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Agreement under Section 173 of the Planning and Environment Act 1987

Dated / /2016

Parties

Name	Cardinia Shire Council
Address	Municipal Offices, 20 Siding Avenue, Officer, Victoria
Short name	Council

Name	Banriar Investments Pty Ltd ACN 146 583 217
Address	28 Mount Pleasant Drive, Mount Waverly, Victoria
Short name	Owner

Background

- A. Council is the responsible authority for the Planning Scheme. Council is also the Collecting Agency and the Development Agency under the Development Contributions Plan.
- B. The Owner is or is entitled to be the registered proprietor of the Subject Land.
- C. The Development Contributions Plan applies to the Subject Land and adjacent areas. It outlines the contributions expected from individual landholders within the area covered by the Development Contributions Plan to fund infrastructure and services required as a result of development of the area.
- D. The Owner has asked Council for permission to carry out certain works which are funded by the Development Contributions Plan.
- E. Council has agreed that the Owner will carry out the Infrastructure Projects and transfer the Project Land in return for a credit against its development contribution liability under the Development Contributions Plan.
- F. Council and the Owner have also agreed that the Owner will undertake the Localised Infrastructure Projects in accordance with this Agreement.
- G. An agreement under section 173 of the Act is recorded on the certificate of title of the Subject Land. This agreement was recorded on the title of the Subject Land on 2 July 2015 in dealing number AM003829Y.
- H. 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 the words and expressions set out in this clause have the following meanings unless the context admits otherwise:

2015 Agreement means the agreement under section 173 of the Act made between Council and Banriar Investments Pty Ltd ACN 146 583 217 dated 24 June 2015 and registered pursuant to instrument AM003829Y.

Act means the *Planning and Environment Act 1987*.

Agreed Land Value means the value set out or specified in Schedule 6B which is deemed to include all transfer costs, costs of Plans of Subdivision, registration fees and the like or any other amount which has been specifically agreed to in writing by Council.

Agreed Project Value means the amount set out or referred to in Schedule 6A or any other amount which has been specifically agreed in writing by Council.

Agreement means this agreement.

Anticipated Cost of Construction means the anticipated price of the delivery of the Infrastructure Project. For an Infrastructure Project, the Anticipated Cost of Construction includes all project design and engineering fees.

Approved Plans means the designs of the Infrastructure Projects or Localised Infrastructure Projects as the case may be as approved by Council under clause 3.

Building has the same meaning as in the Act.

Certificate of Practical Completion means a certificate in writing prepared by Council stating that an Infrastructure Project or Localised Infrastructure Project as the case may be has been completed to the satisfaction of Council.

Civil Works means construction works which are identified in engineering drawings approved by Council, including roads, bridges, culverts, paths and trails.

Collecting Agency has the meaning given to that term in the Development Contributions Plan.

Community Infrastructure Levy means a levy payable under the Development Contributions Plan for community infrastructure.

Consent Fee means a fee payable by the Owner to Council for deciding whether to give consent for anything this Agreement provides must not be done without Council's consent, and which is payable at the rate of:

- (a) \$102 if paid within 12 months from the date that this Agreement commences; or
- (b) \$102 plus indexation if paid at any time after 12 months from the date that this Agreement commences.

Conservation Management Plan means any approved conservation management plan or similar with respect to an area within which an Infrastructure Project or Localised Infrastructure Project is to be completed and includes the 'Officer Precinct Structure Plan: Conservation Management Plan (excluding Cardinia Creek)' prepared by Ecology Partners Pty Ltd dated 15 September 2011.

Construction Management Plan means any approved construction management plan or similar with respect to an area within which an Infrastructure Project or Localised Infrastructure Project is to be completed.

Construction Procedures means the procedures set out in Schedule 5.

Council Infrastructure means infrastructure delivered by Council within the municipality.

CPI means the annual Consumer Price Index (All Groups-Melbourne) as published by the Australian Bureau of Statistics, or, if that index number is no longer published, its substitute as a cumulative indicator of the inflation rate in Australia, as determined by Council from time to time.

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, mail@cardinia.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.

CPI means the annual Consumer Price Index (All Groups-Melbourne) as published by the Australian Bureau of Statistics, or, if that index number is no longer published, its substitute as a cumulative indicator of the inflation rate in Australia, as determined by Council from time to time.

Credit means a credit in the amount of the Agreed Project Value for the relevant Infrastructure Project against the amount of the Development Contributions Levy that the Owner is obliged to pay for the Subject Land under this Agreement and the Development Contributions Plan.

Defects Liability Period means the defects liability period specified in Schedule 4B.

Development Agency has the meaning given to that term in the Development Contributions Plan.

Development Contributions Levy has the same meaning as in the Development Contributions Plan. In this Agreement it means the levy payable per developable hectare at the rate specified in the Development Contributions Plan for the Subject Land. It does not include the Community Infrastructure Levy that is also payable under the Development Contributions Plan.

Development Contributions Plan means the Development Contributions Plan described in Schedule 2.

Endorsed Plans means the plans endorsed under the Planning Permit.

Equalisation Payment means the amount specified in Schedule 6B as the equalisation payment.

GAIC means the Growth Areas Infrastructure Charge under the Act.

Indexation means an annual adjustment carried out in accordance with CPI.

Infrastructure Project means a project to be delivered by the Owner under this Agreement as identified in the relevant column of the table to Schedule 6A and which may be further illustrated and defined in the Public Infrastructure Plan.

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

Land Project means the land transactions described in Schedule 6B in respect of the Project Land.

Landscape Works means landscape works which are identified on a landscape plan prepared by the Owner and approved by Council from time to time, excluding Civil Works.

Localised Infrastructure means works, services or facilities necessitated by the subdivision or development of land including but not limited to provision of utility services such as water supply, stormwater drainage, sewerage, gas and electricity services, telecommunications infrastructure and local roads, bridges, culverts and other water crossings, any required associated traffic control measures and devices. For the purposes of this Agreement, Localised infrastructure does not include the infrastructure required for the Projects or other infrastructure that is in the nature of regional or state infrastructure.

Localised Infrastructure Project means a project to be delivered by the Owner under this Agreement as identified in the relevant column of the table to Schedule 6C and which may be further illustrated and defined in the Public Infrastructure Plan.

Maintenance Period means the maintenance period specified in Schedule 4A.

Open Space Land means land for passive open space in respect of which equalisation is to apply under either the Development Contributions Plan or the Precinct Structure Plan applying to the Subject Land. It does not include Project Land.

Over Provision means the amount by which the Credit to which the Owner is entitled in accordance with this Agreement exceeds the Owner's liability to pay the Development Contributions Levy in respect of the Subject Land.

Owner means the person or a person 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 of the Subject Land or any part of it 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.

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:

- 3.1.1 record the terms and conditions on which Council as the Collecting Agency under the Development Contributions Plan has granted its consent to the Owner to undertake the Infrastructure Projects and the Land Projects;
- 3.1.2 to record the terms on which the Owner must provide the Localised Infrastructure Projects; and
- 3.1.3 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 entered into this Agreement for the following reasons:

- 4.1 the Owner has elected to enter into this Agreement in order to carry out the Infrastructure Projects and the Land Projects for a Credit instead of making a total cash payment as a Development Contributions Levy; and
- 4.2 the Owner will make cash payments to Council to meet the Owner's liability to pay the Development Contributions Levy for the Subject Land in accordance with the timeframes set out in this Agreement.

5. Payment of Development Infrastructure Levy

The Parties agree that:

- 5.1 subject to
 - 5.1.1 the Owner's entitlement to a Credit; and
 - 5.1.2 clause 5.2 of this Agreement -

the Owner is not required to pay the Development Infrastructure Levy in cash on a stage-by-stage basis;
- 5.2 notwithstanding clause 5.1 the Development Infrastructure Levy for a particular Stage must be paid if a milestone specified in Schedule 6A for any Infrastructure Project has not been met unless Council agrees in writing that the milestone is deemed to be met; and
- 5.3 any component of the Development Infrastructure Levy in respect of the Subject Land which is not offset by an entitlement to a Credit must be paid to Council prior to the issue of the Statement of Compliance for the next stage of the subdivision of the Subject Land following the depletion of the Credit.

6. Agreement required

The Parties agree that this Agreement will continue to be required unless Council confirms in writing that it is no longer required.

7. Owner's specific obligations

7.1 Infrastructure Projects

The Owner covenants and agrees that:

- 7.1.1 the Owner will construct the Infrastructure Projects specified in Schedule 6A prior to the milestones identified in Schedule 6A for the Agreed Project Value; and

- 7.1.2 the Agreed Project Value will be paid as a Credit against the Owner's liability to pay the Development Contributions Levy in the manner described in and payable at the time set out in the Schedule 6A of this Agreement.

7.2 Localised Infrastructure Projects

The Owner covenants and agrees that:

- 7.2.1 the Owner will construct the Localised Infrastructure Projects specified in Schedule 6C prior to the milestones identified in Schedule 6C.

7.3 Project Land

The Owner must transfer or vest the Project Land specified in Schedule 6B for the Agreed Project Value:

- 7.3.1 prior to the milestones identified in Schedule 6B;
- 7.3.2 where the Agreed Land Value is payable as a Credit or payment, as the case may be, as described in and payable at the time set out in Schedule 6B.

7.4 Design and Construction of Infrastructure Projects and Localised Infrastructure Projects

The Owner covenants and agrees that:

- 7.4.1 the Owner will, at its initial cost, prepare detailed design and engineering plans and specifications of the Infrastructure Projects and Localised Infrastructure Projects (**Designs**) and submit the Designs to Council;

7.4.2 the Designs must:

- (a) be to the satisfaction of Council;
- (b) comply with any relevant standard set out in the Development Contributions Plan; and
- (c) comply with any conditions or requirements set out in the Planning Permit or the Planning Scheme –

and the approval of the Designs by Council will be reflected by a set of plans and specifications which are endorsed by Council as Approved Plans or the like;

- 7.4.3 the Owner will obtain all necessary permits and approvals for the Infrastructure Projects and Localised Infrastructure Projects;

7.4.4 prior to any contract being awarded for the Infrastructure Projects, the Owner will:

- (a) submit to Council for its approval a copy of the terms and conditions of any contract to be awarded generally in accordance with the Approved Plans;
- (b) submit the proposed construction program to Council for approval;

- 7.4.5 in carrying out the works associated with an Infrastructure Project or Localised Infrastructure Project which is carried out on any land owned by Council, the Owner must provide for the protection of people and property in accordance with appropriate occupational health and safety plans and practices which have first been approved by the owner of any land upon which the works associated with the

Infrastructure Project or Localised Infrastructure Project as the case may be are to be conducted;

7.4.6 the Owner will:

- (a) construct the Infrastructure Projects and Localised Infrastructure Projects in accordance with the Approved Plans to the satisfaction of Council unless Council has approved in writing a variation from the Approved Plans;
- (b) obtain any other approval required under any other applicable legislation or Regulation;
- (c) take any mitigation measures required under any approved Conservation Management Plan or Construction Management Plan that applies to the Subject Land or any other land which contains an Infrastructure Project or Localised Infrastructure Project as the case may be identified in the Public Infrastructure Plan;
- (d) comply with the Construction Procedures;
- (e) pay to Council the Plan Checking Fee and Supervision Fee for the Infrastructure Projects and Localised Infrastructure Projects; and

7.4.7 each Infrastructure Project and Localised Infrastructure Project will be completed before the milestone described in the relevant schedule and if an Infrastructure Project or Localised Infrastructure Project is not completed before that milestone, Council may withhold any Statement of Compliance relating to the Stage comprising or subsequent to the relevant milestone unless alternative arrangements are made to the satisfaction of Council for the completion of the Infrastructure Project or Localised Infrastructure Project as the case may be.

7.5 Certificate of Practical Completion

The Owner covenants and agrees that:

- 7.5.1 the issue of a Certificate of Practical Completion by Council is subject to compliance with this Agreement and the Construction Procedures;
- 7.5.2 following the issue of the Certificate of Practical Completion for an Infrastructure Project or Localised Infrastructure Project, the Owner:
 - (a) must provide Council with 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 or Localised Infrastructure Project;
 - (b) must provide a copy of any certificate, consent or approval required by any authority for the carrying out, use or occupation of the Infrastructure Project or Localised Infrastructure Project;
 - (c) is responsible for the maintenance of the Infrastructure Project or Localised Infrastructure Project in good order, condition and repair to the satisfaction of Council for the period specified in Schedule 4A from the date of the issue of the Certificate of Practical Completion; and
 - (d) is responsible for the repair of any defects during the Defects Liability Period specified in Schedule 4B from the date of the issue of the Certificate of Practical Completion.

7.6 Public Open Space Equalisation

The Parties agree that:

- 7.6.1 the Owner will at the election of Council either transfer to or vest in Council for municipal purposes any Open Space Land identified in Schedule 6B as shown on the Public Infrastructure Plan;
- 7.6.2 the Owner will pay to Council, or the Council will pay to the Owner, as the case may be, any required the Equalisation Payment specified for the Open Space Land in Schedule 6B;
- 7.6.3 the Equalisation Payment must be paid:
 - (a) where the payment is due to the Owner, within 30 days of the transfer or vesting of the final parcel of Open Space Land described in Schedule 6B; and
 - (b) where the payment is due to Council, prior to the issue of a Statement of Compliance for the final stage of the development of the Subject Land; and
- 7.6.4 upon complying with this clause 7.6, the Owner has fulfilled its obligations in relation to the Subject Land under the Planning Scheme in relation to Open Space Land.

7.7 Public Infrastructure Plan

The Owner covenants and agrees that subject to this Agreement, the Owner will comply with and implement the Public Infrastructure Plan.

8. Agreed Land Value

8.1 The Parties agree that:

- 8.1.1 the Agreed Land Value replaces the market value and any other method of calculating compensation payable to a person under the *Land Acquisition and Compensation Act 1986* and the Act in respect of Project Land; and
- 8.1.2 upon payment being made in accordance with this Agreement whether as a monetary amount or by a Credit in respect of the Agreed Land Value or any other amount agreed to be paid under this Agreement in respect of any land, no other compensation is payable for the effect of severance or for solatium as those terms or concepts are understood in the context of the *Land Acquisition and Compensation Act 1986* or for any other category of or form of loss or compensation in respect of the Project Land.

9. Parties' obligations

9.1 Credit

The Parties agree that:

- 9.1.1 upon the issue of a Certificate of Practical Completion in respect of an Infrastructure Project, the Owner will be entitled to the Credit for that Infrastructure Project as set out in Schedule 6A;

- 9.1.2 upon the provision of a Credit for an Infrastructure Project, Council's obligations to the Owner in respect of that Infrastructure Project are complete but the Owner's obligations for maintenance and repair of defects of the Infrastructure Project under this Agreement remain for the duration of the Maintenance Period or Defects Liability Period;
- 9.1.3 upon the transfer or vesting of Project Land in Council, the Owner will be entitled to a Credit in respect of the relevant Project Land in Schedule 6B in respect of the Agreed Land Value; and
- 9.1.4 after the expiry of the Maintenance Period referred to in Schedule 4A and the Defects Liability Period referred to in Schedule 4B, maintenance of the works and repair of any defects in respect of an Infrastructure Project, those projects become the responsibility of Council; and
- 9.1.5 where an amount is payable to the Owner in respect of an Infrastructure Project listed in Schedule 6A and that item is identified in the relevant schedule as having a Credit as the funding source, the amount payable to the Owner must be first made and taken as a Credit at the time set out in Schedule 6A.

9.2 Reimbursement for Over Provision

The Parties agree that:

- 9.2.1 Council will not reimburse the Owner for the Over Provision unless the Owner's liability to pay the Development Contributions Levy has been satisfied in respect of all Stages of the subdivision of the Subject Land, unless an alternative time is specified in Schedule 6A or Schedule 6B of this Agreement; and
- 9.2.2 upon Council making a payment for Over Provision to the Owner in accordance with clause 9.2.1, the Owner will no longer be entitled to any Credit existing prior to that payment.

10. Acknowledgement by the Parties

The Parties acknowledge and agree that:

- 10.1 this Agreement is intended to relate only to infrastructure that is commonly funded by a development contributions plan and not Localised Infrastructure; and
- 10.2 compliance with the obligations of this Agreement does not relieve the Owner of any obligation imposed by Council or a Tribunal to provide Localised Infrastructure which obligation may be imposed as a requirement in a planning permit for the subdivision or development of the Subject Land.

11. Owner's further obligations

11.1 Notice and registration

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

11.2 Further actions

The Owner:

- 11.2.1 must do all things necessary to give effect to this Agreement;
- 11.2.2 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 section 181 of the Act; and
- 11.2.3 agrees 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.

11.3 Fees

Within 14 days of a written request for payment, the Owner must pay to Council any:

- 11.3.1 Plan Checking Fee;
- 11.3.2 Supervision Fee; and
- 11.3.3 Satisfaction Fee.

11.4 Council's costs to be paid

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

- 11.4.1 preparing, drafting, finalising, signing, recording and enforcing this Agreement;
- 11.4.2 preparing, drafting, finalising and recording any amendment to this Agreement; and
- 11.4.3 preparing, drafting, finalising and recording any document to give effect to the ending of this Agreement.

11.5 Time for giving consent

If Council makes a request for payment of:

- 11.5.1 a fee under clause 11.3; or
- 11.5.2 any costs or expenses under clause 11.4 -

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

11.6 Interest for overdue money

The Owner agrees:

- 11.6.1 the Owner must pay to Council interest in accordance with section 227A of the *Local Government Act 1989* on any amount due under this Agreement that is not paid by the due date; and
- 11.6.2 if interest is owing, Council will apply any payment made to interest and any balance of the payment to the principal amount.

12. Agreement under section 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 section 173 of the Act.

13. Owner's warranties

Without limiting the operation or effect which this Agreement has, 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.

14. 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:

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

15. General matters

15.1 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:

- 15.1.1 personally on the other Party;
- 15.1.2 by leaving it at the other Party's Current Address;
- 15.1.3 by posting it by prepaid post addressed to the other Party at the other Party's Current Address; or
- 15.1.4 by email to the other Party's Current Email.

15.2 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.

15.3 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.

15.4 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 or certification of plans subdividing the Subject Land or relating to use or development of the Subject Land.

15.5 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.

15.6 Governing law

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

16. GST

16.1 In this clause words that are defined in *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning as their definition in that Act.

16.2 Except as otherwise provided by this clause, all consideration payable under this Agreement in relation to any supply is exclusive of GST.

16.3 If GST is payable in respect of any supply made by a supplier under this Agreement, subject to clause 16.4 the recipient will pay to the supplier an amount equal to the GST payable on the supply at the same time and in the same manner as the consideration for the supply is to be provided under this Agreement.

16.4 The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST payable under clause 16.3.

17. GAIC

All land transferred to or vested in Council must have any liability for GAIC discharged prior to it being transferred to or vested in Council and to the extent it is not, the Owner shall remain liable to Council for any GAIC liability incurred by Council.

18. Commencement of Agreement

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

19. Ending of Agreement

19.1 This Agreement ends when the Owner has complied with all of its obligations (including all maintenance and defect obligations) under this Agreement.

Schedule 1

Subject Land

Address: 138 Rix Road , Officer

Certificate of Title Details: Volume 11682 Folio 088

Schedule 3

Planning Permit

Permit Number T120607 issued on 29 July 2013 as amended from time to time including the plans endorsed under the planning permit.

Schedule 4

Schedule 4A

Maintenance Period

- The Maintenance Period for Civil Works is 12 months.
- The Maintenance Period for Landscape Works is 24 months.

Schedule 4B

Defects Liability Period

- The Defects Liability Period for Civil Works is 12 months.
- The Defects Liability Period for Landscape Works is 24 months.

Schedule 5

Construction Procedures

Procedure for issue of Certificate of Practical Completion

1. Upon the completion of the Infrastructure Project or Localised Infrastructure Project the Owner must notify Council or any other relevant authority.
2. Within 14 days of receiving notice of the completion of an Infrastructure Project or Localised Infrastructure Project from the Owner, Council or any other relevant authority must inspect the Infrastructure Project or Localised Infrastructure Project and determine whether or not to issue the Certificate of Practical Completion.
3. If Council is not satisfied with the Infrastructure Project or Localised Infrastructure Project, Council may refuse to issue a Certificate of Practical Completion provided Council:
 - a. identifies in what manner or respect the Infrastructure Project or Localised Infrastructure Project is not satisfactorily completed; and
 - b. what must be done to satisfactorily complete the Infrastructure Project or Localised Infrastructure Project.
4. Council may, notwithstanding the detection of a minor non-compliance determine to issue a Certificate of Practical Completion if Council is satisfied that the proper completion of the outstanding matter can be secured by the payment of a financial amount to Council or the provision of some other security for the proper completion of that outstanding matter.

Access

5. Before accessing land owned by Council or a third party for the purpose of constructing any Infrastructure Project or Localised Infrastructure Project, or undertaking any maintenance or repair of defects in respect of any Infrastructure Project or Localised 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. it has satisfied any condition of such consent; and
6. 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.
7. 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 or Localised Infrastructure Project to be completed, maintained or repaired in accordance with the Approved Plans.

Quality of work

8. Apart from any other requirement contained in the Agreement, all work must:
 - a. Accord with Council's Engineering Standard Drawings and Specifications unless otherwise approved;
 - b. use good quality materials, not involving asbestos and which are suitable for the purpose for which they are required;
 - c. be carried out in a good and workmanlike manner;
 - d. be fit and structurally sound, fit for purpose and suitable for its intended use;

Maddocks

- e. not encroach on land other than the land shown in any plans or specifications approved by Council;
- f. comprise best industry practice;
- g. unless otherwise authorised comply with any relevant current Australian Standard; and
- h. accord with a construction management plan to be prepared to the satisfaction of Council.

Schedule 6

Schedule 6A – Infrastructure Projects

Infrastructure Project Number	Infrastructure Project Description	Extent of Infrastructure Project	Milestone for the completion of the Infrastructure Project or a stage of the Infrastructure Project.	Agreed Project Value	Funding Source	Timing for Payment/Credit
5b	Construction of Rix Road upgrade to a Connector Street Boulevard standard (section 3) – 1.5 metre footpath on northern side	Portion of Officer DCP Item DI_RO_15a.	Prior to Statement of Compliance for Stage 4.	5% of the value of the Infrastructure Project as set out in the DCP indexed in accordance with the methodology set out in the DCP to the financial year as at the date of Practical Completion.	DCP	Credit upon the issue of a Certificate of Practical Completion for the Infrastructure Project
RD_RO_11a	Construction of Kenilworth Avenue upgrade to a Connector Street (Section 4c)	as per DCP Item DI_RO_11a	The Infrastructure Project must have reached a stage whereby: <ul style="list-style-type: none"> Functional Design Plans must be lodged with Council by 15 August 2016. The Tender must be awarded by 28 March 2017. 	5% of the value of the Infrastructure Project as set out in the DCP indexed in accordance with the methodology set out in the DCP to the	DCP	Credit upon the issue of a Certificate of Practical Completion for the Infrastructure Project

Schedule 6B – Project Land and Open Space Land

Project Number	Project Land Description	Title or plan reference	Area of the Project Land	Milestone for transfer or vesting of the Project Land	Agreed Land Value	Funding Source	Timing for Payment / Credit
N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Open Space Land	Open Space Land Description	Title or plan reference	Area of the Open Space Land	Equalisation Payment for Open Space Land	Funding Source	Timing for Payment / Credit
-	Public Open Space contribution as cash	-	Equivalent to 5,940 square metres	\$490,050 subject to Indexation until it is paid to Council	-	Payment prior to issue of a Statement of Compliance for Stage 4

Schedule 6C – Localised Infrastructure Projects

Localised Infrastructure Project Number	Localised Infrastructure Project Description	Extent of Localised Infrastructure Project	Milestone for the completion of the Localised Infrastructure Project	Funding Source
2	Construction of Access Street – Level 1 with shared landscape trial (Section 6b)	From eastern property boundary to western property boundary	Prior to Statement of Compliance for Stage 8	Developer



Signing Page

Signed, sealed and delivered as a deed by the Parties.

Signed by and on behalf, and with the authority, of the **Cardinia Shire Council** by Philip Walton, Manager Planning and Development, in the exercise of a power conferred by an Instrument of Delegation in the presence of:

General

ANDREW PASTOR
}

Witness

Executed by **Banriar Investments Pty Ltd**
ACN 146 583 217 in accordance with s 127(1)
of the *Corporations Act 2001*:

Signature of Director

RIMPLE GURJITSINGH RIAR

Print full name

Signature of Director/Company Secretary

BANNIRCHELVAM ARUMUGAM

Print full name

Mortgagee Consent

Anton Jerome Frederick Gaudry as Mortgagee under instrument of mortgage no. AM612201C consents to the Owner entering into this Agreement and in the event that the Mortgagee becomes mortgagee-in-possession, agrees to be bound by the covenants and conditions of this Agreement.

Signed by **Anton Jerome Frederick Gaudry**
in the presence of:

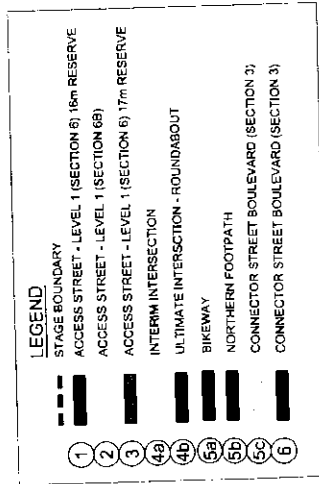
Witness

VICTORIA KATHLEEN KATHRYN MOFFAT
BURCH & CO LAWYERS
Level 1, 127 Market Street
South Melbourne Victoria 3205
An Australian Legal Practitioner within the meaning
of the Legal Profession Uniform Law (Victoria)

Attachment 1

Public Infrastructure Plan

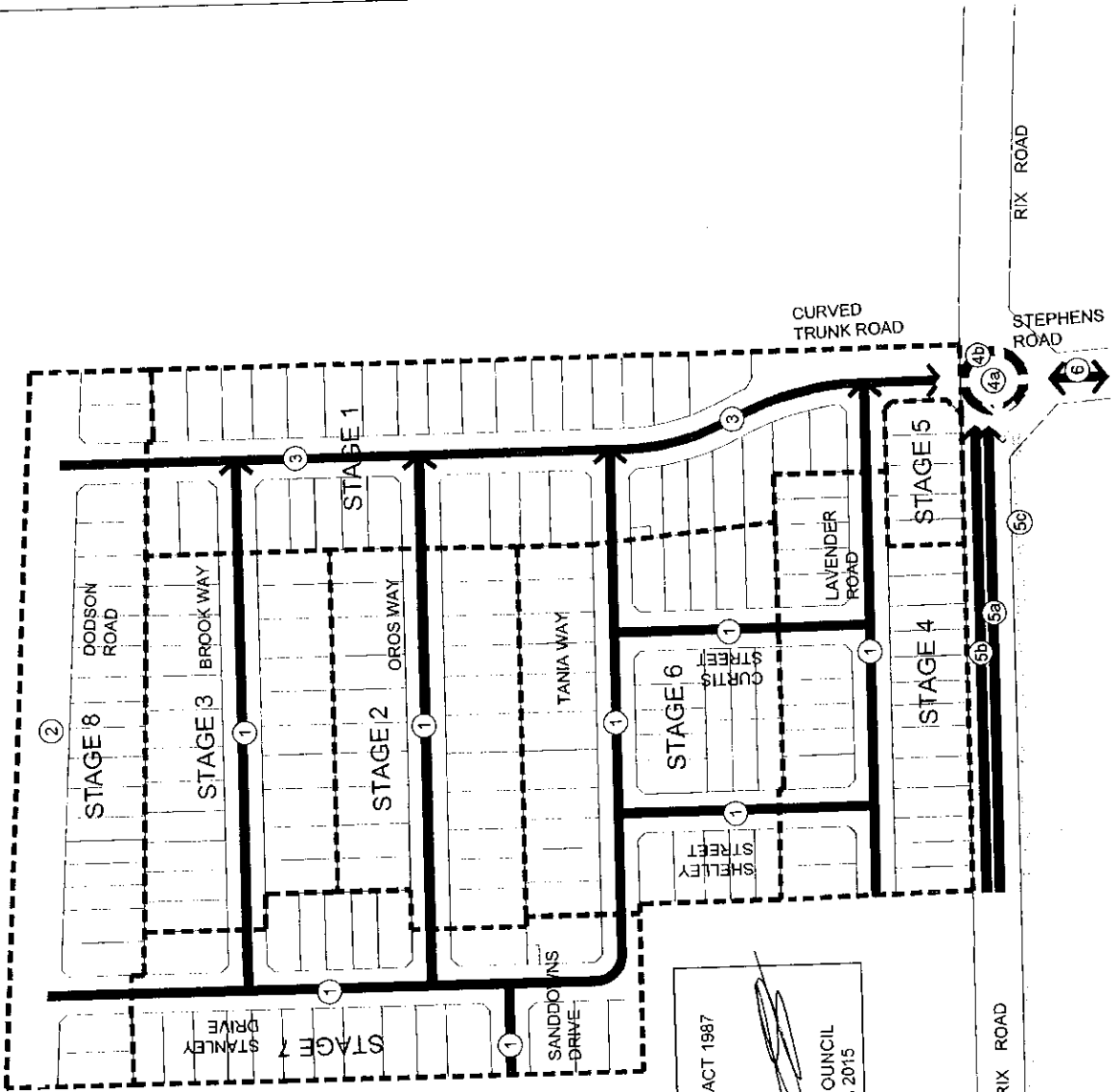
ITEM	DESCRIPTION	DEVELOPER WORKS (NON DCP ITEMS)	WORKS IN LIEU OF DCP PAYMENTS	DCP ITEM NUMBER	RESPONSIBILITY FOR CONSTRUCTION	EXPECTED FINANCIAL YEAR FOR DELIVERY
1	Access Street - Level 1 (Section 6) 18m Road Reserve	YES	NO	N/A	DEVELOPER	2014-2017
2	Construction of Access Street - Level 1 with shared landscape trail (Section 6b)	YES	NO	N/A	DEVELOPER	2014-2017
3	Access Street - Level 1 (Section 6) 17m Road Reserve	YES	NO	N/A	DEVELOPER	2014-2017
4a	Construction of interim intersection at Stephens Road/Rix Road/Curved Trunk Road	NO	NO	N/A	OTHERS	2014-2015
4b	Construction of Ultimate Roundabout at Stephens Road/Rix Road/Curved Trunk Road	NO	NO	D_TM_18	OTHERS	N/A
5a	Construction of Rix Road upgrade to a Connector Street Boulevard standard (Section 3) - excluding footpath on northern side	NO	NO	DI_RO_15a	OTHERS	2014-2015
5b	Construction of Rix Road upgrade to a Connector Street Boulevard standard (Section 3) - 1.5m footpath on northern side	NO	YES	DI_RO_15b	DEVELOPER	2014-2015
5c	Construction of Rix Road upgrade to a Connector Street Boulevard standard (Section 3) - second carriageway	NO	NO	DI_RO_15b	OTHERS	N/A
6	Construction of Stephens Road upgrade to a Connector Street Boulevard standard (Section 3)	NO	NO	DI_RO_18	OTHERS	N/A



APPROVED PLAN
PLANNING AND ENVIRONMENT ACT 1987
CARDINIA PLANNING SCHEME

Permit No.: T120607-1
 Sheet: 1 of 1
 Approved by: Angela Gleeson
 CARDINIA SHIRE COUNCIL
 Date: Wednesday, 4 March 2015

- NOTES**
- OPSP/CARDINIA PLANNING SCHEME REQUIRES A 9.5% CONTRIBUTION TOWARDS PUBLIC OPEN SPACE.
 - OPEN SPACE EQUALISATION IN ACCORDANCE WITH THE OPSP TO BE ADDRESSED AS PART OF A SECTION 173 AGREEMENT REGISTERED ON TITLE.
 - OPTIC FIBRE CONDUITS TO BE INSTALLED TO THE SATISFACTION OF THE RESPONSIBLE AUTHORITY.
 - STREETS INCLUDING CONNECTOR STREET TO BE CONSTRUCTED AT THE RELEVANT STAGES OF SUBDIVISION.



BANRIAR INVESTMENTS PTY LTD
 BEACONSFIELD LAVENDER ESTATE
 138 RIX ROAD, BEACONSFIELD
 PUBLIC INFRASTRUCTURE PLAN

Drawing No. 11928QP01
 Sheet No. 1 PRELIMINARY
 Rev F

Scale 1:1000
 North Arrow

Author: [Name]
 Designer: [Name]
 Checker: [Name]
 Date: [Date]

Scale 1:1000
 North Arrow

NOT TO BE USED FOR CONSTRUCTION

FOR THE COUNCIL'S USE ONLY

DATE: []/ []/ []

REVISIONS:

NO.	DATE	DESCRIPTION
1	24/02/15	Issue for Council
2	19/02/15	Issue for Council
3	20/02/15	Issue for Council
4	24/02/15	Issue for Council
5	19/02/15	Issue for Council
6	19/02/15	Issue for Council

Author: [Name]
 Designer: [Name]
 Checker: [Name]
 Date: [Date]

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