
YARRIAMBIACK SHIRE COUNCIL

AND

MURTOA HOUSING INNOVATION PTY LTD ACN 671 381 454

**PLANNING AND ENVIRONMENT ACT 1987
SECTION 173 AGREEMENT**

Power & Bennett

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THIS AGREEMENT dated 13th day of May 2026

BETWEEN **YARRIAMBIACK SHIRE COUNCIL** of 34 Lyle Street, Warracknabeal VIC 3393
(Responsible authority)

AND **MURTOA HOUSING INNOVATION PTY LTD ACN 671 381 454** of 36-38 McDonald
Street, Murtoa VIC 3390
(Owner)

RECITALS

- A. The Owner is the owner and registered by the Registrar of Titles as the proprietor of an estate in fee simple in the land at Cromie St, Murtoa being Lot 2 on PS928445L Parish of Ashens and Township of Murtoa (subject land).
- B. The Responsible Authority is responsible for the administration and enforcement of the Yarriambiack planning scheme (planning scheme) pursuant to the provisions of the Planning and Environment Act 1987 (the Act).
- C. On 11/9/2024 the Responsible Authority resolved at a meeting of the Responsible Authority to gift the subject land to the owner on the condition that the owner develop the subject land and use same for community housing within four years of the date the Owner is registered as the proprietor of the title for the subject land (the decision).
- D. A condition of the Decision requires the owner to enter into this agreement to provide for the Owner's obligation to develop and use the subject land for community housing per Recital C.
- E. The Responsible Authority and the Owner have agreed that, without restricting or limiting their respective powers to enter into this agreement, and insofar as it can be so treated, this agreement is an agreement entered into pursuant to section 173 of the Act.
- F. The Responsible Authority and the Owner have entered into this agreement in order to achieve or advance the objectives of planning in Victoria or the objectives of the planning scheme.

OPERATIVE PART

1. Interpretation

This agreement is governed by the laws of Victoria and the parties submit to the non-exclusive jurisdiction of the courts of that State.

In the interpretation of this agreement:

- (a) References to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under the legislation;
- (b) Words denoting the singular include the plural and vice versa, words denoting individuals or persons include bodies corporate and vice versa, words denoting one gender include all genders and references to documents or agreements also mean those documents or agreements as changed, novated or replaced;
- (c) Grammatical forms of defined words or phrases have corresponding meanings;
- (d) Parties must perform their obligations on the dates and times fixed by reference to the capital city of Victoria;
- (e) Reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;
- (f) If the day on or by which anything is to be done is a Saturday, a Sunday or a public holiday in the place in which it is to be done, then it must be done on the next business day;
- (g) References to a party are intended to bind their heirs, executors, administrators, successors and assigns; and
- (h) Obligations under this agreement affecting more than one party bind them jointly and each of them severally.

2. Definitions

In this agreement unless inconsistent with the context or subject matter:

- (a) Act means the Planning and Environment Act 1987;
- (b) Agreement means this agreement and any agreement executed by the parties varying or expressed to be supplemental to this agreement;
- (c) Subject land means the land described in recital A;
- (d) Owner means the owner for the time being of the land and the person or persons entitled from time to time to be registered by the Registrar of Titles as the proprietor of an estate in fee simple in the land or any part thereof, and includes a mortgagee in possession;
- (e) Planning permit means the decision of the responsible authority referred to in recital C, including any plans endorsed for same;

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- (f) Planning scheme means the Yarriambiack planning scheme and any successor instrument or other planning scheme which applies to the subject land;
 - (g) Community housing means housing that is commissioned, developed or enabled using a needs assessment and built in a dwelling mix, design and location that aligns with local demand. The homes have suitability for ageing in place and workforce stability.
 - (h) Responsible authority means Yarriambiack Shire Council or its successor as the authority responsible for administering and enforcing the planning scheme and includes its agents, officers, employees, servants, workers and contractors; and
 - (i) Tribunal means the Victorian Civil and Administrative Tribunal or any successor tribunal, court, institution or body.

3. Specific obligations of the owner

The owner covenants with the responsible authority that:

- (a) The Owner will commence and complete the proposed development of the subject land and commence use for the intended purpose of community housing within 4 years of the date the Owner is registered as proprietor of the title for the subject land or such other later date as extended with the written consent of the Responsible Authority
- (b) The Owner shall not use the subject land for any other purpose than the intended use of community housing without the written consent of the Responsible Authority.
- (c) In the event that the Owner does not comply with the obligations of Clauses 3(a) & 3(b) hereof, then, at the option of the Responsible Authority, the Owner, at the Owner's sole cost and expense, shall do all things and sign all necessary documents to transfer the proprietorship of the subject land to the Responsible Authority for nominal consideration.
- (d) In the event that the Owner does not do all things and sign all necessary documents in compliance with Clause 3(c) hereof the Owner irrevocably appoints the Responsible Authority as its attorney and authorises the Responsible Authority to do all things and sign all documents on behalf of the Owner for the purposes of transferring the proprietorship of the subject land as contemplated by Clause 3(c) hereof.
- (e) The Owner shall compensate the Responsible Authority for any loss suffered by the Responsible Authority as a result of the Owner's breach of Clause 3 hereof.

4. Further obligations of the owner

The owner further covenants that:

- (a) The Owner will not sell, transfer, dispose of, assign, mortgage or otherwise part with possession of the subject land or any part of it without first disclosing to its successors the existence and nature of this agreement;
- (b) The Owner will do all that is necessary to enable the responsible authority to make an application to the Registrar of Titles to make a recording of this agreement on the certificate of title to the subject land in accordance with section 181 of the Act, including the signing of any further agreement, acknowledgment or other document;

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- (c) The Owner shall immediately on demand pay the reasonable legal costs and fees incurred and incidental to the preparation and execution of this agreement and the registration hereof pursuant to section 181 of the Act, together with all costs of enforcing this agreement if deemed necessary by the responsible authority. The owner hereby agrees that any such costs are and remain a charge on the subject land until paid, and consents to the responsible authority registering a caveat on the certificate of title to the subject land in respect of any such costs and acknowledges that any such costs shall be capable of being recovered by the responsible authority in any court of competent jurisdiction as a civil debt recoverable;
 - (d) That until such time as this agreement is registered on the title to the subject land, the owner shall ensure that successors in title will give effect to this agreement, and do all acts and sign all documents which will require those successors to give effect to this agreement, including executing a deed agreeing to be bound by the terms of this agreement;
 - (e) The Owner agrees to indemnify and keep indemnified the responsible authority from and against all costs, expenses, losses or damages that it may sustain, incur, suffer or be or become liable for or in respect of any suit, action, proceeding, judgment or claim brought by any person arising from or referable to this agreement and/or any non-compliance with this agreement; and
 - (f) The Owner agrees to allow the responsible authority to enter the subject land at any reasonable time to assess compliance with this agreement.

5. Owner's warranties and acknowledgements

- (a) The Owner warrants that:
 - (i) It is the registered proprietor, or entitled to be so, of the subject land;
 - (ii) There are no mortgages, liens, charges or other encumbrances affecting the subject land which are not disclosed by the usual searches; and
 - (iii) If the subject land is affected by a mortgage, the mortgagee of the subject land consents to the owner entering into this agreement and the agreement being registered on the title to the subject land.
- (b) The Owner acknowledges that any obligations imposed on the owner under this agreement take effect as separate and several covenants which are annexed to the subject land and run at law and in equity with the land and every part thereof and bind the owner, its successors, assigns and transferees, and the registered proprietor for the time being of the whole or any part of the subject land.

6. Further assurance

The parties to this agreement must do or cause to be done all things that are reasonably necessary to give effect to this agreement.

7. Default

If the Owner defaults or fails to perform any of its obligations under this agreement the responsible authority may, without prejudice to any other remedies, rectify and remedy such default and the cost of doing so shall be borne by the owner. The owner hereby consents to the responsible authority registering a caveat on the certificate of title to the subject land in respect of any such costs, and acknowledges that any such costs shall be capable of being recovered by the responsible authority in any court of competent jurisdiction as a civil debt recoverable.

8. No waiver

Any time or other indulgence granted by the responsible authority to the owner or any variation of the terms and conditions of this agreement or any judgment or order obtained by the responsible authority against the owner will not in any way amount to a waiver of any of the rights or remedies of the responsible authority in relation to the terms of this agreement.

9. No fettering of powers of responsible authority

The Owner expressly acknowledges and agrees that nothing in this agreement nor the performance by the owner of any of its obligations under this agreement does or will restrain, limit or otherwise fetter the exercise by the responsible authority of the powers, duties and discretions that the responsible authority has or may have, as planning authority, responsible authority or otherwise, under the Act or under the planning scheme to consider, approve, amend or to make any decision or impose any requirements or conditions in connection with the granting of any planning approval or certification relating to any use or development, or in relation to the commencement or initiation of any enforcement action or proceeding whatsoever.

10. Entire agreement

This agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

11. 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 shall be severed and the other provisions of this agreement shall remain operative and be of full force and effect.

12. Disputes

- (a) If there is a dispute between the parties concerning the interpretation or implementation of this agreement, that dispute must be referred to the tribunal for resolution to the extent permitted by the Act.
- (b) If there is a dispute concerning any matter which is not referable to the tribunal under the Act, that dispute must be referred for arbitration by an arbitrator agreed upon in writing by the parties, or, in the absence of such agreement the chair of the Victorian Chapter of the Institute of Arbitrators Australia or his or her nominee, for arbitration.

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- (c) The parties shall each be entitled to legal representation for the purposes of any proceedings or arbitration referred to clause 12(a) or (b) of this agreement unless the tribunal or arbitrator otherwise directs, and each party must bear its own costs.

13. Commencement of agreement

Unless otherwise provided in this agreement, this agreement shall commence on the date of this agreement.

14. End of agreement

Upon completion of the owner's obligations under clause 3(a) of this agreement to the satisfaction of the responsible authority, the responsible authority shall consent to this agreement ending and to the removal of the recording of the agreement on the certificate of title to the land provided for in clause 3(b) of this agreement.

Execution page

SIGNED SEALED AND DELIVERED as a Deed by the parties on the date set out at the commencement of this Agreement:

SIGNED SEALED AND DELIVERED for and on behalf)
of, and with the authority of YARRIAMBIACK)
SHIRE COUNCIL by the member of Council staff)
occupying the position or title of or acting in the)
position of Manager Development &)
Environmental Services, under S6 Instrument of)
Delegation from Council to Council Staff, and in)
accordance with the Yarriambiack Shire Council)
Common Seal and Conduct at Meetings Local Law)
2024, endorsed by:)



Adam Moar

Adam Moar

Tammy Smith

Chief Executive Officer Signature

Mayor Andrew McLean

Mayor Andrew McLean (Max 18.2026.18.44.16 GMT+10)

Mayor: Cr Andrew McLean

Tammy Smith

Chief Executive Officer name

Deputy Mayor, Corinne Heintze

Deputy Mayor, Corinne Heintze (Max 18.2026.19.04.52 GMT+10)

Deputy Mayor: Cr Corinne Heintze

EXECUTED BY Murtoa Housing Innovation Pty)
Ltd ACN 671 381 454 in accordance with)
Section 127 of the Corporations Act 2001 by)
being signed by those persons who are)
authorised to sign for the company:)

Christopher Sounness

Director & Secretary
Christopher Sounness
1 Waterlink Esplanade, Horsham VIC 3400

John Delahunty

John Delahunty (Max 18.2026.20.06.14 GMT+10)

Director
John Delahunty
105 Templemore Rd, Murtoa VIC 3390

Section 173 planning agreement - Lot 2 PS928445L, Cromie St, Murtoa

Final Audit Report

2026-05-13

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Agreement completed.

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