Agreement under Section 173 of the Planning and Environment Act 1987

Dated [date of Agreement]

Parties

|  |  |
| --- | --- |
| Name | **[details of First Owner]** |
| Address | **[address of First Owner's residence/registered office]** |
| Short name | **the Owner** |

|  |  |
| --- | --- |
| Name | **[name of] Council** |
| Address | **[address]** |
| Short name | **Council** |

**RECITALS**

A. Council is the responsible authority for the Planning Scheme, pursuant to the Act.

B. The First Owner is the registered proprietor or is entitled to be the registered proprietor of the Subject Land.

C. The First Owner proposes to meet the Offset Requirement by providing a first party offset that meets the requirements of the Guidelines.

D. The Parties enter into this Agreement, pursuant to section 173 of the Act, to satisfy the Offset Requirement, to restrict and regulate the use and development of the Subject Land in perpetuity, and to achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

E. The Subject Land is subject to the Mortgage, which Mortgagee, as evidenced by its consent on the attestation pages, consents to this Agreement. [Note: Delete if unnecessary]

**The Parties agree**

# Definitions

In this Agreement unless expressed or implied to the contrary:

**Act** means the *Planning and Environment Act 1987* (Vic).

**Agreement** means this Agreement, including any schedule to this Agreement.

**Annual Report** means a report provided to Council within one year of the Commencement Date and prior to each anniversary of that date for each year thereafter for a period of 10 years, in accordance with clause 11.1.

**Building** has the same meaning as in the Act.

**Business Day** means any day in Victoria that is not:

1. a Saturday or a Sunday; or
2. a public holiday in Melbourne, Victoria pursuant to the *Public Holidays Act 1993*(Vic)

**Commencement Date** means the date on which this Agreement commences in accordance with clause 6.

**DELWP Offset Register** means the register administered by the Department which contains information about existing and potential offset sites, and is described in the Guidelines as the 'Offset Register'.

**Department** means the Department of Environment, Land, Water and Planning or its relevant successor.

**Domestic or Feral Animal** means any animal that is not native fauna or livestock.

**First Owner** means the person or persons referred in Item 1.

**Gain** means the predicted improvement in biodiversity value of native vegetation due to active management and increased security provided at an offset site, as determined in accordance with the Department's Gain Scoring Manual.

**Gain Balance** means the whole or any part of the Gain recorded by the Secretary on the DELWP Offset Register under or in connection with this Agreement which is not necessary to satisfy the Offset Requirement.

**Gain Scoring Manual** means the *Native vegetation gain scoring manual, Version 2,* dated December 2017, a copy of which is available from the website administered on behalf of the Secretary, which at the Commencement Date is <www.delwp.vic.gov.au>.

**Guidelines** means the *Guidelines for the removal, destruction or lopping of native vegetation*, dated December 2017, a copy of which is available from the website administered on behalf of the Secretary, which at the Commencement Date is [www.delwp.vic.gov.au](http://www.delwp.vic.gov.au).

**Item** means an item in Schedule 1.

**Management Actions** means the works and other requirements to be carried out by the Owner as specified in the Offset Management Plan in Schedule 3.

**Management Commitments** means the outcomes for the improved quality and extent of Native Vegetation on the Offset Site to be achieved by the Owner carrying out the Management Actions.

**Mortgage** means the registered mortgage referred to in Item 8.

**Mortgagee** means the person or persons referred to in Item 8, and any person registered or entitled to be registered, from time to time, by the Registrar of Titles as mortgagee of a mortgage affecting the Subject Land or any part of it. [Note: Delete if unnecessary]

**Native Vegetation** includes native vegetation within the meaning of the same term in the Planning Scheme, and includes dead native vegetation (to the extent not within that meaning).

**Native Vegetation Offset Report** means the report annexed at Schedule 4.

**Offset Extract** means a document issued by the Department specifying that the whole or any part of any Gain Balance has been used to satisfy any current or future offset requirement (other than the Offset Requirement) that is capable of being satisfied by the Gain Balance in accordance with the Guidelines.

**Offset Management Plan** means the plan annexed at Schedule 3.

**Offset Requirement** means the requirement to provide a Native Vegetation offset described in Item 5.

**Offset Site** means that part of the Subject Land as specified in Schedule 2.

**Owner** means any person registered or entitled to be registered, from time to time, by the Registrar of Titles as proprietor of an estate in fee simple of the Subject Land or any part of it, and includes the First Owner for so long as the First Owner remains the registered proprietor.

**Periodic Report** means an additional report requested by Council from time to time in accordance with clause 11.2, which relates to a specified period for the purpose of demonstrating compliance with the Agreement, including the Offset Management Plan.

**Planning Permit** means the planning permit described in Item 4. [Note: Delete if unnecessary]

**Planning Scheme** means the planning scheme described in Item 6 and any other planning scheme that applies to the Subject Land from time to time.

**Secretary** means the Secretary to the Department.

**Subject Land** means the land that is described in Item 7 as at the date of this Agreement, 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.

# Interpretation

In this Agreement unless the context admits otherwise:

The singular includes the plural and vice versa.

If a party consists of more than one person, this Agreement binds them jointly and each of them severally.

A term used in this Agreement has its ordinary meaning unless that term is defined in either this Agreement or in the Act. In the event that a term is defined in both this Agreement and the Act, the definition in this Agreement shall prevail.

A reference to an Act, Regulation or planning scheme includes any Acts, Regulations or amendments amending, consolidating or replacing the Act, Regulation or planning scheme.

The Recitals are deemed to form part of this Agreement.

This Agreement should be interpreted, insofar as the language of the Agreement permits:

#### to give full effect to the Offset Requirement, any clause of the Planning Scheme or other regulatory provision pursuant to which the Offset Requirement was imposed, and the Guidelines; and

#### to protect, preserve, foster, promote the growth, and improve the condition of, Native Vegetation and other environmental values of the Offset Site.

A provision in this agreement that a thing be done or an obligation be met to the satisfaction of Council is intended to enable the Council to determine actions that must be taken or the standard of compliance to be achieved by the Owner, subject to such actions or standards being not unreasonably disproportionate or burdensome.

# Business day

### Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the following Business Day.

# Agreement under section 173 of the Act

This Agreement is made as a deed in accordance with section 173 of the Act.

# Parts of this Agreement

This Agreement includes any schedule to this Agreement.

If there is any ambiguity, discrepancy or inconsistency in the documents forming part of this Agreement, the higher standard, quality or quantum will prevail.

# Commencement Date

This Agreement commences from the date of execution of the Agreement by the final executing party.

# Covenants to run with the land

The obligations of the Owner under this Agreement take effect as separate and several covenants which are annexed to and run at law and in equity with the Subject Land and every part thereof.

Subject to clause 7.3, the obligations bind the Owner, its successors, assigns and transferees.

If the Subject Land is subdivided, this Agreement must be read and applied so that:

### the Agreement continues to apply to the whole of any lot containing any part of the Offset Site (or any part of the fencing around the Offset Site);

### each Owner of a lot that includes any part of the Offset Site is responsible for those covenants and obligations which relate to the part of the Offset Site included in Owner's lot; and

### if the Offsite Site is located on more than one lot, and satisfying any covenant or obligation requires the action of more than one Owner or affects more than one lot:

#### the Owners of each lot containing any part of the Offset Site are jointly and severally responsible for any such covenants and obligations; and

#### each Owner of such a lot grants to the Owners of each other lot containing part of the Offset Site permission to access the lot owned by that Owner for the purposes of satisfying such covenants or obligations.

# Ending of Agreement

This Agreement is intended to apply to:

### the Offset Site; and

### the whole of the Subject Land, or (if the Subject Land is subdivided) the whole of any lot that includes any part of the Offset Site,

in perpetuity.

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

As soon as reasonably practicable after the Agreement has ended, Council will, 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.

If the Subject Land is subdivided, and the subsequent Owner of a lot has no obligations under this Agreement with respect to any part of the Offset Site, Council will, at that 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 that lot.

# Owner's management obligations

The Owner covenants, agrees and undertakes as follows.

## Implementation of the Offset Management Plan

### The Owner must implement and comply with the Offset Management Plan.

### To achieve the Management Commitments, the Owner must complete the Management Actions to the standards, requirements and timeframes set out in the Offset Management Plan and to the satisfaction of Council.

### On completion of any part of the Management Actions, the Owner must, to the satisfaction of Council:

#### maintain and protect the Management Actions;

#### not interfere with, or cause or consent to interference by any other person with, the Management Actions; and

#### carry out any other ongoing maintenance activities or works described in the Offset Management Plan.

## Protection of Native Vegetation in perpetuity

Subject to clause 10.2, the Owner must:

### maintain any Native Vegetation in perpetuity, to the same or better condition than exists at the Offset Site after the Management Actions under the Offset Management Plan are complied with;

### not cause or consent to the removal, destruction, lopping or any other interference with any Native Vegetation on the Offset Site, or to the application for a permit for the same;

### to the satisfaction of Council, take all reasonable steps to ensure that Native Vegetation on the Offset Site is protected and that no Native Vegetation is removed, destroyed, lopped or otherwise interfered with.

## Introduction of animals other than livestock

### Subject to clauses 10.2, 10.3 and 9.3.2, the Owner must:

#### not cause or consent to the bringing of any Domestic or Feral Animal onto the Offset Site; and

#### to the satisfaction of Council, take all reasonable steps to exclude any Domestic or Feral Animal from entering onto or remaining on the Offset Site.

### The Owner may bring domestic dogs on to the Offset Site provided that:

#### any dogs so brought are under the immediate control of the Owner or another person authorised by the Owner at all times; and

#### do not cause damage to the Offset Site or otherwise interfere with an obligation under this Agreement.

## Installation, upgrade and maintenance of fencing

### If any stock or person other than the Owner accesses or is reasonable likely to access the Offset Site, or has ready access to or becomes reasonably likely to have access to the Offset Site, the Owner must, subject to clause 10.3, ensure that fencing and gates are installed and maintained so as to protect the Offset Site from any stock or other threats to the condition of the native vegetation, to the satisfaction of Council.

### Subject to clause 10.3, the Owner must maintain any fencing required by or under this Agreement in good repair and condition, and to a standard that is adequate to prevent the access of stock or other threats which the fencing is intended to prevent, at all times, to the satisfaction of Council.

## Weed and pest management obligations

The Owner must, in relation to the Offset Site:

### comply with sections 20(1)(d), (e) and (f) of the *Catchment and Land Protection Act 1994* (Vic); and

### subject to clause 10.3, monitor for and take all reasonable steps to reduce and minimise the growth and spread of weeds to the satisfaction of Council.

## Application of fertiliser

The Owner must:

### not cause or consent to the application of any fertiliser to any part of the Offset Site; and

### to the satisfaction of Council, take all reasonable steps to ensure that fertiliser is not applied to any part of the Offset Site.

## Buildings and structures

Subject to clauses 10.2 and 10.3, the Owner must:

### not construct, erect or place any Building or structure on the Offset Site; and

### to the satisfaction of Council, take all reasonable steps to:

#### ensure that no Building or structure is constructed, erected or placed on the Offset Site by any other person; and

#### to remove any Building or structure constructed, erected or placed on the Offset Site.

## Rubbish and other materials

The Owner must:

### not cause or consent to the dumping of any rubbish or the storage of any materials on the Offset Site; and

### to the satisfaction of Council, take all reasonable steps to:

#### avoid and prevent the dumping of any rubbish or the storage of any materials on the Offset Site; and

#### remove and clean up any rubbish dumped or materials placed or stored on the Offset Site.

## Further management obligations

Subject to clauses 10.2 and 10.3, the Owner must not cause or consent to any of the following on, to or from the Offset Site, and must take all reasonable steps to ensure that the following do not occur on, to or from the Offset Site to the satisfaction of Council:

### the removal, introduction or disturbance of any soil, rocks or other minerals;

### the alteration of, interference with or deterioration in the natural state or the flow, supply, quantity or quality of water, including in or to any waterway or body of water;

### the construction of dams or modification of existing dams;

### the removal of or interference with any fallen vegetation, twigs, branches or other woody or leafy material;

### the introduction, entry or presence of any livestock;

### the subdivision of the Offset Site;

### the operation of any trade, industry or business;

### the recreational use of trail bikes or four wheel drive vehicles;

### the carrying out of any works on the Offset Site other than those required or expressly permitted by this Agreement or required by law; and

### the use of the Offset Site, or the carrying out of any works or other activities, not consistent with this Agreement.

## Extractive industry and utility installations

### The Owner must not cause or consent to, unless required by law:

#### exploration, mining, extraction or production of gas, petroleum, minerals or other substances on the Offset Site; or

#### the installation of any transmission lines or other services or works on the Offset Site.

### The Owner must bring this Agreement to the attention of any person who notifies the Owner that they have applied for or will be applying for a licence, approval, authorisation or proposal to take an action of the kind described in clause 9.10.1, and to any other person or body whose approval is required to take that action.

### The Owner must notify Council of any notification of an application for a licence, approval, authorisation or proposal to take an action of the kind described in clause 9.10.1.

## Ongoing obligations

The Owner's obligations under this Agreement continue to apply regardless of any amendment to the Planning Scheme or any amendment to, expiration or cancellation of the Planning Permit. [Note: Delete reference to the Planning Permit if unnecessary.]

## Notice

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

## Special obligations

The Owner covenants, agrees and undertakes to comply with the obligations specified in Schedule 6.

# Exemptions from compliance with Owner's obligations

The Owner may be exempted from compliance with the obligations under clause 9 to the extent set out in this clause.

## General exemptions

### Notwithstanding anything in clause 9, the Owner may remove, destroy, lop or otherwise interfere with any Native Vegetation on the Offset Site to the minimum extent necessary:

#### to keep vegetation clear of an electric line, provided that the removal, destruction, lopping or interference is carried out in accordance with a code of practice prepared under Part 8 of the *Electricity Safety Act 1998* (Vic);

#### to remove vegetation from an electricity supply easement in accordance with any code of practice prepared in accordance with Part 8 of the *Electricity Safety Act 1998* (Vic) in order to minimise the risk of bushfire ignition in the proximity of electric lines;

#### to mitigate an immediate risk of personal injury or damage to property;

#### as part of measures for the suppression of fire in emergency circumstances;

#### to comply with a fire prevention notice issued under sections 41 or 41F of the *Country Fire Authority Act 1958* (Vic) or sections 87 or 93 of the *Metropolitan Fire Brigades Act 1958* (Vic); and

#### to comply with a direction given under section 65 of the *Forests Act 1958*(Vic).

### The Owner must provide Council with a notice at least seven days before removing, destroying, lopping or otherwise interfering with any Native Vegetation under clauses 10.1.1(a) or 10.1.1(b).

### The Owner must provide Council with a notice not more than seven days after removing, destroying, lopping or otherwise interfering with any Native Vegetation under clauses 10.1.1(c), 10.1.1(d), 10.1.1(e) or 10.1.1(f).

### A notice under clause 10.1.2 or 10.1.3 must set out the works or activities, the specific circumstances in which the works or activities are required, and the clause under which the works or activities are permitted.

## Exemptions under Offset Management Plan

If an Offset Management Plan expressly provides for the Owner to carry out any activity, that activity is taken not to contravene clauses 9.2, 9.3, 9.7, or 9.9.

## Exemptions granted by Council

### On application by the Owner, Council may, in its sole discretion, exempt the Owner from compliance with clauses 9.3, 9.4, ,9.5.2, 9.7, or 9.9.

### An exemption granted under clause 10.3.1 may be conditional and applies only to the circumstances described in the exemption.

# Reporting and information

The Owner covenants and agrees to submit an Annual Report to Council for each of the 10 years following the Commencement Date, which sets out, among other matters:

### progress under and compliance with the Agreement; and

### progress under, completed actions and compliance with the Offset Management Plan,

for the period since the previous Annual Report (or since the Commencement Date, if no previous Annual Report has been submitted).

Council may require the Owner to prepare a Periodic Report after the period during which Annual Reports are required under clause 11.1. Council can only request a Periodic Report once every five years.

The Owner further covenants and agrees to:

### retain for 10 years invoices, documents and other records of activities the Owner has taken in the implementation of this Agreement and the Offset Management Plan; and

### provide to Council, within 30 days of a request from the Council, subject to any restrictions on disclosure, records kept in accordance with 11.3.1 and any other information specified by Council that is in the Owner's possession and that is reasonably required by Council to assist Council to assess compliance with the Owner's obligations under this Agreement.

# Access to Subject Land

The Owner covenants and agrees to permit Council and its officers, employees, agents, contractors, invitees and licensees, on provision of five business days' notice (or such lesser period as is reasonable in the circumstances):

### to enter and access the Subject Land; and

### to bring any associated machinery, equipment or vehicles on to the Subject Land,

for the purposes of this Agreement, including (without limitation):

### to assess compliance with this Agreement; and

### to rectify non-compliance with this Agreement in accordance with clause 19.

# Owner's indemnities

The Owner hereby indemnifies Council and agrees to keep Council indemnified against all claims, demands, loss or damage which Council may suffer or sustain in respect of:

### the death or injury to any person or loss of or damage to property (**Loss**) as a result of Council's access to or works or activities on the Subject Land or any part of the Subject Land for the purposes of this Agreement to the extent that the Loss is caused or contributed to by the Owner's act or omission; and

### any costs incurred by Council in obtaining any remedy against the Owner in respect of any contravention of this Agreement.

The Owner hereby acknowledges and agrees that:

### Council is not and will not at any time be construed as the employer or principal of the Owner or any employee that the Owner might have; and

### the Owner is solely responsible and liable for making any payments in respect to superannuation, payroll or any other tax, WorkCover levy or any similar payments in relation to any employees of the Owner.

# Owner to pay costs of Council

Within 30 days of the provision of a tax invoice by Council, the Owner covenants and agrees that the Owner will pay to Council the reasonable costs and expenses of and incidental to:

### the preparation, review, and execution of this Agreement;

### the recording of this Agreement on the Folio of the Register to the Subject Land in accordance with the Act;

### any variation to or termination of this Agreement requested by or on behalf of the Owner, or applied for by the Owner under the Act, whether or not Council agrees to such an amendment or termination;

### any application to the Registrar of Titles to make any amendments to or recordings in the Register that are necessary because of the variation or termination of this Agreement, as a consequence of:

#### a request by the Owner;

#### the subdivision of the Subject Land; or

#### an application made by the Owner for consent or approval for any act, matter or thing under or in connection with this Agreement.

On the provision of a tax invoice by Council, these costs are and until paid remain a debt due to Council by the Owner.

# Successors in Title

Without limiting the operation or effect that this Agreement has, the Owner must ensure that, until such time as the Registrar of Titles makes a recording of this Agreement on the Folio of the Register to the Subject Land, successors in title shall be required to:

give effect to and do all acts and sign all documents which will require those successors to give effect to this Agreement; and

execute a deed by which successors assume the obligations of the Owner under, and agree to be bound by, this Agreement.

# Owner's warranties and third party consents

The First Owner warrants that:

all persons who have any interest in the Subject Land, other than the First Owner, have consented to this Agreement and that consent is recorded in Schedule 5 to this Agreement;

apart from the First Owner and the persons who have 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.

# Recording of offsets

Within 30 days after the Commencement Date, Council must cause a copy of this Agreement to be provided to the Secretary for the purpose of enabling the Secretary to record the Offset Site, allocate the Gain in respect of the Site and record any Gain Balance on the DELWP Offset Register:

Once recorded on the DELWP Offset Register, any Gain Balance is available to the Owner to satisfy any other current or future offset requirement that is capable of being satisfied by the Gain Balance in accordance with the Guidelines (as amended from time to time, and including any successor to or replacement of that policy), if:

### the Owner applies in writing to the Department for an Offset Extract; and

### the Department issues an Offset Extract to the Owner,

The Owner obtains no right in law or equity in relation to the Gain Balance, by reason of the recording of the Gain or the Gain Balance on the DELWP Offset Register or by reason of the issue of an Offset Extract to the Owner or otherwise.

The Owner must not purport to sell, assign, or transfer the right or opportunity to use the Gain Balance to any person.

# Further assurance

The Parties agree to do all things necessary:

to give effect to this Agreement;

to enable Council to apply to the Registrar of Titles to:

### record this Agreement on the Folio of the Register to the Subject Land in accordance with the Act;

### replace this Agreement with registration of an amended agreement if an amendment is made to this Agreement which necessitates replacement of its registration; and

### remove the registration of this Agreement in whole or part (as applicable) from the Subject Land if this Agreement ends in accordance with clause 8, or is otherwise discharged as to part of the Subject Land.

# Non-compliance

If Council considers that the Owner has not complied with any obligations under this Agreement:

### Council may issue a notice to the Owner which sets out the nature of the alleged non-compliance;

### the Owner must respond in writing to the notice within 10 Business Days after the notice is given, setting out the Owner's response to the alleged non-compliance and, if substantiated, the actions the Owner proposes to take in order to remedy the non-compliance and the timeframe in which to complete the actions;

### in the event of a failure by the Owner to comply with the written notice within 28 Business Days after the notice is given, or in the event of a dispute or difference between the Owner and Council in relation to the alleged non-compliance which is not resolved:

#### Council and its officers, employees, agents, contractors, invitees and licensees may enter into the Subject Land in accordance with clause 12 and take action for the purpose of rectifying the non-compliance; and

#### Within 30 days of the provision of a tax invoice by Council, the Owner must pay to Council the reasonable costs and expenses of and incidental to action taken pursuant to this clause to rectify non-compliance with this Agreement (including costs and legal expenses of investigating and issuing a notice in accordance with this clause), which are and until paid remain a debt due to Council by the Owner.

Clause 19.1 does not constrain Council or any other person from taking enforcement action under the Act, or from otherwise seeking to enforce this Agreement.

# Amendment

This Agreement may be amended with the agreement of all the Parties or only in accordance with Division 2 of Part 9 of the Act.

# Notices

## Form of Notice

### A notice or other communication to a Party under this Agreement (**Notice**) must be

#### in writing and in English; and

#### addressed to that Party in accordance with the details nominated in Schedule 1 (or any alternative details nominated to the sending party by Notice).

## How Notice must be given and when Notice is received

### A Notice must be given by one of the methods set out in the table below.

### A Notice is regarded as given and received at the time set out in the table below.

### However, if this means the Notice would be regarded as given and received outside the period between 9.00am and 5.00pm (addressee’s time) on a Business Day (**business hours period**), then the Notice will instead be regarded as given and received at the start of the following business hours period.

|  |  |
| --- | --- |
| **Method of giving Notice** | **When Notice is regarded as given and received** |
| By hand to the nominated address | When delivered to the nominated address |
| By pre-paid post to the nominated address | At 9.00am (addressee’s time) on the second Business Day after the date of posting |
| By fax to the nominated fax number | At the time indicated by the sending party’s transmission equipment as the time that the fax was sent in its entirety. |
| By email to the nominated email address | When the email (including any attachment) comes to the attention of the recipient party or a person acting on its behalf. |

# 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 rights or remedies of Council in relation to this Agreement.

# No fettering of Council's powers

This Agreement does not fetter or restrict Council's power or discretion to make any decision or impose any requirements or conditions in connection with the granting of any planning approval or certifying any plan which subdivides the Subject Land or relating to any use or development of the Subject Land.

# Governing Law

This Agreement is governed by the laws of the State of Victoria.

Each of the Parties irrevocably submits to the exclusive jurisdiction of the courts of Victoria and courts of appeal from them in respect of any proceedings arising out of or in connection with this Agreement. Each Party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

# 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 is severed with the other provisions of this Agreement remaining operative.

# Entire agreement

This Agreement states all the express terms of the agreement between the Parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements between the Parties in respect of its subject matter.

# Inspection of documents

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

Signing Page

Executed and delivered as a deed.

[Note: Insert appropriate execution clauses for the First Owner.]

[If the First Owner is a natural person:]

|  |  |  |  |
| --- | --- | --- | --- |
| **Signed, sealed and delivered** by **[insert]** in the presence of: | |  |  |
| Signature of witness | |  | Signatory |
| Name of witness (print) | |  |  |
|  |
| Date |

[If the First Owner is a company:]

|  |  |  |
| --- | --- | --- |
| **Executed** by [**Insert company name**] **ACN** [**Insert ACN**] in accordance with s 127(1) of the *Corporations Act 2001* (Cth) in the presence of: |  |  |
| **Signature of director** |  | **Signature of director/company secretary**  **(Please delete as applicable)** |
|  |  |  |
| **Name of director (print)** |  | **Name of director/company secretary) (print)** |
| **Date** |  |  |

|  |  |  |  |
| --- | --- | --- | --- |
| **Signed, sealed and delivered** by and on behalf, and with the authority, of [**Insert name of Council] Council** by [Insert name of person signing on behalf of Council], in the exercise of a power conferred by an Instrument of Delegation dated [Insert date of instrument], in the presence of: | |  |  |
| Signature of witness | |  | Signatory |
| Name of witness (print) | |  |  |
|  |
| Date |

Schedule 1 Agreement Details

|  |  |
| --- | --- |
| **Item 1: Owner** | [**Insert full name of current owner(s), and ACN details if a company**] |
| **Item 2: Owner's details**  Address:  Attention:  Fax:  Email: | [Insert Owner's postal address for service]  [insert name and title of Owner's representative]  [Insert Owner's facsimile number for service]  [Insert Owner's email address for service] |
| **Item 3: Council's details**  Address:  Attention:  Fax:  Email: | [Insert Council's postal address for service]  [insert name and title of Council's representative]  [Insert Council's facsimile number for service]  [Insert Council's email address for service] |
| **Item 4: Planning Permit**  Permit number:  Date issued:  Purpose: | [Note: Delete Item 4 if unnecessary ie, because no planning permit has been issued which is relevant to the offset requirement]  [Insert number of planning permit]  [Insert date planning permit issued]  [Describe the use or development of land for which the permit was issued, using the language contained in the permit] |
| **Item 5: Offset Requirement**  Condition number:  Condition text: | [Insert details of legal instrument under which the offset requirement arises.]  [If the Planning Permit imposes the offset requirement:]  [Insert number of relevant condition]  [Insert text of relevant condition]  [If a different legal instrument imposes the offset requirement, insert details of (a) the instrument and (b) the content of the requirement as expressed in the text of the instrument.] |
| **Item 6: Planning Scheme** | [Insert name of planning scheme]. |
| **Item 7: Subject Land**  Register details:  Lot and plan:  Known as: | Certificate of Title Volume [X] Folio [X]  [Lot and Plan numbers]  [Address]. |
| **Item 8: Mortgage**  Mortgage number:  Date of registration:  Mortgagee: | [Mortgage number]  [Date of registration]  [Name of Mortgagee] |
|  |  |

Schedule 2 Offset Site

[Insert copy of site plan.]

Schedule 3 Offset Management Plan

[Insert Offset Management Plan.]

Schedule 4 Native Vegetation Offset Report

[Insert Native vegetation offset report.]

Schedule 5 Consents

[Note: Insert appropriate consents for Mortgagee, Caveator or Purchaser:]

**Mortgagee's Consent**

[Insert details of Mortgagee if relevant]as Mortgagee of registered mortgage No. [Insert number] consents to the Owner entering into this Agreement and in the event that the Mortgagee becomes mortgagee-in-possession, agrees to be bound by the covenants and conditions of this Agreement.

**Caveator's Consent**

[Insert details of Caveator if relevant] as Caveator of registered caveat No. [Insert details of caveat and dealing number, if relevant] consents to the Owner entering into this Agreement.

**Purchaser's Consent**

[Insert details of Purchaser if relevant] as purchaser of the whole of the Subject Land consents to the Owner entering into this Agreement.

Schedule 6 Special obligations

[Note: Council to insert any special obligations that are to apply to the Owner and to the Offset Site by operation of clause 9.13.]