



**CITY OF
PARRAMATTA**

ATTACHMENTS EXCLUDED FROM MAIN AGENDA

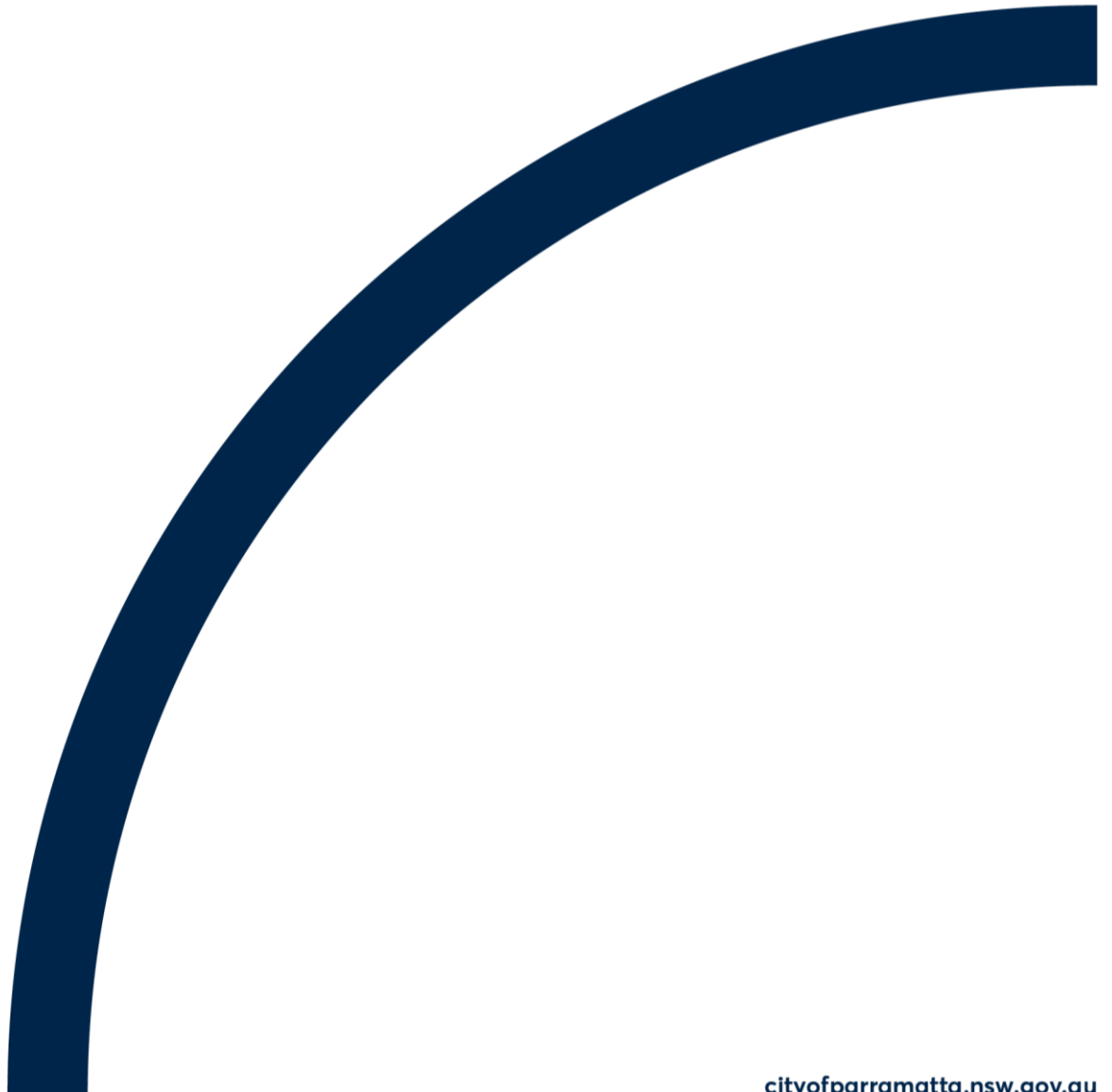


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Voluntary Planning Agreement

[Date]

City of Parramatta Council

ABN 49 907 174 773

WP Block H Pty Ltd

ACN 606 790 872

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Agreement

Date

Parties

First party

Name	City of Parramatta Council (Council)
ACN	49 907 174 773
Contact	Manager, Land Use Planning
Telephone	(02) 9806 5050

Second party

Name	WP Block H Pty Ltd (Developer)
ACN	606 790 872
Contact	Saul Moran
Telephone	(02) 8878 6928

Background

- A. On 28 May 2018, the Council resolved to amend the DCP by way of the DCP Amendment.
- B. The DCP Amendment will apply to the Land.
- C. The Developer intends to seek Development Consent to develop the Land in a manner facilitated by the DCP Amendment substantially in accordance with the Design Competition Scheme.
- D. The Development of the Land is to be carried out in Stages as indicated in the Staging Plan.
- E. The Developer offers to enter into this agreement to make Developer Contributions for public purposes if Development Consent is granted to the Development, and progressively as various Stages in the Development are reached.

Operative part

1 Definitions

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

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

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

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

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

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

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

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

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

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

Certificate of Practical Completion means a certificate issued by Council under clause 8.1(b)(i) of Schedule 2 of this agreement.

Child Care Centre means the child care centre for 90 places, approximately 1,400 m² of internal and external space, 10 car parking spaces and finished with a 'warm shell' including fixtures and equipment in accordance with the Concept Design, subject to any Development Consent;

Child Care Works means the works to be carried out to deliver the Child Care Centre as described in Item A.1 of Schedule 1;

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

Community Infrastructure Management and Operational Fund (Wentworth Point) means the fund to be established by Council in order to disburse the Surplus Funds - Indoor Sports Centre;

Compliance Certificate means a compliance certificate within the meaning of s6.4 of the Act issued by an accredited certifier;

Construction Certificate means a construction certificate as defined under section 6.4 of the Act;

Construction Terms means the terms set out in Schedule 2;

Child Care Stratum Lot means a stratum lot or lots as shown in any Development Consent for the Development to contain the Child Care Centre and to be transferred to Council in accordance with clause 6.5 and Item B.1 in Schedule 1.

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

Design Competition Jury Report means the design excellence competition jury report for the phase 2 competition for architectural design Block H, Precinct B, Wentworth Point dated 21 November 2019;

Design Competition Scheme means the design competition winning scheme for the Land prepared by FJMT Architects, as amended by the Design Competition Jury Report and as revised following public exhibition in March 2023 and submitted to the Department of Planning & Environment on 4 April 2023, with future detailed design to be determined in accordance with the Construction Terms, and as otherwise amended from time to time;

Developer Contributions means the Works, land dedications and other public benefits set out in Schedule 1;

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

DCP means the *Homebush Bay West Development Control Plan 2004* as amended;

DCP Amendment means the part of Amendment No. 2 to the DCP, which applies to the Land;

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

Development means development on the Land:

- (a) facilitated by the taking effect of the DCP Amendment,
- (b) designed substantially in accordance with the Design Competition Scheme, subject to any Development Consent; and
- (c) for which Development Consent is granted;

Development Application has the same meaning as in the Act;

Development Consent has the same meaning as in the Act;

ELNO has the same meaning as in the Participation Rules;

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

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

GST has the same meaning as in the GST Law;

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

Indoor Sports Centre means an indoor sports centre indicatively shown on the Concept Design;

Indoor Sports Centre Lot means any stratum lot or lots as shown in any Development Consent for the Development to contain the Indoor Sports Centre and to be transferred to Council in accordance with clause 6.6 and Item C.2 in Schedule 1 .

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 Lot 24 in Deposited Plan 270778 and Lot 41 in Deposited Plan 270778.

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);

Occupation Certificate means an occupation certificate as defined under section 6.4 of the Act;

Open Space Land means the part of the Land indicatively shown as 'Public Open Space' in the plan in Annexure F, being approximately 16,000m² ;



Participation Rules means the participation rules as determined by the *Electronic Conveyancing National Law* as set out in the *Electronic Conveyancing (Adoption of National Law) Act 2012 (NSW)*.

Peer Review means a review of the Schedule of Costs, carried out by an independent quantity surveyor who is a member of the Australian Institute of Quantity Surveyors and who is engaged by the Council for that purpose;

PEXA means Property Exchange Australia Ltd;

Public Domain Works means the embellishment works to be carried out on and to the Open Space Land as described in Item A.2 of Schedule 1 and shown on Annexure F;

Public Works Item means the Indoor Sports Centre and the Child Care Centre.

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

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

Residential Floor Space means any floor space in the Development which is proposed to be used for the purposes of residential accommodation as defined in the *Standard instrument – Principal Local Environmental Plan*.

Security means a Bank Guarantee or Bond;

Schedule of Costs means a schedule of the costs expended in delivering the Indoor Sports Centre prepared and certified by an independent quantity surveyor who is a member of the Australian Institute of Quantity Surveyors and who is engaged by the Developer for that purpose;

Shuttle Bus Security means a Bond provided under clause 12.3(a), subject to clauses 12.3(d) and (e);

Shuttle Bus Service means Item C1 in Schedule 1;

Stage or Stages means the stages H0 to H3 shown on the Staging Plan;

Staging Plan means the plan in Annexure C;

Surplus Funds - Indoor Sports Centre means the difference between the actual cost of delivering the Indoor Sports Centre and the Works Value in Item A1 of Schedule 1.

Transferee has the meaning given in clause 13.3;

Wentworth Point means the suburb of Wentworth Point in which the Development is proposed to be constructed;

Works means the works set out in Part A of the table in Schedule 1;

Works Item means each item of Works being items A.1, A.2 and A.3 in Schedule 1;

Works Security means a Bond or Bank Guarantee provided under clause 12.3;

Works Value means the amount set out in Column 5 of Schedule 1 in respect of each Works Item.

2 Interpretation

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

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



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

3 Planning Agreement under the Act

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

4 Application of this agreement

This agreement applies to:

- (a) the Development, and
- (b) the Land.

5 Operation of this agreement

This agreement commences on and from the date it is executed by all parties.

6 Developer Contributions to be made under this agreement

6.1 Developer Contributions

The Developer must make the Developer Contributions in the manner and at the times set out in Schedule 1.

6.2 Works

- (a) The Developer will carry out the Works in accordance with this agreement, any Development Consent granted for the Works and the Construction Terms.
- (b) The Works or any part of the Works required under this agreement will be taken to have been completed for the purposes of this agreement when a Certificate of Practical Completion has been issued for the Works.
- (c) The Works must be completed in Stages and at the times set out in Column 4 of Schedule 1 in respect of each Works Item.

- (d) The parties agree and acknowledge that each Works Item serves the public purpose set out in Column 2 of Schedule 1 in respect of that Works Item.

6.3 Public Access and Easements

- (a) The Developer will, at no cost to Council, register against the title to the Open Space Land:
- (i) a covenant in the terms set out in Schedule 3 prohibiting any building or structures from being constructed on the Open Space Land, other than structures for the purposes of enhancing public use of the Open Space Land as open space, which covenant is to be limited in depth to that which is necessary to accommodate the basement level of the Development; and
 - (ii) an easement in gross in the terms set out in Schedule 3, burdening the Open Space Land in favour of the Council permitting public access to the Open Space Land, which easement is to be limited in depth so as not to apply to the basement level of the Development.
- (b) Any requirement to register an easement, covenant or other instrument against the title to the Land will be satisfied when the Developer provides the Council a copy of the relevant title search showing the registration of the instrument.
- (c) Any easement or covenant required under clause 6.3(a) must be registered when any plan to effect a stratum subdivision to create that part of the Open Space Land as a separate lot is registered, or prior to the issue of the first Occupation Certificate for Stage H3 of the Development, whichever is the later:
- (i) .
- (d) The parties agree that the proposed covenant and easement under this clause will serve the following public purposes:
- (i) To increase the amount of and improve existing public open space areas in the vicinity of the Land;
 - (ii) To improve pedestrian circulation and the amenity of the public domain in the vicinity of the Land.
- (e) The Developer agrees and acknowledges that the obligations under this clause 6.3 are relevant considerations for the Council or any other consent authority when determining a Development Application or application to modify a Development Consent relating to the Land.

6.4 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.

6.5 Child Care Stratum Lot

- (a) Prior to the issue of an Occupation Certificate for Stage H3 of the Development, the Developer must, at no cost to Council construct the Child Care Centre as part of the Development, in accordance with the Development Consent for Stage H3, the Detailed Design for item A.1, and the Construction Terms.
- (b) The obligations under clause 6.5(a) will be taken to have been fulfilled for the purposes of this agreement when a Certificate of Practical Completion is issued in respect of the Child Care Works.
- (c) Within 10 Business Days after:
 - (i) The issue of an Occupation Certificate for Stage H3 of the Development; or
 - (ii) The registration of a plan of subdivision to create the Child Care Stratum Lot as a separate lot;

whichever occurs later, the Developer must transfer the Child Care Stratum Lot to the Council in accordance with any relevant provisions of the Construction Terms and Council must accept the transfer of the Child Care Stratum Lot so that immediately on transfer, the Council will have an estate in fee simple in possession, freed and discharged from:

- (iii) all estates, interests, trusts, restrictions, dedications, reservations; rights; and
- (iv) any charges, rates and strata levies relating to a period prior to the transfer of the Child Care Stratum Lot to Council.
- (d) The parties acknowledge and agree that:
 - (i) easements may be required to be registered over the Child Care Stratum Lot in relation to services or other support required for the Development; and
 - (ii) an easement must not be registered over the Child Care Stratum Lot without the Council's prior approval.
- (e) The obligation under clause 6.5(c) will be taken to have been fulfilled for the purposes of this agreement when the Council is given evidence that a transfer of the Child Care Stratum Lot to the Council has been effected by means of electronic lodgement and registration through PEXA or another ELNO without encumbrances as required by clause 6.5(c).
- (f) For the purposes of clause 6.5(c) Council will do all things necessary including signing all documents required in order for the Developer to transfer the Child Care Stratum Lot to Council within 7 Business Days of submission of the required forms or documents to Council.
- (g) The Developer must, in accordance with the provisions of the Construction Terms, ensure that, on transfer of the Child Care Stratum Lot, Council will have the benefit of any defects liability warranty given by a builder for the Development and the Child Care Stratum Lot, together with any other warranties and guarantees in accordance with clause 8.3 of Schedule 2.

6.6 Indoor Sports Centre Lot

- (a) Prior to the issue of an Occupation Certificate for Stage H3 of the Development, the Developer must, at no cost to Council construct the Indoor Sports Centre as part of the Development, in accordance with the Development Consent for Stage H3, the Detailed Design for item A.3 and the Construction Terms.
- (b) The obligations under clause 6.6(a) will be taken to have been fulfilled for the purposes of this agreement when a Certificate of Practical Completion is issued in respect of the Indoor Sports Centre.
- (c) Within 10 Business Days after:
 - (i) The issue of an Occupation Certificate for Stage H3 of the Development; or
 - (ii) The registration of a plan of subdivision to create the Indoor Sports Centre Lot as a separate lot;

whichever occurs later, the Developer must transfer the Indoor Sports Centre Lot to the Council in accordance with any relevant provisions of the Construction Terms and Council must accept the transfer of the Indoor Sports Centre Lot so that immediately on transfer, the Council will have an estate in fee simple in possession, freed and discharged from:

- (iii) all estates, interests, trusts, restrictions, dedications, reservations; rights; and
- (iv) any charges, rates and strata levies relating to a period prior to the transfer of the Indoor Sports Centre Lot to Council..
- (d) The parties acknowledge and agree that:
 - (i) easements may be required to be registered over the Indoor Sports Centre Lot in relation to services or other support required for the Development; and
 - (ii) an easement must not be registered over the Indoor Sports Centre Lot without the Council's prior approval.
- (e) The obligation under clause 6.6(c) will be taken to have been fulfilled for the purposes of this agreement when the Council is given evidence that a transfer of the Indoor Sports Centre Lot to the Council has been effected by means of electronic lodgement and registration through PEXA or another ELNO without encumbrances as required by clause 6.6(d).
- (f) For the purposes of clause 6.6(c) Council will do all things necessary including signing all documents required in order for the Developer to transfer the Indoor Sports Centre Lot to Council within 7 Business Days of submission of the required forms or documents to Council.
- (g) The Developer must, in accordance with the provisions of the Construction Terms, ensure that, on transfer of the Indoor Sports Centre Lot, Council will have the benefit of any defects liability warranty given by a builder for the Development and the Indoor Sports Centre Lot, together with any other warranties and guarantees in accordance with clause 8.3 of Schedule 2.

7 Community Infrastructure Management and Operational Fund (Wentworth Point)

7.1 Surplus monies

- (a) The parties agree and acknowledge that the total costs of delivering the Indoor Sports Centre may be less than the Works Value for Item A3 of Schedule 1.
- (i) ;

7.2 Establishment of the Community Infrastructure Management and Operational Fund (Wentworth Point)

- (a) In respect of the Surplus Funds - Indoor Sports Centre:
- (i) the Developer must within 20 Business Days of completion of the Indoor Sports Centre provide to Council a Schedule of Costs;
- (ii) Council may, acting reasonably, within 10 Business Days from receiving the Schedule of Costs obtain a Peer Review of the Schedule of Costs and if it elects to do so, may provide a copy of the Peer Review to the Developer;
- (iii) If each of the parties determines the actual costs of carrying out the Indoor Sports Centre to be different, the actual costs of carrying out the Indoor Sports Centre as set out in the Peer Review must be the amount used in calculating the Surplus Funds - Indoor Sports Centre.
- (iv) The Developer must:
- (A) within 10 Business Days of receiving confirmation from Council that the Schedule of Costs provided to Council in accordance with clause 7.2(a)(i) is accepted; or
- (B) within 10 Business Days from receiving the Peer Review pursuant to clause 7.2(a)(ii),
- whichever is the earlier, transfer the Surplus Funds - Indoor Sports Centre to a bank account nominated by Council.
- (b) Within 10 Business Days of receipt of the Surplus Funds - Indoor Sports Centre, Council must invest the Surplus Funds - Indoor Sports Centre in an interest bearing account held in the name of the Council for the purpose of the Community Infrastructure Management and Operational Fund (Wentworth Point) pursuant to the provisions of section 625 of the *Local Government Act 1993*.
- (c) The parties agree that Council may only apply monies from the Community Infrastructure Management and Operational Fund (Wentworth Point) towards the maintenance and operational needs of the:
- (i) Child Care Centre; and/or
- (ii) Indoor Sports Centre; and/or
- (iii) any other Council owned or managed community facilities within Wentworth Point.

8 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 except to the extent that it would authorise the imposition of a condition on a Development Consent for the Development requiring development contributions in respect of the provision of public amenities and services for the public purposes in respect of which Developer Contributions are required to be made under this agreement.
- (b) This agreement **does not exclude** the application of section 7.12 of the Act to the Development.
- (c) This agreement **does not exclude** the application of section 7.24 of the Act to the Development.
- (d) The benefits under this agreement **are not to be** taken into consideration in determining a development contribution under section 7.11 of the Act except as provided for above at clause 8(a) of this agreement.

9 Registration of this agreement

9.1 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.

9.2 Registration of this agreement

- (a) The Developer agrees that the Council may register 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 will take all practical steps, and otherwise do anything that the Council reasonably requires to procure:
 - (i) the consent of each person who:
 - (A) has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or
 - (B) is seized or possessed of an estate or interest in the Land, and
 - (ii) the execution of any documents,
 to enable the registration of this agreement in accordance with this clause 9.2.
- (c) The Developer consents to the registration of the agreement in accordance with this clause 9.2.

9.3 Removal from Register

- (a) The parties acknowledge that the Developer Contributions are each required to be provided in connection with the Stage of the Development noted in Column 4 of the table in Schedule 1 for that Developer Contribution (**Relevant Stage**).
- (b) Within 5 Business Days of the Developer having either:
 - (i) fulfilled its obligations to provide the Developer Contributions required in the Relevant Stage; or

- (ii) in respect of any Developer Contributions for the Relevant Stage comprising Works, provided a Works Security under clause 12.2(a) for the Works,

the Council will provide a release and discharge of this agreement so that it may be removed from the folios of the Register for that part of the Land comprising the Relevant Stage;

- (c) The Council will provide a release and discharge of this agreement from the folios of the Register for any Final Lots in the Development immediately before those lots are created so that the notation of this agreement does not appear on the title to those lots.

9.4 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 on 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 5 Business Days after the Developer complies with clause 9.2 and must not lodge any other caveats on the titles to any of the Land.

10 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.

11 Dispute Resolution

11.1 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.

11.2 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,
- (c) The position which the party issuing the Notice of Dispute believes is correct.

11.3 *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 11.6 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.

11.4 *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 11.5 or by expert determination under clause 11.6.

11.5 *Mediation*

If a party gives a Determination Notice calling for the dispute to be mediated and clause 11.6 does not apply:

- (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 11.5 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.

11.6 Expert determination

- (a) If the dispute is not resolved under clause 11.3 or clause 11.5, or the parties otherwise agree that the dispute may be resolved by expert determination, or if the parties disagree regarding whether expert determination is appropriate, but one of the parties calls for the dispute to be determined by expert determination, and the Chief Executive Officer of the professional body that represents persons who have the relevant expertise to determine the dispute provides a written opinion that the dispute can be determined by a member of that body, the dispute will be referred to an expert, in which event:
 - (b) 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;
 - (c) The expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;
 - (d) 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;
 - (e) 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;
 - (f) 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

- (g) 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.

11.7 *Litigation*

If the dispute is not *finally* resolved in accordance with this clause 11, then either party is at liberty to litigate the dispute.

11.8 *Suspension of contractual obligations*

Subject to any interlocutory order obtained under clause 11.1, the referral to or undertaking of a dispute resolution process under this clause 11 does not suspend the parties' obligations under this agreement, other than any obligation that is the subject of the dispute.

12 *Enforcement*

12.1 *Default*

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this agreement, it may give notice in writing to the other party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 25 Business Days.
- (b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.
- (c) If a party disputes the Default Notice it may refer the dispute to dispute resolution under clause 11 of this agreement.

12.2 *Security*

- (a) Prior to the issue of a Construction Certificate in respect of any Residential Floor Space for a Stage of the Development, the Developer must provide to the Council Security in the amount of 75% of the Works Value for the Works required to be delivered in that Stage to secure:
 - (i) the completion of those Works; and
 - (ii) if the relevant Stage includes the delivery of the Indoor Sports Centre or Child Care Centre, the transfer of the Child Care Stratum Lot (in respect of the Security provided for the Child Care Centre) or the Indoor Sports Centre Lot (in respect of the Security provided for the Indoor Sports Centre).
- (b) The Council may reject any Security that contains errors, or if it has received the Security, require at any time the Developer to obtain a replacement Security that rectifies any such errors or otherwise obtain rectification of the errors. The

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

- (c) The Council may call on a Security provided under this clause if:
- (i) the Developer is in material or substantial breach of this agreement in respect of the obligation secured by the Security and has failed to rectify the breach within a reasonable period of time after having been given reasonable notice (which must not be less than 25 Business Days) in writing to do so in accordance with clause 12.1 of this agreement; or
 - (ii) the Developer becomes Insolvent and is in material or substantial breach of this agreement.
- (d) Within 20 Business Days of each anniversary of a Bank Guarantee provided under clause (a), the Developer must provide Council with one or more replacement Bank Guarantees (**Replacement Bank Guarantee**) in an amount calculated in accordance with the following:
- $$A = \frac{B \times D}{C}$$
- Where:
- A is the amount of the Replacement Bank Guarantee,
 - B is the amount of the Bank Guarantee to be replaced,
 - C is the CPI for the quarter ending immediately before the date of the Bank Guarantee to be replaced,
 - D is the CPI for the quarter ending immediately before the date of the Replacement Bank Guarantee,
- provided A is greater than B.
- (e) On receipt of a Replacement Bank Guarantee provided under clause 12.2(d), the Council must release and return to the Developer, as directed, the Bank Guarantee that has been replaced as soon as reasonably practicable.
- (f) At any time following the provision of a Security under this clause, the Developer may provide the Council with one or more replacement Securities totalling the amount of all Securities required to be provided under this clause for the time being. On receipt of such replacement Security, the Council must release and return to the Developer, as directed, the Security which it holds that has been replaced immediately.
- (g) The Council may apply the proceeds of a Security in satisfaction of:
- (i) any obligation of the Developer under this agreement that is secured by the Security including the carrying out of the Works; and
 - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with the obligation secured by the Security.
- (h) The Council must within 20 Business Days return a Security provided under this clause to secure the provision of any Works if requested by the Developer and:

- (i) The Developer has issued a notice under clause 8.1(a) of Schedule 2 of this agreement in respect of the item of Works to which the Security relates; and
 - (ii) The Developer has provided a Security under clause 8.5 of the Construction Terms (defects liability guarantee) for that item of Works;
 - (iii) If the Security relates to other items of Works which are not complete for the purposes of this agreement, a replacement Security is provided by the Developer in an amount determined by the Council acting reasonably, that is equivalent to the costs of constructing those other items of Works.
- (i) For the avoidance of doubt, the Developer may direct Council in writing to continue to hold a Security provided under this clause 12.2 in satisfaction of the requirement to submit a Security under clause 8.5 of the Construction Terms for defects liability.
 - (j) Nothing in this clause 12.2 prevents or restricts the Council from taking any enforcement action in relation to:
 - (i) any obligation of the Developer under this agreement that is not secured by a Security; or
 - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with an obligation under this agreement which is secured by the Security.

12.3 Security for Shuttle Bus Service

- (a) The Developer must, prior to the issue of an Occupation Certificate for Stage H1, provide to the Council a Bond in the amount of \$12 million less the costs incurred by the Developer up to that point in time in providing the Shuttle Bus Service (including prior to the date of this agreement) to secure the provision of the Shuttle Bus Service for the remainder of the term during which it is to be provided.
- (b) Evidence of the cost of providing the Shuttle Bus Service is to be provided by the Developer to Council in the form of a 'service summary' similar to that contained in Annexure E.
- (c) The Council may call on the Shuttle Bus Security if the Developer is in material or substantial breach of its obligations to provide the Shuttle Bus Service under 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 20 Business Days) in writing of the need to do so.
- (d) On each anniversary of the date of this agreement, the Developer may submit to the Council a summary of the costs of providing the Shuttle Bus Service during the preceding year, in the form of a 'service summary' similar to that contained in Annexure E (**Costs Summary**), together with a replacement Bond in the amount of the Shuttle Bus Security held by Council, less the costs of providing the Shuttle Bus Service during the preceding year as noted in the Costs Summary.
- (e) The Council on receipt of the Costs Summary and replacement Bond, release and return to the Developer, as directed, the Security which it holds that has been

replaced immediately, and the replacement Bond becomes the Shuttle Bus Security.

- (f) The Council must within 3 Business Days of the end of the term during which the Shuttle Bus Service is to be provided under this agreement, return the Shuttle Bus Security to the Developer.
- (g) Nothing in this clause 4 prevents or restricts the Council from taking any enforcement action in relation to:
 - (i) any obligation of the Developer under this agreement that is not secured by the Shuttle Bus Security; or
 - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this agreement and which is not satisfied by calling on the Shuttle Bus Security.

12.4 Compulsory Acquisition - Child Care Stratum Lot

- (a) If the Developer does not transfer the Child Care Stratum Lot 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* and may call upon any Security provided under clause 12.2 in respect of the Child Care Centre to cover any costs, including legal costs, incurred by Council on acquisition of the Land.
- (b) Clause 12.4(a) constitutes an agreement for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (c) 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 12.4(a).
- (d) The Developer must pay the Council, promptly on demand, an amount equivalent to all costs, including legal costs, incurred by the Council acquiring the whole or any part of the relevant land under clause 12.4(a) that are or cannot be recovered by calling on a Bank Guarantee.

12.5 Compulsory Acquisition - Indoor Sports Centre/Indoor Sports Centre Lot

- (a) If the Developer does not transfer the Indoor Sports Centre Lot 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* and may call upon any Security provided under clause 12.2 in respect of the Indoor Sports Centre to cover any costs, including legal costs, incurred by Council on acquisition of the Land.
- (b) Clause 12.5(a) constitutes an agreement for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991*.

- (c) 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 12.5(a).
- (d) The Developer must pay the Council, promptly on demand, an amount equivalent to all costs, including legal costs, incurred by the Council acquiring the whole or any part of the relevant land under clause 12.5(a) that are or cannot be recovered by calling on a Bank Guarantee.

12.6 *Transfer Documents*

- (a) The Developer will deliver to Council, prior to the issue of an Occupation Certificate for Stage H3 of the Development:
 - (i) a form of transfer under the *Real Property Act 1900* for the purpose of transferring the Child Care Stratum Lot and the Indoor Sports Centre Lot when they are created with the Developer named as transferor and Council named as transferee, properly executed by the Developer but with the description of land omitted, which omission Council is entitled to rectify by inserting the proper title reference to the Child Care Stratum Lot and Indoor Sports Centre Lot that will be appropriate at the time of lodgement of the transfer; and
 - (ii) any other document (for example a discharge of mortgage or withdrawal of caveat) in registrable form as is necessary to ensure that Council is able to register the transfer of the Child Care Stratum Lot and the Indoor Sports Centre Lot, or an irrevocable undertaking from the relevant person issuing the document that the document will be produced for registration on request for the purposes of transferring the Council Strata Lot and the Indoor Sports Centre Lot to Council under this agreement.
- (b) The documents referred to in clause 12.6(a) are to be held by Council as security for the performance by the Developer of the obligations imposed on it under this agreement.

12.7 *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.

13 *Assignment and Dealings*

13.1 *Assignment*

- (a) A party must not assign or deal with any right under this agreement without the prior written consent of the other parties, which shall not be unreasonably withheld or delayed and must be provided within 5 Business Days.

- (b) A change in ownership of more than 50% of the shares of the Developer shall be deemed to be an assignment of this agreement for the purposes of this clause.

13.2 *Mortgages of the Land*

The Developer agrees not to enter into any agreements or contracts that would effect a mortgage of the Land in addition to those on title at the date of this agreement until this agreement is registered on the title to the Land pursuant to clause 9.2.

13.3 *Transfer of Land*

- (a) The Developer may not transfer, assign or dispose of the whole or any part of its right, title or interest in the Land (present or future) or in the Development other than a Final Lot, to another person (**Transferee**) unless before it sells, transfers or disposes of that right, title or interest:
- (i) The Developer satisfies the Council, acting reasonably, that the proposed Transferee is financially capable of complying with the Developer obligations under this agreement;
 - (ii) The Developer satisfies the Council, acting reasonably that the rights of the Council will not be diminished or fettered in any way;
 - (iii) The Transferee delivers to the Council a novation deed signed by the Transferee in a form and of such substance as is acceptable to the Council containing provisions under which the Transferee agrees to comply with all the outstanding obligations of the Developer under this agreement;
 - (iv) The Transferee delivers to the Council replacement Security as required by this agreement;
 - (v) Any default under any provisions of this agreement has been remedied or waived by the Council, on such conditions as the Council may determine, and
 - (vi) The Developer and the Transferee pay the Council's reasonable costs in relation to the assignment.

14 Approvals and consents

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

15 No fetter

15.1 *Discretion*

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

15.2 No fetter

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

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

15.3 Planning Certificates

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

16 Notices

16.1 Notices

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

- (a) must be in writing and signed by a person duly authorised by the sender, or bear the name and position of the person duly authorised by the sender if sent by email;
- (b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by email, 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: [Council email] Attention: Manager, Land Use Planning
(ii)	to WP Block H Pty Ltd	Locked Bag 1400, Meadowbank NSW 2114 Email: legalnotice@billbergia.com.au Attention: Saul Moran

- (c) is taken to be given or made:
 - (i) in the case of hand delivery, when delivered; and
 - (ii) in the case of delivery by post, 3 Business Days after the date of posting (if posted to an address in the same country) or 5 Business Days after the date of posting (if posted to an address in another country).

16.2 Notices sent by email

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

- (A) the name of the person sending the Notice; and
- (B) the sender's position within the relevant party;
- (ii) states in the body of the message or the subject field that it is sent as a Notice under this agreement;
- (iii) contains an express statement that the person sending the Notice has the authority to serve a Notice under this agreement;
- (iv) is sent to the email address below or the email address last notified by the intended recipient to the sender as above
- (b) The recipient of a Notice served under this clause 16.2 must:
 - (i) promptly acknowledge receipt of the Notice; and
 - (ii) keep an electronic copy of the Notice,
- (c) Failure to comply with clause 16.2 does not invalidate service of a Notice under this clause.

16.3 *Receipt of Notices sent by email*

- (a) A Notice sent under clause 16.2 is taken to be given or made:
 - (i) when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above;
 - (ii) when the Notice enters an information system controlled by the recipient; or
 - (iii) when the Notice is first opened or read by the recipient,whichever occurs first.
- (b) If under clause 16.3 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.

17 General

17.1 *Relationship between parties*

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

17.2 Time for doing acts

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

17.3 Further assurances

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

17.4 Joint and individual liability and benefits

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

17.5 Variations and Amendments

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

17.6 Counterparts

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

17.7 Legal expenses and stamp duty

- (a) The Developer agrees to pay the Council's legal costs and disbursements up to an amount of \$25,000 in connection with the negotiation, preparation, execution, carrying into effect, enforcement and release and discharge of this agreement, including the reasonable costs of obtaining any legal advice in connection with this agreement, no later than 10 Business Days after receiving a demand from the Council to pay such costs.
- (b) The Developer agrees to pay or reimburse the costs and expenses incurred by Council in connection with the advertising and exhibition of this agreement in accordance with the Act.
- (c) The Developer agrees to pay Council any administrative fees as required by Council acting reasonably, and as set out in Council's adopted schedule of fees and charges, in connection with the administration of this agreement.

17.8 Entire agreement

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

17.9 Representations and warranties

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

17.10 Severability

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

17.11 Invalidity

- (a) A word or provision must be read down if:
 - (i) this agreement is void, voidable, or unenforceable if it is not read down;
 - (ii) this agreement will not be void, voidable or unenforceable if it is read down; and
 - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
 - (i) despite the operation of clause (a), the provision is void, voidable or unenforceable if it is not severed; and
 - (ii) this agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this agreement has full effect even if clause 17.11(b) applies.

17.12 Waiver

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

17.13 GST

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

equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances.

- (d) If the Council is obliged to pay any GST on any supply made under or in accordance with this agreement, the Developer indemnifies the Council for the amount of any such payment is required to make.

17.14 Governing law and jurisdiction

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

Schedule 1 Developer Contributions

Column 1	Column 2	Column 3	Column 4	Column 5
Item/ Contribution	Public Purpose	Manner & Extent	Timing	Works Value
A. Construction of Works				
1. Child Care Centre	Community Facilities	Child care Centre substantially in accordance with the Detailed Design determined pursuant to the Construction Terms	Prior to the issue of an Occupation Certificate for Stage H3 of the Development	\$9,042,000
2. Public Domain Works	Open Space	Construction of the Public Domain Works substantially in accordance with the Design Competition Scheme, subject to any Development Consent.	Prior to the issue of an Occupation Certificate for Stage H2 of the Development.	\$7,271,000

Column 1	Column 2	Column 3	Column 4	Column 5
Item/ Contribution	Public Purpose	Manner & Extent	Timing	Works Value
3. Indoor Sports Centre	Active Recreation	Construction of an Indoor Sports Centre substantially in accordance with the Detailed Design determined pursuant to the Construction Terms.	Prior to the issue of an Occupation Certificate for Stage H3 of the Development	\$35,721,000
B. Dedication of Land				
1. Child Care Stratum Lot	Community Facilities	Dedication of the Child Care Centre described in Item A.1 of Schedule 1.	See clause 6.5(c)	NA
2. Indoor Sports Centre Lot	Active Recreation	Dedication of the Indoor Sports Centre described in Item A.3 of Schedule 1.	See clause 6.6(c)	NA
C. Other material public benefits				
1. Shuttle Bus Service	Traffic and Transport	Continued provision of the Baylink Shuttle free community bus service to a value of \$18 million (including costs incurred prior to the date of this agreement) as set out in Annexure D	Continuous until 1 January 2031	\$18,000,000

Column 1	Column 2	Column 3	Column 4	Column 5
Item/ Contribution	Public Purpose	Manner & Extent	Timing	Works Value
2. Open Space Land	Creation of Interests	Grant rights of public access to the Open Space Land and impose a covenant on the Open Space Land in accordance with clause 6.3(a). This land will remain in the ownership of the Developer and will not be transferred to Council.	At the time specified in clause 6.3.	NA
TOTAL				\$70,034,000

Schedule 2 Construction terms

1 Interpretation

- 1.1 For the purposes of this Schedule 2, the defined terms in clause 1 of this agreement, and the interpretation principles in clause 2 of this agreement will apply, and unless the context indicates a contrary intention:

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

Concept Design means, in respect of the Indoor Sports Centre and Child Care Centre the indicative design contained in Annexure B, which may be further modified pursuant to clause 5.1 of this Schedule 2.

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

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

Defects Liability Period means the period of 12 months from the date on which the Works Item is taken to have been completed for the purposes of this agreement.

Detailed Design means the final specifications and finishes for each Public Works Item and will include the design of each Public Works Item, installation specifications and estimated costs of construction and/or installation.

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

Superintendent means the Superintendent appointed under any Construction Contract.

2 Requirements of Authorities and Approvals

- 2.1 These Construction Terms must be read and construed subject to:
- (a) any requirements or conditions of any Development Consent;
 - (b) the requirements of and conditions imposed by all relevant Authorities and all Laws relating to the Development and the construction of the Development.
- 2.2 If the Developer requires any Approvals in order to carry out the obligations under this agreement, then the Developer will acquire all Approvals necessary to carry out the Works at its own cost.
- 2.3 The Developer must ensure that the Works carried out under this agreement are carried out:
- (a) in accordance with the relevant Development Consent for each Works Item 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

Subject to the remainder of this agreement, all costs of the Works must be borne by the Developer.

4 Project Management and Contractor Engagement

4.1 The Developer will be responsible for managing each of the Works Items.

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

- (a) carry out the Developer's obligations in these Construction Terms as part of any Construction Contract; and
- (b) prior to the commencement of any part of the Works, agree with Council a schedule of meetings that a Council representative will attend including but not limited to any meetings attended by the Superintendent and ensure that a Council representative is advised of any such meetings. For the avoidance of doubt, the meetings referred to in this clause 4.2(b) are separate to the inspections referred to in clause 7 of this Schedule 2.

5 Design Development and Approvals

5.1 Detailed Design

- (a) In respect of each of the Public Works Items, once Development Consent has been granted for the Public Works Item, the Developer must prepare the Detailed Design to be consistent with the Concept Design and Development Consent for the Public Works Item and submit the Detailed Design to the Council for approval, together with a detailed cost estimate for the Public Works Item certified by a suitably qualified quantity surveyor who is a member of the Australian Institute of Quantity Surveyors and engaged by the Developer (**Cost Estimate**).
- (b) Within 20 Business Days of receiving the Detailed Design and Cost Estimate, Council must notify the Developer in writing as to whether the Detailed Design is approved or not approved, and Council can only withhold its approval under this clause reasonably.
- (c) If the Council does not approve the Detailed Design, the notice to the Developer to that effect must detail:
 - (i) what, if any, changes are required to the Detailed Design to ensure it complies with the Development Consent and the Concept Design for the Public Works Item; and
 - (ii) what other changes Council requests which are not required to correct an inconsistency between the Detailed Design and the Concept Design or Development Consent for the Public Works Item.
- (d) If Council requests changes to the Detailed Design which are not required to correct an inconsistency with the Concept Design or Development Consent for the Public Works Item, then the Council must bear any additional costs incurred by the Developer in providing the Public Works Item as a result of the changes requested by the Council, including construction costs and consultants costs, if

the changes requested will result in the Works exceeding the Works Value for the relevant Public Works Item.

- (e) The Developer must promptly amend the Detailed Design in response to any request by Council pursuant to clause 5.1(c) of this Schedule 2 prior to making an application for a Construction Certificate for the relevant Public Works Item, other than if:
 - (i) the change is requested under clause 5.1(c)(ii); and
 - (ii) the change will delay the carrying out of the relevant Public Works Item, or require a modification of the Development Consent for the relevant Public Works Item or any part of the Development.
- (f) The amended Detailed Design prepared under clause 5.1 (e) will be the agreed Detailed Design for the relevant Public Works Item.
- (g) Council may not request any variations to the Detailed Design other than pursuant to clause 5.1(c) of this Schedule 2, or after the Detailed Design has been agreed pursuant to clause 5.1(f) of this Schedule 2.
- (h) Any acceptance by the Council of the Detailed Design under this clause 5.1 of Schedule 2 is not to be taken as approval of or to any Construction Certificate for the relevant Public Works Items.
- (i) If Council fails to provide a response to the Detailed Design within the time required by clause 5.1(b) of this Schedule 2, the Developer may issue a notice to the Council seeking its response, and if the Council does not provide a response within a further period of 10 Business Days, the Developer may proceed to seek a Construction Certificate for the Detailed Design notwithstanding the remainder of this clause 5 of Schedule 2 and the Detailed Design is deemed to have been agreed to by Council.

5.2 **Good faith**

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

5.3 **Cost of Works**

- (a) If the Council requests changes to the Detailed Design for any of the Public Works Items pursuant to clause 5.1(c)(ii) of this Schedule 2 and if the actual costs to complete the relevant Public Works Item exceeds the Works Value for the relevant Public Works Item, then once the relevant Public Works Item is complete, the Developer must provide to Council a notice of the actual costs incurred by the Developer in carrying out the Public Works Item which details the increase above the Cost Estimate for the Public Works Item as a result of the changes requested by Council, and which is accompanied by a certification of those costs from a quantity surveyor who is a member of the Australian Institute of Quantity Surveyors and engaged by the Developer for this purpose.
- (b) For the purposes of clause 5.3(a) of this Schedule 2, the actual costs of the relevant Public Works Item are the final certified contract costs inclusive of variations for the relevant Public Works Item and other costs reasonably incurred in the carrying out the relevant Public Works Item and paid by the Developer to third parties for the following:

- (i) design of the relevant Public Works Item, project management, fees, investigations, consultant fees, studies or reports specifically required for the relevant Public Works Item; and
- (ii) any Approval specifically required to be obtained for or in relation to the carrying out of the relevant Public Works Item.

6 Carrying out of each Works Item

6.1 Communication

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

6.2 Standard of each Works Item

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

6.3 Damage to people, property & utilities

- (a) The Developer is to ensure to the fullest extent reasonably practicable that, in performing its obligations under this agreement:
 - (i) all necessary measures are taken to protect people and property;
 - (ii) unnecessary interference with the passage of people and vehicles is avoided; and
 - (iii) nuisances and unreasonable noise and disturbances are prevented.
- (b) Without limiting clause 6.3(a) of this Schedule, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any public land except as authorised in writing by the Council or any relevant Authority.

7 Inspection

- (a) On completion of the Detailed Design, or in respect of the Public Domain Works on the provision of a notice from the Developer to Council indicating an intention to commence the Works, the Council will within 20 Business Days provide a schedule of inspections to be undertaken by Council (**Inspection Schedule**) to occur at specified stages of the construction of each Works Item (**Inspection Stage**).
- (b) 5 Business Days prior to reaching an Inspection Stage as set out in the Inspection Schedule, the Developer must notify the Council of the inspection date (**Inspection Date**).

- (c) On the Inspection 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 relevant Works Item.
- (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 relevant Works Item is located to inspect the progress of the relevant Works Item, 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 Builder; and
 - (iv) being accompanied by the Developer or a nominee, or as otherwise agreed.
- (e) The Council may, acting reasonably, within 5 Business Days of carrying out an inspection (either under clause 7(c) or 7(d) of this Schedule 2), notify the Developer of any defect or non-compliance in the relevant Works Item (**Inspection Defect Notice**) and direct the Developer to carry out work to rectify that defect or non-compliance within a reasonable period of time. Such work may include, but is not limited to:
 - (i) removal of defective or non-complying material;
 - (ii) demolishing defective or non-complying work;
 - (iii) reconstructing, replacing or correcting any defective or non-complying work; and
 - (iv) not delivering any defective or non-complying material to the site of the relevant Works Item.
- (f) If the Developer is issued an Inspection Defect Notice the Developer must, at its cost, rectify the defect or non-compliance specified in the Inspection Defect Notice within the time period specified in the Inspection Defect Notice, provided that it is reasonable having regard to the nature of the works.
- (g) If the Developer fails to comply with an Inspection Defect Notice, the Council will be entitled to refuse, acting reasonably, to issue a Certificate of Practical Completion until the Inspection Defect Notice has been complied with to Council's satisfaction.
- (h) For the avoidance of doubt, any acceptance by the Council that the Developer has rectified a defect or non-compliance identified in an Inspection Defect Notice does not constitute:
 - (i) acceptance by the Council that the relevant Works Item complies with all Approvals and Laws; or
 - (ii) an Approval by the Council in respect of the relevant Works Item; or
 - (iii) an agreement or acknowledgment by the Council that the relevant Works Item is complete and may be delivered to the Council in accordance with this agreement.

8 Completion**8.1 Completion of a Works Item**

- (a) When the Developer considers that a Works Item, or any part of a Works Item, is complete, the Developer must send a notice to the Council accompanied by complete works as executed plans, any relevant certificates or consents of any public utility authority and a request for written certification from the Council that the Works Item is 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 relevant Works Item and will, acting reasonably, either:
 - (i) Provide written certification to the Developer that the relevant Works Item has 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, provided that the Council cannot require any additional information or matters to be addressed unless:
 - (A) the additional information or matters are required to be provided or addressed in order to ensure that the Works Item complies with this agreement; and
 - (B) the additional information and matters required to be addressed would not reasonably have been apparent to Council at any Inspection Stage or if they would have been reasonably apparent at any Inspection Stage, they were the subject of an Inspection Defect Notice which has not been satisfactorily complied with by the Developer
- (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 relevant Works Item has been completed.
- (d) In the event that the Developer considers that a Certificate of Practical Completion should have been issued by Council and none has been issued, the Developer may give a Notice of Dispute.

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 a Certificate of Practical Completion is issued in respect of a Public Works Item, 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 relevant Works Item.
- (b) The Developer must as soon as practicable, and no later than 20 Business Days after the date on which a Certificate of Practical Completion is issued in respect of a Public Works Item provide the Council with a tour of the land subject to the relevant Public Works Item 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 each Public Works Item.
- (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 a Works Item 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, including a Compliance Certificate to the effect that the Rectification Works are complete.
- (e) The Developer must meet all costs of and incidental to rectification of Defects under clause 8.4 of this Schedule 2.
- (f) If the Developer fails to comply with a Rectification Notice, then the Council may, acting reasonably, do such things or take such action as is necessary to carry out the Rectification Works on any part of the Land on which the relevant Works Item is located, without further notice to the Developer, and may:

- (i) call upon any Security provided to the Council under this agreement in respect of the relevant Works Item to meet its costs of carrying out Rectification Works; and
 - (ii) recover as a debt due to the Council by the Developer in a court of competent jurisdiction, any difference between the amount of the Security and the costs incurred by the Council in carrying out Rectification Works.
- (g) The Developer must request that Council inspect the relevant Works Item 20 Business Days prior to the end of the Defects Liability Period for that Works Item. The Council must inspect the relevant Works Item at any time after receiving the request from the Developer and before the end of the Defects Liability Period.

8.5 Security for Defects Liability

- (a) Prior to the issue of a Certificate of Practical Completion in respect of the relevant Works Item the Developer must deliver to the Council Security in an amount equivalent to 2.5% of the Works Value of the relevant Works Item.
- (b) The Developer advises and the Council acknowledges its awareness that the Security may be supplied by the Builder and form a part of the security held by the Developer from the Builder under the terms of the Construction Contract, provided that:
 - (i) any Security provided by the Builder benefits the Council and satisfies the requirements of this agreement; and
 - (ii) the Developer procures an agreement from the Builder that the Council will be entitled to call on any Security provided by the Builder, in accordance with the terms of this agreement and the terms of any Construction Contract.
- (c) Within 10 Business Days after the Defects Liability Period for a Works Item has expired Council must (if it has not called on it) return the Security referred to in clause 8.5(a) of this Schedule 2 for the relevant Works Items (or any remaining balance of it) to the Developer.
- (d) Notwithstanding clause 8.5(c) of this Schedule 2, if during the Defects Liability Period for a Works Item, the Council issues a Rectification Notice and the Rectification Notice is not complied with, then the Council need not deliver the balance of any Security provided to it in respect of the relevant Works Item, until that defect has been rectified.

9 Risk

The Developer undertakes the Works entirely at its own risk.

10 Insurance

- (a) Prior to the commencement of the construction of each Works Item, the Developer must ensure the Builder effects and the Developer must produce evidence to the Council of the following insurances issued by an insurer approved by the Council (acting reasonably) in a form approved by the Council (acting reasonably):
 - (i) construction works insurance for the value of the relevant Works Item;
 - (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

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

12 Intellectual Property Rights

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

13 Plans

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

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

Schedule 3 Open Space Land

Terms of Easement

- 1 The terms of this easement apply to the Open Space Land.
- 2 The owner of the Open Space Land grants to the Council and members of the public full and free right to go, pass and repass over the Open Space Land at all times:
 - (a) with or without companion animals (as defined in the Companion Animals Act 1998) or other small pet animals; and
 - (b) on foot without vehicles (other than wheelchairs or other disabled access aids), unless vehicles are being used to access the building on the Land via clearly identified entry and exit points;for all lawful purposes.
- 3 The owner of the Open Space Land must, to the satisfaction of Council, acting reasonably:
 - (i) keep the Open Space Land (including any services in, on or under the Open Space Land) in good repair and condition;
 - (ii) maintain and repair the Open Space Land and all improvements on the Open Space Land;
 - (iii) keep the Open Space Land clean and free from rubbish; and
 - (iv) maintain sufficient public liability insurance covering the use of the Open Space Land in accordance with the terms of this Easement.
- 4 The owner of the Open Space Land must ensure that any rules made by an owners corporation or community association relating to the Open Space Land have been approved by the Council, and Council must provide its approval within 15 Business Days of submission of the draft rule to the Council by the owners corporation or community association, and Council must not withhold or delay its consent unreasonably.
- 5 If any member or members of the public loiter or congregate, for any purpose which the owner of the Open Space Land, acting reasonably, considers to be a nuisance or a safety risk, the owner may either remove those members of the public, or arrange for their removal by an appropriate authority.
- 6 The owner of the Open Space Land may erect safety signage and any other appropriate signage and may erect CCTV cameras in the Open Space Land.
- 7 The owner of the Open Space Land 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 owners corporation or community association relating to the Open Space Land.
- 8 The owner of the Open Space Land 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) which must not be withheld unreasonably, temporarily close or temporarily

restrict access through all or part of the Open Space Land 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 Open Space Land or any improvements in, on or under the Open Space Land; or
 - (b) security, public safety or evacuation of the Open Space Land and adjoining buildings.
- 9 Subject to ensuring the provision of access in accordance with above clause 1, the owner of the Open Space Land may, provided any necessary planning approvals are obtained:
- (a) Carry out works in the Open Space Land for the purposes of enhancing the Open Space Land;
 - (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 Open Space Land; and
 - (c) Use the Open Space Land,
- in a manner consistent with Parramatta City Council's Public Domain Guidelines dated July 2017 or any such policy of the Council that replaces that policy.
- 10 The Council is solely empowered to release this Easement.
- 11 This Easement may only be varied by written agreement between the Council and the owner of the Open Space Land.

Terms of Covenant

1. The terms of this restriction on use of land apply to the Open Space Land.
2. The Owner of the Open Space Land covenants with Council that, subject to clause 3 below, it will not erect, or allow the erection of, any building or structure on the Covenant Site.
3. Clause 2 does not apply to any building or structure erected on the Covenant Site which is used predominantly for the purpose of enhancing public use of the Covenant Site as open space.

Schedule 4 Summary of requirements (section 7.4)

Subject and subsection of the Act	Planning Agreement
<p>Planning instrument and/or Development Application – Section 7.4(1)</p> <p>The Developer has:</p> <p>(a) Sought a change to an environmental planning instrument</p> <p>(b) Made, or propose to make a Development Application</p> <p>(c) Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Description of the land to which the planning Agreement applies – Section 7.4(3)(a)</p>	<p>Lot 24 in Deposited Plan 270778, and Lot 41 in Deposited Plan 270778.</p>
<p>Description of the application – Section 7.4(3)(b)</p>	<p>Development on the Land facilitated by the DCP Amendment</p>
<p>The scope, timing and manner of delivery of contribution required by the Planning Agreement – Section 7.4(3)(c)</p>	<p>Developer Contributions are to be provided as set out in Schedule 1</p>
<p>Applicability of section 7.11 of the Act – Section 7.4(3)(d)</p>	<p>Excluded only to the extent set out in clause 8(a)</p>
<p>Applicability of section 7.12 of the Act – Section 7.4(3)(d)</p>	<p>Not excluded</p>
<p>Applicability of section 7.24 of the Act – Section 7.4(3)(d)</p>	<p>Not excluded</p>
<p>Mechanism for dispute resolution – Section 7.4(3)(f)</p>	<p>See clause 11</p>
<p>Enforcement of the Planning Agreement – Section 7.4(3)(g)</p>	<p>See clause 12</p>
<p>Registration of the Planning Agreement – Section 7.6</p>	<p>Yes</p>
<p>No obligation to grant consent or exercise functions – Section 7.4(9)</p>	<p>Yes</p>

Executed as an agreement

Executed by **City of Parramatta City Council** under seal in accordance with a resolution of the Council on [insert date]:)
)
)

.....
Signature of

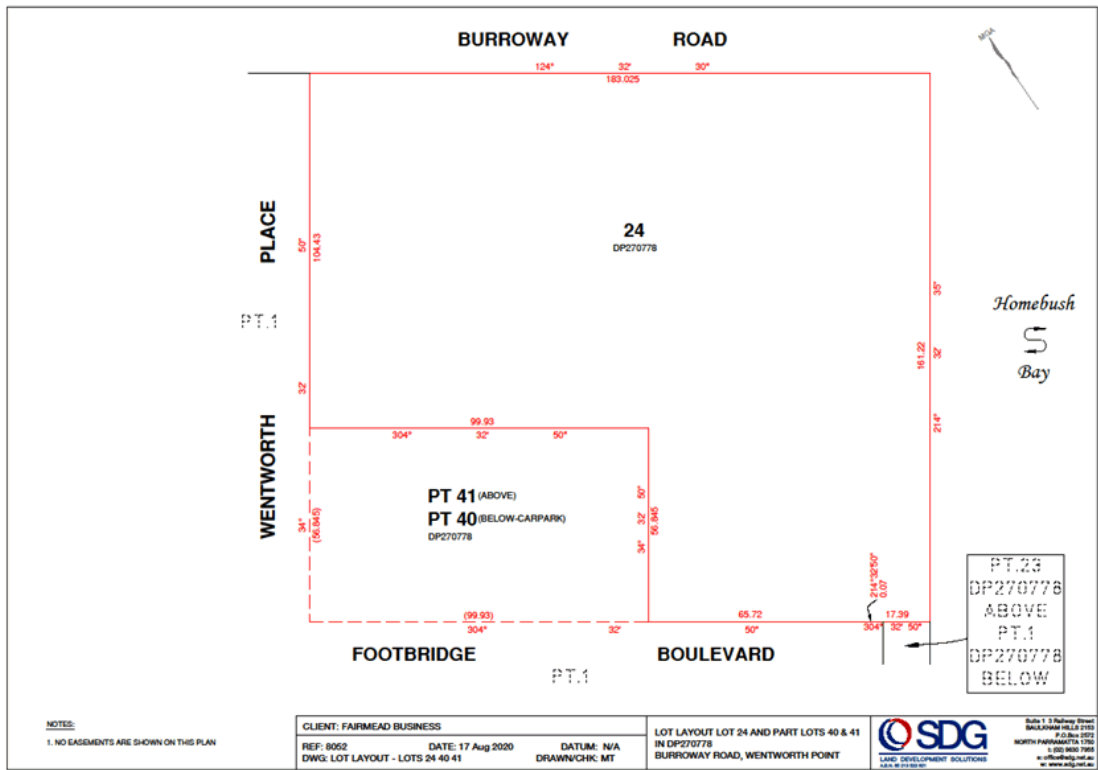
.....
Signature of

.....
Print name

.....
Print name

[Insert further execution clauses as required for each party]

Annexure A Plan showing Land



Annexure B Concept for Indoor Sports Centre and Child Care Centre

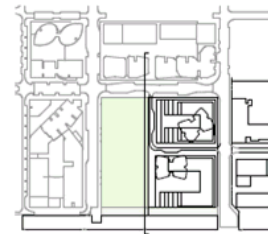
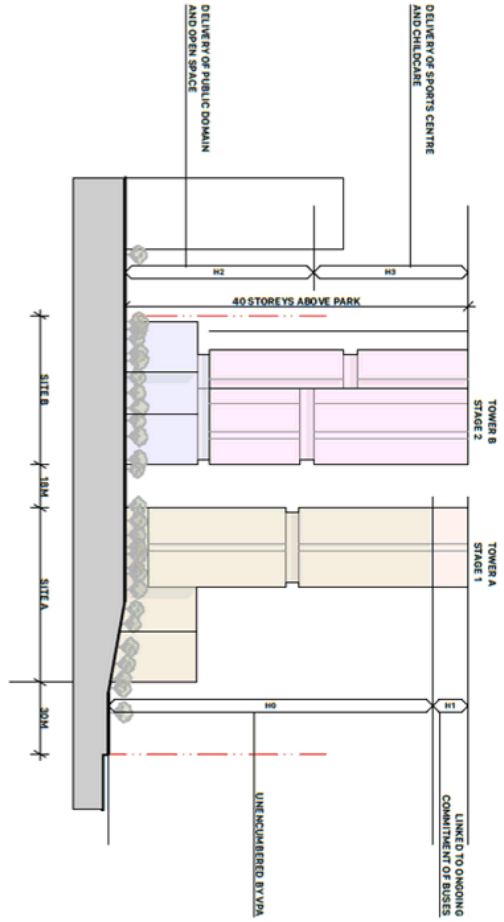
Please refer to Wentworth Point Block H – Recreation Centre, Document ID 230322 PCCWP Sports Centre, Revision: Draft, Rev 02 dated 10th November 2023

Annexure C Staging Plan

27/10/23
fintstudio

4017 - VAN GELDEREN
BELLERINA - BRINDING COVE - MANTONSHOPE

SCALE
N/S SCALE @ A3



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Annexure D Shuttle Bus Service



Service Summary
and cost estimates
January 2018 to 1 January 2031



The Baylink Shuttle

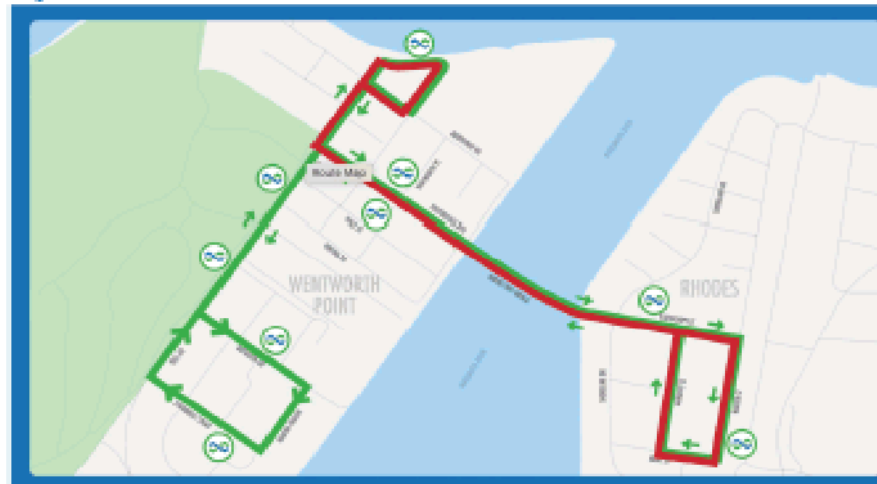
Service Overview

The Baylink Shuttle is a free community bus service funded by the Billbergia Group, providing residents of Wentworth Point and Rhodes direct connections between Wentworth Point, Sydney Olympic Park Ferry Wharf and Rhodes Railway Station.

Kinetic in Sydney (previously T/A Telfords Bus & Coach) has been operating the service under an agreement since its inception on 29 January 2018.

Initially implemented as a 3-month trial service, the Baylink Shuttle commenced with two (2) Optare Solo buses operating between 6:30am and 7:00pm Monday to Friday. In response to community feedback and overwhelming demand, Billbergia has continued to fund the service, pending a decision on the final stage of its Bennelong Cove development.

Baylink Shuttle route



To accommodate a large increase in patronage, the vehicle fleet was upgraded in October 2018 to four (4) purpose-built and Billbergia-branded buses, with the following specifications:

- / Type: Custom Bus CB80 Volvo 8L Diesel
- / Size: 12.5 metre Low Floor City Bus (Wheelchair Accessible)
- / Vehicle Capacity: 63 Passengers (48 seated and 15 standing)
- / Additional Features: Wooden Floor, Leather Seats, USB Charging Ports, On board

Service Operation Oct 2018 – March 2020

At its peak prior to the COVID 19 pandemic, the service reached approx. 24,000 passenger trips per week with three Baylink Shuttle buses operating to the following time table.

- / **Baylink Shuttle – Regular Service (2 buses)***
Operating Hours: (All day service) 6:30am - 8:30pm Monday to Friday excluding public holidays
- / **Baylink Shuttle - Express Service (1 bus)**
Operating Hours: (Mornings) 6:30am – 9:15am (Monday to Friday excl. public holidays)
(Afternoons) 3:00pm – 7:00pm (Monday to Friday excluding public holidays)

*A trial service between Wentworth Point & Newington also operated for 8 months between April and November 2019.

A fourth Baylink Shuttle bus remained on standby, to ensure continued operation and allow for driver change over, maintenance and operational requirements.

Service Operation March 2020 - Current

With lower demand for the service due to COVID-19 pandemic lockdowns, public health orders and changes in travel patterns, the service was reduced, with the current services running two (2) buses as follows:

- / **Baylink Shuttle Regular (1 bus)**
Operating Hours: (All-day service – 6:30am to 8:00 am, every 30 minutes.
- / **Baylink Shuttle - Express Service (1 bus)**
Operating Hours: (Mornings)
6:30am to 10:00am and 2:30pm to 7:30pm, every 15 minutes.

Future service operations

As workers return to the office, Billbergia is receiving feedback from the community requesting additional vehicles, frequency, stops and the potential expansion of the service to include weekend operation.

Billbergia has expressed interest in Kinetic supporting the full conversion of Baylink Shuttle vehicles from diesel to battery-electric from the end of 2024.

Converting Baylink Shuttle to zero emissions

Through extensive testing and implementation of vehicles and infrastructure, Kinetic has developed significant experience, IP, and an advanced roadmap to BEB roll-out encompassing:

- / Fleet and Infrastructure Procurement
- / Depot Energy Management Strategy
- / Fleet and Asset Maintenance

Annexure E Shuttle Bus  Service – Service and Cost Summary

Baylink Shuttle operating costs and forecasts to 1 January 2031

The following outlines the cost estimates to run the services through to 1 January 2031 with increased operational capacity to meet passenger demand and conversion of the fleet to full electric buses commencing at the end of 2024. A Capability Statement on Kinetic also accompanies this document.

BAYLINK COSTS TO DATE		
Services	Operating Period	Cost
Establishment of Services Bus wrap branding 2 x Optare buses Change to 4 x Custom buses with additional services	2018 – current (as at 1 March 2023)	\$4,000,000
FORECAST ESTIMATED COST FOR 2023 to 1 January 2031		
Services	Operating period Calendar year	Estimated cost allowance
Return to full Pre Covid service, Incl. 2 x regular (all day) weekday services 1 x express (morning / afternoon peak) weekday service Allowance for additional services/ route changes eg: 1 x regular Saturday (day) service 30 min frequency 1 x regular Sunday (day) service 30 min frequency	2023	\$1,000,000
	2024	\$1,450,000
	2025	\$1,500,000
	2026	\$1,550,000
	2027	\$1,600,000
	2028	\$1,650,000
	2029	\$1,700,000
Allowances: Conversion to electric buses inclusive (Jan 2025 – 2031) Local recharging & depot access charges Overhead and operational administration	2030	\$1,750,000
	Total	\$18,000,000

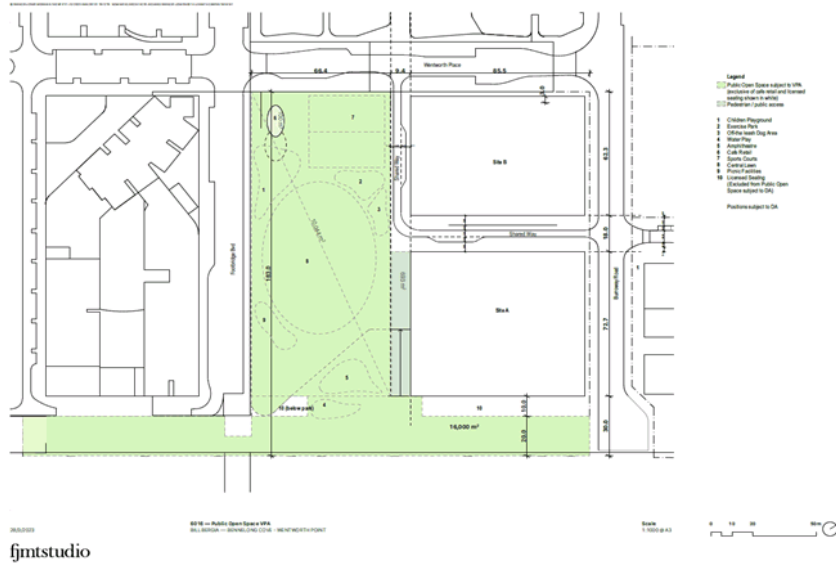
Kinetic overview

Kinetic is the largest bus operator in Australasia with over 5000 buses and 7300 people transporting over 100 million passengers every year. We are also the region’s largest owner and operator of battery electric buses (BEBs) with our ‘green’ fleet across Australia and New Zealand expected to grow to 300 vehicles in 2023.

Kinetic operates over 95 government and private contracted bus services covering urban, regional, school, charter, airport and specialist bus services.

We are a trusted transport partner that delivers bus services that are safe, reliable, clean and green. We focus on the fundamentals and drive continuous improvement of systems, processes, and methodologies.

Annexure F Open Space Land

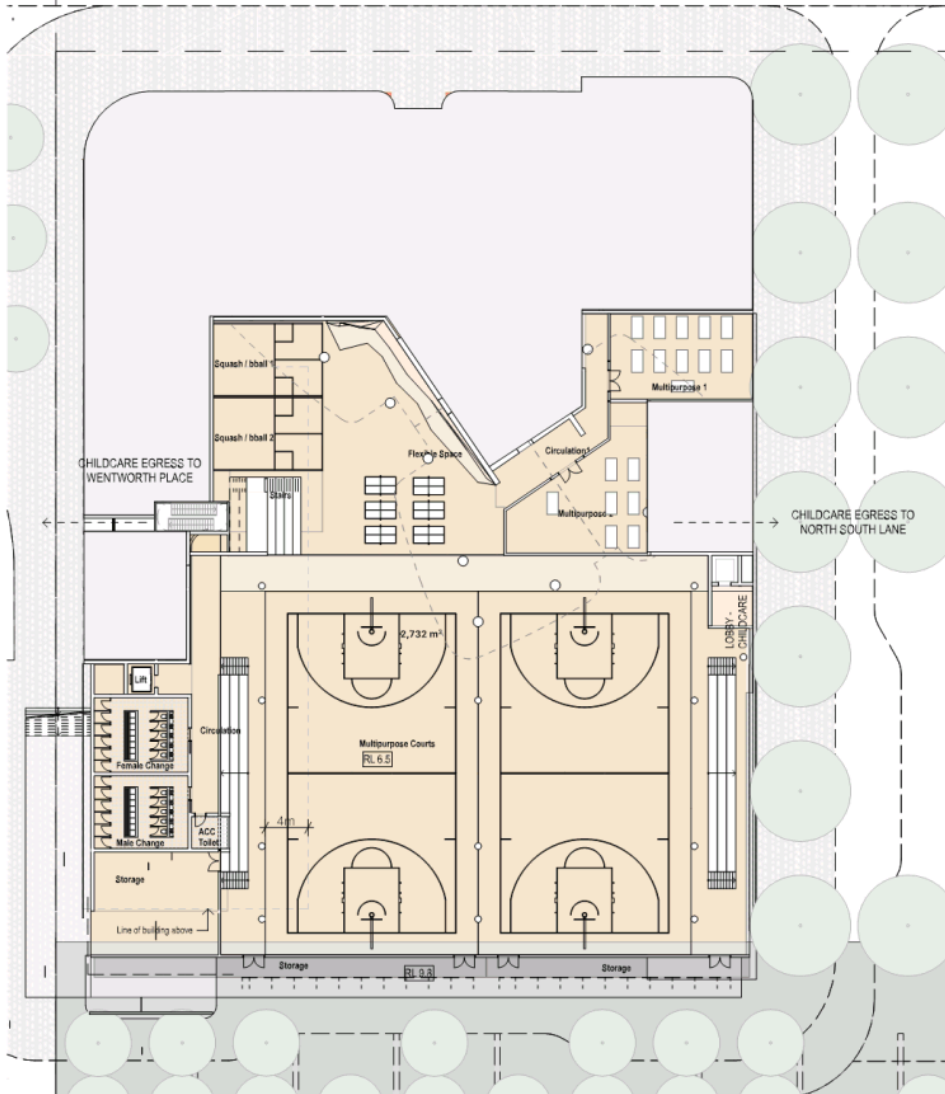


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<p>BENNELONG COVE - WENTWORTH POINT Block H Wentworth Point Sydney NSW 2127</p>	<p>Site Plan VPA Details</p>	<p>Status Document ID 230222 PCCWP Sports Centre - Draft Document ID 230222 PCCWP Sports Centre - Final</p>	<p>Rev Date 01 03/04/2023 02 10/11/2023</p>	<p>Scale 1:2000 @ A3</p>	<p>Code PCCWP</p>	<p>Sheet 9/17</p>	<p>Rev</p>	<p>0 20 50 100m</p> 
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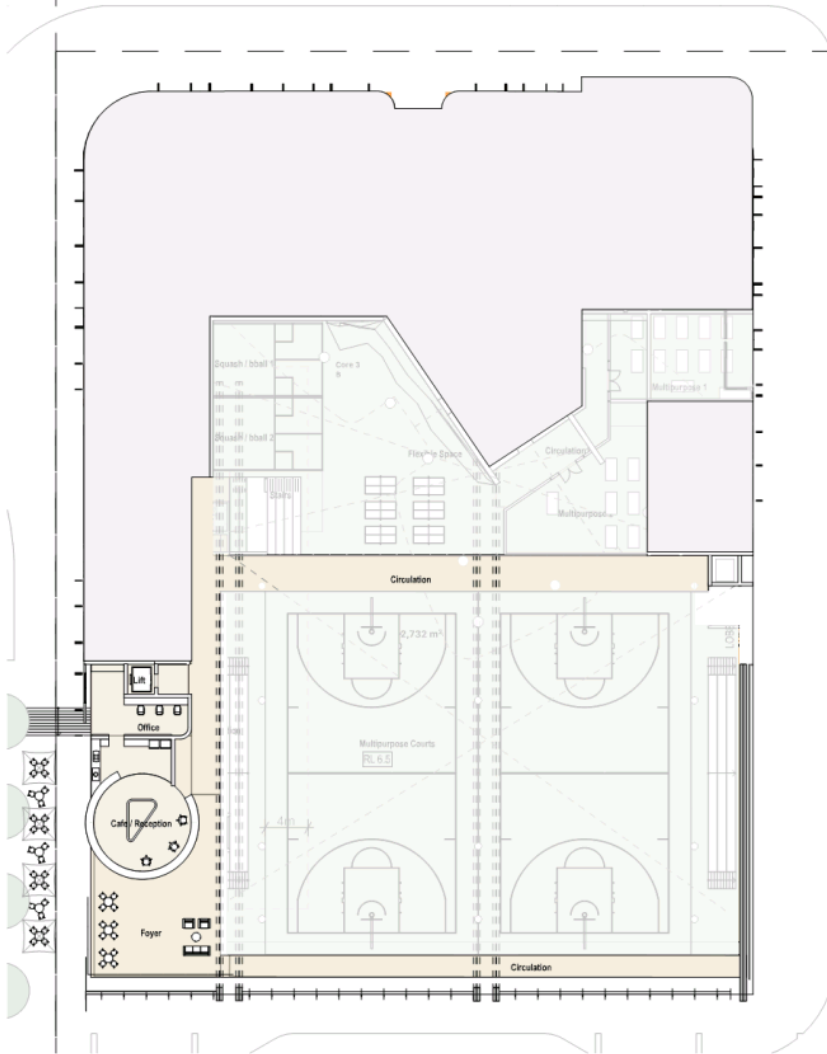
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Floor (Story)	Zone Category	Room Name	Area
Lower ground Ragi			
Sports Centre	Cafe / Reception		112
Sports Centre	Circulation		316
Sports Centre	Foyer		122
Sports Centre	Lift		7
Sports Centre	Office		40
Lower ground			
Sports Centre	Circulation		65
Sports Centre	Circulation1		56
Sports Centre	Female Change		64
Sports Centre	Flexible Space		271
Sports Centre	Lift		7
Sports Centre	Male Change		55
Sports Centre	Multipurpose 1		97
Sports Centre	Multipurpose 2		188
Sports Centre	Multipurpose 3		86
Sports Centre	Multipurpose Courts		1,661
Sports Centre	Squash / bball 1		62
Sports Centre	Squash / bball 2		62
Sports Centre	Stairs		46
Sports Centre	Storage		66
Sports Centre	Toilet		9
			3,392 m²

BENNELONG COVE - WENTWORTH POINT Block H Wentworth Point Sydney NSW 2127	Level LG Presentation Plans	Status Document ID 230222 PCCWP Sports Centre - Draft Document ID 230222 PCCWP Sports Centre - Final	Rev 01 02	Date 03/04/2023 10/11/2023	Scale 1:400 @ A3	Code PCCWP	Sheet 2501	Rev	0 4 10 20m	

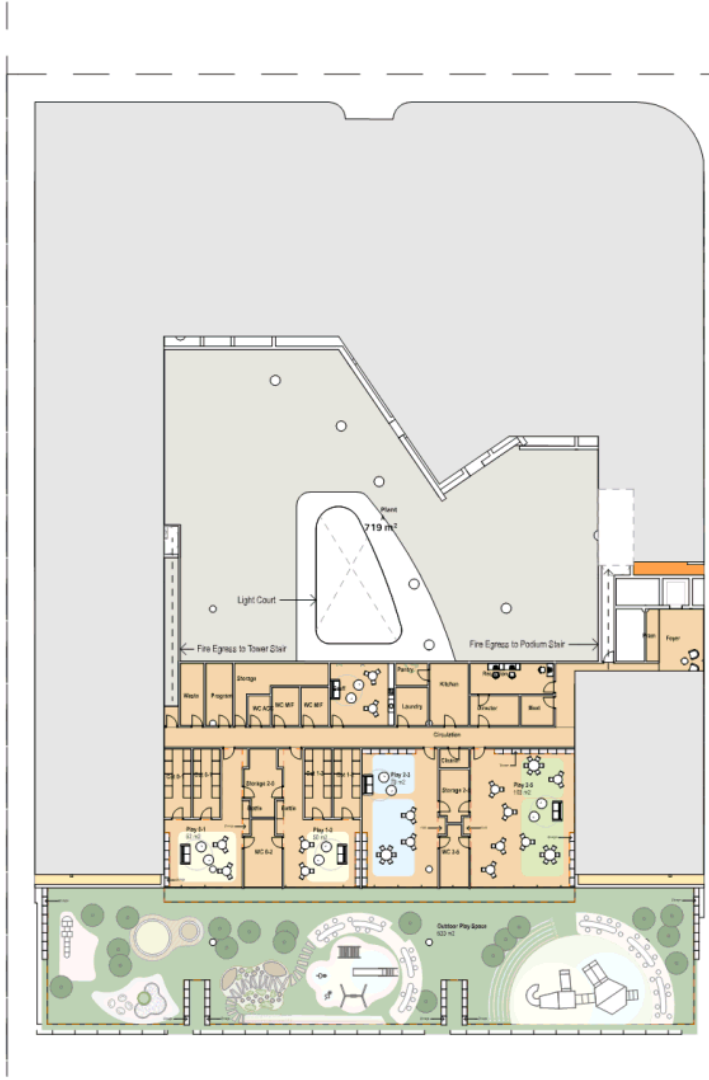
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Floor (Story)	Zone Category	Room Name	Area
Lower ground Rags			
Sports Centre	Cafe / Reception		112
Sports Centre	Circulation		316
Sports Centre	Foyer		122
Sports Centre	Lift		7
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Sports Centre	Squash / bball 1		62
Sports Centre	Squash / bball 2		62
Sports Centre	Stairs		46
Sports Centre	Storage		66
Sports Centre	Toilet		9
			3,392 m²

BENNELONG COVE - WENTWORTH POINT Block H Wentworth Point Sydney NSW 2127	Level LGR Presentation Plans	Status Document ID 230322 PCCWP Sports Centre - Draft Document ID 230322 PCCWP Sports Centre - Final	Rev 01 02	Date 03/04/2023 10/11/2023	Scale 1:400 @ A3	Code PCCWP	Sheet 2502	Rev	0 4 10 20m	

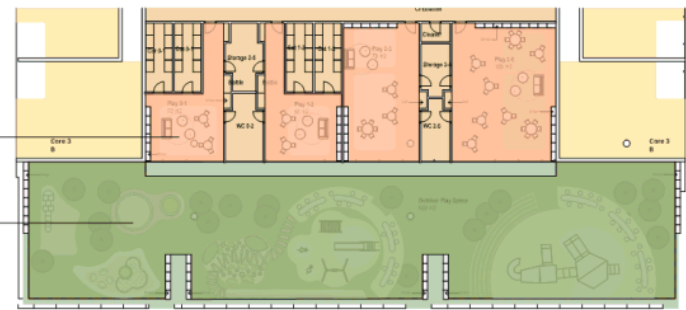
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Play spaces measured exclusive of storage

Zone Category	Room Name	Area	Children 3.25sqm	Staff ratio	Staff	External Area 7sqm
Childcare	Bottle	2				
Childcare	Circulation	197				
Childcare	Cleaner	4				
Childcare	Cot 0-1	30				
Childcare	Cot 1-2	30				
Childcare	Director	12				
Childcare	Foyer	27				
Childcare	Kitchen	19				
Childcare	Laundry	10				
Childcare	Meet	8				
Childcare	Outdoor Play Space	639				
Childcare	Pantry	6				
Childcare	Play 0-1	52	16	0.25	4	
Childcare	Play 1-2	50	16	0.25	4	
Childcare	Play 2-3	79	24	0.20	5	
Childcare	Play 3-5	109	33	0.10	3	
Childcare	Pram	6				
Childcare	Program	13				
Childcare	Reception	21				
Childcare	Staff	32				
Childcare	Storage	22				
Childcare	Storage 2-5	28				
Childcare	WC 0-2	19				
Childcare	WC 2-5	13				
Childcare	WC ACC	5				
Childcare	WC M/F	16				
Childcare	Waste	12				
		1,462 m²	90		16	90

Play spaces measured exclusive of storage

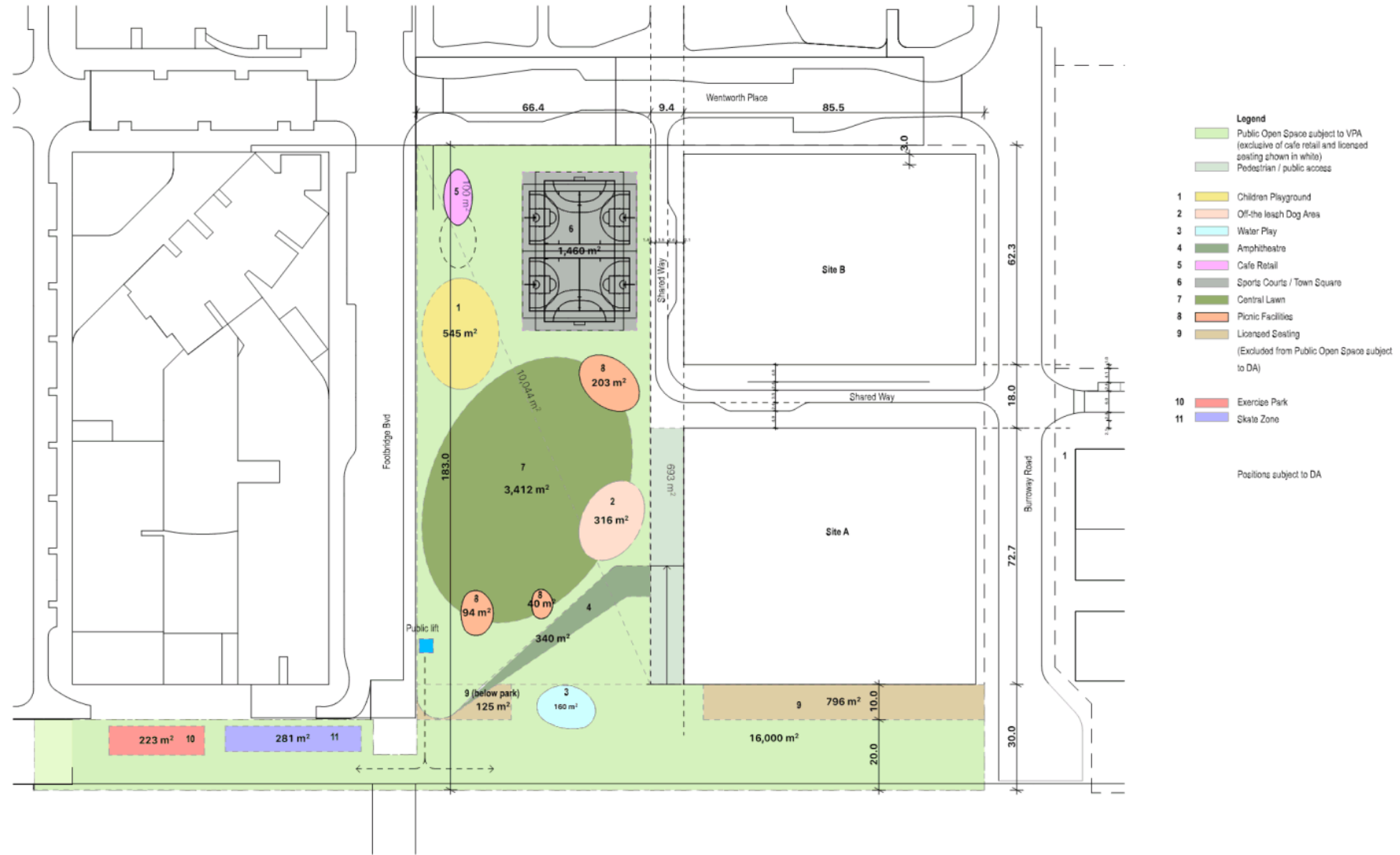


Note: Layouts are indicative only and subject to future DA

BENNELONG COVE - WENTWORTH POINT Block H Wentworth Point Sydney NSW 2127	Level GLM Presentation Plans	Status Document ID 230322 PCCWP Sports Centre - Draft Document ID 230322 PCCWP Sports Centre - Final	Rev 01 02	Date 03/04/2023 10/11/2023	Scale 1:400 @ A3	Code PCCWP	Sheet 2/503	Rev 0 4 10 20m	



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<p>BENNELONG COVE - WENTWORTH POINT Block H Wentworth Point Sydney NSW 2127</p>	<p>Public Open Space VPA Details</p>	<p>Status Document ID 230222 PCCWP Sports Centre - Draft Document ID 230222 PCCWP Sports Centre - Final</p>	<p>Rev Date 01 03/04/2023 02 10/11/2023</p>	<p>Scale 1:1000 @ A3</p>	<p>Code PCCWP</p>	<p>Sheet 8/15</p>	<p>Rev</p>	<p>0 10 20 50m</p>
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Project: 16325-21. WWP - Additional Open Space Embellishment (VPA Works)
 Drawing: 6016 Open Space VPA
 Filename: S:\Jobfiles - Current\16000 - 16999\16300 - 16399\16325 - Block H, Wentworth Point\6.0 RLB Reports\6.1 Estimates & Cost Studies\12 - VPA Works Feb 23\60

