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# Voluntary Planning Agreement

5-7 Parkes Street, Parramatta

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City of Parramatta Council ABN 49 907 174 773

Parkmeng Pty Ltd ACN 601 875 398



Interim General Manager of Council



Administrator of Council

SAM FATAD -

Director of Developer



Director / Secretary of Developer

# Table of contents

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Parties	1
Background	1
1 Definitions and Interpretations	2
Definitions	2
Interpretation	5
2 Application of the Agreement	5
3 Planning Agreement under the Act	5
4 Application of Sections 94, 94A and 94EF	6
5 Operation of this Agreement	6
6 Contributions to be made under this Agreement	6
The Contributions	6
D01 and D03 – Dedication of Land	7
Floor Space Ratio	8
Unit Works	8
Dedication 02	8
7 Execution of Park Embellishment	9
Context	9
Approvals for Park Embellishment	9
Construction of Park Embellishment	9
8 Registration	10
Registration of this Agreement	10
Caveat	10
Release	11
9 Dispute resolution	11
Reference to Dispute	11
Notice of Dispute	12
Representatives of Parties to Meet	12
Further Notice if Not Settled	12
Mediation	12
Expert determination	13
Litigation	14

	No suspension of contractual obligations	14
10	Security and Enforcement	14
	Bank Guarantee – Park Embellishment and Unit Works	14
	Compulsory Acquisition	15
	Restriction on the issue of Certificates	15
	Enforcement by any party	16
11	Review of this Agreement	16
12	Assignment and Transfer	16
13	No fetter	17
	Discretion	17
	No fetter	17
14	Costs	17
15	GST	18
	GST exclusive	18
	GST Payable by Developer	18
16	Explanatory Notice to the Agreement	18
17	General	18
	Amendments	18
	Counterparts	18
	Relationship of Parties	18
	Time for doing acts	18
	No merger	18
	Entire agreement	19
	Further assurances	19
	Representations and warranties	19
	Confidentiality	19
	No waiver	19
	Governing law and jurisdiction	19
	Further Acts	19
	Joint and individual liability and benefits	20
	Severability	20
	Notice	20
	When is notice given	20
	Address for notices	20

Schedule 1	22
Requirements of division 6 part 4 of the Act	22
Schedule 2	23
Contributions	23
Schedule 3	25
Dedication Drawing	25
Schedule 4	26
Indicative Concept Plan	26
Schedule 5	29
Schedule of Materials and Finishes for Dedication 02	29
Schedule 6	31
Construction Terms	31
Schedule 7	40
Deed of Novation	40
Execution	47

# Voluntary Planning Agreement for Redevelopment of 5-7 Parkes Street, Parramatta

Dated 28 June 2016

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## Parties

**First party**                      **City of Parramatta Council ABN 49 907 174 773**                      **(Council)**

**Second Party**                      **Parkmeng Pty Ltd ABN 601 875 398**                      **(Developer)**

## Background

- A        The Developer owns the Land being Lot 511 in DP 866023.
- B        The LEP currently provides:
- (i)        a maximum building height for the Land of 18 metres, and
  - (ii)       a maximum floor space ratio for the Land of 4:1.
- C        The Developer has sought:
- (i)        a change to the Height of Buildings Map referred to in clause 21(2) of the LEP to allow a maximum building height of 72 metres for the Land as defined in the LEP; and
  - (ii)       a change to the Floor Space Ratio map and / or clause 22 of the LEP to allow a maximum floor space ratio of 6.5:1.
- D        The Developer submitted a Planning Proposal to Council on 19 February 2014 seeking the changes referred to in recital C.
- E        On 30 September 2014 Council wrote to the Department of Planning & Environment requesting a Gateway Determination under section 56 of the Act in respect of the Planning Proposal. The Planning Proposal was granted a Gateway Determination by the Minister for Planning, subject to conditions on 27 November 2014.
- F        By letter dated 10 July 2015, the Developer offered to enter into this Agreement with Council (**Offer**) for:
- (i)        the dedication of land for Jubilee Park and for the widening of Parkes Street, Parramatta;
  - (ii)       dedication of a two bedroom apartment with a car parking space as affordable housing; and
  - (iii)       works in kind to embellish the new park dedication.

- G The Parties propose to formalise the terms of the Developer's Offer referred to in recital F by entering into this Agreement in accordance with section 93F of the Act.
- H This Agreement will be executed by the Parties after the public exhibition of the Instrument Change and prior to the Gazettal of the Instrument Change by the Department.
- I A Development Application will be subsequently submitted to Council under Part 4 of the Act for the redevelopment of the Land.

## 1 Definitions and Interpretations

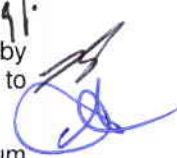
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### Definitions

- 1.1 In this Agreement the following definitions apply:

Term	Definition
<b>the Act</b>	means the <i>Environmental Planning and Assessment Act 1979 (NSW)</i> .
<b>Agreement</b>	means this Planning Agreement.
<b>Approvals</b>	means any certificate, licence, consent, permit, approval or other requirement of any Government Agency.
<b>Bank Guarantee</b>	means an irrevocable and unconditional undertaking with no expiry or lapsing date issued by any financial institution approved by Council in its absolute discretion to pay an amount or amounts of money to Council on demand and containing any other terms and conditions reasonably acceptable to Council.
<b>Business Days</b>	means a day that is not a Saturday, Sunday or public holiday in NSW.
<b>Claim</b>	means any claim, loss, liability, damage, proceedings, order, judgement or expense.
<b>Completion</b>	means for the Park Embellishment and Unit Works, at the point in time when a Compliance Certificate is issued for the relevant works in accordance with the Construction Terms.
<b>Compliance Certificate</b>	has the same meaning as under the Act.
<b>Construction Certificate</b>	has the same meaning as under the Act.
<b>Construction Terms</b>	means the terms set out in Schedule 6.
<b>Contamination</b>	the presence (in, on or under the 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 and that presence presents a risk of harm to human health or any other aspect of the environment.
<b>Contributions</b>	means any monetary contributions, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit detailed in Column 2 of Schedule 2.
<b>Council</b>	means City of Parramatta Council.

<b>CPI</b>	means the All Groups Consumer Price Index (Sydney) as published by the Australian Bureau of Statistics.
<b>Dedication 01</b>	means the land for Jubilee Park marked in the Dedication Drawing as D01.
<b>Dedication 02</b>	means the two bedroom affordable housing apartment marked in the Dedication Drawing as D02 and as described in Schedule 2 of this Agreement.
<b>Dedication 03</b>	means the land for road widening marked in the Dedication Drawing as D03.
<b>Dedication of Land</b>	means the dedication of both Dedication 01 and Dedication 03.
<b>Dedication Drawing</b>	means the plan in Schedule 3 of this Agreement.
<b>Defect</b>	means a defect (which adversely affects the work or will require rectification because of the defect) arising from materials or workmanship or design other than: <ul style="list-style-type: none"> <li>(a) minor shrinkage;</li> <li>(b) minor settlement cracks;</li> <li>(c) normal wear and tear.</li> </ul>
<b>Defect Liability Period</b>	means the period of 6 months from the date the relevant works are handed over or provided to Council in accordance with this Agreement.
<b>Developer</b>	means Parkmeng Pty Ltd.
<b>Development</b>	means the development of 5-7 Parkes Street Parramatta proposed by the Developer including a mixed use multi-storey building containing residential apartments, commercial and / or retail units at ground level and underground car parking.
<b>Development Application</b>	has the same meaning as in the Act.
<b>Development Consent</b>	has the same meaning as in the Act and as may be granted in respect of the Development.
<b>Dispute</b>	means a dispute about the terms and operations of this Agreement.
<b>Explanatory Note</b>	means the note exhibited with a copy of this Agreement, when this Agreement is made available for inspection by the public in accordance with the Act, as contemplated by clause 25E of the Regulation.
<b>Final Occupation Certificate</b>	means the final occupation certificate for the Development issued in accordance with the Act.
<b>Gateway Determination</b>	means the determination by Tim Archer Acting Director Metropolitan (Parramatta) Planning Services Department of Planning & Environment dated 27 November 2014 pursuant to section 56(2) of the Act that an amendment to the Parramatta City Centre Local Environmental Plan 2007 should proceed to exhibition.
<b>GST</b>	has the meaning given to that term in the GST Act.
<b>GST Act</b>	means the <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> .

<b>Government Agency</b>	means: (a) a government or government department or other body; (b) a governmental, semi-governmental or judicial person; or (c) a person (whether autonomous or not) who is charged with the administration of a law.
<b>Indicative Concept Plan</b>	means the plan in <del>8</del> <sup>Schedule 4</sup> of this Agreement prepared by MAKO Architecture, Project No. 1514 Sheet CP_001 to CP_003 dated 15 May 2015. <span style="float: right;">91. </span>
<b>Instrument Change</b>	means the amendment to the LEP so the maximum building height for the Land is 72 metres and the maximum floor space ratio for the Land is 6.5:1.
<b>Land</b>	means Lot 511 in DP 866023 also known as 5-7 Parkes Street, Parramatta.
<b>LEP</b>	means the Parramatta Local Environmental Plan 2011.
<b>Minister</b>	means the Minister administering the Act.
<b>Occupation Certificate</b>	has the same meaning as under the Act and includes an interim or final occupation certificate.
<b>Park Embellishment</b>	means the works in kind to be undertaken by the Developer to the land the subject of Dedication D01 in accordance with Indicative Concept Plan subject to reasonable variations resulting from the detailed design phase as agreed between both parties.
<b>Party</b>	means a party to this Agreement, including their successors and assigns.
<b>Parties</b>	means the parties to this Agreement.
<b>Public Purpose</b>	means any purpose that benefits the public or a section of the public, including but not limited to a purpose specified under section 93F(2) of the Act.
<b>Rectification Certificate</b>	means a Compliance Certificate within the meaning of section 109C(1)(a)(v) of the Act to the effect that work the subject of a Rectification Notice has been completed in accordance with the Rectification Notice.
<b>Rectification Notice</b>	means a notice in writing that identifies a Defect in a work and requires rectification of the Defect within a reasonably specified period of time.
<b>Regulation</b>	means the <i>Environmental Planning and Assessment Regulation 2000 (NSW)</i> .
<b>Schedule of Materials and Finishes</b>	means the Schedule of Materials and Finishes for Dedication 02 set out at Schedule 5.
<b>Supply</b>	has the meaning given to that term in the GST Act.
<b>Unit Works</b>	means the design, construction and fit out of Dedication 02, including a car parking space, dishwasher, washer and dryer as required under this Agreement.



## **Interpretation**

1.2 In this document:

- (a) a singular word includes the plural and vice versa;
- (b) a word which suggests one gender includes the other gender;
- (c) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, this document and references to this document include any schedules or annexures;
- (d) a reference to a party to this document or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;
- (e) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) a reference to a document or agreement (including a reference to this document) is to that document or agreement as amended, supplemented, varied or replaced;
- (g) a reference to this document includes the agreement recorded by this document;
- (h) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (i) if any day on or by which a person must do something under this document is not a Business Day, then the person must do it on or by the next Business Day.
- (j) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity; and
- (k) a reference to 'month' means calendar month.

## **2 Application of the Agreement**

2.1 This Agreement applies to:

- (a) the Land; and
- (b) the Instrument Change; and
- (c) the Development.

## **3 Planning Agreement under the Act**

3.1 This Agreement constitutes a planning agreement within the meaning of section 93F of the Act. Schedule 1 demonstrates how this Agreement complies with each of the requirements of Division 6 Part 4 of the Act.

## **4 Application of Sections 94, 94A and 94EF**

- 4.1 This Agreement does not exclude the application of sections 94 and 94A of the Act to the Development.
- 4.2 This Agreement does not exclude the operation of section 94EF of the Act to the Development.
- 4.3 For the purposes of section 94(6) of the Act, the Contributions under this Agreement are not to be taken into account when determining a development contribution under section 94 for the Development.

## **5 Operation of this Agreement**

- 5.1 The Parties agree that this Agreement operates on and from the date it is executed by the Parties as required by clause 25C(1) of the Regulation, except that clauses 6 and 7 of this Agreement do not operate until the Instrument Change commences in accordance with section 34 of the Act.
- 5.2 This Agreement will remain in force until:
  - (a) it is terminated by operation of Law; or
  - (b) all obligations are performed or satisfied.
- 5.3 The Developer may request the Council to consider changes to the terms of this Agreement, if a legal challenge to the Development Consent by a third party results in the Development Consent being rendered invalid or unenforceable.

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

### **The Contributions**

- 6.1 The Developer agrees that if the Instrument Change is made consistent with the terms in Recital C, and that will enable a Development Application to be lodged to carry out the Development, it will make the Contributions to Council which are to be made:
  - (a) for the public purpose specified in column 1 of Schedule 2;
  - (b) to the extent or in the amount referred to in column 2 of Schedule 2; and
  - (c) at the times referred to in column 3 of Schedule 2.
- 6.2 The Developer shall include in a Development Application lodged in respect of the Development the Contributions set out in Schedule 2 of this Agreement and must:
  - (a) comply with any condition of Development Consent requiring provision of the Development Contribution; and
  - (b) not seek to amend such conditions of Development Consent; and
  - (c) not appeal to the Land and Environment Court in respect of the same; and
  - (d) not take any other action to avoid complying with such conditions,

provided that the conditions on the Development Consent for the Development reflect and are not inconsistent with the agreement between the parties regarding the Development Contribution set out in this Agreement.

**D01 and D03 – Dedication of Land**

- 6.3 The Dedication of Land will occur prior to the issue of a Final Occupation Certificate being issued for the Development.
- 6.4 The Dedication of Land is taken to have been made (and made free of costs) if:
- (a) in the case of Dedication 01 the land vests in the Council for an estate in fee simple under section 49(1) of the *Local Government Act 1993*; or
  - (b) in the case of Dedication 03, the land is dedicated to Council as a public road under section 9 of the *Roads Act 1993*.
- 6.5 When the Council has been given an instrument by the Developer for the purposes of achieving Dedication 03 as required under clause 6.46.4(b), the Council must promptly do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- 6.6 The Developer must ensure that the land to be dedicated under this Agreement is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges), when the Developer dedicates that land to the Council under this Agreement.
- 6.7 Despite clause 6.6, if having used its best endeavours, the Developer cannot ensure that the land to be dedicated is free from any relevant encumbrance and affectation, then:
- (a) the Developer may request that the Council agree to accept the land subject to those encumbrances and affectations; and
  - (b) if the encumbrance or affectation:
    - (i) does not prevent the future use of the land for the public purpose for which it is to be dedicated under this Agreement; and
    - (ii) is not a charge against the Land, and
    - (iii) is an encumbrance or charge that Council would not be restricted from granting or extinguishing over public land or public road under the *Local Government Act 1993* or the *Roads Act 1993*,
- the Council must not withhold its agreement unreasonably; and otherwise, the Council may withhold its agreement at its absolute discretion.
- 6.8 The Council acknowledges that this Agreement does not require the Developer to carry out any work in relation to Dedication 03.
- 6.9 The Council represents and warrants that it has inspected Dedication 01 and Dedication 03 and acknowledges that no representations, inducements or warranties have been made by the Developer or its agents or representatives relating to:
- (a) the present or future state or condition of Dedication 01 and Dedication 03; or
  - (b) the suitability of Dedication 01 and Dedication 03 for Council's purposes.

6.10 The Developer represents and warrants that:

- (a) it is the owner of Dedication 01 and Dedication 03; and
- (b) in relation to Dedication 01 and Dedication 03 (but not including any structure erected on that land) has no knowledge of:
  - (i) any Contamination; or
  - (ii) any other patent defect that would make the land unsuitable for Council's purposes.

**Floor Space Ratio**

6.11 Council agrees that the Developer may include the area of Dedication 01 and Dedication 03 in any calculation of floor space ratio for the Development.

**Unit Works**

6.12 Prior to the issue of an Occupation Certificate in respect of any part of the Development, or in any event, prior to the occupation of any part of the Development, the Developer must, at no cost to Council:

- (a) Carry out the Unit Works as part of the Development, in accordance with the Development Consent, the Construction Terms and the Schedule of Materials and Finishes; and
- (b) Purchase and install a dishwasher, washing machine and clothes dryer as specified in the Schedule of Materials and Finishes (each of a specification approved by the Council, whose approval shall not be unreasonably withheld) in Dedication 02.

6.13 The Unit Works required under clause 6.12 will be taken to have been completed when Council certifies, by notice in writing, that the Unit Works have been fully constructed and finished in accordance with the Construction Terms, and will be taken to have been provided when Dedication 02 is transferred to Council in accordance with this Agreement.

**Dedication 02**

6.14 Within 20 Business Days after:

- (a) the issue of an Occupation Certificate for that part of the Development that incorporates the Unit Works, or
- (b) the registration of a Strata Plan which incorporates the Unit Works,

whichever occurs later, the Developer must transfer Dedication 02 to the Council:

- (c) in accordance with any relevant provisions of the Construction Terms; and
- (d) so that immediately on transfer, Dedication 02 can be lawfully occupied and Council will have an estate in fee simple in possession, freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, rights, charges, rates, strata levies and contracts, except as may be permitted by this Agreement.

6.15 The obligation under clause 6.14 will be taken to have been fulfilled for the purposes of this Agreement when the transfer of Dedication 02 to Council is shown on the Register.

- 6.16 The parties acknowledge and agree that Dedication 02 is to be constructed, finished and dedicated to Council under this Agreement for the purposes of the provision of affordable housing and the Council intends to engage an approved community housing provider for the ongoing management of Dedication 02.
- 6.17 The Developer must ensure that, on transfer of the Dedication 02, Council will have the benefit of any defects liability warranty given by a builder in relation to the Development and Dedication 02.

## **7 Execution of Park Embellishment**

### **Context**

- 7.1 The parties agree that this clause 7:
- (a) governs the execution of the Park Embellishment and subject to the terms of any Development Consent or other statutory certificates under the Act, sets out the terms and conditions the parties will observe in relation to the execution of the Park Embellishment; and
  - (b) applies to the whole of the Park Embellishment and any relevant part of them as the context requires for the orderly conduct of the Development and observance of the terms and conditions of this Agreement.

### **Approvals for Park Embellishment**

- 7.2 The Developer must, at its own cost, use its reasonable endeavours to obtain all Approvals from any relevant Governmental Agency having jurisdiction over or in respect of the Park Embellishment.
- 7.3 If the Developer, after complying with clause 7.2, is not able to obtain such Approvals the Council shall issue a notice pursuant to clause 8.4(a) of Schedule 6.
- 7.4 Before commencing the Park Embellishment, the Developer must give Council copies of all Approvals relating to the Park Embellishment, other than Approvals granted by Council.

### **Construction of Park Embellishment**

- 7.5 The Developer must at its cost:
- (a) carry out and complete the Park Embellishment in accordance with the Construction Terms and all Approvals relating to the Park Embellishment issued by any relevant Governmental Agency having jurisdiction over or in respect of the Park Embellishment;
  - (b) ensure that the Park Embellishment is conducted in a proper and workmanlike manner so that it is structurally sound, and suitable for its intended use; and
  - (c) promptly notify Council of any delays which it experiences in completing the Park Embellishment that may affect completion.
- 7.6 The Park Embellishment will be taken to have been Completed when Council certifies, by notice in writing, that it has been fully constructed in accordance with the Construction Terms, and will be taken to have been provided to Council when Dedication 01 is dedicated to Council in accordance with this Agreement.

## 8 Registration

### Registration of this Agreement

- 8.1 The Developer represents and warrants that it is the registered proprietor of the Land. The Parties agree that this Agreement will be registered on the title of the Land pursuant to section 93H of the Act.
- 8.2 The Developer must, as soon as practicable after this Agreement is executed take all reasonable steps to procure:
- (a) the consent of each person who:
    - (i) has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or
    - (ii) is seized or possessed of an estate or interest in the Land; and
  - (b) the execution of any documents; and
  - (c) the production of the relevant duplicate certificates of title,
- to enable 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 section 93H of the Act.
- 8.3 The Developer, at its own expense and no later than 25 Business Days after the date of this Agreement, will take all practical steps to procure the lodgement of this Agreement with the Registrar-General.
- 8.4 The Developer, at its own expense will take all reasonable practical steps 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 pursuant to clause 8.3.
- 8.5 The Parties agree that on registration by the Registrar General this Agreement will be binding on and enforceable against the owners of the Land from time to time as if each owner of the Land had entered into this Agreement.

### Caveat

- 8.6 The Developer acknowledges and agrees that:
- (a) when this Agreement is executed, Council is deemed to have acquired, and the Developer is deemed to have granted an equitable estate and interested in Dedication 02 for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently Council has sufficient interest in that land in respect of which to lodge a caveat over that land notifying that interest; and
  - (b) after a Strata Plan is registered creating a strata lot for Dedication 02, it will not object to Council lodging a caveat in the relevant folios of the Register held by the LPI for that lot nor will it seek to remove any caveat lodged by Council until that lot is dedicated to Council in accordance with this Agreement.

## Release

- 8.7 The Council agrees to promptly provide a release and discharge of this Agreement with respect to any part of the Land if the Developer requests a release and discharge of this Agreement (whether in full or part) and:
- (a) In the case of a request for a full release and discharge, the Developer has complied with all its obligations under this Agreement to the Council's satisfaction, which should not be unreasonably be withheld; or
  - (b) In the case of a request for partial release and discharge,:
    - (i) the Developer has complied with its obligations under this Agreement to the Council's satisfaction, which should not be unreasonably withheld, to the extent that those obligations affect that part of the Land to which the partial release relates;
    - (ii) a Bank Guarantee or Bank Guarantees have been provided in accordance with clause 10;
    - (iii) this Agreement has been and will remain registered against the title of any land to be dedicated to Council under this Agreement (unless the dedication will occur at the same time as the partial release and discharge);
    - (iv) this Agreement has been and will remain registered against the common property of the Development;
    - (v) if a Strata Plan has been registered that creates a strata lot for Dedication 02, the Council has registered a caveat over that lot in accordance with clause 8.6; and
    - (vi) the Developer is not otherwise in default of this Agreement.

## Removal from Register

- 8.8 After Council has confirmed any release and discharge under clause 8.7, the Council will, within a reasonable period of time from the date it receives a request from the Developer,
- (a) do all things reasonably necessary to enable the extinguishment or cancellation of this Agreement from the Register pertaining to the Land or that part of the Land to which the release and discharge relates; and
  - (b) must return to the Developer any security amount referable to the part or parts of the Land to which that release and discharge relates, provided that, in the case of a partial release, the Developer provides a replacement security, in accordance with clause 10 and in an amount satisfactory to the Council (acting reasonably), for any obligations that remain outstanding.

## 9 Dispute resolution

### Reference to Dispute

- 9.1 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.

### **Notice of Dispute**

- 9.2 The party wishing to commence the dispute resolution processes must give written notice (Notice of Dispute) to the other part 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.

### **Representatives of Parties to Meet**

- 9.3 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 the notified dispute.
- 9.4 The Parties must without limitation:
- (a) resolve the dispute during the course of that meeting;
  - (b) agree that further material, expert determination in accordance with clause 9.7 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
  - (c) 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.

### **Further Notice if Not Settled**

- 9.5 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 9.6.

### **Mediation**

- 9.6 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 five 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 five 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 9.6 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 five 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 five 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.

#### **Expert determination**

9.7 If the dispute is not resolved under clause 9.4 or clause 9.6, 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 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.

### **Litigation**

- 9.8 If the dispute is not finally resolved in accordance with this clause 9, then either party is at liberty to litigate the dispute.

### **No suspension of contractual obligations**

- 9.9 Subject to any interlocutory order obtained under clause 9.1, the referral to or undertaking of a dispute resolution process under this clause 9 does not suspend the parties' obligations under this Agreement.

## **10 Security and Enforcement**

### **Bank Guarantee – Park Embellishment and Unit Works**

- 10.1 Prior to the issue of any Construction Certificate for the Development, the Developer must provide to Council a Bank Guarantee in the amount of \$300,000.
- 10.2 The Council may call on a Bank Guarantee provided under clause 10.1 if:
  - (a) the Council compulsorily acquires any land or is required to take enforcement action to require the transfer of any land in accordance with this agreement;
  - (b) the Developer fails to Complete the Unit Works in accordance with clause 6.12; or
  - (c) the Developer fails to Complete the Park Embellishment in accordance with clause 7.5.
- 10.3 Within 20 Business Days of each anniversary of a Bank Guarantee provided under clause 10.1 the Developer must provide Council with one or more replacement Bank Guarantees (**Replacement Bank Guarantee**). Each Replacement Bank Guarantee is to be in the amount specified in clause 10.1 indexed annually in accordance with any movement in the CPI from the date of entry into this Agreement until such time as the date of that Replacement Bank Guarantee.
- 10.4 On receipt of a Replacement Bank Guarantee provided under clause 10.3, the Council must release and return to the Developer as directed, the Bank Guarantee that has been replaced.
- 10.5 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 Guarantees, the Council must release and return to the Developer, as directed, the Bank Guarantees which it holds that have been replaced.
- 10.6 The Council may apply the proceeds of a Bank Guarantee provided under this clause in satisfaction of:
  - (a) any obligation of the Developer under this Agreement to Complete the Unit Works in accordance with clause 6.12;
  - (b) any obligation of the Developer to pay the costs of compulsory acquisition or of any enforcement action taken by the Council to require the transfer of any land in accordance with this Agreement;

- (c) any obligation of the Developer to Complete the Park Embellishment under clause 7.5; and
  - (d) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure of the Developer to comply with this Agreement.
- 10.7 The Council must return a Bank Guarantee provided under this clause 10 if requested by the Developer and the Developer has duly fulfilled all of its obligations under this Agreement.
- 10.8 Nothing in this clause 10 prevents or restricts the Council from taking any enforcement action in relation to:
- (a) any obligation of the Developer under this Agreement; or
  - (b) 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.

#### **Compulsory Acquisition**

- 10.9 If the Developer does not effect the dedication of any land to Council as required by this Agreement, the Council may compulsorily acquire the relevant land, in which case the Developer consents to the Council compulsorily acquiring that land for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedures in the *Land Acquisition (Just Terms Compensation) Act 1991* and may call upon any Bank Guarantee provided under this clause 10 to cover any costs, including reasonable legal costs, incurred by the Council on acquisition of the land.
- 10.10 Clause 10.9 constitutes an agreement for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991*.
- 10.11 Except as otherwise agreed between the Developer and Council, the Developer must ensure the relevant land is freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, rights, charges, rates, strata levies and contracts, except as may be permitted by this Agreement on the date that the Council will acquire the land in accordance with clause 10.9.
- 10.12 The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the relevant land under clause 10.9.
- 10.13 The Developer must pay the Council, promptly on demand, an amount equivalent to all costs, including reasonable legal costs, incurred by the Council acquiring the whole or any part of the relevant land under clause 10.9 that are not or cannot be recovered by calling on a Bank Guarantee.

#### **Restriction on the issue of Certificates**

- 10.14 For the purposes of section 109F(1) of the Act:
- (a) this Agreement must be registered in accordance with clause 8;
  - (b) the Developer must provide the Bank Guarantee required under clause 10.1 to Council,

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

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

- (a) effect the Dedication of Land in accordance with clauses 6.3 and 6.4; and
- (b) Complete the Park Embellishment in accordance with clause 7,

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

10.16 For the purposes of section 109H(2) of the Act, the Developer must complete the Unit Works in accordance with clause 6.12 prior to the issue of an Occupation Certificate for any part of the Development.

#### **Enforcement by any party**

10.17 Without limiting any other remedies available to the Parties, this Agreement may be enforced by any Party in any court of competent jurisdiction.

10.18 Nothing in this Agreement prevents:

- (a) 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; or
- (b) the Council from exercising any function under the Act or any other law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

## **11 Review of this Agreement**

11.1 This Agreement may be reviewed or modified and any review or modification of this Agreement will be conducted in the circumstances and in a manner determined by the Parties.

11.2 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.

11.3 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.

## **12 Assignment and Transfer**

12.1 The parties must not assign or otherwise transfer their rights under this Agreement without the prior written consent of the other party.

12.2 The Developer must not assign, transfer or dispose of any right, title or interest in the Land to another person or entity (Transferee) unless:

- (a) the Developer satisfies Council that the proposed Transferee is financially capable of complying with the Developer's obligations under this Agreement;
- (b) the Developer satisfies Council that the rights of the Council will not be diminished or fettered in any way;

- (c) the Transferee delivers to the Council a novation deed signed by the Transferee in the form substantially similar to the form which is annexed to this Agreement and marked as **Schedule 7**;
- (d) the Transferee has provided a Bank Guarantee or Bank Guarantees as required by clause 10 of this Agreement;
- (e) any default by the Developer under any provisions of this Agreement have been remedied by the Developer or waived by the Council on such conditions as the Council may determine; and
- (f) the Transferee pay the Council's reasonable costs in relation to the novation deed and the assignment.

12.3 If the Developer assigns, transfers or disposes of any right, title or interest in the Land and satisfies the requirements of clauses 12.1 and 12.2, the Developer will be released from the obligations under this Agreement with respect to the whole or any part of the Land being assigned, transferred or disposed of, in accordance with the terms of the novation deed required under clause 12.2(c).

## **13 No fetter**

### **Discretion**

13.1 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 granting of Development Consent for the Development (all referred to in this Agreement as a "Discretion").

### **No fetter**

13.2 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 clause 13.2(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.

## **14 Costs**

14.1 The Developer agrees to pay Council's reasonable costs for preparing, negotiating, executing, stamping, registering and releasing or discharging this Agreement and any document related to this Agreement.

14.2 All costs associated with the provision of the Contributions described in Schedule 2 are to be paid by the Developer.

## **15 GST**

### **GST exclusive**

- 15.1 Except under this clause, the consideration for a Supply made under or in connection with this document does not include GST.

### **GST Payable by Developer**

- 15.2 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 Supply, whichever is appropriate in the circumstances.

## **16 Explanatory Notice to the Agreement**

- 16.1 Under clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist interpreting this Agreement.

## **17 General**

### **Amendments**

- 17.1 This document may only be amended by written agreement between all parties.

### **Counterparts**

- 17.2 This document may be signed in any number of counterparts. All counterparts together make one instrument.

### **Relationship of Parties**

- 17.3 Unless otherwise stated:

- (a) nothing in this Agreement creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

### **Time for doing acts**

- 17.4 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.

- 17.5 If any act or thing required to be done is done after 5pm on the specified day, it is taken to have been done on the following Business Day.

### **No merger**

- 17.6 The rights and obligations of the parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

**Entire agreement**

- 17.7 This Agreement supersedes all previous agreements about its subject matter and embodies the entire agreement between the Parties.
- 17.8 To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion, has no effect except to the extent expressly set out or incorporated by reference in this Agreement.

**Further assurances**

- 17.9 Each Party must do all things reasonably necessary to give effect to this Agreement and the transactions contemplated by it.

**Representations and warranties**

- 17.10 The Parties represent and warrant that they have the power to enter into this Agreement and comply with their obligations under this Agreement and that entry into this Agreement will not result in the breach of any law.

**Confidentiality**

- 17.11 The Parties agree that the terms of this Agreement are not confidential and that this Agreement may be treated as a public document and exhibited or reported without restriction by either Party.
- 17.12 Any information disclosed by a Party under this Agreement:
- (a) must be kept confidential unless it is already available in the public domain; and
  - (b) may only be used to attempt to resolve a dispute.

**No waiver**

- 17.13 The failure of a Party to require full or partial performance of a provision of this document does not affect the right of that Party to require performance subsequently.
- 17.14 A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- 17.15 A right under this Agreement may only be waived in writing signed by the Party granting the waiver, and is effective only to the extent specifically set out in that waiver.

**Governing law and jurisdiction**

- 17.16 New South Wales law governs this Agreement.
- 17.17 Each Party irrevocably submits to the exclusive jurisdiction of the New South Wales courts and courts competent to hear appeals from those courts.

**Further Acts**

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

**Joint and individual liability and benefits**

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

**Severability**

17.20 A clause or part of a clause of this Agreement that is illegal or unenforceable may be severed from this document and the remaining clauses or parts of the clause of this document continue in force.

**Notice**

17.21 A notice, consent or communication under this Agreement is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
  - (i) addressed to the person to whom it is to be given; and
  - (ii) given as follows:
    - (A) delivered by hand to that person's address;
    - (B) sent by prepaid mail (or by prepaid airmail if the person is overseas) to that person's address; or
    - (C) sent by fax to that person's fax number where the sender receives a transmission confirmation report from the despatching machine indicating the transmission was made without error and showing the relevant number of pages and the correct destination fax number or name of recipient.

**When is notice given**

17.22 A notice, consent or communication given under clause 17.21 is given and received on the corresponding day set out in the table below. The time expressed in the table is the local time in the place of receipt.

If a notice is	It is given and received on
Delivered by hand or sent by fax	(a) that day, if delivered by 5.00pm on a Business Day; or (b) the next Business Day, in any other case.
Sent by post	(a) three Business Days after posting, if sent within Australia; or (b) seven Business Day after posting, if sent to or from a place outside Australia.

**Address for notices**

17.23 A person's address and fax number are those set out below, or as the person notifies the sender:



<b>Name</b>	<b>Parkmeng Pty Ltd ABN 601 875 398</b>
<b>Attention</b>	Remon Fayad
<b>Address</b>	Level 2, 72 Macquarie Street
<b>Fax</b>	9687 2376

<b>Name</b>	<b>City of Parramatta Council</b>
<b>Attention</b>	The Chief Executive Officer
<b>Address</b>	PO Box 32, Parramatta NSW 2124
<b>Fax</b>	9806 5917

## Schedule 1

Requirements of division 6 part 4 of the Act

Subject and subsection of the Act	The planning agreement
<p><b>Planning Instrument or Development Application</b> (section 93F(1)) The Developer has:</p> <p>(a) sought a change to an environmental planning instrument;</p> <p>(b) made, or proposes to make, a project or development application; or</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) and (b) applies.</p>	<p>Yes.</p> <p>Yes.</p> <p>Yes.</p>
<p><b>Planning Instrument or Development Application</b> (section 93F(1)) For the purpose of being used or applied towards a Public Purpose, the Developer has:</p> <p>(a) dedicated land free of cost;</p> <p>(b) paid a monetary contribution; or</p> <p>(c) provided any other material public benefit.</p>	<p>Yes.</p> <p>No</p> <p>Yes.</p>
<p><b>Description of the land to which the Agreement applies</b> (Section 93F(3)(a))</p>	<p>See clause 2.</p>
<p><b>The scope, timing and manner of delivery of contribution required by the Agreement</b> (Section 93F(3)(c))</p>	<p>See clauses 6 and 7, Schedule 2 and Schedule 6.</p>
<p><b>Applicability of section 94 of the Act</b> (Section 93F(3)(d))</p>	<p>The application of section 94 of the Act is not excluded.</p>
<p><b>Applicability of section 94A of the Act</b> (Section 93F(3)(d))</p>	<p>The application of section 94A of the Act is not excluded.</p>
<p><b>Applicability of section 94EF of the Act</b> (Section 93F(3)(d))</p>	<p>The application of section 94EF of the Act is not excluded.</p>
<p><b>Mechanism for dispute resolution</b> (Section 93F(3)(f))</p>	<p>See clause 9.</p>
<p><b>Enforcement of the Agreement</b> (Section 93F(3)(g))</p>	<p>See clause 10.</p>
<p><b>Registration of the Agreement</b> (Section 93F(3)(g))</p>	<p>See clause 8.</p>

## Schedule 2

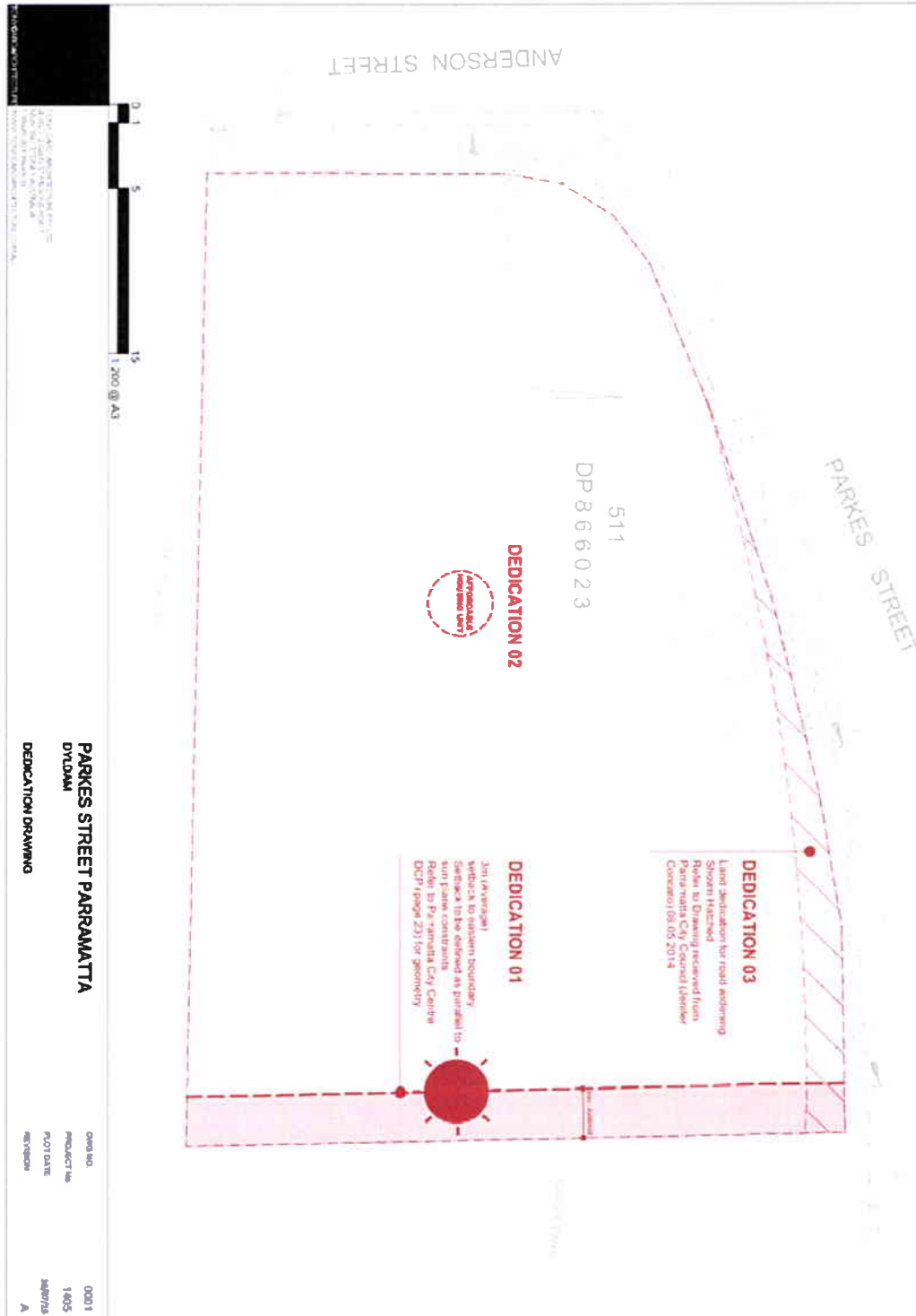
### Contributions

Column 1	Column 2	Column 3
Purpose of Development Contribution	Development Contribution	Date for making Development Contribution
Public open space and recreation areas	The dedication to Council, at no cost to Council, of the land depicted as Dedication 01 on the Dedication Drawing in Schedule 3 for use as a Public Park including the transfer of ownership of Dedication 01 to Council in accordance with the <i>Local Government Act 1993</i> .	Dedicated Land to be transferred to the Council prior to the issue of a Final Occupation Certificate being issued for the Development or any part of the Development.
Affordable Housing	<p>The construction, finishing and transfer to Council, at no cost to Council, of a two bedroom apartment within the Development, being Dedication 02, which must:</p> <p>(a) be in the location determined in the Concept Design Process set out at clause 5.1 of Schedule 6;</p> <p>(b) be a minimum of 75 square metres to a maximum of 80 square metres in area (not including basement car parking space);</p> <p>(c) include a second ensuite bathroom;</p> <p>(d) include a basement car parking space;</p> <p>(e) include a dishwasher, washer and dryer and other finishes in accordance with the Schedule of Materials and Finishes; and</p> <p>(f) at the time of transfer be able to be lawfully occupied.</p>	<p>The Unit Works are to be completed prior to the issue of an Occupation Certificate for the Development, or in any event prior to occupation of that part of the Development.</p> <p>The transfer of Dedication 02 is to occur within 20 Business Days after the later of:</p> <p>(a) the issue of an Occupation Certificate for that part of the Development, or</p> <p>(b) the registration of a Strata Plan for that part of the Development.</p>

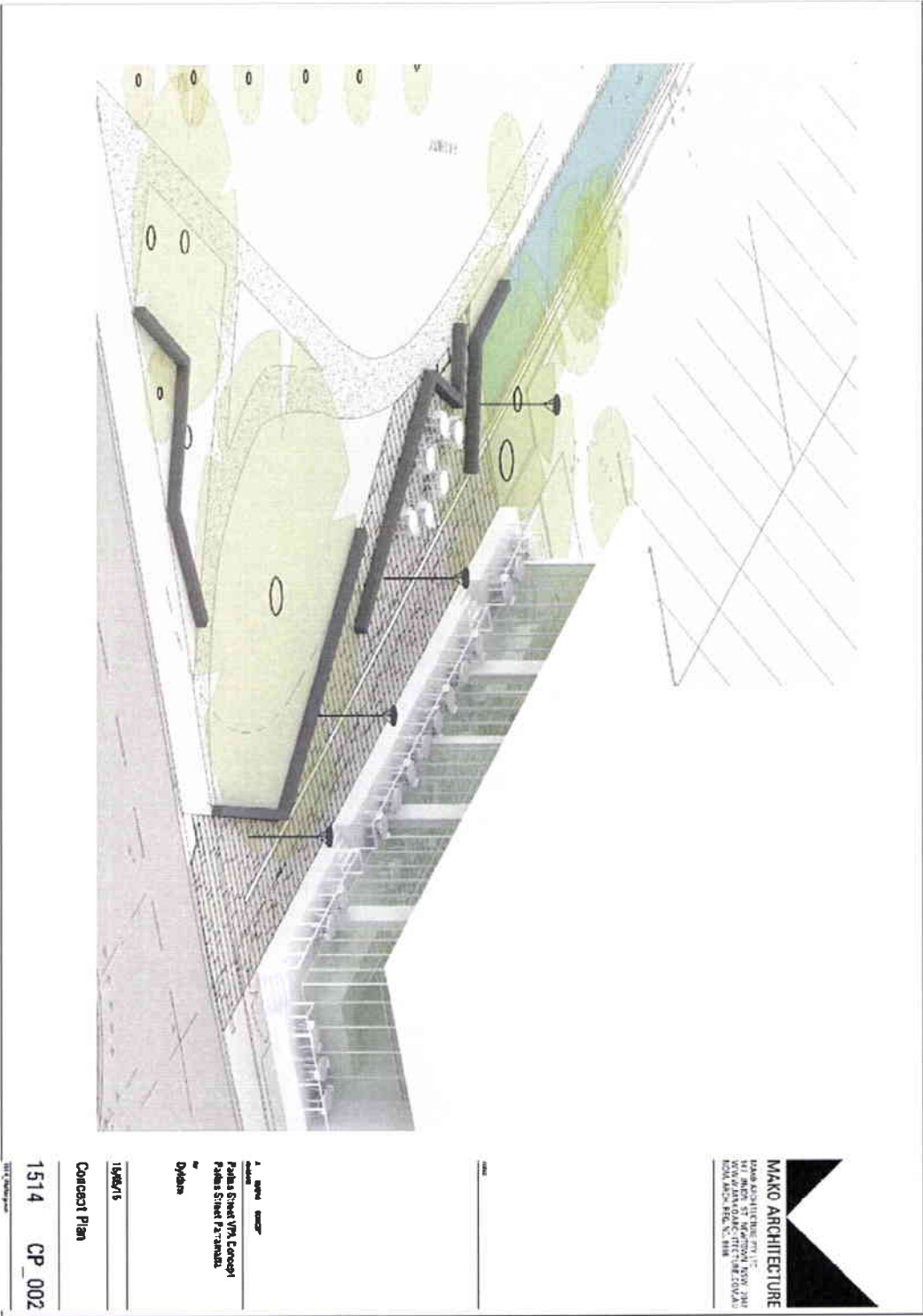
Column 1	Column 2	Column 3
Purpose of Development Contribution	Development Contribution	Date for making Development Contribution
Public Road / Road Widening	<p>The dedication to Council, at no cost to Council, of the land depicted as Dedication 03 on the Dedication Drawing in Schedule 3 for the purpose of road widening of Parkes Street, including:</p> <p>(a) the dedication of Dedication 03 to Council in accordance with the <i>Roads Act 1993</i>; and</p> <p>(b) the clearance of all structures from Dedication 03 and the remediation of the same.</p>	Dedicated Land to be transferred to the Council prior to the issue of a Final Occupation Certificate being issued for the Development or any part of the Development.
Public Open Space and Recreation Areas	<p>The Developer will undertake Public Domain works to Jubilee Park to create an active interface between the Development and the public open space.</p> <p>The Works in Kind shall be undertaken in accordance with the scope and extent of works as outlined in the Indicative Concept Plan in Schedule 4. The Developer will allow for reasonable adjustments/variations resulting during the detailed design phase as agreed between both parties.</p>	The Park Embellishment is to be completed prior to the Dedication of Land, being prior to the issue of a Final Occupation Certificate for the Development or any part of the Development.

# Schedule 3

## Dedication Drawing



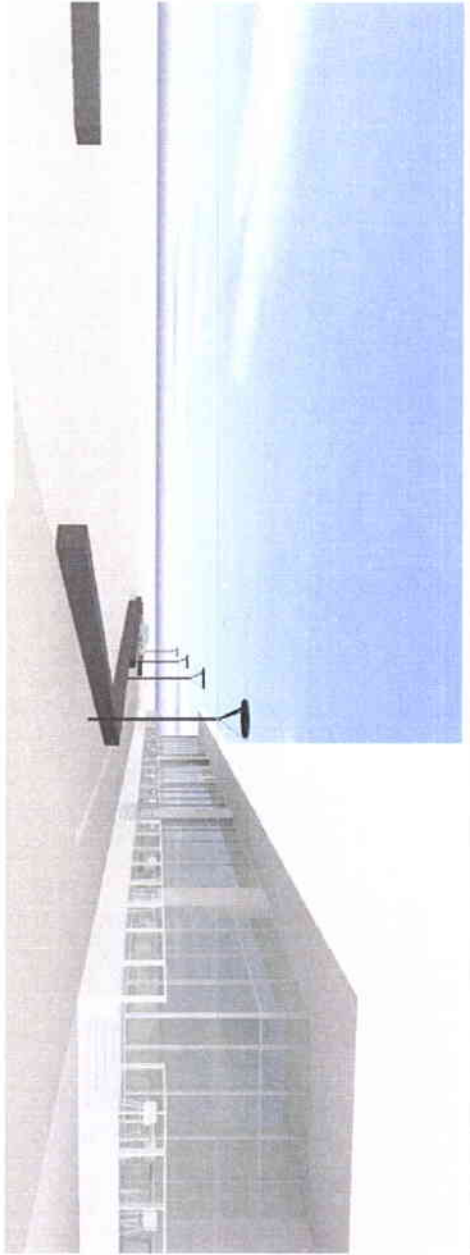
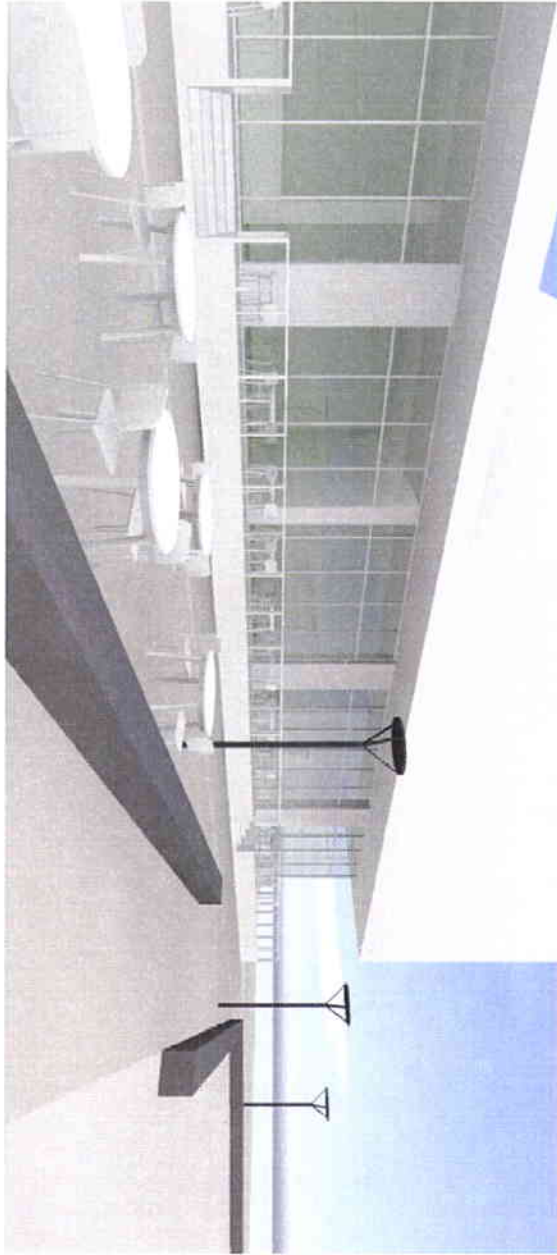




**MAKO ARCHITECTURE**  
 Mako Architecture Pty Ltd  
 141 MERRI ST. NEWTON NSW 2146  
 NSW 2146 AUSTRALIA  
 TEL: 02 9638 8800  
 WWW.MAKOARCH.COM

**1. SITE PLAN**  
 1:1000  
 Parkes Street YPA Concept  
 Parkes Street Parramatta  
 for  
 Dysons

**15/04/15**  
**Concept Plan**  
**1514 CP\_002**  
 11/11/2014




**MAKO ARCHITECTURE**  
 MAKO ARCHITECTURE PTY LTD  
 10/100 PARKES STREET PARRAMATTA NSW 2150  
 AUSTRALIA  
 PHONE: 02 9639 1111  
 WWW.MAKOARCHITECTURE.COM.AU

1. 1514 CP\_003  
 Parkes Street YPA Concept  
 Parkes Street Parramatta  
 in  
 Dipylon

1514 CP\_003  
 Concept Plan



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## Schedule 5

Schedule of Materials and Finishes for Dedication 02

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<b>Car Space</b>	Single car space plus storage area
<b>Kitchens</b>	Dulux White Duck ½ strength Polyurethane kitchen cupboards with Caesar stone bench top. Paco Jaanson chrome kitchen sink mixer Double bowl stainless steel sink Westinghouse stainless steel 60cm gas cooktop Westinghouse stainless steel 60cm wall oven Westinghouse stainless steel 60cm range hood Chef Dishlex stainless steel dishwasher Colourback glass splash backs
<b>Bathroom &amp; Ensuites</b>	Vanity with mirrored shaving cabinet Ibis chrome mixers to vanities, showers and baths White acrylic bath tub Chrome bathroom accessories Back to wall toilet suites Semi frameless glass shower screens Door hardware with privacy set
<b>Bedrooms</b>	Aluminium sliding wardrobe doors with veneer panel Door hardware with passage set
<b>Flooring</b>	Living, dining, hallways & bedrooms to be carpeted Vitrified floor tiles to the bathroom, ensuite, kitchen and laundry Vitrified tiles to balconies Entry foyer, common area and lift lobbies to be tiled
<b>Walls &amp; Ceilings</b>	Party Wall system (Job Specific item - Can be specified upon design plans)

Full height ceramic tiling to the bathroom, ensuite and laundry walls

Internal metal stud walls sheeted and painted

Plaster board ceilings

External wall cladding (Job Specific item - Can be specified upon design plans)

**Windows & Sliding Doors** Semi-commercial and framed windows and sliding doors

**Electrical & Data**

- Two double GPO's to kitchen
- Hard wired power connections as required to all appliances
- Two double GPO's to living and dining room
- One telephone, Internet, TV and Pay TV point to living room
- One telephone, Internet, TV and Pay TV point to main bedroom
- Two double GPO's to second bedroom
- One double GPO to each bathroom, ensuite and laundry
- Access control to common area doors
- Security video intercom
- Downlights (Job specific item – Downlights to bathroom, ensuite, kitchen and laundry dependant on floor to ceiling height)

**Air Conditioning** Split system

**General Items**

- Simson 4kg Dryer to laundry
- Simson 6 ½ kg SWT654 washer
- Stainless steel laundry tub to laundry
- Automatic garage door at basement entry
- Aluminium balustrades with glass to balcony Holland blinds throughout

At the time of making this Agreement for the rezoning of the Land, no design plans are available to the Developer. As such the above items are only indicative of the finishes to be provided, as some items could be deleted or discontinued prior to construction commencing. Council may request the Developer to provide an updated schedule of finishes prior to construction commencing.

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## Schedule 6

### Construction Terms

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#### 1 Interpretation

For the purposes of this Schedule 6, the defined terms in clause 1.1 of this Agreement and the Interpretation principles in clause 1.2 of this Agreement will apply and, unless the context indicates a contrary intention the following definitions apply:

**Bond** means an unconditional documentary performance bond signed and issued by an Australian Prudential Regulation Authority (**APRA**) regulated authorised deposit taking institution or an insurer authorised by APRA to conduct new or renewal insurance business in Australia, that:

- (a) is denominated in Australian dollars,
- (b) has been issued by or on behalf of the Developer,
- (c) has no expiry or end date,
- (d) specifies the Council as the beneficiary,
- (e) is irrevocable,
- (f) states the relevant minimum amount required to be lodged as security, and
- (g) states the purpose of the deposit required in accordance with this Agreement.

**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).

**Detailed Design** means the final specifications and finishes for the Works prepared in accordance with clause 5.2 of this Schedule 6 and will include the design of the Works, the location for the Works and installation specifications where appropriate.

**Services** means all water, gas, electricity, drainage, sewerage, data communications, telecommunications and other services which are required under the Development Consent or an Approval and which are necessary for the construction, operation or occupation of the Works and the land to be dedicated to Council under this Agreement.

**Works** means the Park Embellishment and the Unit Works as required under this Agreement.

#### 2 Requirements of Authorities and Approvals

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

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

2.2 Subject to clause 7.2 of the Agreement, if the Developer requires any Approvals in order to carry out the obligations under this Agreement, then the Developer will acquire all Approvals at its own cost.

- 2.3 The Developer must ensure that the Works are carried out:
- (a) in accordance with the Development Consent, the Detailed Design 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 ;
- 2.4 It is acknowledged that to the extent of any inconsistency between this Agreement, the Development Consent, the Detailed Design or any Approval, the terms of the Detailed Design, or if it is later in time, 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.
  - (b) provide reasonable notice to the Council of any meeting relating to the Park Embellishment or the Unit Works that is attended by the Superintendent appointed under any Construction Contract (**Superintendent**) and give Council an opportunity to attend the meeting at the designated time.

### **5 Design Development and Approvals**

#### **5.1 Concept Design**

- (a) The Developer must provide updated concept designs for the Park Embellishment (Dedication 01) and the Unit Works (Dedication 02) to Council prior to lodgement of a Development Application for the Development (**Draft Concept Design**).
- (b) The Draft Concept Design will be informed by the outcome of a design competition for the Development as it relates to Dedication 01.
- (c) At the time the Draft Concept Design is provided to Council, the Developer must notify the Council in writing of the proposed location of Dedication 02 within the overall Development.
- (d) Within 20 Business Days of receiving the Draft Concept Design, the Council may notify the Developer in writing of any changes it requires to the Draft Concept Design and if it is not satisfied with the location of Dedication 02, suggest an alternative location for Dedication 02.
- (e) Provided the Council's suggested changes to the Draft Concept Design are consistent with the outcome of the design competition and will not result in a significant delay to the lodgement of the Development Application, the Developer will make those changes including any change necessary to accommodate any proposed alternative location for Dedication 02 and provide a final Concept Design to Council to be included in the Development Application (**Final Concept Design**).

- (f) If the Council does not provide a response to the Draft Concept Design in accordance with paragraph (d) of this clause, the Council will be taken to have accepted the Draft Concept Design and the location of Dedication 02.

## 5.2 Detailed Design

- (a) Prior to lodgement of a Construction Certificate for the Development, the Developer must provide to Council a copy of the Construction Certificate drawing (**Detailed Design**) in relation to works to Dedication 01 and Dedication 02 which must be generally consistent with the approved Development Consent.
- (b) Within 20 Business Days of receiving the Detailed Design, Council will respond to the Developer with any 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 paragraph (b) of this clause 5.2, to avoid possible delays to the Completion of the Works, the outstanding issues should be referred for dispute resolution in accordance with clause 9 of the Agreement. .
- (e) Any acceptance by the Council of the Detailed Design under this clause 5.2 is not to be taken as approval of or to any Construction Certificate for the Works, however the Detailed Design may be used as part of the application for any such certificate.

## 5.3 Variation by Council and Variation Costs

- (a) The Council may require a substantial change to the design or the Works that is not contemplated in the Indicative Concept Plan and upon a request from Council the Developer will determine the cost of such variations acting reasonably and in accordance with market practice and advise Council of those costs. If Council is not satisfied with such costs it may require the costs to be determined by a quantity surveyor (at the Council's expense), selected by the Council in its absolute discretion, and the amount determined by the quantity surveyor will be the Variation Costs for such works.
- (b) If there are any Variation Costs for the Works that are authorised or determined in accordance with clause 5.3(a) of this Schedule 6, Council must pay the Variation Costs, except any part of those costs that are as a consequence of requirements imposed by another Authority.
- (c) The Variation Costs to be paid by Council in accordance with clause 5.3(b) of this Schedule 6 must be paid to the Developer within 10 Business Days after:
  - (i) delivery by the Developer to Council of a tax invoice for the payment, unless the parties agree otherwise; and
  - (ii) a Certificate of Practical Completion has been issued for the works attributable to the variation.

## 5.4 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 tradesman-like 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 Building Code of Australia and any relevant Australian Standards.

## **7 Inspection**

- (a) Council may (but is not obliged) at reasonable times and on reasonable notice inspect the progress of the Works during the course of construction. Council must be accompanied by the Developer during any inspection of the Works.
- (b) Council will promptly notify the Developer of any Defect or non-compliance in the Works identified during or as the result of such inspection and direct the Developer to carry out work to rectify that Defect or non-compliance within a reasonable time period. The parties expressly agree that any failure to identify a Defect or non-compliance will not be construed as amounting to an acceptance by Council of that Defect or non-compliance.
- (c) If the Developer is issued a direction to carry out further work under paragraph (b) of this clause 7 in Schedule 6, the Developer must, at the Developer's cost, rectify the Defect or non-compliance specified in the notice within a reasonable time period as specified in the notice.
- (d) If the Developer fails to comply with a direction to carry out work given under paragraph (b) of this clause 7 in Schedule 6, the Council will be entitled to refuse to accept that the Works (or the relevant part of the Works) have been completed in accordance with this Agreement.
- (e) For the avoidance of doubt, any acceptance by the Council that the Developer has rectified a Defect or non-compliance identified in a notice issued under paragraph (b) of this clause 7 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 Notice of Completion**

When the Developer considers that an item of the Works has reached Completion, the Developer must give Council a practical completion notice which includes:

- (a) a Compliance Certificate from the appointed certifier that the item of Works has reached Completion; and

- (b) three sets of the 'as built' drawings for the item of Works, including one set in electronic format.

## 8.2 **Acceptance by Council**

Subject to any liability for rectification of any Defect an item of Works will be taken to have been completed and the Developer is discharged from any further obligation in relation to Completion of that item of Works on receipt of written notice from Council that it accepts the Compliance Certificate.

## 8.3 **Council Final Inspection**

- (a) Council must inspect the item of Works within 10 Business Days of receiving notice from the Developer pursuant to clause 8.1 of this Schedule 6. Within 10 Business Days after such an inspection, Council must give the Developer a notice that states whether Council:

- (i) accepts the Compliance Certificate and concurs that Completion has been achieved; or
- (ii) disagrees that Completion has been achieved and identifies the errors or omissions which in Council's opinion must be rectified by the Developer to achieve Completion; and

in the circumstances identified in paragraph 8.3(a)(ii) of this clause, issue a notice of the nature identified in clause 8.4(b) of this Schedule 6.

- (b) Nothing in this clause 8.3 will be constructed to reduce or waive in any manner the Developer's responsibility to correct minor Defects of minor omissions, whether or not these are identified by Council.

## 8.4 **Non-completion of Works**

- (a) Council may, at its discretion, permit the Developer not to complete an item of Works by issuing a notice to the Developer, expressly stating that Completion of the item identified in that notice is not required.
- (b) If Council considers that the Developer is in breach of an obligation under this Agreement in relation to the execution of the Works or that the Developer has failed to achieve Completion of any item of Works, then Council may elect to give the Developer a notice providing specific detail of that breach or failure to complete and requiring the breach or failure to complete to be rectified within a period of no less than 20 Business Days or such greater period as Council considers reasonable in the circumstances.
- (c) The Developer must comply with any notice issued under clause 8.4(b) within the reasonable time period specified in the notice. If the Developer fails to comply with that notice, Council may give the Developer at least 20 Business Days' notice that it intends to call on any security in relation to the Developer's breach.
- (d) Without limiting any other rights that Council has to enforce this Agreement, Council may, if it gives a notice under clause 8.4(a) or clause 8.4(c) of this Schedule 6:
  - (i) call upon on the Bank Guarantee under this Agreement no earlier than 20 Business Days after the notice has been given; and
  - (ii) carry out and complete the item of Works the subject of the notice.

- (e) If Council calls up the Bank Guarantee, it may use the amount so paid to it in satisfaction of costs actually incurred by it in remedying the Developer breach as follows:
  - (i) the reasonable costs incurred by Council to remedy a breach including carrying out and Completion of Works; and
  - (ii) all fees and charges (including but not limited to reasonable legal costs and expenses) necessarily and reasonably incurred by Council to remedy the Developer's breach.
- (f) Works carried out by Council pursuant to clause 8.4(d) of this Schedule 6 must be carried out in the form and to the standards required under this Agreement and all Approvals issued by any Government Agency.
- (g) To the extent that expenditure incurred by Council in carrying out works pursuant to clause 8.4(d) of this Schedule 6 exceeds the Bank Guarantee available for appropriation at the relevant time, Council may recover any such shortfall from the Developer as a debt due.
- (h) Where Council calls up a Bank Guarantee to Complete an item of Works it must hold any surplus over and above the fees and charges described in clause 8.4(e) of this Schedule 6 against any other damages or losses resulting from the Developer's breach of this Agreement and return any surplus to the Developer when all issues relating to the assessment of those damages and losses are concluded.

## **9 Delivery of documents**

- (a) The Developer must on transfer or dedication of any land to Council under this Agreement provide:
  - (i) all "as built" drawings, specifications and relevant operation and service manuals for any Works on that land;
  - (ii) all necessary certificates relating to any Works on that land including the certificates of any consultants of the Developer that the Council may reasonably require;
  - (iii) copies of all Approvals required for the occupation or use of that land; and
  - (iv) a costs schedule, detailing the actual cost of the Works on that land.
- (b) The Developer must prior to transfer or dedication of any land to Council, provide the Council with a tour of the land and provide reasonable instructions on the operation and use of the Services on that land.

## **10 Assignment of Warranties and Causes of Action**

- (a) The Developer must assign (as beneficial owner) or cause to be assigned to Council the benefit of any warranties and guarantees obtained by the Developer and the Builder (and capable of assignment) with respect to any material or goods incorporated in or forming part of the Works, including any statutory warranties under the *Home Building Act 1989*.
- (b) To the extent that any such warranties or guarantees cannot be assigned, the Developer must at the request of Council do anything reasonably required by Council to enforce such warranties or guarantees for the benefit of Council.

## **11 Defects Liability**

- 11.1 During the Defect Liability Period, Council may give the Developer a Rectification Notice that:



- (a) identifies a Defect in the Works; and
- (b) specifies any action required to be undertaken by the Developer to rectify that Defect; and
- (c) specifies a reasonable period to remedy that Defect,

which the Developer must comply with at its own cost according to the terms of the Rectification Notice.

11.2 When the Developer considers that rectification is complete, the Developer may give Council a Rectification Certificate relating to the work the subject of the Rectification Notice.

11.3 Within 10 Business Days of receiving a Rectification Certificate from the Developer the Council must inspect the rectification work and:

- (a) issue a further Rectification Notice if it is not reasonably satisfied that the rectification work is complete; or
- (b) notify the Developer in writing that it is satisfied the rectification work is complete and that it accepts the Rectification Certificate.

11.4 Council's acceptance of a Rectification Certificate in accordance with clause 11.3(b) of this Schedule 6, discharges the Developer from any further obligation to comply with a Rectification Notice.

11.5 If the Developer does not comply with a Rectification Notice within 20 Business Days after the expiry of the time period in the 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 Works without further notice to the Developer, and may:

- (a) call upon any Bond or Bank Guarantee provided to the Council under clause 11.6 of this Schedule 6 to meet its costs of rectifying the Defect; and
- (b) recover as a debt due to the Council by the Developer in a court of competent jurisdiction, any difference between the amount of the bond and the costs incurred by the Council in rectifying the Defect.

11.6 **Security for Defects Liability**

(a) Prior to the dedication or transfer of any land to Council under this Agreement, the Developer must deliver to the Council Bonds or Bank Guarantees in an amount equivalent to 2.5% of the actual cost of the Works on that land, as set out in the costs schedule provided to Council in accordance with clause 9(a)(iv) of this Schedule 6.

(b) The Developer advises and the Council acknowledges its awareness that the Bonds or Bank Guarantees may be supplied by the Builder and form a part of the security held by the Developer from the Builder under the terms of the Construction Contract, provided that:

- (i) any Bond or Bank Guarantee provided by the Builder benefits the Council and satisfies the requirements of this Agreement; and
- (ii) the Developer procures an Agreement from the Builder that the Council 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 Defect Liability Period has expired Council must (if it has not called on it) return the Bond or Bank Guarantee referred to in clause 11.6(a)(or any remaining balance of it) to the Developer.
- (d) Notwithstanding clause 11.6(c) of this Schedule 6, if during the Defect Liability Period, the Council issues a Rectification Notice and the Rectification Notice is not complied with, then the Council need not deliver the balance of any Bonds or Bank Guarantees provided to it until that Defect has been rectified.

## **12 Risk**

The Developer undertakes the Works entirely at its own risk.

## **13 Insurance**

13.1 The Developer must establish and maintain:

- (a) public liability insurance for an amount not less than \$20 million (or such greater amount Council reasonably requires) covering all aspects of the Works and submit to Council a copy of the certificate of insurance prior to the commencement of the construction of the Works and at all other times Council reasonably requires;
- (b) all other insurance policies in respect of the Works that Council considers reasonably necessary including:
  - (i) insurance of the Works and insurance against death or injury to persons employed in the construction of the Works; and
  - (ii) any other insurances required at law; and
- (c) if any of the insurances required by this clause 13.1 can be supplied by a Builder, then the Developer shall give notice of this opportunity and the Developer and Council shall act reasonably in considering and effecting that substitution.

13.2 All insurance policies that the Developer must keep current under this Agreement must:

- (a) be established with one or more insurance companies which are respectable, reputable and financially sound and approved by Council (such approval not to be unreasonably withheld);
- (b) name Council as an insured party;
- (c) cover the parties for their respective interests; and
- (d) be kept current until the Park Embellishment achieve Completion.

13.3 No later than 10 Business Days after any request by Council, the Developer must provide Council with a certificate of currency (or such other evidence as the Council may reasonably require) in respect of any insurance that must be established and maintained under this Agreement.

## **14 Indemnities**

Until Completion of the Works the Developer indemnifies and releases Council, its employees, officers, agents and contractors from and against all Claims suffered or incurred by Council, except to the extent such Claim arises either directly or indirectly as a result of the negligence, default, act or omission of the Council or its employee, officer, agent or contractor.

**15 Risk of contamination**

15.1 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.

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**Schedule 7**

Deed of Novation

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MADISON MARCUS  
LAW FIRM

**Deed of Novation**

**Property: 5 – 7 Parkes Street Parramatta contained in Folio  
Identifier 511/866023**

**Parkmeng Pty Ltd**

Vendor

and

**[insert name of Purchaser]**

Purchaser

and

**City of Parramatta Council**

Council

Level 10, 1 Market Street  
Sydney NSW 2000  
PO Box Q742, QVB NSW 1230  
DX 13006 Market Street Exchange  
P +61 2 8022 1222  
F +61 2 8022 1221  
E [enquire@madsomarcus.co](mailto:enquire@madsomarcus.co)  
W [www.madsomarcus.co](http://www.madsomarcus.co)

© Madison Marcus Law Firm Pty Ltd

2275407 2

**This Deed** is dated [insert date]

**Parties:** **Parkmeng Pty Ltd** ACN \_\_\_\_\_ of Level 1, 74 Macquarie Street, Parramatta in the State of New South Wales (**Vendor**)

**and** **[to be inserted]** of [to be inserted] (**Purchaser**)

**and** **City of Parramatta Council** of 126 Church Street, Parramatta in the State of New South Wales (**Council**)

## Recitals

- A. The Vendor and Council are parties to a Planning Agreement registered on the title to the property known as 5 to 7 Parkes Street, Parramatta contained in Folio Identifier 511/866023 (**Property**), bearing registration number A1392225 (**Planning Agreement**).
- B. The Vendor and the Purchaser are parties to a contract for sale of the Property dated [date].
- C. This deed is entered into pursuant to clause 12.2 of the Planning Agreement.

This deed witnesses that in consideration of, among other things, the mutual promises contained in this deed the parties agree as follows:

## 1. Definitions and Interpretation

### 1.1 Dictionary

The following definitions apply unless the context requires otherwise.

**Claim** means any claim, notice, demand, suit, account, action, proceeding, arbitration, litigation (including reasonable legal costs), investigation or judgment of any nature, absolute or contingent, liquidated or unliquidated, whether known or unknown, whether directly or indirectly, or whether in law, contract, tort, negligence, statute (including strict liability) or in equity, arising from or out of or in connection with the Planning Agreement, including any claim for any liability, damages, losses, costs, expenses, expenditure, charge, compensation, payment, remedy, debt, lien or relief.

**Effective Date** means the date of this deed.

### 1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (c) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (d) A reference to a clause is a reference to a clause of this deed.
- (e) A reference to an agreement or document (including a reference to this deed) is to the agreement or document as amended, supplemented, novated or replaced, except to

the extent prohibited by this deed or that other agreement or document, and includes the recitals and schedules to that agreement or document.

- (f) A reference to a party to this Deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).

## **2. Novation**

### **2.1 Agreement to novation**

On and from the Effective Date, the Purchaser, Vendor and Council agree as follows:

- (a) the Purchaser is substituted for the Vendor under the Planning Agreement as if the Purchaser had originally been a party to the Planning Agreement instead of the Vendor; and
- (b) each reference in the Planning Agreement to the Vendor must be read and construed as a reference to the Purchaser.

### **2.1.2 Assumption of benefits and obligations**

On and from the Effective Date, the Purchaser will:

- (a) be bound by and must comply with the provisions of the Planning Agreement, as if the Purchaser were the Developer named in the Planning Agreement;
- (b) assume the full obligations of the Vendor under the Planning Agreement ; and
- (c) enjoy all the rights, benefits and entitlements of the Vendor under the Planning Agreement, including all rights, benefits and entitlements of the Vendor arising prior to the Effective Date.

## **3. Release**

### **3.1 Release of Vendor**

On and from the Effective Date, Council absolutely and unconditionally releases the Vendor from:

- (a) the Vendor's obligations under the Planning Agreement arising on and from the Effective Date; and
- (b) any Claims which it has or may have against the Vendor arising on and from the Effective Date.

## **4. General**

### **4.1 Costs**

The reasonable costs and expenses incurred by the each party in connection with the negotiation, preparation and signature of this deed shall be paid as follows:

- (a) the Purchaser must pay the reasonable costs of the Council;
- (b) the Purchaser must pay its own costs; and
- (c) the Vendor must pay its own costs and expenses.

### **4.2 Notices**

All notices, requests, demands, consents, approvals, agreements or other communications to or by a party to this deed:

- (a) must be in writing; and
- (b) will be taken to be given or made when delivered, received or left at the address of the recipient specified on page 1 of this deed or fax number of the recipient which it may have notified the sender but, if delivery or receipt is on a day on which business is not generally carried on in the place to which the communication is sent or is later than 4.00pm (local time), it will be taken to have been given or made at the commencement of business on the next day on which business is generally carried on in that place.

#### 4.3 Governing law

This deed is governed by the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

#### 4.4 General representations and warranties

Each party represents and warrants to each other party that:

- (a) **authority:** it has full power, capacity and authority unconditionally to enter into and perform its obligations under this deed and the Planning Agreement;
- (b) **authorisations:** it has taken all necessary action to authorise the execution, delivery and performance of this deed and the Planning Agreement in accordance with their terms; and
- (c) **binding obligations:** this deed contains legal, valid and binding obligations and is enforceable in accordance with its terms;
- (d) **due incorporation (if a company):** it is duly incorporated in accordance with the laws of its place of incorporation, and it validly exists under those laws and has the capacity to sue or be sued in its own name and to own its property and conduct its business as it is being conducted; and
- (e) **non-contravention:** the execution and delivery of, and compliance with its obligations under this deed and the Planning Agreement does not contravene:
  - (i) any law or directive from a government body;
  - (ii) the constitution of the party;
  - (iii) any agreement or instrument to which the party is a party; or
  - (iv) any obligations of the party to any other person.

#### 4.5 No fetter

Notwithstanding anything else contained in this deed, this deed is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council (all referred to in this deed as a "**Discretion**"). No provision of this deed is intended to constitute any fetter on the exercise of any Discretion. If, contrary to the operation of this clause, any provision of this deed 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) above 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 deed has full force and effect; and

- (c) to endeavour to satisfy the common objectives of the parties in relation to the provision of this deed which is to be held to be a fetter to the extent that is possible having regard to the relevant court judgment.

**4.6 Limit on reliance on Representations and Warranties**

The parties acknowledge that each party has entered into this deed in reliance upon the representations and warranties contained in clause 4.4. No party has entered into this deed in reliance on any representation, warranty, promise or statement made by another party, or any other person on behalf of a party, other than those set out in this deed. Each representation and warranty survives the execution of this deed and is repeated by the parties on the completion date of this deed.

**4.7 Invalidity**

If a provision of this deed or a right or remedy of a party under this deed is invalid or unenforceable, it is to be read down or severed only to the extent of the invalidity or unenforceability.

**4.8 Amendments and waivers**

- (a) This deed may be amended only by a written document signed by the parties.
- (b) A waiver of a provision of this deed or a right or remedy arising under this deed, including this clause, must be in writing and signed by the party granting the waiver.

**4.9 Further assurances**

Each party must do all things necessary to give full effect to this deed and the transactions contemplated by this deed.

**4.10 No assignment**

Unless expressly permitted under this deed, a party may not assign this deed or otherwise transfer the benefit of this deed or a right or remedy under it, without the prior written consent of the other parties (which consent shall not be unreasonably withheld).

**4.11 Counterparts**

This deed may be signed in any number of counterparts and all those counterparts together make one instrument.

**4.12 Joint and several liability**

Except as otherwise provided by this deed, an agreement, representation, covenant, right or obligation on the part of two or more persons binds them jointly and severally.



Executed as a deed

**Executed by the Vendor**

**Executed** by Parkmeng Pty Limited (ACN \_\_\_\_\_) in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Company Secretary

\_\_\_\_\_  
Full name (print)

\_\_\_\_\_  
Full name (print)

**Executed by the Purchaser**

**Executed** by [to be inserted] in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

\_\_\_\_\_  
Signature of sole Director and sole Company Secretary

\_\_\_\_\_  
Full name (print)

**Executed by the Council**

Signed for and on behalf of  
City of Parramatta Council ABN 49 907 174 773  
in accordance with a resolution passed on

\_\_\_\_\_  
Signature of Mayor

\_\_\_\_\_  
Signature of Chief Executive Officer

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print name

.....  
Chief Executive Officer

.....  
Lord Mayor

.....  
Name of Chief Executive Officer

.....  
Name of Lord Mayor

---

**Execution**

EXECUTED as an agreement

Signed for and on behalf of

City of Parramatta Council ABN 49 907 174 773  
in accordance with a resolution passed on



Signature of Administrator



Signature of Interim General Manager

AMANDA CHADWICK

Print name


GREGORY DYER

Print name

Executed by

Parkmeng Pty Ltd ACN 601 875 398 by:

Director

  
Director/Secretary

Full name of Director

SAM FARAD  
Full name of Director/Secretary