

# **DRAFT** Planning Agreement

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Canterbury Bankstown Council

Hailiang Property Campsie Pty Ltd

Date:



Level 7, 151 Clarence Street  
Sydney NSW 2000  
Australia

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Ref:3602523

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# Planning Agreement

Dated

## Parties

1. **Canterbury Bankstown Council** ABN 45 985 891 846 of 66-72 Rickard Road, Bankstown NSW 2200 (**the Council**)
2. **Hailiang Property Campsie Pty Ltd** ACN 604 111 908 of Level 3, 205 Euston Road, Alexandria NSW 2015 (**the Developer**)

## Background

- A. The Developer is the owner of the Land.
- B. The Land is located in the Canterbury Bankstown local government area.
- C. The Developer has sought a change to an environmental planning instrument in the form of the Instrument Change so as to enable the Development to be carried out.
- D. The Developer proposes to make a Development Application to carry out the Development on the Land.
- E. The Developer has offered to enter into this Agreement in connection with the Instrument Change and the anticipated Development Application.
- F. The Agreement provides for the making of certain Development Contributions by the Developer in the circumstances set out within this Agreement.
- G. These Development Contributions are to be used for or applied towards a public purpose.

## Operative provisions

### 1. Defined meanings

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Words used in this document and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause at the back of this document.

### 2. Status of this Agreement

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#### 2.1 Planning Agreement

This Agreement is a planning agreement within the meaning of section 7.4(1) of the Act.

## **2.2 Land**

This Agreement applies to:

- (a) the Land; and
- (b) the land described in Schedule 5.

## **2.3 Development**

This Agreement applies to the Development.

## **2.4 Instrument Change**

This Agreement applies to the Instrument Change.

## **2.5 Operation**

- (a) This Agreement commences and has force and effect on and from the date when the parties have both executed this Agreement.
- (b) The party who last signed is to insert the date when this Agreement commences in space provided on the cover sheet.

## **2.6 Effect and obligations**

Despite any other provision of this Agreement, the Developer is under no obligation to make any Development Contribution in accordance with this Agreement unless:

- (a) and until the Instrument Change has been made and is in effect; and
- (b) Development Consent has been granted to carry out some or all of the Development; and
- (c) a Construction Certificate has been issued in relation to that Development Consent; and
- (d) the relevant circumstances set out in this Agreement as to when the Development Contribution must be made have arisen.

## **2.7 Warranties**

The parties warrant to each other that they:

- (a) have full capacity to enter into this Agreement; and
- (b) are able to fully comply with their obligations under this Agreement.

## **2.8 Further agreements**

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.

## **2.9 Security**

The Council is satisfied this Agreement provides for the enforcement of this Agreement by a suitable means in the event of a breach of this Agreement by the Developer, particularly by:



- (a) the ability for an Occupation Certificate to be withheld by reason of section 6.10(d) of the Act when read in conjunction with clause 4.1(a); and
- (b) the provisions of clause 11, clause 12 and clause 13.

### **3. Application of other development contribution provisions**

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#### **3.1 Local infrastructure contributions — general**

- (a) This Agreement does not exclude the application of section 7.11 of the Act to the Development.
- (b) The benefits under this Agreement are not to be taken into consideration in determining a development contribution under section 7.11 of the Act to the extent that is provided for in this Agreement.

#### **3.2 Local infrastructure contributions — fixed levies**

This Agreement does not exclude the application of section 7.12 of the Act to the Development.

#### **3.3 Special infrastructure contributions**

This Agreement does not exclude the application of section 7.24 of the Act to the Development.

### **4. Development Contributions**

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#### **4.1 Nature, extent and timing**

- (a) The Developer must make the Development Contributions in Column 3 of the Table at the point in time set out in Column 5 of the Table in accordance with this Agreement.
- (b) In relation to a Work, the reference 'make' in clause 4.1(a) is a reference to the completion of the Work for the purposes of this Agreement.
- (c) Nothing in this Agreement precludes the Developer from electing to make a Development Contribution earlier than it is required to do so.

#### **4.2 Public purpose of the Development Contributions**

- (a) Each Development Contribution must be used for or applied towards the relevant public purpose set out in Column 2 and Column 4 of the Table.
- (b) This clause 4.2 has effect after the termination of this Agreement.

### **5. Adjustment of monetary Development Contributions**

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#### **5.1 Indexation**

Monetary Development Contributions are to be indexed in accordance with this clause 5.

#### **5.2 Adjustment formula**

The monetary Development Contribution at the time of payment is determined by the following formula:

$$\frac{\$C_C \times CPI_P}{CPI_C} \#$$

Where:

- (a)  $\$C_C$  is the relevant contribution value shown in Column 3 of the Table;
- (b)  $CPI_P$  is the last published CPI at the time of the payment of the contribution;
- (c)  $CPI_C$  is the last published CPI at the date of this Agreement

## **6. Dedicating land as a Development Contribution**

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### **6.1 When land is taken to be dedicated**

A Development Contribution that is the dedication of land is taken to have been made (and made free of cost) if:

- (a) if dedication is to be effected by the registration of a plan of subdivision under section under section 9 of the *Roads Act 1993* and vested in fee simple in the Council under section 145 of that Act; or
- (b) the Council is given an instrument by the Developer, in registrable form, that (when registered) will effect the transfer of the title to the land to the Council.

### **6.2 Ancillary obligations of the parties in relation to the dedication of land**

- (a) When the Council has been given an instrument by the Developer under clause 6.1(b), the Council must promptly do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- (b) The Developer must ensure that the land to be dedicated under this Agreement is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges), when the Developer transfers that land to the Council under this Agreement.
- (c) For avoidance of doubt, clause 6.2(b) does not apply in relation to statutory rights that exist or arise under legislation which are of a type which the Developer could not prevent from affecting the land.
- (d) Despite clause 6.2(b), if, despite having used its best endeavours, the Developer cannot ensure that the land to be dedicated is free from any relevant encumbrance or affectation, then:
  - (i) the Developer may request that the Council agree to accept the land subject to those encumbrances and affectations; and
  - (ii) if the encumbrance or affectation:
    - (A) does not prevent the future use of the land for the public purpose for which it is to be dedicated under this Agreement; or
    - (B) is not a charge arising as a result of unpaid taxes or charges,the Council must not withhold its agreement unreasonably; and

- (iii) in other circumstances, the Council may withhold its agreement at its absolute discretion.

### **6.3 No warranties, etc unless express or required**

The parties are not bound by any warranty, representation, collateral agreement or implied term under the general law or imposed by legislation in relation to the Dedicated Land unless:

- (a) that warranty, representation, agreement or term is contained in the express terms of this Agreement; or
- (b) it is an implied term or warranty imposed by statute which is mandatory and cannot be excluded by the parties' agreement.

## **7. Provision of the easement for passive recreation and the positive covenant**

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### **7.1 When Item 11 and Item 12 are taken to be made**

Item 11 and Item 12 are each taken to have been made if the Council is given an instrument by the Developer, in registrable form, that (when registered) will create the given interest in land.

### **7.2 Ancillary obligations of the parties in relation to the dedication of land**

When the Council has been given an instrument by the Developer under clause 7.1, the Council must promptly do all things reasonably necessary to enable registration of the instrument to occur.

### **7.3 No warranties, etc unless express or required**

The parties are not bound by any warranty, representation, collateral agreement or implied term under the general law or imposed by legislation in relation to the land that is the subject of Item 11 and Item 12 unless:

- (a) that warranty, representation, agreement or term is contained in the express terms of this Agreement; or
- (b) it is an implied term or warranty imposed by statute which is mandatory and cannot be excluded by the parties' agreement.

## **8. Carrying out of Work as a Development Contribution**

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### **8.1 The design of Work**

- (a) The Developer is not to commence carrying out of a Work unless the Council has first approved the design for the Work in writing.
- (b) The Developer must prepare and submit the design (being a design that is consistent with the relevant entry in Column 3 of the Table) to the Council.
- (c) The Council:
  - (i) must promptly consider the design; and

- (ii) must not unreasonably withhold its approval of the design.
- (d) For the avoidance of doubt where the Council is the consent authority for a Work, nothing in this clause shall fetter the Council's discretion, as consent authority, in determining any Development Application for the Work.

**Note:** This provision does not affect section 4.15(1)(a)(iia) of the Act which says that in determining a development application, a consent authority is to take into consideration any planning agreement that is of relevance to the development the subject of the development application.

## **8.2 Manner of the carrying out of Work**

Any Work that is required to be carried out by the Developer under this Agreement is to be carried out in a proper and workmanlike manner in accordance with:

- (a) Development Consent that authorises the carrying out of the Work (if any);
- (b) the consent given under section 138 of the *Roads Act 1993* (if any); and
- (c) subject to the above — the design approved by the Council under clause 8.1.

Nothing in this Agreement may be taken to be an authorisation to carry out any Work without Development Consent or a consent given under section 138 of the *Roads Act 1993*.

## **8.3 Access to land by Developer**

- (a) The Council authorises the Developer to enter, occupy and use any land that is reasonably necessary for the purpose of performing its obligations under this Agreement.
- (b) Nothing in this Agreement creates or gives the Developer any estate or interest in any part of the land referred to in clause 8.3(a).
- (c) Nothing in this Agreement constitutes a consent to carry out work under section 138 of the *Roads Act 1993*.

## **8.4 Access to land by Council**

- (a) The Council may enter any land on which Work is being carried out by the Developer under this Agreement in order to inspect, examine or test the Work, or to remedy any breach by the Developer of its obligations under this Agreement relating to the Work.
- (b) The Council must:
  - (i) give the Developer prior reasonable notice before it enters land under this clause 8.4; and
  - (ii) comply with any reasonable directions given by the Developer in relation to accessing any land under this clause 8.4, including undertaking site induction or comply with health and safety requirements.
- (c) Nothing in this Agreement creates or gives the Council any estate or interest in any part of the land referred to in this clause 8.4.

## **8.5 Council's obligations relating to Work**

- (a) The Council must not unreasonably delay, hinder or otherwise interfere with the performance by the Developer of its obligations under this Agreement.
- (b) The Council must use its reasonable endeavours to ensure third parties unrelated to the Developer do not unreasonably delay, hinder or otherwise interfere with the performance of those obligations.

## **8.6 Protection of people, property and utilities**

- (a) The Developer must, in performing its obligations under this Agreement, as far as is reasonably practicable:
  - (i) take all necessary measures to protect people and property;
  - (ii) avoid, on public roads, unnecessary interference with the passage of people and vehicles; and
  - (iii) prevent private or public nuisances (including noise and disturbances of an unreasonable nature).
- (b) Without limiting clause 8.6(a), the Developer must not obstruct, interfere with, impair or damage any:
  - (i) public road, public footpath, public cycleway or other public thoroughfare; or
  - (ii) any publicly-owned pipe, conduit, drain, watercourse or other such utility or service on any land,except as authorised in accordance with the relevant legislation and Approvals.

## **8.7 Repair of damage**

- (a) The Developer is to maintain any Work required to be carried out by the Developer under this Agreement until the Work is completed for the purposes of this Agreement or such later time as agreed between the parties.
- (b) The Developer is to carry out its obligation under clause 8.7(a) at its own cost.

## **8.8 Completion of Work**

- (a) The Developer is to give the Council written notice of the date on which it intends to complete the Work required to be carried out under this Agreement.
- (b) The Council is to inspect the Work the subject of the notice referred to in clause 8.8(a) within 14 days of the date specified in the notice for completion of the Work.
- (c) Work required to be carried out by the Developer under this Agreement is completed for the purposes of this Agreement when the Council gives a written notice to the Developer to that effect (**the Completion Notice**).
- (d) The Council must not unreasonably withhold or delay the Completion Notice.
- (e) If the Council is the owner of the land on which Work the subject of Completion Notice is located, the Council assumes responsibility for the Work upon the issuing of the Completion Notice.

- (f) If clause 8.8(e) does not apply when a Completion Notice is issued, the Council assumes responsibility for the Work if the Council becomes the owner of the land on which the Work is located.
- (g) Before the Council gives the Developer a Completion Notice, it may, acting reasonably, give the Developer a written direction to complete, rectify or repair any specified part of the Work to the reasonable satisfaction of the Council.
- (h) The Developer, at its own cost, is to promptly comply with any direction given in accordance with clause 8.8(g).

## **8.9 Defect rectification**

- (a) The Council may, acting reasonably, give the Developer a Rectification Notice during the Defects Liability Period.
- (b) The Developer, at its own cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.
- (c) The Council is to do such things as are reasonably necessary to enable the Developer to comply with such a Rectification Notice.

## **8.10 Works-as-executed-plan**

- (a) No later than 60 days after Work is completed for the purposes of this Agreement, the Developer is to submit to the Council a full works-as-executed-plan in respect of the Work (other than Item 6 and Item 7).
- (b) The Developer, being the copyright owner in the plan referred to in clause 8.10(a), gives the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Agreement.

## **8.11 Equipment removal**

When Work on any Council owned or controlled land is completed for the purposes of this Agreement, the Developer, without unreasonable delay, is to:

- (a) remove any Equipment from land and make good any damage or disturbance to the land as a result of that removal; and
- (b) leave the land in a neat and tidy state, clean and free of rubbish.

## **8.12 Insurance**

- (a) Prior to commencing the construction of any Work (required under this Agreement), the Developer must take out and keep current (or procure that its subcontractor take out and keep current) to the reasonable satisfaction of the Council the following insurances in relation to the relevant Work up until the Work is taken to have been completed in accordance with this Agreement:
  - (i) contract works insurance, noting the Council as an interested party, for the full replacement value of the Work (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works;
  - (ii) public liability insurance for at least \$20,000,000 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party;
  - (iii) workers compensation insurance as required by law; and

- (iv) any other insurance required by law.
- (b) If the Developer does not comply with clause 8.12(a), the 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 the Council and may be recovered by the Council as a debt due in a court of competent jurisdiction.
- (c) The Developer is not to commence the construction of any Work (required under this Agreement) unless it has first provided to the Council written evidence of the relevant insurances (such as certificates of currency for the insurances) specified in clause 8.12(a)

## **9. Variations to Development Contributions**

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### **9.1 Variation may be requested and agreed to**

- (a) The Developer may, in its absolute discretion, request that the Council approve a variation to the Development Contributions (that is, a change to the any of the provisions in the Table).
- (b) The Council may, in its absolute discretion, agree to a variation of the Development Contributions, provided that the variation is generally consistent with the intended objectives and outcomes of this Agreement.

### **9.2 Effect of variation**

An agreed written variation to the Development Contributions under this clause 9 has effect as if it formed part of the Table (and the Table has no effect to the extent of any inconsistency with that document) and no amendment to this Agreement is required.

## **10. Making of a monetary Development Contribution**

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A monetary Development Contribution is taken to have been made by the Developer when the Council receives the full amount of the contribution payable:

- (a) in cash; or
- (b) upon clearance of an unendorsed bank cheque; or
- (c) by a deposit, by means of electronic funds transfer, of cleared funds into a bank account nominated by the Council.

## **11. Registration**

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### **11.1 Developer agreement to registration**

The Developer agrees to the registration of this Agreement under section 7.6 of the Act in relation to the Land.

### **11.2 Registration of this Agreement**

- (a) Within 60 Business Days of this Agreement coming into effect:

- (i) the Developer at its own expense will take all reasonably practicable steps to obtain the agreement of the persons specified in section 7.6(1) of the Act whose agreement is necessary for the Registration on Title; and
- (ii) if that agreement is obtained, take all reasonably practicable steps to secure:
  - (A) the execution of any documents; and
  - (B) the production of the relevant certificates of title; and
  - (C) the lodgement and registration of this Agreement, by the Registrar-General in the relevant folios of the Register.
- (b) The Developer must give the Council a copy of the relevant folios of the Register and a copy of the registered dealing within 21 Business Days of registration of this Agreement.

### **11.3 Release and discharge of this Agreement**

The parties agree to do all things reasonably required by the other party to promptly release and discharge this Agreement with respect to all parts of the Land upon:

- (a) the making of all relevant development contributions; or
- (b) this Agreement being terminated.

## **12. Transfer, assignment or novation**

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### **12.1 Consent for transfer of Relevant Lots**

- (a) The Developer must not transfer the Land or any part of the Land to any person without the consent of the Council.
- (b) This clause 12.1 does not apply to:
  - (i) the dedication of the Dedicated Land to the Council; or
  - (ii) to the conversion of that part of the Land that is not Dedicated Land into common property (within the meaning of the *Strata Schemes Management Act 1996*);
  - (iii) to the conversion of that part of the Land that is not Dedicated Land into association property (within the meaning of the *Community Land Management Act 1989*); or
  - (iv) the transfer of a Service Lot.

### **12.2 Consent for assignment or novation of this Agreement**

- (a) The Developer must not assign or novate to any person its rights or obligations under this Agreement without the consent of the Council.
- (b) For avoidance of doubt, this clause 12.2 does not preclude the transfer of any part of the Land.



### 12.3 The giving of consent by the Council

- (a) The Council must give its consent under clause 12.1(a) or clause 12.2(a) if:
  - (i) the Developer has, at no cost to the Council, first procured by the person to whom:
    - (A) the land will be transferred; or
    - (B) the rights or obligations under this Agreement are to be assigned or novated,  
  
the execution of a deed of novation on reasonable terms (being a deed generally in terms of the Novation Deed); and
  - (ii) either:
    - (A) there is no current Material Breach of this Agreement by the Developer;
    - (B) there is a current Material Breach of this Agreement, but the Developer has compensated the Council such that the Council is in the same financial position as it would have been had the breach not taken place; or
    - (C) there is a current Material Breach of this Agreement and it is incapable of being remedied, but the breach has not had and is unlikely to have any adverse impact on the Council's financial position.
- (b) The Council, on giving consent under clause 12.3(a) must enter into the deed of novation referred to in clause 12.3(a)(i).
- (c) In this clause 12.3 **Material Breach** means either or both of the following
  - (i) a breach of a significant obligation of a party under this Agreement;
  - (ii) a breach of substantial import or consequence to a party by the other party.

### 12.4 No requirement for consent when Agreement is registered

Clause 12.1 and clause 12.2 do not apply in connection with the transfer of the whole or any part of the Land if this Agreement is, at the time of transfer, Registered on Title.

### 12.5 Novation Deed deemed to apply in certain circumstances

If the whole or any part of the Land is transferred without a Novation Deed being entered into (**Transferred Land**), and this Agreement is registered on the title to the Land, then this Agreement is deemed to include the provisions of the Novation Deed as if it had been entered into:

- (a) by the person who has ceased to own the Transferred Land (who is taken to be the Existing Developer in the Novation Deed);
- (b) by the person who has become the owner of the Transferred Land (who is taken to be the New Developer in the Novation Deed); and
- (c) by the Council,

on the basis that:

- (d) the Effective Date is either:
  - (i) if the New Developer was not a party to the Agreement until the transfer of the Transferred Land, the date that the New Developer become a Party under section 7.6(3) of the Act; or
  - (ii) if the New Developer was a party prior to the transfer of the Transferred Land, the date that the Existing Developer provides the New Developer with an instrument, in registrable form, that (when registered) will effect the transfer of the title to the Transferred Land from the Existing Developer to the New Developer.

#### **12.6 Land may be used for finance, sales contracts may be exchanged and agreements for lease entered into**

- (a) This clause 12.6 takes precedence over the other provisions in this clause 12 .
- (b) For the avoidance of doubt:
  - (i) the Developer may mortgage, charge, encumber and/or grant a security interest (however defined or described) over or in respect of all or any of the Developer's right, powers, title, benefit and/or interest in, to, under or derived from the Land, this Agreement and/or any other asset or property of the Developer to or in favour of any financier or creditor of the Developer (or to or in favour of any agent or trustee of or for any such financier or creditor) (any such person being a **Mortgagee**); and
  - (ii) the Developer may enter into any agreement to sell, transfer, option or lease which, if exercised, may result in the formation of an agreement to sell, transfer or lease any part of the Land comprised in or forming part of the Development.

### **13. Enforcement in relation to the dedication of land**

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#### **13.1 Agreement under the Just Terms Act**

- (a) Subject to clause 13.2, if the Developer does not dedicate the land required to be dedicated under this Agreement:
  - (i) at the time at which it is required to be dedicated; or
  - (ii) at any point after that time,

the Developer consents to the Council compulsorily acquiring that land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- (b) Clause 13.1(a) is an agreement for the purposes of section 30 of the Just Terms Act.

#### **13.2 Limitations on that agreement**

The Council may only acquire land pursuant to clause 13.1 if to do so is reasonable having regard to the circumstances surrounding the failure by the Developer to dedicate the land required to be dedicated under this Agreement.

### **13.3 Ancillary obligations**

- (a) If, as a result of the acquisition referred to in clause 13.1, the Council must pay compensation to any person other than the Developer, the Developer must reimburse the Council for that amount, upon a written request being made by the Council.
- (b) The Developer indemnifies and keeps indemnified, the Council against all claims made against the Council under the Just Terms Act as a result of any acquisition by the Council of the whole or any part of the Dedicated Land under clause 13.1(a).
- (c) The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 13, including:
  - (i) signing any documents or forms;
  - (ii) producing certificates of title to the Registrar-General under the Real Property Act; and
  - (iii) paying the Council's reasonable costs arising under this clause 13.

## **14. Termination**

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### **14.1 Termination of this Agreement**

Either the Council (on one hand) or all the persons that comprise the Developer (on the other hand) may terminate this Agreement by giving 42 days written notice to the other party or parties if either:

- (a) all of the following circumstances exist:
  - (i) this Agreement has commenced prior to the Instrument Change being made;
  - (ii) the Instrument Change has not been made within 12 months of the date this Agreement commenced;
  - (iii) the party seeking to terminate this Agreement gives the other party notice of its opinion, which must have been reasonably formed, that the Instrument Change is unlikely to be made;
  - (iv) at least one calendar month has elapsed since the date of the notice referred to in clause 14.1(a)(iii); and
  - (v) the Instrument Change has not been made; and
  - (vi) the Council is satisfied, acting reasonably, that the Instrument Change will not be made; or
- (b) the Developer has made the Development Contributions required under this Agreement and any Defect Liability Period has ended.
- (c) Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this Agreement for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

## **14.2 Consequences of the termination of this Agreement**

- (a) If this Agreement is terminated under clause 14.1:
  - (i) the parties are released and discharged from their obligations under this Agreement; and
  - (ii) the Council must promptly release and return any security provided by the Developer under this Agreement.
- (b) Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this Agreement for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

## **14.3 Costs and expenses**

Despite clause 14.2, termination of this Agreement does not release and/or discharge the Developer from any obligations under clause 15 and clause 17 to pay the Council's reasonable costs and expenses.

## **15. Breach of obligations**

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### **15.1 Breach notice**

If the Council reasonably considers that the Developer is in breach of any obligation under this Agreement, it may give a written notice (**Breach Notice**) to the Developer:

- (a) specifying the nature and extent of the breach;
- (b) requiring the Developer to either:
  - (i) rectify the breach if it reasonably considers it is capable of rectification; or
  - (ii) if the Developer reasonably considers the breach is not capable of rectification, pay a reasonable amount in compensation to the Council in lieu of rectifying the breach,

specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.

- (c) If the Developer:
  - (i) does not comply with a Breach Notice relating to the carrying out of Work under this Agreement; and
  - (ii) has no reasonable excuse for its non-compliance,

the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.

### **15.2 Costs of remedying a breach**

- (a) Any reasonable costs incurred by the Council in remedying a breach in accordance with clause 15.1 may be recovered by the Council as a debt due in a court of competent jurisdiction, but only if there has been an actual breach by the Developer of the obligations under this Agreement that were the subject of the Breach Notice.

- (b) For the purpose of this clause 15.2, the Council's costs of remedying a breach the subject of a Breach Notice include, but are not limited to:
  - (i) the costs of the Council's servants, agents and contractors reasonably incurred for that purpose;
  - (ii) all fees and charges necessarily or reasonably incurred by the Council in remedying the breach; and
  - (iii) all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- (c) Nothing in this clause 15 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Agreement by the Developer, including but not limited to seeking relief in an appropriate court.

## **16. Dispute resolution**

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### **16.1 Determination of disputes**

If there is any dispute, difference of opinion or failure to agree relating to or arising from this Agreement (**Dispute**) that dispute must be referred for determination under this clause 16.

### **16.2 No legal proceedings**

- (a) The parties must not bring or maintain any action on any Dispute until it has been referred and determined as provided in this clause 16.
- (b) Clause 16.2(a) does not prevent:
  - (i) class 1 proceedings (as set out in section 17 of the *Land and Environment Court Act 1979*) being commenced, maintained and concluded; or
  - (ii) urgent injunctive relief to keep a particular position.

### **16.3 Notice of disputes**

A party referring a Dispute for determination must do so by written notice to the other parties (**Dispute Notice**) which must specify the nature of the Dispute and a nominated officer of the referring party with sufficient authority to determine the Dispute.

### **16.4 Negotiated resolution and selection of expert**

- (a) On service of the Dispute Notice, the receiving parties must refer the Dispute to an officer with sufficient authority to determine the Dispute. The nominated officers of each party must meet at least once and use reasonable endeavours to resolve the Dispute by negotiation within seven days of service of the Dispute Notice. Any resolution must be recorded in writing and signed by each nominated officer. By agreement, the nominated officers may employ the services of a mediator to assist them in resolving the Dispute.
- (b) If the nominated officers are unable to resolve the Dispute within seven days of service of the Dispute Notice they must endeavour to resolve the Dispute by expert determination or mediation in accordance with this clause 16.
- (c) Clauses 16.5 - 16.8 apply to a Dispute concerning a matter arising in connection with this Agreement that can be determined by an appropriately qualified expert if:

- (i) the parties to the Dispute agree that it can be so determined, or
  - (ii) the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- (d) Clause 16.9 applies to all other Disputes in connection with this Agreement.

#### **16.5 Appointment of Expert**

- (a) Within seven days of the parties agreeing that the Dispute can be determined by an appropriately qualified expert, or receiving a written opinion under clause 16.4(c)(ii) that the Dispute can be determined by an expert, the parties are to endeavour to appoint an expert by agreement. That appointment must be recorded in writing and signed by each nominated officer.
- (b) If the nominated officers do not record the appointment of an expert within that second seven day period, the expert must be appointed, at the request of any party, by the President for the time being (or if none, the senior elected member) of the Law Society of New South Wales.

#### **16.6 Assistance to the Expert**

- (a) Once the Expert has been appointed, the parties must:
  - (i) each use their best endeavours to make available to the Expert, all information the Expert requires to settle or determine the Dispute; and
  - (ii) ensure that their employees, agents or consultants are available to appear at any hearing or enquiry called by the Expert.
- (b) The parties may give written submissions to the Expert but must provide copies to the other parties at the same time.

#### **16.7 Expert's decision**

- (a) The decision of the Expert must:
  - (i) be in writing and give reasons; and
  - (ii) be made and delivered to the parties within one month from the date of submission of the dispute to the Expert or the date of completion of the last hearing or enquiry called by the Expert, if later.
- (b) The Expert may conduct the determination of the Dispute in any way it considers appropriate but the Expert may, at its discretion, have regard to the Australian Commercial Disputes Centre's guidelines for expert determination of disputes or such other guidelines as it considers appropriate.
- (c) The Expert's decision is final and binding on the parties.
- (d) The Expert must act as an expert and not as an arbitrator.

#### **16.8 Expert's costs**

- (a) The Expert must also determine how the expenses relating to the reference of the Dispute (including the Expert's remuneration) should be apportioned between the parties and in default of a decision by the Expert, those expenses must be borne by the parties equally.

- (b) In determining the apportionment of costs, the Expert may have regard to what the Expert, in its reasonable opinion, considers to be a lack of good faith or a failure to use reasonable endeavours by any party, in assisting the Expert or resolving the dispute between the parties' nominated officers as required by this clause.

#### **16.9 Mediation of Disputes**

- (a) If this clause 16.9 applies, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President for the time being (or if none, the senior elected member) of the Law Society of New South Wales to select a mediator.
- (b) 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.
- (c) Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- (d) The Parties are to share equally the costs of the President, the mediator, and the mediation.

#### **16.10 Continual performance**

Each party must continue to perform its obligations under this document while any dispute is being determined under this clause 16.

### **17. General provisions**

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#### **17.1 Costs**

- (a) The Developer is to pay to the Council the Council's reasonable costs of preparing, negotiating, executing and stamping this Agreement, and any document related to this Agreement within 14 days of a written demand by the Council for such payment.
- (b) The amount referred to in clause 17.1(a) is subject to a cap of \$15,000 exclusive of GST.
- (c) The Developer is also to pay to the Council the Council's reasonable costs of enforcing this Agreement within 14 days of a written demand by the Council for such payment.

#### **17.2 GST**

Note: The parties have a common belief that:

- GST does not apply to transactions for making supplies (commonly referred to as in kind developer contributions) under this Agreement, because the Developer has entered into this Agreement in order to secure a right to develop land (as per Division 82 of the GST Law); and/or
- the Agreement provides for fees or charges for a supply of a regulatory nature made by an Australian government agency and are therefore not the provision of consideration (as per Division 81 of the GST Law and regulation 81.15.01 of the *A New Tax System (Goods and Services Tax) Regulations 1999*).

This clause 17.2 has been included in the event that the parties are mistaken.

- (a) If GST is payable by a supplier (or by the representative member for a GST group of which the supplier is a member) on any supply made under or in relation to this Agreement, the recipient must pay to the supplier an amount (**GST Amount**) equal to the GST payable on the supply. The GST Amount is payable by the recipient in addition to and at the same time as the net consideration for the supply, provided that the GST Amount is not payable until the supplier issues a tax invoice in this respect.
- (b) If a party is required to make any payment or reimbursement, that payment or reimbursement must be reduced by the amount of any input tax credits or reduced input tax credits to which the other party (or the representative member for a GST group of which it is a member) is entitled for any acquisition relating to that payment or reimbursement.
- (c) This clause 17.2 is subject to any other specific agreement regarding the payment of GST on supplies.

### **17.3 Duties**

The party at law to pay stamp duty, must promptly, within the initial applicable period prescribed by law, pay any duty payable in relation to the execution, performance and registration of this document, or any agreement or document executed or effected under this document.

### **17.4 Notices**

- (a) Any notice to or by a party under this document must be in writing and signed by the sender or, if a corporate party, an authorised officer of the sender.
- (b) Any notice may be served by delivery in person or by post to the address of the recipient specified in this provision or most recently notified by the recipient to the sender.

Addresses for notices:

#### **The Council**

Canterbury Bankstown Council  
66-72 Rickard Road, Bankstown NSW 2200  
Attention: General Manager

#### **The Developer**

Hailiang Property Campsie Pty Ltd  
PO Box 169  
St Peters NSW 2044  
Attention: The Proper Officer, HPG Development

- (c) A notice to the Developer must be given in relation to each of the persons who are the Developer.

### **17.5 Governing law and jurisdiction**

- (a) This document is governed by and construed under the law in the State of New South Wales.
- (b) Any legal action in relation to this document against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.



- (c) Each party by execution of this document irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

#### **17.6 Amendments**

This Agreement may be amended or revoked by further agreement in writing signed by the parties (including by means of a further planning agreement).

#### **17.7 Third parties**

This document confers rights only upon a person expressed to be a party and not upon any other person.

#### **17.8 Pre-contractual negotiation**

This document:

- (a) expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement; and
- (b) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject matter or any term of that agreement.

#### **17.9 Further assurance**

Each party must execute any document and perform any action necessary to give full effect to this document, whether before or after performance of this document.

#### **17.10 Continuing performance**

- (a) The provisions of this document do not merge with any action performed or document executed by any party for the purposes of performance of this document.
- (b) Any representation in this document survives the execution of any document for the purposes of, and continues after, performance of this document.
- (c) Any indemnity agreed by any party under this document:
  - (i) constitutes a liability of that party separate and independent from any other liability of that party under this document or any other agreement; and
  - (ii) survives and continues after performance of this document.

#### **17.11 Waivers**

Any failure by any party to exercise any right under this document does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

#### **17.12 Remedies**

The rights of a party under this document are cumulative and not exclusive of any rights provided by law.

### **17.13 Severability**

Any provision of this document which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this document or the validity of that provision in any other jurisdiction.

### **17.14 Counterparts**

This document may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same document.

### **17.15 Party acting as trustee**

If a party enters into this document as trustee of a trust, that party and its successors as trustee of the trust will be liable under this document in its own right and as trustee of the trust. Nothing releases the party from any liability in its personal capacity. The party warrants that at the date of this document:

- (a) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;
- (b) the party is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by this document on behalf of the trust and that this document is being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust;
- (c) no restriction on the party's right of indemnity out of, or lien over, the trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.; and
- (d) nothing in this Agreement establishing the trust limits the trustee's ability to perform its obligations under this Agreement or the trustee's liability under this Agreement.

### **17.16 Where more than one person is the Developer**

- (a) Where more than one person is bound by this Agreement as the Developer any right that is capable of being exercised by the Developer under this Agreement may only be exercised by those persons jointly and each person who is a Developer may, at its absolute discretion, decline to exercise such a right.
- (b) Clause 17.16(a) does not apply to a right that may be exercised by:
  - (i) a Developer; or
  - (ii) two or more persons who are each a Developer (but not all persons who are a Developer) acting jointly,without any prejudice to the other persons who are a Developer.
- (c) The provisions of clause 17.16(a) and clause 17.16(b) have effect subject to:
  - (i) any written agreement between the parties concerned (which may be in the form of a deed under clause 12.3(a)(i)); and
  - (ii) clause 16.

- (d) This clause 17.16 does not prevent the Council from taking action or seeking injunctive relief against any person who is a Developer under this Agreement in respect of any breach of this Agreement.

#### **17.17 Validity of this Agreement**

- (a) No party is to commence or maintain, or cause to be commenced or maintained, any judicial review proceedings in the Land and Environment Court concerning:
  - (i) the validity of this Agreement; or
  - (ii) the granting or modifying of any Development Consent to the extent that the Development Consent was granted or modified having regard to the existence of this Agreement.
- (b) If this Agreement or any part of it becomes unenforceable or invalid as a result of any change to a law, the parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Agreement is entered into.

#### **17.18 Annual reporting**

- (a) The Developer is to provide to the Council (no later than each anniversary of the date on which this Agreement is entered into) a report outlining the performance of its obligations under this Agreement.
- (b) The report under this clause 17.18 is to be in such a form and to address such matters as reasonably required by the Council from time to time.
- (c) This clause 17.18 has no effect unless the Development has been physically commenced.

#### **17.19 Review of this Agreement**

- (a) The parties must review this Agreement every two 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.
- (b) For the purposes of this clause 17.19, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- (c) For the purposes of addressing any matter arising from a review of this Agreement, the parties must use all reasonable endeavours to agree on and implement appropriate amendments to this Agreement.
- (d) A failure by a party to agree to take action requested by the other Party as a consequence of a review referred to in clause 17.19(a) is not a breach of this Agreement and is not able to be dealt with under clause 16.

### **18. Definitions and interpretation**

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#### **18.1 Definitions**

In this document unless the context otherwise requires:

**Act** means the *Environmental Planning and Assessment Act 1979*;

**Agreement or this document** means this Deed and includes any schedules, annexures and appendices to this Deed;

**Approval** includes approval, consent, licence, permission or the like;

**Breach Notice** — see clause 15.1;

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in New South Wales;

**Claims** includes actions, proceedings, suits, causes of action, arbitration, verdicts and judgments either at law or in equity or arising under a statute, debts, dues, demands, claims of any nature, costs and expenses;

**Completion Notice** – see clause 8.8(c);

**CPI** means the index titled 'Index Numbers; All groups CPI ; Sydney', series A2325806K, published by the Australian Bureau of Statistics with product number 6401.0;

**Dedicated Land** means the land to be, or that is, dedicated under this Agreement;

**Defect** means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a Work or any part of a Work;

**Defects Liability Period** means the period of six months commencing on the day immediately after a Work is completed for the purposes of this Agreement;

**Development** means the development of the Land for the purposes of a hospital of a height, bulk and scale which is made possible by the Instrument Change;

**Development Application** means a Development Application (within the meaning of the Act);

**Development Consent** means a development consent (within the meaning of the Act) for the Development;

**Development Contribution** means any of the following:

- (a) a monetary contribution;
- (b) a dedication of land free of cost;
- (c) the carrying out of work; or
- (d) the provision of any other material public benefit,

provided for in this Agreement and described in the Table;

**Dispute** — see clause 16.1;

**Dispute Notice** — see clause 16.3;

**Effective Date** — see the Novation Deed and clause 12.5(d);

**Encumbrance** includes any mortgage or charge, lease, (or other right of occupancy) or profit a prendre;

**Equipment** means any equipment, apparatus, vehicle or other equipment or thing to be used by or on behalf of the Developer in connection with the performance of its obligations under this Agreement;

**Expert** — see clause 16.4;

**GST** has the meaning given by section 195-1 of the *A New Tax System (Goods and Services Tax) Act (1999)* (Cth);

**GST Amount** — see clause 17.2(a);

**Hospital** means a hospital within the meaning of the Standard Instrument set out in the *Standard Instrument (Local Environmental Plans) Order 2006*;

**Instrument Change** means any change to environmental planning instruments (as defined in the Act) insofar as it applies to the Land such that:

- (a) the maximum building height for a Hospital on the Land is RL 72.75;
- (b) the floor space ratio for a Hospital on the Land is 5.1:1; and
- (e) there are no other new or amended provisions of an environmental planning instrument (when compared with what was in place as at 1 September 2022) that would have the practical effect of preventing the realisation of a Hospital of the height, bulk and scale anticipated by the above numerical maximums.

**Item** means the relevant or indicated item in the Table;

**Just Terms Act** means the *Land Acquisition (Just Terms Compensation) Act 1991*;

**Land** means the land described in Schedule 4;

**Note:** This land is illustrated in sheet 1 of Schedule 2.

**Material Breach** — see clause 12.3;

**Novation Deed** means the draft deed in Annexure A;

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

**Real Property Act** means the *Real Property Act 1900*;

**Rectification Notice** means a notice in writing:

- (a) identifying the nature and extent of a Defect;
- (b) specifying the works or actions that are required to Rectify the Defect;
- (c) specifying the date by which or the period within which the Defect is to be rectified.

**Rectify** means rectify, remedy or correct;

**Registration on Title** means the registration of this Agreement under section 7.6 of the Act in the folio of the Register kept under the Real Property Act in relation to the Relevant Lots, and **Registered on Title** refers to the state of the Agreement being so registered;

**Regulation** means the *Environmental Planning and Assessment Regulation 2021*;

**Section 7.11 Contribution** means a development contribution under section 7.11 of the Act;

**Service Lot** means a lot that is created for one or more of the following purposes:

- (a) to be dedicated or otherwise transferred to the Council;
- (b) for any public utility undertaking (within the meaning of the Standard Instrument);
- (c) for roads, open space, recreation, environmental conservation, water cycle management or riparian land management,

but does not include a lot which is intended to be further subdivided by or on behalf of the Developer but does include association property within the meaning of the *Community Land Development Act 1989* used for a purpose mentioned in (c) above;

**Standard Instrument** means the standard instrument for a principal local environmental plan set out in the *Standard Instrument (Local Environmental Plans) Order 2006* as at the date of this Agreement;

**Table** means the table set out in Schedule 1;

**Transferred Land** — see clause 12.5;

**Work** means:

- (a) when a reference to an object, the physical result of any building, engineering or construction work in, on, over or under land; and
- (b) when a reference to activity, activity directed to produce the physical result of any building, engineering or construction work in, on, over or under land.

## 18.2 Interpretation

- (a) In this document unless the context otherwise requires:
  - (i) clause and subclause headings are for reference purposes only;
  - (ii) the singular includes the plural and vice versa;
  - (iii) words denoting any gender include all genders;
  - (iv) reference to a person includes any other entity recognised by law and vice versa;
  - (v) a reference to a party means a party to this Agreement, including their successors and assigns and a person bound by the Agreement under section 7.6(3) of the Act;
  - (vi) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
  - (vii) any reference to any agreement or document includes that agreement or document as amended at any time;
  - (viii) the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it;

- (ix) the expression **at any time** includes reference to past, present and future time and the performance of any action from time to time;
- (x) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (xi) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
- (xii) any ambiguities in the interpretation of this Agreement shall not be construed against the drafting party.
- (xiii) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this document;
- (xiv) reference to a provision described, prefaced or qualified by the name, heading or caption of a clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment in this document means a cross reference to that clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment;
- (xv) when a thing is required to be done or money required to be paid under this document on a day which is not a Business Day, the thing must be done and the money paid on the immediately following Business Day;
- (xvi) reference to a statute includes all regulations and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated; and
- (xvii) reference in this Agreement to a \$ value relation to a Development Contribution is a reference to the value exclusive of GST.
- (b) Nothing in this Agreement is to be taken to require the Council to do anything that would cause it to be in breach of any of its statutory obligations.

### **18.3 No joint venture, etc**

Unless otherwise stated:

- (a) nothing in this Agreement creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

### **18.4 No obligation to grant or modify a Development Consent**

- (a) This Agreement does not impose an obligation on the Council to grant or modify any Development Consent.
- (b) For avoidance of doubt, clause 18.4(a) does not affect any obligation of the consent authority (under section 4.15(1)(a)(iia) of the Act) to take this Agreement into consideration.

### **18.5 No breach, etc of a Development Consent**

Despite any other provision of this Agreement, this Agreement does not require, allow or preclude anything from being done if by so doing it would cause the Developer to:

- (a) be in breach; or
- (b) not fulfil a requirement,

of a Development Consent in force and applying to the Land.

### **18.6 Explanatory Note**

In accordance with clause 205(5) of the *Environmental Planning and Assessment Regulation 2021* the explanatory note must not be used to assist in construing this Agreement.



## Schedule 1 – Development Contributions

(Clause 4)

Column 1	Column 2	Column 3	Column 4	Column 5
Item Number	Name	Description	Public purpose	When contribution is required
<b>Dedication of land</b>				
1	Dedication of land with frontage to Canterbury Road	<p>Dedication of an area of land that is generally consistent with the area shaded purple in the drawing at sheet 2 of schedule 2, the approximate dimensions of which are to be:</p> <ul style="list-style-type: none"> <li>• 3.5 metres wide along the site frontage of Canterbury Road;</li> <li>• 86 metres in length; and</li> <li>• 300m<sup>2</sup> in area.</li> </ul>	Transport	Prior to the issue of the first Occupation Certificate for the Development
2	Dedication of land for a pedestrian through site link	<p>Dedication of an area of land that is generally consistent with the area shaded blue in the drawing at sheet 2 of schedule 2, the approximate dimensions of which are to be:</p> <ul style="list-style-type: none"> <li>• 6 metres wide along the eastern boundary of the Land;</li> <li>• 33 metres in length; and</li> <li>• 200m<sup>2</sup> in area.</li> </ul>	Transport	Prior to the issue of the first Occupation Certificate for the Development
3	Dedication of land for laneway	<p>Dedication of an area of land that is generally consistent with the area shaded orange in the drawing at sheet 2 of schedule 2, the approximate dimensions of which are:</p> <ul style="list-style-type: none"> <li>• 9 metres wide;</li> <li>• 765m<sup>2</sup> in area.</li> </ul>	Transport	Prior to the issue of the first Occupation Certificate for the Development

Column 1	Column 2	Column 3	Column 4	Column 5
Item Number	Name	Description	Public purpose	When contribution is required
<b>Payment of a monetary contribution</b>				
4	Payment of a monetary contribution for a cycleway from the site to the Cooks River	A monetary contribution of \$25,000	Transport	Prior to the issue of the first Occupation Certificate for the Development
5	Payment of a monetary contribution to assist the Council with the future acquisition of 80 Duke Street, Campsie (private property) to create a new public park.	A monetary contribution of \$75,000	Public open space	Prior to the issue of the first Occupation Certificate for the Development
<b>The carrying out of works</b>				
6	Provision of public art on the Land	<p>Provision of public art on the Land, including public art to:</p> <ul style="list-style-type: none"> <li>the new pocket park in the north west corner of the site; and</li> <li>within the site of land to be dedicated under Item 2.</li> </ul> <p>The design and construction cost of the public art is to be approximately \$150,000 inclusive of GST (although the Developer may, at its absolute discretion, spend more than this amount).</p> <p>The Developer will commission, procure and coordinate delivery and installation of the public art on site.</p> <p>This contribution is to be proportionately scaled back for a Development to the extent that:</p>	Public art	Prior to the issue of the first Occupation Certificate for the Development

Column 1	Column 2	Column 3	Column 4	Column 5
Item Number	Name	Description	Public purpose	When contribution is required
		<ul style="list-style-type: none"> <li>any public art is required under any part of any Development Consent (other than public art that is only required by reason of this Agreement); or</li> <li>any development contribution or equivalent is required for public art under the Development Consent (other than a contribution that is only required by reason of this Agreement).</li> </ul> <p>The contribution under this Agreement cannot be reduced to less than nil and nothing in this Agreement requires Council to pay any amount to the Developer or to contribute to the delivery of any contributions under this Agreement.</p> <p>For example, if a \$150,000 public art contribution is required under the terms of a Development Consent, irrespective of this Agreement, then the obligation for the Development under Item 6 will be nil.</p>		
7	Provision of a pocket park	<p>The embellishment of an area of land that is generally consistent with the area shaded green in the drawing at sheet 2 of schedule 2.</p> <p>The embellishment is to be generally in accordance with the depiction contained within the dashed-line yellow triangle in the concept landscape drawing at sheet 3 of schedule 2, being 'Masterplan Concept Design for Illustrative Purposes Only', revision G prepared by distinctive Living Design dated 12 August 2021.</p>	Public open space	Prior to the issue of the first Occupation Certificate for the Development
8	Provision of a kerb ramp pair	<p>The construction of a new kerb ramp pair on Stanley Street, crossing Perry Street at or near the location marked as 'New kerb ramp pair across Perry Street' in the drawing at sheet 4 of schedule 2.</p> <p>The location of the work is to be at or near the location identified in the drawing at sheet 4 of schedule 2 as 'New kerb ramp pair across Perry Street'.</p>	Transport	Prior to the issue of the first Occupation Certificate for the Development

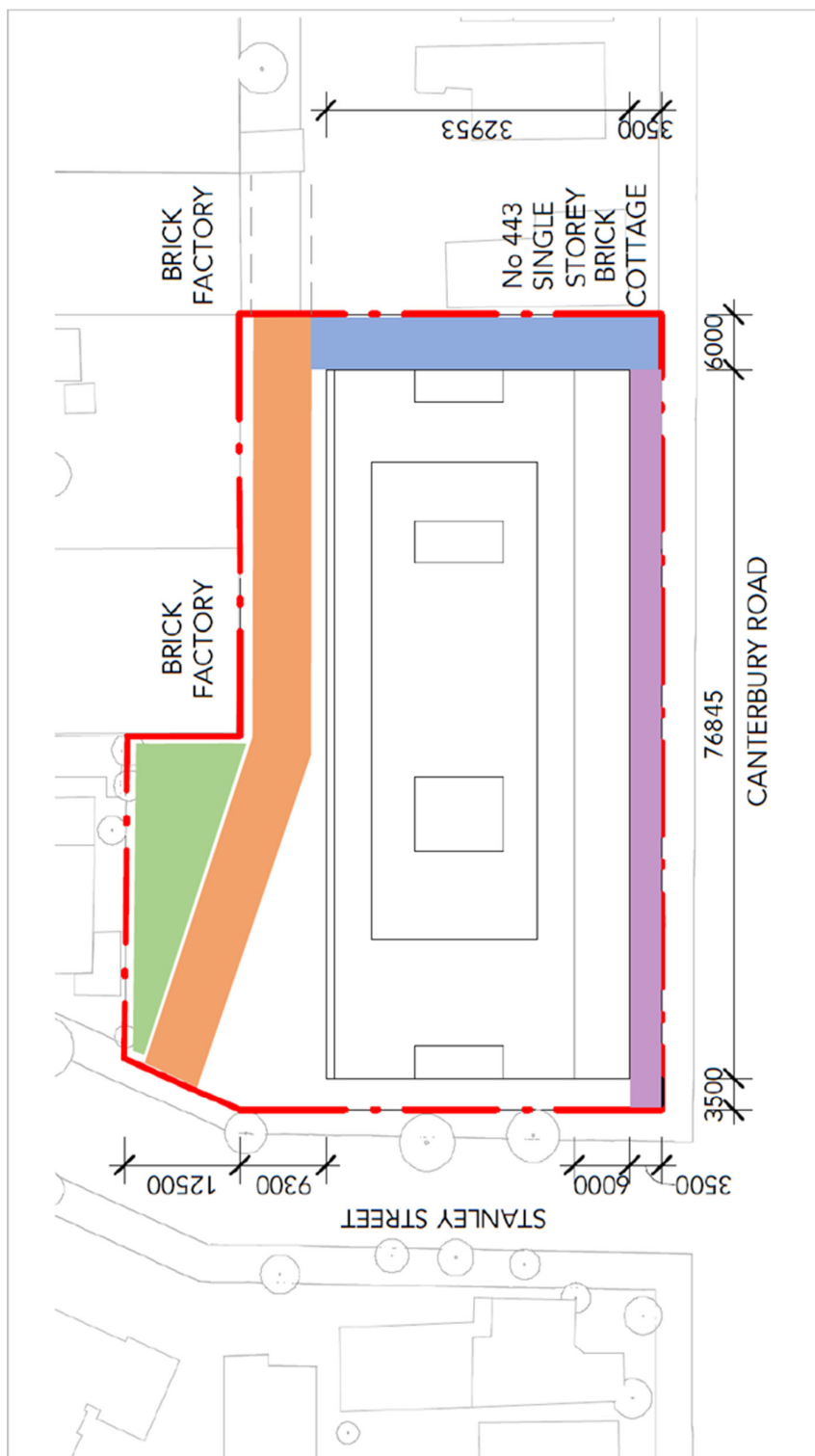
Column 1	Column 2	Column 3	Column 4	Column 5
Item Number	Name	Description	Public purpose	When contribution is required
		The kerbs are to be constructed generally in accordance with the drawing 'Standard Kerb Ramps', S-003, revision dated 16 June 2022, as extracted in sheet 5 of schedule 2.		
9	The provision of new zebra-type pedestrian crossings	<p>The construction of four new zebra-type pedestrian crossings at or near the locations marked as 'New zebra-type crossing' in the drawing at sheet 4 of schedule 2.</p> <p>The crossings are to be constructed generally in accordance with the drawing 'Standard Raised Pedestrian Threshold Flush to Top of Kerb: Concrete', S-035, revision dated 8 February 2019, as extracted in sheet 6 of schedule 2.</p>	Transport	Prior to the issue of the first Occupation Certificate for the Development
11	The provision of two bus stops	<p>The construction of two new or upgraded bus stops including shelters on Canterbury Road , at or near the location marked as 'B' and labelled as 'New or upgraded bus stops at Canterbury Road' in the drawing at sheet 4 of schedule 2.</p> <p>The bus stops are to be generally constructed in accordance with the drawing 'Standard Bus Stop 3 &amp; 4: Front Door Access', S-018, revision dated 4 May 2022, as extracted in sheet 7 of schedule 2.</p>	Transport	Prior to the issue of the first Occupation Certificate for the Development
<b>The provision of other material public benefit</b>				
12	Easement for passive recreation	<p>The provision of an easement for passive recreation:</p> <ul style="list-style-type: none"> <li>• over an area of land that is generally consistent with the area shaded green in the drawing at sheet 2 of schedule 2;</li> <li>• that is generally in accordance with the draft terms set out Schedule 3; and</li> <li>• that is in the form of an easement in gross.</li> </ul>	Public open space	Prior to the issue of the first Occupation Certificate for the Development

Column 1	Column 2	Column 3	Column 4	Column 5
Item Number	Name	Description	Public purpose	When contribution is required
13	Positive covenant for maintenance and repair	<p>The provision of a positive covenant for maintenance and repair:</p> <ul style="list-style-type: none"> <li>• over an area of land that is generally consistent with the area shaded green in the drawing at sheet 2 of schedule 2; and</li> <li>• that is generally in accordance with the draft terms set out Schedule 3</li> </ul>	Public open space	Prior to the issue of the first Occupation Certificate for the Development

(Clause 18.1)



(Schedule 1)

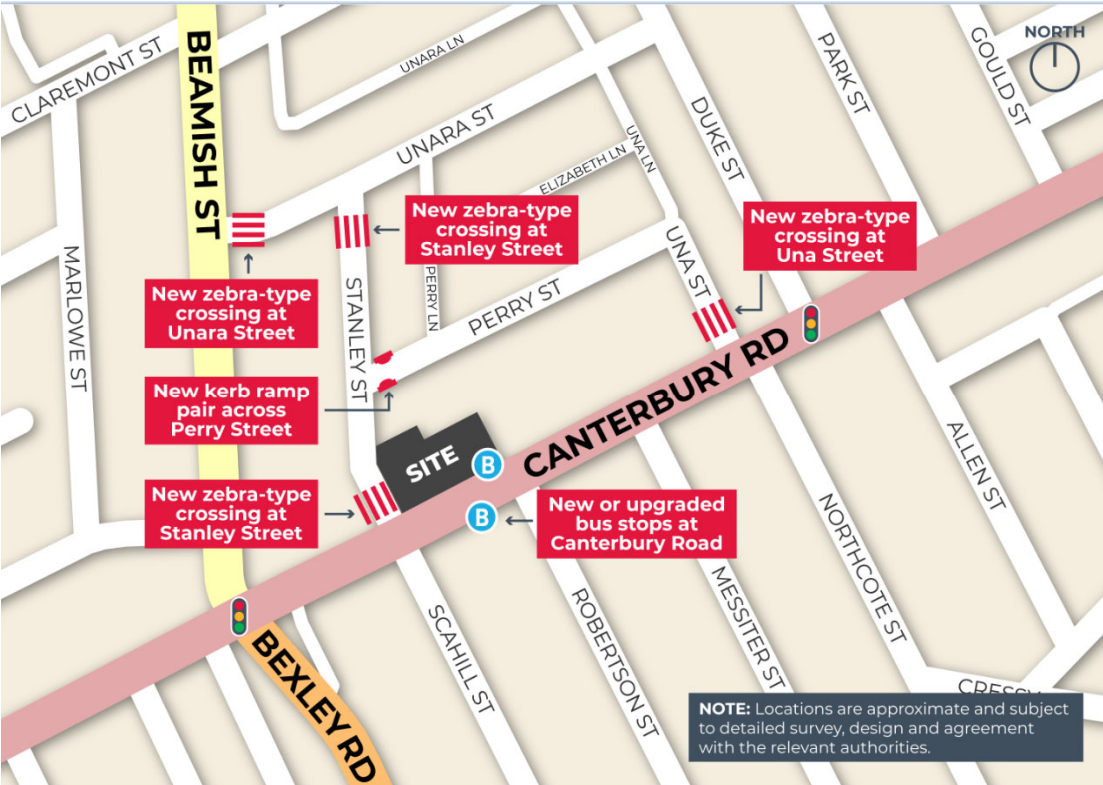


(Schedule 1)

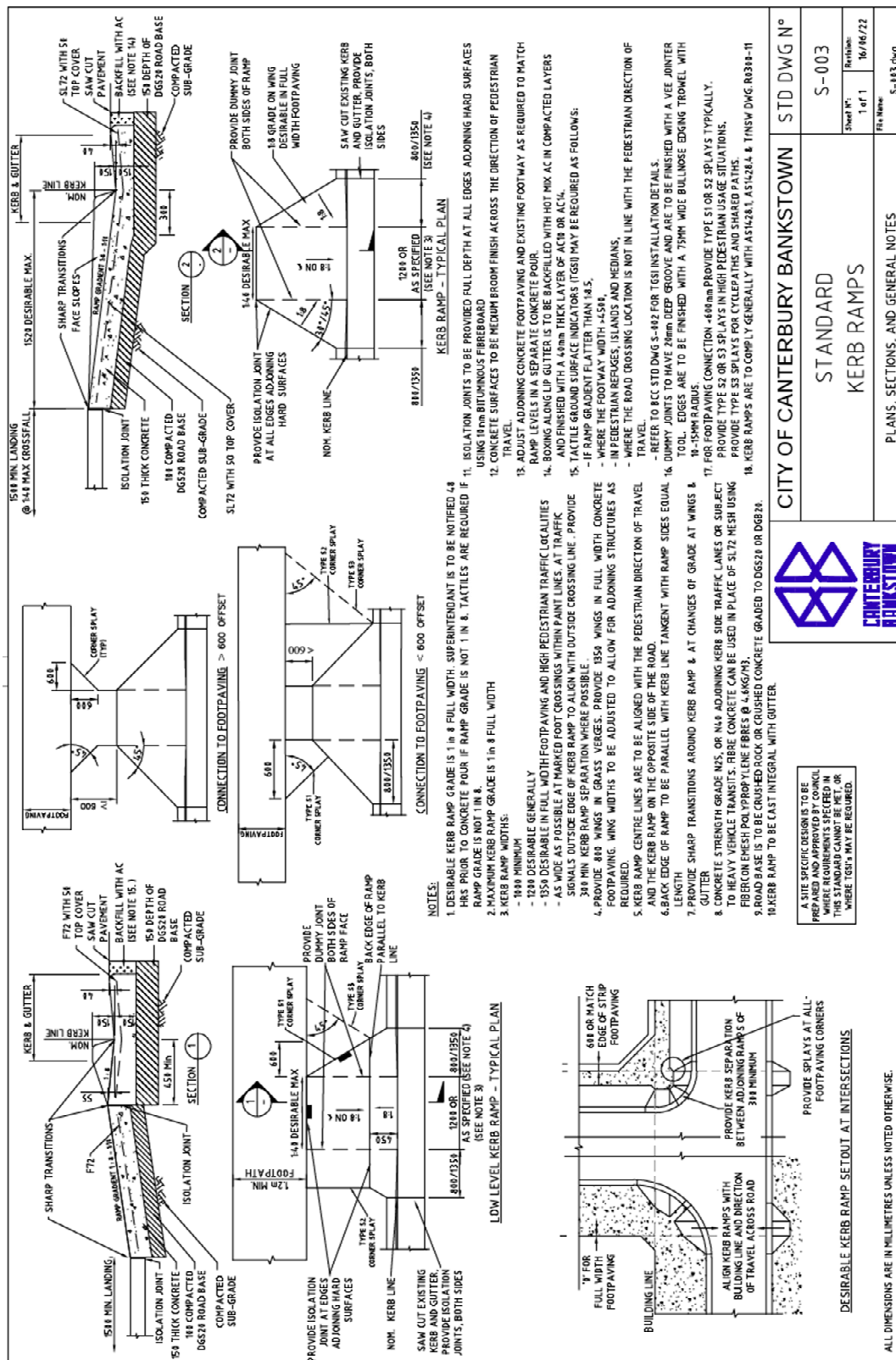




Sheet 4: Works locations

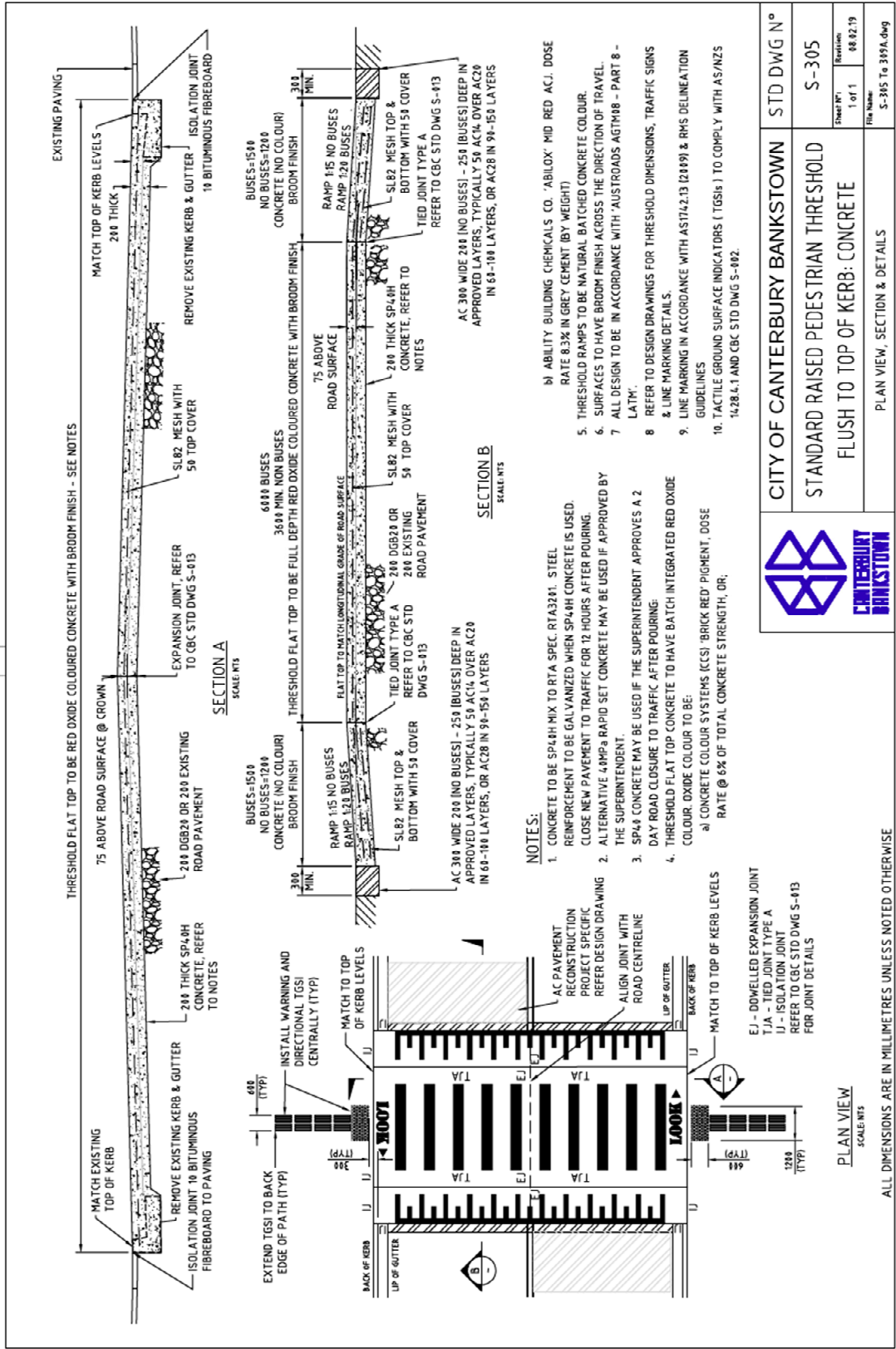


(Schedule 1)



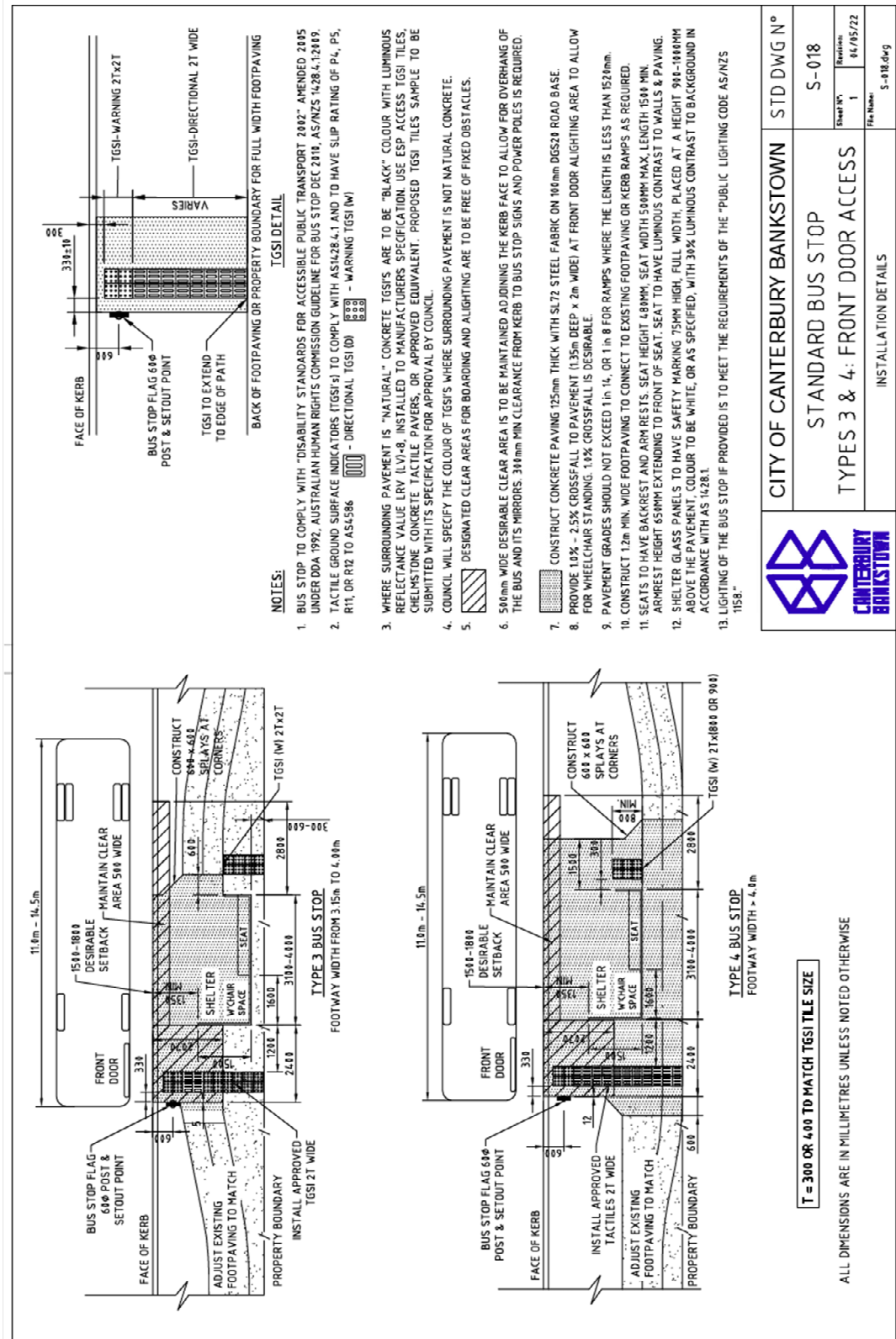
Sheet 6: Standard zebra-type crossing with concrete surface drawing

(Schedule 1)



Sheet 7: Standard bus stop drawing

(Schedule 1)





## Schedule 3 – Easement and positive covenant

---

(Schedule 1)

**Instrument setting out terms of Easements or Profits à Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B Conveyancing Act 1919.**

(Sheet **[X]** of **[Y]** Sheets)

**Plan:** *[Insert new deposited plan name]*

**Full name and address of the  
owner of the land**

**Lot 3 in Deposited Plan 337683** *[Insert the name of the landowner]*

*[Insert address of the landowner]*

### Part 1 (Creation)

<b>Number of item shown in the intention panel on the Plan</b>	<b>Identity of the easement, profit a prendre, restriction or positive covenant to be created and referred to in the Plan</b>	<b>Burdened Lot(s) or parcel(s)</b>	<b>Benefited Lot(s), road(s), bodies or Prescribed Authorities</b>
<b>1.</b>	<b>Easement for Passive Recreation</b>	3/337683	Canterbury Bankstown Council
<b>2.</b>	<b>Positive Covenant</b>	3/337683	Canterbury Bankstown Council

## Part 2 (Terms)

### 1 DICTIONARY

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In this instrument:

- (a) **Act** means the *Conveyancing Act* 1919 as amended from time to time.
- (b) **Authorised Users** means every person authorised by the Council and members of the public.
- (c) **Council** means the Canterbury Bankstown Council.
- (d) **Grantor** means the owner of the Lot Burdened.
- (e) **Lot Burdened** means a lot burdened by an easement, positive covenant or restriction in this instrument.

### 2 Terms of easement for passive recreation variable width numbered 1 in the plan

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#### 2.1 Easement

- (a) The Council and Authorised Users may, in common with the Grantor, use and enjoy for passive recreation the part of the Lot Burdened shown as the site of this easement.
- (b) In exercising the powers given in clause 2.1(a), the Council and Authorised Users must:
  - (i) use reasonable endeavours to ensure:
    - (A) all refuse is deposited in proper receptacles or removed from the Lot Burdened, and
    - (B) users keep noise to a minimum level; and
  - (ii) cause as little:
    - (A) inconvenience as is practicable to the Grantor or any occupier of, or any invitee on, any part of the Lot Burdened, and
    - (B) damage as is practicable to the Lot Burdened and any improvement on it.
  - (iii) make good any collateral damage caused by the Council and any Authorised User; and
  - (iv) obey any reasonable requirement and directions of the owner of the Lot Burdened whilst in the site of the easement.
- (c) For the purposes of this easement 'passive recreation' means walking, sitting, reading, listening to music provided by headphones and passive appreciation of the outdoor environment.
- (d) The easement must be open for use by the Council and any Authorised User at least between the hours of 7am to 8pm, seven days a week.

#### 2.2 Release, etc.

Name of the person empowered to release vary or modify restriction of this easement:

The Grantor and the Council jointly.

### **3 Terms of positive covenant numbered 2 in the plan**

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#### **3.1 Positive covenant**

The Grantor must keep and maintain the part of the Lot Burdened shown as the site of the easement for passive recreation in good repair and safe condition.

#### **3.2 Release, etc.**

Name of the person empowered to release vary or modify restriction of this positive covenant:

The Grantor and the Council jointly.

***[Execution block to be inserted]***

***[The part of the Lot Burdened shown as the site of this easement will be generally consistent with the area shaded green in the drawing at sheet 2 of schedule 2.]***

## Schedule 4 – The Land

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(Clause 18.1)

Title Details	Street Address (in Campsie)	Landowner
Lot 3 DP 337683	445 Canterbury Road	Hailiang Property Campsie Pty Ltd
Lot A DP 355656	445 Canterbury Road	Hailiang Property Campsie Pty Ltd
Lot B DP 355656	445 Canterbury Road	Hailiang Property Campsie Pty Ltd
Lot 13 DP 3995	445 Canterbury Road	Hailiang Property Campsie Pty Ltd
Lot 15 DP 3995	445 Canterbury Road	Hailiang Property Campsie Pty Ltd
Lot A DP 391661	445 Canterbury Road	Hailiang Property Campsie Pty Ltd
Lot B DP 391661	445 Canterbury Road	Hailiang Property Campsie Pty Ltd
Lot A DP 416123	445 Canterbury Road	Hailiang Property Campsie Pty Ltd
Lot B DP 416123	445 Canterbury Road	Hailiang Property Campsie Pty Ltd



## Schedule 5 – Works land

(Clause 2.2(b))

Development contribution for the carrying out of works	Street (in Campsie)	Landowner
Item 8 under schedule 1	The Perry Street public road reserve	Canterbury Bankstown Council
Item 9 under schedule 1	<ul style="list-style-type: none"> <li>The Stanley Street public road reserve</li> <li>The Una Street public road reserve</li> <li>The Unara Street public road reserve between the intersection of Beamish Street, and Stanley Street</li> </ul>	Canterbury Bankstown Council
Item 10 under schedule 1	The Canterbury Road public road reserve between the intersection of Scahill Street, and Robertson Street.	Canterbury Bankstown Council

**Executed as a deed.**

**Executed** on behalf of **Canterbury Bankstown Council** by affixing the seal in accordance with a resolution passed at a duly convened meeting held on \_\_\_\_\_ in the presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of the General Manager

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of the Mayor

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print name

**Executed** on behalf of **Hailiang Property Campsie Pty Ltd** (ACN 604 111 908) in accordance with s127(1) of the *Corporations Act 2001* (Cth) by:

\_\_\_\_\_  
Signature of the Secretary/Director

\_\_\_\_\_  
Signature of a Director

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print name

## **Deed of Novation**

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Canterbury Bankstown Council

[Insert name of existing developer]

[Insert name of new developer]

# Deed of Novation

Dated

## Parties

1. **Canterbury Bankstown Council** of 66-72 Rickard Road, Bankstown NSW 2200 (**the Council**)
2. **[Insert name of existing developer]** ACN [insert ACN] of [insert address] (**the Existing Developer**)
3. **[Insert name of new developer]** ACN [insert ACN] of [insert address] (**the New Developer**)

## Background

- A. The Council and the Existing Developer have entered into the Agreement.
- B. The Existing Developer intends to transfer **[Insert title reference(s)]** to the New Developer.

**[If, as a result of the transfer, the Existing Developer will no longer own any of the Land:]**

- C. The Existing Developer has agreed to transfer the Rights and Obligations to the New Developer.
- D. The Council has consented to the transfer of the Existing Developer's Rights and Obligations to the New Developer and the parties have agreed to enter into this Deed to give effect to their common intentions.

**[If, as a result of the transfer, the Existing Developer will still own part of the Land:]**

- C. The New Developer has agreed to accept the Rights and Obligations as a Developer under the Agreement.
- D. The Council has consented to the transfer of the relevant land to the New Developer and the inclusion of the New Developer as a Developer party to the Agreement and the parties have agreed to enter into this Deed to give effect to their common intentions.

## Operative provisions

### 1. Defined meanings

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Words used in this document and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause at the back of this document.

## **2. Novation**

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**[If, as a result of the transfer, the Existing Developer will no longer own any of the Land:]**

With effect on and from the Effective Date:

- (a) The New Developer is substituted for the Existing Developer under the Agreement as if the New Developer had originally been a party to the Agreement instead of the Existing Developer and all references in the Agreement to the Existing Developer in any capacity must be read and construed as if they were references to the New Developer; and
- (b) The New Developer is bound by, and must comply with, the provisions of the Agreement and the obligations imposed on the Existing Developer by the Agreement and the New Developer enjoys all the rights and benefits of the Existing Developer under the Agreement (even if an obligation, right or benefit, arose or accrued before the Effective Date).

**[If, as a result of the transfer, the Existing Developer will still own part of the Land:]**

With effect on and from the Effective Date:

- (a) The New Developer is taken to be a party to the Agreement and the definition of Developer in the Agreement is taken to include the New Developer; and
- (b) The New Developer is bound by, and must comply with, the provisions of the Agreement and the obligations imposed on the Developer by the Agreement and the New Developer enjoys all the rights and benefits of the Developer under the Agreement (even if an obligation, right or benefit, arose or accrued before the Effective Date).

## **3. Consent**

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**[If, as a result of the transfer, the Existing Developer will no longer own any of the Land:]**

With effect on and from the Effective Date, the Council:

- (a) consents to the New Developer being substituted for Existing Developer on the terms outlined at clause 2 of this Deed;
- (b) accepts the assumptions by the New Developer of all the liabilities of the Existing Developer under the Agreement instead of those liabilities being liabilities of the Existing Developer; and
- (c) agrees to be bound by the terms of the Agreement in every way as if the New Developer were a party to the Agreement instead of the Existing Developer.

**[If, as a result of the transfer, the Existing Developer will still own part of the Land:]**

With effect on and from the Effective Date, the Council:

- (d) consents to the New Developer becoming a Developer under the terms of the Agreement as outlined at clause 2 of this Deed;
- (e) agrees to be bound by the terms of the Agreement in every way as if the New Developer were a party to the Agreement.

## **4. Release and Indemnity**

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**[If, as a result of the transfer, the Existing Developer will no longer own any of the Land:]**

### **4.1 Release and Discharge (the Council)**

On and from the Effective Date, the Council releases the Existing Developer from all Rights and Obligations and from all Claims that it may have against the Existing Developer under or in respect of the Agreement.

### **4.2 Release and Discharge (the Existing Developer)**

On and from the Effective Date, the Existing Developer releases the Council from all its obligations under the Agreement and from all Claims that it may have against the Council under or in respect of the Agreement.

### **4.3 Indemnity**

On and from the Effective Date, the New Developer indemnifies the Existing Developer from and against all Liabilities and Claims that it may have against the Existing Developer in respect of the Agreement.

**[Omit clause 4 if, as a result of the transfer, the Existing Developer will still own part of the Land]**

## **5. Representations and Warranties**

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### **5.1 Power**

Both of the Existing Developer and the New Developer represent and warrant to the Council and to each other that:

- (a) it is an individual or corporation validly existing under the laws of Australia;
- (b) if it is a corporation – that it has the corporate power to enter into and perform its obligations under this Deed and has taken all necessary corporate action to authorise execution, delivery and performance of this Deed;
- (c) this Deed is valid and binding upon it and is enforceable against it in accordance with its terms; and
- (d) if it is a corporation – that no application or order has been made for the winding up or liquidation of it, no action has been taken to seize or take possession of any of its assets, there are no unsatisfied judgments against it and it is able to pay its debts as and when they come due and payable.

### **5.2 Reliance by the Council**

The Existing Developer and the New Developer each acknowledge that the Council has entered into this Deed in reliance on the representations and warranties detailed in clause 5.1.

## **6. General provisions**

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### **6.1 Developer Costs**

The Existing Developer and the New Developer must pay their own costs in relation to:

- (a) the negotiation, preparation, execution, performance, amendment or registration of, or any consent given or made; and
- (b) the performance of any action by that party in compliance with any liability arising, under this Deed, or any agreement or document executed or effected under this Deed, unless this Deed provides otherwise.

### **6.2 The Council's Costs**

The Existing Developer and the New Developer are jointly and severally responsible for Council's reasonable legal costs in relation to the negotiation, preparation and execution of this Deed, but are not otherwise liable for the Council's costs in relation to the:

- (a) performance, amendment or registration of, or any consent given or made; and
- (b) the performance of any action by that party in compliance with any liability arising, under this Deed, or any agreement or document executed or effected under this Deed, unless this Deed provides otherwise.

### **6.3 GST**

If any payment made by one party to any other party under or relating to this Deed constitutes consideration for a taxable supply for the purposes of GST or any similar tax, the amount to be paid for the supply will be increased so that the net amount retained by the supplier after payment of that GST is the same as if the supplier was not liable to pay GST in respect of that supply. This provision is subject to any other agreement regarding the payment of GST on specific supplies, and includes payments for supplies relating to the breach or termination of, and indemnities arising from, this Deed.

### **6.4 Duties**

- (a) The New Developer must promptly, within the initial applicable period prescribed by law, pay any duty payable in relation to the execution, performance and registration of this Deed, or any agreement or document executed or effected under this Deed.
- (b) The New Developer indemnifies Council and the Existing Developer against any loss incurred by any other party in relation to any duty specified in this provision, whether through default by the New Developer under this provision or otherwise.

### **6.5 Assignment**

A party must not transfer any right or liability under this Deed without the prior consent of each other party, except where this Deed provides otherwise.

### **6.6 Notices**

- (a) Any notice may be served by delivery in person or by post or transmission by facsimile to the address or number of the recipient specified in this provision or most recently notified by the recipient to the sender.

**[Insert address for notices for each of the parties]**

- (b) Any notice to or by a party under this Deed must be in writing and signed by either:
  - (i) the sender or, if a corporate party, an authorised officer of the sender; or
  - (ii) the party's solicitor.
- (c) Any notice is effective for the purposes of this Deed upon delivery to the recipient or production to the sender of a facsimile transmittal confirmation report before 4.00pm local time on a day in the place in or to which the written notice is delivered or sent or otherwise at 9.00am on the next day following delivery or receipt.

#### **6.7 Governing law and jurisdiction**

- (a) This Deed is governed by and construed under the law in the State of New South Wales.
- (b) Any legal action in relation to this Deed against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.
- (c) Each party by execution of this Deed irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

#### **6.8 Amendments**

Any amendment to this Deed has no force or effect, unless effected by a document executed by the parties.

#### **6.9 Third parties**

This Deed confers rights only upon a person expressed to be a party, and not upon any other person.

#### **6.10 Pre-contractual negotiation**

This Deed:

- (a) expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement; and
- (b) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject matter or any term of that agreement.

#### **6.11 Further assurance**

Each party must execute any document and perform any action necessary to give full effect to this Deed, whether before or after performance of this Deed.

#### **6.12 Continuing performance**

- (a) The provisions of this Deed do not merge with any action performed or document executed by any party for the purposes of performance of this Deed.
- (b) Any representation in this Deed survives the execution of any document for the purposes of, and continues after, performance of this Deed.
- (c) Any indemnity agreed by any party under this Deed:



- (i) constitutes a liability of that party separate and independent from any other liability of that party under this Deed or any other agreement; and
- (ii) survives and continues after performance of this Deed,

#### **6.13 Waivers**

Any failure by any party to exercise any right under this Deed does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

#### **6.14 Remedies**

The rights of a party under this Deed are cumulative and not exclusive of any rights provided by law.

#### **6.15 Severability**

Any provision of this Deed which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this Deed or the validity of that provision in any other jurisdiction.

#### **6.16 Counterparts**

This Deed may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same Deed.

#### **6.17 Party acting as trustee**

If a party enters into this Deed as trustee of a trust, that party and its successors as trustee of the trust will be liable under this Deed in its own right and as trustee of the trust. Nothing releases the party from any liability in its personal capacity. The party warrants that at the date of this Deed:

- (a) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;
- (b) the party is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by this Deed on behalf of the trust and that this Deed is being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust; and
- (c) no restriction on the party's right of indemnity out of or lien over the trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.

### **7. Definitions and interpretation**

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#### **7.1 Definitions**

In this Deed unless the context otherwise requires:

**Claims** includes actions, proceedings, suits, causes of action, arbitration, verdicts and judgments either at law or in equity or arising under a statute, debts, dues, demands, claims of any nature, costs and expenses.

**Agreement** means the voluntary planning agreement between the Council and the Existing Developer dated [insert date], a copy of which is annexed to this Deed as Annexure **A**.

**Deed** means this Deed and includes any Annexures to this Deed.

**Effective Date** means the date upon which the Existing Developer provides the New Developer with an instrument, in registrable form, that (when registered) will effect the transfer of the title to the land from the Existing Developer to the New Developer.

**GST** means any tax, levy, charge or impost implemented under the *A New Tax System (Goods and Services Tax) Act (GST Act)* or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Act;

**Liabilities** include all liabilities (whether actual, contingent or prospective), losses, damages, costs and expenses of whatever description.

**Rights and Obligations** means all of the rights, benefits and obligations imposed or conferred on the Existing Developer by the Agreement.

## **7.2 Interpretation**

In this Deed unless the context otherwise requires:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) reference to a person includes any other entity recognised by law and vice versa;
- (e) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (f) any reference to a party to this Deed includes its successors and permitted assigns;
- (g) any reference to any agreement or document includes that agreement or document as amended at any time;
- (h) the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it;
- (i) the expression **at any time** includes reference to past, present and future time and the performance of any action from time to time;
- (j) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (k) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
- (l) any ambiguities in the interpretation of this Deed shall not be construed against the drafting party; and
- (m) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this Deed.

**Executed** as a deed.

**[Insert relevant attestation clauses]**

**[Insert the executed planning agreement that is the subject of the novation as Annexure A]**