

This document is prepared from a precedent intended solely for use by legal practitioners with the knowledge, skill and qualifications required to use the precedent to create a document suitable to meet the vendor's legal obligation to give certain statements and documents to a purchaser before the purchaser signs a contract to purchase the land. This document is current as at 1 July 2024.

Section 32 Statement

The vendor makes this statement in respect of the land in accordance with section 32 of the *Sale of Land Act 1962*.

This statement must be signed by the vendor and given to the purchaser before the purchaser signs the contract.

The vendor may sign by electronic signature.

The purchaser acknowledges being given this statement signed by the vendor with the attached documents before the purchase signed any contract.

Land LOT 4812 ON PLAN OF SUBDIVISION 818227L COMPRISED IN CERTIFICATE OF TITLE
VOLUME 12082 FOLIO 305

Property Address 8 HICKORY STREET WARRAGUL VIC 3820 (FORMERLY KNOWN AS 121 WILLANDRA
CIRCUIT WARRAGUL VIC 3820)

Vendor's name FAYE LORRAINE WHEELER

Signature _____ **Date** / 09 / 2025

+ Vendor's name REGINALD NEVILLE GEORGE WHEELER

+ Signature _____ **Date** / 09 / 2025

Purchaser's name _____

Signature _____ **Date** _____

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1. FINANCIAL MATTERS

1.1 Particulars of any Rates, Taxes, Charges or Other Similar Outgoings (and any interest on them)

☒ (a) Their total does not exceed: \$4,500.00

OR

☐ (b) Are contained in the attached certificate/s.

OR

☐ (c) Their amounts are:

Authority	Amount	Interest (if any)
(1) _____	(1) \$ _____	(1) \$ _____
(2) _____	(2) \$ _____	(2) \$ _____
(3) _____	(3) \$ _____	(3) \$ _____
(4) _____	(4) \$ _____	(4) \$ _____

☐ (d) There are NO amounts for which the purchaser may become liable as a consequence of the sale of which the vendor might reasonably be expected to have knowledge¹, which are not included in items 1.1(a), (b) or (c) above; other than any amounts described in this rectangular box.

\$

1.2 Particulars of any Charge (whether registered or not) imposed by or under any Act to secure an amount due under that Act, including the amount owing under the charge

\$ _____ To _____

Other particulars (including dates and times of payments):

1.3 Terms Contract

This section 1.3 only applies if this section 32 statement is in respect of a terms contract where the purchaser is obliged to make 2 or more payments (other than a deposit or final payment) to the vendor after the execution of the contract and before the purchaser is entitled to a conveyance or transfer of the land.

☐ Attached is a Law Institute of Victoria published "Additional Section 32 Statement".

1.4 Sale Subject to Mortgage

This section 1.4 only applies if this section 32 statement is in respect of a contract which provides that any mortgage (whether registered or unregistered), is NOT to be discharged before the purchaser becomes entitled to possession or receipts of rents and profits.

☐ Attached is a Law Institute of Victoria published "Additional Section 32 Statement".

1.5. Commercial and Industrial Property Tax Reform Act 2024 (Vic) (CIPT Act)

(a) The Australian Valuation Property Classification Code (within the meaning of the CIPT Act) most recently allocated to the land is set out in the attached Municipal rates notice or property clearance certificate or is as follows	AVPCC No.
(b) Is the land tax reform scheme land within the meaning of the CIPT Act?	☐ YES ☒ NO
(c) If the land is tax reform scheme land within the meaning of the CIPT Act, the entry date within the meaning of the CIPT Act is set out in the attached Municipal rates notice or property clearance certificate or is as follows	Date: OR ☒ Not applicable

¹ Other than any GST payable in accordance with the contract.

2. INSURANCE

2.1 Damage and Destruction

This section 2.1 only applies if this section 32 statement is in respect of a contract which does NOT provide for the land to remain at the risk of the vendor until the purchaser becomes entitled to possession or receipt of rents and profits.

- ☐ (a) Attached is a copy or extract of any policy of insurance in respect of any damage to or destruction of the land.
OR
- ☐ (b) Particulars of any such policy of insurance in respect of any damage to or destruction of the land are as follows:

Name of insurance company: _____

Type of policy: _____ Policy no: _____

Expiry date: ____ / ____ / ____ Amount insured: _____

2.2 Owner-Builder

This section 2.2 only applies where there is a residence on the land that was constructed by an owner - builder within the preceding 6 years and section 137B of the Building Act 1993 applies to the residence.

- ☐ (a) Attached is a copy or extract of any policy of insurance required under the *Building Act* 1993.
OR
- ☐ (b) Particulars of any required insurance under the Building Act 1993 are as follows:

Name of insurance company: _____

Policy no: _____ Expiry date: ____ / ____ / ____

Note: There may be additional legislative obligations in respect of the sale of land on which there is a building or on which building work has been carried out.

3. LAND USE

3.1 Easements, Covenants or Other Similar Restrictions

A description of any easement, covenant or other similar restriction affecting the land (whether registered or unregistered): -

- (a) ☒ Is in the attached copies of title document/s.
OR
- ☐ Is as follows:

- (b) ☒ Particulars of any existing failure to comply with that easement, covenant or other similar restriction are:

Central Gippsland Region Water Corporation Deed of Agreement and Consent for Building Over or Near Assets - Site plans indicate driveway over sewer connection.

3.2 Road Access

There is NO access to the property by road if the square box is marked with an "X" ☐

3.3 Designated Bushfire Prone Area

The land is in a designated bushfire prone area under section 192A of the *Building Act* 1993 if the square box is marked with an "X" ☐

3.4 Planning Scheme

- ☒ Attached is a certificate with the required specified information.
OR

☐ The required specified information is as follows:

- (a) Name of planning scheme _____
- (b) Name of responsible authority _____
- (c) Zoning of the land _____
- (d) Name of planning overlay _____

4. NOTICES

4.1 Notice, Order, Declaration, Report or Recommendation

Particulars of any notice, order, declaration, report or recommendation of a public authority or government department or approved proposal directly and currently affecting the land, being a notice, order, declaration, report, recommendation or approved proposal of which the vendor might reasonably be expected to have knowledge:

☐ Are contained in the attached certificates and/or statements.

OR

☒ Are as follows:

None to the knowledge of the Vendors but the Vendors have no means of knowing of all
decisions of public authorities and government departments unless communicated directly to
the Vendors.

4.2 Agricultural Chemicals

There are NO notices, property management plans, reports or orders in respect of the land issued by a government department or public authority in relation to livestock disease or contamination by agricultural chemicals affecting the ongoing use of the land for agricultural purposes. However, if this is not the case, the details of any such notices, property management plans, reports or orders, are as follows:

Not applicable.

4.3 Compulsory Acquisition

The particulars of any notices of intention to acquire that have been served under section 6 of the *Land Acquisition and Compensation Act 1986* are as follows:

Not applicable.

5. BUILDING PERMITS

Particulars of any building permit issued under the *Building Act 1993* in the preceding 7 years (required only where there is a residence on the land):

☐ Are contained in the attached certificate.

OR

☒ Are as follows:

See General Annexure Item 1

~~6. OWNERS CORPORATION~~

This section 6 only applies if the land is affected by an owners corporation within the meaning of the *Owners Corporations Act 2006*.

☐ 6.1 Attached is a current owners corporation certificate with its required accompanying documents and statements, issued in accordance with section 151 of the *Owners Corporations Act 2006*.

OR

☐ 6.2 Attached is the information prescribed for the purposes of section 151(4)(a) of the *Owner Corporations Act 2006* and the copy documents specified in section 151(4)(b)(i) and (iii) of that Act.

OR

☐ 6.3 The owners corporation is an inactive owners corporation.²

² An inactive owners corporation includes one that in the previous 15 months has not held an annual general meeting, not fixed any fees and not held any insurance.

~~7. GROWTH AREA INFRASTRUCTURE CONTRIBUTION ("GAIC")~~

Words and expressions in this section 7 have the same meaning as in Part 9B of the *Planning and Environment Act 1987*.

7.1 Work-in-Kind Agreement

This section 7.1 only applies if the land is subject to a work-in-kind agreement.

- (a) The land is NOT to be transferred under the agreement unless the square box is marked with an "X" ☐
- (b) The land is NOT land on which works are to be carried out under the agreement (other than Crown land) unless the square box is marked with an "X" ☐
- (c) The land is NOT land in respect of which a GAIC is imposed unless the square box is marked with an "X" ☐

7.2 GAIC Recording

This section 7.2 only applies if there is a GAIC recording.

Any of the following certificates or notices must be attached if there is a GAIC recording.

The accompanying boxes marked with an "X" indicate that such a certificate or notice that is attached:

- (a) Any certificate of release from liability to pay a GAIC ☐
- (b) Any certificate of deferral of the liability to pay the whole or part of a GAIC ☐
- (c) Any certificate of exemption from liability to pay a GAIC ☐
- (d) Any certificate of staged payment approval ☐
- (e) Any certificate of no GAIC liability ☐
- (f) Any notice providing evidence of the grant of a reduction of the whole or part of the liability for a GAIC or an exemption from that liability ☐
- (g) A GAIC certificate issued under Part 9B of the *Planning and Environment Act 1987* must be attached if there is no certificate or notice issued under any of sub-sections 7.2 (a) to (f) above ☐

8. SERVICES

The services which are marked with an "X" in the accompanying square box are NOT connected to the land:

- ☐ Electricity supply ☐ Gas supply ☐ Water supply ☐ Sewerage ☒ Telephone services

9. TITLE

Attached are copies of the following documents:

9.1 ☒ (a) Registered Title

A Register Search Statement and the document, or part of a document, referred to as the "diagram location" in that statement which identifies the land and its location.

OR

☐ (b) General Law Title

The last conveyance in the chain of title or other document which gives evidence of the vendor's title to the land.

- ☐ 9.2 Evidence of the vendor's right or power to sell (where the vendor is not the registered proprietor or the owner in fee simple).

~~10. SUBDIVISION~~

10.1 Unregistered Subdivision

This section 10.1 only applies if the land is subject to a subdivision which is not registered.

10.2 Staged Subdivision

This section 10.2 only applies if the land is part of a staged subdivision within the meaning of section 37 of the *Subdivision Act 1988*.

- ☐ (a) Attached is a copy of the plan for the first stage if the land is in the second or a subsequent stage.
- (b) The requirements in a statement of compliance relating to the stage in which the land is included that have not been complied with are as follows:

- (c) The proposals relating to subsequent stages that are known to the vendor are as follows:

- (d) The contents of any permit under the *Planning and Environment Act 1987* authorising the staged subdivision are:

10.3 Further Plan of Subdivision

This section 10.3 only applies if the land is subject to a subdivision in respect of which a further plan within the meaning of the *Subdivision Act 1988* is proposed.

- ☐ (a) Attached is a copy of the plan which has been certified by the relevant municipal council (if the later plan has not been registered).
- OR
- ☐ (b) Attached is a copy of the latest version of the plan (if the later plan has not yet been certified).

~~11. *DISCLOSURE OF ENERGY INFORMATION~~

(Disclosure of this information is not required under section 32 of the Sale of Land Act 1962 but may be included in this section 32 statement for convenience.)

Details of any energy efficiency information required to be disclosed regarding a disclosure affected building or disclosure area affected area of a building as defined by the *Building Energy Efficiency Disclosure Act 2010* (Cth)

- (a) to be a building or part of a building used or capable of being used as an office for administrative, clerical, professional or similar based activities including any support facilities; and
- (b) which has a net lettable area of at least 1 000m²; (but does not include a building under a strata title system or if an occupancy permit was issued less than 2 years before the relevant date):
- ☐ Are contained in the attached building energy efficiency certificate.
- OR
- ☐ Are as follows:

12. DUE DILIGENCE CHECKLIST

(The Sale of Land Act 1962 provides that the vendor or the vendor's licensed estate agent must make a prescribed due diligence checklist available to purchasers before offering land for sale that is vacant residential land or land on which there is a residence. The due diligence checklist is NOT required to be provided with, or attached to, this section 32 statement but the checklist may be attached as a matter of convenience.)

- ☐ Vacant Residential Land or Land with a Residence
- ☒ Attach Due Diligence Checklist (this will be automatically attached if ticked)

13. ATTACHMENTS

(Any certificates, documents and other attachments may be annexed, and additional information may be added to this section 13 where there is insufficient space in any of the earlier sections)

(Attached is a Law Institute of Victoria published "Additional Section 32 Statement" if section 1.3 (Terms Contract) or section 1.4 (Sale Subject to Mortgage) applies)

GENERAL ANNEXURE

General Annexure Item 1

Building Permit No. BS-L 34264/9473862316992 for construction of dwelling and garage dated 27 August 2021 - copy attached.
Occupancy Permit issued 17 March 2022 - copy attached.
Certificate of Insurance - copy attached.

General Annexure Item 2

Register Search Statement Volume 12082 Folio 305
Plan of Subdivision 818227L
Covenant PS818227L
Section 173 Agreement AL289081Q
Section 173 Agreement AS159632U
Section 173 Agreement AS164564F
Letter dated 23 February 2022 from Baw Baw Shire regarding change of address of property
Building Permit
Occupancy Permit
Certificate of Insurance
Central Gippsland Region Water Corporation Deed of Agreement and Consent for Building Over or Near Assets
Baw Baw Shire Rate Notice
Gippsland Water Account
Gippsland Water Asset Plan
Planning Certificate
Planning Property Report
Due Diligence Checklist

REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958

Page 1 of 2

VOLUME 12082 FOLIO 305

Security no : 124127566835A
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LAND DESCRIPTION

Lot 4812 on Plan of Subdivision 818227L.

PARENT TITLES :

Volume 11581 Folio 242 Volume 12082 Folio 222

Created by instrument PS818227L 21/05/2019

REGISTERED PROPRIETOR

Estate Fee Simple

Joint Proprietors

FAYE LORRAINE WHEELER

REGINALD NEVILLE GEORGE WHEELER both of 8 HICKORY STREET WARRAGUL VIC 3820

AV777476H 24/06/2022

ENCUMBRANCES, CAVEATS AND NOTICES

COVENANT PS818227L 21/05/2019

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

AGREEMENT Section 173 Planning and Environment Act 1987
AL289081Q 13/08/2014

AGREEMENT Section 173 Planning and Environment Act 1987
AS159632U 13/05/2019

AGREEMENT Section 173 Planning and Environment Act 1987
AS164564F 14/05/2019

DIAGRAM LOCATION

SEE PS818227L FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NIL

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

Street Address:



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The Victorian Government acknowledges the Traditional Owners of Victoria and pays respects to their ongoing connection to their Country, History and Culture. The Victorian Government extends this respect to their Elders, past, present and emerging.

REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958

Page 2 of 2

DOCUMENT END

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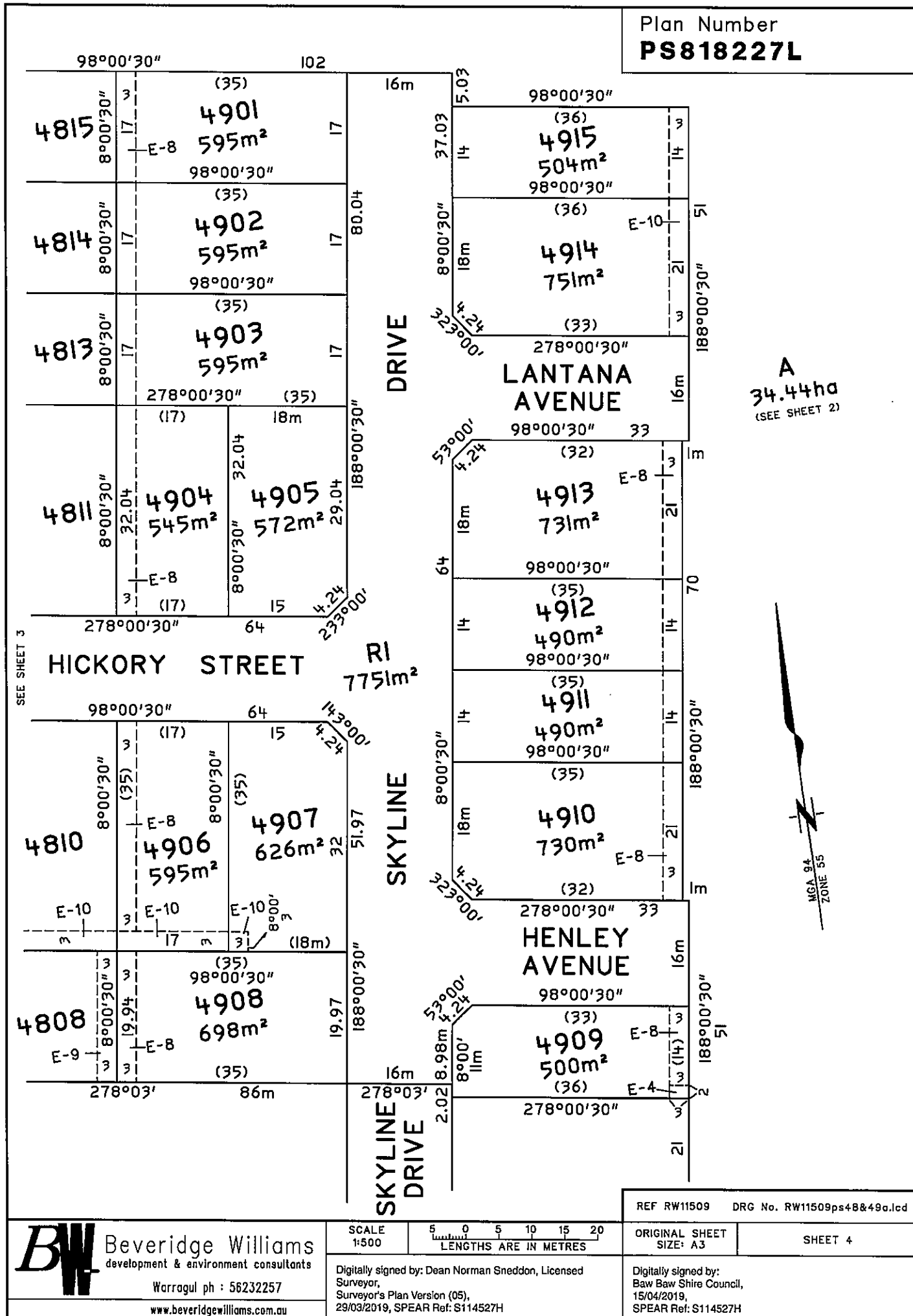
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Document Type	Plan
Document Identification	PS818227L
Number of Pages (excluding this cover sheet)	5
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Plan Number
PS818227L

WATERFORD RISE ESTATE CREATION OF RESTRICTION

Upon registration of this plan the following restrictions is to be created.

Land to benefit: LOTS A, 4801 - 4815 & 4901 TO 4915 ON THIS PLAN

Land to be burdened: LOTS 4801 - 4815 & 4901 TO 4915 ON THIS PLAN

Description of Restriction No 1:

The registered proprietor for the time being of a burdened lot shall not:-

- (1) at any time build, construct, erect or cause, allow or allow to be built constructed or to remain on the burdened lot:
 - (a) more than one dwelling;
 - (b) any dwelling other than a dwelling:-
 - (i) with external walls constructed of materials of which no less than 30% is constructed of brick, brick veneer or masonry veneer or other texture coated material approved in writing by Baw Baw Developments Pty. Ltd.;
 - (ii) with a roof made of masonry, terracotta roof tiles or colour coated steel (excluding white colorbond and plain zinc finish) or other non-reflective material;
 - (iii) with fascia boards, trim and exposed metal work colour co-ordinated with the dwelling;
 - (iv) with a floor area excluding any garage, terrace, pergola or verandah, of more than:-
 - (A) 130 square metres if the Lot is 600 square metres or less in area;
 - (B) 150 square metres if the Lot is more than 601 square metres in area;
 - (v) which includes a double lock up garage or a double detached garage which is built in the same materials as the dwelling;
 - (vi) with any façade not identical to or similar to any dwelling within five Lots in all directions of the Lot including those lots on the opposite side of the street frontage and the façade having been approved in writing by Baw Baw Developments Pty. Ltd.;
 - (vii) set back not more than seven metres from the front boundary.
 - (c) any fence:-
 - (i) on the front boundary;
 - (ii) on the side boundary within 5 metres of the street frontage;
 - (iii) any side or rear fence other than a fence constructed 1.8 metres in height above the natural surface level and constructed of timber, with timber capping and exposed posts;
 - (d) any clothes line visible from outside the burdened lot;
 - (e) any split system cooling/heating units visible from outside the burdened lot;
 - (f) any evaporative cooling unit other than a low profile unit mounted on the roof below the ridgeline and coloured to match the roof material;
 - (g) any caravan, boat or trailer unless screened from view from outside the burdened lot;
 - (h) any retaining wall within 7 metres of the front boundary other than a retaining wall which is constructed of stamped or stencilled concrete, stone, rendered block or masonry and which is less than 1.2 metres in height.
 - (i) any driveway other than a driveway which is constructed of any material other than concrete pavers, coloured concrete, exposed aggregate concrete or stamped or stencilled concrete;
 - (j) any signage including for sale signage unless approved in writing by Baw Baw Developments Pty. Ltd. until after construction of a dwelling on the burdened lot;
 - (k) (i) erect any outbuilding having a floor area greater than 20 square metres unless constructed in the same materials as the dwelling constructed on the lot.
(ii) erect any outbuilding in front of the building alignment of any dwelling constructed on the Lot.
- (2) permit any excessive growth of grass or weeds on the burdened lot;
- (3) further subdivide the burdened Lot.

Restriction No 1 ends on the 30th June, 2028.

NOTE: Responsibility for the compliance with Restriction No 1 lies with the benefited land and not the Baw Baw Shire Council

REF RW11509 DRG



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FORM 18

Section 181 **R**

APPLICATION BY A RESPONSIBLE AUTHORITY FOR THE MAKING OF A
RECORDING OF AN AGREEMENT

Planning and Environment Act 1987

AL289081Q

Lodged at the Land Titles office by:



Name: **WAKEFIELD & VORIG**

Phone:

Address:

Ref:

Customer Code: **2881A**

The Authority having made an agreement referred to in section 181(1) of the
Planning and Environment Act 1987 requires a recording to be made in the
Register for the land.

Land: C/T Volume ~~11377~~ Folio ~~352~~ being Lot B PS 647689V
C/T Volume 10989 Folio 542 being Lot 2 PS 604316/
C/T Volume ~~3456~~ Folio ~~032~~ being Lot 1 TP 753794

JB **5874-706**

Authority: (name and address) Baw Baw Shire Council
Civic Place
WARRAGUL VIC 3820

Section and Act under which agreement made: Section 173 Agreement
Planning & Environment Act
1987

A copy of the Agreement is attached to this Application.

Signature for the Authority: **Peter McWhinney**

Position held: **MANAGER STATUTORY PLANNING**

Name of Officer: **PETER McWHINNEY**

Date **5 SEPT 2012** **BAW BAW SHIRE COUNCIL**

THIS AGREEMENT is made the 5 day of SEPTEMBER 2012

BETWEEN

Baw Baw Shire Council
of
Civic Place Warragul
(hereinafter called "Council")

AND

Baw Baw Developments Pty Ltd
of
3 Napier Street, Warragul
&
Duncan Charles McNeil & Debra Joy McNeil
of
80 Pharaohs Road Warragul
(hereinafter called the "Owners")

AL289081Q

13/08/2014 \$116.50 173


Whereas:

1. Baw Baw Developments Pty Ltd are the registered proprietors of: -
Volume ~~11377~~ Folio ~~352~~ being Lot B PS 647689V.

Duncan and Debra McNeil are the registered proprietors of:-
Certificate of Title Volume 10989 Folio 542 being Lot 2 PS 604316 and
Certificate of Title Volume ~~3456~~ Folio ~~632~~ being Lot 1 TP 753794

JB 5874-706
(Lot B PS 647689V, Lot 1 TP 753794 and Lot 2 PS 604316 hereinafter called the
"Land").

2. The Council and the Owner have agreed to enter into an agreement under
Section 173 of the Planning and Environment Act 1987 to provide, as set out in
in the Council Resolution of the 25th November 2009 that: -
 - a) That Council agree to combine the application land under Planning Permit
PSB 0038/09 and Lots 1 and 2 PS 604316 and the balance of Lot 1 TP836466 and
Lot 2 TP 637827 to the north as shown on the application plan for the purpose of
making an appraisal of the five percent open space contribution across the whole.

Now this agreement witnesseth and the parties agree and covenant as follows:

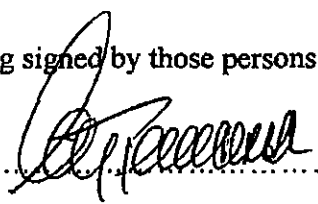
1. Without limiting the operation or effect which this Agreement otherwise has, the parties
acknowledge that this Agreement is made pursuant to the provisions of Section 173 of
the Planning and Environment Act 1987.
2. This Agreement shall come into force immediately upon execution by all parties hereto
and shall run with the "Land".
3. The Owner covenants that it will bring this Agreement to the attention of all purchasers,
mortgagees, transferees and assignees of the "Land".
4. Each of the parties hereto shall respectively sign and execute all such further documents
and deeds and do all acts and things as the other party shall reasonably require for
completely effectuating this Agreement.

5. The Council covenants with the Owner:
 - a) That for any future Planning Application of the "Land", no Public Open Space Contribution will be required except for the areas within the "Land" shown as Public Open Space on the endorsed plan for PSB 0038/09A.
6. The Owner covenants that it will prepare or cause to be prepared an application under Section 181 of the Planning and Environment Act 1987 to enable the registration of this Agreement at the Land Registry and the Owner further agrees to pay (on request) the Council's costs and expenses in connection with this agreement including anything done in anticipation of this Agreement and the enforcement of any obligations imposed on the owners excepting the cost of any unsuccessful enforcement action.
7. The Owner covenants that it will as soon as practicable upon the formation of this Agreement take all steps reasonably necessary to enter a memorandum of this Agreement on the Certificate of Title to the Land in accordance with Section 181 of the Planning and Environment Act 1987 so that it shall run with the "Land".
8. Whenever herein the word "Owner" shall mean the person or persons 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 whole or part of the "Land".

EXECUTED AS A DEED

Executed by **Baw Baw Developments Pty Ltd** by being signed by those persons who are authorised to sign for the company.

Full Name **Gary William Tomasetti**
Usual Address **20 Bell Park Close**
Warragul 3820

Director.....

AL289081Q

13/08/2014 \$116.50 173



Signed on behalf of Baw Baw Shire Council

)

By Melissa Harris

Director of Growth & Development

)

Pursuant to Instrument of Delegation

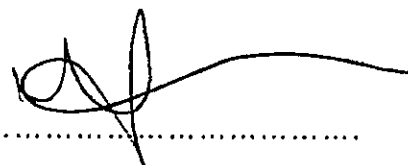
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Dated 16 DECEMBER 2011 In the presence of:

)

.....


Witness





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AS159632U

**Application by a responsible authority for the
making of a recording of an agreement
Section 181 Planning and Environment Act 1987**

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Lodged by

Name: HWL EBSWORTH LAWYERS
Phone: 8644 3421
Address: LEVEL 26, 530 COLLINS STREET, MELBOURNE
Reference: DV: KM: 906046
Customer code: 985X

The responsible authority having made an agreement referred to in section 181(1) of the Planning and Environment Act 1987 requires a recording to be made in the Register.

Land:(volume and folio)

VOLUME 11377 FOLIO 352
VOLUME 10989 FOLIO 542
VOLUME 05874 FOLIO 706

Responsible authority:(full name and address, including postcode)

BAW BAW SHIRE COUNCIL of 1 Civic Place, Warragul, 3820

Section and act under which agreement is made:

SECTION 173 OF THE PLANNING AND ENVIRONMENT ACT 1987 (VIC)

A copy of the agreement is attached to this application:

YES

Signing:

35271702A

181PEA

Page 1 of 2

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Land Use Victoria contact details: see www.delwp.vic.gov.au/property>Contact us

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**Application by a responsible authority for the
making of a recording of an agreement
Section 181 Planning and Environment Act 1987**

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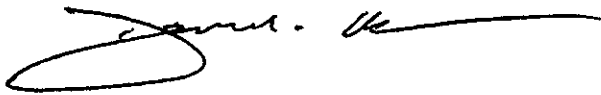
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Certifications

1. The Certifier has taken reasonable steps to verify the identity of the applicant.
2. The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
3. The Certifier has retained the evidence supporting this Registry Instrument or Document.
4. The Certifier has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Executed on behalf of **Baw Baw Shire Council**
Signer Name **DAVID VORCHHEIMER**
Signer Organisation **HWL EBSWORTH LAWYERS**
Signer Role **AUSTRALIAN LEGAL PRACTITIONER**

Signature



Execution Date

9 MAY 2017.

35271702A

181PEA

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Deed of Agreement

**Under s173 of the
Planning and Environment Act 1987**

Baw Baw Shire Council

and

Baw Baw Developments Pty Ltd

and

Duncan Charles McNeil

and

Debra Joy McNeil

Ref: DV:KM:906046

Doc ID 631014383A1

Level 26, 530 Collins Street, Melbourne VIC 3000 Australia
PO Box 3, Collins Street West VIC 8007 Australia
DX 564 Melbourne

Telephone +61 3 8644 3500
Facsimile 1300 365 323 (Australia) +61 3 9034 3257 (International)
hwlebsworth.com.au

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Table of contents

1.	Definitions and interpretation clauses	3
1.1	Definitions	3
1.2	Interpretation	5
2.	Owner's obligations	6
3.	Council Access	6
4.	Community Infrastructure Levy	7
4.1	The Owner covenants and agrees:	7
5.	Indemnity	7
6.	Further obligations	7
6.1	Notice and registration	7
6.2	Giving effect to this Agreement	7
6.3	Recording by Registrar of Titles	7
6.4	Council's costs to be paid	8
7.	Agreement under Section 173 of the Act	8
7.1	Agreement under the Act	8
8.	Owner's warranties	8
8.1	Owner's warranties	8
9.	Successors in title	8
9.1	Successors in title	8
10.	Notices	9
10.1	Service	9
10.2	Time of service	9
11.	Alternative Dispute Resolution	9
11.1	Referral to VCAT	9
11.2	Section 149 of the Act	9
11.3	Legal Representation	10

12.	Miscellaneous	10
12.1	Commencement of Agreement	10
12.2	Default	10
12.3	Ending of Agreement	10
12.4	Multiple lots	10
12.5	Application to Registrar	10
12.6	No fettering of Council's powers	11
12.7	No waiver	11
12.8	Severability	11
12.9	Proper law	11
Annexure 1		12
Executed as a deed		2

AS159632U

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Deed of Agreement

Date

7/5/2019

Parties

Baw Baw Shire Council

of 1 Civic Place, Warragul, Victoria 3820

(Council)

Baw Baw Developments Pty Ltd

of 3 Napier Street, Warragul, Victoria 3820

(Owner)

Duncan Charles McNeil

of Pharaohs Road, Warragul, Victoria 3820

(Owner)

Debra Joy McNeil

of Pharaohs Road, Warragul, Victoria 3820

(Owner)

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 Owner is or is entitled to be the registered proprietor of the Subject Land, which is the land over which this Agreement is intended to be registered.
- C. On 27 January 2016 Council issued Planning Permit No. PLA0345/14 (**Planning Permit**) allowing the Subject Land to be developed in accordance with the Planning Permit and endorsed plans.
- D. Condition 6 of the Planning Permit states that:

'Prior to the issue of a Statement of Compliance, the owner of the land must enter into an Agreement with the Responsible Authority pursuant to Section 173 of the Planning and Environment Act 1987. The cost of the preparation, lodgement and registration of the Agreement and any subsequent amendment, enforcement, removal or other dealing associated with the Agreement shall be borne totally by the owner of the land. The Agreement must be registered on the certificate of title for the land. Evidence of the registration of the agreement must be provided to the Responsible Authority prior to the issue of a Statement of Compliance.

The Agreement shall include the following details :

- a) *Unless with the written consent of the Responsible Authority, all fencing within 3 metres of boundaries abutting roads or reserves to be no higher than 1.2 metres.*
- b) *Unless with the written consent of the Responsible Authority, all boundary fencing along the northern and western edge of the overall subdivision must be at least 50% visually permeable and no higher than 1.2 metres.*
- c) ****DELETED****
- d) ****DELETED****
- e) *No single level concrete slab construction shall be used for any dwelling on a lot with a gradient of 20% or more unless with the written consent of the Responsible Authority.*
- f) *prior to the issue of a statement of compliance for the subdivision, the owner of the land will pay Council the amount specified in the Public Infrastructure Plan approved under planning permit PLA0345/14;*
- g) *prior to the issue of a Building Permit for the development of each dwelling the owner will pay a community infrastructure levy in accordance with the relevant Development*

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Contribution Plan Overlay Schedule to the Responsible Authority;

- h) any contributions made in accordance with (a) and (b) will satisfy all future development and community contributions under the Planning and Environment Act, 1987 which may be levied in respect of the land ;*
- i) the Public Infrastructure Plan approved under Planning Permit PLA0345/14 will be implemented; and*
- j) prior to the commencement of any DCP works, the timing of any payments to be made to a person in respect of any infrastructure project shall be subject to written agreement between that person and Council.*

- E. This Agreement addresses condition 6(a), (b), (e) and (g) of the Planning Permit.

At the date of this Agreement, the Subject Land is encumbered by Mortgages as listed in column two to annexure 1 to this Agreement. The Mortgagee has consented to the Owner entering into this Agreement with respect to the Subject Land.

- F. At the date of this Agreement, the Subject Land is affected by the Agreements listed at column three to annexure 1 to this Agreement.

- G. The Parties have agreed to enter into this Agreement:

- a. to give effect to the requirements of the Planning Permit; and
- b. to achieve or advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

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 *Planning and Environment Act 1987* (Vic).

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Agreement	means this Deed of Agreement and any Agreement executed by the Parties expressed to be supplemental to this Agreement.
Building Permit	means a Building Permit pursuant to Part 3 of the <i>Building Act 1993</i> .
Business Day	means a day that is not a Saturday, Sunday or public holiday in Melbourne.
Claim	means any claim, action, proceeding or demand made against the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.
Community Infrastructure Levy	means the community infrastructure levy specified in clause 4 of this Agreement that is required to be paid in respect of each Dwelling in accordance with this Agreement.
Development	means the development of the Subject Land in accordance with the Planning Permit.
Dwelling	has the same meaning as defined in the Planning Scheme.
Endorsed Plans	means the plans endorsed pursuant to the Planning Permit.
Development Contributions Plan Overlay - Schedule 1	means Development Contributions Plan Overlay - Schedule 1 to clause 45.06: Development Contributions Plan Overlay of the Planning Scheme.
Development Contributions Plan	means the Development Contributions Plan associated with Development Contributions Plan Overlay - Schedule 1.
Indexation	means a the Indexation as set out in Development Contributions Plan Overlay Schedule 1 and the associated Development Contributions Plan.
Loss	means any loss, damage, cost, expense or liability incurred by the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.
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.
Overall Subdivision	means the first and second release, collectively, of Waterford Rise as shown on sheet 2 of the Endorsed Plans.
Party or Parties	means the Owner and Council under this Agreement as appropriate.
Planning Permit	means the Planning Permit referred to in Background C of this Agreement as amended from time to time.
Planning Scheme	means the Baw Baw Planning Scheme and any other Planning Scheme which applies to the Subject Land.
Residential Lot	means a house lot created by subdivision of the Subject Land which, in the opinion of Council, is of a size and dimension intended to be developed as a single dwelling.
Statement of Compliance	means a Statement of Compliance under the <i>Subdivision Act 1998</i> .
Subject Land	means the land described at Annexure 1 to this Agreement 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.
VCAT	means the Victorian Civil and Administrative Tribunal.

1.2 Interpretation

- (a) In this document, 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 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.

- (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) The introductory clauses to this Agreement are and will be deemed to form part of this Agreement.
- (viii) Headings are for guidance only and do not affect the interpretation of this Agreement.
- (b) 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
 - (i) bind the Owner, its successors, transferees and permitted assigns, the registered proprietor or proprietors for the time being of the Subject Land; and
 - (ii) if the Subject Land is subdivided further, 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.

2. Owner's obligations

- (a) The Owner covenants and agrees that, unless with the prior written consent of the Responsible Authority;
 - (i) all fencing within 3 metres of boundaries abutting roads or reserves to be no higher than 1.2 metres;
 - (ii) all boundary fencing along the northern and western edge of the Overall Subdivision must be at least 50% visually permeable and no higher than 1.2 metres;
 - (iii) no single level concrete slab construction shall be used for any dwelling on a lot with a gradient of 20% or more;
- (b) prior to the issue of a Building Permit for the Development of each Dwelling the Owner will pay a Community Infrastructure Levy in accordance with the relevant Development Contribution Plan Overlay Schedule 1 (plus Indexation) to the Responsible Authority.

3. Council Access

The Owner covenants and agrees to allow the Council and its officers, employees, contractors or agents or any of them, to enter the Land (at any reasonable time) to assess compliance with this Agreement.

4. Community Infrastructure Levy

4.1 The Owner covenants and agrees that:

- (a) the Community Infrastructure Levy is to be indexed in accordance with the Indexation pursuant to this Agreement;
- (b) if the Community Infrastructure Levy is not paid by time a Building Permit issues, it will until paid accrue interest at the rate being the penalty rate prescribed in the *Penalty interest Rates Act 1983*; and
- (c) the Community Infrastructure Levy and any interest which accrues on it will be a debt by the Owner to Council until paid.

4.2 Council acknowledges that payment of the Community Infrastructure Levy represents a discharge by the Owner of any obligation to pay any further levy imposed for the purposes of community infrastructure as set out at Part 3B of the Act.

5. Indemnity

The Owner covenants to indemnify and keep the Council, its officers, employees, agents, workmen and contractors indemnified from and against all costs, expenses, losses or damages which they or any of them may sustain incur or suffer or be or become liable for or in respect of any suit action proceeding judgement or claim brought by any person arising from or referable to this Agreement or any non compliance with this Agreement.

6. Further obligations

6.1 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.

6.2 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.

6.3 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 s181 of the Act and do all things necessary to enable Council

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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.

6.4 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 preparation, drafting, finalisation, engrossment, execution, registration and enforcement of 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.

7. Agreement under Section 173 of the Act

7.1 Agreement under 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.

8. Owner's warranties

10. Notices

10.1 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 at the address set out in this Agreement or subsequently notified to each Party from time to time; or
- (c) by sending it by facsimile provided that a communication sent by facsimile shall be confirmed immediately in writing by the sending Party by hand delivery or prepaid post.

10.2 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 facsimile, on the next following business day unless the receiving Party has requested retransmission before the end of that business day.

11. Alternative Dispute Resolution

11.1 Referral to VCAT

In the event of any dispute between the parties concerning the interpretation or implementation of this Agreement, that dispute must be referred to the VCAT for resolution to the extent permitted by the Act. In the event of a dispute concerning any matter which is not referable to the VCAT pursuant to the Act, that matter will be referred for arbitration agreed upon in writing by the parties, or, in the absence of agreement, the Chairman of the Victorian Chapter of the Institute of Arbitrators, Australia, or his nominee, for arbitration.

11.2 Section 149 of the Act

Wherever provision is made in this Agreement that any matter be done to the satisfaction of the Responsible Authority or any of its officers or any public authority and a dispute arises in relation to that matter, the dispute will be referred to VCAT in accordance with Section 149 of the Act.

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11.3 Legal Representation

The parties will be entitled to legal representation for the purposes of any arbitration or referral referred to in sub-clauses 10.1 and 10.2 and, unless the Arbitrator, Chairman, Nominee or the Tribunal otherwise directs, each party will bear its own costs in relation to it.

12. Miscellaneous

12.1 Commencement of Agreement

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

12.2 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.

12.3 Ending of Agreement

This Agreement ends on the date that the Council issues a letter confirming that the

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12.6 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.

12.7 No waiver

Any time or other indulgence granted by Council to the Owner or any variation of the terms and conditions of this Agreement or any judgment or order obtained by Council against the Owner will not in any way amount to a waiver of any of the rights or remedies of Council in relation to the terms of this Agreement.

12.8 Severability

- (a) If a court, arbitrator, tribunal or other competent authority determines that a word, phrase, sentence, paragraph or clause of this Agreement is unenforceable, illegal or void then it must be severed and the other provisions of this Agreement will remain operative.
- (b) Clause 12.8(a) will not apply if to do so will materially affect the commercial arrangement formed by this Agreement.

12.9 Proper law

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

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Annexure 1

Subject Land				Mortgage	Agreements
Address	Volume	Folio	Lot Plan		
80 Pharaohs Road, Warragul, Victoria 3820	10989	542	Lot 2 on PS 604316F	Australia and New Zealand Banking Group Ltd number U662428B	Agreement pursuant to section 173 of the <i>Planning and Environment Act 1987</i> with the dealing number AE826210C Agreement pursuant to section 173 of the <i>Planning and Environment Act 1987</i> with the dealing number AL289081Q
80 Pharaohs Road, Warragul, Victoria 3820	05874	706	Lot 1 on TP 753794T	Not applicable	Agreement pursuant to section 173 of the <i>Planning and Environment Act 1987</i> with the dealing number AL289081Q
Princes Highway Warragul, Victoria 3820	11377	352	Lot B		

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Annexure 2

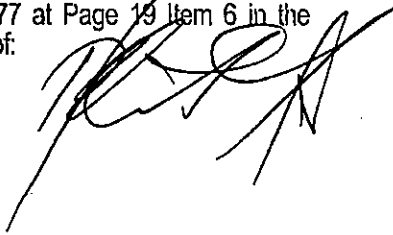
Mortgagee's Consent

Australia and New Zealand Banking Group Ltd as Mortgagee of registered Mortgage No U662428B consents to the Owner entering into this Agreement and agrees to be bound by the terms and conditions of this Agreement as if it were the Owner of the Subject Land.

Executed by AUSTRALIA AND NEW
ZEALAND BANKING GROUP LIMITED
ABN 11 005 357 522 by being SIGNED
by its Attorney



Under the Power of Attorney Dated
28/04/2005 a certified copy of which is
filed in the permanent order Book
Number 277 at Page 19 Item 6 in the
presence of:



AUSTRALIA AND NEW ZEALAND
BANKING GROUP LIMITED ABN 11 005
357 522 by its Attorney

AS159632U

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LAWYERS

Executed as a deed

SIGNED, SEALED AND DELIVERED by)
and on behalf of **Baw Baw Shire Council** by)
Yasmin Woods, Director Planning &)
Development, pursuant to the Instrument of)
Delegation dated 12 December 2018 in the)
presence of:

y woods

Folk

Witness Signature

Talea Leenaerts

Witness Name

**Executed by Baw Baw Developments Pty
Ltd ACN 103 394 618** in accordance with
section 127 of the *Corporations Act 2001*
(Cth) by:

[Signature]

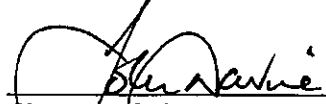
Signature of Director

<

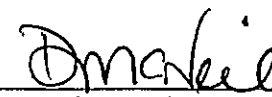
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HWLEBSWORTH
LAWYERS

Signed, sealed and delivered by Debra
Joy McNeil in the presence of:



Signature of witness



Signature of Debra Joy McNeil

Full name of witness (print) John M Davine
of 41 Gladstone Street Warragul
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform
Law (Victoria)

Address of witness (print)



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Application by a responsible authority for the making of a recording of an agreement

Section 181 Planning and Environment Act 1987

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Lodged by

Name: HWL EBSWORTH LAWYERS

Phone: 8644 3421

Address: LEVEL 26, 530 COLLINS STREET, MELBOURNE

Reference: DV: KM: 906046

Customer code:

The responsible authority having made an agreement referred to in section 181(1) of the Planning and Environment Act 1987 requires a recording to be made in the Register.

Land:(volume and folio)

VOLUME 11377 FOLIO 352

Res

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**Application by a responsible authority for the
making of a recording of an agreement
Section 181 Planning and Environment Act 1987**

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3. The Certifier has retained the evidence supporting this Registry Instrument or Document.
4. The Certifier has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Executed on behalf of

Baw Baw Shire Council.

Signer Name

DAVID VORCHHEIMER

Signer Organisation

HWL EBSWORTH LAWYERS

AS164564F

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LAWYERS

Deed of Agreement

**Under s173 of the
Planning and Environment Act 1987**

Baw Baw Shire Council

and

Baw Baw Developments Pty Ltd

Certificate of Title:

Volume 11377 Folio 352 being lot B on PS 647689V

Table of contents

1.	Definitions and interpretation clauses	3
1.1	Definitions	3
1.2	Interpretation	10
2.	Owner's obligations	10
2.1	Payment of Development Contribution Plan Levies	10
2.2	Implementation of PIP	11
2.3	Works in Kind and Credits	11
2.4	Developer Works and Localised Infrastructure	12
3.	Council's Obligations	12
3.1	Application of Infrastructure Project Payments	12
3.2	Deferring of payment of DCP Levies	13
4.	Works or Land Contribution	13
5.	Infrastructure Projects	13
5.1	Construction of DCP Items in lieu of payment of DCP Levies	13

AS164564F

HWL
EBSWORTH
LAWYERS

6.	Transfer of Ownership of Infrastructure Project	18
6.1	Transfer or Vesting of Infrastructure Project	18
6.2	Condition of Transfer or Vesting of Project Land	18
7.	Bank Guarantee or Bond	19
7.1	Bank Guarantee or Bond required for an Infrastructure Project:	19
7.2	Bank Guarantee or Bond required for the Maintenance Period:	19
8.	Indexation	20
9.	Standard of Works	20
10.	Council Access	20
11.	Indemnity	20
12.	Default	20
13.	Non-compliance	21
14.	Further obligations	22
14.1	Notice and registration	

AS164564F

HWL
EBSWORTH
LAWYERS

18.2	Time of service	23
19.	Alternative Dispute Resolution	24
19.1	Referral to VCAT	24
19.2	Section 149 of the Act	24
19.3	Legal Representation	24
20.	Miscellaneous	24
20.1	Commencement of Agreement	24
20.2	Ending of Agreement	24
20.3	Multiple lots	25
20.4	Application to Registrar	25
20.5	No fettering of Council's powers	25
20.6	No waiver	25
20.7	Severability	25
20.8	Proper law	25
Schedule 1	Construction Procedure	26
Schedule 2	Details of the Subject Land	1

AS164564F

Doc ID 633147043/v1

Page 1

HWL
EBSWORTH
LAWYERS

Deed of Agreement

Date 13th Day of May 2019

Parties

Baw Baw Shire Council

of 1 Civic Place, Warragul, Victoria 3820

(Council)

Baw Baw Developments Pty. Ltd. (ABN ~~32 951 78 0737~~) (ACN 103 394 618)

of 3 Napier Street, Warragul VIC 3820

The Agreement shall include the following details:

- a) *Unless with the written consent of the Responsible Authority, all fencing within 3 metres of boundaries abutting roads or reserves to be no higher than 1.2 metres.*
- b) *Unless with the written consent of the Responsible Authority, all boundary fencing along the northern and western edge of the overall subdivision must be at least 50% visually permeable and no higher than 1.2 metres.*
- c) ****DELETED****
- d) ****DELETED****
- e) *No single level concrete slab construction shall be used for any dwelling on a lot with a gradient of 20% or more unless with the written consent of the Responsible Authority.*
- f) *prior to the issue of a statement of compliance for the subdivision, the owner of the land will pay Council the amount specified in the Public Infrastructure Plan approved under planning permit PLA0345/14;*
- g) *prior to the issue of a Building Permit for the development of each dwelling the owner will pay a community infrastructure levy in accordance with the relevant Development Contribution Plan Overlay Schedule to the Responsible Authority;*
- h) *any contributions made in accordance with (a) and (b) will satisfy all future development and community contributions under the Planning and Environment Act, 1987 which may be levied in respect of the land;*
- i) *the Public Infrastructure Plan approved under Planning Permit PLA0345/14 will be implemented; and*
- j) *prior to the commencement of any DCP works, the timing of any payments to be made to a person in respect of any infrastructure project shall be subject to written agreement between that person and Council.'*

-
- F. The Subject Land is within the area affected by Development Contributions Plan Overlay - Schedule 1 (**DCPO1**) and Development Contributions Plan Overlay - Schedule 2 (**DCPO2**) pursuant to the Planning Scheme, which requires the Owner to make contributions towards infrastructure. Council is the Collecting Agency and the Development Agency pursuant to the Act for both DCPO1 and DCPO2.
- G. A Public Infrastructure Plan (**PIP**) has been approved under the Planning Permit.
- H. The Owner agrees to deliver Infrastructure Projects, or otherwise to pay DCP Levies to Council, in accordance with this Agreement.
- I. At the date of this Agreement, the Subject Land is affected by the Agreements listed at column three to Schedule 2 to this Agreement.
- J. The Parties have agreed to enter into this Agreement:
- (i) to give effect to the requirements of the Planning Permit;
 - (ii) to provide for Infrastructure Projects and the DCP Levy for the Subject Land; and
 - (iii) to achieve or advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

This deed witnesses that in consideration of, amongst 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 *Planning and*

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Agreement	means this Deed of Agreement and any Agreement executed by the Parties expressed to be supplemental to this Agreement.
Allotment	means a Lot developed for residential or commercial purposes.
Approved Plans	means the plans for an Infrastructure Project that are approved by Council pursuant to clause 5.6(a)(ii) of this Agreement on the basis of the Designs.
Bank Guarantee	means a bank guarantee or other form of security to the satisfaction of Council in the amount set out in clause 7 of this Agreement.
Building Permit	means a building permit under the <i>Building Act 1993</i> .
Business Day	means a day that is not a Saturday, Sunday or public holiday in Melbourne.
Certificate of Practical Completion	means a written certificate issued by Council in its capacity as the Development Agency for an Infrastructure Project stating that an Infrastructure Project or a specified stage of the Infrastructure Project has been completed to the satisfaction of Council.
Claim	means any claim, action, proceeding or demand made against the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.
Collecting Agency	has the same meaning as in the Act.
Community Infrastructure Levy	has the same meaning as in the Act.
Construction Procedure	means the construction procedure contained in Schedule 1 to this Agreement.
Construction Supervision Fee	means a fee payable to Council by the Owner for the supervision of the Works which is payable in accordance with, and at the rate specified pursuant to, section 17(2) of the <i>Subdivision Act 1988</i> .

Credit	means any credit that is attributable to the Owner's outstanding liability to pay contributions under the DCPO2 as a result of the Owner providing Project Land or delivering DCP Items in lieu of the DCP2 Levy
Current Address	means: (a) for Council, the address shown on page one of this Agreement, or any other address listed on Council's website; and (b) for the Owner, the address shown on page one of this Agreement or any other address provided by the Owner to Council for any purpose relating to the Subject Land.
Current Email	means: (a) for Council, bawbaw@bawbawshire.vic.gov.au or any other email address listed on Council's website; and (b) for the Owner, any email address provided by the Owner to Council for the express purpose of electronic communication regarding this Agreement.
DCP Item	means an Infrastructure Project that is identified in the DCPO2 and DCP2.
DCP Levy	means the: (a) Development Infrastructure Levy Contribution payable under DCPO1; or (b) Development Infrastructure Levy Contribution payable under DCPO2 as applicable to the Subject Land.
DCPO1	means Development Contributions Plan Overlay - Schedule 1 pursuant to the Planning Scheme.
DCPO2	means Development Contributions Plan Overlay - Schedule 2 pursuant to the Planning Scheme.
Designs	means the detailed design and engineering plans and specifications for an Infrastructure Project that are submitted to

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Council pursuant to clause 5.6(a) of this Agreement.

Development	means the development of the Subject Land in accordance with the Planning Permit.
Development Contribution Levy	means the Development Contributions Levy as defined in the Act.
Development Infrastructure Levy	means the Development Infrastructure Levy as defined in the Act.
Developer Works	means those Infrastructure Projects that are identified as such in the PIP, do not fall within DCP1 or DCP2 and are the responsibility of the Owner.
Development Agency	has the same meaning as in the Act.
Development Contributions Plan 1 or DCP1	means the Development Contributions Plan incorporated into the Scheme pursuant to DCPO1.
Development Contributions Plan 2 or DCP2	means the Warragul Development Contributions Plan dated September 2014 and Amended June 2017 (as amended from time to time) incorporated into the Planning Scheme pursuant to DCPO2.
Development Infrastructure Levy	has the same meaning as in the Act.
Indexation	(a) means a quarterly adjustment to an amount carried out in accordance with the methods set out in the DCPO1 or DCPO2 as appropriate; or (b) an adjustment to land value in accordance with the methodology specified in the DCP1 or DCP2 as appropriate.
Infrastructure Project	means a project which may be delivered by the Owner under this Agreement, identified in the PIP.

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Intellectual Property means all current and future intellectual property rights in respect of copyright, trade marks, patents, designs, rights in relation to confidential information, trade secrets, know how, manners of manufacture, formulas, inventions, databases, get up and all other rights falling within the scope of this term whether arising by common law, equity or statute.

Localised Infrastructure means works, services or facilities necessitated by the subdivision or development of land including but not limited to provision of utility.

Loss means any loss, damage, cost, expense or liability incurred by the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Lot means a part (consisting of one or more pieces) of any land to be developed for residential or commercial purposes (except a road, a reserve, or common property) shown on a plan, which can be disposed of separately and includes a unit or accessory unit on a registered plan of strata subdivision and a lot or accessory lot on a registered cluster plan and upon which a DCP Levy is payable and excludes:

- (c) a Staged Lot;
- (d) a lot created to facilitate the installation of essential services;
- (e) a lot excised for the purposes of any works or installations required by the Responsible Authority or any other Authority;
- (f) a lot or any other portion of the Land excised as required by the Responsible Authority or any other authority for any public purposes, including but not limited to:

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Milestone	means the Milestone for the Completion of the Infrastructure Project as set out in the PIP.
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.
Over Provision	means where Council, as the Collecting Agency, agrees that the Owner can provide an Infrastructure Item in accordance with clause 2.3 of this Agreement and the cost of the Infrastructure Item exceeds the Agreed Project Cost for that Item,
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.
PIP	means the Public Infrastructure Plan that is endorsed under the Planning Permit.
Plan Checking Fee	means a fee payable to Council by the Owner for the review and consideration of the Designs and which is payable in accordance with, and at the rate specified pursuant to, the <i>Subdivision Act 1988</i> .
Plan of Subdivision	means the plan or plans of subdivision that subdivide the Land into Lots.
Planning Permit	means the planning permit referred to in Recital C of this Agreement.
Planning Scheme	means the Baw Baw Planning Scheme and any other Planning Scheme which applies to the Subject Land.
Project Land	means the land area (in hectares) required to facilitate the Infrastructure Project as defined in DCP2, including neighbourhood parks, but does not include land that forms part of an open space contribution pursuant to the Planning Scheme or

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Subdivision Act 1988.

Public Infrastructure Plan (PIP)	means the Public Infrastructure Plan approved under the Planning Permit.
PSP	means the Warragul Precinct Structure Plan Precinct Structure Plan applying to the Subject Land as amended from time to time.
Residential Lot	means a house lot or multi dwelling lot created by subdivision of the Subject Land which, in the opinion of Council, is of a size and dimension intended to be developed as a single dwelling or for multiple dwellings and where a Residential Lot is proposed for multiple dwellings, for the purpose of calculating the quantum of the Community Infrastructure Levy it shall be deemed that a Residential Lot comprises 1 dwelling.
Schedule	means a schedule to this Agreement.
Stage	is a reference to a stage of subdivision of the Subject Land.
Staged Lot	means a lot that will be further subdivided to create Lots.
Statement of Compliance	means a Statement of Compliance under the <i>Subdivision Act 1988</i> .
Subject Land	means the land described at Schedule 2 to this Agreement 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.
Value of Project Land	means the value of land required for an Infrastructure Project as defined in DCP2.
VCAT	means the Victorian Civil and Administrative Tribunal.
Works	has the same meaning as in the Act.
Works in Kind	means an Infrastructure Project undertaken by the Owner in accordance with clause 2.3, clause 4 and clause 5 of this Agreement

1.2 Interpretation

- (a) In this document, 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 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.
 - (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) The introductory clauses to this Agreement are and will be deemed to form part of this Agreement.
 - (viii) Headings are for guidance only and do not affect the interpretation of this Agreement.
- (b) 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
 - (i) bind the Owner, its successors, transferees and permitted assigns, the registered proprietor or proprietors for the time being of the Subject Land; and
 - (ii) if the Subject Land is subdivided further, 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.

2. Owner's obligations

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- (b) prior to the issue of a Statement of Compliance for the subdivision of each Stage of the Development, the Owner will pay to the Council the DCP Levy including any Indexation in accordance with DCPO1 as appropriate and as required by this Agreement; and
- (c) prior to the issue of a Statement of Compliance for the subdivision of each Stage of the Development, the Owner will pay to Council, the DCP Levy including any Indexation in accordance with DCPO2 as appropriate and as required by this Agreement.

2.2 Implementation of PIP

The Owner covenants and agrees that:

- (a) subject to this Agreement, the Owner will implement the PIP as applicable to the Subject Land and will deliver the Infrastructure Projects and Developer Works as set out in PIP including but not limited to the Milestone for the Infrastructure Projects and Developer Works;
- (b) prior to the issue of a Statement of Compliance for the last Stage of the subdivision and Development, the Owner must have implemented the PIP to the satisfaction of Council;
- (c) should the Owner construct any of the Infrastructure Projects listed in the PIP, the Owner must undertake such Infrastructure Projects in accordance with this Agreement and to Council's specifications, requirements and satisfaction; and
- (d) the Owner will construct the Developer Works specified in the PIP to Council's specifications, requirements and satisfaction.

2.3 Works in Kind and Credits

- (a

- (C) the Construction Procedure at Schedule 1 of this Agreement;
- (ii) the timing of the payment of any funds as a reimbursement beyond the value of any Credits, in relation to any Infrastructure Project is subject to the availability of funds in the DCPO2 account.
- (d) If the Owner delivers an Infrastructure Item in accordance with this clause, the Owner may receive a Credit for the Agreed Project Cost plus Indexation against the obligation to pay Council the DCP2 Levy to the extent of the Agreed Project Cost of that Infrastructure Item (as Indexed) until the Credit is fully utilised.

2.4 Developer Works and Localised Infrastructure

- (a) The Owner covenants and agrees that:
 - (i) the DCP Levy collected pursuant to DCPO1 in accordance with this Agreement only relates to DCPO1 and not Developer Works or Localised Infrastructure; and
 - (ii) DCP Levy collected pursuant to DCPO2 in accordance with this Agreement only relates to the Infrastructure Projects not Developer Works or Localised Infrastructure.
- (b) The Owner covenants and agrees that it must deliver those items identified in the PIP as Developer Works:
 - (i) in accordance with the Milestone specified in the PIP; and
 - (ii) in accordance with the Construction Procedure contained in Schedule 1 of this Agreement;

to the satisfaction of Council and unless otherwise agreed prior in writing by Council.

3. Council's Obligations

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3.2 Deferring of payment of DCP Levies

- (a) The Council, in its absolute discretion, may agree to the deferring of payment of the DCP Levy and require the Owner to enter into an agreement pursuant to section 173 of the Act for the payment of the DCP Levy.
- (b) The Owner covenants and agrees that any future agreement referred to in clause 3.2(a) will include appropriate indexation provisions as set out at clause 45.06 of the Scheme.

4. Works or Land Contribution

- (a) Council may, at its absolute discretion, accept a transfer of Works for a DCP Item or land in lieu or partially in lieu of a cash DCP Levy for the DCPO2 contribution provided such works or transfer achieves in full or part, a project identified in DCP2 for the locality.
- (b) The Parties covenant and agree that the value of the DCP Item Works or land contribution must be assessed by an independent valuer or quantity surveyor (as appropriate).

5. Infrastructure Projects

5.1 Construction of DCP Items in lieu of payment of DCP Levies

Council

5.3 Time for Completion of Infrastructure Works:

Where an infrastructure Project is being delivered in accordance with Clause 2.3 of this Agreement and the Owner does not meet the specified Milestone for an Infrastructure Project, Council in its capacity as Responsible Authority may:

- (a) at its absolute discretion, in writing, extend the Milestone; or
- (b) refuse to issue a Statement of Compliance until the Infrastructure Project is completed for that Stage to the satisfaction of Council in its capacity as Development Agency.

5.4 Obligation to complete Infrastructure Project once commenced

Once Works associated with an Infrastructure Project are commenced by the Owner, the Owner must complete the Infrastructure Project regardless of whether the total cost of completing the Infrastructure Project exceeds the Agreed Project Cost.

5.5 Agreed Project Cost of an Infrastructure Project

The Parties to this Agreement agree that the Agreed Project Cost of an Infrastructure Project is a fixed amount subject only to Indexation.

5.6 Design and approval of Infrastructure Projects

- (a) Where an Infrastructure Project is being constructed in accordance with Clause 2.3

- (A) a copy of the terms and conditions of the contract to be awarded; and
 - (B) a copy of the proposed construction program.
- (b) Council must consider the Designs submitted to it pursuant to clause 5.6(a)(i) of this Agreement and either:
 - (i) approve the Designs and issue Approved Plans; or
 - (ii) if, in Council's opinion, the Designs are inadequate:
 - (A) refuse to issue Approved Plans; and
 - (B) identify, and advise the Owner, which aspects of the Designs are inadequate and invite the Owner to submit further Designs.
- (c) Once the Designs are approved under this clause 5.6, the Owner covenants and agrees to obtain the relevant consents to allow the Intellectual Property of the Designs to be owned by Council.
- (d) In the event that Council calls up the Bank Guarantee referred to in clause 7.1(a)(i) of this Agreement and the Council is in a position that requires it to complete the Infrastructure Project, the Designs approved under this clause 5.6 are novated to Council and are to be provided to Council in a format to Council's satisfaction.
- (e) Once the Designs are approved pursuant to clause 5.6(b)(i), Council will not unreasonably require further variations of the Approved Plans.

5.7 Variation of Approved Plans

The Owner covenants and agrees that upon the approval of the Designs, there will be no further variation of the Designs without the prior written consent of Council. In the event that the Design is to be varied, the Agreed Project Cost is to remain unaltered.

5.9 Certificate of Practical Completion

Where an Infrastructure Project is constructed pursuant to clause 2.3 of this Agreement and when an Infrastructure Project, or any stage of an Infrastructure Project as specified in the PIP, has been completed to the satisfaction of Council in accordance with this Agreement, Council agrees that it will issue a Certificate of Practical Completion for that Infrastructure Project or stage of it as specified in the PIP and this Agreement.

5.10 Procedure for Certificate of Practical Completion

The Parties covenant and agree that upon the completion of an Infrastructure Project, the Owner will initiate the Construction Procedure at Schedule 1 and the parties will proceed in accordance with the Construction Procedures at Schedule 1 to this Agreement.

5.11 Standard of Work

In addition to any other requirement in this Agreement, the Owner covenants and agrees that all Works for an Infrastructure Project must:

- (a) accord with the Approved Plans unless otherwise agreed prior in writing by Council;
- (b) be fit and structurally sound, fit for purpose and suitable for their intended use;
- (c) accord with best industry practice to the extent required by the Approved Plans;</

