

# Bankstown Private Hospital

297 – 299 Canterbury Road, Revesby in the State of New South Wales  
being Lot 9 in Deposited Plan 663160 (Folio Identifier 9/663160) and Lot  
202 in Deposited Plan 840245 (Folio Identifier 202/840245)

**DRAFT PLANNING AGREEMENT**  
***Under s7.4 of the Environmental Planning and***  
***Assessment Act 1979***

Canterbury-Bankstown City Council (ABN 45 985 891 846)

and

Canterbury-Bankstown Private Hospital Pty Ltd (ACN 619 483 457)

March 2021

**THIS PLANNING AGREEMENT** is made on  
2021

**BETWEEN:**

- (1) **CANTERBURY-BANKSTOWN COUNCIL (ABN 45 891 846 )** of 66-72 Rickard Road, Bankstown in the State of New South Wales (the **Council**); and
- (2) **CANTERBURY-BANKSTOWN PRIVATE HOSPITAL PTY LTD (ACN 619 483 457) c/-** CT Accountant, Suite 303, 21-23 Burwood Road, Burwood in the State of New South Wales (the **Developer**).

**BACKGROUND**

- (A) The Developer has an equitable interest in the Land by virtue of entry into an option to acquire the land.
- (B) The Developer intends to develop the Land after the acquisition of same pursuant to the approval of the Planning Proposal currently with the Council and thereafter and after obtaining Development Consent. The Developer has offered to enter into this document with the Council to provide the Public Benefits on the terms of this document.
- (C) The Land is within the Canterbury-Bankstown local government area and the Bankstown Local Environmental Plan 2015 applies to it.
- (D) The Developer and the Council have agreed to enter into the Voluntary Planning Agreement (the VPA) referred to above for the purposes of the Developer making contributions for public purposes under the Environmental Planning and Assessment Act 1979.

**THE PARTIES AGREE AS FOLLOWS:**

1. **INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this document.

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

**Adverse Affectation** has the same meaning as in Part 3 of Schedule 3 of the *Conveyancing (Sale of Land) Regulation 2010 (NSW)*.

**Authorisation** means:

- (a) an approval, authorisation, consent, declaration, exemption, permit, licence, notarisation or waiver, however it is described, and including any condition attached to it; and
- (b) in relation to anything that could be prohibited or restricted by law if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken,

including any renewal or amendment.

**Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney, Australia.

**Council's Personal Information** means Personal Information to which the Developer, or any third party engaged by the Developer, has access directly or indirectly in connection with this document, including the Personal Information of any personnel, customer or supplier of the Council (other than the Developer).

**Council's Policies** means all policies and procedures relevant to the provision of the Public Benefits, as notified by the Council in writing to the Developer.

**Council's Representative** means the person named in Item 3 of Schedule 1 or his/her delegate.

**Completion** means the point at which the Developer's Works are complete except for minor defects:

- (a) the existence of which do not prevent the Developer's Works being reasonably capable of being used for their intended purpose;
- (b) which the Developer has grounds for not promptly rectifying; and
- (c) rectification of which will not affect the immediate and convenient use of the Developer's Works for their intended purpose.

**Completion Certificate** means a written certificate issued by Council in writing once the Developer's Works have been completed adequately

**Completion Notice** means a notice issued by the Developer in accordance with clause 6.1.

**Confidential Information** means:

- (a) information of a party (**disclosing party**) that is:
  - (i) made available by or on behalf of the disclosing party to the other party (**receiving party**), or is otherwise obtained by or on behalf of the receiving party; and
  - (ii) by its nature confidential or the receiving party knows, or ought reasonably to know, is confidential

but, without limiting the foregoing, does not include this Agreement nor any detailed designs and related documents prepared in pursuance of this Agreement.,

Confidential Information may be made available or obtained directly or indirectly, and before, on or after the date of this document.

Confidential Information does not include information that:

- (a) is in or enters the public domain through no fault of the receiving party or any of its officers, employees or agents;

- (b) is or was made available to the receiving party by a person (other than the disclosing party) who is not or was not then under an obligation of confidence to the disclosing party in relation to that information; or
- (c) is or was developed by the receiving party independently of the disclosing party and any of its officers, employees or agents.

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

**Contamination** has the meaning given to that word in the *Contaminated Land Management Act 1997* (NSW).

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Dealing** means selling, transferring, assigning, novating, mortgaging, charging, or encumbering and, where appearing, **Deal** has the same meaning.

**Defect** means any error, omission, defect, non-conformity, discrepancy, shrinkage, blemish in appearance or other fault in the Public Benefits or any other matter which prevents the Public Benefits from complying with the terms of this document.

**Developer's Representative** means the person named in Item 4 of Schedule 1 or his/her delegate.

**Developer's Works** means those parts of the Public Benefit described as "Developer's Works" in clause 1 of Schedule 3, to be delivered by the Developer in accordance with this document subject to any agreed amendments to the works or any works that can not be undertaken in the event that TfNSW does not approve same

**Development** means the development of the Land by the Developer described at Item 2 of Schedule 1.

**Development Application** means the development application identified in Item 5 of Schedule 1 and includes all plans, reports models, photomontages, material boards (as amended supplemented) submitted to the consent authority before the determination of that Development Application.

**Development Consent** means the consent granted to the Development Application for the Development and includes all modifications made under section 4.55 of the Act.

**Dispute** means any dispute or difference between the parties arising out of, relating to or in connection with this document, including any dispute or difference as to the formation, validity, existence or termination of this document.

**Environmental Laws** means all laws and legislation relating to environmental protection, building, planning, health, safety or work health and safety matters and includes the following:

- (a) the *Work Health and Safety Act 2011* (NSW);
- (b) the *Protection of the Environment Operations Act 1997* (NSW); and

(c) the *Contaminated Land Management Act 1997 (NSW)*.

**Essential Infrastructure** means that part of the Public Benefit described as "Essential Infrastructure" in clause 1 of Schedule 3, to be delivered by the Developer in accordance with this document.

**First Construction Certificate** means a construction certificate issued for substantive works on the Land but does not include any early works construction certificate for demolition or excavation save where the excavation involves association building works such as shoring or piling.

**Government Agency** means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

**Gross Floor Area** has the meaning given to that term in the *Sydney Local Environment Plan* in effect at the date of this document.

**GST** means the same as in the GST Act.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

**Guarantee** means an irrevocable unconditional bank guarantee or documentary performance bond for the Guarantee Amount which must:

- (a) be denominated in Australian dollars;
- (b) be an unconditional undertaking;
- (c) be signed and issued by a bank licensed to carry on business in Australia, an Australian Prudential Regulation Authority (APRA) regulated authorised deposit taking institution or an insurer authorised by APRA to conduct new or renewal insurance business in Australia having at all times an investment grade security rating from an industry recognised rating agency of at least:
  - (i) BBB + (Standard & Poors and Fitch);
  - (ii) Baa 1 (Moody's); or
  - (iii) Bbb (Bests);
- (d) be issued on behalf of the Developer;
- (e) have no expiry or end date;
- (f) state the beneficiary as the Council;
- (g) be irrevocable;
- (h) state the Guarantee Amount as the minimum amount required by this document to be lodged as security;

- (i) state the purpose of the security as required in accordance with this document; and
- (j) be on such other terms approved by the Council.

**Guarantee Amount(s)** means a Guarantee or Guarantees for the total amount listed in Item 6 of Schedule 1 of this document.

**Guarantee Amount(s) Due Date** means the date or milestone by which the Developer must provide the Guarantee Amount to the Council, set out at Item 7 of Schedule 1.

**Index Number** means the Consumer Price Index (Sydney all groups) published by the Australian Bureau of Statistics from time to time.

**Insolvency Event** means:

- (a) having a controller, receiver, manager, administrator, provisional liquidator, liquidator or analogous person appointed;
- (b) an application being made to a court for an order to appoint a controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property
- (c) the person being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (d) an application being made to a court for an order for its winding up;
- (e) an order being made, or the person passing a resolution, for its winding up;
- (f) the person:
  - (i) suspending payment of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or being or becoming otherwise insolvent; or
  - (ii) being unable to pay its debts or otherwise insolvent;
- (g) the person taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
- (h) a court or other authority enforcing any judgment or order against the person for the payment of money or the recovery of any property; or
- (i) any analogous event under the laws of any applicable jurisdiction,

unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved by the other party.

**Land** means the land described in Item 1 of Schedule 1 of this document.

**Laws** means all applicable laws, regulations, industry codes and standards, including all Environmental Laws.

**LEP** means the *Bankstown Local Environmental Plan 2015* or any future consolidated Local Environmental Plan for amalgamated council Canterbury-Bankstown

**Monetary Contribution** means that part of the Public Benefits described as "Monetary Contribution" in clause 1 of Schedule 3 to be paid by the Developer to the Council in accordance with this document.

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

**Owner** means the owner of the Land being Elcheikh Pty Ltd (ACN 135 292 223)

**Personal Information** has the meaning set out in the *Privacy Act 1988* (Cth).

**Personnel** means the Developer's officers, employees, agents, contractors or subcontractors.

**Physical Commencement** has the same meaning as in section 4.53 of the Act save that the Development is taken to have been physically commenced for the purposes of section 4.53 of the Act notwithstanding that a precondition to such commencement may not have been satisfied.

**Planning Proposal** means PP\_2018\_CBANK\_007\_00

**Post Completion Liability Period** means 12 months after the date that all of the Developer's Works have reached Completion.

**Privacy Laws** means the *Privacy Act 1988* (Cth), the *Privacy and Personal Information Protection Act 1998* (NSW), the *Spam Act 2003* (Cth), the *Do Not Call Register Act 2006* (Cth) and any other applicable legislation, principles, industry codes and policies relating to the handling of Personal Information.

**Public Benefits** means the provision of benefits to the community by the Developer in the form and at the times specified in Schedule 3.

**Regulation** means the *Environmental Planning and Assessment Regulation 2000* (NSW).

**Standards** means the policies, procedures and standards for carrying out the Developer's Works, listed non-exhaustively at clause 4 of Schedule 3.

**Subdivision of Land** has the same meaning as in the Act.

**Tax** means a tax, levy, duty, rate, charge, deduction or withholding, however it is described, that is imposed by law or by a Government Agency, together with any related interest, penalty, fine or other charge.

**TfNSW** means Transport for NSW.

## 1.2 **Rules for interpreting this document**

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
  - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
  - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
  - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) A reference to **including** means "including, without limitation".
- (g) A reference to **dollars** or **\$** is to an amount in Australian currency.
- (h) A reference to **this document** includes the agreement recorded by this document.
- (i) Words defined in the GST Act have the same meaning in clauses about GST.
- (j) This document is not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on a provision of this document to protect itself.

## 2. **APPLICATION OF THE ACT AND THE REGULATION**

### 2.1 **Application of this document**

This document is a planning agreement within the meaning of section 7.4 of the Act and applies to the Land.

### 2.2 **Public Benefits to be made by Developer**

Clause 5 and Schedule 3 set out the details of the:



- (a) Public Benefits to be delivered by the Developer;
- (b) time or times by which the Developer must deliver the Public Benefits; and
- (c) manner in which the Developer must deliver the Public Benefits.

### 2.3 **Application of sections 7.11, 7.12 and 7.24 of the Act**

- (a) The application of sections 7.11, 7.12 and 7.24 of the Act are excluded to the extent set out in Items 5 and 6 of Schedule 2 to this document.
- (b) For the avoidance of doubt but otherwise subject to clause 2.4, if the Council imposes a condition of consent on a Development Consent for the Development under section 7.11 of the Act requiring payment of a contribution authorised by a contributions plan no further contributions pursuant to section 7.11 or section 7.12 of the Act are payable in relation to the Development.

### 2.4 **Council rights**

This document does not impose an obligation on or otherwise fetter the discretion of the Council with respect to the:

- (a) grant of a Development Consent for the Development; or
- (b) exercise of any function under the Act in relation to a change to an environmental planning instrument, including the making or revocation of an environmental planning instrument.

### 2.5 **Explanatory note**

The explanatory note prepared in accordance with clause 25E of the Regulation must not be used to assist in construing this document.

### 2.6 **Planning Proposal**

The document will not apply in the event that the Planning Proposal is not approved and the Minister determines not to proceed with the Planning Proposal pursuant to section 3.35(4) of the Act.

## 3. **OPERATION OF THIS PLANNING AGREEMENT**

### 3.1 **Commencement**

This document will commence on the date of execution of this document by all parties to this document.

## 4. **WARRANTIES**

### 4.1 **Mutual warranties**

Each party represents and warrants that:

- (a) (**power**) Council has full legal capacity and power to enter into this document and to carry out the transactions that it contemplates and the Developer warrants that it has the consent of the Owner to enter into this document and to carry out the transactions that it contemplates;
- (b) (**corporate authority**) it has taken all corporate action that is necessary or desirable to authorise its entry into this document and to carry out the transactions contemplated;
- (c) (**Authorisations**) it holds each Authorisation that is necessary or desirable to:
  - (i) enable it to properly execute this document and to carry out the transactions that it contemplates;
  - (ii) ensure that this document is legal, valid, binding and admissible in evidence; or
  - (iii) enable it to properly carry on its business as it is now being conducted, and it is complying with any conditions to which any of these Authorisations is subject;
- (d) (**documents effective**) this document constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping or registration;
- (e) (**solvency**) there are no reasonable grounds to suspect that it will not be able to pay its debts as and when they become due and payable; and
- (f) (**no controller**) no controller is currently appointed in relation to any of its property, or any property of any of its subsidiaries.

### 4.2 **Developer warranties**

- (a) The Developer warrants to the Council that, at the date of this document:
  - (i) it is not the registered proprietor of the Land;
  - (ii) it has the express consent of the Owner to enter into this document;
  - (iii) it will become the registered proprietor prior to the commencement of the works but, if it does not, has permission to deliver the Public Benefits in any event.;

- (iv) it is legally entitled to obtain all consents and approvals that are required by this document and do all things necessary to give effect to this document;
  - (v) all work performed by the Developer and the Personnel under this document will be performed with due care and skill and to a standard which is equal to or better than that which a well experienced person in the industry would expect to be provided by an organisation of the Developer's size and experience; and
  - (vi) it is not aware of any matter which may materially affect the Developer's ability to perform its obligations under this document.
- (b) The Developer warrants to the Council that, prior to commencing delivery of the Public Benefits it will have obtained all Authorisations and insurances required under any Law to carry out its obligations under this document.

## 5. **PUBLIC BENEFITS**

### 5.1 **Developer to provide Public Benefits**

The Developer must, at its cost and risk, provide the Public Benefits to the Council in accordance with this document subject to any variations made pursuant to an agreement between the parties after Development Consent

## 6. **COMPLETION**

### 6.1 **Date of Completion**

The Developer must ensure that the Developer's Works reach Completion on or before the date or milestone referred to in clause 1 of Schedule 3 of this document.

### 6.2 **Developer completion notice**

When, in the reasonable opinion of the Developer, the Developer's Works have reached Completion, the Developer must notify the Council's Representative in writing and must include in that notice:

- (a) a statement from the person with direct responsibility and supervision of that work that in their opinion the Developer's Works have reached Completion;
- (b) copies of any warranties, guarantees, maintenance information to assume responsibility for the Developer's Works; and
- (c) a hard copy and soft copy of final "as built" drawings of the Developer's Works.

(**"Completion Notice"**).

For the avoidance of doubt, the Developer can issue separate Completion Notices at separate times for different elements of the Developer's Works, however the Developer must ensure that Completion is achieved for all of the Developer's Works before the due date specified in Item 1 of Schedule 3.

### 6.3 **Inspection by the Council**

- (a) The Council's Representative must inspect the Developer's Works within 10 Business Days of the date that the Completion Notice is received by the Council. Within 10 Business Days of the date of the inspection by the Council's Representative, the Council must by written notice to the Developer:
  - (i) state that Completion has been achieved and provide the Developer with a Completion Certificate; or
  - (ii) state that Completion has not been achieved and, if so, identify the Defects which, in the opinion of the Council's Representative, prevent the achievement of Completion ("**Notice Of Defects**").
- (b) Nothing in this clause 6.3, or any Notice of Defects, will:
  - (i) reduce or waive in any manner the Developer's responsibility to:
    - (A) deliver the Developer's Works in accordance with this Agreement; or
    - (B) to correct Defects, whether or not these are identified by the Council; or
  - (ii) create any liability for the Council in relation to any Defects.

### 6.4 **Rectification of Defects**

(a) In the event that a Notice of Defects is issued, the Developer must rectify the Defects so identified and clause 6.3(a) will apply once the Developer reissues a Completion Notice thereafter ("**Defects Completion Notice**").

For the avoidance of doubt, the Council must deal with the Defects Completion Notice in the same manner as required in clause 6.3(a)(i)-(iii),

(b) Clause 6.3 and this clause 6.4 will continue to apply to Notices of Defects until such time as Completion is achieved.

### 6.5 **Post Completion Liability Period**

- (a) During the Post Completion Liability Period, if the Council identifies any Defects in the Developer's Works, the Council may issue a notice to the Developer identifying with sufficient particularity the relevant Defects and nominate a reasonable period within which the Defects are to be rectified, noting that such period may be immediate where public safety dictates it ("**PCLP Notice**").
- (b) The Developer must rectify the Defects identified in the PCLP Notice within the timeframe so specified to the standards identified in this Agreement.

## **6.6 Conduct of Works**

The parties agree that the Developer is not required to undertake any works until such time as there is a Development Consent.

## **6.7 Dispute Resolution**

In the event that the council issues a Notice of Defects or a PCLP Notice which is not agreed to or is challenged by the Developer, then if the Parties are unable to resolve the dispute and agree on a method to satisfy the Notice of Defects then the dispute resolutions provision of clause 10 will apply

## **6.8 Council Step-in rights**

The Council may, without having any obligation to do so and at the Developer's cost which shall constitute a debt due to Council, step-in and rectify any non-compliance by the Developer with:

- (a) a Notice of Defects within a reasonable timeframe of the notice having been issued; or
- (b) a PCLP Notice within the time for compliance specified within the notice.

No action taken pursuant to this clause 6.8 relieves the Developer of complying with its obligations under this Agreement.

## **7. INDEMNITY**

The Developer indemnifies the Council against all damage, expense, loss or liability of any nature suffered or incurred by the Council arising from any act or omission by the Developer (or any Personnel) in connection with the performance of the Developer's obligations under this document, except to the extent that the damage, expense, loss or liability suffered or incurred is caused by, or contributed to by, any wilful or negligent act or omission of the Council (or any person engaged by the Council). This indemnity ceases to exist at the completion of the Developer Works as determined by notice issued under 6.3(a)(i). The period of the indemnity only extends from the date of this document to the date that the Post Completion Liability Period ends.

## **8. REGISTRATION AND CAVEAT**

### **8.1 Registration of this document**

- (a) The Developer:
  - (i) consents to the registration of this document at the NSW Land Registry Services on the certificate of title to the Land;
  - (ii) warrants that it has obtained all consents to the registration of this document on the certificate of title to the Land including the consent of the current Registered Proprietor; and

- (iii) must within 20 Business Days of a written request from the Council do all things necessary to allow the Council to register this document on the certificate of title to the Land, including but not limited to:
  - (A) producing any documents or letters of consent required by the Registrar-General of the NSW Land Registry Services;
  - (B) providing the production slip number when the Developer produces the certificate of title to the Land at the NSW Land Registry Services; and
  - (C) providing the Council with a cheque for registration fees payable in relation to registration of this document at NSW Land Registry Services.
- (iv) The Developer must act promptly in complying with and assisting to respond to any requisitions raised by the NSW Land Registry Services that relate to registration of this document.

## 8.2 **Caveat**

- (a) The Council may, at any time after the date of this document, register a caveat over the Land preventing any dealing with the Land that is inconsistent with this document. Provided that the Council complies with this clause 8.2, the Developer must not object to the registration of this caveat and may not attempt to have the caveat removed from the certificate of title to the Land.
- (b) In exercising its rights under this clause 8.2 the Council must do all things reasonably required to:
  - consent to the registration of:
    - (A) this document; and
    - (B) any plan of consolidation, plan of subdivision or other dealing required by this document or the Development Consent.
- (c) In the event that the Developer seeks to register a dealing over the Land that it is permitted to so register pursuant to this Agreement, the the Council agrees to provide Caveator consent for any such dealing within 3 business days of request of same.

## 8.3 **Release of this document**

- (a) If the Council is satisfied that the Developer has provided all Public Benefits and otherwise complied with this document including expiry of the Post Completion Liability Period and rectification of any Defects notified during that period then the Council must promptly do all things reasonably required to remove this document from the certificate of title to the Land.

## 9. **ENFORCEMENT**

### 9.1 **Developer to provide Guarantee**

The Developer must deliver the Guarantee for the Guarantee Amount to the Council by the Guarantee Amount Due Date.

### 9.2 **Right of Council to claim on Guarantee**

- (a) The Developer agrees that the Council may make an appropriation from the Guarantee in such amount as the Council, acting reasonably, thinks appropriate if:
  - (i) the Council exercises rights under clause 6.8 of this Agreement;;
  - (ii) an Insolvency Event occurs in respect of the Developer;
  - (iii) the detailed designs for the Developer's Works are not finalised between the parties within 24 months of the date of issue of a Construction Certificate that approves the construction of the Development; or
  - (iv) the Developer's Works do not reach Completion within 60 months of the date of issue of the first Construction Certificate in respect of the Development (or such later time as agreed by the Council in writing).
- (b) Any amount of the Guarantee appropriated by the Council in accordance with clause 9.2 must be applied only towards:
  - (i) the costs and expenses incurred by the Council rectifying any default by the Developer under this document; and
  - (ii) carrying out any works required to achieve the Public Benefits.

### 9.3 **Expenditure by the Council**

If the Council claims on the Guarantee to Complete the Developer's Works, then the Council:

- (a) Is not required to expend more money than the Guarantee Amount and may elect not to carry out items of the Developer's Works to ensure that those works can be carried out for an amount equal to or less than the Guarantee Amount. For the avoidance of doubt, any action by Council in this regard does not relieve the Developer of its obligation to perform the Developer's Works.
- (b) May expend more than the Guarantee Amount. If the Council expends more money than the Guarantee Amount then the amount in excess of the Guarantee Amount will be deemed to be a debt due and owing to the Council by the Developer.

### 9.4 **Top-up and return of Guarantee**

- (a) If the Council calls upon the Guarantee in accordance with this clause 9 then the Developer must immediately provide to the Council a replacement

Guarantee or a further Guarantee to top up the amount taken by the Council to ensure that, at all times until the Guarantee is released in accordance with paragraph (b), the Council is in possession of a Guarantee for a face value equivalent to the Guarantee Amount.

- (b) If:
  - (i) the monies secured by the Guarantee have not been expended;
  - (ii) the Post Completion Liability Period comes to an end; and
  - (iii) any PCLP Notice outstanding at the date the Post Completion Liability Period ends is completed

then the Council will promptly return the Guarantee to the Developer.

## 10. **DISPUTE RESOLUTION**

### 10.1 **Application**

Any Dispute must be determined in accordance with the procedure in this clause 10.

### 10.2 **Negotiation**

- (a) If any Dispute arises, a party to the Dispute (**Referring Party**) may by giving notice to the other party or parties to the Dispute (**Dispute Notice**) refer the Dispute to the Developer's Representative and the Council's Representative for resolution. The Dispute Notice must:
  - (i) be in writing;
  - (ii) state that it is given pursuant to this clause 10; and
  - (iii) include or be accompanied by reasonable particulars of the Dispute including:
    - (A) a brief description of the circumstances in which the Dispute arose;
    - (B) references to any:
      - (aa) provisions of this document; and
      - (bb) acts or omissions of any person, relevant to the Dispute; and
    - (C) where applicable, the amount in dispute (whether monetary or any other commodity) and if not precisely known, the best estimate available.
- (b) Within 10 Business Days of the Referring Party issuing the Dispute Notice (**Resolution Period**), the Developer's Representative and the Council's Representative must meet at least once to attempt to resolve the Dispute.



- (c) The Developer's Representative and the Council's Representative may meet more than once to resolve a Dispute. The Developer's Representative and the Council's Representative may meet in person, via telephone, videoconference, internet-based instant messaging or any other agreed means of instantaneous communication to effect the meeting.
- (d) If the dispute is not resolved within 14 days after the representatives have first met, either party may, within 48 hours thereafter, give notice calling for determination of the dispute (Dispute Notice). Otherwise, the Dispute is taken to have been waived by the Claimant.
- (e) The Dispute Notice shall be submitted to an expert in accordance with, and subject to, Resolution Institute Expert Determination Rules and determined accordingly.

### 10.3 **Not use information**

The purpose of any exchange of information or documents or the making of any offer of settlement under this clause 10 is to attempt to settle the Dispute. Neither party may use any information or documents obtained through any dispute resolution process undertaken under this clause 10 for any purpose other than in an attempt to settle the Dispute.

### 10.4 **Condition precedent to litigation**

Subject to clause 10.5, a party must not commence legal proceedings in respect of a Dispute unless:

- (a) a Dispute Notice has been given; and
- (b) the Resolution Period has expired.

### 10.5 **Summary or urgent relief**

Nothing in this clause 10 will prevent a party from instituting proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.

## 11. **TAXES AND GST**

### 11.1 **Responsibility for Taxes**

- (a) The Developer is responsible for any and all Taxes and other like liabilities which may arise under any Commonwealth, State or Territory legislation (as amended from time to time) as a result of or in connection with this document or the Public Benefits.
- (b) The Developer must indemnify the Council in relation to any claims, liabilities and costs (including penalties and interest) arising as a result of any Tax or other like liability for which the Developer is responsible under clause 11.1(a).

### 11.2 **GST free supply**

To the extent that Divisions 81 and 82 of the GST Law apply to a supply made under this document:

- (a) no additional amount will be payable by a party on account of GST; and
- (b) no tax invoices will be exchanged between the parties.

### 11.3 **Supply subject to GST**

To the extent that clause 11.2 does not apply to a supply made under this document, this clause 11.3 will apply.

- (a) If one party (**Supplying Party**) makes a taxable supply and the consideration for that supply does not expressly include GST, the party that is liable to provide the consideration (**Receiving Party**) must also pay an amount (**GST Amount**) equal to the GST payable in respect of that supply.
- (b) Subject to first receiving a tax invoice or adjustment note as appropriate, the receiving party must pay the GST amount when it is liable to provide the consideration.
- (c) If one party must indemnify or reimburse another party (**Payee**) for any loss or expense incurred by the Payee, the required payment does not include any amount which the Payee (or an entity that is in the same GST group as the Payee) is entitled to claim as an input tax credit, but will be increased under clause 11.3(a) if the payment is consideration for a taxable supply.
- (d) If an adjustment event arises in respect of a taxable supply made by a Supplying Party, the GST Amount payable by the Receiving Party under clause 11.3(a) will be recalculated to reflect the adjustment event and a payment will be made by the Receiving Party to the Supplying Party, or by the Supplying Party to the Receiving Party, as the case requires.
- (e) The Developer will assume the Council is not entitled to any input tax credit when calculating any amounts payable under this clause 11.3.
- (f) In this document:
  - (i) consideration includes non-monetary consideration, in respect of which the parties must agree on a market value, acting reasonably; and
  - (ii) in addition to the meaning given in the GST Act, the term "GST" includes a notional liability for GST.

## 12. **DEALINGS**

### 12.1 **Dealing by the Council**

- (a) The Council may Deal with its interest in this document without the consent of the Developer if the Dealing is with a Government Agency. The Council must give the Developer notice of the Dealing within five Business Days of the date of the Dealing.

## 12.2 Dealing by the Developer

- (a) Prior to registration of this document in accordance with clause 8, the Developer must not Deal with this document or the Land without:
  - (i) the prior written consent of the Council, consent which must not be unreasonably withheld; and
  - (ii) the Council, the Developer and the third party the subject of the Dealing entering into a deed of consent to the Dealing on terms acceptable to the Council.
- (b) On and from registration of this document in accordance with clause 8:
  - (i) the Developer may Deal with this document without the consent of the Council only as a result of the sale of the whole of the Land (without subdivision) to a purchaser of the Land;
  - (ii) the Developer may register a plan of strata subdivision, and the Council consents to this document remaining registered only on the certificate of title to the common property of the strata plan upon registration of the strata plan; and
  - (iii) the Developer must not otherwise Deal with this document to a third party that is not a purchaser of the whole or any part of the Land without:
    - (A) the prior written consent of the Council, consent which must not be unreasonably withheld; and
    - (B) the Council, the Developer and the third party the subject of the Dealing entering into a deed of consent to the Dealing on terms acceptable to the Council.

## 13. TERMINATION

- (a) The Council may terminate this document by notice in writing to the Developer if the Development Consent lapses or is surrendered by the Developer without already having achieved Physical Commencement.
- (b) If the Council terminates this document then:
  - (i) the rights of each party that arose before the termination or which may arise at any future time for any breach or non-observance of obligations occurring prior to the termination are not affected;
  - (ii) the Developer must take all steps reasonably necessary to minimise any loss that each party may suffer as a result of the termination of this document;
  - (iii) the Council will return the Guarantee to the Developer after first deducting any amounts owing to the Council or costs incurred by the Council by operation of this document. If in exercising its rights under this document the Council expends more money than the Guarantee

Amount then the amount in excess of the Guarantee Amount will be deemed to be a debt due and owing to the Council by the Developer; and

- (iv) the Council will, at the Developer's cost, do all things reasonably required to remove this document from the certificate of title to the Land.

## 14. **CONFIDENTIALITY AND DISCLOSURES**

### 14.1 **Use and disclosure of Confidential Information**

A party (**receiving party**) which acquires Confidential Information of another party (**disclosing party**) must not:

- (a) use any of the Confidential Information except to the extent necessary to exercise its rights and perform its obligations under this document; or
- (b) disclose any of the Confidential Information except in accordance with clauses 14.2 or 14.3.

### 14.2 **Disclosures to personnel and advisers**

- (a) The receiving party may disclose Confidential Information to an officer, employee, agent, contractor, or legal, financial or other professional adviser if:
  - (i) the disclosure is necessary to enable the receiving party to perform its obligations or to exercise its rights under this document; and
  - (ii) prior to disclosure, the receiving party informs the person of the receiving party's obligations in relation to the Confidential Information under this document and obtains an undertaking from the person to comply with those obligations.
- (b) The receiving party:
  - (i) must ensure that any person to whom Confidential Information is disclosed under clause 14.2(a) keeps the Confidential Information confidential and does not use it for any purpose other than as permitted under clause 14.2(a); and
  - (ii) is liable for the actions of any officer, employee, agent, contractor or legal, financial or other professional adviser that causes a breach of the obligations set out in clause 14.2(b)(i).

### 14.3 **Disclosures required by law**

- (a) Subject to clause 14.3(b), the receiving party may disclose Confidential Information that the receiving party is required to disclose:
  - (i) by law or by order of any court or tribunal of competent jurisdiction; or
  - (ii) by any Government Agency, stock exchange or other regulatory body.

- (b) If the receiving party is required to make a disclosure under clause 14.3(a), the receiving party must:
  - (i) to the extent possible, notify the disclosing party immediately it anticipates that it may be required to disclose any of the Confidential Information;
  - (ii) consult with and follow any reasonable directions from the disclosing party to minimise disclosure; and
  - (iii) if disclosure cannot be avoided:
    - (A) only disclose Confidential Information to the extent necessary to comply; and
    - (B) use reasonable efforts to ensure that any Confidential Information disclosed is kept confidential.

#### 14.4 **Receiving party's return or destruction of documents**

On termination of this document the receiving party must immediately:

- (a) deliver to the disclosing party all documents and other materials containing, recording or referring to Confidential Information; and
- (b) erase or destroy in another way all electronic and other intangible records containing, recording or referring to Confidential Information,

which are in the possession, power or control of the receiving party or of any person to whom the receiving party has given access.

#### 14.5 **Security and control**

The receiving party must:

- (a) keep effective control of the Confidential Information; and
- (b) ensure that the Confidential Information is kept secure from theft, loss, damage or unauthorised access or alteration.

### 15. **NOTICES**

- (a) A notice, consent or other communication under this document is only effective if it is sent by email and no server generated message is received by the sender notifying rejection of the email.
- (b) A person's email is that set out in Schedule 1 for the Council's Representative and the Developer's Representative, or as the person notifies the sender in writing from time to time.

### 16. **GENERAL**

#### 16.1 **Governing law**

- (a) This document is governed by the laws of New South Wales.

- (b) Each party submits to the exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document, and waives any right it might have to claim that those courts are an inconvenient forum.

#### 16.2 **Access to information**

In accordance with section 121 of the *Government Information (Public Access) Act 2009 (NSW)*, the Developer agrees to allow the Council immediate access to the following information contained in records held by the Developer:

- (a) information that relates directly to the delivery of the Public Benefits by the Developer;
- (b) information collected by the Developer from members of the public to whom the Developer provides, or offers to provide, services on behalf of the Council; and
- (c) information received by the Developer from the Council to enable the Developer to deliver the Public Benefits.

#### 16.3 **Liability for expenses**

- (a) The Developer must pay its own and the Council's expenses incurred in negotiating, executing, registering, releasing, administering and enforcing this document.
- (b) The Developer must pay for all reasonable costs and expenses associated with the preparation and giving of public notice of this document.

#### 16.4 **Relationship of parties**

- (a) Nothing in this document creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) No party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

#### 16.5 **Giving effect to this document**

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this document.

#### 16.6 **Time for doing acts**

- (a) If:
  - (i) the time for doing any act or thing required to be done; or
  - (ii) a notice period specified in this document,

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

- (b) If any act or thing required to be done is done after 5pm on the specified day, it is taken to have been done on the following Business Day.

#### 16.7 **Severance**

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this document without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

#### 16.8 **Preservation of existing rights**

The expiration or termination of this document does not affect any right that has accrued to a party before the expiration or termination date.

#### 16.9 **No merger**

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this document for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

#### 16.10 **Waiver of rights**

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

#### 16.11 **Operation of this document**

- (a) This document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.
- (b) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

#### 16.12 **Inconsistency with other documents**

Unless the contrary intention is expressed, if there is an inconsistency between any of one or more of:

- (a) this document;
- (b) any Schedule to this document; and
- (c) the provisions of any other document of the Developer,

the order of precedence between them will be the order listed above, this document having the highest level of precedence.

#### 16.13 **No fetter**

Nothing in this document in any way restricts or otherwise affects the Council's unfettered discretion to exercise its statutory powers as a public authority.

#### 16.14 **Counterparts**

This document may be executed in counterparts.

### 17. **TFNSW APPROVALS**

#### 17.1 **Developer's Work subject to TFNSW approval**

- (a) The works required at (a) in Annexure A are works that need to be approved by the TfNSW.
- (b) The parties agree that the Council will take all steps as reasonably requested by the Developer to assist in obtaining the approval of the TfNSW for the works as listed in (a) of Annexure A.
- (c) The parties agree that there is potential for parts of the Developer's Works at (b) of Annexure A to also need approval by the TfNSW.
- (d) The parties agree that the Council will take all steps as reasonably requested by the Developer to assist in obtaining the approval of the TfNSW for the works that may require the approval of the TfNSW as part of the Developer's Works at (b) of Annexure A.

#### 17.2 **TfNSW determinations of Developer's Work**

- (a) In the event that a Development Consent is issued and the TfNSW has:
  - (i) not required the works referenced in clause 17.1(a) to be carried out; or
  - (ii) rejected the carrying out of the works referenced in clause 17.1(c)then such works are not required to be carried out pursuant to this Agreement.





## SCHEDULE 1

### Agreement Details

ITEM	TERM	DESCRIPTION
1.	<b>Land</b>	297 Canterbury Road, Revesby in the State of New South Wales being Lot 9 in Deposited Plan 663160 (Folio Identifier 9/663160) and 299 Canterbury Road, Revesby in the State of New South Wales being Lot 202 in Deposited Plan 840245 (Folio Identifier 202/840245)
2.	<b>Development</b>	The construction of a hospital (as defined in the LEP).
3.	<b>Council's Representative</b>	Name: General Manager Address: Upper Ground Floor, Bankstown Civic Tower 66-72 Rickard Road, Bankstown NSW 2200 Email: council@cbc.city.nsw.gov.au
4.	<b>Developer's Representative</b>	Name: Steven Spiridonidis Address: Suite 303, 21 Burwood Road, Burwood NSW 2134 Email: <a href="mailto:stevens@sgcassets.com">stevens@sgcassets.com</a>
5.	<b>Development Application</b>	Any further development application for the Development after the amendment to the LEP sought in the Planning Proposal
6.	<b>Guarantee Amount</b>	\$75,000.00
7.	<b>Guarantee Amount Due Date</b>	Prior to the First Construction Certificate for the Development

## SCHEDULE 2

### Requirements under the Act and Regulation (clause 2)

The below table summarises how this document complies with the Act and Regulation.

ITEM	SECTION OF ACT OR REGULATION	PROVISION/CLAUSE OF THIS DOCUMENT
1.	<p><b>Planning instrument and/or development application</b> (section 7.4(1) of the Act)</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument;</p> <p>(b) made, or proposes to make, a Development Application; or</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) Yes</p> <p>(b) No</p> <p>(c) No</p>
2.	<p><b>Description of land to which this document applies</b> (section 7.4(3)(a) of the Act)</p>	Item 1 of Schedule 1.
3.	<p><b>Description of change to the environmental planning instrument to which this document applies and/or the development to which this document applies</b> (section 7.4(3)(b) of the Act)</p>	<p>Proposed amendments to the LEP to amend the Floor Space Ratio (FSR) applying to the Land from 1:1 to 2.3:1 insofar as development for the purposes of a hospital is concerned.</p> <p>The Development</p>
4.	<p><b>The nature and extent of the provision to be made by the developer under this document, the time or times by which the provision is to be made and the manner in which the provision is to be made</b> (section 7.4(3) of the Act)</p>	Schedule 3 and Annexure A.
5.	<p><b>Whether this document excludes (wholly or in part) or does not exclude the application of section 7.11, 7.12 or 7.24 to the development</b> (section 7.4(3)(d) of the Act)</p>	<p>Section 7.11 is not excluded</p> <p>Section 7.12 is not excluded</p> <p>Section 7.24 is not excluded</p>

ITEM	SECTION OF ACT OR REGULATION	PROVISION/CLAUSE OF THIS DOCUMENT
6.	<b>Applicability of section 7.11 of the Act</b> (section 7.4(3) can of the Act)	The application of section 7.11 of the Act is not excluded in respect of the Development and contributions (if any) under section 7.11 will be required to be paid.
7.	<b>Consideration of benefits under this document if section 7.11 applies</b> (section 7.4(3) can of the Act)	Benefits are not to be taken into consideration in determining a development contribution under section 7.11 of the Act.
8.	<b>Mechanism for Dispute Resolution</b> (section 7.4(3)(f) of the Act)	Clause 10
9.	<b>Enforcement of this document</b> (section 7.4(3)(g) of the Act)	Clause 9
10.	<b>No obligation to grant consent or exercise functions</b> (section 7.4(9) of the Act)	Clause 2.4
11.	<b>Registration of this document</b> (section 7.6 of the Act)	Clause 8
12.	<b>Whether certain requirements of this document must be complied with before a construction certificate is issued</b> (clause 25E(2)(g) of the Regulation)	Item7 of the table to Schedule 1; Schedule 3
13.	<b>Whether certain requirements of this document must be complied with before a subdivision certificate is issued</b> (clause 25E(2)(g) of the Regulation)	No.
14.	<b>Whether certain requirements of this document must be complied with before an occupation certificate is issued</b> (clause 25E(2)(g) of the Regulation)	Clause 6; Schedule 3
15.	<b>Whether the explanatory note that accompanied exhibition of this document may be used to assist in construing this document</b> (clause 25E(7) of the Regulation)	No. See clause 2.5

## **SCHEDULE 3**

### **Public Benefits (clause 5)**

#### **1. PUBLIC BENEFITS – OVERVIEW**

The Developer must provide the Public Benefits in accordance with Schedule 3 and this document. The timing of delivery and additional specifications relating to the Public Benefits is set out in the table below

	<b>Public Benefit</b>	<b>Due date</b>	<b>Additional specifications</b>
1.	Developer's Works	Before the date of any Occupation Certificate for the Development.	The Developer's Works are listed in Annexure A of this document

#### **2. FINAL DESIGN OF THE DEVELOPER'S WORKS**

##### **2.1 Scope of Developer's Works**

As at the date of this document, the nature and extent of the required Developer's Works is set out in Annexure A to this document. The parties agree that the list of Developer's Works are outlined generally and are subject to design and planning and might be subject to change as agreed between the Developer and Council, having regard to:

- (a) the extent to which the design of the Developer's Works has been approved by the TfNSW in regards to works listed at point (a) at Annexure A and those works approved by Council as listed (b)-(d) at Annexure A; and
- (b) conditions affecting the Developer's Works that were not reasonably capable of identification prior to the date of this document.

##### **2.2 Final design of Developer's Works**

- (a) Within 24 months of the date of Development Consent for development works on the Land (or a later time approved by the Council in writing acting reasonably) but prior to the issue of the First Construction Certificate for the Development, the Developer must submit to the Council's Representative for approval detailed design drawings of the Developer's Works that reflect the Developer's Works set out in Annexure A; and
- (b) Within 30 Business Days after the Council's Representative has received the detailed design drawings the Council will inform the Developer in writing of its approval of the Developer's Works or provide feedback to assist the Developer in finalising the Plans for the Developer's Works.
- (c) If the detailed design drawings are not approved, the Council will inform the Developer in writing of what further information or modifications are required and the Developer will have a further 25 Business Days to re-

submit the required information, following which the process outlined in this paragraph (b) will apply again.

- (d) If the Developer fails to prepare the detailed design drawings in accordance with this clause 2.2 of Schedule 3, then the Council may exercise its rights under clause 9 of this document in order to carry out the Developer's Works itself at the cost of the Developer.
- (e) Once the Developer's Works are approved, the parties agree to provide same to the TfNSW for approval and do all things necessary to obtain the TfNSW approval for the Developer Works. In the event that the TfNSW require design amendments to the Developer Works, the Council will agree to any amendments suggested by the TfNSW.

### 2.3 **Preparation of and changes to construction design drawings**

- (a) Following approval of the detailed design drawings by the Council in accordance with clause 2.2 of Schedule 3, the Developer must promptly:
  - (i) prepare construction design drawings that comply with the detailed design drawings; and
  - (ii) provide the Council with a copy of the construction design drawings.
- (b) The Council, acting reasonably, may by written notice to the Developer at any time, approve, vary or direct the Developer to vary the construction design drawings so that the Developer's Works reflect:
  - (i) the Standards;
  - (ii) a departure or discrepancy from the plans approved under clause 2.2 of Schedule 3; or
  - (iii) any other standard or specification for materials or methodology for carrying out works that is adopted by the Council from time to time, provided that any direction given under this clause 2.3(b)(iii) of Schedule 3 does not significantly increase:
    - (A) the cost of that element of the Developer's Works; or
    - (B) the complexity of implementation of the Developer's Works that may lead to a significant delay in the completion of the Developer's Works.

but must not seek any variations that are contrary to the design requirements of the TfNSW.

- (c) Within 20 Business Days of receiving a notice from the Council under clause 2.3(b) of Schedule 3, the Developer must:
  - (i) to the extent practicable, use reasonable endeavours to comply with the notice given by the Council;
  - (ii) if the notice is contrary to the requirements of the TfNSW, advise the Council; and

- (iii) if the Developer determines that the notice given by the Council is unreasonable or impracticable, notify a dispute in accordance with clause 10 of this document.

If the Developer does not provide any response during the 20 Business Days after receiving a notice from the Council under clause 2.3(b) of Schedule 3, it is deemed that the Developer accepts the notice given by the Council and will take all steps required to comply with the notice.

- (d) No participation by the Council in the development of, the review of, or comments on any design drawings submitted by the Developer will lessen or otherwise affect the Developer's obligations under this document or constitute an acknowledgement by the Council that the Developer has complied with its obligations under this document.

### **3. CONSTRUCTION OF DEVELOPER'S WORKS**

#### **3.1 Insurance**

- (a) From commencement of the Developer's Works until the completion of the Developer's Works, the Developer must effect and maintain (or cause to be effected and maintained under one or more policies of insurance and without requiring any risk to be double insured) the following insurances held with an insurer licensed by the Australian Prudential Regulation Authority or holding an investment grade rating from Standard & Poors, Moody's or Fitch:

- (i) worker's compensation insurance or registrations as required by Laws;
- (ii) public liability insurance written on an occurrence basis with a limit of indemnity of not less than \$20,000,000 covering all aspects of the Developer's Works;
- (iii) construction works insurance in relation to the Developer's Works; and
- (iv) motor vehicle third party cover with a limit of indemnity of not less than \$20 million for each and every occurrence.

- (b) The Developer must submit a copy of all certificates of insurance to the Council:

- (i) prior to commencing construction of the Developer's Works; and
- (ii) promptly following a written request by the Council, provided that such a request is not made more than twice in any 12 month period.

#### **3.2 Approvals and consents**

The Developer must, at its cost, obtain all relevant approvals and consents for the Developer's Works, whether from the Council or from any other relevant Government Agency and the TfNSW including any necessary road opening permits. Before commencing the Developer's Works, the Developer must give to the Council

copies of all approvals and consents for the Developer's Works, other than the Development Consent.

### 3.3 **Construction work**

The Developer must, at its cost:

- (a) carry out and complete the Developer's Works in accordance with all approvals and consents relating to the Developer's Works, including any approval given by the Council under this document;
- (b) ensure that all Developer's Works are constructed in a good and workmanlike manner, in accordance with the plans approved under this document so that the Developer's Works are structurally sound, fit for purpose and suitable for their intended use;
- (c) ensure that the Developer's Works are Complete by the due date specified in clause 1 of Schedule 3 and promptly after becoming aware advise the Council's Representative of any significant delays in completing the Developer's Works or delays that may impact the delivery of the Public Benefits by the due date specified in Item 1 of Schedule 3.

### 3.4 **Inspections by the Council**

The Council, as a party to this document and not in its role as a Government Agency, may:

- (a) inspect the Developer's Works during the course of construction at reasonable times and on reasonable notice; and
- (b) notify the Developer's Representative of any material or significant defect, error or omission relating to the construction or installation of the Developer's Works identified during or as the result of an inspection.

Any failure by the Council to identify a Defect, error or omission will not be construed as amounting to an acceptance by the Council of the Defect, error or omission.

## 4. **STANDARDS**

The following list of Standards are included for information purposes only, and as a guide to the relevant standards for the general nature of the work identified as Developer's Works in this document. The Council makes no representation or warranty as to the currency of the standards identified, or their application on the final design of the Developer's Works. The Developer must make its own enquiries regarding whether any standard has been replaced or supplemented. In the event that an Australian Standard prescribed a different level of material, finish, work or workmanship than those contained in a Council standard, then the higher of the two standards will apply. If there is a conflict between Council standards then the Developer must request the Council nominate the correct and applicable Council standard. The Council's decision as to the applicable standard is final.



### **Relevant Australian Standards**

- AS 1725 Geotechnical Site investigations
- AS 4455 Masonry Units and segmental pavers
- AS 4678 Earth Retaining Structures
- AS 3600 Concrete Structures
- AS 2876 Concrete kerbs and channels
- AS 1158 Road Lighting
- AS 1743 Road signs
- AS 4282 Control of the Obtrusive Effects of Outdoor lighting
- AS 3500 Plumbing and Drainage
- AS 3700 Masonry Structures
- AS 2890 Parking Facilities
- AS 1428 Design for Access and Mobility
- AS 4454 Composts, soil conditioners and mulches

### **Relevant Australian Standards – Roads (including pedestrian areas)**

- AS 1725 Geotechnical Site investigations
- AS 4455 Masonry Units and segmental pavers
- AS 4678 Earth Retaining Structures
- AS 3600 Concrete Structures
- AS 2876 Concrete kerbs and channels
- AS 1158 Road Lighting
- AS 4282 Control of the Obtrusive Effects of Outdoor lighting
- AS 1428 Design for Access and Mobility
- AS 3500 Plumbing and Drainage
- AS 3700 Masonry Structures
- AS 2890 Parking Facilities
- AS 1742 Manual of uniform traffic control devices
- AS 1743 Road Signs

## **Council Standards**

- The Standards identified at <https://www.cbccity.nsw.gov.au/development/planning-control-policies/council-standard-drawings> insofar as they are relevant to the Development

**EXECUTED** as a deed.

**Signed, sealed and delivered** for  
**CANTERBURY-BANKSTOWN**  
**COUNCIL** (ABN 45 985 891 846) by  
its duly authorised officer, in the  
presence of:

\_\_\_\_\_  
Signature of officer

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of officer  
Authorised delegate pursuant to  
section 377 of the Local Government  
Act 1993

\_\_\_\_\_  
Name

\_\_\_\_\_  
Position of officer

\_\_\_\_\_  
Address of witness

**EXECUTED** by **CANTURBURY**  
**BANKSTOWN PRIVATE HOSPITAL**  
**PTY LTD** [CAN ACN 619 483 457] in  
accordance with s127(1) of the  
Corporations Act 2001 (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/secretary

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

## **ANNEXURE A**

### **Public Benefits – additional plans and specifications**

#### **Developer's Works**

The Developer's Works will include the following elements to be delivered in accordance with the document:

- (a) The installation of traffic signals and slip lanes at the intersection of Canterbury Road and Mavis Street, in consultation with the TfNSW
- (b) The installation of new bus shelters on both the northern and southern sides of Canterbury Road (next to the Canterbury Road/Mavis Street intersection) to cater for staff, patients and visitors using public transport. The locations will be determined in conjunction with the proposed Canterbury Road/Mavis Street intersection design in (a). The shelters must be accessible for seniors and people with disabilities and comply with the Disability Discrimination Act 1992
- (c) The embellishment of Mavis Street to improve the public domain, street lighting, road line markings and other safety measures.
- (d) The construction of new pedestrian crossings, footpaths and associated public domain improvements (e.g street lighting and seating) between the Land and the Bankstown-Lidcombe Hospital (via Claribel Road and Artigall Street). The improvements must comply with the Disability Discrimination Act 1992.

These works are subject to change if TfNSW does not approve or agree to any of the works.