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Planning and Environment Regulations 2005 S.R. No. 33/2005

Form 18



Section 181

APPLICATION BY A RESPONSIBLE AUTHORITY FOR THE MAKING OF A RECORDING OF AN AGREEMENT

Planning and Environment Act 1987

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Lodged at the Land Titles office by:

Name: *McKenzie Allen*

Phone: *5625 4688*

Address: *28 Princes Way, Drouin*

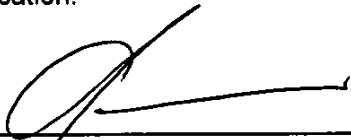
Ref: Customer Code: *7178B.64* *5102N*

The 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 for the land.

Land:	Situate at Lot 2 on Plan of Subdivision PS317834G being land contained in Certificate of Title Volume 10096 Folio 594 and known as Viminaria Road, Harmers Haven
Authority:	Bass Coast Shire Council 76 McBride Avenue, Wonthaggi
Section and Act under which Agreement made:	Section 173 Planning & Environment Act 1987

A copy of the Agreement is attached to this Application.

Signature for the Authority:



Name of Officer:

Allan Bawden

Designation:

Chief Executive Officer

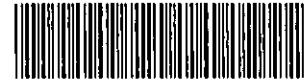
Date:

24.10.05

AB 3-11-05

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Agreement made pursuant to section 173 of the Planning and Environment Act 1987

between:

ANDREW BASIL WARE

&

BASS COAST SHIRE COUNCIL

Property: *Viminaria Road, Harmers Haven, 3995*

LUSCOMBE

COLAHAN

Barristers & Solicitors

45 McBride Avenue, Wonthaggi
PO Box 506 Wonthaggi 3995 - DX 34901 Wonthaggi
email luscol@ompac.net.au
Telephone (03) 5672 3433 Facsimile (03) 5672 3392

THIS DEED OF AGREEMENT is made pursuant to section 173 of the *Planning and Environment Act 1987* ("the Act") between:

ANDREW BASIL WARE of Viminaria Road, Harmers Haven, 3995, ("the Owner");

and: **BASS COAST SHIRE COUNCIL** of 76 McBride Avenue, Wonthaggi ("the Responsible Authority");

- WHEREAS:**
- A. The Owner is registered as the proprietor of the land being Lot 2 on Plan of Subdivision PS317834G, being the land contained in Certificate of Title Volume 10096 Folio 594 and being the land known as Viminaria Road, Harmers Haven, 3995 ("the Subject Land");
 - B. On 3/10/2003 the Responsible Authority consented to the Owner subdividing the Subject Land into 21 lots and associated vegetation removal and works in accordance with endorsed plans forming Planning Permit 02470.
 - C. The parties enter into this Agreement to give effect to the Responsible Authority's consent and to achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.
 - D. The Responsible Authority is a Council within the meaning of the *Local Government Act 1989*.
 - E. The Subject Land is situated within the Municipal Boundaries of the Responsible Authority as defined in the *Local Government Act 1989*.

IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS

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

Agreement means this agreement and any agreement executed by the parties expressed to be supplemental to this Agreement.

Environmental Management Plan means the endorsed Environmental Management Plan forming part of the Planning Permit.

Landscape Plan means the endorsed Landscape Plan forming part of the Planning Permit.

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Lot Development Plan means the endorsed Lot Development Plan forming part of the Planning Permit.

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

Party or parties means the Owner and the Responsible Authority under this Agreement as appropriate;

Planning Permit means Bass Coast Shire Council Planning Permit no: 02470 issued on 3 October 2003;

Subdivision means proposed Plan of Subdivision PS525125C;

Planning Scheme means the Bass Coast Planning Scheme and any other planning scheme that applies to the Land; and

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 a reference to each other gender.

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 If a party consists of more than one person this Agreement binds them jointly and each of them severally.

2.5 A term used in this Agreement 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 Acts, Regulations or amendments amending, consolidating or replacing the Act, Regulation or Planning Scheme.

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

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2.8 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 Subject Land provided that if the Subject 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. COMMENCEMENT DATE

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

4. OPERATIVE PART

The Owner agrees that:



- 4.1 The Owner will prior to the issue of a Statement of Compliance for the Subdivision of the Subject Land, prepare and implement the Environmental Management Plan in consultation with the body managing the Harmers Haven Flora and Fauna Reserve.
- 4.2 The Owner will not further subdivide any lots on the Subdivision so as to create further allotments.
- 4.3 There shall be only 1 dwelling on each Lot on the Subdivision and all dwellings and outbuildings must be located entirely within the approved building envelopes unless otherwise approved in writing by the Responsible Authority.
- 4.4 The Owner will proceed with the Subdivision and development of the Subject Land generally in accordance with the Planning Permit.
- 4.5 Every future dwelling on any of the lots to be created by the Subdivision on the Subject Land must be supplied with a water tank of suitable capacity to provide for 20,000 litres of water exclusively available for fire fighting purposes. The tanks must be suitably sited and have an approved CFA coupling installed to the satisfaction of the Country Fire Authority.
- 4.6 All buildings will comply with the CFA document "*Design and Siting Guidelines & Bushfire Protection for Rural Houses (Morris & Barber)*" to the satisfaction of the Country Fire Authority.
- 4.7 Any fencing will be constructed and maintained to the satisfaction of the Responsible Authority.

4.8 The Owner will comply with the Landscape Plan.

4.9 The Owner will comply with the Lot Development Plan.



5. REGISTRATION OF THIS AGREEMENT

The Owner agrees to do all things necessary to enable the Responsible Authority to enter a memorandum of this agreement on the Certificate of Title to the Subject Land in accordance with section 181 of the Act and the Responsible Authority, at the Owner's expense shall prepare and register this Agreement in accordance with section 181 of the Act without delay. The Owner shall pay the reasonable costs of preparation, registration, implementation and enforcement of this Agreement which are and until paid will remain a debt due to the Responsible Authority by the Owner

6. SUCCESSORS IN TITLE

Without limiting the operation or effect that this Agreement has, the Owner must ensure that, until such time as a memorandum of this Agreement is registered on the title to the Subject Land, successors in title shall 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. GENERAL MATTERS

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 facsimile provided that a communication sent by facsimile shall be confirmed immediately in writing by the sending party by hand delivery or prepaid post.

C. 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.

Service of Notice

A notice or other communication is deemed served:

A. if delivered, on the next following business day;

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

8. No Waiver

Any time or other indulgence granted by the Responsible Authority to the Owner or any variation of the terms and conditions of this Agreement or any judgment or order obtained by the Responsible Authority against the Owner will not in any way amount to a waiver of any of the rights or remedies of the Responsible Authority in relation to the terms of this Agreement.

9. 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 other provisions of this Agreement will remain operative.

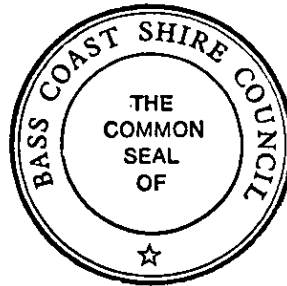
10. No Fettering of Responsible Authority's Powers

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.

DATED: 24/10/2005

EXECUTED BY THE PARTIES AS A DEED:


The Common Seal of BASS COAST SHIRE COUNCIL)
was hereto affixed in the presence of:)



Chief Executive Officer: 

Executed by ANDREW BASIL WARE)
in the presence of:)



Witness 

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