



Department of Environment, Land, Water & Planning

Electronic Instrument Statement

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Status	Registered	Dealing Number	AU914974P
Date and Time Lodged	14/10/2021 09:26:46 PM		

Lodger Details

Lodger Code	17829T
Name	RUSSELL KENNEDY
Address	
Lodger Box	
Phone	
Email	
Reference	115599-03910

APPLICATION TO RECORD AN INSTRUMENT

Jurisdiction	VICTORIA
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Estate and/or Interest

FEE SIMPLE

Land Title Reference

10110/780

Instrument and/or legislation

RECORD - AGREEMENT - SECTION 173
Planning & Environment Act - section 173

Applicant(s)

Name	YARRA RANGES SHIRE COUNCIL
Address	
Street Number	15
Street Name	ANDERSON
Street Type	STREET
Locality	LILYDALE
State	VIC
Postcode	3140

Additional Details



Department of Environment, Land, Water & Planning

Electronic Instrument Statement

Refer Image Instrument

The applicant requests the recording of this Instrument in the Register.

Execution

1. The Certifier has taken reasonable steps to verify the identity of the applicant or his, her or its administrator or attorney.
2. The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
3. The Certifier has retained the evidence supporting this Registry Instrument or Document.
4. The Certifier has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Executed on behalf of	YARRA RANGES SHIRE COUNCIL
Signer Name	SUZANNE MANSON
Signer Organisation	PARTNERS OF RUSSELL KENNEDY
Signer Role	AUSTRALIAN LEGAL PRACTITIONER
Execution Date	14 OCTOBER 2021

File Notes:

NIL

This is a representation of the digitally signed Electronic Instrument or Document certified by Land Use Victoria.

Statement End.



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Document Type	Instrument
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YARRA RANGES SHIRE COUNCIL

and



**AGREEMENT MADE PURSUANT TO
SECTION 173 OF THE PLANNING AND
ENVIRONMENT ACT 1987**

Land: 275 Edward Road, Chirnside Park Victoria
3116.

Russell Kennedy Pty Ltd ACN 126 792 470 ABN 14 940 129 185
Level 12, 469 La Trobe Street, Melbourne VIC 3000 PO Box 5146, Melbourne VIC 3001 DX 494 Melbourne
T +61 3 9609 1555 F +61 3 9609 1600 info@rk.com.au russellkennedy.com.au

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AillyLaw

Liability limited by a scheme approved under Professional Standards Legislation.

Ref CYW 115599-03910

© Russell Kennedy Pty Ltd

THIS AGREEMENT IS DATED

12 October 2021

PARTIES

1 **YARRA RANGES SHIRE COUNCIL**
of 15 Anderson Street, Lilydale, Victoria 3140
(Council)

2 
(Owner)

RECITALS

- A The Council is the responsible authority under the Act for the Scheme.
- B The Owner is registered or is entitled to be registered as proprietor of the Land.
- C Condition 13 of the Permit provides as follows:
- “13. *Prior to a Statement of Compliance being issued an agreement under Section 173 of the Planning and Environment Act 1987 must be entered into between the owner of the site and the Responsible Authority requiring:*
- a. *That the land comprising both Lots 1 and 2 not be further subdivided.*
- This Agreement is to be prepared at the owner's expense and will be recorded on the folio of the register relating to the site. The owners agree to pay on demand all costs and expenses of, and incidental to, the execution and recording of this Agreement.”*
- D The Land is encumbered by mortgage number AU285049E in which Regional Investment Corporation is named as mortgagee. The Mortgagee has consented to the Owner entering into this Agreement.
- E This Agreement has been entered into in order to:
- (i) comply with condition 13 of the Permit;
 - (ii) prohibit, restrict or regulate the use or development of the Land; and
 - (iii) achieve and advance the objectives of planning in Victoria or the objectives of the Scheme in relation to the Land.
- F This Agreement is made under Division 2 of Part 9 of the Act.

OPERATIVE PROVISIONS

1 DEFINITIONS

In this Agreement:

- (a) **Act** means the *Planning and Environment Act 1987*.

- (b) **Agreement** means this Agreement, including the recitals and any annexures to this Agreement.
- (c) **Business Day** means Monday to Friday excluding public holidays in Victoria.
- (d) **Land** means the land known as 275 Edward Road, Chirnside Park Victoria 3116 being the whole of the land more particularly described in certificate of title volume 10110 folio 780.
- (e) **Mortgagee** means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as mortgagee of the Land or any part of it.
- (f) **Owner** means the person or persons who are registered or are entitled to be registered as proprietor of an estate in the Land or any part thereof, and includes a mortgagee in possession.
- (g) **Permit** means planning permit YR-2015/1099 issued in respect of the Land by Council on 10 February 2016 and amended on 28 April 2017 allowing for a two lot subdivision.
- (h) **Scheme** means the Yarra Ranges Planning Scheme or any other planning scheme which applies to the Land from time to time.

2 COMMENCEMENT

This Agreement comes into force on the date it was made as set out above.

3 ENDING OR AMENDING AGREEMENT

3.1 Ending or amending

This Agreement ends or may be amended in accordance with the Act.

3.2 Cancellation or alteration of recording

As soon as reasonably practicable after this Agreement has ended or has been amended, the Council must, at the request and at the cost of the Owner, apply to the Registrar of Titles under the Act to cancel or alter the recording of this Agreement on the folio of the Register to the Land.

4 OWNER'S COVENANTS

4.1 Owner's covenants regarding the Land

The Owner covenants and agrees that the lots created by the subdivision authorised by the Permit must not be further subdivided.

4.2 Successors in title

Until this Agreement is recorded on the folio of the Register which relates to the Land pursuant to section 181 of the Act, the Owner must ensure that the Owner's successors in title give effect to and do all acts and sign all documents which will require those successors to give effect to this Agreement including requiring the successors in title to execute a deed agreeing to be bound by the terms of this Agreement. Until that deed is executed, the Owner, being a party to this Agreement, remains liable to perform all of the Owner's obligations contained in this Agreement.

4.3 Further assurance

The Owner must do all things necessary (including signing any further agreement, acknowledgment or document) to enable the Council to record this Agreement on the folio of the Register which relates to the Land.

4.4 Payment of Council's costs

The Owner agrees to pay on demand to the Council the Council's costs and expenses (including any legal fees incurred on a solicitor-client basis) of and incidental to the preparation, execution, recording, removal, amendment and enforcement of this Agreement.

4.5 Mortgagee to be bound

The Owner covenants to obtain the consent of any Mortgagee to be bound by the covenants in this Agreement if the Mortgagee becomes mortgagee in possession of the Land.

4.6 Indemnity

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

4.7 Non-compliance

If the Owner has not complied with this Agreement within 14 days after the date of service on the Owner by the Council of a notice which specifies the Owner's failure to comply with any provision of this Agreement, the Owner covenants:

- 4.7.1 to allow the Council its officers, employees, agents, workmen and contractors to enter the Land and rectify the non-compliance;
- 4.7.2 to pay to the Council on demand, the Council's reasonable costs and expenses (**Costs**) incurred as a result of the Owner's non-compliance;
- 4.7.3 to pay interest at the rate of 2% above the rate prescribed under section 2 of the *Penalty Interest Rates Act 1983* on all moneys which are due and payable but remain owing under this Agreement until they are paid in full;
- 4.7.4 if requested to do so by the Council, to promptly execute in favour of the Council a mortgage to secure the Owner's obligations under this Agreement,

and the Owner agrees:

- 4.7.5 to accept a certificate signed by the Chief Executive Officer of the Council (or any nominee of the Chief Executive Officer) as prima facie proof of the Costs incurred by the Council in rectifying the Owner's non-compliance with this Agreement;
- 4.7.6 that any payments made for the purposes of this Agreement shall be appropriated first in payment of any interest and any unpaid Costs of the Council and then applied in repayment of the principal sum;
- 4.7.7 that all Costs or other monies which are due and payable under this Agreement but which remain owing shall be a charge on the Land until they are paid in full; and

4.7.8 if the Owner executes a mortgage as required by clause 4.7.4, any breach of this Agreement is deemed to be a default under that mortgage.

4.8 Council access

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

4.9 Covenants run with the Land

The Owner's obligations in this Agreement are intended to take effect as covenants which shall be annexed to and run at law and in equity with the Land and every part of it, and bind the Owner and its successors, assignees and transferees, the registered proprietor or proprietors for the time being of the Land and every part of the Land.

4.10 Owner's warranty

The Owner warrants and covenants that:

- 4.10.1 the Owner is the registered proprietor (or is entitled to become the registered proprietor) of the Land and is also the beneficial owner of the Land;
- 4.10.2 the execution of this Agreement by the Owner complies with the Registrar's Requirements for Paper Conveyancing Transactions made under section 106A of the *Transfer of Land Act 1958*;
- 4.10.3 there are no mortgages, liens, charges or other encumbrances or leases or any rights inherent in any person other than the Owner affecting the Land which have not been disclosed by the usual searches of the folio of the Register for the Land or notified to the Council;
- 4.10.4 no part of the Land is subject to any rights obtained by adverse possession or subject to any easements or rights described or referred to in section 42 of the *Transfer of Land Act 1958*; and
- 4.10.5 until this Agreement is recorded on the folio of the Register which relates to the Land, the Owner will not sell, transfer, dispose of, assign, mortgage or otherwise part with possession of the Land or any part of the Land without first disclosing to any intended purchaser, transferee, assignee or mortgagee the existence and nature of this Agreement.

5 GENERAL

5.1 No fettering of Council's powers

This Agreement does not fetter or restrict the Council's power or discretion in respect of any of the Council's decision making powers including but not limited to an ability to make decisions under the *Local Government Act 1989*, and the Act or to make or impose requirements or conditions in connection with any use or development of the Land or the granting of any planning permit, the approval or certification of any plans of subdivision or consolidation relating to the Land or the issue of a Statement of Compliance in connection with any such plans.

5.2 Time of the essence

Time is of the essence as regards all dates, periods of time and times specified in this Agreement.

5.3 Counterparts

- 5.3.1 This Agreement may be executed in any number of counterparts and all the counterparts together constitute one and the same instrument; and
- 5.3.2 A copy of an original executed counterpart received by email:
- (a) must be treated as an original counterpart;
 - (b) is sufficient evidence of the execution of the original; and
 - (c) may be produced in evidence for all purposes in place of the original.

5.4 Governing law and jurisdiction

This Agreement is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts and tribunals of Victoria and waives any right to object to proceedings being brought in those courts or tribunals.

5.5 Enforcement and severability

- 5.5.1 This Agreement shall operate as a contract between the parties and be enforceable as such in a Court of competent jurisdiction regardless of whether, for any reason, this Agreement were held to be unenforceable as an agreement pursuant to Division 2 of Part 9 of the Act.
- 5.5.2 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.

6 NOTICES

6.1 Service of notice

A notice or other communication required or permitted, under this Agreement, to be served on a person must be in writing and may be served:

- 6.1.1 personally on the person;
- 6.1.2 by leaving it at the person's address set out in this Agreement;
- 6.1.3 by posting it by prepaid post addressed to that person at the person's current address for service;
- 6.1.4 by email to the person's current email address notified to the other party; or
- 6.1.5 by facsimile to the person's current number notified to the other party.

6.2 Time of service

A notice or other communication is deemed served:

- 6.2.1 if served personally or left at the person's address, upon service;
- 6.2.2 if posted within Australia to an Australian address by express post, two Business Days; by standard post, six Business Days after posting;

- 6.2.3 if sent by email, subject to the clause 6.2.5, at the time of receipt as specified in section 13A of the *Electronic Transactions (Victoria) Act 2000*;
- 6.2.4 if served by facsimile, subject to the clause 6.2.5, 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; and
- 6.2.5 if received after 5.00pm in the place of receipt or on a day which is not a Business Day, at 9.00am on the next Business Day.

6.3 Proof of receipt of notice by email

In proving that a notice given by email has been received by the recipient, it is sufficient to produce an acknowledgement or receipt that the email has reached the recipient's email address.

7 INTERPRETATION

In this Agreement, unless the contrary intention appears:

- 7.1 the singular includes the plural and vice versa;
- 7.2 a reference to a document or instrument, including this Agreement, includes a reference to that document or instrument as novated, altered or replaced from time to time;
- 7.3 a reference to an individual or person includes a partnership, body corporate, government authority or agency and vice versa;
- 7.4 a reference to a party includes that party's executors, administrators, successors, substitutes and permitted assigns;
- 7.5 words importing one gender include other genders;
- 7.6 other grammatical forms of defined words or expressions have corresponding meanings;
- 7.7 a covenant, undertaking, representation, warranty, indemnity or agreement made or given by:
 - 7.7.1 two or more parties; or
 - 7.7.2 a party comprised of two or more persons;is made or given and binds those parties or persons jointly and severally;
- 7.8 a reference to a statute, code or other law includes regulations and other instruments made under it and includes consolidations, amendments, re-enactments or replacements of any of them;
- 7.9 a recital, schedule, annexure or description of the parties forms part of this Agreement;
- 7.10 if an act must be done on a specified day that is not a Business Day, the act must be done instead on the next Business Day;
- 7.11 if an act required to be done under this Agreement on a specified day is done after 5.00pm on that day in the time zone in which the act is performed, it is taken to be done on the following day;
- 7.12 a reference to an authority, institution, association or body (original entity) that has ceased to exist or been reconstituted, renamed or replaced or whose powers or functions have been

transferred to another entity, is a reference to the entity that most closely serves the purposes or objects of the original entity;

7.13 headings and the provision of a table of contents are for convenience only and do not affect the interpretation of this Agreement.

EXECUTED pursuant to Division 2 of Part 9 of the Act.

SIGNED SEALED AND DELIVERED by

for and on behalf of **YARRA RANGES SHIRE COUNCIL** pursuant to the power delegated to that person by Instrument of Delegation dated August 2020 in the presence of:

C. Elliott

Witness

Caz Elliott

Name of witness

M. Simone

Marcella Simone

AU914971P

SIGNED SEALED AND DELIVERED by
[REDACTED] in accordance
with section 127(1) of the *Corporations Act*
2001 (Cth) by being signed by authorised
persons:

)
)
)
)
)

[REDACTED]

[REDACTED]

Director

*Director/company secretary

Full Name

Full Name

Usual Address

Usual Address

VIC

Date: 9/6/21

AU914974

MORTGAGEE'S CONSENT

REGIONAL INVESTMENT CORPORATION as Mortgagee under Mortgage No. AU285049E which encumbers the Land consents to the Owner entering into this Agreement and agrees to be bound by the terms of and conditions of this Agreement if the Mortgagee becomes mortgagee in possession of the Land.

DATED:



Executed for and on behalf of
REGIONAL INVESTMENT CORPORATION

Scott Holmes
Authorised Officer
30/08/2021

AU914974P