

## **Deed**

### **Eastlakes Shopping Centre, 19A Evans Avenue, Eastlakes**

#### **Planning Agreement**

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

**Bayside Council**

**Crown Eastlakes Developments Pty Ltd**

**Crown Eastlakes Pty Ltd**

**Stateland East Pty Ltd**

**Stateland BKK Pty Ltd**

Date:

**Eastlakes Shopping Centre, 19A Evans Avenue,  
Eastlakes  
Planning Agreement**

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**Summary Sheet**

**Council:**

**Name:** Bayside Council

**Address:** 444-446 Princes Highway, Rockdale, NSW 2216

**Telephone:** (02) 9562 1666

**Email:** council@bayside.nsw.gov.au

**Representative:** John Furestad

**Developer:**

**Name:** Crown Eastlakes Developments Pty Ltd

**Address:** Level 29, 1 Market Street, Sydney, NSW 2000

**Telephone:** (02) 9925 0088

**Email:** williamlam@crowngroup.com.au

**Representative:** William Lam

**Landowners:**

**Name:** Crown Eastlakes Pty Ltd

**Address:** Level 29, 1 Market Street, Sydney, NSW 2000

**Telephone:** (02) 9925 0088

**Email:** williamlam@crowngroup.com.au

**Representative:** William Lam

**Name:** Stateland East Pty Ltd

**Address:** Level 29, 1 Market Street, Sydney, NSW 2000

**Telephone:** (02) 9925 0088

**Email:** williamlam@crowngroup.com.au

**Representative:** William Lam

**Eastlakes Shopping Centre, 19A Evans Avenue, Eastlakes Planning Agreement**

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**Name:** Stateland BKK Pty Ltd

**Address:** Level 29, 1 Market Street, Sydney, NSW 2000

**Telephone:** (02) 9925 0088

**Email:** williamlam@crowngroup.com.au

**Representative:** William Lam

**Land:**

See definition of *Land* in clause 1.1.

**Development:**

See definition of *Development* in clause 1.1.

**Development Contributions:**

See clause 9 and Schedule 1.

**Application of s7.11, s7.12 and s7.24 of the Act:**

See clause 8.

**Enforcement:**

See Part 4.

**Registration:**

See clause 20.

**Restriction on dealings:**

See clause 21.

**Dispute Resolution:**

See Part 3.

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**Bayside Council**

**Developer and Landowners**

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**Eastlakes Shopping Centre, 19A Evans Avenue,  
Eastlakes Planning Agreement**

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

**Parties**

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

and

**Crown Eastlakes Developments Pty Ltd** ABN 66 620 434 504 of Level 29, 1 Market Street, SYDNEY, NSW 2000 (**Developer**)

and

**Crown Eastlakes Pty Ltd** ABN 12 602 863 838 of Level 29, 1 Market Street, SYDNEY, NSW 2000

**Stateland East Pty Ltd** ABN 98 106 277 918 of Level 29, 1 Market Street, SYDNEY, NSW 2000

**Stateland BKK Pty Ltd** ACN 110 180 124 of Level 29, 1 Market Street, SYDNEY, NSW 2000

(together, **Landowners**)

**Background**

- A The Landowners own the Land.
- B The Development to which this Deed applies is a transitional Part 3A Project within the meaning of cl2(1) of Schedule 2 of the Savings and Transitional Regulation the subject of an approval under the repealed Part 3A of the Act as continued under the Savings and Transitional Regulation (**Project Approval**).
- C The Project Approval was most recently modified on 18 June 2020 under s75W of the Act pursuant to modification application number MP09\_0146 (MOD 4) to modify the southern site, including redesign of the podium, revised building envelopes, increased building height above podium and additional basement parking.
- D Condition E31 of the Project Approval as modified requires a planning agreement to be entered into pursuant to a letter of offer dated 11 October 2019.
- E The Project Approval applies to Lots 30 and 31 DP1246820, however the Council, the Developer and the Landowners agree that this Deed is to be entered into only in connection with the part of the development on Lot 30 DP1246820 as modified by MOD 4.

- F The Council, the Developer and the Landowners agree to enter into this Deed for the provision of Development Contributions as required by Condition E31 of the Project Approval.

## **Operative provisions**

### **Part 1 - Preliminary**

#### **1 Interpretation**

- 1.1 In this Deed the following definitions apply:

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

**Approval** includes approval, consent, licence, permission or the like.

**Authority** means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

**Building** means a building so identified in the location shown on the Development Plan in Schedule 2.

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

**Cost** means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

**CPI** means the *Consumer Price Index (All Groups – Sydney)* published by the Australian Bureau of Statistics.

**Deed** means this Deed and includes any schedules, annexures and appendices to this Deed.

**Development** means development, within the meaning of the Act, of the Land the subject of Development Consent with reference to MP09\_0146 as modified from time to time.

**Development Consent** means a development consent within the meaning of the Act or an approval to carry out a project under the repealed Part 3A of the Act as continued under Schedule 2 of the Savings and Transitional Regulation, as modified from time to time.

**Development Contribution** means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose, but does not include any security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s7.4(3)(g) of the Act.

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### Developer and Landowners

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**Dispute** means a dispute or difference between the Parties under or in relation to this Deed.

**Final Lot** means a Strata Lot created in the Development for separate residential occupation and disposition which is not intended for further subdivision.

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

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

**Item** means an item specified in Column 1 of Schedule 1.

**Land** means land comprised in Lot 30 DP 1246820 otherwise known as 19A Evans Avenue, Eastlakes, NSW 2018, and includes any lot created by subdivision or strata subdivision of that lot.

**MOD 4** means the modification of the Project Approval MP09\_0146, granted on 18 June 2020 under s75W of the Act.

**Monetary Contribution** means a monetary Development Contribution referred to in Part A of the table in Schedule 1.

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

**Party** means a party to this Deed.

**Rectify** means rectify, remedy or correct.

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

**Savings and Transitional Regulation** means the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*.

**Strata Lot** means a lot created in the Development for separate residential occupation and disposition that is created by the registration of a strata plan or a strata plan of subdivision under the *Strata Schemes Development Act 2015*, not being common property.

**Work** means the physical result of any building, engineering or construction work in, on, over or under land that is part of the works described in Part B of Schedule 1.

**Works Plan** means the plan in Schedule 3 of this Deed.

- 1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
  - 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
  - 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.

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### **Developer and Landowners**

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- 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
- 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value inclusive of GST if GST is payable.
- 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.14 A reference to a Party to this Deed includes a reference to the employees, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

## **2 Status of this Deed**

- 2.1 This Deed is a planning agreement within the meaning of s7.4(1) of the Act.

## **3 Commencement**

- 3.1 This Deed commences and has force and effect on and from the date when the Parties have:
  - 3.1.1 all executed the same copy of this Deed, or

3.1.2 each executed separate counterparts of this Deed and exchanged the counterparts.

3.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.

## **4 Application of this Deed**

4.1 This Deed applies to the Land and to the Development.

## **5 Warranties**

5.1 The Parties warrant to each other that they:

5.1.1 have full capacity to enter into this Deed, and

5.1.2 are able to fully comply with their obligations under this Deed.

## **6 Further agreements**

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

## **7 Surrender of right of appeal, etc.**

7.1 The Developer, Landowners and Council are not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.

## **8 Application of s7.11, s7.12 and s7.24 of the Act to the Development**

8.1 This Deed does not exclude the application of s7.11 of the Act to the Development and the benefits under this Deed are not to be taken into consideration when determining a development contribution under s7.11 in relation to the Development.

8.2 This Deed does not exclude the application of s7.12 of the Act to the Development.

8.3 This Deed does not exclude the application of s7.24 of the Act to the Development.

## **Part 2 – Development Contributions**

### **9 Provision of Development Contributions**

- 9.1 The Developer and Landowners are to make Development Contributions to the Council in accordance with Schedule 1 and any other provision of this Deed relating to the making of Development Contributions.
- 9.2 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed, specifically:
- 9.2.1 the Development Contribution in Schedule 1 Item A.1 must be applied by Council towards upgrades to or embellishment of new community facilities or public spaces (which may include park upgrades) within a 2km radius of the Land, but external to the Land (**Contribution Area**). The Council has the absolute discretion to determine where within the Contribution Area, and on what facilities or public spaces the Development Contribution is spent, and
- 9.2.2 the Development Contribution in Schedule 1 Item A.2 must be applied towards the provision of affordable public housing.

### **10 Payment of monetary Development Contributions**

- 10.1 A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.
- 10.2 A monetary Development Contribution amount identified in this Deed is to be indexed from the date of this Deed to the date of payment in accordance with the CPI

### **11 Carrying out of Work**

- 11.1 Without limiting any other provision of this Deed, any Work that is required to be carried out by the Developer and Landowners under this Deed is to be carried out in accordance with any design or specification specified or approved by the Council, any relevant Approval and any other applicable law.

### **12 Access to land by Developer and Landowners**

- 12.1 Subject to the Developer and Landowners obtaining all necessary statutory approvals, the Council is to permit them, upon receiving reasonable prior notice from them, to enter any Council owned or controlled land approved by the Council in order to enable the Developer and Landowners to properly perform their obligations under this Deed.

- 12.2 Nothing in this Deed creates or gives the Developer or Landowners any estate or interest in any part of the land referred to in clause 12.1.

### **13 Access to land by Council**

- 13.1 The Council may enter any land on which Work is being carried out by the Developer or Landowners under this Deed in order to inspect, examine or test the Work, or to remedy any breach by the Developer or Landowners of their obligations under this Deed relating to the Work.
- 13.2 The Council is to give the Developer and Landowners prior reasonable notice before it enters land under clause 13.1.

### **14 Completion of Works and Payment**

- 14.1 For the purpose of this Deed the Works identified in Schedule 1 Item B.1 are complete for the purposes of this Deed when the Council, acting reasonably, gives the Landowner and Developer written notice that the Works have been completed in accordance with all relevant Approvals for the Works and to the satisfaction of the Council.
- 14.2 Once the Developer notifies Council that in its opinion the Works have been completed in accordance with all relevant Approvals (**Developer's Notice**), Council must, within 10 business days, either:
- 14.2.1 advise the Developer that the Works are complete for the purposes of clause 14.1; or
- 14.2.2 request further information or require further work to be carried out before Council can be satisfied that the Works are complete.
- 14.3 If Council issues a request under clause 14.2.2, the Developer must provide the additional information or carry out the further work, and may then provide a further Developer's Notice under clause 14.2 and clause 14.2 applies to that further notice.
- 14.4 If Council does not respond to a Developer's Notice within 10 business days as provided by clause 14.2, the Works are taken to be complete
- 14.5 Once the Works identified in Schedule 1 Item B.1 are complete in accordance with clause 14.1 and Council has confirmed that all monetary Development Contributions have been paid in accordance with this Deed, this Deed no longer applies to the Development, subject to any rights and obligations under this Deed which accrue before that date being unaffected.

### **15 Works-As-Executed-Plan**

- 15.1 No later than 60 days after Work is completed for the purposes of this Deed, the Developer and Landowners are to submit to the Council a full works-as-executed-plan in respect of the Work.
- 15.2 The Developer or Landowner, whichever appropriate, will use their best endeavours to seek to have the persons who hold copyright in the works-as-executed-plans for the Works grant Council a licence to use the plans.

Council will use its best endeavours to ensure it takes the necessary steps to facilitate the acceptance of any such licence.

## **Part 3 – Dispute Resolution**

### **16 Dispute resolution – expert determination**

- 16.1 This clause applies to a Dispute between any of the Parties to this Deed which has not been resolved after first following the procedures in clause 17, and which concerns a matter arising in connection with this Deed or its subject matter that can be determined by an appropriately qualified expert if:
- 16.1.1 the Parties to the Dispute agree that it can be so determined, or
- 16.1.2 where the Parties to the Dispute disagree on whether it can be so determined, the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 16.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 16.3 If a notice is given under clause 16.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 16.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the Resolution Institute (NSW) to appoint an expert for expert determination.
- 16.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 16.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 16.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

### **17 Dispute Resolution - mediation**

- 17.1 This clause applies to any Dispute arising in connection with this Deed or its subject matter.
- 17.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 17.3 If a notice is given under clause 17.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 17.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.

- 17.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 17.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 17.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

## **Part 4 - Enforcement**

### **18 Breach of obligations**

- 18.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer and Landowners:
  - 18.1.1 specifying the nature and extent of the breach,
  - 18.1.2 requiring the Developer and Landowners to Rectify the breach if it reasonably considers it is capable of rectification,
  - 18.1.3 specifying the period within which the breach is to be rectified being a period that is reasonable in the circumstances.
- 18.2 If the Developer receives a notice from Council under clause 18.1 and considers, (acting reasonably) it to be unreasonably issued or that there is no breach as alleged, the Developer may notify Council of its response within 14 days of receiving the notice. During this 14 day period Council must not take any further action with respect to the alleged breach.
- 18.3 If Council does not agree with the Developer's notice under clause 18.2 within 14 days of receiving the Developer's notice under clause 18.2 the parties must apply the dispute resolution procedures under this Deed.
- 18.4 Any costs incurred by the Council in remedying a breach in accordance with clause 18.1 may be recovered by the Council as a debt due in a court of competent jurisdiction, subject to any contrary order of a Court of competent jurisdiction.
- 18.5 For the purpose of clause 18.4, the Council's costs of remedying a breach the subject of a notice given under clause 18.1 include, but are not limited to:
  - 18.5.1 the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
  - 18.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
  - 18.5.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.

- 18.6 Nothing in this clause 18, except clause 18.2 (and then only to the extent provided in clause 18.2), prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer or Landowners, including but not limited to seeking relief in an appropriate court.

## **19 Enforcement in a court of competent jurisdiction**

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

## **Part 5 – Registration & Restriction on Dealings**

### **20 Registration of this Deed**

- 20.1 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act on the title to the Land, other than a Final Lot.
- 20.2 Not later than 20 days after the commencement of this Deed, the Developer is to deliver to the Council in registrable form:
- 20.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Developer and Landowners, and
- 20.2.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.
- 20.3 The Developer warrants that all persons whose consent is required under s7.6(1) of the Act consent to registration of the Deed.
- 20.4 The Developer and Landowners are to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 20.5 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land or a part of the Land:
- 20.5.1 in so far as the part of the Land concerned is a Final Lot;
- 20.5.2 in relation to a Building, when the Monetary Contributions required to be paid in respect of that Building have been paid, provided that the Work is complete for the purposes of this Deed; and
- 20.5.3 in relation to any other part of the Land, once the Developer has completed all of its obligations under this Deed in accordance with

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### **Developer and Landowners**

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this Deed or this Deed is terminated or otherwise comes to an end for any other reason, and

20.5.4 in doing so the parties must act promptly.

20.6 The Parties agree that if the Works are complete and the Monetary Contributions in respect of a Building are paid, the Deed will not apply to or be registered on the title of any strata plan or Final Lot with respect to a Building when a strata plan is registered with respect to that Building. The Developer and Landowners may rely on this clause, including when the strata subdivision certificate for any relevant strata plan is being registered. The Council agrees to act promptly in response to any queries during the strata plan registration process, to ensure that the strata plan is registered without this Deed on title in the circumstances in this clause.

20.7 Notwithstanding any other provision of this Deed, the Developer and Landowners are to pay all LRS registration fees associated with the registration of this Deed on the title to the Land and removal of any notation in respect of the Deed from the title to the Land, and are to reimburse Council for any fees Council incurs excluding any legal fees in connection with the registration of the Deed within 20 days of a written demand by Council.

## **21 Restriction on dealings**

21.1 The:

21.1.1 Landowners are not to sell or transfer the Land or any part, and

21.1.2 Developer and Landowners are not to assign its rights or obligations under this Deed, or novate this Deed,

to any person unless:

21.1.3 the Developer or Landowners (as the case may be) have, at no cost to the Council, first procured the execution by the person to whom the Land or part thereof is to be sold or transferred or the Developer's rights or obligations under this Deed are to be assigned or novated (as the case may be), of a deed between that person, the Council and the Developer and the Landowner in favour of the Council binding the person to the Developer and Landowner's obligations under this Deed,

21.1.4 the Council has been given notice by the Developer or Landowner of its intent to sell,

21.1.5 the Developer or Landowners (as the case may be) is or are (as the case may be) not in breach of this Deed.

21.2 Subject to clause 21.3, the Developer or the Landowners (as the case may be) acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 21.1.

21.3 Clause 21.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

## **Part 6 – Indemnities & Insurance**

### **22 Risk**

- 22.1 The Developer and Landowners perform this Deed at their own risk and at their own cost.

### **23 Release**

- 23.1 The Developer and Landowners release the Council from any Claim they may have against the Council arising in connection with the performance of the Developer's and Landowners' obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

### **24 Indemnity**

- 24.1 The Developer and Landowners indemnify the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Developer's and Landowners' obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

## **Part 7 – Other Provisions**

### **25 Review of Deed**

- 25.1 The Parties agree that they may review this Deed from time to time, should a party consider on reasonable grounds that there are circumstances that materially affect the operation of this Deed.
- 25.2 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 25.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 25.3 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.
- 25.4 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 25.1 (but not 25.3) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

## **26 Notices**

- 26.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 26.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
  - 26.1.2 emailed to that Party at its email address set out in the Summary Sheet.
- 26.2 If a Party gives the other Party 3 business days' notice of a change of its address or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address.
- 26.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 26.3.1 delivered, when it is left at the relevant address,
  - 26.3.2 sent by post, 2 business days after it is posted, or
  - 26.3.3 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 26.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

## **27 Approvals and Consent**

- 27.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.
- 27.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

## **28 Costs**

- 28.1 Each Party is to pay its own costs of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed, or any other costs associated with this Deed.
- 28.2 The Developer and Landowners are also to pay to the Council the Council's reasonable costs of enforcing this Deed within 7 days of a written demand by the Council for such payment, subject to the enforcement being reasonable and any contrary order of a court of competent jurisdiction.

## **29 Entire Deed**

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

## **30 Further Acts**

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

## **31 Governing Law and Jurisdiction**

- 31.1 This Deed is governed by the law of New South Wales.
- 31.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 31.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

## **32 Joint and Individual Liability and Benefits**

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

## **33 No Fetter**

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

## **34 Illegality**

- 34.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

### **35 Severability**

- 35.1 If a clause or part of a clause of this Deed 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.
- 35.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

### **36 Amendment**

- 36.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25C of the Regulation.

### **37 Waiver**

- 37.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 37.2 A waiver by a Party is only effective if it:
- 37.2.1 is in writing,
  - 37.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
  - 37.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
  - 37.2.4 is signed and dated by the Party giving the waiver.
- 37.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 37.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 37.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

### **38 GST**

- 38.1 In this clause:  
**Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice** have the meaning given by the GST Law.

# Eastlakes Shopping Centre, 19A Evans Avenue, Eastlakes Planning Agreement

## Bayside Council

### Developer and Landowners

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

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

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

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

- 38.2 The contribution amounts offered in the Deed are inclusive of GST if GST is payable. Subject to clause 38.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 38.3 Clause 38.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive if GST is payable.
- 38.4 No additional amount shall be payable by the Council under clause 38.4 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 38.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 38.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 38.5.2 that any amounts payable by the Parties in accordance with clause 38.2 (as limited by clause 38.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 38.6 No payment of any amount pursuant to this clause 38, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 38.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 38.8 This clause 38 continues to apply after expiration or termination of this Deed.

### **39 Explanatory Note**

- 39.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 39.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Planning Deed.

DRAFT

## **Schedule 1**

(Clause 9)

### **Development Contributions**

**DRAFT**

**Eastlakes Shopping Centre, 19A Evans Avenue, Eastlakes Planning Agreement**

**Bayside Council**

**Developer and Landowners**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Item/ Contribution</b>	<b>Public Purpose</b>	<b>Manner &amp; Extent</b>	<b>Timing</b>

**A. Monetary Contributions (all amounts inclusive of GST if GST is payable)**

1. \$1,550,000

Upgrades to or establishment of new community facilities or public spaces within the Contribution Area (as defined in clause 9.2.1), at the discretion of Council

Payment of \$1,550,000 to the Council in accordance with clause 10 of this Deed in instalments as follows:

<b>BUILDING</b>	<b>INSTALMENT AMOUNT</b>
Retail Centre	\$539,803
Building D	\$284,216
Building E	\$144,309
Building F	\$147,448
Building G	\$102,439
Building J	\$331,785
<b>Total</b>	<b>\$1,550,000</b>

An instalment amount identified in the table in Column 3 of this Item A.1. is to be paid prior to the issue of the first Occupation Certificate for the Building identified in that table corresponding to the instalment amount.

**Eastlakes Shopping Centre, 19A Evans Avenue, Eastlakes Planning Agreement**

**Bayside Council**

**Developer and Landowners**

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2. \$3,000,000      Affordable housing

Payment of \$3,000,000 to the Council in accordance with clause 10 of this Deed in instalments as follows:

An instalment amount identified in the table in Column 3 of this Item A.1. is to be paid prior to the issue of the first Occupation Certificate for the Building identified in that table corresponding to the instalment amount

<b>BUILDING</b>	<b>INSTALMENT AMOUNT</b>
Building D	\$844,041
Building E	\$428,557
Building F	\$437,880
Building G	\$304,216
Building J	\$985,306
<b>Total</b>	<b>\$3,000,000</b>

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**B. Carrying out of Work (all amounts inclusive of GST if GST is payable)**

1. Road upgrades

Roads

Carry out and complete construction of a roundabout at the intersection of Evans Avenue and Racecourse Place as shown on the Works Plan to a construction cost of \$100,000. This Deed does not apply to works over and above the cost of the contribution amount of \$100,000 (incl GST).

Prior to the issue of the first Occupation Certificate for the Development.

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Schedule 2

(Clause 1.1)

Development Plan



For Approval

# Eastlakes Shopping Centre, 19A Evans Avenue, Eastlakes Planning Agreement

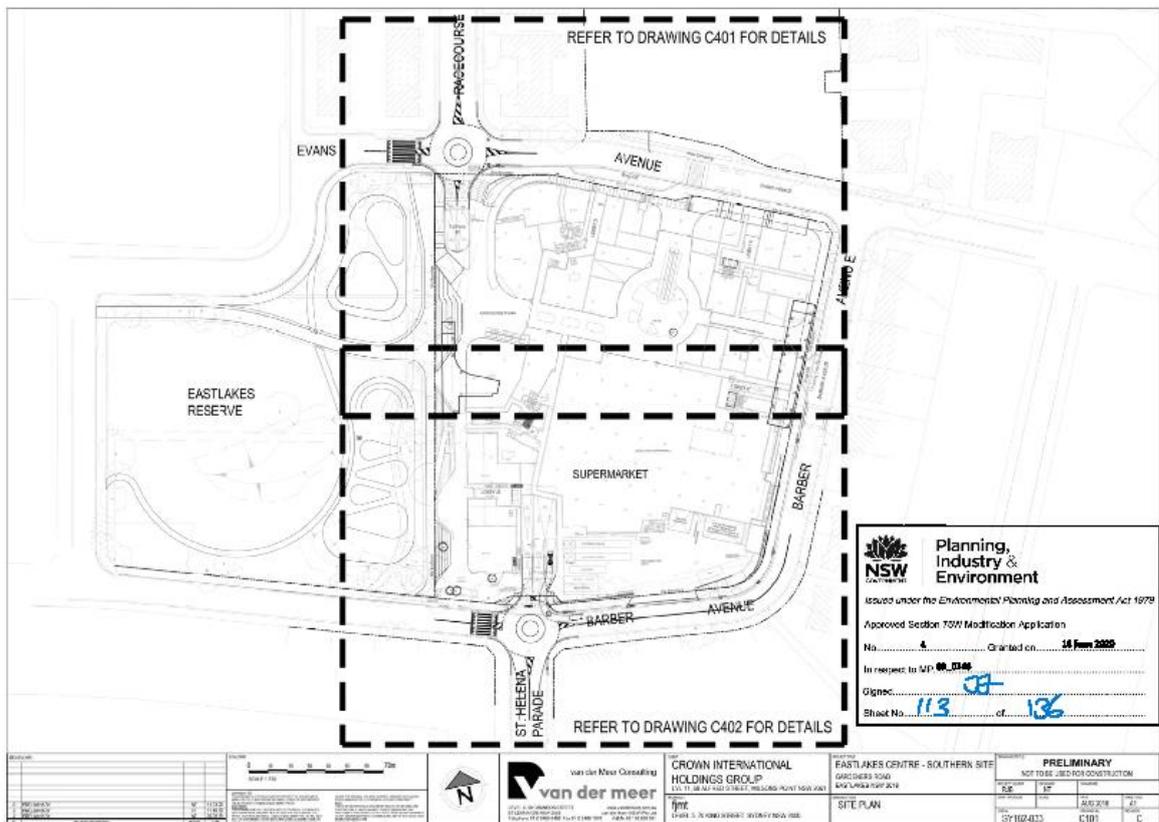
Bayside Council

Developer and Landowners

## Schedule 3

(Clause 1.1)

## Works Plan



**Eastlakes Shopping Centre, 19A Evans Avenue, Eastlakes Planning Agreement**

**Bayside Council**

**Developer and Landowners**

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**Execution**

**Executed as a Deed**

**Dated:**

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**Executed on behalf of the Council**

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**General Manager**

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**Witness**

**Executed on behalf of Crown Eastlakes Developments Pty Ltd** in accordance with s127(1) of the Corporations Act (Cth) 2001

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**Name/Position**

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**Name/Position**

**Eastlakes Shopping Centre, 19A Evans Avenue, Eastlakes Planning Agreement**

**Bayside Council**

**Developer and Landowners**

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**Executed on behalf of Crown Eastlakes Pty Ltd** in accordance with s127(1) of the Corporations Act (Cth) 2001

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**Name/Position**

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**Name/Position**

**Executed on behalf of Stateland East Pty Ltd** in accordance with s127(1) of the Corporations Act (Cth) 2001

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**Name/Position**

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**Name/Position**

**Executed on behalf of Stateland BKK Pty Ltd** in accordance with s127(1) of the Corporations Act (Cth) 2001

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**Name/Position**

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**Name/Position**

## **Appendix**

(Clause 39)

*Environmental Planning and Assessment Regulation 2000*

(Clause 25E)

## **Explanatory Note**

### **Draft Planning Agreement**

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

### **Parties**

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

and

**Crown Eastlakes Developments Pty Ltd** ABN 66 620 434 504 of Level 29, 1 Market Street, SYDNEY, NSW 2000 (**Developer**)

and

**Crown Eastlakes Pty Ltd** ABN 12 602 863 838 of Level 29, 1 Market Street, Sydney, NSW 2000

**Stateland East Pty Ltd** ABN 98 106 277 918 of Level 29, 1 Market Street, Sydney, NSW 2000

**Stateland BKK Pty Ltd** ACN 110 180 124 of Level 29, 1 Market Street, Sydney, NSW 2000

(together, **Landowners**)

### **Description of the Land to which the Draft Planning Agreement Applies**

This draft Planning Agreement applies to the land comprised in Lot 30 DP 1246820 and otherwise known as 19A Evans Avenue, Eastlakes, NSW 2018, and includes any lot created by subdivision or strata subdivision of that lot.

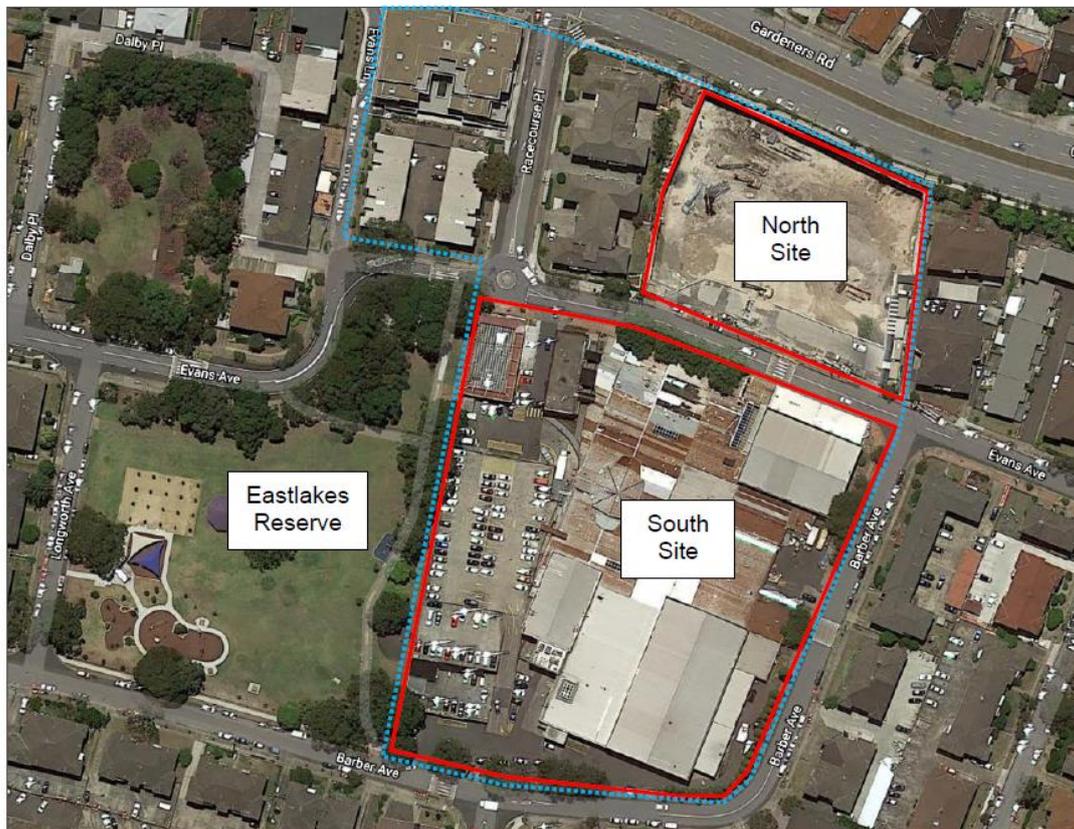
# Eastlakes Shopping Centre, 19A Evans Avenue, Eastlakes Planning Agreement

Bayside Council

Developer and Landowners

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The land to which this Deed applies is shown as the 'South Site' on the aerial map below.



## Description of Proposed Development

This draft Planning Agreement applies to a transitional Part 3A Project within the meaning of cl2(1) of Schedule 2 of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*, the subject of a Project Approval that has been modified from time to time. The development approved is a mixed use development incorporating basement car parking, ground floor retail area and residential development area, communal open space, public domain landscaping and associated infrastructure works.

The Project Approval was most recently modified on 18 June 2020 under s75W of the Act pursuant to modification application number MP09\_0146 (MOD 4) to modify the southern site, including redesign of the podium, revised building envelopes, increased building height above podium and additional basement parking.

The Project Approval applies to Lots 30 and 31 DP1246820, however the Council, the Developer and the Landowners agree that this Deed is to be entered into only in connection with the part of the development on Lot 30 DP1246820.

## **Description of Development Contributions**

This draft Planning Agreement requires the Developer and the Landowners to pay monetary contributions to be applied towards upgrades to or establishment of new community facilities or public spaces within a 2km radius of the Land at the discretion of the Council and towards affordable housing, and requires the Developer to carry out road upgrades being a roundabout between Evans Avenue and Racecourse Avenue.

## **Summary of Objectives, Nature and Effect of the Draft Planning Agreement**

### **Objectives, Nature and Effect of Draft Planning Agreement**

The draft Planning Agreement is a planning agreement under s7.4 of the EPA Act. It is a voluntary agreement, under which the Developer makes Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) for various public purposes (as defined in s 7.4(2) of the EPA Act).

The objective of the draft Planning Agreement is to require the Developer and Landowners to provide funding for upgrades to or establishment of new community facilities and public spaces within a 2km radius of the Land at the discretion of the Council and for affordable housing, and the carrying out of the construction of a roundabout.

The Draft Planning Agreement:

- requires the Developer and Landowners to make monetary and works development contributions,
- relates to the carrying out by the Developer and Landowners of the Development on Lot 30 DP1246820,
- does not exclude the application of s 7.11 of the EPA Act to the Development,
- does not exclude the application of s7.12 of the EPA Act to the Development,
- does not exclude the application of s 7.24 of the EPA Act to the Development,
- is to be registered on the titles to the Land,
- imposes restrictions on the Landowners transferring the Land or part of the Land and on the Developer and Landowner from assigning an interest under the Agreement,
- provides a dispute resolution method where a dispute arises under the agreement, being mediation and expert determination,
- provides that the agreement is governed by the law of New South Wales,
- provides that the A New Tax System (Goods and Services Tax) Act 1999 (Cth) applies to the agreement.

## **Assessment of the Merits of the Draft Planning Agreement**

### **How the Draft Planning Agreement Promotes the Public Interest**

The draft Planning Agreement requires the Developer and Landowners to provide funding for upgrades to or establishment of new community facilities or public spaces within a 2km radius of the Land at the discretion of the Council and for affordable housing, and requires the Developer to carry out the construction of a roundabout. These development contributions will improve the public amenities, facilities and infrastructure and the availability of affordable housing that will serve the wider community.

The Draft Planning Agreement:

- promotes and co-ordinates the orderly and economic use and development of the land to which the Planning Agreement applies by enabling community facilities, public spaces and road works that serve the development and the wider community to be provided,
- promotes good design and amenity of the built environment by enabling funding for public community facilities and public space works,
- contributes to the provision of (or recoupment of the cost of providing) affordable housing, and
- provides increased opportunity for public involvement and participation in the form of public notification of the draft Planning Agreement.

The Draft Planning Agreement promotes the objects of the EPA Act set out in sections 1.3(a), (c), (g) and (j).

The Draft Planning Agreement also promotes the following guiding principles for local councils as set out in s8A of the *Local Government Act 1993*:

- the management of lands and other assets so that current and future local community needs can be met in an affordable way,
- working with others to secure appropriate services for local community needs,
- promoting Council's long-term strategic planning on behalf of the local community.

### ***All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program***

No.

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

This Draft Planning Agreement contains requirements that must be complied with before occupation certificates are issued.