

**Voluntary Planning Agreement – Albion Hotel,  
135 George Street and 118 Harris Street,  
Parramatta NSW**

City of Parramatta Council

and

PIC Royal Investments Pty Ltd

Our Ref: LDA:AH:3026 / 75733

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## Reference schedule

<b>Item 1</b>	<b>Council</b>	
	City of Parramatta Council ABN 49 907 174 773	
<b>Item 2</b>	<b>Developer</b>	
	PIC Royal Investments Pty Ltd ABN 33 613 824 847	
<b>Item 3</b>	<b>Land</b>	
	The whole of the land comprised in: <ul style="list-style-type: none"> <li>– Lot 135 in DP 748984 known as 135 George Street, Parramatta NSW</li> <li>– Lot 4 in DP 388895 known as 118 Harris Street, Parramatta NSW</li> </ul>	
<b>Item 4</b>	<b>Planning Proposal</b>	
	Title	Planning proposal for 135 George Street and 118 Harris Street, (Albion Hotel site) Parramatta
	Summary	<p>A planning proposal seeking to amend the LEP controls that apply in relation to the Land as follows:</p> <ul style="list-style-type: none"> <li>– increase in the maximum building height to 144 metres (approximately 44 storeys), being 165.6 metres inclusive of design excellence bonus (approximately 51 storeys)</li> <li>– increase in the maximum FSR to a mapped FSR of 10:1, being 12:1 including the Design Excellence and High Performing Buildings bonuses</li> <li>– include the following site-specific provision: <ul style="list-style-type: none"> <li>(a) minimum commercial FSR equivalent to 1:1, with unlimited commercial floor space (within the maximum building height limit of 165.6 metres);</li> <li>(b) the high performing building bonus of 0.5:1 FSR applies;</li> <li>(c) the maximum car parking rates endorsed by Council as part of the Parramatta CBD Planning Proposal apply; and</li> <li>(d) the Solar Access provisions related to Experiment Farm in accordance with draft Clause 7.4 as endorsed by Council as part of the Parramatta CBD Planning Proposal apply.</li> </ul> </li> </ul>
	Number	PP-2020-3128
<b>Item 5</b>	<b>Dedication Land</b>	
	Those parts of the Land to be dedicated to Council in accordance with this Agreement, being: <ul style="list-style-type: none"> <li>– part of the Land for road widening along Harris Street (up to a maximum width of 7 metres); and</li> <li>– part of the Land for the purpose of a splay corner located on the corner of George Street and Harris Street, as required by Transport for NSW and Council.</li> </ul>	

Item 6	Easement Site	
	<p>Those parts of the Land to be burdened by public easement rights granted in favour of Council in accordance with this Agreement being:</p> <ul style="list-style-type: none"> <li>– a 12 metre wide East-West link; and</li> <li>– a public pedestrian access of variable width generally 6 metres wide to be located at the Western boundary of the Land</li> </ul> <p>as shown on the plan in Schedule 9.</p>	
Item 7	Notices	
	Council	<p>City of Parramatta Council 126 Church Street, PARRAMATTA NSW 2150</p> <p>Attention: Sarah Baker</p> <p>Email: council@parracity.nsw.gov.au; and sbaker@cityofparramatta.nsw.gov.au</p>
	Developer	<p>PIC Royal Investments Pty Ltd 4 Drake Avenue, Macquarie Park NSW 2113</p> <p>Attention: Marlas Zhu</p> <p>Email: info@skycorpaustralia.com</p>

Date 2021

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## Parties

**City of Parramatta Council** ABN 49 907 174 773 of 126 Church Street, Parramatta NSW 2150 (**Council**)

**PIC Royal Investments Pty Ltd** ABN 33 613 824 847 of 3 Nicholson Avenue, St Ives NSW (**Developer**)

## Background

- A. The Developer is the registered proprietor of the Land.
- B. The Developer made an application to the Council for the Instrument Change for the purpose of making a Development Application to the Council for Development Consent to carry out the Development on the Land.
- C. On 23 March 2020, Council resolved to endorse the Developer’s proposed Instrument Change and the proposed site-specific development control plan which contemplates more detailed built form guidelines to supplement the LEP controls.
- D. A Gateway Determination was issued on 31 July 2020. and a subsequent Gateway alteration providing an extension of time was issued on 26 April 2021.
- E. The Developer has made an offer in connection with the proposed Instrument Change to enter into this Agreement to make contributions for public purposes associated with the Instrument Change and the Development.
- F. The Developer and the Council agree to enter into this Agreement.

## Agreed terms

### 2. Definitions

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

<b>Word/s</b>	<b>Meaning</b>
<b>Act</b>	means the <i>Environmental Planning and Assessment Act 1979 (NSW)</i>
<b>Agreement</b>	means this Agreement and all schedules and annexures to it
<b>Approval</b>	means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this agreement
<b>Authority</b>	means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person

<b>Word/s</b>	<b>Meaning</b>
<b>Bank Guarantee</b>	<p>means an irrevocable and unconditional undertaking with no expiry or end date in favour of Council to pay an amount or amounts of money to the Council on demand and containing terms and conditions reasonably acceptable to Council issued by:</p> <ul style="list-style-type: none"> <li>– one of the following trading banks: <ul style="list-style-type: none"> <li>(a) Australia and New Zealand Banking Group Limited</li> <li>(b) Commonwealth Bank of Australia,</li> <li>(c) Macquarie Bank</li> <li>(d) National Australia Bank</li> <li>(e) St George Bank Limited</li> <li>(f) Westpac Banking Corporation, or</li> </ul> </li> <li>– any other financial institution approved by the Council (acting reasonably)</li> </ul>
<b>Bond</b>	means an insurance bond from an AAA credit rated party, or a party with a credit rating otherwise acceptable to Council
<b>Business Day</b>	means a day on which banks are open for general banking business in Sydney, excluding Saturdays and Sundays
<b>Claim</b>	means any claim, loss, liability, damage, proceeding, order, judgment or expense arising out of the operation of this Agreement
<b>Concept Design</b>	means the concept design for the Works set out in the document at Schedule 10
<b>Construction Certificate</b>	means a construction certificate as defined under section 6.4 of the Act
<b>Construction Terms</b>	means the terms set out in Schedule 2 of this Agreement
<b>Council</b>	means the council named in Item 1
<b>CPI</b>	means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics
<b>Dedication Land</b>	means that part of the Land to be dedicated to Council in accordance with this Agreement as described in Item 5
<b>Developer</b>	means the party named in Item 2
<b>Development</b>	means the future development of the Land as anticipated by the Instrument Change, either for a mixed-use development consisting of residential and commercial uses or a wholly commercial development
<b>Development Application</b>	has the same meaning as in the Act
<b>Development Consent</b>	has the same meaning as in the Act
<b>Development Contributions</b>	means the development contributions payable for the Development in accordance with sections 7.11 and 7.12 of the Act

Word/s	Meaning
<b>Development Contributions Plan</b>	means a contributions plan as defined in Section 7.1 of the Act that applies to the Land
<b>Draft Contributions Plan</b>	means the draft Parramatta CBD Local Infrastructure Contributions Plan 2021, exhibited by Council between 9 August 2021 and 20 September 2021
<b>Easement Site</b>	means that part of the Land described in Item 6 or otherwise agreed between the Council and the Developer in writing
<b>Easement Terms</b>	means the terms of a public access easement as set out in Schedule 3
<b>Experiment Farm</b>	The heritage item known as the Experiment Farm Cottage and located at 9 Ruse Street, Harris Park
<b>GST</b>	has the same meaning as in the GST Law
<b>GST Law</b>	has the meaning given to that term in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition of or administration of the GST
<b>Insolvent</b>	<p>means, in relation to a party:</p> <ul style="list-style-type: none"> <li>(a) that party makes an arrangement, compromise or composition with, or assignment for, the benefit of its creditors or a class of them;</li> <li>(b) a receiver, receiver and manager, administrator, provisional liquidator, trustee, controller, inspector or analogous person is appointed in relation to, or over, all or any part of that party's business, assets or securities;</li> <li>(c) a presumption of insolvency has arisen under legislation because of the party's failure to comply with a statutory demand or analogous process;</li> <li>(d) an application for the winding up of, or for the appointment of a receiver to, that party, other than winding up for the purpose of solvent reconstruction or re amalgamation, is presented and not withdrawn or dismissed within 21 days (or such longer period agreed to by the parties), or an order is made or an effective resolution is passed for the winding up of, or for the appointment of a receiver to, that party, or any analogous application is made or proceedings initiated;</li> <li>(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;</li> <li>(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;</li> <li>(g) an execution or analogous process is levied or enforced against the property of that party;</li> <li>(h) that party ceases or suspends, or threatens to cease or suspend, the conduct of all or a substantial part of its business;</li> <li>(i) that party disposes of, or threatens to dispose of, a substantial part of its assets;</li> </ul>



<b>Word/s</b>	<b>Meaning</b>
	<p>(j) that party stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts; or</p> <p>(k) that party is unable to pay the party's debts as and when they become due and payable</p>
<b>Instrument Change</b>	means an amendment to the LEP in response to the planning proposal described in Item 4
<b>Item</b>	means a numbered item in the reference schedule at the beginning of this agreement
<b>Land</b>	means the land described in Item 3
<b>Law</b>	<p>means:</p> <p>(a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;</p> <p>(b) any Approval, including any condition or requirement under it; and</p> <p>(c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b)</p>
<b>LEP</b>	means the <i>Parramatta Local Environmental Plan 2011</i>
<b>LRS</b>	means the NSW Land Registry Services
<b>Modification Application</b>	means any application to modify the Development Consent under section 4.55 of the Act
<b>Monetary Contribution</b>	means the monetary contribution payable by the Developer under clause 8 of this Agreement
<b>Notice Address</b>	means the address or number set out in Item 7 for the party to whom the notice is to be given
<b>Occupation Certificate</b>	means an occupation certificate as defined under section 6.4 of the Act and includes a final Occupation Certificate, or a partial Occupation Certificate
<b>Public Road</b>	has the same meaning as in the <i>Roads Act 1993</i>
<b>Quantity Surveyor</b>	means a qualified quantity surveyor approved by the Council (acting reasonably), appointed by the Developer on terms of engagement approved by the Council (acting reasonably) and whose costs are to be paid by the Developer
<b>Reference Design</b>	means the Reference Design in respect of the proposed Development set out in Schedule 11
<b>Register</b>	means the Torrens title register maintained under the <i>Real Property Act 1900</i> (NSW)
<b>Regulation</b>	means the <i>Environmental Planning and Assessment Regulation 2000</i>
<b>Related Body Corporate</b>	has the meaning given to that term in s 9 of the <i>Corporations Act 2001</i> (Cth)
<b>Solar Access Plane</b>	The solar access plane intended to protect sunlight access to Experiment Farm and the nominated curtilage area during the period from 10.00am to 2.00pm on 21 June

Word/s	Meaning
Transferee	has the meaning given in clause 14.2
Works	means the work set out in Schedule 1

### 3. Interpretation

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

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

- (i) in favour of two or more persons is for the benefit of them jointly and severally; and
- (ii) on the part of two or more persons binds them jointly and severally;
- (q) **(writing)** a reference to a notice, consent, request, approval or other communication under this Agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (r) **(replacement bodies)** a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
- (s) **(Australian currency)** a reference to dollars or \$ is to Australian currency;
- (t) **(month)** a reference to a month is a reference to a calendar month; and
- (u) **(year)** a reference to a year is a reference to twelve consecutive calendar months.

#### **4. Planning Agreement under the Act**

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- (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 Regulation, and the way this Agreement addresses those requirements.

#### **5. Application of this Agreement**

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This Agreement binds the parties and applies to:

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

#### **6. Operation of this Agreement**

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- (a) This Agreement commences on and from the date it is executed by all parties.
- (b) Until this Agreement operates, this Agreement constitutes an offer by the Developer to enter into this Agreement in connection with the Instrument Change.
- (c) For the avoidance of doubt, the obligations to deliver contributions under clause 8 do not take effect until:
  - (i) the Instrument Change has been made and has commenced; and
  - (ii) the Developer and Council have signed this Agreement.
- (d) This Agreement will remain in force until:
  - (i) it is terminated by operation of law; or
  - (ii) all obligations are performed and satisfied.

#### **7. Explanatory note**

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The explanatory note in Schedule 5 prepared in accordance with clause 25E of the Regulation must not be used to assist in construing this document.

## 8. Contributions to be made under this Agreement

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### 8.1 Monetary Contribution

- (a) If Development Consent is granted for Development that includes use of the Land or any part of the Land for residential purposes, the Developer will pay to Council a Monetary Contribution of:
- (i) \$2,821,500; or
  - (ii) an amount calculated in accordance with the following formula, whichever is the greater:  
$$\$2,821,500 \quad \times \quad \frac{\text{The CPI at the time of payment}}{\text{The CPI at the date of this Agreement}}$$
- (b) Subject to clauses 8.1(c) and 8.1(d), the Monetary Contribution must be paid to Council in instalments as follows:
- (i) 75% of the Monetary Contribution prior to the issue of a Construction Certificate for the relevant Development;
  - (ii) 25% of the Monetary Contribution prior to the issue of an Occupation Certificate for any part of the Development.
- (c) The Developer is not required to pay the first instalment of the Monetary Contribution specified in clause 8.1(b)(i) if the Developer provides to the Council a Bank Guarantee in accordance with clause 13.2 as security for that payment, in which case the Developer must pay the full amount of the Monetary Contribution prior to the issue of an Occupation Certificate for any part of the Development.
- (d) For the avoidance of doubt, the reference to a Construction Certificate for the Development in clause 8.1(b)(i) and clause 13.2, means a Construction Certificate that authorises the erection of any structure, but does not include a Construction Certificate that authorises only demolition or excavation works.
- (e) The Monetary Contribution must be paid by way of bank cheque in favour of Council or by deposit by means of electronic funds transfer into an account specified by Council in writing.
- (f) The Monetary Contribution will be taken to have been made when the Council notifies the Developer in writing that the bank cheque has been received and cleared funds, or electronic funds have been deposited in the Council's bank account.
- (g) The parties agree and acknowledge that the Monetary Contribution will be used by the Council towards a public purpose which Council reasonably considers to be in the public interest.
- (h) Notwithstanding anything else in this clause 8.1, if the Council adopts the Draft Contributions Plan, prior to the submission of a Development Application for the Development (or any part of the Development) and imposes conditions on the grant of a Development Consent for the Development requiring payment of Development Contributions in accordance with that adopted plan, the Developer will not be required to pay the Monetary Contribution under this clause.

### 8.2 Works

- (a) The Developer will carry out the Works in accordance with this Agreement, including the Construction Terms and any Development Consent granted for the Works.
- (b) The Works or any part of the Works required under this Agreement will be taken to have been completed for the purposes of this Agreement in accordance with clause 8.1 of the Construction Terms.

- (c) The Works or any part of the Works required under this Agreement will be taken to have been delivered to Council when the Works are complete and the Easements are granted in favour of the Council permitting public access in accordance with clause 8.4(a).
- (d) The Developer must deliver the Works to the Council in accordance with clause 8.2(c) prior to the issue of an Occupation Certificate for the Development or any part of the Development.
- (e) The Council must not unreasonably withhold or delay its consent in respect of any matters relating to the Works which require Council's consent or approval, subject to clause 14.
- (f) The parties agree and acknowledge that the Works serve the public purpose of providing public accessways and improving pedestrian connections and amenity in the vicinity of the Development.

### **8.3 Dedication of Land**

- (a) The Developer must dedicate or cause to be transferred to the Council, at no cost to the Council, the Dedication Land freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts in, over or in connection with the land, including but not limited to, municipal rates and charges, water rates and land tax, except as permitted by Council.
- (b) The obligation to dedicate the Dedication Land will be taken to have been satisfied when either:
  - (i) a Certificate of Title is issued by the LRS for the whole of the Public Road identifying the Council as the registered proprietor of that land without encumbrances as required by clause 6.3(a); or
  - (ii) when the Public Road is dedicated to Council by operation of the registration of a plan of subdivision in accordance with section 9 of the *Roads Act 1993*.
- (c) The Dedication Land must be dedicated or transferred to Council prior to the issue of an Occupation Certificate for the Development or any part of the Development.
- (d) The parties agree and acknowledge that the embellishment and dedication of the Dedication Land serve the public purpose of providing public roads and improving the traffic network in the vicinity of the Development.
- (e) The Developer acknowledges and agrees:
  - (i) that it is responsible for the management and remediation of any contamination present upon or under the Dedication Land;
  - (ii) it will attend to any necessary remediation of the Dedication Land at its own costs; and
  - (iii) to the fullest extent permitted by Law indemnify and release the Council from any Claim which might arise from any contamination with respect to the Dedication Land existing on the Land before the date the Dedication Land is transferred or dedicated to Council, except to the extent that such contamination was caused by the default or negligence of Council.
- (f) Prior to the registration of any easement permitting public access to the Easement Site, the Developer must provide to Council's reasonable satisfaction, certification by a qualified person, that the Easement Site is not contaminated and is suitable for the proposed use.

### **8.4 Public Access and Easements**

- (a) The Developer will, at no cost to Council, register against the title of those parts of the Land comprising the Easement Site:

- (i) a covenant prohibiting any building or structures, including pillars, other than structures approved by the Council (acting reasonably) for the purposes of enhancing public domain areas and as contemplated in the Development, to be constructed on the Easement Site, which covenant is to be limited in height and depth as appropriate for a pedestrian accessway as determined by Council (acting reasonably) and having regard to:
  - (A) the overhang contemplated in the Reference Design; and
  - (B) the outcome of any relevant design excellence competition and development application process; and
- (ii) an easement in gross in favour of the Council permitting public access and generally in accordance with the Easement Terms burdening the Easement Site. The Easement Site is to be limited in height and depth as appropriate for a pedestrian accessway as determined by Council (acting reasonably) and having regard to:
  - (A) the overhang contemplated in the Reference Design; and
  - (B) the outcome of any relevant design excellence competition and development application process.
- (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) The covenant required under clause 8.4(a)(i) must be registered prior to the issue of a Construction Certificate for the Development.
- (d) The easement required under clause 8.4(a)(ii) must be registered prior to the issue of an Occupation Certificate for any building on the Land forming part of the Development.
- (e) The parties agree that the proposed covenant and easement under this clause will serve the following public purposes:
  - (i) to increase the amount of and improve existing public open space areas in the vicinity of the Land;
  - (ii) to improve pedestrian circulation and the amenity of the public domain in the vicinity of the Land.
- (f) The Developer agrees and acknowledges that the obligations under this clause 8.4 are relevant considerations for the Council or any other consent authority when determining a Development Application or Modification Application relating to the Land and that a failure to comply with those obligations or any inconsistency with the requirements in those clauses may constitute a reason for refusal of such a Development Application or Modification Application.

## **8.5 Access to Council owned land**

- (a) The Council agrees to permit the Developer, its employees, officers, agents and contractors, upon receiving at least 10 Business Days' prior notice, to enter, pass through or occupy any Council owned or controlled land in order to enable the Developer to properly perform its obligations under this Agreement. Nothing in this clause creates or gives the Developer any estate or interest in any part of the Council owned or controlled land.
- (b) The Developer indemnifies the Council, its employees, officers, agents and contractors from and against all Claims in connection with the entry or access by the Developer to, or any presence of the Developer on, Council owned or controlled land for the purposes of performing its obligations under this Agreement, except to the extent such Claim arises directly as a result of the Council or its employees, officers, agents, contractors or workmen's negligence, default, act or omission.

## **9. Application of s 7.11, s 7.12 and s 7.24 of the Act to the Development**

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- (a) This Agreement does not exclude the application of sections 7.11, 7.12 or 7.24 of the Act to the Development.
- (b) The benefits under this Agreement are not to be taken into consideration in determining a development contribution under section 7.11 of the Act.

## **10. Registration of this Agreement**

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### **10.1 Developer Interest**

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

### **10.2 Registration of this Agreement**

- (a) The Developer agrees to procure the registration of this Agreement under the *Real Property Act 1900 (NSW)* in the relevant folios of the Register of the Land in accordance with section 7.6 of the Act.
- (b) The Developer, at its own expense, must:
  - (i) procure the lodgement of this Agreement with the LRS 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) promptly comply with any requisition that may be raised with regards to registration of this Agreement from the LRS; and
  - (iii) provide documentary evidence that the registration of this Agreement has been completed to Council within 10 Business Days of receiving confirmation that the registration has occurred.
- (c) The Developer at its own expense will take all reasonably practical steps, and otherwise do anything that the Council reasonably requires to procure:
  - (i) the consent of each person who:
    - (A) has an estate or interest in the Land registered under the *Real Property Act 1900 (NSW)*; or
    - (B) is seized or possessed of an estate or interest in the Land,
  - (ii) an acceptance of the terms of this agreement and an acknowledgement in writing from any existing mortgagee in relation to the Land that the mortgagee will adhere to the provisions of this agreement if it takes possession of the Land as mortgagee in possession,
  - (iii) the execution of documents reasonably required; and
  - (iv) the production of the relevant certificates of title,to enable the registration of this Agreement in accordance with this clause 10.2.

### **10.3 Removal from Register**

The Council must within 10 Business Days of a request by the Developer under this clause, execute any form and supply such other information and do anything as reasonably required by the Developer to enable the release and removal of this Agreement from the folios of the Register for the Land (or any part of it), provided the Developer has duly fulfilled its obligations under this Agreement and is not otherwise in default of any of the obligations under this Agreement.



#### 10.4 Caveat

- (a) The Developer acknowledges and agrees that:
  - (i) when this Agreement is executed, the Council is deemed to have acquired and the Developer is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the *Real Property Act 1900 (NSW)* and consequently the Council will have a sufficient interest in the Land in respect of which to lodge a caveat over the Land notifying that interest;
  - (ii) it will not object to the Council lodging a caveat in the relevant folios of the Register for the Land nor will it seek to remove any caveat lodged by the Council provided the caveat does not prevent registration of any dealing or plan other than a transfer.
- (b) The Council must, at the Developer's cost, register a withdrawal of any caveat in respect of the Land within five Business Days after the Developer complies with clause 10.2 and must not lodge any other caveats on the titles to any of the Land.

### 11. Review of this Agreement

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#### 11.1 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) For the purposes of this clause 11.1 of this Agreement and subject to clause 11.2, 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) For the purposes of this clause 11.1 of this Agreement and subject to clause 11.2, a party is not in breach of this Agreement if it does not agree to an amendment to this Agreement requested by a party in, or as a consequence of, a review.

#### 11.2 Change to Community Infrastructure Rate and Development Contributions

- (a) The parties acknowledge that as at the date of this Agreement:
  - (i) Council is proposing to amend the LEP to address the provision of community infrastructure within the Parramatta CBD and to adopt an accompanying Infrastructure Strategy and Development Guideline;
  - (ii) the Monetary Contribution for this Agreement has been calculated on the basis of a monetary rate per square metre of land (**Community Infrastructure Rate**), being a percentage of land value uplift (as defined in the Council's Planning Agreements Policy); and
  - (iii) the Community Infrastructure Rate is being applied consistently by Council at the date of this Agreement but may change when the planning proposal for the Parramatta CBD is finalised.
- (b) If, at the time an instalment of the Monetary Contribution becomes payable (**Payment Date**):
  - (i) the Council adopts a Community Infrastructure Rate that is less than the rate applied under this Agreement (being \$150 per square metre); and
  - (ii) as a consequence of the reduction of the Community Infrastructure Rate, Council amends the Development Contributions Plan, or adopts a new Development Contributions Plan that applies to the Land, so that the Development Contributions payable for the Development under this Agreement are higher, per square metre or other basis of measurement used to determine the quantum of contributions, than they would otherwise have been as at the date of this Agreement,

then, within 20 Business Days of either party making a request for review, the Council and the Developer must meet to review this Agreement in accordance with the principles in clause 11.2(c) and using their best endeavours and in good faith.



- (c) If a review of this Agreement is carried out under clause 11.2(b) the parties must consider during that review process, the quantum of Monetary Contribution payable by the Developer to the Council under this Agreement and a reduction of the Monetary Contribution by an amount equivalent to the difference between:
  - (i) the Development Contributions calculated as at the date of this Agreement (indexed in accordance with increases in the CPI from the date of this agreement to the date of the calculation); and
  - (ii) the Development Contributions calculated as at the Payment Date.
- (d) If, at a relevant Payment Date, Council has adopted a Community Infrastructure Rate that is higher than \$150 per square metre then, within 20 Business Days of either party making a request for review, the Council and the Developer must meet to review this Agreement using their best endeavours and in good faith to consider increasing the quantum of Monetary Contribution payable by the Developer under this Agreement on and from the relevant Payment Date in accordance with the increased Community Infrastructure Rate having regard to the Development and Development Contributions payable in accordance with the Development Contributions Plan, or provision of other material public benefits in lieu of that increased amount. For avoidance of doubt, an adjustment under this clause 11.2(d) cannot operate retrospectively (ie as regards an instalment of the Monetary Contribution which has already been paid) and must be calculated on a pro rata basis having regard to instalments due or payable on or after the date on which Council has adopted the increased Community Infrastructure Rate.
- (e) Any agreement reached during a review under this clause 11.2 will not constitute an amendment to this agreement until the amendment has been:
  - (i) confirmed in writing as an amendment to this Agreement;
  - (ii) publicly notified in accordance with the Regulation;
  - (iii) approved by Council after consideration of any public submissions; and
  - (iv) signed by the parties to this Agreement.
- (f) A failure by a party to agree to participate in a review under this clause 11.2 is taken to be a dispute for the purposes of clause 12.
- (g) If the parties cannot agree to the terms of any amendment to this Agreement following a review under clause 11.2, either party may refer the matter to dispute resolution under clause 12.
- (h) Nothing in this clause 11.2:
  - (i) affects the obligation of the Developer under the Act to pay contributions in accordance with Section 7.11 or Section 7.12 of the Act; or
  - (ii) requires the Council to pay any money to the Developer or to refund the Developer or any other entity, any amount paid to it under this Agreement or for any other purpose.

## **12. Dispute Resolution**

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### **12.1 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.

### **12.2 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.

### 12.3 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 12.6 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.

### 12.4 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 12.5 or by expert determination under clause 12.6.

### 12.5 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 12.5 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.

## 12.6 Expert determination

If the dispute is not resolved under clause 12.3 or clause 12.5, 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.

## 12.7 Litigation

If the dispute is not finally resolved in accordance with this clause 12, then either party is at liberty to litigate the dispute.

## 12.8 No suspension of contractual obligations

Subject to any interlocutory order obtained under clause 12.1, the referral to or undertaking of a dispute resolution process under this clause 12 does not suspend the parties' obligations under this Agreement.

## 13. Enforcement

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### 13.1 Default

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this Agreement, it may give notice in writing to the other party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 21 days.
- (b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.

- (c) If a party disputes the Default Notice it may refer the dispute to dispute resolution under clause 12 of this Agreement.

### 13.2 Bank Guarantee for Monetary Contribution

Subject to clause 8.1(d), if the Developer elects to provide a Bank Guarantee instead of paying the first instalment of the Monetary Contribution as set out in clause 8.1, the Developer must provide to the Council a Bank Guarantee in an amount equivalent to 75% of the Monetary Contribution prior to the issue of a Construction Certificate for the Development.

### 13.3 Works Bank Guarantee

- (a) The Developer must provide to the Council security against the obligation under this Agreement to complete the Works, in the form of a Bank Guarantee or Bond (**Security**) in the amount of the costs to complete the Works (**Works Security**) calculated at the date of provision of the Works Security, and as certified by a Quantity Surveyor.
- (b) The Works Security must be provided to Council prior to the issue of a Construction Certificate for the Development.
- (c) For the purpose of clause 13.3(a) the costs to complete the Works are costs that would be reasonably incurred in the carrying out of the Works including costs payable to third parties for the design of the Works, project management fees, investigations, consultant fees, and studies or reports specifically required for the Works, remediation costs, construction costs and costs to remove or relocate services, but exclude:
  - (i) the application fees for any Approval required to be obtained for or in relation to the carrying out of the Works;
  - (ii) the costs of the Quantity Surveyor retained in respect of assessing the costs of the Works; and
  - (iii) the Developer's internal management costs.

### 13.4 Bank Guarantees Generally

- (a) This clause applies to any Bank Guarantee provided under this agreement.
- (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 15 Business Days of receiving the Council's request.
- (c) The Council may call on a Bank Guarantee provided under this clause 13 if:
  - (i) the Developer is in material or substantial breach of this Agreement and has failed to rectify the breach within a reasonable period of time after having been given reasonable notice (which must not be less than 21 Business Days) in writing to do so in accordance with clause 13.1 of this Agreement; or
  - (ii) the Developer becomes Insolvent.
- (d) At any time following the provision of a Bank Guarantee under this clause, the Developer may provide the Council with one or more replacement Bank Guarantee totalling the amount of all Bank Guarantees required to be provided under this clause for the time being. On receipt of such replacement Bank Guarantee, the Council must release and return to the Developer, as directed, the Bank Guarantee(s) which it holds that have been replaced as soon as reasonably practicable.
- (e) Subject to clause 13.4(b), the Council may apply the proceeds of a Bank Guarantee in satisfaction of:
  - (i) any obligation of the Developer under this Agreement that is secured by the Bank Guarantee; and

- (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this Agreement.
- (f) The Council must return any Bank Guarantees provided by the Developer in accordance with this clause 13.4 no later than 10 Business Days after the date the Developer has satisfied the obligation secured by the Bank Guarantee in accordance with this Agreement.
- (g) Nothing in this clause 13.4 prevents or restricts the Council from taking any enforcement action in relation to:
  - (i) any obligation of the Developer under this Agreement; or
  - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this Agreement,that is not or cannot be satisfied by calling on a Bank Guarantee.

### **13.5 Compulsory Acquisition**

- (a) If the Developer does not dedicate the Dedication Land to Council as required by this Agreement, the Council may compulsorily acquire the relevant land, in which case the Developer consents to the Council compulsorily acquiring that land for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedures in the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (b) Clause 13.5(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 13.5(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 13.5(a), except to the extent caused or contributed by the negligence of Council or any default of this Agreement by Council.
- (e) The Developer must pay the Council, promptly on demand, an amount equivalent to all proper and reasonable costs, including legal costs, incurred by the Council acquiring the whole or any part of the relevant land under clause 13.5(a) that are not or cannot be recovered by calling on a Bank Guarantee.

### **13.6 Restriction on the issue of Certificates**

- (a) In accordance with section 6.8 of the Act and clause 146A of the Regulation the obligations to:
  - (i) pay the Monetary Contribution under clause 8.1(b)(i) or instead provide a Bank Guarantee under clause 13.2;
  - (ii) register the covenant under clause 8.4(a)(i); and
  - (iii) provide Works Security under clause 13.3,must be satisfied prior to the issue of a Construction Certificate for the Development or any part of the Development.
- (b) In accordance with section 6.10 of the Act and clause 154E of the Regulation the obligations to:
  - (i) pay the Monetary Contribution under clause 8.1;
  - (ii) carry out the Works and dedicate the Dedication Land under clauses 8.2 and 8.3; and

- (iii) register the public access easement under clause 8.4(a)(ii),  
must be satisfied prior to the issue of an Occupation Certificate for the Development or any part of the Development.

### 13.7 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.

## 14. Assignment and Dealings

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### 14.1 Assignment of this Agreement

- (a) Subject to clauses 14.1(d) and 14.2, a party must not assign, transfer or novate any right under this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).
- (b) Any change of ownership or control (as defined in section 50AA of the *Commonwealth Corporations Act 2001*) of a party (excluding the Council) shall be deemed to be an assignment of this agreement for the purposes of this clause.
- (c) Any purported dealing in breach of this clause is of no effect.
- (d) Council's consent to any assignment, transfer or novation of the Developer's interest under this Agreement must not be withheld if:
  - (i) this Agreement has been registered on the title to the Land; and
  - (ii) where there are outstanding obligations as at the date of the proposed assignment, the requirements set out in clause 14.3(a)(i) to (vi) are satisfied.

### 14.2 Transfer of Land prior to registration

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

- (a) The Developer satisfies the Council (acting reasonably) that the proposed Transferee is financially capable of complying with the Developer obligations under this agreement;
- (b) The Developer satisfies the Council (acting reasonably) that the rights of the Council will not be materially 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 reasonably acceptable to the Council containing provisions under which the Transferee agrees to comply with all the outstanding obligations of the Developer under this agreement;
- (d) The Transferee delivers to the Council replacement Bonds or Bank Guarantees 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 (acting reasonably), and
- (f) The Developer and the Transferee pay the Council's reasonable costs in relation to the assignment.

## 15. Approvals and consents

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

## 16. No fetter

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### 16.1 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**").

### 16.2 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 clause 16.2(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.

### 16.3 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.

## 17. Notices

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### 17.1 Notices

- (a) Any notice given under or in connection with this Agreement (**Notice**):
  - (i) must be in writing and signed by a person duly authorised by the sender; and
  - (ii) must be addressed to the Notice Address and delivered to the intended recipient by hand, by prepaid post or by email at the address in Item 7.
- (b) A Notice is taken to be given or made:
  - (i) in the case of hand delivery, when it is left at the relevant physical address;
  - (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
  - (iii) in the case of an email, as soon as it is sent provided that:
    - (A) the sender does not receive a message indicating that there has been an error in the transmission;
    - (B) the sender also sends the notice by way of an alternative method of service (but clauses 17.1(b)(i) and 17.1(b)(ii) will not apply to the alternative method); and



- (C) the email contains the word “notice” in the subject line.
- (c) If under clause 17.1(b) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.
- (d) A party may change their Notice Address by giving the other party at least 5 Business Days written notice of the changes details.

## **18. General**

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### **18.1 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.

### **18.2 Time for doing acts**

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

### **18.3 Further assurances**

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

### **18.4 Joint and individual liability and benefits**

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

### **18.5 Variations and Amendments**

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

### **18.6 Counterparts**

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

### **18.7 Legal expenses and stamp duty**

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



legal advice in connection with this Agreement, no later than 10 Business Days after receiving a demand from the Council to pay such costs.

- (b) The Developer agrees to pay or reimburse the costs and expenses incurred by Council in connection with the advertising and exhibition of this Agreement in accordance with the Act.
- (c) The Developer agrees to pay Council any reasonably incurred administrative fees as required by Council, acting reasonably, in connection with the administration of this agreement.

#### **18.8 Entire agreement**

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

#### **18.9 Representations and warranties**

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

#### **18.10 Severability**

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

#### **18.11 Invalidity**

- (a) A word or provision must be read down if:
  - (i) this Agreement is void, voidable, or unenforceable if it is not read down;
  - (ii) this Agreement will not be void, voidable or unenforceable if it is read down; and
  - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
  - (i) despite the operation of clause 18.11(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 18.11(b) applies.

#### **18.12 Waiver**

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

#### **18.13 GST**

- (a) Words and expressions which are not defined in this Agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law.

- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with this Agreement, the Developer must pay the GST or pay to the Council an amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances.
- (d) If the Council is obliged to pay any GST on any supply made under or in accordance with this Agreement, the Developer indemnifies the Council for the amount of any such payment is required to make.

**18.14 Governing law and jurisdiction**

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



## 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

.....

Print name of Witness

.....

Name of authorised delegate

.....

Address of Witness

.....

Position of authorised delegate

**Executed by PIC Royal Investments Pty Ltd ACN 613 824 847** in accordance with section 127(1) of the Corporations Act 2001 (Cth) acting by:

.....

**Marlas Zhu**  
(Sole Director/Secretary)

## Schedule 1: Scope of works

Work	Nature and extent
Embellishment of public domain and through site link	<p>Embellishment of the shared lane and pedestrian link such as landscaping, amenities, furniture and seating.</p> <p>The qualitative standard of the design and finishes for the shared lane and pedestrian link shall be generally in accordance with the approved development application detailed design, Council's Public Domain Guidelines and any other relevant policies or guidelines and the relevant Australian Standards.</p>

## Schedule 2: Construction Terms

### 1. Interpretation

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

- (a) **Builder** means any entity contracted under the Construction Contract to carry out the Works.
- (b) **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).
- (c) **Council Standards** mean any design standards or guidelines or other requirements or policies of the Council applicable to the design and specifications of the Works.
- (d) **Defect** means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a Work or any part of a Work, but excludes any damage caused by members of the public who have access to the Land, or damage caused by weather.
- (e) **Defects Liability Period** means in respect of each item of the Works the period of 12 months from the date on which the item of Work is taken to have been completed.
- (f) **Detailed Design** means the final specifications and finishes for the Works prepared in accordance with clause 5.2 of this Schedule 2 and will include the design of the Works, the location for the Works, installation specifications and estimated costs of construction and/or installation.
- (g) **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.
- (h) **Superintendent** means the Superintendent appointed under any Construction Contract.

### 2. Requirements of Authorities and Approvals

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- (a) These Construction Terms must be read and construed subject to:
  - (i) any requirements or conditions of any Development Consent;
  - (ii) the requirements of and conditions imposed by all relevant Authorities and all Laws relating to the Development and the construction of the Development.
- (b) If the 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.
- (c) The Developer must ensure that the Works carried out under this Agreement are carried out:
  - (i) in accordance with the relevant Development Consent for the Works and all Approvals and the requirements of all Laws, including without limitation, work health and safety legislation; and
  - (ii) in a good and workmanlike manner and so that they are diligently progressed until completion;

AND 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

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

#### **4. Project Management and Contractor Engagement**

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- (a) The Developer will be responsible for managing the Works.
- (b) The Developer will ensure that any contractor it engages to carry out the Works agrees to carry out the Developer's obligations in these Construction Terms as part of any Construction Contract.

#### **5. Design Development and Approvals**

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##### **5.1 Concept Design**

Council and the Developer have worked in consultation with each other to prepare and agree the Concept Design.

##### **5.2 Detailed Design**

- (a) The Council must notify the Developer of any Council Standards as soon as possible after the date of this Agreement. If the Council does not provide the Council Standards, the Developer must request them from the Council.
- (b) Prior to Works commencing the Developer must provide a copy of the draft Detailed Design to the Council for approval.
- (c) Within 28 Business Days of receiving the Detailed Design, Council will respond to the Developer with any suggested amendments to the Detailed Design.
- (d) Council and the Developer must work in consultation with each other to prepare and agree the Detailed Design and must both act reasonably and with due expedition in their consultations with each other.
- (e) If the Council does not approve the Detailed Design, Council must give a notice to the Developer detailing what, if any, changes are required to the Detailed Design to ensure it complies with the Council Standards and Concept Design.
- (f) The Developer must promptly amend the Detailed Design in response to any reasonable request by Council pursuant to clause 5.2(e) of this Schedule 2 and provide a final Detailed Design for that design to Council for approval.
- (g) The Developer may not seek a Construction Certificate for the Works until the Detailed Design is agreed in accordance with this clause 5.2.
- (h) Any acceptance or approval by the Council of the Detailed Design under this clause 5 of Schedule 2 is not to be taken as approval of or to any Development Consent or Construction Certificate for the Works.

##### **5.3 Good faith**

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

#### **6. Carrying out of Works**

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##### **6.1 Communication**

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

##### **6.2 Standard of Works**

- (a) Unless otherwise provided, the Developer shall, and must cause the Builder to, use suitable new materials and proper and tradesmanlike workmanship when carrying out the Works.

- (b) The qualitative standard of the design and finishes for the Works must be consistent with the Development Consent and Approvals for the Works and no less than those described in the following documents:
  - (i) any relevant Australian Standard; and
  - (ii) the Council Standards.
- (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.

### 6.3 Damage to people, property & utilities

- (a) The Developer is to ensure to the fullest extent reasonably practicable that, in performing its obligations under this Agreement:
  - (i) all necessary measures are taken to protect people and property;
  - (ii) unnecessary interference with the passage of people and vehicles is avoided; and
  - (iii) nuisances and unreasonable noise and disturbances are prevented.
- (b) Without limiting clause 6.3(a) of this Schedule 2, 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 public land except as authorised in writing by the Council or any relevant Authority.

## 7. Inspection

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- (a) On completion of the Detailed Design, the Council will provide a schedule of inspections to be undertaken by Council (**Inspection Schedule**) to occur at specified stages of the construction of the Works (**Inspection Stage**). If the Council does not provide the Inspection Schedule, the Developer must request the Inspection Schedule from the Council prior to the Works commencing.
- (b) Five Business Days prior to reaching an Inspection Stage as set out in the Inspection Schedule, the Developer must notify the Council of the proposed inspection date (**Inspection Date**).
- (c) On the Inspection Date, or other agreed date, the Developer must ensure that any employees, contractors, agents or representatives of Council have access to and may enter the Land to inspect the Works.
- (d) In addition to carrying out inspections in accordance with the Inspection Schedule, the Council may enter the Land or any part of the Land on which the Works are located to inspect the progress of the Works, subject to:
  - (i) the terms of the Construction Contract (save for any clause of the Construction Contract which prevents the Council from accessing the Land);
  - (ii) giving reasonable notice to the Developer;
  - (iii) complying with all reasonable directions of the Developer; and
  - (iv) being accompanied by the Developer or a nominee, or as otherwise agreed.
- (e) The Council may, acting reasonably, within 5 Business Days of carrying out an inspection, notify the Developer of any defect or non-compliance in the Works and direct the Developer

to carry out work to rectify that defect or non-compliance within a reasonable period of time. Such work may include, but is not limited to:

- (i) removal of defective or non-complying material;
  - (ii) demolishing defective or non-complying work;
  - (iii) reconstructing, replacing or correcting any defective or non-complying work; and
  - (iv) not delivering any defective or non-complying material to the site of the Works.
- (f) If the Developer is issued a direction to carry out further work under clause 7(e) of this Schedule 2, the Developer must, at its cost, rectify the defect or non-compliance specified in the Notice within the time period specified in the Notice, provided that it is reasonable having regard to the nature of the works.
- (g) If the Developer fails to comply with a direction to carry out work given under clause 7(e) of this Schedule 2, the Council will be entitled to refuse to accept that the Works (or the relevant part of the Works) meets the Council Standard and certify completion, until the required Works have been completed in accordance with this Agreement to the Council's satisfaction (acting reasonably).
- (h) For the avoidance of doubt, any acceptance by the Council that the Developer has rectified a defect or non-compliance identified in a notice issued under 7(e) of this Schedule 2 does not constitute:
- (i) acceptance by the Council that the Works comply with all Approvals and Laws; or
  - (ii) an Approval by the Council in respect of the Works; or
  - (iii) an Agreement or acknowledgment by the Council that the Works or the relevant part of the Works are complete and may be delivered to the Council in accordance with this Agreement.

## **8. Completion**

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### **8.1 Practical Completion**

- (a) When the Developer considers that the Works, or any part of the Works, are complete, the Developer must send a Notice to the Council accompanied by complete works as executed plans, and any relevant certificates or consents of any public utility authority stating that the Developer considers the Works are complete.
- (b) Within 10 Business Days of receipt of the notice under clause 8.1(a) of this Schedule 2, the Council will carry out an inspection of the Works and within a further 7 days of the date of the inspection, will, acting reasonably, either:
- (i) provide written certification to the Developer that the Works have been completed; or
  - (ii) notify the Developer of any additional information required or matters which must be addressed by the Developer prior to the certification being issued.
- (c) If the Developer is required to provide additional information or address any matters under clause 8.1(b)(ii) of this Schedule 2, the Developer will provide that information to Council or address those matters within 10 Business Days of receiving the notice or within a reasonable period of time and make a further request under clause 8.1(a) of this Schedule 2 for written certification that the Works have been completed.
- (d) The Works are taken to be complete for the purposes of this Agreement when the notice is provided under clause 8.1(b)(i) of this Schedule 2.



## 8.2 Delivery of documents

- (a) The Developer must as soon as practicable, and no later than 20 Business Days after the date on which the Works are completed in accordance with clause 8.1 of this Schedule, deliver to 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.
- (b) The Developer must as soon as practicable, and no later than 20 Business Days after the date on which the Works are completed in accordance with clause 8.1 of this Schedule, provide the Council with a tour of the land subject to the Works and provide reasonable instructions on the operation and use of the Services on that land.

## 8.3 Assignment of Warranties and Causes of Action

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

## 8.4 Defects Liability Period

- (a) During the Defects Liability Period, the Council (acting reasonably) may give to the Developer a notice (**Rectification Notice**) in writing that identifies a Defect in the 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, which must be reasonable having regard to the nature of the Defect (**Rectification Date**).
- (b) The Developer must comply with the Rectification Notice by:
  - (i) procuring the performance of the Rectification Works by the Rectification Date, or such other date as agreed between the parties;
  - (ii) keeping the Council reasonably informed of the action to be taken to rectify the defect; and
  - (iii) carrying out the Rectification Works.
- (c) The Council must give the Developer and its contractors any access required to carry out the Rectification Works.
- (d) When the Developer considers that the Rectification Works are complete, the Developer must notify the Council and provide documentation, plans or invoices which establish that the Rectification Works were carried out.
- (e) The Council must inspect the Rectification Works within 15 Business Days of receiving a Notice from the Developer under clause 8.4(d) of this Schedule 2 and, acting reasonably:
  - (i) issue a further Rectification Notice if it is not reasonably satisfied that the Rectification Works are complete; or

- (ii) notify the Developer in writing that it is satisfied the Rectification Works are complete.
- (f) The Developer must meet all costs of and incidental to rectification of Defects under this clause 8.4.
  - (i) 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:
    - (ii) call upon any Bond or Bank Guarantee provided to Council under clause 8.5 of this Schedule 2 to meet its costs of carrying out Rectification Works; and
    - (iii) recover as a debt due to the Council by the Developer in a court of competent jurisdiction, any difference between the amount of the security deposit and the costs incurred by the Council in carrying out Rectification Works.
- (g) The Developer must request that Council inspect the Works 10 Business Days prior to the end of the Defects Liability Period. The Council must inspect the Works at any time after receiving the request from the Developer and before to the end of the Defects Liability Period.
- (h) If, prior to the end of the Defects Liability Period the Developer fails to request the inspection, the Defects Liability Period will be extended for a period of 10 Business Days after the inspection is requested so that Council may carry out the inspection and issue any Rectification Notice prior to the end of the Defects Liability Period.

#### **8.5 Security for Defects Liability**

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

## **9. Risk**

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The Developer undertakes the Works entirely at its own risk.

## **10. Insurance**

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

## **11. Indemnities**

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

## **12. Intellectual Property Rights**

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

## **13. Risk of contamination**

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- (a) The Developer acknowledges and agrees:
- (i) that it is responsible for the management and remediation of any contamination present upon or under the land on which the Works are to be carried out;
  - (ii) it will attend to any necessary remediation at its own costs; and
  - (iii) to the fullest extent permitted by Law indemnify and release the Council from any Claim which might arise from any contamination with respect to the land on which the Works are to be carried out existing on the Land before the date the Works are to be delivered to Council, except to the extent that such contamination was caused or contributed to by the default or negligence of Council.
- (b) Prior to the registration of any easement permitting public access to the Easement Site, the Developer must provide to Council's reasonable satisfaction, certification by a qualified person, that the Easement Site is not contaminated and is suitable for the proposed use.

## **14. Plans**

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

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

## Schedule 3: Easement Terms

- 1 The owner of the Easement Site grants to the Council and members of the public full and free right to go, pass and repass over the Easement Site at all times:
  - (a) with or without companion animals (as defined in the *Companion Animals Act 1998*) or other small pet animals; and
  - (b) on foot without vehicles (other than wheelchairs or other disabled access aids), unless vehicles are being used to access the building on the Land via clearly identified entry and exit points;for all lawful purposes.
- 2 The owner of the Easement Site must, to the satisfaction of Council, acting reasonably:
  - (a) keep the Easement Site (including any services in, on or under the Easement Site) in good repair and condition;
  - (b) maintain and repair the Easement Site and all improvements on the Easement Site;
  - (c) keep the Easement Site clean and free from rubbish; and
  - (d) maintain sufficient public liability insurance covering the use of the Easement Site in accordance with the terms of this Easement.
- 3 The owner of the Easement Site must ensure that any rules made by an Owner's Corporation (if any) relating to the Easement Site have been approved by the Council, acting reasonably.
- 4 If any member or members of the public loiter or congregate, for any purpose which the owner of the Easement Site, acting reasonably, considers to be a nuisance or a safety risk, the owner may either remove those members of the public, or arrange for their removal by an appropriate authority.
- 5 The owner of the Easement Site may erect safety signage and any other appropriate signage and may erect CCTV cameras in the Easement Site.
- 6 The owner of the Easement Site may engage security personnel to monitor and control the behaviour of the public including but not limited to prohibiting smoking, consumption of alcohol (except within licensed areas), passage of animals, bicycles and skateboards and the like in accordance with any rules made by an Owner's Corporation relating to the Easement Site.
- 7 The owner of the Easement Site may with the Council's prior written consent (except in the case of an emergency, in which case the Council's prior written consent is not required) temporarily close or temporarily restrict access through all or part of the Easement Site for the time and to the extent necessary but only on reasonable grounds for the purposes of:
  - (a) construction, construction access, repairs, maintenance, replacement and alteration to the Easement Site or any improvements in, on or under the Easement Site; or
  - (b) security, public safety or evacuation of the Easement Site and adjoining buildings.
- 8 Subject to ensuring the provision of access in accordance with above clause 1 of this Schedule, the owner of the Easement Site may, provided any necessary planning approvals are obtained:
  - (a) carry out works in the Easement Site for the purposes of enhancing the Easement Site;
  - (b) install or erect works of art, street furniture, awnings, tables and chairs associated with ground floor commercial premises, notice boards or any other similar improvements at ground level within the Easement Site; and

(c) use the Easement Site,

in a manner consistent with Parramatta City Council Outdoor Dining Policy adopted 25 February 2019, or any such policy of the Council that replaces that policy.

- 9 The Council is solely empowered to release this Easement.
- 10 This Easement may only be varied by written agreement between the Council and the owner of the Easement Site.

## Schedule 4: Summary of requirements (section 7.4)

The below table summarises how this Agreement complies with the Act and Regulation.

Subject and section of the Act or Regulation	Provision/clause of this document	
<p><b>Planning instrument and/or Development Application</b> – Section 7.4(1) of the Act</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument</p> <p>(b) made, or proposes to make a Development Application</p> <p>(c) entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p><b>Description of the land to which the planning Agreement applies</b> – Section 7.4(3)(a) of the Act</p>	<p>Refer to Item 3</p>	
<p><b>Description of change to the environmental planning instrument to which this document applies and/or the development to which this document applies</b> – Section 7.4(3)(b) of the Act</p>	<p>Refer to Item 4 and the definition of Instrument Change in clause 2.</p>	
<p><b>The nature and extent of the provision to be made by the Developer under this document, the time or times by which the provision is to be made and the manner in which the provision is to be made</b> – Section 7.4(3)(c) of the Act</p>	<p>Refer to clause 8 of this Agreement</p>	
<p><b>Whether this document excludes (wholly or in part) or does not exclude the application of section 7.11, 7.12 or 7.24 to the development</b> – Section 7.4(3)(d) of the Act</p>	<p>Section 7.11</p>	<p><input type="checkbox"/> excluded <input checked="" type="checkbox"/> not excluded</p>
	<p>Section 7.12</p>	<p><input type="checkbox"/> excluded <input checked="" type="checkbox"/> not excluded</p>
	<p>Section 7.24</p>	<p><input type="checkbox"/> excluded <input checked="" type="checkbox"/> not excluded</p>
<p><b>Consideration of benefits under this document if section 7.11 applies</b> – Section 7.4(3)(e) of the Act</p>	<p>Benefits are not to be taken into consideration in determining a development contribution under section 7.11 of the Act</p>	

<b>Mechanism for dispute resolution</b> – Section 7.4(3)(f) of the Act	Refer to clause 12
<b>Enforcement of this document</b> – Section 7.4(3)(g) of the Act	Refer to clause 13
<b>Registration of this document</b> – Section 7.6 of the Act	Refer to clause 10.2
<b>No obligation to grant consent or exercise functions</b> – Section 7.4(9) of the Act	See clause 16 (no fetter)



Schedule 5: Explanatory Note



## Explanatory Note

### Exhibition of draft Voluntary Planning Agreement

#### Lot 135 in DP 748984 and Lot 4 in DP 388895, known as 135 George Street and 118 Harris Street, Parramatta NSW (Land)

*Environmental Planning & Assessment Regulation 2000 (clause 25E)*

#### Planning Agreement

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft voluntary planning agreement (**the Planning Agreement**) under Section 7.4 of the *Environmental Planning and Assessment Act 1979 (the Act)*.

The Planning Agreement will require the provision of monetary contributions, the carrying out of works, the dedication of land and granting of easements in favour of the Council in connection with a proposed change to provisions of the *Parramatta Local Environmental Plan 2011 (LEP)* to facilitate the proposed development of the Land.

This Explanatory Note has been prepared jointly between the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000 (the Regulations)*.

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

#### Parties

PIC Royal Investments Pty Ltd ABN 33 613 824 847 (**the Developer**) made an offer to City of Parramatta Council (**the Council**) to enter into a voluntary Planning Agreement, in connection with a Planning Proposal relating to the subject land.

#### Description of subject land

The land to which the Planning Agreement applies is described as Lot 135 in DP 748984 and Lot 4 in DP 388895, known as 135 George Street and 118 Harris Street, Parramatta NSW.

### Description of the Planning Proposal to which the Planning Agreement applies

The Planning Proposal (PP-2020-3128) amends the LEP to:

- (a) increase the maximum building height for the Land to 144 metres (approximately 44 storeys), being 165.6 metres inclusive of design excellence bonus (approximately 51 storeys);
- (b) increase the maximum FSR for the Land to a mapped FSR of 10:1, being 12:1 including the Design Excellence and High Performing Buildings bonuses;
- (c) include the following site-specific provisions:
  - (i) minimum commercial FSR equivalent to 1:1, with unlimited commercial floor space (within the maximum building height limit of 165.6 metres);
  - (ii) the high performing building bonus of 0.5:1 FSR applies;
  - (iii) the maximum car parking rates endorsed by Council as part of the Parramatta CBD Planning Proposal apply; and

- (iv) the Solar Access provisions related to Experiment Farm in accordance with draft Clause 7.4 as endorsed by Council as part of the Parramatta CBD Planning Proposal apply.

## **Summary of Objectives, Nature and Effect of the Planning Agreement**

### **Monetary Contribution**

The Planning Agreement requires a monetary contribution in the amount of \$2,821,500 if the Land is redeveloped in a manner which is directly correlated to, and made permissible by, the Planning Proposal and the development includes development for residential and commercial or wholly commercial purposes. Monetary contributions are to be indexed to CPI.

If the Council adopts the draft Parramatta CBD Local Infrastructure Contributions Plan 2021 on exhibition between 9 August 2021 and 20 September 2021, the Monetary Contribution will not be payable.

### **Works**

The Planning Agreement requires embellishment of a shared lane and pedestrian link, such as landscaping, amenities, furniture and seating. A Concept Design for the works is shown in Schedule 10 of the agreement.

### **Land**

The Planning Agreement requires dedication of:

- part of the Land for road widening along Harris Street (up to a maximum width of 7 metres); and
- part of the Land for the purpose of a splay corner located on the corner of George Street and Harris Street, as required by Transport for NSW and Council.

## **Assessment of the Merits of the Planning Agreement**

### **How the Planning Agreement Promotes the Objects of the Act**

By delivering contributions that will provide public amenities and services in connection with redevelopment of land, the draft Planning Agreement promotes the following objectives of the *Environmental Planning and Assessment Act 1979*:

- to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources (s1.3(a));
- to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment (s1.3(b)); and
- to promote the orderly and economic use and development of land (s1.3(c)).

### **Impacts of the Planning Agreement on the Public and Promotion of the Public Interest**

In general, the Planning Agreement will facilitate the Planning Proposal and the redevelopment of the Land, achieving strategic objectives for the Parramatta CBD. The redevelopment of the Land, the provision of monetary contributions towards public infrastructure and the public domain works and land dedication will have a positive impact on the public and promote the public interest.

The monetary contribution to be provided under the Planning Agreement will be used to provide community infrastructure. This contribution is required in addition to any contributions under sections 7.11, 7.12 and 7.24

of the *Environmental Planning and Assessment Act 1979*. Accordingly, the contribution will positively contribute to the extent and quality of infrastructure available for use by the community.

The public domain works, land dedication and granting of public access easements will improve pedestrian amenity, accessibility of sites and traffic flows within the CBD.

The draft Planning Agreement promotes the public interest by making contributions that will enable the Council to provide services and facilities for existing and future residents and visitors of the city.

The proposed contributions under the Planning Agreement are consistent with the Council's strategic plans and policy documents.

### **The Planning Purposes served by the Planning Agreement**

The monetary contribution will be used to fund services and facilities that will enable the City of Parramatta to support existing and future residents and visitors of the city.

The works will be carried out for the purposes of creating public accessways.

The land will be dedicated for the purposes of road widening and a splay corner.

### **Whether the Planning Agreement Conforms with the Council's Capital Works Program**

Council's Management Plan incorporates capital work projects aimed at providing and improving community infrastructure. In this respect, the provision of the contributions for the purpose of providing community infrastructure in the Parramatta City Centre conforms to that intent.

### **Whether the Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued**

The Planning Agreement requires the following to be satisfied prior to the issue of a construction certificate:

- 75% of the monetary contribution to be paid to Council (or provide a bank guarantee for the amount in accordance with the Planning Agreement).
- The provision of a bank guarantee to secure the completion of the works.
- Registration of a covenant restricting building or structures within the area of the public access easement.

The Planning Agreement requires the following to be satisfied prior to the issue of a final occupation certificate:

- 25% of the monetary contribution to be paid to Council, so that a total of 100% of the monetary contribution has been paid to Council.
- Completion of the works.
- Dedication of the Dedication Land.
- Registration of public access easements.

Schedule 6: Title searches



LAND REGISTRY SERVICES Title Search



NEW SOUTH WALES LAND REGISTRY SERVICES - TITLE SEARCH

FOLIO: 4/388895

SEARCH DATE	TIME	EDITION NO	DATE
11/4/2021	10:23 PM	11	19/10/2020

LAND

LOT 4 IN DEPOSITED PLAN 388895
LOCAL GOVERNMENT AREA CITY OF PARRAMATTA
PARISH OF ST JOHN COUNTY OF CUMBERLAND
TITLE DIAGRAM DP388895

FIRST SCHEDULE

PIC ROYAL INVESTMENTS PTY LTD (T AM877572)

SECOND SCHEDULE (4 NOTIFICATIONS)

- 1 RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
2 G202351 COVENANT
3 AM877569 LEASE TO ALBION HOTEL UT PTY LIMITED EXPIRES: 17/9/2022.
4 AQ480177 MORTGAGE TO FRONTIER OPPORTUNITY VIII LIMITED

NOTATIONS

UNREGISTERED DEALINGS: NIL

\*\*\* END OF SEARCH \*\*\*

3026

PRINTED ON 11/4/2021

\* Any entries preceded by an asterisk do not appear on the current edition of the Certificate of Title. Warning: the information appearing under notations has not been formally recorded in the Register. InfoTrack an approved NSW Information Broker hereby certifies that the information contained in this document has been provided electronically by the Registrar General in accordance with Section 90B(2) of the Real Property Act 1900.



LAND  
REGISTRY  
SERVICES

# Title Search



NEW SOUTH WALES LAND REGISTRY SERVICES - TITLE SEARCH

FOLIO: 135/748984

SEARCH DATE	TIME	EDITION NO	DATE
11/4/2021	10:23 PM	10	19/10/2020

LAND

LOT 135 IN DEPOSITED PLAN 748984  
AT PARRAMATTA  
LOCAL GOVERNMENT AREA CITY OF PARRAMATTA  
PARISH OF ST JOHN COUNTY OF CUMBERLAND  
TITLE DIAGRAM DP748984

FIRST SCHEDULE

PIC ROYAL INVESTMENTS PTY LTD (T AM877575)

SECOND SCHEDULE (6 NOTIFICATIONS)

- 1 RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
- 2 AC868216 POSITIVE COVENANT
- 3 AC868217 RESTRICTION AS TO USER (S.88E(3) CONVEYANCING ACT, 1919)
- 4 AE496142 POSITIVE COVENANT
- 5 AM877569 LEASE TO ALBION HOTEL UT PTY LIMITED EXPIRES: 17/9/2022.
- 6 AQ480177 MORTGAGE TO FRONTIER OPPORTUNITY VIII LIMITED

NOTATIONS

UNREGISTERED DEALINGS: NIL

\*\*\* END OF SEARCH \*\*\*

3026

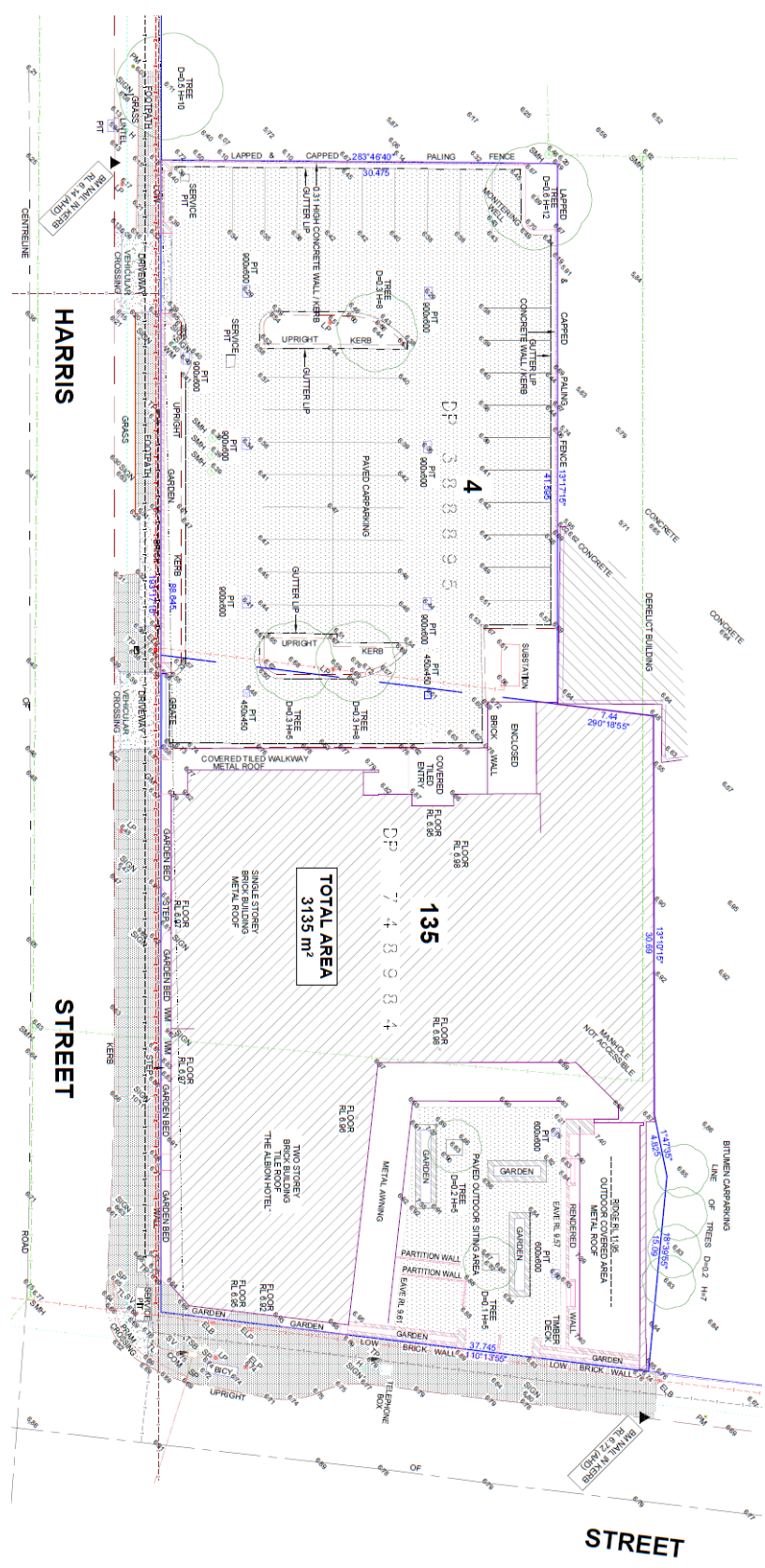
PRINTED ON 11/4/2021

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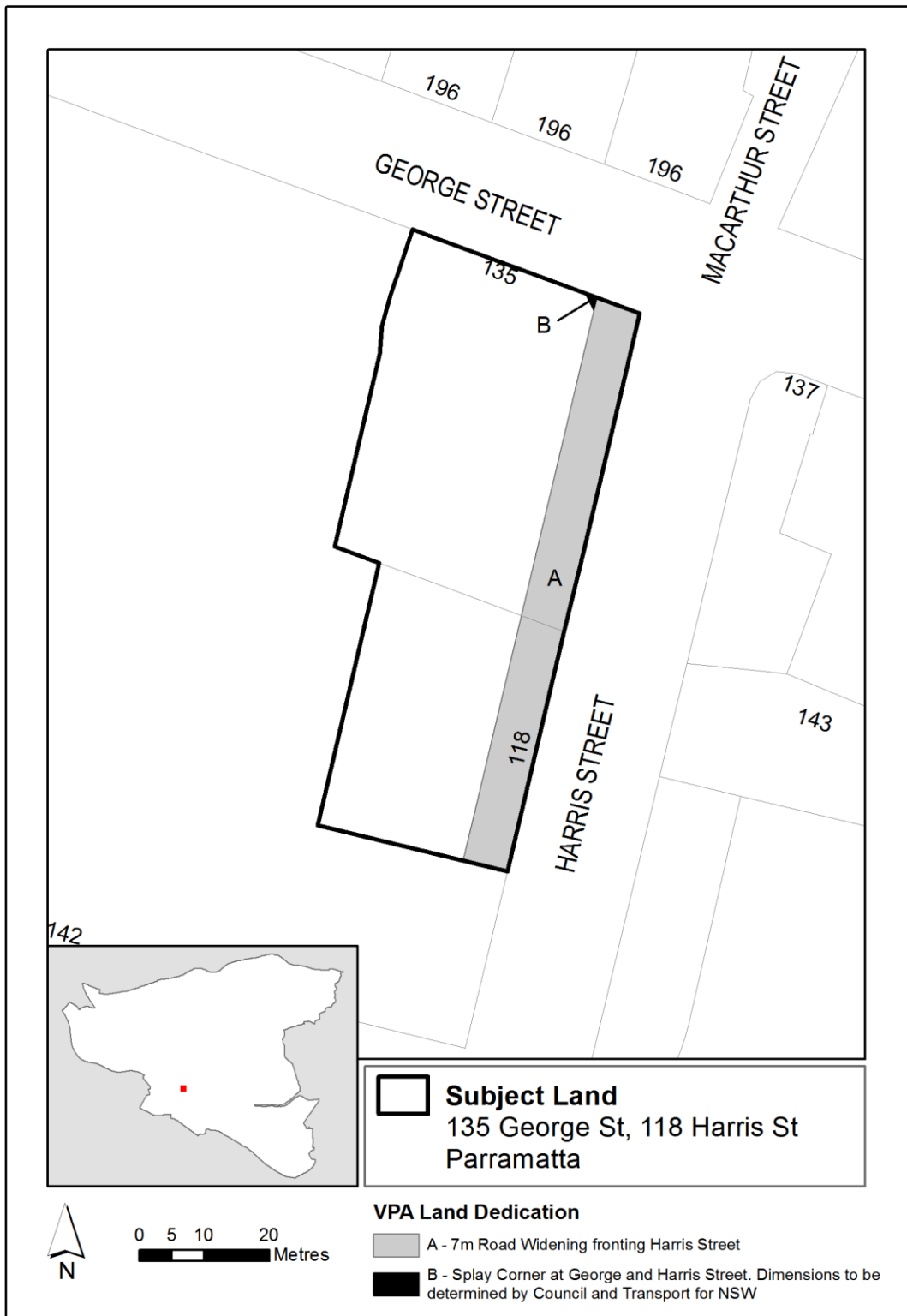
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Received: 11/04/2021 22:23:24

# Schedule 7: Plan showing Land

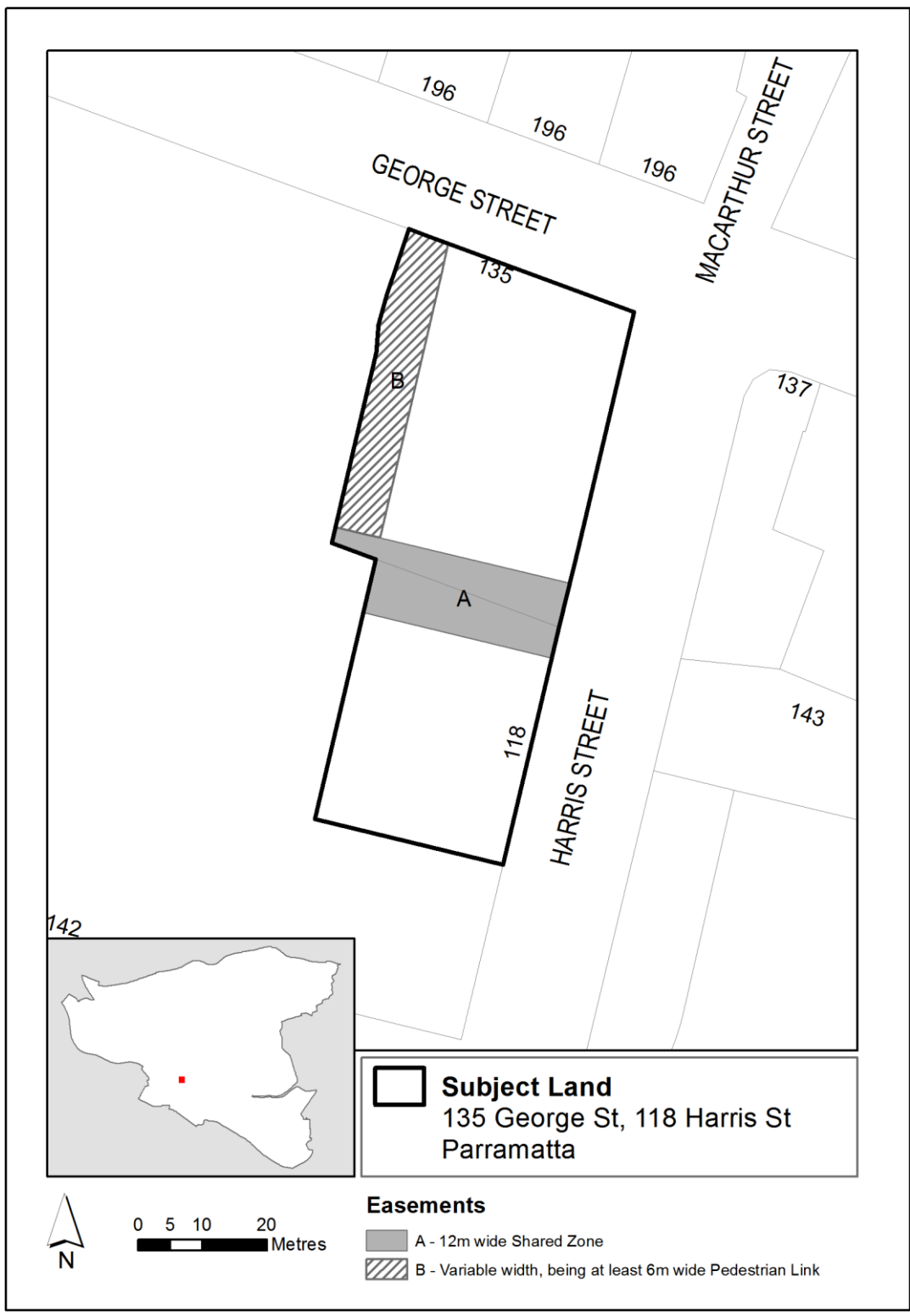


# Schedule 8: Plan showing Dedication Land



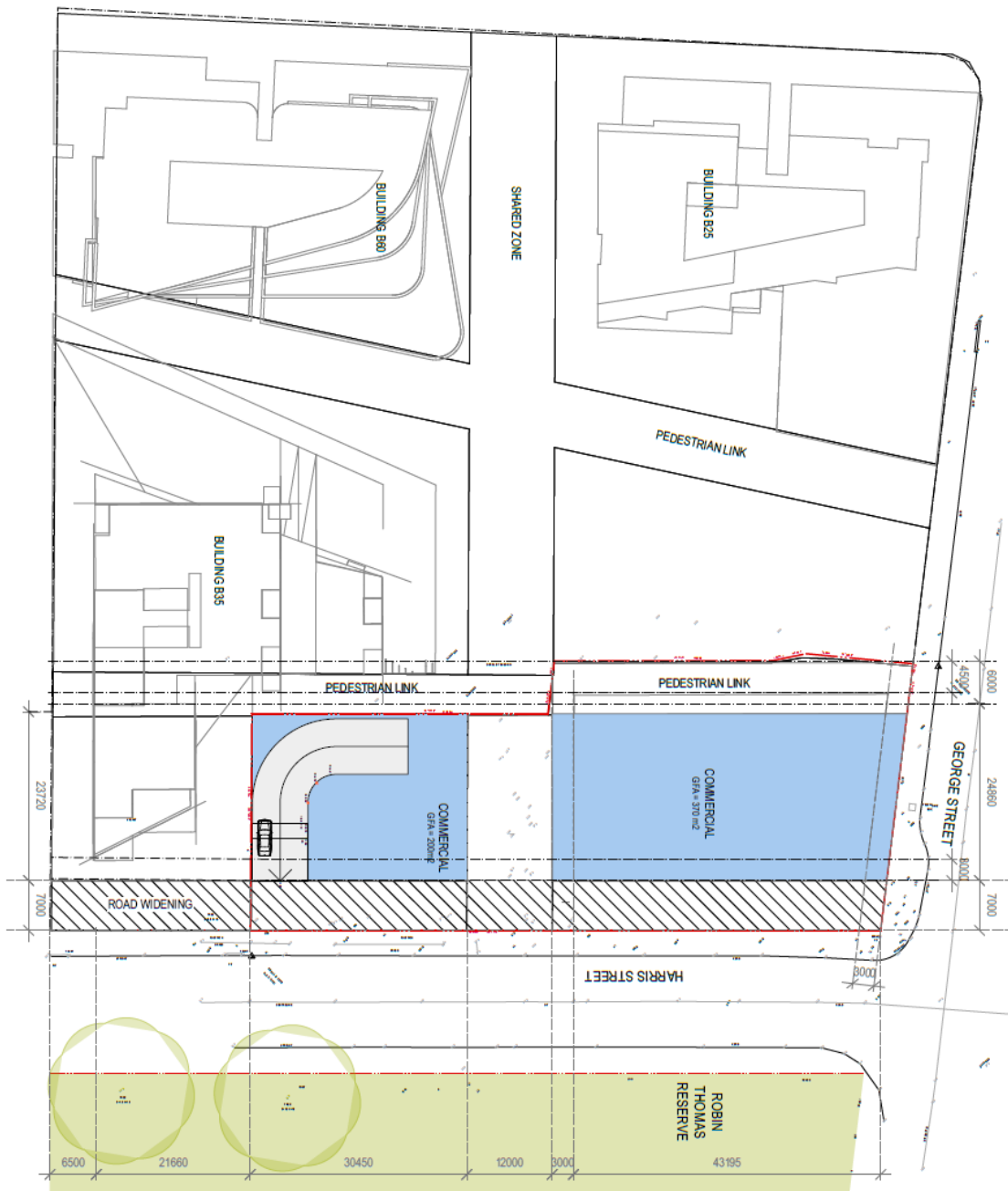


# Schedule 9: Plan showing Easement Site





# Schedule 10: Concept Design for the Works in Schedule 1



THE PROPOSAL | 5.11  
 135 GEORGE ST + 118 HARRIS ST, PARRAMATTA  
 LEVEL 01



**ALEKSANDAR**  
**PROJECTS**  
ARCHITECTURE  
INTERIOR DESIGN  
LANDSCAPE ARCHITECTURE



# Schedule 11: Reference Design

