

	Memorandum of Advice
From	Ben Thrift and Vicki Sharp
To	Trevor Wilson, Balanced Securities Limited
cc	David Geer
Date	15 May 2024
Subject	Balanced Securities Registered First Mortgage Advice
Matter No	5607707

Trevor,

We write to confirm our advice in respect of Balanced Securities Limited's (**Balanced Securities**) rights in connection with its power of sale as mortgagee pursuant to registered mortgages and the absolute priority of its interests measured against interests asserted by certain third parties.

Our advice is provided to, and for the benefit of, Balanced Securities. Any other party in receipt of this memorandum or having access to this memorandum may not rely on the contents of this advice and should seek its own legal advice in respect of these matters.

1 **Balanced Securities' interests**

Balanced Securities holds the following registered mortgages:

- (a) Mortgage AQ989911C registered on 7 May 2018 in respect of the land comprised in Certificate of Title Volume 08954 Folio 174, being the land known as 610 Davis Road, Tarneit;
- (b) Mortgage AQ283781Y registered on 25 September 2017 in respect of the land comprised in Certificate of Title Volume 08954 Folio 175, being the land known as 620 Davis Road, Tarneit;
- (c) Mortgage AR883845U registered on 30 January 2019 in respect of the land comprised in Certificate of Title Volume 08954 Folio 176, being the land known as 640 Davis Road, Tarneit; and
- (d) Mortgage AN614642A registered on 3 March 2017 in respect of the land comprised in Certificate of Title Volume 9109 Folio 389, being the known as 155 Kenning Road, Tarneit,

(together, **Mortgages over the Land**).

Qartaba Homes Pty Ltd (**Qartaba**) is, and has been since the date of the Mortgages, the registered proprietor of the Land (other than in respect of 620 Davis Road, Tarneit of which Qartaba became the registered proprietor on 24 July 2017).

2 **Balanced Securities' Rights as First Registered Mortgagee**

We are instructed that Balanced Securities has received notice from certain parties who have claimed that they are purchasers of subdivided lots of the Land from Qartaba pursuant to contracts of sale (**Purported Contracts**).

We are further instructed that at the time when it entered into the Mortgages and made loans to Qartaba, Balanced Securities had no knowledge howsoever or whatsoever of the Purported Contracts. No caveats were registered on the titles to the Land at the time the Balance Securities mortgages were registered.

At the time when it entered into the Mortgages, Balanced Securities was provided with Statutory Declarations by two directors of Qartaba, on behalf of Qartaba, which included the following statements:

"9. *The Company [Qartaba] has not created any unregistered or equitable interest in the property by Deed, Licences, Lease or in any other manner, written or otherwise.*

...

11. *The Company has not sold, agreed to sell, offered for sale nor granted any option over the property or any part thereof and will not do so prior to any advance under the mortgage loan from the Lender."*

Balanced Securities holds a legal interest as a registered first mortgagee over the Land. Pursuant to Section 42 of the Transfer of Land Act the interest of Balanced Securities is absolutely paramount and is not subject any of the exceptions referred to in that section. Balanced Securities holds its interest in the Land absolutely free from any encumbrances that are alleged by third parties pursuant to Purported Contracts.

In our view Balanced Securities is entitled to exercise its power of sale pursuant to the Mortgages and section 77 of the Transfer of Land Act. In the event that any purchaser under the Purported Contracts seeks to impede the sale of the Land including by registering a Caveat, Balanced Securities will be entitled to apply to Court to seek orders facilitating the sale together with costs and damages.

Any purchaser under a sale by Balanced Securities as mortgagee will as matter of law take clear title pursuant to section 77(4) of the Transfer of Land Act.

Consistent with section 77(3) of the Transfer of Land Act, after payment of all costs, charges and expenses properly incurred incidental to the sale of the Property and consequent on the mortgagor's default and in payment of the moneys which are due ,owing or payable pursuant to Balanced Securities' mortgages, Balanced Securities will pay the residue (if any) from any mortgagee sale into the Supreme Court of Victoria.

Yours sincerely

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