

Voluntary Planning Agreement

City of Parramatta Council
ABN 49 907 174 773

Praxis Capital Pty Ltd
ACN 166 624 031

M20 Pty Ltd
ACN 165 901 333

Dly to ~~23/5/21~~
25/3/21

23/5/21
25/3/21

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Agreement

Date: March 1 2021

Parties

First party

Name City of Parramatta Council (**Council**)
ABN 49 907 174 773
Contact Manager, Land Use Planning
Telephone (02) 9806 5050

Second party

Name Praxis Capital Pty Ltd (**Proponent**)
ACN 166 624 031
Contact Dennis He
Telephone 02 8837 6444

Third party

Name M20 Pty Ltd (**Landowner**)
ACN 165 901 333
Contact Dr Lionel M Chang
Telephone 02 8837 6444

Background

- A. The Developer Parties have lodged an application for the Instrument Change for the purpose of making a Development Application to the Council for Development Consent to carry out the Development on the Land.
- B. The Developer Parties have offered to enter into this agreement to make contributions for public purposes associated with the Instrument Change and the Development.

Operative part

1 Definitions

In this agreement, unless the context indicates a contrary intention:

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

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

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

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

Bank Guarantee means an irrevocable and unconditional undertaking that is not limited in time and does not expire by one of the following trading banks:

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

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

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

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

Construction Certificate means a construction certificate as defined under section 6.4 of the Act;

CPI means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics;

Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land;

Developer Parties means the Proponent and the Landowner, jointly and severally;

Development means redevelopment of the Land for either a mixed use development incorporating a residential component, or a wholly commercial development;

Development Application has the same meaning as in the Act;

Development Consent has the same meaning as in the Act;

Development Contributions means the development contributions payable for the Development in accordance with section 7.11 or section 7.12 of the Act;

Development Contributions Plan means a contributions plan as defined in section 7.1 of the Act that applies to the Land;

Easement Terms means the terms of a public access easement as set out in Schedule 1;

GST has the same meaning as in the GST Law;

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

Insolvent means, in relation to a party:

- (a) that party makes an arrangement, compromise or composition with, or assignment for, the benefit of its creditors or a class of them;

- (b) a receiver, receiver and manager, administrator, provisional liquidator, trustee, controller, inspector or analogous person is appointed in relation to, or over, all or any part of that party's business, assets or securities;
- (c) a presumption of insolvency has arisen under legislation because of the party's failure to comply with a statutory demand or analogous process;
- (d) an application for the winding up of, or for the appointment of a receiver to, that party, other than winding up for the purpose of solvent reconstruction or re amalgamation, is presented and not withdrawn or dismissed within 21 days (or such longer period agreed to by the parties), or an order is made or an effective resolution is passed for the winding up of, or for the appointment of a receiver to, that party, or any analogous application is made or proceedings initiated;
- (e) any shareholder or director of that party convenes a meeting for the purpose of considering or passing any resolution for the winding up or administration of that party;
- (f) that is an individual, a creditor's petition or a debtor's petition is presented to the Official Receiver or analogous authority in relation to that party;
- (g) an execution or analogous process is levied or enforced against the property of that party;
- (h) that party ceases or suspends, or threatens to cease or suspend, the conduct of all or a substantial part of its business;
- (i) that party disposes of, or threatens to dispose of, a substantial part of its assets;
- (j) that party stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts; or
- (k) that party is unable to pay the party's debts as and when they become due and payable;

Instrument Change means an amendment to the LEP in response to the planning proposal submitted by the Developer Parties known as RZ/21/2015 seeking to (among other matters):

- (a) increase the maximum floor space ratio for the Land from 4:1 to 10:1; and
- (b) increase the maximum building height for the Land from 36m to 90m;

Land means Lot 1 DP 503651 and Lot 1 DP 501663, known as 20-22 Macquarie St Parramatta NSW;

Law means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and
- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b);

LEP means the Parramatta Local Environmental Plan 2011;

Modification Application means any application to modify the Development Consent under section 4.55 of the Act;

Monetary Contribution means the monetary contribution payable by the Developer Parties under clause 6 of this agreement;

Occupation Certificate means an occupation certificate as defined under section 6.4 of the Act, and includes a partial Occupation Certificate;

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

Regulation means the *Environmental Planning and Assessment Regulation 2000*;

Related Body Corporate has the meaning given to that term in s 9 of the *Corporations Act 2001* (Cth);

Setback Area means an area along the length of the boundary of the Land adjacent to Marsden Road 2m wide, and limited in depth to 100mm below ground to accommodate tiling and bedding, and limited in height to 4m as shown on the plan at Annexure A;

Strata Plan means a strata plan, a strata plan of subdivision or a strata plan of consolidation that is registered in accordance with the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*; and

Transferee has the meaning given in clause 12.3.

2 Interpretation

In this agreement, unless the context indicates a contrary intention:

- (a) **(documents)** a reference to this agreement or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this agreement;
- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement;
- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;
- (e) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) **(president, CEO, general manager or managing director)** the president, CEO, general manager or managing director of a body or Authority includes any person acting in that capacity;
- (g) **(requirements)** a requirement to do anything includes a requirement to cause that thing to be done, and a requirement not to do anything includes a requirement to prevent that thing being done;
- (h) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (i) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;

- (j) **(singular)** the singular includes the plural and vice-versa;
- (k) **(gender)** words importing one gender include all other genders;
- (l) **(parts)** a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (m) **(rules of construction)** neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (n) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (o) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in, Australia, even if the obligation is to be performed elsewhere;
- (p) **(joint and several)** an agreement, representation, covenant, right or obligation:
 - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
 - (ii) on the part of two or more persons binds them jointly and severally;
- (q) **(writing)** a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (r) **(replacement bodies)** a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
- (s) **(Australian currency)** a reference to dollars or \$ is to Australian currency;
- (t) **(month)** a reference to a month is a reference to a calendar month; and
- (u) **(year)** a reference to a year is a reference to twelve consecutive calendar months.

3 Planning Agreement under the Act

- (a) The parties agree that this agreement is a planning agreement within the meaning of section 7.4 of the Act.
- (b) Schedule 2 of this agreement summarises the requirements for planning agreements under s 7.4 of the Act and the way this agreement addresses those requirements.

4 Application of this agreement

This agreement applies to:

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

5 Operation of this agreement

This agreement commences on and from the date it is executed by all parties.

6 Contributions to be made under this agreement

6.1 Monetary Contribution

- (a) The Developer Parties will pay to Council a monetary contribution of \$1,107,000.00 indexed in accordance with any increases in the CPI from the date of this agreement to the date of payment, but only if Development Consent is granted for Development that includes use of the Land or any part of the Land for residential purposes.
- (b) Subject to clause 6.1(c), the Monetary Contribution must be paid to Council in instalments as follows:
 - (i) 25% of the Monetary Contribution within 5 Business Days of the grant of Development Consent for any Development that includes a residential component;
 - (ii) 50% of the Monetary Contribution prior to the issue of a Construction Certificate for the Development; and
 - (iii) 25% of the Monetary Contribution prior to the issue of an Occupation Certificate for the Development, or prior to the registration of any Strata Plan, whichever is earlier.
- (c) The Developer Parties are not required to pay the instalments of the Monetary Contribution specified in clauses 6.1(b)(i) and (ii) if the Developer Parties provide to the Council Bank Guarantees in accordance with clause 11.2 as security for those payments, in which case the Developer Parties must pay the full amount of the Monetary Contribution prior to the issue of an Occupation Certificate for the Development.
- (d) The Monetary Contribution must be paid by way of bank cheque in favour of Council or by deposit by means of electronic funds transfer into an account specified by Council.
- (e) The Monetary Contribution will be taken to have been made when the Council notifies the Developer Parties in writing that the bank cheque has been received and cleared funds or electronic funds have been deposited in the Council's bank account.
- (f) The parties agree and acknowledge that the Monetary Contribution will be used by the Council towards public domain improvement works within the Parramatta CBD, the provision of affordable housing (to the value of 10% of the value uplift) and towards Council's Cultural Plan ("Culture and Our City: A Cultural Plan for Parramatta's CBD 2017-2022") as determined by Council to be necessary to accommodate the anticipated population growth in the Parramatta Central Business District.

6.2 Public Access and Easements

- (a) The Developer Parties will, at no cost to Council, register against the title to the Land:
 - (i) a covenant prohibiting any building or structures, including pillars, other than structures approved by the Council (acting reasonably) for the purposes of enhancing public domain areas, to be constructed on the Setback Area; and

- (ii) an easement in gross burdening that part of the Land on which the Setback Area is located in favour of the Council to permit public access to the Setback Area generally in accordance with the Easement Terms.
- (b) Any requirement to register an easement, covenant or other instrument on the title to the Land will be satisfied when the Developer Parties provide to the Council a copy of the relevant title search showing the registration of the instrument.
- (c) Any covenant required under clause 6.2(a)(i) must be registered prior to the issue of the first Construction Certificate for any building on the Land forming part of the Development.
- (d) Any easement required under clause 6.2(a)(ii) must be registered prior to the issue of an Occupation Certificate for any building on the Land forming part of the Development.
- (e) The parties agree that the proposed covenant and easement under this clause will serve the public purposes of improving pedestrian circulation and amenity in the vicinity of the Land.
- (f) The Developer Parties agree and acknowledge that:
 - (i) Council may require, under any Development Consent, the person with the benefit of the Development Consent to conduct works to construct a public domain area, to erect structures or enhance the Setback Area to meet Council's reasonable standards and specifications for public domain areas; and
 - (ii) the Landowner will not object to a requirement to carry out works in accordance with clause 6.2(f)(i), or appeal the imposition of any condition of Development Consent requiring those works; and
 - (iii) the obligations under this clause 6.2 are relevant considerations for the Council or any other consent authority when determining a Development Application or Modification Application relating to the Land and that a failure to comply with those obligations or any inconsistency with the requirements in those clauses may constitute a reason for refusal of such a Development Application or Modification Application.
- (g) The Council will not unnecessarily disrupt the design of the Development and will work with the Developer Parties in good faith to agree on a design for the Setback Area that has regard to the aesthetics of the Development, provided that the design is consistent with Council's standards and specifications for public domain areas.

7 Application of s 7.11, s 7.12 and s 7.24 of the Act

- (a) This agreement does not exclude the application of section 7.11 of the Act to the Development.
- (b) This agreement does not exclude the application of section 7.12 of the Act to the Development.
- (c) This agreement does not exclude the application of section 7.24 of the Act to the Development.
- (d) The benefits under this agreement are not to be taken into consideration in determining a development contribution under section 7.11 of the Act.

8 Registration of this agreement

8.1 Landowner Interest

The Landowner represents and warrants to the Council that on the date of this agreement it is the registered proprietor of the Land.

8.2 Registration of this agreement

- (a) The Developer Parties agree to procure the registration of this agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register of the Land in accordance with section 7.6 of the Act.
- (b) The Developer Parties, at their own expense, must:
 - (i) procure the lodgement of this agreement with the Registrar-General as soon as reasonably practicable after this agreement comes into operation, but in any event, no later than 10 Business Days after that date;
 - (ii) 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; and
 - (iii) provide documentary evidence that the registration of this agreement has been completed to Council within 5 Business Days of receiving confirmation that the registration has occurred.
- (c) The Developer Parties at their own expense will take all practical steps, and otherwise do anything that the Council reasonably requires to procure:
 - (i) The consent of each person who:
 - (A) has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or
 - (B) is seized or possessed of an estate or interest in the Land,
 - (ii) An acceptance of the terms of this agreement and an acknowledgement in writing from any existing mortgagee in relation to the Land that the mortgagee will adhere to the provisions of this agreement if it takes possession of the Land as mortgagee in possession,
 - (iii) The execution of any documents; and
 - (iv) The production of the relevant duplicate certificates of title or electronic equivalent,to enable the registration of this agreement in accordance with this clause 8.2.
- (d) The Landowner consents to the registration of the agreement in accordance with this clause 8.2.

8.3 Removal from Register

The Council will provide a release and discharge of this agreement so that the instrument may be removed from the folios of the Register for the Land (or any part of it) provided the Council is satisfied (acting reasonably):

- (a) the Developer Parties have duly fulfilled their obligations under this agreement, and are not otherwise in default of any of the obligations under this agreement; or

- (b) the Land, or any part of it, will not be developed for the purposes of residential development having regard to the development potential of the Land after the Instrument Change and:
 - (i) the obligation to establish the Setback Area under clause 6.2 has been met; or
 - (ii) the Council has formally decided not to require the construction of public access on the Setback Area.

8.4 Caveat

- (a) The Landowner acknowledges and agrees that:
 - (i) when this agreement is executed, the Council is deemed to have acquired and the Landowner is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently the Council will have a sufficient interest in the Land in respect of which to lodge a caveat over the Land notifying that interest;
 - (ii) it will not object to the Council lodging a caveat in the relevant folios of the Register for the Land nor will it seek to remove any caveat lodged by the Council provided the caveat does not prevent the registration of any dealing or plan other than a transfer.
- (b) The Council must, at the cost of the Developer Parties, register a withdrawal of any caveat in respect of the Land within five Business Days after the Developer Parties comply with clause 8.2 and must not lodge any other caveats on the titles to any of the Land.
- (c) The Council must, at the cost of the Developer Parties, register a withdrawal of any caveat in respect of the Land provided that:
 - (i) the Council is satisfied (acting reasonably) that the Land, or any part of it, will not be developed for the purposes of residential development having regard to the development potential of the Land after the Instrument Change; or
 - (ii) a final Occupation Certificate is issued for the Development on the basis that it will be occupied only for commercial purposes and not for residential purposes.

9 Review of this agreement

9.1 Review by agreement

- (a) This agreement may be reviewed or modified by agreement between the parties using their best endeavours and acting in good faith.
- (b) For the purposes of clause 9.1 of this agreement and subject to clause 9.2, 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.
- (c) For the purposes of clause 9.1 of this agreement and subject to clause 9.2, 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.

9.2 *Change to Development Contributions*

- (a) The parties acknowledge that as at the date of this agreement:
 - (i) Council is proposing to adopt a 'value sharing approach' for development within the Parramatta CBD under a Local Environmental Plan by means of a separate planning proposal for the Parramatta CBD and an accompanying Infrastructure Strategy and Development Guideline in respect of residential development;
 - (ii) the Monetary Contribution for this agreement has been calculated on the basis of a monetary rate per square metre of land (**Community Infrastructure Rate**), being a percentage of land value uplift (as defined in the Council's Planning Agreements Policy); and
 - (iii) the Community Infrastructure Rate is being applied consistently by Council at the date of this agreement, but may change when the planning proposal for the Parramatta CBD is finalised.

- (b) If, at the time the first instalment of the Monetary Contribution becomes payable (**Payment Date**):
 - (i) the Community Infrastructure Rate adopted by Council is less than the rate applied under this agreement (being \$150 per square metre); and
 - (ii) as a consequence of the reduction of the Community Infrastructure Rate, Council amends the Development Contributions Plan, or adopts a new Development Contributions Plan that applies to the Land, so that the Development Contributions payable for the Development are higher, per square metre or other basis of measurement used to determine the quantum of contributions, than they would otherwise have been as at the date of this agreement;

then, within 20 Business Days of either party making a request for review, the Council and the Developer Parties must meet to review this agreement in accordance with the principles in clause 9.2(c) and using their best endeavours and in good faith.

- (c) If a review of this agreement is carried out under clause 9.2(b) the parties must consider during that review process, the quantum of Monetary Contribution payable by the Developer Parties to the Council under this agreement and a reduction of the Monetary Contribution by an amount equivalent to the difference between:
 - (i) the Development Contributions calculated as at the date of this agreement (indexed in accordance with increases in the CPI from the date of this agreement to the date of the calculation); and
 - (ii) the Development Contributions calculated as at the Payment Date.
- (d) Any agreement reached during a review under this clause 9.2 will not constitute an amendment to this agreement until the amendment has been:
 - (i) confirmed in writing as an amendment to this agreement;
 - (ii) publicly notified in accordance with the Regulation;
 - (iii) approved by Council after consideration of any public submissions; and
 - (iv) signed by the parties to this agreement.

- (e) A failure by a party to agree to participate in a review under this clause 9.2 is taken to be a dispute for the purposes of clause 10.
- (f) If the parties cannot agree to the terms of any amendment to this agreement following a review under clause 9.2, either party may refer the matter to dispute resolution under clause 10.
- (g) Nothing in this clause 9.2:
 - (i) affects the obligation of the Developer Parties under the Act to pay contributions in accordance with section 7.11 or section 7.12 of the Act; or
 - (ii) requires the Council to pay any money to the Developer Parties or to refund to the Developer Parties or any other entity, any amount paid to it under this agreement or for any other purpose.

10 Dispute Resolution

10.1 *Reference to Dispute*

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

10.2 *Notice of Dispute*

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

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

10.3 *Representatives of Parties to Meet*

- (a) The representatives of the parties must promptly (and in any event within 20 Business Days of the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute.
- (b) The parties may, without limitation:
 - (i) resolve the dispute during the course of that meeting,
 - (ii) agree that further material or expert determination in accordance with clause 10.6 about a particular issue or consideration is needed to effectively resolve the dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or
 - (iii) agree that the parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

10.4 *Further Notice if Not Settled*

If the dispute is not resolved within 10 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (**Determination Notice**) by mediation under clause 10.5 or by expert determination under clause 10.6.

10.5 *Mediation*

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

- (a) The parties must agree to the terms of reference of the mediation within 15 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 15 Business Days of receipt of the Determination Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) The mediator appointed pursuant to this clause 10.5 must:
 - (i) Have reasonable qualifications and practical experience in the area of the dispute; and
 - (ii) Have no interest or duty which conflicts or may conflict with his or her function as a mediator he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) The mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (e) The parties must within 15 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation (except if a resolution of the Council is required to appoint a representative, the Council must advise of the representative within 5 Business Days of the resolution);
- (f) The parties agree to be bound by a mediation settlement and 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 vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

10.6 *Expert determination*

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

- (a) The dispute must be determined by an independent expert in the relevant field:
 - (i) Agreed upon and appointed jointly by the parties; and
 - (ii) In the event that no agreement is reached or no appointment is made within 20 Business Days of the agreement to refer the dispute to an expert,
 - (iii) appointed on application of a party by the then President of the Law Society of New South Wales;

- (b) The expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;
- (c) The determination of the dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (d) The expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (e) Each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs; and
- (f) Any determination made by an expert pursuant to this clause is final and binding upon the parties except unless:
 - (i) Within 20 Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and commences litigation; or
 - (ii) The determination is in respect of, or relates to, termination or purported termination of this agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal.

10.7 *Litigation*

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

10.8 *No suspension of contractual obligations*

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

11 **Enforcement**

11.1 *Default*

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this agreement, it may give notice in writing to the other party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 21 days.
- (b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.
- (c) If a party disputes the Default Notice it may refer the dispute to dispute resolution under clause 10 of this agreement.

11.2 *Bank Guarantee*

- (a) If the Developer Parties elect to provide Bank Guarantees instead of paying instalments of the Monetary Contribution as set out in clause 6.1(b), the Developer Parties must provide to the Council:

- (i) a Bank Guarantee in an amount equivalent to 25% of the Monetary Contribution within 5 Business Days of the grant of Development Consent for any Development that includes a residential component; and
 - (ii) a Bank Guarantee in an amount equivalent to 50% of the Monetary Contribution prior to the issue of a Construction Certificate for the Development.
- (b) The Council may reject any Bank Guarantee that contains errors, or if it has received the Bank Guarantee, require at any time the Developer Parties to obtain a replacement Bank Guarantee that rectifies any such errors or otherwise obtain rectification of the errors. The Developer Parties must provide the replacement Bank Guarantee, or otherwise obtain rectification of the errors, within 5 Business Days of receiving the Council's request.
- (c) The Council may call on a Bank Guarantee provided under this clause if:
 - (i) the Developer Parties are in material or substantial breach of this agreement and have failed to rectify the breach within a reasonable period of time after having been given reasonable notice (which must not be less than 21 Business Days) in writing to do so in accordance with clause 11.1 of this agreement; or
 - (ii) the Proponent or Landowner becomes Insolvent.
- (d) Within 20 Business Days of each anniversary of a Bank Guarantee provided under clause (a), the Developer Parties must provide Council with one or more replacement Bank Guarantees (**Replacement Bank Guarantee**) in an amount calculated in accordance with the following:

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

Where:

A is the amount of the Replacement Bank Guarantee,

B is the amount of the Bank Guarantee to be replaced,

C is the CPI for the quarter ending immediately before the date of the Bank Guarantee to be replaced,

D is the CPI for the quarter ending immediately before the date of the Replacement Bank Guarantee,

provided A is greater than B.

- (e) On receipt of a Replacement Bank Guarantee provided under clause 11.2(d), the Council must release and return to the Developer Parties, as directed, the Bank Guarantee that has been replaced as soon as reasonably practicable.
- (f) At any time following the provision of a Bank Guarantee under this clause, the Developer Parties may provide the Council with one or more replacement Bank Guarantees totalling the amount of all Bank Guarantees required to be provided under this clause for the time being. On receipt of such replacement Bank Guarantee, the Council must release and return to the Developer Parties, as directed, the Bank Guarantee(s) which it holds that have been replaced as soon as reasonably practicable.

- (g) Subject to clause 11.2(c), the Council may apply the proceeds of a Bank Guarantee in satisfaction of:
 - (i) any obligation of the Developer Parties under this agreement that is secured by the Bank Guarantee in accordance with clause 11.2(a); and
 - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer Parties to comply with this agreement.
- (h) Nothing in this clause 11.2 prevents or restricts the Council from taking any enforcement action in relation to:
 - (i) any obligation of the Developer Parties under this agreement; or
 - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer Parties to comply with this agreement,

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

11.3 *Restriction on the issue of Certificates*

- (a) In accordance with section 6.8 of the Act and clause 146A of the Regulation the obligations to:
 - (i) provide a Bank Guarantee under clause 11.2; or
 - (ii) pay the instalments of the Monetary Contribution under clause 6.1(b)(i) and (ii), and
 - (iii) register any covenant in accordance with clauses 6.2(a)(i) and 6.2(c),
 must be satisfied prior to the issue of a Construction Certificate for the Development or any part of the Development.
- (b) In accordance with section 6.10 of the Act and clause 154E of the Regulation the obligations to:
 - (i) pay the Monetary Contribution under clause 6.1; and
 - (ii) register the easement under clauses 6.2(a)(ii) and 6.2(d),
 must be satisfied prior to the issue of an Occupation Certificate for the Development or any part of the Development.

11.4 *Compulsory Acquisition*

- (a) If the Developer Parties do not register the public access easement required under clause 6.2, the Council may compulsorily acquire the relevant interest in the land, in which case the Landowner consents to the Council compulsorily acquiring that interest 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 Council may recover any costs, including legal costs, incurred by the Council on acquisition of the interest from the Developer Parties.
- (b) Clause 11.4(a) constitutes an agreement for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (c) The Developer Parties indemnify 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 11.4(a).

- (d) The Developer Parties must pay the Council, promptly on demand, an amount equivalent to all costs, including legal costs, incurred by the Council acquiring the whole or any part of the relevant interest in the land under clause 11.4(a).

11.5 *General Enforcement*

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

12 *Assignment and Dealings*

12.1 *Assignment*

- (a) A party must not assign or deal with any right under this agreement without the prior written consent of the other parties.
- (b) Any change of ownership or control (as defined in section 50AA of the *Commonwealth Corporations Act 2001*) of a party (excluding the Council) shall be deemed to be an assignment of this agreement for the purposes of this clause.
- (c) Any purported Dealing in breach of this clause is of no effect.

12.2 *Arrangements with Mortgagee*

- (a) In the event the Landowner mortgages the Land subsequent to this agreement the Landowner is to use all reasonable efforts at that time to arrange a multiple party deed of agreement between the Council, the Landowner, and the mortgagee so that the mortgagee accepts that the responsibilities set out in this agreement are binding upon the mortgagee in the event that the Landowner defaults on the mortgage and the mortgagee takes possession of the Land.
- (b) The terms of the adoption of the obligations of the Landowner by the mortgagee shall be as reasonably required by the Council. The agreement shall be prepared at the cost of the Landowner.

12.3 *Transfer of Land*

- (a) The Landowner may not transfer, assign or dispose of the whole or any part of its right, title or interest in the Land (present or future) or in the Development to another person (**Transferee**) unless before it sells, transfers or disposes of that right, title or interest:
 - (i) The Landowner satisfies the Council that the proposed Transferee is financially capable of complying with the Developer Parties' obligations under this agreement;
 - (ii) The Landowner satisfies the Council that the rights of the Council will not be diminished or fettered in any way;
 - (iii) The Transferee delivers to the Council a novation deed signed by the Transferee in a form and of such substance as is acceptable to the Council

containing provisions under which the Transferee agrees to comply with all the outstanding obligations of the Developer Parties under this agreement;

- (iv) The Transferee delivers to the Council replacement Bank Guarantees as required by this agreement;
- (v) Any default under any provisions of this agreement has been remedied or waived by the Council, on such conditions as the Council may determine, and
- (vi) The Landowner and the Transferee pay the Council's reasonable costs in relation to the assignment.

13 Approvals and consents

Except as otherwise set out in this agreement, and subject to any statutory obligations, a party may give or withhold an approval or consent to be given under this agreement in that party's absolute discretion and subject to any conditions determined by the party. A party is not obligated to give its reasons for giving or withholding consent or for giving consent subject to conditions.

14 No fetter

14.1 Discretion

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

14.2 No fetter

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

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

14.3 Planning Certificates

The Developer Parties acknowledge that Council may, at its discretion, include advice on any planning certificate issued under section 10.7 of the Act that this agreement affects the Land.

15 Notices

15.1 Notices

Any notice given under or in connection with this agreement (**Notice**):

- (a) must be in writing and signed by a person duly authorised by the sender;

- (b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by email or fax at the address or fax number below, or at the address or fax number last notified by the intended recipient to the sender after the date of this agreement:

- (i) to City of Parramatta Council: PO Box 32, Parramatta, NSW 2124
Fax: 02 9806 5917
Email: council@cityofparramatta.nsw.gov.au
Attention: Manager, Land Use Planning
- (ii) to Developer Parties M20 Pty Ltd and Praxis Capital Pty Ltd
5/20 Macquarie St Parramatta
Email: support@praxiscapital.com.au
Attention: Dennis He

- (c) is taken to be given or made:
- (i) in the case of hand delivery, when delivered;
- (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
- (iii) in the case of a fax, on production of a transmission report by the machine from which the fax was sent that indicates the fax was sent in its entirety to the recipient's fax number; and
- (d) if under clause (c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

15.2 Notices sent by email:

- (a) A party may serve a Notice by email if the Notice:
- (i) includes a signature block specifying:
- (A) the name of the person sending the Notice; and
- (B) the sender's position within the relevant party;
- (ii) states in the body of the message or the subject field that it is sent as a Notice under this agreement;
- (iii) contains an express statement that the person sending the Notice has the authority to serve a Notice under this agreement;
- (iv) is sent to the email address below or the email address last notified by the intended recipient to the sender as above
- (b) The recipient of a Notice served under this clause 15.2 must:
- (i) promptly acknowledge receipt of the Notice; and

- (ii) keep an electronic copy of the Notice,
- (c) Failure to comply with clause 15.2 does not invalidate service of a Notice under this clause.

15.3 *Receipt of Notices sent by email*

- (a) A Notice sent under clause 15.2 is taken to be given or made:
 - (i) when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above;
 - (ii) when the Notice enters an information system controlled by the recipient; or
 - (iii) when the Notice is first opened or read by the recipient,
 whichever occurs first.
- (b) If under clause 15.3 a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it will be taken to have been given or made at the start of business on the next Business Day in that place.

16 General

16.1 *Relationship between parties*

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

16.2 *Time for doing acts*

- (a) If the time for doing any act or thing required to be done or a notice period specified in this agreement expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5.00 pm on the specified day, it is taken to have been done on the following Business Day.

16.3 *Further assurances*

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

16.4 *Joint and individual liability and benefits*

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.

16.5 Variations and Amendments

A provision of this agreement can only be varied by a later written document executed by or on behalf of all parties and in accordance with the provisions of the Act.

16.6 Counterparts

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

16.7 Legal expenses and stamp duty

- (a) The Developer Parties must pay the Council's legal costs and disbursements in connection with the negotiation, preparation, execution, carrying into effect, enforcement and release and discharge of this agreement, including the reasonable costs of obtaining any legal advice in connection with this agreement, no later than 10 Business Days after receiving a demand from the Council to pay such costs.
- (b) The Developer Parties agree to pay or reimburse the costs and expenses incurred by Council in connection with the advertising and exhibition of this agreement in accordance with the Act.
- (c) The Developer Parties agree to pay Council any administrative fees as required by Council, acting reasonably, in connection with the administration of this agreement.

16.8 Entire agreement

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

16.9 Representations and warranties

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

16.10 Severability

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

16.11 Invalidity

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

- (i) despite the operation of clause 16.11(a), the provision is void, voidable or unenforceable if it is not severed; and
- (ii) this agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this agreement has full effect even if clause 16.11(b) applies.

16.12 Waiver

- (a) A right or remedy created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.
- (b) The fact that a party fails to do, or delays in doing, something the party is entitled to do under this agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

16.13 GST

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

16.14 Governing law and jurisdiction

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

Schedule 1 Easement Terms

- 1 The owner of the Setback Area grants to the Council and members of the public full and free right to go, pass and repass over the Setback Area at all times:
 - (a) with or without companion animals (as defined in the Companion Animals Act 1998) or other small pet animals; and
 - (b) on foot without vehicles (other than wheelchairs or other disabled access aids), unless vehicles are being used to access the building on the Land via clearly identified entry and exit points;for all lawful purposes.
- 2 The owner of the Setback Area must, to the satisfaction of Council, acting reasonably:
 - (i) keep the Setback Area (including any services in, on or under the Setback Area) in good repair and condition;
 - (ii) maintain and repair the Setback Area and all improvements on the Setback Area;
 - (iii) keep the Setback Area clean and free from rubbish; and
 - (iv) maintain sufficient public liability insurance covering the use of the Setback Area in accordance with the terms of this Easement.
- 3 The owner of the Setback Area must ensure that any rules made by an Owner's Corporation relating to the Setback Area have been approved by the Council, acting reasonably.
- 4 If any member or members of the public loiter or congregate, for any purpose which the owner of the Setback Area, acting reasonably, considers to be a nuisance or a safety risk, the owner may either remove those members of the public, or arrange for their removal by an appropriate authority.
- 5 The owner of the Setback Area may erect safety signage and any other appropriate signage and may erect CCTV cameras in the Setback Area.
- 6 The owner of the Setback Area may engage security personnel to monitor and control the behaviour of the public including but not limited to prohibiting smoking, consumption of alcohol (except within licensed areas), passage of animals, bicycles and skateboards and the like in accordance with any rules made by an Owner's Corporation relating to the Setback Area.
- 7 The owner of the Setback Area may with the Council's prior written consent (except in the case of an emergency, in which case the Council's prior written consent is not required) temporarily close or temporarily restrict access through all or part of the Setback Area for the time and to the extent necessary but only on reasonable grounds for the purposes of:
 - (a) construction, construction access, repairs, maintenance, replacement and alteration to the Setback Area or any improvements in, on or under the Setback Area; or
 - (b) security, public safety or evacuation of the Setback Area and adjoining buildings.
- 8 Subject to ensuring the provision of access in accordance with above clause 1 of this Schedule, the owner of the Setback Area may, provided any necessary planning approvals are obtained:

- (a) Carry out works in the Setback Area for the purposes of enhancing the Setback Area;
- (b) Install or erect works of art, street furniture, awnings, tables and chairs associated with ground floor commercial premises, notice boards or any other similar improvements at ground level within the Setback Area; and
- (c) Use the Setback Area,

in a manner consistent with Parramatta City Council Outdoor Dining Policy adopted 25 February 2019, or any such policy of the Council that replaces that policy.

9 The Council is solely empowered to release this Easement.

10 This Easement may only be varied by written agreement between the Council and the owner of the Setback Area.

Subject and subsection of the Act	Planning Agreement
<p>Planning instrument and/or Development Application – Section 7.4(1)</p> <p>The Developer has:</p> <ul style="list-style-type: none"> (a) Sought a change to an environmental planning instrument (b) Made, or propose to make a Development Application (c) Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies 	<p>The Developer Parties have sought a change to an environmental planning instrument and propose to make a Development Application.</p>
<p>Description of the application – Section 7.4(3)(b)</p>	<p>See the definition of Instrument Change</p>
<p>Description of the land to which the planning Agreement applies – Section 7.4(3)(a)</p>	<p>See the definition of Land</p>
<p>The scope, timing and manner of delivery of contribution required by the Planning Agreement – Section 7.4(3)(c)</p>	<p>Clauses 6.1 and 6.2</p>
<p>Applicability of section 7.11 of the Act – Section 7.4(3)(d)</p>	<p>Not excluded – see clause 7</p>
<p>Applicability of section 7.12 of the Act – Section 7.4(3)(d)</p>	<p>Not excluded – see clause 7</p>
<p>Applicability of section 7.24 of the Act – Section 7.4(3)(d)</p>	<p>Not excluded – see clause 7</p>
<p>Mechanism for dispute resolution – Section 7.4(3)(f)</p>	<p>Clause 10</p>
<p>Enforcement of the Planning Agreement – Section 7.4(3)(g)</p>	<p>Clause 11</p>
<p>Registration of the Planning Agreement – Section 7.6</p>	<p>Clause 8</p>
<p>No obligation to grant consent or exercise functions – Section 7.4(9)</p>	<p>See clause 14 (no fetter)</p>

Executed as an agreement

Executed for and on behalf of **City of
Parramatta City Council** by its
authorised delegate in accordance with
a resolution of the Council on

)
)
)


Signature of [insert position]
BUSINESS SUPPORT MANAGER

Dayna Coyle
Print name

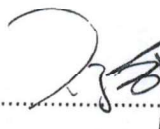

Signature of [insert position] **CEO**

BRETT NEWMAN
Print name

Executed by **Praxis Capital Pty Ltd**
ACN 166 624 031 in accordance with
Section 127 of the *Corporations Act*
2001:

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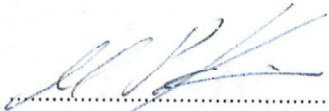
Signature of Director / Secretary


Signature of Dennis He, Director

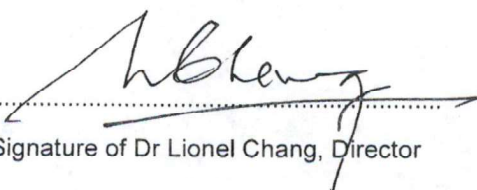
Print Name

Executed by **M20 Pty Ltd** ACN 165 901
333 in accordance with Section 127 of
the *Corporations Act* 2001:

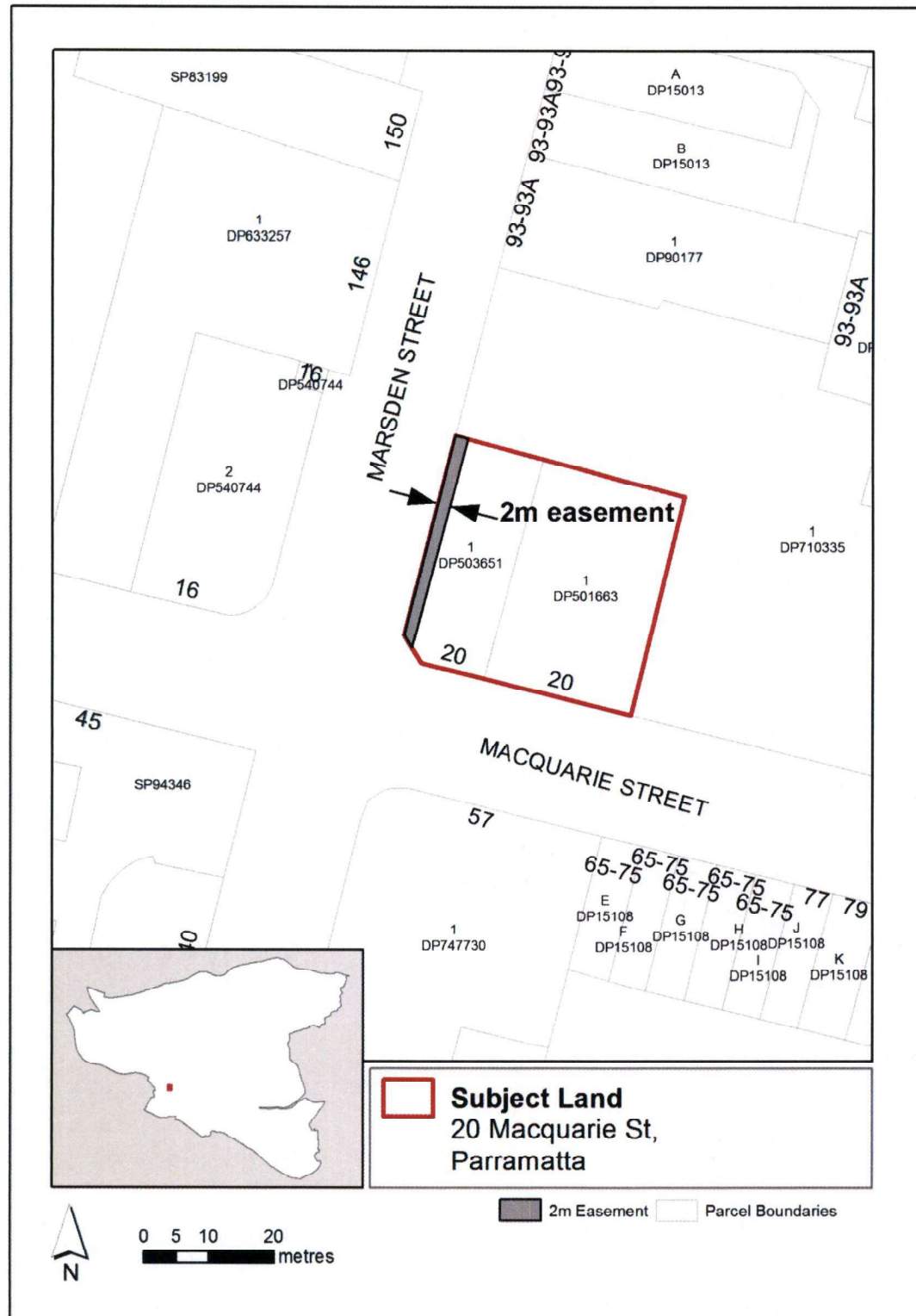
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Signature of Director / Secretary

Michael P Kyriacou
Print Name


Signature of Dr Lionel Chang, Director

Plan showing Setback Area



gpl
25/3/21

Dyke
25/3/21