

**THIS IS THE AGREEMENT REFERRED  
TO IN S.C. 15 AND PARAGRAPH 2  
OF THE VENDOR'S STATEMENT AND MARKED "A".**

**AGREEMENT**

**S.173, PLANNING AND ENVIRONMENT ACT 1987**

THIS AGREEMENT is made on 2 May 1990 by CITY OF KEW ("the City") and NAURU PHOSPHATE ROYALTIES TRUST of 80 Collins Street, Melbourne ("the Purchaser")

**WHEREAS**

1. The Purchaser has purchased the land described on Plan "A" attached hereto being Crown Allotment 61H Parish of Boroondara ("the land") under a Contract of Sale dated 24 April 1990 from the Minister for Property and Services.
2. The Contract is due for completion on 4 May 1990 or earlier by agreement when the Purchaser will become entitled to vacant possession of and to be granted the land in fee simple.
3. The land is affected by the provisions of the Kew Planning Scheme ("the Scheme").
4. The City is the responsible authority for the purposes of the Planning and Environment Act 1987 ("the Act") in relation to the Scheme.
5. Grafted oak trees (*Quercus canariensis*) and elms (*Ulmus procera*) ("the trees") are located on land immediately abutting the land to the north and shown on Plan "B" attached hereto and the City and the Purchaser agree that the trees should be preserved for historic reasons so far as it is reasonably possible to do so and that restrictions should be placed upon the use of the land for that purpose.
6. The Purchaser has agreed to enter into this agreement with the City under section 173 of the Act.

**NOW THIS AGREEMENT WITNESSES -**

7. The Purchaser for himself and his successors in title with the intent that the covenants hereunder shall bind and run with the land **HEREBY COVENANTS AND AGREES** with the City as follows -


7. NOT CHARGEABLE WITH STAMP DUTY 21 MAY 1990  
notwithstanding the provisions of Clause 7(1)(c) of the Scheme not to subdivide the land into lots of less than 700 square metres in area;  
notwithstanding the uses otherwise permitted within the Residential C Zone in the Scheme not to use or cause or permit to be used any lot on any subdivision of the land other than for the purposes of a detached house or for dual occupancy and uses ancillary thereto (including a tennis court);

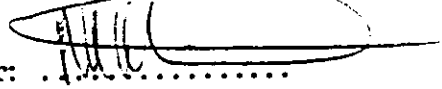
- 7.3 save with the permission of the City not to cause or allow:
- 7.3.1 any tree on or overhanging the land to be altered pruned injured destroyed or removed except where the Purchaser reasonably believes there is an immediate and actual hazard which may cause injury to any person or property;
- 7.3.2 any development of the land under the canopy of the trees, including any paving or construction of any buildings, including fences, swimming pools, tennis courts, garages and other outbuildings;
- 7.3.3 the construction or carrying out of any works, including any excavation or alteration in the level of the soil under the canopy or cutting of trenches or laying of any services;
- 7.3.4 the use of the land under the canopy of the trees which may result in the compaction of soil, including the storage of materials, vehicular access or parking of vehicles;
- 7.3.5 the washing or spreading of any chemicals which may be detrimental to the trees into the soil under the canopy of the trees.
- 7.4 For the purposes of sub-clause 7.3, "canopy" means the land contained within the drip-lines of the trees.
- 7.5 Notwithstanding anything in sub-clause 7.3 hereof, permission of the City will not be required if any activity or use mentioned in that sub-clause is required under or in pursuance of any Act of Parliament and Regulations thereunder or by any public authority, government department or municipal corporation.
- 7.6 The City agrees that in determining whether or not to grant permission under sub-clause 7.3 hereof it shall take into account -
- 7.6.1 that the trees are of historic interest and the objective is to retain and enhance the trees, protect them against any activity which may impair their health, natural beauty or importance as part of an avenue of trees for present and future generations; and
- 7.6.2 any report which may be obtained from a suitably qualified or experienced person on the existing condition of the trees and how they may be affected by the granting of permission under sub-clause 7.3 hereof for the buildings works or other developments or the proposed usage.
- 7.7 Vehicular access to the land or to any lot in any subdivision of the land shall only be from Wills Street.
8. If any provision of this Agreement is not valid it shall not affect the validity of the other provisions of this Agreement but shall be read down or severed so as to leave the other provisions of this Agreement in effect.
9. The Purchaser agrees to do all things necessary to enable a Memorandum of this Agreement to be entered on the relevant Crown Grant or Certificate or Certificates of Title to the land in accordance with Section 181 of the Act including signing any further Agreement, acknowledgement or document to enable the said Memorandum to be registered under that Section.

- 10. The Purchaser and the City covenant and agree to do all things necessary including the signing of such further Agreement or other documents that may be required to ensure that each of their covenants and agreements hereunder are carried out and effected.
- 11. Any Notice required to be given to the Purchaser and any Notice required to be given to any other owner of the land or any part thereof shall be deemed to be given if forwarded by pre-paid post to the Purchaser or such owner at the land or such relevant part and any such Notice shall be deemed to have been received on the day after posting when it would be delivered in the ordinary course of post.
- 12. The City and the Purchaser agree that for the purpose of section 176 of the Act this Agreement comes into effect and is binding on them from the date it is made.

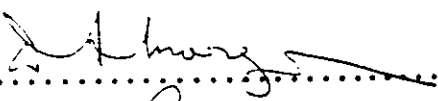
The City and the Purchaser acknowledge their acceptance of this Agreement.

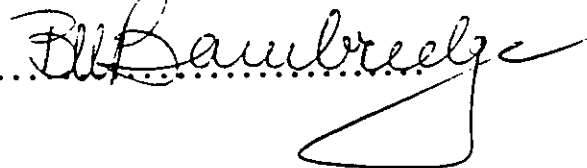
THE CORPORATE SEAL of CITY OF KEW )  
was hereunto affixed in the )  
presence of: )

Mayor: ..... 

Chief Executive Officer: ..... 

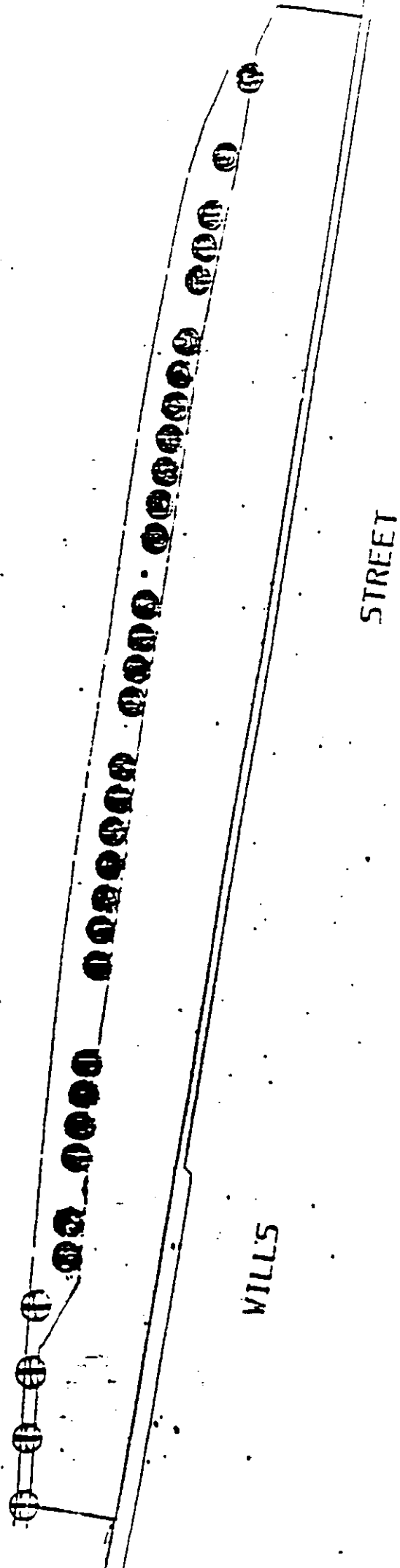
THE COMMON SEAL of THE NAURU )  
PHOSPHATE ROYALTIES TRUST was )  
affixed hereto in the presence of: )

Trustee: ..... 

Secretary: ..... 



PLAN 3



WILLS STREET

⊕ Quercus canariensis (grafted)

⊖ Ulmus procera