

# **DRAFT For Exhibition**

## **Voluntary Planning Agreement**

City of Parramatta Council

*ABN 49 907 174 773*

Wharf and Hughes Developments Pty Ltd

*ACN 655 633 426*

112 Wharf Road Pty Limited

*ACN 606 374 538*

357 Hughes Avenue Pty Limited

*ACN 629 274 675*

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# Agreement

## Date

## Parties

### First party

<b>Name</b>	City of Parramatta Council ( <b>Council</b> )
<b>ABN</b>	49 907 174 773
<b>Address</b>	126 Church Street, Parramatta
<b>Contact</b>	Manager, Land Use Planning
<b>Telephone</b>	(02) 9806 5050

### Second party

<b>Name</b>	Wharf and Hughes Developments Pty Ltd ( <b>Developer</b> )
<b>ACN</b>	655 633 426
<b>Address</b>	Suite 2, 2-4 Giffnock Avenue, Macquarie Park NSW 2113
<b>Contact</b>	General Counsel
<b>Telephone</b>	02 9889 5540

### Third party

<b>Name</b>	112 Wharf Road Pty Limited ( <b>112 Wharf</b> )
<b>ACN</b>	606 374 538
<b>Address</b>	Suite 2, 2-4 Giffnock Avenue, Macquarie Park NSW 2113
<b>Contact</b>	General Counsel
<b>Telephone</b>	02 9889 5540

### Fourth party

<b>Name</b>	357 Hughes Avenue Pty Limited ( <b>357 Hughes</b> )
<b>ACN</b>	629 274 675
<b>Address</b>	Suite 2, 2-4 Giffnock Avenue, Macquarie Park NSW 2113
<b>Contact</b>	General Counsel
<b>Telephone</b>	02 9889 5540

## Background

- A. The Developer has submitted the Planning Proposal seeking amendments to the LEP for the purpose of making Development Applications to the Council for Development Consent to carry out the Development on the Land.
- B. Gateway Determination was issued on 17 August 2021.
- C. The Developer and Landowner have offered to enter into this agreement to make contributions for public purposes in connection with the Instrument Change and the Development.

## Operative part

### 1 Definitions

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

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

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

**Affordable Housing Unit** means a strata lot containing a Dwelling and any associated car parking that is intended to be managed by a Community Housing Provider and rented exclusively to very low income households, low income households or moderate income households, being such households as are prescribed in clause 6 of *State Environmental Planning Policy (Affordable Rental Housing) 2009*;

**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;

**Associated Entity** has the same meaning as in section 50AAA of the *Corporations Act 2001* (Cth);

**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;

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

**Certificate of Practical Completion** means the written certificate confirming the Works, or part of the Works, have been completed to the Council's satisfaction issued under clause 10.1(b)(i) of the Construction Terms;

**Certification Regulation** means the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*;

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

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

**Construction Terms** means the terms set out in Schedule 2;

**Contribution** and **Contribution Item** mean an item from the Contributions Table;

**Contributions Plan** has the same meaning as under the Act;

**Contributions Table** means the table at Schedule 1;

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

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

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

**Dedication Land** means that part of the Land to be dedicated to Council in accordance with this agreement, as shown on the Land Dedication Plan at Annexure A;

**Development** means the re-development of the Land for mixed-use, residential, commercial and public recreation uses in accordance with the LEP once the Instrument Change occurs;

**Development Application** has the same meaning as in the Act;

**Development Consent** has the same meaning as in the Act;

**Dwelling** has the same meaning as in the LEP;

**Easement Site** means the proposed location of the Public Access Easement limited in as described in Annexure B and shown on the plan at Annexure D;

**Easement Terms** means the terms of the Public Access Easement as set out in Schedule 7;

**East Site** means that part of the Land described as such in Schedule 4;

**Final Lot** means a strata or stratum lot in the Development that is not to be further developed or subdivided as part of the Development (but may be later redeveloped or subdivided by a future owner);

**GST** has the same meaning as in the GST Law;

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

**Insolvent** means, in relation to a party:

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

**Instrument Change** means an amendment to the LEP in response to the Planning Proposal;

**Land** means the land described in Schedule 4;

**Landowner** means in respect of the East Site, 112 Wharf and in respect of the West Site, 357 Hughes;

**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);

**LEP** means the *Parramatta Local Environmental Plan 2011*;



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

**Monetary Contribution** means a monetary contribution payable by the Developer under clause 7.1 of this agreement;

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

**Park Works** means those Works required for Contribution Item No's 2, 3 and 5;

**Planning Proposal** means Planning Proposal PP-2020-4038 seeking amendments to the LEP to rezone the Land, increase height and floor space ratio controls applying to the Land, apply a minimum non-residential floor space ratio control, provide for additional permitted uses and introduce design excellence provisions, as generally described in Schedule 5;

**Proposed Cost** means the proposed cost of carrying out the Development or any part of the Development, determined in accordance with clause 208 of the Regulation;

**Public Access Easement** means the public access easement to be granted under clause 7.6 of this agreement;

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

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

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

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

**Related Body Corporate** has the meaning given to that term in s 9 of the *Corporations Act 2001* (Cth);

**Residential Lot** means a strata lot containing a Dwelling that is not an Affordable Housing Unit and, for the avoidance of doubt, includes Residential Lots in the Town Centre;

**Road Works** means those Works required for Contribution Item No. 6;

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

**Staging Plan** means the plan at Schedule 6, separating the Development into several stages;

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

**Strata Plan** means a strata plan, a strata plan of subdivision or a strata plan of consolidation that is registered in accordance with the Strata Schemes Act; and

**Strata Schemes Act** means the *Strata Schemes Development Act 2015*;

**Subdivision Plan** means a plan of subdivision as defined under section 195 of the *Conveyancing Act 1919*;

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

**Total Contribution Value** means the total value of all Contributions to be provided under this agreement as specified in the Contributions Table, as adjusted, where necessary, for CPI;

**Transferee** has the meaning given in clause 13.2(a); and

**West Site** means that part of the Land described as such in Schedule 4;

**Works** means the Park Works, the Road Works and any work required to construct the Affordable Housing Units as set out in the Contributions Table.

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

### 4 Application of this agreement

This agreement applies to:

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

### 5 Operation of this agreement

- (a) This agreement commences on and from the date it is executed by all parties.
- (b) For the avoidance of doubt, the obligations to deliver contributions under clause 7 do not take effect until the Instrument Change has been published on the NSW legislation website.

## 6 Staged provision of Contributions

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

## 7 Contributions to be made under this agreement

### 7.1 Monetary Contributions

- (a) The Developer will pay to Council monetary contributions specified in Contribution Item 1 in the Contributions Table, increased but not decreased in accordance with the following formula:

$$\begin{array}{rcccl} \text{Monetary} & & \text{Amount specified} & & \text{The CPI at the time of payment} \\ \text{Contribution} & & \text{in the} & & \\ \text{payable} & = & \text{Contributions} & \times & \hline & & \text{Table} & & \text{The CPI at the date of this} \\ & & & & \text{agreement} \end{array}$$

- (b) Each Monetary Contribution must be paid in accordance with the timeframes specified in the Contributions Table.
- (c) A Monetary Contribution must be paid by way of bank cheque in favour of Council or by deposit by means of electronic funds transfer into an account specified by Council.
- (d) A Monetary Contribution will be taken to have been made when the Council notifies the Developer in writing that the bank cheque has been received and cleared funds or electronic funds have been deposited in the Council's bank account.
- (e) The parties agree and acknowledge that the Monetary Contribution will be used by the Council towards the public purpose specified in the Contributions Table.

### 7.2 Works

- (a) The Developer will carry out the Works in accordance with this agreement, including the Construction Terms and any Development Consent granted for the Works.
- (b) The Works or any part of the Works required under this agreement will be taken to have been completed for the purposes of this agreement when a Certificate of Practical Completion has been issued for those Works.
- (c) The Works or any part of the Works required under this agreement will be taken to have been delivered to Council when the land on which those Works are located is dedicated to Council.
- (d) The Works must be delivered to the Council in accordance with the timeframes provided in the Contributions Table.

- (e) The parties agree and acknowledge that the Works serve the public purposes specified in the Contributions Table.

### 7.3 *Dedication of Land*

- (a) Each Landowner must dedicate or cause to be transferred to the Council, at no cost to the Council, the relevant part of the Dedication Land owned by it.
- (b) On dedication or transfer to Council, the Dedication Land must be freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts in, over or in connection with the land, including but not limited to, any outstanding municipal rates and charges, water rates and land tax, except:
  - (i) any easements existing at the date of this agreement if it is necessary to retain those easements and they will not interfere with the intended use of the Dedication Land; and
  - (ii) any interests as permitted by Council prior to the creation of the interest.
- (c) The Landowner must not:
  - (i) grant or allow, or agree to grant or allow, the registration of any estate, interest, easement or right in or over the Dedication Land, other than a mortgage that will be discharged prior to the Dedication Land being transferred or dedicated to Council, or
  - (ii) construct any works, other than the Works under a Development Consent, on the Dedication Land over which an estate, interest, easement or right will be required,unless Council has provided its prior written consent.
- (d) A Contribution comprising the dedication of land is made for the purposes of this agreement when either:
  - (i) a Certificate of Title (or electronic equivalent) is issued by NSW Land Registry Services for the relevant Dedication Land identifying the Council as the registered proprietor of that land without encumbrances as required by clause 7.3(b); or
  - (ii) where the relevant Dedication Land is a Public Reserve, when a subdivision plan is registered by NSW Land Registry Services which shows the relevant Dedication Land as being a “public reserve” in accordance with section 49 of the *Local Government Act 1993*; or
  - (iii) where the relevant Dedication Land is a Public Road, when a plan is registered by NSW Land Registry Services which shows the relevant Dedication Land as being a “public road” in accordance with section 9 of the *Roads Act 1993*.
- (e) The Dedication Land must be dedicated or transferred to Council in accordance with the timeframes provided in the Contributions Table.
- (f) The parties agree and acknowledge that the embellishment and dedication of the Dedication Land serve the public purposes specified in the Contributions Table.

#### 7.4 Maintenance of Works

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

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

- (i) repairing any defects due to use of poor materials or due to poor workmanship; and
- (ii) removing graffiti or repairing or replacing any item damaged as a consequence of vandalism, provided that works required as a consequence of graffiti or vandalism do not exceed \$100,000 per annum.

**Maintained** and **Maintenance** have corresponding meanings.

**Maintenance Bond** means a Bank Guarantee in the amount of 2.5% of the cost of the Park Works to be Maintained and 5% of the cost of the Road Works to be Maintained.

**Maintenance Period** is:

- (a) for hard landscaping components of the Park Works and all Road Works, the period of 2 years, and
- (b) for soft landscaping components of the Park Works, the period of 5 years, commencing from the time the relevant item of Work is delivered to Council in accordance with this agreement.

**Maintenance Schedule** means the schedule of proposed Maintenance works as required by clause 7.4(g).

- (b) The Park Works must be Maintained by the Developer to the reasonable satisfaction of the Council for the Maintenance Period.
- (c) The Developer is responsible for rectifying all defects in the Road Works during the Maintenance Period and must comply with any written notice from Council issued during that period requiring rectification of such defects, within the time specified in the written notice, which must not be unreasonable having regard to the work required.
- (d) If, during the Development, construction vehicles used for the Development travel on roads that have been constructed and dedicated to Council in accordance with this agreement, the Developer must Maintain those roads to Council's satisfaction acting reasonably, during and immediately after any such period of use by construction vehicles.
- (e) Council will permit the Developer and its contractors and agents to access the relevant land to carry out any Maintenance required under clause 7.4(b), (c) and (d). The Developer must provide at least two Business Days' notice prior to entering the land to carry out the Maintenance.
- (f) The Developer must follow relevant Council policies and obtain all Approvals necessary to carry out the Maintenance required under this clause.

- (g) Prior to the issue of a Certificate of Practical Completion for any part of the Works or Road Works, the Developer must provide to Council:
  - (i) a Maintenance Schedule setting out the proposed Maintenance works (if any),
  - (ii) details of the costs of the relevant Works prepared by a suitably qualified quantity surveyor or otherwise established by reference to invoices provided by contractors who carried out the Works; and
  - (iii) the Maintenance Bond.
- (h) The Council agrees to promptly return the Maintenance Bond provided under paragraph (g) of this clause at the end of the Maintenance Period for the relevant item of Works, subject to paragraphs (d), (m) and (n) of this clause.
- (i) Forty Business Days prior to the end of any Maintenance Period, the Developer must request Council to carry out an inspection of the relevant Works or any part of those Works.
- (j) The Council must carry out the inspection as requested by the Developer within 10 Business Days of the request.
- (k) The Council may, within 10 Business Days of carrying out the inspection notify the Developer of any Maintenance work required, including any Maintenance required in addition to the work set out in the Maintenance Schedule.
- (l) If the Developer is issued with a notice to carry out Maintenance work under paragraph (k) of this clause, the Developer must, at the Developer's cost, carry out the Maintenance work as specified in the notice and in the timeframe specified by the notice.
- (m) If the Council issues a notice under paragraph (k) of this clause, the Council may retain any Maintenance Bond provided by the Developer under paragraph (g) of this clause until the Maintenance work required under the notice has been completed, or any dispute about the notice has been resolved, despite the expiration of any Maintenance Period.
- (n) If the Developer fails to substantially comply with an approved Maintenance Schedule or does not rectify any defects in the Works as required, and does not rectify that failure within 21 Business Days of being notified of that failure or within a reasonable period of time agreed between the parties, or if the Developer fails to comply with a notice issued under paragraph (k) of this clause, the Council may, by itself, its employees, contractors or agents, carry out the required works and may:
  - (i) call on the Maintenance Bond provided under paragraph (g) of this clause in satisfaction of the costs of carrying out the maintenance work; and
  - (ii) recover as a debt due to the Council by the Developer in a court of competent jurisdiction, any difference between the amount of the Maintenance Bond and the costs incurred by the Council in carrying out the maintenance work.

### 7.5 *Affordable Housing Units*

- (a) The Developer will dedicate or transfer, at no cost to Council, 24 fully completed and fitted out Affordable Housing Units, containing at least 31 bedrooms, within the Development to Council.
- (b) The Affordable Housing Units will be constructed, completed and transferred to Council in the manner and timeframes specified in the Contributions Table.
- (c) An Affordable Housing Unit must not be transferred to Council unless and until an Occupation Certificate has been issued for that unit.
- (d) On transfer to Council:
  - (i) each Affordable Housing Unit must be freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts in, over or in connection with the land, including but not limited to, any outstanding municipal rates and charges, water rates, land tax and strata levies, except as permitted by Council; and
  - (ii) the Developer must ensure that Council receives the benefit of and is entitled to claim against any warranties, bonds and insurance for the Affordable Housing Units, including but not limited to statutory warranties, bonds and insurance, applicable to other Residential Lots in the Development.
- (e) The Developer and Landowner must not grant or allow, or agree to grant or allow, the registration of any estate, interest, easement or right in or over an Affordable Housing Unit, and must not permit the construction of any works over or within an Affordable Housing Unit, other than the construction and fit out of the Affordable Housing Unit itself, for which such an interest will be created, unless Council has provided its prior written consent.
- (f) A Contribution comprising the dedication or transfer of an Affordable Housing Unit is made for the purposes of this agreement when a Certificate of Title (or electronic equivalent) is issued by NSW Land Registry Services for the relevant Affordable Housing Unit identifying the Council as the registered proprietor of that land without encumbrances as required by clause 7.5(d).
- (g) The parties agree and acknowledge that the provision of Affordable Housing Units under this clause serves the public purposes of providing affordable housing in the vicinity of the Development and the Council intends to engage an approved community housing provider for the ongoing management of the Affordable Housing Units.

### 7.6 *Public Access Easement*

- (a) The Developer and Landowner will, at no cost to Council, register against the title to the Land:
  - (i) a covenant prohibiting any building or structures, including pillars, other than structures approved by the Council (acting reasonably) for the purposes of enhancing public domain areas, to be constructed the Easement Site; and



- (ii) an easement in gross burdening that part of the Land forming the Easement Site in favour of the Council permitting public access to the Easement Site and generally in accordance with the Easement Terms.
- (b) Any requirement to register an easement, covenant or other instrument against the title to the Land will be satisfied when the Developer and Landowner provide to the Council a copy of the relevant title search showing the registration of the instrument.
- (c) Any covenant or easement, required under clause (a) must be registered prior to the issue of an Occupation Certificate for any building on the Land within Stage 3 of the Development.
- (d) The parties agree that the proposed covenant and easement under this clause will serve the following public purposes:
  - (i) To increase the amount of and improve existing public open space areas in the vicinity of the Land;
  - (ii) To improve pedestrian circulation and the amenity of the public domain in the vicinity of the Land.
- (e) The Developer and Landowner agree and acknowledge that the obligations under this clause 7.6 are relevant considerations for the Council or any other consent authority when determining a Development Application or Modification Application relating to the Land and that a failure to comply with those obligations or any inconsistency with the requirements in those clauses may constitute a reason for refusal of such a Development Application or Modification Application.

#### **7.7 Access to Council owned land**

- (a) The Council agrees to permit the Developer on terms to be determined by Council, to enter, pass through or occupy any Council owned or controlled land in order to enable the Developer to properly perform its obligations under this agreement, provided the Developer gives at least 15 Business Days' notice. Nothing in this clause creates or gives the Developer any estate or interest in any part of the Council owned or controlled land.
- (b) The Developer indemnifies the Council, its employees, officers, agents and contractors from and against all Claims in connection with the entry or access by the Developer to, or any presence of the Developer on, Council owned or controlled land for the purposes of performing its obligations under this agreement, except to the extent such Claim arises directly as a result of the negligence, default, act or omission of Council or its employees, officers, agents, contractors or workmen.

#### **7.8 Contribution Values**

The parties acknowledge and agree that the contribution values set out in the Contributions Table are estimates only and:

- (a) the Developer assumes all cost and risk in relation to the provision and the making of the Contributions, including any variations over time to the value of land to be dedicated or the cost of carrying out the Works, and

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

## 7.9 Additional Monetary Contribution

- (a) The Developer will pay to Council an additional monetary contribution in the amount calculated in accordance with the following formula:

$$\begin{array}{rclcl} \text{Additional} & & 1\% \text{ of} & & \text{The CPI at the time of payment} \\ \text{Monetary} & = & \text{Proposed} & \times & \hline \text{Contribution} & & \text{Cost} & & \text{The CPI at the date the} \\ & & & & \text{Proposed Cost is determined} \end{array}$$

- (b) The Additional Monetary Contribution must be paid in instalments prior to the issue of each Construction Certificate for the Development, with the amount of each instalment calculated in accordance with clause 7.9(a) based on the Proposed Cost of that part of the Development subject to the Construction Certificate to be issued.
- (c) Notwithstanding clause 7.9(b), if the Act or Regulation is amended, or a Ministerial direction is made under section 7.17 of the Act that would ordinarily apply to contributions payable under sections 7.11 or 7.12 for the Development, and that amendment or direction provides that monetary contributions are to be paid prior to the issue of an Occupation Certificate, Council will agree to deferred payment of the Additional Monetary Contribution so that each instalment is paid prior to the issue of an Occupation Certificate, with the amount of each instalment calculated in accordance with clause 7.9(a) based on the Proposed Cost of that part of the Development subject to the Occupation Certificate to be issued.
- (d) The Additional Monetary Contribution must be paid by way of bank cheque in favour of Council or by deposit by means of electronic funds transfer into an account specified by Council.
- (e) The Additional Monetary Contribution will be taken to have been made when the Council notifies the Developer in writing that the bank cheque has been received and cleared funds or electronic funds have been deposited in the Council's bank account.
- (f) The parties agree and acknowledge that the Additional Monetary Contribution will be used by the Council towards the public purposes specified in any Contributions Plan adopted by Council at the time the Additional Monetary Contribution is received.

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

- (a) This agreement excludes the application of sections 7.11 and 7.24 of the Act to the Development, but only to the extent that the Residential Gross Floor Area of the Development does not exceed:
- (i) 70,805 square metres on the East Site; or
  - (ii) 92,353 square metres on the West Site.

- (b) This agreement does not exclude the application of section 7.24 of the Act to the Development.
- (c) For the avoidance of doubt, if the Residential Gross Floor Area of the Development exceeds 70,805 square metres on the East Site or 92,353 square metres on the West Site:
  - (i) sections 7.11 and 7.12 of the Act will apply to the extent of the exceedance; and
  - (ii) the requirement to pay the Additional Monetary Contribution under clause 7.9 will not apply to the extent of the exceedance.

## 9 Registration of this agreement

### 9.1 Landowner Interest

Each Landowner represents and warrants to the Council that on the date of this agreement it is the registered proprietor of the relevant part of the Land, as set out in Schedule 4.

### 9.2 Registration of this agreement

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

to enable the registration of this agreement in accordance with this clause 9.2.

- (d) Each Landowner consents to the registration of the agreement in accordance with this clause 9.2.

### 9.3 *Removal from Register*

- (a) The Council will provide a release and discharge of this agreement so that it may be removed from the folios of the Register for the Land (or any part of it) provided the Council is satisfied the Developer has duly fulfilled its obligations under this agreement, and is not otherwise in default of any of the obligations under this agreement.
- (b) For the avoidance of doubt, the Council may provide a release and discharge allowing removal of this agreement from the folios of the Register for any proposed Final Lot, provided that the Developer has fulfilled any obligations under this agreement that, in accordance with the Contributions Table, will be due at the time an Occupation Certificate is to be issued for the Final Lot to be released. Where a building contains Affordable Housing Units, and Council has confirmed its satisfaction under clause 12.4(b)(ii), Council may provide a release and discharge allowing removal of this agreement from the folios of the Register in relation to Final Lots to be created within that building, but may require this agreement to be registered on the folios of the Register for the Affordable Housing Units within that building.

### 9.4 *Caveat*

- (a) Each Landowner acknowledges and agrees that:
  - (i) when this agreement is executed, the Council is deemed to have acquired and the Landowner is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently the Council will have a sufficient interest in the Land in respect of which to lodge a caveat over the Land notifying that interest;
  - (ii) it will not object to the Council lodging a caveat in the relevant folios of the Register for the Land nor will it seek to remove any caveat lodged by the Council provided the caveat does not prevent registration of any dealing or plan other than a transfer.
- (b) The Council must, at the Landowner's cost, register a withdrawal of any caveat in respect of the Land within five 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, other than in accordance with clause 9.4(c).
- (c) The Landowner acknowledges and agrees that:
  - (i) when this agreement is executed, Council is deemed to have acquired, and the Landowner is deemed to have granted, an equitable estate and interest in the Dedication Land and each Affordable Housing Unit for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently Council has sufficient interest in the Dedication Land each Affordable Housing Unit in respect of which to lodge a caveat over that land notifying Council's interest;

- (ii) it will notify the Council that any subdivision plan or Strata Plan creating a lot consisting wholly of Dedication Land or an Affordable Housing Unit has been registered within 2 Business Days of registration; and
- (iii) it will not object to Council lodging a caveat over the Dedication Land or any Affordable Housing Unit once the relevant title has been created, nor will it seek to remove any such caveat lodged by Council.

## 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, and
- (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:

- (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*

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, the parties may refer the dispute to an expert, in which event:

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

### 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 *No 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.

## 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 21 days.
- (b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.

- (c) If a party disputes the Default Notice it may refer the dispute to dispute resolution under clause 11 of this agreement.

## 12.2 *Security for Works*

- (a) The Developer must provide to the Council:
  - (i) a Bank Guarantee or Bank Guarantees to secure the completion of the Park Works (**Park Works Security**) ; and
  - (ii) a Bank Guarantee to secure the completion of the Road Works in the amount that is 25% of the total estimated cost of Roads Works (**Road Works Security**).
- (b) At all times, the Park Works Security must have a minimum value of:
  - (i) an amount equivalent to the value of the Park Works that have not been Completed in each Stage of the Development for which a Construction Certificate has been issued for above-ground works; or
  - (ii) \$5,000,000.00 plus indexation in accordance with increases in the CPI from the date of this agreement,whichever is the least.
- (c) Prior to the issue of the first Construction Certificate for above-ground works in each Stage of the Development, the Developer must:
  - (i) assess the value of the Bank Guarantee that will be required under clause 12.2(b) once the Construction Certificate is issued; and
  - (ii) provide any additional or replacement Bank Guarantee so that the requirements of that clause are met.
- (d) The Council may reject any Bank Guarantee that contains errors, or if it has received the Bank Guarantee, require at any time the Developer to obtain a replacement Bank Guarantee that rectifies any such errors or otherwise obtain rectification of the errors. The Developer must provide the replacement Bank Guarantee, or otherwise obtain rectification of the errors, within 5 Business Days of receiving the Council's request.
- (e) The Council may call on a Bank Guarantee provided under this clause if:
  - (i) the Developer is in material or substantial breach of this agreement in failing to deliver a Contribution Item within the timeframe required by the Contributions Table, or where a revised timeframe has been agreed by Council, within that revised timeframe and has failed to rectify the breach within a reasonable period of time after having been given reasonable notice (which must not be less than 21 Business Days) in writing to do so in accordance with clause 12.1 of this agreement; or
  - (ii) the Developer becomes Insolvent.
- (f) 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.

- (g) On receipt of a Replacement Bank Guarantee provided under clause 12.2(f), the Council must release and return to the Developer, as directed, the Bank Guarantee that has been replaced as soon as reasonably practicable.
- (h) At any time following the provision of a Bank Guarantee under this clause, the Developer may provide the Council with one or more replacement Bank Guarantees totalling the amount of all Bank Guarantees required to be provided under this clause for the time being. On receipt of such replacement Bank Guarantee, the Council must release and return to the Developer, as directed, the Bank Guarantee(s) which it holds that have been replaced as soon as reasonably practicable.
- (i) The amount of the Road Works Security may be reduced by agreement between the parties, if the estimated cost of all outstanding Road Works under this agreement (as determined by a report prepared by a qualified Quantity Surveyor at the Developer's cost) is less than the amount required to be held by Council under clause 12.2(a)(ii).
- (j) Subject to clause 12.2(e), the Council may apply the proceeds of a Bank Guarantee in satisfaction of:
  - (i) any obligation of the Developer to deliver the Contribution Item that is secured by the Bank Guarantee; and
  - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this agreement.
- (k) If Council calls on a Road Works Security at any time, the Developer must provide a further Bank Guarantee to Council so that Council holds security in an amount that is equivalent to 25% of the total estimated cost of the Road Works at all times, unless that amount has been reduced in accordance with clause 12.2(i), in which case the amount of the Road Works Security must be equivalent to the agreed reduced amount under that clause.
- (l) The Council must promptly return a Bank Guarantee to the Developer when the Contribution to which the Bank Guarantee relates is discharged by the delivery of a Contribution Item and the Developer has provided any Security for maintenance required under clause 7.4(g) and for defects liability required under the

Construction Terms. For the avoidance of doubt, the Road Works Security is to be released by Council on completion of the final stage of the Road Works.

- (m) 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; or
  - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this agreement,that is not or cannot be satisfied by calling on a Bank Guarantee.

### 12.3 *Compulsory Acquisition*

- (a) If the Developer does not dedicate the Dedication Land to Council or grant the Public Access Easement as required by this agreement, the Council may compulsorily acquire the relevant land or interest, in which case the Developer consents to the Council compulsorily acquiring that land or interest for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedures in the *Land Acquisition (Just Terms Compensation) Act 1991* and may call upon any Bank Guarantee provided under clause 12.2 to cover any costs, including legal costs, incurred by the Council on acquisition of the land or interest.
- (b) Clause 12.3(a) constitutes an agreement for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (c) Except as otherwise agreed between the Developer and Council, the Developer must ensure the Dedication Land is freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, rights, charges, rates, strata levies and contracts, except as may be permitted by this agreement on the date that the Council will acquire the land in accordance with clause 12.3(a).
- (d) The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the relevant land or interest under clause 12.3(a).
- (e) The Developer must pay the Council, promptly on demand, an amount equivalent to all costs, including legal costs, incurred by the Council acquiring the whole or any part of the relevant land or interest under clause 12.3(a) that are not or cannot be recovered by calling on a Bank Guarantee.

### 12.4 *Security for Affordable Housing Units*

- (a) Any Development Application for the erection of a building that will contain an Affordable Housing Unit or Units to be dedicated to Council under this agreement must identify the following:
  - (i) The Affordable Housing Unit or Units proposed to be dedicated to Council.
  - (ii) The parking space or spaces associated with each Affordable Housing Unit.
  - (iii) The location of each Affordable Housing Unit in the building.
  - (iv) The proposed layout and fit out of each Affordable Housing Unit in the building.

- (b) Prior to the issue of an Occupation Certificate for any building containing an Affordable Housing Unit, or any part of such a building, the Developer must:
  - (i) provide access to the Council to inspect the Affordable Housing Unit and any other part of the building if required by Council; and
  - (ii) obtain written confirmation from Council that it is satisfied the Affordable Housing Unit has been completed and fitted out in accordance with the requirements of this agreement.
- (c) An Occupation Certificate applying to an Affordable Housing Unit must be provided before that unit can be transferred to Council.

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

- (a) In accordance with section 6.8 of the Act and clause 21 of the Certification Regulation a Construction Certificate must not be issued for any part of the Development unless:
  - (i) relevant obligations to provide Bank Guarantees under clause 12.2 have been satisfied; and
  - (ii) any Monetary Contributions payable in accordance with clauses 7.1 and 7.8 and the Contributions Table have been paid; and
  - (iii) any other obligations required prior to the issue of the Construction Certificate as specified in the Contributions Table or under this agreement have been met.
- (b) In accordance with section 6.10 of the Act and clause 48 of the Certification Regulation an Occupation Certificate must not be issued for any part of the Development unless:
  - (i) Council has issued written confirmation that any Affordable Housing Unit located within the building subject to the Occupation Certificate has been completed and fitted out in accordance with this agreement;
  - (ii) any obligation to deliver a Contribution required prior to the issue of that Occupation Certificate as specified in the Contributions Table or under this agreement has been met;
  - (iii) any Bank Guarantee for maintenance required under clause 7.4 has been provided; and
  - (iv) any Bank Guarantee for defects liability required under the Construction Terms has been provided.

#### **12.6 *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.
- (b) Any change of ownership or control (as defined in section 50AA of the *Commonwealth Corporations Act 2001*) of a party (excluding the Council) shall be deemed to be an assignment of this agreement for the purposes of this clause.
- (c) Any purported dealing in breach of this clause is of no effect.

### 13.2 Transfer of Land

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

### 13.3 Right to transfer Strata or Stratum Lots

- (a) Notwithstanding clause 13.2, the Landowner may enter into a contract for sale with a Transferee for a Final Lot on a proposed Strata Plan or Subdivision Plan that has not yet been registered, without having to obtain consent from Council.
- (b) For the avoidance of doubt, the transfer of a Final Lot is not permitted under clause 13.3(a) unless the Council has provided a written release and discharge of this agreement under clause 9.3.

### 13.4 Exempt Transfers

- (a) Clause 13.2 does not apply where the Landowner transfers:

- (i) any part of the Land it owns to an Associated Entity of the Landowner or Developer or to Council in accordance with this agreement; or
- (ii) a Super Lot where the Contribution for the Super Lot has already been provided or otherwise secured;

and this agreement has been registered against the title to the relevant land, or Council has provided a written release and discharge of this agreement for the relevant land under clause 9.3.

- (b) The Landowner must notify the Council in writing:
  - (i) 20 Business Days prior to any transfer under clause 13.4(a) identifying the part of the Land that is to be transferred and the proposed transferee; and
  - (ii) 5 Business Days after the transfer has taken place, confirming any changes to representatives of the Landowner or Developer for the purposes of this agreement and clause 16.

## 14 Approvals and consents

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

## 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;
- (b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by email at the address below, or at the address last notified by the intended recipient to the sender after the date of this agreement:
  - (i) to City of Parramatta Council: PO Box 32, Parramatta, NSW 2124  
Email: council@cityofparramatta.nsw.gov.au  
Attention: Manager, Land Use Planning
  - (ii) to Wharf and Hughes Development Pty Ltd [Address]  
Email: [Email]  
Attention: [Contact]
  - (iii) to 112 Wharf Road Pty Limited [Address]  
Email: [Email]  
Attention: [Contact]
  - (iv) to 37 Hughes Avenue Pty Limited [Address]  
Email: [Email]  
Attention: [Contact]
- (c) is taken to be given or made:
  - (i) in the case of hand delivery, when delivered;
  - (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
  - (iii) in the case of an email, when the sender receives an email acknowledgement from the recipient's information system showing the email has been delivered to the email address for the recipient stated in clause 16.1(b); and
- (d) if under clause (c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

## 17 Release and Discharge

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

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

## 18 General

### 18.1 *Relationship between parties*

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

### 18.2 *Landowner Obligations*

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

### 18.3 *Time for doing acts*

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

#### **18.4 Further assurances**

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

#### **18.5 Joint and individual liability and benefits**

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

#### **18.6 Variations and Amendments**

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

#### **18.7 Counterparts**

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

#### **18.8 Legal expenses and stamp duty**

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

#### **18.9 Entire agreement**

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

#### **18.10 Representations and warranties**

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

#### **18.11 Severability**

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



#### *18.12 Invalidity*

- (a) A word or provision must be read down if:
  - (i) this agreement is void, voidable, or unenforceable if it is not read down;
  - (ii) this agreement will not be void, voidable or unenforceable if it is read down; and
  - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
  - (i) despite the operation of clause (a), the provision is void, voidable or unenforceable if it is not severed; and
  - (ii) this agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this agreement has full effect even if clause 18.12(b) applies.

#### *18.13 Waiver*

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

#### *18.14 GST*

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

#### *18.15 Governing law and jurisdiction*

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

## Schedule 1

## Contributions Table

No.	Item	Public Purpose	Type of Contribution	Scope	Timing of Provision	Timing for provision of Bank Guarantee	Estimated Amount / Value of Item
1	Monetary Contribution	Ermington Community Hub, public library, community facilities at the discretion of Council	Monetary Contribution	\$19,349 per Dwelling for any Dwelling in the Development in excess of 1,925 Dwellings	Prior to the issue of a Construction Certificate for the relevant Dwelling	N/A	\$0 on the basis that as at the date of this agreement the Developer proposes a maximum of 1,925 Dwellings
2	Stage 1 Open Space	Open space and recreation	Works	Construction and embellishment of a minimum of 3,907 sqm of open space in accordance with the indicative landscape design in Annexure B and this agreement	Works to be completed prior to the dedication of land.	Park Works Security in accordance with clause 12.2 required prior to the issue of a Construction Certificate for any above-ground works in Stage 1.	See below total
			Works – Maintenance	Maintenance in accordance with the Maintenance Schedule required under this agreement	In accordance with clause 7.4.	Prior to practical completion, in accordance with clause 7.4(g)	2.5% of the cost of the Works.
			Land Dedication	Dedication to Council of a minimum of 3,907 sqm of land identified for open space in	Land to be dedicated to Council prior to the issue of an Occupation Certificate for the last building in Stage	N/A	Nil

No.	Item	Public Purpose	Type of Contribution	Scope	Timing of Provision	Timing for provision of Bank Guarantee	Estimated Amount / Value of Item
				Stage 1 in Annexure A to Council.	1 of the Development, or prior to the issue of an Occupation Certificate in any subsequent Stage, whichever occurs first.		
3	Stage 2 Open Space	Open space and recreation	Works	Construction and embellishment of a minimum of 7,212 sqm of open space in accordance with the indicative landscape design in Annexure B and this agreement	Works to be completed prior to the dedication of land.	Park Works Security required in accordance with clause 12.2 prior to the issue of a Construction Certificate for any above-ground works in Stage 2.	See below total
			Works – Maintenance	Maintenance in accordance with the Maintenance Schedule required under this agreement	In accordance with clause 7.4.	Prior to practical completion, in accordance with clause 7.4(g)	2.5% of the cost of the Works.

No.	Item	Public Purpose	Type of Contribution	Scope	Timing of Provision	Timing for provision of Bank Guarantee	Estimated Amount / Value of Item
			Land Dedication	Dedication to Council of a minimum of 7,212 sqm of land identified for open space in Stage 2 in Annexure A to Council.	Land to be dedicated to Council prior to the issue of an Occupation Certificate for the last building in Stage 2 of the Development, or prior to the issue of an Occupation Certificate in any subsequent Stage, whichever occurs first.	N/A	Nil
<b>Estimated Total for Contribution Items 2 and 3 plus road works in the East Site</b>							<b>\$10,480,924</b>
4	Stage 3 Public Access Easement	Public pedestrian thoroughfare	Works	Construction and embellishment, at no cost to Council, of the Easement Site to provide for a public pedestrian thoroughfare in accordance with any Development Consent granted for those works.	Works to be completed prior to grant of the Public Access Easement.	N/A	N/A – no value attributed to the works on the Public Access Easement
			Grant of Public Access Easement	Registration of a public access easement over the Easement Site in accordance with clause 7.6.	In accordance with clause 7.6	N/A	Nil

No.	Item	Public Purpose	Type of Contribution	Scope	Timing of Provision	Timing for provision of Bank Guarantee	Estimated Amount / Value of Item
5	Stage 4 Open Space	Open space and recreation	Works	Construction and embellishment of a minimum of 14,914 sqm of open space in accordance with the indicative landscape design in Annexure B and this agreement	Works to be completed prior to the dedication of land.	Park Works Security required in accordance with clause 12.2 prior to the issue of a Construction Certificate for any above-ground works in Stage 4.	See below total
			Works – Maintenance	Maintenance in accordance with the Maintenance Schedule required under this agreement	In accordance with clause 7.4.	Prior to practical completion, in accordance with clause 7.4(g)	2.5% of the cost of the Works.
			Land Dedication	Dedication to Council of a minimum of 14,914 sqm of land identified for open space in Stage 4 in Annexure A to Council.	Land to be dedicated to Council prior to the issue of the first Occupation Certificate a building in Stage 4 of the Development.	N/A	Nil
Estimated Total for Contribution Items 4 and 5 plus road works in the West Site							\$10,596,490

No.	Item	Public Purpose	Type of Contribution	Scope	Timing of Provision	Timing for provision of Bank Guarantee	Estimated Amount / Value of Item
6	Affordable Housing Units	Housing Affordability	Works	<p>Construction and fit out of 24 Affordable Housing Units, with a minimum of 34 bedrooms within the Development, in accordance with the specifications at Annexure C and the terms of this agreement.</p> <p>12 Affordable Housing Units will be located within Stage 1 and 12 Affordable Housing Units will be located in Stage 3.</p>	Affordable Housing Units to be constructed, completed and an Occupation Certificate issued for the relevant Strata Lot prior to dedication.	N/A	See below total

No.	Item	Public Purpose	Type of Contribution	Scope	Timing of Provision	Timing for provision of Bank Guarantee	Estimated Amount / Value of Item
			Land Dedication	Dedication of 24 Affordable Housing Units to Council in accordance with clause 7.5	<p>12 Affordable Housing Units are to be dedicated to Council before the issue of the last Occupation Certificate for Stage 1 of the Development, or before the issue of an Occupation Certificate in any subsequent Stage, whichever occurs first.</p> <p>12 Affordable Housing Units are to be dedicated to Council before the issue of the last Occupation Certificate for Stage 3 of the Development, or before the issue of an Occupation Certificate in any subsequent Stage, whichever occurs first.</p>	Nil	See below total
<b>Estimated Total for Contribution Item 6</b>							<b>\$16,169,411</b>
7	Roadworks	Public Road, Roadworks, Regional traffic network	Works	Construction of roads, cycleways and footpaths in accordance with the indicative concept designs in Annexure B.	Prior to dedication of land for public road.	Prior to the issue of a Construction Certificate for the first building in a	Road works costs included in subtotals above

No.	Item	Public Purpose	Type of Contribution	Scope	Timing of Provision	Timing for provision of Bank Guarantee	Estimated Amount / Value of Item
			Land Dedication	Land for new roads as identified on the Land Dedication Plan at Annexure A to be dedicated to Council as a public road.	Prior to the issue of an Occupation Certificate for any building in the Stage containing the road to be dedicated	Stage that includes Road Works.	
<b>TOTAL OF ALL CONTRIBUTION ITEMS (excluding Maintenance)</b>							<b>\$37,246,825</b>



## Schedule 2 Construction terms for the Works

### 1 Interpretation

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.

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

**Defects Liability Period** means in respect of the Works to which clause 10.4 of this Schedule applies, the period of 6 months from the date on which the Certificate of Practical Completion is issued for the Works.

**Detailed Design** means the final specifications and finishes for the Works prepared in accordance with clause 5.2 or clause 5.3 of this Schedule 2 and will include the design of the Works, the location for the Works, installation specifications and estimated costs of construction and/or installation.

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

**Superintendent** means the Superintendent appointed under any Construction Contract.

**Works** includes any part of the Works.

### 2 Requirements of Authorities and Approvals

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

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

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

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

- (a) in accordance with the relevant Development Consent for the Works and all Approvals and the requirements of all Laws, including without limitation, work health and safety legislation; and
- (b) in a good and workmanlike manner and so that they are diligently progressed until completion;

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

### 3 Costs of Works

All costs of the Works must be borne by the Developer in accordance with clause 7.8 of this agreement.

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

4.1 The Developer will be responsible for managing the Works.

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

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

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

##### **5.1 Concept Design for Works**

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

##### **5.2 Detailed Design for Park Works and Road Works**

- (a) This clause 5.2 applies to the preparation of a Detailed Design for the Park Works, Road Works and any works to be carried out on the Easement Site.
- (b) Prior to submitting any Development Application or application for any other Approval for the Works, the Developer must provide a copy of the draft Detailed Design to the Council for approval, prepared in accordance with:
  - (i) the Concept Design;
  - (ii) any relevant Australian Standard; and
  - (iii) any relevant design standards or guidelines and any other requirements or policies applied by the Council from time to time in assessing the adequacy of any works or improvements proposed for public domain areas or public roads.
- (c) The Developer will obtain any relevant standards (including design standards), specifications, or guidelines and any other requirements or policies referred to in clause 5.2(b)(iii) of this Schedule from Council if the Council fails to deliver them to the Developer.
- (d) Within 28 Business Days of receiving the draft Detailed Design, Council will respond to the Developer with any suggested amendments to the Detailed Design.
- (e) Council and the Developer must work in consultation with each other to prepare and agree the Detailed Design and must both act reasonably, promptly and in good faith in their consultations with each other.
- (f) If the Detailed Design is not completed and agreed within 28 Business Days of Council providing its suggested amendments in accordance with clause 5.2(d) of this Schedule 2, to avoid possible delays to the issue of a Certificate of Practical Completion, the Council will, in its sole discretion, be entitled to decide on any outstanding or undecided matter or item relating to areas that are to be

accessible to the public, provided that any decision made by Council under this clause:

- (i) is consistent with the Concept Design for the Works;
  - (ii) is consistent with the obligation to carry out the Works and dedicate the Dedication Land under this agreement;
  - (iii) does not materially and adversely affect the Development; and
  - (iv) is not unreasonable.
- (g) Any acceptance by the Council of the Detailed Design under this clause 5.2 of Schedule 2 is not to be taken as approval of or to any Development Application or application for any other Approval for the Works.

### **5.3 Detailed Design for Affordable Housing Units**

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

(iii) are not unreasonable.

- (d) Council and the Developer must act reasonably, promptly and in good faith to finalise the Detailed Design for Affordable Housing Units.
- (e) For the avoidance of doubt, any acceptance by the Council of the Detailed Design for Affordable Housing Units under this clause 5.3 is not to be taken as approval of or to any Development Application relating to those Affordable Housing Units.

## **6 Construction Drawings**

- 6.1 Prior to applying for a Construction Certificate for any Works, or if a Construction Certificate is not required, prior to commencement of the Works, the Developer must provide to Council for approval draft construction drawings for those Works prepared in accordance with the Detailed Design.
- 6.2 Within 15 Business Days of receiving the draft construction drawings, Council may, acting reasonably, require a variation to the construction drawings to comply with the Detailed Design, the Building Code of Australia, any relevant Australian standard or any relevant design standards or guidelines referred to in clause 5.2(b) or clause 5.3(c) of this Schedule.
- 6.3 The Developer must amend the construction drawings in accordance with a requirement issued by Council under clause 6.2 of this Schedule.
- 6.4 For the avoidance of doubt, any approval of the construction drawings provided by the Council under this clause 6 is not to be taken as approval of or to any Construction Certificate for the Works.

## **7 Review of Construction Document**

The Developer acknowledges and agrees that:

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

## **8 Carrying out of Works**

### **8.1 Communication**

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

## 8.2 Standard of Works

- (a) The Developer must procure the execution and completion of the Works and must cause the Builder to use suitable new materials and proper and tradesmanlike workmanship when carrying out the Works.
- (b) The Works must be diligently progressed to Practical Completion in accordance with:
  - (i) the Detailed Design and construction drawings approved by Council under this Schedule;
  - (ii) any Development Consent and Approvals applying to the Works;
  - (iii) the requirements of all Laws, including without limitation, workplace health and safety legislation; and
  - (iv) the obligations of this agreement.
- (c) The Developer must not commence construction of any Works until it has given the Council copies of all Approvals necessary for the construction of the Works.
- (d) The Developer may but is not obliged to reinstate any Works where damage or destruction is as a result of:
  - (i) any act or omission of the Council or its employees, consultants or agents relating to any part of the Works under this agreement; or
  - (ii) the use or occupation by the Council or its employees, consultants or agents, Council's representatives or other contractor of the Council of any part of the Works.

## 8.3 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 8.3(a) of this Schedule, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

## 9 Inspection

- (a) On completion of the Detailed Design, the Council will provide a schedule of inspections to be undertaken by Council (**Inspection Schedule**) to occur at specified stages of the construction of the Works (**Inspection Stage**). If the Council does not provide the Inspection Schedule, the Developer must request the Inspection Schedule from the Council prior to the Works commencing.

- (b) Ten (10) Business Days prior to reaching an Inspection Stage as set out in the Inspection Schedule, the Developer must notify the Council of the proposed inspection date (**Inspection Date**).
- (c) On the Inspection Date, or other agreed date, the Developer must ensure that any employees, contractors, agents or representatives of Council have access to and may enter the Land to inspect the Works.
- (d) In addition to carrying out inspections in accordance with the Inspection Schedule, the Council may enter the Land or any part of the Land on which the Works are located to inspect the progress of the Works, subject to:
  - (i) the terms of the Construction Contract (save for any clause of the Construction Contract which prevents the Council from accessing the Land);
  - (ii) giving reasonable notice to the Developer;
  - (iii) complying with all reasonable directions of the Developer; and
  - (iv) being accompanied by the Developer or a nominee, or as otherwise agreed.
- (e) The Council may, acting reasonably, within 5 Business Days of carrying out an inspection (either under clause 9(c) or 9(d) of this Schedule 2), notify the Developer of any defect or non-compliance in the Works and direct the Developer to carry out work to rectify that defect or non-compliance within a reasonable period of time. Such work may include, but is not limited to:
  - (i) removal of defective or non-complying material;
  - (ii) demolishing defective or non-complying work;
  - (iii) reconstructing, replacing or correcting any defective or non-complying work; and
  - (iv) not delivering any defective or non-complying material to the site of the Works.
- (f) If the Developer is issued a direction to carry out further work under clause 9(e) of this Schedule 2, the Developer must, at its cost, rectify the defect or non-compliance specified in the Notice within the time period specified in the Notice, provided that it is reasonable having regard to the nature of the works.
- (g) If the Developer fails to comply with a direction to carry out work given under 9(e) of this Schedule 2, the Council will be entitled to refuse to accept that the Works (or the relevant part of the Works) meet the Council's standards and specifications and may refuse to issue a Certificate of Practical Completion, until the required Works have been completed to the Council's satisfaction, acting reasonably.
- (h) For the avoidance of doubt, any acceptance by the Council that the Developer has rectified a defect or non-compliance identified in a notice issued under 9(e) of this Schedule 2 does not constitute:
  - (i) acceptance by the Council that the Works comply with all Approvals and Laws; or
  - (ii) an Approval by the Council in respect of the Works; or

- (iii) an agreement or acknowledgment by the Council that the Works or the relevant part of the Works are complete and may be delivered to the Council in accordance with this agreement.

## **10 Completion**

### **10.1 Practical Completion**

- (a) When the Developer considers that the Works, or any part of the Works, are complete, the Developer must send a Notice to the Council accompanied by complete works as executed plans, any relevant certificates or consents of any public utility authority and a request for written certification from the Council that the Works are complete.
- (b) Within 10 Business Days of receipt of the notice under clause 10.1(a) of this Schedule 2, the Council will carry out an inspection of the Works and will, acting reasonably, either:
  - (i) provide written certification to the Developer that the Works have been completed; or
  - (ii) notify the Developer of any additional information required or matters which must be addressed by the Developer prior to the certification being issued.
- (c) If the Developer is required to provide additional information or address any matters under clause 10.1(b)(ii) of this Schedule 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 10.1(a) of this Schedule 2 for written certification that the Works have been completed.
- (d) Practical completion will be achieved in relation to the Works or any part of the Works when a Certificate of Practical Completion has been issued for those Works.

### **10.2 Delivery of documents**

- (a) The Developer must as soon as practicable, and no later than 20 Business Days after the date on which the Certificate of Practical Completion is issued in respect of the Works or any part of the Works deliver to the Council, complete and legible copies of:
  - (i) all “as built” full-sized drawings, specifications and relevant operation and service manuals;
  - (ii) all necessary certificates including the certificates of any consultants of the Developer that the Council may reasonably require, and Approvals of any public utility authority (where relevant); and
  - (iii) copies of all Approvals required for use of the land subject to the Works.
- (b) The Developer must as soon as practicable, and no later than 20 Business Days after the date on which the Certificate of Practical Completion is issued in respect of the Works or any part of the Works, provide the Council with a tour of the land subject to the Works and provide reasonable instructions on the operation and use of the Services on that land.

### 10.3 Assignment of Warranties and Causes of Action

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

### 10.4 Defects Liability Period

- (a) This clause 10.4 of this Schedule applies to works to construct and fit out Affordable Housing Units to be delivered under this agreement.
- (b) During the Defects Liability Period, the Council (acting reasonably) may give to the Developer a notice (**Rectification Notice**) in writing that identifies a defect in the Works and specifies:
  - (i) action required to be undertaken by the Developer to rectify that defect (**Rectification Works**); and
  - (ii) the date on which the defect must be rectified (**Rectification Date**).
- (c) The Developer must comply with the Rectification Notice by:
  - (i) procuring the performance of the Rectification Works by the Rectification Date, or such other date as agreed between the parties;
  - (ii) keeping the Council reasonably informed of the action to be taken to rectify the defect; and
  - (iii) carrying out the Rectification Works.
- (d) The Council must give the Developer and its contractors any access required to carry out the Rectification Works.
- (e) When the Developer considers that the Rectification Works are complete, either the Developer must notify the Council and provide documentation, plans or invoices which establish that the Rectification Works were carried out.
- (f) The Council may inspect the Rectification Works within 15 Business Days of receiving a Notice from the Developer under clause 10.4(e) of this Schedule 2 and, acting reasonably:
  - (i) issue a further Rectification Notice if it is not reasonably satisfied that the Rectification Works are complete; or
  - (ii) notify the Developer in writing that it is satisfied the Rectification Works are complete.
- (g) The Developer must meet all costs of and incidental to rectification of defects under this clause 10.4.
- (h) If the Developer fails to comply with a Rectification Notice, then the Council may do such things or take such action as is necessary to carry out the Rectification Works, including accessing and occupying any part of the Land without further notice to the Developer, and may recover as a debt due to the Council by the



Developer in a court of competent jurisdiction the costs incurred by the Council in carrying out Rectification Works.

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

## **11 Risk**

The Developer undertakes the Works entirely at its own risk.

## **12 Insurance**

- (a) Prior to the commencement of the construction of any of the Works, the Developer must ensure the Builder effects and the Developer must produce evidence to the Council of the following insurances issued by an insurer approved by the Council (acting reasonably) in a form approved by the Council (acting reasonably):
  - (i) construction works insurance for the value of the Works;
  - (ii) public risk insurance for at least \$20 million per claim;
  - (iii) workers compensation insurance as required by Law.
- (b) The Developer must provide evidence of currency of insurance required by clause 12(a) of this Schedule 2 upon request by the Council, acting reasonably, throughout the term of this agreement.

## **13 Indemnities**

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

## **14 Intellectual Property Rights**

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

## **15 Risk of contamination**

- (a) This clause 15 of Schedule 2 applies to all Dedication Land.
- (b) In this clause:

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

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

**CLM Act** means the *Contaminated Land Management Act 1997*;

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

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

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

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

**Contamination Planning Guidelines** means the Contaminated Land Planning Guidelines under the CLM Act, being as at the date of this agreement *Managing Land Contamination, Planning Guidelines SEPP 55 – Remediation of Land* dated 1998;

**CSM** means conceptual site model;

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

**Preliminary Investigation Report** means a report prepared by a Consultant detailing the outcome of a preliminary investigation as defined in SEPP 55 and the Contamination Planning Guidelines;

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

**Remediation** has the same meaning as in the CLM Act;

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

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

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

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

- (c) Prior to dedication or transfer:
  - (i) Land for open space and recreation must meet or be Remediated to Residential “C” standard as specified in Schedule B1 of the National Environment Protection (Assessment of Site Contamination) Measure 1999 (as amended 2013); and
  - (ii) All other land must meet or be Remediated to a standard suitable for its intended use.
- (d) The Developer must, at its cost, assess all Dedication Land for Contamination and carry out any Remediation of that land in accordance with this clause 15, the CLM Act, SEPP 55 and any other legislation and guidelines relating to the remediation of contaminated land.
- (e) All assessments and reports required under this clause must be carried out in accordance with the Assessment Guidelines.
- (f) Prior to lodgement of a Development Application for any Works on Dedication Land, the Developer must provide to Council a Preliminary Investigation Report, despite any conclusion the Developer has reached about whether or not Contamination is an issue on the Dedication Land.
- (g) The Preliminary Investigation Report must include, but is not limited to, the following information:
  - (i) land history,
  - (ii) any past or present potentially contaminating activities on the Dedication Land or adjoining land;
  - (iii) a preliminary assessment of any Contamination including a CSM identifying sources, pathways and receptors; and
  - (iv) where contaminating activities are suspected to have had an impact on the land or the land use history is incomplete, the results of any sampling and analysis undertaken to confirm the extent of any potential Contamination.
- (h) If a Preliminary Investigation Report indicates that the land the subject of that report may be or is potentially contaminated, the Developer must engage a Consultant to carry out a detailed site investigation and provide a Detailed Investigation Report to Council as part of any Development Application, or other application for an Approval, for the Works on the relevant land.
- (i) The Detailed Investigation Report must include, but is not limited to, the following information:
  - (i) the nature, extent and degree of Contamination on, in or under the relevant land;
  - (ii) a revision of the CSM based on the results of the detailed site investigation;

- (iii) an assessment of the potential risk posed by contaminants to human health and the environment; and
  - (iv) a clear statement as to whether the relevant land meets the Remediation Standard.
- (j) If the Detailed Investigation Report provides that Remediation of the relevant land is required, the Developer must engage a Consultant to prepare a RAP and provide a draft of the RAP to Council.
- (k) The draft RAP must include, but is not limited to, the following information:
  - (i) the process by which the relevant land should be Remediated and how the Remediation will be validated to demonstrate the site meets the Remediation Standard; and
  - (ii) if there are several options for Remediation, details as to the process for each option, identification of the preferred option for Remediation and the reasons why that option is preferred, including details for each option of the likely ongoing maintenance obligations and estimated costs of maintenance.
- (l) Council may consider the draft RAP and, within 10 Business Days of receiving the draft RAP, provide comments on the draft RAP including any preferences Council has for Remediation of the land.
- (m) The Developer must require the Consultant to have regard to the Council's comments and preferences when finalising the RAP and, where options for remediation are available, direct the Consultant to prepare the RAP based on Council's preferred option.
- (n) The Developer must obtain all Approvals required to Remediate the land and must carry out the Remediation in accordance with those Approvals, the RAP and Council's preferences for Remediation, so that the site meets the Remediation Standard.
- (o) On completion of Remediation, the Developer must provide to Council a Validation Report that includes, but is not limited to, the following information:
  - (i) a description of, and documentary evidence confirming, all Remediation works that have been performed;
  - (ii) results of validation testing and monitoring;
  - (iii) a clear statement as to whether the relevant land meets the Remediation Standard;
  - (iv) if Council has approved that any residual contamination may be left onsite, a site environmental management plan that includes:
    - (A) a description of the exact location, depth and lateral extent of contamination left onsite;
    - (B) a risk assessment of potential exposures scenarios, including demonstration that there is no off-site migration of contamination from the site, or where there is off-site migration or its potential, that contamination within the site is managed or monitored so it does not

present an unacceptable risk to either the on-site or off-site environments;

- (C) likely receptors and necessary control measures to management inadvertent exposure;
  - (D) responsible parties including who will be the responsible entity to implement the management plan; and
  - (E) an approved long term Site Management Plan (or equivalent management plan resulting from revisions of the approved long term Site Management Plan) is to remain in place and be implemented until such time as it is determined by Council that a long term Site Management Plan is no longer required.
- (p) Council will not accept dedication of any part of the Dedication Land that is subject to residual contamination, unless otherwise previously approved by Council.
- (q) Prior to dedication or transfer of any Dedication Land to Council, Council may, at its sole discretion, require the provision of a Site Audit Report and Site Audit Statement prepared by a Site Auditor, confirming that any Contamination of the land does not present a risk of harm to human health or any other aspect of the environment and that the relevant land meets the Remediation Standard.
- (r) The Developer must comply with any conditions of a Site Audit Statement, including any measures required to be implemented to ensure any ongoing monitoring obligations.

## Schedule 3

## Summary of requirements (section 7.4)

Subject and subsection of the Act	Planning Agreement
<p><b>Planning instrument and/or Development Application</b> – 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 checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p><b>Description of the land to which the planning Agreement applies</b> – Section 7.4(3)(a)</p>	<p>See Schedule 4.</p>
<p><b>Description of the change to an environmental planning instrument or development</b> – Section 7.4(3)(b)</p>	<p>See the definition of Planning Proposal, Instrument Change and Development in clause 1.</p>
<p><b>The scope, timing and manner of delivery of contribution required by the Planning Agreement</b> – Section 7.4(3)(c)</p>	<p>See clause 7 and the Contributions Table in Schedule 1.</p>
<p><b>Applicability of section 7.11 of the Act</b> – Section 7.4(3)(d)</p>	<p>See clause 8.</p>
<p><b>Applicability of section 7.12 of the Act</b> – Section 7.4(3)(d)</p>	<p>See clause 8.</p>
<p><b>Applicability of section 7.24 of the Act</b> – Section 7.4(3)(d)</p>	<p>See clause 8.</p>
<p><b>Mechanism for dispute resolution</b> – Section 7.4(3)(f)</p>	<p>See clause 11.</p>
<p><b>Enforcement of the Planning Agreement</b> – Section 7.4(3)(g)</p>	<p>See clause 12.</p>
<p><b>Registration of the Planning Agreement</b> – Section 7.4(3)(g) and section 7.6</p>	<p>See clause 9.</p>
<p><b>No obligation to grant consent or exercise functions</b> – Section 7.4(9)</p>	<p>See clause 15.</p>

## Schedule 4      Land

Address	Lot and DP Reference	Registered Proprietor
<b>EAST SITE</b>		
112 Wharf Road, Melrose Park	Lots 1-3 DP 127049	112 Wharf Road Pty Limited
112 Wharf Road, Melrose Park	Lot 7 DP 511531	112 Wharf Road Pty Limited
30 Waratah Street, Melrose Park	Lot 100 DP 519737	112 Wharf Road Pty Limited
1 Mary Street, Melrose Park	Lot 1 DP 519737	112 Wharf Road Pty Limited
1 Mary Street, Melrose Park	Lot 6 DP 511531	112 Wharf Road Pty Limited
<b>WEST SITE</b>		
82 Hughes Avenue, Melrose Park	Lot 3 DP 602080	357 Hughes Avenue Pty Ltd

## Schedule 5                      Planning Proposal

	Existing	Proposed
Zoning	IN1 General Industrial	R4 High Density Residential RE1 Public Recreation (limited to public open space areas)
Land reserved for acquisition	-	Amend to include the RE1 zoned land
Height	12 metres	Up to 77 metres
FSR (Net FSR)	1:1	2.47:1 and 2.73:1
Minimum non-residential FSR	-	Minimum 1,000 sqm
Additional permitted use	-	Permit 'food and drink premises' in the R4 High Density Residential zone
Design excellence	-	Introduce design excellence provisions for buildings of 55m and above in height without the provision of bonuses.



Schedule 6      Staging Plan



FIGURE 3.4    Holdmark Sites - Illustrative Plan

## Schedule 7                      Easement Terms

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

- 8 Subject to ensuring the provision of access in accordance with above clause 1 of this Schedule, the owner of the Easement Site may, provided any necessary planning approvals are obtained:
- (h) carry out works in the Easement Site for the purposes of enhancing the Easement Site;
  - (i) install or erect works of art, street furniture, awnings, tables and chairs associated with ground floor commercial premises, notice boards or any other similar improvements at ground level within the Easement Site; and
  - (j) use the Easement Site,
- in a manner consistent with Parramatta City Council Outdoor Dining Policy adopted 9 July 2012 and amended 25 February 2013, or any such policy of the Council that replaces that policy.
- 9 The Council is solely empowered to release this Easement.
- 10 This Easement may only be varied by written agreement between the Council and the owner of the Easement Site.

**Executed as an agreement**

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

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of authorised delegate

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Name of authorised delegate

\_\_\_\_\_  
Address of witness

\_\_\_\_\_  
Position of authorised delegate

**Executed by Wharf and Hughes** )  
**Development Pty Ltd** ACN 655 633 426 )  
in accordance with section 127 of the )  
*Corporations Act 2001* (Cth) by: )  
 )  
 )

.....  
Signature of Sole Director and Sole  
Secretary

.....  
Print name of Sole Director and Sole  
Secretary

**Executed by 112 Wharf Road Pty Ltd** )  
ACN 606 374 538 in accordance with )  
section 127 of the *Corporations Act 2001* )  
(Cth) by: )  
 )  
 )

.....  
Signature of Sole Director and Sole  
Secretary

.....  
Print name of Sole Director and Sole  
Secretary

**Executed by 357 Hughes Avenue Pty** )  
**Ltd** ACN 629 274 675 in accordance with )  
section 127 of the *Corporations Act 2001* )  
(Cth) by: )  
 )  
 )

.....  
Signature of Sole Director and Sole  
Secretary

.....  
Print name of Sole Director and Sole  
Secretary

Annexure A      Land Dedication Plan



## Annexure B

## Infrastructure Services Delivery Plan and Landscape Design

# **Infrastructure Services Delivery Plan**

## **Melrose Park South Precinct (Wharf and Hughes Developments Pty Ltd)**

[August 2022]

Works listed in Schedule 1 of the Planning Agreement between  
the City of Parramatta and Holdmark Pty Ltd



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## Purpose

The Melrose Park South Holdmark Development Infrastructure Services Delivery Plan (ISDP) is a document which details the items of work to be delivered by way of a Planning Agreement between Wharf and Hughes Developments Pty Ltd (the Developer) and the City of Parramatta (the Council).

The physical and social renewal of the area will be supported by the appropriate provisions of infrastructure necessary to support the existing and new community. The works set out in the ISDP have been designed consistent with the Melrose Park South Structure Plan (refer to Figure A).

This ISDP has been prepared to assist in the preparation, negotiation, and implementation of the Planning Agreement. This ISDP includes:

- A more detailed description of the scope of works showing the general location and configuration of works on the site;
- A budget estimate (ex. GST) for the delivery of the item based on the scope of works and/or concept plans referenced; and
- A rationale for the staging of delivery of each item of works based on Development Area/Stage or lot threshold of works. An indicative staging plan in Part D identifies the development stages/areas for the works.

In reading this document, the following should be noted:

- The Description of the Works outlines the scope of works proposed to be delivered.
- These cost estimates include allowances for contingency, professions fees, approvals, maintenance and defects liability period.
- All hard landscaping works will be maintained by the Developer for a period of 24 months from the completion of works. Soft landscaping works will be maintained by the Developer for a minimum of 60 months from the date of completion.
- Maintenance means works to bring an item to a state of reasonable condition and in accordance with relevant standards applicable at the time of construction of the item, including repairing any defects due to use of poor materials or due to poor workmanship, but does not include removing graffiti or repairing any item damaged as a consequence of vandalism.
- The estimated budgets are outlined to give an understanding and context to the scope of works proposed. There is nothing to stop the same works being delivered at a reduced cost if efficiencies can be negotiated at tender or through the detailed design stage. Any cost savings achieved by the Developer do not need to be passed on to Council. Conversely any additional costs incurred shall be borne by the Developer.
- For the ISDP items, a scope of works has been defined as a performance specification (i.e. Roads, drainage, utilities etc.).

The following schedules provided in Part A-F of the ISDP detail the scope, budget and staging of all items of works consistent with Schedule 1 of the Planning Agreement. This document and its schedules will form an Annexure to the Planning Agreement. The terms in this document are subject to the more specific terms agreed between the parties under other parts of the Planning Agreement and if there is any inconsistency, the terms of the Planning Agreement (other than this document) prevail.

## Proposed development

Melrose Park South (Wharf and Hughes Developments Pty Ltd) Development will be transformed from an industrial estate to a waterfront mixed use precinct, including approximately 1,925 dwellings, 1,000 sqm of non-residential floorspace, new public roads and new public open space.



Figure A: Approved Structure Plan showing indicative built form, Holdmark Site's highlighted in red dotted line

## Timing

The development is anticipated to begin within 12 months of the proposed amendment to the LEP, subject to development consents being granted. The development is anticipated to be delivered over 8 – 10 years; the timing will be dependent on market conditions. A high-level staging plan is provided in Part D of this ISDP.

## Planning Agreement Summary Table

No	Item	Public Purpose	Scope	Contribution Value	Timing
1	West Site	Public Open Space – dedication and embellishment New roads and cycleways	Road works and cycleway (refer to Offset Plan at Part E).	\$21,077,414	Within 6 months after the occupation of the relevant stage.
2	East Site		Open Space: new parks with an area of 14,914 sqm (west site) and 10,208 sqm (east site) will be dedicated to Council and embellished.  Publicly assessment private land – easement placed over private land to allow for 24/7 public access at ground level and basements to be constructed below ground (refer to Part G).  Maintenance for 5 years. (soft landscaping).  Maintenance for 2 years (hard		Within 6 months after the occupation of the relevant stage.

			landscaping)		
3	Affordable Housing	Affordable Housing	Construction, fit out and dedication to Council of 24 affordable housing units with a minimum of 34 bedrooms.	\$16,169,411	<p>50% of total affordable housing units to be dedicated before the issue of the last occupancy certificate for stage 1 of the development or before the issue of an occupancy certificate in any subsequent stage. Whichever occurs first.</p> <p>50% of total affordable housing units to be dedicated before the issue of the last occupancy certificate for stage 3 of the development or before the issue of an occupancy certificate in any subsequent stage. Whichever occurs first.</p>
	Total			\$37,246,825	

## Part A: Development Contribution – Carrying Out of Works

The following lists the items of works and a discussion on the scope, budget and staging in order as they appear in Schedule 3 of the Planning Agreement

### 1. West Site

Public purpose	Various – including roadworks, the dedication (at no cost to Council) and embellishment of the western public open space.
Development Area/Staging Rationale	Various – refer to Planning Agreement Staging Plan.
Description of Works	<p><b>Road Works:</b> the construction of new roadways (refer to Part F for road specifications). Given the roads within the precinct also service the proposed development, only 50% of the value has been offset as part of the VPA calculations (refer to Offset Plan at Part E).</p> <p><b>Open Space:</b> a new park with an area of 14,914 sqm will be dedicated to Council (with a \$0 value assigned for the purpose of this VPA). The park will also be embellished generally in accordance with the indicative landscape plan which is attached to this letter.</p> <p><b>Publicly Accessible Private Land:</b> easement placed over private land to allow for 24/7 public access at ground level and basements to be constructed below ground (refer to Part G).</p>
Core Elements	<ul style="list-style-type: none"> <li>• Roadways.</li> <li>• Easement of private land to allow for public access.</li> <li>• Embellishment of western park – including: <ul style="list-style-type: none"> <li>○ Site formation, cut/fill and walls</li> <li>○ Amenities building</li> <li>○ Footpaths and paving</li> <li>○ Landscaping, including soft/hard landscaping and mature trees</li> <li>○ Children’s playground (District Playground, including facilities for around 5-10 yr old children)</li> <li>○ Furniture (signs, bins, benches, tables, BBQs and signage)</li> </ul> </li> </ul> <p>All works will be design in accordance with site specific DCP and Public Domain Manual. The proposed park will be designed in accordance with the NSW Government’s “Everyone can play document”, to ensure inclusive play.</p>
Estimates Works Value:	\$10,596,490

## 2. East Site

Public Purpose:	Various – including roadworks, the dedication (at no cost to Council) and embellishment of the eastern public open space.
Development Area/Staging Rationale:	Various – refer to Planning Agreement Staging Plan.
Description of Works:	<p><b>Road Works:</b> the construction of new roadways (refer to Part F for road specifications). Given the roads within the precinct also service the proposed development, only 50% of the value has been offset as part of the VPA calculations (refer to Offset Plan at Part E).</p> <p><b>Open Space:</b> three new parks with a combined area of 10,208 sqm (excluding land for the Parramatta Light Rail corridor) will be dedicated to Council (with a \$0 value assigned for the purpose of this VPA). The areas will also be embellished generally in accordance with the indicative landscape plan which is attached to this letter.</p> <p><b>Cycleways:</b> the construction of cycleways in accordance with Council's requirements (refer to Offset Plan at Part E).</p>
Core Elements:	<ul style="list-style-type: none"> <li>• Roadways.</li> <li>• Cycleways.</li> <li>• Embellishment of western park – including: <ul style="list-style-type: none"> <li>○ Site formation, cut/fill and walls</li> <li>○ Amenities building</li> <li>○ Footpaths and paving</li> <li>○ Landscaping, including soft/hard landscaping and mature trees</li> <li>○ Furniture (signs, bins, benches, tables, BBQs and signage)</li> </ul> </li> </ul> <p>All works will be design in accordance with site specific DCP and Public Domain Manual.</p> <p>The proposed park will be designed in accordance with the NSW Government's "Everyone can play document", to ensure inclusive play.</p>
Estimated Works Value:	\$10,480,924

### 3. Affordable Housing

Public purpose:	Affordable Housing
Development Area/Staging Rationale	<p>50% of total affordable housing units to be dedicated before the issue of the last occupancy certificate for stage 1 of the development or before the issue of an occupancy certificate in any subsequent stage. Whichever occurs first.</p> <p>50% of total affordable housing units to be dedicated before the issue of the last occupancy certificate for stage 3 of the development or before the issue of an occupancy certificate in any subsequent stage. Whichever occurs first.</p>
Description of works	<p>Dedication of 24 affordable housing units with a minimum of 34 bedrooms.</p> <p>Finishing to include all fixtures and fittings to enable occupation include but not limited to:</p> <ul style="list-style-type: none"> <li>• Air conditioning (split system)</li> <li>• Floor coverings</li> <li>• Window dressings</li> <li>• Dishwasher</li> <li>• Kitchen appliances</li> </ul>
Core Elements	<ul style="list-style-type: none"> <li>• Carry out works to of 24 affordable housing units with a minimum of 34 bedrooms.</li> <li>• Each unit must have been issued an Occupation Certificate and be fit for purpose.</li> </ul>
Estimates Works Value:	\$16,169,411

#### 4. Publicly Accessible Private Land

Public purpose:	Pedestrian link
Development Area/Staging Rationale	To be dedicated before the issue of the last occupancy certificate for stage 3 of the development.
Description of works	Creation of an easement in favour of the public to be used as a pedestrian link.
Core Elements	<p>The easement will be open 24/7 to the public and will be used as a pedestrian link.</p> <p>The easement will have an area of approximately 2,000sqm and an approximate width of 12 metres.</p> <p>Development below ground level for the purpose of basements and car parking for the proposed mixed-use development may occur beneath the easement.</p>
Estimates Works Value:	N/A



## Part B: Land Dedication and Acquisitions Provisions

A significant amount of Public Land exists within the project site. Much of that land will remain as public land during and after the redevelopment process, while additional public land will also be created. There are two types of land proposed to be dedicated to City of Parramatta upon the completion of the works identified in this plan. These are:

- Public Roads (in accordance with the provisions of the Roads Act, 1993); and
- Community Land for use as Parks and Open Space (in accordance with the provisions of the Local Government Act 1993).

### 1. Associated Costs

It is important to recognise that the cost estimates do not include any value associated with the acquisition or dedication of land to Council for the purposes of roads and public open space. Land is to be dedicated to Council at nil cost.

### 2. Dedication Timing

Following the completion of construction and embellishment works in accordance with this ISDP, all public roads and open space areas shall be dedicated to Council as part of the relevant subdivision certificate process for that stage of development.

### 3. Public Roads

In order to facilitate the construction of new road connections and intersections, the proposed redevelopment will require that new public roads built and dedicated in accordance with the new subdivision layout.

### 4. Parks and Open Space

The proposed master plan provides approximately 25,122 sqm (excluding land for the Parramatta Light Rail Corridor) of new open space which includes a new waterfront park along the eastern and western side of the Melrose Park foreshore. The open space will be dedicated to Council as public reserves in accordance with the timing reflected in this ISDP or at a mutually agreeable time.

### 5. Land Remediation

During the redevelopment process, localised existing areas of contaminated ground may become disturbed. As part of the redevelopment works, contaminated lands will require validation before handover / dedication in line with terms agreed with Council outlined in the Voluntary Planning Agreement.

## Part C: Indicative Land Dedication Plan






## Part D: Indicative Staging Plan



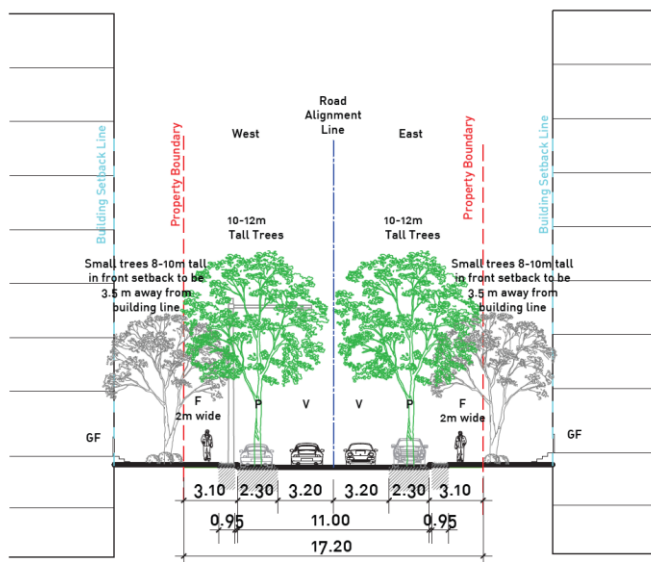
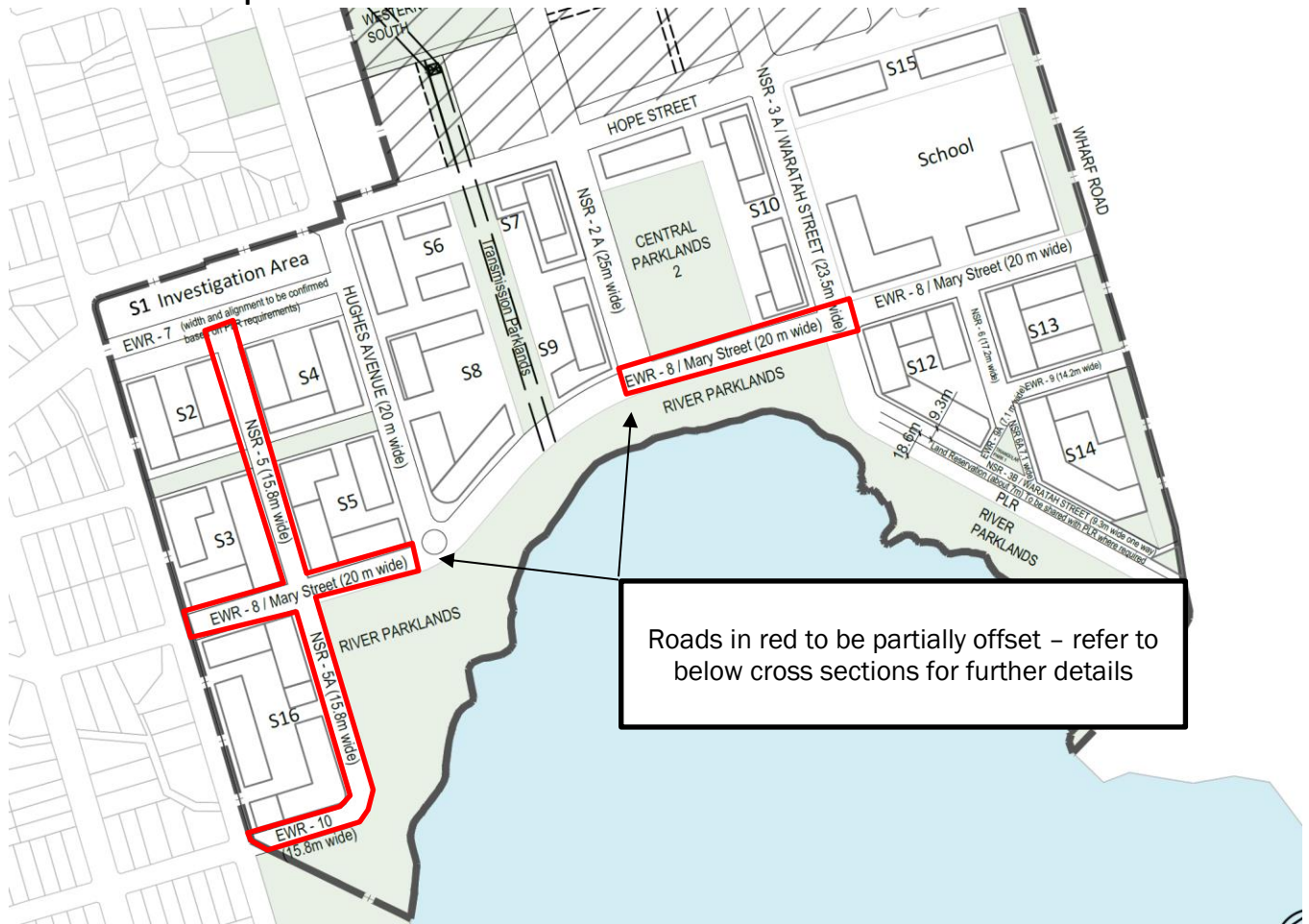
## Part E: Offset Plan



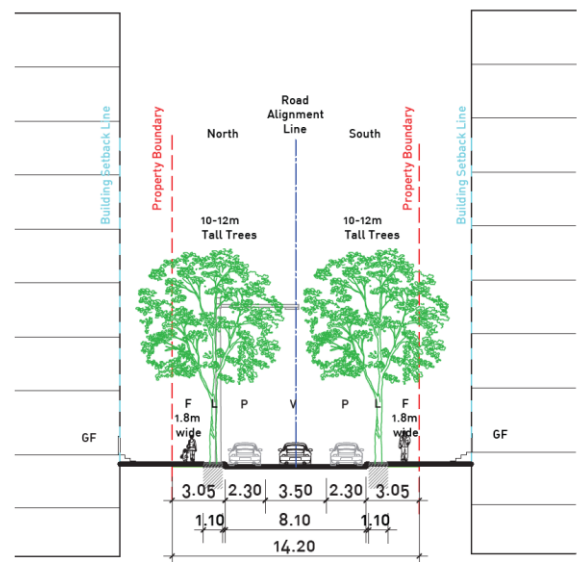
	Offset Roads/ Footpaths - 50% of costings to be offset
	Dedicated Open Space - Land to be dedicated to Council, with the cost of embellishments proposed to be offset
	Offset Cycleways - As above - this includes cycleways along Wharf Road and Waratah Street, which connect to the wider catchment. Council to confirm location of cycleways.



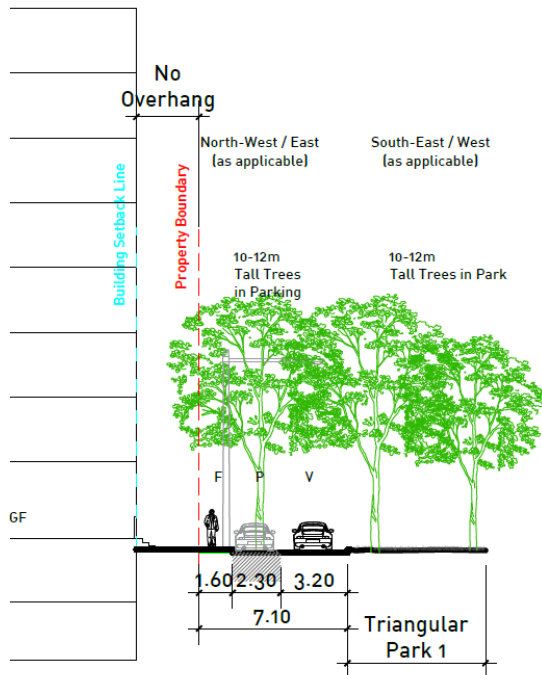
## Part F: Example Road Sections



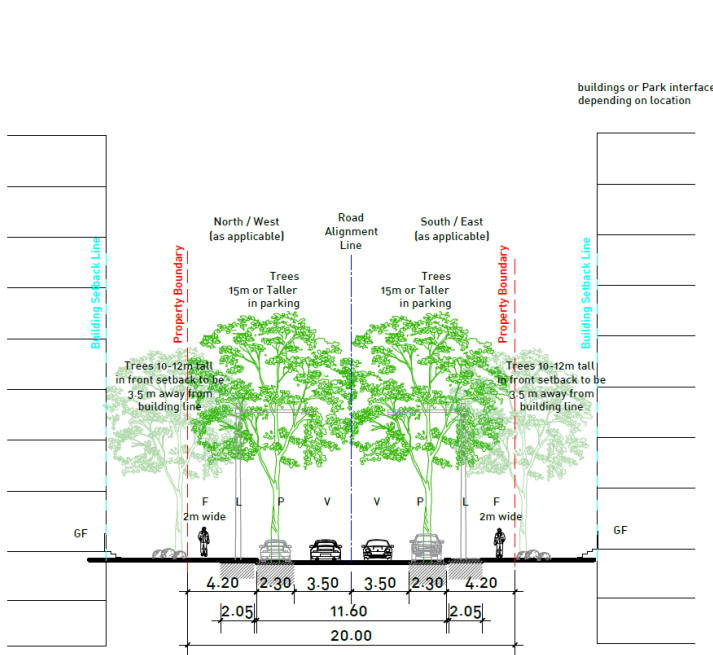
NSR 6 - 17.2 M WIDE ROAD



EWR 9 - 14.2 M WIDE ROAD  
One way traffic eastbound with parking on both sides of the street

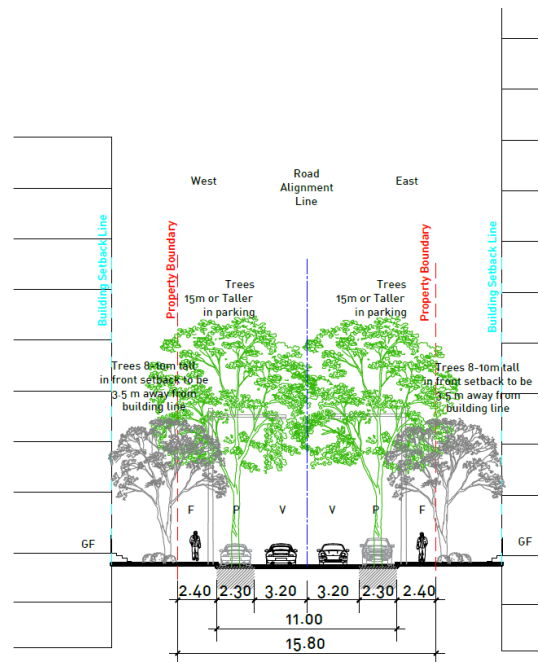


7.1 M WIDE LOCAL ONE WAY STREET with parking on one side -  
NSR 6A (southbound) & EWR 9A (northeast-bound)

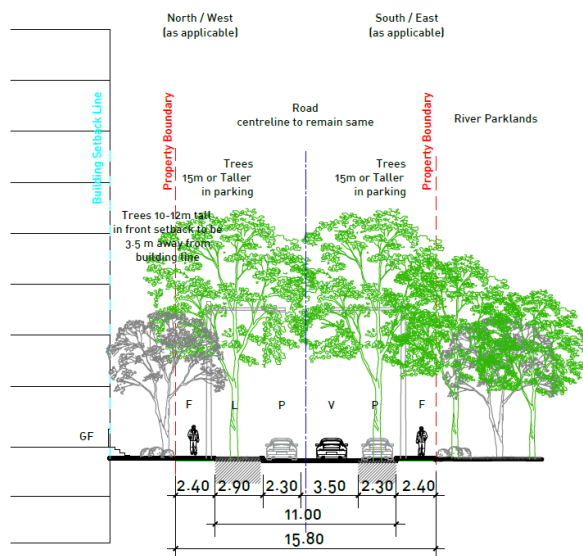
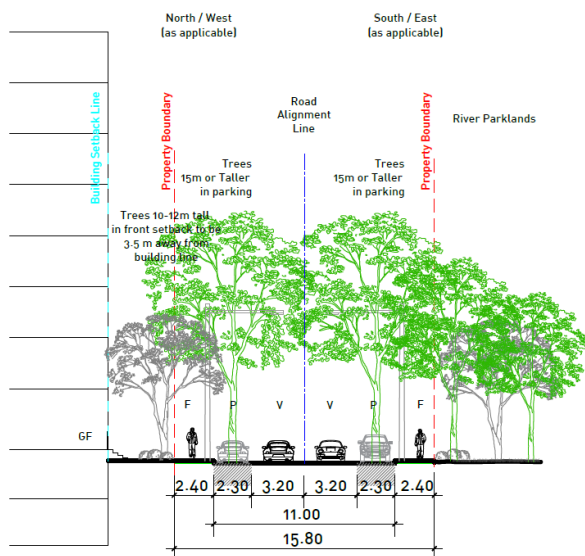
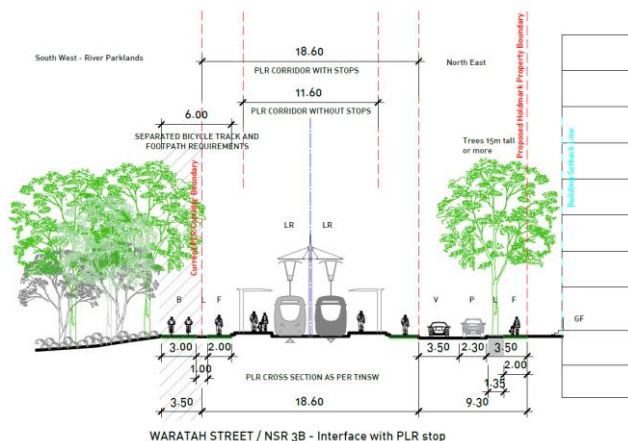
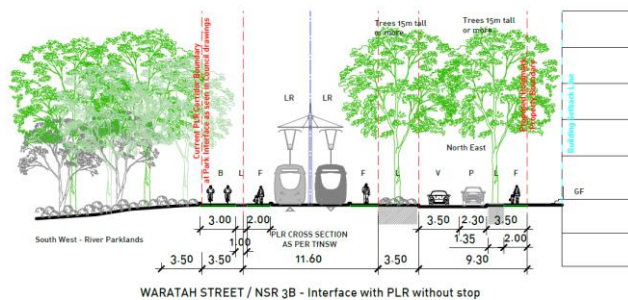


TYPICAL 20 M WIDE STREET - Applicable to HUGHES AVENUE & EWR 8 (Mary Street)

Note: Building setbacks vary per street, and are as per the setback drawing  
EWR 8 predominantly has the River Park interface on the southern side



NSR 5 - 15.8 M WIDE STREET



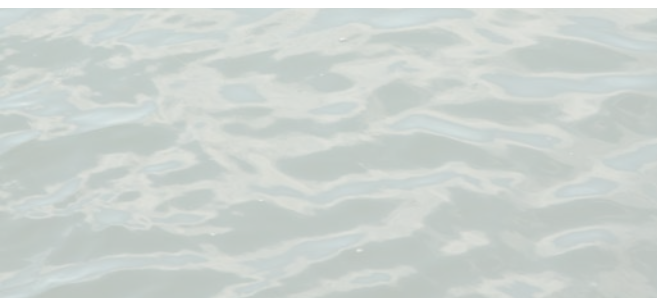
- Eastern / Southern edge of the street to remain unchanged.
- Tree locations and Footpath locations to remain unchanged.
- Road alignment to be maintained, vehicular lane shall be widened to 3.5 m northward /westward
- New parking lane to be linemarked, kerb shifted out, and older parking lane to be converted to a planted verge.



## Part G – Publicly Accessible Private Land







## **Melrose Park**

Holdmark Sites Planning Proposal

Landscape Report

May 2020



# Introduction

This Landscape Design report has been prepared by Site Image Landscape Architects on behalf of Holdmark, in conjunction with Cox Architecture to describe the Landscape Design associated with the planning proposal for the Melrose Park Holdmark Sites.

This report sets out landscape considerations and design proposals associated with the site development proposals and is to be read in conjunction with related planning, architectural and consultant reports describing the allied aspects of the works. Those reports comprehensively describe the physical site, context, constraints, controls, and built form and associated proposals and assessed impacts and benefits. This report will focus on landscape aspects of the site and proposals, and aims to minimize duplication of information contained in accompanying reports.

Generally, this report describes the development and landscape proposals, and sets out relevant authorities codes and requirements, and describes the design features that illustrate substantial conformance with these requirements.

This report has been prepared considering the South Precinct, to ensure one consistent and integrated landscape plan has been developed for Melrose Park Holdmark sites and surrouding South precinct sites.

# Contents

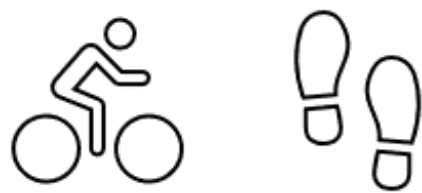
1.0	Landscape Principles
2.0	Landscape Master Plan - Whole Precinct
3.0	Landscape Master Plan - Holdmark Sites
4.0	Holdmark West Site
5.0	Holdmark East Site
6.0	Planting Palette



1.0 Landscape Principles

CONNECTIVITY

Provide important pedestrian connections



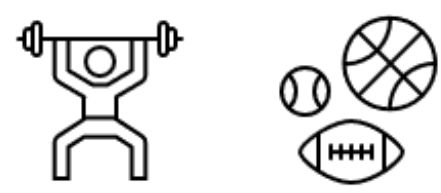
SOCIAL

Create meaningful spaces for people



HEALTH

Encourage health & wellness



SUSTAINABILITY

Promote environemntally sustainable design





# 2.0 Landscape Masterplan - Whole Precinct

## Objectives

- To provide a suitable high level of open space and other amenity provisions for residents and visitors;
- To retain major trees and green corridors and promote protection and revegetation of significant existing vegetation;
- To provide a sustainable response to the site through the use of native and low water use planting, recycled/ harvested rainwater and locally sourced or recycled materials;
- Provide passive recreation and garden areas that provide opportunity for relaxation and passive recreation;
- To provide suitable integration and acceptable impact on adjacent vegetation communities;
- To achieve a suitable visual quality to the open space, civic spaces and streetscapes that provides consistency of identity and cohesion to the project overall, and assists in unifying the many different areas of the site (planting, hardscape, furniture, fixtures, and services);
- To provide practical amenity and safety through suitable design and detailing of a hierarchy of lighting, signage, access routes and amenities, parking locations and the like that together contribute to the good functioning, safe and efficient operation of site activities;
- To provide high quality public open space and amenity on the Holdmark site that is integrated into the wider precinct open space network;
- To provide landscape buffer transitions that respond to the existing mangrove forest along the foreshore;
- To provide strong pedestrian connections through the public open spaces of the Holdmark sites that link into the pedestrian movement and wayfinding of the wider precinct;
- To achieve and promote healthy lifestyles and activity within the site itself both active and passive;
- To provide a quality public domain landscape outcome in line with existing or relevant DCP and Council codes;
- To accommodate future expansion of the open space network as the precinct develops





# 3.0 Landscape Masterplan - Holdmark Sites

## Objectives

- Develop parts of the open space network that can be extended as other sites are redeveloped;
- Provide the core open space elements for the wider precinct;
- Deliver new road infrastructure with landscape elements that are consistent with the overall precinct design;
- Create high quality on-site communal open spaces that can be enjoyed by new residents and that encourage social interaction with their new community;
- Design landscape that meet the requirements set out in the ADG;
- Embrace the existing natural features through protection and awareness that can be maintained and enhanced as the other sites are redeveloped;
- Create a (sub)urban sense of place and identity;
- Provide a landscape buffer to Wharf Road development frontages that will create a green corridor once the other sites are redeveloped;
- Retain and protect significant trees where possible specifically the north boundary of the Holdmark west site.





4.0 Holdmark West Site



Public domain interface



On-site internal courtyards



Public open space & path network

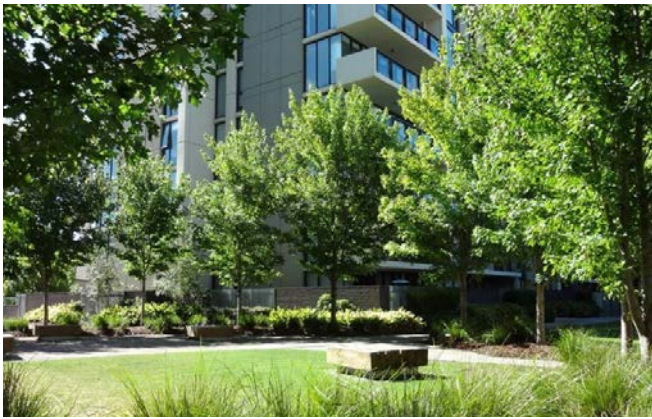


Significant precinct open space amenity





5.0 Holdmark East Site



On-site internal courtyards



Consistent public amenity character



Embrace access to existing natural features



Active and passive recreation nodes





6.0 Planting Palette

The planting will be a mix of natives, with a selection of exotic species. Plants are based on council's preferred species, locally occurring species, and species which are proven performers in Sydney landscapes.

Botanic Name	Common Name	Size (m)	Pot size
FEATURE TREES			
<i>Cupaniopsis anacardioides</i>	Tuckeroo	15 x 2	200L
<i>Elaeocarpus eumundi</i>	Smooth-Leaf Quandong	12 x 6	200L
<i>Fraxinus angustifolia raywoodii</i>	Claret Ash	15 x 4	200L
<i>Lagerstroemia indica</i> x <i>L.fauriei</i> 'Natchez'	Crepe Myrtle (White)	8 x 6	200L
<i>Pyrus calleryana</i> 'Chanticleer'	Chanticleer Pear	12 x 4	200L
<i>Tristaniopsis laurina</i> 'Luscious'	Water Gum	9 x 7	200L
NATIVE TREES			
<i>Angophora costata</i>	Sydney Red Gum	30 X 10	200L
<i>Allocasuarina torulosa</i>	Rose She Oak	25 x 10	200L
<i>Buckinghamia celsissima</i>	Ivory Curl Flower	10 x 5	100L
<i>Banksia serrata</i>	Old Man Banksia	8 x 4	100L
<i>Eucalyptus robusta</i>	Swamp Mahogany	30 X 10	200L
<i>Eucalyptus saligna</i>	Sydney Blue Gum	30 X 10	200L
<i>Eucalyptus sideroxylon</i>	Red Iron Bark	30 X 10	400L
<i>Eucalyptus punctata</i>	Grey Gum	30 X 10	400L
SHRUBS			
<i>Acacia cognata</i> 'Limelight'	Acacia Limelight	1 x 1	300mm
<i>Adenanthos sericens</i>	Woolly Bush	3 x 2	300mm
<i>Banksia robur</i>	Swamp Banksia	2 x 2	300mm
<i>Rhaphiolepis indica</i> 'Snow Maiden'	Snow Maiden Indian Hawthorn	1 x 0.5	300mm
<i>Syzygium australe</i> 'Select Form'	Lilly Pilly 'Select Form'	5 x 1.5	300mm
<i>Viburnum odoratissimum</i>	Sweet Viburnum	3 x 2	300mm
<i>Westringia fruticosa</i> 'Blue Gem'	Blue Gem Westringia	1.5 x 1.3	300mm
ACCENTS			
<i>Alpinia caerulea</i>	Native Ginger	3 x 2	300mm
<i>Beschorneria yuccoides</i>	Mexican Lily	1.5 x 1.5	300mm
<i>Doryanthes excelsa</i>	Gymea Lily	3 x 2	300mm
<i>Macrozamia communis</i>	Burrawang/Cycad	2 x 1.5	300mm
GRASSES AND GROUNDCOVERS			
<i>Arthropodium cirratum</i>	New Zealand Rock Lily	0.5 x 0.5	150mm
<i>Banksia spinulosa</i> 'Birthday Candles'	Birthday Candles Banksia	0.5 x 0.5	150mm
<i>Blechnum gibbum</i> 'Silver Lady'	Dwarf Fern Tree / Silver Lady	1.2 x 1	150mm
<i>Dichondra argenta</i> 'Silver Falls'	Silver Falls	1.5	150mm
<i>Dianella ensifolia</i> 'Silver Streak'	Dianella Silver Streak	0.6 x 0.6	150mm
<i>Dianella tasmanica</i> 'Tas Red'	Dianella Tas Red	0.4 x 0.4	150mm
<i>Dietes grandiflora</i>	Native Iris	1.5 x 1	150mm
<i>Hardenbergia violacea</i>	Happy Wanderer	0.3 x 1.5	150mm
<i>Liriope muscari</i> 'Just Right'	Liriope 'Just Right'	0.5 x 0.5	150mm
<i>Poa labillardieri</i> 'Eskdale'	Poa Eskdale	0.6 x 0.5	150mm
<i>Philodendron</i> 'Xanadu'	Philodendron Xanadu	0.5 x 0.5	150mm





## Annexure C

## Specifications for Affordable Housing Units

Description of works	<p>Dedication of 24 affordable housing units with a minimum of 34 bedrooms, including any associated car parking.</p> <p>Finishing to include all fixtures and fittings to enable occupation include but not limited to:</p> <ul style="list-style-type: none"> <li>• Air conditioning (split system)</li> <li>• Floor coverings</li> <li>• Window dressings</li> <li>• Dishwasher</li> <li>• Kitchen appliances</li> </ul>
Core Elements	<ul style="list-style-type: none"> <li>• Provision of affordable housing units with a minimum of 34 bedrooms.</li> <li>• Units to be distributed throughout the Development. Location of units by mutual agreement but no higher than Level 5 of the building and not all on the ground floor.</li> <li>• Each unit must have been issued an Occupation Certificate</li> </ul>

## Annexure D

## Public Access Easement

