

Agreement Deferring Amalgamation of Lot 1 (No. 37) and Lot 132 (No. 37F) Grant Street, Cottesloe

Town of Cottesloe

Wahidin Husen



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Details

Parties

Town of Cottesloe

of PO Box 606, Cottesloe, Western Australia
(Town)

Wahidin Husen

formerly of JL Besuki 22 Jakarta 10310 Indonesia but now of PO Box 4553, Harrisdale, Western Australia
(Owner)

Background

- A The Owner is registered as the proprietor of an estate in fee simple in land being:
- (a) Lot 1 on Deposited Plan 2701 and being the whole of the land comprised in Certificate of Title Volume 1291 Folio 332 (**Lot 1**); and
 - (b) Lot 132 on Deposited Plan 26632 and being the whole of the land comprised in Certificate of Title Volume 1291 Folio 332 (**Lot 132**).
- (Lots)
- B The Lots are situated within the district of the Town.
- C The Owner applied to the Town for development approval to construct two, two-storey grouped dwellings on the Lots. (**Development**).
- D The Town approved the Development on 24 December 2018 subject to conditions including the following:
- ‘(6). Lots 1 and 132 being amalgamated and a new Certificate of Title being created prior to completion and occupation of the development.’*
- (Condition 6)
- E The Owner has requested the Town to release the building permit for the Development prior to the amalgamation of the Lots (**Amalgamation**) and the Town has agreed subject to the Owner entering into a legal agreement with the Town to ensure that the Amalgamation is carried out and an application for a new Certificate of Title to the amalgamated Lots is submitted to the Registrar of Titles within twelve (12) months of the issue of the building permit for the Development.
- F The Owner enters into this Deed to comply with the Town’s requirements.

Agreed Terms

1. Owner’s Covenants

In consideration of the Town issuing the building permit to the Owner prior to the Amalgamation the Owner COVENANTS AND AGREES with the Town that he shall amalgamate the land

comprising the Lots into a single lot on one Certificate of Title to accommodate the Development and submit an application for a new Certificate of Title to the amalgamated Lots to the Registrar of Titles no later than 12 months after the issue of a building permit for the Development.

2. Default

In the event that the Owner defaults in completing the Amalgamation and submitting an application for the new Certificate of Title to the amalgamated Lots referred to in **clause 1** within the specified time, the Owner AUTHORISES the Town to complete the Amalgamation, and the Application for New Title and for that purpose IRREVOCABLY APPOINTS the Town his joint and several attorney from the date of the issue of the building permit referred to in **clause 1** for a period of two (2) years for and on his behalf to enable the Town to amalgamate the Lots and to apply for a new Certificate of Title to the amalgamated Lots and the Owner agrees to indemnify the Town against any cost it may incur in carrying out such acts on the Owner's behalf should it exercise the power to do so. Furthermore, any such costs incurred by the Town shall be a liquidated debt payable by the Owner and recoverable from them in a court of competent jurisdiction.

3. Disposal Restrictions

On the issue of the building permit for the Development then until such time as the provisions of **clause 1** have been satisfied and the Lots have been amalgamated into one lot on one Certificate of Title the Owner shall not sell, transfer, mortgage, lease, charge, assign or otherwise dispose of or encumber:

- (a) any of the Lots separately; or
- (b) the Lots or any part or interest therein to any person without the prior written consent of the Town, which consent shall not be withheld if the time provided in **clause 1** for the Amalgamation has not expired and the person to whom any such right or interest in the Lots is to be granted has first executed a Deed of Covenant (or in the case of a mortgagee an undertaking satisfactory to the Town) to be prepared by the Town's solicitors at the cost of the Owner whereby that person covenants to observe and perform such of the covenants conditions and stipulations herein contained (including this covenant) as the Town shall require, as if that person had been a party to this Deed.

4. Charge and Caveat

The Owner CHARGES his interest in the Lots in favour of the Town with the performance of his obligations pursuant to this Deed and with the payment of all moneys owing to the Town or which may become payable to the Town pursuant to this Deed and AUTHORISES the Town to lodge an absolute Caveat at the Western Australian Land Information Authority trading as Landgate against the Certificate of Title to the Lots or any parts thereof for the purpose of securing such obligations.

5. Withdrawal of Caveat

Subject to there being no subsisting or unremedied breach of any provision of this Deed and subject to:

- (a) the Owner as appropriate complying with **clause 3** hereof the Town agrees that on receipt of a written request from the Owner it shall provide to the Owner as appropriate at the cost of the Owner in registrable form a duly executed withdrawal of any Caveat lodged by the Town pursuant to this Deed to enable registration of any transfer, lease, assignment or mortgage document provided that the Town is entitled to re-lodge its absolute caveat following such registration; and

- (b) the Owner having complied with **clause 1** of this Deed the Town shall provide to the Owner on receipt of a written request from the Owner and at his cost a withdrawal of any Caveat lodged by the Town pursuant to this Deed and the provisions of this Deed shall then be of no further force and effect except in respect of any pre-existing unremedied breach.

6. Costs

The costs including the Town's solicitors' costs of and incidental to the preparation, execution and stamping of this Deed, all duties payable hereon and the cost of preparing and lodging any Caveat (and any withdrawal or replacement thereof) shall be borne by the Owner.

7. Interpretation

In this Deed:

Headings have been inserted for guidance only and shall be deemed not to form part of the context.

Where a reference to a party includes more than one person the rights and obligation of those persons shall be joint and several.

Reference to the parties includes their personal representatives, successors and lawful assigns.

The Schedule and Annexures (if any) form part of the Deed.

Signing page

EXECUTED

2019.

Executed for and on behalf of the TOWN
OF COTTESLOE pursuant to section
9.49(a) of the *Local Government Act 1995*:

Signature

(Print Full Name)

Chief Executive Officer

Position

EXECUTED by WAHIDIN HUSEN in the
presence of

Signature of Wahidin Husen

Witness Sign

Full Name of Witness

Address

Occupation