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**Form 18****Section 181****APPLICATION BY A RESPONSIBLE AUTHORITY FOR THE MAKING OF A
RECORDING OF AN AGREEMENT*****Planning and Environment Act 1987***

Lodged at the Land Titles Office by:

Name: Maddocks**Phone:** 9288 0555**Address:** 140 William Street, Melbourne 3000 or DX 259 Melbourne**Ref:** TGM:5419018**Customer Code:** 1167E

The Authority having made an agreement referred to in section 181(1) of the *Planning and Environment Act 1987* requires a recording to be made in the Register for the land.

Land: Volume 8471 Folio 305, Volume 10213 Folio 789, Volume 10799 Folio 635,
Volume 8935 Folio 561 and Volume 8562 Folio 277

Authority: Greater Geelong City Council, City Hall, 30 Gheringhap St, Geelong, Victoria

Section and Act under which agreement made: Section 173 of the *Planning and Environment Act 1987*.

A copy of the agreement is attached to this application

Signature for the Authority: ... *Peter K Smith*

Name of officer: ... *PETER SMITH*

Office held: ... *COORDINATOR STRATEGIC IMPLEMENTATION*

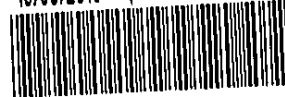
Date: ... *2 JUNE 2010*

Date 31/5 2010

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DX 259 Melbourne

**Agreement under Section 173
of the Planning and Environment Act 1987**
Subject Land: 162-240 Grubb Road, Ocean Grove

Greater Geelong City Council
and



and





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Agreement under Section 173 of the Planning and Environment Act 1987

Dated 31 / 5 / 2010

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Parties

Name	Greater Geelong City Council
Address	City Hall, 30 Gheringhap Street, Geelong, Victoria
Short name	Council

Name	
Address	
Short name	Owner

Name	
Address	
Short name	Owner

Background

- A. Council is the responsible authority pursuant to the Act for the Planning Scheme. Council is also the planning authority pursuant to the Act for Amendment C60 to the Planning Scheme.
- B. The Owner is or is entitled to be the registered proprietor of the Subject Land.
- C. Amendment C60 proposes to rezone the Subject Land to facilitate urban development, to introduce a Development Plan Overlay in relation to the Subject Land and to introduce reference to the Ocean Grove Growth Area Masterplan into the Planning Scheme (amongst other things).
- D. The parties enter into this Agreement:
 - D.1 to identify the infrastructure obligations of the Owner; and
 - D.2 to 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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The Parties Agree

1. Definitions

In this Agreement the words and expressions set out in this clause have the following meanings unless the context admits otherwise:

Act means the *Planning and Environment Act 1987*.

Adjustment Index means the Building Price Index, Melbourne as published in the latest edition of Rawlinsons Australian Construction Handbook or if this index is not available by reference to the Australian Bureau of Statistics Producer Price Index, Output of General Construction Industry – Victoria publication series 6427.0 Tables 15 and 16.

Agreement means this agreement and any agreement executed by the parties expressed to be supplemental to this agreement.

Amendment C60 means amendment C60 to the Planning Scheme.

Development Staging Plan means the plan required under clause 2.2 of the Schedule to the Development Plan Overlay to be introduced by Amendment C60.

External Drainage Works means those drainage works:

- that are necessary as a result of the proposed subdivision and development of either the Subject Land or the Neighbouring Land, in accordance with the Stormwater Management Masterplan; and
- that fall outside the area of both the Subject Land and the Neighbouring Land.

Internal Drainage Works means those drainage works:

- that are necessary as a result of the proposed subdivision and development of either the Subject Land or the Neighbouring Land, in accordance with the Stormwater Management Masterplan; and
- that fall within the area of the Subject Land.

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.

Neighbouring Land means the other land in the area covered by the Development Plan Overlay introduced by Amendment C60.

Northern East-West Collector Road means the northernmost east-west collector road linking Grubb Road and Banks Road that is planned to be constructed through the Subject Land, generally as shown in the Ocean Grove Growth Area Masterplan.

Ocean Grove Growth Area Masterplan means the plan at clause 4.0 to the Development Plan Overlay Schedule to be introduced by Amendment C60.

Open Space Landscape Masterplan means the relevant document required under clause 2.2 of the Schedule to the Development Plan Overlay to be introduced by Amendment C60.



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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 Subject Land or any part of it and includes a Mortgagee-in-possession.

party or parties means the Owner and Council under this Agreement as appropriate.

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

Regional Public Open Space means part of the Subject Land comprising 4 hectares which is shown in the Ocean Grove Growth Area Masterplan as part of a larger area of open space straddling the boundary of the Subject Land and the Neighbouring Land.

Residential Lot means a lot which, by virtue of its size and configuration, is likely and or intended to be used for the purpose of one or more dwellings.

Social Infrastructure Assessment means a social infrastructure assessment carried out by Council.

Statement of Compliance means a statement of compliance within the meaning of section 21 of the *Subdivision Act 1988*.

Stormwater Management Masterplan means the relevant document required under clause 2.2 of the Schedule to the Development Plan Overlay to be introduced by Amendment C60.

Subject Land means the land situated at Grubb Road, Ocean Grove, more particularly being the land referred to in Certificates of Title Volume 8471 Folio 305, Volume 10213 Folio 789, Volume 10799 Folio 635, Volume 8935 Folio 561 and Volume 8562 Folio 277 and any reference to the Subject Land in this Agreement includes any lot created by the subdivision of the Subject Land or any part of it.

VicRoads means the Roads Corporation established under Part II of the *Transport Act 1983*.

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 a reference to each other gender.
- 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 If a party consists of more than one person this Agreement binds them jointly and each of them severally.
- 2.5 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 meaning as defined in the Act.
- 2.6 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.
- 2.7 The introductory clauses to this Agreement are and will be deemed to form part of this Agreement.

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- 2.8 The obligations of the Owner under this Agreement, will take effect as separate and several covenants which are annexed to and run at law and equity with the Subject Land provided that if the Subject Land is subdivided, this Agreement must be read and applied so that each subsequent owner of a lot is only responsible for those covenants and obligations which relate to that owner's lot.

3. Specific obligations of the Owner

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3.1 Intersection of Northern East-West Collector Road and Grubb Road

The Owner agrees that:

- 3.1.1 At the time specified in the Development Staging Plan, the Owner must either::

- (a) design and construct an intersection which is generally in accordance with the provisions of the Road Network and Traffic Management Plan, where the Northern East-West Collector Road meets Grubb Road, to the satisfaction of Council and VicRoads, at the Owner's cost; or
- (b) make an agreement in writing with Council, pursuant to section 21(1)(b)(ii) of the *Subdivision Act 1988*, in relation to the timing of the design and construction of that intersection, all at the Owner's cost; and

- 3.1.2 for the purposes of clause 3.1.1, the design and construction of the intersection must also include all drainage, kerb and channels, street lighting, pavement, land acquisition (if any is required) and any necessary traffic control devices, all to the satisfaction of Council.

3.2 Drainage works

- 3.2.1 The Owner agrees that, prior to the issue of a Statement of Compliance in relation to any plan of subdivision which creates a Residential Lot within the area of the Subject Land, the Owner must design and construct all Internal Drainage Works that are either necessary as a result of that subdivision or that fall within the area of that plan of subdivision. The Internal Drainage Works must be carried out at the Owner's cost in accordance with the Stormwater Management Masterplan, to the satisfaction of Council.

3.2.2 Both parties acknowledge and agree that:

- (a) any Internal Drainage Works on the Subject Land that are required as a result of any additional drainage flows resulting from the proposed subdivision and development of the Neighbouring Land will be the subject of a separate agreement between the owner of that relevant land and the Owner; and
- (b) the Stormwater Management Masterplan must only designate on the Subject Land those Internal Drainage Works that are required as a result of any additional drainage flows resulting from the proposed subdivision and development of the Neighbouring Land on the Subject Land, if there is agreement to fund those works between the owner of that relevant land and the Owner.

- 3.2.3 The Owner agrees that if the drainage of the Owners land requires the upsizing of any drainage infrastructure on Neighbouring Land downstream of the Subject Land beyond what is reasonably required to drain that Neighbouring Land, the Owner

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will enter into an arrangement with the owner of the downstream land to contribute to the cost of upsizing of the drainage as reasonably required.

- 3.2.4 Both parties agree that if appropriate, the Stormwater Management Masterplan may include recommendations that Internal Drainage Works include water storage requirements for the Regional Public Open Space for the purpose of irrigating that area.
- 3.2.5 The Owner agrees that, prior to the issue of a Statement of Compliance in relation to any plan of subdivision which creates a Residential Lot within the area of the Subject Land, the Owner must pay to Council a portion of the design and construction of all of the External Drainage Works as specified in the Stormwater Management Masterplan
- 3.2.6 Both parties agree that the portion to be paid by the Owner pursuant to clause ~~3.2.4~~ ^{3.2.5} is to be determined by calculating the area of the Subject Land as a percentage of the total land area to be rezoned by Amendment C60 that is to be serviced by the External Drainage Works.

3.3 Provision of public open space

The Owner agrees that:

- 3.3.1 the Owner will vest in Council ten percent of the area of the Subject Land for public open space;
- 3.3.2 the public open space area of the Subject Land will include:
- (a) a contiguous area of not less than 4 hectares in the area in accordance with the Open Space Landscape Masterplan to the satisfaction of Council; and
 - (b) other areas of public open space, including but not limited to regional parks, large local parks and small local parks, including any such areas generally in accordance with the Open Space Landscape Masterplan;
- 3.3.3 the area of any permanent or semi-permanent body of water:
- (a) will be included as part of the public open space required by this clause 3.3 provided that, to the satisfaction of Council:
 - (i) it is not required under the Stormwater Management Masterplan to accommodate a 1 in 10 year rainfall event; and
 - (ii) it serves a useful public open space function –
 - (b) may be included as part of the public open space required by this clause 3.3 at the absolute discretion of Council.
- 3.3.4 each area of public open space must be shown as a reserve on the plan of subdivision for the relevant part of the Subject Land so as to vest in Council upon the registration of that plan of subdivision;
- 3.3.5 each area of public open space, once vested in Council, will be treated as a requirement for public open space for the purposes of the *Subdivision Act 1988*; and

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- 3.3.6 compliance with this clause 3.3 precludes Council from requiring any additional public open space, whether pursuant to the *Subdivision Act 1988* or the Planning Scheme.

3.4 Improvement of public open space

- 3.4.1 The Owner agrees that, prior to the issue of a Statement of Compliance in relation to any plan of subdivision which vests any area of public open space in Council, the Owner must either:
- (a) carry out improvements to that area, in accordance with the requirements of the Open Space Landscape Masterplan, at the Owner's cost; or
 - (b) make an agreement in writing with Council, pursuant to section 21(1)(b)(ii) of the *Subdivision Act 1988*, in relation to the timing of those improvements to the Regional Public Open Space, at the Owner's cost.
- 3.4.2 The improvements that may be required pursuant to clause 3.4.1 must include one senior football oval within the Regional Public Open Space, car parks, playgrounds, pedestrian and cycle paths, earthworks, seats, bollards, fencing, landscaping, drainage lines and detention basins but are limited so as to not require the Owner to expend more than \$1.1 million in total in undertaking those works.

3.5 Community infrastructure charge

- 3.5.1 The Owner agrees that, prior to the issue of a Statement of Compliance in relation to any plan of subdivision which creates a Residential Lot within the area of the Subject Land, the Owner must pay to Council:
- (a) the amount of \$900 in respect of each Residential Lot which by virtue of its size and configuration, is likely and or intended to be used for the purpose of only one dwelling ; and
 - (b) the amount of \$900 per expected dwelling in respect of any Residential Lot which by virtue of its size and configuration, is likely and or intended to be used for the purpose of more than one dwelling. The expected dwelling yield of each super lot is to be determined by Council in consultation with the Owner using the approved Development Plan for guidance. If the Development Plan does not provide adequate guidance a rate of 25 dwellings per hectare is to be applied.
- 3.5.2 The parties agree that the payment pursuant to clause 3.5.1(b) is intended to meet the obligation for all of the land within the area covered by the plan of subdivision in relation to multi dwelling development and there would be no further requirement for the payment of the community infrastructure charge for that plan of subdivision other than in accordance with clause 3.5.1(b).
- 3.5.3 The Owner agrees that the monetary contribution specified in clauses 3.4 and 3.5 will be adjusted upwards on 1 July each year after the commencement of this Agreement by reference to the Adjustment Index.

3.6 Development infrastructure charge

- 3.6.1 The Owner acknowledges that it will undertake improvements to the Regional Public Open Space as specified in clause 3.4.2 in lieu of being otherwise required to make a payment as a development infrastructure charge as identified in the notes to Schedule 1.

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4. Further obligations of the Owner**4.1 Notice and Registration**

The Owner further covenants and agrees that the Owner will bring this Agreement to the attention of all prospective purchasers, lessees, mortgagees, chargees, transferees and assigns.

4.2 Further actions

The Owner further covenants and agrees that:

- 4.2.1 the Owner will do all things necessary to give effect to this Agreement;
- 4.2.2 the Owner will consent to Council making application to the Registrar of Titles to make a recording of this Agreement in the Register 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 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.

4.3 Council's Costs to be Paid

The Owner further covenants and agrees that the Owner will immediately pay to Council, Council's reasonable costs and expenses (including legal expenses) of and incidental to the preparation, drafting, finalisation, engrossment, execution and registration of this Agreement which are and until paid will remain a debt due to Council by the Owner.

4.4 Interest on outstanding money

The Owner agrees that if any monetary contribution required under this Agreement is not paid by the time as required, the amount payable will accrue interest from the day the Statement of Compliance is issued at the rate prescribed under section 227A of the *Local Government Act 1989* until the monetary contribution and interest is paid.

5. Specific Obligations of Council**5.1 Council acknowledges and agrees that:**

- 5.1.1 it will, in respect of any contributions received pursuant to this Agreement, keep proper records and accounts in accordance with its obligations under the Local Government Act 1989;
- 5.1.2 the Owner is not required to pay a development infrastructure charge provided it undertakes improvements to the Regional Public Open Space as specified in clause 3.4.2; and
- 5.1.3 all payments made pursuant to clause 3.5 will be directed by Council towards infrastructure requirements identified in a Social Infrastructure Assessment;

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6. Agreement under Section 173 of the Act

Council and the Owner agree that 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 pursuant to Section 173 of the Act, and the obligations of the Owner under this Agreement are obligations to be performed by the Owner as conditions subject to which the Subject Land may be used and developed for specified purposes.

7. 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 Subject Land which may be affected by this Agreement.

8. Successors in Title

Without limiting the operation or effect that this Agreement has, the Owner must ensure that, until such time as a memorandum of this Agreement is registered on the title to the Subject Land, successors in title shall be required to:

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

9. General matters**9.1 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:

- 9.1.1 by delivering it personally to that party;
- 9.1.2 by sending it by prepaid post addressed to that party at the address set out in this Agreement or subsequently notified to each party from time to time; or
- 9.1.3 by sending it by facsimile provided that a communication sent by facsimile shall be confirmed immediately in writing by the sending party by hand delivery or prepaid post.

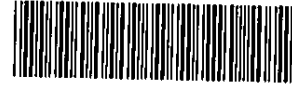
9.2 Service of Notice

A notice or other communication is deemed served:

- 9.2.1 if delivered, on the next following business day;
- 9.2.2 if posted, on the expiration of 7 business days after the date of posting; or
- 9.2.3 if sent by facsimile, on the next following business day unless the receiving party has requested retransmission before the end of that business day.

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**9.3 No Waiver**

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

9.4 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 must be severed and the other provisions of this Agreement will remain operative.

9.5 No Fettering of Council's Powers

It is acknowledged and agreed that this Agreement does not fetter or restrict the power or discretion of Council 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 Subject Land or relating to any use or development of the Subject Land.

10. GST

10.1 In this clause words that are defined in A New Tax System (Goods and Services Tax) Act 1999 (Cwlth) have the same meaning as their definition in that Act.

10.2 Except as otherwise provided by this clause, all consideration payable under this Agreement in relation to any supply is exclusive of GST.

10.3 If GST is payable in respect of any supply made by a supplier under this Agreement, subject to clause 10.4 the recipient will pay to the supplier an amount equal to the GST payable on the supply at the same time and in the same manner as the consideration for the supply is to be provided under this Agreement.

10.4 The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST payable under clause 10.3.

11. Commencement of Agreement

This Agreement commences on the date that Amendment C60 to the Planning Scheme comes into operation.

12. Ending of Agreement

12.1 This Agreement ends when the Owner has complied with all of the obligations imposed on the Owner under this Agreement, as evidenced by a letter from Council to the Owner stating that the obligations have been satisfied.

12.2 If this Agreement relates to more than one lot and the owner of that lot has complied with all of the obligations in relation to that lot, the owner of that lot may request Council to end this Agreement in relation to that lot.

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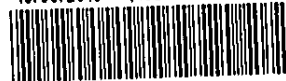
- 12.3 As soon as reasonably practicable after the Agreement has ended, Council will, at the request and at the cost of the Owner make application to the Registrar of Titles under Section 183(1) of the Act to cancel the recording of this Agreement on the register.

13. Dispute Resolution

- 13.1 If a dispute between the parties arises out of or in connection with this agreement, then either party will send a notice of dispute in writing adequately identifying and providing details of the dispute.
- 13.2 Within 14 days after service of a notice of dispute, the parties shall confer at least once, and at the option of either party, to attempt to resolve the dispute and failing resolution of the dispute to explore and if possible agree on methods of resolving the dispute by other means. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute.
- 13.3 In the event that the dispute cannot be so resolved or if at any time either party considers that the other party is not making reasonable efforts to resolve the dispute, and in the event that an application to the Victorian Civil and Administrative Tribunal to deal with the dispute cannot otherwise be made under the Act, either party may by notice to the other party refer such dispute to arbitration.

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**Schedule 1**

Property	Developer (Landowner)	Area (ha) of subject land*	% of total	Regional Open Space Contributions		Total Development Contribution***	Contribution payable per ha of subject land*
				Pavilion	Sport Ovals		
242-250 Grubb Road, Wallington		1.79	0.64%	\$5,760	\$16,416	\$22,176	\$12,38
162-240 Grubb Road, Ocean Grove		84.26	30.40%	\$0**	Construction of northern oval as works in lieu	\$0	\$ (works i lieu
1712-1730 Bellarine Highway, Marcus Hill		25.89	9.34%	\$84,060	\$240,768	\$324,828	\$12,54
172-180 Grubb Road, Ocean Grove		1.75	0.63%	\$5,670	\$16,416	\$22,086	\$12,62
122-160 Grubb Road, 92-120 Grubb Road, 732-770 Banks Road, Ocean Grove		163.49	58.99%	\$530,910	Construction of southern oval as works in lieu	\$530,910	\$324 (plu works i lieu
	Total	277.18	100.00%			\$900,000.00	

Notes

* The area referred to as "subject land" in the two columns above is a net developable area calculated as follows:

Gross Area of the Subject Land zoned Residential 1 less:

- Area of school site of 3.5 ha in total (if any)
- Area of the Regional Public Open Space of 8 ha in total (if any)
- Area of Grubb Road road widening required by VicRoads as advised in VicRoads letter dated 22 April 2009 of 30 metres width (if any)

When calculating the Development Contribution payable per hectare of subject land at Statement of Compliance for each stage of subdivision all land within the stage is to be charged the contribution including local roads, parks and drainage reserves. The only elements to be excluded from the area subject to the contribution are the three elements listed above (i.e school site, regional open space and road widening area).

** The amount calculated as [REDACTED] contribution to the pavilion would have been \$273,600. This amount is not shown as it has been distributed proportionally amongst



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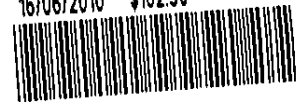
the three other northern landowners [REDACTED]. This redistribution has been undertaken to more equitably distribute the costs of constructing the sports oval ([REDACTED] are required to undertake under this agreement) amongst the northern landowners as recommended by the Independent Panel that considered Amendment C60.

*** The \$900,000 to be collected is Council's estimated cost to construct a pavilion and all money collected will be used for this purpose.

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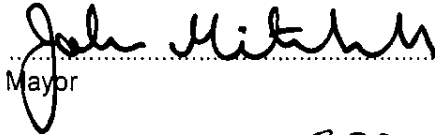
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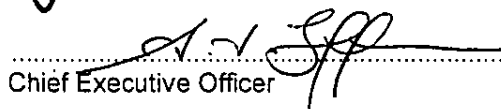
Signing Page

SIGNED, SEALED AND DELIVERED as a Deed by the parties on the date set out at the commencement of this Agreement.

THE COMMON SEAL of GREATER
GEELONG CITY COUNCIL was affixed
hereto in the presence of:




Mayor


Chief Executive Officer

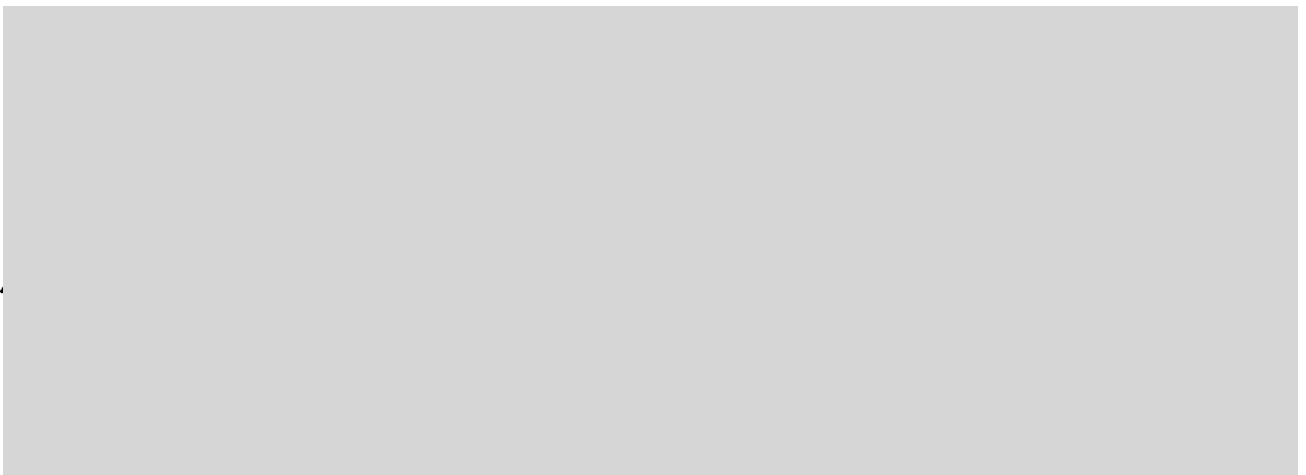
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Owner



3933



Owner

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Mortgagee's Consent

National Australia Bank Limited as Mortgagee of registered mortgage no. AG 453956F 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.

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EXECUTED on behalf of NATIONAL AUSTRALIA BANK)
LIMITED by its Attorney



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Form 18

Section 181

**APPLICATION BY A RESPONSIBLE AUTHORITY FOR THE
MAKING OF A RECORDING OF AN AGREEMENT****Planning and Environment Act 1987**

Lodged at the Land Titles Office by:

Name:

Phone:

Address:

Ref:

Customer Code:

The Authority having made an agreement referred to in section 181(1) of the **Planning and Environment Act 1987** requires a recording to be made in the Register for the land.

Land: Certificates of title volume 8935 folio 561, ~~volume 8562 folio 277, volume 8471 folio 305, volume 8471 folio 304 and volume 10213 folio 789.~~

Authority: Greater Geelong City Council of 30 Gheringhap Street, Geelong 3220.

Section and Act under which agreement made: Section 173 of the Planning and Environment Act 1987.

A copy of the agreement is attached to this application.

Signature for the Authority:

Name of Officer and position held:

4/7/12

Date:

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Date *12/6* /2012

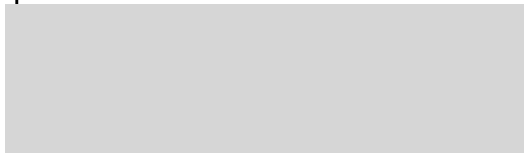
Section 173 Agreement

Subject Land: 162-240 Grubb Road, Ocean Grove, Victoria

GREATER GEELONG CITY COUNCIL

(Council)

and



(Owners)



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Section 173 Agreement

DATED 12/16/2012

BETWEEN

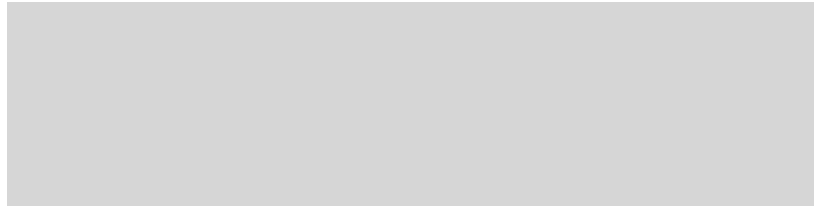
GREATER GEELONG CITY COUNCIL

of Municipal Offices of 30 Gheringhap Street, Geelong, Victoria,

(Council)

AND

AND



(Owners)

RECITALS

- A. The Owners are the registered proprietors of the Oakdene Estate, including the Reserve Land.
- B. The Council is the Responsible Authority pursuant to the Act for the purposes of administering the provisions of the Scheme.
- C. The Council issued planning permit number 1012/2010 on June 2011 allowing removal of native vegetation generally in accordance with the endorsed plans ["the Permit"] from the land known as the Oakdene Estate.
- D. Conditions 6- 12 of the Permit provide as follows;
 - “ 6. Before the vegetation removal starts an offset plan showing appropriate offsets to compensate for the removal of 0.09 habitat hectares of vegetation including 8 large old trees and 15 medium old trees to the satisfaction of the Department of Sustainability and Environment must be submitted to and approved by the Responsible Authority. Three copies of the plan must be provided. When approved, the plan will be endorsed and will then form part of the permit.
 7. Maps or plans forming part of the offset plan must be drawn to scale with dimensions (where appropriate).
 8. The offset plan must include details of the:
 - a) Vegetation to be removed, including details of:
 - i) the location of the vegetation including details of the Bioregion

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- ii) *the Ecological Vegetation Class (EVC) of the vegetation*
 - iii) *the Bioregional Conservation Status of the EVC*
 - iv) *the area to be removed (in hectares)*
 - v) *the habitat hectare score (out of 1) of the vegetation*
 - vi) *the number of large and medium old trees to be removed (where applicable)*
 - vii) *the presence of any rare or threatened species*
 - viii) *whether the site is potential habitat for any rare or threatened species*
 - ix) *conservation significance*
 - x) *total vegetation loss calculated in habitat hectares*
- b) *gain targets*
- c) *offset/s to compensate for the vegetation removal, including details of:*
 - i) *type of offset/s to be provided in each location*
 - ii) *location of the offset/s including details of the Bioregion*
 - iii) *Ecological Vegetation Class of the offset vegetation*
 - iv) *habitat hectare score (out of 1) of the offset/s*
 - v) *number of large and medium old trees to be protected (where applicable)*
 - vi) *rare or threatened species habitat to be protected (if applicable)*
 - vii) *conservation significance of the offset*
- d) *gains in vegetation and habitat quality to be achieved by the offset/s*
- e) *details of any revegetation including number of trees, shrubs and other plants, species mix, and density included in a Schedule of Works*
- f) *methods of managing and restoring the existing vegetation to be retained included in a Schedule of Works*
- g) *methods of interim protection for newly established vegetation*
- h) *methods of permanent protection for established offset/s*

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- i) *persons responsible for implementing and monitoring the offset plan*
 - j) *time frame for implementing the offset plan*
 - 9. *Vegetation removal and the provision of offsets must accord with the endorsed plan.*
 - 10. *The Responsible Authority, with the written agreement of Department of Sustainability and Environment, may approve amendments [to] the Offset Plan.*
 - 11. *Offsets in accordance with the endorsed plans must be initiated prior to any approved clearing of native vegetation.*
 - 12. *Before the vegetation removal starts, the owner must enter into a registered on-title agreement to the satisfaction of the Responsible Authority and the Department of Sustainability and Environment, which provides for native vegetation offset in accordance with the endorsed offset plan of this permit. The owner/applicant must pay the reasonable costs of the preparation, execution and registration of the on-title agreement."*
- E. The Owners have prepared and submitted to the Department of Sustainability and Environment and the Council, the Vegetation Offset Management Plan in satisfaction of the requirements of the Permit as they relate to the Oakdene Estate.
- F. The Reserve Land is encumbered by Mortgage No.AG453956F registered on 15 April 2009 in favour of National Australia Bank Ltd. who, as evidenced by its execution of this Agreement, consents to the provisions of this Agreement.
- G. The parties have agreed that without limiting or restricting their respective powers to enter into this Agreement and in so far as it can be so treated, this Agreement is made pursuant to Section 173 of the Act in order to meet the requirements of condition 12 of the Permit by setting out the native vegetation offset obligations with respect to the Reserve Land, and to advance the objectives of planning in Victoria.

THE PARTIES AGREE

1. DEFINITIONS

In this Agreement unless expressed or implied to the contrary:

Act means the *Planning and Environment Act 1987*.

Agreement means this agreement and any agreement executed by the parties expressed to be supplemental to this Agreement.

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Council means the Greater Geelong City Council in its capacity as the Responsible Authority under the Act and the Scheme.

Developers means

both jointly and severally as the case may be, and includes successors and assigns.

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

Oakdene Estate means the land known as the Oakdene Estate being the land at 162-240 Grubb Road Ocean Grove Victoria and being contained within certificates of title Volume 8935 Folio 561, Volume 8562 Folio 277, Volume 8471 Folio 305, Volume 8471 Folio 304 and Volume 10213 Folio 789.

Oakdene Estate Conservation Reserve means the area of land shown on the drawing entitled "Figure 2 Offset sites-Oakdene Estate Conservation Reserve; Revision001 dated 30/03/2012 "prepared by WSP Environment and Energy as endorsed by the Council on 23 April 2012 and being part of the land contained within certificate of title Volume 8935 Folio 561.

party or parties means the Owners, and the Council under this Agreement as appropriate.

Permit means the planning permit described in Recital C of this Agreement.

Reserve Land means the land described as Lot 2 on Plan of Subdivision 095200 being the land contained within certificate of title volume 08935 folio 561.

Residential Lot means a lot which in the opinion of the Council is of a size and dimension such that it is intended to be developed as a housing lot without further subdivision.

Scheme means the Greater Geelong Planning Scheme.

Tribunal means the Victorian Civil and Administrative Tribunal.

Vegetation Offset Management Plan means the document prepared to the satisfaction of the Department of Sustainability and Environment entitled "*Vegetation Offset Management Plan for Grubb Road Intersection-Oakdene Estate Conservation Reserve prepared by WSP Environment and Energy dated 10 April 2012* and endorsed by the Council under condition 6 of the Permit on 23 April 2012 as amended from time to time. A copy of the Vegetation Offset Management Plan is available for inspection upon request at the offices of the Council.

VOMP Works means all actions required to be undertaken under the Vegetation Offset Management Plan, including all management, monitoring and reporting actions.

2. EFFECT OF AGREEMENT

2.1 This Agreement is effective from the date of this Agreement.

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- 2.2 The Owners use and development of the Reserve Land is subject to the conditions and obligations set out in this Agreement which provide for the use or development of the Reserve Land for the specified purposes and which are intended to achieve or advance the objectives of the Scheme.
- 2.3 The Owners obligations will take effect as separate and several covenants which will be annexed to and run at law and equity with the Reserve Land to bind the Owners and each successor, assign or transferee of the Owners including the registered proprietor, the Mortgagee in possession and the beneficial owner for the time being of the Reserve Land.

3. OWNERS WARRANTIES

Without limiting the operation or effect of this Agreement, the Owners warrant that to the best of their knowledge and belief:

- 3.1 except for the parties to this Agreement, any Mortgagee who has consented to this Agreement, and any other persons disclosed in writing to the Council before the signing of this Agreement, no other person has any interest either legal or equitable in the Reserve Land which may be affected by this Agreement or by development or use of the Reserve Land pursuant to the Scheme;
- 3.2 the Owners have obtained all necessary authorities and consents to bind all other persons who have any interest either legal or equitable in the Reserve Land;
- 3.3 no part of the Reserve Land is subject to any right obtained by adverse possession or subject to any easements rights or encumbrances mentioned in section 42 of the Transfer of Land Act1958 (Vic);
- 3.4 the Owners have not entered into any option, contract of sale or lease in respect of the Reserve Land or any part of it which is still subsisting; and
- 3.5 the Owners will not sell, transfer, dispose of, assign, mortgage or otherwise part with possession of the Reserve Land without firstly providing to their successors in title a copy of this Agreement

4. SUCCESSORS IN TITLE

Without limiting the operation or effect of this Agreement, the Owner must ensure that, until this Agreement is recorded on the folio of the register which relates to the Reserve Land, the Owners successors in title will:

- 4.1 give effect to, do all acts and sign all documents requiring those successors to give effect to this Agreement; and
- 4.2 execute a deed agreeing to be bound by this Agreement.

5. COVENANTS OF OWNERS

5.1 Owners Covenants

The Owners covenant, acknowledge and agree with the Council that they will;

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- i] implement the Vegetation Offset Management Plan on the Oakdene Estate Conservation Reserve at all times for a period of ten years from the date of this Agreement;
- ii] manage the habitat within the Oakdene Estate Conservation Reserve at all times in accordance with the Vegetation Offset Management Plan for a period of ten years from the date of this Agreement;
- iii] comply with the requirements of the Vegetation Offset Management Plan including all monitoring and reporting requirements at all times for a period of ten years from the date of this Agreement;
- iv] transfer the Reserve Land to the Council no earlier than five years from the date of this Agreement;

to the reasonable satisfaction of the Council.

5.2 Registration

The Owners covenant to:

- 5.2.1 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 Reserve Land in accordance with Section 181 of the Act; and
- 5.2.2 do all things necessary to enable the Council to undertake the action in clause 5.2.1 of this Agreement 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.

5.3 Council's and Owners Costs to be Paid by Developers

The Developers covenant to pay immediately on demand to the Council the Council's reasonable costs and expenses (including legal expenses) incidental to the preparation, finalisation and enforcement of this Agreement, including its registration against the title to the Reserve Land.

5.4 Non-Compliance

If the Owners have not complied with this Agreement within 28 days after service of a written notice by the Council specifying any non-compliance, the Owners covenant:

- 5.4.1 to allow the Council its officers, employees, contractors or agents to enter the Owners Land and rectify the non-compliance;
- 5.4.2 to pay to the Council on demand, the Council's reasonable costs and expenses [including legal costs] incurred as a result of the non-compliance which (until paid) are and remain a charge on the Oakdene Estate;

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6. DEVELOPERS COVENANTS

6.1 Ongoing Obligations

The Developers agree that following the vesting of the Reserve Land in the Council, they will assume responsibility for all obligations with respect to the Reserve Land as set out in clause 5.1 of this Agreement. In doing such, the Developers agree to take out public liability insurance (with Council's interest noted on the certificate of insurance) to Council's satisfaction.

6.2 Security for Performance

- i) Prior to the transfer of the Reserve Land to Council, the Developers must provide to Council a bank guarantee for the estimated cost of the VOMP Works determined in accordance with Clause 6.2(ii) of this Agreement.
- ii) At least 21 days before the Developers propose to provide a bank guarantee to the Council in accordance with 6.2(i) of this Agreement, the Developers must provide the Council with a detailed estimated costing of all VOMP Works which remain to be completed under the Vegetation Offset Management Plan. The Council may accept the estimated cost calculated by the Developers, or may elect, at its cost, to refer the costing to a suitably qualified consultant (**Consultant**). If the Council refers the costing to the Consultant, the Consultant must certify the estimated cost of the VOMP Works in his or her opinion. The certification by the Consultant of the estimate cost of any works or of any other is, and is deemed to be, a matter done by the Council to its satisfaction. The purpose of this clause is to ensure (and the parties agree) that any dispute in relation to this clause may be determined by the Tribunal pursuant to Section 149(1)(b) of the Act. Nothing in this clause purports to limit the jurisdiction of any court in Victoria.

6.3 Failure to complete VOMP Works

- i) In the event the Developers provide a bank guarantee to the Council in accordance with clause 6.2(i) of this Agreement and they fail or neglect to carry out or complete the VOMP Works to the satisfaction of the Council, Council may cause to be served on the Developers a notice in writing (**the notice**) specifying the works, matters and things in respect of the VOMP Works of which the Developers are in default.
- ii) Should the default under clause 6.3(i) of this Agreement continue for a period of 30 days following the issue of the notice, the Council may draw upon the bank guarantee at its discretion to enable completion of the VOMP Works.

6.4 Return of Bond

Upon completion of the VOMP Works, the Council will, on written request of the Developers, return the bank guarantee to the Developers.



7. GENERAL

7.1 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.

7.2 No Waiver

Any time or other indulgence granted by the Council to the Owners or any variation of the terms and conditions of this Agreement or any judgment or order obtained by the Council against the Owners 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.

7.3 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 must be severed and the other provisions of this Agreement remain operative.

7.4 No Fettering of Council's Powers

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 Reserve Land or the granting of any planning approval, or the approval or certification of any plans of subdivision or consolidation applicable to the Oakdene Estate.

6.5 Joint Obligations

In the case of each party that consists of more than one person [including in that expression any corporation] each of those persons covenants, agrees and declares that all of the covenants, agreements, declarations and consents contained in this Agreement and made and given by that party have been entered into, made and given and are binding upon that person both severally and also jointly with the other person or persons constituting that party

8. NOTICES

8.1 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:

8.1.1 personally on the party; or

8.1.2 by sending it by pre-paid post, addressed to that party at that party's address specified in this document or subsequently notified to each party as that party's address for service; or



- 8.1.3 by facsimile to the person's number for service specified in this document or subsequently notified to each party.

8.2 Time of Service

A notice or other communication is deemed served:

- 8.2.1 if served personally, upon service;
- 8.2.2 if posted within Australia to an Australian address, 2 business days after posting and in any other case, 7 business days after posting;
- 8.2.3 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; or
- 8.2.4 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.

9. INTERPRETATION

In this Agreement, unless expressed or implied to the contrary:

- 9.1 undefined terms or words have the meanings given in the Act or the Scheme;
- 9.2 the singular includes the plural and the plural includes the singular;
- 9.3 a reference to a gender includes a reference to the other genders;
- 9.4 a reference to a person includes a reference to a firm, corporation or other corporate body;
- 9.5 if a party consists of more than one person this Agreement binds them jointly and each of them severally;
- 9.6 a reference to a 'planning scheme' or 'the Scheme' includes any amendment, consolidation, or replacement of such scheme and any document incorporated by reference into such scheme;
- 9.7 a reference to a statute includes any statutes amending, consolidating or replacing those statutes and any regulations made under the statutes;
- 9.8 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;
- 9.9 all headings are for ease of reference only and do not affect the interpretation of this Agreement;
- 9.10 the Recitals to this Agreement form part of this Agreement.

9 ENDING OF THIS AGREEMENT

- 9.1 This Agreement shall end:



- i) Upon the Owners discharging of their obligations under this Agreement;
 - ii) With respect to any Residential Lot, upon creation of such lot; or
 - iii) With the written agreement of the parties.
- 9.2 Upon the ending of this Agreement under clause 9.1, the Council will, as soon as practicable following a request from the Owner and at the full cost of the Owner, make application to the Registrar of Titles under section 183(2) of the Act to cancel the recording of this Agreement on the register.

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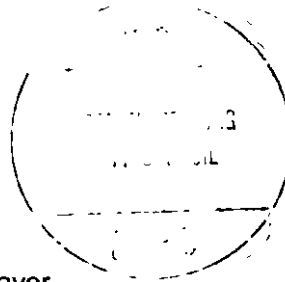
EXECUTED by the parties

The Common Seal of GREATER
GEELONG CITY COUNCIL was affixed
hereto in the presence of

John Mithen

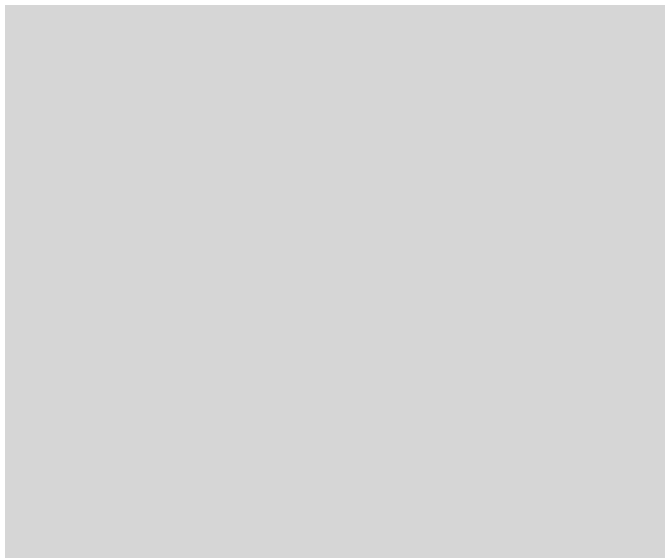
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Mayor

Chief Executive Officer



Director

Full name

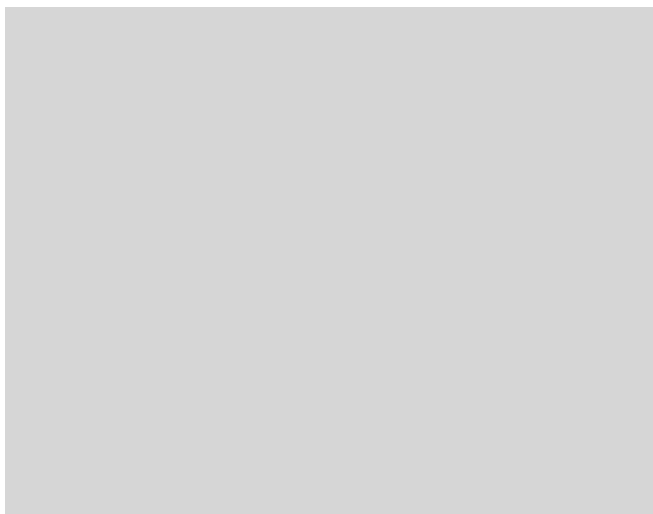
Usual address

Director (or Company Secretary)

Full name

Usual address

Owner



Director

Full name

Usual address

Director (or Company Secretary)

Full name

Usual address

Owner



CONSENT OF MORTGAGEE

NATIONAL AUSTRALIA BANK LTD as mortgagee under mortgage number AC 774287S
acknowledges and agrees to be bound by the terms of this Agreement

Executed by National Australia Bank Limited
by its Attorney

