

# Planning Agreement

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SCANNED

The Hills Shire Council  
Council

Golden Mile 1888 Pty Ltd + Pennant Hills Estate 88 Pty  
Ltd + Rainbowforce Pty Ltd (ACN 463 711 963)

Developer

Rainbowforce Pty Ltd  
Golden Mile 1888 Pty Ltd  
Pennant Hills Estates 88 Pty Ltd  
(collectively, the Owners)

BATCH NO:  
TIME:

Gadens (a)  
17 APR 2015

THE HILLS SHIRE COUNCIL

**gadens**

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# Planning Agreement

Dated

## Parties

1. **The Hills Shire Council (Council).**
2. **Golden Mile 1888 Pty Ltd + Pennant Hills Estate 88 Pty Ltd + Rainbowforce Pty Ltd (ACN 463 711 963) (Developer).**
3. Rainbowforce Pty Ltd  
Golden Mile 1888 Pty Ltd  
Pennant Hills Estates 88 Pty Ltd  
**(collectively, the Owners)**

## Background

- A. Council is the consent authority pursuant to the Act for the Proposed Development.
- B. The Developer is the owner of several of the lots comprising the Land, as outlined in Schedule 3.
- C. The Developer has entered into agreements with the Owners of the remainder of the lots comprising the Land to carry out the Proposed Development on the Land.
- D. On 19 May 2009 Council resolved to adopt the Draft LEP and issue a Section 69 report to the Director General for gazettal subject to a number of conditions. The Draft LEP has not yet been gazetted.
- E. The Developer has lodged the Development Application in anticipation of gazettal of the Draft LEP, to carry out the Proposed Development on the Land.
- F. The Developer has offered to enter into a planning agreement on the terms set out below to make Development Contributions if Development Consent to carry out the Proposed Development are granted.

## Operative provisions

### 1. Definitions and interpretation

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#### 1.1 Definitions

In this document unless the context otherwise requires:

**Act** means the *Environmental Planning and Assessment Act 1979*;

**Additional Monetary Contribution** means the amount determined by multiplying the Monetary Contribution Rates by the number of dwellings in addition to the Anticipated Dwellings approved for the Proposed Development;

**Anticipated Dwellings** means the dwellings anticipated in the Proposed Development as set out in Schedule 4;

**Bank Guarantee** means a written guarantee without a time limit acceptable to Council issued by an Australian Bank;

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in New South Wales;

**Construction Certificate** has the same meaning as in the Act;

**Dedication** means the creation or transfer of an estate in fee simple free of any mortgage, lease, easement or other encumbrance of a lot registered under the Real Property Act;

**Dedication Lands** means the parts of the Land specifically identified for dedication to Council in Schedule 1 as illustrated on the site plan (Figure 1);

**Development Application** means the development application for the Proposed Development, being DA 1103/2011/JP;

**Development Consent** means the approval of the Development Applications;

**Development Contributions** means a monetary contribution, the dedication of land free of cost or the provision of a material public benefit including the Works, or the combination of any of them;

**Draft LEP** means the Draft Local Environmental Plan which provides for the following rezoning:

- (a) land bounded by Jenkins Road, Post Office Street, Boundary Road and the Railway reservation from Residential 2(a1) to Residential 2(a4); and
- (b) land bounded by Moseley Skeet, Jenkins Road, Post Office Street and Donald Street from Residential 2(a2) to Residential 2(a1).

**Encumbrance** includes any mortgage or charge, lease, (or other right of occupancy) or profit a prendre;

**GST** means any tax, levy, charge or impost implemented under the *A New Tax System (Goods and Services Tax) Act (GST Act)* or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Act;

**Land** comprises the whole of the land described in Schedule 3;

**Monetary Contribution** means the amount specified in Schedule 2 as the Monetary Contribution;

**Occupation Certificate** has the same meaning as in the Act;

**Owners** means the owners of the parcels of the Land as set out in Schedule 3, and includes any successor in title;

**Party** means a party to this document, including their successors and assigns; Price Index means:

- (a) All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics; or
- (b) if this price index is discontinued or abolished or if the items or weighting of the items whose prices are considered varied so as to change the basis of the price index then such price index as Council may select that, as nearly as practicable, serves the same purpose.

**Proposed Development** means the development the Land for mixed use retail and residential, generally as described in Schedule 4;

**Subsisting Breach** means any breach by the Developer in the performance of its obligations under this document which is not rectified within 14 days of written notice of the breach being provided to the Developer by Council;

**Works** means the works in kind identified in Schedule 2.

## 1.2 Interpretation

In this document unless the context, otherwise requires:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) reference to a person includes any other entity recognised by law and vice versa;
- (e) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (f) any reference to a party to this document includes its successors and permitted assigns;
- (g) any reference to a provision of an Act or Regulation is a reference to that provision as at the date of this document;
- (h) any reference to any agreement or document includes that agreement or document as amended at any time;
- (i) the use of the word includes or including is not to be taken as limiting the meaning of the words preceding it,
- (j) the expression at any time includes reference to past, present and future time and the performance of any action from time to time;
- (k) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (l) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
- (m) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this document;
- (n) reference to a provision described, prefaced or qualified by the name, heading or caption of a clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment in this document means a cross reference to that clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment;

- (o) when a thing is required to be done or money required to be paid under this document on a day which is not a Business Day, the thing must be done and the money paid on the immediately following Business Day; and
- (p) reference to a statute includes all regulations and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated.

## **2. Planning agreement under the Act**

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The Parties agree that this document is a planning agreement within the meaning of section 93F of the Act.

## **3. Application of this document**

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This document is made in respect of the Proposed Developments and applies to the Land.

## **4. Operation of this document**

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- 4.1 Until the planning agreement operates, this document constitutes the Developer's offer to enter into the planning agreement if consent under s80 of the Act is granted to a Development Application forming part of the Proposed Developments.
- 4.2 The planning agreement operates only if:
  - (a) the Draft LEP is gazetted;
  - (b) the carrying out of the Proposed Development is subject to a condition imposed under s931(3) of the Act requiring this planning agreement to be entered into, and
  - (c) the planning agreement is entered into as required by the condition in accordance with clause 25C(1) of the Regulation.
- 4.3 This document provides for Development Contributions to be made with respect to each Development Consent that comprises the Proposed Development as outlined in Schedule 2.

## **5. Dedication Lands**

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### **5.1 Developer and Owners must not deal with property**

The Developer and Owners must not during the term of this document sell, transfer, mortgage, charge or grant a lease or license or any other right of occupancy to any person over the Dedication Land without first obtaining Council's consent in writing. Council may, at its absolute discretion, refuse its consent or give consent with conditions.

### **5.2 Caveat**

- (a) The Developer and Owners agree that their obligations under this document create an equitable interest in the Dedication Lands held by Council and they agree to grant to Council a right to register a caveat on title over the Dedication Lands.
- (b) The Developers must provide Council with survey plans for the Dedication Lands.

- (c) On the date of execution of this document, the Developer will give to Council in registrable form caveats over the Dedication Lands endorsed with landowner's consent in the form and on the terms of the caveat attached to this document as Annexure A. The Developers acknowledge and agree that to be in registrable form the caveats must identify the land by a survey plan in accordance with the Real Property Regulation 2008 including Schedule 4.
- (d) Council must not unreasonably withhold its consent to the registration of any dealing by a mortgagee that would not have a material adverse effect on Council's interest in the Dedication Lands.
- (e) Council will give to the Developer a withdrawal of caveat within 7 days of this document being validly terminated under clause 18.1.

## 6. Dedication

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- 6.1 The Developer and Owners must at their cost Dedicate to Council the Dedication Lands in accordance with the times listed in Schedule 1.
- 6.2 The Dedication will be effected when:
  - (a) a plan of subdivision is registered dedicating the Dedication Lands to Council; or
  - (b) Council becomes the registered proprietor of an existing lot being part of the Dedication Lands as a result of the registration of a transfer of land.
- 6.3 Where an existing lot forming part of the Dedication Lands is to be transferred to Council,
  - (a) the Developer will deliver to Council the following:
    - (i) transfer in registrable form signed by the registered proprietor of the lot;
    - (ii) the Certificate of Title for the lot; and
    - (iii) a discharge of mortgage, surrender of lease or other document to release the lot from any encumbrance.
  - (b) Council will on receipt of these documents arrange for the following:
    - (i) stamping of the transfer; and
    - (ii) lodgement of the transfer and other documents at the office of Land and Property Information for registration.
- 6.4 Council must provide the Developer with a tax invoice for its reasonable expenses incurred in relation to the Dedication of the Dedication Land including its legal costs and disbursements on an indemnity basis (including any registration fees).
- 6.5 The Developer will be entitled to the benefit of any special or discounted rates charged to Council by its consultants and legal advisers and will be entitled to seek assessment of any legal costs, as a third party payer under s 350(2) of the *Legal Profession Act 2004*.
- 6.6 The Developers must pay to Council the amount invoiced for expenses under sub-clause 4 within 14 days of receipt of the invoice.
- 6.7 The Developer must pay Council on reasonable notice the stamp duty (if any) on the Dedication of the Dedication Land. The Parties acknowledge that Section 227 *Duties Act*

1997 provides generally that duty under that Act is not chargeable on dutiable transactions where Council is liable to pay the duty.

- 6.8 After the Dedication Land is transferred to Council, Council will use the land for public purposes being the provision of public open space and such other public purposes in the future as Council may consider appropriate.

## 7. Monetary Contributions

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### 7.1 Payment

The Developer must pay the Monetary Contribution and any applicable Additional Monetary Contribution (**Total Monetary Contribution**). Payment of the Total Monetary Contribution may be made by cheque or electronic bank transfer to Council's nominated bank account.

### 7.2 Additional Dwellings

If the Development Consents approve dwellings in addition to the Anticipated Dwellings then the Developer must also pay the Additional Monetary Contribution.

### 7.3 Annual Increases

On each anniversary of the date of this document the Total Monetary Contribution applicable immediately prior to that anniversary will be increased by the same percentage as the annual percentage increase, if any, in the Price Index most recently published prior to the relevant anniversary. The increased Total Monetary Contribution will be the Total Monetary Contribution in the subsequent 12 months.

### 7.4 Pro rata payment

- 7.4.1 The parties acknowledge that the Proposed Development may be undertaken in a number of stages, with the construction of individual buildings authorised by separate Construction Certificate.
- 7.4.2 The Total Monetary Contribution is to be paid on a pro rata basis prior to the issue of each Construction Certificate for construction of the buildings comprising the Proposed Development.
- 7.4.3 The proportion of the Total Monetary Contribution payable at each relevant Construction Certificate will be calculated in accordance with the below formula:

$$b = \frac{ya}{x}$$

Where:

a= Total Monetary Contribution

b = proportion of Total Monetary Contribution payable in connection with the Construction Certificate

x = total number of approved dwellings in the Development Consent

y = number of dwellings to be constructed under the Construction Certificate



## **7.5 Public Purpose**

The Total Monetary Contribution is required for the funding of the construction of improvements to the public domain in the vicinity of the Land (including those specified in Section 93(F)(2) of the Act) as determined by the General Manager of Council from time to time and Council will apply the Total Monetary Contribution for those purposes.

## **8. Works in Kind**

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### **8.1 Provision of works**

The Developer must carry out the works in kind identified in Schedule 2 (**Works**) at its own expense. The estimated value of the Works is provided for information purposes only and the Developer must carry out the Works regardless of the actual costs involved.

### **8.2 Completion of Works**

The Works must be completed to the reasonable satisfaction of Council prior to the issue of the first Strata Certificate for the Land (Completion Date).

### **8.3 Design of Works**

8.3.1 The Parties acknowledge and agree that plans and specifications for the design of the Works will be required having regard to the following:

- (a) the policies, procedures and standards reasonably required by Council for the Works;
- (b) changes in the Proposed Developments including matters not reasonably capable of identification on or before the date of this document; and

(c) matters arising out of the relevant Development Consent.

8.3.2 The Developer must promptly after the date of the relevant Development Consent prepare a detailed description, plans and specifications for the Works (Draft Design) and submit them to Council for approval, such approval not to be unreasonably withheld.

8.3.3 Council must promptly review the Draft Design and provide comments to the Developer. The Developer must promptly amend the Draft Design to take into account the comments made by Council and re-submit the Draft Design. When the Draft Design is satisfactory to Council then Council must (in its capacity as a party to this Deed not as a consent authority) notify the Developer that the Draft Design is acceptable and this will be the Approved Design.

### **8.4 Approvals**

8.4.1 The Developer must, at their cost, obtain all relevant approvals and consents for the Works to be constructed in accordance with the Approved Design whether from the Council or other relevant government agency, including but not limited to any necessary road opening permit or road occupancy certificate from the Roads and Traffic Authority.

8.4.2 Before commencing the Works, the Developer must give Council copies of all approvals and consents for the Works.

## **8.5 Construction Plans**

- 8.5.1 The Developer must complete construction drawings in accordance with the Approved Design in such format as Council may reasonably require (Construction Plans) and submit them to Council for approval, such approval not, to be unreasonably withheld.
- 8.5.2 Council must promptly review the Construction Plans and provide comments to the Developer. The Developer must promptly amend the Construction Plans to take into account the comments made by Council and re-submit the revised Construction Plans. When the Construction Plans are satisfactory Council will notify the Developer of its approval (in its capacity as a party to this document, not as consent authority) and these plans will be the Approved Construction Plans.

## **8.6 Construction**

The Developer agrees that the Works must be carried out:

- (a) in a safe, proper, efficient and workmanlike manner;
- (b) in accordance with the Approved Construction Plans and any other information submitted under this document;
- (c) in accordance with all approvals and consents obtained for the Works; and
- (d) complying with any reasonable directions from Council in respect of the construction of the Works.

## **8.7 Insurance**

- 8.7.1 The Developer must in respect of the Works take out and maintain the following insurances:
- (a) public liability insurance for at least \$20,000,000 for each accident or event or for such other amount as Council may reasonably notify;
  - (b) construction all risk insurance for the replacement value of the Works; and
  - (c) insurance against death or injury to persons employed in relation to undertaking the Works.
- 8.7.2 All insurance policies must:
- (a) be with a reputable insurer acceptable to Council;
  - (b) have endorsed upon them the rights and interests of Council;
  - (c) have no exclusions, endorsements or alterations unless consented to by Council; and
  - (d) include a cross liability clause providing that the 'insured' applies to Council and the other insured persons as though a separate policy had been issued for each person.
- 8.7.3 The Developer must submit a copy of a certificate of currency of the insurance to Council prior to commencement of the construction of the Works and when otherwise reasonably requested by Council.

8.7.4 If any loss or damage arises from any cause covered by these insurance policies, the Developer must immediately apply for the insurance money and expend it together with the Developer's money to promptly rectify the loss or damage.

## **8.8 Inspection of Works**

The Council as a party to this document and not as a consent authority may (but is not obliged) at reasonable times and on reasonable notice inspect the Works during the course of construction. Council will promptly in good faith inform the Developer in writing of any material or significant defect, error or omission relating to the construction of the Works identified during or as a result of the inspection. The Parties expressly agree that any failure to identify a defect, error or omission will not be construed as amounting to an acceptance by Council of that defect, error or omission.

## **8.9 Works Completion**

When, in the opinion of the Developer, the Works have reached completion, the Developer must notify Council in writing and must include in that notice:

- (a) a statement from the person with the responsibility, carriage and supervision of the construction that in their opinion the Works have reached completion; and
- (b) copies of any warranties, guarantees, maintenance, information or other material reasonably required for the ongoing maintenance of the Works; and
- (c) at least 3 sets of 'as built' drawings of the Works in such formats as Council may require,

(Completion Notice).

## **8.10 Inspection by Council**

Council must inspect the Works within 14 days after receipt of the Completion Notice and must by written notice to the Developer:

- (a) concur that the Works have been completed; or
- (b) disagree that the Works have been completed and identify the errors or omissions required to be rectified for completion of the Works.

The Developer must take into account the errors or omissions identified by Council (if any) and re-submit the Completion Notice.

## **8.11 Completion Date**

The date of completion of the Works will be the date specified in the Completion Notice to which Council concurs, the date the Parties otherwise agree or if the matter is referred to Dispute Resolution the date determined by an Expert.

## **8.12 Non completion of Works**

If the Developers fails to complete the Works as required by this document by the Completion Date Council may:

- (a) accept the Works as completed; and
- (b) arrange for, the necessary further construction or rectification to complete the Works in accordance with this document at the cost of the Developers.

The Developers must pay to Council the cost incurred by Council in completing the Works, within 14 days of receiving an invoice for those costs.

### **8.13 Ownership**

For the avoidance of doubt, the Parties acknowledge and agree that on completion of the Works or acceptance of the Works by Council the Developer transfers the Works to Council and Council will own the Works.

### **8.14 Public Purpose**

The Works are constructed for Council as public amenities.

## **9. Defects Liability Period**

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### **9.1 Rectification in the Defects Liability Period**

If Council notifies the Developer of a defect in the Works within the Defects Liability Period, the Developer must promptly remedy that defect to the satisfaction of Council.

### **9.2 Defects Liability Period**

Defects Liability Period means the period of 6 months from the date of completion of the Works or acceptance by Council of the incomplete Works.

### **9.3 No Limitation**

This clause does not limit any other right, power or privilege of Council with or arising under this document or any other document or otherwise at law in respect of any defect in the Works.

## **10. Security Works**

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### **10.1 Provision of Security**

Prior to the issue of any Construction Certificate for the Proposed Development, the Developer will provide to Council either the payment of a bond or a Bank Guarantee for \$742,108 (**Works Security Amount**) as security for the due, prompt and proper observance and performance by the Developer and the Owners of their obligations under this document.

### **10.2 Form of Security**

In the event of any Subsisting Breach by the Developer, the Council may, without further notice to the Developer or the Owners, call up the Bank Guarantee or apply the bond for any amount payable to Council. If at any time any money is paid under the Bank Guarantee or the bond, the Developer must at the request of the Council provide the Council with a supplementary or replacement Bank Guarantee or make further payment for the bond so that the amount of the Bank Guarantee or bond held by the Council is the amount properly required to be provided under this document.

### **10.3 Price Index Increases**

On each anniversary of the date of this document the Security Amount applicable immediately prior to that anniversary will be increased by the same percentage as the annual percentage increase, if any, in the Price Index most recently published prior to the

relevant anniversary. The increased Security Amount will be the Security Amount in the subsequent 12 months.

#### **10.4 Progressive Release of Security**

Subject to the Developer complying with the its obligations under this Agreement, Council will at the request of the Developer release 80% of the Works Security Amount to the Developer on a pro rata basis as the Works are completed, with 20% of the Works Security Amount retained until the end of the Defects Liability Period. Council, is only required to release a Bank Guarantee where a replacement Bank Guarantee for the relevant reduced amount of the Works Security Amount is provided by the Developers.

### **11. Application of s94 and s94A of be Act**

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For the purpose of s93F(5) this document excludes the operation of sections 94 and 94A of the Act in considering the Development Application(s) for the Proposed Development.

### **12. Modifications**

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- 12.1 In the event that the Proposed Development is changed, modified or amended prior to completion of the development, and a further development or modification application is made for the development of the Land, then any Development Contribution made pursuant to this document will, to the extent that it is lawful:
- (a) be taken into account as part of any development contribution for the purpose of any planning agreement relating to a later application in respect of the Land; and
  - (b) be taken into account in determining any development contribution under s94 and s94A of the Act; and
  - (c) be taken into account in determining whether or not any planning agreement excludes the operation of s94 and/or s94A of the Act; and
  - (d) be taken into account for the purposes of s94(6) of the Act; and
  - (e) be taken into account for the purposes of s79C of the Act.

### **13. Easements Covenants and Restrictions on Title**

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- 13.1 Prior to any dedication of the Dedication Lands to Council, the parties are to resolve what easements, covenants and/or restrictions on title must necessarily be created upon any subdivision of the Land, having regard to the provisions of Part 6 of the *Conveyancing Act 1919*.
- 13.2 The parties warrant one with the other to do all things necessary to procure the registration on title to the Land or title(s) to any relevant lot created by subdivision of the Land of any easement, covenant or restriction on title as referred to in clause 13.1 of this document.

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

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Except as otherwise set out in this document, any agreement, covenant, representation or warranty under this document by 2 or more persons binds them jointly and each of them

individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

## **15. No fetter**

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

## **16. Representations and warranties**

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The Parties represent and warrant that they have power to enter into this document and comply with their obligations under the document and that entry into this document will not result in the breach of any law.

## **17. Severability**

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If a clause or part of a clause of this document 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. 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 document, but the rest of this document is not affected.

## **18. Termination**

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### **18.1 Development Consents**

If Development Consent is granted by the Council with respect to the Development Application(s), this document terminates with respect to that particular Development Consent:

- (a) on the lapse of the Development Consent; or
- (b) on the formal surrender of the Development Consent; or
- (c) on the final determination by a Court of competent jurisdiction issuing a declaration that the Development Consent is invalid.

### **18.2 Consequences**

- (a) On the date of termination or rescission of this document, subject to the following sub-paragraphs each party releases each other from any obligation to perform any term, or any liability arising out of, this document after the date termination.
- (b) Any unapplied Monetary Contribution, bond or Bank Guarantee that has been provided to Council will be refunded to the Developer as soon as practicable after the date of termination.
- (c) Termination or rescission of this document does not release either party from any obligation or liability arising under this document before termination or rescission.

## 19. Private Certifiers

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Where Council is not the certifying authority for any aspect of the Proposed Development the Developer must on the appointment of a private certifier provide a copy of this document to the private certifier.

## 20. Breach Notice and Rectification

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- 20.1 If the Developer is or Owners are, in the opinion of Council, in breach of a material obligation under this document, Council may provide written notice of the breach to the Developer or Owners and require rectification of that breach within a reasonable period of time (**Breach Notice**).
- 20.2 Unless there are compelling reasons to extend or abridge the period of time permitted for rectification, a reasonable period of time is taken to be fourteen days from receipt of written notification of the breach.
- 20.3 If the breach is not rectified within the time specified in the Breach Notice, or otherwise agreed between the Parties, Council may rectify the breach as the agent of the Developer and at the risk of the Developer. The Developer must pay all reasonable costs incurred by the Council in remedying the breach.

## 21. Dispute resolution

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### 21.1 Determination of disputes

If there is any dispute, difference of opinion or failure to agree relating to or arising from this document (**Dispute**) that dispute must be referred for determination under this clause.

### 21.2 No legal proceedings

The Parties must not bring or maintain any action on any Dispute (except for urgent injunctive relief to keep a particular position) until it has been referred and determined as provided in this clause.

### 21.3 Notice of disputes

A Party referring a Dispute for determination must do so by written notice to the other parties (**Dispute Notice**) which must specify the nature of the Dispute and a nominated officer of the referring party with sufficient authority to determine the Dispute.

### 21.4 Negotiated resolution and selection of expert

- (a) On service of the Dispute Notice the receiving Parties must refer the Dispute to an officer with sufficient authority to determine the Dispute. The nominated officers of each Party must meet at least once and use reasonable endeavours to resolve the Dispute by negotiation within seven days of service of the Dispute Notice. Any resolution must be recorded in writing and signed by each nominated officer. By agreement, the nominated officers may employ the services of a mediator to assist them in resolving the Dispute.
- (b) If the nominated officers are unable to resolve the Dispute within seven days of service of the Dispute Notice they must endeavour within the following seven-day period to appoint an expert by agreement. That appointment must be recorded in writing and signed by each nominated officer.

- (c) If the nominated officers do not record the appointment of an expert within that second seven day period, the expert must be appointed, at the request of any party, by the President for the time being (or if none, the senior elected member) of the Law Society of New South Wales.

#### **21.5 Assistance to the Expert**

- (a) Once the Expert has been appointed (the Expert), the Parties must:
  - (i) each use their best endeavours to make available to the Expert all information the Expert requires to settle or determine the Dispute; and
  - (ii) ensure that their employees, agents or consultants are available to appear at any hearing or enquiry called by the Expert.
- (b) The Parties may give written submissions to the Expert but must provide copies to the other Parties at the same time.

#### **21.6 Expert's decision**

- (a) The decision of the Expert must:
  - (i) be in writing and give reasons; and
  - (ii) be made and delivered to the parties within one month from the date of submission of the dispute to the Expert or the date of completion of the last hearing or enquiry called by the Expert, if later.
- (b) The Expert may conduct the determination of the Dispute in any way it considers appropriate but the Expert may, at its discretion, have regard to the Australian Commercial Disputes Centre's guidelines for expert determination of disputes or such other guidelines as it considers appropriate.
- (c) The Expert's decision is final and binding on the parties.
- (d) The Expert must act as an expert and not as an arbitrator,

#### **21.7 Expert's costs**

- (a) The Expert must also determine how the expenses relating to the reference of the Dispute (including the Expert's remuneration) should be apportioned between the parties and in default of a decision by the Expert those expenses must be borne by the parties equally.
- (b) In determining the apportionment of costs the Expert may have regard to what the Expert, in its reasonable opinion, considers to be a lack of good faith or a failure to use reasonable endeavours by any party in assisting the Expert or resolving the dispute between the parties' nominated officers as required by this clause.

#### **21.8 Continual performance**

Each Party must continue to perform its obligations under this document while any dispute is being determined under this clause.



## **22. Registration of document on Title**

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### **22.1 Acknowledgement**

The Developer acknowledges that Council intends to register this document under section 93H of the Act on the Lands and on registration by the Registrar-General the document will be binding on and enforceable against the owners of the Lands from time to time as if each owner for the time being had entered into this document.

### **22.2 Consents to Registration**

This document must be registered on the title of the Land as soon as practicable after it is made. Each Party must promptly execute any document and perform any action necessary to affect the registration of this document on the title of the Land.

### **22.3 Release from Registration**

Council will at the request of the Developer release part of the Land from registration of this document where the Development Contributions have been made including completion of the Works and no other money is owing to Council under this document. The obligations of the Council are satisfied when Council provides the Developer with a signed Request in registrable form for the release of registration of this document

### **22.4 Registration Expenses**

The Developer must pay Council's reasonable expenses including registration fees, any stamp duty, legal costs and disbursements, for the registration of this document and the subsequent removal of registration, on an indemnity basis.

The Developer will be entitled to the benefit of any special or discounted rates charged to Council by its consultants and legal advisers and will be entitled to seek assessment of any legal costs, as a third party payer under s 350(2) of the *Legal Profession Act 2004*:

## **23. General provisions**

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### **23.1 Costs of document**

The Developer must pay Council's fees and reasonable expenses, including legal costs and disbursements on an indemnity basis in relation to:

- (a) the negotiation, preparation, execution and amendment of this document; and
- (b) exhibition fees or fees payable to the NSW Department of Planning in any way associated with this document,

in the amount of \$27,058.61.

### **23.2 GST**

If any payment made by one party to any other party under or relating to this document constitutes consideration for a taxable supply for the purposes of GST or any similar tax, the amount to be paid for the supply will be increased so that the net amount retained by the supplier after payment of that GST is the same as if the supplier was not liable to pay GST in respect of that supply. This provision is, subject to any other agreement regarding the payment of GST on specific supplies, and includes payments for supplies relating to the breach or termination of, and indemnities arising from, this document.


### 23.3 Assignment

A party must not transfer any right or liability under this document without the prior consent of each other party, except where this document provides otherwise.

### 23.4 Notices

- (a) Any notice to or by a party under this document must be in writing and signed by the sender or, if a corporate party, an authorised officer of the sender.
- (b) Any notice may be served by delivery in person or by post or transmission by facsimile to the address or number of the recipient specified below or most recently notified by the recipient to the sender:

**Golden Mile 1888 Pty Ltd + Pennant Hills Estate 88 Pty Ltd + Rainbowforce Pty Ltd (ACN 463 711 963)**  
Sam Fayad  
Level 1, 74 Macquarie Street  
PARRAMATTA NSW 2150

**The Hills Shire Council**  
~~Att: Mathew Pearce~~ *Public Officer*  *SP*  
~~129 Showground Road~~ *3 Columbia Court,*  
~~GASTLE HILL NSW 2164~~ *Baulkham Hills NSW 2153*

- (c) Any notice is effective for the purposes of this document upon delivery to the recipient or production to the sender of a facsimile transmittal confirmation report before 4.00pm local time on a day in the place in or to which the written notice is delivered or sent or otherwise at 9.00am on the next day following delivery or receipt.

### 23.5 Governing law and jurisdiction

- (a) This document is governed by and construed under the law in the State of New South Wales.
- (b) Any legal action in relation to this document against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.
- (c) Each party by execution of this document irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

### 23.6 Amendments

Any amendment to this document has no force or effect, unless effected by a document executed by the parties.

### 23.7 Third parties

This document confers rights only upon a person expressed to be a party, and not upon any other person.

### 23.8 Precontractual negotiation

This document:

- (a) expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement; and

- (b) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject matter or any term of that agreement.

### **23.9 Further assurance**

Each party must execute any document and perform any action necessary to give full effect to this document, whether before or after performance of this document.

### **23.10 Continuing performance**

- (a) The provisions of this document do not merge with any action performed or document executed by any party for the purposes of performance of this document.
- (b) Any representation in this document survives the execution of any document for the purposes of, and continues after, performance of this document.
- (c) Any indemnity agreed by any party under this document:
  - (i) constitutes a liability of that party separate and independent from any other liability of that party under this document or any other agreement; and
  - (ii) survives and continues after performance of this document.

### **23.11 Waivers**

Any failure by any party to exercise any right under this document does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

### **23.12 Remedies**

The rights of a party under this document are cumulative and not exclusive of any rights provided by law.

### **23.13 Severability**

Any provision of this document which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this document or the validity of that provision in any other jurisdiction.

### **23.14 Counterparts**

This document may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same document.

### **23.15 Party acting as trustee**

If a party enters into this document as trustee of a trust, that party and its successors as trustee of the trust will be liable under this document in its own right and as trustee of the trust. Nothing releases the party from any liability in its personal capacity. The party warrants that at the date of this document:

- (a) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;
- (b) the party is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by this

document on behalf of the trust and that this document is being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust;

- (c) no restriction on the party's right of indemnity out of or lien over the trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.

The common seal of The Hills Shire Council was affixed under a resolution passed by council on 28 April, 2015 in presence of



General Manager

*Dave Walker*

Print name

*P Doyle*

Witness

*Peter Doyle*

Print name

Signed for and on behalf of Golden Mile 1888 Pty Ltd + Pennant Hills Estate 88 Pty Ltd + Rainbowforce Pty Ltd (ACN 463 711 963):

*Chahida Khattar*

Secretary/Director

**CHAHIDA KHATTAR**

Print name

Signed for and on behalf of Golden Mile 1888 Pty Ltd:

*Chahida Khattar*

Secretary/Director

**CHAHIDA KHATTAR**

Print name

Signed for and on behalf of Pennant Hills Estates 88 Pty Ltd:

*Sultaney Khattar*

Secretary/Director

**SULTANEY KHATTAR**

Print name

Signed for and on behalf of Rainbowforce Pty Ltd:

*Chahida Khattar*

Secretary/Director

**CHAHIDA KHATTAR**

Print name

Mayor

*Andrew Jefferies*

Print name

28/4/2015

Director

**SAM FAYAD**

Print name

Director

**SAM FAYAD**

Print name

Director

**SULTANEY KHATTAR**

Print name

Director

**SAM FAYAD**

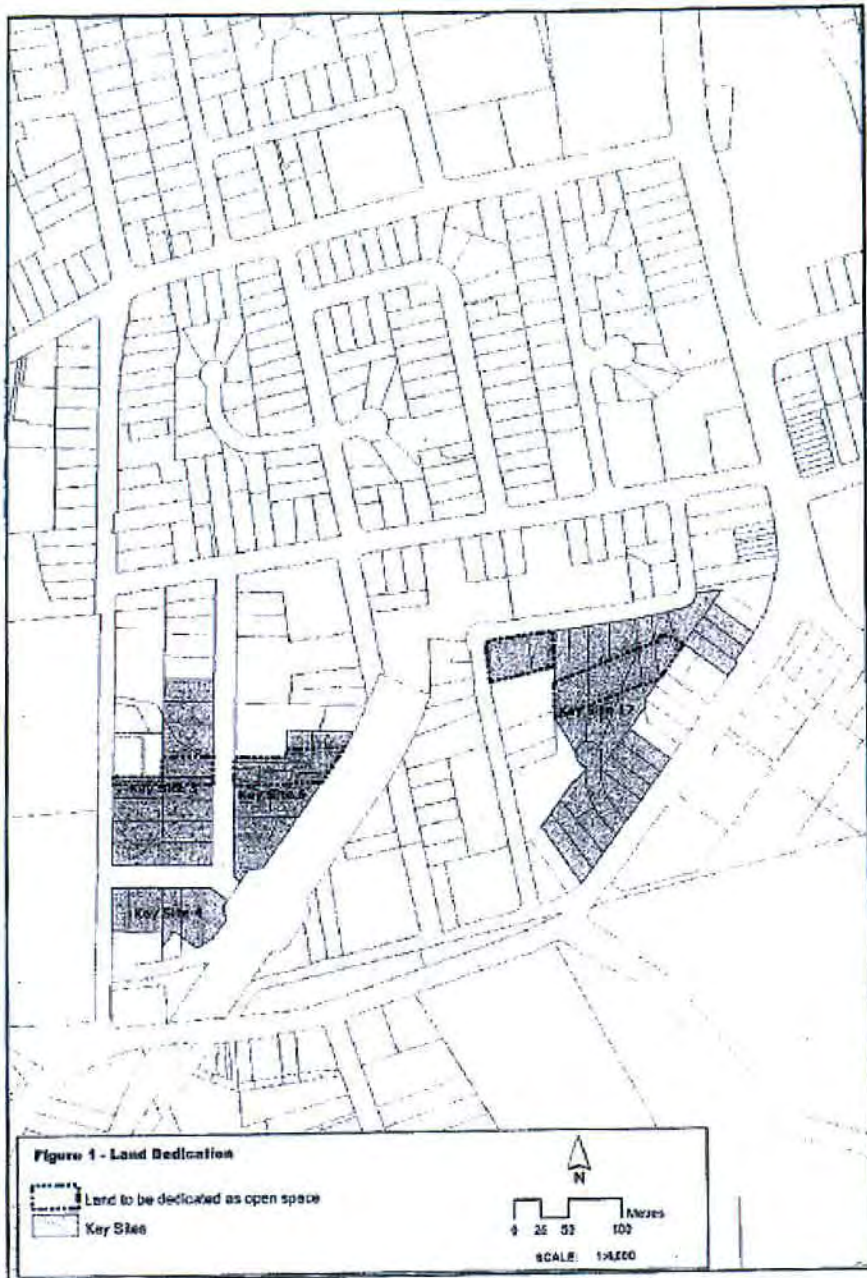
Print name

Schedule 1— Dedication Lands

The land to be dedicated to Council as public open space is shown on Figure 1.

Details of the Dedication Lands and the Dedication are as below.

Lot	DP	Owner	Area to be dedicated (m <sup>2</sup> )	Timing of Dedication
1	1028075	Rainbowforce Pty Ltd	1,381 (whole lot)	Prior to the issue of any Strata Subdivision Certificate
2	1028075	Rainbowforce Pty Ltd	707 (whole lot)	
A	29919	Rainbowforce Pty Ltd	526	Prior to the issue of a Strata Subdivision Certificate for either Buildings A, B or C, whichever is subdivided last
B	29919	Rainbowforce Pty Ltd	510	
C	29919	Rainbowforce Pty Ltd	34	
5	30115	Rainbowforce Pty Ltd	1,043	
4	30115	Rainbowforce Pty Ltd	1,289	
3	30115	Pennant Hills Estates 88 Pty Ltd	338	
		<b>Total</b>	<b>5,828</b>	
		<b>Estimated value</b>	<b>\$5,296,969</b>	



**Figure 1 – Land Dedication**

## Schedule 2 – Works-in-Kind

Contribution type	Value \$	Timing
<b>Works-in-Kind</b>		
Roundabout at Young Rd/Post Office St	253,000	Prior to any Strata Subdivision Certificate
Open Space Embellishment – CPLOS1	459,500	Prior to the issue of a Strata Subdivision Certificate for either Buildings A, B or C, whichever is subdivided last
Cycleway/Pedestrian Path in Transmission Easement	29,608	
<b>Total value of Works-in-Kind</b>	<b>742,108</b>	
<b>Total Monetary Contribution</b>		
Monetary Contribution	920,984	Pro rata payment in accordance with clause 7 of this document
Additional Monetary Contribution	Quantum calculated using Monetary Contribution Rates below	Pro rata payment in accordance with clause 7 of this document
<b>Monetary Contribution Rates</b>		
Monetary rate per 1 bedroom unit	1,580	
Monetary rate per 2 bedroom unit	2,028	
Monetary rate per 3+ bedroom unit	2,308	
<b>For Information Purposes only, the Monetary Contribution relates to:</b>		
Signals at Jenkins Rd/Post Office St	64,104	
Upgrade to Jenkins/PHills Rd intersection	139,356	
Upgrade to stormwater mgt facilities	289,662	
Carlingford Library	153,292	
Carlingford Community Centre	153,292	
Open Space Embellishment — CPOS1	121,278	
<b>Total</b>	<b>920,984</b>	



### Schedule 3 - Owners

Legal description	Address	Owner
1/DP1028075	14 Shirley Street	Rainbowforce Pty Ltd
2/DP1028075	16 Shirley Street	Rainbowforce Pty Ltd
1/DP30115	18 Shirley Street	Rainbowforce Pty Ltd
8/DP26412	20 Shirley Street	Rainbowforce Pty Ltd
7/DP26412	22 Shirley Street	Rainbowforce Pty Ltd
6/DP26412	24 Shirley Street	Rainbowforce Pty Ltd
A/DP29919	26 Shirley Street	Rainbowforce Pty Ltd
B/DP29919	28 Shirley Street	Rainbowforce Pty Ltd
C/DP29919	30 Shirley Street	Rainbowforce Ply Ltd
7/DP30115	2 Janell Crescent	Golden Mile 1888 Ply Ltd
5/DP30115	6 Janell Crescent	Rainbowforce Pty Ltd
4/DP30115	8 Janell Crescent	Rainbowforce Pty Ltd
3/DP30115	10 Janell Crescent	Pennant Hills Estates 88 Pty Ltd
	Janell Crescent (former road - also known as 253 Pennant Hills Road)	Rainbowforce Ply Ltd
9/DP8508	247 Pennant Hills Road	Golden Mile 1888 Pty Ltd
10/DP8508	249 Pennant Hills Road	Golden Mile 1888 Pty Ltd
8/DP30115	251 Pennant Hills Road	Golden Mile 1888 Pty Ltd
2/DP30115	255 Pennant Hills Road	Rainbowforce Pty Ltd
25/DP21386	257 Pennant Hills Road	Pennant Hills Estates 88 Pty Ltd
24/DP21386	259 Pennant Hills Road	Rainbowforce Pty Ltd
23/DP21386	261 Pennant Hills Road	Rainbowforce Pty Ltd
7/DP9614	277 Pennant Hills Road	Rainbowforce Pty Ltd
1/DP135608	279 Pennant Hills Road	Rainbowforce Ply Ltd
9/DP655986	281 Pennant Hills Road	Rainbowforce Pty Ltd

## Schedule 4 — Proposed Development

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- 39 one bedroom units
- 343 two bedroom units; and
- 71 three bedroom units

**Anticipated Dwellings: 453**

# Annexure A — Caveat

Form: 08X  
 Licence: 03-10-191  
 Licensee: Gadens Lawyers

**CAVEAT**  
**Prohibiting Recording of a Dealing or Plan**  
**or Granting of a Possessory Application**  
**New South Wales**  
**Section 74F Real Property Act 1900**

Leave this space clear. Affix additional pages to the top left-hand corner.

**PRIVACY NOTE:** Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

**STAMP DUTY** Office of State Revenue use only

(A) **LAND**

If the claim relates to less than the whole of the land in the folio of the Register, a description of the part or premises affected, consistent with the claim set out on page 2 of this form and in the terms specified by Schedule 3 of the Real Property Regulation 1998, is required.

Torrens Title  
 Part: 1/DP1028075, 2/DP1028075, A/DP29919, B/DP29919, C/DP29919, 3/DP30115, 4/DP30115, 5/DP30115  
 Being the part identified on the plan annexed hereto and marked "A"

(B) **REGISTERED DEALING**

Number	Torrens Title
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(C) **LODGED BY**

Delivery Box	Name, Address or DX and Telephone	CODE
	Reference (optional):	<b>X</b>

(D) **REGISTERED PROPRIETOR**

Show only the registered proprietor(s) against whom the claim is made: insert the full name and address

Rainbowforce Pty Ltd  
 Penrith Hills Estates 88 Pty Ltd  
 Rotary House, 43 Hunter Street  
 Parramatta NSW

Postcode: 2150

(E) **CAVEATOR**

Insert the full name and postal address

The Hills Shire Council  
 129 Showground Road  
 Castle Hill NSW  
 ABN 25 034 494 656

Postcode: 2154

(F) **ADDRESS IN NEW SOUTH WALES FOR SERVICE OF NOTICES ON THE CAVEATOR**

*This must be a street address.* If desired, a Document Exchange box in NSW may be provided in addition.

Street Address: 129 Showground Road, Castle Hill NSW

Postcode 2154

Document Exchange Box in NSW (additional):

*NOTE: If the caveator's name or address for service of notices changes, the Department of Lands, Land and Property Information Division, must be notified on form 08CX.*

(G) **ACTION PROHIBITED**

List by number only the items in Schedule 2 prohibited by this caveat

1,2 and 7

(H) The caveator claims to be entitled to the estate or interest specified in Schedule 1 in the above land by virtue of the instrument set out in that schedule and prohibits the Registrar General from taking, with respect to the land, the action specified above unless the caveator has consented in writing or this caveat has lapsed or been withdrawn.

9735991 CAR/CAR  
 All handwriting must be in block capitals.

**WARNING:** care should be exercised in completing a caveat form. An insupportable caveat may be challenged in the Supreme Court; damages may be awarded for lodging a caveat without justification; and penalties could be imposed for a breach of the Oaths Act 1900 and section 117 of the Real Property Act 1900. Furthermore failure to observe the requirements of section 117 of the Real Property Act 1900 and regulations 7 and 8 of the Real Property Regulation 1998 may make the caveat invalid.

(I) **SCHEDULE 1 Estate or interest claimed**

Nature of the estate or interest in the land		
Equitable interest to have title of the land transferred or dedicated to the caveator in connection with development of the land		
By virtue of the instrument referred to below		
Nature of Instrument	Date	Parties
Planning Agreement		The Hills Shire Council Rainbowforce Pty Ltd Pennant Hills Estates 88 Pty Ltd Golden Mile 1888 Pty Ltd
By virtue of the facts stated below		
Not applicable		

(J) **SCHEDULE 2 Action prohibited by this caveat**

1. The recording in the Register of any dealing other than a plan affecting the estate or interest claimed by the caveator and set out in Schedule 1.
2. The registration or recording of any plan other than a delimitation plan affecting the estate or interest claimed by the caveator and set out in Schedule 1.
3. The registration of delimitation plan<sup>1</sup> No.
4. The granting of any possessory application<sup>2</sup> with respect to the land referred to above.
5. The recording in the register of any dealing affecting the estate or interest of which the caveator is registered proprietor.
6. The granting of an application to extinguish the \_\_\_\_\_ created by \_\_\_\_\_
7. The recording in the register of a writ affecting the estate or interest claimed by the caveator and set out in Schedule 1.

(K) **STATUTORY DECLARATION:**

- I, \_\_\_\_\_ solemnly and sincerely declare that -
1. To the best of my knowledge, information and belief the caveator has a good and valid claim to the estate or interest set out in Schedule 1.
  2. This caveat does not require the leave of the Supreme Court or the endorsed consent of the registered proprietor \_\_\_\_\_; and
  3. This caveat is certified correct for the purposes of the Real Property Act 1900.
- I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900.

Made and subscribed at \_\_\_\_\_ in the State of New South Wales  
 on \_\_\_\_\_ in the presence of -  
 Signature of witness: \_\_\_\_\_ Signature of declarant: \_\_\_\_\_  
 Name of witness: \_\_\_\_\_  
 Address of witness: \_\_\_\_\_ Capacity of declarant if other than the caveator: \_\_\_\_\_  
 Qualification of witness: Justice of the Peace / Practising Solicitor / Other [specify]

(L) **CONSENT OF THE REGISTERED PROPRIETOR of the estate or interest affected by the caveat (section 74F Real Property Act 1900)**

I, the registered proprietor named at letter (D), for the purposes of section 74F(6) Real Property Act 1900 only, consent to this caveat.

Signature of registered proprietor: \_\_\_\_\_

1. A plan defining the boundaries of land in a limited folio of the Register. See Part IVB Real Property Act 1900.
2. An application made by a person claiming title to land by virtue of adverse possession. See Part VIA Real Property Act 1900.
3. As the Department of Lands may not be able to provide the services of a justice of the peace or other qualified witness, the statutory declaration should be signed and witnessed prior to lodgement at Land and Property Information Division.