

Date / /

Agreement under section 173 of the Planning and Environment Act 1987

Subject Land: **###insert address (or describe land if only part of a site)##**

Ballarat City Council
and

###insert name of Owner##
###insert ACN number if applicable##

Contents

- 1. **Definitions.....2**
- 2. **Interpretation4**
- 3. **Purpose of Agreement.....4**
- 4. **Reasons for Agreement.....5**
- 5. **Agreement required5**
- 6. **Owner's specific obligations5**
- 7. **Owner's further obligations5**
 - 7.1 Notice and registration.....5
 - 7.2 Further actions.....6
 - 7.3 Fees.....6
 - 7.4 Council's costs to be paid6
 - 7.5 Time for determining satisfaction.....6
 - 7.6 Interest for overdue moneys7
 - 7.7 Notification of compliance with Owner's obligations.....7
- 8. **Agreement under section 173 of the Act.....7**
- 9. **Owner's warranties7**
- 10. **Successors in title7**
- 11. **General matters7**
 - 11.1 Notices.....7
 - 11.2 No waiver8
 - 11.3 Severability8
 - 11.4 No fettering of Council's powers8
 - 11.5 Inspection of documents.....8
 - 11.6 Governing law.....8
- 12. **Commencement of Agreement.....8**
- 13. **Ending of Agreement.....8**

Agreement under section 173 of the Planning and Environment Act 1987

Dated / /

Parties

Name	Ballarat City Council
Address	25 Armstrong Street South, Ballarat, Victoria
Short name	Council

Name	##insert Owner's name##
Address	##insert Owner's address##
Short name	Owner

Background

- A. Council is the responsible authority for the Planning Scheme.
- B. The Owner is or is entitled to be the registered proprietor of the Subject Land.
- C. **##this provision must be included if the requirement to enter the agreement arises under a condition of a planning permit##**Council issued the Planning Permit requiring the Owner to enter into this Agreement providing for the matters set out in condition **##** of the Planning Permit.
- D. **##this provision must be included if the requirement to enter the agreement arises under the planning scheme##**The Planning Scheme provides that the Owner is required to enter into this Agreement providing for the matters set out in clause **##** of the Planning Scheme.
- E. **##this provision must be included if the requirement to enter the agreement arises as a condition of Council agreeing to support an amendment to the Planning Scheme##**Council required the Owner to enter into this Agreement in consideration of Council supporting an amendment to the Planning Scheme.
- F. **##if none of the above, specify the reason that the Agreement is required##**
- G. **##this provision must be included if the Subject Land is subject to a mortgage##**As at the date of this Agreement, the Subject Land is encumbered by a mortgage in favour of the Mortgagee. The Mortgagee consents to the Owner entering into this Agreement.
- H. **##this provision must be included if the Subject Land is subject to a caveat##** As at the date of this Agreement, the Subject Land is encumbered by a caveat in favour of the Caveator. The Caveator consents to the Owner entering into this Agreement.

- I. ~~##this provision must be included if the Subject Land is subject to a mortgage and a caveat##~~ As at the date of this Agreement, the Subject Land is encumbered by a mortgage and caveat in favour of the Mortgagee and Caveator. The Mortgagee and Caveator consent to the Owner entering into this Agreement.
- J. The Parties enter into this Agreement:
- J.1 to achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land; and
- J.2 ~~##this provision must be included if the requirement to enter the agreement arises under a condition of a planning permit##~~to give effect to the Planning Permit.
- J.3 ~~##this provision must be included if the requirement to enter the agreement arises under the Planning Scheme##~~to give effect to the Planning Scheme.
- J.4 ~~##this provision must be included if the requirement to enter the agreement arises as a condition of a Council supporting an amendment to the Planning Scheme##~~to give effect to the agreement reached between Council and the Owner regarding Council's support of the proposed amendment to the Planning Scheme.
- J.5 ~~##if any other reason is specified above, then insert reason for entering agreement##.~~

The Parties agree

1. Definitions

In this Agreement unless the context admits otherwise:

Act means the *Planning and Environment Act 1987*.

Agreement means this Agreement and includes this Agreement as amended from time to time.

~~##this provision must be included if any of the Owner's obligations are required to be performed to Council's satisfaction ##~~**CPI** means the annual Consumer Price Index (All Groups-Melbourne) as published by the Australian Bureau of Statistics, or, if that index number is no longer published, its substitute as a cumulative indicator of the inflation rate in Australia, as determined by Council from time to time.

~~##this provision must be included if the Subject Land is subject to a caveat##~~**Caveator** means the person registered as caveator of the Subject Land or any part of it.

Current Address for Service

for Council means the address shown on page 1 of this Agreement, or any other address listed on Council's website; and

for the Owner means the address shown on page 1 of this Agreement or any other address provided by the Owner to Council for any purpose or purposes relating to the Subject Land.

Current Email Address for Service

for Council means ballcity@ballarat.vic.gov.au, or any other principal office email address listed on Council's website; and

for the Owner means any email address provided by the Owner to Council for the express purpose of electronic communication regarding this Agreement.

Current Number for Service

for Council means 03 5320 ####, or any other facsimile number listed on Council's website; and

for the Owner means any facsimile number provided by the Owner to Council for the express purpose of facsimile communication regarding this Agreement.

Endorsed Plan means the plan endorsed with the stamp of Council from time to time as the plan which forms part of the Planning Permit.

##this provision must be included if any of the Owner's obligations are required to be performed to Council's satisfaction ##**Indexation** means an annual adjustment to the Satisfaction Fee carried out in accordance with CPI.

##this provision must be included if the Subject Land is subject to a mortgage##**Mortgagee** means the person registered or entitled from time to time to be registered as mortgagee of the Subject Land or any part of it.

Owner means the person registered or entitled from time to time to be registered as proprietor of an estate in fee simple of the Subject Land or any part of it and includes a mortgagee-in-possession.

Owner's obligations includes the Owner's specific obligations and the Owner's further obligations.

Party or Parties means the Parties to this Agreement.

##this provision must be included where the owner is required to undertake Public Works where those works are not covered by sections 15-17 of the *Subdivision Act 1988*##**Plan Checking Fee** means a fee payable to Council by the Owner for checking plans for Public Works and which is payable at the rate of 0.75 per cent of the estimated cost of constructing the Public Works shown on the plans to be checked.

##this provision must be included if the requirement to enter the agreement arises under the condition of a planning permit##**Planning Permit** means planning permit No. [##insert planning permit number##], as amended from time to time, issued on [##insert date of issue of planning permit##].

Planning Scheme means the Ballarat Planning Scheme and any other planning scheme that applies to the Subject Land.

##this provision must be included where the owner is required to undertake Public Works where those works are not covered by sections 15-17 of the *Subdivision Act 1988*##**Public Works** means works that are to be constructed by or on behalf of the Owner on land other than the Subject Land for the purpose of providing roads or public utility services to service or otherwise provide benefit to the Subject Land.

Satisfaction Fee means a fee payable by the Owner to Council for determining whether any one of the Owner's obligations has been undertaken to Council's satisfaction and which is payable at the rate of:

- if paid within 12 months of the date this Agreement commences, \$102; or
- if paid at any time after 12 months of the date this Agreement commences, \$102 plus Indexation.

Subject Land means the land situated at [##insert address of Subject Land##] being the land referred to in Certificate of Title Volume [##insert Volume number##] Folio [##insert Folio number##] and any reference to the Subject Land includes any lot created by the subdivision of the Subject Land or any part of it.

##this provision must be included where the owner is required to undertake Public Works where those works are not covered by sections 15-17 of the *Subdivision Act 1988*##
Supervision Fee means a fee payable to Council by the Owner for supervision of Public Works and which is payable at the rate of 2.5 per cent of the estimated cost of constructing the Public Works.

2. Interpretation

In this Agreement unless the context admits otherwise:

- 2.1 the singular includes the plural and vice versa;
- 2.2 a reference to a gender includes all genders;
- 2.3 a reference to a person includes a reference to a firm, corporation or other corporate body and that person's successors in law;
- 2.4 any agreement, representation, warranty or indemnity by 2 or more persons (including where 2 or more persons are included in the same defined term) binds them jointly and severally;
- 2.5 a term used has its ordinary meaning unless that term is defined in this Agreement. If a term is not defined in this Agreement and it is defined in the Act, it has the meaning as defined in the Act;
- 2.6 a reference to an Act, regulation or the Planning Scheme includes any Act, regulation or amendment amending, consolidating or replacing the Act, regulation or Planning Scheme;
- 2.7 the Background forms part of this Agreement;
- 2.8 the Owner's obligations take effect as separate and several covenants which are annexed to and run at law and equity with the Subject Land; and
- 2.9 any reference to a clause, page, condition, attachment or term is a reference to a clause, page, condition, attachment or term of this Agreement.

3. Purpose of Agreement

The Parties acknowledge and agree that the purposes of this Agreement are to:

- 3.1 to give effect to the ##Planning Permit or Planning Scheme or agreement to support the amendment to the Planning Scheme or other (per the Background)##; and

- 3.2 to achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

4. Reasons for Agreement

The Parties acknowledge and agree that this Agreement has been entered into for the following reasons:

- 4.1 **##this provision must be included if the requirement to enter the agreement arises under the condition of a planning permit##**Council would not have issued the Planning Permit without the condition requiring this Agreement; and
- 4.2 **##this provision must be included if the requirement to enter the agreement arises under the condition of a planning permit##**the Owner has elected to enter into this Agreement in order to take the benefit of the Planning Permit.
- 4.3 **##this provision must be included if the requirement to enter the agreement arises under the Planning Scheme##**the Planning Scheme requires an Agreement to be entered into in certain circumstances; and
- 4.4 **##this provision must be included if the requirement to enter the agreement arises under the Planning Scheme##**the Owner has elected to enter into this Agreement in order to take the benefit of **##insert that which agreement is pre-condition for under the Planning Scheme##**.
- 4.5 **##this provision must be included if the requirement to enter the agreement arises as a condition of Council agreeing to support an amendment to the Planning Scheme##**the Owner and Council agreed that the Owner would enter into this Agreement as a condition of Council supporting the proposed amendment to the Planning Scheme; and
- 4.6 **##this provision must be included if the requirement to enter the agreement arises as a condition of Council agreeing to support an amendment to the Planning Scheme##**the Owner has elected to enter into this Agreement in order to secure Council's support of the proposed amendment to the Planning Scheme.

5. Agreement required

The Parties agree that this Agreement will continue to be required until the Owner has complied with all of the Owner's obligations under this Agreement.

6. Owner's specific obligations

##specific obligations of Owner##

7. Owner's further obligations

7.1 Notice and registration

The Owner must bring this Agreement to the attention of all prospective occupiers, purchasers, lessees, licensees, mortgagees, chargees, transferees and assigns.

7.2 Further actions

The Owner:

- 7.2.1 must do all things necessary to give effect to this Agreement;
- 7.2.2 consents to Council applying to the Registrar of Titles to record this Agreement on the Certificate of Title of the Subject Land in accordance with section 181 of the Act and do all things necessary to enable Council to do so, including:
 - (a) sign any further agreement, acknowledgment or document; and
 - (b) obtain all necessary consents to enable the recording to be made.

7.3 Fees

##this provision must be included where the owner is required to undertake Public Works where those works are not covered by sections 15-17 of the *Subdivision Act* 1988 (7.3.1& 7.3.2) or where some other matter is required to be undertaken to Council's satisfaction (7.3.3)## Within 14 days of a written request for payment, the Owner must pay to Council, any:

- 7.3.1 Plan Checking Fee;
- 7.3.2 Supervision Fee; and
- 7.3.3 Satisfaction Fee.

7.4 Council's costs to be paid

Within 14 days of a written request for payment, the Owner must pay to Council, Council's costs and expenses (including legal expenses) relating to this Agreement, including:

- 7.4.1 preparing, drafting, finalising, signing, recording and enforcing this Agreement;
- 7.4.2 preparing, drafting, finalising and recording any amendment to this Agreement;
- 7.4.3 determining whether any of the Owner's obligations have been undertaken to Council's satisfaction; and
- 7.4.4 preparing, drafting, finalising and recording any document to give effect to the ending of this Agreement.

7.5 Time for determining satisfaction

If Council makes a request for payment of:

- 7.5.1 a fee under clause 7.3.3; or
- 7.5.2 any costs or expenses under clause 7.4.3,

the Parties agree that Council will not decide whether the Owner's obligation has been undertaken to Council's satisfaction until payment has been made to Council in accordance with the request.

7.6 Interest for overdue moneys

Any amount due under this Agreement but unpaid by the due date incurs interest at the rate prescribed under section 227A of the *Local Government Act* 1989 and any payment made shall be first directed to payment of interest and then the principal amount owing.

7.7 Notification of compliance with Owner's obligations

The Owner must notify Council of its compliance with all of the Owner's obligations.

8. Agreement under section 173 of the Act

Without limiting or restricting the respective powers to enter into this Agreement, and insofar as it can be so treated, this Agreement is made as a deed in accordance with section 173 of the Act.

9. Owner's warranties

The Owner warrants that apart from the Owner and any other person who has consented in writing to this Agreement, no other person has any interest, either legal or equitable, in the Subject Land which may be affected by this Agreement.

10. Successors in title

Until such time as a memorandum of this Agreement is recorded on the Certificate of Title of the Subject Land, the Owner must require successors in title to:

- 10.1 give effect to this Agreement; and
- 10.2 enter into a deed agreeing to be bound by the terms of this Agreement.

11. General matters

11.1 Notices

A notice or other communication required or permitted to be served by a Party on another Party must be in writing and may be served:

- 11.1.1 personally on the other Party;
- 11.1.2 by leaving it at the Party's Current Address for Service;
- 11.1.3 by posting it by prepaid post addressed to that Party at the Party's Current Address for Service;
- 11.1.4 by facsimile to the Party's Current Number for Service; or
- 11.1.5 by email to the Party's Current Email Address for Service.

11.2 No waiver

Any time or other indulgence granted by Council to the Owner or any variation of this Agreement or any judgment or order obtained by Council against the Owner does not amount to a waiver of any of Council's rights or remedies under this Agreement.

11.3 Severability

If a court, arbitrator, tribunal or other competent authority determines that any part of this Agreement is unenforceable, illegal or void then that part is severed with the other provisions of this Agreement remaining operative.

11.4 No fettering of Council's powers

This Agreement does not fetter or restrict Council's power or discretion to make decisions or impose requirements or conditions in connection with the grant of planning approvals or certification of plans subdividing the Subject Land or relating to use or development of the Subject Land.

11.5 Inspection of documents

A copy of any planning permit, document or plan referred to in this Agreement is available for inspection at Council offices during normal business hours upon giving the Council reasonable notice.

11.6 Governing law

This Agreement is governed by and is to be construed in accordance with the laws of Victoria.

12. Commencement of Agreement

This Agreement commences on the date specified on page one or if no date is specified on page one, the date Council executes the Agreement.

13. Ending of Agreement

13.1 This Agreement ends when the Owner has complied with all of the Owner's obligations.

13.2 After the Agreement has ended, Council will, at the Owner's written request, apply to the Registrar of Titles under section 183(1) of the Act to cancel the record of this Agreement.

Signing Page

Signed, sealed and delivered as a deed by the Parties.

Signed sealed and delivered by the Ballarat City Council was affixed in the presence of -

.....
Natalie Reiter
General Manager City Strategy

##Execution clause if Owner is individual (delete if not)##

Signed sealed and delivered by ##insert Owner's name## in the presence of:)
)
)

.....
Witness

##Execution clause if Owner is Company with sole director (delete if not)##

Executed by ##insert Owner's name## in accordance with section 127(1) of the Corporations Act 2001:)
)
)
)

..... Signature of Sole Director and Sole Company Secretary

..... Print full name

##Execution clause if Owner is Company with multiple directors (delete if not)##

Executed by xx in accordance with section 127(1) of the Corporations Act 2001:)
)
)
)

.....
Signature of Director

.....
Signature of Director (or Company Secretary)

.....
Print full name

.....
Print full name

##this provision must be included if the Subject Land is subject to a mortgage##Mortgagee's Consent

##insert Mortgagee name## as Mortgagee under Instrument of mortgage No. **##insert mortgage number##** consents to the Owner entering into this Agreement and in the event that the Mortgagee becomes mortgagee-in-possession, agrees to be bound by the covenants and conditions of this Agreement.

.....

##this provision must be included if the Subject Land is subject to a caveat##Caveator's Consent

##insert Caveator's name## as Caveator of registered caveat No. **##insert caveat number##** consents to the Owner entering into this Agreement.

.....