
**LAND MANAGEMENT AGREEMENT
BY DEED**

BETWEEN:

YORKE PENINSULA COUNCIL
("the Council")

AND

STUART KINGSLEY MURDOCH
BRIONY JANE MURDOCH
("the Owner")

THIS DEED is made the

day of

2019

BETWEEN:

YORKE PENINSULA COUNCIL of 8 Elizabeth Street MAITLAND SA 5573 (“the Council”) of the one part

And

THE PERSON NAMED IN ITEM 1 OF THE SCHEDULE of the address specified in Item 1 of the Schedule (hereinafter with its successors and assigns, as the case may be, referred to as “the Owner”) of the other part

RECITALS:

- A. The Owner is the registered proprietor of an estate in fee simple in the whole of the land specified in Item 2 of the Schedule (“the Land”).
- B. Save and except the Owner and the person(s) specified in Item 3 of the Schedule, if any, as at the date of this Deed no other person has any legal interest in the Land.
- C. The Owner has sought Development Plan Consent from the Council pursuant to the provisions of the Development Act 1993 (“the Act”) to demolish the existing dwelling and construct a new dwelling, undercroft garage, deck, underground rainwater tanks and retaining walls on the Land in accordance with the plans described in Item 4 of the Schedule (“the Dwelling”).
- D. The Council is prepared to grant Development Plan Consent to the Dwelling provided the Owner agrees to provide for the installation of a temporary containment (holding tank) with a future connection to a Community Wastewater Management Scheme (“the CWMS”) and which is to be constructed by the Council at some appropriate future time.

- E. The Owner has obtained independent legal advice as to the content and effect of this Deed.
- F. Pursuant to the provisions of section 57(2) of the Act the Owner has agreed with the Council to enter into this Deed relating to the future development, management, preservation and conservation of the Land subject to the terms and conditions that follow.

NOW THIS DEED WITNESSES and IT IS AGREED by and between the parties:

1. RECITALS

- 1.1 The parties acknowledge and declare both that the matters referred to in the recitals to this Deed are true and correct in every particular and that the recitals shall form part of this Deed.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this Deed, unless the context otherwise requires, the following words and expressions shall have the following meanings:

- 2.1.1 **“the Council”** means the Yorke Peninsula Council and includes any lawful successor to it;
- 2.1.2 **“the Land”** means the land specified in Item 2 of the Schedule and includes any improvements situated thereon;
- 2.1.3 **“the Owner”** means the person named in Item 1 of the Schedule as the Owner and includes all persons who at any time during the Term are registered as the proprietor of an estate in fee simple in the Land;
- 2.1.4 **“the Schedule”** means the Schedule attached to this Deed;
- 2.1.5 **“the Term”** means the period commencing on the date of execution of this Deed and continuing until this Deed is mutually surrendered by an agreement between the Owner and the Council;
- 2.1.6 **“the Code”** means the South Australian Health On-site Wastewater Systems Code April 2013;

2.1.7 **“the Reserve Fund”** means the fund entitled POINT SOUTTAR EFFLUENT AUGMENTATION RESERVE established by the Council into which money is paid and held by the Council until it is required to be applied by the Council towards the cost of construction of the CWMS;

2.2 Interpretation

Subject to any inconsistency of subject or context the following rules of construction shall be used in the interpretation of this Deed:

- 2.2.1 Words and phrases used in this Deed which are defined in the South Australian Public Health Act 2011 or in the Regulations made under that Act shall have the meanings ascribed to them by the Act or the Regulations as the case may be;
- 2.2.2 Reference in any statute or subordinate legislation shall include all statutes and sub-ordinate legislation amending, consolidation or replacing the statute or sub-ordinate legislation referred to;
- 2.2.3 The term “person” includes a corporate body;
- 2.2.4 The term “the Dwelling Extension” shall mean the dwelling extension proposed to be constructed on the Land described in the plans on Item 4 of the Schedule and which has or will be an approved development under the Act;
- 2.2.5 Words importing the singular number or plural number are to be taken to include the plural number and the singular number respectively;
- 2.2.6 Words importing any gender include both genders;
- 2.2.7 Where two or more persons are bound hereunder to observe or perform any obligation or Deed whether express or implied they are bound jointly and each of them severally;
- 2.2.8 Clause headings are provided for reference purposes only and are not to be resorted to in the interpretation of the Deed;
- 2.2.9 The requirements of the Deed are at all times to be construed as additional to the requirements of the Act and any other legislation affecting the Land;

2.2.10 Nothing contained in this Deed shall fetter the Council in the exercise of its discretion as the Relevant Authority under the Act.

3. ACKNOWLEDGMENTS OF THE OWNER

3.1. The Owner acknowledges that prior to entering into this Deed it has received independent legal advice as to the content and effect of this Deed.

4. UNDERTAKINGS OF THE OWNER

4.1. The Owner shall notify the Council in writing of any change of ownership of the Land.

4.2. The Owner shall give to any intending purchaser of the Land written notice of this Deed.

4.3. The Owner shall lodge a separate application under the South Australian Public Health Act 2011 and the South Australian Public Health (Wastewater) Regulations 2013 ("the Wastewater Application") for the installation of a septic tank and temporary containment (holding tank).

4.4. The Wastewater Application must be approved by the Council in writing prior to the grant of development approval in relation to the application to construct a dwelling on the Land.

4.5. The Wastewater Application shall provide for the installation of a three thousand (3,000) litre septic tank and a three thousand (3,000) litre holding tank and alarm system and shall comply with the Code.

4.6. The Owner shall pay to the Council a contribution to the Reserve Fund in the sum of SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS (\$17,500.00) for a future connection to the common pressure line of the CWMS which will transport effluent to the treatment plant ("the Connection Contribution") which amount is acknowledged by the parties to be a genuine pre-estimate of the cost to be incurred by the Council to establish the connection to the CWMS, as follows:

4.6.1 an amount of ONE THOUSAND SEVEN HUNDRED AND FIFTY DOLLARS (\$1,750.00) at the time the Wastewater Application is lodged; and

4.6.2 NINE (9) further amounts each of ONE THOUSAND SEVEN HUNDRED AND FIFTY DOLLARS (\$1,750.00) annually thereafter unless the Council constructs the CWMS before the last such payment is due to be paid by the Owner in which case the Owner must pay the balance of the said sum of SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS (\$17,500.00) then outstanding in full.

- 4.7 The Connection Contribution amount will be identified in the Council's fees and charges register.
- 4.8 Any approval granted by the Council in respect to a Wastewater Application may be subject to condition(s) as the Council deems fit to impose.
- 4.9 The Owner shall ensure the temporary containment (holding tank) is emptied and its contents disposed of in accordance with the provisions of the Code.
- 4.10 The Owner agrees to take full responsibility for the disposal of accumulated waste from the temporary containment (holding tank).
- 4.11 Within six (6) months of the completion of the CWMS and the establishment of the Connection Point to the Land by the Council, the Owner must make an application to connect to the CWMS.
- 4.12 Following the establishment of the Connection Point the Owner agrees to pay a yearly service charge to the Council in an amount determined by the Council pursuant to its then current rates and charges policy to maintain the connection.
- 4.13 All costs associated with the installation of the temporary containment (holding tank) including the costs of construction, installation and operation shall be the responsibility of the Owner.

5. COUNCIL'S OBLIGATIONS

- 5.1 The Council shall use its best endeavours but shall be under no legal obligation to provide a connection point to the Owners Land for a connection to the CWMS ("the Connection Point") within ten (10) years from the date hereof.

5.2 The Connection Point will be established when sufficient funds in the opinion of the Council have been accumulated in the Reserve Fund to enable an upgrade of the existing sewerage treatment plant and the supply and installation of the CWMS rising main to service the Land.

6. ADJUSTMENT OF THE CONNECTION CONTRIBUTION

6.1 If the actual cost incurred by the Council to establish the connection to the CWMS is either greater or less than the sum specified in Clause 4.6 then the Owner must pay to the Council an amount equivalent to any additional cost or the Council must refund to the Owner equivalent to the reduction of the cost (as the case may be) PROVIDED THAT if the cost incurred by Council is greater than the sum of SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS (\$17,500.00) then the additional cost payable to the Council by the Owner is to be capped to the sum of SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS (\$17,500.00) adjusted by reference to the relevant Consumer Price Index for all groups (Adelaide) in respect of the period between the date hereof and the date of the completion of the CWMS.

7. OPERATION OF THIS DEED

7.1. The parties expressly declare and agree that the provisions of the Deed shall not be binding or impose any obligation upon them unless and until the Deed is registered and a memorial thereof entered on the Certificate of Title for the Land pursuant to the provisions of section 57(5) of the Act in priority to any other registrable interest in the land save and except for the estate and interest of the Owner therein.

8. RESCISSION

8.1. If any development authorisation obtained for the Development is not granted, or if granted, lapses or expires by virtue of the provisions of the Act without being implemented by the Owner, the Council agrees to rescind the Deed at the request of the Owner and the reasonable costs of and incidental to the preparation, stamping and registration of the Deed of Rescission shall be borne by the Owner.

9. COMPLIANCE

9.1. The Owner shall at all times during the Term use its best endeavours to ensure that all occupiers, lessees and/or licensees from time to time of the Land comply with the provisions of this Deed.

10. COUNCIL'S POWERS OF ENTRY ETC

10.1 The requirements of this Deed are to be at all times construed as additional to the requirements of the Act and any other legislation affecting development of the Land AND the consent of the Council pursuant to this Deed shall be obtained prior to the Owner seeking any consent under the Act. Nothing contained in this Deed shall fetter the Council in the exercise of its discretion as the Relevant Authority under the Act.

10.2 The Council or any employee or authorised officer of the Council may at any reasonable time upon giving twenty-four hours written or verbal notice to the Owner or any occupier enter into and upon the Land for purposes of:

10.2.1 inspecting the Land and any building or structure thereupon;

10.2.2 exercising any other powers of Council under this Deed or pursuant to law;

PROVIDED HOWEVER the Council or any employee or authorised officer shall not be required to give such notice if in the reasonable opinion of the Council or such employee or authorised officer urgent entry is required.

10.3 If the Owner is in breach of the terms of this Deed the Council may by notice in writing served on the Owner require the Owner to remedy the breach within such time as is nominated by the Council in the notice (being not less than twenty-eight (28) days of the date of service of the notice) and if the Owner fails to remedy the breach the Council or its servants or agents may carry out necessary works upon the Land and recover any costs thereby incurred from the Owner.

10.4 The Council may delegate any of its powers under this Deed to any person.

11. VARIATION AND WAIVER

11.1. This Deed may not be varied except by a supplementary Deed signed by the Council and the Owner.

11.2. The Council may waive compliance by the Owner with the whole or any part of the obligations of the Owner herein contained but no such waiver is effective unless expressed in writing and signed by the Council.

12. NOTICES

12.1. Notice for the purpose of this Deed is to be taken to be properly served on the Owner if it is:

12.1.1 posted to the Owner at the Owner's last address known to the Council; or

12.1.2 any method prescribed by the Development Regulations 2008 for the service of a notice.

13. NOTING OF THIS DEED

13.1. Each party must do and execute all such acts, documents and things as are necessary to ensure that as soon as is possible after the execution of this Deed by all necessary parties, this Deed is noted by the Registrar-General against the Certificate of Title for the Land pursuant to Section 57(5) of the Act.

14. COSTS

14.1. The Owner is to bear the costs of and incidental to the negotiation and preparation of this Deed and the stamping and registering to note this Deed on the Certificate of Title to the Land.

14.2. The Owner hereby agrees to indemnify the Council and keep the Council forever indemnified in respect to the whole of its costs and expenses (including without limitation legal costs and expenses) of and incidental to the implementation of this Deed including the enforcement of its terms.

15. GOVERNING LAW

15.1. The law governing the interpretation and implementation of the provisions of this Deed is the law of South Australia.

16. GENERAL PROVISIONS

16.1 If any provision of the Deed shall be found by a court of competent jurisdiction to be invalid or unenforceable in law then and in such case the parties hereby record that it is their intention that such provision be severed from this Deed and that the remaining provisions are to be effective and enforceable according to their terms.

16.2 This Deed contains the whole Deed between the parties in respect of the matters referred to herein.

17. REGISTRATION

17.1 The Owner hereby consents to and requests registration of this Deed pursuant to Section 57(5) of the Development Act 1993

EXECUTED as a Deed

THE COMMON SEAL of the YORKE PENINSULA)
COUNCIL was hereunto affixed in the presence of:)


.....
Mayor

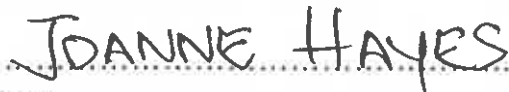
.....
Chief Executive Officer

SIGNED by STUART KINGSLEY MURDOCH

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In the presence of:)


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Witness signature

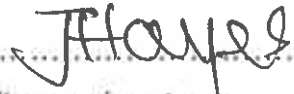

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Witness name


SIGNED by BRIONY JANE MURDOCH

) 

In the presence of:

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.....
Witness signature


.....
Witness name

The person named in Item 3 of the Schedule, if any, who has a legal interest in the Land by virtue of the interest specified therein **HEREBY CONSENTS** to the Owner entering into this deed.

THE COMMON SEAL of)
AUSTRALIA & NEW ZEALAND BANKING GROUP LTD.)
Was hereunto affixed in the presence of:)

[Handwritten Signature]

Signature

SCOTT ORTH

Name

AGRIBUSINESS MANAGER

Title



THE OWNER HEREBY CERTIFIES pursuant to Section 57(4) of the Act that no other person has a legal interest in the land.

Signed by **STUART KINGSLEY MURDOCH**

) SK Murdoch

In the presence of:

)

Hayes

Witness signature

JOANNE HAYES

Witness name

SIGNED by **BRIONY JANE MURDOCH**

) B. Murdoch

In the presence of:

)

Hayes

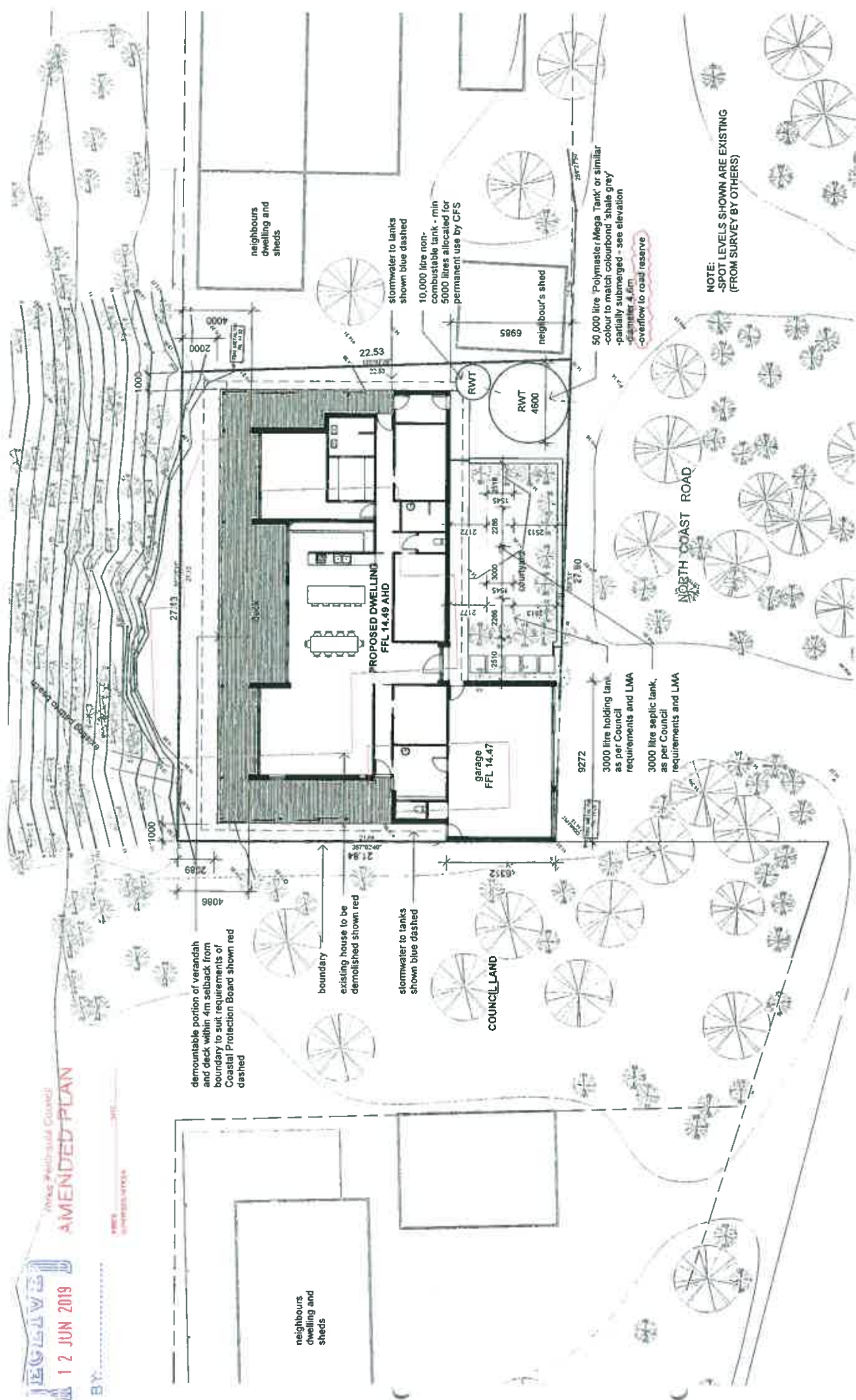
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JOANNE HAYES

Witness name

SCHEDULE

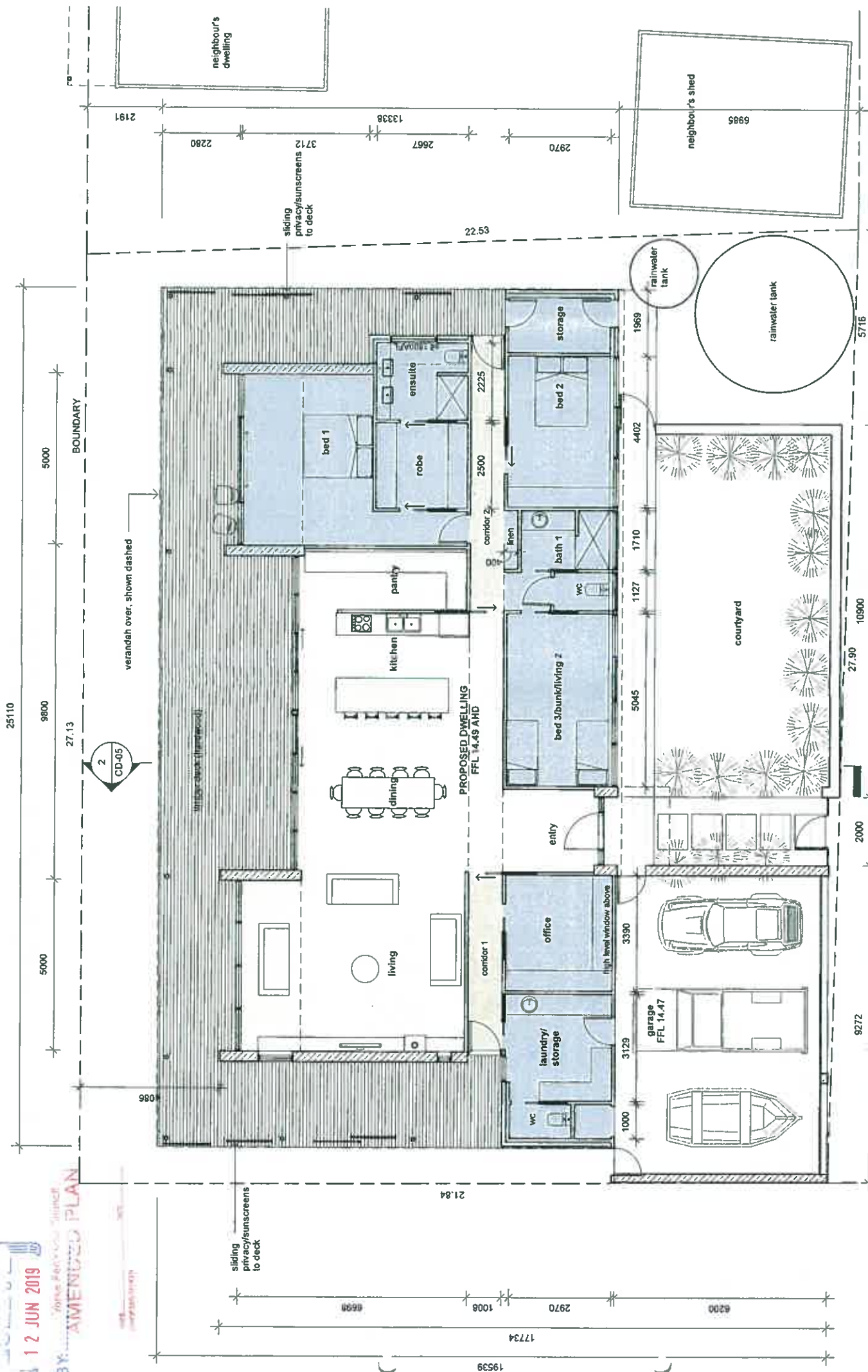
- ITEM 1** **Full Name of Owner:**
STUART KINGSLEY MURDOCH
BRIONY JANE MURDOCH
- Address of Owner:**
PO BOX 76 WAROOKA SA 5577
- ITEM 2** **Land Description:**
THE WHOLE OF THE LAND COMPRISED WITHIN CERTIFICATE OF
TITLE REGISTER BOOK VOLUME 5424 FOLIO 651 BEING
SECTION 299 HUNDRED OF PARA WURLIE IN THE AREA NAMED
POINT SOUTTAR
- ITEM 3** **Full Name of person with legal interest in the Land (if any) and
details of interest in the Land**
9516532 MORTGAGE TO AUSTRALIA & NEW ZEALAND BANKING
GROUP LTD.
- ITEM 4** **The plans for the Dwelling**
ATTACHED HERETO



JUNE 2019	1809	1:200	@A3	Bri and Stuey Murdoch	Point Soutbar Beach House	1100 North Coast Road, Point Soutbar	CD-01B REV A
SITE PLAN				Copyright. All rights reserved. This work remains the property of the Architect. No part of this work can be copied (in whole or in part) without the written authorisation of the Architect. mountfordwilliamsonarchitecture			
Notes: The Contractor shall verify all dimensions and details on site prior to commencement of any work. Any discrepancies are to be reported to the Architect immediately. e: ben@mountfordwilliamson.com.au m: 0413 300 066 e: mara@mountfordwilliamson.com.au m: 0408 314 706							

12 JUN 2019

AMENDED PLAN



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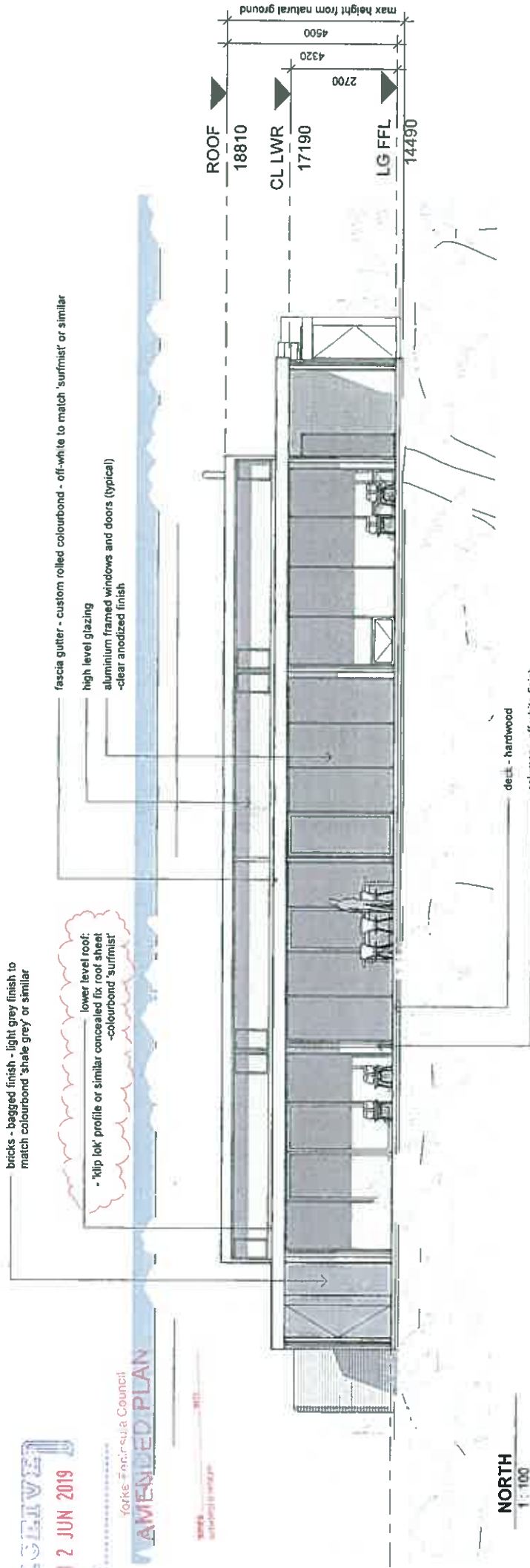


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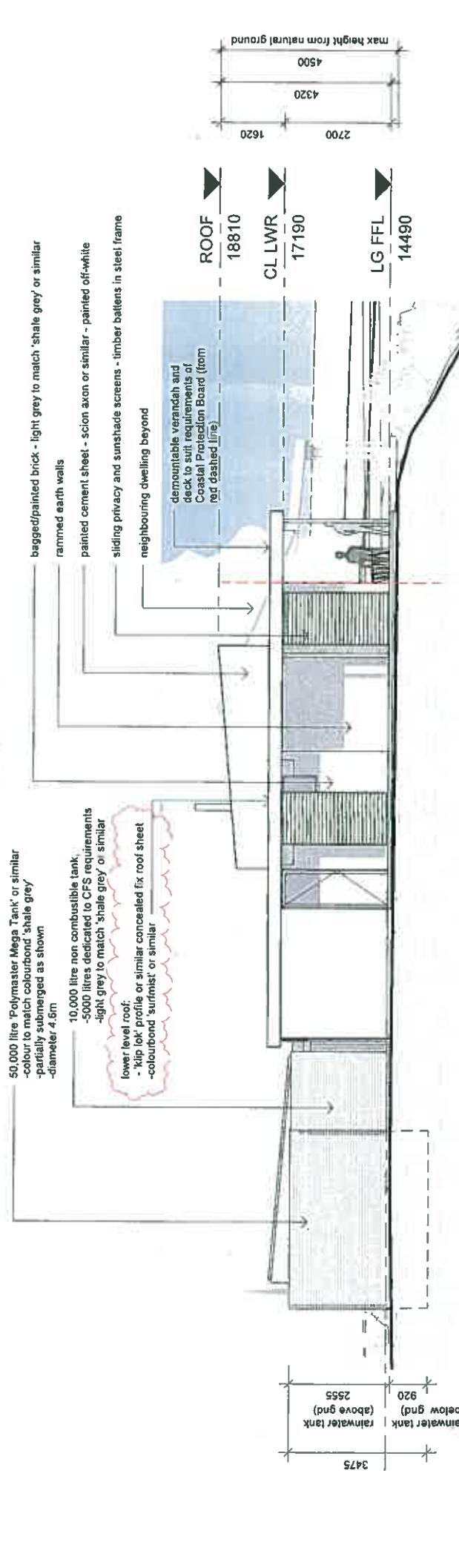
By: Council Engineer
Yorkshire Council

AMENDED PLAN

Scale: 1:100



NORTH
1:100



EAST
1:100

JUNE 2019	1809	@A3	Bri and Stuy Murdoch	Point Soutar Beach House	1100 North Coast Road, Point Soutar	CD-03 REV A
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12 JUN 2019

BY: **MENDED PLAN**

fascia gutter - custom rolled colourbond - off-white to match 'surfmist' or similar
 colourbond eaves gutter - off-white - 'surfmist' or similar
 high level glazing
 timber entry gables and front door beyond
 main roof and garage roof:
 • 'Xip lok' profile or similar concealed fix roof sheet
 -colourbond 'surfmist'

50,000 litre rainwater tank
 -light grey to match 'shale grey' or similar
 -partially submerged
 bricks - bagged finish - light grey finish to
 match colourbond 'shale grey' or similar

SOUTH
1 : 100

LG FFL
14490

colourbond roller doors to garage - 'shale grey' or similar
 fibre cement sheet panel cladding system - painted off-white
 rammed earth
 rammed earth wall to courtyard

fibre cement sheet panel cladding system - painted off-white
 rammed earth
 solar panels to roof of garage
 rammed earth
 fibre cement sheet panel cladding system - painted off-white

neighbouring dwelling beyond

LG FFL
14490

WEST
1 : 100



JUNE 2019	1889	1 : 100 @A3	BH and Stuey Murdoch	Point Soutar Beach House	1100 North Coast Road, Point Soutar
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CD-04
REV A