

**1637, 1639 and 1647 Botany Road, Botany
Lot 1 in Deposited Plan 1059219, Lot 1 in Deposited Plan 743217
and Lot 1 in Deposited Plan 770617**

Development Application No. DA-2017/1243

Planning Agreement

Under s 7.4 of the Environmental Planning and Assessment Act 1979

Bayside Council

and

**Princeton Capstack Pty Ltd ATF Princeton Botany Equity
Trust**

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Contacts Sheet

Council:

Name: Bayside Council ABN 80 690 785 443

Address: 444 - 446 Princes Highway, ROCKDALE NSW 2216

Telephone: (02) 9562 1666

Facsimile: (02) 9562 1777

Email: council@bayside.nsw.gov.au

Representative: Peter Barber (Director - City Futures)

Owner/Developer

Name: Princeton Capstack Pty Ltd ATF Princeton Botany Equity Trust (ACN 637 399 458)

Address: Level 2, 17 Castlereagh Street, Sydney NSW 2000

Telephone: 8097 2561

Email: george@princetonfs.au

Representative: Chief Executive – George Gadallah

This Agreement constitutes a planning agreement within the meaning of s 7.4 of the *Environmental Planning and Assessment Act 1979* and facilitates the provision of Development Contributions for the public benefit.

Parties

Bayside Council

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

and

Princeton Capstack Pty Ltd ATF Princeton Botany Equity Trust

ACN 637 399 458
Level 2, 17 Castlereagh Street
Sydney NSW 2000
(Owner/Developer)

Background

- A. The Owner/Developer owns the Land identified in Schedule 2, known as 1637 - 1647 Botany Road, Botany.
- B. The Development Application was lodged with the Council in relation to the Land.
- C. The Development Application was the subject of the grant of Development Consent DA-2017/1243 by the Land and Environment Court in Proceedings No. 2018/207382.
- D. The Owner/ Developer caused to be lodged the Modification Application with the Council.
- E. The Modification Application was the subject of the grant of the Modification Approval by the Land and Environment Court in Proceedings No. 2023/120399.
- F. In connection with the Development Application the Owner/Developer offered to enter into this Agreement in accordance with section 7.4 of the Act to provide the Development Contribution on the terms and conditions of this Agreement.
- G. The Modification Approval included new condition 13B, as follows:

13B. Pursuant to s 7.7(3) of the Environmental Planning and Assessment Act 1979, a voluntary planning agreement in accordance with the offer made by the developer (Princeton Capstack Pty Ltd ATF Princeton Botany Equity Trust) to Council, by letter from Pikes & Verekers Lawyers dated 27 March 2024 (a copy of which is annexed and marked A1), must be entered into between the developer and Council prior to the issue of any Construction Certificate. [Inserted LEC Proceedings No. 2023/00120399]
- H. The Owner/Developer is prepared to make the Development Contribution in connection with carrying out of the development approved by Development Consent DA-2017/1243, as modified by the Modification Approval, in accordance with this Agreement.

Operative provisions

Part 1 - Preliminary

1. Definitions and interpretation

1.1 In this Agreement the following definitions apply:

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

Agreement means this Planning Agreement under which the Owner/Developer agrees to make the Development Contributions.

Business Day means any day in New South Wales which is not a Saturday, Sunday or any proclaimed public holiday.

Claim includes any claim, demand, damage, loss, expense or liability of any kind (including in respect of interest and including one which is prospective or contingent and one the amount of which is not ascertained) and costs (whether or not the subject of a court order).

Construction Certificate has the same meaning as in the Act.

Council means Bayside Council, its successors and assigns.

Development Application means development application No. DA-2017/1243 lodged with the Council.

Development Consent DA-2017/1243 means the development consent granted under the Act by the Land and Environment Court in proceedings No. 2018/207382 on 7 January 2020 for demolition of existing structures and erection of shop top housing with 36 residential units, 5 commercial/retail spaces and basement car parking with 97 car parking spaces, including as modified by the Modification Approval.

Development Contribution means the contribution set out in **Schedule 3** to this Agreement, to be used for, or applied towards, the provision of a Public Purpose as set out in **Schedule 3**.

Lenthen Lane means the land known as Lenthen Lane (comprising Lots 1 and 2 DP 772878) located in proximity to the Land and adjoining Botany Road.

Modification Application means modification application No. MDA No. 2022/141 lodged with the Council, being an application to modify Development Consent DA-2017/1243.

Modification Approval means the determination by the Land and Environment Court in proceedings No. 2023/120399 on 28 May 2024 to modify Development Consent DA-2017/1243, with the modifications summarised as follows:

- Reconfiguration of basement levels one and two;
- Reconfiguration of the ground floor including changes to the approved commercial tenancies, additional services, introduction of office premises, changes to the substation infrastructure and associated works, realignment of the pedestrian through link, suspended OSD tank and changes to waste management;

- Design changes to the above residential levels, including decreased building separation and internal apartment reconfiguration;
- Increase in height from RL21.43 to RL 23.24;
- Changes in colours and materials.

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.

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

LRS means New South Wales Land Registry Services

Owner/Developer means Princeton Capstack Pty Ltd ATF Princeton Botany Equity Trust (ACN 637 399 458) and its successors and permitted assigns.

Owner/Developer's Obligations means the Owners/Developer's obligations under this Agreement.

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

Public Purpose has the same meaning as in s 7.4 of the Act.

Regulation means the *Environmental Planning and Assessment Regulation 2021*.

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

- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- 1.2.2 A reference to a Business Day means a day other than a Saturday, Sunday or public holiday in Sydney.
- 1.2.3 If the day on which any act, matter or thing is to be done under this Agreement is not a Business Day, the act, matter or thing must be done on the next business day.
- 1.2.4 A reference to time is local time in Sydney,
- 1.2.5 A reference to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- 1.2.6 A reference to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.7 A reference to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.8 A reference to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.

- 1.2.9 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- 1.2.10 An expression importing a natural person includes any company, corporation, trust, partnership, joint venture, association, unincorporated association, body corporate, statutory body, statutory authority or governmental agency.
- 1.2.11 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.12 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.13 Reference to the word "include" or "including" are to be construed without limitation.
- 1.2.14 A reference to a party to this Agreement includes a reference to the personal representatives, legal representatives, agents and contractors of the party, and the party's successors and assigns substituted by novation.
- 1.2.15 Any schedules, appendices and attachments form part of this Agreement.
- 1.2.16 Notes appearing in the Agreement are operative provisions of this Agreement.

2. Application of this Agreement

- 2.1 This Agreement applies to the Land and to the Development.

3. Status and operation of this Agreement

- 3.1 This Agreement takes effect and operates from: the date when Parties have all executed the same copy of this Agreement or each Party has executed separate counterparts of this Agreement and exchanged the counterparts.
- 3.2 The Parties agree that this Agreement is a Planning Agreement within the meaning of section 7.4 of the Act and is governed by Part 7, Division 7.1, Subdivision 2 of the Act.
- 3.3 This Agreement will remain in force until the obligations of the Parties under this Agreement are completed or this Agreement is terminated either by operation of law or this Agreement is terminated by operation of law.

4. Further agreements relating to this Agreement

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

5. Application of s 7.11, s 7.12, s 7.24 of the Act to the Development

- 5.1 The Parties agree that this Agreement does not exclude the application of sections 7.11 and 7.12 of the Act in relation to the Development and the Development Consent (including as modified).

Part 2 – Development Contributions

6. Provision of Development Contributions

- 6.1 **Schedule 3** has effect in relation to the Development Contribution to be made by the Owner/Developer under this Agreement.
- 6.2 The Owner/Developer must make the Development Contribution (as set out in **Schedule 3**) to Council in accordance with this Agreement.
- 6.3 The Council must apply the Development Contribution made by the Owner/ Developer under this Agreement towards the Public Purpose for which it is made as set out in Schedule 3.
- 6.4 Despite **clause 6.3**, Council may apply a Development Contribution made under this Agreement towards a Public Purpose other than the purpose specified in this Agreement if Council considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.
- 6.5 The Owner/ Developer will comply with the Owner/ Developer's Obligations.

Part 3 – Other Provisions

7. Covenant not to sue

- 7.1 The Parties will not bring or pursue, or cause or procure a third party to bring or pursue, a Claim against each other in relation to the subject matter of this Agreement, other than a claim for a breach of this agreement.
- 7.2 For the avoidance of doubt, the Owner/Developer is not to commence or maintain, or cause to be commenced or maintained, any proceedings in the Land and Environment Court NSW involving an appeal against, or questioning the validity of:
 - 7.2.1 conditions of Development Consent DA-2017/1243 as modified by the Modification Approval relating to any matter in respect of Development Contribution; or
 - 7.2.2 conditions of Development Consent DA-2017/1243 as modified by the Modification Approval relating to any matter in respect of Development Contribution, relating to the payment of development contributions under s 7.11 of the Act; or
 - 7.2.3 this Agreement.

8. Enforcement in a court of competent jurisdiction

- 8.1 Without limiting any other provision of this Agreement, the Parties may enforce this Agreement in any court of competent jurisdiction within New South Wales.
- 8.2 This Agreement is governed by the law of New South Wales.
- 8.3 Each party submits to the exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this Agreement.
- 8.4 For the avoidance of doubt, nothing in this Agreement prevents:

- 8.4.1 a Party from bringing proceedings in any court of competent jurisdiction within New South Wales to enforce any aspect of this Agreement,
- 8.4.2 Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement.

9. Dispute Resolution

9.1 Notice of Dispute

- 9.1.1 If a Party claims that a dispute has arisen under this agreement (**Claimant**), it must give written notice to the other Party (**Respondent**) stating the matters in dispute and designating as its representative a person to negotiate the dispute (**Claim Notice**).
- 9.1.2 This paragraph does not apply to an application for urgent interlocutory relief.

9.2 Response to Notice

Within 20 business days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the dispute.

9.3 Negotiation

The nominated representatives must:

- 9.3.1 meet to discuss the matter in good faith within 10 Business Days after service by the Respondent of notice of its representative; and
- 9.3.2 use reasonable endeavours to settle or resolve the dispute within 15 business days after they have met.

9.4 Further Notice if not Settled

If the dispute is not resolved within 15 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (**Dispute Notice**).

9.5 Mediation

The parties agree that a dispute shall be mediated if it is the subject of a Dispute Notice, in which case:

- 9.5.1 the parties must agree the terms of reference of the mediation within 5 Business Days of the receipt of the Dispute Notice (the terms shall include a requirement that the mediation rules of the Resolution Institute apply);
- 9.5.2 the appointment of a Mediator will be agreed between the parties, or failing agreement within 5 Business Days of receipt of the Dispute Notice, either party may request the President of the Resolution Institute to appoint a mediator;
- 9.5.3 the Mediator appointed pursuant to this clause 9.5.3 must:
 - (a) have reasonable qualifications and practical experience in the area of the dispute; and
 - (b) have no interest or duty which conflicts or may conflict with her function as mediator, she being required to fully disclose any such interest or duty before her appointment;

- 9.5.4 the Mediator shall be required to undertake to keep confidential all matters coming to her knowledge by reason of her appointment and performance of her duties;
- 9.5.5 the parties must within 5 Business Days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation;
- 9.5.6 the parties agree to be bound by any 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;
- 9.5.7 in relation to costs and expenses:
 - (a) each party will bear their own professional and expert costs incurred in connection with the mediation;
 - (b) the costs of the Mediator will be shared equally by the parties unless the Mediator determines 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.

9.6 Litigation

If the dispute is not finally resolved in accordance with clause 9.5, either party is at liberty to litigate the dispute.

9.7 Exchange of information

The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process established by this clause 9 for any purpose other than an attempt to settle a dispute between the parties.

9.8 Continue to Perform obligations

Each party must continue to perform its obligations under this agreement, notwithstanding the existence of a dispute.

9.9 Survival of this clause

For the avoidance of doubt this clause survives the completion or termination of this Agreement.

10. Registration of this Agreement

- 10.1 The Parties agree that this Agreement is to be registered for the purposes of section 7.6 of the Act.
- 10.2 The Owner/Developer must lodge this Agreement for registration with LRS on the register pertaining to the Land no later than 42 days after the date of this Agreement of this Agreement including obtaining the consent of any mortgagee or other person who has an interest in the Land.
- 10.3 The Owner/Developer must use all reasonable endeavours to obtain such registration as soon as practicable and promptly after registration, deliver to the Council a title search of the Land confirming registration of this Agreement.

- 10.4 For the avoidance of doubt the Owner/ Developer warrants that following execution of this Agreement it will not take any action to grant an interest in the Land to another person so as to prevent registration of this Agreement on the Land, as required by this Agreement.

11. Assignment and transfer

- 11.1 Unless the matters specified in **clause 11.2** are satisfied, and whilst the obligations in this Agreement have not been completed, the Owner/Developer is not to do any of the following:
- 11.1.1 to transfer the Land to any person, or
 - 11.1.2 assign, transfer dispose or novate to any person the Owner/Developer's rights or obligations under this Agreement
- 11.2 The matters required to be satisfied for the purposes of **clause 11.1** are as follows:
- 11.2.1 This Agreement has been registered on the title of the Land in accordance with **clause 10**;
 - 11.2.2 the Owner/ Developer has, at no cost to Council, first procured the execution by the person to whom the Owner/Developer's rights or obligations under this Agreement are to be assigned or novated, of an agreement in favour of the Council assigning or novating those rights or obligations to the person on terms satisfactory to Council acting reasonably, and
 - 11.2.3 Council, by notice in writing to the Owner/Developer which will not be unreasonably withheld, has stated that evidence satisfactory to Council has been produced to show that the assignee or novatee, is reasonably capable of performing its obligations under the Agreement,
 - 11.2.4 the Owner/Developer is not in breach of this Agreement, and
 - 11.2.5 Council otherwise consents to the transfer, assignment or novation in writing, which will not be unreasonably withheld.

12. Notices

- 12.1 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:
- 12.1.1 delivered or posted to that Party at its address set out in the Contacts Sheet.
 - 12.1.2 emailed to that Party at its email address set out in the Contacts Sheet.
- 12.2 If a Party gives the other Party 3 Business Days notice of a change of its address or fax number, 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 or email address.
- 12.3 Any notice, consent, information, application or request is to be treated as given or made if it is;
- 12.3.1 delivered, when it is left at the relevant address.

12.3.2 sent by post, 2 Business Days after it is posted.

12.3.3 sent via email (unless the sender receives notification to the effect that the email has failed to send), at the time it was sent.

12.4 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.

13. Costs

13.1 The Parties agree to that the Applicant is to pay the Council's costs in relation to preparing, negotiating, executing, stamping and registering this Agreement.

13.2 The Owner/Developer is required to fully indemnify Council in relation to any costs and disbursements associated with any action undertaken to enforce Council's rights under this Agreement in the event of any breach of this Agreement by the Owner/ Developer, including for the avoidance of doubt any action taken by Council to enforce its rights under this agreement.

14. Entire Agreement

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

14.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

15. Further Acts

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

16. Joint and individual liability and benefits

16.1 Except as otherwise set out in this Agreement:

16.1.1 any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and

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

17. No fetter

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

18. Representations and warranties

- 18.1 Each Party represents and warrants to each other Party that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

19. Severability

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

20. Modification

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

21. Waiver

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

22. Rights cumulative

- 22.1 Except as expressly stated otherwise in this Agreement, the rights to a Party under this Agreement are cumulative and are in addition to any other rights of that Party.

23. Duty

- 23.1 The Owner/Developer is liable for and must pay all duty (including any fine or penalty except where it arises from default by another Party) on or relating to this Agreement, any document executed under it or any dutiable transaction evidenced or effected by it.

24. Effect of Schedules

- 24.1 Each Party agrees to comply with any terms contained in the Schedules to this Agreement as if those terms were included in the operative part of the Agreement.

25. Relationship of the Parties

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

26. GST

- 26.1 In this clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, supply and Tax Invoice have the meaning given by the GST Law.

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

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

Input Tax Credit has the meaning given by 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 GST Law.

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

- 26.2 Subject to **clause 26.4**, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 26.3 **Clause 26.2** does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 26.4 No additional amount shall be payable by Council under **clause 26.2** unless, and only to the extent that, Council (acting reasonably and in accordance with 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.
- 26.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to division 81 of the *A New Tax System (Goods and Services Tax) Act 1999*, each Party agrees:
- 26.5.1 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;
- 26.5.2 That any amounts payable by each Party in accordance with **clause 26.2** (as limited by **clause 26.4**) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 26.6 No payment of any amount pursuant to this **clause 26**, 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.

26.7 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.

26.8 This clause continues to apply after expiration or termination of this Agreement.

27. Explanatory Note relating to this Agreement

27.1 The **Appendix** contains the Explanatory Note relating to this Agreement required by clause 205 of the Regulation.

27.2 Pursuant to clause 205(5) of the Regulation, each Party agrees that the Explanatory Note in **Appendix** is not to be used to assist in construing this Agreement.

Execution

Executed as an Agreement

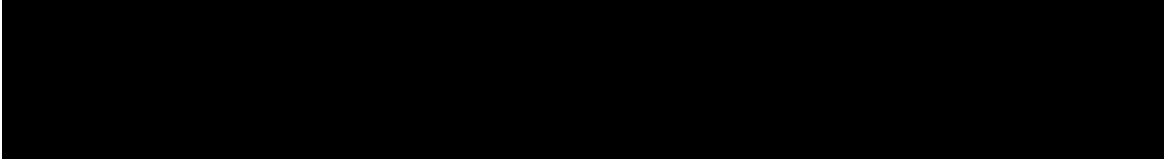
7

date:

March

2025
~~2024~~

Executed on behalf of Bayside Council ABN 80 690 785 443 by its authorised delegate pursuant to section 377 of the *Local Government Act 1993* in the presence of:



General Manager (sign)

Witness (sign)

Meredith Wallace

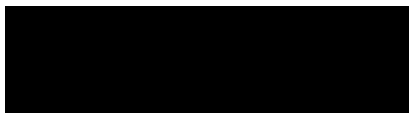
Name of General Manager (print)



Witness – Name/Position (print)

Executed by Princeton Capstack Pty Ltd ATF Princeton Botany Equity Trust (ACN 637 399 458) in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

Signature of Director



26/02/2025

Full name (print)

George Gadallah

Signature of Director



26/02/2025

Full name (print)

Craig Anderson

Schedule 1: (Section 7.4 Requirements)

Provision of the Act	This Agreement
Under section 7.4(1), the Developer has:	
(a) Sought a change to an environmental planning instrument	No
(b) Made, or proposes to make, a Development Application	No
(c) Entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies	Yes
Description of the land to which this Agreement applies	The Land described in Schedule 2 to this agreement
The scope, timing and manner of delivery of Development Contributions required by this Agreement – (Section 7.43)(c))	See Schedule 3
Applicability of Sections 7.11, 7.12 and 7.24 of the Act	See clause 5
Benefits under the Agreement considered for Section 7.11 purposes – (Section 7.4(3)(e)),	See clause 6 and Schedule 3
Dispute Resolution – (Section 7.4(3)(f))	See clause 9
Enforcement of this Agreement – (Section 7.4(3)(g))	See clause 8
Registration of the Agreement – (Section 7.6)	Yes, see clause 10

Schedule 2: The Land

The Land

Lot 1 in Deposited Plan 1059219, Lot 1 in Deposited Plan 743217 and Lot 1 in Deposited Plan 770617, known as 1637, 1639 and 1647 Botany Road, Botany.

Schedule 3: Development Contribution

Column 1	Column 2	Column 3	Column 4
Item	Public Purpose	Contribution Value	Timing
Monetary Contribution	Monetary Contribution for public purposes relating to the upgrading of Lenthen Lane, including civil works and public domain improvements (in lieu of providing a through site link to Rancom Street)	\$100,000	Prior to the issue of any Construction Certificate in relation to the Development Consent DA-2017/1243.

Appendix (Explanatory Note)

Environmental Planning and Assessment Regulation 2021

(clause 205)

Explanatory Note: Proposed Planning Agreement

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

1. Parties

Bayside Council

ABN 80 690 785 443 of 444 - 446 Princes Highway, ROCKDALE NSW 2216

(Council)

and

Princeton Capstack Pty Ltd ATF Princeton Botany Equity Trust (ACN 637 399 458)

(Owner/Developer)

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

- (a) Lot 1 in Deposited Plan 1059219, Lot 1 in Deposited Plan 743217 and Lot 1 in Deposited Plan 770617, known as 1637, 1639 and 1647 Botany Road, Botany
(Land)
- (b) The Owner/Developer is the owner of the Land.

3. Description of the Development

- (a) Demolition of existing structures and erection of shop top housing with 36 residential units, 5 commercial/retail spaces and basement car parking with 97 car parking spaces, as modified by modification application No. MDA No. 2022/141, with the modifications summarised as follows:
 - Reconfiguration of basement levels one and two;
 - Reconfiguration of the ground floor including changes to the approved commercial tenancies, additional services, introduction of office premises, changes to the substation infrastructure and associated works, realignment of the pedestrian through link, suspended OSD tank and changes to waste management;
 - Design changes to the above residential levels, including decreased building separation and internal apartment reconfiguration;
 - Increase in height from RL21.43 to RL 23.24;
 - Changes in colours and materials.

(Development).

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

4.1 Objectives of proposed Planning Agreement

- (a) The objectives of the proposed Planning Agreement are to:
- Provide Development Contributions for the benefit of the public in the form of the payment by the Owner/Developer to Council of a monetary contribution in the sum of \$100,000 for the upgrading of Lenthen Lane, including civil works and public domain improvements (in lieu of providing a through site link to Rancom Street)
 - Achieves the provision of this Development Contribution for public domain improvements with greater certainty, less risk and less cost to Council.

4.2 Nature of proposed Planning Agreement

- (a) The Planning Agreement is a planning agreement under section 7.4 of the *Environmental Planning and Assessment Act 1979 (Act)*. The Planning Agreement is a voluntary agreement under which the Development Contribution (as defined in clause 1.1 of the Planning Agreement) are made by the Owner/Developer for public purposes (as defined in section 7.4(2) of the Act).

4.3 Effect of proposed Planning Agreement

The Planning Agreement:

- (a) Provides for the payment of a monetary contribution by the Owner/Developer to Council in the sum of \$100,000 the upgrading of Lenthen Lane, including civil works and public domain improvements (in lieu of providing a through site link to Rancom Street)
- (b) Achieves the provision of this Development Contribution for public domain improvements with greater certainty, less risk and less cost to Council.

5. Assessment of the merits of the proposed Planning Agreement

5.1 The Public Purposes served by the proposed Planning Agreement

- (a) The proposed Planning Agreement promotes the provision of and recoupment of the cost of providing public amenities and public services, in this case public amenities and public services relating to the upgrading including civil works and public domain improvements on Lenthen Lane.

5.2 How the proposed Planning Agreement promotes the Public Interest and the objects of the Act

- (a) The Planning Agreement promotes the public interest and the objects of the Act as set out in section 1.3 the Act, including:
- (i) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
 - (ii) to promote the orderly and economic use and development of land,
 - (iii) to promote good design and amenity of the built environment.

- (b) The Planning Agreement promotes the provision of and recoupment of the cost of providing public amenities and public services, in this case public amenities and public services relating to the upgrading including civil works and public domain improvements on Lenthen Lane.

5.3 How the proposed Planning Agreement promotes the Elements of the Council's Charter

The proposed Planning Agreement promotes the elements of the Council's Charter by providing for the ultimate delivery of appropriate infrastructure, public amenities and services for the local community, which enables the Council to carry out its functions in a way that facilitates local communities that are strong, healthy and prosperous.

5.4 How the proposed Planning Agreement promotes the objects (if any) of the Local Government Act 1993

The proposed Planning Agreement promotes the objects of the *Local Government Act 1993* by allowing Council to provide infrastructure, public amenities and services appropriate to the current and future needs of the local community and the wider public and to improve and develop the resources of the area.

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

The proposed Planning Agreement specifies that the Owner/Developer must make the Development Contribution prior to the issue of any Construction Certificate.

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

The proposed Planning Agreement conforms to Council's capital works program and, furthermore, will enable the program to be advanced with greater timeliness and certainty while reducing the financial risks to Council in its implementation.

6. Further Information

6.1 Interpretation

Note: This explanatory note is a summary only of the proposed Planning Agreement, is not to be relied upon as a complete description of the proposed Planning Agreement, and is not to be used as an aid in construing the proposed Planning Agreement.

6.2 Further Information

Copies of the proposed Planning Agreement are available on the Council website, and at the offices of Council.