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Date / /

Agreement under Section 173 of the Planning and Environment Act 1987

Subject Land: 195 - 209 St Georges Road, Northcote

Darebin City Council
and

Seventh Mirage Pty Ltd
ACN 006 251 529

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Agreement under Section 173 of the Planning and Environment Act 1987

Dated / /

Parties

Name	Darebin City Council
Address	274 Gower Street, Preston, Victoria
Short name	Council

Name	Seventh Mirage Pty Ltd ACN 006 251 529
Address	267 Hawthorn Road, Caulfield North, Victoria
Short name	Owner

Background

- A. Council is the Responsible Authority and the Planning 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.
- C. Council, in its capacity as Planning Authority for the Planning Scheme, has received a request to prepare an amendment to the Planning Scheme from the Owner (**the request**). The request proposes, amongst other things to:
- rezone the Subject Land from an Industrial 3 Zone to a Business 2 Zone;
 - apply a Design and Development Overlay to the Subject Land; and
 - apply an Environment Audit Overlay to the Subject Land.
- D. Through the request, the Owner has stated to Council:
- the former industrial use on the Subject Land is no longer viable; and
 - the Subject Land is well placed for redevelopment with a mixed use redevelopment involving both housing and commercial land uses.
- E. In relation to housing, the Planning Scheme emphasises the importance of encouraging a significant proportion of new development, including at strategic redevelopment sites, to be affordable for households on low to moderate incomes. The Planning Scheme further provides:
- retaining affordable housing options is a major challenge for Council; and

- a vision of ensuring that housing in the municipality is sufficiently diverse to provide more affordable, accessible and appropriate choices and opportunities.
- F. As at the date of this Agreement, the Subject Land is encumbered by Mortgage No. M789514W in favour of the Mortgagee. The Mortgagee has consented to the Owner entering into this Agreement with respect to the Subject Land.
- G. The parties enter into this Agreement:
 - G.1 as a way to implement the policy in the Planning Scheme referred to in paragraph E of this Agreement as the Subject Land redevelops; and
 - G.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.

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

Date means the earliest date on which the Owner first offers any Dwelling constructed or to be constructed on the Subject Land for sale.

Dwelling or Dwellings has the meaning provided in the Planning Scheme.

Housing Act means Housing Act 1983.

market price means the sum which any Dwelling constructed or to be constructed on the Subject Land, if it were held for an estate in fee simple unencumbered by any lease, mortgage or other charge, might be expected to realize at the Date if offered for sale on any reasonable terms and conditions which a genuine seller might in ordinary circumstances be expected to require.

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.

Planning Scheme means the Darebin Planning Scheme that applies to the Subject Land.

Registered housing association has the meaning provided in the Housing Act 1983.

Registered housing provider has the meaning provided in the Housing Act 1983.

3.3 Following the transfer of ownership from the Owner to a Registered housing association or Registered housing provider of the Dwellings referred to in clause 3.1 of this Agreement (**Social housing**),

3.3.1 except with the prior written consent of Council, the Social housing must continue to be owned by a Registered housing association or Registered housing provider; and

3.3.2 except with the prior written consent of Council, the ongoing management of the Social housing must be undertaken by a Registered housing association or Registered housing provider.

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.

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

Following the transfer of ownership of 10 per cent of all Dwellings constructed or to be constructed on the Subject Land to a Registered housing association or Registered housing provider, this Agreement will end with respect to all other parts of the Subject Land.

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SCHEDULE 1

Subject Land details

- Certificate of Title Volume 4363 Folio 446
- Certificate of Title Volume 9574 Folio 669
- Certificate of Title Volume 6168 Folio 402
- Certificate of Title Volume 8496 Folio 647
- Certificate of Title Volume 3292 Folio 304
- Certificate of Title Volume 3377 Folio 215

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