

July 2020

Bayside Council

Combined Projects (Rockdale) Pty Ltd

Planning Agreement

Section 93F of the Environmental Planning
and Assessment Act, 1979 (NSW)

DEED OF VARIATION

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Date

Parties

Bayside Council (ABN 80 690 785 443) of 444/446 Princes Hwy, Rockdale, New South Wales (**Council**)

Combined Projects (Rockdale) Pty Ltd (ACN 601 986 654) of Level 7, 111 Devonshire Street, Surry Hills, New South Wales (**Developer**)

Background

- A On 17 July 2018, the parties executed a planning agreement (**Agreement**) in accordance with the provisions of section 93F of the *Environmental Planning and Assessment Act 1979* (**Act**) (as then in force) in the form contained in Annexure 1.
 - B Clause 10(b) of the Agreement provides that: "No modification or review of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement."
 - C The parties have entered into discussions and as a result of those discussions, have agreed to modify the Agreement on the terms set out in this deed.
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Operative provisions

1 Definitions and interpretation

Terms defined in the Agreement have the same meaning when used in this deed unless otherwise defined in this document. The rules of interpretation set out in the Agreement apply to the interpretation of this deed.

2 Modification of the Agreement

2.1 Public Access Link

The parties agree that the Agreement is modified as follows:

- (a) the words 'Public Pedestrian Link Easement' are replaced with the words 'Public Access Link' where they appear in the Contents table of the Agreement;
- (b) the definition of Public Pedestrian Link Easement in clause 1.1 of the Agreement is deleted;
- (c) the following new definition is inserted into clause 1.1 of the Agreement:

Public Access Link

means a public access link through the ground floor of Building C providing public access between Bay Street and Chapel Grove during the hours of operation of the adjacent commercial tenancies.

- (d) Clause 5(d) of the Agreement is amended by replacing the words 'Public Pedestrian Link Easement' with the words 'Public Access Link';
- (e) Clause 6.4 of the Agreement is replaced with:

6.4 Creation of Public Access Link

The Developer must take all steps necessary to create and maintain the Public Access Link in accordance with the timing specified in Table 2 of Schedule 2.

- (f) Item 2 of Table 2 in Schedule 2 is replaced with:

2	<p>Creation of Public Access Link</p> <p>The Developer will create and maintain the Public Access Link</p>	<p>To be created prior to the issue of any Occupation Certificate in relation to the Stage 1 Works or as otherwise agreed in writing between the parties.</p>
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- (g) the title of Annexure B is replaced with:
- Staging Plan;
- (h) the plan contained in Annexure B to the Agreement is replaced with a plan in the form of that contained in Annexure 2 of this deed.

2.2 **Public Car Parking Spaces**

The parties agree that the Agreement is modified as follows:

- (a) the definition of Public Car Parking Spaces in the Agreement is amended by replacing:
 - (i) the number '40' where it appears with the number '43'; and
 - (ii) the words 'in yellow' where they appear with the words 'in hatching'; and
- (b) the plan contained in Annexure A to the Agreement is replaced with a plan in the form of that contained in Annexure 3 of this deed.

2.3 Agreement otherwise unchanged

- (a) Other than as varied under clauses 2.1 and 2.2 of this deed, the Agreement remains unchanged.
- (b) To the extent of any inconsistency between the subject matter of this deed and the Agreement, this deed shall prevail to the extent of any inconsistency.

Execution

Executed as a deed.

Executed by Bayside Council ABN 80)
690 785 443 pursuant to ss 377 and)
378 of the *Local Government Act 1993*,)
in the presence of:)

.....
Witness

.....
Authorised Officer

.....
Name of Witness (print)

.....
Name of Authorised Officer (print)

Executed by Combined projects)
(Rockdale) Pty Ltd ACN 601 986 654)
in accordance with section 127(1) of the)
Corporations Act 2001 (Cth):)

.....
Company Secretary/Director (sole)
FOUAD DEIRI

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Annexure 1 - Agreement



June 2017

Bayside Council

Combined Projects (Rockdale) Pty Ltd

Planning Agreement

Section 93F of the Environmental Planning
and Assessment Act, 1979 (NSW)

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Date 17 July 2018

Parties

Bayside Council (ABN 80 690 785 443) of 444/446 Princes Hwy, Rockdale, New South Wales (Council)

Combined Projects (Rockdale) Pty Ltd (ACN 601 986 654) of Level 7, 111 Devonshire Street, Surry Hills, New South Wales (Developer)

Background

- A On, 23 December 2015, the Developer made a Development Application for Development Consent to carry out the Development on the Land.
 - B In connection with the Development Application, the Developer has offered to enter into this Agreement to make Development Contributions in the event that the Development Consent is granted.
-

Operative provisions

1 Definitions and interpretation

1.1 Definitions

In this Agreement these terms have the following meanings:

Act	the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Access Easement	means the easement for access limited in depth burdening the basement levels of Building C and benefiting Lot 1 in DP 930952 (No 13 Bay Street) so as to provide suitable access to any basement car park on that Lot which has received development consent.
Agreement	this voluntary planning agreement including any schedules or annexures.
Authority	means any Federal, State or local government or semi-governmental, statutory, judicial or public person,

	instrumentality or department.
Building C	means the building that is to be constructed on the Building C Land and that is identified as Building C in the Development Application.
Building C Land	means the land known as 15-21 Bay Street, Rockdale and contained in the titles in the table in Schedule 1 and identified as Area C.
Business Day	a day which is not a Saturday, Sunday or bank or public holiday in Sydney.
Consent Authority	means any other Authority having the function to determine the Development Application under the Act.
Development	means the development on the Land as described in the Development Application being the construction of a mixed use development comprising of 3 x 12 storey buildings with 365 residential apartments, 6 commercial premises, communal roof top open space, associated basement parking, public carpark, public domain works, stratum subdivision and demolition of existing structures.
Development Application	means Development Application DA2016/241 seeking consent for the Development.
Development Consent	means a development consent, within the meaning of the Act, for the Development Application, which authorises the carrying out of the Development, and includes, for the avoidance of doubt, conditions of development consent.
Development Contributions	means those contributions identified in Schedule 2 .
GST	has the same meaning as in the GST Law.
GST Law	has the meaning given to that term in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition or administration of the GST.
Item	means an item referred to in Schedule 2 .
Land	means the land located at 15-21 Bay Street, 1-11 Chapel Street, 1-3 Chapel Lane & 6-12 Lister Avenue, Rockdale contained in the titles in Schedule 1 and identified as Areas A, B and C.
LPI	Land and Property Information or any other Authority replacing it.
Occupation Certificate	has the same meaning as under section 109C of the Act.
Party	means a party to this Agreement, including their

	successors and assigns.
Permitted Encumbrances	means any easements required by any service provider, Authority or the Development Consent or as otherwise agreed in writing by the Council.
Practical Completion	<p>means, in relation to the Works in Kind, the stage in the execution of the Works in Kind when those works are complete except for minor defects that:</p> <ul style="list-style-type: none">(a) do not prevent the Works in Kind from being reasonably capable of being used for their intended purpose; and(b) rectification of which will not prejudice the convenient use of the Works in Kind, and for which arrangements are in place satisfactory to the Council to ensure the necessary rectification occurs.
Public Car Parking Spaces	means 40 car parking spaces within basement levels 1 and 2 in Building C as identified in yellow on the plans attached at Annexure A .
Public Car Parking Easement Rights	means easement rights in favour of Council and the public for car parking on the Public Car Parking Spaces, with associated easement rights in favour of Council and the public for over Building C to access to the Public Car Parking Spaces.
Public Domain Works - Stage 1	means landscaping and other public domain works (including without limitation tree planting, paving, seating, lighting etc) that are the subject of Development Consent, and as generally shown on the Scott Carver Plans, in relation to the area of land indicated in green and marked 'Stage 1 Works' on Plan No. DA - 1002 which is attached as Annexure B .
Public Domain Works - Stage 2	means landscaping and other public domain works (including without limitation tree planting, paving, seating, lighting etc) that are the subject of Development Consent, as generally shown on the Scott Carver Plans, in relation to the area of land indicated in green and marked 'Stage 2 Works' on Plan No. DA - 1002 which is attached as Annexure B .
Public Pedestrian Link Easement	means easement rights in favour of the Council and the public for pedestrian access between Bay Street and Chapel Grove through the ground floor of Building C in the area hatched red on Annexure B .

Registration on Title	means the registration of this Agreement under section 93H of the Act in the folio of the register kept under the <i>Real Property Act 1900 (NSW)</i> in relation to the Land, and Registered on Title refers to the state of the Agreement being so registered.
Regulation	the <i>Environmental Planning and Assessment Regulation 2000</i> (NSW).
Road Widening Land - Bay Street	means that part of the Land adjoining Bay Street that is hatched in blue and indicated as 'Road Widening Setback 5.5 m' on the plan attached at Annexure C to be dedicated to Council for the purposes of the road widening of Bay Street.
Road Widening Land - Chapel Lane	means that part of the Land adjoining Chapel Lane that is hatched blue and indicated as 'Road Widening Setback 6 m' on the plan attached at Annexure C to be dedicated to Council for the purposes of the road widening of Chapel Lane.
Scott Carver Plans	means the plans prepared by Scott Carver numbers DA000 Rev 4; DA100 Rev 4; DA101 Rev 4; DA102 Rev 4; DA103 Rev 4; DA104 Rev 4; DA105 Rev 4; DA106 Rev 4; DA0107Rev 4; DA108 Rev 1; DA109 Rev 1; DA110 Rev 1; DA200 Rev 4; DA201 Rev 4; DA202 Rev 4; DA203 Rev 4; DA204 Rev 4; DA000 Rev 4; DA000 Rev 4, dated: Rev 1 dated 26.11.17; Rev 4 dated 20.4.17 – all print date 20 April, 2017 which form part of the Development Application.
Stage 1 Works	means building works that are the subject of Development Consent in relation to the area of land indicated in green and marked 'Stage 1 Works' on Plan No. DA - 1002 which is attached as Annexure C
Stage 2 Works	means building works that are the subject of Development Consent in relation to the area of land indicated in blue and marked 'Stage 2 Works' on Plan No. DA - 1002 which is attached as Annexure C
Works in Kind	means each of the Works in Kind to be carried out by the Developer specified in Table 1, Column 1 of Schedule 2 .

1.2 Interpretation

Unless expressed to the contrary, in this Agreement:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;

- (d) 'includes' means includes without limitation;
- (e) if the day on or by which any act, must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day;
- (f) '\$' or 'dollars' is a reference to Australian currency and all amounts payable under this Agreement are payable in Australian dollars;
- (g) a reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (h) a reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced;
- (i) a reference to a clause, part, schedule or annexure is a reference to a clause, part, schedule or annexure of or to this Agreement;
- (j) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (k) a reference to a Party to this Agreement includes a reference to the servants, agents and contractors of the Party, and the Party's successors and assigns;
- (l) any schedules and annexures form part of this Agreement;
- (m) headings do not affect the interpretation of this Agreement; and
- (n) this Agreement is not binding on any Party unless it or a counterpart has been duly executed by each person named as a Party to this Agreement.

2 Planning agreement under the Act

The Parties agree that this Agreement is a planning agreement governed by subdivision 2 of Division 6 of Part 4 of the Act.

3 Application of this Agreement

This Agreement applies to the Land and the Development.

4 Operation of this Agreement

This Agreement operates only if:

- (a) the Development Application receives development consent through the actions of the Consent Authority; and

- (b) the Agreement is entered into as required by Clause 25C(1) of the Regulation.

5 Development Contributions to be made under this Agreement

The Developer agrees to provide a Development Contribution to Council by:

- (a) delivering the Works in Kind; and
- (b) dedicating to Council the Road Widening Land - Bay Street and the Road Widening Land - Chapel Street ;
- (c) the creation of the Public Car Parking Easement Rights;
- (d) the creation of the Public Pedestrian Link Easement; and
- (e) the creation of the Access Easement,

at the Developer's cost, and in accordance with the timing set out in **Schedule 2** of this Agreement and any other provisions of this Agreement.

6 Delivery of Development Contributions

6.1 Delivery of Works in Kind

- (a) The Works in Kind are to be carried out in accordance with the drawings and plans approved under the Development Consent.
- (b) The Developer must carry out the Works in Kind:
 - (i) in accordance with the timing specified in **Table 1 of Schedule 2**;
 - (ii) in a proper and workmanlike manner;
 - (iii) in accordance with any relevant law and the Development Consent; and
 - (iv) at no cost to Council.
- (c) The Works in Kind are delivered for the purposes of this Agreement when they reach Practical Completion.

6.2 Dedication of Road Widening Land

- (a) The Developer must take all steps necessary to register at the LPI the transfer of the Road Widening Land - Bay Street and the Road Widening Land - Chapel Street in accordance with the timing specified in **Table 2 of Schedule 2** by either:
 - (i) dedication of the Road Widening Land - Bay Street and/or the Road Widening Land - Chapel Street on the registration of a deposited plan which indicates that the Road Widening Land - Bay Street and/or the Road Widening Land - Chapel Street is intended to be dedicated to the Council; or

(ii) delivery to the Council of:

- (A) a form of transfer in respect of the Road Widening Land - Bay Street and/or the Road Widening Land - Chapel Street executed by the Developer in registrable form transferring that land for \$1.00; and
- (B) the certificates of title for the Road Widening Land - Bay Street and/or the Road Widening Land - Chapel Street; and
- (C) withdrawal of any caveat, mortgage or charge registered on the title to the Road Widening Land - Bay Street and/or the Road Widening Land - Chapel Street which would prevent registration of the transfer to Council,

and the Developer must otherwise take any other necessary action (other than paying stamp duty associated with the transfer) to give effect to the transfer of the title of the Road Widening Land - Bay Street and/or the Road Widening Land - Chapel Street to the Council.

- (b) The Council agrees that it will accept the Road Widening Land - Bay Street and the Road Widening Land - Chapel Street to the Permitted Encumbrances.
- (c) If for whatever reason it becomes necessary (in the opinion of the Council) the Developer must do all things necessary, including preparing any survey plans or other required documents, to grant any rights reasonably necessary to allow the public to access and use the Road Widening Land - Bay Street and the Road Widening Land - Chapel Street. For the avoidance of doubt, this includes:
 - (i) the grant of any necessary easements and rights of way, in favour of Council or in gross, required to facilitate public access and use of the Road Widening Land - Bay Street and the Road Widening Land - Chapel Street; and
 - (ii) the preparation, execution and registration of any documents required to give effect to such easements and rights of way; and
 - (iii) procuring the execution of such documents by Council or any other third party whose execution is necessary to give effect to the documents.
- (d) Council must, without delay or objection, attend to the execution of any documents required to give effect to the Permitted Encumbrances.

6.3 Creation of the Public Car Parking Easement Rights

- (a) The Developer must take all steps necessary to register at the LPI to grant and create the Public Car Parking Easement Rights in accordance with the timing specified in **Table 2 of Schedule 2** by either:
 - (i) the registration of a deposited plan which has the effect of granting the Public Car Parking Easement Rights; or

- (ii) delivering to Council:
 - (A) an instrument in registrable form that is effective to grant the Public Car Parking Easement Rights when executed by the Council as transferee;
 - (B) the written consent to the registration of the granting of the easement of any person whose consent is required to that registration; and
 - (C) a written undertaking from any person holding the certificate of title to the production of the certificate of title for the purposes of the transfer of the Public Car Parking Easement Rights.
- (b) If for whatever reason it becomes necessary (in the opinion of the Council) the Developer must do all things necessary, including preparing any survey plans or other required documents, to grant any rights reasonably necessary to allow the public to access and use the Public Car Parking Easement Rights. For the avoidance of doubt, this includes:
 - (i) the grant of any necessary easements and rights of way, in favour of Council or in gross, required to facilitate public access and use of the Public Car Parking Easement Rights; and
 - (ii) the preparation, execution and registration of any documents required to give effect to such easements and rights of way; and
 - (iii) procuring the execution of such documents by Council or any other third party whose execution is necessary to give effect to the documents.

6.4 Creation of the Public Pedestrian Link Easement

- (a) The Developer must take all steps necessary to register at the LPI to grant and create the Public Pedestrian Link Easement in accordance with the timing specified in Table 2 of Schedule 2 by either:
 - (i) the registration of a deposited plan which has the effect of granting the Public Pedestrian Link Easement; or
 - (ii) delivering to Council:
 - (A) an instrument in registrable form that is effective to grant the Public Pedestrian Link Easement when executed by the Council as transferee;
 - (B) the written consent to the registration of the granting of the easement of any person whose consent is required to that registration; and
 - (C) a written undertaking from any person holding the certificate of title to the production of the certificate of title for the purposes of the transfer of the Public Pedestrian Link Easement.

- (b) If for whatever reason it becomes necessary (in the opinion of the Council) the Developer must do all things necessary, including preparing any survey plans or other required documents, to grant any rights reasonably necessary to allow the public to access and use the Public Pedestrian Link Easement. For the avoidance of doubt, this includes:
 - (i) the grant of any necessary easements and rights of way, in favour of Council or in gross, required to facilitate public access and use of the Public Pedestrian Link Easement; and
 - (ii) the preparation, execution and registration of any documents required to give effect to such easements and rights of way; and
 - (iii) procuring the execution of such documents by Council or any other third party whose execution is necessary to give effect to the documents.

6.5 Creation of Access Easement

- (a) Prior to the time for the delivery of the Development Contribution consisting of the Access Easement, the Parties must negotiate in good faith to agree the:
 - (i) limitations of the Access Easement; and
 - (ii) the terms of the Access Easement.
- (b) The Developer must take all steps necessary to grant the Access Easement in accordance with the timing specified in Table 3 of Schedule 2 by either:
 - (i) the registration of a deposited plan which has the effect of granting the Access Easement; or
 - (ii) delivering to Council:
 - (A) an instrument in registrable form that is effective to grant the Access Easement when executed by the Council as transferee;
 - (B) the written consent to the registration of the granting of the easement of any person whose consent is required to that registration; and
 - (C) a written undertaking from any person holding the certificate of title to the production of the certificate of title for the purposes of the transfer of the Access Easement.

6.6 Public purpose

The Council must, acting reasonably and in good faith, apply the Development Contributions received from the Developer under this Agreement towards the public purposes identified in Schedule 2.

7 Application of sections 94, 94A and 94EF of the Act to the Development

- (a) This Agreement does not exclude the application of sections 94, 94A and 94EF of the Act; or
- (b) Benefits under this Agreement are not to be taken into account in determining a development contribution under section 94 of the Act.

8 Access to land by Developer

- (a) The Council authorises the Developer, for no licence fee, rent or other cost, to enter, occupy and use any land owned or controlled by the Council for the purpose of performing its obligations under this Agreement, subject to any conditions and requirements of Development Consent.
- (b) Subject to clause 8(a) above, the Council is to permit the Developer, upon receiving reasonable prior notice from the Developer, for no licence fee, rent or other cost, to enter any other Council owned or controlled land in order to enable the Developer to properly perform its obligations under this Agreement.

9 Registration of this Agreement

9.1 Registration of Agreement on Title

- (a) The Developer must, at its cost, take all practical steps required to enable the Registration on Title of this Agreement on the Land, including:
 - (i) procuring 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
 - (ii) attending to the execution of any documents and procuring execution by any other required party; and
 - (iii) procuring the production of the relevant certificates of title.
- (b) The Parties will take all practical steps to procure the lodgement of this Agreement with the LPI as soon as reasonably practicable after the Agreement is entered into by the Parties.
- (c) The Parties agree that on Registration on Title that this Agreement will be binding on and enforceable against the owners of the Land from time to time as if each owner of the Land for the time being had entered into this Agreement.

10 Review of this Agreement

- (a) The Parties agree that this Agreement may be reviewed or modified and that any review or modification of this Agreement will be conducted in the circumstances and in the manner determined by the Parties.
- (b) No modification or review of this Agreement, will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

11 Dispute Resolution

11.1 Reference to dispute

If a dispute arises between the Parties in relation to this Agreement, then either Party must resolve that dispute in accordance with this **clause 11**.

11.2 Notice of dispute

The Party wishing to commence the dispute resolution processes must notify the other in writing of:

- (a) the intent to invoke this **clause 11**;
- (b) the nature or subject matter of the dispute, including a summary of any efforts made to resolve the dispute other than by way of this **clause 11**; and
- (c) the outcomes which the notifying Party wishes to achieve (if practicable).

11.3 Representatives of parties to meet

- (a) The representatives of the Parties must promptly (and in any event within 5 Business Days of the written notice provided in accordance with **clause 11.2**) meet in good faith to attempt to resolve the notified dispute.
- (b) The Parties may, without limitation:
 - (i) resolve the dispute during the course of that meeting;
 - (ii) agree that further material, expert opinion or consideration is needed to effectively resolve the dispute (in which event the Parties will, in good faith, agree to a timetable for resolution); and
 - (iii) agree that the Parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination or mediation) which is appropriate for the resolution of the relevant dispute.

11.4 Neither party may constrain

If:

- (a) at least one meeting has been held in accordance with **clause 11.3**; and
- (b) the Parties have been unable to reach an outcome identified in **clause 11.3(b)(i) to 11.3(b)(iii)**; and

- (c) either of the Parties, acting in good faith, forms the view that the dispute is reasonably unlikely to be resolved in accordance with a process agreed under **clause 11.3**,

then, that Party may, by 5 Business Days written notice to the other Party, terminate the dispute resolution process in respect of that dispute. The termination of the process set out in this clause does not of itself amount to a breach of this Agreement.

12 Security and Enforcement

Section 93F(3)(g) of the Act requires the enforcement of a planning agreement by a suitable means in the event of a breach of the Agreement by the Developer. The intention of the Parties is that the following satisfies this obligation:

- (a) **clause 9** through the registration of this Agreement on the title of the Land; and
- (b) the timing for the delivery of the Development Contributions as identified in **column 2 of Schedule 2**.

13 Notices

13.1 Delivery

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:

- (a) Delivered or posted to that Party at its address set out below.
- (b) Faxed to that Party at its fax number set out below.
- (c) Emailed to that Party at its email address set out below.

Bayside Council

Attention: Michael McCabe
Address: 444/446 Princes Hwy, Rockdale, NSW
Fax Number: 9562 1777
Email: michael.mccabe@bayside.nsw.gov.au

Combined Projects (Rockdale) Pty Ltd

Attention: Fouad Deiri
Address: Level 7, 111 Devonshire Street, Surry Hills NSW
Fax Number: 8665 4111
Email: FD@deicorp.com.au

13.2 Change of details

If a Party gives the other Party 3 Business Days notice of a change of its address, email or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, emailed, posted or faxed to the latest address, email address or fax number.

13.3 Giving of notice

Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) If it is delivered, when it is left at the relevant address;
- (b) If it is emailed, when it is sent by the Party and no "failure to deliver" email is received;
- (c) If it is sent by post, 2 Business Days after it is posted; and
- (d) If it is sent by fax, as soon as the sender receives from the senders fax machine a report of an error free transmission to the correct fax number.

13.4 Delivery outside of business hours

If any notice, 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 5.00 pm 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.

14 Assignment and dealings

14.1 Assignment

- (a) A Party must not assign or deal with any right under this Agreement without the prior written consent of the other Parties. Council must not unreasonably withhold or delay its written consent and must respond within 15 Business Days.
- (b) Any purported dealing in breach of this **clause 14** is of no effect.

14.2 Transfer dealings

- (a) The Developer must not transfer all or any part of the Land unless the Developer:
 - (i) first informs the proposed purchaser (the **Incoming Party**) of this Agreement;
 - (ii) Provides the Incoming Party with a copy of this Agreement; and
 - (iii) enters into a novation deed with the Incoming Party and the Council, whereby the Incoming Party agrees to perform the obligations of the Developer under this Agreement.

For the avoidance of doubt, this clause does not apply to the sale (off the plan or otherwise) of any final residential or commercial strata lots to a third party.

- (b) The Council will promptly execute the novation deed referred to in **clause 14.2(a)(iii)** and do all things reasonably required to give effect to that deed.,
- (c) The provisions of this **clause 14.2** do not apply where the Agreement has been registered in accordance with **clause 9**.

15 Costs

The Parties agree to bear their own costs of preparing, negotiating and executing this Agreement.

16 Entire agreement

- (a) This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.
- (b) Pursuant to clause 25E(7) of the Regulation, the Parties agree that the explanatory note exhibited with this Agreement is not to be used to assist in construing this Agreement.

17 Further acts

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

18 Governing law and jurisdiction

This Agreement and the transactions contemplated by this Agreement are governed by and are to be construed in accordance with the laws applicable in New South Wales. The Parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

19 No fetter

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

20 Representations and warranties

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

21 Severability

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. 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.

22 Waiver

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. 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. 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.

23 GST

23.1 Construction

In this **clause 23** words and expressions which are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law.

23.2 Intention of the Parties

Without limiting the operation of this **clause 23**, as at the date of this Agreement, the Parties intend that:

- (a) Divisions 81 and 82 of the GST Law apply to the supplies made under and in connection with this Agreement;
- (b) no tax invoices will be exchanged between the Parties; and
- (c) no additional amount will be payable to a Supplier (as defined in **clause 23.4** below) on account of GST.

23.3 Consideration GST exclusive

All prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

23.4 Payment of GST – additional payment required

- (a) If an entity (**Supplier**) makes a taxable supply under or in connection with this Agreement (**Relevant Supply**), then, subject to **clause 23.4(d)**, the Party required under the other provisions of this Agreement to provide the consideration for that Relevant Supply (**Recipient**) must pay an additional amount to the Supplier (**GST Amount**), as calculated under **clause 23.4(b) or 23.4(c)** (as appropriate).
- (b) To the extent that the consideration to be provided by the Recipient for the Relevant Supply under the other provisions of this Agreement is a payment of money (including, for the avoidance of doubt, any payment under **clause 23.4(c)**), the Recipient must pay to the Supplier an additional amount equal to the amount of the payment multiplied by the rate or rates of GST applicable to that Relevant Supply.
- (c) To the extent that the consideration to be provided by the Recipient for that Relevant Supply is neither:
 - (i) a payment of money; nor
 - (ii) a taxable supply,**(Non-taxable non-monetary consideration)**,
the Recipient must pay to the Supplier an additional amount equal to 1/11th of the GST-inclusive market value of the non-taxable non-monetary consideration.
- (d) To the extent that the consideration payable by the Recipient is a taxable supply made to the Supplier by the Recipient, then, notwithstanding **clause 23.4(a)**:
 - (i) subject to **clause 23.4(d)(ii)**, no additional amount is payable by the Recipient to the Supplier on account of the GST payable on that taxable supply; and
 - (ii) however, if taking into account any liability for GST of, any input tax credit of, and any amount payable under **clauses 23.4(b) or 23.4(c)** by a Supplier or Recipient, a Supplier or Recipient, or the representative member of a GST group of which they are a member, has a net amount of GST payable that it is not able to recover from another Party under this **clause 23**, the Parties must negotiate in good faith to agree on an appropriate treatment of GST as between them. If agreement cannot be reached prior to the time that a Party becomes liable for GST, the matter is to be resolved in the same way as a dispute under **clause 23.5**.
- (e) The recipient will pay the GST Amount referred to in this **clause 23.4** in addition to and at the same time as the first part of the consideration is provided for the Relevant Supply.

23.5 Valuation of non-monetary consideration

The Parties will seek to agree upon the market value of any non-monetary consideration which the Recipient is required to provide under **clause 23.4**. If

agreement cannot be reached prior to the time that a Party becomes liable for GST, the matter in dispute is to be determined by an independent expert nominated by the President for the time being of the Institute of Chartered Accountants in Australia. The Parties will each pay one half of the costs of referral and determination by the independent expert.

23.6 Tax invoice

The Supplier must deliver a tax invoice to the Recipient before the Supplier is entitled to payment of the GST Amount under **clause 23.4**. The Recipient can withhold payment of the GST Amount until the Supplier provides a tax invoice.

23.7 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a Supplier under this Agreement, the GST Amount payable by the Recipient under **clause 23.4** will be recalculated taking into account any previous adjustment under this clause to reflect the adjustment event and a payment will be made by the Recipient to the Supplier or by the Supplier to the Recipient as the case requires.

23.8 Reimbursements

Where a Party is required under this Agreement to pay, indemnify or reimburse an expense, loss or outgoing of another Party, the amount to be paid, indemnified or reimbursed by the first Party will be the sum of:

- (a) the amount of the expense, loss or outgoing less any input tax credits in respect of the expense, loss or outgoing to which the other Party, or to which the representative member of a GST group of which the other Party is a member, is entitled; and
- (b) any additional amount payable under **clause 23.4** in respect of that reimbursement.

23.9 No Merger

This **clause 23** does not merge in the completion, discharge, rescission or termination of this Agreement or on the transfer of any property supplied or to be supplied under this Agreement.

24 Relationship of parties

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

25 Further steps

Each party must promptly do whatever any other party reasonably requires of it to give effect to this Agreement and to perform its obligations under it.

26 Counterparts

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one Agreement.

27 Rights cumulative

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

Schedule 1

Land subject of the Agreement	
Area A	
6 & 6A Lister Avenue	Lot 3 DP 13570
8 Lister Avenue	Lot 4 DP 13570
10 Lister Avenue	Lot 5 DP 13570
12 Lister Avenue	Lot D DP 420619
1 Chapel Lane	Lot 61 DP 703624
3 Chapel Lane	Lot 2 DP 1027204
Area B	
1 Chapel Street	Lot 1 DP 551369
3 Chapel Street	Lot 2 DP 551369
5 Chapel Street	Lot 1 DP 309448
7 Chapel Street	Lot 2 DP 309448
9 Chapel Street	Lot 1 DP 450104
11 Chapel Street	Lot 2 DP 450104
Area C	
15 Bay Street	Lot 1 DP 79509
17 Bay Street	Lot 1 DP 522410
19 Bay Street	Lot 2 DP 522410
21 Bay Street	Lot 19 DP 59816
21A Bay Street	Lot 1 DP 84102

Schedule 2

Table 1 - Works in Kind

	Column 1 – Description	Column 2 – Timing	Column 3 – Public purpose
1	Public Car Parking The Developer is to carry out the construction of the Public Car Parking Spaces in accordance with the Development Consent.	Practical Completion to be reached prior to the issue of any Occupation Certificate in relation to the Stage 1 Works or as otherwise agreed in writing between the Parties.	Public car parking
2	Public Domain Works – Stage 1 The Developer is to carry out the Public Domain Works - Stage 1	Practical Completion to be reached prior to the issue of any Occupation Certificate in relation to the Stage 1 Works or as otherwise agreed in writing between the Parties.	Public amenity
3	Public Domain Works – Stage 2 The Developer is to carry out the Public Domain Works - Stage 2	Practical Completion to be reached prior to the issue of any Occupation Certificate in relation to the Stage 2 Works or as otherwise agreed in writing between the Parties.	Public amenity

Table 2 – Creation of public easement rights/ Dedication of Road Widening Land

	Column 1 – Description	Column 2 – Timing	Column 3 – Public purpose
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	Column 1 – Description	Column 2 – Timing	Column 3 – Public purpose
1	Creation of easement rights The Developer will create the Public Car Parking easement rights.	To be created prior to the issue of any Occupation Certificate in relation to the Stage 1 Works or as otherwise agreed in writing between the Parties.	Public car parking
2	Creation of easement rights The Developer will create the Public Pedestrian Link Easement	To be created prior to the issue of any Occupation Certificate in relation to the Stage 1 Works or as otherwise agreed in writing between the Parties.	
3	Dedication of Road Widening Land - Chapel Lane The Developer will dedicate the Road Widening Land - Chapel Lane to Council.	To be dedicated to Council prior to the issue of any Occupation Certificate in relation to the Stage 2 Works or as otherwise agreed in writing between the Parties.	Public Roads and Road Widening
4	Dedication of Road Widening Land - Bay Street The Developer will dedicate the Road Widening Land - Bay Street to Council.	To be dedicated to Council prior to the issue of any Occupation Certificate in relation to the Stage 1 Works or as otherwise agreed in writing between the Parties.	Public Roads and Road Widening

Table 3 – Other

Column 1 – Description	Column 2 – Timing	Column 3 – Public purpose
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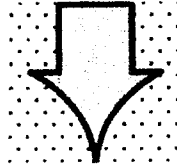
	Column 1 - Description	Column 2 - Timing	Column 3 - Public purpose
1	The Developer will create the Access Easement on the standard terms for a Right of Carriageway under Schedule 8 of the <i>Conveyancing Act 1919</i> (NSW) and any other terms negotiated between the parties, acting reasonably.	To be created at reasonable time to be agreed to in writing between the Parties so as to facilitate the redevelopment of Lot 1 in DP930952 (No 13 Bay Street), and in any event no later than 6 months after the granting of any development consent in relation to the said Lot which involves basement car parking proposed to be accessed via the basement levels of Building C.	Access



Execution

**SIGN
HERE**

Executed as a deed.



Executed by Bayside Council ABN 80)
690 785 443 pursuant to ss 377 and)
378 of the *Local Government Act 1993*,)
in the presence of:)

Meredith Wallace

.....
Witness

.....
Authorised Officer

.....
Name of Witness (print)

MEREDITH WALLACE
.....
Name of Authorised Officer (print)

Executed by Combined projects
(Rockdale) Pty Ltd ACN 601 986 654)
in accordance with section 127(1) of the)
Corporations Act 2001 (2th):)

[Signature]

Sole
Company Secretary/Director

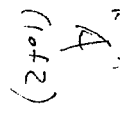
.....
~~Director~~

Fouad Deiri
.....
Name of Company Secretary/Director
(print)

.....
~~Name of Director (print)~~

Annexure A

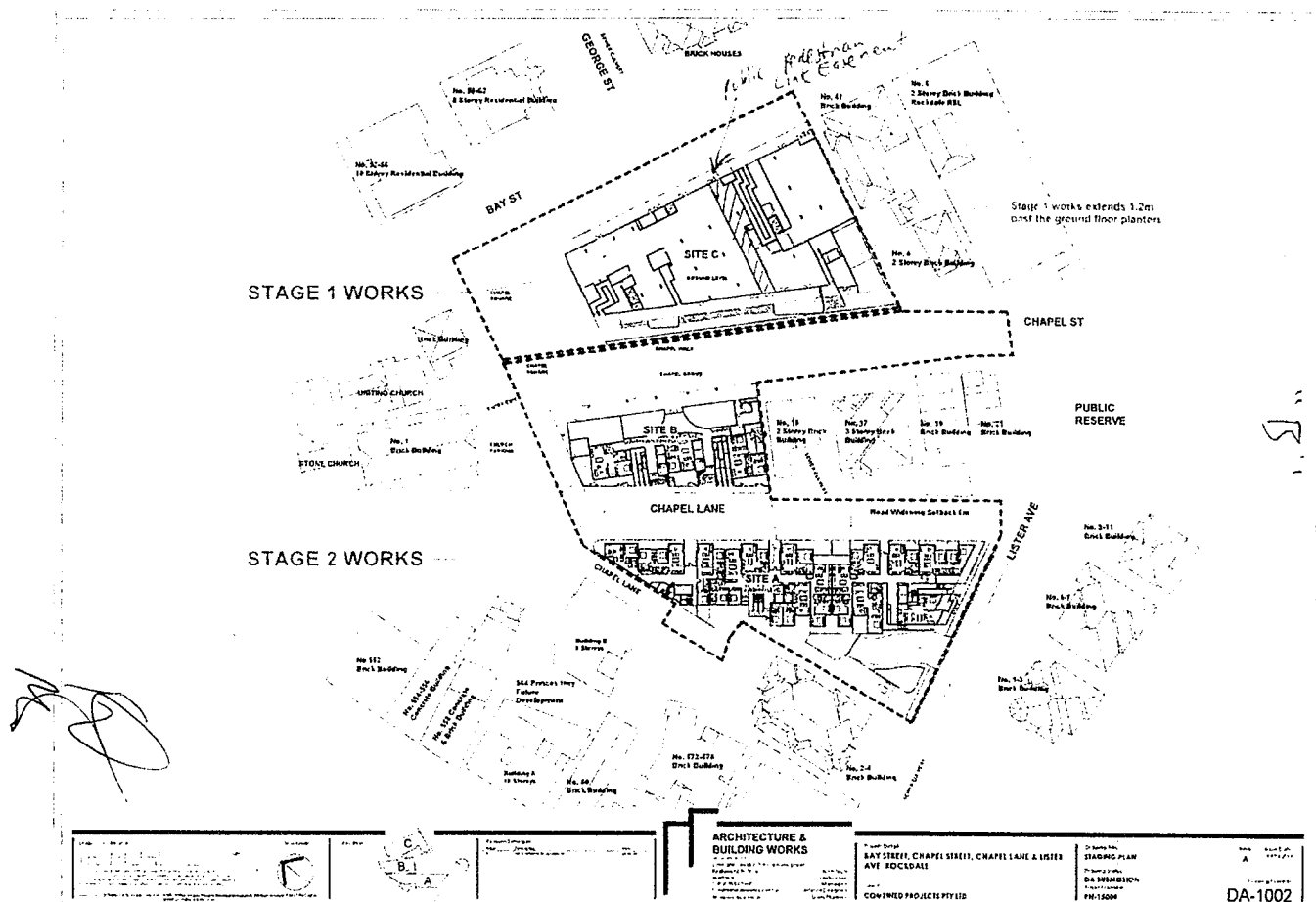
Public Car Parking Spaces

A handwritten signature in black ink, appearing to be "M. S.", written over a horizontal line.[illegible][illegible]

Annexure B

Staging Plan (including Public Pedestrian Link Easement)

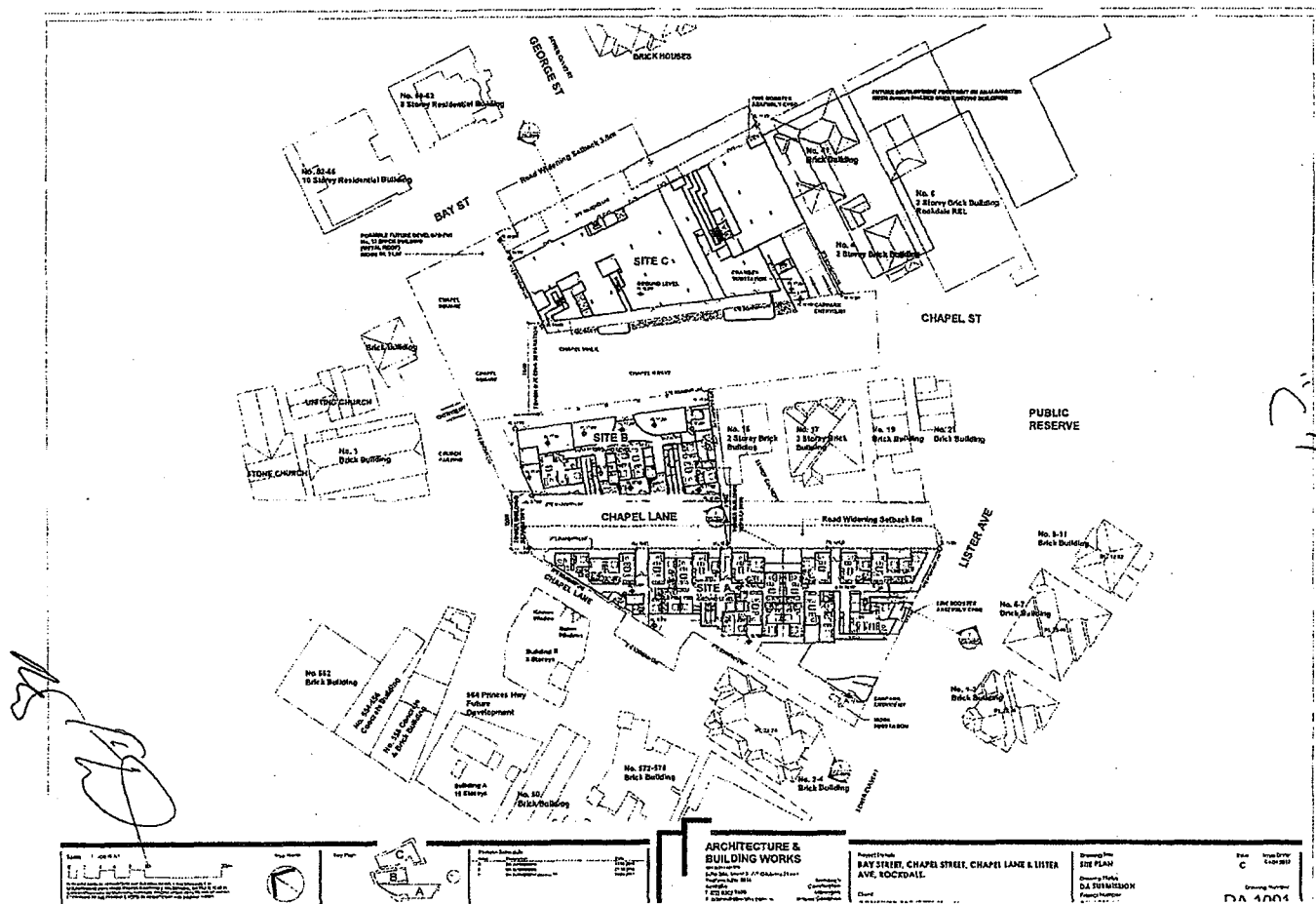
A handwritten signature in black ink, consisting of a large, stylized 'R' followed by a horizontal line extending to the right.



Annexure C

Roads Widening Plan





Annexure 2 – Staging Plan

Annexure 3 – Public Car Parking Spaces

Drawing Number
DA-2074