### MINUTES OF THE SPECIAL MEETING OF COUNCIL Application S173/2016/5 and S173/2016/8 - Ending of two Item 3.2 Section 173 Agreements At 135 City Vista Court, Plumpton Appendix 3 - Section 173 Agreement (AL377156U)

Appendix 3

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Application by Responsible Authority, Relevant Authority, Referral Authority or Council for the making of a recording of an agreement Section 181(1) Planning and Environment Act 1987

Lodged by: Name: Norton Rose Fulbright Australia Phone: 8686 6000 Address: RACV Tower, 485 Bourke Street, Melbourne Ref: 2809997 Customer Code: 1035773

1724X

**Privacy Collection Statement** The information from this form is collected under statutory authority and is used for the purpose of maintaining publicly searchable registers and indexes in the Victorian Land Registry.

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: Certificate of TitleVolume 10844 Folio 147, Lot No 1 on Plan of Subdivision 526039P and generally known as 135 City Vista Court, Plumpton in the State of Victoria.

Authority: Melton City Council

Section and Act under which agreement made: Section 173 Planning & Environment Act 1987

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A copy of the Agreement is attached to this Application.

Signature for the Authority:

Name of Officer:

<u>40 Pettitt</u> - 2014 Date: 165@ Super

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# MINUTES OF THE SPECIAL MEETING OF COUNCIL Item 3.2 Application \$173/2016/5 and \$173/2016/8 - Ending of two Section 173 Agreements At 135 City Vista Court, Plumpton Appendix 3 - Section 173 Agreement (AL377156U)

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# **NORTON ROSE FULBRIGHT**

Dated 16 September

2014

# **Planning Agreement**

Parties

Melton City Council

Melbourne Water Corporation ABN 81 945 386 953

Phenomenal Properties Pty Ltd ABN 92 128 068 959

Elisa de Wit Norton Rose Fulbright Australia RACV Tower, 485 Bourke Street Melbourne VIC 3000 Tel: +61 (0)3 8686 6000 nortonrosefulbright.com Our ref: 2809997

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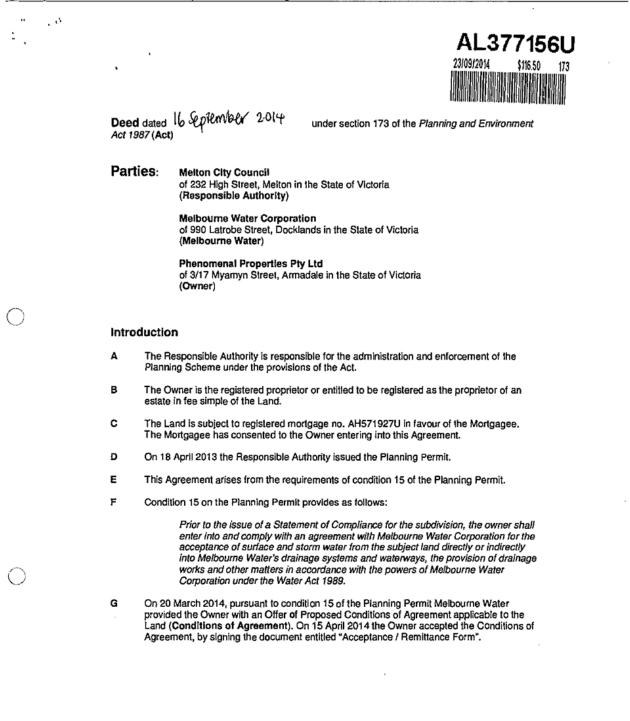
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The Conditions of Agreement provide that the Owner must pay drainage contributions as follows:

Drainage Contributions Scheme: Taylors Hill West DS Rate Type: Residential				
Hydraulic	\$83,505.00			
2.2110 ha @ \$37,768/ha				
Scheme Storm Water Quality	\$0.00			
2.2110 ha @ \$0/ha				
General Storm Water Quality	\$0.00			
2.2110 ha @ \$0/ha				
Total Payable:	\$83,505.00			

The Conditions of Agreement also provide that:

"The owners request to defer payment of drainage contributions and the issue of a compliance letter to Council is acceptable to Melbourne Water subject to the owner entering into a 173 Agreement with Melbourne Water. A compliance letter will not be issued to Council until the 173 Agreement is signed by all parties."

J The parties enter into this Agreement to facilitate the requirements referred to in Recital I above.

### It is agreed

- 1 Definitions and interpretation
- 1.1 Definitions

In this Agreement:

- (1) Act means the Planning and Environment Act 1987 (Vic);
- (2) Agreement means this document and any agreement executed by the parties expressed to be supplemental to this document;
- Conditions of Agreement has the meaning given in Recital G;
- (4) Drainage Contributions means the hydraulic drainage contributions relating to Lot 1;
- (5) GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (as amended) from time to time;
- (6) Land means the land described in certificate of title volume 10844 folio 147, lot no 1 on Plan of subdivision 526039P and generally known as 135 City Vista Court, Plumpton in the state of Victoria;
- (7) Letter of Release means a letter from Melbourne Water certifying that all applicable conditions of the Conditions of Agreement have been complied with;
- (8) Lot 1 means lot 1 on the Proposed Plan of Subdivision;

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# MINUTES OF THE SPECIAL MEETING OF COUNCIL Item 3.2 Application \$173/2016/5 and \$173/2016/8 - Ending of two Section 173 Agreements At 135 City Vista Court, Plumpton Appendix 3 - Section 173 Agreement (AL377156U)

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		(9)			later means Melbourne Water Corporation (ABN 81 945 386 953) ts agents, officers, employees, servants, workers and contractors;
		(10)			eans National Australia Bank Ltd being the person registered or registered as the mortgagee of the Land or any part of it;
		(11)	Regist	trar of Ti	s the person or persons registered or entitled to be registered by the ittes as proprietor or proprietors of an estate in fee simple of the Land it and includes a mortgagee in possession;
		(12)			mit means the Planning Permit number PA2013/3848/1 for 135 City umpton, including any plans endorsed under it;
		(13)			neme means the Melton Planning Scheme and any successor other planning scheme which applies to the Land;
$\bigcirc$		(14)	PS646	5839J pr	an of Subdivision means the proposed plan of subdivision repared by Cardno, Ref: CG130246-2, version D, a copy of which is chedule 1 to this Agreement;
$\bigcirc$		(15)	author	ity respo	Authority means Melton City Council or its successor as the onsible for administering and enforcing the Planning Scheme and ents, officers, employees, servants, workers and contractors; and g
		(16)	Tribur	nal mea	ns the Victorian Civil and Administrative Tribunal.
	1.2	Interp	retation	L	
		(1)	Refere	ence to:	
			(a)	one ge	ender includes the others;
			(b)	the sir	ngular includes the plural and the plural includes the singular;
			(C)	a pers	includes a body corporate;
			(d)		y includes the party's executors, administrators, successors and tted assigns;
			(e)	a thing	g includes the whole and each part of it separately;
$\bigcirc$			(f)	a statu include	ute, regulation, code or other law or a provision of any of them es:
				(i)	any amendment or replacement of it; and
				(ii)	another regulation or other statutory instrument made under it, or made under it as amended or replaced; and
			(g)	dollars	s means Australian dollars unless otherwise stated.
		(2)	"Inciud	ding" and	d similar expressions are not words of limitation.
		(3)			or expression is given a particular meaning, other parts of speech cal forms of that word or expression have a corresponding meaning.
		(4)			any table of contents or index are for convenience only and do not is Agreement or affect its interpretation.
	APAC	PAC-#22910542-v2			3 © Norton Rose Fußbright Australia

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- (5) A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.
- (6) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.
- (7) This Agreement does not in any way limit the application of the Act.

#### 1.3 Parties

- If a party consists of more than 1 person, this Agreement blods each of them separately and any 2 or more of them jointly.
- (2) An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.
- (3) A party which is a trustee is bound both personally and in its capacity as a trustee.

#### 2 Obligations run with the Land

2.1 The obligations of the Owner under this Agreement, take effect as separate and several covenants which are annexed to and run at law and equity with 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 Specific Obligations of the Owner

- 3.1 The Owner covenants and agrees with Melbourne Water that it will pay the Drainage Contributions to Melbourne Water upon request prior to a Letter of Release being issued or within 30 days of:
  - (1) a contract of sale of Lot 1 being entered into;
  - (2) a planning permit being issued for any development on Lot 1; or
  - (3) a planning permit being issued or consent to the certification of a plan of subdivision being given for any future subdivision of Lot 1;

whichever of these events occurs first.

- 3.2 Melbourne Water and the Owner agree that the Drainage Contributions shall be calculated on 2.2110ha of land and the contribution rates current at the time of payment.
- 3.3 Upon any of the events described in clause 3.1 occurring, the Owner will immediately provide Melbourne Water with written notification of such event, in accordance with clause 11.1.
- 3.4 Melbourne Water and the Owner agree that this Agreement satisfies condition 15 of the Planning Permit.

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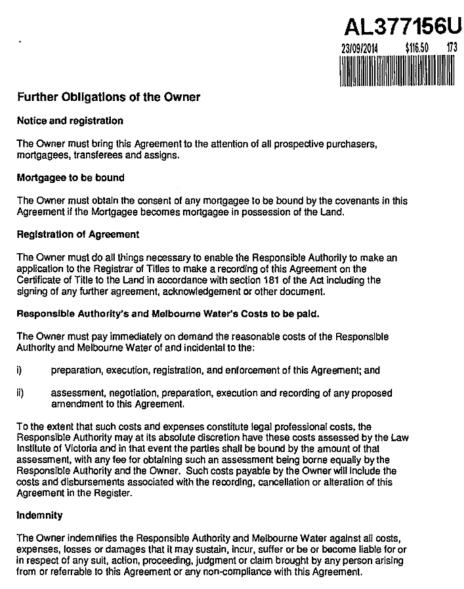
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#### 4.6 Access

The Owner must allow the Responsible Authority and Melbourne Water to enter the Land at any reasonable time to assess compliance with this Agreement.

### 5 Further assurance

Each party must promptly at its own cost do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to this Agreement.

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#### 6 Agreement under section 173 of the Act

The parties acknowledge and agree that this Agreement is made under section 173 of the Act.

## 7 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 who has consented in writing to this Agreement, no other person has any interest, either legal or equitable, in the Land.

### 8 Planning objectives

The parties acknowledge that the provisions of this Agreement are intended to achieve or advance the objectives of planning in Victoria and the objectives of the Planning Scheme.

9 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 Land, successors in title must be required to:

- give effect to and do all acts and sign all documents which will require those successors to give effect to this Agreement; and
- (2) execute a deed agreeing to be bound by the terms of this Agreement.

#### 10 Goods and Service Tax

#### 10.1 Definitions and Expressions

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.

#### 10.2 Amounts payable do not include GST

Each amount, of whatever description, specified as payable by one party to the other party under this Agreement is expressed as a GST exclusive amount unless specified to the contrary.

#### 10.3 Liability to pay any GST

Subject to clause 10.4, in addition to any amount payable by one party to the other party under this Agreement in respect of a taxable supply, the party liable to pay the amount ("Recipient") must pay to the other party ("Supplier") a sum equivalent to the GST payable, if any, by the Supplier in respect of the taxable supply on the date on which the amount is otherwise payable.

#### 10.4 Tax Invoice

A party's right to payment under clause 10.3 is subject to a Tax Invoice being delivered to the Recipient.

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Item 3.2

Appendix 3

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#### **General Matters** 11

#### Service of Notice 11.1

A notice or other communication required or permitted to be served by a party on another party must be in writing and in addition to any other method of service provided by law may be served:

(1) by delivering it personally on that party; or

Appendix 3 - Section 173 Agreement (AL377156U)

- (2) by sending it by pre paid post, addressed to that party at the address set out in this Agreement or subsequently notified to each party; or
- by sending it by facsimile If it confirmed immediately In writing by the sending party (3) by hand delivery or pre paid post.
- 11.2 Time of Service

A notice or other communication is deemed served:

- if delivered personally, on the next following business day; (1)
- if posted within Australia to an Australian address, two business days after the date (2) of posting and in any other case, seven business days after the date of posting;
- if sent by facsimile, on the next following business day unless the receiving party (3) has requested retransmission before the end of that day;
- if received after 6.00pm in the place of receipt or on a day which is not a business (4) day, at 9.00am on the next business day.

#### 11.3 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 judgement or order obtained by the Responsible Authority against the Owner do 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.

- 11.4 Jurisdiction
  - (1) The law of Victoria governs this Agreement.
  - (2)The parties submit to the non-exclusive jurisdiction of the courts of Victoria and of the Commonwealth of Australia.

#### 11.5 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 remain operative.

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#### 11.6 Disputes

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- (1) If there is a dispute between the parties concerning the interpretation or implementation of this Agreement, that dispute may be referred to the Tribunal for resolution to the extent permitted by the Act.
- (2) If there is a dispute concerning any matter which is not referrable to the Tribunal under the Act, that dispute may be referred for arbitration by an Arbitrator agreed upon in writing by the parties or, in the absence of such agreement the Chairman of the Victorian Chapter of the Institute of Arbitrators and Mediators, Australia or his nominee, for arbitration.
- (3) Where provision is made in this Agreement that any matter be done to the satisfaction of the Responsible Authority or any of its officers and a dispute arises in relation to such provision, the dispute may be referred to the Tribunal in accordance with section 149(1)(b) of the Act.
- (4) The parties are entitled to legal representation for the purposes of any arbitration or referral referred to in clauses (2) and (3). Unless the Arbitrator, Chairman, nominee or the Tribunal otherwise directs, each party must bear its own costs.

#### 11.7 No Fettering of Responsible Authority's or Melbourne Water's powers

The parties acknowledge and agree that this Agreement does not fetter or restrict the power or discretion of the Responsible Authority or Melbourne Water 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.

#### 12 Commencement of Agreement

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

#### 13 Amendment

The parties may agree in writing to amend this Agreement.

## 14 Ending of Agreement

- 14.1 This Agreement comes to an end within the meaning of section 177(1) of the Act when the Owner has completed, to the satisfaction of the Responsible Authority and Melbourne Water, all of the obligations imposed on It under this Agreement or otherwise by agreement between the parties in accordance with section 177(3) of the Act.
- 14.2 Once this Agreement ends, the Responsible Authority will, within a reasonable time, following a request from the Owner and at the cost of the Owner, complete and 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.

### 15 Counterparts

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

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(1) must be treated as an original counterpart;

(2) is sufficient evidence of the execution of the original; and

(3) may be produced in evidence for all purposes in place of the original.

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Executed by the parties as a deed and delivered on the date shown on the first page.

THE COMMON SEAL of THE MELTON CITY

COUNCIL was affixed hereto in the presence of: Councillor Chief Executive Officer



Signed sealed and delivered by Melbourne Water Corporation by its duly appointed attorney in the presence of:

. anolus 9 Signature of witness

Name of witness (BLOCK LETTERS)

990 LA TROBEST. <u>POCILLANDS</u> Address of witness 3008

Signature of attorney

JANE DENTON Name of attorney (BLOCK LETTERS)

LEGAL COUNSEL & CORBRATE Position of attorney Secretary RY

Date of power of attorney: 21 March 2014 By executing this deed the attorney states that the attorney has received no notice of revocation of the power of attorney.

Executed by Phenomenal Properties Pty Ltd ABN 92 128 068 959 in accordance with section 127 of the *Corporations Act* 2001:

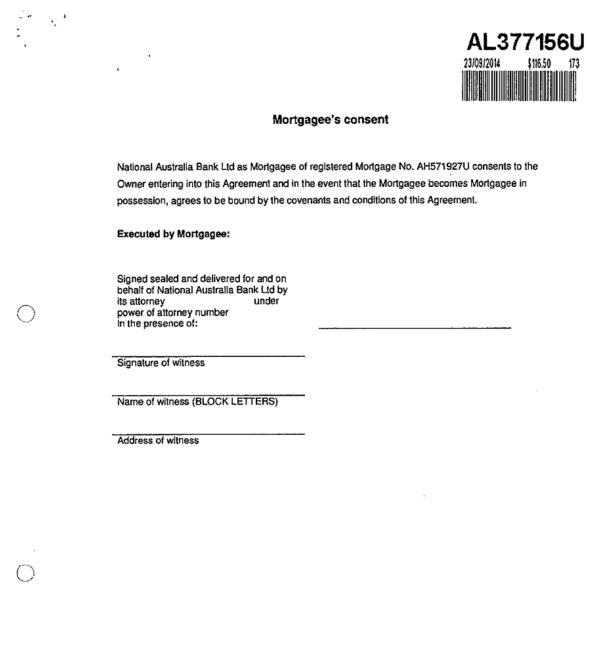
JOHN PAULO WHEELER

Name of sole director and sole company secretary (BLOCK LETTERS)

Sole director and sole company secretary

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Registrar of Titles Land Titles Office Marland House 570 Bourke Street MELBOURNE

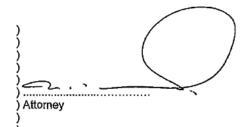
APPLICATION TO REGISTER AN AGREEMENT UNDER SECTION 173 OF THE PLANNING AND ENVIRONMENT ACT 1987

Registered Proprietor: Phenomenal Properties Pty Ltd ACN 128 068 959

National Australia Bank Limited A.B.N. 12 004 044 937 as Mortgagee pursuant to Registered Mortgage numbered AH571927U hereby consents to the within Agreement.

EXECUTED by NATIONAL AUSTRALIA BANK LIMITED by being signed sealed and delivered in Victoria by its Attorney

No 277 Page No 025 Item 35) in the presence of:



Signature of Witnes

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#### Schedule 1

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Proposed Plan of Subdivision referred to in clause 1.1(14).

The plan which is Schedule 1 has been removed from this counterpart of the section 173 Agreement due to difficulties of the Titles Office with imaging for recording purposes.

A copy of the plan identified is included in each of the counterparts to this section 173 Agreement which are held by:

- · The Responsible Authority;
- · Melbourne Water Corporation; and
- · The Owner of the Land as at the date the Agreement was executed.

A copy of the counterpart agreement together with Schedule 1 is available for inspection at the offices of the Responsible Authority during normal hours upon giving the Responsible Authority reasonable notice.

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