Department of Environment, Land, Water & Planning

Electronic Instrument Statement

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The Victorian Government acknowledges the Traditional Owners of Victoria and pays respects to their ongoing connection to their Country, History and Culture. The Victorian Government extends this respect to their Elders, past, present and emerging.

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Status	Registered	Dealing Number	AU903251U
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Lodger Details

Lodger Code	18776H
Name	HARWOOD ANDREWS
Address	
Lodger Box	
Phone	
Email	
Reference	AL - 22103284

APPLICATION TO RECORD AN INSTRUMENT

Jurisdiction VICTORIA

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Estate and/or Interest
FEE SIMPLE

Land Title Reference
8457/119

Instrument and/or legislation
RECORD - AGREEMENT - SECTION 173
Planning & Environment Act - section 173

Applicant(s)

Name	GREATER GEELONG CITY COUNCIL
Address	
Street Number	30
Street Name	GHERINGHAP
Street Type	STREET
Locality	GEELONG
State	VIC
Postcode	3220

Additional Details

Reference :AL - 22103284
Secure Electronic Registries Victoria (SERV), Level 13, 697 Collins Street Docklands 3008
Locked bag 20005, Melbourne 3001, DX 210189
ABN 86 627 986 396

Department of Environment, Land, Water & Planning

Electronic Instrument Statement

Refer Image Instrument

The applicant requests the recording of this Instrument in the Register.

Execution

1. The Certifier has taken reasonable steps to verify the identity of the applicant or his, her or its administrator or attorney.
2. The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
3. The Certifier has retained the evidence supporting this Registry Instrument or Document.
4. The Certifier has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Executed on behalf of	GREATER GEELONG CITY COUNCIL
Signer Name	CLARE MARGARET MCKENNA
Signer Organisation	THE LANTERN LEGAL GROUP PTY LTD
Signer Role	LAW PRACTICE
Execution Date	12 OCTOBER 2021

File Notes:
NIL

This is a representation of the digitally signed Electronic Instrument or Document certified by Land Use Victoria.

Statement End.

Reference :AL - 22103284
Secure Electronic Registries Victoria (SERV), Level 13, 697 Collins Street Docklands 3008
Locked bag 20005, Melbourne 3001, DX 210189
ABN 86 627 986 396

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H RWOOD
NDREWS

SECTION 173 AGREEMENT
PLANNING AND ENVIRONMENT ACT 1987

GREATER GEELONG CITY COUNCIL
Responsible Authority

- and -

WON HEE CHO
Registered Land Owner

in relation to land at:

102 POWELL STREET, OCEAN GROVE

AU903251U

5TJR:22103284

Harwood Andrews
ABN 98 076 868 034
70 Gheringhap Street, Geelong 3220, Victoria, Australia
DX 22019 Geelong
PO Box 101 Geelong Vic 3220

Telephone: 03 5225 5225 Facsimile: 03 5225 5222

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THIS AGREEMENT is made the 6th day of October 2021

PARTIES:

1. **Greater Geelong City Council** of 30 Gheringhap Street, Geelong 3220

(Responsible Authority)

2. **Won Hee Cho** of 102 Powell Street, Ocean Grove 3226 .

(Owner)

RECITALS:

R.1. The Owner is the registered proprietor of the land known as 102 Powell Street, Ocean Grove, being the land described in Certificate of Title Volume 8457 Folio 119 (**Land**).

R.2. The Responsible Authority is responsible for the administration and enforcement of the Planning Scheme pursuant to the provisions of the Act.

R.3. The Responsible Authority issued planning permit number PP-411-2020 on 15 January 2021 allowing development of the land for two (2) dwellings and two (2) lot subdivision (**Permit**).

R.4. Condition 14 of the Permit provides as follows:

> *14. Unless otherwise approved in writing by the Responsible Authority, prior to the issue of the Statement of Compliance:*
>
> *a) ...*
>
> *or*
>
> *b) The owner of the land must enter into an agreement with the Responsible Authority pursuant to Section 173 of the Planning and Environment Act 1987 which provides for all development to be in accordance with the endorsed plans forming part of the Planning Permit PP-411-2020 (or any amendment to that permit) or any subsequent Planning Permit.*
>
> *The owner must pay the costs of preparation, review, execution and registration of the agreement and the agreement must be registered on the newly created title/s. The Section 173 Agreement may be ended by the Responsible Authority at the written request of the owner and at no cost to Council.*

R.5. This Agreement is entered into between the Responsible Authority and the Owner pursuant to section 173 of the Act in order to meet the requirements of condition 14 of the Permit and to achieve the objectives of planning in Victoria.

R.6. The Land is subject to registered mortgage instrument no. AN022415M, which mortgagee Perpetual Ltd, as evidenced by its consent on the attestation page, consents to this Agreement.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS

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

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

1.2. **Agreement** means this Agreement and any agreement executed by the parties varying or expressed to be supplemental to this Agreement.

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1.3. **Current Address for Service**

1.3.1. for the Responsible Authority means the address shown under the heading "Parties" in this Agreement, or any other principal office address listed on the website of the Responsible Authority; and

1.3.2. for the Owner means the address shown under the heading "Parties" in this Agreement or any other address provided by the Owner to the Responsible Authority for any purpose or purposes relating to the Land.

1.4. **Current Email Address for Service**

1.4.1. for the Responsible Authority means statplanning@geelongcity.vic.gov.au, or any other email address listed on the website of the Responsible Authority; and

1.4.2. for the Owner means any email address provided by the Owner to the Responsible Authority for the express purpose of electronic communication regarding this Agreement.

1.5. **Current Number for Service**

1.5.1. for the Responsible Authority means 03 5272 4277, or any other facsimile number listed on the website for the Responsible Authority; and

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

1.6. **Land** means the land described in Recital R.1 and any reference to the Land includes any lot created by the subdivision of the Land or any part of it.

1.7. **Mortgagee** means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as Mortgagee of the Land or any part of it.

1.8. **Owner** means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as the proprietor or proprietors of an estate in fee simple of the Land or any part of it, and includes a Mortgagee in possession.

1.9. **Owner's Obligations** means the covenants, promises, agreements, indemnities, undertakings and warranties given by the Owner under this Agreement including the specific obligations imposed under clause 3.

1.10. **party** or **parties** means the Owner and the Responsible Authority under this Agreement as appropriate.

1.11. **Permit** means the planning permit issued by the Responsible Authority described in Recital R.3 including the plans endorsed under it and as amended from time to time, or any subsequent permit issued by the Responsible Authority. [delete if not appropriate to BOE]

1.12. **Planning Scheme** means the Greater Geelong Planning Scheme and any successor instrument or other planning scheme which applies to the Land.

1.13. **Register** and **Registrar** have the same meaning as in the *Transfer of Land Act 1958* (Vic).

1.14. **Responsible Authority** means Greater Geelong City Council in its capacity as:

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1.14.1. the authority responsible for administering and enforcing the Planning Scheme; and

1.14.2. a municipal council within the meaning of the *Local Government Act 2020* (Vic),

and includes its agents, officers, employees, servants, workers and contractors and any subsequent person or body which is the responsible authority or municipal council.

2. INTERPRETATION

In the interpretation of this Agreement unless inconsistent with the context or subject matter:

2.1. The singular includes the plural and the plural includes the singular.

2.2. A reference to a gender includes a reference to all other genders.

2.3. Words (including defined expressions) denoting persons will be deemed to include all trusts, bodies and associations, corporate or unincorporated, and vice versa.

2.4. A reference to a person includes a reference to a firm, corporation, association or other entity and their successors in law.

2.5. A reference to a statute includes any statute amending, consolidating or replacing that statute and includes any subordinate instruments made under that statute.

2.6. The Recitals to this Agreement are and will be deemed to form part of this Agreement including any terms defined within the Recitals.

2.7. References to the parties will include their transferees, heirs, assigns, and liquidators, executors and legal personal representatives as the case may be.

2.8. Reference to a document or agreement includes reference to that document or agreement as changed, novated or replaced from time to time.

2.9. Where a word or phrase is given a definite meaning in this Agreement, a part of speech or other grammatical form for that word or phrase has a corresponding meaning.

2.10. Where a word or phrase is not defined in this Agreement, it has the meaning as defined in the Act, or, if it is not defined in the Act, it has its ordinary meaning.

3. SPECIFIC OBLIGATIONS OF THE OWNER

The Owner agrees with the Responsible Authority that unless the prior written consent of the Responsible Authority is obtained, all development on the Land must be in accordance with the Permit to the satisfaction of the Responsible Authority

4. FURTHER COVENANTS OF THE OWNER

The Owner warrants and covenants with the Responsible Authority that:

4.1. It is the registered proprietor (or entitled to be so) of the Land.

4.2. Save as shown in the certificate of title to the Land, there are no mortgages, liens, charges, easements or other encumbrances or any rights inherent in any person affecting the Land or any part of it and not disclosed by the usual searches.

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4.3. Neither the Land nor any part of it is subject to any right obtained by adverse possession or subject to any easements, rights or encumbrances mentioned in section 42 of the *Transfer of Land Act* 1958 (Vic).

4.4. It will not sell, transfer, dispose of, assign, mortgage or otherwise part with possession of the Land or any part of it without first providing to its successors a copy of this Agreement.

4.5. It will within 28 days of written demand pay to the Responsible Authority the Responsible Authority's reasonable costs (including legal or other professional costs) and expenses of and incidental to the:

4.5.1. negotiation, preparation, execution and recording of this Agreement;

4.5.2. assessment, negotiation, preparation, execution and recording of any proposed amendment to this Agreement; and

4.5.3. determination of whether any of the Owner's obligations have been undertaken to the satisfaction of the Responsible Authority or to give consent to anything under this Agreement.

To the extent that such costs and expenses constitute legal professional costs, the Responsible Authority may at its absolute discretion have these costs assessed by the Law Institute of Victoria and in that event the parties will be bound by the amount of that assessment, with any fee for obtaining such an assessment being borne equally by the Responsible Authority and the Owner. Such costs payable by the Owner will include the costs and disbursements associated with the recording, cancellation or alteration of this Agreement in the Register.

4.6. It will do all that is necessary to enable the Responsible Authority to make application to the Registrar of Titles to record this Agreement in the Register in accordance with the Act, including the signing of any further agreement, acknowledgment or other document.

4.7. Until such time as this Agreement is recorded in the Register, the Owner must 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.

5. FURTHER ASSURANCE

The parties to this Agreement will do all things necessary (including signing any further agreement, acknowledgement or document) to give full effect to the terms of this Agreement and to enable this Agreement to be recorded in the Register in accordance with the Act.

6. AMENDMENT

This Agreement may be amended only in accordance with the requirements of the Act.

7. NO WAIVER

No waiver by any party of any default in the strict and literal performance of or compliance with any provision, condition or requirement in this Agreement will be deemed to be a waiver of strict and literal performance of and compliance with any other provision, condition or requirement of this Agreement nor to be a waiver of or in any way release any party from compliance with any provision, condition or requirement in the future nor will any delay or omission of any party to exercise any right under this Agreement in any manner impair the exercise of such right accruing to it thereafter.

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8. NO FETTERING OF POWERS OF RESPONSIBLE AUTHORITY

The parties acknowledge and agree that this Agreement does not fetter or restrict the power or discretion of the Responsible Authority 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 Land or relating to any use or development of the Land.

9. INTEREST ON OVERDUE MONEYS

Any amount due under this Agreement but unpaid by the due date incurs interest at the rate prescribed under section 227A of the *Local Government Act 1989* (Vic) and any payment made shall be first directed to payment of interest and then the principal amount owing.

10. NOTICES

All notices and other communications under this Agreement will be sent by prepaid mail, by hand delivery, email or by facsimile to the Current Addresses for Service, Current Email Address for Service or Current Number for Service of the parties, and may be sent by an agent of the party sending the notice. Each notice or communication will be deemed to have been duly received:

10.1. not later than two business days after being deposited in the mail with postage prepaid;

10.2. when delivered by hand;

10.3. if sent by email, at the time of receipt in accordance with the *Electronic Transactions (Victoria) Act 2000* (Vic); or

10.4. if sent by facsimile transmission upon completion of that transmission and production of a transmission report stating that the facsimile was sent to the addressee's facsimile number.

11. COSTS ON DEFAULT

If the Owner defaults in the performance of any obligations under this Agreement it will pay to the Responsible Authority its reasonable costs of action taken to achieve compliance with this Agreement.

12. INVALIDITY OF ANY CLAUSE

Notwithstanding anything to the contrary in this Agreement, if any provision of this Agreement will be invalid and not enforceable in accordance with its terms, all other provisions which are self-sustaining and capable of separate enforcement without regard to the invalid provisions will be and continue to be valid and enforceable in accordance with those terms.

13. AGREEMENT BINDING ON SUCCESSORS OF OWNERS

This Agreement will extend to and bind the Owner's successors, assigns, administrators, transferees and legal personal representatives and the obligations imposed upon them will also be binding on their successors, transferees, purchasers, mortgagees and assigns as if each of them had separately executed this Agreement.

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14. JOINT OBLIGATIONS

In the case of each party that consists of more than one person (including in that expression any corporation) each of those persons covenants, agrees and declares that all of the covenants, agreements, declarations and consents contained in this Agreement and made and given by that party have been entered into, made and given and are binding upon that person both severally and also jointly with the other person or persons constituting that party.

15. 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.

16. EXCHANGE OF COUNTERPARTS BY EMAIL OR FAX

16.1. This Agreement may be executed in any number of counterparts.

16.2. All counterparts together constitute one agreement.

16.3. A party may execute this Agreement by signing any counterpart.

16.4. This Agreement is binding on the parties on the exchange of executed counterparts. A copy of an original executed counterpart sent by email or by facsimile machine:

16.4.1. must be treated as an original counterpart;

16.4.2. is sufficient evidence of the execution of the original; and

16.4.3. may be produced in evidence for all purposes in place of the original.

16.5. A party which has executed a counterpart of this Agreement or its legal representative may exchange it with another party by sending a copy of that original executed counterpart by email or facsimile machine to that other party or its legal representative and if requested by that other party or its legal representative must promptly deliver that original by hand or post. Failure to make that delivery does not affect the validity of this Agreement.

17. COMMENCEMENT AND ENDING OF AGREEMENT

17.1. This Agreement will commence:

17.1.1. on the date that it bears; or

17.1.2. if it bears no date, on the date it is recorded in the Register.

17.2. This Agreement will end by agreement between the parties or otherwise in accordance with the provisions of the Act.

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EXECUTED AS A DEED

SIGNED SEALED AND DELIVERED on behalf of the **GREATER GEELONG CITY COUNCIL** by Joanne Van Slageren, Manager City Development, pursuant to an instrument of delegation authorised by Council resolution, in the presence of:

Joanne Van Slageren

JOHN RUSH
Witness

SIGNED SEALED AND DELIVERED by the said **WON HEE CHO** in the presence of:

Won Hee Cho

ROB THOMSON
Witness

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MORTGAGEE CONSENT

Perpetual Ltd as Mortgagee under Instrument of Mortgage No. AN022415M consents to the Owner entering into this Agreement and agrees to be bound by the terms and conditions of this Agreement.

DATED: 30/9/21

Executed for and on behalf of

Perpetual Ltd

Signed in my presence for and on behalf of Perpetual Limited (ACN 000 431 827) under the Power of Attorney dated 10/12/12, a certified copy of which is filed in Permanent Order No Bk 272 Page 033 Item 18 by its Attorneys Justin Arigho and Kushma Ram who are personally known to me and each of whom declare that they have received no notice of the revocation of their powers

Signature of Witness	FULL NAME OF WITNESS	Signature of Attorney	Title of Attorney
	Patsy Woolford		Manager
Full Name of Witness	SIGNATURE OF WITNESS	Signature of Attorney	Title of Attorney
Patsy Woolford			Administrator

Mortgage Operations Officer
Level 18 Angel Place
123 Pitt Street Sydney
NSW 2000 (02) 9229 9000

AU903...

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