

ADVERTISED PLAN

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RIGBY COOKE LAWYERS

Agreement pursuant to Section 173 of the Planning and Environment Act

Moreland City Council

and

Darul Ulum College of Victoria

Land: Lot 1 PS402577B
17 Baird St, Fawkner, Victoria

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AGREEMENT

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AGREEMENT

DATE

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THIS AGREEMENT is made the 24 day of Sep 2018

PARTIES

BETWEEN: Moreland City Council
90 Bell Street, Coburg, Victoria 3058
(Council)

AND: Darul Ulum College of Victoria
ACN 160 313 557
17 Baird Street, Fawkner Victoria 3060
(Owner)

RECITALS

- A. Council is the Responsible Authority under the Act for the Scheme.
- B. The Owner is the registered proprietor of the Land.
- C. Planning Permit MPS 2001/0116 (**Permit**) issued by Council on 23 August 2001 allows the use and development of a place of worship (**Prayer Hall**) in conjunction with the existing educational centre on the Land.
- D. The Prayer Hall has been developed and is being used in accordance with the Permit.
- E. On 10 February 2016, Council resolved to enter into an agreement with the Owner pursuant to section 173 of the Act requiring the Owner to prepare the Management Plan to establish operational parameters for the Prayer Hall.
- F. The Owner has voluntarily prepared the Management Plan to help manage the use of the Prayer Hall. The Management Plan specifies hours of operation and patron number limits for the Prayer Hall which are generally consistent with those specified in the Council Resolution.
- G. Council has approved the Management Plan.
- H. The parties agree that operating the Prayer Hall in accordance with the Management Plan will assist in ensuring the operation of the Prayer Hall does not detrimentally affect the amenity of the neighbourhood.
- I. This Agreement has been entered into in order to:
 - a. record the Owner's agreement to operate the Prayer Hall in accordance with the Management Plan;
 - b. provide a system for independently reviewing and if appropriate, amending the Management Plan; and
 - c. achieve and advance the objectives of planning in Victoria and the objectives of the Scheme in relation to the Land.
- J. This Agreement is made under Division 2 of Part 9 of the Act.

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THE PARTIES AGREE THAT:-

1 DEFINITIONS

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

- 1.1 **Act** means the *Planning and Environment Act 1987*.
- 1.2 **Agreement** means this agreement and any agreement executed by the parties expressed to be supplemental to this Agreement.
- 1.3 **Business Day** means Monday to Friday excluding public holidays in Victoria.
- 1.4 **Land** means the land at 17 Baird St, Fawkner (alternatively known as 1 Roma Street, Fawkner) and more particularly described as Lot 1 on Plan of Subdivision 402577B being the whole of the land contained in Certificate of Title Volume 11396 Folio 082.
- 1.5 **Management Plan** means the management plan prepared by or on behalf of the Owner dated December 2017 specifying hours of operation, patron numbers and other matters relating to the operation of the Prayer Hall, as approved by Council and includes any subsequent amended version as may be agreed from time to time.
- 1.6 **Party** or **parties** means Council and the Owner under this Agreement as appropriate.
- 1.7 **Planning Scheme** means the *Moreland Planning Scheme* and any other planning scheme which applies to the Land.
- 1.8 **Tribunal** means the Victorian Civil and Administrative Tribunal.
- 1.9 **Council Resolution** means the resolution of Council made on 10 February 2016 which contemplates a management plan for the Prayer Hall with the following hours of operation and patron number limits:
 - a) *Standard weekly operating hours and patron limits (Monday to Sunday):*
 - i. 5:00am to 7:00am (depending on Daylight/EST)/Limit 350 patrons
 - ii. 7:00am to 4:00pm/Limit 1230 patrons
 - iii. 4:00pm to 11:00pm*/Limit 500 patrons (* = except during Ramadan and on Fridays)
 - b) *Friday night operating hours and patron limits:*
 - i. 7:30pm to 11:30pm/Limit 1230 patrons
 - ii. 11:30pm to 5:00 Saturday/Limit 300 patrons
 - c) *Ramadan afternoon patron limits*
 - i. 4:00pm to 7:00pm/Limit 500 patrons
 - ii. 7:00pm to 11:30pm/Limit 1230 patrons

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d) *I'tikaaf (General)* – In addition to the nightly prayer on Friday nights, a maximum number of 50 patrons may attend the Prayer Hall to observe the ritual of I'tikaaf between 11:30pm to 5:00am on other nights of the week, including each night for the last 10 days of Ramadan.

e) *Special events* – The Prayer Hall Management Plan will also provide for the following special events held at the prayer hall throughout the year, during which the standard operating hours and patron limits do not apply:

i. *Two annual Eid Prayers (a maximum of 3 hours each between 7:30am to 10:30pm).*

ii. *Bi-annual Weekend Religious Event.*

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2 INTERPRETATION

In this Agreement unless the context admits otherwise:

- a. The singular includes the plural and vice versa.
- b. A reference to a gender includes a reference to each other gender.
- c. A reference to a person includes a reference to a firm, corporation or other corporate body and that person's successors in law.
- d. If a party consists of more than one person this Agreement binds them jointly and each of them severally.
- e. A word or expression used in this Agreement has its ordinary meaning unless that word or expression is defined in this Agreement. If a word or expression is not defined in this Agreement and it is defined in the Act it has the meaning as defined in the Act.
- f. 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.

2.2 The obligations of the Owner under this Agreement, will take effect as separate and several covenants which are annexed to and run at law and equity with the Land to bind the Owner and each successor, assignee or transferee of the Owner, the registered proprietor, the mortgagee in possession and the beneficial owner for the time being of the Land. If the Land is subdivided, this Agreement must be read and applied so that each subsequent owner of a lot is only responsible for those covenants and obligations which relate to that owner's lot.

3 OWNER'S OBLIGATIONS

3.1 The Owner covenants and agrees to operate the Prayer Hall in accordance with the Management Plan, to the satisfaction of Council.

4 AMENDING OR REPLACING THE MANAGEMENT PLAN

4.1 The Owner may, from time to time, amend or replace the Management Plan but must not do so without the written consent of Council or the Tribunal on review under s149 of the Act.

4.2 If the Owner wishes to amend or replace the Management Plan, the Owner must submit the amended or replacement Management Plan to Council with:

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- a. an explanation of the reason for the amendment or replacement; and
- b. if the amendment or replacement includes:
 - i. an increase in patron numbers, advice from a suitably qualified traffic engineer confirming that the proposed increase will not have an unacceptable impact on the traffic management in the surrounding area; and
 - ii. an extension of operating hours, advice from a suitably qualified town planner confirming that the proposed extension will not have an unacceptable impact on the amenity of the surrounding area.

4.3 Within 90 days (or such longer period as agreed between the parties) of receiving an amended or replacement Management Plan from the Owner under this clause, Council must decide whether or not to consent to the amendment.

4.4 The parties acknowledge and agree that if Council decides to refuse consent to an amendment or replacement of the Management Plan, or fails to determine a request to amend or replace the Management Plan within 90 days of the request being made, the Owner may apply to the Tribunal for review of that decision or failure in accordance with the Act.

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5 NO AMENDMENT PERIOD

5.1 Despite anything to the contrary in clause 4.1, the Owner agrees not to apply to Council to amend the patron number limits or operating hours in the Management Plan for three years after the date of this Agreement.

6 AGREEMENT UNDER SECTION 173 OF THE ACT

All Parties 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, the Owner's 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.

7 GENERAL MATTERS

7.1 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:

- a. by delivering it personally to that party;
- b. 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;
- c. by sending it by email provided that a communication sent by email is to an email address nominated by a Party to this Agreement; or
- d. 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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7.2 Service of Notice

A notice or other communication is deemed served:

- a. where sent by pre-paid post, on the second Business Day following the day on which it was posted;
- b. where transmitted by facsimile or email before 5.00 pm on a Business Day, on that day, or in any other case of transmission by facsimile or email, on the next Business Day following the day of transmission;
- c. where delivered by hand during normal business hours on a Business Day, on that day, or in any other case of hand delivery, on the Business Day following the day of delivery.

7.3 No waiver

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

7.4 Enforcement and severability

- a. This Agreement shall operate as a contract between the parties and be enforceable as such in the Tribunal or otherwise 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.
- b. If the Tribunal, a Court, arbitrator, 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.

7.5 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.

7.6 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.

8 COMMENCEMENT OF AGREEMENT

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

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9 AMENDING OR ENDING OF AGREEMENT

This Agreement may be amended or ended in accordance with the Act but the parties agree that any application to amend the Agreement may be determined by the Tribunal on the merits of the application.

10 REGISTRATION AND REMOVAL FROM REGISTER

10.1 Registration

- a. The parties agree that:
- i. as soon as practicable after execution of this Agreement, Council will apply to the Registrar of Titles to make a recording of the Agreement in the Register on the certificate of title for the Land in accordance with Section 181 of the Act; and
 - ii. the Owner will do all things necessary to enable Council to do so including signing any further agreement, acknowledgment or document to enable the recording to be made in the Register under that section.

10.2 Removal from Register

Once this Agreement ends as to all or part of the Land, Council will, within a reasonable time following a request from the Owner and at the cost of the Owner, 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 that part of the Land.

11 COUNTERPARTS

This Agreement may be executed in any number of counterparts each of which when executed is taken to be an original and such counterparts together constitute one Agreement.

12 GOVERNING LAW

This Agreement takes effect, is governed by and to be construed in accordance with the laws of Victoria.

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EXECUTED by the parties as an agreement

SIGNED SEALED AND DELIVERED by
KIRSTEN COSTER Director Planning and
Economic Development as the delegate of
and on behalf of the **MORELAND CITY
COUNCIL (ABN 4620 201 0737)** in the
presence of:




Kirsten Coster



Signature of witness



Name of witness
(please print)

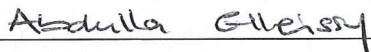


Usual address

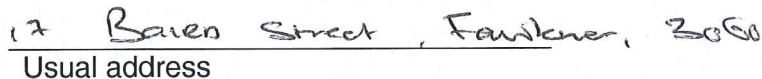
EXECUTED by **DARUL ULUM COLLEGE
OF VICTORIA** in accordance with section
127(1) of the *Corporations Act 2001* (Cth)
by being signed by authorised persons



Signature of witness



Name of witness
(please print)



Usual address

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