



22 September 2015

The General Manager
Marrickville Council
PO Box 14
PETERSHAM, NSW, 2049



Attention: Mr Peter Wotton – Team Leader Development Assessment (Planning)

Dear Peter,

**Reclassification of Bankstown City Council owned land
at No. 180 Princes Hwy, St Peters
via an Amendment to the Marrickville Council LEP**

I refer to our previous correspondence in this matter whereby we request that Marrickville Council undertake the reclassification of Bankstown City Council (Council) owned land in St Peters.

Council has owned the subject site since late 2003, and by default under the Local Government Act 1993, the land became classified as Community Land. For Council to be able to appropriately manage the land into the future, the land is required to be reclassified to Operational Land, as was originally intended for this site.

Council obtained legal advice (from the Office of Local Government) that detailed that the reclassification process should be undertaken by Marrickville Council, as the subject site is within their local jurisdiction. As previously discussed and as per correspondence, Council provides the relevant Planning Application Fee (see attached Cheque for \$4,579.70) for this process to commence as part of the upcoming Marrickville Council Local Environmental Planning (LEP) Amendment. This Fee is identified as a *Rezoning Fee - Minor LEPs as part of scheduled amendments* within the Marrickville Council Fees and Charges Schedule 2015-16.

Should Marrickville Council require any additional information in relation to this proposal, please don't hesitate to contact me on (02) 9707 9097.

Yours faithfully,

Daniel Smith
Project Manager Special Projects

24 September 2015

receipt no. 426706

IJR

8 December 2016

Inner West Council

Petersham Service Centre

Peter Wotton - Strategic Planning Projects Coordinator - Marrickville

2-14 Fisher St,

PETERSHAM NSW 2049

Dear Mr Wotton,

**Reclassification of Canterbury Bankstown Council owned land
at No. 180 Princes Hwy, St Peters (Lot 4 DP 818380)
via an Amendment to the Marrickville Council LEP**

I refer to your letter to Council dated 3 November 2016, whereby the NSW Department of Planning and Environment have provided further advice in relation to progressing the proposed reclassification of Council land. This also includes reference to Council following The Department's Practice Note *Classification and reclassification of public land through a local environmental plan* (PN 16-001), as well as following the Department's *Guide to Preparing Local Environmental Plans*.

In order to progress the reclassification of the above mentioned Council land, the following information is provided in relation to the LEP Practice Note (PN 16-001):

- Canterbury Bankstown Council (former Bankstown City Council) is the legal owner of the land.
- The subject land is not a public reserve, rather an operational asset with a B6 Enterprise Corridor zoning (under Marrickville LEP 2011).
- All interests in the land are to remain as is after the proposed reclassification of the land.
- The land became community land by default after purchase in 2003.
- Canterbury Bankstown Council will undertake the required Public Hearing as part of the reclassification process (s57 of the EP&A Act and s29 of the LG Act).
- The Planning Proposal for the reclassification is being coordinated by Inner West Council (formerly Marrickville Council), as described under previous legal advice.

In relation to the Practice Note *Attachment 1 – Information Checklist for Proposals to Classify or Reclassify Public Land through an LEP*, Council provides the following information:

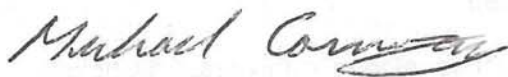
- **Current & Proposed Classification:** Currently the land is 'Community Land' by default after purchase in 2003, and the proposal is to reclassify the land 'Operational Land' to enable the intended purpose of the land to continue as an investment site.
- **Is the land a Public Reserve:** The land is not a public reserve, rather an operational business investment land / building, for financial return to Council.
- **Strategic & Site Specific Merits of reclassification:** The land was originally purchased for the purposes of financial return and investment for Council, with a long term lease to a KFC Restaurant, providing Council an investment opportunity. An oversight at the time of purchase resulted in the land defaulting to Community Land, and this was not identified until recently.
- **Result of Strategic Study or Report:** The planning proposal is a result of a Council Report to rectify an oversight at the time of land purchase, whereby Council now requires the land to be Operational Land to continue with its current and intended use (Attachment 1 – Council Report).
- **Consistency with Community Plan or other local strategic plan:** The subject land is the result of strategic financial investment and return to Council, and therefore consistent with Council managing its finances to provide maximum return on its investment to the local community.
- **Interest in Land:** The subject land:
 - Was purchased at Auction by the former Bankstown City Council in December 2003, with a condition of purchase that the new owner lease-back to the current occupants (KFC Restaurant) for a period up to 2034.
 - Was intended to be a strategic land holding for the operational purposes of financial return to Council.
 - Is owned outright by Council (now Canterbury Bankstown Council).
 - Is subject to a number of easements to support stormwater infrastructure of adjoining properties, including the WestConnex project (Attachment 1 – See attachment to Report).
- **Discharging of Interests in the Land:** There is no proposal to discharge any interests in the land. All interests will remain after the proposed reclassification.
- **Effect of Reclassification:** the reclassification will enable Council to continue the existing use on the site, enter new Leases with the current tenants, as was intended at the time of purchase of the land. There is no loss of open space or no changes proposed to any interests in the land. The land will remain as is since its purchase in 2003, and will enable Council to enter new Leases on what is commonly referred to as an operational asset.
- **Evidence of any Interests in Land:** The land has never been a public reserve, and Council's proposal to continue its existing use is consistent with its original intent. A copy of the Title Search of the property is provided as Attachment 2.
- **Current Uses of Land:** The land contains a premises used as a KFC Restaurant at the time of purchase. This use has continued to date, with the tenants having options to lease the premises until 2034. Council intends to

enable the Lease renewal options to occur, however it has recently been identified that the land defaulted to Community Land, contrary to enabling such uses or any new occupants should the current tenants vacate or relocate.

- **Current Lease Arrangements:** The land is leased to KFC Restaurant, with options for lease until 2034. Council will be required in the near future to update the lease upon renewal, and must ensure the land is appropriately classified.
- **Current & Proposed Business Dealings:** The current occupants (KFC Restaurant) have indicated that they propose to exercise their options on the current land and premises, however should market conditions change and they provide notice to vacate, Council will be unable to re-lease the premises due to the defaulted community classification. Council does not currently have any intention of realising its asset, as it provides Council a financial return, as was originally intended.
- **Any associated Rezoning of land:** There is no proposal to change the existing zoning of the land. That would be a matter for Inner West Council, however we are not aware of proposed changes in this area.
- **Financial Benefit of Reclassification:** Council currently leases the premises on the subject land for financial return. This property is part of Council's strategic land holdings, whereby Council in the past made recommendations to invest funds in assets that provide good financial returns. The funds contribute to Council's Land and Investment Fund.
- **Fund Availability for Open Space:** This question is not relevant to the subject site, however the rental return for the property has always been part of Council's Land and Investment Fund, and not part of any open space requirement. The site is zoned B6 Enterprise Corridor under the Marrickville Council LEP 2011 and provide Canterbury Bankstown Council with a financial return on its property investment.
- **Land Reclassification Map:** The whole Lot will be reclassified as part of this proposal, and be provided by Inner West Council at the time of the Planning Proposal.
- **Government Agency Comments:** There are no relevant Government Agency comments in this matter.

Should Inner West Council require any additional information in relation to this proposal, please contact Daniel Smith – Project Manager on (02) 9707 9097.

Yours faithfully,



Michael Conway
Manager Property & Investment

ATTACHMENTS:

1. Council Report (28 July 2015): Property Matter – 180 Princes Hwy, St Peters.
2. Title Search (25 November 2016).

Report of the General Manager - 28 July 2015

ITEM 6.6 **Property Matter - 180 Princes Highway, St Peters**

DELIVERY PROGRAM (2013-2017) TA 19. Council is strategically and effectively managing its public land and property portfolios.

AUTHOR **Corporate and Financial Services**

ISSUE

To consider and address certain administration matters relating to Council's property at 180 Princes Highway, St Peters.

RECOMMENDATION That –

1. In accordance with the relevant provisions of the Local Government Act 1993, Council commences the reclassification process of its property at 180 Princes Hwy, St Peters to Operational Land, as outlined in this report.
2. Council agree to enter into the proposed Deed with WestConnex and subsequent creation of an easement to address its drainage requirements, in lieu of any financial compensation, as outlined in this Report.
3. The Mayor and General Manager be delegated authority to sign all documents under the Common Seal of Council, as required.

BACKGROUND

In December 2003, Council acquired, via public auction, a property located at 180 Princess Highway, St Peters from the proprietors of KFC, the fast food outlet. A condition of the sale was that the property would be leased back to them based on a long term lease contract which ends on 13 December 2034.

As part of Council's administration of this property, it is required to ensure that all land management issues appropriately and/or accordingly reflect Council's intent and the requirements of the Local Government Act 1993.

This report requires Council to consider two issues relating to this property, being:

- a proposal to re-classify the subject land from Community to Operational Land; and
- address a drainage easement matter benefiting Council's property.

REPORT

Reclassification of Land

The Local Government Act 1993, requires all Council owned land to be classified as either Community or Operational Land. In cases where land is being acquired, Council is required to indicate its preference to classify the land, at that time. If a decision is not within three (3) months, the land defaults to Community Land.

In general terms, Community Land is intended for public access/use and is managed in accordance with an agreed Plan of Management for the site and cannot be sold. Conversely, other land such as Council depots and certain investment properties would be classified as Operational Land, which are not bound by similar restrictions.

At the time, Council's decision to acquire the property was for investment purposes, which would suggest that the land be held as Operational Land, particularly given its intention to provide a long term lease to the proprietors of KFC.

So as to ensure appropriate compliance with the Local Government Act 1993, it is proposed to commence the process of re-classifying the site to Operational Land.

In brief, a reclassification process must be made through a Local Environmental Plan (LEP). The "relevant planning authority" must prepare a "planning proposal" in relation to a draft LEP to reclassify the land. As the land is situated in the Marrickville local government area, Marrickville City Council will need to conduct this process on behalf of Council, as the "relevant planning authority".

Marrickville City Council have indicated that it is able to incorporate Council's request as part of its next amendment process to the Marrickville Local Environmental Plan 2011 (Amendment No.4), which is expected to be considered by their Council throughout this year.

Drainage Easement Matter

In September 2014, Council received correspondence from Transport WestConnex Delivery Authority (WestConnex), the statutory body that is responsible for the construction of the WestConnex Motorway.

WestConnex compulsorily acquired the land adjoining Council's property at 180 Princes Highway, St Peters, which Council has a benefit of in the form an easement to drain water from its site. The acquisition was confirmed by a Government Gazetted Notice on 19 December 2014.

As is generally the case with all compulsory acquisitions, any easements which affects the land, are extinguished and the relevant parties are compensated in accordance with the Land Acquisitions (Just Terms Compensation) Act 1991.

Westconnex acknowledges that Council is required to retain the infrastructure to service its property. As such they have proposed the following:

- Council temporarily enter into a Deed, which continues to preserve Council's stormwater requirements, in lieu of any financial compensation, during the construction phase; and

- Subsequently, replace the Deed with a new easement once construction has been completed, to appropriately reflect Council's infrastructure requirements.

Council's lawyers have agreed that the above approach is appropriate. Council will rely on its lawyers to ensure that the terms and conditions of the Deed and eventual replacement of the easement meets Council's requirements.

WestConnex is also required to reimburse Council for all its legal costs incurred in addressing the matter.

Current Financial Assessment

In December 2003, Council entered into a thirty-one (31) year lease with QSR Limited, the Franchisee operating the KFC outlet. The Lease includes five options, favouring the Lessee, to renew the Lease throughout the period. QSR and Council have recently formalised the second option under the Lease.

Some of the broader leasing and financial details associated with the property are as follows:

Description	Details
Lease Information	
Purchase Date	December 2013
Options Renewed	2
Option Period End Date	December 2019
Purchase Details	
Original Purchase Price	\$2,195,000
Current Valuation	\$3,500,000
Capital Growth Since Purchase	\$1,305,000
Capital Growth Since Purchase	59%
Rental Return Details	
Annual Rent	\$191,000
Current Valuation	\$3,500,000
Rental Return	5.5%

As Councillors will note, Council's investment property is performing reasonably well. Council will continue to assess and regularly update Councillors regarding the property, as required.

POLICY IMPACT

The proposed reclassification ensures compliance with the relevant provisions of the Local Government Act 1993 and Council's decision to invest in appropriate investment properties, which generate alternate sources of revenue for Council.

FINANCIAL IMPACT OF RECOMMENDATIONS

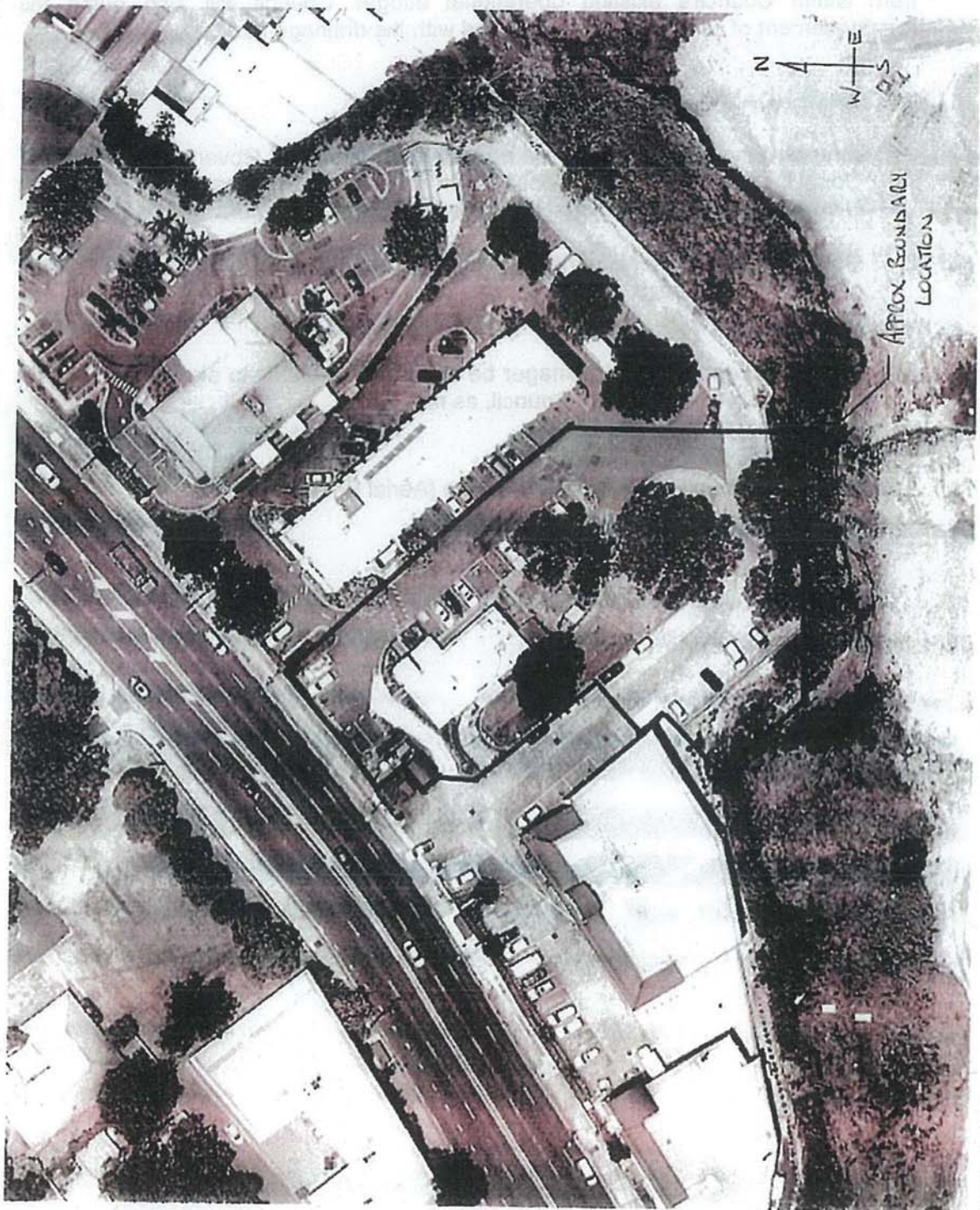
The associated costs with processing the above are minor in nature and will be met from within Council's existing operational budget. Council will also pursue the reimbursement of all legal costs associated with the drainage matter.

RECOMMENDATION That –

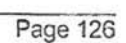
1. In accordance with the relevant provisions of the Local Government Act 1993, Council commences the reclassification process of its property at 180 Princes Hwy, St Peters to Operational Land, as outlined in this report.
2. Council agree to enter into the proposed Deed with WestConnex and subsequent creation of an easement to address its drainage requirements, in lieu of any financial compensation, as outlined in this Report.
3. The Mayor and General Manager be delegated authority to sign all documents under the Common Seal of Council, as required.

ATTACHMENTS

- A. Matter 1 - Reclassification: Maps of Site (Aerial Photo & Cadastre)



Aerial Photo: 21-11-14



EXTRACT

BANKSTOWN CITY COUNCIL
MINUTES OF THE
ORDINARY MEETING OF COUNCIL
HELD IN COUNCIL CHAMBERS
ON 28 JULY 2015



ITEM 6.6
(1192)

PROPERTY MATTER - 180 PRINCES HIGHWAY, ST PETERS
CLR. WINTERBOTTOM:/CLR. ASFOUR

RESOLVED that

1. In accordance with the relevant provisions of the Local Government Act 1993, Council commences the reclassification process of its property at 180 Princes Hwy, St Peters to Operational Land, as outlined in this report.
2. Council agree to enter into the proposed Deed with WestConnex and subsequent creation of an easement to address its drainage requirements, in lieu of any financial compensation, as outlined in this Report.
3. The Mayor and General Manager be delegated authority to sign all documents under the Common Seal of Council, as required.

- CARRIED

ITEM 6.7
(1193)

BANKSTOWN BIODIVERSITY STRATEGIC PLAN COUNCIL ADOPTION
CLR. NAJJAR:/CLR. PARKER

RESOLVED that Council adopt the Biodiversity Strategic Plan 2015-2025.

- CARRIED

ITEM 6.8
(1194)

SYDNEY METRO PROJECT - SUBMISSION TO TRANSPORT FOR NSW
CLR. NAJJAR:/CLR. KUSKOFF

RESOLVED that Council endorse the submission to Transport for NSW in relation to the Sydney Metro project.

- CARRIED



Order number: 40741630
Your Reference: Daniel Smith - property
25/11/16 13:48

LAND AND PROPERTY INFORMATION NEW SOUTH WALES - TITLE SEARCH

FOLIO: 4/818380

SEARCH DATE	TIME	EDITION NO	DATE
25/11/2016	1:48 PM	8	5/8/2015

LAND

LOT 4 IN DEPOSITED PLAN 818380
AT ST PETERS
LOCAL GOVERNMENT AREA INNER WEST
PARISH OF PETERSHAM COUNTY OF CUMBERLAND
TITLE DIAGRAM DP818380

FIRST SCHEDULE

BANKSTOWN CITY COUNCIL (T AA634127)

SECOND SCHEDULE (11 NOTIFICATIONS)

- 1 RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
- 2 G330426 EASEMENT APPURTENANT TO THE PART OF THE LAND ABOVE DESCRIBED SHOWN SO BENEFITED IN THE TITLE DIAGRAM AFFECTING LOT A IN DP391775
- 3 G352529 RIGHT OF WAY APPURTENANT TO THE PART OF THE LAND ABOVE DESCRIBED SHOWN SO BENEFITED IN THE TITLE DIAGRAM AFFECTING THE PART OF LOT 1 IN DP391775 SHOWN SO BURDENED IN DP602277
- 4 G352529 DRAINAGE EASEMENT APPURTENANT TO THE PART OF THE LAND ABOVE DESCRIBED SHOWN SO BENEFITED IN THE TITLE DIAGRAM AFFECTING THE PART OF LOT A IN DP391775 SHOWN SO BURDENED IN DP602277
- 5 G422612 EASEMENT APPURTENANT TO THE PART OF THE LAND ABOVE DESCRIBED SHOWN SO BENEFITED IN THE TITLE DIAGRAM AFFECTING LOT B IN DP394647
- 6 H548352 EASEMENT APPURTENANT TO THE PART OF THE LAND ABOVE DESCRIBED SHOWN SO BENEFITED IN THE TITLE DIAGRAM AFFECTING LOTS 1 & 2 IN DP594630 AND LOT 24 IN DP183134
- 7 EASEMENT(S) AFFECTING THE PART(S) SHOWN SO BURDENED IN THE TITLE DIAGRAM CREATED BY:
 - DP788037 -EASEMENT FOR ELECTRICITY PURPOSES
 - DP788037 -EASEMENT TO DRAIN WATER VAR. WIDTH
 - DP818380 -RIGHT OF WAY VAR. WIDTH
 - DP818380 -EASEMENT TO DRAIN STORM WATER VAR. WIDTH
 - DP818380 -EASEMENT FOR SERVICES VAR. WIDTH
 - DP818380 -EASEMENT FOR SERVICES 2 WIDE
 - DP818380 -EASEMENT FOR SIGNAGE VAR. WIDTH
 - DP818380 -RIGHT OF CARRIAGEWAY 4 WIDE
 - DP818380 -RIGHT OF CARRIAGEWAY 3.75 WIDE

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LAND AND PROPERTY INFORMATION NEW SOUTH WALES - TITLE SEARCH

FOLIO: 4/818380

PAGE 2

SECOND SCHEDULE (11 NOTIFICATIONS) (CONTINUED)

- 8 EASEMENT(S) APPURTENANT TO THE LAND ABOVE DESCRIBED CREATED BY:
 DP788037 -RIGHT OF FOOTWAY
 DP788037 -EASEMENT TO DRAIN WATER VAR. WIDTH
 DP788037 -RIGHT OF CARRIAGEWAY VAR. WIDTH
 DP788037 -EASEMENT FOR SERVICES VAR. WIDTH
 DP818380 -RIGHT OF WAY VAR. WIDTH
 DP818380 -EASEMENT TO DRAIN STORM WATER VAR. WIDTH
 DP818380 -EASEMENT FOR SERVICES VAR. WIDTH
 DP818380 -EASEMENT FOR SERVICES 2 WIDE
 DP818380 -EASEMENT FOR SIGNAGE VAR. WIDTH
 DP818380 -RIGHT OF CARRIAGEWAY 3.75 WIDE
 DP818380 -EASEMENT FOR SERVICES 1 WIDE
- 9 E88840 EASEMENT TO DRAIN WATER APPURTENANT TO THE LAND
 ABOVE DESCRIBED AFFECTING THE WHOLE OF LOT 2 IN
 DP602277
 AJ196569 EASEMENT RELEASED IN SO FAR AS IT AFFECTS LOT 2
 IN DP1168612
- 10 U531155 LEASE TO SYDNEY ELECTRICITY OF PREMISES BEING
 SUBSTATION NO. 7379 "PRINCES BISHOP" TOGETHER WITH
 RIGHT OF WAYS & EASEMENTS FOR ELECTRICITY PURPOSES
 SHOWN IN PLAN WITH U531155. EXPIRES 30-9-2043.
- 11 AJ710481 LEASE TO QSR PTY LTD OF 180 PRINCES HIGHWAY, ST
 PETERS. EXPIRES: 13/12/2019. OPTION OF RENEWAL: THREE
 (3) X FIVE (5) YEARS EACH.
- * AJ855998 TRANSFER OF LEASE AJ710481 LESSEE NOW ATHU
 HOLDINGS PTY LTD
- * AJ996166 CAVEAT AFFECTING LEASE AJ710481 CAVEAT BY
 KENTUCKY FRIED CHICKEN PTY LIMITED

NOTATIONS

UNREGISTERED DEALINGS: NIL

*** END OF SEARCH ***

PRINTED ON 25/11/2016

* Any entries preceded by an asterisk do not appear on the current edition of the Certificate of Title. Warning: the information appearing under notations has not been formally recorded in the Register.

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