

Voluntary Planning Agreement – 2 O’Connell Street, Parramatta

City of Parramatta Council

and

The Owners – Strata Plan No. 20716

Our Ref: LDA:LDA:1738 / 37588

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Reference schedule

Item 1	Council	
	City of Parramatta Council ABN 49 907 174 773	
Item 2	Owners Corporation	
	The Owners – Strata Plan No. 20716	
Item 3	Land	
	The whole of the land comprised in Strata Plan 20716 known as 2 O’Connell Street, Parramatta NSW 2150 or 5 Aird Street, Parramatta NSW 2150	
Item 4	Common Property	
	The whole of the common property located within the Land, and comprising the whole of folio identifier CP/SP20716	
Item 5	Planning Proposal	
	Title	2 O’Connell Street Parramatta – increase maximum building height and floor space ratio controls 16.2:1 FSR and height of building is 217 metres
	Summary	<p>Amend Parramatta Local Environmental Plan 2011 to amend the maximum building height and floor space ratio controls that apply to land at 2 O’Connell Street, Parramatta, including to:</p> <ul style="list-style-type: none"> – allow a maximum building height of 217m, subject to a further 15% height increase where design excellence bonus is achieved – a maximum FSR of 15:1 – include an additional site-specific clause requiring a mandatory 1:1 of commercial floor space – include an additional site-specific clause allowing the consent authority to grant consent to an additional FSR of 1.2:1 of non-residential floor space in addition to the 15:1 FSR – include maximum car parking rates in accordance with the Parramatta CBD Strategic Transport Study and resolution of Council on 10 April 2017
	Number	PP_2017_COPAR_013_00
Item 6	Notices	
	Council	<p>City of Parramatta Council 126 Church Street PARRAMATTA NSW 2150</p> <p>Attention: Felicity Roberts Fax: 02 9806 5917 Email: council@parracity.nsw.gov.au; AND sbaker@cityofparramatta.nsw.gov.au</p>
	Owners Corporation	The Owners – Strata Plan No. 20716 C/- Premier Strata Management



	PO BOX 3030 PARRAMATTA 2124 Attention: David Tuskan Fax: (02) 9630 1915 Email: davidt@premierstrata.com.au
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x _____ x _____

x _____ x _____

Date 2019

Parties

City of Parramatta Council ABN 49 907 174 773 of 126 Church Street, Parramatta NSW 2150 (**Council**)

The Owners – Strata Plan No. 20716 of C/- Premier Strata Management, Po Box 3030 Parramatta 2124 (**Owners Corporation**)

Background

- A. The Parramatta Local Environmental Plan 2011 applies to the Land.
- B. The Owners Corporation is the owners' corporation of the strata scheme created by Strata Plan 20716 and is the registered proprietor of the Common Property on the Land.
- C. The Owners Corporation is in the process of developing a Strata Renewal Plan for the collective sale of the whole of the Land in accordance with Part 10 of the SSSA
- D. The Owners Corporation lodged with Council a Planning Proposal requesting an Instrument Change by way of an amendment to the Parramatta Local Environment Plan 2011, as contemplated in the Strata Renewal Proposal for the Strata Plan. The Department of Planning and Environment determined the Planning Proposal and gave Gateway determination on 5 October 2018.
- E. The Strata Renewal Proposal anticipates that Development may ultimately be carried out on the Land.
- F. The Planning Proposal was accompanied by an offer from the Owners Corporation to Council to enter into this agreement to make contributions for public purposes associated with the Instrument Change in the event that the Land is ultimately redeveloped in accordance with the Instrument Change.
- G. The Owners Corporation and the Council agree to enter into this Agreement.

Agreed terms

1. Definitions

In this Agreement, unless the context indicates a contrary intention:

Word/s	Meaning
Act	means the <i>Environmental Planning and Assessment Act 1979 (NSW)</i>
Agreement	means this Agreement and all schedules and annexures to it
Approval	means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this agreement
Authority	means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person

Word/s	Meaning
Bank Guarantee	<p>means an irrevocable and unconditional undertaking without an expiry or end date in favour of Council to pay an amount or amounts of money to the Council on demand issued by:</p> <p>1 One of the following trading banks:</p> <ul style="list-style-type: none"> (a) Australia and New Zealand Bank Group Pty Ltd, (b) Commonwealth Bank of Australia, (c) Macquarie Bank Limited, (d) National Australia Bank Limited (e) St George Bank Limited, (f) Westpac Banking Corporation, or <p>2 Any other financial institution approved by the Council in its absolute discretion.</p>
Business Day	means a day on which banks are open for general banking business in Sydney, excluding Saturdays and Sundays
Common Property	means the common property specified in Item 4
Construction Certificate	means a construction certificate as defined under section 6.4 of the Act, or if the Former Building and Subdivision Provisions apply, section s 109C of the Act
Council	means the council named in Item 1
CPI	means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics
Deal With	means doing or agreeing to sell, transfer, assign, mortgage, charge, encumber or otherwise deal with the Common Property, the Land or this agreement (where applicable)
Dealing	means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Common Property, the Land or this agreement (where applicable)
Development	has the same meaning as in the Act
Development Application	has the same meaning as in the Act
Development Consent	has the same meaning as in the Act
Developer Contributions	means the development contributions payable for the Development in accordance with Section 7.11 and 7.12 of the Act
Development Contributions Plan	means a contributions plan as defined in Section 7.1 of the Act that applies to the Land

Word/s	Meaning
Former Building and Subdivision Provisions	has the same meaning as in clause 18 of the <i>Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017</i>
Fax Number	means a party's facsimile number set out in Item 6
Gateway Determination	means the determination of the delegate of the Greater Sydney Commission of 5 October 2018
GST	has the same meaning as in the GST Law
GST Law	has the meaning given to that term in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition of or administration of the GST
Instrument Change	means an amendment to the Parramatta Local Environmental Plan 2011 substantially in accordance with the Planning Proposal which amends the planning controls applicable to the Land.
Item	means a numbered item in the reference schedule at the beginning of this agreement
Land	means the land specified in Item 3
Law	means: <ul style="list-style-type: none"> (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation; (b) any Approval, including any condition or requirement under it; and (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b)
LRS	means the NSW Land Registry Services
Monetary Contribution	means the monetary contribution payable by the Owners Corporation under clause 8 of this Agreement
Notice Address	means the address or number set out in Item 6 for the party to whom the notice is to be given
Occupation Certificate	means an occupation certificate as defined under section 6.4 of the Act, if the Former Building and Subdivision Provisions apply, section 109C of the Act, and includes an interim Occupation Certificate, final Occupation Certificate or a partial Occupation Certificate as the case may be
Owners Corporation	means the owner named in Item 2
Planning Proposal	means the planning proposal specified in Item 5
Regulation	means the <i>Environmental Planning and Assessment Regulation 2000</i>
Replacement Title	Has the meaning given to in clause 11.1(c)

Word/s	Meaning
SSDA	means the <i>Strata Scheme Development Act 2015 (NSW)</i>
Strata Plan	means a strata plan, a strata plan of subdivision or a strata plan of consolidation that is registered in accordance with the <i>Strata Schemes (Freehold Development) Act 1973</i> or the <i>Strata Schemes (Leasehold Development) Act 1986</i>
Strata Renewal Plan	has the same meaning as used in the SSDA
Strata Renewal Proposal	has the same meaning as used in the SSDA
Strata Scheme	means the scheme established by Strata Plan No. 20716

2. Interpretation

In this agreement, unless the context indicates a contrary intention:

- (a) **(documents)** a reference to this agreement or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this agreement;
- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement;
- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;
- (e) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) **(president, CEO, general manager or managing director)** the president, CEO, general manager or managing director of a body or Authority includes any person acting in that capacity;
- (g) **(requirements)** a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (h) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (i) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (j) **(singular)** the singular includes the plural and vice-versa;
- (k) **(gender)** words importing one gender include all other genders;

- (l) **(parts)** a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (m) **(rules of construction)** neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (n) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (o) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Sydney, Australia, even if the obligation is to be performed elsewhere;
- (p) **(joint and several)** an agreement, representation, covenant, right or obligation:
 - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
 - (ii) on the part of two or more persons binds them jointly and severally;
- (q) **(writing)** a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (r) **(replacement bodies)** a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
- (s) **(Australian currency)** a reference to dollars or \$ is to Australian currency;
- (t) **(month)** a reference to a month is a reference to a calendar month; and
- (u) **(year)** a reference to a year is a reference to twelve consecutive calendar months.

3. Planning Agreement under the Act

- (a) The parties agree that this Agreement is a planning agreement within the meaning of section 7.4 of the Act.
- (b) Schedule 1 of this Agreement summarises the requirements for planning Agreements under section 7.4 of the Act and the Regulation, and the way this Agreement addresses those requirements.

4. Application of Section 7.11 or 7.12 of the Act to the Development

This Agreement does not exclude the application of Section 7.11 or 7.12 of the Act to any future Development of the Land or Development Application relating to the Land.

5. Application of this Agreement

This Agreement, binds the parties and applies to:

- (a) the Common Property; and
- (b) the Instrument Change, and
- (c) the Land.

6. Operation of this Agreement

- (a) This Agreement commences on and from the date it is executed by all parties.

- (b) Until this Agreement operates, this agreement constitutes an offer by the Owners Corporation to enter into this Agreement in connection with the Instrument Change.
- (c) This Agreement only operates if each of the following has occurred:
 - (i) the Instrument Change has been made and has commenced; and
 - (ii) the Owners Corporation and Council have signed this Agreement.
- (d) This Agreement will remain in force until:
 - (i) it is terminated by operation of law; or
 - (ii) all obligations are performed and satisfied.

7. Explanatory note

The explanatory note in Schedule 1 prepared in accordance with clause 25E of the Regulation must not be used to assist in construing this document.

8. Contributions to be made under this Agreement

8.1 Monetary Contribution

- (a) The Owners Corporation will pay to Council a Monetary Contribution of \$6,549,585 or an amount calculated in accordance with the following formula, whichever is the greater:

$$\begin{array}{r}
 \$6,549,585 \\
 \times \quad \text{The CPI at the time of payment} \\
 \hline
 \text{The CPI at the date of this Agreement}
 \end{array}$$

- (b) Subject to clauses 8.1(c) and 8.1(d), the Monetary Contribution must be paid to Council in instalments as follows:
 - (i) 75% of the Monetary Contribution prior to the issue of any Construction Certificate for Development on the Land which is directly correlated to, and made permissible by, the Instrument Change; and
 - (ii) 25% of the Monetary Contribution prior to the issue of an Occupation Certificate for the Development of the Land which is directly correlated to, and made permissible by, the Instrument Change, or prior to the registration of any Strata Plan following completion of the Development contemplated in clause 8.1(b)(i), whichever is earlier.
- (c) For the avoidance of doubt, the Monetary Contributions are not payable whilst the Strata Scheme continues to operate in its existing form, and will only be payable if a Construction Certificate is required for proposed Development on the Land which is directly correlated to, and made permissible by, the Instrument Change.
- (d) The Owners Corporation is not required to pay the instalment of the Monetary Contribution specified in clause 8.1(b)(i) if the Owners Corporation provides to the Council a Bank Guarantee in accordance with clause 9 as security for that payment, in which case the Owners Corporation must pay the full amount of the Monetary Contribution prior to the issue of an Occupation Certificate for the Development.
- (e) The Monetary Contribution must be paid by way of bank cheque in favour of Council or by deposit by means of electronic funds transfer into an account specified by Council in writing.
- (f) The Monetary Contribution will be taken to have been made when the Council notifies the Owners Corporation in writing that the bank cheque has been received and cleared funds or electronic funds have been deposited in the Council's bank account.

- (g) The parties agree and acknowledge that the Monetary Contribution will be used by the Council towards a public purpose which Council reasonably considers to be in the public interest.

9. Bank Guarantee

- (a) If the Owners Corporation elects to provide a Bank Guarantee instead of paying the first instalment of the Monetary Contribution as set out in clause 8.1(b), the Owners Corporation must provide to the Council a Bank Guarantee in an amount equivalent to 75% of the Monetary Contribution prior to the issue of a Construction Certificate for the Development.
- (b) The Council may reject any Bank Guarantee that contains errors, or if it has received the Bank Guarantee, require at any time the Owners Corporation to obtain a replacement Bank Guarantee that rectifies any such errors or otherwise obtain rectification of the errors. The Owners Corporation must provide the replacement Bank Guarantee, or otherwise obtain rectification of the errors, within 5 Business Days of receiving the Council's request.
- (c) The Council may call on a Bank Guarantee provided under this clause if:
- (i) the Owners Corporation is in material or substantial breach of this agreement and has failed to rectify the breach within a reasonable period of time after having been given reasonable notice (which must not be less than 21 Business Days) in writing to do so in accordance with clause 15.1 of this agreement; or
 - (ii) the Owners Corporation becomes Insolvent.
- (d) Within 20 Business Days of each anniversary of a Bank Guarantee provided under clause 9(a), the Owners Corporation must provide Council with one or more replacement Bank Guarantees (**Replacement Bank Guarantee**) in an amount calculated in accordance with the following:

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

Where:

A is the amount of the Replacement Bank Guarantee,

B is the amount of the Bank Guarantee to be replaced,

C is the CPI for the quarter ending immediately before the date of the Bank Guarantee to be replaced,

D is the CPI for the quarter ending immediately before the date of the Replacement Bank Guarantee,

provided A is greater than B.

- (e) On receipt of a Replacement Bank Guarantee provided under clause 9(d), the Council must release and return to the Owners Corporation, as directed, the Bank Guarantee that has been replaced as soon as reasonably practicable.
- (f) At any time following the provision of a Bank Guarantee under this clause, the Owners Corporation may provide the Council with one or more replacement Bank Guarantee totalling the amount of all Bank Guarantees required to be provided under this clause for the time being. On receipt of such replacement Bank Guarantee, the Council must release and return to the Owners Corporation, as directed, the Bank Guarantee(s) which it holds that have been replaced as soon as reasonably practicable.
- (g) Subject to clause 9(c), the Council may apply the proceeds of a Bank Guarantee in satisfaction of:

- (i) any obligation of the Owners Corporation under this agreement that is secured by the Bank Guarantee; and
 - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Owners Corporation to comply with this agreement.
- (h) Nothing in this clause 9 prevents or restricts the Council from taking any enforcement action in relation to:
- (i) any obligation of the Owners Corporation under this agreement; or
 - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Owners Corporation to comply with this agreement,
- that is not or cannot be satisfied by calling on a Bank Guarantee.
- (i) The Council must return any Bank Guarantees provided by the Owners Corporation in accordance with this clause 9 no later than 14 days after the date the Owners Corporation has paid the Monetary Contribution in full in accordance with clause 8.1 of this Agreement.

10. Owners Corporation warranties as to Capacity

The Owners Corporation represents and warrants and covenants to the Council that on the date of this Agreement:

- (a) it is the registered proprietor of the Common Property;
- (b) it is empowered to enter into this Agreement and to do all things that will be required by this Agreement; and
- (c) all things have been done or will be done as may be necessary to render this Agreement legally enforceable in accordance with its terms and fully valid and binding on it; and
- (d) all authorisations by any Authority that are required or will be required in connection with the execution and delivery of the performance of obligations under or the validity or enforceability of, this Agreement have been obtained or effected and are or will be fully operative.

11. Registration of this Agreement

11.1 Registering the Agreement

- (a) The Owners Corporation agrees to procure the registration of this agreement under the *Real Property Act 1900 (NSW)* in the relevant folio for the Common Property in accordance with section 7.6 of the Act.
- (b) The Owners Corporation, at its own expense, must:
 - (i) lodge this agreement with the LRS as soon as reasonably practicable after this agreement comes into operation, but in any event, no later than 10 Business Days after that date;
 - (ii) promptly comply with any requisition that may be raised with regards to registration of the agreement from the LRS; and
 - (iii) following registration of this agreement, provide documentary evidence that the registration of this agreement has been completed to Council within 10 Business Days of receiving confirmation that the registration has occurred.
- (c) If the Strata Scheme is terminated by strata renewal under Part 10 of the SSSA or by unanimous decision of the lot owners under Part 9, Division 4 of the SSSA, the Owners Corporation, at its own expense, must:

- (i) arrange for this Agreement to be registered on any certificate of title which replaces SP20716 (**Replacement Title**) and obtain any necessary consents;
- (ii) promptly comply with any requisition that may be raised with regards to registration of the Agreement on the Replacement Title from the LRS;
- (iii) produce to the Council any details of lodgement of this Agreement with the LRS; and
- (iv) following registration of this Agreement, notify the Council of registration, enclosing a title search of the Replacement Title confirming the registration.

11.2 Removal from Register

The Council will promptly execute any form and supply such other information and do anything as reasonably required by the Owners Corporation to enable the removal of this Agreement from the title of the Common Property, provided the Council is satisfied the Owners Corporation has duly fulfilled its obligations under this Agreement, and is not otherwise in default of any of the obligations under this Agreement.

12. Caveat

- (a) The Owners Corporation acknowledges and agrees that:
 - (i) when this Agreement is executed, the Council is deemed to have acquired and the Owners Corporation is deemed to have granted, an equitable estate and interest in the Common Property for the purposes of section 74F(1) of the *Real Property Act 1900 (NSW)* and consequently the Council will have a sufficient interest in the Common Property in respect of which to lodge a caveat over the Common Property notifying that interest;
 - (ii) it will not object to the Council lodging a caveat in the relevant folios of the Register for the Common Property nor will it seek to remove any caveat lodged by the Council provided that (consistent with clause 16.1(b)) the caveat does not prevent registration of any dealing or plan other than a transfer of Common Property.
- (b) The Council must, at the Owners Corporation's cost, register a withdrawal of any caveat in respect of the Common Property within five Business Days after the Owners Corporation complies with clause 8.1(b) or 11.1(c) and must not lodge any other caveats on the titles to any of the Land, other than in relation to a Replacement Title in accordance with clause 11.1(c).

13. Review of this agreement

13.1 Review by Agreement

- (a) This Agreement may be reviewed or modified by agreement between the parties using their best endeavours and acting in good faith.
- (b) For the purpose of clause 13.1 of this Agreement and subject to clause 13.2, no modification or review of this Agreement will be of any force or effect unless it is in writing and signed by the parties to this Agreement.
- (c) For the purposes of clause 13.1 of this Agreement and subject to clause 13.2, a party is not in breach of this Agreement if it does not agree to an amendment to this Agreement requested by a party in, or as a consequence of, a review.

13.2 Change to Development Contributions

- (a) The parties acknowledge that as at the date of this Agreement:
 - (i) Council is proposing to adopt a 'value sharing approach' for Development within the Parramatta CBD under a Local Environmental Plan by means of a separate planning

proposal for the Parramatta CBD and an accompanying Infrastructure Strategy and Development Guideline;

- (ii) the Monetary Contribution for this Agreement has been calculated on the basis of a monetary rate per square metre of land (**Value Sharing Rate**), being a percentage of land value uplift (as defined in the Council's Planning Agreements Policy); and
 - (iii) the Value Sharing Rate is being applied consistently by Council at the date of this Agreement, but may change when the planning proposal for the Parramatta CBD is finalised.
- (b) If, at the time the first instalment of Monetary Contribution becomes payable (**Payment Date**);
- (i) the Value Sharing Rate adopted by Council is less than the rate applied under this Agreement (being \$150 per square metre); and
 - (ii) as a consequence of the reduction of the Value Sharing rate, Council amends the Development Contributions Plan, or adopts a new Development Contributions Plan that applies to the Land, so that the Development Contributions payable for the Development under this Agreement are higher, per square metre or other basis of measurement used to determine the quantum of contributions, than they would otherwise have been as at the date of this Agreement.

then, within 20 Business Days of either party making a request for review, the Council and the Owners Corporation must meet to review this Agreement in accordance with the principles in clause (c) and using their best endeavours and in good faith.

- (c) If a review of this Agreement is carried out under clause (b) the parties must consider during that review process, the quantum of Monetary Contribution payable by the Owners Corporation to the Council under this Agreement and a reduction of the Monetary Contribution by an amount equivalent to the difference between:
- (i) the Development Contributions calculated as at the date of this Agreement; and
 - (ii) the Development Contributions calculated as at the Payment Date.
- (d) Any agreement reached during a review under this clause 13.2 must be conducted in accordance with clause 13.1(a) and confirmed in writing as an amendment to this agreement and be signed by the parties to this Agreement.
- (e) A failure by a party to agree to participate in a review under this clause 13.2 is taken to be a dispute for the purposes of clause 14.
- (f) If the parties cannot agree to the terms of any amendment to this Agreement following a review under clause 13.2, either party may refer the matter to dispute resolution under clause 14.
- (g) Nothing in this clause 13.2:
- (i) affects the obligation of the Owners Corporation under the Act to pay contributions in accordance with Section 7.11 or Section 7.12 of the Act; or
 - (ii) requires the Council to pay any money to the Owners Corporation or to refund the Owners Corporation or any other entity, any amount paid to it under this Agreement or for any other purpose.

14. Dispute Resolution

14.1 Reference to Dispute

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

14.2 Notice of Dispute

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

- (a) the nature of the dispute,
- (b) the alleged basis of the dispute, and
- (c) the position which the party issuing the Notice of Dispute believes is correct.

14.3 Representatives of Parties to Meet

- (a) The representatives of the parties must promptly (and in any event within 20 Business Days of the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute.
- (b) The parties may, without limitation:
 - (i) resolve the dispute during the course of that meeting,
 - (ii) agree that further material or expert determination in accordance with clause 14.6 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.

14.4 Further Notice if Not Settled

If the dispute is not resolved within 10 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (**Determination Notice**) by mediation under clause 14.5 or by expert determination under clause 14.6.

14.5 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 President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) the mediator appointed pursuant to this clause 14.5 must:
 - (i) have reasonable qualifications and practical experience in the area of the dispute; and
 - (ii) have no interest or duty which conflicts or may conflict with his or her function as a mediator he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) the mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (e) the parties must within 15 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation (except if a resolution of the Council is required to appoint a representative, the Council must advise of the representative within 5 Business Days of the resolution);

- (f) the parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (g) in relation to costs and expenses:
 - (i) each party will bear its own professional and expert costs incurred in connection with the mediation; and
 - (ii) the costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

14.6 Expert determination

If the dispute is not resolved under clause 14.3 or clause 14.5, or the parties otherwise agree that the dispute may be resolved by expert determination, the parties may refer the dispute to an expert, in which event:

- (a) the dispute must be determined by an independent expert in the relevant field:
 - (i) agreed upon and appointed jointly by the parties; and
 - (ii) in the event that no agreement is reached or no appointment is made within 20 Business Days of the agreement to refer the dispute to an expert, appointed on application of a party by the then President of the Law Society of New South Wales;
- (b) the expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;
- (c) the determination of the dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (d) the expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (e) each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs; and
- (f) any determination made by an expert pursuant to this clause is final and binding upon the parties except unless:
 - (i) within 20 Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and commences litigation; or
 - (ii) the determination is in respect of, or relates to, termination or purported termination of this agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal.

14.7 Litigation

If the dispute is not finally resolved in accordance with this clause 14, then either party is at liberty to litigate the dispute.

14.8 No suspension of contractual obligations

Subject to any interlocutory order obtained under clause 14.1, the referral to or undertaking of a dispute resolution process under this clause 14 does not suspend the parties' obligations under this agreement.

15. Enforcement

15.1 Default

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this agreement, it may give notice in writing to the other party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 21 days.
- (b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.
- (c) If a party disputes the Default Notice it may refer the dispute to dispute resolution under clause 14 of this agreement.

15.2 General Enforcement

- (a) Without limiting any other remedies available to the parties, this agreement may be enforced by any party in any Court of competent jurisdiction.
- (b) Nothing in this agreement prevents:
 - (i) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this agreement or any matter to which this agreement relates; and
 - (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 agreement or any matter to which this agreement relates.

16. Assignment and Dealings

16.1 Assignment

- (a) Subject to clause (b):
 - (i) a party must not Deal With any right under this Agreement or the Common Property without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed); and
 - (ii) the Owners Corporation must not otherwise Deal With a third party in relation to this agreement without:
 - (A) the prior written consent of the Council (such consent not to be unreasonably withheld or delayed); and
 - (B) the Council, the Owners Corporation and the third party the subject of the Dealing entering into an agreement of consent to the Dealing on terms reasonably acceptable to the Council,unless the third party is a purchaser of the whole of the Land.
- (b) The Owners Corporation may Deal With any right under this Agreement and the Common Property (or the Land) without the Council's consent provided:
 - (i) the Dealing involves the sale of the whole of the Land to a purchaser of the whole of the Land, and the Owners Corporation delivers to the Council an assignment or novation agreement signed by the purchaser in a form and of such substance as is reasonably acceptable to the Council;
 - (ii) the Dealing is required as part of the day to day management of a strata scheme and does not materially adversely impact on Council's rights or interests under this agreement, for example registration of a by-law, easement or covenant;

- (iii) the Dealing is directly related to a transaction involving an individual lot within the scheme and does not materially adversely impact on Council's rights or interests under this agreement (eg sale or lease of an individual lot).
- (c) The Owners Corporation must pay the Council's reasonable costs in relation to any consent or documentation requested by the Owners Corporation due to the operation of this clause 16.
- (d) Any purported Dealing in breach of this clause is of no effect.

17. Approvals and consents

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

18. No fetter

18.1 Discretion

This Agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council, including, but not limited to, any statutory power or discretion of the Council relating to the Development Application or any other application for Development Consent (all referred to in this agreement as a "**Discretion**").

18.2 No fetter

No provision of this Agreement is intended to constitute any fetter on the exercise of any Discretion. If, contrary to the operation of this clause, any provision of this agreement is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the parties agree:

- (a) They will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied,
- (b) In the event that clause (a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect, and
- (c) To endeavour to satisfy the common objectives of the parties in relation to the provision of this agreement which is to be held to be a fetter on the extent that is possible having regard to the relevant court judgment.

18.3 Planning Certificates

The Owners Corporation acknowledges that Council may, at its discretion, include advice on any planning certificate issued under section 10.7(5) of the Act that this Agreement affects the Land.

19. Notices

19.1 Notices

Any notice given under or in connection with this Agreement (**Notice**):

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed to the Notice Address and delivered to the intended recipient by hand, by prepaid post or by email or fax at the address or fax in Item 6;
- (c) is taken to be given or made:
 - (i) in the case of hand delivery, when it is left at the relevant physical address;

- (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
- (iii) in the case of a fax, on production of a transmission report by the machine from which the fax was sent that indicates the fax was sent in its entirety to the recipient's fax number; and
- (iv) in the case of an email, as soon as it is sent provided that:
 - (A) the sender does not receive a message indicating that there has been an error in the transmission;
 - (B) the sender also sends the notice by way of an alternative method of service (but clauses 19.1(c)(i), 19.1(c)(ii) and 19.1(c)(iii) will not apply to the alternative method); and
 - (C) the email contains the word "notice" in the subject line.
- (d) if under clause 19.1(c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place;
- (e) a party may change their Notice Address by giving the other parties at least 5 Business Days written notice of the changed details.

20. General

20.1 Relationship between parties

- (a) Nothing in this Agreement:
 - (i) constitutes a partnership between the parties; or
 - (ii) except as expressly provided, makes a party an agent of another party for any purpose.
- (b) A party cannot in any way or for any purpose:
 - (i) bind another party; or
 - (ii) contract in the name of another party.
- (c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

20.2 Time for doing acts

- (a) If the time for doing any act or thing required to be done or a notice period specified in this agreement expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5.00 pm on the specified day, it is taken to have been done on the following Business Day.

20.3 Further assurances

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this Agreement.

20.4 Joint and individual liability and benefits

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

20.5 Variations and Amendments

A provision of this Agreement can only be varied by a later written document executed by or on behalf of all parties and in accordance with the provisions of the Act.

20.6 Counterparts

This Agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

20.7 Legal expenses and stamp duty

- (a) The Owners Corporation must pay the Council's legal costs and disbursements in connection with the negotiation, preparation, execution, carrying into effect, enforcement and release and discharge of this Agreement, including the reasonable costs of obtaining any legal advice in connection with this Agreement, no later than 10 Business Days after receiving a demand from the Council to pay such costs.
- (b) The Owners Corporation agrees to pay or reimburse the costs and expenses incurred by Council in connection with the advertising and exhibition of this Agreement in accordance with the Act.
- (c) The Owners Corporation agrees to pay Council any administrative fees as required by Council, acting reasonably, in connection with the administration of this Agreement.

20.8 Entire agreement

The contents of this Agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this Agreement, whether orally or in writing.

20.9 Representations and warranties

The parties represent and warrant that they have the power and authority 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.

20.10 Severability

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

20.11 Invalidity

- (a) A word or provision must be read down if:
 - (i) this Agreement is void, voidable, or unenforceable if it is not read down;
 - (ii) this Agreement will not be void, voidable or unenforceable if it is read down; and
 - (iii) the provision is capable of being read down.

- (b) A word or provision must be severed if:
 - (i) despite the operation of clause (a), the provision is void, voidable or unenforceable if it is not severed; and
 - (ii) this Agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this Agreement has full effect even if clause 20.11(b) applies.

20.12 Waiver

- (a) A right or remedy created by this Agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.
- (b) The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

20.13 GST

- (a) Words and expressions which are not defined in this Agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with this Agreement, the Owners Corporation must pay the GST or pay to the Council an amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances.
- (d) If the Council is obliged to pay any GST on any supply made under or in accordance with this Agreement, the Owners Corporation indemnifies the Council for the amount of any such payment is required to make.

20.14 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this Agreement.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.



Executed as an Agreement

Council

Executed by **City of Parramatta City Council** under seal in accordance with a resolution of the Council on []:

.....
Signature

.....
Signature

.....
Position
(please print)

.....
Position
(please print)

.....
Name of Signatory
(please print)

.....
Name of Signatory
(please print)

Owners Corporation

The common seal of the **Owners – Strata Plan No. 20716** was affixed on 2018 in the presence of the following person(s) authorised by section 273 *Strata Schemes Management Act 2015* to attest the affixing of the seal:

.....
Signature

.....
Signature

.....
Name
(please print)

.....
Name
(please print)

.....
Authority
(please print)

.....
Authority
(please print)

Schedule 1: Summary of requirements under the Act and Regulation (clause 3(b))

The below table summarises how this agreement complies with the Act and Regulation

Section of the Act or Regulation	Provision/clause of this document
<p>Planning instrument and/or Development Application (section 7.4(1) of the Act)</p> <p>The Owners Corporation has:</p> <p>(a) sought a change to an environmental planning instrument</p> <p>(b) made, or proposes to make a Development Application</p> <p>(c) entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Description of the land to which the planning Agreement applies (section 7.4(3)(a) of the Act)</p>	Refer to Item 3
<p>Description of change to the environmental planning instrument to which this document applies and/or the development to which this document applies (section 7.4(3)(b) of the Act)</p>	Increase maximum building height and floor space ratio controls 16.2:1 FSR and 217 metres height of building as proposed in the Planning Proposal, subject to a further 15% height increase where design excellence bonus is achieved
<p>The nature and extent of the provision to be made by the Owners Corporation under this document, the time or times by which the provision is to be made and the manner in which the provision is to be made (section 7.4(3)(c) of the Act)</p>	Refer to clause 8.1
<p>Whether this document excludes (wholly or in part) or does not exclude the application of section 7.11, 7.12 or 7.24 to the development (section 7.4(3)(d) of the Act)</p>	<p>Section 7.11 <input type="checkbox"/> excluded <input checked="" type="checkbox"/> not excluded</p> <p>Section 7.12 <input type="checkbox"/> excluded <input checked="" type="checkbox"/> not excluded</p> <p>Section 7.24 <input type="checkbox"/> excluded <input checked="" type="checkbox"/> not excluded</p>
<p>Applicability of section 7.11 of the Act (section 7.4(3)(e) of the Act)</p>	The application of section 7.11 of the Act is not excluded in respect of the Development and contributions (if any) under section 7.11 will be required to be paid
<p>Consideration of benefits under this document if</p>	Benefits are not to be taken into consideration

section 7.11 applies (section 7.4(3)(e) of the Act)	in determining a development contribution under section 7.11 of the Act
Mechanism for dispute resolution (section 7.4(3)(f) of the Act)	Refer to clause 14
Enforcement of this document (section 7.4(3)(g) of the Act)	This agreement requires 75% of the Monetary Contribution to be provided in instalments with the first instalment payable prior to issuance of a Construction Certificate in respect of the development of the Land which would be impermissible if the Instrument Change had not occurred but for the registration of this agreement on title. Refer also to clauses 8, 9 and 15
No obligation to grant consent or exercise functions (section 7.4(9) of the Act)	Refer to clause 18
Registration of this document (section 7.6 of the Act)	Applicable after the document comes into effect. Refer to clause 11
Whether certain requirements of this document must be complied with before a construction certificate is issued (clause 25E(2)(g) of the Regulation)	Refer to explanatory notes
Whether certain requirements of this document must be complied with before a subdivision certificate is issued (clause 25E(2)(g) of the Regulation)	Refer to explanatory notes
Whether certain requirements of this document must be complied with before an occupation certificate is issued (clause 25E(2)(g) of the Regulation)	Refer to explanatory notes
Whether the explanatory note that accompanied exhibition of this document may be used to assist in construing this document (clause 25E(7) of the Regulation)	The explanatory note must not be used to assist in construing this document. Refer to clause 7

Explanatory Note

Exhibition of draft Voluntary Planning Agreement

Strata Plan 20716, known as 2 O'Connell Street, Parramatta NSW 2150 or 5 Aird Street, Parramatta NSW 2150

Environmental Planning & Assessment Regulation 2000 (clause 25E)

Planning Agreement

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft voluntary Planning Agreement (**the Planning Agreement**) under Section 7.4 of the Environmental Planning and Assessment Act 1979 (**the Act**).

The Planning Agreement will require the provision of monetary contributions in connection with a proposed change to provisions of the Parramatta Local Environmental Plan 2011 (**LEP**).

This Explanatory Note has been prepared jointly between the parties as required by clause 25E of the Environmental Planning and Assessment Regulation 2000 (**the Regulations**). This Explanatory Note is not to be used to assist in construing the Planning Agreement.

Parties

The Owners – Strata Plan No. 20716 (**the Owners Corporation**) made an offer to City of Parramatta Council (**the Council**) to enter into a Voluntary Planning Agreement, in connection with a Planning Proposal relating to the subject land.

Description of subject land

The land to which the Planning Agreement applies is described as Strata Plan 20716, known as 2 O'Connell Street, Parramatta NSW 2150 or 5 Aird Street, Parramatta NSW 2150 (**the Land**).

Description of the Planning Proposal to which the Planning Agreement applies

The Planning Proposal (PP_2017_COPAR_013_00) amends the LEP to modify the maximum building height and floor space ratio controls that apply to land at 2 O'Connell Street, Parramatta.

Summary of Objectives, Nature and Effect of the Planning Agreement

Monetary Contribution

The Planning Agreement requires a monetary contribution in the amount of \$6,549,585 if the land is redeveloped in a manner which is directly correlated to, and made permissible by, the Planning Proposal.

Assessment of the Merits of the Planning Agreement

How the Planning Agreement Promotes the Objects of the Act and the public interest

The draft Planning Agreement promotes the following objective of the Environmental Planning and Assessment Act 1979:

- 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;
- to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment; and
- to promote the orderly and economic use and development of land.

The draft Planning Agreement promotes the public interest by providing finances that will enable the City of Parramatta to provide services and facilities for existing and future residents and visitors of the city.

The Planning Purposes served by the Planning Agreement

The monetary contribution will be used to fund services and facilities that will enable the City of Parramatta to support existing and future residents and visitors of the city.

How the Planning Agreement promotes the objectives of the Local Government Act 1993 and the elements of the Council's Charter

The Planning Agreement is consistent with the following purposes of the Local Government Act 1993:

- to give councils the ability to provide goods, services and facilities, and to carry out activities, appropriate to the current and future needs of local communities and the wider public; and
- to give councils a role in the management, improvement and development of the resources of their areas.

The Planning Agreement promotes the following element of the Council's Charter:

- to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively

This element of the Council's Charter is promoted through the provision of funding for services and facilities that will enable the City of Parramatta to support existing and future residents and visitors of the city.

Whether the Planning Agreement Conforms with the Council's Capital Works Program

It is anticipated that the funds will be allocated towards **projects** identified in the capital works program.

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

The Planning Agreement requires the following to be satisfied prior to the issue of a construction certificate: 75% of the monetary contribution to be paid to Council, so that a total of 75% of the monetary contribution has been paid to Council.

The Planning Agreement requires the following to be satisfied prior to the issue of an occupation certificate: 25% of the monetary contribution to be paid to Council, so that a total of 100% of the monetary contribution has been paid to Council.