

Contents

Parties	4
Background	4
Operative part	4
1 <i>Definitions</i>	4
2 <i>Interpretation</i>	9
3 <i>Planning Agreement under the Act</i>	10
4 <i>Application of this agreement</i>	10
5 <i>Operation of this agreement</i>	10
6 <i>Contributions to be made under this agreement</i>	11
7 <i>Contamination</i>	15
8 <i>Registration of this agreement</i>	18
9 <i>Review of this agreement</i>	20
10 <i>Dispute Resolution</i>	20
11 <i>Enforcement</i>	22
12 <i>Discharge of Developers Obligations</i>	25
13 <i>Assignment and Dealings</i>	26
14 <i>Approvals and consents</i>	27
15 <i>No fetter</i>	27
16 <i>Notices</i>	27
17 <i>General</i>	29
Schedule 1 Contributions Table	33
Schedule 2 Scope of works	36
Schedule 3 Construction terms	37
Schedule 4 Maintenance Schedule	46
Schedule 5 Scope of Work	51
Schedule 6 Transit Corridor	55
Schedule 7 Summary of requirements (section 7.4)	56
Annexure A Plan showing Land	60
Annexure B Plan showing Dedication Land	61
Annexure C Plan showing staging	62
Annexure D Foreshore Park Concept Plan	63

Annexure E Easement Plan

64

**Annexure F Annexure F Auburn Development Contributions
Plan 2007 (Amendment 1)**

65

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	Sekisui House Australia Pty Limited (Developer)
ACN	41 135 313 236
Contact	The Secretary
Telephone	(02) 8817 1400

Third Party

Name	SH Road Development Pty Limited (Landowner)
ACN	614 406 058
Contact	The Secretary
Telephone	(02) 8817 1400

Background

- A. In February 2019 the Developer 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;

ASC NEPM means *National Environment Protection (Assessment of Site Contamination) Measure 1999*

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;

Bond means an insurance bond from an AAA credit rated party, or a party with a credit rating otherwise acceptable to 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(b)(i) of Schedule 3;

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 section 6.4 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 3;

Contributions Plan has the same meaning as under the Act;

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 Land means that part of the Land which may be dedicated to Council in accordance with this agreement, as generally shown on the plan at Annexure B.

Developer means Sekisui House Australia Pty Limited;

Developer Contributions means the contribution items set out in Schedule 1;

Development means the proposed future development of the Land for the purposes of a mixed-use residential development;

Development Application has the same meaning as in the Act;

Development Consent has the same meaning as in the Act;

Easement Plan is the plan at Annexure E which shows existing and proposed easements for the Dedication Land.

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

Foreshore Park means the part of the Land to be dedicated to Council as shown cross hatched on the plan in Annexure B and is to be embellished in accordance with Schedule 2;

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*;

Gross Floor Area has the meaning given to it by 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 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:

- (a) expand the proposed public open space and land subject to acquisition for public open space on the Land by increasing the RE1 Public Recreation zone and reducing the R4 High Density Residential zone;
- (b) rezone the north-eastern corner of the Land from R4 High Density Residential to B4 Mixed Use;
- (c) increase the maximum Height of Buildings to provide a range of heights from part 19m and part 88m to a range of heights between 44m and 134m (up to 40 storeys);
- (d) increase the maximum floor space ratio limit applying to the Land from part 1.25:1 and part 2.6:1 to 1.9:1 to 7:3:1, whilst not exceeding the existing maximum gross floor space ratio on the site of 188,800m²;
- (e) amend the Land Acquisition Map to increase the public open space and exclude the foreshore wharf from public acquisition to facilitate its refurbishment and operation as a café under the existing community title;
- (f) include an additional permitted use under Schedule 1 of the LEP to permit 'food and drink premises' as a permissible use in the RE1 zone where the existing café is located on the Land; and
- (g) introduce site specific provisions to restrict the application of clause 4.6 of the LEP relating to floor space ratio.

Land means Lot 3 DP 271278 known as 14-16 Hill Road, Wentworth Point;

Landowner means SH Hill Road Development Pty Limited;

Land Acquisition Map means the map contained in the LEP titled LAP_001 and identified as 0200 COM LAP 001 030 20130604.

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 *Auburn Local Environmental Plan 2010*;

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

Occupation Certificate means an occupation certificate as defined under section 6.4 of the Act, or if the Former Building and Subdivision Provisions apply, section 109C of the

Act, and includes an interim Occupation Certificate, a final Occupation Certificate or a partial Occupation Certificate as the case may be;

Phase 2 ESA means a phase 2 detailed investigation of the potential for contamination of the Dedication Land carried out in accordance with the *Managing Land Contamination Planning Guidelines, SEPP No. 55 - Remediation of Land*;

Public Reserve has the same meaning as in the *Local Government Act 1993*;

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* (NSW);

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

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

Remediation has the same meaning as in the *Contaminated Land Management Act 1997*;

Remediation Action Plan means a plan:

- (a) prepared in accordance with the requirements of the *Managing Land Contamination Planning Guidelines SEPP No. 55 Remediation of Land*, detailing remediation objectives, the process by which the Dedication Land will be remediated and how the remediation will be validated to demonstrate the suitability of the Dedication Land for the proposed land use; and
- (b) approved by a Site Auditor .

Remediation Maintenance Period means the period that is 5 years from the date that the Dedication Land is dedicated to Council in accordance with clause 6.4 of this Deed;

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

Site Auditor has the same meaning as in the *Contaminated Land Management Act 1997*;

Stage 1 Foreshore Park means that part of the Foreshore Park shown as 'Stage 1' in Annexure B;

Stage 2 Foreshore Park means that part of the Foreshore Park shown as 'Stage 2' in Annexure B;

Stage 1 Foreshore Works means the embellishment, as outlined in Schedule 2, of the main eastern portion of the foreshore reserve shown as Stage 1 at Annexure B, to be delivered in accordance with the staging plan in annexure C;

Stage 2 Foreshore Works means the embellishment, as outlined in Schedule 2, of the secondary western portion of the foreshore reserve that is adjacent to the north-western stage building, shown as Stage 2 at Annexure B to be delivered in accordance with the staging plan in annexure C;

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 13.3; and

Transit Corridor means the part of the Land to be dedicated to Council as shown hatched on the plan in Annexure B and is to be embellished in accordance with Schedule 2 and Schedule 3.

Works means the work set out in Schedule 2 .

2 Interpretation

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

- (a) **(documents)** a reference to this agreement or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this agreement;
- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement;
- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;
- (e) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) **(president, CEO, general manager or managing director)** the president, CEO, general manager or managing director of a body or Authority includes any person acting in that capacity;
- (g) **(requirements)** a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (h) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (i) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (j) **(singular)** the singular includes the plural and vice-versa;
- (k) **(gender)** words importing one gender include all other genders;
- (l) **(parts)** a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (m) **(rules of construction)** neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;

- (n) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (o) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Sydney, Australia, even if the obligation is to be performed elsewhere;
- (p) **(joint and several)** an agreement, representation, covenant, right or obligation:
 - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
 - (ii) on the part of two or more persons binds them jointly and severally;
- (q) **(writing)** a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (r) **(replacement bodies)** a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
- (s) **(Australian currency)** a reference to dollars or \$ is to Australian currency;
- (t) **(month)** a reference to a month is a reference to a calendar month; and
- (u) **(year)** a reference to a year is a reference to twelve consecutive calendar months.

3 Planning Agreement under the Act

- (a) The parties agree that this agreement is a planning agreement within the meaning of section 7.4 of the Act.
- (b) Schedule 4 of this agreement summarises the requirements for planning agreements under section 7.4 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 The Developer must make the Developer Contributions in the manner and at the times set out in Schedule 1 and in accordance with this clause 0.
- 6.2 The Developer will lodge the Development Application for the Stage 1 Foreshore Works and the Stage 2 Foreshore Works as soon as practicable and within six months of the date of execution of this Agreement.
- 6.3 *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, in accordance with the timing shown in Schedule 1.
 - (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 delivered to the Council in accordance with dedication of the timing outlined in Schedule 1 of this agreement.
 - (d) The parties agree and acknowledge that the Works serve the following public purposes:
 - (i) Increasing the amount of public open space by providing a foreshore park which will be constructed in two stages and dedicated to Council;
 - (ii) improve the local traffic network by providing for the traffic signalisation of the intersection at Burroway and Hill Rd (if this meets the RMS warrants); and
 - (iii) providing a transit corridor that can be used as a future light rail link.
- 6.4 *Dedication of Land*
- (a) The Developer must dedicate or cause to be transferred to the Council, at no cost to the Council, the Dedication Land in accordance with the timing in Schedule 1 of this agreement. Subject to clause 6.4(b) to clause 6.4(e), the Dedication Land must be 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, except as permitted by Council in writing.
 - (b) The Dedication Land will be dedicated subject to the existing easements shown in the Easement Plan at Annexure E.
 - (c) The Developer intends to register new easements as shown on the Easement Plan at Annexure E. The Developer must obtain Council's consent to register an easement. Council may refuse its consent to the registration of the easement by:
 - (i) informing the Developer within 14 days; and
 - (ii) must provide reasons as to why Council objects to the registration of the easement.
 - (d) Easements other than those shown on the Easement Plan at Annexure E may be registered on the Dedication Land, subject to obtaining Council's agreement as required under Clause 6.3(c).

- (e) Council must not unreasonably withhold consent to the registration of an easement, regardless of whether the easement is shown on the Easement Plan at Annexure E.
- (f) Without limiting clause 6.4(e), it is not unreasonable for Council to object to the location of an easement if the location will unreasonably obstruct the use or maintenance of any embellishments on the Land.
- (g) The obligation to dedicate the Foreshore Park will be taken to have been satisfied when:
 - (i) either a Certificate of Title is issued by NSW Land and Property Information for the whole of the Public Reserve identifying the Council as the registered proprietor of that land without encumbrances as required by clause 6.4(a) or when the Public Reserve is dedicated to Council by operation of the registration of a plan of subdivision in accordance with section 49 of the *Local Government Act 1993*; and
 - (ii) the Council has confirmed in writing that the Developer has met its obligations under clause 6.3(a) and 7.4. The Developer is to write to Council to request Council's confirmation as to whether satisfied the Developer has met its obligations under clause 6.3(a) and 7.4 and Council is to provide a written response within 14 days.
- (h) The obligation to dedicate the Transit Corridor will be taken to have been satisfied when:
 - (i) either a Certificate of Title is issued by NSW Land and Property Information for the whole of the Transit Corridor identifying the Council as the registered proprietor of that land without encumbrances as required by clause 6.4(a) or when the Transit Corridor is dedicated to Council as a Public Road by operation of the registration of a plan of subdivision in accordance with section 9 of the *Roads Act 1993*; and
 - (ii) the Council has confirmed in writing that the Developer has met its obligations under clause 6.3. The Developer is to write to Council to request Council's confirmation as to whether it is satisfied the Development has met its obligations under clause 6.3 and Council is to provide a written response within 14 days.
- (i) The Developer will not be required to dedicate the Dedication Land if Council informs the Developer that such dedication is not required in accordance with clause 7.5(d) of this Agreement. If dedication of the Dedication Land is not required, the obligations in relation to dedication in clause 6.4 will not apply to the Dedication Land.

6.5 Maintenance of Works

- (a) This clause only applies if Council informs the Developer, in accordance with clause 7.5(d) of this Agreement, that the Dedication Land is to be dedicated to Council.
- (b) In this clause, the following definitions apply:

Maintain means works to bring an item to a state of reasonable condition and in accordance with relevant standards applicable at the time of construction of the

item, including repairing any defects but does not include removing graffiti or repairing any item damaged as a consequence of vandalism. **Maintained** and **Maintenance** have corresponding meanings.

Maintenance Period in relation to a particular item of Work, is

- (i) For the Stage 1 Foreshore Works the period of 5 years from the time that item of Work is delivered to Council in accordance with this agreement;
- (ii) For Stage 2 Foreshore Works, for a maximum period of 5 years. If Stage 2 is delayed by more than 4 years after the delivery of Stage 1, the maintenance period for stage 2 is to be a maximum of 1 year.

Maintenance Schedule means the schedule of proposed maintenance works as required by Schedule 4.

Maintenance Works means the works required to Maintain the Foreshore Park as detailed in the Maintenance Schedule.

- (c) The Works or any part of those works, must be Maintained by the Developer in accordance with the Maintenance Schedule for the Maintenance Period.
- (d) The Developer may engage contractors to carry out the Maintenance Works but responsibility for the Maintenance Works lies with the Developer.
- (e) The Developer and its contractors must follow the following Council policies in carrying out the Maintenance required under this clause:
 - (i) Asset Management Policy;
 - (ii) Contaminated Land Policy and Procedure;
 - (iii) Outdoor dining policy – wharf café
 - (iv) Policy for removal of placards, bills, flyers, banners and paper affixed to public assets;
 - (v) Unauthorised Use of Public Lands Policy and Procedure; and
 - (vi) any other policies relevant to the Maintenance Works which may be adopted after the execution of this Deed and which Council informs the Developer in writing may apply, as may be amended from time to time.
- (f) The Developer must obtain all Approvals necessary to carry out the Maintenance required under this clause.
- (g) If the Stage 1 Foreshore Park is to be dedicated to Council, the Developer must provide the Council with a Bank Guarantee or Bond in the amount of \$780,000, being estimated costs of the Maintenance Works as set out in the Maintenance Schedule (being \$600,000) plus a 30% contingency fee prior to the issue of a Certificate of Practical Completion for the Stage 1 Foreshore Works. Each year on the anniversary of the date of the Certificate of Practical Completion, the value of the Bank Guarantee will be decreased by 20% for a period of 5 years.
- (h) The Council agrees to promptly return the Bank Guarantee for the prior year within 14 days of the new Bank Guarantee being provided under clause 6.5(g) above.

- (i) The Council agrees to promptly return any Bank Guarantee provided under paragraph 6.5(g) at the end of the Maintenance Period for the relevant item of Works, subject to paragraphs (n) and (o) of this clause.
- (j) Forty Business Days prior to the end of any Maintenance Period, the Developer must request Council to carry out an inspection of the Works or any part of those Works.
- (k) The Council must carry out the inspection as requested by the Developer within 5 Business Days of the request.
- (l) The Council may, within 5 Business Days of carrying out the inspection notify the Developer of any Maintenance work required, including any Maintenance required in addition to the work set out in the Maintenance Schedule.
- (m) If the Developer is issued with a notice to carry out Maintenance work under paragraph (l) of this clause, the Developer must, at the Developer's cost, carry out the Maintenance work as specified in the notice and in the timeframe specified by the notice.
- (n) If the Council issues a notice under paragraph (l) of this clause, the Council may retain any Bank Guarantee provided by the Developer under paragraph 6.5(g) of this clause until the Maintenance work required under the notice has been completed, or any dispute about the notice has been resolved, despite the expiration of any Maintenance Period.
- (o) If:
 - (i) the Developer fails to substantially comply with the approved Maintenance Schedule and does not rectify that failure within 15 Business Days of being notified of that failure or within a reasonable period of time agreed between the parties, or if the Developer fails to comply with a notice issued under paragraph (l) of this clause; or
 - (ii) Council becomes aware of an item of the Works that requires urgent Maintenance to ensure public safety or avoid damage or loss to the public or property,

the Council may, by itself, its employees, contractors or agents, carry out the required works and may:

 - (iii) call on the Bank Guarantee or Bond provided under paragraph 6.5(g) of this clause in satisfaction of the costs of carrying out the maintenance work; and
 - (iv) recover as a debt due to the Council by the Developer in a court of competent jurisdiction, any difference between the amount of the Bank Guarantee or Bond and the costs incurred by the Council in carrying out the maintenance work.

6.6 *Access to Council owned land*

- (a) The Council agrees to permit the Developer, upon receiving at least 10 Business Days' prior notice, to enter, pass through or occupy any Council owned or controlled land in order to enable the Developer to properly perform its obligations under this agreement. Nothing in this clause creates or gives the Developer any estate or interest in any part of the Council owned or controlled land.

- (b) Prior to accessing Council owned land, the Developer must obtain and provide to Council evidence of public liability insurance, with an insurer approved by the Council, with the Council identified as an interested party, for an amount not less than the amount of \$20 million.
- (c) The Developer must maintain the insurances required under clause 6.6(b) until the expiration of the Maintenance Period for the Stage 2 Foreshore Works. The Developer indemnifies the Council, its employees, officers, agents and contractors from and against all Claims in connection with the entry or access by the Developer to, or any presence of the Developer on, Council owned or controlled land for the purposes of performing its obligations under this agreement, except to the extent such Claim arises directly as a result of the Council or its employees, officers, agents, contractors or workmen's negligence, default, act or omission.

7 Contamination

7.1 Phase 2 ESA and Remediation Action Plan

- (a) At the same time as the lodgement of a Development Application for the Development, the Developer must provide Council with:
 - (i) a Phase 2 ESA for the Dedication Land;
 - (ii) A Remediation Action Plan;
 - (iii) a letter that provides Council with contractual reliance on the Phase 2 ESA (**Reliance Letter**); and
 - (iv) a Site Audit Statement prepared by an independent NSW Environment Protection Authority accredited auditor for contaminated land, reviewing the Phase 2 ESA and confirming that the measures in the Remediation Action Plan will ensure the Dedication Land is remediated to the standard in clause 7.4(b).
- (b) The Developer is responsible for payment of all costs and expenses associated with obtaining a Phase 2 ESA and Reliance Letter (if applicable) including but not limited to the fees of any consultants.

7.2 Consultation on Remediation Action Plan

- (a) The Council may provide the Developer with comments on the Remediation Action Plan within 30 days of Council receiving the Remediation Action under clause 7.1(a). Such comments may include but are not limited to the remediation methods and Council may suggest alternative methods.
- (b) The Developer must consider any comments received by Council pursuant to clause 7.2(a).

7.3 Prior to the carrying out of remediation works

- (a) Remediation works to the Dedication Land must not commence until the Developer has provided to Council and Council has confirmed receipt in writing of a Site Audit Statement prepared by an independent NSW Environment Protection Authority accredited auditor for contaminated land. Council must confirm receipt

in writing of the Site Audit Statement within 10 Business Days from the date on which Site Audit Statement is provided to Council.

- (b) The Developer is responsible for payment of all costs and expenses associated with the preparation and finalisation of the Remediation Action Plan including but not limited to the fees of any consultants.

7.4 Remediation

- (a) The Developer must, at its cost, carry out the Remediation of the Dedication Land in accordance with the *Contaminated Land Management Act 1997* and the Remediation Action Plan
- (b) The Developer will remediate the Dedication Land to the standard of *National Environment Protection (Assessment of Site Contamination) (2013) Health-based investigation levels (HIL) C – Public open space such as parks, playgrounds, playing fields (e.g. Ovals), secondary schools and footpaths.*

7.5 Post Remediation

After the Developer has completed the Remediation of the Dedication Land, the Developer must provide:

- (a) to Council a Site Audit Report confirming that the Dedication Land has been remediated in accordance with the Remediation Action Plan;
- (b) written confirmation that any conditions in the Site Auditor's statement have been satisfied; and
- (c) in addition to 7.5(a) and (b) above, where the remediation method involves a cap and contain strategy:
 - (i) a long term management plan which identifies ongoing monitoring and maintenance of the capping; and
 - (ii) a cost estimate prepared by an appropriately qualified person addressing the costs to implement the long term management plan over a 10 year period, including a breakdown of likely costs per year.
- (d) Within 30 Business Days of receiving the documents outlined at 7.5(a)-(c), Council must inform the Developer in writing;
 - (i) That dedication of the Dedication Land to Council is required in accordance with the terms of this Agreement; or
 - (ii) That dedication of the Dedication Land is not required.

7.6 Dedication of Foreshore Park - Ongoing maintenance

- (a) If the Foreshore Park is dedicated to Council, any obligations in maintaining or monitoring contamination of the Foreshore Park as required by the Site Auditor will be the responsibility of the Developer during the Remediation Maintenance Period and the Council shall facilitate access to the Dedication Land for such purposes. For the avoidance of doubt, all costs associated with maintaining or monitoring contamination as required by the Site Auditor are the Developer's responsibility during the Remediation Maintenance Period.

7.7 *Retention of Dedication Land by Developer*

- (a) If Council informs the Developer that dedication of the Dedication Land is not required under clause 7.5(d) above:
 - (i) the Developer will retain ownership of the Dedication Land and will provide public access easements as required and negotiated with Council. If at the time of negotiating the terms of the public access easement, Council has adopted standard terms for public access easements then the public access easement required by this Deed must be in accordance with the adopted terms; and
 - (ii) the obligations on the Developer in relation to maintenance and the provision of a bank guarantee outlined in clause 6.5 will not apply.

7.8 *Bank Guarantee for Remediation Maintenance Period*

If the Council agrees to accept dedication of the Dedication Land pursuant to section 7.5(d)(i) and the annual cost estimate as estimated under clause 7.5(c)(ii) above is \$5,000 per year or more:

- (a) the Developer must provide the Council with a Bank Guarantee or Bond in the amount that is 75% of the costs to maintain the remediation of the Dedication Land as determined by the costs estimate provided to Council under clause 7.5(c)(ii).
- (b) The Council agrees to promptly return the Bank Guarantee within 14 days of the expiration of the Remediation Maintenance Period.
- (c) If the Developer fails to comply with any conditions of the Site Audit Report or the long term management plan required by clause 7.5(c)(ii) and does not rectify that failure within 30 Business Days of being notified of that failure or within a reasonable period of time agreed between the parties, the Council may, by itself, its employees, contractors or agents, carry out the required works and may:
 - (i) call on the Bank Guarantee or Bond provided under paragraph 7.8(a) of this Deed in satisfaction of the costs of carrying out any works required under the Site Audit Report or long term management plan required by clause 7.5(c)(ii);
 - (ii) if no bank guarantee has been provided for maintenance of the remediation of the Dedication Land because the annual cost estimate was less than \$5,000, then Council may call on the Bank Guarantee provided under 6.5(g) of this Deed;
 - (iii) recover as a debt due to the Council by the Developer in a court of competent jurisdiction, any difference between the amount of the Bank Guarantee or Bond provided under clause 7.8(a) or 6.5(g) and the costs incurred by the Council in carrying out any work required to ensure compliance with the Site Audit Report or the long term management plan required by clause 7.5(c)(ii).
- (d) If the annual cost estimate provided under clause 7.5(c)(ii) is less than \$5,000 per year, a Bank Guarantee is not required.

7.9 *Indemnity and release*

- (a) If Council notifies the Developer that dedication of the Dedication Land is required, the Developer, to the fullest extent permitted by Law, indemnifies and releases the Council from any Claim the subject matter of which arose prior to the expiration of the Maintenance Period in relation to any contamination on the Dedication Land.
- (b) Where the Council notifies the Developer that the Dedication land is not required under clause 7.5 (d), no indemnity or release in relation to contamination is provided by the Developer.

7.10 *Application of s 7.11, s 7.12 and s 7.24 of the Act to the Development*

- (a) This agreement does not exclude the application of section 7.11 of the Act to the Development.
- (b) This agreement does not exclude the application of section 7.12 of the Act to the Development.
- (c) This agreement does not exclude the application of section 7.24 of the Act to the Development.
- (d) The benefits under this agreement are to be taken into consideration in determining a development contribution under section 7.11 of the Act.
- (e) The parties agree that:
 - (i) For any future Development Application or Modification Application for Development of the Land which results in a Gross Floor Area of 188,000 square metres or less, s7.11 contributions will be payable ~~at the rates shows in the Rates Schedule of the~~ ~~in accordance with the~~ Auburn Development Contributions Plan 2007 (Amendment 1), a copy of which is at Annexure F of this Deed, despite any other contributions plan that may be applicable or in force at the time of the making of such a Development Application or Modification Application;
 - (ii) any contribution payable under clause 7.10(e)(i) is to be indexed quarterly in accordance with any increase in CPI for Sydney from the date on which this Deed is executed until the development contributions is provided to Council; and
 - (iii) any future Development Application or Modification Application that results in the Gross Floor Area on the Land exceeding 188,000 square metres will be subject to the relevant contributions plan that applies at the time of the determination of such Development Application or Modification Application.

8 Registration of this agreement

8.1 *Developer Interest*

Land owner represents and warrants to the Council that on the date of this agreement it is the registered proprietor of the Land and has granted the Developer unfettered authority to negotiate the terms of this Agreement on the Landowner's behalf.

8.2 *Registration of this agreement*

- (a) The parties must take all practicable steps to enable this Deed to be registered by the LRS on the title to the Land, including the execution of any documents and procuring the consent of each person whose consent is required to Registration.
- (b) Within 7 days of execution of the Deed by the Developer, the Developer must provide to Council:
 - (i) the Deed, properly executed by the Developer;
 - (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 consent in writing of any person who has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW) or is seized or possessed of an estate or interest in the Land,
 - (iv) a cheque payable to NSW Land Registry Services in the amount of \$143.50
- (c) Within 7 days of execution of this Deed, the Developer must lodge with the LRS, the certificate of title for the Land or if the certificate of title is not in the possession of the Developer, procure the lodgment of the certificate of title by the person who is holding the certificate of title, with the LRS.
- (d) In addition to its obligations under clause 8.2(b), the Developer at its own expense must take all practical steps, and otherwise do anything that the Council reasonably requires to procure the execution of any documents to enable the registration of this agreement in accordance with this clause 8.2.
- (e) The Landowner consents to the registration of the agreement in accordance with this clause 8.2.

8.3 *Removal from Register*

The Council must promptly 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.

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 (**the Claimant**) must give written notice (**Notice of Dispute**) to the other party (**the Respondent**) of:

- (a) The nature of the dispute,
- (b) The alleged basis of the dispute,
- (c) The position which the party issuing the Notice of Dispute believes is correct; and
- (d) The representative it has designated as the person to negotiate the dispute.

10.3 Response to Notice

Within 10 days of receiving the Notice of Dispute, the Respondent must notify the Claimant of its representative to negotiate the dispute.

10.4 Representatives of Parties to Meet

- (a) The representatives of the parties must promptly (and in any event within 20 Business Days of the Response to 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 10.7 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.

10.5 *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 10.6 or by expert determination under clause 10.7.

10.6 *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 10.6 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 must convene and attend the mediation within 30 days of the Determination Notice;
- (g) 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
- (h) 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.

10.7 *Expert determination*

If the dispute is not resolved under clause 10.3 or clause 10.6, 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.

10.8 *Litigation*

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

10.9 *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 21 days.

- (b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.
- (c) If a party disputes the Default Notice it may refer the dispute to dispute resolution under clause 10 of this agreement.

11.2 *Bank Guarantee*

- (a) Prior to the issue of a Construction Certificate for Stage 1 Foreshore Park works, the Developer must provide to the Council a Bank Guarantee in the amount of \$16.12 million to secure the completion of the Works.
- (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 21 Business Days) in writing to do so in accordance with clause 11.11.1 of this agreement; or
 - (ii) the Developer becomes Insolvent.
- (d) Within 20 Business Days of each anniversary of a Bank Guarantee provided in accordance with this Deed, 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 the Bank Guarantee; and
 - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this agreement.
- (h) The Council must promptly return a Bank Guarantee provided under this clause to secure the provision of any Works if requested by the Developer and:
 - (i) A Certificate of Practical Completion has been issued for the item of Works to which the Bank Guarantee relates; and
 - (ii) The Developer has provided a Bond or Bank Guarantee under clause 8.5 of the Construction Terms (defects liability guarantee) for that item of Works. if such a Bank Guarantee is required under this Agreement;
 - (iii) The Developer has provided a Bank Guarantee for any Maintenance Period under clause 6.5 for that item of Works, if such a Bank Guarantee is required under this Agreement; 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 Developer in an amount determined by the Council acting reasonably, that is equivalent to the costs of constructing those other items of Works.
- (i) For the avoidance of doubt, the Developer may direct Council in writing to continue to hold a Bank Guarantee provided under this clause 11.2 in satisfaction of the requirement to submit a Bank Guarantee or Bond under clause 8.5 of the Construction Terms for defects liability.
- (j) 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 Compulsory Acquisition

- (a) If the Landowner does not dedicate the Dedication Land to Council as required by this agreement, the Council may compulsorily acquire the relevant land, in which case the Landowner consents to the Council compulsorily acquiring that land for compensation in the amount of \$1.00 without having to follow the pre-acquisition

procedures in the *Land Acquisition (Just Terms Compensation) Act 1991* and may call upon any Bank Guarantee provided under clause 11.2 to cover any costs, including legal costs, incurred by the Council on acquisition of the land.

- (b) Clause constitutes an agreement for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (c) Except as otherwise agreed between the Developer and Council, the Developer must ensure the Dedication Land is freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, rights, charges, rates, strata levies and contracts, except as may be permitted by this agreement on the date that the Council will acquire the land in accordance with clause 11.3(a).
- (d) The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the relevant land under clause 11.3(a).
- (e) The Developer must pay the Council, promptly on demand, an amount equivalent to all costs, including legal costs, incurred by the Council acquiring the whole or any part of the relevant land under clause 11.3(a) that are not or cannot be recovered by calling on a Bank Guarantee.

11.4 *Restriction on the issue of Certificates*

- (a) In accordance with section 6.10 of the Act and any associated regulations (or if the Former Building and Subdivision Provisions apply, section 109H(2) of the Act) the obligations to:
 - (i) carry out the Works;
 - (ii) dedicate the Dedication Land;
 - (iii) provide a Bank Guarantee or Bond for any item of the Works for defects liability under the Construction Terms;

must be satisfied prior to the issue of an Occupation Certificate for the relevant stage of the Development as outlined in Schedule 1 of this agreement.

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 Discharge of Developers Obligations

The Developer's obligations under this agreement shall be discharged on the occurrence of any of the following:

- (a) The Developer's obligations have been fully carried out in accordance with the Deed, including its maintenance obligations under clause 6.5 and 7.6;

- (b) The Developer has fully or completely assigned the Developer's interest under the agreement in accordance with clause 13.1; or
- (c) The parties otherwise agree in writing to the modification or discharge of this Deed.

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.

13.2 Arrangements with Mortgagee

- (a) The Developer and Landowner agrees with the Council that if the Developer or 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 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 or Landowner by the mortgagee shall be as reasonably required by the Council. The agreement shall be prepared at the cost of the Developer.

13.3 Transfer of Land

- (a) The Developer or 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 Developer or Landowner satisfies the Council that the proposed Transferee is financially capable of complying with the Developer obligations under this agreement;
 - (ii) 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 or Landowner under this agreement;
 - (iii) The Transferee delivers to the Council replacement Bonds or Bank Guarantees as required by this agreement;
 - (iv) Any default under any provisions of this agreement has been remedied or waived by the Council, on such conditions as the Council may determine..
 - (v) The Developer 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 Developer acknowledges that Council may, at its discretion, include advice on any planning certificate issued under section 10.7 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 City of Parramatta Council: PO Box 32, Parramatta, NSW 2124
Fax: 02 9806 5917
Email: KKuo@cityofparramatta.nsw.gov.au
Attention: Manager, Land Use Planning
- (ii) to Sekisui House Australia Pty Limited: Ground Floor, 68 Waterloo Rd, Macquarie Park NSW 2113
Email: secretary@sekisuihouse.com.au
Attention: Secretary

- (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.

16.2 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
KKuo@cityofparramatta.nsw.gov.au
 - (B) to Sekisui House Australia Pty Limited: Attention: The Secretary
secretary@sekisuihouse.com.au

- (b) The recipient of a Notice served under this clause 16.2 must:
 - (i) promptly acknowledge receipt of the Notice; and
 - (ii) keep an electronic copy of the Notice,
- (c) Failure to comply with clause 16.2 does not invalidate service of a Notice under this clause.

16.3 *Receipt of Notices sent by email*

- (a) A Notice sent under clause 16.216.2 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 16.2 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 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 reasonable costs of obtaining any legal advice in connection with this agreement no later than 10 Business Days after receiving a demand from the Council to pay such costs.
- (b) The 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.

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 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.

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.

17.15 Operation of indemnities

Unless this agreement expressly provides otherwise, each indemnity in this agreement survives the expiry or termination of this agreement.

Column 1	Column 2	Column 3	Column 4
Item/ Contribution	Public Purpose	Manner & Extent	Timing
Construction of Stage 1 Foreshore Park Works	Provision of public open space	Embellishment of new public open space, such as landscaping, amenities, furniture, seating, and BBQ areas.	<p>Prior to issue of Occupation Certificate for Stages 5, 6, or 7 (whichever is the earlier) of the Development (In accordance with staging plan attached at annexure C) or 3 years from the date of Development Consent for the Stage 1 Foreshore Park Works, whichever is earlier</p> <hr/> <p>Prior to issue of Occupation Certificate for Stage 5 of the Development (in accordance with staging plan at annexure C).</p>
Construction of Stage 2 Foreshore Park Works	Provision of public open space	Embellishment of new public open space, such as landscaping, amenities, furniture, seating, and BBQ areas.	
Construction of Transit Corridor	Provision of public infrastructure	Construction of Public Road in accordance with relevant Australian Standards Council guidelines	Prior to issue of Occupation Certificate for Stage 7 of the Development (In accordance with staging plan attached at annexure C)

Dedication of Land	Dedication	Dedication of Stage 1 of the Foreshore Park	Within 12 months from the date of Practical Completion for the Stage 1 Foreshore Park, unless Council informs the Developer that dedication is not required in accordance with clause 7.5(d) of this Agreement
Dedication of Land	Dedication	Dedication of Stage 2 of the Foreshore Park	Within 12 months from the date of Practical Completion for the Stage 2 Foreshore Park, unless Council informs the Developer that dedication is not required in accordance with clause 7.5(d) of this Agreement
Dedication of Land	Dedication	Dedication of the Transit Corridor	Prior to issue of Occupation Certificate for Stage 7 of the Development (whichever is the earlier) (In accordance with staging plan attached at annexure C)

Schedule 2 Scope of works

The proposed scope of works includes the following:

Foreshore Park

The construction of the Foreshore Park in the area shown hatched in Annexure B which will be known as Lot 8 DP11645 and Lot 19 DP 5815. The Foreshore Park must include as a minimum the items listed and shown in Schedule 5.

Stage 1 Foreshore Works are as follows: the embellishment of main eastern portion of the foreshore reserve to be delivered in accordance with the plans shown in Annexure D.

Stage 2 Foreshore Works are as follows: the embellishment of secondary western portion of the foreshore reserve that is adjacent to the north-western stage building to be delivered in accordance with the plans in Annexure D.

Signalised Traffic Intersection Upgrade

The construction of a signalised traffic intersection upgrade at the intersection of Hill and Burroway Roads carried out to the satisfaction of RMS and Council's Manager of Traffic Services and any other works required to be carried out by TfNSW .

Transit Corridor

The construction of a public road, in accordance with relevant Australian Standards and Council guidelines, along the Transit Corridor which is shown hatched in Diagram 1 below. The Transit Corridor may be used for a light rail link the future but the Developer is not responsible for this in any way and the works in the Transit Corridor to be carried out by the Developer are limited to the construction of the public road. The construction of the Transit Corridor that can be used as a future light rail link. The Transit Corridor must include as a minimum the items listed and shown in Schedule 6.

Schedule 3 Construction terms

1 Interpretation

For the purposes of this Schedule 3, 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).

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.

Detailed Design means the final specifications and finishes for the Works prepared in accordance with clause 5.2 of this Schedule 3 and will include the design of the Works, the location for the Works and installation specifications.

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.

Works means the works required to construct and finish the Foreshore Park and Transit Corridor..

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 carry out the Developer's obligations in these Construction Terms as part of any Construction Contract.

5 Design Development and Approvals

5.1 Concept Design

Council and the Developer have worked in consultation with each other to prepare and agree the concept plans for the Works at Annexure C.

5.2 Detailed Design

(i) Prior to Works commencing the Developer must provide a copy of the draft Detailed Design to the Council for approval.

(ii) Within 28 Business Days of receiving the Detailed Design, Council will respond to the Developer with any suggested amendments to the Detailed Design.

(iii) 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.

(iv) 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(ii) of this Schedule 3, 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:

(A) is consistent with the obligation to carry out the Works and dedicate the Dedication Land under this agreement; and

(B) is consistent with the Development Consent; and

(C) does not materially and adversely affect the Development; and

(D) is not unreasonable..

5.3 Any acceptance by the Council of the Detailed Design under this clause 5 of Schedule 3 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 3 from Council if the Council fails to deliver them to the Developer.
- (d) The Developer 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 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) Two 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 2 Business Days of carrying out an inspection (either under clause 7(c) or 7(d) of this Schedule 3), 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 3, 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 3, 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 3 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, 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 5 Business Days of receipt of the notice under clause 8.1(a) of this Schedule 3, 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 3, the Developer will provide that information to Council or address those matters within 5 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 3 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.

8.2 Delivery of documents

- (a) The Developer 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 deliver to the Council via email, 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 Developer 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 the Works.
- (b) The Developer 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 Developer must assign (as beneficial owner) or cause to be assigned to Council the benefit of any warranties and guarantees obtained by the Developer and the Builder (and capable of assignment) with respect to any material or goods incorporated in or forming part of the Works.
- (b) To the extent that any such warranties or guarantees cannot be assigned, the Developer 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

The Defects Liability Period and obligations under this clause and Schedule 3 only apply if the Foreshore Park is to be dedicated to Council. This clause 8.4 will not apply if Council informs the Developer that the Foreshore Park does not need to be dedicated in accordance with clause 7.4 of this Agreement.

- (a) During the Defects Liability Period, the Council (acting reasonably) may give to the Developer a notice (**Rectification Notice**) in writing that identifies a defect in the Works and specifies:
 - (i) action required to be undertaken by the Developer to rectify that defect (**Rectification Works**); and
 - (ii) the date on which the defect must be rectified (**Rectification Date**).
- (b) The Developer must comply with the Rectification Notice by:
 - (i) procuring the performance of the Rectification Works by the Rectification Date, 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 Developer and its contractors any access required to carry out the Rectification Works.
- (d) When the Developer considers that the Rectification Works are complete, either the Developer 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 Developer under clause 8.4(d) of this Schedule 3 and, acting reasonably:
 - (i) issue a further Rectification Notice if it is not reasonably satisfied that the Rectification Works are complete; or
 - (ii) notify the Developer in writing that it is satisfied the Rectification Works are complete.
- (f) The Developer must meet all costs of and incidental to rectification of defects under this clause 8.4.
- (g) If the Developer fail 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 Developer, and may:

- (i) call upon any Bond or Bank Guarantee provided to the Council under clause 8.5 of this Schedule 3 to meet its costs of carrying out Rectification Works; and
 - (ii) recover as a debt due to the Council by the Developer 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 Developer 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 Developer and before to the end of the Defects Liability Period.
- (i) If, prior to the end of the Defects Liability Period:
- (i) the Developer 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) This clause 8.5 only applies if the Foreshore Park is to be dedicated to Council. If Council informs the Developer, in accordance with clause 7.4 of this Agreement, that dedication is not required then security for defects liability is not required and this clause 8.5 will not apply.
- (b) Prior to the issue of a Certificate of Practical Completion for each item of the Works the Developer must deliver to the Council Bonds or Bank Guarantees in an amount equivalent to 2.5% of the construction costs for the particular item of Works.
- (c) The Developer 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 Developer 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 Developer procure 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.
- (d) 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 3 for that item of Works (or any remaining balance of it) to the Developer.
- (e) Notwithstanding clause 8.4(c) of this Schedule 3, 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.

- (f) The Council must deliver the balance of any Bond or Bank Guarantee for the Defects Liability Period to the Developer within 14 days after the Defects Liability Period has ended.

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 3 upon request by the Council, acting reasonably, throughout the term of this agreement.

11 Indemnities

- (a) The Developer shall indemnify the Council against:
 - (i) Loss of or damage to the Council's property; and
 - (ii) Claims in respect of personal injury or death or loss of, or damage to, any other property,arising out of or as a consequence of the carrying out of the Works.
- (b) The indemnity in clause 11(a) of this Schedule 3:
 - (i) only relates to matters which occurred before the expiry of the Remediation Maintenance Period; and
 - (ii) shall be reduced proportionally to the extent that the act or omission of the Council or its employees, officers, agents, contractors or workmen may have contributed to the injury, death, loss or damage.

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. To the extent the Developer has or receives intellectual property rights for the Works, the Developer shall assign those intellectual property rights to Council or permit use thereof.

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 4 Maintenance Schedule

Landscaping

Generally

The maintenance contractor must maintain all plant material in a state of health and vigour. To do so, the Contractor must undertake inspections and supervise (all) rectification and Maintenance Works. The contractor must also maintain the site in a neat and tidy appearance through general sweeping and rubbish removal. Minimum frequency of weekly service visit in relation to general landscaping maintenance.

Logbook

The contractor is required to maintain records of maintenance visits and tasks undertaken. The project maintenance records must be kept by the Client's Representative. At the end of each maintenance visit the contractor must report to the Client's Representative.. Once approved the contractor must fill out the log book retained by the Client's Representative.

Undertaken: At each maintenance visit.

Watering

The contractor must undertake irrigation maintenance to support healthy and vigorous plant growth. At each visit, the Contractor must assess soil moisture against the requirements of the planted vegetation. Dry / wet conditions may be detrimental to growth dependent on the species planted. Experience is required to make an informed assessment. Where an irrigation system is installed the contractor must monitor the application rates and make running adjustments to ensure appropriate soil moisture levels, as well as irrigation efficiency to minimise the insufficient application and waste overspray onto hard surfaces.

Particular attention must be paid to maintenance within the first 4 weeks when plants are most susceptible to death through transplanting shock, altered environmental conditions and varying soil interface issues.

Undertaken: Weekly for 8 weeks, then fortnightly for the remainder of the contract.

Weeding and rubbish removal

Whole Site: The contractor must remove any plant material that has not been specified and general litter from garden beds, and, sweep paths and pavements of fallen / windblown vegetative matter and rubbish. Dispose of all material offsite.

Undertaken: Weekly

Fertilising

Lawn: Provide one application 8 weeks after the initial lay with a proprietary fertiliser, with an N:P:K analysis of 10%(N) : 3.4%(P) : 6.4%(K). Broadcast evenly and water in well in accordance with the manufacturer's recommendations and application rates

Lawn only - 1 application 8 weeks after

Pesticide/Fungicide Spraying

Nil. Make recommendations should spraying be required.

Herbicide spraying

Nil. The contractor must undertake weed removal by hand or mechanically.

Soil subsidence

Contractor must maintain garden soil surface levels throughout the maintenance period correcting soil subsidence. Soils and mulch are to remain flush with raised planter edges.

Undertaken: As required.

Mulch

Generally, top up mulch annually in spring to maintain the specified depths. Ensure no topsoil is exposed. Top up with the mulch originally specified. Sweep dispersed mulch back onto garden beds.

Undertaken: Annually (100mm)

Gravel surfaces

Including all loose quarried material. Sweep dispersed gravels back into gravel zones. Clean gravels of litter and vegetative matter.

Undertaken: Every 12 Weeks

Stakes and ties

Stakes and ties must not be used to support weak stemmed plants. If required, stakes and ties must be a loose fit allowing trunk and stem movement and the development of reaction wood. Stakes must not be driven into the plant rootball. All stakes and ties must be removed after one year of installation.

Undertaken: Practical completion audit. Removal at 12 months.

Plant replacement

The Contractor must replace dead or dying plants. Should any one species fail entirely, the Contractor must not replace with the same species. In such cases the Client's Representative must be sought to provide species variation advice. Species must be assessed and replaced within two weeks of assessment.

Undertaken: Every 12 weeks.

Pruning

Generally, shrubs are to be tip pruned at the end of each flowering period. Shrubs and plantings must be appropriately maintained to allow for clear lines of sight over the shrubs from pathways and pedestrian areas. Trees are to be progressively crown lifted when branches are no greater than 20mm in diameter. All trees are to be appropriately pruned, trimmed and maintained for passive surveillance.

Undertaken: Every 6 Months

Urgent works after storms

Inspect site after known storm events, or as requested by the Client's Representative and correct storm event damage. Typically, eroded soils and mulch dispersed onto paths.

As required

Raingardens Assess proper functioning through inspection of plant material health and evidence of waterlogging. Clear out debris and trapped sediment in inlet traps / rock armoury etc. Flush out subsoil pipes and remove any surface build to maintain the original extended detention depth.

Undertake: Annually

Garden / Lawn edging

Inspect and rectify any edging that has dislodged or become exposed through settlement.

Undertaken: Annually

Mowing

Lawns must be mowed to maintain a leaf blade height of no greater than 50mm. No more than 1/3 of the blade height is to be removed at each mowing. Water in topdressing material thoroughly, immediately after installation, to disperse beneath leaf blades and fill around stolons and rhizomes. Where excessive divots occur cut and lift existing turf. Place additional topsoil beneath before replacing at correct level. Feather in with topdress soil mixture.

Undertaken: Fortnightly in summer and monthly in winter.

Top-dressing

Lightly topdress with ANL 'Organic Top Dressing'. Do not cover turf blades completely. Blade tips are to remain exposed to sunlight.

Undertaken: Every 2 Years

Oil finished timber (benches & decking)

Oiled timber should be re-coated on a regular basis to help maintain its colour and appearance. Timber, in typically exposed situations, should be initially recoated after 3 months, and thereafter every 6 months. Re-coating is best done in warm weather. Wash the surface down to remove dust and dirt with a household detergent. Allow to dry. Apply one or two coats of Natural Pigmented Oil. Apply with a clean cloth and wear protective clothing. Do not apply a water based stain, which is not compatible with Natural Pigmented Oil. If the surface of the oiled timber has seriously degraded, as evidenced by greying and checking, a light sanding is recommended to freshen up the timber. Natural Pigmented Oil may be obtained from leading hardware stores or from the manufacturer.

Undertaken: As required.

Cleaning

Rubbish

All garbage bins to be checked and emptied.

Undertaken: twice daily

Paths

Collect all loose rubbish from pathways, walkways on all internal pathways

BBQ Area

Clean BBQ area and spot clean any grease residue.

Undertaken: Weekly (frequency may be reviewed seasonally).

Toilets

Toilets to be inspected twice daily and through cleaned.

Undertaken: Twice daily

Schedule 5

Scope of Work

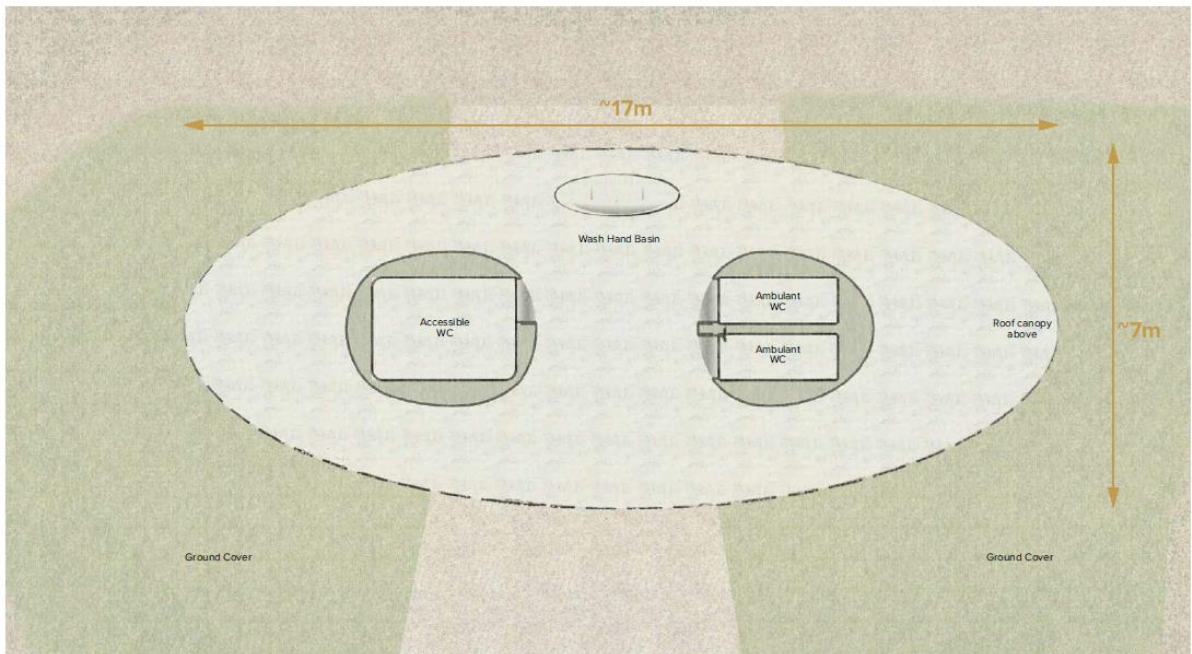
Description of Works:	<p>The Foreshore Reserve will provide high amenity and diverse recreation opportunities for the local community.</p> <p>The largest parkland within the development to service residents and visitors at Wentworth Point. The park will be designed to reflect its function as the 'backyard' for the surrounding high density community and capitalise on the significant views afforded by its river foreshore location.</p> <p>The park should complement the facilities available to the community within the other open space areas throughout the precinct and the wider Wentworth Point area. It will have a versatile central lawn space for a variety of programs and community events as well as a recreation zone to provide play and physical activity opportunities for a range of ages and abilities.</p>
Core Elements:	<p>Works to be delivered include:</p> <ul style="list-style-type: none"> • Soft landscaping and lawns • P3 Lighting (55 - 70) • 1x Foreshore shared path 4m wide & internal access pathways • 1x Inland cycle path 3.5m wide • Bicycle racks (min 10-12) • 1x Amenities block (2x Unisex / 1 Disabled) as per Annexure B • 3x Children's play areas (customised to age groups 2-4, 5-10 & 11-14) & 2x Fitness Stations • 200 – 400 litre pot size Mature tree planting (target of 40% tree canopy cover) • Picnic Tables (min 14-16) & Double BBQs min 3) • Bench seats (min 40-50) • Drinking fountain (min 5) • Bins (min 6) • Shelters and structures (min 6-8) • Sea wall reconstruction as formed tiered seating and other foreshore improvements • External services to park including stormwater drainage, water supply and irrigation system and lighting • Preparation of Plan of Management for the Park • Preparation of Contamination Management Plan for the Park • In addition to the above, any items that are shown in concept plans attached at Annexure A, B and C.





Amenities Pavilion - Plan

200824 Phase 7 Foreshore Park and Amenities Pavilion | Council Discussion





SANCTUARY MASTERPLAN

Project No. 1801 13270A3 Rev. Issue _ 24/9/20
TURNER
 Landscape Architecture
 200824
 www.turner.com.au

Amenities Pavilion

200824 Phase 7 Foreshore Park and Amenities Pavilion | Council Discussion



SANCTUARY MASTERPLAN

Project No. 1801 11750A3 Rev. Issue _ 24/9/20
TURNER
 Landscape Architecture
 200824
 www.turner.com.au

Schedule 6 Transit Corridor

Core Elements:	<p>Works to be delivered includes:</p> <ul style="list-style-type: none"> Grassed area for community recreational use on the street edges Shared pathway 1.2m wide Landscape works, street furniture, lighting, stormwater drainage, and relocation of services <p>OR</p> <ul style="list-style-type: none"> Surfaced and line marked for street parking
----------------	--



Schedule 7 Summary of requirements (section 7.4)

Subject and subsection of the Act	Planning Agreement
<p>Planning instrument and/or Development Application – Section 7.4(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 type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>
<p>Description of the land to which the planning Agreement applies – Section 7.4(3)(a)</p>	<p>Lot 3 DP 271278, known as 14-16 Hill Road, Wentworth Point.</p>
<p>Description of the application – Section 7.4(3)(b)</p>	<p>An amendment to the <i>Auburn Local Environmental Plan 2010</i> in order to redistribute approved gross floor area, amend zoning, height of building, floor space ratio and land acquisition controls for 14-16 Hill Rd, Wentworth Point.</p>
<p>The scope, timing and manner of delivery of contribution required by the Planning Agreement – Section 7.4(3)(c)</p>	<p>See Schedule 1.</p>
<p>Applicability of section 7.11 of the Act – Section 7.4(3)(d)</p>	<p>Not excluded</p>
<p>Applicability of section 7.12 of the Act – Section 7.4(3)(d)</p>	<p>Not excluded</p>
<p>Applicability of section 7.24 of the Act – Section 7.4(3)(d)</p>	<p>Not excluded</p>
<p>Mechanism for dispute resolution – Section 7.4(3)(f)</p>	<p>See clause 10</p>
<p>Enforcement of the Planning Agreement – Section 7.4(3)(g)</p>	<p>See clause See clause 1111.</p>
<p>Registration of the Planning Agreement – Section 7.6</p>	<p>The Planning Agreement will be registered.</p>

No obligation to grant consent or exercise functions – Section 7.4(9)	There is no obligation on Council to grant consent or exercise functions.
--	---

Executed as an agreement

Signed on behalf of **City of Parramatta Council** (ABN 49 907 174 773) by its authorised delegate pursuant to section 377 of the *Local Government Act 1993* in the presence of:

Signature of witness

Signature of authorised delegate

Name of witness

Name of authorised delegate

Address of witness

Position of authorised delegate

Signed on behalf of **Sekisui House** ACN 41 135 313 236 in the presence of:

Signature of witness

Signature of authorised delegate

Name of witness

Name of authorised delegate

Address of witness

Position of authorised delegate

Further execution clause required for Landowner.

Signed on behalf of **SH Hill Road Development Pty Limited** ACN 41 135 313 236 in the presence of:

Signature of witness

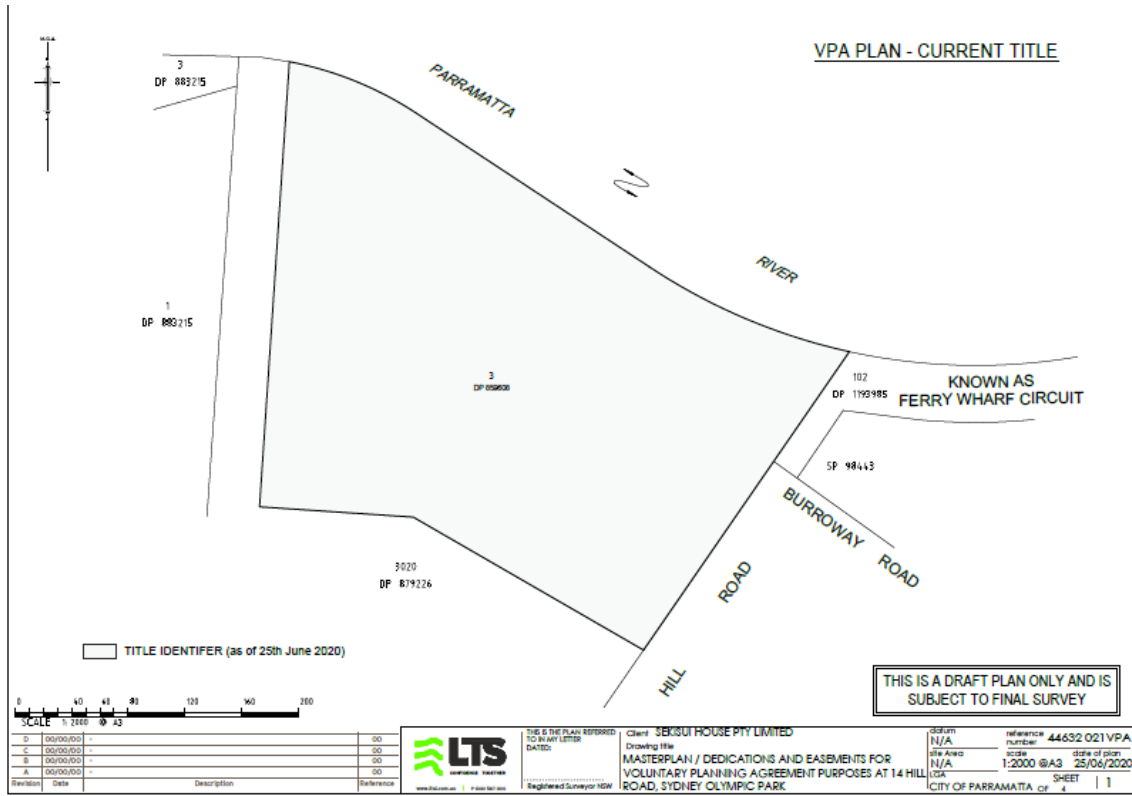
Signature of authorised delegate

Name of witness

Name of authorised delegate

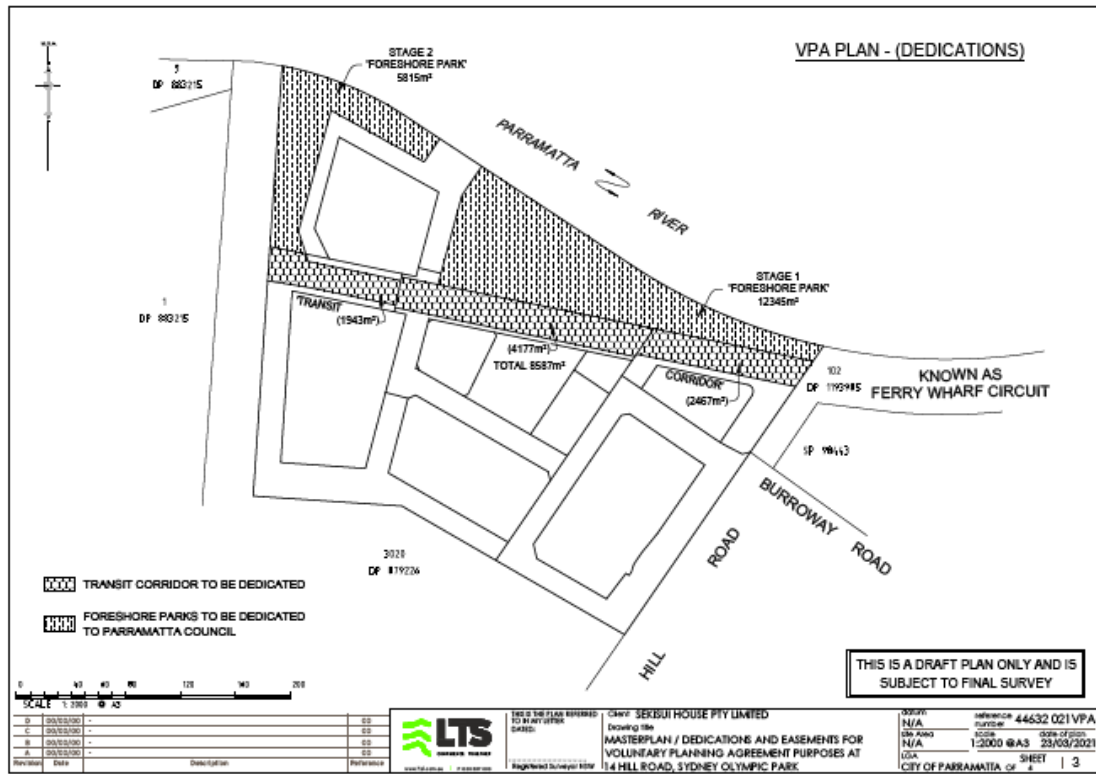
Annexure A

Plan showing Land



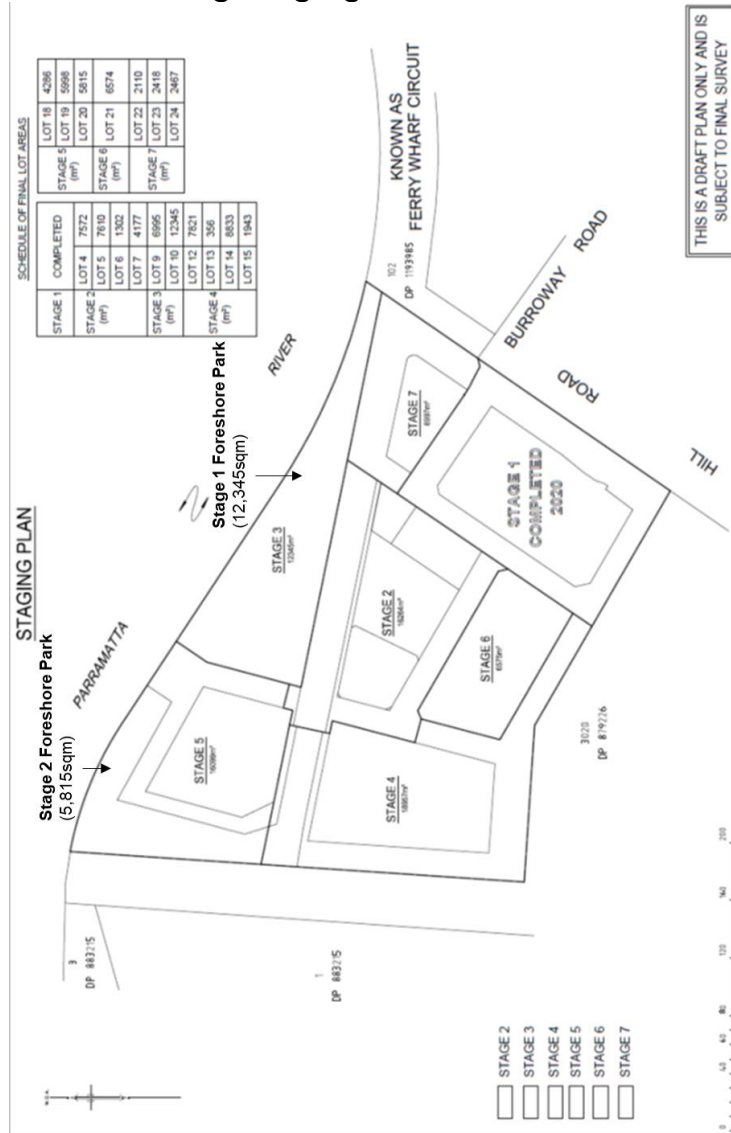
Annexure B

Plan showing Dedication Land

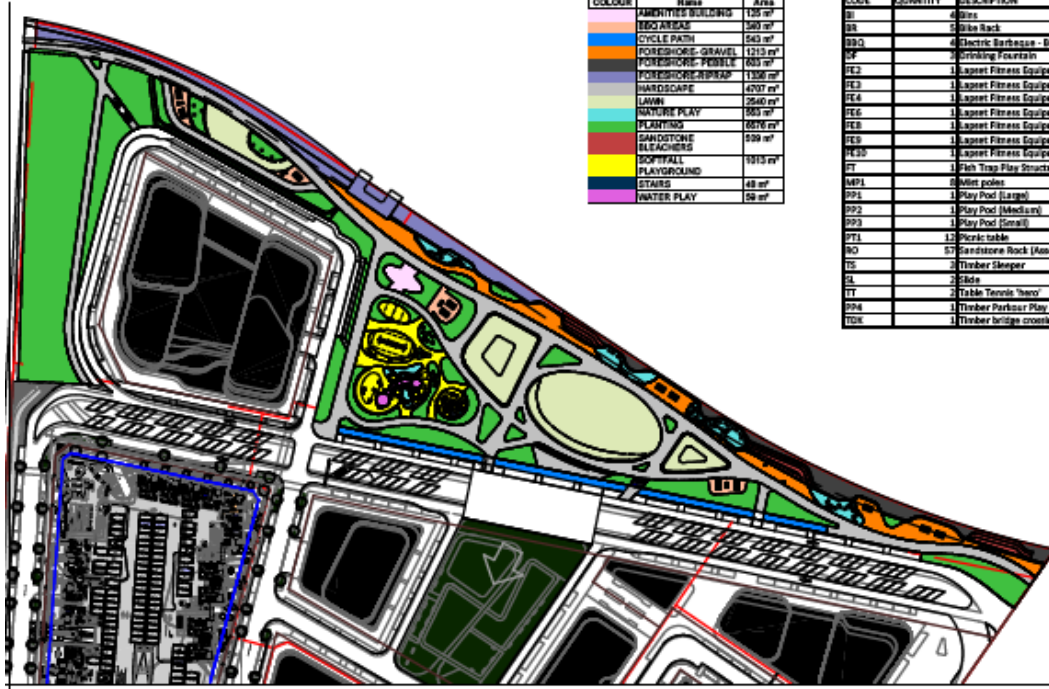


Annexure C

Plan showing staging



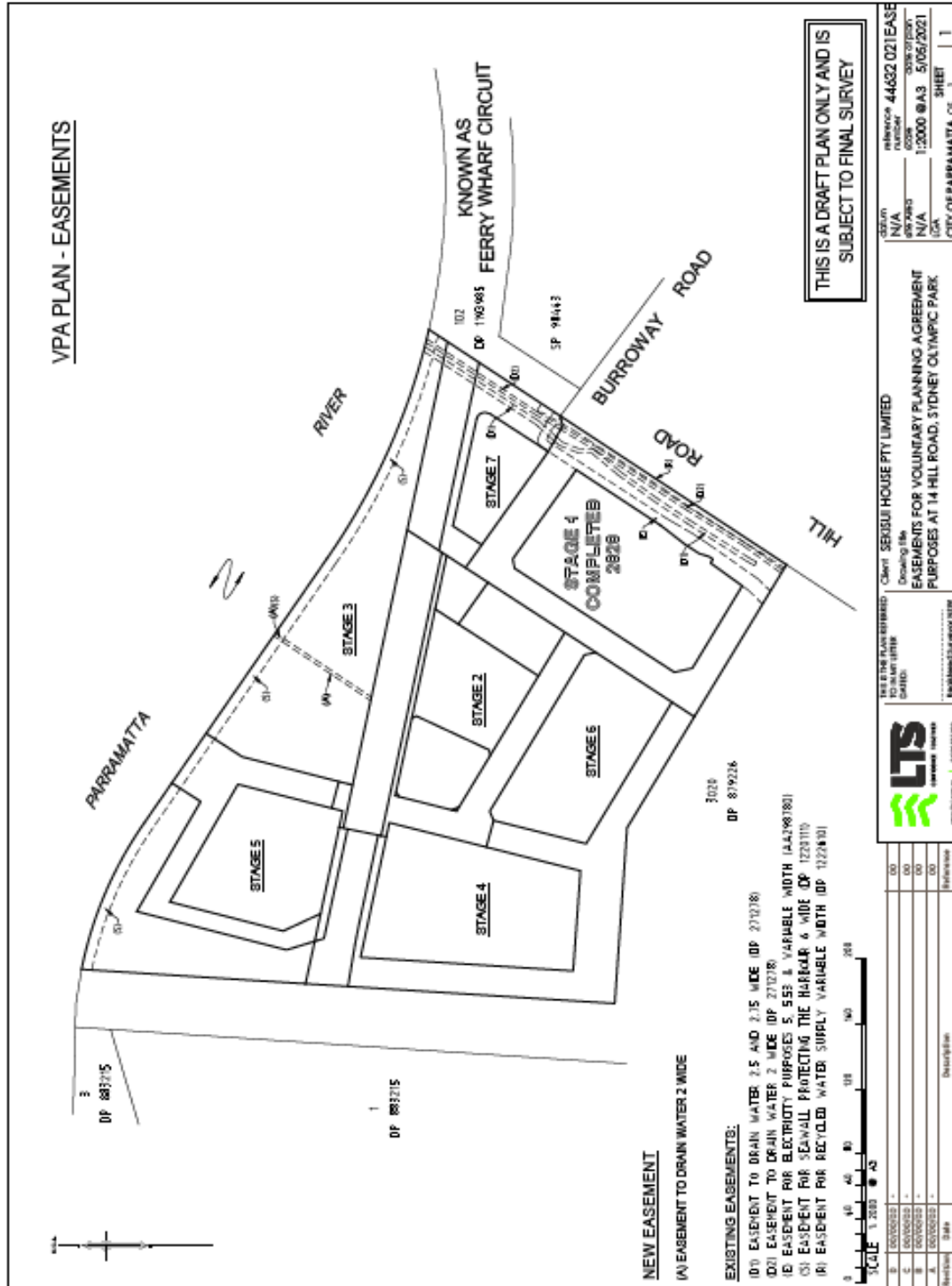
MATERIALS AND FINISHES AREA PLAN



AREAS PLAN		
COLOUR	Name	Area
	AMENITIES BUILDING	1257 m ²
	BBQ AREAS	580 m ²
	CYCLE PATH	563 m ²
	FORESHORE GRAVEL	1212 m ²
	FORESHORE PEBBLE	100 m ²
	FORESHORE ASPHALT	1328 m ²
	HARDSCAPE	4207 m ²
	LAWN	2640 m ²
	MINIWE PLAY	957 m ²
	PLANTING	5576 m ²
	SANDSTONE BLEACHERS	939 m ²
	SOFTFALL PLAYGROUND	1073 m ²
	STAIRS	48 m ²
	WATER PLAY	58 m ²

SCHEDULE OF QUANTITIES- ELEMENTS AND FIXTURES

CODE	QUANTITY	DESCRIPTION
BI	4	Bins
BR	5	Bike Rack
BBQ	4	Electric Barbecue - BM3 E2.2 Barbecue bench with 2 x CC2
BF	2	Drinking Fountain
FE2	1	Aspet Fitness Equipment - Pull Up Product code: 081265M
FE3	1	Aspet Fitness Equipment - Back & Abs Product code: 081215M
FE4	1	Aspet Fitness Equipment - Flying dog Product code: 081245M
FE5	1	Aspet Fitness Equipment - Salton Beam Product code: 081456M
FE6	1	Aspet Fitness Equipment - Bow M Product code: 081201M
FE7	1	Aspet Fitness Equipment - Bow L Product code: 081203M
FE8	1	Aspet Fitness Equipment - Signage Product code: 081230M
FT	1	Feet Trap Fly Structure
MP1	8	Mist poles
PP1	1	Play Pod (Large)
PP2	1	Play Pod (Medium)
PP3	1	Play Pod (Small)
PT1	12	Plastic table
RO	57	Sandstone Rock (Assorted sizes)
TS	2	Timber Sleeper
TL	2	Tables
TT	2	Table Tennis 'beno'
PAH	1	Timber Parkour Play structure
TCR	1	Timber bridge crossing



Annexure F

Auburn Development Contributions Plan 2007
(Amendment 1)

AUBURN DEVELOPMENT CONTRIBUTIONS PLAN 2007 S7.11 RATES SCHEDULE

June Quarter 2021 CPI (0.8%) - Contribution Rates (from 28 July 2021):

Auburn Development Contributions Plan 2007	
Former Auburn LGA - Dwelling Types	S7.11 monetary levy
Apartment - One Bedroom or Secondary Dwelling/Granny Flat (GF)	\$3,371.31
Apartment - Two Bedroom or Secondary Dwelling/Granny Flat (GF)	\$6,484.01
Apartment - Three Bedroom	\$8,818.19
Apartment - Four or more Bedrooms	\$10,892.44
Knock Down Rebuild > for New Single 4+ Bedroom Dwelling	\$2,068.04
Knock Down Rebuild > for New Single 4+ Bedroom Dwelling + 1 bed GF	\$5,445.89
Knock Down Rebuild > for New Single 4+ Bedroom Dwelling + 2 bed GF	\$8,558.24
Knock Down Rebuild > Dual Occupancy 4+ Bedrooms	\$12,966.65
Non-Residential S7.12 (S94A) 1% of Cost of Works above \$200,000; 0.5% of CoW between \$100,001 and \$199,999; \$0 for CoW up to and including \$100,000	
Wentworth Point (Homebush Bay West) - Dwelling Types	S7.11 monetary levy
One Bedroom	\$3,388.05
Two Bedroom	\$5,085.37
Three Bedroom	\$6,997.47
Four Bedroom	\$7,265.69
Non-Residential S7.12 (S94A) 1% of Cost of Works above \$200,000; 0.5% of CoW between \$100,001 and \$199,999; \$0 for CoW up to and including \$100,000	