

Application by a Responsible Authority for the making of a Recording of an Agreement

Section 181 Planning and Environment Act 1987



Form 18

Lodged by:

Name: MADDOCKS
Phone: 9288 0555
Address: Level 6, 140 William Street, Melbourne, Victoria, 3000
Ref: TGM:5900958
Customer Code: 1167E

The Responsible 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.

Land: Volume 8947 Folio 942, Volume 8731 Folios 222 and 223, Volume 8436 Folios 242 and 243, Volume 8689 Folio 084 and Volume 8469 Folio 621 ✓

Responsible Authority: Yarra Ranges Council of Civic Centre, Anderson Street, Lilydale, 3140

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

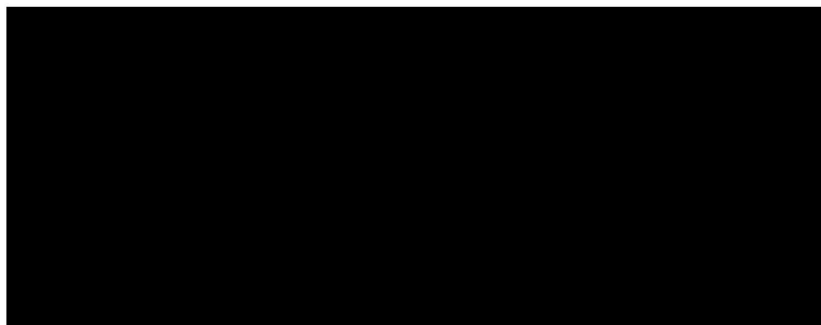
A copy of the Agreement is attached to this Application

Date:

Signature for Responsible Authority:

Name of officer:

Position Held:



KEEP

Date / /2012

AJ617447R



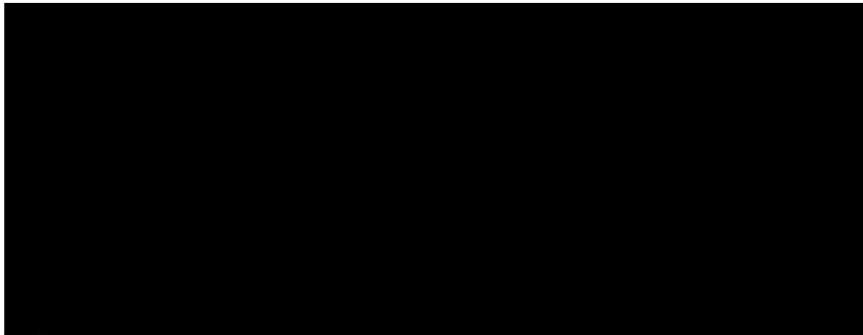
Agreement under Section 173 of the Planning and Environment Act 1987

Subject Land: Oakhaven Development Plan

Purpose: Development Contributions.

Shire of Yarra Ranges

and



AJ617447R

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Agreement under Section 173 of the Planning and Environment Act 1987

DATED / / 2012

AJ617447R



Parties

| | |
|------------|---|
| Name | Shire of Yarra Ranges |
| Address | Civic Centre, Anderson Street, Lilydale Victoria 3140 |
| Short name | Council |

| | |
|------------|------------|
| Name | [REDACTED] |
| Address | [REDACTED] |
| Short name | [REDACTED] |

| | |
|------------|------------|
| Name | [REDACTED] |
| Address | [REDACTED] |
| Short name | [REDACTED] |

Background

- A. Council is the responsible authority pursuant to the Act for the Planning Scheme.
- B. The CPCC is the registered proprietor of that part of the Subject Land described in certificate of title Volume 8947 Folio 942.
- C. CSR is the registered proprietor of that part of the Subject Land, described as the land in certificates of title: Volume 8731 Folio 223, Volume 8731 Folio 222, Volume 8436 Folio 243, Volume 8436 Folio 242, Volume 8689 Folio 084 and Volume 8469 Folio 621.
- D. The Subject Land is within an area that is being developed for urban purposes.
- E. The parties have agreed on the provision of development contributions partly in cash and partly by the carrying out of certain works in respect of the Development.
- F. The parties enter into this Agreement:
 - to record the terms and conditions on which the parties have agreed on development contributions; and
 - 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.

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

Approved Development Plan means the Development Plan approved from time to time under clause 43.04 of the Planning Scheme by Council.

Development means the development of the Subject Land in accordance with the Approved Development Plan.

Infrastructure Project means any one of the infrastructure projects described in clause 3 of this Agreement.

Lot means a lot on the plan endorsed under a planning permit.

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.

Party or parties means the CPCC, CSR and Council under this Agreement as appropriate.

Planning Scheme means the Yarra Ranges Planning Scheme and any other planning scheme that applies to the Subject Land.

Registered Proprietor 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 the Subject Land and includes any Mortgagee-in-possession.

Schedule means a schedule to this Agreement.

Stage followed by a reference to a stage number is a reference to a specified stage of the Development as identified in any staging plan forming part of the plans endorsed under a planning permit.

Statement of Compliance means a statement of compliance under the Subdivision Act 1988.

Subject Land means the whole of the parcel of land described in Schedule 1 and any reference to the Subject Land in this Agreement includes any and each lot created by the subdivision of the Subject Land or any part of it.



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 the Registered Proprietor in relation to a part of the Subject Land comprises more than one party, then this Agreement binds them jointly and each of them severally in relation only to the obligations of the Registered Proprietor of that part of the Subject Land.
- 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.
- 2.8 The obligations of the Registered Proprietor 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 Registered Proprietor of a lot is only responsible for those covenants and obligations which relate to that Registered Proprietor's lot.

3. OBLIGATIONS OF THE PARTIES

3.1 Registered Proprietor's covenants

The Registered Proprietor covenants and agrees that:

Pedestrian Access

- 3.1.1 prior to the completion of the penultimate stage of the Development it will at its own cost construct a pedestrian access from the Subject Land to Rolling Hills Road in a location that is to the satisfaction of Council;
- 3.1.2 prior to the commencement of works in respect of the pedestrian access the CPCC must lodge plans and specifications of the pedestrian access with Council for its approval;
- 3.1.3 the pedestrian access must be constructed in accordance with the approved plans and specifications and to the satisfaction of Council;

- 3.1.4 if the pedestrian access is not completed before the CPCC seeks a Statement of Compliance for the final stage of the subdivision of the Subject Land, the CPCC must provide a cash security in the amount of \$450,000 to Council to be held by Council as security pending the completion of the pedestrian access way by the CPCC in accordance with this Agreement;

Footpaths within the Subject Land

- 3.1.5 CPCC will construct footpaths on one side of each of the roads constructed within the Development. At its discretion and provided that it is consistent with plans endorsed under a planning permit, the CPCC may construct a footpath on both sides of the road;

Traffic Control Measures

- 3.1.6 prior to the issue of a Statement of Compliance in respect of the third stage of the subdivision of the Subject Land, CPCC will at its own cost construct and undertake the traffic control measures on Park Valley Drive in a location or locations, as are reasonably required to discourage thorough traffic (**Traffic Control Measures**).
- 3.1.7 prior to the commencement of the Traffic Control Measures the CPCC must lodge plans and specifications identifying each of the elements of the Traffic Control Measures with Council for its approval;
- 3.1.8 the Traffic Control Measures must be constructed in accordance with the approved plans and specifications and to the satisfaction of Council;
- 3.1.9 if the Traffic Control Measures are not completed before the CPCC seeks a Statement of Compliance for the third stage of the subdivision of the Subject Land, the CPCC must provide a cash security in the amount of \$50,000 to Council to be held by Council as security pending the completion of the Traffic Control Measures way by the CPCC.

Contribution to Traffic Lights

- 3.1.10 CPCC will contribute an amount of \$150,000 towards the cost of installation of traffic lights at -
 - 3.1.10.1 the intersection of Switchback Road and Edward Road; or
 - 3.1.10.2 the intersection of Switchback Road and Victoria Road –

within seven days of the Council providing the CPCC with a valid tax invoice and proof to the satisfaction of the CPCC, that Council has entered into a contract for the installation of the traffic lights;

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Contribution to Footpaths outside the Subject Land

3.1.11 CPCC will pay to Council the amount of \$650,000 in accordance with clause 3.1.12 towards the construction of:

(a) footpaths within approximately a 2 kilometre radius of the Subject Land, at locations to be determined by Council, and

(b) the following footpaths according to the following timing points:

3.1.11.1 after the receipt of the Stage 1 contribution, a footpath on one side of Valley Ho Drive from 43 Valley Ho Drive to the southern boundary of Switchback Road;

3.1.11.2 after the receipt of the Stage 2 contribution, a footpath on one side of the road from the entrance to the Development located on the corner of Kingswood Drive and Park Valley Drive to the intersection of Country Club Drive and Meadow Gate Drive;

3.1.11.3 after the receipt of the Stage 3 contribution, a footpath on one side of the road from the entrance to the Development located on the corner of St Andrews Drive and crown Point Ridge to the eastern boundary of 20 Allambi Road; and

3.1.11.4 after the receipt of the Final Stage contribution, a footpath on one side of Chirnside Drive from the current 68 Chirnside Drive to the eastern boundary of Edward Road;

provided that if the subdivision proceeds in more than 6 stages, Council and the CPCC must agree on an alternative payment schedule to the satisfaction of Council;

3.1.12 the \$650,000 is to be paid to Council in instalments at the completion of each Stage of the subdivision (**Stage Contribution**). The Stage Contribution for each Stage will be \$650,000 divided by the total number of lots in the Development of the whole of the Subject Land and multiplied by the number of lots in the relevant stage.

3.2 Indexation

The Registered Proprietor agrees that the amounts of all monetary values set out in this Agreement are to be adjusted annually effective on 1 July in each year commencing 1 July 2013 by the amount of the Annual Produce Price Index Australia, Victoria (Table 15 Selected Output of Division E – Construction Industry Building Construction Victoria (for buildings) and Roads and Bridge Construction Victoria published by the ABS (Series 6427.0) or if that index is not available or relevant the most similar or appropriate index available as published by the ABS.



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4. OBLIGATIONS OF COUNCIL

4.1 Credit and other matters

Council agrees that

- 4.1.1 if it fails to commence the construction of the traffic lights referred to in clause 3.1.10 of this Agreement before the issue of a Statement of Compliance in respect of the final stage of the subdivision of the Subject Land, it must refund the \$150,000 contribution to the CPCC within 7 days unless the CPCC and Council agree on a different delivery date;
- 4.1.2 if it fails to complete the construction of the footpaths referred to in clause 3.1.11 of this Agreement within 4 years of issue of a Statement of Compliance in respect of the final stage of the subdivision of the Subject Land, it must refund any unspent funds, and any interest accrued on those funds, to the CPCC within 7 days of the expiry of the relevant 4 year period on a pro rata basis having regard to the value of works which have been completed;
- 4.1.3 within 7 days of the completion of an Infrastructure Project by the CPCC, Council will return to the CPCC any security held by Council in respect of that Infrastructure Project;
- 4.1.4 it will treat all contributions made by the CPCC pursuant to this Agreement as development contribution levies and keep proper records of any amount paid to it under this agreement;;
- 4.1.5 it will only use the relevant development contribution for a purpose relating to the provision of the specific Infrastructure Project for which the contribution was required; and
- 4.1.6 if it does not expend the funds for those purposes within the timeframes set out above, it must refund any unspent funds, and any interest accrued on those funds, to the CPCC.

5. FURTHER OBLIGATIONS OF THE PARTIES

5.1 Notice and Registration

CPCC and CSR covenant and agrees that they will bring this Agreement to the attention of all prospective purchasers, lessees, mortgagees, chargees, transferees and assigns.

5.2 Further actions

CPCC and CSR covenant and agree that:

- 5.2.1 they will do all things necessary to give effect to this Agreement;
- 5.2.2 they 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.

5.3 Council's Costs to be Paid

The CPCC agrees that it will immediately upon receipt of a demand, pay to Council, its 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 CPCC.

6. AGREEMENT UNDER SECTION 173 OF THE ACT

The parties 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 CPCC and CSR under this Agreement are obligations to be performed by the CPCC and CSR as conditions subject to which the Subject Land may be used and developed.

7. CPCC'S AND CSR'S WARRANTIES

Without limiting the operation or effect which this Agreement has, the CPCC and CSR warrant that apart from 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 CPCC and CSR 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.

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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.

9.3 No Waiver

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

Unless otherwise provided in this Agreement, this Agreement commences from the date of this Agreement.

12. ENDING OF AGREEMENT

- 12.1 On the issue of a Statement of Compliance for each plan of subdivision for residential allotments created over the Subject Land, the Agreement ends in respect of that part of the Subject Land in the plan of subdivision in accordance with s177(2) of the Act provided that at all times, the Agreement must remain registered on the balance of the Subject Land.
- 12.2 Once this Agreement ends as to part of the Subject Land in accordance with clause 12.1 the Council will, within a reasonable time, following a request from the Registered Proprietor and at the cost of the Registered Proprietor, execute all documents necessary to make application to the Registrar of Titles under section 183(2) of the Act to cancel the recording of this Agreement on the register as to the relevant part of the Subject Land.
- 12.3 On completion of the all of the Registered Proprietor's obligations (including all maintenance obligations) in accordance with this Agreement, the Council must, as soon as practicable following the ending of this Agreement and at the request and at the cost of the Registered Proprietor, execute all documents necessary to make application to the Registrar of Titles under section 183(2) of the Act to cancel the recording of this Agreement on the register.

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

SIGNED on behalf of **YARRA RANGES COUNCIL** by an officer authorised to enter into this agreement in the presence of)
)
)
)



Director Planning Building and Health

Witness

Name of Witness

AJ617447R



EXECUTED BY CHIRNSIDE PARK COUNTRY CLUB LIMITED ACN 005 070 468 in accordance with the Corporations Act 2001 by being signed by the following officers:)
)
)

.....
Signature of director

.....
Full name

.....
Signature of director/company secretary

.....
Full name

EXECUTED BY CSR BUILDING PRODUCTS LIMITED ACN 008 631 356 in accordance with the Corporations Act 2001 by being signed by the following officers:)
)
)

.....
Signature of director

.....
Full name

.....
Signature of director/company secretary

.....
Full name

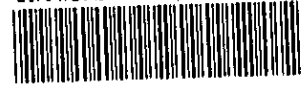
**Schedule 1
Subject Land**

68 Kingswood Drive, Chirnside Park,
66 Chirnside Drive, Chirnside Park,
68 Chirnside Drive, Chirnside Park,
78 St Andrews Drive, Chirnside Park,
80 St Andrews Drive, Chirnside Park,
131 Switchback Road, Chirnside Park,
41 Valley Ho Road, Chirnside Park,

Certificate of Title Volume 8947 Folio 942 ✓
Certificate of Title Volume 8731 Folio 223 ✓
Certificate of Title Volume 8731 Folio 222 ✓
Certificate of Title Volume 8436 Folio 243 ✓
Certificate of Title Volume 8436 Folio 242 ✓
Certificate of Title Volume 8689 Folio 084 ✓
Certificate of Title Volume 8469 Folio 621 ✓

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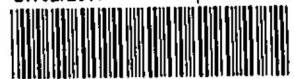


Application by a Responsible Authority for the making of a Recording of an Agreement

Section 181 **Planning and Environment Act 1987**

AK930905F

27/02/2014 \$113 173



Form 18

Lodged by:

Name: MADDOCKS
Phone: 9288 0555
Address: Level 6, 140 William Street, Melbourne, Victoria, 3000
Ref: MYM:LXE:LGC:6149574
Customer Code: 1167E

The Responsible 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.

Land: Volume 11393 Folios 580 and 581

Responsible Authority: Yarra Ranges Council of Anderson Street, Lilydale, 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

Date: 25/2/2014

Signature for Responsible Authority:

Name of officer:

Position held:



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**Hall&Wilcox
Lawyers**

Agreement under
section 173 of the *Planning
and Environment Act 1987*
(Vic)

Yarra Ranges Council



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Bourke Place
600 Bourke Street
Melbourne Vic 3000
DX 320

Telephone +61 3 9603 3555
Facsimile +61 3 9670 9632
www.hallandwilcox.com.au
CSR523-93643 CMH CMH 5306022_1

[6149574: 12417629_1]

Agreement under section 173 of the Planning and Environment Act 1987 (Vic)



Date 25/2/2014.

Parties

Yarra Ranges Council of Anderson Street, Lilydale Victoria 3140 (Council)



Recitals

- A The Council is the responsible authority under the Act for the purposes of the Planning Scheme. The Owner is the registered proprietor of the Land.
- B The Land is affected by the provisions of the Planning Scheme.
- C Council issued the Permit in respect of the Parent Title, requiring the Owner to enter into this Agreement providing for the matters set out in condition 4 of the Permit.
- D The Council and the Owner have agreed to enter into this Agreement under section 173 of the Act to achieve or advance the objectives of planning in Victoria and the objectives of the Scheme in relation to the Land and to give effect to the requirements of the Permit.
- E As at the date of this Agreement the Land is encumbered by a caveat in favour of the Caveator. The Caveator consents to the Owner entering into this Agreement.

The parties agree:

1 Definitions and interpretation

1.1 Definitions

In this Agreement:

Act means the *Planning and Environment Act 1987 (Vic)*.

Agreement means this Agreement and includes this Agreement as amended from time to time.

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Building means a permanent structure and part of a permanent building or a structure including external walls, outbuildings, service installations, garages and other appurtenances of a permanent building.

Building Envelope means that part of any Lot which is identified and delineated on the Endorsed Plan as 'Building Envelope' or the like.

Business Day means a day that is not a Saturday, Sunday or public holiday in Melbourne.

Caveator means the person registered as caveator of the Subject Land.

Endorsed Plan means the plan endorsed with the stamp of Council from time to time as the plan which forms part of the Planning Permit.

Land means part of the land situated at 68 Kingswood Drive, Chirnside Park, Victoria 3116 being all of the land referred to in certificates of title volume 11393 folio 580 and volume 11393 folio 581 and any reference to the Land includes any Lot created by the Subdivision of the Land or any part of it.

Landscape Plan means the landscape plan endorsed by Council under the Permit.

Lot has the same meaning as in the *Subdivision Act 1988* (Vic).

Lots 1042 – 1049 (inclusive) means all of that part of the Land which is delineated and identified on the Endorsed Plan as:

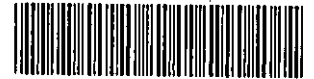
- (a) Lot 1042;
- (b) Lot 1043;
- (c) Lot 1044;
- (d) Lot 1045;
- (e) Lot 1046;
- (f) Lot 1047;
- (g) Lot 1048; and
- (h) Lot 1049.

Lots 1050 – 1057 (inclusive) means all of that part of the Land which is delineated and identified on the Endorsed Plan as:

- (a) Lot 1050;
- (b) Lot 1051;
- (c) Lot 1052;

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- (d) Lot 1053;
- (e) Lot 1054;
- (f) Lot 1055;
- (g) Lot 1056; and
- (h) Lot 1057.

Lots 1072 – 1079 (inclusive) means all of that part of the Land which is delineated and identified on the Endorsed Plan as:

- (a) Lot 1072;
- (b) Lot 1073;
- (c) Lot 1074;
- (d) Lot 1075;
- (e) Lot 1076;
- (f) Lot 1077;
- (g) Lot 1078; and
- (h) Lot 1079.

Owner means the person registered or entitled from time to time to be registered as proprietor of an estate in fee simple of the Land or any part of it and includes a mortgagee-in-possession.

Parent Title means the land situated at 68 Kingswood Drive, Chirnside Park more particularly being all of the land which was referred to in certificate of title volume 8947 folio 942.

Party or Parties means the Parties to this Agreement but does not include a person who has transferred or otherwise disposed of all of their interests in the Land.

Permit means Planning Permit number YR-2012/615, as amended from time to time, issued on 3 May 2013, authorising a 117 lot subdivision of, and variation of easements on, the Parent Title in accordance with the Endorsed Plan.

Planning Scheme means the Yarra Ranges Planning Scheme and any other planning scheme that applies to the Land.

1.2 Interpretation

In this Agreement, headings are inserted for convenience only and do not affect the interpretation of this Agreement and unless the context otherwise requires:

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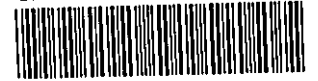
- (a) words and expressions used in this Agreement which are not expressly defined in this Agreement, but which have a defined meaning in the Act, have the same meaning in this Agreement as in the Act;
- (b) the singular includes the plural and vice versa;
- (c) a gender includes the other gender;
- (d) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (e) the meaning of general words is not limited by specific examples introduced by 'includes', 'including', 'for example', 'such as' or similar expressions;
- (f) a reference to a document or instrument, including this Agreement, includes all of its clauses, paragraphs, recitals, parts, schedules and annexures and includes the document or instrument as amended, varied, novated, supplemented or replaced from time to time;
- (g) a reference to a Party is to a Party to this Agreement and includes the Party's successors and permitted transferees and assigns and if Party is an individual, includes executors and personal legal representatives;
- (h) a reference to a person includes an individual, a partnership, a corporation or other corporate body, a joint venture, a firm, a trustee, a trust, an association (whether incorporated or not), a government and a government authority or agency;
- (i) an agreement, representation, warranty or indemnity by two or more persons binds them jointly and each of them severally;
- (j) an agreement, representation, warranty or indemnity in favour of two or more persons is for the benefit of them jointly and each of them severally;
- (k) no provision of this Agreement will be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement;
- (l) unless otherwise stated, a reference to a statute, code, planning scheme or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
- (m) if the day on or by which something must be done is not a Business Day, that thing must be done on the next Business Day.

2 Commencement of Agreement

This Agreement commences on the date of execution.

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3 Effect of Agreement and registration

3.1 Agreement under section 173 of the Act

The Parties agree 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 as a deed under section 173 of the Act.

3.2 Covenants to run with the Land

The Parties agree that the obligations imposed on the Land under this Agreement are intended to take effect as separate and several covenants which are annexed to and run at law and equity with the whole or any part of the Land and bind the Owner, its successors, transferees and permitted assigns, the registered proprietor or proprietors for the time being of the Land.

3.3 Lots

Despite clause 3.2, this Agreement is to be read and applied so that, in respect of the covenants and obligations under clauses 4.1 and 4.2, each Owner of a Lot is only responsible for those covenants and obligations that relate to that Owner's Lot.

3.4 Registration memorandum

The Owner agrees that it will consent to the Council making an application to the Registrar of Titles to make a recording of this Agreement in the Register on the certificate of title of the Land in accordance with section 181 of the Act.

4 Covenants

The Owner covenants and agrees:

4.1 Building Envelopes

- (a) If the Endorsed Plan identifies a Building Envelope for a Lot, the Owner must not:
- (i) build, construct, erect or carry out; or
 - (ii) cause or permit to be built, constructed, erected or carried out,
- any Building or Works on that Lot outside, or otherwise in contravention of, a Building Envelope.
- (b) On Lots 1042 – 1049 (inclusive), Lots 1050 – 1057 (inclusive) and Lots 1072 – 1079 (inclusive), the Owner must not:
- (i) build, construct, erect or carry out; or
 - (ii) cause or permit to be built, constructed, erected or carried out,

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any Building, other than a single Building comprising 8 dwellings, each of which must be constructed to the satisfaction of Council.

4.2 Retaining walls

Owners which share a retaining wall on a common boundary of two Lots are jointly responsible for the maintenance of that retaining wall and must cooperate with one another to allow such access to such people and at such times as is reasonably necessary to allow the proper inspection, maintenance or repair of the retaining wall, the costs of which must be borne by them in equal proportions.

4.3 Notice of Agreement

The Owner acknowledges and agrees that it must bring this Agreement to the notice of all prospective purchasers, lessees, mortgagees, chargees, transferees and assigns of the Land.

5 Owner's warranties

Without limiting the operation or effect of this Agreement, the Owner warrants that apart from the Caveator and any other person who has consented in writing to this Agreement, no other person has any interest, either legal or equitable, in the Land which may be affected by this Agreement.

6 Successors in title

Without limiting the operation or effect of this Agreement, the Owner must ensure that until a memorandum of this Agreement is recorded on the certificate of title to the Land, the Owner's successors in title will:

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

7 Costs

The Owner must pay Council's costs and expenses in relation to the

- (a) preparation, drafting, finalisation, engrossment, execution and registration of this Agreement;
- (b) preparation, drafting, finalisation, engrossment, execution and registration of any amendment to this Agreement; and
- (c) preparation, drafting, finalisation, engrossment, execution and registration of any document to give effect to the ending of this Agreement.

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8 Interest

The Owner must pay to Council interest in accordance with section 227A of the *Local Government Act 1989 (Vic)* on any amount due under this Agreement that is not paid by the due date.

9 No fettering of the Council's powers

The parties acknowledge and agree that this Agreement does not fetter or restrict the power or discretion of the 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 relating to the Land or relating to any use or development of the Land.

10 Notices

10.1 General

Unless this Agreement expressly states otherwise, any notice, consent, approval or other communication (**notice**) in connection with this Agreement must be in writing and signed by the sender or a person authorised by the sender. A notice may be given by hand delivery, prepaid post or by facsimile transmission to the recipient's current address for service for notices.

10.2 When effective

A notice will be deemed to be received:

- (a) if hand delivered, at the time of delivery;
- (b) if sent by prepaid post, three Business Days after the date of posting if posted to or from a place within Australia or seven Business Days after the date of posting if posted to or from a place outside Australia; or
- (c) if sent by facsimile transmission, when the sender's fax machine produces a report confirming the successful transmission of the entire notice including the relevant number of pages and the correct destination fax machine number or name of recipient.

unless a notice is received after 5.00 pm on a Business Day in the place of receipt or at any time on a non Business Day, in which case, that notice is deemed to have been received at 9.00 am on the next Business Day.

10.3 Addresses for notices

Any notice given in connection with this Agreement must be given to the registered address of the Party if it is an incorporated entity or the known address of the Party where she is an individual, or if to the Owner of a Lot, to the address of that Lot.

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11 Inspection of documents

A copy of any planning permit, document or plan referred to in this Agreement is available for inspection at Council offices during normal business hours upon giving the Council reasonable notice.

12 No Waiver

Any time or other indulgence granted by Council to the Owner or any variation of this Agreement or any judgment or order obtained by Council against the Owner does not amount to a waiver of any of Council's rights or remedies under this Agreement.

13 Severability

If any provision of this Agreement is void, voidable by a Party, unenforceable, invalid or illegal and would not be so if a word or words were omitted, then that word or those words are to be severed and if this cannot be done, the entire provision is to be severed from this Agreement without affecting the validity or enforceability of the remaining provisions of this Agreement.

14 Further steps

Each Party agrees to promptly do all things reasonably necessary to give full effect to this Agreement and the transactions contemplated by it, including obtaining consents and signing documents.

EXECUTED as a deed.

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[Barcode]

Signing page

SIGNED on behalf of YARRA RANGES)
COUNCIL by an officer authorised to)
enter into this agreement in the presence of)



Director Planning Building and Health

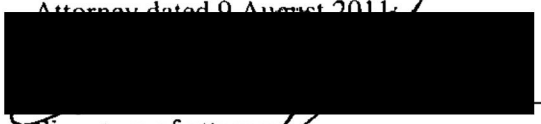


Witness



Name of Witness

EXECUTED by **CHIRNSIDE PARK**)
COUNTRY CLUB LIMITED ACN 005 070)
468 by its attorneys and under Power of)
Attorney dated 9 August 2011:)



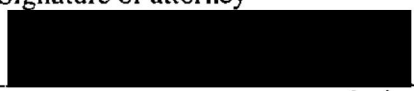
Signature of attorney



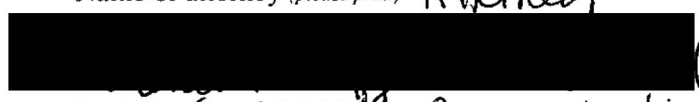
Signature of attorney



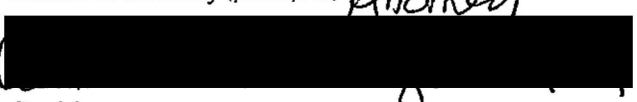
Name of attorney (please print) *Attorney*



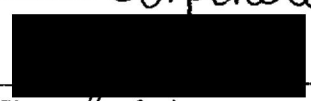
Name of attorney (please print) *Attorney*



Position *Corporate Communications*



Position



Signature of witness



Name of witness (please print)



Signature of witness



Name of witness (please print)

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EXECUTED by CSR BUILDING)
PRODUCTS LIMITED ACN 008 631 356 in)
accordance with the *Corporations Act 2001* by)
being signed by the following officers:)



Signature of director



Name of director (please print)



Signature of director / company secretary



Name of director / company secretary (please print)