

75-81 Railway Street, Rockdale NSW

Lot 101 DP771165, Lot 3 DP 82942, Lot 1 DP455421 and

Lot 1 DP912313

Planning Agreement

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

Bayside Council

and

Zoe Holdings Rockdale Pty Limited

Dated: 26 November 2018
~~9th October 2018~~

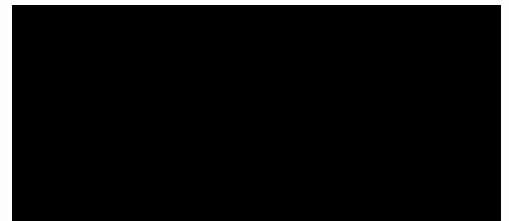


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Contacts Sheet

Council:

Name: Bayside Council

Address: 444-446 Princes Highway, ROCKDALE NSW 2216

Telephone: 1300 581 299

Facsimile: (02) 9562 1777

Email:

Representative: Manager Strategic Planning

Developer:

Name: Zoe Holdings Rockdale Pty Limited

ACN: 169 548 770

Address: 9 Bestic Street ROCKDALE NSW 2216

Telephone: + 61 2 9642 5666

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Email: a.harb@elouraholdings.com.au

Representative: Alex Harb

**Planning Agreement, 75-81 Railway Street, Rockdale NSW,
Lot 101 DP771165, Lot 3 DP 82942, Lot 1 DP455421 and
Lot 1 DP912313**

This Agreement constitutes a planning agreement within the meaning of section 7.4 of the *Environmental Planning and Assessment Act 1979*, and facilitates the provision of Development Contributions to be used and applied towards a Public Purpose.

Parties

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

and

Zoe Holdings Rockdale Pty Limited
of 9 Bestic Street ROCKDALE NSW 2216
ACN 169 548 770
(Developer)

Background

- A. The Developer owns the Land identified.
- B. The Developer has requested the Instrument Change by way of an amendment to the Rockdale LEP.
- C. The Developer intends to lodge a Development Application for the Development.
- D. The Developer has offered to enter into a Planning Agreement in accordance with section 7.4 of the Act in connection with the Instrument Change and the carrying out of Development of the Land, on the terms and conditions of the Agreement.
- E. The Developer will make Development Contributions in accordance with this Agreement in connection with the carrying out of the Development.
- F. The Developer initially offered Council two options for the Development Contributions, being an option for a Development Contribution that was conditional on the provision of public access over the Railway Street Land (**Option A**), and an option for an alternative Development Contribution in circumstances where the public access condition was not satisfied (**Option B**).
- G. Now that the public access condition for Option A has been satisfied, the Development Contributions to be provided by the Developer under this Agreement comprises what is substantially a combination of Option A and Option B.
- H. The parties agree that if section 7.11, 7.12 or 7.24 contributions apply, these contributions will not cause the maximum amount payable by the Developer for the Development Contributions to exceed \$1,799,000.00, adjusted annually in accordance with clause 3 of Schedule 3.

Operative provisions

Part 1 - Preliminary

1. Definitions and interpretation

1.1 In this Agreement the following definitions apply:

Above Ground Construction Certificate means the first Construction Certificate for the Development that authorises the erection of any building above ground level.

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

Actual Gross Floor Area means the actual Gross Floor Area approved under the Development Consent.

Agreement means this Agreement and includes any schedules, annexures and appendices to this Agreement.

Agreed Contribution Value means the value of the Works specified in Column 3 of the Contribution Table corresponding to that Item of Work, adjusted annually in accordance with clause 3 of Schedule 3, without regard to any amount payable pursuant to sections 7.11, 7.12 and 7.24 of the Act.

Business Day means a day other than a Saturday, Sunday or bank or public holiday in Sydney, New South Wales.

Certifying Authority has the same meaning as in the Act.

Consent Authority has the same meaning as in the Act.

Contamination means the presence in, on or under land of a substance (whether a solid, liquid or gas) at a concentration above the concentration at which the substance is normally present on, in or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or to any other aspect of the environment.

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

Consultant has the same meaning as in the Records.

Consumer Price Index means the All Groups Consumer Price Index, Index numbers, quarterly, for Sydney published by the Australian Bureau of Statistics.

Contributions Plan means *Rockdale Section 94 Contributions Plan 2004*, made by the Council under section 7.18 of the Act and approved by the Council on 26 May 2004, and as subsequently amended or replaced.

Contribution Table means the table included in clause 2 of Schedule 3.

Council Land means any land where the Works are to be carried out, including the Railway Street, Waltz Street, Parker Street, Heston Lane and the Parking Land.

DCP means *Rockdale Development Control Plan 2011 – Special Precincts* and includes any development control plan applying to the Land that supersedes *Rockdale Development Control Plan 2011*.

Defect means any error, omission, shrinkage, blemish in appearance or other fault with respect to any Item of Work which adversely affects the ordinary use and/or enjoyment of the particular item.

Design Specifications means the specifications and all other requirements (including the Preliminary Design) set out in Schedule 4.

Detailed Design Specifications means the design specifications prepared in accordance with clause 11.

Development means the Development described in Item 2 of Schedule 2.

Development Application has the same meaning as in the Act.

Development Consent means any development consent, as defined by the Act, which authorises the carrying out of the Development on the Land, and includes:

- (a) any conditions of consent to which the Development Consent is subject;
- (b) any modifications of the Development Consent made under s.96 of the Act; and
- (c) any subsequent development consent in respect of the Land and the Development.

Development Contribution means any aspect of the development contributions set out in Schedule 3 to be delivered by the Developer in accordance with this Agreement, less any amount payable pursuant to sections 7.11, 7.12 and 7.24 of the Act in respect of the Development.

Dispute means a dispute or difference between Council and the Developer arising out of this Agreement.

First Defects Liability Period, in relation to an Item of Work is twelve (12) months commencing on the date on which the Hand-Over occurs in respect of that Item of Work to the Council.

Force Majeure Event means any:

- (a) lightning strike, severe storm, earthquake, natural disaster, landslide, bushfire, mudslide or tsunami;
- (b) sabotage, vandalism, malicious damage, riot or a 'terrorist act' as defined in the *Terrorism Insurance Act 2003* (Cth);
- (c) explosion, flood or fire resulting from any of the events in paragraph (a) or (b);
- (d) war (declared or undeclared), civil war, insurrection, invasion, rebellion, revolution, military action or usurped power, martial law, act of public enemy, epidemic or embargo;
- (e) ionising radiation, radioactive contamination, nuclear contamination or toxic, chemical or biological contamination;

that is beyond the reasonable control of a party, was not caused by an act or omission of the party, and could not have been prevented, avoided, mitigated, remedied or overcome by the party taking steps a prudent and reasonable person would have taken in the circumstances.

General Security means an unconditional undertaking for \$400,000 as at the date of this Agreement adjusted annually in accordance with clause 24.3.

Gross Floor Area has the same meaning given to the term "gross floor area" in the Rockdale LEP.

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:

- (a) in respect of an Item of Work, the completion of the construction of that Item of Work in accordance with this Agreement and the delivery or dedication (as applicable) of that Item of Work to the Council in accordance with this Agreement; and
- (b) in respect of the Development Contribution described in Part B of the Contribution Table, once Council is the registered proprietor of the Parking Land.

Hand-Over Date means for each Development Contribution specified in the Contribution Table, the date that Hand-Over is required to occur in respect of that Development Contribution, as specified in Column 4 of the Contribution Table.

Instrument Change means an amendment to the Rockdale LEP which is substantially in accordance with the Planning Proposal and which increases the maximum permissible height for the Land to 28m.

Inspection and Test Plan has the same meaning as in the NSW Government Quality Management System Guidelines for Construction June 2005 and as subsequently amended or replaced.

Item of Work means each item of the Works corresponding to a reference number (A.1, A.2 or A.3) in column 1 of Part A of the Contribution Table.

Land means the whole or any part of the land specified and described in Item 1 of Schedule 2.

Latent Contamination means the presence of Contamination in, on or under land identified in green on the map at clause 4 in Schedule 3 that:

- (a) could not reasonably have been foreseen by a competent developer in the position of the Developer, and was not in fact foreseen by the Developer, at the date of this Agreement having regard to the information disclosed and otherwise available to the Developer and does not include any Contamination of which the Developer had knowledge or ought reasonably to have had knowledge at the date of this Agreement; and
- (b) was not caused or contributed to by the Developer or any of its contractors.

Latent Contamination Costs means, for an Item of Work, an increase in costs (over and above the Agreed Contribution Value for that Item of Work) reasonably expected to be incurred by the Developer:

- (a) that is a direct and natural consequence of a Latent Contamination; and
- (b) that is no more than the increase that would be incurred by a competent and efficient developer having taken all reasonable and feasible steps to mitigate the impact of the relevant Latent Contamination.

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.

Planning Proposal means the *Planning Proposal to Amend Rockdale Local Environmental Plan 2011 at 75-85 Railway Street Rockdale* submitted to the NSW Department of Planning & Environment on 15 September 2015 for changes to the height standard in relation to the Land by means of an amendment to the Rockdale LEP.

Preliminary Design means the agreed preliminary design of the Works, as set out in clause 4 of Schedule 4.

Parking Land means the portion of the Land identified on the map in Schedule 5, to be dedicated to Council.

Public Facility means a public amenity, a public service, a public facility, public land, public infrastructure, a public road, a public work, or any other act, matter or thing that meets a Public Purpose.

Public Infrastructure has the same meaning as in the Act.

Public Purpose has the same meaning as in section 7.4(2) of the Act.

Railway Street Land means 83-85 Railway Street, Rockdale (being Lot 1 in Deposited Plan 3560).

Rectification Certificate means a compliance certificate as defined by 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 issued during the First Defects Liability Period or the Second Defects Liability Period that identifies a Defect in an Item of Work and requires rectification of the Defect within the Defects Liability Period.

Rectification Security means an unconditional undertaking for \$100,000 as at the date of this Agreement adjusted annually in accordance with clause 24.3.

Records means the Rockdale Technical Guide-Works-As-Executed Records or as subsequently amended or replaced.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

Remaining Rectification Security means an unconditional undertaking for the amount equivalent to the cost of a Defect of the Item(s) of Work, as determined in accordance with clause 19.10.

Road Opening Permit means consent issued by the roads authority under section 138 of the *Roads Act 1993* for works associated with each Item of Work.

Rockdale LEP means *Rockdale Local Environmental Plan 2011* and includes any local environmental plan applying to the Land that supersedes *Rockdale Local Environmental Plan 2011*.

Second Defects Liability Period, in relation to an Item of Work, is twelve (12) months commencing on the date of the Rectification Certificate for a Defect provided by the Developer under clause 19.3.

Service Provider has the same meaning as in the NSW Government Quality Management System Guidelines for Construction, 15 August 2013.

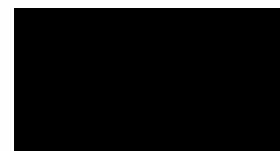
Site Conditions means any physical conditions encountered in the execution of the Works above, upon, under or over the surface of, or in the vicinity of, the Council Land, and includes:

- (a) surface water, ground water, ground water hydrology and the effects of any de-watering;
- (b) physical and structural conditions, above, upon and below Council Land, including old footings, underground structures, buildings, improvements, partially completed structures or in-ground works;
- (c) topography of the Council Land, ground surface conditions and geology, including rock and sub-surface conditions or other materials encountered at, or in the vicinity of, the Council Land;
- (d) climatic and weather conditions, including rain, surface water run-off and drainage, floods, water seepage, wind blown dust and sand, seasons and physical conditions that are a consequence of climatic and weather conditions;
- (e) all existing systems and utilities, above or below ground level and all facilities with which such systems and utilities are connected;
- (f) all improvements, including any artificial things, foundations, retaining walls and other structures installed by or on behalf of the Council or others;
- (g) any Contamination, pollution, or other rubbish, spoil or waste; and
- (h) underground strata forming part of the Council Land.

Strata Certificate has the same meaning as in the Strata Schemes Act.

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 Development Act 2015* (NSW).



Works means the works specified in Part A of the Contribution Table.

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 and labels are inserted for convenience only and do not affect the interpretation of this Agreement.
 - 1.2.2 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.
 - 1.2.3 A reference to time is local time in Sydney.
 - 1.2.4 A reference to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
 - 1.2.5 A reference to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
 - 1.2.6 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.
 - 1.2.7 A reference to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
 - 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
 - 1.2.9 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.
 - 1.2.10 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.
 - 1.2.11 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.
 - 1.2.12 Reference to the word "include" or "including" are to be construed without limitation.
 - 1.2.13 A reference to this Agreement includes the agreement recorded in the Agreement.
 - 1.2.14 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.
 - 1.2.15 Any schedules, appendices and attachments form part of this Agreement.

- 1.2.16 Notes appearing in the Agreement are operative provisions of this Agreement.
- 1.2.17 A reference in this Agreement to the name and number of a zone under Rockdale LEP includes a reference to an equivalent zone under any local environmental plan that supersedes LEP.

2. Application of this Agreement

- 2.1 The parties agree that this document is a planning agreement within the meaning of section 7.4 of the Act and governed by subdivision 2 of Division 6 of Part 4 of the Act. An overview of how this Agreement satisfies the requirements of section 7.4 of the Act is set out in Schedule 1.
- 2.2 This Agreement applies to the Land and to the Development.

3. Status and operation of this Agreement

- 3.1 This Agreement constitutes an irrevocable offer by the Developer to enter into the Agreement in connection with the Development once all of the preconditions contained in clause 3.2 are satisfied. Further, it is agreed that, subject to clause 3.2:
- 3.1.1 this Agreement will commence from the date this document is entered into in accordance with clause 25C(1) of the Regulation; and
- 3.1.2 the Developer is under no obligation to make the Development Contributions to the Council unless and until all of the preconditions specified in clause 3.2 are satisfied.
- 3.2 Subject to clause 3.3, this Agreement becomes effective and operative upon all of the following preconditions being satisfied:
- 3.2.1 the Instrument Change has been made and has commenced and applies to the Development;
- 3.2.2 Development Consent is granted to the Development; and
- 3.2.3 this Agreement has been entered into by all parties as required by clause 25C(1) of the Regulation.
- 3.3 Clauses 4, 6, 23.2, 26 and 27 to 51 operate from the date of this Agreement.
- 3.4 The Developer's obligation to make Development Contributions only arises at the times specified in this Agreement.

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.
- 4.2 A further agreement for the purpose of clause 4.1 may include (but is not limited to) matters pertaining to:
- 4.2.1 access to Land;
- 4.2.2 the rectification of Defects; and

4.2.3 detailed design and specification.

5. Surrender of right of appeal

The Developer must not commence or maintain, or cause to be commenced or maintained, any proceedings in the Land and Environment Court involving an appeal against, or questioning the validity of, a Development Consent relating to the Development or an approval under section 4.55 of the Act to modify a Development Consent relating to the Development to the extent that it relates to the existence of this Agreement or requires any aspect of this Agreement to be performed according to the terms of this Agreement.

6. Application of s7.11, s7.12 and s7.24 of the Act to the Development

- 6.1 To the extent that Council is a Consent Authority for the Development, this Agreement excludes the application of sections 7.11 and 7.12 of the Act in respect of the Development.
- 6.2 To the extent that Council is not a Consent Authority for the Development, this Agreement does not exclude the application of sections 7.11 and 7.12 of the Act in respect of the Development and clause 6.4 shall apply.
- 6.3 This Agreement does not exclude the application of section 7.24 of the Act in respect of the Development.
- 6.4 The Development Contributions provided under this Agreement are to be taken into consideration in determining development contributions under section 7.11 of the Act in respect of the Development.
- 6.5 If sections 7.11, 7.12 and 7.24 of the Act are applicable to this Agreement and the Developer is required to pay any amounts payable pursuant to sections 7.11, 7.12 and 7.24 of the Act at any time, then:
 - 6.5.1 the Developer will attend to payment of any amounts payable under sections 7.11, 7.12 and 7.24 of the Act as and when they are payable;
 - 6.5.2 upon payment of the amounts referred to in clause 6.5.1, the Developer will issue Council an invoice for an amount equivalent to the amounts referred to in clause 6.5.1; and
 - 6.5.3 upon receipt of the invoice referred to in clause 6.5.2, Council will attend to payment of the said invoice within 14 days of the date of the invoice.
- 6.6 If clause 6.5 applies, the parties expressly acknowledge and agree that any section 7.11, 7.12 and 7.24 contributions payable shall not cause the total contributions payable by the Developer under this Agreement to exceed \$1,799,000, adjusted annually in accordance with clause 3 of Schedule 3.

Part 2 – Development Contributions

7. Provision of Development Contributions

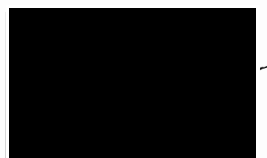
- 7.1 The Developer must, at its cost, provide the Development Contributions to Council in the manner and by the time set out in Schedule 3 and in accordance with all other provisions of this Agreement.

8. Procedures relating to the dedication of land

- 8.1 The Developer must, at its own cost, take all steps required to transfer or dedicate the Parking Land to Council by the applicable Hand-Over Date for that Development Contribution.
- 8.2 Without limiting clause 8.1,
- 8.2.1 the Developer must give Council:
- (a) for execution by Council as transferee, an instrument of transfer under the *Real Property Act 1900* relating to the Parking Land. The instrument of transfer must be duly signed by the Developer and be effective to transfer the title to the Parking Land;
 - (b) the certificate of title for the Parking Land;
 - (c) a discharge of any mortgage or other encumbrance on the Parking Land; and
 - (d) a withdrawal of any caveat affecting the land,
- each in registerable form, such that the registration of the transfer and other documents will give Council unencumbered title to the Parking Land.
- 8.2.2 Council is to execute the instrument of transfer and return it to the Developer within 7 days of receiving it from the Developer;
- 8.2.3 the Developer is to lodge the instrument of transfer for registration at Land and Property Information within 7 days of receiving it from Council duly executed; and
- 8.2.4 the Developer is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- 8.3 The Development Contribution in Part B of the Contribution Table will be taken to be complied with once Council is registered proprietor of the Parking Land, so that Hand-Over is achieved.
- 8.4 Council must provide the Developer with a tax invoice for its reasonable expenses incurred in relation to the dedication of land contemplated by this clause 8 and the Developer must pay those reasonable expenses promptly.
- 8.5 After the dedication of land contemplated by this clause 8, Council will use the land for car parking, a pedestrian footway area and to improve traffic flow in the area.

9. Parking Land Security

- 9.1 If the Developer fails to dedicate the Parking Land to Council as required by clause 8 on or before the Hand-Over Date for the dedication of that land, then the Council may, after giving the Developer not less than 30 Business Days' notice in writing of its intention to do so and the Developer's subsequent failure to dedicate the Parking Land as required by this Agreement within that 30 Business Day notice period, compulsorily acquire the Parking Land for the amount of \$1.00 in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).
- 9.2 The Council and the Developer agree that:



- 9.2.1 clause 9.1 is an agreement between the Developer and the Council for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW); and
- 9.2.2 in clause 9.1 the Developer and the Council have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition of the Parking Land.

10. Approvals and consents for an Item of Work

- 10.1 The Developer must, at its own cost, obtain all approvals and consents for the Works.
- 10.2 Council is responsible for obtaining development consent for the Item of Works identified in Item A.3 in the Contribution Table.
- 10.3 The Developer must not apply for a permit for installation of traffic management facilities until the approval of the Bayside Local Traffic Committee, under delegation by the NSW Roads and Maritime Services in accordance with Part 5,3 of the *Road Transport Act 2003* has been given.
- 10.4 The Developer will submit a Traffic Control Plan to the Council at least 10 Business Days before any Item of Work is undertaken on any existing public assets owned, maintained or controlled by the Council. No Item of Work shall be commenced until the Traffic Control Plan has been approved by an adequately qualified person, who is qualified to perform traffic control safety instructions under the Roads and Maritime Services, 'Traffic Control at Work Sites Technical Manual' dated 27 July 2018, or any subsequent amendment to that document. In addition no work shall commence on any Council assets until such time as the appropriate occupancy permission has been obtained and the appropriate fees and charges pertinent to such occupancy paid.
- 10.5 The Developer must not apply for a Construction Certificate from the Certifying Authority for an Item of Work until the Council (in its capacity as the future owner of the Item of Work and not as a planning authority) has approved the Detailed Design Specifications for the Item of Work in accordance with clause 11.2.

11. Designing and carrying out of an Item of Work

- 11.1 The Developer must engage a Service Provider to prepare the Detailed Design Specifications for each Item of Work and the Developer must ensure that Detailed Design Specifications are in accordance with:
 - 11.1.1 the Design Specifications (including the Preliminary Design);
 - 11.1.2 the Quality Management System, developed by the Service Provider in accordance with AS/NZS ISO 9000:2000, and certified by a third party organisation accredited under a recognised product certification scheme in accordance with AS/NZS ISO 9001:2000;
 - 11.1.3 any reasonable lawful requirements and directions of the Council that are notified in writing to the Developer; and
 - 11.1.4 the conditions of any Development Consent granted in relation to an Item of Work and any other applicable approvals.
- 11.2 The Developer must submit the Detailed Design Specifications for the Works to Council together with all supporting documentation for approval by Council prior to carrying out the Works or any Item of Work.

- 11.3 Council must, acting reasonably, review the Detailed Design Specifications and within 20 Business Days after their submission either:
- 11.3.1 approve the Detailed Design Specifications; or
 - 11.3.2 reject the Detailed Design Specifications (in which case, Council must provide comments to the Developer to explain what changes are required for Council to approve the Detailed Design Specifications).
- 11.4 If Council rejects the Detailed Design Specifications, the Developer must address Council's comments and resubmit the Detailed Design Specifications for approval by Council under this clause 11.
- 11.5 The Developer must carry out and complete each Item of Work or engage a Service Provider to carry out and complete each Item of Work, in accordance with:
- 11.5.1 the Detailed Design Specifications approved by the Council under this clause 11;
 - 11.5.2 all applicable laws, including those relating to occupational health and safety;
 - 11.5.3 the conditions of any development consent granted in relation to an Item of Work and any other applicable approvals; and
 - 11.5.4 the conditions of any development consent or other approval granted in relation to the carrying out of that Item of Work.

12. Acceptance of Site Conditions

Subject to clause 22:

- 12.1 the Council makes no representation and gives no warranty to the Developer in respect of the Site Conditions likely to be encountered, or which may be encountered, during the execution of the Works or otherwise in respect of the condition of:
- 12.1.1 the Council Land;
 - 12.1.2 any structure or other thing, on, under or adjacent to, or otherwise in the vicinity of, the Council Land;
- 12.2 the Developer must accept:
- 12.2.1 the Council Land;
 - 12.2.2 any structure or other thing, on, under or adjacent to, or otherwise in the vicinity of, the Council Land;
- in their existing condition (including when encountered) subject to all defects; and
- 12.3 the Developer agrees that it is responsible for, and assumes the risk of, and will not be entitled to make any claim or demand arising out of, or in any way in connection with, any additional work, increased costs and any damage, expense, loss, liability or delay (including any delay in achieving Hand-Over in respect of an Item of Works) it suffers or incurs arising out of, or in any way in connection with:
- 12.3.1 the Site Conditions actually encountered during the carrying out of the Works under this Agreement; the

12.3.2 the Council Land,

including the suitability or otherwise of the Council Land for the Works under this Agreement.

13. Not Used

14. Quality Management System for an Item of Work

- 14.1 The Developer or its Service Provider, if engaged under clause 11.5, must implement and construct each Item of Work in accordance with:
 - 14.1.1 a Quality Management System developed by the Service Provider in accordance with AS/NZS ISO 9000:2000 and certified by a third party organisation accredited under a recognised product certification scheme in accordance with AS/NZS ISO 9001:2000; or
 - 14.1.2 a project specific Quality Management Plan and Inspection and Test Plan developed by the Service Provider in accordance with the NSW Government Quality Management Guidelines March 2012 and approved by the Council.
- 14.2 The Developer must ensure that the carrying out of each Item of Work is supervised in accordance with the requirements in the Records.
- 14.3 A Consultant must be appointed:
 - 14.3.1 where the Item of Work is to be constructed by a Service Provider under contract to the Developer, by the Developer; or
 - 14.3.2 where the Item of Work is to be constructed by the Developer, by the Council.

15. Access to the Land

- 15.1 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.
- 15.2 The Council is to permit the Developer to enter and occupy any land owned or controlled by Council that is required, for the Developer to carry out any Item of Work under this Agreement or to perform any other obligation imposed on the Developer by or under this Agreement, upon giving reasonable prior notice.

16. Protection of people and property

- 16.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the carrying out of any Work that:
 - 16.1.1 all necessary measures are taken to protect people and property; and
 - 16.1.2 unnecessary interference with the passage of people and vehicles is avoided; and
 - 16.1.3 nuisances and unreasonable noise and disturbances are prevented.

17. Hand-Over of Works

- 17.1 The Developer must achieve Hand-Over for each Item of Work on or before the Hand Over Date for that Item of Work.
- 17.2 The Developer must submit to the Council the Works-as-Executed Records and provide the Council with written notice that the Item of Work is nearing completion not less than 10 Business Days prior to the anticipated Hand-Over Date of the Item of Work.
- 17.3 Council, acting reasonably, may, within 5 Business Days of receipt of the notice under clause 17.2:
 - 17.3.1 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;
 - 17.3.2 notify the Developer that it has achieved Hand-over for that Item of Work;
or
 - 17.3.3 notify the Developer that it has not achieved Hand-over for that Item of Work, in which case Council must:
 - (a) identify the errors or omissions which in the opinion of Council need to be completed so that the Developer can achieve Hand-Over in respect of that Item of Work; or
 - (b) accept Hand-Over of the Item of Work and issue a Rectification Notice under clause 19.
- 17.4 On Hand-Over of an Item of Work:
 - 17.4.1 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; and
 - 17.4.2 subject to clause 19, Council accepts ownership, possession, risk and control of that Item of Work; and
- 17.5 Once Hand-Over has been achieved in respect of each of the Items of Work, Council will return to the Developer the General Security in accordance with clause 25.

18. Failure to Comply with the Hand-Over Date

- 18.1 If the Developer fails to achieve Hand-Over of an Item of Work by the Hand-Over Date the Council may, acting reasonably, call upon the General Security and carry out and complete the Item of Work itself, or engage a contractor to carry out and complete the Item of Work.
- 18.2 For the purposes of clause 18.1:
 - 18.2.1 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;

- 18.2.2 if the Council incurs costs that are over and above the amount payable under the General Security, Council's additional costs will be a debt due from the Developer to Council, payable on demand.
- 18.3 For the purpose of clause 18.2.2, Council's costs of completing an Item of Work includes, but is not limited to:
- 18.3.1 the costs of Council's officers, personal representatives, agents and contractors reasonably incurred for that purpose;
- 18.3.2 all fees and charges necessarily or reasonably incurred by Council in order to have the Item of Work rectified; and
- 18.3.3 without limiting clause 18.3.2 all legal costs and expenses reasonably incurred by Council, by reason of the Developer's failure to comply with this Agreement.
- 18.4 In the event that the Developer fails to achieve Hand-Over in respect of an Item of Work by the Hand-Over Date, the Developer irrevocably and for valuable consideration appoints Council as its attorney and to execute all such documents and do all such things on the Developer's behalf as are necessary or desirable to enable an Handover to be achieved in respect of an Item of Work.

19. Rectification of Defects

- 19.1 During the First Defects Liability Period and the Second Defects Liability Period, the Council may, acting reasonably, give to the Developer a Rectification Notice.
- 19.2 The Developer must promptly comply with a Rectification Notice at its own cost according to the terms of the Rectification Notice.
- 19.3 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.
- 19.4 If the Developer does not comply with a Rectification Notice, the Council may do such things as are necessary to rectify the Defect.
- 19.5 For the purposes of clause 19.4:
- 19.5.1 Council may call upon the Rectification Security or the Remaining Rectification Security to meet its costs in rectifying the Defect; and
- 19.5.2 if the Council incurs costs that are over and above the amount payable under the Rectification Security or the Remaining Rectification Security, Council's additional costs will be a debt due from the Developer to Council, payable on demand.
- 19.6 For the purpose of clause 19.5, Council's costs include:
- 19.6.1 the reasonable costs of Council's officers, personal representatives, agents and contractors reasonably incurred for that purpose;
- 19.6.2 all fees and charges necessarily or reasonably incurred by Council in order to have the Item of Work rectified; and
- 19.6.3 without limiting clause 19.6.2, all legal costs and expenses reasonably incurred by Council, by reason of the Developer's failure to comply with its obligations under this clause 19.

- 19.7 In the event that the Developer does not comply with a Rectification Notice, the Developer irrevocably and for valuable consideration 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 the Council to rectify any Defects in accordance with a Rectification Notice given under this Agreement.
- 19.8 Subject to receipt by Council of a replacement unconditional undertaking if required under 19.9, Council must promptly after the expiration of the First Defects Liability Period, return to the Developer any unused portion of the Rectification Security.
- 19.9 If at the expiration of the First Defects Liability Period:
- 19.9.1 any Rectification Notice is outstanding; or
- 19.9.2 the Second Defect Liability Period for an Item of Work has not yet expired,
- Council may retain a Remaining Rectification Security in relation to the Defect of the Item(s) of Work.
- 19.10 If Remaining Rectification Security is required under clause 19.9:
- 19.10.1 The Developer will provide Council with details of the costs associated with the rectification of the Defect in question and nominate the amount of the Remaining Rectification Security proposed to be provided (**Proposed RRS**);
- 19.10.2 Council, acting reasonably, may within 5 Business Days of receipt of notification of the Proposed RRS:
- (a) request further information from the Developer that is relevant to the determination of the Proposed RRS;
- (b) notify the Developer that Council consents to the Proposed RRS; or
- (c) notify the Developer that Council disagrees with the Proposed RRS.
- 19.10.3 If Council consents to the Proposed RRS under clause 19.10.2(b), the Proposed RRS is the Remaining Rectification Security for the relevant Item(s) of Work.
- 19.10.4 If Council disagrees with the Proposed RRS under clause 19.10.2(c), the Remaining Rectification Security for the relevant Item of Work(s) is to be determined by an independent quantity surveyor, agreed jointly between the parties or by the Institute of Quantity Surveyors, who will determine the Remaining Rectification Security for the relevant Item of Work(s).
- 19.11 The Remaining Rectification Security must be returned to the Developer within 5 Business Days of the expiry of the Second Defect Liability Period.
- 19.12 A Rectification Certificate that resolves and meets the requirements of an outstanding Rectification Notice discharges the Developer from any further obligation to comply with the relevant Rectification Notice. For the sake of clarity, this clause does not prevent Council from issuing a new Rectification Notice for an Item of Work that was previously subject to a Rectification Notice, during the Second Defect Liability Period.

- 19.13 Council must do all things reasonably necessary to enable the Developer to comply with a Rectification Notice that has been given in accordance with clause 19.

20. Damage and repairs to Work

- 20.1 The Developer, at its own cost, is to repair and make good to the reasonable satisfaction of Council any Loss or damage to an Item of Work from any cause whatsoever which occurs prior to the date on which Hand-over is achieved in respect of an Item of Work, except to the extent that such Loss is directly or indirectly caused or contributed to by Council.

21. Variation of Work

- 21.1 The design or construction of an Item of Work is not to be varied by the Developer after the Detailed Design Specifications have been approved by Council under clause 11, unless:
- 21.1.1 the parties agree in writing to the variation (prior to that variation being carried out); and
 - 21.1.2 any consent or approval required under the Act or any other law to the variation is first obtained; and
 - 21.1.3 the Developer bears all of Council's reasonable costs of and incidental to agreeing to and approving the variation under this Agreement.
- 21.2 If, after the Detailed Design Specifications have been approved by Council under clause 11, Council requests a variation to the design or construction of Item of Work,
- 21.2.1 the Developer will provide the Council with a fee quote for the costs of completing the Item of Work in accordance with the variation requested by Council;
 - 21.2.2 the parties must agree a sum that will be payable by Council to the Developer to account for the increased costs of completing the Item of Work (**Variation Amount**). The Variation Amount will be an reasonable estimate of the additional costs directly attributable to the variation requested by Council; and
 - 21.2.3 the parties must, acting reasonably, agree an extension to the Hand-Over Date in respect of the Item of Work;
 - 21.2.4 the Developer must carry out the Item of Work in line with the variation requested by Council by the Hand-over Date (as extended under clause 21.2.3); and
 - 21.2.5 Council must pay the Variation Amount to the Developer after the Item of Work (as varied) is complete, and within 28 days of receipt of a tax invoice for the amount claimed by the Developer.

22. Latent Contamination

- 22.1 The Developer will not be entitled to make, and Council will not be liable in connection with, any claim or demand arising out of or in connection with any Latent Contamination, except to the extent expressly provided for in this clause 22.

- 22.2 If the Developer encounters Latent Contamination while carrying out the Works, the Developer must promptly, and where possible before the Latent Contamination is disturbed, give Council written notice of the general nature of the Latent Contamination.
- 22.3 As soon as reasonably practicable after issuing a notice under clause 22.2, but in any event within 7 days of the Developer first becoming aware of the relevant Latent Contamination, the Developer must, as a condition precedent to any entitlement under clause 22.4 in respect of the Latent Contamination, give Council a written notice including:
- 22.3.1 details of the Latent Contamination encountered (with sufficient evidence to demonstrate to the reasonable satisfaction of Council that Latent Contamination is present);
 - 22.3.2 details of the extent to which any Items of Work are effected by the Latent Contamination;
 - 22.3.3 details of any estimated Latent Contamination Costs with details of how such amount has been calculated and why the various components of that amount are in each case Latent Contamination Costs, in sufficient detail (and supported by sufficient evidence) to enable the Council to substantiate that amount;
 - 22.3.4 a written statement setting out any proposals the Developer may have for reducing the impact of any increase in costs arising from the alleged Latent Contamination; and
 - 22.3.5 details of the steps that the Developer has taken, or proposes to take, to mitigate the impact of the Latent Contamination and to reduce any associated Latent Contamination Costs.
- 22.4 Within 20 Business Days after Council receives all of the information required by clause 22.3, Council must notify the Developer that it:
- 22.4.1 accepts that there is Latent Contamination and that the Latent Contamination will cause the Developer to incur the Latent Contamination Costs set out in the Developer's notice under clause 22.3, in which case Council may (at its absolute discretion):
 - (a) pay the Developer the Latent Contamination Costs set out in the Developer's notice under clause 22.3 within 20 Business Days of receipt of the Developer's notice under clause 22.3; or
 - (b) direct the Developer to cease carrying out the Item of Work effected by the Latent Contamination, in which case clause 22.5 will apply; or
 - 22.4.2 rejects that there is Latent Contamination and that the Developer will incur Latent Condition Costs, in which case either party may refer the matter for resolution under clause 26 to determine whether or not there is Latent Contamination and, if there is determined to be Latent Contamination, to determine the value of the relevant Latent Contamination Costs – in which case clause 22.5 will apply once the value of those costs is determined; or
 - 22.4.3 accepts that there is Latent Contamination but rejects that the Developer will incur the Latent Contamination Costs, in which case either party may refer the matter for resolution under 26 to determine the value of those costs, and clause 22.5 will apply once the value of those costs is determined.

22.5 Where this clause applies:

- 22.5.1 the parties must appoint an independent quantity surveyor to assess the value of the works already performed in respect of the Item of Work effected by the Latent Contamination (**Affected Item of Work**);
- 22.5.2 an independent quantity surveyor is a person:
- (a) agreed between and jointly appointed by the parties; or
 - (b) where the parties are unable to reach agreement within 10 Business Days of Council serving a notice under clause 22.4 or the determination of a dispute under clause 26 (as applicable), a person appointed by the Institute of Quantity Surveyors;
- 22.5.3 the Developer must promptly provide Council and the independent quantity surveyor with:
- (a) a detailed description of all work performed by the Developer in respect of the Affected Item of Work prior to the date of the direction under clause 22.4.1(b);
 - (b) evidence (including photographs and as built plans) of those works;
 - (c) evidence of the Developer's expenditure on those works;
 - (d) any other information requested by the independent quantity surveyor;
- 22.5.4 the independent quantity surveyor appointed must:
- (a) act independently and with expedition; and
 - (b) take into consideration all documents, information and other material which the parties give the independent quantity surveyor;
- 22.5.5 within 10 Business Days of the independent quantity surveyor's assessment of the value of works already performed in respect of the Affected Item of Work, the Developer must pay Council the difference between that assessment and the Agreed Contribution Value. For the avoidance of doubt, if the value of the works already performed by the Developer as assessed by the independent quantity surveyor is more than the Agreed Contribution Value, the Developer will not be entitled to a refund for those works;
- 22.5.6 the decision of the independent quantity surveyor is final and binding; and
- 22.5.7 the parties will share the costs of the independent quantity surveyor equally.

Part 3 – Other Provisions

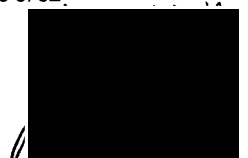
23. Indemnity and insurance

- 23.1 This clause 23 applies for the period between the commencement of construction of an Item of Work up until the expiration of the First Defects Liability Period and Second Defects Liability Period.

- 23.2 The Developer indemnifies Council from and against all Loss, except to the extent that any Loss is directly or indirectly caused or contributed to by any act, omission or negligence of Council, its employees, officers, agents, contractors and workmen.
- 23.3 The Developer is to take out and keep current to the reasonable satisfaction of Council the following insurances in relation to the Works required to be carried out by the Developer under this Agreement up until Hand-Over of the Works in accordance with this Agreement:
- 23.3.1 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;
- 23.3.2 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;
- 23.3.3 workers compensation insurance as required by law; and
- 23.3.4 any other insurance required by law.
- 23.4 If the Developer fails to comply with clause 23.3, 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 debt due from the Developer to Council, payable on demand.
- 23.5 The Developer is not to commence to carry out any Works unless it has first provided to Council a certificate of currency for each of the insurances specified in clause 23.3.

24. Provision of Security

- 24.1 On or before the grant of the Road Opening Permit, the Developer must give the Council 2 unconditional undertakings for:
- 24.1.1 the General Security; and
- 24.1.2 the Rectification Security,
- for the due, prompt and proper observance and performance by the Developer of its obligations under this Agreement in relation to the Works.
- 24.2 Each unconditional undertaking required under clause 24.1 must be an irrevocable and unconditional on demand undertaking (with no expiry date) on terms approved in writing by Council. For the avoidance of doubt, the Developer must provide 2 separate unconditional undertakings.
- 24.3 On each anniversary of the date of this Agreement:
- 24.3.1 the security amount required for each unconditional undertaking required under clause 24.1 will be increased by the same percentage as the percentage increase, if any, in the Consumer Price Index in the 12 months prior to the relevant anniversary. The increased security amount will be the amount of security required for the 12 months immediately following the relevant anniversary; and
- 24.3.2 the Developer must provide replacement Security to Council for the revised Security Amount adjusted in accordance with clause 24.3.1.



- 24.4 Any unused portion of an unconditional undertaking that is held by the Council immediately prior to the receipt by Council of the replacement Bank Guarantee under clause 24.3.2, must be returned to the Developer upon receipt of the replacement unconditional undertaking.
- 24.5 The Parties agree that Council may, acting reasonably, impose conditions of Development Consent on the Development under section 4.17 of the Act specifying that the first Occupation Certificate for the Development must not be issued until the Developer has achieved Hand-Over for each of the Items of Work.
- 24.6 The Parties agree that, in respect of the Works, where Council is the certifying authority, it may withhold the issue of the relevant Construction Certificate or Occupation Certificate (as appropriate) until such time as the identified Item of Work is completed.

25. Release & return of General Security

The Council is to release the General Security to the Developer within 5 Business Days following the final Hand-Over of all of the Works.

26. Dispute Resolution

- 26.1 Any Dispute between the parties must be resolved under this clause 26.
- 26.2 If a party wishes to have a Dispute resolved or determined, it must give a written notice (**Notice of Dispute**) to the other party. A Notice of Dispute must state that it is a notice under clause 26.2 and must specify in reasonable detail:
- (a) the legal basis for and detailed particulars of the Dispute;
 - (b) the facts relied on; and
 - (c) the relief or outcome sought.
- 26.3 Within 10 Business Days after a Notice of Dispute is given (or a longer period agreed by the parties in writing), the parties must ensure that their senior representatives meet, undertake good faith negotiations and use their reasonable endeavours to resolve the Dispute.
- 26.4 If a Dispute is not resolved within the period referred to in clause 26.3, either party may give a written notice to the other party to refer the Dispute for expert determination (**Notice of Referral**).
- 26.5 Only an Expert (as defined in clause 26.6) may conduct an expert determination under this clause 26.
- 26.6 An Expert is a person:
- (a) agreed between and jointly appointed by the parties; or
 - (b) where the parties are unable to reach agreement within 10 Business Days of a Notice of Referral, a person appointed by the Resolution Institute at the request of a party.
- 26.7 The parties must promptly enter into an engagement agreement with the Expert on terms reasonably required by the Expert.
- 26.8 An agreement for expert determination under this Agreement is not an arbitration agreement under the *Commercial Arbitration Act 2010* (NSW).

26.9 The parties agree that the Expert must:

- (a) act as an expert and not as an arbitrator;
- (b) act fairly, impartially and independently of each party;
- (c) apply the Expert's own knowledge and expertise;
- (d) determine and notify the parties of the procedure for conducting the expert determination as the Expert thinks fit, and is not bound by the rules of evidence;
- (e) make any directions for conducting the expert determination as the Expert thinks fit;
- (f) conduct investigations and enquiries, examine documents and interview persons to the extent the Expert considers necessary or desirable to resolve the Dispute;
- (g) determine the Dispute as expeditiously as possible; and
- (h) give the parties a written determination with reasons, within 30 Business Days after the date of the engagement agreement referred to in clause 26.6, or any later date the parties may agree in writing.

26.10 Each party is entitled to legal representation during the expert determination.

26.11 The Expert must use all reasonable endeavours to avoid any actual or potential:

- (a) conflict of interest; or
- (b) circumstance that may reasonably be considered to adversely affect the Expert's impartiality or independence.

26.12 The Expert must immediately give the parties written notice if the Expert becomes aware of the existence of anything described in clause 26.11.

26.13 To the extent permitted by law, the Expert's determination is final and binding on the parties unless:

- (a) there is any fraud;
- (b) there is a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
- (c) both conditions below apply:
 - (a) the value of the claim exceeds \$250,000; and
 - (b) within 60 Business Days after the Expert gives the parties the determination, a Party gives written notice to the other Party referring the matter to a Court.

26.14 Any party may make a written request to the Expert to correct the determination for:

- (a) a minor mistake arising from an accident or omission; or
- (b) a defect in form.

26.15 Each party must:

- (a) cooperate in good faith with the Expert and the other party in the conduct of the expert determination; and
- (b) use reasonable endeavours to comply with all requests and directions reasonably given by the Expert.

26.16 The parties must:

- (a) comply with any reasonable direction of the Expert to provide security deposits for the Expert's fees and disbursements;
- (b) each pay half of the Expert's fees and disbursements in connection with the expert determination; and
- (c) bear their own costs in connection with the expert determination.

26.17 Nothing in clause 26 prejudices the right of a party to seek urgent injunctive or declaratory relief for any matter in connection with this Agreement.

26.18 Subject to clause 26.19, the parties must, and must ensure that the Expert must keep confidential, and not disclose to any other person:

- (a) all proceedings and submissions relating to an expert determination under clause 26, including the fact that any step in the expert determination is occurring; and
- (b) all documents and any other information (in any form) relating to the expert determination, including the Expert's determination.

26.19 A party may disclose confidential information referred to in clause 26.18:

- (a) if that party obtains the prior written consent of the other party;
- (b) as required by law; or
- (c) to the extent necessary to give effect to or to enforce a determination.

26.20 Despite the existence of a Dispute or its referral to expert determination, each party must continue to perform their obligations under this Agreement.

26.21 A party must not appoint the Expert as arbitrator, advocate or adviser in any arbitral, judicial or adjudication proceedings relating to the Dispute or any part of it, except with the other party's written consent.

26.22 Clause 26 survives the termination or expiry of this Agreement.

27. Registration of this Agreement

27.1 The Developer acknowledges that Council intends to register this Agreement under section 7.6 of the Act on the Land and on registration by the Registrar-General of Land Registry Services, the Agreement will be binding on and enforceable against

the owner of the Land from time to time as if each owner for the time being had entered into this Agreement.

27.2 Developer's obligations

- 27.2.1 The Developer must as soon as practicable after the date of this Agreement and, in any event, no later than 60 Business Days after that date, obtain the consent of each person who has an estate or interest in the Land to the registration of this instrument.
- 27.2.2 The Developer must at the request of Council, sign any *Real Property Act 1900* (NSW) dealing, acknowledgement or document, provide all relevant consents (including the consent of any mortgagee or caveator) arrange for the production of the Certificates of Title for the Land and do all other things reasonably necessary to enable this Agreement to be registered pursuant to section 7.6 of the Act.

27.3 Release and discharge of deed by Council

- 27.3.1 This Agreement ends when the Developer has complied with all of its obligations imposed under the terms of this Agreement.
- 27.3.2 The Council must promptly do all things reasonably required by the Developer to release and discharge this Agreement with respect to any part of the Land (such that the Agreement is no longer registered by the Registrar-General under section 7.6 of the Act in relation to that part of the Land) upon the earlier of:
- (a) the Developer having provided all of the Development Contributions in accordance with this Agreement; and
 - (b) this Agreement otherwise coming to an end.

27.4 Registration of Strata Plans

- 27.4.1 This Agreement will not remain or be newly registered by the Registrar-General under section 7.6 in relation to any newly created strata lot, subject to the Developer being in compliance with this Agreement to the reasonable satisfaction of the Council at that time.
- 27.4.2 For each Strata Plan lodged with the office of the Registrar-General, where that Strata Plan is intended to create a strata lot(s), the Council must do all things reasonably required by the Developer to ensure that this Agreement is not registered by the Registrar-General under section 7.6 of the Act in relation to any such lot.
- 27.4.3 If through error or other reason this Agreement is registered on the title to any strata lot, each party must do such things as are reasonably necessary, within 5 Business Days after being requested by the other, to facilitate the lodging and grant of a request for the registration of this Agreement to be removed from the title to that lot.

28. Lodgement of Caveat

- 28.1 The Developer acknowledges that the rights under this Agreement give Council a caveatable interest in the Land. Until such time as this Agreement is registered on the relevant folios of the Register held by Land Registry Services (**LRS**) pertaining to the Land, the Developer agrees that Council may lodge a caveat on the relevant folios of the Register held by LRS pertaining to the Land.

28.2 A caveat lodged by Council in accordance with this clause 28 must not prevent or prohibit the lodgement of any instrument dealing or matter required for the registration of any mortgage, subdivision plan, easement, covenant, right of way, deposited plan or strata plan relating to the Development. The Developer must not lodge a lapsing notice or take any action to obtain or seek a withdrawal or removal of the caveat, unless:

28.2.1 the Developer's obligations under this Agreement have been satisfied; or

28.2.2 this Agreement has otherwise come to an end.

28.3 If Council lodges a caveat in accordance with clause 28, Council must:

28.3.1 ensure that the caveat does not prevent or delay the registration of this Agreement;

28.3.2 immediately execute the relevant forms to remove the registration of any caveat lodged by Council in respect of the Land within 5 Business Days of registration of this Agreement on the Land in accordance with this clause 28;

28.3.3 provide any consent or other documentation required to permit the registration of:

- (a) any easements to burden or benefit the Land;
- (b) any variations of lease (including by way of exercise of option), or transfers of lease, over any part of the Land;
- (c) any lease;
- (d) the subdivision of the Land for the purpose of creating parcels; and
- (e) the subdivision of the Parking Land.

29. Assignment and transfer

29.1 A Party must not assign, novate or deal with any right, including transfer of the Land, or obligation under the Agreement without the prior written consent of the other Party.

29.2 In respect of a request by the Developer for Council's consent under clause 29.1, Council must not unreasonably withhold consent under this clause, provided that the matters specified in clause 29.3 are satisfied.

29.3 The matters required to be satisfied for the purposes of clause 29.1 are:

29.3.1 the Developer has, at its own cost, first procured the execution by the person to whom the Developer's rights or obligations under this Agreement are proposed to be assigned, novated, sold, transferred, delegated or otherwise encumbered (**Proposed Transferee**), of an agreement in favour of the Council on terms satisfactory to Council acting reasonably; and

29.3.2 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;

29.3.3 the Developer has agreed to pay all reasonable fees and expenses (including legal fees) incurred by Council in connection with the proposed

assignment, novation or dealing and the investigation of the Proposed Transferee; and

29.3.4 the Developer is not in breach of this Agreement.

29.4 Any purported dealing in breach of clause 29 is of no effect.

29.5 Notwithstanding clause 29.1 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 on a proposed Strata Plan, without compliance with clause 29.3.

30. Review of this Agreement

30.1 The Developer is to provide to Council by not later than each anniversary of the date on which this Agreement is entered into a report detailing the performance of its obligations under this Agreement.

30.2 The Parties agree to review this Agreement at least once 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.

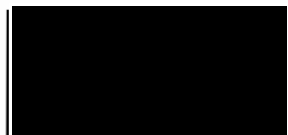
30.3 For the purposes of clause 30.2, the relevant changes include (but are not limited to):

- (a) 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;
- (b) any change to the Development;
- (c) any change to the Rockdale LEP;
- (d) any change to or the making of any environment planning instrument that affects the Development;
- (e) if the Developer is unable to obtain all consents necessary for the Developer to enter onto the Land and carry out Work as required by this Agreement;
- (f) if contributions under section 7.11, 7.12 or 7.24 are levied on the Development as a condition of Development Consent; and
- (g) the exhibition of a draft contributions plan, within the meaning of the Act, relating to land in the Council's area.

30.4 For the purposes of addressing any matter arising from a review of this Agreement referred to in clause 30.2 the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Agreement.

30.5 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.

30.6 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 30.2 is not a dispute for the purposes of clauses 26 and is not a breach of this Agreement.



31. Notices

- 31.1 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:
 - 31.1.1 delivered or posted to that Party at its address set out in the Contacts Sheet; or
 - 31.1.2 faxed to that Party at its fax number set out in the Contacts Sheet.
- 31.2 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.
- 31.3 Any notice, consent, information, application or request is to be treated as given or made if it is;
 - 31.3.1 delivered, when it is left at the relevant address;
 - 31.3.2 sent by post, 4 Business Days after it is posted; or
 - 31.3.3 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.
- 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.

32. Approvals and consent

- 32.1 Unless expressly stated otherwise 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.
- 32.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

33. Costs

- 33.1 The Developer must pay to Council the Council's reasonable costs of up to \$45,000, for preparing, negotiating, executing and stamping this Agreement, and any document related to this Agreement, within 20 Business Days of a provision of a tax invoice by Council for such payment.
- 33.2 The Developer must pay to Council the Council's reasonable costs 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:
 - 33.2.1 expert determination by an Expert under clause 26 in which case each party will bear its own costs; or
 - 33.2.2 court proceedings, in which case any costs will be paid in accordance with orders of the court only.

34. Entire Agreement

- 34.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.
- 34.2 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.

35. Further acts

- 35.1 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.

36. Governing law and jurisdiction

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

37. Joint and individual liability and benefits

- 37.1 Except as otherwise set out in this Agreement:
 - 37.1.1 any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually; and
 - 37.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

38. No fetter

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.

39. No obligation or liability

The Developer acknowledges and agrees that:

- 39.1.1 Council (or any person on its behalf) does not assume or owe any duty of care or other responsibility or obligation to the Developer in relation to the Design Specifications or the Detailed Design Specifications, and will not be required to check the Design Specifications or the Detailed Design Specifications, for suitability, errors, omissions or compliance with the requirements of law, any approval or this Agreement;
- 39.1.2 the Developer will not be entitled to make, and Council will not be liable upon or in connection with, any claim, liability or Loss arising out of or in connection with



any failure by Council (or any person on its behalf) to detect or notify the Developer of any lack of suitability, errors, omissions or non-compliance with the requirements of law, any authority or this deed in any part of the Design Specifications or the Detailed Design Specifications; and

- 39.1.3 no review of, comment upon, consent to, or approval or rejection of, nor failure or refusal to review, comment upon, consent to, or approve or reject, any Design Specifications or the Detailed Design Specifications (including under clause 11) or any other direction (including approval) by Council (or any person on its behalf) about such Design Specifications or the Detailed Design Specifications will:
- (a) relieve the Developer from, or otherwise limit, alter or affect, the Developer's liabilities or responsibilities under this Agreement or otherwise at law or in equity; or
 - (b) prejudice Council's rights against the Developer whether under this Agreement or otherwise at law or in equity.

40. Representations and warranties

- 40.1 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.

41. Severability

- 41.1 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.
- 41.2 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.
- 41.3 The parties acknowledge that under and by virtue of section 7.4(4) of the Act, any provision of this Agreement is not invalid by reason only that there is no connection between the Development and the object of the expenditure of any Development Contribution required to be made by that provision.

42. Modification

- 42.1 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.
- 42.2 The Council acknowledges that the Developer may require the approval of any financier prior to agreeing to any modification to this Agreement.

43. Waiver

- 43.1 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.
- 43.2 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.

- 43.3 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.

44. Rights cumulative

- 44.1 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.

45. Duty

- 45.1 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.
- 45.2 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.

46. Effect of Schedules

- 46.1 The Schedules to this Agreement form part of this Agreement.

47. Relationship of the Parties

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

48. GST

- 48.1 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 Act means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

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 GST Act.

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.

- 48.2 Subject to clause 48.4 and clause 48.5.2:

- 48.2.1 except where specified to the contrary in this Agreement, all consideration payable under this Agreement in relation to any supply is exclusive of GST; and
- 48.2.2 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.
- 48.3 Clause 48.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 48.4 No additional amount shall be payable by Council under clause 48.2 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.
- 48.5 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 or Division 82 of the GST Act:
- 48.5.1 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; and
- 48.5.2 that any amounts payable by each Party in accordance with clause 48.2 (as limited by clause 48.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 48.6 No payment of any amount pursuant to this clause 48, 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.
- 48.7 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.
- 48.8 This clause continues to apply after expiration or termination of this Agreement.

49. Explanatory Note relating to this Agreement

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

50. New Laws

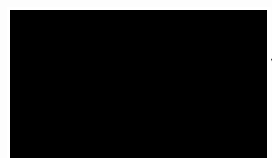
- 50.1 If the Developer is obliged by any new law to do something or pay an amount which it is already contractually obliged to do or pay under this Agreement then, to the extent only that the relevant obligation is required under both the new law and this Agreement, compliance with the new law will constitute compliance with the relevant obligation under this Agreement.

51. Force Majeure Events

- 51.1 This clause 51 applies in the case of a Force Majeure Event.
- 51.2 The Developer is not liable for any failure to comply with any of its obligations under this Agreement where the failure is caused or contributed to by a Force Majeure Event.
- 51.3 In the event that a Force Majeure Event occurs:
- (a) The Developer will notify Council in writing as soon as is reasonably practicable the extent to which it is unable to perform its obligations (the **FME Notice**); and
 - (b) The parties must use their best endeavours to mitigate the adverse effects of the Force Majeure Event and perform their obligations under this Agreement as quickly as is reasonably possible.
- 51.4 If the Developer has complied with its responsibilities under clause 51.3(a) and is still unable to carry out its obligations under this Agreement due to a Force Majeure Event, then the parties must meet within 21 days of the FME Notice to discuss in good faith alternative arrangements or contributions which can be provided in light of the Force Majeure Event.

52. Counterparts

This Agreement may be executed in any number of counterparts all of which taken together constitute one instrument.

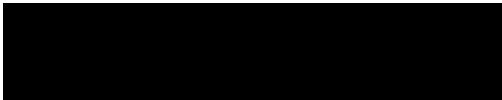


Execution

Executed as an Agreement at Rockdale

date: 26 NOVEMBER 2018

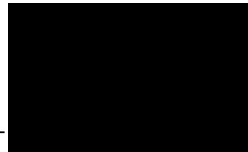
Executed on behalf of Bayside Council:



General Manager (sign)

MEREDITH WALLACE

Name of General Manager (print)



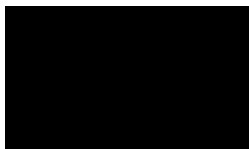
Witness (sign)

JEFFREY APPEL

Witness – Name/Position (print)

DEVELOPMENT MANAGER.

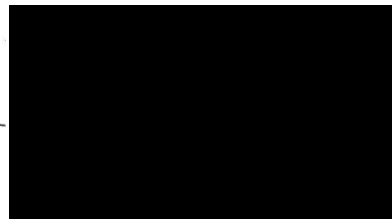
Executed by Zoe Holdings Rockdale Pty Limited pursuant to s 127 of the Corporations Act 2001:



Director (sign)

Hassan Harb

Name of Director (print)



Director/Secretary (sign)

Annette Harb

Name of Director/Secretary (print)

Schedule 1 Section 7.4 Requirements

(Clause 2.1)

Provision of the Act	This Agreement
Under section 7.4(1), the Developer has:	
(a) sought a change to an environmental planning instrument	Yes
(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 – Section 7.4(3)(a))	The whole of the Land described in Schedule 2 to this Agreement
Description of the change to the environmental planning instrument to which this Agreement applies – (Section 7.4(3)(b)(i))	Additional permissible height of a proposed mixed-use development
The scope, timing and manner of delivery of Development Contributions required by this Agreement – (Section 7.4(3)(c))	See Schedule 3 to this Agreement
Applicability of Sections 7.11 and 7.12 of the Act – (Sections 7.4(3)(d) and 7.4(5A))	See clause 6
Applicability of Section 7.24 of the Act – (Section 7.4(3)(d))	See clause 6
Benefits under the Agreement considered for Section 7.11 purposes – (Section 7.4(3)(e)),	All Development Contributions under this Agreement
Dispute Resolution – (Section 7.4(3)(f))	See clauses 26
Security & Enforcement of this Agreement – (Section 7.4(3)(g))	See clauses 24, 25
Registration of the Agreement – (Section 7.6)	Yes, see clause 27
Restriction on dealings	See clause 28
No obligation to grant consent or exercise functions – (Section 7.4(9))	See clause 38

Schedule 2 Description of the Land and the Development

(Clause 1)

1. Item 1 The Land

Lot 101 DP771165,

Lot 3 DP82942,

Lot 1 DP455421; and

Lot 1 DP912313

(together known as 75-81 Railway Street, Rockdale).

2. Item 2 The Development

The development, within the meaning of the Act, of or on or including the Land for mixed uses, achieving not less than 9,394 square metre Actual Gross Floor Area, under the Rockdale LEP once it is amended by the Instrument Change.

Schedule 3 Development Contributions

(Clause 7)

1. Development Contributions

- 1.1 If Development Consent is granted for Development between 9,394 square metres and 10,299 square metres of Actual Gross Floor Area (rounded to the nearest square metre), the Developer must provide the Development Contributions identified as Item A.1 and B.1 in Column 1 of the Contribution Table, by the date specified in Column 4 (Hand-Over Date) of the Contribution Table for each of those Items; or
- 1.2 If Development Consent is granted for Development of 10,300 square metres of Actual Gross Floor Area (rounded to the nearest square metre) or more, the Developer must provide the Development Contributions identified as Items A, 1, A.2, A.3 and B.1 in the Contribution Table, by the date specified in Column 4 (Hand-Over Date) of the Contribution Table for each Item.

2. Contribution Table

Column 1	Column 2	Column 3	Column 4
Item	Development Contribution	Agreed Contributions Value	Hand-Over Date
Part A – Works			
A.1	A1. Extension of Hesten Lane southwards by approximately 21 metres over the Parking Land including: (a) construction of new road infrastructure for approximately 21 metres of Hesten Lane; (b) construction of a perpendicular lined marked car parking area, comprising of at least 8 spaces, on the Parking Land; (c) retaining walls; (d) soft landscaping; (e) lighting; and (f) signage; as shown on the Map in clause 4 of Schedule 3	\$150,000	Prior to the issue of an Occupation Certificate for the Development. NOTE: The Works are subject to the Defect Liability Period once completed.

	and in accordance with the Detailed Design Specifications.		
A.2	A2. Streetscape improvement works between the back of the existing kerb and the property boundary in the areas shown on the Map in clause 4 of Schedule 3 and in accordance with the Detailed Design Specifications.	\$899,000	Prior to the issue of an Occupation Certificate for the Development. NOTE: The Works are subject to the Defect Liability Period once completed.
A.3	A3. Streetscape improvement works to the footpath from Railway Street to the Guild Theatre Site inside boundary (Lot 2 DP 3560, Lot 3 DP 3560), in accordance with the Detailed Design Specifications.		Prior to the issue of an Occupation Certificate for the Development. NOTE: The Works are subject to the Defect Liability Period once completed.
Part B – Dedication of Parking Land to Council			
B.1	B1. Dedication to Council of the Parking Land	\$750,000	Prior to the issue of an Occupation Certificate for the Development.

3. Adjustment of Agreed Contribution Value

- 2.1 On each anniversary of the date of this Agreement the Agreed Contribution Value of each Item of Work and the Parking Land (B.1) specified in Column 3 of the Contribution Table will be increased by the same percentage as the percentage increase, if any, in the Consumer Price Index in the 12 months prior to the relevant anniversary. The increased Agreed Contribution Value will be the Agreed Contribution Value for the 12 months immediately following the relevant anniversary.

4. Map of Works



For the avoidance of any doubt:

- if the Development is permitted under the Development Consent to be between 9,394m² and 10,299m² of Actual Gross Floor Area (rounded to the nearest square metre), the Development Contributions to be provided by the Developer are those identified in purple; and
- if the Development is permitted under the Development Consent to be 10,300m² of Actual Gross Floor Area (rounded to the nearest square metre) or more, the Development Contributions to be provided by the Developer are those identified in purple and green.

Schedule 4 Design Specifications

1. Specifications

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

- Demolition of existing surfaces and disposal off-site.
- Compaction of existing sub-grade.
- Supply and installation and compaction of DGB20 base course to Council standards.
- Supply and installation of SL72 32MPa concrete base course or standard otherwise agreed in writing by Council.
- Supply and installation of spine and core pavement treatment in accordance with Rockdale Public Domain Paving Style Sheet dated 03/10/2015.
- Associated landscape works to Council specifications.
- All existing levels to be maintained.

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:

- Public Domain Plan – Part 3: Preliminary Design of Schedule 4 – Design Specifications
- 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
- Applicable Legislation – Commonwealth and New South Wales Legislation.
- Drawing coordinates shall conform to GDA94 (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 be not less than the minimum requirements specified by the conditions of consent.

2.2 Drawing Presentation

- The detailed design plans are to be prepared in accordance with the 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, must be provided for:
 - All movements at intersections.

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 (RC), 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 pavement design shall be prepared by a registered N.A.T.A. laboratory based on sampling and testing of the subgrade materials from the site. Details of the pavement design, results of subgrade testing (including 4 day soaked 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 (AC) only.

2.8 Road Alignment

- Footpath design consistent with AS1428, and NSW Bicycle Guidelines. Attention is drawn to the provisions for minimum height clearance (2.2m); minimum clear width (1.5m); 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 centerline.
- 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 New Road (East).

- Parking signage in New Road (East).

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 conditions of consent 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 conforming to Annexure A of 0160 – *Quality (design)* must accompany the design.

2.14 Utility Services – applicable only in relation to the Extension of Hesten Lane

- The extension of Hesten Lane (Item A.1 of the Development Contributions) shall comply with Ausgrid Network Standards for underground supply of electricity, including underground supply within the new road.

2.15 Street Lighting – applicable only in relation to the Extension of Hesten Lane

- The extension of Hesten Lane (Item A.1 of the Development Contributions) shall design and implement new street lighting as required to meet the design lighting category from AS1158 (Category P3 – Lighting for roads and public spaces).
- The location of street lighting poles shall comply with RTA requirements:
 - Impact absorbing poles may be located not less than 1.0m from the edge of the nearest traffic lane; and
 - Non-impact absorbing poles may be located not less than 3.0m from the edge of the nearest traffic lane.
- 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 the 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 of the Development Application for the Development.

Schedule 5 Parking Land

The area of land shown on the below map outlined in purple to be dedicated to Council as the Parking Land – being the area of approximately 342 square metres of the Land (in stratum) forming part of Lot 1 DP 912313 and part of Lot 1 DP 45541 for the provision of parking:



Appendix

(Clause 49)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Proposed Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

1. Parties

Bayside Council ABN 80 690 785 443 of 444-446 Princes Highway, Rockdale NSW 2216

(Council)

and

Zoe Holdings Rockdale Pty Limited ACN 169 548 770 of 9 Bestic Street ROCKDALE NSW 2216

(Developer)

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

2.1 75- 81 Railway Street, Rockdale as described in **Schedule 2** to the Agreement.

2.2 This Developer is the owner of the Land.

3. Description of proposed Development

3.1 The proposed redevelopment of the Land for mixed uses (being a minimum Gross Floor Area of 9,394 square metres).

3.2 In conjunction with the Development, the Developer will provide Development Contributions by way of the dedication of land and works in kind. The extent of the works in kind vary depending on the total square metres of gross floor area achieved by the Development.

3.3 If the Development is between 9,394 square metres and 10,299 square metres of Gross Floor Area, then in conjunction with the Development the Developer will provide:

- (a) the dedication of land (approximately 342 square metres in stratum) for provision of proposed new public carparking and a section of proposed future pedestrian connection between Hesten Lane and Waltz Street, Rockdale; and
- (b) the design and construction of the extension of Heston Lane over the dedicated land and the construction of a perpendicular lined marked car parking area comprising of at least 8 spaces on the dedicated land, as well as associated ancillary works such as retaining walls, soft landscaping, lighting and signage.

3.4 If the Development is 10,300 square metres or above of Gross Floor Area, then in conjunction with the Development, the Developer will provide:

- (a) The dedication of land and the design and construction of the land extension and perpendicular car parking as described in paragraph 3.3(a) and 3.3(b) above; and
- (b) Streetscape improvement works between the back of the existing kerb and the property boundary as shown in the below map; and
- (c) Streetscape improvement works to the footpath from Railway Street to the Guild Theatre Site inside boundary (Lot 2 DP 3560, Lot 3 DP 3560).



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

4.1 Objectives of proposed Planning Agreement

4.1.1 The objectives of the proposed Planning agreement are to:

- 4.1.1.1 provide Development Contributions for the benefit of the public in the form of streetscape improvement works;
- 4.1.1.2 provide Development Contributions for the benefit of the public in the form of:
 - dedication of land at no cost to Council;
 - works to create new public carparking, the extension of a road to provide better public access, and to facilitate a proposed future pedestrian connection; and
 - if the Development is over 10,300 square metres in Gross Floor Area, provide streetscape improvement works between the back of the existing kerb and the property boundary.
- 4.1.1.3 achieve the provision of these Development Contributions with greater certainty and at less risk and less cost to Council than would be possible through the outright purchase of the land or the use of section 94 development contributions alone.

4.2 Nature and effect of proposed Planning Agreement

- 4.2.1 The proposed Planning Agreement will not come into effect until the proposed instrument Change comes into force and Development Consent is granted for development achieving not less than 9,394 square metres of Gross Floor Area on the Land.
- 4.2.2 The proposed Planning Agreement will require the Developer to provide the following public benefits at no cost to Council:
- dedication land (approximately 342 square metres in stratum) to Council for the provision of proposed new public carparking and a section of proposed future pedestrian connection between Hesten Lane and Waltz Street, Rockdale
 - the design and construct the extension of Heston Lane over the dedicated land and the construction of a perpendicular lined marked car parking area comprising of at least 8 spaces on the dedicated land, as well as associated ancillary works such as retaining walls, soft landscaping, lighting and signage and dedication of land for provision of proposed new public carparking and a proposed future pedestrian connection; and
 - if the Development is 10,300 square metres of Gross Floor Area, carry out streetscape improvement works and footpath improvement works for the Public Purpose of providing public amenities.
- 4.2.4 If the Development is between 9,393 square metres and 10,299 square metres of Gross Floor Area, the estimated value of the Works and other contributions under the proposed Planning Agreement are \$900,000. If the Development is 10,300 square metres or above of Gross Floor Area, the estimated value of the Works and other contributions under the proposed Planning Agreement is \$1,799,000.

5. Assessment of the merits of the proposed Planning Agreement

5.1 The impact of the proposed Agreement on the public or any relevant section of the public

- 5.1.1 The proposed Planning Agreement impacts on the public by promoting the public interests as outlined in paragraph 5.2.1.

5.2 How the proposed Planning Agreement promotes the public interest and one or more objects of the *Environmental Planning and Assessment Act 1979*

- 5.2.1 The proposed Planning Agreement promotes the public interest by securing the provision of Development Contributions, through the carrying out of Work for the purposes of improving community facilities and, in general, for the purposes of improving and promoting the community's quality of life.
- 5.2.2 The proposed Planning Agreement will also promote the public interest by securing the dedication of land free of cost and the carrying out of additional Work, for the purposes of improving community facilities, infrastructure and services and, in general, for the purposes of improving and promoting the community's quality of life.
- 5.2.2 The proposed Planning Agreement promotes the objects of the *Environmental Planning and Assessment Act 1979* by;
- encouraging the development and conservation of natural and urban resources for the purpose of promoting the social and economic welfare of the community and a better environment;

- encouraging the promotion and co-ordination of the orderly and economic use and development of land;
- encouraging the provision of land for public purposes; and
- encouraging the provision and co-ordination of community services and facilities.

5.3 For Planning Authorities:

5.3.1 Development corporations – How the proposed Planning Agreement promotes its statutory responsibilities

N/A

5.3.2 Other public authorities – How the proposed Planning Agreement promotes the objects (if any) of the Act under which it is constituted

The proposed Planning Agreement promotes the Principles of *the Local Government Act 1993* by:

- 5.3.2.1 allowing Council to improve and develop the resources of the area appropriate to the current and future needs of the local community and the wider public through the provision of streetscape improvement works and footpath improvement works; and
- 5.3.2.2 allowing Council to improve and develop the resources of the area through the provision of the new public car parking spaces, construction of a new section of an existing road and use dedicated land for provision of a proposed future pedestrian connection.

5.3.3 Councils – How the proposed Planning Agreement promotes the elements of the Council's Charter (cl 25E(2)(d))

- 5.3.3.1 Section 8 of the *Local Government Act 1993* (NSW), previously set out the Council's charter. However, commencing 23 September 2016, the charter has been replaced with 'Guiding principles for councils' under section 8A of the *Local Government Act*.

Section 25E(2)(d) of the *Environmental Planning and Assessment Regulation 2000* has not been amended to reflect the change. The current (section 8A Guidelines), and previous (section 8 Charter), requirements of the *Local Government Act* are addressed below.

- 5.3.3.2 The Planning Agreement promotes the following elements of the Council's charter, as stated under the previous wording of section 8 of the *Local Government Act 1993* (NSW):

- *"to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively"*

The Planning Agreement promotes this aspect of Council's charter by providing for Council to provide improvements towards facilities for the community.

- *"to effectively plan for, account for, and manage the assets for which it is responsible":*

The Planning Agreement promotes this aspect of Council's charter by providing for Council to receive the benefit of streetscape improvement works which assist Council to manage the assets which are identified in the Planning Agreement as requiring improvement.

5.3.3.3 The Planning Agreement promotes the following elements of the Guiding principles for Councils in the exercise of Council functions, as stated under section 8A of the *Local Government Act 1993* (NSW):

- *"manage lands and other assets so that current and future local community needs can be met in an affordable way."*

The Planning Agreement provides a mechanism through which Council can manage its assets by delivering improvements to community facilities, in an affordable way.

- *"work with others to secure appropriate services for local community needs."*

The Planning Agreement provides a mechanism for Council to work with others, being the Developer, to secure streetscape improvements to public streets and footpath improvements, for local community needs.

Further, the Planning Agreement provides a mechanism for Council to work with the Developer to provide new public car parking spaces, construction of a new section of an existing road and use dedicated land for provision of a proposed future pedestrian connection.

5.3.4 All planning authorities – Whether the proposed Planning Agreement conforms with the authority's capital works program

The works identified in the proposed Planning Agreement are not works which are part of the Council's capital works program however they are works which conform with aspects of the works identified as a priority by Council in its development contribution plans and will enable those works to be carried out with greater timeliness and certainty while reducing the financial risks to Council if Council were to do the works themselves.