



## Maddocks

Lawyers  
Collins Square, Tower Two  
Level 25, 727 Collins Street  
Melbourne VIC 3008  
Australia

Telephone 61 3 9258 3555  
Facsimile 61 3 9258 3666

info@maddocks.com.au  
www.maddocks.com.au

DX 259 Melbourne

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

Subject Land: 34 George Street, Maidstone and 53 Wattle Road, Maidstone

**Maribyrnong City Council**  
and

**Mileva Gajic**  
and

**Bosko Gajic**  
and

**Latin America Pty Ltd**  
ACN 139 315 763

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## Contents

<b>1.</b>	<b>Definitions</b> .....	<b>2</b>
<b>2.</b>	<b>Interpretation</b> .....	<b>3</b>
<b>3.</b>	<b>Purposes of Agreement</b> .....	<b>4</b>
<b>4.</b>	<b>Reasons for Agreement</b> .....	<b>4</b>
<b>5.</b>	<b>Agreement required</b> .....	<b>4</b>
<b>6.</b>	<b>Owner's specific obligations</b> .....	<b>4</b>
	6.1 Road construction.....	4
<b>7.</b>	<b>Owner's further obligations</b> .....	<b>5</b>
	7.1 Notice and registration.....	5
	7.2 Further actions.....	5
	7.3 Fees.....	5
	7.4 Council's costs to be paid.....	6
	7.5 Time for determining satisfaction.....	6
	7.6 Interest for overdue money.....	6
	7.7 Notification of compliance with Owner's obligations.....	6
<b>8.</b>	<b>Agreement under s 173 of the Act</b> .....	<b>6</b>
<b>9.</b>	<b>Owner's warranties</b> .....	<b>6</b>
<b>10.</b>	<b>Successors in title</b> .....	<b>7</b>
<b>11.</b>	<b>General matters</b> .....	<b>7</b>
	11.1 Notices.....	7
	11.2 Counterparts.....	7
	11.3 No waiver.....	7
	11.4 Severability.....	7
	11.5 No fettering of Council's powers.....	7
	11.6 Inspection of documents.....	7
	11.7 Governing law.....	8
<b>12.</b>	<b>Commencement of Agreement</b> .....	<b>8</b>
<b>13.</b>	<b>Ending of Agreement</b> .....	<b>8</b>

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

## Dated

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## Parties

Name	<b>Maribyrnong City Council</b>
Address	corner Hyde and Napier Streets, Footscray, Victoria
Short name	<b>Council</b>
Name	<b>Mileva Gajic</b>
Address	13 Winjeel Court, Braybrook, Victoria
Short name	<b>Owner</b>
Name	<b>Bosko Gajic</b>
Address	13 Winjeel Court, Braybrook, Victoria
Short name	<b>Owner</b>
Name	<b>Latin America Pty Ltd ACN 139 315 763</b>
Address	c/- Michael A Palma, Level 1, 46 Douglas Street, Noble Park, Victoria
Short name	<b>Owner</b>

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## Background

- A. Council is the responsible authority for the Planning Scheme.
- B. The Owner is or is entitled to be the registered proprietor of the Subject Land.
- C. Council is the planning authority for the purpose of Amendment C158 to the Planning Scheme. Amendment C158 proposes to rezone the subject land to enable it to be redeveloped for residential use and apply an environmental audit overlay. Pursuant to section 96A of the Act, the Owner has concurrently applied to Council for a permit to obtain approval to use and develop the subject land for residential purposes as may be required by the amended Planning Scheme following a gazettal of Amendment C158.
- D. As part of the proposed rezoning of the subject land, the Owner and Council have agreed that the Owner will construct the road and other associated road facilities. The parties enter this agreement to achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect to the subject land.

- E. For the avoidance of doubt, the parties acknowledge that the Owner's obligations under this Agreement are contingent on the approval of Amendment C158 to the Planning Scheme.
- F. 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

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### 1. Definitions

In this Agreement unless the context admits otherwise:

**Act** means the *Planning and Environment Act 1987*.

**Agreement** means this Agreement and includes this Agreement as amended from time to time.

**Amendment to the Planning Scheme** means amendment C158 to the Planning Scheme which seeks to rezone the Subject Land.

**Building** has the same meaning as in the Act.

**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, email@maribyrnong.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.

**Estimated Cost** means:

- (a) for the purpose of calculating the Plan Checking Fee, the estimated cost, as agreed by Council, of constructing the Public Works shown on the plans to be checked; and
- (b) for the purpose of calculating the Supervision Fee, the estimated cost, as agreed by Council, of constructing the Public Works to be supervised.

**Indexation** means an annual adjustment to the Satisfaction Fee carried out in accordance with CPI.

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

**Owner** means the person registered or entitled from time to time to be registered as proprietor of an estate in fee simple of the Subject Land 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 but does not include a person who has transferred or otherwise disposed of all of their interests in the Subject Land.

**Plan Checking Fee** means a fee payable to Council by the Owner for checking plans for Public Works and which is payable at the rate of 0.75 per cent of the Estimated Cost.

**Planning Scheme** means the Maribyrnong Planning Scheme and any other planning scheme that applies to the Subject Land.

**Public Works** means works that are to be constructed by or on behalf of the Owner on land other than the Subject Land for the purpose of providing roads or public utility services to service or otherwise provide benefit to the Subject Land.

**Road** means the continuation of the public road known as George Street running north-south between the land at 53 Wattle Road, Maidstone and the land at 34 George Street, Maidstone.

**Satisfaction Fee** means a fee payable by the Owner to Council for determining whether any one of the Owner's obligations has been undertaken to Council's satisfaction, or 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) \$325.80 if paid within 12 months from the date that this Agreement commences; or
- (b) \$325.80 plus Indexation if paid at any time after 12 months from the date that this Agreement commences.

**Statement of Compliance** has the same meaning as in the *Subdivision Act 1988*.

**Subject Land** means the land situated at 34 George Street, Maidstone and 53 Wattle Road, Maidstone being the land referred to in certificates of title volume 10707 folio 718 and volume 9392 folio 627 and any reference to the Subject Land includes any lot created by the subdivision of the Subject Land or any part of it.

**Supervision Fee** means a fee payable to Council by the Owner for supervision of Public Works and which is payable at the rate of 2.5 per cent of the Estimated Cost.

## 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 give effect to the agreement prior to the adoption of the Planning Scheme amendment to construct the road; and
- 3.2 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 has entered into this Agreement for the following reasons:

- 4.1 the Owner and Council agreed that the Owner would enter into this Agreement to pay the cost and construct the unmade part of George Street. The Agreement will only come into effect on the approval date of the amendment; and
- 4.2 the Owner has elected to enter into this Agreement in order to facilitate the commencement of the planning scheme amendment.

### **5. Agreement required**

The Parties agree that this Agreement will continue to be required until the Owner has complied with all of the Owner's obligations.

### **6. Owner's specific obligations**

#### **6.1 Road construction**

- 6.1.1 Prior to the issue of Statement of Compliance or occupancy permit, whichever occurs first, the Owner must:

- (a) construct the unmade part of George Street, between Wattle Road and the southern boundary of the Subject Land to Council's standards and requirements including all drainage facilities, footpaths and street lights, at its own cost, to the satisfaction of Council;
  - (b) landscape the western and eastern side of the Road to the satisfaction of Council; and
  - (c) ensure the width and design of the Road aligns with the southern existing section of George Street.
- 6.1.2 The Road must be constructed to a public road standard in accordance with Council's engineering requirements, to the satisfaction of Council.
- 6.1.3 Detailed engineering design plans (1:200) and specifications for the construction and underground drainage shall be prepared by a qualified Engineer at the Owner's expense and must be approved by Council prior to commencement of the works. The Owner must obtain appropriate permits and pay related fees in relation to the construction of George Street.
- 6.1.4 Following construction and completion of a 3 month maintenance period, Council will be solely responsible for the ongoing maintenance and upkeep of the Road.

## **7. Owner's further obligations**

### **7.1 Notice and registration**

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

### **7.2 Further actions**

The Owner:

- 7.2.1 must do all things necessary to give effect to this Agreement;
- 7.2.2 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 s 181 of the Act; and
- 7.2.3 agree 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.

### **7.3 Fees**

The Owner must pay to Council within 14 days after a written request for payment, any:

- 7.3.1 Plan Checking Fee;
- 7.3.2 Supervision Fee; and
- 7.3.3 Satisfaction Fee.

#### **7.4 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:

- 7.4.1 preparing, drafting, finalising, signing, recording and enforcing this Agreement;
- 7.4.2 preparing, drafting, finalising and recording any amendment to this Agreement;
- 7.4.3 determining whether any of the Owner's obligations have been undertaken to Council's satisfaction; and
- 7.4.4 preparing, drafting, finalising and recording any document to give effect to the ending of this Agreement.

#### **7.5 Time for determining satisfaction**

If Council makes a request for payment of:

- 7.5.1 a fee under clause 7.3.3; or
- 7.5.2 any costs or expenses under clause 7.4.3,

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

#### **7.6 Interest for overdue money**

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

#### **7.7 Notification of compliance with Owner's obligations**

The Owner must notify Council of its compliance with all of the Owner's obligations.

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### **8. Agreement under s 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 s 173 of the Act.

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### **9. Owner's warranties**

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.



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**10. 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:

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

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**11. General matters****11.1 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:

- 11.1.1 personally on the other Party;
- 11.1.2 by leaving it at the other Party's Current Address;
- 11.1.3 by posting it by priority prepaid post addressed to the other Party at the other Party's Current Address; or
- 11.1.4 by email to the other Party's Current Email.

**11.2 Counterparts**

This Agreement may be executed in counterparts, all of which taken together constitute one document.

**11.3 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.

**11.4 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.

**11.5 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 Planning Scheme amendment process or the grant of planning approvals or certification of plans subdividing the Subject Land or relating to use or development of the Subject Land.

**11.6 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.

**11.7 Governing law**

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

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**12. Commencement of Agreement**

This Agreement commences on the date on which the Amendment to the Planning Scheme is published in the Victorian Government Gazette.

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**13. Ending of Agreement**

13.1 This Agreement ends upon the satisfactory completion of the construction of George Street and after the 3 month maintenance period.

13.2 After this Agreement has ended, Council will, at the Owner's written request, apply to the Registrar of Titles under s 183(1) of the Act to cancel the record of this Agreement.

# Signing Page

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

**Signed** by and on behalf, and with the authority, of )  
 the Maribyrnong City Council by Stephen Wall , Chief )  
 Executive Officer, in the exercise of a power )  
 conferred by an Instrument of Delegation, in the ) .....  
 presence of: )  
 )

.....  
Witness

**Signed sealed and delivered** by **Mileva Gajic** in the )  
 presence of: ) .....

.....  
Witness

**Signed sealed and delivered** by **Bosko Gajic** in the )  
 presence of: ) .....

.....  
Witness

**Executed** by **Latin America Pty Ltd ACN 139 315** )  
**763** in accordance with s 127(1) of the *Corporations* )  
*Act 2001*: )

.....  
Signature of Director

.....  
Signature of Director (or Company Secretary)

.....  
Print full name

.....  
Print full name



**Mortgagee's Consent**

National Australia Bank Ltd as Mortgagee under instrument of mortgage no. AL254228H 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.

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