|  |  |  |
| --- | --- | --- |
|  |  | **Agreement under section 173 of the Planning and Environment Act 1987** |
|  |  | [*insert address of the Land*] |
|  |  |  |

Information table

**Date of Agreement:**

**Parties:**

Name Wellington Shire Council

Short form name Council

Notice details 18 Desailly Street, Sale, Vic, 3850

Name [*Insert name of owners*]

Short form name Owners

Notice details [*Insert address of owners for notice*]

*[Note: Insert the name of any other parties (eg if more than one owner, third party)*

Name

Short form name

Notice details*]*

**Background:**

A The Responsible Authority is the responsible authority for the administration and enforcement of the Planning Scheme pursuant to the Act.

B The Land comprises [*insert title details*] and is subject to the Planning Scheme.

C The Owners are the registered proprietors or are entitled to be registered as the proprietor of the Land.

D The Responsible Authority on [*insert date*] issued the Permit which allows [*insert details of what the Permit allows*].

E Condition [*insert relevant condition requiring section 173 agreement*] of the Permit provides:

*[insert text of relevant condition]*

G [*Note: Include if the Land is subject to a mortgage:*

The Owners have obtained the consent of the Mortgagee of the Land to their entering into this agreement (see Appendix A).]

H [*Note: Include if the land is subject to a caveat:*

The Owners have obtained the consent of the Caveator to their entering into this agreement (see Appendix A).

Agreed terms

1. **Defined terms and interpretation**
   1. **Defined terms**

In this Agreement:

**“Act”** means the *Planning and Environment Act* 1987 (Vic).

“**Endorsed Plans**” means the plan or plans approved by the Responsible Authority pursuant to the Permit, as amended from time to time.

**“Land”** means the land situated at [*insert street address*] being the land comprised in Certificates of Title Vol [*insert volume number*] Fol *[insert folio number*] and which is also known as [*insert Lot and Plan of Subdivision/CP/TP reference*], and any reference to the Land in this Agreement will include a reference to any lot created by the subdivision of the Land or any part of it.

**“Mortgagee”** means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as Mortgagee of the Land or any part of it.

**“Notice”** means any notice, demand, consent, approval or communication under this agreement

“**Owner”** means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as proprietor or proprietors of an estate in fee simple of the Land or any part of it and includes a Mortgagee-in-possession.

**“Party”** or “**Parties”** means the Owner and the Responsible Authority. [*if there are any other parties, they should be inserted into this definition*]

**“Permit”** means planning permit number [*insert permit number*], as amended from time to time, issued to the Owner on [*insert date of issue of Permit*] by the Council.

“**Planning Scheme”** means the Wellington Planning Scheme.

**“Council”** means the Wellington Shire Council as the Responsible Authority for the Planning Scheme and any subsequent person or body which is the Responsible Authority for the Planning Scheme.

“**Tribunal**”means the Victorian Civil and Administrative Tribunal, and any Tribunal or other person or body which supersedes it.

* 1. **Interpretation**

In this agreement unless the context admits otherwise:

* + 1. The singular includes the plural and vice versa.
    2. A reference to a gender includes a reference to each other gender.
    3. A reference to a person includes a reference to a firm, corporation or other corporate body and that person’s successors in law.
    4. If a party consists of more than one person this agreement binds them jointly and each of them severally.
    5. A reference to an Act, Regulation or the Planning Scheme includes any Acts, Regulations or amendments amending, consolidating or replacing the Act, Regulation or Planning Scheme.
    6. A reference to an information table, a clause, paragraph, schedule or annexure is to the information table, a clause or paragraph of, or schedule or annexure to, this agreement, and a reference to this agreement includes the Information table and any schedule or annexure.
    7. A reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time.
    8. A rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it
    9. A term used in this agreement 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 same meaning as defined in the Act.
  1. **Headings**

Headings are for ease of reference only and do not affect interpretation.

1. **Section 173 Agreement** 
   1. Purpose

This agreement is made under section 173 of the Act. In entering into it the parties intend to give effect to the planning permit and achieve or advance the objectives of planning in Victoria and the objectives of the Planning Scheme.

* 1. Burden of covenants

The parties to this agreement intend that the burden of the Owner’s covenants run with the Land.

**2.3 Reasons for agreement**

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

(a) Council would not have issued this permit without the condition requiring this agreement; and

(b) the owner has elected to enter into this agreement in order to take the benefit of the permit.

1. **Commencement**

This agreement comes into force on the date of this agreement or if no date is specified the date Council executes this Agreement.

1. **Owner’s Covenants**
   1. Obligations

The Owner acknowledges and agrees:

* + 1. [*insert obligations of the Owner*]
  1. Successors in title

Without limiting the operation or effect which this agreement has, the Owner must not sell, agree to sell, transfer, dispose of, assign, mortgage or otherwise deal with its interests in the whole or any part of the Land before this agreement is registered on the title to the Land unless the Owner has first:

* + 1. disclosed in writing to the party with whom the Owner proposes to deal with its interest, the existence and nature of this agreement; and
    2. entered into a deed with the Owner’s successors, in a form satisfactory to the Responsible Authority (acting reasonably), under which the Owner’s successor will be bound by this agreement.
  1. Obligation to run with the Land
     1. Each of the obligations of the Owner under this agreement takes effect as a covenant which is annexed to and runs at law and in equity with the Land.
     2. Each of these obligations binds the Owner, their successors, assigns and transferees and each registered proprietor for the time being of the whole or of any part of the Land.
  2. Registration

The Owner must do all things that are reasonably necessary to register this agreement under section 181 of the Act.

* 1. Indemnity

The Owner covenants to indemnify and keep indemnified the Council, its officers, employees, agents, workmen and contractors from and against all costs, expenses, losses or damages which they or any of them may sustain incur or suffer or be or become liable for or in respect of any suit action proceeding judgment or claim brought by any person arising from or referrable to this agreement or any non-compliance with this agreement.

* 1. Council Access

The Owner covenants to allow the Council and its officers, employees, contractors or agents or any of them, to enter the Land (at any reasonable time) to assess compliance with this agreement.

* 1. Owner’s Warranties

Without limiting the operation or effect which this agreement has, 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 Land which may be affected by this agreement

1. **Costs**
   1. Owner to pay costs of Responsible Authority

The owner will pay all costs of and incidental to the preparation, negotiation, drafting, finalisation, engrossment, execution and registration of this agreement.

1. **General**
   1. No fettering of Responsible Authority’s powers

The parties acknowledge and agree that nothing in this agreement fetters the exercise of any statutory discretion or power by the Responsible Authority, including its powers and discretions to make any decision or impose any requirements or conditions in connection with the granting of any planning approval or certification of any plans of subdivision applicable to the Land or relating to any use or development of the Land, and the provisions of this agreement must be read accordingly.

* 1. Counterparts

This agreement may be executed in counterparts. All executed counterparts constitute one document.

* 1. Entire agreement

This agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

* 1. Severability

A term or part of a term of this agreement that is illegal or unenforceable may be severed from this agreement and the remaining terms or parts of the term of this agreement continue in force.

* 1. Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

* 1. Governing law

This Agreement is governed by and will be construed in accordance with the laws from time to time in force in the State of Victoria.

**EXECUTED** as an agreement under Division 2 of Part 9 of the Act and as a Deed between the parties

|  |  |
| --- | --- |
| **THE COMMON SEAL** of **WELLINGTON SHIRE COUNCIL** was hereto affixed on the  In accordance with Local Law Number 1  in the presence of:  ................................................................  Chief Executive Officer | )  )  )  )  ) |

|  |  |
| --- | --- |
|  |  |
| **SIGNED SEALED AND DELIVERED** by  **[*insert name*]**  in the presence of:  ................................................................  Signature of Witness  ................................................................  Name of Witness (Print) | )  ) ..................................................  ) |
| **SIGNED SEALED AND DELIVERED**  by *[insert name*]  in the presence of:  ................................................................  Signature of Witness  ................................................................  Name of Witness (Print) | )  ) ...................................................  ) |

**Annexure A**

**Mortgagee's Consent**

The [*mortgagee name and ABN/ACN*] as Mortgagee under registered Mortgage No. [*insert instrument number as shown on land title*] consents to *[insert name of owner*] entering into this Agreement and in the event that the Mortgagee becomes Mortgagee-in-possession, agrees to be bound by the covenants and warranties set out in this Agreement.

…………………………………………..

Authorised Officer

**Caveator’s Consent**

[Caveator’s name] as Caveator of registered caveat No[insert caveat number] consents to the owner entering into this agreement.