


Meeting Date: Tuesday 9 December 2014
Location: Council Chambers, Level 6, Civic Centre, 1 Devlin Street, Ryde
Time: 7.30pm

ATTACHMENTS FOR COUNCIL MEETING

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 City of Ryde

Lifestyle and opportunity
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City of Ryde
Development Control Plan 2014

Part: 4.5
Macquarie Park Corridor

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Macquarie Park Corridor

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1.0 PRELIMINARY

1.1 Introduction

This Part provides a framework to guide future development in the Macquarie Park Corridor, North Ryde. The document specifies built form controls for all development within the Corridor, and sets in place urban design guidelines to achieve the vision for Macquarie Park as a vibrant community, as a place to live, work and visit.

1.2 Citation

This Part may be cited as City of Ryde Development Control Plan 2014, Part 4.5 - Macquarie Park Corridor.

1.3 Land Covered by this Part

The land covered by this Part is shown in the below figure, and is generally bounded by M2 Motorway and Delhi Road on the northeast, Epping Road on the southwest, Macquarie University on the northwest and Lane cove River to the southeast.

This part does not apply to the [North Ryde Station Urban Activation Precinct](#).

1.4 Relationship with other Plans and Policies


This Part supplements the Ryde Local Environmental Plan (LEP) 2014 by providing detailed development principles, controls and guidelines. In addition to this Part, Ryde LEP 2014, [State Environmental Planning Policy 65 – Design Quality of Residential Flat Development \(SEPP 65\)](#) and other relevant State Environmental Planning Policies must also be taken into account when making a development application.

The Draft [Herring Road Urban Activation Precinct \(UAP\)](#) was exhibited August 2014. The exhibition documents propose that this DCP applies to the Herring Road UAP land and suggest amendments. The suggested amendments will be incorporated in this DCP when the Herring Road UAP is finalised.

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Figure 1.3.1 Land covered by this part  Urban Activation Precincts are excluded from this DCP

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Macquarie Park Corridor

1.5 Aims and Purpose of this Part

The purpose of this Part is to provide objectives, controls and design criteria to achieve desirable development outcomes in line with Council's vision for the Macquarie Park Corridor.

The key aims of this Part are to:

1. To ensure that the Corridor matures into a premium location for globally competitive businesses with links to the university.
2. To ensure that the employment and educational activities within the Corridor are integrated with other businesses and activities within Sydney's global economic arc.
3. To reinforce the importance of the economic function of the Corridor and facilitate employment growth now and into the future. (This will include retaining employment lands)
4. To create a centre that is sustainable and that incorporates the principles of ecologically sustainable development
5. To ensure the Corridor will be characterised by a high-quality, well-designed and safe environment that reflects the natural setting and promotes a sense of identity.
6. To create an urban structure that will:
 - a. Promote a balance of commercial and non-commercial (such as educational and residential) uses within the corridor
 - b. Promote the commercial core and business park areas for commercial activity and employment
 - c. Provide a transition from the more intense development along the main boulevard - Waterloo Road - to peripheral areas characterised by lower scaled development
 - d. Focus street and place-making activities to create three accessible and vibrant railway station precincts.
 - e. Capitalise on magnate infrastructure, facilities and services such as the M2, Macquarie University and Macquarie Shopping Centre.
7. To create an access network that will:
 - a. Achieve a more permeable network promoting greater connectivity and integration between land uses and the station precincts.
 - b. Achieve a safe and convenient pedestrian environment that encourages public transport use and social interaction.
 - c. Create additional streets that will
 - i. Reduce pressure on the existing road and pedestrian infrastructure,
 - ii. Provide new opportunities for business and street addresses
8. To create an open space network that will:
 - a. Include a network of diverse active and passive recreation spaces to support the residential and working populations of the Corridor.
 - b. Provide safe, accessible, sustainable, well used and designed public open spaces within the Corridor.

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1.6 How to use this Plan

| SECTION | INTENDED EFFECT |
|--|--|
| <p>1.0 PRELIMINARY</p> <p>1.1 Introduction</p> <p>1.2 Citation</p> <p>1.3 Land Covered by this Part</p> <p>1.4 Relationship with other Plans and Policies</p> <p>1.5 Aims and Purpose of this Part</p> <p>1.6 How to use this Plan</p> | <p><i>This section gives an overview of the Draft DCP and its relationship with other plans</i></p> |
| <p>2.0 VISION</p> | <p><i>Describes the future character of the Macquarie Park Corridor (derived from consultation and the Sydney Metro Strategy)</i></p> |
| <p>3.0 THE STRUCTURE PLAN</p> <p>3.1 Introduction</p> <p>3.2 Urban Structure Plan</p> | <p><i>Provides an urban structure plan that articulates the land use structure of the Macquarie Park Corridor including</i></p> <ul style="list-style-type: none"> - <i>where residential communities will develop,</i> - <i>the locations of the business and retail cores</i> - <i>the lower scaled, open landscaped, business parks located on the fringes of the corridor adjoining Epping Road, the M2</i> |
| <p>4.0 ACCESS NETWORK</p> <p>4.1 Streets</p> <p>4.2 Pedestrian Connections</p> <p>4.3 Bicycle Network</p> <p>4.4 Sustainable Transport</p> | <p><i>This section of the draft DCP includes the Access Network Map adopted by Council on 22 October 2103 and controls which support the Access Network</i></p> |
| <p>5.0 PUBLIC DOMAIN</p> <p>5.1 Open Space Network</p> <p>5.2 New open space</p> <p>5.3 Central Park</p> <p>5.4 Shrimpton's Creek Park</p> <p>5.5 Riverside Park</p> <p>5.6 Thomas Holt Drive Park</p> <p>5.7 Rail Station Plaza</p> <p>5.8 Street Tree and Front Tree Planting</p> <p>5.9 Community Facilities</p> <p>5.10 Public Art</p> | <p><i>This section gives guidance to the scale, function, furniture and other requirements for proposed open space.</i></p> <p><i>Guidance is also given to the provision of public art and community facilities.</i></p> |

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Macquarie Park Corridor

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| <p>6.0 IMPLEMENTATION – INFRASTRUCTURE, FACILITIES AND PUBLIC DOMAIN IMPROVEMENTS</p> | <p><i>This section includes guidelines for the implementation of planning incentives (additional building height and floor space defined in RLEP Amendment 1) in return for public infrastructure. In particular streets and parks identified in sections 4 and 5 of the DCP</i></p> |
| <p>7.0 BUILT FORM 7.1 Site Planning and Staging 7.2 Activity Centres Structure Plan 7.2 Active frontage 7.3 Setbacks and Build-to Lines 7.4 Awnings and Canopies 7.6 Rear Setbacks 7.7 Building Separation 7.8 Building Bulk and Design</p> | <p><i>This section of the draft DCP provides controls that determine building design and form – such as setbacks, active frontage and building separation.</i></p> <p><i>Information regarding the zone of influence for the underground rail line (which impacts on setbacks and basement areas) has also been included in the DCP.</i></p> |
| <p>8.0 SITE PLANNING AND STAGING 8.1 Site Planning and staging 8.2 Site Coverage, Deep Soil Areas and private open space 8.3 Planting on Structures 8.4 Topography and Building Interface 8.5 Site Facilities 8.6 Vehicular Access 8.7 On-site Parking 8.8 Fencing</p> | <p><i>This section of the draft DCP provides controls that determine the overall site layout and design – such as parking design requirements, site coverage and deep soil requirements and even fencing design guidelines (to provide council the basis for not accepting high security fencing (that includes razor wire) such as that around at least one existing data centre in the Macquarie Park Corridor).</i></p> |
| <p>9.0 ENVIRONMENTAL PERFORMANCE 9.1 Wind Impact 9.2 Noise and Vibration 9.3 Bushfire Management 9.5 Soil Management</p> | <p><i>This section of the DCP ensures that environmental comfort (wind and noise) are considered in addition to property protection and safety (bushfire).</i></p> |

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Macquarie Park Corridor

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2.0 VISION

The vision for the future of the Corridor was developed through a number of community and stakeholder workshops held during 2001. This has been further developed in the preparation of this Part to guide the formation of development objectives, public domain treatments and development controls for the Corridor.



Figure 2.0.1 View east over Macquarie Park Corridor

Macquarie Park Corridor Vision

‘Macquarie Park will mature into a premium location for globally competitive businesses with strong links to the university and research institutions and an enhanced sense of identity.

The Corridor will be characterised by a high-quality, well-designed, safe and livable environment that reflects the natural setting, with three accessible and vibrant railway station areas providing focal points.

Residential and business areas will be better integrated and an improved lifestyle will be forged for all those who live, work and study in the area.’

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Macquarie Park Corridor

3.0 THE STRUCTURE PLAN

3.1 Introduction

The Structure Plan sets out the broad framework for development within the Macquarie Park Corridor. It underpins the development controls within this Plan, and is supported by Ryde LEP 2014.

3.2 Urban Structure Plan

The Urban Structure Plan reflects and builds on the existing land uses and functions within the Corridor to implement the vision for Macquarie Park as Australia's premier technology park and premier location for globally competitive business with strong links between Macquarie University and business.

Macquarie Park Corridor will include new residential communities around the North Ryde and Macquarie University Stations while the Commercial Core will be centred on the Macquarie Park Station and Waterloo Road. Intensive development centred on Waterloo Road is proposed to transition through the Business Park areas to the lower scaled residential areas adjoining the Macquarie Park Corridor.

The Commercial Core will evolve from its business park roots to become an urban employment centre supported by key public transport infrastructure notably the Epping to Chatswood Rail Link which opened in 2009 and is due to be expanded to link to Sydney's north west.

The Business Park areas at the edges of the Corridor are characterised by lower density development with green leafy setbacks and attractive landscaping. Many international and Australian technology, research and pharmaceutical companies are located in the business park areas including Optus, Laverty, Canon, CSIRO and....

The Macquarie Shopping Centre - NSW second largest shopping mall – has a regional catchment and anchors the Retail Core. This DCP will seek to reinforce the role of the shopping centre as a regional attractor and hub for recreation facilities for families and youth – which currently include one of only two ice skating rinks in Sydney, cinemas and restaurants. The DCP will also encourage the shopping centre to create a vibrant street interface.

Macquarie University is magnet infrastructure attracting tens of thousands of students and staff. The university vision is to integrate private sector research and development with education and health functions with the first stages of this plan realised in the development of the Hearing Hub specialising in auditory technology and the Macquarie University Hospital providing services across a broad range of specialties, including oncology, radiology, neurology and cardiology. The university grounds also include facilities that are open to public such as a swimming pool.

Planned residential communities centred on the North Ryde and Macquarie University Rail Stations provide for more than 10,000 new dwellings close to transport, employment and education facilities. Together the Herring Road and North Ryde Station UAPs and this DCP provide for new residential and working communities supported by new infrastructure including new parks, road connections and community facilities.

This Development Control Plan seeks to enhance the public domain and implement new roads and parks to support future residents, workers, university students and visitors.

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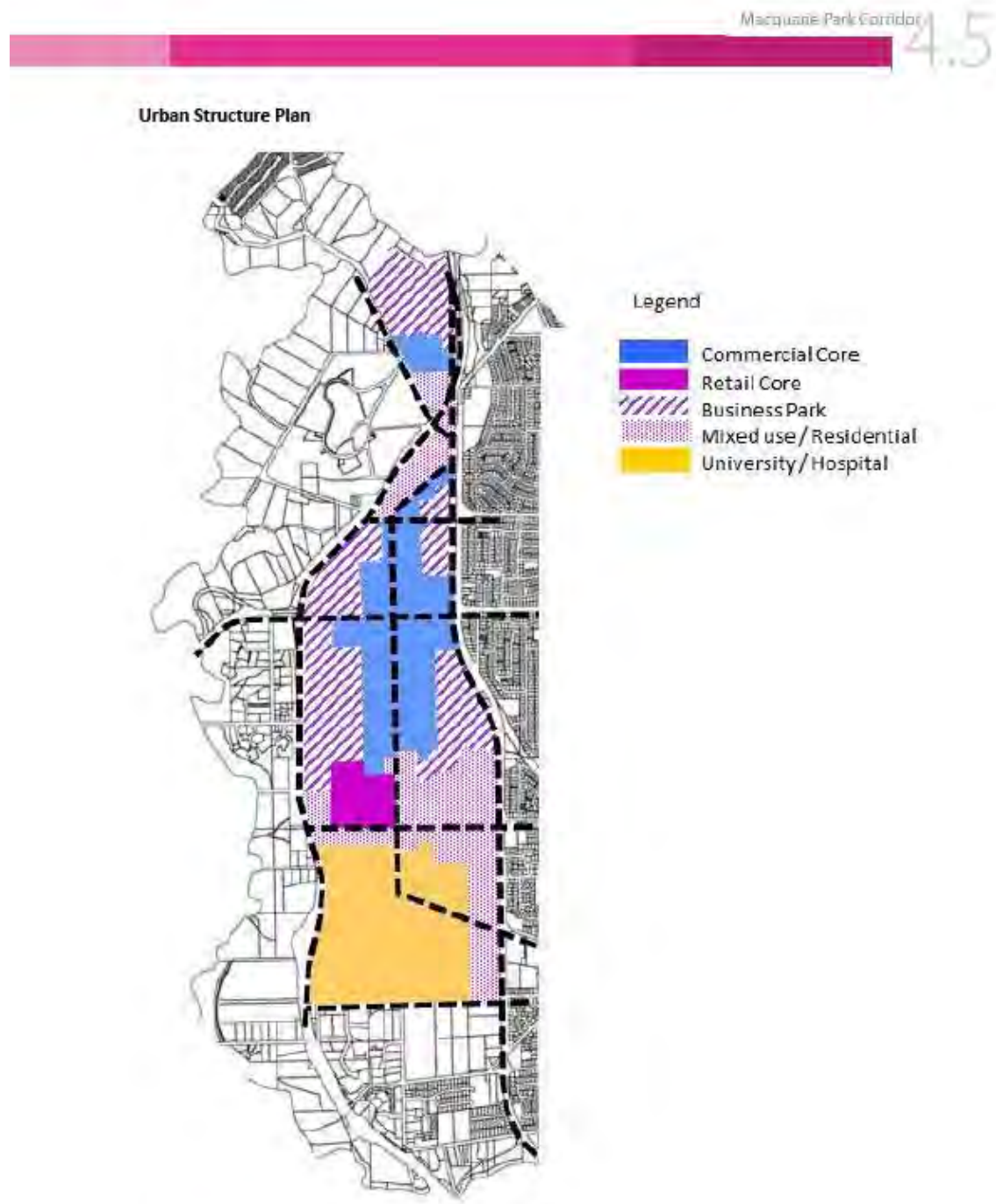


Figure 3.2.1

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4.5 Macquarie Park Corridor

4.0 ACCESS NETWORK

The Macquarie Park Corridor is comparable in scale to the City of Sydney (refer below maps) but has fewer roads and route choice. The current block size and building footprint lengthens the walk time for foot trips within the precinct and increases reliance on driving, even for short trips. The future character of Macquarie Park will include intensifying the Commercial Core and other functions of the Corridor, including its residential areas. An effective transport network is required to service anticipated growth within Macquarie Park.

This DCP aims to create a permeable network of streets and pedestrian ways and to create new streets and laneways. The implementation of this DCP will improve vehicular, pedestrian and cycle permeability within the Corridor.

The Access Network Structure Plan provides a clear hierarchy of street types, including the extension of existing streets and a network of new streets (20m), laneways (14m) and pedestrian ways (8m). The Access Network maximises cross connections within the corridor and to surrounding areas..



Figure 3.4.2 Macquarie Park Corridor



Figure 3.4.3 Sydney CBD

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Macquarie Park Corridor 4.5

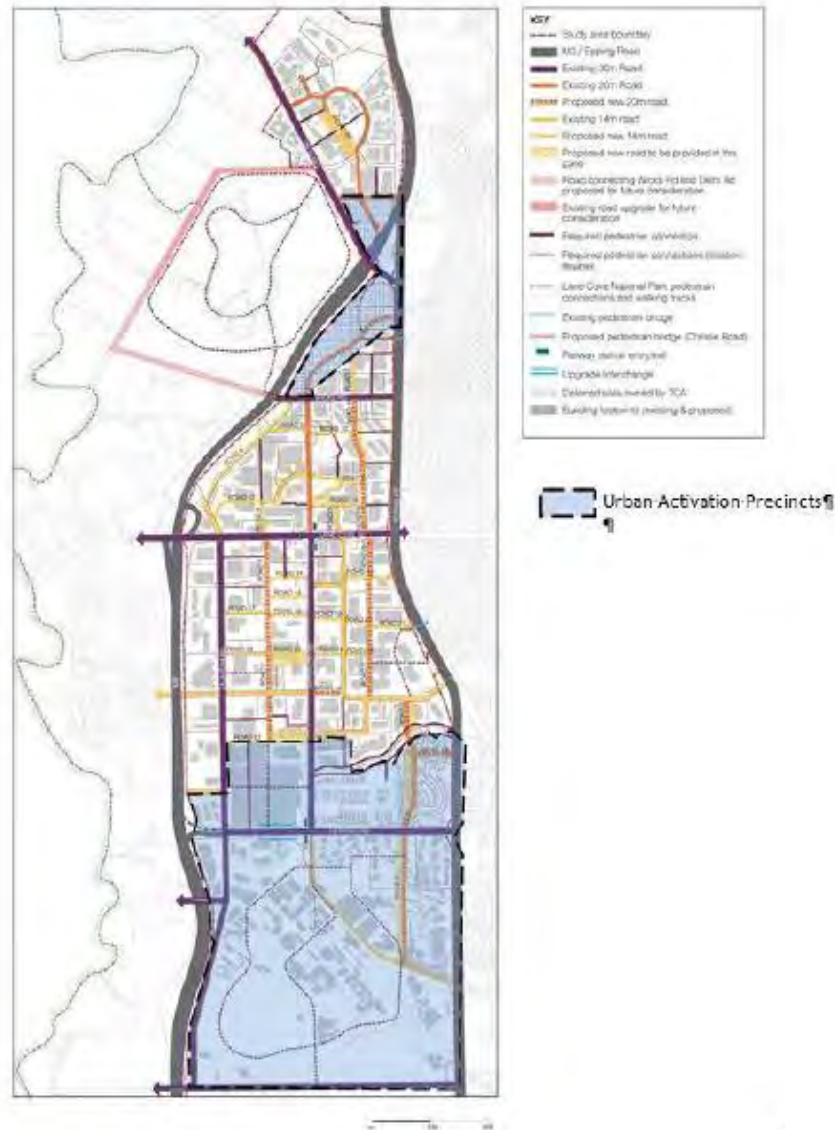


Figure 4.1.1 Access Network

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Macquarie Park Corridor

4.1 Streets

The location of new streets builds upon the existing configuration and layout of Waterloo and Talavera Roads. These streets establish the main alignment of streets with respect to the main axial configuration of the grid. This grid is supported by the alignment of Lane Cove Road in the north-south axis and also establishes the dominant configuration of property boundaries in the area.

Two street types have been identified:

- 20m wide streets
- 14m wide streets

These are based on the predominant use and frontages of existing buildings, the varying intensity of existing patterns of access, circulation and movement and the particular topographic conditions across the corridor.

Prior to redevelopment, landowners are to consult with Council at an early stage in the site planning process. Landowners are to consult with Council for details on location and set-out of new streets.

Objectives

1. To provide for new streets to improve pedestrian, cycle and vehicular connectivity within the Corridor.
2. To enhance connectivity with surrounding areas and provide new access points into the Corridor from the surrounding street network
3. To establish a clear hierarchy of public streets, building on the existing street hierarchy within the Corridor.
4. To accommodate increased traffic movement within the Corridor.
5. To provide additional opportunities for on-street car parking.
6. To promote active transport including walking, cycling and bus public transport usage.
7. To provide a street network that responds to the constraints of topography, existing development and subdivision patterns.

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Controls

- a. Provide new public streets and pedestrian connections in accordance with Access Structure Plan Figure 4.1.1
- b. New streets are to be dedicated to the Council. New streets are to be maintained by the landowner until dedicated to Council.
- c. Buildings are not permitted to be located on any proposed street and are required to be setback from proposed streets identified in The Access Structure Plan Figure 4.1.1
- d. Each site is to provide for co-ordination of proposed streets with neighbouring sites, including level adjustments and detailed plans. This detail is to be provided together with the development application.
- e. Lighting, paving and street furniture, landscaped setbacks and tree planting are to be provided as required in the *Macquarie Park Corridor Public Domain Technical Manual*.
- f. Provide new Streets as follows
 - i. 20m wide (typical) streets in accordance with Figure 4.1.2
 - ii. 14m wide (typical) streets in accordance with Figure 4.1.3

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4.5 Macquarie Park Corridor

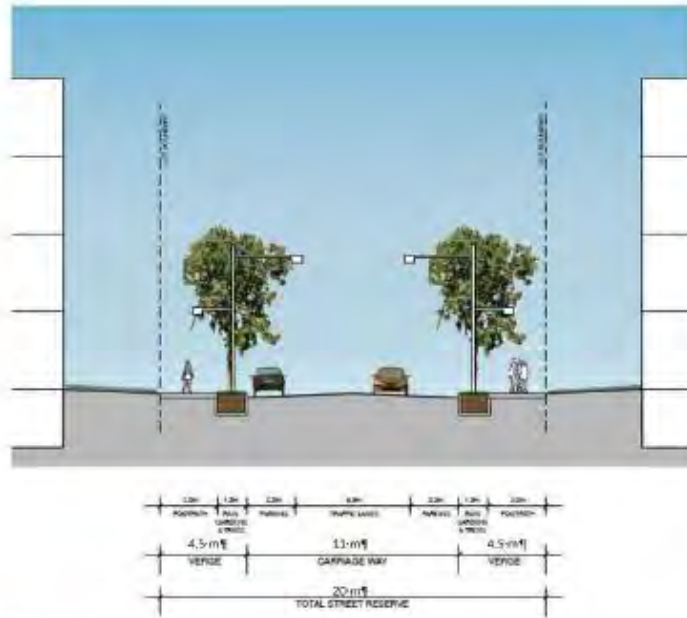


Figure 4.1.2
20m Wide Streets – Typical section

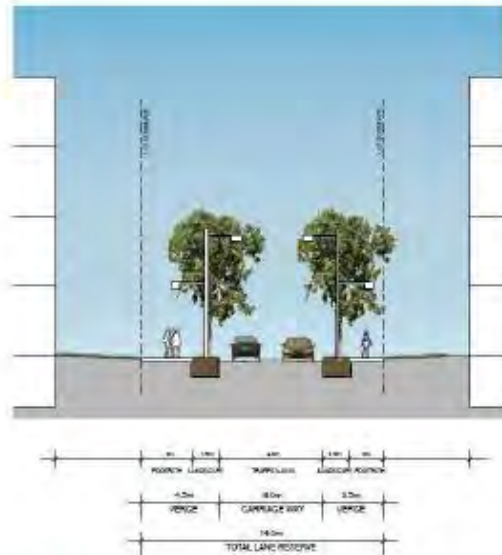


Figure 4.1.3
14m Wide Streets – Typical section

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Macquarie Park Corridor

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4.2 Pedestrian Connections

Through block connections provide a fine-grain overlay to the street and block structure of the Corridor. Pedestrian through-site links are to be provided as they contribute to the walkability of the Corridor by providing a useful addition to the street network and walkable destinations (e.g. building entries, shopfronts, courtyards, outdoor dining). The design of through-site links is to maximise pedestrian accessibility, walkability, amenity and safety. The most successful connections are accessible, continuous, well lit and safe.

Objectives

1. To expand and enhance the pedestrian network, and increase pedestrian permeability throughout the Macquarie Park Corridor.
2. To provide pedestrian connections, across barriers such as the M2, and link to pedestrian amenities, such as the Shrimpton's Creek path, Macquarie University station and Macquarie Centre bus interchange in order to promote walking access to public space and public transport
3. To ensure that through block connections are accessible at all times, continuous, well lit, safe.
4. To provide equitable access for all.
5. To promote pedestrian activity and contribute to the vitality of the Macquarie Park Corridor.
6. To encourage active uses adjoining pedestrian ways

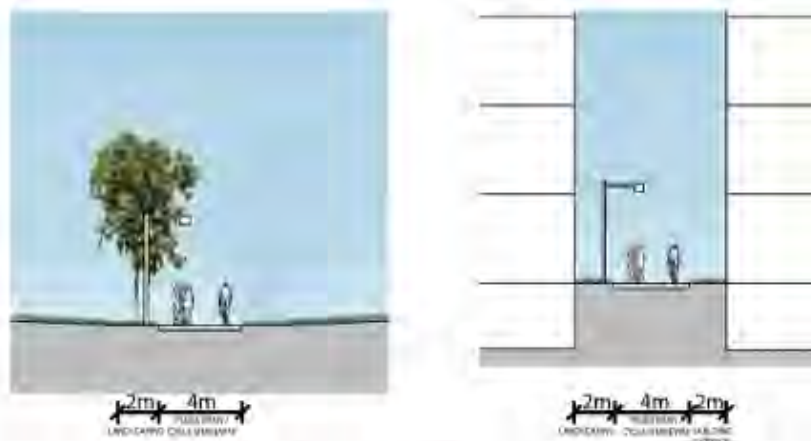


Figure 4.2.1 Pedestrian Ways Typical sections

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Macquarie Park Corridor

Controls

- a. Provide pedestrian bridges in accordance with the Access Structure Plan. Figure 3.4.1
 - i. Over the M2 connecting Christie Park to Macquarie Park Corridor
 - ii. Connecting across Shrimpton's Creek



**Figure 4.2.2
Pedestrian Bridge Exemplars**

- 1. BP Bridge, Chicago
- 2. Pedestrian Bridge, Zapallar Chile
- 3. Smiths Creek Bridge

- b. Provide pedestrian connections in accordance with Access Structure Plan. Figure 4.1.1

- c. Pedestrian connections are to:
 - i. Be a minimum of 6m wide comprising 4m wide paving and 2m wide soft landscaping as shown in Figure 4.3.1 (or as determined by Council).
 - ii. Be designed with a 2m setback to any building.
 - iii. Be publicly accessible at all times.
 - iv. Provide a clear sightline from one end to the other for surveillance and accessibility;
 - v. Maximise active frontages pedestrian connections
 - vi. Be designed to consider pedestrian safety and the security of adjacent businesses, particularly at night. (For example, where pedestrian through-site links are provided between buildings, windows are to be provided between the internal ground floor space of the building and the pedestrian link)

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- vii. Extend and enhance the public domain and have a public domain character.

Note: Where pedestrian through-site links are adjacent a courtyard or public space, the design of the pedestrian link is to be integrated with the design of the open space and access is provided between the two spaces.

- viii. Be in accordance with Part 9.2 of this DCP Access for People with Disabilities and designed to provide barrier-free access in accordance with AS1428 and the Disability Discrimination Act;
- ix. Paving shall be in accordance with the Macquarie Park Public Domain Technical Manual.
- x. Remain in private ownership and be created as Rights-of-Way in favour of Council or similar mechanism.



Figure 4.2.3 through site links are to be integrated with the site design and consider pedestrian safety and security

- d. Each site is to provide for co-ordination of pedestrian connections with neighbouring sites, including level adjustments and detailed plans. Detailed plans, sections other material as necessary are to be provided together with the development application.

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Macquarie Park Corridor

4.3 Bicycle Network

Dedicated cycle lanes are to be provided along all existing and new streets within the Corridor, as shown in Figure 4.3.1. This integrated cycle strategy maximises the opportunities for cycle circulation within the Corridor.

In addition to the street network, cycle/pedestrian paths provide additional connectivity to surrounding areas.

The cycle network maximises interchange opportunities with bus and rail public transport. The strategy is supported by the provision of end of trip facilities.

Objectives

1. To maximise cycle connections to regional cycle routes through and around the Corridor.
2. To maximise cycle permeability within the Corridor.
3. To create a safe, high quality cycle network.
4. To maximise interchange opportunities with public transport.

Controls

- a. Provide dedicated cycle access in accordance with Ryde Bicycle Strategy 2014 refer Figure 4.3.1 Cycleways
- b. The Regional Bicycle network is to be implemented as off-street shared cycleways in accordance with the Macquarie Park Public Domain Technical Manual. The Regional Bicycle network comprises:
 - i. Waterloo Road
 - ii. Delhi Road
 - iii. Epping Road
 - iv. Lane Cove Road
 - v. Khartoum Road
 - vi. The M2, and
 - vii. Shrimpton's creek pathways
- c. The Local Bicycle Network is to be implemented as on-street shared ways in accordance with the Macquarie Park Public Domain Technical Manual. The Local Bicycle network comprises:
 - i. Lyon Park Road
 - ii. Talavera Road
 - iii. Wicks Road
 - iv. Proposed roads 17, 18, 19, 20, 21
 - v. Proposed road 3
 - vi. Proposed road 8

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Macquarie Park Corridor 4.5

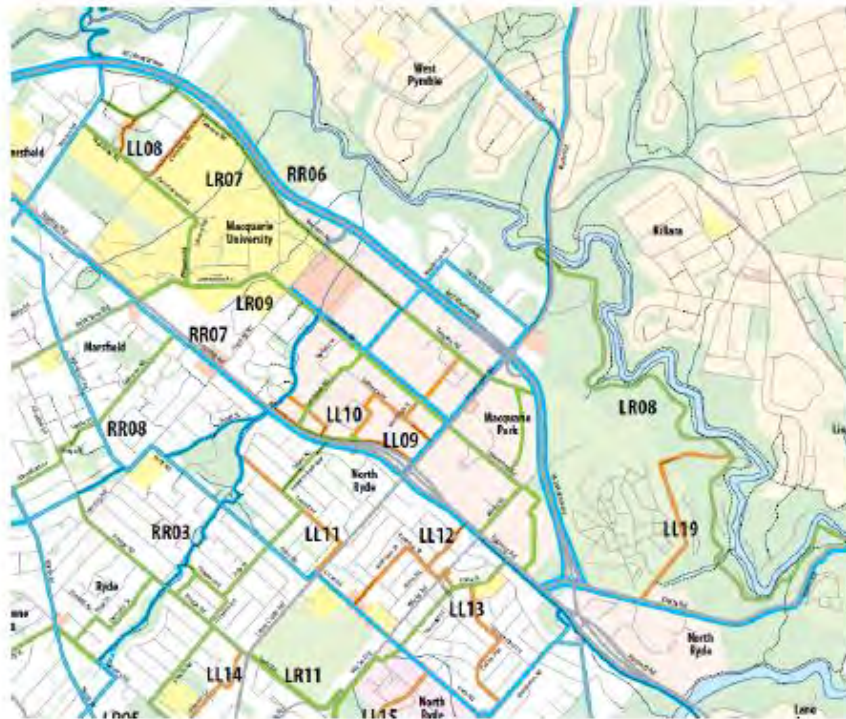


Figure 4.3.1 Indicative Cycleways - Refer to Ryde Bicycle strategy 2014

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4.5 Macquarie Park Corridor

4.4 Sustainable Transport

Travel demand management has become a major strategic concern for policy makers, businesses and the public within Macquarie Park Corridor.

The modal split for public transport usage in 2014 is 15%. This plan aims to assist to increase this to 60% by 2031.

- 3 rail stations opened in 2009.
- Increase in bus usage needed
- Transport Management Association (TMA) established

A Travel Plan (TP) is a travel management tool that promotes the development, implementation and monitoring of a co-ordinated transport strategy for an individual business or residential building. The primary purpose of a Travel Plan is to influence the travel behaviour of employers, employees, residents and occasional visitors to an organisation, away from single-occupancy car use towards more efficient and sustainable forms of transport.

A Framework Travel Plan (FTP) is a travel demand management tool to promote the use of active and public transport to and from an entire development site. The primary purpose of the FTP is to coordinate a site-wide and building wide approach to influence the travel behaviour of employees, residents, clients and visitors, away from single-occupancy car use towards more efficient modes of transport, including active transport such as walking and cycling; public transport such as train and bus; and car-pooling and car sharing. The Framework Travel Plan is required where the future tenants are unknown.

Objectives

1. To adopt policies and procedures which encourage transport choice to and within the Macquarie Park Corridor
2. To minimise rates of private vehicle use for commuters and business trips and achieve a transport modal shift target of 60% public transport use for the journey to work in particular.
3. To support public transport, car-sharing, taxi, and bicycle users by enhancing amenities and infrastructure;
4. To More effectively manage the use of private vehicle trips and parking within the area;
5. Reduce congestion and the cumulative impacts of vehicle emissions upon air quality.

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Macquarie Park Corridor 4.5

Controls

Public transport

- a. Upgrade the bus interchange in Herring Road in accordance with the Access Structure Plan to:
 - i. Accommodate additional bus stops to provide for increased bus patronage
 - ii. Reduce pedestrian and vehicle conflict
 - iii. Enable active frontage
- b. Any DA that includes residential development on the Macquarie Shopping Centre site is to provide a master plan that demonstrates how the bus interchange upgrade may be achieved.

Travel Plans

- a. A Framework Travel Plan. (FTP) is required to be submitted together with a DA for all development that exceeds 10,000sqm new floor space. For all development (including residential development) the FTP must:
 - i. Adopt strategies and procedures to meet the 40% drive-alone target for the journey-to-work and to encourage transport choice to and within the Macquarie Park Corridor.
 - ii. Demonstrate how on-site parking provision and built form design will contribute to the Framework Travel Plan and assist meet the 40% drive alone target for the journey-to-work.
 - iii. Demonstrate infrastructure connections to the nearby footpath, bicycle and public transport networks.
 - iv. Provide, to council satisfaction, supportive infrastructure for:
 - public transport passengers (bus shelters and passenger waiting areas)
 - bus operators (bus layover, driver facilities)
 - ridesharing, car-share, taxi, (dedicated parking in publicly accessible locations)
 - walking and cycling (lockers and end of trip facilities).

Car-share Parking

City of Ryde Council's Car-share policy seeks the provision of a minimum 13 car share parking spaces in the Macquarie Park Corridor. Car share parking spaces should be considered as part of the Travel Plan where practicable and should be provided in locations that are accessible at all times.

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- b. For all development (excluding residential development) the FTP must also:
 - v. Identify measures in an Action Plan that will implement the 40% drive alone target for the journey to work, including appointing a Travel Plan co-ordinator, encouraging walking, cycling, car sharing and public transport use.
 - vi. Set out information that is proposed to be provided to City of Ryde Council in an annual monitoring report. Such information will monitor how the Action Plan is implemented including the journey-to-work modal split, actions undertaken and opportunities for improvement and future action etc.
- c. Provide a final Travel Plan to Council for certification prior to the issue of any occupation certificate.

Note: Landowners should consult with the Macquarie Park Travel Management Association for the latest information on Travel Plans.

Parking Rates

- a. Bicycle parking and end of trip facilities are to be provided in accordance with Ryde DCP Part 9.3 Parking.
- b. Parking is to be provided in accordance with DCP Part 9.3 Parking and clause 4.5B (2) Ryde LEP 2014

Note: Clause 4.5B (2) Ryde LEP 2014 provides for maximum off-street parking spaces for commercial and industrial development in the Macquarie Park Corridor in accordance with Figure 4.4.2 Macquarie Park Corridor Parking Restrictions Map. For the purposes of the above control

- *Commercial premises means business, office and retail premises.*
 - *Industrial development means Light industry -- a building or place used to carry out an industrial activity that does not interfere with the amenity of the neighbourhood including high technology industry and home industry*
- c. Car parking within residential development is to be provided in accordance with the following maximums:
 - 0.6 space / one bedroom dwelling
 - 0.9 spaces / two bedroom dwelling
 - 1.4 spaces / three bedroom dwelling
 - 1 visitor space / 10 dwellings

ITEM 4 (continued)

ATTACHMENT 2



Parking

| | |
|---|--|
|  | 1 space / 46 m ² Gross Floor Area |
|  | 1 space / 70 m ² Gross Floor Area |
|  | 1 space / 80 m ² Gross Floor Area |

Figure 4.4.2 Macquarie Park Corridor Parking Restrictions Map
Reproduced from Ryde LEP 2014



ITEM 4 (continued)

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4.5

Macquarie Park Corridor

5.0 PUBLIC DOMAIN

5.1 Open Space Network

The Open Space Structure Plan identifies new public space and augments existing public open spaces within the Corridor, to create a new open space network. The location of public open space is integrated with the street network to maximise pedestrian access opportunities. The public open space network includes a diverse range of open space including plazas, parks and natural areas along Shrimpton's Creek.

The key urban plazas included in the structure plan are:

- North Ryde Station Precinct Square
- Macquarie Park Station Square - East
- Macquarie Park Station Square - West
- Macquarie University Station Square - East
- Macquarie University Station Square – West

The key public open spaces/parks included in the structure plan are:

- Central Park
- North Ryde Station Precinct Central Park
- Shrimpton's Creek
- Riverside Park
- Thomas Holt Drive

The open space network is supported by Fitness trails that utilise the pedestrian access ways and connections through private open space on the peripheries of the town centre, allowing for extended pedestrian connections along creek corridors and into the Lane Cove National Park.

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ATTACHMENT 2

Macquarie Park Corridor 4.5

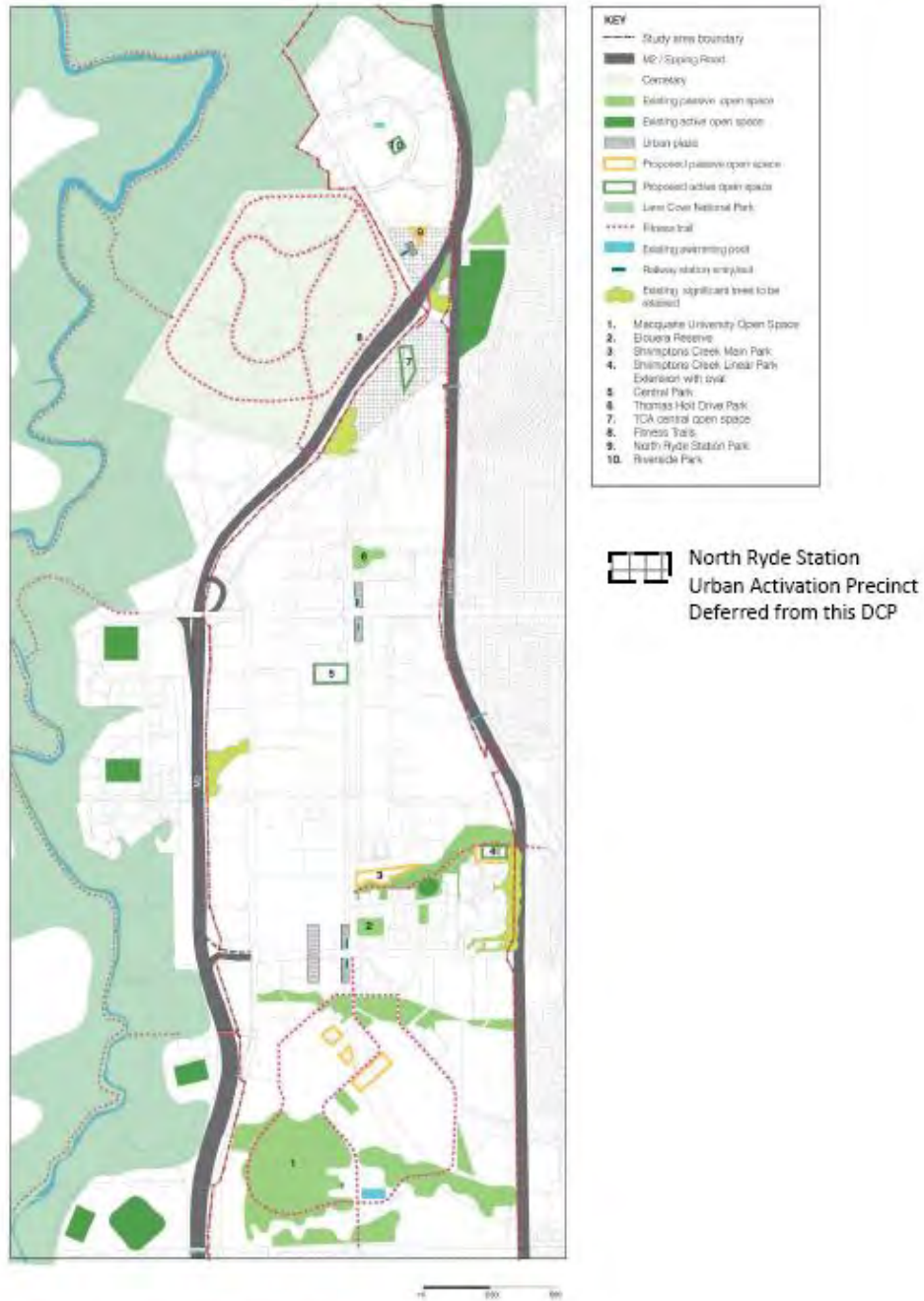


Figure 5.1.1 Proposed Open Space network

ITEM 4 (continued)

ATTACHMENT 2

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Macquarie Park Corridor

5.2 New open space

Objectives

1. To meet the recreation needs of residents, workers and visitors to Macquarie Park Corridor.
2. To provide additional open space within a network of well-connected parks, plazas and green streets.
3. To provide diverse urban open spaces including plazas parks and natural areas that will support active transport and recreation.
4. To provide well used public space that accommodates a range of active and passive recreational uses.
5. To contribute to stormwater and ecological management.
6. To maximise the accessibility of public open space, and to contribute to the pedestrian and cycle network.
7. To create bio-links and canopy connections to existing vegetation communities surrounding the Corridor.

Controls

- a. Provide public open space as shown in Figure 5.1.1- Open Space Structure Plan and in accordance with table 5.2.1- Controls for Open Spaces and Sections 5.3 – 5.6 of the DCP (which contain specific requirements for each park).
- b. Buildings are not permitted to be located on any proposed new parks identified in Figure 5.1.1 - The Open Space Structure Plan.
- c. Parks are to be dedicated to the Council, unless agreed that they are to be held and maintained as privately owned public space ("POPS").
- d. New parks are to be maintained by the landowner until dedicated to Council.
- e. The landowner of POPS must cause a right of way easement ("Easement") to be registered on title in favour of Council. The landowner is responsible for all reasonable costs associated with the registration of the Easement.
- f. POPS are to be maintained by the landowner in perpetuity. Public Liability Insurances up to \$20,000,000 are to be held and maintained by the landowner at all times during ownership of the POPS.
- g. At least 50% of new public space is to receive three (3) hours direct sunlight between 9:00 am and 3:00 pm.

ITEM 4 (continued)

ATTACHMENT 2

Macquarie Park Corridor 4.5

- h. Active frontages are to be provided in accordance with Section 6 of the DCP - Active Frontage Controls.
- i. Provide internet connection to all publicly accessible space in Macquarie Park, particularly new parks
- j. Provide Open Space in accordance with Table 5.2.1 Controls for Open Spaces

Table 5.2. 1
Controls for Open Spaces

| Park name and address | Area Dimensions | Specific controls | Function and Indicative character |
|-------------------------------------|---|--|---|
| Central Park 43-61 Waterloo Road | 1 Ha 75 m x 100 m (if the dimensions are altered a min. 65m is required in any direction) The park layout is to be generally in accordance with Figure 5.3.1 | <ul style="list-style-type: none"> • Central Park is to be located abounding Waterloo Road. Implement new roads in accordance with Figure 4.1.1 on two sides of the Central Park. (Note: Central Park will therefore have roads on three sides) • Provide 10 park benches and 10 bicycle parking spaces • Where practicable provide turf detention basin to minimum 50% of park area as the Central Park is on the overland flow alignment | <p>A multi-function park that provides for: Active recreation (informal sport) Passive recreation Community events (e.g. cinema, expos etc.) Children's play</p> <p>Refer Figures 5.3.2 5.3.3 5.3.4</p> |
| Shrimpton's Creek Parklands | 3.8 Ha Variable dimensions The park layout is to be generally in accordance with Figure 5.4.1 | <ul style="list-style-type: none"> • Provide active frontage in accordance with Figure 6.11.1 Active Frontage Controls. • Provide a pedestrian bridge across Shrimpton's Creek to improve connectivity between the existing residential precincts and Lyon Park Road. Bridge design must take into account ecology Council's relevant flood management plan. • Future development is to address the creek corridor and minimise | <p>A multi-function park that provides for: Active transport – fitness trail, walking and cycling Active recreation (informal sport, skateboarding) Passive recreation Children's play</p> <p>Refer Figures 5.4.2 5.4.3 5.4.4 5.4.5 5.4.6</p> |

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4.5

Macquarie Park Corridor

| | | | |
|---------------------------------------|--|--|--|
| | | <p>service entries and parking area fronting this space.</p> <ul style="list-style-type: none"> • Provide transparent or no fences to the park boundary • Provide 20m riparian protection zones on private lands adjoining the park • Implement pedestrian connections in accordance with Figure 4.1.1 • Development is to plant endemic species only adjoining the park | |
| Riverside Park Julius Avenue | 0.35 Ha 60 m x 60 m The park layout is to be generally in accordance with Figure 5.5.1 | <ul style="list-style-type: none"> • Facilitate through site access to public transport hubs • Provide 6 park benches and 6 bicycle parking spaces | A multi-function park that provides for: Passive recreation Children's play Outdoor dining Neighbourhood meeting place |
| Thomas Holt Park Thomas Holt Drive | 0.4 Ha 100 m x 40 m approximately Refer Figure 5.6.1 | <ul style="list-style-type: none"> • Provide landscaping that responds to the natural topography of the park (such as terraced seating). Refer Figure 5.6.2 • Provide 6 park benches and 6 bicycle parking spaces | Passive recreation Children's play Neighbourhood meeting place |

- a. Refer to the Macquarie Park Public Domain Technical Manual for detailed design requirements.
- b. Provide pedestrian pathways and cycleway connections to adjoining public domain spaces.
- c. Accommodate a range of seating areas with prospect and views across open space.
- d. Provide a mix of paved and open lawn/ turf areas, shaded and sunny areas.
- e. Provide infrastructure (such as power and water supply to support events and where appropriate gas for BBQ facilities)

Paving

- f. Provide high quality pavement that relates to public domain of adjoining streets in accordance with *Macquarie Park Public Domain Technical Manual*.

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ATTACHMENT 2

Macquarie Park Corridor 4.5

Park furniture

- g. Install park lighting along key pedestrian routes. Reduce visual clutter by incorporating light fittings on built elements where possible
- h. Provide a generous quantum of seating in sun/shade areas.
- i. Locate bins at park entries/exits.
- j. Provide directional/ information signage at key zones.

Vegetation

- k. Minimum 20% consolidated area of the open space area should be provided as deep soil zone to establish large trees.
- l. Provide exotic and endemic species (minimum 60%), large scale shade trees (over 8 m height).
- m. Protect and retain existing trees over 5m in height.

Stormwater

- n. Implement water sensitive urban design. Provide for on site absorption, manage water quality and run off on site.
- o. Improve stormwater treatment through site and explore possibilities for incorporating stormwater drainage infrastructure as an evocative element within the urban design.

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Macquarie Park Corridor

5.3 Central Park

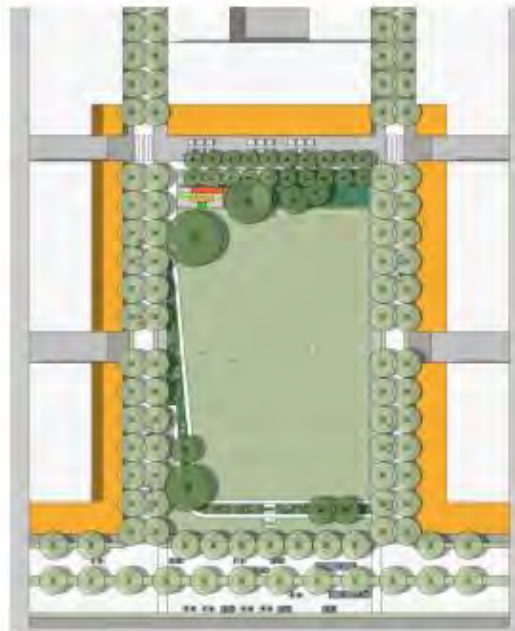


Figure 5.3.1 Central Park layout

Figure 5.3.2 Character images

1. Recreational night-time use (Moonlight cinema, Aspect Studios image library)
2. Group gatherings (BBQ area, Aspect Studios image library)
3. Large turf area (Citroen Park, Paris, G.Clement, 'Invented Landscapes', p.115)
4. Seating wall steps (Garden of the Cerca de Sao Bernado, 'Fieldwork, p.117')
5. Detention basin (Victoria Park, Sydney, Aspect Studios Image Library)



Figure 5.3.4 Night noodle markets
Hyde Park Sydney



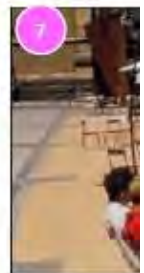
Figure 5.3.3 Cellar Door expo
Hyde Park Sydney

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Macquarie Park Corridor

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6. Passive recreation area
(Aspect Studios Image
Library)
7. Informal cafe/ seating
(‘New city spaces’, p.83)
8. Main Plaza San Antonio
– shade structures

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Macquarie Park Corridor

5.4 Shrimpton's Creek Park



Figure 5.4.2 Como Pleasure Grounds



Figure 5.4.3 Olympic Park fountain

Source <http://www.au.timeout.com/sydney/aroundtown/features/4300/best-picnic-spots>



Figure 5.4.4 Skate park



Figure 5.4.5 Olympic Park Swing



Figure 5.4.6 Future Character photos

1. Bioswale (Victoria Park, Sydney, Aspect Studios Image Library)
2. Timber bridge(Woolwash Park, Sydney, Aspect Studios Image Library)
3. Planted swale (Victoria Park,'Contemporary Australian Landscape Design, p. 179)
4. Endemic tree and understory planting (Aspect Studios Image Library)

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ATTACHMENT 2

Macquarie Park Corridor 4.5

5.5 Riverside Park



5.6 Thomas Holt Drive Park

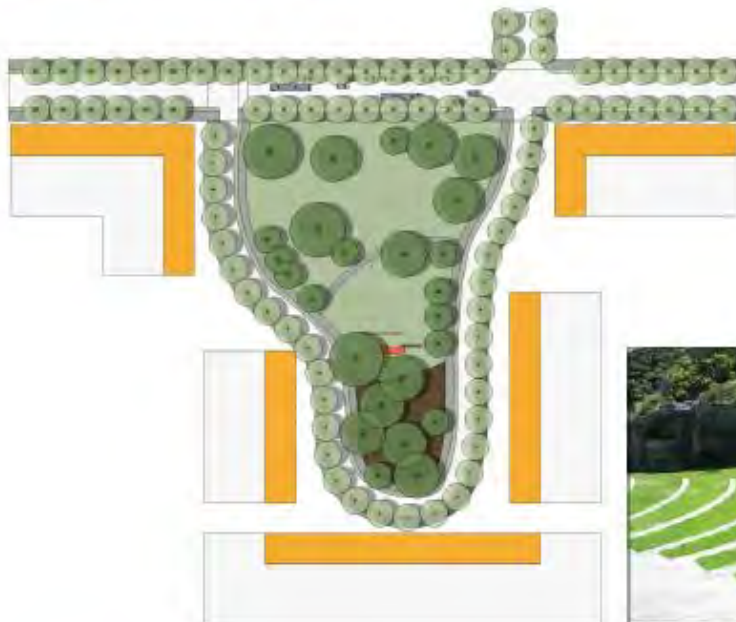


Figure 5.5.1
Figure

5.5.2
Bradleys Head Park
amphitheatre or
terraced
seating



ITEM 4 (continued)

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Macquarie Park Corridor

5.7 Rail Station Plazas

Objectives

1. To provide a square/ plaza, with active building frontages.
2. To provide clear unimpeded views and access from station square from surrounding streets.
3. To address level changes by creating a series of terraces that tie into adjoining footpath levels.

Controls

- a. Provide the following Station plazas (including fittings):
 - i. Macquarie Park Station Plaza - West
Area: Provide minimum 0.35 ha
Dimensions: Provide minimum 88 x 40m
 - ii. Macquarie Park Station Plaza – East
Area: Provide minimum 0.35 ha
Dimensions: Provide minimum 88 x 40m as shown in Figure 5.6.1
 - iii. Macquarie University Station Plaza - West
Area: Provide minimum 0.56 ha
Dimensions: Provide minimum 75 x 75 m as shown in 5.6.2
 - iv. Macquarie University Station Plaza – East
Area: Provide minimum 0.67 ha
Dimensions: Provide minimum 80 x80 m as shown in Figure 5.6.3
- b. Install a minimum of 10 park benches and 10 bicycle parking spaces in each station plaza.
- c. Station plazas are to be privately owned public space. Station plazas are to be accessible at all times.
- d. Provide Continuous Active frontage to station plazas refer also Figure 7.1.1
- e. Minimise large banks of stairs. If stairs are used to provide alternative access to ensure equitable access for all.
- f. Provide unimpeded and generous entrances and circulation paths into and through the plaza.
- g. Provide infrastructure (such as gas, power and water supply) and subject to consent, appropriately scaled kiosks, vendor stalls, cafes and restaurants) that will enhance the rail station plazas as meeting places and support activities such as markets, community events, leisure and recreation.

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Macquarie Park Corridor

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- h. Provide wireless internet connection to all publicly accessible space, particularly station plazas

Station Plaza Setbacks

- i. Provide building setbacks for adequate pedestrian circulation space around train stations.

Paving

- j. Provide paving in accordance with *Macquarie Park Public Domain Technical Manual*.

Park Furniture

- k. Install lighting to contribute to public safety
- l. Locate bins at square entries/exits.
- m. Provide directional and information signage.

Vegetation

- n. Endemic species to street edge.

Stormwater

- o. Minimise storm water runoff for irrigation. All storm water is to be filtered in accordance with Council requirements and tanks installed for irrigation storage.



Figure 5.7.1 Character Photo
Federation Square Melbourne



Figure 5.7.2 Character photo
Chifley Square Sydney

ITEM 4 (continued)

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Macquarie Park Corridor

Macquarie Park Station Plaza - East



Figure 5.6.1 Illustrative Plan Only

Macquarie University Station Plaza - West



Figure 5.6.2 Illustrative Plan Only

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Macquarie Park Corridor 4.5

Macquarie University Station Plaza – East

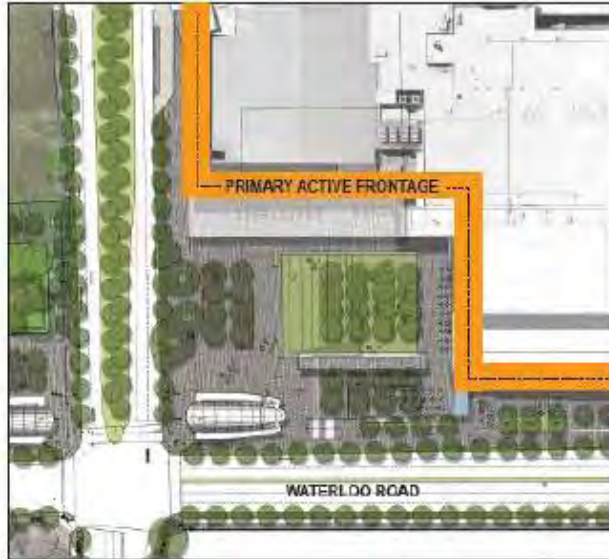


Figure 5.6.3 Illustrative Plan Only



PRIMARY ACTIVE FRONTAGE
STATION SERVICES BUILDING UNDER PLAZA



PRIMARY ACTIVE FRONTAGE
STATION SERVICES BUILDING UNDER PLAZA

Figure 5.6.4 Illustrative perspective

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Macquarie Park Corridor

5.8 Street Tree and Front Setback Tree Planting

A broad strategy of new street tree planting is based on the four significant vegetation groups that would have been present on the site prior to development, reinforcing the unique landscape character of the area and minimising weed infestation. The location of the tree species enables a ‘reading’ of the geology and topography. This strategy allows for creation of bio-links and canopy connections to existing vegetation communities outside the site area and to the Lane Cove National Park.

Objectives

1. To respond to the unique natural character of the Macquarie Park Corridor.
2. To reinforce the street network and contribute to the legibility of streets.
3. To integrate best practice water sensitive urban design principles into the design and management of the public domain.
4. To reflect the endemic vegetation communities historically present within the Corridor.
5. To create bio-links and canopy connections to existing vegetation communities surrounding the Corridor.

Controls

- a. Street trees and front setback must be provided in accordance with the Street Tree Key Plan in Macquarie Park Public Domain Technical Manual, and their health guaranteed for a minimum of 5 years.
- b. At grade parking is not permitted in the front setback

Note: front setbacks may contribute to deep soil zones and site coverage calculations.

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Macquarie Park Corridor 4.5



Figure 5.9.1 Excerpt City of Ryde: Social and Cultural Infrastructure Framework

ITEM 4 (continued)

ATTACHMENT 2

4.5

Macquarie Park Corridor

5.9 Community Facilities

Community facilities provide areas for social and recreational activity, as well as essential support services. These facilities strengthen and support the community, increasing the public life of the Corridor.

Community facilities are to be provided in accordance with the relevant documentation prepared by Council, particularly the [City of Ryde: Social and Cultural Infrastructure Framework](#). Based on population growth statistics (available 2011) within Macquarie Park Corridor the [City of Ryde: Social and Cultural Infrastructure Framework](#) seeks:

- One branch library 1,400 sqm
- One community centre 2,000 sqm
- One community arts centre 1,000 sqm and
- One community hall 500 sqm

Objectives

1. To provide services and facilities supporting the increasing employment and residential population within the Macquarie Park Corridor.
2. To enliven the public domain.
3. To encourage walking within the Corridor rather than driving to facilities in surrounding areas.
4. To provide a coordinated approach to the delivery of community facilities across the Corridor.

Controls

- a. Provide community facility/space of not less than 3,000sqm within the Macquarie Park Shopping Centre (which may include a branch library or other function in accordance with the [City of Ryde: Social and Cultural Infrastructure Framework](#).) The community space must be directly accessible from the public domain and within a short walk of the station and bus interchange. Community space must be discussed with City of Ryde prior to the lodgement of a Development Application.
- b. Provide community facility/space of not less than 500 sqm within new development at 45 Waterloo Road facing the proposed Central Park. This may include community meeting space and associated amenities and should be discussed with Council prior to lodging a Development Application.
- c. Within public streets, parks, squares and plazas provide infrastructure (such as gas, power and water supply) and appropriately scaled built forms (such as kiosks, vendor stalls, cafes and restaurants) that will enhance the public domain as a meeting place and support activities such as markets, community events, leisure and recreation.

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Macquarie Park Corridor

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5.10 Public Art

Public art can make urban spaces attractive and welcoming, promote local identity, evoke business confidence and attract investment. Artworks can enhance new development, streetscapes, parks, gardens and other places and spaces, creating interesting and distinctive urban environments. They can create vital and engaging environments that connect private and public domains, attracting pedestrian activity and navigation. Good public art can be a destination in itself.

The themes of innovation technology, natural environment, local history, transport and movement provide a spectrum of ideas that can be explored and expressed through public art. Artworks can be used to create emblems or symbols that depict the identity of the place. It can be used to distinguish special places or developments, enable new businesses to develop a strong identity or signatures, signify entry points, strengthen the character of the place and stimulate the interaction of ideas that is central to the vision of the Corridor. Artworks can be integrated into the landscape or building features.

Objectives

1. To include site-specific integrated public artworks in new developments in Macquarie Park Corridor.
2. To create a distinctive urban environment and sense of place
3. To reflect local character, cultural identity and the natural environment
4. To create a high quality public domain incorporating public art that is original, creative and innovative in its design and use of form, technique and materials, and at the forefront of new ideas and sustainable practice.
5. To ensure that Public art conforms to standards in regard to public safety, is robust, durable and low maintenance.



Figure 5.10.1 The Pool by Jen Lewin Des Moines (interactive lighting/artwork installed in the pavement)

Figure 5.10.2 Walking Men (pictograms from across the world) part of City of Sydney's Art and About public art program. The images were incorporated into banners



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Draft

ITEM 4 (continued)

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4.5

Macquarie Park Corridor

Controls

- a. Public art must be included in all new development with more than 10,000m² new floor space in the amount of 0.1% of the construction cost of the works capped at \$1,500,000.
- b. Public art must be located within the site so as to be publicly viewed or experienced.
Note: This may be within ground floor building foyers, on the building façade or within the front setback. Public art may also be funded by the developer and located within public parks or the public domain (e.g. banners on the light poles within the road reservation, purpose designed street furniture etc)
- c. A site specific Arts Plan is to be submitted together with the development application.
The Arts Plan will include:
 - i. Arts project description and statement of artistic intent.
 - ii. Thematic framework for the artwork. Suggested themes arising from the history of the Macquarie Park Corridor are:
 - Innovation and / or technology
 - Transport (train, bus, car) and people movement
 - History of Macquarie Park Corridor e.g. market gardening
 - Future of Macquarie Park
 - Natural environment e.g. water**Note: four creeks traversed the Macquarie Park Corridor. These are Industrial Creek, Porters Creek, Shrimpton's Creek and University Creek. For the most part they have been piped and are not now visible.**
 - iii. Concept drawing and descriptions of proposed public art works including:
 - Proposed location
 - Whether or not the artwork is integrated into the building design, landscape or other site features (including the building façade, paving, lighting design, outdoor seating, play equipment and the like.)
 - Proposed use of materials with particular information to be provided on robustness, durability, and low maintenance
 - iv. Implementation (detailing at what stage the artwork will be implemented etc)
 - v. Preliminary construction details with particular emphasis on public safety considerations.

What documentation will be required before construction?
Detailed construction and engineering reports will be required prior to the issue of the construction certificate to ensure public safety; robustness and low maintenance are considered in the final design of the artwork. Conditions of consent will detail the documentation required prior to the issue of the construction certificate.



Figure 5.10.3 Police headquarters Parramatta. Here public art is incorporated into the building façade and sunscreens. The art work is based on forensic science and DNA graphs.

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ATTACHMENT 2

Macquarie Park Corridor 4.5

6.0 IMPLEMENTATION – INFRASTRUCTURE, FACILITIES AND PUBLIC DOMAIN IMPROVEMENTS

New and improved infrastructure community facilities, (road network and drainage) and public domain improvements (landscaping, parks, public art) within the Corridor is necessary to support growth, to create a vibrant work and living environment and to strengthen and sustain the existing and future communities.

The basis for the infrastructure, facilities and public domain improvements within the Corridor are documented in the Access and Open Space Structure Plans within this DCP and in relevant City of Ryde community facilities plans, particularly the [City of Ryde: Social and Cultural Infrastructure Framework](#).

The provisions of these elements will be achieved through:

- Funds received from the Special Rate Levy applying to the Corridor.
- Development contributions under S94 of the Environment Planning and Assessment Act
- The development process achieved through design and implemented as conditions of the development
- Development process achieved through the provision of planning incentives (height and floor space) in return for new roads and parks identified in the Open Space and Access Structure Plans in this DCP. Under this scheme planning incentives applicable under Ryde LEP are deferred until a voluntary planning agreement (VPA) is executed between Council and the developer. This VPA secures infrastructure contributions in cash or works in kind to be delivered through redevelopment.

The planning incentives mechanism is considered fair and equitable in that all landowners receiving the benefit of increased FSR and or height will contribute whether there is infrastructure on their land or not. As a value capture mechanism it offers the opportunity to develop an infrastructure funding tool within the planning system which will address infrastructure needs in the Macquarie Park Corridor.

The principles of the planning incentives scheme is:

- **Nexus:** That some of the benefit afforded to sites within Macquarie Park (through an uplift in FSR under Amendment No. 1) is captured by Council to provide essential infrastructure required as a result of increased densities in the area
- **Transparency:** This includes a clear understanding of what infrastructure is to be funded and how contribution rates and community benefit are calculated and applied to individual sites
- **Equity:** A framework that treats landowners fairly and where both infrastructure and incentives for development are based on equity and fairness
- **Practical:** The implementation of the mechanism must be practical and occur in a timely fashion to avoid delays and provide certainty for commercial dealings
- **Feasibility:** The contributions must be reasonable and provide infrastructure without burdening land such that development is not feasible at each stage

ITEM 4 (continued)

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4.5

Macquarie Park Corridor

Infrastructure to be provided

The proposed funding model will provide funding for roads and open space as identified in the Access and Open Space Structure Plans in the DCP as follows:

- 4.1 km of 20m wide roads
- 3.6 km of 14m wide roads
- 3.5 hectares of open space

This Part should be read in conjunction the City of Ryde LEP 2014, which allows for incentive floor space and building height. It is critical that any approval for incentive floor space makes provision for the infrastructure, public domain improvements and other community benefits necessary to support the generated demand.

Process for accessing the planning incentives

- A landowner inspects [Ryde LEP 2014 – \(Amendment 1\) Macquarie Park Corridor](#) planning incentives maps and wishes to lodge a development application under the new LEP because it allows for greater FSR and building height.

Note:

Refer to the [Figure 4.1.1 Access Network](#) and / or [Figure 5.1.1 Proposed Open Space Network](#) to determine if there is any public domain to be delivered on the site – or alternatively a developer may decide to provide a monetary contribution to support delivery of the proposed roads and open space.

Refer to [Draft Guideline for 'Un-deferrals' and delivery of Public Infrastructure and council's Voluntary Agreements Policy](#)

Refer to [Council's Fees and Charges](#) for the charges levied on the incentive floor space developed on a site in accordance with the planning documents applying to the area

- Contact Council to arrange for a pre lodgement meeting and to discuss accessing the incentive scheme

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Macquarie Park Corridor 4.5

Objectives

1. To locate higher densities around significant places such as parks, local centres and train stations.
2. To provide FSR controls which correlate with height controls.
3. To allow bonuses for the provision of public infrastructure as demand for floor space increases.

Controls

- a. Floor Space Ratios and Height of Buildings are to comply with the Ryde LEP 2014.

Note: Where it is proposed to take advantage of Floor Space and/or Height Incentives, applicants are to present and discuss their scheme with Council prior to lodgement of a development application.

- b. The Access Network being roads and the Open Space Network being parks are to
 - i. be dedicated to Council as part of a new development and are to
 - ii. conform with the Macquarie Park Corridor Access Structure Plan. The
 - iii. be design and constructed in accordance with the Macquarie Park Corridor Public Domain Technical Manual and Section 5 of this DCP.
- c. The public land such as the road verge adjoining a development site is to be embellished and dedicated to Council as part of any new development. The design and construction of the works are to be undertaken in accordance with the Macquarie Park Public Domain Technical Manual and Section 4 of this Part.

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4.5

Macquarie Park Corridor

7.0 BUILT FORM

This section aims to encourage good design and to coordinate development within the corridor

Buildings should be sited to allow for the future provision of roads and open space as shown in this Part. Staged development should be planned to maximise building address to existing streets as well as frontages to new streets.

7.1 Site Planning – New Streets and Open Spaces

Objectives

1. To ensure that development occurs within the framework of proposed streets and open spaces.
2. To ensure that the built form structure plan is reinforced.
3. To encourage buildings to address existing and proposed streets.

Controls

- a. Sites are to be planned to allow for the future provision of new streets and open spaces in accordance the Open Space Network Figure 5.1.1 and Access Network Figure 4.1.1.

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Macquarie Park Corridor 4.5

7.2 Activity Centres Structure Plan

Due to the size of the Macquarie Park Corridor, it is recognised that not all streets will develop as active pedestrian environments or Activity Centres.

The planning controls for the corridor aim to create vibrant streetscapes in areas with high pedestrian traffic, located close to public transport and public open space. Three Activity Centres which represent an arrival point, for commuters travelling by both road and rail to the Corridor have been identified. These are:

- **Macquarie Park Station Activity Centre**
 - Centred on the intersection of Waterloo Road and Lane Cove Road this activity centre builds on symbiotic relationship between the train station and the commercial core of Macquarie Park.
 - The vitality of the Activity Centre is enhanced by the future Central Park, a major new public open space and recreation destination for the Corridor
 - Waterloo Road will provide a civic streetscape with a high quality public domain and opportunities for a prestigious corporate address.
 - The accessibility of the precinct will be enhanced by new streets and pedestrian connections, creating a high level of permeability, opportunities for new building addresses, access and service retail.
- **Macquarie University station Activity Centre**
 - Includes two of the main destinations within the Corridor - Macquarie University and the Macquarie Shopping Centre – which contribute to the diversity and vibrancy of the Precinct.
 - The Macquarie University Station and bus interchange service large numbers of students, visitors and workers each day.
 - The area is expected to accommodate diverse land uses, with the flexibility to change over time.
- **North Ryde Station Activity Centre** *This precinct is deferred from this DCP however, for co-ordination purposes the following information is provided*
 - Adjoins the Lane Cove River National Park and business park areas including Riverside Corporate Park, historic home of the CSIRO.
 - The precinct includes two distinct sub-precincts: the North Ryde station mixed use / residential areas and residential areas to the west of the M2. The Activity Centres includes neighbourhood retail hub for daily shopping and community services and facilities;
 - A future land bridge over the M2 provides the opportunity to unify the precinct and to increase the rail station catchment.

Objectives

1. To co-ordinate the orderly development of the Precinct and have regard to
 - the Macquarie University Master Plan (Approved under Part 3A of the Act) and
 - the Herring Road Urban Activation Precinct
 - the North Ryde Station Urban Activation Precinct .

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Activity Centres Structure Plan

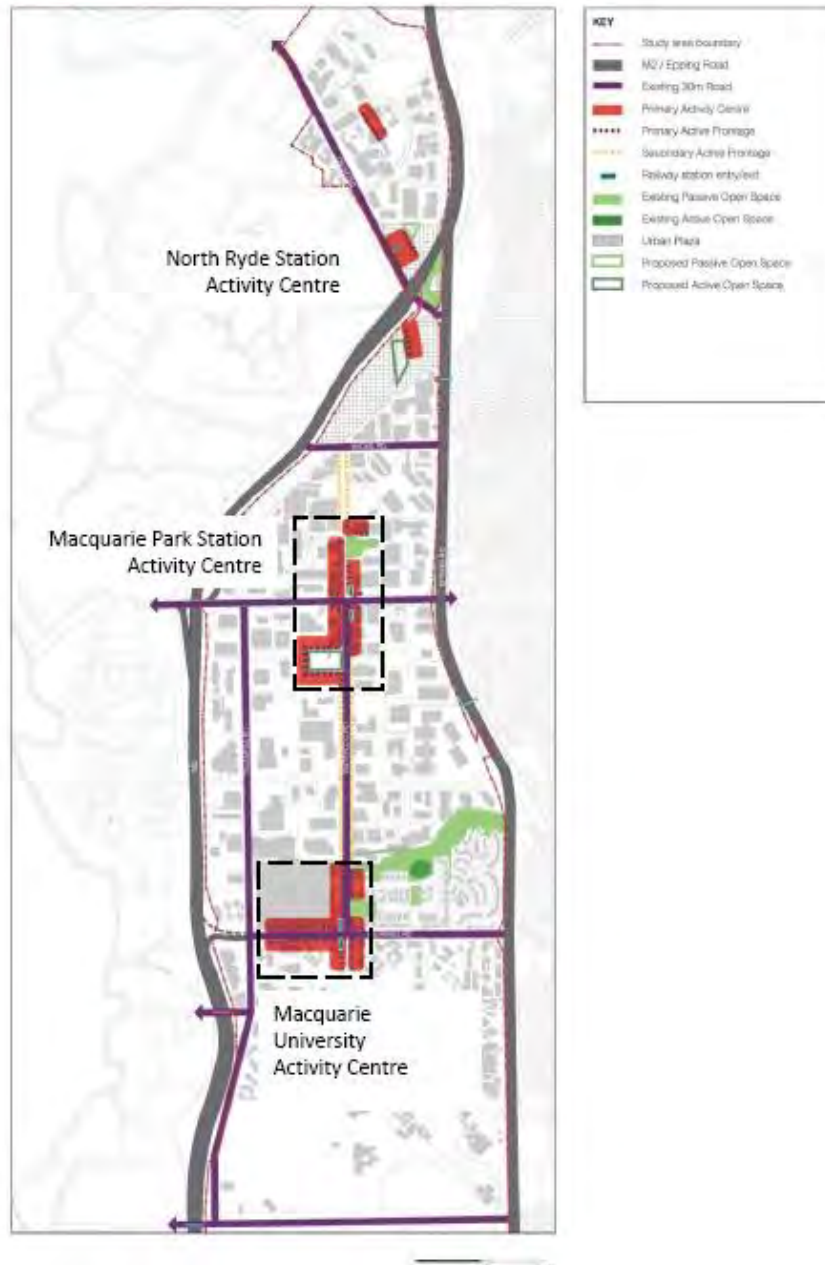


Figure 7.2.1 Activity Centres Structure Plan and Active Frontage Control Drawing

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7.2 Active frontage

Active uses at ground level are encouraged within Macquarie Park generally but more particularly in Activity Centres in order to ensure vibrant streetscapes, community meeting places and the provision of local services and facilities. This is supported by controls for 'Active Frontages', which identify areas where active ground level uses are to be consolidated.

Objectives

1. To create a distinctive civic character to Waterloo Road around the stations.
2. To provide a mix of uses to support an increasing employment and residential population over time.
3. To create a vibrant local activity centre adjacent to the station and around new parks.
4. To provide a range of uses, including where permitted residential and retail, that complement the broader uses within the Corridor and that generate activity at ground level.
5. To create vibrant local activity hubs adjacent to stations and around new parks and rail station plazas.
6. To provide high quality public spaces suitable for active and passive recreation, for users of the rail stations and surrounding urban areas.
7. To ensure that public spaces and streets are activated along their edges.
8. To encourage safe well used public domain spaces.
9. To create vibrant streetscapes around areas of high pedestrian traffic.
10. To encourage activity within the Corridor outside commercial business hours.
11. To enhance pedestrian safety, security and amenity within the Corridor

Controls

- a. Continuous ground level active uses must be provided where primary active frontages are shown in Figure 7.2.1 Active Frontage Control Drawing. Buildings must address the street or public domain.
- b. Front door and street address is to be located on the primary frontage.
- c. Loading docks, vehicular access is not to be located where primary active frontages are shown in Figure 7.2.1 Active Frontage Control Drawing unless it can be demonstrated that there is no alternative.
- d. Active ground level uses are encouraged where secondary active frontages are shown in Figure 7.2.1 Active Frontage Control Drawing

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- e. Active uses are defined as one or more of the following:
 - i. shop fronts;
 - ii. retail/service facilities with a street entrance;
 - iii. cafe or restaurants with street entrance;
 - iv. community and civic uses with a street entrance;
 - v. recreation and leisure facilities with a street entrance;
 - vi. commercial or residential lobbies with a street entrance not more than 20% of the total length of the building's street frontage
- f. Entries to active frontage tenancies are to be accessible and at the same level as the adjacent footpath.
- g. Active uses must occupy the street frontage for a depth of at least 10m. Refer Figure 7.1.1 Active Frontage Control Drawing
- h. On sloping sites, the maximum level change between ground floor tenancies and the adjacent footpath is 600 mm.
- i. Where active frontage is required a minimum of 90% of the building frontage is to be transparent i.e. windows and glazed doors. (A maximum 10% active frontage may be fire stairs, plant, masonry walls and other non-active uses)
- j. Clear glazing is to be provided to windows and doors. The sill height for windows must be maximum 1200mm above the footpath, including for sloping sites. Refer Figure 7.2.2

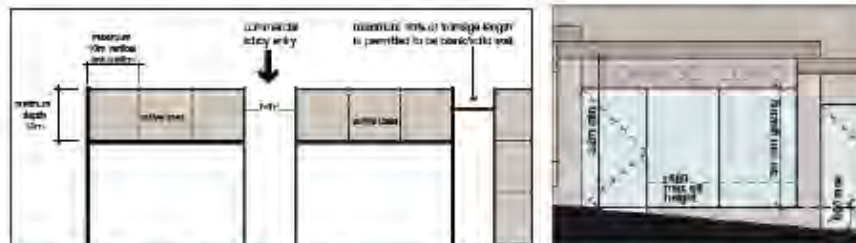


Figure 7.2.2 Active Frontages plan diagram and Active Frontages elevation diagram

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7.3 Setbacks and Build-to Lines

Setback controls define the building line and determine the location of buildings relative to the street boundary. General setback controls apply throughout the corridor. Specific street setback controls are provided where a particular existing or desired future street character is to be reinforced.

Buildings are encouraged to treat the setbacks as build-to-lines in order to promote a consistent setback and safe attractive public domain. However, subject to negotiation with Council, buildings may setback further from the street or public domain according to specific site conditions. This will include consideration of the impacts on underground infrastructure associated with the Epping Chatswood Rail Link (ECRL) running under Waterloo Road.

Objectives

1. To enhance the existing character of streets within the Corridor.
2. To create new streets which contribute to the character and identity of the Corridor.
3. To increase pedestrian amenity and provide pedestrian sight lines to train stations.
4. To retain and reinforce the existing character of green setbacks with mature planting.

Controls

- a. Minimum setbacks and build-to lines must be provided as shown in Figure 7.3.1 Setback Control Drawing – summarised as follows;
 - i. Zero setbacks to streets build-to lines in Primary Active Frontage
 - ii. 5m setback Secondary Active Frontage Waterloo Road
 - iii. 10m setback all existing and new streets
 - iv. 5m setback to all parks (existing and proposed)
 - v. 20m green setbacks adjoining the M2 tollway and Epping Road.
- b. Provide 2m setbacks to pedestrian pathways
- c. Despite clause 7.2.a development may be set back further from the street or public domain where it can be demonstrated to Council that the impacts of development on underground rail infrastructure are not in accordance with the ECRL Underground Infrastructure Protection Guidelines Report No. 20007300/ PO-4532 obtainable from Transport for NSW.
- d. Council encourages development that complies with Figure 7.2.1 Setback Control Drawing and meets the requirements of the ECRL Second Reserve Support Zone. The following are permitted in the Second Reserve support zone:
 - i. Excavations less than 3m in depth are not required to be assessed. Excavations 3m or more in depth are required to be assessed for their impact on the underground infrastructure, including impacts during construction
 - ii. Shallow footings with relatively light loadings (allowable bearing pressure of less than 150kPa on small pad or strip footings) are not required to be assessed. Other shallow footings and deep foundations are required to be assessed.

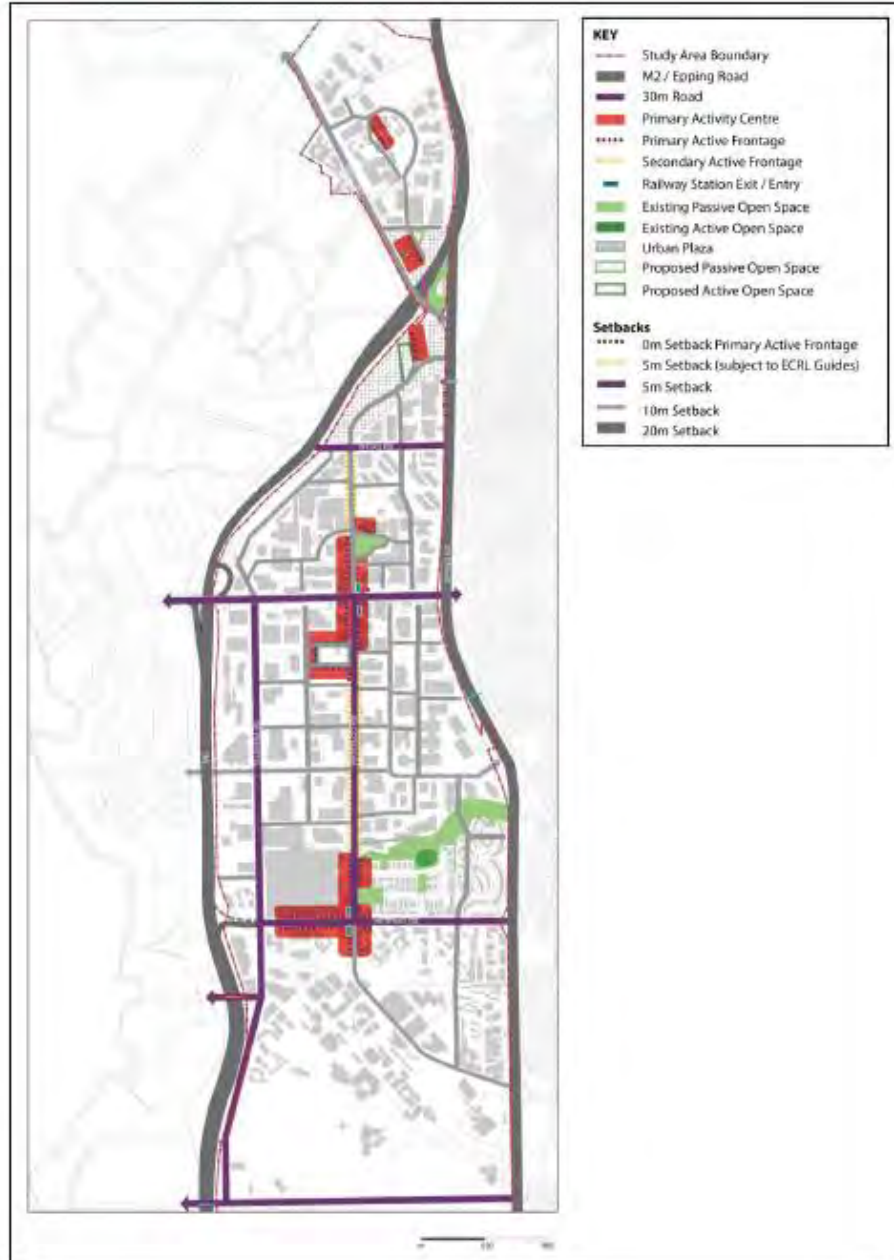
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Figure 7.3.1 Setback Control Drawing



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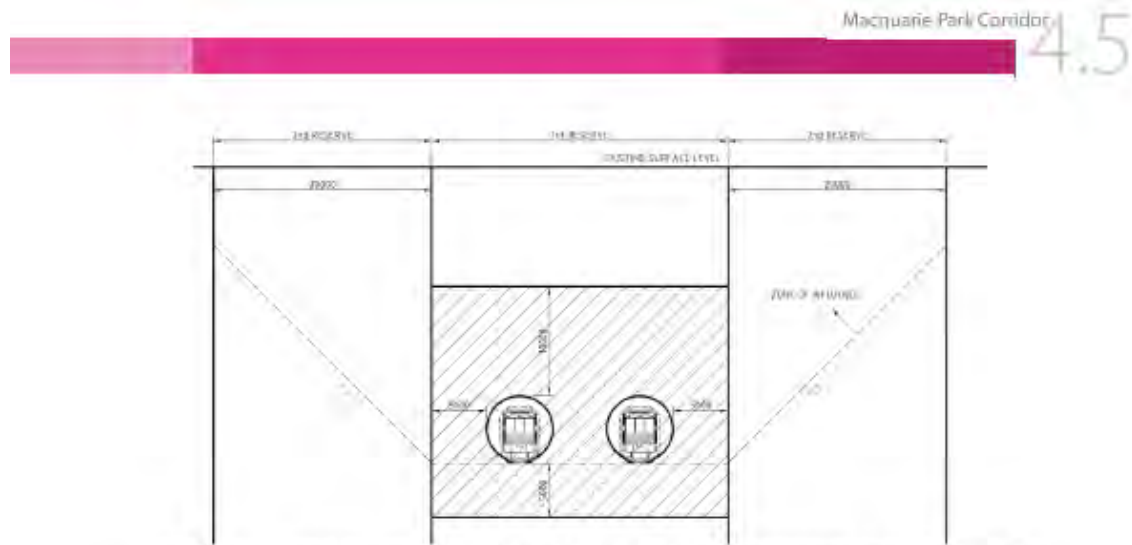


Figure 7.2.3 Section showing First and Second Reserve Zones associated with ECRL underground rail infrastructure in Macquarie Park Corridor
Source: ECRL Underground Infrastructure Protection Guidelines Report No. 20007300/ PO-4532

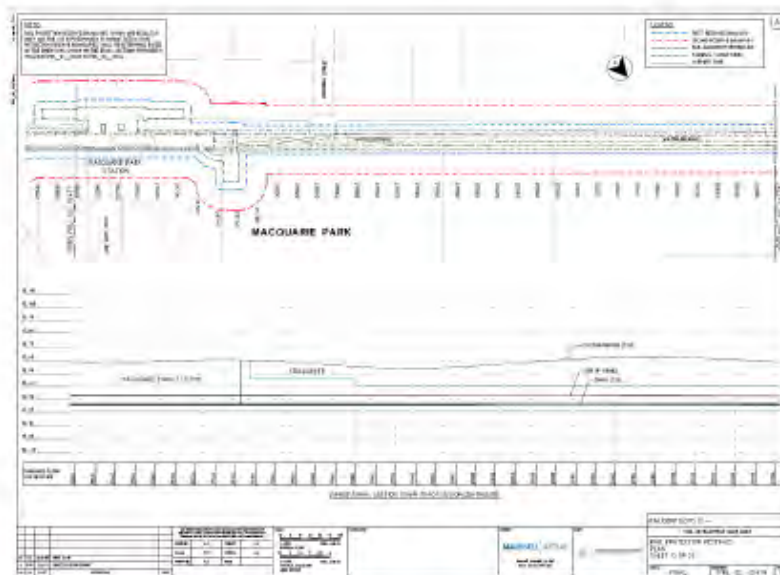


Figure 7.2.4 sample plan showing First and Second Reserve Zones associated with ECRL underground Rail infrastructure in Macquarie Park Corridor

Source: ECRL Underground Infrastructure Protection Guidelines Report No. 20007300/ PO-4532

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- e. Underground parking is not permitted to encroach into the front setback areas unless it can be demonstrated that the basement is designed to support significant mature trees and deep root planting. Refer to Figure 7.2.2
- f. Awnings, canopies, balconies, sun shading and screening elements can project forward of the street setback line.
- g. 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.

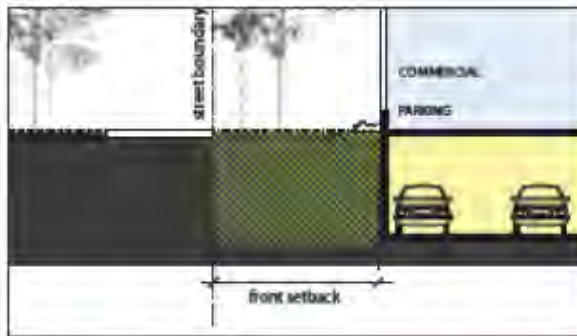


Figure 7.2.2 Parking is not permitted within required setbacks, allowing for deep soil landscaping along streets

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7.4 Awnings and Canopies

Awnings increase pedestrian amenity by providing shelter and enclosure at a pedestrian scale. They encourage pedestrian activity along streets and, in conjunction with active edges such as retail frontages, support and enhance the vitality of the local area. Awnings and entry canopies provide a public presence and interface within the public domain, contributing to the identity of a development.

Objectives

1. To unify the streetscape.
2. To provide weather protection, safety and security for pedestrians.
3. To demarcate building entries and contribute to the image and identity of development.

Controls

- a. Awnings must be provided where Primary Active Frontages are shown in Figure 7.2.1 Activity Centres Structure Plan and Active Frontage Control Drawing. Entry canopies and discontinuous awnings and entry canopies are encouraged elsewhere in the Corridor.
- b. Awning width is to be 3 m. Refer to Figure 7.4.1
- c. Provide awnings with a soffit height of 3.6 m above the finished ground floor level. On sloping sites, awning soffit height may vary from 3.6 m - 4.2 m. Refer to Figure 4.5.96.
- d. Awning heights are to be coordinated with adjoining properties.
- e. Where the topography slopes along the street, awnings are to step to provide a regular height over the footpath. Steps in awnings should not exceed 600 mm.
- f. Stepped awnings must be detailed to provide continuous weather protection.
- g. Glazing is not permitted in continuous awnings.
- h. Under awning lighting is to be provided to achieve appropriate luminance levels for pedestrians (Refer to relevant Australian Standards). This should be recessed into the soffit of the awning.

Entry Canopies

- i. Entry canopies and discontinuous awnings may be provided to building entries not located along Active Frontages.
- j. Entry canopies may be glazed or solid, and are to be coordinated with a soffit height of 3.6 m minimum.

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Figure 7.4.1 Awnings: Section

Figure 7.4.2 Awnings: Elevation

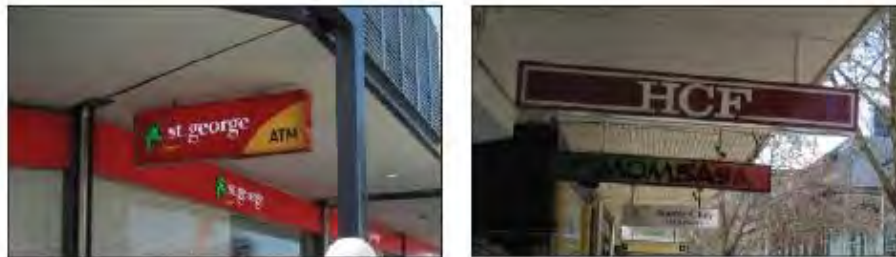


Figure 7.4.3 Continuous awnings integrating signage and recessed lighting



Figure 7.4.5 Entry canopy integrated with landscape and building design

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7.6 Side and Rear Setbacks

Side and rear setback spaces provide a corridor of deep soil between sites. This area allows for the retention of existing mature trees, and future tree planting. Side and rear setbacks also provide an opportunity to resolve changes in level between sites.

Objectives

1. To create a pattern of development that positively defines the streetscape.
2. To provide building separation for visual and acoustic privacy
3. To provide deep soil zones, and maintain mature/significant vegetation.
4. To contribute to the landscape character of the Corridor.

Controls

- a. Buildings are to be set back 5m from the rear boundary unless a proposed new road is shown on the site.
- b. Buildings are to be set back 5m from the side boundaries
- c. Buildings are not to be constructed on the locations for proposed new roads.
- d. Awnings, canopies, balconies, sun shading and screening elements may project into the rear setback zones.
- e. Basement car park structures should not encroach into the minimum required rear setback zone unless the structure can be designed to support mature trees and deep root planting.
- f. Above ground portions of basement car-parking structures are discouraged and deep soil planting is promoted
- g. Natural ground level is to be retained throughout side and rear setbacks, wherever possible. Refer to Section Topography and Building Interface for controls.

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7.7 Building Separation

Where buildings face each other within the same site, provide adequate separation to allow visual privacy and solar access to buildings and courtyard spaces.

Objectives

1. To allow solar access to buildings and communal areas.
2. To retain mature vegetation between buildings and allow for deep soil planting.
3. To provide a visual break between buildings and reduce the perceived bulk and scale of the built environment.
4. To provide visual privacy between buildings.
5. To provide outlook from buildings.

Controls

Commercial:

- a. Provide minimum 20 m separation between buildings facing each other within a site. Refer to Figure 7.7.1
- b. Provide minimum 10 m separation between buildings perpendicular to each other within a site. This reduced building separation control only applies where the width of the facing facades does not exceed 20 m. Refer to Figure 7.7.1

Residential:

- c. Provide building separation as recommended by the NSW Residential Flat Design Code "Rule of Thumb" requirements.

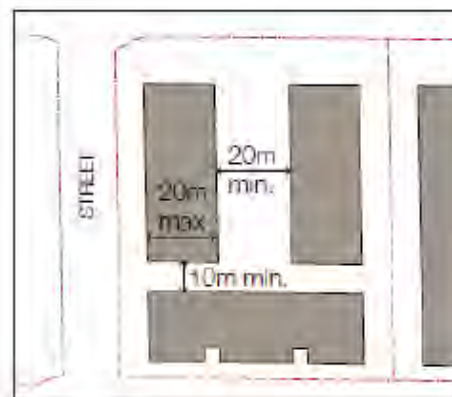


Figure 7.7.1 Commercial Building separation controls

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7.8 Building Bulk and Design

To allow for a diversity of building types, flexible performance based controls are provided. Generally thin cross section buildings improve the amenity of living and working environments. Commercial buildings with larger footprint requirements can adopt creative solutions (such as atria or internal courtyards) to meet the environmental performance standards within this plan .

Taller buildings have an increased impact on their surroundings. As such, the bulk and form of taller buildings is numerically controlled. This ensures that the environmental impacts of taller buildings on the surrounding areas are minimised, and that the forms of these buildings contribute positively to the skyline of the Corridor.

Objectives

1. To minimise overshadowing and visual impact of taller buildings.
2. To contribute to the scale and proportion of the urban form.
3. To contribute to energy efficiency of buildings.
4. To provide internal spaces of a high quality and amenity.
5. To create modelled buildings which address the public domain.
6. To ensure that new developments have facades which define and enhance the public domain.
7. To ensure that building elements such as awnings, sun screens, shading devices, roof structures and services elements are integrated into the overall building form and façade design.

Controls

- a. The floor-plate of buildings above 8 storeys is not to exceed 2000 m², unless it can be demonstrated that slender building forms are achieved through courtyards, atria, articulation or architectural devices.
- b. Buildings are to address the street, and are to have a street address
- c. Facade design is to
 - i. Reflect and respond to the orientation of the site using elements such as sun shading and other passive environmental controls where appropriate.
 - ii. Provide building articulation such as well design roof forms, expressed vertical circulation etc.
 - iii. Express corner street locations by giving visual prominence to parts of the façade (eg a change in building articulation, material or colour, or roof expression).

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- iv. Integrate and co-ordinate building services such as roof plant, parking and mechanical ventilation with the overall façade and building design, and be screened from view.
 - v. Roof forms, building services and screening elements are to occur within the overall height controls. Refer to Ryde LEP 2014 for height controls.
 - vi. Ventilation louvres and car park entry doors are to be coordinated with the overall façade design.
- d. The distance of any point on a habited floor from a source of natural daylight should not exceed 12m (such as from the core to an external window).
- i. Atria and courtyards are to be used to promote access to natural light, pedestrian links and slender building forms.
 - ii. Arrange courtyards and atria to respond to street lot & solar orientation.
 - iii. The preferred height to width ratio of atria is 3:1.
- e. Buildings are to be designed to be flexible – car parking above the ground level is to have a floor to ceiling height of not less than 2.7m

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8.0 SITE PLANNING AND STAGING

8.1 Site Coverage, Deep Soil Areas and private open space

Site coverage controls limit the extent of building footprint within each site, providing significant areas of open space and landscape. Within the remaining open space, deep soil areas are to be provided. Each site is to provide a consolidated area of deep soil, located to provide maximum benefit in terms of landscape planning. This may require the deep soil area to be located to retain significant vegetation, or to be located adjacent to deep soil areas on neighbouring sites.

Objectives

1. To maintain the 'campus style' industrial parklands character that typifies much of the Corridor.
2. To provide developments with a high level of amenity and landscape character.
3. To retain existing mature trees and allow for future tree planting.
4. To provide occupants with passive recreational opportunities.
5. To provide an area on site for soft landscaping and deep soil planting.
6. To improve stormwater quality and minimise water consumption through implementation of water sensitive urban design guidelines

Controls

- a. A minimum 20% of a site must be provided as deep soil area. Communal open spaces are to incorporate the primary deep soil area where possible
- b. Deep soil areas must be at least 2 m deep.
- c. For the purpose of calculating deep soil areas, only areas with a minimum dimension of 20 m x 10 m may be included.
- d. A minimum 20% of the site area is to be provided as Landscaped Area. Landscaped Area is defined as: Area on the site not occupied by any buildings, except for swimming pools or open air recreation facilities, which is landscaped by way of gardens, lawns, shrubs or trees and is available for use and enjoyment by the occupants of the building, excluding areas used for driveways, parking areas or drying yards.
- e. Solar access to communal open spaces is to be maximised. Communal courtyards must receive a minimum of 3 hours direct sunlight between 9 am and 3 pm on the 21st of June.
- f. Appropriate shading is to be provided so that communal spaces are useable during summer.

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- g. Landscaping is to contribute to water efficiency and effective stormwater management. Landowners are to consult with Council for requirements to address stormwater quality and Quantity.

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8.3 Planting on Structures

Quality landscape design and open space amenity relies in part on the quality and health of plants. Planting above structures places a range of environmental stresses on vegetation as a result of limited soil depth, artificial soils, limited drainage and/or irrigation. Where landscaped courtyards are located above basement car parking or other structures, provide the following minimum standards to improve the quality and longevity of landscaping.

Objectives

1. To contribute to the quality and amenity of communal open space on roof tops, podiums, internal courtyards and above basement car parks.
2. To encourage the establishment and healthy growth of trees.
3. To promote 'green buildings' that reduce the overall environmental impact of development

Controls

- a. Provide optimum conditions for plant growth by providing appropriate irrigation and drainage methods.
- b. Design planters to provide the largest possible volume of soil, in accordance with the following recommended standards:
 - i. Large trees (canopy diameter up to 16 m at maturity)
 - Min. soil volume 150 m³
 - Min. soil depth 1.3 m,
 - Min. soil area 10 m x 10 m or equivalent
 - ii. Medium trees (canopy diameter up to 8 m at maturity)
 - Min. soil volume 35 m³
 - Min. soil depth 1 m
 - Min. soil area 6 m x 6 m or equivalent
 - iii. Small trees (canopy diameter up to 4 m at maturity)
 - Min. soil volume 9 m³
 - Min. soil depth 800 mm
 - Min. soil area 3.5 m x 3.5 m or equivalent
 - iv. Shrubs
 - Min. soil depth 500-600 mm
 - v. Ground cover
 - Min. soil depth 300-450 mm
 - vi. Turf
 - Min. soil depth 100-300 mm

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8.4 Topography and Building Interface

The topography within the Macquarie Park Corridor creates significant issues for the interface between buildings, private open spaces and streets. Roadways, landscape and open space infrastructure should address the interface between the public and private domain.

The design of private landscapes within this zone, both soft and hard, should integrate with the public domain landscape. In order to maximise continuity between these zones, the erection of boundary walls or fences should be minimised and at grade connections provided wherever possible.

Changes in level across a site should be accommodated internally within the building design to ensure that internal spaces integrate with external movement patterns and public uses (eg. cafés and shops). Designers should consider the degree to which building frontages can activate or enhance the use of the public domain. The success of the public domain will depend on the degree to which these sites can facilitate through connections and also provide facilities that encourage people to stop and linger.

Objectives

1. To ensure that buildings and courtyard spaces are connected to the street.
2. To ensure that building entries and forecourts contribute positively to the streetscape and public domain.
3. To address level changes across street frontages, and between adjoining properties.
4. To reduce the impact of site levelling on adjacent properties, and future site development opportunities.
5. To ensure visibility and surveillance of all publicly accessible open spaces from streets and the public domain.

Controls

- a. Level changes across sites are to be resolved within the building footprint.
 - i. Where buildings are built to the street boundary (i.e. zero setbacks, refer to section 7.3 Street Setbacks), a level transition must be provided between the building and the adjacent footpath. This level must be maintained for a minimum depth of 10 m into the building.
 - ii. Where buildings are set back from the street boundary, entries are to be provided at street level wherever possible.
- b. An accessible path of travel is to be provided from the street through the main entry door of all buildings.
 - i. Where necessary, stairs and ramps are to be integrated with the landscape design of front setbacks.
- c. Natural ground level is to be retained for a zone of 4 m from the side and rear property boundaries. Retaining walls, cut and fill are not permitted within this zone.

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- d. The maximum height of retaining walls within the front, side and rear setbacks is not to exceed 1.2 m.
- e. Publicly accessible open spaces under private ownership (courtyards, forecourts) must be provided at footpath level. Where level changes cannot be avoided due to topography, the finished level of the open space must not exceed 1.2 m above footpath level.

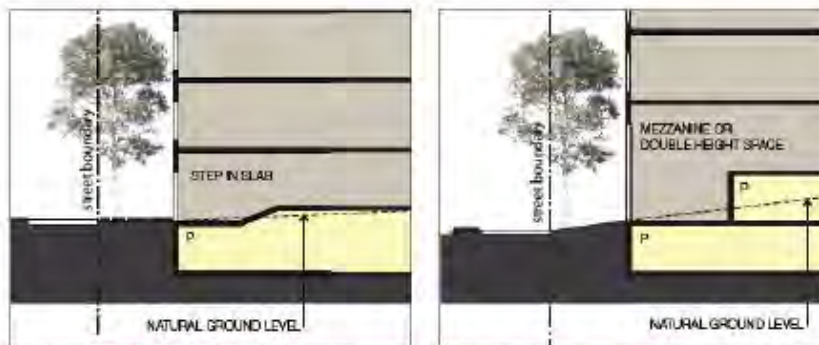


Figure 8.4.1 Level change across site resolved within building entry

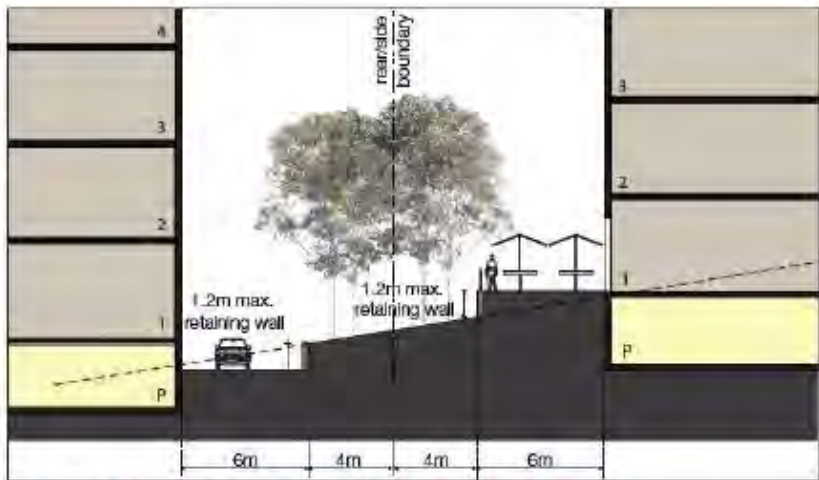


Figure 8.4.2 Level change controls at side and rear setbacks.

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Figure 8.4.3 Level change controls where publicly accessible open space is located adjacent to a street.

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8.5 Site Facilities

Site facilities include loading areas, garbage areas, mail boxes, external storage areas, courier/service entries, and residential clothes drying facilities.

Site facilities are to be considered at an early stage of design development. This ensures that the impact of necessary site facilities on the public domain and adjacent properties can be minimised

Objectives

1. To provide appropriate site facilities for retail, commercial and residential uses.
2. To minimise the impact of site facilities on the streetscape and public domain.
3. To provide adequate garbage and recycling areas to all developments.

Controls

Commercial

- a. Vehicular access to loading facilities is to be provided from secondary and tertiary streets where possible.
- b. Rubbish and recycling areas must be provided in accordance with DCP Part 7.2 Waste Minimisation and Management. These areas must:
be integrated with the development;
 - i. minimise the visibility of these facilities from the street; and
 - ii. be located away from openable windows to habitable rooms.
- c. Barrier free access is to be provided to all shared facilities.

Residential

- d. Provide either communal or individual laundry facilities to each dwelling, and at least one external clothes drying area. The public visibility of this area should be minimised. Clothesdrying is only permitted on balconies that are permanently screened from view from the public domain.
- e. Provide storage to dwellings as required by the NSW Residential Flat Design Code.
- f. Lockable mail boxes are to be provided in a location visible from the public domain. Mailboxes are to be integrated with the design of building entries and to Australia Post standards.

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8.6 Vehicular Access

Vehicular access is the ability for cars and maintenance and service vehicles to access the development. The location, type and design of vehicle access points to a development will have significant impacts on the streetscape, the site layout and the building façade design. It is important that vehicle access is integrated into site planning from the earliest stages to balance any potential conflicts with streetscape requirements and traffic patterns and to minimise potential conflicts with pedestrians.

Objectives

1. To integrate adequate car parking and servicing access without compromising street character, landscape or pedestrian amenity and safety.
2. To encourage the active use of street frontages.

Controls

- a. Vehicular access is not permitted along streets identified as 'Active Frontages' (refer to Section 7.2 Active Frontages).
- b. Where practicable, vehicle access is to be from secondary streets.
- c. Potential pedestrian/vehicle conflict is to be minimised by:
 - i. limiting the width and number of vehicle access points
 - ii. ensuring clear site lines at pedestrian and vehicle crossings
 - iii. utilising traffic calming devices
 - iv. separating and clearly distinguishing between pedestrian and vehicular accessways
- d. The appearance of car parking and service vehicle entries is to be improved by
 - i. locating or screening garbage collection, loading and servicing areas visually away from the street
 - ii. setting back or recessing car park entries from the main façade line
 - iii. avoiding black holes in the façade by providing security doors to car park entries
 - iv. where doors are not provided, it is to be ensured that the visible interior of the car park is incorporated into the façade design and material selection and that building services pipes and ducts are concealed, and
 - v. returning the façade material into the car park entry recess for the extent visible from the street as a minimum.
- e. The width of driveways is to be determined in accordance with the requirements of Ryde DCP, Part 8 Engineering and the relevant Australian Standards.

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8.7 On-site Parking

The accommodation of car parking on site, underground and on-grade, has a significant impact on the site layout, landscape design, deep soil zones and storm water management. It is important new developments consider the local context such as the location of public transport facilities, services and recreational facilities within walking or cycling distance, which will reduce the need for parking spaces.

Objectives

1. To minimise car dependency for commuting and recreational transport use, and to promote alternative means of transport - public transport, bicycling, and walking.
2. To minimise traffic congestion in the Corridor.
3. To provide adequate car parking for building users and visitors, depending on building use and proximity to public transport.
4. To minimise the visual impact of car parking on streets, public spaces and adjoining sites.
5. To maximise opportunities for consolidated areas of deep soil planting and landscaping.



Figure 8.6.3 Along Active Frontages, basement parking must be located fully below footpath level. However to accommodate topography, basement levels may protrude by a maximum of 1.2 m beyond ground level. Along street frontages, above ground parking must be laminated with another use.

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4.5 Macquarie Park Controls



Figure 8.6.2 Along public streets, basement parking must protrude no more than 1.2 m above ground for no more than 60% of the building frontage.

Controls

- a. Safe and secure 24 hour access to car parking areas is to be provided for building users.

At-grade parking

- b. Parking areas must not be located within the front, side or rear setbacks.
- c. Parking areas are to be screened from view from the street, public domain and communal open space areas, using site planning and appropriate screen planting or structures.
- d. Provide safe and direct access from parking areas to building entry points.
- e. Provide appropriate mature vegetation between parking bays to provide shade and enhance visual impact.

Basement parking

- f. Basement parking areas should be located directly under building footprints to maximize opportunities for deep soil areas unless the structure can be designed to support mature plants and deep root plants.
- g. Basement parking areas must not extend forward of the building line along a street.
- h. Along active frontages, basement parking must be located fully below the level of the footpath. Refer to Section 7.2 Active Frontages.
- i. Basement parking should be contained wholly beneath ground level along public streets.
- j. Where this cannot be achieved due to topography, the parking level must protrude no more than 1.2 m above ground level for no more than 60% of the building frontage along a public street (Refer to Figures 8.6.2 and 8.6.3).
- k. Ventilation grills or screening devices of car park openings are to be integrated into the overall façade and landscape design of the development.

ITEM 4 (continued)

ATTACHMENT 2



Parking in structures

- I. Along all street frontages, above ground parking levels are to be laminated with another use for a minimum depth of 10 m, e.g. building entry lobbies, retail tenancies, commercial floor space.
- m. Temporary above ground parking structures are to be designed to allow future adaptation to other uses. Ramps should be located internally rather than on the facades of parking structures to allow ease of adaptation of use.

8.8 Fencing

Security fencing is inconsistent with the vision of this DCP to promote and open landscaped centre

Objectives

- 1. To create an attractive public domain and open landscaped character within the Macquarie Park Corridor

Controls

- a. Fencing is not permitted on the perimeter boundary of sites. Security should be provided within buildings.

ITEM 4 (continued)

ATTACHMENT 2

4.5

Macquarie Park Corridor

9.0 ENVIRONMENTAL PERFORMANCE

Assessment of both commercial and residential development within the Macquarie Park Corridor utilises comprehensive state and national building assessment and rating tools.

Commercial office design and construction is rated using the Green Building Council of Australia’s Green Star rating system. Using this tool, projects are evaluated against eight environmental impact categories, plus innovation. Within each category, points are awarded for initiatives that demonstrate that a project has met the overall objectives of Green Star, and the specific criteria of the relevant rating tool credits. Points are then weighted and an overall score is calculated, determining the Green Star rating.

Residential developments, and the residential component of mixed-use development is required by legislation to pass BASIX. The Building Sustainability Index ensures homes are designed to use less potable water and be responsible for fewer greenhouse gas emissions by setting energy and water reduction targets.

Objectives

1. To reduce the necessity for mechanical heating and cooling.
2. To reduce reliance on fossil fuels.
3. To minimise greenhouse gas emissions.
4. To reduce environmental impact over the life cycle of a building.
5. To promote renewable energy initiatives.

Controls

- a. Commercial development is required to achieve a 4 Star Green Star Certified Rating.
- b. Residential development is to comply with BASIX (Building Sustainability Index) requirements.
- c. Development is required to comply with Section 7.8 Building Bulk.

ITEM 4 (continued)

ATTACHMENT 2

Macquarie Park Corridor 4.5

9.1 Wind Impact

Being located on a ridge above the Lane Cove River, the Corridor is relatively exposed to prevailing winds. In order to maximize the amenity of new developments and their adjoining public domains it is important that the design of new buildings incorporate measures to minimize any wind impacts, particularly on the proposed public spaces.

Objectives

1. To protect the public domain from the impact of undesirable winds while allowing the penetration of cooling summer breezes, and
2. To minimise any adverse wind impacts from the introduction of new structures.

Controls

- a. Buildings shall not create uncomfortable or unsafe wind conditions in the public domain which exceeds the Acceptable Criteria for Environmental Wind Conditions. Carefully locate or design outdoor areas to ensure places with high wind level are avoided.
- b. All applications for buildings over 5 storeys in height shall be accompanied with a wind environment statement. For buildings over 9 storeys and for any other building which may be considered an exposed building shall be accompanied by a wind tunnel study report. Refer to Council for documentation and report requirements.
- c. Calculation rules
 - i. Natural wind conditions are intensified by certain types of buildings by the way they relate to the surrounding area. In this section, those buildings are called exposed buildings.
 - ii. A building may be considered exposed if half or more of its height rises above surrounding buildings and/or the building lies on the perimeter of a built up area.
 - iii. Exposed buildings are likely to create unpleasant and even dangerous high winds, mainly in three locations: at the base, around corners or through arcades or other openings at the base of the building.
 - iv. In addition the areas within the exposed buildings that could potentially experience adverse wind effects are the areas on the podium, terraces on the roof or on setbacks in the tower as well as projecting or corner balconies.

ITEM 4 (continued)

ATTACHMENT 2

4.5

Macquarie Park Corridor

Acceptable criteria for environmental wind conditions:

| AREA CLASSIFICATION | LIMITING WEEKLY MAXIMUM GUST- EQUIVALENT MEAN | LIMITING ANNUAL MAXIMUM GUST |
|---|---|---------------------------------|
| Outdoor dining areas, amphitheatres etc | 3.5 m/s | 10 to 13 m/s |
| Main retail centres and retail streets, parks, communal recreational areas | 5.5 m/s | 13 m/s |
| Footpaths and other pedestrian accessways | 7.5 m/s | 16 m/s |
| Infrequently used laneways, easements, private balconies | 10 m/s | 23 m/s |

Note that the Gust-Equivalent Mean is defined as the maximum 3 second gust divided by a local Gust Factor for the local wind speed. It is recommended that the local gust factor be derived from the measured local turbulence intensity. If the mean wind speed happens to be greater than the Gust-Equivalent Mean then the Mean wind speed is to be adopted in place of the Gust-Equivalent Mean.

The Annual Maximum Gust wind speed criteria can be used as an alternative to the Gust-Equivalent Mean Criteria.

If the Gust-Equivalent Mean criteria are being used then a check should also be made to ensure that all areas studied are within the Annual Maximum Gust wind speed of 23 m/s.

When assessing the impact of a proposed development, no increase over the existing wind conditions is acceptable unless the increase over the existing conditions is such that the relevant criterion for that type of space is still satisfied.

ITEM 4 (continued)

ATTACHMENT 2

Macquarie Park Corridor 4.5

9.2 Noise and Vibration

Loud noise affects the amenity of places, particularly in mixed-use areas where developments need to consider the amenity of a range of occupants. The impact of rail, commercial and industrial noise and vibration on residential development and pedestrian amenity is to be considered in the design and siting of all commercial, mixed use, industrial and community developments. Commercial and industrial developments can be designed and managed to minimise noise and vibration generation and intrusion.

Objectives

1. The impacts of noise and vibration on residential development are to be mitigated through appropriate design and the use of insulation.
2. The operation of commercial and industrial developments is to protect the amenity of residential and public spaces.

Controls

- a. 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.
- b. Development is to comply with all relevant statutory regulations.
- c. Where light industrial and commercial development adjoins residential development, the use of mechanical plant equipment and building services will be restricted and must have appropriate acoustic insulation.
- d. Loading and unloading facilities must not be located immediately adjacent to residential development.
- e. Retail premises must limit any spruiking and the playing of amplified music or messages so as not to disturb the amenity of other public and private places.
- f. Air conditioning ducts shall not be situated immediately adjacent to residential development.

ITEM 4 (continued)

ATTACHMENT 2

4.5

Macquarie Park Corridor

9.3 Bushfire Management

This section is based on the Planning for Bushfire Protection Guidelines prepared by the NSW Rural Fire Service.

Council's customer service department has copies of the Bushfire Hazard and Fire Prone Lands maps produced by the Rural Fire Service which identify hazard risk based on vegetation and slope classes.

AS 3959 currently sets out requirements for the construction of buildings in designated bushfire prone areas. It is referred to by the BCA as a Standard, which is, deemed-to-satisfy the Performance Requirements of that Code relating to bushfire protection

Objectives

1. Consider bushfire protection and management issues in land use planning and development decisions, to provide a safe environment for the community.
2. Manage vegetation to reduce potential bushfire attack in the vicinity of habitable buildings.
3. Design and siting of habitable buildings to improve the survivability of the building and the protection of life during the passage of the fire front.
4. Provide safe access for emergency and other vehicles at all times.
5. Ensure water is available to landholders and emergency services to enable the defence of habitable buildings against bushfire attack.
6. Establish a maintenance regime for fire protection for the life of the habitable building..



Figure 9.3.1 Bushfire Prone Land - 01 January 2006

Controls

ITEM 4 (continued)

ATTACHMENT 2

Macquarie Park Corridor

4.5

- a. A Bushfire Threat Assessment report, prepared by a suitably qualified bush fire consultant, must form part of all development applications for lands identified as 'fire prone' on the Bush Lands Maps. This assessment is to be prepared in accordance with the Planning for Bushfire Protection Guidelines, prepared by the Rural Fire Service.
- b. Assessment of threat from bushfire must examine impacts of the proposal both within and external to the site, including the capacity of the existing road network serving the site to accommodate traffic in emergency situations.
- c. Preparation of an assessment of threat from bushfire should include reference to:
 - i. NSW Rural Fire Service (RFS) - Planning for Bushfire Protection - a guide for land use planners, fire authorities, developers and home owners; and
 - ii. Consultation with Council and RFS staff.
- d. The recommendations of the Assessment report must be incorporated into the design of the proposed development.
- e. Fire protection measures must be capable of being maintained by owners and users.
- f. The design of a development in a fire prone area must provide for adequate emergency vehicle access to those parts of the site fronting a potential bushfire source.

ITEM 4 (continued)

ATTACHMENT 2

4.5

Macquarie Park Corridor

9.5 Soil Management

Management of soil loss during construction is an important consideration in ensuring the continued health of the nearby waters of the Lane Cove River and groundwater. Sediments can also mobilize pollutants, which may have an adverse impact on natural bushland areas. It is essential that adequate soil management practices are followed during the development of the Corridor.

Objectives

1. To ensure that development does not contribute to environmental damage of waterways and bushland in and adjacent to Macquarie Park.
2. To minimise air and water pollution due to soil loss either through erosion or poor site practices.

Controls

- a. Development is to comply with the City of Ryde DCP 2014
- b. Development is to be designed and constructed to integrate with the natural topography of the site to minimise the need for excessive sediment disturbance and prevent soil loss.
- c. Effective site management and maintenance practices are to be followed to prevent soil loss. d. Ensure that suspended Solid concentrations in stormwater leaving the site do not exceed more than 50 mg/litre
- f. An Erosion and Sediment Control Plan (ESCP), prepared by a suitably qualified environmental engineer, is required to be submitted in support of all development proposals requiring development consent under the Ryde Local Environmental Plan, (other than for minor building modifications) including: Demolition; Excavation; Trenching and Building.
- g. The ESCP must make reference to the entire construction and post construction period, and all devices must be installed prior to commencement of any demolition or construction works on-site.
- h. The ESCP is to be prepared in conjunction with the Site Stormwater Management Plan and as a minimum contain the following information:
 - i. Property details
 - ii. Site analysis (contours, access points, location of existing vegetation/creeks or other features)
 - iii. Extent and degree of clearing works and any excavations
 - iv. Conservation/protection of sensitive areas and trees either on site or adjoining development

ITEM 4 (continued)

ATTACHMENT 2

Macquarie Park Corridor

4.5

- v. Truck movements and access arrangements/routes (load limits)
- vi. Sediment and Erosion Control Measures (Location and type of all control measures)
- vii. Excavation pit protection
- viii. Material stockpile location and control method, waste management;
- ix. Pump out method (if required)
- x. Dust control measures to reduce surface or airborne movement of sediment from exposed areas of the site
- xi. Hours of operation
- xii. Ongoing maintenance methods
- xiii. Risks, safeguards and safety precautions; and xiv. Contingencies.

ITEM 6 (continued)

ATTACHMENT 1

The Council of the City of Ryde
ABN 81 621 292 610

and

DEP Shepherd Bay Pty Limited
ACN 167 939 504

and

John O'Brien

and

Joanne Rhook

Planning Agreement

Environmental Planning and Assessment Act 1979

ITEM 6 (continued)

ATTACHMENT 1

Planning Agreement made at _____ on _____ 2014.

Parties **The Council of the City of Ryde (ABN 81 621 292 610)** of 1 Devlin Street, Ryde, NSW (**Council**)

and

DEP Shepherd Bay Pty Ltd (ACN 167 939 504) c/- Dragon Eye Properties Suite 202, Level 2, 127 York Street, Sydney, NSW (**Developer**)

and

John O'Brien of 24 Railway Street, Meadowbank NSW and **Joanne Rhook** of 24 Railway Street, Meadowbank NSW (collectively known as the "**Land Owners**")

Background

- A. The Land Owners are the owners of the Land.
- B. The Developer has the right to acquire the Land pursuant to the Call Option Deed dated 14 February 2014.
- C. For the purpose of Section 93F(1) of the Act, the Developer has entered into an agreement with, or is otherwise associated with, a person who has made the Development Application.
- D. On 18 July 2014 the Developer lodged (or authorised to be lodged, as the case may be) the Development Application with the Council to carry out the Development on the Land.
- E. The Developer has made an offer to enter into a planning agreement with the Council to provide the Contributions.
- F. This deed constitutes the planning agreement contemplated by the Development Application.

Operative provisions

1. Interpretation

1.1 Definitions

The following words have these meanings in this Deed unless the contrary intention appears:

Accessible means in accordance with the relevant requirements of "*Australian Standard AS 1428.1 – 2009: Design for Access and Mobility*".

Act means the Environmental Planning and Assessment Act, 1979 and Regulations (as amended).

Adjustment Date means each 30 June every year after the date of this Deed.

Affordable Housing has the same meaning as in the Act.

Affordable Housing Unit means the dwelling identified as Unit 16 including the associated off-street car parking space and storage area marked as CP 16 and (W) respectively in the Affordable Housing Unit Plan.

Affordable Housing Unit Plan means the plans identified in Schedule 12 as may be amended from time to time by agreement between the parties.

ITEM 6 (continued)

ATTACHMENT 1

Appeal means an appeal (including an application for any kind of leave to appeal) in a Court of competent jurisdiction against the decision of a lower court.

Appeal Notice means:

- (a) in proceedings in the Court of Appeal:
 - (i) an application for leave to Appeal;
 - (ii) a Notice of Intention to Appeal; or
 - (iii) if a valid Notice of Intention to Appeal has been lodged, a Notice of Appeal; and
- (b) in proceedings in the High Court, an application for Special Leave to Appeal.

Application means an application for any Approval.

Approval means any approvals, consents, certificates, permits, endorsements, licences, conditions or requirements (and any modifications or variations to them) which may be required by Law for the commencement and carrying out of the Contributions Works or the Development generally and includes a Development Consent or other approval under the EP&A Act (or modification of that approval).

Authority means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes an accredited certifier accredited under the *Building Professionals Act 2005*.

Bank Bill Rate means the average bid rate for Bills having a tenor of 90 days as displayed on the "BBSY" page of the Reuters Monitor System on the day the relevant payment is due (**Due Date**). However, if the average bid rate is not displayed by 10:30 am on the Due Date or if it is displayed but there is an obvious error in that rate, **Bank Bill Rate** means:

- (a) the rate the Council calculates as the average of the bid rates quoted at approximately 10:30 am on that day by each of five or more institutions chosen by the Council which provide rates for display on the "BBSY" page of the Reuters Monitor System for Bills of a 90 day tenor which are accepted by that institution (after excluding the highest and the lowest, or in the case of equality, one of the highest and one of the lowest bid rates); or
- (b) where the Council is unable to calculate a rate under paragraph (a) because it is unable to obtain the necessary number of quotes, the rate set by the Council in good faith at approximately 10:30 am on that day, having regard, to the extent possible, to the rates otherwise bid for Bills of a 90 day tenor at or around that time.

The rate calculated or set must be expressed as a percentage rate per annum and be rounded up to the nearest fourth decimal place.

The Council may calculate a rate under paragraph (a) or (b) before 11:00 am on the Due Date, but if the average bid rate appears on the "BBSY" page by 11:00 am and there is no obvious error in it, the "BBSY" page rate applies as the **Bank Bill Rate** under this Deed despite any calculation by the Council under paragraph (a) or (b).

Bills means a bill of exchange as defined in the *Bills of Exchange Act 1909* (Cth), but does not include a cheque.

Bond means a documentary performance bond which must be denominated in Australian dollars and be an unconditional undertaking with all the following requirements. It must:

ITEM 6 (continued)

ATTACHMENT 1

- (a) Be signed and issued by an Australian Prudential Regulation Authority [APRA] regulated authorised deposit taking institution or an insurer authorised by APRA to conduct new or renewal insurance business in Australia;
- (b) Have at all times an investment grade security rating from an industry recognised rating agency of at least:
 - (i) BBB + [Standard & Poors and Fitch]; or
 - (ii) Baa 1 [Moody's]; or
 - (iii) bbb [Bests].
- (c) Be issued on behalf of the Developer;
- (d) Have no expiry or end date;
- (e) Have the beneficiary as the Council;
- (f) Be irrevocable;
- (f) State either individually, or in total with other lodged compliant forms of Guarantee, the relevant minimum amount required to be lodged as security; and
- (g) State the purpose of the deposit required in accordance with this Planning Agreement.

Bond Amounts means the face value of each Bond that is required to be provided by the Developer to Council under the terms of this Agreement.

Bond Works means the Contribution Works.

Building means a building proposed to be constructed on the Land, but excluding marketing suites or other buildings which are not part of the Development and which are not intended to remain on the Land indefinitely.

Business Day means any day except for Saturday or Sunday or a day which is a public holiday in Sydney.

Call Option Deed means the Call Option Deed between the Land Owners as Vendor and the Developer as Purchaser dated 14 February 2014 and which grants the Developer the right to acquire the Land.

Cash Deposit has the meaning given to that term in paragraph 6 of Schedule 10.

Cash Deposit Account has the meaning given to that term in paragraph 6 of Schedule 10.

CEO means the General Manager or the person acting in that role for each of the Council and the Developer respectively.

Certifier means:

- (a) such person with the appropriate qualifications to provide the required certification and appointed by the Developer (at its cost); and
- (b) in the case of the Road Works only, the Council.

Certificate of Practical Completion has the meaning given to that term in paragraph 1.16 of Schedule 4.

ITEM 6 (continued)

ATTACHMENT 1

Completion means in relation to any part of the Contribution Works, the point of time at which the Council notifies the Developer that it is satisfied that the Contribution Works have been completed in accordance with all relevant Approvals and the requirements of this Deed (except for minor omissions and defects).

Compliance Certificate means a certificate referred to in section 109C(1)(a) of the Act.

Consent Authority means, in relation to an Application, the Authority having the function to determine the Application.

Construction Certificate means a certificate issued under section 109C(1)(b) of the EP&A Act.

Construction Cost means the Costs of and directly attributable to the performance of the Contribution Works including:

- (a) preparation of design and construction drawings for the Contribution Works;
- (b) cost or materials used or installed (as the case may be) as part of the Contribution Works; and
- (c) labour, equipment hire and other Costs directly associated with the excavation, Remediation to the required standard, and construction of the Contribution Works.

Contribution Land means the land to be dedicated or transferred (as the case may be) by the Developer as described in Table 1 to Schedule 3 of this Deed and as indicated in Schedule 17 - Land Dedication Plan.

Contribution Land for Road means that part of the Contribution Land that is to be dedicated as Public Road along the Faraday Lane frontage of the Land.

Contribution Works means the works to be undertaken by the Developer as described in Table 2 of Schedule 3.

Contributions means the dedication of land (free of any Encumbrance and Cost), and the provision of material public benefits, all as provided for in the Contributions Schedule of this Deed including the Contribution Land and the Contribution Works.

Contributions Schedule means the table and notes included in Schedule 3.

Costs includes all costs, charges and expenses, including those incurred in connection with advisers.

Court means the New South Wales Land and Environment Court or any other court of competent jurisdiction.

CPI means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or if that index no longer exists, any similar index which the Council determines in its sole discretion.

Deed means this deed.

Defects Liability Period means in respect of the Contribution Works, the period of 12 months which commences on the date of Practical Completion of the Contribution Works.

Development means the development described in paragraph 2 of Schedule 2

Development Application means Development Application LDA 2014/307 dated 18 July 2014 for the construction of a residential flat building comprising 73 residential dwellings and 2 basement levels of car parking on the Land.

ITEM 6 (continued)

ATTACHMENT 1

Development Consent means each 'Development Consent' as that term is defined in the EP&A Act or an approval under Part 5 of the EP&A Act and includes any Modification granted with respect to the Development Application.

Development Contributions Procedures means the development contribution procedures set out in Schedule 4 and Schedule 5 of this Deed.

Encumbrance, in relation to any land, means any:

- (a) security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention;
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off;
- (c) right that a person (other than the owner) has to remove something from land (known as a profit à prendre), easement, public right of way, restrictive or positive covenant, lease, or licence to use or occupy; or
- (d) third party right or interest or any right arising as a consequence of the enforcement of a judgment,

or any agreement to create any of them or allow them to exist, in respect of that land.

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

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

Explanatory Note means the explanatory note relating to this Planning Agreement, as required by clause 25E of the EP&A Regulation, being Exhibit A to this Deed.

GST has the meaning it has in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

GST Amount has the meaning given to that term in clause 14.3.

Home Warranty Insurance has the same meaning as in the Home Building Act 1989

Indicative Public Domain Concept Plan means the plans set out in Schedule 16 as may be amended from time to time by agreement between the parties.

Insurer means an insurer that is licensed by the Australian Prudential Regulatory Authority (APRA) to operate in Australia or has an investment grade rating from an industry recognised rating agency such as Moodies, Standard & Poors or Bests.

Interest Rate in relation to interest payable on any payment due under this Deed means the rate which is the Bank Bill Rate plus a margin of 2% per annum.

Land means the land described in paragraph 1 of Schedule 2 or any subsequent Subdivision of those lots.

Land Dedication Plan means the plans set out in Schedule 17 as may be amended from time to time by agreement between the parties.

Law means:

- (a) the common law including principles of equity; and

ITEM 6 (continued)

ATTACHMENT 1

- (b) the requirements of all statutes, rules, ordinances, codes, regulations, proclamations, by-laws or consents by an Authority.

Legal Costs means legal costs and expenses on a full indemnity basis or solicitor and own client basis, whichever is the higher.

Legal Challenge means proceedings in a Court in which a declaration that the Development Consent or Approval in relation to the Development Application is invalid, and includes, but is not limited to, any proceedings in which such a declaration is sought which are heard on remitter from another Court following an Appeal.

Modification means a "modification" of the Development Consent within the meaning of section 96 of the EP&A Act.

Occupation Certificate means a certificate referred to in section 109C(1)(c) of the EP&A Act and which may be interim or final as provided for in section 109C(2) of the EP&A Act.

Party means a Party to this Deed, and includes their successors and assigns.

Permitted Encumbrance means each of:

- (a) easements benefitting statutory authorities, encroachments authorised by Approvals and environmental management requirements;
- (b) any of the following:
- (i) an Encumbrance (other than a mortgage, charge, pledge, lien, security interest, title retention, contractual right of set-off, or any other security agreement or arrangement in favour of any person); and
 - (ii) such other agreement or arrangement,
- the Council (acting reasonably) agrees in writing are permitted encumbrances..

Planning Agreement means this Deed.

Practical Completion means in relation to each Contribution Works, the point of time at which the relevant Certifier is satisfied, acting reasonably, that the whole of that Contribution Works has been completed with all relevant Approvals and this Deed (except for minor defects or omissions).

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

Quantity Surveyor means a registered quantity surveyor appointed by the Council and approved by the Developer (acting reasonably).

Real Property Act means the *Real Property Act* 1900 (NSW).

Recipient has the meaning given to that term in clause 14.3 to this Deed.

Recipient Supply has the meaning given to that term in clause 14.5 to this Deed.

Register means the Torrens title register maintained under the Real Property Act.

Relevant Easements has the meaning given to that term in paragraph 1.1 of Schedule 5.

Relevant Subdivision has the meaning given to that term in paragraph 1.1 of Schedule 5.

Remediation has the same meaning as in the *Contaminated Land Management Act* 1997 No. 140 (NSW).

ITEM 6 (continued)

ATTACHMENT 1

Remediation Action Plan means a plan approved by a Site Auditor for the remediation of any part of the Land, including by way of adoption and implementation of an environmental management plan, if required for the purpose of obtaining any Approval.

Required Face Value means the face value equivalent to \$167,678 as increased by CPI in accordance with paragraph 1.3 of Schedule 10.

Revised Bond Amounts has the meaning given to that term in paragraph 1.3 of Schedule 10.

Road Works means those items as set out in part 2 of Table 2 of Schedule 3.

Site Auditor has the same meaning as in *Contaminated Land Management Act 1997 (No 140 (NSW))*.

Subdivision has the meaning given to "subdivision of land" in section 4B of the EP&A Act and **Subdivide** has a similar meaning.

Subdivision Certificate has the same meaning as in the EP&A Act.

Supplier has the meaning given to that term in clause 14.3 to this Deed.

Suspension Expiry Date means the date on which the Suspension Period ends.

Suspension Period means the period of time from and including the date on which a document initiating a Legal Challenge has been served on the Council and the Developer and ending on:

- (a) subject to paragraphs (b) and (c), the date on which:
 - (i) the Legal Challenge is discontinued;
 - (ii) final orders (apart from any orders as to costs) are made in the Legal Challenge; or
 - (iii) for any other reason, the Legal Challenge no longer includes an application for a declaration that the Development Consent is invalid;whichever is the earlier;
- (b) subject to paragraph (c), if an Appeal Notice is filed and served in connection with final orders in the Legal Challenge or an Appeal from the Legal Challenge (apart from any orders as to costs), the date on which:
 - (i) the Appeal is discontinued;
 - (ii) final orders (apart from any orders as to costs) are made in the Appeal; or
 - (iii) for any other reason, the Appeal no longer includes an appeal in respect of a Court decision regarding the validity of the Development Consent whichever is earlier,unless the orders in the Appeal require the Legal Challenge to be remitted to another Court in relation to the validity of the Development Consent, in which case paragraph (a) re-applies; or
- (c) the date which is 15 Business Days after the date on which the period of time allowed for filing an Appeal Notice described in paragraph (b) has expired, if no valid Appeal Notice has been filed and served by that first-mentioned date.

For the avoidance of doubt, the Suspension Period continues if paragraph (b) applies.

ITEM 6 (continued)

ATTACHMENT 1

Taxes means taxes, levies, imposts, deductions, charges and duties (including stamp and transaction duties) excluding GST together with any related interest, penalties, fines and expenses in connection with them, except if imposed on, or calculated having regard to, net income of a person.

1.2 General

In this Deed:

- (a) headings are for convenience only and do not affect interpretation;
- and unless the context indicates a contrary intention:
- (b) **"person"** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
 - (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
 - (d) a reference to a document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
 - (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments, replacements and substitutions;
 - (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
 - (g) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Deed, and a reference to this Deed includes all schedules, exhibits, attachments and annexures to it;
 - (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
 - (i) **"includes"** in any form is not a word of limitation;
 - (j) a reference to **"\$"** or **"dollar"** is to Australian currency;
 - (k) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Deed; and
 - (l) any capitalised term used, but not defined in this Deed, will have the meaning ascribed to it under, and by virtue of, the EP&A Act.

2. Planning Agreement

2.1 Condition Precedent

- (a) The provisions of this deed, other than clauses 5, 6, 7, 8, 10, 12, 16, 19 will commence on the date that Development Consent for the Development has been granted by Council; and
- (b) Clauses 5, 6, 7, 8, 10, 12, 16, 19 will commence upon the execution of this deed by all parties.

2.2 Planning agreement under the EP&A Act

This Deed constitutes a planning agreement within the meaning of section 93F of the EP&A Act.

ITEM 6 (continued)

ATTACHMENT 1

2.3 Application of the Planning Agreement

This Deed applies to:

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

3. Development Contributions

3.1 Payment or Delivery of Contributions

The Parties agree that the Developer must (at its Cost and risk):

- (a) Undertake the Contribution Works in accordance with Schedule 3, Schedule 4 and Schedule 16 (as applicable); and
- (b) Dedicated and transfer (as the case may be) the Contribution Land to Council in accordance with Schedule 3, Schedule 5, Schedule 12 and Schedule 17.

4. Application of s94, 94A and 94EF of the EP&A Act

The application of sections 94, 94A and 94EF of the EP&A Act are excluded to the extent stated in Schedule 1 to this Deed.

5. Caveat

The Land Owners acknowledge and agree that:

- (a) When this Deed is executed by the Land Owners (whether or not the Council has executed this Deed), the Council is deemed to have acquired, and the Land Owners have deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the Real Property Act and consequently the Council has a sufficient interest in the Land in respect of which to lodge with the NSW Land and Property Information a caveat notifying that interest; and
- (b) Subject to clause 7, the Council may (but only whilst this Deed is not registered) lodge a caveat on the Land to protect its rights under this Deed and the Land Owners will not object to the Council lodging a caveat in the relevant folio of the Register for the Land nor (subject to the provisions of this clause 5) will it seek to remove any caveat lodged by the Council.
- (c) If Council lodges a caveat in accordance with this clause, then the Council will do all things reasonably required to ensure that the caveat does not prevent or delay either the registration of this Deed or any Dealing which is not inconsistent with this Agreement.
- (d) The Council (as the Caveator) will provide any consent the Land Owners may reasonably require to enable this Deed or any Dealing to be registered.
- (e) The Council will promptly, following registration of this Deed, do all things reasonably necessary to remove the caveat from the title to the Land.

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-
- 6. Registration of this Deed**
- 6.1 Ownership of the Land**
- The Land Owners represent and warrant that they are the legal and beneficial owners of the Land.
- 6.2 Registration on title**
- The Land Owners agree to promptly do all things that are necessary for Council to procure the registration of this Deed in the relevant folio of the Register for the Land in accordance with section 93H of the EP&A Act and in accordance with Schedule 8,
-
- 7. Release and Discharge**
- The Council agrees to release and discharge this Deed and remove any caveat lodged by the Council pursuant to clause 5 on the release and discharge terms contained in clause 5 and Schedule 9 to this Deed.
-
- 8. Breaches to be rectified**
- (a) If the Council considers that the Developer or Land Owners (as the case may be) have defaulted on the performance of any of their obligations under this Deed, then the Council may give written notice to the Developer or Land Owners (as the case may be) which:
- (i) identifies the nature of the breach; and
 - (ii) provides at least 20 Business Days (except in the case of an emergency or where there is an issue of public safety where less time may be specified) with which the Developer or Land Owners (as the case may be) must rectify that breach and what action must be taken to rectify that breach.
- (b) In accordance with sections 109H and 109J of the EP&A Act and section 146A of the EP&A regulation, all breaches of this Deed for which the Council has provided a notice requiring rectification of that breach to the Developer or Land Owners (as the case may be) must be rectified prior to the issue (following the date that such notice is provided to the Developer) of any Construction Certificate, Subdivision Certificate or Occupation Certificate relating to the Land or the Development.
-
- 9. Additional Security**
- 9.1 Bonds**
- The Developer has agreed to provide security (in the form of Bonds) to the Council for performance of its obligations under this Deed on the terms and conditions of Schedule 10.
-
- 10. Assignment and other dealings**
- The Land Owners agree that the provisions of Schedule 11 apply in relation to any proposed assignment or dealing in relation to the Land (or any part of it) or of the Developer's or Land Owners' (as the case may be) interest in this Deed.
-
- 11. Review of Deed**
- The Parties may agree to review this Deed. Any review or modification will be conducted in the circumstances and in the manner determined by the Parties.

ITEM 6 (continued)

ATTACHMENT 1

12. Dispute resolution

The Parties agree that any disputes under or in relation to this Deed will be resolved in accordance with the procedures set out in Schedule 7.

13. Overdue payments

13.1 Interest on overdue money

The Developer agrees to pay interest to the Council on any amount payable by it under this Deed from when it becomes due for payment, during the period that it remains unpaid, on demand or at times determined by the Council, calculated on daily balances. The rate to be applied to each daily balance is the Interest Rate.

13.2 Compounding

Interest which is not paid when due for payment may be capitalised by the Council at intervals which the Council determines from time to time or, if no determination is made, then on the first day of each month. Interest is payable on capitalised interest at the rate and in the manner referred to in this clause 13.

13.3 Interest on liability merged in judgment or order

If a liability under this Deed becomes merged in a judgment or order, then the Developer agrees to pay interest to the Council on the amount of that liability as an independent obligation. This interest accrues from the date the liability becomes due for payment both before and after the judgment or order until it is paid, at a rate that is the higher of the rate payable under the judgment or order and the rate referred to in this clause 13.

For the avoidance of doubt, if a liability under this Deed becomes merged in a judgment or order then the Developer will only be required to pay either interest payable under the judgment or order or interest calculated under this clause 13 but not both.

14. GST

14.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause 14 have the meanings given to those terms by the GST Act.
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 14.
- (c) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

14.2 Reimbursements

Any payment or reimbursement required to be made under this Deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

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14.3 Additional amount of GST payable

Subject to clause 14.5, if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this Deed:

- (a) any amount payable or consideration to be provided under any provision of this Deed (other than this clause 14), for that supply is exclusive of GST;
- (b) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (GST Amount), and:
 - (i) where that GST Amount is payable by the Council, the GST Amount will be limited to the amount of the input tax credit (if any) to which the Council (or the representative member of any GST group of which the Council, in any capacity, is a member) is entitled in relation to the Council's acquisition of that supply and is payable within 5 Business Days after the Council (or the representative member of any GST group of which the Council, in any capacity, is a member) has received the benefit of that input tax credit; and
 - (ii) in any other case, the GST Amount is payable at the same time as any other consideration is to be first provided for that supply; and
- (c) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 14.3(b).

14.4 Variation

- (a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 14.3 and clause 14.5), varies from the additional amount paid by the Recipient under clause 14.3, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 14.4(a) is deemed to be a payment, credit or refund of the GST Amount payable under clause 14.3.
- (b) The Supplier must issue an adjustment note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

14.5 Exchange of non-monetary consideration

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which clause 14.3 applies is a taxable supply made by the Recipient (Recipient Supply), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 14.3 shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
- (b) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 14.3 (or the time at which such GST Amount would have been payable in accordance with clause 14.3 but for the operation of clause 14.5(a)).

14.6 No merger

This clause will not merge on completion or termination of this Deed.

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15. Explanatory Note

The Explanatory Note must not be used to assist in construing this Deed.

16. Notices

16.1 Form

Any notice, consent, information, application or request that must or may be given or made to a party under this Deed is only given or made if it is in writing and delivered or posted to that party at its address set out below or faxed to that party at its fax number set out below:

Council

Name: Council of the City of Ryde
Address: 1 Devlin Street, Ryde NSW 2112
Fax: 9952 8222
For the attention of: General Manager

Developer

Name: DEP Shepherd Bay Pty Ltd (ACN 167 939 504)
Address: Suite 202, Level 2, 127 York Street, Sydney, NSW 2000
Fax: 9931 4888
For the attention of: Chief Executive Officer

Land Owners

Name: John O'Brien
Address: 21-24 Railway Street, Meadowbank NSW 2114
Fax:

Name: Joanne Rhook
Address: 21-24 Railway Street, Meadowbank NSW 2114
Fax:

16.2 Change of address

If a Party gives another Party 3 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.

16.3 Receipt

Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) if it is delivered, when it is left at the relevant address;
- (b) if it is sent by post, 2 Business Days after it is posted; and
- (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.

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ATTACHMENT 1

16.4 Receipt - next Business Day

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, 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. Schedules and Annexures to this Deed

The Parties agree:

- (a) that all the Schedules and Annexures form part of this Deed; and
- (b) to comply with the provisions of those Schedules and Annexures.

18. General provisions

The Parties agree to the miscellaneous and general provisions set out in Schedule 13 to this Deed apply.

19. Obligations under this Planning Agreement

- (a) Subject to paragraphs (e) and (h) in this clause 19, where a Legal Challenge is commenced the parties' obligations under this Deed are immediately suspended and neither the Developer shall have any obligation to make any Contributions under this Deed until the expiration of the Suspension Period or where paragraph (e) of this clause 19 applies.
- (b) Subject to paragraph (c) in this clause 19, where any Legal Challenge is commenced and/or where the Court declares or orders any Approval to be invalid, the Parties agree to:
 - (i) meet, no later than 5 Business Days after the date of service of commencement of the Legal Challenge and after any declaration or order that Approval is invalid, to discuss in good faith;
 - (ii) the suspension of the parties rights and obligations under this Agreement; and
 - (iii) their intentions in relation to that declaration or order, including, without limitation, any intention to Appeal that declaration; and
 - (iv) consult regularly with the other in relation to any Appeal and must respond within a reasonable period to each other's questions, queries and enquiries and generally keep each other informed regarding the progress of any such Appeal.
- (c) The parties will not be required to meet or consult pursuant to paragraph (b) of this clause 19 in circumstances where any of the Parties receives legal advice that it should not so meet or consult with the other Party in connection with any such declaration or Appeal.
- (d) The parties agree that any discussions held between the Parties under this clause 19 are confidential and that a common interest between them exists for the purposes of legal professional privilege in connection with those discussions.

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ATTACHMENT 1

- (e) Notwithstanding paragraph (a), the Developer may elect at its Cost and risk to proceed with the Development and continue to comply with its obligations under this Deed unless and until such time as the Approval is declared invalid.
- (f) The parties agree that if this clause 19 applies and there is a suspension of the parties' obligations under this Deed, where necessary, any Contribution Works that have been commenced, but not completed, will be left in a state that is safe to the public before those Contribution Works cease notwithstanding the commencement of the Suspension Period.
- (g) If this Deed is terminated as the result of any Appeal the parties will meet in accordance with paragraph (b) of this clause 19 to discuss the return of the Bonds and any matters that may need to be addressed as a result of the commencement of the Contribution Works.
- (h) If any Approval is declared invalid, the parties will meet in accordance with clause 19 (b) of this Deed to discuss their respective rights and obligations under this Deed as a consequence of that determination.
- (i) If the Developer elects to proceed with the Development notwithstanding paragraphs (a) and (f), then the Developer is liable for and indemnifies the Council against all liability, loss, Costs and expenses (including Legal Costs) arising from or incurred in connection with the Developer proceeding with the Development despite the Legal Challenge and the operation of paragraph (a).

20. Land Owners' obligations under this Deed

- (A) Subject to clause 20(B) of this deed, the Land Owners obligations under the terms of this Deed are limited as at the date of this Deed to those specified in clauses 5, 6, 8, 10, 11, 12, 16, 18, 19 of this Deed.
- (B) If the Developer does not complete the purchase of the Land from the Land Owners or the Land Owners, in their own right or through their employees, agents, contractors or the like, seek to commence the Development, then the Land Owners agree to be bound by all of the Developer's obligations under this Deed as if they were the Developer for the purposes of this Deed on and from the occurrence of the earlier of the following dates:
 - (i) the date on which the Land Owners seek the issue of any Construction Certificate for the Development;
 - (ii) the date which is forty two (42) days after the date of determination of the Development Consent; and
 - (iii) the date of the termination of the Call Option Deed.

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ATTACHMENT 1

Schedule 1 - Section 93F Requirements

The Parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the Planning Agreement complying with the EP&A Act.

| Requirement under the EP&A Act | This Planning Agreement |
|---|---|
| <p>Planning instrument and/or development application - (Section 93F(1)) The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p> | <p>(a) No</p> <p>(b) Yes</p> <p>(c) Yes</p> |
| <p>Description of land to which this Deed applies - (Section 93F(3)(a))</p> | <p>The Land described in paragraph 1 of Schedule 2.</p> |
| <p>Description of change to the environmental planning instrument or the development to which this Deed applies - (Section 93F(3)(b)) Describe:</p> <p>(a) the proposed change to the environmental planning instrument to which this Deed applies; and</p> <p>(b) the development to which this Deed applies.</p> | <p>(a) Not applicable</p> <p>(b) The Development described in paragraph 2 of Schedule 2</p> |
| <p>The scope, timing and manner of delivery of contribution required by this planning agreement - (Section 93F(3)(c))</p> | <p>As set out in Schedule 3 - Contributions Schedule, Schedule 4 – Contribution Works Procedures and Schedule 5 – Contribution Land Procedures.</p> |
| <p>Applicability of Section 94 of the EP&A Act - (Section 93F(3)(d))</p> | <p>The application of section 94 of the EP&A Act is not excluded in respect of this Deed and for the avoidance of doubt, contributions (if any) under section 94 will be required to be paid.</p> |
| <p>Applicability of Section 94A of the EP&A Act - (Section 93F(3)(d))</p> | <p>The application of section 94A of the EP&A Act is not excluded in respect of this Deed and for the avoidance of doubt, contributions (if any) under section 94A will be required to be paid.</p> |

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| Requirement under the EP&A Act | This Planning Agreement |
|--|---|
| <p>Applicability of Section 94EF of the EP&A Act - (Section 93F(3)(d))</p> | <p>The application of section 94EF of the EP&A Act is not excluded in respect of this Deed and for the avoidance of doubt, contributions (if any) under section 94EF will be required to be paid.</p> |
| <p>Consideration of benefits under this Deed if section 94 applies - (Section 93F(3)(e)) Are the benefits under this Deed to be taken into consideration if Section 94 of the EP&A Act is not excluded?</p> | <p>No</p> |
| <p>Mechanism for Dispute resolution - (Section 93F(3)(f)) This Deed provides a mechanism for the resolution of disputes under the agreement?</p> | <p>Refer to clause 12 and Schedule 7.</p> |
| <p>Enforcement of this Deed (Section 93F(3)(g) and section 93H) This Deed provides for enforcement by a suitable means in the event of a breach.</p> | <p>Refer to clauses 5, 6, 8 and 9 and Schedule 4 and Schedule 5</p> |
| <p>Registration of this Deed The parties agree that this Deed will be registered in accordance with clause 6.</p> | <p>Yes</p> |
| <p>No obligation to grant consent or exercise functions - (Section 93F(9)) The parties acknowledge that this Deed does not impose an obligation on a planning authority to grant a Development Consent, or to exercise any function under the EP&A Act in relation to a change to an environmental planning instrument.</p> | <p>Refer to paragraph 1.8 of Schedule 13.</p> |

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Schedule 2 - Description of the Land and the Development

1. Title

Those parts of the land comprised in as Lot 13 in Deposited Plan 7533 and Lots A and B in Deposited Plan 343831, being the whole of the land in Certificate of Title Folio Identifiers 13/7533, A/343831 and B/343831 and know as 21-24 Railway Street, Meadowbank.

2. Development

The construction of a residential flat building on the Land comprising of seventy three (73) dwellings, two (2) basement levels of car parking future development and the Contribution Works and Contribution Land identified in Schedules 3, 4 and 16 (as the case may be).

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ATTACHMENT 1

Schedule 3 - Contributions Schedule

1.1 Contributions Tables

Table 1 – Contribution Land

| <u>Column 1 - Contribution</u> | | <u>Column 2 - Date Contribution Land is to be dedicated</u> |
|--------------------------------|--|--|
| 1. | <p>The Contribution Land for Road</p> <p>The dedication of part of the Land, being that area identified as “Proposed Road Widening” (approximately 161 square metres and 2.6 metres wide) in Schedule 17 - Land Dedication Plan, to the Council as Public Road.</p> | <p>Prior to the earlier occurrence of:</p> <p>(a) the issue of any Occupation Certificate for any part of the Development; and</p> <p>(b) the occupation of any part of the Development.</p> |
| 2. | <p>The Contribution Land for Affordable Housing</p> <p>The transfer in strata to Council of that part of the Building, being the Affordable Housing Unit marked as Unit 16 and the associated car parking space and storage area marked as CP16 and (W) respectively (with a combined total area of approximately 92m² square metres) in Schedule 12 – Affordable Housing Unit Plan.</p> | <p>Prior to the earlier occurrence of:</p> <p>(a) the issue of any Occupation Certificate for any part of the Development; and</p> <p>(b) the occupation of any part of the Development.</p> |

Table 2 - Contribution Works

| <u>Column 1 - Contribution</u> | | <u>Column 2 - Date Contribution Works are to be delivered/Practically Completed</u> |
|--------------------------------|---|---|
| 1 | <p>Remediation of Contribution Land</p> <p>The Developer must ensure that prior to the Contribution Land being transferred to the Council:</p> <p>(i) The Contribution Lands are to be remediated in accordance with any Remediation Action Plan as approved by a Site Auditor so that they are made suitable for their use as road and public domain (as the case may be) in accordance with the <i>Contaminated Lands Management Act 1997</i>; and</p> <p>(ii) Provide certification from a Site Auditor that the Contribution Lands have been remediated and are suitable for their intended use by Council as contemplated under the terms of this Deed.</p> | <p>To be Practically Completed and Remediation verified by the Site Auditor prior to the date Contribution Land is to be dedicated and transferred (as the case may be) to Council as identified in Table 1 of this Schedule 3.</p> |
| 2. | <p>Road, footpath and public domain construction and utility services installation</p> <p>The Developer will undertake all road and footpath construction</p> | <p>To be Practically Completed</p> |

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| | | |
|-----------|---|---|
| | <p>within the area identified as “Proposed Road Widening” (approximately 161 square metres and 2.6 metres wide) on the plan contained in Schedule 17 - Land Dedication Plan and to at least the construction standard referred to in Schedule 16 – Indicative Public Domain Concept Plan (security for which works is to be provided for the value of the Required Face Value as indexed in accordance with paragraph 1.3 of Schedule 10)</p> <p>The works must include the following:</p> <ul style="list-style-type: none"> (i) Roads including wear to surface, pavement, sub base, subgrade, kerb and gutter, drainage, line marking and sign posting; (ii) Paving, including compacted sub-grade, concrete substrate, concrete unit pavers; (iii) Kerb re-alignment and replacement (standard City of Sydney Council blue stone details); (iv) Drainage works; (v) Service requirements (power, water, gas etc., including undergrounding these services with provision of a 1.5 metre depth below design ground level for these services); (vi) Adjustments to all existing services pits and man holes; (vii) Demolition of existing kerbs and infra-structure; (viii) Street lighting and associated services; (ix) Street trees and associated urban details; and (x) Traffic control and associated temporary infrastructure. | <p>prior to the date that the Contribution Land for Road is to be dedicated to Council as listed in Table 1 of this Schedule 3,</p> |
| <p>3.</p> | <p>Affordable Housing Unit</p> <p>The Developer will design, construct and complete the Affordable Housing Unit in accordance with the following requirements:</p> <ul style="list-style-type: none"> (a) It is to have a minimum floor area of 92m²; (b) It is to be constructed and finished so as to be fully operational but with the exclusion of any loose furniture; and (c) It is to be designed so as to be Accessible. | <p>Prior to the earlier occurrence of:</p> <ul style="list-style-type: none"> (a) the issue of any Occupation Certificate for any part of the Development; and (b) the occupation of any part of the Development. |

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ATTACHMENT 1

Schedule 4 - Contribution Works Procedures

This Schedule 4 applies to all Contribution Works.

1.1 Approvals and Design responsibility

- (a) The Developer must at its Cost and risk:
 - (i) prepare all Applications and submit such applications to Council and obtain all Approvals necessary to carry out the Contribution Works; and
 - (ii) comply with all conditions of all such Approvals
- (b) The Developer agrees to procure the design of the Contribution Works in accordance with this Deed and the Development Consent; and
- (c) The Council acknowledges that a Construction Certificate for the Development may be issued prior to the Approvals for the Contribution Works relating to the Road.

1.2 Construction phase

- (a) Subject to paragraph 1.2(b) of this Schedule 4, the Developer must procure the execution and completion of the Contribution Works in accordance with:
 - (i) the Approvals;
 - (ii) any Contribution Works program agreed with the Council; and
 - (iii) its other obligations under this Deed.
- (b) The Developer must not commence construction of any of the Contribution Works until it has given the Council copies of all Approvals relating to the Contribution Works.
- (c) The Developer must not commence construction of the Contribution Works comprising the Road Works unless and until the Council has received:
 - (i) the design of the Road Works; and
 - (ii) the program for the construction of the Road Works, including anticipated dates for construction and completion.

1.3 Review of Contribution Works and Construction Documents

The Developer acknowledges and agrees that:

- (a) the Council may but is not obliged to critically analyse the plans and specifications of the Contribution Works;
- (b) the Council is not responsible for any errors omissions or non-compliance with any Law or the requirement of any Authority by reason of agreeing to the plans and specifications of the Contribution Works;
- (c) the Council is not liable for any liability, loss or Cost incurred by the Developer because of any defect in the design or construction of any part of the Contribution Works; and

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- (d) no comment, review or information supplied to the Developer by the Council alters or alleviates the Developer from its obligation to construct and complete the Contribution Works in accordance with this Deed.

1.4 Developer responsibilities

- (a) The Developer is responsible for the delivery and care of the Contribution Works at all times prior to Practical Completion of the Contribution Works.
- (b) Prior to Practical Completion, the Developer is responsible for:
 - (i) providing all things and taking all measures reasonably within its control to protect people and property in relation to the Land where failure to do so may render the Council or the Developer liable under the Law; and
 - (ii) taking any urgent action in relation to the Land necessary to protect people and the consequences of any failure to take such action where failure to do so may render the Council or the Developer liable under the Law.

1.5 Damage

If the Developer or the employees or agents of the Developer damage any public utilities and services or property on or adjacent to the Land, the Developer must promptly make good the damage and pay any compensation which the Law requires the Developer to pay.

1.6 Best Industry Practice

The Developer must ensure that the Contribution Works it has procured to be designed and carried out are designed and carried out according to Best Industry Practice.

1.7 Quality of Material and Work

The Developer must procure the Contribution Works to be carried out:

- (a) using good quality materials, which must be suitable for the purpose for which they are required under this Deed;
- (b) without the use of asbestos in any form;
- (c) in compliance with relevant standards determined by Australian Standards Limited, the Building Code of Australia and any relevant manufacturers' standards; and
- (d) so that the Contribution Works, when completed, are suitable for the purpose for which they are required as contemplated by the relevant Approvals.

1.8 Insurance

The Developer must ensure that there is effected and maintained insurance policies covering such risks, and on terms, reasonably acceptable to the Council including:

- (a) physical loss, damage or destruction of each aspect of the Contribution Works (including any associated temporary works);
- (b) third party liability;
- (c) contractors;
- (d) professional indemnity insurance with respect to design works only; and

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- (c) If required by law, Home Warranty Insurance.

The policies must provide cover for the period from the date of the commencement of construction of the Contribution Works until the end of any relevant Defects Liability Period for each and every aspect of the Contribution Works and as required under the Home Building Act 1989 in the case of Home Warranty Insurance.

1.9 Amount of property insurance

The insurance cover in relation to works insurance must be for an amount not less than the full insurable value of the relevant Contribution Works on a full reinstatement and replacement basis (including extra Costs of reinstatement, Costs of demolition and removal of debris, and professional fees).

1.10 Insurance generally

All insurances which the Developer is required by this Deed to effect and maintain:

- (a) must be with an Insurer;
- (b) must note the rights and interests of the Council; and
- (c) must not in any respect limit or derogate from the liabilities or obligations of the Developer under this Deed.

1.11 Providing proof of insurance

Whenever reasonably requested in writing by the Council, the Developer must give the Council certificates of the insurance policies which the Developer is required by this Deed to effect and maintain.

1.12 Premiums

The Developer must punctually pay all premiums in respect of all insurances required under this Agreement.

1.13 Additional Obligations

The Developer must:

- (a) not do or omit to do anything which if done or not done might vitiate, impair, derogate or prejudice any insurance or might prejudice any claim under any insurance policy;
- (b) if necessary, rectify anything which might prejudice any insurance policy;
- (c) reinstate an insurance policy if it lapses;
- (d) immediately notify the Council in writing if an insurer gives notice of cancellation in respect of any insurance policy; and
- (e) give full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.

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ATTACHMENT 1

1.14 Application of insurance proceeds

If all or any part of the Contribution Works are damaged or destroyed prior to Practical Completion thereof:

- (a) all insurance proceeds in respect of that damage or destruction must be applied to repair or reinstate the Contribution Works, except if the damage or destruction is caused by the Council;
- (b) if the insurance proceeds received under the insurances in respect of the damage or destruction are less than the cost of repairing or replacing the Contribution Works (or those insurances are void or unenforceable and there are no proceeds), the Developer must complete the repair and replacement of the Contribution Works using its own funds; and
- (c) if the insurance proceeds received under the insurances in respect of the damage or destruction exceed the Costs of repairing or replacing the Contribution Works, the Developer will be entitled to keep that excess.

1.15 Input tax credits

Where the Developer has effected any insurance policy referred to in this Deed before the date of this Deed, the Developer:

- (a) warrants that it informed the insurer of the extent of its entitlement to an input tax credit for the last premium it paid at or before the time of first making any subsequent claim under the insurance policy; and
- (b) must inform the insurer of the extent of its entitlement to an input tax credit for any future premium it pays immediately after paying that premium.

Where the Developer effects any insurance policy referred to in this Deed after the date of this Deed, the Developer must inform the insurer of the extent of its entitlement to an input tax credit for any premium it pays immediately after paying that premium.

1.16 Certification

When the Developer is of the opinion that the Contribution Works have reached Practical Completion, the Developer must:

- (a) request the relevant Certifier to issue a certificate confirming Practical Completion (**Certificate of Practical Completion**); and
- (b) at the same time give the Certifier (if the Council is not the Certifier) a copy of that request.

1.17 Certifier to respond

Within 10 Business Days after the receipt of the Developer's request, the Council must procure the Certifier to either:

- (a) give the Developer (with a copy to the Council at the same time) a Certificate of Practical Completion certifying that the Contribution Works have reached Practical Completion; or
- (b) give the Developer (with a copy to the Council at the same time) the reasons for not issuing that certificate and provide a detailed list of work required to be completed in order for that certificate to be issued.

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1.18 Dispute where no Certificate of Practical Completion

If within 10 Business Days after receipt of the Developer's request the Certifier does not either issue the Certificate of Practical Completion for the Contribution Works or give the Developer reasons for not issuing the certificate, then either the Council or the Developer may regard the circumstances as constituting a dispute between the Council and the Developer.

1.19 Dispute of detailed list

- (a) If the Certifier issues the detailed list referred to in paragraph 1.17(b), then the Developer may dispute the detailed list within 10 Business Days of the detailed list being issued by notice in writing to the Certifier.
- (b) If the Certifier and the Developer are not able to resolve the dispute about the detailed list within 10 Business Days of the Developer notifying the Certifier of the dispute about the detailed list, then either the Council or the Developer may regard the circumstances as constituting a dispute between the Council and the Developer.
- (c) If the Certifier and the Developer resolve the dispute about the detailed list, then the Certifier must provide an updated detailed list or withdraw the detailed list and issue the Certificate of Practical Completion.

1.20 Carrying out required work

- (a) On receipt of the detailed list referred to in paragraph 1.17(b) in this Schedule 4 or the updated detailed list referred to in paragraph 1.19(c) in this Schedule 4 the Developer must carry out the work referred to in that list and, on completion of that work, request the Certifier to issue a Certificate of Practical Completion.
- (b) If the Certifier is satisfied that all such work has been completed in accordance with this Deed then, the Developer must procure the Certifier to issue the Certificate of Practical Completion within 10 Business Days after receipt of the Developer's request. Otherwise the provisions of paragraphs 1.17 to 1.19 in this Schedule 4 inclusive re-apply.

1.21 Prerequisites for Certificate of Practical Completion

Despite paragraph 1.18 in this Schedule 4, a Certificate of Practical Completion for any separate aspect of the Contribution Works may not issue unless and until:

- (a) where relevant copies of all necessary documents and Approvals issued by the Consent Authority or relevant accredited certifier acknowledging completion of a specific aspect of the Contribution Works have been delivered to the Council; and
- (b) copies of all other certificates, consents and Approvals required of any relevant Authority, whose certificate, consent or approval is required for the erection, use or occupancy of that Contribution Works have been delivered to the Council;

1.22 Bond

If there is a defect or omission in relation to the Contribution Works which prevents the Certificate of Practical Completion being issued, and, if the Council (in its absolute discretion) agrees to accept a Bond to secure completion of that defect or omission, then:

- (a) if the Developer agrees, the Developer must:

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- (i) provide the Bond for the amount required by the Council (in its absolute discretion) to secure that defect or omission; and
- (ii) undertake in writing to rectify that defect or omission within the time nominated by Council (acting reasonably);
- (b) upon receipt of the Bond and the Developer's undertaking, the Council will direct the relevant Certifier to disregard that defect or omission for the purposes of certifying Practical Completion of the Contribution Works;
- (c) the Developer must rectify the defect or omission in accordance with its undertaking; and
- (d) if the Developer fails to rectify the defect or omission in accordance with its undertaking, then the Council may call on the Bond in accordance with paragraph 8 of Schedule 10 and/or rectify the breach in accordance with paragraph 2 of Schedule 6.

1.23 Providing documents to the Council

If the Council reasonably so requires, the Developer must use all reasonable endeavours to procure the issue and delivery to the Council of copies of the following items (as may be relevant) in relation to the Contribution Works:

- (a) a copy of as built drawings and all warranties and operations manuals given in connection with the Contribution Works; and
- (b) a copy of all certificates issued by any Authority in relation to any part of the Contribution Works which have not previously been delivered to the Council,

promptly, and in any event within 90 Business Days, after Practical Completion.

1.24 Rectification

- (a) At any time during the Defects Liability Period (in respect of a Contribution), the Council may inspect the Contribution Works for the purpose of ascertaining what defects and omissions (if any) in the Contribution Works are required to be made good by the Developer.
- (b) The Council may give notice to the Developer that:
 - (i) states that part of the Contribution Works that are defective, giving details;
 - (ii) specifies the works which the Council considers are required to rectify the defect;
 - (iii) provides a reasonable estimate of the Costs and Legal Costs to rectify such works, including particulars of how those Costs and Legal Costs were calculated; and
 - (iv) allows the Developer a reasonable period to rectify such works.
- (c) The Developer must rectify any defects or omissions in the Contribution Works which are identified in a notice issued in accordance with paragraph 1.24 (b) of this Schedule 4.
- (d) If the Developer fails to complete or rectify such works within the period required by a notice issued under paragraph 1.24 (b) of this Schedule 4 then the Council may have such works completed or rectified and the Developer must reimburse the Council

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promptly following any demand by the Council for all Costs and Legal Costs incurred by the Council in completing or rectifying such works.

- (e) The Developer indemnifies the Council for all monies payable by the Developer to the Council pursuant to paragraph 1.24 (d) of this Schedule 4.
- (f) The indemnity in paragraph 1.24 (e) of this Schedule 4 is a continuing obligation, separate and independent from the Developer's other obligations and survives completion, rescission or termination of this Deed. The Developer must pay on demand any amount it must pay under the indemnity in paragraph 1.24(e) of this Schedule 4.

1.25 Development Program

- (a) The Developer must provide an updated Development Program to the Council from time to time as the Development progresses, and as a minimum must provide an updated program:
 - (i) as soon as possible upon lodgement of an Application for construction of a Building with the relevant Consent Authority;
 - (ii) whenever there are delays in the Development which materially impact on the milestones identified in the previous Development Program provided to Council which relate to the issue of a Construction Certificate or Occupation Certificate; and
 - (iii) no less than 6 months before the Developer lodges an Application for an Occupation Certificate for any Building with the relevant Consent Authority.
- (b) The Council is not to disclose the Development Program referred to in clause 1.25(a) above to any third party unless required by law or in any other circumstances, with the consent of the Developer.

1.26 Remediation

Prior to the dedication of the Contribution Land to Council, the Developer must:

- (a) comply with all legislation and guidelines in carrying out the Remediation; and
- (b) satisfy any conditions in the Site Auditor's statement, including any measures required to be implemented to ensure any ongoing monitoring obligations.

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Schedule 5 - Contribution Land Procedures

1.1 Approvals

No less than 10 Business Days before the timing identified in Column 2 of Table 1 of Schedule 3, the Developer must at its Cost and risk:

- (a) prepare all Applications and obtain all Approvals necessary to:
 - (i) Subdivide the Land by one or more plans of subdivision to separate the Contribution Land from the Land (**Relevant Subdivision**); and
 - (ii) As required, create such easements, restrictions on use and covenants as agreed by the Council and the Developer (both acting reasonably), as being necessary or usual in the circumstances to permit and promote public access to the Contribution Land, which easements, restrictions on use or covenants must be registered at or about the same time as the relevant plan of subdivision (**Relevant Easements**);
- (b) comply with all conditions of all such Approvals; and
- (c) procure Land and Property Information NSW to register the relevant documentation and plans to create the Relevant Subdivision and register the Relevant Easements consistent with all such Approvals.

1.2 Developer undertakings regarding Contribution Land

In accordance with the timing identified in Column 2 of Table 1 of Schedule 3, the Developer must (at its Cost and risk):

- (a) Do all acts and execute and deliver all documents (in form and content reasonably satisfactory to the Council) to the Council (or such other person as the Council may reasonably direct) in order to give effect to the dedication or transfer (as the case may be) of the Contribution Land to the Council for a consideration of \$1.00
- (b) Deliver to the Council:
 - (i) the certificate or certificates of title for the Contribution Land;
 - (ii) any consents and other documentation in registrable form required for the transfer (and registration) of the Contribution Land;
 - (iii) any permits in connection with the Contribution Land and any consents and other documentation in a registrable form necessary, or otherwise required by the Council, for the transfer (and registration) of those permits;
- (c) Take any other necessary action (including paying all Taxes) to give effect to the transfer of the title of the Contribution Land to the Council (or such other person as the Council may direct) free of all Encumbrances (other than a Permitted Encumbrance) and affectations (including any charge or liability for rates, taxes and charges) except any caveat lodged over the Contribution Land by the Council in accordance with clause 5 of this Agreement; and
- (d) Without limiting paragraph 1.2 of this Schedule 5, enter into and complete a Contract for the Sale of Land with Council for the transfer of the Affordable Housing Unit to Council for the consideration amount referred to in paragraph 1.2 (a), being \$1.00.

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1.3 Acquisition

- (a) If the Developer does not transfer or grant to the Council the interests in land as required by this Deed (including the dedication and transfer of the Contribution Land to Council (as the case may be)), the Developer confers on Council an irrevocable option to purchase the Contribution Land and any interests for the amount of \$1.00.
- (b) Except as otherwise agreed between the Developer and the Council, the Developer must ensure that the Contribution Land is free of all Encumbrances (other than Permitted Encumbrances) and affectations (including any charge or liability for rates, taxes and charges), on the date that the Developer is liable to dedicate or transfer (as the case may be) the Contribution Land to the Council in accordance with paragraph 1.2 of this Schedule 5.
- (c) The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the relevant interest in land under paragraph 1.3 of this Schedule 5.
- (d) The Developer must pay the Council, promptly on demand, an amount equivalent to all Costs and Legal Costs incurred by the Council acquiring the whole or any part of the relevant interest in land where the Developer is in breach of Schedule 5.

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Schedule 6 - Notification and rectification of breach

1. Notice of breach

1.1 Notice of Breach by the Council

If the Council considers that the Developer has defaulted on the performance of any of its respective obligations under this Deed, then the Council may give written notice to the Developer which:

- (i) identifies the nature of the breach; and
- (ii) specifies that the breach must be rectified within at least 20 Business Days (except in the case of an emergency or where there is an issue of public safety where less time may be specified) of the Council's notice.

1.2 Developer's Response to Notice

- (a) Promptly upon receipt of a notice under paragraph 1.1 of this Schedule 6, the Developer must either:
 - (i) rectify the breach identified in that notice within the time period specified in that notice; or
 - (ii) notify the Council in writing that it does not agree that the breach identified in that notice has occurred, and refer the matter for dispute resolution in accordance with clause 12 and Schedule 7.
- (b) In the absence of a manifest error on the face of the notice, nothing in paragraph 1.2(a)(ii) of this Schedule 6 will constrain or limit the Council's rights of recourse under this Deed.

1.3 Rights of the Council after Giving Notice

- (a) If:
 - (i) the Developer does not take either of the actions outlined in paragraph 1.2(a) of this Schedule 6; or
 - (ii) any dispute notified by the Developer is resolved in favour of the Council,then the Council may take any or all of the actions available to it under this Deed including:
 - A. taking any action under paragraph 2.1 of this Schedule 6;
 - B. calling on the Bond under Schedule 10;
 - C. issue a notice to the Developer which:
 - 1) identifies the nature of the breach; and
 - 2) specifies that the breach must be rectified by the Developer within at least 20 Business Days (except in the case of an emergency or where there is an issue of public safety where less time may be specified) of the Council's notice,

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and the provisions of paragraphs 1.2 and 1.3 of this Schedule 6 will apply in respect of that notice (with the necessary changes having been made) and if the Developer does not take either of the actions outlined in paragraph 1.2(a) of this Schedule 6 then the Council may have recourse against the Developer in relation to the breach.

- (b) The rights of the Council under this Deed, and any action taken by it as referred to in paragraph 1.3 of this Schedule 6 or otherwise, are without derogation from the other rights and remedies available to the Council under this Deed, at law and in equity in relation to any default of the Developer.

2. Council may rectify breach

2.1 Council may perform Developer's obligations

- (a) Before exercising its rights under paragraph 2.1 of this Schedule 6, the Council will give at least 20 Business Days' (except in the case of an emergency or where there is an issue of public safety where less time may be specified) written notice to the Developer of its intention to exercise its rights under paragraph 2.1 of this Schedule 6.
- (b) The Council may (but is not obliged to):
 - (i) perform the Developer's obligations where the Developer fails to:
 - A. rectify the breach identified in the notice referred to in paragraph 1.1. of this Schedule 6 within the time period specified in that notice; or
 - B. notify the Council in writing that it does not agree that the breach identified in the notice referred to in paragraph 1.1 of this Schedule 6 and refer the matter for dispute resolution in accordance with clause 12 and Schedule 7;
 - (ii) rectify any breach of this Deed;
 - (iii) carry out other works that are necessary to be carried out; and
 - (iv) otherwise do anything which the Developer should have done under this Deed.
- (c) Without limiting paragraph 2.1 of this Schedule 6 the Developer agrees that the Council, its employees, agents and contractors, may enter onto the Land and do whatever is necessary to remedy the breach, in the absolute discretion of the Council, subject to compliance with the reasonable directions of the Developer relating to work, health and safety and compliance with all Laws.
- (d) The Developer indemnifies and will keep the Council indemnified from and against all claims, actions, demands, losses, damages, Costs and Legal Costs incurred by the Council or for which the Council may become liable in the exercise or purported exercise of the rights of the Council under this paragraph 2.1 of this Schedule 6, except in the event that such Claim is caused by or contributed to by the negligence of the Council or where the Council has exercised its rights in breach of this Deed.

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Schedule 7 - Dispute Resolution

1.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with the provisions of this Schedule 7.

1.2 Written notice of dispute

A party claiming that a dispute has arisen under or in relation to this deed must give written notice to the other party specifying the nature of the dispute.

1.3 Attempt to resolve

On receipt of notice under clause 1.2 of this Schedule 7, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

1.4 Mediation

If the parties do not agree within 10 Business Days of receipt of notice under clause 1.2 of this Schedule 7 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

the parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of NSW. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

1.5 Expert evaluation generally

- (a) If the parties agree under clause 1.3 of this Schedule 7 that expert evaluation is the appropriate dispute resolution technique, expert evaluation must be carried out in accordance with this clause 0.
- (b) Where the parties are not able to agree on an appropriate expert, the expert is to be appointed by the President of the appropriate institute or association.
- (c) If the parties cannot agree on which institute or association is appropriate in the circumstances (within the same 10 Business Days), either party may refer the selection of the institute or association to the President of the Bar Association of New South Wales to select the most appropriate institute or association.
- (d) The institutes or associations from which the expert may be appointed are:
 - (i) if an architect: the Royal Australian Institute of Architects, New South Wales Chapter;
 - (ii) if an engineer: Engineers Australia,

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- (iii) if a valuer: the Australian Property Institute Incorporated ARBN 007 505 866, New South Wales Division;
 - (iv) if an expert in decontamination: Engineers Australia - Environmental College
 - (v) if an expert in insurance: the Australian and New Zealand Institute of Insurance and Finance, New South Wales Branch;
 - (vi) if a real estate agent: the Real Estate Institute of New South Wales;
 - (vii) if a quantity surveyor: the Australian Institute of Quantity Surveyors, New South Wales Chapter;
 - (viii) if a barrister: the New South Wales Bar Association;
 - (ix) if an accountant: the Institute of Chartered Accountants, New South Wales Division;
 - (x) if a solicitor or mediator: the Law Society of New South Wales
- (e) If:
- (i) more than two types of experts are required to determine the dispute; or
 - (ii) the parties agree to appoint a lead expert; or
 - (iii) the President of the Bar Association exercising his or her functions in accordance with clause 0 consider the appointment of a lead expert appropriate
- then the parties must appoint a lead expert.
- (f) The lead expert must be a solicitor who has practised for not less than 15 years and who has not less than 5 years' experience in alternative dispute resolution. The lead expert must be agreed by the parties and failing agreement will be appointed by the President of the Law Society of New South Wales.
- (g) If a lead expert is appointed the functions of that person are:
- (i) to determine the type of expert required to determine the dispute;
 - (ii) in the absence of agreement between the parties as to the identity of the expert, to request the appropriate institute or association referred to in clause 0 ("Institutes and associations") to appoint an expert;
 - (iii) to determine the questions to be put to the expert and, if there is more than one expert, to co-ordinate and determine the timing of each expert determination;
 - (iv) if the dispute requires determination by an expert solicitor, to perform that function;
 - (v) if the expert determinations obtained are ambiguous, contradictory or in conflict, to determine the ambiguity, contradiction or conflict;
 - (vi) on receipt of the expert determinations to deliver to the parties a final determination of the dispute;

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- (vii) to determine any question of procedure concerning the dispute resolution process.
- (h) The expert is to be engaged on his standard terms of engagement subject to any amendments required to ensure consistency with this clause.
- (i) Both parties may, within 20 Business Days of the date of appointment of the expert, make written submissions to the expert on the matter the subject of the dispute. If a party makes a written submission to the expert, it must give a copy of the submission to the other party at the same time as it gives the submission to the expert. Submissions must include all particulars upon which a party seeks to rely in support of its position in relation to the dispute. The expert will determine the procedure for determining the dispute.
- (j) When any dispute or difference referred to in this clause has been referred for determination, the parties will each use their best endeavours to make available to the expert all facts and circumstances which the expert may require to settle or determine the dispute or difference and must ensure that their respective employees, agents and consultants are available to appear at any hearing or enquiry called for by the expert. The parties record their agreement that the hearing be concluded within 20 Business Days, and the expert's decision given within 20 Business, of the date of appointment of the expert, and shall use their best endeavours to see that these time frames are met.
- (k) The expert's decision is not final and binding on the parties and the parties may refer their dispute to a Court of competent jurisdiction for determination on the basis of a fresh hearing of all issues and facts. The cost of the expert's decision is to be borne by the parties in the shares as the expert determines and in the absence of a determination equally between the parties.
- (l) The expert will also determine the amount of the costs and expenses of the reference of such dispute to him. In default of such decision, those costs and expenses will be borne by the parties in equal shares.

1.6 Court proceedings

If the dispute is not resolved within 30 Business Days after notice is given under clause 1.2 of this Schedule 7, then any party which has complied with the provisions of this Schedule 7, may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

1.7 Not use information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under the provisions of this Schedule 7 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under the provisions of this Schedule 7 for any purpose other than in an attempt to settle the dispute.

1.8 No prejudice

The provisions of this Schedule 7 do not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this deed.

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1.9 Costs

The Costs of appointing a mediator or expert under this Schedule 7, will be borne equally by the Parties. Each Party will be responsible for its own Legal Costs with respect to any dispute resolution process.

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Schedule 8 - Registration of Deed

1.1 Registration

- (a) The Developer warrants that it has obtained all consents to the registration of this Deed on the Title to the Land as are necessary and in particular the consent of any Mortgagee or Lessee registered on the Certificate of Title to the Land;
- (b) The Developer must on execution of this Agreement, produce to the Council together with this Deed for execution by the Council, a letter from the mortgagee (if any) and lessees of any registered lease on the Land (if any) consenting to the registration of this Deed and a copy of the Production Ticket as evidence that the Mortgagee (if any) has produced the Certificate of Title to Land and Property Information for the purpose of registration of the Deed and a bank cheque for the relevant registration fees. If the Land is unencumbered by a mortgagee the Developer must produce the Certificate of Title to Land and Property Information and give a copy of the Production Slip to the Council;
- (c) The Developer must promptly comply with any Requisitions that may be raised with regard to registration of the Deed from Land and Property Information;
- (d) Subject to paragraphs 1.1 (a), (b) and 1.2 of this Schedule 8, the Council will register this Deed on the relevant folio of the Register as soon as reasonably practicable, but in any event no later than 20 Business Days after the execution of this Deed by the Council.
- (e) The Council will notify the Developer following registration of the Deed by the Council and forward the Developer's copy of the Deed to it.

1.2 Caveat

- (a) Without limiting any other provision of this Agreement, until such time as the registration of this Deed is completed, the Developer agrees that Council may register a caveat over the Land precluding any dealing which is not consistent with this Agreement.
- (b) Following registration of this Planning Agreement in the relevant folio of the Register, the Council must promptly remove any caveat registered under clause as soon as possible.

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Schedule 9 - Release and Discharge Terms

- (a) Once the Council is satisfied that the Developer has fully complied with all of its obligations under this Deed, at the Developer's request (and Cost), the Council must within ten (10) Business Days of being requested to do so by the Developer:
- (i) provide a full release and discharge of this Deed with respect to the whole of the Land; and
 - (ii) (should the Council not already have done so) sign such documentation as is necessary to remove any caveat lodged by the Council in relation to the Land pursuant to clause 5 of this Deed.
- (b) Despite paragraph (a) above of this Schedule 9, from time to time, the Developer may request the Council to provide a release and discharge of the Planning Agreement to the extent the Planning Agreement affects any part of the Development where:
- (i) the Developer has fully satisfied their obligations under this Planning Agreement (including paying any relevant Contribution Amount) in respect of that part of the Development or provided security to the Council's satisfaction (in its sole and unfettered discretion) to secure performance of any outstanding obligations under this Planning Agreement in respect of that Development;
 - (ii) to the extent the Defects Liability Period for any Contribution Works, the Developer has provided the Council with a Bond in accordance with Schedule 10; and
 - (iii) the Developer is not otherwise in default of any of their obligations under this Planning Agreement (as determined by the Council (acting reasonably), at the time of the Developer's request, unless the Council waives the default.
- (c) If the conditions in paragraph (b) of Schedule 9 are satisfied, the Council will provide a release and discharge of the Planning Agreement with respect of only that part of the Development, which will be registered in priority to the plan of strata subdivision of that Development.

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Schedule 10 - Bonds

1. Bonds Required

1.1 Developer to provide

- (a) Prior to the issue of the first Construction Certificate for any part of the Development, the Developer must provide a Bond to the Council for the Contribution Works for the Required Face Value.
- (b) The Bond referred to in paragraph 1.1(a) of this Schedule 10, secures the:
 - (i) Practical Completion of the Contribution Works; and
 - (ii) as reduced in accordance with paragraph 1.2, rectification of any defects and omissions (if any) of the Contribution Works during the Defects Liability Period,in accordance with this Deed.
- (c) For the avoidance of doubt, the Developer acknowledges and agrees that if the actual construction cost of the Contribution Works exceeds the Required Face Value, then the Contribution Works must be completed at the Developer's cost and the scope of the Contribution Works may not be reduced.

1.2 Reduction of the Bonds for the Contribution Works

- (a) Subject to paragraph 1.2(b) of this Schedule 10, the Developer may by written notice to the Council, upon Practical Completion of any part of the Contribution Works, request a reduction of the Bond Amounts for the Contribution Works having regard to the works completed at the time of the request. The Council will act reasonably in the consideration of whether a partial release or exchange (as the case may be) leaves appropriate or adequate security for the balance of the Bond Works.
- (b) If the Developer provides an assessment of the Contribution Works and the Construction Cost from a Quantity Surveyor with its request under paragraph (a) and Council (acting reasonably) is satisfied that the relevant Contribution Works have achieved Practical Completion, then the Council must release to the Developer a reasonable portion of the Bond having regard to the Construction Cost of the relevant completed Contribution Works.
- (c) The Developer acknowledges and agrees that, to secure the Developer's obligations under paragraph 1.24 of Schedule 4 during the Defects Liability Period for each of the Contribution Works, the Bond Amount must not be reduced to an amount which is less than 10 per cent of the Required Face Value.
- (d) Following Practical Completion of all the Bond Works, the Bond Amount will be reduced to an amount which is equal to 10 per cent of the Required Face Value.

1.3 Adjustment of Bond Amounts

- (a) On each Adjustment Date the Bond Amounts are to be adjusted to the Revised Bond Amount as determined in accordance with the following formula:

$$RBA = \frac{BA \times A}{B}$$

where:

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RBA is the Revised Bond Amount applicable from the relevant Adjustment Date;

BA is the Bond Amount that is current on the relevant Adjustment Date;

A is the CPI published immediately before the relevant Adjustment Date (and in the case of the first adjustment, the CPI (All Groups Sydney) for the September 2014 quarter);

B is the CPI published immediately before the date of this Deed and, in the case of subsequent adjustments, the immediately preceding Adjustment Date.

No increase or other change will be made to the Revised Bond Amount where B is greater than A or where the Revised Bond Amount is less than 10 per cent of the Required Face Value.

- (b) The Council must give the Developer written notice of the Revised Bond Amounts to apply from the relevant Adjustment Date.
- (c) The Developer must give the Council replacement or further Bonds so that the Council holds Bonds for an amount equal to the Revised Bond Amounts no later than 15 Business Days after receipt of a notice given under paragraph 1.3(b) of this Schedule 10.

2. Face value of Bond

If a Bond is required to be provided by the Developer to the Council under this Deed, then the Developer must procure and give to the Council a Bond with a face value of an amount equivalent to the amount and at the time specified in this Deed.

3. Expiry of Bonds

If, despite the requirements of this Deed, any Bond provided by the Developer is expressed as expiring on a certain date, the Developer must provide the Council with a replacement Bond 20 Business Days prior to the expiry of any Bond subject to paragraph 4 of this Schedule 10.

4. Failure to replace expired Bond

If the Developer fails to provide the Council with a replacement Bond in accordance with paragraph 3 of this Schedule 10, the Council may call on the full amount of such Bond after giving 10 Business Days prior written notice to the Developer.

5. No limitation of obligations

The provision of the Bond does not:

- (a) relieve the Developer from any of its obligations under any other provision of this Deed; or
- (b) limit the right of the Council to recover from the Developer in full all money payable to the Council under this Deed, including without limitation, interest on any such amounts or damages or other losses incurred by the Council.

6. Cash deposit

- (a) If the Council makes demand under any Bond pursuant to paragraph 4 of this Schedule 10, the Council must hold the full amount so paid to the Council as a cash deposit (**Cash Deposit**) in a separate account opened with any body corporate that is

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an ADI (authorised deposit-taking institution) for the purposes of the Banking Act, 1959 in the name of the Council and with beneficial ownership vesting at all times in the Council (**Cash Deposit Account**). The Cash Deposit will operate to secure the same obligations under this Deed that the relevant Bond secured.

- (b) As beneficial owner of the Cash Deposit, the Council may, at any time and without notice to the Developer, withdraw money (including accrued interest) from the Cash Deposit Account and retain that money absolutely to satisfy or reimburse the Council for any liability, loss, cost, charge or expense incurred by the Council because of failure by the Developer to comply with those of the Developer's obligations under this Deed that the relevant Bond secured.
- (c) All Costs, charges, duties and taxes payable in connection with the Cash Deposit Account or interest accruing on moneys credited to the Cash Deposit Account may be satisfied by the Council withdrawing money from the Cash Deposit Account and applying the money for that purpose.
- (d) If no moneys are, or may become, payable to the Council under this Deed in connection with the obligations under this Deed secured by the relevant Bond and the Developer has satisfied all of its obligations under this Deed which were secured by the relevant Bond, the Council must pay the balance of the Cash Deposit Account, less all Costs, charges, duties and taxes payable in connection with such payment, to the Developer.
- (e) For the avoidance of doubt, the Developer has no right to require the Council to release the Cash Deposit until the Council is reasonably satisfied that no moneys are, or may become, payable to the Council under this Deed in relation to obligations secured by the relevant Bond.

7. Release of Cash Deposit

The Council must release the Cash Deposit to the Developer if the Developer provides the Council with a replacement Bond complying with the requirements of paragraph 3 of this Schedule 10.

8. Claims under Bond

The Developer agrees that the Council may after giving at least 10 business days prior written notice to the Developer make claims under a Bond provided by it on the following basis the Council may call upon the Bond (in full or in part) in the event that:

- (a) the Developer breaches its obligation to carry out and complete any of the Bond Works in accordance with this Deed; and
- (b) a notice has been issued by Council requiring the Developer to remedy the breach in accordance with the requirements of paragraph 1 of Schedule 6, and the breach remains unremedied following the expiry of the rectification period specified in that notice,

and retain and use such monies in its discretion to compensate the Council for the Developer's breach of those obligations.

ITEM 6 (continued)

ATTACHMENT 1

Schedule 11 - Assignment and Dealing

1.1 Developer's proposed assignment of rights

- (a) Unless the matters specified in paragraph 1.1(b) of this Schedule 11 are satisfied and subject to paragraph 1.1(c) of this Schedule 11, the Developer is not to assign or novate to any person the Developer's rights or obligations under this Deed.
- (b) The Developer must not assign or novate to any person its rights or obligations under this Deed and the Developer must not transfer the whole or any part of the Land or its interest in the Land unless the prior written consent of Council is obtained. The Council must not unreasonably withhold its consent in circumstances where the following matters have been satisfied:
 - (i) the Developer has, at no cost to the Council, first procured the execution by the person to whom the Developer's rights or obligations under this Deed are to be assigned or novated (**incoming party**), of a deed poll in favour of the Council in the form of Schedule 15, completed in a manner satisfactory to the Council. Such deed includes covenants that the incoming party:
 - A. will perform the obligations of the Developer under this Deed; and
 - B. is bound by the terms and conditions of this Deed (relevant to the Developer as if the incoming party had executed e Deed; and
 - (ii) the Developer is not in breach of this Deed with respect to the relevant part of the Land in case of an assignment or novation of the Developer's interest in part of the Land only, unless the breach is waived by the Council.

1.2 Right of Developer to sell Land

- (a) The Developer must not sell or transfer the whole or any part of the Land or any of their interest in the Land (and must procure that the whole or any part of the Land is not sold or transferred) prior to this Deed being removed from title to that Land (or any part of it) unless before any such sale, transfer or disposal of any such part of the Land or such part of their interest in the Land to another person (**Transferee**) the Developer obtains Council's prior written consent. The Council must not unreasonably withhold its consent in circumstances where the requirements specified in paragraph 1.1(b) of this Schedule 11 are satisfied.
- (b) This paragraph 1.2 does not apply to the transfer of a single lot in a strata plan (irrespective of whether the strata plan has been registered).

1.3 Council's Costs

The Developer must pay to the Council (or reimburse the Council on demand) for all the Costs and Legal Costs incurred by the Council in connection with any assignment or dealing proposed under paragraphs 1.1 or 1.2 of this Schedule 11.

1.4 Council's assignment of rights

Council may assign its rights under this Deed to any successor in title.

ITEM 6 (continued)

ATTACHMENT 1

1.5 Council to act promptly

The Council must act promptly in dealing with any application made by the Developer in respect of any proposed assignment or dealing proposed under paragraphs 1.1 or 1.2 of this Schedule 11.

Draft

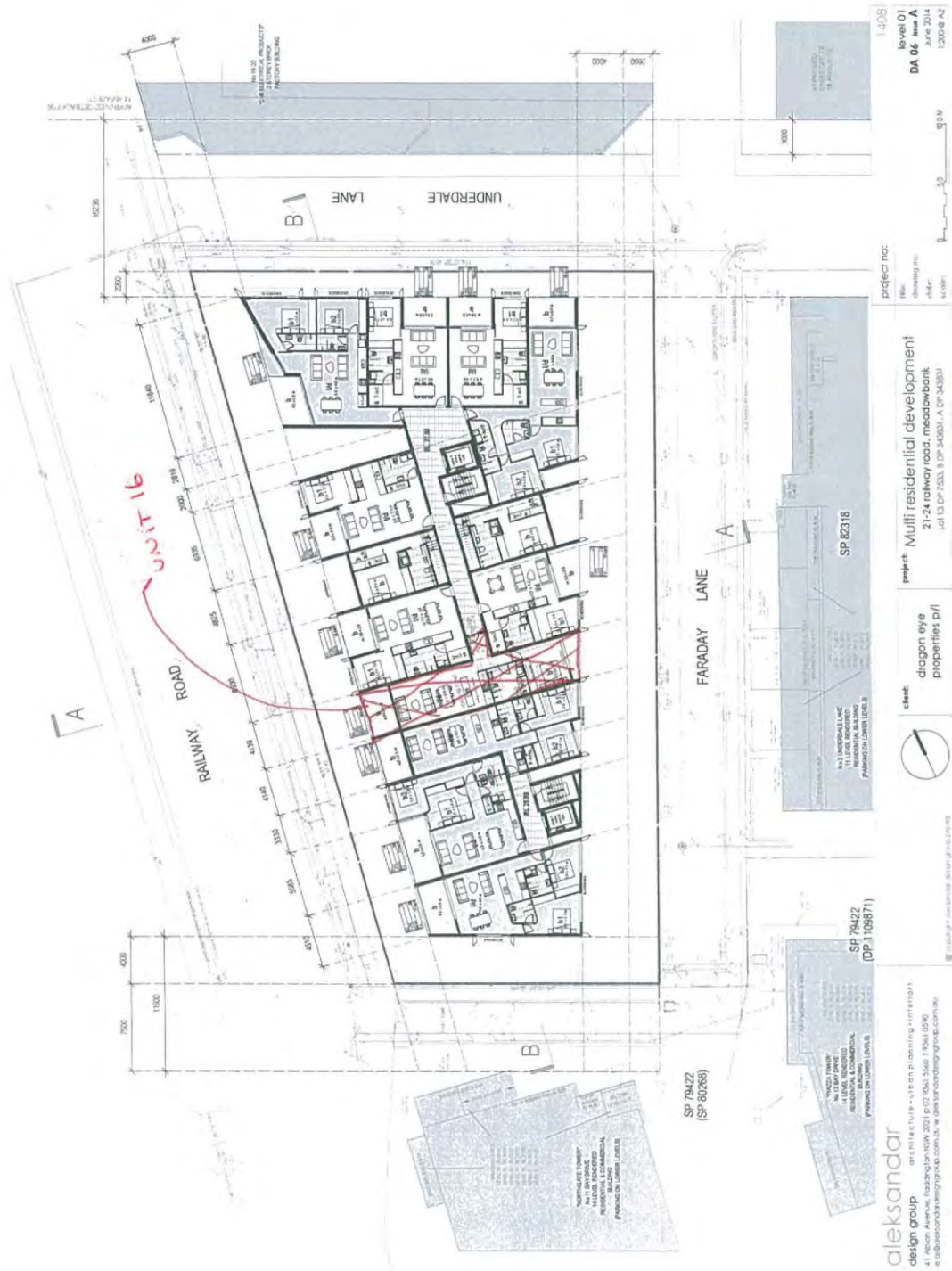
ITEM 6 (continued)

ATTACHMENT 1

Schedule 12 – Affordable Housing Unit Plan

ITEM 6 (continued)

ATTACHMENT 1



project no: 1408
level: 01
DA: 06
date: June 2014
scale: 1:200 (B 1:200)

project: Multi residential development
 21-24 railway road, meadowbank
 lot 13, DP 7533, 9 DP 34001, A DP 34001

client: dragon eye properties p/l


aleksandar design group
 architects & interior designers
 41, robin avenue, meadowbank NSW 2163
 phone: 02 9511 7300
 www.aleksandar.com.au

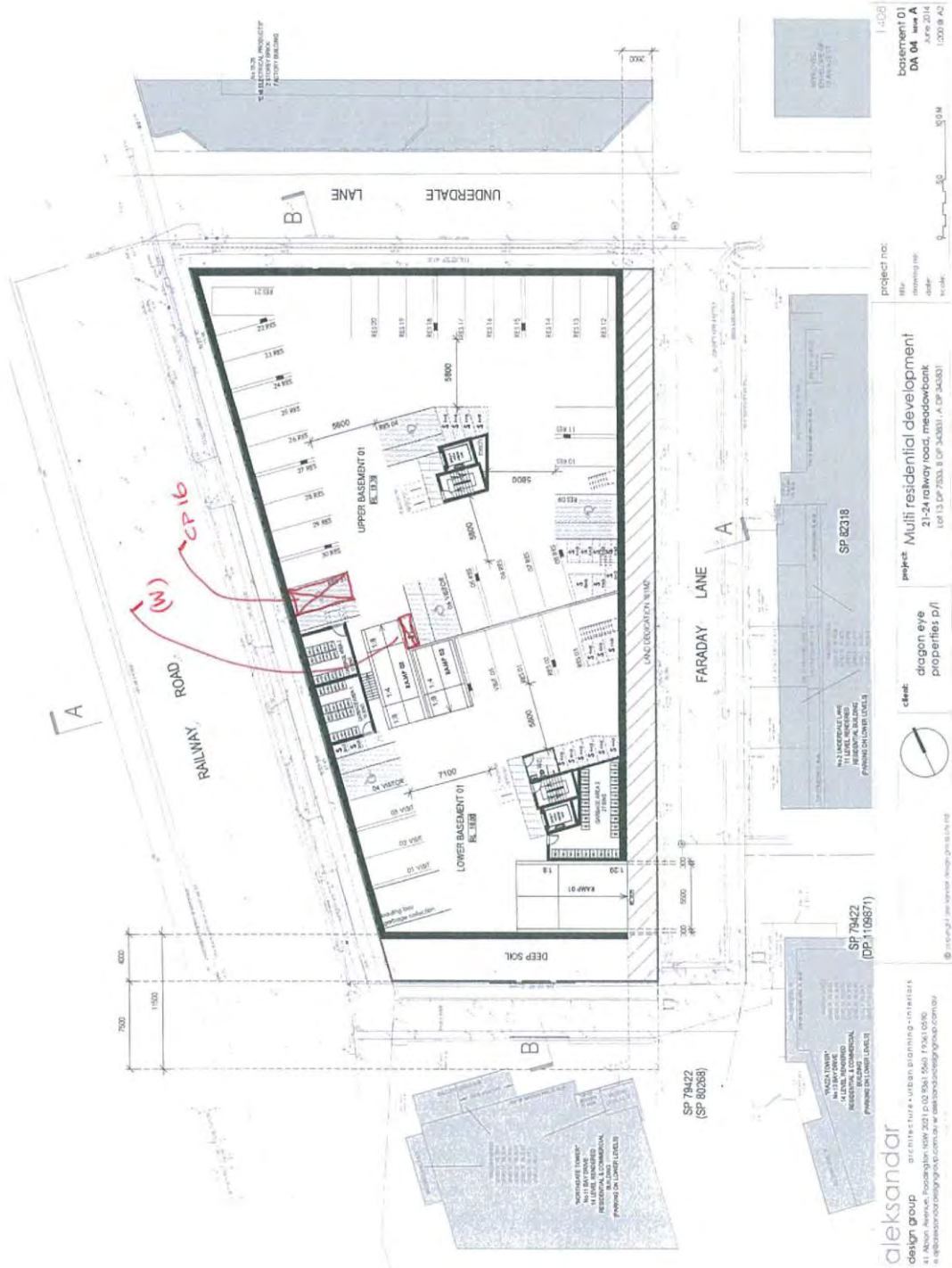
SP 79422 (SP 80265)
 NORTH-SOUTH 'TOWER'
 MULTI-RESIDENTIAL DEVELOPMENT
 LEVEL 01 (RESIDENTIAL)
 PRELIMINARY ARCHITECTURAL PLAN
 PREPARED ON LOT 13 (DA 06)

SP 79422 (PPJ 105871)
 NORTH-SOUTH 'TOWER'
 MULTI-RESIDENTIAL DEVELOPMENT
 LEVEL 01 (RESIDENTIAL)
 PRELIMINARY ARCHITECTURAL PLAN
 PREPARED ON LOT 13 (DA 06)

SP 82318
 NORTH-SOUTH 'TOWER'
 MULTI-RESIDENTIAL DEVELOPMENT
 LEVEL 01 (RESIDENTIAL)
 PRELIMINARY ARCHITECTURAL PLAN
 PREPARED ON LOT 13 (DA 06)

ITEM 6 (continued)

ATTACHMENT 1



ITEM 6 (continued)

ATTACHMENT 1

Schedule 13 – General Provisions

1.1 Approvals and Consent

Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party will not unreasonably withhold an approval or consent to be given under this Deed but may give its approval or consent subject to any conditions reasonably determined by that Party.

1.2 Costs

- (a) Unless otherwise specified in this Deed, all Costs and Legal Costs relating to this Deed are to be borne by the Developer in the amount specified in Schedule 14 and is payable on demand.
- (b) Without limiting paragraph 1.2(a) of this Schedule 13, the Developer agrees to pay or reimburse the Council on demand for:
 - (i) Costs and Legal Costs of the Council in connection with:
 - A. exercising, enforcing or preserving, or attempting to exercise, enforce or preserve, rights under this Deed, including in connection with the Developer default;
 - B. any waiver, variation, release or discharge of this Deed; and
 - (ii) Taxes and fees (including, without limitation, registration fees and stamp duty) and fines and penalties in respect of fees which may be payable or determined to be payable in connection with this Deed or a payment or receipt or any transaction contemplated by this Deed.

1.3 Effect of terms and conditions in Schedules and Annexures

The Parties agree to comply with the terms and conditions contained in the Schedules and Annexures as if those terms and conditions were expressly set out in full in the operative parts of this Deed.

1.4 Entire agreement

To the extent permitted by law, in relation to its subject matter only, this Deed:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

1.5 Further acts

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 Deed and all transactions incidental to it.

1.6 Governing Law and jurisdiction

This Deed 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 6 (continued)

ATTACHMENT 1

1.7 Enforcement

- (a) This Deed may be enforced by any Party in any court of competent jurisdiction.
- (b) For the avoidance of doubt, nothing in this Deed prevents:
 - (i) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates; and
 - (ii) an Authority or the Council from exercising any function under the EP&A Act or any other Law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

1.8 No fetter

Nothing in this Deed is to be construed as requiring an Authority (including the Council) to do anything that would cause it to be in breach of any of its obligations at Law, and without limitation:

- (a) nothing in this Deed is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty; and
- (b) nothing in this Deed imposes any obligation on an Authority to:
 - (i) grant any Development Consent; or
 - (ii) exercise any function or power under the EP&A Act in relation to a change, or a proposed change, in an environmental planning instrument.

1.9 Representations and warranties

- (a) Each Party each individually represents and warrants that:
 - (i) **(power)** it has power to enter into this Deed and comply with its obligations under the Deed;
 - (ii) **(no contravention or exceeding power)** this Deed does not contravene its constituent documents (if any) or any law or obligation by which it is bound or to which any of its assets are subject, or cause a limitation on its powers or the powers of its officers to be exceeded;
 - (iii) **(authorisations)** it has in full force and effect the authorisations necessary for it to enter into this Deed to which it is a party, to comply with its obligations and exercise its rights under this Deed and to allow this Deed to be enforced;
 - (iv) **(validity of obligations)** its obligations under this Deed are valid and binding and are enforceable against it in accordance with the terms of the Deed;
 - (v) **(no immunity)** does not have immunity from the jurisdiction of a court or from legal process;
 - (vi) **(benefit)** it benefits by entering into this Deed to which it is a Party; and

ITEM 6 (continued)

ATTACHMENT 1

(vii) **(legal advice)** it has obtained its own independent legal advice as to its obligations and rights under the terms of this Deed prior to entering into this Deed.

(b) Each Party acknowledge that each other Party has entered into this Deed to which it is a party in reliance on the representations and warranties in this paragraph 1.9 of this Schedule 13.

1.10 Severability

(a) If a clause or part of a clause of this Deed 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.

(b) 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 Deed, but the rest of this Deed is not affected.

1.11 Modification

No modification of this Deed will be of any force or effect unless it is in writing and signed by the Parties as a Deed.

1.12 Waiver

(a) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or a breach of obligation by, another Party.

(b) A waiver by a party is only effective if it is in writing.

(c) A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

1.13 Confidentiality

The Parties agree that the terms of this Deed are not confidential and this Deed may be treated as a public Deed and exhibited or reported without restriction by any Party.

1.14 Release and indemnity

(a) The Developer agrees that the obligation to provide the Contributions is at the risk of the Developer. The Developer releases the Council from any Claim, liability or loss arising from, and Costs and Legal Costs incurred in connection with, the Developer's obligation to provide the Contributions.

(b) The Developer indemnifies the Council against all liabilities or loss arising from, and any Costs and Legal Costs incurred in connection with the Council enforcing the Developer's obligation to provide the Contributions in accordance with this Deed and/or the Council exercising the Council's rights under or by virtue of this Deed.

(c) The indemnity in paragraph 1.14(b) of this Schedule 13 is a continuing obligation, independent of the Developer's other obligations under this Deed and continues after this Deed ends.

ITEM 6 (continued)

ATTACHMENT 1

- (d) It is not necessary for a Party to incur expense or to make any payment before enforcing a right of indemnity conferred by this paragraph 1.14
- (e) A Party must pay on demand any amount it must pay under an indemnity in this paragraph 1.14.

ITEM 6 (continued)

ATTACHMENT 1

Schedule 14 - Costs

Developer is to pay Council's legal costs associated with the preparation and execution of this Deed being the sum of \$5,000 (excl. GST).

ITEM 6 (continued)

ATTACHMENT 1

Schedule 15 – Pro-forma Novation Deed

Novation Deed

Council of the City of Ryde
Council

[Developer]
Transferor

[Insert Transferee's name]
Transferee

ITEM 6 (continued)

ATTACHMENT 1

Novation Deed made at _____ on _____

Parties **The Council of the City of Ryde (ABN 81 621 292 610)** of 1 Devlin Street, Ryde
NSW 2112
(Council)

[Insert Transferor's name] of [INSERT]
(Transferor)

[Insert Transferee's name] of [INSERT]
(Transferee)

Recitals

- A The Council and the Transferor are parties to the Original Agreement.
- B The Transferor is defined as the Developer under the terms of the Original Agreement.
- C The Original Agreement relates to the whole of the Land.
- D The Transferor wishes to assign its rights and obligations under the Original Agreement to the Transferee.
- E The parties to this Deed have agreed to the novation of the Transferor's obligations under the Original Agreement to the Transferee.

This deed provides

1. Definitions and interpretation

1.1 Definitions

Effective Date means [*insert*].

Land has the meaning given to that term in the Original Agreement.

Original Agreement means the voluntary planning agreement dated [*insert*] and made between the Council the Developer and the Land Owners.

Required Obligations means the Developer's obligations under the terms of the Original Agreement.

Transferor means [*insert*].

1.2 References to certain general terms

In this deed unless the contrary intention appears:

- (a) a reference to this deed or another instrument includes any variation or replacement of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

ITEM 6 (continued)

ATTACHMENT 1

- (c) the singular includes the plural and vice versa;
- (d) the word person includes a firm, body corporate, an unincorporated association or an authority;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (f) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally;
- (g) a reference to anything (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of persons is a reference to anyone or more of them;
- (h) "include" in any form when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar nature; and
- (i) capitalised terms which are used in this deed but are not otherwise defined have the meaning given to them in the Original Agreement.

1.3 Headings

Headings are inserted for convenience and do not affect the interpretation of this deed.

2. Novation

2.1 Original Agreement

Subject to clause 2.4 and with effect from the Effective Date:

- (a) the Transferee is substituted for the Transferor as a party to the Original Agreement, and agrees to perform the Required Obligations;
- (b) the Transferee will be bound by the Original Agreement, and will be entitled to the benefit of the Original Agreement, as if the Transferee was a party to the Original Agreement instead of the Transferor insofar as the Original Agreement relates to the Required Obligations; and
- (c) the Transferor is released and discharged from all obligations and liabilities, and from all claims (whether for Costs, Legal Costs, damages, fees or otherwise), arising under the Original Agreement insofar as the Original Agreement relates to the Required Obligations.

2.2 Performance by Transferee

The Transferee must perform all of the Transferor's obligations under the Original Agreement as if named as the Transferor, whether or not the relevant obligations relate to works performed prior to the date of this Deed, including, but not limited to:

- (a) the delivery of all public benefits to Council (including the Contribution Amounts, Contribution Lands and Contribution Works); and

ITEM 6 (continued)

ATTACHMENT 1

(b) the provision of all Guarantees to Council.

2.3 Release of Guarantees

The parties expressly acknowledge and agree that:

- (a) Council will release any Guarantee provided to Council by the Transferor under the provisions of the Original Agreement to the Transferor (or as the Transferor otherwise directs in writing) promptly and in any event within 14 days of the provision of replacement Guarantee by the Transferee; and
- (b) Nothing in this clause 2.3 will be read or construed as a waiver of any right held by Council relating to or arising from the performance of the Original Agreement by the Transferor before the date of this Deed.

2.4 Liability before Effective Date

Notwithstanding clause 2.1, the Transferor is not released, relieved or discharged from liability under the Original Agreement before the Effective Date, or any breach of any provision of the Original Agreement by the Transferor occurring before the Effective Date (to the extent that it is not remedied by the Effective Date) in so far as the Original Agreement relates to the Required Obligations.

3. Affirmation of the Original Agreement

The Original Agreement will be read and construed subject to this deed, and in all other respects the provisions of the Original Agreement are ratified and confirmed, and, subject to the variation and novation contained in this deed, the Original Agreement will continue in full force and effect.

4. GST

Where a supply made under this deed gives rise to a liability for GST, the consideration to be provided for that supply (other than under this clause) shall be increased by an additional amount equal to the GST payable on the supply. The additional amount must be paid, and the supplier must provide a tax invoice, at the same time as the other consideration for that supply is to be provided under this deed. Terms used in this clause have the meanings in the *A New Tax System (Goods and Services Tax) Act 1999*.

5. Stamp duty and costs

- (a) The Transferor and the Transferee are jointly and severally liable for the Council's Legal Costs of and incidental to the negotiation, preparation and execution of this deed, and must reimburse the Council for such Legal Costs promptly on demand.
- (b) The Transferee will pay all stamp duty arising directly or indirectly from this deed.

6. Further acts

- (a) Each party will take all steps, execute all deeds and do everything reasonably required by any other party to give effect to any of the actions contemplated by this deed.

ITEM 6 (continued)

ATTACHMENT 1

(b) This deed binds each party which signs it even if other parties do not, or if the execution by other parties is defective, void or voidable.

7. Governing law

This deed is governed by the law in force in the place specified in the New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of that place.

8. Counterparts

This deed may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

Executed as a deed.

[INSERT appropriate execution clauses for the Council, Developer and Land Owners]

Signed, sealed and delivered by [insert Transferee] in accordance with section 127 of the Corporations Act by or in the presence of:

Signature of Secretary/other Director

Name of Secretary/other Director in full

Signature of Director

Name of Director in full

ITEM 6 (continued)

ATTACHMENT 1

Schedule 16 – Indicative Public Domain Concept Plan

ITEM 6 (continued)

ATTACHMENT 1

Schedule 17 – Land Dedication Plan

ITEM 6 (continued)

ATTACHMENT 1

Exhibit A – Explanatory Note

ITEM 6 (continued)

ATTACHMENT 1

EXPLANATORY NOTE

Cl. 25E of Environmental Planning and Assessment Regulation 2000

Planning Agreement – DEP Shepherd Bay Pty Limited, John O’Brien and Joanne Rhook – 21-24 Railway Street, Meadowbank (Land)

Introduction

The purpose of this Explanatory Note is to provide a summary to support the notification of a draft Planning Agreement (**Planning Agreement**), under Section 93F of the *Environmental Planning and Assessment Act 1979 (Act)*, prepared in connection with a Development Application (LDA 2014/307) (**Development Application**).

The Development Application seeks approval for the construction of a high density residential flat building on the Land (**Development**).

The Planning Agreement specifies the public benefits to be provided by the Developer in connection with the Development.

Contributions under sections 94, 94A and 94EF of the Act are not excluded under the Planning Agreement and are therefore payable by the Developer if development consent is granted for the Development.

This explanatory note has been prepared jointly by the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000 (Regulation)*.

For the purposes of this explanatory note, capitalised terms which are used in this explanatory note but which are not otherwise defined have the meaning given to those terms in the Planning Agreement.

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

1. Parties to the Planning Agreement

The parties to the Planning Agreement are DEP Shepherd Bay Pty Limited (ACN 167 939 504) (**Developer**), John O’Brien and Joanne Rook (**Land Owners**) and the Council of the City of Ryde (**Council**).

2. Description of the Land

The Planning Agreement applies to Lot 13 in Deposited Plan 7533 and Lots A and B in Deposited Plan 34383, being the whole of the land in Certificate of Title Folio Identifiers 13/7533, A/34383 and B/34383, known as 21-24 Railway Street, Meadowbank (**Land**).

ITEM 6 (continued)

ATTACHMENT 1

3. Description of the Proposed Change to the Environmental Planning Instrument and Development

The Planning Agreement relates to Development Application LDA 2014/307 dated 18 July 2014 for the construction of a residential flat building comprising 73 residential dwellings and 2 basement levels of car parking on the Land.

4. Summary of Objectives, Nature and Effect of the Planning Agreement

The objective of the Planning Agreement is to ensure the provision of a Public Road and an Affordable Housing Unit to meet the needs of the local community.

In order to secure the obligations of the Developer under the Planning Agreement, the terms of the Planning Agreement requires the provision of security in the form of Bonds, the registration of the Planning Agreement on the title of the Land and allows the Council to acquire the Contribution Land.

The public benefits to be provided under the Planning Agreement are summarised as follows:

a. Contribution Land

The Developer (at its cost) agrees to dedicate / transfer (as the case may be) to Council the following Contribution Land:

- (i) part of the Land adjacent to Faraday Lane as Public Road; and
- (ii) the Affordable Housing Unit within the Development as a strata title lot.

b. Contribution Works

The Developer agrees to deliver (at its cost) the following works:

- (i) the remediation of the Contribution Land so that they are made suitable for their use as Public Road and the Affordable Housing Dwelling; and
- (ii) the construction of the Public Road, being the widening of Faraday Lane as indicated in *Schedule 19 - Land Dedication* of the Planning Agreement.

5. Assessment of the merits of the Planning Agreement

(a) How the Planning Agreement promotes the public interest and one or more of the objects of the Act

The Planning Agreement promotes the objects of the Act, in particular objects (iv) and (viii) which relate to “*the provision of land for public purposes*” and “*the provision and maintenance of affordable housing*” respectively. In this regard, these objects are satisfied as the planning agreement will ensure the delivery of the Public Road and the Affordable Housing Unit.

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ATTACHMENT 1

(b) How the Planning Agreement promotes elements of the Council's charter

The Planning Agreement promotes a number of elements of the Council's charter under section 8 of the *Local Government Act 1993* (NSW). In particular it promotes Council's long-term strategic planning on behalf of the local community.

The Council's strategic planning for Meadowbank envisions an attractive, vibrant and sustainable urban place which provides quality residential developments complimented with enhanced pedestrian, bike and road access through Meadowbank.

The Planning Agreement requires the Developer to construct and dedicate land for a Public Road. It also requires the Developer to construct and transfer to Council an Affordable Housing Unit.

In summary, the Planning Agreement promotes the Council's charter by ensuring the delivery of the public benefits under the Planning Agreement which in turn satisfy the following aspects of Council's charter:

- (i) the engagement by Council in long-term strategic planning on behalf of the local community;
- (ii) the provision of adequate, equitable and appropriate services and facilities for the community; and
- (iii) the appropriate response as to the provision and planning for the needs of the community.

(c) The impact of the Planning Agreement on the public or any section of the public.

The scope of the Planning Agreement will benefit the local and wider community as it will improve the public domain by providing improved local roads and much needed Affordable Housing opportunities.

It is envisaged that the Contributions to be delivered under the Planning Agreement will have a positive impact on the locality by virtue of improving public road access and providing a much needed affordable housing unit.

(d) Whether the Planning Agreement conforms with Council's capital works program

The Planning Agreement is not inconsistent with the Council's capital works program.

(f) The planning purpose or purposes of the Planning Agreement

The Planning Agreement will provide a major public benefit in terms of the provision of improved public road access and an affordable housing unit. As it would be difficult to obtain these public benefits through other statutory means, the Planning Agreement is the most suitable instrument by which the Contributions can be delivered.

ITEM 6 (continued)

ATTACHMENT 1

(g) Compliance of certain requirements prior to issue of construction, occupation or subdivision certificates.

The Contributions under the Planning Agreement, being the Contribution Works and the transfer / dedication of the Contribution Land, must be provided in accordance with the timing provisions as set out in Schedule 3 of the Planning Agreement, which are linked, where relevant, to the issue of any occupation certificates for the Development.

In summary, the dedication and transfer (as the case may be) of the Contribution Land to Council are required to occur prior to the issue of an Occupation Certificate or the occupation of the Development, whichever occurs first.

For more specific details as to the compliance of certain requirements under the Planning Agreement prior to the issue of construction, occupation or subdivision certificates please refer to Schedule 3 of the Planning Agreement, a copy of which is attached to and forms part of this Explanatory Note.

In addition to the above, prior to the issue of the first Construction Certificate for any Building within the Development, the Developer is required to provide a Bond to the Council for the Required Face Value (i.e. \$167,678) as security for its obligations under the Agreement relating to the Contribution Works.

ITEM 6 (continued)

ATTACHMENT 1

Annexure to Explanatory Note - Contributions Schedule (Schedule 3 of the Planning Agreement)

ITEM 6 (continued)

ATTACHMENT 1

Schedule 3 - Contributions Schedule

1.1 Contributions Tables

Table 1 – Contribution Land

| <u>Column 1 - Contribution</u> | | <u>Column 2 - Date Contribution Land is to be dedicated</u> |
|--------------------------------|--|--|
| 1. | <p>The Contribution Land for Road</p> <p>The dedication of part of the Land, being that area identified as “<i>Proposed Road Widening</i>” (approximately 161 square metres and 2.6 metres wide) in Schedule 17 – Land Dedication Plan, to the Council as Public Road.</p> | <p>Prior to the earlier occurrence of:</p> <p>(a) the issue of any Occupation Certificate for any part of the Development; and</p> <p>(b) the occupation of any part of the Development.</p> |
| 2. | <p>The Contribution Land for Affordable Housing</p> <p>The transfer in strata to Council of that part of the Building, being the Affordable Housing Unit marked as Unit 16 and the associated car parking space and storage area marked as CP16 and (W) respectively (with a combined total area of approximately 92m² square metres) in Schedule 12 – Affordable Housing Unit Plan.</p> | <p>Prior to the earlier occurrence of:</p> <p>(a) the issue of any Occupation Certificate for any part of the Development; and</p> <p>(b) the occupation of any part of the Development.</p> |

Table 2 - Contribution Works

| <u>Column 1 - Contribution</u> | | <u>Column 2 - Date Contribution Works are to be delivered/Practically Completed</u> |
|--------------------------------|---|---|
| 1. | <p>Remediation of Contribution Land</p> <p>The Developer must ensure that prior to the Contribution Land being transferred to the Council:</p> <p>(iii) The Contribution Lands are to be remediated in accordance with any Remediation Action Plan as approved by a Site Auditor so that they are made suitable for their use as road and public domain (as the case may be) in accordance with the <i>Contaminated Lands Management Act 1997</i>; and</p> <p>(iv) Provide certification from a Site Auditor that the Contribution Lands have been remediated and are suitable for their intended use by Council as contemplated under the terms of this Deed.</p> | <p>To be Practically Completed and Remediation verified by the Site Auditor prior to the date Contribution Land is to be dedicated and transferred (as the case may be) to Council as identified in Table 1 of this Schedule 3.</p> |
| 2. | <p>Road, footpath and public domain construction and utility</p> | |

ITEM 6 (continued)

ATTACHMENT 1

| | | |
|-----------|---|---|
| | <p>services installation</p> <p>The Developer will undertake all road and footpath construction within the area identified as "Proposed Road Widening" (approximately 161 square metres and 2.6 metres wide) on the plan contained in Schedule 17 - Land Dedication Plan and to at least the construction standard referred to in Schedule 16 - Indicative Public Domain Concept Plan (security for which works is to be provided for the value of the Required Face Value as indexed in accordance with paragraph 1.3 of Schedule 10)</p> <p>The works must include the following:</p> <ul style="list-style-type: none"> (ii) Roads including wear to surface, pavement, sub base, subgrade, kerb and gutter, drainage, line marking and sign posting; (iii) Paving, including compacted sub-grade, concrete substrate, concrete unit pavers; (iv) Kerb re-alignment and replacement (standard City of Sydney Council blue stone details); (v) Drainage works; (vi) Service requirements (power, water, gas etc., including undergrounding these services with provision of a 1.5 metre depth below design ground level for these services); (vii) Adjustments to all existing services pits and man holes; (viii) Demolition of existing kerbs and infra-structure; (ix) Street lighting and associated services; (x) Street trees and associated urban details; and (x) Traffic control and associated temporary infrastructure. | <p>To be Practically Completed prior to the date that the Contribution Land for Road is to be dedicated to Council as listed in Table 1 of this Schedule 3.</p> |
| <p>3.</p> | <p>Affordable Housing Unit</p> <p>The Developer will design, construct and complete the Affordable Housing Unit in accordance with the following requirements:</p> <ul style="list-style-type: none"> (a) It is to have a minimum floor area of 92m²; (b) It is to be constructed and finished so as to be fully operational but with the exclusion of any loose furniture; and (c) It is to be designed so as to be Accessible. | <p>Prior to the earlier occurrence of:</p> <ul style="list-style-type: none"> (a) the issue of any Occupation Certificate for any part of the Development; and (b) the occupation of any part of the Development. |

ITEM 6 (continued)

ATTACHMENT 1

Executed as a Deed.

EXECUTED by **THE COUNCIL OF**)
THE CITY OF RYDE by [INSERT],)
General Manager under delegated authority)
pursuant to Section 377 of the Local)
Government Act 1993 in the presence of:)

Witness (signature):

[INSERT NAME]

Name (printed):

EXECUTED by **DEP SHEPHERD BAY**)
PTY LTD (ACN 167 939 504) in accordance)
with section 127 of Corporations Law:)
)
)

Signature:

Signature:

Name:

Name:

Position:

Position:

EXECUTED by **JOHN O'BRIEN** in the)
presence of:)
)
)
)

Witness (signature):

John O'Brien

Full Name (printed):

ITEM 6 (continued)

ATTACHMENT 1

EXECUTED by JOANNE RHOOK in the)
presence of:)
)
)
)
)

Witness (signature):

Joanna Rhook

Full Name (printed):

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ATTACHMENT 1



Division of Local Government
Department of Premier and Cabinet

Capital Expenditure Guidelines

December 2010

These are Director General's Guidelines issued pursuant to section 23A of the *Local Government Act 1993*.

ITEMS 13 and 14 (continued)

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(Special arrangements may be made if these hours are unsuitable)

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Premier & Cabinet
Division of Local Government

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Acknowledgement: These Guidelines draw on information published by the Government of Western Australia, Department of Treasury and Finance, Project Evaluation Guidelines; Victorian Government, Local Government Victoria, Local Government Asset Investment Guidelines.

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ATTACHMENT 1

1 Purpose and Scope of Guidelines

These Guidelines have been developed to assist NSW councils prepare Capital Expenditure Reviews. Capital expenditure is incurred when a council spends money to buy, construct, renovate or acquire an asset.

The Guidelines have been designed to:

- encourage councils to evaluate major capital expenditure by means of a consistent methodology
- improve the quality of council's analysis performed in supporting all forms of project funding and capital expenditure
- enable the financial impact of projects on a council to be quantified, identified and controlled.

The Guidelines aim to ensure that a council's evaluation of the proposed capital expenditure is consistent and rigorous, the merits of projects can be compared and resource allocation can be made on an informed basis. It is important that the evaluation of the project is carried out in a clear, transparent and systematic way. The process of evaluation and reporting methods outlined in these Guidelines will enhance the transparency and rigour of capital expenditure project evaluation.

Capital Expenditure Review is a necessary part of a council's capital budgeting process and as such should be undertaken as part of the Integrated Planning and Reporting requirements in the preparation of the Community Strategic Plan and Resourcing Strategy.

2 Overview

As councils are responsible for the prudent management of community resources, it is important that as part of council's normal planning process, councils undertake a Capital Expenditure Review before committing to any major capital project.

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3 What projects do the guidelines apply to?

These guidelines apply to capital projects for infrastructure facilities, including renovations and extensions that are expected to cost in excess of 10% of council's annual ordinary rate revenue or \$1 million, whichever is the greater (GST exclusive).

In addition to the minimum requirements for a Capital Expenditure Review, a council is also required to complete additional requirements in cases where a project's cost is forecast to exceed \$10 million (GST exclusive).

Councils may consider it prudent to undertake Capital Expenditure Reviews for projects under the threshold, but this will be at a council's discretion.

4 What projects are exempt from the guidelines?

The guidelines do not apply to:

- capital expenditure on land purchases, land remediation, water supply networks, sewerage networks, stormwater drainage, domestic waste management facilities, roads, footpaths, bridges;
- projects where funding has been approved under the *Public Reserves Management Fund Act 1987*;
- projects that are classified as Public-Private Partnerships;
- project designs and feasibility studies that do not commit council to the project (the cost of such studies are to be included if council subsequently proceeds with the project).

While the guidelines do not apply to the projects described above, capital expenditure on such things as land purchase for an applicable project should be included as part of the capital expenditure review of that project.

Although a project may be exempt from the submission of a capital expenditure review to the Division, it is expected, that in accordance with best practice, councils should apply the principles of these guidelines to all capital projects.

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5 Unplanned asset replacement arising from premature failure

From time to time, councils may be required to undertake emergency work to replace assets due to premature failure, fire, flood or accidental damage.

In these circumstances, council should take the opportunity to review and assess the assets. In undertaking this assessment, council should consider these guidelines in conjunction with council's asset management plans, the asset's prior serviceability and community requirements prior to replacement.

6 s23A Guidelines

These guidelines have been issued by the Chief Executive of the Department of Premier & Cabinet, Division of Local Government (under delegated authority) in accordance with section 23A of the *Local Government Act 1993* (the Act). As such councils are required to take them into consideration before exercising any of their functions.

7 When do councils need to notify the Division and notification requirements

Councils are required to notify the Division of all capital expenditure projects to which these Guidelines apply, prior to the commencement of the project.

Notification to the Division will include:

- A brief description of the project
- The estimated cost of the project and proposed funding sources
- Anticipated start and completion dates
- A brief commentary on how the council has fulfilled each of the Capital Expenditure Review requirements relevant to the project based on cost.

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Council may be requested to provide additional information to the Division in some instances. The Division reserves the right to assess the process undertaken by the council for the capital expenditure project, but it will not approve or endorse the project itself.

If a council is requiring special variation funding for the capital expenditure, council must complete the capital expenditure review and submit this to the Division prior to submission of the special variation application.

If project costs increase by 10% of the initial costs at any time, council must notify the Division of the revised project cost and give a brief explanation as to the reasons for the increase and the council's process and plans to meet these increases. Council should also keep the community informed of cost increases and associated reasons.

8 Council Responsibilities

Councils have a responsibility to their community for the prudent management of community assets and finances.

To establish the project costs, all elements of the project must be taken into account. This includes feasibility studies, project design and scoping costs, the provision of non-monetary goods and/or services and any costs associated with the development application and its conditions.

Where a project is conducted in stages, it is to be considered as one project. Councils are not to break a project up into smaller parts in order to avoid the threshold requirements contained in these Guidelines.

9 Preliminary Business Case

Before a council undertakes a capital expenditure project a preliminary business case must be prepared to determine whether the proposal is necessary, consistent with council's community strategic plan, delivery program and operational plans,

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offers value for money and that the council has the capacity to deliver and maintain their current and future community services in the long term. The council must demonstrate that its decision to carry out the capital expenditure is based on sound strategic and financial planning, supported by valid data and research; and that it reflects the views, priorities and objectives of the broader community.

Councils are required to prepare a preliminary business case for each council project to which these Guidelines apply. It is also appropriate to prepare a preliminary business case for any project assessed or considered as high risk.

The preliminary business case describes the high level objectives for the project and identifies possible alternative proposals. It should outline the risks, sustainability issues, costs and benefits relevant to these alternatives, as well as identify any assumptions on which the proposal(s) are based.

Cost estimates should be reasonably reliable but not to the level of accuracy as required in the capital expenditure review. The more accurate the costing is, the more useful it will be for the decision making process.

It is expected that the cost estimate in the preliminary business case be within 15% of the project's final cost.

The ongoing costs relating to the capital works project (ie, lifecycle costs), should also be identified.

The amount of detail in the preliminary business case should reflect the proposed project's scale, cost and risk.

The governance model and internal controls, which will be utilised to manage project risks and assist the successful completion of the project, should also be identified. For example, preliminary business cases should include information relating to the project's Steering Committee, Project Team, monitoring and review systems and if necessary, Probity Advisor and internal audit program.

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The preliminary business case should be supported by evidence and evaluate the service needs, options and implementation of the proposal. The evidence must be based on quantitative and qualitative data, use established methodologies that assess costs and benefits and link resources to services and results via evidence-based results logic. It is important that any assumptions on which supporting data is based are clearly identified.

Once a council is satisfied that sufficient information and evidence has been provided in the preliminary business case and has resolved to continue with the project, a Capital Expenditure Review should be prepared.

10 Capital Expenditure Review Minimum Requirements

The following are the minimum requirements for a Capital Expenditure Review. It is recommended that councils undertake this review as part of their internal control processes for all material or high risk capital expenditure projects, irrespective of the funding source.

It is also considered best practice for councils to complete a capital expenditure review for projects exempt from these guidelines.

10.1 Outline proposed Project

- Council should give a brief outline of the project.

10.2 Justify the Need

Justify the need for the proposal based on firm estimates of future needs, including:

- demonstration of a clear relationship between the proposal and council's community strategic plan, delivery program and operational plan
- completion of a business case / feasibility study
- analysis of community needs and expectations based on community consultation, which should identify how the project will address specific community needs and any issues of public access and equity

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- an outline of the projected costs in council's long term financial plan and asset management plans.

10.3 Assess the Capacity of Council

Assess the capacity of council to manage the project to completion and into the future by:

- determining the capacity of council's management and skill base to undertake the project
- identifying the responsibilities of council to the project on a year-by-year basis throughout the project's lifetime. These responsibilities must be itemised and costed (see 10.6 Financial Implications)
- undertaking a risk assessment of the project including:
 - assessment of the governance and management structures in place to effectively minimise project risks. The appropriate structure will depend on the type and complexity of the project and the stakeholders involved. It would be expected that council has an internal audit function as part of its governance structure.
 - assessment of compliance requirements including but not limited to the *Local Government Act 1993*, *Environmental Planning and Assessment Act 1979*, *Heritage Act 1977* and any other legislation considered appropriate for the project
- considering the appointment of a Steering Committee
- designating a project manager. Councils should ensure that candidates for this position have the appropriate skills, expertise and experience to manage the project. A rigorous and open recruitment process should be undertaken by council to ensure that an appropriate candidate is found. Once a project manager has been designated, council should ensure that sufficient delegations are granted to allow the manager to undertake the work.

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10.4 Priorities

Determine the priority of the project in relation to existing capital commitments and future works by:

- assessing the impact of the project's funding on existing and future capital works and services in accordance with council's long term financial plan
- reviewing the community strategic plan, delivery program and operational plan to ensure the proposal is aligned to council's objectives, and
- reviewing the asset management plan/s to ensure that other assets do not require the funding as a higher priority

In accordance with the Integrated Planning and Reporting framework, councils will also have developed and put in place, current asset management plans that give consideration to future infrastructure needs. Proposed capital expenditure for infrastructure must be included in these plans, including appropriate linkages to council's delivery program and operational plan.

10.5 Alternatives

Consider the full range of project alternatives, including:

- the preparation of a project plan with appropriate economic appraisals of council's preferred and alternative options
- an assessment of alternative service delivery methods
- an assessment of alternative methods of acquisition. Possible alternatives to consider include renting, renovating, constructing, or acquiring an existing building
- the consequences of not proceeding with the proposal.

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10.6 Financial Implications

Project costs should be considered from a 'whole of life' perspective. They should also be included in a council's long term financial plan as part of council's Integrated Planning and Reporting framework. These costs should include, but not be limited to:

- (i) design costs
 - (ii) the costs of land acquisitions
 - (iii) the costs of land disposals
 - (iv) land and property development costs
 - (v) raw materials costs
 - (vi) maintenance and other ongoing operational costs
 - (vii) depreciation and/or provisions for replacement costs
 - (viii) labour costs
 - (ix) opportunity costs
 - (x) overhead costs, such as project management
 - (xi) payments and fees, including expenses and allowances, to external providers and council's consultants and advisers
 - (xii) loan and/or other financing establishment costs
 - (xiii) plant and equipment costs
- sourcing of funds:
 - (i) where funds are to be borrowed council must comply with Part 12, Chapter 15 of the Act and with the Ministerial Borrowing Order, which can be located in the Code of Accounting Practice and Financial Reporting on the Division's website at www.dlg.nsw.gov.au
 - (ii) where funds are to be sourced by way of internal loans council must obtain Ministerial approval and comply with s410(3) and s410(4) of the Act
 - (iii) where funds are to be sourced by way of a special variation, approval must be sought under Part 2, Chapter 15 of the Act
 - identification of any potential increase in council's actual or prospective expenditures, whether in terms of one-off capital amounts or recurrent expenditures. This includes consequential recurrent costs such as maintenance, debt servicing, staffing, etc

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- identification of systems in place to monitor and control increases in project costs
- identification of any potential loss in the value of council's assets or a potential loss in actual or prospective revenue
- consideration of the possible inability of council to discharge its Charter obligations to provide adequate, equitable and appropriate services and facilities for the community
- cash flow analysis. This should detail council's ability to repay any loans required for the project. The cost of funds and the effect of debt servicing, including internal reserves, should also be considered
- Net Present Value calculations – cost/benefit. Break even analysis for best, worst and likely scenarios.

It is expected that in the capital expenditure review there will be a higher level of accuracy in relation to estimated costs than the preliminary business case. It is expected that the cost estimate in the capital expenditure review will be within 5% of the final cost.

When calculating future costs it is appropriate that project costs are indexed based on prudent and reasonable assumptions. These assumptions should be documented and able to be provided on request or provided as part of the project's capital expenditure review.

10.7 Public Consultation Process

Councils must undertake public consultation and engagement processes prior to making any commitment to the project. Like other aspects of council business, councils are strongly encouraged to involve the community in decision making around capital projects. It is a requirement under these guidelines, that councils prepare a report on the public consultation process undertaken to bring the project to the review state as well as providing details on the process, for ongoing reporting on the project to the council and the community. The report should include:

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- how council conveyed the social, economic, employment, financial and environmental impacts of the project to the community
- confirmation that the project is included in the council's community strategic plan, delivery program and operational plan
- details of the consultation processes council has in place to allow participation by affected groups and consideration of their views
- a public interest evaluation showing a positive outcome for the broader community, which includes but is not limited to; effectiveness, accountability and transparency, equity, public access, consumer rights, security and privacy.
- details of the methods used by council to inform the broader community of the proposed project, its key elements and decisions made in relation to the project. This may include community newsletters, community surveys, newspaper or radio advertisements, etc.
- council's planning process to enable the community be provided with sufficient information to be adequately informed. To be considered sufficient the delivery program and operational plan should include:
 - purpose of project and benefits to the community
 - costs and funding sources, and
 - construction time frames
- details of the public reaction to the proposal including any statistics on the outcome of surveys, any correspondence received from the community, etc
- details on any public meetings held in regard to the proposal

11 Capital Expenditure Review Additional Requirements – project costs in excess of \$10M (ex GST)

In addition to the minimum requirements set out above, a council is also required to complete the following additional requirements in cases where a project's cost is forecast to exceed \$10 million (GST exclusive). For projects below the \$10 million threshold, the additional requirements are optional. They are considered best

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practice and councils are encouraged to complete them for all projects which are considered high risk or of material costs.

Where the project costs fall into the above category, councils are also required to carry out a more intensive community consultation process. This may include additional consultation with specific groups and/or the community in relation to the detailed components of the project. It could involve community meetings, surveys and information sessions.

11.1 Business/Management Project Plan

Councils must complete a comprehensive business/management project plan. The plan should contain the key elements and deliverables of the project and outline the costs and revenues associated with them. Details should include, but not be limited to:

- the business structure, if appropriate
- key personnel and their relevant experience
- description of the proposal and its product/service
- current market position and the potential for growth
- the business objectives both in the short and long term
- the reason the proposal will be successful
- financial projections.

The financial projections should include:

- both direct and indirect costs, separately identified
- both capital costs and ongoing recurrent costs, as well as any other expenses that are expected to occur once the project has been delivered and is operational
- inclusion of these projections in council's long term financial plan and asset management plan.

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A report on all financial implications is to be prepared, including:

- an economic/market appraisal which includes:
 - (i) a cost/benefit analysis test (where major benefits can be quantified)

The analysis needs to be conducted with objectivity and balance. The cost benefit analysis has to account for benefits to the public as a whole. It is important that the views and assumptions used in the analysis are thoroughly tested for validity and reasonableness. In particular, it should be ensured that views of the wider community are considered.

The analysis of the benefits and costs needs to be unbiased and the conclusion transparent. This helps ensure that the conclusion has not been predetermined. The analysis must be rigorous, where conclusions follow logically from the analysis and the evidence considered.

The economic/market appraisal should show a positive result in terms of monetary or community benefit. In the case of business undertakings, full competitive neutrality pricing requirements should be applied and all ongoing expenses taken into account.

- (ii) an analysis of cost effectiveness (where outputs are not readily measured in monetary terms)

The analysis should consider but not be limited to issues such as:

- Environment – effects on land, flora, fauna, air and water
- Heritage – impacts that effect the existence or integrity of an historical site
- Quality of Life – impacts that alter the population's enjoyment of life
- Health & Safety – that the community is not exposed to unnecessary health or safety risks

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- Law & Order – change in the maintenance of law and order in the community

11.2 Risk Management Plan

Council must develop and put into operation an appropriate risk management plan for the project. The plan should be reviewed, updated and amended as and when required during the development of the project. All potential risks must be identified and addressed. Risks may not only be measured in monetary or financial terms. Possible risks may include:

Investment/Planning Risk

- Investment/planning risk relates to the quality of the planning that has contributed to the investment proposal. It can help to identify critical issues that may not have been considered as part of the planning process or potential costs and benefits that have been incorrectly estimated. There is also the risk that community needs have been misunderstood or that the services to be delivered by the project will not meet needs or expectations.

Design Risk

- Design risk relates to the level of complexity of the project, the extent to which proven technology will be used to achieve the projects aims and the realism associated with the time period estimated for completion
- External approvals risk relates to issues associated with obtaining approval for the proposal to proceed including public consultation, planning approval, environmental approvals, heritage approvals, etc.

Demand/Market Risk

- The demand or market risk relates to whether there is sufficient demand for the proposed project in order for it to succeed or that the proposed fees and charges will adversely affect demand.

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Management/Operations Risk

- Management risk relates to the role management plays in ensuring that the investment delivers the expected outcomes. Where the management team named in the proposal has no experience in dealing with similar projects, this increases the risk and lessens the likelihood of success. Operations risk relates to the operational problems that may occur if the project is not planned and managed correctly
- As part of the assessment of operations risk, council should also consider whether it has adequate insurance coverage for the project and whether or not it has obtained adequate legal advice, if necessary for the project to be delivered.

Reputation Risk

- Reputation risk looks at issues relating to council's reputation being effected if the project is not completed or does not meet its targets or the expectation of the community. Other issues to be considered as part of this analysis could include such things as cost overrun, time over run, impractical designs and looking closely at council's community consultation to ensure the project is supported by the community and wider public.

Compliance Risk

- Compliance risk relates to the risk that the project fails to comply with any relevant regulations, legislation or polices, eg planning, heritage or environmental.

Completion/Construction Risk

- The completion/construction risk relates to the risk that the proposed project will not be completed in accordance with the specifications and within the stipulated timeframe and/or budget. In assessing such a risk, consideration will need to be given to the potential external and financial impacts of such outcomes.

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Environmental Risk

- Environmental risk refers to the impact of the proposal on the environment and will encompass the criteria previously considered.

Occupational Health and Safety Risk

- All occupation health and safety issues need to be considered such as construction material, noise and site safety.

Other Risks

- Any other proposal implementation risk not identified under the above headings should be documented and assessed
- Councils should also consider what actions will be undertaken if the project is not meeting and or achieving milestones or costs, eg cost blowouts, builder insolvency, unexpected economical situations, unexpected excavation costs

11.3 Probity Plan

Councils must develop a probity plan for the project. A probity plan is needed to ensure:

- that the project process is transparent, that conflict of interests are avoided, pecuniary interests declared and that the project complies with competition laws and principles
- if land is to be rezoned, that the development application process is outlined with particular attention paid to the separation of council's roles as landowner and consent authority
- the plan may need to include documentation of the relationship between the parties involved in the project, eg, the independence of parties from the project, council or prospective private sector bidders for the project.

11.4 Tender Evaluation

The tendering process should be in accordance with the Division's Tendering Guidelines. The *Local Government (General) Regulation 2005* and the *Local Government Act 1993*. Councils should detail how the tendering/contracting process

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will be conducted, ie, tender stages, details of assessment panels, assessment process (including proposed evaluation criteria) and short listing.

12 Reporting

Councils must put mechanisms in place to report on all aspects of the project. Minimum reporting requirements for all capital expenditure projects include:

- quarterly reporting to the council on the progress of the project
- quarterly reporting to the council on the costs and budget variances regarding the project. Where costs and budget variances are reported by line item, the report should also include the impact on the total project
- any issue that may have an adverse impact on the project (this may include monetary and non-monetary inputs and outcomes). The risk management plan may be relevant in this regard
- reporting capital works projects in council's annual report, which is considered to be best practice.

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13 Summary Flow Chart

