
Council of the City of Ryde

Macquarie University

Planning Agreement

Section 93F of the *Environmental Planning and Assessment Act 1979* (NSW)

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Date

7th February 2013.

Parties

Council of the City of Ryde ABN 81 621 292 610 of 1 Devlin Street, Ryde, NSW (Planning Authority)

Macquarie University ABN 90 952 801 237 of Macquarie University, NSW (University)

Background

- A The University's Land is listed as a State Significant Site under the Major Development SEPP.
- B On 13 August 2009, the Concept Plan Approval was granted for the Development.
- C The Concept Plan Approval makes provision for the Development, subject to further Approval, for the following principal purposes:
 - a. student housing;
 - b. commercial; and
 - c. academic.
- D The Concept Plan Approval, as amended by the Hearing Hub Approval, requires the University to make an agreement with the Planning Authority for provision of development contributions and/or agreed works-in-kind relating to the development of the Land, prior to the occupation of the Hearing Hub Development.
- E The Planning Authority considers that the security arrangements under this Planning Agreement are suitable for the purposes of section 93F(3)(g) of the Act having regard to:
 - a. the obligations of the University provided for under this Planning Agreement;
 - b. the risks and consequences of a breach by the University to the Planning Authority; and
 - c. the nature of the Development being carried out under the Concept Plan Approval.
- F The University has offered to enter into this Planning Agreement to provide the Development Contribution in accordance with the conditions of the Concept Plan Approval and a provision in a statement of commitments made by the University in connection with the Concept Plan Approval (as superseded by condition C15(5) of the Concept Plan Approval).

- G On 2 January 2009, the Minister for Planning granted approval number 08_0032 for the Cochlear Building (as modified on 9 April 2009, Modification 08_0032(1)). That approval imposed a condition requiring the proponent to make development contributions in accordance with the terms of a voluntary planning agreement between the University, the Planning Authority and other relevant parties. The approval further states, that if such planning agreement was not entered into by completion of construction of the Cochlear Building, the proponent must make contributions as determined by the Department of Planning after consulting with the Planning Authority and having regard to *City of Ryde Development Contributions Plan 2007*. This Planning Agreement is entered into after completion of construction of the Cochlear Building.
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Operative Provisions

1 Planning Agreement under the Act

This Planning Agreement is governed by subdivision 2 of Division 6 of Part 4 of the Act.

2 Application of this Planning Agreement

The Planning Agreement applies to the Development and the Land.

3 Operation of this Planning Agreement

The Planning Agreement only operates if:

- (a) each Party executes the Planning Agreement; and
- (b) approval is obtained from the Minister for Education under the *Macquarie University Act 1989* (NSW) to the University entering into this Planning Agreement.

The University must give written notice of the Minister's approval to the Planning Authority within 10 Business Days after receipt by the University.

4 Interpretation

4.1 Definitions

In this Planning Agreement the following definitions apply:

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

Adjustment means an adjustment of an instalment of a Monetary Contribution to take into account a change in Land Use Categories for the Development in accordance with **clause 6.6**.

Adjustment Amount means the quantum of either an increase or a decrease in an instalment of a Monetary Contribution payable by the University calculated in accordance with **clause 6.6** for each Land Use Category.

Approval means any approval or consent obtained under the Act (and any variation or modifications) which may be required by law for the carrying out of the Development.

Approval Application means an application submitted to a consent authority for an Approval.

Approved Building means a building capable of occupation and use by human beings which is approved as part of an Approval granted after the Commencement Date or the Hearing Hub Approval.

Bank Guarantee means an irrevocable and unconditional undertaking by an Australian Bank, to pay an amount on demand, on terms and with an expiry date, acceptable to the Planning Authority (acting reasonably).

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in Sydney.

Category 1 means the Land Use Category of housing for University purposes.

Category 2 means the Land Use Category of commercial and research (for commercial purposes) and business incubation.

Category 3 means the Land Use Category of academic use including research (for non-commercial purposes).

Cochlear Building means the development approved under project approval 08_0032 granted by the Minister for Planning under section 75J of the Act on 2 January 2009 (including any variations or modifications).

Commencement Date means the date of this Planning Agreement.

Completion means that date upon which an independent certifier appointed by the University with the approval of the Planning Authority (acting reasonably) certifies to the University and the Planning Authority that the University Road Works have been completed in accordance with the Approval for the University Road Works.

Concept Plan Approval means approval MP06_0016 granted by the Minister for Planning under section 75O of the Act on 13 August 2009, as modified from time to time.

Construction Certificate has the same meaning as in section 109C of the Act.

Development means the development of the Land approved under the Concept Plan Approval and, for the avoidance of doubt, does not include the following:

- (a) Cochlear Building;

- (b) the development approved under project approval 07_0113 granted by the Minister for Planning under section 75J of the Act on 29 April 2008, for the Library building (including any variations or modifications); and
- (c) the private hospital and its associated clinic buildings approved under project approval 06_0172 granted by the Minister for Planning under section 75J of the Act on 13 May 2007 (including any variations or modifications).

Development Contribution means:

- (a) the Monetary Contributions; and
- (b) the carrying out of the University Road Works.

Explanatory Note means the explanatory note relating to this Planning Agreement, as required by clause 25E of the Regulation and set out in **schedule 4**.

GFA means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,

but excludes:

- (d) any area for common vertical circulation, such as lifts and stairs, and
- (e) any basement:
 - (i) storage, and
 - (ii) vehicular access, loading areas, garbage and services, and
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
- (h) any space used for the loading or unloading of goods (including access to it), and
- (i) terraces and balconies with outer walls less than 1.4 metres high, and
- (j) voids above a floor at the level of a storey or storey above.

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.

Hearing Hub Approval means Project Approval MP10_0032 granted by the delegate of the Minister on 20 December 2010 in accordance with the Concept Plan Approval.

Hearing Hub Development means the development approved under the Hearing Hub Approval.

Herring Road Civic Precinct means any future commercial, retail, transport interchange and/or public plaza located generally in the area of Herring Road, between Waterloo Road and Talavera Road as generally indicated by a circle on **annexure A** or such other centre as is agreed in writing by the Parties.

Index Number means:

- (a) the Consumer Price Index (All Groups) for Sydney published from time to time in the Australian Statistician's Summary of Australian Statistics. If the Australian Statistician updates the reference base of the Consumer Price Index (All Groups) for Sydney a conversion shall be made to preserve the intended continuity of calculation by using the appropriate arithmetical factor determined by the Australian Statistician; or
- (b) if the Consumer Price Index (All Groups) is discontinued or suspended:
 - (i) a replacement index agreed by the University and the Planning Authority which reflects fluctuations in the cost of living in Sydney; or
 - (ii) if the University and the Planning Authority do not agree on a replacement index, a replacement index which reflects fluctuations in the cost of living in Sydney determined by a Valuer nominated by the president for the time being of the Australian Property Institute Inc. (State Division) whose determination shall be binding upon the University and the Planning Authority. The cost of that determination shall be shared equally between the University and the Planning Authority.

Indexation Date means the date falling half way between 11 October 2011 and the Commencement Date.

Insurance Bond means an irrevocable and unconditional undertaking by an insurance company to pay an amount on demand, on terms and with an expiry date acceptable to the Planning Authority (acting reasonably). The insurance company is to have an office in Sydney and be acceptable to the Planning Authority (acting reasonably) but the Planning Authority must not refuse consent to an insurance company where the insurance company has a Standard & Poor's rating of –AA or better.

Land means the land described in **schedule 2**.

Land Use Categories means the land use categories for the relevant Approved Building being Category 1, Category 2 and/or Category 3.

Local Government Area means the Ryde local government area.

Major Development SEPP means the *State Environmental Planning Policy (Major Development) 2005 (NSW)* or any other environmental planning instrument replacing it.

Macquarie Park Corridor means the area generally identified on the map attached at **annexure A**.

Maximum Total Monetary Contribution Amount means \$18,997,536 being an amount:

- (a) calculated as shown in **table 1** of **schedule 3**;
- (b) indexed in accordance with **clause 6.3**; and
- (c) which includes the Paid MP Traffic Management Study Contribution Item.

Monetary Contributions means the monetary contributions to be made by the University under this Planning Agreement calculated in accordance with **clause 6.1** and to be used for or applied as identified in **clause 6.4**.

Occupation Certificate has the same meaning as in section 109C of the Act.

Paid MP Traffic Management Study Contribution Item means the Monetary Contribution **item 4.1** in **table 1** of **schedule 3**, being the amount of \$50,000.

Party means a party to this Planning Agreement, including their successors and assigns.

Planning Agreement means this agreement including any schedules or annexures.

Quantity means, as the case may be, for:

- (a) Category 1, the number of beds approved for the relevant Approved Building; and
- (b) Category 2 and Category 3, the GFA in square metres of the relevant Approved Building;

Rate means, as the case may be, for:

- (a) Category 1, \$1,010.88;
- (b) Category 2, \$38.65; and
- (c) Category 3, \$Nil.

Regulation means the *Environmental Planning and Assessment Regulation 2000 (NSW)*.

Security means any of:

- (a) a Bank Guarantee;
- (b) an Insurance Bond; or
- (c) such other security as is agreed in writing between the Parties, in favour of the Planning Authority.

Security Amount means:

- (a) for the Monetary Contributions, an amount equal to the instalment of the Monetary Contribution payable for an Approved Building calculated in accordance with **clause 6.1(b)**; and
- (b) for the University Road Works, an amount equal to that specified in **column 6 of table 2 of schedule 3**.

Strategic Plan means the Ryde 2021 Community Strategic Plan adopted in July 2011 and the Four Year Delivery Plan adopted in July 2011 (as amended or updated) and any of the relevant complementary suite of plans, studies or strategies applicable to the Macquarie Park Corridor during the operation of this Planning Agreement as prepared by or adopted by the Planning Authority.

Traffic Count means an automatic traffic count of the average weekday two-way traffic volume on Gymnasium Road immediately east of Culloden Road for at least one week's duration during normal teaching periods at the University conducted by an appropriately qualified consultant acceptable to the Planning Authority (acting reasonably).

University Road Works means the Culloden, Gymnasium and Waterloo Road roundabout upgrade works identified in **table 2 of schedule 3** that are to be carried out generally as shown on the preliminary indicative plan and scope of works at **Annexure B** and the estimated cost of those works is identified in **table 2 of schedule 3** as \$4,500,000.

University Road Works Trigger means an average vehicle count result of 7,000 or more vehicles per weekday for the Traffic Count.

4.2 Interpretation

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

- (a) headings are inserted for convenience only and do not affect the interpretation of this Planning Agreement.
- (b) if the day on which any act, matter or thing is to be done under this Planning Agreement is not a Business Day, the act, matter or thing must be done on the next Business Day.
- (c) a reference in this Planning Agreement to dollars or \$ means Australian dollars and all amounts payable under this Planning Agreement are payable in Australian dollars.
- (d) a reference in this Planning Agreement 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.
- (e) a reference in this Planning Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.

- (f) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Planning Agreement.
- (g) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (h) 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.
- (i) 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.
- (j) the words 'include' or 'including' are to be construed without limitation.
- (k) a reference to this Planning Agreement includes the agreement recorded in this Planning Agreement.
- (l) a reference to a Party to this Planning Agreement includes a reference to the servants, agents and contractors of the Party, and the Party's successors and assigns.
- (m) any schedules and attachments form part of this Planning Agreement.
- (n) notes and examples included in this Planning Agreement do not form part of the Planning Agreement.

5 Development Contribution to be made under this Planning Agreement

- (a) The University must make the Development Contribution in respect of the Development in accordance with **clause 6**.
- (b) The Development Contribution made in accordance with this Planning Agreement is made in full and final satisfaction of the requirement for the University to make contributions to the Planning Authority for the Development, subject to **clause 6.1(d)**.

6 Delivery of Development Contribution

6.1 Timing and calculation of Monetary Contributions

- (a) An instalment of the Monetary Contributions calculated in accordance with **clause 6.1(b)** and indexed in accordance with **clause 6.3**, is payable to the Planning Authority by the University for each Approved Building:
 - (i) prior to the issue of the first Occupation Certificate for that Approved Building in accordance with **clause 6.2**; or
 - (ii) as otherwise agreed in writing between the Parties.

- (b) Each instalment of the Monetary Contributions payable by the University for each Approved Building is to be calculated in accordance with the following formula:

$$MC = (A \times Rate) + (B \times Rate) + (C \times Rate)$$

Where:

A = Category 1 (Housing for University Purposes) Quantity

B = Category 2 (Commercial and research (for commercial purposes) and business incubation) Quantity

C = Category 3 (Academic Uses (including non-commercial research) Quantity

MC = instalment of Monetary Contributions

and "Rate" has the meaning given in **clause 4.1**.

- (c) Regardless of the formula in **clause 6.1(b)** and regardless of the Quantity approved in an Approval but subject to **clause 6.1(d)**, the total Monetary Contributions payable by the University will not exceed the Maximum Total Monetary Contribution Amount for the Development.
- (d) If there is a determination of a modification application to the Concept Plan Approval which increases the Quantity for Category 1 or Category 2 under the Concept Plan Approval as originally approved or introduces a new usage category, the Parties agree to review the Maximum Total Monetary Contribution Amount in light of the determination of that modification.

6.2 Monetary Contributions payment procedure

- (a) If the University is required to pay an instalment of the Monetary Contributions for an Approved Building in accordance with **clause 6.1**, the University must give the Planning Authority written notice, not more than 30 but not less than 10 Business Days, prior to the anticipated date of issue of the first Occupation Certificate for the Approved Building to which the instalment of the Monetary Contributions relates of:
- (i) the calculation of the instalment of the Monetary Contributions to be paid as required under **clause 6.1**, indexed in accordance with **clause 6.3**;
 - (ii) the GFA or number of beds, as the case may be, for each respective Land Use Category in the Approved Building;
 - (iii) the cumulative GFA or number of beds, as the case may be, for each respective Land Use Category for all the Approved Buildings in the Development and the cumulative Category 2 GFA for each Precinct (as defined in the Concept Plan Approval) for all the Approved Buildings in the Development as at the date of the written notice given under **clause 6.2(a)** and in respect of which the Approval has not lapsed or been surrendered;

- (iv) the Adjustment Amount, if any, calculated in accordance with **clause 6.6**; and
 - (v) the amount of the instalment of the Monetary Contributions to be paid to the Planning Authority for the relevant Approved Building, as adjusted.
- (b) The University must pay each instalment of the Monetary Contributions prior to the issue of the first Occupation Certificate for the relevant Approved Building.
 - (c) The Monetary Contributions or an instalment of those Monetary Contributions are paid or made for the purposes of this Planning Agreement when cleared funds are deposited by means of electronic funds transferred by the University into a bank account nominated by the Planning Authority under this clause.

6.3 Indexation of Monetary Contributions

Each instalment of the Monetary Contributions as adjusted pursuant to **clause 6.6** is to be calculated in accordance with **clause 6.1** and is to be indexed (prior to payment in accordance with **clause 6.2**) to the amount represented by A in the formula:

$$A = B \times \frac{C}{D}$$

Where:

- A** is the instalment of the Monetary Contribution following indexation;
- B** is the instalment of the Monetary Contributions payable prior to indexation (as adjusted pursuant to **clause 6.6**);
- C** is the Index Number for the quarter ending immediately before the date of payment of the instalment of the Monetary Contributions; and
- D** is the Index Number for the quarter ending immediately before the Indexation Date.

6.4 Application of Monetary Contributions

- (a) The Monetary Contributions must be applied by the Planning Authority in accordance with the Strategic Plan and within the Macquarie Park Corridor.
- (b) Notwithstanding **clause 6.4(a)**, it is acknowledged that there is a joint intent on the part of the Parties to improve the amenity of the Herring Road Civic Precinct and accordingly, the Planning Authority will give proper and robust consideration to achieving that end when determining where within the Macquarie Park Corridor, the Monetary Contributions received under this Planning Agreement will be expended.
- (c) Notwithstanding **clause 6.4(a)**, if the Planning Authority determines to expend Monetary Contributions within the Herring Road Civic Precinct,

then the Monetary Contributions may be applied by the Planning Authority for any other purpose in the Herring Road Civic Precinct.

- (d) Upon request by the University, the Planning Authority will identify the manner in which the Monetary Contributions payable under this Planning Agreement have been expended.

6.5 Monitoring of GFA

On the lodgement of each Approval Application for the Development but excluding the Approval Application for the Hearing Hub, the University must include the following details:

- (a) the cumulative Category 2 GFA or the number of beds (determined at a date not more than 3 months prior to the date of lodgement of the Approval Application), as the case may be, for all Approved Buildings (excluding any Approval which has lapsed or been surrendered) by reference to each Land Use Category, including the GFA or the number of beds, as the case may be, forming part of the Approval Application;
- (b) the cumulative Category 2 GFA or the number of beds for each Precinct (as defined in the Concept Plan Approval), for all Approved Buildings (excluding any Approval which has lapsed or been surrendered) including the GFA, as the case may be, forming part of the Approval Application; and
- (c) the number of car parking spaces at the University which have been Approved at that time as part of the Development.

6.6 Adjustment of Monetary Contribution

- (a) If the cumulative number of beds for Category 1 or the cumulative GFA for Category 2 identified in **clause 6.5(a)** (but excluding the GFA or number of beds, as the case may be, for those Land Use Categories within the current Approved Building) is different to the combined number of beds or GFA, as the case may be, for the relevant Land Use Category identified in the last written notice provided to the Planning Authority under **clause 6.2(a)(iii)** for an Approved Building, the Planning Authority or the University, as the case may be, is entitled to an Adjustment for the next Monetary Contribution instalment payable by the University, such Adjustment being the sum of the Adjustment Amounts for each of Category 1 and Category 2 determined in accordance with the following formula:

$$A = ((B - D) - C) \times E$$

Where:

- A** is the Adjustment Amount;
- B** is the cumulative number of beds for Category 1 or the cumulative GFA for Category 2 identified in **clause 6.5(a)** but amended as appropriate if the cumulative GFA or the number of beds, as the case may be, sought under the

Approval Application for the current Approved Building is amended by the Approval of that Approved Building;

- C** is the cumulative number of beds for Category 1 or the cumulative GFA for Category 2 as at the date of calculation as identified in the last of the written notices provided by the University to the Planning Authority under **clause 6.2(a)(iii)**;
- D** is the number of beds for Category 1 or GFA for Category 2 within the Approved Building under the current Approval; and
- E** is the Rates for Category 1 or Category 2 as applicable.

- (b) An Adjustment is not to be calculated for the first instalment of the Monetary Contributions for the Hearing Hub Development but an Adjustment will be calculated for each instalment of the Monetary Contributions following that first instalment.

6.7 Final Adjustments

The final Adjustment is to be made and the appropriate Adjustment Amount credited on the date for payment of the final instalment of the Monetary Contributions.

6.8 University Road Works Contribution

- (a) The University must:
 - (i) commission the carrying out of the Traffic Count every two years from the Commencement Date until the earliest of:
 - (A) the Planning Agreement is terminated; or
 - (B) two years after the final Approved Building under the Concept Plan Approval is Approved and the Road Works Trigger has not been reached; or
 - (C) the University is released from its obligations under the Planning Agreement pursuant to **clause 11**; or
 - (D) the Traffic Count exceeds the University Road Works Trigger; and
 - (ii) complete the Traffic Count and give a copy of the final report containing the results to the Planning Authority within 20 Business Days of the receipt of the final report, unless otherwise agreed by the Parties,

and if the University fails to complete any Traffic Count and give a copy of the final report within the agreed period, the Planning Authority will provide written notice to the University. The University will have 15 Business Days to carry out the Traffic Count and give a copy of the final report to the Planning Authority and failing that, the Planning Authority may commission the carrying out of the Traffic Count and recover the reasonable external costs of doing so from the University as a debt due on demand.

- (b) If the Traffic Count exceeds the University Road Works Trigger, the University must:
 - (i) notify the Planning Authority within 20 Business Days of receipt of the results of the Traffic Count (unless the Planning Authority commissioned the carrying out of the Traffic Count in which case the Planning Authority must notify and provide a copy to the University of the results of the Traffic Count within 20 Business Days); and
 - (ii) carry out the University Road Works within 12 months of obtaining all necessary approvals, consents, certifications and authorisations required to carry out the University Road Works.
- (c) The University must use all reasonable endeavours to:
 - (i) obtain all necessary approvals, consents, certifications and authorisations required to carry out the University Road Works; and
 - (ii) enter into a works in kind deed (or other similar agreement) with the relevant authority to carry out the University Road Works on terms reasonably acceptable to the University which includes an option to engage the University's own contractors to carry out the University Road Works; and
 - (iii) obtain land owner's consent from all relevant land owners to enable the University Road Works to be carried out by the University,

within 12 months of the receipt by the University of the results of the Traffic Count.
- (d) The University Road Works are made for the purposes of this Planning Agreement when the University Road Works reach Completion.

7 University Facilities

It is acknowledged that the University provides a number of benefits to the broader community in providing, operating and maintaining its existing and proposed infrastructure and facilities.

8 Application of sections 94, 94A and 94EF of the Act to the Development

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

9 Modification of this Planning Agreement

- (a) Subject to **clause 9(b)**, this Planning Agreement may be modified and any modification of this Planning Agreement will be conducted in the circumstances and in the manner determined by the Parties.
- (b) No modification of this Planning Agreement will be of any force or effect unless it is:
 - (i) in writing and in the form of a deed of variation; and
 - (ii) signed by the Parties to this Planning Agreement.

10 Dispute Resolution

10.1 Dispute

If a dispute arises from this Planning Agreement, a Party must not commence Court or arbitration proceedings relating to the dispute unless that Party has participated in a mediation in accordance with **clauses 10.2 and 10.3**. This **clause 10** does not apply to an application for urgent interlocutory relief.

10.2 Notice of Dispute

A Party claiming that a dispute has arisen (**the Dispute**) must give a written notice specifying the nature of the Dispute (**the Notice**) to the other Party or Parties to the Planning Agreement. The Parties must then participate in mediation in accordance with this **clause 10**.

10.3 No Agreement

If the Parties do not agree, within seven days of receipt of the Notice (or within a longer period agreed in writing by them) on:

- (a) the procedures to be adopted in a mediation of the Dispute; and
- (b) the timetable for all the steps in those procedures; and
- (c) the identity and fees of the mediator;

then:-

- (d) the President of the Law Society of New South Wales will appoint the mediator, determine the mediator's fees and determine the proportion of those fees to be paid by each Party (to be in equal shares unless otherwise agreed by the Parties);
- (e) the Parties must mediate the Dispute:-
 - (i) with the mediator appointed under **clause 10.3(d)**;
 - (ii) in good faith; and
 - (iii) in accordance with the Mediation Rules of The Law Society of New South Wales.

10.4 Institution of proceedings

If a Party commences proceedings relating to the Dispute other than for urgent interlocutory relief, that Party must consent to orders under section 26 of the *Civil Procedure Act 2005* that:

- (a) the proceedings relating to the Dispute be referred to mediation by a mediator; and
- (b) if the Parties do not agree on a mediator within seven days of the order referred to in **clause 10.4(a)**, the mediator appointed by the President of the Law Society of New South Wales will be deemed to have been appointed by the Court.

10.5 Non-compliance with clause

If a Party:

- (a) refuses to participate in a mediation of the Dispute to which it earlier agreed; or
- (b) refuses to comply with **clause 10.3(e)** of this clause, a notice having been served in accordance with **clause 10.2**; then,
 - (i) that Party is not entitled to recover its costs in any Court proceedings or arbitration relating to the Dispute, even if that Party is successful; and,
 - (ii) that Party is deemed to have consented to a decree of the Supreme Court of New South Wales that it will specifically perform and carry into execution **clause 10.3(e)** of this clause.

11 Release and Discharge

The University will be released from its obligations under this Planning Agreement if:

- (a) the University transfers, assigns or disposes of its obligations in accordance with the requirements of **clause 14(c)**;
- (b) the Concept Plan Approval is declared invalid or lapses;
- (c) the University has fulfilled each of its obligations under the Planning Agreement;
- (d) the Planning Agreement is terminated;
- (e) the Parties agree that the performance of the Planning Agreement has been frustrated by an event outside the control of the Parties to the Planning Agreement; or
- (f) the Parties otherwise agree to modify or discharge the Planning Agreement in accordance with **clause 9**.

12 Security and Enforcement

12.1 University to provide Security

- (a) Section 93F(3)(g) of the Act requires the enforcement of a planning agreement by a suitable means, such as the provision of a bond or guarantee, in the event of a breach of the agreement by the developer. This **clause 12** satisfies this obligation.
- (b) The University must provide Security to the Planning Authority for the Security Amount:
 - (i) subject to **clause 12.1(b)(ii)**, for each instalment of the Monetary Contributions, prior to the issue of a Construction Certificate for each Approved Building;
 - (ii) for an instalment of the Monetary Contributions for the Hearing Hub Development, within 10 Business Days of the operation of this Planning Agreement under **clause 3**; and
 - (iii) for the University Road Works, prior to the issue of a Construction Certificate for the University Road Works or commencement of works, if no Construction Certificate is required.

12.2 Release of Security to the University

In respect of each Security provided to the Planning Authority under **clause 12.1**, the Planning Authority must release the Security to the University:

- (a) if provided for an instalment of the Monetary Contributions, upon the payment by the University of the relevant instalment of the Monetary Contributions for that Approved Building; and
- (b) if provided for the University Road Works, upon the date of Completion.

12.3 Call on Security

- (a) The Security provided in **clause 12.1** is given to secure compliance by the University with its obligations to pay:
 - (i) Monetary Contributions in accordance with this Planning Agreement; and
 - (ii) any costs of achieving Completion of the University Road Works if the University fails to Complete the University Road Works and any interest payable in respect of those costs under **clause 13 (Rectification Costs)**.
- (b) The Planning Authority must only exercise its rights under the Security in accordance with this **clause 12.3**.
- (c) The Planning Authority must not request a payment (**Security Payment**) under the Security from the provider of it, unless:
 - (i) the Planning Authority has first given 20 Business Days written notice (**Claim Notice**) to the University of its intention to do so;

- (ii) the Claim Notice specifies the Monetary Contribution or Rectification Costs to which that Security Payment relates and the amount and calculation of the Security Payment;
- (iii) the amount of the requested Security Payment does not exceed the amount of the relevant instalment of the Monetary Contribution or Rectification Costs, as the case requires;
- (iv) where the reason for the request is that:
 - (A) the University has, in breach of this Planning Agreement, failed to pay an instalment of the Monetary Contribution to which the Planning Authority is entitled, within 15 Business Days of the Planning Authority demanding payment of it; or
 - (B) the University has, in breach of this Planning Agreement, failed to comply with its obligation to carry out the University Road Works in accordance with this Planning Agreement and the University has failed to pay any Rectification Costs the amount of which has been ascertained and to which the Planning Authority is entitled, within 15 Business Days of the Planning Authority demanding payment of it; and

there is no dispute between the University and the Planning Authority:

- (1) as to whether the University is obliged to pay the relevant instalment of the Monetary Contribution or Rectification Costs or is otherwise in breach of its obligations to do so; or
 - (2) about the amount of the instalment of the Monetary Contribution or Rectification Costs,
- (v) for which the Security Payment is requested.
- (d) The Planning Authority must not request a Security Payment unconscionably or in bad faith.
- (e) The Planning Authority must, upon demand, account to the University for any Security Payment to the extent that it exceeds or is otherwise not required to pay the instalment of the Monetary Contribution or Rectification Costs for which the Security Payment is requested.
- (f) The Planning Authority must take reasonable steps to mitigate any Loss.

12.4 Issue of Occupation Certificate

- (a) For the purposes of section 109H(2) of the Act it is a precondition to the issue of an Occupation Certificate that all Development Contributions to be made or paid on or before the date of issue of an Occupation Certificate have been made or paid.
- (b) For the purposes of section 109H(2) of the Act, the requirements of this Agreement will be satisfied if the Planning Authority has called on the

Security in relation to the instalment of the Monetary Contributions or Rectification Costs.

12.5 Enforcement by any party

- (a) Without limiting any other remedies available to the Parties, this Planning Agreement may be enforced by any Party in any court of competent jurisdiction.
- (b) Nothing in this Planning Agreement prevents:
 - (i) a Party from bringing proceedings in a court of competent jurisdiction to enforce any aspect of this Planning Agreement or any matter to which this Planning Agreement relates, subject to compliance with **clause 10**; and
 - (ii) the Planning Authority from exercising any function under the Act or any other Act or law.

13 Overdue payments

- (a) If a payment under the Planning Agreement is overdue, the Planning Authority will provide written notice to the University. The University will have 15 Business Days to make the overdue payment and failing the University making that payment, **clauses 13(b) and 13(c)** will apply.
- (b) The University must pay interest in accordance with this **clause 13(b)** upon any money overdue for payment by it under this Planning Agreement from the day the amount is due for payment under **clause 13(a)** to the date on which it is paid. The following apply in relation to the calculation and payment of any such interest:
 - (i) The period during which any moneys remain overdue for payment by the University will, subject to clause 13(b)(ii), be divided into consecutive 90 day periods (**Interest Periods**).
 - (ii) An Interest Period which would otherwise end on a day which is not a Business Day will end on the preceding Business Day.
 - (iii) The applicable interest rate for each Interest Period will be the Bank Bill Rate for that Interest Period.
 - (iv) The Bank Bill Rate for an Interest Period means the Bank Bill Swap Reference Rate for 90 day bills published in the Australian Financial Review.
 - (v) If the Bank Bill Rate is discontinued or ceases to be published then the Bank Bill Rate will be the rate which is the arithmetic mean of the buying rates, for bills of exchange accepted by leading Australian banks which have a term of 90 days, quoted by the Commonwealth Bank of Australia, the National Australia Bank and Westpac Banking Corporation at or about 10.30 am on the first day of the relevant 90 day period.

- (vi) Interest under this **clause 13** accrues daily.
- (vii) If an obligation of the University under this Planning Agreement to pay any moneys becomes merged in any other obligation to pay those moneys (including a judgment or order) the University must, notwithstanding the merger, pay interest on those moneys in accordance with this Planning Agreement.
- (c) Interest which is not paid when due for payment is capitalised on the first day of each month. Interest is payable on capitalised interest at the rate and in the manner referred to in this **clause 13**.

14 Transfer and Assignment

- (a) The Planning Authority must not assign or deal with any right under this Planning Agreement other than to or with another planning authority, without the prior written consent of the University, which must not be unreasonably withheld.
- (b) Subject to **clause 14(c)** and **(d)**, the University may, without limitation, and while continuing to be bound to perform the Planning Agreement:
 - (i) sell, lease, grant easements, transfer, assign, subdivide, mortgage, charge, encumber or otherwise deal with the Land or any part of it;
 - (ii) sub-contract or delegate the performance of any right, obligation, benefit or interest under this Planning Agreement to any person;
 - (iii) give security, in any form including a mortgage, lien, charge, pledge or trust in respect of any right, benefit or interest under this Planning Agreement to any person;
 - (iv) enter into any lease or licence arrangements in relation to the Land or register any type of interest or right on the title of the Land including any easement; and
 - (v) enter into any joint venture or similar type of arrangement in respect of the Development and/or the Land.
- (c) The University must not novate this Planning Agreement to a third party (**Third Party**) as part of any transfer, sale or disposal of any part of the Land, unless before it does so, the University:
 - (i) satisfies the Planning Authority, acting reasonably, that the Third Party is financially capable of complying with the relevant obligations under this Planning Agreement in respect to the Land being transferred or disposed of; and
 - (ii) the Third Party enters into a deed with the Planning Authority containing provisions under which the Third Party agrees to comply with the relevant obligations under this Planning Agreement as if it were the University with respect to that part of the Land being sold, transferred or disposed of.

- (d) If the University sells, transfers or disposes of any part of the Land and satisfies **clause 14(c)**, the University will be released from its obligations under this Planning Agreement with respect to the Land being sold, transferred or disposed of.
- (e) Any purported dealing in breach of this **clause 14** is of no effect.

15 GST

15.1 Construction

In this **clause 15**:

- (a) words and expressions which are not defined in this Planning Agreement but which have a defined meaning in the GST Act have the same meaning as in the GST Act; and
- (b) any reference to GST payable or an entitlement to an input tax credit includes a reference, as appropriate, to GST payable by, or an input tax credit entitlement of, the representative member of a GST group.

15.2 Intention of the Parties

Without limiting the operation of this **clause 15**, as at the date of this Planning Agreement, the Parties acknowledge and agree that it is their intention that:

- (a) Divisions 81 and 82 of the GST Act apply to the supplies made under and in connection with this Planning Agreement, such that the Planning Authority and the University are taken not to make any taxable supplies to each other;
- (b) no tax invoices will be exchanged between the Parties; and
- (c) no additional amount will be payable to a Supplier (as defined in **clause 15.4** below) on account of GST.

15.3 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Planning Agreement (other than under this **clause 15**) are exclusive of GST.

15.4 Payment of GST – additional payment required

- (a) If an entity (Supplier) makes a taxable supply under or in connection with this Planning Agreement (Relevant Supply), then, subject to **clause 15.4(d)**, the Party required under the other provisions of this Planning Agreement to provide the consideration for that Relevant Supply (Recipient) must pay an additional amount to the Supplier (GST Amount), as calculated under **clauses 15.4(b), 15.4(c) and 15.4(e)** (as appropriate).
- (b) To the extent that the consideration to be provided by the Recipient for the Relevant Supply under the other provisions of this Planning Agreement is a payment of money (including, for the avoidance of doubt, any payment under **clauses 15.4(c) and 15.4(e)**), the Recipient must

pay to the Supplier an additional amount equal to the amount of the payment multiplied by the rate of GST applicable to that Relevant Supply.

- (c) To the extent that the consideration to be provided by the Recipient for that Relevant Supply is neither:
- (i) a payment of money; nor
 - (ii) a taxable supply,

(Non-taxable non monetary consideration),

the Recipient must pay to the Supplier an additional amount equal to the following:

$$R/(1+R) \times \text{GST-inclusive market value of the Relevant Supply}$$

Where:

R equals the rate of GST expressed as a percentage (eg as at the date of this Planning Agreement R is 0.10).

- (d) To the extent that the consideration payable by the Recipient is a taxable supply made to the Supplier by the Recipient (Recipient Supply), then, notwithstanding **clause 15.4(a)** and subject to **clause 15.4(e)**, no additional amount is payable by the Recipient to the Supplier on account of the GST payable on that taxable supply. Where clause 15.4(e) does not apply, the Recipient must issue an invoice for any Recipient Supply on or before the time at which the Recipient would have paid the GST Amount in accordance with **clauses 15.4(a) and 15.4(f)** but for the operation of this **clause 15.4(d)**. Where **clause 15.4(e)** does apply, the Recipient must issue an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 15.4(a) and (f).
- (e) Notwithstanding **clause 15.4(d)**, if the GST-inclusive market value of the non-monetary consideration of the Relevant Supply (Supplier's taxable supply) is less than the GST-inclusive market value of the non-monetary consideration comprising the taxable supply made by the Recipient to the Supplier for the Supplier's taxable supply (Recipient's taxable supply) then, the Recipient must pay to the Supplier an additional amount equal to:

$$R/(1+R) \times (X - Y)$$

Where:

R has the same meaning as in **clause 15.4(c)**.

X equals the GST-inclusive market value of the Recipient's taxable supply.

Y equals the GST-inclusive market value of the Supplier's taxable supply.

- (f) The Recipient will pay the GST Amount referred to in this **clause 15.4** in addition to and at the same time as the first part of the consideration is provided for the Relevant Supply or on receipt of a valid tax invoice for the Relevant Supply from the Supplier, whichever is the later..

15.5 Valuation of non-monetary consideration

The Parties will seek to agree upon the market value of any non-monetary consideration which the Recipient is required to provide under **clause 15.4**. If agreement cannot be reached prior to the time that a Party becomes liable for GST, the matter in dispute is to be determined by an independent expert nominated by the President for the time being of the Institute of Chartered Accountants in Australia. The Parties will each pay one half of the costs of referral and determination by the independent expert.

15.6 Variation of GST

If the GST payable in relation to a supply made under or in connection with this Planning Agreement varies from the GST Amount payable by the Recipient under **clause 15.4**, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Where there is an adjustment event, the Supplier must issue an adjustment note to the Recipient as soon as the Supplier becomes aware of the adjustment event.

15.7 Reimbursements

Where a party is required under this Planning Agreement to pay, indemnify or reimburse an expense, loss or outgoing of another party, the amount to be paid, indemnified or reimbursed by the first party will be the sum of:

- (a) the amount of the expense, loss or outgoing less any input tax credits in respect of the expense, loss or outgoing to which the other party is entitled; and
- (b) any additional amount payable under **clause 15.4** in respect of that reimbursement.

15.8 No Merger

This **clause 15** does not merge in the completion, discharge, rescission or termination of this Planning Agreement or on the transfer of any property supplied or to be supplied under this Planning Agreement.

15.9 Inconsistency

To the extent that there is any inconsistency between this **clause 15** and any provision in a document executed under or pursuant to this Planning Agreement, this **clause 15** will prevail.

16 Notices

16.1 Delivery of notices, consents or invoices

Any notice, consent, invoice, information, application or request that must or may be given or made to a Party under this Planning Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) For any notice or invoice, hand delivered with proof of receipt or delivered by registered post with proof of receipt to that Party at its address set out below:

Planning Authority

Attention: The General Manager
Council of the City of Ryde

Address: 1 Devlin Street, Ryde, NSW

University

Attention: Director of Strategy, Planning and Development

Address: Macquarie University Property, Building Y6A,
Macquarie University, NSW

AND

Attention: Chief Operating Officer

Address: Building E11A Macquarie University, NSW

- (b) For any consent, information, application or request, delivered by any of the means identified in **clause 16.1(a)** or by email to that Party at its email address set out below:

Planning Authority

Attention: The General Manager

Email cityofryde@ryde.nsw.gov.au

University

Attention: Gavin Carrier, Director of Strategy, Planning
and Development

Email gavin.carrier@mq.edu.au

AND

Attention: Peter Dodd, Chief Operating Officer

Email: peter.dodd@mq.edu.au

16.2 Change of Details

If a Party gives the other Party three Business Days notice of a change of its address or email address:

- (a) anything permitted to be hand delivered or posted is notice is only given or made by that other Party if it is hand delivered or posted by way of registered post to the latest address; or
- (b) anything permitted to be sent by email, is only sent if it is emailed to the latest email address.

16.3 Giving of Notice

Subject to **clause 16.4**, any notice, consent, invoice, information, application or request is to be treated as given or made at the following time:

- (a) if it is hand delivered, when it is delivered at the relevant address;
- (b) if it is sent by registered post, two Business Days after it is posted; and
- (c) if it is sent by email, when a delivery confirmation report is received by the sender, unless subsequently the sender receives a delivery failure notification, indicating that the electronic mail has not been delivered.

16.4 Delivery outside of business hours

If something is delivered on a day that is not a Business Day, or if on a Business Day, after 5.00 pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at 9am on the next Business Day.

17 Costs

- (a) Except as otherwise provided, the Parties are to each pay their own legal and other costs and expenses in relation to the negotiation, preparation and execution of this Planning Agreement.
- (b) The ongoing administration of this Planning Agreement (which for the avoidance of doubt does not include any variation or renegotiation of this Planning Agreement) forms part of the Development Contribution and the University is not required to pay any additional costs or expenses.

18 Entire Agreement

This Planning Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Planning Agreement was executed, except as permitted by law.

19 Further acts

Each Party must promptly execute all documents and do all things that the other Party from time to time reasonably requests to effect, perfect or complete this Planning Agreement and all transactions incidental to it.

20 Governing law and jurisdiction

This Planning Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

21 No fetter

Nothing in this Planning Agreement shall be construed as requiring the Planning Authority to do anything that would cause it to be in breach of any of its obligations at law, and without limitation but subject to **clause 6.4**, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

22 Severability

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

23 Waiver

- (a) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Planning Agreement, does not amount to a waiver of any obligation or exercise of a right of, or breach of obligation by, another Party.
- (b) A waiver by a Party is only effective if it is in writing.
- (c) A written waiver by a Party is only effective in relation to the particular obligation, right or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation, right or breach or as an implied waiver of that obligation, right or breach in relation to any other occasion.
- (d) A single or partial exercise or waiver by a Party of a right relating to this Planning Agreement does not prevent any other exercise of that right or the exercise of any other right.

- (e) A party is not liable for any loss, cost or expense of any other Party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

24 Effect of Schedules

Subject to **clause 28**, the Parties must comply with any terms contained in schedules to this Planning Agreement as if those terms were included in the operative part of the Planning Agreement.

25 Relationship of parties

This Planning Agreement is not intended to create a partnership, joint venture or agency relationship between the Parties.

26 Further steps

Each Party must promptly do whatever any other Party reasonably requires of it to give effect to this document and to perform its obligations under it.

27 Counterparts

This document may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

28 Explanatory Note

The Explanatory Note is not to be used in construing this Planning Agreement.

Schedule 1

Section 93F Requirements

Provision of the Act	This Planning Agreement
Under section 93F(1), the University has:	
(a) sought a change to an environmental planning instrument.	(a) No
(b) made, or proposes to make, a concept plan approval or project approval under Part 3A of the Act or a development application under Part 4 of the Act.	(b) Yes. The Concept Plan Approval has been granted and further Approvals will be sought to carry out the Development as approved under the Concept Plan Approval.
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(c) No
Description of the land to which this Planning Agreement applies- (Section 93F(3)(a))	The whole of the Land in schedule 2 .
Description of the development to which this Planning Agreement applies- (Section 93F(3)(b)(ii))	The Development of the Land approved under the Concept Plan Approval.
The scope, timing and manner of delivery of Development Contribution required by this Planning Agreement - (Section 93F(3)(c))	See clauses 5 and 6 .
Applicability of Section 94 of the Act - (Section 93F(3)(d))	The application of section 94 of the Act is wholly excluded in respect of all of the Development on the Land.
Applicability of Section 94A of the Act - (Section 93F(3)(d))	The application of section 94A of the Act is wholly excluded in respect of all of the Development on the Land.
Applicability of Section 94EF of the Act - (Section 93F(3)(d))	The application of section 94EF of the Act is not excluded in respect of the Development on the Land.

Provision of the Act	This Planning Agreement
Applicability of Section 93F(3)(e) of the Act	Not applicable.
Mechanism for Dispute resolution - (Section 93F(3)(f))	See clause 10 to this Planning Agreement.
Enforcement of this Planning Agreement - (Section 93F(3)(g))	See clause 12 to this Planning Agreement.
Registration of this Planning Agreement (Section 93H)	Not applicable.
No obligation to grant consent or exercise functions - (Section 93F(9))	See clause 21 of this Planning Agreement.

Schedule 2

Description of Land subject of the Development

Location: Macquarie University Campus, New South Wales

Lot	Deposited Plan
7	DP569359 (Menzie's College)
8	DP569359 (Menzie's College)
9	DP1047085 (Shell Garage)
10	DP1047085 (Arts Faculty)
17	DP858135 (Dunmore Lang College)
191	DP1157041 (Main Campus including Sportsfields)
190	DP1157041 (Cochlear)
1	DP240970 (part of Sportsfields)
5	DP851713 (part of Sportsfields)
7	DP1047085 (Old Waterloo Road)
8	DP1047085 (Old Golf Range)
17	DP1058168 (Nortel Building)
181	DP1112777 (Macquarie University Village)
115	DP1129623 (surrounding Macquarie Railway Station)

Schedule 3

Development Contribution Calculation Schedule

Land Use Category

Category 1: Housing for University purposes

Category 2: Commercial and research (for commercial purposes) and business incubation (assumed proportion of commercial offices: Research and Business Incubation is 71%:29%)

Category 3: Academic use including research (for non-commercial purposes)

Note: It is acknowledged that this Schedule reflects the calculation of the Maximum Total Monetary Contribution Amount, however, Monetary Contributions payable under this Planning Agreement will be expended in accordance with clause 6.4.

Table 1 – Monetary Contributions

Col 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Item	Contribution Type	Land Use Category	Estimated Quantity	Rate	Estimated Contribution for the item	Timing of Contribution
1	Community and Cultural Facilities					

Col 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Item	Contribution Type	Land Use Category	Estimated Quantity	Rate	Estimated Contribution for the item	Timing of Contribution
	No development contribution	1,2,3	nil	nil	nil	N/A
2 Open Space & Recreation						
	No development contribution	1,2,3	nil	nil	nil	N/A
3 Civic & Urban Improvements						
3.1	Public domain design and construction of works	2	Commercial office: 284,000sqm Research and Business Incubation 116,000sqm	\$8.32 per sqm	\$3,328,000	In accordance with clause 6
3.2	No development contribution	1 and 3	nil	Nil	nil	N/A
4 Roads & Traffic Management						
4.1	Contribution to the Planning Authority's	n/a	n/a	n/a	\$50,000	Paid.

Col 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Item	Contribution Type	Land Use Category	Estimated Quantity	Rate	Estimated Contribution for the item	Timing of Contribution
	Macquarie Park Traffic Management Study					
4.2	Roads and Traffic Management Facilities to be completed by the Planning Authority	1	3,450 beds	\$1,010.88 per bed	\$3,487,536	In accordance with clause 6
4.3	Roads and Traffic Management Facilities to be completed by the Planning Authority	2	Commercial office 284,000sqm Research and Business Incubation: 116,000sqm	\$27.28 per sqm	\$10,912,000	In accordance with clause 6
4.4	No development contribution	3	nil	nil	nil	N/A
5	Transport & Accessibility Facilities					
5.1	No development contribution	1,2,3	nil	nil	nil	N/A
6	Cycleways					
6.1	No development contribution	1,2,3	nil	nil	nil	N/A
7	Stormwater Management Facilities					
7.1	No development contribution	1 and 3	nil	nil	nil	N/A
7.2	Closed conduits and overland flow channels to be completed by the Planning Authority	2	Commercial office:	\$3.05 per sqm	\$1,220,000	In accordance with clause 6

Col 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Item	Contribution Type	Land Use Category	Estimated Quantity	Rate	Estimated Contribution for the item	Timing of Contribution
			284,000sqm Research and Business Incubation: 116,000sqm			
8	Plan Administration					
8.1	No development contribution	1,2,3	nil	nil	nil	N/A
MAXIMUM TOTAL MONETARY CONTRIBUTION AMOUNT					\$18,997,536 (subject to indexation)	

Table 2 – Estimated Cost of University Road Works

<i>Col 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5 (subject to indexation)</i>	<i>Column 6</i>	<i>Column 7</i>
<i>Item</i>	<i>Contribution Type and Intended Purpose</i>	<i>Land Use Category</i>	<i>Quantity</i>	<i>Rate</i>	<i>Estimated Road Works contribution</i>	<i>Timing of Contribution</i>
1.1	Upgrade to Culloden, Waterloo, Gymnasium roundabout as identified on the Preliminary Indicative University Road Works Plan	n/a	n/a	n/a	\$4,500,000	In accordance with clause 6
ESTIMATED COST OF UNIVERSITY ROAD WORKS					\$4,500,000	

Schedule 4

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Introduction

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of the proposed Planning Agreement (the "**Planning Agreement**") prepared under subdivision 2 of Division 6 of Part 4 (Section 93F) of the *Environmental Planning & Assessment Act 1979* (the "**Act**").

This Explanatory Note has been prepared jointly by the Parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000* (the "**Regulation**").

The Planning Agreement is required to be entered into in accordance with a condition of the Concept Plan Approval granted in August 2009 by the then Minister for Planning and a provision in a statement of commitments made by the proponent in connection with that Concept Plan Approval (as superseded by condition C15(5) of the Concept Plan Approval).

Parties to the Planning Agreement

The Parties to the Planning Agreement are the City of Ryde Council ("**Council**") and Macquarie University ("**MQU**").

Description of Subject Land

The Planning Agreement applies to the whole of the MQU Campus (the "**Land**") as described in **schedule 2** of the Planning Agreement.

Description of Proposed Change to Environmental Planning Instrument/Development Application

MQU has gained a rezoning of the MQU Site via the gazettal of a State Significant Site Listing of the site under Part 21 of Schedule 3 of *State Environmental Planning Policy (Major Development) 2005* which commenced on 11 September 2009.

This listing sets out the planning regime for the MQU Site, including the zoning, development yields and building heights.

The development proposal is set out in the Concept Plan application and approval as approved by the Minister on 13 August 2009 (**Concept Plan Approval**).

Summary of Objectives, Nature and Effect of the Draft Planning Agreement

The objective of the Planning Agreement is to facilitate the delivery of MQU's Development Contribution and is a contractual relationship between the Council and MQU setting out how the Development Contribution will be provided and applied.

It is acknowledged that MQU provides a number of benefits to the broader community in providing, operating and maintaining its existing and proposed infrastructure and facilities.

(see **appendix 'I'** for an overview of those benefits).

The Planning Agreement contains a schedule (being **schedule 3**) explaining the calculation of the development contribution to be made to the Council as well as a clause (being **clause 6**) setting out the timing and manner of the delivery of the development contribution.

Under the Planning Agreement, MQU will provide a development contribution towards local infrastructure totalling up to \$23,497,536, comprising:

- a monetary contribution to the Council up to a maximum amount of \$18,997,536 (subject to indexation and adjustable depending on the final mix of development types developed on the Campus) to be paid in stages over the life of the development; and
- the carrying out of road works to upgrade the Culloden, Waterloo and Gymnasium Roads roundabout at an estimated cost of \$4,500,000 once a traffic volume trigger is reached. The University is required to carry out traffic volume counts every two years from the date of commencement.

The Planning Agreement includes an adjustment provision which is calculated at the time each instalment of the Monetary Contributions is calculated (clause 6.6). The intention of clause 6.6 is to make an adjustment for changes between the buildings approved as part of the Concept Plan Approval in respect of which past instalments of Monetary Contributions were paid, and the actual usage of those Approved Buildings over time. The Adjustment is made at each point where an instalment of the Monetary Contributions is payable.

This Planning Agreement assists in promoting, co-ordinating, managing, and securing the orderly and economic development of the MQU Land.

The Planning Agreement acknowledges that the University provides a number of benefits to the broader community in providing, operating and maintaining its existing and proposed infrastructure and facilities. An independent assessment of the public value of MQU's facilities is attached hereto as **appendix 'I'**.

MQU currently permits public access to many of its facilities but, under its Act, it may limit that access at any time.

MQU enters into the VPA pursuant to ss 6(1), 6(3)(a), 6(3)(c), 16(1B)(g), 16(1)(e), 16(3), 21A, 21B and Schedule 2, clause 2 of the *Macquarie University Act 1989* (NSW).

Timing of Delivery of the Public Community Benefit (having regard to requirements for issue of a construction certificate, occupation certificate or subdivision certificate).

It is currently envisaged that the Development of the MQU Campus pursuant to the Concept Plan Approval will take place in stages over 25 years or so.

The Planning Agreement requires the making of the Development Contribution to Council as follows:

- for the Monetary Contributions, in stages and prior to the issue of the first Occupation Certificate for an approved building; and
- the carrying out of the road works, once a traffic volume trigger is reached.

Appropriate provisions are included in the Planning Agreement requiring MQU to provide security for the road works and the monetary contributions in stages and prior to the issue of any construction certificate required for those works or for an approved building.

The Planning Authority considers that the security arrangements under this Planning Agreement are suitable for the purposes of section 93F(3)(g) of the Act.

The Relationship of the Negotiated Planning Agreement Outcomes and the Development Contribution under Section 94.

The Planning Agreement, in meeting the requirements of the Concept Plan Approval, makes provision for community benefits by the payment of monetary contributions at an agreed rate and the carrying out of works in kind.

Assessment of the Merits of the Draft Planning Agreement

Arising from the Planning Agreement, the public will gain the benefits of the Development Contribution towards a range of local infrastructure as follows:

- (a) expenditure of the Monetary Contributions in the Macquarie Park Corridor in accordance with the Ryde 2021 Community Strategic Plan adopted in July 2011 and the Four Year Delivery Plan adopted in July

2011 (as amended or updated) and Schedule 1 of Council's Section 94 Plan (if relevant to those strategies); and

- (b) potential expenditure of the Monetary Contributions in the Herring Road Civic precinct (as identified in Annexure A to the Planning Agreement); and
- (c) provision of the road works which if required, will also benefit the public through the upgrade of road infrastructure in the LGA.
- (d) to support the Ryde 2021 Community Strategic Plan, Council has developed a Four Year Delivery Plan 2011-2015. The Plan outlines capital works to be delivered during the next four years. Given the strategic importance of the Macquarie Park Corridor to City of Ryde, significant resources have been allocated to enhance the public domain and facilities in the Corridor. This includes upgrades to drainage, roads, cycleways, paths and community facilities. The Planning Agreement will see monetary contributions spent within the Corridor to support the capital works program planned by Council.
- (e) in accordance with Council's charter and section 8(1) of the Local Government Act including:
 - (i) to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively; and
 - (ii) to engage in long-term strategic planning on behalf of the local community.

The Planning Purposes served by the Draft Planning Agreement

In accordance with section 93F(2) of the Act, the Planning Agreement has the following public purposes:

- (a) the provision of (or the recoupment of the cost of providing) affordable housing in the form of student and university housing,
- (b) the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land,
- (c) the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure,
- (d) the monitoring of the planning impacts of development, and
- (e) the conservation or enhancement of (or the recoupment of the cost of conserving and enhancing) the natural environment.

The Council has assessed the Planning Agreement and holds the view that the provisions of the Planning Agreement provide reasonable means of achieving the public purposes set out above. Further the Development Contribution will assist Council in accordance with the Ryde 2021 Community Strategic Plan adopted in July 2011 and the Four Year Delivery Plan adopted in July 2011 (as amended or updated) and Schedule 1 of Council's Section 94 Plan (if relevant to those strategies). .

How the Draft Planning Agreement Promotes the Objects of the Environmental Planning and Assessment Act 1979

The Planning Agreement promotes the following objects of the Act:

- the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,
- the promotion and co-ordination of the orderly and economic use and development of land,
- the protection, provision and co-ordination of communication and utility services,
- the provision of land for public purposes,
- the provision and co-ordination of community services and facilities,
- the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats,
- ecologically sustainable development, and
- the provision and maintenance of affordable housing.

The Planning Agreement promotes the objects of the Act set out above by requiring MQU to provide the items as set out in this Explanatory Note for the purposes of providing local social and physical infrastructure and facilities.

This purpose represents an important public benefit, and MQU's offer to contribute towards this purpose will provide an important positive impact on the public who use the infrastructure and services and facilities to which these purposes relate.

How the Planning Agreement Promotes the Public Interest

The Planning Agreement promotes the public interest, and the objects of the Act as set out above, by committing MQU to make contributions towards local infrastructure and facilities.

The Impact of the Planning Agreement on the Public or Any Section of the Public

The Planning Agreement will positively impact on the public, or any section of the public, as it will:

- facilitate the delivery of MQU's Development Contribution,
- assist in promoting, co-ordinating, managing, and securing the orderly and economic development of the MQU site,
- provide reasonable means of achieving the public purposes set out in the Planning Agreement, and
- enhance the public facilities and amenities available in the Council's Local Government Area.

Interpretation of the Planning Agreement

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

Explanatory Note - Appendix 'I'

Public Value of University Facilities

Facility	*Net public value%	Total Estimated Value				Estimated "Public Value" for the purposes of this VPA based on the Net Public Value%				
		Land Value	Development Cost	Maintenance Life Cycle 20 yrs	Total Value of the Life Cycle Asset	Land Value	Development Cost	Maintenance Life Cycle 20 yrs	Total Public Value of the Life Cycle Asset	Allowance for public value of connecting infrastructure
New Library	6%	\$10,750,000	\$77,679,109	\$44,202,805	\$132,631,914	\$645,000	\$4,660,747	\$2,652,168	\$7,957,915	
Hospital	20%	\$17,533,000	\$282,179,463	\$124,815,956	\$424,528,419	\$3,506,600	\$56,435,893	\$24,963,191	\$84,905,684	
Hearing Hub	20%	\$11,593,500	\$134,405,423	\$54,201,246	\$200,200,169	\$2,318,700	\$26,881,085	\$10,840,249	\$40,040,034	
Child care centres	25%	\$1,429,500	\$7,402,317	\$7,253,750	\$16,085,567	\$357,375	\$1,850,579	\$1,813,438	\$4,021,392	
Sports and Aquatic Centre	40%	\$4,840,500	\$33,025,973	\$21,154,030	\$59,020,503	\$1,936,200	\$13,210,389	\$8,461,612	\$23,608,201	
Sports fields	40%	\$17,351,400	\$48,141,393	\$30,509,415	\$96,002,208	\$6,940,560	\$19,256,557	\$12,203,766	\$38,400,883	
Tennis courts	40%	\$4,030,000	\$3,418,927	\$700,000	\$8,148,927	\$1,612,000	\$1,367,571	\$280,000	\$3,259,571	
Proposed Skate Park	50%	\$45,000	\$852,586	\$481,579	\$1,379,165	\$22,500	\$426,293	\$240,790	\$689,583	
Macquarie Theatre	25%	\$1,319,000	\$8,701,345	\$6,033,408	\$16,053,753	\$329,750	\$2,175,336	\$1,508,352	\$4,013,438	
Lighthouse Theatre	10%	\$258,500	\$3,034,630	\$1,345,304	\$4,638,434	\$25,850	\$303,463	\$134,530	\$463,843	
Mason Theatre	10%	\$194,500	\$1,569,440	\$913,241	\$2,677,181	\$19,450	\$156,944	\$91,324	\$267,718	
Price Theatre	10%	\$253,000	\$2,237,560	\$1,452,532	\$3,943,092	\$25,300	\$223,756	\$145,253	\$394,309	
Y3A Theatre	10%	\$300,000	\$1,816,232	\$1,044,844	\$3,161,076	\$30,000	\$181,623	\$104,484	\$316,108	
Art Gallery	40%	\$396,000	\$3,157,733	\$1,546,316	\$5,100,049	\$158,400	\$1,263,093	\$618,526	\$2,040,019	
Australian History Museum	40%	\$3,771,500	\$30,074,212	\$14,727,092	\$48,572,804	\$1,508,600	\$12,029,685	\$5,890,837	\$19,429,122	
Museum of Ancient Cultures	40%	\$305,000	\$2,432,093	\$1,190,976	\$3,928,069	\$122,000	\$972,837	\$476,390	\$1,571,227	
Observatory	5%	\$4,500	\$940,028	\$59,871	\$1,004,399	\$225	\$47,001	\$2,994	\$50,220	
University Roads	**	\$3,025,000	\$46,987,811	\$41,643,659	\$91,656,470	-	-	-	-	\$20,873,619
University Carparks	**	\$17,405,500	\$35,502,445	\$24,568,941	\$77,476,886	-	-	-	-	\$17,644,396
Passive open space	50%	\$12,274,045	\$19,500,000	\$12,000,000	\$43,774,045	\$6,137,023	\$9,750,000	\$6,000,000	\$21,887,023	
Macquarie University Sculpture Park	25%	-	\$2,510,000	\$800,000	\$3,310,000	-	\$627,500	\$200,000	\$827,500	
Meeting rooms	5%	\$6,100,800	\$29,380,887	\$18,065,147	\$53,546,834	\$305,040	\$1,469,044	\$903,257	\$2,677,342	
Mars Creek Upgrade	**	\$6,022,200	\$12,341,719	\$36,602,937	\$54,966,856	-	-	-	-	\$12,518,017
Precinct E Proposed Works (Roads)	**	\$2,257,350	\$32,293,955	\$31,075,806	\$65,627,111	-	-	-	-	\$14,945,757
Precinct E Proposed Works (Riparian)	**	\$1,091,050	\$7,230,719	\$15,019,939	\$23,341,708	-	-	-	-	\$5,315,783
Average public value percentage	23%									
Totals		\$122,550,845	\$826,816,000	\$491,408,794	\$1,440,775,639	\$26,000,573	\$153,289,397	\$77,531,162	\$256,821,131	\$71,297,572

Facility	Total Estimated Value					Estimated "Public Value" for the purposes of this VPA based on the Net Public Value%				
	*Net public value%	Land Value	Development Cost	Maintenance Life Cycle 20 yrs	Total Value of the Life Cycle Asset	Land Value	Development Cost	Maintenance Life Cycle 20 yrs	Total Public Value of the Life Cycle Asset	Allowance for public value of connecting infrastructure
						GRAND TOTAL of ESTIMATED PUBLIC VALUE \$328,118,703				

Notes:

The above table is adapted from a table prepared by Newplan Urban Planning Solutions.

* The "net public value" is a value determined by NewPlan Urban Planning Solutions.

**A public value has been assigned to that infrastructure that provides access and amenity for the facilities identified above. That infrastructure includes roads, car parks, and stormwater drainage and is "connecting infrastructure" that supports the social infrastructure.

Executed as a deed.

Executed on behalf of the City of Ryde)
by John Neish, General Manager,)
pursuant to the resolution of Council on)
.....
in the presence of:

.....
Witness

.....
General Manager

.....
Name of Witness (print)

.....
John Neish

Signed sealed and delivered for
Macquarie University by its attorneys
under Power of Attorney in registered
book ~~4571~~ no. 13 in the presence of:

4640 576
Julie Smith
Signature of Witness

Julie Smith

Signature of Attorney

.....
Name of witness

.....
Signature of Witness

Doris Ursua

.....
Name of Witness

Paul Luttrell

.....
PAUL LUTTRELL
.....
Attorney GENERAL COUNSEL
Name of witness MACQUARIE UNIVERSITY

Deidre Anderson

.....
Signature of Attorney

Deidre Anderson

.....
Name of Attorney

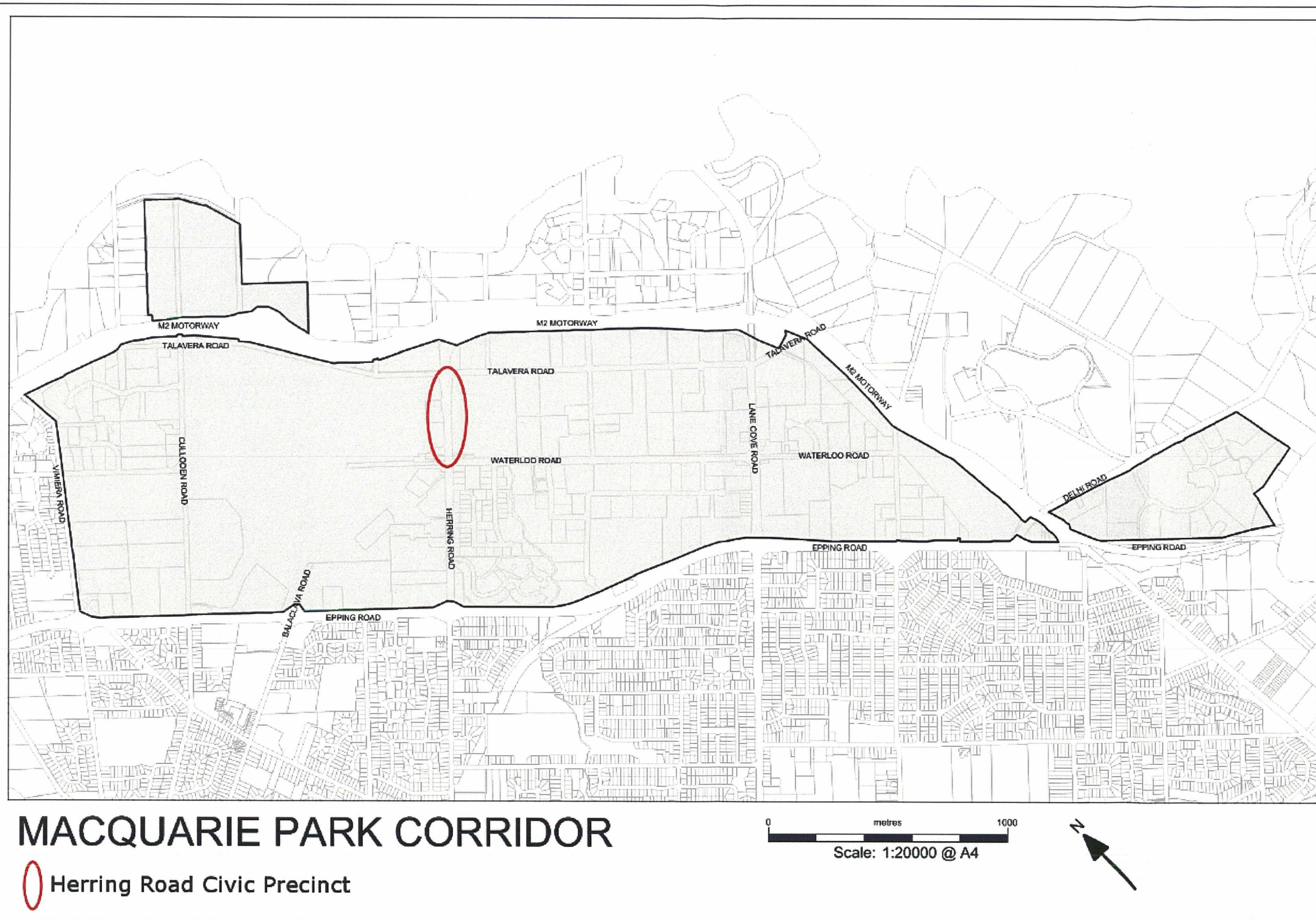
Annexure A

Macquarie Park Corridor and Herring Road Civic Precinct Map

KEY:

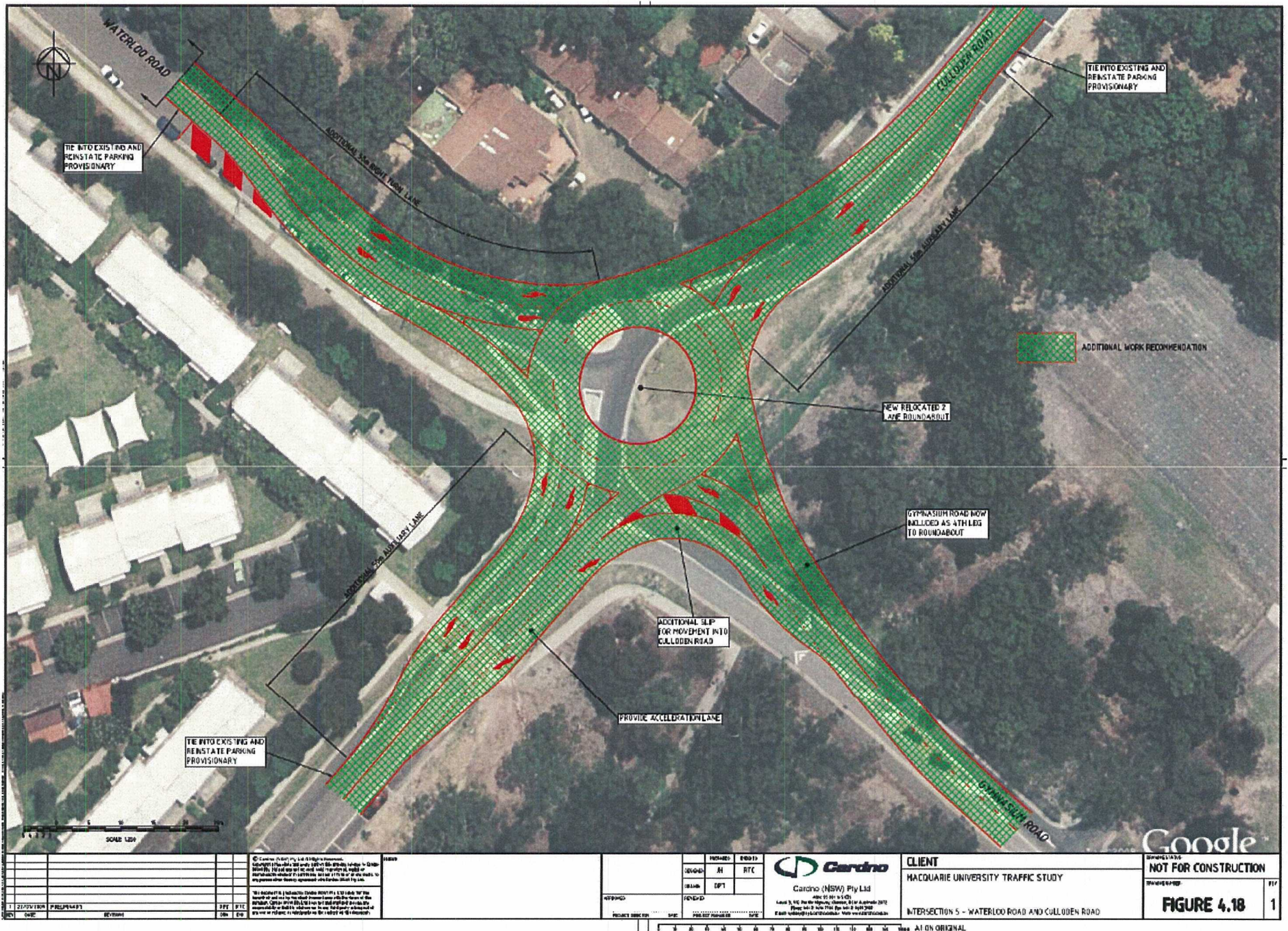
Macquarie Park Corridor: shaded in grey

Herring Road Civic Precinct: circled in red



Annexure B

Preliminary Indicative University Road Works Plan



Culloden / Waterloo / Gymnasium Roads Intersection

Scope of Works:

Design and construct Waterloo Road / Culloden Road / Gymnasium Road intersection in accordance with Cardno concept plan – hatched area (attached) and titled FIG 4.18 Rev 1.

Design and Construction will include and be limited to the following:

1. Dilapidation survey and report
2. Geotechnical and Environmental surveys including soil classification for off-site disposal
3. Detail design to RMS and City of Ryde standards. Road, footpath and landscape finishes to be similar to existing finishes in Culloden Road
4. Statutory Authority/Council approvals
5. Construction Preliminaries (Site Establishment etc)
6. Environmental controls (erosion and sediment control, noise, vibration and air quality monitoring etc)
7. Traffic management
8. Clearing and demolition works (existing roundabout, pavements, medians, footpaths, signage and redundant drainage)
9. Tree removal and pruning as necessary
10. Terminating, capping, protecting, supporting and/or relocation of existing services including street lighting. Underground services to be relocated if required but not amplified.
11. Earthworks and excavation
12. Stormwater and subsoil drainage works associated with road runoff
13. Roads and pavement works including treatment of unsuitable subgrade
14. Linemarking and signage but excluding traffic lights or other signalisation
15. Topsoiling and landscape works
16. Provision of 'as built' drawings
17. Quality assurance verification

June 2012