

Our Reference: [REDACTED]

27 January 2022

Victorian Planning Authority
C/o Wonthaggi NE PSP
Level 25, 35 Collins Street
MELBOURNE VIC 3000

[REDACTED]
Melbourne Office
1 Glenferrie Road
PO Box 61
Malvern VIC 3144
Tel: (03) 9524 8888

beveridgewilliams.com.au

Via email: [REDACTED]

Dear Sir / Madam,

**RE: SUBMISSION TO THE REVISED WONTHAGGI NORTH EAST PRECINCT STRUCTURE PLAN, DEVELOPMENT CONTRIBUTIONS PLAN, ASSOCIATED DOCUMENTS & BACKGROUND REPORTS
PROPERTY ID #5 – HESLOP ROAD NORTH WONTHAGGI**

Beveridge Williams acts on behalf of BEW Family Investments Pty Ltd in relation to the above matter.

Our client thanks the Victorian Planning Authority and Bass Coast Shire Council for progressing the Wonthaggi North East Precinct Structure Plan, Development Contributions Plan, Native Vegetation Precinct Plan, and other amendment material following the Tranche 1 hearing that occurred in April 2021.

Our client is the owner of approximately 2 hectares of land formally known as Lot 2 PS302494N. This property is identified as parcel identification number 5 in the Draft Wonthaggi North East PSP and Draft Wonthaggi North East DCP.



Figure 1 - Subject site

This submission is in response to the revised Wonthaggi North East Precinct Structure Plan (PSP), Development Contributions Plan (DCP), Changes Report and associated background documents, dated November 2021 and follows our previous submission to the PSP in November 2020 (see enclosed). In response to the exhibited changes, we raise the following concerns and requests for clarification:

Public Open Space Contribution

- There is a discrepancy in the Public Open Space percentage included in R65 of the PSP and the Schedule to Clause 53.01 for residential land. We understand the POS calculation of 3.82% outlined in R65 has been calculated incorrectly as it includes local reserves provided for under the DCP. We understand the correct percentage should be 2.47% of NDHa.

Community Infrastructure Levy (CIL)

- There is inconsistency within the CIL which is payable per dwelling. Page 8 of the Development Contributions Plan (DCP) states the community infrastructure levy is capped at \$1,225 per dwelling, whilst Table 9 on page 35 shows that based on the DCP costings for community infrastructure the CIL per Dwelling computes to be \$1,178.97. We seek clarification on why the VPA & Council are seeking to collect a CIL that is above what is required to deliver the nominated projects.

Existing Section 173 Agreements

- Section 5.3.1 of the DCP states that, *the DCP assumes all affected parties honour the existing Section 173 Agreements on land that has the benefit of a permit. Where an existing section 173 agreement applies to land that does not have the benefit of a permit, any permit issued will include a condition that the existing section 173 agreement be ended as it pertains to the new permit land and that a new section 173 agreement be entered into in accordance with the DCP.*
- We seek clarification as to whether the draft DCP, and associated published documents, are premised on any potential amendment to our client's existing Section 173 agreement? In the event that Parcel 5 continues to be developed generally in accordance with the approved development plan, as endorsed by Council on 21 September 2011, our client would strongly object to such a proposal.

Infrastructure

- We understand that there is an existing water main which runs along Fuller Road and Heslop Road, however this does not appear to be shown on the plans in the PSP document, specifically Plan 12 – Utilities. We would like to know whether this has been considered.

Development Contributions Plan

- The development costs associated with the revised drainage strategy and functional design as outlined in the Functional Design Report prepared by Alluvium appear to have significantly increased on the basis of revised drainage strategy prepared by Engeny and Functional Design Prepared by Alluvium. It appears that the DCP rate for drainage has increased substantially. Has there been an independent review of the costings prepared by Alluvium?

We thank you for the opportunity to register an addendum to our original submission in response to Amendment C152basc. Should the matters identified above remain unresolved and a Standing Advisory Committee is convened, we reserve the right to present our position elaborating on our points in greater detail to the committee.

Should you have any queries, please do not hesitate to contact me via email

[REDACTED]

Yours faithfully,



BEVERIDGE WILLIAMS

On behalf of
BEW Family Investments Pty Ltd

Enclosures:

Endorsed Development Plan dated 21 September 2021.
Section 173 agreement reference AJ534369V
Submission to the draft Wonthaggi North East PSP

Our Reference: [REDACTED]

30 November 2020

Victorian Planning Authority
Re: Wonthaggi North East PSP
Level 25, 35 Collins Street
MELBOURNE VIC 3000

[REDACTED]
Melbourne Office
1 Glenferrie Road
PO Box 61
Malvern VIC 3144
Tel: (03) 9524 8888

beveridgewilliams.com.au

Dear John Petrakos,

**RE: SUBMISSION TO THE DRAFT WONTHAGGI NORTH-EAST PRECINCT STRUCTURE PLAN
PROPERTY ID #5 – HESLOP ROAD NORTH WONTHAGGI**

Beveridge Williams acts on behalf of BEW Family Investments Pty Ltd in relation to the above matter.

Our client is the owner of approximately 2 hectares of land formally known as Lot 2 PS302494N. This property is identified as parcel identification number 5 in the Draft Wonthaggi North East PSP and Draft Wonthaggi North East DCP.



Following a review of the Draft Wonthaggi North East PSP, the Draft Wonthaggi North East DCP and the proposed planning controls as they apply to Property ID # 5, our client strongly objects to Bass Coast Planning Scheme Amendment C152basc. The objection is based on the following:

- Property ID No. 5 is currently zoned General Residential Zone Schedule 1 and is affected by the Development Plan Overlay Schedule 21. Development Plan Overlay Schedule 21 relates to the Wonthaggi North-East Growth Area.

The current DPO21 requires the landowner to enter into a Section 173 Agreement for the provision of infrastructure and community services. The subject land was included

in discussions relating to development infrastructure as part of the Summerfields Estate and (Property ID No.s 2, 3 and 4) and the Northern Views Estate (Property ID No. 6). Accordingly, the Certificate of Title includes an existing and still current Section 173 Agreement (Instrument No. AJ534369V).

The Section 173 Agreement identifies infrastructure items and maximum amounts payable for development infrastructure. Specifically, the Section 173 Agreement notes under Section 2.1.2.2 'The maximum Contribution payable by BEW to Council is \$108,429.00' plus indexation.

The draft DCP identifies a development contribution for Property ID No. 5 of \$333,298 which is significantly greater than what has been negotiated and agreed between parties.

It is submitted that Draft DCP is onerous and breaches Clause 2.3 of the Section 173 Agreement which states:

'The Parties agree that should an Owner have paid to the Council the total amount of its contribution as set out in clauses 2.1.2.1-2.1.2.3 of this Agreement (as indexed) prior to the issue of the Statement of Compliance for the final stage of subdivision for that Owner's part of the Subject Land, the parties agree that no further Contribution will be due to be paid by the Owner under this Agreement with respect to the development of its part of the Subject Land'.

It is also submitted that Draft DCP breaches Clause 5.4 of the Section 173 Agreement which, with respect to Council, states that:

'It will not propose, exhibit or adopt any future amendment to the Planning Scheme which applied to the Subject Land and concerns development or open space contributions that is inconsistent with this Agreement'.

Our client requests that the Wonthaggi North East Development Contributions Plan be removed from Property ID No. 5 in its entirety.

In addition to the above, we request that an access onto Heslops Road be included in the PSP to allow for the development of their land. Without access to Heslops Road, the site will be effectively landlocked and the ability to develop the site will be at the behest of the neighbouring developers.

We thank you for the opportunity to register our submission to Amendment C152basc. Should the matters identified above remain unresolved and a planning panel is convened, we reserve the right to present our position to the independent panel.

Should you have any queries, please do not hesitate to contact me via email

[REDACTED]

Yours sincerely,



FIONA WIFFRIE

Senior Town Planner
BEVERIDGE WILLIAMS

enc: Endorsed Development Plan under DPO21.

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8.2.2012

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SECTION 173 AGREEMENT

BASS COAST SHIRE COUNCIL
(Council)

- and -

SUMMERFIELDS WONTHAGGI PTY LTD
(Summerfields)

- and -

BEW FAMILY INVESTMENTS PTY LTD
(BEW)

- and -

WENTWORTH PTY LTD

Harwood Andrews Pty Ltd
ABN 99 076 868 034
70 Gheringhap Street, Geelong 3220, Victoria, Australia
DX 22019 Geelong
PO Box 101 Geelong Vic 3220

Telephone: 03 5225 5225 Facsimile: 03 5225 5222

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THIS AGREEMENT is made on the 8th day of February 2012

PARTIES:

1. **BASS COAST SHIRE COUNCIL** of 76 McBride Avenue, Wonthaggi in the State of Victoria ("Council"); and
2. **SUMMERFIELDS WONTHAGGI PTY LTD** of Level 1, 356 Main Street, Mornington in the State of Victoria ("Summerfields") and **BEW FAMILY INVESTMENTS PTY LTD** of Level 1, 6 Clow Street, Dandenong in the State of Victoria ("BFI"), and **WENTWORTH PTY LTD** of 270 Bay Street, Brighton, in the State of Victoria ("Wentworth") (collectively referred to as "the Owner").

RECITALS:

- R1. The Council is the responsible authority under the Bass Coast Planning Scheme for the purposes of administering the provisions thereof.
- R2. Summerfields is the registered proprietor of the land known as 90 Fuller Road, North Wonthaggi in the said State being the land described in certificate of title volume 5304 folio 791 known as Lot 1 on Title Plan 402901G ("the Summerfields land").
- R3. BEW is the registered proprietor of the land known as Heslop Road, North Wonthaggi in the said State being the land described in certificate of title volume 10008 folio 696 known as Lot 2 on Plan of Subdivision PS302494N ("the BEW land").
- R4. Wentworth is the registered proprietor of the land described in certificate of title volume 10008 folio 697 known as lot 3 on Plan of Subdivision PS302494N ("the Wentworth land").
- R5. Amendment C113 to the Planning Scheme was adopted by the Minister for Planning on 15 September 2010, and affects land within the north east growth area of Wonthaggi. Amendment C113 introduced the Wonthaggi Dalyston Structure Plan as a reference document into the Scheme, and incorporated the key objectives and strategies within the Wonthaggi Dalyston Structure Plan into the Scheme. Amendment C113 also rezoned 179 hectares of land located within the Wonthaggi north east growth area from a Farming Zone to a Residential 1 Zone, and introduced Schedule 21 to the Development Plan Overlay ("DPO21") into the Planning Scheme and applied DPO21 over all of the land rezoned.
- R6. As a result of Amendment C113, the Subject Land is subject to DPO21 under the Planning Scheme, which requires the preparation of a development plan with respect to the Subject Land to the satisfaction of the Council. Clause 3.0 of DPO21 provides as follows:

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"Before a permit is issued the owners of the land must enter into an Agreement with the responsible authority pursuant to Section 173 of the Planning and Environment Act 1987.

This Agreement must make provision for contributions to be made by the owners towards the provision of on-site and off-site road and traffic improvements (including the provision of land and/or the payment of financial levies), required as a consequence of the intended use and development of the land."

- R7. The Owner intends to subdivide the Subject Land into 683 lots in accordance with the Development Plan.
- R8. This Agreement is entered into between the Council and the Owner as provided for in DPO21 and section 173 of the Act, in order to facilitate the subdivision of the Subject Land and agree to the delivery of key community and development infrastructure in a timely and efficient manner upon terms which require land owners benefiting from such infrastructure to bear an appropriate part of the costs of such works.
- R9. This Agreement is also entered into between the Council and the Owner pursuant to section 173 of the Act in order to achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.
- R10. The Summerfields land is subject to registered mortgage No. AH080048M registered on 5 March 2010 in favour of Bank of Queensland Ltd.
- R11. The mortgagee referred to in Recital R10, as evidenced by its consent on the attestation pages, consent to this agreement and agree, in the event that it becomes a mortgagee in possession, to be bound by this Agreement.
- R12. The Wentworth land is subject to an agreement registered under section 173 of the Act on 9 December 2009, such agreement setting out a framework for the drainage strategy of land to the south of the Wentworth land.

OPERATIVE PART:

1. THE PARTIES AGREE AS FOLLOWS:

1.1. Definitions

In this Agreement the words and expressions set out in this clause have the following meanings unless the context admits otherwise -

1.1.1. "Act" means the Planning and Environment Act 1987.

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- 1.1.2. "Adjustment Index" means the Building Price Index, Melbourne as published in the latest edition of Rawlinsons Australian Construction Handbook or if this index is not available by reference to the Australian Bureau of Statistics Producer Price Index, Output of General Construction Industry – Victoria publication series 6427.0 Tables 15 and 16;
- 1.1.3. "Agreement" means this agreement and any agreement executed by the parties expressed to be supplemental to this Agreement;
- 1.1.4. "Community Facility Items" means those community facility items marked CF01 – CF03 on Figure 2, Location of Community Facility Items, within the CP;
- 1.1.5. "Contribution" means a contribution towards the construction or creation of an Infrastructure Project;
- 1.1.6. "CP" means the Wonthaggi North East Development Contributions Plan dated 21 January 2010, prepared by Urban Enterprise Pty Ltd;
- 1.1.7. "Council" means Bass Coast Shire Council as the Responsible Authority for the Planning Scheme and any subsequent person or body which is the Responsible Authority for the Planning Scheme;
- 1.1.8. "Development Plan" means the plan entitled "Development Plan, 'Summerfields' Fuller Road, Wentworth Road & Heslop Road, Wonthaggi" prepared by Beveridge Williams for Wallis Watson Group, Wentworth Pty Ltd and BEW Family Investments Pty Ltd dated 4 April 2011 as adopted by the Council on 20 September 2011;
- 1.1.9. "DPO21" means Schedule 21 to the Development Plan Overlay under the Planning Scheme;
- 1.1.10. "Infrastructure Project" means an infrastructure project included in the Infrastructure Project List or in the CP and in respect of which a Contribution is levied for that project;
- 1.1.11. "Infrastructure Project List" means the list of Infrastructure projects at Annexure A of this Agreement;
- 1.1.12. "Mortgagee" means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as Mortgagee of the Subject Land or any part of it;

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- 1.1.13. "Owner" means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as proprietor or proprietors of an estate in fee simple of the Subject Land or any part of it and includes a Mortgagee-in-possession;
- 1.1.14. "party or parties" means the owners and Council under this Agreement as appropriate;
- 1.1.15. "Planning Scheme" means the Bass Coast Planning Scheme and any other planning scheme which applies to the Subject Land;
- 1.1.16. "Residential lot" means a lot intended to be finally developed with a dwelling. It does not include a super lot, balance lot or the like which is intended to be further subdivided;
- 1.1.17. "Statement of Compliance" means a statement of compliance issued under the *Subdivision Act 1988*;
- 1.1.18. "Subject Land" means the land referred to in Recitals R2, R3 and R4; and
- 1.1.19. "Wonthaggi Dalyston Structure Plan" means the plan prepared by Coomes Consulting entitled 'Wonthaggi / Dalyston Structure Plan' dated September 2008.

1.2. Interpretation

In the interpretation of this Agreement (including its recitals and any schedules) except to the extent that the context otherwise requires:

- 1.2.1. Words (including defined expressions) denoting the singular will be deemed to include the plural and vice versa.
- 1.2.2. Words (including defined expressions) denoting any gender will be deemed to include all other genders.
- 1.2.3. Words (including defined expressions) denoting persons will be deemed to include all trusts, bodies and associations, corporate or unincorporated, and vice versa.
- 1.2.4. References to a statute or statutory provision will be deemed to include any statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or

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replaced by the same and any by laws, local laws, licences, statutory instruments, rules and regulations, orders, notices and directions, consents or permission made under it and any condition attaching to it.

- 1.2.5. Headings are included for convenience only and will not affect the interpretation of this Agreement or any schedule.
- 1.2.6. References to clauses, recitals and schedules are to clauses of, and recitals and schedules to, this Agreement.
- 1.2.7. References to the parties will include their transferees, heirs, assigns, and liquidators, executors and legal personal representatives as the case may be.
- 1.2.8. Reference to the Subject Land in this Agreement will include a reference to any lot created by the subdivision of the Subject Land or any part of it.
- 1.2.9. Reference to a document or agreement includes reference to that document or agreement as changed, novated or replaced from time to time.
- 1.2.10. 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.

2. OWNER COVENANTS

Contributions

2.1 The Owner acknowledges and agrees that:

2.1.1 It will, as provided for in clause 2.1.3, pay to Council the levy specified in clause 2.1.3.

2.1.2 The total amount of Contributions to be paid by the Owner in accordance with the Infrastructure Project List is \$3,403,052.00, subject to indexation in accordance with clause 2.1.5 of this Agreement. More specifically, in satisfying its obligation to pay the levy in clause 2.1.3,

2.1.2.1 The maximum Contribution payable by Summerfields to Council is \$865,807.00.

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2.1.2.2 The maximum Contribution payable by BEW to Council is \$108,429.00.

2.1.2.3 The maximum Contribution payable by Wentworth to Council is \$2,428,815.00.

2.1.3 Prior to the issue of a Statement of Compliance with respect to any new residential lot created on the Subject Land, the owner of the land which contains such lot, either in whole or in part, will pay to Council to its satisfaction \$5,027.00 per Residential lot.

2.1.4 The monetary contributions set out in the Infrastructure Project List towards the Infrastructure Projects listed as "contribution" for items OS3, OS4 and OS13, being 'Park A', 'Park B' and 'Wetlands – north east corner of Subject Land' respectively, and any other Infrastructure Projects which may require provision of land by the Owner to the Council, are to be paid to the Council over and above the provision of that part of the Subject Land to Council which is to accommodate those Infrastructure Projects.

2.1.5 The Contribution amounts in clauses 2.1.2 and 2.1.3 of this Agreement must be adjusted on a compound basis upwards on 1 July each year after the commencement of this Agreement by reference to the Adjustment Index.

2.1.6 Prior to the issue of a statement of compliance in respect of a subdivision which would in Council's opinion acting reasonably result in more than 95% of lots on an individual owner's land being created, that individual owner must pay to Council any amount required to reach the maximum contribution for that individual owner as identified in clauses 2.1.2.1 to 2.1.2.4 of this Agreement.

2.3 The Parties agree that should an Owner have paid to the Council the total amount of its Contributions as set out in clauses 2.1.2.1 – 2.1.2.3 of this Agreement (as indexed) prior to the issue of the Statement of Compliance for the final stage of subdivision for that Owner's part of the Subject Land, the parties agree that no further Contribution will be due to be paid by the Owner under this Agreement with respect to the development of its part of the Subject Land.

3. WORKS IN LIEU OF DEVELOPMENT CONTRIBUTIONS

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3.1 The parties acknowledge and agree that:

3.1.1 subject to clause 3.1.1.1 provided Council in its absolute discretion agrees in writing, the Owner may construct or cause to be constructed an Infrastructure Project (works-in-lieu) and receive a credit for the cost of that Infrastructure Project against the obligation to pay the Contributions;

3.1.1.1 despite the absolute discretion afforded to Council in clause 3.1.1, it is at the Owner's absolute discretion as to whether it elects to construct Infrastructure Project items OS3, OS4, OS13, I11, RO5 and RO8 as works in lieu;

3.1.2 the credit to which the Owner shall be entitled in respect of works-in-lieu shall be the amount specified as the cost of that Infrastructure Project in the Infrastructure Projects List indexed in accordance with this Agreement, unless Council expressly agrees otherwise in writing;

3.1.2.1 if Council expressly agrees in writing that part of an Infrastructure Project may be constructed as works in lieu the amount of the credit will be apportioned to accord with the proportion of the Infrastructure Project constructed as works in lieu;

3.1.3 any credit accrued in accordance with clause 3.1.1 of this Agreement will be deducted from the total cost of Contributions for each Owner as set out in clauses 2.1.2.1 – 2.1.2.3 of this Agreement;

3.1.4 any agreement in writing in respect of works-in-lieu between the Council and the Owner shall be deemed to require that the works must:

(a) be constructed in accordance with plans and specifications first approved by Council;

(b) accord with any conditions on the approval of the plans and specifications;

(c) be constructed to the satisfaction of Council;

(d) be in accordance with the specifications, requirements and any necessary approvals of all relevant authorities; and

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(e) be maintained free of defects for a period of 12 months from their practical completion;

3.1.5 an Owner will not be required to pay any contributions in cash until its credit accrued in accordance with clause 3.1.1 of this Agreement has been exhausted; and

3.1.6 any credit accrued in accordance with clause 3.1.1 of this Agreement which remains following the issue of a statement of compliance for the final stage of subdivision of the Subject Land will be reimbursed to the entity that has accrued the credit, being either Summerfield, BFI or Wentworth.

4. FURTHER COVENANTS OF THE OWNER

The Owner warrants and covenants with the Council that:

- 4.1.1. It owns the Subject Land.
- 4.1.2. Save as shown in the certificates of title to the Subject Land, there are no mortgages, liens, charges, easements or other encumbrances or any rights inherent in any person affecting the Subject Land or any part thereof and not disclosed by the usual searches.
- 4.1.3. No part of the Subject Land is subject to any right obtained by adverse possession of which the Owner is aware.
- 4.1.4. It has not entered into any contract of sale or lease in respect of the Subject Land or any part thereof which option, contract or lease is still subsisting save in respect of the agreement between it known to the Council.
- 4.1.5. It will not sell, transfer, dispose of, assign, mortgage or otherwise part with possession of the Subject Land or any part thereof without first providing to its successors a copy of this Agreement.
- 4.1.6. The Owner will within 28 days of written demand pay to the Council the Council's reasonable costs (including legal costs) and expenses of and incidental to the preparation, execution and registration of the Agreement. To the extent that such costs and expenses constitute legal professional costs, either party may have these costs assessed by the Law Institute of Victoria and in that event the parties shall be bound by

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the amount of that assessment, with any fee for obtaining such an assessment being borne equally by Council and the Owner. Such costs payable by the Owner shall include the costs and disbursements associated with the registration of the Agreement on the titles and removal therefrom.

4.2. Registration of Agreement

The parties agree and the Owner acknowledges that the Council will forthwith after the execution of the Agreement and prior to the first Statement of Compliance being issued with respect to the proposed subdivision of the Subject Land register the Agreement on the titles of the Subject Land pursuant to the provisions of Section 181 of the Act.

5. COUNCIL'S COVENANTS

The Council agrees that:

- 5.1 It must apply all Contributions paid by the Owner towards the construction of the Infrastructure Projects and the specific amount of the application of the contribution to each Infrastructure Project must be commensurate with the amount specified in the Infrastructure Project List.
- 5.2 All Contributions paid by the Owners, including the Contribution paid in accordance with clause 2.1.4 of this Agreement, will be held and applied by the Council as though it were a contribution under a Development Contributions Overlay payment.
- 5.3 Unless the Owner elects to construct the following Infrastructure Project items as works in lieu in accordance with Clause 3 of this Agreement, the Council will complete construction of:
 - 5.3.1 Infrastructure Project items OS3, OS4, and RO8 prior to the issue of a Statement of Compliance which would in Council's reasonable opinion result in more than 50% of lots on the Subject Land being created; and
 - 5.3.2 Infrastructure Project items RO5 (insofar as it extends along the Subject Land) and OS13 within two years of the issue of a Statement of Compliance in respect of a subdivision which would in Council's reasonable opinion result in 95% of lots on the Subject Land being created. .

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- 5.4 It will not propose, exhibit or adopt any future amendment to the Planning Scheme which applies to the Subject Land and concerns development or open space contributions that is inconsistent with this Agreement.

6. APPLICATION OF CONTRIBUTIONS

The parties acknowledge and agree that:

- i. In the event that the Council has insufficient funds to complete all Infrastructure Projects, it must apply towards the Infrastructure Projects any funds it has received from the Owner as a Contribution; and
- ii. If, at the end of the Owner's obligations under this Agreement there are excess funds paid as a Contribution held by the Council and such funds are not sufficient in Council's reasonable opinion to undertake an Infrastructure Project, then Council must apply any such excess funds towards the improvement of public land which is within the Subject Land or otherwise as expressly agreed in writing with the Owner.

7. AMENDMENT

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

8. WAIVER

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.

9. NO FETTERING OF COUNCIL'S POWERS

- 9.1 The parties acknowledge and agree that this Agreement does not fetter or restrict the power or discretion of the Council to make any decision or impose any requirements or conditions in connection with the granting of any planning approval or certification of any plans of subdivision applicable to the Subject Land or relating to any use or development of the Subject Land.

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- 9.2 For clarity, nothing in this Agreement which provides for the provision of contributions to the Infrastructure Projects shall fetter the Council's ability to require the Owner to contribute to or provide local roads and other local infrastructure reasonably required by the subdivision of the Subject Land and normally associated with the development of land including water supply, stormwater drainage, gas and electricity services and telecommunications infrastructure and which is not otherwise provided for in the CP.

10. NOTICE

All notices and other communications provided for or permitted by 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:

- 10.1. not later than two business days after being deposited in the mail with postage prepaid;
- 10.2. when delivered by hand;
- 10.3. 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
- 10.4. 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.

11. JURISDICTION

This Agreement will be governed by and construed in accordance with the law of the State of Victoria and each of the parties hereby submits to the jurisdiction of the Courts of the State of Victoria and the Victorian Civil and Administrative Tribunal.

12. INVALIDITY OF ANY CLAUSE

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 will be and continue to be valid and enforceable in accordance with those terms.

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13. AGREEMENT BINDING ON SUCCESSORS OF OWNER

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

14. JOINT OBLIGATIONS

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

15. GST

- 15.1. In this clause 3, 'GST Act' means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- 15.2. Expressions used in this clause and in the GST Act have the same meanings as when used in the GST Act.
- 15.3. Amounts payable and consideration provided under or in respect of this Agreement are GST exclusive.
- 15.4. 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.
- 15.5. A party is not obliged, under clause 3.3, to pay the GST on a taxable supply to it until given a valid tax invoice for the supply.

16. THE PARTIES AGREE

- 16.1. The Council and the Owner shall do all things necessary (including signing any further agreement, acknowledgment or document) to give full effect to the terms of this Agreement and to enable the Council to register this Agreement on the titles to the Subject Land in accordance with the Act.



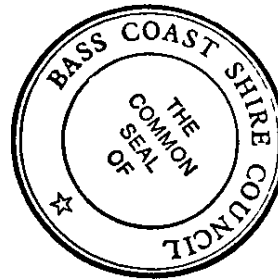
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- 16.2. The Agreement shall commence on the date that it bears and shall end upon payment of all sums payable by the Owner under this Agreement. The Council must at the request of, and at the cost of, the Owner take steps to end the registration of this Agreement on the certificates of title to the Subject Land upon its ending.

EXECUTED BY THE PARTIES

THE COMMON SEAL of BASS COAST SHIRE COUNCIL was affixed hereto in the presence of:

...Mayor.
...c'tiit°ExEi'cu.v ... Tcer ...



THE COMMON SEAL of SUMMERFIELDS WONTAGGI PTY LTD was affixed in the presence of the authorised persons:

Director

Director/Secretary

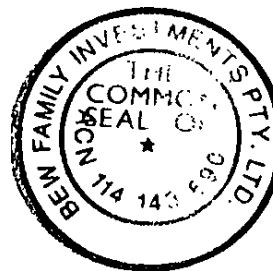


THE COMMON SEAL of BEW FAMILY INVESTMENTS PTY LTD was affixed in the presence of the authorised persons:

Sole

Director

Director/Secretary



EXECUTED by WENTWORTH PTY LTD

in accordance with Section 127 of the Corporations Act 2001:

Keith Donohue
Sole Director & Sole Company Secretary

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MORTGAGEE'S CONSENT

BANK OF QUEENSLAND LTD as mortgagee under mortgage No AF283947L acknowledges and agrees to be bound by the terms of this Agreement as it affects the land the subject of the mortgage.

DATED: 16th January 2012

Executed on behalf of

BANK OF QUEENSLAND LTD:



Print name DAVID GUSTIN

Position held REGIONAL MANAGER

BANK OF QUEENSLAND LIMITED ABN 32 009 656 740 BY ITS DULY
CONSTITUTED ATTORNEY DAVID ANTHONY GUSTIN UNDER POWER
OF ATTORNEY BOOK NO 277 AT PAGE 018 ITEM 26 WHO HAS
RECEIVED NO NOTICE OF REVOCATION OF THE POWER

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Summerfields Estate Development Contributions

Community Infrastructure Levy
 North East Wonthaggi Development Plan
 Residential NDA (ha) 280.81
 Commercial NDA (ha) 77.29
 Summerfields Estate
 Area (ha) 62.77
 Lots 677

Code	Category	Type of Contribution	Item	Total Cost Identified in DCP	Site Area (ha)	No. of dwellings (per ha)	Community Infrastructure Levy (per dwelling)	Contribution	Development Types Making Contribution	DCP %	Works in Lieu
CI01	Community Facility		Community Facility - Multi Purpose Community Centre (Community Hub)	\$7,000,000	62.77	14	\$891	\$782,633	Res	100%	No
OS1a	Open Space		District Sports Reserve (Active Open Space A)	\$2,604,000	62.77	14	\$563	\$582,280	Res	100%	No
Subtotal								\$1,364,912			

Development Contribution Items

Code	Category	Type of Contribution	Item	Total Cost Identified in DCP	Site Area (ha)	Development Infrastructure Levy (per ha)	Contribution	Development Types Making Contribution	DCP %	Works in Lieu
CI02	Community Facility	In full	Community Facility - Multi Purpose Community Centre (Community Hub)	\$3,000,000	62.77	\$10,683	\$670,596	Res	100%	No
CI03	Community Facility	In full	Land Acquisition - Multi Purpose Community Centre (Community Hub)	\$30,000	62.77	\$107	\$6,706	Res	100%	No
OS1b	Open Space	In full	District Sports Reserve (Active Open Space A)	\$1,000,000	62.77	\$3,561	\$223,532	Res	100%	No
OS3	Open Space	In full	Park A	\$60,000	62.77	\$214	\$13,412	Res	100%	Yes
OS4	Open Space	In full	Park B	\$300,000	62.77	\$1,068	\$67,060	Res	100%	Yes
OS13	Open Space	In full	Wellands - North East Corner of Summerfields Estate	\$750,000	62.77	\$2,671	\$167,649	Res	100%	Yes
C5	Culvert	In full	Heslop Rd - East of Wentworth Rd	\$100,000	62.77	\$279	\$17,529	Res & Comm	100%	No
I03	Intersection	In full	Roundabout - Korumburra Road (VicRoads) and Heslops Road Intersection	\$750,000	62.77	\$2,094	\$131,465	Res & Comm	100%	No
I06	Intersection	In part	Roundabout - Loch Wonthaggi Rd/Heslops Rd Intersection	\$1,000,000	62.77	\$1,396	\$87,643	Res & Comm	50%	No
I07	Intersection	In part	Land Acquisition - Loch Wonthaggi Rd/Heslop Rd Intersection	\$30,000	62.77	\$42	\$2,629	Res & Comm	50%	No
I08	Intersection	In part	Turning Lanes - Bass Hwy at Heslop Rd	\$500,000	62.77	\$698	\$43,822	Res & Comm	50%	No
I10	Intersection	In part	Signalisation - Bass Hwy/Korumburra Rd Intersection	\$1,500,000	62.77	\$2,094	\$131,465	Res & Comm	50%	No
I11	Intersection	In full	T-Intersection - Fuller Rd/Memorial Ave	\$100,000	62.77	\$278	\$17,529	Res & Comm	100%	Yes
I12	Intersection	In part	Roundabout - Fuller Rd/East-West Collector Rd Intersection	\$500,000	62.77	\$698	\$43,822	Res & Comm	50%	No
R01	Road	In part	Road Construction - On Heslop Rd between Fuller Rd & Korumburra Rd	\$1,100,000	62.77	\$1,536	\$96,407	Res & Comm	50%	No
R05	Road	In full	Road Construction - Fuller Rd	\$880,000	62.77	\$2,457	\$154,252	Res & Comm	100%	Yes
R08	Road	In full	Footpath Construction - Wentworth Rd between Longstaff St and Unused Road Reserve	\$20,000	62.77	\$56	\$3,506	Res & Comm	100%	Yes
R09	Road	In part	Road Construction - On Heslop Rd between Bass Hwy & Fuller Rd	\$1,688,000	62.77	\$2,357	\$147,942	Res & Comm	50%	No
Subtotal						\$32,292	\$2,026,963			

Development Contribution Items Additional to DCP

Code	Category	Type of Contribution	Item	Total Estimated Cost	Site Area (ha)	Development Infrastructure Levy (per ha)	Contribution	Development Types Making Contribution	%	Works in Lieu
	Open Space	In full	Realign Overhead Powerlines in Park B	\$50,000	62.77	\$178	\$11,177	Res	100%	Yes
Subtotal						\$178	\$11,177			

Total Contribution of Summerfields Estate		\$3,403,052
Contribution Per Lot		\$5,027

Individual Developer Contributions		Area (ha)	Amount
Summerfields Wonthaggi Pty. Ltd.		15.97	\$865,807
Wentworth Pty. Ltd.		44.80	\$2,428,815
BEW Family Investments Pty. Ltd.		2	\$108,429

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Summerfields Estate Infrastructure Items

Community Infrastructure Levy		
Code	Category	Item
C001	Community Facility	Community Facility - Multi Purpose Community Centre (Community Hub)
C01a		Delisted Sports Reserve (Active Open Space A)
Development Contribution Items		
Code	Category	Item
C102	Community Facility	Community Facility - Multi Purpose Community Centre (Community Hub)
C103	Community Facility	Land Acquisition - Multi Purpose Community Centre (Community Hub)
C01b	Open Space	Delisted Sports Reserve (Active Open Space A)
C03	Open Space	Park A
C04	Open Space	Park B
C013	Open Space	Wetlands - North East Corner of Summerfields Estate
C5	Canal	Heslop Rd - East of Wentworth Rd
R03	Intersection	Roundabout - Komnabura Road (McRocks) and Heslop Road Intersection
R06	Intersection	Roundabout - Loch Worragge Rd/Heslop Rd Intersection
R07	Intersection	Land Acquisition - Loch Worragge Rd/Heslop Rd Intersection
R08	Intersection	Turning Lanes - Bass Hwy at Heslop Rd
R10	Intersection	Signalisation - Bass Hwy/Komnabura Rd Intersection
R11	Intersection	T-Intersection - Fuller Rd/Memorial Ave
R12	Intersection	Roundabout - Fuller Rd/East-West Collector Rd Intersection
R01	Road	Road Construction - On Heslop Rd between Fuller Rd & Komnabura Rd
R05	Road	Road Construction - Fuller Rd
R08	Road	Footpath Construction - Wentworth Rd between Longstaff St and the Unused Road Reserve
R09	Road	Road Construction - On Heslop Rd between Bass Hwy & Fuller Rd
Development Contribution Items Additional to DCP		
Code	Category	Item
	Open Space	Resign Overhead Powerlines in Park B

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Summerfields Estate Infrastructure Items		
Code	Category	Item
C001	Community Facility	Community Facility - Multi Purpose Community Centre (Community Hub)
C01a	Open Space	Delisted Sports Reserve (Active Open Space A)
Development Contribution Items		
Code	Category	Item
C102	Community Facility	Community Facility - Multi Purpose Community Centre (Community Hub)
C103	Community Facility	Land Acquisition - Multi Purpose Community Centre (Community Hub)
C01b	Open Space	Delisted Sports Reserve (Active Open Space A)
C03	Open Space	Park A
C04	Open Space	Park B
C013	Open Space	Wetlands - North East Corner of Summerfields Estate
C5	Canal	Heslop Rd - East of Wentworth Rd
R03	Intersection	Roundabout - Komnabura Road (McRocks) and Heslop Road Intersection
R06	Intersection	Roundabout - Loch Worragge Rd/Heslop Rd Intersection
R07	Intersection	Land Acquisition - Loch Worragge Rd/Heslop Rd Intersection
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R08	Road	Footpath Construction - Wentworth Rd between Longstaff St and the Unused Road Reserve
R09	Road	Road Construction - On Heslop Rd between Bass Hwy & Fuller Rd
Development Contribution Items Additional to DCP		
Code	Category	Item
	Open Space	Resign Overhead Powerlines in Park B

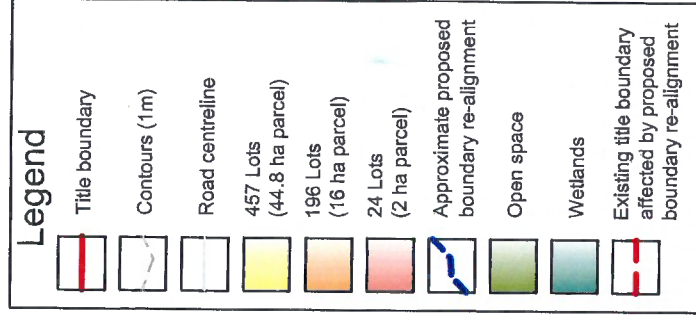
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ENDORSED DEVELOPMENT PLAN.

Planning and Environment Act 1987.
Base Case Planning Scheme Clause 43.04

Schedule 21 - Summerfields

This Development Plan was approved by Council at the meeting of

21 September 2011

For and on behalf of the Responsible Authority

Date 15/2/12



1:4000 @ A3

Ref : 5747 Ver : 03

Notes :

- this plan is subject to Council approval
- all dimensions and areas are subject to survey and final computations



29.06.2011

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Development Plan

'Summerfields' Fuller Road, Wentworth Road & Heslop Road, Wonthaggi

Wallis Watson Group, Wentworth Pty Ltd & BEW Family Investments Pty Ltd



Melbourne ph: 03 9528 4444
www.beveridgewilliams.com.au