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2 of 2

Fees: \$90.50

LANDS TITLES REGISTRATION OFFICE SOUTH AUSTRALIA

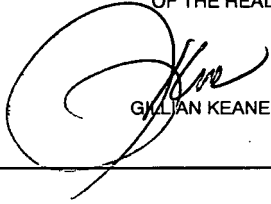
MEMORANDUM OF ENCUMBRANCE

FORM APPROVED BY THE REGISTRAR-GENERAL

BELOW THIS LINE FOR AGENT USE ONLY

Series No.	Prefix
2	E

CERTIFIED CORRECT FOR THE PURPOSES OF THE REAL PROPERTY ACT 1886



GILLIAN KEANE - Registered Conveyancer ✓

BELOW THIS LINE FOR OFFICE USE ONLY

Date	Time:	
FEES		
R.G.O.	POSTAGE	NEW C.T.
90.50		

Lodged by: **BAILS + SON CONVEYANCING** AGENT CODE **BSC 3**
 Correction to: **Statewide Conveyancing Services** MTBA 656
 41-43 Gawler Street Mount Barker SA 5251
 8391.2227

TITLES, CROWN LEASES, DECLARATIONS ETC. LODGED WITH INSTRUMENT (TO BE FILLED IN BY PERSON LODGING)

1.
2.
3.
4.
5.

Assessor

PLEASE ISSUE NEW CERTIFICATE(S) OF TITLE AS FOLLOWS


1.
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3.

1B Lot 406 Bails 00011830.doc;1


DELIVERY INSTRUCTIONS (Agent to complete) PLEASE DELIVER THE FOLLOWING ITEM(S) TO THE UNDERMENTIONED AGENT(S)

TERMS(S)	AGENT CODE
CT 5883/330	BSC 3


WATERFORD ENCUMBRANCE wdox/admin/landbroker/00006417

CORRECTION	PASSED 
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REGISTERED - 1 JUL 2003



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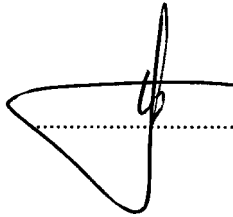


REGISTRAR-GENERAL SOUTH AUSTRALIA

DATED the 12th day of ~~12th~~ JUNE 2003 ✓
8

EXECUTION

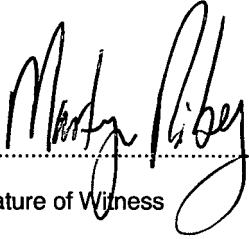
SIGNED by the Encumbrancer (Owner)) ✓



in the presence of:)

)
)
)





Signature of Witness

Signed in my presence by the Encumbrancer who is either personally known to me or has satisfied me as to his or her identity*.

MARTYN RUBEY

Print Full Name of Witness (BLOCK LETTERS)

9 Hereford Ave. Halmdorf.

Address of Witness

Business Hours Telephone Number.....

83982222. /

* NB: A penalty of up to \$2000 or 6 months imprisonment applies for improper witnessing.

MEMORANDUM OF ENCUMBRANCE

CERTIFICATE(S) OF TITLE BEING ENCUMBERED

The whole of the land in C/T Volume 5883 Folio 330 ✓

(which is referred to as "the Land")

ESTATE AND INTEREST

In fee simple ✓

ENCUMBRANCES

AG 9442922 ✓

ENCUMBRANCER (Full Name and Address)

MURRAY JOHN STORY and GAYE MILCHARD
Both of PO Box 786 Littlehampton SA 5250 ✓

("the Owner").

ENCUMBRANCEE (Full Name and Address)

WATERFORD DEVELOPMENTS (SA) PTY LTD ACN 097 482 838 of 555 The Parade Magill SA 5072
("the Developer"). ✓

OPERATIVE CLAUSE

The Owner desiring to render the land above described for the purposes of securing to and for the benefit of the Developer the payment of the sum of money and the performance and observance of the covenants on the part of the Owner hereinafter contained in this Encumbrance the Encumbrancer (the Owner) encumbers the estate and interest in the land above described for the benefit of the Encumbrancee (the Developer) subject to the encumbrances and other interests as described above for a term expiring on the 31st day of December 2020 with an annuity or rent charge (if demanded) of 10 cents payable on the 30th day of June each year commencing on the 30th day of June next ensuring after the execution hereof.

It is covenanted between the Encumbrancer (the Owner) and Encumbrancee (the Developer) as follows:

1. HOW TO UNDERSTAND THIS DOCUMENT

- 1.1. There are some special rules that apply to this Encumbrance which you need to understand. Those special rules are explained in clause 21 of this Encumbrance.
- 1.2. Some words used in this Encumbrance have a special meaning. Those meanings are explained in clause 22 of this Encumbrance.

2. PAYMENT OF ANNUAL RENT CHARGE

The payment of the yearly rent charge shall not affect or prejudice the right or entitlement of the Developer to an injunction to prevent or restrain the Owner from committing any breach of any covenant contained in this Encumbrance nor to recover damages for any such breach.

3. DEVELOPMENT GUIDELINES AND PRINCIPLES

- 3.1. Subject to clause 3.3 hereof the Owner shall not undertake any Development on the Land without the prior written approval of the Developer.
- 3.2. The Owner shall not Develop the Land except in accordance with the terms of the Development Guidelines.
- 3.3. The provisions of clause 3.1 above shall cease to apply after the Development Completion Date.

4. SETBACKS

- 4.1. Subject to Clause 4.3 hereof the Owner shall not undertake any development on the Land within fifteen (15) metres of any Road Boundary except where:
 - 4.1.1. a lesser setback for development on the Land is provided for in any Land Management Agreement entered into by the Owner and the Council, or
 - 4.1.2. where the approval of the Council is obtained to a lesser setbackprovided however that the Owner shall not undertake any development on the Land within six (6) metres of any Road Boundary.
- 4.2. Subject to Clause 4.3 hereof the Owner shall not undertake any development on the Land within six (6) metres of any Reserve Boundary.
- 4.3. Solid fences may be constructed on the Land within six (6) metres of any Road Boundary where the consent in writing of the Developer has first been obtained pursuant to the provisions contained in Clause 5.2.3 hereof.
- 4.4. The following provisions shall apply to Allotments **568 to 577 in DP 59976** inclusive namely:-

4.4.1. The Owner of any such Lot shall in undertaking development on the Land orientate and give any Dwelling constructed on the Land its primary frontage to the adjacent reserve fronting Waterford Avenue, and

4.4.2. Notwithstanding the provisions of clause 4.4.1 hereof the Owner shall ensure that the appearance of the Dwelling to the east of Fairfield Road is of an attractive secondary frontage as if the Dwelling were to front that road.

5. FENCES

The Owner will not without the consent in writing of the Developer erect or permit to be erected on the Land any fence or gate which does not comply with the following specifications:-

5.1. All fences shall be open rural style post and wire fencing in their style and shall not detract from the open rural vistas and the semi rural character of the locality,

5.2. Notwithstanding the provisions of clauses 4 and 5.1 above solid fences may be constructed on the Land for the purpose of ensuring reasonable privacy to immediate areas surrounding any Dwelling constructed on the Land provided that such fences shall be:-

5.2.1. no higher than one point eight (1.8) metres, and

5.2.2. of timber or colour coated steel, and

5.2.3. no closer to the Road Boundary or Reserve Boundary than complies with the setback provisions contained in clause 4 of this Encumbrance unless the consent in writing of the Developer has first been obtained which consent can be withheld for any reason, and

5.2.4. shall not extend more than fifteen (15) metres from the rear of any Dwelling constructed on the Land as demonstrated on the diagram contained in Schedule 2 hereto, and

5.2.5. not be situated anywhere on the Land except on a boundary nor enclose the Land other than where located towards the rear of the Land and running between two side fences as demonstrated in the diagram contained in Schedule 2 hereto, and.

6. SIGNS

The Owner shall not erect or permit to be erected on the Land any board, sign or hoarding of any description other than a standard short term property real estate sign which sign shall be no greater in area than one (1) metre square.

7. OUTBUILDINGS

The Owner shall not construct any Outbuilding on the Land that does not comply with the Development Guidelines or which otherwise detracts from the vistas and semi rural character of the locality.

8. RAINWATER TANKS

The Owner shall not install or construct a rainwater tank on the Land unless the same is painted or designed and sited to integrate with the other development on the Land and is screened from public view by landscaping or a judicious location.

9. LANDSCAPING

The Owner shall at his/her/its own expense within twelve (12) months of practical completion of the Dwelling on the Land landscape the Road Frontage and all parts of the Land (except enclosed courtyards) visible from a Road or Reserve and shall maintain such landscaping in a healthy, neat and tidy condition at all times thereafter.

10. REFUSE COLLECTION

The Owner shall ensure that all refuse disposal containers stored on the Land are screened from view from any Road or Reserve except on rubbish collection days.

11. LAND NOT TO BE SUBDIVIDED

The Owner shall not apply to The District Council of Mt Barker or its successor to subdivide the Land into more than one allotment and for the purposes of this provision any application for division of the Land pursuant to the Real Property Act 1886, Community Titles Act 1996 or the Strata Titles Act 1998 or any Acts past in addition or substitution therefore shall be deemed to be subdivision of the Land.

12. NUMBER OF DWELLINGS ON THE LAND

12.1. Subject to clause 12.2 hereof the Owner shall not erect more than one (1) Dwelling House on the Land.

12.2. Nothing contained in this clause shall be deemed to prevent the Owner from constructing a free standing Building intended for human habitation separate to any Dwelling constructed on the Land where such Building is intended for separate occupation by a member of the Owner's family provided that the Building is not designed, intended or capable of being used as a separate Dwelling by another family.

13. TRANSPORTABLE HOUSES

The Owner shall not construct or permit to be constructed or installed on the Land any Transportable House.

14. TRANSFER OF LAND BY OWNER

The Owner will not transfer or otherwise dispose of his/her/its estate and interest in the Land without making it a term of such purchase or transfer that the intending purchaser or transferee shall enter into a Memorandum of Encumbrance with the Developer or its assignee in the same terms as this Encumbrance (or as near to the same as is practicable and which Memorandum of Encumbrance shall be lodged immediately after the Memorandum of Transfer to the purchaser or transferee of the Land and in priority to all other registered instruments) with the cost of the preparation and registration of such new Memorandum of Encumbrance being borne by the intending purchaser or transferee.

15. RELEASE OF OWNER FROM COVENANTS

Provided that the Owner performs and observes all covenants, terms and conditions on his/her/its part to be complied with pursuant to this Encumbrance then the Owner shall on the transfer of the Land to a new purchaser or transferee and the execution by such new purchaser or transferee of the new Memorandum of Encumbrance as provided for in clause 14 above be released and discharged from payment of the rent charge and from the future performance and observance of all the covenants contained in this Encumbrance.

16. COSTS

The Owner shall bear all costs of an incidental to the preparation of this Encumbrance and all stamp duty and registration costs in respect of the same.

17. APPROVAL BY DEVELOPER

Any approval required to be given by the Developer may be given either by the Developer or by any architect or other person appointed for that purpose by the Developer in which event the costs of that other person shall be borne by the Developer.

18. SCHEME OF DEVELOPMENT

The Owner acknowledges that the covenants terms and conditions contained in this Encumbrance are entered into and undertaken for the purpose of the Developer's scheme of development for the whole of the development known as Waterford and that notwithstanding anything to the contrary contained in this Encumbrance the Developer has the right in its absolute and unfettered discretion at any time and from time to time to modify waive release or decline to enforce any covenant term or condition contained in any Encumbrance entered into in relation to the Waterford development whether or not they are the same covenants terms and conditions as are set out in this Encumbrance and that in doing so the Owner nor his/her/its assigns or successors in title shall have no action or claim whatsoever against the Developer arising out of or in any way connected with the exercise by the Developer of its right to modify waive or release any of such covenants terms and conditions in any other Encumbrance.

19. POWERS OF DEVELOPER

Subject to the terms of this Encumbrance the Developer shall be entitled to all the powers rights and remedies given to an Encumbrancee by the Real Property Act 1886 as amended from time to time.

20. SEVERANCE

If any covenant term or condition contained in this Encumbrance is held by a Court to be invalid void or unenforceable the remainder of such covenants terms and conditions shall remain in full force and effect and shall in no way be affected impaired or invalidated as a consequence.

21. RULES FOR UNDERSTANDING THIS ENCUMBRANCE

If a party uses a right given to that party under this Encumbrance this does not affect that party's ability to use any other right.

- 21.1. Where two or more persons are bound by this Encumbrance to observe or perform obligations whether expressed or implied then they are bound jointly and each of them individually.
- 21.2. Reference to a party includes the executors and administrators and assigns of every party named in this Encumbrance.
- 21.3. Words suggesting natural Persons include companies and vice versa.
- 21.4. Words suggesting the single number include the plural number and vice versa.

21.5. Words suggesting any gender include all genders.

21.6. Headings are for reference only and do not affect interpretation.

21.7. Reference to any law includes any modification or any other law passed in substitution for that law.

21.8. Reference to an authority includes any new or substitute authority which carries out substantially the same functions.

22. SPECIAL MEANING WORDS

- 22.1. **Building** means any building or out building and any structure whether free standing or affixed to any other building erected outside any building or out building and without in any way limiting this definition includes any portion of a building, balconies and/or eaves, garage, carport, shed driveway, verandah, pergola, fence, wall, sink, tank, antenna, airconditioner, sun blind, heater, clothes line, BBQ and letter box.
- 22.2. **Council** means The District Council of Mount Barker and its successors.
- 22.3. **Developer** means Waterford Developments (SA) Pty Ltd ACN 097 482 838 of 555 The Parade Magill in the said State and its successors and assigns and the expression "Encumbrancee" has a like meaning
- 22.4. **Development** includes the construction, erection or installation of any Building, structure, fence or other external fitting or fixture, the painting or staining of the exterior of any Building, structure, fence or other external fitting or fixture, the excavation, grading or levelling of and the removal of rock, stone, sand and soil, landscaping and the use of street furniture and the expression "develop" has a corresponding meaning.
- 22.5. **Development Guidelines** means the development guidelines set out in Schedule 1 to this Deed.
- 22.6. **Development Completion Date** means either:-
 22.6.1. the 31st day of December 2006, or
 22.6.2. the date upon which the Developer in writing notifies the Council that it has completed the Waterford Development
 whichever date last occurs.
- 22.7. **Dwelling** means a Building or part of Building used as a self contained residence.
- 22.8. **Land** means the land defined in panel 1 of the front page of this Encumbrance.
- 22.9. **Out Building** means any building structure constructed or to be constructed on the Land including any free standing carport, sheds and other like structures not architecturally integrated into a Dwelling House.
- 22.10. **Owner** means the person persons or company referred to in panel 4 of the front page of this Encumbrance and his/her/its executors administrators and assigns and the expression "Encumbrancer" has a like meaning.

- 22.11. **Reserve** means any reserve vested in the Council as part of the Waterford Development.
- 22.12. **Reserve Boundary** means the boundary of any Reserve within the Waterford Development.
- 22.13. **Road** means any road vested in Council as part of the Waterford Development.
- 22.14. **Road Frontage** means that portion of the Land lying within the setback area of a Road Boundary as provided for in clause 4.1 hereof.
- 22.15. **Road Boundary** means the boundary of the Land to any Road.
- 22.16. **Transportable House** means any Dwelling which is pre-built or designed and constructed with the intention that it may be transported to another site.

SCHEDULE ONE

DEVELOPMENT GUIDELINES

These Development Guidelines have been formed with the intention of setting a theme for the built environment that is compatible with a high quality rural living residential development.

Encouragement will be given to innovative designs that vary from the traditional approach to provide aesthetic variety.

Consideration must be given to adjacent built forms with respect to architectural style, building positioning, and light and site optimisation.

1. COMMENCEMENT ON SITE

No building, outbuildings, garage, carport, shed, fencing, swimming pool, or excavation shall be commenced unless working drawings showing the design, materials for external elements of structure, walls, roofing or other such combinations of materials have been submitted to the Developer. Owners shall not submit plans to The District Council of Mount Barker without first having submitted them to the Developer and having obtained from the Developer a certificate of approval for such plans.

2. DESIGN

The Parties recognise the value of good building design and effective utilization of building materials to enhance the natural features and elements of the Mt Barker rural area.

2.1. Dwelling

The design of the Dwelling House its position on the Land, orientation, and floor levels will be assessed by the Developer for suitability.

2.2. Foundation

Raw concrete, steel, or other stumping used in foundation work or supports shall be concealed from view.

2.3. Gables

Gables constructed of fibre cement sheeting (or similar material) must be rendered, painted or otherwise decorated.

2.4. Verandahs/Carports

The design, appearance, external colours, and materials of all verandahs, carports and outbuildings shall be integrated with the design of the main Dwelling and placed within the building line.

3. MATERIALS

All materials must be compatible and complementary to the aims described in this annexure. Only good quality building materials shall be used for construction of Buildings and Out Buildings.

3.1. External Walls

External walls must be brick, brick veneer or approved texture coated material. The use of timber, natural or simulated, may be approved provided that the Dwellings are professionally designed and aesthetically pleasing. Rendered walls are recommended.

3.2. Roofing

A variety of roof structures, forms and roofing materials is encouraged, but pitched roofs are to have a minimum pitch of 27.5 degrees. Fibre cement and uncoated galvanised iron or zincalume roofing is not permitted. Flat roofs are acceptable only if they are designed as an integral part of and complement the open rural character of the Dwelling, its setting and roof exposure in the locality. Curved or other innovative roof frames will be considered on their architectural merit. House gutters and downpipes should be plastic colorbond or painted to match the Dwelling. Externally mounted gutters shall be in a rounded profile.

3.3. Windows and Doors

A range of materials is permitted for framing and detailing. Consideration is to be given to colours and weatherproofing aspects. Window areas should take into consideration such orientation and take advantage of views without overlooking neighbours where visual privacy is impacted.

4. COLOUR

All colours shall not be other than those which complement the aesthetics of the natural landscape and coastal environment and shall complement the overall theme of the Waterford Development.

5. AIRCONDITIONERS AND SOLAR WATER HEATERS

Airconditioners and solar water heaters should where possible be architecturally integrated with the form of the Dwelling and not directly visible from any Road Boundary or Reserve.

6. LANDSCAPING

All garden areas of the Land within public view shall be landscaped within twelve (12) months of the date of practical completion of the Dwelling.

7. VEHICLE ACCOMMODATION

A minimum of 2 car parking spaces shall be provided. At least one of which shall be under cover of a garage or carport.

8. BUILDING PROVISIONS DURING CONSTRUCTION

In the interests of safety, guarding water quality and the environment, builders and building owners will be required to meet criteria set down to minimize rubbish and debris leading to water pollution.

The following controls on all building sites will apply.

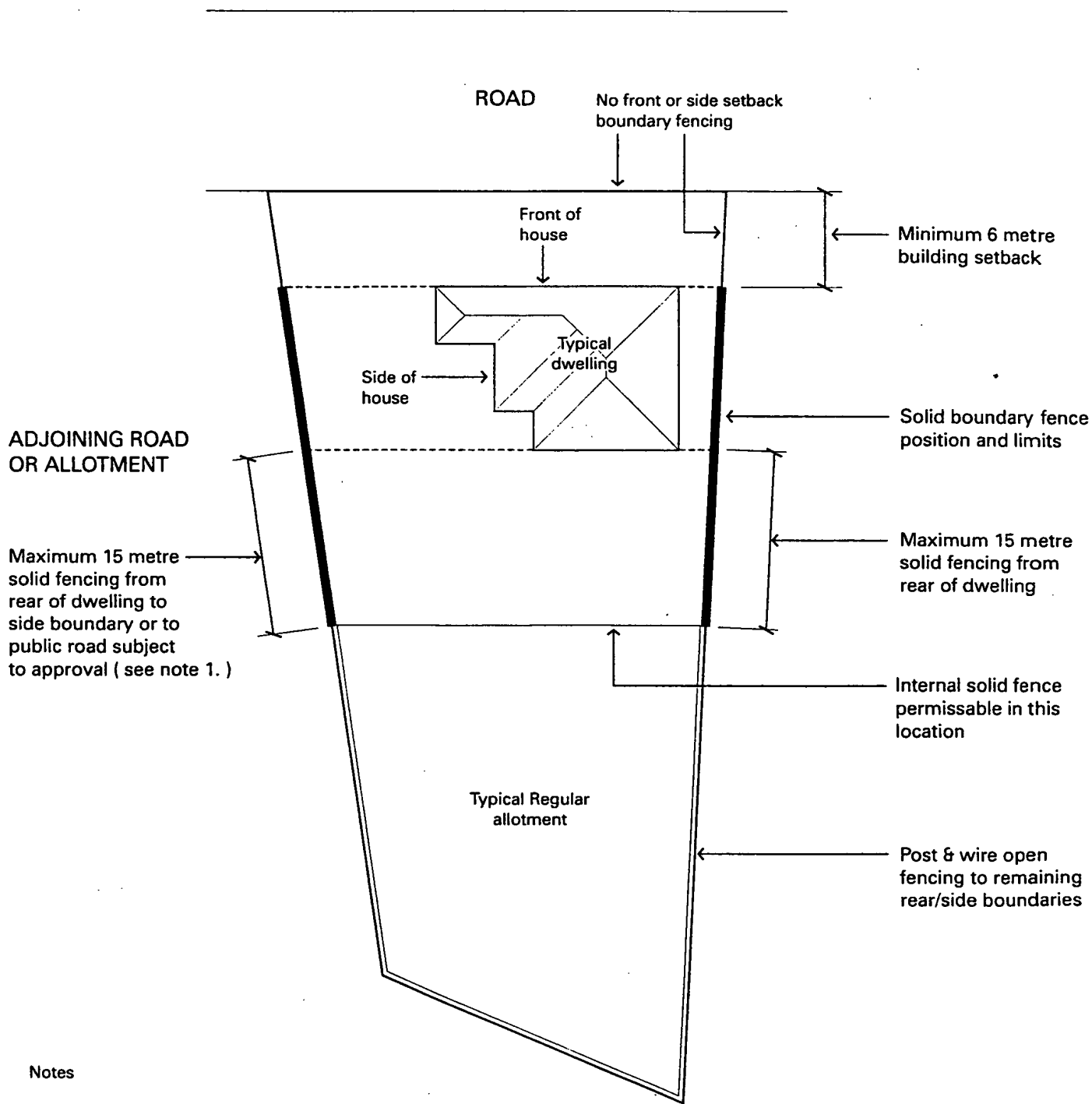
8.1. All waste without exception is to be collected and containerized prior to disposal off site.

8.2. During the course of any building works no dogs shall be allowed to roam freely over the site.

8.3. Damage caused by builders and/or Owners to any infrastructure item during the construction process shall be rectified at the Owner's expense.

SCHEDULE TWO FENCING DIAGRAM

DWELLING SETBACKS AND FENCING REQUIREMENTS



Notes

1. Solid fencing on irregular shaped and corner allotments require approval having regard to site and locality conditions
2. Plan not to scale

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