



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

GREATER GEELONG CITY COUNCIL
Responsible Authority

- and -

BARWON REGION WATER CORPORATION
ABN 86 348 316 514
Registered Land Owner

in relation to land at:

42 LEATHER STREET, BREAKWATER

2SSM:21700324

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

THIS AGREEMENT is made the _____ day of _____

PARTIES:

1. **Greater Geelong City Council** of 30 Gheringhap Street, Geelong 3220
(**Responsible Authority**)
2. **Barwon Region Water Corporation** (as successor in law of Geelong Waterworks and Sewerage Trust and Geelong and District Water Board) ABN 86 348 316 514 of PO Box 659 Geelong, 3220
(**Owner**)

RECITALS:

- R.1. The Owner is the registered proprietor of the land known as 42 Leather Street, Breakwater, being the land described in Certificates of Title volume 6734 folio 612, volume 9053 folio 520, volume 9287 folio 379, volume 9922 folio 638, volume 9922 folio 640, volume 10034 folio 728 and volume 10034 folio 729 (**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 Owner has identified the Land as surplus to its requirements as a Regional Urban Water Corporation and seeks to re-zone the Land to the respective underlying zones under the Planning Scheme to facilitate its disposal.
- R.4. The Owner does not intend to conduct a detailed survey of the environmental conditions of the Land as part of its application to amend the zoning of the Land.
- R.5. The Responsible Authority will consider the re-zoning amendment without a survey of the environmental conditions if restrictions are placed on the future use of the Land.
- R.6. This Agreement is entered into between the Responsible Authority and the Owner pursuant to section 173 of the Act in order to advance the objectives of the Planning Scheme and to achieve the objectives of planning in Victoria in respect of the Land.

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.
- 1.3. **Certificate of environmental audit** and **statement of environmental audit** have the same meaning as in the *Environment Protection Act 1970*.
- 1.4. **Child Care Centre** has the same meaning as a Land Use Term as defined under the Planning Scheme.
- 1.5. **Current Address for Service**
 - 1.5.1. for the Responsible Authority means the address shown under the heading "Parties" in Agreement, or any other principal office address listed on the website of the Responsible Authority; and

- 1.5.2. for the Owner means the address shown under the heading "Parties" this Agreement or any other address provided by the Owner to the Responsible Authority for any purpose or purposes relating to the Land.
- 1.6. **Current Email Address for Service**
- 1.6.1. for the Responsible Authority means statplanning@geelongcity.vic.gov.au, or any other email address listed on the website of the Responsible Authority; and
- 1.6.2. 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.
- 1.7. **Current Number for Service**
- 1.7.1. for the Responsible Authority means 03 5272 4277, or any other facsimile number listed on the website for the Responsible Authority; and
- 1.7.2. 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.
- 1.8. **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.
- 1.9. **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.
- 1.10. **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.
- 1.11. **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.
- 1.12. **party** or **parties** means the Owner and the Responsible Authority under this Agreement as appropriate.
- 1.13. **Planning Scheme** means the Geelong Planning Scheme and any successor instrument or other planning scheme which applies to the Land.
- 1.14. **Responsible Authority** means Greater Geelong City Council in its capacity as:
- 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 1989* (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:

- 3.1. Subject to clause 3.2, the Land must not be used for a Child Care Centre.
- 3.2. The Responsible Authority will consider an application under the Planning Scheme to use the Land for a child care centre if:
 - 3.2.1. a certificate of environmental audit is issued for the Land specifying the environmental condition of the Land is not, or is not potentially, detrimental to any beneficial use of that Land; or
 - 3.2.2. a statement of environmental audit is issued stating that the environmental condition of the Land is not, or is not potentially, detrimental to a sensitive beneficial use.

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.

- 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.

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.

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. COMMENCEMENT AND ENDING OF AGREEMENT

16.1. This Agreement will commence on date that it bears.

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

EXECUTED AS A DEED

SIGNED SEALED AND DELIVERED on behalf of the **GREATER GEELONG CITY COUNCIL** by Peter Bettess, General Manager Planning & Development pursuant to an instrument of delegation authorised by Council resolution, in the presence of:

.....
P Bettess

.....
Witness

THE COMMON SEAL of **BARWON REGION WATER CORPORATION** was hereunto affixed in the presence of:

.....
Director

.....
Secretary

