

LAUNCESTON CITY COUNCIL

A.B.N. 73 149 070 625

("Council")

and

(NAME)

(A.B. N IF RELEVANT)

("the Owner")

SECTION 71 AGREEMENT

FOR

(ADDRESS)

Section 71 Agreement - Address of Property

DEED OF AGREEMENT

THE DEED is made _____ day of _____ 20xx .

PARTIES:

LAUNCESTON CITY COUNCIL_of St John Street Launceston in Tasmania
(Council)

And

The Person referred to at item 1 of the Schedule ("the Owner")

RECITALS:

- A The Owner is the Owner of the Land.
- B The Owner wishes to use or develop the Land in accordance with the Permit.
- C The terms and conditions contained in the Permit require the parties to enter in to an agreement of this kind and register it.

OPERATIVE PART:

The parties agree and covenant as follows:

<u>Reference Schedule</u>	
Item 1 - The Owner	[name]
Item-2 Owners address for notices	[address]
Item 3 - The Land	(description including title reference)
Item 4 - The Permit	DA..... (Number) as subsequently amended and attached as "Attachment A".
Item 5 - The Plans	(identifying numbers and dates) as attached as "Attachment B".

1. Objective and Function of this Agreement

- 1.1. Without limiting any operation or effect which this agreement otherwise has, Council and the Owner acknowledge that this agreement is made under Part 5 of the Act (and in particular section 71) with the intent that the burden of the Owner's covenants run with the Land as provided for by section 79 of the Act.

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1.2. The parties enter this agreement:

- a) To provide for the matters set out in section 72(2) of the Act; and
- b) To record terms of the Permit.

1.3. This agreement begins immediately upon execution by the parties.

Permit Requirements/Registered Covenants

2. Owner's Permit Obligations

The Owner must:

2.1.[insert condition]

2.2.[insert condition]

2.3.[insert condition]

2.4.[insert condition]

2.5.[insert condition]

2.6.[insert condition]

2.7. This agreement is to be read in conjunction with the Permit and Plans.

General Terms

3. Registration of the agreement

The Owner must:

3.1. The Owner must do all things necessary to enable the Council in its discretion to register this agreement with the Recorder of Titles;

3.2. Secure the consent of any mortgagee or encumbrance to the registration of this deed of agreement before its registration in the form specified in this agreement.

3.3. Ensure that the agreement is placed on the Certificate of Title for the Land.

3.4. Pay all stamp duty and registration costs, taxes (including any goods and services tax, duties, fees, penalties, stamp duties and other charges of any nature payable in respect of this agreement or any document required by it.

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4. Liability for works

If the Permit requires the Owner to perform works of any kind, the Owner must at all times:

4.1 Indemnify and keep indemnified Council against all actions proceedings claims demands costs and expenses whatsoever in respect of or arising out of the works including,

- a) all claims for maintenance, replacement or repair of any building structure or work;
- b) any loss damage or expenses suffered or claimed to have been caused by the works.

4.2 The liability of the Owner commences on the date of this agreement and continues in force for so long as the law permits despite that the Owner may subsequently lease, charge, mortgage, pledge or licence the Land or any part of it.

5. Termination

5.1. Council may terminate this agreement by notice in writing to the Owner if:

- a) The Owner breaches it;
- b) The Owner fails to comply with any permit in respect of the Land;
- c) The Owner fails to comply with the Planning Scheme, the Act or the Miscellaneous Act in respect of the use or development of the Land;
- d) The mortgagee fails to consent to this agreement and the registration of it.

5.2. This agreement also terminates as provided for in the Act.

5.3 If a party terminates this agreement for breach of it by the other party, then that termination does not affect rights which have accrued prior to the date of termination.

6. General

6.1. Nothing in this agreement creates the relationship of partnership or of principal and agent or of joint venture between the Council and the Owner.

6.2. If the Owner wishes to sell, assign or otherwise dispose of (its) interest in the Land, (it) shall procure the assignment of the liability hereunder to the new Owner with the consent of Council, which shall not be unreasonably withheld, and Council shall release and discharge the Owner from any further liability hereunder.

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7. Proper Law

7.1. This agreement is governed by the law of the State of Tasmania and the parties submit to the non-exclusive jurisdiction of those courts and from courts competent to hear appeals therefrom.

8. Reading Down and Severability

8.1. If a provision of this agreement is void or voidable by a party, unenforceable or illegal but would not be so if read down or severed from the agreement, it must be read down or severed accordingly.

9. Council's costs

9.1 The Owner must immediately on demand pay to Council, Council's costs and expenses (as between solicitor and client) relating to this agreement and anything done before or after this agreement for the enforcement of any obligation imposed upon the Owner under it.

10. Exercise of Powers

10.1. Council and the Owner expressly acknowledge that any obligation imposed upon the Council under this agreement does not fetter the future exercise of any statutory discretion by the Council whether in relation to the permit or the Land or otherwise, and the provisions of this agreement must be read accordingly.

11. Further Documents

11.1. The Council and the Owner will do all things and prepare and sign all further documents necessary to give effect to this agreement and to ensure that this agreement is fully carried out.

12. Disclosure of this Agreement

12.1. The Owner must not at any time before or after the registration of this agreement sell, transfer, dispose of or in any way part with possession of the Land without first disclosing the existence of and nature of this agreement to the Owner's successors.

13. Alteration to this Agreement

13.1. This agreement may be amended by agreement between Council and all persons who are bound by any covenant in the agreement.

13.2. If any proposed amendment to this agreement requires a new or an amended permit, then that permit or that amended permit (as the case may be) must be obtained before this agreement is amended.

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13.3. Despite this clause, Council may determine that a new agreement is required.

14. Notices

14.1. A notice pursuant to this agreement must be in writing. Notices may be served:

- a) personally by leaving them with the party on whom they are to be served at that party's address stated in clause 18.3; or
- b) by pre-paid post sent to the address stated in clause 18.3; or
- c) by facsimile (or by any other like method by which a written or recorded message may be sent) directed to the party on whom they are to be served at that party's address stated in clause 18.3.

14.2. Notices are not effective until received by the other party and any such notice is without prejudice to any other mode of receipt deemed to be received by such other party:

- a) if served personally when left at the address of the other party stated in clause 18.3;
- b) when mailed, three business days after being put into the post addressed to such party at that address; and
- c) if made by facsimile or any other like method upon the production of a transmission report by a machine from which the transmission was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient stated in clause 18.3.

Interpretation & Definitions

15. Definitions

15.1 In this agreement unless the contrary intention appears:

"**Act**" is the *Land Use Planning and Approvals Act 1993*.

"**Land**" means the land description in Item 3 of the Reference Schedule.

"**Miscellaneous Act**" means the Local Government (Building and Miscellaneous Provisions) Act 1993.

"**Planning Scheme**" means the Launceston Interim Planning Scheme 2015 and any amendment, modification or replacement of that scheme made pursuant to the provisions of the Act.

"**Plan**" means the plan or plans described in Item 5 of the Reference Schedule.

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"The Permit" means the permit described in Item 4 of the Reference Schedule

16. Interpretation

16.1 In this agreement:

- a) A reference to the Council includes a reference to any new council which has jurisdiction in respect of the land established pursuant to part 2 of the Local Government Act 1993 or any other legislation or proclamation;
- b) A reference to the Owner includes (its) assignees and any person bound by the covenants in it as provided for in section 79 of the Act;
- c) A reference to this agreement in any other instrument is a reference to this agreement as amended, varied, novated or substituted from time to time;
- d) A reference to statute, ordinance, code, law or planning scheme includes a reference to such document as amended or substituted from time to time;
- e) A reference to a person or party includes that persons executors, administrators, successors, substitutes (including persons taking by novation), transferees, assigns and any person deriving title under such a person;
- f) Words and expressions used both in this agreement and in the Act, the Local Government Act 1993 or the Miscellaneous Act have the same meanings as they have in those Acts.

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EXECUTED AS A DEED.

EXECUTED by the Owner) (full name)
(Pty Ltd in accordance with Section 127 of
The Corporations Act)

(Director)

(Director/Secretary)

The Common Seal of **Launceston**)
City Council was hereunto affixed by)
Council Delegate)

Signature

Mortgagee's Consent

[e.g. Westpac Banking Corporation as Mortgagee under registered Mortgage number ... over the land contained in Certificate of Title Volume Folio], consents to and agrees to be bound by the covenants and all other terms and conditions contained in this agreement. We further consent to the registration of this agreement on the title to the above land.

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Attachment A - The Permit

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Attachment B - The Plans