



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

**GREATER GEELONG CITY COUNCIL**  
Council

- and -

**BELMONT PROJECTS PTY LTD**  
ACN 603 132 074  
Registered Land Owner

in relation to land at:

**1 HENRY STREET BELMONT**

3JMH:21605049

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

11<sup>th</sup>

day of

October 2017

**PARTIES:**

1. **Greater Geelong City Council** of 30 Gheringhap Street, Geelong 3220  
(Council)
2. **Belmont Projects Pty Ltd** ACN 603 132 074 of Level 1, 85 Union Street Armadale, 3143  
(Owner)

**RECITALS:**

- R.1. The Owner is or is entitled to be the registered proprietor of the land known as 1 Henry Street Belmont, being the land described in Certificate of Title volume 07067 folio 272 (**Land**).
- R.2. The Council is responsible for the administration and enforcement of the Planning Scheme pursuant to the provisions of the Act. Council is also the Planning Authority for Amendment C251 to the Planning Scheme.
- R.3. The Land is the former Belmont CSIRO site and is proposed to be developed for urban purposes.
- R.4. Planning Scheme Amendment C251 is a combined amendment and planning permit application under section 96A of the Act that proposes to:
  - a. zone the Land to General Residential Zone Schedule 1 under the Planning Scheme;
  - b. apply a Development Plan Overlay and Environmental Audit Overlay to the Land; and
  - c. grant a Planning Permit for a staged multi-lot subdivision.
- R.5. A draft Development Plan was exhibited as part of the Amendment.
- R.6. To facilitate the future redevelopment of the Land in an appropriate manner, and to advance the objectives of planning in Victoria, the Council and the Owner have agreed to enter into this Agreement.
- R.7. The Council and the Owner have agreed that without limiting or restricting their respective powers to enter into this Agreement and in so far as it can be treated, this Agreement is made pursuant to Section 173 of the Act.

**IT IS AGREED AS FOLLOWS:**

**1. DEFINITIONS**

In this Agreement unless inconsistent with the context or subject matter:

- 1.1. **Accommodation** means any form of group or multi-unit accommodation on a lot other than a single dwelling lot, including but not limited to a hostel, lodge, boarding house, residential building, nursing home, aged care facility, residential hotel or motel, or a bed and breakfast.
- 1.2. **Act** means the *Planning and Environment Act 1987* (Vic).
- 1.3. **Adjustment Index** means the Consumer Price Index as published by the Australian Bureau of Statistics, publication series 6401.

- 1.4. **Agreement** means this Agreement and any agreement executed by the parties varying or expressed to be supplemental to this Agreement.
- 1.5. **Amendment** means the proposed amendment to the Planning Scheme generally described in Recital 4 of this Agreement and which at the time of this agreement has the reserved title of 'Amendment C251 to the Greater Geelong Planning Scheme'.
- 1.6. **Community Infrastructure Contribution** means the sum of \$2,000 as at 30 June 2015 for each Residential Lot created by subdivision of the Land, following the approval of the Amendment, or for each Dwelling created in the case where there is no subdivision.
- 1.7. **Council** means Greater Geelong City Council in its capacity as:
- 1.7.1. the authority responsible for administering and enforcing the Planning Scheme; and
  - 1.7.2. 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.
- 1.8. **Current Address for Service**
- 1.8.1. for the Council means the address shown under the heading "Parties" in Agreement, or any other principal office address listed on the website of the Council; and
  - 1.8.2. for the Owner means the address shown under the heading "Parties" this Agreement or any other address provided by the Owner to the Council for any purpose or purposes relating to the Land.
- 1.9. **Current Email Address for Service**
- 1.9.1. for the Council means statplanning@geelongcity.vic.gov.au, or any other email address listed on the website of the Council; and
  - 1.9.2. for the Owner means any email address provided by the Owner to the Council for the express purpose of electronic communication regarding this Agreement.
- 1.10. **Current Number for Service**
- 1.10.1. for the Council means 03 5272 4277, or any other facsimile number listed on the website for the Council; and
- for the Owner means any facsimile number provided by the Owner to the Council for the express purpose of facsimile communication regarding this Agreement.
- 1.11. **Development Plan** means the Development Plan to be approved by the Council (whether or not by stages) under and for the purposes of the DPO Schedule under the Planning Scheme as introduced through the Amendment.
- 1.12. **DPO Schedule** means the Development Plan Overlay Schedule to be introduced into the Planning Scheme upon approval of the Amendment to that overlay.

- 1.13. **Dwelling** has the same meaning as 'dwelling' in the Planning Scheme.
- 1.14. **Henry Street Tree Reserves** means the land area required for the retention of trees fronting Henry Street generally in accordance with the Development Plan and Permit, and to form part of the Open Space Contribution.
- 1.15. **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.
- 1.16. **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.
- 1.17. **Open Space Contribution** means the provision of Public Open Space and Henry Street Tree Reserves equal to 10% of the area of the Land or an in-lieu cash payment or combination of both.
- 1.18. **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.
- 1.19. **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.
- 1.20. **party** or **parties** means the Owner and the Council under this Agreement as appropriate.
- 1.21. **Permit** means planning permit 408/2016 for the staged multi-lot subdivision (including subdivision of land adjacent to a road in a road zone category 1) and construction of a single dwelling on each lot under 300 square metres as amended from time to time.
- 1.22. **Plan of Subdivision** means a plan of subdivision in a form acceptable to the Council or the Tribunal on review, that subdivides the Land.
- 1.23. **Planning Scheme** means the Greater Geelong Planning Scheme and any successor instrument or other planning scheme which applies to the Land.
- 1.24. **Public Open Space** means a 0.5 hectare park (approximately) fronting Henry Street generally in accordance with the Development Plan and for the purposes of the Open Space Contribution does not include any encumbered land (such as land required for on-site drainage detention facilities).
- 1.25. **Residential Lot** means a lot created by a Plan of Subdivision on the Land proposed to be within the General Residential Zone to be implemented as part of the Amendment, or any other lot which the Council, acting reasonably, considers is to be developed for the purpose of accommodating a single Dwelling or another form of Accommodation.
- 1.26. **Statement of Compliance** means a statement of compliance to issue by Council for a Plan of Subdivision which creates Residential Lots on the Land rezoned to General Residential Zone by the Amendment.
- 1.27. **Tribunal** means the Victorian Civil and Administrative Tribunal established under the *Victorian Civil and Administrative Tribunal Act 1998*.

## 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**

- 3.1. Community Infrastructure Contribution
  - 3.1.1. The Owner agrees that it must pay to Council the Community Infrastructure Contribution:
    - 3.1.1.1. Prior to the issue of a Statement of Compliance, in respect of each Residential Lot to be created upon registration of that plan of subdivision; or
    - 3.1.1.2. Prior to the issue of an occupancy permit or other necessary approval under the *Building Act 1993* in respect of the construction of a Dwelling or other Accommodation where there is no subdivision;
  - 3.1.2. The parties agree that there will be no future requirement for the payment of a community infrastructure charge on the Land other than in accordance with clause 3.1.1 of this Agreement;
  - 3.1.3. The Owner agrees with Council that the monetary contribution specified in clause 3.1.1 will be adjusted on a compound basis upwards on 1 July each year from the date 30 June 2015 by the amount of the Adjustment Index.
- 3.2. Public Open Space
  - 3.2.1. The Public Open Space must be vested in Council upon registration of the Plan of Subdivision for any subdivision of Stage 3 pursuant to the

Permit or in any event, no later than two years after the date of the Permit or otherwise agreed in writing.

- 3.2.2. Prior to the vesting of the Public Open Space in Council, the Owner shall construct at its cost the landscaping of the Public Open Space in accordance with the Development Plan to the satisfaction of the Council and in accordance with relevant Council strategies for open space.
- 3.2.3. If the public open space contribution required by the Planning Scheme and the Permit for the staged multi-lot subdivision of the Land is not satisfied by the provision of the Public Open Space and Henry Street Tree Reserves, the Owner must address any shortfall to the satisfaction of Council.
- 3.2.4. Any monetary payment required pursuant to clause 3.2.3 of this Agreement must be paid prior to the Statement of Compliance being issued in relation to Stage 1 of the proposed staged multi-lot subdivision of the Land or as otherwise agreed in writing.

#### 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 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 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. COVENANTS OF THE COUNCIL**

The Council acknowledges and agrees that:

- 5.1. Council will not demand or require any payment by the Owner in respect of public open space and community infrastructure contributions other than under this Agreement;
- 5.2. it will use best endeavours to ensure that the Amendment is prepared and processed in an expeditious manner;
- 5.3. it will forthwith after the execution of this Agreement register this Agreement on the title of the Land pursuant to the provisions of Section 181 of the Act; and
- 5.4. the Community Infrastructure Contribution collected will be applied by Council at its sole discretion but within Community Services Planning Area 8 (Belmont and Highton) unless otherwise agreed in writing between the Council and the Owner.

**6. 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.

**7. AMENDMENT**

This Agreement may be amended:

- 7.1. when all of the Parties agree in writing to amend the Agreement wholly or in part as to any part of the Land; or
- 7.2. otherwise in accordance with Part 9 Division 2 of the Act.

**8. 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.

**9. 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.

**10. 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.

**11. 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:

- 11.1. not later than two business days after being deposited in the mail with postage prepaid;
- 11.2. when delivered by hand;
- 11.3. if sent by email, at the time of receipt in accordance with the *Electronic Transactions (Victoria) Act 2000* (Vic); or
- 11.4. 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.

**12. 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.

**13. 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.

**14. 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.

**15. 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.

**16. 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.

**17. COMMENCEMENT AND ENDING OF AGREEMENT**

17.1. This Agreement will commence on the date that it bears but the specific obligations of the Owner in Clause 3 will not apply, take effect, or commence operation whatsoever until the Amendment is approved by the Minister for Planning and gazetted such that the Amendment is incorporated into the Planning Scheme.

17.2. This Agreement will end:

17.2.1. In respect of a Residential Lot, or in the case where there is no subdivision, in respect of the land on which a Dwelling is to be constructed, upon payment of the Development and Community Infrastructure Contribution; or

17.2.2. 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 ~~Geoff Lawler, Acting Director Planning & Development~~ <sup>Kelvin Spiller, CEO</sup> pursuant to an instrument of delegation authorised by Council resolution, in the presence of:




~~Geoff Lawler~~ KELVIN SPILLER  
CEO COGG.

  
.....  
Witness

**EXECUTED** by Belmont Projects Pty Ltd ACN  
603 132 074 in accordance with Section 127 of the  
Corporations Act 2001:

.....  
Director *N/A*

  
.....  
Director/Secretary

.....  
Full Name

*ADAM DAVIDSON*  
.....  
Full Name

.....  
Address

*50 BRUNEL STREET MALVERN EAST*  
.....  
Address