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Date        /        /

# Agreement under section 173 of the Planning and Environment Act 1987

**Subject Land: Barrabool Road and 41-63, 65 and 67 Cityview Drive, Wandana Heights**

**Purpose of Agreement: Infrastructure Contributions**

**City of Greater Geelong**  
and

**John William Baden Lamb**

**Samsar Pty Ltd**

**Barwon Region Water Corporation**

**Draft 22 August 2016 for exhibition purposes only**

**[Note: If Amendment C331 is to proceed to adoption, each owner will be required to execute a separate agreement identical to this agreement save as to owner and title details to make provision for infrastructure contributions set out in this exhibition version document]**

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# Agreement under section 173 of the Planning and Environment Act 1987

Dated        /        / 2016

## Parties

Name	<b>City of Greater Geelong</b>
Address	City Hall, 30 Gheringhap Street, Geelong, Victoria
Short name	<b>Council</b>
Name	<b>##</b>
Address	
Short name	<b>Owner</b>

## Background

- A. Council is the responsible authority pursuant to the Act for the Planning Scheme. Council is also the planning authority for Amendment C331 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 C331 proposes to:
  - C.1 rezone the Subject Land from Farming Zone and Public Use Zone (Schedule 1) to General Residential Zone Schedule 1 under the Planning Scheme; and
  - C.2 apply other planning controls as appropriate to the Subject Land.
- D. Planning Permit 392/2015 allowing a multi-lot subdivision on the Subject Land is being considered concurrently with the preparation of Amendment C331 pursuant to Section 96A of the Act.
- E. The Owner and Council have agreed that the Subject Land will be liable for the Infrastructure Contribution.
- F. As at the date of this Agreement, parts of the Subject Land are encumbered by a mortgage in favour of the Mortgagee. Each Mortgagee consents to the Owner entering into this Agreement.

- G. The parties enter into this Agreement to:
- G.1 record the terms and conditions on which Council and the Owner have agreed for the Owner to pay the Infrastructure Contribution; and
  - G.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

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### 1. Definitions

In this Agreement unless the context admits otherwise:

**Act** means the *Planning and Environment Act 1987*.

**Adjustment Index** means the annual CPI (all groups) Melbourne as published by the Australian Bureau of Statistics.

**Agreement** means this agreement.

**Amendment C331** means Amendment C331 to the Planning Scheme prepared by Council in its capacity as the Planning Authority.

**Approved Development Plan** means a development plan approved by Council in accordance with a Development Plan Overlay to be applied to the Subject Land by Amendment C331.

**Dwelling** has the same meaning as in the Planning Scheme but also includes a residence that is provided as part of Retirement Village or Aged Care Facility

**Infrastructure Contribution** means the contribution specified in Schedule 2 required to be made in respect of each Residential Lot or each Dwelling as the case may be in accordance with clause 3.1.

**Infrastructure Contribution Liability** means the Owner's liability for the Infrastructure Contribution payable under clause 3.1.

**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.

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

**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 house 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.

## 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. Obligations of the Owner

### 3.1 Infrastructure Contribution

The Owner covenants and agrees that subject to this Agreement, the Owner must pay the Infrastructure Contribution –

- 3.1.1 prior to the issue of a Statement of Compliance in respect of any Plan of Subdivision; or
- 3.1.2 prior to the issue of an Occupancy Permit or the like under the *Building Act 1993* if there is no subdivision.

### 3.2 Indexation of Infrastructure Contribution

The Owner agree that the amount of the Infrastructure Contribution is adjusted each year on 1 July by the Adjustment Index.

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## 4. Acknowledgements of Council

Council acknowledges that it will apply any amount received under this Agreement for the purpose of providing community facilities within Council's community services planning area 8 encompassing Highton, Belmont and Wandana Heights or for providing sub-regional community facilities in a nearby area.

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## 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 referenced in section 172 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.

## **5.5 Localised Infrastructure**

The Parties acknowledge and agree that:

- 5.5.1 this Agreement relates only to community infrastructure not Localised Infrastructure; and
- 5.5.2 compliance with the obligations of this Agreement does not relieve the Owner of any obligation imposed by Council or a tribunal to provide Localised Infrastructure which obligation may be imposed as a requirement in a planning permit for the subdivision or development of the Subject Land.

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## **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.

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## **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.

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## **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.

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## **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.

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## **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.

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**11. Commencement of Agreement**

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

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**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.

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## Schedule 1

### Subject Land

The Subject Land Certificate of title details are:<sup>1</sup>

- 335 Barrabool Road, Wandana Heights: Certificate of Title Volume 2865 Folio 825
- 41-63 Cityview Drive, Wandana Heights: Certificate of Title Volume 10035 Folio 483
- 65 Cityview Drive, Wandana Heights: Certificate of Title Volume 9845 Folio 841
- 67 Cityview Drive, Wandana Heights: Certificate of Title Volume 10039 Folio 350

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## Schedule 2

### Infrastructure Contribution

\$2670 per Residential Lot.

or

\$2670 per Dwelling

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## Signing Page

**Signed, sealed and delivered** as a deed by the Parties.

**SIGNED SEALED AND DELIVERED**  
on behalf of the **GREATER GEELONG**

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<sup>1</sup> The final executed agreement will have the land and title details only of the relevant land owner. The list below is a list of all land parcels to which the requirement for a section 173 will be applied current as at the day of drafting.



**CITY COUNCIL** by Peter Bettess,  
General Manager Planning & Tourism  
pursuant to an instrument of delegation  
authorised by Council resolution, in the presence  
of:

.....  
P Bettess

.....  
Witness

**The Common Seal** of **## ACN ##** was affixed<sup>2</sup> )  
in accordance with s 127(2) of the )  
*Corporations Act 2001* in the presence of:

.....  
Signature of Director

.....  
Signature of Director/Company Secretary

.....  
Print full name

.....  
Print full name

**Signed Sealed and Delivered** by **##** in the )  
presence of: )  
..... )

.....  
Witness

**Signed Sealed and Delivered** by **##** in the )  
presence of: )  
..... )

.....  
Witness

<sup>2</sup> Owner execution details will be finalised at the time the execution document is prepared.



## as Mortgagee<sup>3</sup> of registered mortgage No. ## consents to the Owner entering into this Agreement and in the event that the Mortgagee becomes mortgagee-in-possession, agrees to be bound by the covenants and conditions of this Agreement.

.....

for exhibition

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<sup>3</sup> To be completed following a title search when execution is imminent.