

Planning Agreement

Belmore Property Investment Pty Ltd
ABN 34 652 337 927

AND

Canterbury-Bankstown Council
ABN 45 985 891 846

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Date

[insert] day of [MONTH]
2022

Parties

Landowner

Belmore Property Investment Pty Ltd (ABN 34 652 337 927) having its principal place of business at 601 Canterbury Road, Belmore NSW 2192

Council

Canterbury-Bankstown Council ABN 45 985 891 846
Bankstown Civic Tower, 66-72 Rickard Road, Bankstown NSW 2220

Background

- A The Landowner owns the Development Site.
- B The Landowner has the benefit of the Development Consent to develop the Development Site.
- C Council is the owner of the Council Land, which adjoins the Development Site.
- D The Deferred Commencement under Part A of the Development Consent provides:

A. This consent is not to operate until the Applicant satisfies the Council, within 24 months of the date of this consent that:

In accordance with the irrevocable letter of offer dated 15 December 2020 made by the Applicant, the Applicant has entered into a Planning Agreement under section 7.4 of the Environmental Planning and Assessment Act 1979 (and Councils Planning Agreement Policy), with Council for the dedication of the area of land measuring 3 metres (depth) along the northern boundary of the site (as shown on the draft Plan of Subdivision 2670-15DP, prepared by Daw & Wilton, dated 10 December 2020) for the purpose of lane widening.

- E The Landowner and the Council enter into this Deed in fulfilment of the Deferred Commencement condition.
- F The Development Consent was granted on 24 December 2020 and the parties acknowledge that s4.53(6)(b) of the *Environmental Planning and Assessment Act 1979* applies to the Development Consent.

Operative Provisions

1 Planning Agreement under the EPA Act

1.1 Section 7.4

The parties agree that this Deed is a planning agreement within the meaning

given to that term in section 7.4(1) of the EPA Act.

1.2 Application

The planning agreement constituted by this Deed applies to the Development Site and the Development.

2 Operation

The parties agree that this planning agreement takes effect on the execution of this Deed by the parties to it.

3 Definitions and interpretation

3.1 Definitions

In this Deed, the following definitions will apply:

Approval includes approval, consent, licence, permission or the like.

Business Day means any day except a bank or public holiday throughout New South Wales or a Saturday or Sunday;

Claim includes a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding or right of action.

Consent Authority has the same meaning as in the EPA Act;

Council means the Canterbury-Bankstown Council ABN 45 985 891 846;

Council Land means the part of Waverley Lane adjacent to the Development Site.

Dedication Land means the following land to be dedicated to Council:

the part of the Development Site along the northern (Waverley Lane) boundary, measuring 3 metres in depth and a width of 41.19 metres as shown in Schedule 1. The dedication is to enable the part of Waverley Lane adjacent to the Development Site to accommodate a minimum 1.8m wide pedestrian footpath and a minimum 6.5m road carriageway kerb to kerb

Deed means this Deed and includes any schedules, annexures and appendices to this Deed;

Development means, but is not limited to, the construction of the residential flat building development on the Development Site to be carried out by the Landowner in accordance with the Development Consent;

Development Application means DA-163/2018 lodged with Council on 19 April 2018 in respect of the Development Site;

Development Consent means the consent granted by the Land and Environment Court on 24 December 2020 in the Class 1 Proceedings in respect of the Development Application, as modified from time to time;

Development Site means Lots 29, 30, and 31 in Deposited Plan 10105 and known as 599-603 Canterbury Road, Belmore, and includes any lot created by the consolidation or subdivision of those lots from time to time;

EPA Act means the Environmental Planning and Assessment Act 1979;

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

Occupation Certificate means a certificate referred to in Division 6.2, Sections 6.3 and 6.4 of the EPA Act.

3.2 Interpretation

In this Deed, unless the context otherwise requires:

- (a) words denoting any gender include all genders;
- (b) headings are for convenience only and do not affect interpretation;
- (c) the singular includes the plural and vice versa;
- (d) any schedule or annexure attached to this Deed forms part of it;
- (e) a reference to a party includes its legal personal representatives, successors and permitted assigns;
- (f) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;
- (g) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them
- (h) unless expressly stated to be otherwise, the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar inclusive expressions; and
- (i) a reference to this Deed means this Deed and includes any variation or replacement of this Deed.

3.3 Warranties

The parties warrant to each other that they:

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

3.4 Further agreements

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

3.5 Surrender of right of appeal, etc.

The Landowner is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.

4 Section 7.11, 7.12 and 7.24 of the EPA Act

4.1 Application of section 7.11, 7.12 and 7.24

Sections 7.11, 7.12 and 7.24 of the EPA Act are not excluded in relation to the Development.

4.2 Benefits

Benefits obtained by Council under this Deed are not to be taken into consideration in determining any development contribution under section 7.11 of the EPA Act in respect of the Development Consent.

5 Dedication Land

- 5.1** The Landowner must, at its expense, dedicate to Council free of cost to the Council the Dedication Land prior to issue of any Occupation Certificate for the Development.
- 5.2** The Landowner must inform the principal certifying authority for the Development (if it is not the Council) of the provisions of this clause within 14 days after the date of this Deed.
- 5.3** The Landowner must give Council 14 days notice of the lodgement of a subdivision plan involving the Dedication Land.
- 5.4** The Landowner is to ensure that the land dedicated to the Council is free of all encumbrances and affectations (whether registered or unregistered and including

without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.

- 5.5** If, having used all reasonable endeavours, the Landowner cannot ensure that the land is free from all encumbrances and affectations, it may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.

5.6 Acquisition of land required to be dedicated

- (a) If the Landowner does not dedicate land required to be dedicated under this Deed at the time at which it is required to be dedicated, the Landowner consents to the Council compulsorily acquiring the land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- (b) Clause 5.6(a) constitutes an agreement for the purposes of section 30 of the Just Terms Act.
- (c) If, as a result of the acquisition referred to in clause 5.6(a), the Council is required to pay compensation to any person other than the Landowner, the Landowner is to reimburse the Council that amount, upon a written request being made by the Council, or the Council can call on any Security provided under this Deed.
- (d) The Landowner indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- (e) The Landowner is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 5.6, including without limitation:
 - (i) signing any documents or forms,
 - (ii) giving land owner's consent for lodgement of any development application,
 - (iii) producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and
 - (iv) paying the Council's costs arising under this clause 5.6.

6 Registration and Caveat

6.1 Acknowledgment

The Landowner agrees to register this Deed on the Development Site pursuant to section 7.6 of the EPA Act and acknowledge that on registration by the Registrar-General, this Deed will be binding on and enforceable against the owner of the Development Site from time to time as if each owner for the time being had entered into this Deed.

6.2 Consents to registration

Upon execution of this Deed, the Landowner must, at its cost, obtain the consents to the registration of this Deed from each person who has an estate or interest in the Development Site.

6.3 Landowner's obligations

The Landowner must:

- (a) not later than 10 days after this Deed takes effect:
 - (i) deliver to the Council in registrable form required by NSW Land Registry Services an instrument to procure the registration of this Deed on the title to the Development Site duly executed by the Landowner and any other person required by the NSW Land Registry Services to execute such instrument and,
 - (ii) provide all relevant consents to the registration (including the consents required under clause 6.2) to the Council for review; and
- (b) immediately upon receiving the registrable form executed by the Council, lodge the form, consents and all other necessary documents with NSW Land Registry Services to enable this Deed to be registered, and
- (c) do all other things reasonably necessary to enable this Deed to be registered pursuant to section 7.6 of the EPA Act.

6.4 Release

Council must execute and give to the Landowner any forms required by NSW Land Registry Services to remove the registration of this Deed from the Certificate of Title for the Development Site after the Landowner has complied with all its obligations under this Deed to Council's satisfaction.

6.5 Registration expenses

The Landowner must pay Council's expenses including registration fees, legal costs and disbursements in relation to the registration of this Deed and its subsequent removal from the title to the Development Site.

6.6 Upon execution of the Caveat by Council

The Landowner acknowledges that clause 5 of this Deed gives the Council an equitable estate or interest in the Dedication Land entitling the Council, pursuant to section 74F of the *Real Property Act 1900*, to lodge with the Registrar-General a caveat prohibiting the recording of any dealing affecting the Council's estate or interest in that land.

6.7 Restriction on dealings

- (a) The Landowner is not to:
 - (i) sell or transfer the Development Site or any part of it, or
 - (ii) assign their rights or obligations under this Deed, or novate this Deed,
to any person unless:
 - (iii) the Landowner has, at no cost to the Council, first procured the execution by the person to whom the Development Site or part is to be sold or transferred or their rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
 - (iv) the Council has given written notice to the Landowner stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
 - (v) the Landowner is not in breach of this Deed, and
 - (vi) the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- (b) Subject to clause 6.7(c), the Landowner acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 6.7(a).
- (c) Clause 6.7(a) does not apply in relation to any sale or transfer of the Development Site if this Deed is registered on the title to the Development Site at the time of the sale.

7 Dispute resolution

7.1 Dispute resolution - expert determination

- (a) This clause 7.1 applies to a dispute between any of the parties to this Deed concerning a matter arising in connection with this Deed 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.

(b) Notification of disputes

A dispute between the parties to which this clause 7.1 applies arises if

one party serves on the other party a written notice of dispute adequately identifying and providing details of the dispute.

(c) Conference

Within 10 Business Days after receiving a written notice of dispute, the parties must confer at least once to resolve the dispute. At every such conference, each party must be represented by a person having authority to agree to a resolution. All aspects of every such conference, except the fact of the occurrence, will be privileged.

(d) Expert determination

If, within 20 Business Days of service of a written notice of dispute, the parties have not resolved the dispute, the dispute must be referred to expert determination and be determined by an expert. If, within a further 10 Business Days, the parties have not agreed upon an expert, the expert must be nominated by the Australian Commercial Disputes Centre.

(e) Conduct of expert determination

The expert determination must be conducted in accordance with the Guidelines for Expert Determination of the Australian Commercial Disputes Centre. Except where the parties otherwise agree in writing or the Guidelines for Expert Determination of the Australian Commercial Disputes Centre otherwise provide:

- (i) each party must bear its own costs and pay one half of the expert's fees and expenses;
- (ii) the expert must not act as an arbitrator; and
- (iii) the determination of the expert will be final and binding on the parties.

7.2 Dispute resolution - Mediation

- (a) This clause 7.2 applies to any dispute arising in connection with this Deed other than a dispute to which clause 7.1 applies.
- (b) Such a dispute is taken to arise if one party gives another Party a notice in writing specifying particulars of the dispute.
- (c) If a notice is given under clause 7.2(b), the parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- (d) If the dispute is not resolved within a further 28 days, 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 of the Law Society to select a mediator.
- (e) 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.

- (f) Each party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- (g) The parties are to share equally the costs of the President, the mediator, and the mediation.

7.3 Proceedings

Nothing in this clause 7 will prejudice the right of a party to institute proceedings to enforce payment due under this Deed or to seek injunctive or urgent declaratory relief.

7.4 Continued performance of obligation

Notwithstanding the existence of a dispute, the parties must continue to perform their respective obligations under this Deed unless excused from performance by another provision of this Deed.

8 Notices

8.1 Notices given under this Deed:

- (a) must be in writing and clearly readable in the English language;
- (b) must be signed by the party giving or making it (or signed on behalf of that party by its authorised representative); and
- (c) may be delivered to a party by hand or by prepaid post to that party's address shown in page 1 of this Deed or to such other address or person as a party may specify by notice given in accordance with this clause.

8.2 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:

- (a) delivered or posted to that Party at its address, or
- (b) emailed to that Party at its email address.

8.3 Despite clause 8.2, notices received after 5 pm in the place of receipt or on a non-Business Day are taken to be received at 9 am on the next Business Day.

9 General

9.1 Relationship between the parties

Except as expressly provided to the contrary in this Deed, nothing in this Deed

will constitute the parties as principal and agent, employer and employee, partners or otherwise liable for the acts or omissions of any other party.

9.2 Entire agreement

This Deed records the entire agreement between the parties in relation to its subject matter. It supersedes all prior contracts, arrangements, understandings or negotiations by, or between, the parties in relation to the subject matter of this Deed.

9.3 Further assurance

Each party must (at its own expense) do all things that any other party reasonably requires of it to give the other party the full benefit of any obligations owed to the other party and expressed in this Deed.

9.4 Counterparts

This Deed and any variation of this Deed may be executed and take effect in two or more counterparts, each of which when taken together, will constitute one and the same instrument.

9.5 Survival

All warranties, releases, exclusions and limitations of liability, indemnities, terms with respect to intellectual property and confidential information in this Deed will remain valid and binding following expiry or termination of this Deed. Any other provision by its nature intended to survive expiry or termination of this Deed survives expiry or termination of this Deed.

9.6 No waiver

The failure, delay or omission by a party to exercise, or to partially exercise, a right, power or remedy under this Deed does not operate as a waiver of that right, power or remedy. A party which exercises, or partially exercises, a right, power or remedy maintains its right to further exercise the same right, power or remedy or to exercise another right, power or remedy. A party waives a right, power or remedy only by explicitly doing so in a written notice to the other party and the waiver is strictly limited to the matters specified in the notice.

9.7 Cumulative rights

The rights, powers, authorities, discretions and remedies of a party under this Deed do not exclude any other right, power, authority, discretion or remedy.

9.8 Severability

If any provision of this Deed is determined by a court or other competent tribunal or authority to be illegal, invalid or unenforceable then:

- (a) where the offending provision can be read down so as to give it a legal, valid and enforceable operation of a partial nature it must be read down to the extent necessary to achieve that result;

- (b) where the offending provision cannot be read down then that provision must be severed from the Deed in which event, the remaining provisions of this Deed operate as if the severed provision had not been included; and
- (c) the legality, validity or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction is not affected,

but only to the extent that is consistent with giving substantial effect to the intentions of the parties under this Deed.

9.9 Variation

This Deed can only be amended, supplemented or replaced by another document publicly notified and signed by the parties in accordance with the *Environmental Planning and Assessment Regulation 2021*.

9.10 Governing law and jurisdiction

This Deed is governed by the law of New South Wales. Each party submits to the jurisdiction of the courts in New South Wales in connection with matters concerning this Deed.

10 Costs


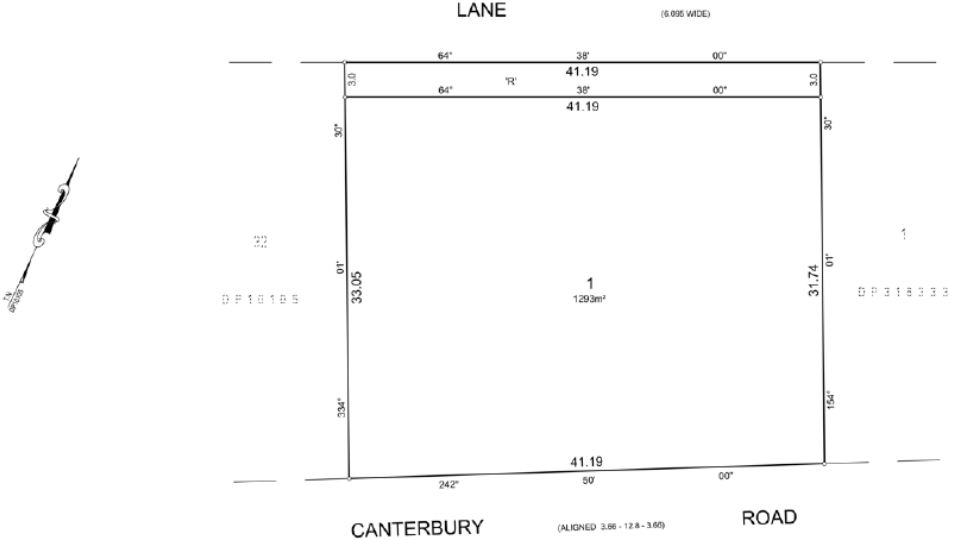
- 10.1** The Landowner agrees to pay Council's costs incurred to give effect to this Deed including but not limited to, the costs of preparing, negotiating and executing this Deed and any other related document within 30 days of a written demand by Council for such payment.

11 Notations on section 10.7 Planning Certificates

- 11.1** The Landowner acknowledges that the Council may, at its absolute discretion, make a notation under s10.7(5) of the EPA Act to the effect that the land is subject to the PA on any certificate issued under s10.7 of the EPA Act relating to the land the subject of the agreement.

Planning Agreement

Schedule 1 – Plan of Dedication Land

PLAN FORM 2 (A2)		WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION		Sheet No. 1 of 1 Sheets	
 PO BOX 3222, REDFERN NSW 2016 Ph: 02 8065 1156 Fax: 02 8065 1297 Email: survey@daw-walton.com.au REVISION: 1 DATED: 10-12-2020					
DRAFT SUBDIVISION PLAN PREPARED FROM ARCHITECTURAL PLANS BY ARQUERO, JOB No: 13007, ISSUE: F, DATED: 22/06/2020					
 <p>'R' DENOTES ROAD WIDENING TO BE DEDICATED TO THE PUBLIC AS ROAD (129.5m²)</p>					
SURVEYOR NAME: JOHN WALTON DATE OF SURVEY: REFERENCE: 2670-15DP		PLAN OF: SUBDIVISION OF LOTS 29-31 IN DP10105		LGA: CANTERBURY-BANKSTOWN LOCALITY: BELMORE Reduction Ratio: 1 : 200 Lengths are in metres	
				REGISTERED:	
				DRAFT	

Planning Agreement

Executed as a deed.
Executed by **Belmore Property Investment Pty Ltd** in accordance section 127 of the Corporations Act 2001 (Cth) in the presence of:

Signature of witness

Full name of witness

Signature of Xiaomin Chen

Full name of sole director/secretary

Executed by **Canterbury-Bankstown Council** by its Chief Executive Officer pursuant to delegation from Council and in the presence of:

Witness (Signature)

Name of Witness (Print Name)

Chief Executive Officer (Signature)

Name of Chief Executive Officer (Print Name)

Explanatory Note

Exhibition of draft Planning Agreement - 599-603

Canterbury Road, Belmore

Environmental Planning & Assessment Regulation 2021 (Section 205)

Introduction

The purpose of this explanatory note is to provide a plain English summary to support the notification of the draft planning agreement (**Planning Agreement**) prepared under Subdivision 2 of Division 7.1 of Part 7 of the *Environmental Planning and Assessment Act 1979 (Act)*.

This explanatory note has been prepared jointly by the parties as required by section 205 of the *Environmental Planning and Assessment Regulation 2021 (Regulation)*.

Parties to the Planning Agreement

The parties to the Planning Agreement are Belmore Property Investment Pty Ltd (**Landowner**) and Canterbury-Bankstown Council (**Council**).

Description of the Subject Development Site

The land to which the Planning Agreement applies is described as follows:

Lot 29 DP 10105, Lot 30 DP 10105 and Lot 31 DP 10105, known as 599 - 603 Canterbury Road, Belmore (**Development Site**)

The Development Site (edged in blue) and the land to be dedicated to Council (marked in red) are generally as shown on the map below.

Planning Agreement



Description of the Proposed Development

This Planning Agreement relates to Development Application No. DA-163/2018. On 24 December 2020, the Land and Environment Court approved Development Application No. DA-163/2018 for the demolition of the existing buildings and associated structures and the construction of a five storey residential flat building over two levels of basement carparking on the Development Site (**Development**).

The development consent to the Development contains a deferred commencement condition as follows:

- . This consent is not to operate until the Applicant satisfies the Council, within 24 months of the date of this consent that:***

In accordance with the irrevocable letter of offer dated 15 December 2020 made by the Applicant, the Applicant has entered into a Planning Agreement under section 7.4 of the Environmental Planning and Assessment Act 1979 (and Councils Planning Agreement Policy), with Council for the dedication of the area of land measuring 3 metres (depth) along the northern boundary of the site (as shown on the draft Plan of Subdivision 2670-15DP, prepared by Daw & Wilton, dated 10 December 2020) for the purpose of lane widening.

Description of Development Contributions

This Planning Agreement requires the dedication of part of the Development Site, being a strip of land along the northern (Waverley Lane) boundary, measuring 3 metres in depth and a width of 41.19 metres as shown in Schedule 1. The dedication is to enable the part of Waverley Lane adjacent to the Development Site to accommodate a minimum 1.8m wide pedestrian footpath and a minimum 6.5m road carriageway kerb to kerb.

Summary of Objectives, Nature and Effect of the Planning Agreement

The Planning Agreement is a voluntary planning agreement under section 7.4 of the Act. The Planning Agreement is entered into in fulfilment of the deferred commencement condition of the development consent to DA-163/2018.

The terms of the Planning Agreement require the Landowner to dedicate to Council a part of the Development Site along the northern (Waverley Lane) boundary, measuring 3 metres in depth and a width of 41.19m to enable the part of Waverley Lane adjacent to the Development Site to accommodate a minimum of 1.8m wide pedestrian footpath and a minimum of 6.5m road carriageway kerb to kerb except in areas of transition at the eastern and western ends of the widening (Development Contribution)

The Development Contribution is to be provided to Council prior to the issue of any Occupation Certificate for the Development.

The Development Contribution will be provided in addition to the section 7.11 development contributions payable with respect to the Proposed Development.

The Planning Agreement is to be registered on the title to the Development Site.

The requirement to dedicate the Dedication Land gives the Council a caveatable interest in the Dedication Land which entitles the Council to lodge a caveat prohibiting the recording of any dealing affecting the Council's estate or interest in that land.

The Planning Agreement imposes restrictions on the Landowner transferring the Development Site or part of the Development Site or the Landowner assigning an interest under the agreement.

The Planning Agreement contains a provision allowing the Council to compulsorily acquire the Dedication Land for \$1 if the Landowner fails to dedicate the Dedication Land by the time at which it is required to be dedicated.

Assessment of Merits of Planning Agreement

How the Planning Agreement Promotes the Public Interest

The Planning Agreement promotes the public interest by requiring the dedication of the Dedication Land to the Council, which will be applied towards the public purpose of transport or other infrastructure relating to land and will have a public benefit by widening the road reserve within the adjoining Waverley Lane, contributing to the local road network that will serve the Development Site.

The Planning Agreement and the dedication of the land under the agreement also promotes the public interest by promoting the following objects of the Act:

- a) the promotion and co-ordination of the orderly and economic use and development of land; and
- b) the provision of land for public purposes.

The Planning Agreement also promotes the guiding principles for councils under section 8A of the *Local Government Act 1993* (NSW) by assisting Council to:

- carry out functions in a way that provides the best possible value for residents and ratepayers;
- work with others to secure appropriate services for local community needs; and
- manage lands and other assets so that current and future local community needs can be met in an affordable way.

Whether the Planning Agreement conforms with the Council's capital works program

This Planning Agreement does not require the carrying out of any works. As section 7.11 development contributions remain payable under the Development Consent, the Planning Agreement has no negative effect on Council's ability to deliver on its capital works program.

Whether the Planning Agreement specifies that certain requirements must be complied with before issuing of a construction certificate, occupation certificate or subdivision certificate

Yes. The Planning Agreement requires the Dedication Land to be dedicated to Council prior to the issue of any Occupation Certificate for the Development.