

Planning Agreement for the provision of Contributions in lieu of Parking Spaces

280 Chapel Road, Bankstown – Lots 31, 32 and 33 DP 11312

Duyanh Pty Limited (ACN 086 779 937) and Kimala Pty Ltd (ACN 102 281 363) (**Developers**)

Canterbury Bankstown Council (ABN 45 985 891 846) (**Council**)

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Parties

Council	Name	Canterbury Bankstown Council
	Address	Bankstown Customer Service Centre, Upper Ground Floor, Bankstown Civic Tower, 66-72 Rickard Road, Bankstown NSW 2200
	ABN	45 985 891 846
	Telephone	(02) 9707 9000
	Fax	(02) 9707 9700
Developers	Name	Duyanh Pty Limited
	Address	293 Chapel Road, Bankstown NSW 2200
	ACN	086 779 937
	Name	Kimala Pty Ltd
	Address	31 Salvia Avenue, Bankstown NSW 2200
	ACN	102 281 363

Background

- A** The Developers are the registered proprietors of the Land.
- B** The Developers have applied or propose to apply, for the Development Consent.
- The Developers have offered to provide the Monetary Contribution if the Development Consent is granted.

Operative Provisions

1 Agreement

The agreement of the parties is set out in the Operative Provisions of this agreement, in consideration of, among other things, the mutual promises contained in this agreement.

2 Definitions and interpretation

2.1 Defined terms

In this agreement, words beginning with a capital letter that are defined in Part 1 of **Schedule 1** have the meaning ascribed to them in that schedule.

2.2 Interpretation

The interpretational rules contained in Part 2 of **Schedule 1** apply in the interpretation of this agreement.

3 Application and operation of this agreement

3.1 Planning agreement

This agreement is a planning agreement:

- (1) within the meaning set out in section 7.4 of the Act; and
- (2) governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.

3.2 Application

This agreement applies to both the Land and the Development.

3.3 Operation

- (1) Subject to paragraph (2), this agreement operates from the date it is executed by both parties.
- (2) The following clauses of this agreement will only operate if and when Council grants the Development Consent:
 - (a) clause 4;
 - (b) clause 6;
 - (c) clause 8; and
 - (d) clause 11.

3.4 Acknowledgement

The Developers acknowledge that if they are required to provide a Monetary Contribution under this agreement then Council will use its reasonable endeavours to ensure that the Monetary Contribution is used to provide public car parking within the Bankstown Central Business District however Council is under no obligation to do so and may use that contribution for the provision of public car parking in any other part of the Canterbury Bankstown Local Government Area.

4 Application of sections 7.11 and 7.12

4.1 Application

This agreement does not exclude the application of section 7.11 or section 7.12 of the Act to the Development.

4.2 Consideration of benefits

Section 7.11(6) of the Act does not apply to the Contribution that is to be carried out or provided pursuant to this agreement.

5 Registration of this agreement

5.1 Registration

This agreement will be registered on the title of the Land pursuant to section 7.6 of the Act.

5.2 Obligations of the Developer

The Developers must:

- (1) do all things necessary to allow the registration of this agreement to occur under clause 5.1; and
- (2) pay any reasonable costs incurred by Council in undertaking that registration.

6 Provision of Monetary Contribution

6.1 Application

This clause 6 only applies where the Developer is required to provide Monetary Contribution to Council under this agreement.

6.2 Obligation to make a Monetary Contribution

Subject to clause 6.4, the Developer must pay the Monetary Contribution to Council as set out in **Schedule 3**.

6.3 Developers' undertaking

The Developers undertake to Council not to make an application for the issue of any Occupation Certificate until it has made the payment required to be made to Council under clause 6.2.

6.4 Indexation of Amounts payable by Developers

The Monetary Contribution is to be increased (with the calculation to be made as from the date any such amount is due to be paid under this agreement) in accordance with the following formula:

$$A = B \times \frac{C}{D}$$

where:

A = the indexed amount;

B = the relevant amount as set out in this agreement;

C = the Index most recently published before the date that the relevant payment or the calculation with respect to the relevant amount is to be made; and

D = the Index most recently published before the commencement date of this agreement.

If **A** is less than **B**, then the amount of the relevant Monetary Contribution will not change.

7 Developers warranties

The Developers warrant to Council that:

- (1) they are legally and beneficially entitled to the Land;
- (2) they are able to fully comply with their obligations under this agreement;
- (3) they have full capacity to enter into this agreement; and
- (4) there is no legal impediment to them entering into this agreement, or performing the obligations imposed on them under this agreement.

8 Determination of this agreement

8.1 Determination

- (1) Subject to paragraph (2), this agreement will determine upon the Developers satisfying all of their obligations under this agreement (including any obligations under this clause 8).
- (2) This agreement will determine immediately if the Development Consent:
 - (a) lapses;
 - (b) is surrendered; or
 - (c) becomes ineffective for any reason,under the Act.

8.2 Effect of determination

Upon the determination of this agreement Council will do all things necessary to allow the Developer to remove this agreement from the title of the whole or any part of the Land as soon as reasonably practicably.

9 Assignment and security

9.1 Prohibition

Neither party may Assign their rights under this agreement without the prior written consent of the other party.

9.2 Assignment of the Land

The Developers must not Assign their interest in the Land unless:

- (1) Council consents to the Assignment, acting reasonably;
- (2) the proposed assignee enters into an agreement to the satisfaction of Council under which the assignee agrees to be bound by the terms of this agreement; and
- (3) the Developers are not in breach of any terms of this agreement.

9.3 Delivery to Council of Bank Guarantee

The Developers must deliver to Council an unconditional Bank Guarantee in a form acceptable to the Council for an amount and by the time specified in **Schedule 3 (Bank Guarantee)**.

9.4 Council may call on Bank Guarantee

If the Developers fail to comply with any term of this agreement or do not pay any amount they are required to pay to Council by the time or times and in the manner set out in this agreement, Council may, without limiting any other avenues available to it, call on the relevant Bank Guarantee without notice to the Developers to the extent necessary to meet that liability.

9.5 Return of Bank Guarantee

Council must return the Bank Guarantee (if any) within one (1) month after:

- (1) the Developers have complied with clause 6.2 (if applicable); or
- (2) the determination of this agreement.

10 Review and amendment

10.1 Negotiation of review

If either party requests a review of the whole or any part of this agreement then the parties must use their best endeavours, acting in good faith, to review this agreement in accordance with that request.

10.2 Amendment to be in writing

If the parties agree to amend this agreement as a result of a review conducted under clause 10.1 then any such amendment must be made:

- (1) in writing signed by both parties;
- (2) in accordance with the Act, or any Regulations in force under the Act.

11 Dispute resolution

11.1 Notice of Dispute

If a party believes that there is a dispute in respect of this agreement (**Dispute**) then:

-
- (1) that party must give notice (**Dispute Notice**) in writing to the other party stating that there is a Dispute; and
 - (2) the Dispute Notice must outline:
 - (a) what the party believes the dispute to be;
 - (b) what the party wants to achieve;
 - (c) what the party believes will settle the Dispute; and
 - (d) who will be the party's representatives to negotiate the dispute.

11.2 Consultation between the Representatives

Within fifteen (15) Business Days of a notice served in accordance with clause 11.1(1) the representatives (**Representatives**) of each of the parties must meet in order to resolve the Dispute.

11.3 Exclusivity of dispute resolution procedure

- (1) Both parties must adhere to the dispute resolution procedure set out in this agreement.
- (2) The only time that either party may depart from the dispute resolution procedure set out in this clause is when urgent interlocutory relief is required to restrain a breach or threatened breach of this agreement.

11.4 Settlement of Dispute

If the parties cannot resolve the Dispute after adhering to the dispute resolution procedure set out in this agreement then either party may seek any other avenues available to it in order to resolve the Dispute.

12 Position of Council

12.1 Consent authority

The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the terms of the Planning Legislation.

12.2 Agreement does not fetter discretion

This agreement is not intended to operate to fetter, in any unlawful manner:

- (1) the power of Council to make any Law; or
- (2) the exercise by Council of any statutory power or discretion,
(Discretion).

12.3 Severance of provisions

- (1) No provision of this agreement is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this agreement is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
 - (a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 12 is substantially satisfied;
 - (b) in the event that paragraph (1)(a) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect; and
 - (c) to endeavour to satisfy the common objectives of the parties in relation to the provision of this agreement which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.

-
- (2) Where the Law permits Council to contract out of a provision of that Law or gives Council power to exercise a Discretion, then if Council has in this agreement contracted out of a provision or exercised a Discretion under this agreement, then to the extent of this agreement is not to be taken to be inconsistent with the Law.

12.4 No obligations

Nothing in this agreement will be deemed to impose any obligation on Council to exercise any of its functions under the Act in relation to the Development Consent, the Land or the Development in a certain manner.

13 Confidentiality

13.1 Agreement not Confidential

The terms of this agreement are not confidential and this agreement may be treated as a public document and exhibited or reported without restriction by any party.

13.2 Other Confidential Information

- (1) The parties acknowledge that:
- (a) Confidential Information may have been supplied to some or all of the parties in the negotiations leading up to the making of this agreement; and
 - (b) The parties may disclose to each other further Confidential Information in connection with the subject matter of this agreement.
 - (c) Subject to paragraphs (2) and (3), each party agrees:
 - (i) not to disclose any Confidential Information received before or after the making of this agreement to any person without the prior written consent of the party who supplied the Confidential Information; or
 - (ii) to take all reasonable steps to ensure all Confidential Information received before or after the making of this agreement is kept confidential and protected against unauthorised use and access.
- (2) A party may disclose Confidential Information in the following circumstances:
- (a) in order to comply with the Law, or the requirements of any Authority; or
 - (b) to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the information confidential.
- (3) The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

14 GST

14.1 Defined GST terms

Defined terms used in this clause 14 have the meaning ascribed to them in the GST Law.

14.2 GST to be added to amounts payable

- (1) If GST is payable on a Taxable Supply made under, by reference to or in connection with this agreement, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- (2) This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive.
- (3) Unless otherwise expressly stated, prices or other sums payable or Consideration to be provided under or in accordance with this agreement are exclusive of GST.

14.3 GST obligations to survive termination

This clause 14 will continue to apply after the expiration or earlier termination of this agreement.

15 Default in performance

15.1 Events of Default

The Developers commit an **Event of Default** if:

- (1) they breach a term of this agreement; or
- (2) fail to comply with the terms and conditions of the Development Consent for the Development.

15.2 Consequences of Events of Default

Where the Developers commit an Event of Default, Council may serve a notice on the Developers requiring the relevant breach to be rectified within seventy two (72) days of the date of that notice.

15.3 No restriction on rights

The rights vested in Council pursuant to clause 15.2 do not prevent Council from exercising any other rights that it may possess at law.

15.4 Termination

This agreement terminates in the event Council serves notice on the Developers terminating this agreement where the Developer has failed to comply with a notice issued in accordance with 15.2.

15.5 Consequence of termination

Upon termination of this agreement:

- (1) all future rights and obligations of the parties are discharged; and
- (2) all pre-existing rights and obligations of the parties continue to subsist.

16 Miscellaneous

16.1 Obligation to act in good faith

The parties must at all times:

- (1) cooperate and use their best endeavours to profitably and professionally give effect to their rights and obligations set out in this agreement;
- (2) not unreasonably delay any action, approval, direction, determination or decision which is required of them;
- (3) make approvals or decisions that are required of them in good faith and in a manner consistent with the completion of the transactions set out in this agreement; and
- (4) be just and faithful in their activities and dealings with the other parties.

16.2 Legal costs

The Developers agree to:

- (1) pay or reimburse the reasonable legal costs and disbursements of Council of the negotiation, preparation and execution of this agreement;
- (2) pay the reasonable legal costs and disbursements referred to in paragraph (1) within fourteen (14) days of receipt of a tax invoice from Council; and
- (3) pay or reimburse the legal costs and disbursements of Council arising from the ongoing administration and enforcement of this agreement including any breach or default by the Developers of its obligations under this agreement.

17 Administrative provisions

17.1 Notices

- (1) Any notice, consent or other communication under this agreement must be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
 - (a) delivered to that person's address;
 - (b) sent by pre-paid mail to that person's address; or
 - (c) transmitted by facsimile or other electronic means to that person's address.
- (2) A notice given to a person in accordance with this clause is treated as having been given and received:
 - (a) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
 - (b) if sent by pre-paid mail, on the third Business Day after posting; and
 - (c) if transmitted by facsimile or other electronic means to a person's address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next Business Day.
- (3) For the purpose of this clause the address of a person is the address set out in this agreement or another address of which that person may from time to time give notice to each other person.

17.2 Entire agreement

This agreement is the entire agreement of the parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this agreement.

17.3 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

17.4 Cooperation

Each party must sign, execute and deliver all agreements, documents, instruments and act reasonably and effectively to carry out and give full effect to this agreement and the rights and obligations of the parties under it.

17.5 Counterparts

This agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

17.6 Amendment

This agreement may only be amended or supplemented in writing signed by the parties.

17.7 Unenforceability

Any provision of this agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid or enforceable, and is otherwise capable of being severed to the extent of the invalidity or enforceability, without affecting the remaining provisions of this agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

17.8 Power of Attorney

Each attorney who executes this agreement on behalf of a party declares that the attorney has no notice of:

- (1) the revocation or suspension of the power of attorney by the grantor; or
- (2) the death of the grantor.

17.9 Governing law

The law in force in the State of New South Wales governs this agreement. The parties:

- (1) submit to the exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeal from those courts in respect of any proceedings in connection with this agreement; and
 - (2) may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.
-

Execution page

Executed as an agreement.

Dated:

Executed by Duyanh Pty Limited in accordance with section 127(1) of the Corporations Act by authority of its directors.

Director/Secretary (Signature)

Director (Signature)

Name of Director/ Secretary (Print Name)

Name of Director (Print Name)

Executed by Kimala Pty Ltd in accordance with section 127(1) of the Corporations Act by authority of its directors.

Director/Secretary (Signature)

Director (Signature)

Name of Director/ Secretary (Print Name)

Name of Director (Print Name)

Signed, sealed and delivered by Canterbury Bankstown Council by its General Manager and Mayor by the affixing of the Common Seal of Council in accordance with resolution dated

General Manager (Signature)

Mayor (Signature)

Name of General Manager (Print Name)

Name of Mayor (Print Name)

Schedule 1: Defined terms and interpretation

Part 1 – Definitions

Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Assign or Assignment	as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.
Authority	means (as appropriate) any: <ol style="list-style-type: none">(1) federal, state or local government;(2) department of any federal, state or local government;(3) any court or administrative tribunal; or(4) statutory corporation or regulatory body.
Bank Guarantee	means an irrevocable and unconditional undertaking without any expiry or end date by one of the following trading banks: <ol style="list-style-type: none">(1) Australia and New Zealand Banking Group Limited.(2) Commonwealth Bank of Australia.(3) National Australia Bank Limited.(4) Westpac Banking Corporation. <p>Any other financial institution approved by the Council, in its absolute discretion.</p>
Confidential Information	means any information and all other knowledge at any time disclosed (whether in writing and orally) by the parties to each other, or acquired by the parties in relation to the other's activities or services which is not already in the public domain and which: <ol style="list-style-type: none">(1) is by its nature confidential;(2) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise);(3) any party knows or ought to know is confidential; or(4) is information which may be reasonably considered to be of a confidential nature.
Complete or Completed	means completed in accordance with the requirements of this agreement.
Construction Certificate	has the meaning ascribed to it in the Act.
Contribution	means the contribution required to be provided to Council by the Developers in accordance with this agreement and as set out in Schedule 3 .

Development	means the construction of a multi level building comprised of two (2) restaurants on the ground floor, office spaces on the first and third floors and residential apartments on the second floor.
Development Consent	means a consent issued under the Act for the Development.
GST Law	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition or administration of the GST.
Index	means the Consumer Price Index (All Groups - Sydney) as published by the Australian Bureau of Statistics from time to time.
Land	means the land contained in certificates of title folio identifiers 31/11312, 32/11312 and 33/11312, and known as 280 Chapel Road, Bankstown NSW 2200.
Law	means all legislation, regulations, by-laws, common law and other binding order made by any Authority.
Monetary Contribution	means the monetary contribution required to be made by the Developer as set out in Schedule 3 .
Occupation Certificate	has the meaning ascribed to it in the Act.
Planning Legislation	means the Act, the <i>Local Government Act 1993</i> (NSW) and the <i>Roads Act 1993</i> (NSW).

Part 2 - Interpretational Rules

clauses, annexures and schedules	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this agreement.
reference to statutes	a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
singular includes plural	the singular includes the plural and vice versa.
person	the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
executors, administrators, successors	a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
dollars	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
calculation of time	if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.

reference to a day	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
accounting terms	an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia.
reference to a group of persons	a group of persons or things is a reference to any two or more of them jointly and to each of them individually.
meaning not limited	the words “include”, “including”, “for example” or “such as” are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
next day	if an act under this agreement to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.
next Business Day	if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.
time of day	time is a reference to Sydney time.
headings	headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this agreement.
agreement	a reference to any agreement, Agreement or instrument includes the same as varied, supplemented, novated or replaced from time to time.

Schedule 2:
Requirements under section 7.5 of the Act

Requirement under the Act	This Planning Agreement
Planning instrument and/or development application – (Section 7.4(1) of the Act) The Developer has: (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(a) No (b) No (c) Yes
Description of land to which this agreement applies – (Section 7.4(3)(a) of the Act)	The land contained in certificates of title folio identifiers 31/11312, 32/11312 and 33/11312, and known as 280 Chapel Road, Bankstown NSW 2200.
Description of change to the environmental planning instrument to which this agreement applies – (Section 7.4(3)(b) of the Act)	Not applicable.
Application of section 7.11 of the Act – (Section 7.4(3)(d) of the Act)	Refer to clause 4 of the Planning Agreement.
Applicability of section 7.12 of the Act – (Section 7.4(3)(d) of the Act)	Refer to clause 4 of the Planning Agreement.
Consideration of benefits under this agreement if section 7.11 applies – (Section 7.4(3)(e) of the Act)	Refer to clause 4 of the Planning Agreement.
Mechanism for Dispute resolution – (Section 7.4(3)(f) of the Act)	Refer to clause 11 of the Planning Agreement.
Enforcement of this agreement (Section 7.4(3)(g))	Refer to clause 5 and 9 of the Planning Agreement.
No obligation to grant consent or exercise functions – (Section 7.4(3)(9))	Refer to clause 12 of the Planning Agreement.

**Schedule 3:
Monetary Contribution**

Item	Time for Completion	Contribution Value + amount of Bank Guarantee	Timing of Bank Guarantee
Monetary Contribution	Prior to the issue of a final Occupation Certificate in respect of the Development.	(No. of parking spaces shortfall x contribution in lieu of a parking space, subject to indexation = Total contribution value) 7 x \$34,272.63 = \$239,908.41.	Prior to the issue of any Construction Certificate for the Development.

**Planning Agreement for the provision of Contributions in lieu of
Parking Spaces**

Explanatory Note

280 Chapel Road, Bankstown – Lots 31, 32 and 33 in DP 11312

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PLANNING AGREEMENT FOR THE PROVISION OF CONTRIBUTIONS IN LIEU OF PARKING SPACES

EXPLANATORY NOTE

280 CHAPEL ROAD, BANKSTOWN – LOTS 31, 32 AND 33 IN DP 11312

INTRODUCTION

This Explanatory Note has been prepared in accordance with clause 25E of the *Environmental Planning & Assessment Regulation 2000* (NSW).

The purpose of this Explanatory Note is to provide a summary to support the notification of the proposed planning agreement (**Planning Agreement**) under section 7.4 of the *Environmental Planning and Assessment Act 1979* (NSW) (**EP&A Act**).

1 PARTIES TO THE PLANNING AGREEMENT

The parties to the Planning Agreement are:

- (1) Canterbury Bankstown Council (**Council**).
- (2) Duyanh Pty Ltd and Kimala Pty Limited (**Developers**).

2 DESCRIPTION OF THE SUBJECT LAND

The land to which the Planning Agreement relates is set out in the table below.

Folio Identifier	Location
Lots 31, 32 and 33 DP 11312	280 Chapel Road, Bankstown

3 SUMMARY OF OBJECTS, NATURE AND EFFECT OF THE PLANNING AGREEMENT

The intent of the Planning Agreement is to ensure that the car parking needs of the incoming visitors into the Bankstown CBD is met.

The contributions to be provided by the Developers under the Planning Agreement are described in the table below.

Description of Contributions
Contribution in lieu of a parking space as determined by Council is \$34,272.63.
The total Contribution to be made is \$239,908.41, as calculated below: No. of parking spaces shortfall x contribution in lieu of a parking space = 7 x \$34,272.63 = \$239,908.41.

4 ASSESSMENT OF THE MERITS OF THE PLANNING AGREEMENT

4.1 The planning purposes served by the Planning Agreement

In accordance with section 7.4(2) of the EPA Act, the Planning Agreement promotes the following public purpose:

- (1) the provision of public amenities and public services; and
- (2) the monitoring of the planning impacts of development of the Land.

4.2 How the Planning Agreement promotes the public interest

In accordance with the objects of the EPA Act, the Planning Agreement promotes the public interest in the following manner:

- (1) The proper management, development and conservation of land.
- (2) The promotion and co-ordination of the orderly and economic use and development of land by ensuring that the layout and design of car parks function effectively and safely.
- (3) The Planning Agreement will not preclude the public being provided with the opportunity for involvement and participation in development assessment. The public have been provided the opportunity to be involved with the development assessment and are invited to make comment on the Planning Agreement, particularly with regard to the public interest.
- (4) The provision of car parking facilities in the Bankstown CBD parking facilities, as identified in Council's Bankstown CBD Parking Strategy, can be delivered more efficiently, when they are part funded by developer contribution. The parking that is provided in this way, can be used by the public generally, and not just by the clients of the development.

4.3 How the Planning Agreement promotes the elements of Council's charter

The Planning Agreement promotes a number of elements of Council's Charter under section 8 of the *Local Government Act 1993* (NSW), as follows:

- (1) the exhibition of the Planning Agreement facilitates the involvement of members of the public, while council staff were involved in the development of the Planning Agreement;
- (2) this explanatory note is prepared for the purposes of keeping the local community and the State government (and through it, the wider community) informed about its activities;
- (3) the Planning Agreement makes it clear that Council has a statutory role as consent authority for development and that the Planning Agreement is not intended to unlawfully influence the exercise of its regulatory functions, ensuring that Council will act consistently and without bias, particularly where an activity of the Council is affected;
- (4) to provide adequate car parking for the public within the Canterbury Bankstown Local Government Area and ensuring that appropriate services for the community are managed efficiently and effectively;
- (5) to have regard to the long term and cumulative effects of its planning decisions by achieving a balance between parking requirements, visual aesthetics, pedestrian safety including people with a disability;

- (6) to have regard to the effects of its planning decisions by ensuring that the layout and design of car parks function efficiently and safely;
- (7) to strengthen Council's strategic approach to the provision of car parking facilities in the Bankstown CBD with pooled funding made available by developer contributions under this Planning Agreement; and
- (8) to alleviate the overall traffic congestion on Chapel Road.

4.4 Capital works program

The works set out in the Planning Agreement do not form part of Council's capital works program.

4.5 Compliance matters

The Planning Agreement requires the Developers to provide a bank guarantee for the total Contribution amount prior to the issuance of a construction certificate, and the total Contribution amount is to be made prior to the issuance of the final occupation certificate for the Development.