

## **Planning Agreement**

**391-397A Anzac Parade & 17 Bunnerong Road, Kingsford  
(DA/311/2020)**

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

Perpetual Corporate Trust Limited (ABN 99 000 341 533) (**Developer**)

Prepared by:

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# Planning Agreement

## 391-397A Anzac Parade & 17 Bunnerong Road, Kingsford (DA/311/2020)

### Parties

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<b>Council</b>	<b>Name</b>	Randwick City Council
	<b>Address</b>	30 Frances Street Randwick NSW 2031
	<b>ABN</b>	77 362 844 121
<b>Developer</b>	<b>Name</b>	Perpetual Corporate Trust Limited
	<b>Address</b>	Level 18 123 Pitt Street Sydney NSW 2000
	<b>ABN</b>	99 000 341 533

### Background

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- 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

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#### 1 Agreement

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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

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##### 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.

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### **3 Application and operation of document**

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#### **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.

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### **4 Application of s7.11 and s7.12**

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#### **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.

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### **5 Provision of Contributions**

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#### **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 Grant of Easement**

The Developer, at its own expense, must register the Easement on the title to the Land in accordance with **Schedule 3** on the terms set out in **Annexure 2** or on such other terms acceptable to Council, acting reasonably, to enable the public to access the Connection Link prior to the issue of an Occupation Certificate.

#### **5.3 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 5.4;

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- (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.

#### **5.4 Design and specification of Works**

- (1) This clause 5.4:
  - (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 5.9.
- (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.

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(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 5.4 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.

## **5.5 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.

## **5.6 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.

## **5.7 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 3** of this document and those proposals must include the estimate of costs to complete each piece of public art included in the relevant proposal.

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- (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.

## **5.8 Affordable Housing Levy Contribution**

- (1) The Developer must pay the Affordable Housing Levy Contribution to Council under **Schedules 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 101 of the Development Consent.

## **5.9 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,

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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.

## **6 Completion of Works**

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### **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

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- (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

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### 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.

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- (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**

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### **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.

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## 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.

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## **9 Developer Warranties and Indemnities**

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### **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 4**.
- (2) The provisions of **Annexure 4** 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 4**.

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## **10 Security**

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### **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.

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- (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.

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## **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.

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## **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.

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### **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.

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## **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.

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## 13 Dispute Resolution

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### 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

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- (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;

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- (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:

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- (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.

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## **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.

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- (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**

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#### **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.

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## 16 Confidentiality

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### 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.

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## 17 GST

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### 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.

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### **17.3 GST Obligations to Survive Termination**

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

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## **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.

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## **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.

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(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*.

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## Schedule 1– Requirements under s7.4

REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
<b>Planning instrument and/or development application – (Section 7.4(1))</b>  The Developer has:  (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.	(a) No (b) Yes (c) Not applicable
<b>Description of land to which this agreement applies – (Section 7.4(3)(a))</b>	1) Lot 1 DP34728, 2) Lot 2 DP902648, 3) Lot 1 DP959667, 4) Lot 2 DP959667.
<b>Description of change to the environmental planning instrument to which this agreement applies – (Section 7.4(3)(b))</b>	Not applicable
<b>Application of section 7.11 of the Act – (Section 7.4(3)(d))</b>	Does not apply
<b>Applicability of section 7.12 of the Act – (Section 7.4(3)(d))</b>	Does not apply
<b>Consideration of benefits under this agreement if section 7.11 applies – (Section 7.4(3)(e))</b>	See clause 4.
<b>Mechanism for Dispute resolution – (Section 7.4(3)(f))</b>	See clause 13.
<b>Enforcement of this agreement (Section 7.4(3)(g))</b>	See clause 10.
<b>No obligation to grant consent or exercise functions – (Section 7.4(3)(9))</b>	See clause 14.

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## Schedule 2 – Defined Terms and Interpretation

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### Part 1 – Definitions

<b>Act</b>	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
<b>Affordable Housing Levy Contributions</b>	means the Contribution identified as such in <b>Schedule 3</b> .
<b>Assign</b>	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.
<b>Authority</b>	means (as appropriate) any:
	(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.
<b>Bank Guarantee</b>	means an irrevocable and unconditional undertaking without any expiry or end date by one of the following trading banks:
	(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.
<b>Claim</b>	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.
<b>Completed</b>	means completed in accordance with the requirements of this document.
<b>Completion Notice</b>	has the meaning ascribed in clause 6.2.
<b>Community Infrastructure Contributions</b>	means the Works specified as such in <b>Schedules 3 and 4</b> .
<b>Community Link</b>	means the Contribution contained in Item 6 of <b>Schedule 3</b> .

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<b>Community Link Plan</b>	means the plan that is attached as <b>Annexure 5</b> .
<b>Confidential Information</b>	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.
<b>Construction Certificate</b>	has the same meaning as in section 6.4(d) of the Act.
<b>Contributions</b>	means the Works, the Monetary Contributions (including the Affordable Housing Levy Contribution) and the grant of the Easement.
<b>Contribution Value</b>	means the amount specified in <b>Schedules 3</b> in the column headed "contribution value" for each item of the Contributions.
<b>Defect</b>	has the meaning ascribed to it in clause 7.1.
<b>Defects Notice</b>	has the meaning ascribed to it in clause 7.1.
<b>Defects Liability Period</b>	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.
<b>Defects Security</b>	has the meaning ascribed to it in clause 10.
<b>Development</b>	means the development generally described in development application DA/311/2020 consisting of construction of a sixteen (16) storey mixed-use development comprising ground/first/second floor commercial spaces and a boarding house comprising 360 boarding rooms and a manager's room, basement parking, public plaza, pedestrian through-site link, signage, earthworks, landscaping and associated works..
<b>Development Application</b>	means an application for the Development Consent.
<b>Development Consent</b>	means a consent issued under the Act for the Development.
<b>Dispute</b>	has the meaning ascribed to it in clause 13.1.
<b>Easement</b>	means an easement in perpetuity granted to Council for access to the Community Link on the terms set out in <b>Annexure 2</b> .
<b>Encumbrance</b>	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;

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- (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.

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- (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.

<b>Land</b>	means the "Land" set out in <b>Schedule 1</b> .
<b>Law</b>	means all legislation, regulations, by-laws, common law and other binding order made by any Authority.
<b>Location Plan</b>	means the plan that is attached as <b>Annexure 1</b> .
<b>Monetary Contributions</b>	means the monetary contributions specified or described in <b>Schedule 3</b> .
<b>Occupation Certificate</b>	has the same meaning as in section 6.4(c) of the Act.
<b>Planning Legislation</b>	means the Act, the <i>Local Government Act 1993 (NSW)</i> and the <i>Roads Act 1993 (NSW)</i> .
<b>Quantity Surveyor</b>	means a person who: <ul style="list-style-type: none"><li>(1) is a member of their respective professional organisation and has been for at least five (5) years;</li><li>(2) practises as a quantity surveyor for works of the same nature as the relevant Works;</li><li>(3) is active as a quantity surveyor at the time of his appointment;</li><li>(4) has at least three (3) years experience in valuing works of the same nature as the relevant Works; and</li><li>(5) undertakes to act fairly and promptly in accordance with the requirements of this document.</li></ul>
<b>Rectification Notice</b>	has the meaning ascribed to it in clause 6.4.
<b>Security</b>	means collectively the Work Securities and the Defects Security.
<b>Subdivision Certificate</b>	has the same meaning as in section 6.4(d) of the Act.
<b>Works</b>	means the works specified or described in <b>Schedule 4</b> .
<b>Works Securities</b>	has the meaning ascribed to it in clause 10.

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## **Part 2 - Interpretational Rules**

<b>clauses, annexures and schedules</b>	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this document.
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<b>reference to statutes</b>	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.
<b>singular includes plural</b>	the singular includes the plural and vice versa.
<b>Person</b>	the word “person” includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
<b>executors, administrators, successors</b>	a particular person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
<b>Dollars</b>	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
<b>calculation of time</b>	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.
<b>reference to a day</b>	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
<b>accounting terms</b>	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.
<b>reference to a group of persons</b>	a group of persons or things is a reference to any two or more of them jointly and to each of them individually.
<b>meaning not limited</b>	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.
<b>next day</b>	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.
<b>next Business Day</b>	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.
<b>time of day</b>	time is a reference to Sydney time.
<b>Headings</b>	headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this document.
<b>Agreement</b>	a reference to any agreement, document or instrument includes the same as varied, supplemented, novated or replaced from time to time.
<b>Gender</b>	a reference to one gender extends and applies to the other and neuter gender.

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### Schedule 3 – Contributions

Item	Contributions	Public Purpose	Timing	Contribution Value
1	Public Art to be delivered to the northern boundary of the Land. (Section 7.12)	Improvement of local 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.	\$500,000.00
2	Registration of an Easement on the title to the Land on the terms of the Easement as set out in <b>Schedule 3</b> unless otherwise agreed by Council.	Improvement of local amenity and liveability	Prior to the issue of an Occupation Certificate in respect of the Development.	Not valued
3	Section 7.12 Monetary Contribution	Public infrastructure in the Kensington and Kingsford community.	Prior to the issue of a Construction Certificate in respect of the Development.	\$1,244,916.00
4	Affordable Housing Levy Contribution	Provision of affordable housing	Prior to the issue of an Occupation Certificate in respect of the Development.	The amount of the 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				
5	Construction of Anzac Parade/ Gardeners Road Intersection as identified as 'Area 1' on the Location Plan.	Improvement of local infrastructure and recreation facilities	The earlier of twenty-four (24) months from the date the relevant Construction Certificate is issued or the issue of the first Occupation	\$1,200,000.00

			Certificate in respect of the Development.
6	Construction of Anzac Parade footpaths and intersections (directly adjacent to subject site) as 'Area 2' in the Location Plan.	Improvement of infrastructure and facilities	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.
7	Construction of Public Realm Works – Community Link on Land as 'Area 3' on the Location Plan and in the Community Link Plan.	Improvement of infrastructure	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.
<b>TOTAL CONTRIBUTIONS</b>			\$4,695,141.00 plus the registration of the Easement and any Affordable Housing Levy Contribution

## Schedule 4 - Works

Item of Works	Specification	Application of specification and design approval (clause 5.4)
Public Art to be delivered to the northern boundary of the Land.	As per the Public Art Strategy at <b>Annexure 3</b> of this document.	Yes
<b>Community Infrastructure Contributions</b>	<p>Anzac Parade/Gardeners Road Intersection as identified as 'Area 1' on the Location Plan.</p> <p>All works listed below will be delivered as per the final approved plans and as per Council's standards. The works will include but will not be limited to the following items;</p> <ul style="list-style-type: none"> <li>Replace existing vehicle lay-by on Bunnerong Road with a new pavement extension and planting zone as nominated,</li> <li>Provide new paving to full extent of 'Area 1',</li> <li>Retain and protect existing trees as nominated on approved plans and incorporate in new planter beds with integrated seating,</li> <li>Relocate and reinstate existing utility service infrastructure as required (located on Bunnerong Road and Anzac Parade intersection directly in front of the site) and nominated in the final Public Utility Report,</li> <li>Provide bike racks as nominated,</li> <li>Provide Public seatwalls and standalone seating as nominated,</li> <li>Deliver 'Area 1' with all required kerbing, drainage and pavement thresholds,</li> <li>Remove existing TfNSW signage (located on Bunnerong Road and Anzac Parade directly in front of the site) and relocate and reinstate to new location.</li> <li>Provide public domain lighting to 'Area 1'.</li> <li>Provision of public domain furniture and ancillary items.</li> <li>Incorporation of environmentally sustainable initiatives in line with the Green Star Design and Build requirements as nominated in K2K DCP.</li> </ul>	Yes
Anzac parade footpaths and intersections (directly adjacent to subject site) as 'Area 2' in the Location Plan.	All works listed below will be delivered as per the final approved plans and as per Council's standards. The works will include but will not be limited to the following items;	Yes

<ul style="list-style-type: none"> <li>Underground existing overhead cables fronting Bunnerong Road directly in front of the subject site.</li> <li>Remove existing pavement finishes and replace with new pavement as nominated,</li> <li>Provide new trees as nominated,</li> <li>Provide new planting beds as nominated,</li> <li>Provide new seating zones as nominated,</li> <li>Provide bike racks as nominated,</li> <li>Relocate and reinstate existing utility service infrastructure as required.</li> <li>Provision of public domain furniture and ancillary items.</li> <li>Incorporation of environmentally sustainable initiatives in line with the Green Star Design and Build requirements as nominated in K2K DCP.</li> </ul>	<p>All works listed below will be delivered as per the final approved plans and as per Council's standards. The works will include but will not be limited to the following items;</p> <ul style="list-style-type: none"> <li>Provide new Community Link with new paving and landscaping with planter beds as nominated,</li> <li>Provide new public domain lighting as nominated,</li> <li>Provide CCTV security and boom gate (if required) to the laneway to meet public domain security requirements,</li> <li>Provide weather protection structures to the nominated area,</li> <li>Provide new handrails and integrated lighting to meet DDA requirements on pedestrian ramp located in the laneway,</li> <li>Provision of public domain furniture and ancillary items.</li> <li>Incorporation of environmentally sustainable initiatives in line with the Green Star Design and Build requirements as nominated in K2K DCP.</li> </ul>
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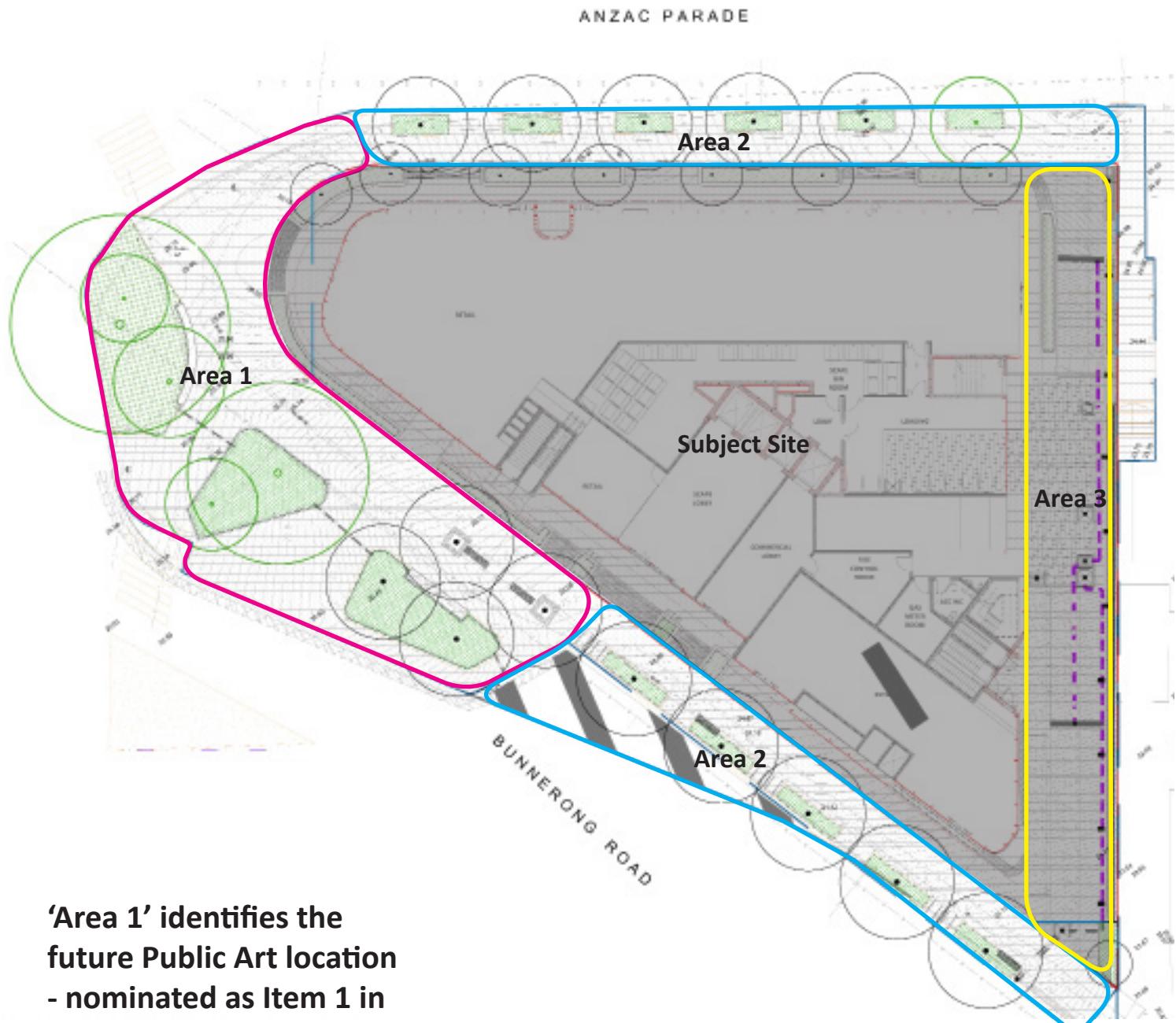
## **Annexure 1 – Location Plan**

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## Annexure 1

### Location Plan

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**'Area 1' identifies the future Public Art location - nominated as Item 1 in Schedule 3**

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## **Annexure 2 – Terms of Easement for Community Link**

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- (1) The Registered Proprietor grants to the Benefitting Authority and to all members of the public a non-exclusive right to access the Community Link for the purposes of using the Community Link as a pedestrian thoroughfare at all times. For the purpose of clarity, the Registered Proprietor retains all rights to access the Community Link at any time, including vehicular access to the loading dock and for waste collection of and with respect to the adjoining building.
- (2) The Registered Proprietor must, at its own expense, maintain the Connection Link to ensure it is:
  - (a) in good repair;
  - (b) in a safe condition;
  - (c) structurally stable;
  - (d) in a condition suitable for its intended use; and
  - (e) in compliance with all applicable laws,and must:
  - (f) promptly repair any damage to the Community Link from any cause; and
  - (g) do all things necessary and in accordance with any reasonable direction of the Benefitting Authority to ensure that the Community Link is maintained in the condition required under this clause (2).
- (3) The Registered Proprietor must obtain planning approval (if required) to undertake any works required to give effect to the maintenance requirements under clause (2).
- (4) The Registered Proprietor releases the Benefitting Authority from, and indemnifies the Benefitting Authority against, any loss or damage suffered or incurred by the Benefitting Authority in connection with the use of the Community Link but only in relation to the construction or maintenance of the Community Link and in relation to the lawful use of the Community Link for the purposes of a pedestrian thoroughfare. This release and indemnity will not apply where the loss or damage arises as a direct result of a negligent act or omission of the Benefitting Authority.
- (5) In this easement:
  - Community Link** means the community link constructed on that part of the Land over which this easement is registered.
  - Land** means the land on which this easement is registered.
  - Benefitting Authority** means Randwick City Council (ABN 77 362 844 121).
  - Registered Proprietor** means the registered proprietor of the Land from time to time, and all its heirs, executors, assigns and successors in title and, where there are two or more registered proprietors of the land burdened, those persons jointly and severally.
  - Name of Authority with the right to release, vary or modify this easement: Randwick City Council.**

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### **Annexure 3 – Public Art Strategy**

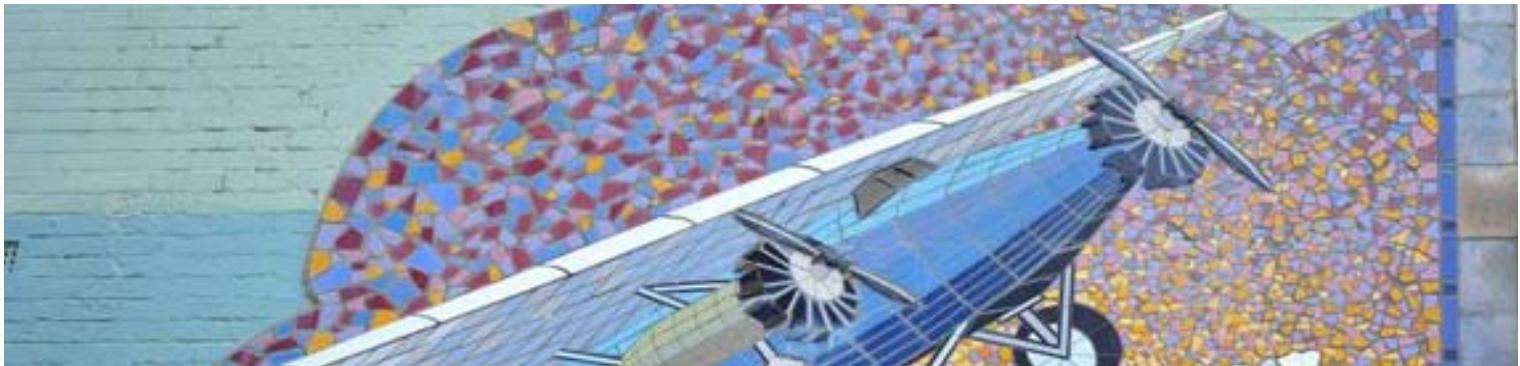
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RANDWICK CITY COUNCIL

# Public Art Strategy





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## Attachments

- a. Public art commissioning processes**
  - 1.0 Process for commissioning public art**
  - 2.0 Preparing a site brief**
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  - 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

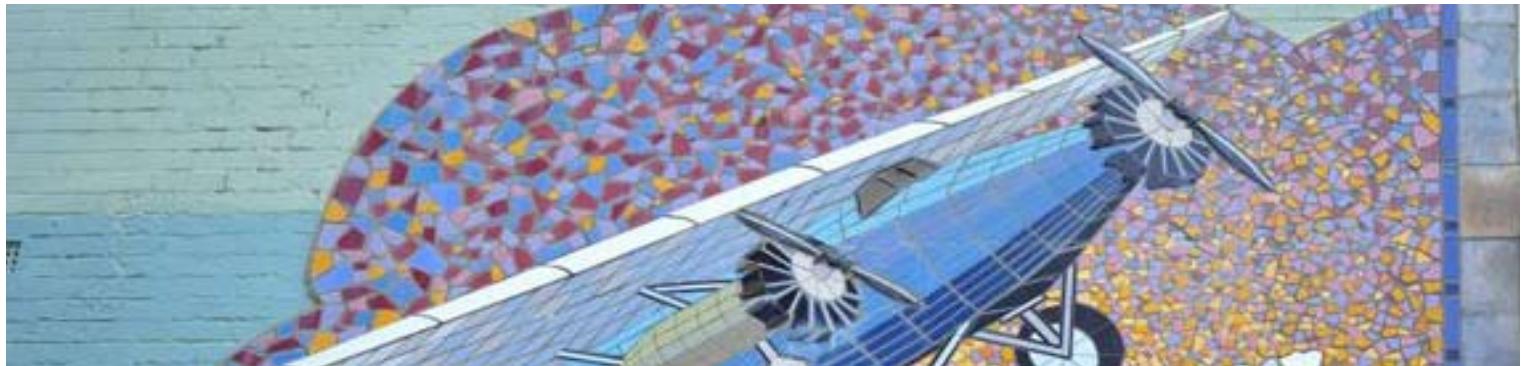
## Acknowledgements

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.

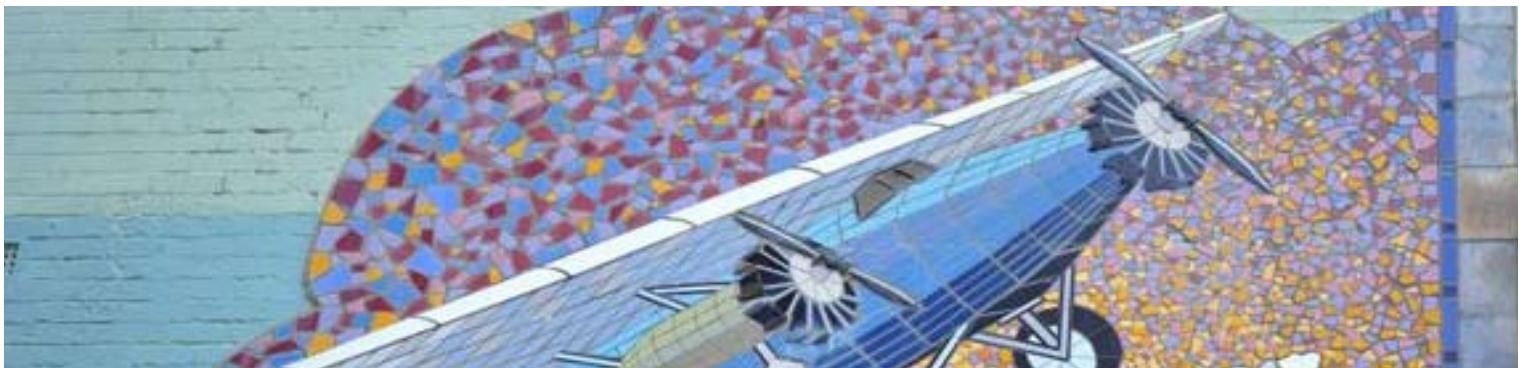
## 6.0

### 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

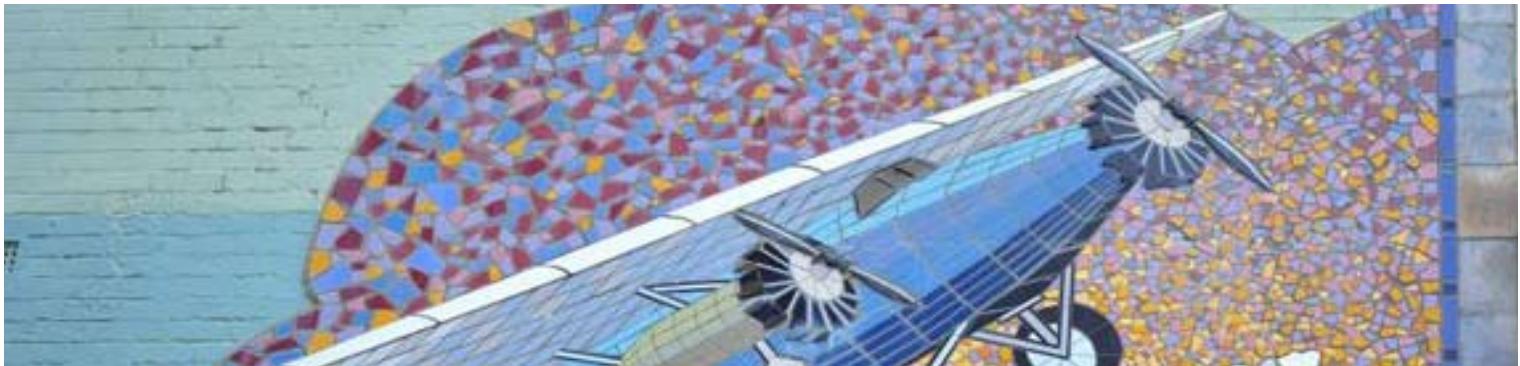
##### Public art objectives

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:<sup>1</sup>

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.

<sup>1</sup> 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.<sup>2</sup>

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.

<sup>2</sup> 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:<sup>3</sup>

- **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.

<sup>3</sup> 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

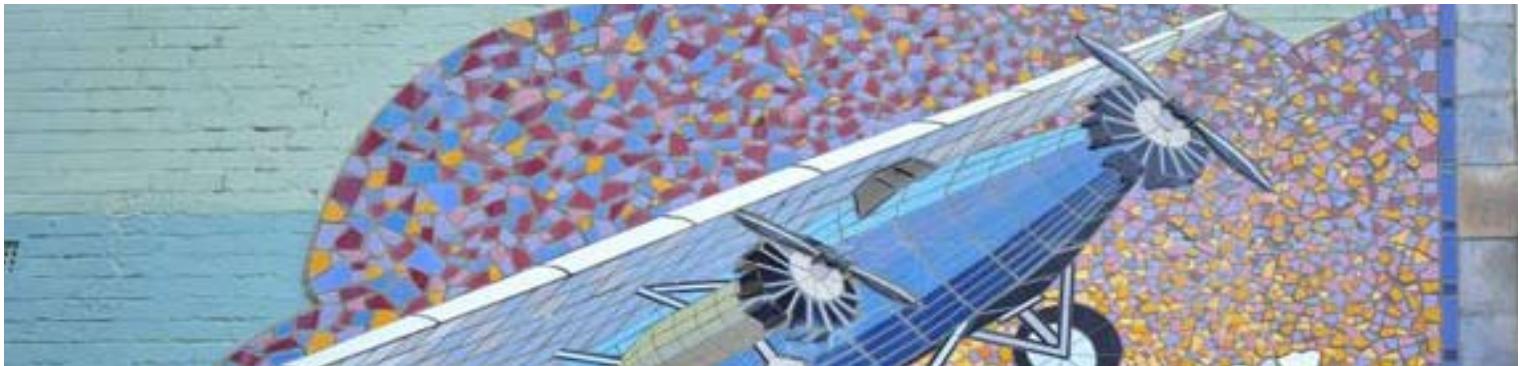
### Disposal of public artworks

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:<sup>4</sup>

- 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 brief<sup>5</sup> 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

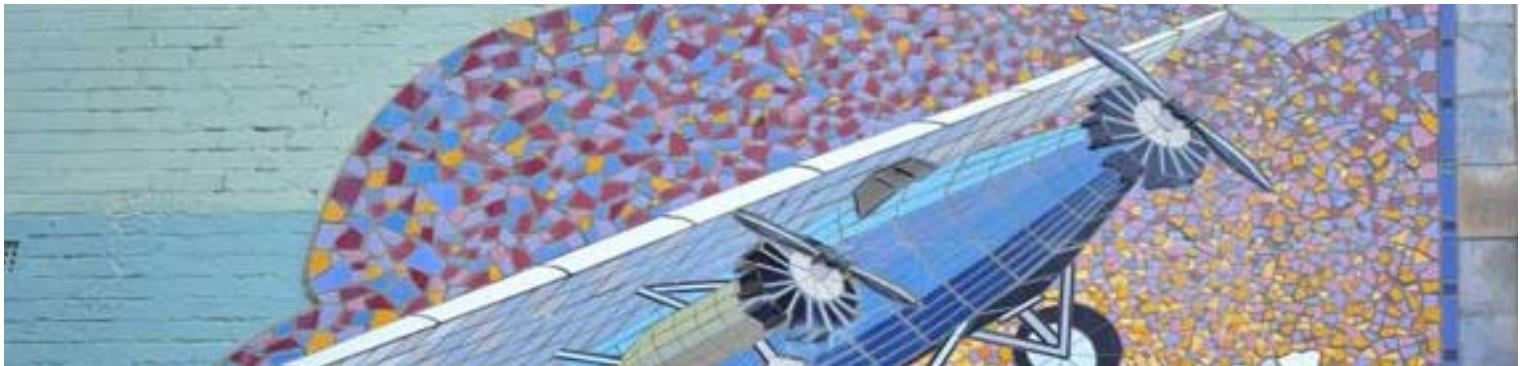
The Council will describe in the artist's brief how the Council's staff will be involved in the delivery of the project. A Project Manager/Coordinator will be appointed to liaise with the artist throughout the duration of the project. The artist's brief will also contain a description of the various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

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

<sup>5</sup> 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 individual<sup>6</sup>
- 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

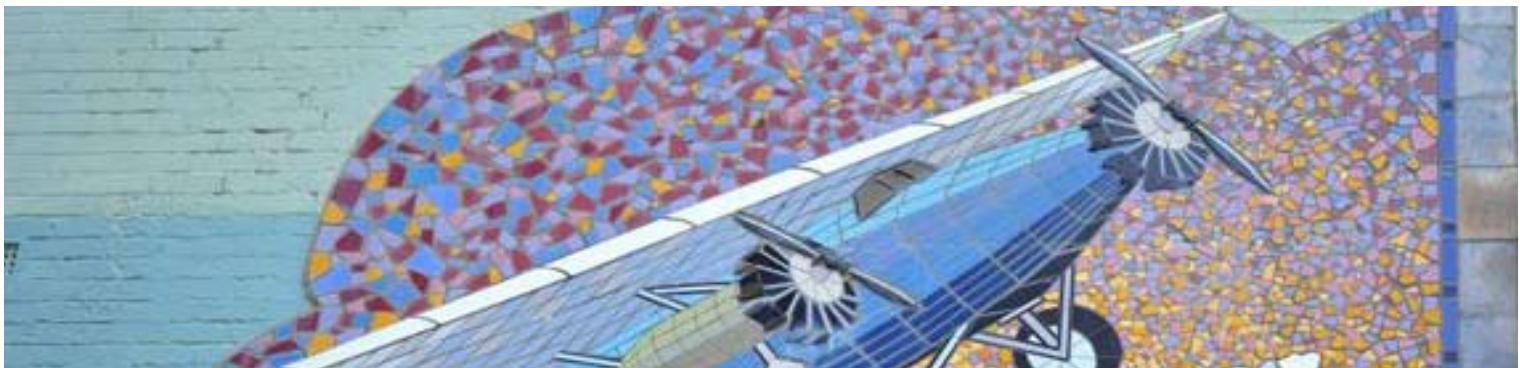
Some public artworks may lose community appeal or become superfluous for various reasons (e.g. risk/legal considerations, poor condition, and diminished aesthetic value). An artwork may also need to be removed from public display or relocated to another area due to changes made to its physical surroundings.

A work may be considered for removal when:<sup>7</sup>

- 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

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

<sup>7</sup> 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*.





**RANDWICK CITY COUNCIL**

**30 Frances Street**

**Randwick NSW 2031**

**[www.randwick.nsw.gov.au](http://www.randwick.nsw.gov.au)**

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## Annexure 4 – Limitation of Liability

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- (a) Perpetual Corporate Trust Limited ACN 000341533 (**Trustee**) enters into this document in its capacity as trustee of the Scape Australia (Kingsford) 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 4, 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 4 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 4 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 4.
- (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 4.
- (j) In this Annexure 4, '**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.

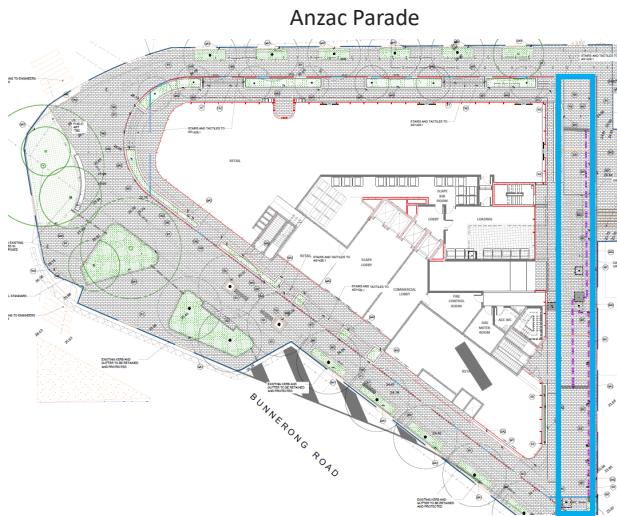
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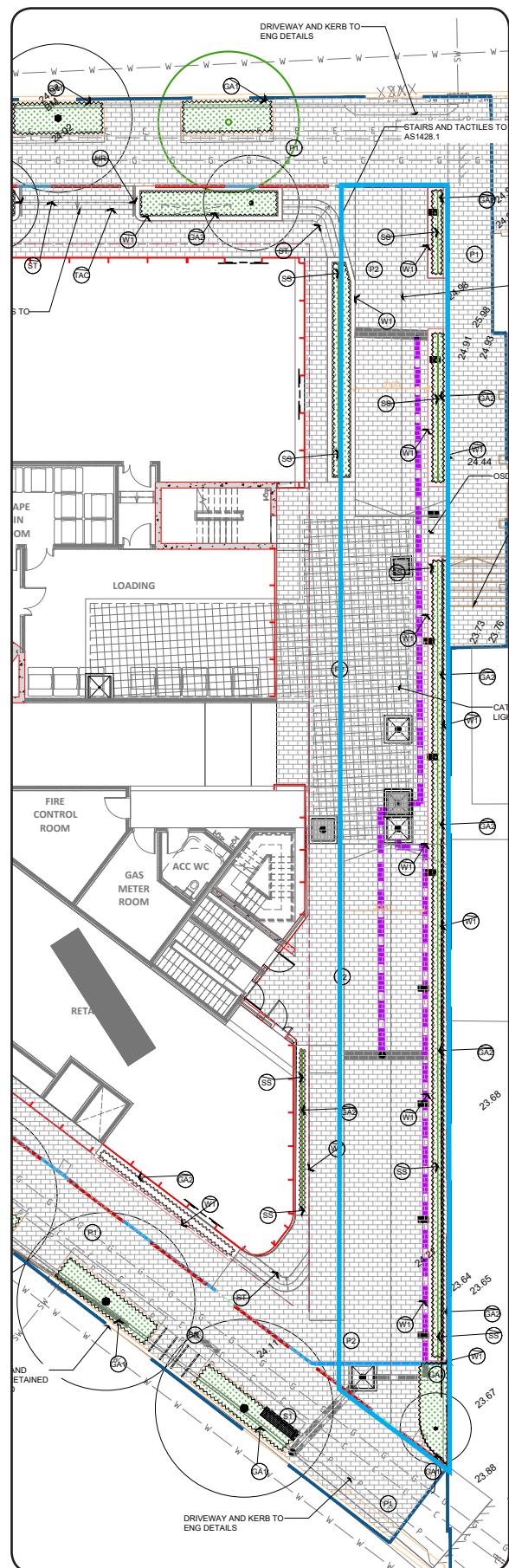
## **Annexure 5 – Community Link Plan**

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## Annexure 5 Community Link Plan



Location Plan



### Key

Extent of Community Link

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## Execution page

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**Executed as a deed**

Dated:

**Signed, sealed and delivered** by **Randwick City Council** by its General Manager in the presence of the witness whose signature appears below and in accordance with resolution dated



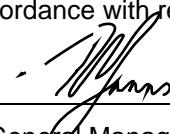
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Witness (Signature)

---

Kerry Kyriacou

Name of Witness (Print Name)



---

General Manager (Signature)

---

Therese Manns

Name of General Manager (Print Name)

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

---

Director/Secretary (Signature)

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Director (Signature)

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Name of Director/Secretary (Print Name)

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Name of Director (Print Name)