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Date / /

Agreement under section 173 of the Planning and Environment Act 1987

Subject Land: Mollers Lane, Leopold

Purpose of Agreement: Payment of Infrastructure Contributions and Delivery of
Infrastructure Projects

City of Greater Geelong

and

##

Draft for exhibition

Interstate offices
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NOTE

This agreement has been prepared for exhibition purposes only.

If Amendment C367 is recommended for approval, Council will arrange for an execution version of this agreement to be prepared and signed by all owners of the land which is affected by Amendment C367.

All owners under Amendment C367 will be expected to agree among themselves as to who will be responsible for compliance with particular parts of this Agreement and specifically the delivery of the Infrastructure Projects as set out in the Schedule to this Agreement. One of the Infrastructure Projects comprises a signalised intersection which is not on the Subject Land but the responsibility for funding and delivery of this intersection is to borne across all of the owners and it is up to the owners to sort out who will be responsible for delivery noting that it must be delivered before the issue of a statement of compliance for the first stage of any development.

Council will not issue a statement of compliance for any stage of subdivision that contains an item of Infrastructure if it is not satisfied that the Infrastructure either has been provided or will be provided.

This agreement contains legal obligations on all owners. Owners should seek their own legal advice in relation to the obligations contained in this agreement.

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Schedule 1 **16**
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Draft for exhibition

Agreement under section 173 of the Planning and Environment Act 1987

Dated / / 2018

Parties

Name	City of Greater Geelong
Address	City Hall, 30 Gheringhap Street, Geelong, Victoria
Short name	Council
Name	The Owner set out in Schedule 1
Address	As set out in Schedule 1
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 C367 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 C367 proposes to:
- C.1 rezone the Subject Land from Farming Zone to General Residential Zone Schedule 1 under the Planning Scheme; and
 - C.2 apply other planning controls as appropriate to the Subject Land –
to give effect to the South Leopold Framework Plan.
- D. The Owner and Council have agreed that the Subject Land will:
- D.1 pay the Infrastructure Contribution;
 - D.2 carry out and complete the Infrastructure Projects; and
 - D.3 transfer Open Space Land to Council.
- E. 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.

- F. As at the date of this Agreement, the Subject Land is subject to a Caveat in favour of the Caveators. The Caveators consent to the recording of this Agreement on the certificates of title to the Subject Land.
- 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 record the terms and conditions on which the Owner is required to provide the Infrastructure Projects; and
 - G.3 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 annual Consumer Price Index (all groups) Melbourne as published by the Australian Bureau of Statistics.

Agreement means this agreement.

Amendment C367 means Amendment C367 to the Planning Scheme prepared by Council in its capacity as the Planning Authority.

Approval Date means the date on which a notice of approval is published under section 36 of the Act or Amendment C367 commences to operate whichever is the later.

Infrastructure Contribution means the contribution specified in Schedule 2 required to be made in respect of each Demand Unit in accordance with clause 3.1.

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

Infrastructure Project means the infrastructure projects listed in Schedule 3.

Land Project means the land component of any Infrastructure Project.

Localised Infrastructure means works, services or facilities necessitated by the subdivision or development of land including but not limited to provision of utility services such as water supply, stormwater drainage, sewerage, gas and electricity services, telecommunications infrastructure and local roads, bridges, culverts and other water crossings, any required associated traffic control measures and devices together with the associated land.

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.

Net Developable Hectare means that part of the Subject land available for development. This excludes encumbered land, arterial roads, community facilities and public open space. It includes lots, local streets and connector streets. Net Developable Area may be expressed in terms of hectare units namely Net Developable Hectares.

Northern Open Space means the northern most parcel of public open space identified in the plan attached as Annexure A.

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.

Open Space Land is any Land Project which comprises land for public open space.

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 the planning permit issued by Council for the staged multi lot subdivision of the Subject Land and other matters.

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.

Southern Open Space means the southern most parcel of public open space (encumbered and unencumbered) identified in the plan attached as Annexure A.

Stage means a stage identified in the staging plan from time to time which forms part of the Endorsed Plans under the Planning Permit.

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 to pay development contributions.

3.1 Infrastructure Contribution

The Owner covenants and agrees that in addition to the obligations in clause 4 of 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.

4. Obligation of Owner to deliver Infrastructure Projects

4.1 Owner to carry out Infrastructure Project

The Owner covenants and agrees that:

- 4.1.1 unless the Owner has been notified in writing by Council that an Infrastructure Project is to be delivered by a third party, the Owner must:
- (a) carry out and construct each Infrastructure Project in accordance with the Approved Plans; and
 - (b) prior to the Provision Trigger identified in Schedule 3 unless the Collecting Agency has agreed to an alternative time.

4.2 Design and construction of Infrastructure Projects

The Owner agrees that, except with the prior written consent of Council:

- 4.2.1 the Owner will, at its cost, prepare the plans and specifications of each Infrastructure Project and submit those plans and specifications to Council for approval;
- 4.2.2 the plans and specifications must:
 - (a) be to the satisfaction of Council;
 - (b) comply with any conditions or requirements of any relevant planning permit or the Planning Scheme;
- 4.2.3 approval of the Designs by Council will be reflected in a set of plans and specifications endorsed by Council as the Approved Plans; and
- 4.2.4 the Owner will obtain all necessary permits and approvals for the Infrastructure Projects;
- 4.2.5 the Owner will construct the Infrastructure Projects in accordance with the Approved Plans to the satisfaction of Council unless Council has approved in writing a variation from the Approved Plans;

5. Environmental Assessment of Land Projects

The Owner covenants and agrees that prior to transferring to or vesting any Land Project or Open Space Land to or in Council, the Owner must provide Council with an environmental assessment prepared by a properly qualified environmental consultant that clearly and unequivocally states that the Land Project or Open Space Land is suitable to be used and developed for purpose for which it is intended.

6. Acknowledgement by the Owner

The Owner acknowledge and agree that:

- 6.1.1 This Agreement contains obligations for the delivery of infrastructure namely the Infrastructure Projects but this Agreement does not specify which Owner is responsible for delivery of any particular item of Infrastructure Projects;
- 6.1.2 Council will not issue a Statement of Compliance for any plan of subdivision unless Council is satisfied that the Infrastructure Project has been delivered by the Provision Trigger for any particular item of Infrastructure;
- 6.1.3 It is the responsibility of the Owner or where the owner is more than one person the Owners to arrange between themselves who will be responsible for the delivery of any particular Infrastructure Project;
- 6.1.4 this Agreement relates only to infrastructure that is commonly funded by a development contributions plan and not Localised Infrastructure; and
- 6.1.5 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.

7. Acknowledgements of Council

Council acknowledges that it will apply any amount received under this Agreement for the purpose of providing community facilities within Leopold.

8. Further obligations of the Parties

8.1 Notice and registration

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

8.2 Further actions

The Owner:

- 8.2.1 must do all things necessary to give effect to this Agreement;
- 8.2.2 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.

8.3 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

drafting execution and registration of this Agreement which are and until paid will remain a debt due to Council by the Owner.

8.4 Interest for overdue moneys

8.4.1 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.

8.4.2 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.

8.5 Localised Infrastructure

The Parties acknowledge and agree that:

8.5.1 this Agreement does not relate to Localised Infrastructure; and

8.5.2 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.

9. 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.

10. Owner's Warranties

10.1 The Owner warrants that apart from the Owner and 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.

10.2 The Owner warrants that the Open Space Land and any Land Project is in an environmental condition such as to be suitable to be used and developed for the purpose for which it is intended to be put.

11. 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:

11.1 give effect to this Agreement; and

11.2 enter into a deed agreeing to be bound by the terms of this Agreement.

12. General matters**12.1 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:

12.1.1 personally on the person;

12.1.2 by leaving it at the person's current address for service;

12.1.3 by posting it by prepaid post addressed to that person at the person's current address for service;

12.1.4 by facsimile to the person's current number for service; or

12.1.5 by email to the person's current email address for service.

12.2 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.

12.3 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.

12.4 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.

12.5 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.

12.6 Governing law

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

13. GST**13.1 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.

13.2 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.

13.3 Recipient must pay

If GST is payable in respect of any supply made by a supplier under this Agreement, subject to clause 13.4 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.

13.4 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 13.3.

14. Foreign resident capital gains withholding

14.1 Definitions

For the purposes of this clause, the following definitions apply:

Clearance Certificate means a valid clearance certificate under section 14-220(1) of Schedule 1 to the Tax Act.

Consideration means any monetary and non-monetary consideration including a Credit required to be paid or given by Council to the Owner for the transfer or vesting of a Land Project or in respect of Open Space Land under this Agreement.

Excluded Transaction has the meaning given to that term in section 14-215 of Schedule 1 to the Tax Act.

Statement of Compliance has the same meaning as in the Subdivision Act 1988

Tax Act means the *Taxation Administration Act 1953* (Clwth)

Variation Amount means, where the Owner has served a Variation Notice on Council, the amount required to be withheld as specified in the Variation Notice.

Variation Notice means a valid variation notice issued by the Australian Taxation Office in respect of a variation application made under section 14-235(2) of Schedule 1 of the Tax Act.

14.2 Foreign resident status of Owner

The Owner is taken to be foreign residents under Subdivision 14-D of Schedule 1 to the Tax Act unless the Owner gives to Council a Clearance Certificate no later than 10 Business Days before the Land Project and the Open Space Land is transferred to or vested in Council.

14.3 Excluded transaction

14.3.1 Clause 14.5 does not apply if:

- (a) the transfer or vesting of the Land Project or the Open Space Land is an Excluded Transaction; and

- (b) the Owner provides Council with all information and documentation to satisfy Council that the transfer or vesting of the Land Project and the Open Space Land is an Excluded Transaction no later than 10 Business Days before the Land Project or the Open Space land as the case may be is transferred to or vested in Council's ownership.

14.3.2 Without limiting clause 14.3.1, the transfer or vesting of a Land Project or Open Space Land is an Excluded Transaction if the market value of the Land Project or Open Space Land as at the date of this Agreement is less than \$750,000.

14.4 Variation notice

If the Owner provides Council with a Variation Notice prior to the transfer or vesting of the Land Project and Open Space Land, then Council will adjust the withholding amount (as specified in clause 14.5 below) in accordance with the Variation Notice.

14.5 Withholding

14.5.1 This clause 14.5 applies if the Owner is taken to be foreign residents under clause 14.2 and the Owner has not satisfied Council that the transfer or vesting of the a Land Project and Open Space Land is an Excluded Transaction under clause 14.3.

14.5.2 Subject to clauses 14.5.3 and 14.5.4, Council will deduct from any monetary consideration payable to the Owner an amount equal to:

- (a) 12.5% of the Consideration (excluding GST) in accordance with section 14-200(3) of Schedule 1 to the Tax Act; or
- (b) the Variation Amount, if the Owner have provided Council with a Variation Notice in accordance with clause 14.4,

(withholding amount).

14.5.3 Subject to clause 14.5.4, if any monetary consideration payable to the Owner is less than 12.5% of the Consideration, the Owner must deliver to Council:

- (a) a cash payment equal to 12.5% of the Consideration (or such other amount as required by Council); or
- (b) the Variation Amount, if the Owner has provided Council with a Variation Notice in accordance with clause 14.4 -

upon delivery of the executed form of this Agreement to Council or such other time as Council may have allowed in writing as notified to the Owner.

14.5.4 If there is no Consideration specified in this Agreement, the Owner must deliver to Council:

- (a) a cash payment equal to 12.5% of the market value of the Land Project and Open Space Land valued as at the date of this Agreement; or
- (b) the Variation Amount, if the Owner has provided Council with a Variation Notice in accordance with clause 14.4,

upon delivery of the executed form of this Agreement to Council or such other time as Council may have allowed in writing as notified to the Owner and the Developer.

14.9 Owner's and Developer's warranty

The Owner warrants that the information provided to Council under this clause 14 is true and correct.

14.10 Indemnity

The Owner agrees to indemnify Council against any interest, penalty, fine or other charge or expense incurred by Council as a result of the Owner's failure to comply with this clause 14.

15. Commencement of Agreement

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

16. Amendment of Agreement

16.1 This Agreement may be amended in accordance with the Act.

16.2 If notice of a proposal to amend this Agreement is required pursuant to section 178C of the Act, the parties agree that only Council and the Owner of the Subject Land or that part of the Subject Land that is the subject of the proposal to amend this Agreement are required to be notified of the proposal.

17. Ending of Agreement

17.1 This Agreement ends:

17.1.1 when the Owner has complied with all of the Owner's obligations under this Agreement; or

17.1.2 otherwise by agreement between the Parties in accordance with section 177 of the Act.

17.2 Upon the issue of a Statement of Compliance for a plan of subdivision for any Residential Lot 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.

17.3 If notice of a proposal to end this Agreement is required pursuant to section 178C of the Act, the parties agree that only Council and the Owner of the Subject Land or that part of the Subject Land that is the subject of the proposal to end this Agreement are required to be notified of the proposal.

17.4 Once this Agreement ends as to part of the Subject Land, 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(2) of the Act to cancel the recording of this Agreement on the register as to that part of the Subject Land.

17.5 On completion of all the Owner's obligations under this Agreement, Council must as soon as practicable following the ending of this Agreement and at the Owner's request and at the



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Owner's cost, execute all documents necessary to make application to the Registrar of Titles under section 183(2) of the Act to cancel the recording of this Agreement on the register.

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Schedule 1

Subject Land

Address:

Subject Land and Certificate of title details:

[##Title details to be supplied by owners for insertion into the execution version agreements]

Schedule 2

Infrastructure Contribution

\$40,000 per Net Developable Hectare.

Schedule 3

INFRASTRUCTURE PROJECTS

(refer attached table)

Table to Schedule 3			
Project Number	Infrastructure Project¹ Description	Extent of Project	Provision Trigger for the completion of the Infrastructure Project
1	The parks and Open Space Land along the creek/watercourse alignments including playground equipment seating, shared walking cycling paths, landscaping trees and utility services In accordance with the Open Space Plan reference number 15196-100 OSP U Version U dated 17 -01-2017 and the Integration Plan Drawing number 15196-100-IP version U dated 14 – 12 - 2017.	To the extent shown in accordance with the Open Space Plan reference number 15196-100 OSP U Version U dated 17 -01-2017 and the Integration Plan Drawing number 15196-100-IP version U dated 14 – 12 - 2017 . The details of the inclusions of park furniture playground equipment and the like must be as per the Approved Plans .	The Northern Open Space is to be delivered before the issue of a Statement of Compliance in respect of Stage 4 for that part of the northern open space which is in Stage 4 and by Stage 8 in respect of that part of the northern open space which is in Stage 8 The Southern Open Space is to be delivered before the issue of a Statement of Compliance in respect of Stage 12.
2	Drainage Infrastructure and water detention basins generally as shown in. the Open Space Plan reference number 15196-100 OSP U Version U dated 17 -01-2017 but more particularly as per any drainage plan forming part of the Approved Plans . .	To the extent shown in the Open Space Plan reference number 15196-100 OSP U Version U dated 17 -01-2017 but more particularly designed in accordance with any drainage plan forming part of the Approved Plans.	The drainage infrastructure and water detention basin forming part of the Northern Open Space is to be constructed and completed prior to the issue of a Statement of Compliance in respect of Stage 1 The drainage infrastructure and water detention basin forming part of the Southern Open Space is to be constructed and completed prior to the issue of a Statement of Compliance in respect of Stage 6.
3	The widening and upgrade of the western side of Mollers Lane so as to have a total road reservation width of 22 metres in accordance with plans forming part of the Approved Plans.	To the extent shown in	The widening of Mollers Lane must as each plan of subdivision adjoining that part of Mollers Lane proceeds, with the exception of that portion of Mollers Lane which is adjacent to Stage 13. That part of of Mollers Lane which is adjacent to Stage 13 must be widened as part of the plan of subdivision for Stage 3 extending south up to the boundary with Stage 4.

¹ Infrastructure Project is a defined phrase in this Agreement.



4	Signalised intersection works to upgrade the intersection of Bellarine Highway and Mollers Lane in accordance with the relevant conditions in the Planning Permit and in accordance with the Approved Plans	Signalised Intersection between Mollers Lane and Bellarine Highway	Prior to the issue of a Statement of Compliance for the first Stage.
5	All Connector and other internal Roads	To the extent shown in the Planning Permit	The issue of a Statement of Compliance in respect of the Stage within which the road is located.
6	Sewerage Pumping Station(s)	To the extent required by Barwon Water	As required by Barwon Water.

Annexure A

Plan



proposed
subdivision and sta

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