

Planning Agreement

**111-125 Anzac Parade and 112 Todman Avenue, Kensington
(DA/373/2020)**

Randwick City Council (ABN 77 362 844 121) (**Council**)

Perpetual Corporate Trust Limited (ACN 000 341 533) (**Developer**)

Prepared by:

Marsdens Law Group

Level 1
49 Dumaresq Street
CAMPBELLTOWN NSW 2560

Tel: (02) 4626 5077

Fax: (02) 4626 4826

DX: 5107 Campbelltown

Ref: 65 43 4065



Table of Contents

Parties.....	1
Background.....	1
Operative Provisions.....	1
1 Agreement.....	1
2 Definitions and interpretation	1
2.1 Defined Terms.....	1
2.2 Interpretation	1
3 Application and operation of document	2
3.1 Planning Agreement	2
3.2 Application.....	2
3.3 Operation	2
4 Application of s7.11 and s7.12.....	2
4.1 Application.....	2
4.2 Section 7.24	2
5 Provision of Contributions	2
5.1 Contributions.....	2
5.2 Acknowledgements on subdivision.....	2
5.3 Grant of Lease	3
5.4 Works	3
5.5 Design and specification of Works.....	4
5.6 Contribution Value	5
5.7 Access to the Land and location of Works.....	5
5.8 Public Art.....	6
5.9 Affordable Housing Levy Contribution	6
5.10 Payment of Community Infrastructure Contribution in lieu of carrying out the Works.....	7
5.11 Monetary Contributions.....	7
5.12 Indexation of Monetary Contributions payable by Developer	7
6 Completion of Works	8
6.1 Completion	8
6.2 Issue of Completion Notice	8
6.3 Inspection by Council.....	8
6.4 Rectification Notice	8
6.5 Works-As-Executed-Plan.....	9
7 Defects Liability.....	9
7.1 Defects Notice.....	9
7.2 Developer to Rectify Defects	9
7.3 Access by Developer	9
7.4 Right of Council to Step-In	10
7.5 Consequence of Step-In	10
7.6 Costs of Council.....	10
8 Variation of scope or timing for provision of Works	10
8.1 Variation to the scope of an item of Work.....	10
8.2 Deferral of the timing of Completion of an item of the Works	10
9 Developer Warranties and Indemnities.....	11
9.1 Warranties.....	11
9.2 Indemnity.....	12
9.3 Limitation of Liability.....	12
10 Security	12
10.1 Provision of Security	12
10.2 Replacement of Security.....	12
10.3 Council may call on Security.....	12
10.4 Release of Works Securities.....	13
10.5 Release of Defects Security.....	13
10.6 Council may withhold Subdivision Certificate	13
10.7 Council may withhold Construction Certificate	13
10.8 Council may withhold Occupation Certificate	13
11 Registration of this document	14

11.1	Registration of this document	14
11.2	Obligations of Developer.....	14
11.3	Discharge from the Register	14
12	Assignment	14
12.1	Application.....	14
12.2	Restriction on Assignment	15
12.3	Procedure for Assignment	15
13	Dispute Resolution	15
13.1	Notice of dispute	15
13.2	Conduct pending resolution	16
13.3	Further steps required before proceedings.....	16
13.4	Disputes for mediation or expert determination	16
13.5	Disputes for mediation	16
13.6	Choice of expert.....	16
13.7	Directions to expert.....	17
13.8	Expert may commission reports.....	17
13.9	Expert may convene meetings.....	18
13.10	Other courses of action	18
13.11	Confidentiality of information provided in dispute resolution process.....	18
13.12	Final determination of expert	19
13.13	Costs	19
13.14	Remedies available under the Act	19
13.15	Urgent relief.....	19
14	Termination, Rescission or Determination	19
14.1	Termination	19
14.2	Consequence of termination	19
14.3	Determination.....	19
15	Position of Council	19
15.1	Consent authority	19
15.2	Document does not fetter discretion	20
15.3	Severance of provisions.....	20
15.4	No Obligations.....	20
16	Confidentiality	20
16.1	Document not Confidential.....	20
16.2	Other Confidential Information	20
17	GST	21
17.1	Defined GST Terms	21
17.2	GST to be Added to Amounts Payable	21
17.3	GST Obligations to Survive Termination	21
18	General	21
18.1	Obligation to act in good faith	21
18.2	Legal costs	22
19	Administrative provisions	22
19.1	Notices	22
19.2	Entire Document	22
19.3	Waiver	22
19.4	Cooperation.....	23
19.5	Counterparts	23
19.6	Amendment.....	23
19.7	Unenforceability	23
19.8	Power of Attorney	23
19.9	Governing law	23
	Schedule 1 – Requirements under s7.4	24
	Schedule 2 – Defined Terms and Interpretation	26
	Part 2 - Interpretational Rules	30
	Schedule 3 – Contributions	32
	Schedule 4 - Works	34
	Annexure 1 – Location Plan	35
	Annexure 2 – Public Art Strategy	36
	Annexure 3 – Limitation of Liability	37
	Annexure 4 – Lease	38

Annexure 5 – Community Innovation Centre Fitout Area 39
Annexure 6 – Building Management Statement Schedule of Shared Facilities..... 40
Execution page 41

Planning Agreement
111-125 Anzac Parade and 112 Todman Avenue, Kensington
(DA/373/2020)

Parties

Council	Name	Randwick City Council
	Address	30 Frances Street Randwick NSW 2031
	ABN	77 362 844 121
Developer	Name	Perpetual Corporate Trust Limited
	Address	Level 18 123 Pitt Street Sydney NSW 2000
	ACN	000 341 533

Background

- A** The Developer owns the Land.
- B** The Developer wishes to carry out the Development.
- C** The Developer has applied for the Development Consent.
- D** The Developer has agreed to make the Development Contributions on and subject to the terms of this document.

Operative Provisions

1 Agreement

The agreement of the parties is set out in the Operative Provisions of this document, in consideration of, among other things, the mutual promises contained in this document.

2 Definitions and interpretation

2.1 Defined Terms

In this document, words beginning with a capital letter that are defined in Part 1 of **Schedule 2** have the meaning ascribed to them in that schedule.

2.2 Interpretation

The interpretational rules contained in Part 2 of **Schedule 2** apply in the interpretation of this document.

3 Application and operation of document

3.1 Planning Agreement

This document is a planning agreement:

- (1) within the meaning set out in s7.4 of the Act; and
- (2) governed by Subdivision 2 of Part 7 of the Act.

3.2 Application

This document is made in respect of the Development and applies to both the Land and the Development.

3.3 Operation

This document operates from the last to occur of the following:

- (1) the Development Consent being granted; and
- (2) the date that this document is executed by both parties.

4 Application of s7.11 and s7.12

4.1 Application

This document excludes the application of section 7.11 or section 7.12 of the Act to the Development.

4.2 Section 7.24

This document does not exclude the application of s7.24 of the Act to the Development.

5 Provision of Contributions

5.1 Contributions

The Developer must make the Contributions in the manner and at the times set out in **Schedule 3** of this Agreement.

5.2 Acknowledgements on subdivision

- (1) The Developer discloses and Council acknowledges that:
 - (a) the Developer intends to undertake a stratum subdivision of the Land to create a separate parcel of land for the proposed premises to be the subject of the Lease, being the Community Innovation Centre (**Subdivision**);
 - (b) the Subdivision:
 - (i) requires a building management statement (**BMS**) to accompany the plan of subdivision; and
 - (ii) may be accompanied by a section 88B instrument to create easements, restrictions and covenants;
 - (c) it intends to attach to the BMS a list of shared facilities, with the method of apportionment for cost being as shown attached in Annexure 6 or using such other method of apportionment that is fair and reasonable;

-
- (2) prior to the Subdivision Certificate being signed, the Developer:
 - (a) must submit the building management statement to Council; and
 - (b) consult, in good faith, with Council as to the nature of the shared services and method of apportionment.
 - (3) Unless otherwise agreed by Council, acting reasonably, the nature of the shared services, method of apportionment and Council's percentage with respect to any particular shared service is as contemplated in Annexure 6. Council acknowledges that:
 - (a) additional shared services may need to be added to the BMS as the design is developed and the method of apportionment for any additional services must be consistent with the apportionments in Annexure 6; and
 - (b) where the apportionment is on an area basis Council's percentage can only be determined when the final survey is prepared;
 - (c) where the apportionment is on a meter basis Council's percentage will be determined at the time of the expense based on Council's usage when compared to all usage.

5.3 Grant of Lease

- (1) The Developer must grant the Lease to Council as set out **Annexure 4** prior to Council's occupation of the Community Innovation Centre.
- (2) Council irrevocably authorises the Developer and its lawyers to, promptly after the Subdivision Certificate is issued:
 - (a) fill in the following blank spaces in the Lease:
 - (i) Item 3 of the Reference Schedule, the description of the premises including the folio of the land;
 - (ii) Item 5 of the Reference Schedule, the Commencement Date;
 - (iii) Item 6 of the Reference Schedule, the Terminating Date;
 - (b) change any details that have become incorrect, for example a party's contact details have changed for the services of notices; and
 - (c) do anything else necessary to complete and (if applicable) stamp and register the Lease.
- (3) Despite the authority contained in this clause 5.3(2):
 - (a) the Developer must provide full detail of any items to be inserted or changed in the Lease before making any insertions or changes; and
 - (b) to the extent Council identifies an error (acting reasonably), it must promptly advise the Developer within five (5) Business Days of receiving the details.

5.4 Works

The Developer, at its cost, must:

-
- (1) obtain development consent, and any other form of consent required by a relevant Authority, for the construction and use of the Works;
 - (2) carry out and complete the Works to the satisfaction of the Council by the time specified in **Schedule 4**; and
 - (3) carry out and complete the Works:
 - (a) in accordance with the specifications (if any) referred to in **Schedule 4** for the relevant item of Work or the design and specifications agreed or determined to apply to an item of Work under clause 5.5;
 - (b) in accordance with any relevant development consent;
 - (c) in accordance with the requirements of, or consents issued by, any Authority;
 - (d) ensuring that:
 - (i) all necessary measures are taken to protect people, property, and the environment;
 - (ii) unnecessary interference with the passage of people and vehicles is avoided;
 - (iii) nuisances and unreasonable noise and disturbances are prevented; and
 - (iv) all relevant laws and regulations with respect to water, air, noise and land pollution (including 'pollution incidents') as defined under the *Protection of the Environment Operations Act 1997* (NSW),
 - (e) in accordance with any Australian Standards applicable to works of the same nature as each aspect of the Works; and
 - (f) in a proper and workmanlike manner complying with current industry practice and standards relating to each aspect of the Works.

5.5 Design and specification of Works

- (1) This clause 5.5:
 - (a) applies to an item of Works if column 3 of **Schedule 4** indicates its application to that item of Works; and
 - (b) is subject to clause 5.10.
- (2) The Developer must:
 - (a) consult with Council with respect to the development of the detailed design and specification of the item of Works; and
 - (b) ensure that the relevant design is consistent with, and has regard to, any relevant policies of Council as identified in the Development Consent.
- (3) Before commencing construction of an item of Work, the Developer must submit to Council:

-
- (a) for its approval, the detailed design and specification for that item of Work; and
 - (b) a report from a suitable qualified and experienced quantity surveyor which estimates the cost to complete the relevant item of Work in accordance with the detailed design.
 - (4) The design and specification for the item of Work must be prepared by the Developer having specific regard to:
 - (a) the specification for that Work set out in column 2 of **Schedule 4**; and
 - (b) the Contribution Value of the relevant item of Work.
 - (5) Within thirty (30) days of the date of the first submission referred to in paragraph (4), Council must either:
 - (a) Notify the Developer in writing of its approval of the design and specification. The Developer is then to carry out and complete the item of Work in accordance with that design and specification; or
 - (b) Notify the Developer in writing that it does not approve of the design and specification and provide the Developer with reasons for this.
 - (c) If Council notifies the Developer in writing that it does not approve of the design and specification, the Developer may:
 - (i) elect to amend the design and specification and submit to Council the amended design and specification in which case the approval process set out in this clause 5.5 applies to that amendment, save for the fact that Council must consider an amended design within ten (10) days of the date of submission; or
 - (ii) if the Developer does not agree with the modifications requested by Council, then it may refer the relevant matter for dispute resolution in accordance with this document.
 - (6) If Council fails to notify the Developer in writing that it approves or does not approve of the design and specification within the time required under paragraph (5), then Council is deemed to have accepted the relevant design.

5.6 Contribution Value

If the Developer's actual cost of carrying out the Works, including any costs incurred pursuant to this document, determined at the date on which the Works are Completed, differs from the Contribution Value, then subject to the Works having been sufficiently completed in accordance with this document, neither party will be entitled to claim credit or reimbursement, as the case may be, for the difference. The Developer is not required to disclose to Council the actual cost of carrying out the Work.

5.7 Access to the Land and location of Works

- (1) The Developer must permit the Council, its officers, employees, agents and contractors to enter the Land at any time, upon giving 5 business days notice, in order to inspect, examine or test any of the Works.
- (2) Council must give the Developer prior reasonable notice before it enters the Land and ensure that the Council and its employees comply with all reasonable directions of the Developer and all site construction requirements including without limitation all

workplace health and safety requirements and reporting to a site office or site superintendent.

5.8 Public Art

- (1) With respect to the item of Work consisting of Public Art as set out in Item 1 of **Schedule 3**, in accordance with the following:
 - (a) The Developer must provide its proposals for the provision of Public Art in accordance with the Public Art Strategy at **Annexure 2** of this document and those proposals must include the estimate of costs to complete each piece of public art included in the relevant proposal.
 - (b) Within thirty (30) business days of receiving the relevant proposal from the Developer, Council must either:
 - (i) Serve notice on the Developer confirming that it agrees with some or all of the proposal, in which case the Developer must Complete the relevant item of Works in accordance with so much of the proposal that is accepted by Council; or
 - (ii) Notify the Developer in writing that it does not approve of the design and specification and provide the Developer with reasons for this.
 - (c) If Council notifies the Developer in writing that it does not approve of the proposal, the Developer may:
 - (i) elect to amend the proposal and submit to Council the amended proposal in which case the approval process set out in this clause applies to that amendment; or
 - (ii) if the Developer does not agree with the modifications requested by Council, then it may refer the relevant matter for dispute resolution in accordance with paragraph (d).
 - (d) Either party may elect by written notice to the other party that any dispute under paragraph (c) may be referred for expert determination immediately, without the need for the relevant dispute to be subject to clauses 13.3 to 13.5 (inclusive).
 - (e) If an election is made under paragraph (d) then unless otherwise agreed between the parties the relevant expert will be a public art curator.
- (2) If Council fails to provide a notice to the Developer under paragraph (1) within the time required in that paragraph, then Council is deemed to have accepted the whole of the relevant proposal and the Developer must Complete the relevant item of Works in accordance with the proposal.

5.9 Affordable Housing Levy Contribution

- (1) The Developer must pay the Affordable Housing Levy Contribution to Council under **Schedule 3**, in accordance with the conditions of any Development Consent.
- (2) The Affordable Housing Levy Contribution is made for the purposes of this document when Council receives:

- (a) the full amount of the contribution payable under this document in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by Council; or
- (b) payment in accordance with condition 109 of the Development Consent.

5.10 Payment of Community Infrastructure Contribution in lieu of carrying out the Works

- (1) If it becomes apparent during the design process for any item of the Community Infrastructure Contributions that:
 - (a) the relevant item of the Works are not feasible or cannot be conducted at a reasonable cost by the Developer; or
 - (b) if Council require a superior standard of works beyond what is proposed by the Owner,

then the Developer may at its sole discretion elect to pay the Contribution Value for the relevant item of the Works in lieu of carrying out that item (and for the purpose of clarity the relevant item of the Works is no longer required to be provided as a work).

- (2) If the Developer elects to pay the Contribution Value in accordance with clause 5.9(1), Council will use the money paid as the Contribution Value for the delivery of community infrastructure on the same land as the land on which the works the subject of the Community Infrastructure Contributions were to be carried out. However, for the purpose of clarity, Council has an absolute discretion as to which parts of that land on which it undertakes those works and is not obliged to carry out works on all of that land.
- (3) An election pursuant to paragraph (1) must be advised to Council in writing as soon as practicable.

5.11 Monetary Contributions

- (1) The Developer must pay the Monetary Contributions by the time specified in **Schedule 3**.
- (2) A monetary development contribution is made for the purposes of this document when Council receives the full amount of the contribution payable under this document in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by Council.

5.12 Indexation of Monetary Contributions payable by Developer

The Monetary Contributions are to be increased (with the calculation to be made as from the date any such amount is due to be paid under this document) in accordance with the following formula:

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

where:

- A** = the indexed amount;
- B** = the relevant amount as set out in this document;
- C** = the Consumer Price Index, All Groups, Sydney most recently published before the date that the relevant payment or the calculation with respect to the relevant amount is to be made; and

D = the Consumer Price Index, All Groups, Sydney most recently published before the commencement date of this document.

If A is less than B, then the amount of the relevant Monetary Contribution will not change.

6 Completion of Works

6.1 Completion

For the purpose of this document an item of Work is Completed when:

- (1) the Works have been accepted as, or deemed to have been, Completed in accordance with this clause 6; and
- (2) any other obligation with respect to the relevant item of Work which must be discharged prior to the Completion of that Work in accordance with this document has been discharged.

6.2 Issue of Completion Notice

If the Developer considers that any particular item of the Works is complete it must serve a notice on Council which:

- (1) is in writing;
- (2) identifies the particular item of the Works to which it relates; and
- (3) specifies the date on which the Developer believes the relevant item of the Works was completed,

(Completion Notice).

6.3 Inspection by Council

- (1) Council must inspect the Works set out in a Completion Notice within ten (10) business days of the receipt of that notice.
- (2) If Council fails to carry out an inspection required under paragraph (1) the Works referred to in the relevant Completion Notice will be deemed to be Complete and acceptable to Council.

6.4 Rectification Notice

- (1) Within five (5) business days of inspecting the Works set out in a Completion Notice Council must provide notice in writing (**Rectification Notice**) to the Developer that the Works set out in the Completion Notice:
 - (a) have been Completed; or
 - (b) have not been Completed, in which case the notice must also detail:
 - (i) those aspects of the Works which have not been Completed; and
 - (ii) the work Council requires the Developer to carry out in order to rectify the deficiencies in those Works.
- (2) If Council does not provide the Developer with a Rectification Notice in accordance with paragraph (1), the Works set out in the Completion Notice will be deemed to have been Completed and acceptable to Council.
- (3) Where Council serves a Rectification Notice on the Developer, the Developer must:

-
- (a) rectify the Works in accordance with that notice within a reasonable period of time which must be no less than twenty one (21) Business Days; or
 - (b) serve a notice on the Council that it disputes the matters set out in the notice.
- (4) Where the Developer:
- (a) serves notice on Council in accordance with paragraph (3)(b), the dispute resolution provisions of this document apply; or
 - (b) rectifies the Works in accordance with paragraph (3)(a), it must serve upon the Council a new Completion Notice for the Works it has rectified.

6.5 Works-As-Executed-Plan

Prior to Completion of an item of Work the Developer must provide to Council a full works-as-executed-plan in respect of the item of Work.

7 Defects Liability

7.1 Defects Notice

- (1) Where any part of the Works has been Completed but those Works contain a material defect which:
 - (a) adversely affects the ordinary use and/or enjoyment of the relevant Works; or
 - (b) will require maintenance or rectification works to be performed on them at some time in the future as a result of the existence of the defect;

(Defect) Council may issue a defects notice (**Defects Notice**) concerning those Works but only within the Defects Liability Period.
- (2) A Defects Notice must contain the following information:
 - (a) the nature and extent of the Defect;
 - (b) the work Council requires the Developer to carry out in order to rectify the Defect; and
 - (c) the time within which the Defect must be rectified (which must be a reasonable time and not less than fifteen (15) business days).

7.2 Developer to Rectify Defects

- (1) The Developer must rectify the Defects contained within a Defects Notice as soon as practicable after receipt of the Defects Notice.
- (2) The Developer must follow the procedure set out in clause 6 in respect of the satisfaction of the Defects Notice.

7.3 Access by Developer

- (1) The Council will permit the Developer its agents and contractors, to enter, occupy and use so much of the Land that is subject to the Lease (**Premises**) as is necessary for the purpose of allowing the Developer to rectify any Defect in accordance with this clause 7.

-
- (2) The Developer must:
- (a) give prior reasonable notice before it enters the Premises;
 - (b) ensure that the Developer and its employees comply with all reasonable directions of Council in relation to that access; and
 - (c) cause as little disruption to the use and enjoyment of the Premises as possible.

7.4 Right of Council to Step-In

Council, at its absolute discretion, may enter upon the Land for the purpose of satisfying the Defects Notice where the Developer has failed to comply with a Defects Notice but only after giving the Developer five (5) business days written notice of its intention to do so.

7.5 Consequence of Step-In

If Council elects to exercise the step-in rights granted to it under clause 7.4 then:

- (1) Council may:
 - (a) enter upon any part of the Land that it requires access to in order to satisfy the obligations of the Developer in accordance with the Defects Notice; and
 - (b) rectify the relevant Defects in accordance with the Defects Notice; and
- (2) the Developer must not impede or interfere with Council in undertaking that work.

7.6 Costs of Council

Where Council exercises its step-in rights, it may call upon the Defects Security provided by the Developer pursuant to clause 10 and recover as a debt due in a court of competent jurisdiction any difference between the amount of the Defects Security and the costs incurred by the Council in rectifying the Defects.

8 Variation of scope or timing for provision of Works

8.1 Variation to the scope of an item of Work

- (1) The Developer may request that Council approve in writing a variation to the scope any item of Work.
- (2) The scope of an item of Work is not to be varied unless Council and the Developer agree in writing to the variation.
- (3) Council may refuse to agree to a variation of an item of Work at its absolute discretion.

8.2 Deferral of the timing of Completion of an item of the Works

- (1) Notwithstanding any other provision of this document, if the Developer forms the view at any time, that:
 - (a) it is unable to Complete any item of the Works by the time specified in **Schedule 3**; or
 - (b) it believes that there is a risk of damage to any item of the Works if they are delivered by the time required in **Schedule 3**,

(**Deferred Works**), then the Developer may seek Council's approval to defer the Completion of the relevant item of the Works by providing written notice to the Council:

-
- (c) identifying the relevant item of Work that the Developer proposes to defer;
 - (d) specifying the reason for the request to defer the Completion of that item of the Works; and
 - (e) identifying the anticipated time for Completion of the relevant item of Work.
- (2) The Council, acting reasonably, must give the Developer a written notice within five (5) business days of the date upon which the Developer serves written notice upon Council in accordance with paragraph (1) stating:
- (a) whether or not it consents to the deferral of the Deferred Works;
 - (b) the revised date for Completion required by Council; and
 - (c) any reasonable conditions Council requires with respect to the deferral.
- (3) The Developer acknowledges and agrees that:
- (a) with respect to paragraph (2)(b), Council may require the relevant item of the Works to be completed before the issue of a Construction Certificate, Subdivision Certificate or Occupation Certificate with respect to the Development; or
 - (b) Council may require additional Security on account of that deferral provided that the amount of any such security held by Council as a result does not exceed one hundred and ten per cent (110%) of the then estimated cost to complete the relevant item of the Works.
- (4) If the Council consents to the deferral of the Deferred Works, then the following applies:
- (a) The Developer must comply with any conditions required by Council under paragraph (2)(c) above.
 - (b) Provided the Developer satisfies those conditions, the Developer will not be considered to be in breach of this document as a result of a failure to achieve Completion of the relevant Deferred Works by the time for Completion specified in this document.
 - (c) The time for completion of the Deferred Works under this document is the revised date for Completion approved by Council.

9 Developer Warranties and Indemnities

9.1 Warranties

The Developer warrants to Council that:

- (1) it is legally and beneficially entitled to the Land;
- (2) it is able to fully comply with its obligations under this document;
- (3) it has full capacity to enter into this document; and
- (4) there is no legal impediment to it entering into this document, or performing the obligations imposed under it.

9.2 Indemnity

The Developer indemnifies Council in respect of any Claim that may arise as a result of the conduct of the Works until such time as a Completion Notice is issued for that item of Work but only to the extent that any such Claim does not arise as a result of the negligent acts or omissions of Council.

9.3 Limitation of Liability

- (1) The Developer relies upon and Council accepts the limitation of liability as outlined in **Annexure 3**.
- (2) The provisions of **Annexure 3** only apply during any period where the Developer is the owner of the Land in its capacity as Trustee of the Trust referred to in **Annexure 3**.

10 Security

10.1 Provision of Security

- (1) Subject to paragraph (2), the Developer must deliver to Council separate Bank Guarantees or other forms of security to the satisfaction of the Council:
 - (a) prior to the issue of a Construction Certificate for an item of Works, for an amount equivalent to one hundred and ten per cent (110%) of the Contribution Value for that item of Work (**Works Securities**); and
 - (b) prior to the Completion of an item of Work, for an amount equivalent to ten per cent (10%) of the Contribution Value of that item of Work (**Defects Security**),(collectively referred to as the **Security**).
- (2) The Developer may satisfy its obligations under paragraph (1) (either in whole or in part), by directing Council to retain any Security held by Council which is required to be released by Council under this document.
- (3) If the parties have agreed that the Developer is to pay Council a monetary contribution in lieu of carrying out any item of Work then no Security will be payable for that item of Work.

10.2 Replacement of Security

- (1) The Developer may replace any Security provided by it at any time, provided that the amount of that replacement is not less than that which is required to be provided under this document.
- (2) On receipt of a replacement Security, Council must immediately release the Security being replaced and return it to the Developer.

10.3 Council may call on Security

- (1) If the Developer commits a material or substantial breach of this document (including if the Developer becomes subject to an Insolvency Event) and has failed to rectify the breach within a reasonable period of time after having been given no less than five (5) Business Days notice Council, without limiting any other remedies available to it, may call on any Security provided by the Developer.
- (2) If Council calls on any Security, it may use the amount so paid to it in satisfaction of any costs incurred by it in remedying the breach in paragraph (1).

10.4 Release of Works Securities

Council must release and return the Works Securities with respect to an item of Work, or any unused part of it, to the Developer no later than the last to occur of:

- (1) ten (10) business days after the date of Completion of an item of Work; and
- (2) receipt of the Defects Security for the item of Work to which the Works Securities relates.

10.5 Release of Defects Security

Council must release and return the Defects Security or any unused part of it to the Developer no later than ten (10) business days after the last to occur of:

- (1) if no Defects Notice has been issued, the end of the Defects Liability Period; or
- (2) if one or more Defects Notices have been issued, the date that all Defects have been rectified to the reasonable satisfaction of the Council in accordance with this document.

10.6 Council may withhold Subdivision Certificate

- (1) The Developer may only make, or cause, suffer or permit the making of, an application for a Subdivision Certificate in respect of the Development if, at the date of the application, the Developer is not in breach of an obligation to make a Contribution under this document that is required to be made before that Subdivision Certificate can be issued.
- (2) Council may withhold the issue of any such Subdivision Certificate if until such time as:
 - (a) the breach is rectified; or
 - (b) Council calls upon the Security provided by the Developer in respect of the Contribution to which the breach relates.

10.7 Council may withhold Construction Certificate

- (1) The Developer may only make, or cause, suffer or permit the making of, an application for a Construction Certificate in respect of the Development if, at the date of the application, the Developer is not in breach of an obligation to make a Contribution under this document that is required to be made before that Construction Certificate can be issued.
- (2) Council may withhold the issue of any such Construction Certificate if until such time as the breach is rectified.

10.8 Council may withhold Occupation Certificate

- (1) The Developer may only make, or cause, suffer or permit the making of, an application for an Occupation Certificate in respect of the Development if, at the date of the application, the Developer is not in breach of an obligation to make a Contribution under this document that is required to be made before that Occupation Certificate can be issued.
- (2) Any such Occupation Certificate must not be issued until such time as:
 - (a) the breach is rectified; or
 - (b) Council calls upon the Security provided by the Developer in respect of the Contribution to which the breach relates.

11 Registration of this document

11.1 Registration of this document

The Developer acknowledges and agrees that:

- (1) this document must be registered on the title to the Land pursuant to section 7.6 of the Act; and
- (2) subject to clause 11.2, Council will undertake that registration at the cost of the Developer.

11.2 Obligations of Developer

- (1) The Developer, at its own expense, will promptly after this document comes into operation, take all practical steps, and otherwise do anything that the Council reasonably requires, to procure:
 - (a) the consent of each person who:
 - (i) has an estate or interest in the Land; or
 - (ii) is seized or possessed of an estate or interest in the Land;
 - (b) the execution of any documents; and
 - (c) the production of the relevant duplicate certificates of title,
to enable the registration of this document in accordance with clause 11.1.
- (2) The Developer, at its own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires:
 - (a) to allow the lodgement of this document with the Registrar-General as soon as reasonably practicable after this document comes into operation but in any event, no later than sixty (60) business days after that date; and
 - (b) to allow the registration of this document by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this document is lodged for registration.

11.3 Discharge from the Register

The Council will provide a release and discharge of this document so that it may be removed from the folios of the Register for the Land (or any part of it) when:

- (1) the obligations under this document have been satisfied; or
- (2) if this document is terminated or rescinded.

12 Assignment

12.1 Application

This clause 12 only applies during any period when this document is not registered on the title of the Land.

12.2 Restriction on Assignment

Other than in accordance with this clause 12 the Developer may not:

- (1) Assign any part of the Land; and/or
- (2) Assign their rights or obligations under this document.

12.3 Procedure for Assignment

- (1) If the Developer:

- (a) wishes to Assign any part of the Land; and/or
- (b) wishes to Assign its rights or obligations under this document,

then the Developer must:

- (c) provide a written request to Council for the consent of Council to the relevant Assignment;
- (d) provide Council with any evidence required by Council, acting reasonably, to satisfy Council that the third party in whose favour the Assignment is to be made (**Assignee**) is reasonably capable of performing the obligations under this document that are to be Assigned to it; and
- (e) obtain written consent of Council to the relevant Assignment; and
- (f) at no cost to Council, procure:
 - (i) the execution by the Assignee of an appropriate deed where the Assignee agrees to be bound by the terms of this document; and
 - (ii) the provision of all Security to Council by the Assignee that the Developer is required to provide under this document (and any additional securities if required by Council acting reasonably) at the same time as, or prior to, entering into that deed.

13 Dispute Resolution

13.1 Notice of dispute

- (1) If a dispute or lack of certainty between the parties arises in connection with this document or its subject matter (**Dispute**), then either party (**First Party**) must give to the other (**Second Party**) a notice which:
 - (a) is in writing;
 - (b) adequately identifies and provides details of the Dispute;
 - (c) stipulates what the First Party believes will resolve the Dispute; and
 - (d) designates its representative (**Representative**) to negotiate the Dispute.
- (2) The Second Party must, within five (5) Business Days of service of the notice of dispute, provide a notice to the First Party designating as its representative a person to negotiate the Dispute (the representatives designated by the parties being together, the **Representatives**).

13.2 Conduct pending resolution

The parties must continue to perform their respective obligations under this document if there is a Dispute but will not be required to complete the matter the subject of the Dispute, unless the appropriate party indemnifies the other parties against costs, damages and all losses suffered in completing the disputed matter if the Dispute is not resolved in favour of the indemnifying party.

13.3 Further steps required before proceedings

Subject to clauses 13.14 and 13.15 and except as otherwise expressly provided in this document, any Dispute must, as a condition precedent to the commencement of litigation, mediation under clause 13.5 or determination by an expert under clause 13.6, first be referred to the Representatives. The Representatives must endeavour to resolve the dispute within five (5) Business Days of the date a notice under clause 13.1(2) is served.

13.4 Disputes for mediation or expert determination

If the Representatives have not been able to resolve the Dispute, then the parties must agree within five (5) Business Days to either refer the matter to mediation under clause 13.5 or expert resolution under clause 13.6.

13.5 Disputes for mediation

- (1) If the parties agree in accordance with clause 13.4 to refer the Dispute to mediation, the mediation must be conducted by a mediator agreed by the parties and, if the parties cannot agree within five (5) Business Days, then by a mediator appointed by the President of the Law Society of New South Wales for the time being.
- (2) If the mediation referred to in paragraph (1) has not resulted in settlement of the Dispute and has been terminated, the parties may agree to have the matter determined by expert determination under clause 13.6.

13.6 Choice of expert

- (1) If the Dispute is to be determined by expert determination, this clause 13.6 applies.
- (2) The Dispute must be determined by an independent expert in the relevant field:
 - (a) agreed between and appointed jointly by the parties; or
 - (b) in the absence of document within five (5) Business Days after the date that the matter is required to be determined by expert determination, appointed by the President of the Law Society of New South Wales for the time being.
- (3) If the parties fail to agree as to the relevant field within five (5) Business Days after the date that the matter is required to be determined by expert determination, either party may refer the matter to the President of the Law Society of New South Wales for the time being whose decision as to the relevant field is final and binding on the parties.
- (4) The expert appointed to determine a Dispute:
 - (a) must have a technical understanding of the issues in dispute;
 - (b) must not have a significantly greater understanding of one party's business, functions or operations which might allow the other side to construe this greater understanding as a bias; and
 - (c) must inform the parties before being appointed of the extent of the expert's understanding of each party's business or operations and, if that information

indicates a possible bias, then that expert must not be appointed except with the written approval of the parties.

- (5) The parties must promptly enter into an document with the expert appointed under this clause 13.6 setting out the terms of the expert's determination and the fees payable to the expert.

13.7 Directions to expert

- (1) In reaching a determination in respect of a dispute under clause 13.6, the independent expert must give effect to the intent of the parties entering into this document and the purposes of this document.
- (2) The expert must:
- (a) act as an expert and not as an arbitrator;
 - (b) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
 - (c) not accept verbal submissions unless both parties are present;
 - (d) on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to the other party;
 - (e) take into consideration all documents, information and other material which the parties give the expert which the expert in its absolute discretion considers relevant to the determination of the Dispute;
 - (f) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
 - (g) issue a draft certificate stating the expert's intended determination (together with written reasons), giving each party ten (10) Business Days to make further submissions;
 - (h) issue a final certificate stating the expert's determination (together with written reasons); and
 - (i) act with expedition with a view to issuing the final certificate as soon as practicable.
- (3) The parties must comply with all directions given by the expert in relation to the resolution of the Dispute and must within the time period specified by the expert, give the expert:
- (a) a short statement of facts;
 - (b) a description of the Dispute; and
 - (c) any other documents, records or information which the expert requests.

13.8 Expert may commission reports

- (1) Subject to paragraph (2):

-
- (a) the expert may commission the expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the expert in making a determination; and
 - (b) the parties must indemnify the expert for the cost of those advisers or consultants in accordance with clause 13.6(5) of this deed.
- (2) The parties must approve the costs of those advisers or consultants in writing prior to the expert engaging those advisers or consultants.

13.9 Expert may convene meetings

- (1) The expert must hold a meeting with all of the parties present to discuss the Dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.
- (2) The parties agree that a meeting under paragraph (1) is not a hearing and is not an arbitration.

13.10 Other courses of action

If:

- (1) the parties cannot agree in accordance with clause 13.4 to refer the matter to mediation or determination by an expert; or
- (2) the mediation referred to in clause 13.5 has not resulted in settlement of the dispute, the mediation has been terminated and the parties have not agreed to refer the matter to expert determination within five (5) Business Days after termination of the mediation,

then either party may take whatever course of action it deems appropriate for the purpose of resolving the Dispute.

13.11 Confidentiality of information provided in dispute resolution process

- (1) The parties agree, and must procure that the mediator and the expert agree as a condition of his or her appointment:
 - (a) subject to paragraph (2), to keep confidential all documents, information and other material disclosed to them during or in relation to the mediation or expert determination;
 - (b) not to disclose any confidential documents, information and other material except:
 - (i) to a party or adviser or consultant who has signed a confidentiality undertaking; or
 - (ii) if required by Law or any Authority to do so; and
 - (c) not to use confidential documents, information or other material disclosed to them during or in relation to the mediation or expert determination for a purpose other than the mediation or expert determination.
- (2) The parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:

-
- (a) views expressed or proposals or suggestions made by a party or the mediator or the expert during the expert determination or mediation relating to a possible settlement of the Dispute;
 - (b) admissions or concessions made by a party during the mediation or expert determination in relation to the Dispute; and
 - (c) information, documents or other material concerning the dispute which are disclosed by a party during the mediation or expert determination unless such information, documents or facts would be discoverable in judicial or arbitral proceedings.

13.12 Final determination of expert

The parties agree that the final determination by an expert will be final and binding upon them except in the case of fraud or misfeasance by the expert.

13.13 Costs

If any independent expert does not award costs, each party must contribute equally to the expert's costs in making the determination.

13.14 Remedies available under the Act

This clause 13 does not operate to limit the availability of any remedies available to Council under the Act.

13.15 Urgent relief

This clause 13 does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this document.

14 Termination, Rescission or Determination

14.1 Termination

This document terminates in the following events:

- (1) The parties agree in writing to terminate the operation of this document at any time.
- (2) The Development Consent lapses.

14.2 Consequence of termination

Upon termination of this document:

- (1) all future rights and obligations of the parties are discharged; and
- (2) all pre-existing rights and obligations of the parties continue to subsist.

14.3 Determination

This document will determine upon the Developer satisfying all of the obligations imposed on it in full.

15 Position of Council

15.1 Consent authority

The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the terms of the Planning Legislation.

15.2 Document does not fetter discretion

This document is not intended to operate to fetter, in any unlawful manner:

- (1) the power of Council to make any Law; or
- (2) the exercise by Council of any statutory power or discretion,
(Discretion).

15.3 Severance of provisions

- (1) No provision of this document is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this document is held by a court of competent jurisdiction to constitute an unlawful 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 15 is substantially satisfied; and
 - (b) in the event that paragraph (1)(a) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this document has full force and effect; and
 - (c) to endeavour to satisfy the common objectives of the parties on relation to the provision of this document which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.
- (2) Where the Law permits Council to contract out of a provision of that Law or gives Council power to exercise a Discretion, then if Council has in this document contracted out of a provision or exercised a Discretion under this document, then to the extent of this document is not to be taken to be inconsistent with the Law.

15.4 No Obligations

Nothing in this document will be deemed to impose any obligation on Council to exercise any of its functions under the Act in relation to the Development Consent, the Land or the Development in a certain manner.

16 Confidentiality

16.1 Document not Confidential

The terms of this document are not confidential and this document may be treated as a public document and exhibited or reported without restriction by any party.

16.2 Other Confidential Information

- (1) The parties acknowledge that:
 - (a) Confidential Information may have been supplied to some or all of the parties in the negotiations leading up to the making of this document; and
 - (b) The parties may disclose to each other further Confidential Information in connection with the subject matter of this document.
 - (c) Subject to paragraphs (2) and (3), each party agrees:

-
- (i) not to disclose any Confidential document received before or after the making of this document to any person without the prior written consent of the party who supplied the Confidential Information; or
 - (ii) to take all reasonable steps to ensure all Confidential Information received before or after the making of this document is kept confidential and protected against unauthorised use and access.
 - (2) A party may disclose Confidential Information in the following circumstances:
 - (a) in order to comply with the Law, or the requirements of any Authority; or
 - (b) to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the information confidential.
 - (3) The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

17 GST

17.1 Defined GST Terms

Defined terms used in this clause 17 have the meaning ascribed to them in the GST Law.

17.2 GST to be Added to Amounts Payable

- (1) If GST is payable on a Taxable Supply made under, by reference to or in connection with this document, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- (2) This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive.
- (3) Unless otherwise expressly stated, prices or other sums payable or Consideration to be provided under or in accordance with this document are exclusive of GST.

17.3 GST Obligations to Survive Termination

This clause 17 will continue to apply after expiration of termination of this document.

18 General

18.1 Obligation to act in good faith

The parties must at all times:

- (1) cooperate and use their best endeavours to profitably and professionally give effect to their rights and obligations set out in this document;
- (2) not unreasonably delay any action, approval, direction, determination or decision which is required of them;
- (3) make approvals or decisions that are required of them in good faith and in a manner consistent with the completion of the transactions set out in this document; and
- (4) be just and faithful in their activities and dealings with the other parties.

18.2 Legal costs

The Developer agrees to:

- (1) pay or reimburse the reasonable legal costs and disbursements of Council of the negotiation, preparation, execution, and stamping of this document;
- (2) pay the reasonable legal costs and disbursements referred to in paragraph (1) within ten (10) business days of receipt of a Tax Invoice from Council; and
- (3) pay or reimburse the legal costs and disbursements of Council arising from the ongoing administration and enforcement of this document including any breach or default by the Developer of its obligations under this document.

19 Administrative provisions

19.1 Notices

- (1) Any notice, consent or other communication under this document must be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
 - (a) delivered to that person's address;
 - (b) sent by pre-paid mail to that person's address; or
 - (c) transmitted by facsimile to that person's address.
- (2) A notice given to a person in accordance with this clause is treated as having been given and received:
 - (a) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
 - (b) if sent by pre-paid mail, on the third Business Day after posting; and
 - (c) if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next Business Day.
- (3) For the purpose of this clause the address of a person is the address set out in this document or another address of which that person may from time to time give notice to each other person.

19.2 Entire Document

This document is the entire agreement of the parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this document.

19.3 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

19.4 Cooperation

Each party must sign, execute and deliver all agreements, documents, instruments and act reasonably and effectively to carry out and give full effect to this document and the rights and obligations of the parties under it.

19.5 Counterparts

This document may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

19.6 Amendment

This document may only be amended or supplemented in writing signed by the parties.

19.7 Unenforceability

Any provision of this document which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid or enforceable, and is otherwise capable of being severed to the extent of the invalidity or enforceability, without affecting the remaining provisions of this document or affecting the validity or enforceability of that provision in any other jurisdiction.

19.8 Power of Attorney

Each attorney who executes this document on behalf of a party declares that the attorney has no notice of:

- (1) the revocation or suspension of the power of attorney by the grantor; or
- (2) the death of the grantor.

19.9 Governing law

The law in force in the State of New South Wales governs this document. The parties:

- (1) submit to the exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeal from those courts in respect of any proceedings in connection with this document; and
 - (2) may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.
-

Schedule 1– Requirements under s7.4

REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
Planning instrument and/or development application – (Section 7.4(1)) The Developer has: <ul style="list-style-type: none"> (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies. 	<ul style="list-style-type: none"> (a) No (b) Yes (c) Not applicable
Description of land to which this agreement applies – (Section 7.4(3)(a))	<ul style="list-style-type: none"> 1) 3/3897 2) 1/SP87347 3) 1/938380 4) 4/655026 5) A/107256 6) B/107256 7) 1/956200 8) 3/SP87347 9) 1/956200 10) 2/344524
Description of change to the environmental planning instrument to which this agreement applies – (Section 7.4(3)(b))	Not applicable
Application of section 7.11 of the Act – (Section 7.4(3)(d))	Does not apply
Applicability of section 7.12 of the Act – (Section 7.4(3)(d))	Does not apply
Consideration of benefits under this agreement if section 7.11 applies – (Section 7.4(3)(e))	See clause 4.
Mechanism for Dispute resolution – (Section 7.4(3)(f))	See clause 13.
Enforcement of this agreement (Section 7.4(3)(g))	See clause 10.

No obligation to grant consent or exercise functions – (Section 7.4(3)(9))

See clause 14.

Schedule 2 – Defined Terms and Interpretation

Part 1 – Definitions

Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Affordable Housing Levy Contributions	means the Contribution identified as such in Schedule 3 .
Assign	as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.
Authority	means (as appropriate) any: <ul style="list-style-type: none">(1) federal, state or local government;(2) department of any federal, state or local government;(3) any court or administrative tribunal; or(4) statutory corporation or regulatory body.
Bank Guarantee	means an irrevocable and unconditional undertaking without any expiry or end date by one of the following trading banks: <ul style="list-style-type: none">(1) Australia and New Zealand Banking Group Limited.(2) Commonwealth Bank of Australia.(3) Macquarie Bank.(4) National Australia Bank Limited.(5) St George Bank Limited.(6) Westpac Banking Corporation.(7) Any other financial institution approved by the Council, in its absolute discretion, in response to a request from the Developer.
Claim	against any person any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
Completed	means completed in accordance with the requirements of this document.
Completion Notice	has the meaning ascribed in clause 6.2.

Community Infrastructure Contributions

means the Works specified as such in **Schedules 3 and 4**.

Confidential Information

means any information and all other knowledge at any time disclosed (whether in writing and orally) by the parties to each other, or acquired by the parties in relation to the other's activities or services which is not already in the public domain and which:

- (1) is by its nature confidential;
- (2) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise);
- (3) any party knows or ought to know is confidential;
- (4) is information which may be reasonably considered to be of a confidential nature.

Construction Certificate

has the same meaning as in section 6.4(d) of the Act.

Contributions

means the Works, the Monetary Contributions (including the Affordable Housing Levy Contribution) and the grant of the Lease..

Contribution Value

means the amount specified in **Schedules 3** in the column headed "contribution value" for each item of the Contributions.

Defect

has the meaning ascribed to it in clause 7.1.

Defects Notice

has the meaning ascribed to it in clause 7.1.

Defects Liability Period

means with respect to an item of Work, a period of twelve (12) months commencing on the date of Completion of the relevant item of Work.

Defects Security

has the meaning ascribed to it in clause 10.

Development

means the development generally described in development application DA/373/2020 consisting of demolition of existing structures and construction of a mixed-use development up to nineteen (19) storeys, comprising basement parking, ground and first floor level commercial/retail use and a boarding house to be used as student and key worker accommodation comprising 564 boarding rooms, a roof-top pool, signage, public plaza, earthworks, landscaping, and associated works.

Development Application

means an application for the Development Consent.

Development Consent

means a consent issued under the Act for the Development.

Dispute

has the meaning ascribed to it in clause 13.1.

Encumbrance

means an interest or power:

- (1) reserved in or over an interest in any asset;
- (2) arising under, or with respect to, a Bio-Banking Agreement;

-
- (3) created or otherwise arising in or over any interest in any asset under any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement, covenant, lease, subordination to any right of any other person and any other encumbrance or security interest, trust or bill of sale; or
 - (4) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.

Encumber means to grant an Encumbrance.

GST Law

means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Insolvency Event

means the happening of any of the following events:

- (1) Application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order or an order is made that a body corporate be wound up.
- (2) An application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate or one of them is appointed, whether or not under an order.
- (3) Except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, agreement of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them.
- (4) A body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved.
- (5) A body corporate is or states that it is insolvent.
- (6) As a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**), a body corporate is taken to have failed to comply with a statutory demand;
- (7) A body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act*.
- (8) A body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate.
- (9) A person becomes an insolvent under administration as defined in section 9 of the *Corporations Act* or action is taken which could result in that event.

	(10) A receiver, manager or receiver and manager is appointed to the Company.
	(11) A claim is filed in a court against a person that is not defended, released or otherwise settled within twenty eight (28) days of the date of its filing at the court.
	(12) Anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.
Land	means the "Land" set out in Schedule 1 .
Law	means all legislation, regulations, by-laws, common law and other binding order made by any Authority.
Lease	means the lease for the Community Innovation Centre in the form at Annexure 4 .
Location Plan	means the plan that is attached as Annexure 1 .
Monetary Contributions	means the monetary contributions specified or described in Schedule 3 .
Occupation Certificate	has the same meaning as in section 6.4(c) of the Act.
Planning Legislation	means the Act, the <i>Local Government Act 1993</i> (NSW) and the <i>Roads Act 1993</i> (NSW).
Quantity Surveyor	means a person who: <ul style="list-style-type: none"> (1) is a member of their respective professional organisation and has been for at least five (5) years; (2) practises as a quantity surveyor for works of the same nature as the relevant Works; (3) is active as a quantity surveyor at the time of his appointment; (4) has at least three (3) years experience in valuing works of the same nature as the relevant Works; and (5) undertakes to act fairly and promptly in accordance with the requirements of this document.
Rectification Notice	has the meaning ascribed to it in clause 6.4.
Security	means collectively the Work Securities and the Defects Security.
Subdivision	has the meaning ascribed to that term at clause 5.2(1)(a).
Subdivision Certificate	has the same meaning as in section 6.4(d) of the Act.
Works	means the works specified or described in Schedule 4 .
Works Securities	has the meaning ascribed to it in clause 10.

Part 2 - Interpretational Rules

clauses, annexures and schedules	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this document.
reference to statutes	a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
singular includes plural	the singular includes the plural and vice versa.
Person	the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
executors, administrators, successors	a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
Dollars	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
calculation of time	if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
reference to a day	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
accounting terms	an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia.
reference to a group of persons	a group of persons or things is a reference to any two or more of them jointly and to each of them individually.
meaning not limited	the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
next day	if an act under this document to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.
next Business Day	if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.
time of day	time is a reference to Sydney time.
Headings	headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this document.
Agreement	a reference to any agreement, document or instrument includes the same as varied, supplemented, novated or replaced from time to time.

Gender

a reference to one gender extends and applies to the other and neuter gender.

Schedule 3 – Contributions

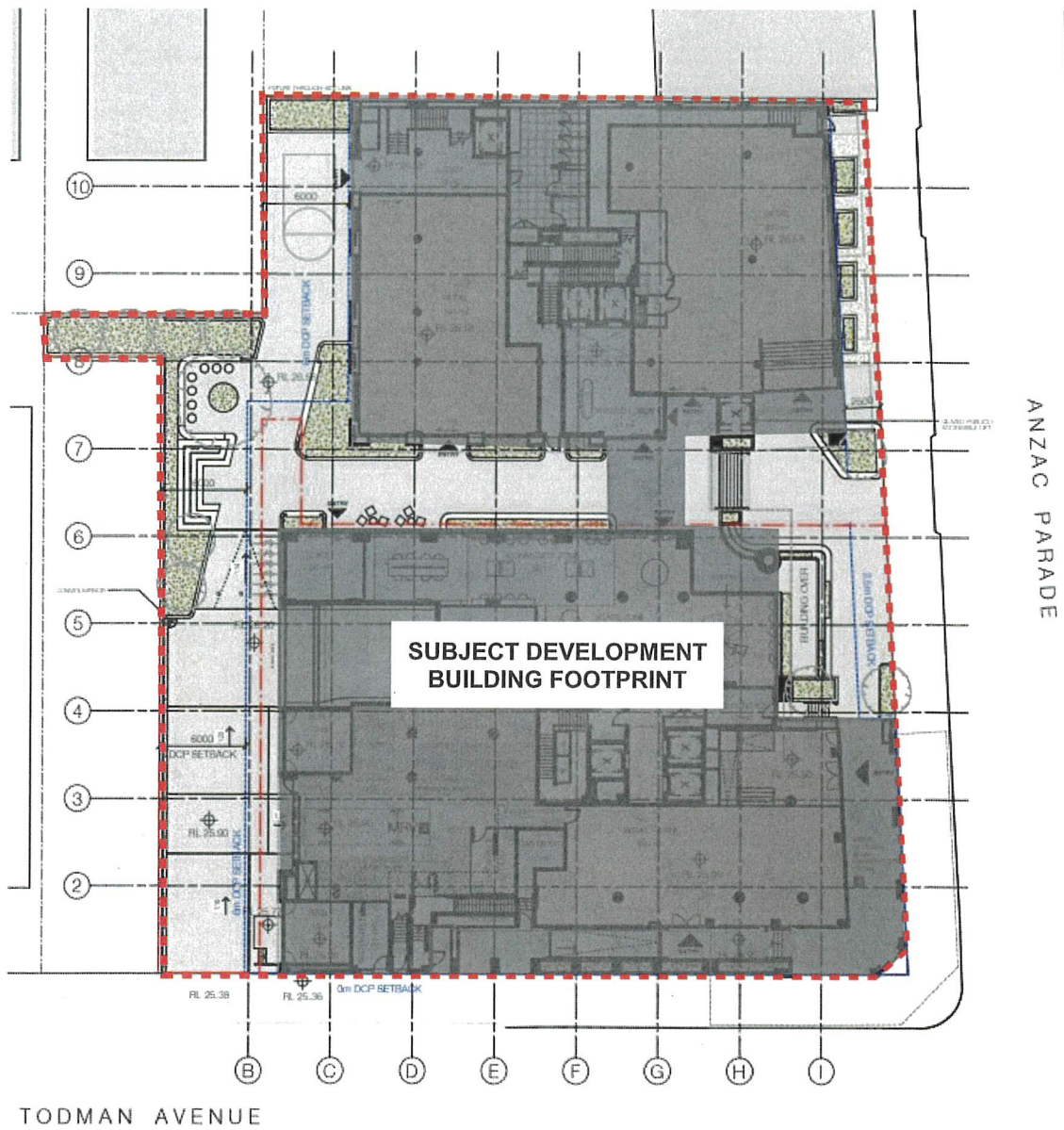
Item	Contributions	Public Purpose	Timing	Contribution Value
	Section 7.12			
1	Public Art	Improvement of local area amenity and liveability.	The earlier of twenty-four (24) months from the date the relevant Construction Certificate is issued or the issue of the first Occupation Certificate in respect of the Development.	\$450,000
2	Undergrounding of overhead powerlines to zones that directly border with the subject site.	Improvement of local area amenity and liveability.	The earlier of twenty-four (24) months from the date the relevant Construction Certificate is issued or the issue of the first Occupation Certificate in respect of the Development.	\$829,525
3	Footpath works including landscaping along Todman Avenue and Anzac Parade.	Improvement of local area amenity and liveability.	The earlier of twenty-four (24) months from the date the relevant Construction Certificate is issued or the issue of the first Occupation Certificate in respect of the Development.	\$712,488
4	Grant of long term Lease to Council in the form shown in Annexure 4	Improvement of local area amenity and liveability.	Prior to the issue of an Occupation Certificate in respect of the Development	Not valued
5	Affordable Housing Levy Contribution	Provision of affordable housing	Prior to the issue of an Occupation Certificate in respect of the Development.	Contribution is calculated in accordance with Clause 6.18 of the Randwick Local Environmental Plan 2012, the Kensington and Kingsford Town Centres Affordable Housing Plan adopted by the Council on 10 December 2019 and is based on an Affordable Housing Contribution

				Rate of \$324.38, payable in accordance with the conditions of the Development Consent.
Community Infrastructure Contributions (CIC)				
6	Fit out of Community Innovation Centre (200m2) tenancy.	Improvement of local area amenity and liveability.	Prior to the issue of an Occupation Certificate in respect of the Development.	\$3,000,000
7	Monetary Contribution in lieu of cycleway and Cycle Parking Facility including \$137,512 of s7.12 contribution.	Improvement of local area amenity and liveability.	Payable prior to the issue of third Construction Certificate in respect of the Development.	\$437,512
8	Monetary contribution to be used for the upgrade of the Portion of Green Grid Links	Improvement of local infrastructure and recreation facilities to be completed by Council at a later date.	Payable prior to the issue of third Construction Certificate in respect of the Development.	\$328,050
	TOTAL CONTRIBUTIONS			\$5,757,575 plus any Affordable Housing Levy Contribution.

Schedule 4 - Works

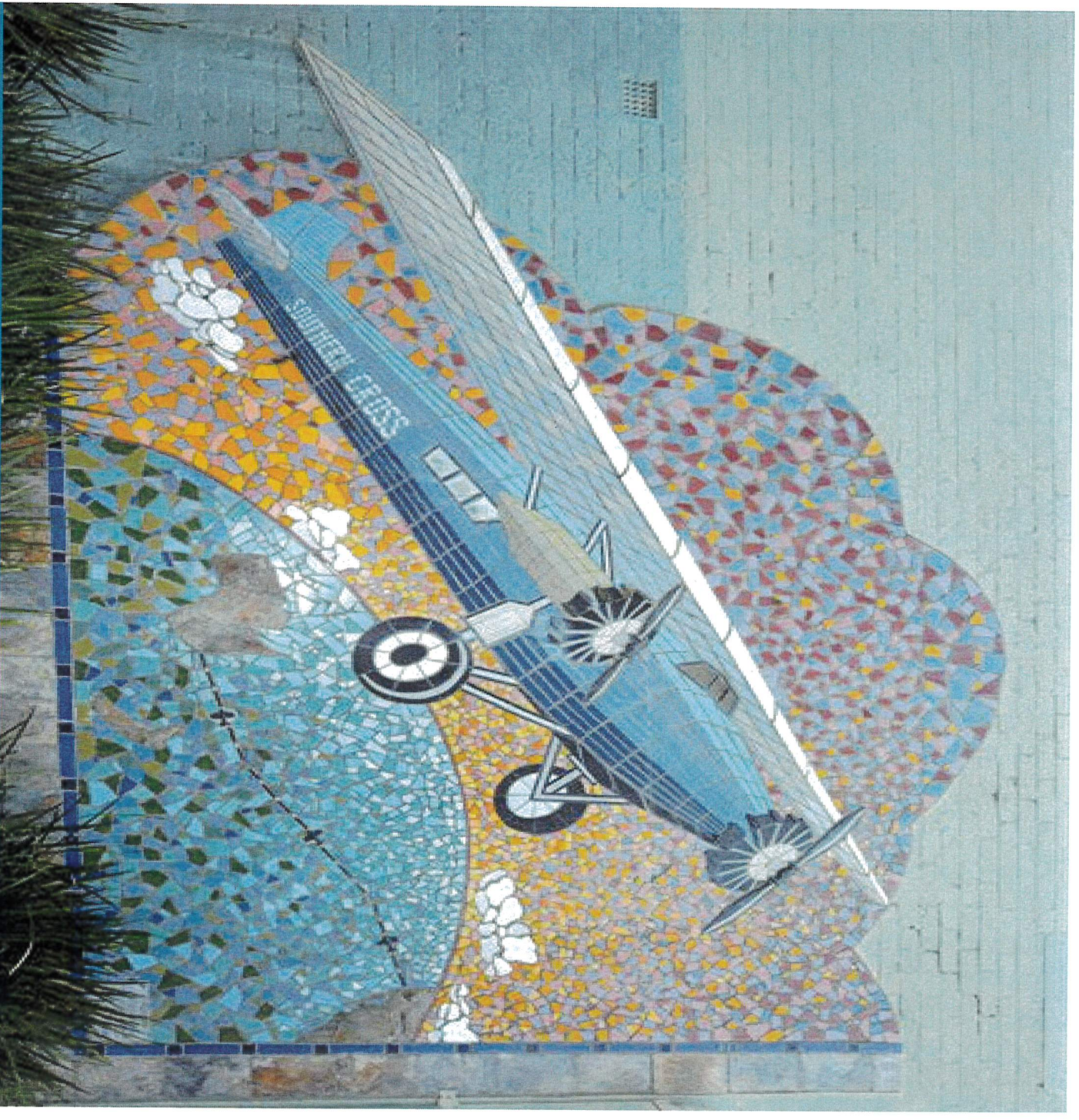
Item of Works	Specification	Application of specification and design approval (clause 5)
Public Art	As per the Public Art Strategy at Annexure 2 of this document	Yes
Undergrounding of overhead powerlines to zones that directly border with the subject site.	Existing above ground electrical powerlines to be relocated underground.	Yes
Footpath works including landscaping along Anzac Parade and Todman Avenue directly adjacent to the subject site.	Existing footpath reinstated and widened including landscaping along Anzac Parade and Todman Avenue.	Yes
Fit out of Community Innovation Centre (200m2) tenancy.	<p>Provision of a fitout suitable for the use of an Innovation Centre for the areas shown in Annexure 5, including;;</p> <ul style="list-style-type: none">• Fitout of Innovation space per approved plans.• 1 x standalone lift to tenancy.• 1 x standalone staircase connecting ground to the Innovation Space.• Fitout of Innovation space and ancillary spaces,• Provision of technologies and audio visual equipment to enable function of space,• Separate amenities for the Community Multipurpose space.	Yes

Annexure 1 – Location Plan



----- SUBJECT SITE BOUNDARY

Annexure 2 – Public Art Strategy

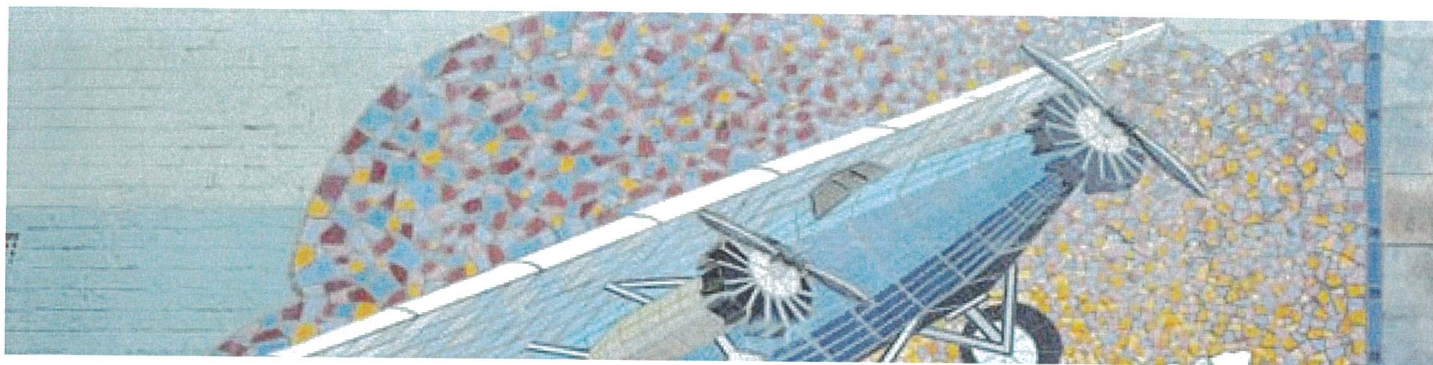


Randwick City
Council
a sense of community

RANDWICK CITY COUNCIL

Public Art Strategy





CONTENTS

- 1.0 Our vision for public art
- 2.0 Introduction
- 3.0 The Council's integrated planning model
- 4.0 The benefits of high quality public art
- 5.0 Role of the arts and cultural advisory panel
- 6.0 Review of the current situation
 - 6.1 Location of existing public art, monuments and sculptures
 - 6.2 Maintenance and budgetary considerations
- 7.0 Public art objectives and principles
 - 7.1 Public art objectives
 - 7.2 Public art principles
- 8.0 The Council's approach to enhancing public art
 - 8.1 Funding sources
 - 8.2 Identification of priority locations
 - 8.3 Sustainability and public artworks
 - 8.4 Register of public artworks
 - 8.5 Descriptions of public artworks
 - 8.6 Donations of public artworks
 - 8.7 Community initiated and social engagement public art projects
 - 8.8 Community participation and engagement process
 - 8.9 Marketing and promotion
 - 8.10 Restoration of artworks
 - 8.11 Relocation of artworks
 - 8.12 Disposal of public artworks

Attachments

- a. Public art commissioning processes
 - 1.0 Process for commissioning public art
 - 2.0 Preparing a site brief
 - 3.0 Preparing an artist's brief
 - 4.0 Contractual arrangements
- b. Decommissioning of public artworks
- c. Integrating art with capital/functional works
 - 1.0 Selection of projects with integrated artwork
 - 2.0 Project management

References

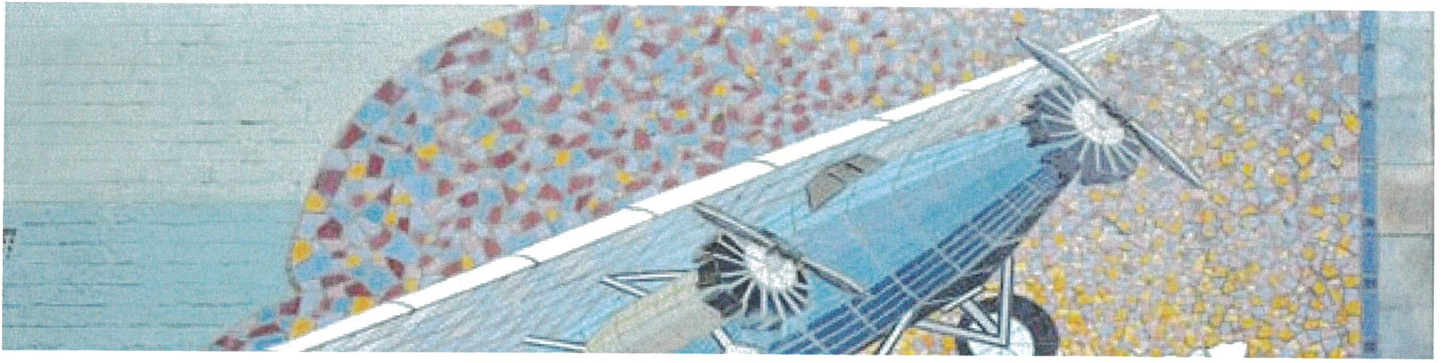
Acknowledgements

The Council wishes to thank the members of the Arts and Cultural Advisory Panel for their assistance and feedback in preparing this document.

Photographs

Southern Cross mosaic mural at Kingsford (cover); Sewing Room sculpture at Prince Henry; Sir Charles Kingsford Smith mosaic mural at Kingsford; the Bali Memorial at Coogee; and Bush Tucker trail at La Perouse.

Strategy adopted in July 2010



1.0 Our vision for public art

Randwick City Council's vision for public art is to:

"Work with professional artists and the community to achieve a range of temporary and permanent public art, and activities that contributes to a sense of community in Randwick City."

Our public places are an important part of our City providing space for people to meet, sit and interact – influencing the vibrancy and vitality of an area.

The Council recognises that high quality public art has the ability to enhance public places and spaces. It can also add immeasurably to a community's sense of place, contribute to civic identity, address community needs, tackle social exclusion and provide educational value.

2.0 Introduction

This Public Art Strategy has been prepared to provide a framework for the Council's planning and decision making in relation to the commissioning and acquisition of public art, as well as its ongoing care and maintenance.

The need to prepare a Public Art Strategy has been identified as a key action within the Council's cultural plan A Cultural Randwick City (2008) to facilitate a regular program of temporary and permanent public art for the City which is integrated with the area's rich cultural heritage.

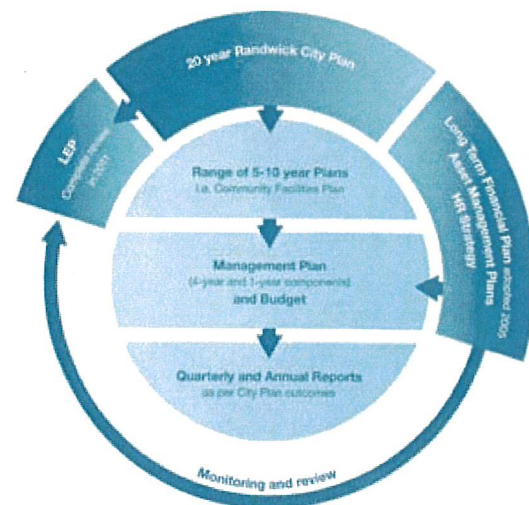
In preparing this document the Council has referred to a number of relevant policies and guidelines for the commissioning of public art, and has also consulted with a number of local arts and cultural practitioners through its Arts and Cultural Advisory Panel.

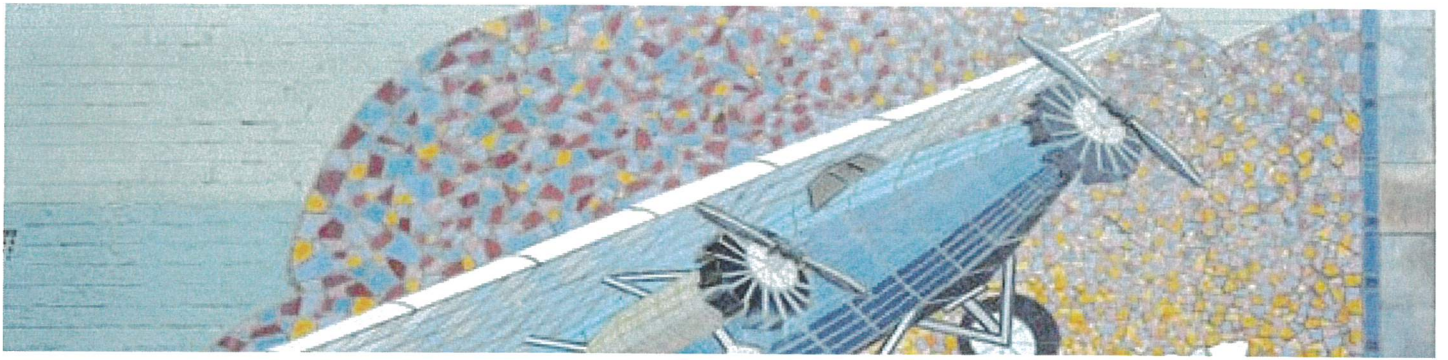
This document sets out the following:

- Clarifies the Council's objectives and methodology for the procurement of quality public art in Randwick City
- Describes the decision-making process of acquiring public art, either through commission, direct purchase or accepting donation
- Identifies the circumstances where developers can play a valuable place making role by incorporating public art within their building project
- Provides a framework for community groups and individuals proposing public art projects for consideration as a Council supported project.

3.0 The Council's integrated planning model

This Strategy has been informed by a number of the Council's existing plans and policies including the *Randwick City Plan* (2010), *A Cultural Randwick City* (2008) and our *Management Plan* (2009-2013). The diagram below outlines where this Strategy sits within the Council's integrated planning model:





4.0

The benefits of high quality public art

Public art is increasingly used as an aid for revitalising urban spaces and engaging with communities. It enhances the physical environment, thereby enriching the simple experience of being in a place. It can create an environment of quality that attracts more people, raises a town centre's profile and improves economic outcomes. Public art can make a significant contribution to social health and well being of the local community, and be good for local business.

Public art is mostly located in public places and spaces but may also be incorporated into private areas open to the public such as shopping plazas, schools, parks, town centres, streetscapes and buildings. Public art can be represented as a literal piece of artwork such as a sculpture, a painting, a wall mosaic or a mural. It can be incorporated into a functional object including paving, water features (such as a fountain), seating, and lighting. It can also be a temporary work such as an art performance in an outdoor public space.

Community involvement and engagement with the development of a work of public art promotes social inclusion and gives local residents the opportunity to shape their local neighbourhood. Public art in Australian cities is often created by the local communities themselves and is enhanced with the help of experienced community artists.

5.0

Role of the arts and cultural advisory panel

In 2008, the Council resolved to establish an advisory panel comprising of local arts and cultural institutions and practitioners to advise the Council on its cultural programs and public art initiatives. Terms of Reference for the Panel were also adopted and outlines how the Panel is to operate. Membership of the Panel consists of no less

than five local practising artists and two Councillors and is serviced by the Council's Community Project Officer, Youth and Culture. The Panel operates on a consensus basis and meets quarterly although should the need arise a special meeting to consider additional matters may be convened. In relation to the Council's Public Art Strategy, the Panel's role includes, although is not limited to:

- providing input and feedback on conceptual briefs when engaging artists for the Council's public art and place-making projects
- assisting in identifying any gaps in public art provision and suitable sites within the City's town centres and key public spaces
- assisting and advising in the Council's decision-making process relating to the acquisition and commission of the Council's public art projects
- advising the Council in development of art policy and project development matters brought before the Advisory Panel, including subsequent review of existing Public Art Strategy and the Council's cultural activities as the need arises.

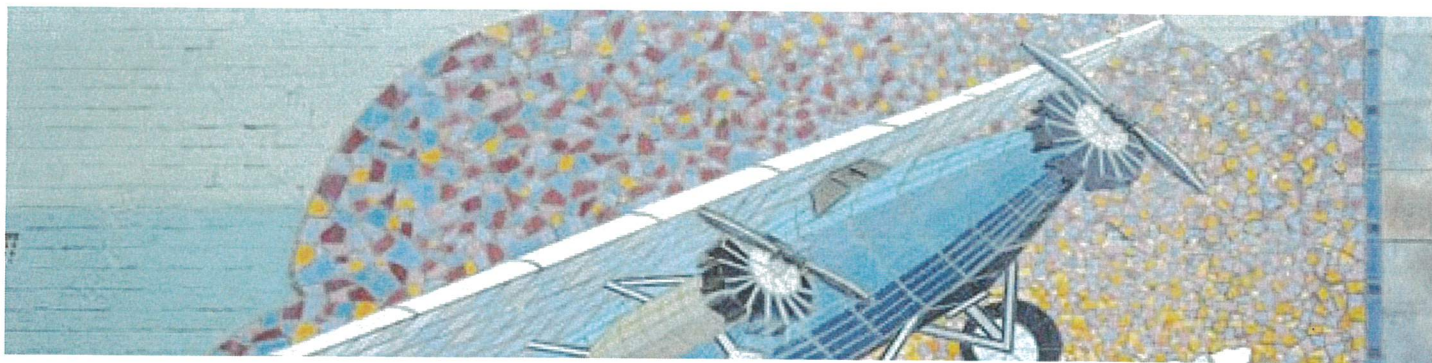
6.0

Review of the current situation

6.1

Location of existing public art, monuments and sculptures

Public artworks within Randwick City have traditionally been represented by public artefacts, sculptures and monuments inherited from as early as the mid nineteenth century. There are 30 murals, fountains, monuments and sculptures, some of which are heritage items listed under the *Randwick Local Environmental Plan 1998* (Consolidation). These outdoor public artworks are distributed around the streets and parks, and along the



coast within the city, with the majority located in the older and more established suburbs of Randwick and Coogee. These play a valuable role in enhancing the streetscape and parks, as well as connecting the past with the present.

Randwick City also has a collection of public artworks including the mosaic murals dedicated to Sir Charles Kingsford Smith at Kingsford, the Sewing Room sculpture at Prince Henry and the Bali memorial at Coogee. However, Randwick City does not have a systematic public art acquisition program as acknowledged in our cultural plan. This is now being addressed through this strategy. Suitable sites within town centres especially those on the western side of Anzac Parade should, where appropriate, be identified as priority locations for public artworks as part of a town centre's public domain strategy.

6.2

Maintenance and budgetary considerations

When a decision is made to acquire a piece of public art, the financial costs extend beyond the commissioning and installation stages. The artwork will require on-going care and maintenance for the duration of its identified life-span. Some of the Council's outdoor public artefacts, monuments and sculptures require immediate restoration and maintenance works. An estimated \$700,000 is required to restore the artefacts to an acceptable standard and then placed in a cyclical maintenance program. This estimate includes the preparation of a Maintenance Plan and associated landscaping works to enhance the setting of these works.

The Council believes that investment in high quality public art brings into our City important community and social benefits. Public art provides a focal point to a public space, and people are more likely to use places that are safe and attractive. This in turn makes our annual maintenance expenditure of public spaces and parks all the more cost effective. As the Council acquires public artworks to enhance its city environment, the annual maintenance budget will need to increase proportionately in order to

protect and retain the value of its cultural assets. Therefore it is essential to articulate in this strategy what the Council wants to achieve when commissioning public art, together with a set of guiding principles to ensure value for money and successful public art outcomes. The objectives and guiding principles are set out below.

7.0

Public art principles and objectives

7.1

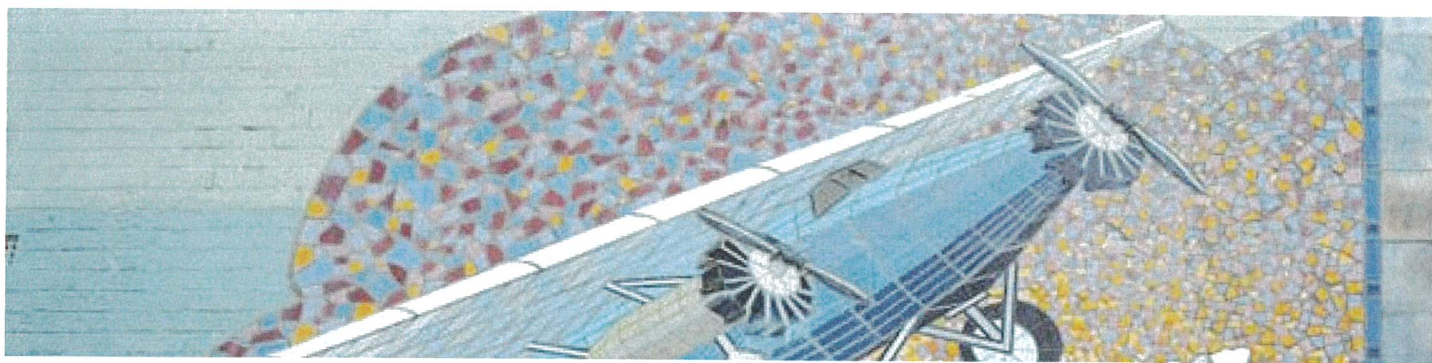
Public art objectives

The objective of this public art strategy is to support one of the key actions of the Randwick City Plan (2006) which is to "Increase public art, performance spaces and opportunities for creative expression across our City". This includes implementing public art to achieve one or more of the following outcomes:

- create a strong cultural identity
- create a sense of arrival
- animate public environments
- celebrate creativity and innovation
- celebrate community cultures
- explore local heritage
- responding to Aboriginal heritage
- engage local communities

Public artworks can be located in, or form part of:

- building developments
- public open space
- private space physically/visually accessible to the public
- Streetscape
- Transport and utility networks



7.2

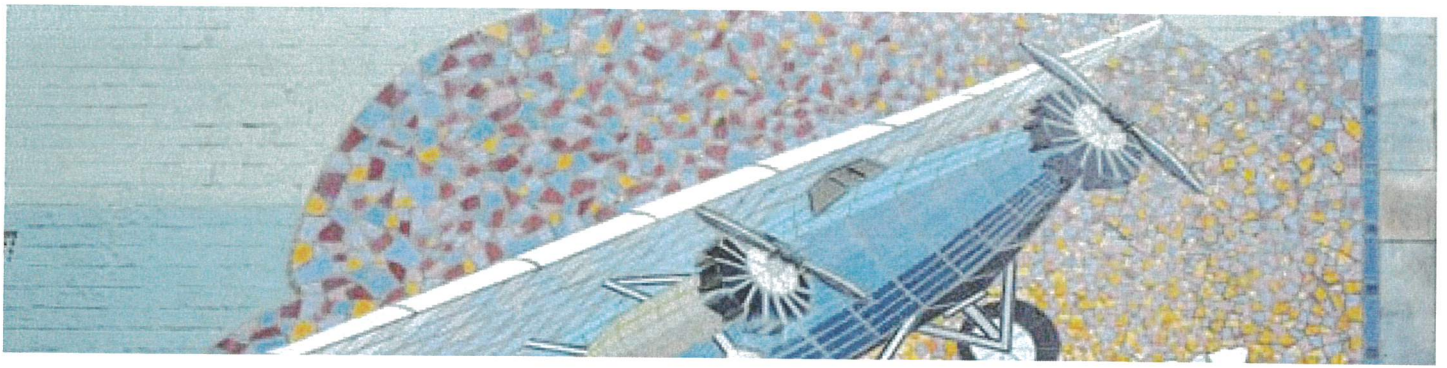
Public art principles

In planning for and commissioning public artworks, the Council will adopt the following principles:¹

1. Public artworks should contribute to an area's cultural identity and help to create a sense of place:
 - artworks should be appropriate to the local community in which they are to be sited.
2. Public artworks should help to build stronger, more connected communities within Randwick City:
 - public art should improve the amenity of public places and promote opportunities for social interaction
 - community involvement should be encouraged in the development of public art projects.
3. Public artworks should be able to be enjoyed and experienced by people of different ages and backgrounds:
 - neighbourhood art projects should be developed with a community audience in mind
 - public artworks should engage and involve people of different ages, including young people, and provide an opportunity to explore cultural diversity.
4. Public artworks should be sensitive to the area's cultural heritage:
 - Projects should respond to the social history of Randwick City.
5. Public artworks should relate well to the built and natural environment:
 - the Council should encourage collaboration with architecture and design teams on capital works projects
 - ensure that public artworks are responsive to climate and environmental issues.
6. Public artworks should exemplify artistic excellence and integrity:
 - encourage works that are original and showcase excellence in Australian art and design
 - the integrity of artists must be respected in the way the work is treated and represented by the Council.
7. Public artworks should respond to the challenge of climate change through sustainable design and fabrication:
 - artworks must be constructed using sustainable materials and processes
 - water features must only use recycled or rainwater.
8. Public artworks must consider public safety and easily maintained:
 - artworks must be designed to be structurally sound under a range of uses and conditions
 - permanent artworks must be designed to be durable and able to be maintained at minimal cost.

¹ Adapted from Landcom (2008) *Public Art Guidelines*, p. 9.





8.0 The Council's approach to enhancing public art

8.1 Funding sources

Randwick City Council aims to either acquire or commission and complete, at minimum, one public artwork every two years. The Council recognises that best practice Public Art projects can only be achieved through the allocation of adequate budgets. The Council will consider public art opportunities as part of its annual budget review process. In this regard, the Council's financial contribution to public art will be through one of two methods:

- a. infrastructure projects with a component of built-in artwork, funded under the Council's annual capital works program
- b. specific budget allocation for iconic/stand-alone artwork.

Every year, in developing the new financial year's draft capital works program, the Council staff will review its building program and nominate projects which offer the best opportunities to integrate public art. Examples of infrastructure projects with a built-in art component are artist-designed alternative paving treatment, colour selection, facade treatment to buildings, fencing or new street furniture.

Nominated projects will be costed and submitted for the Council's endorsement as part of its Plan of Management and Budget process. This process requires the Council's staff to consider in advance how public art may be assimilated within the design and delivery process of public facilities improvement works. On occasions, the Council may consider it appropriate to allocate a special budget to acquire or commission a piece of stand-alone or iconic public artwork. Guidelines for the commissioning of new public art works are described in **Attachment 1** of this document.

In appropriate circumstances, the Council will enter into a voluntary planning agreement with developers in addition to S94 requirements. The type of public artwork will depend on the nature of the development proposal and opportunities present at the development site and its surrounds. A nationally accepted guide of 1.0% of construction costs will be used as a starting point for negotiations on voluntary planning agreements.²

In addition, the Council may obtain grant funding from an arts institution/ agency or receive sponsorship from a philanthropic/ corporate organisation. Community groups may also propose public art funded by another source and seek to form a partnership with the Council.

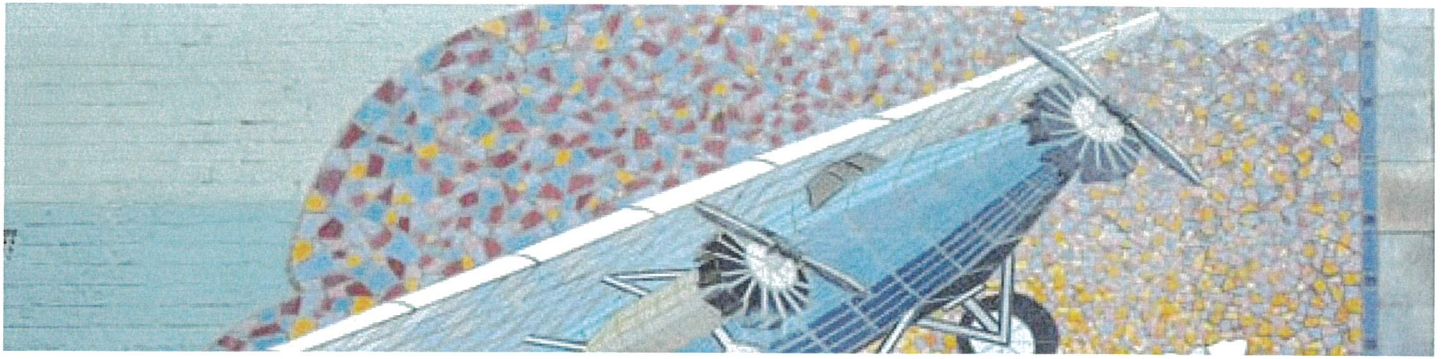
8.2 Identification of priority locations

A multi-disciplinary team including Council officers from the City Planning (CP) and City Services (CS) Departments, with assistance from the Council's Arts and Cultural Advisory Panel, will identify suitable sites within the City's town centres and key public places where public art should be encouraged. Since the majority of the Council's existing public artworks are located along the coastline and the northern part of the city, town centres with public domain strategies containing provisions for public art such as Matraville and Kensington town centres will be priority locations for the City's initial artwork under this strategy.

8.3 Sustainability and public artworks

The Council has a commitment to implementing ecologically sustainable practices as part of all of its facilities and activities including the planning, design, and implementation of all outdoor public art projects. This includes the use of renewable (green) materials and technologies in artists' designs, fabrication and installation processes. The Council will also seek to acquire artworks that are appropriate to the environment in which they are to be installed e.g. outdoor artworks should be highly durable, resistant to vandalism and require low maintenance.

² The Western Australian State Government Percent for Art Scheme allocates up to one percent of the estimated total construction cost of each State capital works project, valued at \$2million and over, to a commissioned Western Australian artwork. This includes refurbishments as well as new building works.



8.4

Register of public artworks

All public artworks will be identified on the Council's asset register by the Property Coordinator, including for each item, a description of the artwork, maintenance requirements and decommissioning details.

8.5

Descriptions of public artworks

It is the Council's intention to support a diverse range of creative public artworks that are most suited to the circumstances of the nominated site. Artworks may include, but are not limited to, those characteristics presented below :³

- **Decorative:** where the primary purpose is to aesthetically enhance an environment or structure, such as incorporated imagery or sculpture, paving elements and lighting. Can also be functional, iconic, integrated or site specific.
- **Iconic:** a stand alone or significant work, where the artists' approach is largely independent of other considerations – 'art-for-art's-sake'. Examples include sculpture, water features, lighting or multimedia. Often site specific.
- **Integrated/functional:** works that are fully incorporated within the design of the built or natural environment. Integrated works may include floor and window design, lighting, landscaping and associated elements. Artwork is inclusive of street furniture, seating, gateways, shelters, bollards etc. Commissioned as public art, functional requirements will be unique and have the potential to celebrate local distinctiveness.
- **Site specific:** designed specifically for, and responsive to, a particular site through scale, material, form and concept. Could apply to all listed categories.
- **Interpretive:** where the primary purpose is to describe, educate and comment on issues, events or situations. Examples include signage, pavement inlays, sculpture,

seating, landscaping, murals and text based work. Can also be functional, decorative, iconic and site specific.

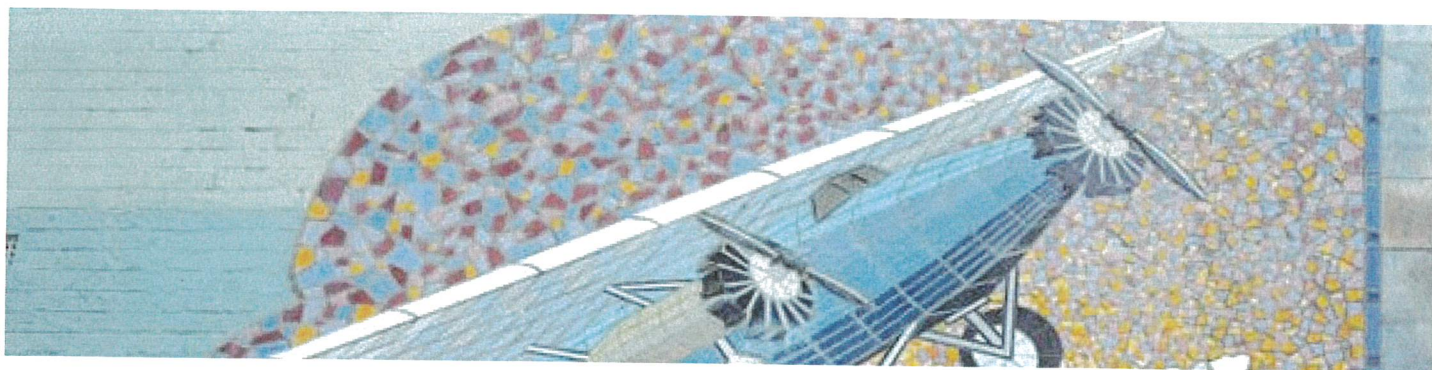
- **Commemorative:** where the primary purpose is to acknowledge and recall an event, activity or person important to the local community and its visitors. Examples include sculpture, murals, pavement details and gardens. Could apply to all listed categories.
- **Temporary:** where the work is not intended to be permanent. A piece or event may be momentary or remain for a fixed time. Wide-ranging outcomes are possible and include performance, garden planting, text, installations and multimedia.

8.6

Donations of public artworks

From time to time, artists and members of the community offer to donate artworks to the Council with the expectation that the works will be cared for and suitably displayed in the public domain/Council premises. Only artwork created by professional artists, or a professional working as a part of a multi-disciplinary team, will be accepted by the Council. All public art accepted by the Council will be on the basis of an agreed timeframe. This timeframe may be reviewed at any time during the originally agreed life cycle should the Council have concerns regarding the condition of the artwork or safety aspects. All permanent donations will be accompanied by a legal document transferring full rights of ownership to Randwick City Council. The Council will have exclusive copyright licence of the works, however full copyright will remain with the artist/author of the work/object.

³ Adapted from Arts SA (2004) *Public Art Making it Happen: Commissioning guidelines for local councils*, p. 4.



8.7

Community initiated and social engagement public art projects

Community initiated art refers to any proposal by an individual, community group or other external party to create and or fund a piece of public art. Social engagement projects targeted at hard to reach groups who would benefit from direct involvement would also be supported. These proposals must be supervised by a project coordinator (professional artist or experienced community development officer or both) to ensure access and equity outcomes and facilitate project outcomes. Funding or sponsorship for these projects may be approved through the Council's Cultural Community Grants Program or the biennial public art budget, as outlined in section 8.1 regarding funding sources.

8.8

Community participation and engagement process

Where practicable, and in circumstances when timing is not an issue, the opinion of the Council's Arts and Cultural Advisory Panel will be sought before the Council commissions or accepts a donation of public artwork. All donated artwork will be added to the asset register and maintained in accordance with the Council's commissioning and decommissioning processes, as outlined in **attachment 1**.

8.9

Marketing and promotion

Any new public artwork for Randwick City should have a marketing and communication strategy developed to ensure the best climate in which an artwork can be understood and received. Marketing and promotion are also about advocacy for public art and developing the public's understanding of contemporary arts practice.

8.10

Restoration of artworks

Public artwork including monuments, sculptures and water features in the public domain are subject to wear and tear and degradation over time. In addition, they are occasionally vandalised, graffitied or broken. As part of the acquisition of any new artwork, the artist must provide a maintenance schedule upon completion of the work. The schedule should outline requirements for regular cleaning, maintenance or servicing, specifically what is required, who should do it and how often e.g. cleaning agents for surface treatments and materials. Details of any spare parts that have been lodged must also be provided.

8.11

Relocation of artworks

Circumstances sometimes arise where redevelopment of a site or changed uses render an artwork inappropriate and require its relocation. The implications if it is deemed necessary to relocate a work of art prior to the agreed display date needs consideration. The Council must consult with the artist before preparing a report addressing the following matters: insurance, risk assessment, valuation, engineering and legal.

8.12

Disposal of public artworks

Disposal of public art must be done with the knowledge and in consultation with the artist, where possible. If, after making reasonable enquiries the Council cannot identify or locate the artist (or the artist's representative), then the Council may dispose of the public artwork as it sees fit. All decisions and actions should be fully documented. Artworks should first be offered for sale at a price based on independent valuation; first to the artist, then to other institutions or the public, or at an auction. Funds from any decommissioned public artwork should be reused for new/ or upgraded public art within the City. Objects which are destroyed should be disposed of in a responsible manner.



Attachment 1

Public art commissioning and decommissioning guidelines



A. Public art commissioning process

1.0

Process for commissioning public art

In commissioning new works of public art, the general process for the Council will take the following form:⁴

- appoint the Council's Project Manager for the work and establish a multi-disciplinary team to provide input e.g. Landscape architect, engineers and cultural development officer
- select a suitable site from an approved priority list/ strategy/plans/ and or imminent capital works projects
- identify category of commission, whether:
 - a open competition
 - b limited competition
 - c purchase or direct commission
- prepare a specific site brief, with input from the Council's Arts and Cultural Advisory Panel
- outline the approximate cost of works
- secure the Council's approval to proceed with the public art project
- prepare an artist's brief⁵ and circulate to the Council's Arts and Cultural Advisory Panel and Council staff for discussion and finalisation prior to issuing

2.0

Preparing a site brief

Prior to engaging an artist, a site brief should be developed. The purpose of this brief is to clarify early ideas and capture relevant information for consultation purposes. It will also provide background information for the development of an artist's brief.

The site brief will include:

- a description of the project proposal including the intent, firm ideas about the art form and medium; scale of the proposal; a preliminary project budget and other information that allows a working understanding of the final outcome
- details and images of the site with opportunities and constraints
- context or location for the artwork including its relationship to the architecture or landscape
- strategies for community information and involvement including target groups, local stakeholders and community organisations
- themes or community issues the project could address
- examples of work by preferred or short listed artists
- identified stages for implementing the project
- an outline of how the project will address sustainability, maintenance and public safety issues

3.0

Preparing an artists' brief

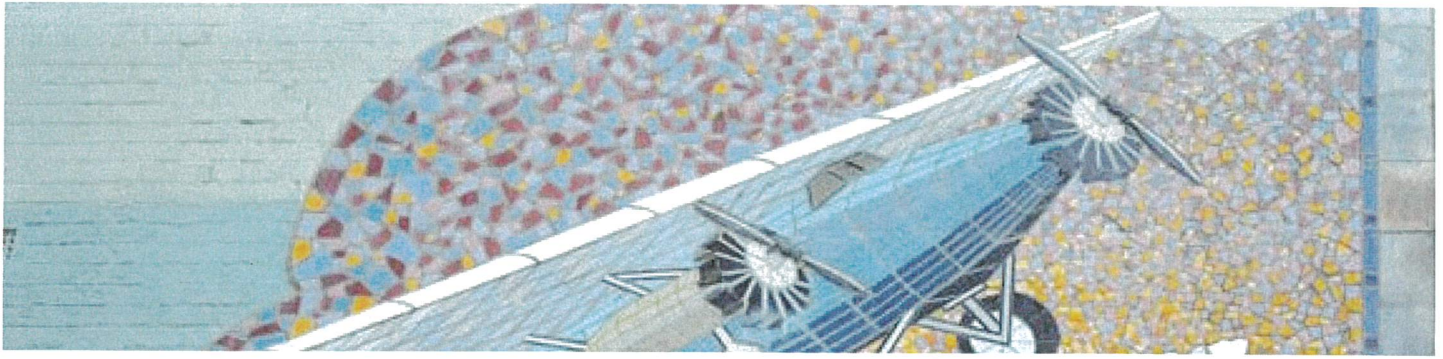
The Council will describe in the artist's brief how the Council's staff will be involved in the delivery of the project. A Project Manager/Coordinator will be appointed to liaise with the artist throughout the duration of the project. The artist's brief will also contain a description of the various contractual arrangements appropriate to the supply and installation of the artwork.

The artist's brief should contain the following items:

- the site brief
- a thematic framework if the artist is required to respond to specific themes or subjects

⁴ Adapted from Hastings Borough Council (2005) *Public Art in Hastings: Pride of Place*, p 10.

⁵ The Public Art Guidelines Art into Practice prepared by Landcom, together with checklists documented in Public Art Making It Happen: Commissioning Guidelines For Local Councils prepared by Arts South Australia, will be used by the Council's staff to ensure the best possible outcomes in the carrying out of and the commissioning its own public art projects.



- a maximum project budget
- preferred materials, fabrication and installation requirements if this is relevant
- artist selection criteria
- project management information
- timeframes
- lifespan of artwork and maintenance

4.0

Contractual arrangements

A commissioning contract between the artist and the Council will be prepared and ratified prior to work commencing. The contract will be administered by the Council's appointed Project Manager and must address, although is not limited to, the following:

- the terms and conditions relating to the delivery, presentation and installation timelines
- the intended life of the work
- the amount, and how and when it is to be paid for the work
- the artist must provide a maintenance schedule upon completion of the work which will inform the maintenance to be undertaken by the Council
- the artist must have a current insurance policy covering Public Liability and Professional Indemnity. A certificate of currency is required as evidence
- if an Aboriginal or Torres Strait Islander community or creator is involved with a public art project, consideration needs to be given to including special provisions in the contract which safeguard the Indigenous cultural and intellectual property concerns of that community or individual⁶
- acknowledges that Artists' Moral Rights (as defined in the Moral Rights Amendment to the Commonwealth

Copyright Act 1972) over all works will be respected by the Council

- the Artist must outline how they comply with their OH&S statutory obligations
- the contract must outline the responsibilities of the parties in relation to confidential information
- the terms and conditions, consistent with the Council's obligations under the Copyright Act if the Council intends to remove, relocate or dispose of the work.

B.

Decommissioning of public artworks

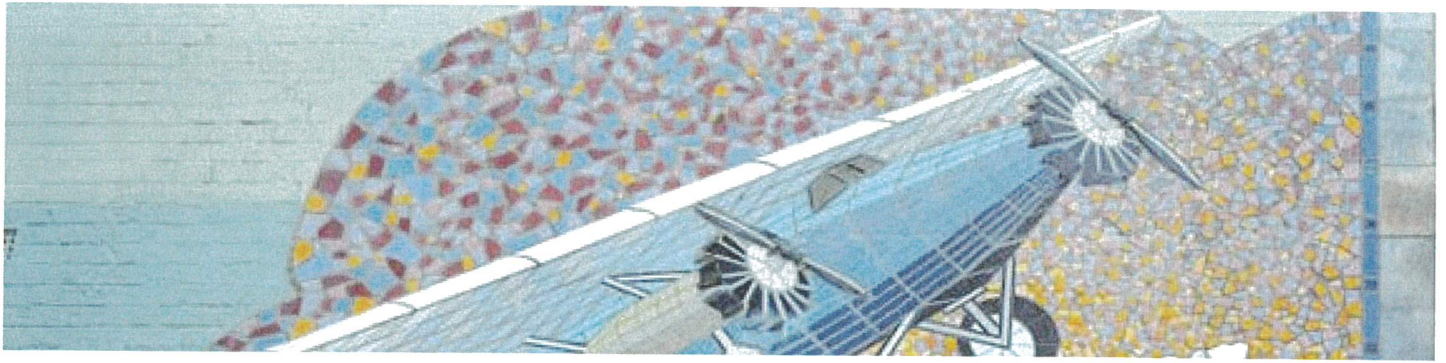
Some public artworks may lose community appeal or become superfluous for various reasons (e.g. risk/legal considerations, poor condition, and diminished aesthetic value). An artwork may also need to be removed from public display or relocated to another area due to changes made to its physical surroundings.

A work may be considered for removal when:⁷

- its condition has deteriorated to such an extent that it can no longer be considered to be the original work of art
- its condition has deteriorated beyond restoration, or where the cost of restoration is excessive in relation to the original cost of the work or the current value of the work
- the cost of ongoing maintenance is prohibitive
- the work has deteriorated to a point where it is unsafe or presents a danger to the public
- the artwork has reached its endurance attributes/limits and that the space which it occupies is required for a preferred and Council-approved purpose
- it is being replaced by a new piece of artwork identified to be more suited to the site or the

⁶ Refer to Australia Council for the Arts (2007) *Protocols for producing Indigenous Australian visual arts*.

⁷ Adapted from Arts SA (2004) *Public Art Making it Happen: Commissioning guidelines for local councils*, p. 45.



surrounding context is no longer appropriate for the existing artwork

- the work of art is being duplicated

Where an artwork is considered for removal, Council staff will prepare a report and make a recommendation/s to the Council on options for the restoration, relocation or disposal of the artwork. Additional expert advice may be sought on issues related to relocation, removal or the disposal of artworks where it is considered such advice is required to make an informed decision. Input will also be sought from the Council's Arts and Cultural Advisory Panel where possible.

C. Integrating art with capital/functional works

1.0

Selection of projects with integrated artwork

In identifying which projects within the draft capital works are to have a component of integrated artwork, the Coordinator of Landscape Design will identify potential projects in consultation with the Coordinator Community Planning Unit and Cultural Project Officer. This action will be carried out on an annual basis. Council staff will bring forward at least one identified projects every two years to be costed and submitted as part of the Council's capital works program budget. The works program is an important part of the Council's annual Plan of Management and Budget preparation process.

2.0

Project management

The delivery of approved works will be carried out in accordance with the Council's project management procedures, and the Council's policy for outsourcing works to approved consultants/contractors, and performance reporting framework. The delivery of the project will be monitored via the Council's quarterly reporting system.

References

Arts SA (2004) *Public Art Making it Happen: Commissioning guidelines for local councils.*

Australia Council for the Arts (2007) *Protocols for producing Indigenous Australian visual arts.*

Copyright, Moral Rights and Community Cultural Development: A guide for organisations, communities and Artists involved in collaborative arts projects.

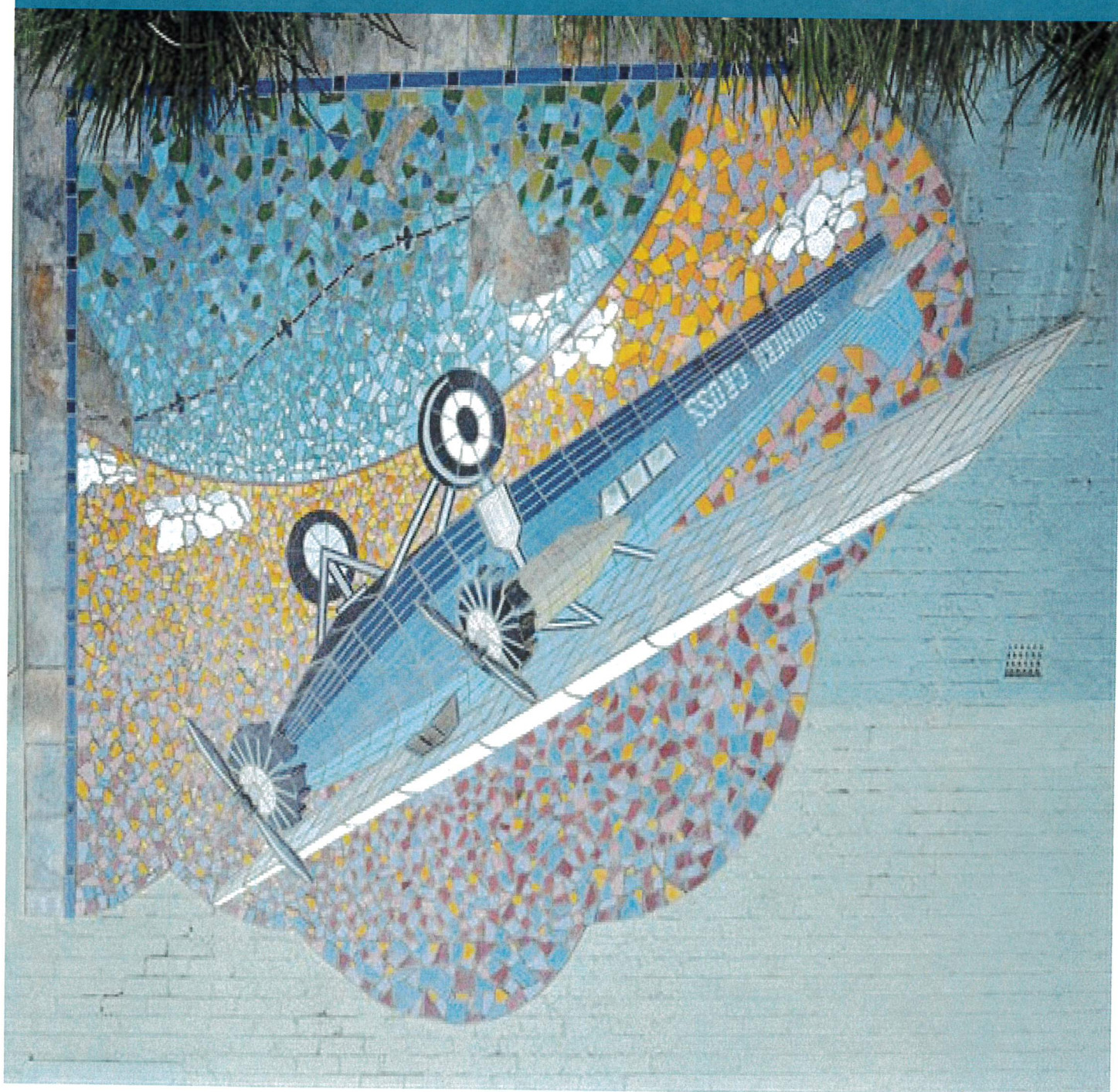
Hastings Borough Council (2005) *Public Art in Hastings: Pride of Place.*

Landcom (2008) *Public Art Guidelines.*

Randwick City Council (2008) *A Cultural Randwick City.*

Randwick City Council (2005) *The Randwick City Plan.*





Annexure 3 – Limitation of Liability

- (a) Perpetual Corporate Trust Limited ACN 000 341 533 (**Trustee**) enters into this document in its capacity as trustee of the Scape Australia (Moore Park Trust) (**Trust**) and in no other capacity.
- (b) The parties acknowledge that the Trustee incurs the Trustee Liabilities solely in its capacity as trustee of the Trust and agree that (to the maximum extent permitted by law) the Trustee will cease to have any Trustee Liability if the Trustee ceases for any reason to be trustee of the Trust.
- (c) A Trustee Liability may be enforced against the Trustee only to the extent to which:
 - (i) the Trustee is actually indemnified in respect of that Trustee Liability out of the property of the Trust (provided the Trustee has taken necessary steps to enforce its right of indemnity as trustee of the Trust); and
 - (ii) there is sufficient property held by the Trustee as trustee at the time, which is available to meet that indemnity (after all Trust assets have been allocated to meet the indemnity and any other valid claims).
- (d) Subject to clause (e) of this Annexure 3, no person will be entitled to:
 - (i) claim from or commence proceedings against the Trustee in respect of any Trustee Liability in any capacity other than as trustee of the Trust,
 - (ii) enforce or seek to enforce any judgment in respect of any Trustee Liability against any property of the Trustee other than property held by the Trustee as trustee of the Trust;
 - (iii) take any steps to procure or support the appointment of a liquidator, administrator or any other similar office holder to the Trustee on the basis of a Trustee Liability, or prove in any liquidation, administration or arrangement of or affecting the Trustee; or
 - (iv) in respect of a Trustee Liability, appoint or take any steps to procure or support the appointment of a receiver or receiver and manager to any property of the Trustee, other than property which is held by it in its capacity as trustee of the Trust.
- (e) The restrictions in clauses (c) and (d) of this Annexure 3 do not apply to any Trustee Liability to the extent to which there is, whether under the deed or constitution of the Trust or by operation of law, a reduction in the extent of the Trustee's indemnification, or in respect of which the Trustee is not entitled to be indemnified, out of the property of the Trust, as a result of the Trustee's fraud, negligence or breach of trust.
- (f) Each other party to this document agrees that no act or omission of the Trustee (including any related failure to satisfy any Trustee Liabilities) will constitute fraud, negligence or breach of trust of the Trustee for the purposes of clause (e) of this Annexure 3 to the extent to which the act or omission was caused or contributed to by any failure of that party to fulfil its obligations relating to the Trust or by any other act or omission of that party.
- (g) No attorney, agent or other person appointed under this document has authority to act on behalf of the Trustee in a way which exposes the Trustee to any personal liability, and no act or omission of such a person will be considered fraud, negligence or breach of trust of the Trustee for the purposes of clause (e) of this Annexure 3.
- (h) This limitation of the Trustee's Liability applies despite any other provisions of this document and extends to all Trustee Liabilities of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this document or its performance.
- (i) The Trustee is not obliged to do or refrain from doing anything under this document (including incur any liability) unless the Trustee's liability is limited in the same manner as set out in clauses (a) to (h) of this Annexure 3.
- (j) In this Annexure 3, '**Trustee Liability**' means any liability or obligation (of any kind including, without limitation, for negligence, in tort, in equity, or under statute) of the Trustee which arises in any way under or in connection with this document or its performance, or any representation, warranty, conduct, omission, agreement or transaction made under or in connection with this document or its performance.

Annexure 4 – Lease

Conditions and Provisions of Lease

RELATING TO

Council Community Facility at 111-125 Anzac
Parade, Kensington

BETWEEN

Perpetual Trustee Company Limited (ACN 000
001 007)

AND

Randwick City Council

MILLS OAKLEY LAWYERS

Level 7, 151 Clarence Street
SYDNEY NSW 2000

Telephone: +61 2 8289 5800

Facsimile: +61 2 9247 1315

www.millsOakley.com.au

Ref: 3525281

Table of Contents

Reference Schedule	4
1 Definitions and Interpretation	5
1.1 Definitions	5
1.2 Interpretation	8
2 Exclusion of Statutory Provisions	10
2.1 Laws excluded	10
2.2 Moratorium	10
3 Term	10
3.1 Term of Lease	10
4 Rent	10
4.1 Payment of Rent	10
4.2 Outgoings	11
4.3 Outgoings being strata levies or contributions under a Building Management Statement	11
4.4 Cost of Services	12
4.5 Cost of Services provided by the Landlord	12
5 GST	13
5.1 Definitions	13
5.2 Payment of GST	13
5.3 Input tax credit	13
6 Use of Premises and Building	13
6.1 Permitted use	13
6.2 No warranty as to use	13
6.3 Compliance with Laws and Requirements	14
6.4 Overloading	14
6.5 Other activities by Tenant	15
6.6 Emergency evacuation procedures and drills	16
6.7 Keys and access cards and securing of Premises	16
6.8 Rights of the Landlord	17
6.9 Rules	17
6.10 Common areas	17
6.11 Signage	17
7 Maintenance, Repairs, Alterations and Additions	18
7.1 Repairing obligations	18
7.2 Inflammable substances	19
7.3 Compliance with fire regulations	19
7.4 Landlord's right of inspection	19
7.5 Enforcement of repairing obligations	19
7.6 Landlord may enter to repair	20
7.7 Minor Alterations	20
7.8 Alterations to Premises	20
7.9 Notice to Landlord of damage, accident etc	22
8 Work Health and Safety	22

8.1	Defined terms.....	22
8.2	Acknowledgment by the Tenant.....	23
8.3	General safety obligations of the Tenant	23
8.4	Tenant is Principal Contractor.....	24
8.5	Notice of appointment	24
8.6	Obligation to comply not limited	24
8.7	Assistance of Landlord and compliance with directions.....	24
9	Assignment and Subletting.....	24
9.1	No disposal of Tenant's interest.....	24
9.2	Sublease and Licensing	24
9.3	Mortgaging Tenant's interest in Premises	25
9.4	Leasing and charging Tenant's Fittings.....	25
10	Insurance, Indemnities and Releases	26
10.1	Insurances to be taken out by Tenant.....	26
10.2	Effect on Landlord's insurances	26
10.3	Exclusion of Landlord's liability.....	27
10.4	Release	27
10.5	Indemnities	27
11	Quiet Enjoyment and Obligations	28
11.1	Quiet enjoyment.....	28
11.2	Operating the Building.....	28
11.3	Services	29
12	Default and Termination	29
12.1	Default and Termination by the Landlord	29
12.2	Termination by the Tenant	29
12.3	Antecedent breaches	30
12.4	Landlord may rectify	30
13	Make Good.....	30
13.1	Tenant to yield up and remove its fittings.....	30
13.2	Failure by carry out works	30
14	Demolition or Replacement of Building.....	31
14.1	Demolition Notice	31
14.2	Acceptance of Landlord's Offer.....	32
15	Miscellaneous.....	32
15.1	Notices	32
15.2	Costs	33
15.3	Easements	34
15.4	Further construction	34
15.5	Severance	35
15.6	Entire agreement.....	35
15.7	Reliance	35
15.8	Waiver	35
15.9	Governing Law	35
15.10	Change of Landlord.....	36
15.11	Landlord's consent	36
15.12	Consolidation or subdivision	36
16	First right of refusal	37
16.1	Offer and acceptance	37

16.2	Exceptions.....	37
17	Limitation of Liability.....	37
	Execution page	39

Reference Schedule

Item	Term	Definition
1.	Landlord	Perpetual Trustee Company Limited (ACN 000 001 007) of Level 18, 123 Pitt Street, Sydney NSW 2000
2.	Tenant	Randwick City Council (ABN 77 362 844 121) of 30 Frances Street, Randwick NSW 2031
3.	Premises	Randwick City Council Community Innovation Centre at 111-125 Anzac Parade, Kensington [This will be updated upon subdivision]
4.	Term	99 years
5.	Commencing Date	#To be inserted being after the issue of the Subdivision Certificate and Practical Completion of DA/373/2020 #
6.	Terminating Date	#To be inserted being 99 years from the Commencing Date#
7.	Rent (clause 4)	\$1.00 receipt of which is hereby acknowledged by the Landlord.
8.	Permitted Use (clause 6.1)	Community Innovation Centre.
9.	Public Risk Insurance (clause 10)	\$20 million

1 Definitions and Interpretation

1.1 Definitions

The following definitions apply where used in this Lease unless the context, or an express provision of this Lease, requires otherwise:

Authority includes:

- (a) any government in any jurisdiction, whether federal, state, territorial or local;
- (b) any provider of public utility services, whether statutory or not; and
- (c) any other person, authority, instrumentality or body having jurisdiction, rights, powers, duties or responsibilities over the Premises or any part of them or anything in relation to them.

Building means the Landlord's Fixtures and all buildings, structures, and other improvements the subject of the Building Management Statement of which the Premises form part and includes the Common Areas.

Building Management Statement means the building management statement registered with the plan of subdivision which created the Premises, as may be varied from time to time.

Business Day means a day which is not a Saturday, Sunday, public holiday or bank holiday in the city of Sydney, New South Wales.

Claim includes any claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding, right of action, claim for compensation and claim for abatement of rent obligation.

Commencing Date means the date specified in Item 5.

Common Areas means those parts of the Building:

- (a) if any designated by the Landlord from time to time for use by the commercial/retail occupants of the Building in common with the Landlord and their respective employees, invitee, licensees and any other persons authorised expressly or impliedly by the Landlord and which are not otherwise leased or licensed to any person; or
- (b) forming shared facilities or shared services under a Building Management Statement or strata management statement.

Cost includes any cost, charge, expense, outgoing, payment or other expenditure of any nature (whether direct, indirect or consequential and whether accrued or paid), including where appropriate all legal fees.

CPI means:

- (c) the Consumer Price Index (All Groups) for Sydney published from time to time by the Australian Bureau of Statistics; or

- (d) if the Consumer Price Index is suspended or discontinued, the price index substituted by the Australian Bureau of Statistics or if no price index is substituted, the index which the President decides most closely reflects changes in the cost of living.

CPI Review Date means each annual anniversary of the Commencing Date.

GST means the goods and services tax as imposed by the GST Law including, where relevant, any related interest, penalties, fines or other charge.

GST Amount means, in relation to a payment, an amount arrived at by multiplying the payment (or the relevant part of a payment if only part of a payment is the consideration for a taxable supply) by the appropriate rate of GST prescribed under the GST Law from time to time (being 10% when the GST Law commenced) or any lower rate notified from time to time by the person making the relevant Supply.

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999*, or, if that Act is not valid or does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

Item means an Item in the Reference Schedule to this Lease.

Keys means keys, access cards and other methods of access from time to time used for the Premises or any part of it.

Landlord's Consent and similar phrases mean the prior written consent of the Landlord.

Landlord's Fixtures includes the following if owned or supplied by the Landlord:

- (a) all plant and equipment, mechanical or otherwise, appurtenances, fittings, fixtures, furniture, furnishings of any kind, including window coverings, blinds and light fittings from time to time on or comprising part of the Premises or which may exclusively service the Premises or any part of them; and
- (b) all Services within the Premises or which exclusively service the Premises including stop cocks, fire hoses, hydrants, other fire prevention aids and all fire fighting systems but excluding any shared facilities the subject of the Building Management Statement.

Law includes any requirement of any statute, rule, regulation, proclamation, ordinance or by-law, present or future, and whether state, federal or otherwise.

Outgoings means:

- (a) all strata levies for the Premises;
- (b) all contributions in respect of the Premises payable to a building management committee under a Building Management Statement;
- (c) the Landlord's Costs of maintaining and repairing the Premises or Landlord's Fixtures within the Premises including capital replacement where such works are undertaken by the Landlord at the request of the Tenant,

excluding any council rates or land tax.

Permitted Use means the permitted use described in Item 8.

Premises means the premises specified in Item 3, located in the Building and includes all of the Landlord's Fixtures in the Premises.

Proposed Work means any work referred to in clause 7.8(a).

Reference Schedule means the reference schedule forming part of this Lease.

Related Entity has the meaning set out in the *Corporations Act 2001*.

Rent means the rent specified in Item 7 as varied from time to time in accordance with this Lease.

Requirement includes any requirement, notice, order, direction, recommendation, consent, stipulation or similar notification received from or given by any Authority or under any Law, whether in writing or otherwise, and regardless of to whom it is addressed or directed.

Rules means the rules:

- (a) determined by the Landlord from time to time acting reasonably; and/or
- (b) concerning any shared facilities or Common Areas governed by any by-laws, Building Management Statement or strata management statement.

Services means all services or systems of any nature from time to time provided to or available for use by the Premises and/or the Building, and includes those of the following which are part of the Premises on the Commencing Date, namely:

- (a) any electronic medium, energy source, lighting, gas, fuel, power, water, sewerage, drainage, loading docks, plant rooms, storage areas, fire services, sprinkler systems or devices, lift and Air Conditioning;
- (b) fittings, fixtures, appliances, plant and equipment utilised for any of the services specified in paragraph (a); and
- (c) any services or systems from time to time utilised for access to the Premises and Building.

Standard means a standard issued by Standards Australia.

Tenant's Employees includes the employees, agents, contractors, consultants, customers, workmen, invitees, clients and visitors of the Tenant, its subtenants, licensees and concessionaires and others who may at any time be in or on the Premises or the Building, with or without invitation.

Tenant's Fittings includes all fixtures, fittings, plant, equipment, partitions or other articles and chattels of all kinds (other than stock in trade) which are not owned by the Landlord and at any time are on the Premises, including any bathrooms.

Term means the term of this Lease as specified in Item 4.

Terminating Date means the date specified in Item 6.

Work means any work, including the Proposed Work, which:

- (a) is carried out at or about the Premises; or
 - (b) which requires the appointment of a principal contractor,
- whether or not directed or approved by the Landlord.

1.2 Interpretation

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

- (a) the singular includes the plural and conversely;
- (b) a gender includes all genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (e) a reference to a clause, sub-clause, paragraph, sub-paragraph or schedule is a reference to a clause, sub-clause, paragraph, sub-paragraph or schedule to this Lease;
- (f) a reference to any party to this Lease or any other agreement or document includes the party's successors and substitutes or assigns;
- (g) a reference to a right or obligation of any two or more Tenants confers that right, or imposes that obligation, as the case may be, jointly and severally;
- (h) a reference to an agreement or document is to the agreement or document as amended, novated, supplemented, varied or replaced from time to time, except to the extent prohibited by this Lease;
- (i) a reference to legislation or to a provision of legislation includes a modification, re-enactment of or substitution for it and a regulation or statutory instrument issued under it;
- (j) a reference to **dollars** or **\$** is to Australian currency;
- (k) each schedule of, annexure and attachment to and/or exhibit relating to this Lease forms part of it;
- (l) a reference to conduct includes any omission, statement or undertaking, whether or not in writing;

- (m) a reference to writing includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form;
- (n) unless stated otherwise, one word or provision does not limit the effect of another;
- (o) a reference to includes or including means includes, without limitation, or including, without limitation, respectively;
- (p) a reference to the whole includes part;
- (q) all obligations are taken to be required to be performed duly and punctually;
- (r) words importing do include do, permit or omit, or cause to be done or omitted;
 - (i) where a reference is made to any person, body or Authority, that reference, if the person, body or Authority has ceased to exist, will be to the person, body or Authority as then serves substantially the same objects as that person, body or Authority; and
 - (ii) any reference to the President of that person, body or Authority, in the absence of a President, will be read as a reference to the senior officer for the time being of the person, body or Authority or any other person fulfilling the duties of President;
- (s) where anything is permitted in an emergency the opinion of the Landlord as to the existence or non-existence of that state of affairs is conclusive;
- (t) where the day or last day for doing anything or on which an entitlement is due to arise is not a Business Day, that day or last day will be the immediately following Business Day;
- (u) a reference to a month means a calendar month;
- (v) a reference to a year means a calendar year;
- (w) a provision of this Lease must not be construed against a party only because that party was responsible for preparation of this Lease;
 - (i) subject to clause 1.2(w)(ii), every obligation under this Lease:
 - (A) regardless of the form or context of the wording, is a covenant by the party undertaking that obligation; and
 - (B) continues throughout the Term and any holding over period and after that for so long as the obligation remains to be observed or performed; and
 - (ii) (A) every obligation of the Landlord under this Lease binds that person only during the period(s) that person is entitled to receive the rents and income of the Premises; and

- (B) subject to clause 1.2(w)(i)(A) the covenants on the part of the Landlord bind the person from time to time immediately entitled to the Premises at the end of this Lease;
- (iii) every covenant by the Tenant includes a covenant by the Tenant to ensure compliance with the covenant by each of the Tenant's Employees; and
- (x) to the extent of any inconsistency between the Agreement for Lease and this Lease, the provisions of this Lease shall prevail unless the contrary intention is expressed.

2 Exclusion of Statutory Provisions

2.1 Laws excluded

To the extent permitted by Law the covenants, powers and provisions (if any) implied in leases by virtue of any Law are expressly negated.

2.2 Moratorium

To the extent permitted by Law, any Law, Requirement or moratorium which at any time directly or indirectly:

- (a) extends or reduces the Term;
- (b) lessens, varies or affects in favour of the Tenant or any obligation under this Lease;
- (c) delays, prevents or prejudicially affects the exercise by the Landlord of any right, power or remedy given by this Lease; and/or
- (d) reduces or postpones the payment of Rent or any part of it, is excluded from this Lease,

may not be enforced by the Tenant against the Landlord.

3 Term

3.1 Term of Lease

Subject to this Lease the Landlord leases to the Tenant and the Tenant takes the Premises for the Term.

4 Rent

4.1 Payment of Rent

The parties agree and acknowledge that the Tenant shall pay to the Landlord the Rent in consideration of the Landlord granting to the Tenant a lease of the Premises for the Term. This sum of Rent is payable by the Tenant on the Commencement Date.

4.2 Outgoings

- (a) The Tenant must pay to or reimburse the Landlord for the Outgoings within 30 days of notice from the Landlord by electronic funds transfer to the same account in which Rent is paid to under this Lease, or as otherwise directed by the Landlord.
- (b) If requested by the Tenant, the Landlord must promptly provide to the Tenant reasonable details to substantiate the Outgoings.
- (c) In respect of that component of Outgoings which are the Landlord's Costs of maintaining and repairing the Premises or Landlord's Fixtures within the Premises (other than capital replacement where such works are undertaken by the Landlord at the request of the Tenant), such costs must be levied at a rate commensurate with outgoings levied on similar premises.

4.3 Outgoings being strata levies or contributions under a Building Management Statement

- (a) The Landlord acknowledges that:
 - (i) the Tenant is a long term tenant of the Premises; and
 - (ii) subject to clause 4.3(c), should be entitled to vote on any matter affecting that component of Outgoings payable under this Lease being strata levies or contributions payable to a building management committee under a Building Management Statement as if it was the owner of the Premises and a member of the building management committee.
- (b) The Landlord (in its capacity as the owner of the Premises) must:
 - (i) provide the Tenant a copy of any agenda or proposed resolutions from the strata scheme or building management committee which affects the Outgoings referred to in clause 4.3(a)(ii);
 - (ii) permit the Tenant to participate and attend any meeting of the owners corporation or building management committee where resolutions may be passed which affect the Outgoings referred to in clause 4.3(a)(ii); and
 - (iii) subject to clause 4.3(c), vote in accordance with:
 - (A) in respect of a resolution issued under clause 4.3(b)(i) which affects the Outgoings referred to in clause 4.3(a)(ii), any written direction given by the Tenant at least 48 hours prior to the meeting; or
 - (B) any direction given by the Tenant participating at a meeting of the owners corporation or building management committee, which affects the Outgoings referred to in clause 4.3(a)(ii).
- (c) Despite clauses 4.3(a)(ii) and 4.3(b):
 - (i) clause 4.3(b)(iii) does not apply to any matter where the Landlord agrees not to pass the cost onto the Tenant as an Outgoings;

- (ii) clause 4.3(b)(iii)(A) does not apply to a vote affecting the Outgoings referred to in clause 4.3(a)(ii) where the Tenant fails to give a written direction under clause 4.3(b)(iii)(A);
- (iii) clause 4.3(b)(iii)(B) does not apply to a vote affecting the Outgoings referred to in clause 4.3(a)(ii) where the Tenant:
 - (A) fails to attend the meeting of the owners corporation or building management committee; or
 - (B) participates in, but fails to give a direction at, the meeting of the owners corporation or building management committee prior to the vote being cast

4.4 Cost of Services

- (a) The Tenant must promptly pay, all third party Costs for all Services separately supplied, metered, consumed or connected (as appropriate) to, in or on the Premises, including (without limitation) the Costs of:
 - (i) all sources of energy, electricity and gas (if applicable);
 - (ii) water rates and usage (solely related to the premises);
 - (iii) telephone and internet;
 - (iv) air conditioning and mechanical services; and
 - (v) all rubbish removal services.
- (b) The Tenant must, where relevant, obtain direct accounts with the suppliers of the Services and pay all fees as and when due.

4.5 Cost of Services provided by the Landlord

- (a) Where the Tenant is not able to obtain accounts with the suppliers of the Services and the Services:
 - (i) form part of the Landlord's Fixtures and are supplied by the Landlord;
 - (ii) are a shared service or shared facility under the Building Management Statement, then the Services must be separately metered,
the Tenant must reimburse the Landlord for all amounts payable in connection with the Services;
 - (iii) which form part of the Landlord's Fixtures; or
 - (iv) which may be charged in accordance with the Building Management Statement,
within 30 days of the Tenant being billed by the Landlord and if the Tenant fails to pay for any Service by the due date for payment the Landlord reserves the right to cease supplying that Service.

- (b) If the Services supplied by the Landlord are damaged, destroyed or if there is interruption to the Services which is caused solely due to the act of the Landlord or the Landlord's contractors then the Tenant is not required to reimburse the Landlord for the Costs for the Services for the period of the damage, disconnection or interruption.

5 GST

5.1 Definitions

Capitalised expressions which are not defined in clause 1.1 but which have a defined meaning in the GST Law (irrespective of whether they are capitalised in the GST Law) have the meaning given to them under the GST Law.

5.2 Payment of GST

The parties agree that:

- (a) all Payments have been set or determined without regard to the impact of GST;
- (b) if the whole or any part of a payment is the consideration for a taxable supply for which the payee is liable to GST, the GST Amount in respect of the payment must be paid to the payee as an additional amount, either concurrently with the payment or as otherwise agreed in writing; and
- (c) the payee will provide to the payer a tax invoice.

5.3 Input tax credit

Despite any other provision of this Lease, if a payment due under this Lease (including any contribution to Outgoings) is a reimbursement or indemnification by one party of an expense, loss or liability incurred or to be incurred by the other party, the payment shall exclude any part of the amount to be reimbursed or indemnified for which the other party can claim an input tax credit.

6 Use of Premises and Building

6.1 Permitted use

- (a) The Tenant must not use the Premises for any use other than for the Permitted Use without the Landlord's Consent. The parties agree that the Landlord will not withhold such consent to amend the Permitted Use if for an innovation centre, commercial office or similar purposes.

6.2 No warranty as to use

The Landlord gives no warranty (either present or future) as to the suitability of the Premises or the use to which the Premises may be put. The Tenant:

- (a) accepts this Lease with full knowledge of and subject to any prohibitions or restrictions on the use of the Premises from time to time under any Law or Requirement;

- (b) must obtain, maintain and comply with at its Cost any consent or approval from any Authority; and
- (c) must not by any act or omission cause or permit any consent or approval referred to in clause 6.2(b) to lapse or be revoked.

6.3 Compliance with Laws and Requirements

- (a) The Tenant must comply with and observe at its Cost all Laws and Requirements in relation to or arising as a result of the:
 - (i) the Tenant's Fittings;
 - (ii) particular use of the Premises, including those which arise as a result of the gender or number of persons in the Premises; and/or
 - (iii) damage to the Premises caused or contributed to by the Tenant or the Tenant's Employees,whether or not those Laws or Requirements are addressed to or are required to be complied with by either or both of the Landlord and the Tenant or by any other person.
- (b) Where any Law or Requirement is notified to or served on the Tenant, the Tenant must give a complete copy of it immediately to the Landlord.
- (c) Before complying with any Law or Requirement referred to in clause 6.3 the Tenant must obtain the Landlord's Consent, where required elsewhere under this Lease, and must otherwise observe the provisions of this Lease.
- (d) The Tenant is not required to effect structural alterations or additions to the Premises except those caused by, contributed to or arising from:
 - (i) the Tenant's Fittings; and
 - (ii) particular use of the Premises, including those which arise as a result of the gender or number of persons in the Premises; and/or
 - (iii) damage to the Premises caused or contributed to by the Tenant or the Tenant's Employees.

6.4 Overloading

- (a) The Tenant must not:
 - (i) must not place or store any heavy articles or materials on any floor of the Premises that exceed the maximum loadings prescribed by the Landlord and/or prescribed by the Rules; or
 - (ii) install any equipment or system on the Premises that overloads or may overload the electrical or other Services to the Premises.

- (b) If the Landlord at the request of the Tenant upgrades the Services to accommodate any equipment or system which the Tenant wishes to install, the Tenant must pay to the Landlord:
 - (i) on demand the entire Cost to the Landlord of those alterations (including consultants' fees); and
 - (ii) if required by the Landlord, the estimated Cost of those alterations before they are commenced.

The Landlord gives no warranty as to the suitability of any such alteration.

6.5 Other activities by Tenant

- (a) The Tenant must in respect of Appurtenances on the Premises:
 - (i) not use any of them for any purpose other than those for which they were designed;
 - (ii) not place in any of them any substance which they were not designed to receive; and
 - (iii) pay to the Landlord all reasonable Costs of making good any damage to any of them arising from any misuse, or otherwise caused, by the Tenant or the Tenant's Employees.
- (b) Where there is any Air Conditioning or fire alarm system installed by or on behalf of the Landlord anywhere in the Building (including the Premises), the Tenant must not interfere with that system nor obstruct or hinder access to it.
- (c) The Tenant must:
 - (i) not affix any television or radio mast, antennae or satellite dish to any part of the Premises without the Landlord's Consent;
 - (ii) not use or operate any musical or other instrument or other sound or picture producing equipment on the Premises if that instrument or equipment is audible or visible from outside the Premises;
 - (iii) if any part or parts of the Premises are damaged, defaced or marked by the Tenant or the Tenant's Employees, immediately repair such damage;
 - (iv) keep the Premises clean and not permit any accumulation of useless property or rubbish in them. No rubbish or waste may at any time be burned on the Premises by the Tenant;
 - (v) not permit tobacco smoking within the Premises or any part of the Building other than in any area (if any) designated by the Landlord from time to time;
 - (vi) not keep any animals or birds in the Premises;

- (vii) at its Cost keep the Premises free and clear of pests, insects and vermin; and
- (viii) not do or carry on in the Premises any harmful or offensive trade, business or occupation or anything which causes or may cause annoyance, nuisance, damage or disturbance to the occupiers or owners of any nearby premises or to the Landlord;
- (d) observe the reasonable requirements of the Landlord in relation to the Services; and
- (e) comply with the Landlord's access control system for the Building and Premises, if any, which may include Requirements for use of the Keys.

6.6 Emergency evacuation procedures and drills

The Tenant must:

- (a) comply with all Requirements of the Landlord for the Tenant and the Tenant's Employees to participate in emergency evacuation procedures and emergency evacuation drills from the Building; and
- (b) not make or permit any of the Tenant's Employees to make any Claim against the Landlord, arising from participation in any of those procedures or drills except to the extent caused or contributed to by the wrongful act or negligent act or omission of the Landlord or any agent or employee of the Landlord.

6.7 Keys and access cards and securing of Premises

(a) The Tenant:

- (i) must ensure that all exterior doors and windows in the Premises are securely locked and fastened at all times when the Premises are not occupied; and
- (ii) authorises the Landlord or any agent or employee of the Landlord to enter the Premises after giving reasonable notice to the Tenant for the purpose of locking any door or window left unlocked or unfastened or for other similar purposes.

(b) The Tenant:

- (i) must only provide Keys to:
 - (A) employees of the Tenant; and
 - (B) authorised contractors appointed by the Tenant who provide services to the Premises;
- (ii) must keep current a list of the recipients of Keys and their status from time to time which must be provided to the Landlord upon request;

- (iii) must pay immediately on demand by the Landlord all Costs however arising where any Key is lost, stolen, destroyed or mutilated, including any Cost to or Claim against the Landlord arising from anything done with any stolen or lost Key.

6.8 Rights of the Landlord

- (a) If there is an emergency or a threat (or potential threat) to the health and safety of any person, the Landlord may:
 - (i) restrict or prohibit access to the Common Areas;
 - (ii) temporarily close or block any part of the Common Areas; and/or
 - (iii) stop the Tenant or the Tenant's Employees from entering the Building or using the Common Areas,until after the emergency or threat ends.
- (b) The Landlord may restrict or prohibit the Tenant's or the Tenant's Employees' access to the Common Areas:
 - (i) as contemplated by, or as may be necessary to allow the exercise of rights under, any registered easement; and/or
 - (ii) which are not required for the Tenant's or the Tenant's Employees' access to the Premises.

6.9 Rules

- (a) The Landlord may, in consultation with the Tenant, vary or make additional Rules which are consistent with this Lease in connection with the operation, use (including customer safety), management and occupation of the Premises, Common Areas, and Building generally, and provided the additional or amended Rules do not denigrate from the rights of the Tenant under this Lease. If there is any inconsistency between the other provisions of this Lease and the Rules, as varied, the other provisions of this Lease prevail.
- (b) The Landlord is not liable for any loss or damage caused or contributed to by its non-enforcement of the Rules.

6.10 Common areas

The Tenant and the Tenant's Employees, together with any other person authorised by the Landlord, may use the Common Areas for the purposes for which the Common Areas were designed or intended to be used, subject to the limitations and restrictions contained in this Lease and the Rules.

6.11 Signage

The:

- (a) Tenant must submit any proposed signage to be installed in the Signage Zones and method of installation to the Landlord for the Landlord's Consent at least 14 days before such signage is erected;
- (b) Landlord may only withhold consent to the installation of the proposed signage under clause 6.11(a) if, in the Landlord's reasonable opinion:
 - (i) the proposed signage is offensive, inappropriate, or not suitable;
 - (ii) the proposed signage is not in keeping with the design and/or colour scheme for the Building; and/or
 - (iii) the method of installation may cause damage to the Building; and
- (c) Tenant must not otherwise display any sign on any external surface of the Premises or Building except with the Landlord's Consent which the Landlord may grant or withhold at its discretion or grant subject to conditions.

7 Maintenance, Repairs, Alterations and Additions

7.1 Repairing obligations

- (a) The Tenant:
 - (i) must, at its cost, keep the Premises and the Tenant's Fittings in good repair and condition;
 - (ii) subject to clause 7.1(b), is solely responsible for the repair, maintenance (including all capital works) of:
 - (A) the lift in the Premises (which is not a shared service or shared facility);
 - (B) any air-conditioning plant and equipment exclusively servicing the Premises;
 - (C) the Landlord's Fixtures within the Premises;
 - (iii) subject to clause 7.1(b), immediately repair any damage to the Landlord's Fixtures, Premises or Building caused by any act or omission of the Tenant or of the Tenant's Employees or by its or their use or occupancy of the Premises or by the installation use or removal of the Tenant's Fittings;
 - (iv) immediately replace all glass broken by the Tenant or by any of the Tenant's Employees; and
 - (v) promptly replace all defective lighting within the Premises.
- (b) The Tenant agrees that where works are required (including all capital works) under clauses 7.1(a)(ii) and 7.1(a)(iii) outside the Premises or which may affect the Services to the Building:

- (i) the Tenant must first obtain the Landlord's Consent and follow all reasonable directions and conditions imposed by the Landlord; and/or
- (ii) the Landlord may notify the Tenant that the Landlord will carry out the works at the Tenant's Cost, such Costs to be paid by the Tenant to the Landlord within 30 days of the Landlord providing the Tenant a tax invoice for the works or any component of the works.

7.2 Inflammable substances

The Tenant must not:

- (a) other than as is necessary and proper for the Permitted Use, and then only in quantities which are reasonably appropriate and in accordance with applicable Standards, store inflammable or explosive substances on or in the Premises; or
- (b) use any of those substances on the Premises for any purpose.

7.3 Compliance with fire regulations

The Tenant must:

- (a) at its Cost, comply with all Laws, Standards and Requirements in relation to sprinklers, fire alarms and fire prevention in respect of the Premises beyond the level of compliance required for vacant base buildings (which is the Landlord's responsibility). In particular, the Tenant must ensure compliance with all Laws, Standards and Requirements in relation to sprinklers, fire alarms and fire prevention for any Proposed Work, partitions, fit out, use, racking, plant and equipment; and
- (b) pay to the Landlord on demand the Cost of any alteration to any Services, sprinkler or fire prevention equipment and installations (including alarms) which may become necessary by reason of those regulations or any alterations required as a result of clause 7.3(a).

7.4 Landlord's right of inspection

- (a) Subject to clause 7.2(b), the Landlord may in the presence of a responsible officer of the Tenant (if available) at reasonable times on giving the Tenant reasonable notice enter the Premises and view the state of repair and condition.
- (b) In the case of an emergency the Landlord may enter the Premises without notice at any time.

7.5 Enforcement of repairing obligations

The Landlord may:

- (a) notify the Tenant of the Tenant's failure to repair, replace or clean the Premises which the Tenant is obliged to do under this Lease; and
- (b) require the Tenant repair, replace or clean the Premises within a reasonable time.

7.6 Landlord may enter to repair

If:

- (a) there is an emergency;
- (b) the Landlord is obliged or permitted under this Lease to do work in or affecting the Premises; or
- (c) any Authority requires any repair or Work to be undertaken on the Premises which the Landlord must, or in its discretion elects to, do and for which the Tenant is not liable under this Lease,

then the Landlord, its architects, workmen and others authorised by the Landlord may at reasonable times on giving to the Tenant as much notice as is practicable in the circumstances, enter and carry out any of those works and repairs or do the things which the Landlord is obliged to do. In so doing the Landlord must use best endeavours not to cause undue inconvenience to the Tenant.

7.7 Minor Alterations

The Tenant is solely responsible for and may, subject to clause 7.8, install Tenant's Fittings and renovate, refurbish or replace Tenant's Fittings at its own cost and expenses provided:

- (a) that such work is carried out in a fit and proper manner by contractors or tradesmen approved by the Landlord and without disturbance or disruption to other tenants, occupants or users of the Building;
- (b) that such work is carried out in accordance with:
 - (i) all Standards; and
 - (ii) all Laws and the Requirements of Authorities; and
- (c) the Tenant takes out, or procures its contractor to take out, contracts works insurance to fully cover the Proposed Work and workers compensation insurance (as required by Law).

7.8 Alterations to Premises

- (a) The Tenant must not make or permit any work, alteration, addition or installation in or to the Premises and/or to the existing Tenant's Fittings by or on behalf of the Tenant and/or by the Tenant's Employees which involves alterations to the Landlord's Fixtures, Services or any structural elements of the Premises or Building (**Proposed Work**) without the Landlord's Consent.
- (b) In seeking the Landlord's Consent, the Tenant must submit to the Landlord plans and specifications of the Proposed Work.
- (c) If the Landlord consents to any Proposed Work, the Landlord requires (unless it notifies otherwise), as a condition of the Landlord's Consent, that:

- (i) any Proposed Work, including obtaining an Occupation Certification if required, will be at the Cost of the Tenant and will be supervised by a person approved by the Landlord;
 - (ii) any Proposed Work be carried out in a fit and proper manner by contractors or tradesmen approved by the Landlord and without disturbance or disruption to other tenants, occupants or users of the Building;
 - (iii) any Proposed Work to be carried out is in accordance with:
 - (A) all Standards;
 - (B) all Laws and the Requirements of Authorities;
 - (C) plans and specifications required under clause 7.7;
 - (iv) the Tenant obtains, keeps current and complies with all necessary approvals and permits from all Authorities necessary to enable any Proposed Work to be carried out in accordance with the Law and any applicable Standards. On request by the Landlord the Tenant must give for inspection by the Landlord copies of all those approvals and permits;
 - (v) on completion of the Proposed Work the Tenant immediately obtains and gives to the Landlord:
 - (A) a copy of any certificates of compliance or satisfactory completion issued by the appropriate Authority or necessary to legally use or occupy the Proposed Work;
 - (B) a certificate from the Tenant's architect or structural engineer certifying that the Proposed Works have been designed and installed in a structurally sound manner, if there are any Proposed Works reasonably requiring such certification as determined by the Landlord; and
 - (C) two sets of final "as built" drawings (reduced to A3 size) in respect of the Proposed Works;
 - (vi) the Tenant on demand reimburses the Landlord for any reasonable Cost incurred by the Landlord as a result of the Proposed Work being carried out, including any resulting modification or variation to the Premises, Services or Building; and
 - (vii) the Tenant takes out, or procures its contractor to take out contracts works insurance to fully cover the Proposed Work and workers compensation insurance (as required by Law).
- (d) The Tenant must at its own Cost comply with all conditions imposed by the Landlord as part of its consent to the Proposed Work, or which the Landlord may impose from time to time during the carrying out of the Proposed Work.

- (e) The Tenant must stop carrying out the Proposed Work if requested by the Landlord if the Landlord believes on reasonable grounds that the Tenant is in breach of any provision of this Lease, including clause 7.7.
- (f) The provisions of clause 7.7(a) do not apply in respect of and the Tenant is not required to obtain the Landlord's consent in respect of non-structural works in or to the Premises which do not require the consent of any Authority.

7.9 Notice to Landlord of damage, accident etc

The Tenant must promptly notify the Landlord of any:

- (a) damage, accident or defect to or in the Premises; and
- (b) circumstances likely to cause any damage or injury to occur within the Premises of which the Tenant has notice (actual or constructive).

8 Work Health and Safety

8.1 Defined terms

In this clause unless the contrary intention appears:

- (a) The following terms have the meanings given to them in the WHS Act:
 - (i) Construction Project;
 - (ii) Construction Work;
 - (iii) High Risk Construction Work;
 - (iv) Person Conducting a Business or Undertaking;
 - (v) Person With Management or Control of Fixtures, Fittings or Plant at a Workplace;
 - (vi) Person With Management or Control of Plant at a Workplace;
 - (vii) Person With Management or Control of a Workplace;
 - (viii) Principal Contractor; and
 - (ix) Workplace.
- (b) **WHS Act** means the Work Health and Safety Act 2011 (NSW) and includes any regulations and advisory standards made under it.
- (c) **Work** means any work in relation to the Premises carried out by or on behalf of the Tenant (including by or on behalf of any sub-tenant or licensee), which:
 - (i) is carried out at or about a Workplace; or
 - (ii) which requires the appointment of a Principal Contractor,

whether or not directed or approved by the Landlord, including by not limited to any Construction Work, High Risk Construction Work and Construction Projects.

- (iii) **Third Party Work** means contractors or others undertaking Work in or at the Premises.

8.2 Acknowledgment by the Tenant

- (a) The Tenant acknowledges that in respect of the Premises it is:
- (i) the Person With Management or Control of the Workplace;
 - (ii) the Person With Management or Control of Fixtures, Fittings or Plant at the Workplace;
 - (iii) the Person With Management or Control of Plant at the Workplace; and
 - (iv) the Person Conducting a Business or Undertaking; and
 - (v) the Tenant has an obligation to ensure the safety of any persons at the Premises including persons engaged in the Third Party Work.

8.3 General safety obligations of the Tenant

- (a) The Tenant must ensure:
- (i) compliance with its obligations under the WHS Act, in particular with the obligations it has as a Person Conducting a Business or Undertaking, Person With Management and Control of the Workplace, Person With Management or Control of Fixtures, Fittings or Plant at the Workplace and Person With Management or Control of Plant at the Workplace;
 - (ii) that it and all persons employed or engaged by it or on its behalf including all Workers comply at all times with the requirements of the WHS Act and any directions, manuals, policies or rules formulated from time to time by the Landlord;
 - (iii) that it has systems in place to assess and eliminate risks and hazards at the Premises, which meet the standard required by the WHS Act;
 - (iv) that where risk and hazards cannot be eliminated, the risks and hazards are adequately controlled in a way which meets the standard required by the WHS Act;
 - (v) that it provides appropriate training and supervision to all persons employed or engaged by it at the Premises, including all Workers; and
 - (vi) that only qualified persons are engaged to carry out any Third Party Work.

- (b) To the fullest extent permitted by law the Tenant indemnifies the Landlord against liability or loss arising from, or cost incurred in connection with, any breach by the Tenant of its obligations under clause 8.3.

8.4 Tenant is Principal Contractor

- (a) Without limiting or in any way affecting the Tenant's obligations under this Lease or any other document, where any Work is to be undertaken at the Premises, whether during the Term or any period of occupation to fitout the Premises before the Commencing Date, the Tenant acknowledges and agrees that it is the Principal Contractor.
- (b) For specific Work to be conducted at the Premises, the Tenant may ask the Landlord to consent to the appointment of a third party as the Principal Contractor in place of the Tenant. If the Landlord consents to the appointment of a third party as Principal Contractor, the Tenant must ensure that the third party is formally appointed as the Principal Contractor.

8.5 Notice of appointment

The Tenant will ensure that all documentation relevant to the appointment of a Principal Contractor under the WHS Act is lodged within the statutory limits.

8.6 Obligation to comply not limited

The Tenant's compliance with the WHS Act in performing its obligations under this clause is in addition to, not in substitution for, the Tenant's obligation to comply with any other legislation or regulations.

8.7 Assistance of Landlord and compliance with directions

- (a) The Tenant must do all things necessary to assist the Landlord in discharging any obligations it may have under the WHS Act.
- (b) The Tenant must immediately comply with directions on safety issued by any relevant authority or by the Landlord.

9 Assignment and Subletting

9.1 No disposal of Tenant's interest

Subject to clauses 9.1, the Tenant must not assign, transfer, sublet, licence or otherwise deal with or part with possession of the Premises or this Lease, any part of them or any interest in them or attempt to do so.

9.2 Sublease and Licensing

- (a) The Tenant may grant a sublease or licence of the whole or part of the Premises, including to a third party to manage or operate the Premises on behalf of the Tenant (**Operator**), provided that:
 - (i) the Tenant holds casual/regular hirers insurance or a similar policy for person or group of persons (not being a sporting body, club,

- association, corporation or incorporated body) who hires a Council facility for commercial or profit making purposes; or
- (ii) any other subtenant, licensee or hirer holds public liability insurance for an amount not less than \$20 million (or such other amount determined by the Tenant).
- (b) The:
- (i) Tenant may grant a sublease or licence to use the Premises; and/or
 - (ii) Operator may grant a sublease or licence to use the Premises, provided that where a subtenant proposes to lease, or a licensee proposes to licence the whole Premises for a continuous period of more than 4 weeks:
 - (iii) the Tenant must give the Landlord 30 days prior notice before the sublease or licence is granted or if that is not practical, as much possible notice having regard to the circumstances giving rise to the sublease or licence;
 - (iv) there is no subsisting breach of this Lease by the Tenant at the date of proposed sublease or licence;
 - (v) the sublease or licence:
 - (A) automatically terminates if this Lease is surrendered or terminated;
 - (B) contains provisions:
 - (1) to prevent the subtenant or licensee causing or contributing to a breach of this Lease; and
 - (2) requiring the subtenant or licensee to comply with the terms of this Lease in so far as they affect the subleased Premises, which must include (without limitation) complying with the Permitted Use; and
 - (3) requiring the subtenant or licensee to hold public liability insurance for an amount not less than \$20 million (or such other amount determined by the Tenant).

9.3 Mortgaging Tenant's interest in Premises

The Tenant must not mortgage or charge this Lease or the Tenant's interest in the Premises without the Landlord's Consent, which will not be unreasonably withheld where the Tenant is a company and wishes to enter into a charge over all of its assets and undertakings.

9.4 Leasing and charging Tenant's Fittings

The Tenant must not mortgage, charge, lease or otherwise deal with any Tenant's Fittings or anything else which requires or may require the Landlord to sign a landlord's waiver or any similar written material, without the Landlord's Consent.

10 Insurance, Indemnities and Releases

10.1 Insurances to be taken out by Tenant

The Tenant must:

- (a) take out on or before the Commencing Date and keep current during the Term:
 - (i) a public risk insurance policy for an amount in respect of any single event of not less than:
 - (A) the amount specified in Item 9; or
 - (B) any other amount which the Landlord may notify (acting reasonably) the Tenant from time to time; and
 - (ii) an insurance policy in respect of all of the Landlord's Fixtures, plate glass windows and doors forming part of or within the Premises for not less than their full replacement value;
- (b) ensure that all insurance policies taken or to be taken out under this clause 10:
 - (i) are taken out with an independent and reputable insurer approved by the Landlord (acting reasonably);
 - (ii) contain conditions acceptable to or required by the Landlord and the Landlord's insurer;
 - (iii) are on an occurrence, not a claims made, basis; and
 - (iv) note the interests of the Landlord and any mortgagee of the Premises;
- (c) whenever reasonably required by the Landlord, give to the Landlord every policy of insurance to be effected by the Tenant under this clause 10 and a certificate of currency from the insurer; and
- (d) pay all premiums and other money payable in respect of any policy whenever they are due and payable.

10.2 Effect on Landlord's insurances

- (a) The Tenant must not, without the Landlord's Consent, do anything to or on the Premises which will or may:
 - (i) increase the rate of any insurance on the Premises or on any property in them;
 - (ii) prejudice any insurance policy; or
 - (iii) conflict with any Law, Standard or any Requirement or with any requirement of the Landlord's insurer(s) relating to fires or fire safety or prevention or with any insurance policy in respect of the Premises or any property in them.

- (b) The Tenant must pay to the Landlord on demand all extra Costs of insurance on the Premises or the Building and on any property in them (if any are required) on account of the extra risk caused by the Tenant's use or occupation of the Premises.

10.3 Exclusion of Landlord's liability

- (a) All property on the Premises is there at the sole risk of the Tenant.
- (b) The Landlord, its servants and agents are not liable for any Claim that the Tenant or the Tenant's Employees or any person claiming by, through or under the Tenant may incur or make or which arises from:
 - (i) any defect or malfunction in any Service or any Appurtenance or any other equipment or Services installed in or supplied to the Building or the Premises; and/or
 - (ii) the shut down or removal of any Item of plant or equipment from the Building that forms part of the Services or any other equipment or Services installed in or supplied to the Building or the Premises for the purposes of maintenance, repair or replacement.

10.4 Release

The Tenant releases the Landlord and its servants and agents from liability in respect of:

- (a) any Claim relating to any property of the Tenant or any other person on the Premises, the Building or any part of them;
- (b) any damage, loss, death or injury to any person or property on the Premises;
- (c) anything the Landlord is permitted or required to do under this Lease;
- (d) a Service not being available, being interrupted or not working properly;
- (e) the Landlord's Fixtures not working properly;
- (f) the Building or the Common Areas not being clean or secure;
- (g) any fire, bomb threat or other emergency drill or the Tenant evacuating the Building because of any fire, bomb threat or other emergency;
- (h) the operation of any statute, regulation or notice issued by an Authority with which the Tenant, under the provisions of this Lease, must comply; and
- (i) any strike, accident, riot, industrial action or civil disturbance.

10.5 Indemnities

- (a) Even if:
 - (i) a Claim results from something the Tenant may be authorised or obliged to do under this Lease; or

- (ii) a waiver or other indulgence has been given to the Tenant in respect of an obligation of the Tenant under this clause 10.5,

the Tenant indemnifies the Landlord in respect of all Claims for which the Landlord will or may be or become liable, whether during or after the Term, in respect of or arising from:

- (iii) any loss, damage or injury to property or person or death to a person caused or contributed to by:
 - (A) any wilful or negligent act or omission;
 - (B) any default under this Lease; and/or
 - (C) the use of the Premises, the Building,by or on the part of the Tenant or the Tenant's Employees;
- (iv) the negligent or careless use or neglect of the Services and facilities of the Premises or the Appurtenances by the Tenant or the Tenant's Employees or any other person claiming through or under the Tenant;
- (v) any overflow or leakage (including rain water or from any Service, Appurtenance or the Landlord's Fixtures) originating from within the Premises;
- (vi) any loss, damage or injury relating to plate and other glass caused or contributed to by any act or omission on the part of the Tenant or the Tenant's Employees; or
- (vii) any breach by the Tenant of this Lease.

- (b) Each indemnity is independent of the Tenant's other obligations and continues during this Lease and after it expires or is terminated. The Landlord may enforce an indemnity before incurring any expense.

11 Quiet Enjoyment and Obligations

11.1 Quiet enjoyment

Subject to the Tenant's compliance with this Lease, the Tenant may occupy and enjoy the Premises subject to the terms of this Lease during the Term without any interruption by the Landlord.

11.2 Operating the Building

To the extent that no other person is obliged to do so, the Landlord must use reasonable endeavours to keep:

- (a) the Common Areas neat and clean; and
- (b) the Building clean and in good repair having regard to the nature, quality and age of the Building.

11.3 Services

- (a) To the extent that the Landlord is obliged to provide the Services and subject to the Tenant's other obligations, the Landlord must use reasonable endeavours to keep the Services provided to the Building operational, but is not liable to the Tenant for any breach of this obligation due to:
 - (i) the need to repair, maintain or replace any Service;
 - (ii) the Requirement of any Authority; or
 - (iii) any accident or other unforeseen event.
- (b) If any of the Services fail to function properly for any reason the Tenant must not make any Claim against the Landlord.

12 Default and Termination

12.1 Default and Termination by the Landlord

- (a) If the:
 - (i) Tenant commits a material breach of any of its obligations and has not remedied that breach within a reasonable period having regard to the nature of the breach; or
 - (ii) Premises are materially damaged beyond repair or damaged or destroyed so as to render the Premises or any part of the Premises wholly or substantially unfit for the occupation or use of the Premises by the Tenant or inaccessible by any means of access and it is not commercially feasible to repair the damage rebuild the Premises,the Landlord may terminate this Lease.
- (b) Where this Lease is terminated under clause 12.1(a)(ii) and the Landlord intends to redevelop, and not repair, the Building, clause 14 applies provided that:
 - (i) the Landlord is not required to give 6 months prior notice of the termination of this Lease; and
 - (ii) for the purpose of clause 14, the Early Termination Date will be the date of termination under clause 12.1(a)(ii); and
 - (iii) clause 14.1(a)(iv)(A) does not apply.

12.2 Termination by the Tenant

If the Premises are:

- (a) damaged or destroyed or if there is interruption to access the Premises so as to render the Premises or any part of the Premises wholly or substantially unfit for the occupation or use of the Premises by the Tenant or inaccessible by any means of access; or
- (b) rendered unfit for the Permitted Use of,

then the Tenant may terminate this Lease.

12.3 Antecedent breaches

Termination of this Lease does not affect the rights or liabilities of the parties in relation to any cause of action accruing prior to termination.

12.4 Landlord may rectify

The Landlord may, but is not obliged to, at any time remedy any default by the Tenant under this Lease and do anything arising from the default that the Landlord considers necessary, provided that the Landlord has first given the Tenant a written notice specifying the default and a reasonable time having regard to the nature of the default within which to remedy the default (and that default has not been remedied), and without limiting any other rights of the Landlord, the Tenant must pay to the Landlord on demand the reasonable Cost of remedying such default.

13 Make Good

13.1 Tenant to yield up and remove its fittings

Subject to clause 14.1(d), the Tenant must on or before the Terminating Date or sooner determination of this Lease unless the Landlord agrees or directs otherwise:

- (a) remove from the Premises all the Tenant's Fittings (together with any signs or advertisements affixed by the Tenant to any part of the Building) including:
 - (i) all specialty equipment relating to the Tenant's use of the Premises;
 - (ii) all partitions or Services installed and/or modified by the Tenant after the Commencing Date;
- (b) remove any redundant:
 - (i) fire protection equipment (thermals/sprinklers);
 - (ii) cabling (as notified by the Landlord);
 - (iii) tenancy plumbing,
- (c) make good damaged or worn:
 - (i) ceiling tiles;
 - (ii) skirting boards;
 - (iii) floor coverings;
- (d) re-configure all Services such fire protection equipment, as hydraulic, mechanical and electrical services to ensure they are compliant and safe;
- (e) leave the Premises in a clean state and condition,

and make good any damage caused to the Premises or the Building in the carrying out these works.

13.2 Failure by carry out works

If the Tenant fails to carry out the works as required by clause 13.1, the Landlord may:

- (a) cause the Tenant's Fittings to be removed and stored in the manner the Landlord in its absolute discretion thinks fit at the risk and at the Cost of the Tenant; or
- (b) treat the Tenant's Fittings as if the Tenant had abandoned its interest in them and they had become the property of the Landlord, and deal with them in the manner the Landlord thinks fit without being liable in any way to account to the Tenant for them; and/or
- (c) carry out the works and/or clean the Premises at the Cost of and as agent for the Tenant and recover from the Tenant the Cost to the Landlord of doing so as a liquidated debt payable on demand.

14 Demolition or Replacement of Building

14.1 Demolition Notice

- (a) During the term of the Lease, the Landlord may terminate the Lease at any time if there is a genuine proposal to redevelop the Building and such redevelopment cannot be carried out without vacant possession of the Premises, provided the Landlord first gives the Tenant at least 6 months' prior written notice (**Development Notice**):
 - (i) specifying the date for early termination of the Lease (**Early Termination Date**);
 - (ii) specifying the details of the proposed redevelopment; and
 - (iii) specifying the proposed replacement premises which must:
 - (A) be of a similar size to the Premises;
 - (B) within the building or any new building to be erected on the land; and
 - (C) include a fit out commensurate with, or better than, the fit out of the existing premises at the time the Development Notice is served at no cost to the Tenant,**(Replacement Premises)**; and
 - (iv) offering to:
 - (A) relocate the Tenant to alternative premises of a similar size on or away from the Land from Early Termination Date until the completion of the redevelopment works for the Replacement Premises; and
 - (B) lease the Replacement Premises to the Tenant on substantially the same terms as this Lease provided that the lease of the Replacement Premises will be for a term commencing on completion of the redevelopment works for the Replacement Premises and terminating on the Terminating Date,**(Landlord's Offer)**.

- (b) If the Landlord issues a Development Notice, the Tenant may terminate the Lease by giving the Landlord not less than 1 months' written notice of termination, at any time.
- (c) No compensation is payable by the Landlord in respect of termination under this clause. Any termination under this clause does not prejudice the rights of the Landlord in respect of any breach of this Lease occurring before the Early Termination Date.
- (d) Where the Lease terminates under this clause 14.1, the:
 - (i) Tenant's obligations under clause 13.1(a) are limited to the removal of the specialty equipment relating to the Tenant's use of the Premises and any furniture, equipment or other personal property;
 - (ii) Tenant does not need to comply with clauses 13.1(b), 13.1(c) or 13.1(d).
- (e) On or before the Early Termination Date, the Tenant must deliver vacant possession of the Premises to the Landlord.

14.2 Acceptance of Landlord's Offer

- (a) Within 6 months (time of the essence) after the Landlord gives the Tenant the Landlord's offer (**Offer Period**), the Tenant must notify the Landlord if it accepts or rejects the Landlord's offer.
- (b) If the Tenant does not respond to the Landlord's Offer during the Offer Period, the offer immediately lapses and is deemed to be rejected by the Tenant.
- (c) If the Tenant accepts the Landlord's Offer during the Offer Period, the Landlord will prepare and the parties must exchange an agreement for lease, lease, other agreement (as applicable) on terms acceptable to both parties acting reasonably as soon as practicable, which may be conditional upon receiving the relevant Approvals.

15 Miscellaneous

15.1 Notices

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

- (a) must be in writing addressed to the intended recipient at the address shown below or the address last notified by the intended recipient to the sender:

Landlord:

Name: **Perpetual Trustee Company Limited** (ACN 000 001 007) c/-
Scape Australia Management Pty Ltd

Attention: General Counsel

Address: Level 14, 275 George Street, Sydney NSW 2000

Email: officialnotice@scape.com

Tenant:

Name: Randwick City Council

Attention: General Manager

Address: 30 Frances Street, Randwick NSW 2031

Email: council@randwick.nsw.gov.au

- (b) must be signed by the sender or if a company, by an authorised officer;
- (c) will be taken to have been served:
 - (i) in the case of delivery in person, when delivered to or left at the address of the recipient shown in this Lease (as the case may be) or at any other address which the recipient may have notified to the sender;
 - (ii) in the case of email, when sent unless:
 - (A) the sender receives notification that the email could not be delivered; or
 - (B) the sender receives notification that the sending of the email is delayed in which case it is served when received by the recipient; and
 - (iii) in the case of mail, on the third Business Day after the date on which the notice is accepted for posting by the relevant postal authority;

but if service is on a day which is not a Business Day in the place to which the communication is sent or is later than 5.00pm (local time) on a Business Day, the notice will be taken to have been served on the next Business Day in that place; and
- (d) if the Landlord transfers its interest in the Premises or if the Tenant assigns or transfers its interest in this Lease to a third party then the address for service as disclosed in clause 15.1(a) will be amended to reflect the details of the third party acquiring the interest in the Premises or Lease as advised by the third party.

15.2 Costs

- (a) Each party must pay its own Costs in connection with the negotiation, preparation and execution of this Lease.
- (b) Without limiting any other rights of the Landlord, the Tenant must pay to the Landlord on demand:

- (i) all stamp duty (including penalties and fines other than those incurred due to the default of the Landlord) on this Lease; and
- (ii) all Costs of the Landlord in relation to:
 - (A) the stamping and registration of this Lease and any certified copy of it required by the Landlord;
 - (B) the actual or contemplated enforcement of, or actual or contemplated exercise, preservation or consideration of any rights, powers or remedies under this Lease; and
 - (C) a breach of this Lease by the Tenant.

15.3 Easements

The Landlord may for:

- (a) the purpose of the provision of public or private access to the Premises and the Building;
- (b) the purpose of rectifying any encroachment;
- (c) the support of structures in the future erected on or from adjoining land; or
- (d) any Service,

dedicate land or transfer, grant or create or take the benefit of any easement or other right to or from, or enter into any arrangement or agreement with, any owners, tenants or occupiers or others having an interest in any land (including the Land) near the Premises or with any Authority (under any valid and enforceable Requirement of that Authority) as the Landlord thinks fit. This Lease will be taken to be subject to that easement or other right as envisaged by this clause 15.3, and the Tenant will promptly on request by the Landlord confirm to the Land Titles Office in the state in which the Premises are located or other relevant Authority its consent to that easement or other right.

15.4 Further construction

- (a) The Landlord reserves the right at any time to construct or permit the construction of any buildings or works on any part or parts of the Land (excluding the Premises) and whether of a permanent or temporary nature and to add to or permit to be added to (whether by the construction of additional storeys or in any other manner) and to vary, alter or reduce or permit to be varied, altered or reduced any buildings, erections, improvements or works in or on the Land (including the Building) at any time and from time to time as the Landlord sees fit. The Landlord further reserves the right to vary, modify or relocate any part or parts of the Common Areas resulting from the construction of any buildings or works or otherwise provided that the Landlord must:
 - (i) ensure access to the Premises is maintained to enable the Tenant to use the Premises for the Permitted Use; and;
 - (ii) as far as practicable, minimise disturbance to the Tenant.

- (b) The Tenant acknowledges that it is not entitled to and will not make any Claim arising out of the construction of any building, any works or operations associated with alterations and additions or dust, noise, the imposition of access restrictions or other inconvenience or disturbance to the Tenant which might arise from any alterations and additions.
- (c) The Landlord shall make every reasonable endeavour to ensure that the construction of any building, any works or operations associated with alterations and additions or dust, noise, the imposition of access restrictions or other undue inconvenience is minimised so that no material disruption is caused to the Tenant.

15.5 Severance

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of this Lease nor affect the validity or enforceability of that provision in any other jurisdiction.

15.6 Entire agreement

This Lease contains all the contractual arrangements of the parties with respect to the transactions to which they relate and supersede all earlier conduct by the parties with respect to those transactions.

15.7 Reliance

The Tenant acknowledges and represents that it:

- (a) has had the opportunity to seek disclosure of all material information relating to the transactions dealt with by this Lease;
- (b) has not relied to any extent on any conduct by or on behalf of the Landlord in relation to those transactions apart from those set out or referred to in this Lease; and
- (c) has satisfied itself that the location of and access to the Premises is sufficient for its intended use of the Premises.

15.8 Waiver

- (a) No waiver is effective unless it is in writing.
- (b) A party's failure to take advantage of any breach by the other party will not be construed as waiving the breach.

15.9 Governing Law

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

15.10 Change of Landlord

(a) If the Landlord:

- (i) sells its interest in the Premises; or
- (ii) grants a concurrent lease over the Premises,

so that the Tenant becomes obliged to perform its obligations under this Lease in favour of another person, then the Tenant must enter into those documents the Landlord or that other person reasonably requires, at the Landlord's or that other person's cost, to enable that other person in its name to enforce the benefit of all obligations owed under this Lease, and if the purchaser, transferee or grantee (as the case may be) is a trustee, the Tenant agrees to vary the Lease to incorporate any limitation of liability clauses reasonably required by the purchaser, transferee or grantee.

(b) An obligation owed by the Tenant to the Landlord which is due for performance before an event described in clause 15.10(a)(i) or 15.10(a)(ii) occurs remains owing to the person who is the Landlord at the time that event occurred and not its assignee, tenant or landlord and may be enforced by that person in its own name.

15.11 Landlord's consent

In each case where the Tenant is required to obtain the consent of the Landlord under this Lease:

- (a) the Landlord's consent may be given or withheld acting reasonably unless the relevant clause specifically provides otherwise; and
- (b) the Landlord's consent may, if given, be conditional or unconditional.

15.12 Consolidation or subdivision

- (a) The Landlord may at any time carry out a Consolidation or Subdivision of the Premises of the Building.
- (b) Subject to clause 15.12(d), the Tenant will, at the Landlord's Cost, give its written consent in a form prepared by the Landlord to any plan of Subdivision or any amendment, alteration or variation referred to in clause 15.12(a) if sought or required by the Landlord or an Authority within 14 days of a written request to do so by the Landlord.
- (c) Subject to clause 15.12(d), the Tenant will not object to or obstruct any matter referred to in clause 15.12(a) or 15.12(b).
- (d) The Landlord will procure that no plan of Subdivision or any amendment, alteration or variation referred to in clause 15.12(a) will interrupt the Tenant's right to quiet enjoyment.

16 First right of refusal

16.1 Offer and acceptance

- (a) During the Term, if the Landlord intends to sell the Premises, the Landlord must:
 - (i) offer to sell the Premises to the Tenant for \$1.00; and
 - (ii) deliver to the Tenant the form of a contract for the sale and purchase of land consistent with industry practice (**Sale Contract**),
(Landlord's Offer).
- (b) The Tenant may accept the Landlord's Offer by returning to the Landlord:
 - (i) a duly completed and executed and dated Sale Contract; and
 - (ii) any other document or requirement of the Sale Contract.
- (c) If the Tenant accepts the Landlord's Offer:
 - (i) the Sale Contract is binding upon the parties whether or not it is signed by the Landlord from the date the Landlord's offer is accepted; and
 - (ii) the Landlord must within 5 Business Days of the Tenant accepting the Landlord's Offer return a duly executed identical counterpart of Sale Contract which must be dated on the same date as the Landlord's Offer was accepted by the Tenant.
- (d) If the Tenant does not accept the Landlord's Offer within 20 Business Days of the date of the Landlord's Offer the:
 - (i) Landlord's Offer immediately lapses; and
 - (ii) Landlord may sell the Premises to any third party at any price.

16.2 Exceptions

This clause does not apply where the Premises is transferred or sold to a Related Entity of the Landlord.

17 Limitation of Liability

- (a) Perpetual Trustee Company (**Trustee**) enters into this document in its capacity as trustee of the Scape Australia (Moore Park) Trust ABN 99 402 773 487 (**Trust**) and in no other capacity.
- (b) The parties acknowledge that the Trustee incurs the Trustee Liabilities solely in its capacity as trustee of the Trust and agree that (to the maximum extent permitted by law) the Trustee will cease to have any Trustee Liability if the Trustee ceases for any reason to be trustee of the Trust.
- (c) A Trustee Liability may be enforced against the Trustee only to the extent to which:
 - (i) the Trustee is actually indemnified in respect of that Trustee Liability out of the property of the Trust (provided the Trustee has taken necessary steps to enforce its right of indemnity as trustee of the Trust); and
 - (ii) there is sufficient property held by the Trustee as trustee at the time, which is available to meet that indemnity (after all Trust assets have been allocated to meet the indemnity and any other valid claims).

- (d) Subject to clause 17(e), no person will be entitled to:
 - (i) claim from or commence proceedings against the Trustee in respect of any Trustee Liability in any capacity other than as trustee of the Trust,
 - (ii) enforce or seek to enforce any judgment in respect of any Trustee Liability against any property of the Trustee other than property held by the Trustee as trustee of the Trust;
 - (iii) take any steps to procure or support the appointment of a liquidator, administrator or any other similar office holder to the Trustee on the basis of a Trustee Liability, or prove in any liquidation, administration or arrangement of or affecting the Trustee; or
 - (iv) in respect of a Trustee Liability, appoint or take any steps to procure or support the appointment of a receiver or receiver and manager to any property of the Trustee, other than property which is held by it in its capacity as trustee of the Trust.
- (e) The restrictions in clauses 17(c) and 17(d) do not apply to any Trustee Liability to the extent to which there is, whether under the deed or constitution of the Trust or by operation of law, a reduction in the extent of the Trustee's indemnification, or in respect of which the Trustee is not entitled to be indemnified, out of the property of the Trust, as a result of the Trustee's fraud, negligence or breach of trust.
- (f) Each other party to this document agrees that no act or omission of the Trustee (including any related failure to satisfy any Trustee Liabilities) will constitute fraud, negligence or breach of trust of the Trustee for the purposes of clause 17(e) to the extent to which the act or omission was caused or contributed to by any failure of that party to fulfil its obligations relating to the Trust or by any other act or omission of that party.
- (g) No attorney, agent or other person appointed under this document has authority to act on behalf of the Trustee in a way which exposes the Trustee to any personal liability, and no act or omission of such a person will be considered fraud, negligence or breach of trust of the Trustee for the purposes of clause 17(e).
- (h) This limitation of the Trustee's Liability applies despite any other provisions of this document and extends to all Trustee Liabilities of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this document or its performance.
- (i) The Trustee is not obliged to do or refrain from doing anything under this document (including incur any liability) unless the Trustee's liability is limited in the same manner as set out in clause 17(a) to 17(h).
- (j) In this 16, '**Trustee Liability**' means any liability or obligation (of any kind including, without limitation, for negligence, in tort, in equity, or under statute) of the Trustee which arises in any way under or in connection with this document or its performance, or any representation, warranty, conduct, omission, agreement or transaction made under or in connection with this document or its performance.

Execution page

Executed as a Deed

Date:

Executed by the Landlord

I certify that I am an eligible witness and that the Landlord's attorney signed this dealing in my presence:

Certified correct for the purposes of the Real Property Act 1900 by the Landlord's attorney who signed this dealing pursuant to the power of attorney specified.

Signature of Witness

Signature of **[insert Attorney's name]**

Name of Witness

Signing on behalf of Perpetual Trustee Company Limited

Address of Witness

Power of attorney Book
No

Electronic signature of me (as named above) affixed by me on the date specified

Executed by the Tenant

Executed by the Tenant by its duly authorised officer pursuant to delegation from Council in accordance with section 377 *Local Government Act 1993* and in the presence of:

Witness (Signature)

Authorised Officer (Signature)

Name of Witness (Print Name)

Name of Authorised Officer (Print Name)

Annexure 5 – Community Innovation Centre Fitout Area

Nominated Architects: Adam Haddow 7168 | John Pradel 7004

Re.	Date	Revision	By	Ch
1	24.12.2021	CONCRETE PILE CASE SCHEME	BC	JK
2	27.12.2021	STRUCTURAL REVIEW	BC	JK
3	14.11.2022	STRUCTURAL REVIEW	BC	JK
4	22.07.2022	10% DG FACT	BC	JK

Client _____

Project _____
SCAPE LAGUAMAN

111-125 Anzac Parade
& 112 Todman Avenue

Drawing Name _____



Job No. _____ Drawing No. _____ Revision _____

6224 DD-A-0112/ 4



FOR INFORMATION

Structural Engineer
Northrop

Mechanical / Electrical / Hydraulic Engineer
WSP

Fire Engineer
E-Lab

Access Consultant
=

BARK / Sert / ESD

Integral Group

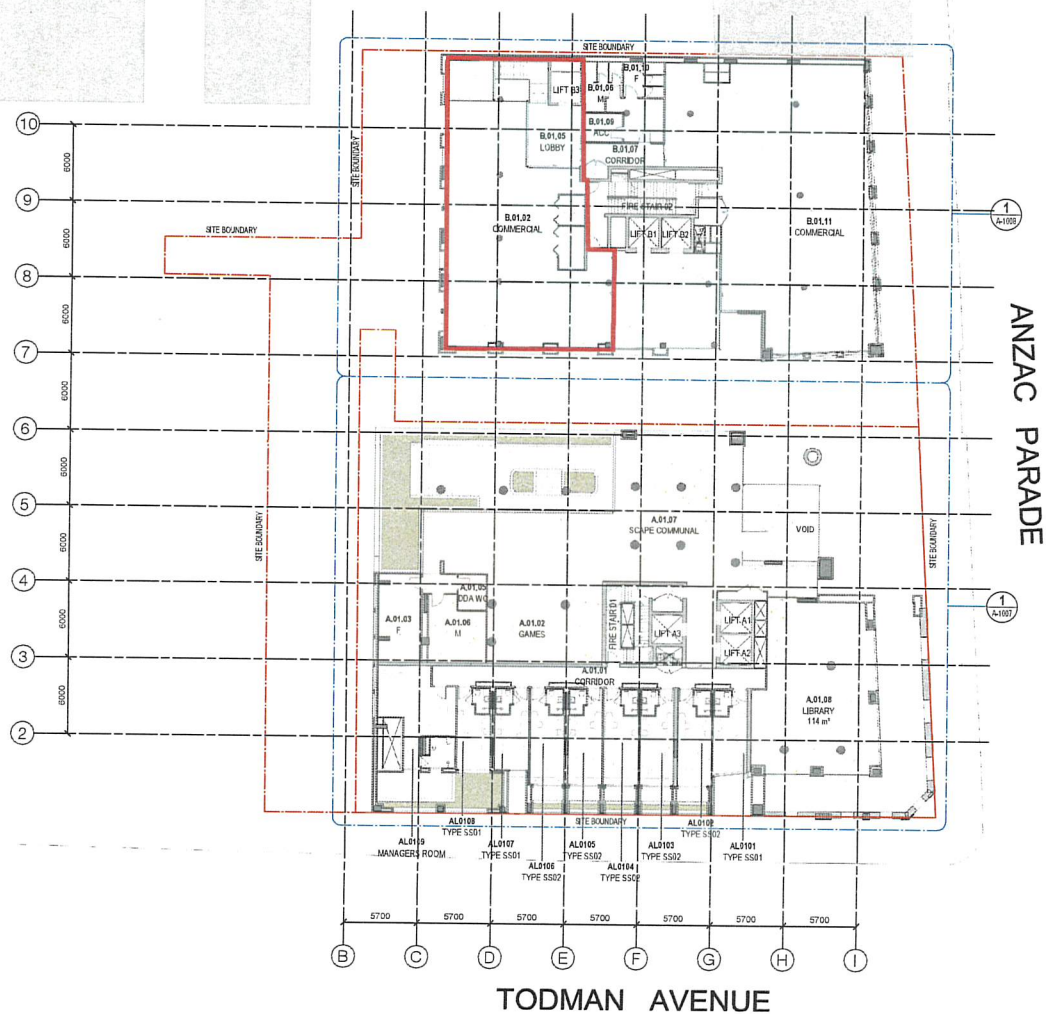
Client

Suite 2, Level 30 Governor
Macquarie Tower 1 Farrer
Place, Sydney NSW 2000

Drawing Name
L1 PRECINCT PLAN



Job No. 6224 Drawing No. DD-A-0113/ 4 Revision



Annexure 6 – Building Management Statement Schedule of Shared Facilities

Annexure 6 – Building Management System - Shared Facilities & Services

Interpretation

In interpreting the matters referred to in this 0, the following meaning apply:

Residential Lot means the owner of Lot 100;

Commercial Lot means the owner of Lot 101; and

Council Lot means Lot 102.

For shared facility costs to be contributed to:

1. **Maintenance** means costs of periodic maintenance and repair, including testing, cleaning, servicing, replacement of minor parts or parts of a non-capital nature (such as, for example, light bulbs or filters) and includes a reasonable proportion of any management fee payable by a lot owner for the maintenance or supply of the relevant shared facility;
2. **Capital** means costs of renewals and replacement of the shared facility (or any parts of it) including of a capital nature (and not being maintenance costs) (except to the extent the renewal or replacement is as a result of the wilful or negligent actions of a particular owner in which case the costs of that renewal or replacement will be borne only by that owner);
3. **Energy** means electricity costs; and
4. **Service** means the costs to supply the service.

Method of Calculation of share:

1. **area** means the shared facility cost for the relevant shared facility is apportioned based on the gross floor area of each lot benefiting from that shared facility expressed as a percentage of the total gross floor area of all of the lots so benefiting.
2. **car spaces** means the shared facility cost for the relevant shared facility is apportioned based on the number of car spaces in the building available for use by each lot benefiting from that shared facility expressed as a percentage of the total number of car spaces available in the building for all of the lots so benefiting.
3. **meter** means the shared facility cost for the relevant shared facility is apportioned based on a meter (or similar equipment) which records the use of the shared facility (or the thing supplied by it) by the relevant lot.
4. **shared facility use** means the shared facility cost for the relevant shared facility is apportioned based on the expected use by each lot benefiting from the shared facility expressed as a percentage.

Item No.	Shared Facility	Location	Benefited Lots	Method of Apportionment	Council's Percentage	Maintenance/ Operating Responsibility Note the responsibility for effecting the work will rest with either Lot 100 or Lot 101	Shared Costs
1.	Air Conditioning and Mechanical Services (e.g. extraction / ventilation fans)	Base Building	100 101 102	Meter	Council's Percentage is determined based on usage through its meter when compared to all meters		Maintenance, Capital
2.	Car park Lighting and Ventilation (inc. smoke exhaust fans)	Base Building	100 101 102	Shared Facility Use	0%		Maintenance, Capital
3.	Emergency Lighting	Base Building	100 101 102	Shared Facility Use	0%		Maintenance, Capital
4.	Fire Equipment: - Sprinklers, pumps etc. - Detectors, Fire Indicator Panel etc. - Evacuation plans, Annual Training, Compliance; - QFRS Monitoring.	Base Building	100 101 102	Area	0%		Maintenance, Capital
5.	Lifts	Base Building	100 101	Shared Facility Use	0%		Maintenance, Capital
6.	Security Access Control Equipment	Base Building	100 101 102	Shared Facility Use	0%		Maintenance, Capital

Item No.	Shared Facility	Location	Benefited Lots	Method of Apportionment	Council's Percentage	Maintenance/ Operating Responsibility Note the responsibility for effecting the work will rest with either Lot 100 or Lot 101	Shared Costs
7.	Security Equipment CCTV	Base Building	100 101 102	Shared Facility Use	0%		Maintenance, Capital
8.	Basement Carpark Gate	Base Building	100 101 102	Shared Facility Use	0%		Maintenance, Capital
9.	Main Distribution (Telecommunications) Frame	Base Building	100 101 102	Meter	Council's Percentage is determined based on usage through its meter when compared to all meters		Maintenance, Capital
10.	Sewerage (including pumps)	Base Building	100 101 102	Shared Facility Use	0%		Maintenance, Capital
11.	Portable Water (including pumps and pressurisation storage tanks)	Base Building	100 101 102	Meter	Council's Percentage is determined based on usage through its meter when compared to all meters		Maintenance, Capital
12.	Stormwater and Drainage (inc. pumps)	Base Building	100 101 102	Shared Facility Use	0%		Maintenance, Capital
13.	Window Cleaning Equipment (including eye bolt testing)	Base Building	100 101	Shared Facility Use	0%		Maintenance, Capital

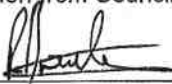
Item No.	Shared Facility	Location	Benefited Lots	Method of Apportionment	Council's Percentage	Maintenance/ Operating Responsibility Note the responsibility for effecting the work will rest with either Lot 100 or Lot 101	Shared Costs
14.	Common Area Electricity	Base Building	100 101 102	Shared Facility Use	0%		Energy
15.	Commercial Garbage Removal	Base Building	101 102	Shared Facility Use	20% OR Council to arrange private collection		Service
16.	Residential Pneumatic Waste System	Base Building	100	Shared Facility Use	0%		Maintenance, Capital
17.	General Repairs and Maintenance	Base Building	100 101 102	Shared Facility Use	0%		Maintenance, Capital
18.	Building Landscape and Maintenance	Base Building	100 101 102	Shared Facility Use	0%		Maintenance, Capital
19.	Green Star Operational Rating and Compliance	Base Building	100 101 102	Shared Facility Use	0%		Maintenance, Capital
20.	End of Trip Facilities	Base Building	101 102	Shared Facility Use	0%		Maintenance, Capital

Execution page

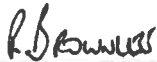
Executed as a deed

Dated: 16 May 2023

Signed, sealed and delivered by Randwick City Council by its General Manager pursuant to delegation from Council:



General Manager (Signature)



Name of General Manager (Print Name)

~~Signed, sealed and delivered by Perpetual Corporate Trust Limited ACN 000 341 533 in accordance with section 127(1) of the Corporations Act 2001 (Cth) by authority of its directors.~~

Director/Secretary (Signature)

Director (Signature)

Name of Director/Secretary (Print Name)

Name of Director (Print Name)

Execution page

Executed as a deed

Dated: 16 May 2023

~~Signed, sealed and delivered by Randwick City Council by its General Manager and Mayor by the affixing of the Common Seal of Council in accordance with resolution dated~~

~~General Manager (Signature)~~

~~Mayor (Signature)~~

~~Name of General Manager (Print Name)~~

~~Name of Mayor (Print Name)~~

Signed, sealed and delivered by Perpetual Corporate Trust Limited ACN 000 341 533

Executed under Power of Attorney dated 16 September 2014.



Attorney (Signature)

Shirley Jiang
Manager

Attorney (Print Name)



Witness (Signature)

Macy Tran

Witness (Print Name)



Attorney (Signature)

Marta Ilijas
Manager

Attorney (Print Name)



Witness (Signature)

Macy Tran

Witness (Print Name)
