfire Prone Area* mapping and in accordance with the provisions of the Moreton Bay Regional Council Bushfire Hazard Overlay Code, a detailed Bushfire Hazard Assessment has been prepared.

Bushfire hazard in Queensland is mapped as bushfire prone areas. This mapping forms part of the State Planning Policy Interactive Mapping System (SPPIMS). The mapping identifies the extent and level of the bushfire hazard across the state. Mapping is in accordance with the process described in 'A new methodology for state-wide mapping of bushfire-prone areas in Queensland', Leonard, J and Newnham, G et al (2014). The areas are mapped as either very high, high or medium potential bushfire intensity and include potentially hazardous vegetation that could support a significant bushfire. This vegetation is classified and mapped as having a vegetation hazard class. The SPP IMS does not identify any bushfire impact on Lot 51 on RP82952 and a limited impact at the eastern extent of Lot 2 on RP189017.

The original vegetation on and about this site is identified as Regional Ecosystem (RE) 12.5.3 *Eucalyptus racemosa* subsp. *racemosa* woodland on remnant Tertiary surfaces. Figure 3 shows the extent of that original vegetation and demonstrates that as a result of past management and rural residential development no significant areas of RE 12.5.3 remain. The original vegetation on and about Burpengary Creek is identified as Regional Ecosystem (RE) 12.3.16 Gallery rainforest (notophyl vine forest) on alluvial plains - Fire sensitive and not considered flammable. The QFES defensible space calculator yields a BAL of Low. The Lots adjoining or adjacent to the west and north have discrete, non - contiguous areas of non - remnant vegetation with managed understory dissected by internal roads and trails and secondary infrastructure.

**CONCLUSION: The SPP IMS does not identify any bushfire impact on Lot 51 on RP82952 or Lot 2 on RP189017. This has been confirmed by onsite visit and ground truthing.**

## Recommendations

Summary	
1	There is no classified vegetation impacting on the proposed development on Lot 51 on RP82952 and Lot 2 on RP189017. The Australian Standard AS3959- 2018 - <i>Construction of buildings in bushfire prone areas</i> has not been triggered on this site.
2	The vegetation on 120 Coutts Drive and 48 Ogilvy Road, Burpengary will be maintained in managed low hazard state.
3	Fencing on Lot 51 on RP82952 and Lot 2 on RP189017 will be constructed of non – combustible materials.
4	Ingress and egress for residents and emergency services will be via Coutts Road
5	Reticulated water will be provided to the reconfiguration.



## INTRODUCTION

Queensland Bushfire Planning has been engaged on behalf of Farriers Creek Pty Ltd to conduct a site-based Bushfire Hazard Assessment in relation to a 91 Lot subdivision and included drainage, parkland and open space (Lots 900, 901, 902) development at 120 Couatts Drive and 48 Ogilvy Road, Burpengary. This Report has been prepared in accordance with the Moreton Bay Regional Council Planning Scheme V4. The aim of this report is to demonstrate the level of bushfire hazard, utilising the methodology as required by *Planning Scheme Policy, Bushfire Prone Area* of the Plan.

The focus of this Report refers to the statutory planning and building requirements as they may apply, pursuant to all relevant policies, standards and regulation, along with end-user consideration. In addition, this report seeks to ensure fire risk and evacuation for adjoining and nearby properties is not inadvertently adversely impacted. This assessment report aims to mitigate the risk to life and property from bushfire threat and the impact of bushfire attack which includes:

- Direct flame contact;
- Ember and firebrand attack;
- Radiant heat; and
- Fire-driven wind.

This assessment does not seek to remove the threat of any bushfire risk, but provide detailed siting, layout, building and/or servicing information to assist the ability of the owner(s) to manage the potential threat of this risk. This assessment report is prepared in accordance with best practice industry standards as applicable in Queensland and pursuant to both State and local government bushfire hazard policies and guidelines.

## SITE DETAILS

Site Address	120 Couatts Drive and 48 Ogilvy Road, Burpengary
Local Government	Moreton Bay Regional Council
Real Property Description	Lot 51 on RP82952 and Lot 2 on RP189017
Zoning	Emerging Community, Limited Development
Area of Site (square meters)	121 150
Applicant	Farriers Creek Pty Ltd
Current Land Use	Residential
Proposed Land Use	Low density residential

## General Description - Site and Surrounds

The subject land is bounded by Burpengary Creek. Lot 51 is cleared of vegetation, Lot 2 has been generally cleared for production purposes on the higher ground. Significant low density residential development has occurred to the south and northeast of Burpengary Creek. To the north and west are managed rural residential Lots. The precinct is bounded in the east by the M1 and to the west by the main North Coast Railway right of way and Morayfield Road to the north. To the south is Station Road and significant residential development. The isolated pockets of vegetation are not contiguous and therefore would not support a intense fire front.

The site is located at 120 Couatts Drive and 48 Ogilvy Road, Burpengary and is described as Lot 51 on RP82952 and Lot 2 on RP189017 within Moreton Bay Regional Council (Figure 1).



**Figure 1**

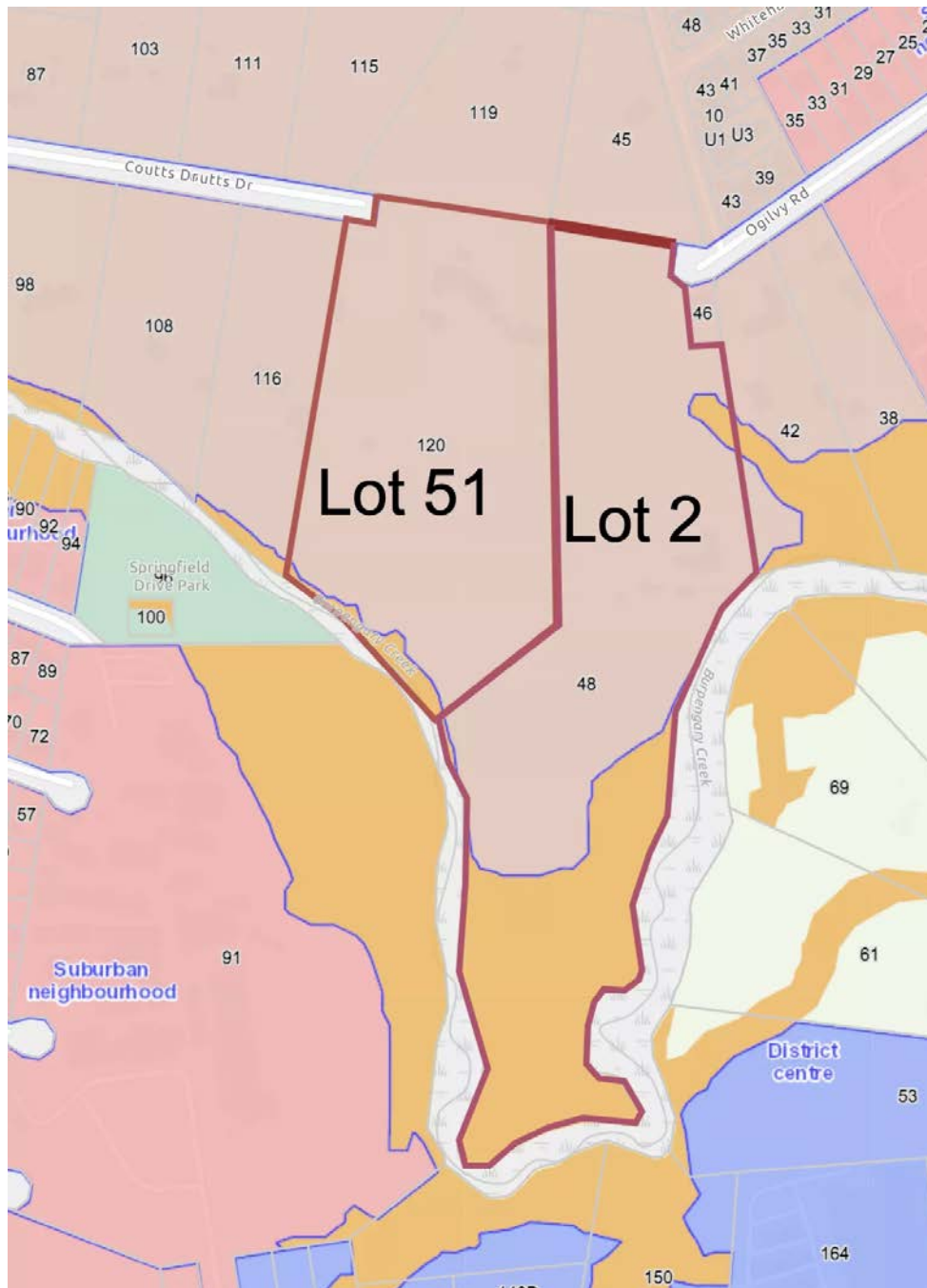
Lot 51 on RP82952 and Lot 2 on RP189017 has an area of 121 150 square metres and is aligned northsouth with a northeasterly aspect (Figure 2).



**Figure 2**

- + Bushfire assessments
- + Property vegetation assessments
- + Site planning for bushfire
- + Property management for bushfire
- + Bushfire management plans

Lot 51 on RP82952 and Lot 2 on RP189017 are currently zoned Emerging Community, Limited Development (Figure 3).



**Figure 3**

# PROPOSED DEVELOPMENT

The proposed development is a 91 Lot subdivision and included drainage, parkland and open space (Lots 900, 901, 902) (Figure 4).

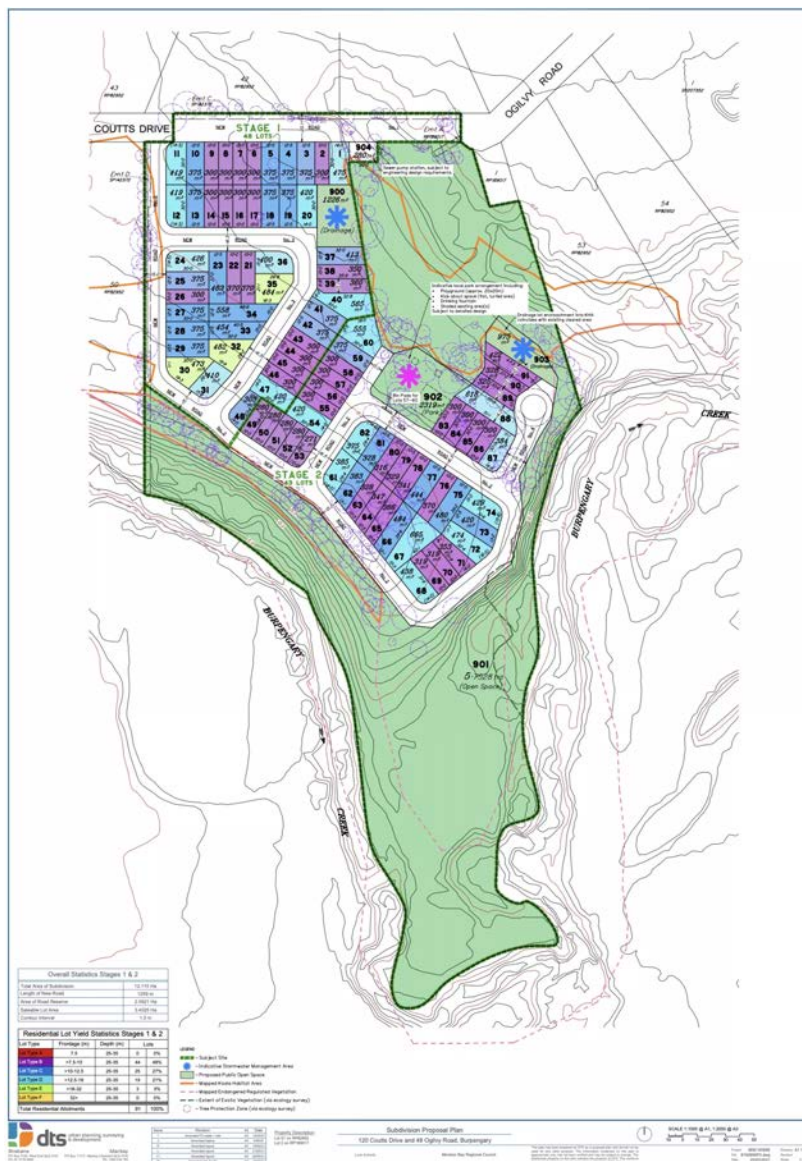


Figure 4

- + Bushfire assessments
- + Property vegetation assessments
- + Site planning for bushfire
- + Property management for bushfire
- + Bushfire management plans

## SCOPE OF BUSHFIRE HAZARD ASSESSMENT

A reconfiguration of a lot has been proposed at 120 Couatts Drive and 48 Ogilvy Road, Burpengary, Lot 51 on RP82952 and Lot 2 on RP189017. The site is captured by the State Planning Policy Natural Hazards and Resilience - *Bushfire Prone Area* mapping and in accordance with the provisions of the Moreton Bay Regional Council Bushfire Hazard Overlay Code, a detailed Bushfire Hazard Assessment has been prepared.

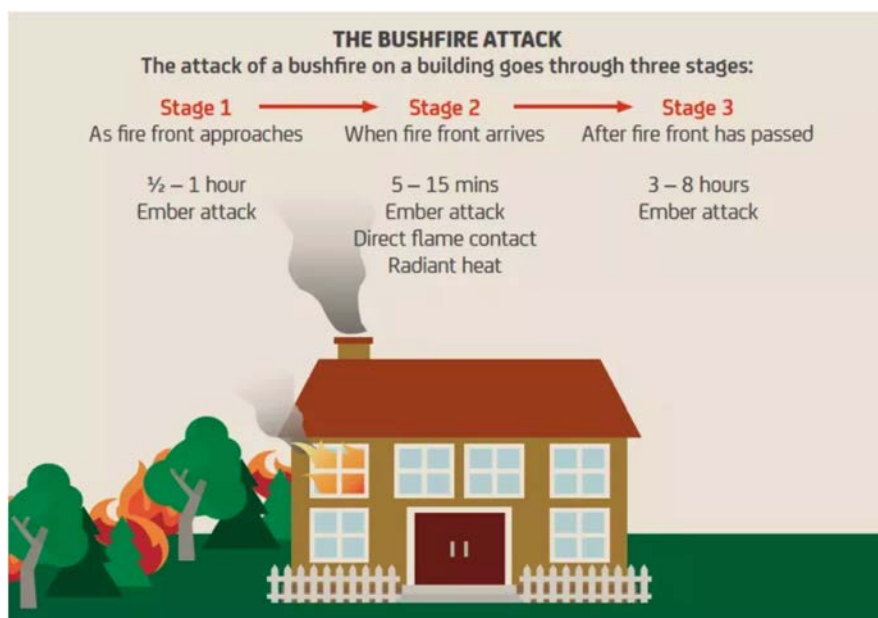
## UNDERSTANDING BUSHFIRE HAZARD

Bushfires are an intrinsic part of Australia's environment. Natural ecosystems have evolved with fire and the landscape, along with its biological diversity, has been shaped by both historic and recent fires. Many of Australia's native plants are fire prone and very combustible, while numerous species depend on fire to regenerate. Indigenous Australians have long used fire as a land management tool and it continues to be used to clear land for agricultural purposes and to protect properties from intense, uncontrolled fires. Historically, bushfires have caused loss of life and significant damage to property. While naturally occurring bushfires cannot be averted, their consequences can be minimised by implementing mitigation strategies and reducing the potential impact to areas which are most vulnerable.

### Bushfire Attack

Bushfire attack refers to the various methods in which bushfire may impact upon life and property and principally encompass:

- Direct flame contact;
- Ember and firebrand attack;
- Radiant heat; and
- Fire-driven wind (Figure 5).



**Figure 5**

## Direct Flame Contact

Direct flame attack refers to flame contact from the main fire front, the flame that engulfs burning vegetation is the same flame that contacts the building. It is estimated that only 10 to 20 per cent of buildings lost to bushfire occur as a direct result of flame attack.

## Ember and Firebrand Attack

CSIRO research has shown that ember attack is the cause of up to 80% of house loss in Australia. The convective forces of bushfire raise burning embers into the atmosphere on prevailing winds and deposit them to the ground ahead of the fire front. Typically, ember attack occurs approximately 30 minutes prior to the arrival of the fire front and continues during the impact of the fire front and for several hours afterwards. Building loss via ember attack relates largely to the vulnerabilities and peculiarities of each building, its distance from the classifiable vegetation and whether someone is present to actively defend the building.



## Radiant Heat

Measured in kilowatts per m<sup>2</sup>, radiant heat is the heat energy released from the fire front which radiates to the surrounding environment, deteriorating rapidly over distance. In terms of impacts on buildings, radiant heat can pre-heat materials making them more susceptible to ignition. Radiant heat can also damage building materials such as window glazing, allowing openings into a building through which embers may enter.

## Fire Driven Wind

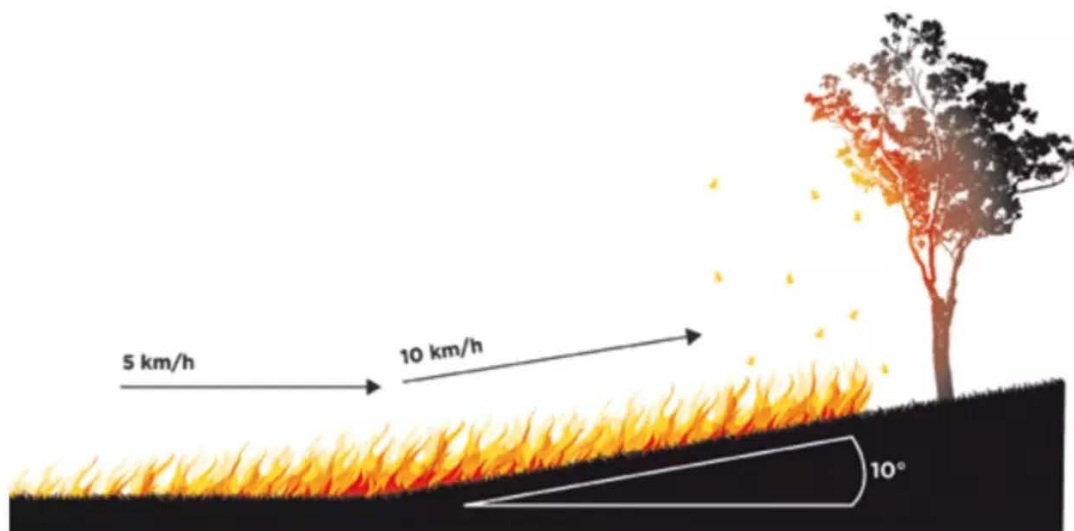
The convective forces of a bushfire typically result in strong fire-driven winds, which can lead to building damage. The typical effects of fire driven wind include conveyance of embers, damage from branches and debris hitting the building, as well as direct damage to vulnerable building components, such as lifting roofs and the breakage of windows.

## Vegetation

The Australian bush varies greatly around the country. There are regions of open woodlands, grassland savannas, dense rainforest. Different types of vegetation burn differently. Generally, fuel is classified as being fine (grasses and twigs that are less than 6 millimetres in diameter) or heavy (branches, logs or stumps). Finer fuels burn more easily, increasing the spread of the fire. Another key factor is fuel moisture content, or how dry the fuel is. The drier the fuel, the more easily it will burn. The dryness of the fuel depends on seasonal rainfall and temperatures.

## Topography

Fires burn faster uphill. This is due to the radiation and convection a fire creates preheating the fuel. A 10-degree increase in slope results in a doubling of the speed of the fire. Fire will spread up a 10-degree slope two times as fast as it will along flat ground (Figure 6). The aspect of a slope (direction that a sloping piece of land is facing) influences a fire's behaviour. Northern and western aspects receive more direct heat from the sun, drying both the soil and the vegetation more than on southern or eastern slopes. The fuels on northern and western aspects are often drier and less dense than fuels on slopes with a different aspect.



**Figure 6**

## Fire Weather

Fire weather affects bushfire risk levels on a daily, weekly or seasonal basis. The South-east Queensland weather pattern is dominated by a maritime effect. The most common winds are southeast and northeast, the latter being very common during the summer months as an afternoon sea breeze. The most severe fire weather in the area is associated with a northwest wind generated on the back of a high pressure system moving slowly from west to east or from a situation where there is intense low pressure activity in the southeast of Australia extending a trough into southern Queensland (Just, 1978). However, the frequency of these situations in the region is low, being generally of the order of one to two days or fewer per year. The exception can occur in bad fire seasons when fuel conditions are very dry as a result of prolonged dry periods. In Queensland, these bad fire seasons occur about once a decade and are infrequent when compared with the fire situation that prevails frequently in southern Australia.

Whilst an assessment of vegetation types, fuel loads, effective slope and other factors can be readily undertaken, fire weather can fluctuate across days, weeks and seasons and can have a significant impact on the potential for bushfire threat, as well as influence bushfire behaviour and intensity. The Forest Fire Danger Index (FFDI) is a commonly used method to readily advise the community of the likely ability of fire suppression based on fire weather, which is used to inform the Fire Danger Rating (FDR) System (Figure 7). It is important to maintain awareness as to the level of local fire danger during the fire season.

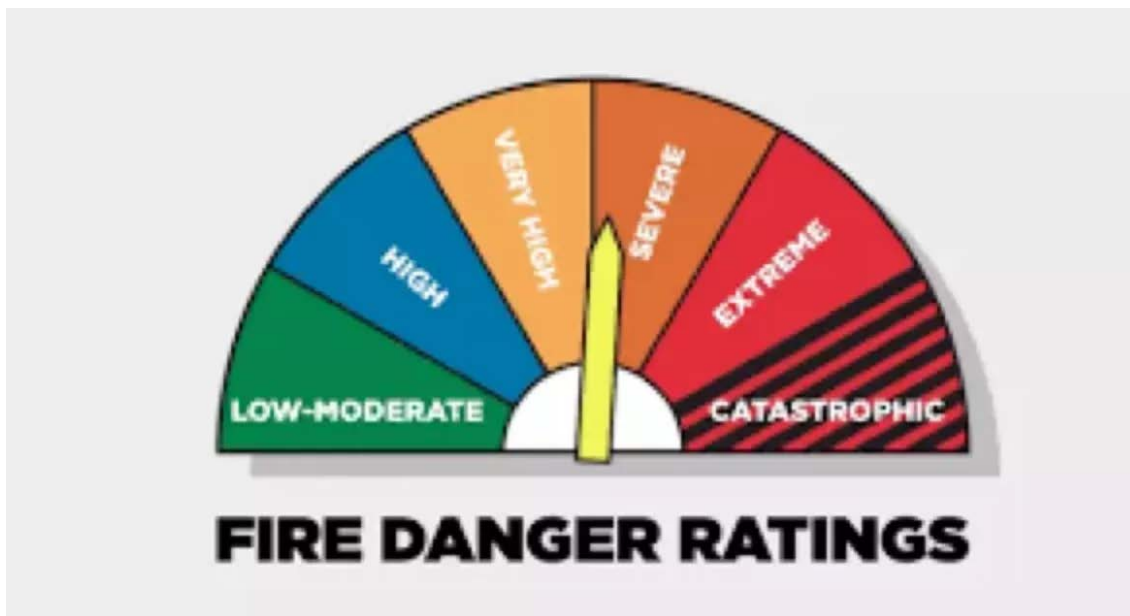
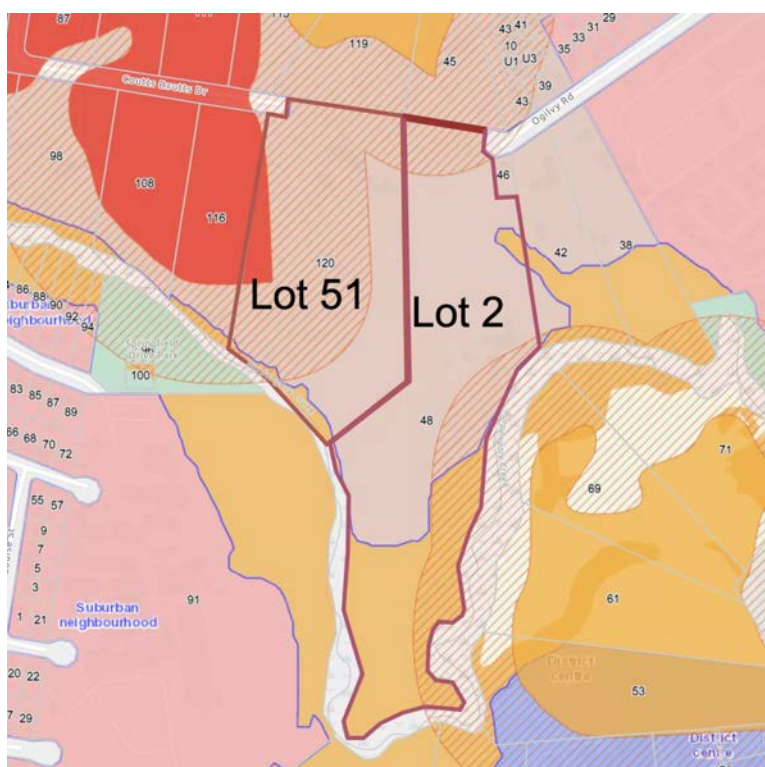


Figure 7

## BUSHFIRE HAZARD ASSESSMENT

The State Government Single State Planning Policy (SPP) released in 2017, includes mapping that is an outcome of the new bushfire hazard mapping methodology, developed by the CSIRO and the Queensland Government. The new Bushfire Prone Area mapping was found to have an average reliability of 85%. The new methodology provides a major improvement in bushfire hazard mapping. The new modified approach calculates potential fire line intensity using total fuel loads, landscape slope and fire weather severity. A default 100-metre buffer was determined from analysis of heat and radiation decay curves and research that indicates 80% of housing loss and 80% of life loss occurred within 100 metres of bushland.

The subject site is identified on the Moreton Bay Regional Council *Bushfire Hazard Overlay Map* as being within Potential Bushfire Impact zone (Figure 8).



**Figure 8**

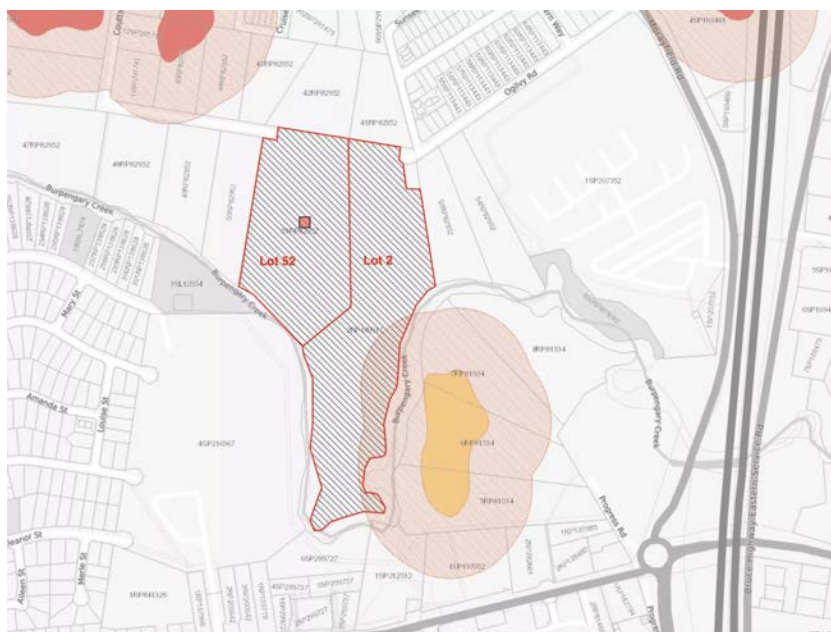


- + Bushfire assessments
- + Property vegetation assessments
- + Site planning for bushfire
- + Property management for bushfire
- + Bushfire management plans

Bushfire hazard in Queensland is mapped as bushfire prone areas. This mapping forms part of the State Planning Policy Interactive Mapping System (SPPIMS). The mapping identifies the extent and level of the bushfire hazard across the state. Mapping is in accordance with the process described in ‘A new methodology for state-wide mapping of bushfire-prone areas in Queensland’, Leonard, J and Newnham, G et al (2014). The areas are mapped as either very high, high or medium potential bushfire intensity and include potentially hazardous vegetation that could support a significant bushfire. This vegetation is classified and mapped as having a vegetation hazard class. The SPP IMS does not identify any bushfire impact on Lot 51 on RP82952 and a limited impact at the eastern extent of Lot 2 on RP189017.

The MBRC Bushfire hazard overlay mapping under its planning scheme indicates areas of High hazard to the east and west. The Bushfire Resilient communities-technical Reference guide for the State Planning Policy State Interest “Natural Hazards, Risk and resilience – Bushfire (Oct 2019) requires where mapping is not of sufficient reliability, local governments may seek too either:

- liaise with QFES to confirm and resolve identified mapping issues in state-wide bushfire hazard area maps, or
- prepare local scale bushfire hazard area maps using improved local vegetation or slope mapping applying the same methodology as the state used in preparing the SPP IMS bushfire prone area mapping, as described in Section 4.2.
- liaise with QFES to confirm and resolve identified mapping issues in state-wide bushfire hazard area maps, or
- prepare local scale bushfire hazard area maps using improved local vegetation or slope mapping applying the same methodology as the state used in preparing the SPP IMS bushfire prone area mapping, as described in section 4.2.
- The hazard as shown on the MBRC bushfire overlay mapping would indicate this has not been done and therefore the SPPIMS mapping is more relevant in for the existing vegetation (Figure 9)



**Figure 9**



## LOCAL GOVERNMENT PROVISIONS

The Moreton Bay Regional Council Planning Scheme Version 4 came into effect on 27 June 2017 and incorporated Bushfire Hazard Overlay Mapping, Overlay Code and Bushfire Hazard Planning Scheme Policy. An Assessment has also been conducted against the applicable Overlay Code.

## SITE ASSESSMENT

An onsite inspection and assessment were conducted at 120 Couatts Drive and 48 Ogilvy Road, Burpengary on 24 May, 2021 to observe and record the relevant information to determine the bushfire hazard in accordance with the requirements of the Moreton Bay Regional Council Planning Scheme Version 4.

## Vegetation

The *Public Safety Business Agency (PSBA) State-wide Bushfire Hazard (Bushfire Prone Area)* mapping identifies the original vegetation on and about this site as Regional Ecosystem (RE) 12.5.3 *Eucalyptus racemosa* subsp. *racemosa* woodland on remnant Tertiary surfaces. Figure 3 shows the extent of that original vegetation and demonstrates that as a result of past management and rural residential development no significant areas of RE 12.5.3 remain. The Lots adjoining or adjacent to the west and north have discrete, non - contiguous areas of non - remnant vegetation with managed understory dissected by internal roads and trails and secondary infrastructure (Figure 10).



**Figure 10**

- + Bushfire assessments
- + Property vegetation assessments
- + Site planning for bushfire
- + Property management for bushfire
- + Bushfire management plans

The original vegetation on and about Burpengary Creek is identified as Regional Ecosystem (RE) 12.3.16 Gallery rainforest (notophyl vine forest) on alluvial plains - Fire sensitive and not considered flammable. (Figure 11).



**Figure 11**

The proposed development will have a perimeter road of minimum 15 metres from the vegetation on Burpengary Creek. The QFES defensible space calculator yields a BAL - Low. (Appendix 2)

## Classified Vegetation

Australian Standard, *Construction of Buildings in Bushfire Prone Areas* (AS 3959–2018) requires any classified vegetation within 100 metres of the proposed works must be assessed. The vegetation on Lot 51 on RP82952 and Lot 2 on RP189017 and surrounding properties has been cleared or fragmented by past management and development of rural residential and low density residential lots. The fragmentation of the surrounding vegetation and the non-flammability of the vine forest type has removed any bushfire impacts on the proposed development

## Risk Analysis

The potential for an unplanned vegetation fire to occur within retained vegetation is a function of the level of hazard and the opportunity for ignition and fire development. The risk can be quantified in two parts:

- Internal
- External

### Internal

No significant vegetation remains on Lot 51 RP82952 (Photo 1 and 2) and Lot 51 (Photo 3, 4, and 5).



**Photo 1 (Lot 51 -East from Couatts Rd)**



**Photo 2 (Lot 51 - West from Burpengary Creek)**



**Photo 3 (Lot 51 - Park Area)**



**Photo 4 (Lot 51 - Park Area)**



**Photo 5 (Gallery Rainforest Burpengary Creek)**

## External

The adjoining Lots to the east are occupied rural residential lots predominantly maintained in a managed low hazard condition (Photo 6 and 7).

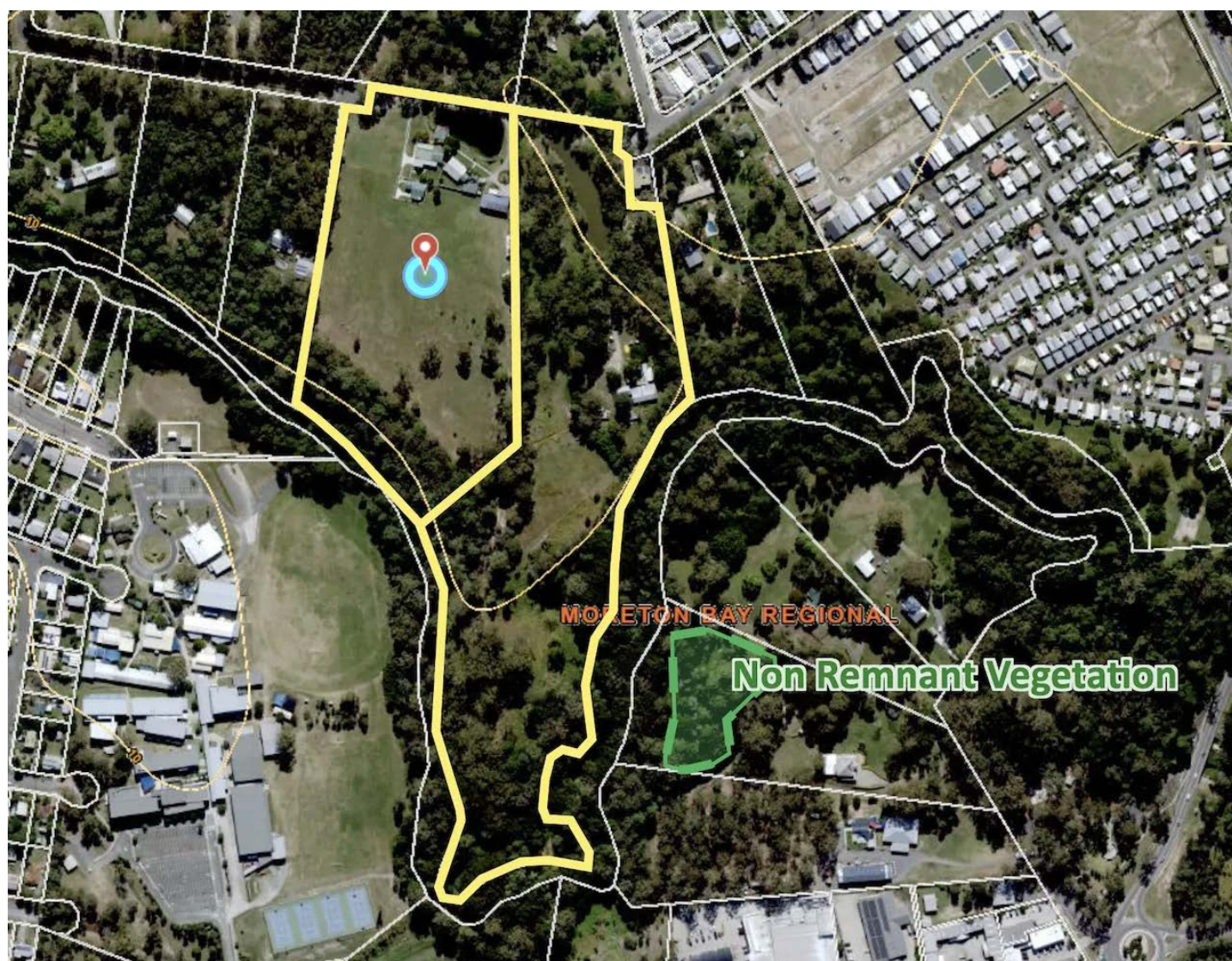


**Photo 6 (Lot 50 on RP82952)**



**Photo 7 (Lot 50 on RP82952)**

A discrete area of vegetation to the south of Burpengary Creek is identified on the State Planning Policy Interactive Mapping System (SPPIMS). The mapping identifies the extent and level of the bushfire hazard across the state. The area of the vegetation is approximately 6 000 square meters. Section 2 of the *Australian Standard AS3959 -2018 - Construction of buildings in Bushfire prone areas - 2.2.3.2 (a)* allows that any area of less than 1 ha and not within 100 metres of any other vegetation being classified vegetation can be excluded from consideration (Figure 12).



**Figure 12**

## ASSESSMENT OF BUSHFIRE HAZARD

Australian Standard - *Construction of Buildings in Bushfire Prone Areas (AS 3959–2018)* requires that any classified vegetation within 100 metres of the proposed works must be assessed. Figure 13 shows the extent of the Non Classified Vegetation - Regional Ecosystem (RE) 12.3.16 Gallery rainforest (notophyl vine forest)



**Figure 13**

## Potential Radiant Heat Flux

The Australian Standard, Construction of Buildings in Bushfire Prone Areas (AS 3959-2018), provides a suitable methodology for identifying assessable vegetation and determining the requirements for the construction of buildings in order to improve their resistance to bushfire attack from burning embers, radiant heat, flame contact and a combination of the three attack forms.

## Bushfire Protection Measures in Combination

Figure 14 illustrates that effective protection against bushfire can only be achieved by the integration of multiple measures. Removing the bushland (hazard) will remove the risk but this option is neither necessarily possible nor desirable. An acceptable level of protection of life and property can be achieved while still retaining and protecting biodiversity and the natural values of the bushland.



**Figure 14**



## BUSHFIRE RISK MITIGATION

A range of strategies can be applied to mitigate the potential impacts of bushfire:

- Vegetation management
- Access and egress
- Fencing
- Water supply
- Awareness and education
- Building construction.

### Vegetation Management

Onsite vegetation and landscape management are important to maintaining low hazard conditions by:

- Limiting fuel accumulation;
- Reducing connectivity of fuels;
- Establishing and maintaining defensible space;
- Appropriate landscaping; and
- The proposed lot size of the development will constrain the development of any additional bushfire hazard.

### Clearing

The site proposed for residential Lots carries no significant vegetation. Lot 902 will be managed parkland. Lot 901 Open space consists of remnant Regional Ecosystem 12.3.16.

### Landscaping

No hazardous vegetation will be established within the residential development,



## Site Access and Egress

The intent of design requirements for roads is to provide safe egress for residents and access for attending firefighting vehicles. A road system that is compliant with guideline measures provides fire services with easier access to buildings, a safe retreat for firefighters and residents, and can provide a fire control line where hazard reduction and back burning can take place. In determining safe access to a site, consideration is given to the fire brigade vehicles which are required to access public and private roads. Given the size of these vehicles and the poor visibility in which they often operate, roads need to be designed to specific requirements, including road width, grade, cross-fall, weight capacity, passing bays and turnaround areas, all of which may vary depending on whether it is a perimeter, access, cul-de-sac or battle-axe road type.

## Fencing

Fencing materials have the capacity to contribute to fire spread and intensity. No specific construction is required.

## Water Supply

Providing a sufficient water supply provides firefighters and residents with the appropriate levels of water to undertake building defense. There are two options in which a house site can be supplied with a sufficient water supply; from either reticulated water accessible via a hydrant, or a dedicated static water supply. Reticulated water will be supplied to the development meeting the required statutory standards.



## Community Awareness

Property owners are responsible for developing their own knowledge and understanding of the level of bushfire risk specific to their respective properties. A household bushfire plan is required and must take account of matters such as where occupants are during the day (at home, work or school), if any occupants require special assistance (i.e. infants, the elderly or the ill), evacuation routes available, evacuation destinations, property maintenance and preparation and arrangements for pets. Planning ahead of any perceived bushfire event is essential.

The warning systems now implemented by Emergency Services and Local Authorities provide timely information and advice to occupants. Understanding what to do in the event of bushfire emergency is critical. Prior knowledge as to the steps to take during the lead up to a fire event, during the passage of bushfire, and what to do immediately after the fire front has passed is critical.

The Rural Fire Service Queensland (RFSQ) 'Bushfire Survival Plan' provides detailed information on how to prepare for the bushfire season and how to take action to survive in the event of bushfire. A copy of this publication can be obtained from the RFSQ website. ([https://ruralfire.qld.gov.au/Fire\\_Safety\\_and\\_You/Bushfire\\_Survival\\_Plan/](https://ruralfire.qld.gov.au/Fire_Safety_and_You/Bushfire_Survival_Plan/))

## SUMMARY OF RECOMMENDATIONS

This report includes a number of recommendations regarding bushfire risk mitigation in accordance with AS3959-2018 and Moreton Bay Regional Council Planning Scheme Version 4. A summary of recommendations made by this report is included below.

RECOMMENDATIONS
1. There is no classified vegetation impacting on the proposed development on Lot 51 on RP82952 and Lot 2 on RP189017. The Australian Standard AS3959- 2018 - <i>Construction of buildings in bushfire prone areas</i> has not been triggered on this site.
2. The vegetation on 120 Couatts Drive and 48 Ogilvy Road, Burpengary will be maintained in managed low hazard state.
3. Fencing on Lot 51 on RP82952 and Lot 2 on RP189017 will be constructed of non – combustible materials. Ingress and egress for residents and emergency services will be via Couatts Drive
4. Ingress and egress for residents and emergency services will be via Couatts Road.
5. Reticulated water will be provided to the reconfiguration.

## CONCLUSIONS

This report considers the bushfire mitigation measures required for 120 Couatts Drive and 48 Ogilvy Road, Burpengary, Lot 51 on RP82952 and Lot 2 on RP189017. Based upon detailed analysis of the potential future bushfire hazard no specific mitigation is required. It is significant to note that bushfire remains a natural process which is endemic to the Australian bush and it remains subject to a range of contributing factors which are variable on a daily and hourly basis. It is extremely difficult to predict the behaviour and intensity of a fire event at any given time. Therefore, it remains of the utmost importance that residents within identified bushfire prone areas obtain knowledge and remain aware of their options in the event of a bushfire to ensure the preservation of both life and property.



# Appendices

## APPENDIX 1

**CODE COMPLIANCE ASSESSMENT**

Performance Outcomes	Acceptable Outcomes	Compliance
<p><b>PO96</b> Development:</p> <p>(a) minimises the number of buildings and people working and living on a site exposed to bushfire risk;</p> <p>(b) ensures the protection of life during the passage of a fire front;</p> <p>(c) is located and designed to increase the chance of survival of buildings and structures during a bushfire;</p> <p>(d) minimises bushfire risk from build up of fuels around buildings and structures;</p> <p>(e) ensure safe and effective access for emergency services during a bushfire.</p>	<p><b>E96.1</b> Buildings and structures are:</p> <p>(a) not located on a ridgeline;</p> <p>(b) not located on land with a slope greater than 15% (see Overlay map - Landslide hazard);</p> <p>(c) dwellings are located on east to south facing slopes</p> <p><b>E96.2</b> Buildings and structures have contained within the site:</p> <p>(a) a separation from classified vegetation of 20m or the distance required to achieve a bushfire attack level (BAL) at the building, roofed structure or fire fighting water supply of no more than 29, whichever is the greater;</p> <p>(b) a separation from low threat vegetation of 10m or the distance required to achieve a bushfire attack level (BAL) at the building, roofed structure or fire fighting water supply of no more than 29, whichever is the greater;</p> <p>(c) a separation of no less than 10m between a fire fighting water supply extraction point and any classified vegetation, buildings and other roofed structures;</p>	<p>No Bushfire impact.</p>

Performance Outcomes	Acceptable Outcomes	Compliance
	<p>(a) an area suitable for a standard fire fighting appliance to stand within 3m of a fire fighting water supply extraction point; and</p> <p>(b) an access path suitable for use by a standard fire fighting appliance having a formed width of at least 4m, a cross-fall of no greater than 5%, and a longitudinal gradient of no greater than 25%:</p> <p>i. to, and around, each building and other roofed structure; and</p> <p>ii. to each fire fighting water supply extraction point.</p>	N/A
<p><b>PO97</b> Development and associated driveways and access ways:</p> <p>(a) avoid potential for entrapment during a bushfire;</p> <p>(b) ensure safe and effective access for emergency services during a bushfire;</p> <p>(c) enable safe evacuation for occupants of a site during a bushfire.</p>	<p><b>E97</b> A length of driveway:</p> <p>(a) to a road does not exceed 100m between the most distant part of a building used for any purpose other than storage and the nearest part of a public road;</p> <p>(b) has a maximum gradient no greater than 12.5%;</p> <p>(c) have a minimum width of 3.5m; accommodate turning areas for fire fighting appliances in accordance with Qld Fire and Emergency Services' Fire Hydrant and Vehicle Access Guideline.</p>	N/A
<p><b>PO98</b> Development provides an adequate water supply for fire-fighting purposes.</p>	<p><b>E98</b> (a) a reticulated water supply is provided by a distributor retailer for the area or;</p>	Complies

Performance Outcomes	Acceptable Outcomes	Compliance
	<p>(b) where not connected to a reticulated water supply, on-site fire fighting water storage containing not less than 10 000 litres (tanks with fire brigade tank fittings, swimming pools) is located within 10m of buildings and structures.</p> <p>(c) Where a swimming pool is the nominated on-site fire fighting water storage source, vehicle access is provided to within 3m of that water storage source.</p> <p>(d) Where a tank is the nominated on-site fire fighting water storage source, it includes:</p> <ul style="list-style-type: none"> <li>i. a hardstand area allowing medium rigid vehicles (15 tonne fire appliance) access within 6m of the tank;</li> <li>ii. fire brigade tank fittings, comprising 50mm ball valve and male camlock coupling and, if underground, an access hole of 200mm (minimum) to accommodate suction lines.</li> </ul>	
<p><b>PO99</b></p> <p>Development:</p> <p>(a) does not present unacceptable risk to people or environment due to the impact of bushfire on dangerous goods or combustible liquids;</p> <p>(b) does not present danger or difficulty to emergency services for emergency response or evacuation.</p>	<p><b>E99</b></p> <p>Development does not involve the manufacture or storage of hazardous chemicals.</p>	<p>N/A</p>

## APPENDIX 2

SPP Bushfire Separation Distance Calculator			
VARIABLE DESCRIPTION	VARIABLE	UNITS	VALUE
<i>Input Values</i>			
FIRE WEATHER SEVERITY	FDI		55.00
VEGETATION HAZARD CLASS	VHC	-	1.1 Complex mesophyll to notophyll vine forests
REMNANT STATUS	-	-	Remnant
SLOPE TYPE (UPSLOPE OR DOWNSLOPE)	ST	-	Downslope
EFFECTIVE SLOPE UNDER THE HAZARDOUS VEGETATION	eSlope	degrees	5.00
SLOPE BETWEEN SITE AND HAZARDOUS VEGETATION	θ	degrees	2.00
DISTANCE OF THE SITE FROM HAZARDOUS VEGETATION	d	m	15.00
<i>Output Values</i>			
SURFACE FUEL LOAD	-	t/ha	2.60
NEAR SURFACE FUEL LOAD	-	t/ha	0.00
BARK FUEL LOAD	-	t/ha	0.00
ELEVATED FUEL LOAD	-	t/ha	0.00
TOTAL OVERALL FUEL LOAD	W	t/ha	2.60
TOTAL SURFACE FUEL LOAD	w	t/ha	2.60
POTENTIAL FIRE LINE INTENSITY	l	kW/m	0
RADIANT HEAT FLUX	q	kW/m <sup>2</sup>	0.00
BUSHFIRE ATTACK LEVEL (AS 3959-2009)	BAL	-	BAL-LOW

## Appendix 2

### About the Report Author



This Report was prepared by Bushfire Specialist Bernard Trembath. Bernard has extensive practical knowledge and experience in bushfire planning and management and an intimate working knowledge of Queensland vegetation and climate, particularly in relation to fire prediction and behaviour.

Prior to establishing Queensland Bushfire Planning in 2014, Bernard was the Regional Manager Rural Operations, Brisbane Region, for Queensland Fire and Emergency Services (QFES). As Regional Manager, Bernard was responsible for bushfire mitigation within the Brisbane Region, working with Local Governments and many other organisations to help reduce the impacts of bushfires. Bernard was also the QFES bushfire planning specialist, providing specialist bushfire planning and management advice on behalf of QFES.

Since 2014, Bernard has provided his specialist bushfire planning knowledge to advise and assist a large number of individuals, companies and government agencies. His happy clients include:



- + Bushfire assessments
- + Property vegetation assessments
- + Site planning for bushfire
- + Property management for bushfire
- + Bushfire management plans