



Department of Environment, Land, Water & Planning

This copied document to be made available for the sole purpose of enabling its consideration and review as part of a planning process under the Planning and Environment Act 1987. The document must not be used for any purpose which may breach any copyright

Electronic Instrument Statement

Copyright State of Victoria. This publication is copyright. No part may be reproduced by any process except in accordance with the provisions of the Copyright Act 1968 (Cth) and for the purposes of Section 32 of the Sale of Land Act 1962 (Vic) or pursuant to a written agreement. The information is only valid at the time and in the form obtained from the LANDATA REGD TM System. None of the State of Victoria, LANDATA REGD TM System, Victorian Land Registry Services Pty. Ltd. ABN 86 627 986 396 as trustee for the Victorian Land Registry Services Trust ABN 83 206 746 897 accept responsibility for any subsequent release, publication or reproduction of the information.

ADVERTISED
PLAN

Produced 02/12/2020 05:30:11 PM

Status	Registered	Dealing Number	AS774794K
Date and Time Lodged	04/12/2019 12:47:25 PM		

Lodger Details

Lodger Code	20218G
Name	HUNT & HUNT LAWYERS
Address	
Lodger Box	
Phone	
Email	
Reference	CLG:9553499 2-50 Eli

APPLICATION TO RECORD AN INSTRUMENT

Jurisdiction	VICTORIA
--------------	----------

Privacy Collection Statement

The information in this form is collected under statutory authority and used for the purpose of maintaining publicly searchable registers and indexes.

Estate and/or Interest

FEE SIMPLE

Land Title Reference

3294/665
3893/496
3907/344
3952/340
4013/514
5770/859
8766/455
10676/123

Instrument and/or legislation

RECORD - AGREEMENT - SECTION 173
Planning & Environment Act - section 173

Applicant(s)

Name	MELBOURNE CITY COUNCIL
Address	
Property Name	TOWN HALL
Street Number	120



Department of Environment, Land, Water & Planning

This copied document to be made available for the sole purpose of enabling its consideration and review as part of a planning process under the Planning and Environment Act 1987. The document must not be used for any purpose which may breach any copyright

Electronic Instrument Statement

Street Name	SWANSTON
Street Type	STREET
Locality	MELBOURNE
State	VIC
Postcode	3000

**ADVERTISED
PLAN**

Additional Details

Refer Image Instrument

The applicant requests the recording of this Instrument in the Register.

Execution

1. The Certifier has taken reasonable steps to verify the identity of the applicant or his, her or its administrator or attorney.
2. The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
3. The Certifier has retained the evidence supporting this Registry Instrument or Document.
4. The Certifier has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Executed on behalf of	MELBOURNE CITY COUNCIL
Signer Name	RICHARD JOHN WILLIAMS
Signer Organisation	HUNT & HUNT VICTORIA PTY LTD
Signer Role	AUSTRALIAN LEGAL PRACTITIONER
Execution Date	04 DECEMBER 2019

File Notes:

NIL

This is a representation of the digitally signed Electronic Instrument or Document certified by Land Use Victoria.

Statement End.



Imaged Document Cover Sheet

This copied document to be made available for the sole purpose of enabling its consideration and review as part of a planning process under the Planning and Environment Act 1987. The document must not be used for any purpose which may breach any copyright

The document following this cover sheet is an imaged document supplied by LANDATA®, Victorian Land Registry Services.

**ADVERTISED
PLAN**

Document Type	Instrument
Document Identification	AS774794K
Number of Pages (excluding this cover sheet)	12
Document Assembled	

Copyright and disclaimer notice:

© State of Victoria. This publication is copyright. No part may be reproduced by any process except in accordance with the provisions of the Copyright Act 1968 (Cth) and for the purposes of Section 32 of the Sale of Land Act 1962 or pursuant to a written agreement. The information is only valid at the time and in the form obtained from the LANDATA® System. None of the State of Victoria, LANDATA®, Victorian Land Registry Services Pty. Ltd. ABN 86 627 986 396 as trustee for the Victorian Land Registry Services Trust ABN 83 206 746 897 accept responsibility for any subsequent release, publication or reproduction of the information.

The document is invalid if this cover sheet is removed or altered.

This copied document to be made available
for the sole purpose of enabling
its consideration and review as
part of a planning process under the
Planning and Environment Act 1987.
The document must not be used for any
purpose which may breach any
copyright

ADVERTISED PLAN

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

Melbourne City Council
Impact Funds Management Pty Ltd as trustee for the IIG Kensington
Property Trust
2-50 Elizabeth Street, Kensington
2-12 Barrett Street, Kensington

EQUIPE
LAWYERS

ABN 49 141 940 703
8 Gold Street
COLLINGWOOD VIC 3066
TEL: 9853 5000
EMAIL: admin@equipelawyers.com.au

This copied document to be made available for the sole purpose of enabling its consideration and review as part of a planning process under the Planning and Environment Act 1987. The document must not be used for any purpose which may breach any copyright

Table of contents

ADVERTISED PLAN

Parties 1

Recitals 1

Operative provisions 2

1 Specific obligations 2

Schedule of new floor space..... 2

Provision of bank guarantee 3

Liability to make Contribution 3

Application and refund of Contribution 3

Notice and registration..... 3

Giving effect to this Agreement 3

Recording by Registrar of Titles 3

2 Agreement under section 173 of the Act 4

Agreement under the Act..... 4

3 Owner’s warranties..... 4

Owner's warranties 4

4 Successors in title 4

Successors in title 4

5 Commencement and Ending 5

Commencement of Agreement..... 5

Application to Registrar..... 5

No fettering of Council’s powers 5

Further acknowledgement 5

6 General..... 5

Entire agreement 5

Further acts 6

Severability 6

Notices 6

Service of Notice..... 6

Waiver 6

7 Definitions and interpretation 6

Definitions 6

Interpretation..... 7

This copied document to be made available for the sole purpose of enabling its consideration and review as part of a planning process under the Planning and Environment Act 1987. The document must not be used for any purpose which may breach any copyright

This Agreement is made on the 4th day of December 2019.

ADVERTISED PLAN

Parties

Melbourne City Council of 120 Swanson Street, Melbourne, Victoria 3000 (the Council)
Impact Funds Management Pty Ltd (ACN 163 620 988) as trustee for the IIG Kensington Property Trust of 11 Princes Street, St Kilda, Victoria 3182 (the Owner)

Recitals

- A Council is the Responsible Authority pursuant to the Act for the Planning Scheme.
- B The Owner is the registered proprietor of the Subject Land.
- C The Subject Land is affected by Schedule 2 to Clause 45.06 (Development Contributions Plan Overly) of DCPO2. The DCPO2 requires the imposition of conditions on planning permits to provide for the payment of contributions towards the provision of infrastructure in the local area, subject to certain exceptions.
- D On 17 January 2018, Council issued Planning Permit No. TP-2016-606 (the Permit), which allows the Subject Land to be used and developed for purposes of adapting and re-using of a complex of heritage buildings known as the Younghusband Wool Store.
- E Condition 31 of the Permit requires the Owner to enter into an agreement with Council prior to the commencement of works. This condition states:

31. *Prior to the commencement of works, excluding demolition, site remediation and site preparation works, the owner of the land must enter into an agreement with the Responsible Authority, pursuant to Section 173 of the Planning and Environment Act 1987. The agreement must:*

- *be registered on the title of the land that is the subject of this permit.*
- *provide for the removal of the agreement from the land following completion of the obligations contained in the agreement*
- *require the owner of the land to pay all reasonable legal costs and expenses of the agreement, including preparation, execution and registration on title, and*
- *provide the following:*

- i. *Require the owner or developer to pay a development contribution of:*
 - *\$182.58 per square metre of new commercial floor space*
 - *\$152.15 per square metre of new retail floor space**or such other amount outlined within an approved development contribution plan to the satisfaction of the Responsible Authority.*

- ii. *Require that development contributions be indexed annually*

This copied document to be made available for the sole purpose of enabling its consideration and review as part of a planning process under the Planning and Environment Act 1987. The document must not be used for any purpose which may breach any copyright.

from 1 July 2015 using the Price Index of Output of the Construction Industries (Victoria) by the Australian Bureau of Statistics.

- iii. Confirm that the development contributions will be payable to the Responsible Authority.
- iv. Require payment of the development contribution on issue of a certificate of building occupancy, a certificate of completion of works or a statement of compliance with a subdivision permit in accordance with the Subdivision Act 1988.
- v. Confirm the procedure for refunding monies paid if an approved development contribution plan for the area is less than the amount stipulated in the Section 173 agreement.
- vi. Require a bank guarantee to the value of 50% of the development contribution to be provided to the Responsible Authority prior to the commencement of any works. The bank guarantee will be returned upon full payment of the development contribution.

- F The Parties have not been able to reach agreement regarding the amount of the Contribution payable under DCPO2.
- G This Agreement sets out the process for determining the amount of the Contribution payable under the Permit.
- H The Parties enter into this Agreement to do both the following:
 - a. give effect to the requirements of condition 31 of the Planning Permit; and
 - b. achieve and advance the objectives of Act and the Planning Scheme in respect of the Subject Land.

Operative provisions

1 Specific obligations

Schedule of new floor space

- 1.1 Within one month of the date of the execution of this Agreement, the Owner must submit to Council a schedule ("**the New Floor Space Schedule**") that sets out the total amount of new commercial floor space and new retail space for which a Contribution is payable being:
 - 1.1.1 New floor space that is not associated with an existing use (an existing use being a use in existence as at the date the Permit was issued); and
 - 1.1.2 New floor space that increases the existing floor space by more than 1,000 square metres (existing floor space being floor space that existed at the date the Permit was issued).
- 1.2 The New Floor Space Schedule must be to the satisfaction of and be approved by the Council.

Provision of bank guarantee

- 1.3 Prior to the commencement of the Permitted Development the Owner must provide to Council a bank guarantee of \$225,000 as security for the payment of the Contribution. The parties agree that in identifying the figure of \$225,000 in substitution for 50% of the Contribution, this does not impact on the final amount of the Contribution to be paid.
- 1.4 Council must return the bank guarantee immediately upon satisfaction of the Contribution in accordance with Clause 1.5.

Liability to make Contribution

- 1.5 Prior to the issue of a certificate of occupancy for the Permitted Development, the Owner must pay to Council a Contribution according to the new floor space specified in the New Floorspace Schedule approved under Clause 1.1 at the following rates (subject to any increases in accordance with Clause 1.6):
- 1.5.1 \$182.58 per square metre of new commercial floor space.
- 1.5.2 \$152.15 per square metre of new retail floor space,
- to the satisfaction of Council.
- 1.6 The rates specified in Clause 1.5 are to be indexed annually from 1 July 2015 using the Price Index of Output of the Construction Industries (Victoria) by the Australian Bureau of Statistics ("the Indexation Factor").

Application and refund of Contribution

- 1.7 In the event that a DCP for the Subject Land is incorporated into the Planning Scheme, Council agrees that:
- 1.7.1 it will apply the Contribution towards the provision of infrastructure in accordance with the DCP;
- 1.7.2 no further Contribution is payable under the DCP in respect of the Permitted Development; and
- 1.7.3 it will refund to the Owner any amount paid under Clause 1.5 that exceeds the amount that would be paid as a development contribution, assuming the development contribution for the Permitted Development was calculated in accordance with the DCP, and with an appropriate allowance for the Indexation Factor. The refund must be paid within 30 days of the incorporation of the DCP into the Planning Scheme.

Notice and registration

- 1.8 The Owner will bring this Agreement to the attention of all prospective purchasers, tenants, Mortgagees, transferees and assigns.

Giving effect to this Agreement

- 1.9 The Owner will do all things necessary to give effect to this Agreement.

Recording by Registrar of Titles

- 1.10 The Owner will consent to Council making application to the Registrar of Titles to make a recording of this Agreement in the Register on the Certificate of Title to the Subject Land in accordance with section 181 of the Act and do all things necessary to

enable Council to do so including signing any further agreement, acknowledgement or document or procuring the consent to this Agreement of any Mortgagee or caveator to enable the recording to be made in the Register under that section.

**ADVERTISED
PLAN**

2 Agreement under section 173 of the Act

Agreement under the Act

- 2.1 Council and the Owner agree that without limiting or restricting their respective powers to enter into this Agreement and, insofar as it can be so treated, this Agreement is made pursuant to section 173 of the Act and the obligations of the Owner under this Agreement are obligations to be performed by the Owner as conditions subject to which the Owner may have use and enjoyment of the Subject Land.

3 Owner's warranties

Owner's warranties

- 3.1 Without limiting the operation or effect which this Agreement has, the Owner warrants that apart from the Owner and any other person which 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.
- 3.2 Save as shown in the certificate 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.
- 3.3 Neither the Subject 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).
- 3.4 The Owner must pay on demand to the Council the Council's reasonable costs and expenses including preparation, execution and registration on title.

4 Successors in title

Successors in title

- 4.1 Without limiting the operation or effect which this Agreement has, the Owner must ensure that, until such time as a memorandum of this Agreement is registered on the title to the Subject Land, successors in title shall be required to give effect to and do all acts and sign all documents which will require those successors to give effect to this Agreement and enter into a deed agreeing to be bound by the terms of this Agreement.

5 Commencement and Ending

Commencement of Agreement

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

Amendment of Agreement

- 5.2 This Agreement may be amended in accordance with Section 178 of the Act:
- 5.2.1 by agreement between the Responsible Authority and all persons who are bound by any covenant in the Agreement; or
 - 5.2.2 otherwise in accordance with the Act.

Ending of Agreement

- 5.3 This Agreement will end on the payment of the Contributions.

Application to Registrar

- 5.4 As soon as practicable after the Agreement has ended, Council will, at the request and at the cost of the Owner make application to the Registrar of Titles under section 183(1) of the Act to cancel the recording of this Agreement on the Register.

No fettering of Council's powers

- 5.5 It is acknowledged and agreed that this Agreement does not fetter or restrict the power or discretion of 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.

Further acknowledgement

- 5.6 It is acknowledged and agreed that this Agreement is entered into by the Owner on the basis that it is without prejudice to the Owner's right to assert or argue that condition 31 of the Permit is invalid and without prejudice to the Owner's rights to institute proceedings in the Victorian Civil and Administrative Tribunal challenging the validity of condition 31 of the permit, and/or challenging the requirement that the Owner make a development contribution pursuant to condition 31 of the Permit, save that the provisions of this clause will not operate if the Owner has made a Contribution and a certificate of occupancy has issued for the Permitted Development.

6 General

Entire agreement

- 6.1 This Agreement contains everything the parties have agreed in relation to the subject matter it deals with. No party can rely on an earlier written document or anything said or done by or on behalf of another party before this Agreement was executed.

ADVERTISED
PLAN

This copied document to be made available for the sole purpose of enabling its consideration and review as part of a planning process under the Planning and Environment Act 1987. The document must not be used for any purpose which may breach any copyright

ADVERTISED PLAN

Further acts

6.2 Each party must at its own expense promptly execute all documents and do or use reasonable endeavours to cause a third party to do all things that the other party from time to time may reasonably request in order to give effect to, perfect or complete this Agreement and all transactions incidental to it.

Severability

6.3 Each provision of this Agreement is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this Agreement in the relevant jurisdiction, but the rest of this Agreement will not be affected. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

Notices

6.4 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:

- 6.4.1 by delivering it personally to that party;
- 6.4.2 by sending it by prepaid post addressed to that party at the address set out in this Agreement or subsequently notified to each party from time to time; or
- 6.4.3 by sending it by facsimile provided that a communication sent by facsimile shall be confirmed immediately in writing by the sending party by hand delivery or prepaid post.

Service of Notice

6.5 A notice or other communication is deemed served:

- 6.5.1 if delivered, on the next following day;
- 6.5.2 if posted, on the expiration of 7 business days after the date of posting; or
- 6.5.3 if sent by facsimile, on the next following business day unless the receiving party has requested retransmission before the end of that business day.

Waiver

6.6 Any time or other indulgence granted by Council or the Owner or any variation of the terms and conditions of this Agreement or any judgment or order obtained by Council or against the Owner will not in any way amount to a waiver of any of the rights or remedies of Council in relation to the terms of this Agreement.

7 Definitions and interpretation

Definitions

7.1 In this Agreement the following definitions apply:

Act means the *Planning and Environment Act 1987*.

Agreement means this Agreement and any Agreement executed by the Parties expressed to be supplemental to this Agreement.

Contribution means an amount that is payable under the Permit in respect of new commercial and retail floorspace created by the Permitted Development, as determined in accordance with clauses 1.1 – 1.2 and 1.5 – 1.7 of this Agreement.

DCP means a development contribution plan or equivalent mechanism that is prepared and incorporated into the Planning Scheme in accordance with the Act for the purposes of levying development contributions towards the provision of infrastructure that is needed by new development.

DCPO2 means the Schedule 2 to Clause 45.06 of the Planning Scheme.

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.

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.

Permitted Development means the development allowed under the Permit, with the exception of demolition, site remediation and site preparation works.

Permit means the Planning Permit referred to in Recital D of this Agreement.

Planning Scheme means the Melbourne Planning Scheme or any other planning scheme which applies to the Subject Land from time to time.

Subject Land means:

- the land situated at 2-50 Elizabeth Street, being Land in Plan of Consolidation 359143N and more particularly described in Certificate of Title Volume 10676 Folio 123; and
- the land situated at 2-12 Barrett Street, Kensington, being Lot 1 in Plan of Subdivision TP687785, Lot 1 in Plan of Subdivision TP739337 Lot 1 in Plan of Subdivision TP701984, Lot 1 in Plan of Subdivision TP695587, Lot 1 in Plan of Subdivision TP517326, Lot 1 in Plan of Subdivision TP595120 and Lot 1 in Plan of Subdivision TP531207 and more particularly described in Certificates of Title Volume 05770 Folio 859, Volume 03952 Folio 340, Volume 03893 Folio 496, Volume 04013 Folio 514, Volume 03907 Folio 344, Volume 03294 Folio 665, Volume 08766 Folio 455.

Interpretation

7.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- 7.2.1 A word or expression in this Agreement has its ordinary meaning unless that word or expression is defined in this Agreement. If a word or expression is not defined in this Agreement and it is defined in the Act or the Scheme it has the meaning in the Act or the Planning Scheme.
- 7.2.2 Headings are inserted for convenience only and do not affect the interpretation of this Agreement.

- 7.2.3 A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Melbourne, Victoria.
- 7.2.4 If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- 7.2.5 A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 7.2.6 A reference in this Agreement to any document or agreement is to that document or agreement as amended, novated, supplemented or replaced.
- 7.2.7 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- 7.2.8 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 7.2.9 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 7.2.10 A word which indicates the singular also indicates the plural, a word which indicates the plural also indicates the singular, and a reference to any gender also indicates the other genders.
- 7.2.11 Any schedules, attachments or annexures form part of this Agreement.

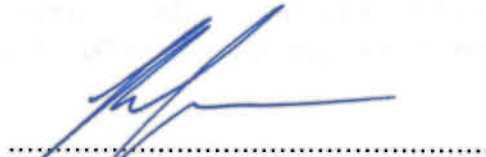
ADVERTISED
PLAN

This copied document to be made available for the sole purpose of enabling its consideration and review as part of a planning process under the Planning and Environment Act 1987. The document must not be used for any purpose which may breach any copyright

Signed, sealed and delivered as a deed by the parties

ADVERTISED PLAN

Signed sealed and delivered by Colin Charman, Acting Principal Urban Planner on behalf of the Melbourne City Council pursuant to the power delegated to that person by an Instrument of Delegation in the presence of:



Colin Charman

(Signature of independent adult witness)

(name of signatory)

PATRICIA HLASKO

Name of witness (BLOCK LETTERS)

Executed by Impact Funds Management Pty Ltd (ACN 138 179 914) in accordance with section 127(2) of the Corporations Act 2001 in the presence of authorised persons:



Signature of Director

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

PAUL BELCHER

NIKKI CARROLL

Full name

Full name

11 PRINCES ST, ST KILDA

11 PRINCES ST, ST KILDA

Usual address

Usual address

This copied document to be made available for the sole purpose of enabling its consideration and review as part of a planning process under the Planning and Environment Act 1987. The document must not be used for any purpose which may breach any copyright

Mortgagee's Consent

National Australia Bank Ltd is the registered Mortgagee under instrument AN430192E and consents to the registration of this Agreement on the title to the Subject Land, being the land referred to in Certificates of Title Volume 10676 Folio 123, Volume 05770 Folio 859, Volume 03952 Folio 340, Volume 03893 Folio 496, Volume 04013 Folio 514, Volume 03907 Folio 344, Volume 03294 Folio 665, Volume 08766 Folio 455

ADVERTISED PLAN

.....
.....

Executed by National Australia Bank Limited
by its Attorney

Marina Spathis
who holds the position of Level 3 Attorney under
Power of Attorney dated 1/03/2007 (a certified
copy of which is filed in Permanent Order Book
277 Page No 25 Item 3) in the presence of:



.....
ATTORNEY

