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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: Harwood Andrews Lawyers
Phone: 5225 5225
Address: 70 Gheringhap Street, Geelong, 3220
DX 22019 Geelong
Ref: 2SSM:21204516
Customer Code: 2235J

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: Certificate of title volume 10742 folio 559
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:

.....
Date:

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SECTION 173 AGREEMENT

PROPERTY: 20 Edwards Point Road, St Leonards 3223

E CHRISTODOULOU

(Owner)

- and -

GREATER GEELONG CITY COUNCIL

(Council)

2SSM:21204516

Harwood Andrews Pty Ltd
ABN 98 076 868 034
70 Gheringhap Street, Geelong 3220, Victoria, Australia
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**AGREEMENT UNDER SECTION 173 OF THE
PLANNING AND ENVIRONMENT ACT 1987**THIS AGREEMENT is made the 13 day of November 2012**PARTIES:**

1. **GREATER GEELONG CITY COUNCIL** ABN 18 374 210 672 of Municipal Offices, 30 Gheringhap Street, Geelong 3220 (Council)
2. **ELIA CHRISTODOULOU** of 4 Lambert Court, Taylors Hill 3057 (Owner)

BACKGROUND:

- A. The Council is the Responsible Authority under the Greater Geelong Planning Scheme (**Planning Scheme**) for the purposes of administering its provisions.
- B. The Owner is registered as the proprietor of the land known as 20 Edwards Point Road, St Leonards being the land described in certificate of title volume 10742 folio 559 (**Subject Land**). ✓
- C. On 9 December 2011 Council issued planning permit no. 427/2011 allowing construction of two dwellings on the land generally in accordance with the plans endorsed under the planning permit (**Development Permit**).
- D. On the 18 June 2012 Council issued planning permit no. 612/2012 allowing the Subject Land to be subdivided into two lots in accordance with the plans endorsed under the planning permit (**Subdivision Permit**).
- E. Condition 2 of the Subdivision Permit provides in part:
 - "2 *Unless otherwise approved in writing by the Responsible Authority, prior to the issue of a Statement of Compliance:*
 - (a) *...; or*
 - (b) *the owner of the land must enter into an agreement with the Responsible Authority pursuant to Section 173 Agreement of the Planning and Environment Act 1987 to the satisfaction of the Responsible Authority which provides for all development to be in accordance with the endorsed plans forming part of Planning Permit 427/2011 (or any amendment to that permit) or any subsequent planning permit unless otherwise agreed in writing by the Greater Geelong City Council."*
- F. The parties enter into this agreement:
 - (a) To give effect to the requirements of condition 2(b) of the planning permit; and

- (b) To achieve the objectives of planning in Victoria and the objectives of the planning scheme.
- G. The Council and Owner agree that without limiting or restricting the respective powers to enter into this agreement, and in so far as they can be so treated, this agreement is made pursuant to section 173 of the Act.
- H. The Subject Land is subject to mortgage registered number AC994103D in favour of the Commonwealth Bank of Australia (**mortgagee**) which, as evidenced by its consent on the attestation pages of this agreement, consents to this agreement.

IT IS AGREED:**AK066210K**

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**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 <i>Planning and Environment Act 1987</i> .
agreement	means this agreement and any agreement executed by the parties expressed to be supplemental to this agreement.
Council	includes its successors (including its successors as Responsible Authority for the planning controls).
Development Permit	means planning permit no. 427/2011 (as amended) issued by Council on 9 December 2011.
endorsed plans	means the plans endorsed to form part of the Development Permit or the Subdivision Permit, as the context requires.
Lot	has the same meaning as in the <i>Subdivision Act 1988</i> .
Owner	means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as proprietors of an estate in fee simple of the Subject Land or any part of it and includes a mortgagee in possession.
plan of subdivision	means the proposed plan of subdivision PS705066P of the Subject Land prepared by licensed surveyor Robert J Signorini.
Planning Scheme	means the Greater Geelong Planning Scheme and any other planning scheme which applies to the Subject Land.
Subdivision Permit	means planning permit no. 612/2012 issued by Council on 18 June 2012.
Subject Land	means the land known as 20 Edwards Point Road, St Leonards being the land described in certificate of title volume 10742 folio 559.

AK066210K**2. INTERPRETATION**

- 2.1. In this agreement unless the context permits otherwise:
- 2.2. The singular includes the plural and vice versa;
- 2.3. A reference to 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 and that person's successors;
- 2.5. If a party consist of more than one person this agreement binds them jointly and each of them severally;
- 2.6. A word or expression used in this agreement has its ordinary meaning unless that word or expression is defined in this agreement. If a word or expression is not defined in this agreement and it is defined in the Act it has the meaning as defined in the Act;
- 2.7. Any 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; and
- 2.8. The introductory clauses to this agreement are and will be deemed to form part of this agreement.

3. SECTION 173 AGREEMENT

- 3.1. This agreement is made under section 173 of the Act. In entering into it the parties intend to achieve or advance the objectives of planning in Victoria or the objectives of the planning scheme.
- 3.2. Council and the Owner intend that the burden of the covenants and obligations imposed on the Owner in this agreement are intended to run with the Subject Land and apply to the Owner and their successors in title to the Subject Land.

4. COMMENCEMENT OF AGREEMENT

- 4.1. Unless otherwise provided in this agreement this agreement commences from the date of this agreement.

5. ENDING OF AGREEMENT

- 5.1 This agreement will end upon the earlier of:
 - 5.1.1 the written agreement for the Council and the Owner; or
 - 5.1.2 when Council advises the Owner in writing that it is satisfied the development allowed by the Development Permit is completed in accordance with the endorsed plans; or
 - 5.1.3 otherwise in accordance with the Act.

5.2 If this agreement ends under clause 5.1, Council must do all things necessary to notify the Registrar of Titles to cancel the recording of this agreement in the Registrar in accordance with section 183 of the Act.

5.3 The Owner must pay the Council's reasonable costs in complying with clause 5.2

6. OWNER'S WARRANTIES & COVENANTS

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6.1. The Owner warrants and covenants with the Council that:

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6.1.1. He is the registered proprietor of the Subject Land.

6.1.2. Save as shown in the respective certificate of title to the Subject Land, there are no mortgages, liens, charges, easements or other encumbrances or any rights inherent in any person affecting the Subject Land or any part thereof and not disclosed by the usual searches.

6.1.3. Except as disclosed to Council, neither the Subject Land nor any part of it 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 Act 1958 (Vic).

6.1.4. Except as disclosed to Council, he has not entered into any contract of sale or lease in respect of the Subject Land or any part thereof which option, contract or lease is still subsisting.

7. SPECIFIC OBLIGATIONS OF THE OWNER

7.1 The Owner agrees that following registration of the plan of subdivision approved by the Subdivision Permit any development of the Subject Land must accord with the endorsed plans forming part of the Development Permit (or any amendment to the Development Permit) or any subsequent planning permit issued by Council.

8. FURTHER OBLIGATIONS OF THE OWNER

8.1. The Owner further agrees to:

8.1.1. bring this agreement to the attention of all prospective purchasers, mortgagees, transferees and assigns;

8.1.2. do all things necessary to give effect to this agreement; and

8.1.3. facilitate the Council making application to the Registrar of Titles and do all things necessary to record this agreement in the register on the Certificate of Title to the Subject Land in accordance with Section 181 of the Act and pay all costs of preparation and execution of the agreement and entry of the memorandum on the Certificate of Title to the Subject Land.

9. SUCCESSORS IN TITLE

9.1. 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 of the Subject Land, successors in title shall be required to:

- 9.1.1. Give effect to and do all acts and sign all documents which require those successors to give effect to this agreement; and
- 9.1.2. Execute a deed agreeing to be bound by the terms of this agreement.

10. NOTICES

- 10.1. 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:
 - 10.1.1. by delivering it personally to that party;
 - 10.1.2. by sending by pre-paid post addressed to that party at the address set out in this agreement or subsequently notified to each party from time to time; or
 - 10.1.3. sending it by facsimile provided that a communication send by facsimile shall be confirmed immediately in writing by sending party by hand delivery or pre-paid post.
- 10.2. A notice or other communication is deemed served:
 - 10.2.1. if delivered, on the next following business day;
 - 10.2.2. if posted, on the expiration of two business days after the date of posting; or
 - 10.2.3. if sent by facsimile, on the next following business day unless the receiving party has requested transmission before the end of that business day.

11. NO WAIVER

- 11.1. 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 or any of the rights or remedies of Council in relation to the terms of this agreement.

12. SEVERABILITY

- 12.1. If a Court, arbitrator, tribunal or other competent authority determined that a word, phrase, sentence, paragraph or clause of this agreement is unenforceable, illegal, void then it must be served and the other provisions of this agreement will remain operative.

13. NO FETTERING OF COUNCIL'S POWERS

- 13.1. 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.



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

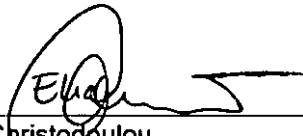
THE COMMON SEAL of **GREATER GEELONG CITY COUNCIL** was affixed hereto in the presence of:

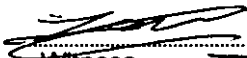


.....
Mayor

.....
Chief Executive Officer

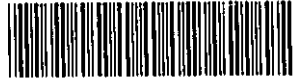
SIGNED SEALED AND DELIVERED by the said **ELIA CHRISTODOULOU** in the presence of:


.....
E Christodoulou


.....
Witness **James Sofianos.**

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MORTGAGEE'S CONSENT

Commonwealth Bank of Australia Limited as proprietor of mortgage registered no. AC994103D consents to the Owner entering into this agreement and in the event that it enters into possession of the Subject Land in exercise of its rights under the mortgage, agrees to be bound by the covenants and conditions of this agreement.

SIGNED, SEALED AND DELIVERED in Sydney for and on behalf of the COMMONWEALTH BANK of AUSTRALIA by its Attorney

Lisa Crosby
Lisa Crosby

under Power dated 11 December 2000 a certified copy of which is filed in Permanent Order Book No. 277 at Page 016 who certifies that he/she is

RA *A* ~~Romelinda Amurao~~ ~~Manager Post Settlements~~
Sydney of COMMONWEALTH BANK OF AUSTRALIA.

in the presence of:

Amurao

Romelinda Amurao
150 George Street Parramatta

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