



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID1620/2018

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION
Plaintiff

ASKK INVESTMENT GROUP PTY LTD
Defendant

ORDER

JUDGE: JUSTICE DAVIES

DATE OF ORDER: 14 February 2019

WHERE MADE: Melbourne

THE COURT ORDERS BY CONSENT THAT:

1. Subject to the carveout in paragraph 3 of the order made 20 December 2018 and to paragraph 2 below, the restraints in paragraph 2 of the order made 20 December 2018 and extended by order made 7 February 2019 (the **freezing orders**) be extended to 15 March 2019 or further order of the Court.
2. The freezing orders do not prohibit the defendant from:
 - (a) executing a loan deed with Ahmad Ayad a copy of which is annexed to this order as Annexure A;
 - (b) applying the funds obtained pursuant to the loan deed referred to in (a) to pay or cause to be paid the deposit of \$3,250,000 due 15 February 2019 pursuant to special condition 20 of the contract of sale (**Contract of Sale**) of property at Lot 2, 615 Hume Highway, Beveridge in the State of Victoria (the **Property**) exhibited as NMJ 14 to the affidavit of Naomi Margaret Johnston sworn 19 December 2018 (**Johnston Affidavit**); and
 - (c) withdrawing from the Bank Accounts the total sum of \$9,250 for the purpose of paying the rates due in relation to the Property.



3. The proceeding is otherwise adjourned to 14 March 2019 for further directions.
4. Costs reserved.
5. There is liberty to apply to any party or any other person effected by these orders on the giving of reasonable notice to the other party or parties.

Date that entry is stamped: 14 February 2019.

Warrick Soden
Registrar



ANNEXURE A



Loan Deed

BETWEEN

Askk Investment Group Pty Ltd (ACN 621 924 589)

AND

Ahmad Ayad

MILLS OAKLEY
Level 6, 530 Collins Street
MELBOURNE VIC 3000
Telephone: +61 3 9670 9111
Facsimile: +61 3 9605 0933
DX 558, MELBOURNE
www.millsOakley.com.au
Ref: SAHM/5782089



Parties

Askk Investment Group Pty Ltd (ACN 621 924 589)
of 10 Boort Street, Broadmeadows, Victoria 3047

(“Borrower”)

Ahmad Ayad
of 10 Boort Street, Broadmeadows, Victoria 3047

(“Lender”)

Background

The Lender has agreed to provide a loan to the Borrower for the Purpose.

The parties agree

1 Definitions and interpretation

1.1 Definition

In this Deed:

Borrower means Askk Investment Group Pty Ltd (ACN 621 924 589);

Insolvent means, in relation to a person, when the person:

- (a) is:
 - (i) insolvent as that term is defined in Section 9 of the Corporations Act; or
 - (ii) the subject of an event described in Sections 459C(2) (a) to (f) or Section 585 of the Corporations Act (or it makes a statement from which another party to this agreement may reasonably deduce it is so subject); or
 - (iii) an insolvent under administration or suffers the appointment of a controller, administrator, liquidator or provisional liquidator as those terms are defined in Section 9 of the Corporations Act; or
 - (iv) dissolved,
- other than to carry out an amalgamation or reconstruction while solvent; or
- (b) enters into any agreement or composition with its creditors or convenes a meeting of its creditors for this purpose;
- (c) is subject to an order or an effective resolution is passed for the liquidation, winding up or dissolution of the person;
- (d) is otherwise unable to pay its debts as and when they become due and payable;
- (e) being a natural person, commits or suffers an act of bankruptcy; or
- (f) takes or suffers any similar act under the law of any jurisdiction.

Joint Venture and Participation Agreement means the agreement of that name between any person or entity as the First Party (**Joint Venturer**) and the Borrower as the Second Party, substantially in the form contained in Schedule 1, in relation to the Property;

Lender means Ahmad Ayad;



Principal Sum means \$3,250,000;

Property means the land known as Lot 2, 615 Old Hume Highway, Beveridge, Victoria 3753 being all of the land comprised in certificate of title volume 10685 folio 976;

Protected Payments means amounts paid to the Borrower under a Joint Venture and Participation Agreement.

Purpose means to assist the Borrower to make the instalment payment due on 15 February 2019 pursuant to a Contract of Sale dated 3 October 2017 between Old Hume Pty Ltd (ACN 617 035 006);

Repayment Offer means the offer described in clause 2.2(a)(i) of this Deed;

State means the state of Victoria in the Commonwealth of Australia;

1.2 Interpretation

In this Deed:

- (a) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (b) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (c) where the day on which or by which any act, matter or thing is to be done under this Deed is not a business day, that act, matter or thing will be done on the immediately preceding business day;
- (d) "**includes**" in any form is not a word of limitation; and
- (e) a reference to "\$" or "dollar" is to Australian currency.

2 The loan

2.1 Loan

The Lender agrees to lend and the Borrower agrees to borrow the Principal Sum for the Purpose.

2.2 Repayment subject to Joint Venture and Participation Agreement

- (a) The Lender must not seek repayment of the Principal Sum until:
 - (i) The Borrower makes a Repayment Offer (to all Joint Venturers under current Joint Venture and Participation Agreements to repay Protected Payments) and pays Protected Payments to any Joint Venturer who accepts the offer within 30 days of the offer being made; and
 - (ii) If an order for repayment to Joint Venturers is made by the Federal Court of Australia, the order has been complied with; and
 - (iii) The termination of all Joint Venture and Participation Agreements; and
 - (iv) If a managed investment scheme is established for the purposes of purchasing the Property, the responsible entity of that scheme considers that repayment of any or all of the Principal Sum would not be materially adverse to the interests of members of that scheme.
- (b) Subject to clause (a), the Borrower must repay the Principal Sum within 14 days of written demand for repayment by the Lender.



3 No interest

No interest will be payable by the Borrower to the Lender on the Principal Sum.

4 Default

Subject to clause 5 below, at the option of the Lender, the outstanding balance of the Principal Sum will become immediately due and payable by the Borrower to the Lender, despite any previous delay or waiver by the Lender, if:

- (a) the Borrower becomes Insolvent; or
- (b) the Borrower breaches any provision of this Deed which is not capable of being remedied.

5 Subordination to Joint Venturers

Notwithstanding clause 4 above, the Lender acknowledges that any and all rights of the Lender to recover any monies due and payable by the Borrower under this Deed are entirely subordinated to the rights and entitlements of any Joint Venturer:

- (a) to any Protected Payments;
- (b) if the Borrower becomes Insolvent;

6 Costs and expenses

The Borrower agrees to indemnify the Lender in respect of all legal costs and disbursements incurred by the Lender in enforcing or attempting to enforce this Deed.

7 Variation

This Deed may only be altered, amended, varied or modified by a written document and executed by the Parties.

8 Severability

If anything in this Deed is unenforceable, illegal or void then it is severed and the rest of this Deed remains in force.

9 Jurisdiction

This Deed is to be governed by and construed in accordance with all applicable laws in force in the State from time to time and the parties submit to the non-exclusive jurisdiction of the courts of the State.



Loan Deed

Execution Page

EXECUTED as a Deed on February 2019

EXECUTED by Askk Investment Group Pty Ltd (ACN 621 924 589) in accordance with section 127(1) of the Corporations Act 2001

Signature of Director

Signature of Director / Company Secretary (delete as applicable)

Name of Director (Please print)

Name of Director / Company Secretary (Please print)

SIGNED by Ahmad Ayad in the presence of:

Signature of Witness

Signature of Ahmad Ayad

Name of Witness (Please print)



Schedule 1 Pro Forma Joint Venture and Participation Agreement



EXPRESSION OF INTEREST
JOINT VENTURE AGREEMENT

DETAILS OF PARTY 1

Name: _____

Address: _____

Postal address: _____

Contact: W: _____

Mobile: _____

Occupation: _____

If company, ACN: _____

IDENTIFYING PARTY 1

Existing client *Known more than 12 months* Passport

Driver licence Medicare card

Other licence *e.g. Boat, Pilot, Firearm* Other *e.g. Birth certificate*

Centrelink ID Companies – *ASIC names index search*

– if required office holders

DETAILS OF ALLOTMENT & CONTRIBUTIONS

Lot No: _____

Size of Lot 400 square meters

Contribution: \$200,000.00

Initial Payment \$20,000.00 Date Paid: _____

Method of Payment

Monthly payments: \$1,000.00 on the _____

_____ Day of each Month Contribution Due Date: _____

* The parties hereby agree that the size (area) and location of each allotment may change from time to time subject to Council approval of the planning permit and plans of subdivision. All reasonable steps will be taken to ensure that the Lot sizes remain unchanged, and all parties to the Joint Venture shall be notified of any changes within 14 to 21 days of said changes being made on the plans of subdivision.

Signature of Party 1

Signature of Party 2
ASKK Investment Group Pty Ltd



("First Party")

AND

ASKK INVESTMENT GROUP PTY LTD

("Second Party")

JOINT VENTURE AND PARTITION AGREEMENT

Zeno Lawyers
Level 1, Suite 1A, 357 Barry Road
Campbellfield VIC 3061
Phone: 03 9357 5230
Fax: 03 9357 7599
Email: reception@zenolawyers.com.au
Ref: SZ:131319



THIS AGREEMENT dated [redacted] day of [redacted] 2017

BETWEEN [redacted]

in the State of [redacted] (First Party)

AND ASKK INVESTMENT GROUP PTY LTD of 2/1523-1535 Sydney Road, Campbellfield, Victoria (Second party)

RECITALS

- A. The Second Party is the nominated Purchaser and is entitled to be registered as the sole proprietor of the englobo land known as Lot 2 615 Hume Highway, Beveridge, and being the whole of the land comprised in Certificate of Title Volume 10685 Folio 976 ("the subject land").
- B. The subject land shall be divided into two (2) super lots broadly in accordance with the plan hereunto attached as Schedule "A"
- C. It is intended by the parties hereinto to develop and subdivide super lot A into 471 residential allotments broadly in accordance with the proposed Plan of Subdivision hereunto attached as Schedule "B" and to partition the land in accordance with this Agreement.
- D. The parties have hereunto agreed to associate themselves as joint ventures for the purpose of purchasing and developing the subject land upon the terms and conditions hereinafter contained.

OPERATIVE PART

1. Interpretation

This agreement is governed by the laws of Victoria and the parties submit to the non-exclusive jurisdiction of the courts of that state.

In the interpretation of this agreement:

- (a) References to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under the legislation;
- (b) Words denoting the singular include the plural and vice versa, words denoting individuals or persons include bodies corporate and vice versa, references to documents or agreements also mean those documents or agreements as changed, novated or replaced, and words denoting one gender include all genders;



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- (c) Grammatical forms of defined words or phrases have corresponding meanings;
 - (d) Parties must perform their obligations on the dates and times fixed by reference to the capital city of Victoria;
 - (e) Reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;
 - (f) If the day on or by which anything is to be done is a Saturday, a Sunday or a public holiday in the place in which it is to be done, then it must be done on the next business day;
 - (g) References to a party are intended to bind their executors, administrators and permitted transferees;
 - (h) Obligations under this agreement affecting more than one party bind them jointly and each of them severally;
 - (i) The company means the company incorporated to carry on the joint venture described in this agreement, in which each of the joint venturers holds a parcel of shares; and
 - (j) Confidential information means information, plans, specifications, and data concerning the planning, financing, cost, operations and marketing of the joint venture project; designs registered or not, patents, customer lists, supplier lists, source and destination codes which become available to a joint venturer, the managing director, the finance manager or the employees of any of them as a result of the joint venture.

2. Representative

Each corporate party must appoint in writing a representative to manage the affairs of the joint venture on its behalf and agrees that its representative has authority to bind the company on all matters relating to the joint venture.

3. Purpose and Facets of Joint Venture

The parties agree to establish the joint venture under the terms of this Agreement.

- (a) The parties agree to develop and subdivide the subject land into 471 residential allotments.
- (b) The Second Party agrees to allocate Lot _____ of the development to the First Party, in return for financial contribution made by the First Party to this Joint Venture Agreement.
- (c) The First Party may, with the consent of the Second Party, transfer its interest, rights and obligations pursuant to this Agreement to a third party.
- (d) Upon the registration of the Plan of Subdivision, each party shall execute all such documents as required to give effect to this Partition and relinquishment of their respective interests in the subject land.



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- (e) The First Party agrees and acknowledges that they will possess no proprietary right, title or interest in the property whether by the laws of equity or otherwise in respect of their contribution to the acquisition of the property, until such time as the terms of this Agreement are wholly complied with.

4. Term of the joint venture

- (a) The joint venture starts on the date of this agreement and ends:
- (i) When determined as this agreement provides; or
 - (ii) On a day agreed in writing by the parties; or
 - (iii) Within three years of this Agreement

whichever is earlier.

- (b) The parties agree to terminate this Agreement if within three years of this Agreement the Plan of Subdivision has not been registered, with the Second Party to refund all funds advanced pursuant to this agreement to the First Party, and the First Party upon, accepting and receiving said funds, indemnifying the Second Party to any actions in law, tort, or equity in relation to the termination of this Agreement.

5. Financial Contributions

- (a) The Second Party shall hold the assets of the Joint Venture as Trustee for and on behalf of the parties to this Agreement.
- (b) Without derogating from the generality of the foregoing paragraph, the parties hereto shall deposit into the nominated bank account sufficient funds to provide for the residue of the purchase money, stamp duty, registration fees, legal costs and the like at least 14 days prior to the date nominated for settlement of the subject land or otherwise as advised by the Trustee from time to time.
- (c) The First Party shall make a contribution of \$200,000 towards the Joint Venture. ("the contribution")
- (d) The contribution shall be paid as follows:
- (i) An initial payment of \$20,000 upon the signing of this Agreement into the nominated bank account.
 - (ii) Thereafter a minimum of \$1,000 at the beginning of each calendar month into the nominated bank account until such time as the contribution is repaid in full.

- (e) The contribution shall be paid into the following bank account:

Name: ASKK INVESTMENT GROUP PTY LTD
BSB: 033 338
ACC: 539311
REF: Lot No. _____



6. Description of Allotment

The First Party accepts as identical with the land the lot bearing the same number on the Proposed Plan of Subdivision attached hereunto, and referred to in paragraph 3(b) of this Agreement, upon the registration of said allotment. The First Party will not make any requisition or claim any compensation or rescind this Agreement, or future Contracts of Sale, for:

- (a) Any actual or alleged misdescription of the allotment or deficiency in its area or measurements;
- (b) Any minor variations (being variations which will not materially affect the allotment);
- (c) Any other amendments or variations to the Plan of Subdivision which do not affect the allotment.

7. Joint venture parties

The parties covenant and agree with the other as follows:

- (a) To be just and faithful to the other in all transactions relating to the Joint Venture and to give a true account of the same to the other when and as often as shall be reasonably required.
- (b) Upon every reasonable request being made of them, to inform the other of them of all matters, accounts, writings and other things they may become possessed or of or concerning the Joint Venture.
- (c) Punctually to pay and discharge their prospective, present and future debts and engagements and at all times to indemnify and keep indemnified the other Joint Venturer for the time being from and against any losses and damages which may arise in respect thereof, and in respect of any breach of the obligations imposed on and hereto and without in any way limiting the generality of the foregoing, any losses and damages which may arise from any of the Joint Venturers hereto entering into any contracts, pledging any credit, incurring any liabilities, assuming the obligations or making any warranties or representations whatsoever for or on behalf of any other Joint Venturer hereto, without the necessary authority or power to do so.
- (d) To exercise their best endeavours in the performance of their respective functions in connection with the conduct of the Joint Venture.
- (e) To promote the interest of the Joint Venture.
- (f) Not to be a party to the doing of any act, matter or thing whereby the goodwill, commercial reputation and overall public image of the other Joint Venturer or the Joint Venture may be prejudicially affected.
- (g) That the recitals herein contained are true and correct and reflect the intentions and obligations of the parties to the Joint Venture.



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- (h) Not to give any security or promise for the payment of money on account of the Joint Venture unless in the ordinary course of business.
 - (i) Not to sell, transfer, assign or otherwise dispose of his their share or interest in the Joint Venture, or any part thereof, except as specifically provided in this Agreement.

8. Management of the joint venture project

- (a) The management of the Joint Venture shall be vested with the Second Party.
- (b) The First Party may request the Second Party to provide progress reports in respect to the joint venture project, and the Second Party shall not without reasonable excuse withhold said information from the First Party.
- (c) The Manager shall undertake all tasks as may be necessary to effect the acquisition, development and subdivision of the subject land and shall engage consultants, engineers and generally be responsible for putting into effect and realisation of the Joint Venture project.
- (d) The Manager shall be reimbursed for all disbursements as and when they may occur.

9. Dispute resolution

- (a) If a dispute arises between the venturers, then before any court proceeding may begin, the partner raising the dispute (the complainant) must give 14 days notice to the others setting out the dispute and seeking discussion and compromise with a view to resolving the dispute.
- (b) If after 14 days the dispute is not resolved then it must be referred to mediation before commencing proceedings, and before the joint venture is ended in accordance with the following provisions. The costs of mediation must be borne by the venturers in proportion to their interests in the joint venture.

10. Insurance

- (a) The parties hereto shall effect and maintain adequate insurance cover for all insurable risks associated with the subject land.

11. Independent legal advice

- (a) The parties acknowledge and warrant to the other that they have each read and understood the terms of this Joint Venture Agreement, have obtained, or at their choice declined to obtain, independent legal advice in respect



thereof and have entered into this Agreement of their own free will and after having made all due and proper enquiries.

12. Mediation

- (a) The parties expressly agree to endeavour to settle any dispute arising in relation to any matter under this agreement by mediation administered by the Australian Disputes Centre (ADC) before having recourse to arbitration or litigation.
- (b) The mediation must be conducted in accordance with the ADC guidelines for commercial mediation operating at the time the dispute is referred to ADC.
- (c) The guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved.
- (d) The terms of the guidelines are deemed incorporated into this agreement.
- (e) This clause survives termination of this agreement.

13. Determination of the joint venture

- (a) If the parties cannot resolve a dispute between them after following the dispute resolution procedures set out in the mediation clause, then any of them (the offeror) may by written notice to the others offer to sell its interest in the joint venture at the price and on the terms, including settlement within no less than 30 days, in the offer.
- (b) The other parties must within 14 days of receiving the notice either accept the offer, pro rata to their interests under this joint venture agreement, or reject it, and offer their interests to the offeror at the price and on the terms in the counter-offer, which may be accepted no later than 14 days after receipt by the other parties.
- (c) If the counter-offer is accepted, the transaction must be completed within 30 days of acceptance.
- (d) If no party wishes to acquire the balance of the joint venture interest, then the whole undertaking of the joint venture must be sold via private treaty within a reasonable time.
- (e) If a party wishes to acquire the interest of another party under these provisions but does not agree that the offered price reflects the proper market price, then:
 - (i) The accepting party must sign an unconditional agreement to buy the other's interest at a price to be determined as set out below;
 - (ii) The price must be determined by taking the mean of two valuations by two independent, experienced and qualified valuers, one to be obtained by each party, with the cost shared equally; and



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- (iii) The agreement must be completed within 30 days after the valuations have been made and the mean taken.

14. Sale of joint venture interest to a third party

- (a) The First Party shall not, without the prior consent of the Second Party, sell its interest in the Joint Venture.
- (b) If a First Party, after receiving the consent of the Second Party, wishes to accept an offer from an outside party (third party) to buy the whole of its interest in the joint venture, then it must immediately notify the Second Party in writing, and must give them 14 days to agree to buy its interest on the same terms and conditions as this Agreement with completion to take place within a further 30 days from acceptance.
- (c) If the Second Party does not wish to acquire the First Party's interest, then they may either accept the sale to the third party, conditionally upon the third party signing an identical joint venture agreement to this document, or may counter-offer their interests for sale upon terms and at a price they nominate. If none of these courses of action is acceptable, then the undertaking of the joint venture must be sold via private treaty.

15. Variation of Agreement

This Agreement may only be altered, amended, varied or modified by a written document and executed by all the parties hereto.

16. Further Conduct

Each of the parties to this Agreement agrees and covenants that they shall hereinafter promptly, upon request to do so, execute all such documents, instruments and Deeds and do all such acts and things that may be reasonably required of them in order to implement and give full force and effect to the provisions, purposes and intent of this Agreement.

17. Default

- (a) A venturer defaults under this agreement if:
- (i) It transfers any of its interest in the joint venture in breach of this agreement; or
- (ii) It does not make a payment due to the joint venture; or
- (iii) It continues to breach any obligation under this agreement after receiving 14 days notice to remedy the breach; or
- (iv) It commits an act of bankruptcy, or an order is made appointing a receiver, provisional or general liquidator, for its winding up or it assigns its estate for the benefit of creditors; or



-
- (v) It ceases to carry on business so that it can no longer contribute capital to the joint venture; or
 - (vi) It breaches any of its fiduciary duties to the other venturers, or is convicted of a criminal offence involving dishonesty; or
 - (vii) It becomes incapable, or is subject to an order appointing an administrator or guardian.
- (b) If a default occurs, the other venturers may within 30 days give written notice of the default to the defaulting party by which they determine to acquire its interest in the joint venture at the price stipulated in this Agreement. Settlement is to be effected within 30 days of delivery of the later of the valuations.
 - (c) If the non-defaulting parties do not wish to acquire the interest of the defaulting party then the undertaking of the joint venture must be sold by private treaty within a reasonable time.

18. Costs

The costs of preparation and completion of this agreement must be shared by the parties in the same proportions as their interest in the joint venture.

19. Notices

A notice or other communication to a party must be in writing and delivered to that party or that party's practitioner in one of the following ways:

- (a) Delivered personally; or
- (b) Posted to their address when it will be treated as having been received on the second business day after posting; or
- (c) Faxed to their facsimile number when it will be treated as received when it is transmitted; or
- (d) Sent by email to their email address, when it will be treated as received when it enters the recipient's information system.

20. Counterparts

If this agreement is executed in a number of counterparts, when executed and taken together they constitute this agreement and the date of the agreement will be the date on which it is executed by the last party.



Execution page

SIGNED AS AN AGREEMENT

SIGNED BY _____) _____)	_____
in the presence of:	Signature

Signature of witness	

Print name of witness	

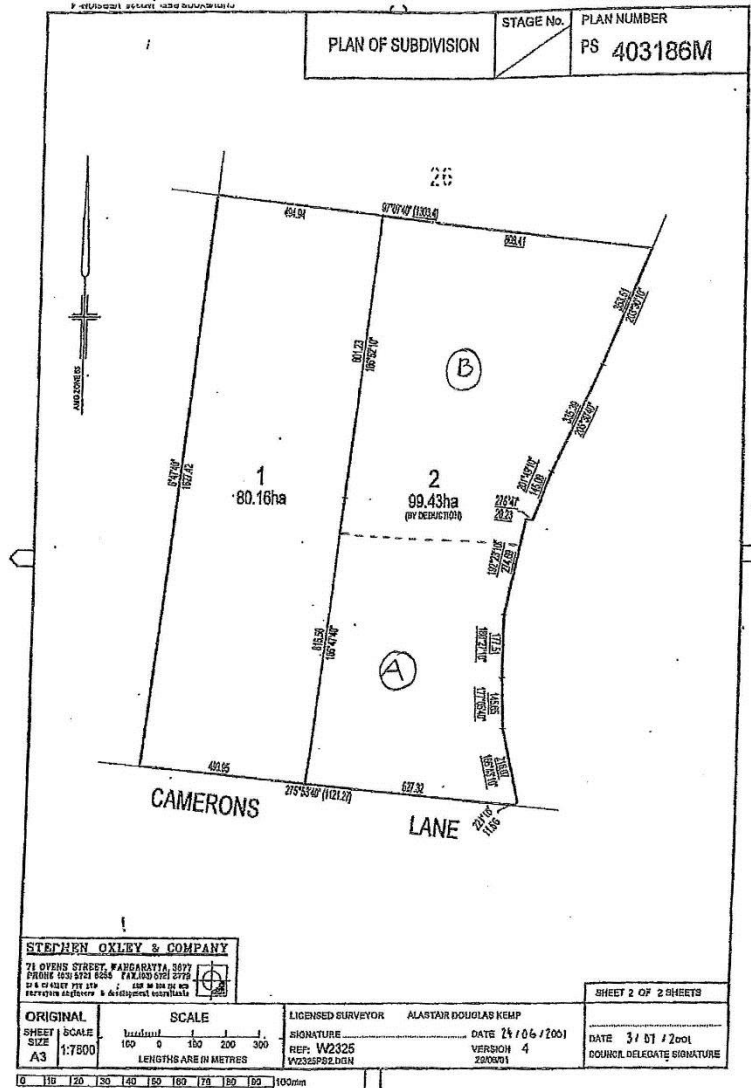
EXECUTED BY ASKK INVESTMENT) GROUP PTY LTD) (ACN 621 924 589) /	
_____	Director
Director	Name: ...
Name: Ahmad Ayad	



“SCHEDULE A”

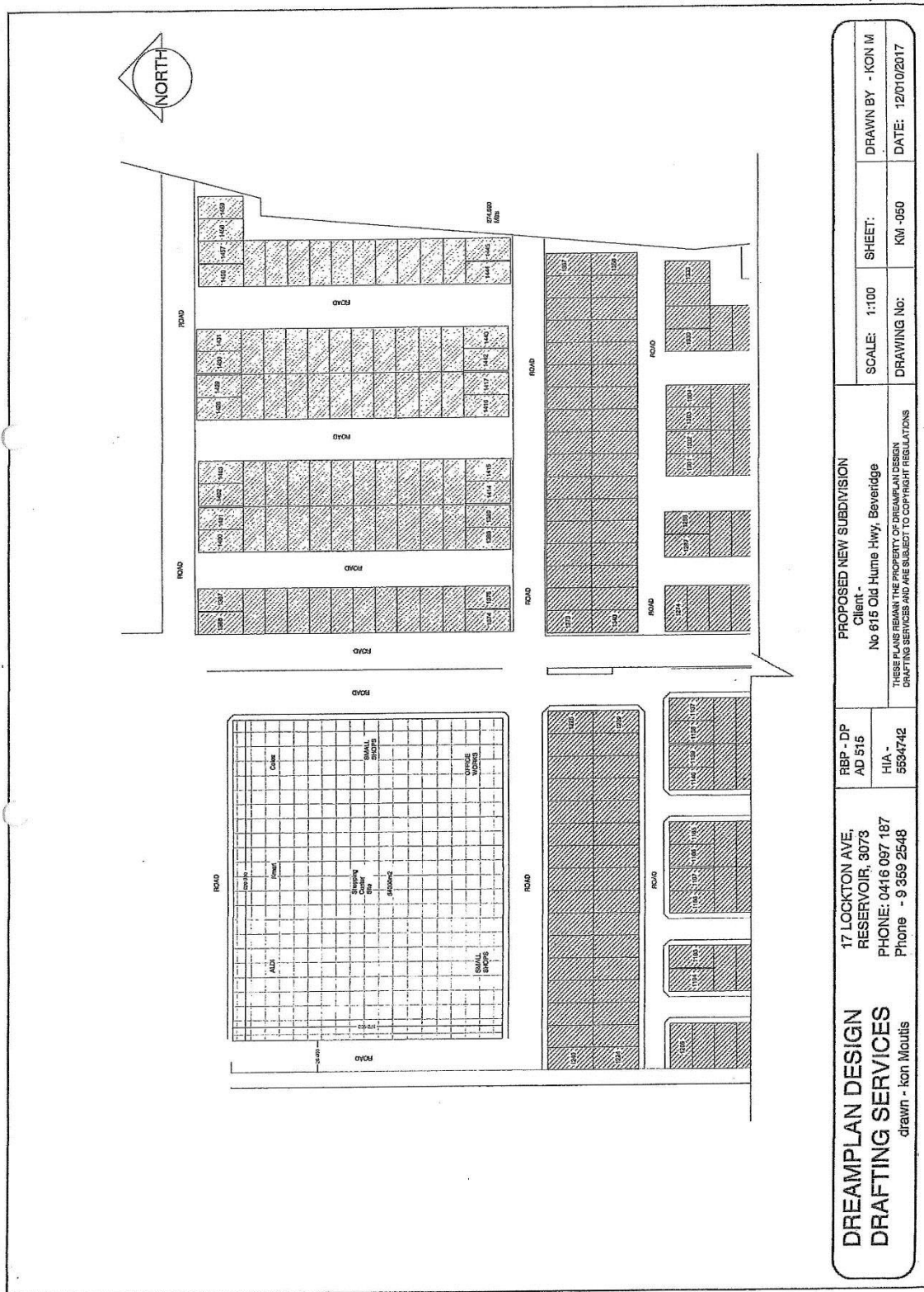


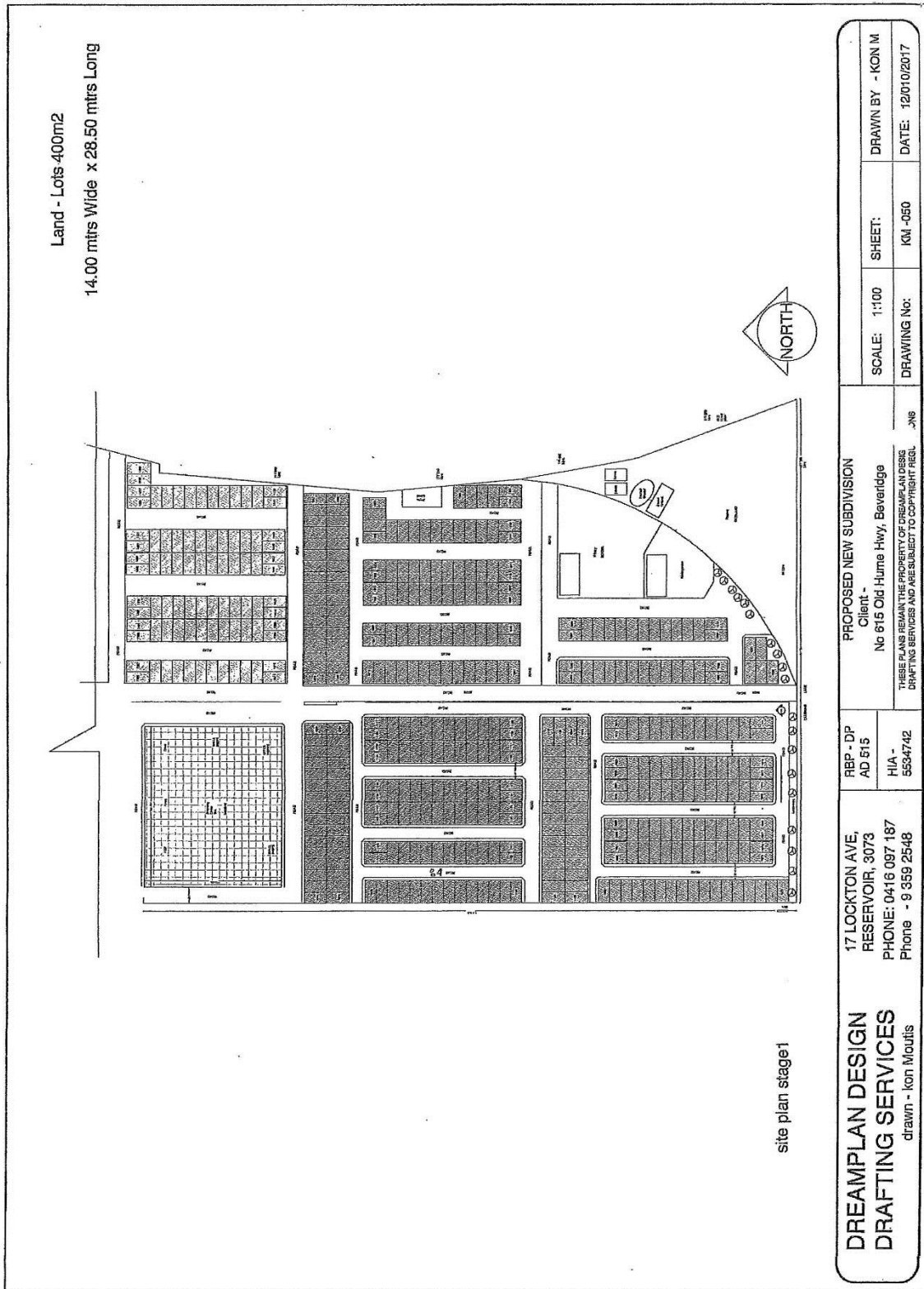
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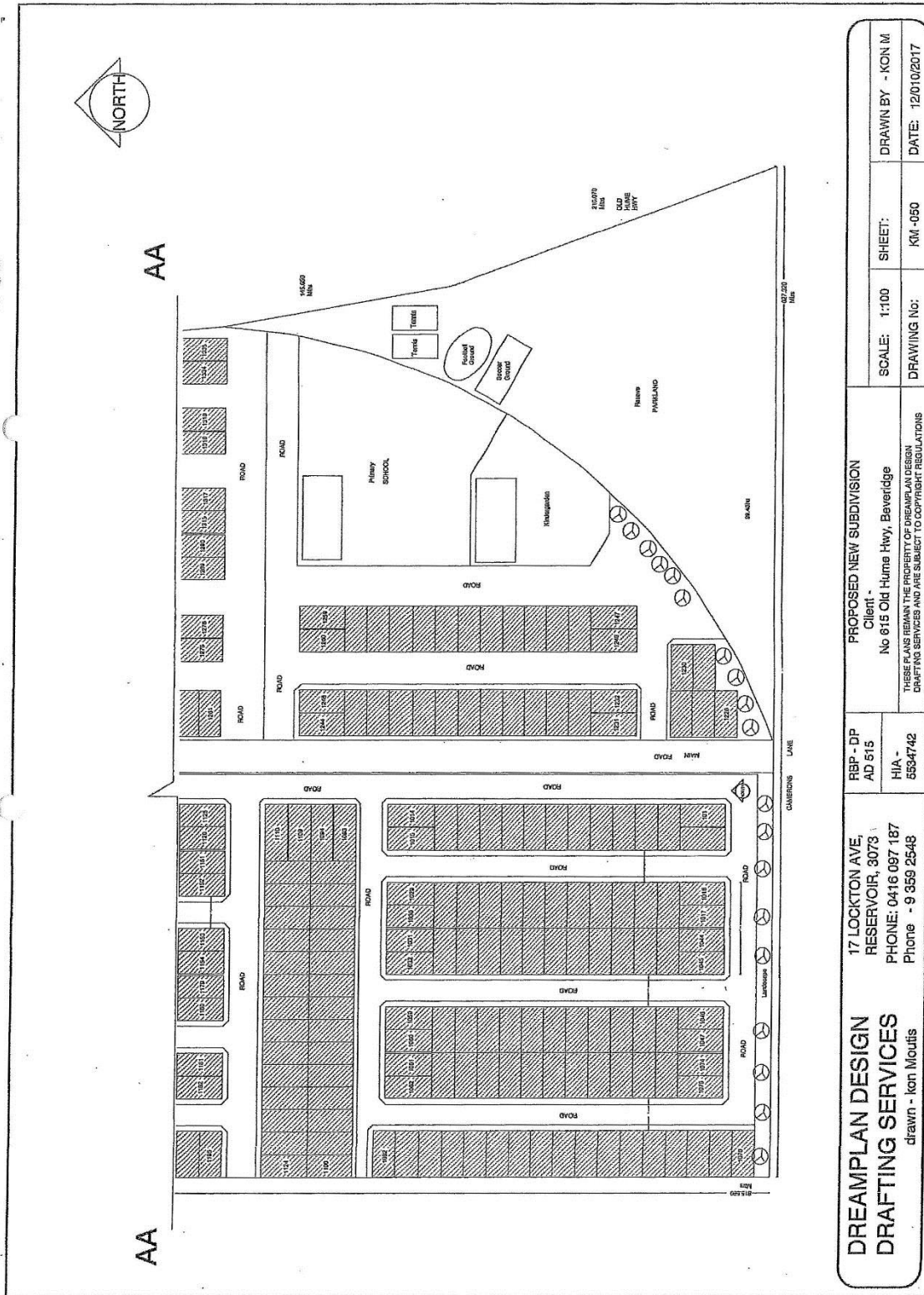




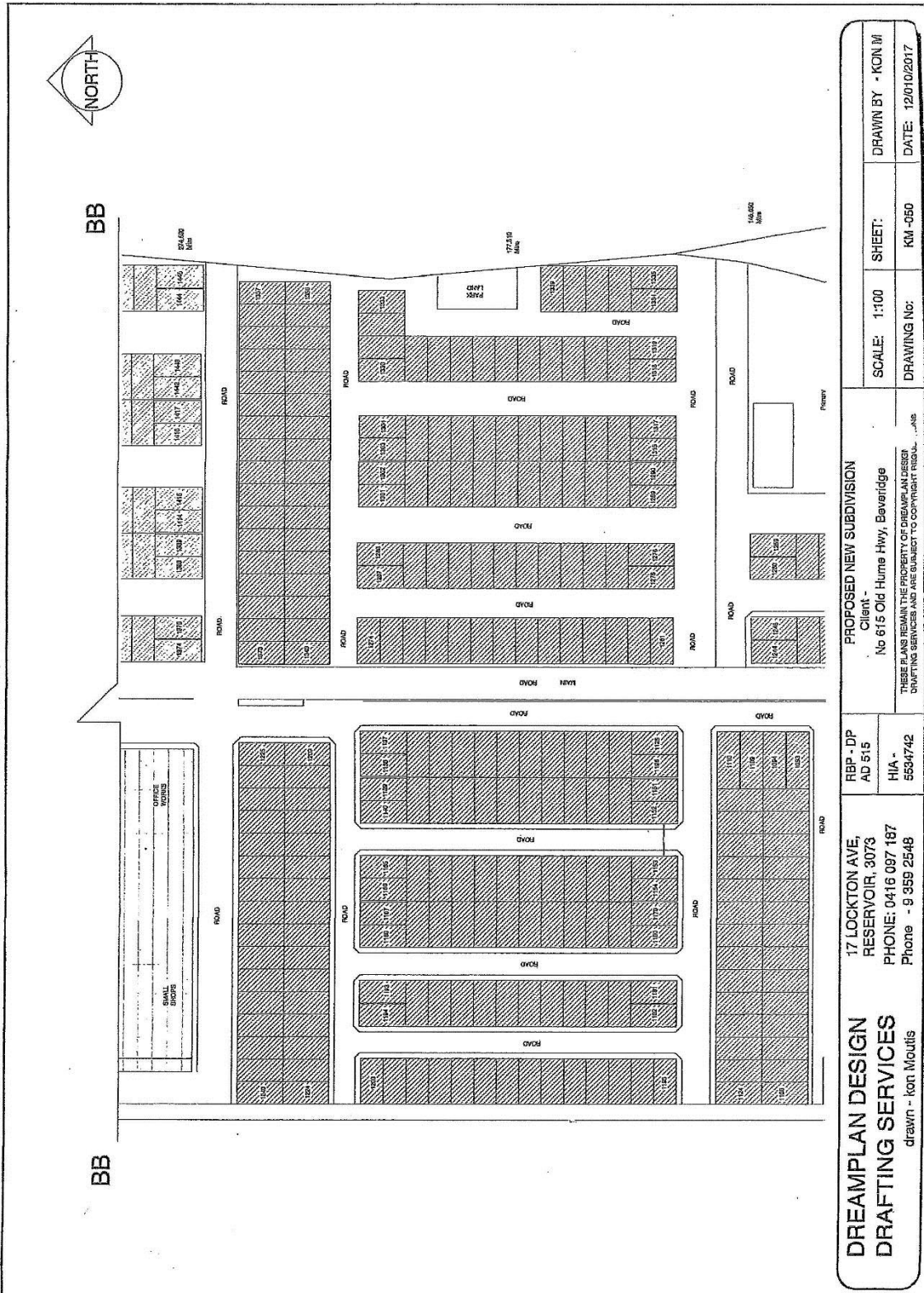
“SCHEDULE B”







DREAMPLAN DESIGN DRAFTING SERVICES drawn - Ivan Moutis	RBP - DP AD 615	PROPOSED NEW SUBDIVISION Client - No 615 Old Hume Hwy, Beveridge		SCALE: 1:100 DRAWING No:	SHEET: KM-050	DRAWN BY - KON M DATE: 12/01/2017
	HIA - 5534742	THESE PLANS REMAIN THE PROPERTY OF DREAMPLAN DESIGN DRAFTING SERVICES AND ARE SUBJECT TO COPYRIGHT REGULATIONS				



DREAMPLAN DESIGN DRAFTING SERVICES drawn - kon Moutis	17 LOCKTON AVE, RESERVOIR, 3073 PHONE: 0416 097 187 Phone - 9 359 2548	RBP - DP AD 515 HIA - 5594742	PROPOSED NEW SUBDIVISION Client - No 615 Old Hume Hwy, Beveridge	SCALE: 1:100 DRAWING No:	SHEET: KM -050	DRAWN BY - KON M DATE: 12/01/2017
	THESE PLANS REMAIN THE PROPERTY OF DREAMPLAN DESIGN DRAFTING SERVICES AND ARE SUBJECT TO COPYRIGHT REGULATION					





