

Voluntary Planning Agreement

[Date]

City of Parramatta Council

ABN 49 907 174 773

and

1. PFG Property Investments No.1 Pty Ltd
ACN 646 014 986
2. PFG Property Investments No.2 Pty Ltd
ACN 646 014 708
3. TFG Property Investments No.1 Pty Ltd
ACN 646 014 664
4. TFG Property Investments No.2 Pty Ltd
ACN 646 014 815

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DRAFT

Agreement

Date

Parties

Council

Name City of Parramatta Council (**Council**)

ACN 49 907 174 773

Contact Manager, Land Use Planning

Telephone

Contact email

Landowner No.1

Name PFG Property Investments No.1 Pty Ltd;
TFG Property Investments No.1 Pty Ltd
(Collectively, **Landowner No.1**)

ACN 646 014 986; 646 014 664

Contact

Telephone

Contact email

Landowner No.2

Name PFG Property Investments No.2 Pty Ltd;
TFG Property Investments No.2 Pty Ltd
(Collectively, **Landowner No.2**)

ACN 646 014 708; 646 014 815

Contact

Telephone

Contact email

Background

- A. Landowner No.1 and Landowner No.2 are the registered proprietors of the Land.
- B. A Development Control Plan for the Land has been prepared.
- C. The Council has resolved to endorse the Development Control Plan for the purpose of public exhibition.
- D. A Development Application on the land will be submitted to the relevant consent authority for Development Consent.

- E. Landowner No.1 and Landowner No.2 have made an offer to enter into this agreement to make Monetary Contributions (by Landowner No.1) and for the construction of a Pedestrian Through- Site Link for public purposes (by Landowner No.2) if Development Consent is granted.

Operative part

1 Definitions

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

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

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

Affordable Housing has the meaning given in the Act, read in conjunction with s13 of the *State Environmental Planning Policy (Housing) 2021*;

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

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

Business Day means a day on which banks are open for general banking business in Sydney, excluding Saturdays and Sundays;

Certificate of Practical Completion means the written certificate confirming the Works have been completed to the Council's satisfaction, issued under clause 8.1 of Schedule 2;

City of Parramatta Rosehill Ward means the division of the City of Parramatta Local Government Area established under s210 of the *Local Government Act 1993* known as the Rosehill Ward;

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

Cost means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature;

Construction Certificate has the same meaning as in the Act;

Contributions means the Monetary Contribution and the Pedestrian Through-Site Link;

Contributions Plan has the same meaning as in the Act;

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

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

Development means the mixed-use development with associated car parking being the subject of the Proposed Development Application;

Development Application has the same meaning as in the Act;

Development Consent is any development consent (as defined in the Act) granted to the Proposed Development Application;

Development Control Plan means the site-specific development control plan for the Land;

Easement means a public access easement between Parramatta Road and Victoria Street 6 metres wide in the location generally shown in the Easement Plan the terms of which are set out in Schedule 3 and subject to clause 8.4;

Easement Area means the part of Land No.2 included within the Easement;

Easement Plan means the plan in Annexure 'B'

Explanatory Note means an explanatory note prepared under clause 205(1) of the Regulation;

GST has the same meaning as in the GST Law;

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

Insolvent means, in relation to a party:

- (a) that party makes an arrangement, compromise or composition with, or assignment for, the benefit of its creditors or a class of them;
- (b) a receiver, receiver and manager, administrator, provisional liquidator, trustee, controller, inspector or analogous person is appointed in relation to, or over, all or any part of that party's business, assets or securities;
- (c) a presumption of insolvency has arisen under legislation because of the party's failure to comply with a statutory demand or analogous process;
- (d) an application for the winding up of, or for the appointment of a receiver to, that party, other than winding up for the purpose of solvent reconstruction or re amalgamation, is presented and not withdrawn or dismissed within 21 days (or such longer period agreed to by the parties), or an order is made or an effective resolution is passed for the winding up of, or for the appointment of a receiver to, that party, or any analogous application is made or proceedings initiated;
- (e) any shareholder or director of that party convenes a meeting for the purpose of considering or passing any resolution for the winding up or administration of that party;
- (f) that is an individual, a creditor's petition or a debtor's petition is presented to the Official Receiver or analogous authority in relation to that party;
- (g) an execution or analogous process is levied or enforced against the property of that party;
- (h) that party ceases or suspends, or threatens to cease or suspend, the conduct of all or a substantial part of its business;
- (i) that party disposes of, or threatens to dispose of, a substantial part of its assets;
- (j) that party stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts; or
- (k) that party is unable to pay the party's debts as and when they become due and payable.

Land means the Land No.1 and the Land No.2 as depicted in Annexure A to this Deed;

Land No.1 means:

Lot and DP No.:	Address:	Owner:
Lot 1 DP 89526	173 Parramatta Road, Granville	PFG Property Investments No.1 Pty Ltd and TFG Property Investments No.1 Pty Ltd
Lot 1 DP 81084	171 Parramatta Road, Granville	PFG Property Investments No.1 Pty Ltd and TFG Property Investments No.1 Pty Ltd

subject to clause 6

Land No.2 means:

Lot and DP No.:	Address:	Owner:
Lot 1 DP 615141	187 Parramatta Road, Granville	PFG Property Investments No.2 Pty Ltd and TFG Property Investments No.2 Pty Ltd
Lot 1 DP 504298	181-185 Parramatta Road, Granville	PFG Property Investments No.2 Pty Ltd and TFG Property Investments No.2 Pty Ltd
Lot 2 DP 89526	181-185 Parramatta Road, Granville	PFG Property Investments No.2 Pty Ltd and TFG Property Investments No.2 Pty Ltd
Lot 1 DP 79102	181-185 Parramatta Road, Granville	PFG Property Investments No.2 Pty Ltd and TFG Property Investments No.2 Pty Ltd
Lot 1 DP 79624	181-185 Parramatta Road, Granville	PFG Property Investments No.2 Pty Ltd and TFG Property Investments No 2 Pty Ltd
Lot X DP 163366	64 Victoria Street, Granville	PFG Property Investments No.2 Pty Ltd and TFG Property Investments No 2 Pty Ltd

Lot A DP 160406	60 Victoria Street, Granville	PFG Property Investments No.2 Pty Ltd and TFG Property Investments No 2 Pty Ltd
Lot 58 DP 869379	58 Victoria Street, Granville	PFG Property Investments No.2 Pty Ltd and TFG Property Investments No 2 Pty Ltd

subject to clause 6

Landowner No.1 means: PFG Property Investments No.1 Pty Ltd ACN 646 014 986 and TFG Property investments No 1 Pty Ltd ACN 646 014 664, being the owners of Land No.1 or their successors in title;

Landowner No.2 means PFG Property Investments No.2 ACN 646 014 708 Pty Ltd ACN 646 014 708 and TFG Property Investments No 2 Pty Ltd ACN 646 014 815 being the owners of Land No.2 or their successors in title;

Law means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and
- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b);

Modification Application has the same meaning as in the Act;

Monetary Contribution means the monetary contribution payable under clause 8 of this agreement;

Occupation Certificate has the same meaning as in the Act, and includes an occupation certificate or a partial occupation certificate as the case may be;

Pedestrian Through-Site Link means the construction of a minimum 6-metre-wide (comprising a 4m wide pathway and 2m wide landscape edge), 24/7 publicly accessible pedestrian through-site link on Land No.2 consistent with the Parramatta Development Control Plan 2024 to provide future pedestrian access from Parramatta Road to Victoria Street.

Proposed Development Application means a Development Application to be lodged with Council for a mixed use development being multi-storey high density development with associated car parking with a maximum FSR of 4.5:1 on the Land as envisaged by the Development Control Plan.

Public Purpose means the public purpose to which the Monetary Contribution will be applied (being the provision of Affordable Housing) and the Works constructed (being the provision of a Pedestrian Through-Site Link), subject to clause 8 of this Agreement.

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

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

Works means the construction of the Pedestrian Through-Site Link

2 Interpretation

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

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

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

3 Planning Agreement under the Act

- (a) The parties agree that this agreement is a planning agreement within the meaning of section 7.4 of the Act.
- (b) Schedule 4 of this agreement summarises the requirements for planning agreements under section 7.4 of the Act and the way this agreement addresses those requirements.

4 Application of this agreement

4.1 This agreement applies to:

- (a) The Proposed Development Application and
- (b) the Land.

4.2 Landowner No.1 and Landowner No.2 each acknowledge and agree that the Development Consent may be granted subject to a condition requiring this agreement to be complied with in connection with the carrying out of the Proposed Development and Landowner No.1 and Landowner No.2 are not to object to, or seek a review of, or appeal against the imposition of such a condition.

4.3 Subject to the terms of this agreement, Landowner No.1 and Landowner No.2 each acknowledge and agree that this agreement and the obligations under this agreement continue to apply even if the Development Consent is modified or amended.

5 Operation of this agreement

- (a) This agreement commences on and from the date it is executed by all parties.

- (b) For the avoidance of doubt, the obligations to deliver contributions under clause 8 do not take effect until:
 - (i) the Development Control Plan is in effect and
 - (ii) Development Consent is granted to the Proposed Development Application for Land No.1 and or Land No.2, and
 - (iii) the time or event specified in the Contributions Schedule as the time or event by which the obligation to deliver the contribution arises occurs.

6 Ownership

The parties acknowledge that the ownership of the Land may change between Landowner No. 1 and Landowner No. 2.

7 Development Application

7.1 The parties acknowledge:

- (a) that separate Development Applications may be lodged in relation to Land No. 1 and Land No. 2 and for stages within Land No.1 and Land No.2; and
- (b) obligations under this agreement in clause 8.1(a) and 8.2 can be transferred in accordance with clause 14.

7.2 Proposed Development Application

- (a) The Contributions under Clause 8 of this agreement only relate to the Development, being the subject of the Proposed Development Application

8 Contributions to be made under this agreement

8.1 Landowner No.1 and Landowner No.2 are each to make the applicable Contributions for Landowner No.1 and Landowner No.2 to the Council in accordance with the Contributions Table at Schedule 1 of this agreement and any other provision of this agreement requiring Landowner No.1 and Landowner No.2 to make Development Contributions.

8.2 *Monetary Contribution*

- (a) Landowner No.1 is to pay a monetary contribution in the amount of \$1,500,000.00 or an amount calculated in accordance with the following formula, whichever is greater (**the Monetary Contribution**):

$$\begin{array}{r}
 \$1,500,000.00 \quad \times \quad \frac{\text{The CPI at the time of payment}}{\text{The CPI at the date of this deed}}
 \end{array}$$

- (b) The Monetary Contribution must be paid to Council, prior to the issue of any Construction Certificate for above ground works for the Development Consent granted for the Development on Land No.1.
- (c) The Monetary Contribution must be paid in one instalment by way of bank cheque in favour of Council or by deposit by means of electronic funds transfer into an account specified by Council.
- (d) The Monetary Contribution will be taken to have been made when the Council notifies Landowner No.1 in writing that the bank cheque has been received and cleared funds or electronic funds have been deposited in the Council's bank account.
- (e) The parties agree and acknowledge that the Monetary Contribution will be used by the Council towards the provision of Affordable Housing.
- (f) Despite clause 8.2(e), the Council may apply a part or all of the Monetary Contribution made under this agreement towards a public purpose other than the public purpose specified in this deed if:
 - (i) the Council reasonably considers that the public interest would be better served by applying the Monetary Contribution towards that other purpose rather than the purpose so specified; and
 - (ii) that other purpose is located within and primarily for the benefit of the City of Parramatta Rosehill Ward.

8.3 *Pedestrian Through-Site link*

- (a) Subject to issue of a Construction Certificate with respect to the Development Consent on Land No.2, Landowner No.2 will carry out the Works in accordance with this agreement, the Construction Terms in Schedule 2 and any future development consent granted for the Works.
- (b) The detailed design and location of the Pedestrian Through-Site Link will be subject to Clause 5 of Schedule 2 of this Deed and any conditions of consent imposed by Council on the Development Consent which includes the construction of the Pedestrian Through-Site Link.
- (c) The Works will be taken to have been completed for the purposes of this deed when a Certificate of Practical Completion has been issued for the Works.
- (d) The Applicants are responsible for the ongoing maintenance of the Works, including all costs associated with maintenance. In the event of an emergency, Council will undertake maintenance works, noting that the costs associated with that maintenance will be the responsibility of the Applicants.
- (a) Practical Completion of the Works is to occur prior to the issue of any Occupation Certificate for the Development on Land No.2. The Works will be carried out following the coming into force of the Development Control Plan and following the granting of Development Consent which includes the Pedestrian Through-Site Link.
- (b) The parties agree and acknowledge that the Works serve the Public Purpose.

- (c) The parties agree and acknowledge that the Works will remain in private ownership.

8.4 *Public Access and Easements*

- (a) Landowner No.2, at no cost to Council, must register against the title to Land No.2 an easement in gross burdening the Easement Area Through-Site in favour of the Council permitting public access over the Pedestrian Through-Site Link in accordance with the Easement Terms.
- (b) The Parties acknowledge that the Easement Area is subject to the final design and location of the Pedestrian Through-Site Link as determined in the Development Consent granted by Council that relates to the Pedestrian Through-Site Link.
- (c) Any requirement to register an easement, covenant or other instrument against the title to Land No.2 will be satisfied when Council is provided a copy of the relevant title search showing the registration of the instrument.
- (d) The Easement required under clause 8.4(a) must be registered prior to the issue of any Occupation Certificate for the Development on Land No.2.
- (e) The parties agree that the proposed 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 Land No.2;
 - (ii) To improve pedestrian circulation and the amenity of the public domain in the vicinity of Land No.2.
- (f) The parties agree and acknowledge that the obligations under this clause 8 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.

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

- (a) This agreement does not exclude the application of section 7.11 of the Act to the Development, subject to clause (e) below.
- (b) This agreement does not exclude the application of section 7.12 of the Act to the Development.
- (c) This agreement does not exclude the application of section 7.24 of the Act to the Development.
- (d) The benefits under this agreement are to be taken into consideration in determining a development contribution under section 7.11 of the Act.
- (e) The Council will not levy any contribution under section 7.11, or any other policy or legislation, for the purpose of Affordable Housing in relation to a Development

Application on the Land. The parties agree that the Monetary Contribution made under this agreement is the sole contribution required for Affordable Housing in relation to the Development on the Land.

10 Registration of this agreement

10.1 Landowner No.1's Interests and Landowner No.2's Interests

- (a) Landowner No.1 represents and warrants to the Council that on the date of this agreement it is the registered proprietor of Land No.1.
- (b) Landowner No.2 represents and warrants to the Council that on the date of this agreement it is the registered proprietor of Land No.2.

10.2 Registration of this agreement

- (a) Landowner No.1 agrees to procure the registration of this agreement under the *Real Property Act 1900 (NSW)* in the relevant folios of the Register for Land No.1 in accordance with section 7.6 of the Act following the execution of this agreement.
- (b) Landowner No.2 agrees to procure the registration of this agreement under the *Real Property Act 1900 (NSW)* in the relevant folios of the Register for Land No.2 in accordance with section 7.6 of the Act following the execution of this agreement.
- (c) Upon the execution of this agreement, Landowner No.1 and Landowner No.2 must each, at their own expense:
 - (i) procure the lodgement of this agreement with the Registrar-General as soon as reasonably practicable, but in any event, no later than 10 Business Days after that date;
 - (ii) procure the registration of this agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this agreement is lodged for registration; and
 - (iii) provide documentary evidence that the registration of this agreement has been completed to Council within 5 Business Days of receiving confirmation that the registration has occurred.
- (d) Landowner No.1 and Landowner No.2 must each, at their own expense, take all practical steps, and otherwise do anything that the Council reasonably requires to procure:
 - (i) The consent of each person who:
 - (A) has an estate or interest in the Land registered under the *Real Property Act 1900 (NSW)*; or
 - (B) is seized or possessed of an estate or interest in the Land,
 - (ii) An acceptance of the terms of this agreement and an acknowledgement in writing from any existing mortgagee in relation to the Land that the existing mortgagee will adhere to the provisions of this agreement if it takes possession of the Land as mortgagee in possession,
 - (iii) The execution of any documents; and

- (iv) The production of the relevant duplicate certificates of title, to enable the registration of this agreement in accordance with this clause 10.2.
- (e) Landowner No.1 consents to the registration of the agreement on the relevant folios of the Register for Land No.1 in accordance with this clause 10.2.
- (f) Landowner No.2 consents to the registration of the agreement on the relevant folios of the Register for Land No.2 in accordance with this clause 10.2.

10.3 *Removal from Register*

- (a) The Council will provide a release and discharge of this agreement so that it may be removed from the folios of the Register for Land No. 1 (or any part of it) if the Council is satisfied the owner of Land No.1 (or the relevant part of Land No.1) has duly fulfilled their obligations under this agreement with respect to Land No.1 (or the relevant part of Land No.1) and are not otherwise in default of any of the obligations under this agreement with respect to Land No.1 (or the relevant part of Land No.1).
- (b) The Council will provide a release and discharge of this agreement so that it may be removed from the folios of the Register for Land No. 2 (or any part of it) if the Council is satisfied the owner of Land No.2 (or the relevant part of Land No.2) has duly fulfilled their obligations under this agreement with respect to Land No.2 (or the relevant part of Land No.2) and are not otherwise in default of any of the obligations under this agreement with respect to Land No.2 (or the relevant part of Land No.2).

11 Assignment, restriction and caveat on dealings

11.1 *Assignment*

- (a) A party must not assign or deal with any right under this agreement without the prior written consent of the other parties (which shall not be unreasonably withheld).
- (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) The Council consents to any assignment or dealing with any right under this agreement of a kind described in clause 11.1(a) which involves:
 - (i) the substitution of obligations on or rights in favour of Landowner No.1 to Landowner No.2; or
 - (ii) the substitution of obligations on or rights in favour of Landowner No.2 to Landowner No.1

to the extent that assignment or dealing relates to the transfer of Ownership of part of the Land from Landowner No.1 to Landowner No.2 or from Landowner No.2 to Landowner No.1 as the case may be.

11.2 *Restriction*

- (a) Landowner No.1 is not to:

- (i) sell or transfer Land No.1, or
- (ii) assign Landowner No.1's rights or obligations under this agreement, or novate this agreement,

to any person unless:

- (iii) Landowner No.1 has, at no cost to the Council, first procured the execution by the person to whom Land No.1 or part is to be sold or transferred or Landowner No.1's rights or obligations under this agreement are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
- (iv) Landowner No.1 satisfies the Council that the rights of the Council will not be diminished or fettered in any way, and
- (v) the Council has given written notice to Landowner No.1 stating that it reasonably considers that the purchaser, transferee, assignee or novate, is reasonably capable of performing its obligations under this agreement, and
- (vi) Landowner No.1 is not in breach of this agreement, and
- (vii) the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld, and
- (viii) Any default under any provisions of this agreement has been remedied or waived by the Council, on such conditions as the Council may determine, and
- (ix) Landowner No.1 and the transferee pay the Council's reasonable costs in relation to the assignment.

(b) Landowner No.2 is not to:

- (i) sell or transfer Land No.2, or
- (ii) assign Landowner No.2's rights or obligations under this agreement, or novate this agreement,

to any person unless:

- (iii) Landowner No.2 has, at no cost to the Council, first procured the execution by the person to whom Land No.2 or part is to be sold or transferred or Landowner No.2's rights or obligations under this agreement are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
- (iv) Landowner No.2 satisfies the Council that the rights of the Council will not be diminished or fettered in any way, and
- (v) the Council has given written notice to Landowner No.2 stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this agreement, and
- (vi) Landowner No.2 is not in breach of this agreement, and
- (vii) the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld; and

- (viii) Any default under any provisions of this agreement has been remedied or waived by the Council, on such conditions as the Council may determine, and
 - (ix) Landowner No.2 and the Transferee pay the Council's reasonable costs in relation to the assignment.
- (c) The Council must provide any notice, consent or conditions required by clause 11.2(a) or 11.2(b) of this agreement within 10 business days of receipt of notice from Landowner No.1 or Landowner No.2 as applicable of the proposed transfer.
- (d) Clause 11.2(a) and (b) does not apply to:
- (i) the transfer of part of Land No.1 to Landowner No.2;
 - (ii) the transfer of part of Land No.2 to Landowner No.1;
 - (iii) the assignment of rights or obligations on Landowner No.1 to Landowner No.2 (to the extent that those rights or obligations relate to a transfer as described in clause 11.2(d)(i) of this agreement); or
 - (iv) the assignment of rights or obligations on Landowner No.2 to Landowner No.1 (to the extent that those rights or obligations relate to a transfer as described in clause 11.2(d)(ii) of this agreement).

11.3 *Continued performance of obligations by Landowner No.1 and Landowner No.2*

- (a) Subject to clause 11.2, Landowner No.1 acknowledges and agrees that it remains liable to fully perform its obligations under this agreement unless and until it has complied with its obligations under this agreement.
- (b) Subject to clause 11.2, Landowner No.2 acknowledges and agrees that it remains liable to fully perform its obligations under this agreement unless and until it has complied with its obligations under this agreement

11.4 *Exclusion from restriction*

- (a) Clause 11.2 does not apply in relation to any sale or transfer of the Land if this agreement is registered on the title to the Land at the time of the sale.

11.5 *Removal from Register*

- (a) The Council will agree to provide a release and discharge of this agreement from a residential lot following strata subdivision of Land No.2 upon the request of the relevant Landowner prior to fulfillment of the relevant Landowner's obligations, subject to the agreement being registered on title to the common property within the strata subdivision.

11.6 *Caveat*

- (a) Landowner No.1 acknowledges and agrees that:
 - (i) when this agreement is executed, the Council is deemed to have acquired and Landowner No.1 is deemed to have granted, an equitable estate and interest in Land No.1 for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently the Council will have a sufficient interest in Land No.1 in respect of which to lodge a caveat over Land No.1 notifying that interest;

- (ii) it will not object to the Council lodging a caveat in the relevant folios of the Register for Land No.1, 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) Landowner No.2 acknowledges and agrees that:
- (i) when this agreement is executed, the Council is deemed to have acquired and Landowner No.2 is deemed to have granted, an equitable estate and interest in Land No.2 for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently the Council will have a sufficient interest in Land No.2 in respect of which to lodge a caveat over Land No.2 notifying that interest;
 - (ii) it will not object to the Council lodging a caveat in the relevant folios of the Register for Land No.2, nor will it seek to remove any caveat lodged by the Council provided the caveat does not prevent registration of any dealing or plan other than a transfer.
- (c) The Council acknowledges and agrees that:
- (i) the Council must, at the cost of the owner of Land No.1, register a withdrawal of any caveat in respect of Land No.1 within 10 Business Days after Landowner No.1 has paid the Monetary Contribution and
 - (ii) the Council must, at the cost of the owner of Land No.2, register a withdrawal of any caveat in respect of Land No.2 within 10 Business Days after the Practical Completion of the Works;
 - (iii) the Council must not lodge any other caveats on the titles to any of Land No.1 and Land No.2, other than in accordance with clause 11.6(a) and (b).

12 Review of this agreement

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

13 Dispute Resolution

13.1 Reference to Dispute

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

13.2 Notice of Dispute

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

- (ii) The alleged basis of the dispute, and
- (iii) The position which the party issuing the Notice of Dispute believes is correct.

13.3 *Representatives of Parties to Meet*

- (a) The representatives of the parties must promptly (and in any event within 20 Business Days of the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute.
- (a) The parties may, without limitation:
 - (i) resolve the dispute during the course of that meeting,
 - (ii) agree that further material or expert determination in accordance with clause 13.6 about a particular issue or consideration is needed to effectively resolve the dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or
 - (iii) agree that the parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

13.4 *Further Notice if Not Settled*

If the dispute is not resolved within 10 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (**Determination Notice**) by mediation under clause 13.5 or by expert determination under clause 13.6.

13.5 *Mediation*

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

- (a) The parties must agree to the terms of reference of the mediation within 15 Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- (b) The mediator will be agreed between the parties, or failing agreement within 15 Business Days of receipt of the Determination Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) The mediator appointed pursuant to this clause 13.5 must:
 - (i) Have reasonable qualifications and practical experience in the area of the dispute; and
 - (ii) Have no interest or duty which conflicts or may conflict with his or her function as a mediator he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) The mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;

- (e) The parties must within 15 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation (except if a resolution of the Council is required to appoint a representative, the Council must advise of the representative within 5 Business Days of the resolution);
- (f) The parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (g) In relation to costs and expenses:
 - (iii) Each party will bear its own professional and expert costs incurred in connection with the mediation; and
 - (iv) The costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

13.6 *Expert determination*

If the dispute is not resolved under clause 13.3 or clause 13.5, or the parties otherwise agree that the dispute may be resolved by expert determination, the parties may refer the dispute to an expert, in which event:

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

13.7 *Litigation*

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

13.8 *No suspension of contractual obligations*

Subject to any interlocutory order obtained under clause 13.1, the referral to or undertaking of a dispute resolution process under this clause 13 does not suspend the parties' obligations under this agreement.

14 Enforcement

14.1 *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 13 of this agreement.

14.2 *Restriction on the issue of Certificates*

- (a) In accordance with section 6.8 of the Act and any associated regulations any obligations to:
 - (i) pay the Monetary Contribution under clause 8.2, must be satisfied prior to the issue of any Construction Certificate for above ground works for the Development on any part of Land No.1.
- (b) In accordance with section 6.10 of the Act and any associated regulations the obligations to:
 - (ii) Register the Easement under clause 8.4, must be satisfied prior to the issue of any Occupation Certificate for the Development on Land No.2.

14.3 *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.

15 Approvals and consents

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

16 No fetter

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 any Development Application or any other application for Development Consent in relation to the Land (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 (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*

Landowner No.1 and Landowner No.2 acknowledge 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

17.1 *Notices*

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

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by email or fax at the address or fax number below, or at the address or fax number last notified by the intended recipient to the sender after the date of this agreement:

- (i) to City of Parramatta Council: PO Box 32, Parramatta, NSW 2124
Email: acrkovski@cityofparramatta.nsw.gov.au
Attention: Manager, Land Use Planning
 - (ii) Landowner No.1 and Landowner No.2 Suite 3, Level 3, 2 Grosvenor Street, Bondi Junction NSW 2022
Email:
Attention:
- (c) is taken to be given or made:
- (i) in the case of hand delivery, when delivered;
 - (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
- (d) if under clause (c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

17.2 Notices sent by email:

- (a) A party may serve a Notice by email if the Notice:
- (i) includes a signature block specifying:
 - (A) the name of the person sending the Notice; and
 - (B) the sender's position within the relevant party;
 - (ii) states in the body of the message or the subject field that it is sent as a Notice under this agreement;
 - (iii) contains an express statement that the person sending the Notice has the authority to serve a Notice under this agreement;
 - (iv) is sent to the email address below or the email address last notified by the intended recipient to the sender:
 - (A) to City of Parramatta Council: Attention: Manager, Land Use Planning
acrkovski@cityofparramatta.nsw.gov.au
 - (B) Landowner No.1 and Landowner No.2 : Attention:
- (b) The recipient of a Notice served under this clause 17.2 must:
- (v) promptly acknowledge receipt of the Notice; and
 - (vi) keep an electronic copy of the Notice,
- (c) Failure to comply with clause 17.2 does not invalidate service of a Notice under this clause.

17.3 *Receipt of Notices sent by email*

- (a) A Notice sent under clause 17.2 is taken to be given or made:
 - (i) when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above;
 - (ii) when the Notice enters an information system controlled by the recipient;
or
 - (iii) when the Notice is first opened or read by the recipient,
whichever occurs first.
- (b) If under clause 17.3 a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it will be taken to have been given or made at the start of business on the next Business Day in that place.

18 General

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:
 - (iii) bind another party; or
 - (iv) 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) Landowner No.1 and Landowner No.2 must pay the Council's legal costs and disbursements in connection with the negotiation, preparation, execution, carrying into effect, enforcement and release and discharge of this agreement, including the reasonable costs of obtaining any legal advice in connection with this agreement, no later than 10 Business Days after receiving a demand from the Council to pay such costs which will not be greater than \$13,000.00.
- (b) In the event that a further review of this agreement is required in the future, Landowner No. 1 and Landowner No.2 agree to reimburse Council's legal fees reasonably incurred with doing so to a maximum amount agreed in advance for that further review.
- (c) Landowner No.1 and Landowner No.2 agree 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.
- (d) The Landowner agrees to pay Council any 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:
 - (iv) despite the operation of clause (a), the provision is void, voidable or unenforceable if it is not severed; and
 - (v) 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 (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 Landowner No.1 or Landowner No.2 as relevant
- (d) 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.
- (e) If the Council is obliged to pay any GST on any supply made under or in accordance with this agreement, Landowner No.1 or Landowner No.2 as relevant 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.

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No.	Item	Public Purpose	Type of Contribution	Scope	Timing of Provision	Estimated Amount / Value of Item
1.	Monetary Contribution	The provision of Affordable Housing.	Monetary Contribution	Provision of a monetary contribution	Prior to the issue of any Construction Certificate for above ground works with respect to the Development Consent granted in relation to Land No.1.	\$1,500,000
2.	Pedestrian Through-Site Link.	The provision of public pedestrian access	Construction of the Works	Provision, construction and embellishment of a Pedestrian Through-Site Link through construction of the Works	Practical Completion of the Works is to occur prior to the issue of any Occupation Certificate for the Development on Land No.2.	\$1,764,000
3	Easement	The provision of public pedestrian access	Easement over the Pedestrian Through-Site Link	Registration on title of an easement in gross burdening the Easement Area, being that part of the Land on which the Pedestrian Through-Site Link will be located,	Prior to the issue of any Occupation Certificate for the development on Land No.2.	\$0
\$3,264,000						

Schedule 2 Construction Terms

1 Interpretation

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

Applicant means Landowner No.2.

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

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

Defects Liability Period means in respect of each item of building works which together comprise the Works the period of 12 months from the date on which the Certificate of Practical Completion is issued for the Works.

Detailed Design means the final specifications and finishes for the Works prepared in accordance with clause 5.2 of this Schedule 2 **Error! Reference source not found.** and will include the design of the Works, the location for the Works, installation specifications and estimated costs of construction and/or installation.

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

Superintendent means the Superintendent appointed under any Construction Contract.

Works means the Pedestrian Through-Site Works.

2 Requirements of Authorities and Approvals

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

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

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

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

- (a) in accordance with the relevant Development Consent for the Works and all Approvals and the requirements of all Laws, including without limitation, work health and safety legislation; and

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

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

3 Costs of Works

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

4 Project Management and Contractor Engagement

4.1 The Applicant will be responsible for managing the Works.

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

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

5 Design Development and Approvals

5.1 Concept Design

Council and the Applicant will work in consultation with each other to prepare and agree the concept plans for the Works.

5.2 Detailed Design

- (a) Prior to Works commencing the Applicant must provide a copy of the draft Detailed Design to the Council for approval.
- (b) Within 15 Business Days of receiving the Detailed Design, Council will respond to the Applicant with any suggested amendments to the Detailed Design.
- (c) Council and the Applicant must work in consultation with each other to prepare and agree the Detailed Design and must both act reasonably and with due expedition in their consultations with each other.
- (d) If the Detailed Design is not completed and agreed within 15 Business Days of Council providing its suggested amendments in accordance with clause 5.2(b) of this Schedule 2 to avoid possible delays to the issue of a Certificate of Practical Completion, the Council will, in its sole discretion, be entitled to decide on any outstanding or undecided matter or item relating to areas that are to be accessible to the public, provided that any decision made by Council under this clause:
 - (i) is consistent with the obligation to carry out the Works under this agreement; and
 - (ii) is consistent with the Development Consent; and
 - (iii) does not materially and adversely affect the Development; and
 - (iv) is not unreasonable.

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

5.4 **Good faith**

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

6 Carrying out of Works

6.1 **Communication**

The Applicant 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 Applicant shall, and must cause the Builder to, use suitable new materials and proper and tradesmanlike workmanship when carrying out the Works.
- (b) The qualitative standard of the design and finishes for the Works must be no less than those described in the following documents:
 - (i) Any relevant Australian Standard;
 - (ii) Any relevant design standards or guidelines and any other requirements or policies applied by the Council from time to time in assessing the adequacy of any works or improvements proposed for the public domain or to be accessible to the public in accordance with this deed.
- (c) The Applicant will obtain any relevant standards (including design standards), specifications, or guidelines and any other requirements or policies referred to in clause 6.2(b)(ii) of this Schedule 2 from Council if the Council fails to deliver them to the Applicant.
- (d) The Applicant 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 Applicant 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 Applicant is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

7 Inspection

- (a) On completion of the Detailed Design, the Council will provide a schedule of inspections to be undertaken by Council (**Inspection Schedule**) to occur at specified stages of the construction of the Works (**Inspection Stage**). If the Council does not provide the Inspection Schedule, the Applicant 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 Applicant must notify the Council of the proposed inspection date (**Inspection Date**).
- (c) On the Inspection Date, or other agreed date, the Applicant 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 Applicant;
 - (iii) complying with all reasonable directions of the Applicant; and
 - (iv) being accompanied by the Applicant or a nominee, or as otherwise agreed.
- (e) The Council may, acting reasonably, within 5 Business Days of carrying out an inspection (either under clause 7(c) or 7(d) of this Schedule 2), notify the Applicant of any defect or non-compliance in the Works and direct the Applicant 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 Applicant is issued a direction to carry out further work under clause 7(e) of this Schedule 2, the Applicant 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 Applicant fails to comply with a direction to carry out work given under 7(e) of this Schedule 2, the Council will be entitled to refuse to accept that the Works (or the relevant part of the Works) meet the Council's standards and specifications and may refuse to issue a Certificate of Practical Completion, until the required Works have been completed to the Council's satisfaction, acting reasonably.
- (h) For the avoidance of doubt, any acceptance by the Council that the Applicant 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 deed.

8 Completion

8.1 Practical Completion

- (a) When the Applicant considers that the Works, or any part of the Works, are complete, the Applicant must send a Notice to the Council accompanied by complete works as executed plans, any relevant certificates or consents of any public utility authority and a request for written certification from the Council that the Works are complete.
- (b) Within 10 Business Days of receipt of the notice under clause 8.1(a) of this Schedule 2, the Council will carry out an inspection of the Works and will, acting reasonably, either:
 - (i) provide written certification to the Applicant that the Works have been completed; or
 - (ii) notify the Applicant of any additional information required or matters which must be addressed by the Applicant prior to the certification being issued.
- (c) If Council does not attend to the inspection referred to in Cause 8.1(b) of this Deed within 10 Business Days, the Applicant may send a further Notice to the Council requesting an inspection.
- (d) If the Applicant is required to provide additional information or address any matters under clause 8.1(b)(ii) of this Schedule 2, the Applicant 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.

- (e) Practical completion will be achieved in relation to the Works or any part of the Works when a Certificate of Practical Completion has been issued for those Works

8.2 Defects Liability Period

- (a) During the Defects Liability Period, the Council (acting reasonably) may give to the Applicant a notice (**Rectification Notice**) in writing that identifies a defect in the Works and specifies:
 - (i) action required to be undertaken by the Applicant to rectify that defect (**Rectification Works**); and
 - (ii) the date on which the defect must be rectified (**Rectification Date**).
- (b) The Applicant 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 Applicant and its contractors any access required to carry out the Rectification Works.
- (d) When the Applicant considers that the Rectification Works are complete, either the Applicant must notify the Council and provide documentation, plans or invoices which establish that the Rectification Works were carried out.
- (e) The Council may inspect the Rectification Works within 15 Business Days of receiving a Notice from the Applicant under clause 8.4(d) of Schedule 5 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 Applicant in writing that it is satisfied the Rectification Works are complete.
- (f) The Applicant must meet all costs of and incidental to rectification of defects under this clause 8.2.
- (g) If the Applicant 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 Applicant, and may:
 - (i) call upon any Bond or Bank Guarantee provided to the Council under clause **Error! Reference source not found.** of this Schedule 5 to meet its costs of carrying out Rectification Works; and
 - (ii) recover as a debt due to the Council by the Applicant in a court of competent jurisdiction, any difference between the amount of the

security deposit and the costs incurred by the Council in carrying out Rectification Works.

- (h) The Applicant must request that Council inspect the Works 28 days prior to the end of the Defects Liability Period. The Council must inspect the Works at any time after receiving the request from the Applicant and before to the end of the Defects Liability Period.
- (i) If, prior to the end of the Defects Liability Period:
 - (i) the Applicant fails to request the inspection, or
 - (ii) the Council does not carry out the inspection,the Council may extend the Defects Liability Period so that the inspection may be carried out.

9 Risk

The Applicant undertakes the Works entirely at its own risk.

10 Insurance

- (a) Prior to the commencement of the construction of any of the Works, the Applicant must ensure the Builder effects and the Applicant 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 Applicant 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 deed.

11 Risk of contamination

- (a) The Applicant 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.

12 Plans

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

- (a) matters affecting Works not capable of identification on or before the date of this deed; or

(b) by agreement between the parties.

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Schedule 3 Easement Terms

- 1 The owner of the Easement Area grants to the Council and members of the public full and free right to go, pass and repass over the Easement Area at all times:
 - (a) with or without companion animals (as defined in the Companion Animals Act 1998) or other small pet animals; and
 - (b) on foot without vehicles (other than wheelchairs or other disabled access aids), unless vehicles are being used to access the building on the Land via clearly identified entry and exit points;for all lawful purposes.
- 2 The owner of the Easement Area must, to the satisfaction of Council, acting reasonably:
 - (a) keep the Easement Area (including any services in, on or under the pedestrian Through-Site link) in good repair and condition;
 - (b) maintain and repair the Easement Area and all improvements on the pedestrian Through-Site link ;
 - (c) keep the Easement Area clean and free from rubbish; and
 - (d) maintain sufficient public liability insurance covering the use of the Easement Area in accordance with the terms of this Easement.
- 3 The owner of Easement Area must ensure that any rules made by an Owner's Corporation relating to the Easement Area 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 pedestrian Through-Site link, 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 Area may erect safety signage and any other appropriate signage and may erect CCTV cameras in the pedestrian Through-Site link.
- 6 The owner of the Easement Area may engage security personnel to monitor and control the behaviour of the public including but not limited to prohibiting smoking, consumption of alcohol (except within licensed areas), passage of animals, bicycles and skateboards and the like in accordance with any rules made by an Owner's Corporation relating to the Easement Area.
- 7 The owner of the Easement Area may with the Council's prior written consent (except in the case of an emergency, in which case the Council's prior written consent is not required) temporarily close or temporarily restrict access through all or part of the Easement Area for the time and to the extent necessary but only on reasonable grounds for the purposes of:
 - (a) construction, construction access, repairs, maintenance, replacement and alteration to the Easement Area or any improvements in, on or under the Easement Area; or
 - (b) security, public safety or evacuation of the Easement Area 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 Area may, provided any necessary planning approvals are obtained:
- (a) Carry out works in the Easement Area for the purposes of enhancing the Easement Area;
 - (b) Install or erect works of art, street furniture, awnings, tables and chairs associated with ground floor commercial premises, notice boards or any other similar improvements at ground level within the Easement Area; and
 - (c) Use the Easement Area,
- in a manner consistent with Parramatta City Council's Street Activity Policy, 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 Area.

Schedule 4

Summary of requirements (section 7.4)

Subject and subsection of the Act	Planning Agreement
<p>Planning instrument and/or Development Application – Section 7.4(1)</p> <p>The Developer has:</p> <p>(a) Sought a change to an environmental planning instrument</p> <p>(b) Made, or propose to make a Development Application</p> <p>(c) Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies</p>	<p>X No</p> <p>X Yes</p> <p>X No</p>
<p>Description of the land to which the planning Agreement applies – Section 7.4(3)(a)</p>	<p>1. Lot 1 DP 89526 - 173 Parramatta Road, Granville;</p> <p>2. Lot 1 DP 81084, 171 Parramatta Road, Granville</p> <p>3. Lot 1 DP 615141 - 187 Parramatta Road, Granville</p> <p>4. Lot 1 DP 504298 - 181-185 Parramatta Road, Granville</p> <p>5. Lot 2 89526 - 181-185 Parramatta Road, Granville</p> <p>6. Lot 1 DP 79102 - 181-185 Parramatta Road, Granville</p> <p>7. Lot 1 DP 79624</p> <p>8. Lot X DP 163366 - 64 Victoria Street, Granville</p> <p>9. Lot A DP 160406 - 60 Victoria Street, Granville</p> <p>10. Lot 58 DP 869379 - 58 Victoria Street, Granville</p>
<p>Description of the application – Section 7.4(3)(b)</p>	<p>The Development as described in Clause 1</p>
<p>The scope, timing and manner of delivery of contribution required by the Planning Agreement – Section 7.4(3)(c)</p>	<p>Clause 8</p>
<p>Applicability of section 7.11 of the Act – Section 7.4(3)(d)</p>	<p>Applies partially</p> <p>Exclude in accordance with clause 9(e)</p>
<p>Applicability of section 7.12 of the Act – Section 7.4(3)(d)</p>	<p>Applies</p>

Applicability of section 7.24 of the Act – Section 7.4(3)(d)	Applies
Mechanism for dispute resolution – Section 7.4(3)(f)	Clause 13
Enforcement of the Planning Agreement – Section 7.4(3)(g)	Clause 14
Registration of the Planning Agreement – Section 7.6	Clause 10
No obligation to grant consent or exercise functions – Section 7.4(9)	Clause 16

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Executed as an agreement

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

Signature of witness

Signature of authorised delegate

Name of witness

Name of authorised delegate

Address of witness

Position of authorised delegate

Signed on behalf of **PFG Property Investments No.1 Pty Ltd** (ACN 646 014 986) in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

Signature of Director

Signature of Director

Full name (print)

Full name (print)

Date

Date

Signed on behalf of **PFG Property Investments No.2 Pty Ltd** (ACN 646 014 708) in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

Signature of Director

Signature of Director

Full name (print)

Full name (print)

Date

Date

Signed on behalf of **TFG Property Investments No.1 Pty Ltd** (ACN 646 014 664) in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

Signature of Director

Signature of Director

Full name (print)

Full name (print)

Date

Date

Signed on behalf of **TFG Property Investments No.2 Pty Ltd** (ACN 646 014 815) in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

Signature of Director

Signature of Director

Full name (print)

Full name (print)

Date

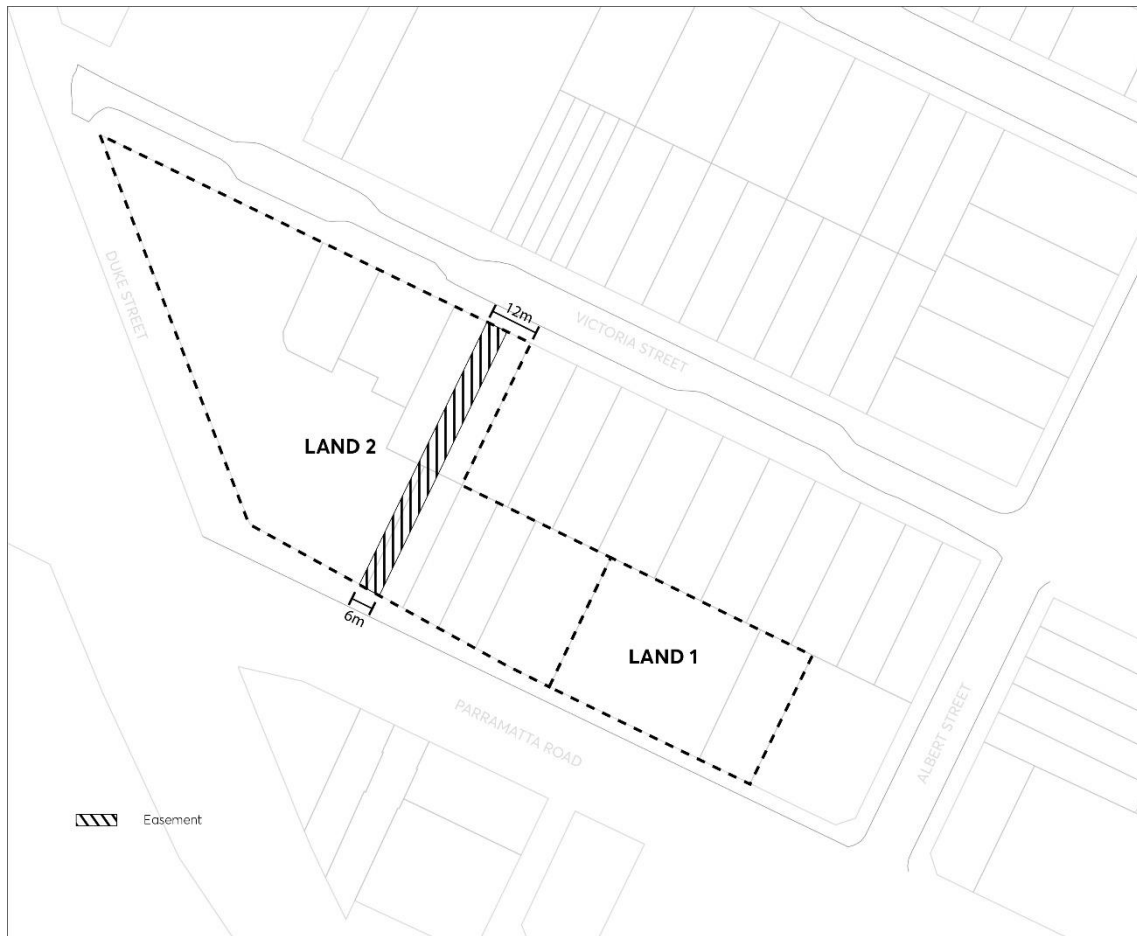
Date

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Annexure B

Easement Plan



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