

Terms of Use

1. The Design Intent Plans

- a. The Design Intent Plans are drawings which set out basic details of the Exemplar Plans.
- b. The Design Intent Plans are provided solely for the purpose of the Licensee determining whether the Licensee wishes to acquire a licence to use the Exemplar Plans.
- c. The Design Intent Plans are not to be used for building or seeking a permit to build.
- d. Subject to these Terms of Use, the Licensor hereby grants to the Licensee a non-exclusive, royalty free, revocable limited licence to reproduce the Design Intent Plans for the sole purpose of the Licensee determining whether the Licensee wishes to acquire a licence to use the Exemplar Plans.
- e. The Licensee may provide a reasonable number of copies of the Design Intent Plans to its consultants and professional advisers for such purpose.

2. The Guidance Documents

- a. The Guidance Documents set out the principles for use and adaptation of the Exemplar Plans.
- b. Subject to these Terms of Use, the Licensor hereby grants to the Licensee a non-exclusive, royalty free, revocable limited licence to reproduce the Guidance Documents solely for:
 - i. determining together with the Design Intent Plans whether the Licensee wishes to acquire a licence to use the Exemplar Plans; and
 - ii. use in conjunction with the Exemplar Plans (provided the Licensee obtains a licence to use the Exemplar Plans by payment of the Licence Fee) and solely for obtaining the Purpose.

- c. The Licensee may provide a reasonable number of copies of the Guidance Documents to its consultants and professional advisers for such purposes.

3. The Exemplar Plans

- a. Subject to the Licensee paying the Licence Fee to the Licensor and to these Terms of Use, the Licensor hereby grants to the Licensee a non-exclusive, royalty bearing, revocable limited licence to reproduce and adapt the Exemplar Plans solely for and limited to the Purpose.
- b. The use rights licensed under sub-clause b are limited as follows:
 - i. the licensed rights expire if the Licensee has not submitted a planning application with the responsible authority to undertake development at the Site using the Exemplar Plans (as may be adapted hereunder) within 12 months of the later of accepting these Terms Of Use or any substitution of the Site agreed by the Licensor under clause c (or such longer period as the Licensor may in its discretion approve in writing);
 - ii. the Licensee may make only so many copies of the Exemplar Plans as are reasonably required for the Purpose;
 - iii. the Licensee may adapt the Exemplar Plans for use at the Site in a manner consistent with the Guidance Documents but has no more extensive right of alteration; and
 - iv. the Licensee may sublicense such rights to its builders and other consultants but only to the extent necessary for the obtaining of the Purpose.
- c. Subject to sub-clause e, the State retains copyright and all other intellectual property rights in the Design Intent Plans, Exemplar Plans and Guidance Documents. The Licensee must not use the Design Intent

Plans, Exemplar Plans or Guidance Documents save as expressly authorised under these Terms of Use.

- d. The Licensee must not assign or licence for reward any right comprised in copyright in the Design Intent Plans, Guidance Documents, Exemplar Plans or any adaptation of the Exemplar Plans.
- e. The Licensee shall be the owner of the copyright in any adaptation of the Exemplar Plans constituting an original work and created by or on behalf of the Licensee, provided however that:
 - i. the Licensee obtains no rights in relation to the Exemplar Plans other than as are licensed under clause e;
 - ii. the Licensee must only use such adaptation of the Exemplar Plans for the Purpose;
 - iii. there is no further right of adaptation;
 - iv. the Licensee must not license its rights in relation to the adaptation of the Exemplar Plans otherwise than to its builders and other consultants on a royalty free basis and solely for the Purpose;
 - v. the Licensee may not assign, transfer encumber or otherwise deal with its rights in relation to the adaptation of the Exemplar Plans; and
 - vi. any adaptation of the Exemplar Plans must comply with subclauses f to h both inclusive.
- f. The Licensee must ensure that all adaptations of the Exemplar Plans bear a statement in the following form:

"adapted from plans licensed by the State of Victoria, all rights in the original plans are reserved. The State of Victoria does not endorse or warrant these plans as adapted. The original terms of licence are available at <https://www.planning.vic.gov.au/policy-and-strategy/future-homes>"
- g. The Licensee must not remove or alter any copyright statement, disclaimer or identification information set out on the Design Intent Plans, Guidance Documents or Exemplar Plans (including any adaptation of the Plans).
- h. The Licensee must not remove or alter on the Design Intent Plans, Guidance Documents or Exemplar Plans (including any adaptation of the Exemplar Plans) any statement constituting a right of attribution

of an author, or any insignia or statement identifying a Contributor or identifying the Plans as produced under the Future Homes Project.

- i. The Licensee must attribute the Future Homes Project in all publicity relating to the Purpose including in any two or three-dimensional representation of the Exemplar Plans. The form of the attribution shall be as reasonably specified by the Licensor from time to time.
- j. The Licensee hereby grants to the State an irrevocable, perpetual, royalty free worldwide licence (together with the right of sublicense) to reproduce publish and communicate any adaptation of the Exemplar Plans made by or on behalf of the Licensee for non-commercial research, education and other public policy purposes. For the purposes of this clause the Licensee must provide the Licensor with a copy of all such adaptations and procure a Moral Rights Release in favour of the Licensor.

4. Site

- a. The Licensee must nominate a Site within the State of Victoria for use of the Plans.
- b. The Exemplar Plans may only be used for building at the Site.
- c. The Licensee may with the prior written consent of the Licensor request one substitution of the Site, provided that the Licensor will not consent to the Site being substituted under this clause c once the Licensee has submitted a planning application with the responsible authority to build on the Site.
- d. In no case may the Licensee use the Exemplar Plans with respect to more than one site or for the building of more than a single residential apartment development (without paying an additional licence fee and thereby obtaining an additional licence).

5. Licensor warranties

- a. The Licensor warrants that it is the sole legal and beneficial owner of Copyright in the Design Intent Plans, Guidance Documents and Exemplar Plans and has the right to grant the licences hereby granted under these Terms of Use.
- b. The warranty in sub-clause a is subject to any Moral Rights endorsement appearing on of the foregoing documents.
- c. The Licensee must immediately notify the Licensor if it receives any claim that the Licensee's use of the Exemplar Plans (or

any other document licensed under these Terms of Use) infringes another person's Intellectual Property, Moral or other rights.

- d. The Licensee must not institute or defend any legal proceedings in relation to the Exemplar Plans (or any other document licensed under these Terms of Use) without the prior written consent of the Licensor.

6. Victorian Planning Scheme

- a. The Victoria Planning Provisions may provide a streamlined town planning process in certain municipal planning schemes for residential building developments adapted from the Exemplar Plans.
- b. It is the sole responsibility of the Licensor to procure that any development proposal based upon the Exemplar Plans (including any adaptation of the Exemplar Plans) is endorsed by the relevant Determining Referral Authority.
- c. The Licensor gives no warranty, express or implied, that any particular development proposal based on the Exemplar Plans (including any adaptation of the Exemplar Plans) will be approved under particular planning scheme requirements or exempted from particular planning scheme requirements.
- d. The Licensor gives no warranty, express or implied, that a streamlined planning process will be adopted in any particular planning schemes.
- e. The Licensor may have statutory functions and duties under the PEA (including as a Determining Referral Authority). Nothing in these Terms of Use fetters the discretion of the Department in carrying out its functions and duties and the Department does not enter into these Terms of Use in the course of carrying out any function or duty under the PEA.

7. Acknowledgements & Disclaimers

- a. The Design Intent Plans, Guidance Documents, Exemplar Plans are provided on an as is basis and without warranty of any kind.
- b. The Exemplar Plans will require adaptation by the Licensee to the Site and to suit the Licensee's purposes.
- c. The Design Intent Plans, Guidance Documents and Exemplar Plans and all associated material do not constitute professional advice.

- d. The Exemplar Plans together with the Guidance Documents represent one or more options for achieving a particular energy performance (including NatHERS rating) and other environmentally sustainable design (**ESD**) principles. They do not cover all designs or specifications and energy and ESD performance and outcomes will vary depending on Site, final design, specification and other factors.
- e. Any representation by the Licensor as to quantities, bills of quantities, or estimated constructions costs are provided for guidance and do not constitute representations as to future matters. Quantities and costs may vary considerably depending upon many factors including the Site, final design, specification and other factors.
- f. The Licensor is not an architect within the meaning of the Architects Act 1991 (Vic), and does not claim or hold itself out as offering the services of an architect.
- g. No communication or representation (in any form) made by or on behalf of the Licensor, its employees and agents whether in respect of Exemplar Plans, Design Intent Plans, Guidance Documents, any adaptation of those created by the Licensee, the Site or town planning requirements shall be taken as or relied upon by the Licensee or any other person as constituting professional advice of any kind.
- h. It is the sole responsibility of the Licensee to make its own enquiries in relation to and obtain all necessary permits and approvals for any building development proposal based upon the Exemplar Plans.
- i. It is the sole responsibility of the Licensee to obtain independent professional advice (including but not necessarily limited to architectural advice, engineering advice, town planning advice, construction advice and legal advice) in relation to the above matters and for any proposed building development based upon the Exemplar Plans including any adaptation of the Exemplar Plans and including but not limited to:
 - i. whether the Exemplar Plans and Guidance Documents are suitable for the Licensee's purposes including (but not limited to) development of the Site;
 - ii. specifications for any final design;

- iii. the energy performance and ESD outcomes of any building development based upon the Exemplar Plans;
- iv. bills of quantities and construction costs;
- v. compliance with town planning guidelines and requirements;
- vi. compliance with the Building Code of Australia, National Construction Code, the requirements of Fire Rescue Victoria and all other regulatory requirements; and
- vii. these Terms of Use.

8. Licensee warranties

- a. The Licensee warrants to the Licensor as follows:
 - i. the Licensee has taken professional advice and has determined without reliance on any representation by the Licensor that the Exemplar Plans and Guidance Documents are suitable for the purposes of the Licensee;
 - ii. the Licensee has made its own assessment of the commercial value of the Exemplar Plans and Guidance Documents; and
 - iii. the Licensee has read and understood those Terms of Use and in particular the acknowledgements and disclaimers set out herein and has had an opportunity to obtain independent legal advice in relation to these Terms of Use.

9. Limitation of liability

- a. The Licensor gives no warranty express or implied that the Design Intent Plans, Guidance Documents or Exemplar Plans are fit for the purposes of the Licensee.
- b. The Licensee uses the Design Intent Plans, Guidance Documents and Exemplar Plans and any associated material solely on its own risk.
- c. To the maximum extent permitted by law, the Licensee hereby discharges and forever releases the Licensor and the Contributors from and against all claims, costs, damages, expenses and liability howsoever described and arising out of or incidental to the Licensee's use of the Design Intent Plans, Guidance Documents and Exemplar Plans and any associated material, provided however that this release does not apply in relation to a breach of the express Licensor warranties set out in these Terms of Use.

- d. This clause 9 (limitation of liability) survives termination of these Terms of Use.

10. General

- a. These Terms of Use and the licences granted hereunder are personal to the Licensee and may not be assigned, encumbered or otherwise dealt with by the Licensee.
- b. These Terms of Use constitute the entire agreement between the Licensor and the Licensee with respect to their subject matter and supersede all previous communications, representations, inducements undertakings agreements or arrangements whatsoever.
- c. Any waiver by the Licensor must be in writing and shall be effective only to the extent expressly set out in such waiver.
- d. These Terms of Use shall be read and construed according to the laws of the State of Victoria and the parties submit to the exclusive jurisdiction of the courts of that State.
- e. These Terms of Use may not be varied except in writing signed by both the parties.
- f. The Licensor may terminate the licences granted under these Terms of Use if the Licensee fails to perform any of its obligations under or otherwise breaches a provision of these Terms of Use and that failure or breach is incapable of remedy, or if capable of remedy, continues for 14 days after the Licensee is given a written notice by the Licensor requiring the breach to be remedied.
- g. In the event of termination all rights of the Licensee granted under these Terms of Use shall terminate and the Licensee shall forthwith cease to make any use of the Exemplar Plans and Guidance Documents and upon demand deliver up to the Licensor all copies of such material in the Licensee's possession custody or control.
- h. These Terms of Use may be executed in counterparts. All executed counterparts are taken to constitute one document.
- i. These Terms of Use may be executed in any way authorised by:
 - i. in the case of a corporation, the Corporations Act 2001; and
 - ii. the Electronic Transactions (Victoria) Act 2000.

11. Definitions & Interpretation

- a. In these Terms of Use:
- i. headings shall not affect interpretation;
 - ii. a reference to the specific does not limit the general;
 - iii. a reference to a person includes a reference to a natural person, company, partnership and joint venture.
- b. The following terms have the following meanings:-
- i. **Contributors** means the persons who contributed to the development of the Plans and Guidance Documents;
 - ii. **Design Intent Plans** means the conceptual drawings setting out basic details of the Exemplar Plans and published by the Licensor through the Website;
 - iii. **Department** means Department of Environment, Land, Water and Planning ABN 90 719 052 204;
 - iv. **Determining Referral Authority** has the meaning given to that term by the PEA;
 - v. **Exemplar Plans** means the exemplar building plans & specifications developed under the Future Homes Project for a residential apartment building and made available to by the Licensor to the Licensee subject to these Terms of Use and further described in the Schedule.
 - vi. **Future Homes Project** means the project conducted by the Licensor for the production of exemplar residential apartment designs and an associated streamlined planning process;
 - vii. **Guidance Documents** means the principles and adaption guidance documents for the Exemplar Plans published by the Licensor from time to time and further described in the Schedule.
 - viii. **Intellectual Property Rights** means statutory and other proprietary rights in respect of trademarks, patents, circuit layouts, copyrights, confidential information and all other intellectual property rights as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation of July 1967, as amended;
 - ix. **Licence Fee** means the licence fee set out in the Schedule;
 - x. **Licensee** means the person identified in the Schedule;
 - xi. **Licensor** means the State of Victoria through the Department;
 - xii. **Moral Rights Release** means a release by the author of their moral rights being the suite of rights conferred on a creator of copyright works by part IX of the Copyright Act 1968 or any analogous rights in respect of any other jurisdiction and **Moral Rights** has a concomitant meaning;
 - xiii. **PEA** means the Planning and Environment Act 1987;
 - xiv. **Purpose** means the purpose of building residential apartments using the Exemplar Plans (and as may be adapted under these Terms of Use) at the Site;
 - xv. **Site** means the site for the use of the Exemplar Plans nominated by the Licensee and identified in the Schedule and must be a Site within the State of Victoria; and
 - xvi. **Victoria Planning Provisions** means the Victoria Planning Provisions approved under part 1A of the PEA and as amended from time to time;
 - xvii. **Website** means the website operated by or on behalf of the Licensor at URL <https://www.planning.vic.gov.au/policy-and-strategy/future-homes>

SCHEDULE

Licensee [insert Company Pty Ltd ACN ### ##]
 [insert ABN ## ## ##]
 [Insert registered office address ##]

Licence Fee [\$## plus GST] [DELWP to provide]

Site [insert site address details nominated by Licensee##]

Exemplar Plan Title Exemplar Plan A
 Exemplar Plan B
 Exemplar Plan C
 Exemplar Plan D
 [delete plans that are not relevant]

Guidance Document Title Building Future Homes: Adaptation Guide

[Please complete and sign Options 1 or 2. Once returned, DELWP will countersign and provide you with an executed copy of this agreement along with your purchased plans]

Signing page

Executed as an agreement.

Executed by [DELWP to insert name]
a duly authorised officer for and on
behalf of the **Department of
Environment Land Water and
Planning** in the presence of:

Witness's signature

Authorised officer's signature

Name

Date

Date

[Note: Select appropriate execution clause for Licensee. See options below. It is now unusual to execute with a common seal, if a licensee requests this please seek legal advice]

Option 1: Company - execution without using a common seal in accordance with section 127(1) of the Corporations Act 2001 (most common form)

**Executed by [insert name] ACN
[insert] in accordance with s 127(1) of
the Corporations Act 2001 (Cth) in the
presence of:**

Signature of Director

Signature of Director/Company Secretary
(Please delete as applicable)

Name of Director
(print)

Name of Director/Company Secretary
(print)

Option 2: Company (sole director and who is also company secretary) - execution without using a common seal in accordance with s 127(1) of the Corporations Act 2001 (Cth) (common form)

Executed by **[insert company name]**

ACN **[insert]** in accordance with
s 127(1) of the *Corporations Act 2001*
(Cth) in the presence of:

Signature of Sole Director and Sole
Company Secretary

Who states that he/she is the Sole Director and
the Sole Company Secretary of the company

Name of Director and Sole Company
Secretary
(print)