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31/08/2005

CARDINIA SHIRE COUNCIL	
REPLY ACTION	
REC'D 01 SEP 2005	
COMMENT INFORMATION	B.J.
FILE REF	1389700500

Barry Jones
Cardinia Shire Council
PO Box 7
PAKENHAM VIC 3810

Dear Barry

Section 173 Agreement for 10 Hickson Road, Officer

Further to previous correspondence we enclose two signed original copies of the Section 173 Agreement for retention by Council.

A copy of the Section 173 Agreement has been lodged at the Land Registry and is registered on title in dealing number **AD838446M**. A copy of the agreement has also been lodged with the office of the Minister for Planning in accordance with section 179(1) of the *Planning and Environment Act 1987 (the Act)*.

Kindly note that under section 179(2) of the Act, a responsible authority must keep a copy of the Section 173 Agreement indicating any amendment made to it available at its office for any person to inspect during office hours free of charge.

Thank you for your instructions in this matter.

Please contact Lucinda Caldow if you have any queries.

Yours faithfully

Maddocks

Maddocks

enc

Interstate office
Sydney

Affiliated offices
Adelaide, Beijing, Brisbane, Colombo,
Dubai, Hong Kong, Jakarta, Kuala Lumpur,
Manila, Mumbai, New Delhi, Perth,
Singapore, Tianjin



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Date 18 / 8 / 2005

Agreement under Section 173 of the Planning and Environment Act 1987 Subject Land: 10 Hickson Road, Officer

Cardinia Shire Council
and

Hygain Property Management Pty Ltd
ACN 097 343 836

Interstate office
Sydney
Affiliated offices
Adelaide, Beijing, Brisbane, Colombo,
Dubai, Hong Kong, Jakarta, Kuala Lumpur,
Manila, Mumbai, New Delhi, Perth,
Singapore, Tianjin

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Agreement under Section 173 of the Planning and Environment Act 1987

DATE 18 / 8 / 2005

BETWEEN

CARDINIA SHIRE COUNCIL
of Municipal Offices, Henty Way, Pakenham

(Council)

AND

HYGAIN PROPERTY MANAGEMENT PTY LTD ACN 097 343 836
of 10 Hickson Road, Officer

(Owner)

RECITALS

- A. Council is the Responsible Authority pursuant to the Act for the Planning Scheme.
- B. The Owner is or is entitled to be the registered proprietor of the Subject Land.

On 25 May 1992 Council issued Planning Permit No. P.2180B (**Planning Permit**) allowing the use and development of a grain and stockfeed factory on the Subject Land in accordance with a plan to be endorsed under condition 1 of the Planning Permit. Condition 3 of the Planning Permit requires the Owner to enter into this Agreement to provide for the matters set out in that condition. A copy of the Planning Plan is available for inspection at Council offices during normal business hours.

- C. Condition 3 of the Planning Permit provides that:

"THE BUILDINGS HEREIN PERMITTED SHALL NOT BE OCCUPIED UNTIL SUCH TIME AS A SECTION 173 AGREEMENT PURSUANT TO THE PLANNING & ENVIRONMENT ACT 1987 PROVIDING FOR THE FOLLOWING, HAS BEEN EXECUTED AND REGISTERED ON TITLE TO THE LAND:-

- (I) THAT WITHIN THE 6 MONTHS PRIOR TO THE TERMINATION OF ACCESS CONSENT TO LOT 28, L.P.7847 HICKSON ROAD FROM OFFICER SOUTH ROAD ACROSS LAND OWNED BY THE PUBLIC TRANSPORT CORPORATION, THE APPLICANT MUST ARRANGE FOR THE DESIGN AND CONSTRUCTION AT NO COST TO COUNCIL OF HICKSON ROAD FROM OFFICER SOUTH ROAD TO LOT 28, L.P.7847 TO THE FOLLOWING STANDARDS:

- (A) AN ALL WEATHER GRAVEL ROAD CONSTRUCTED TO COUNCIL'S SATISFACTION AND IN ACCORDANCE WITH 'SPECIFICATION FOR PARTIAL GRAVEL ROAD CONSTRUCTION WORKS STANDARD DRAWING 1, JULY 1987'.

- (B) WIDENING AND STRENGTHENING OF THE HICKSON ROAD BRIDGE OVER THE OFFICER SOUTH DRAIN AS NECESSARY TO CATER FOR TRUCK TRAFFIC TO THE SATISFACTION OF THE RESPONSIBLE AUTHORITY.

AT SUCH TIME AS HICKSON ROAD IS CONSTRUCTED PURSUANT TO THE LOCAL GOVERNMENT ACT, ALLOWANCE WILL BE MADE TO THE APPLICANT FOR THE COST OF ANY CONSTRUCTION WORKS PURSUANT TO THIS AGREEMENT WHICH CAN BE REASONABLY INCORPORATED INTO THE PRIVATE STREET SCHEME."

- D. The parties enter into this Agreement:
- D.1 to give effect to the requirements of the Planning Permit; and
- D.2 to achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

THE PARTIES AGREE

1. DEFINITIONS

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

Act means the *Planning and Environment Act 1987*.

Adjoining Land means the land adjacent to the Subject Land and the railway station, including the railway reserve, and generally known as the 'Officer railway station car park', previously owned by Roads Corporation and now owned by Melbourne Water Corporation.

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

Access Road means Hickson Road, Officer from the Subject Land to Officer South Road.

Endorsed Plan means the plan endorsed with the stamp of Council from time to time as the plan which forms part of the Planning Permit. A copy of the Endorsed Plan is available for inspection at Council offices during normal business hours.

lot means a lot on the Endorsed Plan.

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.

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 Council under this Agreement as appropriate.

Plan means the 'Specification for Partial Gravel Road Construction works Standard Drawing' dated 1 July 1987 and approved by Council.

Planning Scheme means the Cardinia Planning Scheme and any other planning scheme that applies to the Subject Land.

Subject Land means the land situated at 10 Hickson Road, Officer being the land referred to in Certificate of Title Volume 10060 Folio 202 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.

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.
- 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. SPECIFIC OBLIGATIONS OF THE OWNER

The Owner covenants and agrees that six months prior to the termination of access from Officer South Road to the Subject Land via the Adjoining Land, the Owner must, at the Owner's cost:

- 3.1 design and construct the Access Road as an all weather gravel road in accordance with the Plan, to the satisfaction of Council; and
- 3.2 widen and strengthen the Hickson Road Bridge, over the Officer South drain, at the intersection of Hickson Road, Officer and South Road, Officer to cater for truck traffic, to the satisfaction of Council.

4. FURTHER OBLIGATIONS OF THE OWNER

4.1 Notice and Registration

The Owner further covenants and agrees that the Owner will bring this Agreement to the attention of all prospective purchasers, lessees, mortgagees, chargees, transferees and assigns.

4.2 Further actions

The Owner further covenants and agrees that:

- 4.2.1 *the Owner will do all things necessary to give effect to this Agreement;*
- 4.2.2 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 Section 181 of the Act and 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.

4.3 Council's Costs to be Paid

The Owner further covenants and agrees that 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.

5. AGREEMENT UNDER SECTION 173 OF THE ACT

Council and the Owner agree that 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 pursuant to Section 173 of the Act, and the obligations of the Owner under this Agreement are obligations to be performed by the Owner as conditions subject to which the Subject Land may be used and developed pursuant to the Planning Permit.

6. 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 Subject Land which may be affected by this Agreement.

7. 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:

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

8. GENERAL MATTERS

8.1 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:

- 8.1.1 by delivering it personally to that party;
- 8.1.2 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; or
- 8.1.3 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.

8.2 Service of Notice

A notice or other communication is deemed served:

- 8.2.1 if delivered, on the next following business day;
- 8.2.2 if posted, on the expiration of 7 business days after the date of posting; or
- 8.2.3 if sent by facsimile, on the next following business day unless the receiving party has requested retransmission before the end of that business day.

8.3 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.

8.4 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.

8.5 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. COMMENCEMENT OF AGREEMENT

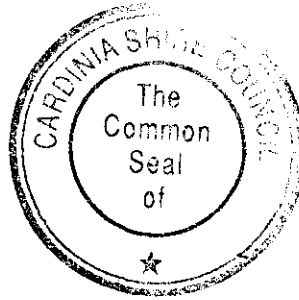
Unless otherwise provided in this Agreement, this Agreement commences from the date of this Agreement.

10. ENDING OF AGREEMENT

- 10.1 This Agreement ends when the Owner has complied with all of the obligations imposed on the Owner under this Agreement.
- 10.2 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.
- 10.3 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 Section 183(1) of the Act to cancel the recording of this Agreement on the register.

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

The COMMON SEAL of the CARDINIA SHIRE COUNCIL was affixed in the presence of:



[Signature]
.....
Mayor
[Signature]
.....
Chief Executive Officer

~~THE COMMON SEAL of HYGAIN PROPERTY MANAGEMENT PTY LTD ACN 097 343 836 was affixed in the presence of authorised persons:~~

) Executed by HYGAIN PROPERTY MANAGEMENT
) PTY LTD (ACN 097 343 836) pursuant to Section 127 of
) the Corporations Act 2001 by being signed by those
) persons who are authorised to sign for the company

[Signature]
.....
Director

[Signature]
.....
Full name

[Signature]
.....
Usual address

[Signature]
.....
Director (or Company Secretary)

[Signature]
.....
Full name

[Signature]
.....
Usual address