

**DEED OF AGREEMENT
UNDER SECTION 173 OF THE
PLANNING AND ENVIRONMENT ACT 1987 (VIC)**

692-700 PORTARLINGTON ROAD, LEOPOLD

Dated

Made between

Greater Geelong City Council

(Council)

and

#####

(Owner)

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PARTICULARS

BACKGROUND

- A. Council is:
 - I. the responsible authority pursuant to the Act for the Planning Scheme applying to the Land; and
 - II. the planning authority for Amendment C441ggee to the Planning Scheme.
- B. The Owner is or is entitled to be the registered proprietor of the Land.
- C. The Planning Scheme requires that a planning permit for subdivision must include a mandatory condition requiring the Owner to enter into an Agreement under section 173 of the Act.
- D. Amendment C441ggee proposes to:
 - I. rezone the Land from Farming Zone to General Residential Zone – Schedule 1 under the Planning Scheme, in support of the objectives under the Leopold Structure Plan;
 - II. apply a Design and Development Overlay to the Land and to the Land and to 672 – 690 Portarlinton Road, Leopold, Victoria; and
 - III. apply an Environmental Audit Overlay to the Land.
- E. The Parties agree that the Owner will pay the Community Infrastructure Contribution.
- F. The Parties enter into this Deed to record the terms and conditions of each Party to the agreement.

This deed of agreement under section 173 of the Planning and Environment Act 1987 (Vic) (**Deed**) is made up of the Particulars and Operative Provisions.

No.	Item	Details
1.	Date of Deed:	[date]
2.	Council:	Greater Geelong City Council City Hall, 30 Gheringhap Street, Geelong VIC 3220
3.	Owner:	##### 692 – 700 Portarlinton Road, Leopold VIC 3224 Email: [insert]
4.	Land:	The land comprised in: (a) Certificate of Title Volume 10227 Folio 495, namely lot 1 on title plan 120971E situated at 692 – 700 Portarlinton Road, Leopold VIC 3224 (Second Owner Land).
5.	Community Infrastructure Contribution	\$40,000.00 per hectare of Net Developable Area.

SIGNED, SEALED AND DELIVERED AS A DEED

SIGNED SEALED AND DELIVERED on behalf of the **GREATER GEELONG CITY COUNCIL** by _____ pursuant to an instrument of delegation authorised by Council resolution, in the presence of:

Witness's signature

Print witness name

Council seal

Date

Authorised delegate's signature

SIGNED SEALED AND DELIVERED by ##### in the presence of:

#####

Witness's signature

Date

Print witness name

OPERATIVE PROVISIONS

1. Definitions and Interpretation

1.1 Definitions

In this Deed, except where the context otherwise requires:

- (a) **Act** means the *Planning and Environment Act 1987* (Vic);
- (b) **Amendment C441ggee** means amendment C441ggee to the Planning Scheme prepared by Council in its capacity as the planning authority;
- (c) **Business Day** means a day which is not a Saturday, Sunday, public holiday or bank holiday in Melbourne, Victoria;
- (d) **Certificate of environmental audit** and **statement of environmental audit** have the same meaning as in the *Environment Protection Act 1970*.
- (e) **Community Infrastructure Contribution** means the amount set out in Item 5 as at the commencement of this Deed and subject to adjustment in accordance with the provisions of this Deed;
- (f) **Community Infrastructure Levy** is a levy imposed by a development contributions plan prepared pursuant to Part 3B of the Act;
- (g) **CPI** means the annual Consumer Price Index (all groups) Melbourne as published by the Australian Bureau of Statistics or its successor, and includes any published index replacing the Consumer Price Index;
- (h) **GST** means the goods and services tax levied pursuant to the GST Act and includes any replacement or subsequent similar tax;
- (i) **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (j) **Infrastructure Contribution** is any contribution imposed by any infrastructure contributions plan prepared pursuant to Part 3AB of the Act;
- (k) **Item** means an item of the Particulars to this Deed;
- (l) **Land** means the land described in Item 4 and any reference to Land in this Deed includes any lot created via subdivision of the Land or any part of it;
- (m) **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 thereof;
- (n) **Net Developable Area** means those parts of the Land which are available for development, including lots and local streets. This excludes encumbered land, arterial roads, significant heritage sites, schools, community facilities and public open space;
- (o) **Owner** means the person 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 Land or any part of the Land and includes any Mortgagee-in-possession;
- (p) **Particulars** means the particulars commencing on page 2 of this Deed;

- (q) **Parties** means the parties to this Deed, and **Party** means any one of them;
- (r) **Plan of Subdivision** means a plan of subdivision of the Land which, upon registration, creates any number of additional lots which can be disposed of separately;
- (s) **Planning Scheme** means the City of Greater Geelong Planning Scheme and any other planning scheme that applies to the Land;
- (t) **Registrar of Titles** means the Victorian Registrar of Titles;
- (u) **Residential Lot** means a lot which is of an appropriate size and dimension to be developed with a residential house without further subdivision, in the sole opinion of Council; and
- (v) **Sensitive Use** has the same meaning as defined in the *Ministerial Direction No.1 – Potentially Contaminated Land*.
- (w) **Statement of Compliance** means a statement of compliance issued by Council under the *Subdivision Act 1988 (Vic)*.

1.2 Interpretation

In this Deed:

- (a) headings to clauses are for convenience only and do not affect interpretation;
- (b) any reference to a clause, recital, particular or annexure is a reference to a clause of, recital in, particular of or annexure to, this Deed;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) if a word or phrase is not defined in this Deed but is defined in the Act, it holds the same meaning in this Deed as defined in the Act;
- (e) a reference to dollars and "\$" is to Australian currency;
- (f) a reference to a statute, ordinance, code or other law, including the Act or Planning Scheme, includes a regulation, rule or other statutory instrument issued under it and consolidations, amendments, re-enactments or replacements of any of them;
- (g) a reference to a document includes any variation or replacement of it;
- (h) a reference to a person includes a reference to the person's executors, administrators, substitutes (including, but not limited to, persons taking by novation), successors and permitted assigns;
- (i) a reference to time is to Geelong, Victoria, Australia time;
- (j) where any obligation of this Deed is to be performed on a day other than a Business Day, that obligation is to be performed on the next Business Day;
- (k) if an act under this Deed to be done by a party on or by a given day is done after 5.00 pm on that day, it is taken to be done on the next day;
- (l) if the Owner comprises two or more persons, this Deed binds them jointly and each of them individually;
- (m) where any time period is required to be calculated from a specified date, that date will not be included in the calculation;
- (n) any indemnity in this Deed is a continuing indemnity and survives termination;

- (o) the singular includes the plural and vice versa;
- (p) a reference to a gender includes all genders;
- (q) the words "include", "including", "for example", "such as" or cognate expressions are to be construed without limitation;
- (r) the word "person" includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or any government agency;
- (s) a reference to a group of persons or things is a reference to any two or more of them jointly and to each of them individually.

2. Obligations of the Owner

2.1 Community Infrastructure Contribution

- (a) The Owner must pay the portion of Community Infrastructure Contribution in respect to the part of the Land which forms part of a Plan of Subdivision. Such portion of Community Infrastructure Contribution must be paid prior to the issue of a Statement of Compliance for the relevant Plan of Subdivision.
- (b) On 1 July each year, the Community Infrastructure Contribution is to be adjusted by the CPI.
- (c) The Parties agree, and Council acknowledges, that:
 - (i) the Community Infrastructure Contribution is inclusive of any Community Infrastructure Levy and/or Infrastructure Contribution which may be levied or payable under the Act; and
 - (ii) payment of the Community Infrastructure Contribution will satisfy any obligation imposed on the Owner to pay a Community Infrastructure Levy prior to the issue of a building permit.

2.2 Attachment to Land

- (a) Pursuant to the Act, this Deed will be recorded as a registered encumbrance on the title of the Land. The Parties agree that this Deed creates separate and severable covenants which run with the Land, at law and in equity, and where the Land is subdivided, this Deed must be interpreted such that each subsequent owner of a lot which forms part of the Land will only be responsible for those covenants which relate to that owner's lot.

3. Council's use of Community Infrastructure Contribution

- 3.1 Pursuant to the purposes of this agreement, Council will utilise the amount of Community Infrastructure Contribution received from the Owner for the purpose of providing community facilities within Leopold, Victoria.

4. Other Obligations

4.1 Notice

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

4.2 Registration

- (a) The Parties acknowledge that pursuant to section 181 of the Act, Council must apply to the Registrar of Titles, without delay, to record the agreement relating to Land set out in this Deed.

- (b) The Owner must, at its own cost, do all things necessary to give effect to this Deed. This includes all things necessary to enable recording of the agreement, including:
 - (i) signing any further agreement, acknowledgment or document; and
 - (ii) obtaining all necessary consents to enable the recording to be made.

4.3 Third parties

- (a) Where the agreement created under this Deed has not yet been recorded on the Certificate of Title of the Land, the Owner must require all successors in title of the Land or part of the Land to:
 - (i) give effect to this Deed; and
 - (ii) enter into a deed with the Parties agreeing to be bound by the terms of this Deed.
- (b) The Owner warrants that, apart from the Owner or any other person who has consented in writing to this Deed, no other person has any legal or equitable interest in the Land which may affect or be affected by this Deed.

4.4 Costs

The Owner covenants and agrees that the Owner will pay to Council immediately upon receiving a request from Council, its reasonable costs and expenses (including legal expenses) for and incidental to the drafting, execution, amendment and registration of this Agreement which are and until paid will remain a debt due to Council by the Owner.

5. GST

- (a) For the purposes of this clause, expressions set out in italics bear the same meaning as those expressions in the GST Act.
- (b) To the extent that a party makes a taxable supply under or in connection with this Deed, except where express provision is made to the contrary, the consideration payable by a Party under or in connection with this Deed is exclusive of GST.
- (c) If a Party makes a taxable supply under or in connection with this Deed, then the Party liable to pay for the taxable supply must also pay the amount of any GST payable in respect of the taxable supply.
- (d) Upon receipt of the consideration and GST payable, a valid tax invoice will be delivered to the Party which paid that sum within 7 days of payment.

6. Notices

6.1 Service of Notice

Any notice or communication given or made under this Deed:

- (a) must be in writing and signed by a person duly authorised by the sender; and
- (b) must be served on the intended recipient by one or more of the following means:
 - (i) personally on the person;
 - (ii) by delivering it to the person's current address for service; or
 - (iii) by electronic mail to the person's current email address for service.

6.2 Address for service

The address for service for each Party is as stated in the relevant Item of the Particulars, or as notified by that Party from time to time.

7. Agreement under the Planning and Environment Act

7.1 Creation of agreement

The Parties acknowledge and agree that, to the extent allowed, the agreement created via this Deed is made pursuant to Part 9, Division 2 of the Act and the Owner's obligations under this Deed operate as conditions precedent to which the Land may be used and developed by the Owner. This clause 7.1 shall not operate as a limitation or restriction of the Parties' power to enter into this Deed.

7.2 Commencement of agreement

In accordance with section 176 of the Act, this Deed will only come into effect upon Amendment C4441ggee being approved and gazetted in the Victorian Government Gazette.

7.3 Amendment of agreement

This Deed may be amended in accordance with the Act. Where clause 178C(2) of the Act requires Council to give a notice of the proposal to amend the Deed to any other persons, the Parties agree that Council need only provide this notice to the Owner of the Land or that part of the Land subject to the proposed amendment.

7.4 Ending of agreement

- (a) The agreement made under this Deed ends upon the earlier of:
 - (i) the Owner complying with all of the Owner's obligations under this Deed; and
 - (ii) the Parties entering into an agreement to end the Deed in accordance with section 177 of the Act.
- (b) Where clause 178C(2) of the Act requires Council to give a notice of the proposal to end the Deed to any other persons, the Parties agree that Council need only provide this notice to the Owner of the Land or that part of the Land subject to the proposed ending.
- (c) Upon the issue of a Statement of Compliance for a plan of subdivision for a Residential Lot or multiple Residential Lots, the Deed ends in respect of that Residential Lot or those Residential Lots, provided that:
 - (i) the Owner's obligation in respect to the Community Infrastructure Contribution has been met; and
 - (ii) the Deed remains registered on the balance of the Land at all times or until such time as the Deed ends in relation to such balance of the Land.
- (d) Upon:
 - (i) this Deed ending as to part of the Land; and
 - (ii) Council receiving a request from the Owner of that part of the Land,

Council will, within a reasonable time and at the cost of the Owner, execute all documents necessary to cause the Registrar of Titles to cancel the recording of the Deed on the Certificate of Title for that part of the Land, pursuant to section 183(2) of the Act.

- (e) Upon:
 - (i) The Owner complying with all of its obligations under this Deed; and
 - (ii) Council receiving a request from the Owner,

Council will, within a reasonable time and at the cost of the Owner, execute all documents necessary to cause the Registrar of Titles to cancel the recording of the Deed on the Certificates of Title, pursuant to section 183(2) of the Act.

8. General

8.1 Interest on overdue monies

- (a) Any amount due under this Deed but unpaid by the due date incurs interest at the rate referenced in section 172 of the Local Government Act 1989 (Vic) and any payment made towards such due amount shall be first directed to payment of interest and then the principal amount owing.
- (b) Notwithstanding anything contained in this Deed, interest will not 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.

8.2 No fettering

The Parties agree that this Deed does not fetter or otherwise restrict Council's power or discretion to make decisions or impose requirements or conditions in connection with the use or development of the Land.

8.3 Counterparts

This Deed may consist of a number of counterparts and if so executed by hand or by electronic signature, the counterparts taken together constitute the one instrument.

8.4 Inspection of documents

A copy of any document referred to in this Deed is available for inspection at Council's offices during standard business hours upon giving Council reasonable notice.

8.5 Waiver and exercise of rights

In this Deed:

- (a) a single or partial exercise or waiver of a right relating to this Deed may be given subject to conditions and does not prevent any other exercise of that right or the exercise of any other right;
- (b) no party is liable for any loss or expense of another Party caused or partly caused by the waiver, exercise or failure to exercise a right;
- (c) waiver of any right, power, authority, discretion or remedy arising upon a breach of or default under this Deed must be in writing and signed by the Party granting the waiver; and
- (d) this clause may not itself be waived except in writing.

8.6 Prohibition or enforceability

- (a) Any provision of, or the application of any provision of this Deed which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of this Deed, which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that

provision in any other jurisdiction or of the remaining provisions of this Deed in that or any other jurisdiction.

- (c) The application of this clause 8.6 is not limited by any other provision of this Deed in relation to severability, prohibition or enforceability.

8.7 Governing law

This Deed is governed by, and is to be construed in accordance with, the laws in force in Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and any courts having jurisdiction to hear appeals from those courts.

8.8 Mortgagee Consent

- (a) The Parties agree that as at the date of this Deed, the Land is subject to a registered mortgage No AR085994B registered on 1 June 2018 in favour of Westpac Banking Corporation and that the Owner will procure that Mortgagee's consent to this Deed and agrees to be bound by this Deed.
- (b) Prior to allowing any part of the Land to be encumbered by any other mortgage, the Owner must procure the Mortgagee's consent to this Deed, or otherwise ensure that each Mortgagee agrees to be bound by this Deed.
- (c) The Parties agree that sub-clause 8.8(b) only applies where the agreement created under this Deed has not yet been recorded on the Certificate of Title of the Land.

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