



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

**GREATER GEELONG CITY COUNCIL**

Council

- and -

**FABRETTO**

Registered Land Owner

in relation to land at:

**610 RENNIE STREET, LARA**

EMW:22501778

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 137-149 Mercer Street, Geelong 3220 (Council)
2. **Fabretto** of Roxby Street, Manifold Heights 3218 (Owner)

**RECITALS:**

- R.1. The Owner is the registered proprietor of the land known as 610 Rennie Street, Lara being the land contained in folio of the Register Volume 9002 Folio 659, more particularly described as Lot 1 on Plan of Subdivision 98249 (**Land**).
- R.2. Council is the responsible authority under the Act that is responsible for the administration and enforcement of the Planning Scheme. Council is also the planning authority for the Amendment.
- R.3. The Land is currently located in the Farming Zone.
- R.4. The Amendment proposes to rezone the Land to the Industrial 1 Zone and apply the Design and Development Overlay to the Land.
- R.5. On 25 March 2025, the Council resolved to request that the Minister for Planning authorise the preparation and exhibition of the Amendment.
- R.6. The Owner has voluntarily agreed to enter into the agreement in lieu of preparing a Preliminary Risk Screen Assessment for the Land in order to facilitate the Amendment.
- R.7. This Agreement is entered into between the Council and the Owner pursuant to section 173 of the Act in order to:
  - a. facilitate the Amendment;
  - b. restrict use of the Land for a Sensitive Land Use; and
  - c. to achieve the objectives of planning in Victoria.

**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. **Amendment** means Planning Scheme Amendment C453ggee.
- 1.4. **Current Address for Service**
  - 1.4.1. 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 Council; and
  - 1.4.2. for the Owner means the address shown under the heading "Parties" in this Agreement or any other address provided by the Owner to the Council for any purpose or purposes relating to the Land.

1.5. **Current Email Address for Service**

1.5.1. for the Council means statplanning@geelongcity.vic.gov.au, or any other email address listed on the website of the Council; and

1.5.2. for the Owner means any email address provided by the Owner to the Council for the express purpose of electronic communication regarding this Agreement.

1.6. **Environmental Audit** has the same meaning as in the EPA.

1.7. **Environmental Auditor** has the same meaning as in the EPA.

1.8. **Environmental Audit Statement** and **Environmental Audit Report** means an environmental audit statement and environmental audit report prepared by an Environmental Auditor in accordance with the EPA.

1.9. **EPA** means the *Environment Protection Act 2017 (Vic)*.

1.10. **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.

1.11. **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.

1.12. **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.

1.13. **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.

1.14. **party** or **parties** means the Owner and the Council under this Agreement as appropriate.

1.15. **Planning Scheme** means the Greater Geelong Planning Scheme and any successor instrument or other planning scheme which applies to the Land.

1.16. **Preliminary Risk Screen Assessment** has the same meaning as in the EPA.

1.17. **Preliminary Risk Screen Assessment Statement** and **Preliminary Risk Screen Assessment Report** means a preliminary risk screen assessment statement and preliminary risk screen assessment report prepared by an Environmental Auditor in accordance with the EPA.

1.18. **Register** and **Registrar** have the same meaning as in the *Transfer of Land Act 1958 (Vic)*.

1.19. **Sensitive Land Use** means a residential use, child care centre, kindergarten, pre-school centre, primary school, even if ancillary to another use, as defined in Ministerial Direction no. 1 *Potentially Contaminated Land*, dated 15 August 2021, or any amendment to that Direction or subsequent Directions.

## 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 Council that:

- 3.1. Subject to clause 3.2, the Land must not be used for a Sensitive Land Use;
- 3.2. The Council may consider an application under the Planning Scheme to use the Land for a Sensitive Land Use, if:
  - 3.2.1. a Preliminary Risk Screen Assessment Statement and Preliminary Risk Screen Assessment Report is issued for the Land specifying that no Environmental Audit is required; or
  - 3.2.2. an Environmental Audit Statement and an Environmental Audit Report is issued for the Land specifying that it is suitable for a Sensitive Land Use where either:
    - 3.2.2.1. the Owner elects not to undertake a Preliminary Risk Screen Assessment; or
    - 3.2.2.2. where such Preliminary Risk Screen Assessment specifies that an Environmental Audit is required,

all at the Owner's cost.

### **4. FURTHER COVENANTS OF THE OWNER**

The Owner warrants and covenants with the Council that:

- 4.1. It is the registered proprietor (or entitled to be so) of the Land.

- 4.2. Save as shown in the folio of the Register 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 Council the Council'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 Council or to give consent to anything under this Agreement.

To the extent that such costs and expenses constitute legal professional costs, the Council 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 Council 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 Council 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 COUNCIL**

The parties acknowledge and agree that this Agreement does not fetter or restrict the power or discretion of the 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 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 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.

**10. NOTICES**

All notices and other communications under this Agreement will be sent by prepaid mail, by hand delivery or by email to the Current Addresses for Service or Current Email Address 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; or
- 10.3. if sent by email, at the time of receipt in accordance with the *Electronic Transactions (Victoria) Act 2000* (Vic).

**11. COSTS ON DEFAULT**

If the Owner defaults in the performance of any obligations under this Agreement it will pay to the Council 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. COUNTERPARTS, ELECTRONIC SIGNING AND EXCHANGE**

- 16.1. This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute this Agreement.
- 16.2. Execution by either or both parties of an email copy of this Agreement executed by that party will constitute valid and binding execution of this Agreement by such party or parties.
- 16.3. 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).

**17. COMMENCEMENT AND ENDING OF AGREEMENT**

- 17.1. This Agreement will commence:
  - 17.1.1. on the date that it bears; or
  - 17.1.2. if it bears no date, on the date it is recorded in the Register.
- 17.2. 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,  
 and with the authority, of the **CITY OF GREATER**  
**GEELONG** by \_\_\_\_\_ (Name)  
 \_\_\_\_\_ (Title)  
 ,  
 pursuant to an instrument of delegation  
 authorised by Council resolution, in the presence  
 of: \_\_\_\_\_

.....  
Witness

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.

**SIGNED SEALED AND DELIVERED** by the said  
**FABRETTO** in the presence of:

.....  
Fabretto

.....  
Witness

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.