

ITEM 6 (continued)

ATTACHMENT 1



Planning Agreement

Reference: RYD183-00053

City of Ryde Council
ABN 81 621 610

Hindmarsh Development Australia Pty Limited
ACN 118 654 729

Newcastle

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Annexure B Plan Showing Plaza Land and Plaza Works

**Annexure C Plan showing Adjoining Land and
Adjoining Plaza Works**

Annexure D Plan showing Adjoining Temporary Works

Annexure E Plan showing Temporary Works

Annexure F Plan showing Streetscape Works

Annexure G Plan showing Public Access Areas

Annexure H Plan showing Pearson Lane

Annexure I Design Program

Annexure J Scope of Works

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Agreement

Date

Parties

First party

Name City of Ryde Council (**Council**)
ABN 81 621 292 610
Contact Mr Bruce McCann, General Counsel
Telephone 02 9952 8222

Second party

Name Hindmarsh Development Australia Pty
Limited (**Developer**)
ACN 118 654 729
Contact
Telephone

Background

- A. The Developer is the owner of the Land or is entitled to be the owner of the Land.
- B. The Developer has lodged the Development Application with the Council, seeking Development Consent to carry out the Development on the Land.
- C. This Agreement records an irrevocable offer by the Developer and, on the date this Agreement commences to operate, constitutes an agreement between the Developer and the Council for provision of contributions including construction and maintenance of open space areas to be publicly accessible and other public domain works.

Operative part

1 Definitions

In this Agreement, unless context indicates a contrary intention:

Accessible Toilet means an accessible unisex toilet for disabled persons to be included in the Development on the same level and accessible from the public plaza to be constructed in accordance with this Agreement;

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

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

Adjoining Land means the land described in Folio Identifier A/85916 adjacent to the western boundary of the Land, as shown on the plan at Annexure C;

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Adjoining Landowner means the registered proprietor of the Adjoining Land from time to time, being at the time of this Agreement Hilda Chiming Cheong, Joseph Fook Yan Cheong and Windesea Build Pty Limited;

Adjoining Plaza Works means the works to construct and embellish that part of an open space plaza located on the Adjoining Land as shown on the plan at Annexure C;

Adjoining Temporary Works means the temporary landscaping works on the Adjoining Land and on the Plaza Land near to the boundary of the Adjoining Land, including balustrades and handrails, that may be required to ensure the Plaza Land is safe until the Adjoining Plaza Works have been completed, as shown on the plan at Annexure D;

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

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

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

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

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

Bond means an unconditional bond without any expiry dates issued by a bank holding an Australian banking licence for the benefit of the Council;

Builder means the building contractor awarded a building contract for any part of the Works.

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

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

Construction Certificate has the same meaning as in the Act;

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

Contributions means the contributions to be made by the Developer in accordance with clause 6 of this Agreement;

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

Development means the development of the Land for a mixed use retail and residential complex with associated car parking, road works and landscaping on ground level including the construction of a publicly accessible plaza;

Development Application means development application number LDA2013/0220 lodged by the Developer with the Council in respect of the Development and includes subsequent applications (including applications to modify under section 96 of the Act);

Development Consent has the same meaning as in the Act;

Fax Number means a party's facsimile number set out in the Notices clause of this Agreement;

GST has the same meaning as in the GST Law;

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

Heritage Item means the item referred to as "Memorial Clock" located at 2D Victoria Road, corner Wharf Road, Item number I1 listed in the *Ryde Local Environmental Plan (Gladesville Town Centre and Victoria Road Corridor) 2010* as an item of Environmental Heritage;

Implementation Terms means the terms in Schedule 2;

Land means the land upon which the Development will be undertaken, as described in the Development Application, being land identified in Folio Identifiers 1/445440, 2/445440, 2/9135, 1/437223 and SP 34035 and parts of adjoining roads to be acquired by the Developer;

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);

LPI means Land and Property Information NSW or any similar department established from time to time;

Monetary Contribution means \$119,184.30 that has been calculated based on the estimated value of the public works compared with the value of section 94 contributions that would otherwise have applied to the Development (plus 20%) in accordance with the table at Item 2 of Schedule 1.

Note: The total amount of the monetary contribution may change when the VPA is entered into, depending on the value of the works and the amount of s94 contributions applicable at the time.

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Occupation Certificate has the same meaning as in the Act and includes any Occupation Certificate including any interim or final Occupation Certificate;

Owner of land means the person or entity who is the registered proprietor of that land or who is entitled to be the registered proprietor of that land by agreement;

Part Plaza Works means the works to construct and embellish that part of an open space plaza located on the Plaza Land as shown on the plan at Annexure B, except that the public art shown on that plan is to be located wholly on the Adjoining Land;

Pearson Lane means the public road along the southern boundary of the Land to be re-constructed as part of the Development and includes only the upper stratum of the land on which the road is constructed as shown on the plan at Annexure H;

Plaza Land means that part of the Land that will form an open space plaza shown on the plan at Annexure B;

Plaza Works means the Whole Plaza Works or the Part Plaza Works and any other works the Developer is required to carry out in accordance with clause 6.1 and Item 1 of Schedule 1;

Practical Completion means that stage in the construction of the Works when:

- (a) construction of the relevant item of Works is complete except for minor omissions and minor defects:
 - (i) which do not prevent the Works from being reasonably capable of being used for its intended purpose; and
 - (ii) rectification of which will not prejudice the convenient use of the Works; and
- (b) where any outstanding works are yet to be completed, a Bond or Bank Guarantee is delivered for 1.5 times the value of the outstanding work to provide security that the works will be completed;

Public Access Areas means the Accessible Toilet, the footway to be constructed by the Streetscape Works, the central part of the Plaza Area at least 3m wide from the western boundary of the Land and the area between them, as shown in blue hatching on the plan at Annexure G;

Register means the Torrens Title register maintained under the NSW *Real Property Act 1900*;

Regulation means the NSW *Environmental Planning and Assessment Regulation 2000*;

Road Works means the works to re-construct Pearson Lane;

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 (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*;

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Stratum Plan means a plan showing the division of the Land, including any vertical subdivision of the Land, into layers which, when superimposed one upon the other, form the whole of the parcel;

Streetscape Works means the works required to embellish and landscape the publicly accessible footway on that part of the Land adjoining Victoria Road and the slip lane from Victoria Road to Meriton Street, as shown on the plan at Annexure F;

Subdivision Certificate has the same meaning as in the Act;

Temporary Works means the temporary landscaping works on the Plaza Land that may be required to ensure the Adjoining Land and Adjoining Plaza Works are safe until the Plaza Works have been completed, as shown on the plan at Annexure E;

Whole Plaza Works means the works to construct and embellish the open space plaza on both the Plaza Land and the Adjoining Land as shown on the plan at Annexure A, except that the public art shown on that plan must be located wholly on the Adjoining Land;

Works means the Plaza Works, the Road Works and the Streetscape Works.

2 Interpretation

In this Agreement, unless 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 or managing director)** the president, CEO or managing director of a body or Authority means 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;

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- (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 , 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.
- (u) **(year)** a reference to a year is a reference to twelve consecutive calendar months;
- (v) **(GST)** words defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in clauses about GST, and references to GST extend to any notional liability of any person for GST and to any amount which is treated as GST under the *A New Tax*

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System (Goods and Services Tax) Act 1999 (Cth), and references to an input tax credit extend to any notional input tax credit to which any person is entitled; and

- (w) **(GST group)** if a person is a member of a GST group, references to GST for which the person is liable and to input tax credits to which the person is entitled include GST for which the representative member of the GST group is liable and input tax credits to which the representative member is entitled.

3 Planning Agreement under the Act

This Agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

4 Application of this Agreement

This Agreement applies to:

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

5 Operation of this Agreement

This Agreement commences on the date it is executed by all parties.

6 Contributions to be made under this Agreement

6.1 Plaza Works

- (a) The Developer will carry out the Plaza Works in accordance with Item 1 of Schedule 1 of this Agreement and the Implementation Terms.
- (b) The Plaza Works will be taken to have been delivered for the purposes of this Agreement when the Council accepts Practical Completion has been achieved in accordance with the Implementation Terms.
- (c) The Plaza Works must be completed prior to occupation of the Development or the issue of any Occupation Certificate for the Development.
- (d) The parties agree that the Plaza Works are to be constructed for the purpose of providing and embellishing public open space areas within the vicinity of the Development.

6.2 Streetscape Works

- (a) The Developer will carry out the Streetscape Works in accordance with the Implementation Terms.
- (b) The Streetscape Works will be taken to have been delivered for the purposes of this Agreement when the Council accepts Practical Completion has been achieved in accordance with the Implementation Terms.
- (c) The Streetscape Works must be completed prior to occupation of the Development or the issue of any Occupation Certificate for the Development.

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- (d) The parties agree that the Streetscape Works are to be constructed for the purpose of providing public open space areas and improvement of public domain areas within the vicinity of the Development.

6.3 Accessible Toilet

- (a) The Developer will include as part of the Development, the Accessible Toilet in a location to be advised by the Council.
- (b) The Developer acknowledges and accepts that the Accessible Toilet will be able to be accessed and used by members of the public at all times (24 hours a day and seven days a week).
- (c) The Accessible Toilet will be taken to have been delivered for the purposes of this Agreement when an Occupation Certificate has been issued for that part of the Development that includes the Accessible Toilet.
- (d) The Accessible Toilet must be constructed and accessible and able to be used by members of the public on or prior to Practical Completion of the Plaza Works.

6.4 Public Access

- (a) The Developer acknowledges and accepts that it as Owner of the Land will be solely responsible for the ongoing maintenance and repair of the Public Access Areas and it will carry out any maintenance or repair work to the Public Access Areas if directed to do so by the Council.
- (b) The Developer agrees and acknowledges that:
 - (i) no buildings or structures, other than structures for the purposes of enhancing public domain areas, will be constructed on the Public Access Areas;
 - (ii) the Developer will, at no cost to Council, register against the title to the Land:
 - (A) a covenant prohibiting any building or structures, other than structures for the purposes of enhancing public domain areas, to be constructed on the Public Access Areas;
 - (B) a covenant requiring the Owner of the relevant part of the Land to provide the Accessible Toilet on that part of the Land; and
 - (C) an easement in gross in favour of the Council permitting public access to the Public Access Areas.
- (c) The easement in gross referred to in clause 6.4(b)(ii)(C) will include:
 - (i) a right of footway granting full and free right to the Council and every person authorised by it including any member of the public, to go, pass and repass on foot at all times and for all purposes over the Public Access Areas; and
 - (ii) a right to use the Accessible Toilet as a public toilet.

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- (d) The easement in gross referred to in clause 6.4(b)(ii)(C) will require the owner of the Public Access Areas to.
 - (i) maintain and repair the Public Access Areas and carry out any maintenance or repair work to the Public Access Areas if directed to do so by the Council;
 - (ii) maintain sufficient public liability insurance covering the use of the Public Access Areas as required by the Council; and
 - (iii) ensure that any rules made by an Owner's Corporation relating to the Public Access Areas are approved by the Council.
- (e) The requirement to register the covenants and the easement under clause 6.4(b)(ii) will be taken to have been satisfied when the Developer establishes in writing to the Council that the relevant instruments appear on the Register relating to the Land.
- (f) The Developer must lodge with the LPI the relevant instruments to achieve registration of the covenant and the easement under clause 6.4(b)(ii) prior to the occupation of the Development or the issue of any Occupation Certificate for the Development.
- (g) The parties agree that the covenant and the easement in gross over the Public Access Areas required under clause 6.4(b)(ii) is for the purpose of providing public open space areas and public domain areas within the vicinity of the Development.

6.5 Road Works and Road Dedication

- (a) The Developer will carry out the Road Works in accordance with the Implementation Terms.
- (b) The Road Works will be taken to have been delivered for the purposes of this Agreement when the Council accepts Practical Completion has occurred in accordance with the Implementation Terms.
- (c) The Road Works must be completed prior to the dedication of Pearson Lane to the Council in accordance with clause 6.5(d).
- (d) On completion of the Road Works in accordance with the Implementation Terms, the Developer will dedicate, at no cost to the Council, Pearson Lane as a public road under the *Roads Act 1993*.
- (e) Dedication of Pearson Lane as a public road as required by clause 6.5(d) will be taken to have been made for the purposes of this Agreement when:
 - (i) the Council has approved a Stratum Plan showing the proposed stratum division of the Land, including any vertical subdivision of the Land required to establish Pearson Lane; and
 - (ii) the Developer establishes in writing to the Council that the approved Stratum Plan and any other plans or documents required to effect the dedication of Pearson Lane to the Council as a public road under the *Roads Act 1993* have been registered.

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- (f) The Developer must lodge with the LPI the Stratum Plan and relevant instruments required to dedicate Pearson Lane as a public road in accordance with clause 6.5(e) prior to the occupation of the Development or the issue of any Occupation Certificate for the Development.
- (g) The parties agree that the Road Works and the dedication of Pearson Lane are to be provided for the purposes of constructing and providing public roads within the vicinity of the Development.

6.6 Monetary Contribution

- (a) The Developer will pay the Monetary Contribution to the Council.
- (b) The Monetary Contribution will be made for the purposes of this Agreement when cleared funds are deposited by means of electronic funds transfer into a bank account nominated by the Council.
- (c) The Monetary Contribution must be made prior to the issue of any Construction Certificate for the Development.
- (d) The parties acknowledge that the Monetary Contribution may be made for the purposes of repairing, renovating and maintaining the Heritage Item and to improve public domain works in the vicinity of the Heritage Item or for other public purposes, subject to confirmation by Council.

7 Application of s94, s94A and s94EF of the Act to the Development

- (a) This Agreement excludes the application of sections 94 and 94A of the Act to the Development.
- (b) This Agreement does not exclude the application section 94EF of the Act to the Development.

8 Registration of this Agreement

8.1 Developer's Interest

- (a) The Developer represents and warrants to the Council that on the date of this Agreement:
 - (i) it is legally in possession of the Land;
 - (ii) it is entitled to seek to develop the Land;
 - (iii) it is either the registered proprietor of the Land or has entered into an agreement by which it will be entitled to be the registered proprietor of the Land.
- (b) The Developer must notify the Council promptly after it becomes the registered proprietor of the Land.

8.2 Registration of this Agreement

- (a) The Developer agrees to procure the registration of this Agreement under the NSW *Real Property Act 1900* in the relevant folios of the Register of the Land in accordance with section 93H of the Act.

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- (b) The Developer at its own expense will, promptly after the execution of this Agreement, take all practical steps and otherwise do anything that the Council reasonably requires to procure:
 - (i) the consent of each person who has an estate or interest in the Land registered under the NSW *Real Property Act 1900* or each person who is seized or possessed of an estate or interest in the Land;
 - (ii) an acceptance of the terms of this Agreement and an acknowledgement in writing from any existing mortgagee in relation to the Land that the mortgagee will adhere to the provisions of this Agreement if it takes possession of the Land as mortgagee in possession;
 - (iii) the execution of any documents; and
 - (iv) the production of the relevant duplicate certificate of title, to enable the registration of this Agreement in accordance with clause 8.2(a).
- (c) The Developer at its own expense will take all practical steps and otherwise do anything that the Council requires:
 - (i) to procure the lodgement of this Agreement with the Registrar-General as soon as reasonably practicable after this Agreement is executed but in any event, no later than 90 Business Days after that date;
 - (ii) to 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.

8.3 Release and discharge

- (a) From time to time, the Developer may request the Council to provide a release and discharge of this Agreement to the extent that this Agreement affects any part of the Land in respect of which a Subdivision Certificate has been issued or a Strata Plan has been registered creating strata lots.
- (b) The Council agrees to provide a release and discharge of this Agreement in accordance with any request made by the Developer under clause 8.3(a) provided:
 - (i) the Developer has made all contributions required under this Agreement as at the date of the request;
 - (ii) the Developer is not otherwise in default of any of its obligations under this Agreement; and
 - (iii) this Agreement must not be released against any part of a strata lot that includes the Public Access Areas.

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- (c) For the avoidance of doubt, a release and discharge of this Agreement will not be provided by the Council for any part of the Land that includes the Public Access Areas.

9 Review of this Agreement

- (a) This Agreement may be reviewed or modified and 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.

10 Dispute Resolution

10.1 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.

10.2 Notice of Dispute

The party wishing to commence the dispute resolution processes 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.

10.3 Representatives of Parties to Meet

- (a) The representatives of the parties must promptly (and in any event within 14 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, expert determination in accordance with clause 10.6 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.

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10.4 Further Notice if Not Settled

If the dispute is not resolved within 15 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 10.5 or by expert determination under clause 10.6.

10.5 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 5 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 5 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 10.5 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 5 Business Days of receipt of the Determination Notice notify each other of their representatives 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.

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10.6 *Expert determination*

If the dispute is not resolved under clause 10.3 or clause 10.5, 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 Council and the Developer; and
 - (ii) in the event that no agreement is reached or no appointment is made within 30 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.

10.7 *Litigation*

If the dispute is not finally resolved in accordance with this clause 10, then either party is at liberty to litigate the dispute.

10.8 *No suspension of contractual obligations*

Subject to any interlocutory order obtained under clause 10.1, the referral to or undertaking of a dispute resolution process under this clause 10 does not suspend the parties' obligations under this Agreement.

11 **Enforcement**

11.1 *Bank Guarantee or Bond*

- (a) Within five Business Days of the grant of any Development Consent for the Development or any part of the Development, is to provide to the

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Council Bank Guarantees or Bonds for the following amounts in respect of the following items:

- (i) Plaza Works and Streetscape Works Bank Guarantee / Bond – the sum being 50% of the estimated construction costs of the Plaza Works and the Streetscape Works; and
 - (ii) Road Works Bank Guarantee / Bond – the sum being 100% of the estimated construction costs of the Road Works.
- (b) At any time following the provision of a Bank Guarantee or Bond, the Developer may provide the Council with one or more replacement Bank Guarantees or Bonds totalling the amount required to be provided under this clause for the time being. On receipt of such replacement Bank Guarantee or Bond, the Council must release and return to the Developer, as directed, any Bank Guarantees or Bonds which it holds that have been replaced.
- (c) If the Council calls on a Bank Guarantee or Bond in accordance with this Agreement, the Council may, by notice in writing to the Developer, require the Developer to provide a further Bank Guarantee or Bond in an amount that, when added to any unused portion of the existing Bank Guarantees or Bonds, does not exceed an amount equivalent to the amounts specified in clause 11.1(a)
- (d) Within 20 Business Days of receiving a Certificate of Practical Completion for an item of Works, the Council will return any Bond or Bank Guarantee that relates to that item of Works, provided that the Bond or Bank Guarantee does not also relate to another part of the Works that has not achieved Practical Completion, in which case a replacement Bond or Bank Guarantee will be required in accordance with clause 11.1(a)(ii).
- (e) For the avoidance of doubt, the Developer may request the Council to apply any Bank Guarantee or Bond as a defects liability bond or bank guarantee in accordance with clause 9.2 of the Implementation Terms, rather than return the Bond or Bank Guarantee in accordance with clause 11.1(d).

11.2 Call on Bank Guarantee or Bond

- (a) Subject to this clause, the Council may apply the proceeds of a Bank Guarantee or Bond in satisfaction of:
- (i) any obligation of the Developer under this Agreement to carry out the Plaza Works, the Streetscape Works or the Road Works; and
 - (ii) any associated liability, loss, cost, charge or expense directly incurred by the Council because of the failure by the Developer to comply with this Agreement.
- (b) If the Council considers that the Developer has failed to comply with its obligations to carry out the Plaza Works, Road Works or Streetscape Works and the Developer has failed to rectify the non-compliance after having been given reasonable notice, which must be at least 20 Business Days, in writing to do so, the Council may with its employees,

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workmen, contractors and consultants take all necessary steps to rectify the non-compliance including entering and carrying out works on any part of the Land, and may recover the costs incurred in rectifying that non-compliance from the Developer by calling upon the Bank Guarantees or Bonds provided under clause 11.1 and / or as a debt due to the Council by the Developer.

- (c) If, after the Developer has commenced construction of any part of the Works, the work ceases for a period of not less than four months as a result of:

- (i) a dispute with the Builder; or
- (ii) any other cause other than the agreed works program,

the Council may, at the Council's sole and absolute discretion, with its employees, workmen, contractors and consultants take all necessary steps to complete that part of the Works including entering and carrying out works on any part of the Land and may recover the costs incurred in doing so from the Developer by applying so much of the Bank Guarantees or Bonds provided under clause 11.1 or by any other means.

- (d) Nothing in this clause 11 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 or Bond.

11.3 Planning Certificates

- (a) For the purposes of section 109F(1) of the Act and clause 146A of the Regulation, the Developer must provide the Monetary Contribution required under clause 6.6 prior to the issue of any Construction Certificate.

- (b) For the purposes of section 109H(2) of the Act, the Developer must:

- (i) complete the Plaza Works in accordance with clause 6.1,
- (ii) complete the Streetscape Works in accordance with clause 6.2,
- (iii) construct the Accessible Toilet in accordance with clause 6.3(d);
and
- (iv) lodge relevant instruments, plans and documents with the LPI as required by clauses 6.4(f) and 6.5(f),

prior to the issue of any Occupation Certificate for the Development or any part of the Development.

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11.4 Common Property and Public positive covenant

On the registration of any Strata Plan creating common property for the Development, the Developer must ensure:

- (a) that the Public Access Areas are included as part of the common property for the Development to be owned and managed by any Owner's Corporation in respect of the Development; and
- (b) that a public positive covenant is registered against the title to the common property requiring the Owner's Corporation to comply with any ongoing obligations relating to the Public Access Areas under this Agreement, including but not limited to:
 - (i) the requirement to maintain the Public Access Areas under clause 6.4(a); and
 - (ii) the requirement to remove Temporary Works from the Plaza Land under clause 6.1 and clause 1.3 of Schedule 1.

11.5 Enforcement by any party

- (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.

12 Notices

12.1 Notices

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

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by email or fax at the address or fax number below, or at the address or fax number last notified by the intended recipient to the sender after the date of this Agreement:
 - (i) to City of Ryde Council: Address: 1 Devlin Street, Ryde
Fax: 02 9952 8070
Email: bmccann@ryde.nsw.gov.au
Attention: Mr Bruce McCann, General Counsel
 - (ii) Developer: Address: Level 22, 25 Bligh Street,

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Sydney NSW 2000

Fax: 02 9233 3886

Email: steve.laffey@hindmarsh.com.au

Attention: Mr Steve

Laffey, Development Manager

- (c) is taken to be given and 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 a fax, on production of a transmission report by the machine from which the fax was sent that indicates the fax was sent in its entirety to the recipient's fax number; 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 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.

12.2 Receipt of Notices sent by email

- (a) A Notice sent by email under clause 12.1 is taken to be given or made:
 - (i) when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above;
 - (ii) when the Notice enters an information system controlled by the recipient; or
 - (iii) when the Notice is first opened or read by the recipient,whichever occurs first.
- (b) If under clause (a) 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 pm (local time), it will be taken to have been given or made at the start of business on the next Business Day in that place.

13 Approvals and consent

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.

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14 Assignment and Dealings

14.1 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 s50AA of the *Cth 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.

14.2 Arrangements with Mortgagee

- (a) The Developer agrees with the Council that if the Developer mortgages the Land after this Agreement is entered into it must use all reasonable efforts at that time to arrange a multiple party deed of agreement between the Council, the Developer, the Builder and the mortgagee who will be providing finance for the Works so that the mortgagee accepts that the responsibilities set out in this Agreement are binding upon the mortgagee in the event that the Developer defaults on the mortgage and the mortgagee takes possession of the Subject Land.
- (b) The terms of the adoption of the obligations of the Developer by the mortgagee shall be as reasonably required by the Council. The deed shall be prepared at the cost of the Developer.

14.3 Transfer of Land

- (a) The Developer may not transfer, assign or dispose of the whole or any part of its right, title or interest in the Land (present or future) or in the Development to another person (**Transferee**) unless before it sells transfers or disposes of that right, title or interest:
 - (i) The Developer satisfies the Council that the proposed Transferee is financially capable of complying with the Developer's obligations under this Agreement;
 - (ii) The Developer 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 Developer under this Agreement; and
 - (iv) Any default by the Developer under any provisions of this Agreement has been remedied by the Landowner or the Developers or waived by the Council on such conditions as the Council may determine; and
 - (v) The Developer and the Transferee pay the Council's reasonable costs in relation to the assignment.

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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 to the extent that is possible having regard to the relevant court judgment.

16 General

16.1 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.

16.2 Time for doing acts

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

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16.3 Further assurances

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

16.4 Variation

A provision of this Agreement can only be varied by a later written document executed by or on behalf of all parties.

16.5 No assignment

A party cannot assign or otherwise transfer its rights under this Agreement without the prior written consent of the other party.

16.6 Counterparts

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

16.7 Legal expenses and stamp duty

The parties agree to bear their own costs of preparing, negotiating, executing, stamping and registering this Agreement.

16.8 Entire agreement

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

16.9 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 16.9(b)(i) or (ii) applies.

16.10 Waiver

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

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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.

16.11 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.

16.12 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.

16.13 GST

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

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Schedule 1 Contributions – Additional provisions

1 Plaza Works

1.1 Plaza Works

- (a) The Developer must carry out the Whole Plaza Works prior to occupation of the Development or the issue of any Occupation Certificate for the Development or any part of the Development.
- (b) If the Developer elects to carry out the Part Plaza Works only in accordance with a condition of any Development Consent granted for the Development, the Developer must carry out the Part Plaza Works.

1.2 Adjoining Temporary Works

- (a) If the Developer elects to carry out the Part Plaza Works and the Adjoining Plaza Works have not been carried out, the Developer must carry out the Adjoining Temporary Works.
- (b) The Developer must maintain and repair, at the Developer's cost, the Adjoining Temporary Works on the Adjoining Land to the satisfaction of the Council, until the Adjoining Plaza Works commence.
- (c) The Developer will be responsible for obtaining any necessary Approvals and the consent of the Adjoining Landowner to carry out and maintain the Adjoining Temporary Works.
- (d) Within 28 days of the Developer as Owner of the Plaza Land receiving written notice from the Council that the Adjoining Plaza Works have been completed, the Developer as Owner of the Plaza Land must carry out all necessary works to:
 - (i) remove those parts of the Adjoining Temporary Works that are located on the Plaza Land, including the balustrade and handrail; and
 - (ii) make good the Plaza Land to the satisfaction of the Council, including replacement of any damaged pavers.
- (e) The Developer as Owner of the Plaza Land must maintain and repair, at the Developer's cost, any part of the Adjoining Temporary Works located on the Plaza Land until those works are removed in accordance with clause 1.2(d) of this Schedule.

1.3 Temporary Works

If the Adjoining Landowner has carried out the Temporary Works on the Plaza Land because of any arrangement relating to the Adjoining Plaza Works, the Developer must, at the Developer's cost, remove those parts of the Temporary Works that are located on the Plaza Land, immediately prior to or on commencement of the Plaza Works.

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2 Monetary Contribution

Works Cost Contribution

50% Plaza costs allocation	\$546,556.53
Pearson Lane footpath (including land)	\$262,513.22
Accessible Toilet	\$15,527.00
Road Resurface	
Value	\$14,763.00
Public Benefits - Works	\$839,596.65

Cash Contribution

S94 Liability at 24/7/13 rates	\$786,484.12
Shortage (S94 - Works)	-\$38,112.53
VPA Contribution 20% in excess of S94	\$157,296.82
Public Benefits - Cash	\$119,184.29

Total

TOTAL - WORKS + CASH VPA CONTRIBUTION	\$958,544.0
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Reconciliation

S94 Liability at 24/7/13 rates	\$786,484.12
VPA Contribution is excess of S94 Liability	\$172,059.92
Excess Contribution as percentage of VPA	22%

Note: The total amount of the monetary contribution may change when the VPA is entered into, depending on the value of the works and the amount of s94 contributions applicable at the time.

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Schedule 2 Implementation Terms

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 context indicates a contrary intention:

Building 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).

Certificate of Practical Completion means a certificate issued by the Project Certifier that the Works, or an item of building works that comprises part of the Works, has achieved Practical Completion.

Concept Design means the conceptual design for the Plaza Works, Streetscape Works and Road Works as shown on the Landscape Plan as attached in Annexure A.

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

Design Program means the program in Annexure I.

Detailed Design means the final specifications and finishes for the Works prepared in accordance with clause 4.2 of this Schedule 2 and will include the design of the Works, the location for the Works, installation specifications and estimated costs of construction and / or installation.

Phase means any phase of the development or design of the Building that is designated as such in the Design Program.

Project Certifier means the person engaged under the Building Contract to certify Practical Completion of the Works.

Scope of Works means the Scope of Works for the Plaza Works, Road Works and Streetscape Works prepared by the Developer and the Council based on Annexure J and in accordance with clause 4.1 including performance criteria and an indicative schedule of fittings, fixtures and finishes to comprise part of the Works.

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

Variation Costs means any costs which arise because of a written request by the Council for a change to the Works that is not contemplated in the Scope of Works.

2 Requirements of Authorities and Approvals

- (a) These Implementation Terms must be read and construed subject to:
 - (i) any requirements or conditions of a Development Consent;

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- (ii) the requirements of and conditions imposed by all relevant Authorities and all laws relating to the Development and the construction of the Development.
- (b) If the Developer requires any Approvals in order to carry out the obligations under this Agreement, then:
 - (i) the Developer will acquire all Approvals necessary to carry out the Works at its own cost; and
 - (ii) the Council will give the Developer a reasonable period to obtain such Approvals and agree to vary any time provisions in this Agreement accordingly.
- (c) The Developer must ensure that the Works carried out under this Agreement are carried out:
 - (i) in accordance with relevant Development Consents for the Works and all Approvals and the requirements of all Laws, including without limitation, occupational health and safety legislation; and
 - (ii) in a good and workmanlike manner and so that they are diligently progressed until completion;

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

3 Costs of Works

All costs, other than Variation Costs, of the construction of the Works must be borne by the Developer.

4 Design Development and Approvals

4.1 Concept Design

Council and the Developer have worked in consultation with each other to prepare and agree the Landscape Plan as attached in Annexure A.

4.2 Detailed Design

- (a) From the date the Developer notifies the Council in writing that it wishes to commence Phase 2 of the Design Program being preparation of the Construction Certificate (provided that Development Consent has first been granted, or is about to be granted, for the Works), Council and the Developer must work in consultation with each other to prepare and agree the Detailed Design within the timing recorded in Phase 2 of the Design Program.
- (b) Council and the Developer must both act reasonably and with due expedition in their consultations with each other.
- (c) If the Detailed Design is not completed and agreed by the due date in Phase 2 of the Design Program, then, to avoid possible delays to the Date for Practical Completion, the:

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- (i) Council will, in its sole discretion, be entitled to decide on any outstanding or undecided matter or item relating to the Public Access Areas and notify the Developer of its decision; and
- (ii) the Developer will, in its sole discretion, be entitled to decide on any outstanding or undecided matter or item relating to that part of the Works that does not include the Public Access Areas, provided that any decision made by the Developer under this clause:
 - (A) is consistent with the intent of the Scope of Works;
 - (B) is consistent with the Council's decisions relating to the Public Access Areas; and
 - (C) does not materially and adversely affect the use of the Public Access Areas as compared to the use contemplated in the Concept Design.
- (d) The parties may agree to an extension of the time for completion of Phase 2 of the Design Program.

4.3 Variation Costs

If there are any Variation Costs for the Works that are authorised in writing by the Council, the Council must pay the Variation Costs to the Developer within 7 days after delivery by the Developer to Council of a tax invoice for the payment together with reasonable details of the claim for the Variation Costs payment, provided, unless the parties agree otherwise, a Certificate of Practical Completion has been issued for the works attributable to the variation.

4.4 Override

Despite any other provision in clause 4 of this Schedule 2, Council is not entitled to propose and the Developer has no obligation to consider or agree to any inclusion in or aspect of the Detailed Design which:

- (a) is a material departure from the Scope of Works or materially affects the time for commencement or completion of the Works;
- (b) would or may have the effect that the Scope of Works could not be complied with;
- (c) does not comply with the conditions of Development Consent or any Approval for the Development or the Works;
- (d) would or may require the Developer to obtain new, additional or modified Development Consents or Approvals; or
- (e) would or may adversely affect the structural integrity, quality, efficiency, functionality or architectural or aesthetic design of any element of the Development.

4.5 Developer Variations

- (a) The Developer may make a variation to the Works:

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- (i) to comply with the conditions of Development Consent, any Approval, laws and any Requirements;
 - (ii) which does not affect the structural integrity of the Works;
 - (iii) which does not impact adversely on the Services;
 - (iv) which does not materially and adversely impact upon the Council's or the community's use of the Public Access Areas when they are completed.
- (b) The Developer may substitute alternative but not inferior finishes to those described in the Scope of Works in any part of the Works and notify the Council of such substitution, subject to the Council's written agreement to such alternative finish (which agreement shall not be unreasonably withheld).
- (c) The Developer must pay the additional costs resulting from any variation under this clause.

4.6 Good faith

The parties must act promptly and in good faith to consult in relation to and agree the Concept Design and the Detailed Design in accordance with the Design Program.

5 Carrying out of Works

5.1 Communication

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

5.2 Standard of Works

- (a) Unless otherwise provided, the Developer shall use suitable new materials and proper and tradesmanlike workmanship when carrying out the Works.
- (b) The Works must be designed and constructed to the standards and specifications required by the Council, which may include the standards set out in Schedule 3.
- (c) The Developer will obtain the standards and specifications from the Council if the Council fails to deliver them to the Developer.

6 Inspection

- (a) The Council may enter the Site to inspect the progress of the Works, subject to:
- (i) the terms of the Building Contract (save for any clause of the Building Contract which prevents the Council from accessing the Site);
 - (ii) giving reasonable notice to the Developer, the Builder and the Project Certifier;

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- (iii) complying with all reasonable directions of the Developer, the Builder and the Project Certifier;
 - (iv) exercising its rights under this clause entirely at its own risk in all respects; and
 - (v) being accompanied by the Project Certifier or its nominee, or as otherwise agreed.
- (b) The Council may, within 5 Business Days of carrying out an inspection, notify the Developer of any defect or non-compliance in the Works and direct the Developer to carry out work to rectify that defect or non-compliance. Such work may include, but is not limited to:
- (i) removal of defective or non-complying material from the Land;
 - (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.
- (c) If the Developer is issued a direction to carry out further work under clause 6(b) of this Schedule 2, the Developer must, at the Developer's cost, rectify the defect or non-compliance specified in the notice within the time period specified in the notice.
- (d) If the Developer fails to comply with a direction to carry out work given under clause 6(b) of this Schedule 2, the Council will be entitled to refuse to accept that the Works are complete and to refuse to issue a Certificate of Practical Completion, until the required works have been completed to the Council's satisfaction, acting reasonably.
- (e) 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 clause 6(b) 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.

7 Council Direction

Notwithstanding any other provision of these Implementation Terms the Developer must comply, at the Developer's cost, with any direction given by the Council during the design or construction of the Works that is intended to ensure consistency between the Works on the Land and similar works to be carried out on the Adjoining Land.

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8 Completion

8.1 Practical Completion

- (a) The Developer must ensure that the Project Certifier gives to the Council and the Developer not less than 10 Business Days prior written notice of the anticipated date on which, in each case separately, Practical Completion of the Plaza Works, Road Works and Streetscape Works will occur.
- (b) The Developer must arrange for the Developer, the Project Certifier and the Council to inspect the relevant item of the Works referred to in the notice issued under clause 8.1(a) of this Schedule 2 before a Certificate of Practical Completion is issued.
- (c) Within 5 Business Days after the inspection the Developer, the Project Certifier and the Council must:
 - (i) prepare and agree a list of further works (if any) to be completed; and / or
 - (ii) agree on the value of a Bond or Bank Guarantee (if any) to be provided to Council;before the relevant item of Works has achieved Practical Completion.
- (d) If the parties agree that there are no further works required to be carried out before Practical Completion is achieved, the Project Certifier may issue a Certificate of Practical Completion.
- (e) If the parties agree on a list of further works to be carried out to achieve Practical Completion:
 - (i) the Developer must cause those works to be carried out and completed and notify the Council when the Developer considers the further works have been completed;
 - (ii) within 5 Business Days of receiving a notice from the Developer in clause 8.1(e)(i) of this Schedule 2, the Council will notify the Developer if it agrees that the further works have been completed; and
 - (iii) if the Council notifies the Developer that the further works have been completed, the Project Certifier may issue a Certificate of Practical Completion.
- (f) If the parties cannot agree on the list of further works required to achieve Practical Completion:
 - (i) the dispute will be referred to an expert for determination under clause 10.6 of this Agreement and the expert must be requested to determine what further works, if any, are required to be completed before Practical Completion has been achieved for the purposes of this Agreement; and
 - (ii) the Developer must, if the expert determines further works are required to be carried out to achieve Practical Completion,

ITEM 6 (continued)

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expeditiously carry out and complete those works and comply with clause 8.1(e) of this Schedule 2.

8.2 Delivery of documents

- (a) The Developer must as soon as practicable, and no later than 30 days after the date on which the Certificate of Practical Completion is issued in respect of Pearson Lane deliver to the Council, complete copies of:
 - (i) all "as built" 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
 - (iii) copies of all Approvals required for the occupation or use of Pearson Lane.
- (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 Pearson Lane, provide the Council with a tour of Pearson Lane and provide reasonable instructions on the operation and use of the Services within Pearson Lane.

8.3 Assignment of Warranties and Causes of Action

- (a) The Developer must assign (as beneficial owner) or cause to be assigned to Council the benefit of any warranties and guarantees obtained by the Developer and the Builder (and capable of assignment) with respect to any material or goods incorporated in or forming part of the Road 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, including but not limited to;
 - (i) appointing the Council as its attorney to exercise its rights and powers under any Building Contract, including any right to conduct proceedings or prosecute any action to enforce the Developer's rights against others under any Building Contract;
 - (ii) executing all such documents and doing all such things on the Council's behalf as are necessary or desirable to enable the Council to rectify any defects in accordance with the terms of this Agreement and any Building Contract; and
 - (iii) provide any assistance required for the purpose of defending or settling any claim or the pursuit of any rights of recovery from others under any Building Contract.

ITEM 6 (continued)

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9 Defects Liability

9.1 Defects Liability Period

- (a) During the Defects Liability Period, the Council 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; and
 - (ii) the date on which the defect must be rectified.
- (b) The Developer must comply with the Rectification Notice by:
 - (i) procuring the performance of the work required to rectify the defect within the time period specified by the Council or such other time 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.
- (c) The Council must give the Developer and its contractors access to carry out the rectification works.
- (d) When the Developer considers that a rectification is complete, the Developer must notify the Council that the works subject to the relevant Rectification Notice are complete and provide relevant documentation, plans or invoices which establish that those works were carried out.
- (e) The Council may inspect the rectification works within 10 Business Days of receiving a notice from the Developer under clause 9.1(d) of this Schedule 2 and:
 - (i) issue a further Rectification Notice if it is not satisfied that the rectification is complete; or
 - (ii) notify the Developer in writing that it is satisfied the rectification work is complete.
- (f) The Developer must meet all costs of and incidental to rectification of defects under this clause 7.2.
- (g) 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 rectify the defect, including accessing and occupying any part of the Land without further notice to the Developer, and may:
 - (i) call upon any Bond or Bank Guarantee provided by the Developer to the Council under clause 9.2 of this Schedule 2 to meet its costs of rectifying the defect; and
 - (ii) recover as a debt due to the Council by the Developer in a court of competent jurisdiction, any difference between the amount of the security deposit and the costs incurred by the Council in rectifying the defect.

ITEM 6 (continued)

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9.2 Security

- (a) On the issue of a Certificate of Practical Completion for each item of the Works the Developer must deliver to the Council Bonds or Bank Guarantees in an amount equivalent to 5% of the construction costs for the particular item of Works.
- (b) The Developer advises and the Council acknowledges its awareness that the Bonds or Bank Guarantees may be supplied by the Builder and form a part of the security held by the developer from the Builder under the terms of the Building Contract, provided that any Bond or Bank Guarantee provided by the Builder benefits the Council and satisfies the requirements of this Agreement.
- (c) Within 20 Business Days after the Defects Liability Period for a particular item of Works has expired Council must (if it has not called on it) return the Bond or Bank Guarantee referred to in clause 9.2(a) of this Schedule 2 for that item of Works (or any remaining balance of it) to the Developer.
- (d) Notwithstanding clause 9.2(c) of this Schedule 2, if during the Defects Liability Period for a particular item of Works, the Council issues a Rectification Notice and the Rectification Notice is not complied with, then the Council need not deliver the balance of any Bonds or Bank Guarantees provided to it until that defect has been rectified.

10 Risk

The Developer undertakes the Works entirely at its own risk.

11 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 in a form approved by the Council:
 - (i) construction works insurance for the value of the Works;
 - (ii) public risk insurance for at least \$20 million;
 - (iii) workers compensation insurance as required by law.
- (b) The Developer must provide evidence of currency of insurance required by clause 11(a) of this Schedule 2 upon request by the Council throughout the term of this Agreement.

12 Indemnities

The Developer indemnifies the Council, its employees, officers, agents, contractors and workmen from and against all Claims whatsoever arising from or in connection with the carrying out by the Developer of the Works.

13 Intellectual Property Rights

The Council acknowledges that the Developer or its contractors holds all rights to copyright and any intellectual property which may exist in the Plaza Works and the Streetscape Works. To the extent the Developer has or

ITEM 6 (continued)

ATTACHMENT 1

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receives intellectual property rights for the Road Works, the Developer shall assign those intellectual property rights to Council or permit use thereof.

14 Risk of contamination

The Developer acknowledges to the Council that it is responsible for the management and remediation of any contamination present upon or under the Land and that it fully accepts this obligation and will attend to any necessary remediation at its own costs and to the fullest extent permitted by law releases the Council from any Claim which might arise from any contamination with respect to the Land and the Council warrants to the Developer that at the date of entry into this Agreement it is not aware of any contamination affecting the Land.

ITEM 6 (continued)

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Schedule 3 Work Standards

Design Refinement at Construction Certificate Stage

The Works are to be designed so as to ensure:

- The Works are constructed in accordance with City of Ryde's Public Domain Technical Manual for Gladesville Town Centre and Victoria Road Corridor.
- The works marry into and match the Public Domain Works required by any relevant Development Consent or any Development Consent granted for the Adjoining Land.
- The footpath and plaza areas are sufficiently lit by street lights to meet City of Ryde and Australian standards.

General

The standards referred to in this Schedule are included for information purposes only and as a guide to the relevant standards for the general nature of the work of the kind identified as Works in this Agreement.

Relevant Australian Standards

- AS 1725 Geotechnical site investigations
- AS 4455 Masonary units and segmental pavers
- AS 4679 Earth Retaining Structures
- AS 3600 Concrete structures
- AS 2876 Road lighting
- AS 4282 Control of the Obtrusive Effects of Outdoor lighting
- AS 1428 Design for Access and Mobility
- AS 3500 Plumbing and Drainage
- AS 3700 Masonary Structures
- AS 4282 Design for Access and Mobility
- AS 1742 Manual of uniform traffic control devices

City of Ryde Council Standards referencing

- Public Domain Technical Manual
- Part 4.6 of the Development Control Plan
- Street Design Code
- Lights Design Code
- Access Policy
- Construction Specification for Civil works Design and Construction
- Street Tree Masterplan
- Bicycle Strategy and Masterplan (2007)
- Civic Signage Manual

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ITEM 6 (continued)

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Annexure A Plan showing the Whole Plaza Works

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ITEM 6 (continued)

ATTACHMENT 1

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Annexure B Plan Showing Plaza Land and Plaza
Works

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ITEM 6 (continued)

ATTACHMENT 1

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Annexure C

Plan showing Adjoining Land and
Adjoining Plaza Works

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ITEM 6 (continued)

ATTACHMENT 1

Wharf Road Civic Plaza Design Statement

The design responds to the site's context and aims to create a high-quality public space that is accessible to all. The design is based on the following principles:

- Contextual Sensitivity:** The design respects the surrounding urban fabric and the historical significance of the site.
- Accessibility:** The design ensures that the plaza is accessible to all, including people with disabilities, the elderly, and children.
- Quality of Space:** The design creates a high-quality public space that is safe, secure, and enjoyable.
- Community Engagement:** The design is based on extensive consultation with the community and stakeholders.

Material Image

Plant Schedule

Botanical Name	Common Name	Height	Spread	Notes
Agave attenuata	Century Plant	2000	7	Plant in pots
Agave schottlandii	Century Plant	2000	7	Plant in pots
Agave attenuata	Century Plant	2000	7	Plant in pots
Agave attenuata	Century Plant	2000	7	Plant in pots
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Agave attenuata	Century Plant	2000	7	Plant in pots

Area Calculations

Area	Area (sqm)
Wharf Road	784.0 sqm
Victoria Road	138.0 sqm
Merton Street	107.1 sqm
Wharf Lane	73.9 sqm
Victoria Lane	65.9 sqm
Wharf Lane	55.9 sqm
Victoria Lane	32.8 sqm

Plant Schedule

Botanical Name	Common Name	Height	Spread	Notes
Agave attenuata	Century Plant	2000	7	Plant in pots
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Agave attenuata	Century Plant	2000	7	Plant in pots

Area Calculations

Area	Area (sqm)
Wharf Road	784.0 sqm
Victoria Road	138.0 sqm
Merton Street	107.1 sqm
Wharf Lane	73.9 sqm
Victoria Lane	65.9 sqm
Wharf Lane	55.9 sqm
Victoria Lane	32.8 sqm

Document Status Amendments

REV	DATE	DOCUMENT STATUS AMENDMENTS
01	16.11.12	FOR PUA
02	16.11.12	ISSUE FOR DA
03	16.11.12	ISSUE FOR DA
04	26.02.13	Amend Plans to show modern - ISSUE FOR DA APPROVAL
05	02.04.13	Amend Plans to show modern - ISSUE FOR DA APPROVAL

black & white

65 Endeavour, Sydney NSW 1512
Tel: 02 922 104 115
www.blackandwhite.com.au

Landscaping Plans - Siteplan

BB 1035

LP01/P10

ITEM 6 (continued)

ATTACHMENT 1

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Annexure D Plan showing Adjoining Temporary Works

NLS\NLS\39681242\2

ITEM 6 (continued)

ATTACHMENT 1



ITEM 6 (continued)

ATTACHMENT 1

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Annexure E Plan showing Temporary Works

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ITEM 6 (continued)

ATTACHMENT 1

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Annexure F Plan showing Streetscape Works

NLS\NLS\39681242\2

ITEM 6 (continued)

ATTACHMENT 1

REV	DATE	DOCUMENT STATUS / AMENDMENTS
01	2023.12	FOR THE DA
02	2024.01	ISSUE FOR DA
03	16.03.24	ISSUE FOR DA
04	2024.03	Amend Plans & Title sheets - ISSUE FOR DA APPROVAL
05	02.04.24	Amend Title sheets - ISSUE FOR DA APPROVAL



black
black studio pty ltd
65 Sables Street, Sydney NSW 1522
www.blackstudio.com.au

LANDSCAPE ARCHITECT
154 LESLIE STREET, Ryde NSW 1585
02 9387 1111
www.blackstudio.com.au

PROJECT TITLE
Landscape Plan - Developments

DATE
2024.03.12

SCALE
1:200 @ A1

PROJECT NO.
BB 1035

CLIENT
LPO1/P10

PLANT SCHEDULE

Botanical Name	Common Name	Size / Height
Platanus xandersonii	Castle Tree	200' 7'
Agave attenuata	Snake Plant	2000mm
Agave americana	Century Plant	2000mm
Agave schottlandii	Century Plant	2000mm
Agave parviflora	Century Plant	2000mm
Agave attenuata	Snake Plant	2000mm
Agave americana	Century Plant	2000mm
Agave schottlandii	Century Plant	2000mm
Agave parviflora	Century Plant	2000mm



Material Images

The plan shows an extensive open space along Victoria Road. This is an important open space for the local community. The plan shows the proposed building footprint and the surrounding landscape. The plan shows the proposed building footprint and the surrounding landscape. The plan shows the proposed building footprint and the surrounding landscape.

Area Calculations

Area	Area (sqm)
Click Tower	784.0 sqm
Mentions Street Footpath	138.0 sqm
Pearson Lane Footpath	107.1 sqm
New Lane Footpath	753.9 sqm
Victoria Road Footpath	653.9 sqm
Victoria Road Footpath	225.9 sqm
Victoria Road Footpath	211.8 sqm

ITEM 6 (continued)

ATTACHMENT 1

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Annexure G Plan showing Public Access Areas

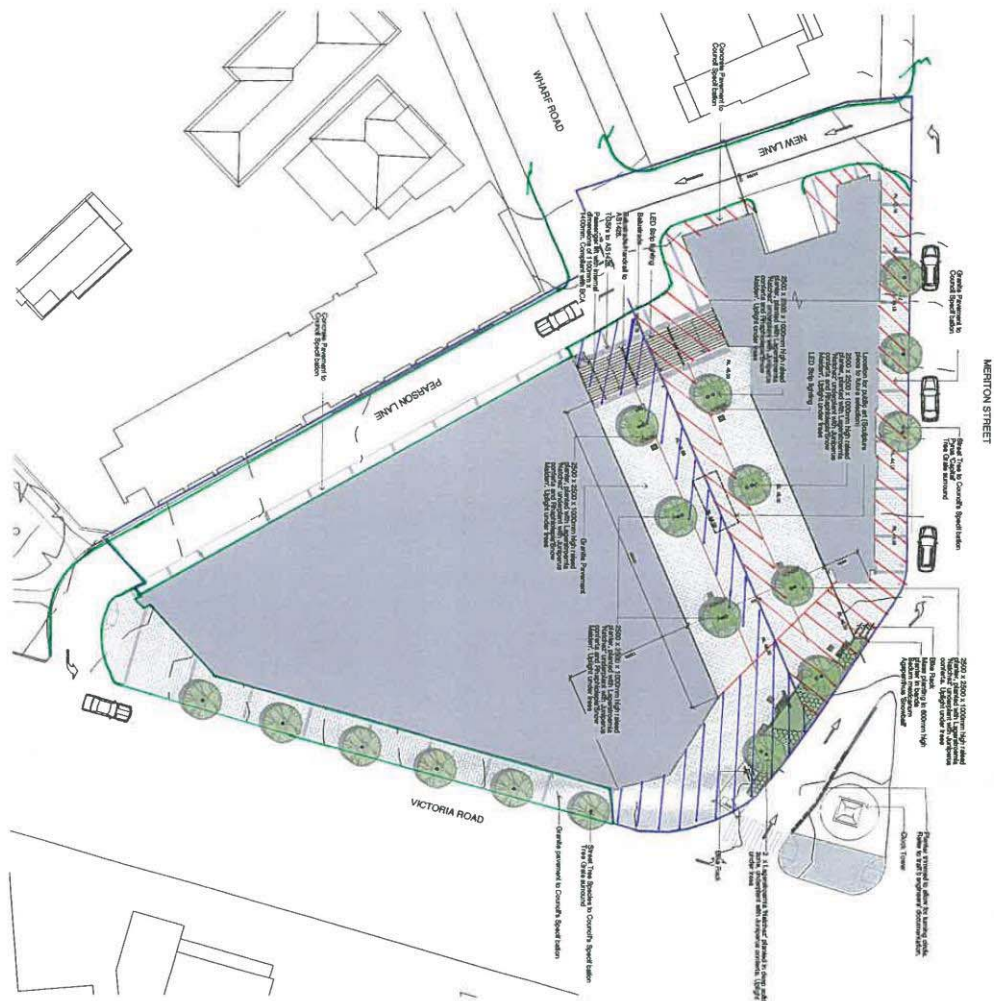
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ITEM 6 (continued)

ATTACHMENT 1

NO.	DATE	DOCUMENT TITLE / AMENDMENTS
01	08/07/13	FINAL DA
02	04/08/13	FINAL DA
03	15/10/13	ISSUE FOR DA
04	25/02/13	Approved Prelims & Title Spec - ISSUE FOR DA APPROVAL
05	02/04/13	Approved Title Spec - ISSUE FOR DA APPROVAL

<p>black black architects</p> <p>63 South Street, Cammeray NSW 1585 email: info@blackarchitects.com.au tel: 0025 004 49</p>	<p>PROJECT 14.3.1.1 - 17th Floor QUANTVILLE NSW</p> <p>PROJECT NO. 1713</p> <p>DATE 15/10/13</p>	<p>CLIENT 14.3.1.1 - 17th Floor QUANTVILLE NSW</p> <p>PROJECT NO. 1713</p> <p>DATE 15/10/13</p>
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Material Images



Planting - 100% Green range



Planting - 100% Green range



Planting - 100% Green range



Planting - 100% Green range



Planting - 100% Green range



Planting - 100% Green range

Wharf Road Civic Plaza Design Statement

The Plaza presents an exciting opportunity for the City of Ryde to create a vibrant public space that will enhance the urban environment. The Plaza is designed to be a multi-functional space that will provide a high-quality public space for the community. The Plaza is designed to be a multi-functional space that will provide a high-quality public space for the community. The Plaza is designed to be a multi-functional space that will provide a high-quality public space for the community.

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ITEM 6 (continued)

ATTACHMENT 1

**Wharf Road Developments
Easements**

Reference
Hatched Plan – Easements

LEGEND

Red Hatching

1-3 Wharf Road – public access over privately maintained land

Blue Hatching

2-10 Wharf Road/136-140 Victoria Road – public access over privately maintained land

Green Boundary Areas

Council owned and maintained land with public access

Unhatched Plaza Areas

Private land – no general public easement over privately maintained land.

However note that the public will need access across this land to access the public disabled toilets (one unisex facility in each development) and to travel from the chair lift (south eastern corner of the Plaza stairs) stopping point at the top of the steps to the central public easement area.

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ITEM 6 (continued)

ATTACHMENT 1

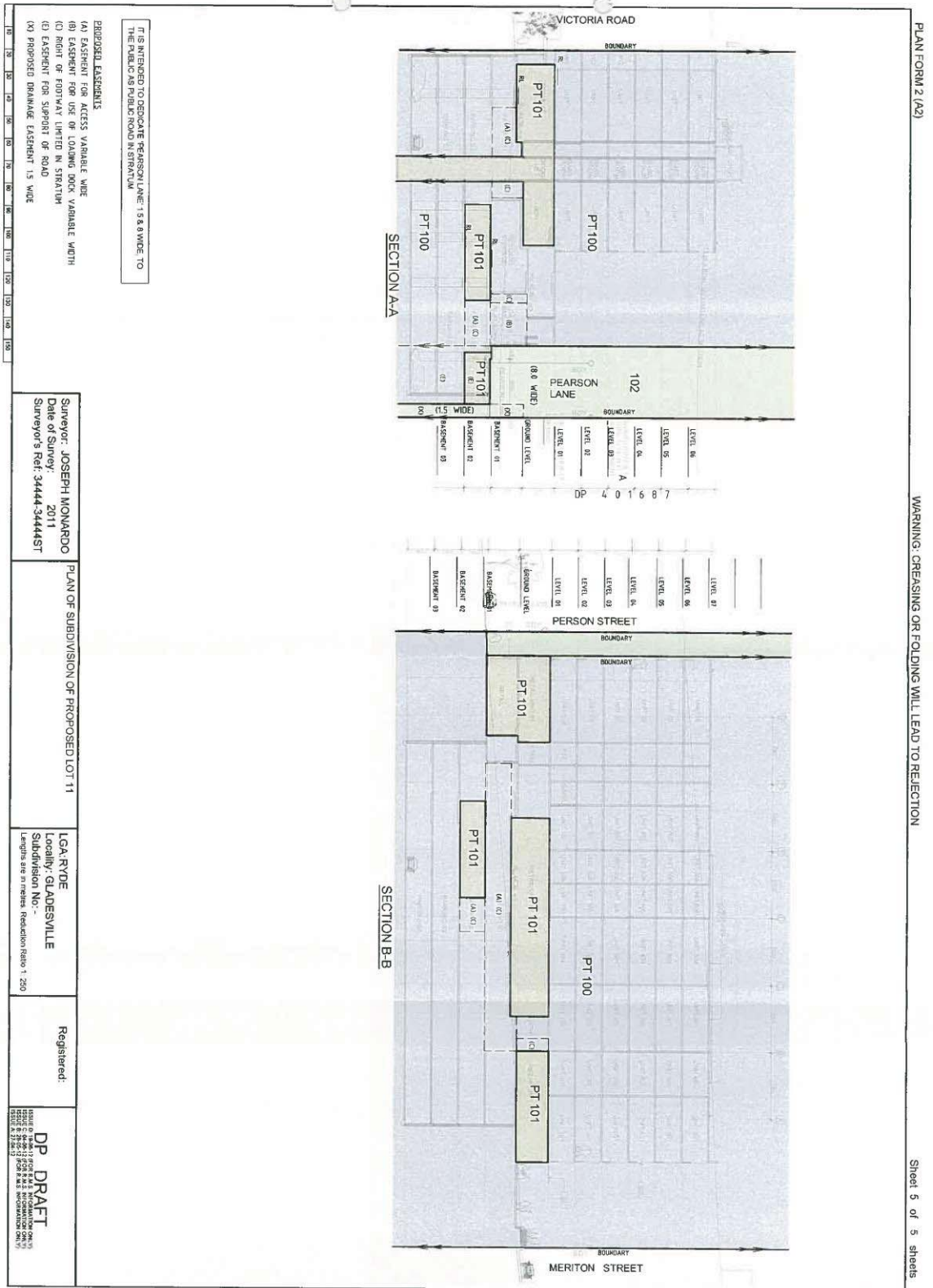
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Annexure H Plan showing Pearson Lane

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ITEM 6 (continued)

ATTACHMENT 1



WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

Sheet 5 of 5 sheets

ITEM 6 (continued)

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Annexure I Design Program

Phase 1: Landscape Plan submitted as part of the Development Application

Phase 2: **Detailed Design of the Works**

Comprises design detail of the Works sufficient for the preparation and lodgement of a Construction Certificate for the Works.

Commences upon receipt of an acceptable Development Consent for the Development.

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ITEM 6 (continued)

ATTACHMENT 1

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Annexure J Scope of Works

1 Road Works

The indicative extent of Pearson Lane is shown on the plan at Annexure H.

The indicative Scope of the Road Works is:

- Reconstruct subgrade and road pavement to Council requirements, over constructed basement, and suitable for appropriate traffic loadings; and
- Construct kerb and gutter to Council requirements; and
- Construct footpath to Council's requirements; and
- Install lighting and new electrical supply along Pearson Lane
- Procure and install signage in Pearson Lane.
- All work will be carried out in accordance with Council's requirements, the Building Code of Australia, applicable NSW Codes of Practice, and applicable and relevant Service Codes.

As part of the design of the Road Works, the Developer will be required to provide certification from an appropriately qualified person that any structures built in the stratum underneath the Road Works have been designed and will be constructed to support the weight and load of the proposed construction of Pearson Lane.

2 Plaza Works

The indicative extent of the Plaza Works is shown on the plan at Annexure A.

The indicative scope of the Plaza Works is:

- The plaza area will include granite paving, stormwater drainage, electrical services, lighting, planting and landscaping.
- All work will be carried out in accordance with Council's requirements, RMS requirements where applicable, the Building Code of Australia, applicable NSW Codes of Practice, and applicable and relevant Service Codes.

The paving design for the Plaza Works will be in accordance with the sketch below.

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ITEM 6 (continued)

ATTACHMENT 1

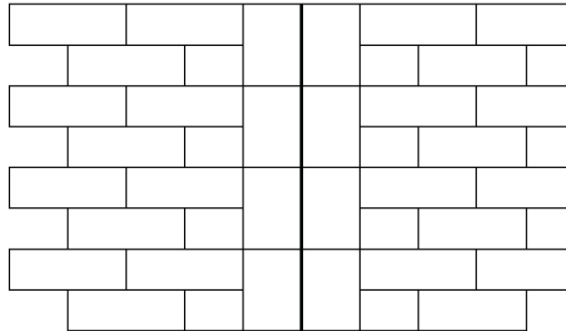
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Preferred Pattern to mask delayed stage

construction

Boundary line in

Bold



Note that central pavers either side of central property line are parallel to the boundary line. This pattern is to be continued from the top of the stairs to the boundary of the soft landscaped area bordering the left slip lane from Victoria Road into Meriton Street.

Any balustrade/handrail installed as a temporary measure by a developer, pending completion of the adjoining part of the Plaza by the adjoining owner, is to be placed on the pavers parallel to the boundary line on the developer's land

3 Streetscape Works

The indicative Scope of Works for the Streetscape Works is shown on the plan at Annexure F. Broadly they are defined as follows:

- Reconstruct footpath / footway at the northern end of the plaza along the left slip lane from Victoria Road to Meriton Street and part of the pathway along Victoria Road, to Council and RMS requirements; and
- Construct granite paving to Council's requirements; and
- Make good the slip lane and Victoria Road kerb and gutter to Council and RMS requirements if necessary; and
- Supply and install street trees to Council's specification and generally in accordance with the attached Landscape Plan; and
- Procure and install traffic signs, as required by RMS, for the slip lane and Victoria Road;

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ITEM 6 (continued)

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- As necessary, make good or construct new, stormwater drainage, electrical services, and street lighting.
- All work will be carried out in accordance with Council's requirements, RMS requirements where applicable, the Building Code of Australia, applicable NSW Codes of Practice, and applicable and relevant Service Codes.

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