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REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958

VOLUME 12062 FOLIO 254

Security no : 124076303665M
Produced 25/02/2019 04:24 PM

LAND DESCRIPTION

Lot B on Plan of Subdivision 817647S.
PARENT TITLE Volume 12017 Folio 417
Created by instrument PS817647S 25/02/2019

REGISTERED PROPRIETOR

Estate Fee Simple
Sole Proprietor
DIGITAL 4 PTY LTD of TOWER A LEVEL 10 799 PACIFIC HIGHWAY CHATSWOOD NSW 2067
PS817647S 25/02/2019

ENCUMBRANCES, CAVEATS AND NOTICES

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

AGREEMENT Section 173 Planning and Environment Act 1987
AR931736L 15/02/2019

DIAGRAM LOCATION

SEE PS817647S FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NUMBER	STATUS	DATE
PS817647S (S) PLAN OF SUBDIVISION	Registered	25/02/2019

-----END OF REGISTER SEARCH STATEMENT-----

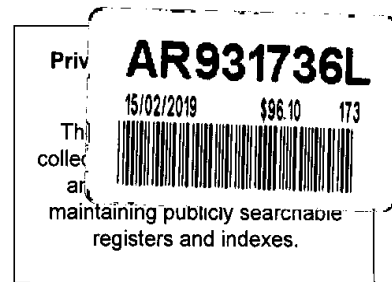
Additional information: (not part of the Register Search Statement)

Street Address: 250A TAYLORS ROAD DELAHEY VIC 3037

DOCUMENT END

Delivered from the LANDATA® System by InfoTrack Pty Ltd.

Application by a responsible authority for the making of a recording of an agreement
Section 181 Planning and Environment Act 1987



Lodged by

Name: HWL EBSWORTH LAWYERS
Phone: (03) 8644 3649
Address: LEVEL 26, 530 COLLINS STREET MELBOURNE VIC 3000
Reference: MB:KC:917118
Customer code: 0985X

The responsible authority having made an agreement referred to in section 181(1) of the Planning and Environment Act 1987 requires a recording to be made in the Register.

Land:(volume and folio)

VOLUME 12017 FOLIO 417 KNOWN AS 250 TAYLORS ROAD AND 2-148 SYDENHAM ROAD, DELAHEY

Responsible authority:(full name and address, including postcode)

BRIMBANK CITY COUNCIL, 301 HAMPSHIRE ROAD, SUNSHINE 3020

Section and act under which agreement is made:

SECTION 173 OF THE PLANNING AND ENVIRONMENT ACT 1987 (VIC)

A copy of the agreement is attached to this application:

YES

Signing:

35271702A

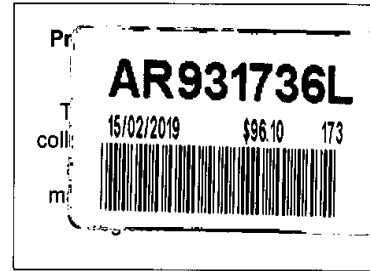
181PEA

Page 1 of 2

THE BACK OF THIS FORM MUST NOT BE USED

Land Use Victoria contact details: see www.delwp.vic.gov.au/property>Contact us

Application by a responsible authority for the making of a recording of an agreement
Section 181 Planning and Environment Act 1987



Executed on behalf of BRIMBANK CITY COUNCIL

Signer Name KRISTEN GILBERT

Signature *Kristen Gilbert*
Manager

My identity has been verified by
Australia Post on 02/05/2018.
Unique Sequence No: 3447860433585

Execution Date 08/02/2019

Full Name of Witness CATHERINE CARDWELL

Witness Signature *Catherine Cardwell*

35271702A

181PEA

Page 2 of 2

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Land Use Victoria contact details: see www.delwp.vic.gov.au/property>Contact us

PLANNING & | **PARTNERS**
PROPERTY

LAWYERS & CONSULTANTS



Agreement under section 173 of the
Planning and Environment Act (1987)

DIGITAL 4 PTY LTD

and

BRIMBANK CITY COUNCIL

250 Taylors Road & 2-148 Sydenham Road, Delahey

13/1 Collins Street
Melbourne VIC 3000
Tel: 8626 9000
Fax: 8626 9001
www.pppartners.com.au
Doc ID 613139113/v1

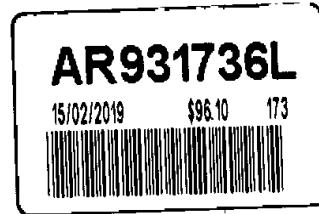


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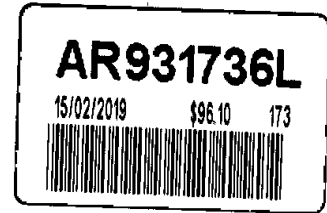
APPENDIX A 8

This Agreement is made on the 8th day of February 2019.

Between

BRIMBANK CITY COUNCIL

of 301 Hampshire Road, Sunshine Victoria 3020
(**'Council'**)



Digital 4 Pty Ltd (ACN 129 827 363)

of Level 10, Tower A, 799 Pacific Highway, Chatswood NSW 2067
(**'Owner'**)

(**'the Parties'**)

Background

- A Council is the Responsible Authority pursuant to the Act for the Planning Scheme.
- B The Owner enters into this Agreement as the registered proprietor of the Subject Land.
- C This Agreement is executed pursuant to Condition 5 of the Permit.
- D Under this Agreement, the Parties agree to defer, until any Future Subdivision of the Subject Land, payment of:
 - (a) Any Public Open Space Contribution; and
 - (b) Any Development Contribution.
- E The Parties also agree as to:
 - (a) Land not to be used to satisfy the Public Open Space Contribution; and
 - (b) Clearing of native flora or fauna from the Subject Land.



1 Definitions

In this Agreement the following definitions apply unless the context admits otherwise:

Act means the *Planning and Environment Act 1987 (Vic)*.

Agreement means this Agreement and any agreement executed by the Parties expressed to be supplemental to this Agreement.

Clause means a clause of the Planning Scheme.

Development Contribution has the same meaning as in Clause 45.06 of the Planning Scheme and any Schedule to Clause 45.06, or any such equivalent provision of the Planning Scheme at the time of any Future Subdivision of the Subject Land.

Future Subdivision means a subdivision of the Subject Land subsequent to The Subdivision.

Lot B means the proposed Lot B on PS 817647S, as created by the Subdivision.

Owner means the person or persons registered or entitled from time to time to be registered as the proprietor or proprietors of an estate in fee simple of the Subject Land or any part of it and includes a Mortgagee-in-possession.

Party or Parties means the Parties to this Agreement, but does not include a person who has transferred or otherwise disposed of all of their interest in the Subject Land.

Permit means Planning Permit P483/2018.

Planning Scheme means the Brimbank Planning Scheme and any other successor instrument or planning scheme applying to the Subject Land.

Public Open Space Contribution means the contribution required under Clause 53.01 of the Planning Scheme and specified in the Schedule to Clause 53.01, or any such equivalent provision of the Planning Scheme as may be in force at the time of any Future Subdivision of the Subject Land.

The Subdivision means the two-lot subdivision of the Subject Land as allowed by the Permit and proposed as Lot A and Lot B on PS 817647S.

Subject Land means the land at 250 Taylors Road and 2-148 Sydenham Road, Delahey, described as Lot 2 on TP012442M, more specifically being Certificate of Title Volume 12017 Folio 417, and proposed to be Lot A and Lot B on PS 817647S.



2 Interpretation

In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) The singular includes the plural and vice versa.
- (b) A reference to a gender includes all genders.
- (c) A reference to a person includes a reference to a firm, corporation or other corporate body and that person's successors in law.
- (d) Any agreement, representation, warranty or indemnity by two or more persons (including where two or more persons are included in the same defined term) binds them jointly and severally.
- (e) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (f) A term used has its ordinary meaning unless that term is defined in the Agreement. If a term is not defined in the Agreement and it is defined in the Act, it has the meaning as defined in the Act.
- (g) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Melbourne, Victoria.
- (h) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- (i) Any reference to an Act, regulation or Planning Scheme includes any Act, regulation or amendment which amends, consolidates or replaces the Act, regulation or Planning Scheme.
- (j) The Owner's obligations take effect as separate and several covenants which are annexed to and run at law and equity with the Subject Land.
- (k) A reference in this Agreement to any document or agreement is to that document or agreement as amended, novated, supplemented or replaced.
- (l) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (m) A reference to the word 'include' or 'including' is to be interpreted without limitation.
- (n) Any schedules and attachments form part of this Agreement.



3 Owner obligations

The Owner covenants and agrees:

3.1 Public Open Space Contribution

The Owner of the Subject Land will satisfy the Public Open Space Contribution upon Future Subdivision of the Subject Land.

3.2 Development Contribution

The Owner of the Subject Land will satisfy the Development Contribution upon Future Subdivision of the Subject Land.

3.3 Land not to be used to satisfy the Public Open Space Contribution

The land adjacent to the northern boundary of Lot B on PS 817647S, on the eastern and western boundary corners where it intersects with Kings and Sydenham Roads, will not to be utilised to constitute the Public Open Space Contribution.

3.4 No Clearing of Native Flora or Fauna

Prior to further subdivision, the Owner will not clear any native flora or fauna within two metres of the boundary line between lots A and B on PS 817647S without the prior written approval of Council, irrespective of whether a planning permit would be required for such clearing.

4 Council obligations

The Council covenants and agrees:

4.1 Statement of Compliance

Council will:

- (a) Apply to the Registrar of Titles without delay to record this Agreement on the title to the Subject Land; and
- (b) Issue the Statement of Compliance as soon as possible after Council has made such application to the Registrar of Titles.

4.2 Discretion under Clause 3.4 of this Agreement

Council will not unreasonably withhold consent to any request under Clause 3.4 of this Agreement.

5 Further actions of the Owner

5.1 Notice and registration

The Owner must bring this Agreement to the attention of all prospective occupiers, purchasers, mortgagees, chargees, transferees and assigns.

5.2 Further actions

The Owner must:

- (a) Do all things necessary to give effect to this Agreement; and



- (b) Consent to the Council applying to the Registrar of Titles to record this Agreement on the Certificate of Title to the Subject Land in accordance with section 181 of the Act and must do all things necessary to enable the Council to do so, including:
 - (i) Sign any further agreement, acknowledgement or documents; and
 - (ii) Obtain all necessary consents to enable the recording to be made.

6 Agreement under section 173 of the Act

6.1 Agreement

Without limiting or restricting the respective powers of the Parties to enter into this Agreement and, insofar as it can be so treated, this Agreement is made as a deed under section 173 of the Act.

7 Owner warranties

7.1 Warranties

The Owner warrants that the following persons hold licences in respect of the Subject Land:

- (a) Optus Mobile Pty Limited (ACN 054 365 696);
- (b) Telstra Corporation Limited (ACN 051 775 556);
- (c) Thinextra Network Pty Limited (ACN 612 807 057); and
- (d) Vodaphone Network Pty Limited (ACN 081 918 461).

The Owner warrants that apart from the Owner, the above-mentioned licensees and any other person who has consented in writing to this Agreement, no other person has any interest, either legal or equitable, in any land which may be affected by this Agreement.

8 Successors in title

8.1 Successors in title

Until such time as a memorandum of this Agreement is registered on the Certificate of Title to the Subject Land, the Owner must require successors in title to:

- (a) Give effect to and do all acts and sign all documents which will require those successors to give effect to this Agreement; and
- (b) Enter into a deed agreeing to be bound by the terms of this Agreement.

9 General Matters

9.1 Notices

A notice or other communication required or permitted to be served by a Party on another Party must be in writing and may be served:

- (a) Personally on the person;
- (b) By leaving it at the person's current address for service;

- (c) By posting it by prepaid post addressed to that person at the person's current address for service;
- (d) By facsimile to the person's current number for service;
- (e) By email to the person's current email address for service; or
- (f) A notice or other communication is taken to be served:
 - (i) If personally delivered, on the next business day following delivery;
 - (ii) If posted, on the expiry of two business days after the date of posting; or
 - (iii) If sent by fax, at the time recorded by the fax machine of the party sending the transmission, provided that:
 - (A) The transmission is successful and has been transmitted in its entirety; and
 - (B) If the time recorded is after 5.00 pm, the time is taken to be 9.00 am on the first business day following transmission.



9.2 No fettering of Council powers

This Agreement does not fetter or restrict Council's power or discretion to make decisions or impose requirements or conditions in connection with the grant of any consent under this Agreement, any planning approvals or certification of plans of subdivision or relating to the use or the development of any land affected by this Agreement.

9.3 No Waiver

Any time or other indulgence granted by Council to the Owner or any variation of this Agreement or any judgment or order obtained against the Owner does not amount to a waiver of any of Council's rights or remedies under this Agreement.

9.4 Severability

If a court, arbitrator, tribunal or other competent authority determines that any part of this Agreement is unenforceable, illegal or void then that part is severed with the other provisions of this Agreement remaining operative.

9.5 Amendment

This Agreement must not be amended or varied unless the amendment or variation is:

- (a) In writing signed by the Parties; and
- (b) In accordance with the Act.

9.6 Entire agreement

This Agreement contains everything the Parties have agreed in relation to the subject matter it deals with. No party can rely on an earlier written document or anything said or done by or on behalf of another party before this Agreement was executed.

9.7 Counterparts

This Agreement may be executed in any number of counterparts and all counterparts taken together will constitute one Agreement.



9.8 Governing Law

This Agreement is governed by and is to be construed in accordance with the laws in the State of Victoria.

9.9 Council Costs

The Owner will immediately pay to Council, Council's reasonable costs and expenses (including legal expenses) of and incidental to the, finalisation, engrossment, execution and registration of this Agreement which are and until paid will remain a debt due to Council by the Owner

10 Commencement of Agreement

10.1 Date of commencement

This Agreement commences on the date of execution by each of the Parties.

11 Ending of Agreement

11.1 Ending of Agreement

This Agreement ends when:

- (a) A replacement agreement is entered into, superseding this Agreement; or
- (b) By agreement between the Parties, pursuant to section 177(2) of the Act; or
- (c) A decision to end the Agreement is made under Part 9 Division 2 of the Act.

11.2 Cancellation of Agreement

As soon as reasonably practical after the Agreement has ended, Council will, at the Owner's written request and cost, apply to the Registrar of Titles under section 183 of the Act to cancel the recording of this Agreement on the whole or relevant part of the Subject Land.

Executed by the Parties as an agreement pursuant to Division 2 of Part 9 of the Act.

Signed sealed and delivered by and on behalf of **BRIMBANK CITY COUNCIL**)
)
)
by the Manager City Planning pursuant)
to an Instrument of Delegation from)
Council to Members of Council Staff)
dated 18 December 2018:



Signed by Manager, City Planning

Signature of witness

Name of Manager **KRISTEN GILBERT**

CATHY CARDWELL

Name of witness

301 HAMPSHIRE RD, SUNSHINE.

Address of Witness

Executed by **DIGITAL 4 PTY LTD** (ACN)
129 827 363) in accordance with section)
127(1) of the *Corporations Act* 2001:)
)

Signature of Director

JAMES HASSELL

Name of Director

Signature of secretary

John Medley

Name of secretary

Signature of witness

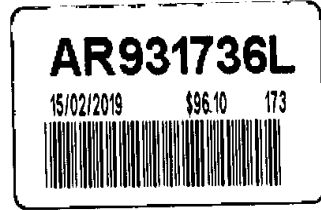
PETER LAMBOURNE

Name of witness

Signature of witness

Bonita Johns

Name of witness



Tenant's Consent

Buildit Enterprises Pty Ltd as tenant under lease consents to the Owner entering into this Agreement.

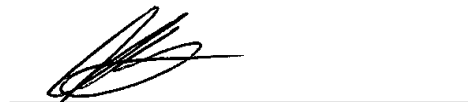
Executed by **BUILDIT ENTERPRISES**)
PTY LTD (ACN 097 042 978) in)
accordance with section 127(1) of the)
Corporations Act 2001:)



Signature of Director




Name of Director



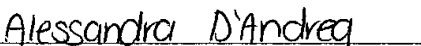
Signature of secretary



Name of secretary



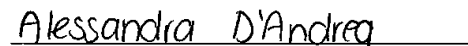
Signature of witness





Name of witness

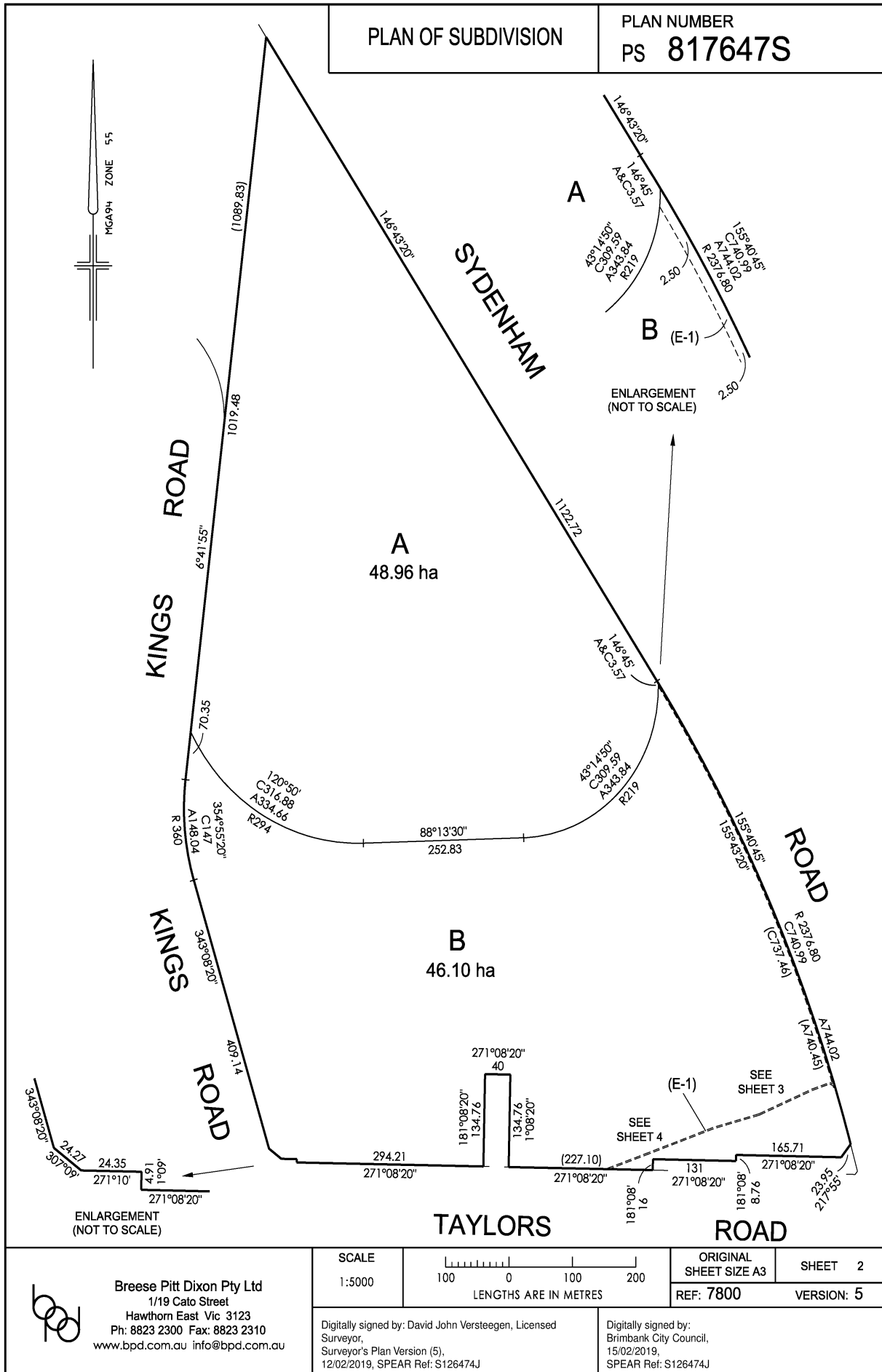


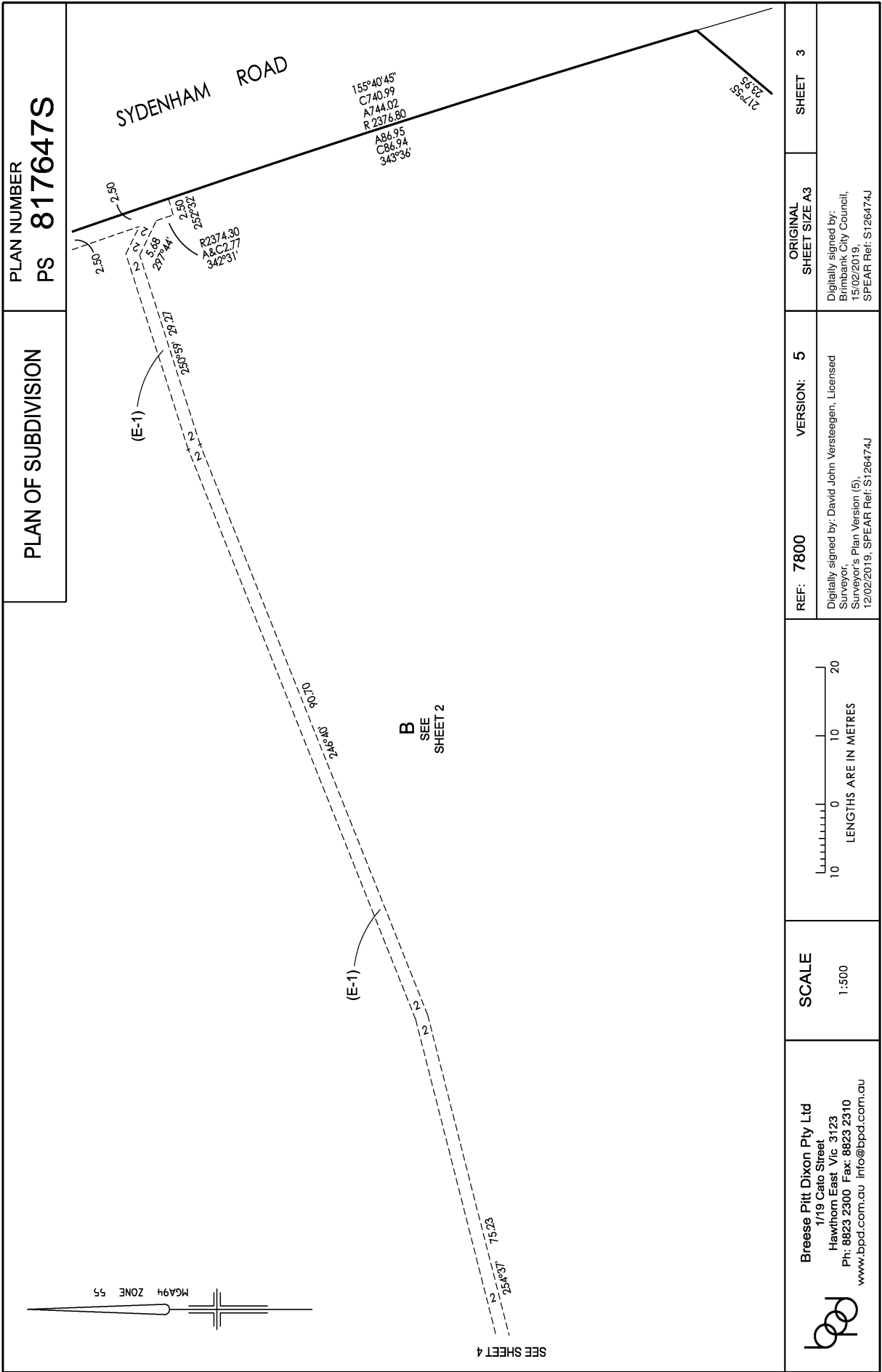
Signature of witness



Name of witness

PLAN OF SUBDIVISION		LRS USE ONLY EDITION 1	PLAN NUMBER PS 817647S	
LOCATION OF LAND PARISH: MARIBYRNONG TOWNSHIP: --- SECTION: B CROWN ALLOTMENT: 25 (PART) CROWN PORTION: --- TITLE REFERENCES: VOL. 12017 FOL. 417 LAST PLAN REFERENCE: LOT 2 TP12442M POSTAL ADDRESS: (at time of subdivision) 250 TAYLORS ROAD DELAHEY 3061 MGA 94 CO-ORDINATES: (of approx. centre of plan) E: 304797 ZONE: 55 N: 5822784 DATUM: GDA94		Council Name: Brimbank City Council Council Reference Number: S135/2018 Planning Permit Reference: P483/2018 SPEAR Reference Number: S126474J Certification This plan is certified under section 11 (7) of the Subdivision Act 1988 Date of original certification under section 6: 27/12/2018 Statement of Compliance This is a statement of compliance issued under section 21 of the Subdivision Act 1988 Public Open Space A requirement for public open space under section 18 of the Subdivision Act 1988 has not been made Digitally signed by: Susan Fitton for Brimbank City Council on 15/02/2019		
VESTING OF ROADS OR RESERVES		NOTATIONS		
IDENTIFIER	COUNCIL/BODY/PERSON	THIS IS A SPEAR PLAN TANGENT POINTS ARE SHOWN THUS: 		
NIL				
NOTATIONS				
DEPTH LIMITATION DOES NOT APPLY				
SURVEY: THIS PLAN IS BASED ON SURVEY THIS SURVEY HAS BEEN CONNECTED TO PERMANENT MARKS No(s). 1202 AND 1196 NOT IN A PROCLAIMED SURVEY AREA STAGING THIS IS NOT A STAGED SUBDIVISION PLANNING PERMIT No.				
ESTATE: ---		AREA: 95.06ha	No. OF LOTS: 2	MELWAY: 13:H6
EASEMENT INFORMATION				
LEGEND: A - APPURTENANT E - ENCUMBERING EASEMENT R - ENCUMBERING EASEMENT (ROAD)				
EASEMENT REFERENCE	PURPOSE	WIDTH (METRES)	ORIGIN	LAND BENEFITED OR IN FAVOUR OF
(E-1)	DRAINAGE	SEE PLAN	THIS PLAN	BRIMBANK CITY COUNCIL
 Breese Pitt Dixon Pty Ltd 1/19 Cato Street Hawthorn East Vic 3123 Ph: 8823 2300 Fax: 8823 2310 www.bpd.com.au info@bpd.com.au		REF: 7800 VERSION: 5 Digitally signed by: David John Versteegen, Licensed Surveyor, Surveyor's Plan Version (5), 12/02/2019, SPEAR Ref: S126474J	ORIGINAL SHEET SIZE A3 PLAN REGISTERED TIME: 4:11pm DATE: 25/2/2019 Assistant Registrar of Titles	SHEET 1 OF 4 SHEETS
CHECKED	D.SMALE	DATE: 12/02/19		





PLAN NUMBER
PS 817647S

PLAN OF SUBDIVISION

REF: 7800

Digitally signed by: David John Versteegen, Licensed Surveyor
Surveyor's Plan Version (5)
12/02/2019, SPEAR Ref: S126474J

VERSION: 5

Digitally signed by: Brimbank City Council,
15/02/2019,
SPEAR Ref: S126474J

SCALE
1:500

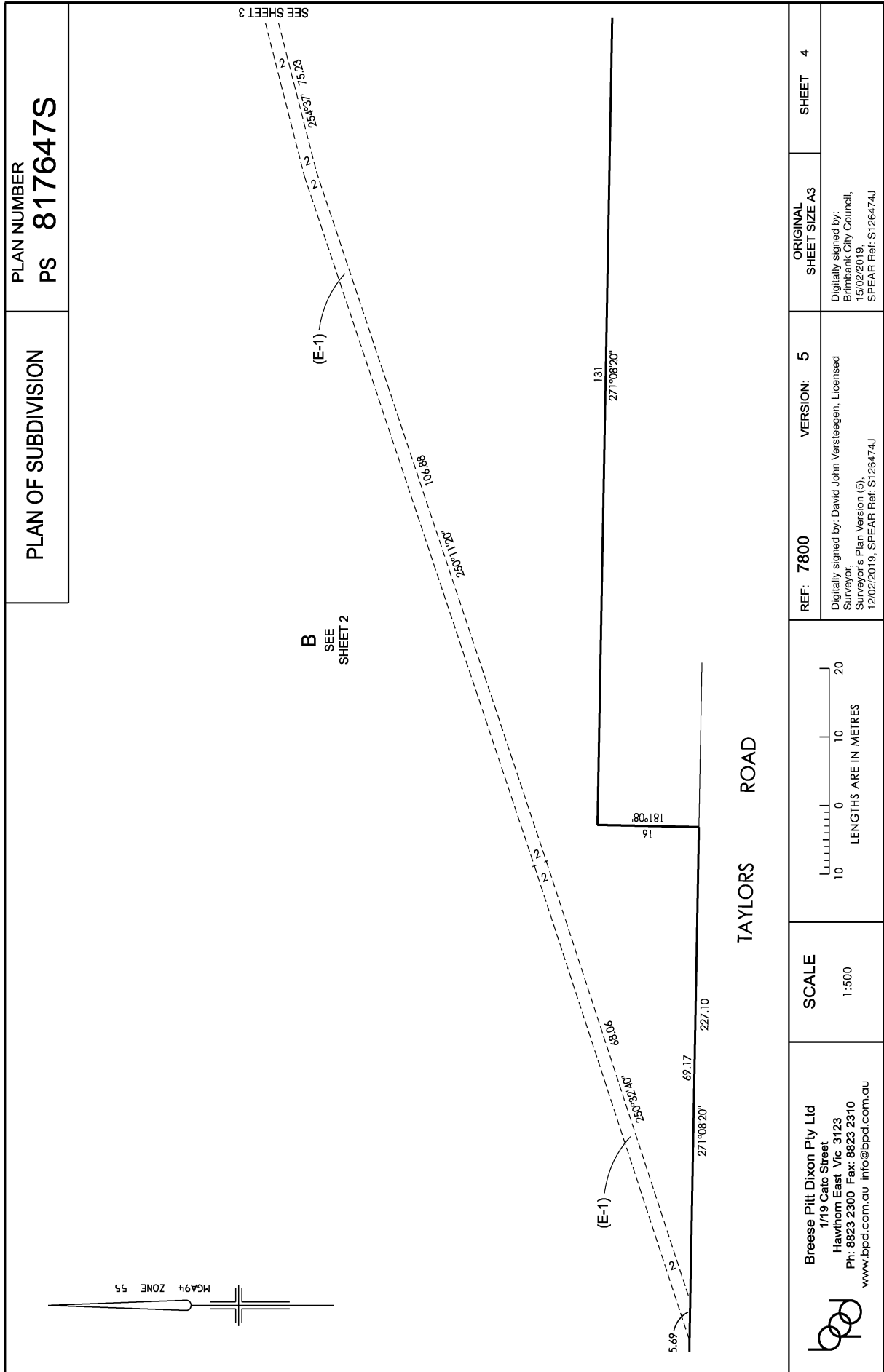
LENGTHS ARE IN METRES

SEE SHEET 4

B
SEE
SHEET 2

SEE SHEET 3

Breese Pitt Dixon Pty Ltd
1/19 Cato Street
Hawthorn East Vic 3123
Ph: 8823 2300 Fax: 8823 2310
www.bpd.com.au info@bpd.com.au



PLAN NUMBER
PS 817647S

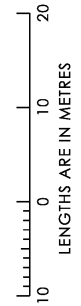
PLAN OF SUBDIVISION

TAYLORS ROAD

Breese Pitt Dixon Pty Ltd
1/19 Cato Street
Hawthorn East Vic 3123
Ph: 8823 2300 Fax: 8823 2310
www.bpd.com.au info@bpd.com.au



SCALE
1:500



REF: 7800 VERSION: 5

Digitally signed by: David John Versteegen, Licensed Surveyor, Surveyor's Plan Version (5)
12/02/2019, SPEAR Ref: S126474J

ORIGINAL SHEET SIZE A3

Digitally signed by: Brimbank City Council, 15/02/2019, SPEAR Ref: S126474J

SHEET 4