

Deed of Agreement under s173 of the
Planning and Environment Act 1987

Early Delivery of Road Land

**Curlewis Land Pty Ltd
(ACN 653 382 766)**

(Owner)

and

City of Greater Geelong

(Council)

DRAFT

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Ref: MB:OR:1149799

Deed of Agreement

Date

Parties

Curlewis Land Pty Ltd ACN 653 382 766)

of Suite 2, Level 8, 412 St Kilda Road, Melbourne VIC 3004

(Owner)

City of Greater Geelong

of 137 - 149 Mercer Street, Geelong VIC 3220

(Council)

Recitals

- A. Council is the Responsible Authority pursuant to the Act for the administration and enforcement of the Planning Scheme, which applies to the Subject Land.
- B. The Council also acts in its capacity as the Collecting Agency and Development Agency under the Act and enters into this Agreement in these capacities.
- C. The Owner is, or is entitled to be, the registered proprietor of the title that comprises the Subject Land, which is the land over which this Agreement is intended to be registered.
- D. Council is progressing Amendment C387 to the Planning Scheme which proposes to facilitate residential development in the Jetty Road Urban Growth Area by:
- (a) rezoning land to the General Residential Zone;
 - (b) applying the Development Contributions Plan Overlay to implement the DCP; and
 - (c) applying the Development Plan Overlay.
- E. The Subject Land is within the area proposed to be affected by Amendment C387.
- F. The Owner intends to develop the Subject Land for residential purposes following the approval of Amendment C387. Before Council adopts Amendment C387, Council has requested the Owner to enter into this Agreement to facilitate the early

provision of the Road Land to enable the delivery of Roadworks under the DCP.

- G. This Agreement is intended to take effect following the gazettal of Amendment C387.

This deed witnesses that in consideration of, among other things, the mutual promises contained in this deed the Parties agree as follows:

1. Definitions and interpretation clauses

1.1 Definitions

In this deed the following definitions apply:

Act	means the <i>Planning and Environment Act 1987</i> (Vic).
Agreement	means this deed of agreement and any Agreement executed by the Parties expressed to be supplemental to this Agreement.
Amendment C387	means Amendment C387 to the Planning Scheme described in Recital D.
Approval Date	means the date on which a notice of approval of Amendment C387 is published in the Government Gazette in accordance with section 36 of the Act.
Business Day	means a day that is not a Saturday, Sunday or public holiday in Melbourne.
Collecting Agency	has the same meaning as in the Act.
Concept Design Plan and Costings	means the concept design plans and costings for the Roadworks in accordance with the DCP.
Council and Responsible Authority	means City of Greater Geelong.

Credit	means a credit in the amount of the Land Value or the Roadworks Value as the case may be, which has or may accrue to the Owner (as the case may be) and which may then be offset against the Owner's liability to pay the Development Infrastructure Levy.
Current Address for Service	for the Council 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 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.
Current Email Address for Service	for the Council means statplanning@geelongcity.vic.gov.au or any other email address listed on the website of the Council; and for the Owner means any email address provided by the Owner to the Council for the express purpose of electronic communication regarding this Agreement.
DCP	means the development contributions plan that is proposed to be approved as part of Amendment C387 or any other DCP that applies or is proposed to apply to the Subject Land.
Design and Construction Plan	means the detailed design and engineering plans and specifications for the construction of the Roadworks in accordance with the DCP.
Development Agency	has the same meaning as in the Act.
Development Infrastructure Levy	means the development infrastructure levy payable under the DCP.
Development Contributions Plan Overlay	means the Development Contributions Plan Overlay under the Planning Scheme.
Development Plan Overlay	means the Development Plan Overlay under the Planning Scheme.

General Residential Zone	means the General Residential Zone under the Planning Scheme.
Indexation	means an annual adjustment to an amount carried out in accordance with the methodology set out or referred to in the DCP.
Land Value	means the fixed amount specified for the Road Land in the DCP subject to Indexation.
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 in the Subject Land or any part of it and includes a Mortgagee-in-possession.
Party or Parties	means the Owner and Council under this Agreement as appropriate.
Plan of Subdivision	means the plan or plans of subdivision in respect of the Subject Land.
Planning Scheme	means the Greater Geelong Planning Scheme and any successor instrument or other planning scheme which applies to the Subject Land.
Planning Permit	means a planning permit issued by Council for the subdivision or development of the Subject Land, as amended from time to time.
RD-01	means the extent of road to the north of RD-05 to the three-exit roundabout at Centennial Boulevard and Greenvale Drive as shown in the DCP.
RD-02	the extent of road from RD-03 to RD-05 as shown in the DCP.
RD-03	the extent of road from RD-06 to the northern boundary of the Bellarine Rail Trail as shown in the DCP.

RD-05	means the four-exit roundabout being the intersection of Coriyule Road to the west, Greenvale Drive to the north, Appleby Street to the east and Tivoli Drive to the south as shown in the DCP.
RD-06	means the three-exit signalised intersection of Portarlington Road and Tivoli Road as shown in the DCP.
Register	means the Register of land kept under section 27 of the <i>Transfer of Land Act 1958</i> (Vic).
Registrar of Titles	means the Registrar of Titles under the <i>Transfer of Land Act 1958</i> (Vic) and includes any Deputy Registrar of Titles and any Assistant Registrar of Titles.
Road Land	means that part of the Subject Land which is to be transferred to or vested in Council and which is required for the provision of RD-03 and RD-05 .
Roadworks	means the construction of the ultimate profile of RD-03 in accordance with plans approved by Council under the Planning Permit.
Roadworks Value	means the amount specified for that part of the Roadworks in the DCP.
Stage	means a stage of the subdivision or development of the Subject Land which is approved by the Planning Permit.
Statement of Compliance	means a statement of compliance issued by Council under the <i>Subdivision Act 1988</i> .
Subject Land	means the following land: <ul style="list-style-type: none"> (a) certificate of title Volume 08501 Folio 901, formally described as Lot 1 PS616244; (b) certificate of title Volume 08158 Folio 910, formally described as Lots 1 and 2 TP337808; and (c) certificate of title Volume 8414 Folio 301, formally described as Lot 1 TP338291

also known as 1421-1423 Portarlington Road Curlewis VIC 3222, 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.

Substantially Commenced

means, in relation to clause 2.2(c), that the Roadworks have commenced and reached the stage of the placement of Class 3 Crushed Rock Sub-Base.

1.2 Interpretation

- (a) In this Agreement, unless the context otherwise requires:
- (i) The singular includes the plural and vice versa.
 - (ii) A reference to a gender includes a reference to each other gender.
 - (iii) A reference to a person includes a reference to a firm, corporation or other corporate body and that person's successors in law.
 - (iv) If a Party consists of more than one person this Agreement binds them jointly and each of them severally.
 - (v) A term used in this Agreement has the meaning as defined in this Agreement. If a term 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.
 - (vi) 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.
 - (vii) References to a Party will include their transferees, heirs, assigns, and liquidators, executors and legal personal representatives as the case may be.
 - (viii) Reference to a document or agreement includes reference to that document or agreement as changed, novated or replaced from time to time.
 - (ix) The introductory clauses to this Agreement are and will be deemed to form part of this Agreement.
 - (x) Headings are for guidance only and do not affect the interpretation of this Agreement.
 - (xi) 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, and bind the Owner, its successors,

transferees and permitted assigns, the registered proprietor or proprietors for the time being of the Subject Land.

2. Owner's obligations

2.1 Provision of Road Land

The Owner covenants and agrees:

- (a) that it must transfer to or vest in Council, the Road Land in return for the Land Value:
 - (i) within three months of Approval Date of Amendment C387, unless Council in its capacity as Development Agency agrees to a different time;
 - (ii) free of all encumbrances, including any structure, debris, waste, refuse and contamination, except as otherwise agreed by Council in its capacity as Development Agency;
 - (iii) free of any fees and charges associated with the delivery of the Road Land; and
 - (iv) otherwise in a condition that is to the satisfaction of Council in its capacity as Development Agency.
- (b) the Owner is responsible for the preparation and registration of the Plan of Subdivision to facilitate the transfer or vesting of the Road Land in Council in accordance with clause 2.1(a)(i);
- (c) the Land Value:
 - (i) is to be paid as a Credit to the Owner;
 - (ii) is a fixed amount subject to Indexation; and
 - (iii) replaces the market value and any other method of calculating compensation payable to a person under the *Land Acquisition and Compensation Act 1986* and the Act in respect of the Road Land;
- (d) upon the Credit being extended to the Subject Land in accordance with this Agreement in respect of the Land Value, no other compensation is payable for the effect of severance or for solatium as those terms or concepts are understood in the context of the *Land Acquisition and Compensation Act 1986* or for any other category of or form of loss or compensation in respect of the Road Land.

2.2 Construction of Roadworks prior to Statement of Compliance/Commencement of Use

The Owner covenants and agrees that:

- (a) the Roadworks must be constructed:
 - (i) prior to the issue of a Statement of Compliance for the first Stage of the subdivision on the Subject Land; or
 - (ii) prior to the commencement of the residential use of any part of the Subject Land—

whichever occurs first, except as otherwise agreed by Council in accordance with clause 2.2(c);
- (b) Council may withhold the issue of a Statement of Compliance if the Roadworks have not been completed in accordance with clause 2.2(a) or an extension of that time granted under clause 2.2(c); and
- (c) Council may, at its absolute discretion, issue a Statement of Compliance for the first Stage of subdivision of the Subject Land before the Roadworks are completed in accordance with clause 2.2(a) if the Owner provides Council with:
 - (i) evidence that the construction of the Roadworks is Substantially Commenced;
 - (ii) access to the Subject Land to enable Council to inspect the Roadworks; and
 - (iii) the submission of a Traffic Report, if requested by the Responsible Authority which shows that any dwellings on the Subject Land can be provided with safe access and egress before the opening of Tivoli Drive,

all to the satisfaction of the Council.

3. Council obligations

3.1 Council Approvals

- (a) Council will use its best endeavours to review and determine whether to approve the following documents which are associated with the Road Land and Roadworks within 28 Business Days from the date the document is provided to Council:
 - (i) Plan of Subdivision;
 - (ii) Concept design plan and costings; and

- (iii) Design and construction plan.
- (b) Where Council determines to refuse to approve a document referred to in clause 3.1(a), Council agrees to provide reasons for that determination to the person who provided the document to Council.

3.2 Credit

In its role as Collecting Agency under the Act, Council covenants and agrees that:

- (a) provided the Owner transfers to or vests the Road Land in Council in accordance with clause 2.1 of this Agreement, the Owner will be entitled to a Credit for the Land Value from the Approval Date;
- (b) the Owner may be entitled to a Credit for the Roadworks Value if the Owner enters into a future works-in-kind agreement with Council and provides the Roadworks in accordance with the terms of that agreement; and
- (c) the Credit for the Land Value will remain available to the Owner until such time as the value of the Credit is fully offset against the liability of the Subject Land for the Development Infrastructure Levy.

4. Further obligations

4.1 Notice and registration

The Owner will bring this Agreement to the notice of all prospective purchasers, Mortgagees, lessees, charges, transferees and assigns of the Subject Land.

4.2 Giving effect to this Agreement

The Owner will do all things necessary to give effect to this Agreement, including executing any further documents and will comply with its obligations under this Agreement.

4.3 Recording by Registrar of Titles

The Owner will consent to Council making application to the Registrar of Titles to make a recording of this Agreement in the Register 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 signing any further agreement, acknowledgement or document or procuring the consent to this Agreement of any Mortgagee or caveator to enable the recording to be made in the Register under that section.

4.4 Council's costs to be paid

- (a) The Owner will immediately pay to Council, Council's reasonable costs and expenses (including legal expenses) of and incidental to the:

- (i) preparation, drafting, negotiation, finalisation, engrossment, execution, registration and enforcement of this Agreement;
- (ii) assessment, preparation, drafting, negotiation, finalisation, engrossment, execution, registration and enforcement of any amendment to this Agreement;
- (iii) the cancellation or alteration of this Agreement in the Register; and
- (iv) determination of whether any of the Owner's obligations have been undertaken to the satisfaction of Council or to give consent to anything under this Agreement,

which are and until paid will remain a debt due to Council by the Owner.

- (b) If in dispute, Council may have the costs assessed by the Law Institute of Victoria Costing Service and the parties will be bound by any assessment, and the cost of any assessment will be paid equally by the parties.

5. Agreement under Section 173 of the Act

Council and the Owner agree without limiting or restricting their respective powers to enter into this Agreement and, insofar as it can be so treated, this Agreement is made pursuant to section 173 of the Act.

6. Owner's warranties

Without limiting the operation or effect which this Agreement has, the Owner warrants that apart from the Owner and any other person which 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.

7. Successors in title

Without limiting the operation or effect which this Agreement has, the Owner must ensure that until such time as a memorandum of this Agreement is registered on the title to the Subject Land, successors in title shall be required to:

- (a) give effect to and do all acts and sign all documents which will require those successors to give effect to this Agreement; and
- (b) execute a deed agreeing to be bound by the terms of this Agreement.

8. Notices

8.1 Service

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:

- (a) by delivering it personally to that Party;
- (b) by sending it by prepaid post addressed to that Party's Current Address for Service; or
- (c) by electronic mail to that Party's Current Email Address for Service.

8.2 Time of service

A notice or other communication is deemed served:

- (a) if delivered, on the next following Business Day;
- (b) if posted, on the expiration of two Business Days after the date of posting, or
- (c) if sent by electronic mail, at the time the communication is deemed to be received under the *Electronic Transactions (Victoria) Act 2000* (Vic).

9. Miscellaneous

9.1 Commencement of Agreement

This Agreement commences from the date of this Agreement, but the obligations in this Agreement only take effect from the Approval Date.

9.2 Default

- (a) If the Owner fails to comply with the provisions of this Agreement, Council may serve a notice on the Owner specifying the works, matters and things in respect of which the Owner is in default.
- (b) If the alleged default continues for 30 days after the service of such notice, Council may, by its officers, employees, agents and contractors, enter the Subject Land and ensure that the works, matters and things are carried out.
- (c) The costs incurred by the Council in undertaking the works as a result of the Owner's default will be payable by the Owner.

9.3 Ending of Agreement

The Parties agree that this Agreement will end:

- (a) with respect to a Residential Lot, upon the issue of a Statement of Compliance relating to a subdivision which creates the Residential Lot, provided that the Agreement must remain registered on the balance of the Subject Land;
- (b) once the Owner has completed, to the satisfaction of Council, all of the obligations imposed upon it under this Agreement; or
- (c) otherwise in accordance with the Act.

9.4 Application to Registrar

As soon as reasonably practicable after the Agreement has ended, Council will, at the request and at the cost of the Owner make application to the Registrar of Titles under section 183(2) of the Act to cancel the recording of this Agreement on the register.

9.5 No fettering of Council's powers

It is acknowledged and agreed that this Agreement does not fetter or restrict the power or discretion of Council 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 Subject Land or relating to any use or development of the Subject Land.

9.6 No waiver

The Parties agree that:

- (a) 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:
 - (i) a waiver of strict and literal performance of and compliance with any other provision, condition or requirement of this Agreement; or
 - (ii) a waiver or release any party from compliance with any provision, condition or requirement in the future; and
- (b) any delay or omission of any Party to exercise any right under this Agreement in any manner will not impair the exercise of such right accruing to it thereafter.

9.7 Severability

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.

9.8 Proper law

This Agreement is governed by and the Owner submits to the laws of the State of Victoria.

9.9 Interest on overdue moneys

Any amount due under this Agreement but unpaid by the due date incurs interest at the rate prescribed under section 120 of the *Local Government Act 2020* (Vic) and any payment made shall be first directed to payment of interest and then the principal amount owing.

9.10 Counterparts, Electronic Signing and Exchange

- (a) This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute this Agreement.
- (b) Execution by either or both parties of a fax or email copy of this Agreement, or transmission or email of a copy of this Agreement, executed by that party, will constitute valid and binding execution of this Agreement by such party or parties.
- (c) The parties acknowledge and agree that this Agreement may be executed electronically in accordance with the requirements of the *Electronic Transactions (Victoria) Act 2000* (Vic).

Executed as a deed

SIGNED on behalf of **GEELONG CITY COUNCIL** by **XXXXX**, **EXECUTIVE DIRECTOR PLANNING AND DESIGN** pursuant to an instrument of delegation authorised by a Council resolution dated 30 August 2021 in the presence of:

.....
Signature of delegate

.....
Witness

.....
Print name

By witnessing this Agreement, the above witness confirms that either:

- this Agreement was signed physically in their presence; or
- where this Agreement was witnessed via audio-visual link, the requirements for witnessing by audio-visual link under section 12 of the Electronic Transactions (Victoria) Act 2000 (Vic) have been met.

Executed by Curlewis Land Pty Ltd ACN 653 382 766 in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

Signature of Director

Signature of Director/Company Secretary

Full name (print)

Full name (print)

By witnessing this Agreement, the above witness confirms that either:

- this Agreement was signed physically in their presence; or
- where this Agreement was witnessed via audio-visual link, the requirements for witnessing by audio-visual link under section 12 of the Electronic Transactions (Victoria) Act 2000 (Vic) have been met.