

83 - 85 Railway Street, Rockdale

Planning Agreement

Under s 7.4 of the *Environmental Planning and Assessment Act 1979*

BAYSIDE COUNCIL

and

ELIAS ESTEPHAN DACCOUR

Table of Contents

Contacts Sheet	5
Parties	6
Background	6
Operative provisions	7
Part 1 - Preliminary	7
1. Definitions and interpretation	7
2. Application of this Agreement	10
3. Status and operation of this Agreement	11
4. Further agreements relating to this Agreement	11
5. Application of s 7.11, s 7.12, s 7.24 of the Act to the Development	11
Part 2 – Development Contributions	11
6. Provision of Development Contributions	11
7. Dedication of land	11
8. Design and Specification of an Item of Work	13
9. Carrying out of an Item of Work	13
10. Construction of an Item of Work	13
11. Access to the Land and the Deed of Agreement for Right of Carriageway and Works Licence	14
12. Protection of people and property	14
13. Hand-Over of Works	14
14. Failure to Comply with the Hand-Over Date	15
15. Rectification of Defects	15
16. Damage and repairs to Work	16
17. Variation of Work	16
Part 3 – Other Provisions	17
18. Indemnity and insurance	17

19.	Provision of Security and Charge	17
20.	Release & return of Security	18
21.	Recovery of cost of rectification carried out by Council	18
22.	Enforcement in a court of competent jurisdiction	19
23.	Dispute resolution – expert determination	19
24.	Dispute resolution – mediation	19
25.	Registration of this Agreement	20
26.	Release and discharge of Agreement by Council	20
27.	Assignment and transfer	21
28.	Review of this Agreement	21
29.	Notices	22
30.	Approvals and consent	22
31.	Costs	23
32.	Entire Agreement	23
33.	Further acts	23
34.	Governing law and jurisdiction	23
35.	Joint and individual liability and benefits	23
36.	No fetter	24
37.	Representations and warranties	24
38.	Severability	24
39.	Modification	24
40.	Waiver	24
41.	Rights cumulative	24
42.	Duty	24
43.	Effect of Schedules	25
44.	Relationship of the Parties	25
45.	GST	25
46.	Explanatory Note relating to this Agreement	26
	Execution	27
	Schedule 1: (Section 7.4 Requirements)	28
	Schedule 2: The Land	29

Schedule 3: Development Contributions	30
Schedule 4: Plans	33
Schedule 5: Specifications	38
Schedule 6: Deed of Agreement (Works Licence and Right of Carriageway)	42

Contacts Sheet

Council:

Name: Bayside Council ABN 80 690 785 443 Branch 003

Address: 444 - 446 Princes Highway, ROCKDALE NSW 2216

Telephone: (02) 9562 1666

Facsimile: (02) 9562 1777

Email: council@bayside.nsw.gov.au

Representative: Meredith Wallace
General Manager

Developer:

Name: Elias Estephan Daccour

Address: 44A Townsend Street, Blakehurst NSW 2221

Telephone: 0424 604 301

Facsimile: Not applicable

Email: louiorg@optusnet.com.au

Representative: Not applicable

83 - 85 Railway Street, Rockdale

This Agreement constitutes a planning agreement within the meaning of s 7.4 of the *Environmental Planning and Assessment Act 1979*, and facilitates the provision of Development Contributions for the Public Benefit.

Parties

Bayside Council

ABN 80 690 785 443 Branch 003 of 444 - 446 Princes Highway, ROCKDALE NSW 2216
(Council)

and

Elias Estephan Daccour of 44A Townsend Street, Blakehurst NSW 2221
(Developer)

Background

- A.** The Developer owns the Land identified in **Schedule 2**, known as 83 - 85 Railway Street, Rockdale.
- B.** The Developer is a director and secretary and controlling mind and will of Group Living Pty Ltd ACN 143 074 060.
- C.** Council owns the Council Land.
- D.** The Developer lodged the Development Application seeking approval for the Development, including requests for variations to the height and floor space ratio development standards pursuant to clause 4.6 of the LEP.
- E.** The Developer has offered to enter into a Planning Agreement in accordance with section 7.4 of the Act, by way of letter dated 2 March 2018.
- F.** The Developer has obtained development consent for the Development subject to conditions, by way of Notice of Determination dated 22 May 2018 which granted development consent for *'[r]etention of the existing facade, demolition of the remainder of the building and construction of a seven (7) storey mixed use development containing 18 residential units, one (1) commercial tenancy and basement car parking, provision of public footway access at the rear, and stratum subdivision into 2 lots'*. Deferred commencement condition B provides *'[a] voluntary planning agreement (VPA) in accordance with the offer set out in the letter from Think Planners to Bayside Council dated 2 March 2018 is to be entered into between the developer and Council'*.
- G.** The Developer is prepared to make Development Contributions in connection with carrying out of the Development in accordance with this Agreement.

Operative provisions

Part 1 - Preliminary

1. Definitions and interpretation

1.1 In this Agreement the following definitions apply:

Act means the *Environmental Planning and Assessment Act 1979* (NSW).

Agreement means this Planning Agreement under which the Developer agrees to make the Development Contributions. .

Business Day means any day in New South Wales which is not a Saturday, Sunday or any proclaimed public holiday.

Certifying Authority has the same meaning as in the Act.

Consent means development consent No. DA 2017/27 granted by way of notice of determination dated 22 May 2018, including any amendments to same.

Construction Certificate means a construction certificate within the meaning of s 6.4(a) of the Act.

Consultant has the same meaning as in the Records.

Council means Bayside Council, its successors and assigns.

Council Land means Lots 2 and 3 in Deposited Plan 3560 being the whole of the land comprised in Certificate of Title Volume 14560 Folio 36 and known as 87 Railway Street, Rockdale.

Council's Lawyer means HWL Ebsworth.

CPI means the Consumer Price Index (All Groups Sydney) or any other index which supersedes the Consumer Price Index (All Groups Sydney).

Dedicated Land means the land to be dedicated to the Council in accordance with this Agreement.

Defect means a defect with respect to any item of Work which adversely affects the ordinary use and/or enjoyment of the particular item.

Defects Liability Period, in relation to an Item of Work, is twelve (12) months commencing on the date on which the Developer Hands-Over the Item of Work to the Council under this Agreement.

Developer means Elias Estephan Dacour and his successors and permitted assigns.

Developer's Obligations means all of the Developer's obligations under this Agreement.

Development means a mixed use development on the Land, the subject of the Development Application DA-2017/26, comprising *[r]etention of the existing*

facade, demolition of the remainder of the building and construction of a seven (7) storey mixed use development containing 18 residential units, one (1) commercial tenancy and basement car parking, provision of public footway access at the rear, and stratum subdivision into 2 lots' which is the subject of the Consent.

Development Application means development application DA-2017/26 lodged with Council.

Development Consent when used generically (as distinct from 'the Consent') has the same meaning as in the Act.

Development Contributions means each of the contributions and works set out in Schedule 3 of this Agreement, to be used for, or applied towards, the provision of a Public Purpose as set out in **Schedule 3**.

GST has the same meaning as in the GST Law.

GST Law has the same meaning as in A New Tax system (Goods and Services Tax) Act 1999 (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Hand-Over means the completion of the construction of an Item of Work in accordance with the requirements of the Council and the delivery or dedication of that Item of Work to the Council in accordance with this Agreement.

Hand-Over Date, in relation to an Item of Work, means the date specified in Column 4 of **Schedule 3** opposite the Item of Work specified in Column 1 of that Schedule.

Item of Work means an item of the Works as specified in **Schedule 3**.

Just Terms Act means the Land Acquisition (Just Terms Compensation) Act 1991.

Land means the land specified and described in **Schedule 2**.

LRS means New South Wales Land Registry Services

Loss means any loss, claim, action, liability, damage, demands, cost, charge, which Council, its employees, officers, agents, contractors and workmen sustains, pays, suffers or incurs or is liable for arising in connection with the carrying out by the Developer of any Item of Work and the performance by the Developer of any obligation under this Agreement, including (but not limited to) reasonable legal and other expenses incurred in connection with investigating or defending any claim or action, whether or not resulting in any liability, and all amounts reasonably paid in settlement of any claim or action

Occupation Certificate has the same meaning as in the Act.

Party means a party to this Agreement, including their successors, agents and assigns.

Public Purpose has the same meaning as in s 7.4 of the Act.

Rectification Certificate means a compliance certificate within the meaning of section 6.4(e) of the Act to the effect that work the subject of a Rectification Notice has been completed in accordance with the Rectification Notice.

Rectification Notice means a notice in writing that identifies a Defect in an Item of Work and requires rectification of the Defect within either the Defects Liability Period.

Rectification Security means a bond or bank guarantee for 10% of the Security Amount.

Records means the Rockdale Technical Guide-Works-As-Executed Records.

Registrable form means the document is properly executed and witnessed and bears an imprint from Revenue New South Wales to the effect that all necessary duties have been paid, and is otherwise capable of immediate registration by the LRS on the title of the relevant piece or parcel of land.

Regulation means the Environmental Planning and Assessment Regulation 2000.

Security means a bond or bank guarantee for the Security Amount.

Right of Carriageway means a proposed right of carriageway over the Council's Land in the area marked 'Driveway R.O.W.' (not coloured) on the plans contained at **Schedule 4**, being a non exclusive right of carriageway, in common with the public, benefitting the Developer's Land.

Security Amount means of \$100,000 indexed annually in accordance with annually by the increase in the CPI during the prior year computed from the date of this Agreement

Service Provider means a provider of services relating to an Item of Work which must have the relevant expertise, experience, approvals, permits and licences to lawfully carry out or implement that Item.

Sketch Plan means the sketch plan contained at **Schedule 7** setting out the works relating to reconfigured parking spaces adjacent to the Guild Theatre.

Specifications means the specifications for the Works set out in **Schedule 4**

Strata Plan means a strata plan or strata plan of subdivision within the meaning of the Strata Schemes Act.

Strata Schemes Act means the *Strata Schemes (Freehold Development) Act 1973* (NSW).

Subdivision Plan means a plan of subdivision of the Land whereby the Dedicated Land is created as a separate legal stratum lot with separate title.

Works means the works to be carried out by the Developer under this Agreement as described in Part B of **Schedule 3**.

Works-As-Executed Records means a plan setting out a record of construction completed in accordance with the Rockdale Technical Guide – Works-As-Executed Records.

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

1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Agreement.

- 1.2.2 A reference to a Business Day means a day other than a Saturday, Sunday or bank or public holiday in Sydney.
- 1.2.3 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.
- 1.2.4 A reference to time is local time in Sydney,
- 1.2.5 A reference to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- 1.2.6 A reference to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.7 A reference 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.
- 1.2.8 A reference to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.9 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- 1.2.10 An expression importing a natural person includes any company, corporation, trust, partnership, joint venture, association, unincorporated association, body corporate, statutory body, statutory authority or governmental agency.
- 1.2.11 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.
- 1.2.12 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.13 Reference to the word "include" or "including" are to be construed without limitation.
- 1.2.14 A reference to this Agreement includes the agreement recorded in the Agreement.
- 1.2.15 A reference to a party to this Agreement includes a reference to the personal representatives, legal representatives, agents and contractors of the party, and the party's successors and assigns substituted by novation.
- 1.2.16 Any schedules, appendices and attachments form part of this Agreement.
- 1.2.17 Notes appearing in the Agreement are operative provisions of this Agreement.

2. Application of this Agreement

- 2.1 This Agreement applies to the Land and to the Development.

3. Status and operation of this Agreement

- 3.1 This Agreement takes effect from the date this Agreement is executed by the Parties.
- 3.2 The Parties each agree that this Agreement is a Planning Agreement within the meaning of Section 7.4 of the Act and is governed by Part 7, Division 7.1, Subdivision 2 of the Act.
- 3.3 This Agreement will remain in force until:
 - 3.3.1 It is terminated by operation of law; or
 - 3.3.2 1 month after all of the Developer's Obligations under this Agreement are performed or satisfied.

4. Further agreements relating to this Agreement

- 4.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Agreement that are not inconsistent with this Agreement for the purpose of implementing this Agreement.

5. Application of s 7.11, s 7.12, s 7.24 of the Act to the Development

- 5.1 The parties each agree that this Agreement does not exclude the application of sections 7.11, 7.12, 7.24 of the Act in respect of the Development.
- 5.2 The Developer agrees that the Development Contributions are not to be taken into account in determining a development contribution under Section 7.11 of the Act.

Part 2 – Development Contributions

6. Provision of Development Contributions

- 6.1 **Schedule 3** has effect in relation to the Development Contributions to be made by the Developer under this Agreement.
- 6.2 The Developer must make the Development Contributions (as set out in **Schedule 3**) to Council in accordance with this Agreement.
- 6.3 The Council must apply each Development Contributions made by the Developer under this Agreement towards the Public Purpose for which it is made and otherwise in accordance with this Agreement.

7. Dedication of land

- 7.1 The Development Contributions comprising the dedication of the Dedicated Land to the Council is made for the purposes of this Agreement when an instrument in registrable form under the *Real Property Act 1900* that is effective to transfer the title to the land to Council is registered at the LRS.
- 7.2 The Developer must at no cost to the Council, carry out all steps required to dedicate the Dedicated Land to the Council free from encumbrances in accordance with this Agreement. For the avoidance of doubt this clause does not mean that the

Developer is liable for internal staff costs incurred by Council in relation to processing the transfer.

- 7.3 The Parties acknowledge and agree that as at the date of this Agreement, the Dedicated Land is not contained in a separate lot and cannot be transferred to the Council until the Land is subdivided to create the Dedicated Land as a separate legal lot capable of transfer.
- 7.4 The Developer must at its expense:
- 7.4.1 promptly lodge the Subdivision Plan at the Council for approval (as consent authority and certifying authority) and use all reasonable endeavours to obtain such approval as soon as practicable;
- 7.4.2 following approval by the Council of the Subdivision Plan, promptly:
- (A) lodge the approved Subdivision Plan at the LRS for registration;
 - (B) notify Council's Lawyers in writing of such lodgement; and
 - (C) thereafter, use all reasonable endeavours to obtain registration of the Subdivision Plan at the LRS as soon as practicable.
- 7.5 The Developer must at its expense:
- 7.5.1 within ninety (90) days after registration of the Subdivision Plan at LRS:
- (A) notify the Council's Lawyers in writing of registration of the Subdivision Plan; and
 - (B) take all steps required of the Developer to transfer the Dedicated Land to the Council free from encumbrances.
- 7.6 The Developer and the Council agree and warrant that they will at their own expense, do all things necessary and sign all documents required to facilitate the subdivision of the Land and the subsequent transfer of the Dedicated Land to Council.
- 7.7 If the Developer does not transfer the Dedicated Land as required by this Agreement in accordance with **clauses 7.1 to 7.5**, the Developer consents to the Council compulsorily acquiring the Dedicated Land for compensation of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- 7.8 Clause 7.7 constitutes an agreement for the purposes of section 30 of the Just Terms Act.
- 7.9 The Developer must promptly do all things necessary, and consent to the Council doing all things necessary, to give effect to **clause 7.7** including (without limitation):
- 7.9.1 signing any documents or forms;
 - 7.9.2 producing certificates of title to the LRS under the Real Property Act 1900;
 - 7.9.3 paying the Council's reasonable costs arising under **clauses 7.7 to 7.9**.
- 7.10 For the avoidance of doubt, the costs referred to in **clause 7.9.3** do not include internal staff costs incurred by Council in relation to processing the compulsory acquisition referred to in **clauses 7.7- 7.9**.

8. Design and Specification of an Item of Work

- 8.1 The Developer must at its expense engage a Service Provider for design and specification of each Item of Work.

9. Carrying out of an Item of Work

- 9.1 The Developer must produce a detailed design and specification for the Works in accordance with:
- 9.1.1 any reasonable lawful requirements and directions of the Council that are notified in writing to the Developer at any time before the Works are approved in accordance with this Agreement;
 - 9.1.2 the conditions of the Consent for the Development granted in relation to an Item of Work;
 - 9.1.3 the Specifications; and
 - 9.1.4 the Sketch Plan.
- 9.2 The Developer must not apply for a Construction Certificate from the Certifying Authority for an Item of Work until the Council (as the future owner of the Item of Work and not as a planning authority) has approved the detailed design and specification for the Works.
- 9.3 The Developer must not apply for a Construction Certificate from the Certifying Authority for an Item of Work until the Council as roads authority under the *Roads Act* 1993 has approved the detailed design and specification for the Works located on Hesten Lane and Walz Street.
- 9.4 The Developer must, at its expense, carry out and complete each Item of Work or engage its Service Provider to carry out and complete each Item of Work, to the reasonable satisfaction of the Council, in accordance with:
- 9.4.1 the detailed design and specification approved by the Council,
 - 9.4.2 all applicable laws, including those relating to occupational health and safety,
 - 9.4.3 the conditions of any development consent granted in relation to the carrying out of that Item of Work;
 - 9.4.4 the conditions of the Consent for the Development; and
 - 9.4.5 the conditions of approval under the *Roads Act* 1993.

10. Construction of an Item of Work

- 10.1 The Developer must engage a Service Provider for implementation/construction of each Item of Work and must implement/construct such Item of Work in accordance with the Building Code of Australia and the development consent for the Development in relation to that Item of Work.
- 10.2 The Developer must ensure that the carrying out of each Item of Work is supervised in accordance with the Records. A Consultant must be appointed:

10.2.1 where the Item of Work is to be constructed by a Service Provider under contract to the Developer, by the Developer, or

10.2.2 where the Item of Work is to be constructed by the Developer, by the Council.

10.3 The Developer must notify the Council in writing within 14 Business Days of the issue of a corrective action request, non-conformance report or notice of non-conformance issued by the Consultant with respect to the Item of Work in accordance with **clause 10.1** and promptly undertake all corrective action with respect to such Item of Work as required by the Council.

11. Access to the Land and the Deed of Agreement for Right of Carriageway and Works Licence

11.1 The Developer is to permit Council, its officers, employees, agents and contractors to enter the Land at any time, upon giving reasonable prior notice, in order to inspect, examine or test any Item of Work.

11.2 At the time of execution of this Agreement the parties must also execute the Deed of Agreement contained at **Schedule 6**.

12. Protection of people and property

12.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the carrying out of any Work that:

12.1.1 all necessary measures are taken to protect people and property, and

12.1.2 unnecessary interference with the passage of people and vehicles is avoided, and

12.1.3 nuisances and unreasonable noise and disturbances are prevented.

13. Hand-Over of Works

13.1 The Developer must submit to the Council the Works-as-Executed Records and written notice for an Item of Work not less than 10 Business Days prior to the date on which it proposes to Hand-Over of the Item of Work.

13.2 Council acting reasonably can, within 5 Business Days of receipt of the notice under **clause 13.1**,

13.2.1 request information (in addition to the Works-as-Executed Records) that is relevant to the completion of the Item of Work and delay the Hand-Over of the Item of Work until the Developer has provided the additional information requested to Council's reasonable satisfaction, or

13.2.2 determine that the Item of Work has not met the detail design and specification approved by Council under **clause 9** and issue an Rectification Notice implemented in accordance with **clause 15**.

13.3 On Hand-Over of an Item of Work:

- 13.3.1 the Developer must ensure that an unencumbered title to each Item of Work passes to Council and must give to Council any document of title to each Item of Work if such a document of title exists;
- 13.3.2 Council accepts ownership, possession and control of that Item of Work; and
- 13.3.3 Council returns to the Developer the Security less the Rectification Security for that Item of Work (alternatively, if the Developer provides a new bond or bank guarantee for the Rectification Security, Council must release the whole of the Security).

14. Failure to Comply with the Hand-Over Date

- 14.1 If the Developer fails to Hand-Over an Item of Work by the Hand-Over Date the Council may if it considers, acting reasonably, that the Item of Work is incomplete, call upon the Security and carry out and complete the Item of Work itself.
- 14.2 For the purposes of **clause 14.1**:
 - 14.2.1 the Developer must allow the Council, its servants, agents and contractors to enter the Land at any time for the purpose of completing the relevant Item of Work,
 - 14.2.2 any difference between the Security called upon by the Council and the costs incurred by the Council in completing the Item of Work may be recovered by the Council from the Developer as a liquidated debt due and owing in a court of competent jurisdiction; and
 - 14.2.3 any remaining Security must be returned to the Developer by the Council as soon as possible, after deduction of the Rectification Security or the provision of a replacement bond or bank guarantee for the Rectification Security.
- 14.3 If the Developer fails to Hand-Over an Item of Work by the Hand-Over Date, the Developer irrevocably appoints the Council as its attorney to execute all such documents and do all such things on the Developer's behalf as are necessary or desirable to enable an Item of Work to be Handed-Over to the Council in accordance with this Agreement.

15. Rectification of Defects

- 15.1 During the Defects Liability Period, the Council may give to the Developer a Rectification Notice.
- 15.2 The Developer must comply with a Rectification Notice at its own cost.
- 15.3 The Developer must comply with the Rectification Notice within a period of time that is reasonable having regard to the practical performance of works required to be performed by the Rectification Notice.
- 15.4 When the Developer considers that rectification is complete, the Developer must give to the Council a Rectification Certificate relating to the item of work the subject of the relevant Rectification Notice and submit to the Council the Works-as-Executed Records and written notice for an item of work on which it proposes to hand-over of the item of work.

- 15.5 Council acting reasonably can, within 20 Business Days of receipt of the notice under **clause 15.4**:
 - 15.5.1 request information (in addition to the Works-as-Executed Records) that is relevant to the completion of the item of work and delay the hand-over of the item of work until the Developer has provided the additional information requested to Council's reasonable satisfaction, or
 - 15.5.2 determine that the Item of Work has not meet the design and specification approved by Council and issue a further Rectification Notice implemented as pursuant to this Clause.
- 15.6 If the Developer does not comply with a Rectification Notice within the time provided at **clause 15.3**, the Council may, subject to **clause 15.7**, do such things as are necessary to rectify the Defect and may recover, as a debt due and owing in a court of competent jurisdiction, any reasonable cost incurred by the Council in rectifying the Defect.
- 15.7 Before the Council may rectify any Defect in accordance with **clause 15.6**, it must;
 - 15.7.1 notify the Developer in writing of its intention to exercise its right pursuant to **clause 15.6**;
 - 15.7.2 provide the Developer a further 14 days to comply with the Rectification Notice or provide some other response in writing; and
 - 15.7.3 reasonably consider the content of any other written response provided by the Developer provided in that 14 day period.

16. Damage and repairs to Work

- 16.1 The Developer, at its own cost, is to repair and make good to the satisfaction of Council any Loss or damage to an Item of Work from any cause whatsoever which occurs prior to the date on which the Item of Work has been Handed-Over to Council under this Agreement.

17. Variation of Work

- 17.1 An Item of Work is not to be varied by the Developer, unless:
 - 17.1.1 the Parties agree in writing to the variation, and
 - 17.1.2 any consent or approval required under the Act or any other law to the variation is first obtained, and
 - 17.1.3 the Developer bears all of Council's costs of and incidental to agreeing to and approving the variation under this Agreement.
- 17.2 For the purposes of **clause 17.1**, a variation may relate to any matter in relation to the Works that is dealt with by this Agreement.

Part 3 – Other Provisions

18. Indemnity and insurance

- 18.1 This clause applies until the expiration of the Defects Liability Period only.
- 18.2 The Developer indemnifies Council from and against all Loss, except to the extent that any Loss is caused or contributed to by the deliberate or negligent act or omission of Council, its employees, officers, agents, contractors and workmen.
- 18.3 The Developer is to take out and keep current to the reasonable satisfaction of Council the following insurances in relation to Work required to be carried out by the Developer under this Agreement up until the Work is taken to have been completed in accordance with this Agreement:
- 18.3.1 contract works insurance; noting Council as an interested party, for the full replacement value of the Works (including the cost of demolition, removal of debris, and remediation, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,
- 18.3.2 public liability insurance for at least \$20,000,000 for a single occurrence, which covers Council, the Developer and any subcontractor of the Developer, for liability to any third party,
- 18.3.3 workers compensation insurance as required by law, and
- 18.3.4 any other insurance required by law.
- 18.4 If the Developer fails to comply with **clause 18.3**, Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a liquidated debt due from the Developer to Council and payable within 30 days after providing an invoice and which may be recovered as a liquidated debt due in a court of competent jurisdiction.
- 18.5 The Developer is not to commence to carry out any Work unless it has first provided to Council satisfactory written evidence of all of the insurances specified in **clause 18.3**.

19. Provision of Security and Charge

- 19.1 The Parties agree that the obligation to carry out the Works will be secured by provision of the Security by the Developer to Council prior to the issue of any Construction Certificate.
- 19.2 The Parties agree in respect of the Items of Works identified in **Schedule 3** and the Security that, where Council is the certifying authority, it may withhold the issue of the relevant Occupation Certificate (as appropriate) until such time as the identified Item of Work is completed or the Security is provided.
- 19.3 The Developer agrees and acknowledges that where the Council is not appointed as the certifying authority, it:
- 19.3.1 will provide a copy of this Agreement to the certifying authority at the time of appointment of the certifying authority under s 81A of the Act, with a

copy of the correspondence to the certifying authority to be immediately provided to Council; and

19.3.2 will not make any application for any Construction Certificate or any Occupation Certificate in breach of its obligations under this agreement and the terms this Agreement.

19.4 The Developer irrevocably and unconditionally:

19.4.1 acknowledges that the Council has a caveatable interest in the Land in accordance with this Agreement;

19.4.2 consents to the Council lodging and maintaining a caveat against the title to the Land; and

19.4.3 agrees that the Council cannot be required to remove any such caveat from the title to the Land except in accordance with **clause 19.5**.

19.5 The Council must promptly withdraw any such caveat from the title to the Land when the Developer has registered this agreement on the title of the Land.

19.6 The Council, as caveator, consents to any financier's mortgage being registered on the Land.

19.7 Any mortgage registered on the Land prevails over Council's (as caveator) interest in the Land provided that, if in possession of the Land pursuant to the mortgage, such financier will remain bound by the Agreement.

20. Release & return of Security

20.1 Subject to **clause 19**, the Council is to release the Security to the Developer as soon as practical following Hand-Over, but may retain the Rectification Security (which can be provided by the Developer as a new bond or bank guarantee in exchange for a full release of the Security) until the end of the Defects Liability Period.

21. Recovery of cost of rectification carried out by Council

21.1 If Council incurs a cost in rectifying a Defect in an Item of Work, it may draw on the Rectification Security in accordance with **clause 19** or alternatively, this cost shall be a liquidated debt due and payable by the Developer to Council within 30 days after the production of an invoice and which may be recovered by Council from the Developer in a court of competent jurisdiction.

21.2 For the purpose of **clause 21.1**, Council's costs of rectifying a Defect in an Item of Work includes, but is not limited to:

21.2.1 the reasonable costs of Council's officers, personal representatives, agents and contractors reasonably incurred for that purpose,

21.2.2 all fees and charges necessarily or reasonably incurred by Council in order to have the Item of Work rectified, and

21.2.3 without limiting **clause 21.2.2**, all legal costs (assessed on an indemnity basis) and expenses reasonably incurred by Council, by reason of the Developer's failure to comply with this Agreement.

22. Enforcement in a court of competent jurisdiction

- 22.1 Without limiting any other provision of this Agreement, the Parties may enforce this Agreement in any court of competent jurisdiction.
- 22.2 For the avoidance of doubt, nothing in this Agreement prevents:
 - 22.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates,
 - 22.2.2 Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

23. Dispute resolution – expert determination

- 23.1 This clause applies to a dispute under this Agreement which relates to a matter that can be determined by an appropriately qualified expert.
- 23.2 Any dispute between the parties as to whether a dispute to which this clause applies can be determined by an appropriately qualified expert is to be referred to the Chief Executive Officer of the professional body that represents persons with the relevant expertise for determination, which is to be final and binding on the Parties.
- 23.3 Such a dispute is taken to arise if one Party gives another party a notice in writing specifying particulars of the dispute.
- 23.4 If a notice is given under **clause 23.3**, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 23.5 If the dispute is not resolved within a further 28 days, the dispute must be referred to the President of the NSW Law Society to appoint an Expert for Expert Determination.
- 23.6 The Expert Determination is binding on the parties except in the case of fraud or misfeasance by the Expert.
- 23.7 Each Party must bear its own costs arising from or in connection with the appointment of the Expert and the Expert Determination.
- 23.8 This clause survives the completion or termination of this Agreement.

24. Dispute resolution – mediation

- 24.1 This clause applies to any dispute under this Agreement other than a dispute to which **clause 23.5** applies.
- 24.2 Such a dispute is taken to arise if on party gives another Party a Notice in writing specifying particulars of the dispute.
- 24.3 If a notice is given under **clause 24.2**, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.

- 24.4 If the dispute is not resolved within a further 28 days, the Parties must mediate the dispute in accordance with the Mediation rules of the Law Society of New South Wales published from time to time and must request the President of the law Society, or the President's nominee, to select a mediator.
- 24.5 If the dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 24.6 This clause survives the completion or termination of this Agreement.

25. Registration of this Agreement

- 25.1 The Parties agree that this Agreement is to be registered for the purposes of section 7.6 of the Act
- 25.2 The Developer must lodge this Agreement for registration on the Register pertaining to the Land no later than 28 days after the date of this Agreement including obtaining the consent of any mortgagee or other person who has an interest in the Land;
- 25.3 The Developer must use all reasonable endeavours to obtain such registration as soon as practicable and promptly after registration, deliver to the Council a title search of the Land confirming registration of this Agreement.
- 25.4 The Parties will take all practical steps to procure:
- 25.4.1 the consent of each person who:
- A. has an estate or interest in the Land registered under the Real Property Act 1900 (NSW) or
- B. is seized or possessed of an estate or interest in the Land, and
- 25.4.2 the execution of any documents, and
- 25.4.3 the production of the relevant duplicate certificates of title,
- to enable the registration of this Agreement under the Real Property Act 1900 (NSW) in the relevant folios of the register for the Developer's Land in accordance with section 7.6 of the Act.
- 25.5 The Developer further covenants and agrees with the Council that pending registration of this Agreement the Council shall be entitled to register a caveat at LRS over the titles comprising the Land to protect its interest therein pursuant to this Agreement.
- 25.6 The Council agrees that, as soon as this Agreement is registered, the Council will immediately withdraw its caveat over the Land.

26. Release and discharge of Agreement by Council

- 26.1 The Council must use all reasonable endeavours and do all things reasonably required to cause the release and discharge of this Agreement with respect to any

part of the Land (such that the Agreement is no longer registered by LRS under section 7.6 of the Act in relation to that part of the Land) within 14 Business Days after receiving a written request to do so by the Developer, upon the Developer having provided all of the Development Contributions in accordance with this Agreement and otherwise complying with this Agreement to the satisfaction of the Council. Council's satisfaction must not be unreasonably withheld.

27. Assignment and transfer

- 27.1 Unless the matters specified in **clause 27.2** are satisfied, the Developer is not to do any of the following:
- 27.1.1 if the Developer is the owner of the Land, to transfer the Land to any person, or
 - 27.1.2 assign, transfer dispose or novate to any person the Developer's rights or obligations under this Agreement
- 27.2 The matters required to be satisfied for the purposes of **clause 27.1** are as follows:
- 27.2.1 the Developer has, at no cost to Council, first procured the execution by the person to whom the Developer's rights or obligations under this Agreement are to be assigned or novated, of an agreement in favour of the Council on terms satisfactory to Council acting reasonable, and
 - 27.2.2 Council, by notice in writing to the Developer, has stated that evidence satisfactory to Council has been produced to show that the assignee or novatee, is reasonably capable of performing its obligations under the Agreement,
 - 27.2.3 the Developer is not in breach of this Agreement, and
 - 27.2.4 Council otherwise consents to the transfer, assignment or novation in writing.
- 27.3 Any purported dealing in breach of this **clause 27.2** is of no effect.
- 27.4 Notwithstanding **clause 27.1** the Developer may enter into a contract for sale, and may sell and transfer to a transferee part of the Land forming a strata lot in a proposed Strata Plan, without compliance with **clause 27.2**.

28. Review of this Agreement

- 28.1 The Developer is to provide to Council by not later than each anniversary of the date on which this Agreement is entered into, a written report detailing the performance of its obligations under this Agreement.
- 28.2 The report referred to in **clause 28.1** is to be in such a form and to address such matters as may be notified by Council to the Developer from time to time.
- 28.3 The Parties agree to review this Agreement every 2 years, and otherwise if either Party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Agreement.

- 28.4 For the purposes of **clause 28.3**, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 28.5 For the purposes of addressing any matter arising from a review of this Agreement referred to in **clause 28.3** the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Agreement.
- 28.6 If this Agreement becomes illegal, unenforceable or invalid as a result of any change to a law, the parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Agreement is entered into.
- 28.7 A failure by a Party to agree to take action requested by the other party as a consequence of a review referred to in **clause 28.3** is not a dispute for the purposes of **clauses 23** and **24** and is not a breach of this Agreement.

29. Notices

- 29.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
 - 29.1.1 delivered or posted to that Party at its address set out in the Contacts Sheet,
 - 29.1.2 faxed to that Party at its fax number set out in the Contacts Sheet.
- 29.2 If a Party gives the other Party 3 Business Days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.
- 29.3 Any notice, consent, information, application or request is to be treated as given or made if it is;
 - 29.3.1 delivered, when it is left at the relevant address.
 - 29.3.2 sent by post, 2 Business Days after it is posted.
 - 29.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
 - 29.3.4 sent via email (unless the sender receives notification to the effect that the email has failed to send).
- 31.4 If any notice, consent, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a Business Day, or if on a Business Day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

30. Approvals and consent

- 30.1 Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under

this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party.

- 30.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

31. Costs

- 31.1 The Developer is required to pay to Council the Council's reasonable legal costs (assessed on an indemnity basis but capped at \$10,000 plus GST) and out of pocket disbursements of preparing, negotiating, executing and stamping this Agreement, and any document related to this Agreement within 20 Business Days of a written demand by Council for such payment.
- 31.2 The Developer is also required to pay to Council the Council's reasonable legal costs (assessed on an indemnity basis) and out of pocket disbursements of enforcing this Agreement within 20 business days of a written demand by Council for such payment except in the case of a dispute that is the subject of court proceedings, in which case any costs will be paid in accordance with orders of the court only.

32. Entire Agreement

- 32.1 This Agreement and the Deed of Agreement at **Schedule 6** contains everything to which the Parties have agreed in relation to the matters it deals with.
- 32.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

33. Further acts

- 33.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.

34. Governing law and jurisdiction

- 34.1 This Agreement is governed by the law of New South Wales.
- 34.2 Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 34.3 Each party waives any right to object to the exercise of jurisdiction by those courts on any basis.

35. Joint and individual liability and benefits

- 35.1 Except as otherwise set out in this Agreement:
- 35.1.1 any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and

35.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

36. No fetter

36.1 Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

37. Representations and warranties

37.1 Each Party represent and warrant to each other Party that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

38. Severability

38.1 If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.

38.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

39. Modification

39.1 No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

40. Waiver

40.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.

40.2 A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given.

40.3 It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

41. Rights cumulative

41.1 Except as expressly stated otherwise in this Agreement, the rights to a Party under this Agreement are cumulative and are in addition to any other rights of that Party.

42. Duty

42.1 The Developer as between the Parties is liable for and must pay all duty (including any fine or penalty except where it arises from default by another Party) on or

relating to this Agreement, any document executed under it or any dutiable transaction evidenced or effected by it.

- 42.2 If a Party other than the Developer pays any duty (including any fine or penalty) on or relating to this Agreement, any document executed under it or any dutiable transaction evidenced or effected by it as a result of the Developer first failing to pay such duty, the Developer must pay that amount to the paying Party on demand.

43. Effect of Schedules

- 43.1 Each Party agree to comply with any terms contained in the Schedules to this Agreement as if those terms were included in the operative part of the Agreement.

44. Relationship of the Parties

- 44.1 This Agreement is not intended to create a partnership, joint venture or agency relationship between the Parties.

45. GST

- 45.1 In this clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, supply and Tax Invoice have the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a Supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount on GST on that Supply.

- 45.2 Subject to **clause 45.4**, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 45.3 **Clause 45.2** does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 45.4 No additional amount shall be payable by Council under **clause 45.2** unless, and only to the extent that, Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 45.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not

subject to division 81 of the *A New Tax System (Goods and Services Tax) Act 1999*, each Party agrees:

- 45.6 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 45.7 that any amounts payable by each Party in accordance with **clause 45.2** (as limited by **clause 45.4**) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 45.8 No payment of any amount pursuant to this **clause 45**, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 45.9 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a Party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 45.10 This clause continues to apply after expiration or termination of this Agreement.

46. Explanatory Note relating to this Agreement

- 46.1 The **Appendix** contains the Explanatory Note relating to this Agreement required by clause 25E of the Regulation.
- 46.2 Pursuant to clause 25E(7) of the Regulation, each Party agrees that the Explanatory Note in **Appendix** is not to be used to assist in construing this Planning Agreement.

Executed as an Agreement at Rockdale

date:

2018

Executed on behalf of Bayside Council ABN 80 690 785 443 Branch 003:

General Manager (sign)

Witness (sign)

Meredith Wallace
Name of General Manager (print)

Witness – Name/Position (print)

Executed by Elias Estephan Daccour:

Elias Estephan Daccour (sign)

Witness (sign)

Elias Estephan Daccour (print)

Witness – Name/Position

Schedule 1: (Section 7.4 Requirements)

Provision of the Act	This Agreement
Under section 7.4(1), the Developer has:	
(a) sought a change to an environmental planning instrument	No
(b) Made, or proposes to make, a Development Application.	Yes
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies	No
Description of the land to which this Agreement applies –	The Land described in Schedule 2 to this agreement
The scope, timing and manner of delivery of Development Contributions required by this Agreement – (Section 7.43)(c)	See Schedule 3
Applicability of Sections 7.11, 7.12 and 7.24 of the Act –	See clause 5
Benefits under the Agreement considered for Section 7.11 purposes – (Section 7.4(3)(e)),	See clause 5
Dispute Resolution – (Section 7.4(3)(f))	See clause 23 clause 24
Enforcement of this Agreement – (Section 7.4(3)(g))	See clauses 19 - 22
Registration of the Agreement – (Section 7.6)	Yes, see clause 25

Doc ID 657637423/v1

Schedule 2: The Land

The Land

Lot 1 DP 3560 (known as 83 - 85 Railway Street, Rockdale.)

Schedule 3: Development Contributions

Part A: Land Dedications

Column 1	Column 2	Column 3	Column 4
Item	Public Benefit	Contribution Value ⁽¹⁾	Timing
A			
A1	Dedication of land to the Council free of cost of the Dedicated Land comprising a stratum lot in the area shown in green on the plans included in Item A1 of Schedule 4 , limited in depth to approximately 1200mm below the lowest level of the surface of the immediately adjoining Hesten Lane ¹ .	\$NA	Prior to the issue of any Occupation Certificate in relation to the Development.

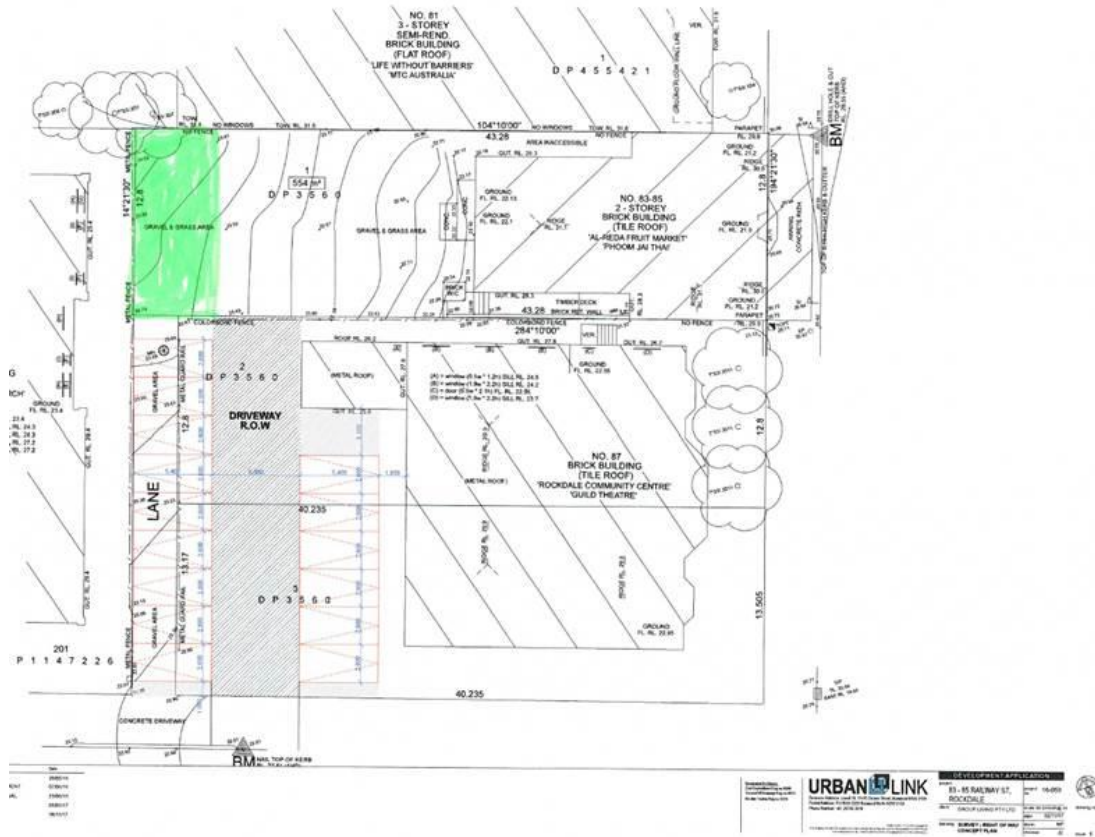
Part B: Works

Column 1	Column 2	Column 3	Column 4
Item	Public Benefit	Contribution Value	Timing
B			
B1	Landscaping and public domain works on the ground level area shown in green on the plan included in Item A1 of Schedule 4 , being the ground level of the stratum lot required to be dedicated to Council in accordance with Item A1 of this Schedule 3 , with the works to comprise a suitable pedestrian footpath and landscaping on either side of the pedestrian footpath.	\$NA	Prior to the issue of any Occupation Certificate in relation to the Development.

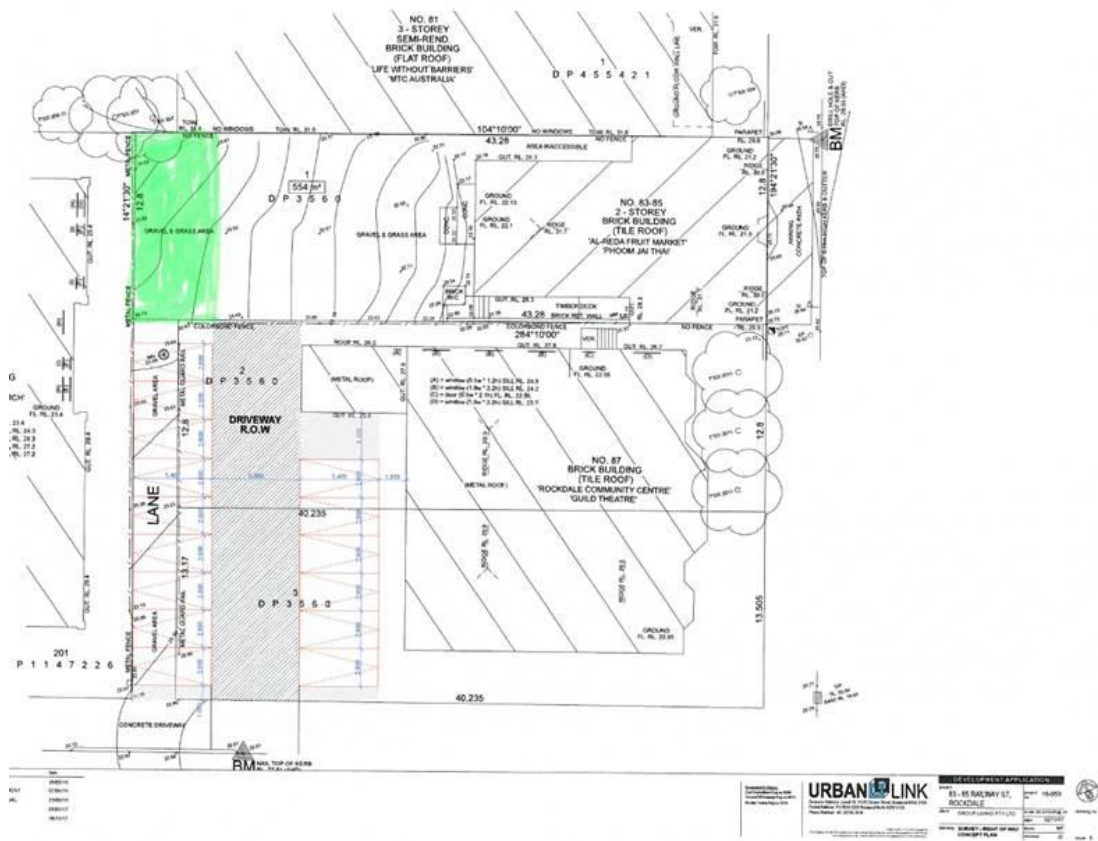
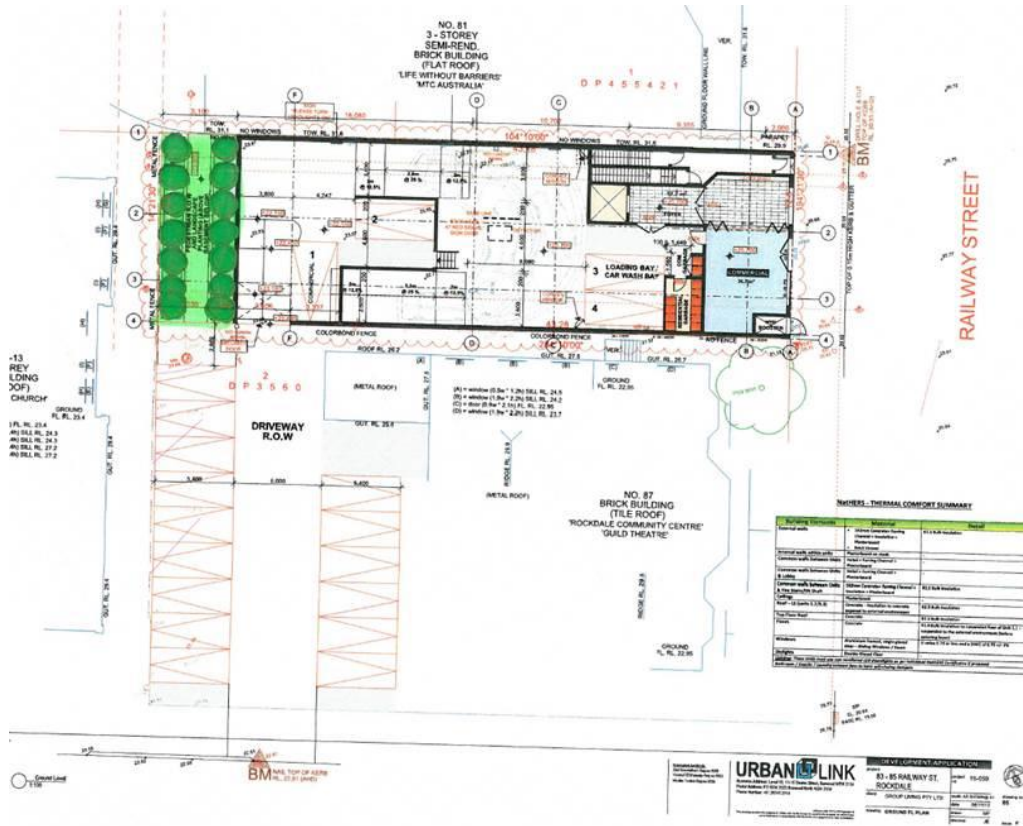
¹ Hestern Lane is also known as Walz Lane.

<p>B2</p>	<p>Road works in the area of the Right of Carriageway and portion of the Walz Street road reserve to the south of the Right of Carriageway, as shown hatched red/pink on the plan included in Item B2 of Schedule 4, so as to:</p> <p>(a) facilitate access to new public parking on Hesten Lane and the Council Land as referred to in Item B3 of this Schedule 3; and</p> <p>(b) facilitate access to the Development via the Right of Carriageway.</p>	<p>\$NA</p>	<p>Prior to the issue of any Occupation Certificate in relation to the Development.</p>
<p>B3</p>	<p>Public domain and landscaping works on Hesten Lane, the Council Land and the area of the Walz Street road reserve to the south of Hesten Lane, the Council Land and the Right of Carriageway, in the area shown hatched blue on the plan included in Item B3 of Schedule 4, so as to:</p> <p>(a) provide for public parking on Hesten Lane and the Council Land and to facilitate public access to the stratum lot to be dedicated to Council in accordance with Item A1 of this Schedule 3; and</p> <p>(b) facilitate access to new public parking on Hesten Lane and the Council Land; and</p> <p>(c) facilitate access to the Development via the Right of Carriageway;</p>	<p>\$NA</p>	<p>Prior to the issue of any Occupation Certificate in relation to the Development.</p>

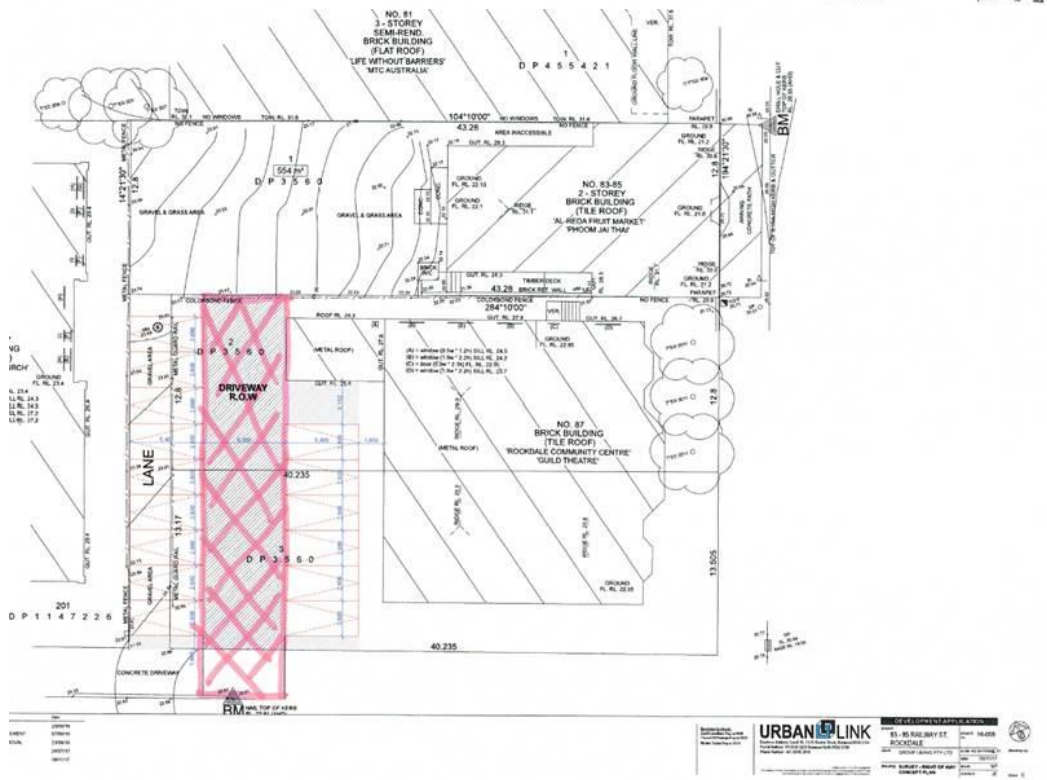
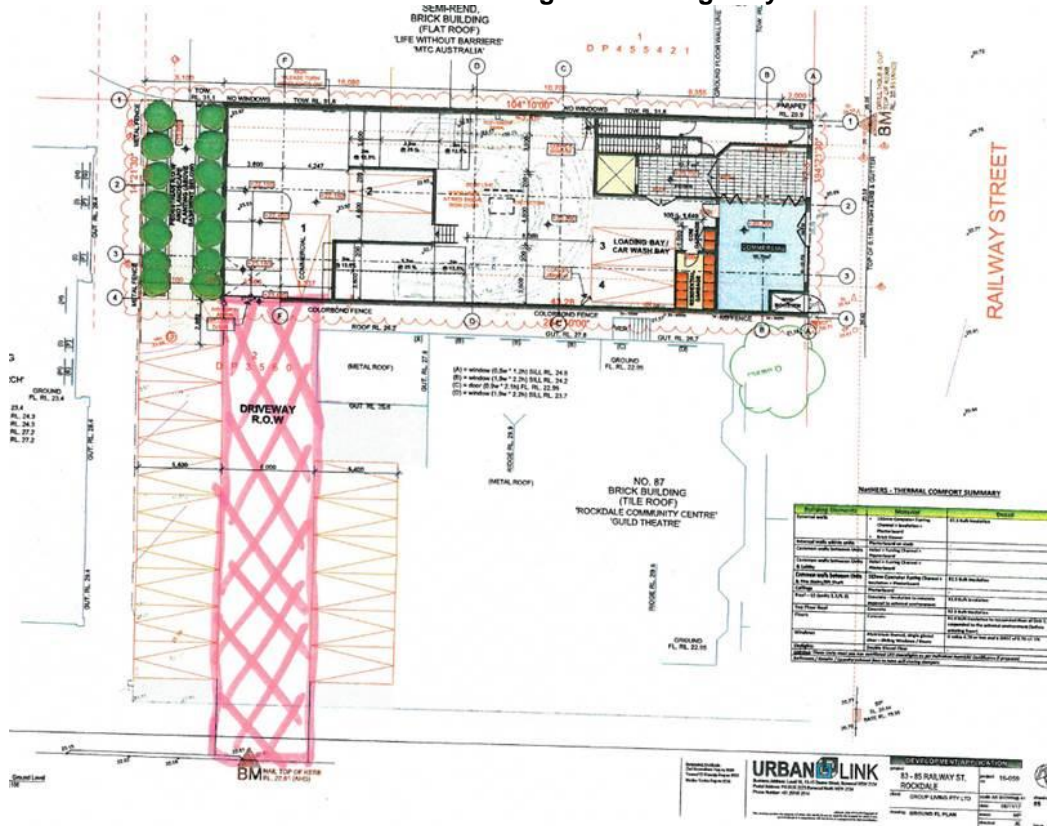
	<p>(d) provide for the reconfiguration of the existing parking spaces immediately to the west of the Guild Theatre to ensure adequate aisle width and space for parking of vehicles, including reduction in width of existing footpath adjacent to the Guild Theatre and reconstruction of the kerb, as generally set out in the Sketch Plan. .</p>		
--	---	--	--



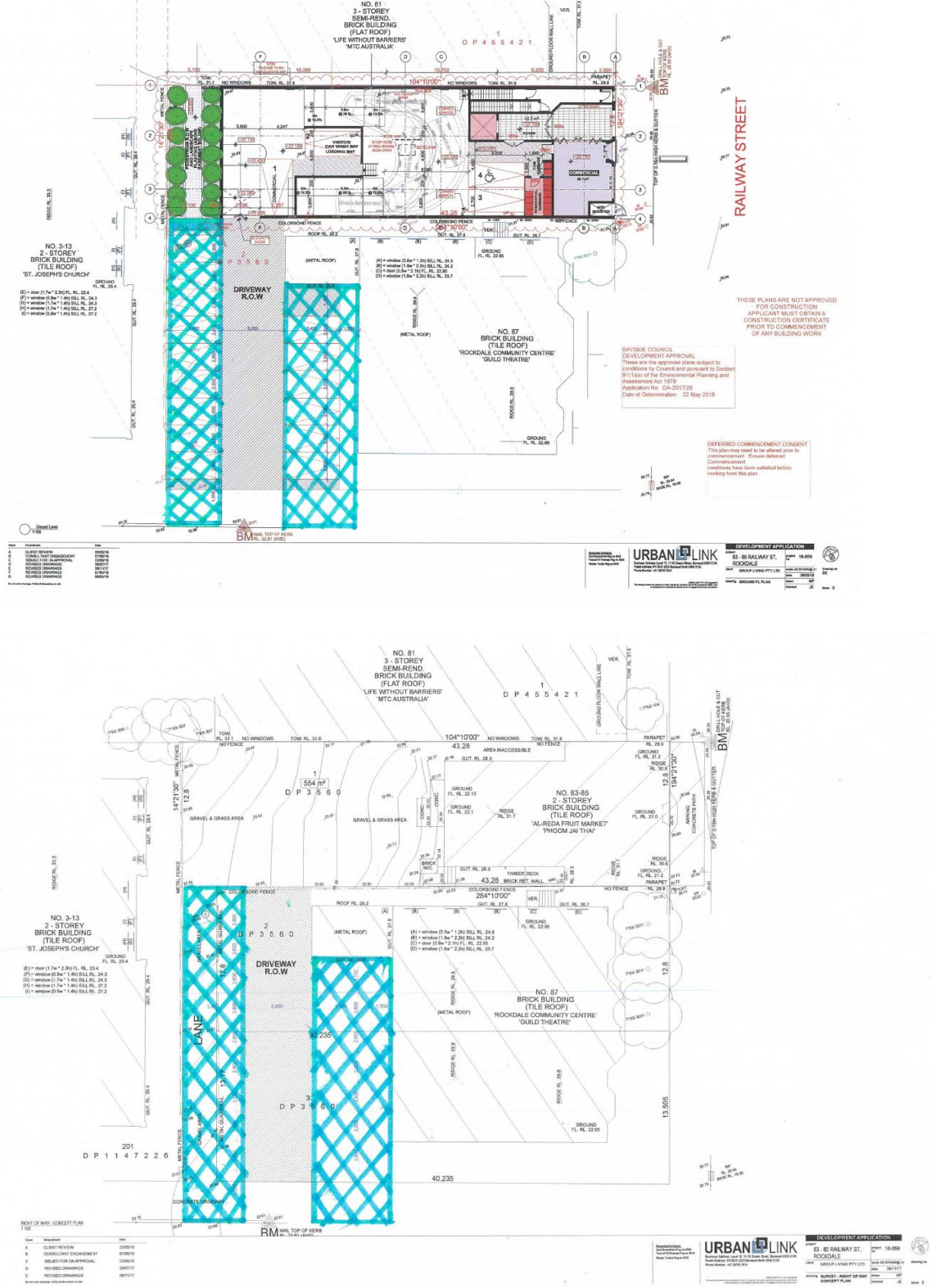
B1 Landscaping and public domain works on ground level of stratum lot required to be dedicated



B2 Road works in the area of the Right of Carriageway and portion of the Walz Street road reserve to the south of the Right of Carriageway



B3 Public domain and landscaping works on Hesten Lane, the Council Land and the area of the Walz Street road reserve to the south of Hesten Lane, the Council Land and the Right of Carrieway



Schedule 5: Specifications

Schedule 5 Design Specifications

1. Specifications

The Scope in respect of an Item of Work is limited to:

- Demolition of existing surfaces and disposal off-site.
- Clearing and excavation to design levels.
- Compaction of existing sub-grade.
- Supply, spread and compaction of DGB20 base course to Council standards.
- Construction of kerb & gutter, kerb only, dish drain plus associated drainage pipes and pits to approved design.
- Construction of pathway to the rear of the Guild Theatre building to Council standards.
- Construction of asphalt pavement to form the newly created R.O.W and parking spaces.
- Supply and installation of regulatory traffic and parking signs, line marking and directional arrows.
- Supply and installation of precast concrete wheel stops to all parking spaces, plus one Removable Bollard with inbuilt locking device to be installed at a selected parking space along eastern side of new R.O.W. Council approved bollard supplied by Leda, Securapost Sentinel SP90R to be supplied and installed as per manufacturers specification. This nominated car space for exclusive use by the Guild Theatre to also have yellow pavement hatching denoting no parking.
- Reconstruct the existing vehicle entrance including layback & gutter, close off existing laybacks and replace with kerb & gutter to council standards.
- Supply and install two (2) bollards at the entry to the Pedestrian R.O.W. to Council standards.
- Supply and install 2.4m high Diplomat Fencing alongside boundary with St Joseph Church & School.
- Supply and install lighting columns at the entry and within Pedestrian R.O.W. to Council standards and approved electrical design.
- Supply and lay paved area within the Pedestrian R.O.W in accordance with Rockdale Public Domain Paving Style and Council standards.
- Associated landscape works within the Pedestrian R.O.W to Council standards and approved landscape design.

2. General Requirements

These General Requirements must be followed if any of the General Requirements are applicable to the Specifications referred to in point 1 above in respect of an Item of Work:

- Preliminary Design of Schedule 4 prepared by Urban Link Project No 16-059 dated 08/05/2018.
- Specification for design – AUS-SPEC:
 - 0021 – Site regrading
 - 0041 – Geometric road layout
 - 0043 – Subsurface drainage (design)
 - 0044 – Pathways and cycleways
 - 0061 – Bridges and other structures
 - 0074 – Stormwater drainage (design)
 - 0160 – Quality (design).
- Variation to Nominated Standards – where AUS-SPEC makes reference to the Austroads *Guide to Road Design*, the design shall comply with the NSW Roads and Traffic Authority Supplement to Austroads *Guide to Road Design*, and where AUS-SPEC makes reference to the Australian Standards AS1742 and AS1743, the design shall comply with the NSW Roads and Traffic Authority Supplement to Australian Standards AS1742 and AS1743.

- Inconsistency – where an inconsistency exists between the nominated design standards the prevailing standard shall be determined by the Council's Manager – City Infrastructure
- Application Legislation – Commonwealth and New South Wales Legislation.
- Drawing coordinates shall conform to GDA84 (Geocentric Datum of Australia). Levels shall conform to AHD (Australian Height Datum).
- Submission formats:
 - Two (2) printed copies of the plans
 - One (1) printed copy of the specification
 - Two (2) printed copies of the Review of Environmental Factors (REF)
 - One (1) USB with electronic format of all documents as follows:
 - Design drawings in DWG file format and portable document format (PDF).
 - Specification and REF in portable document format (PDF).

2.1 Limit of Works

- The limit of works shall be all works required to comply with AUS-SPEC, and shall not be less than the minimum requirements specified by the DA Consent Conditions.

2.2 Drawing Presentation

- The detailed design plans are to be prepared in accordance with Council's *Engineering Drawing Guide: for works in conjunction with developments and subdivisions*. The drawings must show all necessary design details for construction by the Developer.

2.3 Swept Paths

- The preparation and presentation of swept path diagrams shall be in accordance with the Council's *Engineering Drawing Guide: for works in conjunction with developments and subdivisions*. Swept paths, based on the nominated design vehicle 11.0m long, must be provided, if storage and collection of waste is to be located in the basement.

2.4 Design Parameters – Road and Pavement Design

- Design vehicle for swept path diagrams: design single unit bus, 12.5m long.
- Equivalent Standard Axles for pavement design: 3×10^5
- Design life for road pavement: 25 years
- Kerb profiles, pram ramps, etc. shall be in accordance with the Model (Road) Drawings for Kerb and Gutter (R15) issued by the NSW Roads and Traffic Authority.

2.5 Drainage

- Drainage pipes shall be reinforced concrete (RCP), rubber ring jointed (RRJ) pipes only.
- Pit details shall be in accordance with the Model (Road) Drawings for Stormwater Drainage (R11) – Gully Pits issued by the NSW Roads and Traffic Authority.

2.6 Subsurface Drainage

- Design of subsurface drainage shall be in accordance with 0043 – *Subsurface drainage (design)*.
- Alternatively, the Roads and Traffic Authority's *Combined Stormwater and Subsurface Drainage* (Drawing reference MD.R33.A08.A) can be adopted.

2.7 Road Pavement

- A formal design shall be prepared by a registered N.A.T.A. laboratory based on sampling and testing of subgrade materials from the site. Details of the pavement design, results of subgrade testing (including 4 day soak CBR's) are to be submitted with the design drawings.
- Pavements should be designed using the general principles of Austroads 1992 "Pavement Design – A Guide to the Structural Design of Road Pavements".

- Alternatively, the Roads and Traffic Authority's *Standard PTB Structure* (Drawing reference 0000.000.PT.0003) can be adopted.
- Sandstone shall not be used in pavements. Wearing surfaces shall be asphaltic concrete only (AC) only.

2.8 Road Alignment

- Footpath design consistent with AS1248, and NWDS Bicycle Guidelines. Attention is drawn to the provisions for minimum height clearance (2.2m); minimum clear width (1.8m); maximum grades (longitudinal and cross-fall); and kerb ramp details.
- All kerb returns must be designed such that no part of the vehicle crosses the centreline.
- All vehicle footpath crossing profiles are to be provided.
- The design must not result in any un-drained low-points, and as far as practicable low points within the kerb return shall be avoided to eliminate the use of pits with curved lintels.

2.9 Landscape Details

- Landscaping details are as agreed with Council in the Detailed Design Specifications.
- The landscape plan for the treatment of the road reserve must be separate to landscape treatments within the boundary of the property.

2.10 Traffic Facilities

- The following traffic facilities shall be provided in accordance with the NSW Roads and Traffic Authority Supplement to Austroads *Guide to Road Design*, and NSW Roads and Traffic Authority Supplement to Australian Standards AS1742 and AS1743.
 - Line marking and regulatory signage in R.O.W and parking spaces.
 - Parking signage for parking spaces.

2.11 On-Street Parking

- Where flush concrete edging is used as an edge treatment for pavement in lieu of standard kerb and gutter shapes adjacent to on-street parking spaces, wheel stops shall be designed in accordance with AS2890.3:1993.

2.12 Dilapidation report

- The dilapidation report required by DA Consent Conditions must include photos and details of surrounding public infrastructure and adjoining boundary fences.

2.13 Certification Requirements and Quality Assurance

Design qualification

- The design must be certified by a Professional Engineer with current registration on the National Professional Engineers Register (NPER), stating that the design meets the required standards:
 - Civil Engineering area of practice for all civil plans, including drainage design.
 - Structural Engineering area of practice for all structural load carrying elements.
- A certification report confirming to Annexure A of *0160 – quality (design)* must accompany the design.

2.14 Utility Services

- The relocation, adjustment and or replacement of affected underground services to be carried out in accordance with the relevant utility and/or agency standards.

2.15 Street Lighting

- Lighting columns at the entry and within the Pedestrian R.O.W in accordance with lighting design as required to meet the design lighting category from AS1158 (Category P3 – Lighting for roads and public spaces).
- Design to AusGrid Network Standard – Street Lighting Design and Construction NS119.
- Column footings must be designed according to the site conditions and if standard details are being considered, the site conditions must be confirmed.

3. Specification

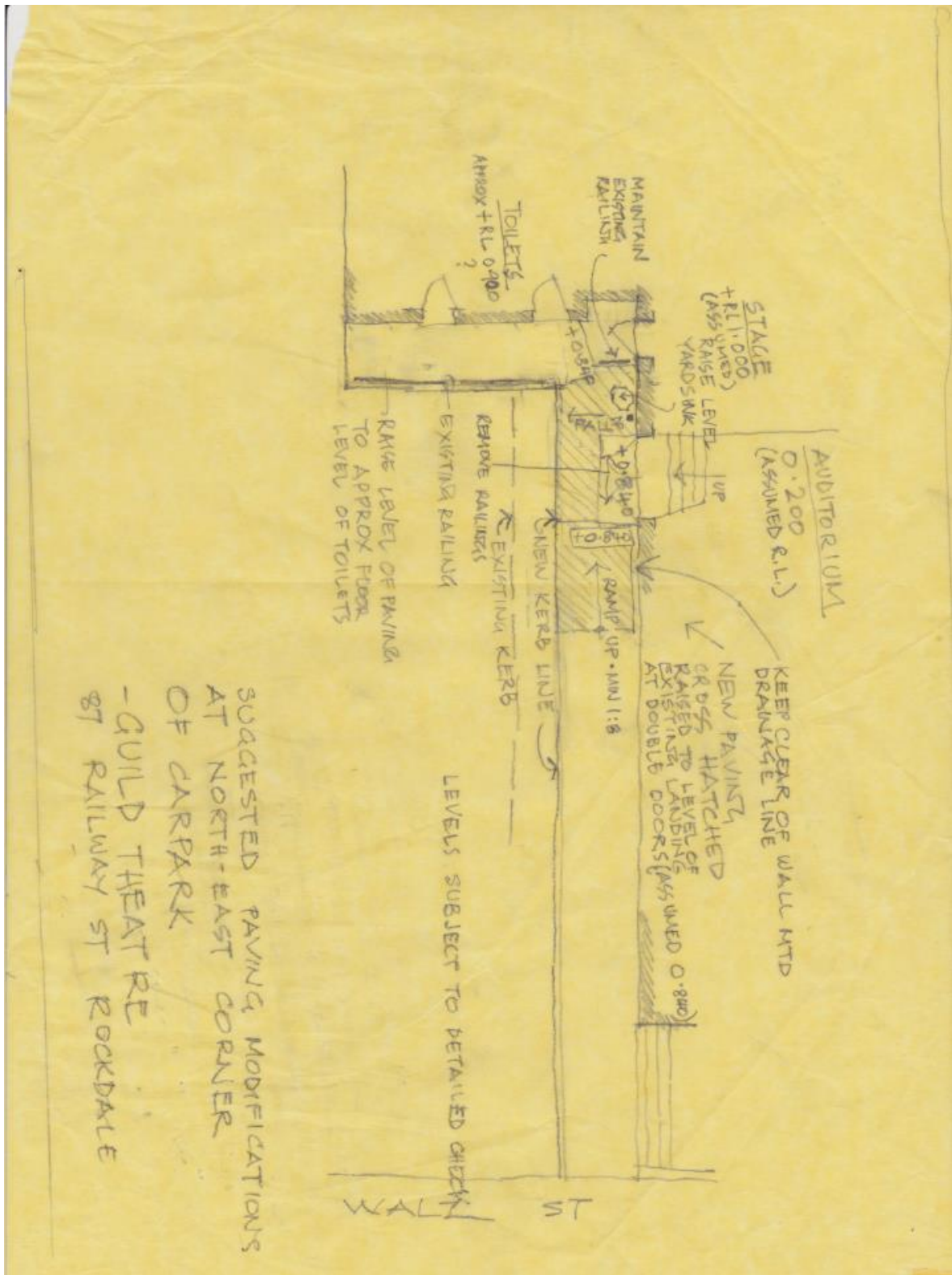
- A specification is to be developed based on AUS-SPEC. The compilation of specification shall be undertaken in accordance with the Council's *Engineering Specification Guide: for works in conjunction with developments and subdivisions*.
- The specification compiler will be required to be a current subscriber to NATSPEC.

4. Preliminary Design

To be provided by the Developer at the time of the lodging the *Public Domain Instruction – Frontage Works Application* for the Development.

Schedule 6: Deed of Agreement (Works Licence and Right of Carriageway)

Schedule 7 - Sketch Plan



Appendix (Explanatory Note)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note: Proposed Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

1. Parties

Bayside Council

ABN 80 690 785 443 Branch 003 of 444 - 446 Princes Highway, ROCKDALE NSW 2216

(Council)

and

Elias Estephan Daccour of ###

(Developer)

2. Description of the Land to which the proposed Planning Agreement applies

- (a) Lot 1 DP 3560, known as 83 - 85 Railway Street, Rockdale (Land).
- (b) This Developer is the owner of the Land.
- (c) The Council is the owner of the adjoining land to the south Lots 2 and 3 in Deposited Plan 3560 being the whole of the land comprised in Certificate of Title Volume 14560 Folio 36 and known as 87 Railway Street, Rockdale (**Council Land**).

3. Description of the Development

- (a) A mixed use development comprising '*[r]etention of the existing facade, demolition of the remainder of the building and construction of a seven (7) storey mixed use development containing 18 residential units, one (1) commercial tenancy and basement car parking, provision of public footway access at the rear, and stratum subdivision into 2 lots*' (**Development**).

4. Summary of objectives, nature and effect of the proposed Planning Agreement

4.1 Objectives of proposed Planning Agreement

- (a) The objectives of the proposed Planning agreement are to:

- Provide Development Contributions for the benefit of the public in the form of the dedication of land free of cost and carrying of of public domain, landscaping and road works.
- Achieve the provision of these Development Contributions with greater certainty and at less risk and less cost to Council.

4.2 Nature of proposed Planning Agreement

- (a) The Planning Agreement is a planning agreement under s7.4 of the *Environmental Planning and Assessment Act 1979 (Act)*. The Planning Agreement is a voluntary agreement under which Development Contributions (as defined in clause 1.1 of the Planning Agreement) are made by the Developer for various public purposes (as defined in s7.4(2) of the Act).

4.3 Effect of proposed Planning Agreement

The Planning Agreement:

- (a) Provides for the creation of a stratum lot at the west of the Land (limited in depth to approximately 1200 mm below the lowest level of the surface of the surface of the immediately adjoining Hestern Lane). The stratum lot is to be dedicated to Council free of cost. The stratum lot will provide a north - south pedestrian link having particular regard to future redevelopment to the north of the Land.
- (b) Provides for landscaping and public domain works to the pedestrian link at the ground level of the stratum lot to be dedicated to Council free of cost.
- (c) Provides for the carrying out of works on the adjoining Hestern Lane, Walz Street and Council Land so as to create additional public car parking on part of Hestern Land and part of the Council Land.
- (d) Access to the Development is to take place via a right of carriage way over the Council Land. The Planning Agreement also makes provisions for the carrying out of works within the proposed right of carriageway to facilitate this access.
- (e) Associated with the Planning Agreement is an agreement to create the right of carriage way over the Council Land providing access to the Development and an works licence over the proposed right of carriageway land to facilitate access during construction pending creation of the right of carriageway.

5. Assessment of the merits of the proposed Planning Agreement

5.1 The Public Purposes served by the proposed Planning Agreement

- (a) The proposed Planning Agreement promotes the provision of and recoupment of the cost of providing public and amenities and public services.
- (b) The Planning Deed is a reasonable means for achieving that planning purpose, as it provides for the payment of a monetary development contribution to be expended on achieving that planning purpose.

5.2 How the proposed Planning Agreement promotes the Public Interest and the objects of the Environmental Planning and Assessment Act 1979

- (a) The Planning promotes the public interest and the objects of the Act as set out in s 1.3 the Act that is, including:

(i) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,

(ii) to promote the orderly and economic use and development of land,

(iii) to promote good design and amenity of the built environment,

5.3 How the proposed Planning Agreement promotes the Elements of the Council's Charter

The proposed Planning Agreement promotes the elements of the Council's Charter by providing appropriate services and facilities for the local community enables the Council to carry out its functions in a way that facilitates local communities that are strong, healthy and prosperous

5.4 How the proposed Planning Agreement promotes the objects (if any) of the Local Government Act 1993

The proposed Planning Agreement promotes the objects of the Local Government Act 1993 by allowing Council to provide facilities appropriate to the current and future needs of the local community and the wider public and to improve and develop the resources of the area.

5.5 Whether the proposed Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

The proposed Planning Agreement specifies that the Developer must make the Development Contributions prior to the issue of any Occupation Certificate in relation to the Development.

5.6 Whether the proposed Planning Agreement conforms with the authority's capital works program

The proposed Planning Agreement conforms to Council's capital works program and, furthermore, will enable the program to be advanced with greater timeliness and certainty while reducing the financial risks to Council in its implementation.

6. Further Information

6.1 Interpretation

Note: this explanatory note is a summary only of the proposed Planning Agreement, is not to be relied upon as a complete description of the proposed Planning Agreement, and is not to be used as an aid in construing the proposed Planning Agreement.

6.2 Further Information

Copies of the proposed Planning Agreement are available on the Bayside Council website, and at the offices of Bayside Council.