

**PRINCES HIGHWAY APARTMENTS**

**The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957**

**591-597 Princes Highway, Rockdale in the State of New South  
Wales comprising Lot 593 of DP 1043957**

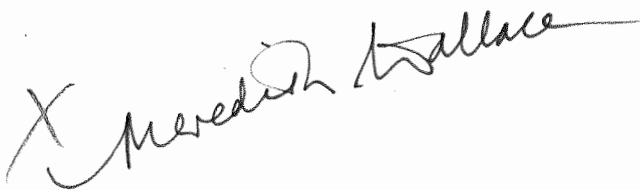
**Planning Agreement**

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

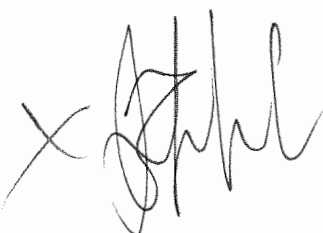
**Bayside Council**

**and**

**Janside Pty Limited**

X 

**[date to be inserted on execution]**

X 

## **PRINCES HIGHWAY APARTMENTS**

**The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957**

### **Table of Contents**

Contacts Sheet	5
Parties	6
Background	6
Operative provisions	8
Part 1 - Preliminary	8
1. Definitions and interpretation	8
2. Application of this Agreement	14
3. Status and operation of this Agreement	14
4. Further agreements relating to this Agreement	14
5. Application of s94, s94A and s94EF of the Act to the Development	14
Part 2 – Development Contributions	15
6. Provision of Development Contributions	15
7. [Intentionally Deleted]	16
8. Procedures relating to the grant of access rights to the public in perpetuity	16
9. Quality Management System for Design and Specification of an Item of Work	17
10. Carrying out of an Item of Work	17
11. Determination of Value	18
12. Quality Management System for an Item of Work	18
13. Access to the Land	19
14. Protection of people and property	19
15. Hand-Over of Works	20
16. Rectification of Defects	20
Part 3 – Other Provisions	21
17. Indemnity and insurance	21
18. Provision of Security	22
19. Release & return of Security	22

## **PRINCES HIGHWAY APARTMENTS**

**The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales**

**comprising Lot 593 of DP 1043957**

20.	Enforcement in a court of competent jurisdiction	23
21.	Dispute resolution – expert determination	23
22.	Dispute resolution – mediation	24
23.	Registration of this Agreement	24
24.	Assignment and transfer	25
25.	Review of this Agreement	26
26.	Notices	26
27.	Approvals and consent	27
28.	Costs	27
29.	Entire Agreement	27
30.	Further acts	28
31.	Governing law and jurisdiction	28
32.	Joint and individual liability and benefits	28
33.	No fetter	28
34.	Representations and warranties	28
35.	Severability	28
36.	Modification	29
37.	Waiver	29
38.	Rights cumulative	29
39.	Duty	29
40.	Effect of Schedules	29
41.	Relationship of the Parties	29
42.	GST	29
43.	Explanatory Note relating to this Agreement	31
44.	Explanatory Note relating to the VPA Tracking Matrix	31
45.	Surrender of Right of Appeal	31
	Execution	32
	Schedule 1	33

## **PRINCES HIGHWAY APARTMENTS**

**The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957**

Schedule 2	35
Schedule 3	36
Schedule 4	40
Schedule 5	41
Schedule 6	42
Appendix 1	43
Appendix 2	47
Annexure "A"      Built Form and Public Domain Brief	48

## PRINCES HIGHWAY APARTMENTS

The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957

### Contacts Sheet

#### Council:

**Name:** Bayside Council

**Address:** 2 Bryant Street, ROCKDALE NSW 2216

**Telephone:** (02) 9562 1666

**Facsimile:** (02) 9562 1777

**Email:** [council@bayside.nsw.gov.au](mailto:council@bayside.nsw.gov.au)

**Representative:** Meredith Wallace  
General Manager of Rockdale City Council  
2 Bryant Street  
Rockdale, NSW 2216  
(02) 9562 1666

Michael McCabe  
Director of City Futures  
2 Bryant Street  
Rockdale, NSW 2216  
(t) 02 9562 1666  
[Michael.McCabe@bayside.nsw.gov.au](mailto:Michael.McCabe@bayside.nsw.gov.au)

#### Developer:

**Name:** Janside Pty Limited (David Welsh)

**ACN:** 003 484 455


**Address:** 489-497 Princes Highway, Kirrawee 2232

**Telephone:** (02) 9567 2100

**Email:** [dwelsh@janside.com.au](mailto:dwelsh@janside.com.au)

#### Representative:

X

X 



## PRINCES HIGHWAY APARTMENTS

The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957

This Agreement constitutes a planning agreement within the meaning of s93F of the *Environmental Planning and Assessment Act 1979*, and facilitates the provision of Development Contributions for the Public Benefit.

### Parties

#### **Bayside Council**

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

and

#### **Janside Pty Limited**

ACN 003 484 455 of 489-497 Princes Highway, Kirrawee 2232  
(Developer)

Together referred to as “the Parties”

---

### Background

- A. The Developer owns the land identified in **Schedule 2 (Land)** being Lot 593 of DP 1043957. The Council owns the land identified in Schedule 6, being Lot 8 DP 14632 and Lots 6 and 7 DP 361824.
- B. The Parties have engaged in consultation and discussion regarding the master plan of the Land for about the past 2 years. During this period, the Developer, in collaboration and with consultation with the Council, has developed a masterplan concept in relation to the Land.
- C. The Land was subsequently included as a part of the Rockdale Town Centre Planning Proposal 2011 (**RTCPP**) submitted to the Department of Planning and Environment (**Department**). The RTCPP in summary sought flexibility for redevelopment by amending the *Rockdale Local Environmental Plan 2011* by increasing the maximum building height controls, removing the maximum FSR controls, permitting additional building height for larger development sites, rezoning land and facilitating the provision of new public open space and introduced performance criteria.
- D. On 5 November 2013, the Department made a gateway determination in relation to the RTCPP.
- E. On 15 October 2014, the RTCPP was deferred in respect to the Land.
- F. The gateway determination in relation to the RTCPP was revised on 6 May 2015.
- G. The Developer has sought changes to the LEP with respect to the Land as provided for in the Planning Proposal dated 7 May 2015 with respect to the Land (**Planning Proposal**). The Planning Proposal seeks to increase the height limit for the Land under the LEP to 47.15 m from the current 22 m. The Planning Proposal was developed in consultation and collaboration with the Council and in accordance with a planning concept presented to the Council.

## PRINCES HIGHWAY APARTMENTS

The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957

- H. The Developer has foreshadowed making a Development Application after the exhibition of the Planning Proposal.
- I. As a part of the consultation and collaboration with the Council, the Developer has offered to enter into a Voluntary Planning Agreement in accordance with section 93F of the Act in connection with the Planning Proposal.
- J. The Development Contributions that the Developer has agreed to make, upon provision of development consent for the development of the Land, are:
  - i. Establishment of North Park: Demolition of the existing buildings and structures and the construction of North Park on the Council Land, which will remain land owned by the Council and used for the benefit of the Rockdale Community;
  - ii. Establishment of Central Park: Demolition of the existing buildings and structures and the construction of Central Park which will remain owned by the Developer and then an Owners Corporation, with the provision of rights of access and use to Central Park in perpetuity for the benefit of the Rockdale Community;
  - iii. Construction of the Canal Walkway: Demolition of the existing buildings and structures and the construction of the Canal Walkway which will remain owned by the Developer and then an Owners Corporation, with the provision of rights of access and use to Canal Walkway in perpetuity for the benefit of the Rockdale Community;
  - iv. 4 Green Star Rating: That the development on the Land and the Council Land be constructed so as to achieve an improved environmental from the mandatory BASIX rating to a 4 Green Star Rating and that;
    - a. The 4 Green Star Rating is certified by the Green Building Council of Australia at the direction and cost of the Developer with reference to the Green Building Council of Australia Green Star rating system and matrix which maximises the benefits to the Rockdale Community by providing key credits to *"Transport, land use and ecology and minimising emissions"*.
    - b. Insofar as reasonably practicable, the promotion of the development of the Land and the Council Land must include reference to the *"4 Green Star Rating achieved with the assistance of the Rockdale City Council"* or similar;
    - c. That throughout the development of the Land and the Council Land, the Developer will periodically update the Council of the design and works which achieve the 4 Green Star Rating; and
    - d. That the Developer produce material which identifies the energy efficiency and sustainability of the 4 Green Star Rating when compared to the mandatory BASIX rating and that material be provided to Council and included in the promotion of the development of the Land and the Council Land as is appropriate from time to time; and
  - v. The provision of a Monetary Contribution.
- K. The Parties have agreed that no Development Contributions are to be provided if the Approved FSR is 3.9:1 or less.

## PRINCES HIGHWAY APARTMENTS

The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales

comprising Lot 593 of DP 1043957

- L. Subject to Background K the Parties have agreed as provided in clause 6, that the provision of all of the Development Contributions is dependant upon the Developer ultimately achieving an Approved FSR for the Development on the Land of 5.1:1, whereby:
- a. the Developer is to provide the Canal Walkway and 4 Green Star Rating construction;
  - b. the Monetary Contribution will decrease depending upon the FSR achieved by any Development Consent granted for the Development;
  - c. the Developer may not have to provide Central Park and access rights to the community in perpetuity in relation to Central Park depending upon the FSR achieved by any Development Consent granted for the Development; and
  - d. the Developer may not have to provide North Park, Central Part and access rights to the community in perpetuity in relation to Central Park depending upon the FSR achieved by any Development Consent granted for the Development.
- M. The Developer is prepared to make Development Contributions in connection with carrying out of the Development in accordance with this Agreement.

## Operative provisions

### Part 1 - Preliminary

#### 1. Definitions and interpretation

- 1.1 In this Agreement the following definitions apply:

**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).

**Agreement** means this Planning Agreement under which the Developer is required to make Development Contributions and includes any schedules, annexures and appendices to this Agreement.

**Approved FSR** means the FSR that is permitted under any Development Consent for the Development.

**Base FSR** means a Floor Space Ratio of 3.9:1, which represents the maximum achievable FSR on the subject site for a development complying with the relevant controls under the RTCPP.

**Bond** being a bond held in, and guaranteed by an Australian bank.

**Built Form and Public Domain Brief** means the document attached to this Agreement marked "A".



## PRINCES HIGHWAY APARTMENTS

The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957

**Canal Walkway** means the public walkway proposed to be provided on the Northern shore of Muddy Creek Canal, as indicated in the extract from the Draft Amendment to Development Control Plan 2011 at Schedule 4, with an approximate value as indicated in Column 3 of Schedule 3.

**Central Park** means the public park/ public domain area and public domain embellishment works proposed to be provided South of Subway Road, as indicated in the extract from the Draft Amendment to Development Control Plan 2011 at Schedule 4, with an approximate value as indicated in Column 3 of Schedule 3.

**Certifying Authority** has the same meaning as in the Act.

**Consent authority** has the same meaning as in the Act.

**Construction Certificate** means a construction certificate within the meaning of s109C(1)(b) of the Act.

**Contribution Value** means the value of the Development Contributions as agreed in accordance with this Agreement (as indexed in accordance with clause 6.7)

**Consultant** has the same meaning as in the Records.

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

**Council Land** means Lot 8 DP 14632 and Lots 6 and 7 DP 361824 upon which it is proposed to construct North park.

**Council Share** means 50%

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

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

**Defect** means a defect with respect to any item in **Schedule 3** which adversely affects the ordinary use and/or enjoyment of the particular item.

**Department** means the Department of Planning and Environment

**Development** means any residential flat building, including any associated commercial and retail space and basement car parking, on the Land, and also including any development for the purposes of:

- (a) a residential flat building;
- (b) commercial or retail space; or
- (c) basement car parking,

on the Land.

## **PRINCES HIGHWAY APARTMENTS**

**The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957**

**Development Application** has the same meaning as in the Act.

**Development Consent** has the same meaning as in the Act.

**Development Contribution** means the Monetary Contribution, the carrying out of Works, or the provision of any other material public benefit (including without limitation the provision of legal rights of access to the public in perpetuity over land), or any combination of them by the Developer, to be used for, or applied towards, a Public Purpose as set out in **Schedule 3**.

**Development Site** means the Land known as 591-597 Princes Highway, Rockdale in the State of New South Wales comprising Lot 593 of DP 1043957 on which the Development is proposed to be carried out.

**First Defects Liability Period** is a period of 365 days which commences at Hand-Over.

**FSR** means floor space ratio and has the same meaning as in the LEP.

**GFA** means Gross Floor Area and has the same meaning as in the 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 the handover of an Item of Work identified in Part B of **Schedule 3** in accordance with clause 15 of this Agreement.

**Hand-Over Date**, means the date of Handover of an Item of Work identified in Part B of **Schedule 3** in accordance with this Agreement.

**Inspection and Test Plan** has the same meaning as in the NSW Government Quality Management System Guidelines for Construction June 2005 (amended March 2012) and as subsequently amended.

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

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

**Land Access Rights** means the access rights over Central Park and Canal Walkway by members of the public in perpetuity as referred to in Part A of **Schedule 3**.

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

**Location Plan** means the plan which is contained in **Schedule 2**.

**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

## PRINCES HIGHWAY APARTMENTS

The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957

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

**Market Value Per m<sup>2</sup>** means the square metre rate of \$1,613.00 as set out in the report of BEM dated 13 July 2015.

**Minister** means the minister administering the Act unless otherwise specified.

**Monetary Contribution** means:

- (a) the monetary contribution as referred to in Item C1 of Schedule 3 as indexed in accordance with clause 6.7; and
- (b) the additional monetary contribution referred to in clause 6.6 as indexed in accordance with clause 6.7.

**North Park** means the public park and associated embellishment works proposed to be provided north of Subway Road on the Council Land, with an approximate value as indicated in Column 3 of Schedule 3

**Occupation Certificate** has the same meaning as in the Act.

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

**Planning Proposal** means the Planning Proposal dated 7 May 2015 in relation to 591 - 597 Princes Highway Rockdale, being land which was deferred from RTCPP.

**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 Purpose** means a public purpose as referred to in s 93F(2) of the Act.

**Rectification Certificate** means a compliance certificate within the meaning of section 109C(1)(a)(v) of the Act to the effect that work the subject of a Rectification Notice has been completed in accordance with the Rectification Notice.

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

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

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

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

**RTCPP** means Rockdale Town Centre Planning Proposal 2011.

## PRINCES HIGHWAY APARTMENTS

The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957

**Second Defects Liability Period** is a period of 365 days which commences after the First Defects Liability Period ends.

**Section 96 Application** means an application to modify a development consent under s 96 of the Act.

**Security Amount** means the amount of the Bond as referred to in accordance with clause 18.1.

**Service Provider** has the same meaning as in the NSW Government Quality Management System Guidelines, March 2012.

**Site Area** means the site area of the Development Site, being 9,664m<sup>2</sup>

**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 (Freehold Development) Act 1973* (NSW).

**Works** means the delivery of works described at B1, B2, B3 and B4 of Schedule 3 in accordance with the Built Form and Public Domain Brief.

**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.

**4 Green Star Rating** means that the development on the Land will be of a standard that meets the 4 Green Star Rating as certified by a private certifier at the direction and cost of the Developer with reference to the Green Building Council Green Star rating system and matrix which maximises the benefits to the Rockdale Community by providing key credits to "*Transport, land use and ecology and minimising emissions*".

- 1.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:
  - 1.2.1 The background of this Agreement, being the matters listed under the heading "*Background*" above, is prepared and agreed to assist in the interpretation of this Agreement. Unless expressly provided for, the matters and things addressed under that heading are used to show the intent of the Parties when entering into this Agreement.
  - 1.2.2 Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
  - 1.2.3 A reference to a Business Day means a day other than a Saturday, Sunday or bank or public holiday in Sydney.
  - 1.2.4 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.

## **PRINCES HIGHWAY APARTMENTS**

**The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957**

- 1.2.5 A reference to time is local time in Sydney,
- 1.2.6 A reference to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- 1.2.7 A reference to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.8 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.
- 1.2.9 A reference to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.10 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- 1.2.11 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.
- 1.2.12 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.
- 1.2.13 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.
- 1.2.14 Reference to the word "include" or "including" are to be construed without limitation.
- 1.2.15 A reference to this Agreement includes the agreement recorded in the Agreement.
- 1.2.16 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.
- 1.2.17 Any schedules, appendices and attachments form part of this Agreement.
- 1.2.18 Notes appearing in the Agreement are operative provisions of this Agreement.
- 1.2.19 A reference in this Agreement to the name and number of a zone under Rockdale LEP 2011 includes a reference to an equivalent zone under any local environmental plan that supersedes the LEP.

## **PRINCES HIGHWAY APARTMENTS**

**The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957**

### **2. Application of this Agreement**

- 2.1 This Agreement applies to the Land and to the Development and specifically, the associated Planning Proposal.

### **3. Status and operation of this Agreement**

- 3.1 **Clauses 23.1, 23.2, 23.3, 23.4, 28.1, 28.2 and 28.3** of this Agreement operate immediately.
- 3.2 The Parties agree that the balance of the terms of this Agreement are effective and binding on the parties if the amendment to the LEP proposed by the Planning Proposal is made, resulting in an amendment to the LEP so as to permit additional height for the Development Site.
- 3.3 Notwithstanding **Clause 3.2**, the Parties agree that the Developer is not bound by this Agreement to provide the Development Contributions (as set out in **Schedule 3**) unless:
- 3.3.1 Development Consent is granted for the Development; and
- 3.3.2 the Development is physically commenced in accordance with s 95 of the Act, with the Development to be taken to have been physically commenced in accordance with s 95 of the Act notwithstanding that a precondition to commencement may not have been satisfied.

### **4. Further agreements relating to this Agreement**

- 4.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Agreement that are not inconsistent with this Agreement for the purpose of implementing this Agreement.
- 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. Application of s94, s94A and s94EF of the Act to the Development**

- 5.1 This Agreement does not exclude the application of sections 94, 94A and 94EF of the Act in respect of the Development.

## PRINCES HIGHWAY APARTMENTS

The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957

### Part 2 – Development Contributions

#### 6. Provision of Development Contributions

- 6.1 No Development Contributions are to be provided if the Approved FSR is 3.9:1 or less.
- 6.2 If the Approved FSR is above 3.9:1 and equal to or less than 4.532:1, then:
- (a) the Developer will not be required to make the Monetary Contribution (as set out in Part C of Schedule 3) nor will the Developer be required to provide Items A1, B1 and B2 of the Development Contribution (as set out in Part B of Schedule 3); and
  - (b) the Developer will be required to provide Items A2, B3 and B4 of the Development Contributions (as set out in Part B of Schedule 3).
- 6.3 If the Approved FSR is above 4.532:1 and less than 4.70:1, then:
- (a) the Developer will not be required to make the Monetary Contribution (as set out in Part C of Schedule 3) nor will the Developer be required to provide Items A1 and B2 of the Development Contributions (as set out in Part B of Schedule 3); and
  - (b) the Developer will be required to provide Items A2, B1, B3 and B4 of the Development Contributions (as set out in Part B of Schedule 3).
- 6.4 If the Approved FSR is above 4.70:1 and equal to or less than 4.876:1 then:
- (a) the Developer will not be required to make the Monetary Contribution (as set out in Part C of Schedule 3); and
  - (b) the Developer will be required to provide Items A1, A2, B1, B2, B3 and B4 (as set out in Part B of Schedule 3).
- 6.5 If the Approved FSR is greater than 4.876:1 and equal to or less than 5.1:1, then the Developer is to make the Development Contributions and the Monetary Contribution (as set out in Items A1, A2, B1, B2, B3 and B4 of Part B of Schedule 3 and Part C of Schedule 3).
- 6.6 If the Approved FSR is greater than 5.1:1 then in addition to making all of the Development Contributions and the Monetary Contribution (as set out in Schedule 3), the Developer must make an additional monetary contribution calculated at the rate of \$820 a square metre of additional GFA above 5.1:1.
- 6.7 The Monetary Contribution as set out in Part C of Schedule 3 and the rate of \$820m<sup>2</sup> referred to in clause 6.6 shall each be indexed annually by the increase in the CPI during the prior year computed from the date of this Agreement.
- 6.8 Subject to **Clause 6.9**, the Council is to apply each Development Contribution made by the Developer under this Agreement towards the Public Purpose for which it is made and otherwise in accordance with this Agreement.

## PRINCES HIGHWAY APARTMENTS

The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957

- 6.9 Despite **Clause 6.8**, Council may apply a Monetary Contribution made under this Agreement towards a Public Purpose other than the purpose specified in this Agreement if Council considers that the public interest would be better served by applying the Monetary Contribution towards that other purpose rather than the purpose so specified.
- 6.10 If the Approved FSR results in the Development Contributions being reduced in accordance with **Clauses 6.2 to 6.6** inclusive, and:
- 6.10.1 a further Development Application (or applications) is lodged seeking to add GFA to the Development (including increasing the height of the Development so as to add GFA to the Development); or
  - 6.10.2 a Section 96 Application (or applications) is lodged seeking to add GFA to the Development (including increasing the height of the Development so as to add GFA to the Development); or
  - 6.10.3 a Construction Certificate (or certificates) is lodged which seeks to increase (lawfully or otherwise) the GFA of the Development from the GFA approved by any development consent in relation to the Development,
- the obligations to make the Development Contributions under this Agreement, and this clause 6 in particular, continue to apply to the Developer, such that:
- 6.10.4 the Approved FSR is to be calculated based upon the existing Approved FSR plus any increase in the Approved FSR as a result of the approval of a Development Application, Section 96 Application or Construction Certificate as referred to in **Sub - Clauses 6.10.1, 6.10.2 and 6.10.3**; and
  - 6.10.5 the Development Contributions required by this clause, in particular **Clauses 6.2 to 6.7 inclusive**, must be made by the Developer based upon the new Approved FSR calculated in accordance with Sub - **Clause 6.12.4**.
- 6.11 The Parties expressly provide and agree that the Developer be responsible for the delivery of the Development Contributions and the values agreed on or as determined in accordance with this Agreement shall be the agreed value of delivery of those Development Contributions. The Developer is not and cannot be required to make payment of any amount of money in lieu of delivery of the Works or the Land Access Rights.

## 7. [Intentionally Deleted]

## 8. Procedures relating to the grant of access rights to the public in perpetuity

- 8.1 At the request of the Council, the Parties have agreed that the Developer shall retain ownership of Central Park and the Canal Walkway.
- 8.2 Prior to the issue of any Occupation Certificate in relation to the Development, the Developer will cause the registration of an easement in gross in favour of the Council, or similar instrument or instruments in favour of the Council, to provide for access by members of the public in perpetuity to Central Park and the Canal Walkway for the public benefit. For the avoidance of doubt this obligation remains



## **PRINCES HIGHWAY APARTMENTS**

**The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957**

and can be enforced if an Occupation Certificate is issued in breach of this Agreement.

- 8.3 On registration of any Strata Plan affecting Central Park and the Canal Walkway resulting in Central Park and Canal Walkway being common property:

8.3.1 Canal Walkway and Central Park must be subject to the easement in gross or other instrument or instruments providing for access by members of the public in perpetuity required under **clause 8.2**; and

8.3.2 however, both parties will do all acts and things to release the individual lots in the Strata Plan from the burden of the easement in gross or instrument or instruments.

## **9. Quality Management System for Design and Specification of an Item of Work**

- 9.1 The Developer must engage a Service Provider for the design and specification of each Item of Work detailed in B0, B1, B2 and B3 of Part B of Schedule 3 and must ensure that the design and specification for such Item of Work is in accordance with 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.

## **10. Carrying out of an Item of Work**

- 10.1 As a part of the Development Application foreshadowed by this Agreement and facilitated by the Planning Proposal, the Developer will produce a detailed design and specification for the Works in accordance with:

10.1.1 any reasonable lawful requirements and directions of the Council that are notified in writing to the Developer at any time before the Works are approved in accordance with this Agreement, and

10.1.2 the conditions of any Development Consent granted in relation to an Item of Work.

- 10.2 The Developer must carry out and complete each Item of Work or engage its Service Provider to carry out and complete each Item of Work, to the reasonable satisfaction of the Council, in accordance with:

10.2.1 the detailed design and specification approved by the Council,

10.2.2 all applicable laws, including those relating to occupational health and safety,

10.2.3 the conditions of any Development Consent granted in relation to the carrying out of that Item of Work; and

10.2.4 the conditions of the Development Consent relating to the Development.

## PRINCES HIGHWAY APARTMENTS

The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957

### 11. Determination of Value

- 11.1 For the purpose of this Agreement, the Parties each acknowledge that:
  - 11.1.1 the estimated Contribution Values specified in Column 3 of Schedule 3 are only the Council's estimates of such amounts and the Developer must complete the Works in accordance with Built Form and Public Domain Brief provided that in determining whether the Works have been completed in accordance with Built Form and Public Domain Brief the Council must act reasonably; and
  - 11.1.2 subject to the terms of this Agreement (including, but not limited to **Clause 33**), the Developer is entitled to determine how the Works will be delivered; and

### 12. Quality Management System for an Item of Work

- 12.1 The Developer will implement/construct each Item of Work detailed in B0, B1, B2 and B3 of Part B of Schedule 3 in accordance with:
  - 12.1.1 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
  - 12.1.2 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.
- 12.2 The Developer must;
  - 12.2.1 ensure that the carrying out of each Item of Work referred to in clause 12.1 above is supervised in accordance with the Records; and
  - 12.2.2 appoint a Consultant where such Item of Work is to be constructed by a Service Provider under contract to the Developer, or by the Developer, or any other person under the direction of the Developer;
- 12.3 for the purposes of the achieving the 4 Green Star Rating as required by Item B4 of Schedule 3, the Developer must appoint the Green Building Council of Australia to:
  - 12.3.1 certify the 4 Green Star Rating;
  - 12.3.2 consult and provide input in relation to the design and construction of the Development so as to ensure that the Development achieves a 4 Green Star Rating, including compliance with the Council's Green Star Assurance Strategy contained at **Schedule 5**; and
  - 12.3.3 periodically update the Council in writing in relation to the design and works which achieve the 4 Green Star Rating, including producing material once the Development is complete which identifies the energy efficiency and sustainability of the 4 Green Star Rating when compared to the mandatory BASIX rating.

## PRINCES HIGHWAY APARTMENTS

The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957

- 12.4 Should the Green Building Council of Australia act unreasonably or in an untimely fashion in certifying the 4 Green Energy Star Rating, the Developer may:
- 12.4.1 make a written request to the Council supported by evidence specifying the grounds upon which it claims that the Green Building Council of Australia is acting unreasonably or in an untimely fashion in certifying the 4 Green Energy Star Rating;
  - 12.4.2 seek the nomination by the Council of 3 alternative persons to provide certification with respect to the 4 Green Star Energy Rating; and
  - 12.4.3 in the event that the Council agrees in writing to the request (which it is not to unreasonably refuse) and nominates 3 alternative persons: appoint one of the three persons nominated by the Council to perform the obligations under Clause 12.3 to provide certification in relation to the 4 Green Star Energy Rating.
- 12.5 The Developer must notify the Council within 5 Business Days of the issue of a corrective action request, non-conformance report or notice of non-conformance issued by the Consultant with respect to the Item of Work in accordance with the Agreement and/or any subsequent agreement and promptly undertake all reasonable corrective action with respect to such Item of Work as required by the Council.

### 13. Access to the Land

- 13.1 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.
- 13.2 The Council is to permit the Developer to enter and occupy the Council Land for the purpose of enabling the Developer to carry out Item of Work B1 in Schedule 3 under this Agreement.
- 13.3 The Developer must take reasonable steps to limit the loss of access and/or amenity by the community to the Council Land.

### 14. Protection of people and property

- 14.1 In addition to **subclause 13.3** above, the Developer is to ensure to the fullest extent reasonably practicable in relation to the carrying out of any Work that:
- 14.1.1 all necessary measures are taken to protect people and property, and
  - 14.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
  - 14.1.3 nuisances and unreasonable noise and disturbances are prevented.

## PRINCES HIGHWAY APARTMENTS

The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957

### 15. Hand-Over of Works

- 15.1 The Developer must at least 20 business days prior to the proposed Hand - Over submit to the Council the Works-as-Executed Records and written notice for an Item of Work on which it proposes to Hand-Over of the Item of Work.
- 15.2 Council acting reasonably can, within 20 Business Days of receipt of the notice under **Subclause 15.1**,
  - 15.2.1 request information (in addition to the Works-as-Executed Records) that is relevant to the completion of the Item of Work and delay the Hand-Over of the Item of Work until the Developer has provided the additional information requested to Council's reasonable satisfaction, or
  - 15.2.2 determine that the Item of Work has not meet the design and specification approved by Council and issue a Rectification Notice implemented as pursuant to **Clause 16**.
- 15.3 An Item of Work is deemed to be Handed Over upon the submission to Council of the Works-as-Executed Records and written notice for an Item of Work and the Developer has complied with any Rectification Notice in relation to any such Item of Work as required under clause 16.
- 15.4 Following Hand Over, the Council is responsible for the maintenance of North Park save in respect of **Clauses 15.2.2 and 16**.

### 16. Rectification of Defects

- 16.1 During the First Defects Liability Period and the Second Defects Liability Period only, the Council may give to the Developer a Rectification Notice.
- 16.2 The Developer must comply with a Rectification Notice at its own cost.
- 16.3 The Developer must comply with the Rectification Notice within a period of time that is reasonable having regard to the practical performance of works required to be performed by the Rectification Notice, but not less than 3 months from the date the Developer receives the Rectification Notice.
- 16.4 When the Developer considers that rectification is complete, the Developer must give to the Council a Rectification Certificate relating to the Item of Work the subject of the relevant Rectification Notice and submit to the Council the Works-as-Executed Records and written notice for an Item of Work on which it proposes to Hand-Over of the Item of Work.
- 16.5 Council acting reasonably can, within 20 Business Days of receipt of the notice under **Subclause 15.1**,
  - 16.5.1 request information (in addition to the Works-as-Executed Records) that is relevant to the completion of the Item of Work and delay the Hand-Over of the Item of Work until the Developer has provided the additional information requested to Council's reasonable satisfaction, or

## PRINCES HIGHWAY APARTMENTS

The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957

- 16.5.2 determine that the Item of Work has not meet the design and specification approved by Council and issue a further Rectification Notice implemented as pursuant to this Clause.
- 16.6 If the Developer does not comply with a Rectification Notice within the time provided at **Subclause 16.3**, the Council may, subject to **Subclause 16.7**, do such things as are necessary to rectify the Defect and may recover, as a debt due and owing in a court of competent jurisdiction, any reasonable cost incurred by the Council in rectifying the Defect.
- 16.7 Before the Council may rectify any Defect in accordance with **Subclause 16.7**, it must;
  - 16.7.1 Notify the Developer in writing of its intention to exercise its right pursuant to **Subclause 16.6**;
  - 16.7.2 Provide the Developer a further 14 days to comply with the Rectification Notice or provide some other response in writing;
  - 16.7.3 Reasonably consider the content of any other written response provided by the Developer provided in that 14 day period.
- 16.8 Save for during the First Defects Liability Period and the Second Defects Liability Period, the Council may not give to the Developer a Rectification Notice or require the Developer to perform rectify any Defect or seek the costs of any rectification from the Developer.

## Part 3 – Other Provisions

### 17. Indemnity and insurance

- 17.1 This clause applies until the expiration of the First Defects Liability Period and Second Defects Liability Periods only.
- 17.2 The Developer indemnifies Council from and against all Loss, except to the extent that any Loss is caused or contributed to by the deliberate or negligent act or omission of Council, its employees, officers, agents, contractors and workmen.
- 17.3 The Developer is to take out and keep current to the reasonable satisfaction of Council the following insurances in relation to Work required to be carried out by the Developer under this Agreement up until the Work is taken to have been completed in accordance with this Agreement:
  - 17.3.1 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,
  - 17.3.2 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,

## PRINCES HIGHWAY APARTMENTS

The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales

comprising Lot 593 of DP 1043957

- 17.3.3 workers compensation insurance as required by law, and
- 17.3.4 any other insurance required by law.
- 17.4 If the Developer fails to comply with **Clause 17.3**, 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 and payable within 30 days after providing an invoice and which may be recovered as a liquidated debt due in a court of competent jurisdiction.
- 17.5 The Developer is not to commence to carry out any Work unless it has first provided to Council satisfactory written evidence of all of the insurances specified in **Clause 17.3**.

## 18. Provision of Security

- 18.1 The Parties agree that the obligation to carry out the Works to be carried out by the Developer pursuant to clause 12 will be secured by a Bond, equal to value of the Works under this Agreement, which the Developer will provide to the Council prior to the issue of the Above Ground Construction Certificate.
- 18.2 The Bond may not be requested and no Bond may be retained by the Council until after the foreshadowed Development Consent for the Development is granted by the Council and the Developer gives Council notice of its intention to commence development pursuant to section 81A(2)(c) of the Act and the Development is physically commenced as provided in section 95 of the Act.
- 18.3 The Developer acknowledges that the Council or other Consent Authority may impose conditions of Development Consent on the Development under section 80A of the Act specifying that the Monetary Contribution, if any, specified in Schedule 3 are to be provided in accordance with the Timing specified in Column 4 of Schedule 3.
- 18.4 The Parties agree in respect of the Items of Works identified in **Schedule 3** that, 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.

## 19. Release & return of Security

- 19.1 The Council is to release the Bond to the Developer as soon as practical following Hand-Over, but may retain the Rectification Security (which can be provided by the Developer as a new bond or bank guarantee in exchange for a full release of the Bond) until the end of the First Defects Liability Period.
- 19.2 If Council incurs a cost in rectifying a Defect in an Item of Work, it may draw on the Rectification Security or alternatively, this cost shall be a liquidated debt due and payable by the Developer to Council within 30 days after the production of an invoice and which may be recovered by Council from the Developer in a court of competent jurisdiction.
- 19.3 For the purpose of **clause 19.2**, Council's costs of rectifying a Defect in an Item of Work includes, but is not limited to:

## **PRINCES HIGHWAY APARTMENTS**

**The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales**

**comprising Lot 593 of DP 1043957**

- 19.3.1 the reasonable costs of Council's officers, personal representatives, agents and contractors reasonably incurred for that purpose,
- 19.3.2 all fees and charges necessarily or reasonably incurred by Council in order to have the Item of Work rectified, and
- 19.3.3 without limiting **clause 19.3.2**, all legal costs (assessed on an indemnity basis) and expenses reasonably incurred by Council, by reason of the Developer's failure to comply with this Agreement.

## **20. Enforcement in a court of competent jurisdiction**

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

## **21. Dispute resolution – expert determination**

- 21.1 This clause applies to a dispute under this Agreement which relates to a matter that can be determined by an appropriately qualified expert.
- 21.2 Any dispute between the parties as to whether a dispute to which this clause applies can be determined by an appropriately qualified expert is to be referred to the Chief Executive Officer of the professional body that represents persons with the relevant expertise for determination, which is to be final and binding on the Parties.
- 21.3 Such a dispute is taken to arise if one Party gives another party a notice in writing specifying particulars of the dispute.
- 21.4 If a notice is given under **Clause 21.3**, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 21.5 If the dispute is not resolved within a further 28 days, the dispute must be referred to the President of the NSW Law Society to appoint an Expert for Expert Determination.
- 21.6 The Expert Determination is binding on the parties except in the case of fraud or misfeasance by the Expert.
- 21.7 Each Party must bear its own costs arising from or in connection with the appointment of the Expert and the Expert Determination.
- 21.8 This clause survives the completion or termination of this Agreement.

## PRINCES HIGHWAY APARTMENTS

The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957

### 22. Dispute resolution – mediation

- 22.1 This clause applies to any dispute under this Agreement other than a dispute to which **Clause 21** applies.
- 22.2 Such a dispute is taken to arise if on party gives another Party a notice in Writing specifying particulars of the dispute.
- 22.3 If a notice is given under **Clause 22.2**, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 22.4 If the dispute is not resolved within a further 28 days, the Parties must mediate the dispute in accordance with the Mediation rules of the Law Society of New South Wales published from time to time and must request the President of the law Society, or the President's nominee, to select a mediator.
- 22.5 If the dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 22.6 This clause survives the completion or termination of this Agreement.

### 23. Registration of this Agreement

- 23.1 The Parties agree to register this Agreement for the purposes of section 93H of the Act.
- 23.2 The Developer must lodge this Agreement for registration on the Register pertaining to Land no later than 28 days after the date of this Agreement including obtaining the consent of any mortgagee or other person who has an interest in the Land.
- 23.3 The Council must promptly do all things reasonably required by the Developer and provide all necessary consents in order to enable the Developer to comply with its obligations under **clause 23.2**.
- 23.4 The Developer must use all reasonable endeavours to obtain such registration as soon as practicable and must promptly after registration deliver to the Council a title search of the Land confirming registration of this Agreement.
- 23.5 **Release and discharge of Agreement by Council**

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 93H of the Act in relation to that part of the Land) upon the earlier of the practical completion of the Development including the Works contemplated in this Agreement



## PRINCES HIGHWAY APARTMENTS

The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957

### 23.6 Registration of Strata Plans

- 23.6.1 This Agreement will not remain or be newly registered by the Registrar-General under section 93H 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.
- 23.6.2 Any Strata Plans that are registered must ensure that the ongoing management and maintenance of Central Park and Canal Walkway if to be the responsibility of the owner's corporation for the Strata Plan and not Council;
- 23.6.3 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 93H of the Act in relation to any such lot.
- 23.6.4 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

### 24. Assignment and transfer

- 24.1 Subject to clause 24.2, the Developer may,
  - 24.1.1 if the Developer is the owner of the Land, transfer the Land to any person, or
  - 24.1.2 assign, transfer, dispose or novate to any person the Developer's rights or obligations under this Agreement
- 24.2 The matters required to be satisfied for the purposes of **clause 24.1** are as follows:
  - 24.2.1 the Developer has, at no cost to Council, first procured the execution by the person to whom the Developer's rights or obligations under this Agreement are to be assigned or novated, of an agreement in favour of the Council on terms satisfactory to Council acting reasonable, and
  - 24.2.2 Council, by notice in writing to the Developer, has stated that evidence satisfactory to Council has been produced to show that the assignee or novatee, is reasonably capable of performing its obligations under the Agreement, and
  - 24.2.3 the Developer is not in breach of this Agreement;
  - 24.2.4 the Council will not suffer any actual and substantial loss or erosion of its rights under this Agreement;
  - 24.2.5 the community will not suffer any actual and substantial loss or erosion of the benefits that will be provided to it by this Agreement; and

## PRINCES HIGHWAY APARTMENTS

The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957

24.2.6 Council is provided sufficient evidence to reasonably satisfy it that the transferee, assignee or novatee, is reasonably capable of performing its obligations under the Agreement.

24.3 Notwithstanding this clause 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 this clause.

## 25. Review of this Agreement

25.1 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.

25.2 The report referred to in this clause is to be in such a form and to address such matters as may be notified by Council to the Developer from time to time.

25.3 The Parties agree to review this Agreement every 2 years, and otherwise if either Party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Agreement.

25.4 For the purposes of this clause, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables Council or any other planning authority to restrict or prohibit any aspect of the Development.

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

25.6 If this Agreement becomes illegal, unenforceable or invalid as a result of any change to a law, the parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Agreement is entered into.

25.7 A failure by a Party to agree to take action requested by the other party as a consequence of a review referred to in this Clause is not a dispute for the purposes of **Clauses 21 and 22** and is not a breach of this Agreement.

## 26. Notices

26.1 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:

26.1.1 delivered or posted to that Party at its address set out in the Contacts Sheet,

26.1.2 emailed to that Party at its email address set out in the Contacts Sheet.

26.2 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.

## **PRINCES HIGHWAY APARTMENTS**

**The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales**

**comprising Lot 593 of DP 1043957**

- 26.3 Any notice, consent, information, application or request is to be treated as given or made if it is;
  - 26.3.1 delivered, when it is left at the relevant address.
  - 26.3.2 sent by post, 2 Business Days after it is posted.
  - 26.3.3 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.
- 28.4 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.

### **27. Approvals and consent**

- 27.1 Except as otherwise set out in this Agreement, or as required by any statutory obligations, a Party may not unreasonably give or withhold an approval or consent to be given under this Agreement or as a part of the Planning Proposal or as a part of the Development Proposal.
- 27.2 A Party is obliged to give its written reasons upon request for giving or withholding consent or for giving consent subject to conditions.

### **28. Costs**

- 28.1 The Developer is required to pay to Council the Council's reasonable costs of preparing, negotiating, executing and stamping this Agreement, and any document related to this Agreement within 20 business days of a written demand by Council for such payment.
- 28.2 The Developer is also required to pay to Council a contribution of \$500 towards Council's costs of preparing the template document on which this Agreement is based within 7 days of a written demand by Council for such payment.
- 28.3 The Developer is also required to 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 court proceedings, in which case any costs will be paid in accordance with orders of the court only.

### **29. Entire Agreement**

- 29.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.
- 29.2 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.

## **PRINCES HIGHWAY APARTMENTS**

**The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957**

### **30. Further acts**

- 30.1 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.

### **31. Governing law and jurisdiction**

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

### **32. Joint and individual liability and benefits**

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

### **33. No fetter**

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

### **34. Representations and warranties**

- 34.1 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.

### **35. Severability**

- 35.1 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.
- 35.2 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.

## **PRINCES HIGHWAY APARTMENTS**

**The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales**

**comprising Lot 593 of DP 1043957**

### **36. Modification**

- 36.1 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.

### **37. Waiver**

- 37.1 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.
- 37.2 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.
- 37.3 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.

### **38. Rights cumulative**

- 38.1 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.

### **39. Duty**

- 39.1 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.
- 39.2 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.

### **40. Effect of Schedules**

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

### **41. Relationship of the Parties**

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

### **42. GST**

- 42.1 In this clause:

## PRINCES HIGHWAY APARTMENTS

The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957

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

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

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

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

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

- 42.2 Subject to **Clause 42.4**, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 42.3 **Clause 42.2** does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 42.4 No additional amount shall be payable by Council under **Subclause 42.2** 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.
- 42.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to division 81 of the *A New Tax System (Goods and Services Tax) Act 1999*, each Party agrees:
  - 42.6 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
  - 42.7 that any amounts payable by each Party in accordance with **Subclause 42.2** (as limited by **Subclause 42.4**) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 42.8 No payment of any amount pursuant to this **Clause 42**, 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.
- 42.9 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a Party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 42.10 This clause continues to apply after expiration or termination of this Agreement.

## PRINCES HIGHWAY APARTMENTS

The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales

comprising Lot 593 of DP 1043957

### 43. Explanatory Note relating to this Agreement

- 43.1 The **Appendix 1** contains the Explanatory Note relating to this Agreement required by clause 25E of the Regulation.
- 43.2 Pursuant to clause 25E(7) of the Regulation, each Party agrees that the Explanatory Note in **Schedule 1** of the **Appendix** is not to be used to assist in construing this Planning Agreement.

### 44. Explanatory Note relating to the VPA Tracking Matrix

- 44.1 The Appendix 2 contains a VPA Tracking Matrix that was used during negotiations and is included in this Agreement as an aide in understanding the operation of the VPA Contributions and there interaction with the Planning Proposal, Development Consent and s94, 94A and 94EF of the Act

### 45. Surrender of Right of Appeal

- 45.1 The Developer is not to 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 96 of the Act to modify a Development Consent relating to the Development to the extent that any such proceedings relate to the existence of this Agreement or requires any aspect of this Agreement to be performed according to the terms of this Agreement.

X

X

*[Handwritten signature]*

*[Handwritten signature]*

**PRINCES HIGHWAY APARTMENTS**

**The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales**

**comprising Lot 593 of DP 1043957**

**Execution**

**Executed as an Agreement at Rockdale**

date: 6 June 2018

---

**Executed on behalf of Council:**



General Manager (sign)



Witness (sign)

Meredith Wallace

Name of General Manager (print)

JEFFREY APPEL

Witness - Name/Position (print)

*Development Manager*

---

**Executed on behalf of the Developer under s 127 of the *Corporations Act 2001*:**

**JANSIDE PTY LIMITED ACN 003 484 455**

---

Director (sign)

---

Director/Secretary (sign)

---

Name of Director (print)

---

Name of Director/Secretary (print)



## PRINCES HIGHWAY APARTMENTS

The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales

comprising Lot 593 of DP 1043957

### Schedule 1

(Clause 3)

#### Section 93F Requirements

Provision of the Act	This Agreement
Under section 93F(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
<b>Description of the land to which this Agreement applies – Section 93F(3)(a))</b>	The whole of the Land described in <b>Schedule 2</b> to this agreement
<b>Description of the change to the environmental planning instrument to which this Agreement applies – (Section 93F(3)(b)(i))</b>	Additional height.
<b>Description of the development to which this Agreement applies – (Section 93F(3)(b)(ii))</b>	The Development Application proposed to be made by the Developer
<b>The scope, timing and manner of delivery of Development Contributions required by this Agreement – (Section 93F(3)(c))</b>	See Schedule 3
<b>Applicability of Sections 94 and 94A of the Act – (Sections 93F(3)(d) and 93F(5A))</b>	Yes
<b>Applicability of Section 94EF of the Act – (Section 93F(3)(d))</b>	Yes

*Meredith Wallace*

**PRINCES HIGHWAY APARTMENTS**

**The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957**

<b>Benefits under the Agreement considered for Section 94 purposes – (Section 93F(3)(e)),</b>	NIL
<b>Dispute Resolution – (Section 93F(3)(f))</b>	<b>See Clauses 21 &amp; 22</b>
<b>Security &amp; Enforcement of this Agreement – (Section 93F(3)(g))</b>	<b>See Clauses 14, 16,18, 19, 20 and 28</b>
<b>Registration of the Agreement – (Section 93H)</b>	<b>Yes, see Clause 23</b>
<b>Restriction on dealings</b>	<b>See Clause 24</b>
<b>No obligation to grant consent or exercise functions – (Section 93F(9))</b>	<b>See Clause 33</b>

## PRINCES HIGHWAY APARTMENTS

The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957

### Schedule 2

(Clause 1)

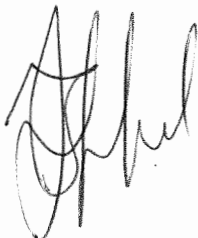
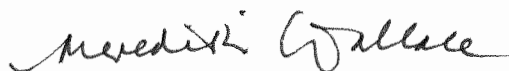
#### The Land

DEVELOPMENT SITE:

591-597 Princes Highway, Rockdale comprising Lot 593 of DP 1043957

Plan re Council Walkway

Plan re Central Park

A stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke.A handwritten signature in black ink that reads "Meredith Wallace".

## PRINCES HIGHWAY APARTMENTS

The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957

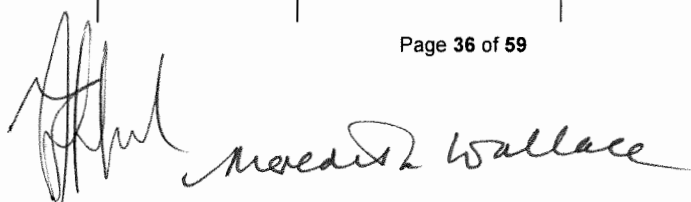
### Schedule 3

(Clause 6)

#### Development Contributions

##### Part A: Land Access Rights

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Public Benefit	Council's Estimate of Contribution Value	Agreed Contribution Value	Timing
<b>A</b>	<b>Community Park and Central Square– land access</b>			
A1	Provide access in perpetuity to the public for public open space for that part of the Land labelled 'Central Park' and enclosed a corresponding blue broken line on the map in <b>Schedule 2</b> , by way of registration of an easement in gross in favour of the council, or similar instrument in favour of Council, including all associated survey, subdivision and legal costs.		\$1,610,000	Prior to the issue of any Occupation Certificate in relation to the Development. For the avoidance of doubt this obligation remains and can be enforced if an Occupation Certificate is issued in breach of this Agreement.
A2	Provide access in perpetuity to the public for public open space for that part of the Land labelled 'Canal Walkway' and enclosed a corresponding blue broken line on the map in <b>Schedule 2</b> , by way of registration of an easement in gross in favour of the council, or similar instrument in favour of Council,	\$0		Prior to the issue of any Occupation Certificate in relation to the Development. For the avoidance of doubt this obligation remains and can be enforced if an Occupation Certificate is issued in breach of this Agreement.



# **PRINCES HIGHWAY APARTMENTS**

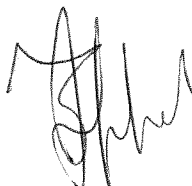
**The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales**

**comprising Lot 593 of DP 1043957**

	including all associated survey, subdivision and legal costs.			
--	---	--	--	--

## **Part B: Works**

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Public Benefit	Council's Estimate of Contribution Value	Agreed Contribution Value	Timing
<b>B</b>	<b>North Park, Central Park, Canal Walkway and 4 Green Star Works</b>			
B0	Prepare detailed design for North Park, Central Park, and Canal Walkway, in accordance with specifications provided by Council.			Subject to clause 6, prior to issue of the first Construction Certificate in relation to the Development.
B1	Construct the North Park (inclusive of contingency and professional fees)	\$804,046	Construction in accordance with the Built Form and Public Domain Brief.	Prior to the issue of any Occupation Certificate in relation to the Development. For the avoidance of doubt this obligation remains and can be enforced if an Occupation Certificate is issued in breach of this Agreement.




## PRINCES HIGHWAY APARTMENTS

The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales

comprising Lot 593 of DP 1043957

B2	Construct the Central Park (inclusive of contingency and professional fees)	\$1,133,356	Construction in accordance with the Built Form and Public Domain Brief.	Prior to the issue of any Occupation Certificate in relation to the Development. For the avoidance of doubt this obligation remains and can be enforced if an Occupation Certificate is issued in breach of this Agreement.
B3	Construct the Canal Walkway (inclusive of contingency and professional fees)	\$574,227.00	Construction in accordance with the Built Form and Public Domain Brief.	Prior to the issue of any Occupation Certificate in relation to the Development. For the avoidance of doubt this obligation remains and can be enforced if an Occupation Certificate is issued in breach of this Agreement.
B4	Construct in accordance with the development approval such that the development complies with a 4 Green Star Rating as certified by a private certifier	\$3,663,000.00	Construction in accordance with the Built Form and Public Domain Brief.	Prior to the issue of any Occupation Certificate in relation to the Development. For the avoidance of doubt this obligation remains and can be enforced if an Occupation Certificate is issued in breach of this Agreement.

### Part C: Monetary Contribution

Column 1	Column 2	Column 3	Column 4
Item	Public Benefit	Agreed Contribution Value	Timing
C			
C1	Monetary contribution to the Council to be applied towards the provision of public amenities or public	\$1,780,000 noting that no GST is payable with respect to this monetary contribution.	Prior to the issue of any Construction Certificate in relation to the Development. For the avoidance of

Page 38 of 59

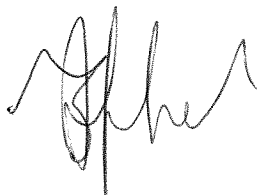
*Meredith Wallace*

**PRINCES HIGHWAY APARTMENTS**

**The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales**

**comprising Lot 593 of DP 1043957**

	services in the Rockdale Town Centre.		doubt this obligation remains and can be enforced if a Construction Certificate is issued in breach of this Agreement.
--	---	--	--

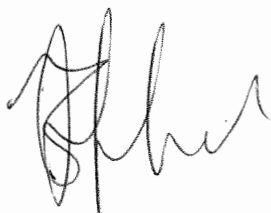


**PRINCES HIGHWAY APARTMENTS**

**The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957**

**Schedule 4**

*[Insert 2 page extract from draft Amendment to DCP, pages 7/59 - 7/60]*

A handwritten signature in black ink, appearing to be 'J. H. H.', located at the bottom left of the page.A handwritten signature in black ink, appearing to be 'Michael Wallace', located at the bottom right of the page.



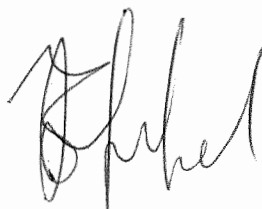
**PRINCES HIGHWAY APARTMENTS**

**The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales**

**comprising Lot 593 of DP 1043957**

**Schedule 5**

Council's Green Star Assurance Strategy

A handwritten signature in black ink, appearing to be 'Philip'.A handwritten signature in black ink, appearing to be 'Meredith Wallace'.

**PRINCES HIGHWAY APARTMENTS**

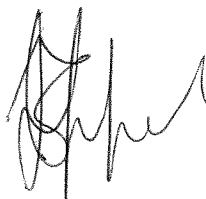
**The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957**

**Schedule 6**

**Council Land**

Lot 8 DP14632 and Lots 6 and 7 DP361824

Plan for North Park



## PRINCES HIGHWAY APARTMENTS

The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957

### Appendix 1

(Clause 41)

*Environmental Planning and Assessment Regulation 2000*

(Clause 25E)

**Explanatory Note [will need to be updated once final VPA drafting is settled]**

### Proposed Planning Agreement

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

#### 1. Parties

**Bayside Council** ABN 80 690 785 443 Branch 003 of 2 Bryant Street, ROCKDALE NSW 2216 (Council)

and

**Janside Pty Limited** ACN 003 484 455 of 489-497 Princes Highway, Kirrawee NSW 2232 (Developer)

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

2.1 591-597 Princes Highway, Rockdale being Lot 593 of DP 1043957, 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 erection on the Land of residential apartment building with retail and commercial spaces and associated basement car parking to a height of 52.34 meters AHD having a Floor space Ratio of 5.1:1.

3.2 In conjunction with this Development, the design, construction and provision of access of land as described by the area enclosed with the broken blue line at Appendix 2.

#### 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:

## PRINCES HIGHWAY APARTMENTS

The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957

- provide Development Contributions for the benefit of the public in the form of the provision of access of land by the community free of cost and the carrying out of Work, as outlined below; and
- 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.

4.2.2 The proposed Planning Agreement will require the Developer to provide the community access to their Land free of cost for the following public purposes (as described by the broken blue line on **Schedule 2** to the Agreement):

- public open space for a proposed community Park;
- The construction of a Park on land owned by the Council; and
- A public walkway along the canal.

4.2.3 The proposed Planning Agreement will also require the Developer to carry out the following Work for a public purpose (as described in Part B of **Schedule 3** to the Agreement):

- Prepare a detailed design for the whole of the proposed Community Park and a proposed Public Square;
- Demolish all buildings on the land that is to be accessible to the community and remediate any contamination on that land;
- Construct the portion of the community Park within the Developer's Land; and
- Design and construct the parks and walkway.

4.2.4 The estimated value of the land to be accessible to the community and Work to be provided under the proposed Planning Agreement is \$8,896,2280.00

### 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

## PRINCES HIGHWAY APARTMENTS

The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957

- 5.2.1 The proposed Planning Agreement promotes the public interest by securing the provision of Development Contributions, including the provision of community access to land free of cost and the carrying out of 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;
  - encouraging the provision and co-ordination of community services and facilities; and
  - encouraging ecologically sustainable development and the protection of the environment.

### 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:

- allowing Council to provide facilities appropriate to the current and future needs of the local community and the wider public and to improve and develop the resources of the area through the provision of the new community park and road widening
- allowing Council to implement the principles of ecologically sustainable development through provision of the Community Park and the remediation of any contamination on the Land.

#### 5.3.3 Councils – How the proposed Planning Agreement promotes the elements of the Council's Charter

The proposed Planning Agreement promotes the elements of the Council's Charter by:

- providing appropriate services and facilities for the community in the form of a new Community park and road widening.




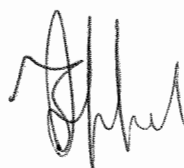
## PRINCES HIGHWAY APARTMENTS

The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957

- providing for the needs of children by providing the Community Park with appropriate facilities.
- properly managing, restoring and enhancing the environment of the area in a manner that is consistent with and promotes the principles of ecologically sustainable development through the provision of the new Community Park, the enhancement of the existing road network and the remediation of any contamination on the Land.

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

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

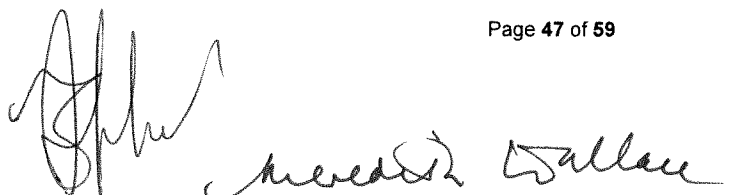


**PRINCES HIGHWAY APARTMENTS**

**The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957**

**Appendix 2**

(Clause 42)

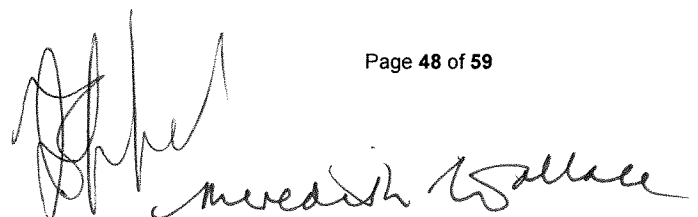
A handwritten signature in black ink, appearing to read 'Mercedes Wallace', is written over a faint, illegible printed name.

**PRINCES HIGHWAY APARTMENTS**

**The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales**

**comprising Lot 593 of DP 1043957**

**Annexure "A" Built Form and Public Domain Brief**

A handwritten signature in black ink, appearing to read 'Meredith Wallace', is located at the bottom right of the page. The signature is written in a cursive, flowing style.



## PRINCES HIGHWAY APARTMENTS

The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957

### 591-597 Princes Highway Rockdale:

#### Built Form and Public Domain Brief

---

##### Proposal:

Bayside Council has received a planning proposal for the redevelopment of 591-597 Princes Highway (the Toyota Site). The development concept seeks to increase the development yield of the site, by increasing the existing Height of Buildings and building setbacks.

The proponent wishes to enter into a Voluntary Planning Agreement (VPA) with Rockdale City Council to provide developed publically accessible open space within their development site.

This document seeks to provide an overview of the scope and proposed management of the open space.

##### Context:

#### Rockdale Town Centre Master Plan

##### 1-Community's Vision

The relevant community aspirations for the Town Centre, which were derived from the key themes of a community workshop, were to:

- Encourage redevelopment of the Centre edges to make these areas more attractive
- Improve and provide more open space for a range of users including families and children

##### 2-Design Strategy 3: Increase the Vitality and Lifestyle

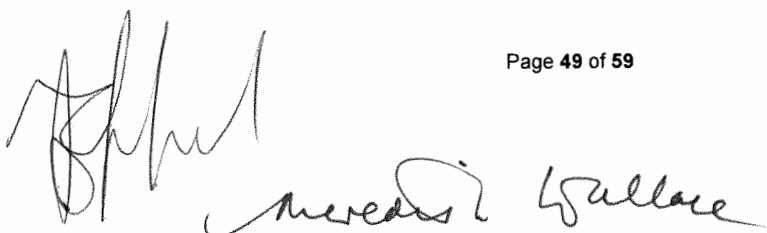
- The lifestyle of the Centre will be improved by encouraging elements in the Town Centre with a social or public focus: open spaces, dining, entertainment, markets, community services
- Usable and safe open space will be provided that suits the needs of Rockdale's culturally diverse community

##### 3-Design Strategy 4: Improve the pedestrian experience

- Improve the pedestrian experience.
- Open spaces and laneways will be activated by the adjoining building uses

15/107901

1 | Page



## Rockdale Town Centre Public Domain Plan

### 1-Public Domain Assessment

The public domain is considered to be the land in public ownership and/ or freely accessible to the public. This includes squares and parks, streetscape, including footpaths and verges, and privately owned public access corridors (i.e. malls, through-site links, arcades and interstitial zones and easements). The public domain may also include the interface between public and private; these are spaces that occur where building setbacks form an extension to streetscapes and open spaces. These interface spaces have been included for the purpose of a more thorough understanding of the public domain.

### 2-Limited Open Space

Open space facilities within the town centre core are limited.

[Providing adequate space and amenity would encourage longer stay and better activation for commercial retail and passive recreation.]

The open space constraints are as follows:

- Limited open space in overall quantum and individual park size.
- Poor quality of open space – general amenity, distribution and size range.
- Lack of appropriate scale i.e. large square or adequate pedestrian streets.
- Lack of connections (pedestrian and cycle paths) to the LGA's open space corridors.

### 3-Urban Public Space Typology

Rockdale's public domain consists of a number of space typologies including squares and parks, streetscape, laneways and/or privately owned public access corridors (malls, through-site links, and arcades) as located in *Figure 3: Urban Public Space Typology*. These types are well represented and are integral in the public domain of Rockdale. The spaces outlined below are all part of a potential open space network of Rockdale. This network would provide an opportunity to improve pedestrian links and site connections. Refer figure 3 Urban Public Space Typology

### 4-Public Domain Concept Plan

Keats Avenue Green Space, Keats Avenue identified as a strong pedestrian connection linking the Seven Ways to Muddy Creek.

### 5-Public Domain Hierarchy - Streetscape

Town Centre Edge – Hierarchy Core

The Town Centre Core is the residential and light industrial zones surrounding Rockdale Town Centre. The materiality is to be modest and limited in detail. Overall this hierarchy is to inform the residential identity of the centre characterised with tree lined streets and green verges.

## PRINCES HIGHWAY APARTMENTS

The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957

### Outcome:

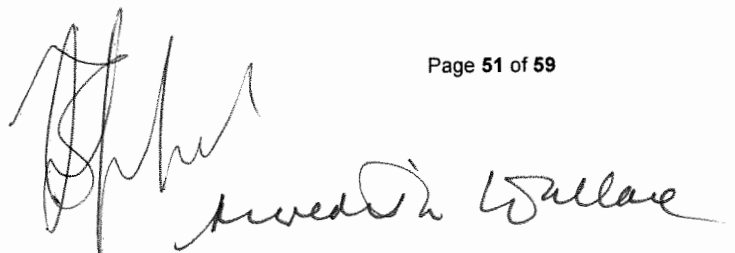
- The open space and associated designated on site through links shall
  - be available to and publicly accessible by the general public at all times
  - provide a quality and standard of environment that provides the highest level of safety civic amenity and complements the adjacent development equal to
  - provide the capacity to cater of informal activities
  - be generally in accordance with the benchmark quality and facilities table that follows
  - remain in the ownership, maintenance and management of the Toyota Site (excluding 11-13 Subway Road)

### Appropriate benchmark quality and facilities

Category	Guidelines	Appropriate outcome/objectives
Public Domain Hierarchy	Rockdale Town Centre Public Domain - Town Centre Core To be applied to: <ul style="list-style-type: none"> <li>Muddy Creek Canal Public Access</li> <li>Public Domain fronting Subway Road</li> <li>Subway Road footpath</li> </ul> Reference: Rockdale Town Centre Public Domain Style Guide	<b>Hierarchy Key Objectives:</b> <ul style="list-style-type: none"> <li>To interface with activation frontages</li> <li>Provide venues for incidental activation</li> <li>Reduce urban clutter, promote multiple use of elements (i.e. multifunction poles)</li> <li>Promote consistency and continuity through adopting appropriate/successful paving/furniture at a medium level area with components to promote unity</li> <li>Use heritage items as landmarks and character defining elements</li> <li>Use landmarks/gateways to aid orientation and legibility in the urban environment by bringing attention to particular items or aspects of the landscape, heritage item or vistas to build the communities mental map of the place</li> </ul>
Quality and Character	Complement the adjacent built form, ensure physical connectivity to existing (potential) open space and parks and improve landscape character and visual quality of the immediate environs	Develop a consistent design vocabulary of park and sportground furniture, walls, paving, signage and lighting that is consistent with the requirement of the Rockdale Town Centre Public Domain Style Guide, and is appropriate to the setting. Develop a coordinated signage strategy for the property and its immediate surroundings.

15/10/2021

3 | Page



# PRINCES HIGHWAY APARTMENTS

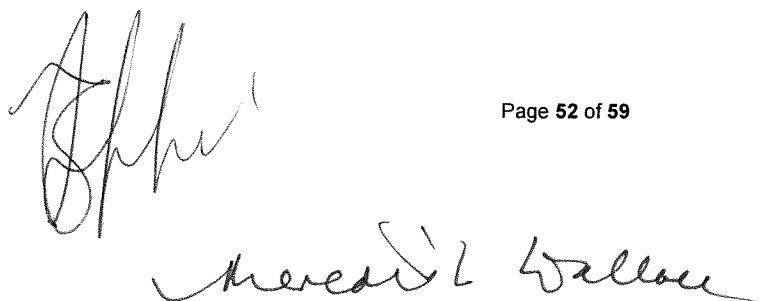
The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales

comprising Lot 593 of DP 1043957

15/107901

Category	Guidelines	Appropriate outcome/objectives
Amenity – Shade and Shelter	Provide adequate natural and man-made shade and shelter	The use of building awnings may supplement elements within the open space
Amenity – Hardstand Pavement	Ensure that there is sufficient pathway and paved areas of a suitable dimension to cater for safe and comfortable circulation for able and mobility impaired movement Reference: Rockdale Town Centre Public Domain Style Guide	Consideration must be given to active movement on proposed and potential through links. Pathways shall be clear, direct and unobstructed to ensure that they do not create areas of potential conflict or congestion.
Amenity – Seating	Provide for seating that is freely available to the general public in a formal and informal manner (such as walls and non-fixed seating) Reference: Rockdale Town Centre Public Domain Style Guide	Configure seating in a manner that caters for individuals as well as for group interaction Allow for 'formal' fixed seating spaces at 5 x 450 mm per 250m <sup>2</sup> Additional seating may be supplemented by walls, planter edges and non-fixed seating
Amenity – Lighting	The main requirements of the relevant Public Lighting Code and guidelines are set by the Essential Services Commission and the Australian Standards AS/NZS 1158 – Lighting for roads and public spaces.	Maintain adequate lighting standards whilst minimising the number of lighting installations Consideration should also be given to sustainable options such as solar lighting and timer automated cut-off sensors, etc
Amenity – Access to Power	Allow managed access to electrical power	Ensure that electrical power access is available and supply requirements do not conflict with pathways or areas of access and circulation.
Access and Circulation	To provide safe and improved access pedestrians and cyclists. To ensure access to and within park as Public Domain is freely accessible to the public Contain a (North-South) through site link	Proposed ramps, stairs and pathways to comply with relevant Council and BCA requirements consistent with Australian Standard AS4128 and Council's DCP Reduced pedestrian, cyclist and vehicle conflicts Improved public safety Ensure that the use of vehicles, when permitted within the park, are regulated and does not affect the normal functioning safety and amenity of the park Installation of signage preventing vehicles from entering. When vehicles are permitted, provide clearly demarked vehicle movement areas and encourage safe driver behaviour. Provide access for emergency at service

4 Page




## PRINCES HIGHWAY APARTMENTS

The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957

Category	Guidelines	Appropriate outcome/objectives
Maintenance and Management	Provide clean, well maintained space. Reduce the occurrence of vandalism and graffiti, and repair promptly. Reduce the amount of littering and actively encourage recycling.	Maintain records of public comments in relation to parks. Regularly review of register to guide future directions. Maintenance programs carried out in accordance with maintenance specifications. Repair vandalism or graffiti within 24 hours where possible. Provide waste and recycling bins to cater for public use. Regular waste and recycling collection to minimise litter overflow. Remove litter overflow regularly.
Asset Management	Prepare an Asset Management Plan in accordance with Rockdale City Council requirements	Business systems measuring integrated decision. Life cycle approach to management. Sustainable funding models. Service delivery.
Sustainability Principles	Ensure best environmental management practices and principles having regard to environmental sustainable design, resource use and maintenance	Energy efficiency - Water savings - Waste reduction - Natural heating and cooling - Provide a place that has a recognisable physical or symbolic relationship with local identity Monitor at regular intervals in accordance with an established Management Plan
Safety, Amenity and Risk management	Provide a safe public environment	A risk assessment of the concept design and a post construction assessment by a credible risk assessor would be required as a condition of permit approval. Regular safety audit (as identified in the Park Plan of Management)
Public Art	Public Art within the park should demonstrate a relevance to local identity and the open space setting	Crime Prevention through Environmental Design Brief. Curating and selection to be subject to Rockdale City Council review, consideration and approval. Art shall be submitted for consideration as a gift to Rockdale City Council to form a part of the Rockdale City Council Art Collection

15/107901

5 | Page



Meredith Wallace

## PRINCES HIGHWAY APARTMENTS

The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957

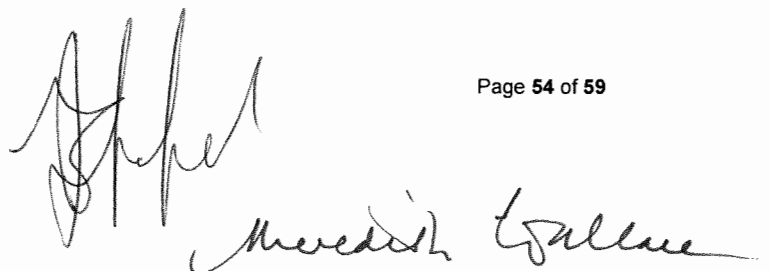
### Built Form - Ground Plane Setbacks

This Southern Gateway Precinct is defined as 591-597 Princes Highway, Rockdale.

- A new public domain with an area of at least 1,950m<sup>2</sup> (excluding Muddy Creek Canal Public Access) is to be provided centrally on the site and fronting Scurry Road. The public domain is to be privately owned and maintained but must be subject to an easement in favour of Council for its use by the general public.
- Pedestrian links are to be provided through the site as generally depicted in Rockdale Town Centre Public Domain Plan 2012.
- Ground floor uses are to address and activate the public domain as well as road frontages where possible.
- Unless stated otherwise, building setbacks are to be in accordance with 591-597 Princes Highway - Ground Plane Setbacks.

15/10/2021

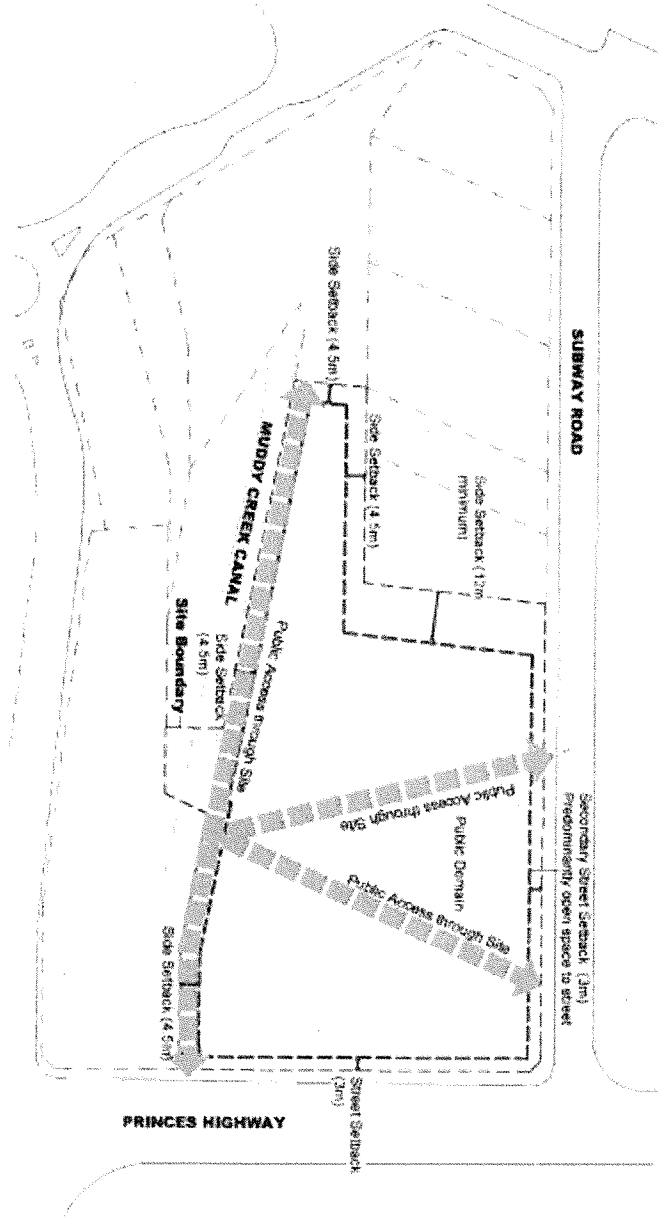
5 | Page



# PRINCES HIGHWAY APARTMENTS

The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957

## 591-570 Princes Highway - Ground Plane Setbacks



*[Handwritten signature]*  
*Meredith Wallace*

## PRINCES HIGHWAY APARTMENTS

The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957

15/10/2001

### Public Domain Assessment

2

- a. King Street Plaza
  - b. Centennial Garden
  - c. Memorial Square
  - d. Chapel Street Reserve
  - e. King Lane Garden
  - f. Kings Avenue Green Space
- Lanesways  
--- Through Block Links

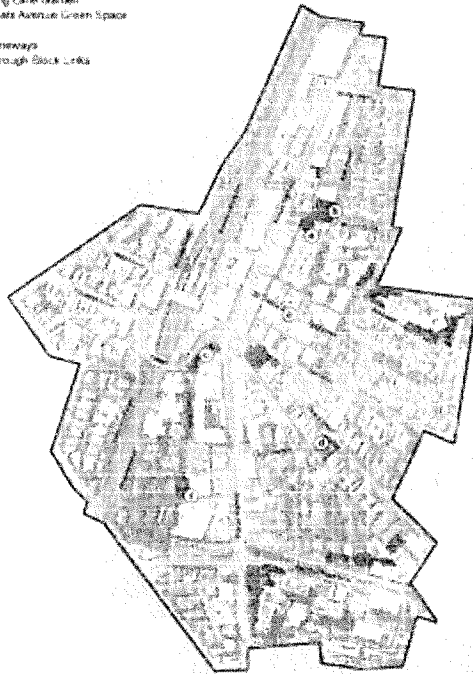


Figure 3: Urban Public Space Typology

Rockdale Urban Public Space Typology

15

Appendix 1 Figure 3: Urban Public Space Typology

8/1/2001

*[Handwritten signature]*  
Michael J. Wallace

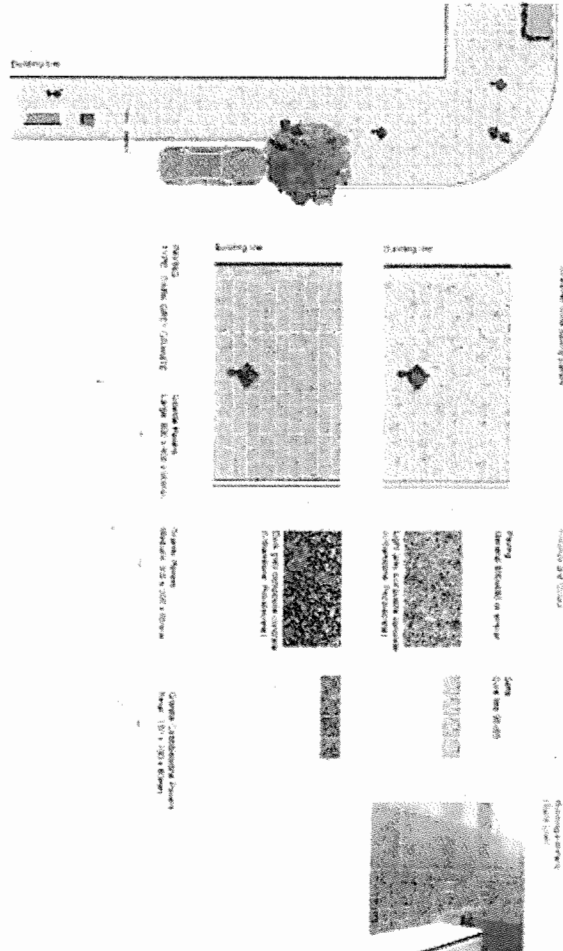


# PRINCES HIGHWAY APARTMENTS

The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957

## Appendix - 2 Rockdale Town Centre – Public Domain Style Guide

### Spine & Core



Sheet 1 of 3

15/10/2021

Rockdale Town Centre - Public Domain Style Guide

917999

*[Handwritten signature]*










# PRINCES HIGHWAY APARTMENTS

The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957

15/10/2021

## Urban Elements Sheet 2 of 3

### Rockdale Town Centre - Public Domain Style Guide

<p><b>Street Sign</b></p> <p>These signs are used to identify the street and the location of the property. They are placed at the intersection of the street and the property.</p> 	<p><b>Sign Post</b></p> <p>These signs are used to identify the street and the location of the property. They are placed at the intersection of the street and the property.</p> 	<p><b>Sign Post</b></p> <p>These signs are used to identify the street and the location of the property. They are placed at the intersection of the street and the property.</p> 
<p><b>Sign Post</b></p> <p>These signs are used to identify the street and the location of the property. They are placed at the intersection of the street and the property.</p> 	<p><b>Sign Post</b></p> <p>These signs are used to identify the street and the location of the property. They are placed at the intersection of the street and the property.</p> 	<p><b>Sign Post</b></p> <p>These signs are used to identify the street and the location of the property. They are placed at the intersection of the street and the property.</p> 
<p><b>Sign Post</b></p> <p>These signs are used to identify the street and the location of the property. They are placed at the intersection of the street and the property.</p> 	<p><b>Sign Post</b></p> <p>These signs are used to identify the street and the location of the property. They are placed at the intersection of the street and the property.</p> 	<p><b>Sign Post</b></p> <p>These signs are used to identify the street and the location of the property. They are placed at the intersection of the street and the property.</p> 

*Meredith Ballance*

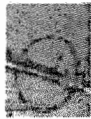
# PRINCES HIGHWAY APARTMENTS

The site known as 591-597 Princes Highway, Rockdale in the State of New South Wales  
comprising Lot 593 of DP 1043957

15/107901

Sheet 3 of 3

Rockdale Town Centre - Public Domain Style Guide



Rockdale Town Centre - Public Domain Style Guide

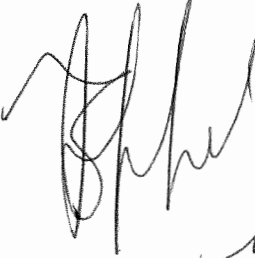
Rockdale Town Centre - Public Domain Style Guide

Rockdale Town Centre - Public Domain Style Guide

Rockdale Town Centre - Public Domain Style Guide

Rockdale Town Centre - Public Domain Style Guide

11 / Page

  
Meredith Wallace