Agreement under section 173 of the Planning and Environment Act 1987

Wodonga-Yackandandah Road, Baranduda
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Information Table

Date of Agreement:

Parties

Name | Wodonga City Council
---|---
Short form name | Council
Notice details | 104 Hovell Street, Wodonga

Name | Next 1 Pty Ltd ACN 116 792 502
---|---
Short form name | Owner
Notice details | 1, 60 Toorak Road, South Yarra

Background

A. Council is the responsible authority pursuant to the Act for the Planning Scheme. Council is also the planning authority for the Amendment to the Planning Scheme.

B. The Owner is the registered proprietor of the Subject Land.

C. The Amendment proposes to rezone the Subject Land.

D. The Permit Application is being considered concurrently with the preparation of the Amendment under section 96A of the Act.

E. The parties enter into this Agreement to achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

Agreed Terms

1. Defined Terms

In this Agreement:

**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.
**Amendment** means an amendment to the Planning Scheme which rezones the Subject Land from the General Residential Zone – Schedule 1 to the Mixed Use Zone, prepared by Council in its capacity as the planning authority.

**Current Address for Service**

for Council means the address shown on page 2 of this Agreement, or any other address listed on Council’s website; and

for the Owner means the address shown on page 2 of this Agreement or any other address provided by the Owner to Council for any purpose or purposes relating to the Subject Land.

**Current Email Address for Service**

for Council means info@wodonga.vic.gov.au, or any other principal office email address listed on Council’s website; and

for the Owner means any email address provided by the Owner to Council for the express purpose of electronic communication regarding this Agreement or any other email address provided by the Owner to Council for any purpose or purposes relating to the Subject Land.

**Current Number for Service**

for Council means 02 6022 9322, or any other facsimile number listed on Council's website; and

for the Owner means any facsimile number provided by the Owner to Council for the express purpose of facsimile communication regarding this Agreement.

**Food and drink premises** has the same meaning as in the Planning Scheme.

**Leasable Floor Area** has the same meaning as in the Planning Scheme.

**Neighbourhood Convenience Centre** means a use and/or development of the Subject Land for Supermarket, Shop or Food and drink premises.

**Notice** means any notice, demand, consent, approval or communication under this agreement.

**Office** has the same meaning as in the Planning Scheme.

**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 the Subject Land and includes any Mortgagee-in-possession.

**Party or parties** means the Owner and Council but does not include a person who has transferred or otherwise disposed of all of their interests in the Subject Land.

**Permit Application** means the application for a planning permit to use and develop the Subject Land for a Neighbourhood Convenience Centre.
Planning Scheme means the Wodonga Planning Scheme.

Supermarket has the same meaning as in the Planning Scheme.

Shop has the same meaning as in the Planning Scheme.

Subject Land means the land situated at Wodonga-Yackandandah Road, Baranduda being the land described as Lot 128 on Plan of Subdivision 733790D and contained in certificate of title volume 11649 folio 066 and any reference to the Subject Land in this Agreement includes a reference to any lot created by the subdivision of the Subject Land or any part of it.

Tribunal means the Victorian Civil and Administrative Tribunal, and any tribunal or other person or body which supersedes it.

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 a reference to each other gender.

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

2.5 A term used in this Agreement 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 Acts, Regulations or amendments amending, consolidating or replacing the Act, Regulation or Planning Scheme.

2.7 The introductory clauses to this Agreement form 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.

2.9 Any reference to a clause, page, condition, attachment or term is a reference to a clause, page, conditions, attachment or term of this Agreement.
3. **Section 173 Agreement**

3.1 **Purpose**

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

3.1.1 record the terms and conditions on which the Owner has agreed to use and develop the Subject Land;

3.1.2 give effect to the floor area allocations in Table 1 of clause 21.03-1 of the Planning Scheme; and

3.1.3 achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

3.2 **Reasons for agreement**

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

3.2.1 Council would not have agreed to prepare the Amendment without the Owner entering into this Agreement; and

3.2.2 the Owner has elected to enter into this Agreement in order to progress the Amendment.

4. **Commencement**

This Agreement comes into force on the date of this Agreement.

5. **Owner’s Specific Obligations**

5.1 **Use and development of the Subject Land**

The Owner agrees that regardless of any rights conferred by the Planning Scheme, except with the prior written consent of Council:

5.1.1 the Leasable Floor Area of the Neighbourhood Convenience Centre must not exceed 1,500 square metres; and

5.1.2 if any part of the Subject Land is used for the purpose of an Office, the combined Leasable Floor Area on the Subject Land that is used for an Office must not exceed 100 square metres.

6. **Further Obligations of the Owner**

6.1 **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.
6.2 Further actions

The Owner further covenants and agrees that:

6.2.1 the Owner will do all things necessary to give effect to this Agreement;

6.2.2 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.

7. 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.

8. 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:

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

8.2 execute a deed agreeing to be bound by the terms of this Agreement.

9. General

9.1 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:

9.1.1 personally on the other Party;

9.1.2 by leaving it at the Party’s Current Address for Service;

9.1.3 by posting it by prepaid post addressed to that Party at the Party’s Current Address for Service;

9.1.4 by facsimile to the Party’s Current Number for Service; or

9.1.5 by email to the Party’s Current Email Address for Service.
9.2 **Service of Notice**

A notice or other communication is deemed served:

9.2.1 if delivered, on the next following business day;

9.2.2 if posted, on the expiration of 7 business days after the date of posting;

9.2.3 if sent by facsimile, on the next following business day unless the receiving party has requested retransmission before the end of that business day; or

9.2.4 if sent by email, the day on which it is sent.

9.3 **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.

9.4 **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.

9.5 **No fettering of Responsible Authority’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.

9.6 **Governing law**

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

9.7 **Ending**

This Agreement ends:

9.7.1 if the Parties agree in writing to end the Agreement; or

9.7.2 if the Amendment lapses; or

9.7.3 if the planning authority abandons the Amendment; or

9.7.4 if the Minister for Planning refuses to approve the Amendment.
SIGNED, SEALED AND DELIVERED as an agreement under Division 2 of Part 9 of the Act and as a Deed between the Parties.

The Common Seal of the Wodonga City Council was hereunto affixed on the . . . . day of . . . . . . . in the presence of:

............................................................... Chief Executive

............................................................... Witness

Executed by Next 1 Pty Ltd ACN 116 792 502 in accordance with s127(1) of the Corporations Act 2001:

............................................................... Director
Print Name:

............................................................... Secretary
Print Name: