
**Min.952 C12/20-628 Draft Planning Agreement for 12 Palmer Street,
Guildford West**

Resolved (Attie/Elmore)

That Council:

1. Endorse the draft Planning Agreement at 12 Palmer Street, Guildford West.

2. Notify the draft Planning Agreement in accordance with Part 7.5 of the Environmental Planning and Assessment Act, 1979.
3. Authorise the Mayor and General Manager to sign and execute the Planning Agreement after the notification period, provided no substantial objections have been made to the Planning Agreement.

A division was called, the result of the division required in accordance with Council's Code of Meeting Practice is as follows:

Councillor(s) For the Motion: Attie, Campbell, Christou, Elmore, Garrard, Hamed, Huang, Lake, Rahme, Saha, Sarkis, Zaiter and Zreika.

Councillor(s) Against the Motion: Cummings.

Item No: C12/20-628

DRAFT PLANNING AGREEMENT FOR 12 PALMER STREET, GUILDFORD WEST

Responsible Division: Environment & Planning
Officer: Director Environment & Planning
File Number: DA-52/2017
Community Strategic Plan Goal: *A resilient built environment*

SUMMARY

Development Application DA-2017/52 was approved by the NSW Land and Environment Court on 28 December 2017 for the removal of trees and vegetation, subdivision of land into 6 lots, construction of 4 residential flat buildings comprising a total of 192 units and 23 townhouses over basement level parking, construction of civil works including roadways, and the provision of parklands and cycleways. The development was approved with a condition for the applicant to enter into a Planning Agreement comprising of land dedication, construction and embellishment works of the Canal Park, Residential Pocket Park and public road.

A draft Planning Agreement has since been prepared in accordance with the condition. Following review by Council's solicitors and officers, it is recommended that Council endorse and notify the draft Planning Agreement. The proposal is consistent with the Cumberland Planning Agreements Policy and would provide a public benefit through the construction of local infrastructure that is identified in the local planning controls. It is also recommended that the Planning Agreement is executed after the notification period, provided no substantial objections have been made to the planning agreement.

RECOMMENDATION

That Council:

- 1. Endorse the draft Planning Agreement at 12 Palmer Street, Guildford West.**
- 2. Notify the draft Planning Agreement in accordance with Part 7.5 of the Environmental Planning and Assessment Act, 1979.**
- 3. Authorise the Mayor and General Manager to sign and execute the Planning Agreement after the notification period, provided no substantial objections have been made to the Planning Agreement.**

REPORT

Context

Development Application DA-2017/52 was approved by the NSW Land and Environment Court on 28 December 2017 for the removal of trees and vegetation, subdivision of land into 6 lots, construction of 4 residential flat buildings comprising a total of 192 units and 23 townhouses over basement level parking, construction of civil works including roadways, and the provision of parklands and cycleways. The development was approved with a condition for the applicant to enter a Planning Agreement comprising of land dedication, construction and embellishment works of the Canal Park, Residential Pocket Park and public road.

Proposed Draft Planning Agreement

The proposed draft Planning Agreement is for land dedication, construction and embellishment works of park and road lands. The proposal is also seeking an offset to the s7.11 contributions, being the aggregate of the contribution values for the embellishment works only. Further details of the draft Planning Agreement is also provided in Attachment 1.

Council's solicitors and officers have undertaken a review of the draft planning agreement and are satisfied that it is consistent with the Cumberland Planning Agreements Policy. Further details of this analysis is provided in Attachment 2.

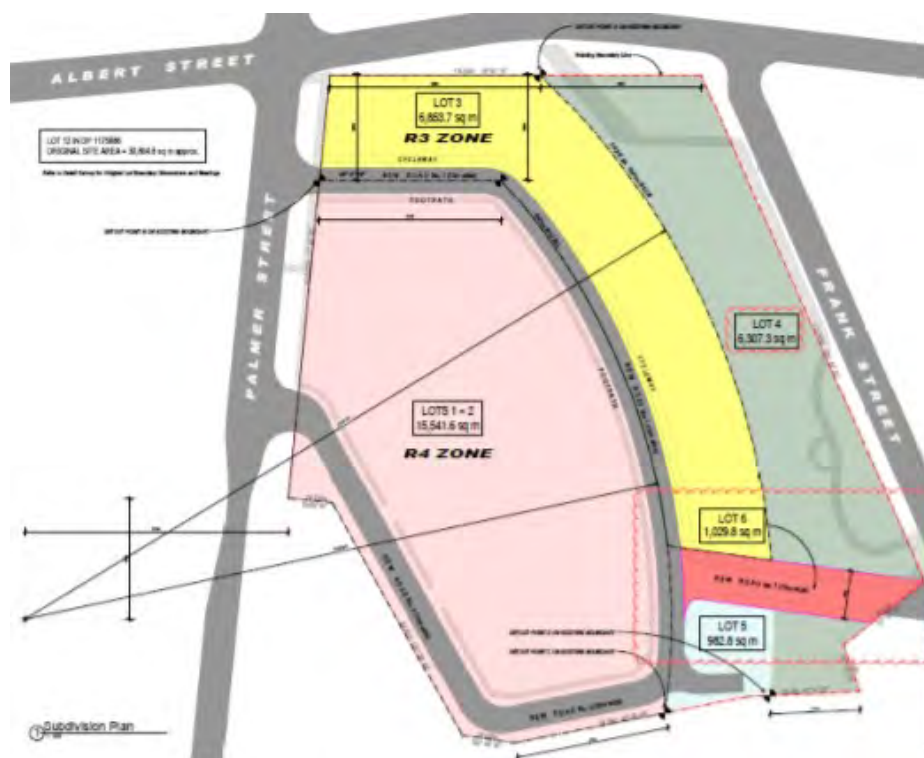


Figure 1 – Proposed development (Lots 1,2 and 3), parklands (Lots 4 and 5) and new road (Lot 6)

Public Benefit

The proposed draft planning agreement would provide a public benefit through the construction of local infrastructure that is identified in the planning controls under Part of Guildford Pipehead Precinct of the Holroyd DCP 2013. The parklands and new road are identified in Map 4, Section 4 - Landscape and Open Space, and shown graphically in Figure 2:



Figure 2 – DCP Provision for Open Spaces

Next Steps

Should Council endorse the draft Planning Agreement, the documentation will be publicly notified in accordance with Section 7.5 of the *Environmental Planning and Assessment Act 1979*. The notification and finalisation of the Planning Agreement shall be undertaken in accordance with Council's resolution.

Should Council not support the proposed draft Planning Agreement, Development Application DA-2017/52 cannot proceed at this time.

COMMUNITY ENGAGEMENT

Should the draft Planning Agreement be endorsed by Council, the documentation will be publicly notified in accordance with section 7.5 of the *Environmental Planning and Assessment Act 1979* and Council's Planning Agreements Policy.

POLICY IMPLICATIONS

Policy implications are outlined in the body of the report.

RISK IMPLICATIONS

There are minimal risk implications for Council associated with this report.

FINANCIAL IMPLICATIONS

There are minimal financial implications for Council associated with this report.

CONCLUSION

Development Application DA-2017/52 was approved by the NSW Land and Environment Court, which includes a condition to enter into a Planning Agreement with Council comprising of land dedication, construction and embellishment works of the Canal Park, Residential Pocket Park and public road. Following review by Council's solicitors and officers, it is recommended that Council endorse the proposed draft Planning Agreement. The proposal is consistent with the Cumberland Planning Agreements Policy as it would provide a public benefit through the construction of local infrastructure that is identified in the planning controls. It is also recommended that the Planning Agreement is executed after the notification period, provided no substantial objections have been made to the Planning Agreement.

ATTACHMENTS

1. Draft planning agreement [↓](#)
2. Updated analysis of offer (confidential)

**DOCUMENTS
ASSOCIATED WITH
REPORT C12/20-628**

**Attachment 1
Draft planning agreement**

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PLANNING AGREEMENT

UNDER S 7.4 OF THE *ENVIRONMENTAL PLANNING AND ASSESSMENT*

CUMBERLAND CITY COUNCIL

ABN 22 798 563 329

&

UNIVERSAL PROPERTY GROUP PTY LTD

ABN 98 078 297 748

UPG 13 PTY LTD

ABN 51 603 449 627

DATE:

Ref 170116

Contents

Parties	1
Parties	Error! Bookmark not defined.
Background	2
Terms	2
1 Interpretation	2
2 Status of this document	5
3 Operation of this document	5
4 Application of this document	6
5 Application of sections 7.11, 7.12, and 7.24 of the Act to the Development	6
6 Provision of Development Contributions	6
7 Design and specification of Works	8
8 Access to the Land	9
9 Variation to the Works	9
10 Completion of Items of Work	9
11 Rectification of Defects	10
12 Step in Rights	11
13 Security	11
14 Insurance	12
15 Warranties	13
16 Registration if this document	13
17 Notice	14
18 Dispute Resolution	14
19 Dispute Resolution - Mediation	15
20 Dispute Resolution – Expert Determination	15
21 Breach of this document	15
22 Termination, Rescission or Determination	16
23 GST	16
24 Assignment	17
25 Position of Council	18
26 Miscellaneous	19
Schedule 1 Requirements Under Section 7.4	22
Schedule 2 Dedicated Land	23
Schedule 3 Works	24
Signing page	27

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PLANNING AGREEMENT

UNDER S 7.4 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

This document is dated

2020

Parties

Name	Cumberland City Council ABN 22 798 563 329	
Short form name	<i>Council</i>	
Notice details	Address	PO BOX 42 Merrylands, NSW 2160
	Phone	(02) 8757 9000
	Email	council@cumberland.nsw.gov.au
	Attention	General Manager

Name	Universal Property Group Pty Ltd ABN 98 078 297 748	
Short form name	<i>Developer</i>	
Notice details	Post/by hand	137 Gilba Road Girraween NSW 2145
	Phone	(02) 9363 2465
	Facsimile	(02) 9688 4762
	Email	graeme@bathla.com.au
	Attention	Graeme Allen, Director of Planning

Name	UPG 13 Pty Ltd ABN 51 603 449 627	
Short form name	<i>Landowner</i>	
Notice details	Post/by hand	137 Gilba Road Girraween NSW 2145
	Phone	(02) 9363 2465
	Facsimile	(02) 9636 4762
	Email	graeme@bathla.com.au
	Attention	Graeme Allen, Director of Planning

Background

- A The Landowner is the registered proprietor of the Land and is a related entity of the Developer.
- A On 17 February 2017, the Developer lodged a Development Application with Council seeking approval of the Development.
- B On 28 April 2017, the Developer lodged an Appeal against the Council's deemed refusal of the Development Application in Land and Environment Court.
- C On 28 December 2017, the Court granted deferred consent to the Development Application as amended.
- D In compliance with Deferred Commencement Condition No. 1 of the Development Consent, the Developer has agreed to make the Development Contributions on and subject to the terms of this document.

Terms

1 Interpretation

1.1 Definitions

In this document the following definitions apply:

Acquisition Act means the *Land Acquisition (Just Terms Compensation) Act 1991* (HSW).

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

Appeal means Land and Environment Court proceedings number 2017/126814 between Universal Property Group Pty Ltd as Applicant and Cumberland City Council as Respondent.

Approval includes approval, consent, licence, permission or the like.

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date and otherwise to Council's satisfaction, in favour of the Council to pay an amount or amounts of money to the Council on demand issued by:

- (a) one of the following trading banks:
 - (i) Australia and New Zealand Banking Group limited,
 - (ii) Commonwealth Bank of Australia,
 - (iii) Macquarie Bank Limited,
 - (iv) National Australia Bank Limited,
 - (v) St George Bank Limited,
 - (vi) Westpac Banking Corporation, or
- (b) any other financial institution approved by the Council in its absolute discretion.

Approved Landscape Plans means the plans attached as **Annexure B**.

Assign as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.

Authority means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, state-owned corporation, a public authority established by or under any Act, a council or country council constituted under the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

Claim includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceedings or right of action.

Completion Notice means a notice which:

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Planning Agreement

- (a) is in writing;
- (b) identifies the particular item of the Works to which it relates; and
- (c) specifies the date on which, the Developer believes the relevant item of the Works was completed,

Contributions Value means the amount specified in **Schedule 3** in the column headed "Contribution Value" for each item of the Development Contributions (a detailed breakdown of which is set out in the BOQ attached as **Annexure C**), as indexed in accordance with this document.

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

CPI means the Consumer Price Index (All Groups – Sydney) published by the Australian Bureau of Statistics.

Defect has the meaning ascribed to that term in clause 11.1.

Defects Liability Period with respect to an item of the Works means the period of 1 year commencing on the day immediately after that item of Works is completed for the purposes of this document.

Deferred Commencement Condition No. 1 means the deferred commencement condition 1 listed in Part A, Schedule A of the Development Consent.

Development means the Development permitted in accordance with the Development Consent.

Development Application means DA 52/2017 lodged with Council on 17 February 2017.

Dedication Plan means the dedication plan attached as **Annexure A**.

Designated Land means the Park Land and the Road Land.

Development Consent means the consent issued by the Land and Environment Court in Proceedings No. 2017 / 126814.

Development Contributions means the provision of the Works and the dedication of the Designated Land to Council.

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

Embellishment Works means the embellishment works to be undertaken on the Park Land as set out in the Approved Landscape Plans and in accordance with Items 1 and 2 of **Schedule 3**.

Encumbrance(s) means an interest or power:

- (a) reserved in or over an interest in any asset;
- (b) created or otherwise arising in or over any interest in any asset under any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement, subordination to any right of any other person and any other encumbrance or security interest, trust or bill of sale; or
- (c) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.

Event of Default has the meaning ascribed to in clause 21.2.

Insolvency Event means the happening of any of the following events:

- (a) Application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order or an order is made that a body corporate be wound up.
- (b) An application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate or one of them is appointed, whether or not under an order.

- (c) Except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, agreement of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them.
- (d) A body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved.
- (e) A body corporate is or states that it is insolvent.
- (f) As a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**), a body corporate is taken to have failed to comply with a statutory demand.
- (g) A body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act*.
- (h) A body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate.
- (i) A person becomes insolvent under administration as defined in section 9 of the *Corporations Act* or action is taken which could result in that event.
- (j) A receiver, manager or receiver and manager is appointed to the Company.
- (k) A claim is filed in a court against a person that is not defended, released or otherwise settled within twenty eight (28) days of the date of its filing at the court.
- (l) Anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Land means Lot 12 in DP 1175686, known as 12 Palmer Street, Guildford West NSW 2161.

Maintenance Period means a period of twelve (12) months after the Embellishment Works are completed.

Maintenance Works means any work (including but not limited to landscaping and associated works) required to maintain the Embellishment Works in good condition and repair.

Occupation Certificate has the same meaning as in the Act.

Park Land means the land described as Lot 4 and shaded in green in the Dedication Plan, and known as 'Canal Park' and the land described as Lot 5 shaded in light blue in the Dedication Plan and known as 'Residential Pocket Park'.

Party means a party to this document.

Planning Legislation means the Act, the *Local Government Act 1993* (NSW) and the *Roads Act 1993* (NSW).

Rectification Notice has the meaning ascribed to it in clause 10.3(a)(iv).

Road Land means the land described as Lot 6, marked as "New Road No.1 (15m wide)", and shaded in dark red in the Dedication Plan.

Road Works means the construction of a road on the Road Land as set out in Item 3 of Schedule 3 in accordance with the Development Consent

Security has the meaning ascribed to it in clause 13.1.

Step-in Rights has the meaning ascribed to it in clause 12.1.

Subdivision Certificate has the same meaning as in the Act.

Works means the Road Works and the Embellishment Works (as applicable).

1.2 Interpretation

In the interpretation of this document, the following provisions apply unless the context otherwise requires:

- (a) Except as otherwise provided in this document, words in this document have the same meaning as those words have in the Act.
- (b) Headings are inserted for convenience only and do not affect the interpretation of this document.
- (c) A reference in this document to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (d) If the day on which any act, matter or thing is to be done under this document is not a business day, the act, matter or thing must be done on the next business day.
- (e) A reference in this document to dollars or \$ means Australian dollars and all amounts payable under this document are payable in Australian dollars.
- (f) A reference in this document to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- (g) A reference in this document to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (h) A reference in this document to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (i) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this document.
- (j) The word "person" includes any individual, company, trust, partnership, joint venture, association, body corporate, unincorporated body or governmental agency.
- (k) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (l) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (m) References to the word 'include' or 'including' are to be construed without limitation.
- (n) A reference to this document includes the agreement recorded in this document.
- (o) A reference to a Party to this document includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
- (p) A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- (q) Any schedules, appendices and attachments form part of this document.
- (r) Notes appearing in this document are operative provisions of this document.

2 Status of this document

2.1 Planning agreement under the Act

This document constitutes a planning agreement within the meaning of s 7.4 of the Act and the parties agree on the matters set out in this document, any schedules, annexures and appendices to this document.

3 Operation of this document

3.1 Operation

This document commences on the date it is signed by all parties whether in counterparts or as a whole.

4 Application of this document

4.1 Application

This document applies to:

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

5 Application of sections 7.11, 7.12, and 7.24 of the Act to the Development

5.1 Subject to clause 5.2, for the purposes of section 7.4 of the Act, this document does not exclude the application of section 7.11 & section 7.12 of the Act to the Development, however the Developer is entitled to an offset in an amount of \$618,561.98 (being the aggregate of the Contribution Values for the Embellishment Works only) with respect to contributions required to be made in accordance with a condition of the Development Consent imposed under s7.11 of the Act.

5.2 Section 7.11(6) of the Act applies to the Development Contributions that are to be carried out or provided pursuant to this document.

5.3 This document does not exclude the application of section 7.24 to the Development.

6 Provision of Development Contributions

6.1 Designated Land

- (a) At no cost to Council, the Developer must dedicate the Designated Land to Council free of any trusts, estates, interests, covenants and Encumbrances by the time specified in **Schedule 2**.
- (b) The Developer must meet all costs associated with the dedication of the Designated Land in accordance with paragraph (a), including any costs incurred by Council in relation to that dedication.

6.2 Compulsory acquisition of the Designated Land

- (a) The Developer and the Landowner consent to the compulsory acquisition of the Designated Land:
 - (i) in accordance with the Acquisition Act; and
 - (ii) on the terms set out in this clause 6.2.
- (b) Council may only acquire the Designated Land compulsorily in accordance with the Acquisition Act if either the Developer or the Landowner have committed an Event of Default with respect to the dedication of that land under this document.
- (c) If Council acquires the Designated Land compulsorily in accordance with the Acquisition Act:
 - (i) the Developer and the Landowner agree that the compensation payable to it on account of that acquisition under the Acquisition Act is \$1.00; and

- (ii) Council must complete that acquisition within twenty four (24) months of the relevant Event of Default.
- (d) The parties agree that the provisions of this clause 6.2 are an agreement with respect to the compulsory acquisition of the Designated Land for the purpose of s30 of the Acquisition Act.
- (e) If Council:
 - (i) acquires the Designated Land under paragraph (c); and
 - (ii) is required to pay any compensation to a third party as a result of that acquisition,then the Developer must pay Council the amount of that compensation as a Monetary Contribution:
 - (iii) within ten (10) business days of demand for payment being made by Council; and
 - (iv) prior to the issue of the then next Occupation Certificate or Subdivision Certificate with respect to the Development.

6.3 Works

The Developer, at its cost, must:

- (a) obtain any consent or approval from an Authority required for the construction and use of the Works;
- (b) carry out and complete the Works to the satisfaction of the Council by the time specified in **Schedule 3**;
- (c) carry out and complete the Works:
 - (i) in accordance with the specification referred to in **Schedule 3** for the relevant item of Work;
 - (ii) in accordance with the requirements of, or consents issued by, any Authority (including the Development Consent and Approved Landscape Plans as applicable);
 - (iii) ensuring that:
 - (A) all necessary measures are taken to protect people, property, and the environment,
 - (B) unnecessary interference with the passage of people and vehicles is avoided; and
 - (C) nuisances and unreasonable noise and disturbances are prevented;
 - (iv) in accordance with any Australian Standards applicable to works of the same nature as each aspect of the Works; and
 - (v) in a proper and workmanlike manner complying with current industry practice and standards relating to each aspect of the Works.

6.4 Contribution Value

If the Developer's actual cost of carrying out the Works, including any costs incurred pursuant to this document differs from the relevant Contribution Value, neither party is entitled to claim a credit or reimbursement, as the case may be, for the difference.

6.5 Indexation of value of Contribution Value

- (a) The Contribution Values for the Works and any Security provided for the Works will be indexed quarterly in accordance with the CPI.

- (b) The Developer must ensure that the Security held by Council at all times equals the indexed amount notified to the Developer by Council.

6.6 Restriction on the issue of Occupation Certificates and Subdivision Certificates

- (a) If this document requires the Developer to Complete an item of the Works, make a monetary contribution or dedicate land (**Relevant Obligation**) prior to the issue of an Occupation Certificate or a Subdivision Certificate, then the relevant Occupation Certificate or Subdivision Certificate (as the case may be) must not be issued unless that Relevant Obligation has been satisfied.
- (b) The Developer must not apply for the issue of an Occupation Certificate or a Subdivision Certificate if a Relevant Obligation has not been satisfied at the time the application for the issue of an Occupation Certificate or a Subdivision Certificate is made.

6.7 Maintenance Works

The Developer, at its cost, must carry out the Maintenance Works during the Maintenance Period so as to ensure that at all times during the Maintenance Period the Embellishment Works are in good condition and repair.

7 Design and Specification of Works

7.1 Developer must submit design and specification

- (a) Before commencing construction of an item of Work, the Developer must submit to Council for its approval, the detailed design and specification for the relevant item of Work.
- (b) The design and specification for the item of Work must be prepared by the Developer having specific regard to:
 - (i) any applicable laws;
 - (ii) the description of the item of Work contained in this document; and
 - (iii) the Contribution Value of that item of Work.

7.2 Council to respond to design and specification

- (a) If within twenty (20) business days of the date of submission referred to in clause 7.1:
 - (i) Council notifies the Developer in writing of its approval of the design and specification, the Developer is to carry out and complete the relevant item of Work in accordance with that design and specification;
 - (ii) Council fails to notify the Developer in writing that it approves or does not approve of the design and specification, Council is taken to have approved the design and specification of the item of Work and the Developer may carry out and complete the item of Work in accordance with that design and specification; or
 - (iii) Council notifies the Developer in writing that it does not approve of the design and specification, the Developer may:
 - (A) elect to amend the design and specification and submit to Council the amended design and specification in which case the approval process set out in this clause 7 applies to that amendment; or
 - (B) if the Developer does not agree with the modifications requested by Council, refer the matter for dispute resolution under agreement.
- (b) For the purposes of paragraph (a)(ii), except with the agreement of the Developer, Council cannot require the Developer to:

- (i) comply with the design approved under this clause if it is inconsistent with the relevant Development Consent; and
- (ii) make modifications to the design and specification of an item of Work that results in a change to the nature and scope of that item of Work as set out in this document.

8 Access to the Land

- 8.1** The Developer is to permit the Council, its officers, employees, agents and contractors to enter the Land, upon giving reasonable prior notice, in order to inspect, examine or test any Works or to remedy any breach of the Developer relating to the carrying out of the Works.

9 Variation to the Works

The Works in Items 1 and 2 in **Schedule 3** must not be varied by the Developer unless the parties agree in writing to the variation.

10 Completion of Items of Work

10.1 Service of Completion Notice

When the Developer considers that an item of Work is complete, the Developer must serve a Completion Notice on Council.

10.2 Inspection by Council

A Council appointed certifier (**Certifier**) must inspect any item of Work that is specified in a Completion Notice within ten (10) business days of the service of that notice.

10.3 Council to serve notice

- (a) Within the earlier of:
- (i) ten (10) business days of the Certifier inspecting the item of Work set out in a Completion Notice; and
 - (ii) twenty (20) business days from the date the relevant Completion Notice was served,

Council must provide notice in writing to the Developer that the item of Work set out in the Completion Notice:

- (iii) has been confirmed as completed by the Certifier; or
 - (iv) has not been confirmed as completed by the Certifier, in which case the notice is a **Rectification Notice** and must also detail:
 - (A) those aspects of the relevant item which have not be completed;
 - (B) the work Council requires the Developer to carry out in order to rectify those deficiencies; and
 - (C) the time by which that work must be carried out and completed (acting reasonably).
- (b) If Council does not provide the Developer with notice in accordance with paragraph (a), the item of Work set out in the Completion Notice will be deemed to have been completed on the date nominated in the Completion Notice.

10.4 Response to Rectification Notice

- (a) Where Council serves a Rectification Notice on the Developer, the Developer must:
- (i) rectify the deficiencies in that item of Work in accordance with, and by the time set out in, the Rectification Notice; or
 - (ii) serve a notice on Council that it disputes the matters set out in the Rectification Notice.

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Planning Agreement

- (b) Where the Developer:
 - (i) serves notice on the Council in accordance with paragraph (a)(ii), the dispute resolution provisions of this agreement apply; or
 - (ii) rectifies the relevant item of Work in accordance with paragraph (a)(i), it must serve a new Completion Notice upon Council for the item of Work it has rectified (**New Completion Notice**).
- (c) The provisions of clauses 10.1 to 10.4 (inclusive) apply to any New Completion Notice issued by the Developer in accordance with paragraph (b)(ii).

10.5 Passing of title and risk

On the later of:

- (a) completion of an Item of Work; and
- (b) the date on which the land on which that item of Work is situated is dedicated to Council,

and subject to inspection and certification by the Certifier, Council:

- (c) accepts ownership, possession and control of; and
- (d) risk in,

that item of Work.

10.6 Works as Executed Plan

No later than twenty (20) business days after an item of Work is Completed, the Developer will submit to Council a full works-as-executed-plan in respect of that item of Work.

11 Rectification of Defects

11.1 Defects Notice

- (a) If an item of Work is complete, but that item of Work contains a material defect which:
 - (i) adversely affects the ordinary use and/or enjoyment of the item; or
 - (ii) will require maintenance or rectification works to be performed on it at some time in the future as a result of the existence of the defect;

(**Defect**) Council may issue a defects notice (**Defects Notice**) concerning that item of Work but only within the Defects Liability Period.

- (b) A Defects Notice must contain the following information:
 - (i) the nature and extent of the Defect;
 - (ii) the work Council requires the Developer to carry out in order to rectify the Defect; and
 - (iii) the time within which the Defect must be rectified (which must be a reasonable time and not less than ten (10) business days).

11.2 Developer to rectify Defects

- (a) Subject to paragraph (b):
 - (i) the Developer served with a Defect Notice must rectify the Defects specified within a Defects Notice as soon as practicable after receipt of the Defects Notice; and
 - (ii) the Developer must follow the procedure set out in clause 10 in respect of the rectification of the Defects specified in the Defects Notice.
- (b) If the Developer disputes the matters set out in the Defects Notice, it must serve a notice on Council that it disputes the matters and the dispute resolution provisions of this agreement apply.

12 Step in Rights

12.1 Right of Council to Step-In

Provided it gives the Developer any notice required to be provided under this document concerning the Developer's breach, Council may:

- (a) carry out any work that the Developer has failed to do in accordance with this document; and
- (b) enter upon that part of the Land reasonably necessary to allow Council to carry out that work.

(Step-in Rights).

12.2 Consequence of Step-In

If Council elects to exercise the Step-in Rights, then the Developer must:

- (a) cease performing the works that are subject to the Step-in Rights; and
- (b) not impede or interfere with Council in undertaking that work.

12.3 Recovery of cost of Work carried out by the Council

- (a) Where Council exercises its Step-in Rights under clause 12.1:
 - (i) it may call upon the Security to recover all reasonable costs incurred by Council in doing so; and
 - (ii) where the Security is not sufficient to cover all of those costs, then Council may recover those costs as a liquidated debt owed by the Developer in a Court of competent jurisdiction.
- (b) For the purpose of paragraph (a), Council's costs of exercising its Step-in Rights include, but are not limited to:
 - (i) the reasonable costs of Council's servants, agents and contractors reasonably incurred for that purpose;
 - (ii) all fees and charges necessarily or reasonably incurred by Council in order to have the default rectified; and
 - (iii) all legal costs and expenses reasonably incurred by Council, by reason of the Developer's failure to comply with this document.

13 Security

13.1 Provision of Security

- (a) Subject to paragraph (b), prior to the issue of a Construction Certificate in respect of the Development, the Developer must deliver to Council separate Bank Guarantees to the satisfaction of the Council:
 - (i) for the amount equivalent to one hundred and ten percent (110%) of the sum of the Contribution Values (**Primary Security**) for all items of Work which are required to be Completed prior to the issue of a Subdivision Certificate or an Occupation Certificate with respect to that part of the Development to which the relevant Construction Certificate relates; and
 - (ii) for an amount equivalent to fifteen percent (15%) of the sum of those Contribution Values (**Defects Security**),(collectively referred to as the **Security**).
- (b) The Developer may satisfy its obligations under paragraph (a) (either in whole or in part) by directing Council to retain any Security held by Council which is required to be released by Council under this document.

13.2 Council may call on Security

- (a) If the Developer commits an Event of Default, Council, without limiting any other remedies available to it, may call on any Security provided by the Developer,
- (b) If Council calls on any Security, it may use the amount so paid to it in satisfaction of any costs incurred by it in remedying the relevant Event of Default.

13.3 Top up of Security

If Council calls on the Security, Council, by notice in writing to the Developer, may require the Developer to provide a further or replacement Security in an amount that, when added to any unused portion of any Security then held by Council, does not exceed the amount of the Security Council is entitled to hold at that time under this document.

13.4 Release of Primary Security

Unless:

- (a) Council has made or intends to make a demand against any Security provided by the Developer;
- (b) the Development Contributions on account of which that Security was provided have not been made; or
- (c) the Developer is in breach of this document at the relevant time,

Council, upon a written request being made by the Developer, must return the Primary Security within ten (10) business days of such a request being made.

13.5 Release of Defects Security

Unless:

- (a) Council has made or intends to make a demand against any Security provided by the Developer for that Stage;
- (b) the relevant Defects Liability Period has not expired; or
- (c) the Developer is in breach of this document at the relevant time,

Council, upon a written request being made by the Developer, must return the Defects Security within ten (10) business days of such a request being made.

14 Insurance

14.1 Indemnity

The Developer indemnifies Council against any Claims that arise in connection with:

- (a) the carrying out by the Developer of any item of the Works; and
- (b) the performance by the relevant Developer of any other obligation under this document,

except to the extent that any such Claim arose as a result of an act or omission of Council.

14.2 Insurance

- (a) The Developer must maintain the following insurances in relation to the Works required to be carried out by it under this document:
 - (i) Contract works insurance, noting, naming or otherwise including the Council as an insured under the policy, for the full replacement value of each item of Works that has not been Completed;

DRAFT

Planning Agreement

- (ii) Public liability insurance for at least \$20,000,000.00 for a single occurrence, noting, naming or otherwise including the Council as an insured under the policy, for liability to any third party;
 - (iii) Workers compensation insurance as required by law.
 - (iv) Any other insurance required by law.
- (Policies).**
- (b) The Developer must provide a copy of the certificate of currency for each of the Policies within seven (7) days of receiving a request from Council to do so.
 - (c) The Developer must ensure that any subcontractor engaged by it to carry out any of the Works maintains its own policies of insurance which are the same as the Policies.

15 Warranties

The Developer warrants to Council that it is:

- (a) legally and beneficially entitled to the Land;
- (b) able to fully comply with its obligations under this document;
- (c) it has full capacity to enter into this document; and
- (d) there is no legal impediment to it entering into this document, or performing the obligations imposed under it.

16 Registration of this document

- 16.1** Within 10 Business Days of receiving a copy of this document executed by the Council, the Developer, at its own expense, is to take all practical steps and otherwise do anything to procure:
- (a) the consent of each person, as required by the Registrar-General, who:
 - (i) has an estate or interest in the Land registered under the Real Property Act; or
 - (ii) is seized or possessed of an estate or interest in the Land,to the registration of this document on the title to the Land and to the terms of this document;
 - (b) the execution of any documents;
 - (c) the production of the relevant certificates of title; and
 - (d) the lodgement of this document in a registrable form at the NSW Land Registry Services for registration by the Registrar-General in the relevant folio of the Register for the Land.
- 16.2** The Developer will take all practical steps and otherwise do anything to procure the registration of this document within two months of the date of this document in the relevant folio of the Register for the Land, including promptly responding to any requisitions made by the Registrar-General in respect of this document and/or any ancillary documents.
- 16.3** The Developer must provide Council with evidence of the lodgement of this document within 10 Business Days of such lodgement at the NSW Land Registry Services.
- 16.4** The Developer will provide Council with a copy of the relevant folio of the Register for the Land and a copy of the registered dealing containing this document within 10 Business Days of registration of this document.

- 16.5** The Developer is to do such other things as are reasonably necessary to remove any notation relating to this document from the title to the Land once the Developer has completed its obligations under this document or this document is terminated or otherwise comes to an end for any other reason. To the extent that the Council's co-operation is required to enable the Developer to comply with this clause, such co-operation shall be promptly provided.

17 Notice

- 17.1** Notices given under this document:
- (a) must be in writing and clearly readable in the English language;
 - (b) must be signed by the party giving or making it (or signed on behalf of that party by its authorised representative); and
 - (c) may be delivered to a party by hand or by prepaid post to that party's address shown in page 1 of this document or to such other address or person as a party may specify by notice given in accordance with this clause.
- 17.2** A notice is taken to be duly given and received:
- (a) if delivered by hand, when delivered; or
 - (b) if delivered by prepaid post, three Business Days after being deposited in the mail with postage prepaid.
- 17.3** Despite clause 17.2, notices received after 5 pm in the place of receipt or on a non-Business Day are taken to be received at 9 am on the next Business Day.

18 Dispute Resolution

- 18.1** If a party claims that a Dispute has arisen under this document (Claimant), it must give written notice to the other party (Respondent) stating the matters in dispute and designating as its representative a person to negotiate the dispute.
- 18.2** Within 15 business days of receiving notice under clause 18.1, the Respondent must notify the Claimant of its representative to negotiate the dispute.
- 18.3** No party may start court proceedings (except for proceedings seeking interlocutory relief) in respect of a Dispute unless it has first complied with this clause 18.
- 18.4** The parties must continue to perform their respective obligations under this document if there is a Dispute but will not be required to complete the matter that is the subject of the Dispute, unless the appropriate party indemnifies the other parties against costs, damages and all losses suffered in completing the disputed matter if the Dispute is not resolved in favour of the indemnifying party.
- 18.5** The parties' nominated representative must:
- (a) meet to discuss the matter in good faith within 10 business days after service by the Respondent of notice of its representative, and
 - (b) use reasonable endeavours to settle or resolve the Dispute within 20 business days after they have met.
- 18.6** If the Dispute is not resolved within 30 business days after the nominated representatives have met, then the parties must agree on the appropriate method of alternative dispute resolution (which may include mediation or expert determination within ten (10) Business Days of the date of the final meeting held in accordance with clause 18.5.

DRAFT

Planning Agreement

- 18.7 If the parties fail to agree on the appropriate method of alternative Dispute resolution in accordance with clause 18.6, the Dispute must be referred for mediation in accordance with clause 19.

19 Dispute Resolution - Mediation

- 19.1 If a notice is given under clause 18.6 seeking mediation, the parties are to mediate the Dispute and the Dispute must be referred to mediation to a mediator agreed by the parties or failing agreement, appointed by the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter).
- 19.2 The mediator appointed must:
- (a) have reasonable qualifications and practical experience in the area of the Dispute, and
 - (b) have no interest or duty which conflicts or may conflict with his function as mediator, s/he being required to fully disclose any such interest or duty before his appointment.
- 19.3 If the Dispute is not resolved by mediation within a further 20 business days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 19.4 In relation to costs and expenses:
- (a) each party will bear their own professional and expert costs incurred in connection with the mediation, and
 - (b) the costs of the mediator will be shared equally by the parties unless the mediator determines a party has engaged in vexalious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

20 Dispute Resolution – Expert Determination

- 20.1 If the parties select expert determination as the method of resolving the Dispute, the Dispute must be determined by an independent expert in the relevant field.
- 20.2 The expert must act as an expert and not an arbitrator.
- 20.3 The determination of the expert will be binding upon the parties unless otherwise agreed.
- 20.4 If the expert does not award costs, each party will bear its own costs in connection with the process and the determination by the expert together with an equal proportion of related fees and costs.

21 Breach of this document

21.1 Breach Notice

If the Developer breaches this document, Council may serve a notice on the Developer (**Breach Notice**) specifying:

- (a) the nature and extent of the alleged breach;
- (b) if:
 - (i) the breach is capable of being rectified other than by the payment of compensation, what Council requires the Developer to do in order to rectify the breach; or

- (ii) the breach is not capable of being rectified other than by payment of compensation, the amount of compensation Council requires the Developer to pay in order to rectify the breach, and
- (c) the time within which Council requires the breach to be rectified, which must be a reasonable time of not less than twenty (20) business days.

21.2 Events of Default

The Developer commits an **Event of Default** if it:

- (a) fails to comply with a Breach Notice; or
- (b) becomes subject to an Insolvency Event.

21.3 Consequences of Events of Default

Where the Developer commits an Event of Default, Council may, in addition to any rights it has at law:

- (a) terminate this document;
- (b) call upon the Security; and/or
- (c) exercise the Step-in Rights so as to carry out any work specified in the relevant Breach Notice.

22 Termination, Rescission or Determination

22.1 Termination

This document terminates in the following events:

- (a) The parties agree in writing to terminate the operation of this document at any time.
- (b) Council serves notice on the Developer terminating this document where the Developer has failed to comply with a Breach Notice.
- (c) The Development Consent lapses.

22.2 Consequence of termination

Upon termination of this document:

- (a) all future rights and obligations of the parties are discharged; and
- (b) all pre-existing rights and obligations of the parties continue to subsist.

22.3 Determination

This document will determine upon the Developer satisfying all of the obligations imposed on it under this document in full.

23 GST

23.1 In this clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 23.2** Subject to clause 23.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 23.3** Clause 23.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 23.4** No additional amount shall be payable by the Council under clause 23.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 23.5** If there are Supplies for Consideration which is not expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- (a) to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
 - (b) that any amounts payable by the Parties in accordance with clause 23.2 (as limited by clause 23.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 23.6** No payment of any amount pursuant to this clause 23, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 23.7** Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 23.8** This clause continues to apply after expiration or termination of this Agreement.

24 Assignment

24.1 Restriction on Assignment

Other than in accordance with this clause 24, the Developer and/or Landowner (as applicable) may not:

- (a) Assign any part of the Land; and/or
- (b) Assign their rights or obligations under this document.

24.2 Procedure for Assignment

- (a) If the Developer and/or Landowner (as applicable):
 - (i) wishes to Assign any part of the Land; and/or
 - (ii) wishes to Assign its rights or obligations under this document,then the Developer must, at no cost to Council, procure:

- (iii) the execution by the Assignee of an appropriate document where the Assignee agrees to be bound by the terms of this document; and
 - (iv) the provision of all Securities to Council by the Assignee that the Developer is required to provide under this document (and any additional securities if required by Council acting reasonably) at the same time as, or prior to, entering into that document.
- (b) The Developer may not Assign this document if, at the time the Assignment is made, the Developer is in breach of this document.

25. Position of Council

25.1 Consent authority

The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the terms of the Planning Legislation.

25.2 Document does not fetter discretion

This document is not intended to operate to fetter, in any unlawful manner:

- (a) the power of Council to make any law; or
- (b) the exercise by Council of any statutory power or discretion,

(Discretion).

25.3 Severance of provisions

- (a) No provision of this document is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this document is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
 - (i) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 25 is substantially satisfied; and
 - (ii) in the event that paragraph cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this document has full force and effect; and
 - (iii) to endeavour to satisfy the common objectives of the parties in relation to the provision of this document which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.
- (b) Where the Law permits Council to contract out of a provision of that Law or gives Council power to exercise a Discretion, then if Council has in this document contracted out of a provision or exercised a Discretion under this document, then to the extent of this document it is not to be taken to be inconsistent with the Law.

25.4 No Obligations

Nothing in this document will be deemed to impose any obligation on Council to exercise any of its functions under the Act in relation to the Development Consent, the Land or the Development in a certain manner.

26 Miscellaneous

26.1 Counterparts

This document may be executed in counterparts (that is, separate copies of the same document, each signed by one or more parties). All executed counterparts constitute one.

Without limiting this clause 26.1, if one or more signatures on behalf of a single party are on different copies of this document, they are taken to be all on one copy only and the multiple copies have the same effect, taken together, as if all the signatures were on the same single copy of this document.

26.2 Further action

Each party must do everything reasonably necessary (including executing documents, obtaining consents and getting documents completed and executed) to give full effect to this document and the transactions contemplated by it. These things must be done at the relevant party's own expense.

26.3 Variations and waivers only in writing

- (a) This document may only be varied (including varying the parties by novation) or supplemented in writing signed by each party.
- (b) A right created under this document may only be waived in writing signed by the party giving the waiver.
- (c) An electronic signature or an electronic communication is not sufficient for the purposes of this clause 26.3.

26.4 Exercising rights and giving consents

- (a) Without limiting clause 26.3(b), a party does not waive a right or remedy if it fails to exercise the right or remedy or delays in exercising the right or remedy. A single or partial exercise of a right or remedy does not prevent another or further exercise of that or another right or remedy.
- (b) A party may exercise a right or remedy in any way it sees fit (including by imposing conditions), except where this document expressly states otherwise. However, a party must not unreasonably withhold its consent or impose unreasonable conditions in connection with a consent, except where this document expressly states otherwise.

26.5 Assignment

A party is not entitled to assign a right under this document without the prior written consent of the other parties and, in the case of the Developer and Landowner, in accordance with clause 24. A purported assignment in breach of this clause 26.5 is void. A party breaches this document if it attempts or purports to assign a right other than in accordance with this clause.

26.6 This document and the general law

- (a) A party's rights and remedies under this document are in addition to other rights and remedies given by law independently of this document.
- (b) A party's rights and obligations under this document are not affected by anything which might otherwise affect them at law.

26.7 Nature of indemnities

Each indemnity in this document is a continuing obligation, independent of the party's other obligations and survives termination or expiry of this document. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity given in this document. Without limiting clause 26.6(a), a right of indemnity given in this document is in addition to any common law rights.

DRAFT

Planning Agreement

26.8 Certain things not affected by termination

- (a) Termination or expiry of this document does not prevent a party from acquiring rights in connection with an act or omission occurring before termination or expiry nor does it affect rights that have accrued on or before termination or expiry.
- (b) Any obligation of confidentiality arising in connection with this document is independent and survives termination or expiry of this document. This applies whether or not the obligation is expressed in this document.
- (c) Any other term which, by its nature, is intended to survive termination or expiry of this document survives such termination or expiry.

26.9 No merger

The rights and obligations of the parties under this document do not merge on completion of any transaction contemplated by this document (including by the execution of any document which is contemplated by this document and consistent with it).

26.10 Severability and reading down

- (a) If a provision of this document would otherwise be illegal, void or unenforceable or impose an obligation or liability that is prohibited by law, the provision is to be read down to the extent necessary to be enforceable or to comply with the law whilst still largely reflecting the parties' commercial intentions as apparent from this document.
- (b) If clause 26.10(a) is not possible, the document is to be read as if the provision was omitted.
- (c) In either case, the remaining provisions of this document continue in force.
- (d) This clause does not apply to an essential provision, to a provision that relates to the consideration under this document or to one of two or more provisions that can reasonably be interpreted as being intended to operate reciprocally or not at all.

26.11 Costs and stamp duty

The Developer agrees to:

- (a) pay or reimburse the reasonable legal costs and disbursements incurred by Council in the negotiation, preparation, execution, and stamping of this document;
- (b) pay the reasonable legal costs and disbursements referred to in paragraph (a) within ten (10) business days of receipt of a tax invoice from Council; and
- (c) pay or reimburse the legal costs and disbursements of Council arising from the ongoing administration and enforcement of this document including any breach or default by the Developer of its obligations under this document.

26.12 Entire agreement and no reliance

- (a) This document constitutes everything to which the parties have agreed in connection with its subject matter and supersedes all previous deeds, agreements, promises or understandings between the parties in connection with its subject matter.
- (b) Each party warrants that:
 - (i) it has been given ample opportunity to obtain independent legal advice in relation to the terms of this document and to negotiate the terms of this document,
 - (ii) it has not been provided with any legal, financial or other advice in connection with this document by any other party to the document,
 - (iii) it enters into this document relying only on the document itself and the party's own investigations (including independent advice received by it), and

DRAFT

Planning Agreement

- (iv) without limiting clause 26.12(b)(iii), in entering into this document, it does not rely on any representation or warranty made by or on behalf of another party in relation to this document (including during the negotiations leading up to this document other than those contained in the document itself).
- (c) No party is liable for any negligent misrepresentation made in connection with the negotiations leading up to this document.

26.13 Time

The time for a party to comply with an obligation is of the essence, unless this document expressly states otherwise.

26.14 Governing law and jurisdiction

This document is governed by the laws of New South Wales, Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia.

26.15 Approvals and Consent

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

DRAFT

Planning Agreement

Schedule 1 Requirements Under Section 7.4

REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
<p>Planning instrument and/or development application – (Section 7.4(1))</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument, or</p> <p>(b) made, or proposes to make, a development application or application for a complying development certificate, or</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) or (b) applies.</p>	<p>(a) No.</p> <p>(b) Yes.</p> <p>(c) Not applicable.</p>
<p>Description of land to which this agreement applies - (Section 7.4(3)(a))</p>	<p>Lot 12 in DP 1175686.</p>
<p>Description of the development to which the agreement applies – (Section 7.4(3)(b))</p>	<p>The subdivision of the Land into six lots (including road), the subsequent construction on the Land of four residential flat buildings over basement car parking comprising 192 residential units and 23 townhouses and associated road and landscaping works.</p>
<p>The nature and extent of the provision to be made by the developer under the agreement, the time or times by which the provision is to be made and the manner by which the provision is to be made – (Section 7.4(3)(c))</p>	<p>Refer to clause 6.</p>
<p>Application of section section 7.11, 7.12 or 7.24 to the development (Section 7.4(3)(d))</p>	<p>Refer to clause 5.</p>
<p>Consideration of benefits under this agreement if section 7.11 applies - (Section 7.4(3)(e))</p>	<p>Refer to clause 5.</p>
<p>Mechanism for the resolution of disputes under this agreement - (Section 7.4(3)(f))</p>	<p>Refer to clause 18.</p>
<p>Enforcement of this agreement - (Section 7.4(3)(g))</p>	<p>Refer to clauses 6.2, 6.6, 12, 13 and 16.</p>
<p>No obligation to grant consent to exercise functions - (Section 7.4(9))</p>	<p>Refer to clause 25.</p>

Planning Agreement

DRAFT

Schedule 2 Dedicated Land

No.	Item	Time for Completion
1	Dedication of ownership of Park Land to Council	Prior to the issue of a Subdivision Certificate for the Development.
2	Dedication of ownership of Road Land to Council	Prior to the issue of a Subdivision Certificate for the Development.

DRAFT

Planning Agreement

Schedule 3 Works

No.	Items of Works	Specification	Time for Completion	Contribution Value
1	Landscaping and embellishment of Park Land on proposed Lot 4	<p>Landscaping and embellishment works to be consistent with the Approved Landscape Plans.</p> <p>At a minimum, the Works must include:</p> <ul style="list-style-type: none"> Installation of boundary fencing consistent with the fencing treatment applied to the nearby boundary of Council's Lower Prospect Canal Reserve. The plans include: <ul style="list-style-type: none"> Treated timber posts matching the proportions of posts installed at Lower Prospect Reserve Canal installed at 2.4 metre intervals. Min. 76.1mm dia. commercial grade galvanised round steel rails housed between posts at 0.6 metre high from ground level. Incorporate two (2) vehicular maintenance access entries for a 3.4 metre wide fence opening with associated concrete kerb layback at locations identified in consultation with Council. Install 140mm dia. round removable in ground bollards at share way midpoints across community land lot boundaries Installation of heavy duty (50mm SHS posts, top and bottom rails & 50 x 25mm RHS intermediate verticals) 1.2 metre high minimum 'black' powder coat tubular steel fencing with emergency access gates and all commercial grade galvanised steel components including caps to enclose the concrete canal in accordance with Sydney Water Fencing Policy and AS 19262012 and AS 5100.1-2004. Installation of two (2) 120 Lt Bayside waste bin enclosures with clear anodised hood and black anodised body, centered on a 0.1 by 0.1 metre concrete landing abutting pathway in proximity to picnic table / BBQ and behind the internal side fenced boundary of new road 1. Installation of one (1) proprietary, minimum 5 metre square by 3 metre high sub surface mounted timber pergola (open air with rafters) on wheelchair accessible concrete landing adjoining the footpath in relative proximity to picnic tables and playground Installation of one (1) proprietary electric BBQ unit (ss bench and one (1) plate) centred under pergola Installation of two (2) sub surface mounted picnic table set and four (4) park seats with arm rests and aluminum slats centred on wheelchair accessible concrete landings for picnic table sets and 1.4m wide x 2.2m long concrete landings for seats, set centred and back 400mm from the landing leading edge. Typically apply a 1.2 metre radius 100mm depth wood chip mulch surround to all new and existing trees in turf and merge 	Prior to the issue of a Subdivision Certificate for proposed Lot 4 of the Development.	\$464,772.95.

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		<p>mulch surrounds around groupings of trees to facilitate mowing.</p> <ul style="list-style-type: none"> Installation of one (1) drinking fountain equal to Prospect Drinking Fountain PDF 316SS.DB.BT on wheelchair accessible concrete pavement blisters adjoining the footpath in close proximity to the playground and BBO. Installation of a 400mm x 600mm interpretive sign on a mounting stand within a pavement blister adjoining the footpath/shareway within Lot 4 with content referencing the historical significance of the site, prepared by a qualified heritage consultant in consultation with Council. Salvage remnant site stored plant equipment (cylinder cast iron casings) and reconfigure as an interpretation feature mounted within Lot 4 in proximity and association with the interpretive sign in consultation with a qualified heritage consultant and Council. All concrete landings, pathways and kerb laybacks to be in accordance with Council's standard drawings SD 8100 & SD 8103 and concrete pathway blisters and playground edging to be distinguished with a charcoal coloured oxide surface treatment. Play equipment, to be supplied and installed by a reputable play equipment supplier, in accordance with AS 4685:2014 (Parts 1 & 2), AS/NZS 4422:1996 (and amend. 1 1999) and AS/NZS 4486.1-1997. The playground is to be designed utilising mulch soft fall attenuating surfacing as similar to SD — Mulch Softfall Playgrounds drawing A4-7456. Plan of Management to be prepared for the Council's adoption. The Plan is to include the proposed Works, asset value and annual maintain estimates. 		
2	<p>Landscaping and embellishment of Park Land on proposed Lot 5</p>	<p>Landscaping and embellishment works to be consistent with the Approved Landscape Plans.</p> <p>At a minimum, the Works must include:</p> <ul style="list-style-type: none"> Installation of boundary fencing consistent with the fencing treatment applied to the nearby boundary of Council's Lower Prospect Canal Reserve. The plans include: <ul style="list-style-type: none"> Treated timber posts matching the proportions of posts installed at Lower Prospect Reserve Canal installed at 2.4 metre intervals. Min. 76.1mm dia. commercial grade galvanised round steel rails housed between posts at 0.6 metre high from ground level. Incorporate one (1) vehicular maintenance access entries for a 3.4 metre wide fence opening with associated concrete kerb layback at location identified in consultation with Council. Installation of heavy duty (50mm SHS posts, top and bottom rails & 50 x 25mm RHS intermediate verticals) 1.2 metre high minimum 'black' powder coat tubular steel fencing with emergency access gates and all commercial grade galvanised steel components including caps to enclose 	<p>Prior to issue of a Subdivision Certificate for proposed Lot 5 of the Development.</p>	<p>\$153,789.03.</p>

		<p>the concrete canal in accordance with Sydney Water Fencing Policy and AS 19262012 and AS 5100.1-2004.</p> <ul style="list-style-type: none"> Installation of one (1) 120 Lt Bayside waste bin enclosures with clear anodised hood and black anodised body, centered on a 0.1 by 0.1 metre concrete landing abutting pathway behind the internal side fenced boundary of new road Installation of one (1) proprietary, minimum 5 metre square by 3 metre high sub surface mounted timber pergola (open air with rafters) on wheelchair accessible concrete landing adjoining the footpath in relative proximity to picnic tables and playground Installation of one (1) proprietary electric BBQ unit (ss bench and one (1) plate) centred under pergola Installation of sub surface mounted picnic table sets and park seats with arm rests and aluminum slats centred on wheelchair accessible concrete landings for picnic table sets and 1.4m wide x 2.2m long concrete landings for seats set centred and back 400mm from the landing leading edge. Typically apply a 1.2 metre radius 100mm depth wood chip mulch surround to all new and existing trees in turf and merge mulch surrounds around groupings of trees to facilitate mowing. Installation of 1 x drinking fountain equal to Prospect Drinking Fountain PDF 316SS DB BT on wheelchair accessible concrete pavement blister adjoining the footpath in close proximity to the BBQ All concrete landings, pathways and kerb laybacks to be in accordance with Council's standard drawings SD 8100 & SD 8103 and concrete pathway blisters and playground edging to be distinguished with a charcoal coloured oxide surface treatment. Plan of Management to be prepared for the Council's adoption. The Plan is to include the proposed Works, asset value and annual maintain estimates. 		
3	Construction of Road – proposed Lot 6	Construction of Road No.1 - 15.1m Wide	Prior to the issue of a Subdivision Certificate for proposed Lot 6 of the Development.	\$1,174,945.00

DRAFT

Planning Agreement

Signing page

Executed and delivered as a deed

Executed by Universal Property Group ACN 078 297 748 in accordance with section 127 of the *Corporations Act 2001*

.....
Signature of director

.....
Signature of director/secretary

.....
Name of director – BLOCK LETTERS

.....
Name of director/secretary – BLOCK LETTERS

Executed by UPG 31 Pty Ltd ACN 603 449 627 in accordance with section 127 of the *Corporations Act 2001*

.....
Signature of director

.....
Signature of director/secretary

.....
Name of director – BLOCK LETTERS

.....
Name of director/secretary – BLOCK LETTERS

Executed on behalf of Cumberland City Council ABN 22 798 563 329
by its General Manager pursuant to section 683 of the *Local Government Act 1993*

.....
Signature of General Manager

.....
Name of General Manager – BLOCK LETTERS

Resolution of the Council dated

2020

.....
Signature of witness

.....
Name of witness – BLOCK LETTERS

.....
Address of witness

DRAFT

Planning Agreement

Annexure B Approved Landscape Plans



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DETAIL 1. TREE PROTECTION
DETAIL 2. GARDEN PREPARATION
DETAIL 3. TURFING & THIRDS EDGE
DETAIL 4. TREE PLANTING DETAIL
DETAIL 5. SANDSTONE BLOCK RETAINING WALL
DETAIL 6. CONCRETE PATH AT PLAYGROUND EDGE
DETAIL 7. PLAYGROUND AND GARDEN BED EDGE

MASS PLANTING SETOUT

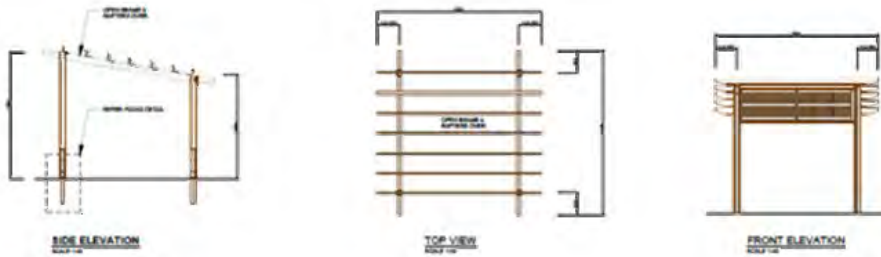
CONCRETE WALL SPECIFICATIONS

PROPOSED COMPANY NAME: DEVELOPMENT	PROJECT NO: 2019/0000000000	DATE: 12/20/20	SCALE: 1:10	DATE: 12/20/20	SCALE: 1:10
PROPOSED COMPANY NAME: DEVELOPMENT	PROJECT NO: 2019/0000000000	DATE: 12/20/20	SCALE: 1:10	DATE: 12/20/20	SCALE: 1:10

DETAIL 8. OUTDOOR DINING TABLE
DETAIL 9. POND SETTING
DETAIL 10. LITTER BIN
DETAIL 11. WATER FOUNTAIN
DETAIL 12. PARK BENCH WITH ARMRESTS

FURNITURE DETAILS

PROPOSED COMPANY NAME: DEVELOPMENT	PROJECT NO: 2019/0000000000	DATE: 12/20/20	SCALE: 1:10	DATE: 12/20/20	SCALE: 1:10
PROPOSED COMPANY NAME: DEVELOPMENT	PROJECT NO: 2019/0000000000	DATE: 12/20/20	SCALE: 1:10	DATE: 12/20/20	SCALE: 1:10

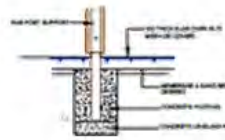


FOR DESIGN AND CONSTRUCTION, ALL PERGOLA MATERIALS SHALL BE SUPPLIED BY LAMBERT AUSTRALIA OR A LIKE QUALIFIED SUPPLIER. THE PERGOLA SHALL BE MANUFACTURED BY LAMBERT AUSTRALIA FOR THIS PROJECT.

PERGOLA SHALL BE MANUFACTURED TO THE MANUFACTURER'S SPECIFICATION & EACH COMPONENT SHALL BE MANUFACTURED TO THE MANUFACTURER'S SPECIFICATION & EACH COMPONENT SHALL BE MANUFACTURED TO THE MANUFACTURER'S SPECIFICATION.

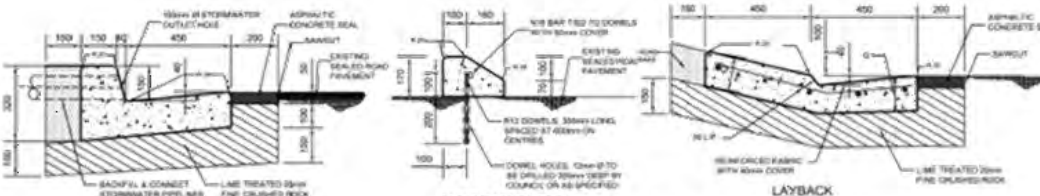
ALL PERGOLA MATERIALS SHALL BE MANUFACTURED TO THE MANUFACTURER'S SPECIFICATION & EACH COMPONENT SHALL BE MANUFACTURED TO THE MANUFACTURER'S SPECIFICATION.

OUTDOOR PERGOLA
Dimensions: 8m x 8m
Engineering: Wind Classification: N3, N410, standard.
To Conform with Local Government Building Code.
Finish & Fabric: Refer to manufacturer's specification. Finishes to match outdoor dining table and bench to be seen. By client subject to council approval.
Finings: To be made resistant to manufacturer's specification.
Footings: Built to ground, or in-situ (where in-slab construction).



FOOTING DETAIL - SLAB OPTION
Scale 1:20

Project Name	Client	Location	Scale	Author	Check	Approved	Date
Outdoor Pergola	ABC Pty Ltd	123 Main St, Sydney	1:20	J. Smith	M. Jones	P. Brown	15/11/20



NOTES

- TRANSVERSE JOINTS AT 4.0M SPACING. SCHEDULED WITH 200mm SAND APRON (200mm ON CENTRES).
- SLAB FABRIC TO EXTEND THROUGHOUT ADJACENT 300mm THICK APRON AND GUTTER.
- SUBGRADE AS SPECIFIED ON DRAWINGS.

LAYBACK & VEHICLE CROSSING STANDARD	LAYBACK THICKNESS	REINFORCING FABRIC
LIGHT DUTY (RESIDENTIAL DWELLINGS)	150	S162
MEDIUM DUTY (RESIDENTIAL TOWN HOUSES & HOME UNITS)	150	S182
HEAVY DUTY (INDUSTRIAL & COMMERCIAL)	200	S182



Project Name	Client	Location	Scale	Author	Check	Approved	Date
Outdoor Pergola	ABC Pty Ltd	123 Main St, Sydney	1:20	J. Smith	M. Jones	P. Brown	15/11/20

