

Planning Agreement

Draft

[Date]

City of Parramatta Council

ABN 49 907 174 773

[Party No.2 - Developer Name]

[ABN/ACN]

[Party No.3 – Developer Name/Landowner (if not the Developer)]

[ABN/ACN]

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Agreement

Date

Parties

First party

Name City of Parramatta Council (**Council**)
ABN 49 907 174 773
Address 9 Wentworth Street, Parramatta
Contact Manager, Land Use Planning
Telephone (02) 9806 5050
Email

Second party

Name [Developer Name] (**Developer**)
ABN/ACN [Developer ACN]
Address
Contact [Developer contact]
Telephone [Developer telephone details]
Email [Insert details]

Third party

Name [Insert details] (Landowner: insert this only if the Developer is not the owner of land required to be dedicated or land on which works are to be carried out)
ABN/ACN [Insert details]
Address
Contact [Insert details]
Telephone [Insert details]
Email [Insert details]

Background

- A. **OPTION A - Planning proposal and development application by developer** On [insert] the Developer submitted the Planning Proposal seeking amendments to the LEP for the purpose of making a Development Application to the Council for Development Consent to carry out the Development on the Land.
- B. Gateway Determination was issued on [insert].

- C. The Developer and Landowner have offered to enter into this agreement to make contributions for public purposes in connection with the Instrument Change and the Development or
- D. The Developer [is the owner of the Land] and intends to undertake the Development on the Land.
- E. The Development of the Land is to be carried out in Stages as indicated in the Staging Plan.
- F. The Developer offers to enter into this agreement to make the Contributions for public purposes if the Instrument Change is made and/or Development Consent is granted to the Development, and progressively as various Stages in the Development are reached.

OPTION B - Development Application by developer without planning proposal

- G. The Developer [is the owner of the Land] and intends to lodge a Development Application to carry out the Development on the Land.
- H. The Development of the Land is to be carried out in Stages as indicated in the Staging Plan.
- I. The Developer [and/or Landowner] offer[s] to enter into this agreement [to] make the Contributions for public purposes if Development Consent is granted to the Development, [and progressively as various Stages in the Development are reached as set out in the this agreement].

Operative part

1 Definitions

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

NOTE: Remove definitions that are not required

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

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

Affordable Housing is defined by 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 Authority having jurisdiction in connection with the activities contemplated by this agreement;

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

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

- (a) Australia and New Zealand Banking Group Limited,
- (b) Commonwealth Bank of Australia,
- (c) Macquarie Bank,
- (d) National Australia Bank,
- (e) St George Bank Limited,

- (f) Westpac Banking Corporation, or
- (g) Other financial institution approved by the Council,

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

Bond means an insurance bond from a party with no less than an "A" S&P Global credit rating;

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 10.1(b)(i) of the Construction Terms;

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

Compliance Certificate means a compliance certificate within the meaning of section 6.4 of the Act issued by an accredited certifier;

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;

Contribution and Contribution Item mean the Public Benefit to be delivered in accordance with this agreement and in the manner and time set out in the Contributions Table;

Contributions Plan has the same meaning as under the Act;

Contributions Table means the table at Schedule 2;

Contribution Value means the value the Council and the Developer agree is to be attributed to each element of the Public Benefit as at the date of this agreement, as set out in Schedule 2 of this agreement to be indexed quarterly in accordance with CPI from the date on which this agreement is executed until the Contribution is provided to Council in accordance with Schedule 2;

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

Council's Policies means all policies and procedures relevant to the provision of Public Benefits, as notified by Council in writing to the Developer;

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

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

Deal has the same meaning;

Dedication Land means that part of the Land to be dedicated to Council in accordance with this agreement, as shown on the Land Dedication Plan and referred to in Annexure A; includes dedication of:

- land in stratum (whether or not within a building);

- lots in a strata plan, and
- interests in land such as but not limited to easements and rights of way.

Defect means any error, omission, defect, non-conformity, discrepancy, shrinkage, blemish in appearance or other fault in the Public Benefits or any other matter which prevents the Public Benefits from complying with the terms of this agreement;

Developer means [Insert Details];

Development means the development of the Land for [Insert Details];

Development Application has the same meaning as in the Act;

Development Consent has the same meaning as in the Act;

Dispute means a dispute or difference between the parties under or in relation to this agreement.

Dwelling has the same meaning as in the LEP;

Easement means an easement for the purposes of [public access] and as set in the Easement Terms;

Easement Terms means the terms of a [describe easement] in accordance with Council's [insert name of policy relating to standard recitals for easements, restrictions and covenants], as may be amended by agreement between the parties [or as set out in Annexure #];

Final Lot means a lot created in the Development for separate residential or commercial occupation and disposition or a lot of a kind or created for a purpose that is otherwise agreed by the parties, not being a lot created by a subdivision of the Land:

- that is to be dedicated or otherwise transferred to Council, or
- on which is situated a dwelling-house that was in existence as at the date of this agreement;

Gross Floor Area has the meaning given to that term in the LEP at the date of this agreement;

GST has the same meaning as in the GST Law;

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition of or administration of the GST;

ISDP means the infrastructure services delivery plan in Annexure C;

Insolvent means, in relation to a party:

- that party makes an arrangement, compromise or composition with, or assignment for, the benefit of its creditors or a class of them;
- 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;
- a presumption of insolvency has arisen under legislation because of the party's failure to comply with a statutory demand or analogous process;
- 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 the amendment to the LEP approved by way of the Planning Proposal;

Land means [Insert Address], with legal particulars and ownership details as of the date of this agreement described in Schedule 5;

Land Dedication Plan means the plan at Annexure A;

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;

LEP means the Parramatta Local Environmental Plan 2023;

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

Monetary Contribution means the monetary contribution payable by the Developer under clause 9.2 of this agreement;

Occupation Certificate means an occupation certificate as defined under section 6.4 of the Act and includes an Occupation Certificate for a part of a building;

Open Space Land means the part of the Land indicatively shown as ['public open space'] in the plan in [insert Annexure], being approximately # square metres.

Park Works means those Works required for Contribution Items [insert] and in accordance with the minimum requirements set out in Schedule 8;

PEXA means Property Exchange Australia Ltd;

Planning Proposal means [insert details], and generally described in Schedule 6;

Public Benefits means the provision of benefits to the community by the Developer as set out in Schedule 2;

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

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

Quantity Surveyor means a qualified independent and practising quantity surveyor with at least five years' experience in the assessment of building and construction costs;

Quantity Surveyor's Assessment means the assessment by the Quantity Surveyor of the cost to deliver the developer's Works;

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

Regulation means the *Environmental Planning and Assessment Regulation 2021*;

Related Body Corporate has the meaning given to that term in s9 of the *Corporations Act 2001 (Cth)*;

Road Works means those Works required for Contribution Item [insert] and in accordance with the minimum requirements set out in Schedule 8;

Smart Cities Works means the works required for Contribution Item [insert] and in accordance with the minimum requirements set out in Schedule 8;

Stage means a numbered stage of the Development as shown on the Staging Plan;

Staging Plan means the plan at Schedule 7, separating the Development into several stages;

Strata Certificate has the same meaning as in the *Strata Schemes Development Act 2015*;

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*; and

Subdivision of Land has the same meaning as in the Act;

Super Lot means a torrens title lot that is intended for further subdivision as set out in the Staging Plan;

Tax means a tax, levy, duty, rate, charge, deduction or withholding, however it is described, that is imposed by law or by a Government Agency, together with any related interest, penalty, fine or other charge;

Transferee has the meaning given in clause 16.3(a);

Works means the physical result of any building, engineering or construction work in, on, over or under land and includes the Park Works, Road Works, Smart City Works.

2 Interpretation

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

NOTE: Delete references that are not required

- (a) **(documents)** a reference to this agreement or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this agreement;
- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement;

- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;
- (e) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) **(president, CEO, general manager or managing director)** the president, CEO, general manager or managing director of a body or Authority includes any person acting in that capacity;
- (g) **(requirements)** a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (h) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (i) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (j) **(singular)** the singular includes the plural and vice-versa;
- (k) **(gender)** words importing one gender include all other genders;
- (l) **(parts)** a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (m) **(rules of construction)** neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (n) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (o) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Sydney, Australia, even if the obligation is to be performed elsewhere;
- (p) **(joint and several)** an agreement, representation, covenant, right or obligation:
 - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
 - (ii) on the part of two or more persons binds them jointly and severally;
- (q) **(writing)** a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (r) **(replacement bodies)** a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;

- (s) **(Australian currency)** a reference to dollars or \$ is to Australian currency;
- (t) **(month)** a reference to a month is a reference to a calendar month;
- (u) **(year)** a reference to a year is a reference to twelve consecutive calendar months.

3 Planning Agreement under the Act

- (a) The parties agree that this agreement is a planning agreement within the meaning of section 7.4 of the Act.
- (b) Schedule 4 of this agreement summarises the requirements for planning agreements under section 7.4 of the Act and the way this agreement addresses those requirements.
- (c) The parties acknowledge and agree that, in accordance with section 4.15 of the Act, the terms of this agreement must be considered by any consent authority when determining a Development Application for the Development, or any part of the Development.

4 Application of this agreement

This agreement applies to:

- (a) the Instrument Change [if applicable], and
- (b) the Development, and
- (c) the Land.

5 Operation of this agreement

- (a) This agreement commences on and from the date that all parties have executed the same copy of this agreement. The last party to sign the agreement must insert the date on the front page on the date on which that party signs the agreement.
- (b) This agreement does not impose an obligation on the Council to grant Development Consent for the Development.
- (c) The explanatory note prepared in accordance with clause 25E of the Regulation must not be used to assist in construing this agreement.

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

This agreement:

- (a) does not exclude the application of section 7.11 of the Act to the Development;
- (b) **does not exclude** the application of section 7.12 of the Act to the Development, and
- (c) **does not exclude** the application of section 7.24 of the Act to the Development.

[Note: Section 7.4(3) of the Act allows a Planning Agreement to exclude the application of section 7.11 and 7.12 in whole or in part. As noted at in Council's PA Policy at 2.3 and 4.2, it is not Council's policy to allow benefits under a planning agreement being taken into consideration in determining a development contribution. In the event the proponent seeks to partly or wholly exclude these contributions, this clause will need to be amended and **if the document partly excludes the operation of section 7.11, then detailed provisions**

need to be inserted in the document setting out the exact extent to which those sections are excluded.]

7 Public benefits to be made by developer

Schedule 2 of this agreement sets out the details of the:

- (a) Contribution Items to be delivered by the Developer;
- (b) The Public Benefit of the Contribution Item;
- (c) time or times by which the Developer must deliver the Contribution Items, and
- (d) manner in which the Developer must deliver the Contribution Items.

8 Staged provision of contributions

- (a) Subject to (b), below, each Contribution Item must be delivered by no later than the timeframe specified in the Contributions Table. However, the Developer may complete and deliver a Contribution Item earlier than the timeframe specified in the Contributions Table.
- (b) Council may, at its sole discretion, agree to the delayed delivery of a Contribution Item on terms satisfactory to Council including in relation to additional security being provided by the Developer. Council's decision regarding the delayed delivery of a Contribution Item may not be the subject of a dispute under this agreement.

9 Provision of contribution items

9.1 General provisions

- (a) The Developer is to deliver the Contribution Items to the Council in accordance with Schedule 2, any other provision of this agreement relating to the provision of the Contribution Items and otherwise to the satisfaction of the Council.
- (b) The Council is to apply each Contribution Item made by the Developer under this agreement towards the public purpose for which it is made and otherwise in accordance with this agreement.

9.2 Monetary contribution

- (a) The Developer will pay to Council each monetary contribution specified in the Contributions Table, increased but not decreased in accordance with the following formula:

$$\text{Contribution} = \text{Amount specified in Contributions Table} \times \frac{\text{CPI at the date of payment}}{\text{CPI at the date of agreement}}$$

- (b) Each Monetary Contribution must be paid in accordance with the timeframes specified in the Contributions Table;
- (c) A 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) A Monetary Contribution is made for the purposes of this agreement when the Council receives the full amount of the Monetary Contribution payable under this agreement in cash or by unendorsed bank cheque or by the deposit by means of

electronic funds transfer of cleared funds into a bank account nominated by the Council, and

- (e) Despite clause 9.1(b) the Council may apply a Monetary Contribution under this agreement towards a public purpose other than the public purpose specified in this agreement if the Council reasonably considers that the public interest would be better served by applying the Monetary Contribution towards that other purpose rather than the purpose so specified.

OPTION: Where works form part of Contribution

9.3 Works

- (a) The Developer will carry out the Works in accordance with this agreement, including the Construction Terms and any Development Consent granted for the Works;
- (b) The design or specification of any Work that is required to be carried out by the Developer under this agreement may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this agreement;
- (c) The Council, acting reasonably, may from time to time give a written direction to the Developer requiring it to vary the design or specification of a Work before the Work is carried out in a specified manner and submit the variation to the Council for approval;
- (d) The Developer is to comply promptly with a direction referred to in clause 9.3(c) at its own cost;
- (e) 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:
 - (i) a Quantity Surveyor's Assessment has been provided to Council confirming that the Works meet or exceed the relevant Contribution Value;
 - (ii) a Certificate of Practical Completion has been issued for those Works.
- (f) The Council may at its sole discretion, engage a Quantity Surveyor to carry out a peer review of the Quantity Surveyor's Assessment provided to Council under clause 9.3(e)(i). The costs of the peer review is to be paid by the Developer within 7 days of receiving an invoice from Council in relation to the peer review;
- (g) In the event that the Quantity Surveyor's Assessment confirms that the Works have not met the Contribution Value, then the difference between the actual cost of carrying out the Works and the Contribution Value is to be paid to Council:
 - (i) within 21 days from the date of the provision of the Quantity Surveyor's Assessment; or
 - (ii) prior to the issue of an Occupation Certificate for the Development, whichever is the earlier and will, for the purposes of this agreement form a Monetary Contribution.
- (h) 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;

- (i) The Works must be delivered to the Council in accordance with the timeframes provided in the Contributions Table, and
- (j) The parties agree and acknowledge that the Works serve the public purposes specified in the Contributions Table.

9.4 *Public access and easements*

- (a) When the Open Space Land is not dedicated to the Council or a Contribution includes an Easement the Developer will, at no cost to Council, register against the title to the Land:
 - (i) a covenant prohibiting any building or structures from being constructed on the Open Space Land, other than structures for the purposes of enhancing public use of the Open Space Land as open space, which covenant is to be limited in depth to that which is necessary to accommodate the basement level of the Development; and
 - (ii) an easement in gross on the Easement Terms, burdening the Open Space Land in favour of the Council;
- (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 9.4(a) must be registered prior to the issue of an Occupation Certificate for the Development;
- (d) the parties agree that the proposed covenant and easement under this clause will serve the following public purposes:
 - (i) to increase the amount of and improve existing public open space areas in the vicinity of the Land;
 - (ii) to improve pedestrian circulation and the amenity of the public domain in the vicinity of the Land.
- (e) the Developer agrees and acknowledges that the obligations under this clause 9.4 are relevant considerations for the Council or any other consent authority when determining a Development Application or Modification 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.

OPTION: Where land is to be dedicated

9.5 *Dedication of land*

- (a) each Landowner must dedicate or cause to be transferred to the Council, at no cost to the Council, the relevant part of the Dedication Land owned by it;
- (b) before any Dedication Land is dedicated to the Council, the Landowner is to do all things reasonably necessary to enable the Council to enter upon the Dedication Land for the purposes of inspecting that land;
- (c) on dedication or transfer to Council, the Dedication Land must be freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts in, over or in connection with the land, including but not limited to, any outstanding municipal

rates and charges, water rates and land tax, except as permitted by Council prior to the creation of the interest;

- (d) the Landowner must not:
 - (i) grant or allow, or agree to grant or allow, the registration of any estate, interest, easement or right in or over the Dedication Land, other than a mortgage that will be discharged prior to the Dedication Land being transferred or dedicated to Council, or
 - (ii) construct any works, other than the Works under a Development Consent, on the Dedication Land over which an estate, interest, easement or right will be required, unless Council has provided its prior written consent.
- (e) a Contribution comprising the dedication of land is made for the purposes of this agreement when either:
 - (i) the relevant transfer of the land to Council is shown on the Register and is without encumbrances as required by clause 9.5(c); or
 - (ii) where the relevant Dedication Land is a Public Reserve, when a subdivision plan is registered by NSW Land Registry Services which shows the relevant Dedication Land as being a “public reserve” in accordance with section 49 of the Local Government Act 1993; or
 - (iii) where the relevant Dedication Land is a Public Road (including a temporary public road), when a plan is registered by NSW Land Registry Services which shows the relevant Dedication Land as being a “public road” in accordance with section 9 of the Roads Act 1993.
- (f) the Dedication Land must be dedicated or transferred to Council in accordance with the timeframes provided in the Contributions Table, and
- (g) the parties agree and acknowledge that the embellishment and dedication of the Dedication Land serve the public purposes specified in the Contributions Table.

9.6 *Maintenance of works*

- (a) In this clause, the following definitions apply:

Maintain means works to bring and hold a Contribution Item to a state of reasonable condition and in accordance with relevant standards applicable at the time of construction of the item, including:

- (i) repairing any defects due to use of poor materials or due to poor workmanship; and
- (ii) removing graffiti or repairing or replacing any item damaged as a consequence of vandalism, provided that works required as a consequence of graffiti or vandalism up to \$100,000 per annum.

Maintained and Maintenance have corresponding meanings.

Maintenance Bond means a Bond or Bank Guarantee in the amount of 2.5% of the cost of the Park Works to be Maintained, 2.5% of the Smart Cities Works to be maintained and 5% of the cost of the Road Works to be maintained.

Maintenance Period is:

- (i) hard assets and soft assets (landscaping components of open space or park works), all road works, and Smart City works - a period of 2 years from the date of delivery under a planning agreement;
- (ii) bushland regeneration works - a period of 5 years from the date of delivery under a planning agreement; and
- (iii) any other Works – a period of 12 months from the date of delivery under a planning agreement or as otherwise agreed.

Maintenance Schedule means the schedule of proposed Maintenance works as required by clause 9.6.

- (b) the Park Works and Smart Cities Works must be Maintained by the Developer to the reasonable satisfaction of the Council for the Maintenance Period;
- (c) the Developer is responsible for rectifying all defects in the Works during the Maintenance Period and must comply with any written notice from Council issued during that period requiring rectification of such defects, within the time specified in the written notice, which must not be unreasonable having regard to the work required;
- (d) if, during the Development, construction vehicles used for the Development travel on roads that have been constructed and dedicated to Council in accordance with this agreement, the Developer must Maintain those roads to Council's satisfaction acting reasonably, during and immediately after any such period of use by construction vehicles;
- (e) Council will permit the Developer and its contractors and agents to access the relevant land to carry out any Maintenance required under clause 9.6(b), (c) and (d). The Developer must provide at least two Business Days' notice prior to entering the land to carry out the Maintenance;
- (f) the Developer must follow relevant Council policies and obtain all Approvals necessary to carry out the Maintenance required under this clause;
- (g) prior to the issue of a Certificate of Practical Completion for any part of the Works, the Developer must provide to Council:
 - (i) a Maintenance Schedule setting out the proposed Maintenance works (if any); and,
 - (ii) the Maintenance Bond.
- (h) the Council agrees to promptly return the Maintenance Bond provided under paragraph (g) of this clause at the end of the Maintenance Period for the relevant item of Works, subject to paragraphs (d), (m) and (n) of this clause;
- (i) Forty Business Days prior to the end of any Maintenance Period, the Developer must request Council to carry out an inspection of the relevant Works or any part of those Works;
- (j) the Council must carry out the inspection as requested by the Developer within 10 Business Days of the request;
- (k) the Council may, within 10 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;

- (l) if the Developer is issued with a notice to carry out Maintenance work under paragraph (k) 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;
- (m) if the Council issues a notice under paragraph (k) of this clause, the Council may retain any Maintenance Bond provided by the Developer under paragraph (g) of this clause until the Maintenance work required under the notice has been completed, or any dispute about the notice has been resolved, despite the expiration of any Maintenance Period, and
- (n) if the Developer fails to substantially comply with an approved Maintenance Schedule or does not rectify any defects in the Works as required, 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 (k) of this clause, the Council may, by itself, its employees, contractors or agents, carry out the required works and may:
 - (i) call on the Maintenance Bond provided under paragraph (g) 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 Maintenance Bond and the costs incurred by the Council in carrying out the maintenance work.

OPTION: Where affordable housing offered

9.7 Affordable housing units

- (a) Any Development Application for the erection of a building that will contain an Affordable Housing Unit (or Units) to be transferred 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 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, the Developer must,
 - (i) at no cost to Council construct, finish and fit out the Affordable Housing Unit as part of the Development, in accordance with the Development Consent and the Construction Terms,
 - (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.
- (c) 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.
- (d) Within 10 Business Days after:
- (i) The issue of an Occupation Certificate for the Affordable Housing Unit; 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 Affordable Housing Unit 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.

- (e) The obligations under clause 9.7(a) will be taken to have been fulfilled for the purposes of this agreement when Council certifies, by notice in writing, that the Affordable Housing Unit has been fully constructed and finished in accordance with this agreement.
- (f) The obligation under clause 9.7(d) will be taken to have been fulfilled for the purposes of this agreement when the transfer of the Affordable Housing Unit to Council is shown on the Register.
- (g) The parties acknowledge and agree that the Affordable Housing Unit 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 Affordable Housing Unit.
- (h) The Developer must, in accordance with the provisions of the Construction Terms, ensure that, on transfer of the Affordable Housing Unit, Council will have the benefit of any defects liability warranty given by a builder for the Development and the Affordable Housing Unit, together with any other warranties and guarantees in accordance with clause 10.3 of Schedule 3.

9.8 *Contribution values*

The parties acknowledge and agree that the Contribution Values set out in the Contributions Table are minimum estimates only and:

- (a) any Contribution Value specified in this agreement in relation to Contribution Item does not serve to define the extent of the Developer's obligation to deliver the Contribution Item;
- (b) the Developer assumes all cost and risk in relation to the provision and the making of the Contributions, including any variations over time to the value of land to be dedicated or the cost of carrying out the Works; and

- (c) the Developer must provide the Contributions notwithstanding that the actual cost of Works or the value of a land dedication may be different to the minimum cost in the Contributions Table.

10 Access to land

10.1 Access to Council owned land

- (a) The Council agrees to permit the Developer on terms to be determined by Council, 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, provided the Developer gives at least 15 Business Days' notice. 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 negligence, default, act or omission of Council or its employees, officers, agents, contractors or workmen.

10.2 Access to land by Council

- (a) The Council may enter any land on which Work is being carried out by the Developer under this agreement in order to inspect, examine or test the Work, or to remedy any breach by the Developer of its obligations under this agreement relating to the Work.
- (b) The Council is to give the Developer prior reasonable notice before it enters land under clause 10.2(a).

11 Registration of this agreement

11.1 Developer interest

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

11.2 Registration of this agreement

- (a) The Developer, and each Landowner, each 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 and each Landowner, 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 and each Landowner, at its own expense, must take all practical steps, and otherwise must do anything that the Council reasonably requires to procure:
 - (iv) 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, and
 - (v) the execution of any documents to enable the registration of this agreement in accordance with this clause 11.2.
- (d) the Developer/Landowner consents to the registration of the agreement in accordance with this clause 11.2.

11.3 *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 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.
- (b) For the avoidance of doubt, the Council may provide a release and discharge allowing removal of this agreement from the folios of the Register for any part of the Land to be subdivided into Residential Lots, provided that the Developer has fulfilled any obligations under this agreement that, in accordance with the Developer Contributions, will be due at the time an Occupation Certificate is to be issued for those Residential Lots to be released. Where a building contains Affordable Housing Units, and Council has confirmed its satisfaction under clause 9.7(d)(ii), Council may provide a release and discharge allowing removal of this agreement from the folios of the Register in relation to the Residential Lots to be created within that building, but may require this agreement to be registered on the folios of the Register for the Affordable Housing Units within that building.

11.4 *Caveat*

The developer/Landowner acknowledges that and agrees that:

- (a) when this agreement is executed, the Council is deemed to have acquired and the Landowner is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently the Council will have a sufficient interest in the Land in respect of which to lodge a caveat over the Land notifying that interest,
- (b) 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,
- (c) It will bear all costs associated with the lodgement of the caveat by Council; and

- (d) 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 Council is satisfied that all obligations under this agreement have been satisfied by the Developer or Land owner.

12 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.

13 Dispute resolution

13.1 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.

13.2 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.

13.3 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 13.6 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.

13.4 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 13.5 or by expert determination under clause 13.6.

13.5 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 13.5 must:
 - (i) have reasonable qualifications and practical experience in the area of the dispute; and
 - (ii) have no interest or duty which conflicts or may conflict with his or her function as a mediator he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) the mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (e) the parties must within 15 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation (except if a resolution of the Council is required to appoint a representative, the Council must advise of the representative within 5 Business Days of the resolution);
- (f) the parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement, and
- (g) in relation to costs and expenses:
 - (i) each party will bear its own professional and expert costs incurred in connection with the mediation; and
 - (ii) the costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

13.6 Expert determination

If the dispute is not resolved under clause 13.3 or clause 13.5 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.

13.7 *Litigation*

If the dispute is not finally resolved in accordance with this clause 13, then either party is at liberty to litigate the dispute.

13.8 *Suspension of contractual obligations*

Subject to any interlocutory order obtained under clause 13.1, the referral to or undertaking of a dispute resolution process under this clause 10 does not suspend the parties' obligations under this agreement, other than any obligation that is the subject of the dispute.

14 **Security**

14.1 *Security for works*

- (a) the Developer must provide to the Council:
 - (i) Bank Guarantees to secure the completion of the Park Works and Smart Cities Works, with each Bank Guarantee being an amount that is 75% of the estimated cost of the Works, and
 - (ii) a Bank Guarantee or Bond to secure the completion of the Road Works in the amount that is 25% of the total estimated cost of Roads Works (**Road Works Security**).
- (b) the Council may reject any Bank Guarantee that contains errors, or if it has received the Bank Guarantee, require at any time the Developer to obtain a replacement Bank Guarantee that rectifies any such errors or otherwise obtain

rectification of the errors. The Developer must provide the replacement Bank Guarantee, or otherwise obtain rectification of the errors, within 5 Business Days of receiving the Council's request.

- (c) the Council may call on a Bank Guarantee or Bond provided under this clause if:
- (i) the Developer is in material or substantial breach of this agreement in failing to deliver a Contribution Item within the timeframe required by the Contributions Table, or where a revised timeframe has been agreed by Council, within that revised timeframe 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 25 Business Days) in writing to do so in accordance with clause 14.1 of this agreement, or
 - (ii) the Developer becomes Insolvent and is in material or substantial breach of this agreement.
- (d) 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.

- (e) on receipt of a Replacement Bank Guarantee provided under clause 14.1(d), the Council must release and return to the Developer, as directed, the Bank Guarantee that has been replaced as soon as reasonably practicable;
- (f) at any time following the provision of a Security under this clause, the Developer may provide the Council with one or more replacement Securities totalling the amount of all Securities required to be provided under this clause for the time being. On receipt of such replacement Security, the Council must release and return to the Developer, as directed, the Security which it holds that has been replaced immediately;
- (g) the Council may apply the proceeds of a Security in satisfaction of:
 - (i) any obligation of the Developer under this agreement that is secured by the Security including the carrying out of the Works; 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 the obligation secured by the Security.

- (h) if Council calls on a Security at any time, the Developer must provide a further Bank Guarantee or Bond to Council so that Council holds security in an amount that is equivalent to 25% of the total estimated cost of the Works at all times, unless that amount has been reduced in accordance with clause 14.1(g), in which case the amount of the Security must be equivalent to the agreed reduced amount under that clause;
- (i) the Council must promptly return a Bank Guarantee to the Developer when the Contribution to which the Bank Guarantee relates is discharged by the delivery of a Contribution Item and the Developer has provided any Security for maintenance required under clause 9.6(g) and for defects liability required under the Construction Terms. For the avoidance of doubt, the Road Works Security is to be released by Council on completion of the final stage of the Road Works, and
- (j) nothing in this clause 14.1 prevents or restricts the Council from taking any enforcement action in relation to:
 - (i) any obligation of the Developer under this agreement that is not secured by a Security, 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 an obligation under this agreement which is secured by the Security.

14.2 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 (or any part which has not been dedicated to Council in accordance with this agreement), 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 and may call upon any Bank Guarantee provided under clause 14.1 to cover any costs, including legal costs, incurred by the Council on acquisition of the land;
- (b) Clause 14.2(a) constitutes an agreement for the purposes of section 30 of the Land Acquisition (Just Terms Compensation) Act 1991;
- (c) except as otherwise agreed between the Developer and Council, the Developer must ensure the Dedication Land is freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, rights, charges, rates, strata levies and contracts, except as may be permitted by this agreement on the date that the Council will acquire the land in accordance with clause 14.2(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 14.2(a), and
- (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 14.2(a) that are not or cannot be recovered by calling on a Bank Guarantee.

14.3 *Restriction on the issue of certificates*

- (a) In relation to section 6.8 of the Act and any associated requirements under the Environmental *Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*, the obligation to:
 - (i) [insert obligations to be completed prior to CC]must be satisfied prior to the issue of a Construction Certificate for the Development or any part of the Development. [If staged development, this subclause can be repeated for each relevant substage rather than simply describing "the Development" as a whole.]
- (b) In relation to section 6.10 of the Act and any associated requirements under the Environmental *Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*, the obligation to:
 - (i) [insert obligations to be completed prior to OC]must be satisfied prior to the issue of an Occupation Certificate for the Development or any part of the Development. [If staged development, this subclause can be repeated for each relevant substage rather than simply describing "the Development" as a whole.]

14.4 *Security for affordable housing units*

- (a) Any Development Application for the erection of a building that will contain an Affordable Housing Unit(s) to be dedicated to Council under this agreement the Developer must comply with clause 9.7.
- (b) Prior to the issue of a Construction Certificate for any building containing an Affordable Housing Unit, the Developer must provide to Council a Bank Guarantee or Bond in the amount of the estimated cost of the fit out of each Affordable Housing Unit in the building;
- (c) The provisions of clause 14.1 apply to a Bank Guarantee provided under this clause 14.3;
- (d) 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) provide access to the Council to inspect the Affordable Housing Unit and any other part of the building if required by Council; and
 - (ii) 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.
- (e) An Occupation Certificate applying to an Affordable Housing Unit must be provided before that unit can be transferred to Council.

15 **Enforcement**

15.1 *Default*

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this agreement, it may give notice in writing to the other party (**Default Notice**) giving all particulars of the matters in respect of which it

considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 25 Business Days;

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

15.2 General enforcement

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

16 Assignment and dealings

16.1 Assignment

- (a) A party must not assign or deal with any right under this agreement without the prior written consent of the other parties, which shall not be unreasonably withheld or delayed and must be provided within 5 Business Days.
- (b) A change in ownership of more than 50% of the shares of the Developer shall be deemed to be an assignment of this agreement for the purposes of this clause.

16.2 Mortgages of the land

The Developer agrees not to enter into any agreements or contracts that would effect a mortgage of the Land in addition to those on title at the date of this agreement until this agreement is registered on the title to the Land pursuant to clause 11.2.

16.3 Transfer of land

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

- (a) The Landowner satisfies the Council that the proposed Transferee is financially capable of complying with the Landowner's obligations under this agreement;
- (b) The Landowner satisfies the Council that the rights of the Council will not be diminished or fettered in any way;
- (c) The Transferee delivers to the Council a novation deed signed by the Transferee in a form and of such substance as is acceptable to the Council containing provisions under which the Transferee agrees to comply with all the outstanding obligations of the Landowner under this agreement;

- (d) The Transferee delivers to the Council replacement Security as required by this agreement;
- (e) 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
- (f) The Landowner and the Transferee pay the Council's reasonable costs in relation to the assignment.

16.4 Right to transfer strata lots

- (a) Notwithstanding clause 16.3 the Landowner may enter into a contract for sale with a Transferee for a Residential Lot on a proposed Strata Plan that has not yet been registered, without having to obtain consent from Council, and
- (b) For the avoidance of doubt, the transfer of a Residential Lot is not permitted under clause 16.3(a) unless the Council has provided a written release and discharge of this agreement.

16.5 Exempt transfers

- (a) Clause 16.3 does not apply where the Landowner transfers:
 - (i) any part of the Land it owns to an Associated Entity of the Landowner or Developer or to Council in accordance with this agreement, or
 - (ii) a Super Lot where the Contribution for the Super Lot has already been provided or otherwise secured; and this agreement has been registered against the title to the relevant land, or Council has provided a written release and discharge of this agreement for the relevant land.
- (b) The Landowner must notify the Council in writing:
 - (i) 20 Business Days prior to any transfer under clause 16.3(a) identifying the part of the Land that is to be transferred and the proposed transferee, and
 - (ii) 5 Business Days after the transfer has taken place, confirming any changes to representatives of the Landowner or Developer for the purposes of this agreement and clause 16.3.

17 Approvals and consents

Except as otherwise set out in this agreement, and subject to any statutory obligations, a party must act reasonably when withholding an approval or consent to be given under this agreement and granting an approval or consent subject to any conditions determined. A party must give its reasons for withholding an approval or consent or for giving an approval or consent subject to conditions.

18 No fetter

18.1 Discretion

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

18.2 *No fetter*

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

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

18.3 *Planning certificates*

The 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.

19 Annual report by developer

- (a) The Developer is to provide to the Council by not later than each anniversary of the date on which this Deed is entered into a report detailing the performance of its obligations under this agreement.
- (b) The report referred is to be in such a form and to address such matters as required by the Council from time to time.

20 Notices

20.1 *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, or bear the name and position of the person duly authorised by the sender if sent by email;
- (b) Must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by email at the address below, or at the address last notified by the intended recipient to the sender after the date of this agreement:
 - (i) to City of Parramatta Council PO Box 32, Parramatta, NSW 2124
Email: [Email]
Attention: Manager, Land Use Planning
 - (ii) to [Party No. 2] [Address]
Email: [Email]
Attention: [Contact]
 - (iii) to [Party No. 3] [Address]

Email: [Email]

Attention: [Contact]

- (c) is taken to be given or made:
 - (i) in the case of hand delivery, when delivered, and
 - (ii) in the case of delivery by post, seven Business Days after the date of posting (if posted to an address in the same country) or fourteen Business Days after the date of posting (if posted to an address in another country).

20.2 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, and
 - (iv) is sent to the email address below or the email address last notified by the intended recipient to the sender as above.
- (b) The recipient of a Notice served under this clause 20.2 must:
 - (i) promptly acknowledge receipt of the Notice;
 - (ii) keep an electronic copy of the Notice, and
- (c) Failure to comply with clause 20.2 does not invalidate service of a Notice under this clause.

20.3 Receipt of notices sent by email

- (a) A Notice sent under clause 20.2 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 20.3 a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it will be taken to have been given or made at the start of business on the next Business Day in that place.

21 Release and discharge

The Council will notify the Developer and the Landowner in writing that they are released and discharged from their obligations under this agreement if any of the following occur:

- (a) The Instrument Change is declared void or invalid by a Court of competent jurisdiction and all opportunities for appeal have been exhausted.
- (b) The Developer and Landowner have fulfilled all of their obligations under this agreement to the Council's reasonable satisfaction.
- (c) The parties agree in writing to terminate the agreement on the basis that the performance of the agreement has been frustrated by an event outside the control of the parties to this agreement.
- (d) A decision is made by the NSW Government to not make the Instrument Change and communicated to the parties in writing, and Council (acting reasonably) is satisfied that the Instrument Change will not be made.

22 General

22.1 *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.

22.2 *Landowner obligations*

Any clause of this agreement that requires the Developer to do anything or imposes an obligation on the Developer, constitutes a requirement for the Landowner to procure that thing to be done or that obligation to be met, either by the Landowner, the Developer or another entity, so far as the requirement or obligation applies to that part of the Land owned by the Landowner.

22.3 *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.

22.4 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.

22.5 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.

22.6 Variations and amendments

- (a) The parties may, at any time and from time to time, enter into agreements relating to the subject matter of this agreement that are not inconsistent with this agreement for the purpose of implementing this agreement.
- (b) 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.

22.7 Surrender of right of appeal, etc.

The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this agreement, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this agreement.

22.8 Legal and other expenses

- (a) The Developer agrees to pay or reimburse the Council's all reasonable costs for drafting, exhibition, execution and registration of the agreement in accordance with Council's Fees & Charges. Costs may include fees relating legal advice, independent consultants, land valuers, quantity surveyors and the like. No later than 10 Business Days after receiving a demand from the Council to pay such costs, and
- (b) The Developer agrees to pay Council any administrative and assessment fees in accordance with Council's Fees & Charges.

22.9 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.

22.10 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.

22.11 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.

22.12 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 22.12(b) applies.

22.13 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.

22.14 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.

22.15 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.

22.16 Access to information

In accordance with section 121 of the *Government Information (Public Access) Act 2009* (NSW), the Developer agrees to allow the Council immediate access to the following information contained in records held by the Developer:

- (a) Information that relates directly to the delivery of the Public Benefits by the Developer;
- (b) Information collected by the Developer from members of the public to whom the Developer provides, or offers to provide, services on behalf of the Council; and
- (c) Information received by the Developer from the Council to enable the Developer to deliver the Public Benefits.

DRAFT

Schedule 2

Contribution Table

Column 1	Column 2	Column 3	Column 4	Column 5
Item / Contribution	Public Purpose	Manner & Extent	Timing	Works Value
1				
2				
3				
4				
5				
TOTAL				\$

Schedule 3 Construction Terms

NOTE: Delete references that are not required.

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 the context indicates a contrary intention:

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

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

Defect or Defective means anything that adversely affects or is likely to adversely affect, the appearance, structural integrity, functionality, or use and enjoyment of any part of the Works.

Defects Liability Period means in respect of the Works to which clauses 10.4 and 10.5 of this Schedule apply, the period of 12 months from the date on which the Certificate of Practical Completion is issued for the Works.

Detailed Design means the final specifications and finishes for each **Works Item** and will include the design of each **Works Item**, 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 or **Works Item** includes any part of the Works required to deliver a Contribution.

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, and
- (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

Except where otherwise stated in this agreement, 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 each of the Works Items.

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 for works

Council and the Developer have worked in consultation with each other to prepare and agree the concept plans (Concept Design) for the Works at Annexure B.

(a) The Council must notify the Developer of any design standards or guidelines or other requirements or policies of the Council (Council Standards) applicable to the design and specifications of each Works Item, prior to lodgement of a Development Application for the relevant Works Item, and if the Council fails to provide the Council Standards, the Developer must request them.

(b) The Developer must prepare the Concept Design in accordance with:

- (i) the Council Standards;
- (ii) the Design Competition Scheme, and
- (iii) the ISDP

and must submit the Concept Design to Council in order for Council to consider its compliance with the Council Standards before lodging a Development Application for the Works

(c) If Council, acting reasonably, requires any amendments to a Concept Design then it must advise the Developer within 10 Business Days of receiving the design, provided the amendments are minor in nature or limited to requiring consistency with the Council Standards.

(d) The Developer must make any amendment to a Concept Design requested by Council under clause 5.1(c) and resubmit the design for Council's approval.

- (e) If the Developer makes the amendments required by Council under clause 5.1(c) then Council must advise the Developer of its agreement to the Concept Design within five (5) Business Days of receipt of the amended Concept Design in accordance with clause 5.1(d).

5.2 Detailed design

- (a) In respect of each of the Works Items, once Development Consent has been granted for the Works item, the Developer must prepare the Detailed Design to be consistent with the Concept Design and Development Consent for the Works item and submit the Detailed Design to the Council for approval, together with a detailed cost estimate for the Works Item certified by a suitably qualified quantity surveyor who is a member of the Australian Institute of Quantity Surveyors and engaged by the Developer (Cost Estimate).
- (b) Within 20 Business Days of receiving the Detailed Design and Cost Estimate, Council must notify the Developer in writing as to whether the Detailed Design is approved or not approved, and Council can only withhold its approval under this clause reasonably.
- (c) If the Council does not approve the Detailed Design, the notice to the Developer to that effect must detail:
 - (i) what, if any, changes are required to the Detailed Design to ensure it complies with the Development Consent and the Concept Design for the Works Item; and
 - (ii) what other changes Council requests which are not required to correct an inconsistency between the Detailed Design and the Concept Design or Development Consent for the Works Item.
- (d) The Developer must promptly amend the Detailed Design in response to any request by Council pursuant to clause 5.2(c) of this Schedule 3 prior to making an application for a Construction Certificate for the relevant Works Item
- (e) The amended Detailed Design prepared under clause 5.1 (e) will be the agreed Detailed Design for the relevant Works Item.
- (f) Council may not request any variations to the Detailed Design other than pursuant to clause 5.2(c) of this Schedule 3, or once the Detailed Design has been agreed pursuant to clause 5.2(f) of this Schedule 3.
- (g) Any acceptance by the Council of the Detailed Design under this clause 5.2 of Schedule 3 is not to be taken as approval of or to any Construction Certificate for the relevant Works Items.
- (h) If Council fails to provide a response to the Detailed Design within the time required by clause 5.2(b) of this Schedule 3, the Developer may issue a notice to the Council seeking its response, and if the Council does not provide a response within a further period of 15 Business Days, the Developer may proceed to seek a Construction Certificate for the Detailed Design notwithstanding the remainder of this clause 5 of Schedule 3 and the Detailed Design is deemed to have been agreed to by Council.

5.3 Detailed design for affordable housing units

- (a) This clause 5.3 applies to the preparation of a Detailed Design for Affordable Housing Units.
- (b) Prior to submitting a Development Application for any building that will contain an Affordable Housing Unit or Units to be dedicated to Council under this agreement, the Developer must provide to Council draft plans for the building showing the location and layout of each Affordable Housing Unit in the building and specifications for fit out of each Affordable Housing Unit (together referred to in this clause as the Detailed Design).
- (c) The Affordable Housing Units must be designed in accordance with:
 - (i) the specifications in Annexure B;
 - (ii) any relevant design guidelines for affordable housing or residential flat buildings; and
 - (iii) so the Affordable Housing Units are of a quality and standard equivalent to other Residential Lots in the same building.
- (d) The Developer will obtain any relevant standards (including design standards), specifications, or guidelines and any other requirements referred to in clause 5.3(c) from Council, if the Council fails to deliver them to the Developer.
- (e) Within 28 Business Days of receiving the draft Detailed Design for Affordable Housing Units, Council will respond to the Developer with any suggested amendments. For the avoidance of doubt, Council may request a change to the location and layout of any Affordable Housing Unit in the relevant building and the proposed fit out of each Affordable Housing Unit.
- (f) The Developer must make any changes to the Detailed Design requested by Council and provide final plans and specifications for approval within 15 Business Days of receiving the Council's response, provided that the requested changes:
 - (i) are consistent with the obligation to deliver the Affordable Housing Units under this agreement;
 - (ii) do not require construction standards and quality of materials for Affordable Housing Units to be higher than those applied to or used in other Residential Lots in the building; and
 - (iii) are not unreasonable.
- (g) Council and the Developer must act reasonably, promptly and in good faith to finalise the Detailed Design for Affordable Housing Units.
- (h) For the avoidance of doubt, any acceptance by the Council of the Detailed Design for Affordable Housing Units under this clause 5.3 is not to be taken as approval of or to any Development Application relating to those Affordable Housing Units.

6 Construction Drawings

- 6.1 Prior to applying for a Construction Certificate for any Works, or if a Construction Certificate is not required, prior to commencement of the Works, the Developer must provide to Council for approval draft construction drawings for those Works prepared in accordance with the Detailed Design.
- 6.2 Within 15 Business Days of receiving the draft construction drawings, Council may, acting reasonably, require a variation to the construction drawings to comply with the Detailed

Design, the Building Code of Australia, any relevant Australian standard or any relevant design standards or guidelines referred to in clause 5.2(b) or clause 5.3(c) of this Schedule.

6.3 The Developer must amend the construction drawings in accordance with a requirement issued by Council under clause 6.2 of this Schedule.

6.4 For the avoidance of doubt, any approval of the construction drawings provided by the Council under this clause 6 is not to be taken as approval of or to any Construction Certificate for the Works.

7 Review of Construction Document

The Developer acknowledges and agrees that:

- (a) Council may, but is not obliged to critically analyse the draft Detailed Design and draft construction drawings for the Works in accordance with clauses 5 and 6 of this Schedule;
- (b) Council is not responsible for any errors, omissions or non-compliance with any Law or the requirement of any Authority by reason of approving the Detailed Design and construction drawings for the Works;
- (c) Council is not liable for any liability, loss or cost incurred by the Developer Parties, or any Claim made against the Developer Parties, because of any defect in the design or construction of any part of the Works; and
- (d) no comment, review or information supplied to the Developer by Council alters or alleviates the obligation to construct and complete the Works in accordance with this agreement.

8 Carrying out of Works

8.1 Commencement of works

The Developer must not commence construction of any Works until it has given the Council copies of all Approvals necessary for the construction of the Works.

8.2 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.

8.3 Standard of works

- (a) The Developer must procure the execution and completion of the Works and must cause the Builder to use suitable new materials and proper and tradesmanlike workmanship when carrying out the Works.
- (b) The Works must be diligently progressed to Practical Completion in accordance with:
 - (i) the Detailed Design and construction drawings approved by Council under this Schedule;
 - (ii) any Development Consent and Approvals applying to the Works;
 - (iii) the requirements of all Laws, including without limitation, workplace health and safety legislation; and
 - (iv) the obligations of this agreement.

- (c) 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.

8.4 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 8.3(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.

9 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) If the Council is not available on the Inspection Date it will nominate an alternate date which is within 3 business days of the initial proposed Inspection Date (**Alternate Inspection Date**);
- (d) On the Inspection Date or Alternate Inspection Date, the Developer must ensure that any employees, consultants, contractors, agents or representatives of Council have access to and may enter the Land to inspect the relevant Works Item;
- (e) Any consultant or contractor fees associated with an inspection required under the Inspection Schedule is to be paid by the Developer following receipt of any invoice from Council;
- (f) 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.
- (g) The Council may, acting reasonably, within 5 Business Days of carrying out an inspection (either under clause 9(c) or 9(d) of this Schedule 3), notify the Developer of any defect or non-compliance in the Works Item (**Inspection Defect Notice**) 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 Item.
- (h) If the Developer is issued a direction to carry out further work under clause 9(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.
- (i) If the Developer fails to comply with a direction to carry out work given under 9(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.
- (j) 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 9(e) of this Schedule 3 does not constitute:
- (i) acceptance by the Council that the relevant Works Item complies with all Approvals and Laws; or
 - (ii) an Approval by the Council in respect of the relevant Works Item; or
 - (iii) an agreement or acknowledgment by the Council that the relevant Works Item is complete and may be delivered to the Council in accordance with this agreement.

10 Completion

10.1 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:

- (i) complete works as executed plans;
 - (ii) any relevant certificates or consents of any public utility authority; and
 - (iii) Quantity Surveyor's Assessment, confirming that the cost of the Works meets or exceeds the Contribution Value; and
 - (iv) 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 10.1(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 10.1(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 10.1(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.

10.2 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;
 - (ii) all necessary certificates including the certificates of any consultants of the Developer that the Council may reasonably require, and Approvals of any public utility authority (where relevant); and
 - (iii) copies of all Approvals required for use of the land subject to the Works.
 - (iv) The Developer, being the copyright owner in the plan referred to in clause 10.2 gives the Council a non-exclusive licence to use the copyright in the works-as-executed-plan for the purposes of this agreement.
- (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.

10.3 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.

10.4 Defects liability period

- (a) This clause 10.4 and clause 10.5 of this Schedule apply to works to construct and fit out Affordable Housing Units to be delivered under this agreement.
- (b) During the Defects Liability Period, the Council (acting reasonably) may give to the Developer a notice (**Rectification Notice**) in writing that identifies a defect in the Works and specifies:
 - (i) action required to be undertaken by the Developer to rectify that defect (Rectification Works); and
 - (ii) the date on which the defect must be rectified (**Rectification Date**).
- (c) 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.
- (d) The Council must give the Developer and its contractors any access required to carry out the Rectification Works.
- (e) 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.
- (f) The Council may inspect the Rectification Works within 15 Business Days of receiving a Notice from the Developer under clause 10.4(e) 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.
- (g) The Developer must meet all costs of and incidental to rectification of defects under this clause 10.4.
- (h) If the Developer fails to comply with a Rectification Notice, then the Council may do such things or take such action as is necessary to carry out the Rectification Works, including accessing and occupying any part of the Land without further notice to the Developer, and may:

- (i) call upon any Security provided to the Council under this agreement in respect of the relevant Works Item 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.
- (i) The Developer must request that Council inspect the Works 20 Business Days prior to the end of the Defects Liability Period. The Council must inspect the relevant Works at any time after receiving the request from the Developer and before the end of the Defects Liability Period.

10.5 Security for defects liability

- (a) Prior to the issue of a Certificate of Practical Completion in respect of the relevant Works Item the Developer must deliver to the Council Security in an amount equivalent to 2.5% of the Works Value of the relevant Works Item.
- (b) The Developer advises and the Council acknowledges its awareness that the Security 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 Security provided by the Builder benefits the Council and satisfies the requirements of this agreement; and
 - (ii) the Developer procures an agreement from the Builder that the Council will be entitled to call on any Security provided by the Builder, in accordance with the terms of this agreement and the terms of any Construction Contract.
- (c) Within 10 Business Days after the Defects Liability Period for a Works Item has expired Council must (if it has not called on it) return the Security referred to in clause 10.5(a) of this Schedule 2 for that item of Works (or any remaining balance of it) to the Developer.
- (d) Notwithstanding clause 10.5(c) of this Schedule 3, if during the Defects Liability Period for a Works Item, the Council issues a Rectification Notice and the Rectification Notice is not complied with, then the Council need not deliver the balance of any Security provided to it in respect of the relevant Works Item, until that defect has been rectified.

11 Risk

The Developer undertakes the Works entirely at its own risk.

12 Insurance

- (a) Prior to the commencement of the construction of each Works Item, 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 per claim;
 - (iii) workers compensation insurance as required by Law.
- (b) The Developer must provide evidence of currency of insurance required by clause 12(a) of this Schedule 3 upon request by the Council, acting reasonably, throughout the term of this agreement.

13 Indemnities and Release

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 a Claim arises either directly or indirectly or is caused or contributed to by any negligence, default, act or omission by Council or its employees, officers, agents, contractors or workmen.

14 Intellectual Property Rights

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

15 Risk of Contamination

- (a) This clause 15 of Schedule 3 applies to all Dedication Land.
- (b) In this clause:

Assessment Guidelines means the following guidelines and any other guidelines made or approved by an Authority under section 105 of the CLM Act:

- National Environment Protection (Assessment of Site Contamination) Measure 1999 (as amended 2013)
- NSW EPA (1995) Sampling Design Guidelines
- NSW OEH (2011) Guidelines for Consultants Reporting on Contaminated Sites

CLM Act means the Contaminated Land Management Act 1997;

Contamination and Contaminated Land have the same meaning as in the CLM Act;

Contamination Consultant means an appropriately qualified environmental consultant, certified by one of the following schemes:

- the Site Contamination Practitioners Australia (SCPA) scheme
- the Environment Institute of Australia and New Zealand's (EIANZ) Contaminated Land Assessment Specialist Certified Environmental Practitioner (CLA Specialist CEnvP) scheme
- the Soil Science Australia (SSA) Certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM) certification

and, if undertaking and reporting on asbestos sampling, with a minimum of 2 years continuous relevant experience in the identification and management of asbestos contamination;

Contamination Planning Guidelines means the Contaminated Land Planning Guidelines under the CLM Act, being as at the date of this agreement Managing Land Contamination, Planning Guidelines SEPP 2021

CSM means conceptual site model;

Detailed Investigation Report means a report prepared by a Contamination Consultant detailing the outcome of a detailed site investigation as described in the Contamination Planning Guidelines;

Preliminary Investigation Report means a report prepared by a Contamination Consultant detailing the outcome of a "preliminary investigation" as defined in SEPP (Resilience and Hazards) and the Contamination Planning Guidelines;

RAP means a Remediation Action Plan or Remedial Action Plan as described in the Contamination Planning Guidelines;

Remediation has the same meaning as in the CLM Act;

Remediation Standard means the standard specified in clause 15(c) of this Schedule;

SEPP 55 means State Environmental Planning Policy No 55 – Remediation of Land;

SEPP(Resilience and Hazards) means State Environmental Planning Policy (Resilience and Hazards) 2021

Site Audit Report, Site Audit Statement and Site Auditor have the same meaning as in the CLM Act; and

Validation Report means a report prepared by a Contamination Consultant on completion of Remediation as described in the Contamination Planning Guidelines.

- (a) Prior to dedication or transfer:
 - (i) Land for the [insert] must meet or be Remediated to Residential 'A' standard as specified in Schedule B1 of the National Environment Protection (Assessment of Site Contamination) Measure 1999 (as amended 2013);
 - (ii) Land for [insert] must meet or be Remediated to Residential "C" standard as specified in Schedule B1 of the National Environment Protection (Assessment of Site Contamination) Measure 1999 (as amended 2013); and
 - (iii) All other land must meet or be Remediated to a standard suitable for its intended use.
- (b) The Developer must, at its cost, assess all Dedication Land for Contamination and carry out any Remediation of that land in accordance with this clause 15, the CLM Act, SEPP (Resilience and Hazards) 2021 and any other legislation and guidelines relating to the remediation of contaminated land.
- (c) All assessments and reports required under this clause must be carried out in accordance with the Assessment Guidelines.
- (d) Prior to commencement of any Works on Dedication Land, the Developer must provide to Council a Preliminary Investigation Report, despite any conclusion the Developer has reached about whether or not Contamination is an issue on the Dedication Land.
- (e) The Preliminary Investigation Report must include, but is not limited to, the following information:
 - (i) historical use of the Dedication Land,

- (ii) any past or present potentially contaminating activities on the Dedication Land or adjoining land;
 - (iii) a preliminary assessment of any Contamination including a CSM identifying sources, pathways and receptors; and
 - (iv) where contaminating activities are suspected to have had an impact on the Dedication Land or the land use history is incomplete, the results of any sampling and analysis undertaken to confirm the extent of any potential Contamination.
- (f) If a Preliminary Investigation Report indicates that the land the subject of that report may be or is potentially contaminated, the Developer must engage a Contamination Consultant to carry out a detailed site investigation and provide a Detailed Investigation Report to Council as part of any Development Application, or other application for an Approval, for the Works on the Land.
- (g) The Detailed Investigation Report must include, but is not limited to, the following information:
 - (i) the nature, extent and degree of Contamination on, in or under the Dedication Land and land immediately adjoining the Dedication Land;
 - (ii) a revision of the CSM based on the results of the detailed site investigation;
 - (iii) an assessment of the potential risk posed by contaminants to human health and the environment; and
 - (iv) a clear statement as to whether the Dedication Land meets the Remediation Standard.
- (h) If the Detailed Investigation Report provides that Remediation of the relevant land is required, the Developer must engage a Contamination Consultant to prepare a RAP and provide a draft of the RAP to Council.
 - (i) The draft RAP must include, but is not limited to, the following information:
 - (i) the process by which the Dedication Land should be Remediated and how the Remediation will be validated to demonstrate the site meets the Remediation Standard; and
 - (ii) if there are several options for Remediation, details as to the process for each option, identification of the preferred option for Remediation and the reasons why that option is preferred, including details for each option of the likely ongoing maintenance obligations and estimated costs of maintenance.
- (j) Council may consider the draft RAP and, within 10 Business Days of receiving the draft RAP, provide comments on the draft RAP including any preferences Council has for Remediation of the Dedication Land.
- (k) The Developer must require the Contamination Consultant to have regard to the Council's comments and preferences when finalising the RAP and, where options for remediation are available, direct the Contamination Consultant to prepare the RAP based on Council's preferred option.

- (l) The Developer must obtain all Approvals required to Remediate the Dedication Land and must carry out the Remediation in accordance with those Approvals, the RAP and Council's preferences for Remediation, so that the Dedication Land meets the Remediation Standard.
- (m) On completion of Remediation, the Developer must provide to Council a Validation Report that includes, but is not limited to, the following information:
 - (i) a description of, and documentary evidence confirming, all Remediation works that have been performed;
 - (ii) results of validation testing and monitoring;
 - (iii) a clear statement as to whether the Dedication Land meets the Remediation Standard;
 - (iv) if Council has approved that any residual contamination may be left onsite, a site environmental management plan that includes:
 - (A) a description of the exact location, depth and lateral extent of contamination left on, in or under the Dedication Land;
 - (B) a risk assessment of potential exposures scenarios, including demonstration that there is no off-site migration of contamination from the Dedication Land, or where there is off-site migration or its potential, that contamination within the Dedication Land is managed or monitored so it does not present an unacceptable risk to either the on-site or off-site environments;
 - (C) likely receptors and necessary control measures to management inadvertent exposure;
 - (D) responsible parties including who will be the responsible entity to implement the management plan; and
 - (E) an approved long term Site Management Plan (or equivalent management plan resulting from revisions of the approved long term Site Management Plan) is to remain in place and be implemented until such time as it is determined by Council that a long term Site Management Plan is no longer required.
- (n) Prior to dedication or transfer of any Dedication Land to Council, Council may, at its sole discretion, require the provision of a Site Audit Report and Site Audit Statement prepared by a Site Auditor, confirming that any Contamination of the land does not present a risk of harm to human health or any other aspect of the environment and that the relevant land meets the Remediation Standard.
- (o) The Developer must comply with any conditions of a Site Audit Statement, including any measures required to be implemented to ensure any ongoing monitoring obligations.
- (p) Where the Remediation method for the Dedication Land involves a cap and contain strategy:
 - (i) a long term management plan which identifies ongoing monitoring and maintenance of the capping; and

- (ii) a cost estimate prepared by an appropriately qualified person addressing the costs to implement the long term management plan over a 10 year period, including a breakdown of likely costs per year.
- (q) Within 30 Business Days of receiving the documents outlined at 15(d) and (g), Council must inform the Developer in writing;
 - (i) That dedication of the Dedication Land to Council is required in accordance with the terms of this Agreement; or
 - (ii) That dedication of the Dedication Land is not required.
- (r) Council may determine at its sole discretion not to accept dedication of any part of the Dedication Land that is subject to:
 - (i) residual contamination; and/or
 - (ii) a Remediation method which will place an unreasonable financial burden on the Council,

in which case the Developer must make the Contribution relating to the Dedication Land in an alternative manner to ensure the public purpose of the Dedication Land is achieved, for example an easement for public access may be required instead of the dedication.

16 Bank Guarantee for Remediation Maintenance Period

If the Council agrees to accept dedication of the Dedication Land pursuant to section 15(r) of this Schedule 3 and the annual cost estimate as estimated under clause 15(p)(ii) above is \$5,000 per year or more:

- (a) the Developer must provide the Council with a Bank Guarantee or Bond in the amount that is 75% of the costs to maintain the remediation of the Dedication Land as determined by the costs estimate provided to Council under clause 15(p)(ii).
- (b) The Council agrees to promptly return the Bank Guarantee within 14 days of the expiration of the Remediation Maintenance Period.

Schedule 4 Summary of Requirements (section 7.4)

Subject and subsection of the Act	Planning Agreement
<p>Planning instrument and/or Development Application – Section 7.4(1)</p> <p>The Developer has:</p> <p>(a) Sought a change to an environmental planning instrument</p> <p>(b) Made, or propose to make a Development Application</p> <p>(c) Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies</p>	<p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>
<p>Description of the land to which the planning Agreement applies – Section 7.4(3)(a)</p>	
<p>Description of the application – Section 7.4(3)(b)</p>	
<p>The scope, timing and manner of delivery of contribution required by the Planning Agreement – Section 7.4(3)(c)</p>	
<p>Applicability of section 7.11 of the Act – Section 7.4(3)(d)</p>	
<p>Applicability of section 7.12 of the Act – Section 7.4(3)(d)</p>	
<p>Applicability of section 7.24 of the Act – Section 7.4(3)(d)</p>	
<p>Mechanism for dispute resolution – Section 7.4(3)(f)</p>	
<p>Enforcement of the Planning Agreement – Section 7.4(3)(g)</p>	
<p>Registration of the Planning Agreement – Section 7.4(3)(g) and section 7.6</p>	
<p>No obligation to grant consent or exercise functions – Section 7.4(9)</p>	

Schedule 5

Land

Address	Lot and DP Reference	Registered Proprietor

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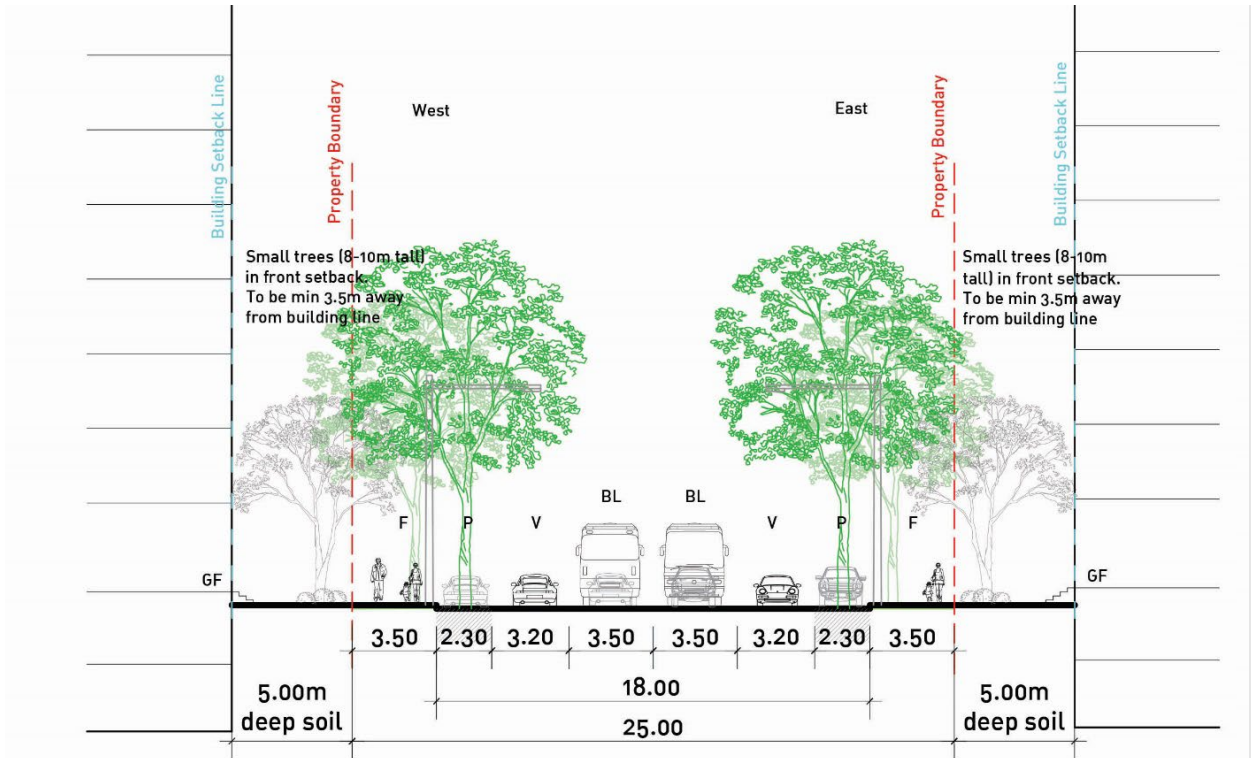
Schedule 8 not relevant]

Scope of Works [delete if

1. Roads Works (incl. Cycleways and Bus Stops) and Intersection Upgrades

Public purpose	Roads, Traffic and Transport
Development Area/Staging Rationale	Various – refer to Planning Agreement Staging Plan.
Description of Works	<p>Road Works: The road works include the demolition of redundant roads and underpasses, embellishment of retained existing roads and the construction of new roads, verges, cycleways, footpaths, bus stops and shelters.</p> <p>Cycleways and Shared Paths: The bicycle network includes both on-street cycleways and off-street shared paths. On-street cycleways include standalone bicycle lanes or integrated with parking lanes with appropriate signage and line marking. Off-street shared paths are provided along the verge of roads and/ or through public open space.</p> <p>Bus Stops and Shelters: Bus stops are to be provided within easy walking distance (maximum 400m) from all residences. Bus stop signage shall be installed in accordance with City of Parramatta and the local bus authority requirements. The stops will be located generally in accordance with agreed bus routes. Works will include bus shelters where required by City of Parramatta, acting reasonably.</p>
Core Elements	<ul style="list-style-type: none"> • Early earth works including batters • Road pavements • Stormwater drainage • Footpaths • Cycleways and shared pathways • Granite Cobble parking bays • Landscaping • Services including Smart Poles (where required) • Turf to verge • Traffic signs • Street furniture • Lighting <p>All works should be design in accordance with site specific DCP and Public Domain Manual.</p>
Estimates Works Value:	The estimated cost for the works listed above is \$[Amount]

[Remove figure below and insert example road sections]



2. Park Works

Public Purpose:	Public Open Space / Passive recreation / Community use
Development Area/Staging Rationale:	[Insert proposed timing]
Description of Works:	<p>The Park Works will provide amenity and recreation opportunities for the existing culture and local community.</p> <p>[Insert description of Park Works].</p>
Core Elements:	<p>Works to be delivered include:</p> <ul style="list-style-type: none"> • Soft and hard landscaping • Lighting • Pathways • Paving • Forming tiered seating • Bicycle racks • Amenities block • Children’s play area (Regional scale 0-3 & 5-11) • Mature tree planting • Picnic Tables • Bench seats • Drinking fountain • Bins • Shelters and structures • Water features and other improvements • External services to park including stormwater drainage, water supply and irrigation system and lighting
Estimated Works Value:	\$(Amount)
Area:	Approx. [Area]

3. New Playing Field

Public purpose:	Public Open Space/Active recreation
Development Area/Staging Rationale	[Insert proposed timing]
Description of works	The New Playing Field will provide amenity and recreation opportunities for the existing culture and local community. [Insert description of New Playing Field].
Core Elements	<ul style="list-style-type: none"> • Earthworks • Grassing and fertilising • Flood lighting (50 Lux) • Amenities building including home & away change facilities, referees room, public toilets, canteen, storage, and first aid • External services to park including stormwater drainage, water supply and irrigation system and lighting
Estimates Works Value:	\$(Amount)
Area:	[Area]

4. Wetland

Public purpose:	Public Open Space
Development Area/Staging Rationale	[Insert proposed timing]
Description of works	<p>A park [describe location and proposed works] that will:</p> <ul style="list-style-type: none"> ○ assist in the management of stormwater ○ increase the provision of deep soil ○ be accessible to the public 24/7, through a formalised path separated from the stormwater management function ○ designed to safe guarded against flooding in appropriate use
Core Elements	<ul style="list-style-type: none"> ● Garden edging ● Soft landscaping ● Footpath ● Smart Bins ● Bench seat ● Mature Trees
Estimates Works Value:	\$(Amount)
Area:	[Area]

5. Affordable Housing

Public purpose:	Affordable Housing
Development Area/Staging Rationale	[Insert proposed timing]
Description of Works	<p>Dedication of [x] affordable housing units with a maximum of [x] bedrooms. Finishing to include all fixtures and fittings to enable occupation include but not limited to:</p> <ul style="list-style-type: none"> • Air conditioning (split system) • Floor coverings • Window dressings • Kitchen fitout including Dishwasher • Security •
Core Elements	<ul style="list-style-type: none"> • Carry out works to provide [x] affordable housing units (with a maximum of [x] bedrooms). • Each unit must have been issued an Occupation Certificate prior to transfer to Council.
Estimates Works Value:	\$(Amount)

6. Smart Cities

Public purpose:	Smart Cities
Development Area/Staging Rationale	[Insert proposed timing]
Description of works	[Description of contribution works / monetary contribution]
Core Elements	<ul style="list-style-type: none"> • Implementation of Smart City projects/initiatives within the Land recommended by Council, to a maximum cost of \$[x] to be delivered in an integrated manner as the relevant part of the Land associated with the project/initiative is developed. • Indicative budget for items: <ul style="list-style-type: none"> ○ Smart Poles = \$[x] ○ Smart Wayfinding = \$[x] ○ Sensor technology = \$[x] ○ Smart bins ○ Are there any other smarts ○ Security
Estimates Works Value:	\$(Amount)

7 Public Transport Contribution

Public purpose:	Public Transport / Community Transport
Development Area/Staging Rationale	[Insert proposed timing]
Description of Works	[Describe service to be provided]. Service to be provided for [x] years or until direct public transport to and from [Development] is available, whichever occurs first.
Core Elements	<ul style="list-style-type: none"> • Provide [transport] service for current and future residents. • Service to connect residents to [public transport terminals]. • Service to cease on the commencement of [State public transport initiatives].
Estimates Works Value:	\$(Amount)

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

[Insert further execution clauses as required for each party]

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Annexure A Land Dedication Plan Land

Note plan should show land to be dedicated and any easements proposed a separate plan may be provided where land is Open Space Land but not transferred to Council

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Annexure B Concept Design and Specifications for Contribution Items

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Annexure C Infrastructure Services Delivery Plan

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