

Voluntary Planning Agreement

City of Parramatta Council
ABN 49 907 174 773

Riverport Parramatta Pty Limited ATF The Riverport Unit
Trust
ACN 159 635 024

Contents

Parties	1	
Background	1	
Operative part	1	
1	<i>Definitions</i>	1
2	<i>Interpretation</i>	4
3	<i>Planning Agreement under the Act</i>	5
4	<i>Application of this agreement</i>	5
5	<i>Operation of this agreement</i>	5
6	<i>Contributions to be made under this agreement</i>	6
	6.1 Monetary Contribution	6
	6.2 Works	6
	6.3 Public Access and Easements	7
7	<i>Application of s 94, s 94A and s 94EF of the Act to the Development</i>	7
8	<i>Registration of this agreement</i>	8
	8.1 Developer Interest	8
	8.2 Registration of this agreement	8
	8.3 Removal from Register	8
	8.4 Caveat	9
9	<i>Review of this agreement</i>	9
10	<i>Dispute Resolution</i>	9
	10.1 Reference to Dispute	9
	10.2 Notice of Dispute	9
	10.3 Representatives of Parties to Meet	9
	10.4 Further Notice if Not Settled	10
	10.5 Mediation	10
	10.6 Expert determination	11
	10.7 Litigation	11
	10.8 No suspension of contractual obligations	11
11	<i>Enforcement</i>	12
	11.1 Default	12
	11.2 Bank Guarantee	12
	11.3 Instrument Registering Easement	14
	11.4 Restriction on the issue of Certificates	14

11.5	General Enforcement	15
12	<i>Assignment and Dealings</i>	15
12.1	Assignment	15
12.2	Arrangements with Mortgagee	15
12.3	Transfer of Land	15
13	<i>Approvals and consents</i>	16
14	<i>No fetter</i>	16
14.1	Discretion	16
14.2	No fetter	16
14.3	Planning Certificates	16
15	<i>Notices</i>	17
15.1	Notices	17
15.2	Notices sent by email:	17
15.3	Receipt of Notices sent by email	18
16	<i>General</i>	18
16.1	Relationship between parties	18
16.2	Time for doing acts	19
16.3	Further assurances	19
16.4	Joint and individual liability and benefits	19
16.5	Variations and Amendments	19
16.6	Counterparts	19
16.7	Legal expenses and stamp duty	19
16.8	Entire agreement	19
16.9	Representations and warranties	19
16.10	Severability	20
16.11	Invalidity	20
16.12	Waiver	20
16.13	GST	20
16.14	Governing law and jurisdiction	21
	Schedule 1 Scope of works	22
	Schedule 2 Construction terms	23
	Schedule 3 Easement Terms	29
	Schedule 3A Easement for Support Terms	31
	Schedule 4 Summary of requirements (section 93F)	32

Annexure A	Plan showing Land	34
Annexure B	Plan showing Pedestrian Link Land	35

DRAFT

Agreement

Date

Parties

First party

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

Second party

Name Riverport Parramatta Pty Limited ATF The Riverport Unit Trust (**Developer**)
ACN 159 635 024
Contact Raymond Touma, Director
Telephone 0411 080 551

Background

- A. The Developer has made an application to the Council for the Instrument Change for the purpose of making a Development Application to the Council for Development Consent to carry out the Development on the Land.
- B. The Instrument Change application was accompanied by an offer by the Developer to enter into this agreement to make contributions for public purposes associated with the Instrument Change and the Development.

Operative part

1 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;

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;

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 2;

Claim means any claim, loss, liability, damage, proceeding, order, judgment or expense arising out of the operation of this agreement;

Construction Certificate means a construction certificate as defined under s 109C of the Act;

Construction Terms means the terms set out in Schedule 2;

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

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

Development means any future development of the Land for a mixed use building with basement car parking, ground floor commercial uses and residential apartments;

Development Application has the same meaning as in the Act;

Development Consent has the same meaning as in the Act;

Easement Terms means the terms of a public access easement as set out in Schedule 3;

Easement for Support Terms means the terms of an easement for support benefitting the Pedestrian Link Land as set out in Schedule 3A;

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

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 re amalgamation, 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 to the LEP to increase the maximum building height for the Land from 36m to 120m and to increase the floor space ratio controls applying to the Land from 4:1 to 10:1 as set out in the planning proposal submitted to the Minister and the gateway determination relating to that proposal granted on 12 June 2015;

Land means Lot 11 DP 1115358, Lot 20 DP 1115360 and Lot 30 DP 1115365, known as 184-188 George Street, Parramatta;

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 96 of the Act;

Monetary Contribution means the monetary contribution payable by the Developer under clause 6 of this agreement;

Occupation Certificate means an occupation certificate as defined under section 109C of the Act, and includes an interim Occupation Certificate or a final Occupation Certificate;

Pedestrian Link Land means that part of the Land necessary to establish a 3m wide through-site link situated on the western boundary of the Land connecting George Street with the Parramatta River shown generally on the plan at Annexure B;

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

Regulation means the *Environmental Planning and Assessment Regulation 2000*;

Transferee has the meaning given in clause 12.3; and

Works means the work set out in Schedule 1.

2 Interpretation

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

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

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

3 Planning Agreement under the Act

- (a) The parties agree that this agreement is a planning agreement within the meaning of section 93F of the Act.
- (b) Schedule 4 of this agreement summarises the requirements for planning agreements under s 93F of the Act and the way this agreement addresses those requirements.

4 Application of this agreement

This agreement applies to:

- (a) the Instrument Change, and
- (b) the Land.

5 Operation of this agreement

This agreement commences on and from the date it is executed by all parties.

6 Contributions to be made under this agreement

6.1 Monetary Contribution

- (a) The Developer will pay to Council a monetary contribution of \$1,000,000 or an amount calculated in accordance with the following formula, whichever is the greater:

$$\begin{array}{r} \$1,000,000 \\ \times \quad \frac{\text{The CPI at the time of payment}}{\text{The CPI at the date of this agreement}} \end{array}$$

- (b) The Monetary Contribution must be paid to Council prior to the issue of the first Construction Certificate for the Development.
- (c) The Monetary Contribution must be paid by way of bank cheque in favour of Council or by deposit by means of electronic funds transfer into an account specified by Council.
- (d) The Monetary Contribution will be taken to have been made when the Council notifies the Developer in writing that the bank cheque has been received and cleared funds or electronic funds have been deposited in the Council's bank account.
- (e) The parties agree and acknowledge that the Monetary Contribution will be used by the Council towards Parramatta River foreshore works generally in accordance with the Parramatta City River Strategy adopted by Council on 25 May 2015, or as otherwise determined by Council.
- (f) The Council agrees that it will give consideration to applying the monetary contribution towards foreshore pedestrian works on the northern side of the Parramatta River where practicable.

6.2 Works

- (a) The Developer 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 Works 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 must be completed prior to the grant of any easement for public access as required under clause 6.3.
- (d) The parties agree and acknowledge that the Works serve the following public purposes:
- (i) Improved pedestrian access and the creation of new connections to the Parramatta River foreshore; and
 - (ii) Improved pedestrian amenity in the vicinity of the Development.

6.3 *Public Access and Easements*

- (a) Subject to clause 6.2, the Developer will, at no cost to Council, register against the title to the Land:
 - (i) a covenant prohibiting any building or structures, including pillars, other than structures approved by the Council (acting reasonably) for the purposes of enhancing public domain areas, to be constructed on the Pedestrian Link Land, which covenant is to be limited in height and depth as required by the design for the Pedestrian Link Land and approved by Council; and
 - (ii) an easement in gross burdening the Pedestrian Link Land unlimited in height in favour of the Council permitting public access to the Pedestrian Link Land and generally in accordance with the Easement Terms;
 - (iii) an easement for support benefiting the Pedestrian Link Land generally in accordance with the Easement for Support Terms.
- (b) Any requirement to register an easement, covenant or other instrument against the title to the Land will be satisfied when the Developer provides to the Council a copy of the relevant title search showing the registration of the instrument.
- (c) Any covenant required under clause 6.3(a)(i) must be registered prior to the issue of the first Construction Certificate for any building on the Land forming part of the Development.
- (d) Any easement, required under clause 6.3(a)(ii) and (iii) must be registered prior to the issue of an Occupation Certificate for any building on the Land forming part of the Development.
- (e) The parties agree that the proposed covenant and easement under this clause will serve the following public purposes:
 - (i) To increase the amount of and improve existing public open space areas in the vicinity of the Land.
 - (ii) To improve pedestrian circulation and the amenity of the public domain in the vicinity of the Land.
- (f) The Developer agrees and acknowledges that the obligations under this clause 6.3 are relevant considerations for the Council or any other consent authority when determining a Development Application or Modification Application relating to the Land and that a failure to comply with those obligations or any inconsistency with the requirements in those clauses may constitute a reason for refusal of such a Development Application or Modification Application.

7 Application of s 94, s 94A and s 94EF of the Act to the Development

- (a) This agreement does not exclude the application of section 94 of the Act to the Development.
- (b) This agreement does not exclude the application of section 94A of the Act to the Development.
- (c) This agreement does not exclude the application of section 93EF of the Act to the Development.

- (d) The benefits under this agreement are not to be taken into consideration in determining a development contribution under section 94 of the Act.

8 Registration of this agreement

8.1 *Developer Interest*

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

8.2 *Registration of this agreement*

- (a) The Developer 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 93H of the Act.
- (b) The Developer, at its own expense, must:
 - (i) procure the lodgement of 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 documentary evidence that the registration of this agreement has been completed to Council within 5 Business Days of receiving confirmation that the registration has occurred.
- (c) The Developer 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 8.2.
- (d) The Landowner consents to the registration of the agreement in accordance with this clause 8.2.

8.3 *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) provided the Council is satisfied the Developer has duly fulfilled its obligations under this agreement, and is not otherwise in default of any of the obligations under this agreement.

8.4 Caveat

- (a) The Developer acknowledges and agrees that:
 - (i) when this agreement is executed, the Council is deemed to have acquired and the Developer 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;
 - (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 must, at the Developer's cost, register a withdrawal of any caveat in respect of the Land within five Business Days after the Developer complies with clause 8.2 and must not lodge any other caveats on the titles to any of the Land, other than in accordance with clause 8.4(a).

9 Review of this agreement

- (a) This agreement may be reviewed or modified. Any review or modification of this agreement will be conducted in the circumstances and in the manner determined by the parties.
- (b) No modification or review of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement.
- (c) 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 Dispute Resolution

10.1 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.

10.2 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.

10.3 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 10.6 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.

10.4 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 10.5 or by expert determination under clause 10.6.

10.5 Mediation

If a party gives a Determination Notice calling for the dispute to be mediated:

- (a) The parties must agree to the terms of reference of the mediation within 15 Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- (b) The mediator will be agreed between the parties, or failing agreement within 15 Business Days of receipt of the Determination Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) The mediator appointed pursuant to this clause 10.5 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.

10.6 *Expert determination*

If the dispute is not resolved under clause 10.3 or clause 10.5, 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.

10.7 *Litigation*

If the dispute is not *finally* resolved in accordance with this clause 10, then either party is at liberty to litigate the dispute.

10.8 *No suspension of contractual obligations*

Subject to any interlocutory order obtained under clause 10.1, the referral to or undertaking of a dispute resolution process under this clause 10 does not suspend the parties' obligations under this agreement.

11 Enforcement

11.1 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 15 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 10 of this agreement.

11.2 Bank Guarantee

- (a) The Developer must provide the following Bank Guarantees to the Council:
 - (i) A Bank Guarantee in the amount of \$1,000,000 to secure the payment of the Monetary Contribution, which must be provided to Council on execution of this agreement.
 - (ii) A Bank Guarantee in the amount of \$350,000 to secure the carrying out of the Works and the cost of registering any easement over the Pedestrian Link Land, which must be provided to Council prior to the issue of a Construction Certificate for the Development, or any part of the Development.
- (b) The Council may reject any Bank Guarantee that contains errors, or if it has received the Bank Guarantee, require at any time the Developer to obtain a replacement Bank Guarantee that rectifies any such errors or otherwise obtain rectification of the errors. The Developer must provide the replacement Bank Guarantee, or otherwise obtain rectification of the errors, within 5 Business Days of receiving the Council's request.
- (c) The Council may call on a Bank Guarantee provided under this clause if:
 - (i) the Developer 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 15 Business Days) in writing to do so in accordance with clause 11.1 of this agreement; or
 - (ii) the Developer becomes Insolvent.
- (d) Within 20 Business Days of each anniversary of a Bank Guarantee provided under clause 11.2(a), the Developer must provide Council with one or more replacement Bank Guarantees (replacement Bank Guarantee) in an amount calculated in accordance with the following:

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

Where:

A is the amount of the replacement Bank Guarantee,

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

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

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

provided A is greater than B.

- (e) On receipt of a replacement Bank Guarantee provided under clause 11.2(d), the Council must release and return to the Developer, as directed, the Bank Guarantee that has been replaced as soon as reasonably practicable.
- (f) At any time following the provision of a Bank Guarantee under this clause, the Developer 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 Developer, as directed, the Bank Guarantee(s) which it holds that have been replaced as soon as reasonably practicable.
- (g) Subject to clause 11.2(c), the Council may apply the proceeds of a Bank Guarantee in satisfaction of:
 - (i) any obligation of the Developer under this agreement that is secured by a Bank Guarantee provided in accordance with clause 11.2(a); and
 - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this agreement; andif necessary, the Council its employees, officers, agents or contractors may enter the Land and carry out any Works required under this agreement.
- (h) The Council must promptly return a Bank Guarantee provided under this clause if requested by the Developer and:
 - (i) the Developer has satisfied the obligation to which the Bank Guarantee relates; and
 - (ii) if the Bank Guarantee secures an item of Works;
 - (A) a Certificate of Practical Completion has been issued for the item of Works to which the Bank Guarantee relates; and
 - (B) 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 Developer in an amount determined by the Council acting reasonably, that is equivalent to the costs of constructing those other items of Works.
- (i) Nothing in this clause 11.2 prevents or restricts the Council from taking any enforcement action in relation to:
 - (i) any obligation of the Developer 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 Developer to comply with this agreement,

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

11.3 *Instrument Registering Easement*

- (a) Prior to the issue of a Construction Certificate, for any part of the Development, the Developer will deliver to Council:
 - (i) an instrument in the form required under the *Real Property Act 1900* for the registration of an easement in gross under section 88A of the *Conveyancing Act 1919* over the Pedestrian Link Land, properly executed by the Developer; and
 - (ii) any other document (for example the consent of any mortgagee) in registrable form as is necessary to ensure that Council is able to register the instrument creating the easement in gross, or an irrevocable undertaking from the relevant person issuing the document that the document together with any certificates of title held by the person will be produced for registration on request for the purposes of registering the easement as required by this agreement.
- (b) The documents referred to in clause 11.3(a) are to be held by Council as security for the performance by the Developer of the obligations imposed on it under this agreement.
- (c) If the Developer fails to register the easement over the Pedestrian Link Land as required by this agreement, the Council is entitled to lodge the documents referred to in clause 11.3(a) for registration and recover the cost of doing so from the Developer or by calling on any Bank Guarantee held by the Council under clause 11.2.

11.4 *Restriction on the issue of Certificates*

- (a) In accordance with section 109F of the Act and clause 146A of the Regulation the obligations to:
 - (i) pay the Monetary Contribution under clause 6.1;
 - (ii) register the covenant under clause 6.3(a)(i);
 - (iii) provide the Bank Guarantee under clause 11.2(a)(ii); and
 - (iv) provide the instrument to register the easement over the Pedestrian Link Land under clause 11.3,must be satisfied prior to the issue of a Construction Certificate for the Development or any part of the Development.
- (b) In accordance with section 109H(2) of the Act the obligations to:
 - (i) carry out the Works under clause 6.2; and
 - (ii) register the easement under clause 6.3(a)(ii),must be satisfied prior to the issue of an Occupation Certificate for the Development or any part of the Development.

11.5 *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 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.

12 *Assignment and Dealings*

12.1 *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.

12.2 *Arrangements with Mortgagee*

- (a) The Developer agrees with the Council that if the Developer 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 Developer, 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 Developer defaults on the mortgage and the mortgagee takes possession of the Land.
- (b) The terms of the adoption of the obligations of the Developer by the mortgagee shall be as reasonably required by the Council. The agreement shall be prepared at the cost of the Developer.

12.3 *Transfer of Land*

- (a) The Developer 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 Developer satisfies the Council that the proposed Transferee is financially capable of complying with the Developer obligations under this agreement;
 - (ii) The Developer 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 Developer under this agreement;

- (iv) The Transferee delivers to the Council replacement 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 Developer and the Transferee pay the Council's reasonable costs in relation to the assignment.

13 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.

14 No fetter

14.1 *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 Instrument Change or any Development Application applying to the Land (all referred to in this agreement as a "**Discretion**").

14.2 *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.

14.3 *Planning Certificates*

The Developer acknowledges that Council may, at its discretion, include advice on any planning certificate issued under section 149(5) of the Act that this agreement affects the Land.

15 Notices

15.1 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 City of Parramatta Council: PO Box 32, Parramatta, NSW 2124
Fax: 02 9806 5917
Email: council@cityofparramatta.nsw.gov.au
Attention: Manager, Land Use Planning
 - (ii) to Riverport Parramatta Pty Limited: 100/32-34 Mons Road, Westmead, NSW 2145
Fax: 02 9890 5466
Email: raytouma@hotmail.com
Attention: Mr Raymond Touma, Director
- (c) is taken to be given or made:
 - (i) in the case of hand delivery, when delivered;
 - (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
 - (iii) in the case of a fax, on production of a transmission report by the machine from which the fax was sent that indicates the fax was sent in its entirety to the recipient's fax number; and
- (d) if under clause (c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

15.2 Notices sent by email:

- (a) A party may serve a Notice by email if the Notice:
 - (i) includes a signature block specifying:
 - (A) the name of the person sending the Notice; and
 - (B) the sender's position within the relevant party;
 - (ii) states in the body of the message or the subject field that it is sent as a Notice under this agreement;
 - (iii) contains an express statement that the person sending the Notice has the authority to serve a Notice under this agreement;

(iv) is sent to the email address below or the email address last notified by the intended recipient to the sender:

(A) to City of Parramatta Council: Attention: Manager, Land Use Planning council@cityofparramatta.nsw.gov.au

(B) to Riverport Parramatta Pty Limited: Attention: Raymond Touma, Director raytouma@hotmail.com

- (b) The recipient of a Notice served under this clause 15.2 must:
- (i) promptly acknowledge receipt of the Notice; and
 - (ii) keep an electronic copy of the Notice,
- (c) Failure to comply with clause 15.2 does not invalidate service of a Notice under this clause.

15.3 *Receipt of Notices sent by email*

- (a) A Notice sent under clause 15.2 is taken to be given or made:
- (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 15.3 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.

16 General

16.1 *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.

16.2 *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.

16.3 *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.

16.4 *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.

16.5 *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.

16.6 *Counterparts*

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

16.7 *Legal expenses and stamp duty*

- (a) The Developer must pay the Council's legal costs and disbursements in connection with the negotiation, preparation, execution, carrying into effect, enforcement and release and discharge of this agreement (including the cost to Council of obtaining advice about such matters), no later than 10 Business Days after receiving a demand from the Council to pay such costs.
- (b) The Developer 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 Developer agrees to pay Council any administrative fees as required by Council, acting reasonably, in connection with the administration of this agreement.

16.8 *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.

16.9 *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.

16.10 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.

16.11 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 16.11(b) applies.

16.12 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.

16.13 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 Developer 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 Developer indemnifies the Council for the amount of any such payment is required to make.

16.14 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.

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Schedule 1 Scope of works

All works, including but not limited to design, demolition, excavation, construction, relocation of utilities and landscaping, to construct a 3m wide pedestrian and cycle path on the Pedestrian Link Land.

A detailed design for the Works will be finalised in accordance with clause 5 of Schedule 2.

All work and designs will meet the following criteria:

- (a) The path is to be paved and have appropriate lighting suitable to pedestrian and cyclist standards;
- (b) The path is to comply in terms of access with the Disability Discrimination Act 1992 (Cth) and Council's foreshore precinct access strategy;
- (c) The path is to comply with Roads and Maritime Services cycling guidelines acceptable to the Council;
- (d) The path, as far as practicable, is to be a straight continuous direction; and is to be open to the sky for its entire length;
- (e) The path is to be consistent with the principles of Crime Prevention Through Environmental Design (CPTED);
- (f) Treatment of the pavement, landscaping, lighting, furniture, and drainage along the path is to be consistent with the *Parramatta Public Domain Guidelines 2016* and material palette of foreshore upgrade works;
- (g) Finished vertical levels are to be commensurate with the adjoining "*Harrisford*" land at 182 George Street, Parramatta and future river foreshore works;
- (h) The Pedestrian Link Land shall not incorporate any boundary fencing or physical separation from the adjoining "*Harrisford*" land at 182 George Street, Parramatta;
- (i) The path is to provide an appropriate response to archaeology;
- (j) All works, including grades and cross falls are to be in accordance with Council's standard drawing specifications and relevant Australian Standards; and
- (k) Design and material choice must have regard to probable flooding over the site and is not to be adversely affected in the event of a flood.

Schedule 2 Construction terms

1 Interpretation

For the purposes of this Schedule 2, the defined terms in clause 1 of this agreement and the Interpretation principles in clause 2 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).

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.

Services means all water, gas, electricity, television, drainage, sewerage, cable TV, data communications, telecommunications and other services which are required under a development consent within the meaning of the Act or an Approval and which are necessary or desirable for the construction or operation of the Development.

Superintendent means the Superintendent appointed under any Construction Contract.

2 Requirements of Authorities and Approvals

2.1 These Construction Terms must be read and construed subject to:

- (a) any requirements or conditions of any Development Consent;
- (b) the requirements of and conditions imposed by all relevant Authorities and all Laws relating to the Development and the construction of the Development.

2.2 If the Developer requires any Approvals in order to carry out the obligations under this agreement, then the Developer will acquire all Approvals necessary to carry out the Works at its own cost.

2.3 The Developer must ensure that the Works carried out under this agreement are carried out:

- (a) 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
- (b) in a good and workmanlike manner and so that they are diligently progressed until completion;

AND 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 Developer.

4 Project Management and Contractor Engagement

4.1 The Developer will be responsible for managing the Works.

- 4.2 The Developer will ensure that any contractor it engages to carry out the Works agrees to:
- (a) carry out the Developer's obligations in these Construction Terms as part of any Construction Contract; and
 - (b) request a Council representative to be present at each on-site meeting attended by the Superintendent.

5 Design Development and Approvals

5.1 Concept Design

The Developer has prepared a concept design for the Development, for the submission of a planning proposal relating to the Instrument Change, an extract of which is at **Error! Reference source not found..**

5.2 Detailed Design

- (a) The Works must be designed as part of any design excellence process applying to the Development under the LEP and in accordance with:
 - (i) any site-specific Development Control Plan;
 - (ii) Council's Public Domain Guidelines 2016;
 - (iii) Council's stormwater and flood management design standards;
 - (iv) Council's standard drawing series;
 - (v) any approved Development Application; and
 - (vi) the Parramatta City River Strategy Design Report, Revision D adopted by Council on 25 May 2015.
- (b) Prior to Works commencing the Developer must provide a copy of the draft Detailed Design to the Council for approval.
- (c) Within 28 Business Days of receiving the Detailed Design, Council will respond to the Developer with any suggested amendments to the Detailed Design.
- (d) Council and the Developer must work in consultation with each other to prepare and agree the Detailed Design and must both act reasonably and with due expedition in their consultations with each other.
- (e) If the Detailed Design is not completed and agreed within 28 Business Days of Council providing its suggested amendments in accordance with clause 5.2(c) of this Schedule 2, to avoid possible delays to the issue of a Certificate of Practical Completion, the Council will, in its sole discretion, be entitled to decide on any outstanding or undecided matter or item relating to areas that are to be accessible to the public, provided that any decision made by Council under this clause:
 - (i) does not materially and adversely affect the Development; and
 - (ii) is not unreasonable.

- 5.3 Any acceptance by the Council of the Detailed Design under this clause 5 of Schedule 2 is not to be taken as approval of or to any Construction Certificate for the Works.

5.4 **Good faith**

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

6 **Carrying out of Works**

6.1 **Communication**

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

6.2 **Standard of Works**

- (a) Unless otherwise provided, the Developer shall, and must cause the Builder to, use suitable new materials and proper and tradesmanlike workmanship when carrying out the Works.
- (b) The qualitative standard of the design and finishes for the Works must be no less than those described in the following documents:
 - (i) Any relevant Australian Standard;
 - (ii) Any relevant design standards or guidelines and any other requirements or policies applied by the Council from time to time in assessing the adequacy of any works or improvements proposed for the public domain or to be accessible to the public in accordance with this agreement.
- (c) The Developer will obtain any relevant standards (including design standards), specifications, or guidelines and any other requirements or policies referred to in clause 6.2(b)(ii) of this Schedule 2 from Council if the Council fails to deliver them to the Developer.

6.3 **Damage to people, property & utilities**

- (a) The Developer 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 Developer 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 will provide a schedule of inspections to be undertaken by Council (**Inspection Schedule**) to occur at specified stages of the construction of the Works (**Inspection Stage**). If the Council does not provide the Inspection Schedule, the Developer must request the Inspection Schedule from the Council prior to the Works commencing.

- (b) Five Business Days prior to reaching an Inspection Stage as set out in the Inspection Schedule, the Developer must notify the Council of the proposed inspection date (**Inspection Date**).
- (c) On the Inspection Date, or other agreed date, the Developer 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 located to inspect the progress of the Works, subject to:
 - (i) the terms of the Construction Contract (save for any clause of the Construction Contract which prevents the Council from accessing the Land);
 - (ii) giving reasonable notice to the Developer;
 - (iii) complying with all reasonable directions of the Developer; and
 - (iv) being accompanied by the Developer or a nominee, or as otherwise agreed.
- (e) The Council may, acting reasonably, within 5 Business Days of carrying out an inspection (either under clause 7(c) or 7(d) of this Schedule 2), notify the Developer of any defect or non-compliance in the Works and direct the Developer 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 Developer is issued a direction to carry out further work under clause 7(e) of this Schedule 2, the Developer 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 Developer fails to comply with a direction to carry out work given under 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) meet the Council's standards and specifications and may refuse to issue a Certificate of Practical Completion, until the required Works have been completed to the Council's satisfaction, acting reasonably.
- (h) For the avoidance of doubt, any acceptance by the Council that the Developer has rectified a defect or non-compliance identified in a notice issued under 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 the Works are complete and may be delivered to the Council in accordance with this agreement.

8 Completion

8.1 Practical Completion

- (a) When the Developer considers that the Works, or any part of the Works, are complete, the Developer must send a Notice to the Council accompanied by complete works as executed plans prepared by a registered surveyor showing the horizontal and vertical positions of all Works, any relevant certificates or consents of any public utility authority and a request for written certification from the Council that the Works are complete.
- (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 and will, acting reasonably, either:
 - (i) provide written certification to the Developer that the Works have been completed; or
 - (ii) notify the Developer of any additional information required or matters which must be addressed by the Developer prior to the certification being issued.
- (c) If the Developer is required to provide additional information or address any matters under clause 8.1(b)(ii) of this Schedule 2, the Developer 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 been completed.
- (d) Practical completion will be achieved in relation to the Works or any part of the Works when a Certificate of Practical Completion has been issued for those Works.

9 Risk

The Developer undertakes the Works entirely at its own risk.

10 Insurance

- (a) Prior to the commencement of the construction of any of the Works, the Developer must ensure the Builder effects and the Developer must produce evidence to the Council of the following insurances issued by an insurer approved by the Council (acting reasonably) in a form approved by the Council (acting reasonably):
 - (i) construction works insurance for the value of the Works;
 - (ii) public risk insurance for at least \$20 million;
 - (iii) workers compensation insurance as required by Law.
- (b) The Developer must provide evidence of currency of insurance required by clause 10(a) of this Schedule 2 upon request by the Council, acting reasonably, throughout the term of this agreement.

11 Indemnities

The Developer indemnifies the Council, its employees, officers, agents and contractors from and against all Claims in connection with the carrying out by the Developer of the Works except to the extent such Claim arises either directly or indirectly as a result of the Council or its employees, officers, agents and contractors' negligence, default, act or omission.

12 Intellectual Property Rights

The Council acknowledges that the Developer or its contractors hold all rights to copyright and any intellectual property which may exist in the Works.

13 Risk of contamination

The Developer acknowledges and agrees:

- (a) that it is responsible for the management and remediation of any contamination present upon or under the land on which the Works are to be carried out;
- (b) it will attend to any necessary remediation at its own costs; and
- (c) to the fullest extent permitted by Law indemnify and release the Council from any Claim which might arise from any contamination with respect to the land on which the Works are to be carried out.

14 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 Easement Terms

Definitions

For the purpose of this Instrument, the following words have the following meanings:

Easement means the Easement created by this Instrument.

Owner of the Lot Burdened means the registered proprietor of the Lot Burdened from time to time.

Council means the City of Parramatta Council and its successors.

Lot Burdened means that part of the land having the burden of the Easement which the Plan indicates is the site of the Easement (being the part of the land used for access way from George Street to the foreshore of the Parramatta River having a width of 3m over 184-188 George Street, Parramatta).

Plan means the plan to which this Instrument relates.

1 Easement for Access 3 wide

- (a) Full and free right for the public at all times to go, pass and repass over the Lot Burdened.
- (b) Full right for the Council and the servants, agents and contractors of the Council at all times to enter, pass and repass over the Lot Burdened (in common with the public) with or without vehicles, plant and equipment and to remain on the Lot Burdened for so long as may be necessary for the purpose of performing Council's rights under clause 1(e) and the Council obligations under clause 1(f).
- (c) The Owner of the Lot Burdened must at all times at its expense and to the satisfaction of Council, acting reasonably:
 - (i) keep the Lot Burdened (including any services in, on or under the Lot Burdened) in good repair and condition;
 - (ii) keep the Lot Burdened clean and free from rubbish; and
 - (iii) maintain sufficient public liability insurance covering the use of the Lot Burdened.
- (d) The Owner of the Lot Burdened must ensure that any rules made by an Owner's Corporation relating to the Lot Burdened have been approved by the Council, acting reasonably.
- (e) If the Owner of the Lot Burdened does not perform any obligation under clause 1(c) the Council may undertake the required work and recover the costs of all such work from the Owner of the Lot Burdened as a liquidated debt.
- (f) The Owner of the Lot Burdened may with the Council's prior written consent, (except in the case of an emergency, in which case the Council's prior written consent is not required) temporarily exclude the public or any member of the public from the Lot Burdened.
- (g) If any member or members of the public loiter or congregate, for any purpose which the Owner of the Lot Burdened considers to be inappropriate, the owner may either remove those members of the public, or arrange for their removal by an appropriate authority.

- (h) The Owner of the Lot Burdened may erect safety signage and any other appropriate signage and may erect CCTV cameras in the Lot Burdened.
- (i) The Owner of the Lot Burdened may monitor and direct the behaviour of the public including but not limited to prohibiting smoking, consumption of alcohol (except within licensed areas), passage of animals, bicycles and skateboards and the like (subject to any rules made by an Owner's Corporation relating to the Lot Burdened being approved by the Council, acting reasonably).
- (j) The Owner of the Lot Burdened may engage security personnel to monitor and control the behaviour of the public when exercising any right of way over the Lot Burdened.
- (k) The Owner of the Lot Burdened may temporarily close parts of the Lot Burdened for the purpose of construction, construction access, repairs, maintenance, replacement and alteration.
- (l) The Owner of the Lot Burdened may (acting reasonably) temporarily close or temporarily restrict access through all or part of the Lot Burdened for the time and to the extent necessary but only on reasonable grounds including, without limitation, reasons of security, safety, construction, evacuation, emergency situations and maintenance.
- (m) The Council is solely empowered to release the Easement.
- (n) The Easement may only be varied by written agreement between the Council and the Owner of the Lot Burdened.

Schedule 3A Easement for Support Terms

Definitions

For the purpose of this Schedule 3A of this Instrument, the following works have the following meanings:

Accessway means the part of the Lot Benefitted 3 wide limited in stratum which is used as public accessway;

Council means the City of Parramatta Council and its successors;

Easement means the Easement created in accordance with this Schedule 3A of this Instrument;

Lot Benefitted means the part of the Land having the benefit of the Easement which the Plan indicates is the site of the Easement;

Lot Burdened means the part of the land having the burden of the Easement which the Plan indicates is the site of the Easement;

Owner of the Lot Burdened means the registered proprietor of the Lot Burdened from time to time;

Plan means the plan to which the Instrument relates;

Terms of Easement

Full right for Council to require the Accessway to be fully supported by the Lot Burdened at all times.

- (a) The Owner of the Lot Burdened must at all times at its expense:
 - (1) provide and maintain support of the Accessway;
 - (2) promptly comply with all reasonable directions by the Council in relation to providing and maintaining support of the Accessway; and
 - (3) maintain appropriate insurance in the name of the Owner of the Lot Burdened and noting the Council's interest against damage and destruction of any structure which forms part of the Accessway to the full replacement value.
- (b) If the Owner of the Lot Burdened does not perform any obligation under clause (a), the Council may undertake the required work and recover the cost of all such work from the Owner of the Lot Burdened as a liquidated debt.
- (c) The Council must at its expense, from time to time and at all times as soon as practicable and so far as reasonably necessary promptly make good and remedy any damage caused to the Lot Burdened arising from any exercise of the Council's rights under clause (b).
- (d) If the Council does not rectify any damage under clause (c), then the Owner of the Lot Burdened

Release and Variation of Easement

- (a) The Council is solely empowered to release the Easement.
- (b) The Easement may only be varied by written agreement between the Council and the Owner of the Lot Burdened.

Schedule 4

Summary of requirements (section 93F)

Subject and subsection of the Act	Planning Agreement
<p>Planning instrument and/or Development Application – Section 93F(1)</p> <p>The Developer 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><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p>Description of the application</p>	<p>Proposed Instrument Change to increase the maximum building height for the Land from 36m to 120m and to increase the floor space ratio control for the Land from 4:1 to 10:1.</p>
<p>Description of the land to which the planning Agreement applies – Section 93F(3)(a)</p>	<p>“Land” is defined in clause 1.</p>
<p>The scope, timing and manner of delivery of contribution required by the Planning Agreement – Section 93F(3)(b)</p>	<p>Clause 6.</p>
<p>Applicability of section 94 of the Act – Section 93F(3)(d)</p>	<p>Not excluded – clause 7.</p>
<p>Applicability of section 94A of the Act – Section 93F(3)(d)</p>	<p>Not excluded – clause 7.</p>
<p>Applicability of section 94EF of the Act – Section 93F(3)(d)</p>	<p>Not excluded – clause 7.</p>
<p>Mechanism for dispute resolution – Section 93F(3)(f)</p>	<p>Clause 10.</p>
<p>Enforcement of the Planning Agreement – Section 93F(3)(g)</p>	<p>Clause 11.</p>
<p>Registration of the Planning Agreement – Section 93F(3)(g)</p>	<p>Clause 8.</p>
<p>No obligation to grant consent or exercise functions – Section 93F(9)</p>	<p>See clause 14 (no fetter)</p>

Executed as an agreement

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

.....
Signature of [insert position]

.....
Signature of [insert position]

.....
Print name

.....
Print name

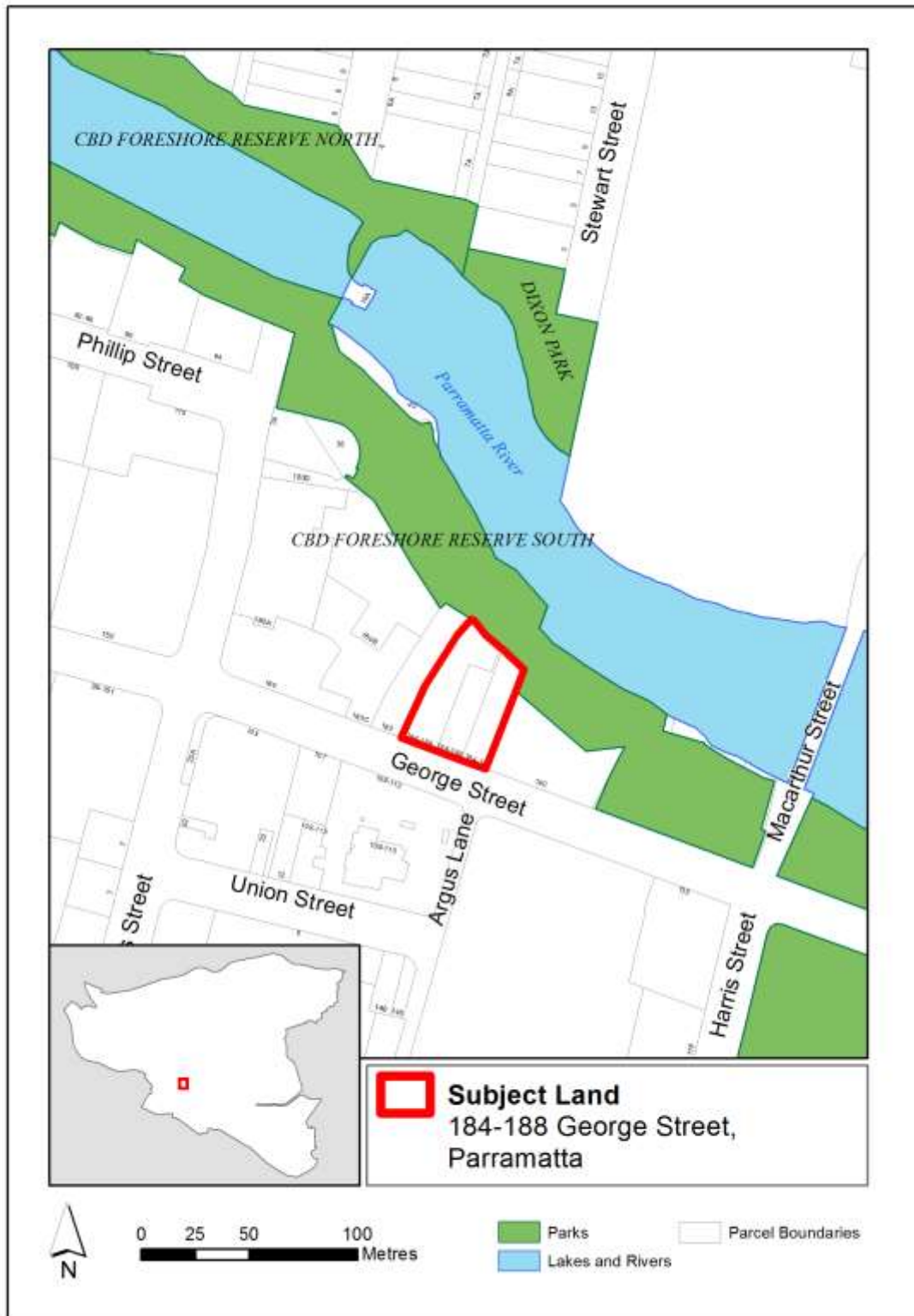
EXECUTED by Riverport Parramatta Pty Limited
ATF The Riverport Unit Trust
ACN 159 635 024 in accordance with
Section 127 of the Corporations Act 2001

Signature of Secretary/Director

Signature of Director

Name of Secretary/Director

Name of Director



Annexure B

Plan showing Pedestrian Link Land

