

## **Agreement under section 173 of the Planning and Environment Act 1987**

### **Subject Land:**

9 and 9A Sutton Street, South Kingsville

### **Hobsons Bay City Council**

and

**Alceon Group No. 67 Pty Ltd**  
ACN **[##Confirm ACN]**

# CONTENTS

Background.....	3
1. Definitions.....	4
2. Interpretation.....	7
3. Purposes of Agreement .....	7
4. Reasons for Agreement.....	7
5. Agreement required.....	7
6. Owner's specific obligations.....	8
6.1 Construction of Infrastructure Projects.....	8
6.2 Standard of work.....	8
6.3 Time for completion of Infrastructure Projects .....	8
6.4 Obligation to complete Infrastructure Projects once commenced.....	8
6.5 Design of Infrastructure Projects.....	8
6.6 Variation of Approved Plans .....	9
6.7 Construction of Infrastructure Projects.....	9
6.8 Certificate of Practical Completion.....	9
6.9 Obligations following Certificate of Practical Completion .....	10
6.10 Bank Guarantee.....	10
6.11 Powerline Undergrounding Works .....	10
6.12 Reimbursement for Over Provision.....	11
7. Owner's further obligations .....	11
7.1 Notice and registration.....	11
7.2 Further actions.....	11
7.3 Fees.....	11
7.4 Council's costs to be paid .....	12
7.5 Time for determining satisfaction.....	12
7.6 Interest for overdue money.....	12
8. Agreement under s 173 of the Act .....	12
9. Owner's warranties .....	12
10. Successors in title.....	12
11. General matters .....	13
11.1 Land Registry.....	13
11.2 Notices.....	13
11.3 Counterparts.....	13
11.4 No waiver.....	13
11.5 Severability .....	13
11.6 No fettering of Council's powers .....	13
11.7 Inspection of documents.....	13
11.8 Governing law.....	13
12. Commencement of Agreement.....	14
13. Ending of Agreement.....	14
SCHEDULE 1 – DESCRIPTION OF PRECINCT 16 WEST LAND .....	15
SCHEDULE 2 – INFRASTRUCTURE PROJECTS.....	16
Signing Page.....	17

# AGREEMENT UNDER SECTION 173 OF THE PLANNING AND ENVIRONMENT ACT 1987

DATED     /     /

## PARTIES

Name	<b>Hobsons Bay City Council</b>
Address	115 Civic Parade, Altona, Victoria 3018
Short name	<b>Council</b>

Name	<b>Alceon Group No. 67 Pty Ltd ACN [##Confirm ACN]</b>
Address	<b>[##Confirm address]</b>
Short name	<b>Owner</b>

## BACKGROUND

- A. Council is the responsible authority for the Planning Scheme.
- B. The Subject Land forms part of the Precinct 16 West Land, being 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.
- C. Authorisation has not yet been sought for, or granted to the Amendment.
- D. The Owner is or is entitled to be the registered proprietor of the Subject Land.
- E. The registered proprietors of the Precinct 16 Land entered into/will enter into [##Delete whichever is inapplicable prior to exhibition] the Memorandum of Understanding.
- F. The parties have agreed to enter into this Agreement to record the terms and conditions by which Council agrees to the Owner constructing and completing the Infrastructure Projects in accordance with the Memorandum of Understanding.

- G. The Parties agree that this Agreement will only commence if and when the Minister for Planning approves the Amendment and the associated Ministerial Notice is published.
- H. The Owner acknowledges and agrees that the Owner is not entitled to any reimbursement or compensation if the Amendment is not approved.
- I. As at the date of this Agreement, the Subject Land is encumbered by a mortgage in favour of the Mortgagee. The Mortgagee consents to the Owner entering into this Agreement.

## **The Parties agree**

### **1. DEFINITIONS**

In this Agreement unless the context admits otherwise:

**Australian Standard** means any relevant standard developed by Standards Australia.

**Act** means the *Planning and Environment Act 1987*.

**Agreed Project Value** means the amount set out or referred to in Schedule 2 or any other amount which has been specifically agreed in writing by Council.

**Agreement** means this Agreement and includes this Agreement as amended from time to time.

**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.

**approved** means approved by Council in writing.

**Approved Plans** means plans approved by Council under clause 6.5 of this Agreement.

**Bank Guarantee** means an unconditional bank guarantee in the amount of 5% of the Infrastructure Project Value from an Australian Bank or other form of security to the satisfaction of Council.

**Building** has the same meaning as in the Act and includes any Building in a Stage.

**Cash Liability** means the Owner's total cash liability based on the total land area of the Subject Land being an amount equal to \$948,430.93 indexed to the calendar year, as at the date a Certificate of Practical Completion is issued in respect of the last Infrastructure Project.

**Certificate of Practical Completion** means a written certificate issued by Council stating that an Infrastructure Project has been completed to the satisfaction of Council.

**complete** in respect of any works or any part of any works means the completion of those works or the specified part of those works in accordance with plans and specifications approved by the Council to the satisfaction of the Council.

**Consent Fee** means the fee specified on Council's internet web site which is payable by a person to Council for deciding whether to give consent or secondary consent for anything in an agreement or where a permit provides that something must not be done without Council's consent.

**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, strategicplanning@hobsonsabay.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.

**Designs** means the detailed design and engineering plans and specifications of an Infrastructure Project approved by Council under clause 6.5 of this Agreement.

**Estimated Cost** means:

- a. for the purpose of calculating the Plan Checking Fee, the estimated cost, as agreed by Council, of constructing a Infrastructure Project shown on the plans to be checked; and
- b. for the purpose of calculating the Supervision Fee, the estimated cost, as agreed by Council, of constructing a Infrastructure Project to be supervised.

**Infrastructure Project** means a project to be delivered by the Owner under this Agreement which is identified in the relevant column of the table to Schedule 2 of this Agreement.

**Interim intersection Upgrade Drawings** means the Sutton Street South Kingsville Concept Plan – Interim, prepared by Traffix Group, drawing no G27836-01-01, issue G, dated 1 February 2021.

**Lot** means a lot created by a subdivision of the Subject Land whether in accordance with any planning permit for the Subject Land or otherwise.

**Maintenance Period** means a period of 12 months from the issue of a Certificate of Practical Completion.

**Memorandum of Understanding** means the memorandum of understanding entered into between Council and the registered proprietors of the Precinct 16 Land on [##Insert date] relating to the provision of infrastructure for the Precinct 16 Land.

**Ministerial Notice** means the Ministerial notice approving the Amendment and published in the Victorian Government Gazette in accordance with the Act.

**Mortgagee** means the person registered or entitled from time to time to be registered as mortgagee of the Subject Land.

**Occupancy Permit** has the same meaning as in the *Building Act 1993* (Vic).

**Over Provision** means the exceedance between the Total Cost of Infrastructure Projects and the Cash Liability equal to the amount of \$157,979.07 indexed to the calendar year, as at the date of practical completion of the last Infrastructure Project.

**Owner** means the person registered or entitled from time to time to be registered as proprietor of an estate in fee simple of the Subject Land and includes a mortgagee-in-possession.

**Owner's obligations** includes the Owner's specific obligations and the Owner's further obligations.

**Party or Parties** means the Parties to this Agreement.

**Plan Checking Fee** means a fee payable to Council by the Owner for checking the Approved Plans and which is payable at the rate of 0.75 per cent of the Estimated Cost.

**Planning Scheme** means the Hobsons Bay Planning Scheme and any other planning scheme that applies to the Subject Land or Precinct 16 West Land.

**Powerline Undergrounding Works** means the third Infrastructure Project described in the table to Schedule 2 of this Agreement.

**Precinct 16 Land** means the land identified as 'Precinct 16' in the Hobsons Bay Industrial Land Management Strategy – June 2008, being the land bounded by Blackshaws Road, Stephenson Street and the railway line in South Kingsville.

**Precinct 16 West Land** means the land described in Schedule 1 of this Agreement and any reference to the Precinct 16 West Land includes any Lot created by the subdivision of the Precinct 16 West Land or any part of it.

**Provision Trigger** means the milestone or provision trigger set out in the relevant column of the table in Schedule 2 of this Agreement.

**Residential Subdivision** means a subdivision of the Subject Land that creates a lot that is occupied by a dwelling or is intended to be occupied by a dwelling and does not include a subdivision to create a super lot or stage lot.

**Satisfaction Fee** means a fee specified on Council's internet web site which is payable by a person to Council for deciding whether any one of obligation in a permit, agreement or any other requirement has been undertaken to Council's satisfaction.

**Schedule** means a schedule to this Agreement.

**Stage** followed by a reference to a stage number is a reference to a specified stage of the development of the Subject Land as identified in any staging plan forming part of the plans endorsed under a future planning permit granted for the Subject Land.

**Statement of Compliance** means a Statement of Compliance under the *Subdivision Act 1988*.

**Subject Land** means the land described as 41-59 Stephenson Street, South Kingsville being Land in Plan of Consolidation 163945E in Certificate of Title Volume 09735, Folio 412.

**Supervision Fee** means a fee payable to Council by the Owner for supervision of a Infrastructure Project and which is payable at the rate of 2.5 per cent of the Estimated Cost.

**Sutton Street Rehabilitation Drawings** means the scope of works, LD Eng Ref: 135600 prepared by LDeng Land Development Engineering and the detail plan & longitudinal section plans prepared by JDS Civil Designs & Surveys drawing no. JDSS1910-C2, Rev B, Sheet 2 and drawing no. JDSS1910-C3, Rev B, Sheet 3 both dated 15 June 2017 and marked up to show the three stages and roundabout.

**Total Cost Of Infrastructure Projects** means the total cost of each Infrastructure Project set out in the table in Schedule 2 of this Agreement together with the applicable Supervision Fee, Plan Checking Fee and Satisfaction Fee.

## 2. INTERPRETATION

In this Agreement 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 any agreement, representation, warranty or indemnity by 2 or more persons (including where 2 or more persons are included in the same defined term) binds them jointly and severally;
- 2.5 a term used 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;
- 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 Agreement;
- 2.8 the Owner's obligations take effect as separate and several covenants which are annexed to and run at law and equity with the Subject Land; and
- 2.9 any reference to a clause, page, condition, attachment or term is a reference to a clause, page, condition, attachment or term of this Agreement.

## 3. PURPOSES OF AGREEMENT

The Parties acknowledge and agree that the purposes of this Agreement are to:

- 3.1 record the terms and conditions by which Council agrees to the Owner constructing and completing the Infrastructure Projects, facilitate the Amendment, the rezoning of the Subject Land and its redevelopment; and
- 3.2 achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

## 4. REASONS FOR AGREEMENT

The Parties acknowledge and agree that Council has entered into this Agreement for the following reasons:

- 4.1 the Owner and Council agreed that the Owner would enter into this Agreement as a condition of Council supporting the Amendment; and
- 4.2 the Owner has elected to enter into this Agreement in order to secure Council's support of the Amendment.

## 5. AGREEMENT REQUIRED

The Parties agree that this Agreement will continue to be required until the Owner has complied with all of the Owner's obligations.

## **6. OWNER'S SPECIFIC OBLIGATIONS**

### **Infrastructure Projects**

#### **6.1 Construction of Infrastructure Projects**

The Owner covenants and agrees that:

6.1.1 the Owner must complete all the Infrastructure Projects set out in Schedule 2 of this Agreement:

- (a) at the full cost of the Owner;
- (b) in accordance with the Approved Plans;
- (c) prior to the relevant Provision Trigger; and
- (d) to the satisfaction of Council.

#### **6.2 Standard of work**

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

- 6.2.1 accord with the Approved Plans unless otherwise agreed in writing by Council;
- 6.2.2 be structurally sound, fit for purpose and suitable for its intended use;
- 6.2.3 comprise best industry practice to the extent required by the Approved Plans;
- 6.2.4 not encroach upon any land other than the land shown in the Approved Plans; and
- 6.2.5 comply with any relevant current Australian Standard unless otherwise agreed in writing by Council.

#### **6.3 Time for completion of Infrastructure Projects**

The Owner covenants and agrees that if the Owner does not construct and complete the Infrastructure Project by the relevant Provision Trigger for an Infrastructure Project, Council may:

- 6.3.1 at its absolute discretion, in writing, extend the timeframe; or
- 6.3.2 refuse to issue any Statement of Compliance for any Residential Subdivision of the Subject Land until the Infrastructure Project is completed to the satisfaction of Council.

#### **6.4 Obligation to complete Infrastructure Projects once commenced**

The Owner covenants and agrees that when the Owner commences to provide an Infrastructure Project, subject to clause 6.11, the Owner must complete the Infrastructure Project in accordance with this Agreement regardless of whether the total cost of completing the Infrastructure Project exceeds the Infrastructure Project Value.

#### **6.5 Design of Infrastructure Projects**

The Owner covenants and agrees that:

- 6.5.1 the Owner must, at the full cost of the Owner, prepare the Designs of an Infrastructure Project and submit the Designs to Council and any other relevant authorities for their



approval at least two months prior to the Owner's intended commencement date for each Infrastructure Project;

- 6.5.2 once to Council's satisfaction, approval of the Designs must be reflected in a set of plans and specifications endorsed by Council as the Approved Plans;
- 6.5.3 the Owner must obtain all necessary permits and approvals for each Infrastructure Project; and
- 6.5.4 prior to awarding any contract for the Infrastructure Projects, the Owner must submit to Council for its approval:
  - (a) a copy of the terms and conditions of the contract to be awarded; and
  - (b) copy of the proposed construction program which accompanies the contract.

## **6.6 Variation of Approved Plans**

The Owner covenants and agrees that upon the approval by Council of the Designs under this Agreement there must be no further variations to the Approved Plans without the prior written consent of Council.

## **6.7 Construction of Infrastructure Projects**

The Owner covenants and agrees that in providing the Infrastructure Projects:

- 6.7.1 the Owner is responsible for all design and construction risks in relation to construction and completion of the Infrastructure Projects; and
- 6.7.2 Council is released from liability to pay, and the Owner holds Council harmless in respect of, any costs that exceed the Infrastructure Project Value.

## **6.8 Certificate of Practical Completion**

The Parties agree that:

- 6.8.1 upon the completion of an Infrastructure Project, the Owner must notify Council and any other relevant authority;
- 6.8.2 within 14 days of receiving notice of the completion of an Infrastructure Project from the Owner, Council will arrange for it and any other relevant authority to inspect the Infrastructure Project and determine whether Council will issue a Certificate of Practical Completion;
- 6.8.3 prior to Council being required to issue a Certificate of Practical Completion, the Owner must provide to Council:
  - (a) a copy of any maintenance information, operational manual or other material which is reasonably required for the ongoing operation and maintenance of the Infrastructure Project;
  - (b) a copy of any certificate, consent or approval required by any authority for the carrying out, use or occupation of the Infrastructure Project;
- 6.8.4 if Council is not satisfied with the Infrastructure Project, Council may refuse to issue a Certificate of Practical Completion provided Council:
  - (a) identifies in what manner the Infrastructure Project is not satisfactorily completed; and
  - (b) what must be done to satisfactorily complete the Infrastructure Project;

- 6.8.5 Council may, notwithstanding a minor non-compliance, determine to issue a Certificate of Practical Completion if Council is satisfied that the proper construction of the Infrastructure Project can be secured or otherwise guaranteed to its satisfaction;
- 6.8.6 before accessing land owned by Council or a third party for the purpose of constructing an Infrastructure Project or undertaking any maintenance or repair of defects in respect of the Infrastructure Project in accordance with this Agreement, the Owner must satisfy Council or if requested by a third party, that person, that the Owner has:
- (a) consent of the owner of land to access such land;
  - (b) satisfied any condition of such consent;
- 6.8.7 the Owner must put in place all proper occupational health and safety plans as may be required under any law of the State of Victoria for that purpose;
- 6.8.8 subject to the Owner satisfying any conditions of consent to access land owned by Council, Council will provide all reasonable access as may be required to its land in order to enable an Infrastructure Project to be constructed and completed, maintained or repaired in accordance with this Agreement.

## **6.9 Obligations following Certificate of Practical Completion**

Following the issue of a Certificate of Practical Completion for an Infrastructure Project, the Owner is responsible for the maintenance of the Infrastructure Project in good order, condition and repair to the satisfaction of Council until:

- 6.9.1 the end of the Maintenance Period; or
- 6.9.2 until the provision of the land containing the Infrastructure Project to Council by a transfer or by a vesting –

whichever is the later.

## **6.10 Bank Guarantee**

The Owner covenants and agrees that:

- 6.10.1 prior to the issue of a Certificate of Practical Completion for an Infrastructure Project, the Owner must provide Council with a Bank Guarantee in respect of the maintenance liability under this Agreement of that Infrastructure Project;
- 6.10.2 if the Owner fails to comply with a written direction from Council to undertake maintenance to an Infrastructure Project, Council may at its absolute discretion use the Bank Guarantee to correct any defects; and
- 6.10.3 the Bank Guarantee will be returned to the Owner after the Maintenance Period, less any amount applied to correcting any defects in the Infrastructure Project.

## **6.11 Powerline Undergrounding Works**

The Parties agree that:

- 6.11.1 If:
- (a) the Powerline Undergrounding Works exceed the Agreed Project Value; or
  - (b) after exercising reasonable and timely endeavours to seek all necessary approvals to undertake the Powerline Undergrounding Works, the Owner is unable to obtain the necessary approvals under clause 6.5 of this Agreement after 6 months of complying with clause 6.5.1,

Council may, at its absolute discretion and on terms as specified in writing as required by Council:

- (a) reduce the scope of the Powerline Undergrounding Works so that they do not exceed the Agreed Project Value; or
- (b) require the Owner to pay an amount equal to the Agreed Project Value in lieu of undertaking the Powerline Undergrounding Works.

6.11.2 In the event the Owner pays an amount equal to the Agreed Project Value to Council in accordance with clause 6.11.1(b), the Owner must pay all costs including but not limited to accounting and auditing fees incurred by Council in accepting and holding the amount.

## **6.12 Reimbursement for Over Provision**

Where the Total Value of Infrastructure Projects exceeds the Cash Liability, the Parties agree that:

- 6.12.1 Council will reimburse the Owner for the Over Provision within 60 days of the issue of a Certificate of Practical Completion for the final Infrastructure Project; and
- 6.12.2 upon Council making a payment for Over Provision to the Owner in accordance with clause 6.12.1, the Owner will no longer be entitled to any further payment from Council.

## **7. OWNER'S FURTHER OBLIGATIONS**

### **7.1 Notice and registration**

The Owner must bring this Agreement to the attention of all prospective occupiers, purchasers, lessees, licensees, mortgagees, chargees, transferees and assigns.

### **7.2 Further actions**

The Owner:

- 7.2.1 must do all things necessary to give effect to this Agreement;
- 7.2.2 consents to Council applying to the Registrar of Titles to record this Agreement on the certificate of title of the Subject Land in accordance with s 181 of the Act; and
- 7.2.3 agree to do all things necessary to enable Council to do so, including:
  - (a) sign any further agreement, acknowledgment or document; and
  - (b) obtain all necessary consents to enable the recording to be made.

### **7.3 Fees**

The Owner must pay to Council within 14 days after a written request for payment, any:

- 7.3.1 Plan Checking Fee;
- 7.3.2 Supervision Fee; and
- 7.3.3 Satisfaction Fee.

#### **7.4 Council's costs to be paid**

The Owner must pay to Council within 14 days after a written request for payment, Council's reasonable costs and expenses (including legal expenses) relating to this Agreement, including:

- 7.4.1 preparing, drafting, finalising, signing, recording and enforcing this Agreement;
- 7.4.2 preparing, drafting, finalising and recording any amendment to this Agreement;
- 7.4.3 determining whether any of the Owner's obligations have been undertaken to Council's satisfaction; and
- 7.4.4 preparing, drafting, finalising and recording any document to give effect to the ending of this Agreement.

#### **7.5 Time for determining satisfaction**

If Council makes a request for payment of:

- 7.5.1 a fee under clause 7.3; or
- 7.5.2 any costs or expenses under clause 7.4,

the Parties agree that Council will not decide whether the Owner's obligation has been undertaken to Council's satisfaction, or whether to grant the consent sought, until payment has been made to Council in accordance with the request.

#### **7.6 Interest for overdue money**

- 7.6.1 The Owner must pay to Council interest in accordance with s 227A of the Local Government Act 1989 on any amount due under this Agreement that is not paid by the due date.
- 7.6.2 If interest is owing, Council will apply any payment made to interest and any balance of the payment to the principal amount.

### **8. AGREEMENT UNDER S 173 OF THE ACT**

Without limiting or restricting the respective powers to enter into this Agreement, and insofar as it can be so treated, this Agreement is made as a deed in accordance with s 173 of the Act.

### **9. OWNER'S WARRANTIES**

The Owner warrants that apart from the Owner and any other person who has consented in writing to this Agreement, no other person has any interest, either legal or equitable, in the Subject Land which may be affected by this Agreement.

### **10. SUCCESSORS IN TITLE**

Until such time as a memorandum of this Agreement is recorded on the certificate of title of the Subject Land, the Owner must require successors in title to:

- 10.1 give effect to this Agreement; and
- 10.2 enter into a deed agreeing to be bound by the terms of this Agreement.

## **11. GENERAL MATTERS**

### **11.1 Land Registry**

No plan of subdivision of the Subject Land or any part of it or instrument of transfer of the Subject Land or any part of it or mortgage or caveat or charge or priority notice relating to it or plan of consolidation affecting the Subject Land may be lodged at the Land Registry for registration, recording or approval until this Agreement has been lodged by or on behalf of the Council and recorded on the certificate of title to the Subject Land.

### **11.2 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:

- 11.2.1 personally on the other Party;
- 11.2.2 by leaving it at the other Party's Current Address;
- 11.2.3 by posting it by priority prepaid post addressed to the other Party at the other Party's Current Address; or
- 11.2.4 by email to the other Party's Current Email.

### **11.3 Counterparts**

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

### **11.4 No waiver**

Any time or other indulgence granted by Council to the Owner or any variation of this Agreement or any judgment or order obtained by Council against the Owner does not amount to a waiver of any of Council's rights or remedies under this Agreement.

### **11.5 Severability**

If a court, arbitrator, tribunal or other competent authority determines that any part of this Agreement is unenforceable, illegal or void then that part is severed with the other provisions of this Agreement remaining operative.

### **11.6 No fettering of Council's powers**

This Agreement 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, consents or certification of plans subdividing the Subject Land or relating to use or development of the Subject Land.

### **11.7 Inspection of documents**

A copy of any planning permit, document or plan referred to in this Agreement is available for inspection at Council offices during normal business hours upon giving the Council reasonable notice.

### **11.8 Governing law**

This Agreement is governed by and is to be construed in accordance with the laws of Victoria.

## 12. COMMENCEMENT OF AGREEMENT

This Agreement commences when:

- 12.1 Council executes this Agreement; and
- 12.2 the Ministerial Notice is published.

## 13. ENDING OF AGREEMENT

This Agreement ends:

- 13.1 when the Owner has complied with all of the Owner's obligations under this Agreement; or
- 13.2 otherwise by agreement between the Parties in accordance with section 177 of the Act.

After this Agreement has ended, Council will, at the Owner's written request, apply to the Registrar of Titles under s 183(1) of the Act to cancel the record of this Agreement.

DRAFT

## 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	Volume 10213, Folio 045
	Lot 2 on Plan of Subdivision 336144B	Volume 11586, Folio 288
	Lot 10 Block C on Plan of Subdivision 001015	Volume 07129, Folio 697

## SCHEDULE 2 – INFRASTRUCTURE PROJECTS

Description of Infrastructure Project*	Provision Trigger	Agreed Project Value
Upgrade existing road in Sutton Street, South Kingsville (including but not limited to new asphalt pavements, roundabout, stormwater drainage (from Blackshaws Road to Moresby Street, South Kingsville), concrete kerb and channelling, nature strip and footpaths) generally in accordance with the 'Stage 2 Works' shown in the Sutton Street Rehabilitation Drawings	Prior to the issue of a Statement of Compliance for the 50th lot on the Subject Land.	\$85,800 indexed to the calendar year, as at the date of practical completion.
Interim upgrade of Blackshaws Road / Sutton Street, South Kingsville intersection generally in accordance with the Interim Intersection Upgrade Drawings	Prior to the issue of a Statement of Compliance for the 50th lot on the Subject Land.	\$270,610.00 indexed to the calendar year, as at the date of practical completion.
Removing the existing overhead powerlines and poles on the west side of Sutton Street (near Blackshaws Road) and relocating them below ground	Prior to the issue of a Statement of Compliance for the 50th lot on the Subject Land.	\$750,000.00 indexed to the calendar year, as at the date of practical completion.
<b>Total Cost Of Infrastructure Projects</b>		\$1,106,410.00 indexed to the calendar year, as at the date of practical completion.

\* If necessary, the Infrastructure Project may be described by reference to the Approved Plans if they have been approved or some other drawing or plan relating to the Infrastructure Project.



## 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 **ALCEON 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

### Mortgagee's Consent

Perpetual Corporate Trust Ltd is the registered Mortgagee under instrument AT323762J and consents to the registration of this Agreement on the title to the Subject Land

.....