



Attachment A

Section 173 Agreement

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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**

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Lodged by

Name: SLM LAW
Phone: 03 5593 1366
Address: 17 PIKE STREET, CAMPERDOWN VICTORIA 3260
Reference: SM:425941-9
Customer code: 1558N

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 and folio)

VOLUME 8185 FOLIO 873

Responsible authority:(full name and address, including postcode)

CORANGAMITE SHIRE COUNCIL OF 181 MANIFOLD STREET, CAMPERDOWN VICTORIA 3260

Section and act under which agreement is made:

SECTION 173 OF THE PLANNING AND ENVIRONMENT ACT 1987

A copy of the agreement is attached to this application:

Signing:

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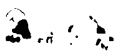
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Executed on behalf of CORANGAMITE SHIRE COUNCIL

Signer Name *Andrew Mason.*

Signature

Execution Date

1 May 2018

Full Name of Witness

Penny Macdonald

Witness Signature

My identity has been verified by Australia Post
on 31 May 2016 -
RECEIPT No. 3286710062029.

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DATED

2017

Corangamite Shire Council

- and -

**Gregory Michael Conheady & Cheryle Anne
Powling**

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AGREEMENT

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SLM Law
Lawyers
17 Pike Street
CAMPERDOWN 3260

REF: Shaun Moloney
TEL: 03 5593 1366

AR021845F

THIS AGREEMENT is made pursuant to Section 173 of the Planning and Environment Act 1987 ("the Act") the 01 day of MAY 2018

BETWEEN:

Corangamite Shire Council of 181 Manifold Street, Camperdown VIC 3260 ("Responsible Authority")

and

Gregory Michael Conheady & Cheryle Anne Powling of 4110 Princes Highway, Camperdown VIC 3260 ("Owners")

INTRODUCTION:

- A. The Owners are the registered proprietors of the property as described in Certificate of Title Volume 8185 Folio 873 ("Subject Land")
- B. The Responsible Authority is responsible for administration and enforcement pursuant to the Act for the Planning Scheme.
- C. The Owners seek to subdivide the Subject Land which the Responsible Authority has agreed to do in Planning Permit PP2017/129 of which condition 5 requires that the Owners would enter into this Agreement that the owner of each lot must ensure that the land may not be further subdivided so as to create a smaller lot for a dwelling.
- D. The parties enter into this Agreement to achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

IT IS AGREED:

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1. DEFINITION

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

1.1 "Act" means the Planning & Environment Act 1987.

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- 1.2 "Agreement" means this Agreement and any agreement executed by the parties expressed to be supplemental to this Agreement.
- 1.3 "Owners" means the person or persons registered by the Registrar of Titles from time to time as proprietor of an estate in fee simple of the Subject Land or any part of it, and includes a mortgagee in possession.
- 1.4 "Planning Scheme" means the Corangamite Planning Scheme and any other planning scheme which applies to the Subject Land.
- 1.5 "Subject Land" means all the land contained Certificate of Title Volume 8185 Folio 873; and includes any lot created from the subdivision of that land or any part of it.
- 1.6 "Mortgagee" means the person 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.
- 1.7 "Responsible Authority" means Corangamite Shire Council in its capacity as the authority responsible for administering and enforcing the Planning Scheme and a municipal council within the meaning of the Local Government Act 1989 (Vic); and includes its agents, officers, employees, servants, workers and contractors and any subsequent person or body which is the responsible authority or municipal council.

2. INTERPRETATION

- 2.1 The singular includes the plural and vice versa.
- 2.2 A reference to a gender includes a reference to a firm, corporation or other corporate body and that person's successors in law.
- 2.3 If a party consists of more than one person this Agreement binds them jointly and each of them severally.

2.4 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.

2.5 The introductory clauses to this Agreement are and will be deemed to form part of this Agreement.

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3. AGREEMENT UNDER SECTION 173 OF THE ACT

The Responsible Authority and the Owners agree that without limiting or restricting their respective powers to enter into this Agreement and, insofar as it can be so treated, this Agreement is made pursuant to Section 173 of the Act.

4. EFFECT OF AGREEMENT

4.1 Except as otherwise provided in this Agreement, this Agreement comes into force from the date it is executed by the parties.

4.2 The obligations of the Owners 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 and each part of it.

5. OWNER'S WARRANTIES

Without limiting the operation or effect which this Agreement has the Owners warrant:

5.1 That they are the registered proprietors of the Subject Land.

5.2 That 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.

6. SUCCESSORS IN TITLE

Without limiting the operation or effect which this Agreement has, the Owners must ensure that, until such time as a memorandum of this Agreement is registered on the

title to the Subject Land, the Owners will bring this Agreement to the attention of all prospective purchasers, mortgagees, transferees and assigns and successors in title who must be required to:

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

7. SPECIFIC COVENANT OF OWNERS

The Owners covenant and agree with the Responsible Authority that the Subject Land following registration of the Plan of Subdivision will not be further subdivided so as to create a smaller lot for a dwelling.

8. FURTHER COVENANT OF OWNERS

8.1 Further Actions

8.1.1 The Owners will do all things necessary, including signing any further agreement, undertakings, covenant and consents, approvals or other documents necessary for the purpose of ensuring that the Owners carry out the Owners covenant under this Agreement and to enable the Responsible Authority to enforce the performance by the Owners of such covenant and undertakings;

8.1.2 The Owners will consent to the Responsible Authority making application to the Registrar of Titles to make a recording of this Agreement in the Register on the Crown Grant and the Certificate of Title comprising the Subject Land in accordance with Section 181 of the Act and to do all things necessary to enable the Responsible Authority to do so including signing any further agreement, acknowledgement 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.

8.2 Responsible Authority's Costs to be Paid

The Owners will immediately pay to the Responsible Authority, Responsible Authority'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 Owners Subject Land. To the extent that any such cost and expenses constitute legal professional costs the Responsible Authority 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 Responsible Authority.

9. GENERAL

9.1 Notices

A notice or other communication required or permitted to be given or served by a party on other party must be in writing and may be given or 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 must be confirmed immediately in writing by the sending party by hand delivery or prepaid post.

9.2 A Notice of other Communication is deemed served

9.2.1 if delivered, on the next following business day;

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9.2.2 if posted, on the expiration of two 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 re-transmission before the end of that business day.

9.3 No Waiver

Any time or other indulgence granted by the Responsible Authority to the Owners or variation of the terms and conditions of this Agreement or any judgement or order obtained by the Responsible Authority against the Owners will not in anyway amount to a waiver of any of the rights or remedies of the Responsible Authority 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 Responsible Authority's Powers

It is acknowledged and agreed that this Agreement does not fetter or restrict the power or discretion of the Responsible Authority 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.

9.6 Cessation

The Agreement shall continue to bind the Subject Land until the Owners and the Responsible Authority enter into an agreement pursuant to Section 177 of the Act at the Owner's expense to end the Agreement.

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MORTGAGEE'S CONSENT.

Westpac Banking Corporation as Mortgagee of the Subject Land pursuant to Mortgage No AQ044261N hereby consents to the within provisions of this Section 173 Agreement.

Dated:

SIGNED, SEALED and DELIVERED by Ralph Scarcella
..... who holds the position of Tier
Three Attorney for Westpac Banking Corporation under power
of attorney dated 17 January 2001, a certified copy of which
is filed in the Permanent Order Book, No. 277 Page 16.

Signature

By executing this agreement the attorney states that the
attorney has received no notice of the revocation of the power
of attorney.

Signature of Witness

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SCHEDULE "A"

Planning Permit No. PP2017/129

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PLANNING PERMIT

Permit No.: PP2017/129
 Planning Scheme: Corangamite Planning Scheme
 Responsible Authority: Corangamite Shire Council
 Prop No.: 2074

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Wastewater Requirements

6. Wastewater from the existing dwellings domestic wastewater system must be able to treat and retain all wastewater within the boundary of the lot and comply with the setback distances as prescribed in the EPA Code of Practice 891.4 to the satisfaction of the Responsible Authority.

Expiry of Permit

7. This permit will expire if one of the following circumstances applies:
 - a) The plan of subdivision has not been certified within two (2) years of the date of this permit.
 - b) A Statement of Compliance is not issued within five (5) years of the date of Certification.

The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires or within six (6) months afterwards.

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