LAND DESCRIPTION

Lot 26 on Plan of Subdivision 805578C.

PARENT TITLES:
Volume 12027 Folio 613 to Volume 12027 Folio 614
Volume 12036 Folio 773 to Volume 12036 Folio 774
Created by instrument PS805578C 23/07/2020

REGISTERED PROPRIETOR

Estate Fee Simple
Joint Proprietors
ELIZABETH ANNE GARNISH
PAUL ANTHONY GARNISH both of 10 MOWBRAY STREET OFFICER VIC 3809
AT539630X 24/08/2020

ENCUMBRANCES, CAVEATS AND NOTICES

COVENANT PS805578C 23/07/2020
Expiry Date 24/10/2032

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

AGREEMENT Section 173 Planning and Environment Act 1987
AS352532W 15/07/2019

DIAGRAM LOCATION

SEE PS805578C FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NIL

-------------------------END OF REGISTER SEARCH STATEMENT-------------------------

Additional information: (not part of the Register Search Statement)

Street Address: 16 PIKE STREET SAN REMO VIC 3925

DOCUMENT END
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The document is invalid if this cover sheet is removed or altered.
Application by a responsible authority for the making of a recording of an agreement
Section 181 Planning and Environment Act 1987

Lodged by
Name: H W Ebsworth Lawyer
Phone:
Address: Km 689 781
Customer code: 985X

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 12036 FOLIO 774; VOLUME 12027 FOLIO 613; VOLUME 12027 FOLIO 614; VOLUME 12036 FOLIO 773

Responsible authority (full name and address, including postcode)
BASS COAST SHIRE COUNCIL, 76 MCBRIDE AVENUE, WONTHAGGI VIC 3995

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:
YES

Signing:

35271702A
181PEA

THE BACK OF THIS FORM MUST NOT BE USED
Land Use Victoria contact details: see www.delwp.vic.gov.au/property> Contact us
Application by a responsible authority for the making of a recording of an agreement
Section 181 Planning and Environment Act 1987

Executed on behalf of Bass Coast Shire Council

Signer Name: Ali Wastie
Chief Executive Officer

Signature: [Signature]

Execution Date: 3.7.2019

Full Name of Witness: Linda Ryan

Witness Signature: [Signature]

MY IDENTITY HAS BEEN VERIFIED BY AUSTRALIA POST ON 15/02/2019
RECEIPT NO. 4720AC0187144495151
Unique Sequence No: 3476960148566
Deed of Agreement

Under s 173 of the
Planning and Environment Act 1987

Bass Coast Shire Council

and

TCG Doreen Pty Ltd
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Deed of Agreement

Date  3rd July 2019

Parties

Bass Coast Shire Council
of 76 McBride Avenue, Wonthaggi, Victoria 3995

(Council)

TCG Doreen Pty (ACN 609 540 847)
of Level 1, 20 Hawthorn East, Victoria 3123

(Owner)

Recitals

A. Council is the Responsible Authority pursuant to the Act for the administration and enforcement of the Planning Scheme, which applies to the Subject Land

B. The Owner is, or is entitled to be, the registered proprietor of the Subject Land, which is the land over which this Agreement is intended to be registered.

C. On 28 October 2015, Council issued Planning Permit No. 140355 allowing the Subject Land to be developed in accordance with the Planning Permit and Endorsed Plans as amended from time to time (Planning Permit).

D. The Planning Permit allows for the,'multi-lot subdivision of land in stages and removal of native vegetation in accordance with the endorsed plans.'

E. Condition 6 of the Planning Permit provides that:

Before issue of a Statement of Compliance for stage one of this subdivision under the Subdivision Act 1988, the owner must enter into an agreement with the Responsible Authority made pursuant to Section 173 of the Planning and Environment Act 1987, and make an application to the Registrar of Titles to have the agreement registered on title to the land under Section 181 of the Planning and Environment Act 1987, which provides:
(a) All future development of the land must be in accordance with the design guidelines approved pursuant to Condition 5 of the permit;

(b) For the payment of management fees to the Responsible Authority in accordance with the schedule as set out in the Native Vegetation Management Plan for a period of 10 years after completion of the conservation reserve to the satisfaction of the Responsible Authority;

(c) The retention, protection and maintenance of the Drooping Sheoak (Allocasuarina verticillata) located within the integrated housing site.

The Owner must pay the costs of the preparation, execution and registration of the Section 173 Agreement in accordance with a decision of Council made under Section 18 of the Act.

F. Condition 58 of the Planning Permit provides that:

A bushfire management plan must be submitted to and endorsed by the Responsible Authority. When endorsed the plan must include an annexure to the section 173 agreement prepared to give effect to the conditions of the permit. The plan must show the following bushfire mitigation measures and site features, unless otherwise agreed in writing by the CFA and Responsible Authority:

(a) Nominate for Lots 29 - 41 and Lots 71 - 76 a minimum Bushfire Attack Level of BAL 29 that the building will be designed and constructed to as shown on Subdivision Master Plan drawn by Taylors dated February 2015.

(b) Nominate for Lots 77 - 85 a minimum Bushfire Attack Level of BAL 19 that the building will be designed and constructed to as shown on Subdivision Master Plan drawn by Taylors dated February 2015.

(c) Nominate for Lots 15 - 26, Lot 42 and Lots 46 - 70 a minimum Bushfire Attack Level of BAL 12.5 that the building will be designed and constructed to as shown on Subdivision Master Plan drawn by Taylors dated February 2015.

(d) Show for Lots 15 - 26, Lots 29 - 42 and Lots 71 - 76 and Lots 86 - 94 as shown on Subdivision Master Plan drawn by Taylors dated February 2015 a static water supply of 2,500 litres of effective water supply for firefighting purposes which meets the following requirements:

(i) Is stored in an above ground water tank
constructed of concrete or metal; and

(ii) All fixed above-ground water pipes and fittings required for firefighting purposes must be made of corrosive resistant metal.

G. Condition 59 of the Planning Permit provides that:

Before the statement of compliance is issued under the Subdivision Act 1988, the Owner must enter into an agreement with the Responsible Authority under Section 173 of the Planning and Environment Act. The agreements must:

(a) Apply to Lots 15 - 26, Lots 29 - 42; and Lots 71 - 76 and Lots 86 - 94 as shown on the Subdivision Master Plan drawn by Taylors dated February 2015.

(b) Incorporate the Bushfire Management Plan approved under this permit.

H. At the date of this Agreement the Subject Land is encumbered by the mortgages at Schedule 1 to this Agreement.

I. The Parties have agreed to enter into this Agreement:

(a) to give effect to the requirements of the Planning Permit; and

(b) to achieve or advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

This deed witnesses that in consideration of, among other things, the mutual promises contained in this deed the parties agree as follows.

1. Definitions and interpretation clauses

1.1 Definitions

In this deed the following definitions apply:

Act means the Planning and Environment Act 1987 (Vic).

Agreement means this Deed of Agreement and any Agreement executed by the Parties expressed to be supplemental to this Agreement.
Bushfire Management Plan means the Bushfire Management Plan endorsed pursuant to the Planning Permit and appended at Schedule 2 to this Agreement.

Business Day means a day that is not a Saturday, Sunday or public holiday in Melbourne.

Claim means any claim, action, proceeding or demand made against the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Conservation Reserve means that part of the Subject Land defined as a conservation reserve in the Native Vegetation Management Plan approved pursuant to the Planning Permit.

Design Guidelines means the design guidelines detailing the design requirements for the development of each allotment, as endorsed by Council pursuant to condition 5 of the Planning Permit.

Development means the development approved pursuant to the Planning Permit.

Endorsed Plans means the plans endorsed by Council for the Development and forming part of the Planning Permit, including the Bushfire Management Plan endorsed on 23 February 2018 and incorporated in Schedule 2 to this Agreement.

Enforcement Order means the enforcement order made by VCAT on 22 November 2012 in proceeding P1634/2012.

Loss means any loss, damage, cost, expense or liability incurred by the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

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 Subject Land or any part of it.

Native Vegetation Management Plan means the Native Vegetation Management Plan endorsed pursuant to 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 in the Subject Land or any part of it and includes a Mortgagee-in-possession.

Party or Parties means the Owner and Council under this Agreement as appropriate.

Planning Permit means the Planning Permit referred to in Recital C of this Agreement.

Planning Scheme means the Bass Coast Planning Scheme and any other Planning Scheme which applies to the Subject Land.

Statement of Compliance means a statement of compliance issued pursuant to the Subdivision Act 1988 (Vic).

Subdivision Master Plan means the endorsed Subdivision Master Plan drawn by Taylors dated February 2015.

Subject Land means the land known as Panorama Drive, San Remo, being the land referred to in Schedule 1 to this Agreement and any reference to the Subject Land in this Agreement includes any lot created by the subdivision of the Subject Land or any part of it.

VCAT means the Victorian Civil and Administrative Tribunal.

1.2 Interpretation

(a) In this document, unless the context otherwise requires:

(i) The singular includes the plural and vice versa.

(ii) A reference to a gender includes a reference to each other gender.

(iii) A reference to a person includes a reference to a firm, corporation or other corporate body and that person’s successors in law.

(iv) If a Party consists of more than one person this Agreement binds them jointly and each of them severally.

(v) 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.

(vi) 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.

(vii) The introductory clauses to this Agreement are and will be deemed to form part of this Agreement.

(viii) Headings are for guidance only and do not affect the interpretation of this Agreement.

(b) 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; and

(i) bind the Owner, its successors, transferees and permitted assigns, the registered proprietor or proprietors for the time being of the Subject Land; and

(ii) if the Subject Land is subdivided further, 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.

2. Owner’s obligations

The Owner covenants and agrees:

(a) to develop the Subject Land in accordance with the Design Guidelines;

(b) to pay to Council, prior to the issue of a Statement of Compliance for the subdivision of stage one under the Subdivision Act 1988,

(i) the amount required by condition 61(a) of the Planning Permit and as calculated in accordance with the Native Vegetation Management Plan relating to management, maintenance and care of the Conservation Area; and

(ii) the amount as required by condition 61(b) of the Planning Permit and as calculated in the Native Vegetation Management Plan relating to the compliance with the remaining term of the Enforcement Order;

(c) if the plan of subdivision for stage one is not registered within 90 days of the issue of a Statement of Compliance for that stage, the Native Vegetation Management Plan must be further reviewed, to the satisfaction of Council, prior to the registration of that plan of subdivision;
(d) if any of the costs and lump sums referred to in clause 2(b) are amended in the Native Vegetation Management Plan as a result of the review required by clause 2(c) of this Agreement,

(i) the Owner must make the appropriate adjustment to the figures and any further payments made by the Owner or refund paid by Council, prior to the registration of the plan of subdivision for stage one of the Development; and

(ii) the Owner must pay to Council the revised amount prior to the registration of the plan of subdivision for stage one of the Development;

(e) to retain, protect and maintain the Drooping Sheoak (*Allocasuarina verticillata*) located within the integrated housing site as shown on the Endorsed Plans and the Native Vegetation Management Plan; and

(f) to develop Lots 15 to 26, Lots 29 to 42, Lots 71 to 76 and Lots 86 to 94 in accordance with the Bushfire Management Plan.

3. Further obligations

3.1 Notice and registration

The Owner will bring this Agreement to the notice of all prospective purchasers, Mortgagees, lessees, charges, transferees and assigns of the Subject Land.

3.2 Giving effect to this Agreement

The Owner will do all things necessary to give effect to this Agreement, including executing any further documents and will comply with its obligations under this Agreement.

3.3 Recording by Registrar of Titles

The Owner will consent to Council making application to the Registrar of Titles to make a recording of this Agreement in the Register on the Certificate of Title of the Subject Land in accordance with s181 of the Act and do all things necessary to enable Council 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.

3.4 Council’s costs to be paid

(a) The Owner will immediately pay to Council, Council’s reasonable costs and expenses (including legal expenses) of and incidental to the preparation, drafting, finalisation, engrossment, execution, registration and enforcement of this Agreement which are and until paid will remain a debt due to Council by the Owner.
(b) If in dispute, Council may have the costs assessed by the Law Institute of Victoria Costing Service and the parties will be bound by any assessment, and the cost of any assessment will be paid equally by the parties.

4. Agreement under Section 173 of the Act

Council and the Owner agree 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.

5. Owner's warranties

Without limiting the operation or effect which this Agreement has, the Owner warrants that apart from the Owner and any other person which 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.

6. Successors in title

Without limiting the operation or effect which 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:

(a) give effect to and do all acts and sign all documents which will require those successors to give effect to this Agreement; and

(b) execute a deed agreeing to be bound by the terms of this Agreement.

7. Notices

7.1 Service

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 or subsequently notified to each Party from time to time; or

(c) 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.
7.2 Time of service

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 following business day unless the receiving Party has requested retransmission before the end of that business day.

8. Alternative Dispute Resolution

8.1 Referral to VCAT

In the event of any dispute between the parties concerning the interpretation or implementation of this Agreement, that dispute must be referred to VCAT for resolution to the extent permitted by the Act. In the event of a dispute concerning any matter which is not referable to VCAT pursuant to the Act, that matter will be referred for arbitration agreed upon in writing by the parties, or, in the absence of agreement, the Chairman of the Victorian Chapter of the Institute of Arbitrators, Australia, or his nominee, for arbitration.

8.2 Section 149 of the Act

Wherever provision is made in this Agreement that any matter be done to the satisfaction of the VPA or any of its officers or any public authority and a dispute arises in relation to that matter, the dispute will be referred to VCAT in accordance with Section 149 of the Act.

8.3 Legal Representation

The parties will be entitled to legal representation for the purposes of any arbitration or referral referred to in clauses 8.1 and 8.2 and, unless the arbitrator, chairman, nominee or VCAT otherwise directs, each party will bear its own costs in relation to it.

9. Miscellaneous

9.1 Commencement of Agreement

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

9.2 Default

(a) If the Owner fails to comply with the provisions of this Agreement, Council may
serve a notice on the Owner specifying the works, matters and things in respect of which the Owner is in default.

(b) If the alleged default continues for 30 days after the service of such notice, Council may, by its officers, employees, agents and contractors, enter the Subject Land and ensure that the works, matters and things are carried out.

(c) The costs incurred by the Council in undertaking the works as a result of the Owner's default will be payable by the Owner.

9.3 Ending of Agreement

This Agreement ends on the date that the Council issues a letter confirming that the Owner has complied with all of its obligations under this Agreement.

9.4 Multiple lots

If this Agreement relates to more than one lot and the Owner of that lot has complied with all of the obligations in relation to that lot, the Owner of that lot may request Council to end this Agreement in relation to that lot.

9.5 Application to Registrar

As soon as reasonably practicable after the Agreement has ended, Council will, at the request and at the cost of the Owner make application to the Registrar of Titles under s183(2) of the Act to cancel the recording of this Agreement on the register.

9.6 No fettering of Council’s powers

It is acknowledged and agreed 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 Subject Land or relating to any use or development of the Subject Land.

9.7 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.

9.8 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.
9.9 **Proper law**

This Agreement is governed by and the Owner submits to the laws of the State of Victoria.
Schedule 1  Subject Land and Owners

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<td>Mortgage AR 679909J RMBL Investments Ltd</td>
<td>Panorama Drive, San Remo VIC 3925</td>
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Schedule 2  Bushfire Management Plan
Schedule 3   Mortgagee Consent

RMBL Investments Ltd as Mortgagee of registered Mortgage No AR 679909J consents to the Owner entering into this Agreement and agrees to be bound by the terms and conditions of this Agreement as if it were the Owner of the Subject Land.

Please see page attached
Signed for and on behalf of RMBL Investments Limited ACN 004 493 789 by two (2) of its appointed attorneys:

1) Alexine Pauline Margaret Courtney
2) Elena Grayson

before me:

........................................
Signature of Witness

Lourdes D’cruz
Name of Witness

RMBL Investments Limited by two (2) of its appointed attorneys:

........................................
Signature

A certified copy of which is filed in Permanent order Book No 277 at page 036 Item 03.
Executed as an agreement

The Common Seal of Bass Coast Shire Council is fixed to this document in the presence of:

[Signature]
Signature of Chief Executive Officer

[Full Name]
Full name (print)

Executed by TCG Doreen Pty Ltd (ACN 609 540 847) in accordance with section 127 of the Corporations Act 2001 (Cth) by:

[Signature]
Signature of Director

[Full Name]
Full name (print)

[Signature]
Signature of Director/Company Secretary

[Full Name]
Full name (print)