



Attachment 1 to Item 10.1.2.

**DRAFT Voluntary Planning Agreement - 14 Angophora
Place, Kurmond**

Date of meeting: 8 April 2025

Location: Council Chambers

Time: 6:30pm

Parties: Hawkesbury City Council and Cannonvale No.1 Pty Ltd

Date: 18 March 2025

PLANNING AGREEMENT

Lot 37, DP271171

14 Angophora Place, Kurmond

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Schedule 1. Requirements under s7.4 of the Act

Schedule 2. Location Plan

Schedule 3. Indicative Subdivision Layout

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PLANNING AGREEMENT

Lot 37, DP271171

14 Angophora Place, Kurmond

Parties

Council	Name	Hawkesbury City Council
	Address	366 George Street WINDSOR NSW 2756
	ABN	54 659 038 834
Developer	Name	Cannonvale No.1 Pty Ltd
	Address	40A Clayton Street BALMAIN NSW 2041
	ABN	28 144 699 187

Recitals

- A. The Developer owns the Land.
- B. The Developer wishes to carry out the Development and has applied for development consent to enable the Development to be carried out on the land.
- C. The Developer and the Council have agreed that the Developer will make Development Contributions in connection with the development of the land in accordance with this document.

It is agreed as follows.

1. Definitions and Interpretation

1.1 Definitions

In this document, words beginning with a capital letter have the following definitions:

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

Assign means, as the context requires, any assignment, sale, transfer, disposition, declaration of trust over the other assignment of a legal and/or beneficial interest. Assignee has the meaning given to it in clause 8.1.

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

Bank Guarantee means an irrevocable and unconditional undertaking by a major Australian financial institution or trading bank carrying on business in Sydney issued:

- (a) In favour of Council;
- (b) Specifying the Developer as a customer;
- (c) For an amount in accordance with clause 6.2;
- (d) As security for the performance by the Developer of the obligations under this document;
- (e) With an expiry date which must not be earlier than five years after the date the bank guarantee is issued; and
- (f) On terms which provide that the bank guarantee may be called on by Council upon presentation and without reference to the Developer (however this does not affect Council's obligations under clause 6.2).

"Base CPI" means the Consumer Price Index (All Groups Index - Sydney) for the quarter ending immediately before the commencement of this Agreement.

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

Claim means against any person 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.

Complete means, in respect of a Works Contribution, that the Developer has fully performed its obligation to make that Works Contribution in accordance with clause 5.10.

Construction Certificate has the meaning given to it in s6.4(a) of the Act.

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

"Current CPI" means the Consumer Price Index (All Groups Index - Sydney) for the quarter ending immediately before the relevant CPI Review Date.

Dealing in relation to the land means, without limitations, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with land,

Development means the development described by the Development Application.

Development Application has the same meaning as in the Act and for this document means the Development Application to which this Agreement has been made.

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

Development Contribution means any Monetary Contributions.

Development Land means the “Development Land” set out in Schedule 1.

Dispute means a dispute or lack of certainty between the Parties under or in relation to this document.

Encumbrance means an interest of power:

- (a) reserved in or over any interest in any asset;
- (b) arising under, or with respect to, a Bio-Banking Document;
- (c) created or otherwise arising in or over any interest in any asset under any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement, covenant, lease, subordination to any right of any other person and any other encumbrance or security interest, trust or bill of sale; or
- (d) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.

Event of Default has the meaning ascribed to it in clause 10.12(b).

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.

“Housing Lot” means a lot approved by a Development Consent comprising part of the Development Land that is intended to be used for the purposes of a single dwelling house without being further sub-divided.

"Housing Lot Contribution" means subject to clause 3 cash to the value of \$35,000 per vacant Housing Lot arising from a Development Consent of the Development Land.

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

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

- (a) 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.
- (b) 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.

- (c) 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.
- (d) 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.
- (e) A body corporate is or states that it is insolvent.
- (f) 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;
- (g) 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.
- (h) 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.
- (i) 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.
- (j) A receiver, manager or receiver and manager is appointed to the Company.
- (k) 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 filing at the court.
- (l) Anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Location Plan means the plan in Schedule 2.

Monetary Contributions means the Monetary Contributions set out in Part 3.

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).

Practical Completion means, in respect of each Works Contribution, that the Works Contribution has been completed except for minor Defects that do not prevent the use of the Works Contribution for its intended purpose.

Primary Security has the meaning ascribed to it in clause 8.2.

Rectification Notice means a notice in writing:

- a) identifying the nature and extent of a Defect,

- b) specifying the works or actions that are required to Rectify the Defect,
- c) specifying the date by which or the period within which the Defect will be rectified.

Rectify means rectify, remedy or correct.

Regulation means the Environmental Planning and Assessment Regulation 2021 (NSW).

Security means collectively the Primary Security and Defects Security.

Subdivision Certificate has the meaning given to it in s6.4(d) of the Act.

Transferee has the meaning given to it in clause 8.2.

Work means the physical result of any building, engineering or construction work in, on, over or under land.

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1.2 Interpretation

Except as otherwise provided in this document, words in this document have the same meaning as those words have in the Act.

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

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

- p) Any schedules, appendices and attachments form part of this document.
- q) Notes appearing in this document are operative provisions of this document.

2. Planning Agreement

This document is a planning agreement within the meaning set out in s7.4 of the Act and governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.

2.1 Application

This document applies to:

- a) The Land and
- b) The Development.

2.2 Warranties

The Parties warrant to each other that they:

- a) Have full capacity to enter into this document, and
- b) Are able to fully comply with their obligations under this document. The Developer warrants to Council that it is:
 - i) Legally and beneficially entitled to the Land; and
 - ii) There is no legal impediment to it entering into this document, or performing the obligations imposed under it.

2.3 Operation

This document operates:

- a) as a deed from the date that it is executed by both parties; and
- b) as a planning agreement for the purpose of the Act from the date that the Development Consent becomes operative.

2.4 Further agreements

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

2.5 Surrender of right of appeal, etc

- a) The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this document, or an Approval relating to the Development Application in so far as the subject matter of the proceedings relates to this document.

- b) Subclause (a) does not restrict the Developer or person with the benefit of the Development Consent issued in relation to the Development Application from commencing an appeal in the Land and Environment Court in relation to any subsequent development application or application to modify the Development Consent the subject of this document, provided that the subject matter of the appeal does not relate to this document or any condition of Development Consent requiring entry into this document.

2.6 Application of s7.11, s7.12 and s7.24 of the Act to the Development

- a) This document excludes the application of s7.11 and s7.12 of the Act to the Development.
- b) This document does not exclude the application of s7.24 of the Act to the Development.
- c) This agreement does not exclude the application of s7.11 and s 7.12 of the Act to the construction of more than one dwelling on a Housing Lot or development that is not ancillary to the residential use of the land.

3. Monetary Contributions

- a) The Developer must make the Monetary Contributions to Council to the equivalent of \$35,000 per residential lot in accordance with any other provision of this document relating to the making of Development Contributions.
- b) The Monetary Contributions are made for the purpose of this document when Council receives the full amount of the Monetary Contributions payable under this document in cash, by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by Council.

4. Adjustment of Contribution Value

- a) On the date of this document and every three months thereafter (each an Adjustment Date), the Contribution Value of each Contribution Item will be adjusted to revised amounts in accordance with the Index applicable on the Adjustment Date, as provided under clause 6(c).
- b) If requested by Council, by no later than 20 Business Days after each Adjustment Date, the Developer must give Council replacement or further Security so that Council holds Security for an amount equal to the revised Contribution Values for the Security that is held by Council on the relevant Adjustment Date.
- c) The Method of Indexing is as follows:

$$MC^c = MC^b \times \frac{\text{Current CPI}}{\text{Base CPI}}$$

MC^c = The Housing Lot contribution at the commencement of this Agreement

MC^b = Adjusted Housing Lot contribution at CPI review date.

5. Registration

5.1 Registration

- a) The Developer, at their own expense, must, as soon as reasonably practicable and no later than ten (10) Business Days after this document 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; and
 - (ii) The execution of any documents to enable registration of this document on the title to the Land pursuant to s7.6 of the Act.
- b) An acceptance of the terms of this document and an acknowledgement in writing from any existing mortgagee in relation to the Land that each will consent to the registration of this document and be bound by an adhere to the provisions of this document as owner of the Land or as mortgagee in possession, as the case may be, in accordance with section 7.6 of the Act;
- (i) The execution of any document;
 - (ii) The production of the relevant certificates of title or electronic equivalent, to enable the registration of this document in accordance with this clause; and the lodgement of this document with the Land Registry Services on Land; and
- c) Council must promptly execute all document necessary to enable registration of this document on the title to the Land at the Developer's cost.
- d) The Developer agrees to procure the registration of this document under the Real Property Act 1900 (NSW) in the relevant folios of the Register in accordance with section 7.6 of the Act.
- e) The Developer must provide documentary evidence that the registration of this document has been completed to Council within five (5) Business Days of receiving confirmation that the registration has occurred.
- f) If Council undertakes the registration in accordance with this clause 7.1, then the Developer will pay or reimburse Council for all its legal and registration costs associated with that registration.

5.2 Discharge

Council must execute any form required by the Registrar-General, and prepared by the Developer, to enable this document to be removed from the title to the Land or any part of it as soon as reasonably practicable after:

- a) The Developer has fully performed the obligations under this document;
- b) In respect of part performance of the obligations under this document, the Developer has fully performed the obligations referable to the part of the Land over which the document is sought to be released and provided the Developer is not in breach of this document at that time, unless waived by Council; or
- c) If this document is terminated, then the parties will do all things necessary to promptly remove this document from the title of the Land.

6. Dispute Resolution

6.1 Reference to Dispute

If a dispute arises between the Parties in relation to this document, 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.

6.2 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.

6.3 Meeting of parties' senior representatives

- a) Within 10 Business Days after the notice is given, or another period agreed by the parties in writing, a senior representative of each party must meet in good faith with a view to resolving the 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 5.6 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.

- c) If the dispute is not resolved within 20 Business Days after the meeting convened under clause 9.3(b), either party may give to the other a written notice calling for determination of the dispute (Determination Notice) by:
 - (i) mediation under clause 5.5 or for expert determination under clause 5.6; and
 - (ii) Failing agreement under clause 9.3(c)(i), refer the dispute for expert determination under clause 5.6.

6.4 Conduct pending resolution

The parties must continue to perform their respective obligations under this document 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.

6.5 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 Present of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- c) The mediator appointed pursuant to this clause 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 functions as a mediator;
- 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 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.

6.6 Expert determination

- a) If the dispute is referred for expert determination, the dispute must be determined by an independent expert in the relevant field jointly appointed by the parties. If the parties cannot agree on the expert to be appointed, the parties must jointly appoint an expert nominated by the President of the NSW Law Society.
- b) The expert appointed to determine the dispute must:
 - (i) Have a technical understanding of the subject matter in the dispute;
 - (ii) Not have a significantly greater understanding of one party's business, functions or operations which might allow the other party to construe this greater understanding as a bias; and
 - (iii) 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 parties must promptly enter into a document with the appointed expert setting out the terms of the expert's appointment and the fees payable to the expert (which are to be shared by the parties equally).
- d) The dispute must be referred to the expert by written submissions from each party, which must include a copy of this document.
- e) The expert must be instructed to determine the dispute and provide the expert's determination to the parties no later than 10 Business Days after receipt of the submissions (or another period agreed by the parties).
- f) The parties must promptly provide the expert with any information, assistance and cooperation requested in writing by the expert in connection with the expert's determination. All correspondence between the expert and a party must be copied to the other party.
- g) The expert must act as an expert and not as an arbitrator. The expert's written determination will be final and binding on the parties in the absence of manifest error.
- h) If the expert fails to determine the dispute and provide the expert's determination to the parties within 20 Business Days after the date on which the determination was due under clause 9.6 (including any extension agreed by the parties under that clause), either party may commence proceedings to determine the dispute.

6.7 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 (b), 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 document in any arbitral, judicial or other proceedings:
- (i) Views expressed or proposals or suggestions made by a party or a 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.

6.8 Conduct pending resolution

While a dispute is unresolved between the parties, each party must continue to perform their respective obligations under this document.

6.9 Remedies available under the Act

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

6.10 Urgent relief

This clause 9 does not prevent any party from seeking urgent injunctive or declaratory relief concerning any matter under this document.

7. Enforcement

7.1 Application

Clauses 7.2 to 7.5 apply only in respect of the Development Contributions to which a Contribution Value is attributed in Part 3.

7.2 Delivery of Bank Guarantees

- a) Prior to the issue of the first Construction Certificate in respect of the Development, the Developer must give a Bank Guarantee to Council (or other form of security to the satisfaction of the Council) for an amount equal to the Contribution Value for each item of the Development Contribution (Primary Security).

7.3 Replacement of Bank Guarantees

- a) The Developer may replace any Bank Guarantees for the Primary Security or Defects Security provided by it at any time, provided that the amount of that replacement is not less than that which is required to be provided under this document.
- b) On receipt of a replacement Bank Guarantee under paragraph (a), Council must immediately release the security being replaced and return it to the Developer.

7.4 Return of Bank Guarantees

- a) Within 10 Business Days of any written request being made by the Developer, after the Developer has made each Development Contribution, Council must return to the Developer the Primary Security referable to that Development Contribution to the Developer, including any replacement Bank Guarantee referable to the Development Contribution given by the Developer under clause 5.6, provided that:
 - (i) If Council has made a demand against the relevant Primary Security, Council is only required to return any remaining balance of the Primary Security still held by Council;
 - (ii) The Developer is not in breach of this document at that time (unless waived by Council).
- b) Council must release and return the Defects Security or any unused part of it to the Developer no later than 10 Business Days after the last to occur of:
 - (i) If no Rectification Notice has been issued, the end of the Defects Liability Period
- c) Within 10 Business Days after this document is terminated and a request being made by the Developer, Council must return to the Developer all of the Bank Guarantees given under clauses 6.2 and 6.6.

7.5 Calling on Bank Guarantees

- a) If the Developer commits an Event of Default, Council, without limiting any other remedies available to it, may call on any Security provided by the Developer.

- b) If Council calls on any Security, it may use the amount so paid to it in satisfaction of any costs incurred by it in remedying the relevant Event of Default.

7.6 Replacement of Bank Guarantees

If Council calls on one or more of the Bank Guarantees under clause 10.5(b), the Developer must deliver a replacement Bank Guarantee equal to the amount of the Bank Guarantee called upon by Council.

7.7 Council may withhold Construction Certificate

- 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 any obligation under this document that is required to be performed prior to the issue of the relevant Construction Certificate.
- b) Council may withhold the issue of the relevant Construction Certificate if, at the relevant time, the Developer is in breach of any obligation under this document that is required to be performed prior to this issue of the relevant Construction Certificate, until such time as the breach is rectified.

7.8 Council may withhold Subdivision 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 Development Contribution under this document that is required to be performed prior to the issue of the relevant Occupation Certificate.
- b) An Occupation Certificate must not be issued if, at the relevant time, the Developer is in breach of any obligation to make any Development Contribution under this document that is required to be performed prior to the issue of the relevant Occupation Certificate, until such time as:
 - (i) The breach is rectified; or
 - (ii) Council calls upon the Bank Guarantee in accordance with clause 6.5.

7.9 Termination

- a) This document terminates in the following events:
 - (i) The Development Consent lapses
 - (ii) The parties agree in writing to terminate this document.
 - (iii) Council serves notice on the Developer terminating this document where the Developer has failed to remedy a breach in accordance with clause 6.12; and
 - (iv) The Developer is subject to an Insolvency Event.

- b) Upon termination of this document, all future right and obligations of the parties are discharged and all pre-existing rights and obligations of the parties continue to subsist.
- c) This document will determine upon the Developer satisfying all of the obligations imposed on it in full.

7.10 Notices

- a) Any notice, consent, information, application or request that must or may be given or made to a Party under this document 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; or
 - (ii) Emailed to that party at its email address set out below

Council

Attention: General Manager
Address: Hawkesbury City Council
366 George Street, Windsor NSW 2756
Email address: council@hawkesbury.nsw.gov.au

Developer

Attention: Rob Barrow
Address: 40A Clayton Street, Balmain NSW 2041
Email address: rob@mavrex.com.au

- 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, posted, or sent to the latest address or email address.
- c) Any notice, consent, information, application or request will be treated as given or made at the following time:
 - (i) If it is delivered, when it is left at the relevant address.
 - (ii) If it is sent by post, 2 Business Days after it is posted.
 - (iii) If it is sent by email, within 3 hours of the sender having sent the email provided that no error message is received within that 3 hour timeframe.
- d) If any notice, consent, information, application or request is delivered, or sent, 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 will be treated as having been given or made at the beginning of the next business day.

7.11 Breach of obligations

- a) If the Council reasonably considers that the Developer is in breach of any obligation under this document, it may serve a written notice on the Developer (Breach Notice) specifying:
- (i) the nature and extent of the breach; if:
 - A. the breach is capable of rectification other than the payment of compensation, what Council requires the Developer to do in order to rectify the breach; or
 - B. the breach is not reasonably capable of rectification other than the payment of compensation, the amount of compensation Council requires the Developer to pay in order to rectify the breach;
 - (ii) the period within which the breach will be rectified or compensation paid, being a period that is reasonable in the circumstances and is not less than 28 business days.
- b) The Developer commits an Event of Default if the Developer fails to fully comply with a Breach Notice or becomes subject to an Insolvency Event.
- (i) If the Developer commits an Event of Default, Council may, in addition to any of its rights at law, step-in and carry out any work specified in any relevant Breach Notice and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.
 - (ii) Any costs reasonably incurred by the Council in remedying a breach in accordance with subclause (c) may be recovered by the Council by either or a combination of the following means:
 - A. by calling-up and applying the Security provided by the Developer under this document; or
 - B. as a debt due in a court of competent jurisdiction.
 - (iii) For the purpose of subclause (ii), the Council's costs of remedying a breach the subject of a Breach Notice include, but are not limited to:
 - A. the costs of the Council's servants, agents and contractors reasonably incurred for that purpose;
 - B. all fees and charges necessarily or reasonably incurred by the Council in remedying the breach; and
 - C. all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
 - (iv) Nothing in this clause prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this document by the Developer, including but not limited to seeking relief in an appropriate court.

7.12 Enforcement in a court of competent jurisdiction

- a) Without limiting any other provision of this document, the Parties may enforce this document in any court of competent jurisdiction.
- b) For the avoidance of doubt, nothing in this document prevents:
 - (i) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this document or any matter to which this document relates; or
 - (ii) the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this document or any matter to which this document relates.

8. Position of Council

8.1 Consent authority

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

8.2 Document does not fetter discretion

This document 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)

8.3 Severance of provisions

- a) No provision of this document is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this document 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 document, to ensure the objective of this clause is substantially satisfied;
 - (ii) In the event that paragraph (i) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision will be severed and the remainder of this document has full force and effect; and
 - (iii) To endeavour to satisfy the common objective of the parties in relation to the provision of this document 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 document contracted out of a provision or exercised a Discretion under this document, then to the extent of this document is not to be taken to be inconsistent with the Law.

8.4 No Obligations

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

8.5 Approvals and consent

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

9. Assignment and Dealings

9.1 Assignment

- a) Subject to 8.1(b), the Developer may not Assign the rights and obligations of this document to any part of the Land to any person (Assignee) unless the Developer first obtains the consent of Council which cannot be unreasonably withheld or delayed provided the Developer satisfies the requirements of this clause.
- b) The Developer must provide Council with any evidence required by Council, acting reasonably, to satisfy Council that the Assignee is reasonably capable of performing the obligations under this document that are to be assigned to it.
- c) Within 10 Business Days after receiving the evidence provided under clause 11.1(b), Council must confirm whether Council consents to the proposed Assignment to the Assignee, and if so, whether as a condition of that consent Council requires the Assignee to enter into an agreement in accordance with clause 12.1(d).
- d) Council may require, as a condition of any consent given under clause 8.1(a) that the proposed Assignee enter into an agreement with Council under which the Assignee agrees to comply with those of the Developer's obligations under this document that remained to be performed (or such part of those obligations as is proposed to be Assigned) as if it were the Developer.
- e) Council is under no obligation to consider granting its consent to any request made by the Developer under clause 8.1(a) if, at the time the request is made, the Developer is in breach of this document, unless waived by Council.

9.2 Dealings

- a) The Developer may not Deal with the whole or any part of the Land unless, before the Developer enters into the Dealing with another person (Transferee):
 - (i) The Transferee enters into an agreement with Council under which the Transferee agrees to comply with those of the Developer's obligations under

this document that remain to be performed in respect of the Land the subject of the Dealing as if it were the Developer;

- (ii) Any default by the Developer under this document has been remedied by the Developer or waived by Council; and
 - (iii) The Developer and the Transferee pay Council's reasonable costs in relation to the Dealing.
- b) If the Developer enters into a Dealing and has fully complied with the requirements of clause 8.2(a) with respect to that Dealing, the Developer will be released from its obligations under this document with respect to the Land the subject of the Dealing.

9.3 Restriction on dealings

- a) The Developer must not:
- (i) sell or transfer the Land; or
 - (ii) Assign the Developer's rights or obligations under this document, or novate this document,

to any person unless:

- b) the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part will be sold or transferred or the Developer's rights or obligations under this document are to be Assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council; and
- c) the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this document, and
- d) the Developer is not in material breach of this document; and
- e) the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- f) This clause does not apply in relation to any sale or transfer of the Land if this document is registered on the title to the Land at the time of the sale or transfer.

10. Indemnities & Insurance

10.1 Risk

The Developer performs this document at its own risk and its own cost.

10.2 Release

The Developer releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer's obligations under this document except if, and to the extent that, the Claim arises because of the Council's negligence or default.

10.3 Indemnity

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

10.4 Insurance

- a) The Developer must take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this document up until the Work is taken to have been completed in accordance with this document:
- (i) contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works;
 - (ii) public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party;
 - (iii) workers compensation insurance as required by law; and
 - (iv) any other insurance required by law.
- b) If the Developer fails to comply with clause 9.4(a), the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
- (i) by calling upon the Security provided by the Developer to the Council under this document; or
 - (ii) recovering the amount as a debt due in a court of competent jurisdiction.
- c) The Developer is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 9.4(a).

11. Other provisions

11.1 Costs

- a) The Developer agrees to reimburse or pay Council's reasonable costs of negotiating, preparing, executing, stamping and registering the document, and any document related to this document, within 10 Business Days of receiving a tax invoice from Council.
- b) The Developer agrees to pay or reimburse the costs and expenses incurred by Council in connection with the advertising and exhibition of this document in accordance with the Act;

- c) The Developer must also pay to the Council the Council's reasonable costs of administration and ongoing enforcement of this document within 7 days of a written demand by the Council for such payment.

11.2 Entire agreement

- a) This document contains everything to which the Parties have agreed in relation to the matters it deals with.
- b) 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 document was executed, except as permitted by law.

11.3 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 document and all transactions incidental to it.

11.4 Governing law and jurisdiction

This document 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.

11.5 Joint and individual liability and benefits

- a) Except as otherwise set out in this document:
 - (i) any agreement, covenant, representation or warranty under this document by two or more persons binds them jointly and each of them individually, and
 - (ii) any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

11.6 Representation and warranties

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

11.7 Severability

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

11.8 Illegality

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

11.9 Modification

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

11.10 Waiver

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

11.11 GST

If any Party reasonably decides that it is liable to pay GST on a supply made to the other Party under this document 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.

GST

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

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

- a) Subject to subclause (c), if GST is payable on a Taxable Supply made under, by reference to or in connection with this document, the Party providing the

Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.

- b) Subclause (a) does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this document to be GST inclusive.
- c) No additional amount shall be payable by the Council under subclause (a) unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- d) If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this document by one Party to the other Party that are not subject to Division 82 of the GST Law, the Parties agree:
 - (i) 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; and
 - (ii) that any amounts payable by the Parties in accordance with this clause (as limited by subclause (c)) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- e) No payment of any amount pursuant to this clause, 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.
- f) 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.
- g) This clause continues to apply after expiration or termination of this document.

11.12 Explanatory Note

An Explanatory Note relating to this document is required by clause 205 of the Regulation. Pursuant to clause 205(5) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this document. A template for an Explanatory Note is included in Council's Planning Agreements Policy 2022.

Schedule 1

Requirements under s7.4 of the Act

Requirement under the Act	This Agreement
Planning instrument and/or development application (s 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 or application for a complying development certificate	Yes
c) Entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) or (b) applies.	Not applicable
Description of land to which this agreement applies (s.7.4(3)(a))	Lot 37, DP 271171 14 Angophora Place, Kurmond
Description of change to the environmental planning instrument to which this agreement applies (s.7.4(3)(b))	Not applicable
Description of the development to which the agreement applies (s.7.4(3)(b))	Refer to definition of the 'Development'
Application of section 7.11 of the Act (s.7.4(3)(d))	Does not apply
Application of section 7.12 of the Act (s.7.4(3)(d))	Does not apply
Application of section 7.24 of the Act (s.7.4(3)(d))	Applies
Consideration of benefits under this agreement if section 7.11 applies (s.7.4(3)(e))	Not applicable
Mechanism for Dispute resolution (s.7.4(3)(f))	Refer to Clause 5.
Enforcement of this agreement by a suitable means, such as the provision of a bond or guarantee, in the event of a	Refer to Clause 6.

breach of the agreement by the developer (s.7.4(3)(g))	
No obligation to grant consent or exercise functions in relation to a change to an environmental planning instrument (s.7.4(9))	Refer to Clause 8.4.

DRAFT

Execution page

Executed as a deed

Dated:

Signed, sealed and delivered by Hawkesbury City Council by its General Manager in the presence of the witness whose signature appears below and in accordance with resolution dated

Witness (Signature)

General Manager (Signature)

Name of Witness (Print Name)

Name of General Manager (Print Name)

Signed, sealed and delivered by Cannonvale No.1 Pty Ltd in accordance with section 127(1) of the Corporations Act 2001 (Cth) by authority of its directors.

Director/Secretary (Signature)

Director (Signature)

Name of Director/Secretary (Print Name)

Name of Director (Print Name)