

- 12 144 WICKS ROAD & 16-18 WATERLOO ROAD MACQUARIE PARK. Local Development Application for construction of a commercial building containing 27340m<sup>2</sup> of floor space. A Voluntary Planning Agreement has also been submitted. LDA2008/0531.**

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**Report prepared by:** Team Leader Major Developments

**Report approved by:** Manager Assessment; Group Manager Environment & Planning

**Report dated:** 20 May 2011

**File Number:** GRP/11/6/3/4 - BP11/401

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### 1. Report Summary

**Applicant:** Dexus Funds Management Limited.

**Owner:** Perpetual Trustee Company Limited, Dexus Property Group.

**Date lodged:** 6 August 2008.

This report considers a proposal to construct a commercial office building containing 27340m<sup>2</sup> of floor space and 309 on site car parking spaces. The proposal also includes the construction of 1 road and part construction of 2 other roads that have been identified in the Macquarie Park planning controls. These roads are proposed to be dedicated to Council as part of a Voluntary Planning Agreement (VPA) **(ATTACHMENT 4)** submitted with the development application.

The development application has been assessed under the provisions of the Ryde Planning Scheme Ordinance. The development results in a 3.9% variation of the permitted floor space ratio as well as resulting in a variation to the storeys control. Both of these variations have been justified with a SEPP 1 objection which has demonstrated that compliance with the control is unreasonable and unnecessary.

The VPA proposes the construction of the roads on the site, the dedication of the roads to Council as well as a monetary contribution. The VPA has been assessed by Council's VPA Panel as being in the public benefit.

During the original advertising period in September 2008, Council received one (1) submission. This submission was not an objection, however raised concerns with respect to the current lease for the existing child care centre on the site. The development application and VPA were readvertised in September 2010 and during this period Council received no submissions.

The development application is recommended for approval subject to conditions of consent.

**Reason for Referral to Committee of the Whole:** VPA submitted with the development application and called up by Councillor Butterworth.

**Public Submissions:** 1 submission was received during the original advertising period on 2008. During the second advertising period between 16 September 2010 and 28 October 2010, Council received no submissions.

**ITEM 12 (continued)**

SEPP1 Objection received? Two SEPP 1 objections have been submitted. The first is for the floor space ratio which proposes a variation of 3.9%. The second is for height. The control is 6 storeys and the development ranges from 6 to 9 storeys.

The plans are **CIRCULATED UNDER SEPARATE COVER** as additional information provided to Councillors – subject to copyright provisions.

Value of works? \$97,851,449

**RECOMMENDATION:**

- (a) That Local Development Application No. 2008/531 at 144 Wicks Road, Macquarie Park being lot 21 DP1101233 and lot 4 DP1046090 be approved subject to the **ATTACHED** conditions (**ATTACHMENT 1**).
- (b) That Council support the Voluntary Planning Agreement Offer made by Dexus Funds Management Limited as part of the development application LDA2008/531 at 144 Wicks Road, Macquarie Park.

**ATTACHMENTS**

- 1 Conditions of Consent
- 2 Map
- 3 Plans
- 4 Voluntary Planning Agreement
- 5 A3 Plans - CIRCULATED UNDER SEPARATE COVER

Report Prepared By:

**Sandra Bailey**  
**Team Leader Major Developments**

Report Approved By:

**Liz Coad**  
**Manager Assessment**

**Dominic Johnson**  
**Group Manager Environment & Planning**

**ITEM 12 (continued)****2. Site** (Refer to attached map.)

**Address** : 144 Wicks Road, Macquarie Park.  
Lot 21 DP 1101233 and Lot 4 DP1046090.

**Site Area** : 18,031m<sup>2</sup>  
Frontage 183 metres to Epping Road  
69 metres to Waterloo Road  
111 metres to Wicks Road.

**Topography and Vegetation** : The entire site is generally undulating and includes large areas of cut and fill. The site includes stands of native vegetation predominantly concentrated around the perimeter of the site. These stands have been identified as having been planted during the construction of the school. Two species (*Wallangarra White Gum* and the *Narrow-Leaf Black Peppermint*) have been found to be identified as 'vulnerable' under the terms of the *Environmental Protection and Biodiversity Conservation Act 1999*. The site does not contain any Blue Gum High Forest or Sydney Turpentine – Ironbark Forest.

**ITEM 12 (continued)**

**Existing Buildings:** There are no buildings on the site. The site was previously used for educational purposes which was known as "Peter Board High School".

**Planning Controls**

**Zoning:** Part B3 Commercial Core and part B7 Business Park under LEP 2010.

**Other:** Ryde Planning Scheme Ordinance.  
Environmental Planning and Assessment Act, 1979.  
State Environmental Planning Policy No. 1.  
State Environmental Planning Policy (Infrastructure) 2007.  
State Environmental Planning Policy No. 55.  
Deemed State Environmental Planning Policy Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.  
Draft State Environmental Planning Policy No. 66.  
Development Control Plan 2010.  
Ryde Local Environmental Plan 2010.

**3. Councillor Representations:**

Name of Councillor: Councillor Butterworth.

Nature of the representation: Not stated.

Date: 14 October 2009.

Form of the representation (e.g. via email, meeting, phone call): Advised Group Manager Environment and Planning.

On behalf of applicant or objectors? Not stated.

Any other persons (e.g. consultants) involved in or part of the representation: Not stated.

**4. Political Donations or Gifts**

Any political donations or gifts disclosed? No.

**5. Proposal**

Consent is sought for the construction of a 6 to 9 storey commercial office building (includes the plant room and car parking). The building will contain 27340m<sup>2</sup> of floor space and 309 on site car parking spaces. The building has been designed to create three horizontal elements consisting of:

- A podium element located at the ground level at the western end of the building. The height of this podium varies from less than 1 storey to 2 storeys and includes 2 retail spaces on the ground floor, car parking, services and public spaces.

**ITEM 12 (continued)**

- A single storey recessed level which is intended to provide a visual separation between the podium and upper levels of the building. This floor will be used for commercial office space.
- 5 commercial upper floors. The façade of this part of the building will comprise fully glazed curtain wall constructed of clear glass panels. The upper levels will be separated by a full height atrium space.

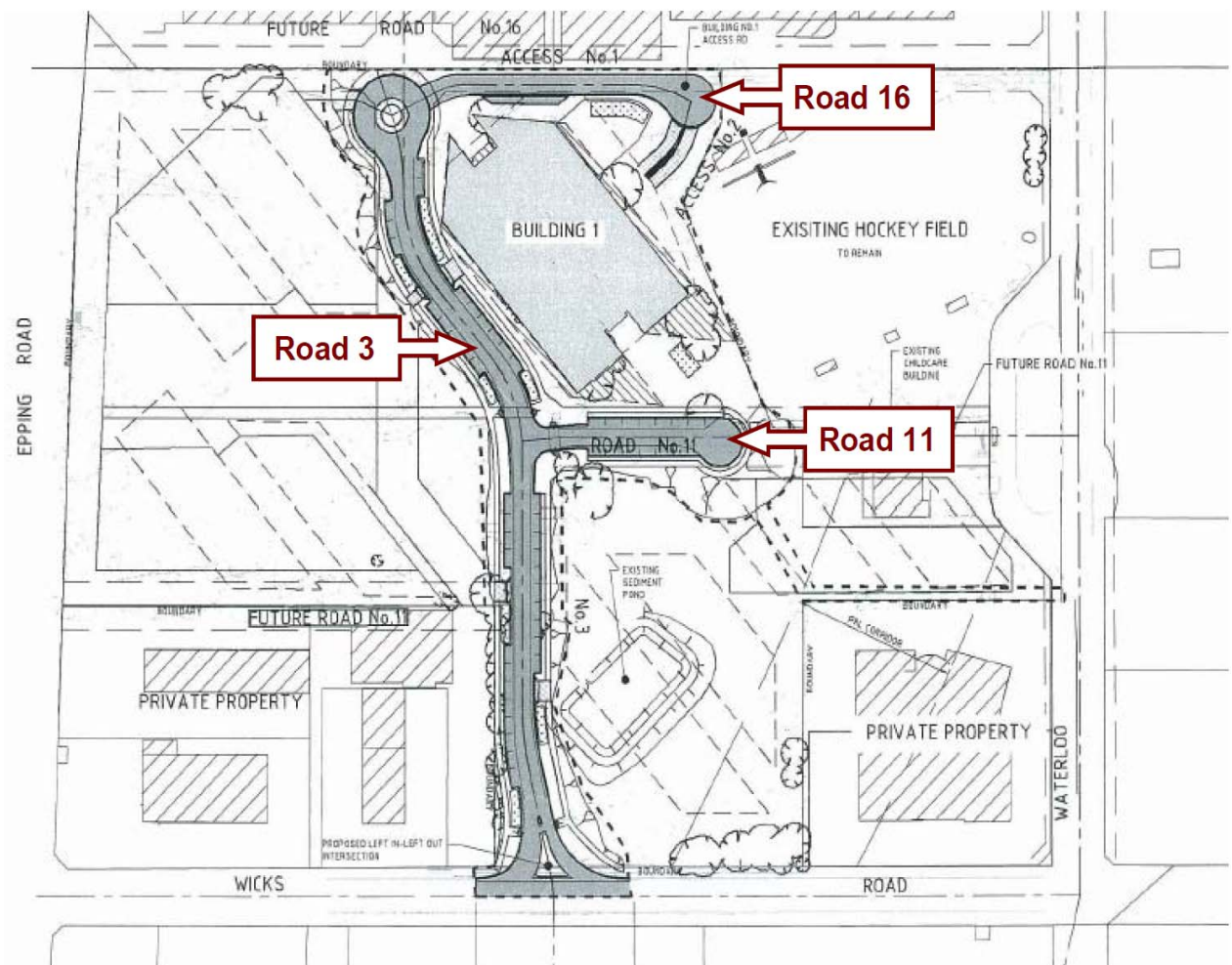
The development also proposes the construction of public domain. This includes the construction of one full road and part construction of 2 other roads identified in the Macquarie Park Structure Plan.

A Voluntary Planning Agreement has also been submitted. Under Section 93F of the Environmental Planning and Assessment Act, developers may contribute works or money to the local community as part of their development. The Voluntary Planning Agreement has identified the following works:

- A monetary contribution of approximately \$513,898.80.
- Construction and dedication of Road 3 between Wicks Road and the northern boundary of the land to a width of 20.4 metres.
- Construction and dedication of Road 11 from the junction of Road 3 to approximately the corner of the hockey fields.
- Construction and dedication of part of Road 16 from the corner of the junction of Road 3 to the corner of the hockey fields.
- Construction of a new roundabout at the intersection of Road 3 and Road 16 and the turning circle at the end of Road 16.

**ITEM 12 (continued)**

These roads are demonstrated in the following plan.

**6. Background**

The development application was lodged on 6 August 2008.

Following a preliminary assessment of the DA a letter was sent to the applicant on 28 October 2008. This letter raised the following issues in respect of the development:

- Clarification was requested in respect to the floor space ratio and car parking requirements.
- The Statement of Environmental Effects failed to provide adequate information in respect of numerous matters identified in Part 4.5 of DCP 2006 and the applicant was asked to address each of the outstanding matters.
- The applicant was advised that the RTA did not support the Masterplan development as the additional traffic could not be adequately accommodated within the existing road and intersection layouts. The RTA requested that the DA not be determined until a satisfactory resolution can be reached which addresses how the Masterplan proposal would contribute to / or physically provide

**ITEM 12 (continued)**

appropriate road based infrastructure within the local precinct. The RTA also advised that traffic lights would not be supported at the intersection of the new roads with Waterloo Road and Wicks Road and that these intersections should be left-in and left-out only.

- Concerns were raised that the proposed development failed to comply with the access arrangements in respect of an uninterrupted path of travel or internal movements.
- An Urban Design Review was undertaken in respect of the Masterplan development. This review identified various design changes that would improve the urban design outcomes of the Masterplan. The applicant was requested to incorporate the design changes identified.
- Further information was requested in respect to Water Sensitive Urban Design and a stormwater drainage report was requested.
- Concerns were raised by Council's Engineers in respect of the road design and layout of the proposed roads. The applicant was requested to amend the design and location of the roads to ensure that it complies with the DCP requirements.
- Further information was requested from the applicant in terms of specific ESD initiatives to be incorporated into the building.

As a response to the above issues, the applicant submitted additional information on 27 February 2009.

A meeting was held with the applicant on 10 March 2009 to discuss the issues raised in Council's letter. In particular this meeting focused on the issue of the Masterplan and whether this should be incorporated into the development application and the issue of the road network and its non-compliances with the DCP.

A further meeting was held with the applicant on 19 May 2009 to focus on the road network. In this meeting it was agreed that the City of Ryde could support the internal road network. It was also agreed that a Voluntary Planning Agreement would be the most appropriate instrument within which to include any land dedications to Council (such as the internal road network and any traffic measures).

The applicant submitted a VPA to Council on 21 October 2009. This VPA contemplated a Masterplan for the subject site, however the Masterplan was not formally part of the development application being considered by Council and this raised difficulties in assessing the overall merits of the VPA. Numerous other issues were also raised in terms of the VPA by Council's VPA Panel. The applicant was advised of these issues on 19 November 2009.

Following discussions in respect of the issues raised by Council, the applicant submitted a revised VPA on 26 July 2010.

Additional information and amended plans which deleted all reference to the Masterplan and requested development consent for the entire part of Road 3, part of

**ITEM 12 (continued)**

Road 11 and one building located behind the hockey field was submitted to Council on 25 August 2010. These plans and the VPA were advertised from 16 September 2010 till 28 October 2010 as well as being referred to the RTA.

A letter was sent to the applicant on 19 September 2010 advising of outstanding matters with the VPA.

The RTA advised on 22 November 2010 that they were not willing to support a roundabout at the intersection of Wicks Road and Road 3 as this would adversely affect the operation of Lane Cove Road and Wicks Road. A meeting was held between the RTA, Council and the applicant on 2 December 2010 where it was resolved that the RTA would only support left in and left out at the intersection of Wicks Road and Road 3. As a consequence of this change, the applicant was required to prepare amended plans.

These amended plans and the revised VPA was submitted to Council on 14 February 2011. Further corrections were required to the VPA and the final version of the VPA was submitted on 9 May 2011. This report deals with these plans and this VPA.

Full copies of these plans and the VPA are circulated to the Councillors under separate cover.

**7. Submissions**

The proposal was advertised and notified in accordance with Development Control Plan 2010 - Part 2.1, Notification of Development Applications on 2 occasions. The first advertising period was from 3 September 2008 until 18 September 2008. During this period Council received 1 submission. The issues raised will be discussed below. The second advertising period was from 16 September 2010 till 28 October 2010. The advertising period included the amended plans as well as the VPA. During this second advertising period, no submissions were received.

The submission received was from the Management Committee of Nought to Five Early Childhood Centre. The submission was not an objection to the development. The submission was advising Council that the child care centre has an existing lease with Dexu until 2028. Although discussions had occurred with Dexu about relocating the child care centre, no agreement had been reached.

The original plans submitted demonstrated a road through the child care centre connecting from Road 3 to Waterloo Road. The applicant was aware of this issue and the amended plans have ceased the construction of this new road in the vicinity of the hockey field resulting in the existing child care centre being retained on site.

**8. Policy Implications****Relevant Provisions of Environmental Planning Instruments etc:****Section 5A of the Environmental Planning and Assessment Act 1979 – Significant Effect on Threatened Species, Populations or Ecological Communities or Their Habitats**

**ITEM 12 (continued)**

For the purposes of this section of the Act, three species have been listed as threatened under NSW and / Commonwealth threatened species legislation. The applicant has completed a Threatened Species Impact Assessment including a seven part test under this section of the Act. The threatened species include the following:

- The Grey-headed Flying fox. This species is listed as vulnerable under the NSW Threatened Species Conservation Act 1995 (TSC Act) and the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act). The species was identified foraging in an exotic tree species at the site being Cottonwoods. The site does not contain a roosting colony of this species. The proposed development will result in the loss of several non-indigenous trees that are used for foraging, however there is significant alternative habitat located in the Lane Cove National Park. The development is unlikely to have an adverse effect on the life cycle of this species.
- Wallangarra White Gum. This species is listed as endangered under the NSW TSC Act and vulnerable under the Commonwealth EPBC Act. This species occurs around the Tenterfield region of the north of NSW and it appears to have been planted widely as a landscaping tree. A total of 7 trees appear on the site. The provision of these trees does not constitute a viable local population and the proposed development is unlikely to be a threat to the species.
- Narrow-leafed Black Peppermint. This species is listed as vulnerable under both the TSC Act and the EPBC Act. It occurs naturally on the New England tablelands and does not occur naturally in the Sydney region. A total of 3 trees have been planted as landscaping trees on the site. The provision of these trees does not constitute a viable local population and the proposed development is unlikely to be a threat to the species.

As the site contains several species that are part of the Blue Gum High Forest which is listed as a critically endangered ecological community, the applicant was also requested by Council's Officers to undertake an assessment of significance for the Blue Gum High Forest. This assessment revealed that while there are a number of species recorded across the site that are known to be part of the Blue Gum High Forest, the canopy species and understorey species have been planted during the landscaping of the school grounds and none of the site constitutes intact or semi-intact communities which could be described as Blue Gum High Forest. For this reason, the development will have no impacts on any Blue Gum High Forest.

The Threatened Species Impact Assessment has been reviewed and supported by Council's Consultant Landscaped Architect. The threatened species identified on the site are unlikely to be significantly impacted by the proposed redevelopment and the development will not hinder the attainment of the objectives specified in section 5(a)(i) and (ii) of the Act.

**(a) Local Environmental Plan 2010**

Ryde LEP 2010 was published and commenced on 30 June 2010. Under this planning instrument the site is zoned part B3 Commercial Core and part B7 Business

**ITEM 12 (continued)**

Park. This planning instrument contains a saving provision (clause 1.8A) which states:

*If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies, and the application has not been finally determined before the commencement, the application must be determined as if this Plan had not commenced.*

This development application was lodged on 6 August 2008, before the commencement of this Plan and so the DA must be determined as if Ryde LEP 2010 had not commenced.

In this respect, the development is permissible with consent within the above zoning and the development is not contrary to any of the objectives in draft LEP 2010.

**(b) Ryde Planning Scheme Ordinance****Zoning**

The site is zoned part Business Special (Employment) 3(g) and part Business Special (Research and Development) 3(f) under the RPSO. The proposed development is permitted in both of these zones with the consent of Council.

**Mandatory Requirements**Clause 34(2) – Traffic Impacts

This clause of the Ordinance applies to developments that are likely to cause increased vehicular traffic on roads in the vicinity of the site. The clause requires Council to take the following matters into consideration:

- a. *Whether adequate vehicular entrances to and exits from the site have been provided so that vehicles using those entrances and exits will not endanger persons and vehicles using those roads.*

**Comment:** The development includes the construction of part of the road network required in Macquarie Park. A new intersection will be created where Road 3 joins Wicks Road. In accordance with the RTA requirements this road will be left in and left out. The road design is supported by the RTA.

Vehicular entrances to and from the building will be created from Road 3 as well as a driveway from future Road 16. Council's engineers have reviewed the plans which are considered to be acceptable subject to a minor change and will not endanger persons or vehicles using these roads. (See condition number 60).

- b. *The provision of space on the site of the building or development or on land adjoining the site, other than a public road, for the parking and standing of such vehicles as the responsible authority may determine.*

**ITEM 12 (continued)**

**Comment:** The development will provide a satisfactory amount of on site car parking and will be consistent with the car parking requirements specified in Clause 98 of the RPSO. Parking spaces for disabled persons as well as bicycle parking areas for 63 bikes including shower and change facilities will also be provided within the development. The layout of the on site car parking has been designed in accordance with AS2890.1-2004 which sets out the minimum requirements for the design of off street car parking facilities.

- c. Whether adequate space has been provided within the site of the building or development for the loading, unloading and fuelling of vehicles and for the picking up and setting down of passengers.*

**Comment:** The development proposes a loading dock on car parking level 2. This loading will be accessed via new Road 3 and Road 16. The loading area has been designed to accommodate medium rigid trucks. Adequate space has been provided to accommodate the future likely needs of the development.

Clause 42 – Advertising Signs

This clause of the Ordinance applies to the erection and display of advertising signs.

The current application does not propose any signage. Separate applications will be made to Council for business identification signage associated with future occupants of the development. The Development Control Plan provides appropriate design guidelines for business identification signs and any such application will be subject of a separate application. (See condition number 5).

Clause 93 – How will development be controlled?

This clause of the Ordinance requires Council to consider the following matters:

1. The planning principles and objectives for the corridor set out in Schedule 18 and clause 94.
2. The objectives and the development standards for floor space ratios set out in Clause 96.
3. The objectives and the development standards for building height set out in Clause 97.
4. The objectives and the development standards for off-street parking set out in Clause 98.

The planning principles are considered in the table below:

Planning Principles	Comment	Compliance
<b>1. Environmental Principles</b>		
To strongly define the public domain and active street frontages in the	The site is not located in the immediate vicinity of the railway station. The development will have frontage to three	Yes

**ITEM 12 (continued)**

Planning Principles	Comment	Compliance
areas surrounding the proposed railway stations, by close alignment of buildings to the street edge and selection of appropriate street-front uses.	streets that have been identified in the road network for Macquarie Park. Although the site is not required to provide active uses on any of the street frontages, it has incorporated active frontages on two of the three frontages. This will ensure that the development addresses the two streets and assist in providing an active street frontage. The building will also be appropriately setback from the new roads.	
To ensure a transition between the Corridor development and surrounding areas.	Part of the site forms the edge of the corridor along Epping Road. However, the development is located away from the edge of the corridor being setback a minimum of 140m from Epping Road. This distance, combined with the development complying with the intent of the height controls and floor space ratio, will ensure that there is unlikely to be an unacceptable impact on the surrounding areas. At some stage in the future there will be another building between this development and Epping Road. The footprint of this building will be critical to maintain the transition between the Corridor and the surrounding areas.	Yes
To ensure higher use of public transport (both rail and bus) by providing safe direct pedestrian and cycle links to bus stops and proposed station entries.	The development is proposing much of the road network that affects the entire site. There will be other opportunities to provide more of the road network as other parts of the site are redeveloped. As more of the site and adjoining properties are developed there will be improved pedestrian links between the building and the station entries and bus stops. The development does provide bicycle parking and rider amenities. In addition, the development provides less car parking than the maximum required by the planning controls which will also encourage the use of public transport.	Yes
To provide landscape and street details to unify areas within the Corridor and, where appropriate, integrate with the	As part of the development it is proposed to construct several streets. This work will be done as part of the VPA between Council and the applicant. These streets will be required to be constructed in	Yes

**ITEM 12 (continued)**

<b>Planning Principles</b>	<b>Comment</b>	<b>Compliance</b>
surrounding natural and built environments.	accordance with the requirements of the Macquarie Park Public Domain Technical Manual.	
To develop innovative, ecologically sustainable, flexible buildings and open spaces.	The proposed buildings will be targeting to achieve 5 Star Green Star rating and a report has been submitted to demonstrate how this can be achieved. A condition of consent has also been imposed to ensure that the development achieves this rating. (See condition number 39).	Yes
To pay special attention to the important interface between new buildings and open spaces, particularly the National Park and existing creek areas.	The site is not located in the vicinity of the National Park, any open spaces areas or existing creek areas.	Yes
To establish a permeable street pattern that provides several links to the surrounding street system and provides an internal grid system.	The Macquarie Park Corridor proposed access network map identifies several new roads on this site. As part of the VPA, it is proposed to construct Road 3 between Wicks Road and the northern boundary of the site, part of Road 11 which extends from Road 3 towards Waterloo Road and half road construction of Road 16 which extends from Road 3 to the rear of the hockey field. Due to the size of the site these are not the only roads required. As the site is further developed, the applicant intends to construct more of the road network. What is proposed to be constructed with this development, however, represents a major portion of the road network for the entire site.	Yes
To provide efficient layout of parking and loading facilities, screened from view of streets.	The parking and loading facilities will be required to comply with AS2890.1. All parking is located within the basement levels. However due to the slope of the land, these basement levels will extend beyond natural ground level and will be visible from proposed Road 3. The design has provided two retail outlets on the lower ground which will provide an active frontage as well as screening some of the carpark from view. The rest	Yes

**ITEM 12 (continued)**

<b>Planning Principles</b>	<b>Comment</b>	<b>Compliance</b>
	of the carpark wall that will be visible from Road 3 will be treated with stone tiling to the wall and slotted sandstone wall. These features will contribute to the building providing a clear base to the building as well as effective screening.	
To take advantage of northerly aspect to create pleasant outdoor public and semi-public spaces.	The development has proposed semi public open space areas to the north of the site on top of the podium above the carpark. In addition, public spaces will be created adjacent to the lower ground floor retail spaces.	Yes
To minimise overshadowing of open spaces	The site is not adjacent to any open space areas.	Yes
To provide a central public space that contributes to the vitality and sustainability of the Corridor.	Not applicable in this instance – as this principle refers to the Civic Heart to be located near the intersection of Waterloo & Lane Cove Roads.	Yes
To incorporate ecological sustainable development measures into the design of new developments in the areas of energy conservation, waste management, water conservation, and ecological enhancement.	The proposed development is acceptable. An ESD report has been submitted as part of the application outlining measures that will be put in place to maximise energy, water & ecological sustainability. The design aims to achieve a 5 Star Green Star rating. It is also proposed to include a condition on the consent requiring a further report to be provided following construction to verify that the development achieves a minimum 5 Star Green Star rating. (See condition number 39).	Yes
To minimise the impact of traffic noise on the occupants of future developments.	A condition of consent will be imposed requiring that the development comply with the requirements of AS/NZS 2107:2000 Acoustics – Recommended Design Sound Levels and Reverberation Times for Building Interiors. Such a condition will ensure the occupants of the future buildings are not adversely affected by traffic noise. (See condition number 42).	Yes

**ITEM 12 (continued)**

<b>Planning Principles</b>	<b>Comment</b>	<b>Compliance</b>
<b>2. Social Principles</b>		
To incorporate the principles of 'Safer by Design' into the design of all new buildings and open space areas.	The proposed development has been assessed against the CPTED principles and has been reviewed by NSW Police. Subject to appropriate conditions of consent as recommended by NSW Police in respect to lighting and signage to clearly identify service roads, the development is considered satisfactory. Specific conditions have been recommended (see condition numbers 52, 53, 54, 55 and 56).	Yes
To provide easy pedestrian and cycle access for both able-bodied and mobility impaired people, throughout the Corridor in the public domain and within private developments.	The roads to be constructed as part of the development are to be to Council's requirements and will allow for pedestrian and cycle access. The development will also provide an accessible path of travel through the building.	Yes
To improve pedestrian and cycle connections between the Corridor and surrounding residential areas and minimise environmental impacts on the locality generally.	The development will incorporate the construction of new roads that will be dedicated to Council. These streets will meet the Council's objectives in terms of providing improved pedestrian and cycleway paths which will enable a more permeable and amenable public domain.	Yes
To provide buildings that are designed to accommodate the needs of people with disabilities.	The development has been designed to incorporate the needs of people with disabilities. Appropriate conditions of consent will ensure that this occurs. (See conditions number 49 to 51).	Yes
To encourage the creation of common spaces within private developments that promotes social interaction.	The development proposal incorporates designated space for a future café. This space will be available for use by building occupants as well as the general public. In addition to this space, there is also proposed a commercial terrace along the northern elevation of the building that will be accessed from the 1 <sup>st</sup> floor of commercial floor space. This space will also promote social interaction.	Yes
To ensure that all buildings have easy, safe vehicular access and	By incorporating active frontages in the development it will help the building in having a street address. All vehicular	Yes

**ITEM 12 (continued)**

<b>Planning Principles</b>	<b>Comment</b>	<b>Compliance</b>
street address.	access will be required to comply with AS2890.1-2004 which will ensure safe vehicular access.	
To provide open space, located in a manner appropriate to interface with adjacent areas and provide recreation opportunities for workers.	The site is not required to provide any open space as identified in the LEP. The development does take advantage of being adjacent to the hockey field by half of the building being orientated towards the open space. The design has also included an outdoor terrace area on the carpark podium that will take advantage of the outlook of the hockey field.	Yes
To promote the notion of a viable and vibrant employment area with a central civic space in the vicinity of Macquarie Park Station, that provides a focus for community and government activities.	Not applicable in this instance as the central civic space will not be located on the subject site nor is the site in the immediate vicinity of the Macquarie Park Station.	Yes
To provide 24-hour access for authorised emergency vehicles in accordance with the relevant Australian Standards.	The proposal has been designed to comply with the BCA and it is required that access for emergency vehicles will be provided where relevant.	Yes
To provide buildings that is designed with well-defined and accessible entrances.	The proposal involves building entrances that satisfy this requirement.	Yes
<b>3. Economic Principles</b>		
To provide flexible buildings that are adaptable to the changing floor plate and layout needs of commercial and high-tech industries over time and also to suit a range of businesses.	<p>The proposal complies with this objective. The building has been designed as two wings with a full height and full length glazed atrium linking each wing. Each commercial floor of the wings will be approximately 2000m<sup>2</sup>. Although these floors are separated by the atrium, they are connected by a central bridge link that is located adjacent to the lift cores.</p> <p>A variety of different retail/commercial uses can also be provided on the ground floor level.</p>	Yes

**ITEM 12 (continued)**

<b>Planning Principles</b>	<b>Comment</b>	<b>Compliance</b>
To promote a central location for civic and government activities.	Not applicable to this site as it is not earmarked for such uses.	NA
To facilitate the continuance of “non conforming” uses in the short term.	Not applicable as the new building and uses therein will be subject to the current statutory controls.	NA
To permit limited residential uses in appropriate identified areas provided they do not undermine the economic viability.	Not applicable to this site.	NA

**Clause 94 – Objectives for the Macquarie Park Corridor**

This clause of the Ordinance provides a list of objectives applying to the Macquarie Park Corridor. The objectives are:

- (a) *To promote Macquarie Park Corridor as a premium location for globally competitive businesses with strong links to the university and research institutions and an enhanced sense of identity, and*
- (b) *To implement the State Government’s strategic objectives of integrating land use and transport, reducing car dependency and creating opportunities for employment in areas supported by public transport, and*
- (c) *To guide the quality of future development in the Corridor, and*
- (d) *To ensure that the Corridor is characterised by a high-quality, well designed and safe environment that reflects the natural setting, with three accessible and vibrant railway station areas providing focal points, and*
- (e) *To ensure that residential and business areas are better integrated and an improved lifestyle is created for all those who live, work and study in the area.*

The development will result in a new building that will have a contemporary appearance and a high standard of ecological sustainability and amenity which would allow for a variety of competitive businesses. The building will contribute to promoting Macquarie Park as a premium location for businesses. To take advantage of the close proximity to public transport, the development has incorporated pedestrian access through the site as well as not exceeding the maximum number of car parking spaces. As detailed further in the report, the development generally conforms to the planning controls adopted for Macquarie Park in respect to the planning principles, car parking and floor space. There is a larger variation in respect to height. This is a storeys control and due to changes in the definition of storeys now includes plant rooms and car parking that is 1.2 metre above natural ground level as a storey. Despite a variation to the numeric control, the development complies with the objectives of the height control and will result in a development that will have a bulk and scale that will be compatible with the locality.

**ITEM 12 (continued)**

The development complies with the objectives of the Macquarie Park Corridor.

**Clause 96 – Floor Space Ratio (FSR)**

The subject site has a floor space ratio of 1:1 as indicated on the “Ryde Local Environmental Plan No 137 – Macquarie Park Corridor - Floor Space Ratio Restrictions” Map (FSR Map) that accompanies the LEP. Where land is identified on this map as containing part of the proposed access network, additional floor space can be provided equivalent to the site area provided as access network.

The site area of this particular development consists of 18,031m<sup>2</sup>. Combining this with the bonus for the road network results in a maximum permitted floor space of 26,311.9m<sup>2</sup>.

The development has proposed a gross floor area of 27,340m<sup>2</sup>. This exceeds the control by 1,028.1m<sup>2</sup> or by 3.9% of the total permitted floor space.

The applicant has submitted a SEPP 1 in respect of the non-compliance.

In assessing the SEPP 1 objection, consideration should be given to the three part tests as set out by Chief Justice Preston in *Wehbe v Pittwater Council* [2007] NSW LEC 827. These tests are summarised as follows:

1. The applicant must satisfy the consent authority that the objection is well founded, and compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
2. The consent authority must be of the opinion that granting consent to the development application would be consistent with aim of the SEPP (Clause 3) of providing flexibility pursuant to in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in s5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979; and
3. It is also important to consider:
  - (a) Whether non-compliance with the development standard raises any matter of significance for State or regional planning; and
  - (b) The public benefit of maintaining the planning controls adopted by the environmental planning instrument.

**Test 1 – Is the Objection well founded?**

SEPP 1 provides that a development standard may be varied if it satisfies the underlying planning objectives behind that development standard. In this instance, the objectives of the floor space ratio requirements are as follows:

- to achieve a consolidation of development around railway stations, with the highest floor space ratios at the station nodes,
- to allow feasible development of the sites around railway stations and facilitate focal points at the station areas,
- to ensure that the peripheral locations of the corridor reflect the landscape needs and building setting requirements of the corporate building,

**ITEM 12 (continued)**

- to reinforce the importance and function of the central spine (Waterloo Road and Riverside Main Street) with suitable built form,
- to encourage the provision of a new street network,
- to provide incentives for redevelopment in return for the provision of the proposed access network as a public benefit.

The applicant has provided the following justification for the non-compliance:

- *The scale of the building is comparably lower in appearance to that of the adjoining buildings located to the northwest of the site, one of which is nine storeys in height. This difference in height is further exaggerated by the fact these adjoining sites are well elevated above the subject site. (See the following figure).*



Figure 1 – Eastern elevation of proposed building showing the scale and bulk of existing buildings north west of the site

- *The proposed cantilevered built form over the entries to the building, gives the building a light and refined appearance. This elevated design reduces the bulk of the building and provides architectural interest than if the building were to be developed over the same extent of the buildings footprint for every floor of the building.*
- *The building is less than 5 minutes walk to the newly opened Macquarie Park train station, such that it will encourage occupants of the building to use this new service as an alternative means of transport.*
- *The development will deliver a high level of amenity for workers through the provision of an extensive landscape setting and large useable public spaces, which is afforded in part due to cantilevering of the building's upper floor plates over the proposed courtyard space to the east of the building.*
- *The undeveloped hockey field site to the north allows for direct views of the building from Waterloo Road, such that the development will help to compensate for the scale and bulk of development comparable to that sought along Waterloo*

**ITEM 12 (continued)**

*Road until such time the hockey site is developed. Particularly given that there is an FSR of 2:1 under Ryde LEP 2010 applying to the hockey site.*

- *The development will deliver a significant proportion of the road network sought by LEP 137 that will support and encourage the future redevelopment of the broader former Peter Board High School site.*

The variation to the floor space ratio from the permitted control is 1,028.1m<sup>2</sup> or 3.9%. The increased bulk and scale will not be noticeable as the development is viewed in context with the other buildings in the immediate locality. The applicant's SEPP 1 has adequately addressed the objectives of the standard. For these reasons, the above comments from the applicant are supported and in this instance, the variation is considered to be well founded and compliance with the control is unreasonable and unnecessary in the circumstances of the case.

**Test 2 – Is granting consent to the development application consistent with the aim of the policy as set out in Clause 3 and Section 5(a)(i) and (ii) of the Act?**

Clause 3 of SEPP 1 includes the aim of the planning instrument which is to provide flexibility to development standards so as not to hinder the attainment of the objectives specified in S5(a)(i) and (ii) of the EP&A Act 1979.

The objectives of S5(a)(i) and (ii) of the EP&A Act 1979 are:

(a) *To encourage:*

- (i) *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 purposes of promoting the social and economic welfare of the community and a better environment;*
- (ii) *The promotion and co-ordination of the orderly and economic use and development of land.*

The applicant has provided the following comments:

*The objects of the Act as specified in Section 5(a) (i) and (ii) are in our opinion achieved by the proposed development in that it:*

- *Constitutes “proper management, development and conservation of natural and man-made resources”. In particular the proposed non-compliances with the standards for maximum building height and FSR will result in better internal efficiencies within the proposed building than if strict compliance were observed.*
- *Promotes “the social and economic welfare of the community and a better environment” by better utilising the existing resources and infrastructure of the community. Specifically, the proposal will generally be consistent with the desired future character of the area and will promote the use of public transport by those travelling to and from the proposed building, thereby reducing traffic and air quality impacts; and*
- *Will result in “the promotion and co-ordination of the orderly and economic use and development of land” by supporting the commercial function of the Macquarie Park centre and providing an appropriate mix of uses on the site.*

**ITEM 12 (continued)**

The above comments are supported. The reasons for the variation are considered to be well founded and in these circumstances, the objectives of the Act are considered to be achieved.

**Test 3b – What is the public benefit of maintaining the planning controls adopted by the environmental planning instrument?**

As demonstrated above, the variation as proposed will encourage the promotion and co-ordination of the orderly and economic use and development of the site as well as maintaining the objectives of the development standard. The public benefit of maintaining the planning controls is to ensure that development is consistent with the objectives of the Act. As demonstrated, despite not complying with the control, the development will still be consistent with the objective of the Act.

**Conclusion**

In these circumstances, the SEPP 1 objection is considered to be well founded and can be supported by Council.

**Clause 97 – Height of Buildings**

This clause of the Ordinance states that the height of a building on land within the Macquarie Park Corridor must not exceed the height shown for the land on the map marked “Ryde Local Environmental Plan No 137 – Macquarie Park Corridor – Height Restrictions” deposited in the office of the Council.

The LEP height map allows for a maximum height of 6 storeys.

The definition of storey in the RPSO means the space within a building situated between one floor level and the floor level next above or, if there is no floor above, the ceiling or roof above, but does not include a part of a building (such as basement) that does not extend more than 1.2 metres above natural ground level. This definition was amended pursuant to LEP 129 and now includes plant rooms and car parking levels that are more than 1.2 metres above natural ground level as a storey.

Due to the above definition of storey, the building will range from 6 storeys to 9 storeys. The development will contain 6 commercial levels. Due to the slope of the land the eastern end of the building will be 8 storeys due to the provision of car parking and retail areas that are located above natural ground level. The plant room will result in an overall maximum of 9 storeys. The western end of the building will be 6 storeys.

This building will not be readily visible from the existing street network. As part of the development however it is proposed to construct new infrastructure that will become part of the street network that Council is trying to introduce for Macquarie Park. The southern elevation of the building will have the greatest street frontage to proposed Road 3. From this street, the podium and the 6 commercial floors will be visible. As the plant room is setback, it will not be visible from the street. At the western end of the building, the podium will not be visible. However, as the building extends to the

**ITEM 12 (continued)**

eastern elevation, the podium will become more visible. This is demonstrated in the following diagram.



This figure demonstrates the southern elevation of the building. The orange line represents the developments compliance with the 30 metre height limit that is permitted under LEP 2010.

The applicant has submitted a SEPP 1 objection in respect of the variation. In assessing the SEPP 1, consideration will be given to the same three part tests as discussed under the floor space ratio part of this report.

**Test 1 – Is the Objection well founded?**

The non-compliance with the numerical requirement of this development standard is considered on its merits. SEPP 1 provides that development standards may be varied if it satisfies the underlying planning objective behind that development standard. In this instance, the objectives of the height requirement are as follows:

- To provide effective control over the scale and bulk of future development; and
- To concentrate building heights around the stations; and
- To provide focal nodes that clearly highlight the role of the stations; and
- To reinforce the important road frontages of Waterloo Road and Lane Cove Road.

The applicant has provided the following justification for the non-compliance:

- *The additional height and bulk for the development will not overshadow any neighbouring development (most notably the child care centre or the hockey field to the north) during the winter solstice between the hours of 9am and 3pm.*
- *When viewed in close proximity the building's plant room will not be visible to then add any apparent additional height or bulk to the building.*
- *The apparent bulk and scale of the development is less than the existing development to the north west of the site, given these adjoining buildings are of the same or greater height and are elevated well above the subject site.*
- *The development reinforces Council's objectives to locate the tallest buildings within Macquarie Park adjacent and in close proximity to the railway stations, with a gradual reduction in the scale of buildings as the distance from the station increases.*
- *The departure from the standard is deemed to be not as relevant given that the anticipated future height of development for the site is now 30 metres, and the*

**ITEM 12 (continued)**

*proposal marginally exceeds this height limit by 4 metres at its highest point at the roof top plant element of the building and 2.25 metres for the building itself.*

- *The cantilevered built forms over the eastern entry to the building, gives the building a light and refined appearance. This elevated design reduces the bulk of the building and provides architectural interest, than if the building were to be developed over the same extent of the buildings footprint to the height limit set by the development.*
- *The building will be of a scale to that of the adjoining buildings to the north west of the site that are closer proximity to the rail station, which will assist in Council's objective to reinforce the station's urban location and importance.*
- *The hockey field site to the north will provide direct views of the building from Waterloo Road, such that the development will help to compensate for the scale and bulk of development comparable to that sought along Waterloo Road until such time the hockey site is developed. Particularly given that there is a building height limit of 37 metres under LEP 2010 applying to the hockey field.*

The above comments are supported. Due to the timing of when this DA was submitted, it must be considered under the provisions of the RPSO which is based on a storeys control. This results in the development having a maximum variation of up to 3 storeys. However the current planning control (LEP 2010) permits a development with a maximum height of 30 metres. As demonstrated by the orange line on the above diagram, the height of the building will exceed this control in respect to the plant room and a small portion of the building towards the eastern elevation. As the plant room is setback from the elevations of the building, it will not be readily visible from the adjoining streets. As already discussed the variation to this control is numerically minor and is unlikely to result in any adverse material impact to the adjoining properties. In these circumstances, more weight should be given to the RLEP 2010 control rather than the storeys requirement of the RPSO.

In this instance, the applicant's SEPP 1 objection has demonstrated that compliance with the height control would be unreasonable and unnecessary. Also the SEPP 1 is considered to be well founded.

**Test 2 – Is granting consent to the development application consistent with the aim of the policy as set out in Clause 3 and Section 5(a)(i) and (ii) of the Act?**

Clause 3 of SEPP 1 includes the aim of the planning instrument which is to provide flexibility to development standards so as not to hinder the attainment of the objectives specified in S5(a)(i) and (ii) of the EP&A Act 1979.

The objectives of S5(a)(i) and (ii) of the EP&A Act 1979 are:

(b) To encourage:

- (iii) 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 purposes of promoting the social and economic welfare of the community and a better environment;
- (iv) The promotion and co-ordination of the orderly and economic use and development of land.

**ITEM 12 (continued)**

The applicant has provided the following comments:

*The objects of the Act as specified in Section 5(a) (i) and (ii) are in our opinion achieved by the proposed development in that it:*

- *Constitutes “proper management, development and conservation of natural and man-made resources”. In particular the proposed non-compliances with the standards for maximum building height and FSR will result in better internal efficiencies within the proposed building than if strict compliance were observed.*
- *Promotes “the social and economic welfare of the community and a better environment” by better utilising the existing resources and infrastructure of the community. Specifically, the proposal will generally be consistent with the desired future character of the area and will promote the use of public transport by those travelling to and from the proposed building, thereby reducing traffic and air quality impacts; and*
- *Will result in “the promotion and co-ordination of the orderly and economic use and development of land” by supporting the commercial function of the Macquarie Park centre and providing an appropriate mix of uses on the site.*

The above comments are supported. The reasons for the variation are considered to be well founded and in these circumstances, the objectives of the Act are considered to be achieved.

**Test 3 – What is the public benefit of maintaining the planning controls adopted by the environmental planning instrument and does the non-compliance raise any matter of significance for State or regional planning?**

The public benefit of maintaining the planning controls is to ensure that development is consistent with the objectives of the Act. As demonstrated above, the variation as proposed will encourage the promotion and co-ordination of the orderly and economic use and development of the site. In addition, the majority of the building complies with the height requirement as identified in LEP 2010. The numeric variation to the height control in LEP 2010 is small and the development will provide an acceptable urban design outcome with minimal impacts to the adjoining properties. Further, the non-compliance is not inconsistent with any State planning policies or regional plan.

**Conclusion**

In these circumstances, the SEPP 1 objection is considered to be well founded and can be supported by Council.

**Clause 98 – Off-street Parking Restrictions**

The objectives of the off street parking controls are as follows:

- To acknowledge accessibility by foot, bicycle and public transport;
- To support the management and supply of parking as the primary means to influence travel behaviour of employees; and
- To provide greater reliance on public transport; and

**ITEM 12 (continued)**

- To assist in the management of increased car usage and traffic congestion in the Corridor; and
- To ensure a greater mode shift to public transport.

This clause of the Ordinance states the off-street parking requirements for commercial and industrial development on land within Macquarie Park Corridor must not exceed the rate shown within Macquarie Park Corridor – Parking Restrictions” deposited in the office of the Council.

The LEP map indicates that the maximum rate of car parking applicable to this part of the site is in part 1 space per 46m<sup>2</sup> of Nett Useable Floor Area (NUFA) and in part 1 space per 70m<sup>2</sup> of NUFA.

The following table demonstrates the maximum car parking rates for this development.

Net Useable Floor Area (m <sup>2</sup> )	Parking Rate	Maximum Parking Required
9,537m <sup>2</sup>	1 space per 46m <sup>2</sup> of NUFA	207
14,882m <sup>2</sup>	1 space per 70m <sup>2</sup> of NUFA	213
<b>Total maximum number of car parking spaces - 420</b>		

The development may provide 420 car parking spaces. This control is a maximum control rather than a minimum control with the intent of the control to increase the use of public transport. The development will result in the provision of 309 car parking spaces within the new building.

The development will not exceed the maximum car parking rate specified under the LEP. As the site is well served by existing bus routes and is within easy walking distance to Macquarie Park railway station, the development will satisfy the objectives of the control as well.

**(c) Relevant SEPPs****State Environmental Planning Policy (Infrastructure) 2007**

The proposed development was identified within Schedule 3 of this SEPP and in accordance with Clause 104 was referred to the Roads and Traffic Authority for comment. The matter was considered by the Sydney Regional Development Advisory Committee on numerous occasions. On the final occasion, the following comments were provided to Council. (The RTA comments are in *italics* and any comment by Council's Officer has been identified in regular font).

1. *The RTA supports the proposed left-in left-out arrangements with a splitter island on Wicks Road. Council should ensure that the intersection design will deter right turn in and out movements from Road 3 and cater for the turn paths of the largest expected vehicle to service the Masterplan area.*

**Comment:** A condition of consent will require the applicant to submit detailed road plans which are to comply with various standards. These plans will be required to

**ITEM 12 (continued)**

demonstrate the RTA's requirements to Council's satisfaction. (See condition number 59).

2. *The RTA maintains its previous position regarding sight distance at the carpark access to new Road 3. The RTA recommends that sight distance be in accordance with AS2890.1 clause 3.2.4. If this cannot be achieved the RTA recommends that this access be closed and all traffic use the other access at the roundabout end of cul-de-sac.*

**Comment:** A condition of consent will be included to require the access to be relocated so that it does not adjoin the curve in Road 3. This will involve some minor redesign to the basement prior to this issue of a Construction Certificate. (See condition Number 60).

3. *The layout of the proposed car parking areas associated with the subject development (including driveways, grades, turn paths, sight distance requirements, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS2890.1-2004 and AS2890.2-2002 for heavy vehicle usage.*

**Comment:** This will be imposed as a condition of consent. (See condition number 63).

4. *Consideration should also be given to providing bicycle parking facilities either within the development or close to it, as well as end trip facilities such as showers, changing rooms, etc. to encourage bicycle use for travelling to and from the development.*

**Comment:** The development has incorporated at least 63 bicycle racks and lockers as well as end of trip facilities including lockers and showers for cyclists on carpark level 2. These facilities satisfies the RTA requirements. (See condition number 9).

5. *The applicant should be required to prepare a work place travel plan (WPTP) to encourage the use of alternative modes of transport. Furthermore the WPTP should ensure that any future tenants of the site are encouraged to stagger the start and finish times of employees as well as introducing car pooling and teleworking to minimise the impact on the road system.*

**Comment:** At this stage the development is for the erection of the building only as future possible tenant is not known. A detailed and effective WPTP needs to be tailored to the requirements of the specific workforce. For this reason it is proposed to include this as a condition of consent to be submitted with any development application for the occupation of the building. (See condition number 10).

**State Environmental Planning Policy no. 55 – Remediation of Land**

The objective of this Policy is to provide for a Statewide planning approach to the remediation of contaminated land. In particular, the Policy aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment by:

**ITEM 12 (continued)**

- (a) Specifying when consent is required, and when it is not required, for a remediation work, and
- (b) Specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work in particular, and
- (c) Requiring that remediation work meets certain standards and notification requirements.

The site has been continuously used as an educational facility (Peter Board High School) since 1961 until its closure in 1998 and subsequent demolition in 2007. Prior to this the site was used primarily for farming and orchards.

A site contamination report has been prepared by GHD (dated May 2008) which includes a review of the previous contamination reports that were prepared between 1999 and 2006. This report addresses the entire site of Peter Board High School. The GHD report has concluded that the site does not appear to have been subject to any potentially contaminating activities that may render the site unsuitable for the proposed development. The report does recommend some additional soil sampling be undertaken towards the site boundary with Wicks Road as there has been no analysis undertaken in this area. This area however is excluded from the site area of the development and will be required to be addressed in subsequent development applications for the site.

Council's Environmental Health Officer has reviewed the report and development application and has raised no objections to the proposed development.

**Deemed State Environmental Planning Policy Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

Deemed SEPP Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 applies to the subject site and has been considered in this assessment.

The site is located within the designated hydrological catchment of Sydney Harbour and therefore is subject to the provisions of the above planning instrument. However, the site is not located on the foreshore or adjacent to the waterway and therefore, with the exception of the objective of improved water quality, the objectives of this planning instrument are not applicable to the proposed development. The objective of improved water quality is satisfied through compliance with the provisions of Part 8.2 of DCP 2006. The proposed development raises no other issues and otherwise satisfies the aims and objectives of the planning instrument.

**Draft State Environmental Planning Policy No. 66 – Integration of Land Use and Transport**

Draft State Environmental Planning Policy No 66 ("DSEPP 66") was placed on exhibition by the Department of Planning in 2001. The Policy aims to ensure that land use planning decisions are coordinated with transport service provision and specifically, the provision of public transport.

**ITEM 12 (continued)**

The proposed development is considered to be consistent with the objectives of this policy as it is located within one of the centres identified in the State Government's Metropolitan Strategy for Sydney (released in December 2005).

Macquarie Park is categorised as a specialised centre expecting a 70% increase in its workforce between 2001 and 2031 (32,000 to 55,000) making it the 4<sup>th</sup> largest employment centres in the State behind the Sydney CBD, Parramatta and North Sydney.

The improvements in public transport expected with the completion of the Epping to Chatswood railway line will provide the necessary improvements in public transport capacity to allow for the future growth of this important employment centre.

**(d) Relevant REPs**

There are no relevant Regional Environmental Plans applicable to this development.

**(e) Any draft LEPs****Local Environmental Plan 2010**

As discussed earlier in the report, LEP 2010 contains a saving provision which requires the DA to be assessed under the RPSO and that LEP 2010 has the status of a draft planning instrument.

Under this draft planning instrument the site would be zoned part B3 Commercial Core and B7 Business Park. The development is permissible with the consent of Council. The LEP also contains controls in respect to height, floor space ratio, off street parking and objectives. Other than height, these controls are the same as what is contained in the RPSO. The height control has changed from storeys to metres. As a consequence of this change, there is only a small portion of the building which does not comply with the height control. The proposed development is considered satisfactory in respect of the provisions of draft LEP 2010.

**(f) Any DCP****Part 4.5 of DCP 2006 – Macquarie Park Corridor**

Control	Comments
<b>s3.0 – Structure Plan</b>	
<b>Street Network</b> Provide new public streets as shown in the Street Network Structure Plan.	As already discussed the development will provide for all of Road 3, part of Road 11 and the dedication of land for Road 16. The layout of these roads is consistent with the intent of the DCP.
<b>Open Space Network</b> Provide public open space as shown in	The site is not required to provide part of the open space network.

**ITEM 12 (continued)**

<b>Control</b>	<b>Comments</b>
Figure 4.5.06 Open Space Network.	
<b>s5.0 – Public Domain</b>	
<b>5.3 – General Public Domain Controls</b>	
<b>Cycle Strategy</b> 1. Provide dedicated cycle access in accordance with Ryde Bicycle Strategy & Master Plan 2007. 2. Provide lockable bicycle storage and end-of-trip facilities at train stations and within development.	The development will not impact on any of the cycle accesses proposed in Macquarie Park. Bicycle parking for a minimum of 63 bikes and shower and change rooms are provided on carpark level 2. (See condition number 9).
<b>Street Furniture, Paving and Street Lighting</b> 2. Utilise paving materials, furniture and lighting standards as identified in the Macquarie Park Public Domain Technical Manual.	The site has a street frontage to 3 proposed roads. As part of the development application, landscaping plans have been submitted to Council in respect of the roads which will form part of the road network for Macquarie Park. These plans have been considered by Council's City Landscaped Architect and comply with the public domain manual for Macquarie Park.
<b>Street Tree &amp; Front Setback Tree Planting</b> 1. Street trees and front setback must be provided in accordance with the Street Tree Key Plan in the Macquarie Park Public Domain Technical Manual, and their health guaranteed for a minimum of 5 years.	The applicant has proposed landscaped plans that demonstrate street trees that are consistent with the species identified in the Macquarie Park Public Domain. Council's City Landscape Architect has advised the street trees proposed along Road 16 should be changed to <i>Glochidion ferdinandii</i> (Cheese tree) and <i>Lophostemon confertus</i> (Brushbox). It is proposed to include a condition on the consent that will reflect this requirement as well as guarantee the health of these trees for 5 years. (See condition numbers 66 and 67).
<b>Community Facilities</b> 1. Community facilities are to be provided as required by the Ryde City Council's Section 94 Plan.	As part of the VPA, Section 94 contributions cannot be imposed. The value of the works proposed in the VPA combined with the monetary contributions is equivalent to the Section 94 that would be generated as part of this development application.
<b>Public Art</b> 1. Public art must be included in all new development on sites over 15,000sqm. 2. A site specific Arts Plan is to be included in a Stage 1 DA or Master	The applicant has not provided a public art plan and has indicated that they would be happy to provide the plan prior to the issue of an Occupation Certificate. This timing was suggested so that the public art respects and complements the final

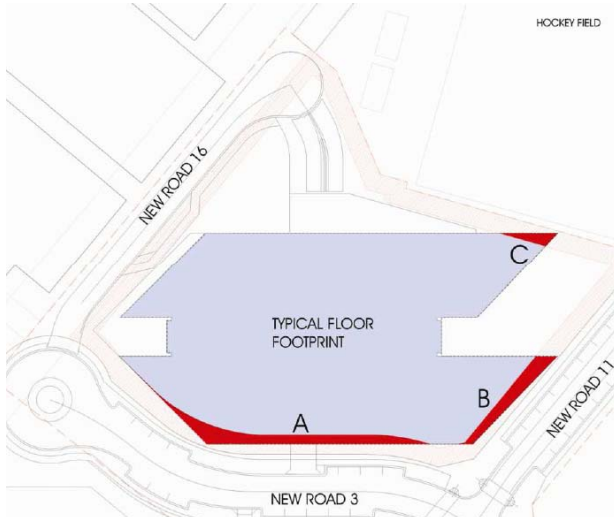
**ITEM 12 (continued)**

Control	Comments
Plan and submitted together with the DA.	building designs. The objective of requiring public art within the Macquarie Park Corridor is to develop iconic points of reference or focal points that promote identity and add to the character and enjoyment of the area. This could be completed prior to Occupation Certificate. A condition of consent will be imposed advising that the art work must be in accordance with the objectives and strategy of clause 5.3.5 of Part 4.5 of DCP 2010. The public art plan would be required to be approved by Council and constructed prior to the issue of an Occupation Certificate. (See condition number 98).
<b>s6.0 – Site &amp; Building Design</b>	
<b>6.1 – General Built Form Controls</b>	
<b>Height Controls</b> <ol style="list-style-type: none"> <li>1. Building heights are to comply with the RPSO and Ryde LEP 2010 Amendment 1.</li> <li>2. Council may consider a variation to the building height controls where the development is providing a public benefit such as detailed in the LEP 2010 Access Network or Environmental Excellence Provisions.</li> </ol>	This issue has already been addressed in the report.
<b>Floor Space Ratio Controls</b> <ol style="list-style-type: none"> <li>1. Floor space ratios are to comply with the RPSO and Ryde LEP 2010, Amendment 1.</li> <li>2. Council may consider a variation to the floor space ratio control where the development is providing a public benefit.</li> </ol>	This issue has already been addressed in the report.
<b>Site Planning &amp; Staging</b> <ol style="list-style-type: none"> <li>1. Sites are to be planned to allow for the future provision of new streets and open spaces in accordance with Ryde LEP 2008 Amendment 1 – Access Network.</li> <li>2. Buildings are to be sited to address existing and new frontages in the following order of precedence: <ol style="list-style-type: none"> <li>a) Primary frontages: These are located along existing streets</li> </ol> </li> </ol>	The development will allow for the future roads to be provided. Both Roads 11 and 3 have been identified as secondary frontages and Road 16 as a staged development frontage. The development has proposed two pedestrian entries. One of these pedestrian entries faces new Road 11. This entry proposes retail uses adjacent to the entry which will help to activate the street frontage. The second entry is off Road 16 and this entry

**ITEM 12 (continued)**

Control	Comments
<p>(typically Type 1 or 2 streets).</p> <p>b) Secondary frontages: these are generally existing, or new Type 2 or 3 streets.</p> <p>3. Front door and street address is to be located on the primary frontage. Loading docks, vehicular access is not permitted to be located on the primary frontage unless it can be demonstrated that there is no alternative.</p> <p>4. Staged development frontages: these are new streets which may take a longer time to deliver due to the number of sites they traverse, and provide limited access and frontage opportunities in the short term.</p>	<p>is likely to be used by pedestrians as it is located closest to the train station. Car parking access is located off Road 3 as well as Road 16. The development complies with the requirements of this clause.</p>
<p><b>Street Setbacks &amp; Built-To Lines</b></p> <p>1. The development is to provide a minimum setback of 5 metres to Roads 11, 3 and 16.</p> <p>2. Underground parking is not permitted to encroach into the setback areas unless it can be demonstrated that the basement is designed to support significant mature trees and deep root planting.</p> <p>3. Awnings, canopies, balconies, sun shading and screening elements can project forward of the street setback line.</p> <p>4. <u>5m setbacks</u> 60% of the street setback area is to be soft landscaping. Existing mature trees are to be retained where possible. Paved areas are to relate to the materials and finishes of the adjacent streetscape. At grade car parking must not be located within this setback.</p>	<p>The development is required to be setback 5 metres from Roads 11, 3 and 16. The development has been broken up into distinct forms, being a podium base at ground floor and two separate wings of office accommodation above. These wings extend beyond the podium. The podium level of the building complies with the required setbacks, however the wings result in areas of non-compliance. It should be noted that the development fully complies with the required setbacks for Road 16 and the breaches occur for Roads 3 and 11.</p> <p>In respect of Road 3, the majority of the upper 5 levels of the building are setback 3.8 metres. Where the road curves, the building is setback a minimum of 0.5 metres and the other part of the building has a maximum setback of 6 metres.</p> <p>In respect of Road 11, the breach in setbacks occurs for the southern wing of the building. This part of the building is setback between 2.4 metres and 4.9 metres.</p>

**ITEM 12 (continued)**

Control	Comments
	<p>These non-compliances for the upper levels of the building are demonstrated on the following diagram.</p>  <p>The objectives of the setback control is to enhance the existing character of streets within the Corridor, to create new streets which contribute to the character and identity of the corridor, to increase pedestrian amenity, provide sight lines to the train stations and retain and reinforce the green character of setbacks. Roads 11 and 3 will not provide sight lines to the train station nor do they contribute to the green character of setbacks. As a result of the podium and level 1 of the building complying with the required setback, the development will create pedestrian amenity at the street level as well as defining the street layout.</p> <p>The variation to street setbacks is considered acceptable.</p>
<p><b>Side &amp; Rear Setbacks</b></p> <ol style="list-style-type: none"> <li>1. On other sites, buildings are to be setback 10m from a rear and 5m from a side site boundary.</li> <li>2. Awnings, canopies, balconies, sun shading and screening elements can project into the side or rear setback zones.</li> <li>3. Basement carpark structures should not encroach into the minimum required side or rear setback zone unless the structure can be designed</li> </ol>	<p>The development requires a 5 metre setback to the hockey field. The podium has been setback 6 metres however part of the northern commercial wing proposes a zero setback. The upper floors of this commercial wing range from the zero setback to 12 metres. The non-compliance with the 5 metre control occurs for a distance equivalent to 19 metres. Given that the entire setback is varied and the podium complies with the setback control, this variation is likely to</p>

**ITEM 12 (continued)**

<b>Control</b>	<b>Comments</b>
<p>to support mature trees and deep root planting.</p> <p>4. Natural ground level is to be retained throughout the side and rear setbacks, where possible.</p>	<p>add visual interest to the building as viewed from the hockey field. It is also unlikely that the non-compliance would affect the amenity of the hockey field. In these circumstances, no objection is raised to the variation.</p>
<p><b>Building Separation</b></p> <p>1. Provide a minimum 20m separation between buildings facing each other within a site.</p> <p>2. Provide a minimum 10m separation between buildings perpendicular to each other within a site. This reduced building separation control only applies where the width of the facing facades do not exceed 20m.</p>	<p>There are no other buildings on this site other than the child care centre located adjacent to Waterloo Road. These two buildings are separated by a distance greater than 20 metres. The proposed building will have no adverse impacts on the child care centre.</p> <p>The proposed development is located at least 20 metres from the buildings on the adjoining sites.</p>
<p><b>Building Bulk</b></p> <p>1. All buildings must comply with Section 6.1.15 of the DCP (Environmental Performance).</p> <p>2. The preferred distance of any point on a habited floor from a source of natural daylight is 12m.</p> <p>3. Atria and courtyards are encouraged to promote access to natural light, pedestrian links and slender building forms.</p>	<p>The development will comply with section 6.1.15 of the DCP. The development has incorporated an atrium on the ground floor and the atrium void extends through the centre of the building with the two commercial wings located off the atrium. The provision of the atrium will ensure that each habitable floor is located at least 12 metres from natural daylight.</p>
<p><b>Site Coverage &amp; Deep Soil Areas</b></p> <p>1. A minimum 20% of a site must be provided as deep soil area.</p> <p>2. Deep soil must be at least 2m deep.</p>	<p>The site will provide approximately 20% as deep soil area. The development complies with the requirements of this clause.</p>
<p><b>Building Articulation</b></p> <p>1. Facades are to be composed with an appropriate scale, rhythm and proportion, which responds to the building use and the desired character by:</p> <p style="padding-left: 40px;">a) Facades are to be composed with an appropriate scale, rhythm and proportion, which respond to the building use and the desired character.</p> <p>2. Façade design is to reflect and respond to the orientation of the site using elements such as sun shading and environmental controls where appropriate.</p>	<p>The building design is contemporary and it has incorporated a base, middle and top. The scale, rhythm and proportions will contribute to the various uses within the building as well as contributing to a building that will add visual interest to the area.</p> <p>The provision of the two wings results in the visual prominence of the corners of the building as viewed from both Roads 11 and 16.</p> <p>A condition of consent will be imposed to</p>

**ITEM 12 (continued)**

<b>Control</b>	<b>Comments</b>
<p>3. Important corners are to be expressed by giving visual prominence to parts of the façade (ie a change in building articulation, material or colour, or roof expression).</p> <p>4. Building services such as roof plant and parking ventilation are to be coordinated and integrated with the overall façade and building design, and screened from view. Roof forms, building services and screening elements are to occur within the overall height control.</p>	<p>require the provision of services to be incorporated into the building. (See condition number 41).</p>
<p><b>Ceiling Heights</b></p> <p>1. Maximum ceiling heights are to be provided as follows: Minimum dimensions are measured from finished floor level to finished ceiling level:</p> <ul style="list-style-type: none"> <li>• Ground level – 3.6m</li> <li>• Upper levels – 2.7m</li> </ul>	<p>The upper floors of the development have a floor to ceiling height of 2.7 metres. Due to the slope of the site, there are two ground floors. The ground floor on the eastern end of the building proposes a café or other retail use. The floor to ceiling height of this part of the building is 4.7 metres. At the western end of the building, the use of the ground floor is commercial with a floor to ceiling height of 2.7m. This is not the main entry to the building and the use of this floor is unlikely to be anything other than commercial. No objection is raised to the floor to ceiling height.</p>
<p><b>Active Frontages</b></p> <p>1. Continuous ground level active uses must be provided where primary active frontages are shown in figure 4.5.94 of the DCP.</p> <p>2. Active uses are defined as one or a combination of the following:</p> <ul style="list-style-type: none"> <li>a. shop fronts.</li> <li>b. Retail/service facilities with a street entrance.</li> <li>c. Café or restaurants with street entrance.</li> <li>d. Community and civic uses with a street entrance.</li> <li>e. Recreation and leisure facilities with a street entrance.</li> <li>f. Commercial or residential</li> </ul>	<p>The site does not contain any primary or secondary active edges for the purposes of the DCP. For this reason, this clause is not applicable to the development. Regardless of this, the development has incorporated active uses on the ground level of the building which will front the intersection of Roads 3 and 11. These active uses consists of two retail shopfronts, 1 of which may possibly be a café and the commercial entry to the building.</p>

**ITEM 12 (continued)**

Control	Comments
lobbies with a street entrance.	
<b>Awnings &amp; Canopies</b> <ol style="list-style-type: none"> <li>1. Continuous awnings must be provided where primary active frontages are shown in Figure 4.5.94 of the DCP. Entry canopies and discontinuous awnings and entry canopies are permitted elsewhere in the corridor.</li> <li>2. Entry canopies and discontinuous awnings may be provided to building entries not located along active frontages.</li> <li>3. Entry canopies may be glazed or solid, and are to be coordinated with the overall façade design.</li> <li>4. Provide canopies with a soffit height of 3.6m – 4.2m.</li> </ol>	<p>The site is not required to provide an awning or canopy.</p> <p>The design of the development on the eastern elevation provides for a entry canopy. The upper part of the building will extend over the ground floor which will assist in defining the entry to the building. The development complies with the requirements of this clause.</p>
<b>Topography &amp; Building Interface</b> <ol style="list-style-type: none"> <li>1. Level changes across sites are to be resolved within the building footprint.</li> <li>2. Where buildings are setback from the street boundary, entries are to be provided at street level wherever possible.</li> <li>3. An accessible path of travel is to be provided from the street through the main entry door of all buildings.</li> <li>4. Where necessary, stairs and ramps are to be integrated with the landscape design of front setbacks.</li> </ol>	<p>The development has incorporated level changes within the footprint of the building. Due to the slope of the site the development has incorporated two pedestrian entries to the building as well as providing an accessible path of travel.</p>
<b>Advertising Signage</b> <ol style="list-style-type: none"> <li>1. Signage shall comply with Part 9.1 of the DCP.</li> </ol>	<p>Signage would be the subject of a future development application. A condition of consent has been included advising that no approval has been granted for any signage. (See condition number 5).</p>
<b>Environmental Performance</b> <ol style="list-style-type: none"> <li>1. Commercial development is required to achieve a 4 Star Green Star Certified Rating.</li> </ol>	<p>A condition of consent will be imposed to ensure that the development achieves a minimum 5 Star Green Star Design rating. (See condition 39).</p>
<b>Wind Impact</b> <ol style="list-style-type: none"> <li>1. Buildings shall not create uncomfortable or unsafe wind conditions in the public domain which exceeds the Acceptable Criteria for</li> </ol>	<p>The application has been accompanied by a wind environment statement. This report has concluded that the proposed development will not have any adverse effects to the wind conditions to the local surrounding streets and pedestrian</p>

**ITEM 12 (continued)**

<b>Control</b>	<b>Comments</b>
<p>Environmental Wind conditions.</p> <p>2. All applications for buildings over 5 storeys in height shall be accompanied with a wind environment statement.</p>	<p>footpaths and thoroughfares.</p>
<p><b>Noise &amp; Vibration</b></p> <p>1. An Acoustic Impact Assessment report prepared by a suitably qualified acoustic consultant is required to be submitted with all development applications for commercial, industrial, retail and community buildings, with the exception of applications minor building alterations.</p>	<p>The applicant has submitted an acoustic report in respect of the development. Appropriate conditions of consent will be imposed to ensure that the development complies with the recommendations in this report. (See condition number 42).</p>
<b>6.2 – Private &amp; Communal Open Space</b>	
<p><b>Landscaping &amp; Communal Courtyards</b></p> <p>1. A minimum 30% of the developable area of the site is to be provided as Landscaped Area.</p> <p>2. Solar access to communal open spaces is to be maximised. Communal courtyards must receive a minimum of 3 hours direct sunlight between 9am and 3pm on 21 June.</p>	<p>The site has provided approximately 20% of the site area as landscaped area. All of this space plus the terrace area located on the northern part of the building will provide communal areas. These areas will receive adequate daylight. As the area of this site is significantly limited due to the location of the roads, the extent of landscaping and communal open areas is considered satisfactory.</p>
<p><b>Pedestrian Through-Site Links</b></p> <p>1. Pedestrian through site links must be provided in accordance with the Pedestrian Access Corridors as shown in the Ryde LEP 2008 Amendment 1 – Access Plan or as required by Council.</p> <p>2. Provide access in accordance with Part 9.2 of DCP 2010 – Access for People with Disabilities.</p>	<p>The site is not required to provide any pedestrian through site links.</p> <p>The development has incorporated access in accordance with Part 9.2 of DCP 2010 – Access for People with Disabilities.</p>
<p><b>Planting on Structures</b></p> <p>1. Where planting is proposed on structures, adequate irrigation and drainage is to be provided.</p>	<p>Raised planter boxes are to be provided on the podium. The depth of these planter boxes will be adequate to allow planting.</p>
<b>6.3 – Services &amp; Site Management</b>	
<p><b>Floodplain Management</b></p> <p>1. All stormwater leaving the site, at any time, up to a 1-in-20 year stormwater event, is treated/filtered in accordance with ANZECC Guidelines</p>	<p>The development application has been assessed by Council's Engineers and has been found to be satisfactory.</p>

**ITEM 12 (continued)**

<b>Control</b>	<b>Comments</b>
<p>for Urban Stormwater management.</p> <p>2. Development must not increase peak stormwater flows for rainfall events of up to 1-in-2 year storm.</p>	
<p><b>Stormwater Drainage</b></p> <p>1. Development shall comply with the requirements outlined in the Stormwater Drainage Section of the DCP and is to provide a stormwater drainage system in accordance with the “major/minor” system concept set out in Australian Rainfall and Runoff.</p>	<p>The development application has been assessed by Council's Engineers and has been found to be satisfactory.</p>
<p><b>Waste Management</b></p> <p>1. All applications for demolition and development must be accompanied by a Waste Management Plan that specifies the type of waste to be produced and the proposed arrangements for ongoing waste management, collection and disposal.</p>	<p>The DA was accompanied by a Waste Management Plan. Given that the development has been amended slightly since the original waste management plan was submitted, a condition will be imposed requiring a new waste management plan to be submitted with the Construction Certificate. (See condition number 48).</p>
<p><b>Soil Management</b></p> <p>1. Development is to be designed and constructed to integrate with the natural topography of the site to minimum the need for excessive sediment disturbance and prevent soil loss. Effective soil management and maintenance practices are to be followed to prevent soil loss.</p>	<p>The development has been conditioned to ensure that appropriate sediment and erosion control measures will be implemented. (See condition number 64).</p>
<p><b>Site Contamination</b></p> <p>1. Prior to the submission of subdivision and development applications, a suitably qualified environmental engineer on behalf of the applicant is to assess whether the subject land is contaminated.</p>	<p>The application has been accompanied by a contamination report. This report has concluded that the site does not appear to have been subject to any potentially contaminating activities (past or present) that may render the site unsuitable from a contamination perspective for the intended development. This report has been supported by Council's Environmental Health Officer.</p>
<p><b>Site Facilities</b></p> <p>1. Vehicular access to loading facilities is to be provided from secondary and tertiary streets where possible.</p> <p>2. Rubbish and recycling areas must be provided in accordance with the DCP.</p>	<p>Vehicular access is proposed from proposed Road 3 and 16. As these are both tertiary streets, the development satisfies the DCP requirement.</p>

**ITEM 12 (continued)**

Control	Comments
<b>Vehicular Access</b> <ol style="list-style-type: none"> <li>Vehicle access is to be from secondary streets and not active frontages.</li> <li>Potential pedestrian/vehicle conflict is to be minimised.</li> </ol>	<p>The location of the vehicular access complies with the DCP requirements.</p>
<b>On-Site Parking</b> <ol style="list-style-type: none"> <li>Safe and secure 24 hour access to car parking areas is to be provided for building users.</li> <li>Provide safe and direct access from parking areas to building entry points.</li> <li>Basement parking areas should be located directly under building footprints to maximise opportunities for deep soil areas unless the structure can be designed to support mature plants and deep root plants.</li> <li>Basement parking should be contained wholly beneath ground level along public streets. Where this cannot be achieved due to topography, the parking level must protrude no more than 1.2m above ground level for no more than 60% of the building frontage along the public street.</li> <li>Ventilation grills or screening devices of carpark openings are to be integrated into the overall façade and landscape design of the development.</li> <li>Along all street frontages, above ground parking levels are to be laminated with another use for a minimum depth of 10m.</li> </ol>	<p>As previously advised the basement carpark does exceed 1.2 metres above natural ground level. For the car parking that exceeds natural ground level the design has incorporated a sandstone wall which in part will also be a slotted sandstone wall. This will ensure an acceptable design solution as viewed from the adjoining street.</p> <p>The development has incorporated safe and direct access from the basement car parking areas to the building entry points as well as providing 24 hour access to the car parking areas.</p>
<b>Work Place Travel Plan (WPTP)</b> <ol style="list-style-type: none"> <li>A WPTP is required for all developments that exceed 15,000sqm floor space or 300 employees.</li> <li>Large sites shall employ a suitably qualified workplace travel coordinator to implement the objectives and strategies of a WPTP.</li> </ol>	<p>At this stage, the number of employees is not known as there is no tenant for the building. Accordingly, a WPTP has not been submitted with the DA. The DA will include a condition on the consent to require the submission of the WPTP with the future tenant DA. (See condition number 10).</p>

**ITEM 12 (continued)**Part 7.2 – Waste Minimisation & Management

A concept waste management plan has been submitted with the development application. Given that the precise nature of future tenants of the buildings is not known at this stage, much of the detail related to the waste management requirements cannot be determined. For this reason, it is necessary to impose conditions that require the submission of detail at a later date.

It is also expected that when tenants become known, separate development applications will be lodged for use/internal fit-out. It is at that time that much of the detail concerning waste management will be finalised. In the meantime, appropriate conditions of consent have been incorporated into the recommendation to ensure compliance with the general objectives of the DCP (see condition number 48).

Part 8.1 – Construction Activities

This part of the DCP replaces DCP 42 – Construction Activities. The main construction issues relevant to this proposal will be managing water quality by preventing soil erosion, the management of construction traffic and parking of builder's vehicles, construction noise, dust and the like.

These matters have been addressed by way of appropriate conditions of consent.

Part 8.2 – Stormwater Management

Council's Development Engineer has reviewed the proposed development and advised that the stormwater design complies with the requirements of Part 8.2 of DCP 2006.

Part 9.2 – Access for People with Disabilities

The requirements of Part 9.2 of the DCP apply to the proposed office development. The accessibility requirements of the proposal are that the ground floor and all subsequent floors must be accessible to all people with disabilities, via the provision of a continuous accessible path of travel to and through the entrance, with door and doorways of appropriate design to be used by people with a disability, and appropriate tactile ground surface indicators, furniture, and sanitary facilities.

The applicant has provided an Access Review completed by Morris-Goding Accessibility Consulting which demonstrates that the development complies with the access arrangements and provides appropriate recommendations. Due to the complexity of this proposal and the importance of ensuring an appropriate level of disabled access is provided, Council engaged the services of Elton Consulting to undertake a review of the development proposal. This review has identified the following issues:

*“The scale and lack of detail on the drawings are such that they do not conclusively demonstrate compliance with requirements for uninterrupted paths of travel or internal movement. More information is needed on building drawings to demonstrate*

**ITEM 12 (continued)**

*what the level changes are and whether level differences have been appropriately addressed to provide a continuous accessible path of travel, particularly with regard to:*

- *Building entry two to the west of the development.*
- *The southern retail tenancies and adjacent perimeter footpath leading to the building entry forecourt.*
- *Access and change in levels between interior commercial floor 1 and exterior terrace.*

*It may be sufficient to address identified issues by way of conditions of consent requiring compliance, as it appears that the site and the general building layout is capable of meeting the relevant standards.'*

The first two issues raised by Elton Consulting have been addressed in the applicant's Access report and it demonstrates that the development will comply with the appropriate access recommendations. The report fails to address the change in levels between the commercial floor 1 and the exterior terrace. It is intended to impose two conditions on the consent. The first condition will require the development to comply with the recommendations of the access report and the second condition will require the applicant to demonstrate that appropriate disabled access can be achieved to the terrace. This is likely to be achieved with the provision of a ramp. (See condition numbers 50 and 51).

**Any Planning Agreement that has been entered into under Section 93F, or any Draft Planning Agreement that a Developer has offered to enter into under Section 93F**

A Voluntary Planning Agreement (VPA) was submitted with the development application and has been notified together with the development application, in accordance with Council's Development Control Plan 2006.

The requirements for VPA's under the Environmental Planning and Assessment Act 1979 are detailed in Section 93F. A VPA is a voluntary agreement between a planning authority and developer where the developer makes an offer to Council to provide a public benefit which is used for or applied towards a public purpose. In this instance the VPA has made the following offer:

- A monetary contribution of approximately \$513,898.80.
- Construction and dedication of Road 3 between Wicks Road and the northern boundary of the land to a width of 20.4 metres.
- Construction and dedication of Road 11 from the junction of Road 3 to approximately the corner of the hockey fields.
- Construction and dedication of part of Road 16 from the corner of the junction of Road 3 to the corner of the hockey fields.
- Construction of a new roundabout at the intersection of Road 3 and Road 16 and the turning circle at the end of Road 16.

**ITEM 12 (continued)**

For the purposes of the Act, the above offer satisfies the definition of a public purpose. The VPA also identifies the obligations of the Developer and the Council should the planning agreement be entered into by the parties.

The merits of the planning agreement are as follows:

- (a) The benefits and their estimated value under the proposed planning agreement are outlined in Table 1 below:

<b>Agreement offer</b>	<b>Estimated offer value (excluding GST)</b>
Construction and dedication of a new Road 3 between Wicks Road and the northern boundary of the land to a width of 20.4 metres including reserve to align road at Wicks Road.	\$1,820,069
Construction and dedication of a new Road 11 from the junction of Road 3 to the corner of the hockey field.	\$400,696
Construction and dedication of part of Road 16 from the junction of Road 3 to the corner of the hockey field.	\$415,219
Construction of a new roundabout at the intersection of Road 3 and Road 16 and the turning circle at the end of Road 16.	These costs have been included in the above figures.
A monetary contribution towards essential capital Council works. Note: This amount would be subject to CPI increases in accordance with Council's Section 94 Contribution Plan.	\$528,331.15
<b>Total</b>	<b>\$3,164,315.00</b>

- (b) At the time that the VPA was considered by the VPA Panel in February 2011, the Section 94 that would be required to be paid was equivalent to \$3,164,315.00. The total value of the public benefits as identified above are equivalent to the contributions that would be applicable if S94 applied to the development. This will satisfy the community benefit test.
- (c) The creation of a roadway in accordance with the Macquarie Park Structure Plan to facilitate traffic flow and movement in the area.
- (d) Increase the pedestrian networks available in the area.

The merits of the VPA have been assessed by Council's internal VPA Panel. This was chaired by Council's Group Manager Environment and Planning and included the General Counsel, Access Manager, Traffic Engineer, Landscape City Architect and a Client Manager. The VPA Panel initially raised various issues with the VPA.

**ITEM 12 (continued)**

The VPA was subsequently amended and has been considered satisfactory by the Chair of the VPA Panel as well as Council's General Counsel and Access Manager.

A condition of consent has been included to ensure that the VPA is registered on the title of the land by the applicant prior to the issue of a Construction Certificate for the development. (See condition number 2). Conditions have also been imposed to ensure the public domain work is completed and the monetary contribution paid prior to the issue of an Occupation Certificate. (See condition numbers 100 and 101).

If Council is of the view not to agree with the VPA, it would be necessary to include a condition on the consent requiring the payment of Section 94 Contributions which reflect the current quarter.

**9. Likely impacts of the Development****Vegetation**

The site includes approximately 360 trees. These trees are mostly located around the perimeter of the site and most appear to have been planted during the construction of the school. The development involves the removal of 193 trees from the site. Of these trees, 13 have been identified as dead and 20 as exempt species from Council's Tree Preservation Order. The remaining 160 trees are located within or have significant incursions with their critical root zone by the construction of the proposed development. The following table identifies the species of trees to be removed as well as the number of that species to be removed.

<b>Number of trees of a particular species to be removed</b>	<b>Species name</b>
1	Sydney green wattle; Scarlet bottlebrush; Port Jackson fig; Hoop pine; Fan palm; Jacaranda; Italian cypress; Red mahogany; Prickly leaved paperbark; Forest red gum; Peppercorn; Red ironbark; Lombardy poplar; London flame tree; False acacia; Illawarra flame tree; Bhutan cypress; Port Jackson cypress; Sydney peppermint; Pinus.
2	Spotted gum; River sheoak; Camellia; Cottonwood; Parramatta river gum; Ironbark; Chinese elm; Bottlebrush; Broad leaved paperbark; River peppermint; Magenta lillypilly.
3	Narrow leaved peppermint; Grey ironbark; Blackbutt; Willow bottlebrush.
4	Sydney blue gum; Turpentine.
5	Ash; Bracelet honeymyrtle.
6	Swamp mahogany.
7	Lemon scented gum; Wallangara white gum.
8	Grey gum.
9	Swamp mahogany.
10	Tallowwood.
17	Unidentified Eucalypt species.
24	Brushbox.

**ITEM 12 (continued)**

Of these trees only the Wallangarra White Gums and Narrow-leafed Black Peppermint trees are identified as either endangered or vulnerable under the NSW Threatened Species Conservation Act or the Commonwealth Environment Protection and Biodiversity Conservation Act. This matter has already been discussed earlier in the report where it has been concluded that although the trees will be removed it will be unlikely to be a threat to the species.

The site does not contain any Blum Gum High Forest despite having some species that belong to the endangered community as these trees are not remnant trees.

As a result of the development there will be some replacement tree planting. This will mostly be located in the public domain areas as well as the setbacks of the buildings. This planting will contribute to replacing some of the loss amenity as a result of the removal of the trees.

Council's Consultant Landscape Architect has raised no objections to the development.

**10. Suitability of the site for the development**

The site is not classified as a heritage item or subject to any natural constraints such as flooding or subsidence. In this regard, the proposal is considered to be suitable for the site in terms of the impact on both the existing natural and built environments.

**11. The Public Interest**

The proposal is considered to be in the public interest as it will provide for increased employment opportunities within the Macquarie Park employment area as well as being consistent with the objectives of the planning instruments.

**12. Consultation – Internal and External**Internal Referrals

**Development Engineer:** No objections have been raised to the proposed development subject to appropriate conditions of consent.

**Consultant Landscape Architect:** The removal and construction management of trees for Stage 1 is considered satisfactory, however further detailed assessment of trees in later stages will be required. In this regard the retention of Scribbly Gums and a naturalistic edge along the Wicks Road frontage should be considered and significant groupings of Tallow Woods and Turpentine in the south-eastern portion of the site should be considered for retention in any new proposal.

Landscaping plans for stage 1 appear to be satisfactory in terms of providing a unified concept that adequately addresses replacing the amenity of trees to be removed.

**ITEM 12 (continued)**

**City Landscape Architect:** The landscape plans fully comply with the public domain manual for Macquarie Park. However, I would like a change in the street tree species along the road marked as "Assess No. 1" to *Glochidion ferdinandii* (Cheese Tree) and *Lophostemon confertus* (Brushbox). (This has been incorporated into condition number 66).

**Environmental Health Officer:** No objections have been raised to the proposed development subject to appropriate conditions of consent.

**Traffic Engineer:** Council's Traffic Engineer has requested that the applicant provide a turning path analysis along Road 3 and Road 11 to determine the medium/heavy rigid vehicle turning path and if there is any overlaps into the proposed cycle lane. If there is overlap, this would be required to be mitigated. Council's Traffic Engineer has advised that this matter can be addressed as a condition of consent. (See condition number 61).

**Stormwater and Park Assets:** No objections have been raised to the development subject to appropriate conditions of consent.

External Referrals

**NSW Police:** The following conditions are recommended for development approval:

- *Service roads from the public street to be clearly identified and signage.*
- *Lighting from the development area should meet the minimum Australian and New Zealand lighting Standards for public streets, carparks and pedestrian thoroughfares, AS1158. External security lighting should be considered and should not illuminate observers or vantage points. Lights should be projected outwards towards pathways, driveways and landscape areas surrounding the building, not towards windows and doors.*

(See condition numbers 53 and 54).

**13. Conclusion:**

This development application represents the first stage of the development of this site. It will allow for the construction and dedication of various roads that have been identified in the Macquarie Park planning controls as well as providing a contemporary building which will respond to the desired character of the locality.

The development results in a minor variation to the floor space ratio. This increase in floor space would not be noticeable as the building is will be compatible with the bulk and scale of surrounding buildings. The building fails to comply with the storeys control. This is due to the slope of the land as well as the definition of storey. It should be noted that the development only results in a minor variation to the height control in LEP 2010 which is a numeric control rather than a storeys control. The variation is acceptable given the minimal impacts as a result of the height and that the building is compatible with adjoining developments. The development also results in some minor variations to the setback requirements. These variations however will not result in any adverse impacts to the new public domain areas or adjoining developments.

**ITEM 12 (continued)**

Despite the minor variations, the development application and the VPA is recommended for approval.

**ITEM 12 (continued)****ATTACHMENT 1****ATTACHMENT 1 CONDITIONS OF CONSENT  
GENERAL**

1. **Approved Plans.** Development is to be carried out in accordance with the following plans and support information submitted to Council.

<b>Plan Number</b>	<b>Title</b>	<b>Drawn By</b>
DA02 Rev B	Site Plan	Fitzpatrick and Partners
DA03 Rev A	Concept Analysis	Fitzpatrick and Partners
DA04 Rev B	Lower Ground	Fitzpatrick and Partners
DA05 Rev B	Carpark 1	Fitzpatrick and Partners
DA06 Rev B	Carpark 2	Fitzpatrick and Partners
DA07 Rev B	Carpark 3	Fitzpatrick and Partners
DA08 Rev B	Level 1	Fitzpatrick and Partners
DA09 Rev B	Level 2 to 6	Fitzpatrick and Partners
DA10 Rev B	Roof	Fitzpatrick and Partners
DA12 Rev A	Section A/B	Fitzpatrick and Partners
DA13 Rev B	South/East Elevation	Fitzpatrick and Partners
DA14 Rev B	North/West Elevation	Fitzpatrick and Partners
DA15 Rev A	Detail South/West Elevation	Fitzpatrick and Partners
DA16 Rev B	Photomontage – East	Fitzpatrick and Partners
DA17 Rev B	Photomontage – South	Fitzpatrick and Partners
DA18 Rev B	Façade Details	Fitzpatrick and Partners
DA19 Rev B	Façade Section and Elevation	Fitzpatrick and Partners
21-16200-C101 Rev B	Cover Sheet	GHD
21-16200-C104 Rev C	Proposed Site Layout	GHD
21-16200-C111 Rev D	External Roads and Drainage Plan	GHD
21-16200-C113 Rev D	Internal Road and Drainage Plan	GHD
21-16200-C121 Rev C	Longitudinal and Typical Sections Road 3 and 11	GHD
21-16200-C122 Rev C	Longitudinal Section Road 11	GHD
21-16200-C123 Rev C	Longitudinal and Typical Sections Future Road 16 and Access 1 & 2	GHD
21-16200-C124 Rev D	Longitudinal and Typical Sections Wicks Road	GHD
21-16200-C131 Rev C	Bulk Earthworks Plan	GHD
21-16200-C132 Rev B	Building 1 – Bulk Earthworks Cross Sections - BLD1-A	GHD
21-16200-C133 Rev B	Building 1 – Bulk Earthworks Cross Sections - BLD1-B	GHD
21-16200-C141 Rev D	Stormwater Drainage Catchment Plan	GHD

Note: The access to Wicks Road is to be constructed in accordance with the plans prepared by GHD or any other condition which amends these plans rather than the Site Plan on DA02 Rev. B.

**ITEM 12 (continued)****ATTACHMENT 1**

2. **Voluntary Planning Agreement** - Pursuant to Section 80A(1) of the Environmental Planning and Assessment Act 1979, the Voluntary Planning Agreement between the City of Ryde and Dexu Funds Management Limited that relates to the development application the subject of this consent, must be registered on the title of the property prior to the lodgement of any application for a certificate under section 109C of the Environmental Planning and Assessment Act 1979.
3. **Building Code of Australia.** All building works are required to be carried out in accordance with the provisions of the Building Code of Australia.
4. **Construction Certificate Required.** Prior to commencing any construction works, the following provisions of the Environmental Planning and Assessment Amendment Act, 1997 are to be complied with:
  - a) A **Construction Certificate** is to be obtained in accordance with Section 81A (2)(a) of the Act.
  - b) A Principal Certifying Authority is to be appointed and Council is to be notified of the appointment in accordance with Section 81A (2)(b) of the Act and Form 7 of Schedule 1 to the Regulations.
  - c) Council is to be notified at least two (2) days prior to the intention to commence building works, in accordance with Section 81A (2)(c) of the Act and Form 7 of Schedule 1 to the Regulations.
5. **Signage.** The applicant is advised that any erection of signs on advertising structures not indicated on the development consent plans requires the submission of a new development application to Council.
6. **Telephone Installations.** Advice should be obtained from your local telecommunications office regarding any telephone lines required to be installed in concrete floors.
7. **Australia Post.** Approval for the site and size of proposed household mailboxes must be obtained from Australia Post.
8. **External Glazing.** All external glazing is to have a maximum reflectivity of 20%.
9. **Bicycle Parking.** A minimum of 63 bicycle parking rails or lockers designed and installed in accordance with Australian Standard AS2890.3, must be provided in a suitable location for the convenience of employees and visitors to the site. Suitable shower and change facilities for cyclists must also be provided within the development.
10. **Workplace Travel Plan.** A Workplace Travel Plan (WTP) must be submitted to Council for approval with any development application to commence a use within the building and prior to occupation of the building. The WTP must include, but will not be limited to strategies to encourage public transport use, the encouragement to stagger start and finish times for employees, car pooling and teleworking to minimise the impact on the road system.
11. **Costs.** All works / regulatory signposting associated with the proposed development shall be at no cost to the RTA.

**ITEM 12 (continued)****ATTACHMENT 1**

12. **Sight Distances.** The required sight lines to pedestrians or other vehicles in or around the carpark or entrances are not to be compromised by landscaping, signage, fencing or display material.
13. **Public Utilities.** The developer shall be responsible for all public utility adjustment / relocation works, necessitated by the above work and as required by the various public utility authorities and / or their agents.
14. **Roof Material.** The roof material is to be non-reflective.
15. **External Finishes and Colours.** The external finishes and colours of the development is to be in accordance with the Materials Sample Board dated June 10 prepared by Fitzpatrick + Partners.
16. **'Dial 1100 Before You Dig.'** Underground pipes and cables may exist in the area. In your own interest and for safety, telephone 1100 before excavating or erecting structures. Information on the location of underground pipes and cables can also be obtained by fax on 1300 652 077 or through the following website [www.dialbeforeyoudig.com.au](http://www.dialbeforeyoudig.com.au).

If alterations are required to the configuration, size, form or design of the development upon contacting the Dial Before You Dig service, an amendment to the Development Consent (or a new development application) may be necessary. Council's Assessment Officer should be consulted prior to the lodgment of an application for a **Construction Certificate** if this is the case.

17. **Energy Australia.** Please contact Energy Australia's Local Customer Service Office to obtain documentary evidence that Energy Australia has been consulted and that their requirements have been met.

Energy Australia  
Building No. 2 Bridge Road (near Sherbrook Road) Hornsby  
Telephone: 9477 8201  
Facsimile: 9477 8295  
Postal Address: GPO Box 4009, Sydney NSW 2001  
Email Address: [HornsbyDA@energy.com.au](mailto:HornsbyDA@energy.com.au)

This information is to be submitted to Council prior to the release of the Construction Certificate.

18. **Proposed food premises** - A separate development application must be submitted to Council to fitout and use any proposed food premises.
19. **Commercial tenancies** - A separate development application must be submitted to Council to fitout and use the proposed commercial tenancies.
20. **New underground petroleum storage systems** - Any new underground petroleum storage systems must be designed, constructed and installed in accordance with the requirements of the Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2008.

**ITEM 12 (continued)****ATTACHMENT 1**

21. **Bundling of above ground storage tanks** - Any above ground liquid storage tanks must be banded to prevent the escape of spills or leaks.
22. **Construction of tank bunds** - All tank bunds must be designed and constructed in accordance with the following requirements:
- a) The bund must have a capacity of at least 110% of the largest tank plus the volume displaced by any additional tanks within the banded area.
  - b) The walls and floor of the bund must be constructed of materials impervious to the contents of any container within the bund and be structurally adequate to contain any liquid spilled within the bund.
  - c) A collection sump must be provided in the floor of the bund to facilitate the removal of liquids and the floor of the bund graded to the sump.
  - d) Drain valves must not be provided in the bund.
  - e) Pipework from the enclosed tanks and any associated pumps must pass over the bund walls.
  - f) Hose couplings for tanks enclosed within the bund must be located so that leaks or spills are contained within the bund.
  - g) The bund must be roofed where practicable to prevent the entry of rainwater.
23. **Construction of garbage rooms** - All garbage rooms must be constructed in accordance with the following requirements:
- (a) The room must be of adequate dimensions to accommodate all waste containers, and any compaction equipment installed, and allow easy access to the containers and equipment for users and servicing purposes;
  - (b) The floor must be constructed of concrete finished to a smooth even surface, coved to a 25mm radius at the intersections with the walls and any exposed plinths, and graded to a floor waste connected to the sewerage system;
  - (c) The floor waste must be provided with a fixed screen in accordance with the requirements of Sydney Water Corporation;
  - (d) The walls must be constructed of brick, concrete blocks or similar solid material cement rendered to a smooth even surface and painted with a light coloured washable paint;
  - (e) The ceiling must be constructed of a rigid, smooth-faced, non-absorbent material and painted with a light coloured washable paint;
  - (f) The doors must be of adequate dimensions to allow easy access for servicing purposes and must be finished on the internal face with a smooth-faced impervious material;
  - (g) Any fixed equipment must be located clear of the walls and supported on a concrete plinth at least 75mm high or non-corrosive metal legs at least 150mm high;
  - (h) The room must be provided with adequate natural ventilation direct to the outside air or an approved system of mechanical ventilation;
  - (i) The room must be provided with adequate artificial lighting; and

## ITEM 12 (continued)

## ATTACHMENT 1

- (j) A hose cock must be provided in or adjacent to the room to facilitate cleaning.
24. **Ventilation of rooms** - Every habitable room, sanitary compartment or other room occupied by a person for any purpose must be provided with adequate natural ventilation or an approved system of mechanical ventilation.
25. **Ventilation of carpark** - The basement carpark must be provided with an adequate system of permanent natural ventilation or an approved system of mechanical ventilation.
26. **Provision for installation of kitchen exhaust systems** - Adequate provision must be made for the installation of kitchen exhaust systems to any future food premises.
27. **Plumbing and drainage work** - All plumbing and drainage work must be carried out in accordance with the requirements of Sydney Water Corporation.
28. **Installation of grease trap** - A grease trap must be installed if required by Sydney Water Corporation. The grease trap must be located outside the building or in a specially constructed grease trap room and be readily accessible for servicing. Access through areas where exposed food is handled or stored or food contact equipment or packaging materials are handled or stored is not permitted.
29. **Noise and vibration from plant and equipment** - Unless otherwise provided in this consent, the operation of any plant or equipment installed on the premises must not cause:
- (a) The emission of noise that exceeds the background noise level by more than 5dBA when measured at, or computed for, the most affected point, on or within the boundary of the most affected receiver. Modifying factor corrections must be applied for tonal, impulsive, low frequency or intermittent noise in accordance with the New South Wales Industrial Noise Policy (EPA, 2000).
  - (b) An internal noise level in any adjoining occupancy that exceeds the recommended design sound levels specified in Australian/New Zealand Standard AS/NZS 2107:2000 *Acoustics – Recommended design sound levels and reverberation times for building interiors*.
  - (c) The transmission of vibration to any place of different occupancy.
30. **Design and Construction Standards.** All engineering plans and work shall be carried out in accordance with the requirements as outlined within Council's publication *Environmental Standards Development Criteria* and relevant Development Control Plans except as amended by other conditions.
31. **Service Alterations.** All mains, services, poles, etc., which require alteration shall be altered at the applicant's expense.
32. **Restoration.** Public areas must be maintained in a safe condition at all times. Restoration of disturbed road and footway areas for the purpose of connection to public utilities will be carried out by Council following submission of a permit application and payment of appropriate fees. Repairs of damage to any public stormwater drainage facility will be carried out by Council following receipt of payment. Restoration of any

**ITEM 12 (continued)****ATTACHMENT 1**

disused gutter crossings will be carried out by Council following receipt of the relevant payment.

33. **Engineering Compliance Certificates.** To ensure all engineering works within the existing and proposed public road reserve to be dedicated including Council's drainage easement will be completed satisfactorily, Engineering Compliance Certificates must be obtained from Council for the following works at the specified stage where applicable and submitted to the Principal Certifying Authority & Council where Council is not the PCA prior to the issue of any Occupation Certificate. All Inspections fee are to be paid to Council in accordance with Management Plan prior to inspection being undertaken by Council.

- Prior to backfilling of Council's stormwater pipelines.
- Prior to backfilling of drainage connections to Council's stormwater drainage systems.
- After trimming and compaction of sub-grade.
- After placement and compaction of the applicable sub-base course
- Prior to casting of Council's pits and other drainage structures including kerb & gutter, access ways, aprons, pathways, vehicular crossings, dish crossings and pathway steps.
- After completion of all works with all disturbed areas satisfactorily restored

**PRIOR TO CONSTRUCTION CERTIFICATE**

34. **Security Deposit.** A security deposit (category: other buildings with delivery of bricks or concrete or machine excavation) is to be paid to Council (Public Works and Services Group) as well as the Infrastructure Restoration and Administration Fee. Please refer to Council's Management Plan for the current fee amounts.
35. **Enforcement Levy.** An Enforcement levy is to be paid to Council on lodgement of the Construction Certificate application in accordance with the requirements of Council's Management Plan (scheduled fees).
36. **Long Service Levy.** Documentary evidence of payment of the Long Service Levy under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 is to be received prior to the issuing of the Construction Certificate.
37. **Street Alignment Fees.** The applicant is to apply to Council, pay the required fee, and have issued street alignment levels by Council prior to the issue of the Construction Certificate.
38. **Payment of Council's Fees and Charges.** Documentary evidence of compliance with Conditions 34, 35, 36, 37 and 62 to the satisfaction of Council or an accredited certifier is to be submitted to the Council prior to the issuing of the Construction Certificate.
39. **Energy Efficiency.** Prior to the issue of a Construction Certificate, plans and specifications must be provided to the Principal Certifying Authority (PCA) that detail how the development will achieve a minimum 5 Star Green Star Design rating. This rating is to be achieved with no changes to the external façade. If any changes to the external façade are required, it will be necessary to submit a Section 96 application for modification to Council. Certification that the building will achieve the prediction of this

**ITEM 12 (continued)****ATTACHMENT 1**

evaluation must also be submitted to the PCA by a suitably qualified consultant prior to the issue of a Construction Certificate.

Certification of the energy efficiency performance of the building must also be submitted to the PCA by a suitably qualified consultant prior to the Final Occupation Certificate being issued. This certification must demonstrate that the building achieves a minimum 5 Star Green Star Design rating.

40. **Section 73 Certificate.** A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Coordinator. Please refer to the Building, Development and Plumbing section of the website at [www.sydneywater.com.au](http://www.sydneywater.com.au) then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, as it may take some time to build water/sewer pipes and this may impact on other services and building, driveway or landscape design.

A copy of Sydney Water's Notice of Requirements must be submitted to the Principal Certifying Authority prior to the **Construction Certificate** being issued.

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to occupation of the development / release of the plan of subdivision.

41. **Location of Service Infrastructure and Facilities.** All service infrastructure/utilities including electrical substations, fire hydrants, gas meters and the like shall be located within the building envelope. Where this is not possible and subject to Council approval such infrastructure shall be located on the subject site and appropriately screened from view. Details of all service infrastructure/utilities are to be approved prior to issue of the Construction Certificate.
42. **Internal Noise Levels.** The internal noise levels within the building are to be in accordance with the requirements of AS/NZS 2107:2000 Acoustic – Recommended Design Sound Levels and Reverberation Times for Building Interiors. The development is to comply with all of the recommendations contained in the environmental noise impact assessment report by Wilkinson Murray Pty Ltd dated July 2008.
43. **Layout of the Carpark.** The layout of the car parking areas associated with the commercial building (including driveways, grades, turn paths, sight distance requirements, aisle widths, aisle lengths and parking bay dimensions) are to be in accordance with AS2890.1-2004 and AS2890.2-2002 for heavy vehicle usage.
44. **Garbage room details** - Details of the proposed garbage room must be submitted to Council or an accredited private certifier for approval with the application for the Construction Certificate. Such details must include:
- (a) the specifications and layout of all proposed waste containers and equipment; and
  - (b) the access to the collection point.

**ITEM 12 (continued)****ATTACHMENT 1**

45. **Carpark ventilation details** - Details of the proposed method of ventilating the basement carpark must be submitted to Council or an accredited private certifier for approval with the application for the Construction Certificate.
46. **Mechanical ventilation details** - Details of all proposed mechanical ventilation systems must be submitted to Council or an accredited private certifier for approval with the application for the Construction Certificate. Such details must include:
- (a) Certified plans of the proposed work;
  - (b) A site survey plan showing the location of all proposed air intakes and exhaust outlets on the site, and any existing cooling towers, air intakes, exhaust outlets and natural ventilation openings in the vicinity;
  - (c) A completed Mechanical Services Design Certificate (Form M1), together with a copy of the certifier's curriculum vitae; and
  - (d) Documentary evidence in support of any departures from the deemed-to-satisfy provisions of the *Building Code of Australia*.
47. **Grease trap room details** - Details of any proposed grease trap room must be submitted to Council or an accredited private certifier for approval with the application for the Construction Certificate.
48. **Waste management plan** - Prior to work commencing a waste management plan must be submitted to and approved by Council. The plan must include the types and estimated volumes of waste materials that will be generated; the proposed method of reuse, recycling or disposal; and the name and address of the recycling facility or landfill site if the waste is to be recycled or disposed of off site. Reuse and recycling must be maximised.
49. **Disabled Access.** Access for disabled people shall be provided in the building in accordance with Part D.3 of the BCA and to the standards set out in AS 1428.1.
50. **Disabled Access:** Disabled access is to be provided to and within the development in accordance with the recommendations contained within the Access Review prepared by Morris-Goding Accessibility Consulting dated 22<sup>nd</sup> July 2008. Details indicating compliance with these recommendations are to be submitted to the Principal Certifying Authority (PCA) prior to the construction certificate being issued. Prior to occupation of the development, a suitably qualified access consultant is to certify that the development complies with Australian Standard 1428 and the Building Code of Australia.
51. **Disabled Access from Building to the Terrace.** Disabled access from the building to the commercial terrace area on level 1 is to be provided in accordance with Part 9.2 of DCP 2010. If the change of level between the interior of the building and the exterior terrace area exceeds 3mm, it will be necessary to provide a ramp or an alternative access means. Details are to be submitted on the Construction Certificate plans.
52. **Carpark Lighting.** All carpark lighting is to be designed, installed and maintained to Australian Standard AS1680.2.1 - 1993: Interior Lighting Circulation Spaces and Other General Areas.

**ITEM 12 (continued)****ATTACHMENT 1**

53. **Lighting of Pedestrian Pathways.** The lighting of pedestrian pathways within the development shall be designed, installed and maintained to Australian Standard AS1158.3.1 – 1999: Road Lighting Pedestrian Area (Category P) Performance and Installation Design Requirements. Areas besides thoroughfares should be evenly lit to avoid concealment or entrapment opportunities.
54. **Security Lighting.** Where security lighting is provided within the development, it should not illuminate observers or vantage points. Light should be projected outwards towards pathways and gates, not towards windows and doors. Passing motorists, police and pedestrians will be the likely observers.
55. **Surveillance Equipment.** Surveillance equipment is to be installed within and around the basement carpark areas and around the toilet / change room areas. The surveillance equipment is to utilise digital or video technology to record images from the cameras. Any surveillance system should be manufactured and installed by a qualified/reputable installer and regularly function tested. The surveillance equipment should meet the requirements of the Privacy legislation.
56. **Anti-Graffiti Coating.** All ground level surfaces are to be treated with anti-graffiti coating to minimise the potential of defacement. In addition, any graffiti evident on the exterior facades and visible from a public place is to be removed immediately.
57. **Fire Safety Schedule.** A “fire safety schedule” specifying the fire safety measures proposed or required to be implemented in the building premises as required by Clause 168 – Environmental Planning and Assessment Regulation 2000 are to be submitted and approved prior to the issue of the Construction Certificate.
58. **Controlled Access to the Carpark.** Access control is to be provided to the entry / exit points to the car parking to limit access to employees and visitors to the site only. Details are to be submitted on the Construction Certificate drawings to demonstrate how this is to be achieved.
59. **Road and Drainage Works.** To facilitate stormwater disposal and satisfactory access to and from the proposed development, the applicant shall, at no cost to Council fully construct the works within both the existing public road reserve and proposed public road to be dedicated to Council generally as shown on Plan No. 21-16200-C104 & C105 Rev C, C106 Rev B, C111 & C113 Rev D, C121, C122, C123 Rev C, C124 Rev D, C131 Rev C, C132 & 133 Rev B and C 141 Rev D Prepared by GHD . The road formation, design and construction shall be consistent with the Council’s Macquarie Park Master Corridor Development Control Plan and The Macquarie Park Technical Public Domain Manual.

Detailed engineering plans including specification prepared by a chartered and experienced civil engineer in accordance with Austroads and Ryde City Council Environmental Standards - Development Criteria Section 4 - Public Civil Works are to be submitted to, and approved by Ryde City Council prior to issue of Construction Certificate.

The design and plans submitted shall incorporate, but not be limited to the following:

- a. Kerb inlet pits (sag and on grade) shall be cast-in-situ and conforming to Council’s standard drainage pit details.

**ITEM 12 (continued)****ATTACHMENT 1**

- b. Drainage pipelines shall be minimum Pipe Class 3, Rubber Ring Jointed, Reinforced Concrete with Type HS2 bedding Support and conforming to AS 4058.
- c. Drainage pipelines shall be designed to have a minimum longitudinal gradient of 1.0%
- d. A drainage system and road layout plan including WSUD details shall be drawn at a scale of 1:100, 1:200 or 1:250 and shall show drainage pipe & pts locations, number and road centerline chainages, size of opening and any other information necessary for the design assessment and also construction of the drainage system.
- e. Drainage system and road longitudinal sections including all kerb returns shall be drawn at a scale of 1:100 or 1:200 horizontally and 1:10 or 1:20 vertically and shall show pipe size, class, materials and pipe support type in accordance with AS 3725 or AS 2032 as appropriate, pipeline road chainages, grades, hydraulic grade line including design flow rates and any other information necessary for the design assessment and construction of the drainage system .
- f. Special details including non-standard pits, pit benching and transitions shall be provided on the drawings at scales appropriate to the type and complexity of the detail being shown.
- g. The drainage system layout plan shall be documented on a detailed features survey base that describes all structures, utility services, vegetation and other relevant features.
- h. The western edge of proposed road 16 is to be flush with the boundary of the adjoining site.
- i. The plans for the left in-left out arrangement on Wicks Road is to be designed so that it will deter right turn in and out movements from road 3 as well as catering for the turn path of the largest expected vehicle to service the area.

Engineering plans assessment and inspections fee during construction including any other applicable fee in accordance with Council's Management Plan are payable at the time of approval being given by Council for the proposed road and drainage works

- 60. **Safe Sight Distance** . To improve sight distance for vehicles exiting the proposed driveway access located on the southern side of proposed building 1, the proposed driveway access shall be relocated to a point 35m west of the southeast corner of the proposed building 1. Revised architectural and engineering plans indicating compliance are to be submitted with the Construction certificate application
- 61. **Cycle Lanes**. Prior to the issue of any construction certificate, it will be necessary to provide to Council a turning path analysis along Road 3 and Road 11 which demonstrates that the medium / heavy rigid vehicle turning path does not overlap into the proposed on-road cycle lane.
- 62. **Maintenance Bond**. To ensure satisfactory performance of the completed road and drainage works to be dedicated to Council, a maintenance period of six (6) months shall apply to all these engineering works. The performance period shall commence from the date of acceptance of these works by Council.

The applicant shall be liable for any part of the work which fails to perform in a satisfactory manner as outlined in Council's standard specification. A bond in the form of a cash deposit or Bank Guarantee of \$100,000 shall be lodged with City of Ryde prior to issue of the Construction Certificate to guarantee this requirement will be met.

**ITEM 12 (continued)****ATTACHMENT 1**

The bond will only be refunded when the works are determined to be satisfactory to Council after the expiry of the six (6) months maintenance period.

63. **Car Parking and Access.** To ensure safe and satisfactory access to and from the proposed development all internal driveways, vehicle turning areas, parking spaces dimensions, headroom clearance and gradients etc shall be designed and constructed in accordance with Australian Standards AS 2890.1-2004 & AS 2890.2-2002. The design shall ensure all vehicles using the site can enter and exit in a forward direction.

Detailed architectural plans together with engineering certification indicating compliance with this condition are to be submitted with the Construction Certificate application.

64. **Stormwater Drainage.** To facilitate safe stormwater disposal from the development site containing building 1, stormwater runoff from all impervious areas of the site shall be collected and piped by gravity flow to Council's underground drainage system via an On-site detention system in accordance with City of Ryde, Development Control Plan 2010: - Part 8.2; Stormwater Management.

The on site detention shall be designed to restrict the post development flows from the site to that of predevelopment level for all storms and durations up to and inclusive of the 1 in 100 year ARI storm event. The predevelopment flows from the site is to be calculated assuming the site is 100% pervious.

Detailed engineering plans and computer modelling calculations prepared by a chartered civil engineer together with engineering certification demonstrating compliance with the above requirements are to be submitted with the Construction Certificate application

65. **Erosion and Sediment Control Plan.** An *Erosion and Sediment Control Plan* (ESCP) shall be prepared by a suitably qualified consultant in accordance with the guidelines set out in the manual "*Managing Urban Stormwater, Soils and Construction*" prepared by the Department of Housing. These devices shall be maintained during the construction works and replaced where considered necessary.

The following details are to be included in drawings accompanying the *Erosion and Sediment Control Plan*

- (a) Existing and final contours
- (b) The location of all earthworks, including roads, areas of cut and fill
- (c) Location of all impervious areas
- (d) Location and design criteria of erosion and sediment control structures,
- (e) Location and description of existing vegetation
- (f) Site access point/s and means of limiting material leaving the site
- (g) Location of proposed vegetated buffer strips
- (h) Location of critical areas (drainage lines, water bodies and unstable slopes)
- (i) Location of stockpiles
- (j) Means of diversion of uncontaminated upper catchment around disturbed areas
- (k) Procedures for maintenance of erosion and sediment controls
- (l) Details for any staging of works
- (m) Details and procedures for dust control.

**ITEM 12 (continued)****ATTACHMENT 1**

66. **Landscaping Plan.** A detailed landscape plan for the site and the required area of the public domain is to be submitted and approved by Council prior to the construction of the development. The landscape plan is to include details of plant selections as well as details of all hard surfaces. The design and documentation of the landscape plan is to be completed by a qualified landscape architect. All of the landscaping is to be compatible with the Council's Macquarie Park Public Domain Technical Manual and Part 4.5 of Development Control Plan 2006. Any trees proposed adjacent to road 16 *Glochidion ferinandii* (Cheese Tree) and *Lophostemon confertus* (Brushbox).
67. **Macquarie Park Public Domain Technical Manual.** All hard landscaping, paving, soft landscaping including species selection, street furniture and the like shall be in accordance with the Macquarie Park Public Domain Technical Manual. Full details, including samples, schedules and plans are to be submitted and approved by Council prior to the construction of the development.

Where soft landscaping is proposed, including species selection, the applicant must ensure that species health is guaranteed for a minimum of 5 years to ensure the character and appearance of the streetscape is established and maintained. Any species that die within five years of planting must be replaced by the applicant with a specimen of a similar size and maturity.

**PRIOR TO COMMENCEMENT**

68. **Signage.** Signage is to be provided on the site as follows:
- a) During the demolition process notices lettered in accordance with AS1319 displaying the words “**DANGER - DEMOLITION IN PROGRESS**” or a similar message shall be fixed to the security fencing at appropriate places to warn the public.
  - b) During the entire construction phase signage shall be fixed on site identifying the PCA and principal contractor (the coordinator of the building work), and providing phone numbers.
69. **Dilapidation Report.** To determine the extent of restoration works that may required, the applicant shall submit to Council a pre and post construction dilapidation report on the status of existing public infrastructures in the vicinity of the proposed development. The report is to include photographic records, description and location of any existing observable defects of the following infrastructure and others where applicable
- a) Road pavement
  - b) Kerb and gutter
  - c) Constructed footpath.
  - d) Drainage pits.
  - e) Traffic signs
  - f) Any other relevant infrastructure.

The report shall be submitted to Ryde City Council development engineers, one prior to commencement of Construction and one prior to issue of Occupation Certificate. The report shall be used by Council as Roads Authority under the Roads Act to assess whether restoration works are required prior to the issue of the Occupation Certificate.

**ITEM 12 (continued)****ATTACHMENT 1**

All restoration works deemed necessary by Council's development engineer are to be completed to Council satisfaction prior to the issue of Occupation Certificate

70. **Traffic Management Plan.** To ensure safe construction traffic flow on site a Traffic Management Plan (TMP) and report shall be prepared by an RTA accredited person shall submitted to and approved by the Principal Certifying Authority.

The TMP shall be prepared in accordance with applicable section of AS 1742.3 1985 and the RTA's Manual – "Traffic Control at Work Sites". The TMP is to address but not be limited to the loss of on-street parking, construction vehicles travel routes, safety of the public, materials storage, handling and deliveries including construction traffic parking.

Additionally, all traffic controllers on site must be RTA accredited traffic controllers and a minimum of seven (7) days notice shall be given to residents should their access will be affected by proposed construction activities.

71. **Sediment and Erosion Control.** The applicant shall install appropriate sediment control devices in accordance with an approved plan prior to any earthworks being carried out on the site. These devices shall be maintained during the construction period and replaced where considered necessary. Suitable erosion control management procedures shall be practiced. This condition is imposed in order to protect downstream properties, Council's drainage system and natural watercourses from sediment build-up transferred by stormwater runoff from the site.
72. **Compliance Certificate.** A Compliance Certificate should be obtained confirming that the constructed erosion and sediment control measures comply with the construction plan and City of Ryde, Development Control Plan 2010: - Part 8.1; Construction Activities

**DURING DEMOLITION AND CONSTRUCTION**

73. **Demolition in Accordance with Australian Standard.** In relation to demolition, all work is to be carried out in accordance with the requirements of AS 2601 (*The Demolition of Structures*).
74. **Security Fencing.** Security fencing shall be provided around the perimeter of the building/demolition site and precautionary measures taken to prevent unauthorized entries of the site at all times during demolition and construction.
75. **Demolition and Construction Hours.** All demolition and all construction and associated work is to be restricted to between the hours of 7.00am and 7.00pm Monday to Friday (other than public holidays) and between 8.00am and 4.00pm on Saturday. No work is to be carried out on Sunday or public holidays.
76. **Control of Dust.** Adequate precautions must be taken to control the emission of dust from the site during demolition and construction work. These precautions could include minimizing soil disturbance, use of water sprays, erecting screens and not carrying out dusty work during windy conditions.

**ITEM 12 (continued)****ATTACHMENT 1**

77. **Work with Asbestos.** All work involving asbestos products and materials, including asbestos-cement sheeting (i.e. fibro) must be carried out in accordance with the guidelines for asbestos work published by WorkCover New South Wales.
78. **Asbestos Wastes.** All asbestos wastes including used asbestos-cement sheeting (i.e. fibro), must be disposed of at a landfill facility licensed by the New South Wales Environmental Protection Authority to receive that waste. Copies of the disposal dockets must be kept by the applicant for at least 3 years and be submitted to Council on request.
79. **Demolition and Building Wastes.** Adequate arrangements must be made for the storage and disposal of demolition and building waste generated on the premises. In this regard the demolishers and builders are encouraged to maximize the re-use and recycling of materials (e.g. Concrete, bricks, roof tiles, timber, doors, windows, fittings, etc.) by separating these materials from other wastes.
80. **Site Inspections.** The occasions on which building work must be inspected are:
- a) at the commencement of the building work, and
  - b) prior to covering any stormwater drainage connections, and
  - c) after the building work has been completed and prior to any occupation certificate being issued in relation to the building.

Documentary evidence of compliance with Council's approval and relevant standards of construction is to be obtained prior to proceeding to the subsequent stages of construction and copies of the documentary evidence are to be maintained by the Principal Certifying Authority and be made available to Council officers upon request.

Prior to occupation of the building, an occupation certificate must be obtained. Prior to the issue of the occupation certificate, **the mandatory inspections must be carried out.**

81. **Additional Inspections.** In addition to the abovestated inspections, the Principal Certifying Authority is required to ensure that adequate provisions are made for the following measures at each stage of construction, to ensure compliance with the approval and City of Ryde's DCP 2006, Part 8.1 - "Construction Activities":
- a) Sediment control measures.
  - b) Tree Preservation and protection measures.
  - c) Security fencing.
  - d) Materials or waste containers upon the footway or road.
  - e) PCA and principal contractor (the coordinator of the building work) signage and site toilets.
82. **Surveyor Check of the Building.** Council recommends that a Registered Surveyors check survey certificate be submitted to the Principal Certifying Authority (*and Council, if Council is not the PCA*) detailing compliance with Council's approval at the following stages:

**ITEM 12 (continued)****ATTACHMENT 1**

- a) Prior to construction of the first completed floor/floor slab showing the area of the land, proposed building and the boundary setbacks and verifying that these are in accordance with the setbacks and levels on the approved drawings.
  - b) On completion of the proposed building showing the area of the land, completed building and the boundary setbacks and verifying that these are in accordance with the setbacks and levels on the approved drawings.
83. **Water into Council's Stormwater Drainage System.** Only unpolluted water is to be discharged to Council's stormwater drainage system.
84. **Noise Levels during Construction.** The L<sub>10</sub> noise level measured for a period of not less than 15 minutes while demolition and construction work is in progress must not exceed the background noise level by more than 20 dB(A) at the nearest affected residential premises.
85. **Excavated Material to be removed from the Site.** All excavated material must be removed from the site. No fill is to be placed above the natural ground level.
86. **Council Owned Land.** No spoil, stockpiles, building or demolition material is to be placed on any public road, footpath, park or Council owned land.
87. **Site Toilets.** Site toilets shall be provided in accordance with the WorkCover Code of Practice entitled "Amenities for Construction Work".
88. **Work in a Public Road.** At all times work is being undertaken within a public road adequate precautions shall be taken to warn, instruct and guide road users safely around the work site. Traffic control devices shall satisfy the minimum standards outlined in AS1742.3-1996 "Traffic Control Devices for Work on Roads".
89. **Disposal of Construction Wastes.** All construction waste is to be disposed of in accordance with the approved Waste Management Plan.
90. **Hoardings** - Where the site adjoins a public thoroughfare the common boundary must be fenced with a hoarding, unless the horizontal distance between the boundary and the structure being demolished is more than twice the height of the structure. All hoardings must be constructed of solid materials and be at least 1.8 metres high.
91. **Protection of underground services** - Before work commences the location of any underground services (eg. gas, water, electricity, telecommunications cables, etc.) must be identified and appropriate measures taken to protect those services.
92. **Mud and debris from vehicles** - All practicable measures must be taken to ensure that vehicles leaving the site do not deposit mud or debris on the road.
93. **Removal of mud and debris from roadway** - Any mud or debris deposited on the road must be cleaned up immediately in a manner that does not pollute waters (ie. by sweeping or vacuuming).
94. **Council Inspections.** To ensure engineering works will be completed satisfactorily, the construction of all external road and drainage works including proposed public road and drainage works to be dedicated to Council must be inspected by Council's

**ITEM 12 (continued)****ATTACHMENT 1**

engineer. A pre-construction meeting shall be arranged with Council's engineer, prior to commencement of works to ensure all the necessary inspections at specified constructions stages are conducted by Council throughout the construction process.

Engineering inspections are payable to Council in accordance with Council Management Plan.

**BEFORE ISSUE OF OCCUPATION CERTIFICATE**

95. **Occupation Certificate Required.** An Occupation Certificate must be obtained from the Principal Certifying Authority (PCA) and a copy furnished to Council in accordance with Clause 151 of the Environmental Planning and Assessment Regulation 2000 prior to commencement of occupation or use of the whole or any part of a new building, an altered portion of, or an extension to an existing building.
96. **Maintenance Policy to be Prepared.** To ensure that the site is appropriately maintained which will maximise community safety, a maintenance policy needs to be established. A graffiti management plans needs to be incorporated into the maintenance policy. This is to be provided prior to the issue of an Occupation Certificate.
97. **Fire Safety Certificates.** A Fire Safety Certificate/s from a suitably qualified person/s is to be submitted to Council or an accredited certifier (*and Council, if Council is not the PCA or an accredited certifier*) for all the essential services installed in the building in accordance with Clauses 170 and 171 of the Environmental Planning and Assessment Regulation 2000.
98. **Public Arts Plan Required.** A public art plan is to be submitted and approved by Council prior to the issue of any Occupation Certificate. The plan is to achieve the objectives and the strategy for public art as outlined in Clause 5.3.5 of Part 4.5 of DCP 2010. The public art is to be constructed prior to the issue of any Occupation Certificate.
99. **Certification of mechanical ventilation work -** A Mechanical Services Completion and Performance Certificate (Form M2) must be submitted to the Principal Certifying Authority on completion and commissioning of all mechanical ventilation work approved under this consent and before the issue of an Occupation Certificate.
100. **Inspection of fitout work by Council -** Council's Environmental Health Officer must inspect the completed fitout before the issue of an Occupation Certificate.  
  
Inspections may be arranged by calling Council's Customer Service Centre on Tel. 9952 8222 at least 48 hours before the inspection is required.
101. **Documentary Evidence of Payment Required by VPA.** Documentary evidence of payment of the monetary contribution as identified in the Voluntary Planning Agreement is to be provided to the PCA prior to the issue of any Occupation Certificate or any Subdivision Certificate.
102. **Public Domain Works to be Completed.** Prior to the issue of any Occupation Certificate, all of the public domain works roads and public domain works roundabout as defined in the Voluntary Planning Agreement is to be completed.

**ITEM 12 (continued)****ATTACHMENT 1**

103. **Compliance Certificates – Engineering.** To ensure the development will be completed in accordance with approved plans, current specifications and applicable Australian and Council's standards the Principal Certifying Authority shall ensure the following will be met.
- Compliance Certificate should be obtained from an accredited certifier confirming that the constructed internal carpark and associated drainage complies with AS 2890.1-2004 & AS 2890.2-2002, the construction plan requirements and Ryde City Council's *Environmental Standards Development Criteria - 1999*.
  - Compliance Certificate should be obtained from an accredited certifier confirming that the site drainage system including rainwater collection/reuse and water quality control device servicing the development comply with the construction plan requirements and City of Ryde, Development Control Plan 2006: - Part 8.2; Stormwater Management
  - Compliance Certificate should be obtained to confirm that after completion of all construction work and landscaping, all areas adjacent the site, the site drainage system (including the on-site detention system), and the trunk drainage system immediately downstream of the subject site (next pit), have been cleaned of all sand, silt, old formwork, and other debris.
  - Compliance Certificate shall be obtained from Council confirming that all vehicular footway and gutter (layback) crossings are constructed in accordance with the construction plan requirements and Ryde City Council's *Environmental Standards Development Criteria - 1999*.
  - Compliance Certificate shall be obtained from Council confirming that all works within the existing and proposed public road reserve to be dedicated including all restoration works have been completed to Council's satisfaction
  - Compliance Certificate shall be obtained from Council confirming that all redundant vehicular crossings have been removed and replaced with concrete footpath and kerb and gutter with disturbed areas grassed where required to Council's satisfaction
- Please be advised that all Compliance Certificates issued by Council is subject to the payment of an inspection fee in accordance with Council's Management Plan
104. **Dedication of Land to Council for Public Road 7 Drainage.** The dedication of land to Council for public road as indicated on plan No. 21-16200-C111 & C113 Revision D dated 19/1/11 prepared by GHD including the creation of all necessary drainage easements in favour of council over all drainage pipelines proposed to be dedicated to Council which are located on private land.
105. **Work-as-Executed Plan for Site Drainage.** A Work-as-Executed plan signed by a Registered Surveyor clearly showing the surveyor's name and date, the site stormwater drainage, including constructed invert and finished ground and floor levels is to be submitted to the Principal Certifying Authority (PCA) and to Ryde City Council. If there are proposed interallotment drainage easements on the subject property, a Certificate from a Registered Surveyor is to be submitted to the PCA certifying that the subject drainage line/s and pits servicing those lines lie wholly within the proposed easements.

**ITEM 12 (continued)****ATTACHMENT 1**

106. **Work-as-Executed Plan for Public Road and Drainage Works.** To ensure works completed within both the existing and proposed the public road reserve to be dedicated to Council have been constructed in accordance with approved plans a Work-as-Executed Plan for these works is to be submitted to Council for approval. The submission shall also include certification from a registered surveyor confirming that all structures are located within their legal boundaries and all pipelines are centrally located within the applicable drainage easements created.
107. **Close Circuit Television (CCTV) Report.** Submission to Council an electronic closed circuit television report (CCTV report) prepared by an accredited operator that assesses the condition of the newly constructed drainage network on public roads, and any defects in the drainage network identified in the report shall be rectified to Council's satisfaction. An additional report is to be submitted to Council at the expiry of the 6 months maintenance period.
108. **Positive Covenant, OSD.** The creation of a Positive Covenant under Section 88 of the Conveyancing Act 1919, burdening the property with the requirement to maintain the stormwater detention system on the property. The terms of the instruments are to be generally in accordance with the Council's draft terms of Section 88E instrument for Maintenance of Stormwater Detention Systems and to the satisfaction of Council.

**BEFORE OCCUPATION OR SITE OPERATIONS COMMENCE**

109. **Registration of premises** - The operator of the food business (childcare centre) must register the premises with Council's Environmental Health Unit before trading commences.
- Registration forms may be obtained from Council's Customer Service Centre on Tel. 9952 8222.
110. **Notification of business details** - The operator of the food business (childcare centre) must notify their business details to the NSW Food Authority before trading commences. Written notifications may be lodged with Council, together with the approved fee. Alternatively, notifications may be lodged free of charge via the Internet at [www.foodnotify.nsw.gov.au](http://www.foodnotify.nsw.gov.au).
- Notification forms may be obtained from Council's Customer Service Centre on Tel. 9952 8222.

**OPERATIONAL REQUIREMENTS**

111. **Loading and Unloading.** All loading and unloading in relation to the use of the premises taking place wholly within the property.
112. **Use of Loading Areas.** Loading areas are to be used for the used for the loading and unloading of goods, materials etc only and no other purpose.
113. **Activity not to Affect the Amenity of the Locality.** All activity being conducted so that it causes no interference to the existing and future amenity of the adjoining occupants and the neighbourhood in general.

**ITEM 12 (continued)****ATTACHMENT 1**

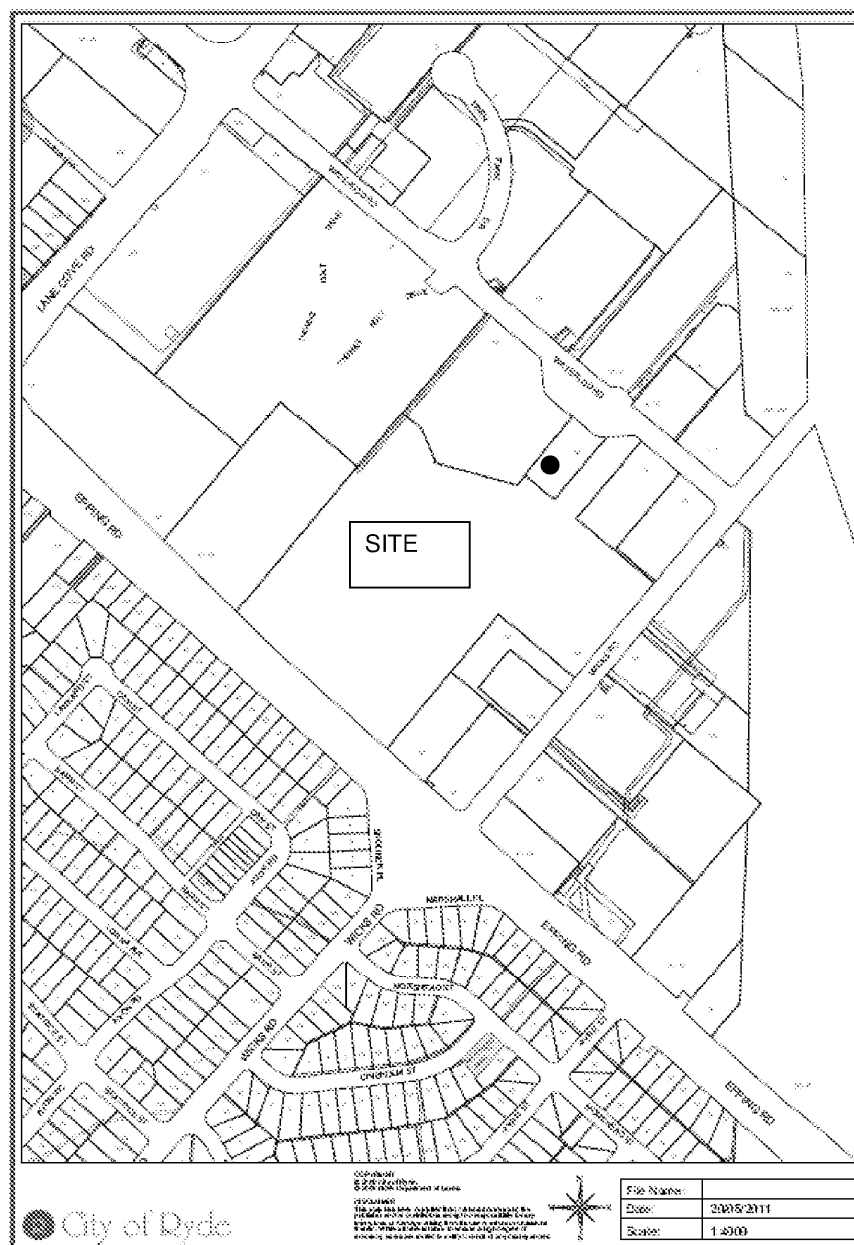
114. **Lighting of the Premises.** The lighting of the premises shall be directed so as not to cause nuisance to the owners or occupiers of adjacent / adjoining premises or to motorists on adjoining or nearby roads. All existing and proposed lights shall comply with the Australian Standard AS4282-1997: Control of the Obtrusive Effects of Outdoor lighting.
115. **Storage and disposal of wastes** - All wastes generated on the premises must be stored and disposed of in an environmentally acceptable manner.
116. **Air pollution** - The use of the premises, including any plant or equipment installed on the premises, must not cause the emission of smoke, soot, dust, solid particles, gases, fumes, vapours, mists, odours or other air impurities that are a nuisance or danger to health.
117. **Offensive noise** - The use of the premises must not cause the emission of 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997*.
118. **Clean water only to stormwater system** - Only clean unpolluted water is permitted to enter Council's stormwater drainage system.
119. **Operation and maintenance of plant and equipment** - The occupier must ensure that all plant and equipment installed on the premises is:
- (a) maintained in a proper and efficient condition; and
  - (b) operated in a proper and efficient manner.
120. **Duty to notify pollution incidents** - Pollution incidents causing or threatening harm to the environment must be reported to Council as soon as practicable on Tel. 9952 8222.
121. **Health inspections** - Council officers may carry out periodic inspections of the food business (childcare centre) to ensure compliance with relevant environmental health standards and Council may charge an approved fee for this service in accordance with Section 608 of the *Local Government Act 1993*.

The approved fees are contained in Council's Management Plan and may be viewed or downloaded at [www.ryde.nsw.gov.au](http://www.ryde.nsw.gov.au).

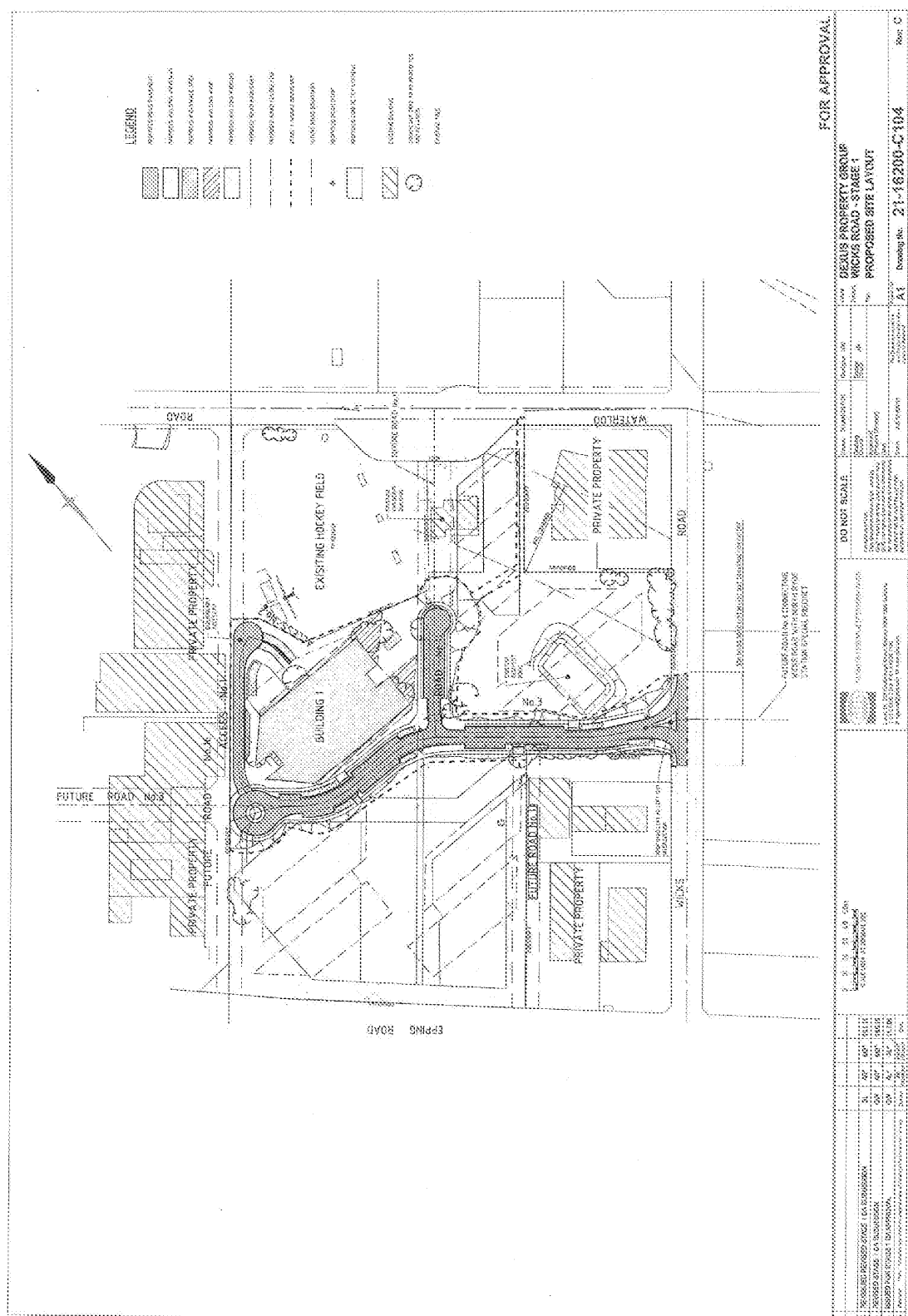
**ITEM 12 (continued)**

## ATTACHMENT 2

- Indicates Submission Received

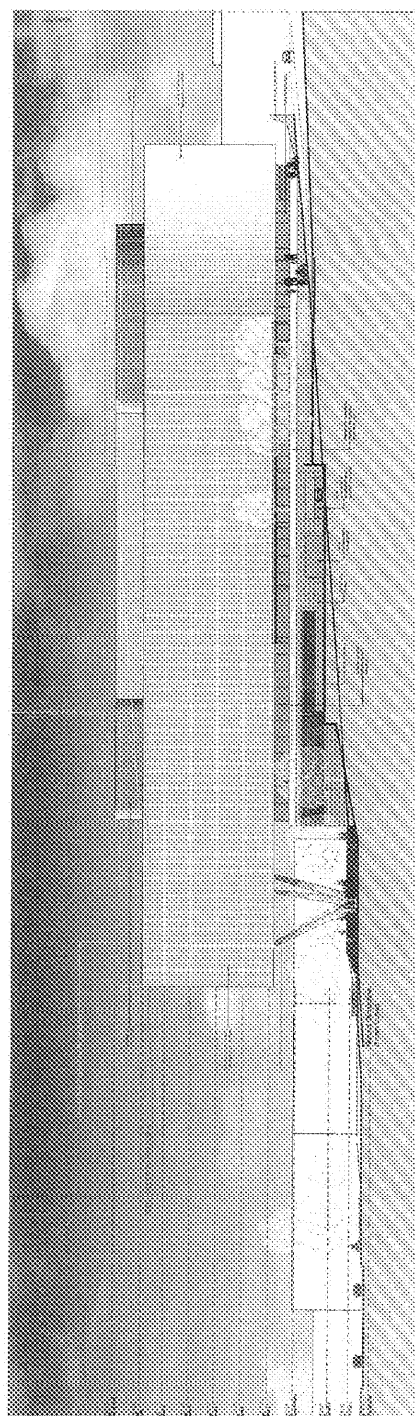
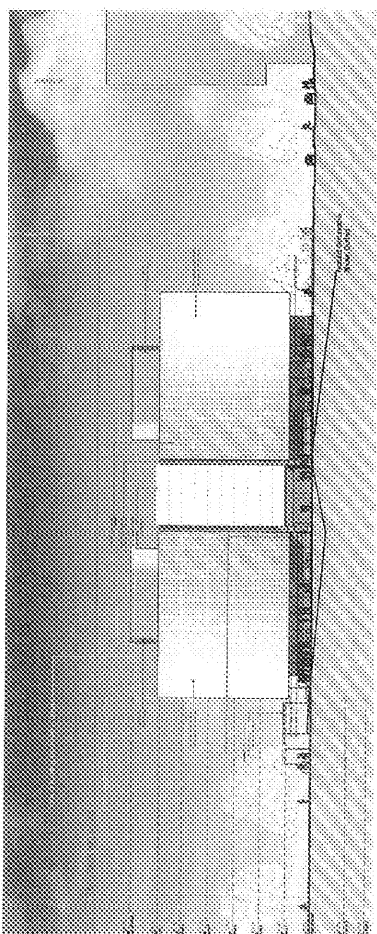


## ATTACHMENT 3



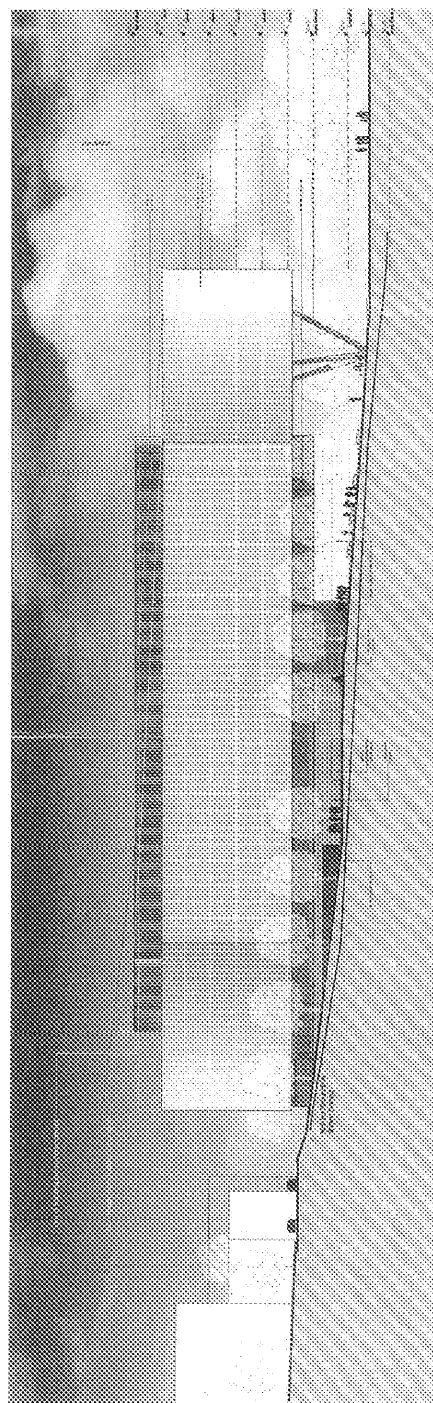
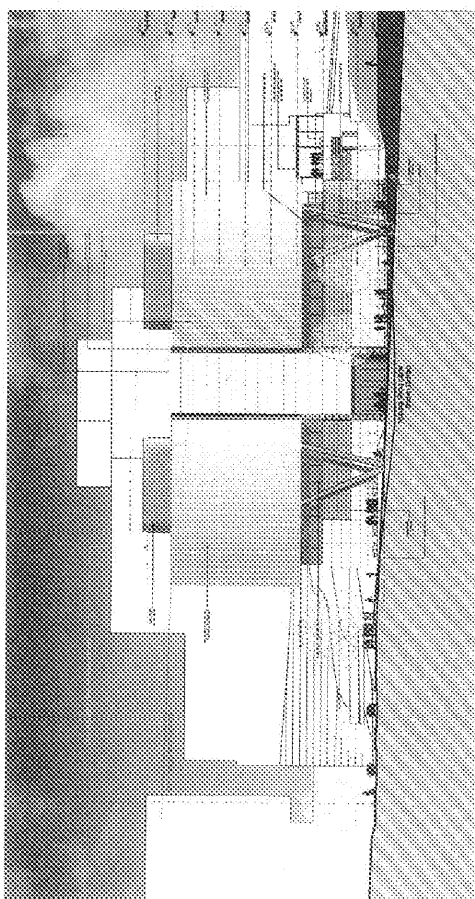
ITEM 12 (continued)

ATTACHMENT 3



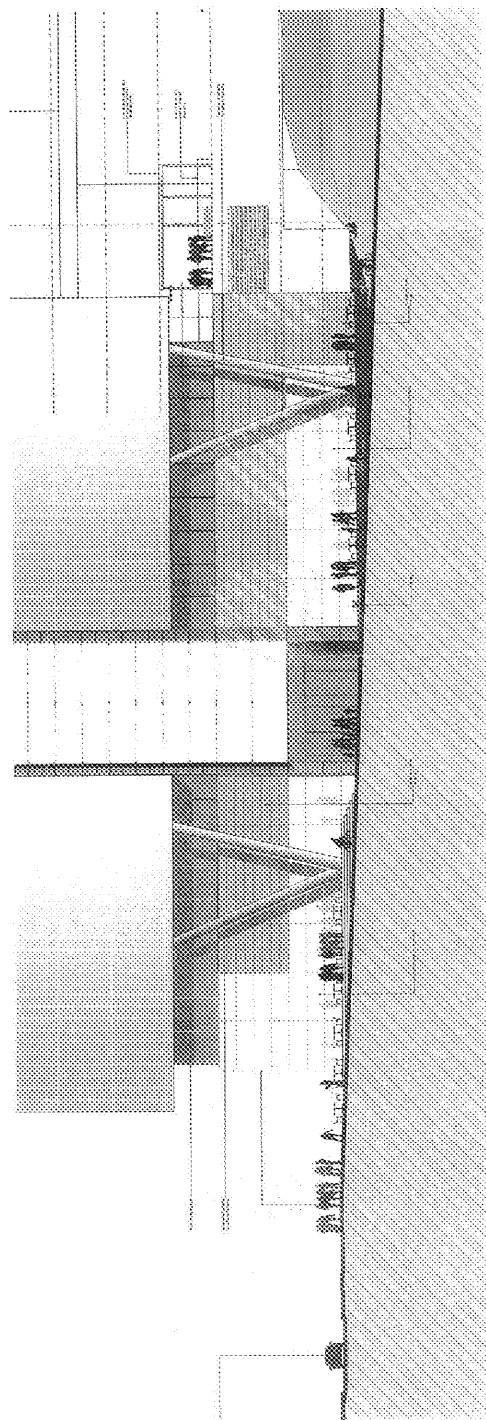
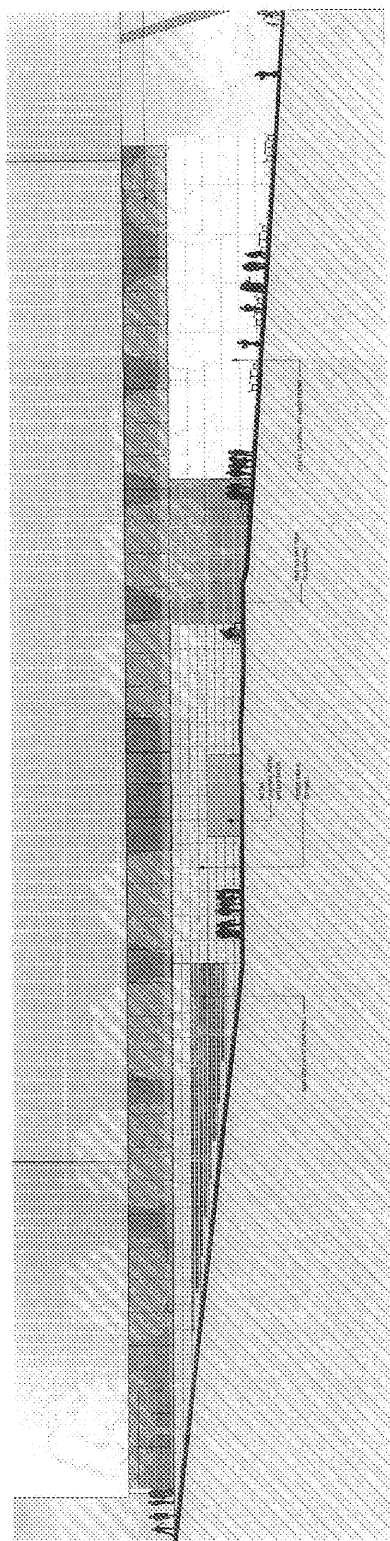
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ATTACHMENT 3



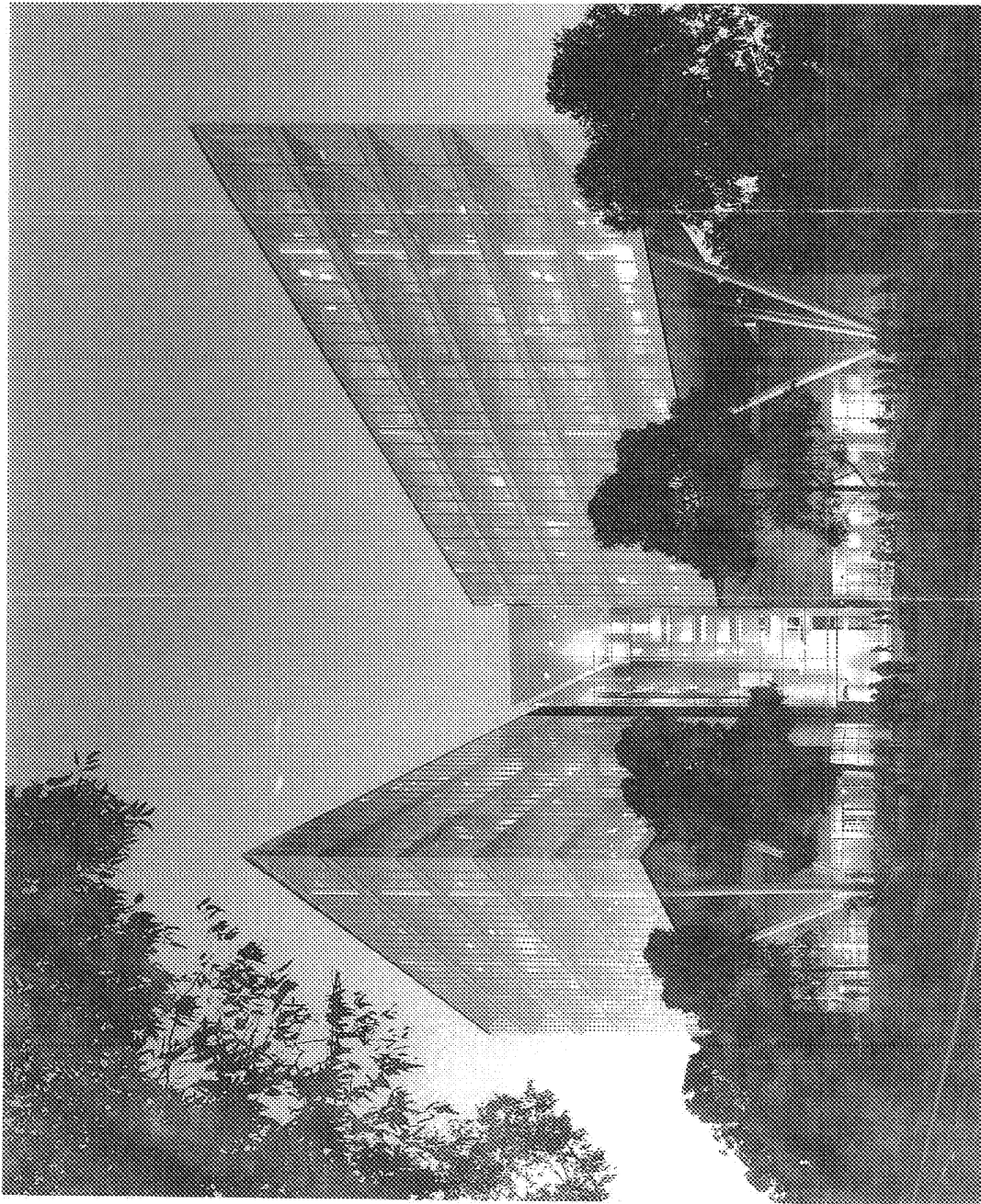
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ATTACHMENT 3



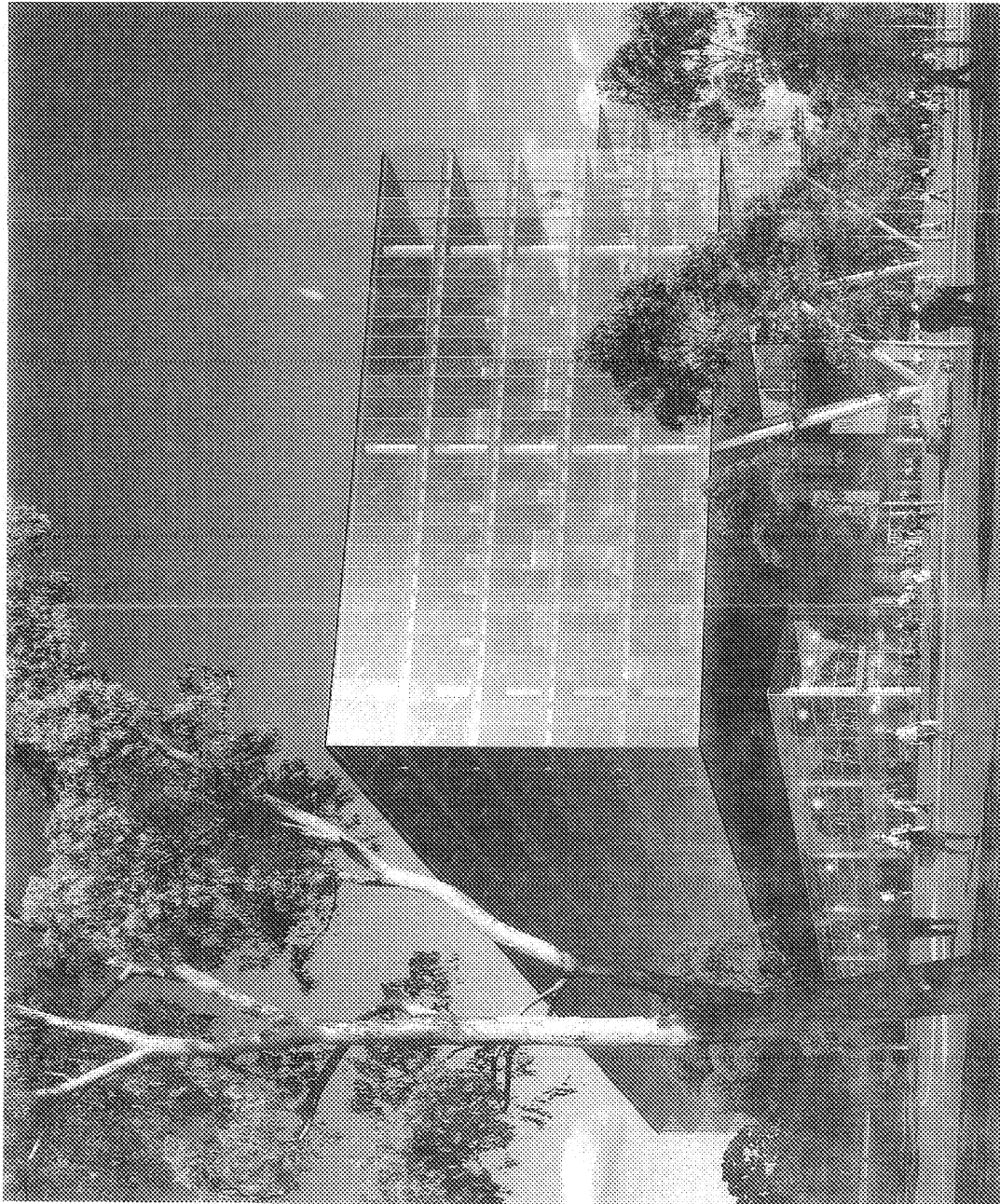
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**ATTACHMENT 3**



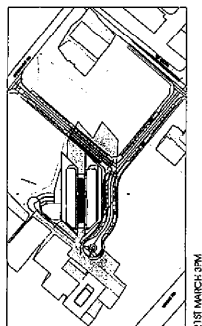
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**ATTACHMENT 3**

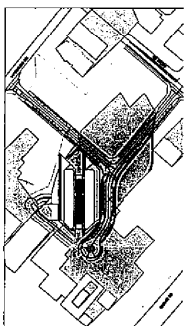


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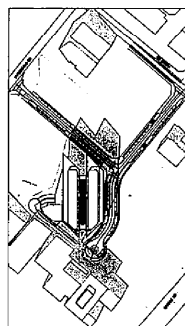
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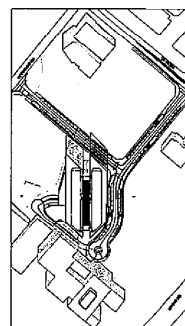
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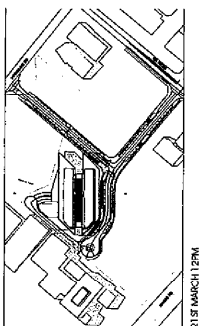
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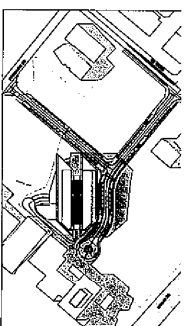
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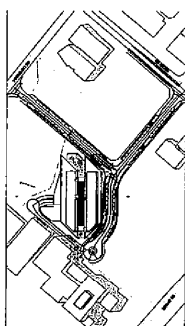
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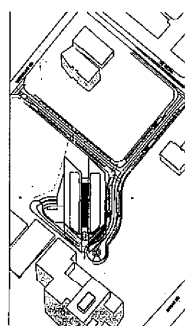
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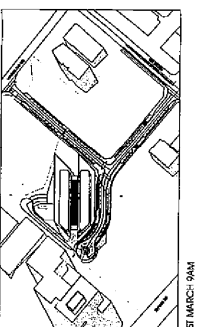
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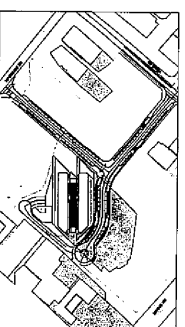
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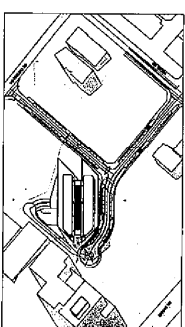
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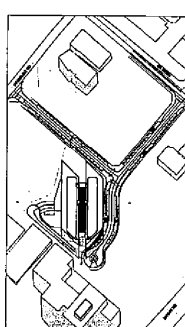
21ST MARCH 9AM



21ST JUNE 9AM



21ST SEP 9AM



21ST DEC 9AM

ITEM 12 (continued)

ATTACHMENT 4



HENRY DAVIS YORK  
LAWYERS

Voluntary Planning Agreement

Ryde City Council  
ABN 81 621 292 610

DEXUS Funds Management Limited as trustee for the Wicks Road Trust  
and DEXUS Wholesale Property Limited as responsible entity for the  
DEXUS Wholesale Property Fund  
ABN 24 060 920 783

HENRY DAVIS YORK 44 MARTIN PLACE SYDNEY NSW 2000 AUSTRALIA  
T +61 2 9947 6000 F +61 2 9947 6999 DX 173 SYDNEY HDY@HDY.COM.AU WWW.HDY.COM.AU

## ITEM 12 (continued)

## ATTACHMENT 4

Voluntary Planning Agreement

HENRY DAVIS YORK

## CONTENTS

KEY DETAILS	1	
BACKGROUND	2	
OPERATIVE PROVISIONS	2	
1 Definitions and interpretation	2	
2 Planning Agreement under the Act	5	
3 Application of this Agreement	5	Deleted: 6
4 Commencement	5	Deleted: 6
5 Development Application	5	Deleted: 6
6 Development Contributions to be made under this Agreement	6	
7 Provision of the Contributions	6	Deleted: 7
8 Implementation Deed	6	Deleted: 7
9 The Public Domain Works	6	Deleted: 7
10 Special Provisions in relation to Road 16	7	Deleted: 8
11 Application of s94 and s94A of the Act to the Development	7	Deleted: 8
12 Section 94 Sum	8	Deleted: 9
13 Dispute Resolution	8	Deleted: 9
14 Guarantees	10	Deleted: 11
15 Registration on Title	12	Deleted: 13
16 Termination	12	Deleted: 13
17 Notices	13	Deleted: 14
18 Approvals and Consent	14	Deleted: 15
19 Entire Agreement	14	Deleted: 15
20 Further Acts	14	Deleted: 15
21 Governing Law and Jurisdiction	14	Deleted: 15

## ITEM 12 (continued)

## ATTACHMENT 4

Voluntary Planning Agreement

HENRY DAVIS YORK

22	Joint and Individual Liability and Benefits	15	Deleted:
23	No Fetter	15	Deleted:
24	Representations and Warranties	15	Deleted:
25	Severability	15	Deleted:
26	Variation	15	Deleted:
27	Waiver	15	Deleted:
28	GST	16	Deleted:
29	Force Majeure	16	Deleted:
30	Compliance with Laws	17	Deleted:
31	Confidentiality	17	Deleted:
EXECUTION		18	Deleted:
Schedule 1: Reference Schedule		19	Deleted:
Schedule 2: The Land		20	Deleted:
Schedule 3: Contributions		21	Deleted:
Schedule 4: Implementation Deed		22	Deleted:
Schedule 5: Dedicated Land		23	Deleted:

## ITEM 12 (continued)

## ATTACHMENT 4

Voluntary Planning Agreement

HENRY DAVIS YORK

## KEY DETAILS

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1	Date	See Execution page
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## 2 Parties

## Council

Name

Ryde City Council  
ABN 81 621 292 610

Address

1 Devlin Street, Ryde, NSW

## Developer

Name

DEXUS Funds Management Limited as trustee for the  
Wicks Road Trust  
and  
DEXUS Wholesale Property Limited as responsible entity  
for the DEXUS Wholesale Property Fund  
ABN 24 060 920 783

Address

Level 9, 343 George Street, Sydney, NSW

## ITEM 12 (continued)

## ATTACHMENT 4

Voluntary Planning Agreement

HENRY DAVIS YORK

## BACKGROUND

- A. On or about 27 November 2007, the Council gave consent for the Preliminary Development.
- B. In August 2008 the Developer lodged the Development Application with the Council seeking Development Consent to carry out the Development on the Land.
- C. Further and separate development applications for the construction of other development on or adjacent to the Land may be made in the future by the Developer.
- D. The Developer has made an offer to the Council to enter into this Agreement under which it proposes to make various Contributions to the Council.

## OPERATIVE PROVISIONS

**1 Definitions and interpretation****1.1** In this Agreement the following definitions apply:

- (a) **Act** means the *Environmental Planning and Assessment Act 1979* (NSW).
- (b) **Authority** means any Commonwealth, state or local government department, body or instrumentality or any other authority or statutory body which has jurisdiction over the Development (including Council) or with whose system the Development is or will be connected.
- (c) **Business Day** means any day which is not a Saturday, Sunday, State wide public holiday in New South Wales or 27, 28, 29, 30 and 31 December.
- (d) **Claim** includes any claim for an increase in Contributions, payment of money (including damages)
  - (i) under, arising out of, or in any way in connection with this Agreement or the Development, including any direction of the Project Certifier;
  - (ii) arising out of or in connection with the Development or either party's conduct; or
  - (iii) otherwise at law or in equity including:
    - (A) by statute
    - (B) in tort for negligence or otherwise, including negligent misrepresentation; or

## ITEM 12 (continued)

## ATTACHMENT 4

Voluntary Planning Agreement

HENRY DAVIS YORK

- (C) for restitution.
- (e) **Commencement Date** means the day that Development Consent is granted for the Development Application.
- (f) **Construction Certificate** means a construction certificate issued pursuant to the Act in respect of the Development or parts of the Development.
- (g) **Contribution Item** means any single item of the Contributions listed in Schedule 3.
- (h) **Contributions** means all of:
- (i) the payment of the Section 94 Sum to the Council by the Developer;
  - (ii) the dedication of the Dedicated Land by the Developer to the Council; and
  - (iii) the completion of the Public Domain Works by the Developer.
- (i) **Dedicated Land** means the land identified as the Dedicated Land in the plan in Schedule 5.
- (j) **Defects Liability Period** has the same meaning as in the Implementation Deed.
- (k) **Development** means the development described at Item 1 of Schedule 1.
- (l) **Development Application** means the Developer's development application assigned by the Council reference DA2008/53, including subsequent applications (including applications for Section 96 Modifications), in respect of the Development.
- (m) **Development Consent** has the same meaning as in the Act.
- (n) **Guarantees** means insurance bonds from QBE or a similar AA rated insurer or an unconditional bank guarantees issued by an institution or bank registered under the Commonwealth Banking Act 1913 and approved by Council (or other form of security acceptable to the Council acting reasonably) which are to be procured by the Developer in favour of the Council as security for the obligations of the Developer under this Agreement, in the amounts set out in Clause 14.
- (o) **Implementation Deed** means the separate agreement between the parties, on the terms of the Implementation Deed in Schedule 4, to be executed in accordance with clause 8.2 of this Agreement pursuant to which that part of the Contributions relating to the Public Domain Works will be performed.
- (p) **Land** means the land on which the Development will be undertaken as shown in the plan in Schedule 2.
- (q) **Law** means any applicable law including any present or future law of the

## ITEM 12 (continued)

## ATTACHMENT 4

Voluntary Planning Agreement

HENRY DAVIS YORK

Commonwealth of Australia or any State or Territory including statute, common law and equity.

- (r) **Occupation Certificate** has the same meaning as in the Act.
- (s) **Party or Parties** means a party or parties to this Agreement (as the context requires), and includes their successors and assigns.
- (t) **Practical Completion** has the same meaning as in the Implementation Deed.
- (u) **Preliminary Development** means the development described at Item 2 of Schedule 1.
- (v) **Project Certifier** has the same meaning as in the Implementation Deed.
- (w) **Public Domain Works** means:
  - (i) the Public Domain Works Roads, and
  - (ii) the Public Domain Works Roundabout.
- (x) **Public Domain Works Roads** means the works described as such in Schedule 3.
- (y) **Public Domain Works Roundabout** means the works described as such in Schedule 3.
- (z) **Road 16** means the area of land so identified on the plan in Schedule 5 and as shown on the plan showing Public Domain Works Roads referred to in Schedule 3.
- (aa) **Regulations** mean the *Environmental Planning and Assessment Regulation 2000*.
- (bb) **Section 94 Sum** means the amount that would, but for this Agreement, be otherwise payable by the Developer to the Council under section 94 of the Act less the estimated cost of the Public Domain Works and is as set out clause 12.3.
- (cc) **Section 96 Modification** means any modification pursuant to section 96 of the Act to a Development Consent granted in respect of the Development.
- (dd) **Stage Inspection** means an inspection undertaken by the Project Certifier during construction of the Public Domain Works.

1.2 In the interpretation of this 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 Agreement.

## ITEM 12 (continued)

## ATTACHMENT 4

Voluntary Planning Agreement

HENRY DAVIS YORK

- (b) If the day on which any act, matter or thing is to be done under this Agreement is not a Business Day, the act, matter or thing must be done on the next Business Day.
- (c) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (d) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or reenactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (e) A reference in this 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 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) References to the word 'include' or 'including' are to be construed without limitation.
- (k) A reference to this Agreement includes the agreement recorded in this Agreement.
- (l) A reference to a party to this 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 Agreement.

**2 Planning Agreement under the Act**

- 2.1 The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

**ITEM 12 (continued)****ATTACHMENT 4**

Voluntary Planning Agreement

HENRY DAVIS YORK

**3 Application of this Agreement**

- 3.1 This Agreement is made in respect of the Development on the Land and applies to the Land in that regard.

**4 Commencement**

- 4.1 This Agreement is effective on and from the Commencement Date, notwithstanding any delay in execution of this Agreement.
- 4.2 The Parties must execute this Agreement as soon as possible after the Commencement Date.

**5 Development Application**

- 5.1 The Parties acknowledge and agree that the Developer has lodged the Development Application with the Council seeking Development Consent for:
- (a) construction of a building with a gross floor area of 27,340m<sup>2</sup>;
  - (b) a building floor plate in the order of approximately 2,000 m<sup>2</sup>;
  - (c) construction of 324 car-parking spaces;
  - (d) constructions of roads; and
  - (e) a building height of 6 storeys (measured from the highest point on the Land).

**6 Development Contributions to be made under this Agreement**

- 6.1 The Developer must provide the Contributions in accordance with this Agreement and the Implementation Deed.
- 6.2 The parties may vary the timing for the provision of the Contributions but only in writing.

**ITEM 12 (continued)****ATTACHMENT 4**

Voluntary Planning Agreement

HENRY DAVIS YORK

**7 Provision of the Contributions**

- 7.1 The Developer must dedicate, by way of transfer and at no cost to Council, the Dedicated Land within three months of the Public Domain Works reaching Practical Completion.
- 7.2 The Developer must commence the construction of the Public Domain Works Roads no later than 28 Business Days after receiving a Construction Certificate for the Public Domain Works Roads.
- 7.3 The Developer must commence the construction of the Public Domain Works Roundabout no later than 28 Business Days after receiving a Construction Certificate for the Public Domain Works Roundabout.
- 7.4 The Developer must complete the Public Domain Works as soon as reasonably practical and no later than 5 years from the date of the issue of the Construction Certificate
- 7.5 The Developer must pay the Section 94 Sum to Council in accordance with Clause 12.
- 7.6 The Parties acknowledge and agree that other than the Contributions, no further contributions or levies under sections 94 or 94A of the Act will be payable by or on behalf of the Developer arising out of or in connection with the Development or the Land and to the extent permitted by law, the Developer will not be liable upon any Claim by any Authority (including the Council) for any contribution or levy under sections 94 or 94A of the Act (other than the Contributions) arising out of or in any way in connection with the Development or the Land.

**8 Implementation Deed**

- 8.1 The Developer must design, construct and commission the Public Domain Works in accordance with the Implementation Deed.
- 8.2 The parties must execute this Agreement and the Implementation Deed (in the form set out in Schedule 4 to this Agreement) as soon as reasonably practical after the Commencement Date. For the avoidance of doubt, the parties acknowledge that this Agreement and the Implementation Deed take effect from the Commencement Date notwithstanding any delay in execution.

**9 The Public Domain Works**

- 9.1 The Developer must pay all development costs associated with the Public Domain Works.
- 9.2 The Council acknowledges and agrees that from the date of transfer of the Dedicated Land to the Council, all risk in the Public Domain Works will lie with Council and

## ITEM 12 (continued)

## ATTACHMENT 4

Voluntary Planning Agreement

HENRY DAVIS YORK

Council will be fully responsible for the care, maintenance and insurance of the Public Domain Works.

**10 Special Provisions in relation to Road 16**

- 10.1 The parties acknowledge and agree that Road 16 forms part of a proposed road linking Epping Road and Waterloo Road that Council proposes to construct in the future (the **Future Road**).
- 10.2 The parties acknowledge and agree that Road 16 forms part of the Dedicated land.
- 10.3 Council acknowledges that it will need to incorporate Road 16 into the Future Road which may require the modification of Road 16.
- 10.4 Council acknowledges and agrees that the modification of Road 16 to facilitate the incorporation of Road 16 into the Future Road will be carried out at Council's cost.
- 10.5 Council acknowledges that the modification of Road 16 and the construction of the Future Road will impact on vehicular and pedestrian access to the basement of the building proposed as part of the Development (the **Basement Access**).
- 10.6 Council agrees to design and construct the intersection of the Future Road and the Basement Access in a manner satisfactory to the Developer, acting reasonably.
- 10.7 During the construction of the Future Road, Council agrees to maintain at all times vehicular and pedestrian access to the basement of the building proposed as part of the Development.
- 10.8 Any parts of Road 16 that do not form part of the roadway of the Future Road but will be dedicated to Council in accordance with this Agreement (such as those parts of the turning circle adjacent to the Basement Access) must be landscaped by Council as part of the construction of the Future Road (the **Future Landscaped Areas**).
- 10.9 Council agrees to maintain the Future Landscaped Areas.
- 10.10 For the avoidance of doubt, Council agrees and acknowledges that the Developer will have no liability:
- (a) in relation to Road 16 once Road 16 has been dedicated to Council pursuant to this Agreement; and
  - (b) in relation to the Future Road; and
  - (c) for the Future Landscaped Areas.

## ITEM 12 (continued)

## ATTACHMENT 4

Voluntary Planning Agreement

HENRY DAVIS YORK

**11 Application of s94 and s94A of the Act to the Development**

- 11.1 This Agreement excludes the operation of Sections 94 and 94A of the Act to any Development Consent that is granted in respect of the Development.
- 11.2 Section 94(6) of the Act does not apply to the Contributions provided pursuant to this Agreement in respect of any other development for which Development Consent is sought by the Developer in relation to development not contemplated by any Development Application for the Development.

**12 Section 94 Sum**

- 12.1 Council acknowledges and agrees that as at the date of this Agreement, the total contribution payable pursuant to section 94 of the Act that, but for this Agreement, would be payable by the Developer in connection with the Development is \$3,164,315.15.
- 12.2 Council acknowledges and agrees that the Developer must complete the Public Domain Works, the estimated cost of which is \$2,635,984 (excluding GST).
- 12.3 Subject to clauses 12.5 and 12.6, the Section 94 Sum is the amount set out in clause 12.1 less the amount set out in clause 12.2, being \$528,331.15 (excluding GST).
- 12.4 Subject to clauses 12.5 and 12.6, the Developer is to pay the Section 94 Sum prior to the issue of the Occupation Certificate for the Development.
- 12.5 The amounts in clauses 12.1 and 12.2 shall be indexed to the consumer price index in accordance with the applicable provisions of the relevant Section 94 Contributions Plan applying at the relevant date.
- 12.6 Notwithstanding any provision of this Agreement, if the Council (or the Land and Environment Court on appeal) grants Development Consent for the Development or grants consent to an application to modify the Development Consent for the Development under section 96 of the Act with conditions that increase or decrease the gross floor area of the Development compared to the gross floor area set out in the Development Application, then the amount in clause 12.1 and therefore the Section 94 Sum is to be increased or decreased by an amount (calculated in accordance with the section 94 contributions plan in force at that time) which reflects the actual amount of gross floor space permitted by the Development Consent or modified Development Consent for the Development.
- 12.7 Notwithstanding any provision in this Agreement, if the Developer does not obtain a Occupation Certificate within 5 years after the date of the grant of the relevant Construction Certificate, the amount payable under this clause shall be that amount that is payable pursuant to Council's section 94 contributions plan that applies at the expiry of the 5 year period less the cost of the Public Domain Works set out in clause 12.2.

## ITEM 12 (continued)

## ATTACHMENT 4

Voluntary Planning Agreement

HENRY DAVIS YORK

**13 Dispute Resolution****13.1 Notice of Dispute**

If a party claims that a dispute has arisen under this Agreement (Claimant), it must give written notice to the other party (**Respondent**) stating the matters in dispute and designating as its representative a person to negotiate the dispute (**Claim Notice**). No party may start court proceedings (except for proceedings seeking interlocutory relief) in respect of a dispute unless it has first complied with this clause 13.

**13.2 Response to Notice**

Within 10 Business Days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the dispute.

**13.3 Negotiation**

The nominated representatives must:

- (i) meet to discuss the matter in good faith within 5 Business Days after service by the Respondent of notice of its representative, and
- (ii) use reasonable endeavours to settle or resolve the dispute within 15 Business Days after they have met.

**13.4 Further Notice if dispute 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 (Dispute Notice) by mediation under clause 13.5 or by expert determination under clause 13.6.

**13.5 Mediation**

If a party gives a Dispute Notice calling for the dispute to be mediated:

- (a) the parties must agree the terms of reference of the mediation within 5 Business Days of the receipt of the Dispute Notice (the terms shall include a requirement that the mediation rules of The Institute of Arbitrators & 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 Dispute Notice, either party may request the Chair of the institute of Arbitrators & Mediators Australia (NSW Chapter) to appoint a mediator (the Mediator);
- (c) the Mediator appointed pursuant to this clause 13.5 must:
  - (i) have reasonable qualifications and practical experience in the area of the dispute; and

## ITEM 12 (continued)

## ATTACHMENT 4

Voluntary Planning Agreement

HENRY DAVIS YORK

- (ii) have no interest or duty which conflicts or may conflict with his function as mediator, he or she being required to fully disclose any such interest or duty before his 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 Dispute Notice notify each other of their representatives who will be involved in the mediation;
- (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;
- (g) in relation to costs and expenses:
  - (i) each party will bear their 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 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.

**13.6 Expert determination**

If the dispute is not resolved under clause 13.3 or 13.5, the dispute may, by agreement between the parties, both acting reasonably having regard to the nature of the dispute, be resolved by expert determination, in which event:

- (a) the dispute must be determined by an independent expert in the relevant field:
  - (i) agreed upon and appointed jointly by the Council and the Developer; or
  - (ii) in the event that no agreement is reached or appointment made within 30 Business Days after the parties agree in writing to expert determination, appointed on application of a party by the Chair of the Institute of Arbitrators & Mediators Australia (NSW Chapter);
- (b) the expert must be appointed in writing and the terms of appointment must not be inconsistent with this clause;
- (c) the determination of the dispute by such 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;

## ITEM 12 (continued)

## ATTACHMENT 4

Voluntary Planning Agreement

HENRY DAVIS YORK

- (e) each party will bear its own costs in connection with the process and the determination by the expert together with an equal proportion of 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 where 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 and any party may commence litigation in relation to the dispute if it has not been resolved within 20 Business Days of the expert giving his or her decision.

**13.7 Litigation**

If the dispute is not finally resolved in accordance with this clause 13 either party is at liberty to litigate the dispute.

**13.8 Continue to perform obligations**

Each party must continue to perform its obligations under this Agreement, notwithstanding the existence of a dispute.

**14 Guarantees**

- 14.1 Prior to obtaining the Construction Certificate for the Development, the Developer must deliver to Council two Guarantees for the following amounts in respect of the following items:

- (a) Public Domain Works - \$2,570,087.33 (97.5% of the construction costs in clause 12.2); and
- (b) Retention sum in respect of defects - \$65,899.60 (2.5% of the construction costs in clause 12.2).

- 14.2 Each Guarantee will be for a period that does not exceed 5 years after the date on which the Guarantees are provided under clause 14.1.

- 14.3 If following a Stage Inspection, the Project Certifier is satisfied that the works up to the relevant Stage Inspection are completed, the Developer may reduce the amount of the Guarantee referred to in clause 14.1(a) by an amount approximate to the costs of the works undertaken up to that Stage Inspection.

- 14.4 Without limiting clause 14.2, if:

- (a) the Development Consent for the Development lapses; and
- (b) the Developer has not commenced any part of the Public Domain Works,

then the Council must return the Guarantees to the Developer within 20 Business Days of the Developer providing a written request to the Council to return the Guarantees.

## ITEM 12 (continued)

## ATTACHMENT 4

Voluntary Planning Agreement

HENRY DAVIS YORK

- 14.5 If the Developer does not provide the Contributions in accordance with this Agreement or the Implementation Deed then, without limiting any other remedies available to the Council, the Council may call on the Guarantees in respect of the Public Domain Works without notice to the Developer.
- 14.6 Within 20 Business Days after the Project Certifier certifies that the Public Domain Works have reached Practical Completion, Council must (if it has not called on it) return the Guarantee referred to in clause 14.1(a) (or any remaining balance of it) to the Developer or as the Developer directs.
- 14.7 Within 20 Business Days after the Defects Liability Period has expired Council must (if it has not called on it) return the Guarantee referred to in clause 14.1(b) (or any remaining balance of it) to the Developer or as the Developer directs.
- 14.8 If during the Defects Liability Period, the Council notifies the Developer of a defect and if at the expiration of the Defects Liability Period that defect has not been rectified by the Developer to the Council's satisfaction (acting reasonably), then:
- (a) the Council need not deliver the Guarantee referred to in clause 14.1(b) (or any remaining balance of it) until that defect has been rectified; and
  - (b) the Council may call upon the Guarantee in order to rectify that defect; and
  - (c) if there is any surplus amount following completion of the rectification of the defect by the Council, the Council must return that amount promptly to the Developer.
- 14.9 Any request for return of a Guarantee must be made in writing and be accompanied by appropriate certification by the Project Certifier acceptable to both parties (acting reasonably).

**15 Registration on Title**

- 15.1 Prior to the issue of the Construction Certificate for the Development, the Developer must register or procure registration of this Agreement on the relevant folios of the Torrens title register held by the New South Wales Land and Property Management Authority pertaining to the Land. The Developer shall be responsible for obtaining the consent of any mortgagee or other person with an interest in the Land to such registration.
- 15.2 Upon full satisfaction of the Developer's obligations under this Agreement, or if for any reason the Development Consent for the Development should be deemed invalid or otherwise lapse, the Council agrees to provide a release and discharge of this Agreement with respect to the Land or any lot, including a strata lot, created on subdivision of the Land, within 10 Business Days of receiving a written request from the Developer and to do all things reasonably necessary, including to execute any necessary document, to enable the Developer to remove the notation of this Agreement on the relevant folios of the Torrens title register held by the New South Wales Land and Property Management Authority pertaining to the Land.

## ITEM 12 (continued)

## ATTACHMENT 4

Voluntary Planning Agreement

HENRY DAVIS YORK

**16 Termination****16.1 General**

If a party to this Agreement fails to comply with the terms and conditions of this Agreement, the non-defaulting party may, if the default is capable of remedy, serve notice on the defaulting party to remedy the default by a date that is not less than a date 5 Business Days from the date of the notice.

**16.2 If:**

- (a) the Development Consent for the Development lapses;
- (b) there is a declaration by a Court of competent jurisdiction that the Development Consent is invalid;
- (c) the defaulting party does not remedy the breach by the date specified in the notice;
- (d) the breach of the Agreement is not capable of remedy,
- (e) the Developer surrenders the Development Consent for the Development on the Land prior to physical commencement (as defined in the Act),

then:

- (i) either party may in the circumstances described in clause 16.2(a) and 16.2(b); or
- (ii) the non-defaulting party may in the circumstances described in clauses 16.2(c) and 16.2(d))
- (iii) the Developer may in the circumstances described in clauses 16.2(e)

terminate this Agreement by no less than 10 Business Days' notice in writing to the other party.

**16.3 Effect of termination**

- (a) If this Agreement is validly terminated for any reason:
  - (i) the provisions of this Agreement will cease to have effect other than those obligations which expressly or by their nature survive termination; and
  - (ii) except as provided otherwise, each party retains the rights it has against any other party in respect of any breach of or unperformed obligation under this Agreement.

**16.4 Rights and Obligations**

The termination of this Agreement pursuant to this clause shall be without prejudice to the rights of a party and shall not affect or determine the obligations of a party that

## ITEM 12 (continued)

## ATTACHMENT 4

Voluntary Planning Agreement

HENRY DAVIS YORK

have accrued under this Agreement or the relevant provision prior to the effective date of such termination.

**17 Notices**

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

- (a) delivered or posted to that Party at its address set out below.
- (b) faxed to that Party at its fax number set out below.
- (c) emailed to that Party at its email address set out below.
- (d) Council:

- (i) Attention: General Manager

- (ii) Address: 1 Devlin Street, Ryde, NSW

- (iii) Fax Number: [#]

- (iv) Email: [#]

- (v) and copy to [cityofryde@ryde.nsw.gov.au](mailto:cityofryde@ryde.nsw.gov.au)

- (e) Developer

- (i) Attention: [#]

- (ii) Address: [#]

- (iii) Fax Number: [#]

- (iv) Email: [#]

17.2 If a Party gives the other Party no less than 5 Business Days' notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

17.3 Any notice, consent, 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 left at the relevant address.
- (b) if it is sent by post, 2 Business Days after it is posted.
- (c) if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

## ITEM 12 (continued)

## ATTACHMENT 4

Voluntary Planning Agreement

HENRY DAVIS YORK

- 17.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a Business Day, or if on a Business Day, after 5pm 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 the beginning of the next Business Day.
- 17.5 A notice sent or delivered in a manner provided by clause 17.1 must, subject to clauses 17.2 - 17.4, be treated as validly given to and received by the Party to which it is addressed even if:
- (a) the addressee has been liquidated or deregistered or is absent from the place at which the notice is delivered or to which it is sent; or
  - (b) the notice is returned unclaimed.

**18 Approvals and Consent**

- 18.1 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 obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

**19 Entire Agreement**

- 19.1 This 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 Agreement was executed, except as permitted by law.

**20 Further Acts**

- 20.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

**21 Governing Law and Jurisdiction**

- 21.1 This 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.

## ITEM 12 (continued)

## ATTACHMENT 4

Voluntary Planning Agreement

HENRY DAVIS YORK

**22 Joint and Individual Liability and Benefits**

- 22.1 Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

**23 No Fetter**

- 23.1 Nothing in this Agreement or the Implementation Deed shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

**24 Representations and Warranties**

- 24.1 The Parties represent and warrant that they have power 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.

**25 Severability**

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

**26 Variation**

- 26.1 No variation of this Agreement have any force or be of any effect unless it is in writing and signed by both Parties to this Agreement.

**27 Waiver**

- 27.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in

## ITEM 12 (continued)

## ATTACHMENT 4

Voluntary Planning Agreement

HENRY DAVIS YORK

relation to any other occasion.

**28 GST****28.1 Meanings**

In this clause:

- (a) GST means GST as defined in the A New Tax System (Goods and Services) Tax Act 1999 as amended from time to time (GST Act) or any replacement or other relevant legislation and regulations;
- (b) words used in this clause which have a particular meaning in the GST law (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires;
- (c) any reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member; and
- (d) if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.

28.2 Unless GST is expressly included, the consideration expressed to be payable under any other clause of this Deed for any supply made under or in connection with this Deed or any other value expressed in this Deed does not include GST.

28.3 Subject to clause 28.6, to the extent that any supply made under or in connection with this Deed is a taxable supply, the GST exclusive consideration otherwise payable for that supply is increased by an amount equal to that consideration multiplied by the rate at which GST is imposed in respect of the supply, and is payable at the same time.

28.4 Each party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable in respect of any supply made under or in connection with this Deed.

28.5 If a payment to a party under this Deed is a payment by way of reimbursement or indemnity and is calculated by reference to the GST inclusive amount of a loss, cost or expense incurred by that party, then the payment is to be reduced by the amount of any input tax credit to which that party is entitled in respect of that loss, cost or expense before any adjustment is made for GST pursuant to clause 28.3.

28.6 Where as a result of the operation of clause 28 the Council is required to pay GST to the Developer, the Developer shall not require the Council to remit such GST to the Developer until 5 Business Days after receiving an input tax credit for that GST

## ITEM 12 (continued)

## ATTACHMENT 4

Voluntary Planning Agreement

HENRY DAVIS YORK

amount. On receipt of a tax invoice from the Developer, the Council must apply for the input tax credit as soon as practicable.

**29 Force Majeure**

- 29.1 Subject to clause 29.6, if a Party is unable by reason of force majeure to carry out wholly or in part its obligations under this Agreement, it must:
- (a) give to the other Party prompt notice of the force majeure with reasonably full particulars; and
  - (b) suggest an alternative method, if any, of satisfying its obligations under this Agreement.
- 29.2 The Parties agree that force majeure includes the commencement of any legal proceedings by any person challenging the validity of the Development Consent or any provision of this Agreement.
- 29.3 If a Party is unable to satisfy its obligations under this Agreement by an alternative method, the obligations of the Parties, and any time periods, so far as they are affected by the force majeure are then suspended during continuance of the force majeure and any further period as may be reasonable in the circumstances.
- 29.4 The Party giving such notice under this clause must use all reasonable efforts and diligence to remove the force majeure or ameliorate its effects as quickly as practicable.
- 29.5 The Parties agree that any costs associated in ameliorating a force majeure event will be apportioned, if necessary, in such manner as may be fair and reasonable.
- 29.6 The Parties agree that this force majeure provision does not apply to an obligation of a Party to transfer and or to pay money.
- 29.7 If the Parties are unable to agree on the existence of an event of force majeure or the period during which the obligations of the Parties, and any time periods, are suspended during the continuance of the force majeure, that dispute must be referred for determination under clause 13.
- 29.8 If a force majeure event cannot be resolved to the mutual satisfaction of Council and the Developer and as a result of a force majeure event the Developer, in its sole discretion, determines that it is unable to undertake the Development, the Developer may terminate this agreement by notice to Council in which event neither Party will have any Claim against the other under this Agreement.

**30 Compliance with Laws**

- 30.1 If a Law is changed or a new Law comes into force (both referred to as New Law) and the Developer is obliged by the New Law to do something or pay an amount which it

## ITEM 12 (continued)

## ATTACHMENT 4

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Voluntary Planning AgreementHENRY DAVIS YORK

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is already contractually obliged to do or pay under this Agreement then, to the extent only that the relevant obligation is required under both the New Law and this Agreement, compliance with this Agreement will constitute compliance with the New Law.

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**31 Confidentiality**

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- 31.1 The parties agree that the terms of this Agreement are not confidential and this Agreement may be treated as a public document and exhibited or reported without restriction by any party.

**DRAFT**

## ITEM 12 (continued)

## ATTACHMENT 4

Voluntary Planning Agreement

HENRY DAVIS YORK

## EXECUTION

Executed as an Agreement on

2011

Signed by [#] as attorney for Ryde City  
Council under power of attorney  
registered in book [#].

\_\_\_\_\_  
Signature of witness  
Name of witness  
(BLOCK LETTERS)

\_\_\_\_\_  
Name

Executed by [#] in accordance  
with section 127 of the *Corporations  
Act 2001*:

\_\_\_\_\_  
Signature of Company Director/Secretary  
Name of company Director/Secretary  
(BLOCK LETTERS)

\_\_\_\_\_  
Signature of Director  
Name of Director  
(BLOCK LETTERS)

## ITEM 12 (continued)

## ATTACHMENT 4

Voluntary Planning Agreement

HENRY DAVIS YORK

## Schedule 1: Reference Schedule

Item	Name	Description
1	Development	The construction of a 6 storey commercial building with a gross floor area of 27,340m <sup>2</sup> and associated road works.
2	Preliminary Development	DA LDA 807/2007 The demolition of the existing school buildings on the Land, preliminary erosion and sediment control works, perimeter fencing and associated signage.

**ITEM 12 (continued)**

**ATTACHMENT 4**

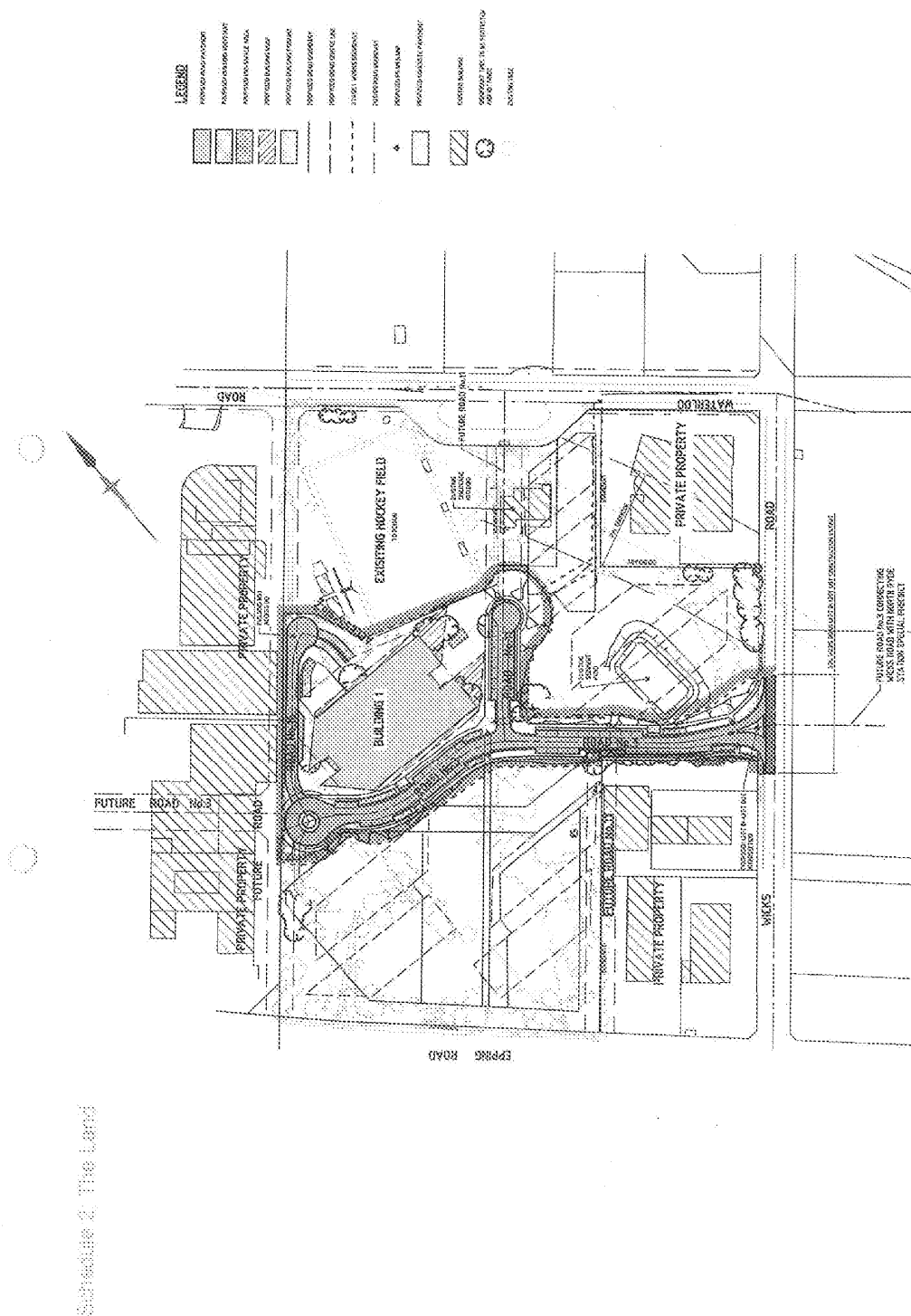
Voluntary Planning Agreement

HENRY DAVIS YORK

**Schedule 2: The Land**

**ITEM 12 (continued)**

## ATTACHMENT 4



## ITEM 12 (continued)

## ATTACHMENT 4

Voluntary Planning Agreement

HENRY DAVIS YORK

## Schedule 3: Contributions

Item	Description
<b>Section 94 Sum</b>	\$513,898.80 or an alternative amount determined in accordance with clause 12.
<b>Public Domain Works Roads</b>	Construction of: <ul style="list-style-type: none"> <li>(a) Road 3 between Wicks Road and the northern boundary of the Land to a width of 20.4 metres – including reserve to realign road at Wicks Road as shown in Plan A below;</li> <li>(b) Road 16 as shown in Plan A below;</li> <li>(c) Part Road 11 as shown in Plan A below, <u>to the specifications contained in "Environmental Standards Development Criteria – Public Civil Works" issued by Ryde City Council.</u></li> </ul>
<b>Public Domain Works Roundabout</b>	The roundabout intersection at the intersection of Road 3 and Road 16 and the turning circle at the end of Road 16 as shown in Plan B below.
<b>Dedicated Land</b>	The land to be dedicated by the Developer to the Council as shown in the plan in Schedule 5

PLAN A

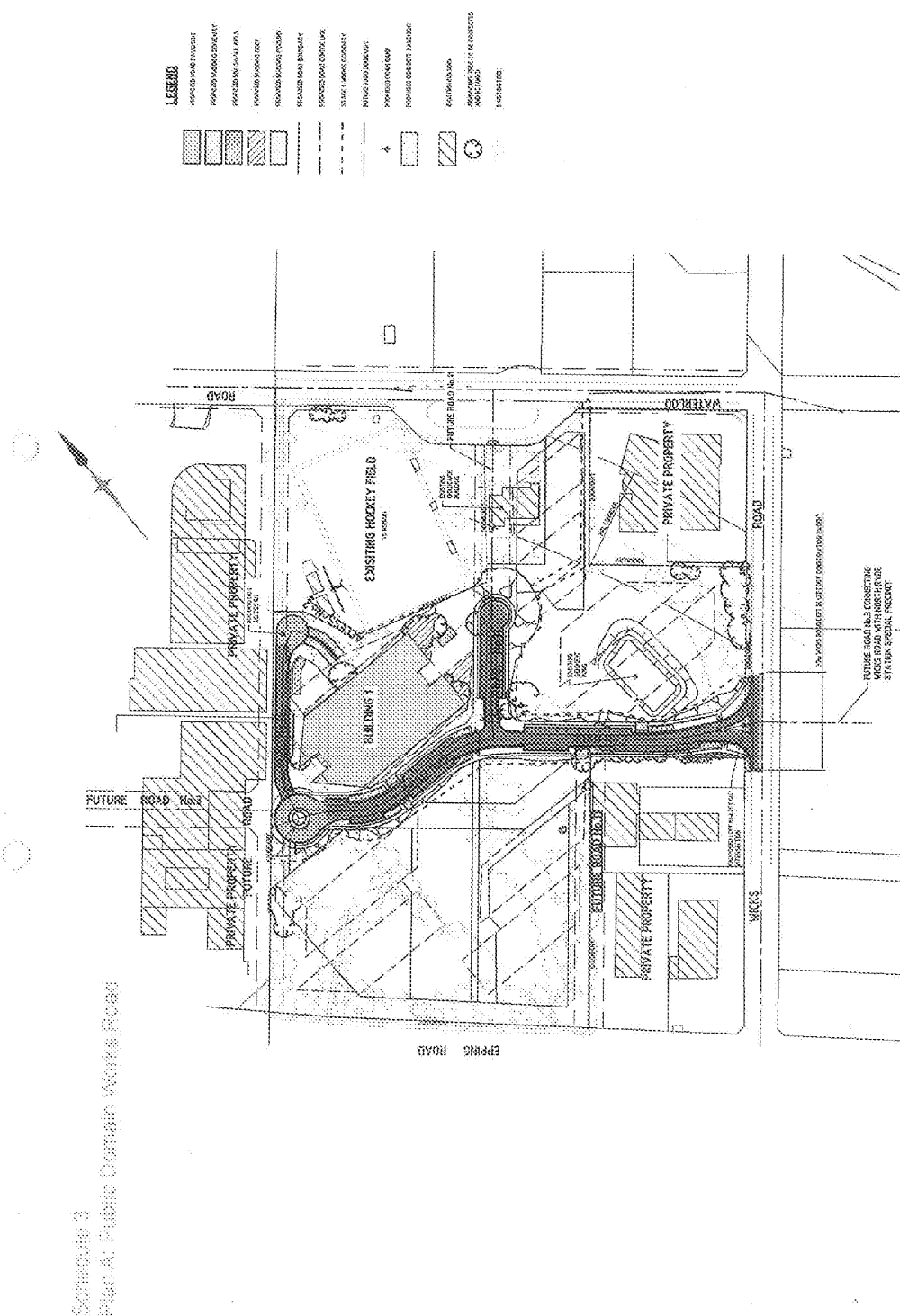
[Insert GHD Plan 21-16200-C104 Rev C]

PLAN B

[Insert GHD Plan 21-16200-C104 Rev C]

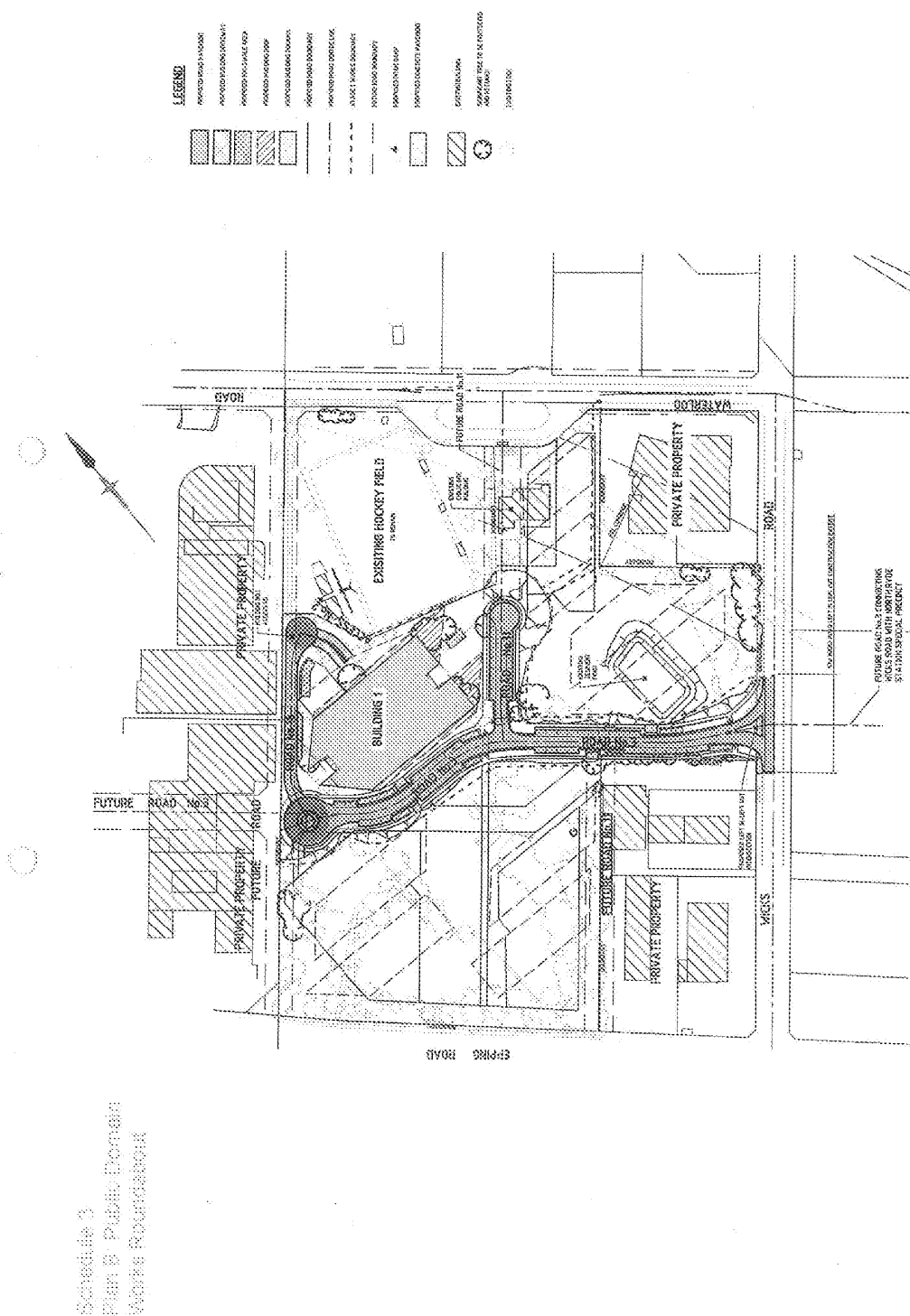
ITEM 12 (continued)

ATTACHMENT 4



**ITEM 12 (continued)**

## ATTACHMENT 4



**ITEM 12 (continued)**

**ATTACHMENT 4**

Voluntary Planning Agreement

HENRY DAVIS YORK

**Schedule 4: Implementation Deed**

**ITEM 12 (continued)**

**ATTACHMENT 4**

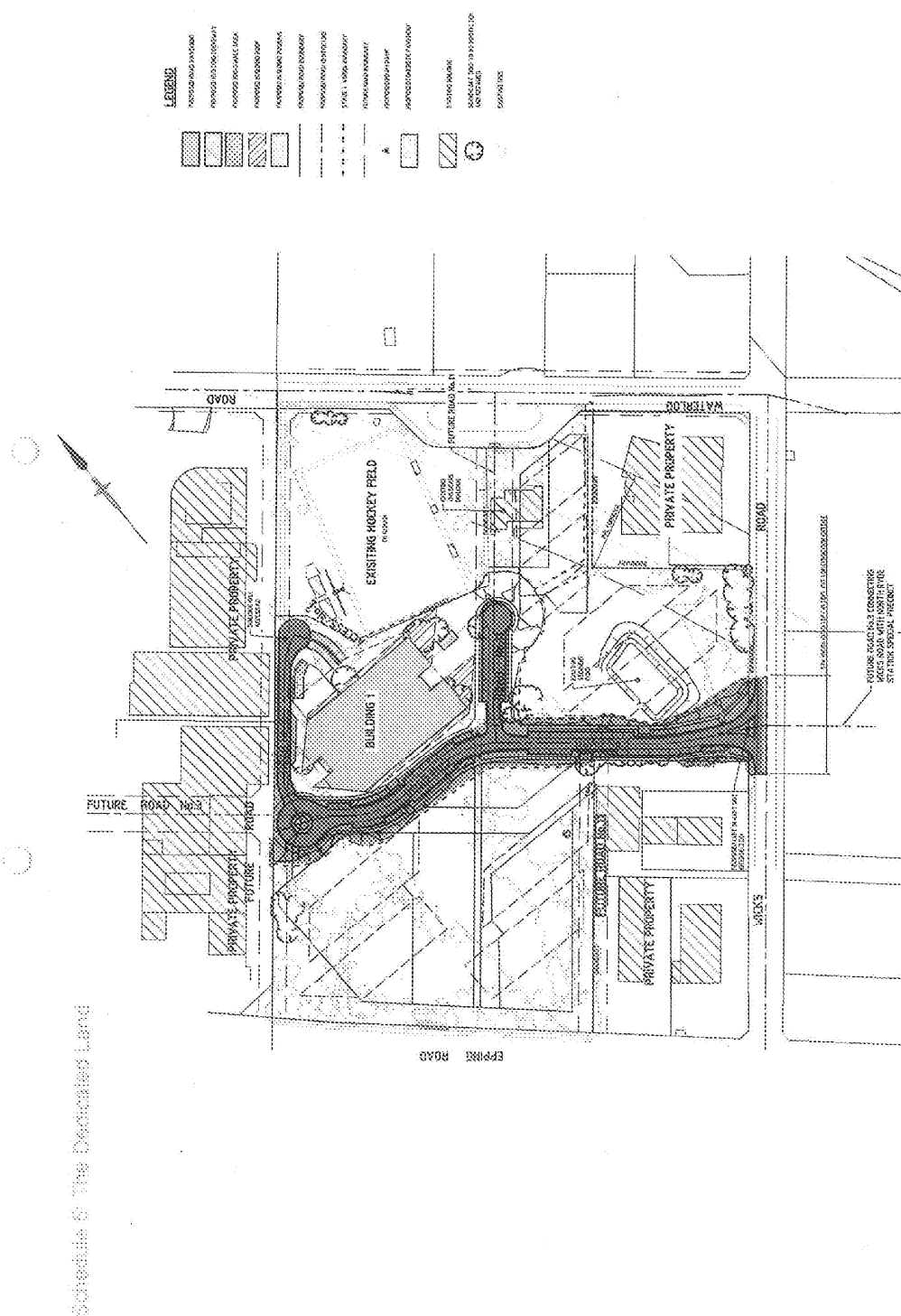
Voluntary Planning Agreement

HENRY DAVIS YORK

**Schedule 5: Dedicated Land**

**ITEM 12 (continued)**

## ATTACHMENT 4



## ITEM 12 (continued)

## ATTACHMENT 4

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Voluntary Planning Agreement

HENRY DAVIS YORK

PROJECT: VOLUNTARY PLANNING TERMS

COUNCIL: RYDE CITY COUNCIL (ABN 81 621 292 610)

DEVELOPER: DEXUS Funds Management Limited as trustee for the Wicks Road  
Trust and DEXUS Wholesale Property Limited as responsible entity for  
the DEXUS Wholesale Property Fund  
(ABN 24 060 920 783)

## EXHIBIT 1 TO THE VOLUNTARY PLANNING AGREEMENT

Signed by [#] as attorney for Ryde City  
Council under power of attorney  
registered in book [#].

---

Signature of witness  
Name of witness  
(BLOCK LETTERS)

---

Name

Executed by [#] in accordance  
with section 127 of the *Corporations  
Act 2001*:

---

Signature of Company Director/Secretary  
Name of company Director/Secretary  
(BLOCK LETTERS)

---

Signature of Director  
Name of Director  
(BLOCK LETTERS)

ITEM 12 (continued)

ATTACHMENT 4



HENRY DAVIS YORK  
LAWYERS

Implementation Deed

**DRAFT**

Ryde City Council  
ABN 81 621 292 610

DEXUS Funds Management Limited as trustee for the Wicks Road Trust  
and DEXUS Wholesale Property Limited as responsible entity for the  
DEXUS Wholesale Property Fund  
ABN 24 060 920 783

HENRY DAVIS YORK 44 MARTIN PLACE SYDNEY NSW 2000 AUSTRALIA  
T +61 2 9947 6000 F +61 2 9947 6999 DX 173 SYDNEY HDY@HDY.COM.AU WWW.HDY.COM.AU

## ITEM 12 (continued)

## ATTACHMENT 4

## CONTENTS

KEY DETAILS	2	
BACKGROUND	3	
OPERATIVE PROVISIONS	3	
1 Definitions and Interpretation	3	
2 The Public Domain Works	5	Deleted
3 Development of the Detailed Design	6	
4 Council Right to Inspect	7	Deleted
5 Completion	7	Deleted
6 Dispute Resolution	9	Deleted
7 Insurance	9	Deleted
8 Notices	10	Deleted
9 Goods and Services Tax	10	Deleted
10 Termination	10	Deleted
11 Intellectual Property Rights	10	Deleted
12 Entire Agreement	10	Deleted
13 Variation	10	Deleted
14 Building Contract	11	Deleted
ANNEXURE A	13	Deleted

## ITEM 12 (continued)

## ATTACHMENT 4

## KEY DETAILS

1	<b>Date</b>	See Execution page
2	<b>Parties</b>	
	<b>Council</b>	
	<b>Name</b>	Ryde City Council ABN 81 621 292 610
	<b>Address</b>	1 Devlin Street, Ryde, NSW
	<b>Developer</b>	
	<b>Name</b>	DEXUS Funds Management Limited as trustee for the Wicks Road Trust and DEXUS Wholesale Property Limited as responsible entity for the DEXUS Wholesale Property Fund ABN 24 060 920 783
	<b>Address</b>	Level 9, 343 George Street, Sydney, NSW

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## ITEM 12 (continued)

## ATTACHMENT 4

**BACKGROUND**

- A The Developer intends to redevelop the Land for commercial use with associated car parking.
- B The parties have entered into the Voluntary Planning Agreement pursuant to which, among other things, the Developer is to provide the Public Domain Works to Council.
- C The parties now wish to set out the process for finalising the design of the Public Domain Works and the terms by which the delivery of Public Domain Works will be implemented.

**OPERATIVE PROVISIONS****1 Definitions and interpretation****1.1 In this Deed:**

- (a) **Annexure** means an annexure to this Deed.
- (b) **Agreed Amount** means the estimated cost of the Public Domain Works as set out in clause 12.2 of the VPA.
- (c) **Approval** means any approval by Authorities with respect to the Development.
- (d) **Builder** means the building contractor awarded the Building Contract.
- (e) **Building Contract** means the contract to carry out the Public Domain Works.
- (f) **Certificate of Practical Completion** means a certificate issued by the Project Certifier that the Public Domain Works have achieved Practical Completion.
- (g) **Condition** means a condition of Development Consent for the Development and conditions of any other Approval.
- (h) **Council's Representative** means the General Manager of Council or such other person who the General Manager of the Council notifies the Developer is the Council's representative from time to time.
- (i) **Date for Practical Completion** means the date for practical completion under the Building Contract for the Public Domain Works.
- (j) **Defects Liability Period** means in respect of the Public Domain Works the period of 12 months from the date on which the Dedicated Land is dedicated to Council.

## ITEM 12 (continued)

## ATTACHMENT 4

- (k) **Detailed Design** means the final specifications and finishes for the Public Domain Works prepared in accordance with clause 3.
- (l) **Practical Completion** means in respect of the Public Domain Works, that stage in the construction of the Public Domain Works when construction of the Public Domain Works is complete except for minor omissions and minor defects:
- (i) which do not prevent the Public Domain 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 Public Domain Works.
- (m) **Project Certifier** means the person engaged under the Building Contract to certify Practical Completion of the Public Domain Works.
- (n) **Public Domain Works Standards** means the standards set out in Annexure B.
- (o) **Requirement** means any requirement, notice, order or direction given by any Authorities.
- (p) **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 Public Domain Works.
- (q) **Variation Costs** means the variation costs over and above the Agreed Amount which arise because of a written request by the Council's Representative for a change to the Public Domain Works that is not contemplated in the Development Application.
- (r) **Voluntary Planning Agreement** means the agreement entered into by the parties on or about the date of this Deed in respect of the Development.
- 1.2 A term which has a defined meaning in the Voluntary Planning Agreement has the same meaning when used in this Deed unless it is expressly defined in this Deed, in which case the meaning given to it in this Deed will prevail.
- 1.3 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
- (a) Headings are inserted for convenience only and do not affect the interpretation of this Deed.
  - (b) If the day on which any act, matter or thing is to be done under this Deed is not a Business Day, the act, matter or thing must be done on the next Business Day.
  - (c) A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.

## ITEM 12 (continued)

## ATTACHMENT 4

- (d) A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or reenactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (e) A reference in this Deed 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 Deed.
- (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) References to the word 'include' or 'including' are to be construed without limitation.
- (k) A reference to this Deed includes the agreement recorded in this Deed.
- (l) A reference to a party to this Deed 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 Deed.

**1.4 No Partnership**

- (a) Nothing in this Deed:
  - (i) creates between the parties either the relationship of partnership or that of principal and agent;
  - (ii) constitutes the parties as parties to a joint venture; or
  - (iii) imposes on the parties any joint or joint and several liability.

**1.5 Proper law and submission to jurisdiction**

- (a) The validity, interpretation, and performance of this Deed is governed by the laws of New South Wales.
- (b) All parties are subject to the jurisdiction of the Supreme Court of New South Wales and the courts of the Commonwealth of Australia.

## ITEM 12 (continued)

## ATTACHMENT 4

**2 The Public Domain Works**

- 2.1 The Developer agrees to procure and carry out the construction of the Public Domain Works as contemplated in this Deed.
- 2.2 The Developer must ensure that the Public Domain Works are carried out in accordance with:
- (a) the Public Domain Works Standards in Annexure A;
  - (b) the Development Consent for the Development and all other Approvals and the requirements of all laws.
- 2.3 All costs, other than Variation Costs, of the construction of the Public Domain Works must be borne by the Developer.

**3 Development of the Detailed Design****3.1 Co-operation with Council**

- (a) From the date the Developer notifies the Council in writing that it wishes to commence the detailed design of the Public Domain Works, Council and the Developer must:
- (i) work in consultation with each other to prepare and agree the Detailed Design; and
  - (ii) try to agree a date by which the Detailed Design must be prepared and agreed;
  - (iii) prepare the Detailed Design in accordance with the Macquarie Park Corridor Public Domain Technical Manual and the AUSTROADS Pavement Design Manual "A Guide to the Structural Design of Road Pavements" (1992).
- (b) Council and the Developer must both act reasonably and with due expedition in their consultations with each other.

**3.2 Costs**

- (a) Subject to clause 3.3, in preparing the Detailed Design, Council and the Developer must use reasonable endeavours to ensure that the cost of delivery of the Public Domain Works does not exceed the Agreed Amount.
- (b) Subject to clause 3.2(c), where the cost of the Public Domain Works is greater than the Agreed Amount, the Developer shall be obliged to accept that cost.
- (c) If the Council makes a written request to change the Detailed Design which a qualified Quantity Surveyor certifies will cause the Agreed Amount to increase by more than 5%, the Council must pay the Variation Costs to the Developer within 10 Business Days after delivery by the Developer to

**ITEM 12 (continued)****ATTACHMENT 4**

Council of a tax invoice for the payment together with reasonable details of the Claim for the additional cost payment.

**3.3 Council Variations**

- (a) Despite any other provision in clause 3, Council is not entitled to propose and the Developer has no obligation to consider or agree to any inclusion in respect of the Detailed Design which:
- (i) exceeds the specifications set out in the Public Domain Works Standards in Annexure A;
  - (ii) does not comply with the conditions of Development Consent or any Approval for the Development;
  - (iii) would or may require the Developer to obtain new, additional or modified Development Consents or Approvals; or
  - (iv) would or may adversely affect the structural integrity, quality, efficiency, functionality or architectural or aesthetic design of any element of the Development or the Public Domain Works.

**3.4 Developer Variations**

- (a) The Developer may make a variation to the Detailed Design of Public Domain Works:
- (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 Development;
  - (iii) which does not impact adversely on the Services; and
  - (iv) which does not materially and adversely impact upon the Council's use of the Public Domain Works when they are completed.
- (b) The Developer may substitute alternative but not inferior finishes to those described in the Detailed Design 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.

**3.5 Good faith**

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

## ITEM 12 (continued)

## ATTACHMENT 4

**4 Council Right to Inspect****4.1 Council's Representative may, subject to:**

- (a) the terms of the Building Contract (save for any clause of the Building Contract which prevents the Council from accessing the Site);
- (b) giving reasonable notice to the Developer, the Builder and the Project Certifier;
- (c) complying with all reasonable directions of the Developer, the Builder and the Project Certifier;
- (d) exercising its rights under this clause entirely at its own risk in all respects; and
- (e) being accompanied by the Project Certifier or its nominee, or as otherwise agreed,

enter the Site at reasonable times to inspect the progress of the Public Domain Works.

**5 Completion****5.1 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 Practical Completion of the Public Domain Works will be achieved.
- (b) The Developer must arrange for the Developer, the Project Certifier and the Council to inspect the Public Domain Works after the notice in clause 5.1(a) is issued and 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 prepare and agree a list of works to be completed before the Public Domain Works has achieved Practical Completion (**Completion Works**).
- (d) If:
  - (i) the parties agree that there are no Completion Works required to be carried out before Practical Completion of the Public Domain Works is achieved, then the Project Certifier may issue a Certificate of Practical Completion for the Public Domain Works;
  - (ii) the parties agree a list of Completion Works for the Public Domain Works, then the Developer must ensure that the Completion Works are carried out and completed and the Project Certifier may issue a Certificate of Practical Completion for the Public Domain Works once those Completion Works have been completed; and

## ITEM 12 (continued)

## ATTACHMENT 4

- (iii) the parties cannot agree a list of Completion Works for the Public Domain Works then:
  - (A) Subject to the concurrence of Council, the Project Certifier may issue a Certificate of Practical Completion for the Public Domain Works when it considers that Practical Completion of the Public Domain Works has been achieved; and
  - (B) any dispute will be referred to an expert for determination under clause 6 and the expert must be requested to determine what further works, if any, are required to be completed before Practical Completion of the Public Domain Works has been achieved for the purposes of this Deed; and
  - (C) the Developer must, if, under clause 6, the expert determines further works are required to be carried out to achieve Practical Completion of the Public Domain Works, expeditiously carry out and complete those further works.

## 5.2 Defects and omission

- (a) The Council may notify the Developer of defects and omissions in any part of the Public Domain Works during the relevant Defects Liability Period.
- (b) The Developer must promptly upon receipt of a defects notice from the Council:
  - (i) procure the performance of the work required to rectify the defect; and
  - (ii) keep the Council reasonably informed of the action to be taken to rectify the defect.
- (c) If the Developer does not promptly procure the rectification of the defect, Council may carry out the rectification.
- (d) The Council must give the Developer and its contractors access to carry out the rectification works.
- (e) The Developer must meet all costs of and incidental to rectification of defects under this clause 5.2.

## 5.3 Delivery of documents

- (a) The Developer must as soon as practicable, and no later than 25 Business Days after the date on which the Certificate of Practical Completion is issued in respect of the Public Domain Works:
  - (i) deliver to the Council, complete copies of:
    - (A) all "as built" drawings, specifications and operation and service manuals relevant to the Public Domain Works;
    - (B) all necessary certificates including the certificates of any

## ITEM 12 (continued)

## ATTACHMENT 4

consultants of the Developer that the Council may reasonably require and which are relevant to the Public Domain Works; and

- (C) consents and approvals of any Authority whose consent or approval is required for the occupation or use of the Public Domain Works, and
- (ii) provide the Council with a tour of the Public Domain Works and provide reasonable instructions on the operation and use of the Services within the Public Domain Works.

#### 5.4 Warranties

- (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 Public Domain 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 including enforcing such warranties or guarantees for the benefit of Council.

#### 6 Dispute Resolution

A dispute under this Deed is to be dealt with using the dispute resolution mechanisms contained in clause 14 of the Voluntary Planning Agreement.

#### 7 Insurance

- 7.1 Promptly after the issue of a Construction Certificate for the Public Domain Works, the Developer must ensure that the Builder effects the following insurances issued by an insurer approved by the Council and in a form approved by the Council (acting reasonably):
  - (a) construction works insurance for the value of the Public Domain Works;
  - (b) public risk insurance for at least \$20 million;
  - (c) workers compensation insurance for personnel in respect of whom the Builder has an obligation at law to effect that insurance.

**ITEM 12 (continued)****ATTACHMENT 4**

- 7.2 The Developer must, throughout the term of this Deed and upon request of the Council, provide evidence of the currency of the insurance required by clause 7.1.

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**8 Notices**

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- 8.1 Notices under this Deed are to be given in accordance with clause 18 of the Voluntary Planning Agreement.

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**9 Goods and Services Tax**

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- 9.1 Goods and Services Tax is to be treated in accordance with clause 29 of the Voluntary Planning Agreement.

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**10 Termination**

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- 10.1 If the Voluntary Planning Agreement is terminated for any reason permitted under clause 17 of the Voluntary Planning Agreement, this Deed is taken to be terminated at the same time.

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**11 Intellectual Property Rights**

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- 11.1 The Council acknowledges that the Developer or its contractors holds all rights to copyright and any intellectual property which may exist in any document arising out of the Public Domain Works. To the extent the Developer has or receives intellectual property rights in any document arising out of the Public Domain Works, the Developer shall, at the request of the Council, grant Council a licence to use those rights for any purpose connected to the Public Domain Works.

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**12 Entire Agreement**

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- 12.1 With the exception of the agreement contained in the Voluntary Planning Agreement, this Deed:
- (a) is the entire agreement and understanding between the parties on everything connected with the subject matter of this Deed; and
  - (b) supersedes any prior agreement or understanding on anything connected with that subject matter.

**ITEM 12 (continued)****ATTACHMENT 4****13 Variation**

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An amendment or variation to this Deed is not effective unless it is in writing and signed by the parties.

**14 Building Contract**

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The Developer shall, upon request, allow Council access to view a copy of the Building Contract.

**DRAFT**

ITEM 12 (continued)

ATTACHMENT 4

Implementation Deed

HENRY DAVIS YORK

DRAFT

## ITEM 12 (continued)

## ATTACHMENT 4

Implementation Deed

HENRY DAVIS YORK

## ANNEXURE A

## Public Domain Works Standards

## ROAD 3:

- (a) Road 3 will be a Type 2 Public Street (secondary road) in accordance with the Macquarie Park Corridor Public Domain Technical Manual.
- (b) Total length 270m.
- (c) Road reserve will be 20.4m in general with a widening up to 22.6m along the bends to accommodate 8.8m medium rigid trucks.
- (d) Road bends and turning circles along Road 3 to accommodate 8.8m medium rigid trucks.
- (e) Lane width to be 3.5m (transitioning to 4.1m at bends) plus 1.2m provision for a cycle lane (total minimum lane width = 4.7m).
- (f) Provision will be made for 40 parallel car parking spaces. Spaces to be 6m in length and 2.5m in depth;
- (g) The roundabout at the western end (Future Road 16 Roundabout) of the road is sized to accommodate 8.8m long rigid trucks.
- (h) The left-in-left-out treatment at the eastern end of Road 3 (at the intersection with Wicks Road) is sized to accommodate 19m long articulated trucks.
- (i) Bio-swale areas are to be provided at regular intervals along the road in locations where the road grading allows stormwater to be collected in the bio-swales.
- (j) Road surface to be flexible bitumen pavement designed to the AUSTROADS Pavement Design Manual "A Guide to the Structural Design of Road Pavements" (1992).
- (k) A 2m wide stone paved footpath will be provided adjacent to the property boundary. Footpath to be Pavement Type B, G684 Black Fuding (dark grey) granite pavers or approved equivalent, in accordance with Macquarie Park Public Domain Technical Manual, Section 3.2.
- (l) In-situ concrete kerb and gutter to be provided along the length of the road in accordance with Macquarie Park Public Domain Technical Manual, Section 3.5.
- (m) Tactile indicators will be provided at all pedestrian ramps in accordance with Macquarie Park Public Domain Technical Manual,

## ITEM 12 (continued)

## ATTACHMENT 4

Implementation Deed

HENRY DAVIS YORK

## Section 3.6.

## ROAD 11

- (n) Road 11 will be a Type 2 Public Street (secondary road) in accordance with the Macquarie Park Corridor Street Network Structure Plan and the Environmental Standards Design Criteria – Public Civil Works document issues by Ryde City Council.
- (o) Total length to be 80m;
- (p) Road reserve will be 20.4m.
- (q) Termination roundabout at the end of Road 11 was designed to accommodate standard cars only.
- (r) Lane width to be 3.5m plus 1.2m provision for a cycle lane (total minimum lane width = 4.7m);
- (s) Provision will be made for 12 parallel car parking spaces. Spaces to be 6m in length and 2.5m in depth;
- (t) A pedestrian ramp and crossing to be provided at the intersection with Road 3.
- (u) Bio-swale areas are provided at regular intervals along the road in locations where the road grading allows stormwater to be collected in the bio-swales.
- (v) Road surface to be flexible bitumen pavement designed to the AUSTRROADS Pavement Design Manual "A Guide to the Structural Design of Road Pavements" (1992)
- (w) A 2m wide stone paved footpath will be provided adjacent to the property boundary. Footpath to be Pavement Type B, G684 Black Fuding (dark grey) granite pavers or approved equivalent, in accordance with Macquarie Park Public Domain Technical Manual, Section 3.2.
- (x) In-situ concrete kerb and gutter to be provided along the length of the road in accordance with Macquarie Park Public Domain Technical Manual, Section 3.5.
- (y) Tactile indicators will be provided at all pedestrian ramps in accordance with Macquarie Park Public Domain Technical Manual, Section 3.6.

## ROAD 16/ACCESS ROAD NO. 1

Access No.1 proposed in the Development Application will provide access to the northern parking entrance to Building 1 under Stage 1. This road is referred to in the Voluntary

## ITEM 12 (continued)

## ATTACHMENT 4

## Implementation Deed

HENRY DAVIS YORK

Planning Agreement as "Road 16" as it forms part of a future road, a Type 3 Public Street (tertiary road) between Waterloo and Epping Roads, under the Macquarie Park Corridor Street Network Structure Plan

- (z) Total length to be 98m;
- (aa) Road reserve to be 7.75m.
- (bb) Road bends and turning circles along Access No.1 to be designed to accommodate 8.8m medium rigid trucks.
- (cc) Lane width to be 3.5m.
- (dd) Provision will be made for a 24m long, 3m deep loading zone.
- (ee) No provision will be made for pedestrian access along this access road.
- (ff) A bio-swale area will be provided at the northern end of the access where the road grading allows stormwater to be collected into the bio-swales.
- (gg) Road surface to be flexible bitumen pavement designed to the AUSTROADS Pavement Design Manual "A Guide to the Structural Design of Road Pavements" (1992)
- (hh) In-situ concrete kerb and gutter to be provided along the length of the road in accordance with Macquarie Park Public Domain Technical Manual, Section 3.5.