

Voluntary Planning Agreement

Parramatta City Council
ABN 49 907 174 773


Drill Pty Ltd
ACN 000 175 600



Chief Executive Officer of Council



Lord Mayor of Council



Director of Developer



Director / Secretary of Developer

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Agreement

Date 29 January 2016

Parties

First party

Name Parramatta City Council (**Council**)
ABN 49 907 174 773
Contact The Chief Executive Officer
Telephone (02) 9806 5050

Second party

Name Drill Pty Ltd (**Developer**)
ACN 000 175 600
Contact Mark Hovey
Telephone (02) 9363 9615

Background

- A. The Developer owns the Land.
- B. The Developer proposes to carry out the Development on the Land. To this extent, the Developer proposes to make a development application to Council for the Development.
- C. Clause 4.3 of the LEP provides that the height of a building on any land is not to exceed the maximum height shown on the land on the Height of Buildings Map. The Height of Buildings Map currently provides a maximum building height for the Land of 12 metres.
- D. Clause 4.4 of the LEP provides that the maximum floor space ratio on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map. The Floor Space Ratio Map currently provides a maximum floor space ratio for the Land of 1.5:1.
- E. The Developer has sought a change to the LEP to allow a maximum building height of 52 metres on the Land and a maximum floor space ratio of 4.5:1, on the Land with a limit on the residential floor space of any development on the Land at a maximum of 1.5:1.
- F. The Developer has made an offer to enter into a planning agreement requiring the Developer to deliver public domain works, being the Works, and the Council has accepted the offer. The Parties wish to formalise that arrangement by entering into this agreement in accordance with section 93F of the Act.

Operative part

1 Definitions

In this agreement, unless context indicates a contrary intention:

Accredited Certifier has the same meaning as in section 4(1) of the Act;

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

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

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

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

Bank Guarantee means an irrevocable and unconditional undertaking by one of the following trading banks:

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

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

Bond means an insurance bond from a AAA credit rated party;

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

Certificate of Practical Completion means the written certificate confirming the Public Domain Works, or part of the Public Domain Works, have been completed to the Council's satisfaction, issued in response to a request under clause 8.1(a) of Schedule 3;

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

Complete, Completed, and Completion means the completion of the Works or part thereof in accordance with a Development Consent and the terms of this agreement (subject to a Development Consent);

Completion Notice means a notice issued by an Accredited Certifier setting out that the Works or part thereof are Complete and which:

- (a) is in writing;

- (b) states that it has been issued under this agreement; and
- (c) certifies that the Works (or the relevant part thereof referred to in the notice) are Complete;

Construction Certificate means a construction certificate as defined under s109C of the Act;

Construction Terms means the terms set out in Schedule 3;

Council Land means the land on which the Public Domain Works are to be carried out and that is owned by or under the control of the Council.

Covenant means the covenant referred to in clause 6.5(a)(i) of this agreement;

Development means a mixed-use multi-storey development proposed for the Land by the Developer in the event the Instrument Change is made;

Development Application means an application for development consent for the Development in accordance with the Act;

Development Consent means any consent granted to the Development Application in accordance with the Act;

Easements means, together, the Setback Area Easement, the Plaza Area Easement and the Thoroughfare Easement;

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

Floor Space Ratio Map has the same meaning as in the LEP;

GST has the same meaning as in the GST Law;

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

Height of Buildings Map has the same meaning as in the LEP;

Instrument Change means a change to the LEP to provide the following for the Land:

- (a) a maximum building height of 52 metres;
- (b) a maximum floor space ratio of 4.5:1; and
- (c) a limitation on the residential floor space ratio to a maximum of 1.5:1;

Land means Lot 10 DP 605684, Lot 1 DP 952720 and Lot 1 DP 972068, currently within Auto Consol 14505-69, known as 24-26 Railway Parade, Westmead;

Landscape VPA Plan means the Landscape VPA Plan prepared by Urbis dated 31 March 2014, Drawing No. FI-201, Revision D, at Annexure A;

Law means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and

(c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b);

LEP means Parramatta Local Environmental Plan 2011;

Modification Application means any application to modify any Development Consent under section 96 of the Act;

Occupation Certificate means an occupation certificate as defined under section 109C of the Act, and includes an interim Occupation Certificate or a final Occupation Certificate;

Plaza Area means the area of the north-western corner of the Land marked "A" and bounded by a solid grey line shown on the Landscape VPA Plan on which an open space plaza is to be constructed in accordance with clause 6.3(a);

Plaza Area Easement has the meaning provided for in clause 6.5(a)(iii);

Plaza Area Easement Terms means the terms set out Schedule 5 for the Plaza Area Easement;

Plaza Works means the works described as the Plaza Works in Part 2 of Schedule 2;

Public Domain Works means the works described as the Public Domain Works in Part 3 of Schedule 2;

Public Thoroughfare means that part of the Land necessary to access the Plaza Area from Railway Parade shown generally as the area marked "Indicative Through Link" and bounded by a solid grey line on the Landscape VPA Plan;

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

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

Scope of Works means the scope of works pertaining to the Works set out in Schedule 7;

Setback Area means the area of the Land created by the set back of any future building at least 3 metres back from the boundaries of the land fronting Railway Parade and Ashley Lane;

Setback Area Easement has the meaning provided for in clause 6.5(a)(ii);

Setback Area Easement Terms means the terms set out in Schedule 6 for the Setback Area Easement;

Setback Works means the works to the Setback Area described as the Setback Works in Part 1 of Schedule 2;

Thoroughfare Terms means the terms set out in Schedule 4 for the Thoroughfare Easement;

Thoroughfare Easement has the meaning provided for in clause 6.5(c);

Works means the Plaza Works, the Public Domain Works and the Setback Works.

2 Interpretation

In this agreement, unless context indicates a contrary intention:

- (a) **(documents)** a reference to this agreement or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this agreement;
- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement;
- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;
- (e) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) **(requirements)** a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (g) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (h) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (i) **(singular)** the singular includes the plural and vice-versa;
- (j) **(gender)** words importing one gender include all other genders;
- (k) **(parts)** a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (l) **(rules of construction)** neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (m) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (n) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Sydney, Australia, even if the obligation is to be performed elsewhere;

- (o) **(joint and several)** an agreement, representation, covenant, right or obligation:
 - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
 - (ii) on the part of two or more persons binds them jointly and severally;
- (p) **(writing)** a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (q) **(replacement bodies)** a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
- (r) **(Australian currency)** a reference to dollars or \$ is to Australian currency;
- (s) **(month)** a reference to a month is a reference to a calendar month.
- (t) **(year)** a reference to a year is a reference to twelve consecutive calendar months.

3 Planning Agreement under the Act

The parties agree that this agreement is a planning agreement within the meaning of section 93F of the Act.

4 Application of this Agreement

This agreement applies to:

- (a) the Land,
- (b) the Instrument Change,
- (c) the Development; and
- (d) to the extent not covered in above paragraph (a) the land on which the Public Domain Works are to be carried out.

5 Operation of this Agreement

The parties agree that this agreement operates on and from the date the Instrument Change is made, being the date the Instrument Change is published on the NSW Legislation Website.

6 Contributions to be made under this agreement

6.1 Works

- (a) The parties agree that the extent of Works required to be carried out by the Developer under this agreement is dependent on the size of the Development measured by floor space ratio.

- (b) The Developer will carry out those Works corresponding to the floor space ratio of the Development as set out in the table at Part 4 of Schedule 2.

6.2 *Setback Area and Setback Works*

- (a) The Developer agrees and acknowledges that any future building on the Land will be set back three metres from the Railway Parade and Ashley Lane frontages of the Land.
- (b) The Developer will carry out the Setback Works generally in accordance with any development consent granted under the Act, the Landscape VPA Plan, the Scope of Works and the Construction Terms.

6.3 *Plaza Area*

- (a) Subject to clause 6.1, the Developer will carry out the Plaza Works generally in accordance with any development consent, the Landscape VPA Plan, the Scope of Works and the Construction Terms.
- (b) The Developer acknowledges and agrees that any Development Application or Modification Application for a building on the Land will include a pedestrian link from Railway Parade through the building to the Plaza Area, if the Plaza Works are required to be carried out by the Developer under this agreement.

6.4 *Public Domain Works*

Subject to clause 6.1, the Developer will carry out the Public Domain Works generally in accordance with any development consent, the Landscape VPA Plan, the Scope of Works and the Construction Terms.

6.5 *Public Access and Easements*

- (a) Subject to clause 6.1, the Developer will, at no cost to Council, register against the title to the Land:
 - (i) a covenant prohibiting any building or structures, including pillars, other than structures approved by the Council (acting reasonably) for the purposes of enhancing public domain areas, to be constructed on the Setback Area and, if the Plaza Works are required to be carried out by the Developer under this agreement, the Plaza Area, which covenant is to be limited in height and depth to correspond with the height and depth of the Setback Area Easement and, where applicable, the Plaza Area Easement; and
 - (ii) an easement in gross burdening that part of the Land on which the Setback Area is located limited in height to the ceiling of the second storey of the Development and depth to the top of the basement car park structure of the Development in favour of the Council permitting public access to the Setback Area and generally in accordance with the Setback Area Easement Terms (**Setback Area Easement**);

- (iii) if the Plaza Works are required, an easement in gross burdening that part of the Land on which the Plaza Area is located limited in height to the ceiling of the second storey of the Development and depth to the top of the basement car park structure of the Development, in favour of the Council permitting public access to the Plaza Area generally in accordance with the Plaza Area Easement Terms (**Plaza Area Easement**).
- (b) The Setback Area Easement and Plaza Area Easement must require the owner of the Setback Area and the Plaza Area to:
 - (i) maintain and repair the Setback Area and the Plaza Area to the satisfaction of the Council, acting reasonably;
 - (ii) maintain sufficient public liability insurance covering the use of the Setback Area and the Plaza Area; and
 - (iii) ensure that any rules made by an Owner's Corporation relating to the Setback Area and the Plaza Area are approved by the Council, acting reasonably.
- (c) The Developer will, at no cost to Council, register against the title to the Land an easement in gross limited in height to the ceiling of the second storey of the Development and depth to the top of the basement car park structure of the Development in favour of the Council permitting use of the Public Thoroughfare to access the Plaza Area generally in accordance with the Thoroughfare Terms (**Thoroughfare Easement**).
- (d) The Thoroughfare Easement must:
 - (i) burden that part of the Land on which the Public Thoroughfare is located;
 - (ii) incorporate the grant of full and free right to Council and every person authorised by it including any member of the public, to go, pass and re-pass on foot at all times and for all lawful purposes without animals (other than guide dogs or registered companion animals) or vehicles (other than wheelchairs or other disabled access aids) over the Public Thoroughfare, subject to the Thoroughfare Terms; and
 - (iii) require the owner of the Public Thoroughfare to:
 - (A) maintain and repair the Public Thoroughfare to the satisfaction of the Council, acting reasonably;
 - (B) maintain sufficient public liability insurance covering the use of the Public Thoroughfare; and
 - (C) ensure that any rules made by an Owner's Corporation relating to the Public Thoroughfare are approved by the Council, acting reasonably.
- (e) The parties acknowledge and accept that any Development Consent will provide more information about the Works and size, shape and location

of the Setback Area, the Plaza Area and the Public Thoroughfare. To the extent that there is any inconsistency between a Development Consent and this agreement, the Development Consent will prevail, provided that:

- (i) the respective total area of the Plaza Area, Setback Area and Public Thoroughfare is not materially less than provided for under this agreement;
 - (ii) the nature and value of the Works is not materially less than provided for under this agreement.
- (f) To avoid doubt, to the extent that any clause in this agreement requires the Developer to carry out the Works (or part thereof) in accordance with the Landscape VPA Plan, the Scope of Works, and/or the Construction Terms, the requirements of any Development Consent are to prevail.

6.6 Manner of Delivery

- (a) Any requirement to register an easement, covenant or other instrument against the title to the Land will be satisfied when the Developer provides to the Council a copy of the relevant title search showing the registration of the instrument.
- (b) The Public Domain Works or any part of the Public Domain Works required under this agreement will be taken to have been delivered for the purposes of this agreement when a Certificate of Practical Completion has been issued for those Works.
- (c) The Setback Works and the Plaza Works or any part of those works required under this agreement will be taken to have been delivered for the purposes of this agreement when the Setback Works and the Plaza Works or part thereof have been Completed.

6.7 Timing

- (a) Any covenant required under clause 6.5(a) must be registered prior to the issue of a Construction Certificate for any building on the Land forming part of the Development.
- (b) Any easement, required under clauses 6.5(a) and 6.5(c) must be registered prior to the issue of an Occupation Certificate for any building on the Land forming part of the Development.
- (c) All Works required under this agreement must be delivered in accordance with clause 6.6(b) and 6.6(c) as relevant, prior to the issue of an Occupation Certificate for any building on the Land approved by any Development Consent.

6.8 Public Purposes

The parties agree that the requirements under this agreement at clauses 6.1 to 6.5 serve the following public purposes:

- (a) To increase the amount of and improve existing public open space areas in the vicinity of the Land;

- (b) To improve pedestrian circulation and the amenity of the public domain in the vicinity of the Land; and
- (c) To create a safe pedestrian environment in the vicinity of the Land and Westmead Railway Station.

6.9 *Future Applications*

The Developer agrees and acknowledges that the obligations under this agreement at clauses 6.1 and 6.3 are relevant considerations for the Council or any other consent authority when determining a Development Application or Modification Application relating to the Land and that a failure to comply with those obligations or any inconsistency with the requirements in those clauses may constitute a reason for refusal of such a Development Application or Modification Application.

7 Licence to Access Council Land

- (a) Subject to the Developer obtaining all necessary approvals for the Public Domain Works, the Council grants the Developer a licence to enter and occupy the Council Land for the purpose of allowing the Developer to carry out the Public Domain Works and to exercise any right or obligation granted to the Developer under this agreement (**Licence**).
- (b) The Terms of the Licence are set out in Schedule 8.

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

- (a) This agreement does not exclude the application of section 94EF of the Act to the Development.
- (b) This agreement partly excludes the application of section 94 and section 94A of the Act to the Development, only to the extent that those sections require any contributions to be made for hotel or motel accommodation or serviced apartments.
- (c) For the avoidance of doubt section 94 and section 94A of the Act will continue to apply to any part of the Development that is not hotel or motel accommodation or serviced apartments.

9 Registration of this agreement

9.1 *Registration of this agreement*

- (a) The Developer represents and warrants that it is the registered proprietor of the Land.
- (b) The Developer agrees that it will procure the registration of this agreement, under the *Real Property Act 1900* (NSW) in the relevant folios of the Register for the Land in accordance with s93H of the Act.
- (c) The Developer at its own expense will, promptly after this agreement comes into operation, take all practical steps, and otherwise do anything that the Council reasonably requires, to procure:
 - (i) the consent of each person who:

- (A) has an estate or interest in the Land; or
- (B) is seized or possessed of an estate or interest in the Land;
and
- (ii) the execution of any documents; and
- (iii) the production of the relevant duplicate certificates of title,
to enable the registration of this Agreement in accordance with
clause 9.1(b).
- (d) The Developer at its own expense, will take all practical steps, and
otherwise do anything that the Council reasonably requires:
 - (i) to procure the lodgement of this agreement with the Registrar-
General as soon as reasonably practicable after this agreement
comes into operation but in any event, no later than 15 Business
Days after that date; and
 - (ii) to procure the registration of this agreement by the Registrar-
General in the relevant folios of the Register for the Land as soon
as reasonably practicable after this agreement is lodged for
registration.

9.2 *Removal from Register*

- (a) The Council agrees that notification of this agreement may be removed
from the Register of the Land, provided that:
 - (i) the Council has been provided with evidence under clause 6.6(a)
that all easements and the covenant required under this agreement
have been registered; and
 - (ii) all Works have been delivered in accordance with clause 6.6(b).
- (b) For the avoidance of doubt, the removal of this agreement from the
Register of the Land under clause 9.2(a) does not constitute a release or
discharge of the Developer from the obligations under this agreement.

9.3 *Strata and community title*

- (a) Despite above clause 9.2, if the Land or part thereof is in the future
subdivided or otherwise converted into a community title scheme or strata
title scheme and this agreement is registered against the folio of the
Register for any of the lots in such a scheme (**Affected Lots**):
 - (i) the Developer is entitled to have this agreement removed from the
Register of the Affected Lots, except any community property or
common property; and
 - (ii) the Council must within 10 Business Days of being notified by the
Developer of the registration of this agreement on the title of the
Affected Lots on the Register execute such documents as
necessary to procure the removal of this agreement from the
Register of the Affected Lots.

- (b) For the avoidance of doubt, this agreement is to otherwise remain registered on the Register for any community property within the community title scheme or common property within the strata title scheme, as the case may be, until clause 9.2(a) has been satisfied.

10 Dispute Resolution

10.1 Reference to Dispute

If a dispute arises between the parties in relation to this agreement, the parties must not commence any court proceedings relating to the dispute unless the parties have complied with this clause, except where a party seeks urgent interlocutory relief.

10.2 Notice of Dispute

The party wishing to commence the dispute resolution processes must give written notice (**Notice of Dispute**) to the other parties of:

- (a) the nature of the dispute;
- (b) the alleged basis of the dispute; and
- (c) the position which the party issuing the Notice of Dispute believes is correct.

10.3 Representatives of Parties to Meet

- (a) The representatives of the parties must promptly (and in any event within 14 Business Days of the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute.
- (b) The parties may, without limitation:
 - (i) resolve the dispute during the course of that meeting;
 - (ii) agree that further material, expert determination in accordance with clause 10.6 about a particular issue or consideration is needed to effectively resolve the dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or
 - (iii) agree that the parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

10.4 Further Notice if Not Settled

If the dispute is not resolved within 15 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (**Determination Notice**) by mediation under clause 10.5 or by expert determination under clause 10.6.

10.5 Mediation

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

- (a) The parties must agree to the terms of reference of the mediation within 5 Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply;
- (b) The mediator will be agreed between the parties, or failing agreement within 5 Business Days of receipt of the Determination Notice, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) The mediator appointed pursuant to this clause 10.5 must:
 - (i) have reasonable qualifications and practical experience in the area of the dispute; and
 - (ii) have no interest or duty which conflicts or may conflict with his or her function as a mediator, he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) The mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (e) The parties must within 5 Business Days of receipt of the Determination Notice notify each other of their representatives that will be involved in the mediation (except if a resolution of the Council is required to appoint a representative, the Council must advise of the representative within 5 Business Days of the resolution);
- (f) The parties agree to be bound by a mediation settlement and unless waived by the parties, may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (g) In relation to costs and expenses:
 - (i) Each party will bear its own professional and expert costs incurred in connection with the mediation; and
 - (ii) The costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in unreasonable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

10.6 Expert determination

If the dispute is not resolved under clause 10.3 or clause 10.5, or the parties otherwise agree that the dispute may be resolved by expert determination, the parties may refer the dispute to an expert, in which event:

- (a) The dispute must be determined by an independent expert in the relevant field:
 - (i) agreed upon and appointed jointly by Council and the Developer; and

- (ii) in the event that no agreement is reached or no appointment is made within 30 Business Days of the agreement to refer the dispute to an expert, appointed on application of a party by the then President of the Law Society of New South Wales;
- (b) The expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;
- (c) The determination of the dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (d) The expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (e) Each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs; and
- (f) Any determination made by an expert pursuant to this clause is final and binding upon the parties except unless:
 - (i) within 20 Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and commences litigation; or
 - (ii) the determination is in respect of, or relates to, termination or purported termination of this Agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal.

10.7 Litigation

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

10.8 No suspension of contractual obligations

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

11 Security and Enforcement

11.1 Bank Guarantee

- (a) Prior to the issue of a Construction Certificate for any building on the Land forming part of the Development, the Developer is to provide to the Council a Bank Guarantee or Bank Guarantees in the amount indicated in the table in Part 4 of Schedule 2 to secure the carrying out of the Public Domain Works required to be provided in accordance with clause 6.1 of this agreement.
- (b) The Council may call on a Bank Guarantee provided under this clause only if:

- (i) the Developer is in material or substantial breach of this agreement in so far as it relates to the Public Domain Works required to be provided in accordance with clause 6.1 of this agreement only and has failed to rectify the breach after having been given reasonable notice (which must not be less than 20 Business Days) in writing to do so; or
 - (ii) the Developer becomes insolvent.
- (c) At any time following the provision of a Bank Guarantee under this clause, the Developer may provide the Council with one or more replacement Bank Guarantees totalling the amount of all Bank Guarantees required to be provided under this clause for the time being. On receipt of such replacement Bank Guarantee, the Council must release and return to the Developer, as directed, the Bank Guarantees which it holds that have been replaced.
- (d) Subject to this clause, the Council may apply the proceeds of a Bank Guarantee in satisfaction of:
 - (i) any obligation of the Developer under this agreement to carry out the Public Domain Works required to be provided in accordance with clauses 6.1 and 6.4 of this agreement, and
 - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this agreement in so far as it relates to the Public Domain Works required to be provided in accordance with clauses 6.1 and 6.4 of this agreement only.
- (e) The Council must return a Bank Guarantee provided under this clause if requested by the Developer and:
 - (i) A Certificate of Practical Completion has been issued for the item of the Public Domain Works to which the Bank Guarantee relates; and
 - (ii) The Developer has provided a Bond or Bank Guarantee under clause 9.2 of Schedule 3 for that item of the Public Domain Works; and
 - (iii) If the Bank Guarantee relates to other items of the Public Domain Works for which a Certificate of Practical Completion has not been issued, a replacement Bank Guarantee is provided by the Developer in an amount determined by the Council acting reasonably, that is equivalent to the costs of constructing those other items of the Public Domain Works.
- (f) Nothing in this clause 11.1 prevents or restricts the Council from taking any enforcement action in relation to:
 - (i) any obligation of the Developer under this agreement; or

- (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this agreement,

that is not or cannot be satisfied by calling on a Bank Guarantee.

11.2 *Restriction on the issue of Certificates*

- (a) In accordance with section 109F of the Act and clause 146A of the Regulation the obligations to:
 - (i) register the covenant under clause 6.5(a)(i); and
 - (ii) provide a Bank Guarantee under clause 11.1,must be satisfied prior to the issue of a Construction Certificate for any building on the Land forming part of the Development.
- (b) In accordance with section 109H(2) the obligation to carry out the Works under clauses 6.2(b), 6.3(a) and 6.4 and the obligation to register any easement under clauses 6.5(a)(ii) and (iii) and 6.5(c) must be satisfied prior to the issue of an Occupation Certificate for any building on the Land forming part of the Development.

11.3 *General Enforcement*

- (a) Without limiting any other remedies available to the parties, this agreement may be enforced by any party in any Court of competent jurisdiction.
- (b) Nothing in this Agreement prevents:
 - (i) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this agreement or any matter to which this agreement relates; and
 - (ii) the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this agreement or any matter to which this agreement relates.

12 **Invalidity of Instrument Change and Development Consent or this Agreement**

- (a) If there is a final and effective Court declaration or order that both the Instrument Change and any Development Consent issued pursuant to the Instrument Change are invalid (**Court Order**), the parties agree that from (and including) the date of the Court Order:
 - (i) where the Developer has not completed the whole or any part of the Works as at the date of the Court Order, the Developer has no obligation to complete the whole or any part of the Works relating to or connected with the subject matter of the Court Order and the Council cannot require the Developer to complete those Works in accordance with this agreement; and

- (ii) where the Developer has registered the covenant and/or any of the easements on the folios for the Land, the Council must:
 - (A) deliver to the Developer within 20 Business Days after the date of the Court Order a form of release for the covenant and the easements so registered; and
 - (B) take any other necessary action to give effect to the release of the covenant and easements and their removal from the folios for the Land in the Register.
- (b) Subject to clause 17.9, if there is a final and effective Court declaration or order that any part of this agreement is invalid, and/or unenforceable the parties agree that they will use reasonable endeavours to resolve the invalidity of this agreement and to give effect to the terms of this agreement so that the offer made by the Developer to enter into this agreement will continue to have effect.

13 Review

- (a) This agreement may be reviewed or modified and any review or modification of this agreement will be conducted in the circumstances and in the manner determined by the parties.
- (b) No modification or review of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement.
- (c) A party is not in breach of this agreement if it does not agree to an amendment to this agreement requested by a party in, or as a consequence of, a review.

14 Assignment and Dealings

14.1 Dealings with land

The Developer may not transfer, assign or dispose of the whole or any part of its right, title or interest in the Land (present or future) or in the Development to another person (**Transferee**) unless:

- (a) the Council has accepted that all easements, covenants or instruments required under this agreement have been registered and all Works have been delivered in accordance with this agreement; or
- (b) before it sells transfers or disposes of that right, title or interest:
 - (i) the Transferee delivers to the Council a novation deed signed by the Transferee in a form containing provisions under which the Transferee agrees to comply with all the outstanding obligations of the Developer under this agreement in accordance with the terms of this agreement; and
 - (ii) any default by the Developer under any provisions of this agreement has been remedied by the Developer or waived by the Council on such conditions as the Council may determine (acting reasonably); and

- (iii) the Developer and the Transferee pay the Council's reasonable costs in relation to the novation deed and the assignment.
- (c) For the avoidance of doubt, the Developer is not required to comply with this clause 14.1 if the transfer or disposition is by way of a mortgage or charge.

14.2 *Community or Strata Schemes*

If the Transferee (as that term is defined in above clause 14.1) is acquiring an interest in the Land or part of the Land as a purchaser of one or more lots in a community scheme or strata scheme (whether or not the community or strata plan, as the case may be, has been registered on the Register), then the Developer may create and transfer that interest without requiring that party to enter into an agreement with the Council and the interest so created and transferred will not be in breach of this agreement.

15 No fetter

15.1 *Discretion*

This agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council, including but not limited to any statutory power or discretion of the Council relating to the Instrument Change or the assessment and determination of any Development Application for the Development (all referred to in this agreement as a "**Discretion**").

15.2 *No fetter*

No provision of this agreement is intended to constitute any fetter on the exercise of any Discretion. If, contrary to the operation of this clause, any provision of this agreement is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the parties agree:

- (a) they will take all practical steps, including the execution of any further documents to ensure the objective of this clause is substantially satisfied;
- (b) in the event that (a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect; and
- (c) to endeavour to satisfy the common objectives of the parties in relation to the provision of this agreement which is to be held to be a fetter to the extent that is possible having regard to the relevant court judgment.

16 Notices

16.1 *Notices*

Subject to clause 16.2, any notice given under or in connection with this agreement (**Notice**):

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by fax at the address or fax number below, or at

the address or fax number last notified by the intended recipient to the sender after the date of this agreement:

- (i) to Parramatta City Council: PO Box 32, Parramatta, NSW 2124
Fax: 02 9806 5917
Attention: The Chief Executive Officer;
 - (ii) to Drill Pty Ltd: Level 15, 1 O'Connell Street, Sydney NSW 2000
Fax: (02) 9363 9091
Attention: Mr Mark Hovey;
- (c) is taken to be given and made:
- (i) in the case of hand delivery, when delivered;
 - (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
 - (iii) in the case of a fax, on production of a transmission report by the machine from which the fax was sent that indicates the fax was sent in its entirety to the recipient's fax number; and
- (d) if under clause (c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

16.2 Notices sent by email

- (a) A party may serve a Notice by email if the Notice:
- (i) includes a signature block specifying:
 - (A) the name of the person sending the Notice; and
 - (B) the sender's position within the relevant party;
 - (ii) states in the body of the message or the subject field that it is sent as a Notice under this agreement;
 - (iii) contains an express statement that the person sending the Notice has the authority to serve a Notice under this agreement;
 - (iv) is sent to the email address below or the email address last notified by the intended recipient to the sender:
 - (A) to Parramatta City Council: Attention: The Chief Executive Officer
council@parracity.nsw.gov.au

(B) to Drill Pty Ltd:

Attention: Mr Mark Hovey

mark@firstpoint.com.au

- (b) The recipient of a Notice served under this clause 16.2 must:
 - (i) promptly acknowledge receipt of the Notice; and
 - (ii) keep an electronic copy of the Notice,
- (c) Failure to comply with clause (b) does not invalidate service of a Notice under this clause.

16.3 Receipt of Notices sent by email

- (a) A Notice sent under clause 16.2 is taken to be given or made:
 - (i) when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above;
 - (ii) when the Notice enters an information system controlled by the recipient; or
 - (iii) when the Notice is first opened or read by the recipient,whichever occurs first.
- (b) If under clause (a) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4 pm (local time), it will be taken to have been given or made at the start of business on the next Business Day in that place.

17 General

17.1 Relationship between parties

- (a) Nothing in this agreement:
 - (i) constitutes a partnership between the parties; or
 - (ii) except as expressly provided, makes a party an agent of another party for any purpose.
- (b) A party cannot in any way or for any purpose:
 - (i) bind another party; or
 - (ii) contract in the name of another party.
- (c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

17.2 Time for doing acts

- (a) If the time for doing any act or thing required to be done or a notice period specified in this agreement expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

- (b) If any act or thing required to be done is done after 5.00 pm on the specified day, it is taken to have been done on the following Business Day.

17.3 Further assurances

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

17.4 Variation

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

17.5 No assignment

Subject to above clause 14, a party cannot assign or otherwise transfer its rights under this agreement without the prior written consent of the other party.

17.6 Counterparts

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

17.7 Legal expenses

The Developer must pay the Council's legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this agreement, to a maximum of \$15,000 (plus GST) on submission by the Council to the Developer of tax invoices for the Council's legal fees.

17.8 Entire agreement

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

17.9 Invalidity

- (a) A word or provision must be read down if:
 - (i) this agreement is void, voidable, or unenforceable if it is not read down;
 - (ii) this agreement will not be void, voidable or unenforceable if it is read down; and
 - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
 - (i) despite the operation of clause (a), the provision is void, voidable or unenforceable if it is not severed; and
 - (ii) this agreement will be void, voidable or unenforceable if it is not severed.

- (c) The remainder of this agreement has full effect even if clause 17.9(b)(i) or (ii) applies.

17.10 Waiver

A right or remedy created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

17.11 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this agreement.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

18 GST

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

List of schedules

Number	Description	Clause reference
Schedule 1	Requirements under section 93F of the Act	N/A
Schedule 2	Works	Clause 1, definitions of Setback Works, Plaza Works and Public Domain Works
Schedule 3	Construction Terms	Clauses 6.1, 6.2 and 6.3
Schedule 4	Thoroughfare Terms	Clause 6.4(d)
Schedule 5	Setback Area Easement Terms	Clause 6.5(a)(ii)
Schedule 6	Plaza Area Easement Terms	Clause 6.5(a)(ii)
Schedule 7	Scope of Works	Clause 1
Schedule 8	Licence Terms	Clause 7

Schedule 1 Requirements under section 93F of the Act

SUBJECT and SUB-SECTION OF THE ACT	THE PLANNING AGREEMENT
<p>Planning instrument and/or Development Application - (Section 93F(1))</p> <p>The Landowner has:</p> <ul style="list-style-type: none"> (a) sought a change to an environmental planning instrument. (b) made, or proposes to make a Development Application. (c) Entered into an agreement with, or is otherwise associated with, a person, to who paragraph (a) or (b) applies. 	<ul style="list-style-type: none"> (a) Yes. (b) No. (c) No.
<p>Description of the land to which the Planning Agreement applies - (Section 93F(3)(a))</p>	<p>The whole of the Land.</p>
<p>Description of change to the environmental planning instrument to which the Planning Agreement applies - (Section 93F(3)(b))</p>	<p>The Instrument Change as defined in clause 1.</p>
<p>The scope, timing and manner of delivery of contribution required by the Planning Agreement - (Section 93F(3)(c))</p>	<p>See clauses 6.1, 6.3, 6.4, 6.5, 6.6 and 6.7.</p>
<p>Applicability of section 94 of the Act - (Section 93F(3)(d))</p>	<p>The application of section 94 of the Act <i>is</i> partly excluded (see clause 8(b)).</p>
<p>Applicability of section 94A of the Act - (Section 93F(3)(d))</p>	<p>The application of section 94A of the Act <i>is</i> partly excluded (see clause 8(b)).</p>
<p>Applicability of section 94EF of the Act - (Section 93F(3)(d))</p>	<p>The application of section 94EF of the Act <i>is not</i> excluded (see clause 8(a)).</p>

SUBJECT and SUB-SECTION OF THE ACT	THE PLANNING AGREEMENT
Mechanism for dispute resolution - (Section 93F(3)(f))	See clause 10.
Enforcement of the Planning Agreement - (Section 93F(3)(g))	See clauses 9.1 and 11, and Schedule 3, clause 9.2
Registration of the Planning Agreement - (Section 93F(3)(g))	Yes. Clause 9.1
No obligation to grant consent or exercise functions - (Section 93F(9))	No obligation. See clause 15.

Schedule 2 Works

1 Setback Works

- 1.1 Subject to above clauses 6.5(e) and 6.5(f) of this agreement, the Setback Works are all works including survey, design, engineering, demolition, earthworks, relocation of utilities and construction works necessary to embellish the Setback Area in accordance with the Landscape VPA Plan and the Scope of Works, noting that while lighting may not be shown on the Landscape VPA Plan for the Setback Works it is required in accordance with the Scope of Works. The Setback Works will include paving, lighting and works required for access to the Land.

2 Plaza Works

- 2.1 Subject to above clause 6.5(e) and 6.5(f) of this agreement, the Plaza Works are all works including survey, design, engineering, demolition, earthworks, relocation of utilities and construction works necessary to construct, establish and embellish the Plaza Area in accordance with the Landscape VPA Plan and the Scope of Works, noting that while lighting may not be shown on the Landscape VPA Plan for the Plaza Works it is required in accordance with the Scope of Works. The Plaza Works will include paving, seating, lighting and landscaping.

3 Public Domain Works

- 3.1 Subject to above clause 6.5(e) and 6.5(f) of this agreement, the Public Domain Works are all works including survey, design, engineering, demolition, earthworks, relocation of utilities and construction works necessary to carry out the following in accordance with the Landscape VPA Plan and the Scope of Works:
- (a) Upgrade and embellishment of the footpath on the southern side of Railway Parade, adjoining Westmead Railway Station, between the existing parking area to the east and Hawkesbury Road to the west, including paving, lighting but only to the extent shown on the Landscape VPA Plan, landscaping, planting of street trees and seating.
 - (b) Construction and embellishment of a raised pedestrian crossing at the entry to Westmead Station to create a safe pedestrian environment across Railway Parade, including kerb extensions on both sides of Railway Parade and high quality landscaping and public domain elements.
 - (c) Upgrade and embellishment of the footpath on the northern side of Railway Parade between the western boundary of the Land and the existing upgraded footpath at the intersection with Hawkesbury Road, including paving, lighting but only to the extent shown on the Landscape VPA Plan, landscaping, planting of street trees and seating.

4 Works Required

This agreement requires the Developer to carry out those Works corresponding to the density of the Development as set out in the table below:

Floor Space Ratio of Approved Development	1.5 : 1 to 2.225 : 1	2.25 : 1 to 3.0 : 1	3.0 : 1 to 4.0 : 1	4.0 : 1 to 4.5 : 1
Works	<ul style="list-style-type: none"> Setback Works (including covenant and easements as required by clause 6.5) Public Domain Works north side of Railway Parade as set out in paragraph 3.1(c) above of this Schedule 2. 	<ul style="list-style-type: none"> Setback Works (including covenant and easements as required by clause 6.5) Public Domain Works north side of Railway Parade as set out in paragraph 3.1(c) above of this Schedule 2. Public Domain Works south side of Railway Parade as set out in paragraph 3.1(a) above of this Schedule 2. 	<ul style="list-style-type: none"> Setback Works (including covenant and easements as required by clause 6.5) Public Domain Works north side of Railway Parade as set out in paragraph 3.1(c) above of this Schedule 2. Public Domain Works south side of Railway Parade as set out in paragraph 3.1(a) above of this Schedule 2. Public Domain Works pedestrian crossing as set out in paragraph 3.1(b) above of this Schedule 2. 	<ul style="list-style-type: none"> Setback Works (including covenant and easements as required by clause 6.5) Public Domain Works north side of Railway Parade as set out in paragraph 3.1(c) above of this Schedule 2. Public Domain Works south side of Railway Parade as set out in paragraph 3.1(a) above of this Schedule 2. Public Domain Works pedestrian crossing as set out in paragraph 3.1(b) above of this Schedule 2. Plaza Works as set out in paragraph 2.1 above of this Schedule 2. (including creation of the Public Thoroughfare and registration of covenant and easements for public access over the Plaza Area and Public Thoroughfare as required by clause 6.5)
Bank Guarantee amount for relevant Public Domain Works (clause 11.1)	<ul style="list-style-type: none"> \$196,250 	<ul style="list-style-type: none"> \$392,500 	<ul style="list-style-type: none"> \$588,750 	<ul style="list-style-type: none"> \$785,000

* Note that if the Development falls into more than one category, the greater of the two categories will apply.

Schedule 3 Construction Terms

1 Interpretation

For the purposes of this Schedule 3, the defined terms in clause 1 of this agreement and the Interpretation principles in clause 2 of this agreement will apply and, unless context indicates a contrary intention:

Builder means any entity contracted under the Construction Contract to carry out the Works.

Construction Contract means the contract to carry out the Works (whether or not that is a contract for the Works only or forms part of a contract for the building of other components of the Development).

Defect means a material defect which adversely affects the ordinary use and/or enjoyment of part of the Works.

Defects Liability Period means in respect of each item of the Works, the period of 12 months from the date on which the Certificate of Practical Completion is issued in the case of the Public Domain Works and the period of 12 months from the date on which the Completion Notice is issued in the case of the Setback Works and Plaza Works.

Detailed Design means the final specifications and finishes for the Works prepared in accordance with clause 5.2 of this Schedule 3 and will include the design of the Works, the location for the Works and installation specifications.

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

2 Requirements of Authorities and Approvals

2.1 These Construction Terms must be read and construed subject to:

- (a) any requirements or conditions of a Development Consent;
- (b) the requirements of and conditions imposed by all relevant Authorities and all laws relating to the Development and the construction of the Development.

2.2 If the Developer requires any Approvals in order to carry out the obligations under this agreement, then:

- (a) the Developer will acquire all Approvals necessary to carry out the Works at its own cost; and
- (b) the Council will give the Developer a reasonable period to obtain such Approvals.

2.3 The Developer must ensure that the Works carried out under this agreement are carried out:

- (a) in accordance with a Development Consent for the Works and all Approvals and the requirements of all Laws, including without limitation, occupational health and safety legislation; and
- (b) in a good and workmanlike manner and so that they are diligently progressed until Completion;

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

3 Costs of Works

All costs of the Works must be borne by the Developer.

4 Project Management and Contractor Engagement

4.1 The Developer will be responsible for managing the Works.

4.2 The Developer will ensure that any contractor it engages to carry out the Works agrees to:

- (a) carry out the Developer's obligations in these Construction Terms as part of any Construction Contract; and
- (b) request a Council representative to be present at each on-site meeting attended by the Superintendent appointed under any Construction Contract (**Superintendent**).

5 Design Development and Approvals

5.1 Concept Design

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

5.2 Detailed Design

- (a) The Developer must provide a copy of the draft Detailed Design to the Council.
- (b) Within 20 Business Days of receiving the Detailed Design, Council will respond to the Developer with any suggested amendments (Suggested Amendments) to the Detailed Design.
- (c) Council and the Developer must work in consultation with each other to prepare and agree the Detailed Design and must both act reasonably and with due expedition in their consultations with each other.
- (d) If the Detailed Design is not completed and agreed within 20 Business Days of Council providing the Suggested Amendments in accordance with clause 5.2(b) of this Schedule 3, to avoid possible delays to the issue of a Certificate of Practical Completion for the Public Domain Works and the Completion Notice for the Setback Works and the Plaza Works, the Council acting reasonably, may within a further 10 Business Days decide on any outstanding or undecided matter or item relating to

areas that are to be accessible to the public, provided that any decision made by Council under this clause:

- (A) is consistent with the intent of this agreement, subject to clause 6.5(e) of this agreement; and
 - (B) is consistent with any Development Consent; and
 - (C) is consistent with the Landscape VPA Plan and the Scope of Works, subject to clause 6.5(e) of this agreement; and
 - (D) does not materially and adversely affect the Development or increase its cost.
- (e) If the Council has not given notice to the Developer of its decision on the relevant outstanding or undecided matters concerning the Detailed Design for the purposes of clause 5.2(d) of this O within 30 Business Days of the Council providing the Suggested Amendments in accordance with clause 5.2(b) of O, then the Detailed Design is to be in the form provided by the Developer to the Council in accordance with clause 5.2(a) of O.
- (f) Any acceptance by the Council of the Detailed Design under this clause 5.2 of Schedule 3 is not to be taken as approval of or to any Construction Certificate for the Works.

5.3 **Good faith**

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

6 **Carrying out of Works**

6.1 **Communication**

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

6.2 **Standard of Works**

- (a) Unless otherwise provided, the Developer shall use suitable new materials and proper and tradesmanlike workmanship when carrying out the Works.
- (b) The qualitative standard of the design and finishes for the Works must be no less than those described in the following documents:
 - (i) Any relevant Australian Standard;
 - (ii) Such relevant public domain guidelines, requirements or policies applied by the Council as at the date of this agreement in assessing the adequacy of any works or improvements proposed for the public domain or to be accessible to the public in accordance with this agreement.

- (c) The Developer will obtain the relevant standards and specifications, guidelines, requirements or other policies referred to in clause 6.2(b)(ii) of this Schedule 3 from Council if the Council fails to deliver them to the Developer.

7 Inspection

- (a) The Council may enter the Land to inspect the progress of the Works, subject to:
 - (i) the terms of the Construction Contract (save for any clause of the Construction Contract which prevents the Council from accessing the Land);
 - (ii) giving reasonable notice of not less than 2 business days to the Developer;
 - (iii) complying with all reasonable directions of the Developer and its Builder;
 - (iv) exercising its rights under this clause entirely at its own risk in all respects; and
 - (v) being accompanied by the Developer or its nominee, or as otherwise agreed.
- (b) The Developer must notify the Council 48 hours' prior to placing any pavers forming part of the Works to enable the Council to inspect the concrete base prior to placing any pavers.
- (c) The Council may, within 5 Business Days of carrying out an inspection, notify the Developer of any Defect or non-compliance in the Works and direct the Developer to carry out work to rectify that Defect or non-compliance. Such work may include, but is not limited to:
 - (i) removal of defective or non-complying material from the Land;
 - (ii) demolishing defective or non-complying work;
 - (iii) reconstructing, replacing or correcting any defective or non-complying work; and
 - (iv) not delivering any defective or non-complying material to the site of the Works.
- (d) If the Developer is issued a direction to carry out further work under clause 7(b) of this Schedule 3, the Developer must, at the Developer's cost, rectify the Defect or non-compliance specified in the notice within the time period specified in the notice.
- (e) If the Developer fails to comply with a direction to carry out work given under clause 7(b) of this Schedule 3 in relation to the Public Domain Works, the Council will be entitled to refuse to accept that the Public Domain Works (or the relevant part of the Public Domain Works) meet the Council's standards and specifications and may refuse to issue a

Certificate of Practical Completion, until the required works have been completed to the Council's satisfaction, acting reasonably.

- (f) For the avoidance of doubt, any acceptance by the Council that the Developer has rectified a Defect or non-compliance identified in a notice issued under clause 7(b) of this Schedule 3 does not constitute:
 - (i) acceptance by the Council that the Works comply with all Approvals and Laws; or
 - (ii) an Approval by the Council in respect of the Works; or
 - (iii) an agreement or acknowledgment by the Council that the Works or the relevant part of the Works are complete and may be delivered to the Council in accordance with this Agreement.

8 Completion

8.1 Practical Completion - Public Domain Works

- (a) When the Developer considers that the Public Domain Works, or any part of the Public Domain Works, are complete, the Developer must send a notice to the Council requesting written certification from the Council that the Public Domain Works are complete.
- (b) Within 10 Business Days of a notice issued under clause 8.1(a) of this Schedule 3, the Council must inspect the Public Domain Works in accordance with clause 7 of this Schedule 3 and either:
 - (i) issue a Certificate of Practical Completion in respect of the Public Domain Works; or
 - (ii) refuse to issue a Certificate of Practical Completion in respect of the Public Domain Works, in which case the Council must provide written reasons to the Developer for the refusal with the notice informing that a Certificate of Practical Completion has not been issued.
- (c) The Developer must ensure that it has notified the Council that an inspection is required under this clause 8.1 of Schedule 3 prior to the issue of a Certificate of Practical Completion for any part of the Public Domain Works.

8.2 Completion - the Setback Works and the Plaza Works

- (a) When the Developer considers that the Setback Works and the Plaza Works, or any part of those works are Complete, the Developer must send a notice to the Accredited Certifier requesting a Completion Notice.
- (b) Within 10 Business Days of the issue of a Completion Notice, the Developer must provide a copy of the Completion Notice to the Council.

8.3 Delivery of documents

- (a) The Developer must as soon as practicable, and no later than 20 Business Days after the date on which the Certificate of Practical

Completion is issued in respect of the Public Domain Works or any part of those works deliver to the Council complete copies of:

- (i) all "as built" drawings, specifications and relevant operation and service manuals in relation to the Public Domain Works ;
 - (ii) all certificates produced by any consultants that have been issued in relation to the construction of the Public Domain Works; and
 - (iii) copies of all Approvals required for the occupation or use of the land subject to the Public Domain Works.
- (b) The Developer must as soon as practicable, and no later than 20 Business Days after the date on which the Completion Notice is issued in respect of the Setback Works and the Plaza Works or any part of those works, deliver to the Council complete copies of:
- (i) all certificates produced by any consultants of the Developer that have been issued in relation to the construction of the Setback Works and the Plaza Works; and
 - (ii) copies of all Approvals required for the occupation or use of the land subject to the Setback Works and the Plaza Works.
- (c) The Developer must as soon as practicable, and no later than 20 Business Days after the date on which the Certificate of Practical Completion is issued in respect of the Public Domain Works or any part of those works, provide the Council with a tour of the land the subject of the Public Domain Works and provide reasonable instructions on the operation and use of the Services on that land.
- (d) The Developer must as soon as practicable, and no later than 20 Business Days after the date on which the Completion Notice is issued in respect of the Setback Works and the Plaza Works or any part of those works, provide the Council with a tour of the land the subject of the Setback Works and the Plaza Works.

8.4 Assignment of Warranties and Causes of Action in relation to the Public Domain Works

- (a) The Developer must use its best endeavours to procure the Builder or its subcontractors to enter into the Deed Poll in favour of the Council, which provides the Council with the benefit of warranties and guarantees directly from the Builder or its subcontractors with respect to the Warranted Goods incorporated in or forming part of the Public Domain Works.
- (b) In the event that the Deed Poll is not obtained in relation to Warranted Goods, then the Developer must at the request of Council do anything reasonably required by Council to enforce such warranties or guarantees for the benefit of Council in respect of the Warranted Goods, including but not limited to;

- (i) appointing the Council as its attorney to exercise its rights and powers under any Construction Contract, including any right to conduct proceedings or prosecute any action to enforce the Developer's rights against others under any Construction Contract in relation to the Warranted Goods;
 - (ii) executing all such documents and doing all such things on the Council's behalf as are reasonably necessary or desirable to enable the Council to rectify any Defects in Warranted Goods in accordance with the terms of this Agreement and any Construction Contract; and
 - (iii) providing any assistance required for the purpose of defending or settling any claim or the pursuit of any rights of recovery from others under any Construction Contract in relation to the Warranted Goods.
- (c) For the purposes of this clause 8.4:
- (i) "Deed Poll" means the Deed Poll attached in Schedule 9;
 - (ii) "Warranted Goods" means in respect of the Public Domain Works:
 - (A) Pavers;
 - (B) Lighting as identified in the Landscape VPA Plan; and
 - (C) Seating.

9 Defects Liability

9.1 Defects Liability Period

- (a) During the Defects Liability Period, the Council (acting reasonably) may give to the Developer a notice (**Rectification Notice**) in writing that identifies a Defect in the Works and specifies:
 - (i) action required to be undertaken by the Developer to rectify that Defect; and
 - (ii) the date on which the Defect must be rectified.
- (b) The Developer must comply with the Rectification Notice by:
 - (i) procuring the performance of the work required to rectify the Defect within the time period specified by the Council in the Rectification Notice or such other time as agreed between the parties;
 - (ii) keeping the Council reasonably informed of the action to be taken to rectify the Defect; and
 - (iii) carrying out the rectification.
- (c) The Council must give the Developer and its contractors any access required to carry out the rectification works.

- (d) When the Developer considers that a rectification is complete, the Developer must notify the Council that the works subject to the relevant Rectification Notice are complete and provide documentation, plans or invoices which establish that those works were carried out.
- (e) The Council may inspect the rectification works within 20 Business Days of receiving a notice from the Developer under clause 9.1(d) of this Schedule 3 and:
 - (i) issue a further Rectification Notice if it is not reasonably satisfied that the rectification is complete; or
 - (ii) notify the Developer in writing that it is satisfied the rectification work is complete.
- (f) The Developer must meet all costs of and incidental to rectification of Defects under this clause 9.1.
- (g) If the Developer fails to comply with a Rectification Notice, then the Council may, do such things or take such action as is necessary to rectify the Defect, including accessing and occupying any part of the Land, and may:
 - (i) call upon any Bond or Bank Guarantee provided directly to the Council, or subject to any conditions or requirements in the Construction Contract or at law, require the Developer to call upon any Bond or Bank Guarantee provided by the Builder to the Developer, in accordance with clause 9.2 of this Schedule 3 to meet its costs of rectifying the Defect; and
 - (ii) recover as a debt due to the Council by the Developer in a court of competent jurisdiction, any difference between the amount of the security deposit and the costs incurred by the Council in rectifying the Defect,

provided that the Council first gives the Developer notice in writing of its intention to take action under this clause and allows the Developer 10 Business Days within which to rectify a failure to comply with a Rectification Notice.

9.2 Security for Defects Liability

- (a) Prior to the issue of a Certificate of Practical Completion of the Public Domain Works the Developer must deliver to the Council evidence that it holds, Bonds or Bank Guarantees in an amount equivalent to:
 - (i) 5% of the construction costs of the Public Domain Works, provided that an inspection has occurred in accordance with clause 7(b) of this Schedule 3 (if applicable), or
 - (ii) 5% of the construction costs of the Public Domain Works if a notice of inspection under clause 7(b) of this Schedule 3 was required and was not provided.

- (b) The Developer advises and the Council acknowledges its awareness that the Bonds or Bank Guarantees required under clause 9.2(a) of this Schedule 3 may be supplied by the Builder to the Developer and form a part of the security held by the Developer from the Builder under the terms of the Construction Contract, provided that:
 - (i) subject to any conditions or requirements in the Construction Contract or at law, any Bond or Bank Guarantee provided by the Builder may be, and must be if required by the Council under clause 9.1(g) of this Schedule 3 (subject to the conditions in clause 9.1(g)), called on by the Developer for the purpose of satisfying an amount owing from the Developer to the Council under this agreement due to a breach of the Construction Contract by the Builder (such proceeds being applied by the Developer to such amount owing to the Council under this agreement); and
 - (ii) the Developer procures an agreement from the Builder that the Developer will be entitled to call on any Bond or Bank Guarantee provided by the Builder, in accordance with the terms of this agreement and the terms of any Construction Contract.
- (c) Within 10 Business Days after the Defects Liability Period for the Public Domain Works has expired the Developer must return the Bonds or Bank Guarantees still held by it as referred to in clause 9.2(a) of this Schedule 3 for the Public Domain Works (or any remaining balance of it) to the Builder, subject to any rights that the Developer has under clause 9.2(b) of this Schedule 3 or under the Construction Contract.
- (d) Notwithstanding clause 9.2(c) of this Schedule 3, if during the Defects Liability Period for a particular item of Works, the Council issues a Rectification Notice and the Rectification Notice is not complied with, then the Council may notify the Developer of the breach, and the Developer must subject to the terms of the Construction Contract not deliver the balance of any Bonds or Bank Guarantees provided to it back to the Builder until that Defect has been rectified.

10 Risk

The Developer undertakes the Works entirely at its own risk.

11 Insurance

- (a) Prior to the commencement of the construction of any of the Public Domain Works, the Developer must ensure the Builder effects and the Developer must produce evidence to the Council of the following insurances issued by an insurer approved by the Council (acting reasonably) in a form approved by the Council (acting reasonably):
 - (i) contract works insurance for the value of the Public Domain Works;
 - (ii) public risk insurance for at least \$20 million;

- (iii) workers compensation insurance as required by law.
- (b) The Developer must provide evidence of currency of insurance required by clause 11(a) of this Schedule 3 upon request by the Council throughout the term of this agreement.

12 Indemnities

The Developer indemnifies the Council, its employees, officers, agents, contractors and workmen from and against all Claims as a result of the carrying out by the Developer of the Public Domain Works except to the extent such Claim arises either directly or indirectly as a result of the Council or its employees, officers, agents, contractors or workmen negligence, default, act or omission.

13 Intellectual Property Rights

The Council acknowledges that the Developer or its contractors holds all rights to copyright and any intellectual property which may exist in the Works. To the extent the Developer has or receives intellectual property rights for the Public Domain Works, the Developer shall permit use thereof under licence.

14 Risk of contamination

14.1 In this clause 14:

- (a) **Contamination** means the presence in, on or under land of a substance at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the environment, which would, if present on land:
 - (i) result in an Authority issuing a notice, direction or order under an Environmental Law; or
 - (ii) constitute a violation of any Environmental Law.
- (b) Contaminated means subject to Contamination.
- (c) Environmental Law means all planning, environmental or pollution laws and any regulations, orders, directions, ordinances or requirements, permissions, permits, licences issued under those laws or instruments.

14.2 The Developer acknowledges to the Council:

- (a) that it is responsible for the management and remediation of any Contamination present upon, in or under the Land;
- (b) it will attend to any reasonably necessary remediation upon, in or under the Land at its own cost so the Land will be suitable for its proposed use; and
- (c) to the fullest extent permitted by law releases the Council from any Claim which might arise from any Contamination with respect to the Land.

14.3 The Council acknowledges to the Developer:

- (a) that it is responsible for the management and remediation of any Contamination present upon, in or under the Council Land;
- (b) it will attend to any reasonably necessary remediation upon, in or under the Council Land at its own cost so that the Council Land will be suitable for its proposed use in accordance with this agreement; and
- (c) to the fullest extent permitted by law releases the Developer from any Claim which might arise from any Contamination with respect to the Council Land;

except to the extent that any Contamination present upon, in or under the Council Land:

- (i) is caused by the Developer, its contractors, agents and/or employees;
- (ii) originates from the Land; or
- (iii) is disturbed as a result of the wilful or negligent act of the Developer, its contractors, agents and/or employees.

14.4 The Council warrants to the Developer that, as far as it is aware and other than as disclosed in writing to the Developer prior to the commencement of the Public Domain Works, the Council Land is not Contaminated.

14.5 The Council will provide the Developer with copies of any information in its possession concerning any Contamination of the Council Land within 5 Business Days of the date of execution of this agreement.

Schedule 4 Thoroughfare Terms

1. The owner of the Public Thoroughfare may monitor and direct the behaviour of the public when exercising any right of way over the Public Thoroughfare.
2. The owner of the Public Thoroughfare may (acting reasonably) temporarily exclude the public or any member of the public from the Public Thoroughfare.
3. If any member or members of the public loiter or congregate, for any purpose which the owner of the Public Thoroughfare considers to be inappropriate, the owner may either remove those members of the public, or arrange for their removal by an appropriate authority.
4. The owner of the Public Thoroughfare may erect safety signage and any other appropriate signage and may erect CCTV cameras in the Public Thoroughfare.
5. The owner of the Public Thoroughfare may monitor and direct the behaviour of the public including but not limited to prohibiting smoking, consumption of alcohol (except within licensed areas), passage of animals, bicycles and skateboards and the like (subject to any rules made by an Owner's Corporation relating to the Public Thoroughfare being approved by the Council, acting reasonably).
6. The owner of the Public Thoroughfare may engage security personnel to monitor and control the behaviour of the public when exercising any right of way over the Public Thoroughfare.
7. The owner of the Public Thoroughfare may temporarily close parts of the Public Thoroughfare for the purpose of construction, construction access, repairs, maintenance, replacement and alteration.
8. The owner of the Public Thoroughfare may (with the approval of Council, acting reasonably, having regard to the safety, security and amenity of the occupants of any building on the Land) prescribe days and times of the day or night that the easement rights may be exercised, subject to the Public Thoroughfare being accessible at all times the Plaza Area is accessible.
9. The owner of the Public Thoroughfare may (acting reasonably) temporarily close or temporarily restrict access through all or part of the Public Thoroughfare for the time and to the extent necessary but only on reasonable grounds including, without limitation, reasons of security, safety, construction, evacuation, emergency situations and maintenance.
10. Subject to ensuring the provision of access in accordance with clause 6.5(d)(ii) of this agreement, the owner of the Public Thoroughfare may, provided any necessary planning approvals are obtained:
 - a. Carry out works of any nature in, under or about the Public Thoroughfare, including constructing, installing, removing, redeveloping or otherwise changing improvements in, under or about the Public Thoroughfare; and

- b. Install or erect works of art, street furniture, awnings, tables and chairs associated with ground floor commercial premises, notice boards or any other similar improvements at ground level or balconies above ground level within the Public Thoroughfare.

Schedule 5 Plaza Area Easement Terms

1. The owner of the Plaza Area grants to the Council and members of the public full and free right to go, pass and repass over the Plaza Area at all times (subject to the other provisions of this Schedule 5), on foot and without animals (other than guide dogs or registered companion animals) or vehicles (other than wheelchairs or other disabled access aids) for all lawful purposes.
2. The owner of the Plaza Area may (with the approval of Council acting reasonably, having regard to the safety, security and amenity of the occupants of any building on the Land) prescribe days and times of the day or night that the easement rights may be exercised, subject to the Plaza Area being accessible at all times the Public Thoroughfare is accessible.
3. The owner of the Plaza Area may, with the Council's prior written consent (except in the case of an emergency in which case the Council's prior written consent is not required) temporarily exclude the public or any member of the public from the Plaza Area.
4. If any member or members of the public loiter or congregate, for any purpose which the owner of the Plaza Area considers to be inappropriate, the owner may either remove those members of the public, or arrange for their removal by an appropriate authority.
5. The owner of the Plaza Area may erect safety signage and any other appropriate signage and may erect CCTV cameras in the Plaza Area.
6. The owner of the Plaza Area may monitor and direct the behaviour of the public including but not limited to prohibiting smoking, consumption of alcohol (except within licensed areas), passage of animals, bicycles and skateboards and the like (subject to any rules made by an Owner's Corporation relating to the Plaza Area being approved by the Council, acting reasonably).
7. The owner of the Plaza Area may engage security personnel to monitor and control the behaviour of the public when exercising any right of way over the Plaza Area.
8. The owner of the Plaza Area may temporarily close parts of the Plaza Area for the purpose of construction, construction access, repairs, maintenance, replacement and alteration.
9. The owner of the Plaza Area may (acting reasonably) temporarily close or temporarily restrict access through all or part of the Plaza Area for the time and to the extent necessary but only on reasonable grounds including, without limitation, reasons of security, safety, construction, evacuation, emergency situations and maintenance.
10. Subject to ensuring the provision of access in accordance with above clause 1 of this Schedule 5, the owner of the Plaza Area may, provided any necessary planning approvals are obtained:
 - a. Carry out works for the purposes of enhancing the Plaza Area; and

- b. Install or erect works of art, street furniture, awnings, tables and chairs associated with ground floor retail premises, notice boards or any other similar improvements at ground level or balconies above ground level within the Plaza Area.

Schedule 6 Setback Area Easement Terms

1. The owner of the Setback Area grants to the Council and members of the public full and free right to go, pass and repass over the Setback Area at all times:
 - a. with or without animals; and
 - b. on foot without vehicles (other than wheelchairs or other disabled access aids), unless vehicles are being used to access the building on the Land via clearly identified entry and exit points;for all lawful purposes.
2. The owner of the Setback Area may with the Council's prior written consent, (except in the case of an emergency, in which case the Council's prior written consent is not required) temporarily exclude the public or any member of the public from the Setback Area.
3. If any member or members of the public loiter or congregate, for any purpose which the owner of the Setback Area considers to be inappropriate, the owner may either remove those members of the public, or arrange for their removal by an appropriate authority.
4. The owner of the Setback Area may erect safety signage and any other appropriate signage and may erect CCTV cameras in the Setback Area.
5. The owner of the Setback Area may monitor and direct the behaviour of the public including but not limited to prohibiting smoking, consumption of alcohol (except within licensed areas), passage of animals, bicycles and skateboards and the like (subject to any rules made by an Owner's Corporation relating to the Setback Area being approved by the Council, acting reasonably).
6. The owner of the Setback Area may engage security personnel to monitor and control the behaviour of the public when exercising any right of way over the Setback Area.
7. The owner of the Setback Area may temporarily close parts of the Setback Area for the purpose of construction, construction access, repairs, maintenance, replacement and alteration.
8. The owner of the Setback Area may (acting reasonably) temporarily close or temporarily restrict access through all or part of the Setback Area for the time and to the extent necessary but only on reasonable grounds including, without limitation, reasons of security, safety, construction, evacuation, emergency situations and maintenance.
9. Subject to ensuring the provision of access in accordance with above clause 1 of this Schedule 6, the owner of the Setback Area may, provided any necessary planning approvals are obtained:
 - a. Carry out works in the Setback Area for the purposes of enhancing the Setback Area;

b. Install or erect works of art, street furniture, awnings, tables and chairs associated with ground floor commercial premises, notice boards or any other similar improvements at ground level within the Setback Area; and

c. Use the Setback Area,

in a manner consistent with Parramatta City Council Outdoor Dining Policy adopted 9 July 2012 and amended 25 February 2013, or any such policy of the Council that replaces that policy.

Schedule 7 Scope of Works

SCOPE OF WORKS
24-26 RAILWAY PDE, WESTMEAD

To be read in conjunction with and subject to a Development Consent, this agreement, the Landscape VPA Plan, and the Detailed Design determined in accordance with clause 5.2 of Schedule 3 (Construction Terms). For the avoidance of doubt, in the event of any inconsistency between the relevant documents, the Detailed Design shall prevail.

Item No.	Item Description	Quantity	Unit
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Public Domain Works and Setback Works (where applicable)

RAILWAY PARADE (NORTHERN SIDE) & ASHLEY LANE WORKS

Demolition Works

1	Break up and remove existing concrete pavement	79.00	m2
2	Allow for relocation of existing service pits, as required	1.00	Item

Groundworks

3	Excavate to reduce level for new paving and base	56.00	m3
4	Trim and grade subgrade to correct levels and profiles including compaction	360.00	m2

5	Dispose of surplus soil	56.00	m3
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Basecourse

6	100 thick in-situ concrete base including all necessary formwork, reinforcement, joints and finish	292.00	m2
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Paving

7	300 x 300 x 60 thick Pebblecrete 'Alluvium' concrete pavers laid over concrete base to footpath	292.00	m2
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8	150 x 150 x 60 thick Pebblecrete 'Alluvium' concrete pavers laid over concrete base to driveway	68.00	m2
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9	Extra for laying new pavers into existing pit covers	1.00	Item
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Kerbs etc

10	Profiled kerb/crossing at junction with loading/entry	27.00	m
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Tactiles

11	600 wide stainless steel tactile indicators fixed to pavers	22.00	m
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Street Furniture

12	Botton & Gardiner Urban Seat 11 bench seat approx. 2000 long	2.00	no
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Landscaping

13	Fraxinus Graffithii trees in grated areas including digging, cultivating, preparing holes, watering basin, topsoil, fertiliser, stakes and ties as required	2.00	no
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14	1800 x 1200 tree grate to new and existing trees	2.00	no
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RAILWAY PARADE (SOUTHERN SIDE)

Demolition Works

16	Break up and remove existing pavers / concrete	375.00	m2
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17	Remove existing trees	2.00	no
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Groundworks

18	Excavate to reduce level for new paving and base	57.00	m3
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19	Trim and grade subgrade to correct levels and profiles including compaction	57.00	m2
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20	Dispose of surplus spoil	57.00	m3
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Basecourse

21	100 thick in-situ concrete base including all necessary formwork, reinforcement, joints and finish	375.00	m2
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Paving

22	300 x 300 x 60 thick Pebblecrete 'Alluvium' concrete pavers laid over concrete base to footpath	375.00	m2
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23	Extra for laying new pavers into existing pit covers	1.00	Item
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Tactiles

24	600 wide stainless steel tactile indicators fixed to pavers	2.00	m
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Street Furniture

25	GM500 bike rack	6.00	no
26	Commercial System Australia 120L LR6158-SSTF rubbish bin	3.00	no
27	Botton & Gardiner Urban Seat 11 bench seat approx. 2000 long	7.00	no

Signage

28	Allow for new traffic and parking control signage (provisional qty)	5.00	no
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Landscaping

29	Fraxinus Graffithii trees in grated and mass planting areas including digging, cultivating, preparing holes, watering basin, topsoil, fertiliser, stakes and ties as required	10.00	no
30	Syzgygium Smithii/Dianella Caerulea/Lomandra Confertifolia/Poa Sieberiana in mass planting areas, including topsoil, digging, cultivating, preparing holes, fertiliser, mulch, etc.	100.00	m2
31	1800 x 1200 tree grate to new trees	9.00	no

PEDESTRIAN CROSSING

Demolition Works

32	Break up and remove existing concrete island and garden	40.00	m2
33	Break up and remove existing bitumen surface to road	212.00	m2
34	Sawcut to road	55.00	m

Groundworks

- | | | | |
|----|---|--------|----|
| 35 | Allow for any minor excavation as required, trim and grade subgrade to correct levels and profiles including compaction | 212.00 | m2 |
|----|---|--------|----|

Basecourse

- | | | | |
|----|--|--------|----|
| 36 | 150 thick in-situ concrete base including all necessary formwork, reinforcement, joints and finish laid over existing basecourse | 190.00 | m2 |
|----|--|--------|----|

Paving

- | | | | |
|----|--|--------|----|
| 37 | 300 x 300 x 60 thick Pebblecrete 'Alluvium' concrete pavers laid over concrete base to footpath | 190.00 | m2 |
| 38 | Approx. 230 thick (max.) concrete ramps including all necessary formwork, reinforcement, joints and finish laid over existing basecourse | 23.00 | m2 |

Kerbs etc

- | | | | |
|----|--|-------|----|
| 39 | 630 wide x 280 high overall concrete kerb and gutter where existing pedestrian ramps removed | 12.00 | m |
| 40 | 630 wide x 280 high overall concrete kerb and gutter at raised crossing | 40.00 | m |
| 41 | Make good junction of new work with existing kerb and gutter | 4.00 | no |

Street Furniture

- | | | | |
|----|--|-------|----|
| 42 | Commercial System Australia 120L LR6158-SSTF rubbish bin | 2.00 | no |
| 43 | Botton & Gardiner Urban Seat 11 bench seat approx. 2000 long | 6.00 | no |
| 44 | Leda SSP150F stainless steel slimline bollard | 16.00 | no |

45	Heelsafe 200 wide stainless steel grate and trench drain	59.00	m
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Landscaping

46	Fraxinus Graffithii trees in grated areas including digging, cultivating, preparing holes, watering basin, topsoil, fertiliser, stakes and ties as required	4.00	no
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47	1800 x 1200 tree grate to new trees	2.00	no
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48	Approx. 2800 (avg.) x 1200 tree grate to new trees	2.00	no
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Plaza Works

Demolition Works

49	In accordance with a Development Consent		Note
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Groundworks

50	Excavate to reduce level for new paving/ramp and base	44.00	m3
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51	Excavate to reduce level for new planters	70.00	m3
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52	Trim and grade subgrade to correct levels and profiles including compaction	207.00	m2
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53	Dispose of surplus spoil	114.00	m3
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Basecourse

54	100 thick in-situ concrete base including all necessary formwork,	151.00	m2
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reinforcement, joints and finish

55	100 thick in-situ concrete base laid to falls including all necessary formwork, reinforcement, joints and finish	56.00	m2
56	100 thick granular base to planter boxes	87.00	m2

Paving

57	600 x 300 x 60 thick Pebblecrete 'Alluvium' concrete pavers laid over concrete base to courtyard	151.00	m2
58	600 x 300 x 60 thick Pebblecrete 'Alluvium' concrete pavers laid over concrete base to ramp	56.00	m2

Retaining Wall

59	150 thick in-situ concrete wall including all necessary formwork, reinforcement, joints, render and paint finish	3.00	m2
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Planter Box

60	150 thick in-situ concrete base including all necessary formwork, reinforcement, joints and finish	87.00	m2
61	150 thick in-situ concrete wall including all necessary formwork, reinforcement, joints, render and paint finish	109.00	m2
62	Tanking membrane and protection board to base and sides of planter box walls	173.00	m2

Handrail

63	50 dia. stainless steel handrail on and including stainless steel brackets/upstands	37.00	m
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Tactiles

64 600 wide stainless steel tactile indicators fixed to pavers 6.00 m

Seating

65 Approx. 600 wide integrated timber seating bench on and including steel support brackets fixed to concrete planter walls 19.00 m

Landscaping

66 Drainage layer at base of planter box 74.00 m2

67 Geotextile fabric over drainage layer 74.00 m2

68 Topsoil to planter box 81.00 m3

69 Prunus Campanulata trees in planter boxes including digging, cultivating, preparing holes, watering basin, fertiliser, stakes and ties as required 7.00 no

70 Dianella Caerulea/Lomandra Confertifolia/Poa Sieberiana in mass planting areas, including digging, cultivating, preparing holes, fertiliser, mulch, etc. 74.00 m2

ALL WORKS

Lighting

71 Lighting as specified in the Detailed Design for all Works, noting that in relation to the Public Domain Works lighting is only required to the extent shown on the Landscape VPA Plan.

Schedule 8 Licence Terms

1 Definitions and Interpretation

1.1 In this Schedule 8, words beginning with a capital letter that are defined in clause 1 of this agreement have the meaning ascribed to them in that clause.

1.2 For the purpose of this Schedule 8:

- (a) The **Licence** means the licence and its terms set out in this Schedule 8;
- (b) the **Licensor** means the Council;
- (c) the **Licensee** means the Developer; and
- (d) the **Purpose** means the purpose referred to in clause 7(a) of this agreement for which the Licensee is accessing the Land from time to time.

2 Licence

2.1 Personal rights

- (a) The Licence is personal to the Licensee and does not create any right or interest in the Council Land.
- (b) The Licensee may not encumber, assign or transfer (either directly or indirectly) the Licence without the prior written consent of the Licensor, acting reasonably.
- (c) The Licensee may sub-licence the Licence to the Builder for the purposes of performing the Public Domain Works, provided Council is notified of the identity of each sub-licensee of the Licence prior to that sub-licensee entering the Council Land.

2.2 Leasehold interest

The Licence does not grant to the Licensee a leasehold interest in the Council Land. The Parties agree that subject to any contrary terms of this agreement, this licence does not confer exclusive possession of the Council Land on the Licensee.

2.3 Termination

The Licence terminates at the expiry of:

- (a) any Defects Liability Period for the Public Domain Works and
- (b) in respect of a defect which is notified during the Defects Liability Period, on the completion of such rectification works for such defect.

3 Compliance with authorities

3.1 Compliance with the terms of consents

In the conduct of the Purpose and compliance with its obligations under this agreement, the Licensee must comply with the requirements of all Authorities.

3.2 Compliance with directions from Authorities

The Licensee must comply with all notices, directions, order or other requests served upon itself or the Licensor and which arise from the conduct of the Purpose on the Council Land by the Licensee.

3.3 Obtaining Approvals

- (a) The Licensee will obtain the Approvals it requires to conduct the Purpose in accordance with clause 2.2 of Schedule 3.
- (b) The Licensor agrees that it will, where required, sign all authorities and do all things reasonably required by the Licensee to obtain an approval.

4 Insurance Obligations

4.1 Insurances

- (a) The Licensee must effect and keep current the insurances required in accordance with clause 11 of Schedule 3.

4.2 Other insurance obligations

The Licensee will provide the Council with evidence of insurance in accordance with clause 11(b) of Schedule 3.

4.3 Risk

Subject to clause 14.3 of 0 the Licensee uses and occupies the Council Land at its own risk.

4.4 WH & S obligations

For the purposes of this agreement and in accordance with clause 293 of the *Work Health & Safety Regulation 2011 (NSW) (WH&S Regulation)*, the Licensor:

- (a) Acknowledges and agrees that the Developer will engage the Builder and appoint it as the "principal contractor" for the construction of the Public Domain Works on the Council Land; and
- (b) will authorise the Builder to exercise such authority of the Licensor as is necessary to enable the Builder to have control of the workplace and to discharge the duties of a principal contractor under Chapter 6 of the WH&S Regulation.

5 No damage

- (a) The Licensee must use and access the Council Land for the purposes of carrying out the Public Domain Works and must cause no damage to the Council Land or the surrounding area in doing so.
- (b) The Licensee must not do anything to interfere with the access of the Council or Council's employees, officers, agents, contractors, licensees and invitees to the Council Land, except as required by occupational, health and safety or other Laws.
- (c) The Licensee must not make any structural additions to the Council Land other than in accordance with this Agreement.

6 Licensee Obligations

The Licensee must:

- (a) not use the Council Land for any purpose other than to carry out the Public Domain Works,
- (b) keep the Council Land clean and dispose of refuse appropriately and in accordance with any Law,
- (c) immediately on becoming aware of any damage, or accident or event caused or contributed to by the Contractor that may cause damage to the Council Land, give notice to the Council of that event, and
- (d) ensure that the Licensee's employees officers, agents, contractors or workmen comply with the Licensee's obligations under this Licence.

7 Release and Indemnity

7.1 Release

The Licensee releases Council from, and agrees that Council is not liable for, any Claim arising from, or incurred in connection with:

- (a) the Licensee's use of and access to the Council Land pursuant to this Licence, or
- (b) damage, loss, injury or death to or of any person or property on the Council Land or the surrounding area caused as a result of the Licensee's use of and access to the Council Land pursuant to this Licence,

unless the Claim arises due to:

- (c) the default or negligence of the Council;
- (d) a breach of Law by the Council; or
- (e) an event or matter for which the Council has agreed to take the risk under this Agreement, including the matters referred to in clause 14.3 of Schedule 3.

7.2 Indemnity

The Licensee is liable for and indemnifies the Council against any Claim arising from, or which the Council incurs or is liable for or in connection with:

- (a) the Licensee's use of and access to the Council Land pursuant to this Licence,
- (b) anything occurring on the Council Land or the surrounding area caused or contributed to by the act, negligence or default of the Licensee or the Licensee's employees, officers, agents, contractors or workmen,
- (c) damage, loss, injury or death caused or contributed to by the act, negligence or default of the Licensee or of the Licensee's employees, officers, agents, contractors or workmen, and

- (d) any breach or default by the Licensee or the Licensee's employees, officers, agents, contractors or workmen of this Licence or of any Law.

8 Vacation of the Council Land

8.1 Vacation

Upon the expiry or earlier termination of this Licence, the Licensee must:

- (a) vacate the Council Land,
- (b) remove all of the Licensee's property and any rubbish from the Council Land,
- (c) make good any damage caused to the Council Land by the Licensee or the Licensee's officers, agents, contractors or workmen,
- (d) leave the Council Land in a clean and tidy state.

8.2 Abandoned Property

The Licensee acknowledges that the Council will be entitled to keep or dispose of, at the Licensee's cost, any of the Licensee's property that the Licensee does not remove from the Council Land in accordance with clause 8.1.

8.3 Non-compliance

If the Licensee fails to comply with its obligations in accordance with this clause 8 of Schedule 8, then the Council may take any reasonably necessary action to rectify the Licensee's default, and recover from the Licensee all such reasonable costs incurred by the Council in doing so.

9 Default

- (a) If the Licensee:
 - (i) repudiates an obligation under this Licence;
 - (ii) breaches an essential term of this Licence; or
 - (iii) fails to rectify a default under this Licence,and after being given reasonable notice of the repudiation, breach or default by the Council and a reasonable opportunity to remedy the repudiation, breach or default, the Licensee fails to remedy the repudiation, breach or default, then the Council may:
 - (iv) re-enter and take possession of the Council Land, using reasonable force to secure possession if necessary,
 - (v) serve a written notice of termination of this Licence on the Licensee,
 - (vi) institute proceedings for possession of the Council Land against the Licensee, or
 - (vii) take any or all of the above action, and

the Licensee must compensate the Council for the loss or damage incurred by the Council to the extent that it is caused by the repudiation, breach or default of the Licensee.

- (b) The compensation to be paid by the Licensee under clause 9(a) of this Schedule 8 extends to the loss or damage incurred by the Council during the term of this Licence as well as the periods before and after any termination of this Licence to the extent that the loss and damage is caused by the Licensee's repudiation, breach or default.
- (c) The Licensee's obligation to compensate the Council for loss or damage incurred by the Council to the extent that is caused by the Licensee's repudiation, breach or default is not affected if:
 - (i) the Licensee abandons or vacates the Council Land,
 - (ii) the Council elects to re-enter or to terminate this Licence,
 - (iii) the Council accepts the Licensee's repudiation, or
 - (iv) the parties' conduct constitutes a surrender by operation of the Law.
- (d) The Council's entitlement to damages under this clause is in addition to any other remedy or entitlement, including termination of this Licence.
- (e) The Council's right to compensation for loss or damage incurred by the Council to the extent that is caused by the Licensee's repudiation, breach or default includes any costs incurred by the Council in dealing with any of the Licensee's property remaining on the Council Land.
- (f) If the Council does not exercise any right or delays exercising any right under this clause 9 of Schedule 8 or gives any concession to the Licensee or attempts to mitigate its loss, it is not a waiver of the Council's rights under this Licence.

Schedule 9 Form of Deed Poll

This Deed is made on

Between

Parramatta City Council ABN 49 907 174 773 of PO Box 32, Parramatta, NSW 2124 (Principal)

and

[] of [] (Subcontractor)

Operative provisions

1. Definitions

In this Deed:

"Contract" means the Voluntary Planning Agreement dated [insert date] between the Principal and the Developer that includes a requirement that the Developer carry out the Public Domain Works.

"Developer" means the person stated in the Schedule.

"Subcontract Work and Products" means the works and/or products stated in the Schedule.

"Warranty Period" means the period stated in the Schedule.

"Public Domain Works" has the same meaning as in the Contract.

2. Warranty

The Subcontractor warrants that all work performed and all materials supplied by the Subcontractor as part of the Subcontract Work and Products will:

- 2.1 comply in all respect with the requirements of the Contract; and
- 2.2 to the extent that the quality of materials or standard of workmanship is not specified in the Contract, comply with the requirements of law and be of merchantable quality and be fit for the purposes for which they are required.

3. Replacement or making good Subcontract Work and Products

3.1 The Subcontractor must at its cost make good, to the reasonable satisfaction of the Principal, any of the Subcontract Work and Products which, within the Warranty Period, are found to:

- 3.1.1 be of a lower standard or quality than referred to in clause 2 of this Deed; or
- 3.1.2 have deteriorated to such an extent that they are no longer fit for the purposes for which they were required.

3.2 The liability of the Subcontractor under this clause 3 is reduced to the extent that deterioration is caused by:

3.2.1 mishandling, damage before installation, or incorrect installation, in each case caused by others;

3.2.2 normal wear and tear; or

3.2.3 incorrect operational procedures or maintenance, in each case not attributable to the Subcontractor.

4. Making good Works

The Subcontractor must at its cost carry out any work necessary to:

4.1 any part of the works to satisfy its obligations under clause 3 of this Deed; and

4.2 restore or make good the Works after satisfying its obligations under clause 3 of this Deed.

5. Notice of Defects

The Principal may notify the Subcontractor in writing if it considers there has been any breach of any provision of this Deed.

6. Time to remedy

The Subcontractor must do everything necessary to remedy all breaches notified to it by the Principal under clause 5 of this Deed within a reasonable time after the Principal's notice.

7. Failure to remedy

7.1 If the Subcontractor fails to carry out and complete the works specified in the Principal's notice under clause 5 of this Deed within a period determined by the Principal to be reasonable in the circumstances, the Principal may give written notice to the Subcontractor that the Principal intends to have that work carried out by others. This notice must allow a reasonable period for the Subcontractor to respond.

7.2 If the Subcontractor fails to complete the work by the date specified in the notice given pursuant to clause 7.1, the Principal may have the work carried out by others, and the Subcontractor indemnifies the Principal against all costs, losses and damages suffered or incurred by the Principal in doing so.

8. Urgent action by Principal

8.1 The Principal may take any urgent action necessary to protect the Works, other property or people as a result of a breach of clause 2 of this Deed.

8.2 The Subcontractor agrees that the Principal taking such action does not affect any obligation of the Subcontractor under this Deed.

8.3 The Subcontractor indemnifies the Principal against all costs, losses and damages suffered or incurred by the Principal in taking that action.

9. Operation of Deed

This Deed comes into effect when executed by the Subcontractor, and is effective whether or not executed by the Principal.

Schedule

1. Developer means Drill Pty Limited, ACN 000 175 600.
2. Subcontract Work and Products means #
3. Warranty Period means a period of # years commencing on the date of Practical Completion of the Public Domain Works in accordance with the Contract.
4. Works means #

Executed as a deed.

Executed by Parramatta City)
Council under seal in accordance)
with a resolution of the Council made)
on [date]:)
)

.....)
Chief Executive Officer Lord Mayor

.....)
Print name of Chief Executive Officer Print name of Lord Mayor

EXECUTED by [## *Insert name of*)
Subcontractor] ACN [## *Insert*)
Subcontractor's ACN] in accordance with)
Section 127 of the *Corporations Act 2001* (Cth) in)
the presence of:)

..... Director

..... Full name

..... Usual address

..... Director (or Company Secretary)

..... Full name

..... Usual address

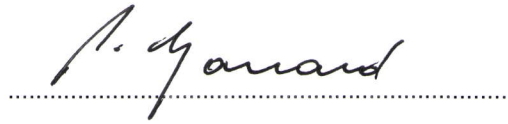
Executed as an agreement

Executed by Parramatta City Council)
under seal in accordance with a resolution)
of the Council made on :

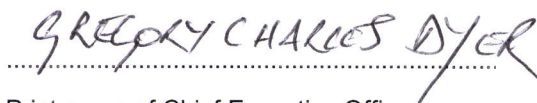
12 October 2015




Chief Executive Officer



Lord Mayor



Print name of Chief Executive Officer

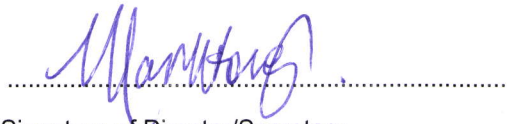


Print name of Lord Mayor

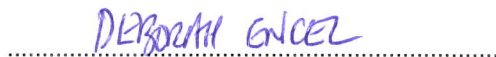
Executed by Drill Pty Ltd)
ACN 000 175 600 in accordance with)
section 127 of the *Corporations Act 2001*)
(Cth) by:)



Signature of Director



Signature of Director/Secretary



Print name of Director



Print name of Director/Secretary

Annexure A

Landscape VPA Plan

Deborah Green
/s/ [Signature] M. 14.

