



# Stormwater Quality In-lieu Contribution Payment Purchase Agreement

1230 Nepean Highway, Cheltenham, 3192  
P.O. Box 1000, Mentone 3194  
1300 653 356  
[www.kingston.vic.gov.au/stormwater](http://www.kingston.vic.gov.au/stormwater)

## 1. Applicant's Details (Purchaser)

Name \_\_\_\_\_

Address \_\_\_\_\_

ABN/ACN [where applicable] \_\_\_\_\_

## 2. The Subject Land [provide details for all land to which the Contribution Payment applies]

Address \_\_\_\_\_

Development Proposal \_\_\_\_\_

Planning Permit Number \_\_\_\_\_

Permit Condition Number \_\_\_\_\_ [which condition does this Contribution Payment address?]

# Describe any stormwater quality measures to be implemented onsite that will result in partial compliance with the applicable permit condition [e.g each unit will have a 2,000 Litre rainwater tank installed and connected to toilets for reuse]

\_\_\_\_\_  
\_\_\_\_\_

## 3. Contribution Payment to Council

Total Impervious area \_\_\_\_\_ sqm

Percentage of Best Practice Water Quality Achieved \_\_\_\_\_ %

Gross contribution payment \$ \_\_\_\_\_

Less credit for partial compliance onsite # \$ \_\_\_\_\_

**Total Contribution Payment** \$ \_\_\_\_\_

## 4. Signature of Purchaser

In signing this agreement, I acknowledge that I agree to the terms and conditions set out on the back of this page.

Signed \_\_\_\_\_ Date \_\_\_\_\_

# Terms and Conditions

## The Parties agree

### 1. Background

- 1.1 The Purchaser proposes to use and develop the Subject Land and acknowledges that a condition of its approval does require or will require that it carry out works on the Subject Land to minimise adverse impacts associated with stormwater discharges from the Subject Land.
- 1.2 As an alternative to provision of on-site works for stormwater quality protection Council has an Adopted Policy that allows the provision of an Offset as an alternative to provision of on-site stormwater quality protection works.
- 1.3 The Purchaser has agreed to procure certain ecological services from Council through the purchase of the Offset, which the Purchaser will rely upon as evidence that certain requirements of a Planning Permit have been, or will be, satisfied.

### 2. Definitions

In this Agreement, unless the context admits otherwise, words and expressions have the following meanings:

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

**Adopted Policy** means Council's Stormwater Quality In-lieu Contributions Policy 2016, or as amended by Council from time to time.

**Agreement** means this agreement.

**Contribution Payment** means the Stormwater Quality In-lieu Contribution Payment described in , which records the value of the Offset.

**Offset** means the provision of works or services to compensate for the possible effects of a change in the use or development of land on stormwater conditions beyond the boundaries of the Subject Land.

**Party or parties** mean the Purchaser and Council under this Agreement as appropriate.

**Payment** means the Payment to Council described in this agreement.

**Planning Permit** means a permit granted under the Act in respect of the Subject Land.

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

**Purchaser** means the purchaser described in this agreement.

**Subject Land** means the land described in this agreement. Any reference to the Subject Land in this Agreement includes any lot created by the subdivision of the Subject Land or any part of it.

### 3. Specific obligations of the Purchaser

- 3.1 Upon the commencement of this Agreement, the Purchaser covenants and agrees:
- 3.1.1 to immediately make the required Payment to Council; and
- 3.1.2 to comply with the requirements of any Planning Permit and the Planning Scheme.
- 3.2 The Purchaser agrees that Council may apply the Payment and account for the Contribution Payment in accordance with the Adopted Policy.
- 3.3 The Purchaser acknowledges and agrees that the Contribution Payments:
- 3.3.1 run with the Subject Land and the Planning Permit, unless Council has agreed in writing to allow the Contribution Payment to be reassigned;
- 3.3.2 are evidence of compliance with obligations under the Act and are not personal property; and
- 3.3.3 cannot be reassigned without the further written agreement of Council.

### 4. Specific obligations of Council

- 4.1 Council agrees that after receiving the Payment:
- 4.1.1 it will create a Contribution Payment in a register maintained by Council in favour of the Subject Land in accordance with this agreement;
- 4.1.2 the Purchaser may rely on the Contribution Payment as evidence of compliance with the Adopted Policy and stormwater quality obligations under the Planning Permit and the Planning Scheme that relates to the Subject Land, to the extent that the Contribution Payment provides evidence that the obligation has been satisfied; and
- it will manage all funds received from the Purchaser to deliver Offsets in accordance with the Adopted Policy.

### 5. Refunds

- 5.1 Where the Purchaser satisfies Council that it will not pursue any relevant application for a Planning Permit for a Proposal described in this agreement, Council may cancel a Contribution Payment and refund the Payment, where satisfied that:
- 5.1.1 any relevant application for a Planning Permit has been formally withdrawn under the Act; and
- 5.1.2 any relevant Planning Permit has expired or been cancelled in accordance with the Act.
- 5.2 If a refund is made pursuant to clause 5.1:
- 5.2.1 the Purchaser shall not be entitled to any accrued interest.
- 5.3 Council shall not be subject to any obligation or duty, implied or otherwise, to invest moneys held by it as a result of this Agreement.

### 6. Further obligations of the parties

The parties further covenant and agree that they will do all things necessary to give effect to this Agreement.

### 7. Release & indemnity

The Purchaser unconditionally releases and indemnifies Council from any claims which may be made by it or any other person relating to any alteration in the value of any Contribution Payment created as a result of this Agreement.

### 8. General matters

#### 8.1 No Waiver

Any time or other indulgence granted by Council to a party or any variation of the terms and conditions of this Agreement or any judgment or order obtained by Council against a party 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.

#### 8.2 Severability

If a court, arbitrator, tribunal or other competent authority determines that a word, phrase, sentence, paragraph or clause of this Agreement is unenforceable, illegal or void then it must be severed and the other provisions of this Agreement will remain operative.

### 9. GST

#### 9.1 Exclusive of GST

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

Tax Invoice

Council must provide a tax invoice to the Purchaser at the time of Payment.