

Voluntary Planning Agreement

Bella Ikea Belmore Pty Ltd
ABN 93 611 860 845

AND

City of Canterbury Bankstown Council
ABN 45 985 891 846

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Date 2018

Parties

Developer Bella Ikea Belmore Pty Ltd ABN 93 611 860 845
Address 21 Chalmers Street, Belmore NSW 2192
Attention Joseph Zaatini

Landowner Bella Ikea Belmore Pty Ltd
Address 21 Chalmers Street, Belmore NSW 2192
Attention Joseph Zaatini

Council City of Canterbury Bankstown Council ABN 45 985 891 846
Address 137 Beamish Street, Campsie NSW 2194
Attention

Background

- A The Development Site is located at 749-757 Canterbury Road, Belmore.
- B The Developer acts with the consent of the registered proprietors of the Development Site.
- C Council is the owner of the Council Land, which adjoins the Development Site.
- D On 1 November 2016, the Developer (under a previous company name) lodged the Development Application DA-506/2016 with the Council.
- E On 12 January 2017, the Developer commenced Class 1 Proceedings in the Land & Environment Court against the Council's deemed refusal of that Development Application.
- F On 19 June 2017, the Court granted Development Consent subject to conditions.
- G Deferred Commencement condition number 1 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:

1. *In accordance with the letter of offer dated 9 June 2017 made by the Applicant, the Applicant is to enter into a Planning Agreement under section 93F of the Environmental Planning and Assessment Act 1979 with Council for the dedication of the area of land measuring 3 metres (depth) along the northern (Wilson Lane) and eastern (Thompson Lane) boundaries for the purpose of road widening. The new lanes shall provide a minimum of 1.8m*

wide pedestrian footpath adjacent to the northern and eastern boundaries. A minimum of 6.5m carriageway kerb to kerb shall be provided in sections of the laneway adjacent to the site, except in areas of transition to accommodate site requirements at 759-757 Canterbury Road. Such dedication is to be free of any trusts, estates, interests, covenants and encumbrances upon the registration at the Land and Property Information Office of New South Wales. All costs associated with the construction of this portion of the site for lane widening must be met by the applicant.

The roadworks required to be completed by the Applicant for the lane widening is as follows:

Wilson Lane

- *New laneway works for land dedication;*
- *Joining of laneway to existing laneway;*
- *Removal of existing kerb and gutter and construction of new kerb and gutter;*
- *Top resheet of new and existing laneway with hotmix;*
- *Relocation of two power poles;*
- *Potential for up to two new poles; and*
- *Relocation of dish on the corner of Wilson and Thompson Lane.*

Thompson Lane

- *New laneway works for land dedication;*
- *Joining of laneway to existing laneway;*
- *Removal of existing kerb and gutter and construction of new kerb and gutter;*
- *Top resheet of new and existing laneway with hotmix;*
- *Relocation of one power pole;*
- *Potential relocation of Telstra pit. However this is subject to the laneway design (which could leave the pit in its existing location) and resistance from Telstra to relocate.*

H Deferred commencement condition number 2 of the Development Consent provides:

2. *A detailed civil design of the lane widening must be submitted and approved by Council City Operations Division addressing the following:*
 - a. *The roadworks referred to at deferred commencement condition 1 above.*
 - b. *Submitted plans must include underground utility services, paving material, construction methodology, hold points, kerb long sections and cross sections. The applicant must consult with Council's City Assets Division regarding footpath material finish.*
 - c. *Appropriate transitions must be provided west of the site towards 759-765 Canterbury Road, to convert the proposed kerb/waterun alignment to match the existing.*
 - d. *The vehicular access and parking facilities shall be constructed in accordance with the approved plans. The longitudinal profile must be in accordance with the approved plans. The applicant must*

demonstrate all vehicles utilising the vehicular access to the site can enter and exit safely with all necessary ground clearances.

- e. *Applicant to provide gutter flow levels and profile for the 1 in 100 year event to provide evidence of 0.15m clearance from water level to threshold in access ramp to basement.*

- I In compliance with Deferred Commencement condition number 1 of the Development Consent, the Developer has agreed to enter into this planning agreement with Council.

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.

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council to pay an amount or amounts of money to the Council on demand issued by:

(a) one of the following trading banks:

- (i) Australia and New Zealand Banking Group Limited,
- (ii) Commonwealth Bank of Australia,
- (iii) Macquarie Bank Limited,

- (iv) National Australia Bank Limited,
- (iv) St George Bank Limited,
- (v) Westpac Banking Corporation, or

(b) any other financial institution approved by the Council in its absolute discretion.

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

Class 1 Proceedings means Land and Environment Court proceedings number 11170 of 2017 between Bella Ikea Belmore Pty Ltd as Applicant and the City of Canterbury Bankstown Council as Respondent;

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

Conditions means the Conditions of Consent that are Annexure 'B' to the Development Consent, forming Schedule 2 of this Deed, as modified from time to time;

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

Construction Certificate means a certificate referred to in Division 6.2 sections 6.3 and 6.4 of the EPA Act;

Council means the City of Canterbury Bankstown Council ABN 45 985 891 846;

Council Land means the part of Wilson Lane and Thompson Lane adjacent to the Development Site.

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

- (a) the part of the Development Site along the northern (Wilson Lane) boundary, measuring 3 metres in depth and a width to enable the part of Wilson Lane adjacent to the Development Site to accommodate a minimum of 1.8m wide pedestrian footpath and a minimum of 6.5m carriageway kerb to kerb except in areas of transition to accommodate site requirements at 749 – 757 Canterbury Road, Belmore as shown in Schedule 4; and
- (b) the part of the Development Site along the eastern (Thompson Lane) boundary, measuring 3 metres in depth and a width to accommodate a minimum of 1.8m wide pedestrian footpath and a minimum of 6.5m carriageway kerb to kerb except in areas of transition to accommodate site requirements at 749 – 757 Canterbury Road, Belmore as shown in Schedule 4;

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

Defect means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of the Road Works or any part of the Road Works.

Defects Liability Period means the period of 1 year commencing on the day immediately after the Road Works are completed for the purposes of 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 Developer in accordance with the Development Consent;

Development Application means DA-506/2016 lodged with Council on 1 November 2016 in respect of the Development Site;

Development Consent means the consent granted by the Land and Environment Court on 19 June 2017 in the Class 1 Proceedings in respect of the Development Application, with such consent forming Schedule 1 of this Deed, as modified from time to time;

Development Site means Lots 12, 13 and 14 in Deposited Plan 4387 and known as 749-757 Canterbury Road, Belmore, and includes any lot created by the consolidation or subdivision of those lots from time to time;

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 Deed.

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;

Principal Contractor has the same meaning as 'principal contractor' in clause 293 of the *Work Health and Safety Regulation 2011*;

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.

Road Works means the provision of road infrastructure for the widening of Wilson and Thompson Lanes to a minimum of 1.8m wide pedestrian footpath and a minimum of 6.5m carriageway kerb to kerb except in areas of transition to accommodate site requirements at 749-757 Canterbury Road, Belmore as shown in Schedule 4; as follows:

Wilson Lane

- *New laneway works for land dedication being construction of road pavement in area of laneway and concrete footpath between kerb and boundary line;*
- *Joining of laneway to existing laneway;*

- *Removal of existing kerb and gutter and construction of new kerb and gutter;*
- *Top resheet of new and existing laneway with hotmix;*
- *Relocation of two power poles;*
- *Potential for up to two new poles; and*
- *Relocation of dish on the corner of Wilson and Thompson Lane.*

Thompson Lane

- *New laneway works for land dedication being construction of road pavement in area of laneway and concrete footpath between kerb and boundary line;*
- *Joining of laneway to existing laneway;*
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- *Top resheet of new and existing laneway with hotmix;*
- *Relocation of one power pole;*
- *Potential relocation of Telstra pit. However this is subject to the laneway design (which could leave the pit in its existing location) and resistance from Telstra to relocate.*

to be carried out in accordance with:

- a. the detailed civil design of the Road Works approved by the Council pursuant to deferred commencement Condition 2 in Part A of the Development Consent; and
- b. the Conditions.

Security means a Bank Guarantee, cash deposit or bond on terms acceptable to Council indexed in accordance with the *Consumer Price Index (All Groups – Sydney)* published by the Australian Bureau of Statistics from the date the Council notifies the Developer of the amount of the Security required.

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 No fettering clause

The Developer acknowledges that Council cannot fetter in advance the exercise of any of its statutory discretions, whether by way of contract, estoppel or otherwise, in relation to any application relating to the Development Site to be lodged with the vendor in its capacity as a governmental authority nor pre-determine any decision in respect of any such application.

3.4 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.

3.5 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.

3.6 Surrender of right of appeal, etc.

The Developer 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

Subject to clause 4.2, sections 7.11, 7.12 and 7.24 of the EPA Act apply 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.

4.3 Offer by the Developer

The Developer acknowledges that this Deed is in the terms of an offer made by the Developer in connection with the Development Consent.

5 Development

5.1 Development Consent

- (a) The Developer has obtained the Development Consent from the Land and Environment Court.

5.2 Road Works

- (a) The Developer must, at its cost, carry out and complete the Road Works in accordance with the Development Consent,, this Deed, the detailed civil design of the Road Works approved by the Council pursuant to deferred commencement Condition 2 in Part A of the Development Consent, any other relevant Approval relating to the Road Works and any other applicable law.
- (b) The Developer must ensure that it has satisfied all Conditions required to be satisfied prior to commencement of the Road Works, including obtaining all consents and Approvals for the Road Works as required pursuant to the Conditions, and as required at law from the Council and any other authority prior to commencement of the Road Works.
- (c) The Developer must carry out and complete the Road Works prior to the issuing of any Occupation Certificate for the Development.

5.3 Access

- (a) Council must grant access to the Developer over the Council Land, and any other land owned by Council as agreed in writing between the parties, for the purpose of carrying out and completing the Road Works.

5.4 Inspection, examination and testing of Road Works

- (a) Council may, at reasonable times and on reasonable prior written notice being given to the Developer, enter any land on which the Road Works are being carried out to inspect, examine or test the Road Works or to remedy any breach by the Developer of its obligations relating to the Road Works during the course of construction.
- (b) Clause 5.4(a) does not apply to require Council to give reasonable prior written notice to inspect the Road Works where the inspection is specified in any Approval for the Road Work.

- (c) Council must promptly give written notice to the Developer of any material or significant defect, error or omission in the Road Works identified during or as a result of such inspection, examination or test and the Developer is to promptly rectify the matters specified in the notice. The parties expressly agree that any failure to identify a defect, error or omission will not be construed as amounting to an acceptance by Council of that defect, error or omission.

5.5 Completion of Work

- (a) The Developer is to give the Council written notice of the date on which it will complete the Road Works required to be carried out under this Deed.
- (b) The Council is to inspect the Road Works the subject of the notice referred to in clause 5.5(a) within 14 days of the date specified in the notice for completion of the Road Works.
- (c) The Road Works required to be carried out by the Developer under this Deed, are completed for the purposes of this Deed when the Council, acting reasonably, gives a written notice to the Developer to that effect.
- (d) If the Council is the owner of the land on which the Road Works the subject of a notice referred to in clause 5.5(c) is issued, the Council assumes responsibility for the Road Works upon the issuing of the notice, but if it is not the owner at that time, it assumes that responsibility when it later becomes the owner.
- (e) Before the Council gives the Developer a notice referred to in clause 5.5(c), it may give the Developer a written direction to complete, rectify or repair any specified part of the Road Works to the reasonable satisfaction of the Council.
- (f) The Developer, at its own cost, is to promptly comply with a direction referred to in clause 5.5(e).

5.6 Rectification of defects

- (a) The Council may 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 a Rectification Notice that has been given to it under clause 5.6(a).

5.7 Works-As-Executed-Plan

- (a) No later than 60 days after the Road Works are completed for the purposes of this Deed, the Developer is to submit to the Council a full works-as-executed-plan in respect of the Road Works.
- (b) The Developer, being the copyright owner in the plan referred to in clause 5.7(a), gives the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Deed.

5.8 Removal of Equipment

- (a) When the Road Works on any Council owned or controlled land is completed for the purposes of this Deed, the Developer, without delay, is to:
 - (i) remove any Equipment from Land and make good any damage or disturbance to the land as a result of that removal, and
 - (ii) leave the land in a neat and tidy state, clean and free of rubbish.

5.9 Principal Contractor

- (a) The Developer acknowledges that:
 - (i) it is undertaking the Road Works;
 - (ii) it is the Principal Contractor for the Road Works; and
 - (iii) as the Principal Contractor, it has control and management of the Development Site.

5.10 Principal Contractor's Responsibility

- (a) The Developer agrees that, as Principal Contractor, the Developer:
 - (i) is responsible for the Road Works at all times until completion of the Road Works has taken place; and
 - (ii) must ensure that, in undertaking the Road Works, it complies with all its obligations under the *Work Health and Safety Act 2011* and the *Work Health and Safety Regulation 2011*.

5.11 Indemnity

- (a) To the full extent permitted by the law, the Developer indemnifies Council and keeps Council indemnified against all costs, expenses, fines, losses, damages and claims for which Council may become liable, suffer or incur in connection with or arising directly or indirectly out of the Developer's performance of its obligations under this Deed.

5.12 Breach of obligations

- (a) If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
 - (i) specifying the nature and extent of the breach; and
 - (ii) requiring the Developer to rectify the breach; and
 - (iii) specifying the period within which the breach is to be rectified, being a period that is reasonable in the circumstances.
- (b) If the Developer fails to comply with a notice given under clause 5.12(a), relating to the carrying out of Road Works under this Deed, the Council may, without further notice to the Developer, call-up the Security provided by the

Developer under this Deed and apply it to remedy the Developer's breach, or 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.

- (c) Any costs incurred by the Council in remedying a breach in accordance with clause 5.12(b) may be recovered by the Council by calling-up and applying the Security provided by the Developer under this Deed or as a debt due in a court of competent jurisdiction.
- (d) For the purpose of clause 5.12(c), the Council's costs of remedying a breach the subject of a notice given under clause 5.12(a) 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.
- (e) Nothing in this clause 5.12 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

5.13 Security for performance of obligations

- (a) The Developer is to provide Security to the Council for the performance of the Developer's obligations under this Deed, in the amount of the estimated cost of construction of the Road Works, to be determined by the Council acting reasonably.
- (b) The Developer is to provide the Security to the Council before it commences any part of the Development or the Road Works.
- (c) The Council, in its absolute discretion and despite clause 5.3, may refuse to allow the Developer to enter, occupy or use any land owned or controlled by the Council or refuse to provide the Developer with any plant, equipment, facilities or assistance relating to the carrying out the Development if the Developer has not provided the Security to the Council in accordance with this Deed.
- (d) The Council may call-up and apply the Security in accordance with clause 5.12 to remedy any breach of this Deed notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity.
- (e) The Council is to release and return the Security or any unused part of it to the Developer within 14 days of completion of all of the Developer's obligations under this Deed.

- (f) The Developer may at any time provide the Council with a replacement Security.
- (g) On receipt of a replacement Security, the Council is to release and return the Security that has been replaced to the Developer.
- (h) If the Council calls-up the Security or any portion of it, it may, by written notice to the Developer, require the Developer to provide a further or replacement Security to ensure that the amount of Security held by the Council equals the amount it is entitled to hold under this Deed.
- (i) The Developer is to ensure that the Security provided to the Council is at all times maintained to the full current indexed value.

6 Dedication Land

- 6.1 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.
- 6.2 The Developer 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.

6.3 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 6.3(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 6.3(a), the Council is required to pay compensation to any person other than the Landowner, the Developer 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 Developer 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 Developer and the Landowner are to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 6.3, 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 6.3.

7 Insurance

7.1 Insurance

- (a) The Developer must:
 - (i) procure and maintain public liability insurance for an amount not less than \$20,000,000 (or such greater amount as reasonably required by Council from time to time) for a single occurrence covering all aspects of the Road Works and submit a copy of the certificate of insurance to Council prior to commencement of the construction of the Road Works and when otherwise reasonably requested by Council;
 - (ii) ensure that all relevant third parties procure and maintain all other insurance policies required by law in respect of the Road Works including, but not limited to, insurance of the Road Works and insurance against death or injury to persons employed or contracted in relation to the undertaking of the Road Works, and any other insurances required by law; and
 - (iii) ensure that all relevant third parties procure and maintain professional indemnity insurance in respect of the design of the Road Works for an amount not less than \$20,000,000 (or such greater amount as reasonably required by Council from time to time) for a single occurrence.

7.2 Insurance requirements

All insurance policies which the Developer must procure and keep current under this Deed must:

- (a) be established with one or more insurance companies which are respectable, reputable and financially sound;
- (b) name Council as an insured party;
- (c) cover the parties' respective interests; and
- (d) be kept current until expiration of the Defects Liability Period.

7.3 Evidence

Before the Development commences any work under this Deed, the Developer must provide Council with a certificate of currency (or such other evidence as Council may reasonably require) in respect of any insurance that must be established and maintained under this Deed.

8 Registration and Caveat

8.1 Acknowledgment

The Developer and the Landowner acknowledge that Council requires the registration of this Deed on the Development Site under section 7.6 of the EPA Act and 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.

8.2 Consents to registration

Not later than 10 days after this Deed takes effect, the Developer 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.

8.3 Developer and Landowner's obligations

The Developer and Landowner must:

- (a) not later than 10 days after this Deed takes effect:
 - (i) deliver to the Council in registrable form required by Land and Property Information an instrument to procure the registration of this Deed on the title to the Development Site duly executed by the Landowner, the Developer and any other person required by the Land and Property Information to execute such instrument and,
 - (ii) provide all relevant consents to the registration (including the consents required under clause 8.2) to Land and Property Information;
 - (iii) arrange for the production of the certificate of titles for the Development Site to the Council or the Land and Property Information for the purpose of registration of this Deed; and
- (b) immediately upon receiving the registrable form executed by the Council, lodge the form and all other necessary documents with the Land and Property Information 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.

8.4 Release

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

8.5 Registration expenses

The Developer 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.

8.6 Caveatable interest

The Developer acknowledges that the rights under this Deed give Council a caveatable interest in the Development Site and consents to the Council registering such a caveat.

8.7 Restriction on dealings

- (a) The Developer and the Landowner are not to:
- (i) sell or transfer the Development Site or any part of it, or
 - (ii) assign the Developer's rights or obligations under this Deed, or novate this Deed,
- to any person unless:
- (iii) the Developer or the Landowner (as the case may be) 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 the Developer's 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 Developer or the Landowner (as the case may be) 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 Developer or the Landowner (as the case may be) 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 8.7(c), the Developer and the Landowner (as the case may be) 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 8.7(a).
- (c) Clause 8.7(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.

9 Dispute resolution

9.1 Dispute resolution – expert determination

- (a) This clause 9.1 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 9.1 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.

9.2 Dispute resolution – Mediation

- (a) This clause 9.2 applies to any dispute arising in connection with this Deed other than a dispute to which clause 9.1 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 9.2(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.

9.3 **Proceedings**

Nothing in this clause 9 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.

9.4 **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.

10 **Notices**

10.1 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.

10.2 A notice is taken to be duly given and received:

- (a) if delivered by hand, when delivered; or
- (b) if delivered by prepaid post, three Business Days after being deposited in the mail with postage prepaid.

10.3 Despite clause 10.2, 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.

11 General

11.1 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.

11.2 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.

11.3 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.

11.4 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.

11.5 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.

11.6 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.

11.7 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.

11.8 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.

11.9 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 2000*.

11.10 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.

12 Costs

- 12.1 The Developer agrees to pay Council's legal 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.

Schedule 1 – Development Consent

Schedule 2 – Conditions of Consent

Schedule 3 – Letter from Developer to Council dated 9 June 2017

**Schedule 4 – Architectural Plan No. s34-102 (Rev 03) prepared by Bureau SRH
Architecture, dated 4 May 2017**

Executed as an agreement

**Executed by Bella Ikea Belmore Pty
Ltd** ABN 93 611 860 845 in accordance
with section 127 of the Corporations Act
by its authorised officers:

Signature of director

Name

Signature of director/secretary

Name

**Executed by the City of Canterbury
Bankstown Council** ABN 45 985 891
846 by delegated authority of the General
Manager

Signature of authorised officer

Name of authorised officer

Signature of witness

Name of witness