

PLANNING & ENVIRONMENT ACT AGREEMENT PURSUANT TO SECTION 173

THIS AGREEMENT made the day of 2022

AFFECTED LAND ("the land"):

The land comprised and described in Certificate of Title Volume 12285 Folios 138 which land includes Lot 1 on Title Plan 226760D (formerly known as part Crown Allotment 24C Parish of Toolongrook) and Volume 1522 Folio 231 which land includes Crown Allotment 23 Parish of Toolongrook.

BETWEEN:

The Responsible Authority: **West Wimmera Shire Council ("the Council")**
and

The Owner: **Judith Ann Sloane**

WHEREAS:

1. The owner is registered proprietor of all those pieces of land described in Certificates of Title Volume 12285 Folio 138 and Volume 1522 Folio 231.
2. The land is affected by the provisions of the West Wimmera Planning Scheme ("the Scheme").
3. The Council is the responsible authority under the Planning & Environment Act 1987 ("the Act") for the purposes of the Scheme.
4. Pursuant to Planning Permit No PA1076 issued on 2 December 2021 the Council has allowed the owner to subdivide the land into two (2) lots being a re-subdivision of two existing lots.
5. Condition 2 of the Planning Permit requires the Owner of the land shall enter into an agreement with Council pursuant to Section 173 of the Act and for this agreement to be registered at the Titles Office pursuant to Section 181 of the Act.

BY THIS AGREEMENT IT IS AGREED AND COVENANTED:

1. OPERATION

- 1.1 This agreement is made pursuant to Section 173 of the Act.
- 1.2 This agreement shall come into force on execution by both parties
- 1.3 The covenants of this agreement shall run with the land.

2. INTERPRETATION

2.1 LOT

In this agreement "lot" means any and each lot shown on the subdivision plan.

2.2 OWNER

In this agreement the word "Owner" unless the contrary intention appears, shall be deemed to include its successors assigns and transferees and the obligations imposed on and assumed by Judith Ann Sloane shall be binding on the successors transferees purchasers mortgagees assigns of Judith Ann Sloane & any other person obtaining possession of the whole or part of the land as if each of those successors separately executed this agreement; and

If the Owner holds the land in a trust capacity, "Owner" shall include the beneficiaries of the trust in relation to which it holds such as land. Where such trust relationship exists the Owner in executing this agreement does so intending to assume not only personal liability, but also to bind the trust for which it acts as trustee.

If the Owner is constituted by more than one person any obligation imposed by this agreement on the Owner shall be imposed on those persons jointly and severally.

2.3 COUNCIL

In this agreement the word "Council" shall include the Shire's successors and its successors as responsible authority for town planning control in the area in which the land is situate.

2.4 In this agreement, unless the context otherwise requires:

- 2.4.1 Words denoting the singular number shall include the plural and vice versa.
- 2.4.2 Words denoting any gender shall include all genders
- 2.4.3 Where a word or phrase is defined, other parts of speech and grammatical forms of that words or phrase shall have corresponding meanings.
- 2.4.4 Words denoting natural persons shall include corporations and vice versa.
- 2.4.5 References to clauses and schedules are to clauses of and schedules to this agreement.
- 2.4.6 Headings are for convenience only and do not effect interpretation.
- 2.4.7 References to any party to this agreement or instrument shall include the party's successors and permitted assigns.
- 2.4.8 Reference to any agreement or instrument shall be also to such agreement or instrument as amended, novated, supplemented, varied or replaced from time to time.
- 2.4.9 References to any legislation or to any provision of any legislation shall include any modification or re-enactment of that legislation and any legislation provision substituted for, and all regulations and statutory instruments issued under such legislation or provision.
- 2.4.10 As the case may be, a reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, jointly and severally.

3. AGREEMENT/COVENANTS

The owner agrees that proposed Lot 1 will be used for conservation purposes and must not be used and developed for accommodation purposes such as a dwelling or other relevant accommodation types.

4. REGISTRATION

The parties shall do all things necessary to enable the Council to register this agreement pursuant to Section 181 of the Act.

5. DISCLOSURE

The Owner shall not sell mortgage or part with possession of the land or any part of it without first disclosing to its successors the existence and nature of this agreement.

6. COSTS OF AGREEMENT

The Owner forthwith on demand shall pay to the Council the Council's costs and expenses (as between the solicitor and own client) of and incidental to this agreement and of anything consequent on it or in furtherance of it.

7. DEFAULT

If the Owner fails to comply with this agreement the Council may serve on the Owner or on the owner of that part of the land in respect of which there has been a failure of compliance a notice in writing specifying the works, matters and things ("the Remedial Works") in respect of which the relevant owner is in default. If such default continues for thirty days after the service of such notice the Council by its employees or contractors may enter upon the land and cause the Remedial Works to be done.

A notice served on the Owner pursuant to this clause may set out the costs (as estimated by the Council) of carrying out the Remedial Works. If the Owner does not comply with the notice within thirty days the Council may serve on the Owner a demand in writing for the amount of the estimated costs. The amount then shall become a debt due and payable by the relevant owner to the Council.

As soon as practicable after the completion of the Remedial Works the Council shall certify the actual costs of the Remedial Works. The difference between a sum paid to the Council as the estimated costs, and the actual costs, shall be paid by the relevant owner to the Council or if there is excess, repaid by the Council to the relevant owner.

8. NOTICES

Any notice required under this agreement may be served by delivering it to the Owner at its last known address within the rating records of the Council. Any notice posted shall be deemed to have been served at the expiration of twenty-four hours from the time of posting.

9. SUCCESSORS BOUND

Without limiting the operation or effect which this agreement has apart from this sub-clause, the Owner shall ensure that its successors:

9.1 Give effect to and do all acts and sign all documents which are required of them to give effect to this agreement; and

9.2 Execute under the seal a deed agreeing to be bound by the terms of this agreement.

The obligation imposed on the Owner by sub-clause 9.1 shall cease for such time as there appears in the register book at the officer of the Registrar of Titles a memorandum of this agreement.

10. RELEASE

On a person ceasing to own any part of the land that person shall be released from the obligations of that person as an owner under this agreement, save to the extent that any right has arisen against such owner prior to such cessation.

11. FURTHER DOCUMENTATION AND ACTION

Each of the parties shall sign and execute all such further documents and deeds and do all acts and things as the other party reasonably shall require for giving effect to this agreement.

12. DISPUTE

Should any dispute or difference arise between the parties with respect to the interpretation of this agreement, its application, such dispute or difference shall be determined by a person appointed by the parties by agreement, or failing agreement, by a person qualified in the area of the dispute or difference and appointed by the Secretary as defined in the Act.

Continued Next Page

EXECUTED AS A DEED


THE COMMON SEAL of WEST WIMMERA)
SHIRE COUNCIL was hereunto affixed in the)
presence of:)

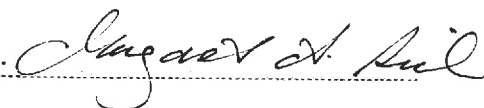
..... Mayor

..... Councillor

..... Chief Executive Officer

SIGNED SEALED AND DELIVERED by the)
said JUDITH ANN SLOANE in the presence)
of:)


Judith Ann Sloane

Witness: 

Full Name: MARGARET ANNE RICH

Address: 4 Mandargo Drive, MH Helen 3350