

THIS AGREEMENT is made the day of 2019

BETWEEN

1. **GREATER GEELONG CITY COUNCIL** of 30 Gheringhap Street, Geelong in the State of Victoria (**Responsible Authority**); and
2. **Echin Pty Ltd.** of 5th Floor Chancery House St Georges Terrace, Perth in the State of Western Australia (**Owner 1**); and
3. **Dean John Farmer and Nigel John Patrick Kingston** both of 27 Florence Street, Cottesloe in the State of Western Australia (**Owner 2**)

RECITALS:

- R.1. Owner 1 is the registered proprietor of the land known as 69-93 Hams Road, Waurn Ponds, being the land described in Certificates of Title Volume 11269 Folios 107, 108, 109 (**Anglesea Road Land**).
- R.2. Owner 2 is the registered proprietor of the land known as 35 Hams Road, Waurn Ponds, being the land described in Certificate of Title Volume 10316 Folio 630 (**Hams Road Land**).
- R.3. Together Owner 1 and Owner 2 are referred to in this Agreement as the Owner.
- R.4. Together the Anglesea Road Land and the Hams Road Land are referred to in this Agreement as the Land.
- R.5. The Responsible Authority is responsible for the administration and enforcement of the Planning Scheme pursuant to the provisions of the Act.
- R.6. The Owner requested that the Land be rezoned and on [INSERT DATE] 2019 the Responsible Authority exhibited Amendment C372 to the Greater Geelong Planning Scheme (**Amendment**). The Amendment proposes to:
 - i) Rezone the Hams Road Land and the Anglesea Road Land, from Farming Zone (FZ) to the General Residential Zone Schedule 1 (GRZ1).
 - ii) Rezone the Barwon Water land between the site to be rezoned for residential purposes as outlined in part i) above and the Geelong/Warrnambool railway from Farming Zone to Public Use Zone 1 (PUZ1).
 - iii) Insert and apply a new Schedule 45 to Clause 43.02 Design and Development Overlay (DDO4) to Land.
- R.7. The Owner has voluntarily agreed to pay to the Responsible Authority a \$2670 contribution in respect of each residential lot created by the subdivision of the Land on the basis that the Responsible Authority will then apply such funds provided to the provision of community facilities in the Waurn Ponds/Grovedale/Armstrong Creek West area of the municipality. This Agreement secures this voluntary contribution.
- R.8. This Agreement is entered into between the Responsible Authority and the Owner pursuant to section 173 of the Act in order to achieve the objectives of planning in Victoria and to secure and deliver the necessary internal and external works associated with the future subdivision and development of the land for residential purposes and to secure the voluntary contribution of the Owner.

IT IS AGREED AS FOLLOWS:

Definitions

1. In this Agreement unless inconsistent with the context or subject matter:
 - 1.1. **Act** means the *Planning and Environment Act 1987*;
 - 1.2. **Agreement** means this Agreement and any agreement executed by the parties varying or expressed to be supplemental to this Agreement;
 - 1.3. **“Adjustment Index”** means either the ANZSIC Class 3101 – 'Road and Bridge Construction – Australia' index or ANZSIC Class 3101 – 'Road and Bridge Construction – Victoria' index at the sole discretion of provided that the amount of any adjustment will be no lower than the Consumer Price Index for Melbourne (All Groups) as published by the Australian Bureau of Statistics;
 - 1.4. **Amendment** means Amendment C372 to the Planning Scheme;
 - 1.5. **Community Infrastructure Contribution** means a payment of \$2670 indexed in accordance with this Agreement.
 - 1.6. **DDO** means the Design and Development Overlay being applied to the Land by Greater Geelong Planning Scheme Amendment C372;
 - 1.7. **Encumbered Land** means all land which includes all existing and proposed drainage lines, retarding basins, lakes, wetlands, land subject to a risk of landslip and liable for flooding, drainage basins, plantation buffer treatments (unless it is demonstrated to the Responsible Authority's satisfaction that the plantation buffer treatments can be used for open space), land within the natural west-east waterway defined as the bed and banks and that area generally 30 metres either side of the creek banks;
 - 1.8. **External Drainage works** means those drainage works:
 - a) that are necessary as a result of the proposed subdivision and development of the Land, in accordance with plans required as a condition of the Planning Permit and
 - b) that fall outside the area of the Land.
 - 1.9. **Drainage Plans** means the detailed drainage plans required to be prepared as a condition of the Planning Permit;
 - 1.10. **Intersection** means an upgraded intersection arrangement at the Hams Road and Ghazeepore Road junction as specified in the conditions and plans approved under the Planning Permit;
 - 1.11. **Land** means the land described in Recital 1;
 - 1.12. **Mortgagee** means the person or persons registered or entitled from time to time to be registered by the Register of Titles as Mortgagee of the Land or any part of it;
 - 1.13. **Landscape Masterplan** means the Landscape Masterplan required to be prepared as a condition of the Planning Permit;
 - 1.14. **Owner** means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as the proprietor or proprietors of an estate in fee simple of the Land or any part of it, and includes a Mortgagee in possession;
 - 1.15. **party or parties** means the Owner and the Responsible Authority under this Agreement as appropriate;

- 1.16. **Planning Permit** means Planning Permit 662/2017, 663/2017 (and any amendment to these documents) and any subsequent permit issued for subdivision of the Land;
- 1.17. **Planning Scheme** means the Greater Geelong Planning Scheme and any successor instrument or other planning scheme which applies to the Land;
- 1.18. **Residential Lot** means a lot to be created on a proposed subdivision of the Land which in the reasonably formed view of the Responsible Authority is intended for development for the purpose of a dwelling without further subdivision.
- 1.19. **Responsible Authority** means Greater Geelong City Council as the authority responsible for administering and enforcing the Planning Scheme and includes its agents, officers, employees, servants, workers and contractors and any subsequent person or body which is the responsible authority for the Planning Scheme;
- 1.20. **Road Network and Traffic Management Plans** means the Road Network and Traffic Management Plans required to be prepared as a condition of the Planning Permit; and
- 1.21. **Urban Design Masterplan** means the Urban Design Masterplan or subdivision plans approved under the Planning Permit.

Interpretation

2. In the interpretation of this Agreement unless inconsistent with the context or subject matter:
 - 2.1. The singular includes the plural and the plural includes the singular;
 - 2.2. A reference to a gender includes a reference to all other genders;
 - 2.3. Words (including defined expressions) denoting persons will be deemed to include all trusts, bodies and associations, corporate or unincorporated, and vice versa;
 - 2.4. A reference to a person includes a reference to a firm, corporation, association or other entity and their successors in law;
 - 2.5. A reference to a statute includes any statute amending, consolidating or replacing that statute and includes any subordinate instruments made under that statute;
 - 2.6. The Recitals to this Agreement are and will be deemed to form part of this Agreement including any terms defined within the Recitals;
 - 2.7. References to the parties will include their transferees, heirs, assigns, and liquidators, executors and legal personal representatives as the case may be;
 - 2.8. Reference to a document or agreement includes reference to that document or agreement as changed, novated or replaced from time to time; and
 - 2.9. Where a word or phrase is given a definite meaning in this Agreement, a part of speech or other grammatical form for that word or phrase has a corresponding meaning.

Specific Obligations of the Owner

Intersection works at the Hams Road and Ghazeepore Road junction

3. The Owner covenants, acknowledges and agrees with the Responsible Authority that:

- 3.1. It will construct the Intersection to such standard as specified in the conditions and plans approved under the Planning Permit to the satisfaction of the Responsible Authority;
- 3.2. It will construct the Intersection prior to or by the time specified in the Planning Permit.
- 3.3. It is responsible for obtaining all approvals, and adherence to maintenance periods, costs, fees and charges associated with the construction of the Intersection.

Upgrades to Hams Road

4. The Owner covenants, acknowledges and agrees with the Responsible Authority that:
 - 4.1. It will undertake improvements within the Hams Road reserve to the standard specified in the conditions and plans approved under the Planning Permit to the satisfaction of the Responsible Authority;
 - 4.2. Improvements must include, but not be limited to roadworks such as asphaltting, line marking, kerb and channel and connection to the intersection at Ghazeepore Road; drainage works; footpaths; pedestrian crossings; signage.
 - 4.3. It will construct the improvements within the Hams Road reserve prior to or by the time specified in the Planning Permit.
 - 4.4. It is responsible for obtaining all approvals, and adherence to maintenance periods, costs, fees and charges associated with the construction to the Hams Road reserve.

Upgrades to Ghazeepore Road

5. The Owner covenants, acknowledges and agrees with the Responsible Authority that unless otherwise agreed in writing:
 - 5.1. It will undertake improvements within the Ghazeepore Road reserve to the standard specified in the conditions and plans approved under the Planning Permit to the satisfaction of the Responsible Authority;
 - 5.2. Improvements must include, but not be limited to roadworks such as asphaltting, line marking including bicycle lanes, kerb and channel and connection to the intersection at Hams Road; drainage works; pedestrian crossings; footpaths; signage.
 - 5.3. It will construct the improvements within the Ghazeepore Road reserve prior to or at the time specified in the Planning Permit..
 - 5.4. 4.4. It is responsible for obtaining all approvals, and adherence to maintenance periods, costs, fees and charges associated with the construction to the Ghazeepore Road reserve.

External drainage works

6. The Owner covenants, acknowledges and agrees with the Responsible Authority:
 - 6.1. It will be responsible for the all External Drainage Works within the VicRoads reserve (Geelong Ring Road Section 4B) to connect and channel the existing drainage network extending from the Ring Road/shared path, to the open waterway reserve in the Land, to the standard specified in the Planning Permit to the satisfaction of the Responsible Authority;

- 6.2. It will be responsible for External Drainage Works, including but not be limited to: cleaning and upgrading, where necessary, to the Ghazeepore Road culvert and Geelong-Warrnambool railway culvert to the standard specified in the Planning Permit to the satisfaction of the Responsible Authority;
- 6.3. It will construct the External Drainage Works prior to or at the time specified in the Planning Permit.
- 6.4. It is responsible for obtaining all approvals, and adherence to maintenance periods, costs, fees and charges associated with the construction
of the External Drainage Works.

Community Infrastructure Contribution

7. The Owner covenants, acknowledges and agrees with the Responsible Authority that:
 - 7.1. Prior to the issue of a Statement of Compliance under the Subdivision Act 1988 in respect of any subdivision or stage of subdivision which would create a Residential Lot, it will pay the Responsible Authority the community infrastructure contribution and will be determined by multiplying the number of Residential Lots to be created by the plan of subdivision by the contribution amount per lot, being \$2670 per lot as at the date of this Agreement;
 - 7.2. The community infrastructure contribution referred to in this clause 7 will be adjusted on 1 July each year following the execution of this Agreement by reference to the Adjustment Index.

Public Open Space Contribution

8. The Owner covenants, acknowledges and agrees with the Responsible Authority that:
 - 8.1. Prior to the issue of a Statement of Compliance for each stage of subdivision on the Land, it will make a contribution to the Responsible Authority for public open space of 10% of all developable residential land in the subdivision, or 10% of the site value of the Land in the subdivision, or a combination of both which is to the Responsible Authority's satisfaction.
 - 8.2. The public open space contribution of 10% of developable residential land will only be credited where:
 - 8.2.1. The land is to be vested or transferred to the Responsible Authority via the relevant plan of subdivision;
 - 8.2.2. It is identified as unencumbered open space in the approved Open Space and Landscape Masterplan or any other component of the Development Plan.
 - 8.2.3. The land is not Encumbered Land.
 - 8.2.4. The land is otherwise free from any contamination, and sown to grass or such other finish as is approved by the Responsible Authority.
 - 8.3. Each area of public open space identified as public open space in the approved Development Plan must be shown as a reserve on the plan of subdivision for the relevant part of the Land so as to vest in the Responsible Authority upon the registration of the plan of subdivision.

Public Open Space Improvements

9. The Owner covenants, acknowledges and agrees with the Responsible Authority that:
 - 9.1. Prior to vesting public open space in Council will undertake improvements within public open space areas to the standard specified in the Landscape Masterplan and in detailed plans approved pursuant to the Planning Permit to the satisfaction of the Responsible Authority.
 - 9.2. It will be responsible for improvements, including but not be limited to: landscaping, fencing, seating, wayfinding/signage, playgrounds and the shared pathway to be constructed along the natural west-east waterway connecting to the existing road and shared path network.
 - 9.3. It is responsible for all costs, fees and charges associated with the improvement of the public open space areas.

Costs associated with works and improvements external to Land

10. The Owner agrees that:
 - 10.1. Where the timing in the approved Planning Permit (including all plans approved under the Planning Permit) trigger works external to the Land identified under this Agreement, it will undertake the triggered works prior to the issue of any statement of compliance under the Subdivision Act 1988 that would trigger the works or any further statement of compliance under the Subdivision Act 1988 in respect of any part of the Land.
 - 10.2. Clause 10.1 applies whether or not there is a planning nexus between the works triggered under the Planning Permit and any and all relevant subdivisions of the Land for which a Statement of Compliance under the Subdivision Act 1988 is sought.
 - 10.3. Owner 1 and Owner 2 have entered into a separate deed of agreement concerning their respective interests in the Land and which deed provides for the apportionment of payment for the external infrastructure items and works identified under this Agreement.
 - 10.4. It will not bring any proceeding under the Subdivision Act 1988 seeking to force the issue of a Statement of Compliance under that Act unless any triggered external works identified under this Agreement have been implemented to the satisfaction of the Responsible Authority.
 - 10.5. The Responsible Authority has no responsibility for the cost of any works identified under the Agreement or for the apportionment of costs of providing infrastructure under this Agreement as between the current owners or any future owners of the Land.

Further Covenants of the Owner

11. The Owner warrants and covenants with the Responsible Authority that:
 - 11.1. It is the registered proprietor (or entitled to be so) of the Land;
 - 11.2. Save as shown in the certificate of title to the Land, there are no mortgages, liens, charges, easements or other encumbrances or any rights inherent in any person affecting the Land or any part of it and not disclosed by the usual searches;

- 11.3. Neither the Land nor any part of it is subject to any right obtained by adverse possession or subject to any easements, rights or encumbrances mentioned in section 42 of the *Transfer of Land Act 1958* (Vic);
- 11.4. It will not sell, transfer, dispose of, assign, mortgage or otherwise part with possession of the Land or any part of it without first providing to its successors a copy of this Agreement;
- 11.5. It will within 28 days of written demand pay to the Responsible Authority the Responsible Authority's reasonable costs (including legal costs) and expenses of and incidental to the preparation, execution, any amendment and recording of this Agreement. To the extent that such costs and expenses constitute legal professional costs, the Responsible Authority may at its absolute discretion have these costs assessed by the Law Institute of Victoria and the parties will be bound by the amount of that assessment, with any fee for obtaining such an assessment being borne equally by the Responsible Authority and the Owner. Such costs payable by the Owner will include the costs and disbursements associated with the recording, cancellation or alteration of this Agreement in the Register;
- 11.6. It will do all that is necessary to enable the Responsible Authority to make application to the Registrar of Titles to record this Agreement in the Register in accordance with the Act, including the signing of any further agreement, acknowledgment or other document; and
- 11.7. Until such time as this Agreement is recorded in the Register, the Owner must ensure that successors in title will give effect to this Agreement, and do all acts and sign all documents which will require those successors to give effect to this Agreement, including executing a deed agreeing to be bound by the terms of this Agreement.

Obligations of the Responsible Authority

12. The Responsible Authority agrees that:
 - 12.1. The Community Infrastructure Contribution collected will be applied at its sole discretion but towards community infrastructure projects that will provide community benefits in the Waurm Ponds/Grovedale areas unless otherwise agreed in writing between the Responsible Authority and the Owner.

Further assurance

13. The parties to this Agreement will do all things necessary (including signing any further agreement, acknowledgement or document) to give full effect to the terms of this Agreement and to enable this Agreement to be recorded in the Register in accordance with the Act.

Amendment

14. This Agreement may be amended only in accordance with the requirements of the Act.

No waiver

15. No waiver by any party of any default in the strict and literal performance of or compliance with any provision, condition or requirement in this Agreement will be deemed to be a waiver of strict and literal performance of and compliance with any other provision, condition or requirement of this Agreement nor to be a waiver of or in any way release any party from compliance with any provision, condition or requirement in the future nor will any delay or omission of any party to exercise any right under this Agreement in any manner impair the exercise of such right accruing to it thereafter.

No Fettering of Powers of Responsible Authority

16. The parties acknowledge and agree that this Agreement does not fetter or restrict the power or discretion of the Responsible Authority to make any decision or impose any requirements or

conditions in connection with the granting of any planning approval or certification of any plans of subdivision applicable to the Land or relating to any use or development of the Land.

Notices

17. All notices and other communications under this Agreement will be sent by prepaid mail, by hand delivery, email or by facsimile to the addresses of the parties as specified in this Agreement or to such other address or person as any party may specify by notice in writing to the other party or parties, and may be sent by an agent of the party sending the notice. Each notice or communication will be deemed to have been duly received:
 - 17.1. not later than two business days after being deposited in the mail with postage prepaid;
 - 17.2. when delivered by hand;
 - 17.3. if sent by email upon production of a delivery confirmation report received by the sender which records the time the email was delivered unless the sender received a delivery failure notification; or
 - 17.4. if sent by facsimile transmission upon completion of that transmission and production of a transmission report stating that the facsimile was sent to the addressee's facsimile number.

Costs on Default

18. If the Owner defaults in the performance of any obligations under this Agreement it will pay to the Responsible Authority its reasonable costs of action taken to achieve compliance with this Agreement.

Invalidity of any Clause

19. Notwithstanding anything to the contrary in this Agreement, if any provision of this Agreement will be invalid and not enforceable in accordance with its terms, all other provisions which are self-sustaining and capable of separate enforcement without regard to the invalid provisions and will be and continue to be valid and enforceable in accordance with those terms.

Agreement Binding on Successors of Owners

20. This Agreement will extend to and bind the Owner's successors, assigns, administrators, transferees and legal personal representatives and the obligations imposed upon them will also be binding on their successors, transferees, purchasers, mortgagees and assigns as if each of them had separately executed this Agreement.

Joint Obligations

21. In the case of each party that consists of more than one person (including in that expression any corporation) each of those persons covenants, agrees and declares that all of the covenants, agreements, declarations and consents contained in this Agreement and made and given by that party have been entered into, made and given and are binding upon that person both severally and also jointly with the other person or persons constituting that party.

GST

22. In respect of GST:
 - 22.1. In this clause 20, 'GST Act' means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
 - 22.2. Expressions used in this clause and in the GST Act have the same meanings as when used in the GST Act.

- 22.3. Amounts payable and consideration provided under or in respect of this Agreement are GST exclusive.
- 22.4. The recipient of a taxable supply made under or in respect of this Agreement must pay to the supplier, at the time the consideration for the supply is due, the GST payable in respect of the supply. This obligation extends to supply consisting of a party's entry into this document.
- 22.5. A party is not obliged, under clause 20.3, to pay the GST on a taxable supply to it until given a valid tax invoice for the supply.

Entire Agreement

23. This Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous Agreements or understandings between the parties in connection with its subject matter.

Commencement and Ending of Agreement

24. This Agreement will commence on date that Amendment is approved by the Minister for Planning.
25. This agreement will end:
- 25.1. In respect of any Residential Lot, upon registration of the plan of subdivision creating that lot;
 - 25.2. by agreement between the parties or otherwise in accordance with the provisions of the Act.

EXECUTED AS A DEED

SIGNED SEALED AND DELIVERED on behalf of the **GREATER GEELONG CITY COUNCIL** by Gareth Smith, Director Planning and Development to an instrument of delegation authorised by Council resolution, in the presence of:

.....
P Bettess

.....
Witness

EXECUTED by **ECHIN PTY LTD.** in accordance with Section 127 of the Corporations Act 2001:

.....
Director

.....
Director/Secretary

SIGNED by the said **DEAN JOHN FARMER** in the presence of:

.....
Witness signature

.....
Witness name (print)

.....
Witness address

SIGNED by the said **NIGEL JOHN PATRICK KINGSTON** in the presence of:

.....

.....
Witness signature

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Witness name (print)

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Witness address

DRAFT