

Agreement under section 173 of the Planning and Environment Act 1987

Subject Land: Market Street and Bartley Street, Wangaratta, Victoria, 3677

Rural City of Wangaratta

and

66-70 Black Street Pty Ltd ACN 639 791 192

CONTENTS

Background.....	3
1. Definitions	3
2. Interpretation	4
3. Purposes of Agreement.....	5
4. Reasons for Agreement.....	5
5. Agreement required	5
6. Owner's specific obligations.....	6
6.1 Subdivision of Subject Land	6
7. Owner's further obligations	6
7.1 Notice and registration.....	6
7.2 Further actions	6
7.3 Council's costs to be paid	6
7.4 Time for determining satisfaction	6
7.5 Interest for overdue money	7
8. Agreement under s 173 of the Act.....	7
9. Owner's warranties	7
10. Successors in title	7
11. General matters	7
11.1 Notices	7
11.2 Counterparts	7
11.3 No waiver	8
11.4 Severability	8
11.5 No fettering of Council's powers.....	8
11.6 Inspection of documents	8
11.7 Governing law.....	8
12. Electronic Execution	8
13. Commencement of Agreement.....	8
14. Ending of Agreement	8
Signing Page.....	9

Agreement under section 173 of the Planning and Environment Act 1987

DATED / /

PARTIES

Name	Rural City of Wangaratta
Address	62-68 Ovens Street, Wangaratta, Victoria, 3677
Short name	Council
Name	66-70 Black Street Pty Ltd
Address	415 Bay Street, Brighton, Victoria, 3186
Short name	Owner

BACKGROUND

- A. Council is the responsible authority for the Planning Scheme.
- B. The Owner is or is entitled to be the registered proprietor of the Subject Land.
- C. On 12 September 2025, the Department of Transport and Planning granted the Minister's Authorisation, subject to conditions, for the Amendment. Condition 1 of the Minister's Authorisation relevantly states:

Council and the relevant Landowners must enter into a s173 Agreement to subdivide land along the new zoning alignment (Market Street and Bartley Street, Moyhu) within six months of approval and gazettal of amendment.
- D. Council and the Owner enter this section 173 agreement to give effect to condition 1 of the Minister's Authorisation.

The Parties agree

1. DEFINITIONS

In this Agreement unless the context admits otherwise:

Act means the Planning and Environment Act 1987.

Agreement means this Agreement and includes this Agreement as amended from time to time.

Amendment means amendment C95wang to the Planning Scheme.

Approval Date has the same meaning as in the Planning Scheme.

Current Address means:

- (a) for Council, the address shown on page three of this Agreement, or any other address listed on Council's website; and
- (b) for the Owner, the address shown on page three of this Agreement or any other address provided by the Owner to Council for any purpose relating to the Subject Land.

Current Email means:

- (a) for Council, council@wangaratta.vic.gov.au or any other email address listed on Council's website; and
- (b) for the Owner, any email address provided by the Owner to Council for the express purpose of electronic communication regarding this Agreement.

Minister means the Minister for Planning.

Minister's Authorisation means the correspondence dated 12 September 2025 issued by the Department of Transport and Planning, under delegation from the Minister, in accordance with section 8A of the Act, authorising Council to prepare the Amendment subject to conditions.

Owner means the person registered or entitled from time to time to be registered as proprietor of an estate in fee simple of the Subject Land and includes a mortgagee-in-possession.

Owner's obligations include the Owner's specific obligations and the Owner's further obligations.

Party or Parties means the Parties to this Agreement.

Proposed Plan of Subdivision means proposed plan of subdivision PS935269P, prepared by Oxley & Co, Edition 1, Surveying File Reference S10326, Version 1, showing the subdivision of the Subject Land.

Planning Scheme means the Wangaratta Planning Scheme and any other planning scheme that applies to the Subject Land from time to time.

Subdivision Act means the *Subdivision Act 1988*.

Subject Land means the land situated at Market Street and Bartley Street, Wangaratta Victoria, being the land referred to in certificates of title:

- (a) volume 9556, folio 205; and
- (b) volume 12377, folio 935,

and any reference to the Subject Land includes all or any part of it, including any lot created by the subdivision of the Subject Land.

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 all genders;
- 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 any agreement, representation, warranty or indemnity by 2 or more persons (including where 2 or more persons are included in the same defined term) binds them jointly and severally;
- 2.5 a term used 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 Act, regulation or amendment amending, consolidating or replacing the Act, regulation or Planning Scheme;
- 2.7 the Background forms part of this Agreement;
- 2.8 the Owner's obligations take effect as separate and several covenants which are annexed to and run at law and equity with the Subject Land; and
- 2.9 any reference to a clause, page, condition, attachment or term is a reference to a clause, page, condition, attachment or term of this Agreement.

3. PURPOSES OF AGREEMENT

The Parties acknowledge and agree that the purposes of this Agreement are to:

- 3.1 give effect to the Minister's Authorisation; and
- 3.2 achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

4. REASONS FOR AGREEMENT

The Parties acknowledge and agree Council has entered into this Agreement for the following reasons:

- 4.1 in deciding to grant the Minister's Authorisation, the Minister included condition 1 requiring Council and the Owner to enter into the Agreement; and
- 4.2 the Minister would not have granted the Minister's Authorisation without including condition 1; and
- 4.3 Council and the Owner enter into this Agreement to satisfy condition 1 of the Minister's Authorisation.

5. AGREEMENT REQUIRED

The Parties agree this Agreement will continue to be required unless:

- 5.1 Council abandons the Amendment in accordance with section 28 of the Act; or
- 5.2 the Agreement is otherwise ended in accordance with the Act.

6. OWNER'S SPECIFIC OBLIGATIONS

6.1 Subdivision of Subject Land

The Owner covenants and agrees:

- 6.1.1 by no later than 6 months after the Approval Date of the Amendment, the Owner must start the subdivision process in respect of the Subject Land in accordance with the Proposed Plan of Subdivision, at the full cost of the Owner; and
- 6.1.2 by no later than 2 years after the Approval Date of the Amendment, or by a later timeframe that Council agrees to in writing, the Subject Land must be subdivided in accordance with the Proposed Plan of Subdivision and the corresponding plan of subdivision registered under the Subdivision Act, at the full cost of the Owner and to the satisfaction of Council.

7. OWNER'S FURTHER OBLIGATIONS

7.1 Notice and registration

The Owner must bring this Agreement to the attention of all prospective occupiers, purchasers, lessees, licensees, mortgagees, chargees, transferees and assigns.

7.2 Further actions

The Owner:

- 7.2.1 must do all things necessary to give effect to this Agreement;
- 7.2.2 acknowledges and agrees to carry out its obligations under this Agreement at its own expense and to the satisfaction of Council;
- 7.2.3 consents to Council applying to the Registrar of Titles to record this Agreement on the certificate of title of the Subject Land in accordance with section 181 of the Act; and
- 7.2.4 agree to do all things necessary to enable Council to do so, including:
 - (a) sign any further agreement, acknowledgment or document; and
 - (b) obtain all necessary consents to enable the recording to be made.

7.3 Council's costs to be paid

The Owner must pay to Council within 28 days after a written request for payment, Council's costs and expenses (including legal expenses) relating to this Agreement, including:

- 7.3.1 preparing, drafting, finalising, signing and recording this Agreement;
- 7.3.2 preparing, drafting, finalising and recording any amendment to this Agreement requested by the Owner; and
- 7.3.3 preparing, drafting, finalising and recording any document to give effect to the ending of this Agreement requested by the Owner.

7.4 Time for determining satisfaction

If Council makes a request for payment of a fee under clause 7.3 of this Agreement, the Owner agrees Council will not decide whether the Owner's obligations have been undertaken to Council's

satisfaction, or whether to grant the consent sought, until payment has been made to Council in accordance with the request.

7.5 Interest for overdue money

- 7.5.1 The Owner must pay to Council interest in accordance with section 120 of the *Local Government Act 2020* on any amount due under this Agreement that is not paid by the due date.
- 7.5.2 If interest is owing, Council will apply any payment made to interest and any balance of the payment to the principal amount.

8. AGREEMENT UNDER SECTION 173 OF THE ACT

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 in accordance with section 173 of the Act.

9. OWNER'S WARRANTIES

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.

10. SUCCESSORS IN TITLE

Until such time as a memorandum of this Agreement is recorded on the certificate of title of the Subject Land, the Owner must require successors in title to:

- 10.1 give effect to this Agreement; and
- 10.2 enter into a deed agreeing to be bound by the terms of this Agreement.

11. GENERAL MATTERS

11.1 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:

- 11.1.1 personally on the other Party;
- 11.1.2 by leaving it at the other Party's Current Address;
- 11.1.3 by posting it by priority prepaid post addressed to the other Party at the other Party's Current Address; or
- 11.1.4 by email to the other Party's Current Email.

11.2 Counterparts

This Agreement may be executed in counterparts, all of which taken together constitute one document.

11.3 No waiver

Any time or other indulgence granted by Council to the Owner or any variation of this Agreement or any judgment or order obtained by Council against the Owner does not amount to a waiver of any of Council's rights or remedies under this Agreement.

11.4 Severability

If a court, arbitrator, tribunal or other competent authority determines that any part of this Agreement is unenforceable, illegal or void then that part is severed with the other provisions of this Agreement remaining operative.

11.5 No fettering of Council's powers

This Agreement does not fetter or restrict Council's power or discretion to make decisions or impose requirements or conditions in connection with the grant of planning approvals or certification of plans subdividing the Subject Land or relating to the use or the development of the Subject Land.

11.6 Inspection of documents

A copy of any planning permit, document or plan referred to in this Agreement is available for inspection at Council offices during normal business hours upon giving the Council reasonable notice.

11.7 Governing law

This Agreement is governed by and is to be construed in accordance with the laws of Victoria.

12. ELECTRONIC EXECUTION

12.1 Each Party consents to the signing of this Agreement by electronic means. The Parties agree to be legally bound by this Agreement signed in this way.

12.2 Each Party reserves the right to sign this Agreement by electronic means, including by use of software or an online service for this purpose.

13. COMMENCEMENT OF AGREEMENT

This Agreement commences on the date specified on page three of this Agreement or if no date is specified on page three, the date Council executes this Agreement.

14. ENDING OF AGREEMENT

This Agreement will not end except in accordance with Division 2 of Part 9 of the Act.

If the Agreement ends, Council will, as soon as reasonably practicable and at the Owner's request and cost, apply to the Registrar of Titles under section 183(1) of the Act to cancel the recording of this Agreement on the folio of the register to the Subject Land.

SIGNING PAGE

Signed, sealed and delivered as a deed by the parties

Signed sealed and delivered by **[Insert name]**,
Coordinator Statutory Planning on behalf of
Rural City of Wangaratta pursuant to an Instrument
of Delegation authorised by Resolution of Council
in the presence of:

)
)
)
)
)

.....
Signature of **[Insert name]**

.....
Signature of witness

The execution of this document has been witnessed
by me in accordance with the requirements for
witnessing by audio-visual link under section 12 of the
Electronic Transactions (Victoria) Act 2000.

.....
Name of witness
(BLOCK LETTERS)

EXECUTED by **66-70 Black Street Pty Ltd**
(ACN 639 791 192) in accordance with)
section 127(1) of the *Corporations Act 2001*)
(Cth))
)

Signature of Director

Signature of Director

Full name
(BLOCK LETTERS)

Full name
(BLOCK LETTERS)

Usual address
(BLOCK LETTERS)

Usual address
(BLOCK LETTERS)

Date of signature
(BLOCK LETTERS)

Date of signature
(BLOCK LETTERS)