

**AQ616556F**

**FORM 18**

**Section 181**

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

**Planning and Environment Act 1987**

**Lodged by:**

**Name:** KELL MOORE LAWYERS  
**Phone:** (02) 6021 2844  
**Address:** 571 KEWA ST, ALBURY NSW 2646  
**Ref:** CMK:170722 Customer Code: 1042B

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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:** Volume 1213 Folio 527

**Authority:** Wodonga City Council

**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.**

**Signature of the Authority:**   
**Name of Officer:** JOHN SEDWICK MANAGER PLANNING & BUILDING  
**Date:** 10/12/2017.

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DATED *15 DECEMBER*

2017

**SECTION 173 AGREEMENT**  
Subject Land: 115 Kinchington Road, Leneva, Victoria

**BETWEEN**

**WODONGA CITY COUNCIL**  
ABN 63 277 160 265

and

**KINCHINGTON ESTATE PTY LTD**  
ACN 612 606 425

The logo for Kell Moore Lawyers features the name "KELL MOORE" in a large, bold, serif font. Below it, the word "LAWYERS" is written in a smaller, spaced-out, sans-serif font. A thick, black, curved line arches under the text, starting from the left and ending on the right, framing the name.

**KELL MOORE**  
LAWYERS

571 Kiewa Street  
ALBURY NSW 2640  
Tel: 02 6021 2844  
Fax: 02 6021 6075  
Ref: CMK:170722

**AQ616556F**

THIS AGREEMENT is made the *15<sup>TH</sup>* day of *DECEMBER* 2017

**BETWEEN** **WODONGA CITY COUNCIL ABN 63 277 160 265** of 104 Hovell Street, Wodonga, Victoria (**Council**)

**AND** **KINCHINGTON ESTATE PTY LTD ACN 612 606 425** of 7 Moloney Drive, Wodonga, Victoria (**Initial Owner**)

#### **BACKGROUND**

- A. The Initial Owner is the current registered proprietor of the Subject Land.
- B. Council is the responsible authority pursuant to the Act for the Scheme.
- C. The Planning Permit was issued by Council for the development of the Subject Land on condition that the Initial Owner enters into an agreement pursuant to section 173 of the Act, prior to the issue of a Statement of Compliance.
- D. Condition 52 of the Planning Permit includes conditions required to be included in this Agreement by the CFA. This agreement has been prepared for the purpose of an exemption from a planning permit pursuant to Clause 44.06-1 of the Scheme.
- E. A Statement of Compliance has not been issued for the Plan of Subdivision.
- F. The Planning Permit imposes conditions in respect of the use and development of the Subject Land.

#### **OPERATIVE CONDITIONS**

##### **1. DEFINITIONS**

In this Agreement unless expressed or implied to the contrary:

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

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

**approved** means approved by Council;

**business day** means Monday to Friday excluding public holidays in Victoria;

**BMO** means the Bushfire Management Overlay or Wildfire Management Overlay referred to in the Planning Scheme;

**CFA** means the Country Fire Authority;

**Corner Lot** means a lot in the Plan of Subdivision which is bounded by a street on two or more sides;

**develop** and **development** have the same meaning as in section 3(1) of the Act;

**Developed Lots** means a lot created by the subdivision of the Subject Land;

**dwelling** has the same meaning as in the Scheme;

**Façade** means a wall of a building running parallel (or mostly parallel) to the street boundary and comprising floor to ceiling or full length windows in at least one Habitable Living Area allowing active surveillance of the public realm, including either a verandah or a detailed principal or secondary access, and designed to front the street;

**Front Building Line** means the front wall of any room of the dwelling (excluding an entry way up to 2.0 metres in width). For the purposes of this definition, nib walls, porticos, verandahs and other architectural features are not defined as a wall;

**Front Fence** means a fence on the boundary of the property facing a road (and in relation to a Corner Lot means the boundary facing the Primary Street);

**Future Residential Lot** means any lot created on the subdivision of the Subject Land (or any part of the Subject Land);

**Habitable Living Area** means any kitchen, lounge, dining or living room;

**Mitigation Plan** means the mitigation plan at Appendix 1 of this Agreement (as amended from time to time) showing bushfire mitigation measures prepared in accordance with Clause 52.47-2.4 of the Scheme and approved under the Planning Permit.

**Owner** means any person or persons registered or entitled 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.

**planning approval** means and includes any planning permit issued in accordance with the Act;

**Plan of Subdivision** means proposed plan of subdivision PS705742Y made in accordance with the Planning Permit and in a form acceptable to Council that subdivides the Subject Land;

**Planning Permit** means planning permit no. 65/2014 issued by Council on 7 January 2015 and subsequently amended on 25 June 2015 (and any subsequent amendment(s) to it);

**Primary Façade** means the façade which is parallel (or mostly parallel) to the street boundary which Council defines as the street address of the lot;

**Primary Street** means the street which Council defines as the street address for the lot;

**Scheme** means the Wodonga Planning Scheme;

**Screening Device** includes any fence, wall, shed, non-transparent screen or material erected, installed or attached to any structure (excluding vegetation or curtains to windows);

**Secondary Façade** means the façade on a Corner Lot which is located parallel (or mostly parallel) to a Secondary Street;

**Secondary Street** means, in relation to a Corner Lot, the street which is not the Primary Street (i.e. not the street which Council defines as the street address for the lot);

**Service Area** includes clotheslines and garbage bin storage areas;

**Statement of Compliance** means a statement of compliance for the Plan of Subdivision issued by Council under section 21 of the *Subdivision Act 1988*;

**Subject Land** means Crown Allotment 2B Section 1 Parish of Wodonga being the land in Certificate of Title Volume 1213 Folio 527, and described as 115 Kinchington Road, Leneva, Victoria; and

**Termination Date** means the date upon which this Agreement ends in accordance with Section 177 of the Act, namely on the date upon which the Owner has complied with its obligations pursuant to this Agreement (as determined by Council) or that Council no longer requires the Owner to comply with the terms of this Agreement.

2. **AGREEMENT UNDER SECTION 173 OF THE ACT**

Council and the Owner agree that without limiting or restricting their respective powers to enter into this Agreement and in so far as it can be so treated, this Agreement is made pursuant to section 173 of the Act.

3. **EFFECT OF AGREEMENT**

3.1 This Agreement is effective from the date of the Agreement and continues in perpetuity, subject to clause 9, to run at law and equity with the Subject Land.

3.2 The Owner's use of the Subject Land is subject to the conditions and obligations set out in this Agreement.

3.3 The Owner's obligations will take effect as separate and several covenants which will be annexed to and run at law and equity with the Subject Land to bind the Owner and each successor, assign or transferee of the Owner including the registered proprietor, the mortgagee in possession and the beneficial owner for the time being of the Subject Land.

4. **OWNER'S WARRANTIES**

Without limiting the operation or effect of this Agreement, the Owner warrants that:

4.1 except for the parties to this Agreement, no other person (except for any tenants of the Subject Land) has any interest, either legal or equitable, in the Subject Land which may be affected by this Agreement or by development or use of the Subject Land pursuant to the Scheme or any permit or approved plan under the Scheme; and

4.2 the Owner has obtained all necessary authorities and consents to bind all other persons who have any interest either legal or equitable in the Subject Land.

5. **SUCCESSORS IN TITLE**

Without limiting the operation or effect of this Agreement, the Owner must ensure that, until this Agreement is recorded on the folio of the register which relates to the Subject Land, the Owner's

successors in title will:

- 5.1 give effect to, do all acts and sign all documents requiring those successors to give effect to this Agreement; and
- 5.2 execute a deed agreeing to be bound by this Agreement.

**6. COVENANTS OF OWNER**

The Owner covenants and agrees that, except with the prior written approval of Council:

- 6.1 site cuts and fill will not exceed 1.0 metres at any one point, without the prior written consent of Council (which may be withheld in Council's absolute discretion);
- 6.2 in respect of any Corner Lot:
  - (a) all dwellings must have a Primary Façade and a Secondary Façade;
  - (b) garages and/or carports must be located at the rear of the dwelling and located on the Secondary Facade (entry to which must be from the Secondary Street), except where two (2) dwellings are proposed to be constructed on the lot;
  - (c) vehicle access driveways must be no wider than 4.5 metres at the boundary of the lot;
- 6.3 garages and/or carports must:
  - (a) be set back at least 5.5 metres front the nearest street boundary of the lot in order to facilitate visitor parking on-site (except where two (2) dwellings are proposed to be constructed on the lot, in which case the minimum set back is 5 metres);
  - (b) be recessed at least 0.5 metres from the Front Building Line of the dwelling; and
  - (c) not occupy more than 50% of the lot frontage;
- 6.4 vehicle access driveways from the Primary Street must be no wider than 4.5 metres at the front boundary of the lot;
- 6.5 a vehicle crossover to any lot must not be located where access is required across any part of an indented parking space (as determined by Council);
- 6.6 no Screening Device may be erected which would obscure surveillance of a public reserve or street from the internal or external living areas of the dwelling;
- 6.7 a Service Area must not be located forward of the Front Building Line;
- 6.8 any Front Fences:
  - (a) must not exceed 1.2 metres in height; and
  - (b) must be constructed of pillars that match the material type and colour of the dwelling and consist of infill fencing panel of 25% transparency in powder

coated tubular metal finishes or timber; and

- (c) in respect of Corner Lots, must extend at least 10 metres along the Secondary Street;

6.9 if the BMO applies to the Subject Land (or any part of the Subject Land) the Owner must at its own cost and expense:

- (a) implement and maintain the bushfire mitigation measures shown in the Mitigation Plan for any dwelling on a Future Residential Lot to the satisfaction of Council on a continual basis, unless a separate planning permit has been issued for that dwelling pursuant to the BMO; and
- (b) implement and maintain any bushfire mitigation measures required under this Agreement.

## 7. FURTHER COVENANTS OF OWNER

### 7.1 Notice

The Owner covenants to bring this Agreement to the attention of all prospective purchasers, mortgagees, transferees and assigns.

### 7.2 Compliance

The Owner covenants to:

- (a) comply with the requirements of all statutory authorities in relation to the development of the Subject Land;
- (b) comply with all relevant and applicable statutes, regulations, local laws and planning controls in relation to the Subject Land; and
- (c) take all necessary steps to comply with the provisions of this Agreement.

### 7.3 Registration

The Owner covenants to:

- (a) consent to Council making an application to the Registrar of Titles to make a recording of this Agreement in the Register on the folio of the Register which relates to the Subject Land in accordance with section 181 of the Act; and
- (b) do all things necessary to enable Council to do so including signing any further agreement, acknowledgment 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.

### 7.4 Mortgagee to be Bound

The Owner covenants to obtain the consent of any mortgagee to be bound by the covenants in this Agreement if the mortgagee becomes mortgagee in possession of the Subject Land.

**7.5 Council's Costs to be Paid**

The Owner covenants to pay to Council, within 14 days of demand, Council's reasonable legal costs and expenses directly attributable to the negotiation, preparation and registration of this Agreement and following any default by the Owner the enforcement of this Agreement. Furthermore, payment of Council legal fees for the registration of the Agreement must be made prior to the issue of a Statement of Compliance.

**7.6 Council Access**

The Owner covenants to allow Council and its officers, employees, contractors or agents or any of them, to enter the Subject Land (at any reasonable time) to assess compliance with this Agreement, but in doing so Council must, and must procure its officers, employees, contractors and agents to enter the Subject Land at their own risk and comply with the Owner's or the Owner's builder's site conditions and safety policy and follow the site supervisor's directions.

**8. GENERAL**

**8.1 Further Assurance**

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Agreement.

**8.2 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.

**8.3 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.

**8.4 No Fettering of Council's Powers**

This Agreement does not fetter or restrict the power or discretion of Council to make or impose requirements or conditions in connection with any use or development of the Subject Land or the granting of any planning approval; the approval or certification of any plans of subdivision or consolidation applicable to the Subject Land or the issue of a Statement of Compliance in connection with any such plans.

**9. ENDING OF AGREEMENT**

9.1 This Agreement will end in respect of the Developed Lots on the Termination Date.

9.2 As soon as reasonably practicable after the Termination Date, Council will, at the request and at the cost of the Owner, make application to the Registrar of Titles under



Section 183(2) of the Act to cancel the recording of this Agreement on the register affecting the Developed Lots.

**10. NOTICES**

**10.1 Service of Notice**

A notice or other communication required or permitted to be served by a party on another party must be in writing and served:

- (a) personally on the party; or
- (b) by sending it by pre-paid post, addressed to that party at the address for service specified in this document or subsequently notified to each party as that party's address for service; or
- (c) by facsimile to the person's number for service specified in this document or subsequently notified to each party.

**10.2 Time of Service**

A notice or other communication is deemed served:

- (a) if served personally, upon service;
- (b) if posted within Australia to an Australian address, three business days after posting and in any other case, ten business days after posting;
- (c) if served by facsimile, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile; or
- (d) if received after 5.00 pm in the place of receipt or on a day which is not a business day, at 9.00 am on the next business day.

**11. INTERPRETATION**

In this Agreement, unless expressed or implied to the contrary:

- 11.1 undefined terms or words have the meanings given in the Act;
- 11.2 the singular includes the plural and the plural includes the singular;
- 11.3 a reference to a gender includes a reference to the other genders;
- 11.4 a reference to a person includes a reference to a firm, corporation or other corporate body;
- 11.5 if a party consists of more than one person this Agreement binds them jointly and each of them severally;
- 11.6 a reference to a "planning scheme" or "Scheme" includes any amendment, consolidation, or replacement of such scheme and any document incorporated by reference into such scheme;

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- 11.7 a reference to a statute includes any statutes amending, consolidating or replacing those statutes and any regulations made under the statutes;
- 11.8 where, in this Agreement, Council may exercise any power, duty or function, that power, duty or function may be exercised on behalf of Council by an authorised or delegated officer;
- 11.9 all headings are for ease of reference only and do not affect the interpretation of this Agreement; and
- 11.10 the Recitals to this Agreement form part of this Agreement.

**EXECUTED** by the parties

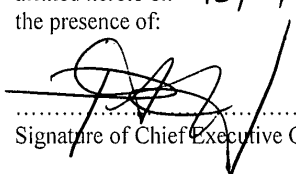

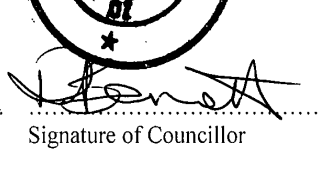
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**SIGNING PAGE**

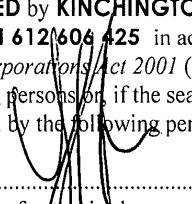
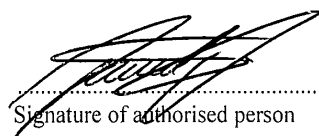
**SIGNED SEALED AND DELIVERED** as a Deed by the parties as set out at the commencement of this Agreement.

**THE COMMON SEAL** of the **WODONGA** )  
**CITY COUNCIL ABN 63 277 160 265** was )  
affixed hereto on 15/12/17 2017 in )  
the presence of:



		
Signature of Chief Executive Officer	Signature of Councillor	Signature of Councillor
<u>P. Harrington</u>	<u>ANNA SPEEDIE</u>	<u>KAT BENNETT</u>
Print Name	Print Name	Print Name

**EXECUTED** by **KINCHINGTON ESTATE PTY** )  
**LTD ACN 612 606 425** in accordance with )  
s 127 *Corporations Act 2001* (Cth) by the )  
following persons or, if the seal is affixed,  
witnessed by the following persons:

	
Signature of authorised person	Signature of authorised person
<u>JENNY STOEN</u>	<u>PAUL BUTKO</u>
Print Name of authorised person	Print Name of authorised person
<u>DIRECTOR</u>	<u>DIRECTOR</u>
Office held	Office held

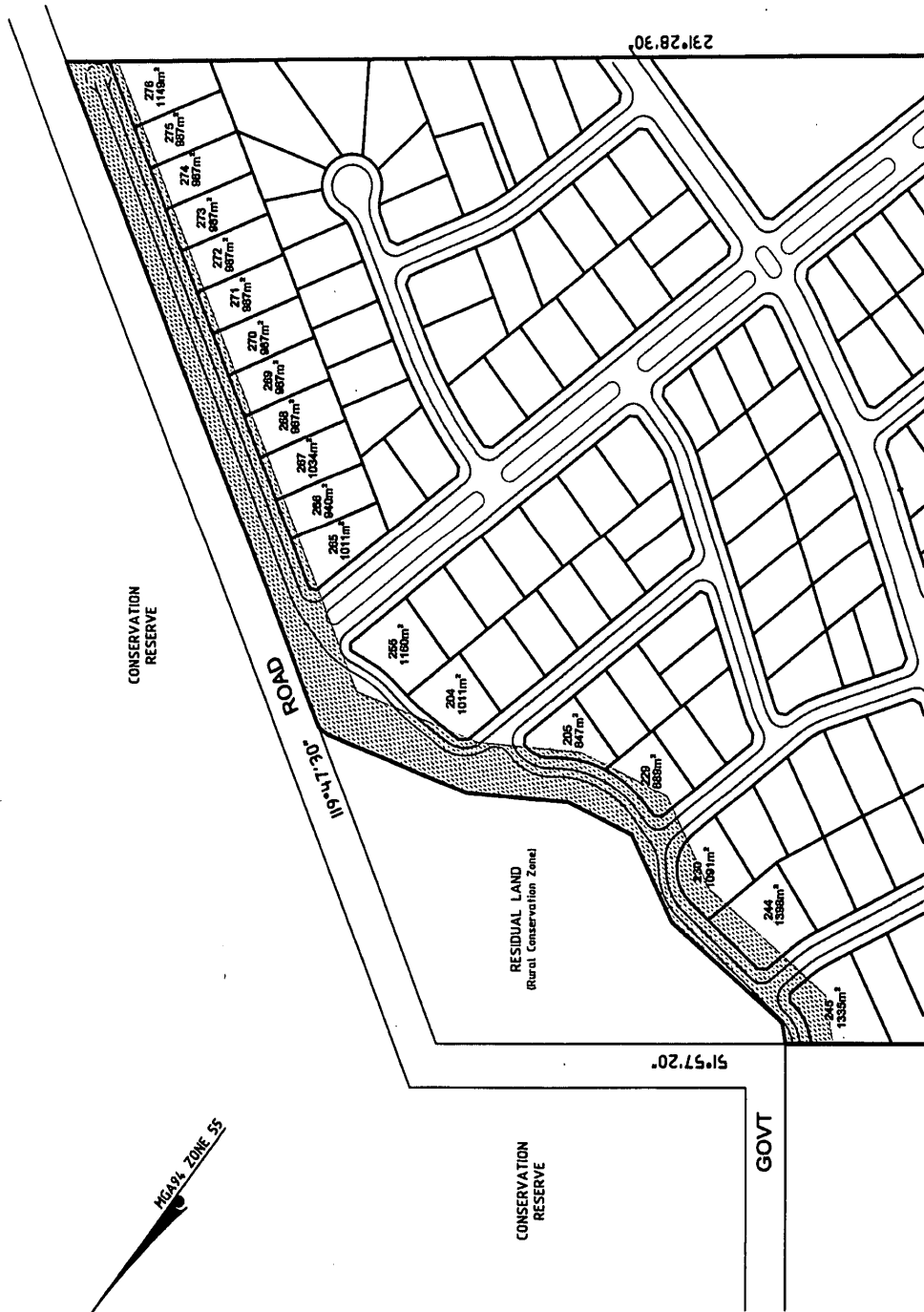
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**Appendix 1 – Mitigation Plan**



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 Scale 1:2000  
 SHEET 1 OF 1  
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**BAL 19 - DEFENDABLE SPACE  
 PROPOSED RESIDENTIAL  
 DEVELOPMENT  
 KINCHINGTON ROAD  
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DEFENDABLE SPACE 24m  
 BUILDING ZONE

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