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Date / / 2015

Agreement under section 173 of the Planning and Environment Act 1987

Subject Land: 321-399 Ibbotson Street, St Leonards

**Purpose of Agreement: Growth Area 1, St Leonards
Infrastructure Contributions and Subdivision Design
Requirements**

City of Greater Geelong
and

Costa Property Nine Pty Ltd ACN ##

EXHIBITION VERSION

(MADDOCKS DRAFT NO 2 - 1 September 2015)

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Agreement under section 173 of the Planning and Environment Act 1987

Dated / / 2015

Parties

Name	City of Greater Geelong
Address	City Hall, 30 Gheringhap Street, Geelong, Victoria
Short name	Council

Name	Costa Property Nine Pty Ltd ACN 111 278 481
Address	Level 1, 2 Myers Street Geelong, 3220
Short name	Owner

Background

- A. Council is the responsible authority pursuant to the Act for the Planning Scheme. Council is also the planning authority for Amendment C317 to the Planning Scheme.
- B. The Owner is or is entitled to be the registered proprietor of the Subject Land.
- C. The Subject Land is within an area that is being developed for urban purposes. Amendment C317 proposes to rezone the Subject Land from Farming Zone to General Residential Zone Schedule 1 under the Planning Scheme; and
- D. Planning Permit 970/2014 allowing multi-lot subdivision on the Subject Land is being considered concurrently with the preparation of the proposed Amendment pursuant to Section 96A of the Act.
- E. The parties enter into this Agreement to:
 - E.1 record the terms and conditions on which Council and the Owner have agreed for the Owner to pay the Infrastructure Contribution and facilitate delivery of the Infrastructure Project; and
 - E.2 achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

The Parties agree

1. Definitions

In this Agreement unless the context admits otherwise:

Act means the *Planning and Environment Act 1987*.

Adjustment Index means the CPI.

Agreement means this agreement.

Amendment C317 means Amendment C317 to the Planning Scheme prepared by Council in its capacity as the Planning Authority.

CPI means the Consumer Price Index (All Groups) Melbourne as published by the Australian Bureau of Statistics.

Infrastructure Contribution means the contribution specified in Schedule 2 required to be made in respect of each hectare of NDA of the Subject Land and adjusted in accordance with clause 3.3.

Infrastructure Contribution Liability means the Owner's liability for the Infrastructure Contribution in respect of the Subject Land under this Agreement.

Infrastructure Project means the proposed Early Learning Community Centre in St Leonards.

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 Subject Land or any part of it.

NDA means the net developable area of the Subject Land as reflected in the Planning Permit for the Subject Land but subject to any amendment required by clause 3.5 of this Agreement.

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 under this Agreement as appropriate.

Plan of Subdivision means a plan of subdivision of the Subject Land which is not a procedural plan but a plan that upon registration creates an additional lot which can be disposed of separately and is intended to be used for a dwelling or can be re-subdivided.

Planning Permit means Permit No. 970/2014 and the plans endorsed under the Planning Permit and includes a reference to any amended plans, or amendments to Permit No. 970/2014 and any other permits authorising the subdivision of the Subject Land whether issued before or after the date of this Agreement.

Planning Scheme means the Greater Geelong Planning Scheme and any other planning scheme that applies to the Subject Land.

Project Land means the land required for an Infrastructure Project.

Registrar of Titles means the Victorian Registrar of Titles.

Residential Lot means a lot which in the opinion of Council is of a size and dimension such that it is intended to be developed as a housing lot without further subdivision.

Schedule means a schedule to this Agreement.

Statement of Compliance means a statement of compliance issued by Council under the *Subdivision Act 1988*.

Subject Land means the land described in Schedule 1 and any reference to the Subject Land in this Agreement includes any lot created by the subdivision of the Subject Land or any part of it.

Total of the Infrastructure Contribution means the total Infrastructure contribution as specified in Schedule 2 required to be made in respect of the whole of the Subject Land and adjusted in accordance with clause 3.3.

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 the Owner comprises more than one party, then 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 are and will be deemed to form part of this Agreement.
- 2.8 The obligations of the Owner under this Agreement, will take effect as separate and several covenants which are annexed to and run at law and equity with the Subject Land provided that if the Subject Land is subdivided, this Agreement must be read and applied so that each subsequent owner of a lot is only responsible for those covenants and obligations which relate to that owner's lot.

3. Payment of Infrastructure Contributions

3.1 Final Shared Infrastructure Funding Plan

The Owner covenants and agrees that subject to this Agreement, the Owner must pay the Infrastructure Contribution to Council to the satisfaction of Council.

3.2 Infrastructure Contribution Liability

The Owner must pay the Infrastructure Contribution to Council in cash in accordance with clauses 3.3 and 3.4.

3.3 Indexation of Infrastructure Contribution

The Parties agree that the amount of the Infrastructure Contribution will be adjusted each year on 1 July by applying by the Adjustment Index.

3.4 St Leonards Early Learning Community Centre Cash Contribution

The Owner agrees that the payment of the Infrastructure Contribution will be as follows:

- 3.4.1 An amount being 20% of the Total of the Infrastructure Contribution must be paid to Council prior to the Statement of Compliance which provides for the subdivision of a total of 20% of the NDA of the Subject Land;
- 3.4.2 An amount being 30% of the Total of the Infrastructure Contribution must be paid to Council prior to the Statement of Compliance which provides for the subdivision of a total of 35% of the NDA of the Subject Land; and
- 3.4.3 The balance of the Total of the Infrastructure Contribution must be paid to Council prior to Statement of Compliance for the subdivision of a total of 50% of the NDA of the Subject Land.

3.5 Subdivision Design Requirements

The Owner must comply with or carry out or cause to be carried out as the case may be the following requirements all to the satisfaction of Council:

- 3.5.1 The upgrading of Ibbotson Street/Murradoc Road intersection and the Old St Leonards Road/ Murradoc Road intersection;
- 3.5.2 The upgrading of Ibbotson Street, Old St Leonards Road, Rigby Street, Emu Street and Doongara Avenue within the vicinity of the Subject Land, and the construction of new footpaths as required by Council;
- 3.5.3 A pedestrian access connection to the golf course on the north-eastern corner of the Subject Land must be created by the Owner;
- 3.5.4 The protection and enhancement of the natural creek line and its embankments, and associated remnant and riparian vegetation;
- 3.5.5 A landscaped 20 metre wide linear open space corridor parallel to Ibbotson Street and extending north from the natural creek line to the golf course;
- 3.5.6 A 2.5 metre wide reinforced concrete shared path together with associated park infrastructure is to be constructed within the linear open space corridor, that also continues along the edge of the natural creek line linking to Old St Leonards Road, in accordance with Council standards;
- 3.5.7 An informal reserve for public open space is to be provided on unencumbered land directly north, and integrated with, the natural creek line;
- 3.5.8 Encumbered land is to be designated for flood and stormwater drainage purposes;
- 3.5.9 The Owner must provide verification through a report prepared by an appropriately qualified expert that there will be no unreasonable adverse impact to surrounding properties prior to development south of the creek and the delivery of off-site drainage infrastructure upgrades and/or improvements necessary to drain the Subject Land. If such report shows that any part of the Subject Land south of the

creek cannot be used for development under the Planning Permit then the NDA is to be reduced in appropriate amendments to Schedule 2 of this Agreement.

- 3.5.10 A stormwater retarding basin or basins generally adjacent to the natural creek line and integrated with the informal reserve referred to in 3.5.7.

4. Acknowledgements of Council

Council acknowledges that Council will apply any amount received under this Agreement for the purpose of the Infrastructure Project.

5. Further obligations of the Parties

5.1 Notice and registration

The Owner must bring this Agreement to the attention of all prospective purchasers, lessees, mortgagees, chargees, transferees and assigns.

5.2 Further actions

The Owner:

- 5.2.1 must do all things necessary to give effect to this Agreement;
- 5.2.2 consents to Council applying to the Registrar of Titles to record this Agreement 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:
- (a) sign any further agreement, acknowledgment or document; and
 - (b) obtain all necessary consents to enable the recording to be made.

5.3 Council's costs to be paid

The Owner further covenants and agrees that the Owner will immediately pay to Council, Council's reasonable costs and expenses (including legal expenses) of and incidental to the execution and registration of this Agreement which are and until paid will remain a debt due to Council by the Owner.

5.4 Interest for overdue moneys

- 5.4.1 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* and any payment made shall be first directed to payment of interest and then the principal amount owing.
- 5.4.2 Notwithstanding anything contained in this Agreement, no interest will begin to accrue unless the person obliged to make a payment has been specifically notified in writing by the other party of the event which gives rise to the obligation to make the payment.

6. Agreement under section 173 of the Act

Council and the Owner agree that without limiting or restricting the respective powers to enter into this Agreement and, insofar as it can be so treated, this Agreement is made as a Deed pursuant to Section 173 of the Act, and the obligations of the Owner under this Agreement are obligations to be performed by the Owner as conditions subject to which the Subject Land may be used and developed.

7. Owner's warranties

Without limiting the operation or effect which this Agreement has, the Owner warrants that apart from 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

Until such time as a memorandum of this Agreement is recorded on the Certificate of Title of the Subject Land, the Owner must require successors in title to:

- 8.1 give effect to this Agreement; and
- 8.2 enter into a deed agreeing to be bound by the terms of this Agreement.

9. General matters**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 person;
- 9.1.2 by leaving it at the person's current address for service;
- 9.1.3 by posting it by prepaid post addressed to that person at the person's current address for service;
- 9.1.4 by facsimile to the person's current number for service; or
- 9.1.5 by email to the person's current email address for service.

9.2 No waiver

Any time or other indulgence granted by Council to the Owner or any variation of this Agreement or any judgment or order obtained by Council against the Owner does not amount to a waiver of any of Council's rights or remedies under this Agreement.

9.3 Severability

If a court, arbitrator, tribunal or other competent authority determines that any part of this Agreement is unenforceable, illegal or void then that part is severed with the other provisions of this Agreement remaining operative.

9.4 No fettering of Council's powers

This Agreement does not fetter or restrict Council's power or discretion to make decisions or impose requirements or conditions in connection with the grant of planning approvals or certification of plans subdividing the Subject Land or relating to use or development of the Subject Land.

9.5 Inspection of documents

A copy of any planning permit, document or plan referred to in this Agreement is available for inspection at Council offices during normal business hours upon giving the Council reasonable notice.

9.6 Governing law

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

10. GST**10.1 GST Act**

In this clause words that are defined in *A New Tax System (Goods and Services Tax) Act* 1999 have the same meaning as their definition in that Act.

10.2 Exclusive of GST

Except as otherwise provided by this clause, all consideration payable under this Agreement in relation to any supply is exclusive of GST.

10.3 Recipient must pay

If GST is payable in respect of any supply made by a supplier under this Agreement, subject to clause 10.4 the recipient will pay to the supplier an amount equal to the GST payable on the supply at the same time and in the same manner as the consideration for the supply is to be provided under this Agreement.

10.4 Tax invoice

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST payable under clause 10.3.

11. Commencement of Agreement

Unless otherwise provided in this Agreement, this Agreement commences from the date of this Agreement.

12. Ending of Agreement

12.1 On the issue of a Statement of Compliance for a Plan of Subdivision for Residential Lots created over the Subject Land or earlier by agreement with Council, the Agreement ends in respect of that part of the Subject Land in the Plan of Subdivision in accordance with section



177 of the Act provided that at all times, the Agreement must remain registered on the balance of the Subject Land.

- 12.2 Once this Agreement ends as to part of the Subject Land in accordance with clause 12.1 Council will, within a reasonable time, following a request from the Owner and at the cost of the Owner, execute all documents necessary to make application to the Registrar of Titles under section 183 of the Act to cancel the recording of this Agreement on the register as to that part of the Subject Land.
- 12.3 On completion of all the Owner's obligations in accordance with this Agreement, Council must as soon as practicable following the ending of this Agreement and at the request and at the cost of the Owner, execute all documents necessary to make application to the Registrar of Titles under section 183 of the Act to cancel the recording of this Agreement on the register.



Schedule 1

Subject Land

Address:

Land known as 321 - 399 Ibbotson Street, St Leonards

Title Details:

Certificate(s) of Title Volume 5863 Folio 416

Schedule 2

Infrastructure Contribution

Summary	Community Centre Cash Contribution
Estimated Lots	xxx
Total Area	38.72 ha
NDA	xx ha
Total Infrastructure Contribution	xxxx
Contribution per hectare of NDA.	\$38,800

