

Voluntary Planning Agreement

(between Council and Developer)

VOLUNTARY PLANNING AGREEMENT Parties

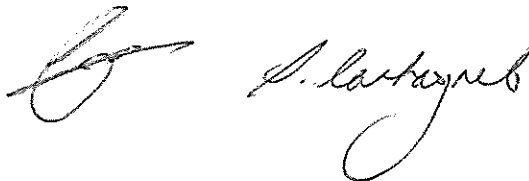
Fairfield City Council (**Council**)

ABN 83 140 439 239

and

Moon Investments Pty Ltd (**Developer**)

ACN 606 586 207

Two handwritten signatures in black ink. The signature on the left is a stylized, cursive 'S'. The signature on the right is a more formal, cursive signature that appears to read 'S. Larkins'.

Contents

Parties	5
Background	6
Operative provisions	6
1 <i>Voluntary planning agreement under the Act</i>	6
2 <i>Application of this Agreement</i>	6
3 <i>Operation of this Agreement</i>	6
4 <i>Definitions and interpretation</i>	6
5 <i>Works and Development Contributions to be made under this Agreement</i>	10
5.1 Works	10
5.2 Design and specification of Works	10
5.3 Contribution Value	11
5.4 Access to the Land and location of Works	11
5.5 Indexation of Amounts payable by Developer	11
5.6 Grant of Easement	11
5.7 Arrangements for the pedestrian bridge generally	11
5.8 Failure to obtain the Bridge Approvals	12
6 <i>Completion of Works</i>	13
6.1 Issue of Completion Notice	13
6.2 Inspection by Council	13
6.3 Rectification Notice	13
7 <i>Defects Liability</i>	14
7.1 Defects Notice	14
7.2 Developer to Rectify Defects	14
7.3 Right of Council to Step-In	14
7.4 Consequence of Step-In	14
7.5 Costs of Council	15
8 <i>Developer Warranties and Indemnities</i>	15
8.1 Warranties	15
8.2 Indemnity	15
9 <i>Application of s7.11 and s7.12 of the Act to the Development</i>	15
10 <i>Registration of this Agreement</i>	15

	10.1	Registration of this agreement	15
	10.2	Removal from Register	16
11		<i>Review of this Agreement</i>	16
	11.1	Review by agreement	16
12		<i>Dispute Resolution</i>	17
	12.1	Reference to Dispute	17
	12.2	Notice of Dispute	17
	12.3	Representatives of Parties to Meet	17
	12.4	Conduct pending resolution	17
	12.5	Further Notice if Not Settled	17
	12.6	Mediation	17
	12.7	Expert determination	18
	12.8	Other courses of action	19
	12.9	Confidentiality of information provided in dispute resolution process	19
	12.10	Remedies available under the Act	20
	12.11	Urgent relief	20
	12.12	Litigation	20
13		<i>Enforcement</i>	20
	13.1	Default	20
	13.2	Bank Guarantee	21
	13.3	Restriction on the issue of Construction Certificates	22
	13.4	Council may withhold Subdivision Certificate	23
	13.5	Restriction on the issue of Occupation Certificate	23
	13.6	General Enforcement	23
14		<i>Termination, Rescission or Determination</i>	23
	14.1	Termination	23
	14.2	Consequence of termination	24
	14.3	Determination	24
15		<i>Notices</i>	24
	15.1	Notices sent by email or post	24
	15.2	Time of Notice	24
16		<i>Approval and consent</i>	25
17		<i>Assignment</i>	25

17.1	Application of clause	25
17.2	Restriction on Assignment	25
17.3	Procedure for Assignment	25
18	<i>Arrangements with Mortgagee</i>	26
19	Costs	26
20	<i>Entire agreement</i>	26
21	<i>Further acts</i>	26
22	<i>Governing law and jurisdiction</i>	27
23	<i>Joint and individual liability and benefits</i>	27
24	<i>Position of Council</i>	27
24.1	Consent authority	27
24.2	Document does not fetter discretion	27
24.3	Severance of provisions	27
24.4	No Obligations	28
25	<i>Representation and warranties</i>	28
26	<i>Severability</i>	28
27	<i>Modification</i>	28
28	<i>Cooperation</i>	28
29	<i>Counterparts</i>	28
30	<i>Waiver</i>	28
31	<i>GST</i>	28
Schedule 1	Summary of requirements (section 7.4)	29
Schedule 2	Development Contributions	31
Schedule 3	Terms of Easement	32
Annexure A	Plan showing Land	34
Annexure B	Plan of Proposed Bridge	35
Annexure C	QS Report	36
Annexure D	Staging Plan	37

Agreement

Date

Parties

First party

Name Fairfield City Council (**Council**)

ABN 83 140 439 239

Contact Chris Shinn

Telephone (02) 9725 0804

Second party

Name Moon Investments Pty Ltd (**Developer**)

ACN 606 586 207

Contact Jim Castagnet

Telephone +61 2 9369 5328

Background

- A. On, 23 April 2021 the Developer made an application to Council for the Instrument Change for the purpose of making a Development Application to Council for Development Consent to carry out Development on the Land.
- B. The Instrument Change application was accompanied by an offer by the Developer to enter into this Agreement to make the Development Contributions.

Operative provisions

1 Voluntary planning agreement under the Act

The Parties agree that this Agreement is a voluntary planning agreement within the meaning of s7.4 of the Act and governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.

2 Application of this Agreement

This agreement applies to:

- (a) the Instrument Change, and
- (b) the Development, and
- (c) the Land.

3 Operation of this Agreement

This agreement commences on and from the date it is executed by all parties.

4 Definitions and interpretation

In this Agreement the following definitions apply unless the context indicates a contrary intention:

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

Assign means any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.

Authority means (as appropriate) any:

- (1) federal, state or local government;
- (2) department of any federal, state or local government;
- (3) any court or administrative tribunal; or
- (4) statutory corporation or regulatory body.

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date by any of the following trading banks:

- (1) Australia and New Zealand Banking Group Limited.
- (2) Commonwealth Bank of Australia.
- (3) Macquarie Bank.
- (4) National Australia Bank Limited.
- (5) St George Bank Limited.

- (6) Westpac Banking Corporation.
- (7) Any other financial institution approved by the Council, in its absolute discretion, in response to a request from the Developer.

Claim means any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

Completed means completed in accordance with the requirements of this agreement.

Confidential Information means any information and all other knowledge at any time disclosed (whether in writing and orally) by the parties to each other, or acquired by the parties in relation to the other's activities or services which is at the date of this agreement not already in the public domain and which:

- (1) is by its nature confidential; or
- (2) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise.).

Construction Certificate has the same meaning as in section 6.4(d) of the Act.

Contribution Value means the amount specified in **Schedules 2** in the column headed "contribution value" for each item of the Development Contributions.

Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

Defects Liability Period means with respect to the Works, a period of twelve (12) months commencing on the date of Completion of the Works.

Development means any development of the Land permitted after the Instrument Change is made.

Development Application means an application for a Development Consent.

Development Consent means any consent issued under the Act for Development.

Development Contributions means the contributions set out in **Schedule 2**, being the Works.

Easement means an easement in perpetuity granted to Council for the use and access of the public to the Footbridge on the terms set out in **Schedule 3**.

Footbridge means the footbridge constituting part of the Works.

GST has the same meaning as in the GST Law.

GST Law has the meaning given to that term 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.

Index means the 6427.00 Producer Price Index published by the Australian Bureau of Statistics (Index No 30 Building Construction – New South Wales)

Insolvency Event means the happening of any of the following events:

- (1) An application which is not withdrawn or dismissed within fourteen (14) days, is made to a court for an order or an order is made that a body corporate be wound up.

- (2) An application which is not withdrawn or dismissed within fourteen (14) days, is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate or one of them is appointed, whether or not under an order.
- (3) Except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, agreement of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them.
- (4) A body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved.
- (5) A body corporate is or states that it is insolvent.
- (6) As a result of the operation of section 459F(1) of the *Corporations Act 2001 (Cth)* (Corporations Act), a body corporate is taken to have failed to comply with a statutory demand;
- (7) A body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act.
- (8) A body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate.
- (9) A person becomes an insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event.
- (10) A receiver, manager or receiver and manager is appointed to the Developer.
- (11) A claim is filed in a court against a person that is not defended, released or otherwise settled within twenty eight (28) days of the date of its service on a person.
- (12) Anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Instrument Change means an Amendment to the Fairfield Local Environmental Plan generally in accordance with the Planning Proposal.

Land means Lot 7 Section E DP4420, Lot 1 DP205759, Lot 10 DP255023 and Lot 1 DP212183

Monetary Contribution means the Development Contributions specified as 'monetary contributions' set out in **Schedule 2**.

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

Planning Legislation means the Act, the *Local Government Act 1993* (NSW) and the *Roads Act 1993* (NSW).

Planning Proposal means the application made on 23 April 2021 to Council for the Instrument Change and which has been allocated Planning Portal reference No PP-2021-3107.

Quantity Surveyor means a person who:

- (1) is a member of their respective professional organisation and has been for at least five (5) years;
- (2) practises as a quantity surveyor for works of the same nature as the relevant Works;
- (3) is active as a quantity surveyor at the time of his appointment;
- (4) has at least three (3) years experience in valuing works of the same nature as the relevant Works; and

(5) undertakes to act fairly and promptly in accordance with the requirements of this agreement.

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

Subdivision Certificate has the same meaning as in section 6.4(d) of the Act.

Works means the Development Contributions specified as 'works' set out in **Schedule 2**.

In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business in Sydney.
- (c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars
- (e) A reference in this Agreement 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.
- (f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced
- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency
- (i) 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.
- (j) 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.
- (k) References to the word 'include' or including are to be construed without limitation.
- (l) A reference to this Agreement includes the agreement recorded in this Agreement.
- (m) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (n) Any schedules and attachments form part of this Agreement.

5 Works and Development Contributions to be made under this Agreement

5.1 Works

The Developer, at its cost, must:

- (a) obtain Development Consent, and any other consent required by a relevant Authority, for the construction and use of the Works (including any consents required from the relevant Authority under the *Roads Act 1993* (NSW) as a pre-requisite to carrying out and completing the Works);
- (b) carry out and complete the Works to the satisfaction of the Council by the time specified in **Schedule 2**; and
- (c) carry out and complete the Works:
 - (i) in accordance with the specifications referred to in **Schedule 2** for the relevant item of Work;
 - (ii) in accordance with any relevant Development Consent;
 - (iii) in accordance with the requirements of, or consents issued by, any Authority (including any consents required to be granted by the relevant Authority under the *Roads Act 1993* (NSW) in carrying out and completing the Works);
 - (iv) ensuring that:
 - (A) all necessary measures are taken to protect people, property, and the Environment;
 - (B) unnecessary interference with the passage of people and vehicles is avoided;
 - (C) nuisances and unreasonable noise and disturbances are prevented; and
 - (D) all relevant laws and regulations with respect to water, air, noise and land pollution (including 'pollution incidents') as defined under the *Protection of the Environment Operations Act 1997* (NSW);
 - (v) in accordance with any Australian Standards applicable to works of the same nature as each aspect of the Works; and
 - (vi) in a proper and workmanlike manner complying with current industry practice and standards relating to each aspect of the Works.

5.2 Design and specification of Works

- (a) The Developer must consult with Council with respect to the development of the detailed design and specification of the Works.
- (b) Before commencing construction of the Work, the Developer must submit to Council for its approval, the detailed design and specifications for the Works.
- (c) Within thirty (30) days of the date of the first submission referred to in paragraph(b), Council must either:
 - (i) notify the Developer in writing of its approval of the design and specification. The Developer is then to carry out and complete the Works in accordance with that design and specification; or
 - (ii) notify the Developer in writing that it does not approve of the design and specification (providing the Developer with detailed reasons).

- (d) If Council notifies the Developer in writing that it does not approve of the design and specification, the Developer may:
- (i) elect to amend the design and specification and submit to Council the amended design and specification, in which case the approval process set out in this clause 5.2 applies to that amendment; or
 - (ii) if the Developer does not agree with the modifications requested by Council, then it may refer the relevant matter for dispute resolution in accordance with this agreement.

5.3 Contribution Value

If the Developer's actual cost of carrying out the Works, including any costs incurred pursuant to this agreement, determined at the date on which the Works are Completed, differs from the Contribution Value, then subject to the Works having been sufficiently completed in accordance with this agreement, neither party will be entitled to claim credit or reimbursement, as the case may be, for the difference.

5.4 Access to the Land and location of Works

- (a) The Developer is to permit the Council, its officers, employees, agents and contractors to enter the Land at any time during normal business hours, upon giving reasonable prior written notice, in order to inspect, examine or test any of the Works. In this clause "test" does not include destructive testing of the Works. To the extent that it is able the Developer must enable Council, its officers, employees, agents and contractors access to the location of the Works where this is not the Land, Council land or a public road.

5.5 Indexation of Amounts payable by Developer

The Contribution Value of the Development Contributions will be increased (with the calculation to be made as from the date any such amount is due to be paid under this agreement) in accordance with the following formula:

$$A = B \times \frac{C}{D}$$

where:

- A = the indexed amount;
- B = the relevant amount as set out in this agreement;
- C = the Index most recently published before the date that the relevant payment or the calculation with respect to the relevant amount is to be made; and
- D = the Index most recently published before the commencement date of this agreement.

If A is less than B, then the amount of the relevant Development Contribution will not change.

5.6 Grant of Easement

The Developer, at its own expense, must register the Easement on the title to the Land in accordance with **Schedule 2** on the terms set out in **Schedule 3**, or on such other terms acceptable to Council, acting reasonably, to enable the public to use and access the Footbridge.

5.7 Arrangements for the pedestrian bridge generally

The Developer acknowledges and agrees that nothing in this Agreement can be construed as Council:

- (a) being obligated to, or consenting to, accepting ownership of, or risk in, the Works; and
- (b) granting any approval for, or consent to, the Works for the purpose of the *Roads Act 1993* (NSW) (**Roads Act**) or the Act.

The Developer further acknowledges and agrees that:

- (c) a consent under s138 of the Roads Act from the relevant roads authority will be required to allow the Works to be undertaken;
- (d) it is likely that a lease of the air space within which the Works are undertaken under s149 of the Roads Act will be required by the relevant roads authority; and
- (e) that it is likely that the following may be required as conditions of any such consent or lease (which for clarity are matters separate to any obligation under this Agreement):
 - (i) security with respect to the construction and maintenance of the Works;
 - (ii) the payment of rent under the lease;
 - (iii) a requirement for easements for support of the Works; and
 - (iv) a requirement to remove the Works at the end of the lease.

5.8 *Failure to obtain the Bridge Approvals*

- (a) For the purpose of this clause 5.8 the **Bridge Approvals** are any statutory approvals required for the conduct of the Works, including but not limited to development consent under the Act, any consents required under the *Roads Act 1993* (NSW) and any consent required from Transport for NSW, including that of Sydney Trains and or Transport Asset Holding Entity of New South Wales (TAHE), required to allow the Works to be undertaken and/or public access from Cabramatta Train Station to the pedestrian bridge forming the Works.
- (b) If the Developer is unable to obtain the Bridge Approvals, then the Developer may elect to make a monetary contribution to Council in an amount equal to one hundred and ten per cent (110%) of the then Contribution Value of the Works in lieu of completing the Works.
- (c) If in the Developer attempting to obtain the Bridge Approvals, the estimated cost to the Developer in complying with conditions imposed by Transport for NSW, including that of Sydney Trains and or Transport Asset Holding Entity of New South Wales (TAHE) with respect to any works to Cabramatta Train Station exceeds five per cent (5%) of the then Contribution Value of the Works the parties will meet in good faith to discuss whether the Works will be undertaken or whether the Developer will instead make a monetary contribution to Council in an amount equal to one hundred and ten per cent (110%) of the then Contribution Value of the Works in lieu of completing the Works.

- (d) If the Developer elects to make a monetary contribution under paragraph (b), or the parties agree that such a monetary contribution will be paid under paragraph (c), then:
 - (i) clauses 5, 6, 7 and 13.2(a)(ii) do not apply; and
 - (ii) a reference to the *Works* in the remaining provisions of this Agreement is to be read as a reference to the relevant monetary contribution.
 - (e) If a monetary contribution is made to Council in an amount equal to one hundred and ten per cent (110%) of the then Contribution Value of the Works in lieu of completing the Works pursuant to this clause, Council as a discretion as to how that monetary contribution is expended, and where possible will consider and prioritise using it to improve public amenities and public services within the area of the Development.
- 6 Completion of Works
- 6.1 *Issue of Completion Notice*
- If the Developer considers that any particular item of the Works is complete it must serve a notice on Council which:
- (a) is in writing;
 - (b) identifies the particular item of the Works to which it relates; and
 - (c) specifies the date on which the Developer believes the relevant item of the Works was completed,
- (Completion Notice).**
- 6.2 *Inspection by Council*
- (a) Council must inspect the Works set out in a Completion Notice within ten (10) business days of the receipt of that notice.
 - (b) If Council fails to carry out an inspection required under paragraph (a) the Works referred to in the relevant Completion Notice will be deemed to be Complete and do not require rectification.
- 6.3 *Rectification Notice*
- (a) Within twenty (20) business days of inspecting the Works set out in a Completion Notice Council must provide notice in writing (**Rectification Notice**) to the Developer that the Works set out in the Completion Notice:
 - (i) have been Completed; or
 - (ii) have not been Completed, in which case the notice must also detail:
 - (A) those aspects of the Works which have not been Completed; and
 - (B) the work Council requires the Developer to carry out in order to rectify the deficiencies in those Works.
 - (b) If Council does not provide the Developer with a Rectification Notice in accordance with paragraph 6.3 (a), the Works set out in the Completion Notice will be deemed to have been completed and not requiring rectification.
 - (c) Where Council serves a Rectification Notice on the Developer, the Developer must:

- (i) rectify the Works in accordance with that notice; or
 - (ii) serve a notice on the Council that it disputes the matters set out in the notice.
- (d) Where the Developer:
 - (i) serves notice on Council in accordance with paragraph (c)(ii), the dispute resolution provisions of this agreement apply; or
 - (ii) rectifies the Works in accordance with paragraph (c)(i), it must serve upon the Council a new Completion Notice for the Works it has rectified.

7 Defects Liability

7.1 Defects Notice

- (a) At any time within the Defects Liability Period, where any part of the Works has been Completed but those Works contain a material defect which:
 - (i) Materially adversely affects the ordinary use and/or enjoyment of the relevant Works; or
 - (ii) will require rectification works to be performed on them at some time in the future as a result of the existence of the defect,

(Defect) Council may issue a defects notice (**Defects Notice**) concerning those Works.

- (b) A Defects Notice must contain the following information:
 - (i) the nature and extent of the Defect;
 - (ii) the work Council requires the Developer to carry out in order to rectify the Defect; and
 - (iii) the time within which the Defect must be rectified (which must be a reasonable time and not less than ten (10) business days).

7.2 Developer to Rectify Defects

- (a) The Developer must rectify the Defects contained within a Defects Notice as soon as practicable after receipt of the Defects Notice.
- (b) The Developer must follow the procedure set out in clause 6.3 in respect of the satisfaction of the Defects Notice.

7.3 Right of Council to Step-In

Council, at its absolute discretion, may enter upon the Land for the purpose of satisfying the Defects Notice where the Developer has failed to comply with a Defects Notice but only after giving the Developer ten (10) business days written notice of its intention to do so.

7.4 Consequence of Step-In

If Council elects to exercise the step-in rights granted to it under clause 7.3 then:

- (a) Council may:
 - (i) enter upon any part of the Land that it requires access to in order to satisfy the obligations of the Developer in accordance with the Defects Notice; and
 - (ii) rectify the relevant Defects in accordance with the Defects Notice; and

- (b) the Developer must not impede or interfere with Council in undertaking that work.

7.5 *Costs of Council*

- (a) Where Council exercises its step-in rights, it may call upon the Defects Security provided by the Developer pursuant to clause 13.2 and recover as a debt due in a court of competent jurisdiction any difference between the amount of the Defects Security and the costs incurred by the Council in rectifying the Defects.
- (b) For the avoidance of any doubt the right of Council to require the rectification of Defects and to Step In lapses at the conclusion of the Defects Liability Period.

8 Developer Warranties and Indemnities

8.1 *Warranties*

The Developer warrants to Council that it is:

- (a) Beneficially entitled to the Land;
- (b) able to fully comply with its obligations under this agreement;
- (c) it has full capacity to enter into this agreement; and
- (d) there is no legal impediment to it entering into this agreement, or performing the obligations imposed under it.

8.2 *Indemnity*

The Developer indemnifies Council in respect of any Claim that may arise as a result of the conduct of the Works but only to the extent that any such Claim does not arise as a result of the negligent acts or omissions of Council.

9 Application of s7.11 and s7.12 of the Act to the Development

- (a) This agreement does not exclude the application of section 7.11 of the Act to the Development.
- (b) This agreement does not exclude the application of section 7.12 of the Act to the Development.
- (c) This agreement does not exclude the application of section 7.24 of the Act to the Development.
- (d) The benefits under this agreement are not to be taken into consideration in determining a development contribution under section 7.11 of the Act.

10 Registration of this Agreement

10.1 *Registration of this agreement*

- (a) The Developer agrees to procure the registration of this agreement under the Real Property Act 1900 (NSW) in the relevant folios of the Register in accordance with section 7.6 of the Act.
- (b) The Developer, at their own expense, must, as soon as reasonably practicable and no later than ten (10) Business Days after this agreement comes into operation and before the issue of any Construction Certificate or Subdivision Certificate for the Development; take all necessary and practical steps, and otherwise do anything that Council reasonably requires to procure:
 - (i) the consent of each person who:

- (A) has an estate or interest in the land registered under the *Real Property Act 1900* (NSW); or
 - (B) is seized or possessed of an estate or interest in the land.
- (ii) an acceptance of the terms of this agreement and an acknowledgement in writing from any existing mortgagee in relation to the Land that each will consent to the registration of this agreement and be bound by and adhere to the provisions of this agreement as owner of the Land or as mortgagee in possession, as the case may be, in accordance with section 7.6 of the Act,
- (iii) the execution of any documents;
- (iv) the production of the relevant certificates of title or electronic equivalent, to enable the registration of this agreement in accordance with this clause; and the lodgement of this agreement with the Land Registry Services on Land; and
- (v) procure the registration of this agreement by the Land Registry Services in the relevant folios of the Register.
- (c) The Developer must provide documentary evidence that the registration of this agreement has been completed to Council within 5 Business Days of receiving confirmation that the registration has occurred.

10.2 *Removal from Register*

- (a) The Council will provide a release and discharge of this agreement so that it may be removed from the folios of the Register for the Land (or any part of it) provided the Council is satisfied the Developer has duly fulfilled its obligations under this agreement, and is not otherwise in default of any of the obligations under this agreement.
- (b) If this Agreement is terminated, then the parties will do all things necessary to promptly remove this Agreement from the title of the Land.

11 *Review of this Agreement*

11.1 *Review by agreement*

- (a) This agreement may be reviewed or modified by agreement between the parties using their best endeavours and acting in good faith.
- (b) For the purposes of clause 12.1 of this agreement and subject to clause 12.2, no modification or review of this agreement will be of any force or effect unless it is in writing, exhibited in accordance with the requirements of the Act and Regulation and signed by the parties to this agreement.
- (c) For the purposes of clause 12.1 of this agreement and subject to clause 12.2, a party is not in breach of this agreement if it does not agree to an amendment to this agreement requested by a party in, or as a consequence of, a review.

12 Dispute Resolution

12.1 *Reference to Dispute*

If a dispute arises between the parties in relation to this agreement, the parties must not commence any court proceedings relating to the dispute unless the parties have complied with this clause, except where a party seeks urgent interlocutory relief.

12.2 *Notice of Dispute*

The party wishing to commence the dispute resolution process must give written notice (Notice of Dispute) to the other parties which:

- (a) adequately identifies and provides details of the nature of the dispute,
- (b) states the alleged basis of the dispute,
- (c) the position which the party issuing the Notice of Dispute believes is correct;
- (d) states what the party commencing the dispute resolution process believes will resolve the dispute; and
- (e) designates its representative to negotiate the Dispute.

12.3 *Representatives of Parties to Meet*

- (a) The representatives of the parties must promptly (and in any event within 10 Business Days of the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute.
- (b) The parties may, without limitation:
 - (i) resolve the dispute during the course of that meeting,
 - (ii) agree that further material or expert determination in accordance with clause 12.7 about a particular issue or consideration is needed to effectively resolve the dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or
 - (iii) agree that the parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

12.4 *Conduct pending resolution*

The parties must continue to perform their respective obligations under this agreement if there is a Dispute but will not be required to complete the matter the subject of the Dispute, unless the appropriate party indemnifies the other parties against costs, damages and all losses suffered in completing the disputed matter if the Dispute is not resolved in favour of the indemnifying party.

12.5 *Further Notice if Not Settled*

If the dispute is not resolved within 10 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (Determination Notice) by mediation under clause 12.6 or by expert determination under clause 12.7.

12.6 *Mediation*

If a party gives a Determination Notice calling for the dispute to be mediated:

- (a) The parties must agree to the terms of reference of the mediation within 15 Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- (b) The mediator will be agreed between the parties, or failing agreement within 15 Business Days of receipt of the Determination Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) The mediator appointed pursuant to this clause 12.6 must:
 - (i) Have reasonable qualifications and practical experience in the area of the dispute; and
 - (ii) Have no interest or duty which conflicts or may conflict with his or her function as a mediator they being required to fully disclose any such interest or duty before their appointment;
- (d) The mediator shall be required to undertake to keep confidential all matters coming to their knowledge by reason of their appointment and performance of their duties;
- (e) The parties must within 15 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation (except if a resolution of the Council is required to appoint a representative, the Council must advise of the representative within 5 Business Days of the resolution);
- (f) The parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (g) In relation to costs and expenses:
 - (i) Each party will bear its own professional and expert costs incurred in connection with the mediation; and
 - (ii) The costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

12.7 *Expert determination*

If the dispute is not resolved under clause 12.3 or clause 12.6, or the parties otherwise agree that the dispute may be resolved by expert determination, the parties may refer the dispute to an expert, in which event:

- (a) The dispute must be determined by an independent expert in the relevant field:
 - (i) Agreed upon and appointed jointly by the parties; and
 - (ii) In the event that no agreement is reached or no appointment is made within 20 Business Days of the agreement to refer the dispute to an expert, appointed on application of a party by the then President of the Law Society of New South Wales;
- (b) The expert appointed to determine a Dispute:
 - (i) must have a technical understanding of the issues in dispute;

- (ii) must not have a significantly greater understanding of one party's business, functions or operations which might allow the other side to construe this greater understanding as a bias; and
 - (iii) must inform the parties before being appointed of the extent of the expert's understanding of each party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the parties.
- (c) The expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;
- (b) The determination of the dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (c) The expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (d) If any independent expert does not award costs, each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs; and
- (e) Any determination made by an expert pursuant to this clause is final and binding upon the parties except unless:
 - (i) Within 20 Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and commences litigation; or
 - (ii) The determination is in respect of, or relates to, termination or purported termination of this agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal.

12.8 *Other courses of action*

If:

- (a) the parties cannot agree to refer the matter to mediation or determination by an expert; or
- (b) the mediation has not resulted in settlement of the dispute, the mediation has been terminated and the parties have not agreed to refer the matter to expert determination within five (5) Business Days after termination of the mediation,

then either party may take whatever course of action it deems appropriate for the purpose of resolving the Dispute.

12.9 *Confidentiality of information provided in dispute resolution process*

- (a) The parties agree, and must procure that the mediator and the expert agree as a condition of his or her appointment:
 - (i) subject to paragraph (a), to keep confidential all documents, information and other material disclosed to them during or in relation to the mediation or expert determination;
 - (ii) not to disclose any confidential documents, information and other material except:
 - (A) to a party or adviser or consultant who has signed a confidentiality undertaking; or
 - (B) if required by Law or any Authority to do so; and

- (iii) not to use confidential documents, information or other material disclosed to them during or in relation to the mediation or expert determination for a purpose other than the mediation or expert determination.
- (b) The parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:
 - (i) views expressed or proposals or suggestions made by a party or the mediator or the expert during the expert determination or mediation relating to a possible settlement of the Dispute;
 - (ii) admissions or concessions made by a party during the mediation or expert determination in relation to the Dispute; and
 - (iii) information, documents or other material concerning the dispute which are disclosed by a party during the mediation or expert determination unless such information, documents or facts would be discoverable in judicial or arbitral proceedings.

12.10 *Remedies available under the Act*

This clause does not operate to limit the availability of any remedies available to Council under the Act.

12.11 *Urgent relief*

This clause does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this agreement.

12.12 *Litigation*

If the dispute is not finally resolved in accordance with this clause, then either party is at liberty to litigate the dispute.

13 *Enforcement*

13.1 *Default*

- (a) In the event a party (the **First Party**) considers another party (the **Second Party**) has failed to perform and fulfil an obligation under this agreement, it may give notice in writing to the other party (**Default Notice**) specifying:
 - (i) the nature and extent of the alleged default;
 - (ii) if:
 - (A) the default is capable of being rectified other than by the payment of compensation, what the First Party requires the Second Party to do in order to rectify the default; or
 - (B) the default is not capable of being rectified other than by payment of compensation, the amount of compensation the First Party requires the Second Party to pay in order to rectify the default, and
 - (iii) the time within which the First Party requires the default to be remedied; which must be a reasonable time not being less than twenty one (21) days.

- (b) In determining whether the default is capable of being rectified, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.
- (c) If a party disputes the Default Notice it may refer the dispute to dispute resolution under clause 12 of this agreement.
- (d) Where the Developer defaults but only prior to the expiry of the Defects Liability Period, Council may, in addition to any rights it has at Law:
 - (i) exercise the Step in Rights so as to carry out any work specified in the relevant Default Notice; or
 - (ii) call on the Security to the extent of any compensation claimed in a Default Notice and not paid by the Developer.

13.2 *Bank Guarantee*

- (a) Subject to paragraph (b) the Developer must provide to the Council a Bank Guarantee:
 - (i) in an amount equivalent to seventy-five per cent (75%) of the sum of the Contribution Values for the Works prior to the issue of a Construction Certificate for the Development (**Primary Security**); and
 - (ii) amount equivalent to fifteen per cent (15%) of the relevant Primary Security as a pre-condition to the Completion of the relevant item of the Works (**Defect Security**)
 (collectively the **Security**).
- (b) The Developer may satisfy its obligations under paragraph (a) (either in whole or in part), by directing Council to retain any Security held by Council which is required to be released by Council under this agreement.
- (c) The Council may reject any Bank Guarantee that contains errors, or if it has received the Bank Guarantee, require at any time the Developer Parties to obtain a replacement Bank Guarantee that rectifies any such errors or otherwise obtain rectification of the errors, provided that the amount of that replacement is not less than that which is required to be provided under this agreement. The Developer Parties must provide the replacement Bank Guarantee, or otherwise obtain rectification of the errors, within 5 Business Days of receiving the Council's request.
- (d) Without limiting any other remedies available to it, Council may call on Security provided under this clause if:
 - (i) the Developer is in breach of this agreement and has failed to rectify the breach within a reasonable period of time after having been given reasonable notice (which must not be less than 21 Business Days) in writing to do so in accordance with clause 13.1 of this agreement; or
 - (ii) the Developer is subject to an Insolvency Event.
- (e) If Council calls on any Security, it must use the amount so paid to it in satisfaction of any costs incurred by it in remedying the relevant breach under paragraph (d).

- (f) Within 20 Business Days of the expiry of a Bank Guarantee provided under clause (a), or if Council calls on the Security in accordance with paragraph (d) and the Security has not yet been replaced, the Developer must provide Council with one or more replacement Bank Guarantees (Replacement Bank Guarantee) in an amount not less than what is required in accordance with this agreement.
- (g) On receipt of a Replacement Bank Guarantee provided under paragraph (f)), the Council must release and return to the Developer Parties, as directed, the Bank Guarantee that has been replaced as soon as reasonably practicable.
- (h) At any time following the provision of a Bank Guarantee under this clause, the Developer Parties may provide the Council with one or more replacement Bank Guarantees totalling the amount of all Bank Guarantees required to be provided under this clause for the time being. On receipt of such replacement Bank Guarantee, the Council must release and return to the Developer, or as directed, the Bank Guarantee(s) which it holds that have been replaced as soon as reasonably practicable.
- (i) Subject to paragraph (d) the Council may apply the proceeds of a Bank Guarantee in satisfaction of:
 - (i) any obligation of the Developer under this agreement that is secured by the Bank Guarantee; and
 - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this agreement.
- (j) Nothing in this clause 13.2 prevents or restricts the Council from taking any enforcement action in relation to:
 - (i) any obligation of the Developer under this agreement; or
 - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this agreement,
 - (iii) that is not or cannot be satisfied by calling on a Bank Guarantee.
- (k) Unless:
 - (i) Council has made or intends to make a demand against any Security provided by the Developer;
 - (ii) the Development Contributions on account of which that Security was provided have not been made; or
 - (iii) the Developer is in breach of this agreement at the relevant time,
 Council, upon a written request being made by the Developer, must return the Security within ten (10) business days of such a request being made.

13.3 *Restriction on the issue of Construction Certificates*

- (a) The Developer may only make, or cause, suffer or permit the making of, an application for a Construction Certificate in respect of the Development if, at the date of the application, the Developer is not in breach of its obligation to make any Development Contribution under this agreement.
- (b) Council may withhold the issue of a Construction Certificate if, at the relevant time, the Developer is in breach of any obligation to make any Development Contribution under this agreement until such time as:

- (i) the breach is rectified; or
- (ii) Council calls upon the Security provided by the Developer in respect of the Development Contribution to which the breach relates.

13.4 Council may withhold Subdivision Certificate

- (a) The Developer may only make, or cause, suffer or permit the making of, an application for a Subdivision Certificate in respect of the Development if, at the date of the application, the Developer is not in breach of its obligation to make any Contribution under this agreement.
- (b) Council may withhold the issue of a Subdivision Certificate if, at the relevant time, the Developer is in breach of any obligation to make any Contribution under this agreement until such time as:
 - (i) the breach is rectified; or
 - (ii) Council calls upon the Security provided by the Developer in respect of the Contribution to which the breach relates.

13.5 Restriction on the issue of Occupation Certificate

- (a) The Developer may only make, or cause, suffer or permit the making of, an application for an Occupation Certificate in respect of the Development if, at the date of the application, the Developer is not in breach of its obligation to make any Contribution under this agreement.
- (b) An Occupation Certificate must not be issued with respect to the Development if, at the relevant time, the Developer is in breach of any obligation to make any Development Contribution under this agreement until such time as:
 - (i) the breach is rectified; or
 - (ii) Council calls upon the Security provided by the Developer in respect of the Development Contribution to which the breach relates.

13.6 General Enforcement

- (a) Subject to clause 12 of this agreement:
 - (i) without limiting any other remedies available to the parties, this agreement may be enforced by any party in any Court of competent jurisdiction;
 - (ii) a party may bring proceedings in the Land and Environment Court to enforce any aspect of this agreement or any matter to which this agreement relates.
- (b) The Council may exercise any function under the Act or any other Act or law relating to the enforcement of any aspect of this agreement or any matter to which this agreement relates.

14 Termination, Rescission or Determination

14.1 Termination

This agreement terminates in the following events:

- (a) The Instrument Change is not made and Gazetted.
- (b) The parties agree in writing to terminate the operation of this agreement at any time.

14.2 *Consequence of termination*

Upon termination of this Planning Agreement all rights and obligations of the parties are discharged.

14.3 *Determination*

This Planning Agreement will determine upon the Developer satisfying all of the obligations imposed on it in full.

15 *Notices*

15.1 *Notices sent by email or post*

- (a) Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
 - (i) Delivered or posted to that Party at its address set out below
 - (ii) Emailed to that Party at its email address set out below.

Council

Attention: General Manager
Address: Fairfield City Council
Administration Centre
86 Avoca Road,
Wakeley NSW 2176

Email: mailmail@fairfieldcity.nsw.gov.au

Developer

Attention: Jim Castagnet

Moon Investments

Address: 1705/101 Grafton St, Bondi Junction, NSW 2022

Email: jim@pdworkshops.com.au

Change of Address

- (b) If a party gives the other party 3 business days' notice of a change of its address or email address, any notice, consent, information, application or request is only given or made by that other party if it is delivered or posted, to the latest address.

15.2 *Time of Notice*

- (a) Any notice, consent, information, application or request is to be treated as given or made at the following time:
 - (i) if it is delivered, on the day of delivery if a Business Day, otherwise on the next Business Day.
 - (ii) If it is sent by post, 3 business days after it is posted.
 - (iii) if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next Business Day.

- (iv) If by email on the date that it enters into the receiver's electronic system if a Business Day, otherwise on the next Business Day.
- (b) If any notice, consent, information, application or request is delivered, 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.
- (c) For the purpose of this clause the address of a person is the address set out in this agreement or another address of which that person may from time to time give notice to each other person.

16 Approval and consent

Except as otherwise set out in this Agreement:

- (a) Council may give or withhold an approval or consent to be given under this Agreement in Council's absolute discretion and subject to any conditions determined by Council; and
- (b) Council is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

17 Assignment

17.1 Application of clause

This clause 17 only applies when this agreement is not registered on the title of the Land.

17.2 Restriction on Assignment

Other than in accordance with this clause 17 the Developer may not:

- (a) Assign its interest in any part of the Land; and/or
- (b) Assign their rights or obligations under this agreement.

17.3 Procedure for Assignment

- (a) If the Developer:

- (i) wishes to Assign its interest in any part of the Land; and/or
- (ii) wishes to Assign its rights or obligations under this agreement,

then the Developer must:

- (iii) provide a written request to Council for the consent of Council to the relevant Assignment;
- (iv) provide Council with any evidence required by Council, acting reasonably, to satisfy Council that the third party in whose favour the Assignment is to be made (**Assignee**) is reasonably capable of performing the obligations under this agreement that are to be Assigned to it;
- (v) obtain written consent of Council to the relevant Assignment; and
- (vi) at no cost to Council, procure:
 - (A) the execution by the Assignee of an appropriate deed where the Assignee agrees to be bound by the terms of this agreement; and

- (B) the provision of all Securities to Council by the Assignee that the Developer is required to provide under this agreement (and any additional securities if required by Council acting reasonably) at the same time as, or prior to, entering into that deed.
 - (b) Council is under no obligation to consider granting its consent to any request made by the Developer under paragraph (a)(iii) if, at the time the request is made, the Developer is in breach of this agreement.
 - (c) If Council consents to an Assignment, the Assignor is released from all of its obligations under this agreement from the date of the consent.
- 18 Arrangements with Mortgagee
- (a) The Developer agrees with the Council that if the Developer mortgages the Land after this agreement is entered into they must use all reasonable efforts at that time to arrange a multiple party deed of agreement between the Council, the Developer, and the mortgagee who will be providing finance for the Works so that the mortgagee accepts that the responsibilities set out in this agreement are binding upon the mortgagee in the event that the Developer defaults under the mortgage and the mortgagee takes possession of the Land.
 - (b) The terms of the adoption of the obligations of the Developer by the mortgagee shall be as reasonably required by the Council. The agreement shall be prepared at the cost of the Developer.
- 19 Costs
- (a) The Developer must pay the Council's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution, carrying into effect, enforcement and release and discharge of this agreement, including the reasonable costs of obtaining any legal advice in connection with this agreement, no later than 10 Business Days after receiving a demand from the Council to pay such costs.
 - (b) The Developer agrees to pay or reimburse the costs and expenses incurred by Council in connection with the advertising and exhibition of this agreement in accordance with the Act.
 - (c) The Developer agrees to pay Council any administrative fees as required by Council, acting reasonably, in connection with the administration of this agreement.
- 20 Entire agreement
- This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.
- 21 Further acts
- Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

22 Governing law and jurisdiction

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

23 Joint and individual liability and benefits

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

24 Position of Council

24.1 *Consent authority*

The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the terms of the Planning Legislation.

24.2 *Document does not fetter discretion*

This agreement is not intended to operate to fetter, in any unlawful manner:

- (a) the power of Council to make any Law; or
- (b) the exercise by Council of any statutory power or discretion,

(Discretion).

24.3 *Severance of provisions*

- (a) No provision of this agreement is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this agreement is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
 - (i) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 24 is substantially satisfied; and
 - (ii) in the event that paragraph (a)(ii) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect; and
 - (iii) to endeavour to satisfy the common objectives of the parties on relation to the provision of this agreement which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.
- (b) Where the Law permits Council to contract out of a provision of that Law or gives Council power to exercise a Discretion, then if Council has in this agreement contracted out of a provision or exercised a Discretion under this agreement, then to the extent of this agreement is not to be taken to be inconsistent with the Law.

24.4 *No Obligations*

Nothing in this agreement will be deemed to impose any obligation on Council to exercise any of its functions under the Act in relation to the Instrument Change, the Land or the Development in a certain manner.

25 *Representation and warranties*

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

26 *Severability*

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

27 *Modification*

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

28 *Cooperation*

Each party must sign, execute and deliver all agreements, documents, instruments and act reasonably and effectively to carry out and give full effect to this agreement and the rights and obligations of the parties under it.

29 *Counterparts*

This agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

30 *Waiver*

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

31 *GST*

If any Party reasonably decides that it is liable to pay GST on a supply made to the other Party under this Agreement and the supply was not priced to include GST, then recipient of the supply must pay an additional amount equal to the GST on that supply.

Schedule 1

Summary of requirements (section 7.4)

Subject and subsection of the Act	Planning Agreement
Planning instrument and/or Development Application – Section 7.4(1)	
The Developer has:	
(a) Sought a change to an environmental planning instrument	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
(b) Made, or propose to make a Development Application	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
(c) Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Description of the land to which the planning Agreement applies – Section 7.4(3)(a)	
Description of the application – Section 7.4(3)(b)	See the definition of Planning Proposal.
The scope, timing and manner of delivery of contribution required by the Planning Agreement – Section 7.4(3)(c)	See clause 5.
Applicability of section 7.11 of the Act – Section 7.4(3)(d)	This section is not excluded by this agreement. See clause 9.
Applicability of section 7.12 of the Act – Section 7.4(3)(d)	This section is not excluded by this agreement. See clause 9
Applicability of section 7.24 of the Act – Section 7.4(3)(d)	This section is not excluded by this agreement. See clause 9
Mechanism for dispute resolution – Section 7.4(3)(f)	See clause 12
Enforcement of the Planning Agreement – Section 7.4(3)(g)	See clause 13
Registration of the Planning Agreement – Section 7.6	See clause 10
No obligation to grant consent or exercise functions – Section 7.4(9)	See clause 24.

Development Contributions	Specification	Time for Completion	Contribution Value
Works	Construction of a footbridge connection and ancillary works including lift to Cabramatta Railway Station from the Development	Prior to the issue of an Occupation Certificate for the Development.	\$4,182,837
Registration of Easement for Footbridge	Registration of an Easement on the title to the Land on the terms of the Easement as set out in Schedule 3 unless otherwise agreed by Council.	Prior to the issue of an Occupation Certificate for the Development.	N/A

- 1.1 The Registered Proprietor grants to the Benefitting Authority and the to all members of the public, a free and full right to access, use and occupy the Footbridge and remain on the Footbridge during such days and reasonable times as nominated from time to time by the Benefitting Authority

For the avoidance of doubt it shall not be a breach of this condition or the Easement granted under it if Sydney trains or TAHE requires that access to the Station Concourse be closed or restricted at any time or times due to security or operational requirements of the Sydney train system or affecting Cabramatta Railway Station. This clause shall survive the determination of this Agreement.

- 1.2 The Registered Proprietor must maintain, and/or allow the Benefitting Authority and the Benefitting Authority's employees, consultants and agents to maintain, the Footbridge to ensure it is, at all times:

- (1) in good repair;
- (2) in a safe condition;
- (3) structurally stable;
- (4) in a condition suitable for its intended use; and
- (5) in compliance with all applicable laws,

and must:

- (6) promptly repair any damage to the Footbridge from any cause;
- (7) do all things necessary and in accordance with any reasonable direction of the Benefitting Authority to ensure that the Footbridge is maintained in the condition required under this clause 1.2; and
- (8) pay all costs incurred by it in complying with this clause 1.2, and any costs incurred by the Benefitting Authority in rectifying any non-compliance with this clause 1.2.

- 1.3 The Registered Proprietor must obtain planning approval (if required) to undertake any works required to give effect to the maintenance requirements under clause 1.2.

- 1.4 The Registered Proprietor releases the Benefitting Authority from, and indemnifies the Benefitting Authority against, any loss or damage suffered or incurred by the Benefited Authority in connection with the existence, use or occupation of the Footbridge except to the extent that the loss or damage arises as a direct result of a negligent act or omission of the Benefitting Authority.

- 1.5 In this easement:

Footbridge means the pedestrian footbridge constructed within the site of this easement, together with any works ancillary to that footbridge, including lifts, connecting the Land to Cabramatta Railway Station.

Land means the land that is, or was (prior to its subdivision) contained within Lot 7 Section E DP4420, Lot 1 DP205759, Lot 10 DP255023 and Lot 1 DP212183

Benefitting Authority means Fairfield City Council (ABN 83 140 439 239).

Registered Proprietor means the registered proprietor of the Land from time to time, and all its heirs, executors, assigns and successors in title and, where there are two or more registered proprietors of the land burdened, those persons jointly and severally.

Name of Authority with the right to release, vary or modify this easement: Fairfield City Council.

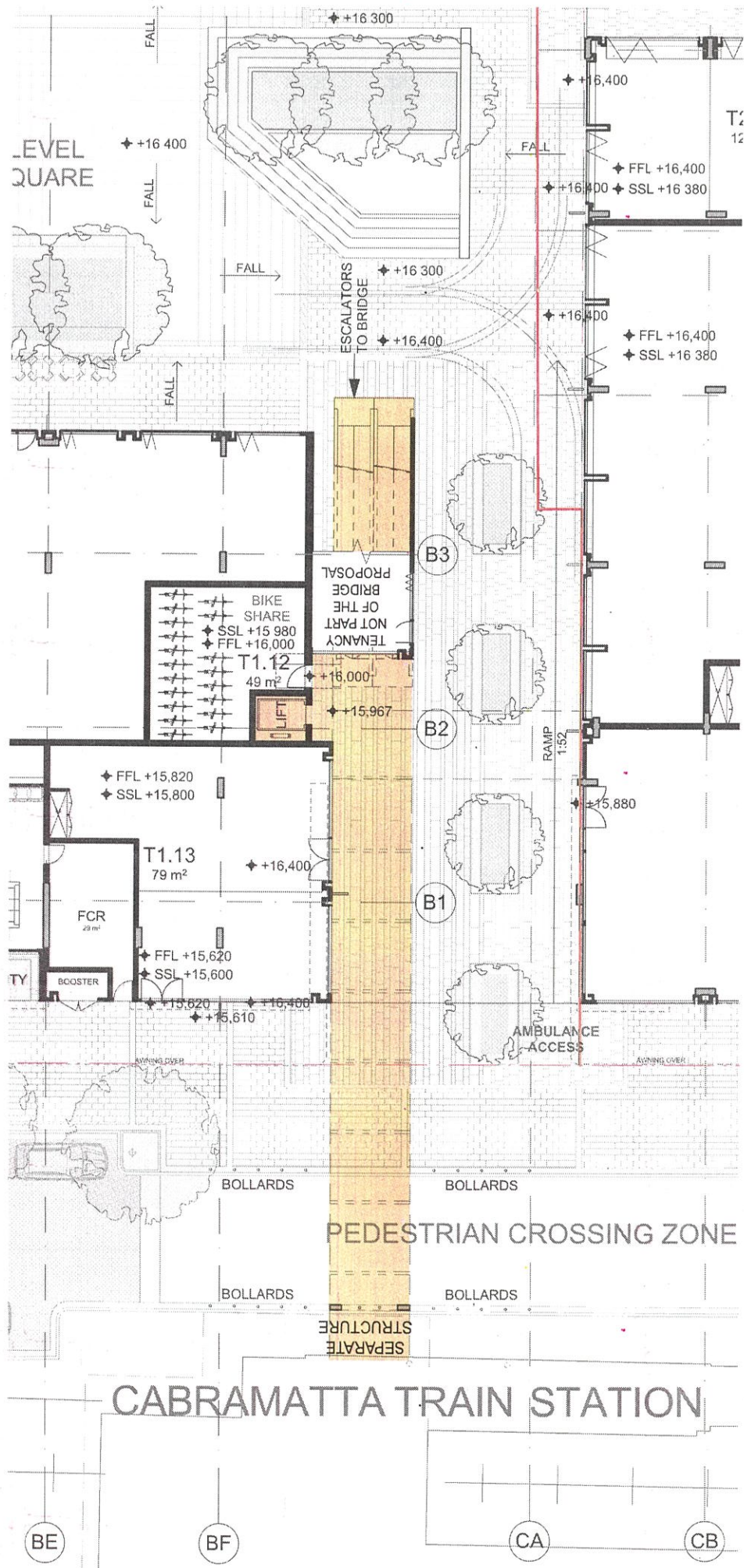


Land Affected by the Planning Proposal

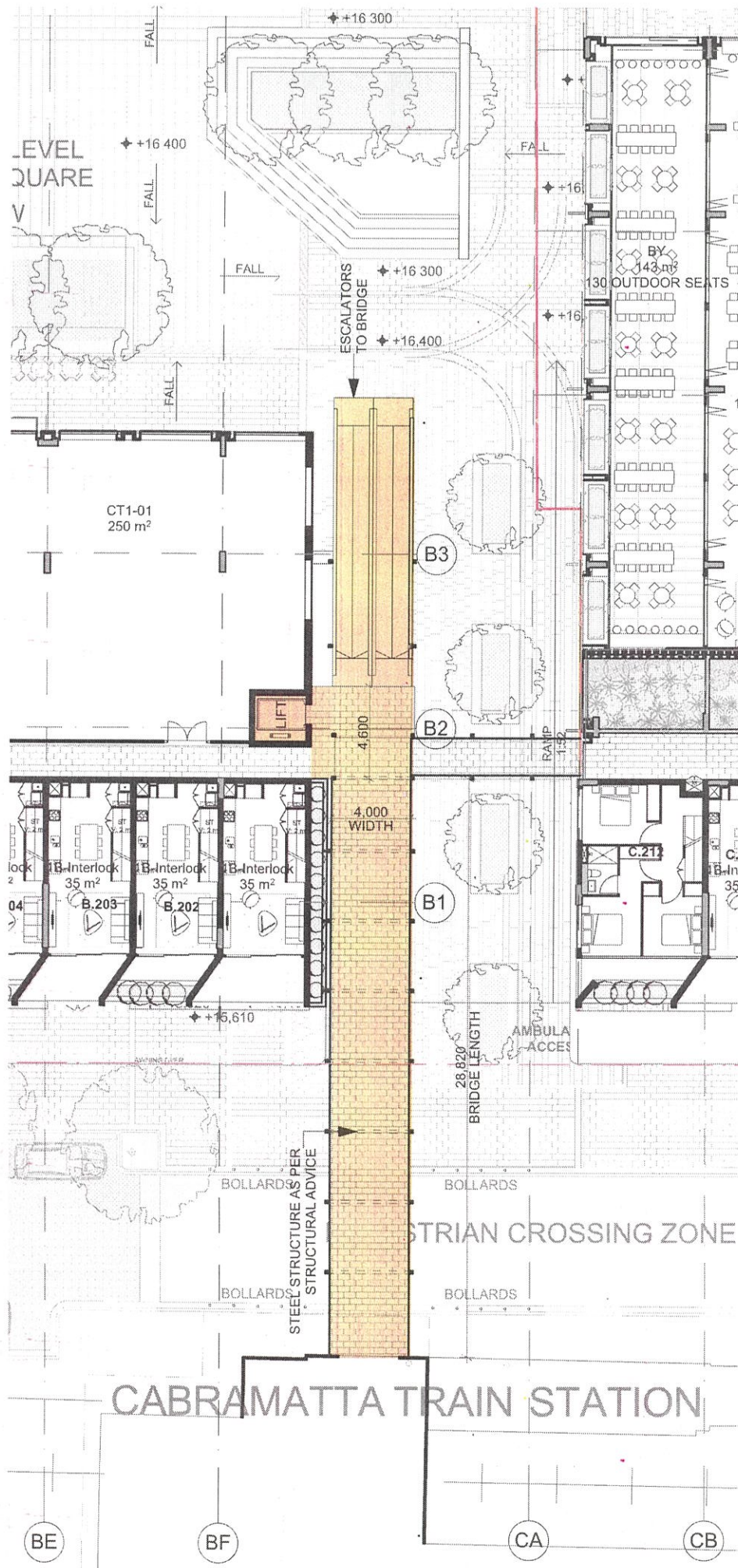
CABRAMATTA EAST

BRIDGE LINK
28.04.2021

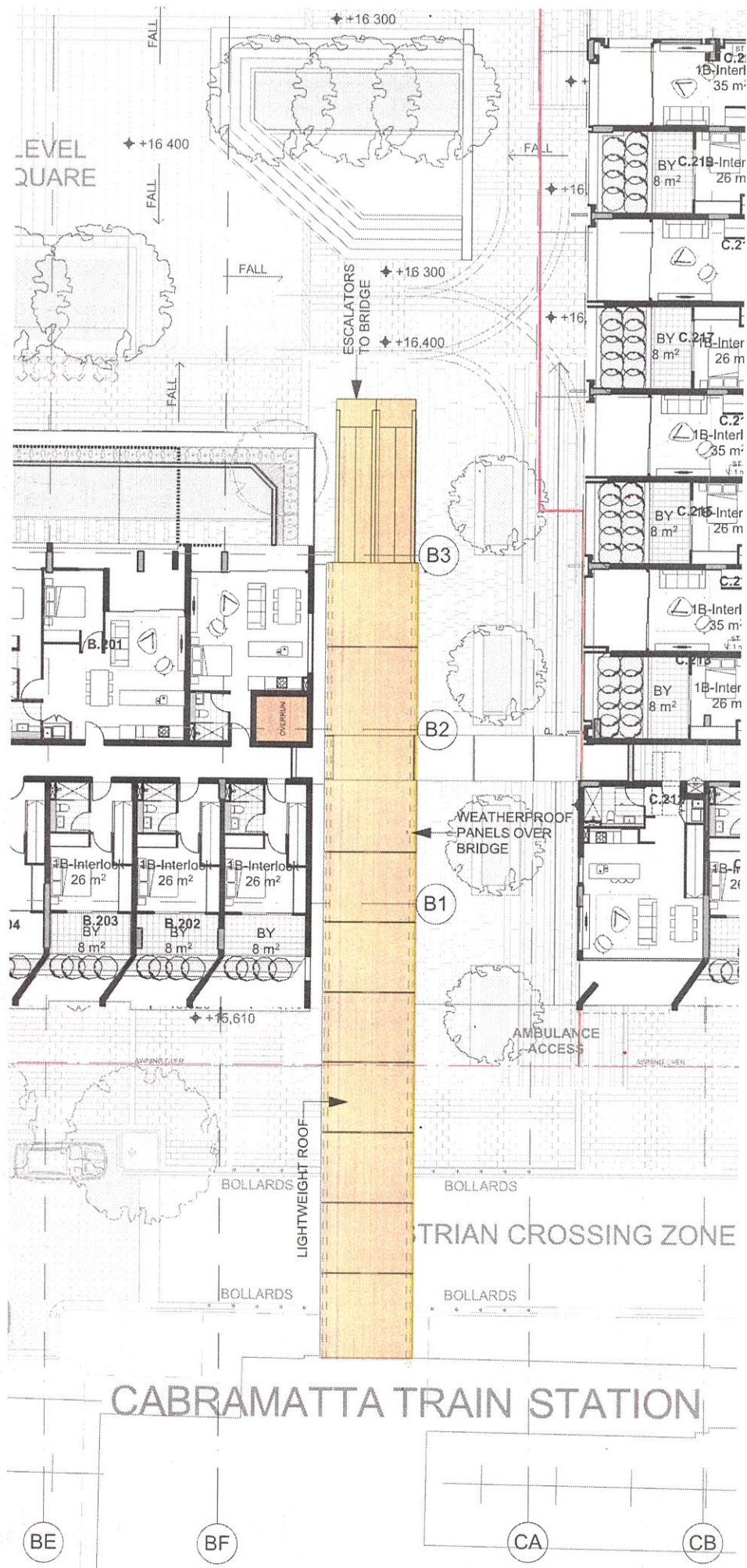
PUBLIC DOMAIN
BRIDGE LINK - GROUND PLAN



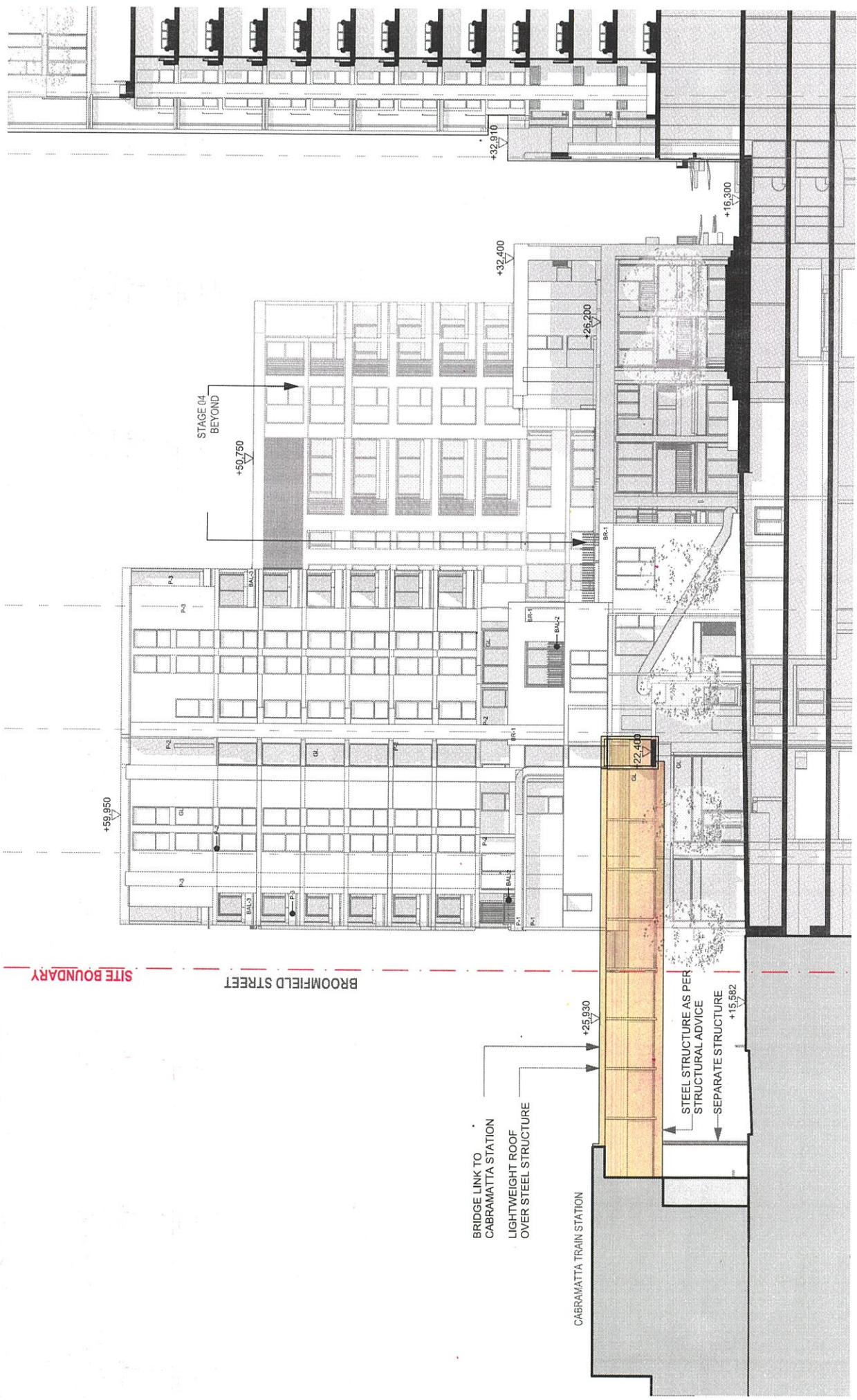
PUBLIC DOMAIN
BRIDGE LINK - LEVEL 1



PUBLIC DOMAIN
BRIDGE LINK - LEVEL 2



PUBLIC DOMAIN SECTION THROUGH BRIDGE LINK



CABRAMATTA EAST
PUBLIC DOMAIN

PUBLIC DOMAIN LAND SURVEY



CABRAMATTA EAST
PUBLIC DOMAIN

DATE: 28-04-2021
SCALE: NTS
Page: 6

plus
architecture

PUBLIC DOMAIN
CONNECTION TO TRAIN STATION



CABRAMATTA EAST
PUBLIC DOMAIN

2001/10 2002/2
DATE 28/01/2021
SCALE N10

Page 7

PUBLIC DOMAIN
ENTRY FROM BROOMFIELD STREET



CABRAMATTA EAST
PUBLIC DOMAIN

JOB NO. 20072
DATE 24/04/2021
SCALE NTD

PUBLIC DOMAIN
RETAIL AND CULTURAL PLAZA



CABRAMATTA EAST
PUBLIC DOMAIN

Suite 602, L6, 150 Karangahape Road
AUCKLAND 1010
New Zealand
Tel +64 9 281 3800
auckland@plusarchitecture.com.au

Ground Floor, 102 Adelaide Street
BRISBANE QLD 4000
Australia
Tel +61 7 3067 3559
brisbane@plusarchitecture.com.au

Level 1, 60 Cashel Street
CHRISTCHURCH 8013
New Zealand
Tel +64 3 337 9491
christchurch@plusarchitecture.com.au

Suite 5, 18 Tepper Avenue
MAIN BEACH QLD 4217
Australia
Tel +61 7 5610 1913
goldcoast@plusarchitecture.com.au

5/107 Elizabeth Street
MELBOURNE VIC 3004
Australia
Tel +61 3 8696 3999
melbourne@plusarchitecture.com.au

160 Beaufort Street
PERTH WA 6000
Australia
Tel +61 8 6500 6490
perth@plusarchitecture.com.au

Level 4, 222 Clarence Street
SYDNEY NSW 2000
Australia
Tel +61 2 8823 7000
sydney@plusarchitecture.com.au

NOMINATED ARCHITECT (NSW)
NOMINATED ARCHITECT (NSW)
Amit Julka 10002
Rido Piri 11286

Annexure C

QS Report

COST PLAN



Footbridge connection, Cabramatta Cost Plan 2

Moon Investments

2152-001



QUANTITY SURVEYING | BUILDING CONSULTANCY |
TAX & ASSET SERVICES | PPP ADVISORY | INFRASTRUCTURE |
FACILITIES MANAGEMENT ADVISORY | EXPERT WITNESS

Footbridge connection, Cabramatta

Moon Investments

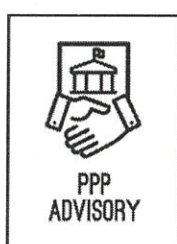
Cost Plan 2



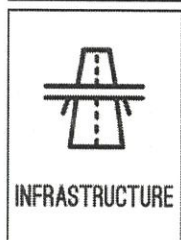
BUILDING
CONSULTANCY



TAX & ASSETS
SERVICES



PPP
ADVISORY



INFRASTRUCTURE



FACILITIES
MANAGEMENT
ADVISORY



EXPERT
WITNESS



Project Number: 2152-001

Reviewed By: David Madden / Gary
Tavfield

Prepared By: Tony Chow

Document Title

Issued To:

Issue Date:

Cost Plan 01

Moon Investments

21/2/2018

Cost Plan 02

Moon Investments

15/6/2021



SUMMARY



Client: Moon Investments
Project: Footbridge connection, Cabramatta

Details: Cost Plan 2
2152-001
Date - 16/06/2021

Code	Description	Page	% of Cost	Cost/m2	Total
1	GENERAL	4			0
2	FOOTBRIDGE	5	43.39		1,814,926
3	NEW LIFT & ASSOCIATED WORKS	5	14.90		623,120
4	SERVICES	6	4.85		203,017
5	EXTRA OVER FOR ROAD CLOSURE AND NIGHT WORK (20% of bridge total)		8.68		362,985
6	Total Trade Cost		71.82		3,004,048
7	PRELIMINARIES & MARGIN (18%)		12.93		540,729
8	Total Construction Cost		84.75		3,544,777
9	PROFESSIONAL FEES (8% of construction total)		6.78		283,582
10	Total Development Cost (Excl. GST)		91.53		3,828,359
11	CONTINGENCY (10% of construction total)		8.47		354,478
12	ESCALATION				Excluded
13	Total Development Cost including Contingency (Excl. GST)		100.00		4,182,837

Project Total (excl GST): 4,182,837



REPORT DETAILS



Client: Moon Investments
Project: Footbridge connection, Cabramatta

Details: Cost Plan 2
2152-001
Date - 16/06/2021

Code	Description	Quantity	Unit	Rate	Amount
1	GENERAL				
1.1	COST PLAN - NO. 2				
1.2					
1.3	FOR				
1.4					
1.5	Moon Investments				
1.6					
1.7	Prepared by: Tony Chow				
1.8	Reviewed by: David Madden / Gary Tayfield				
1.9					
1.10					
1.11					
1.12	Document Issue Schedule				
1.13					
1.14	Cost Plan No. 1 - Issued 21 February 2018				
1.15	Cost Plan No. 2- Issued 15 June 2021				
1.16					
1.17	INTRODUCTION				
1.18	This cost plan has been developed to determine the estimated project cost of proposed footbridge connection to Cabramatta Station, Sydney		note		
1.19	This cost plan is based on our professional opinion and the source material listed below.		note		
1.20					
1.21	CONSULTANTS				
1.22	<u>Architect:</u>				
1.23	plus Architecture		note		
1.24					
1.25	<u>Quantity Surveyor:</u>				
1.26	MBMpl Pty Ltd		note		
1.27	Level 7, 68 Pitt Street, Sydney 2000		note		
1.28					
1.29	DOCUMENTS USED				
1.30	Cabramatta East Bridge Link 28.04.2021 by plus		note		
1.31					
1.32	EXCLUSIONS				
1.33	Legal costs		item		EXCL
1.34	Escalation from June 2021		item		EXCL
1.35	Works beyond the site boundary		item		EXCL
1.36	GST 10%		item		EXCL
1.37	ASSUMPTIONS				



REPORT DETAILS



Client: Moon Investments
Project: Footbridge connection, Cabramatta

Details: Cost Plan 2
2152-001
Date - 16/06/2021

Code	Description	Quantity	Unit	Rate	Amount
1.38	Structural steel for bridge structure was based on 390kg/m2				
					0
2	FOOTBRIDGE				
2.1	<u>Allowance for separate foundation and abutments to Cabramatta Station for bridge connection</u>				
2.2	Allow 3 pile x 2 column=6 nos	6	no	12,000.00	72,000
2.3	Column -allow 2nos 900dia steel plate column	2	no	18,530.00	37,060
2.4	Finishes to column	14	m2	650.00	9,185
2.5	Column cap	2	no	10,000.00	20,000
2.6	Forming joint between the column cap and bridge deck including elastomeric bearing pads	2	no	8,000.00	16,000
2.7	Allowance for structural strengthening work to new building for bridge connection	1	no	100,000.00	100,000
2.8	DEMOLITION				
2.9	Demolish the existing facade in Cabramatta Station for the connection of new bridge	1	Item	12,000.00	12,000
2.10	Allow for makegood the existing facade and roof of the Cabramatta Station after the completion of bridge construction	1	Item	25,000.00	25,000
2.11	BRIDGE STRUCTURE				
2.12	<u>Bridge Deck:</u>				
2.13	Provision for primary steel support beams to soffit and sides including supply, fabricate in factory , transport to site and install (Based on \$390kg/m2)	54.7	t	12,000.00	656,400
2.14	Provision for connections (15%)	5.9	t	12,000.00	70,800
2.15	Steel finishes	60.6	t	1,500.00	90,900
2.16	1mm Bondek steel soffit	140	m2	140.00	19,600
2.17	Reinforced concrete in bridge deck 160mm high	23	m3	400.00	9,200
2.18	Mesh reinforcement in bridge deck	140	m2	25.00	3,500
2.19	<u>Steel Roof:</u>				
2.20	Provision for lightweight steel framed roof approx. 3m wide overall including colorbond profiled metal roof covering	183	m2	850.00	155,550
2.21	Allow for metal cladding to soffit of roof	183	m2	275.00	50,325
2.22	GLASS BALUSTRADE				
2.23	Glass balustrade-approx 2 m high	116	m2	1,500.00	174,000
2.24	Extra for metal handrail / balustrade	58	m	850.00	48,901
2.25	FINISHES				
2.26	Floor finishes	140	m2	350.00	49,000
2.27	3mm Lasercut aluminium cladding fixed to sides and soffit of bridge deck , powercoated finishes	240	m2	650.00	156,000
2.28	Finishes to exposed structural steel support	88	m2	450.00	39,506
					1,814,926
3	NEW LIFT & ASSOCIATED WORKS				
3.1	LIFT PIT & ESCALATOR PIT				
3.2	Lift pit	1	no	25,000.00	25,000

REPORT DETAILS



Client: Moon Investments
Project: Footbridge connection, Cabramatta

Details: Cost Plan 2
2152-001
Date - 16/06/2021

Code	Description	Quantity	Unit	Rate	Amount
3.3	Escalator pit	1	no	20,000.00	20,000
3.4	LIFT SHAFT				
3.5	Solid wall with cladding finishes	116	m2	700.00	81,200
3.6	Lift overrun	9	m2	380.00	3,420
3.7	VERTICAL TRANSPORTATION				
3.8	Passenger lift - 2 stops	1	no	150,000.00	150,000
3.9	Escalators to bridge	1	no	320,000.00	320,000
3.10	Associated builders work	1	item	23,500.00	23,500
3.11	STAIRCASES				
3.12	Staircase steel structure-approx 3 m wide		m/rise		NA

623,120

4	SERVICES				
4.1	ELECTRICAL SERVICES				
4.2	Submains reticulation	1	item	35,000.00	35,000
4.3	Main switchboard	1	item	20,000.00	20,000
4.4	3 PH power supply to lift including cabling and switchboard	1	item	15,000.00	15,000
4.5	Lighting including circuits to lift	1	item	8,000.00	8,000
4.6	Fire detection to lifts	1	item	10,000.00	10,000
4.7	Internal lighting to bridge	14	no	1,000.00	14,000
4.8	Associated builders work	1	item	5,100.00	5,100
4.9	HYDRAULIC SERVICES				
4.10	Drainage points to lift pit	1	no	1,500.00	1,500
4.11	Allow for roof plumbing to lift roof	1	item	5,000.00	5,000
4.12	Roof plumbing to bridge roof	182	m2	120.00	21,850
4.13	In ground stormwater drainage works connected to existing system	1	item	30,000.00	30,000
4.14	Associated builders work	1	item	2,917.48	2,917
4.15	SECURITY SERVICES				
4.16	CCTV camera (pan tilt zoom)	4	no	5,500.00	22,000
4.17	CCTV mounting pole if required	4	no	1,500.00	6,000
4.18	Fibre optic cable reticulation connected to existing monitoring system	1	item	5,000.00	5,000
4.19	Associated builders work	1	item	1,650.00	1,650

203,017

DISCLAIMER



Client: Moon Investments
Project: Footbridge connection, Cabramatta

Details: Cost Plan 2
2152-001
Date - 16/06/2021

This report, the documents attached hereto, and any associated communications, are intended only for the Addressee and may contain privileged or confidential information. Any unauthorised disclosure is strictly prohibited. If you have received this report in error, please notify MBMpl Pty Ltd (MBM) immediately so that we may correct our internal records.

This report is qualified in its entirety by and should be considered in the light of the agreed terms of engagement and the following:

This report has been prepared for the exclusive use of the Addressee and shall not be relied upon by any other third party for any other purposes unless expressly permitted or required by law and then only in connection with the purpose in respect of which this report is provided.

In no event, regardless of whether MBM's consent has been provided, shall MBM assume any liability or responsibility to any third party to whom this report is disclosed or otherwise made available.

Without the prior written consent of MBM, this report is not to be used in conjunction with any public or private offering of securities or other similar purpose where it might be relied upon to any degree by any person other than the Addressee.

MBM has used its reasonable endeavour so that the data contained in this report reflects the most accurate and timely information available and is based on information that was current as of the date of this report.

The preparation of this report has relied on information provided by the Addressee and by third parties. MBM has not verified this information and we assume no responsibility and make no representations with respect to adequacy, accuracy or completeness of such information.

This report is based on estimates, assumptions and other information developed by MBM from our independent research, intelligence, general knowledge of the industry and consultations with the addressee, addressee employee and representatives.

No guarantee or warranty is made by MBM in relation to the projected values or findings contained in this report. In addition, this report is based upon information that was obtained on or before the date in which this report was prepared. Circumstances and events may occur following the date on which such information was obtained that are beyond our control and which may impact on the findings and projections contained in this report. MBM specifically disclaims any responsibility where such circumstances or events do occur and impact the findings of this report.

The findings in this report must be viewed in the context of the entire report including, without limitation, any assumptions made and disclaimers provided. Under no circumstances shall the findings in this report be excised from the body of this report.

All intellectual property rights (including, but not limited to copyright, database rights and trade marks rights) in this report including any forecasts, spreadsheets or other materials provided are the property of MBM. The addressee may use and copy such materials for internal use.

OUR LOCATIONS

MBM has offices in Sydney, Melbourne, Brisbane, Perth, Canberra, Adelaide and the Gold Coast.

We operate as a single entity and are able to utilise specialised skills from any office to deliver a successful outcome for your project or development.

Sydney

Level 5
1 Chifley Square
Sydney NSW 2000
02 9270 1000
nsw@mbmpl.com.au

Melbourne

Level 7
500 Collins Street
Melbourne VIC 3000
03 9603 5200
vic@mbmpl.com.au

Brisbane

Suite 12.1, Level 12
100 Creek Street
Brisbane QLD 4000
07 3234 4000
qld@mbmpl.com.au

Parramatta

Suite 1A, Level 8
111 Phillip Street,
Parramatta, NSW 2150
02 9270 1000
nsw@mbmpl.com.au

Canberra

Level 2, Suite B
Ethos House
28-36 Ainslie Place
Canberra ACT 2601
02 6152 0996
act@mbmpl.com.au

Perth

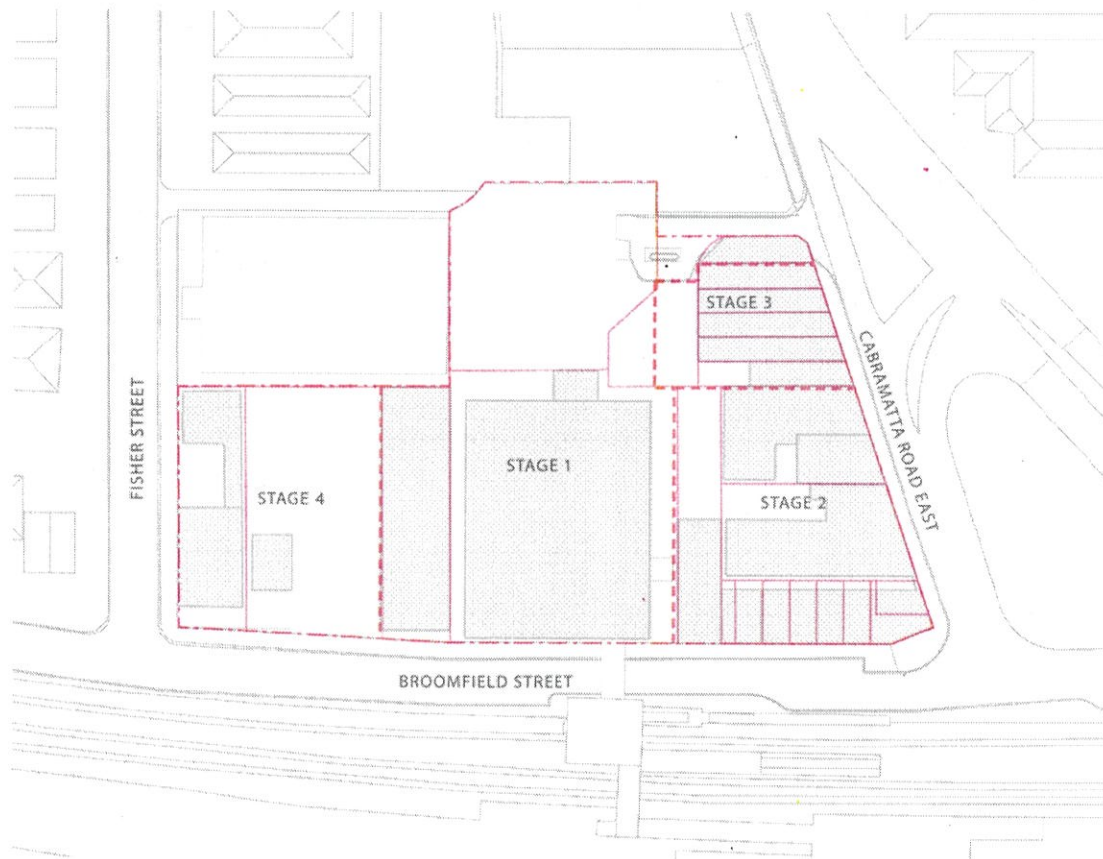
Level 29
221 St Georges Terrace
Perth WA 6000
08 9288 0616
wa@mbmpl.com.au

Adelaide

Balcony Level
109 Gays Arcade
Adelaide 5000
08 8423 4540
sa@mbmpl.com.au

mbmpl.com.au







Dated:

Executed as a Deed: 5 September 2022

Signed, sealed and delivered by Fairfield City Council by its General Manager and Mayor by the affixing of the Common Seal of Council in accordance with resolution dated **24 May 2022**

B. F. Cutts

General Manager (Signature)

Frank Carbone

Mayor (Signature)

BRAOLEY CUTTS

Name of General Manager (Print Name)

FRANK CARBONE

Name of Mayor (Print Name)

Signed, sealed and delivered by Moon Investments Pty Ltd in accordance with section 127(1) of the Corporations Act 2001 (Cth) by authority of its directors.

Leon Zheng

Director/Secretary (Signature)

S. Castagnet

Director (Signature)

Leon Zheng

Name of Director/ Secretary (Print Name)

STEPHAN CASTAGNET

Name of Director (Print Name)

THE COMMON SEAL OF THE COUNCIL OF
THE CITY OF FAIRFIELD was hereunto affixed
on the 7th day of October 2022
pursuant to the resolution of the Council passed
on the _____ day of _____ 20____

[Signature]