

Voluntary Planning Agreement

DRAFT 23 June 2020

City of Parramatta Council

ABN 49 907 174 773

and

Summer Hill Business Estate Pty Ltd

ABN 90 123 332 730

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Agreement

Date

Parties

First party

Name	City of Parramatta Council (Council)
ABN	49 907 174 773
Contact	Manager, Land Use Planning
Telephone	(02) 9806 5050

Second party

Name	Summer Hill Business Estate Pty Ltd (Landowner)
ABN	90 123 332 730
Contact	Mr Charlie Demian
Telephone	(02) 87830 0400

Background

- A. The Landowner is the registered proprietor of the Land.
- B. The Landowner and the Development Manager have entered into a development agreement for the Development Manager to develop the Land.
- C. In November 2012, with the consent of the Landowner, the Development Manager submitted a Planning Proposal to Council seeking changes to the LEP.
- D. The LEP currently provides:
 - (i) a maximum building height for the land of between 9 and 12 metres; and
 - (ii) a maximum floor space ratio for the Land of 1.5:1.
- E. The Landowner has sought to:
 - (i) rezone the Land from B5 Business Development to part B4 Mixed Use and part RE1 Public Recreation;
 - (ii) vary the maximum height of buildings for the majority of the site up to 126 metres, with a maximum height of buildings adjacent to the foreshore up to 28 metres, and so areas zoned RE1 Public Recreation have no height control;
 - (iii) increase the maximum floor space ratio from 1.5:1 to 5.3:1 (to achieve a Gross Floor Area of approximately 318,000m²);
 - (iv) vary the existing 30 metre foreshore building line applying to the Land; and
 - (v) introduce site specific clauses regarding remediation, site containment cells, satisfactory arrangements and design excellence.

- F. On 5 May 2014, Council wrote to the Department of Planning & Environment requesting a Gateway Determination under section 56(2) (now section 3.34(2)) of the Act in respect of the Planning Proposal. The Planning Proposal was granted a Gateway Determination by the Minister for Planning, subject to conditions, on 8 August 2014.
- G. On 2 June 2015, Council wrote to the Department of Planning & Environment in relation to revisions to the Planning Proposal and requesting alterations to the Gateway Determination under section 56(7) (now section 3.34(7)) of the Act. Alterations to the Gateway Determination were granted on 24 September 2015 by the Minister for Planning.
- H. By letter dated 29 January 2018, the Development Manager forwarded to Council, with the consent of the Landowner, an offer to enter into a Voluntary Planning Agreement with Council and to make contributions in connection with the carrying out of the Development.
- I. On 7 February 2018, Council facilitated a workshop with the Development Manager and provided the Development Manager with feedback on the Landowner's offer, and the desire for the Development to include additional public infrastructure.
- J. By letter dated 8 February 2018, the Development Manager forwarded to Council, with the consent of the Landowner, an alternate offer to enter this Agreement with Council and to make contributions, including additional public infrastructure and amenities in connection with the carrying out of the Development if Development Consent is granted to the Development Application and is operative.
- K. On 12 February 2018, Council endorsed the exhibited Planning Proposal that would achieve a Gross Floor Area of 318,000m².
- L. The Department subsequently requested the Development Manager carry out further studies, which the Development Manager undertook, which affirmed that the Instrument Change could achieve a Gross Floor Area of 318,000m² albeit with an increased amount of open space to what was exhibited on 23 December 2015 until 12 February 2016.
- M. By letter dated 25 January 2019, the Development Manager forwarded to Council, with the consent of the Landowner, an alternate offer for the Landowner to enter into this Agreement with Council and to make contributions.
- N. By letter dated 9 July 2019, the Development Manager, with the consent of the Landowner, further revised the Landowner's offer to enter into this Agreement with Council and to make contributions.
- O. On 26 August 2019, Council met and voted to endorse the drafting of this Agreement.
- P. The parties propose to formalise the terms of the Landowner's offer (endorsed by Council as referred to in recital O) by entering into this Agreement in accordance with section 7.4 of the Act.
- Q. A Development Application will be subsequently submitted to Council under part 4 of the Act for the redevelopment of the Land.
- R. The Landowner has offered to pay the Monetary Contribution, dedicate the Dedication Land to Council in respect of the Development, and the Landowner will carry out the Works identified in Schedule 5, Schedule 6, Schedule 7 and Schedule 8 of this agreement.

Operative part

2 Definitions

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

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

Address means a party's address set out in the Notices clause of this Agreement;

Agreement means this planning agreement;

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;

Bank Guarantee means an irrevocable and unconditional undertaking that is not limited in time and does not expire by one of the following trading banks:

- (a) Australia and New Zealand Banking Group Limited,
- (b) Commonwealth Bank of Australia,
- (c) Macquarie Bank,
- (d) National Australia Bank,
- (e) St George Bank Limited,
- (f) Westpac Banking Corporation, or
- (g) Other financial institution approved by the Council,

to pay an amount or amounts of money to the Council on demand and containing terms and conditions reasonably acceptable to the Council;

Bike Path means the proposed bike path to be constructed and dedicated to Council under this Agreement as set out in Schedule 8;

Bond means an insurance bond from an AAA credit rated party;

Business Day means a day on which banks are open for general banking business in Sydney, excluding Saturdays and Sundays;

Certificate of Practical Completion means the written certificate confirming the Works, or part of the Works, have been completed to the Council's satisfaction issued under clause 8.1(d) of Schedule 1;

Commercial Space means a building or part of a building to be constructed and dedicated to Council under this Agreement in a manner that can be used as a public car park or for other purposes such as a community facility or commercial space as set out in Schedule 6;

Community Facility means the proposed community facility to be constructed and dedicated to Council under this Agreement as set out in Schedule 7;

Compliance Certificate has the same meaning as under the Act;

Construction Certificate means a construction certificate as defined under section 6.3 of the Act or if the Former Building and Subdivision Provisions apply, section 109C of the Act;

Construction Terms means the terms set out in Schedule 2;

Contamination means the presence (in, on or under the land) of a substance at a concentration above the concentration at which the substance is normally present (in, on or under respectively) land in the same locality and that presence presents a risk of harm to human health or any other aspect of the environment;

Contributions means any monetary contributions, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit detailed in Column 2 of Schedule 3;

CPI means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics;

Damages means all liabilities, losses, damages, costs and expenses, including legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties;

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

Dedication 01 means the land for the Park Embellishment specified in Schedule 5 and in the general location labelled A on the plan at Annexure A;

Dedication 02 means the land for the Commercial Space specified in Schedule 6 and in the general location labelled C on the plan at Annexure A;

Dedication 03 means the land for the Community Facility specified in Schedule 7 and in the general location labelled B on the plan at Annexure A;

Dedication 04 means the land for the Bike Path specified in Schedule 8;

Dedication Land means the dedication of:

- (a) Dedication 01;
- (b) Dedication 02;
- (c) Dedication 03; and
- (d) Dedication 04,

as shown on the plan included in Annexure A;

Development means any development on the Land contemplated and enabled by the Instrument Change;

Development Application has the same meaning as in the Act;

Development Consent has the same meaning as in the Act;

Development Manager means Pacific Planning Pty Ltd;

Electronic Conveyancing National Law means the Electronic Conveyancing National Law adopted in New South Wales under section 4 of the *Electronic Conveyancing (Adoption of National Law) Act 2012* (NSW).

Fax Number means a party's facsimile number set out in the Notices clause of this Agreement;

Former Building and Subdivision Provisions has the same meaning as in clause 18 of the *Environmental Planning And Assessment (Savings Transitional and Other Provisions) Regulation 2017*;

Gazettal means the date the Instrument Change is first published on the NSW Legislation Website;

Government Agency means:

- (a) a government or governmental department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of law;

Gateway Determination means the determination by Richard Pearson, the Deputy Secretary, Housing, Growth and Economics at the Department of Planning & Environment dated 8 August 2014 pursuant to section 56(2) (now section 3.34(2)) of the Act;

Gross Floor Area has the same meaning as the LEP;

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 of or administration of the GST;

Insolvent means, in relation to a party:

- (a) that party makes an arrangement, compromise or composition with, or assignment for, the benefit of its creditors or a class of them;
- (b) a receiver, receiver and manager, administrator, provisional liquidator, trustee, controller, inspector or analogous person is appointed in relation to, or over, all or any part of that party's business, assets or securities;
- (c) a presumption of insolvency has arisen under legislation because of the party's failure to comply with a statutory demand or analogous process;
- (d) an application for the winding up of, or for the appointment of a receiver to, that party, other than winding up for the purpose of solvent reconstruction or reamalgamation, is presented and not withdrawn or dismissed within 21 days (or such longer period agreed to by the parties), or an order is made or an effective resolution is passed for the winding up of, or for the appointment of a receiver to, that party, or any analogous application is made or proceedings initiated;
- (e) any shareholder or director of that party convenes a meeting for the purpose of considering or passing any resolution for the winding up or administration of that party;
- (f) that is an individual, a creditor's petition or a debtor's petition is presented to the Official Receiver or analogous authority in relation to that party;
- (g) an execution or analogous process is levied or enforced against the property of that party;

- (h) that party ceases or suspends, or threatens to cease or suspend, the conduct of all or a substantial part of its business;
- (i) that party disposes of, or threatens to dispose of, a substantial part of its assets;
- (j) that party stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts; or
- (k) that party is unable to pay the party's debts as and when they become due and payable;

Instrument Change means an amendment made to the LEP in response to the Planning Proposal which anticipates future development with a Gross Floor Area of approximately 318,000m² on the Land;

Land means the land specified in Schedule 4 and includes any part of that land;

Landowner means Summer Hill Business Estate Pty Ltd;

Law means:

- (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);

LEP means the Parramatta Local Environmental Plan 2011;

Modification Application means any application to modify the Development Consent under section 4.55 of the Act;

Monetary Contribution has the meaning given in clause 7.1(a);

NSW Legislation Website means <https://www.legislation.nsw.gov.au>.

Occupation Certificate means an occupation certificate as defined under section 6.3 of the Act or if the Former Building and Subdivision Provisions apply, section 109C of the Act;

Owner has the meaning given to that term in the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW);

Park Embellishment means the construction and embellishment of part of the Land to be dedicated to Council under this Agreement for the purposes of a public park as set out in Schedule 5;

Participation Rules means the Participation Rules made by the Registrar-General under section 23 of the Electronic Conveyancing National Law (NSW).

Planning Proposal means the planning proposal submitted by the Development Manager known as PP_2014_PARRA_004_00 in respect of the Land.

Public Road has the same meaning as in the *Roads Act 1993*;

Register means the Torrens title register maintained under the *Real Property Act 1900*;

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

Related Body Corporate has the meaning given to that term in section 9 of the *Corporations Act 2001* (Cth);

Site Audit Statement has the same meaning as under the *Contaminated Land Management Act 1997*;

Strata Plan means a strata plan, a strata plan of subdivision or a strata plan of consolidation that is registered in accordance with the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*;

Transferee has the meaning given in clause 13.2;

Works means any work required to be carried out by the Landowner under this Agreement to deliver the Bike Path, Community Facility, Park Embellishment and Commercial Space, including but not limited to survey, design, obtaining Approvals, relocating services, remediation of contaminated land, earthworks, engineering, building, construction, fit out, inspection, monitoring, testing and rectifying defects.

3 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 anything includes a requirement to cause that thing to be done, and a requirement not to do anything 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 , 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.

4 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 way this Agreement addresses those requirements.

5 Application of this Agreement

This Agreement applies to:

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

6 Operation of this Agreement

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

- (b) For the avoidance of doubt, the obligation under this Agreement to deliver the Contributions does not take effect until the Instrument Change is made.

7 Contributions to be made under this Agreement

7.1 Monetary contribution

- (a) The Landowner will pay to Council a monetary contribution for active open space in Camellia (**Monetary Contribution**) in accordance with this clause 7.1.
- (b) The Monetary Contribution must be paid to Council in instalments based on the grant of Construction Certificates for the Development.
- (c) An instalment calculated in accordance with clauses 7.1(d) and 7.1(e) is to be paid prior to the issue of each relevant Construction Certificate for the Development.
- (d) The instalments required to be paid under this clause 7.1 are to be calculated in accordance with the following formula (**Instalment Amount**):

Instalment Amount = \$16 per square metre of Gross Floor Area of residential and non-residential development to be certified under the relevant Construction Certificate

- (e) The Instalment Amount is to be indexed in accordance with the following formula:

$$\text{Instalment Amount} \times \frac{\text{The CPI at the time of payment}}{\text{The CPI at the date of the Instrument Change}}$$

- (f) The Instalment Amount calculated in accordance with clauses 7.1(d) and (e) 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 prior to the grant of the relevant Construction Certificate.
- (g) The Monetary Contribution will be taken to have been made when the Council notifies the Landowner in writing that the bank cheque has been received and cleared funds or electronic funds have been deposited in the Council's bank account.
- (h) The parties agree and acknowledge that the Monetary Contribution will be used by the Council towards the provision of open space in Camellia, NSW.

7.2 Works

- (a) The Landowner will carry out the Works in accordance with this Agreement, including the Construction Terms and any Development Consent granted for the Works.
- (b) The Works or any part of the required under this agreement will be taken to have been completed for the purposes of this agreement when a Certificate of Practical Completion has been issued for those Works.
- (c) The Works or any part of the Works required under this agreement will be taken to have been delivered to Council when the land on which those Works are located is dedicated to Council.
- (d) The Works must be completed in accordance with the Construction Terms at the time specified for completion of the Works in Column 3 of Schedule 3.

- (e) The Works must be delivered to the Council at the time specified for dedication or transfer of the relevant Dedication Land in Column 3 of Schedule 3.
- (f) The parties agree and acknowledge that the Works identified in Schedule 5, Schedule 6, Schedule 7 and Schedule 8 serve the following public purposes:
 - (i) provision of open space;
 - (ii) provision of a community facility in retail or commercial premises;
 - (iii) provision of a public car park for commuters or a community facility, to be determined by Council at its discretion;
 - (iv) provision of a community cycle way; and
 - (v) provision of works to remediate the foreshore of the Parramatta River.
- (g) The Landowner shall include in a Development Application lodged in respect of the Development the Contributions set out in Schedule 3 of this Agreement and must:
 - (i) comply with any condition of Development Consent requiring provision of the Contributions;
 - (ii) not seek to amend such conditions of Development Consent;
 - (iii) not appeal to the Land and Environment Court in respect of the same; and
 - (iv) not take any other action to avoid complying with such conditions,

provided that the conditions of the Development Consent for the Development reflect and are not inconsistent with the agreement between the parties regarding the Contributions set out in this Agreement.

7.3 *Dedication of Land*

- (a) The Landowner agrees to dedicate or transfer the Dedication Land to Council.
- (b) The Landowner warrants that it holds the legal capacity to dedicate the Dedication Land to Council.
- (c) The Dedication Land must not be dedicated or transferred to Council unless:
 - (i) all Works required under this Agreement on that part of the Dedication Land is completed in accordance with this Agreement,
 - (ii) all services required for that part of the Dedication Land have been connected and are operational so that the Dedication Land is in a useable and safe condition;
 - (iii) for Dedication 01 and Dedication 04, the Developer provides to Council a Site Audit Statement prepared by a suitably qualified person, which certifies that any Contamination has been remediated and that the land is suitable for its intended use; and
 - (iv) all Works required by this Agreement on that part of the Dedication Land comply with relevant Approvals as determined by Council, acting reasonably.
- (d) The dedication of the Dedication Land will occur at the time specified in Column 3 of Schedule 3.

- (e) The Dedication Land is taken to have been made (and made free of costs) if:
- (i) for Dedication 01 and Dedication 04, the land vests in the Council for an estate in fee simple under section 49(1) of the *Local Government Act 1993*; and
 - (ii) for Dedication 02 and Dedication 03, the land is transferred to Council at no cost to Council and Council is listed as the registered proprietor of the land on the Register.
- (f) The Landowner must ensure that the land to be dedicated under this Agreement is freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts in, over or in connection with the land, including but not limited to, municipal rates and charges, water rates and land tax.
- (g) Despite clause 7.3(f), if having used its best endeavours, the Landowner cannot ensure that the land to be dedicated is free from any relevant encumbrance and affection, then:
- (i) the Landowner may request that the Council agree to accept the land subject to those encumbrances and affections; and
 - (ii) if the encumbrance or affection:
 - (A) does not prevent the future use of the land for the public purpose for which it is to be dedicated under this Agreement; and
 - (B) is not a charge against the Land; and
 - (C) is an encumbrance or charge that Council would not be restricted from granting or extinguishing over public land or public road under the *Local Government Act 1993*, the *Roads Act 1993* and the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*,

the Council must not withhold its agreement unreasonably and otherwise, the Council may withhold its agreement at its absolute discretion.
- (h) Prior to the issue of an Occupation Certificate for the building(s) containing Dedication 02 and Dedication 03 the Developer and the Landowner must provide to Council the draft Building Management Statement or Strata Management Statement for the building and obtain Council's consent (acting reasonably) to the Building Management Statement or Strata Management Statement. The Developer and the Landowner must ensure that Council is provided with voting rights under any such Building Management Statement or Strata Management Statement commensurate with the ownership of Dedication 02 and Dedication 03 within the building such as for example voting rights that are proportionate with the areas (for example, gross floor areas or useable areas) of those parts of the building.
- (i) The Landowner agrees that it will not exercise any vote it holds or any proxy votes held on behalf of strata lot owners to the detriment of Council as owner of Dedication 02 or Dedication 03.
 - (j) The parties agree and acknowledge that the Dedication Land will serve the following public purposes:
 - (i) provision of open space;

- (ii) provision of a community facility in retail or commercial premises;
- (iii) provision of a public car park for commuters or a community facility, as determined by Council at its discretion; and
- (iv) provision of a community cycle way.

7.4 *Compulsory acquisition*

- (a) If the Landowner does not satisfy the requirement to dedicate the Dedication Land at the times referred to in column 3 of Schedule 3, the Landowner consents to the Council compulsorily acquiring the Dedication Land in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) for the amount of \$1.
- (b) The Landowner and the Council agree that:
 - (i) clause 7.4(a) is an agreement between the Owner and the Council for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW); and
 - (ii) in clause 7.4(a), the Owner and Council have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (c) The Landowner indemnifies and agrees to keep indemnified the Council against all claims made against the Council if the Council must pay compensation under Part 3 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) to any person.

8 Sections 7.11, 7.12 and 7.24 of the Act

8.1 *Application of Sections 7.11, 7.12 and 7.24 of the Act to the Development*

- (a) The application of sections 7.11 and 7.12 of the Act to the Development is excluded.
- (b) The application of section 7.24 of the Act to the Development is not excluded.

9 Registration of this Agreement

9.1 *Landowner Interest*

The Landowner represents and warrants to the Council that on the date of this Agreement it is the registered proprietor of the Land.

9.2 *Registration of this Agreement*

- (a) The Landowner agrees to procure the registration of this Agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register of the Land in accordance with section 7.6 of the Act.
- (b) The Landowner, at its own expense, must:
 - (i) lodge this Agreement with the Registrar-General 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) procure the registration of this Agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this Agreement is lodged for registration; and
 - (iii) provide to Council documentary evidence that the registration of this Agreement has been completed within 5 Business Days of receiving confirmation that the registration has occurred.
- (c) The Landowner at its own expense will take all practical steps, and otherwise do anything that the Council reasonably requires to procure:
- (i) the consent of each person who:
 - (A) has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or
 - (B) is seized or possessed of an estate or interest in the Land;
 - (ii) an acceptance of the terms of this Agreement and an acknowledgement in writing from any existing mortgagee in relation to the Land that the mortgagee will adhere to the provisions of this Agreement if it takes possession of the Land as mortgagee in possession;
 - (iii) the execution of any documents; and
 - (iv) the production of the relevant duplicate certificates of title,
- to enable the registration of this Agreement in accordance with this clause 9.2.

9.3 *Removal from Register*

The Council will provide a release and discharge of this Agreement so that it may be removed from the folios of the Register for the Land (or any part of it) if the Agreement is terminated by operation of Law or in accordance with the Agreement, provided the Council is satisfied the Landowner has duly fulfilled its obligations under this Agreement, and is not otherwise in default of any of the obligations under this Agreement.

9.4 *Caveat*

- (a) The Landowner acknowledges and agrees that:
- (i) when this Agreement is executed, the Council is deemed to have acquired and the Landowner is deemed to have granted, an equitable estate and interest in the Land 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 Land in respect of which to lodge a caveat over the Land notifying that interest; and
 - (ii) it will not object to the Council lodging a caveat in the relevant folios of the Register for the Land nor will it seek to remove any caveat lodged by the Council provided the caveat does not prevent registration of any dealing or plan other than a transfer.
- (b) The Council will, at the Landowner's cost:
- (i) provide any consent the Landowner may reasonably require to enable this Agreement or any Dealing that is not inconsistent with this Agreement to be registered against the title to the Land; and

- (ii) do all things reasonably necessary to remove the caveat from the title to the Land, other than the Dedication Land, at the request of the Landowner provided that this Agreement has been registered against the title to the Land.
- (c) For the avoidance of doubt, the Landowner acknowledges and agrees that any caveat registered by Council against the title to the Dedication Land may be retained on title until the Dedication Land is dedicated or transferred to Council in accordance with this Agreement.

10 Review of this Agreement

10.1 *Review by agreement*

- (a) This Agreement may be reviewed or modified by agreement between the parties using their best endeavours and acting in good faith.
- (b) For the purposes of this clause 10.1 and subject to clause 10.2, no modification or review of this Agreement will be of any force or effect unless it is in writing, signed by the parties to this Agreement and in accordance with Law.
- (c) For the purposes of this clause 10.1 and subject to clause 10.2, 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.

10.2 *Change to Development Yield*

- (a) The parties acknowledge that as at the date of this Agreement the Planning Proposal seeks to amend the LEP to increase the maximum floor space ratio control applying to the Land to 5.3:1, which the Landowner anticipates will achieve a Gross Floor Area of 318,000 square metres for future development of the Land.
- (b) The parties acknowledge that the LEP may not be amended in accordance with the Planning Proposal and if the Instrument Change results in a maximum floor space ratio control for the Land of less than 5.3:1, then, within 20 Business Days of either party making a request for review, the Council and the Landowner must meet to review this Agreement in accordance with the principles in clause 10.2(c) and using their best endeavours and good faith.
- (c) If a review of this Agreement is carried out under clause 10.2(b) the parties must, acting reasonably, consider during that review process whether it is appropriate to reduce the contributions to be delivered under this Agreement having regard to the percentage difference between the anticipated Gross Floor Area for the Development as at the date of this Agreement (318,000 square metres) and the anticipated Gross Floor Area for the Development after the Instrument Change is made and any other matters considered relevant by the parties at the time of the review.
- (d) Any agreement reached during a review under this clause 10.2 must be 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 10.2 is taken to be a dispute for the purposes of clause 11.

- (f) If the parties cannot agree to the terms of any amendment to this Agreement following a review under clause 10.2, either party may refer the matter to dispute resolution under clause 11.
- (g) Nothing in this clause 10.2 requires the Council to pay any money to the Landowner or to refund to the Landowner or any other entity, any amount paid to it under this Agreement or for any other purpose.

11 Dispute Resolution

11.1 *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.

11.2 *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.

11.3 *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 11.6 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.

11.4 *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 11.5 or by expert determination under clause 11.6.

11.5 *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 Resolutions Institute 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 Chair of Resolution Institute, (ACN 008 651 232, Level 2, 13-15 Bridge Street, Sydney NSW 2000; telephone: 02 9251 3366, email: infoaus@resolution.institute) or the Chair's designated representative, to appoint a mediator;
- (c) the mediator appointed pursuant to this clause 11.5 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.

11.6 *Expert determination*

If the dispute is not resolved under clause 11.3 or clause 11.5, 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.

11.7 Litigation

If the dispute is not resolved in accordance with this clause 11, then either party is at liberty to litigate the dispute.

11.8 No suspension of contractual obligations

Subject to any interlocutory order obtained under clause 11.1, the referral to or undertaking of a dispute resolution process under this clause 11 does not suspend the parties' obligations under this Agreement.

12 Enforcement

12.1 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 Business 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 11 of this Agreement.

12.2 Bank Guarantee

- (a) Prior to the issue of the first Construction Certificate for the Development the Landowner must provide to the Council a Bank Guarantee in the amount of \$18,500,000.00, to secure the obligation to carry out Works required to deliver the Park Embellishment in accordance with this Agreement.

- (b) Prior to the issue of a Construction Certificate for the building (or part of the building) containing the Commercial Space, and no later than the issue of an Occupation Certificate for the third building in the Development, the Landowner must provide to the Council a Bank Guarantee in the amount of \$3,600,000.00 to secure the obligation to carry out Works required to deliver the Commercial Space in accordance with this Agreement.
- (c) Prior to the issue of a Construction Certificate for the building or any part of the building containing the Community Facility, and no later than the issue of an Occupation Certificate for the second building in the Development, the Landowner must provide to the Council a Bank Guarantee in the amount of \$1,130,000.00 to secure the obligation to carry out Works required to deliver the Community Facility in accordance with this Agreement.
- (d) Prior to the issue of a Construction Certificate for any part of the Works required to deliver the Bike Path, the Landowner must provide to the Council a Bank Guarantee in the amount of \$650,000.00 to secure the obligation to carry out those Works in accordance with this Agreement.
- (e) The amount of each Bank Guarantee provided under this clause 12.2 is to be indexed in accordance with increases in the CPI from the date of this Agreement to the date the Bank Guarantee is provided.
- (f) The Council may reject any Bank Guarantee that contains errors, or if it has received the Bank Guarantee, require at any time the Landowner to obtain a replacement Bank Guarantee that rectifies any such errors or otherwise obtain rectification of the errors. The Landowner must provide the replacement Bank Guarantee, or otherwise obtain rectification of the errors, within 5 Business Days of receiving the Council's request.
- (g) The Council may call on a Bank Guarantee provided under this clause if:
 - (i) the Landowner 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; or
 - (ii) the Landowner becomes Insolvent.
- (h) Within 20 Business Days of each anniversary of a Bank Guarantee provided under this clause 12.2, the Landowner 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.

- (i) On receipt of a Replacement Bank Guarantee provided under clause 12.2(h), the Council must release and return to the Landowner, as directed, the Bank Guarantee that has been replaced as soon as reasonably practicable.
- (j) At any time following the provision of a Bank Guarantee under this clause, the Landowner may provide the Council with one or more replacement Bank Guarantees totalling the amount of all Bank Guarantees required to be provided under this clause for the time being. On receipt of such replacement Bank Guarantee, the Council must release and return to the Landowner, as directed, the Bank Guarantee(s) which it holds that have been replaced as soon as reasonably practicable.
- (k) Subject to clause 12.2(g), the Council may apply the proceeds of a Bank Guarantee in satisfaction of:
 - (i) any obligation of the Landowner under this agreement that is secured by the Bank Guarantee in accordance with this clause 12.2; and
 - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Landowner to comply with this agreement.
- (l) The Council must promptly return a Bank Guarantee provided under this clause to secure the provision of any Works if requested by the Landowner and:
 - (i) a Certificate of Practical Completion has been issued for the item of Works to which the Bank Guarantee relates; and
 - (ii) the Landowner has provided a Bond or Bank Guarantee under clause 8.5 of the Construction Terms (defects liability guarantee) for that item of Works; and
 - (iii) any Occupation Certificate relating to the Works and the Dedication Land on which the Works are located has been issued; and
 - (iv) if the Bank Guarantee relates to other items of Works for which a Certificate of Practical Completion has not been issued, a replacement Bank Guarantee is provided by the Landowner in an amount determined by the Council acting reasonably, that is equivalent to the costs of constructing those other items of Works or the cost of complying with those other requirements.
- (m) For the avoidance of doubt, the Landowner may direct Council in writing to continue to hold a Bank Guarantee in satisfaction of the requirement to submit a Bank Guarantee or Bond under clause 8.5 of the Construction Terms for defects liability.
- (n) Nothing in this clause 12.2 prevents or restricts the Council from taking any enforcement action in relation to:
 - (i) any obligation of the Landowner 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 Landowner to comply with this agreement,

that is not or cannot be satisfied by calling on a Bank Guarantee.

12.3 *Transfer of Dedication 02 and Dedication 03*

- (a) Within 5 Business Days after lodgement of any plan creating a lot for Dedication 02 or Dedication 03 for registration at the NSW Land Registry Services, the Landowner will deliver to Council:
 - (i) a properly executed power of attorney, client authorisation or other document required by the Electronic Conveyancing National Law appointing Council as its representative to act for the Landowner in a conveyancing transaction in accordance with the Participation Rules and containing all relevant transaction details including property address and land title references; and
 - (ii) any documents or forms reasonably required by a mortgagee for the relevant lot to enable it to release the unencumbered title to the lot and to provide any consent to the transfer of the lot to Council; and
 - (iii) an irrevocable undertaking from any entity with Control of the Right to Deal with title for the relevant lot that it will consent to the transfer of the lot to Council and execute any required documents for the purposes of registering that transfer of the unencumbered title to the relevant lot promptly when requested by Council; and
 - (iv) any other document (for example a withdrawal of caveat) in registrable form as is necessary to ensure that Council is able to register the transfer of the relevant lot, or an irrevocable undertaking from the relevant person issuing the document that the document will be produced for registration promptly when requested by Council; and
 - (v) any other document reasonably requested by Council for the purposes of transferring the relevant lot to Council in accordance with the Electronic Conveyancing National Law.
- (b) The documents referred to in clause 12.3(a) are to be held by Council as security for the performance by the Landowner of the obligations imposed on it to transfer Dedication 02 and Dedication 03 to Council under this Agreement.
- (c) In the event the Landowner does not transfer Dedication 02 or Dedication 03 to Council at the time required under this Agreement, the Landowner agrees that Council may, relying on the documents provided to it under clause 12.3(a), register the transfer of the relevant lots to Council electronically in accordance with the Electronic Conveyancing National Law.

12.4 *Restriction on the issue of Certificates*

- (a) In accordance with section 6.8 of the Act and any associated regulations (or if the Former Building and Subdivision Provisions apply, section 109F of the Act and clause 146A of the Regulation):

- (i) the obligation to pay instalments of the Monetary Contribution in accordance with clause 7.1 must be satisfied prior to the issue of each Construction Certificate for the Development; and
 - (ii) each obligation to provide a Bank Guarantee under clause 12.2 must be satisfied prior to the issue of a Construction Certificate for the relevant part of the Development as specified in clause 12.2.
- (b) In accordance with section 6.10 of the Act (or if the Former Building and Subdivision Provisions apply, section 109H(2) of the Act):
- (i) the obligations to complete the Works must be satisfied prior to the issue of an Occupation Certificate for the relevant part of the Development as specified in Column 3 of Schedule 3;
 - (ii) the obligations to dedicate Dedication 01 and Dedication 04 must be satisfied prior to the issue of an Occupation Certificate for the relevant part of the Development as specified in Column 3 of Schedule 3; and
 - (iii) each obligation to provide a Bank Guarantee under clause 12.2 must be satisfied prior to the issue of an Occupation Certificate for the relevant part of the Development as specified in clause 12.2.

12.5 *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 of NSW 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.

13 Assignment and Dealings

13.1 *Assignment*

- (a) A party must not assign or deal with any right under this Agreement without the prior written consent of the other parties.
- (b) Any change of ownership or control (as defined in section 50AA of the *Commonwealth Corporations Act 2001*) of a party (excluding the Council) shall be deemed to be an assignment of this Agreement for the purposes of this clause.
- (c) Any purported dealing in breach of this clause is of no effect.

13.1 *Arrangements with Mortgagee*

- (a) The Landowner agrees with the Council that if the Landowner mortgages the Land after this Agreement is entered into it must use all reasonable efforts at that time to arrange a multiple party deed of agreement between the Council, the Landowner, and the mortgagee who will be providing finance for the Works so that the mortgagee accepts that the responsibilities set out in this Agreement are

binding upon the mortgagee in the event that the Landowner defaults on the mortgage and the mortgagee takes possession of the Land.

- (b) The terms of the adoption of the obligations of the Landowner by the mortgagee shall be as reasonably required by the Council. The agreement shall be prepared at the cost of the Landowner.

13.2 *Transfer of Land*

- (a) The Landowner may not transfer, assign or dispose of the whole or any part of its right, title or interest in the Land (present or future) or in the Development to another person (**Transferee**) unless before it sells, transfers or disposes of that right, title or interest:
 - (i) the Landowner satisfies the Council that the proposed Transferee is financially capable of complying with the Landowner's obligations under this Agreement;
 - (ii) the Landowner satisfies the Council that the rights of the Council will not be diminished or fettered in any way;
 - (iii) the Transferee delivers to the Council a novation deed signed by the Transferee in a form and of such substance as is acceptable to the Council containing provisions under which the Transferee agrees to comply with all the outstanding obligations of the Landowner under this Agreement;
 - (iv) the Transferee delivers to the Council replacement Bonds or Bank Guarantees as required by this Agreement;
 - (v) any default under any provisions of this Agreement has been remedied or waived by the Council, on such conditions as the Council may determine; and
 - (vi) the Landowner and the Transferee pay the Council's reasonable costs in relation to the assignment.

14 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.

15 No fetter

15.1 *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**").

15.2 *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 (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.

15.3 *Planning Certificates*

The Landowner 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.

16 Notices

16.1 *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 as follows and delivered to the intended recipient by hand, by prepaid post or by email or fax at the address or fax number below, or at the address or fax number last notified by the intended recipient to the sender after the date of this Agreement:

- (i) to Council:
 - City of Parramatta Council
 - PO Box 32, Parramatta, NSW 2124
 - Fax: 02 9806 5917
 - Email: PCC Council
 - <council@cityofparramatta.nsw.gov.au>
 - Attention: Manager, Land Use Planning
- (ii) to the Development Manager:
 - Pacific Planning Pty Ltd
 - P.O Box 8
 - Caringbah NSW 1495
 - Fax: NA
 - Email: mdaniel@pacificplanning.com.au
 - Attention: Matt Daniel
- (iii) to the Landowner:
 - Summer Hill Business Estate Pty Ltd
 - PO Box 411
 - Parramatta NSW 2124
 - Fax: 02 8830 0499
 - Email: c.demian@demian.com.au
 - Attention: Mr Charlie Demian

- (i) when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above;
 - (ii) when the Notice enters an information system controlled by the recipient; or
 - (iii) when the Notice is first opened or read by the recipient,
- whichever occurs first.
- (b) If under clause 16.3 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 will be taken to have been given or made at the start of business on the next Business Day in that place.

17 General

17.1 *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.

17.2 *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.

17.3 *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.

17.4 *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.

17.5 *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.

17.6 Counterparts

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

17.7 Legal expenses and stamp duty

- (a) The Landowner must pay the Council's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution, carrying into effect, enforcement and release and discharge of this Agreement, including the reasonable costs of obtaining any legal advice in connection with this Agreement, no later than 30 Business Days after receiving a demand from the Council to pay such costs.
- (b) The Landowner 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 Landowner agrees to pay to Council any administrative fees as required by Council, acting reasonably, in connection with the administration of this Agreement.

17.8 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.

17.9 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.

17.10 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.

17.11 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 17.11(b) applies.

17.12 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.

17.13 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 Landowner 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 Landowner indemnifies the Council for the amount of any such payment is required to make.

17.14 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.

Schedule 1- Summary of requirements (section 7.4 of the Act)

Subject and subsection of the Act	Planning Agreement
<p>Planning instrument and/or Development Application – Section 7.4(1)</p> <p>The Landowner has:</p> <p>(a) Sought a change to an environmental planning instrument</p> <p>(b) Made, or propose 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>No</p> <p>No</p> <p>Yes</p>
<p>Description of the application</p>	<p>See clause 2.</p>
<p>Description of the land to which the planning Agreement applies – Section 7.4(3)(a)</p>	<p>See clause 2.</p>
<p>The scope, timing and manner of delivery of contribution required by the Planning Agreement – Section 7.4(3)(b)</p>	<p>See clauses 7.</p>
<p>Applicability of section 7.11 of the Act – Section 7.4(3)(d)</p>	<p>See clause 8.</p>
<p>Applicability of section 7.12 of the Act – Section 7.4(3)(d)</p>	<p>See clause 8.</p>
<p>Applicability of section 7.32 of the Act – Section 7.4(3)(d)</p>	<p>See clause 8.</p>
<p>Mechanism for dispute resolution – Section 7.4(3)(f)</p>	<p>See clause 11.</p>
<p>Enforcement of the Planning Agreement – Section 7.4(3)(g)</p>	<p>See clause 12.</p>
<p>Registration of the Planning Agreement – Section 7.4(3)(g)</p>	<p>See clause 9.</p>
<p>No obligation to grant consent or exercise functions – Section 7.4(9)</p>	<p>See clause 15 (no fetter)</p>

Schedule 2 - Construction Terms

1 Interpretation

For the purposes of this Schedule 2, the defined terms in clause 2 of this Agreement and the Interpretation principles in clause 3 of this Agreement will apply and, unless context indicates a contrary intention:

Builder means any entity contracted under the Construction Contract to carry out the Works.

Construction Contract means the contract to carry out the Works (whether or not that is a contract for the Works only or forms part of a contract for the building of other components of the Development).

Defects Liability Period means in respect of each item of building works which together comprise the Works the period of 12 months from the date on which the Certificate of Practical Completion is issued for the Works.

Development Program means the development program for the Works prepared in accordance with clause 5.1 of this Schedule 2.

Detailed Design means the final specifications and finishes for the Works prepared in accordance with clause 5.2 of this Schedule 2 and will include the design of the Works, the location for the Works, installation specifications and estimated costs of construction and/or installation.

Practical Completion means that stage in the carrying out and completion of the Works or any part of the Works when:

- (a) those Works are complete except for minor defects which do not prevent those Works from being reasonably capable of being used for their stated purpose; and
- (b) any documents required under this Schedule which are essential for the use, operation and maintenance of those Works have been supplied.

Services means all water, gas, electricity, television, drainage, sewerage, cable TV, data communications, telecommunications and other services which are required under a Development Consent or an Approval and which are necessary for the construction, operation or occupation of the Works and the land to be dedicated to Council under this Agreement.

2 Requirements of Authorities and Approvals

- (a) These Construction Terms must be read and construed subject to:
 - (i) any requirements or conditions of any Development Consent; and
 - (ii) the requirements of and conditions imposed by all relevant Authorities and all Laws relating to the Development and the construction of the Development.
- (b) If the Landowner requires any Approvals in order to carry out the obligations under this Agreement, then the Landowner will acquire all Approvals necessary to carry out the Works at its own cost.
- (c) The Landowner must ensure that the Works carried out under this Agreement are carried out:

- (i) in accordance with the relevant Development Consent for the Works and all Approvals and the requirements of all Laws, including without limitation, work health and safety legislation; and
 - (ii) in a good and workmanlike manner and so that they are diligently progressed until completion and so that the Works are structurally sound, and suitable for their intended use.
- (d) It is acknowledged that to the extent that there is any inconsistency between this Agreement and any Approval the terms of the Approval shall take precedence.

3 Costs of Works

All costs of the Works must be borne by the Landowner.

4 Project Management and Contractor Engagement

- (a) The Development Manager will be responsible for managing the Works on behalf of the Landowner.
- (b) The Landowner will ensure that any contractor it engages to carry out the Works agrees to carry out the Landowner's obligations in these Construction Terms as part of any Construction Contract.
- (c) The engagement of the Development Manager or any other contractor does not affect any requirement under this Agreement for the Landowner to deliver the Contributions and the Landowner is responsible for ensuring that the Development Manager and any contractor comply with this Agreement.

5 Design Development and Approvals

5.1 Draft Concept Design

- (a) The Landowner must provide concept designs for the Works to Council prior to lodgement of a Development Application for the Development (**Draft Concept Design**).
- (b) The Draft Concept Design must be generally in accordance with:
 - (i) the scope of works for the relevant part of the Works at Schedule 5, Schedule 6, Schedule 7 or Schedule 8;
 - (ii) and Council's Public Domain Manual applicable at the time; and
 - (iii) any other relevant design standards, guidelines, requirements or policies applied by the Council in assessing the adequacy of works or improvements proposed for the public domain or to be accessible to the public.
- (c) The Landowner will obtain any relevant standards (including design standards), specifications, or guidelines and any other requirements or policies referred to in clause 5.1(b) of this Schedule from Council if the Council fails to deliver them to the Landowner.
- (d) The Draft Concept Design must include a Development Program for the Works including estimated timeframes for commencement, construction and delivery of the Works in relation to milestones or stages of the Development.
- (e) Within 20 Business Days of receiving the Draft Concept Design and

Development Program, Council may notify the Landowner in writing of any changes it requires to the Draft Concept Design and Development Program.

- (f) Provided the Council's suggested changes to the Draft Concept Design and Development Program will not result in any significant delay to the lodgement of the Development application, the Landowner will make those changes and provide a final Concept Design (**Final Concept Design**) and Development Program to Council to be included in the Development Application.
- (g) If the Council does not provide a response to the Draft Concept Design or Development Program in accordance with clause 5.2(e) of this Schedule 2, the Developer must request the response from the Council and if no reply is received within 5 Business Days of the request, the Council will be taken to have accepted the Draft Concept Design and Development Program.
- (h) A Development Application must not be lodged for any part of the Park Embellishment unless Council's Group Manager, Development & Traffic Services has consulted with relevant internal teams (including Open Space & Natural Resources, Urban Design – Public Domain, Property Assets & Services and Transport Planning) and confirmed in writing that Council is satisfied (acting reasonably) with the Final Concept Design and the Development Program.

5.2 Detailed Design

- (a) Before lodging the Construction Certificate for the Development, the Landowner must provide Council a copy of the Construction Certificate drawing (**Detailed Design**) for the Works identified in Schedule 5, Schedule 6, Schedule 7 and Schedule 8.
- (b) The Detailed Design must be consistent with the Final Concept Design and any Approval for the Works.
- (c) Within 20 Business Days of receiving the Detailed Design, Council must respond to the Landowner with any suggested amendments to the Detailed Design for the Works.
- (d) Council and the Landowner must work in consultation with each other to prepare and agree the Detailed Design for the Works and must both act reasonably and with due expedition in their consultations with each other.
- (e) If the Detailed Design for the Works is not completed within 20 Business Days of Council providing suggested amendments in accordance with clause 5.2(c) of this Schedule 2, to avoid possible delays with the completion of those Works, the outstanding issues may be referred by either party to dispute resolution in accordance with clause 11 of the Agreement.
- (f) Any acceptance by the Council of the Detailed Design under this clause 5.2 of this Schedule 2 is not to be taken as approval of or to any Construction Certificate for the Works, however the Detailed Design may be used as part of the application for any such certificate.

5.3 Good faith

The parties must act promptly and in good faith to consult in relation to the Detailed Design for the Works.

6 Carrying out of Works

6.1 Communication

The Landowner, must keep Council reasonably informed of progress of the Works and provide to Council such information about those Works as Council reasonably requests.

6.2 Standard of Works

- (a) Unless otherwise provided, the Landowner shall, and must cause the Builder to, use suitable new materials and proper and tradesman-like workmanship when carrying out the Works.
- (b) The qualitative standard of the design and finishes for the Works must be in accordance with the final Detailed Design and any Approvals for the Works and must be no less than those described in any relevant Australian Standard.
- (c) The Landowner may but is not obliged to reinstate any Works where damage or destruction is as a result of:
 - (i) any act or omission of the Council or its employees, consultants or agents relating to any part of the Works under this Agreement; or
 - (ii) the use or occupation by the Council or its employees, consultants or agents, Council's representatives or other contractor of the Council of any part of the Works.

6.3 Damage to people, property & utilities

- (a) The Landowner is to ensure to the fullest extent reasonably practicable that, in performing its obligations under this Agreement:
 - (i) all necessary measures are taken to protect people and property;
 - (ii) unnecessary interference with the passage of people and vehicles is avoided; and
 - (iii) nuisances and unreasonable noise and disturbances are prevented.
- (b) Without limiting clause 6.3(a) of this Schedule, the Landowner is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

7 Inspection

- (a) On completion of the Detailed Design, the Council and the Landowner will consult with the Development Manager and prepare an agreed schedule of inspections to be undertaken by Council (**Inspection Schedule**) to occur at reasonable specified stages of the construction of the Works (**Inspection Stage**). The Inspection Schedule must be agreed and finalised (or determined by an appropriate expert in accordance with clause 11 of this Agreement) prior to the Works commencing.
- (b) Five Business Days prior to reaching an Inspection Stage as set out in the Inspections Schedule, the Landowner must notify the Council of the proposed inspection date (**Inspection Date**).

- (c) On the Inspection Date, or other agreed date, the Landowner must ensure that any employees, contractors, agents or representatives of Council have access to and may enter the Land to inspect the Works.
- (d) In addition to carrying out inspections in accordance with the Inspection Schedule, the Council may enter the Land or any part of the Land on which the Works are to be located to inspect the progress of the Works, subject to:
 - (i) Council giving reasonable notice of the proposed inspection;
 - (ii) The terms of the Construction Contract (save for any clause of the Construction Contract which prevents the Council from accessing the Land);
 - (iii) Council being accompanied by the Landowner; and
 - (iv) Council complying with all reasonable directions given by the Landowner, the Development Manager or the Builder.
- (e) The Council may, acting reasonably, within 5 Business Days of carrying out an inspection under clause 7(a) of this Schedule 2, notify the Landowner of any defect or non-compliance in the Works and direct the Landowner to carry out work to rectify that defect or non-compliance within a reasonable period of time. Such work may include, but is not limited to:
 - (i) removal of defective or non-complying material;
 - (ii) demolishing defective or non-complying work;
 - (iii) reconstructing, replacing or correcting any defective or non-complying work; and
 - (iv) not delivering any defective or non-complying material to the site of the Works.
- (f) If the Landowner is issued a direction to carry out further work under clause 7(e) of this Schedule 2, the Landowner must, at its cost, rectify the defect or non-compliance specified in the Notice within the time period specified in the Notice, provided that it is reasonable having regard to the nature of the works.
- (g) If the Landowner fails to comply with a direction to carry out work given under clause 7(e) of this Schedule 2, the Council will be entitled to refuse to accept that the Works or the relevant part of the Works have been completed in accordance with this Agreement.
- (h) For the avoidance of doubt, any acceptance by the Council that the Landowner has rectified a defect or non-compliance identified in a notice issued under clause 7(e) of this Schedule 2 does not constitute:
 - (i) acceptance by the Council that the Works comply with all Approvals and Laws; or
 - (ii) an Approval by the Council in respect of the Works; or
 - (iii) an Agreement or acknowledgment by the Council that the Works (or the relevant part of those Works) are complete and may be delivered to the Council in accordance with this Agreement.

8 Completion

8.1 Practical Completion

- (a) When the Landowner considers that the Works, or any part of those Works, have reached Practical Completion, and prior to the issue of any Occupation Certificate for the Works, the Landowner must send a Notice to the Council which includes:
 - (i) as executed ("as built") plans;
 - (ii) any relevant certificates or consents of any public utility authority;
 - (iii) a Compliance Certificate from the appointed certifier that those Works have reached completion; and
 - (iv) a request for written certification from the Council that those Works have reached Practical Completion.
- (b) Within 10 Business Days of receipt of the notice under clause 8.1(a) of this Schedule 2, the Council will carry out an inspection of the Works or relevant part of the Works and will, acting reasonably, either:
 - (i) provide written certification to the Landowner that those Works have reached Practical Completion; or
 - (ii) notify the Landowner of any additional information required or matters which must be addressed by the Landowner prior to the certification being issued (which must only be additional information or matters which are preventing the relevant Works from achieving Practical Completion).
- (c) If the Landowner is required to provide additional information or address any matters under clause 8.1(b)(ii) of this Schedule 2, the Landowner will provide that information to Council or address those matters within 10 Business Days of receiving the notice or within a reasonable period of time and make a further request under clause 8.1(a) of this Schedule 2 for written certification that the Works have reached Practical Completion.
- (d) Council must issue a Certificate of Practical Completion, stating the date on which the works reached Practical Completion, as soon as possible after Council considers that the Works have reached Practical Completion and any security for defects liability required under this Schedule has been provided.

8.2 Delivery of documents

- (a) The Landowner must as soon as practicable, and no later than 20 Business Days after the date on which the Works achieve Practical Completion, deliver to the Council, complete and legible copies of:
 - (i) all "as built" full-sized drawings, specifications and relevant operation and service manuals;
 - (ii) all necessary certificates including the certificates of any consultants of the Landowner that the Council may reasonably require, and Approvals of any public utility authority (where relevant); and
 - (iii) copies of all Approvals required for use of the land subject to those Works.
- (b) The Landowner must, as soon as practicable, and no later than 20 Business Days after the date on which the Certificate of Practical Completion is issued in

respect of the Works or any part of the Works, provide the Council with a tour of the land subject to the Works and provide reasonable instructions on the operation and use of the Services on that land.

8.3 Assignment of Warranties and Causes of Action

- (a) The Landowner must assign (as beneficial owner) or cause to be assigned to Council the benefit of any warranties and guarantees obtained by the Landowner and the Builder (and capable of assignment) with respect to any material or goods incorporated in or forming part of the Works identified in Schedule 5, Schedule 6, Schedule 7 and Schedule 8.
- (b) To the extent that any such warranties or guarantees cannot be assigned, the Landowner must at the request of Council do anything reasonably required by Council to enforce such warranties or guarantees for the benefit of Council.

8.4 Defects Liability Period

- (a) During the Defects Liability Period, the Council (acting reasonably) may give to the Landowner a notice (**Rectification Notice**) in writing that identifies a defect in the Works and specifies:
 - (i) action required to be undertaken by the Landowner to rectify that defect (**Rectification Works**); and
 - (ii) a reasonable period within which the defect must be rectified (**Rectification Period**).
- (b) The Landowner must comply with the Rectification Notice by:
 - (i) procuring the performance of the Rectification Works within the Rectification Period, or such other date as agreed between the parties;
 - (ii) keeping the Council reasonably informed of the action to be taken to rectify the defect; and
 - (iii) carrying out the Rectification Works.
- (c) The Council must give the Landowner and its contractors any access required to carry out the Rectification Works.
- (d) When the Landowner considers that the Rectification Works are complete, the Landowner must notify the Council and provide documentation, plans or invoices which establish that the Rectification Works were carried out.
- (e) The Council may inspect the Rectification Works within 15 Business Days of receiving a Notice from the Landowner under clause 8.4(d) of this Schedule 2, acting reasonably:
 - (i) issue a further Rectification Notice if it is not reasonably satisfied that the Rectification Works are complete; or
 - (ii) notify the Landowner in writing that it is satisfied the Rectification Works are complete.
- (f) The Landowner must meet all costs of and incidental to rectification of defects under this clause 8.4.
- (g) If the Landowner fails to comply with a Rectification Notice, then the Council may do such things or take such action as is necessary to carry out the

Rectification Works, including accessing and occupying any part of the Land without further notice to the Landowner, and may:

- (i) call upon any Bond or Bank Guarantee provided to the Council under clause 8.5 of this Schedule to meet its costs of carrying out the Rectification Works; and
 - (ii) recover as a debt due to the Council by the Landowner in a Court of competent jurisdiction, any difference between the amount of the security deposit and the costs incurred by the Council in carrying out Rectification Works.
- (h) The Landowner must request that Council inspect the Works 28 days prior to the end of the Defects Liability Period. The Council must inspect the Works at any time after receiving the request from the Landowner and before the end of the Defects Liability Period.
- (i) If, prior to the end of the Defects Liability Period:
- (i) the Landowner fails to request the inspection, or
 - (ii) the Council does not carry out the inspection,
- the Council may extend the Defects Liability Period so that the inspection may be carried out.

8.5 Security for Defects Liability

- (a) Prior to the issue of a Certificate of Practical Completion for each item of the Works the Landowner must deliver to the Council Bonds or Bank Guarantees in an amount equivalent to 2.5% the construction costs for the particular item of Works.
- (b) The Landowner advises and the Council acknowledges its awareness that the Bonds or Bank Guarantees may be supplied by the Builder and form a part of the security held by the Landowner from the Builder under the terms of the Construction Contract, provided that:
 - (i) any Bond or Bank Guarantee provided by the Builder benefits the Council and satisfies the requirements of this Agreement; and
 - (ii) the Landowner procures an agreement from the Builder that the Council will be entitled to call on any Bond or Bank Guarantee provided by the Builder, in accordance with the terms of this Agreement and the terms of any Construction Contract.
- (c) Within 10 Business Days after the Defects Liability Period for a particular item of Works has expired Council must (if it has not called on it) return the Bond or Bank Guarantee referred to in clause 8.5(a) of this Schedule for that item of Works (or any remaining balance of it) to the Landowner.
- (d) Notwithstanding clause 8.5(c) of this Schedule, if during the Defects Liability Period for a particular item of Works, the Council issues a Rectification Notice and the Rectification Notice is not complied with, then the Council need not deliver the balance of any Bonds or Bank Guarantees provided to it until that defect has been rectified.

9 Risk

The Landowner undertakes the Works identified in Schedule 5, Schedule 6, Schedule 7 and Schedule 8 entirely at its own risk.

10 Insurance

- (a) The Landowner must establish and maintain:
 - (i) public liability insurance for an amount not less than \$29 million (or such greater amount Council reasonably requires) covering all aspects of the Works and submit to Council a copy of the certificate of insurance prior to the commencement of the construction of those Works and at all other times Council reasonably requires;
 - (ii) all other insurance policies in respect of the Works that Council considers reasonably necessary including:
 - (A) insurance of those Works and insurance against death or injury to persons employed in the construction of those Works; and
 - (B) any other insurances required at Law; and
 - (iii) if any of the insurances required by this clause 10 can be supplied by a Builder, then the Landowner shall ensure that the Builder establishes and maintains the insurance and require the Builder to provide copies of the certificates of currency in accordance with this clause 10.
- (b) All insurance policies that the Landowner must keep current under this Agreement must:
 - (i) be established with one or more insurance companies which are respectable, reputable and financially sound and approved by Council (such approval not to be unreasonably withheld);
 - (ii) name Council as an insured party; and
 - (iii) cover the parties for their respective interests.
- (c) No later than 10 Business days after any request by Council, the Landowner must provide Council with a certificate of currency (or such other evidence as the Council may reasonably require) in respect of any insurance that must be established and maintained under this Agreement.

11 Risk of contamination

The Landowner acknowledges to the Council:

- (a) that it is responsible for the management and remediation of any Contamination present upon, in or under the Land;
- (b) it will attend to any reasonably necessary remediation upon, in or under the Land at its own cost so the land will be suitable for its proposed use (as certified by a site auditor accredited under the *Contaminated Land Management Act 1997*); and
- (c) to the fullest extent permitted by Law, releases and indemnifies the Council from and against any Claim which might arise from any Contamination with respect to the Land.

12 Intellectual Property Rights

The Council acknowledges that the Landowner or its contractors hold all rights to copyright and any intellectual property which may exist in the Works. To the extent the Landowner has or receives intellectual property rights for those Works, the Landowner shall assign those intellectual property rights to Council or permit use thereof at no cost to Council.

13 Plans

The parties acknowledge and agree that further detail and refinement of plans and documents in connection with this Agreement may be necessary having regard to the following matters:

- (a) matters affecting Works not capable of identification on or before the date of this Agreement; or
- (b) by agreement between the parties.

Schedule 3 - Contributions

Column 1	Column 2	Column 3
Purpose of Development Contributions	Development Contribution	Date for making Development Contribution
Public open space and recreation areas	<p>Dedication 01</p> <p>The dedication to Council, at no cost to Council, of the land as set out in Schedule 5, for use as a public park including dedication of Dedication 01 as public reserve in accordance with the <i>Local Government Act 1993</i>.</p> <p>The Landowner will also undertake Park Embellishment to create an active interface between the Development and the public park.</p> <p>The Park Embellishment shall be undertaken in accordance with the scope and extent of Works as outlined in Schedule 5.</p> <p>The Landowner will allow for reasonable adjustments/variations resulting during the detailed design phase as agreed between both parties in accordance with the Construction Terms.</p>	<p>The Works to remediate any contaminated land within Dedication 01 will be completed in accordance with the Development Program accepted by Council in accordance with clause 5.1 of Schedule 2, but no later than the release of the first Occupation Certificate for the first building in the Development.</p> <p>The Works for the Park Embellishment are to be completed in accordance with the Development Program accepted by Council in accordance with clause 5.1 of Schedule 2, but no later than the release of the Occupation Certificate for the first building in the Development.</p> <p>The Dedication Land is to be transferred to the Council in accordance with the Development Program accepted by Council in accordance with clause 5.1 of Schedule 2, but no later than the occupation certificate for the first building in the Development.</p>
Public car park / community facility	<p>Dedication 02</p>	<p>The Works to construct the Commercial Space must be completed in accordance with the Construction Terms prior to the issue of the first Occupation Certificate for the building (or any part of the building) containing the Commercial Space.</p>

Column 1	Column 2	Column 3
Purpose of Development Contributions	Development Contribution	Date for making Development Contribution
	<p>The dedication to Council, at no cost to Council, of the land as set out in Schedule 6, for use as a public car park or community facility.</p> <p>Dedication 02, will be transferred into Council's ownership.</p> <p>The Commercial Space will be constructed in accordance with Schedule 6 and the terms of this Agreement, and delivered to Council on transfer of Dedication 02.</p>	<p>Dedication Land to be transferred to the Council within 10 Business Days after the issue of the first Occupation Certificate for the building (or any part of the building) containing the Commercial Space, which Occupation Certificate must include Dedication 02.</p>
Community facilities	<p>Dedication 03</p> <p>The dedication to Council, at no cost to Council, of the land as set out in Schedule 7, for use as a community facility including transfer of ownership to Council of Dedication 03.</p> <p>The Community Facility will be constructed in accordance with Schedule 7 and the terms of this Agreement, and delivered to Council on transfer of Dedication 03.</p>	<p>The Works to construct the Community Facility must be completed in accordance with the Construction Terms prior to the issue of the first Occupation Certificate for the building (or any part of the building) containing the Community Facility.</p> <p>Dedication Land to be transferred to the Council within 10 Business Days after the issue of the first Occupation Certificate for the building (or any part of the building) containing the Community Facility, which Occupation Certificate must include Dedication 03.</p>
Through site linkages and recreation	<p>Dedication 04</p> <p>The dedication to Council, at no cost to Council, of the land as set out in Schedule 8, for use as a bike path including transfer of ownership to Council of Dedication 04.</p>	<p>The Works to construct the Bike Path must be completed in accordance with the Construction Terms prior to the issue of the first Occupation Certificate for the Development.</p>

Column 1	Column 2	Column 3
Purpose of Development Contributions	Development Contribution	Date for making Development Contribution
	The Bike Path will be constructed in accordance with Schedule 8 and the terms of this Agreement, and delivered to Council on dedication or transfer of Dedication 04.	Dedication Land to be transferred to the Council prior to the issue of the first Occupation Certificate for the Development.
Open Space	Monetary contribution of \$16 per square metre (indexed) of Gross Floor Area of residential and non-residential development to be certified under the relevant Construction Certificate, payable in accordance with clause 7.1	Prior to the issue of each Construction Certificate in accordance with clause 7.1

Schedule 4 - The Land

Folio Identifier	Street Address
Lot 10 DP 610228	181 James Ruse Drive, Camellia, NSW
Lot 2 DP 512655	
Lot 1 DP 499552	
Lot 25 DP 6856	
Lot 2 DP 549496	
Lot 2 DP 1248548	
Lot 1 DP 128720	
Lot 2 DP 128720	
Lot 3 DP 128720	
Lot 4 DP 128720	
Lot 1 DP 724228	
Lot 2 DP 6856	
Lot 3 DP 6856	
Lot 4 DP 6856	
Lot 5 DP 6856	
Lot 6 DP 6856	
Lot 7 DP 6856	
Lot 8 DP 6856	
Lot 9 DP 6856	
Lot 10 DP 6856	
Lot 11 DP 6856	
Lot 12 DP 6856	
Lot 13 DP 6856	
Lot 14 DP 6856	

Folio Identifier	Street Address
Lot 15 DP 6856	
Lot 16 DP 6856	
Lot 17 DP 6856	
Lot 1 DP 2737	
Lot 2 DP 2737	
Lot 3 DP 2737	
Lot 4 DP 2737	
Lot 5 DP 2737	
Lot 6 DP 2737	
Lot 7A DP 418035	
Lot 9A DP 418035	
Lot 1 DP 927064	

Schedule 5 - Park Embellishment

The Landowner is required to carry out Works to complete the Park Embellishment in accordance with the following:

The final concept design for any part of the Park Embellishment (at least 12,000m²) is to be finalised in accordance with Schedule 2 of this Agreement and to the written satisfaction of the Council's Group Manager, Development & Traffic Services in consultation with relevant internal team (including Open Space & Natural Resources, Urban Design – Public Domain, Property Assets & Services and Transport Planning).

Remediation is to be undertaken to a standard and soil depth that enables safe use for the purposes of RE1 Public Recreation and the implementation of park embellishments.

The foreshore reserve will need to be embellished to a district level open space embellishment rate and provide a range of active and passive recreation opportunities for individuals, small and large groups to participate in physical activity, community gatherings, play, and other activities. Facilities should be capable of supporting both short and long stays and consistent with those prescribed in the City of Parramatta Draft Community Infrastructure Strategy (CIS) for district parks (Active Recreation, Youth Recreation, Fitness & Exercise Spaces, Community Recreation Areas, Trail & Path based Recreation, Dog Off-leash Areas). The following elements shall be incorporated as a part of any future landscape concept design at a minimum:

- District level playground (including shade sails)
- 2 x Multi-use sport hardcourts
- Outdoor fitness equipment
- Fenced dog off-leash area
- BBQ and picnic tables / shelters
- Amenities building (toilets / maintenance)
- Circuit pathway and outdoor lighting
- Seating, water bubblers, waste bins
- Landscaping (canopy trees – 100 litre pot size, turfing)

Each of these embellishments are to be delivered in accordance with this Agreement.

Note: Connections for water, electrical and sewerage are to be provided at the cost of the developer prior to dedication of the foreshore reserve. The landscape concept design and other expenses associated with the delivery of the district park are to be provided at the cost of the developer.

Schedule 6 - Commercial Space

The Landowner is required to carry out Works to complete the Commercial Space in accordance with the following:

The final concept design of the adaptable Commercial Space is to be finalised in accordance with Schedule 2 of this Agreement and to the written satisfaction of the Council's Group Manager, Development & Traffic Services in consultation with relevant internal teams (including Urban Design, Property Assets & Services and Social Outcomes).

The cold shell is to have a minimum lettable floor area of 5,000 m², appropriate floor to ceiling heights of at least 2.7m (in accordance with plans & sections that are agreed by Council) and a uniform configuration that offers flexibility for uses such as commercial offices, indoor recreation, etc. The space is to have direct access from the street or from a lift core, include service conduits to enable a warm shell fitout, provide exposure to dual external aspects at a minimum and ensure that the location of columns and / or structural elements do not compromise potential shell uses.

The final concept design must demonstrate the commercial space is sufficient to accommodate warm shell uses such as commercial offices, indoor recreation, etc. and ensure that future development applications are consistent with Council's intended use.

The parties acknowledge that the Commercial Space will not be provided on the ground floor.

Schedule 7 - Community Facility

The Landowner is required to carry out the Works to complete the Community Facility in accordance with the following:

The final concept design of the Community Facility is to be finalised in accordance with Schedule 2 of this Agreement and to the written satisfaction of Council's Group Manager, Development & Traffic Services in consultation with relevant internal teams (including Urban Design, Property Assets & Services and Social Outcomes, Social & Community Services).

The design of the warm shell Community Facility with a minimum lettable floor area of 600m² is to be informed by the detailed specifications provided by Council's Property Plan and Program Manager.

The Community Facility is to have direct access from the street or a lift core, accommodate appropriate floor to ceiling heights of at least 3.3m (as per plans & sections applicable and that are agreed by Council), be of a uniform configuration that is suitable to accommodate a range of potential community uses and provide exposure to dual external aspects at a minimum.

The Community Facility must be suitable for occupation at the time of dedication. All fixtures, services, bathrooms, kitchen, lighting, power points, appliances and internal linings (walls, ceilings, floors) requested by Council's Property Plan and Program Manager are at the expense of the Landowner and must be installed prior to dedication.

The parties acknowledge that the Community Facility will be provided on the ground floor.

Schedule 8 - Bike Path

The Landowner is required to carry out the Works to complete the Bike Path in accordance with the following:

The final concept design of the Bike Path located within the foreshore park is to be finalised in accordance with Schedule 2 of this Agreement and to the written satisfaction of Council's Transport Planning Manager in accordance with the specifications outlined within the *City of Parramatta Public Domain Guidelines* and *City of Parramatta Bicycle Facilities Design Guide*.

The bike path is to have a minimum width of 6 metres.

Execution

EXECUTED as an agreement

Executed by City of Parramatta City)
Council on [insert date]:)
)

.....
Signature of General Manager

.....
Signature of Mayor

.....
Print name

.....
Print name

Signed by **Summer Hill Business Estate Pty Ltd** ABN 90 123 332 730 under s.127(1) of the *Corporations Act 2001*

sign

office (director)

full name

sign

office (director or secretary)

full name

Annexure A Plan showing Dedication Land

