

# **Agreement under section 173 of the Planning and Environment Act 1987**

**Subject Land:** Centre of Mediation

**Surf Coast Shire Council**

and

**Oliver Tutus**

and

**Sean**

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# AGREEMENT UNDER SECTION 173 OF THE PLANNING AND ENVIRONMENT ACT 1987

**DATED - THURSDAY, 14 JULY 2022**

## **PARTIES**

Name	<b>Surf Coast Shire Council</b>
Address	1 Merrijig Drive TORQUAY
Short name	<b>Council</b>

Name	<b>Oliver Tutus</b>
Address	Melbourne
Short name	<b>Owner</b>

Name	<b>Sean</b>
Address	Sydney
Short name	<b>Owner</b>

## **BACKGROUND**

- A. Council is the responsible authority for the Planning Scheme.
- B. The Owner is or is entitled to be the registered proprietor of the Subject Land.
- C. Council granted the Subdivision Permit requiring the Owner to enter into this Agreement providing for the matters set out in condition Drainage of the Subdivision Permit.
- D. As at the date of this Agreement, the Subject Land is encumbered by a mortgage in favour of the Mortgagee. The Mortgagee consents to the Owner entering into this Agreement.

### **The Parties agree**

#### **1. DEFINITIONS**

In this Agreement unless the context admits otherwise:

**Act** means the *Planning and Environment Act 1987*.

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

**Current Address** means:

- a. for Council, the address shown on page one of this Agreement, or any other address listed on Council's website; and
- b. for the Owner, the address shown on page one of this Agreement or any other address provided by the Owner to Council for any purpose relating to the Subject Land.

**Current Email** means:

- a. for Council, info@surfcoast.vic.gov.au or any other email address listed on Council's website; and
- b. for the Owner, any email address provided by the Owner to Council for the express purpose of electronic communication regarding this Agreement.

**Development Permit** means planning permit no. XJO2393854, as amended from time to time, issued on 2022-Jul-04, in accordance with the plans endorsed by Council.

**Endorsed Plans** means the plans endorsed with the stamp of Council from time to time as the plans forming part of the Subdivision Permit.

**Mortgagee** means the person registered or entitled from time to time to be registered as mortgagee of the Subject Land.

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

**Owner's obligations** includes the Owner's specific obligations and the Owner's further obligations.

**Party** or **Parties** means the Parties to this Agreement.

**Planning Scheme** means the Bayside Planning Scheme and any other planning scheme applying to the Subject Land.

**Subdivision Permit** means planning permit no. WJO2393854, as amended from time to time, issued on 2022-Jul-22, authorising the two lot subdivision in accordance with the Endorsed Plans.

**Subject Land** means the land situated at Centre of Mediation, Victoria being the land referred to in certificate of title volume 0XXXX folio XXX and any reference to the Subject Land includes all or any part of it, including any lot created by the subdivision of the Subject Land.

## **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 all genders;
- 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 any agreement, representation, warranty or indemnity by 2 or more persons (including where 2 or more persons are included in the same defined term) binds them jointly and severally;

- 2.5 a term used 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 Act, regulation or amendment amending, consolidating or replacing the Act, regulation or Planning Scheme;
- 2.7 the Background forms part of this Agreement;
- 2.8 the Owner's obligations take effect as separate and several covenants which are annexed to and run at law and equity with the Subject Land; and
- 2.9 any reference to a clause, page, condition, attachment or term is a reference to a clause, page, condition, attachment or term of this Agreement.

### **3. PURPOSES OF AGREEMENT**

The Parties acknowledge and agree the purposes of this Agreement are to:

- 3.1 give effect to condition Drainage of the Subdivision Permit; and
- 3.2 achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

### **4. REASONS FOR AGREEMENT**

The Parties acknowledge and agree Council has entered into this Agreement for the following reasons:

- 4.1 Council would not have granted the Subdivision Permit without imposing condition Drainage requiring this Agreement; and
- 4.2 the Owner has elected to enter into this Agreement in order to take the benefit of the Subdivision Permit.

### **5. AGREEMENT REQUIRED**

The Parties agree this Agreement will continue to be required until the Owner has complied with all of the Owner's obligations.

### **6. OWNER'S SPECIFIC OBLIGATIONS**

#### **6.1 Compliance with the Development Permit**

Except with Council's prior written consent, the Owner:

- 6.1.1 must only develop the Subject Land in accordance with the Development Permit and the conditions of the Development Permit; and
- 6.1.2 must not, on completing the development in accordance with the Development Permit, alter or extend or otherwise change the development in any way.

#### **6.2 Expiry of the Development Permit**

The Owner's obligations under clause 6.1 continue to apply:

- 6.2.1 regardless of any right conferred by the Planning Scheme;

- 6.2.2 regardless of any subdivision of the Subject Land; and
- 6.2.3 even if the Development Permit expires, is cancelled or otherwise ceases to operate.

## **7. OWNER'S FURTHER OBLIGATIONS**

### **7.1 Notice and registration**

The Owner must bring this Agreement to the attention of all prospective occupiers, purchasers, lessees, licensees, mortgagees, chargees, transferees and assigns.

### **7.2 Further actions**

The Owner:

- 7.2.1 must do all things necessary to give effect to this Agreement;
- 7.2.2 acknowledges and agrees to carry out its obligations under this Agreement at its own expense, in accordance with the Endorsed Plans and to the satisfaction of Council;
- 7.2.3 consents to Council applying to the Registrar of Titles to record this Agreement on the certificate of title of the Subject Land in accordance with section 181 of the Act; and
- 7.2.4 agree to do all things necessary to enable Council to do so, including:
  - (a) sign any further agreement, acknowledgment or document; and
  - (b) obtain all necessary consents to enable the recording to be made.

### **7.3 Council's costs to be paid**

The Owner must pay to Council within 14 days after a written request for payment, Council's costs and expenses (including legal expenses) relating to this Agreement, including:

- 7.3.1 preparing, drafting, finalising, signing, recording and enforcing this Agreement;
- 7.3.2 preparing, drafting, finalising and recording any amendment to this Agreement; and
- 7.3.3 preparing, drafting, finalising and recording any document to give effect to the ending of this Agreement.

### **7.4 Time for determining satisfaction**

If Council makes a request for payment of a fee under clause 7.3 of this Agreement the Parties agree Council will not decide whether the Owner's obligations have been undertaken to Council's satisfaction, or whether to grant the consent sought, until payment has been made to Council in accordance with the request.

### **7.5 Interest for overdue money**

- 7.5.1 The Owner must pay to Council interest in accordance with section 120 of the *Local Government Act 2020* on any amount due under this Agreement that is not paid by the due date.
- 7.5.2 If interest is owing, Council will apply any payment made to interest and any balance of the payment to the principal amount.

## **8. AGREEMENT UNDER S 173 OF THE ACT**

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 in accordance with section 173 of the Act.

## **9. OWNER'S WARRANTIES**

The Owner warrants that apart from the Owner and 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.

## **10. SUCCESSORS IN TITLE**

Until such time as a memorandum of this Agreement is recorded on the certificate of title of the Subject Land, the Owner must require successors in title to:

- 10.1 give effect to this Agreement; and
- 10.2 enter into a deed agreeing to be bound by the terms of this Agreement.

## **11. GENERAL MATTERS**

### **11.1 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:

- 11.1.1 personally on the other Party;
- 11.1.2 by leaving it at the other Party's Current Address;
- 11.1.3 by posting it by priority prepaid post addressed to the other Party at the other Party's Current Address; or
- 11.1.4 by email to the other Party's Current Email.

### **11.2 Counterparts**

This Agreement may be executed in counterparts, all of which taken together constitute one document.

### **11.3 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.

### **11.4 Severability**

If a court, arbitrator, tribunal or other competent authority determines that any part of this Agreement is unenforceable, illegal or void then that part is severed with the other provisions of this Agreement remaining operative.

### **11.5 No fettering of Council's powers**

This Agreement does not fetter or restrict Council's power or discretion to make decisions or impose requirements or conditions in connection with the grant of planning approvals or certification of plans subdividing the Subject Land or relating to the use or the development of the Subject Land.



**11.6 Inspection of documents**

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

**11.7 Governing law**

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

**12. COMMENCEMENT OF AGREEMENT**

This Agreement commences on the date specified on page one of this Agreement or if no date is specified on page one, the date Council executes this Agreement.

**13. ENDING OF AGREEMENT**

This Agreement may be ended by agreement between Council and all persons who are bound by any covenant in the agreement in accordance with section 177(2)(a) of the Act.

## SIGNING PAGE

### Signed, sealed and delivered as a deed by the parties

Signed sealed and delivered by the Director )  
on behalf of Surf Coast Shire Council )  
pursuant to an Instrument of Delegation )  
authorised by Resolution of Council in the )  
presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of witness  
(BLOCK LETTERS)

\_\_\_\_\_  
Name  
(BLOCK LETTERS)

**Signed, sealed and delivered by Oliver** )  
**Tutus** in the presence of: )  
 )  
 )

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of Oliver Tutus

\_\_\_\_\_  
Name of witness  
(BLOCK LETTERS)

**Signed, sealed and delivered by Sean** in )  
the presence of: )  
 )  
 )

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of Sean

\_\_\_\_\_  
Name of witness  
(BLOCK LETTERS)

**Caveator's Consent**

**Robbie Baskin** is the registered Caveator under instrument ## and consents to the registration of this Agreement on the title to the Subject Land.

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