

Item 12.18 Application S173/2017/11/1 - Amendment to an existing Section 173 Agreement by removing the definition of 'Residential Lot' to facilitate further subdivision of the land At 13-15 Diggers Rest-Coimadai Road Diggers Rest

Rest-Coimadai Road Diggers Rest

Appendix 2 Appendix 2 - Section 173 Agreement - dated 5 January 1998



Application by Responsible Authority for the making of a recording of an agreement Section 181(1) Planning and Environment Act 1987

Lodged at the LAND TITLES OFFICE by:

Name: MADDOCK LONIE & CHISHOLM
Phone: 9288 0555
Address: Level 7, 140 William Street, Melbourne, Victoria, 3000
Ref: GOC:MJD:506871 Customer Code: 1167E

IMAGED

The Authority having made an agreement requires a recording to be made in the Register for the land.

Land: The land hatched on the attached plan being part of the land in Certificate of Title Volume 9819 Folio 003

Authority Melton Shire Council of 232 High Street, Melton 3337:

Section and Act under which agreement made: Section 181(1) of the Planning and Environment Act 1987.

A copy of the agreement is attached to this application

Date: 5.1.98

Signature for the Authority:

Name of officer:

Office Held:

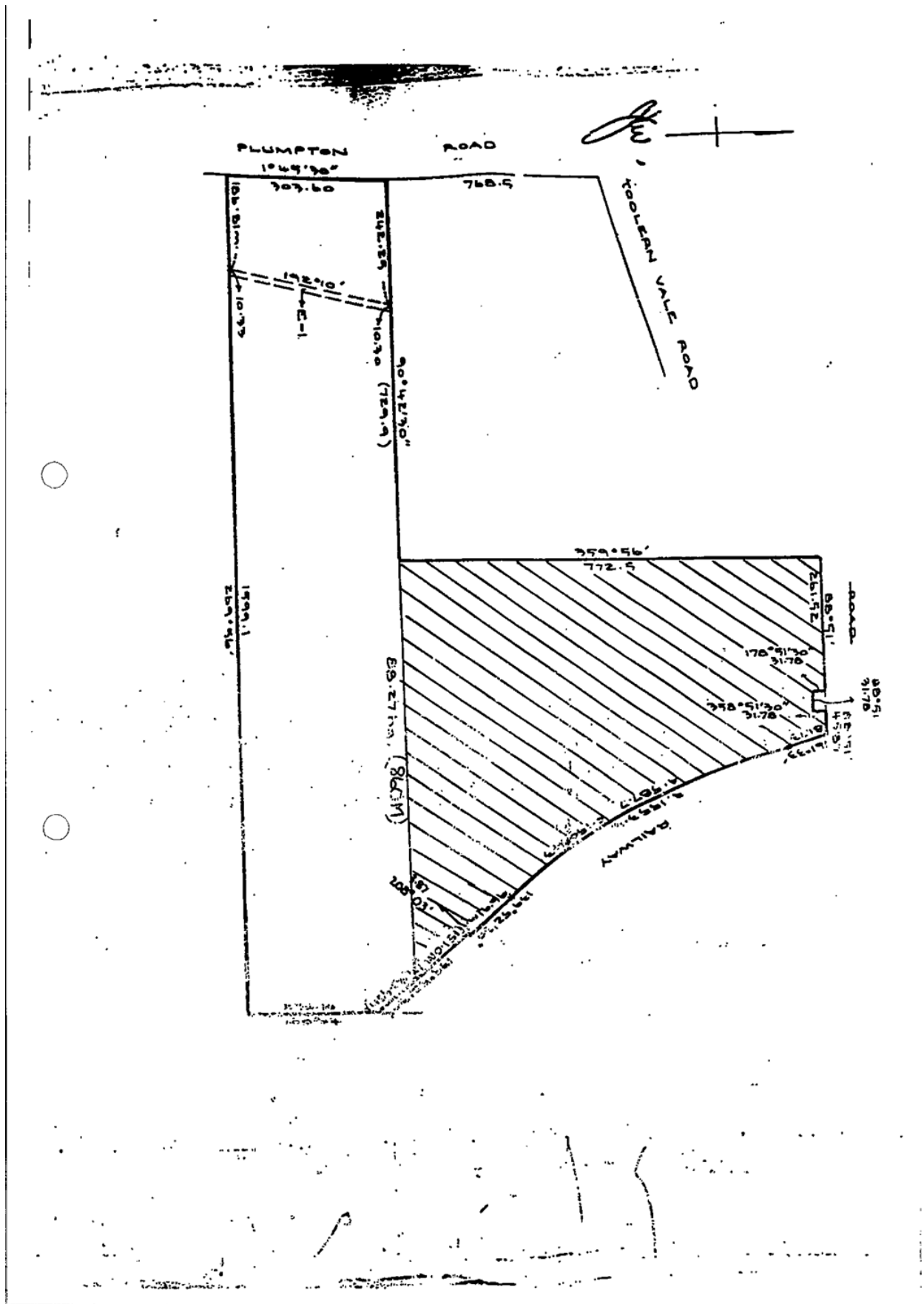
Handwritten signature and name: Andrew Rowson CEO

Handwritten notes: X181(1), V.9899 F.003 (PT.), 19/2/98, Ered lib, 20/2/98

Handwritten: 01 72 10V

Item 12.18 Application S173/2017/11/1 - Amendment to an existing Section 173 Agreement by removing the definition of 'Residential Lot' to facilitate further subdivision of the land At 13-15 Diggers Rest-Coimadai Road Diggers Rest

Appendix 2 Appendix 2 - Section 173 Agreement - dated 5 January 1998



Maddock Lonie & Chisholm
LAWYERS

DATED

5 January

1998

MELTON SHIRE COUNCIL

- and -

MICHAEL ANTHONY KILGARIFF

**AGREEMENT UNDER SECTION 173
OF THE PLANNING AND ENVIRONMENT ACT 1987**

Subject Land: Diggers Rest-Coimadai Road, Diggers Rest

MADDOCK LONIE & CHISHOLM
LAWYERS

140 WILLIAM STREET
MELBOURNE
VICTORIA 3000
TELEPHONE (03) 9288 0555
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A MEMBER OF
advec asia
ADELAIDE, COLOMBO, DUBAI,
HONG KONG, JAKARTA, KUALA LUMPUR,
MADRA, MELBOURNE, MUMBAI,
NEW DELHI, SINGAPORE, SYDNEY

OUR REF: GOC:MJD:506871

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THIS AGREEMENT is made the 5th day of January 1998

BETWEEN

MELTON SHIRE COUNCIL
of Civic Centre, 232 High Street, Melton, Victoria 3337

("Council")

AND

MICHAEL ANTHONY KILGARIFF
of Toolern Vale Road, Diggers Rest, Victoria 3427

("Owner")

RECITALS

- A. The Owner is or is entitled to be the registered proprietor of the subject land.
- B. The Council is the Responsible Authority pursuant to the Act for the Scheme and is also a planning authority for the local section of the Scheme.
- C. At the request of the Owner, Council prepared Amendment L81 to the Scheme which proposes to rezone the subject land from a Rural (Agricultural) Zone to Urban Residential 1 Zone to allow for residential development at a range of densities.
- D. Council has considered Amendment L81 and has resolved to support Amendment L81 provided the Owner enters into this Agreement on the terms and conditions set out herein.
- E. The parties are entering into this Agreement to advance and achieve the objectives of planning in Victoria and the objectives of the Scheme in respect of the subject land.
- F. The subject land is encumbered by Mortgage No. N867891Q in which Australia and New Zealand Banking Group Limited is named as the mortgagee.
- G. The Council and the Owner have agreed that without limiting or restricting their respective powers to enter into this Agreement and insofar as it can be so treated, this Agreement is made pursuant to Section 173 of the Act.

IT IS AGREED

1. DEFINITIONS

In this Agreement the terms and words set out in this clause shall have the following meanings unless otherwise indicated by the context:

- 1.1 "the Act" means the *Planning and Environment Act 1987*.

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2.

- 1.2 "the Agreement" or "this Agreement" means this agreement and any agreement executed by the parties expressed to be supplemental to this agreement.
- 1.3 "approved" means approved of in writing by the Council.
- 1.4 "complete" in respect of any works or any part of any works means the completion of those works or the specified part of those works in accordance with plans and specifications approved by the Council to the satisfaction of the Council.
- 1.5 "Community Contribution" means a contribution (as adjusted from time to time in accordance with clause 8 of this Agreement) by the Owner towards the provision of community and social infrastructure servicing the subject land and its locality.
- 1.6 "development" includes subdivision.
- 1.7 "Development Contributions Plan" means a development contributions plan prepared under Part 3B of the Act.
- 1.8 "Diggers Rest Local Structure Plan" means the local structure plan adopted by Council on 10 July 1996.
- 1.9 "MAEA 2" means the Melbourne Airport Environs Area - 2 overlay control contained in the Scheme.
- 1.10 "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 subject land or any part of it;
- 1.11 "ODP" means an overall development plan for the subject land;
- 1.12 "Owner" means the person or persons entitled from time to time to be registered by the Registrar of Titles as proprietor or proprietors of an estate in fee simple in the subject land or any part of it and includes the mortgagee in possession.
- 1.13 "plan of subdivision" means a plan of subdivision in relation to the whole or any part of the subject land.
- 1.14 "planning approval" shall mean and include any planning permit issued in accordance with the Act.

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- 1.15 "Residential Lot" means a lot shown on plan of subdivision having an area of not less than 0.2 hectares.
- 1.16 "the Scheme" means the Melton Planning Scheme.
- 1.17 "statement of compliance" means a statement of compliance under section 21 of the *Subdivision Act*.
- 1.18 "Subdivision Act" means the *Subdivision Act* 1988;
- 1.19 "the subject land" means the land hatched on the attached plan being part of the land described in Certificate of Title Volume 9819 Folio 003 being situated at Diggers Rest - Coimadai Road, Diggers Rest or any part of that land.
- 1.20 "Vic Code 1" means the Victorian Code for Residential Development - Subdivision and Single Dwellings dated April 1992.
- 1.21 "works" means any works required to be performed by this Agreement, including but not limited to any physical works associated with any development of the subject land such as roads, traffic management devices, drainage, installation of utility facilities, landscaping and any other works relating to the same.

2. INTERPRETATION

All provisions of this Agreement are to be interpreted in the following manner unless otherwise indicated by the context:

- 2.1 Undefined terms or words shall have the meanings given in the Act or the Scheme.
- 2.2 The singular includes the plural and the plural includes the singular.
- 2.3 A reference to a gender includes a reference to each other gender.
- 2.4 A reference to a person includes a reference to a firm, corporation or other corporate body.
- 2.5 If a party consists of more than one person this Agreement binds them jointly and each of them severally.
- 2.6 A reference to a "planning scheme" or "the Scheme" shall include any amendment, consolidation, or replacement of such scheme and any document incorporated by reference into such scheme.

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- 2.7 A reference to a statute shall include any statutes amending, consolidating or replacing same and any regulations made under such statutes.
- 2.8 Where in this agreement the Council may exercise any power, duty or function, that power may be exercised on behalf of the Council by an authorised or delegated officer.
- 2.9 All headings are for ease of reference only and shall not be taken into account in the construction or interpretation of this Agreement.
- 2.10 The introductory clauses to this Agreement are and will be deemed to form part of this Agreement.

3. AGREEMENT UNDER SECTION 173 OF THE ACT

The Council and the Owner agree that without limiting or restricting their respective powers to enter into this Agreement and insofar as it can be so treated, this Agreement is made pursuant to Section 173 of the Act.

4. EFFECT OF AGREEMENT

- 4.1 This Agreement commences on the date of publication of the notice of approval of Amendment L81 to the Scheme in the *Victoria Government Gazette* in accordance with section 36 of the Act.
- 4.2 The obligations of the Owner under this Agreement, being obligations to be performed by the Owner as conditions subject to which the subject land may be used or developed for specified purposes and being intended to achieve or advance the objectives of the Scheme, will take effect as separate and several covenants which shall be annexed to and run at law and equity with the subject land to bind the Owner and each successor, assign or transferee of the Owner including the registered proprietor, the mortgagee in possession and the beneficial owner for the time being of the subject land.

5. OWNER'S WARRANTIES

Without limiting the operation or effect which this Agreement has, the Owner warrants that:

- 5.1 apart from the parties referred to in this Agreement, or other persons disclosed in writing to the Council prior to the signing of this Agreement, no other person has any interest either legal or equitable in the subject land which may be affected by this Agreement or by development or use of the

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subject land pursuant to the Scheme or any permit or approved plan under the Scheme.

- 5.2 the Owner has obtained all necessary authorities and consents to bind all other persons who have any interest either legal or equitable in the subject land.

6. SUCCESSORS IN TITLE

Without limiting the operation or effect which this Agreement has, the Owner shall ensure that, until this Agreement is recorded on the folio of the register which relates to the subject land, the Owner's successors in title will:

- 6.1 give effect to and do all acts and sign all documents which will require those successors to give effect to this Agreement; and
- 6.2 execute under seal a deed agreeing to be bound by the terms of this Agreement.

7. COVENANTS OF OWNER

The Owner covenants and agrees that:

7.1 Submit Documents for Council Approval

prior to the lodgement of any application for planning approval or any other kind of approval for a residential subdivision of the subject land, the Owner must prepare and submit to Council for approval in writing the following:

- 7.1.1 site context and site analysis plans of the subject land;
- 7.1.2 a written statement of how the proposed residential subdivision of the subject land responds to the Diggers Rest Local Structure Plan; and
- 7.1.3 an ODP;

7.2 Matters to be addressed in the ODP

the ODP must provide for and include the following in respect of the proposed residential subdivision of the subject land:

- 7.2.1 a traffic management report prepared by an approved traffic consultant which addresses the following issues:

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- anticipated road traffic volumes to be generated by the proposed residential subdivision;
- traffic management initiatives to address these anticipated traffic volumes;
- lot access provisions for each lot on the plan of subdivision; and
- appropriate traffic control devices at the intersection of any proposed road with Diggers Rest - Coimadai Road, Diggers Rest;

7.2.2 a limitation on the number of additional lots to be created on the subject land with access to Tame Street, Diggers Rest, ensuring that Tame Street does not provide a thoroughfare for traffic generated by the residential subdivision of the subject land;

7.2.3 a drainage report and site drainage plan prepared by an approved drainage engineer by Council addressing the following:

- the direction of fall for all street kerbing within the proposed residential subdivision of the subject land;
- an estimate of the flows to be generated from all streets shown on the plan of subdivision where it is reasonably expected that such streets will generate drainage problems;
- identification of all points where drainage flow leaves the subject land; and
- the destination of all drainage outfall from the subject land;

7.2.4 plans and specifications for all roads to an engineering standard acceptable to Council, including full details of kerb and channel and underground drainage;

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- 7.2.5 the fencing of all reserves on the plan of subdivision;
- 7.2.6 interim measures for land management and environment protection including interim control of noxious weeds and pest animals;
- 7.2.7 provision of hydraulic services to the subject land including provision of reticulated sewerage;
- 7.2.8 the location of lots on the plan of subdivision so far as is possible to achieve the following:
- solar orientation for each lot on the plan of subdivision; and
 - frontages for each lot onto drainage reserves and open space reserves on the plan of subdivision in preference to lots backing onto such reserves;
- 7.2.9 provision for an acoustic barrier fence along any common boundary between residential lots on the plan of subdivision and any railway line; and
- 7.2.10 plans and specifications for a landscape buffer zone along the southern boundary of the subject land (including appropriate fencing treatment) with a view to providing a definitive edge to the urban area within the proposed subdivision;

7.3 Other Environmental Matters to be addressed in the ODP

the ODP must also address the following issues raised by the Environment Protection Authority:

- 7.3.1 provision for the creation and maintenance of a watercourse buffer zone along the unnamed creek abutting the subject land (which is a tributary of Jackson Street), including the creation and maintenance of appropriate vegetation to minimise the impact of urban development on this land;
- 7.3.2 the proximity of the Western Water Sewerage Pumping Stage at Diggers Rest, including provision for an appropriate setback from this pumping station for any residential development on the subject land in order to reduce any

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adverse impact on residential amenity in terms of noise or odour;

7.3.3 stormwater management, including adequate treatment of all drainage water prior to discharge or release to any water authorities and the provision of litter traps, retention basins and the like;

7.3.4 sediment pollution control, including strategies to deal with sediment control particularly during the development stage of the residential subdivision of the subject land. Such sediment pollution control will generally comply with the Environment Protection Authority Publication No. 257 entitled "Construction Techniques for Sediment Solution"; and

7.3.5 potential soil contamination, including undertaking a preliminary environmental site assessment of the subject land to determine whether any further investigations of the subject land are required having regard to any residual levels of contamination from pesticides or fertilisers identified by the preliminary environmental site assessment as existing on the subject land;

7.4 **Open Space Contribution**

a public open space contribution will be provided by the Owner by one of the following methods solely determined at the discretion of the Council:

7.4.1 creation of public open space reserves on a plan of subdivision in accordance with Vic Code 1, except that the following shall apply:

- any such public open space reserves must be of a minimum size of 5,000 square metres; and
- such public open space reserves must be located within 300 metres to 400 metres safe walking distance from dwellings in the subject land, or

7.4.2 a cash payment in lieu of providing such public open space reserves; or

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7.4.3 a combination of the two;

7.5 **Community Contribution**

in addition to any other obligation imposed by this Agreement to construct or contribute to the cost of construction of works on or in the vicinity of the subject land, the Owner will make a Community Contribution;

7.6 subject to clause 7.11, the Community Contribution can be made by means of any one of the following to be determined at the sole discretion of the Council:

7.6.1 the carrying out of approved works;

7.6.2 the provision of approved services;

7.6.3 payment of an approved financial contribution calculated on a per Residential Lot Basis; or

7.6.4 any combination of the above as approved by Council;

7.7 the amount of the Community Contribution will be reviewed annually by the Council on 1 January of each year on the following basis:

7.7.1 adjusting the description of the approved works and/or the description of the approved services required for the Community Contribution as may be necessary to accord with Council's policy as amended from time to time in respect of such matters; and

7.7.2 adjusting any approved financial contribution towards the Community Contribution in accordance with clause 8;

7.8 **Final date for making Community Contribution**

the Community Contribution must be fully made and satisfied by the Owner by the time the Owner lodges the prescribed information required by section 21(1)(a) of the *Subdivision Act* for issue of a statement of compliance for the plan of subdivision;

7.9 **Use and development of the subject land**

the Owner must only use and develop the subject land in accordance with the following:

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- 7.9.1 the approved ODP; and
- 7.9.2 an approved development plan setting out full details of a sequence of development of the subject land which demonstrates and will result in the cost effective provision of all physical and social services for the residential subdivision of the subject land;
- 7.10 **Local of Community and Social Infrastructure**
- subject to clause 7.11, any community and social infrastructure to be constructed by the Owner at its expense as part of the Community Contribution, must be located either within the subject land or on other land in the general vicinity of the subject land in accordance with the Council's policy for such works prevailing at the time of certification of the plan of subdivision;
- 7.11 **Development Contributions Plan**
- if the Scheme is amended so as to incorporate a Development Contributions Plan which is relevant to the residential subdivision of the subject land, the obligations contained in this Agreement may be replaced by the obligations set out in the Development Contributions Plan but only if Council gives notice in writing to the Owner to that effect;
- 7.12 **Undertake Noise Attenuation Study**
- the Owner will undertake an authoritative AS2021 noise attenuation study of the subject land by an approved consultant with a view to the following:
- 7.12.1 determining the application of MAEA2 to any aircraft noise sensitive development that may be undertaken on the subject land consequent upon its rezoning;
- 7.12.2 specifying acceptable general noise attenuation levels for all noise sensitive development the subject land; and
- 7.12.3 establishing appropriate noise attenuation conditions for inclusion in any future building permits for development on the subject land;
- 7.13 **Notice**
- the Owner will bring this Agreement to the attention of all prospective purchasers, mortgagees, transferees and assigns;

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11.

7.14 **Compliance**

the Owner will carry out and comply with the requirements of all statutory authorities in relation to the development of the subject land and comply with all statutes, regulations, local laws and planning controls in relation to the subject land;

7.15 the Owner will take all necessary steps to comply with the obligations of each and every clause in this Agreement;

7.16 **Registration**

the Owner will consent to the Council making application to the Registrar of Titles to make a recording of this Agreement in the Register on the folio of the Register which relates to the subject land in accordance with Section 181 of the Act and do all things necessary to enable the Council to do so including signing any further agreement, acknowledgment or document or procuring the consent to this Agreement of any mortgagee or caveator to enable the recording to be made in the Register under that Section.

7.17 **Mortgagee to be Bound**

the Owner will obtain the consent of any mortgagee to be bound by the covenants in this Agreement if the mortgagee becomes mortgagee in possession of the subject land;

7.18 **Council's Costs to be Paid**

the Owner will forthwith pay on demand to the Council the Council's reasonable costs, disbursements and expenses (including legal expenses) of and incidental to the preparation, drafting, finalisation, engrossment, execution, registration and enforcement of this Agreement which (until paid) are and shall remain a charge on the subject land;

7.19 **Indemnity**

the Owner will indemnify and keep indemnified the Council, its officers, employees, agents, workmen and contractors from and against all costs, expenses, losses or damages whatsoever 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 whatsoever arising from or referable to this Agreement or any non-compliance with this Agreement;

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12.

7.20 **Non-Compliance**

if the Owner has not complied with this Agreement within 14 days after service of a notice by the Council specifying such non-compliance, the Owner will allow the Council its officers, employees, contractors or agents to enter the subject land and rectify such non-compliance;

7.21 if the Council exercises its powers to rectify the non-compliance, the Owner will pay to the Council on demand its reasonable costs and expenses incurred as a result of the non-compliance which (until paid) are and shall be a charge on the subject land;

7.22 if requested by the Council, the Owner will execute in favour of the Council a mortgage to secure the Owner's obligations under this Agreement and acknowledges that any breach of this Agreement shall be deemed to be a default under the mortgage;

7.23 the Owner will accept a certificate signed by the Chief Executive of the Council (or his nominee) as prima facie proof of the costs and expenses incurred by the Council to rectify the Owner's non-compliance with this Agreement;

7.24 the Owner will pay interest at the rate of 2% above the rate prescribed under the *Penalty Interest Rates Act* 1983 on all moneys outstanding under this Agreement until they are paid in full;

7.25 the Owner agrees that any payments made for the purposes of this Agreement shall be appropriated first in payment of any interest and any unpaid costs and expenses of the Council and shall then be applied in repayment of the principal sum ;

7.26 **Standard of Works**

the Owner will comply with the requirements of this Agreement and will complete all works required by the Agreement at its cost and to the satisfaction of the Council; and

7.27 **Council Access**

the Owner will allow the Council and/or its officers, employees, contractors or agents (at any reasonable time) to enter the subject land to assess compliance with this Agreement.

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13.

8. ADJUSTMENT OF COMMUNITY CONTRIBUTION

8.1 Any payment of an approved financial contribution towards the Community Contribution in accordance with clause 7.6.3 of this Agreement shall be adjusted to such extent as may be necessary to allow for any change in the cost of living during the period commencing on the due date for payment of the approved financial contribution in accordance with this Agreement (the "Due Date") and ending on the date or dates of payment of the approval financial contribution.

8.2 For the purposes of calculating any adjustment of the cost of living between the Due Date and the date or dates of payment, the approved financial contribution shall be multiplied by a fraction the denominator of which shall be the All Groups Consumer Price Index No Weighted Average for eight Cities published by the Australia Bureau of Statistics in respect of the latest quarter immediately preceding the commencement of such period and the numerator shall be the same Index Number then current in respect of the latest concluded quarter or immediately preceding the date of payment PROVIDED THAT if the same Index is not current on both dates or is calculated on different base years or if a substantial change takes place in the method or basis of calculating the Index, the fraction to be applied shall be a fraction which in the opinion of an expert appointed in default of Agreement between the parties by the President for the time being of the Institute of Chartered Accountants in Australia (Victorian Branch) or their nominee (whose decision shall be binding and conclusive) most closely reflects changes in the cost of living in the City of Melbourne during such period and all costs of and incidental to the determination of the amount payable under this clause shall be borne equally by the Owner and Council.

9. COVENANTS OF COUNCIL

The Council covenants and agrees that it will:

9.1 respond to any inquiry by the Owner for further information in respect of any obligation under this Agreement within 30 days where reasonably practicable for Council to do so; and

9.2 refer any requests by the Owner for further information in relation to an obligation involving information or a request for works or other action by a referral authority or other statutory authority as soon as reasonably practicable and a copy of any response by that authority shall be referred to the Owner as soon as reasonably practicable after it is received.

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14.

10. **POWER OF ATTORNEY**

- 10.1 The Owner hereby appoints the Council, and any persons deriving title under the Council, the Attorney of the Owner for the purposes of carrying out the Owner's obligations pursuant to this Agreement if the Owner fails to do so.
- 10.2 The Council may not execute any documents under the Power of Attorney referred to in this Agreement unless the Owner has failed to comply with this Agreement within 14 days after the date of service by Council of a notice specifying such non-compliance.

11. **NOTICES**

11.1 **Service of Notice**

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

- 11.1.1 personally to the party; or
- 11.1.2 by sending it by pre-paid post, addressed to that party at the address for service specified in this document or subsequently notified to each party; or
- 11.1.3 by facsimile to the person's number for service specified in this document or subsequently notified to each party.

11.2 **Time of Service**

A notice or other communication is deemed served;

- 11.2.1 if served personally, upon service;
- 11.2.2 if posted within Australia to an Australian address, two business days after posting and in any other case, seven business days after posting; or
- 11.2.3 if served by facsimile, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile;

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15.

11.2.4 if received after 6.00 pm in the place of receipt or on a day which is not a business day, at 9.00 am on the next business day.

12. GENERAL

12.1 Further Assurance

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Agreement.

12.2 No Waiver

Any time or other indulgence granted by the Council to the Owner or any variation of the terms and conditions of this Agreement or any judgment or order obtained by the Council against the Owner will not in any way amount to a waiver of any of the rights or remedies of the Council in relation to the terms of this Agreement.

12.3 Severability

If a court, arbitrator, tribunal or other competent authority determines that a word, phrase, sentence, paragraph or clause of this Agreement is unenforceable, illegal or void then it shall be severed and the other provisions of this Agreement shall remain operative.

12.4 No Fettering of Council's Powers

It is acknowledged and agreed that this Agreement does not fetter or restrict the power or discretion of the Council to make or impose requirements or conditions in connection with any use or development of the subject land or the granting of any planning approval, the approval or certification of any plans of subdivision or consolidation applicable to the subject land or the issue of a Statement of Compliance in connection with any such plans.

13. ENDING OF AGREEMENT

13.1 This Agreement shall end when the Owner has complied with its obligations under this Agreement or earlier by mutual agreement between the parties.

13.2 Notwithstanding the preceding clause, the parties agree that this Agreement shall end in part as to any part of the subject land which becomes a

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Item 12.18 Application S173/2017/11/1 - Amendment to an existing Section 173 Agreement by removing the definition of 'Residential Lot' to facilitate further subdivision of the land At 13-15 Diggers Rest-Coimadai Road Diggers Rest

Appendix 2 Appendix 2 - Section 173 Agreement - dated 5 January 1998

16.

Residential Lot with its own separate certificate of title on a folio of the Register.

13.3 As soon as reasonably practicable after this Agreement has ended in whole or in part, the Council will, at the request and at the cost of the Owner make application to the Registrar of Titles under s.183(2) of the Act to cancel the recording of this Agreement on the register from the whole or part of the subject land (as the case may be).

EXECUTED by the parties on the date set out at the commencement of this Agreement.

THE COMMON SEAL OF THE MELTON SHIRE COUNCIL was hereunto affixed in the presence of:



Handwritten signatures of the Commissioner and Chief Executive Officer.

Commissioner

Chief Executive Officer

SIGNED SEALED AND DELIVERED by MICHAEL ANTHONY KILGARIFF in the presence of:

Handwritten signature of Michael Anthony Kilgariff.

Handwritten signature of a witness and the word 'Witness' printed below.

Australia and New Zealand Banking Group Limited as Mortgagee under Instrument of Mortgage No. N867891Q registered on 29 November 1988 which encumbers the subject land consents to the Owner entering into this Agreement and agrees to be bound by the terms and conditions of this Agreement.

EXECUTED by Australia & New Zealand Banking Group Limited A.C.N. 005 357 522 by being signed by its attorney

ADRIAN COLE under Power of Attorney dated 9/10/1992 a certified copy of which is filed in the permanent order Book number 277 at Page 5 in the presence of

Handwritten signature of Adrian Cole.

Australia and New Zealand Banking Group Limited by its Attorney

WHO HEREBY CERTIFIES THAT HE IS ACTING AS MANAGER SECURITATE FOR THE TIME BEING.

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