

SEC10/2018-1

**275 Barrys Road BARONGAROOK WEST
277 Barrys Road BARONGAROOK WEST**

**Lot: 1 PS: 644904 V/F: 11312/161, Lot: 2 PS: 644904
V/F: 11312/162 Parish of Barongarook**

**PP21/2009 - 1 - Ending of Section 173
Agreement between Colac Otway Shire and
Neil Andrew and Angela Kay Widdicombe -
AJ213392S**

Rod Bright & Associates Pty Ltd

Officer - Ian Williams

EXHIBITION FILE

This document is made available for the sole purpose of enabling its consideration and review as part of a planning process under the Planning and Environment Act 1987. The document must not be used for any purpose which may breach any Copyright.

Submissions to this planning application will be accepted until a decision is made on the application.

If you would like to make a submission relating to a planning permit application, you must do so in writing to the Planning Department

ROD BRIGHT & ASSOCIATES PTY. LTD.
LAND SURVEYORS & TOWN PLANNERS
A.C.N. 007 206 975 A.B.N. 50 007 206 975

Tel. (03) 5231 4883
Fax. (03) 5231 4883

18 June 2018

REF: 11-12(18)

Colac Otway Shire
P.O. Box 283
COLAC VIC 3250

Attention: Bláithín Butler, Statutory Planning Coordinator

Dear Bláithín,

RE: APPLICATION TO END SECTION 173 AGREEMENT AJ213392S
N.A. & A.K. WIDDICOMBE
275 & 277 BARRYS ROAD BARONGAROOK WEST

We act on behalf of our clients Neil & Kay Widdicombe.

Please find attached an application to end the Section 173 Agreement described as instrument AJ213392 attached to Copies of Title Vol 11312 Folios 161 and 162. The agreement was entered into as part of a VCAT decision allowing the subdivision of the land by planning permit PP21/2009-1.

The agreement formalises the following undertakings under clause 8:

- (a) Agrees that, other than for subdivision PS644904L; no further subdivision of either of the lots created by subdivision PS644904L shall be effected so as to create any additional lots.
- (b) Agrees that, no use and development of a dwelling on Lot 2 shall be permitted for 15 years from the date of approval of subdivision PS644904L by the Registrar of Titles.
- (c) Agrees to manage the land in accordance with the Land Management Plan endorsed in compliance with Condition 3 of the Planning Permit.
- (d) Acknowledges the possible off-site impact of adjoining or nearby agricultural activities on the use and enjoyment of each Lot created by subdivision PS644904L.

The owners seek to end the agreement.

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Justification for the removing the Agreement (Section 178B of the Act) include:


- All actions in the endorsed Land Management Plan have been completed. The current focus in land management is on environmental improvements elsewhere in the wider farm holdings.
- A change in circumstances has triggered the re-configuration of the current farm plan which will include sale of Lot 2. The applicants note the original application for subdivision which prompted the Agreement was instigated in early 2009, almost 10 years prior. We query whether a requirement to restrict use and development of the land for a specific period of time is an appropriate planning mechanism, as the planning scheme has not changed in relation to either the agriculture policy context or the Farming Zone purpose/decision guidelines since the original approval, and is unlikely to change substantially over the course of the next few years.
- VC103 was introduced in September 2013 and removed the provisions under clause 35.07-3 in the Farming Zone which then required owners of each lot created to enter into an agreement to ensure the land may not be further subdivided.

Please find attached:

- Application to end agreement forms signed by land owners;
- Current copies of title and copy of Agreement;
- Application fee of \$632.80

We trust that the application will be considered favourably. Please do not hesitate to contact me should you require further information.

Yours sincerely,



Katy Bright
ROD BRIGHT & ASSOCIATES

encl.

copy: N & K Widdicombe
B & M Farnes

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Colac Otway SHIRE

Colac Otway Shire Council
Sustainable Planning and Development Unit
PO Box 283 (101-105 Gellibrand Street)
COLAC VIC 3250
Telephone: (03) 5232 9400 Fax: (03) 5232 9586
E-mail: info@colacotway.vic.gov.au
www.colacotway.vic.gov.au

APPLICATION TO AMEND OR END A SECTION 173 AGREEMENT

Pursuant to Section 178A(2) of the Planning & Environment Act 1987

The Applicant

Name: Neil and Kay Widdicombe (N.A. & A.K. Widdicombe)	Organisation:
Postal Address: 210 Barrys Road BARONGAROOK WEST	Postcode: 3249
Telephone No. (business hours): 0419 018 463	Mobile Phone No.:
E-mail Address:	Fax No.:

The Agreement

Clearly identify the Agreement proposed to be amended, ended or ended in part, and the purpose of the agreement
Instrument AJ213392S Vol 11312 Fol 162 and 161.....

~~The agreement imposes restrictions and requirements as instructed by PP21/2009-1.....~~

Land affected by the Agreement

A description of the land affected by the Agreement, and the land affected by any proposed amendment (i.e. property address and lot details)

~~277 Barrys Road Barongarook West Lot 2 PS644904L.....~~
~~275 Barrys Road Barongarook West Lot 1.1 PS644904L.....~~

Proposal to Amend an Agreement

In the case of a proposal to amend an Agreement, clearly describe the proposed amendment, the purpose of the proposed amendment and any change in circumstances that necessitates the proposed amendment

.....

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Proposal to End an Agreement

In the case of a proposal to end an agreement, clearly describe the parts of the agreement to be ended and why the agreement is no longer required

.....

.....The application seeks to end the Agreement in relation to all matters listed in Clause 8.....

.....Refer to attached supporting letter.....

.....

.....

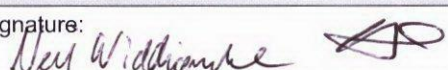
.....

.....

.....

Declaration

I declare that I am the owner of the land, or a person who has entered into an agreement in anticipation of becoming the owner of the land:

Signature:  NAME: Neil and Kay Widdicombe (N.A. & A.K. Widdicombe)	Date: 20/6/2018
---	-----------------

Lodgement

Please lodge the completed form and supporting documents (e.g. copy of title produced not more than 60 days before the application is submitted and a copy of the registered s173 Agreement) with Council's Planning Department.

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Colac Otway SHIRE

Colac Otway Shire Council
Sustainable Planning and Development Unit
PO Box 283 (101-105 Gellibrand Street)
COLAC VIC 3250
Telephone: (03) 5232 9400 Fax: (03) 5232 9586
E-mail: inq@colacotway.vic.gov.au
www.colacotway.vic.gov.au

APPLICATION TO AMEND OR END A SECTION 173 AGREEMENT

Pursuant to Section 178A(2) of the Planning & Environment Act 1987

The Applicant

Name: B.R. & M.M. Farnes	Organisation:
Postal Address: 275 Barrys Road BARONGAROOK WEST	Postcode: 3249
Telephone No. (business hours):	Mobile Phone No.:
E-mail Address:	Fax No.:

The Agreement

Clearly identify the Agreement proposed to be amended, ended or ended in part, and the purpose of the agreement
 Instrument AJ213392S Vol.11312 Fol.162 and 161.....
 The agreement imposes restrictions and requirements as instructed by PP21/2009-1.....

Land affected by the Agreement

A description of the land affected by the Agreement, and the land affected by any proposed amendment (i.e. property address and lot details)
 277 Barrys Road Barongarook West Lot 2 PS644904L.....
 275 Barrys Road Barongarook West Lot 1 PS644904L.....

Proposal to Amend an Agreement

In the case of a proposal to amend an Agreement, clearly describe the proposed amendment, the purpose of the proposed amendment and any change in circumstances that necessitates the proposed amendment

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Proposal to End an Agreement

In the case of a proposal to end an agreement, clearly describe the parts of the agreement to be ended and why the agreement is no longer required

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.....The application seeks to end the Agreement in relation to all matters listed in Clause 8.....

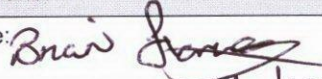
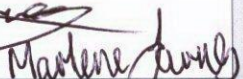
.....Refer to attached supporting letter.....

.....

.....

Declaration

I declare that I am the owner of the land, or a person who has entered into an agreement in anticipation of becoming the owner of the land:

Signature: 
 NAME: B.R. & M.M. Farnes 

Date: 20/6/2018

Lodgement

Please lodge the completed form and supporting documents (e.g. copy of title produced not more than 60 days before the application is submitted and a copy of the registered s173 Agreement) with Council's Planning Department.



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**REGISTER SEARCH STATEMENT (Title Search) Transfer of
Land Act 1958**

Page 1 of 1

VOLUME 11312 FOLIO 161

Security no : 124072088084Q
Produced 30/05/2018 12:40 pm

LAND DESCRIPTION

Lot 1 on Plan of Subdivision 644904L.
PARENT TITLES :
Volume 06013 Folio 546 Volume 08777 Folio 694
Created by instrument PS644904L 02/11/2011

REGISTERED PROPRIETOR

Estate Fee Simple
TENANTS IN COMMON
As to 1 of a total of 2 equal undivided shares
Sole Proprietor
 BRIAN FRANCIS FARNES of 275 BARRYS ROAD BARONGAROOK WEST VIC 3249
As to 1 of a total of 2 equal undivided shares
Sole Proprietor
 MARLENE MAY FARNES of 275 BARRYS ROAD BARONGAROOK WEST VIC 3249
 AJ349642L 01/12/2011

ENCUMBRANCES, CAVEATS AND NOTICES

MORTGAGE AJ349643J 01/12/2011
 AUSTRALIA AND NEW ZEALAND BANKING GROUP LTD

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

AGREEMENT Section 173 Planning and Environment Act 1987
 AJ213392S 23/09/2011

DIAGRAM LOCATION

SEE PS644904L FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NIL

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

Street Address: 275 BARRYS ROAD BARONGAROOK WEST VIC 3249

ADMINISTRATIVE NOTICES

NIL

eCT Control 16165A ANZ RETAIL AND SMALL BUSINESS
Effective from 23/10/2016

DOCUMENT END



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**REGISTER SEARCH STATEMENT (Title Search) Transfer of
Land Act 1958**

Page 1 of 1

VOLUME 11312 FOLIO 162

Security no : 124072088023G
Produced 30/05/2018 12:39 pm

LAND DESCRIPTION

Lot 2 on Plan of Subdivision 644904L.
PARENT TITLES :
Volume 06013 Folio 546 Volume 08777 Folio 694
Created by instrument PS644904L 02/11/2011

REGISTERED PROPRIETOR

Estate Fee Simple
Joint Proprietors
NEIL ANDREW WIDDICOMBE
ANGELA KAY WIDDICOMBE both of 210 BARRYS ROAD BARONGAROOK VIC 3249
PS644904L 02/11/2011

ENCUMBRANCES, CAVEATS AND NOTICES

MORTGAGE AG198880H 18/11/2008
AUSTRALIA AND NEW ZEALAND BANKING GROUP LTD

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

AGREEMENT Section 173 Planning and Environment Act 1987
AJ213392S 23/09/2011

DIAGRAM LOCATION

SEE PS644904L FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NIL

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

Street Address: 277 BARRYS ROAD BARONGAROOK WEST VIC 3249

ADMINISTRATIVE NOTICES

NIL

eCT Control 16165A ANZ RETAIL AND SMALL BUSINESS
Effective from 23/10/2016

DOCUMENT END



Imaged Document Cover Sheet

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Document Type	Plan
Document Identification	PS644904L
Number of Pages (excluding this cover sheet)	2
Document Assembled	30/05/2018 12:39

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PS6449041

28/10/2011 16:29:00 PS

PLAN OF SUBDIVISION	STAGE NO /	LRS use only EDITION 1
---------------------	---------------	----------------------------------

Location of Land

Parish: of Barongarook
Township: _____
Section: _____
Crown Allotment: 23C (Part) & 26A (Part)
Crown Portion: _____
Title References: Vol. 6013 Fol. 546 &
Vol. 8777 Fol. 694
Last Plan Reference: Lot 1 on LP83588
Postal Address: 275 Barrys Road,
(at time of subdivision) Barongarook 3249
MGA94 Co-ordinates: E 723 200
(Of approx. centre of plan) N 5 743 400 Zone 54

Council Certification and Endorsement

Council Name: Colac Otway Shire Council Ref: Sb/2011

1. This plan is certified under section 6 of the Subdivision Act 1988.
- ~~2. This plan is certified under section 11(7) of the Subdivision Act 1988.~~
~~Date of original certification under section 6 / /~~
- ~~3. This is a statement of compliance issued under section 21 of the Subdivision Act 1988.~~

Open Space

(i) A requirement for public open space under section 18 Subdivision Act 1988 ~~has~~ / has not been made:

(ii) The requirement has been satisfied: _____

(iii) The requirement is to be satisfied in stage: _____

Council Delegate: Adam
Council seal: _____
Date: 25/5/11
Re-certified under section 11(7) of the Subdivision Act 1988
Council Delegate: _____
Council seal: _____
Date: _____

Vesting of Roads or Reserves

Identifier	Council/Body/Person
NIL	NIL

Notations

Staging This ~~is~~ is not a staged subdivision
Planning Permit No. PP21/2009

Depth Limitation: 15.24 metres below the surfaces applies to all the land in this plan.

Survey:- This plan ~~is~~ is not based on survey
This survey has been connected to permanent marks no(s).
In proclaimed Survey Area no. _____

Easement Information

Legend: E - Encumbering Easement or Condition in Crown Grant in the Nature of an Easement or other Encumbrance
A - Appurtenant Easement R - Encumbering Easement (Road)

Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of

LRS use only

Statement of Compliance
/ Exemption Statement

Received:

Date: 28/10/11

LRS use only

PLAN REGISTERED
TIME 2:54pm
DATE 2/11/11
.....
M.V
Assistant Registrar of Titles

SHEET 1 OF 2 SHEETS

ROD BRIGHT & ASSOCIATES PTY LTD
LICENSED SURVEYORS & TOWN PLANNERS
26 MURRAY STREET COLAC 3250
TEL 5231 4883 ACN 007 206 975

LICENSED SURVEYOR (PRINT) ANTHONY EDWARD BRIGHT

SIGNATURE Anthony Bright DATE 14/02/2011

REF 11-12 VERSION

Adam
DATE 25/5/11
COUNCIL DELEGATE SIGNATURE

Original sheet size A3

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PLAN OF SUBDIVISION

Stage No.

Plan Number

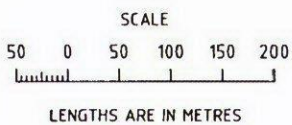
PS644904L



ROD BRIGHT & ASSOCIATES PTY LTD
 LICENSED SURVEYORS & TOWN PLANNERS
 26 MURRAY STREET COLAC 3250
 TEL 5231 4883 ACN 007 206 975

Sheet 2 of 2 sheets

ORIGINAL
 SCALE 1:5000
 SHEET SIZE A3



LICENSED SURVEYOR (PRINT) ANTHONY EDWARD BRIGHT
 SIGNATURE *[Signature]* DATE 14/02/2011
 REF 11-12 VERSION

[Signature]
 DATE 25/5/11
 COUNCIL DELEGATE SIGNATURE
 Original sheet size A3



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Document Type	Instrument
Document Identification	AJ213392S
Number of Pages (excluding this cover sheet)	8
Document Assembled	30/05/2018 12:40

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APPLICATION UNDER SECTION 181 PLANNING & ENVIRONMENT ACT

LODGED BY:

TITLES OFFICE U

AJ213392S

23/09/2011 \$107.50 173



SLM LAW, Lawyers, Colac

Telephone: (03) 5231 9400

Ref: MJC:KAS:250458-6 Code: 1558 N

VICTORIA

APPLICATION BY A RESPONSIBLE AUTHORITY under Section 181 Planning and Environment Act 1987 for **ENTRY OF A MEMORANDUM OF AGREEMENT** under Section 173 of the Act.

The Responsible Authority under the Planning Scheme having entered into an Agreement with the parties named for the land described requires that a memorandum of the Agreement be entered on the Certificate(s) of Title to the land referred to.

LAND Certificate of Title Volume 6013 Folio ⁵⁴⁶~~694~~ and Volume 8777 Folio 694

ADDRESS OF THE LAND 275 Barrys Road, Barongarook West

RESPONSIBLE AUTHORITY Colac Otway Shire

PLANNING SCHEME Colac Otway Shire Planning Scheme

AGREEMENT DATE 19/ 9 /2011 **AGREEMENT WITH**
NA & AK WIDDICOMBE

Signature of the Responsible Authority

JACK GREEN
GENERAL MANAGER
SUSTAINABLE PLANNING & DEVELOPMENT

DATED: 19 Sept 2011

KEEP

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AJ213392S



PLANNING AGREEMENT

Parties

**NEIL ANDREW WIDDICOMBE AND ANGELA KAY WIDDICOMBE
("the Owner")**

and

COLAC OTWAY SHIRE ("the Responsible Authority")

SLM LAW
119 Murray Street
PO Box 3, Colac
Phone: (03) 5231 9400
Facsimile: (03) 52313616

THIS AGREEMENT is made the 19 day of September 2011 pursuant to Section 173 of the Planning and Environment Act 1987 ("the Act").

The following copied documents are made available for the sole purpose of enabling its consideration and review as part of a planning process under the Planning and Environment Act 1987. The document must not be used for any purpose which may breach any Copyright.

PARTIES:

1. COLAC OTWAY SHIRE of 2-6 Rae Street, Colac 3250 ("the Responsible Authority"); and
2. NEIL ANDREW WIDDICOMBE AND ANGELA KAY WIDDICOMBE of 210 Barrys Road, Barongarook West 3249 ("the Owner")

RECITALS:

- A. The Responsible Authority is responsible for the administration and enforcement of the Colac Otway Planning Scheme ("the Planning Scheme") pursuant to the provisions of the Act.
- B. The owner is the registered proprietor of the land known as 275 Barrys Road, Barongarook West 3249 and described in Certificates of Title Volume 6013 Folio 546 and Volume 8777 Folio 694.
- C. The Owner and the Responsible Authority agree that the subdivision of the abovementioned land ("the subdivision") shall be made generally in accordance with the Planning Permit PP21/2009-1 ("the Planning Permit") in the Colac Otway Planning Scheme.
- D. The Owner and the Responsible Authority record their agreement on the terms set out in this Deed.

IT IS AGREED THAT:

1. Without limiting the operation or effect which this Agreement otherwise has, the parties acknowledge that this Agreement is made pursuant to the provisions of Section 173 of the *Planning and Environment Act 1987* ("the Act").
2. This Agreement shall come into force immediately upon execution by the parties and shall run with the Title to the Land.

Interpretation

3. The parties agree that in the interpretation of this Agreement:
 - 3.1 The expression "**Owner**" shall be deemed to include the Owner's successors, assignees and transferees and the obligations imposed upon and assumed by the Owner in respect to the land of which it is registered as proprietor shall also be binding on its successors, transferees, purchasers, mortgagees, assigns and any person obtaining possession of whole or part of the Land ("**the Successors**") as if each of those Successors had separately executed this Agreement;
 - 3.2 "**Subject Land**" means the land referred to in Recital B.
4. The parties agree that in the interpretation of this Agreement:
 - 4.1 The singular includes the plural and the plural includes the singular.

AJ213392S

23/09/2011 \$107.50 173



- 4.2 A reference to a gender includes a reference to each other gender.
- 4.3 A reference to a person includes a reference to a natural person, a corporation or other corporate body and their successors in law.
- 4.4 If a party consists of more than one person this agreement binds them jointly and each of them severally.
- 4.5 A reference to a statute shall include any statutes amending, consolidating or replacing same and any regulations made under such statutes.
- 4.6 All headings are for ease of reference only and shall not be taken into account in the construction or interpretation of this Agreement.
- 4.7 The recitals to this agreement are and will be deemed to form part of this Agreement including any terms defined within the Recitals.
- 4.8 A reference to the words "**Planning Scheme**" includes any planning control in the form of or similar to a planning scheme and being a successor to the Colac Otway Planning Scheme;
- 4.9 A reference to the words "**Responsible Authority**" includes its successors as Responsible Authority for the Planning Scheme in which case any reference to the holder of an office with the Responsible Authority shall be deemed to be a reference to such office of the successor Responsible Authority as that Responsible Authority may designate.

Jurisdiction

5. For the purposes of this Agreement, the parties acknowledge that they are subject to the jurisdiction of the Act and the Victorian Courts for the enforcement of this Agreement.

Severability

6. Notwithstanding clause 1, and in the event that this Agreement is held not to be an agreement validly entered into or enforceable under the Act, it will nevertheless remain a contract between the parties and be enforceable as a contract in a Court of competent jurisdiction on the State of Victoria.
7. 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.

Undertakings of the Parties

8. The Owner:
- (a) Agrees that, other than for subdivision PS644904L; no further subdivision of either of the lots created by subdivision PS644904L shall be effected so as to create any additional lots.

- (b) Agrees that, no use and development of a dwelling on Lot 2 shall be permitted for 15 years from the date of approval of subdivision PS644904L by the Registrar of Titles.
- (c) Agrees to manage the land in accordance with the Land Management Plan endorsed in compliance with Condition 3 of the Planning Permit.
- (d) Acknowledges the possible off-site impact of adjoining or nearby agricultural activities on the use and enjoyment of each Lot created by subdivision PS644904L.

Disputes

9. In the event of any dispute between the parties concerning the interpretation or implementation of this Agreement, such a dispute shall be referred to the Victorian Civil and Administrative Tribunal ("the Tribunal") for resolution to the extent permitted by the Act. In the event of a dispute concerning any matter which is not referable to the Tribunal pursuant to the Act, such matters shall be and is hereby referred to arbitration for an Arbitrator agreed upon in writing by the parties or, in the absence of such agreement the Chairman of the Victorian Chapter of the Institute of Arbitrators, Australia or his nominate, for arbitration.
10. Provision is made in this Agreement that any matter be done to the satisfaction of the Responsible Authority or any of its officers and if a dispute arises in relation thereto, such disputes shall be referred to the Tribunal in accordance with Section 149 (1) (b) of the Act.
11. The parties shall be entitled to legal representation for the purposes of any arbitration or referral referred to in clauses 9 and 10 and, unless the Arbitrator, Chairman, nominee or the Tribunal shall otherwise direct, each party must bear its own costs.

Owner's Covenants

12. The Owner warrants and covenants that:
- (a) The owner is both the registered proprietor and the beneficial owner of the land on the proposed Plan;
- (b) there are no mortgages, liens, charges, easements or other encumbrances or any rights inherent in any person affecting the Subject Land and not disclosed by the usual searches;
- (c) the Subject Land or any part of it is not subject to any rights obtained by adverse possession or subject to any easements, rights or encumbrances mentioned in Section 42 of the *Transfer of Land Act 1958*.

Registration of Agreement

13. The Responsible Authority and the Owner shall do all things necessary (including signing and any further agreement, acknowledgment or document) to enable the Responsible Authority to enter a memorandum of this Agreement on the Certificate of Title to the land in accordance with Section 181 of the Act.
14. Without limiting the operation or effect which this Agreement has, the Owner must ensure that until such time as a Memorandum of this Agreement is registered on the Title to the Land, successors in title shall be required to:

AJ213392S

173

23/09/2011 \$107.50



- 14.1 Give effect to and do all acts and sign all documents which will require those successors to give effect to this Agreement; and
- 14.2 Execute under seal a deed agreeing to be bound by the terms of this Agreement and upon such execution this Agreement shall continue as if executed by such successors as well as by the parties to this Agreement as if the successor's name appeared in each clause in which the name of the Owner appears and in addition to the name of the Owner.

Notification to Successors in Title

15. The Owner will not sell, transfer, assign or otherwise part with possession of the Land or any part thereof until this Agreement and the Section 181 Application has been lodged with Land Victoria by or on behalf of the Responsible Authority and entered on the Certificate of Title to the Land.
16. The Owner will not sell, transfer, assign or otherwise part with possession of the Land or any part thereof without first disclosing to the intended purchaser, transferee or assignee the existence and nature of this Agreement.
17. The Owner and the Responsible Authority acknowledge and agree that this Agreement is made pursuant to Section 173 of the Act and during the period of this Agreement the obligations imposed on the Owner are conditions on which the Land may be used or developed for specified purposes and are intended to take effect as covenants which shall be annexed to and run at law and in equity with the Land and bind the Owner, its successors in title, assignees and transferees and the registered proprietor and proprietors for the time being of the Land and every part of the Land.

Owner May Apply for Planning Permission

18. The parties acknowledge and agree that this Agreement will not and is not intended to prejudice the rights of the Owner to make any application under the Planning Scheme for permission to use and develop the Land or prevent or constrain the Responsible Authority from considering and determining any such application in accordance with the requirements of the Planning Scheme and the Act.

Service

19. 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:
- 19.1 *by delivering it personally to that party;*
- 19.2 *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*
- 19.3 *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.*
20. A notice or other communication is deemed served:
- 20.1 *if delivered, on the next following business day;*

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- 20.2 if posted, on the expiration of two business days after the date of posting or
- 20.3 if sent by facsimile, on the next following business day unless the receiving party has been requested retransmission before the end of that business day.

Council's Costs to be Paid

21. The Owners will immediately pay to the Council, Council's reasonable costs and expenses (including legal expenses) of and incidental of any consequent Agreement and the enforcement and implementation of the Agreement and anything done in anticipation of the enforcement of any obligations imposed on the Owners and the cancellation or amendment of the Agreement which costs are and until paid will remain a charge on the Subject Land. To the extent that any such cost and expenses constitute legal professional costs the Council may have them assessed by the Law Institute of Victoria Cost Service and the Owners shall be bound by the amount of such assessment with any fee for obtaining such assessment being borne equally by the Owners and the Council.

MORTGAGEE'S CONSENT.

Australia and New Zealand Banking Group Ltd as Mortgagee of the Subject Land pursuant to Mortgage No AG198880H hereby consents to the within provisions of this Section 173 Agreement. *Refer page 7. mL*

Dated: *22/8/2011*

IN CONFIRMATION of their agreement the parties have executed this Agreement on the date set out at the commencement of the Agreement.

SIGNED SEALED AND DELIVERED by)
the said **NEIL ANDREW WIDDICOMBE**)
in the presence of:)

Neil Widdicombe

[Handwritten signature]

Signature of witness

Rowena Gleeson

Name of witness (please print)

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SIGNED SEALED AND DELIVERED by)
the said **ANGELA KAY WIDDICOMBE**)
in the presence of:)

[Handwritten signature]

Signature of witness

Rowena Gleeson

Name of witness (please print)

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THE COMMON SEAL of the COLAC OTWAY SHIRE was hereto affixed in accordance with its Local Law No. 4

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Executed by the Colac Otway Shire Council through its authorised delegate, Mr Jack Green, General Manager, Sustainable Planning and Development Planning Permit No. PP21/2009-1

SCHEDULE "A"

Executed by AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED ABN 11 005 357 522 by being SIGNED by its Attorney

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED ABN 11 005 357 522 by its Attorney

Michael GEORGE

Under the Power of Attorney Dated 28/04/2005 a certified copy of which is filed in the permanent order Book Number 277 at Page 19 Item 6 in the presence of:

Who holds office as employee of the ANZ for the time being of Australia and New Zealand Banking Group Ltd in Victoria