



Conservation Agreement

between the

MINISTER FOR THE ENVIRONMENT AND HERITAGE

on behalf of the

COMMONWEALTH OF AUSTRALIA

And

MULTIPLEX DEVELOPMENTS No. 8 PTY LTD

in relation to the

**PROTECTION AND CONSERVATION OF, *PIMELEA SPINESCENS SUBSP
SPINESCENS*, UNDER THE *ENVIRONMENT PROTECTION AND BIODIVERSITY
CONSERVATION ACT 1999***

in the

STATE OF VICTORIA

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THIS CONSERVATION AGREEMENT is made on day of
2005.

PARTIES

This is an agreement between:

Parties	The Minister for Environment and Heritage and Multiplex Development No. 8 Pty Ltd	
<hr/>		
Minister	Name	Ian Campbell , Minister for the Environment and Heritage on behalf of the Commonwealth of Australia
	ABN/ACN/ARBN	34 190 894 983
	Address	Department of the Environment and Heritage John Gorton Building King Edward Terrace Parkes ACT 2600
	Telephone	02 6274 1111
	Fax	02 6274 1666
	Attention	Gerard Early
<hr/>		
Multiplex	Name	Multiplex Developments No. 8 Pty Ltd
	ABN/ACN/ARBN	96 099 635 953
	Address	Level 4, 136 Exhibition Street Melbourne VIC 3000
	Telephone	03 9639 2922
	Fax	03 9639 2900
	Attention	Michael Randall

PURPOSE

- A. Subsection 305(1) of the EPBC Act provides that the Minister may, on behalf of the Commonwealth, enter into an agreement for the protection and conservation of biodiversity in Australia.
- B. The Minister has determined that entry into this Agreement is a prerequisite to granting Multiplex approval to complete its development in Altona, Victoria, as described in EPBC referral 2004/1820.
- C. Under this Agreement, the Minister and Multiplex have agreed to a package of Measures for the Protection and Conservation of the critically endangered plant species, *Pimelea*.

- D. The Minister is satisfied that the implementation of the Measures for the Protection and Conservation of Pimelea, in accordance with this Agreement, will result in a net benefit to the conservation of Pimelea in Victoria and is not inconsistent with the relevant matters under section 139 of the EPBC Act.
- E. DSE and Council have also entered into the Deed of Confirmation with Multiplex in Schedule 2 to document further actions to be carried out by each of those DSE and Council respectively, in order to facilitate Multiplex's obligations under the Measures.
- F. This Agreement has the effect of binding the Commonwealth and Multiplex for the term of this Agreement.

OPERATIVE PART

1 Interpretation

1.1 In this Agreement, unless a contrary intention appears:

Agreement means this Agreement signed by all the Parties.

Altona Nature Conservation Reserve means Crown Allotment 2012, Parish of Truganina and the area shown in Map 2 in Schedule 4 as Altona Nature Conservation Reserve.

Altona Nature Conservation Reserve Management Plan means the management plan described in clause 5.2 of the Measures.

Costs Chart means the document setting out the costs of the Measures, a copy of which is attached at Schedule 6.

Deed of Confirmation means the deed in Schedule 2.

DSE means the Department of Sustainability and Environment in Victoria or a delegate of the Department of Sustainability and Environment in Victoria.

EPBC Act means the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) and any statutory modification, substitution or re-enactment of that legislation or legislative provision.

Measures means the Measures for Protection and Conservation of Pimelea in Schedule 1.

Minister means the Minister administering EPBC Act or a delegate of the Minister under the EPBC Act.

Multiplex means Multiplex Developments No. 8 Pty Ltd or a delegate of Multiplex Developments No. 8 Pty Ltd.

Multiplex Development Site means the area shown in Map 2 in Schedule 4 as the Multiplex Development Site (Certificate of Title Vol 10762 Fol 986).

Parties means the parties to this Agreement and their legal successor and permitted assigns, and includes any person bound by this Agreement as a result of section 307(c) of the EPBC Act.

Pimelea means the plant species *Pimelea spinescens* subsp *spinescens* existing in various locations in Victoria.

Pimelea Nature Conservation Reserve means the Pimelea nature conservation reserve created in accordance with clause 4 of the Measures.

Pimelea Conservation Reserve Management Plan means the management plan described in clause 4 of the Measures.

Pimelea Conservation Trust Fund means the trust fund established in accordance with clause 3 of the Measures.

Pimelea Recovery Activities means:

- (a) surveys for Pimelea'
- (b) research into the biological characteristics or ecological characteristics of Pimelea; and

- (c) long-term conservation of known populations of Pimelea;

Road Section means the 400m stretch of Kirks Bridge Road as shown in Schedule 3.

Translocation, Monitoring and Management Plan means the plan described in Schedule 5.

Trust Deed means the trust deed in Schedule 7.

Victoria means the State of Victoria in Australia.

Wyndham City Council means Wyndham City Council or a delegate of the Wyndham City Council

Writing means any representation of words, figures or symbols capable of being rendered in a visible form.

1.2 In this Agreement, unless the contrary intention appears:

- (a) words importing a gender include any other gender;
- (b) words in the singular include the plural and words in the plural include the singular;
- (c) clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- (d) words importing persons include a partnership and a body whether corporate or otherwise;
- (e) all references to dollars are to Australian dollars;
- (f) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth as amended or replaced from time to time;
- (g) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (h) reference to an Item is to an Item in the Measures for Protection and Conservation;
- (i) any Schedule, except Schedule 2 (Deed of Confirmation) or any attachments form part of this Agreement;
- (j) where any conflict arises between the terms and conditions contained in the clauses of this Agreement and any part of a Schedule or attachment (if any), the terms and conditions of the clauses prevail;

- (k) reference to a Schedule or an attachment is a reference to a Schedule or an attachment to this Agreement, including as amended or replaced from time to time.

1.3 This Agreement records the entire agreement in relation to its subject matter.

1.4 Any reading down or severance of a particular provision does not affect the other provisions of this Agreement.

2 Commencement and duration

2.1 The Parties agree that this Agreement commences on the date on which:

- (a) it is executed; or
- (b) Multiplex receives approval from the Minister under the EPBC Act to proceed with the Action as described in referral 2004/1820 to the Minister under the EPBC Act as varied by referral 2004/1901 to the Minister under the EPBC Act,

whichever is the later date.

2.2 This Agreement shall end on the date that all the Measures in Schedule 1 have been completed (unless terminated in accordance with the EPBC Act or the Agreement).

3 Protection and conservation of Pimelea

3.1 Multiplex agrees that:

- (a) Pimelea is to be conserved and protected in accordance with the Measures for Protection and Conservation for Pimelea in Schedule 1; and
- (b) it shall execute its obligations as set out in Schedule 1, which are indicated as its responsibility and within the timelines prescribed.

4 Changes to the Agreement

4.1 This Agreement including the Measures may be changed by written agreement between the Parties or otherwise in accordance with the EPBC Act.

5 Assignment and novation

5.1 The Parties must not novate their obligations, and must not assign their rights under this Agreement contrary to the Measures for Protection and Conservation, without prior approval in writing from the Minister.

6 Dispute resolution

- 6.1 Any dispute arising during the course of this Agreement shall be dealt with as follows:
- (a) first, the Party claiming that there is a dispute shall send to the other a notice setting out the nature of the dispute;
 - (b) secondly, the Parties shall try to resolve the dispute by direct negotiation, including by referring the matter to persons who may have authority to intervene and direct some form of resolution;
 - (c) thirdly, the Parties have ten (10) business days from the sending of the notice to reach a resolution or to agree that the dispute shall be submitted to mediation or some other form of alternative dispute resolution procedure;
 - (d) fourthly, the Parties shall try to resolve the dispute by arbitration; and
 - (e) lastly, if:
 - i. there is no resolution or agreement; or
 - ii. there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within fifteen (15) business days of the submission, or such extended time as the Parties may agree in writing before the expiration of the fifteen (15) business days,

then, a Party may commence legal proceedings.

6.2 Despite the existence of a dispute, the Party shall (unless requested by in writing not to do so by the Minister) continue to perform the Agreement.

6.3 This clause does not preclude either Party from commencing legal proceedings for urgent interlocutory relief or otherwise under the EPBC Act.

7 Termination by agreement

7.1 This Agreement may be terminated by agreement between the parties to this Agreement in accordance with subsection 308(3) of the EPBC Act.

8 Termination or variation by the Minister

8.1 If the Minister is satisfied that this Agreement is not capable of achieving its purpose, the Minister may, in accordance with subsection 308(4) of the EPBC Act, without Multiplex's consent:

- (a) terminate the Agreement; or,

(b) vary the Agreement in any way the Minister thinks necessary to ensure that it becomes capable of achieving its purpose.

8.2 If the Minister, under the preceding subclause, varies the Agreement, Multiplex may, by notice in writing to the Minister, terminate the Agreement.

8.3 The rights of the Minister under this Agreement are in addition to any rights the Minister has under the EPBC Act.

9 Negation of employment, partnership and agency

9.1 Multiplex agrees not to represent itself and to ensure that its officers, employees, agents and subcontractors do not represent themselves, as being officers, employees, partners or agents of the Commonwealth, or as otherwise able to bind or represent the Commonwealth.

9.2 Multiplex is not by virtue of this Agreement an officer, employee, partner or agent of the Commonwealth, nor does it have any power or authority to bind or represent the Commonwealth.

10 Waiver

10.1 If a Party does not exercise (or delays in exercising) any of its rights, that failure or delay does not operate as a waiver of those rights.

10.2 Whole or partial exercise by a Party of any of its rights does not prevent the further exercise of any right.

10.3 In this clause 'rights' means rights or remedies provided by this Agreement or at law.

11 Costs

11.1 Unless otherwise provided for in the Agreement, each Party shall bear their own costs in relation to the preparation and execution of this Agreement (including all taxes, levies etc. for which it may be liable).

11.2 Unless otherwise provided for in this Agreement, all monetary amounts specified in this Agreement include GST.

11.3 The recipient of a monetary amount under this Agreement, must provide the supplier of the amount with a tax invoice upon receipt of the monetary amount.

12 Notification of matters adversely affecting environmental values

12.1 Multiplex shall:

(a) advise the Minister of any proposed action or event including actions proposed or undertaken by a third party which could

adversely affect the environmental values under protection, conservation or management under this Agreement; and

- (b) respond promptly to all communications from the Minister relating to this Agreement.

13 Notices

13.1 Any notice, request or other communication to be given under this Agreement is to be in writing and dealt with as follows:

- (a) to the Minister – marked for the attention of EPBC Approvals at The Department of the Environment and Heritage GPO Box 787 Canberra ACT 2601 or as otherwise notified by the Minister; and
- (b) in all other cases - to the address of the relevant Party as set out at the beginning of this Agreement and marked to the attention of the person listed for the relevant Party at the beginning of this Agreement.

13.2 Any notice, request or other communication is to be delivered by hand, sent by pre-paid post or transmitted electronically, and if it is sent or transmitted electronically a copy is also to be sent to the addressee by pre-paid post.

13.3 A notice, request or other communication shall be deemed to be received:

- (a) if delivered by hand, upon delivery;
- (b) if sent by pre-paid ordinary post within Australia, to a place within the mainland of Australia, upon the expiration of 20 business days after the date on which it was sent; and
- (c) if transmitted electronically, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.

14 Governing law

14.1 This Agreement is governed by the law of Victoria.

SIGNED AS AN AGREEMENT

SIGNED for and behalf of the MINISTER
FOR THE ENVIRONMENT AND
HERITAGE by

Gerard Early
.....
(signed)

Gerard Early

Delegate for the Australian Government
Minister for the Environment and Heritage

Date: 28/10/05

In the Presence of Witness:

Chris Murphy
.....
(signature)

Chris Murphy
.....
(name)

SIGNED for and behalf of MULTIPLEX
DEVELOPMENTS No. 8 PTY LTD by

Michael Randall
.....
(signed)

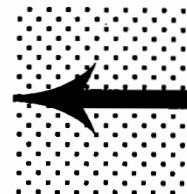
Michael Randall

Date: 26/10/05

In the Presence of Witness:

Radha Govil
.....
(signature)

RADHA GOVIL
.....
(name)



SCHEDULE 1

Measures for Protection and Conservation

of *Pimelea spinescens* subsp *spinescens* in Victoria

Measures for Protection and Conservation
of *Pimelea spinescens* subsp *spinescens* in Victoria

1 Purpose

- 1.1 The purpose of these Measures is to prescribe particular requirements which, when implemented, shall result in a net benefit to the conservation and protection of *Pimelea*.
- 1.2 The Measures form part of, and are to be read in conjunction with, the Agreement.
- 1.3 The Measures under this Agreement shall be undertaken to aid the immediate conservation and protection of *Pimelea*.

2 General protection and conservation prescriptions

- 2.1 Multiplex agrees to undertake the Measures listed below in a manner that is consistent with the protection and conservation of *Pimelea*, unless in receipt of a written agreement (with or without conditions) by the Commonwealth for the activity or action to be undertaken in an alternative manner.
- 2.2 Any conditions accompanying a written agreement must be relevant to limiting or preventing adverse impacts on the protection and conservation of *Pimelea*.
- 2.3 A Commonwealth agreement under subclause 2.1 of the Measures is not an approval, permit, licence, or any other form of authorisation provided for under the EPBC Act.

3 Funding

- 3.1 Multiplex shall directly fund the Measures in accordance with the funding allocated in the Costs Chart in Schedule 6.
- 3.2 The *Pimelea* Conservation Trust Fund shall be established by Multiplex and the Trust Deed in Schedule 7 shall be executed within twenty (20) days of the commencement of this Agreement.
- 3.3 Multiplex warrants that the person named as trustee in the Trust Deed is agreeable in principle to entering into the Trust Deed and acting as trustee of the *Pimelea* Conservation Trust Fund, and no legal or other impediment exists to the execution of the Trust Deed and the establishment of the *Pimelea* Conservation Trust Fund.
- 3.4 Multiplex shall provide funds for the:
 - (a) establishment and ongoing administrative costs for the *Pimelea* Conservation Trust Fund;
 - (b) initial capital amount in the Trust Fund.

4 **Measure 1 - Creation of a Pimelea Nature Conservation Reserve in the City of Wyndham**

- 4.1 Multiplex agrees to take the following actions to facilitate the creation of a new Pimelea Nature Conservation Reserve on a four hundred (400) metre long section of Kirks Bridge Road (“**Road Section**”) in the municipal district of the City of Wyndham. The Road Section currently supports a population of approximately 400 Pimelea. The proposed location of the proposed new Pimelea Nature Conservation Reserve is identified on Map 1 in Schedule 3:
- 4.2 Within one hundred and twenty days (120) days of the commencement of this Agreement, Multiplex shall acquire the parcel of land directly adjacent to the Road Section, as shown on Map 1 in Schedule 3 for the purpose of constructing a detour access track around the proposed new Pimelea Nature Conservation Reserve.
- 4.3 Within one hundred and twenty (120) days after acquiring the land in accordance with clause 4.2 above, Multiplex shall, at its own expense, construct a new road on the acquired land to the specifications and satisfaction of Wyndham City Council to connect with the existing Kirks Bridge Road.
- 4.4 Within twenty (20) days of completing the construction of the new road, Multiplex shall surrender the whole of the land acquired in accordance with clause 4.2 to the Crown in the right of Victoria.
- 4.5 Within twenty (20) days of being notified by Wyndham City Council that the Road Section which is to form the proposed new Pimelea Nature Conservation Reserve has been discontinued, Multiplex shall, at its own expense:
 - (a) remove the existing rural fence around proposed Pimelea Nature Conservation Reserve; and
 - (b) erect a new one hundred and eighty (180) cm high PVC coated chain mesh fence on all sides of the proposed Pimelea Nature Conservation Reserve with a gate large enough to provide for vehicular access, the dimension, specifications and location of the fence and gate to be to the satisfaction of DSE.
- 4.6 Within twenty (20) days of the discontinuance of the Road Section referred to in clause 4.5 above, Multiplex shall:
 - (a) conduct an initial survey of the Pimelea population hosted by the Pimelea Nature Conservation Reserve;
 - (b) prepare a Pimelea Nature Conservation Reserve Management Plan for the Pimelea Nature Conservation Reserve;

- (c) provide the information and documentation produced under clauses 4.6(a) and (b) above to the Minister, DSE and Wyndham City Council; and
- (d) provide funding for the first three (3) years of the implementation of the Pimelea Nature Conservation Reserve Management Plan in accordance with the funds allocated in the Costs Chart in Schedule 6.

5 Measure 2 - Translocation of Pimelea to the Altona Nature Conservation Reserve

- 5.1 Multiplex agrees to take the following actions to achieve the translocation of twenty five (25) Pimelea from the Multiplex Development Site to the Altona Nature Conservation Reserve. The Multiplex Development Site and the Altona Nature Conservation Reserve are identified on Map 2 in Schedule 4.
- 5.2 Multiplex shall:
 - (a) organise the preparation of the Altona Nature Conservation Reserve Management Plan by a botanist, mutually agreed to by Multiplex, DSE and Parks Victoria, for overall management of the Altona Nature Conservation Reserve;
 - (b) ensure that the Altona Nature Conservation Reserve Management Plan is completed within one year of the commencement of this Agreement;
 - (c) submit the Altona Nature Conservation Reserve Management Plan to the Minister and DSE for approval; and
 - (d) provide a copy of the final Altona Nature Conservation Reserve Management Plan to the Minister and DSE.
- 5.3 For the avoidance of doubt, Multiplex shall not be required to undertake or fund any of the activities pursuant to the Altona Nature Conservation Reserve Management Plan, and shall only be required to fund the costs of the preparation of the Altona Nature Conservation Reserve Management Plan.
- 5.4 Within twenty (20) days after the commencement of this Agreement, Multiplex shall prepare the Altona Nature Conservation Reserve prior to translocation in accordance with the Translocation, Monitoring and Management Plan in Schedule 5.
- 5.5 As soon as practicable after being notified by DSE that the Altona Nature Conservation Reserve is adequately prepared for translocation, Multiplex shall facilitate the translocation of Pimelea in accordance with the Translocation, Monitoring and Management Plan;

5.6 Multiplex shall carry out or ensure the carrying out of the management and monitoring of the translocated Pimelea in accordance with the Translocation, Monitoring and Management Plan for 12 months after the completion of the translocation of the Pimelea in accordance with clause 5.5 above.

6 Measure 3 - Pimelea Recovery Activities

6.1 Once the Minister and DSE notify Multiplex that they have determined or approved certain Pimelea Recovery Activities to be undertaken in the first year of this Agreement, Multiplex shall fund those Pimelea Recovery Activities in accordance with the funding allocated in the Costs Chart in Schedule 6.

6.2 For the avoidance of doubt, no money allocated for Pimelea Recovery Activities under this Agreement shall be used to fund administrative or other activities carried out by the Minister or DSE.

SCHEDULE 2

Deed of Confirmation

Deed of Confirmation

Dated: 26/10/05

Multiplex Developments No 8. Pty Ltd (ABN/ACN/ARBN 96 009 635 953)
("Multiplex")
Department of Sustainability and Environment (ABN/ACN/ARBN 90 7 19
052 204) ("DSE"); and
Wyndham City Council (ABN/ACN/ARBN 38 393 903 860) ("Wyndham
City Council")

Mallesons Stephen Jaques

Level 50
Bourke Place
600 Bourke Street
Melbourne Vic 3000
Australia
T +61 3 9643 4000
F +61 3 9643 5999
DX 101 Melbourne
www.mallesons.com

Deed of Confirmation

Details

Interpretation – definitions are at the end of the General terms

Parties	Multiplex, DSE and Wyndham City Council	
Multiplex	Name	Multiplex Developments No 8. Pty Ltd
	ABN/ACN/ARBN	96 009 635 953
	Address	Level 4, 136 Exhibition Street Melbourne VIC 3000
	Telephone	03 9639 2922
	Fax	03 9639 2900
	Attention	Michael Randall
DSE	Name	Department of Sustainability and Environment
	ABN/ACN/ARBN	90 7 19 052 204
	Address	30 Prospect Street Box Hill VIC 3128
	Telephone	03 9296 4633
	Fax	03 9296 4708
	Attention	Kevin Love (Deputy Secretary, Land Stewardship and Biodiversity)
Wyndham City Council	Name	Wyndham City Council
	ABN/ACN/ARBN	38 393 903 860
	Address	Civic Centre, 45 Princess Highway Werribee VIC 3030
	Telephone	03 9742 0700
	Fax	03 9741 6237
	Attention	Ian Robins

-
- Recitals**
- A** Multiplex and the Minister on behalf of the Commonwealth Department of Environment and Heritage have entered into a Conservation Agreement pursuant to subsection 301(1) of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth)
 - B** Schedule 1 of the Conservation Agreement contains Measures to be undertaken by Multiplex for the protection and conservation of the critically endangered plant species *Pimelea spinescens* subsp *spinescens* in Victoria.
 - C** The obligations which Multiplex has committed to deliver under the Conservation Agreement assume that certain actions will be taken by DSE and Wyndham City Council.
 - D** This Deed records the agreement of DSE and Wyndham City Council with Multiplex, that they will use their best endeavours to carry out those actions expediently according to their obligations under the relevant Victorian legislative provisions so as to assist Multiplex to meet its obligations under the Conservation Agreement.
-

Governing law Victoria

Date of deed See Signing page

Deed of Confirmation

General terms

1 Interpretation

1.1 In this Deed, unless the contrary intention appears:

Altona Nature Conservation Reserve means Crown Allotment 2012, parish of Truganina and the area shown in Schedule 4 of the Conservation Agreement;

Conservation Agreement means the agreement entered into between the Minister and Multiplex dated *[Insert Date]*;

Deed means this Deed of Confirmation entered into by the Parties;

DSE means the Department of Sustainability and Environment in Victoria or a delegate of the Department of Sustainability and Environment in Victoria;

EPBC Act means the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) and any statutory modification, substitution or re-enactment of that legislation or legislative provision;

Measures means the Measures in Schedule 1 of the Conservation Agreement;

Minister means the Minister administering the EPBC Act or a delegate of the Minister under the EPBC Act;

Multiplex means Multiplex Developments No 8 Pty Ltd or a delegate of Multiplex Developments No. 8 Pty Ltd;

Multiplex Development Site means the area shown in Map 2 in Schedule 4 of the Conservation Agreement as the Multiplex Development Site (Certificate of Title Vol 10762 Fol 986);

Parties means the parties to this Deed and their legal successors and permitted assigns;

Pimelea means the plant species *Pimelea spinescens* subsp *spinescens* existing in various locations in Victoria;

Pimelea Nature Conservation Reserve means the Pimelea nature conservation reserve to be created in accordance with clause 4 of the Measures;

Pimelea Recovery Activities means:

- (a) surveys for Pimelea;
- (b) research into the biological characteristics or ecological requirements of Pimelea; and

(c) long-term conservation of known populations of Pimelea;

Road Section means the 400m stretch of Kirks Bridge Road as shown in Schedule 3 of the Conservation Agreement;

Translocation, Monitoring and Management Plan means the plan in Schedule 5 of the Conservation Agreement;

Victoria means the State of Victoria in Australia;

Wyndham City Council means Wyndham City Council or a delegate of Wyndham City Council;

1.2 In this Deed, unless the contrary intention appears:

- (a) words importing a gender include any other gender;
- (b) words in the singular include the plural and words in the plural include the singular;
- (c) clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- (d) words importing persons include a partnership and a body whether corporate or otherwise;
- (e) all references to dollars are to Australian dollars;
- (f) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth as amended or replaced from time to time;
- (g) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (h) where any conflict arises between the terms and conditions contained in the clauses of this Deed and any part of a Schedule or attachment (if any), the terms and conditions of the clauses prevail;

1.3 This Deed records the entire agreement in relation to its subject matter.

1.4 Any reading down or severance of a particular provision does not affect the other provisions of this Deed.

2 Confirmation by the Parties

2.1 DSE confirms that:

- (a) the Measures set out in Schedule 1 to Conservation Agreement between Multiplex and the Minister satisfy native vegetation offset requirements under Victorian law in relation to the proposed development of the Multiplex Development Site;
- (b) it intends to recommend to the Victorian Minister for Environment that he recommend to the Governor in Council that the proposed new Pimelea Nature Conservation Reserve be reserved as a new nature conservation reserve;
- (c) after the reservation contemplated in clause 2.1 (b) above is complete, it will use its best endeavours to ensure that the Pimelea Nature Conservation Reserve is managed in accordance with the objectives of the 'Natural Resource Management Ministerial Council's Directions for the National Reserve System - a Partnership Approach (2004)';
- (d) the Translocation, Monitoring and Management Plan for the Altona Nature Conservation Reserve meets DSE's standards for this work;
- (e) it shall notify Multiplex in writing as soon as reasonably practicable after:
 - (i) it is satisfied that that the Altona Nature Conservation Reserve is adequately prepared for translocation; and
 - (ii) it has determined or approved certain Pimelea Recovery Activities in consultation with the Minister, in accordance with clause 6.1 of the Measures.

2.2 Wyndham City Council confirms that:

- (a) it shall advise and supervise Multiplex in its performance of its obligation to construct a new road in accordance with clause 4.3 of the Measures,
- (b) as soon as reasonably practicable after the construction of the new road as contemplated in clause 2.2(a) above, inform the Minister in writing that Multiplex has satisfied this obligation under clause 4.3 of the Measures;
- (c) as soon as reasonably practicable after Multiplex completes construction of the new road in accordance with clause 4.3 of the Measures and surrenders the acquired land in accordance with clause 4.4 of the Measures, use its best endeavours to take all necessary action to discontinue the 400 m stretch of Kirks Bridge Road in the municipal district of the City of Wyndham ("**Road Section**"), which is to form the proposed new Pimelea Nature Conservation Reserve; and
- (d) within twenty (20) days of the discontinuance of the Road Section, advise Multiplex in writing of the Road Section discontinuance.

3 Notices

- 3.1 Any notice, request or other communication to be given under this Deed, is to be in writing and dealt with as follows:
- (a) to the Minister – marked for the attention of EPBC Approvals and Wildlife Division at The Department of the Environment and Heritage GPO Box 787 Canberra ACT 2601 or as otherwise notified by the Minister; and
 - (b) in all other cases - to the address of the relevant Party as set out at the beginning of this Deed and marked to the attention of the person listed for the relevant Party at the beginning of this Agreement.
- 3.2 Any notice, request or other communication is to be delivered by hand, sent by pre-paid post or transmitted electronically, and if it is sent or transmitted electronically a copy is also to be sent to the addressee by pre-paid post.
- 3.3 A notice, request or other communication shall be deemed to be received:
- (a) if delivered by hand, upon delivery;
 - (b) if sent by pre-paid ordinary post within Australia, to a place within the mainland of Australia, upon the expiration of 20 business days after the date on which it was sent; and
 - (c) if transmitted electronically, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.

EXECUTED as a deed

Deed of Confirmation

Signing page

DATED: 26/10/05

SIGNED for and on behalf of)
MULTIPLEX DEVELOPMENTS)
NO 8 PTY LTD in the presence of:)

Radha Govil)
Signature of witness)

RADHA GOVIL)
Name of witness (block letters))

[Signature])
Signature of MULTIPLEX)
DEVELOPMENTS NO 8 PTY LTD)

SIGNED for and on behalf of the)
DEPARTMENT OF)
SUSTAINABILITY AND)
ENVIRONMENT in the presence of:)

Radha Govil)
Signature of witness)

RADHA GOVIL)
Name of witness (block letters))

[Signature])
Signature of DEPARTMENT OF)
SUSTAINABILITY AND)
ENVIRONMENT)

SIGNED for and on behalf of)
WYNDHAM CITY COUNCIL in)
the presence of:)

Radha Govil)
Signature of witness)

RADHA GOVIL)
Name of witness (block letters))

[Signature])
Signature of WYNDHAM CITY)
COUNCIL)

SCHEDULE 3

Map 1

OFFICE USE ONLY

NOTATIONS

PLAN OF PROPOSED ROAD RE-ALIGNMENT

CERTIFICATION BY SURVEYOR

I, **ADRIAN A. THOMAS** of 71 Palmerston Cres. Sth. Melb certify that this plan has been prepared from a survey made under my immediate direction and supervision, in accordance with the Surveying Act 2004 and completed on 31/08/05. That this plan is accurate and correctly represents the adopted boundaries and the survey accuracy accords with that required for level land as defined in regulation 7 (2) of the Surveying (Cadastral Surveys) Regulations 2005

DATE: _____ LICENSED SURVEYOR, SURVEYING ACT 2004.

TO BE COMPLETED WHERE APPLICABLE

THIS SURVEY HAS BEEN CONNECTED TO PERMANENT MARK NOS: 9, 12, 13, 14 & 15. IN PROCLAIMED SURVEY AREA NO. -

THE LAND IN THE SURVEY IS SHOWN ENCLOSED BY CONTINUOUS THICK LINES
 TITLE REF: VOL 6063 FOL 550
 LAST PLAN REF: TP 67965TR

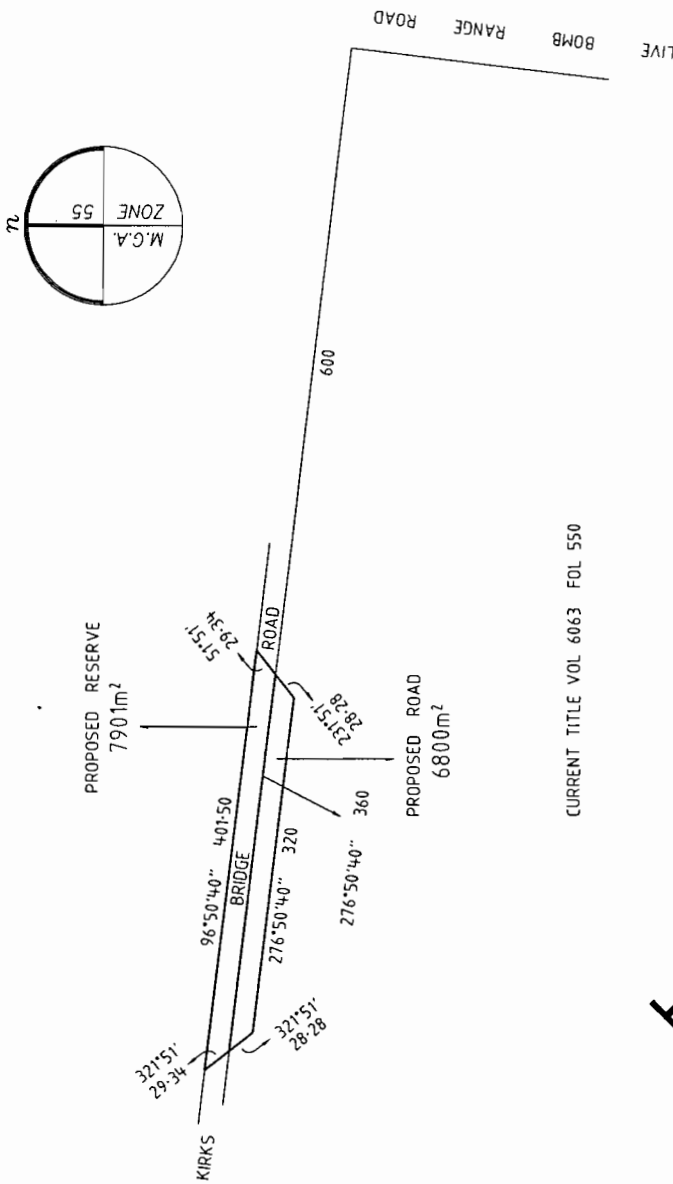
PLAN OF SURVEY

COUNTY GRANT
 PARISH BULMAN

NUMBER OF SHEETS IN PLAN : 1
 NUMBER OF THIS SHEET : 1

SCALE 50 0 100 200 ORIGINAL
 SCALE SHEET SIZE 1:5000 A3
 LENGTHS ARE IN METRES
 OFFICE USE ONLY

VICTORIA



CURRENT TITLE VOL 6063 FOL 550

DRAFT

SURVEYORS REF.

REF: 4852
 DWG: 485200CA
 DATE: 12/09/05

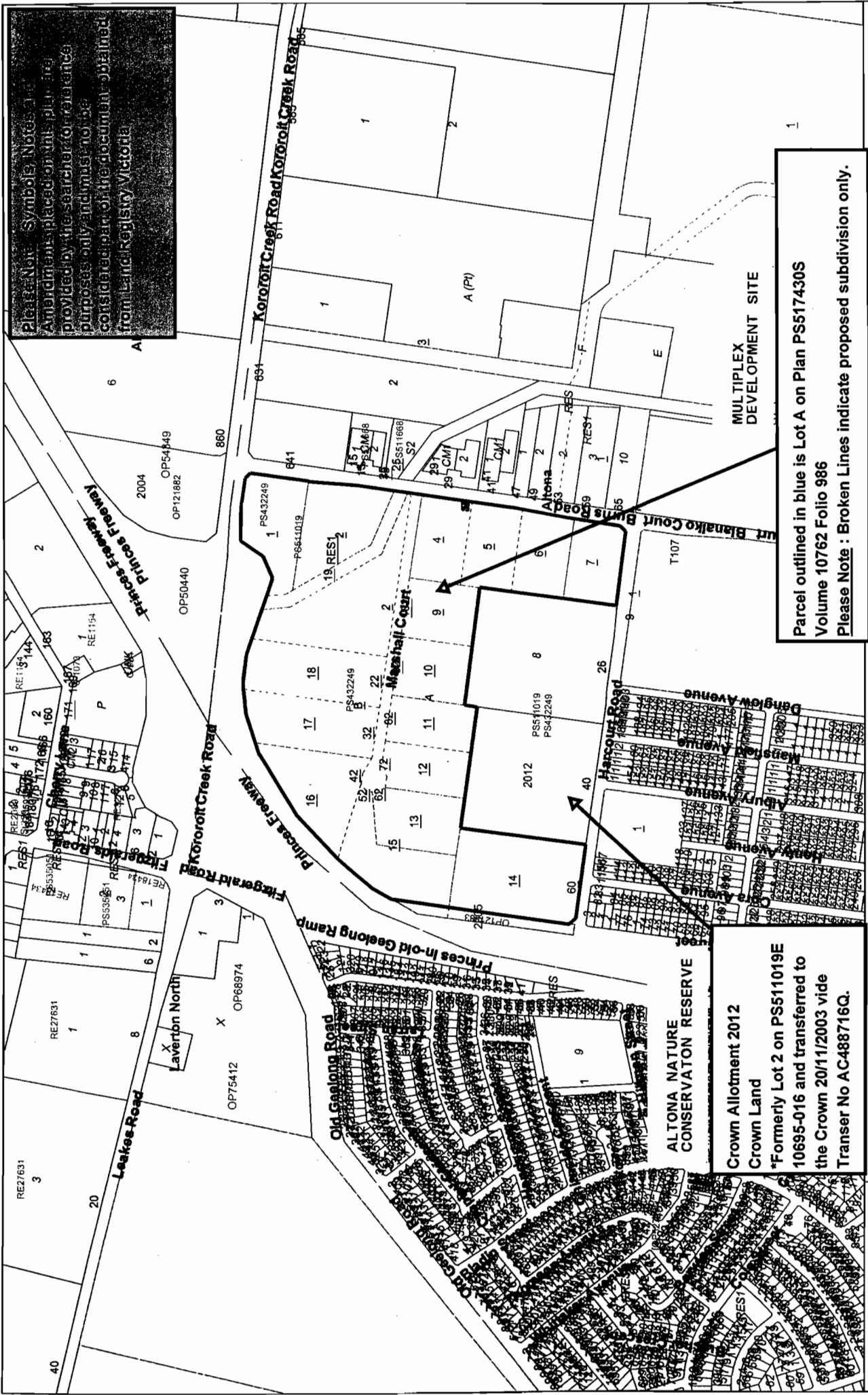


Bosco Jonson Pty Ltd
 A.C.N. 080 522 256
 71 Palmerston Crescent South Melbourne
 Vic 3205 Australia DX 20524 Emerald Hill
 Tel 03) 9699 1400 Fax 03) 9699 5992

SCHEDULE 4

Map 2

Please Note: Symbols, Notes and Amendments placed on this plan are provided by the searcher for reference purposes only. It does not constitute a part of the document obtained from Land Registry Victoria.



Parcel outlined in blue is Lot A on Plan PS517430S
 Volume 10762 Folio 986
 Please Note : Broken Lines indicate proposed subdivision only.

ALTONA NATURE CONSERVATION RESERVE
 Crown Allotment 2012
 Crown Land
 *Formerly Lot 2 on PS511019E
 10695-016 and transferred to
 the Crown 20/1/2003 vide
 Transer No AC488716Q.

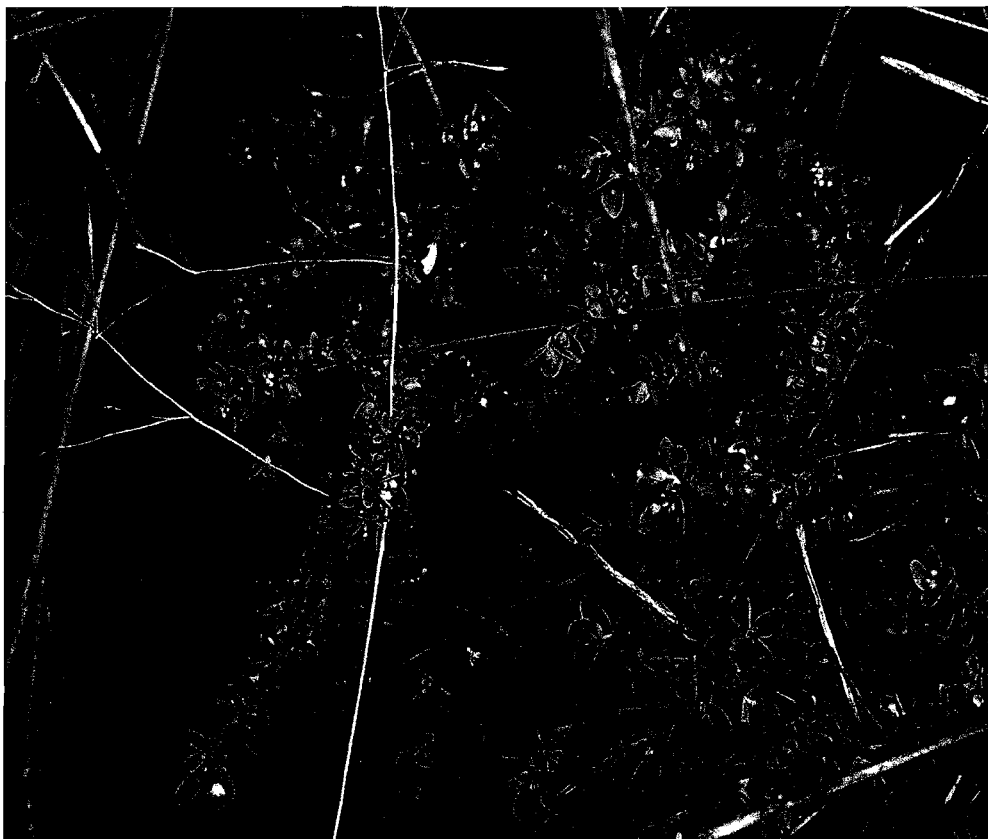
Data Source: Vicmap Property	
Co-ordinates of Plot Corners	Co-ordinates of Plot Corners
NW 303860, 5809480	NE 306460, 5809535
SW 303890, 5807880	SE 306490, 5807935
MGA Zone 55	MGA Zone 55
Scale of Metres (1:10000)	
0 100 200 300 400 500 600 700 800 900 1000	
MGA Zone 55 Melways - 53 H5 Vicroads - 78 E7 Printed 11:33 AM on Oct 10, 2005	

WARNING: No warranty is given as to the accuracy or completeness of this map. Dimensions are approximate. For property dimensions, undertake a Title search.

SCHEDULE 5

Translocation, Monitoring and Management Plan

**Translocation, Management and
Monitoring Plan for
Pimelea spinescens to be translocated to
the Altona Nature Conservation
Reserve on Harcourt Road, Altona
Victoria**



**by Peter Wlodarczyk
Applied Ecologist
Greybox and Grasslands, Indigenous Nursery
50 School Road
Balliang East
Victoria 3340**

Gagin Pty Ltd - Pimelea Translocation Plan

1 Introduction

This document outlines the methods and conditions under which 25 *Pimelea spinescens* subsp *spinescens* (**Pimelea**) individuals will be translocated from the Multiplex development site in Altona to the Altona Nature Conservation Reserve on Harcourt Road in Altona, Victoria. This document also outlines the ongoing management and monitoring requirements for the Pimelea post-translocation. All translocation, monitoring and management works described in this Translocation Plan, will primarily be carried out by Peter Wlodarczyck, an applied ecologist specialising in native grasslands for the initial 12 months.

2 Site Preparation

2.1 Pimelea at proposed Marshall Drive

- (a) A copy of the Department of Environment and Heritage's (DEH) approval for removal of 25 *Pimelea Spinescens* (including 7 *Pimelea* from the 1st referral) and clearance of remnant native grassland is required before translocation commences, to ensure that the translocation is not regarded as a controlled action under the *Environment Protection and Biodiversity Conservation Act 1999*;
- (b) The proposed road to be built in the middle of the Multiplex development site will need to be staked out, to ensure minimal impact to adjacent vegetation; and
- (c) 25 *Pimelea* individuals will be sourced from the Multiplex development site for removal and seed will be collected for propagation, if evident.

2.2 Altona Nature Conservation Reserve on Harcourt Road

- (a) The preferred location for translocation is the area in the degraded section at the front of and to the South East corner of the Reserve facing Harcourt Rd. It is proposed to relocate the fence back to the original property boundary, approximately 1.7m towards Harcourt Rd. This front area should be able to contain up to 25 *Pimelea* individuals at a spacing of 1 per 4m². The South East corner of the Reserve currently hosts an area of degraded grassland, and some of the translocation may also occur here. The proposed recipient sites will be tested for contamination prior to translocation occurring. Once translocation has occurred, the degraded section will be re-fenced and managed to ensure that the causes of degradation do not recur.
- (b) The area in the South West corner of the Reserve is currently occupied by a pile of landfill. This area will be cleared of landfill and the area will be tested for contamination. At this stage, it is not proposed that any translocation will occur here
- (c) To minimise impact on adjacent grasses in the area, it is proposed to enter the Reserve once the current fence along Harcourt Rd has been removed. The current fence is only to be removed once the new fence is erected along the original property boundary to ensure that the Reserve is secure

Gagin Pty Ltd - Pimelea Translocation Plan

at all times during the translocation process. The new fence is to be built to the Department of Environment and Sustainability's (DSE) specifications and will include an access gate for vehicles to enter the Reserve.

- (d) All machinery entering the Reserve will be cleaned to ensure that weed seeds and soil pathogens are not introduced.
- (e) The Botanist will undertake a botanical assessment of the host sites that will be reinstated post-translocation of Pimelea. Short term benchmarks (3 years post-translocation), based on the Australian National Plant Conservation Translocation Guidelines, include:
 - >70% survival of translocated Pimelea; and
 - survival of the translocated Pimelea to the reproductive stage.

Long-term benchmarks (3-10 years) include:

- the establishment of new seedlings; and
- the number of individual Pimelea within the population being sustained or increased by natural recruitment.

3 Translocation Process

3.1 Translocation to the Altona Nature Conservation Reserve

- (a) All machinery entering the Reserve will be cleaned to ensure that weed seeds and soil pathogens are not introduced.
- (b) 25 holes to be made in the chosen Reserve sites to ensure the depth attainable for Pimelea cones to be placed using a 3 bladed tree spade.
- (c) Remove the Pimelea using a 3 bladed tree spade and transport to the prepared holes at the Reserve. During this process, root damage will be assessed and Mycorrhizal fungi identified and removed for cutting material and seed production (John Delpratt, Senior Lecturer in Horticulture at the University of Melbourne, and his team, will undertake identification of Mycorrhizal fungi during the translocation process).
- (d) Fungus will be sent to a fungus lab for:
 - (i) identification; and
 - (ii) propagation for later inoculation of translocated plants and use in seed production and cutting production.
- (e) Each translocated plant will be numbered for future monitoring and given a GPS location. Removed basalt will be used with a clean river sand mix to refill discrepancies with the soil profile.

Gagin Pty Ltd - Pimelea Translocation Plan

- (f) Pimelea will be watered on the day of translocation, and once per month during the first year during the summer and autumn months from November 2005 to April 2006.

4 Post translocation

4.1 Year 1

(a) *Winter:*

- Priority exotics throughout the Reserve (*Nasella Sp*, *Avena fatua*, *Bromus Sp*, *Hypochaeris*, *Phalaris* and *Plantago*) will be spot sprayed throughout the year using Glyphosate at the labelled rate of 1:100. C3 species will be targeted through the whole year, while C4 species will be targeted during summer and autumn. For exotic annuals, fire will need to be used to achieve any reduction in numbers or density. The timing of the burns will be critical to achieving any reduction.
- Water translocated Pimelea in the absence of rain (min rainfall event 12 mm) every 2 weeks.
- Lay 1 bail of *Themeda* seed to the translocation site and adjacent impacted site. *Themeda* seed will be sourced locally from the allotments opposite the Reserve, a distance of 300m.
- Attempt germination of Pimelea seed and cutting material using Mycorrhizal fungus from the laboratory for back-up stock in the event of translocation failure. Excess plants from propagation can be planted into the Reserve or planted into DSE land. Nursery grown Pimelea will be available for planting when a decision is made with regard to the % survivability of translocated plants at 1 year progress report.

(b) *Spring:*

- Weed control of priority exotics.
- Watering, if required.
- Physical removal of *Themeda* florets.
- Spot burn, if required.
- Maintain *Pimelea* nursery grown stock.
- Monitor translocated plants (in accordance with the Monitoring Protocol in Annexure 1).

(c) *Summer:*

- Weed control of priority exotics

Gagin Pty Ltd - Pimelea Translocation Plan

- Submit 6 month progress report to DEH and DSE.
- Assess establishment of *Themeda* and harvest 1 bail from local source.
- Monitor translocated plants.
- Watering, if required.

(d) Autumn:

- Weed control for priority exotics.
- Plant nursery grown material.
- Monitor translocated plants.
- Submit annual progress report to DEH and DSE
- Watering, if required.

4.2 Year 2

(a) Winter, Spring, Summer and Autumn:

- Weed control of priority exotics.
- Submit annual progress report to DEH and DSE.
- Watering, if required.

4.3 Year 3

(a) Winter:

- Weed control of priority exotics.
- Watering, if required.

(b) Spring:

- Weed control of priority exotics

(c) Summer:

- Weed control of priority exotics.
- Assess establishment of *Themeda* and condition of *Themeda* coverage over:
 - translocation site; and
 - impacted native grass area.

Gagin Pty Ltd - Pimelea Translocation Plan

- Submit annual progress report to DEH and DSE.
- (d) *Autumn:*
- (e) Weed control of priority exotics.

5 Costings

These costings are based on the translocation of 25 Pimelea individuals.

Year 1	
Site Preparation	
• Locate Pimelea and collect seed and cutting material	\$660.00
• Trenching as per plan	\$1,320.00
• Contamination testing	\$5,000.00
• 2 meetings with DSE re Harcourt Rd Reserve	\$660.00
• Botanical assessment of host sites (quadrat and transect)	\$4,400.00
• Removal of rubbish with Botanist on site	\$3,300.00
• Relocating fence to the original boundary	\$8,000.00
Translocation	
• Hire of tree spade for transfer of Pimelea	\$4,600.00
• Collection of Mycorrhizal fungus from root stock	\$1,650.00
• Ancillary items: gate, signage, sand, watering	\$1,100.00
• Propagation of cutting material and seed viability	\$770.00
Management and monitoring	
• Weed control of priority exotics on entire Reserve	\$3,540.00
• Assessment of Mycorrhizal fungus to cuttings and seed	\$1,650.00
• 1 bail of Themeda seed and sowing	\$2,200.00
• Progress Reports x 2	\$6,600.00
• Planting of propagated material	\$550.00
Year 2	
Management and monitoring	
• Weed control of priority exotics	\$3,300.00
• Watering, if needed	\$1,500.00
• Burn (to be undertaken by DSE)	\$3,000.00
• Progress Report	\$2,500.00
Year 3	
Management and monitoring	
• Weed control of priority exotics	\$3,300.00
• Progress Report	\$2,500.00
• Watering, if needed	\$1,500.00

*Year 2 and 3 costs are indicative of yearly expenditure required for the management of this site for the next 7 years.

Gagin Pty Ltd - Pimelea Translocation Plan

**All costings above include GST.

SCHEDULE 6

Costs Chart

Costs Chart

	<i>Upfront Costs</i>	
Pimelea Trust Fund	\$686,400.94	<ul style="list-style-type: none"> • \$2,000 = Upfront costs of preparing deed and establishing the Pimelea Trust Fund with the Trust for Nature (Victoria); • \$684,400.94 = Required initial investment amount in the Pimelea Trust Fund
Measure 1 - Pimelea Nature Conservation Reserve	\$183,900.00	<ul style="list-style-type: none"> • \$5000 = Wyndham City Council's administration costs for closing the 400 m stretch of Kirks Bridge Road; • \$40,000 = Compensation to John Chua Seng-Chai and Chua Seng-Huat for 8000m² of their land adjacent to the proposed Pimelea Nature Conservation Reserve; • \$41,000 = Cost of building 400m detour road (including survey and valuation costs); • \$59,800 = Fencing; • \$2820 = Initial survey of Pimelea on the road; • \$5280 = Management plan for Pimelea Nature Conservation Reserve; and • \$30,000 = Upfront costs to rehabilitate and manage the Pimelea Conservation Reserve (3 years)
Measure 2 - Translocation to the DSE Reserve	\$56,208.00	<ul style="list-style-type: none"> • \$5280 = Preparation of Translocation and Monitoring and Management Plan; • \$4928.00 = Preparation of Environment Management plan for the Altona Nature Conservation Reserve by Practical Ecology; • \$8,000 = Relocating fence to original property; • \$38,000 = Preparing Altona Nature Conservation Reserve for translocation (including removal and testing of rubbish dump), translocation and monitoring and management in the first year
Measure 3 - Recovery Activities	\$20,000	<ul style="list-style-type: none"> • Funding for recovery activities associated with Pimelea.
Total Cost = \$946,508.94		

SCHEDULE 7

Trust Deed

Trust Deed

Dated

Minister for the Environment and Heritage on behalf of the
Commonwealth of Australia

Multiplex Developments No. 8 Pty Ltd

Department of Sustainability and Environment

Wyndham City Council

Trust for Nature (Victoria)

Mallesons Stephen Jaques

Level 50

Bourke Place

600 Bourke Street

Melbourne Vic 3000

Australia

T +61 3 9643 4000

F +61 3 9643 5999

DX 101 Melbourne

www.mallesons.com

Trust Deed

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General terms	4
Signing page	9

Trust Deed

Details

Interpretation – definitions are at the end of the General terms

Parties	Minister for the Environment and Heritage, Multiplex Developments No. 8 Pty Ltd, the Department of Sustainability and Environment, Wyndham City Council and Trust for Nature (Victoria)
----------------	--

Minister	Name	Ian Campbell, Minister for the Environment and Heritage on behalf of the Commonwealth of Australia
	ABN	34 190 894 983
	Address	Department of Environment and Heritage, John Gorton Building, King Edwards Terrace, Parkes ACT 2600
	Telephone	02 6274 1111
	Fax	02 6274 1666
	Attention	Gerard Early

Multiplex	Name	Multiplex Developments No. 8 Pty Ltd
	ABN/ACN/ARBN	96 099 635 953
	Address	Level 4, 136 Exhibition Street Melbourne VIC 3000
	Telephone	03 9639 2922
	Fax	03 9639 2900
	Attention	Mike Randall

DSE	Name	Department of Sustainability and Environment
	ABN/ACN/ARBN	90 719 052 204
	Address	30 Prospect Street, Box Hill VIC 3128
	Telephone	03 9742 0700
	Fax	03 9296 4708
	Attention	Kevin Love (Deputy Secretary, Land

Stewardship and Biodiversity)

Council	Name	Wyndham City Council
	ABN/ACN/ARBN	38 393 903 860
	Address	Civic Centre, 45 Princess Highway, Werribee VIC 3030
	Telephone	03 9742 0835
	Fax	03 9741 6237
	Attention	Ian Robins (Chief Executive Officer)

Trustee	Name	Trust for Nature (Victoria)
	ABN	60 292 993 543
	Address	2/385 Little Lonsdale Street, Melbourne, Victoria, 3000
	Telephone	03 9670 9933
	Fax	03 9670 9977
	Attention	Barry McDonald

- Recitals**
- A** Under subsection 305(1) of the EPBC Act, the Minister and Multiplex have entered into a Conservation Agreement which contains an agreed package of Measures for the protection and conservation of the endangered plant species, Pimelea.
- B** Under one of the Measures, Multiplex is required to establish a trust fund to be known as the Pimelea Conservation Trust Fund ("**Trust Fund**") for the purpose of funding certain activities to promote the protection and conservation of Pimelea. The Minister has determined that the Trust Fund must be established for Multiplex to be granted approval by the Minister for its development in Altona, Victoria
- C** The Trustee has been established under the *Victorian Conservation Trust Act 1972 (Vic)* ("**Act**") to acquire, preserve and maintain areas within the state which are ecologically significant or of natural interest or beauty or scientific interest to encourage and assist in the preservation of wild life and native plants for public, scientific and public educational purposes. The Trustee is empowered to act as trustee of moneys or other properties vested in the Trustee on trust.

- D The Trustee has agreed to act as the trustee of the Trust Fund.
- C The Minister, DSE and Council have agreed to form a Trust Committee to administer the funds in accordance with this Deed and to carry out various other administrative activities.
- F Multiplex shall pay six hundred and eighty four thousand, four hundred dollars and ninety four cents (\$684,400.94) as the capital to the Trustee to establish the Trust Fund.
- G The Parties have agreed that the Trust Fund is to be held by the Trustee and applied in accordance with this Deed.

Governing law Victoria

Date of deed See Signing page

Trust Deed

General terms

- 1 Unless the contrary intention appears:
- (a) **Administration Fee** means:
 - (i) 1% of balance of capital calculated and payable each quarter;
or
 - (ii) as the parties otherwise agree from time to time;
 - (b) **Act** means the *Victorian Conservation Trust Act 1972* (Vic);
 - (c) **Altona Nature Conservation Reserve** means the Altona nature conservation reserve as described in the Conservation Agreement;
 - (d) **Capital** means the amount of cash forming part of the Trust Fund from time to time;
 - (e) **Conservation Agreement** means the agreement dated *[insert date]* between the Minister and Multiplex,
 - (f) **EPBC Act** means the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) and any statutory modification, substitution or re-enactment of that legislation or legislative provision;
 - (g) **Measures** means the Measures for the Protection and Conservation of Pimelea in Schedule 1 of the Conservation Agreement;
 - (h) **Parties** means the parties to this Deed as set out in the table entitled Parties above;
 - (i) **Pimelea** means the plant species *Pimelea spinescens* subsp *spinescens* existing in various locations in Victoria;
 - (j) **Pimelea Nature Conservation Reserve** means the Pimelea nature conservation reserve to be established in accordance with the Measures.
 - (k) **Pimelea Recovery Activities** means:
 - (a) surveys for Pimelea;
 - (b) research into the biological characteristics or ecological requirements of Pimelea; and
 - (c) long-term conservation of known populations of Pimelea;
 - (l) **Translocation, Monitoring and Management Plan** means the translocation, monitoring and management plan established under the Conservation Agreement;

- (m) **Trust Committee** means the Trust Committee established under clause 6;
- (n) **Trustee** means the Trust for Nature (Victoria)
- (o) **Trust Fund** means:
 - (i) the capital amount paid to the Trustee as set out in Recital F;
 - (ii) any interest accruing on the capital amount paid to the Trustee in clause 1(o)(i) above.

2 Unless the contrary intention appears:

- (a) words importing a gender include any other gender;
- (b) words in the singular include plural words and words in the plural include the singular;
- (c) words importing persons include a partnership and a body whether corporate or otherwise;
- (d) all references to dollars are Australian dollars;
- (e) reference to any statute or other legislation (whether primary or subordinate) is to statute or other legislation of the Commonwealth as amended or replaced from time to time;
- (f) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (g) a reference to any Party to this Deed or any other agreement or document includes the party's successors and substitutes or assigns;

3 The Trustee shall hold the capital amount paid by Multiplex to the Trustee on trust and apply the interest accruing on the capital amount in accordance with the terms of this Deed.

4 The Trust Fund established pursuant to this Deed is a charitable trust for the purposes set out in this Deed and shall be known as the Trust Fund.

5 The Trustee shall hold the Trust Fund and use it for the benefit, preservation protection and conservation of Pimelea in accordance with this Deed.

6 The following parties agree to form a Trust Committee with equal representation from each party within 20 days of the commencement of this Agreement:

- (a) The Minister;
- (b) DSE; and
- (c) Council.

- 7 The Trust Committee shall be responsible for:
- (a) determining which Pimelea Recovery Activities are to be undertaken in each year after the first anniversary of the commencement of the Conservation Agreement;
 - (b) approving funding by the Trustee from the Trust Fund for:
 - (i) the Pimelea Recovery Activities in paragraph 7(a) above;
 - (ii) ongoing management and monitoring costs for the Pimelea Conservation Reserve in accordance with the Translocation, Monitoring and Management Plan for each year twelve (12) months after the completion of translocation of Pimelea to the Altona Nature Conservation Reserve; and
 - (iii) ongoing monitoring and management costs for the Pimelea Conservation Reserve for each year thirty six (36) months after the discontinuance of the 400 metre stretch of Kirks Bridge Road in the municipal district in the City of Wyndham;

in writing and in accordance with the funding allocations in the Trust Fund Costs Schedule in Annexure A to this Deed;

- (c) attending at least two meetings per annum for the first three (3) years upon commencement of this Deed, and then one (1) meeting per annum thereafter to discuss the progress of the Measures under the Conservation Agreement;
- (d) producing an annual report for the Minister outlining the progress of the Measures in the Conservation Agreement, and their impact on the conservation and protection of Pimelea each year; and
- (e) ensuring on-going representation from each Party on the Trust Committee.

8 Decisions of the Trust Committee shall be made by consensus between the Minister and DSE in consultation with Wyndham City Council.

9 No power conferred by this Deed is capable of exercise in breach of the rule against perpetuities.

10 The Trustee may accumulate:

- (a) any part of the interest accrued by the Trust Fund, which is not applied in accordance with this Deed, for any period permitted by law; and
- (b) any funds not applied accordance with funding allocations in the Trust Fund Costs Schedule in Annexure A to this Deed.

11 Any funds accumulated and not applied under clause 10 above, may either:

- (a) form part of the capital of the Trust Fund; or

- (b) the Trust Committee may apply those accumulated funds in a manner agreed to by the Trust Committee in the then current financial year.
- 12 No power of accumulation conferred on the Trustee by this Deed allows accumulation in breach of any law restricting excessive accumulations and any power so expressed must be read down to the period permitted by law.
- 13 The Parties may agree to appoint a replacement or additional Trustee by instrument in writing.
- 14 The Trustee ceases to hold office when:
 - (a) the Trustee resigns by written notice to the other Parties to this Deed to that effect and the Trustee nominates a new trustee acceptable to the other parties to this deed and who accepts such nomination; or
 - (b) the other parties to this Deed serve written notice to that effect on the Trustee; or
 - (c) the Trustee:
 - (i) suffers a resolution passed or an order is made by the Court for its winding up except for the purposes of reconstruction or amalgamation;
 - (ii) is placed in liquidation or is placed under external administration; or
 - (iii) makes or enters into or endeavours to make or enter into any composition, assignment or other arrangement with or for the benefit of its creditors.
- 15 If the Trustee retires, it shall transfer all assets of the Trust Fund to the new trustee.
- 16 The Trustee is entitled to receive an Administration Fee from the Trust Fund each quarter (or as the parties otherwise agree in writing) as remuneration for acting as Trustee of the Trust Fund. For the avoidance of doubt, the Trustee may not receive any other remuneration for its office from the Trust Fund.
- 17 The release of any portion of the Trust Fund, less any Administration Fee payable to the Trustee, is only to occur when signatures for approval are given by the Trust Committee.
- 18 The Trust Committee acknowledges that the Trustee requires a period of notice of not less than thirty (30) days to be given to arrange for the release of any portion of the Trust Fund.
- 19 Any notice, request or other communication is to be delivered by hand, sent by pre-paid post or transmitted electronically, and if sent or transmitted electronically, a copy is also to be sent to the addressee by pre-paid post.
- 20 A notice, request or other communication shall be deemed to be received:
 - (a) if delivered by hand, upon delivery;

- (b) if sent by pre-paid ordinary post within Australia, to a place within the mainland of Australia, upon the expiration of twenty (20) business days after the date on which it was sent; and
 - (c) if transmitted electronically, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.
- 21 The Parties acknowledge that Multiplex may issue press releases or editorials related to the Trust Fund at any time.
- 22 Amounts quoted in this Deed include GST (if any).
- 23 If a dispute arises between the Parties in respect of or in connection with this Deed (including the validity, breach or termination of it), then without prejudice to any other right or entitlement they may have pursuant to this deed or otherwise, the Parties shall explore whether the dispute can be resolved by agreement between them using informal dispute resolution techniques such as negotiation, mediation, independent expert appraisal, or any other alternative dispute resolution technique. The parties may utilise the services of the Dispute Settlement Centre of Victoria (or such other organisation or individuals as agreed between the parties) to resolve the dispute. The rules governing any such technique will be in accordance with the Dispute Settlement Centre of Victoria guidelines or those of any other body or group as agreed between the parties to this Deed.
- 24 This Deed is governed by the law in force in Victoria.

EXECUTED as a deed

Trust Deed

Signing page

DATED: _____

**SIGNED for and behalf of the
MINISTER FOR THE
ENVIRONMENT AND HERITAGE by**

.....

(signed)

Gerard Early

**A delegate for the Australian
Government Minister for the
Environment and Heritage**

Date:

In the Presence of Witness:

.....

(signature)

.....

(name)

**SIGNED for and behalf of MULTIPLEX
DEVELOPMENTS No. 8 PTY LTD by**

.....

(signed)

[Insert Name]

Date:

In the Presence of Witness:

.....

(signature)

.....

(name)

SIGNED for and behalf of the
DEPARTMENT OF SUSTAINABILITY
AND ENVIRONMENT by

SIGNED for and behalf of WYNDHAM
CITY COUNCIL by

.....

.....

(signed)

(signed)

Secretary DSE or delegate

Ian Robins, Chief Executive Officer

Date:

Date:

In the Presence of Witness:

In the Presence of Witness:

.....

.....

(signature)

(signature)

.....

.....

(name)

(name)

SIGNED for and on behalf of the
TRUST FOR NATURE (VICTORIA) by

.....

(signed)

Barry McDonald

Date:

In the Presence of Witness

.....

(signature)

.....

(name)

ANNEXURE A

Trust Funds Cost Schedule

Requirement	Costs (per annum)	Description
Pimelea Recovery Activities	\$12,000.00	<ul style="list-style-type: none">Ongoing recovery activities associated with Pimelea
Altona Nature Conservation Reserve	\$10,000.00	<ul style="list-style-type: none">Ongoing monitoring and management of translocated Pimelea in accordance with the Translocation, Monitoring and Management Plan
Pimelea Nature Conservation Reserve	\$8,650.00	<ul style="list-style-type: none">Ongoing management and monitoring costs for the Pimelea Nature Conservation Reserve