

1-3 Harrow Road, BEXLEY

Planning Agreement

Under 7.4 of the *Environmental Planning and Assessment Act 1979*

Bayside Council

And

CPD018 Pty Ltd

A handwritten signature in black ink, appearing to read "Michael Wallace", followed by a large, stylized flourish or scribble.

1-3 Harrow Road, BEXLEY

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1-3 Harrow Road, BEXLEY Contacts Sheet

Council:

Name: Bayside Council

Address: PO Box 21, ROCKDALE NSW 2216

Telephone: 1300581299

Email: council@bayside.nsw.gov.au

Representative: Manager of Strategic Planning

Developer:

Name: CPD018 Pty Ltd (ACN 622 719 199)

Address: 157 Victoria rd. Gladesville, NSW 2111

Telephone: 1300 808 158

Email: andrew@cadenceconstructions.com.au **Representative:** Andrew Harb

M.W JH

1-3 Harrow Road, BEXLEY Parties

**Bayside Council
(Council)**

and

CPD018 Pty Ltd

(Developer)

Background

- A. The Developer owns the land identified as Lot B in Deposited Plan 321614 and Lot 15 in Deposited Plan 15198, commonly known as 1-3 Harrow Road, Bexley (**the Land**).
- B. The Developer or its predecessor in title lodged a development application with Council for the demolition of existing structures and construction of a mixed use development comprising of a ground tenancy, a rooftop terrace, five levels of residential units and basement car parking at the Land (**the Development**).
- C. On 5 October 2017, the Developer or its predecessor in title lodged an appeal to the Court against the Council's deemed refusal of the Development.
- D. On 6 April 2018, the Court made orders in accordance with an Agreement pursuant to s34 of the Land and Environment Court Act granting approval to the Development (**Consent**).
- E. Pursuant to condition 12 of the Consent, the Developer must enter into a Planning Agreement in accordance with section 7.4 of the Act prior to the issue of a Construction Certificate for any above ground works and generally in accordance with the letter of offer prepared by Mills Oakley to Council dated 5 April 2018.
- F. The offer made by the Developer on 5 April 2018 was essentially to dedicate a stratum portion of the Land to Council, to provide public domain improvements in the form of public footpath works, and to widen Albyn Lane adjoining the Land, to an appropriate standard sufficient for public use, (including use by heavy vehicles) and the construction of these works.

PART 1 - Definition and Interpretations

1. Definitions and Interpretations

- 1.1 In this Agreement the following definitions apply:

Above Ground Construction Certificate means the first Construction Certificate for the Development which authorises the erection of any building above ground level.

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.

Bank Guarantee means an unconditional and irrevocable undertaking issued by a major Australian trading bank in favour of Council and which is not limited in time and does not have an expiry date and is otherwise in form and substance

acceptable to Council , to pay on demand to Council the amount therein expressed in Australian currency.

Business Days means any day except Saturday, Sunday or any prescribed public holiday in New South Wales.

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

Consent means the development consent issued by the Court on 6 April 2018 in proceedings 2017/00300153, being in respect of the Development, and bearing development application reference DA/2017/373.

Construction Certificate means a construction certificate within the meaning of 6.4 of the Act.

Court means the Land and Environment Court of New South Wales

Dedicated Land means the land to be dedicated to the Council in accordance with this Agreement.

Defect means a defect of any item of work which adversely affects the ordinary use of that item.

Defects Liability Period means the period of 12 months from the date of issue of a final Occupation Certificate.

Developer's Obligations means all of the Developer's obligations under this Agreement.

Development means the ground tenancy, a rooftop terrace, five levels of residential units and basement car parking at 1-3 Harrow Road, Bexley as permitted under the Consent.

Development Consent when used generically (as distinct from 'the Consent') has the same meaning as in the Act.

Development Contribution means each of the contributions and works listed in Schedule 3 of this Agreement, to be used for, or applied towards, the provision of Public Amenities or another Public Purpose as set out in **Schedule 3**.

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.

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

LRS means New South Wales Land Registry Services.

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

Land Dedication means the free dedication of the portion of the Land as detailed in Schedule 3 and as shown on the Land Dedication Plan (described on Appendix 1 of Schedule 3 as stratum lot 11) for the public purposes set out in this Agreement.

Land Dedication Plan means the plan at Appendix 1 of Schedule 3 being the draft stratum Subdivision Plan prepared by Joseph Monardo, Sheets 1 – 4, Reference 50284 001DP.

Occupation Certificate means a certificate referred to in section 6.4 of the Act.

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

Public Purpose has the same meaning as in section 7.4(2) of the Act.

Rectification Certificate means a compliance certificate within the meaning of the Act to the effect that the work subject of a Rectification Notice has been completed in accordance with the Rectification Notice.

Rectification Notice means a notice in writing that identifies a Defect and requires rectification of that Defect within the Defects Liability Period.

Registrable form means the document is properly executed and witnessed and bears an imprint from Revenue New South Wales to the effect that all necessary duties have been paid, and is otherwise capable of immediate registration by the Registrar-General on the title of the relevant piece or parcel of land.

Registrar-General means the Registrar-General under the Real Property Act.

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

Subdivision Plan means a plan of subdivision of the Land whereby the Dedicated Land is created as a separate legal lot with separate title.

Works mean all works to be performed by the Developer under this Agreement.

Works-as-Executed Records means a plan setting out a record of construction as completed.

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.
- 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 Rockdale LEP 2011 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 to the Development.

3. Status and operation of this Agreement

- 3.1 The Parties agree that this Agreement is a planning agreement governed by Part 7, Division 7.1, Subdivision 2 of the Act.
- 3.2 The Agreement only operates when it is entered into pursuant to 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 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. Application of s7.11, s7.12 and s7.24 of the Act to the Development

- 5.1 This Agreement does not exclude the application of sections s7.11, s7.12 and s7.24 of the Act in respect of the Development.
- 5.2 This Agreement will not be taken into consideration when determining development contributions under section 7.11 of the Act in respect of any Development.

Part 2 – Land Dedication and Associated Works

6. Design and Construction of Road

- 6.1 All design and construction work required under this Agreement is to be undertaken by the Developer to the standards and specifications set out in Schedule 3 and Schedule 4 prior to the issue of the final occupation certificate.

7. Procedures relating to the Land Dedication

- 7.1 (a) The Parties acknowledge and agree that as at the date of this Agreement, the Dedicated Land is not contained in a separate lot and cannot be transferred to the Council until the Land is subdivided to create the Dedicated Land as a separate legal lot capable of transfer.
- (b) The Developer must at its expense:
- (i) promptly lodge the Subdivision Plan at the Council for approval and use all reasonable endeavours to obtain such approval as soon as practicable;
 - (ii) following approval by the Council of the Subdivision Plan, promptly:
 - (A) lodge the approved Subdivision Plan at the LRS for registration;
 - (B) notify Council's Lawyers in writing of such lodgement; and
 - (C) thereafter, use all reasonable endeavours to obtain registration of the Subdivision Plan at the LRS as soon as practicable; and
 - (iii) within fourteen (14) days after registration of the Subdivision Plan at LRS:
 - (A) notify the Council's Lawyers in writing of registration of the Subdivision Plan; and
 - (B) transfer the Dedicated Land to the Council free from encumbrances;

- (c) The Developer and the Council agree and warrant that they will at the Developer's expense, do all things necessary and sign all documents required to facilitate the subdivision of the Land and the subsequent transfer of the Dedicated Land to Council.

7.2

- (a) If the Developer does not transfer the Dedicated Land in accordance with clause 7.1, the Developer consents to the Council compulsorily acquiring the Dedicated Land for compensation of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- (b) Clause 7.2(a) constitutes an agreement for the purposes of section 30 of the Just Terms Act.
- (c) The Developer must promptly do all things necessary, and consent to the Council doing all things necessary, to give effect to this clause 7.2 including (without limitation):
 - (i) signing any documents or forms;
 - (ii) producing certificates of title to the Registrar General under the Real Property Act 1900;
 - (iii) paying the Council's reasonable costs arising under this clause 7.2.

8. Dedication of the Land

- 8.1 **Schedule 3** and **Appendix 1** have effect in relation to the stratum of land that is to be dedicated by the Developer under this Agreement. No other portion or stratum of the Land is required to be dedicated.

Part 3 – Other Provisions

9. Section 7.11 Contributions

- 9.1 The Developer agrees that the Development Contributions are not to be taken into account in determining a development contribution under Section 7.11 of the Act.

10. Enforcement in a court of competent jurisdiction

- 10.1 Without limiting any other provision of this Agreement, the Parties may enforce this Agreement in any court of competent jurisdiction.
- 10.2 For the avoidance of doubt, nothing in this Agreement prevents:
 - 10.2.1 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, or
 - 10.2.2 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.

11. Collaborative Approach

- 11.1 The parties acknowledge and agree that they will always act reasonably and co-operatively with each other in relation to this Agreement, and that they will always use all reasonable endeavours to give effect to the requirements of, and to perform their obligations under, this Agreement.

12. Dispute resolution – mediation

- 12.1 A dispute under this Agreement is taken to arise if one party gives another Party a notice in writing specifying particulars of the dispute.
- 12.2 If a notice is given under **clause 12.1**, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 12.3 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.
- 12.4 If the dispute is not resolved by mediation within a further 28 days, or such longer period as may be reasonably 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.
- 12.5 This clause survives the completion or termination of this Agreement.

13. Registration of Agreement

- 13.1 As contemplated by section 7.6 of the Act, the Developer must, within twenty one (21) Business Days of the operation of this Agreement under **clause 3.2**, at the Developer's expense, procure the registration of this Agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register for the Land.

13.2 Release and discharge of Agreement by Council

The Council must use all reasonable endeavours and do all things reasonably required to cause the release and discharge of this Agreement with respect to any part of the Land (such that the Agreement is no longer registered by the Registrar-General under section 7.4 of the Act in relation to that part of the Land) within 14 Business Days after receiving a written request to do so by the Developer, upon the Developer having provided all of the Development Contributions in accordance with this Agreement and otherwise complying with this Agreement to the satisfaction of the Council. Council's satisfaction must not be unreasonably withheld.

14. Assignment and transfer

- 14.1 Unless the matters specified in **clause 14.2** are satisfied, the Developer is not to do any of the following:
- 14.1.1 if the Developer is the owner of the Land, to transfer the Land, or any part of it, to any person, or
- 14.1.2 assign, transfer, dispose or novate to any person the Developer's rights or obligations under this Agreement.
- 14.2 The matters required to be satisfied for the purposes of **clause 14.1** are as follows:

- 14.2.1 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 reasonably, and
- 14.2.2 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,
- 14.2.3 the Developer is not in breach of this Agreement, and
- 14.2.4 Any purported dealing in breach of this **clause 14.2** is of no effect.
- 14.3 Clauses 14.1 and 14.2 have effect subject to clause 14.4.
- 14.4 Clauses 13.1 and 13.2 do not apply to, and shall have no effect whatsoever in relation to, a transfer, assignment, disposal or novation to CPD018Pty Ltd, provided that this Agreement is registered in accordance with clause 13 of this Agreement and the Developer is not in breach of this Agreement.

15. Notices

- 15.1 Any notice, 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:
 - 15.1.1 delivered or posted to that Party at its address set out in the Contacts Sheet,
 - 15.1.2 emailed to that Party at its email address set out in the Contacts Sheet.
- 15.2 If a Party gives the other Party 3 Business Days notice of a change of its address or email address, any notice, 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.
- 15.3 Any notice, information, application or request is to be treated as given or made if it is:
 - 15.3.1 delivered, when it is left at the relevant address.
 - 15.3.2 sent by post, 2 Business Days after it is posted.
 - 15.3.3 sent by email, as soon as the sender receives a 'delivery receipt' from the recipient'.
- 15.4 If any notice, , information, application or request is delivered, or a delivery 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.

16. Entire Agreement

- 16.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.
- 16.2 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.

17. Further acts

- 17.1 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.

18. Governing law and jurisdiction

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

19. Joint and individual liability and benefits

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

20. No fetter

- 20.1 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.

21. Representations and warranties

- 21.1 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.

22. Severability

- 22.1 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.
- 22.2 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.

23. Modification

- 23.1 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.

24. Waiver

- 24.1 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.
- 24.2 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.
- 24.3 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.

25. Rights cumulative

- 25.1 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.

26. Duty

- 26.1 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.
- 26.2 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.

27. Effect of Schedules

- 27.1 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.

28. Relationship of the Parties

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

29. GST

- 29.1 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.

- 29.2 Subject to **clause 29.4**, 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.
- 29.3 **Clause 29.2** does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 29.4 No additional amount shall be payable by Council under **clause 29.2** 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.
- 29.5 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:
 - 29.6 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;
 - 29.7 that any amounts payable by each Party in accordance with **clause 29.2** (as limited by **clause 29.4**) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
 - 29.8 No payment of any amount pursuant to this **clause 29**, 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.
 - 29.9 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.
 - 29.10 This clause continues to apply after expiration or termination of this Agreement.

30. Security

- 30.1 The Developer will provide an irrevocable and unconditional Bank Guarantee for \$20,000 in favour of Council in a form acceptable to Council to secure performance of the Developer's obligation to provide the Development Contributions under this Agreement:
 - (a) The Bank Guarantee should be provided to the Council simultaneously upon signing this Agreement; and
 - (b) Should the Developer fail to perform its obligations to make the Development Contribution under this Agreement then the Council is entitled to call on the Bank Guarantee to recover the value of the Development Contribution not provided in accordance with this Agreement..

31. Enforcement

- 31.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Agreement, it may give a written notice to the Developer:
- (a) specifying the nature and extent of the breach;
 - (b) requiring the Developer to:
 - (i) rectify the breach if it reasonably considers it is capable of rectification; or
 - (ii) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if the breach is not reasonably capable of rectification; and
 - (c) Specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 31.2 Any costs reasonably incurred by the Council by reason of such breach may be recovered by the Council as a debt due in a court of competent jurisdiction.
- 31.3 For the purpose of clause 31.2, the Council's costs include, but are not limited to:
- (a) the costs of the Council's servants, agents and contractors reasonably incurred for that purpose; and
 - (b) All legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 31.4 Nothing in this clause 31 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Agreement by the Developer, including but not limited to seeking relief in an appropriate court.

32. Carrying out of an Item of Work

- 32.1 As a part of the Development, the Developer must produce a detailed design and specification for all Works in accordance with:
- 32.1.1 Any reasonable lawful requirements and directions of the Council that are notified in writing to the Developer at any time before the works are approved in accordance with this Agreement, and
 - 32.1.2 The conditions of any Consent granted in relation to an item of Work.
- 32.2 The Developer must carry out and complete each item of Work or engage its service provider to carry out and complete each item of Work, to the reasonable satisfaction of the Council, in accordance with:
- 32.2.1 The detailed design and specification approved by the Council (including the specification in Schedule 4),
 - 32.2.2 All applicable laws, including those relating to occupational health and safety,
 - 32.2.3 The conditions of the Consent granted in relation to the carrying out of that item of Work; and
 - 32.2.4 The conditions of the Consent relating to the Development.

33. Rectification of Defects

- 33.1 During the Defects Liability Period, the Council may give to the Developer a Rectification Notice.
- 33.2 The Developer must comply with a Rectification Notice at its own cost.
- 33.3 The Developer must comply with the Rectification Notice within a period of time that is reasonable having regard to the practical performance of works required to be performed by the Rectification Notice.
- 33.4 When the Developer considers that rectification is complete, the Developer must give to the Council a Rectification Certificate relating to the item of work the subject of the relevant Rectification Notice and submit to the Council the Works-as-Executed Records and written notice for an item of work on which it proposes to hand-over of the item of work.
- 33.5 Council acting reasonably can, within 20 Business Days of receipt of the notice under clause 33.4:
 - 33.5.1 request information (in addition to the Works-as-Executed Records) that is relevant to the completion of the item of work and delay the hand-over of the item of work until the Developer has provided the additional information requested to Council's reasonable satisfaction, or
 - 33.5.2 determine that the Item of Work has not meet the design and specification approved by Council and issue a further Rectification Notice implemented as pursuant to this Clause.
- 33.6 If the Developer does not comply with a Rectification Notice within the time provided at clause 33.3, the Council may, subject to clause 33.7, do such things as are necessary to rectify the Defect and may recover, as a debt due and owing in a court of competent jurisdiction, any reasonable cost incurred by the Council in rectifying the Defect.
- 33.7 Before the Council may rectify any Defect in accordance with clause 33.6, it must;
 - 33.7.1 notify the Developer in writing of its intention to exercise its right pursuant to clause 33.6;
 - 33.7.2 provide the Developer a further 14 days to comply with the Rectification Notice or provide some other response in writing; and
 - 33.7.3 reasonably consider the content of any other written response provided by the Developer provided in that 14 day period.

34. Legal Costs

- 34.1 The Developer must pay to the Council the Council's reasonable legal costs (assessed on an indemnity basis) in relation to of preparing, negotiating, executing, registering and stamping of this Agreement, and any document related to this Agreement within seven (7) days of a written demand by the Council.
- 34.2 The Developer must also to pay to the Council within seven (7) days of a written demand by the Council for such payment, the Council's reasonable costs (assessed on an indemnity basis) of:
 - 34.2.1 monitoring performance of Developer's Obligations; and
 - 34.2.2 enforcing this Agreement.

35. Release and Indemnity

- 35.1 The Developer performs this Agreement at its own risk and cost.
- 35.2 The Developer releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer's Obligations except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 35.3 The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Developer's Obligations except if, and to the extent that, the Claim arises because of the Council's negligence or default.

36. Explanatory Note relating to this Agreement

- 36.1 The **Appendix 2** contains the Explanatory Note relating to this Agreement required by clause 25E of the Regulation.
- 36.2 Pursuant to clause 25E(7) of the Regulation, each Party agrees that the Explanatory Note in the **Appendix 2** is not to be used to assist in construing this Planning Agreement.

Execution

Executed as a Deed

Date:

MS
27 ~~29~~.3.19.

Executed on behalf of Council:

Executed by **Bayside Council** by its authorised delegate in accordance with a resolution of the Council made on ~~[[INSERT]].~~
13th February 2019



General Manager

MEREDITH WALLACE
Name of Witness in full


Signature of Witness

EXECUTIVE PROJECT OFFICER
JUSTIN RAPISARDA

Executed on behalf of CPD018 Pty Ltd LIMITED (the Developer) under s 127 of the Corporations Act 2001:



Sole Director/Sole Secretary (sign)

James Harb

Name of Sole Director/Sole Secretary (print)



Signature of witness

Schedule 1 (Section 7.4 Requirements)

Provision of the Act	This Agreement
Under section 7.4(1), the Developer has:	
(a) sought a change to an environmental planning instrument	No
(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
Description of the land to which this Agreement applies –	The Land described in Schedule 2 to this agreement
The scope, timing and manner of delivery of Development Contributions required by this Agreement – (Section 7.43)(c)	See Schedule 3 to this Agreement
Applicability of Sections 7.11, 7.12 and 7.24 of the Act –	See clause 5
Benefits under the Agreement considered for Section 7.11 purposes – (Section 7.4(3)(e)),	See clause 5
Dispute Resolution – (Section 7.4(3)(f))	See clause 12
Enforcement of this Agreement – (Section 7.4(3)(g))	See clause 9-11
Registration of the Agreement – (Section 7.6)	Yes, see clause 13

Schedule 2 (The Land)

(Clause 1)

The Land

The Land is:

Lot B in Deposited Plan 321614 and Lot 15 in Deposited Plan 15198.

Schedule 3 (Development Contributions)

(Clause 7)

Development Contributions

Land Dedication

Column 1	Column 2	Column 3	Column 4
Item	Public Purpose	Contribution Value	Timing
A	The developer must dedicate its land (as a stratum lot unlimited as to height but limited as to depth to 500mm below the finished surface of Albyn Lane) to allow for the widening Albyn Lane to the edge of the currently proposed footpath. The northern (Albyn Lane) façade of the commercial premises will then be setback to allow provision of a footpath along the Albyn Lane frontage.		Prior to the issue of the Final Occupation Certificate in respect of the Development.
B	<p>All design and construction work is to be undertaken by the developer, to Council's specifications, namely:</p> <p>(a) A minimum 500mm clearance must be provided between the underside of the finished road surface level to the top of drop down basement roof / slab for Basement Level 1. This depth is required for service conduits, pavement depth and future maintenance of road. Section A-A shown in DP draft plan to be amended to show correct basement ceiling level in accordance with notation on plan A202Rev J prepared by Design Corp Architects. The area above the basement parking area situated below the widened area of Albyn Lane is to be dedicated, and is to be designed and constructed to support a 20T capacity Council Garbage Truck operating in Albyn Lane.</p> <p>(b) The basement parking area to be legally endorsed with a Stratum Subdivision and an 88B Instrument including the dedication as Public Road for the Road Widening strip in Albyn Lane, easements for services/covenants.</p>		Prior to the issue of the relevant construction certificate applicant shall submit to Council an Application to undertake the Public Domain Works on the Harrow Road and Albyn Lane Frontages of the Land.

	<p>(c) The Albyn Lane road carriageway to be widened to accommodate 2 way traffic movements as shown in the Civil Drawings including swept paths prepared by ACOR civil design consultants.</p> <p>(d) The Albyn Lane Footpath to be a variable width as shown on Drawing No. A202 Rev J Prepared by Design Corp Architects dated 24.10.18 and to incorporate ducts for future Public Utility Services along the Lane As shown on ACOR Drawing D4 rev K dated 13.11.18.</p> <p>(e) The existing Light Pole at the south western corner of the property in Albyn Lane to be relocated prior to the final Occupation Certificate to accommodate the Lane Widening but maintain a Level P4 Lighting Category. Location of the light pole will be confirmed with the frontage works application to Council.</p> <p>(f) Prior to the issue of the relevant construction certificate applicant shall submit to Council an Application to undertake the Public Domain Works on the Harrow Road and Albyn Lane Frontages of the Property.</p> <p>(g) To provide for stormwater disposal from the Property the Applicant to complete the stormwater works in line with ACOR design refer drawing D4 Rev k dated 13.11.18. Such works shall be carried out to Council's satisfaction prior to the issue of the Final Occupation Certificate.</p>		
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Schedule 4 - Road Work Specifications

Schedule 4 - Road Work Specifications

Generally design of roads, footpaths, pavements and other road facilities is to be undertaken in accordance with AUSTRROADS, and any published RMS supplement to AUSTRROADS

1. Design

1.1 General Requirements

- 1.1.1 Specification for design - AUS-SPEC unless noted otherwise:
- (a) 0021 - Site regrading;
 - (b) 0041 - Geometric road layout;
 - (c) 0043 - Subsurface drainage (design);
 - (d) 0044- Pathways
 - (e) 0061 - Bridges and other structures;
 - (f) 0074 - Stormwater drainage (design);
 - (g) 0160 - Quality (design).
- 1.1.2 Variation to Nominated Standards - where AUS-SPEC makes reference to the Austroads Guide to Road Design, the design shall comply with the NSW Roads and Traffic Authority Supplement to Austroads Guide to Road Design, and where AUS-SPEC makes reference to the Australian Standards, AS 1742 and AS1743, the design shall comply with the NSW Roads and Traffic Authority Supplement to Australian Standards AS1742 and AS1743.
- 1.1.3 Inconsistency-where an inconsistency exists between the nominated design standards the prevailing standard shall be determined by the Council's Manager - City Infrastructure.
- 1.1.4 Drawing coordinates shall conform to GDAB4 (Geocentric Datum of Australia). Levels shall conform to AHD (Australian Height Datum).
- 1.1.5 Submission formats:
- (a) Two (2) printed copies of the plans;
 - (b) One (1) printed copy of the specification;
 - (c) Two (2) printed copies of the Review of Environmental Factors (REF);
 - (d) One (1) compact disc with electronic format of all documents as follows:
 - (i) Design drawings in DWG file format and portable document format (PDF);

- (i) Specification and REF in portable document format(PDF).

1.2 Limit of Works

- 1.2.1 The limit of works shall be all works required to comply with AUS-SPEC, and shall be not less than the minimum requirements specified by any conditions of consent.

1.3 Drawing Presentation

- 1.3.1 The detailed design plans are to be prepared in accordance with the Rockdale Technical Guide - Computer Aided Design and Drafting. The drawings must show all necessary design details for construction by the Service Provider.

1.4 Swept Paths

- 1.4.1 The preparation and presentation of swept path diagrams shall be in accordance with the Rockdale Technical Guide - Computer Aided Design and Drafting. Swept paths, based on the nominated design vehicle, must be provided for all movements at intersections.

1.5 Design Parameters - Road, Pavement and Lighting Design

- 1.5.1 Design vehicle for swept path diagrams: design single unit bus, 12.5m long.
- 1.5.2 Equivalent Standard Axles for pavement design: 3 x 105.
- 1.5.3 Design life for road pavement: 25 years.
- 1.5.4 Lighting category: to Category P3 based on Australian Standard AS1158 - Lighting for roads and public spaces.
- 1.5.5 Kerb profiles, pram ramps, etc shall be in accordance with the Model (Road) Drawings for Kerb and Gutter (R15) issued by the NSW Roads and Traffic Authority.

1.6 Road Alignment

- 1.6.1 Footpath design consistent with AS1428. Attention is drawn to the provisions for minimum height clearance (2.2m); minimum clear width (1.5m); maximum grades (longitudinal and cross-fall); and kerb ramp details.
- 1.6.2 All kerb returns must be designed such that no part of the vehicle crosses the centerline.
- 1.6.3 All vehicle footpath crossing profiles are to be provided.
- 1.6.4 The design must not result in any un-drained low-points, and as far as practicable low points within the kerb return shall be avoided to eliminate the use of pits with curved lintels.

1.7 Road Pavement

- 1.7.1 A formal pavement design shall be prepared by a registered N.A.T.A. laboratory based on sampling and testing of the subgrade materials from the site. Details of the pavement design, results of subgrade testing (including 4 day soaked CBR's) are to be submitted with the design drawings.
- 1.7.2 Pavements should be designed using the general principles of Austroads 1992 "Pavement Design - A Guide to the Structural Design of Road Pavements".
- 1.7.3 Sandstone shall not be used in pavements. Wearing surfaces shall be asphaltic concrete (AC) only.

1.8 Utility Services

- 1.8.1 The development shall comply with Ausgrid Network Standards for underground supply of electricity.

1.9 Street Lighting

- 1.9.1 The development shall design and implement new street lighting. Pole height and light spacing as required to meet the design lighting category from AS1158.
- 1.9.2 The location of street lighting poles shall comply with RTA requirements:
 - (a) impact absorbing poles may be located not less than 1.0m from the edge of the nearest traffic lane; and
 - (b) non-impact absorbing poles may be located not less than 3.0m from the edge of the nearest traffic lane.
- 1.9.3 Design to AusGrid Network Standard - Street Lighting Design and Construction NS119.
- 1.9.4 Column footings must be designed according to the site conditions, and if standard details are being considered, the site conditions must be confirmed.

1.10 Traffic Facilities

- 1.10.1 The following traffic facilities shall be provided in accordance with the NSW Roads and Traffic Authority Supplement to Austroads Guide to Road Design, and NSW Roads and Traffic Authority Supplement to Australian Standards AS1742 and AS1743:
 - (a) line marking and regulatory signage;
 - (b) parking signage.

1.11 On-Street Parking

- 1.11.1 Where flush concrete edging is used as an edge treatment for pavement in lieu of standard kerb and gutter shapes adjacent to on-street parking spaces, wheel stops shall be designed in accordance with AS2890.3:1993.

1.12 Landscape Details

- 1.12.1 The landscape plan for the treatment of the road reserve must be separate to landscape treatments within the boundary of the property.

1.13 Drainage

- 1.13.1 The preferred drainage culverts shall be pre-cast small span or large span reinforced concrete box culverts designed to AS1697.2 and/or RTA specification R16.
- 1.13.2 Special design box culverts and cast in-situ box culverts shall be designed to applicable Australian Standards and/or RTA specifications, and certified by a NPER Structural Engineer.
- 1.13.3 Base slabs for box culverts may be either pre-cast base slabs or cast in-situ base slabs.
- 1.13.4 Link slabs are not permitted for the construction of multi-cell box culverts.
- 1.13.5 The design of cast in-situ concrete culverts must include sections at appropriate intervals and comprehensive co-ordinate and set out data to enable the design to be implemented. The specification of tolerances for the culvert construction shall be amended from the standard tolerances of AUS-SPEC to impose the highest possible level of tolerances to design dimensions and levels, to ensure that the culvert meets the hydraulic design.
- 1.13.6 Where drainage pipes are to be used the pipes shall be reinforced concrete (RC), rubber ring jointed (RRJ) pipes only.
- 1.13.7 Pit details shall be in accordance with the Model (Road) Drawings for Stormwater Drainage (R11) - Gully Pits issued by the NSW Roads and Traffic Authority.

1.14 Subsurface Drainage

- 1.14.1 Design of subsurface drainage shall be in accordance with 0043 - Subsurface drainage (design).
- 1.14.2 Alternatively, the Roads and Traffic Authority's Combined Stormwater and Subsurface Drainage (Drawing reference MD.R33.A08.A) can be adopted.

1.15 Dilapidation Report

- 1.15.1 The dilapidation report required by conditions of consent must include photos and details of surrounding public infrastructure and adjoining boundary fences.

1.16 Certification Requirements and Quality Assurance

1.16.1 Quality Management:

- (a) The consultant must have a Quality Management System for design and development, including a Quality Management Plan in accordance with AS/NZS ISO 9000:2000, and certified by a third party accredited organisation accredited under a recognised

product certification scheme in accordance with AS/NZS ISO 9001:2000.

1.16.2 Design qualification:

- (a) The design must be certified by a Professional Engineer with current registration on the National Professional Engineers Register (NPER), stating that the design meets the required standards:
 - (i) Civil Engineering area of practice for all civil plans, including drainage design;
 - (ii) Structural Engineering area of practice for all structural load carrying elements.
- (b) A certification report conforming to Annexure A of 0160 -Quality (design) must accompany the design.

1.17 Authority requirements:

- 1.17.1 Implementation of the design and specification may not occur unless a Construction Certificate has been obtained from the Council or an Accredited Certifier in accordance with the Environmental Planning and Assessment Act 1979, subject to any special requirements imposed by the Council in any applicable Works-In-Kind Agreement.
- 1.17.2 The Council or an Accredited Certifier cannot issue a permit for installation of traffic management facilities without the approval of the Rockdale Traffic Committee, under delegation by the NSW Roads and Traffic Authority in accordance with the Road Transport (Safety and Traffic Management) Act 1999.

1.17.3 The applicant shall ensure that a Traffic Control Plan is submitted to the Council at least 10 working days before any works are undertaken on any existing public assets owned, maintained or controlled by the Council. No works shall be commenced until such Traffic Control Plan has been approved by an adequately qualified person, holding a valid Roads and Traffic Authority Traffic Control at Work Sites. In addition no work shall commence on any Council assets until such time as the appropriate occupancy permission has been obtained and the appropriate fees and charges pertinent to such occupancy paid.

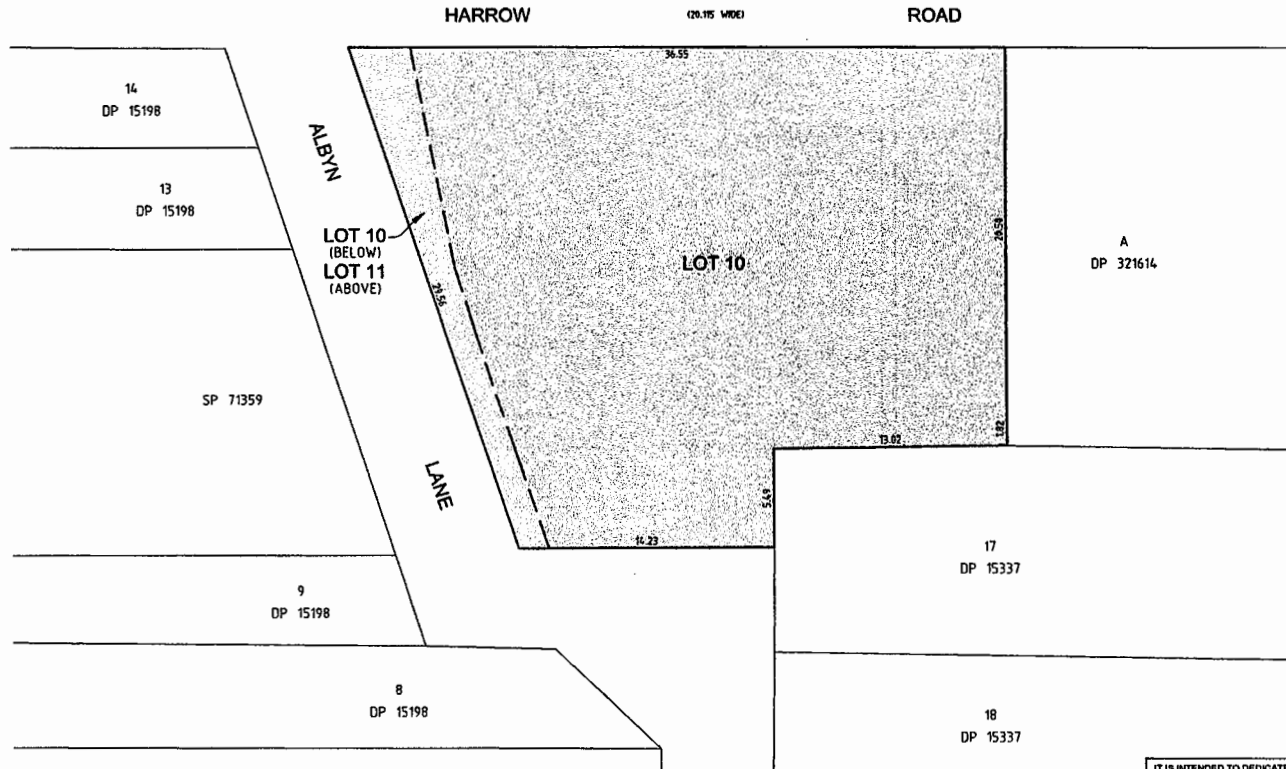
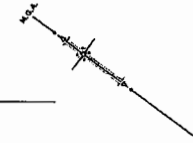
2. Specification

- 2.1 A specification is to be developed based on AUS-SPEC. The compilation of the specification shall be undertaken in accordance with the Council's Engineering Specification Guide: for works in conjunction with developments and subdivisions.
- 2.2 The specification compiler will be required to be a current subscriber to NATSPEC.
- 2.3 The specification must include the following mandatory work sections:
 - 2.3.1 0161 Quality (Construction);
 - 2.3.2 0171 General Requirements.
- 2.4 Any discrepancies arising from the preparation of the specification shall be notified to the Manager - City Infrastructure as soon as practicable.

Appendix 1 (Land Dedication Plan)

LOCATION PLAN

THIS IS A DRAFT PLAN ONLY AND IS SUBJECT TO FINAL SURVEY



IT IS INTENDED TO DEDICATE LOT 11, TO THE PUBLIC AS PUBLIC ROAD IN STRATUM

SURVEYOR
 Name: JOSEPH MONARDO
 Date of Survey: 2017
 Surveyor's Reference: 50284 001DP

PLAN OF SUBDIVISION OF LOT 15 IN DP 15198 AND LOT B IN DP 321614

LGA: BAYSIDE
 Locality: BEKLEY
 Reduction Ratio: 1: 150
 Lengths are in metres.



DP DRAFT
 ISSUE FOR REVIEW: 21-03-18

PLAN FORM 2 (A2)

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

Sheet 2 of 4 sheet(s)

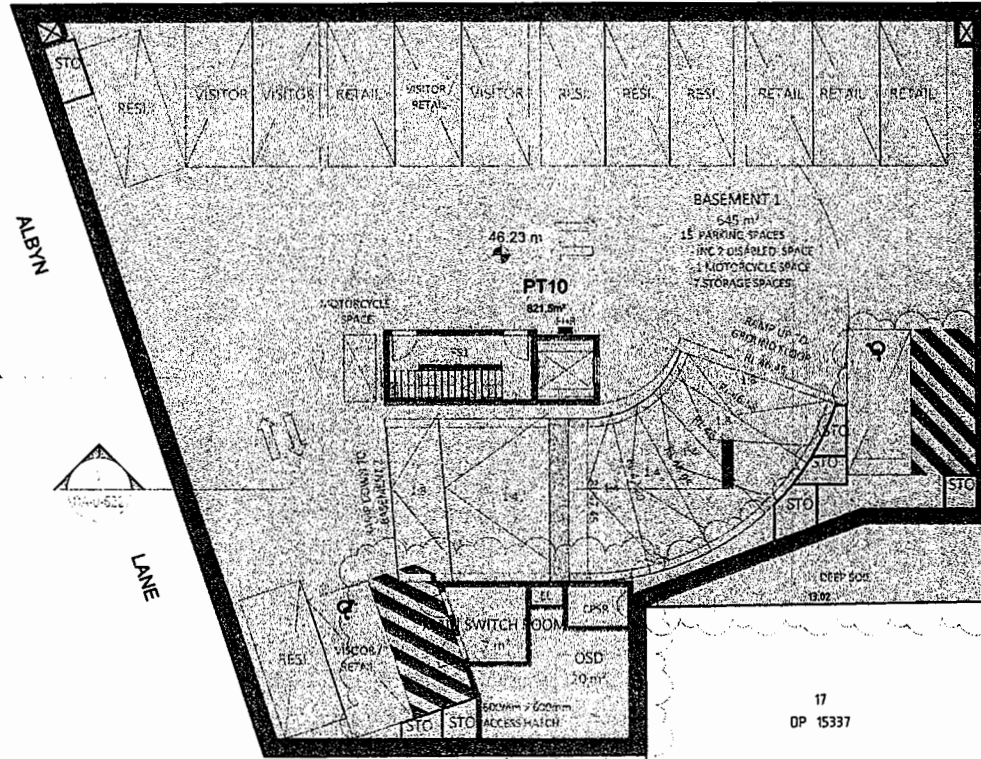
BASEMENT 1 & BELOW

THIS IS A DRAFT PLAN ONLY AND IS SUBJECT TO FINAL SURVEY

HARROW

(20.115 WIDE)

ROAD



LANE

ALBYN

A
DP 321614

36 m

17
DP 15337

IT IS INTENDED TO DEDICATE LOT 11 TO THE PUBLIC AS PUBLIC ROAD IN STRATUM

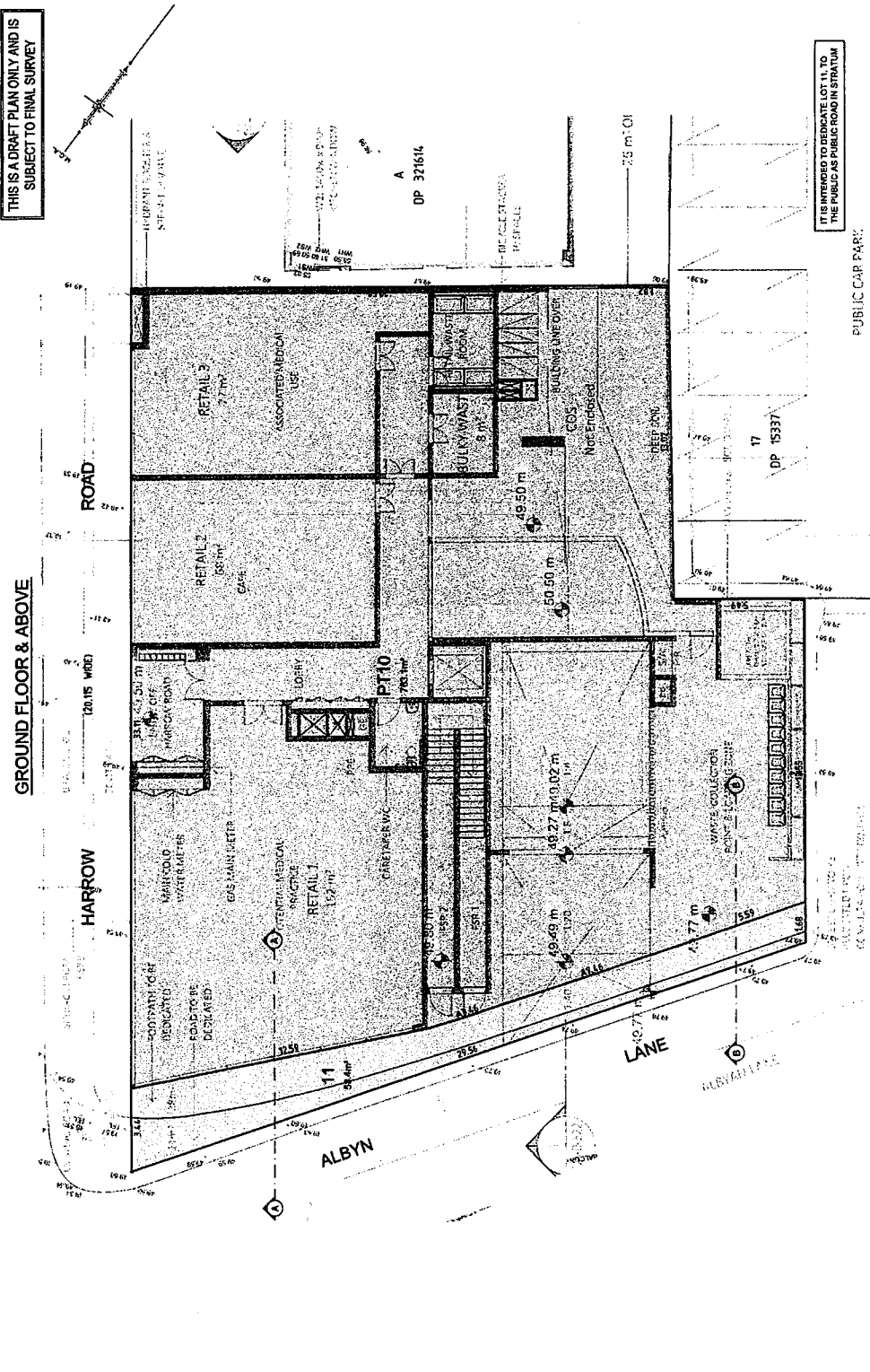
SURVEYOR
 Name: JOSEPH MONARDO
 Date of Survey: 2017
 Surveyor's Reference: 52284 001DP

PLAN OF SUBDIVISION OF LOT 15 IN DP 15198 AND
 LOT B IN DP 321614

LGA: BAYBIDE
 Locality: BEXLEY
 Reduction Ratio 1: 100
 Lengths are in metres.



DP DRAFT
 ISSUE FOR REVIEW: 21-03-18




WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

THIS IS A DRAFT PLAN ONLY AND IS SUBJECT TO FINAL SURVEY

IT IS INTENDED TO DEDICATE LOT 11 TO THE PUBLIC AS PUBLIC ROAD IN STRATHMUR

PUBLIC CAR PARK



 Registered Land Surveyors
 100, King Street
 Perth, Western Australia
 Phone: 08 9422 4600

UGA: BIVASIE
 Locality: BEALEY
 Production Ratio: 1:100
 Lengths are in metres.

PLAN OF SUBDIVISION OF LOT 15 IN DP 15199 AND
 LOT 16 IN DP 321614
 SURVEYOR
 Name: JOSEPH MOUTAROO
 Date of Survey: 2017
 Surveyor's Reference: 2017-00107

DP DRAFT
 ISSUE FOR REVIEW: 21-03-18

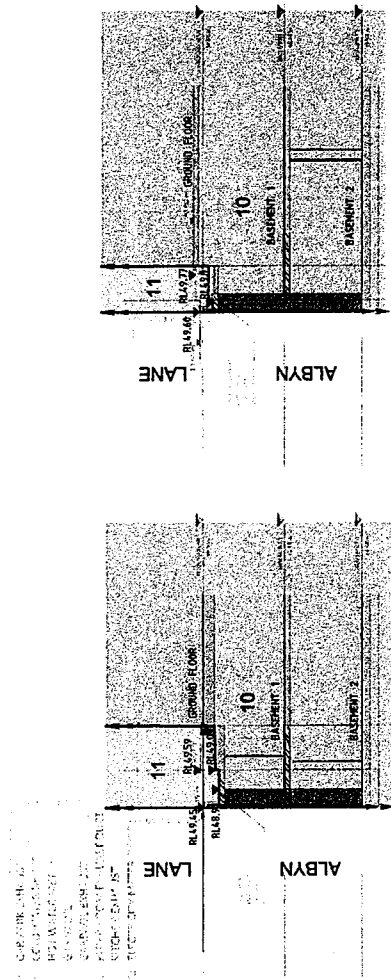
M.W J.M

WARNINGS: CREASING OR FOLDING WILL LEAD TO REJECTION

PLAN FORM 2 (M2)

THIS IS A DRAFT PLAN ONLY AND IS SUBJECT TO FINAL SURVEY

SECTIONS



SECTION B-B
SCALE 1:100

SECTION A-A
SCALE 1:100

IT IS ADVISED TO VISIT THE PUBLIC AS PUBLIC ROAD IN STRATA

DP DRAFT
ISSUE FOR REVIEW: 21-03-18



LOCALITY: MYRAGE
LOCALITY: BEVELY
Reduction Ratio 1: 100
Lengths are in metres.

PLAN OF SUBDIVISION OF LOT 15 IN DP 151588 AND LOT 8 IN DP 321814

SURVEYOR
Name: JOSEPH MONARDO
Date of Survey: 2017
Surveyor's Reference: 0204/01/01P

M.W J.H

Appendix 2 (Explanatory Note)

(Clause 49)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note: Proposed Planning Agreement

Under s7.4 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

CPD018 Pty Limited ACN 622 719 199 of 157 Victoria rd. Gladesville, NSW 2111(**Developer**)

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

2.1 Lot B in Deposited Plan 321614 and Lot 15 in Deposited Plan 15198, commonly known as 1-3 Harrow Road, Bexley **Schedule 2** to the Agreement.

2.2 This Developer is the owner of the Land.

3. Description of the LEP Amendment

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

4.1 Objectives of proposed Planning Agreement

4.1.1 The objectives of the proposed Planning agreement are to:

- provide Development Contributions for the benefit of the public in the form of the dedication of land free of cost and the payment of a monetary Development Contribution, as outlined below; and
- Achieve the provision of these Development Contributions with greater certainty and at less risk and less cost to Council than would be possible through the outright purchase of the land or the use of section 7.11 development contributions alone.

4.2 Nature of proposed Planning Agreement

4.2.1 The Planning Agreement is a planning agreement under s7.4 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 Planning Agreement) are made by the Developer for various public purposes (as defined in s7.4(2) of the Act).

4.3 Effect of proposed Planning Agreement

The Planning Agreement:

- (a) The Developer dedicates its land to allow for the widening Albyn Lane to the edge of the currently proposed footpath. The northern (Albyn Lane) façade of the commercial premises will then be setback to allow provision of a footpath along the Albyn Lane frontage having a variable width as shown on Drawing No. DA-0-202 Revision N dated 3 April 2018, drawing no. DA-0-651 Revision A dated 21 March 2018 (except where amended by recommended Conditions of consent), and as shown on the draft Stratum Subdivision Plan prepared by Joseph Monardo, Sheets 1 – 4, Reference 50284 001DP (dated 21 March 2018) The widening of Albyn Lane would assist with the circulation of traffic and existing condition of the laneway.
- (b) The Developer dedicates the land, namely a laneway (limited in stratum unlimited as to height but limited to a depth of 500mm below the finished surface of Albyn Lane) and footpath. The Road and footpath to be dedicated to Council are to have a clear property boundary as proposed in draft DP plan with Reference 50284 001DP, prepared by Joseph Monardo, registered surveyor, issue date 21 March 2018 and as shown on Drawing No. DA-0-202 Revision N dated 3 April 2018 and Drawing No. DA-0-651 Revision A dated 21 March 2018 (except where amended by recommended Conditions of consent).
- (c) All design and construction work is to be undertaken by the developer, to Council's specifications, namely:
- (d) A minimum 500mm clearance must be provided between the finished road surface level to the top of basement roof / slab for Basement Level 1. This depth is required for service conduits, pavement depth and future maintenance of road. Section A-A shown in DP draft plan to be amended to show correct basement ceiling level. (Issue: basement clearance from road surface for pavement)
- (e) The basement parking area situated below the widened area of Albyn Lane which is to be dedicated is to be designed and constructed to support a 20T capacity Council Garbage Truck operating in Albyn Lane.
- (f) The basement parking area to be legally recognised and shown with a Stratum Subdivision and an 88B Instrument including the dedication of the stratum lot for the Public Road for the Road Widening strip in Albyn Lane, along with easements for services/covenants.
- (g) The Albyn Lane road carriageway to be widened to accommodate 2 way traffic movements as shown in the architectural plans approved under DA 2017/373.
- (h) The Albyn Lane Footpath to be a variable width as shown on Drawing No. DA-0-202 Revision N dated 3 April 2018 and to incorporate ducts for future Public Utility Services along the Lane.
- (i) The existing Light Pole at the south western corner of the property in Albyn Lane to be relocated to accommodate the Lane Widening but maintain a Level P4 Lighting Category. Location of the light pole will be confirmed with the frontage works application to Council.
- (j) Prior to the issue of the construction certificate applicant shall submit to Council an Application to undertake the Public Domain Works on the Harrow Road and Albyn Lane Frontages of the Property.
- (k) To provide for stormwater disposal from the Property the Applicant to extend Council's existing stormwater system in Harrow Road from Albyn Street to the site as proposed in the submitted stormwater drainage plan.

- (l) Acknowledges that the Development Contributions are not to be taken into account in determining a development contribution under Section 7.11 of the Act.

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.

1.1 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

1.2 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.

1.3 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.

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

The proposed Planning Agreement conforms to 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.