









**2.0**23/05/2019  
C183king**Use of land****Section 173 agreements**

No building or works may be constructed for a use in Section 1 of Clause 1 of this Schedule until agreements under Section 173 of the Act are entered into as follows:

- Between the owner of the land and the City of Kingston as responsible authority providing for a recreation contribution which has been calculated on the basis of 1/20th of the site value of all the land in the zone assessed on 18 August 1988 and subsequently indexed at the rate of 14 per cent a year to be paid in stages over a maximum period of three years. The contribution is to assist the provision by the City of Kingston of additional facilities made necessary by the occupiers of the development shown on the development plan that are not provided for in the zone.
- The contribution will be considered to satisfy any contribution for land or money required for 'resort and recreation' under the *Local Government Act, Planning and Environment Act* and *Subdivision Act*.
- Between the owner of the land and the City of Kingston as responsible authority providing for:
  - The construction of a marina and flood gates on land owned by the developer in the zone and of an associated pipeline connecting the marina with other waterways, all to the satisfaction of Melbourne Water, the maintenance of the marina and associated matters.
  - The leasing and licensing of certain land owned by Melbourne Water in the zone for temporary car parking, mooring of boats, access to the Patterson River, the carrying out of certain works on the land and associated matters. This agreement must not require the owner of the land to provide any car parking for the public or for private use on land in the proposed public open space, except a car park for the general public for a maximum of 30 vehicles adjacent to the north-eastern corner of the land, provided any necessary approvals have been obtained.
  - The payment of charges and levies to Melbourne Water in respect to land in the zone.
  - Ancillary matters.
- Between the owner of the land and the City of Kingston as responsible authority providing for the owner to be responsible for ensuring that during construction, satisfactory provision is made to ensure that vehicles leaving the site do not deposit material on to McLeod Road and other connecting roads in the City of Kingston and for any repairs or cleaning required of roads, drains, street furniture and road signs, caused by vehicles leaving the development site, to the satisfaction of the responsible authorities.

**Basement car park**

No building or works may be constructed for a use in Section 1 of Clause 1 of this Schedule until:

- Sufficient investigations of ground conditions necessary to determine whether, having regard to the method of construction of the basement car park and programming, physical protection works are necessary to limit damage that may be caused to pavements and services in the McLeod Road reservation, have been carried out to the requirements of the City of Kingston, to the satisfaction of the responsible authority.
- An agreement under Section 173 of the Act is entered into between the owner of the land, the City of Kingston as responsible authority, Melbourne Water, United Energy and Telstra, either separately or in one common agreement, providing for sufficient monetary bonds in each case to guarantee the complete restoration of any damage caused to services owned by each of these organisations in the McLeod Road reservation, including damage to roadway, footpath or drainage, sewerage, water supply, electricity supply or telecommunication installations, caused

by construction of the adjacent basement car park. Any physical protection works considered necessary and the construction method and program on which they were based must be carried out to the satisfaction of the responsible authority.

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#### Subdivision

##### Decision guidelines

The following decision guidelines apply to an application for a permit under Clause 37.02, in addition to those specified in Clause 37.02 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

- The interface with adjoining zones, especially the relationship with residential areas.
- The effect the subdivision will have on the potential of the area to accommodate the uses which will maintain or enhance its competitive strengths.

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#### Buildings and works

##### Permit requirement

No permit is required to construct a building or construct or carry out works.

Buildings and works must be constructed in accordance with a development plan, open space plan and traffic plan prepared to the satisfaction of the responsible authority prior to the commencement of any works.

##### Development plan

The development plan must be generally in accordance with the *Endeavour Cove Comprehensive Development Plan* (December 1999) and must show:

- The location, height, dimensions, cross sections and floor area of all buildings and works.
- The proposed use of each building.
- The location of all vehicle, bicycle and pedestrian ways.
- The location and layout of all car parking areas generally in accordance with the Car Park Capacity Plan - Comprehensive Development Zone No. 1 - Whalers Cove Marina and access to and from them and a management plan for operating and maintaining the areas.
- The location of all open space, including areas available to the public.
- Proposed landscaping and a management plan for controlling and maintaining open space.
- The stages, if any, in which the land is to be developed, with starting and completion dates for each stage.
- The wind conditions in pedestrian areas.
- The shadows cast by buildings in the zone exceeding two storeys between 11.00am and 2.00pm on 22 June.
- The visual impact of the proposed development when seen from and along the Patterson River and the river's general environs and from McLeod Road.

The responsible authority may consider any one or more of the components of the plan and notify the owner whether they are satisfactory. The responsible authority must consider a component if asked to do so by the owner.

All buildings and works, open space and landscaping and use of land must be in accordance with the plan.

At the request or with the consent of the owner, the plan may be amended to the satisfaction of the responsible authority.

### **Open space plan**

The management plan for controlling and maintaining open space must:

- Show areas of open space that will be available to the public (public areas).
- Show areas of open space that will be available only to residents and employees (non-public areas).
- Show by plans and elevations open space that will be part of a building.
- Specify times when public areas will be available to the public and how it is intended to ensure that they will be available at those times.
- Set out proposals for the permanent management and upkeep of public areas.
- Specify the uses to which public areas may be put.
- Include a landscape plan for all public and non-public areas and for the area of proposed public open space along the northern boundary of the zone. The landscape plan must include details of the species, approximate numbers of trees and planting formations in the proposed public open space.
- The purpose of the river bank planting is to provide an adequate screen to development in the zone when viewed from the river or from in the proposed public open space, and to provide elements of continuity, both visual and as a corridor for bird life, along the trail from Port Phillip Bay to Dandenong.
- Preference will be given to indigenous species, but other appropriate species may be included in the plan following consultation between the owner of the adjoining land, the Minister for Planning or his representative, Melbourne Water, the responsible authority and local community groups.
- If the land is to be developed in stages, show the area that will be available as open space at the completion of each stage.
- Show how public areas which adjoin the proposed public open space along the southern bank of the Patterson River are to be integrated in consultation with the Patterson River Recreation Area Management Committee and Melbourne Water and to the satisfaction of the responsible authority.

### **Traffic plan**

After the development plan has been prepared to the satisfaction of the responsible authority and before work may begin on the site, a traffic plan must be prepared to the satisfaction of the responsible authority.

The plan must show vehicle, bicycle and pedestrian traffic management and control works considered necessary when the development or any stage is completed.

Each stage of traffic works may be designated by a date or as shown on the development plan or by both methods. The traffic plan may also indicate the degree to which the works are required by the use of buildings and works in the zone and the share of the cost of the works attributed to each.

Until the traffic management and control works shown on the traffic plan are completed in stages or fully to the satisfaction of the responsible authority, no land may be used for an art gallery, bank, boat building and repairs, boat sales, boat servicing, boat storage, dwelling, hotel, industry, marina, office, residential hotel, restaurant, shop or yacht club, except with a permit.

At the request or with the consent of the owner, the traffic plan may be amended to the satisfaction of the responsible authority.

### Decision guidelines

Before deciding whether the development plan and traffic plan are satisfactory, the responsible authority must consider:

- The *Endeavour Cove Comprehensive Development Plan* (December 1999).
- The Car Park Capacity Plan - Comprehensive Development Zone No. 1 - Whalers Cove Marina.
- The impact of traffic generated by the proposal and whether it is likely to require special traffic management or control works in the neighbourhood.
- The views of the City of Kingston and the Roads Corporation on the traffic plan.
- Points of access to and from the land and whether they are suitably located.
- The layout of car parking areas and access ways to them.
- The effects of future sea level rises, based on a projected sea level rise of 30cm to 2040.
- Contingencies for the redevelopment of land immediately to the east of the zone.

### Height control

A building or works must not exceed the height above the Australian Height Datum for any particular area as shown on the *Endeavour Cove Comprehensive Development Plan* (December 1999).

### Car space concessions

A permit may be granted to reduce the number of car spaces required for a particular use in Section 1 of Clause 1 of this Schedule if the responsible authority is satisfied that the number of spaces required:

- Is unnecessary in the circumstances.
- Could create or aggravate traffic congestion in the locality.
- Can be provided on nearby land.

Before deciding on an application, the responsible authority must consider:

- The likely demand for car parking spaces.
- The extent to which the various uses of the land are likely to generate different levels of demand for car parking at different times.
- The possible multi-use of the car spaces.
- The demand for car spaces generated by the uses established in previous stages of the development.
- The accessibility of the site to vehicle traffic.
- The proposed layout of parking areas.

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### Signs

None specified.