

Voluntary Planning Agreement

[Date]

City of Parramatta Council
ABN 49 907 174 773

BuildUp Phillip Pty Ltd
ACN 603156958
Academy Parramatta Pty Limited
ACN 602108672

9 July 2025

Contents

Parties	5
Background	5
Operative part	5
1 <i>Definitions</i>	5
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
6.1 The Developer will make the Developer Contributions in the manner and at times set out in Schedule 1 and in accordance with Clause 6.	11
6.2 Works	11
6.3 Dedication of Land	11
6.4 Maintenance of Works	12
6.5 Public Access and Easements	13
6.6 Access to Council owned land	14
6.7 Council Strata Lot	14
6.8 Monetary contribution	15
7 <i>Application of s 7.11, s 7.12 and s 7.24 of the Act to the Development</i>	16
8 <i>Registration of this agreement</i>	16
8.1 Developer Interest	16
8.2 Registration of this agreement	16
8.3 Removal from Register	17
8.4 Caveat	17
9 <i>Review of this agreement</i>	18
10 <i>Dispute Resolution</i>	18
10.1 Reference to Dispute	18
10.2 Notice of Dispute	18
10.3 Representatives of Parties to Meet	18
10.4 Further Notice if Not Settled	19
10.5 Mediation	19
10.6 Expert determination	20
10.7 Litigation	20

10.8	No suspension of contractual obligations	20
11	<i>Enforcement</i>	21
11.1	Default	21
11.2	Security for Affordable Housing Units	21
11.3	Compulsory Acquisition	23
11.4	Restriction on the issue of Certificates	23
11.5	General Enforcement	24
12	<i>Assignment and Dealings</i>	24
12.1	Assignment	24
12.2	Arrangements with Mortgagee	24
12.3	Transfer of Land	24
13	<i>Approvals and consents</i>	25
14	<i>No fetter</i>	25
14.1	Discretion	25
14.2	No fetter	25
14.3	Planning Certificates	26
15	<i>Notices</i>	26
15.1	Notices	26
15.2	Notices sent by email:	26
15.3	Receipt of Notices sent by email	27
16	<i>General</i>	28
16.1	Relationship between parties	28
16.2	Time for doing acts	28
16.3	Further assurances	28
16.4	Joint and individual liability and benefits	28
16.5	Variations and Amendments	28
16.6	Counterparts	28
16.7	Legal expenses and stamp duty	28
16.8	Entire agreement	29
16.9	Representations and warranties	29
16.10	Severability	29
16.11	Invalidity	29
16.12	Waiver	29
16.13	GST	30
16.14	Governing law and jurisdiction	30

Schedule 1	Developer contributions	31
Schedule 2	Scope of Works	34
Schedule 3	Construction terms	35
Schedule 4	Easement Terms	44
Schedule 5	Summary of requirements (section 7.4)	46
Annexure A	Plan showing Land	49
Annexure B	Plan showing Dedication Land	50
Annexure C	Plans showing Works	51
Annexure D	Works Schedule of Materials and Finishes	52
Annexure E	Council Strata Lot Schedule of Materials and Finishes	53

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	Academy Parramatta Pty Limited
ACN	602108672
Contact	Charlie Zeaiter
Telephone	(02) 9891 1193

Third party

Name	BuildUp Phillip Pty Ltd
ACN	603156958
Contact	Charbel Obeid
Telephone	(02) 9891 1193

Background

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

Operative part

1 Definitions

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

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

Affordable Housing has the same meaning as under the Act;

Affordable Housing Unit means a dwelling used for the purposes of Affordable Housing;

Approval means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this agreement;

Authority means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person;

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

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

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 (acting reasonably);

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;

Construction Terms means the terms set out in Schedule 3;

Contributions Plan has the same meaning as under the Act;

Council Strata Lot means the Affordable Housing Units to be dedicated to Council, comprised of 4x1 bedroom units and 1x2 bedroom unit with the following key characteristics:

- (a) a minimum size of 50m² for each 1 bedroom unit;
- (b) a minimum size of 75m² for the 2 bedroom unit; and
- (c) one car space allocated to the 2 bedroom unit;

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

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

Dedication Land means that part of the Land to be dedicated to Council in accordance with this agreement, as generally shown on the plan at Annexure B and denoted "A" and "B", and as described in Schedule 1;

Developer means BuildUp Phillip Pty Ltd and Academy Parramatta Pty Limited;

Development means a mixed-use development on the Land;

Development Application has the same meaning as in the Act;

Development Consent has the same meaning as in the Act;

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

Easement Plan is the Plan at Annexure B which shows the proposed easements and restriction on title;

Easement Terms means the terms of a public access easement as set out in Schedule 4;

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 a planning proposal to amend the Parramatta Local Environmental Plan 2023 as follows:

- (a) Amendment to Clause 7.28A so that it no longer provides a site-specific FSR and height bonus for the Land.
- (b) Amendment to the maximum building height for the Land in the Height of Buildings Map from part 80 metres (105 metres when including all bonuses) and part 0 metres to part 133 metres (153 metres when including all bonuses) and part 0 metres;
- (c) Amendment to the maximum FSR in the Floor Space Ratio Map for the Land from 6:1 (9.7:1 when including all bonuses) to 13.8:1 (16.56:1 when including all bonuses);

Land means Lot 10 DP 773452, known as 90-92 Phillip Street, Parramatta NSW and Lot 2 DP 706033 known as 94-96 Phillip Street, Parramatta NSW, as shown on the plan at Annexure A;

Landowner means BuildUp Phillip Pty Ltd in relation to Lot 10 DP 773452 and Academy Parramatta Pty Limited in relation to Lot 2 DP 706033;

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);

LRS means Land Registry Services.

Modification Application means any application to modify a Development Consent under section 4.55 or 4.56 of the Act;

Monetary Contribution means the amount payable by the Developer to the Council under clause 6.8 of this agreement.

Occupation Certificate means an occupation certificate as defined under section 6.4 of the Act, and includes an Occupation Certificate or a partial Occupation Certificate as the case may be;

PEXA means Property Exchange Australia, which is an Electronic Lodgment Network.

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

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

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

Regulation means the *Environmental Planning and Assessment Regulation 2021* (NSW);

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 Development Act 2015 (NSW)*;

Strata Documents means the strata plan by-laws prepared in accordance with LRS Approved Form 7 and/or a strata management statement or building management statement prepared in accordance with LRS Approved Form 9.

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)** the president 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 5 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 Development, and
- (c) 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 will make the Developer Contributions in the manner and at times set out in Schedule 1 and in accordance with Clause 6.

6.2 Works

- (a) The Developer will carry out the Works in accordance with this agreement, including the Construction Terms, and any Development Consent granted for the Works.
- (b) The Works or any part of the Works required under this agreement will be taken to have been completed for the purposes of this agreement when a Certificate of Practical Completion has been issued for those Works.
- (c) The Works or any part of the Works required under this agreement will be taken to have been delivered to Council when the land on which those Works are located is dedicated to Council.
- (d) The Works must be delivered to the Council prior to the issue of an Occupation Certificate for the Development or any part of the Development, or in any event prior to the occupation of any part of the Development.
- (e) The parties agree and acknowledge that the Works serve the following public purposes:
 - (i) public roads; and
 - (ii) provision of open space.

6.3 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 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.
- (b) The obligation to dedicate the Dedication Land will be taken to have been satisfied when 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 6.3(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* (NSW).
- (c) The obligation to dedicate the Dedication Land will be taken to have been satisfied when either a Certificate of Title is issued by NSW Land and Property Information for the whole of the Public Road identifying the Council as the registered proprietor of that land without encumbrances as required by clause 6.3(a) or when the Public Road is dedicated to Council by operation of the registration of a plan of subdivision in accordance with section 9 of the *Roads Act 1993* (NSW).
- (d) The Dedication Land must be dedicated or transferred to Council within 10 Business Days of registration of a subdivision plan creating the Dedication Land

and in any event prior to the issue of an Occupation Certificate for the Development or any part of the Development.

- (e) The parties agree and acknowledge that the embellishment and dedication of the Dedication Land serve the public purpose of:
 - (i) Provision of public open space; and
 - (ii) Provision of roads.

6.4 *Maintenance of Works*

- (a) 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 due to use of poor materials or due to poor workmanship, 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 the period of 1 year from the time that item of Work is delivered to Council in accordance with this agreement.

Maintenance Schedule means the schedule of proposed Maintenance works as required by clause 6.4(d).

Charles Street Square Works means the works identified in Item 1 of Schedule 2 to this agreement.

- (b) The Charles Street Square Works or any part of those works, must be Maintained by the Developer to the reasonable satisfaction of the Council for the Maintenance Period.
- (c) The Developer must follow relevant Council policies and obtain all Approvals necessary to carry out the Maintenance required under this clause.
- (d) Prior to the issue of a Certificate of Practical Completion for any part of the Charles Street Square Works, the Developer must:
 - (i) provide to the Council a Maintenance Schedule setting out the proposed Maintenance works and estimated costs for the relevant part of the Charles Street Square Works over the Maintenance Period, and
 - (ii) once the Council approves the Maintenance Schedule, acting reasonably, provide the Council with a Bank Guarantee or Bond in the amount of the estimated costs of the maintenance works as set out in the Maintenance Schedule.
- (e) The Council agrees to promptly return any Bank Guarantee provided under paragraph (d) of this clause at the end of the Maintenance Period for the relevant part of the Charles Street Square Works, subject to paragraphs (j) and (k) of this clause.

- (f) Forty Business Days prior to the end of any Maintenance Period, the Developer must request Council to carry out an inspection of the Charles Street Square Works or any part of those Works.
- (g) The Council must carry out the inspection as requested by the Developer within 5 Business Days of the request.
- (h) 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.
- (i) If the Developer is issued with a notice to carry out Maintenance work under paragraph (h) 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.
- (j) If the Council issues a notice under paragraph (h) of this clause, the Council may retain any Bank Guarantee provided by the Developer under paragraph (d) 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.
- (k) If the Developer fails to substantially comply with an approved Maintenance Schedule and does not rectify that failure within 21 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 (h) of this clause, 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 (d) of this clause in satisfaction of the costs of carrying out the maintenance work; 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 Bank Guarantee or Bond and the costs incurred by the Council in carrying out the maintenance work.

6.5 *Public Access and Easements*

- (a) Subject to clause 6.2, the Developer will, at no cost to Council, register against the title to the Land shown in the Easement Plan:
 - (i) a covenant prohibiting any building or structures, including pillars, other than structures approved by the Council (acting reasonably) for the purposes of enhancing public domain areas, to be constructed on the Land shown on the Easement Plan; and
 - (ii) an easement in gross burdening that part of the Land shown on the Easement Plan in favour of the Council permitting public access to the easement area and generally in accordance with the Easement Terms.
- (b) Any requirement to register an easement, covenant or other instrument against the title to the Land will be satisfied when the Developer provides to the Council a copy of the relevant title search showing the registration of the instrument.

- (c) Any covenant required under clause (a) must be registered prior to the issue of the first Construction Certificate for any building on the Land forming part of the Development.
- (d) Any easement, required under clause (a) must be registered prior to the issue of an Occupation Certificate for the Development or any part of the Development, or in any event prior to the occupation of any part of the Development.
- (e) The parties agree that the proposed covenant and easement under this clause will serve the following public purposes:
 - (i) To increase the amount of and improve existing public open space areas in the vicinity of the Land; and
 - (ii) To improve pedestrian circulation and the amenity of the public domain in the vicinity of the Land.
- (f) The Developer agrees and acknowledges that the obligations under this clause are relevant considerations for the Council or any other consent authority when determining a Development Application or Modification Application relating to the Land and that a failure to comply with those obligations or any inconsistency with the requirements in those clauses may constitute a reason for refusal of such a Development Application or Modification Application.

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) 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.

6.7 *Council Strata Lot*

- (a) Prior to the issue of an Occupation Certificate for any building containing an Affordable Housing Unit, or any part of such a building, the Developer must:
 - (i) at no cost to Council construct, finish and fit out the Council Strata Lot as part of the Development, in accordance with the relevant Development Consent, the Construction Terms and the Schedule of Finishes at Annexure E; and
 - (ii) provide access to the Council to inspect the Affordable Housing Unit and any other part of the building if required by Council; and
 - (iii) obtain written confirmation from Council that it is satisfied the Affordable Housing Unit has been completed and fitted out in accordance with the requirements of this agreement.
- (b) The Developer acknowledges and agrees that:

- (i) if it proposes to lodge any Strata Documents for registration at LRS, it must give a copy of those Strata Documents to the Council, together with the Strata Plan, and allow the Council a period of 14 Business Days to review those documents and request any amendments to them to give effect to the provisions of this agreement; and
- (ii) if the Council requests any amendments to the Strata Documents and the Strata Plan, the Developer must make those amendments and then lodge the amended documents for registration at LRS.

(c) Within 10 Business Days after:

- (i) The issue of an Occupation Certificate for the Council Strata Lot; or
- (ii) The registration of a Strata Plan (and any supporting Strata Documents) at LRS for any part of the Development,

whichever occurs later, the Developer must transfer the Council Strata Lot to the Council via PEXA in accordance with any relevant provisions of the Construction Terms and so that immediately on transfer, the Council will have an estate in fee simple in possession, freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, rights, charges, rates, strata levies and contracts, except as permitted by Council.

- (d) The obligations under clause 6.7(a) will be taken to have been fulfilled for the purposes of this agreement when Council certifies, by notice in writing, that the Council Strata Lot has been fully constructed and finished in accordance with this agreement.
- (e) The obligation under clause 6.7(c) will be taken to have been fulfilled for the purposes of this agreement when the transfer of the Council Strata Lot to Council is shown on the Register.
- (f) The parties acknowledge and agree that the Council Strata Lot is to be constructed, finished and dedicated to Council under this agreement for the purposes of the provision of Affordable Housing and the Council intends to engage an approved community housing provider for the ongoing management of the Council Strata Lot.
- (g) The Developer must, in accordance with the provisions of the Construction Terms, ensure that, on transfer of the Council Strata Lot, Council will have the benefit of any defects liability warranty given by a builder for the Development and the Council Strata Lot, together with any other warranties and guarantees in accordance with clause 8.3 of Schedule 3.

6.8 *Monetary contribution*

- (a) The Developer must pay to Council a monetary contribution of \$100,000.00 or an amount calculated in accordance with the following formula, whichever is the greater:

\$100,000.00	x	The CPI at the time of payment
		The CPI at the date of this agreement

- (b) The Monetary Contribution must be paid to Council prior to the issue of an Occupation Certificate for any building containing an Affordable Housing Unit, or any part of such a building.
- (c) The Monetary Contribution must be paid by way of bank cheque in favour of Council or by deposit by means of electronic funds transfer into an account specified by Council.
- (d) The Monetary Contribution will be taken to have been made when the Council notifies the Developer in writing that the bank cheque has been received and cleared funds or electronic funds have been deposited in the Council's bank account.
- (e) The parties agree and acknowledge that the Monetary Contribution will be used by the Council principally towards the embellishment of existing public open space owned by Council on the river foreshore.

7 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 not to be taken into consideration in determining a development contribution under section 7.11 of the Act.

8 Registration of this agreement

8.1 *Developer Interest*

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

8.2 *Registration of this agreement*

- (a) The Developer agrees to procure the registration of this agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register of the Land in accordance with section 7.6 of the Act.
- (b) The Developer, at its own expense, must:
 - (i) procure the lodgement of this agreement with the Registrar-General as soon as reasonably practicable after this agreement comes into operation, but in any event, no later than 10 Business Days after that date;
 - (ii) procure the registration of this agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this agreement is lodged for registration; and
 - (iii) provide documentary evidence that the registration of this agreement has been completed to Council within 5 Business Days of receiving confirmation that the registration has occurred.

- (c) The Developer at its own expense will take all practical steps, and otherwise do anything that the Council reasonably requires to procure:
 - (i) The consent of each person who:
 - (A) has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or
 - (B) is seized or possessed of an estate or interest in the Land,
 - (ii) An acceptance of the terms of this agreement and an acknowledgement in writing from any existing mortgagee in relation to the Land that the mortgagee will adhere to the provisions of this agreement if it takes possession of the Land as mortgagee in possession,
 - (iii) The execution of any documents; and
 - (iv) The production of the relevant duplicate certificates of title, to enable the registration of this agreement in accordance with this clause.
- (d) The Landowner consents to the registration of the agreement in accordance with this clause.

8.3 Removal from Register

- (a) The Council will provide a release and discharge of this agreement so that it may be removed from the folios of the Register for the Land (or any part of it) provided:
 - (i) the Council is satisfied the Developer has duly fulfilled its obligations under this agreement, and is not otherwise in default of any of the obligations under this agreement; or
 - (ii) the Instrument Change does not come into effect.
- (b) The Council will agree to provide a release and discharge of this agreement from a residential lot following strata subdivision upon the request of the Landowner prior to fulfillment of the relevant Landowner's obligations, subject to the agreement being registered on the title to the common property within the strata subdivision

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; and
 - (ii) it will not object to the Council lodging a caveat in the relevant folios of the Register for the Land nor will it seek to remove any caveat lodged by the Council provided the caveat does not prevent registration of any dealing or plan other than a transfer.
- (b) The Council 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(c).

- (c) The Developer acknowledges and agrees that:
 - (i) when this agreement is executed, Council is deemed to have acquired, and the Developer is deemed to have granted, an equitable estate and interest in the Council Strata Lot for the purposes of section 74F(1) of the *Real Property Act 1900 (NSW)* and consequently Council has sufficient interest in the Council Strata Lot in respect of which to lodge a caveat over the Land notifying that interest;
 - (ii) it will notify the Council that the Strata Plan has been registered within 5 Business Days of registration; and
 - (iii) it will not object to Council lodging a caveat in the relevant folios of the Council Strata Lot once the Strata Plan is registered, nor will it seek to remove any such caveat lodged by Council.

9 Review of this agreement

- (a) This agreement may be reviewed or modified. Any review or modification of this agreement will be conducted in the circumstances and in the manner determined by the parties.
- (b) No modification or review of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement.
- (c) A party is not in breach of this agreement if it does not agree to an amendment to this agreement requested by a party in, or as a consequence of, a review.

10 Dispute Resolution

10.1 *Reference to Dispute*

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

10.2 *Notice of Dispute*

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

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

10.3 *Representatives of Parties to Meet*

- (a) The representatives of the parties must promptly (and in any event within 20 Business Days of the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute.
- (b) The parties may, without limitation:
 - (i) resolve the dispute during the course of that meeting,

- (ii) agree that further material or expert determination in accordance with clause 10.6 about a particular issue or consideration is needed to effectively resolve the dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or
- (iii) agree that the parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

10.4 Further Notice if Not Settled

If the dispute is not resolved within 10 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (**Determination Notice**) by mediation under clause 10.5 or by expert determination under clause 10.6.

10.5 Mediation

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

- (a) The parties must agree to the terms of reference of the mediation within 15 Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- (b) The mediator will be agreed between the parties, or failing agreement within 15 Business Days of receipt of the Determination Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) The mediator appointed pursuant to this clause must:
 - (i) Have reasonable qualifications and practical experience in the area of the dispute; and
 - (ii) Have no interest or duty which conflicts or may conflict with his or her function as a mediator he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) The mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (e) The parties must within 15 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation (except if a resolution of the Council is required to appoint a representative, the Council must advise of the representative within 5 Business Days of the resolution);
- (f) The parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (g) In relation to costs and expenses:
 - (i) Each party will bear its own professional and expert costs incurred in connection with the mediation; and

- (ii) The costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

10.6 *Expert determination*

If the dispute is not resolved under clause 10.3 or clause 10.5, or the parties otherwise agree that the dispute may be resolved by expert determination, the parties may refer the dispute to an expert, in which event:

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

10.7 *Litigation*

If the dispute is not finally resolved in accordance with clause 10.1-10.6, then either party is at liberty to litigate the dispute.

10.8 *No suspension of contractual obligations*

Subject to any interlocutory order obtained under clause 10.1, the referral to or undertaking of a dispute resolution process under 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 *Security for Affordable Housing Units*

- (a) Any Development Application for the erection of a building that will contain an Affordable Housing Unit (or Units) to be dedicated to Council under this agreement must identify the following:
 - (i) the Affordable Housing Unit(s) proposed to be dedicated to Council;
 - (ii) the location of each Affordable Housing Unit in the building; and
 - (iii) the proposed layout and fit out of each Affordable Housing Unit in the building, including the estimated cost of fit out.
- (b) Prior to the issue of a Construction Certificate for any building containing an Affordable Housing Unit, the Developer must provide to the Council a Bank Guarantee in the amount of \$250,000.00 to secure the costs of the fit out of each Affordable Housing Unit to be transferred to Council.
- (c) 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.
- (d) 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 11.1 of this agreement; or
 - (ii) the Developer becomes Insolvent.
- (e) Within 20 Business Days of each anniversary of a Bank Guarantee provided under clause (a), the Developer must provide Council with one or more replacement Bank Guarantees (**Replacement Bank Guarantee**) in an amount calculated in accordance with the following:

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

Where:

- A is the amount of the Replacement Bank Guarantee,
- B is the amount of the Bank Guarantee to be replaced,
- C is the CPI for the quarter ending immediately before the date of the Bank Guarantee to be replaced,
- D is the CPI for the quarter ending immediately before the date of the Replacement Bank Guarantee,

provided A is greater than B.

- (f) On receipt of a Replacement Bank Guarantee provided under clause 11.2(e), the Council must release and return to the Developer, as directed, the Bank Guarantee that has been replaced as soon as reasonably practicable.
- (g) 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. Subject to clause 11.2(d), 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;
 - (iii) The Developer has provided a Bank Guarantee for any Maintenance Period under clause 6.4 for that item of Works; 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 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 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 Developer 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 Developer 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* (NSW) 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 11.3(a) constitutes an agreement for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).
- (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 6.8 of the Act and any associated Regulation, any obligations to provide a Bank Guarantee under clause 11.2 must be satisfied prior to the issue of a Construction Certificate for the Development or any part of the Development.
- (b) In accordance with section 6.10 of the Act and any associated Regulation, 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;

- (iv) complete the construction and finishing of the Council Strata Lot in accordance with clause 6.7(a); and
- (v) provide the Council with a copy of the Strata Documents and Strata Plan to Council for review, and incorporate amendments requested under clause 6.7(b),

must be satisfied prior to the issue of an Occupation Certificate for the Development or any part of the Development.

11.5 General Enforcement

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

12 Assignment and Dealings

12.1 Assignment

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

12.2 Arrangements with Mortgagee

- (a) The Developer agrees with the Council that if the Developer mortgages the Land after this agreement is entered into it must use all reasonable efforts at that time to arrange a multiple party deed of agreement between the Council, the Developer, and the mortgagee who will be providing finance for the Works so that the mortgagee accepts that the responsibilities set out in this agreement are binding upon the mortgagee in the event that the Developer defaults on the mortgage and the mortgagee takes possession of the Land.
- (b) The terms of the adoption of the obligations of the Developer by the mortgagee shall be as reasonably required by the Council. The agreement shall be prepared at the cost of the Developer.

12.3 Transfer of Land

- (a) The Developer may not transfer, assign or dispose of the whole or any part of its right, title or interest in the Land (present or future) or in the Development to another person (**Transferee**) unless before it sells, transfers or disposes of that right, title or interest:

- (i) The Developer satisfies the Council that the proposed Transferee is financially capable of complying with the Developer obligations under this agreement;
- (ii) The Developer satisfies the Council that the rights of the Council will not be diminished or fettered in any way;
- (iii) The Transferee delivers to the Council a novation deed signed by the Transferee in a form and of such substance as is acceptable to the Council containing provisions under which the Transferee agrees to comply with all the outstanding obligations of the Developer under this agreement;
- (iv) The Transferee delivers to the Council replacement Bonds or Bank Guarantees as required by this agreement;
- (v) Any default under any provisions of this agreement has been remedied or waived by the Council, on such conditions as the Council may determine, and
- (vi) The Developer and the Transferee pay the Council's reasonable costs in relation to the assignment .

13 Approvals and consents

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

14 No fetter

14.1 *Discretion*

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

14.2 *No fetter*

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

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

14.3 *Planning Certificates*

The Developer acknowledges that Council may, at its discretion, include advice on any planning certificate issued under section 10.7 of the Act that this agreement affects the Land.

15 Notices

15.1 *Notices*

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

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by email or fax at the address or fax number below, or at the address or fax number last notified by the intended recipient to the sender after the date of this agreement:
 - (i) to City of Parramatta PO Box 32, Parramatta, NSW 2124
Council: Email: acrkovski@cityofparramatta.nsw.gov.au
Attention: Senior Infrastructure Manager
 - (ii) to Academy Parramatta 94 Phillip Street, Parramatta NSW 2150
Pty Limited Email: charlie@ellenvee.com.au
Attention: Charlie Zeaiter
 - (iii) to BuildUp Phillip Pty Suite 2, Ground Floor, 90 Phillip Street, Parramatta
Ltd NSW 2150 Email: charbel@anchorestate.com.au
Attention: Charbel Obeid
- (c) is taken to be given or made:
 - (i) in the case of hand delivery, when delivered;
 - (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
 - (iii) in the case of a fax, on production of a transmission report by the machine from which the fax was sent that indicates the fax was sent in its entirety to the recipient's fax number; and
- (d) if under clause (c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

15.2 *Notices sent by email:*

- (a) A party may serve a Notice by email if the Notice:
 - (i) includes a signature block specifying:

- (A) the name of the person sending the Notice; and
- (B) the sender's position within the relevant party;
- (ii) states in the body of the message or the subject field that it is sent as a Notice under this agreement;
- (iii) contains an express statement that the person sending the Notice has the authority to serve a Notice under this agreement;
- (iv) is sent to the email address below or the email address last notified by the intended recipient to the sender:
 - (A) to City of Parramatta Council: Attention: Manager, Land Use Planning
acrkovski@cityofparramatta.nsw.gov.au
Attention: Senior Infrastructure Manager
 - (B) to Academy Parramatta Pty Limited 94 Phillip Street, Parramatta NSW 2150
Email: charlie@ellenvee.com.au
Attention: Charlie Zeaiter
 - (C) to BuildUp Phillip Pty Ltd Suite 2, Ground Floor, 90 Phillip Street, Parramatta NSW 2150
Email: charbel@anchorestate.com.au
Attention: Charbel Obeid

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

15.3 Receipt of Notices sent by email

- (a) A Notice sent under clause 15.2 is taken to be given or made:
 - (i) when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above;
 - (ii) when the Notice enters an information system controlled by the recipient; or
 - (iii) when the Notice is first opened or read by the recipient,
whichever occurs first.
- (b) If under clause 15.3(a) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it will be taken to have been given or made at the start of business on the next Business Day in that place.

16 General

16.1 *Relationship between parties*

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

16.2 *Time for doing acts*

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

16.3 *Further assurances*

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

16.4 *Joint and individual liability and benefits*

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

16.5 *Variations and Amendments*

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

16.6 *Counterparts*

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

16.7 *Legal expenses and stamp duty*

- (a) The Developer must pay the Council's legal costs and disbursements in connection with the negotiation, preparation, execution, carrying into effect, enforcement and release and discharge of this agreement, including the 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.

16.8 *Entire agreement*

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

16.9 *Representations and warranties*

The parties represent and warrant that they have the power and authority to enter into this agreement and comply with their obligations under the agreement and that entry into this agreement will not result in the breach of any law.

16.10 *Severability*

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

16.11 *Invalidity*

- (a) A word or provision must be read down if:
 - (i) this agreement is void, voidable, or unenforceable if it is not read down;
 - (ii) this agreement will not be void, voidable or unenforceable if it is read down; and
 - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
 - (i) despite the operation of clause (a), the provision is void, voidable or unenforceable if it is not severed; and
 - (ii) this agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this agreement has full effect even if clause 16.11(b) applies.

16.12 *Waiver*

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

in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

16.13 GST

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

16.14 Governing law and jurisdiction

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

Schedule 1

Developer contributions

Column 1 Item/ Contribution	Column 2 Public Purpose	Column 3 Manner and Extent	Column 4 Timing	Column 5 Works Value
A. Construction Works				
1. Affordable Housing Units	Affordable Housing	Construction of 4 x 1 bedroom units and 1 x 2 bedroom units and fit out in accordance with Annexure E	Clause 6.7(a) - Prior to the issue of an Occupation Certificate for any building containing an Affordable Housing Unit, or any part of such a building	Range between \$588,000 to \$729,000 per 1 bedroom unit \$753,000 to \$1,087,000 per 2 bedroom unit
2. Public Domain Works	Open space	Construct of public domain works within the area located between the building and the existing Charles Street reserve generally in accordance with Annexure D (Setback Area). The setback is to be from the property boundary.	Clause 6.2(d) - The works must be delivered to the Council prior to the issue of an Occupation Certificate for the Development or any part of the Development.	See costing below.
3. Upper Level Promenade	Open Space	Construction of the upper level promenade	Clause 6.2(d) - The works must be completed prior to the issue of an	\$2,605,000 (including public domain works

		4.5m wide fronting the Parramatta River foreshore generally in accordance with Annexure D (Upper Level Promenade).	Occupation Certificate for the Development or any part of the Development.	described in Item A.2 above)
B. Dedication of Land				
1. Affordable Housing Units		Dedication or transfer of the Affordable Housing Units to Council in accordance with this agreement	Clause 6.7(c) - within 10 business days after either (a) the issue of an Occupation Certificate for the Council Strata Lot, or (b) the registration of a Strata Plan for any part of the Development, whichever occurs later.	NA
2. Road Widening	Public Road	Dedication of road widening of Philip Street as shown as proposed Lot 11 in Annexure B	Clause 6.3(d) - within 10 business days of registration of a subdivision plan creating the Dedication Land and, in any event, prior to the issue of an Occupation Certificate for the Development or any part of the Development	NA
3. Public Open Space	Public Open Space	Dedication of land zoned RE1 to Council for open space as shown as proposed Lot	Clause 6.3(d) - within 10 business days of registration of a subdivision plan creating the Dedication Land and, in any event,	NA

		12 in Annexure B	prior to the issue of an Occupation Certificate for the Development or any part of the Development	
C. Other Material Public Benefit				
1. Open space land	Creation of interests	Grant rights of Public Access to the Setback Area and the Upper Level Promenade and impose a covenant in accordance with Schedule 4. This land will remain in the ownership of the Developer and will not be transferred to Council.	Clause 6.5(c) - The covenant must be registered prior to the issue for the first Construction Certificate for any building on the Land forming part of the Development. Clause 6.5(d) - The easement must be registered prior to the issue of an Occupation Certificate for the Development or any part of the Development.	NA
D. Monetary Contribution				
1. Monetary contribution	Open Space	The Developer is required to pay a monetary contribution to Council in the amount of \$100,000	Clause 6.8(b) - Prior to prior to the issue of an Occupation Certificate for any building containing an Affordable Housing Unit, or any part of such a building	\$100,000

Schedule 2 Scope of Works

1. Upgrade the public domain within the Charles Street reserve to the existing Charles Street Square.
2. Incorporate and construct an upper-level promenade (4.5 metres wide) fronting the river foreshore.
3. Develop a 6m setback from the Charles Street Square to strengthen and activate the square.
4. Creation of an easement in favour of Council permitting public access over the proposed upper-level promenade including the 6-metre-wide setback area from the eastern boundary.
5. Works are to be generally in accordance with Annexure C and Annexure D to this agreement.

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.

Charles Street Square Works means the works identified in Schedule 2, Item 1 to this agreement.

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 Charles Street Square Works, the period of 12 months from the date on which the Certificate of Practical Completion is issued for the Charles Street Square.

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, installation specifications and estimated costs of construction and/or installation.

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

Superintendent means the Superintendent appointed under any Construction Contract.

Works includes the works required to construct and finish the Council Strata Lot as required by clause 6.7(a).

2 Requirements of Authorities and Approvals

- 2.1 These Construction Terms must be read and construed subject to:
 - (a) any requirements or conditions of any Development Consent;
 - (b) the requirements of and conditions imposed by all relevant Authorities and all Laws relating to the Development and the construction of the Development.
- 2.2 If the Developer requires any Approvals in order to carry out the obligations under this agreement, then the Developer will acquire all Approvals necessary to carry out the Works at its own cost
- 2.3 The Developer must ensure that the Works carried out under this agreement are carried out:
 - (a) in accordance with the relevant Development Consent for the Works and all Approvals and the requirements of all Laws, including without limitation, work health and safety legislation; and

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

AND it is acknowledged that to the extent that there is any inconsistency between this agreement and any Approval the terms of the Approval shall take precedence.

3 Costs of Works

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

4 Project Management and Contractor Engagement

4.1 The Developer will be responsible for managing the Works.

4.2 The Developer will ensure that any contractor it engages to carry out the Works agrees to:

- (a) carry out the Developer's obligations in these Construction Terms as part of any Construction Contract; and
- (b) request a Council representative to be present at each on-site meeting attended by the Superintendent and to ensure the Council representative is present at the meeting.

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 consistent with the Schedule of Finishes at Annexure E.

5.2 Detailed Design

- (a) Prior to Works commencing the Developer must provide a copy of the draft Detailed Design to the Council for approval.
- (b) Within 28 Business Days of receiving the Detailed Design, Council will respond to the Developer with any suggested amendments to the Detailed Design.
- (c) 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.
- (d) 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(b) 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:
 - (i) is consistent with the obligation to carry out the Works and dedicate the Dedication Land under this agreement; and
 - (ii) is consistent with the relevant Development Consent; and
 - (iii) does not materially and adversely affect the Development; and
 - (iv) is not unreasonable.

5.3 Any acceptance by the Council of the Detailed Design under this clause 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) Five Business Days prior to reaching an Inspection Stage as set out in the Inspection Schedule, the Developer must notify the Council of the proposed inspection date (**Inspection Date**).
- (c) On the Inspection Date, or other agreed date, the Developer must ensure that any employees, contractors, agents or representatives of Council have access to and may enter the Land to inspect the Works.
- (d) In addition to carrying out inspections in accordance with the Inspection Schedule, the Council may enter the Land or any part of the Land on which the Works are located to inspect the progress of the Works, subject to:
 - (i) the terms of the Construction Contract (save for any clause of the Construction Contract which prevents the Council from accessing the Land);
 - (ii) giving reasonable notice to the Developer;
 - (iii) complying with all reasonable directions of the Developer; and
 - (iv) being accompanied by the Developer or a nominee, or as otherwise agreed.
- (e) The Council may, acting reasonably, within 5 Business Days of carrying out an inspection (either under clause 7(c) or 7(d) of this Schedule 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 10 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 10 Business Days of receiving the notice or within a reasonable period of time and make a further request under clause 8.1(a) of this Schedule 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, complete and legible copies of:
 - (i) all "as built" full-sized drawings, specifications and relevant operation and service manuals in respect of the Works;

- (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) in respect of the Works; 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

- (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 Charles Street Square 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.
- (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,
 - (iii) the Council may extend the Defects Liability Period so that the inspection may be carried out.

8.5 Security for Defects Liability

- (a) Prior to the issue of a Certificate of Practical Completion for each item of the Charles Street Square 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 Charles Street Square Works or part of the Charles Street Square Works.
- (b) 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.
- (c) Within 10 Business Days after the Defects Liability Period for the Charles Street Square Works or part of the Charles Street Square Works, 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 the Charles Street Square Works or part of the Charles Street Square Works (or any remaining balance of it) to the Developer.

- (d) Notwithstanding clause 8.5(c) of this Schedule 3, if during the Defects Liability Period for the Charles Street Square 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.
- (e) 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

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

12 Intellectual Property Rights

The Council acknowledges that the Developer or its contractors hold all rights to copyright and any intellectual property which may exist in the Works. To the extent the Developer has or receives intellectual property rights for the Works and to the extent possible, the Developer shall assign those intellectual property rights to Council or permit use thereof.

13 Risk of contamination

- (a) The Developer acknowledges and agrees:
 - (i) that it is responsible for the management and remediation of any contamination present upon or under the land on which the Works are to be carried out;
 - (ii) it will attend to any necessary remediation at its own costs; and

- (iii) to the fullest extent permitted by Law indemnify and release the Council from any Claim which might arise from any contamination with respect to the land on which the Works are to be carried out.
- (b) Prior to the dedication of any part of the Land to Council, the Developer must provide to Council's reasonable satisfaction, certification by a qualified person, that the land is not contaminated and is suitable for the proposed use.

14 Plans

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

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

Schedule 4 Easement Terms

- 1 In this schedule:
 - (a) The **Pedestrian Area** means the Setback Area and the Upper Level Promenade.
 - (b) The **Setback Area** means that area denoted (E1) in the plan at Annexure B to this agreement.
 - (c) The **Upper Level Promenade** means that area denoted (E2) in the plan at Annexure B to this agreement.
- 2 The owner of the Pedestrian Area grants to the Council and members of the public full and free right to go, pass and repass over the Pedestrian Area at all times:
 - (a) with or without companion animals (as defined in the Companion Animals Act 1998) or other small pet animals; and
 - (b) on foot without vehicles (other than wheelchairs or other disabled access aids), unless vehicles are being used to access the building on the Land via clearly identified entry and exit points;for all lawful purposes.
- 3 The owner of the Pedestrian Area must, to the satisfaction of Council, acting reasonably:
 - (i) keep the Pedestrian Area (including any services in, on or under the Pedestrian Area) in good repair and condition;
 - (ii) maintain and repair the Pedestrian Area and all improvements on the Pedestrian Area;
 - (iii) keep the Pedestrian Area clean and free from rubbish; and
 - (iv) maintain sufficient public liability insurance covering the use of the Pedestrian Area in accordance with the terms of this Easement.
- 4 The owner of the Pedestrian Area must ensure that any rules made by an Owner's Corporation relating to the Pedestrian Area have been approved by the Council, acting reasonably.
- 5 If any member or members of the public loiter or congregate, for any purpose which the owner of the Pedestrian Area, acting reasonably, considers to be a nuisance or a safety risk, the owner may either remove those members of the public, or arrange for their removal by an appropriate authority.
- 6 The owner of the Pedestrian Area may erect safety signage and any other appropriate signage and may erect CCTV cameras in the Pedestrian Area.
- 7 The owner of the Pedestrian Area may engage security personnel to monitor and control the behaviour of the public including but not limited to prohibiting smoking, consumption of alcohol (except within licensed areas), passage of animals, bicycles and skateboards and the like in accordance with any rules made by an Owner's Corporation relating to the Pedestrian Area.
- 8 The owner of the Pedestrian Area may with the Council's prior written consent (except in the case of an emergency, in which case the Council's prior written consent is not

required) temporarily close or temporarily restrict access through all or part of the Pedestrian Area for the time and to the extent necessary but only on reasonable grounds for the purposes of:

- (a) construction, construction access, repairs, maintenance, replacement and alteration to the Pedestrian Area or any improvements in, on or under the Pedestrian Area; or
- (b) security, public safety or evacuation of the Pedestrian Area and adjoining buildings.

9 Subject to ensuring the provision of access in accordance with above clause 1 of this Schedule, the owner of the Pedestrian Area may, provided any necessary Approvals are obtained:

- (a) Carry out works in the Pedestrian Area for the purposes of enhancing the Pedestrian Area;
- (b) Install or erect works of art, street furniture, awnings, tables and chairs associated with ground floor commercial premises, notice boards or any other similar improvements at ground level within the Pedestrian Area; and
- (c) Use the Pedestrian Area,

in a manner consistent with Parramatta City Council Outdoor Dining Policy adopted 9 July 2012 and amended 25 February 2013, or any such policy of the Council that replaces that policy.

10 The Council is solely empowered to release this Easement.

11 This Easement may only be varied by written agreement between the Council and the owner of the Pedestrian Area.

Schedule 5

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>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<p>Description of the land to which the planning Agreement applies – Section 7.4(3)(a)</p>	<p>Lot 10 DP 773452 known as 90-92 Phillip Street, Parramatta NSW</p> <p>Lot 2 DP 706033 known as 94-96 Phillip Street, Parramatta NSW</p>
<p>Description of the application – Section 7.4(3)(b)</p>	<p>Amendment of the Parramatta Local Environmental Plan 2023 to increase the maximum building height and floor space ratio development standards applying to the Land so that the maximum building height is 133m and the maximum floor space ratio is 13.8:1;</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 - see clause 7(a)</p>
<p>Applicability of section 7.12 of the Act – Section 7.4(3)(d)</p>	<p>Not excluded - see clause 7(b)</p>
<p>Applicability of section 7.24 of the Act – Section 7.4(3)(d)</p>	<p>Not excluded - see clause 7(c)</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 11</p>
<p>Registration of the Planning Agreement – Section 7.6</p>	<p>See clause 8</p>

No obligation to grant consent or exercise functions – Section 7.4(9)	There is no obligation on Council to grant consent or exercise its functions - see clause 14
--	---

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

Executed by Buildup Phillip Pty Ltd)
(ACN 603 156 958) in accordance with)
s.127 of the Corporations Act 2001:)

.....
Signature of sole director/secretary

Print Full Name:

Executed by Academy Parramatta Pty Limited)
(ACN 602 108 672) in)
accordance with s.127 of the Corporations)
Act 2001:)

.....
Signature of director

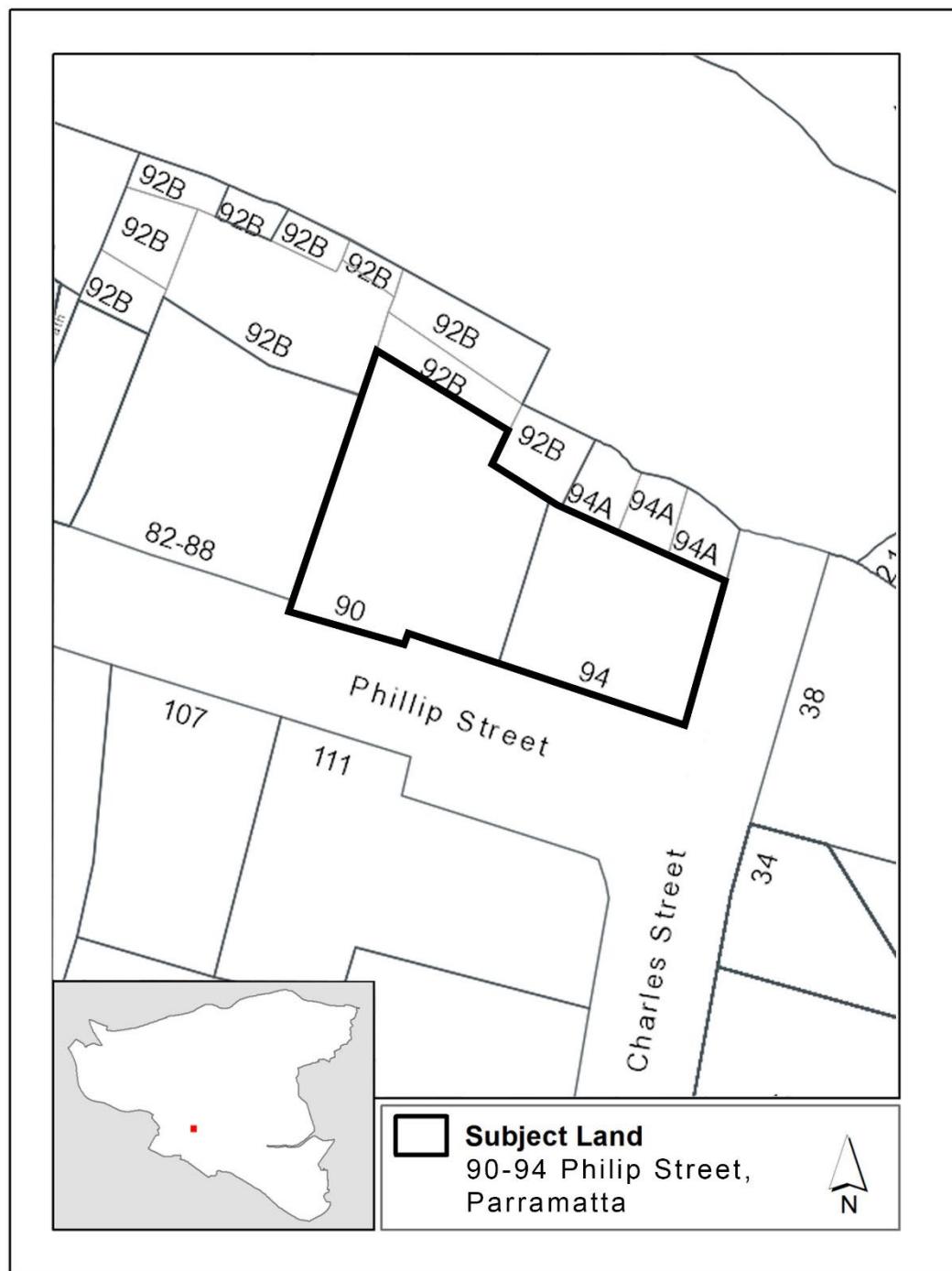
Print Full Name:

.....
Signature of director/secretary

Print Full Name:

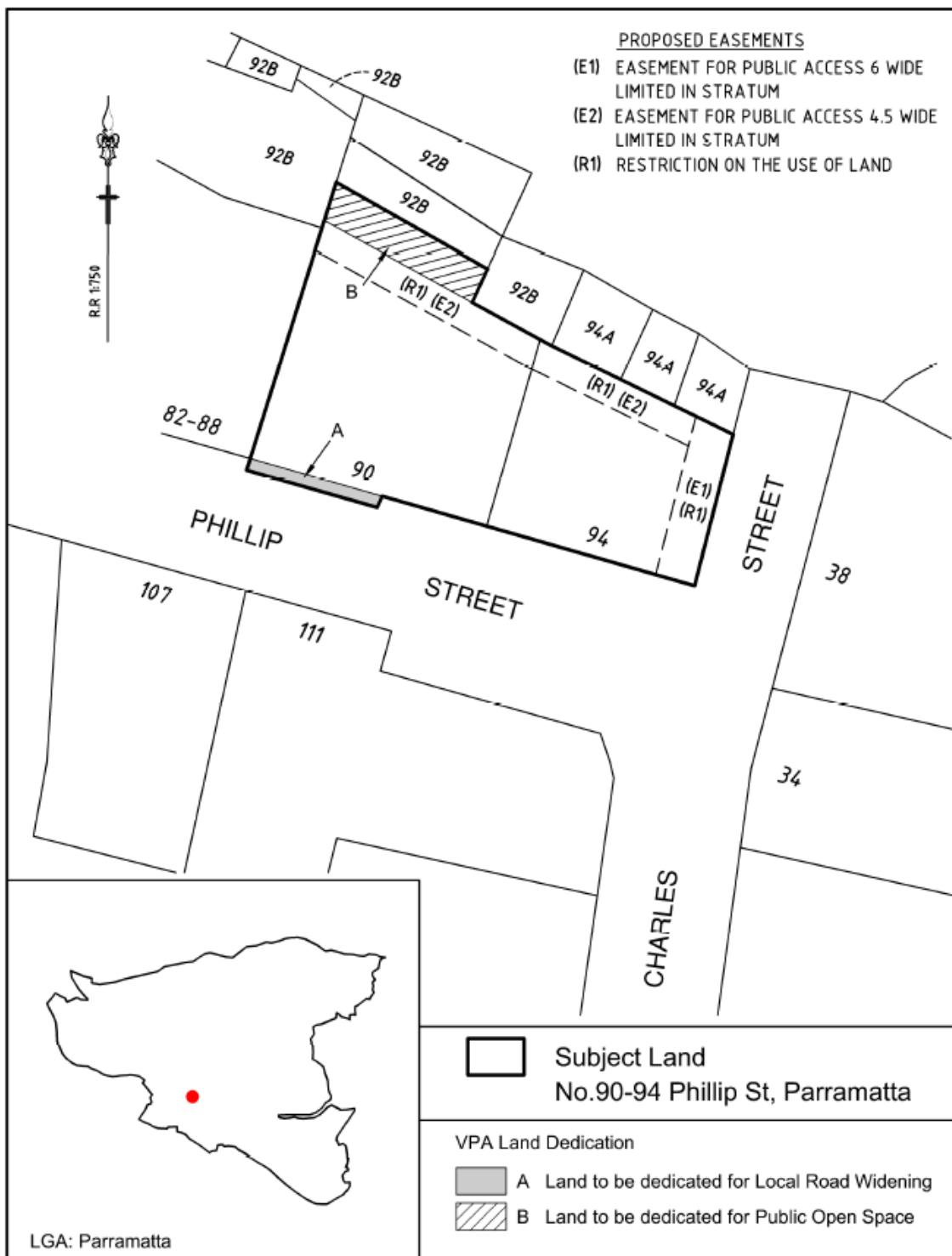
Annexure A

Plan showing Land



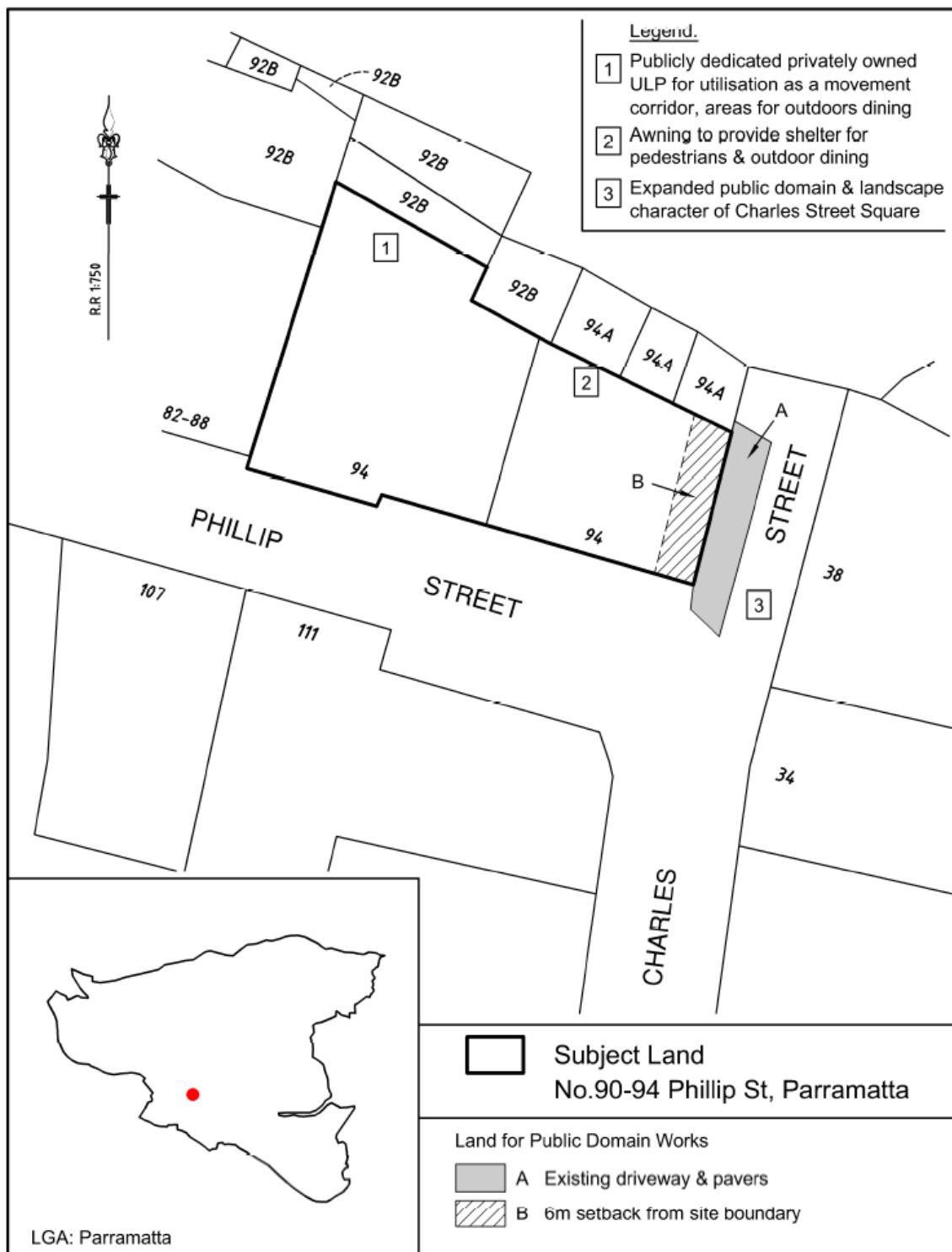
Annexure B

Plan showing Dedication Land



Annexure C

Plans showing Works



Annexure D

Works Schedule of Materials and Finishes

Item	Comment
Pavement	Granite Paver 600 x 300 same or similar colour, specification and finish to existing Charles St Square. Purpose is to blend into existing public domain in the square
Railings	Stainless steel balustrade and 38mm handrail as per existing Charles St Square stairs
Lighting	Provide external energy efficient and durable illumination LED lighting with mains and solar powered
Signage	Supply public commercial signage for public to be provided as per council approval and requirements
Awning Pedestrian & Dining	Cantilevered commercial polycarbonate awning structurally engineered and certified Steel frame powder coat finish
Seating	Install safe ergonomic durable high traffic metal beam seating Steel frame powder coat finish Supply 2 every 20 metres
Landscaping Soft	Design & construct landscaping addressing local fauna and flora Plant & grass species will be in accordance to local codes
Landscaping Hard	To consist of permeable paving and designed solid surfaces.

Materials and finishes are otherwise to be in accordance with the draft City River Public Domain Guidelines dated 2019, or any such policy of the Council that replaces that policy.

Annexure E

Council Strata Lot Schedule of Materials and Finishes

Item	Type	Finish/Colour
Kitchen		
Floor Tile	Ceramic tile	TBC
Bench Tops	20mm Engineered Stone	TBC
Joinery cupboard doors	Polyurethane or Laminate	TBC
Splashback	20mm Engineered Stone	TBC
Oven	Electric Oven 60cm.	TBC
Cooktop	Gas Cooktop, 4 Burner.	TBC
Rangehood	60cm recirculating rangehood	TBC
Dishwasher	60cm under bench dishwasher	TBC
Sink	Single Bowl Sink	TBC
Sink Tapware	Sink Mixer	TBC
Lights	Downlights	White
Bathrooms & Ensuites		
Floor Tile	Ceramic Tile	TBC
Vanity and Basin	TBC	TBC
Mirror	TBC	N/A
Wall Tile	Ceramic Tile	TBC
Paint Finish	Paint	White
Toilet Suite	TBC	TBC
Baths (if applicable)	TBC	TBC
Tapware and showerhead	TBC	TBC
Shower screen	Glass Shower Screen	N/A
Accessories (towel rail & toilet roll holder)	TBC	TBC
Lights	Downlights	White
Laundries		

Floor Tile	Ceramic Tile	TBC
Wall Tile/Splash Back	Ceramic Tile	TBC
Paint Finish	Paint	White
Laundry Tub	Laundry Tub	TBC
Tapware	Laundry Sink Mixer	TBC
Lights	Downlights	White
Dryer	Star rating to comply with Basix	White
Unit Entry Area		
Floor Tile	Ceramic Tile	TBC
Walls	Paint	White
Skirting	Selected Timber Skirting Profile	White
Lights	Downlights	White
Living + Dining Room + Study Rooms + Corridor within units		
Floor Tile	Ceramic Tile	TBC
Walls	Paint	White
Skirting	Selected Timber Skirting Profile	White
Paint Finish	Paint	White
Lights	Downlights	White
BEDROOMS		
Walls	Paint	White
Skirting	Selected Timber Skirting Profile	White
Carpet	TBC	TBC
Paint Finish	Paint	White
Wardrobe	Polyurethane or Laminate	TBC
Lights	Downlights	TBC
Storage Cupboards		
Walls	Paint	White
Joinery	Polyurethane or Laminate	TBC
Balconies		
Floor Tile	Porcelain Tile	TBC
Lights	Downlights	White
Security		
Access Control Intercom	Wall mounted video intercom adjoining living/dining.	N/A
Airconditioning		
Split System	Split System in Living and Master bedroom	White
Blinds		
Blinds	Roller Blinds	TBC