

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##**

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# Agreement under section 173 of the Planning and Environment Act 1987

Dated        /        /

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## Parties

|            |   |
|------------|---|
| Name       | <b>Ballarat City Council</b>                  |
| Address    | 25 Armstrong Street South, Ballarat, Victoria |
| Short name | <b>Council</b>                                |

|            |                                   |
|------------|-----------------------------------|
| Name       | <b>##insert Owner's name##</b>    |
| Address    | <b>##insert Owner's address##</b> |
| Short name | <b>Owner</b>                      |

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## 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. Council issued the Planning Permit requiring, as a condition of the development of the Subject Land, the installation of a Stormwater System.
- D. The Owner has, and will, not comply with the condition of the Planning Permit by the time contemplated by the condition of the Planning Permit.
- E. The Parties are entering into this Agreement to secure the future compliance with the condition of the Planning Permit and to put in place other measures to address the non-compliance.
- F. **##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.
- G. **##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.
- H. **##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.

## The Parties agree

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### 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.

**Building** has the same meaning as in the Act.

##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 principal office 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 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 4061, 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 but does not include a person who has transferred or otherwise disposed of all of their interests in the Subject Land.

**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.

**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.

**Stormwater Detention Plans** means the plans, design and specifications for the Stormwater Detention Tanks.

**Stormwater Detention Tanks** means on-site rainwater tanks designed and installed to collect, and detain prior to off-site discharge, all stormwater runoff from the roofs of all Buildings on the Subject Land.

**Stormwater System** means all aspects of the measures required by condition [##insert condition number or numbers] of the Planning Permit to manage stormwater, drainage and runoff from the Subject Land.

**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.

**Works** has the same meaning as in the Act.

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## 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.

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### **3. Purpose of Agreement**

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

- 3.1 restrict and regulate the development of the Subject Land;
- 3.2 give effect to conditions, subject to which the Subject Land can be developed in accordance with the Planning Permit; and
- 3.3 achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

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### **4. Reasons for Agreement**

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

- 4.1 Council would not have issued the Planning Permit without the condition requiring the installation of the Stormwater System;
- 4.2 the Owner is under a continuing obligation to comply with the condition requiring the installation of the Stormwater System;
- 4.3 Council has agreed to not to take any action in relation to the non-compliance with the requirement to enter install the Stormwater System, provided:
  - 4.3.1 Buildings and Works, other than those authorised by the Planning Permit, are not constructed or carried out on the Subject Land;
  - 4.3.2 Stormwater Detention Tanks are installed in lieu of the Stormwater System before the occupation of any Buildings on the Subject Land; and
  - 4.3.3 these conditions are secured by this Agreement; and
- 4.4 the Owner has elected to enter into this Agreement in order to:
  - 4.4.1 take the benefit of the Planning Permit; and
  - 4.4.2 defer the requirement to install the Stormwater System.

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## 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.

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## 6. Owner's specific obligations

The Owner covenants and agrees that:

### 6.1 Compliance with Planning Permit condition

regardless of:

6.1.1 the timing specified in condition [##insert condition number] of the Planning Permit;  
or

6.1.2 the happening of any event contemplated by that condition,

the Owner must undertake all actions to achieve compliance with condition [##insert condition number] of the Planning Permit;

### 6.2 No further Buildings or Works

until the Owner has complied with clause 6.1, the Owner must not:

6.2.1 construct a Building or construct or carry out Works; or

6.2.2 permit or allow any other person to construct a Building or construct or carry out Works,

other than development authorised by the Planning Permit;

### 6.3 Stormwater Detention Tanks

unless the Owner has complied with clause 6.1,

6.3.1 prior to the occupation of any Building on the Subject Land, the Owner must install Stormwater Detention Tanks:

(a) in accordance with plans approved by Council under clause 6.3.2; and

(b) to the satisfaction of Council;

6.3.2 before installing the Stormwater Detention Tanks under clause 6.3.1, the Owner must prepare at its own cost, and submit to Council for approval, 3 copies of Stormwater Detention Plans, which must provide for the following matters to Council's satisfaction:

(a) the design and layout of the Stormwater Detention Tanks;

(b) the size of the Stormwater Detention Tanks; and

(c) the overflow arrangements of the Stormwater Detention Tanks;

## **6.4 Continuing obligation**

the Owner's obligations under this Agreement apply:

- 6.4.1 regardless of any right conferred by the Planning Scheme;
- 6.4.2 regardless of any subdivision of the Subject Land; and
- 6.4.3 even if the Planning Permit expires, is cancelled or otherwise ceases to operate.

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## **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
- 7.2.3 agrees to 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**

Within 14 days of a written request for payment, the Owner must pay to Council, any 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; 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.

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## **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.

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## **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.

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## **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.

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## **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.

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## **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.

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# 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.

.....