

Kingsland Road South VPA: Bayside Council and Elliott

**Kingsland Road South, Bexley**

**Planning Agreement**

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

**Bayside Council**

**and**

**Angelo Con Elliott and Santina Marie Elliott**

**Date:** \_\_\_\_\_

## Kingsland Road South, Bexley

### Table of Contents

Contacts Sheet	4
Parties	5
Background	5
Operative provisions	5
Part 1 - Preliminary	5
1. Definitions and interpretation	5
2. Application of this Agreement	8
3. Status and operation of this Agreement	8
4. Further agreements relating to this Agreement	8
5. Surrender of right of appeal	8
6. Application of s94, s94A and s94EF of the Act to the Development	8
Part 2 – Development Contributions	8
7. Provision of Development Contributions	8
8. Indexation of Development Contribution	9
Part 3 – Other Provisions	9
9. Enforcement in a court of competent jurisdiction	9
10. Dispute resolution – mediation	9
11. Registration of this Agreement	10
12. Security	10
13. Assignment and transfer	10
14. Notices	11
15. Approvals and consent	11
16. Costs	11
17. Entire Agreement	12
18. Further acts	12
19. Governing law and jurisdiction	12

Kingsland Road South VPA: Bayside Council and Elliott

20.	Joint and individual liability and benefits	12
21.	No fetter	12
22.	Representations and warranties	12
23.	Severability	13
24.	Modification	13
25.	Waiver	13
26.	Rights cumulative	13
27.	Duty	13
28.	Effect of Schedules	13
29.	Relationship of the Parties	13
30.	GST	14
31.	Explanatory Note relating to this Agreement	15
	Execution	16
	Schedule 1	17
	Schedule 2	18
	Schedule 3	19
	Appendix	20

## Kingsland Road South, Bexley

### Contacts Sheet

#### Council:

**Name:** Bayside Council

**Address:** PO Box 21, ROCKDALE NSW 2216

**Telephone:** 1300 581 299

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

**Representative:** Manager of Strategic Planning

#### Developer:

**Name:** Angelo Con Elliott and Santina Marie Elliott

**Address:** PO Box 32, Bexley NSW 2207

**Telephone:**

**Email:** [angelo@forestinnhotel.com.au](mailto:angelo@forestinnhotel.com.au)

**Representative:** Angelo Elliot

## Kingsland Road South, Bexley

### Parties

**Bayside Council**

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

and

**Angelo Con Elliott and Santina Marie Elliott**

of 18 Martin Road, Centennial Park NSW 2021  
(Developer)

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### Background

- A. The Developer owns the land identified in **Schedule 2**.
- B. The Developer has sought to make the following amendments to the LEP in respect of the Land:
  - 1. amend the Land Zoning Map to zone all of the Land B4 – Mixed Use;
  - 2. amend the Height of Buildings Map to provide a maximum 19m (16m + 3m incentive) building height;
  - 3. amend the Floor Space Ratio Map to provide a maximum 2.5:1 (2.0:1 + 0.5:1 incentive) floor space ratio.
- C. The Council forwarded the Planning Proposal to the Minister and on 8 March 2017 the NSW Department of Planning, on behalf of the Minister, issued a Gateway Determination in respect of the Planning Proposal.
- D. The Developer has offered to enter into this Agreement in accordance with section 93F of the Act to make Development Contributions towards the Public Amenities in the event that the LEP Amendment is Gazetted.

### Operative provisions

#### Part 1 - Preliminary

##### 1. Definitions and interpretation

- 1.1 In this Agreement the following definitions apply:

**Act** means the *Environmental Planning and Assessment Act 1979* (NSW).

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

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

**Contribution Value** means the estimated value of the Development Contribution as shown (subject to CPI) in Column 3 of **Schedule 3**.

**CPI** means means Consumer Price Index (Sydney – All Groups) as published by the Australian Bureau of Statistics, or if that index ceases to exist, any other index agreed between the parties.

**Development** means any future development of the land the subject of the Planning Proposal and the LEP Amendment, which includes the Land, after Gazettal.

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

**Development Contribution** means a monetary contribution by the Developer, to be used for, or applied towards, the provision of Public Amenities or another Public Purpose as set out in **Schedule 3**.

**Gazettal** means the publication of the LEP Amendment on the NSW Legislation website under section 34(5) of the Act by the Minister.

**GST** has the same meaning as in the GST Law.

**GST Law** has the same meaning as in A New Tax system (Goods and Services Tax) Act 1999 (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

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

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

**LEP Amendment** means the instrument to amend the LEP as explained in the Planning Proposal.

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

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

**Planning Proposal** means the planning proposal prepared in accordance with section 55 of the Act, in respect of land which includes the Land, by TPG Town Planning & Urban Design, dated August 2016, titled "Kingsland Road South, Bexley Planning Proposal: Land use rezoning, Floor Space Ratio and Height of Buildings Amendment".

**Public Amenities** has the same meaning as in the Act and includes:

- Improvements to the small park at the corner of Abercorn Street and Kingsley Road South and Bexley Oval;
- Public lighting in and around the carpark located on Stoney Creek Road;
- Upgrade and renewal of footpath and public domain works;
- Acquisition and consolidation of community and open spaces.

**Public Purpose** has the same meaning as in section 93F(2) of the Act.

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

- 1.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:
- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
  - 1.2.2 A reference to a Business Day means a day other than a Saturday, Sunday or bank or public holiday in Sydney.
  - 1.2.3 If the day on which any act, matter or thing is to be done under this Agreement is not a Business Day, the act, matter or thing must be done on the next Business Day.
  - 1.2.4 A reference to time is local time in Sydney,
  - 1.2.5 A reference to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
  - 1.2.6 A reference to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
  - 1.2.7 A reference to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
  - 1.2.8 A reference to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
  - 1.2.9 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
  - 1.2.10 An expression importing a natural person includes any company, corporation, trust, partnership, joint venture, association, unincorporated association, body corporate, statutory body, statutory authority or governmental agency.
  - 1.2.11 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
  - 1.2.12 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
  - 1.2.13 Reference to the word "include" or "including" are to be construed without limitation.
  - 1.2.14 A reference to this Agreement includes the agreement recorded in the Agreement.
  - 1.2.15 A reference to a party to this Agreement includes a reference to the personal representatives, legal representatives, agents and contractors of the party, and the party's successors and assigns substituted by novation.
  - 1.2.16 Any schedules, appendices and attachments form part of this Agreement.
  - 1.2.17 Notes appearing in the Agreement are operative provisions of this Agreement.

- 1.2.18 A reference in this Agreement to the name and number of a zone under the LEP includes a reference to an equivalent zone under any local environmental plan that supersedes LEP.

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

- 2.1 This Agreement applies to the Land and the LEP Amendment.

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

- 3.1 The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.
- 3.2 The Agreement only operates when it is entered into as required by clause 25C(1) of the Regulation.
- 3.3 This Agreement will remain in force until:
- 3.3.1 It is terminated by operation of Law; or
- 3.3.2 The Council requests the Minister to determine that the LEP Amendment not proceed in accordance with s58(4) of the Act; or
- 3.3.3 1 month after all of the Developer's obligations under this Agreement are performed or satisfied.

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

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

## **5. Surrender of right of appeal**

- 5.1 The Developer is not to commence or maintain, or cause to be commenced or maintained, any proceedings in the Land and Environment Court involving an appeal against, or questioning the validity of, a Development Consent relating to the Development or an approval under section 96 of the Act to modify a Development Consent relating to the Development to the extent that it relates to the existence of this Agreement or requires any aspect of this agreement to be performed according to the terms of this Agreement.

## **6. Application of s94, s94A and s94EF of the Act to the Development**

- 6.1 This Agreement does not exclude the application of sections 94, 94A and 94EF of the Act in respect of the Development.
- 6.2 This Agreement will not be taken into consideration when determining development contributions under section 94 of the Act in respect of any Development.

## **Part 2 – Development Contributions**

### **7. Provision of Development Contributions**

- 7.1 **Schedule 3** has effect in relation to Development Contributions to be made by the Developer under this Agreement.



- 7.2 The Developer is to make Development Contributions to Council in accordance with this Agreement.
- 7.3 The Council is to apply each Development Contribution made by the Developer under this Agreement towards the Public Purpose for which it is made and otherwise in accordance with this Agreement.
- 7.4 The value of the Development Contribution as set out in **Schedule 3** is to be indexed in accordance with clause 8 of this Agreement until provided or paid.
- 7.5 Despite **clause 7.1**, Council may apply a Development Contribution made under this Agreement towards a Public Purpose other than the purpose specified in this Agreement if Council considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.

## 8. Indexation of Development Contribution

- 8.1 Where this Agreement provides that an amount is subject to CPI, then the amount will be increased in accordance the following formula:

$$A = B \times C/D$$

Where:

- A = the indexed amount at the time the payment is to be made.
- B = the contribution amount stated in the Agreement.
- C = the CPI most recently published before the date of payment.
- D = the CPI most recently published before the date of this Agreement.

For the avoidance of doubt, if A is less than B, then the relevant amount will not change.

## Part 3 – Other Provisions

### 9. Enforcement in a court of competent jurisdiction

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

### 10. Dispute resolution – mediation

- 10.1 A dispute under this Agreement is taken to arise if on party gives another Party a notice in writing specifying particulars of the dispute.

- 10.2 If a notice is given under **clause 10.1**, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 10.3 If the dispute is not resolved within a further 28 days, the Parties must mediate the dispute in accordance with the Mediation rules of the Law Society of New South Wales published from time to time and must request the President of the law Society, or the President's nominee, to select a mediator.
- 10.4 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.
- 10.5 This clause survives the completion or termination of this Agreement.

## 11. Registration of this Agreement

- 11.1 The Parties agree that this Agreement is not required to be registered on the title of the Land.

## 12. Security

- 12.1 The Parties agree that Council may impose conditions on any Development Consent granted in respect of any Development on the Land under section 80A of the Act specifying that:
- 12.1.1 a Construction Certificate for the Development must not be issued until the Development Contribution in **Schedule 3** has been made to the satisfaction of Council.
- 12.2 The Developer will not object to Council lodging a caveat in the relevant folio of the Register for the Land nor will the Developer take, or suffer to be taken, any steps to remove that caveat until the Development Contributions in **Schedule 3** have been paid in accordance with this Agreement.

## 13. Assignment and transfer

- 13.1 Unless the matters specified in **clause 13.2** are satisfied, the Developer is not to do any of the following:
- 13.1.1 if the Developer is the owner of the Land, to transfer the Land, or any part of it, to any person, or
- 13.1.2 assign, transfer dispose or novate to any person the Developer's rights or obligations under this Agreement
- 13.2 The matters required to be satisfied for the purposes of **clause 13.1** are as follows:
- 13.2.1 the Developer has, at no cost to Council, first procured the execution by the person to whom the Developer's rights or obligations under this Agreement are to be assigned or novated, of an agreement in favour of the Council on terms satisfactory to Council acting reasonable, and
- 13.2.2 Council, by notice in writing to the Developer, has stated that evidence satisfactory to Council has been produced to show that the assignee or novatee, is reasonably capable of performing its obligations under the Agreement,

13.2.3 the Developer is not in breach of this Agreement, and

13.2.4 Council otherwise consents to the transfer, assignment or novation.

13.2.5 Any purported dealing in breach of this **clause 13.2** is of no effect.

## **14. Notices**

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

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

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

14.2 If a Party gives the other Party 3 Business Days notice of a change of its address or email address, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address or email address.

14.3 Any notice, consent, information, application or request is to be treated as given or made if it is;

14.3.1 delivered, when it is left at the relevant address.

14.3.2 sent by post, 2 Business Days after it is posted.

14.3.3 sent by email, as soon as the sender receives a 'delivery receipt' from the recipient.

28.4 If any notice, consent, consent, information, application or request is delivered, or receipt in relation to it is received, on a day that is not a Business Day, or if on a Business Day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

## **15. Approvals and consent**

15.1 Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party.

15.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

## **16. Costs**

16.1 The Developer is required to pay to Council the Council's reasonable costs of preparing, negotiating, executing and stamping this Agreement, and any document related to this Agreement within 20 business days of a written demand by Council for such payment.

16.2 The Developer is also required to pay to Council a contribution of \$500 towards Council's costs of preparing the template document on which this Agreement is based within 7 days of a written demand by Council for such payment.

- 16.3 The Developer is also required to pay to Council the Council's reasonable costs of registering a caveat on the Land in accordance with this Agreement or enforcing this Agreement, within 20 business days of a written demand by Council for such payment except in the case of a dispute that is the subject of court proceedings, in which case any costs will be paid in accordance with orders of the court only.

## **17. Entire Agreement**

- 17.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.
- 17.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

## **18. Further acts**

- 18.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.

## **19. Governing law and jurisdiction**

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

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

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

## **21. No fetter**

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

## **22. Representations and warranties**

- 22.1 Each Party represent and warrant to each other Party that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

## **23. Severability**

- 23.1 If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 23.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

## **24. Modification**

- 24.1 No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

## **25. Waiver**

- 25.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 25.2 A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given.
- 25.3 It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

## **26. Rights cumulative**

- 26.1 Except as expressly stated otherwise in this Agreement, the rights to a Party under this Agreement are cumulative and are in addition to any other rights of that Party.

## **27. Duty**

- 27.1 The Developer as between the Parties is liable for and must pay all duty (including any fine or penalty except where it arises from default by another Party) on or relating to this Agreement, any document executed under it or any dutiable transaction evidenced or effected by it.
- 27.2 If a Party other than the Developer pays any duty (including any fine or penalty) on or relating to this Agreement, any document executed under it or any dutiable transaction evidenced or effected by it as a result of the Developer first failing to pay such duty, the Developer must pay that amount to the paying Party on demand.

## **28. Effect of Schedules**

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

## **29. Relationship of the Parties**

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

### 30. GST

30.1 In this clause:

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

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

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

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

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

30.2 Subject to **clause 30.4**, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.

30.3 **Clause 30.2** does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.

30.4 No additional amount shall be payable by Council under **clause 30.2** unless, and only to the extent that, Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.

30.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to division 81 of the *A New Tax System (Goods and Services Tax) Act 1999*, each Party agrees:

30.6 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;

30.7 that any amounts payable by each Party in accordance with **clause 30.2** (as limited by **clause 30.4**) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.

30.8 No payment of any amount pursuant to this **clause 30**, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.

30.9 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a Party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.

30.10 This clause continues to apply after expiration or termination of this Agreement.

**31. Explanatory Note relating to this Agreement**

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

Execution

Executed as a Deed

Date:

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Executed on behalf of Bayside Council by its authorised delegate:

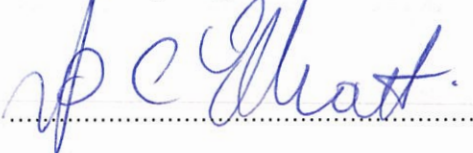
.....  
General Manager

.....  
Name of Witness in full

.....  
Signature of Witness

---

Executed by **Angelo Con Elliott**

  
.....

Signature

MARGARET ELKINGTON  
.....

Name of Witness in full

  
.....

Signature of Witness

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Executed by **Santina Marie Elliott**

  
.....

Signature

MARGARET ELKINGTON  
.....

Name of Witness in full

  
.....

Signature of Witness



## Schedule 1

### Section 93F Requirements

<b>Provision of the Act</b>	<b>This Agreement</b>
Under section 93F(1), the Developer has:	
(a) sought a change to an environmental planning instrument	Yes
(b) made, or proposes to make, a Development Application.	Yes
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies	No
<b>Description of the land to which this Agreement applies – Section 93F(3)(a)</b>	The Land described in <b>Schedule 2</b> to this agreement
<b>Description of the change to the environmental planning instrument to which this Agreement applies – (Section 93F(3)(b)(i))</b>	Definition of <b>Planning Proposal</b>
<b>The scope, timing and manner of delivery of Development Contributions required by this Agreement – (Section 93F(3)(c))</b>	See <b>Schedule 3</b> to this Agreement
<b>Applicability of Sections 94, 94A and 94EF of the Act – (Sections 93F(3)(d))</b>	See <b>clause 6</b> .
<b>Benefits under the Agreement considered for Section 94 purposes – (Section 93F(3)(e)),</b>	See <b>clause 6</b> .
<b>Dispute Resolution – (Section 93F(3)(f))</b>	See <b>clause 10</b>
<b>Enforcement of this Agreement – (Section 93F(3)(g))</b>	See <b>clause 12</b>
<b>Registration of the Agreement – (Section 93H)</b>	See <b>clause 1</b>
<b>No obligation to grant consent or exercise functions – (Section 93F(9))</b>	See <b>clause 21</b>

## Schedule 2

(Clause 1)

### The Land

The Site	Street Address	Lot / DP
Site 1	467 Forest Road, Bexley, NSW 2207	Lot 1 DP 134319
	467 Forest Road, Bexley, NSW 2207	Lot 2 Section 2 DP 1878
Site 2	1 Kingsland Road South, Bexley, NSW 2207	Lot 71 DP 570149
	3 Kingsland Road South, Bexley, NSW 2207	Lot 72 DP 570149
	5 Kingsland Road South, Bexley, NSW 2207	Lot 8 Section 2 DP 1878

### Schedule 3

(Clause 7)

#### Development Contributions

##### Monetary Contribution

Column 1	Column 2	Column 3	Column 4
Item	Public Purpose	Contribution Value	Timing
A	The Developer must pay to the Council a monetary contribution towards the Public Amenities.	\$300,000 (subject to CPI)	Within thirty (30) Business Days of Gazettal.

## Appendix: Explanatory Note

*Environmental Planning and Assessment Regulation 2000*

(Clause 25E)

### Explanatory Note

#### Proposed Planning Agreement

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

##### 1. Parties

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

and

**Angelo Con Elliott and Santina Marie Elliott** of 18 Martin Road, Centennial Park NSW  
2021 (**Developer**)

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

2.1 467 Forest Road, Bexley, NSW 2207 (being Lot 1 DP 134319 and Lot 2 Section 2 DP1878)  
and 1, 3 and 5 Kingsland Road South, Bexley, NSW 2207 (being Lot 71 DP 570149, Lot 72  
DP 570149 and Lot 8 Section 2 DP 1878) as described in **Schedule 2** to the Agreement.

2.2 This Developer is the owner of the Land.

##### 3. Description of proposed amendment to the Rockdale Local Environmental Plan 2011

3.1 The Developer has sought to make the following amendments to the Rockdale Local  
Environmental Plan 2011 (**LEP**) in respect of the Land:

1. amend the Land Zoning Map to zone all of the Land B4 – Mixed Use;
2. amend the Height of Buildings Map to provide a maximum 19m (16m + 3m  
incentive) height of buildings;
3. amend the Floor Space Ratio Map to provide a maximum 2.5:1 (2.0:1 + 0.5:1  
incentive) floor space ratio.

##### 4. Summary of objectives, nature and effect of the proposed Planning Agreement

###### 4.1 Objectives of proposed Planning Agreement

4.1.1 The objective of the proposed Planning Agreement is to secure a monetary  
Development Contribution associated with the Gazettal of the instrument amending the  
LEP.

###### 4.2 Nature of proposed Planning Agreement

4.2.1 The Planning Agreement is a planning agreement under s93F of the  
*Environmental Planning and Assessment Act 1979* (Act). The Planning  
Agreement is a voluntary agreement under which Development Contributions (as

defined in clause 1.1 of the Draft Planning Agreement) are made by the Developer for various public purposes (as defined in s93F(2) of the Act).

#### **4.3 Effect of proposed Planning Agreement**

The Planning Agreement:

- a) imposes an obligation on the Developer to make monetary Development Contributions in the amount of \$300,000, if the LEP is amended, within 30 days of the LEP being amended.
- b) Obliges the Council to expend the Development Contribution on Public Amenities or other public purposes including:
  - i. Improvements to the small park at the corner of Abercorn Street and Kingsley Road South and Bexley Oval;
  - ii. Public lighting in and around the carpark located on Stoney Creek Road;
  - iii. The upgrade and renewal of footpath and public domain works;
  - iv. The acquisition and consolidation of community and open spaces.
- c) Does not exclude the application of s94 and s94A of the Act to the future development of the Land.
- d) imposes restrictions on the Developer selling or otherwise dealing with the Land.
- e) provides for dispute resolution, as agreed between the parties, or in failing to agree, mediation.
- f) enables the Council to lodge a caveat on the Land (restricting any dealing in the Land).

### **5. Assessment of the merits of the proposed Planning Agreement**

#### **5.1 The Public Purposes served by the proposed Planning Agreement**

The proposed Planning Agreement promotes the provision of and recoupment of the cost of providing public and amenities and public services.

The Planning Deed is a reasonable means for achieving that planning purpose, as it provides for the payment of a monetary development contribution to be expended on achieving that planning purpose.

#### **5.2 How the proposed Planning Agreement promotes the Public Interest and the objects of the Environmental Planning and Assessment Act 1979**

The Planning Deed promotes the public interest and the objects of the Act as set out in s5(a) of the Act that is, to encourage:

- (ii) the promotion and co-ordination of the orderly and economic use and development of land, and
- (v) the provision and co-ordination of community services and facilities.

**5.3 How the proposed Planning Agreement promotes the Elements of the Council's Charter**

The proposed Planning Agreement promotes the elements of the Council's Charter by providing appropriate services and facilities for the local community enables the Council to carry out its functions in a way that facilitates local communities that are strong, healthy and prosperous

**5.4 How the proposed Planning Agreement promotes the objects (if any) of the Local Government Act 1993**

The proposed Planning Agreement promotes the objects of the Local Government Act 1993 by allowing Council to provide facilities appropriate to the current and future needs of the local community and the wider public and to improve and develop the resources of the area.

**5.5 Whether the proposed Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued**

The proposed Planning Agreement specifies that the Developer must have paid the monetary Development Contribution before any Construction Certificate is issued in respect of any future Development on the Land.

**5.6 Whether the proposed Planning Agreement conforms with the authority's capital works program**

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

**6. Further Information**

**6.1 Interpretation**

Note: this explanatory note is a summary only of the proposed Planning Agreement, is not to be relied upon as a complete description of the proposed Planning Agreement, and is not to be used as an aid in construing the proposed Planning Agreement.

**6.2 Further Information**

Copies of the proposed Planning Agreement are available on the Bayside Council website, and at the offices of Bayside Council.