

Planning Proposals & Development Applications Requiring 3D CAD Modelling

Payment reference Number: P01(I,J)

In accordance with City of Parramatta's Schedule of Fees and Charges effective as adopted in March 2023. The following fees and charges apply to the processing of 3D model data.

The charges are as follows (GST inclusive):

- **Initial Data extraction fee** (250m radius subject site as centre).....**\$744.45 (I)**
- **Lodgement fee**.....**\$493.50 (J)**
- **Resubmission fee**.....**\$493.50 (J)**

Please fill out and return the two forms attached to the document.

1. **Data Extraction Agreement**
2. **Credit Card Authorisation Form.**

Please quote Payment reference number **(P)** in Payment Details Box in Credit Card Authorisation Form.

Once the two forms are filled out and returned the data will be sent to you via email with a link within one working business day.

Contact us:

council@cityofparramatta.nsw.gov.au | 02 9806 5050
@cityofparramatta | PO Box 32, Parramatta, NSW 2124
ABN 49 907 174 773 | [cityofparramatta.nsw.gov.au](https://www.cityofparramatta.nsw.gov.au)

Confidentiality Deed Poll for City of Parramatta Council's Release of 3D Modelling Data

Parties

This Deed Poll is made by the Recipient identified in Item 1 of the Schedule ("**Recipient**") in favour of City of Parramatta Council (ABN 49 907 174 773) of 126 Church Street Parramatta, NSW 2150 ("**Council**").

Recitals

- A In consideration of the Recipient's payment of the Price to Council, the Recipient has, or may become, acquainted with Confidential Information provided by Council.
- B The Recipient is required to execute this Deed Poll in favour of the Council.

Agreed terms

1. Defined terms & interpretation

Confidential Information means 3D CAD modelling data or other electronic data relating to the Project and the modelling of City of Parramatta in any form which has or will come to the knowledge of the Recipient by any means and which has been or will be given to the Recipient either directly or indirectly by the Council or any of the Council's Personnel, but does not include:

- (a) information which, at the time of disclosure, was already in the public domain;
- (b) information which, subsequent to disclosure, enters the public domain except through breach of this Deed Poll or any other obligation of confidence; or
- (c) information which the Recipient is required to disclose by law or the listing rules of the Australian Stock Exchange.

Including means including, without limiting the generality of what is mentioned, and other parts of speech have a corresponding meaning.

Intellectual Property means all forms of intellectual property throughout the world including patents, petty patents, innovation patents, patentable inventions, know-how, trade marks (whether registered or unregistered), copyright, registered and registrable designs, business or company names, circuit layout rights, applications for registration of any of the foregoing and rights to apply for registration of any of the foregoing, whether created before or after the date of this Deed Poll in Australia or elsewhere.

Personnel means, in relation to a party:

- (a) the officers or employees of the party or a related body corporate of it;
- (b) an agent, adviser or consultant of the party or a related body corporate of it, and the officers and employees of that agent, adviser or consultant; and
- (c) a contractor or sub-contractor of a party or a related body corporate of it, and the officers and employees of that contractor or sub-contractor.

Price means the price specified in Item 4 of the Schedule.

Project means the project identified in Item 2 of the Schedule.

2. Permitted Purpose

The Recipient:

- (a) may only use the Confidential Information in respect of the Project (**Permitted Purpose**); and

- (b) must not use the Confidential Information for any purpose except the Permitted Purpose; and
- (c) must not alter or amend the Confidential Information without the Council's prior written consent.

3. Permitted disclosure

3.1 Disclosure of Confidential Information

The Recipient must not disclose Confidential Information to its Personnel, unless those Personnel are listed in Item 3 of the Schedule to this Deed Poll or the Recipient and the Principal agree in writing to the addition of further names to Item 3 of the Schedule.

3.2 Compliance by Recipient's Personnel

The Recipient must procure that its Personnel (whether or not still employed or engaged by the Recipient) do not do or omit to do anything which if done or omitted to be done by the Recipient would be a breach of the Recipient's obligations under this Deed Poll.

In the event that the Recipient's Personnel does or omits to do anything which if done or omitted to be done by the Recipient would be a breach of the Recipient's obligations under this Deed Poll, such conduct will be deemed to be a breach of this Deed Poll by the Recipient.

3.3 Authorised Disclosure

If a duly authorised representative of the Council approves in writing the disclosure of Confidential Information, the Recipient may disclose that Confidential Information but only strictly in accordance with the terms of that approval.

Council's duly authorised representative for the purpose of this Deed Poll shall be the person identified in Item 5 of the Schedule or such other person nominated by Council in writing from time to time.

3.4 Cost of compliance

The Recipient is responsible for any cost of complying with its obligations in connection with this Deed Poll.

3.5 If Contractor must disclose by law

If the Recipient must disclose Confidential Information by law, the Recipient must give the Council notice of the disclosure as soon as reasonably practicable.

4. Price

- (a) The Recipient must pay the Council the Price as specified in Item 4 of the Schedule within 14 days of receipt of a properly rendered tax invoice from Council and prior to Council's provision of the Confidential Information.
- (b) All consideration provided for a supply under this Deed Poll is calculated inclusive of GST unless the contrary is clear. Where the Recipient is required to reimburse an agreed cost of Council, the amount payable by the Recipient must exclude the amount of any input tax credit to which the Recipient is entitled as recipient of the item to which the agreed cost relates.
- (c) All invoices submitted by Council must be tax invoices complying with *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* (as amended from time to time), must clearly and accurately itemise the amounts payable for each item supplied in Australian dollars and must identify the items supplied. Where the invoice includes a claim for reimbursement of an agreed cost, the invoice must identify that cost and the relevant provider and item supplied.

5. Security and control

5.1 Security

The Recipient must:

- (a) treat and keep Confidential Information as secret, confidential and at all times under its secure control; and
- (b) not copy, produce or disclose Confidential Information (in whole or in part), without the prior written permission of the Council.

In the event of uncertainty as to whether:

- (a) any information is Confidential Information; or
- (b) any information is lawfully within the public domain,

that information is taken to be Confidential Information and the Confidential Information is taken to be not within the public domain, unless the Recipient is informed by the Council in writing to the contrary.

5.2 Breach of confidentiality

The Recipient must:

- (a) immediately give the Council notice of any suspected or actual breach of this Deed Poll including any suspected or actual breach which arises as a result of the actions of any Personnel;

- (b) immediately take steps to prevent or stop any suspected or actual breach;
and
- (c) comply with the Council's directions regarding the enforcement of this Deed Poll (including, starting, conducting and settling enforcement proceedings).

6. Warranty and covenant

The Recipient must treat and keep the Confidential Information in the strictest of secrecy and confidentiality and expressly acknowledges and agrees that the Confidential Information is of a secret and confidential nature.

The Recipient must do everything reasonably necessary to protect and maintain the confidentiality of the Confidential Information.

The Recipient may not disclose to any person other than:

- (a) the Council;
- (b) the Personnel of the Recipient identified in Item 3 of the Schedule or such other Personnel Council approves in writing and in accordance with the terms of that approval; or
- (c) a person who has signed a separate confidentiality deed poll in favour of the Council in a form substantially similar to this Deed Poll,

that the Confidential Information has been made available to the Recipient and the Recipient undertakes:

- (d) to protect and safeguard Confidential Information against unauthorised publication or disclosure;
- (e) not to use Confidential Information for any reason or purpose except in accordance with this Deed Poll or as directed by the Council; and
- (f) to comply with any security measures in connection with Confidential Information that may be required by the Council.

7. Indemnity

The Recipient indemnifies the Council and its Personnel against any loss, damage, expense and legal cost (on a solicitor and own client basis and whether incurred by or awarded against a party) that any of them may incur, directly or indirectly, because of a breach by the Recipient of this Deed Poll including where that loss, damage, expense or legal cost is incurred as a result of a breach of the Recipient's obligations under this Deed Poll through the actions of the Personnel of the Recipient.

8. Return and destruction of Confidential Information

- (a) Subject to clause 9, if the Council requests it, the Recipient must:
 - (i) promptly return to the Council all documents and other physical records of Confidential Information in its possession, custody, power or control;
 - (ii) if any Confidential Information in the possession, custody, power or control of the Recipient is in a form that cannot be detached from valuable equipment (including Confidential Information stored by electronic or electromagnetic means), the Recipient must erase the Confidential Information but the Recipient is not required to delete Confidential Information that is stored in electronic form in back-up tapes, servers or other sources as a result of the Recipient's ordinary back-up procedures for electronic data, provided that no attempt is made by the Recipient to recover such Confidential Information from the back-up tapes, servers or other sources other than for purposes permitted by this Deed Poll.

9. Retained Confidential Information

The Recipient may, subject to complying with all of its obligations under this Deed Poll, retain one copy of any Confidential Information for the purposes of complying with any law, court order, corporate governance, insurance or internal audit requirements (**Retained Confidential Information**).

The Retained Confidential Information must be stored by electronic or electromagnetic means and may not be retained by the Recipient in physical form.

The Retained Confidential Information can only be used by the Recipient for the purposes specified in this clause 9.

10. Continuing obligation

The obligations of the Recipient under this Deed Poll continue after the completion or termination of any employment, engagement, assignment or involvement in relation to the Project.

11. No Warranty

Council does not warrant, guarantee, make any representation in relation to, or assume any duty of care with respect to completeness, accuracy or adequacy of any of the Confidential Information provided by or on behalf of Council in connection

with this Deed Poll. The Recipient must satisfy itself as to the accuracy, completeness, adequacy and fitness for purpose of such Confidential Information.

12. Release

The Recipient releases to the full extent permitted by law Council from all claims and demands as set out in this clause arising out of, in connection with, in respect to or as a consequence of the Recipient's use of the Confidential Information.

'Claims and demands' means all actions, suits, claims, demands, proceedings, losses, damages, compensation, sums of money, costs, legal costs, charges and expenses to which Council is or may become liable in respect to loss of or damage of any kind and however sustained.

13. Non-waiver

The failure of the Council to enforce any of the provisions of this Deed Poll or the granting at any time of any other indulgence is not to be construed as a waiver of that provision or of the right of the Council to enforce that or any other provision at a later date.

14. Jurisdiction

This deed is governed by and subject to the laws of New South Wales.

15. No revocation

This Deed Poll must not be revoked or otherwise modified without the prior written consent of the Council.

16. Equitable remedies

Without prejudice to any other rights or remedies that the Council may have, the Recipient acknowledges and agrees that damages alone would not be an adequate remedy for a breach of any of the provisions of this Deed Poll. The Recipient acknowledges that without proof of actual damages, injunctive relief (whether interim, interlocutory or final), specific performance or other equitable relief in favour of the Council is an appropriate and necessary remedy for the breach or threatened breach of the terms of this Deed Poll. However, nothing contained in this Deed Poll shall be construed as prohibiting the Council from pursuing any other remedies available to it.

17. Intellectual Property

- (a) The Recipient will, if requested by Council, provide Council with its own 3D CAD modelling data showing the Recipient's own modelling of the Project.
- (b) The Recipient acknowledges and agrees that:
 - (i) all Intellectual Property in all Confidential Information provided by the Council under this Deed Poll shall at all times remain the sole property of Council. Nothing in this Deed Poll grants the Recipient a licence to use or amend any such Confidential Information or Intellectual Property. The Confidential Information provided under this Deed Poll is for information purposes only; and
 - (ii) all Intellectual Property in data and other things created by or provided by the Recipient in the course of performing its obligations under clause 17(a) shall be the sole property of Council and the Recipient hereby assigns to Council all such Intellectual Property.

Execution page

EXECUTED as a deed poll.

**Signed, sealed and delivered
by an authorised representative of the
Recipient in the presence of:**

Signature of Authorised Representative

Signature of Witness

Name and position of Authorised Representative

Name of Witness

Date

Address of Witness

Schedule

| | |
|---|---|
| Item 1 – Recipient | Name: ABN: Address: Contact person: |
| Item 2 – Project for which the Confidential Information may be used by the Recipient | |
| Item 3 - Recipient's Personnel that may access the Confidential Information | |
| Item 4 - Price | \$ |
| Item 5 – Council's Representative | Tim Zhao - 3D Project Officer Telephone: (02) 9806 5238 Email: tzhao@cityofparramatta.nsw.gov.au |