

Memorandum of Understanding

between

Hobsons Bay City Council

and

Alceon Group No. 67 Pty Ltd

ACN [##Owner to confirm ACN]

and

Newport Apartments Vic Pty Ltd

ACN 154 781 094

and

Brymart Pty Ltd

ACN 004 785 077

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DRAFT

MEMORANDUM OF UNDERSTANDING (MOU)

DATED / /

PARTIES

Name	Hobsons Bay City Council
Address	115 Civic Parade, Altona, Victoria 3018
Short name	Council
Name	Newport Apartments Vic Pty Ltd ACN 154 781 094
Address	Unit 2401, 68-70 Dorcas Street, Southbank, Victoria 3006
Short name	Newport
Name	Alceon Group No. 67 Pty Ltd ACN [##Owner to confirm ABN]
Address	[##Owner to confirm address]
Short name	Alecon
Name	Bymart Pty Ltd CAN 004 785 077
Address	5 Sutton Street, South Kingsville, Victoria 3015
Short name	Bymart

BACKGROUND

- A. This MOU sets out the common understanding between the parties at the time the MOU is signed and for the duration of the MOU.
- B. This MOU provides background context relevant to Agreements to be entered into between each of the Corporate parties and Council under section 173 of the Act that set out obligations by the Corporate parties to make contributions, in kind or as monetary contributions, to the Infrastructure Projects.
- C. This MOU describes the Strategy for the delivery and apportionment of the Infrastructure Projects that has been used to derive the amount of in kind or monetary contribution that the Corporate parties are obliged to make (or reimbursement the Corporate parties are entitled to receive) as specified in the Agreements.
- D. The Corporate Parties own various parts of the Precinct 16 West Land.
- E. The Precinct 16 West Land is the subject of a forthcoming combined application under s 96A of the Act:
 - (i) to amend the Planning Scheme by (among other things):
 - (a) rezoning the Subject Land from Industrial 3 Zone and part General Residential Zone to part Schedule 4 to the General Residential Zone and part Schedule 2 to the Residential Growth Zone under the Planning Scheme;

- (b) applying Schedule 2 to the Development Plan Overlay under the Planning Scheme to the Subject Land; and
 - (c) subdividing part of the Subject Land to align with the proposed re-zoning;
- (ii) for two planning permit applications relating to the Precinct 16 West Land, specifically:
- (a) planning permit application no. PA1943532 seeking permission to subdivide the land at 9A Sutton Street, South Kingsville into 2 lots; and
 - (b) planning permit application no. PA1943533 seeking permission to subdivide the land at 41-59 Stephenson Street, South Kingsville into 2 lots.

F. This MOU is not intended to create legally enforceable obligations between the parties.

1. DEFINITIONS

In this Agreement unless the context admits otherwise:

Act means the *Planning and Environment Act 1987*.

Agreements means the agreements that are to be entered into between the Corporate parties and Council under section 173 of the Agreement to give effect to the Strategy and the undertakings in this MOU.

Amendment means the proposed Amendment C114 to the Planning Scheme to (among other things):

- a. rezone the Precinct 16 West Land from Industrial 3 Zone and part General Residential Zone to part Schedule 4 to the General Residential Zone and part Schedule 2 to the Residential Growth Zone;
- b. apply Schedule 2 to the Development Plan Overlay to the Precinct 16 West Land;
- c. subdivide part of the Precinct 16 West Land to align with the proposed zoning; and
- d. amend the Schedule to Clause 53.01 of the Planning Scheme to provide for a 5 percent public open space requirement.

Corporate parties means Newport, Alecon and Bymart.

Current Email means:

- a. for Council, strategicplanning@hobsonsbay.vic.gov.au, or any other address listed on Council's website; and
- b. for the Corporate parties, any email address provided by the Corporate party to the Parties for the express purpose of electronic communication regarding this MOU.

Infrastructure Project means the projects set out at Table 1 of the Strategy.

MOU means this memorandum of understanding entered into between Council and the Corporate parties relating to the provision of infrastructure for the Precinct 16 West Land.

Party or Parties means the Parties to this MOU.

Planning Permit means Planning Permit No. PA1736660.

Planning Scheme means the Hobsons Bay Planning Scheme.

Precinct 16 East Land means the land known as 32 – 48 Blackshaws Road, South Kingsville benefitting from the Planning Permit.

Precinct 16 West Land means the land described in Schedule 1 of this MOU.

Schedule means a schedule of this MOU.

Stage followed by a reference to a stage number is a reference to a specified stage of the development of the Precinct 16 West Land as identified in the Strategy.

Strategy means the infrastructure delivery and apportionment strategy prepared by Mesh on behalf of Hobsons Bay City Council entitled “*Precinct 16 West Infrastructure Delivery and Apportionment Strategy*” dated April 2021 contained in Schedule 2 of this MOU.

2. INTERPRETATION

In this MOU unless the context admits otherwise:

- 2.1 the singular includes the plural and vice versa;
- 2.2 a reference to a gender includes all genders;
- 2.3 a reference to a person includes a reference to a firm, corporation or other corporate body and that person's successors in law;
- 2.4 the undertakings made by the Corporate parties are made jointly and severally;
- 2.5 a term used has its ordinary meaning unless that term is defined in this MOU. If a term is not defined in this MOU and it is defined in the Act, it has the meaning as defined in the Act;
- 2.6 a reference to an Act, regulation or the Planning Scheme includes any Act, regulation or amendment amending, consolidating or replacing the Act, regulation or Planning Scheme;
- 2.7 the Background forms part of this MOU;
- 2.8 any reference to a clause, page, condition, attachment or term is a reference to a clause, page, condition, attachment or term of this MOU.

3. TERM

This MOU is effective from the date the last Party signs this MOU and continues until the earlier of:

- 3.1 one month from the date of notice in writing from one of the Parties to all of the Parties notifying of its intention to withdraw from the MOU; or
- 3.2 the obligations on the Corporate parties set out in the Agreements have been completed, to the satisfaction of Council.

4. OBJECTIVES

The Parties acknowledge and agree that they have entered into this MOU for the following reasons:

- 4.1 the Corporate parties and Council understand that the Precinct 16 East Land must be considered in the apportionment of responsibility for delivery of infrastructure in the vicinity of the Precinct 16 West Land;

- 4.2 Council requires the Infrastructure Projects be carried out because the Infrastructure Projects are necessary to achieve:
- 4.2.1 a reasonable standard of drainage, road and pedestrian infrastructure for the benefit of future occupants of the Precinct 16 East Land and the Precinct 16 West Land;
 - 4.2.2 a reasonable standard of public realm amenity (including as regards the undergrounding of powerlines) in the vicinity of the Precinct 16 East Land and the Precinct 16 West Land;
- 4.3 the Corporate parties agree in principle that the Infrastructure Projects are required as part of the redevelopment of the Precinct 16 East Land as authorised by the Planning Permit and the redevelopment of the Precinct 16 West Land as contemplated by the Amendment;
- 4.4 the Parties have engaged in a series of discussions over many months, in part facilitated by Mesh, in an effort to achieve agreement over a suitable and equitable apportionment for the delivery of the Infrastructure Projects;
- 4.5 the Corporate parties agree that the Strategy achieves in a suitable and equitable apportionment of the delivery of the Infrastructure Projects between the Parties in a way that factors in the infrastructure contributions that will be made as part of the redevelopment of the Precinct 16 East Land;
- 4.6 the Corporate parties acknowledge that their agreement to the Strategy is given in consideration for:
- 4.6.1 Council supporting the Amendment; and
 - 4.6.2 Council's agreement to fund part of the cost of works until the southern landowner develops (at which Council's expenditure will be reimbursed without interest) in recognition by Council of the challenges presented by the multiple landholdings within Precinct 16 and as an acknowledgement of the benefit Council's actions deliver in facilitating the efficient redevelopment of the Precinct 16 East Land and the Precinct 16 West Land.
- 4.7 the Corporate parties have elected to enter into this MOU in order to secure Council's support of the Amendment.

5. UNDERTAKINGS

The Parties agree to:

5.1 Strategy

Give effect to the Strategy by entering into Agreements that give effect to the Strategy and this MOU and by undertaking the obligations set out in the Agreements, in order to deliver the Infrastructure Projects.

5.2 Successors in title

Until such time as a memorandum of the Agreements are recorded on the certificates of title of the Precinct 16 West Land, the Corporate parties must require successors in title to:

- 5.2.1 give effect to this MOU; and
- 5.2.2 enter into a MOU reflecting their agreement to make the undertakings set out in this MOU.

6. CORPORATE PARTIES' WARRANTIES

The Corporate parties warrant that apart from the Corporate parties, no other person has any interest, either legal or equitable, in the Precinct 16 West Land which may be affected by this MOU.

7. GENERAL MATTERS

7.1 Notices

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:

- 7.1.1 personally on the other Party; or
- 7.1.2 by email to the other Party's Current Email.

7.2 Counterparts

This MOU may be executed in counterparts, all of which taken together constitute one document.

7.3 No fettering of Council's powers

This MOU does not fetter or restrict Council's power or discretion to make decisions or impose requirements or conditions in connection with the grant of planning approvals or certification of plans subdividing the Precinct 16 West Land or relating to use or development of the Precinct 16 West Land.

SCHEDULE 1 – DESCRIPTION OF PRECINCT 16 WEST LAND

The whole of the land described as:

41-59 Stephenson Street, South Kingsville	Land in Plan of Consolidation 163945E	Volume 09735, Folio 412
5-7 Sutton Street, South Kingsville	Lot 1 on Plan of Subdivision TP513994B	Volume 8355, Folio 010
9 and 9A Sutton Street, South Kingsville	Lot 1 on Plan of Subdivision 336144B Lot 2 on Plan of Subdivision 336144B	Volume 10213, Folio 045 Volume 11586, Folio 288
	Lot 10 Block C on Plan of Subdivision 001015	Volume 07129, Folio 697

SCHEDULE 2 – STRATEGY

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SIGNING PAGE

Signed, sealed and delivered as a deed by the parties

Signed sealed and delivered by Mr Arthur)
 Vatzakis, Manager Planning, Building and)
 Health on behalf of the **Hobsons Bay City**)
Council pursuant to the power delegated)
 to that person by an Instrument of)
 Delegation in the presence of:)

 (Signature of independent adult witness)

 (name of signatory)

 Name of witness
 (BLOCK LETTERS)

EXECUTED by **NEWPORT APARTMENTS**)
VIC PTY LTD (ACN 154 781 094) in)
 accordance with section 127 (1) of the)
Corporations Act 2001 (Cth))

 Signature of Director

 Signature of Director/Company
 Secretary
 (delete whichever is not applicable)

 Full name

 Full name

 Usual address

 Usual address

EXECUTED by **ALECON GROUP NO.67**)
PTY LTD (ACN **##Owner to confirm**) in)
 accordance with section 127 (1) of the)
Corporations Act 2001 (Cth))

 Signature of Director

 Signature of Director/Company
 Secretary
 (delete whichever is not applicable)

 Full name

 Full name

 Usual address

 Usual address

EXECUTED by **BYMART PTY LTD** (ACN)
 004 785 077) in accordance with section)
 127 (1) of the *Corporations Act 2001* (Cth))
)

 Signature of Director

 Signature of Director/Company
 Secretary
 (delete whichever is not applicable)

 Full name

 Full name

 Usual address

 Usual address