



**SECTION 173 AGREEMENT  
PLANNING AND ENVIRONMENT ACT 1987**

***SOCIAL HOUSING***

**HUME CITY COUNCIL**  
Council

- and -

**THOMAS FRANCIS MILLETT**  
Registered Land Owner

in relation to land at:  
**105 VINEYARD ROAD, SUNBURY**

5AMC:22004991

Harwood Andrews  
ABN 98 076 868 034  
Tower 2 | Collins Square  
Level 22, 727 Collins Street  
Melbourne 3008, Victoria, Australia  
DX 30970 Stock Exchange  
PO Box 633 Collins Street West Vic 8007

T 03 9620 9399 F 03 9620 9288





- 1.3.1. in its capacity as planning authority, Hume City Council or its successor as the authority responsible for preparing Amendment C253 to the Planning Scheme,

and includes its agents, officers, employees, servants, workers and contractors.

1.4. **Current Address for Service**

- 1.4.1. for Council means the address shown on page 1 of this Agreement, or any other principal office address listed on the website of Council; and

- 1.4.2. for the Owner means the address shown on page 1 of this Agreement or any other address provided by the Owner to Council for any purpose or purposes relating to the Land.

1.5. **Current Email Address for Service**

- 1.5.1. for Council means [contactus@hume.vic.gov.au](mailto:contactus@hume.vic.gov.au), or any other email address listed on the website of Council; and

- 1.5.2. for the Owner means any email address provided by the Owner to Council for the express purpose of electronic communication regarding this Agreement.

- 1.6. **Development Plan** means the development plan approved by Council pursuant to Clause 43.04 of the Planning Scheme for the Land.

- 1.7. **DPO32** means the Development Plan Overlay – Schedule 32 proposed to be introduced by way of Amendment C253.

- 1.8. **Dwelling** has the same meaning as in the Planning Scheme.

- 1.9. **GST Act** means the *New Tax System (Goods and Services Tax) Act 1999* (Cth).

- 1.10. **Housing Act** means the *Housing Act 1983* (Vic).

- 1.11. **Land** means the land contained within the following Certificates of Title:

- 1.11.1. Certificate of Title Volume 10871 Folio 073;

- 1.11.2. Certificate of Title Volume 11425 Folio 866; and

and includes any lots created by the subdivision of the Land or any part of it.

- 1.12. **Market Value** means the monetary value of a Residential Lot offered for sale at the date of the agreement entered into pursuant to clause 3.3 of this Agreement as determined by an independent valuer appointed by the President of the Australia Property Institute – Victorian Division.

- 1.13. **Mortgagee** means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as mortgagee of the Land or any part of it.

- 1.14. **Owner** means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as the proprietor or proprietors of an estate in fee simple of the Land or any part of it, and includes a Mortgagee in possession.

- 1.15. **Owner's Obligations** means the covenants, promises, agreements, indemnities, undertakings and warranties given by the Owner under this Agreement including the specific obligations imposed under clause 3.
- 1.16. **party or parties** means the Owner and Council under this Agreement as appropriate.
- 1.17. **Planning Scheme** means the Hume Planning Scheme and any successor instrument or other planning scheme which applies to the Land.
- 1.18. **Registered Agency** has the same meaning as in the Housing Act.
- 1.19. **Residential Lot** means a lot created as a result of the subdivision of the Land which in the opinion of Council is of a size and dimension that it is intended to be developed as a housing lot without further subdivision, but that excludes any part of the Land referred to in clause 17.2.4..
- 1.20. **Social Housing** has the same meaning as in the Act and the Housing Act, or such alternative meaning as agreed to in writing by Council.
- 1.21. **Statement of Compliance** means a statement of compliance issued under the *Subdivision Act 1988* (Vic).

## 2. INTERPRETATION

In the interpretation of this Agreement unless inconsistent with the context or subject matter:

- 2.1. The singular includes the plural and the plural includes the singular.
- 2.2. A reference to a gender includes a reference to all other genders.
- 2.3. Words (including defined expressions) denoting persons will be deemed to include all trusts, bodies and associations, corporate or unincorporated, and vice versa.
- 2.4. A reference to a person includes a reference to a firm, corporation, association or other entity and their successors in law.
- 2.5. A reference to a statute includes any statute amending, consolidating or replacing that statute and includes any subordinate instruments made under that statute.
- 2.6. The Recitals to this Agreement are and will be deemed to form part of this Agreement including any terms defined within the Recitals.
- 2.7. References to the parties will include their transferees, heirs, assigns, and liquidators, executors and legal personal representatives as the case may be.
- 2.8. Reference to a document or agreement includes reference to that document or agreement as changed, novated or replaced from time to time.
- 2.9. Where a word or phrase is given a definite meaning in this Agreement, a part of speech or other grammatical form for that word or phrase has a corresponding meaning.
- 2.10. Where a word or phrase is not defined in this Agreement, it has the meaning as defined in the Act, or, if it is not defined in the Act, it has its ordinary meaning.

### 3. SOCIAL HOUSING

The Owner acknowledges and agrees with Council that:

#### Provision of Social Housing

- 3.1. The Owner must provide a contribution towards Social Housing equal to at least the value of 10% of the total number of Residential Lots provided on the Land at a 30% discount to Market Value for each Residential Lot, in accordance with the Development Plan and to the satisfaction of Council;
- 3.2. The contribution towards Social Housing required by Clause 3.1 must be in a form to the satisfaction of Council and a Registered Housing Agency;

#### Further Agreement with Registered Agency

- 3.3. Unless otherwise agreed to in writing by Council, prior to the issue of a Statement of Compliance for any subdivision of the Land that creates a Residential Lot, the Owner must enter into an agreement or alternative arrangement with a Registered Agency that provides for the delivery of Social Housing (as required by clause 3.1 and identified in the Development Plan) to the Registered Agency at the cost of the Owner and in accordance with the requirements of the Registered Agency, to the satisfaction of Council; and
- 3.4. The agreement or alternative arrangement required under clause 3.3 must be prepared, negotiated and completed at the cost of the Owner and to the satisfaction of Council.

### 4. FURTHER COVENANTS OF THE OWNER

The Owner warrants and covenants with Council that:

- 4.1. It is the registered proprietor (or entitled to be so) of the Land;
- 4.2. Save as shown in the certificate of title to the Land, there are no mortgages, liens, charges, easements or other encumbrances or any rights inherent in any person affecting the Land or any part of it and not disclosed by the usual searches;
- 4.3. Neither the Land nor any part of it is subject to any right obtained by adverse possession or subject to any easements, rights or encumbrances mentioned in section 42 of the *Transfer of Land Act 1958* (Vic);
- 4.4. It will not sell, transfer, dispose of, assign, mortgage or otherwise part with possession of the Land or any part of it without first providing to its successors a copy of this Agreement;
- 4.5. It will within 28 days of written demand pay to Council the Council's reasonable costs (including legal or other professional costs) and expenses of and incidental to the:
  - 4.5.1. negotiation, preparation, execution and recording of this Agreement;
  - 4.5.2. assessment, negotiation, preparation, execution and recording of any proposed amendment to this Agreement; and
  - 4.5.3. determination of whether any of the Owner's obligations have been undertaken to the satisfaction of Council or to give consent to anything under this Agreement.

To the extent that such costs and expenses constitute legal professional costs, Council may at its absolute discretion have these costs assessed by the Law Institute of Victoria and in that event the parties will be bound by the amount of that assessment, with any fee for obtaining such an assessment being borne equally by Council and the Owner. Such costs payable by the Owner will include the costs and disbursements associated with the recording, cancellation or alteration of this Agreement in the Register;

- 4.6. It will do all that is necessary to enable Council to make application to the Registrar of Titles to record this Agreement in the Register in accordance with the Act, including the signing of any further agreement, acknowledgment or other document; and
- 4.7. Until such time as this Agreement is recorded in the Register, the Owner must ensure that successors in title will give effect to this Agreement, and do all acts and sign all documents which will require those successors to give effect to this Agreement, including executing a deed agreeing to be bound by the terms of this Agreement.

## **5. GST**

- 5.1. Expressions used in this Agreement that are defined in the GST Act have the same meaning as given to them in the GST Act, unless expressed to the contrary.
- 5.2. Except where express provision is made to the contrary, and subject to this clause, any consideration that may be provided under this Agreement is exclusive of any GST. If a party makes a taxable supply in connection with this Agreement for a consideration which represents its value, then the recipient of the taxable supply must also pay, at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply.
- 5.3. To the extent that one party is required to reimburse another party for costs incurred by the other party, those costs do not include any amount in respect of GST for which the other party is entitled to claim an input tax credit.
- 5.4. A party's right to payment of GST is subject to a tax invoice being delivered to the recipient of the taxable supply.

## **6. FURTHER ASSURANCE**

The parties to this Agreement will do all things necessary (including signing any further agreement, acknowledgement or document) to give full effect to the terms of this Agreement and to enable this Agreement to be recorded in the Register in accordance with the Act.

## **7. AMENDMENT**

This Agreement may be amended only in accordance with the requirements of the Act.

## **8. NO WAIVER**

No waiver by any party of any default in the strict and literal performance of or compliance with any provision, condition or requirement in this Agreement will be deemed to be a waiver of strict and literal performance of and compliance with any other provision, condition or requirement of this Agreement nor to be a waiver of or in any way release any party from compliance with any provision, condition or requirement in the future nor will any delay or omission of any party to exercise any right under this Agreement in any manner impair the exercise of such right accruing to it thereafter.

**9. NO FETTERING OF POWERS OF COUNCIL**

The parties acknowledge and agree 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 Land or relating to any use or development of the Land.

**10. NOTICES**

All notices and other communications under this Agreement will be sent by prepaid mail, by hand delivery or email to the Current Addresses for Service or Current Email Address for Service of the parties, and may be sent by an agent of the party sending the notice. Each notice or communication will be deemed to have been duly received:

- 10.1. not later than two business days after being deposited in the mail with postage prepaid;
- 10.2. when delivered by hand; or
- 10.3. if sent by email, at the time of receipt in accordance with the *Electronic Transactions (Victoria) Act 2000* (Vic).

**11. COSTS ON DEFAULT**

If the Owner defaults in the performance of any obligations under this Agreement it will pay to Council its reasonable costs of action taken to achieve compliance with this Agreement.

**12. INVALIDITY OF ANY CLAUSE**

Notwithstanding anything to the contrary in this Agreement, if any provision of this Agreement will be invalid and not enforceable in accordance with its terms, all other provisions which are self-sustaining and capable of separate enforcement without regard to the invalid provisions will be and continue to be valid and enforceable in accordance with those terms.

**13. AGREEMENT BINDING ON SUCCESSORS OF OWNERS**

This Agreement will extend to and bind the Owner's successors, assigns, administrators, transferees and legal personal representatives and the obligations imposed upon them will also be binding on their successors, transferees, purchasers, mortgagees and assigns as if each of them had separately executed this Agreement.

**14. JOINT OBLIGATIONS**

In the case of each party that consists of more than one person (including in that expression any corporation) each of those persons covenants, agrees and declares that all of the covenants, agreements, declarations and consents contained in this Agreement and made and given by that party have been entered into, made and given and are binding upon that person both severally and also jointly with the other person or persons constituting that party.

**15. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.



## 16. COUNTERPARTS

This Agreement may be executed in counterparts. Each counterpart is an original but the counterparts together are one and the same agreement. The Agreement is binding on the parties on the exchange of the executed counterparts. A copy of the original executed counterpart sent by email:

- 16.1. must be treated as an original counterpart;
- 16.2. is sufficient evidence of the execution of the original; and
- 16.3. may be produced in evidence for all purposes in place of the original.

## 17. COMMENCEMENT AND ENDING OF AGREEMENT

- 17.1. This Agreement will commence on the date on which the notice of approval of Amendment C253 is published in the Government Gazette.
- 17.2. This Agreement will end:
  - 17.2.1. if Council determines to abandon Amendment C253; or
  - 17.2.2. if Amendment C253 lapses; or
  - 17.2.3. if the Minister refuses to approve Amendment C253; or
  - 17.2.4. in respect of any part of the Land not affected by the DPO32, upon the issue of a Statement of Compliance for a subdivision that creates that part of the Land; or
  - 17.2.5. once the Owner has completed all of the obligations imposed upon it under this Agreement to the satisfaction of Council; or
  - 17.2.6. otherwise by agreement between the Parties in accordance with Section 177(2) of the Act.
- 17.3. As soon as reasonably practicable after the Agreement has ended, Council will following a request from the Owner and at the cost of the Owner, apply to the Registrar of Titles under section 183(1) of the Act to cancel the recording of the Agreement.
- 17.4. If the Agreement does not apply to any part of the Land as a result of a subdivision referred to in clause 17.2.4, Council will following a request from the Owner and at the cost of the Owner, as soon as is reasonably practicable after the request, apply to the Registrar of Titles under section 183(1) of the Act to cancel the recording of the Agreement in respect to that part of the Land.

**EXECUTED AS A DEED**

**SIGNED** for and on behalf of **HUME CITY COUNCIL** by Michael Sharp, Director Planning and Development, in the presence of:

.....  
Witness

.....  
Name of witness (please print)

**SIGNED SEALED AND DELIVERED** by the said **THOMAS FRANCIS MILLETT** in the presence of:

.....  
Thomas Francis Millett

.....  
Witness

## **MORTGAGEE CONSENT**

Commonwealth Bank of Australia as Mortgagee under Instrument of Mortgage Nos. AF301657B and AJ406117R consents to the Owner entering into this Agreement and agrees to be bound by the terms and conditions of this Agreement.

DATED:

Executed for and on behalf of

**Commonwealth Bank of Australia**

EXHIBITION