

Draft for Exhibition Date: 8 April 2022

Planning Agreement

Reference: PAR970/169

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

Anglican Church Property Trust Diocese of Sydney
ABN 95 960 399 815 (**Developer**)

—

Planning Agreement

Reference: PAR970/169

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Details

Date

Parties

Name	City of Parramatta Council
ABN	49 907 174 773
Short form name	Council
Notice details	PO Box 32 Parramatta NSW 2124 Email: council@cityofparramatta.nsw.gov.au Attention: Manager, Land Use Planning

Name	Anglican Church Property Trust Diocese of Sydney
ABN	95 960 399 815
Short form name	Developer
Notice details	PO Box Q190, QVB Post Office, Sydney NSW 1230 Email: gxe@sydney.anglican.asn.au Attention: The Secretary

Background

- A On 29 May 2018, the Developer submitted a planning proposal to Council seeking the Instrument Change.
- B Council endorsed the Planning Proposal (in an amended form) on 16 December 2019.
- C Gateway Determination was issued for the Planning Proposal (in an amended form) on 8 September 2020.
- D Once the Instrument Change becomes effective, the Developer will be entitled to lodge Development Applications to the Council for Development Consents to carry out the Development on the Land.
- E Once the Developer elects to act on a Development Consent for the Demolition Works, the Developer will be required to deliver the Public Benefits in accordance with this agreement.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this document:

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

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

Approval means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this agreement, including any determination to proceed with an activity under Part 5 of the Act;

Authority means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person, agency or entity and includes a certifier accredited under the *Building and Development Certifiers Act 2018* (NSW);

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

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

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

Bond means an insurance bond provided by an insurer licensed by the Australian Prudential Regulatory Authority (APRA) to operate in Australia or has an investment grade rating from an industry recognised rating agency such as Moody's, Standard & Poors or Bests;

Building 1 (North Tower) means the building shown as North Tower in the plans in the Civic Space Concept;

Building 2 (South Tower) means the building shown as South Tower in the plans in the Civic Space Concept;

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

Certificate of Practical Completion means the written certificate confirming the Civic Space Works, or part of the Civic Space Works, have been completed to the Council's satisfaction issued under clause 10.1 of the Construction Terms;

Civic Space Concept means the design intent and preliminary concept for the open space area on the Civic Space Land, shown in **Error! Reference source not found.D**;

Civic Space Land means that part of the Land and the Hunter Street Land, required for the Cathedral Square open space area, shown in Annexure D;

Civic Space Works means the Public Benefit works as required by clause 6.1 and described in Schedule 3;

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

Compliance Certificate means a compliance certificate as defined under section 6.4 of the Act;

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

Construction Terms means the terms set out in Schedule 4;

Contributions Plan has the same meaning as under the Act;

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

Damages means all liabilities, losses, damages, costs and expenses, including legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties;

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

Demolition Works means the demolition of the St John's Parish Church Hall;

Desired Access Point means that part of the Land (the rear of Lots 1 & 2 DP 575473 45 Hunter Street) marked 'desired access point' as shown on the plan at Annexure C;

Development means development of the Land for various purposes including commercial office spaces, residential apartments, mixed use buildings consisting of residential apartments and ground floor commercial spaces with active street frontage, and special purposes (public place of worship and ancillary purposes);

Development Application has the same meaning as in the Act, and includes a concept development application;

Development Consent has the same meaning as in the Act;

Development Contributions means development contributions payable under section 7.11 or section 7.12 of the Act;

Easement Terms means the terms of the easement in gross to be granted over the Desired Access Point as set out in Schedule 5.

Force Majeure Event means an event beyond the reasonable control of the parties, which by the exercise of due diligence the parties are not reasonably able to prevent or overcome, including but not limited to:

- (a) earthquake;
- (b) war, invasion, terrorism, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any authority;
- (c) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- (d) a flood which might at the date of deed be expected to occur less frequently than once in every 100 years (based on the 1:100 year average recurrence interval flood event), but only after the first two days of delay;
- (e) fire or explosion, but not the effects of smoke; and
- (f) after the date of deed, the Australian Commonwealth or a State Government has exercised its rights under a Law in respect of an epidemic or pandemic,

and in respect of each of the events or circumstances in paragraphs (a) to (f), which hinders or prevents construction of Building 1 (North Tower) but does not include labour or industrial disputes.

FSR means floor space ratio;

Gateway Determination means the gateway determination issued for the Planning Proposal on 8 September 2020 by the Minister's delegate extracted at Annexure A, including any alterations or amendments;

GST has the same meaning as in the GST Law;

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

Hunter Street Land means the portion of Hunter Street that is a public road and/or owned by the Council that is required for the Civic Space Work, an indicative location of which is shown on the plan at Annexure D;

Insolvent means, in relation to a party:

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

Instrument Change means an amendment to the LEP in response to the Planning Proposal, as amended in accordance with the Gateway Determination;

Land means the land described in Schedule 1;

Law means:

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

LEP means the *Parramatta Local Environmental Plan 2011*;

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

Monetary Contribution means the Public Benefit monetary contributions listed in Table 1 of Schedule 2, as required by clause 6.5 of this agreement;

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

Planning Proposal means proposal no. PP_2020_COPAR_001_00 to amend provisions of the LEP as described at Annexure A;

Public Access & Restriction on Use Licence means a Public Benefit licence in perpetuity to be agreed in respect of the Civic Space Land on substantially the same terms, in all material respects, to the Public Access & Restriction on Use Terms as required by clause 6.3;

Public Access & Restriction on Use Terms means the terms of the Public Access & Restriction on Use Licence as set out in Schedule 6;

Public Benefits means each public benefit granted, delivered or provided by the Developer under this agreement as detailed and described in clause 6;

Queensland Arcade means the arcade located at 181 Church Street Parramatta known as Strata Plan No. 16446;

Queensland Arcade Owners means the registered proprietors of the Queensland Arcade, *The Owners - Strata Plan No. 16446*;

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

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

Road Works means works to construct a permanent vehicle accessway on the Desired Access Point;

St John's Parish Church Hall means the St John's Parish church hall which is listed as heritage item I713 under the LEP, and for the purposes of this agreement means only the c.1910-11 portion of the St John's Parish church hall;

Temporary Access Licence means a Public Benefit temporary passenger and service vehicle access licence on substantially the same terms, in all material respects, to the Temporary Access Terms generally in accordance with one of the proposed routes shown in the plans at AnnexureF;

Temporary Access Terms means the terms of the Temporary Access Licence as set out in Schedule 7.

2. Interpretation

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

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

- (h) (**including**) including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (i) (**corresponding meanings**) a word that is derived from a defined word has a corresponding meaning;
- (j) (**singular**) the singular includes the plural and vice-versa;
- (k) (**gender**) words importing one gender include all other genders;
- (l) (**parts**) a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (m) (**rules of construction**) neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (n) (**legislation**) a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (o) (**time and date**) a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in the city or the State, Australia, even if the obligation is to be performed elsewhere;
- (p) (**joint and several**) an agreement, representation, covenant, right or obligation: (i) in favour of two or more persons is for the benefit of them jointly and severally, and (ii) on the part of two or more persons binds them jointly and severally;
- (q) (**writing**) a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (r) (**replacement bodies**) a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
- (s) (**Australian currency**) a reference to dollars or \$ is to Australian currency;
- (t) (**month**) a reference to a month is a reference to a calendar month; and
- (u) (**year**) a reference to a year is a reference to twelve consecutive calendar months.

3. Planning Agreement under the Act

- (a) The parties agree that this agreement is a planning agreement within the meaning of section 7.4 of the Act.
- (b) Schedule 8 of this agreement summarises the requirements for planning agreements under section 7.4 of the Act and the way this agreement addresses those requirements.

4. Application of this agreement

This agreement applies to:

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

5. Operation of this agreement

- (a) This agreement commences on and from the date it is executed by all parties.

- (b) The parties acknowledge that the proposed development of Building 1 (North Tower) and the Civic Space Works under this agreement require the carrying out of the Demolition Works and accordingly, the obligations to deliver the Public Benefits under this agreement, other than the obligation to provide a temporary accessway and grant a Temporary Access Licence under clause 6.4, do not arise until:
 - (i) Development Consent is granted for the Demolition Works; and
 - (ii) the Developer has obtained a Construction Certificate for the Demolition Works or, if a Construction Certificate is not required, otherwise commences the Demolition Works.
- (c) For the avoidance of doubt, the obligation to provide a temporary accessway and grant a Temporary Access Licence under clause 6.4 will arise on the grant of a Development Consent for the Demolition Works.

6. Public Benefits to be delivered under this agreement

6.1 Civic Space Works

Scope

- (a) The Developer will carry out the Civic Space Works in accordance with this agreement, including the Construction Terms and any Development Consent or Approval granted for the Civic Space Works.
- (b) The Civic Space Works or any part of those Works required under this agreement will be taken to have been completed, and in the case of Hunter Street Land, delivered to Council when a Certificate of Practical Completion has been issued for those Works.

Timing

- (c) The Civic Space Works or any part of those Works required under this agreement are to be completed, and in the case of Hunter Street Land, delivered to Council prior to the issue of an Occupation Certificate for any part of Building 1 (North Tower).

Public Purpose

- (d) The parties acknowledge and agree that the Civic Space Works, together with the Public Access & Restriction on Use Licence will provide for improved open areas for use by the public and will improve pedestrian amenity in the area of the Development.

6.2 Easement in Gross and Road Works

Scope

- (a) The Developer will, at no cost to Council, register against the title to the Land an easement in gross burdening that part of the Land comprising the Desired Access Point, being a portion of the land that is 6m wide and 6m in height, to facilitate a Public Benefit permanent vehicle accessway from Marsden Street to the rear parking area of Queensland Arcade.
- (b) The easement in gross required under clause 6.2(a) must be generally in accordance with the Easement Terms.
- (c) The Developer agrees that the indicative design and location of the Desired Access Point, together with the Road Works, will be included in any Development Application for Building 2 (South Tower).
- (d) The Developer agrees and acknowledges that the obligations under this clause 6.2 are relevant considerations for the Council or any other consent authority when determining a Development Application or Modification Application relating to the Land and that a failure to comply with those obligations or any inconsistency with the requirements in this clause 6.2 may constitute a reason for refusal of such a Development Application or Modification Application.

- (e) The Developer must carry out the Road Works on that part of the Land comprising the Desired Access Point in accordance with engineering standards required by Council (acting reasonably), any applicable Australian Standard and any Development Consent granted for the works.

Timing

- (f) The Developer will:
 - (i) register the easement in gross required under clause 6.2(a) and in accordance with clause 6.2(b) on the title of the relevant portion of the Land comprising the Desired Access Point); and
 - (ii) complete the Road Works,prior to the issue of an Occupation Certificate for any part of Building 2 (South Tower).
- (g) The obligation to complete the Road Works will be taken to have been satisfied when Council issues a Compliance Certificate for the Road Works.
- (h) The requirement to register an easement against the title to the Land will be satisfied when the Developer provides to the Council a copy of the relevant title search showing the registration of the instrument.

Public Purpose

- (i) The parties acknowledge and agree that the registration of the easement required under clause 6.2(a) and the completion of the Road Works are intended for use as a permanent vehicle accessway to the rear of Building 2 (South Tower) and to the rear parking area of Queensland Arcade and serves the public purpose of improving traffic flows and pedestrian amenity on Church Street, Parramatta.

6.3 Public Access & Restriction on Use Licence

Scope

- (a) The parties will enter into the Public Access & Restriction on Use Licence.

Timing

- (b) The parties agree to negotiate the final terms of the Public Access & Restriction on Use Licence so that a formal document, has been agreed in principle between the parties as at the date of this agreement and has been made available for consideration by Council prior to execution of this agreement.
- (c) The Public Access & Restriction on Use Licence must be entered into, on the terms agreed under clause 6.3(b) and the formal document agreed under that clause must be executed by the parties, upon the issue of a Construction Certificate for the Demolition Works or, if a Construction Certificate is not required, prior to the commencement of the Demolition Works, but the terms of the Public Access & Restriction on Use Licence are not required to commence until the Civic Space Works are complete.

Public Purpose

- (d) The parties acknowledge and agree that the Public Access & Restriction on Use Licence together with the Civic Space Works will provide for improved open areas for use by the public and will improve pedestrian amenity in the area of the Development

6.4 Temporary Access Licence

Scope

- (a) The Developer will grant to the Queensland Arcade Owner the Temporary Access Licence.
- (b) The Developer agrees that the final detailed design and location within the Land of the temporary accessway, that will be the subject of the Temporary Access Licence, will be included in any Development Application for Building 1 (North Tower).

- (c) Only after the Queensland Arcade Owner enters into the Licence will the Developer, at no cost to Council or any other entity, construct the temporary accessway that will be the subject of the Temporary Access Licence.
- (d) Council agrees to use its best endeavours to facilitate the discussions and negotiations between the Developer and the Queensland Arcade Owner.
- (e) Council may, acting reasonably, agree to waive the requirements under clauses 6.4(a) to (c) if:
 - (i) the Queensland Arcade Owner does not consent to the Temporary Access Licence; and
 - (ii) the Queensland Arcade Owner elects not to be a party to the Temporary Access Licence.

Timing

- (f) On the condition that the Queensland Arcade Owner enters into the Licence, the construction of the temporary accessway and the grant of the Temporary Access Licence in accordance with this clause 6.4, will be completed within 6 months of any Development Consent being granted for the Demolition Works, or at a later date as agreed by Council, acting reasonably.

Public Purpose

- (g) The parties acknowledge and agree that the Temporary Access Licence is intended for use as a temporary vehicular accessway for passenger and service vehicles to the rear of Queensland Arcade until the earlier of:
 - (i) 10 years after the date of the Temporary Access Licence; or
 - (ii) the date on which permanent vehicular access to the Licensee's property is made available at the rear of land at 41, 43 and 45 Hunter Street, Parramatta, and serves the public purpose of improving traffic flows and pedestrian amenity in the locality.

6.5 Monetary Contribution

- (a) The Developer agrees that it will make the Monetary Contribution to Council:
 - (i) for the public purpose specified in clause 2 in Schedule 2;
 - (ii) in the amount referred to in column 1 of Table 1 in Schedule 2; and
 - (iii) at the times referred to in column 2 of Table 1 in Schedule 2.
- (b) The amount of the Monetary Contribution is to be indexed from the date of this agreement in accordance with the following formula:

$$(\text{Monetary Contribution amount} \times \text{CPI}) / \text{LCPI}$$
 where:

Monetary Contribution amount = the amount referred to in column 1 of Table 1 in Schedule 2; and

CPI = the last CPI published before the due date for payment of that Monetary Contribution; and

LCPI = the last CPI published before the date of this agreement,

provided that CPI is greater than LCPI.
- (c) A Monetary Contribution is made for the purposes of this agreement when the Council receives the full amount of the contribution payable under this agreement 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 the Council.

7. Application of sections 7.11, 7.12 and 7.24 of the Act to the Development

- (a) This agreement does not exclude the application of:
 - (i) section 7.11 of the Act to the Development; or
 - (ii) section 7.12 of the Act to the Development; or
 - (iii) section 7.24 of the Act to the Development.
- (b) The Public Benefits are not to be taken into consideration in determining a Development Contribution.

8. Registration of this agreement

8.1 Developer Interest

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

8.2 Registration of this agreement

- (a) The Developer agrees to procure the registration of this agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register of the Land in accordance with section 7.6 of the Act.
- (b) The Developer, at its own expense, must:
 - (i) procure the lodgement of this agreement with the Registrar-General as soon as reasonably practicable after this agreement is executed by all parties, but in any event, no later than 20 Business Days after that date; and
 - (ii) procure the registration of this agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this agreement is lodged for registration; and
 - (iii) provide documentary evidence that the registration of this agreement has been completed to Council within 5 Business Days of receiving confirmation that the registration has occurred.
- (c) The Developer at its own expense will, promptly after the execution of this agreement, take all practical steps, and otherwise do anything that the Council reasonably requires to procure:
 - (i) the consent of each person who:
 - (A) has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or
 - (B) is seized or possessed of an estate or interest in the Land,
 - (ii) the execution of any documents;
 - (iii) the production of the relevant duplicate certificates of title; or
 - (iv) the production of any other document required;to enable the registration of this agreement in accordance with this clause 8.2.

8.3 Removal from Register

The Council will provide a release and discharge of this agreement so that it may be removed from the folios of the Register for the Land (or any part of it) provided the Council is satisfied the Developer has duly fulfilled its obligations under this agreement, and is not otherwise in default of any of the obligations under this agreement.

8.4 Caveat

- (a) This clause 8.4 is only applicable if the Developer fails to register this agreement under clause 8.2.

- (b) The Developer acknowledges and agrees that:
 - (i) when this agreement is executed, the Council is deemed to have acquired and the Developer is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently the Council will have a sufficient interest in the Land in respect of which to lodge a caveat over the Land notifying that interest; and
 - (ii) it will not object to the Council lodging a caveat in the relevant folios of the Register for the Land nor will it seek to remove any caveat lodged by the Council provided the caveat does not prevent registration of any dealing or plan other than a transfer.
- (c) The Council must register a withdrawal of any caveat in respect of the Land within 5 Business Days after the Developer complies with clause 8.2 and must not lodge any other caveats on the titles to any of the Land.
- (d) The Council represents and warrants that it will as the caveator, promptly provide consent to the registration of any dealing or plan on the Land if that dealing or plan does not have any detrimental impact upon the intent of the caveat registered under this clause.

9. Review of this agreement

- (a) This agreement may be reviewed or modified by agreement between the parties using their best endeavours and acting in good faith.
- (b) No modification or review of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement.
- (c) A party is not in breach of this agreement if it does not agree to an amendment to this agreement requested by a party in, or as a consequence of, a review.

10. Dispute Resolution

10.1 Reference to Dispute

If a dispute arises between the parties in relation to this agreement, the parties must not commence any court proceedings relating to the dispute unless the parties have complied with this clause 10, except where a party seeks urgent interlocutory relief.

10.2 Notice of Dispute

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

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

10.3 Representatives of Parties to Meet

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

arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

10.4 Further Notice if Not Settled

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

10.5 Mediation

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

- (a) the parties must agree to the terms of reference of the mediation within 15 Business Days of the receipt of the Determination Notice, the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply;
- (b) the mediator will be agreed between the parties, or failing agreement within 15 Business Days of receipt of the Determination Notice, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) the mediator appointed pursuant to this clause 10.5 must:
 - (i) have reasonable qualifications and practical experience in the area of the dispute; and
 - (ii) have no interest or duty which conflicts or may conflict with his or her function as a mediator he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) the mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (e) the parties must within 15 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation (except if a resolution of the Council is required to appoint a representative, the Council must advise of the representative within 5 Business Days of the resolution);
- (f) the parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (g) in relation to costs and expenses:
 - (i) each party will bear its own professional and expert costs incurred in connection with the mediation; and
 - (ii) the costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

10.6 Expert determination

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

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

- (b) the expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause 10.6;
- (c) the determination of the dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (d) the expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (e) each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs; and
- (f) any determination made by an expert pursuant to this clause 10.6 is final and binding upon the parties except unless:
 - (i) within 20 Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and commences litigation; or
 - (ii) the determination is in respect of, or relates to, termination or purported termination of this agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal.

10.7 Litigation

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

10.8 No suspension of contractual obligations

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

11. Enforcement

11.1 Default

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this agreement, it may give notice in writing to the other party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 15 Business Days.
- (b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.
- (c) If a party disputes the Default Notice it may refer the dispute to dispute resolution under clause 10 of this agreement.

11.2 Bank Guarantees

- (a) To secure the completion of the Civic Space Works the Developer must, prior to the issue of a Construction Certificate for the Demolition Works or if no Construction Certificate is required, prior to commencement of the Demolition Works, provide to the Council a Bank Guarantee or Bank Guarantees in an amount equivalent to the estimated costs of the Civic Space Works determined by a qualified Quantity Surveyor, having regard to the detailed design for those Works prepared and approved by Council in accordance with the Construction Terms and any Development Consent.
- (b) The Council may reject any Bank Guarantee that contains errors, or if it has received the Bank Guarantee require the Developer at any time to obtain a replacement Bank Guarantee that rectifies any such errors or otherwise obtain rectification of the errors. The

Developer must provide the replacement Bank Guarantee, or otherwise obtain rectification of the errors, within 5 Business Days of receiving the Council's request.

- (c) The Council may call on a Bank Guarantee provided under this clause if:
- (i) subject to clause 11.2(d), the Developer carries out the Demolition Works and has not commenced the construction of Building 1 (North Tower) within 6 months after demolishing any part of the St John's Parish Church Hall;
 - (ii) subject to clause 11.2(d), the Developer carries out the Demolition Works and has not completed the construction of Building 1 (North Tower) within 4 years after demolishing any part of the St John's Parish Church Hall;
 - (iii) the Developer is in material or substantial breach of this agreement and has failed to rectify the breach within a reasonable period of time after having been given reasonable notice (which must not be less than 15 Business Days) in writing to do so in accordance with clause 11.1 of this agreement; or
 - (iv) the Developer becomes Insolvent.
- (d) If a Force Majeure Event occurs after demolition of the St John's Parish Church Hall:
- (i) the Developer must give Council prompt notice of reasonable particulars of the Force Majeure Event and the probable extent of any delays to the construction of Building 1 (North Tower);
 - (ii) the parties must meet to discuss in good faith appropriate timeframes for commencement or completion of the construction of Building 1 (North Tower), having regard to the likely delays caused by the Force Majeure Event; and
 - (iii) the periods of time referred to in clause 11.2(c)(i) and (ii) will be extended in accordance with the discussions and agreement between the parties.
- (e) Subject to this clause and the provisions of this agreement, the Council may apply the proceeds of a Bank Guarantee in satisfaction of:
- (i) any obligation of the Developer under this agreement that is secured by the Bank Guarantee; and
 - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this agreement.
- (f) Within 20 Business Days of each anniversary of a Bank Guarantee provided under this clause 11.2, if requested by the Council, the Developer must provide Council with one or more replacement Bank Guarantees (**Replacement Bank Guarantee**) in an amount calculated in accordance with the following:

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

Where:

A is the amount of the Replacement Bank Guarantee,

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

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

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

provided A is greater than B.

- (g) At least 15 Business Days prior to the expiry of any Bank Guarantee provided under this clause 11.2, the Developer must provide Council with one or more replacement Bank Guarantees in the amount of the Bank Guarantee that is due to expire, plus any increase required under clause 11.2(f).
- (h) At any time following the provision of a Bank Guarantee under this clause 11.2, the Developer may provide the Council with one or more replacement Bank Guarantees

totalling the amount of all Bank Guarantees required to be provided under this clause 11.2 for the time being.

- (i) On receipt of a replacement Bank Guarantee under clause 11.2(f), (g) or (h), the Council must release and return to the Developer, as directed, the Bank Guarantee(s) which it holds that have been replaced within 20 Business Days.
- (j) The Council must within 10 Business Days return a Bank Guarantee provided to secure the Civic Space Works, when requested by the Developer, provided that a Certificate of Practical Completion has been issued for the Civic Space Works;
- (k) Nothing in this clause 11.2 prevents or restricts the Council from taking any enforcement action in relation to:
 - (i) any obligation of the Developer under this agreement; or
 - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this agreement,

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

11.3 Compulsory Acquisition

- (a) If the Developer does not grant the easement in gross required under clause 6.2(a), the Council may compulsorily acquire that interest in the Land, in which case the Developer consents to the Council compulsorily acquiring that interest for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedures in the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (b) Clause 11.3(a) constitutes an agreement for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (c) The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of an interest under clause 11.3(a).
- (d) The Developer must pay the Council, promptly on demand, an amount equivalent to all costs, including legal costs, incurred by the Council acquiring the whole or any part of the relevant land or interest under clause 11.3(a).
- (e) For the avoidance of doubt, this clause 11.3 entitles Council to acquire only the interest in the Land required to be provided under clause 6.2(a), being an easement in gross over that part of the Land comprising the Desired Access Point that is generally in accordance with the Easement Terms.

11.4 Restriction on the issue of Certificates

- (a) In accordance with section 6.8 of the Act and clause 21 of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* the requirement to provide a Bank Guarantee to secure the Civic Space Works under clause 11.2(a) must be complied with prior to the issue of a Construction Certificate for the Demolition Works or for any part of Building 1 (North Tower).
- (b) In accordance with section 6.10(2) of the Act and clause 48 of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*:
 - (i) the requirement to Complete the Civic Space Works under clause 6.1 must be complied with prior to the issue of an Occupation Certificate for any part of Building 1 (North Tower); and
 - (ii) the requirements to complete the Road Works and grant the easement in gross over the Desired Access Point under clause 6.2 must be complied with prior to the issue of an Occupation Certificate for any part of Building 2 (South Tower); and
 - (iii) the requirement to pay the Public Benefit monetary contributions under clause 6.5 must be complied with prior to the issue of an Occupation Certificate for any part of Building 1 (North Tower).

11.5 General Enforcement

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

12. Assignment and Dealings

12.1 Assignment

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

12.2 Transfer of Land

A party (**Transferor**) may not transfer, assign or dispose of the whole or any part of its right, title or interest in the Land (present or future) or in the Development to another person (**Transferee**) unless before it sells, transfers or disposes of that right, title or interest:

- (a) the Transferor satisfies the Council that the proposed Transferee is financially capable of complying with the Transferor's obligations under this agreement;
- (b) the Transferor satisfies the Council that the rights of the Council will not be diminished or fettered in any way;
- (c) the Transferee delivers to the Council a novation deed signed by the Transferee in a form and of such substance as is acceptable to the Council containing provisions under which the Transferee agrees to comply with all the outstanding obligations or continuing obligations of the Transferor under this agreement;
- (d) the Transferee provides to Council any Bank Guarantees required to be provided under this agreement;
- (e) any default under any provisions of this agreement has been remedied or waived by the Council, on such conditions as the Council may determine, and
- (f) the Transferor and the Transferee pay the Council's reasonable costs in relation to the assignment.

13. Approvals and consents

Except as otherwise set out in this agreement, and subject to any statutory obligations, each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this agreement.

14. No fetter

14.1 Discretion

This agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council, including, but not limited to, any statutory power or discretion of

the Council relating to the Planning Proposal, the Instrument Change, or any application lodged by the Developer for Development Consent (all referred to in this agreement as a **Discretion**).

14.2 No fetter

No provision of this agreement is intended to constitute any fetter on the exercise of any Discretion. If, contrary to the operation of this clause 14, any provision of this agreement is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the parties agree:

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

14.3 Planning Certificates

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

14.4 Hunter Street Land

- (a) Nothing in this agreement constitutes any agreement by Council to the closure, sale, or transfer of any part of Hunter Street, Parramatta, or any part of the Hunter Street Land.
- (b) For the avoidance of doubt, if any part of Hunter Street, Parramatta, or any part of the Hunter Street Land is required for the Civic Space Works:
 - (i) the Developer must comply with all Laws and obtain all Development Consents or Approvals necessary for the redevelopment of that land;
 - (ii) the Developer must make an application to Council for closure of the relevant portion of Hunter Street or that part of the Hunter Street Land in accordance with the provisions of the *Roads Act 1993* (NSW);
 - (iii) Council must assess the application on its merits, in accordance with relevant Laws and policies;
 - (iv) Council may grant or refuse the application at its discretion, subject to its compliance with any applicable Law;
 - (v) the Developer must pay all relevant fees associated with the application for closure; and
 - (vi) the Developer must attend to any procedural requirements to progress the road closure application.

15. Notices

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

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by email at the address, or at the address last notified by the intended recipient to the sender after the date of this agreement:
 - (i) to the City of Parramatta Council:

PO Box 32, Parramatta, NSW 2124

Email: council@cityofparramatta.nsw.gov.au

Attention: Manager, Land Use Planning

- (ii) to the Secretary, Anglican Church Property Trust Diocese of Sydney:
PO Box Q190, QVB Post Office, Sydney NSW 1230
Email: gxe@sydney.anglican.asn.au
Attention: Greg Ellem
- (c) is taken to be given or made:
 - (i) in the case of hand delivery, when delivered;
 - (ii) in the case of delivery by post, 5 Business Days after the date of posting (if posted to an address in the same country) or 10 Business Days after the date of posting (if posted to an address in another country); and
 - (iii) in the case of an email when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above; and
- (d) if under clause 15(c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

16. General

16.1 Relationship between parties

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

16.2 Time for doing acts

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

16.3 Further assurances

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

16.4 Variation

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

16.5 No assignment

A party cannot assign or otherwise transfer its rights under this agreement without the prior written consent of the other party.

16.6 Counterparts

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

16.7 Legal expenses and stamp duty

- (a) The Developer must pay the Council's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution, carrying into effect, enforcement and release and discharge of this agreement, and any other agreement, deed or licence that is necessary to give effect to the arrangements recorded in this agreement, including the reasonable costs of obtaining any legal advice in connection with this agreement, to a maximum amount of \$55,000 for negotiation, preparation and execution of this agreement and any associated legal advice, and any other agreement, deed or licence that is necessary to give effect to the arrangements recorded in this agreement.
- (b) The Developer must pay the costs and disbursements as required under clause 16.7(a) no later than 10 Business Days after receiving a demand from the Council to pay such costs.
- (c) The Developer agrees to pay or reimburse the costs and expenses incurred by Council in connection with the advertising and exhibition of this agreement in accordance with the Act.
- (d) The Developer agrees to pay Council any administrative fees as required by Council, acting reasonably, in connection with the administration of this agreement.

16.8 Entire agreement

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

16.9 Representations and warranties

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

16.10 Severability

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

16.11 Invalidity

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

16.12 Waiver

- (a) A right or remedy created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not

constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

- (b) The fact that a party fails to do, or delays in doing, something the party is entitled to do under this agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

16.13 GST

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

16.14 Governing law and jurisdiction

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

Schedule 1 - Land

Lot Reference / Identifier	Address	Registered Proprietor as at the date of this Agreement
Lots 1 and 2 DP 1110057 (Auto Consol 6894-134)	195 Church Street, Parramatta	Anglican Church Property Trust Diocese of Sydney
Lots E through to I DP 15108 (Auto Consol 15461-22)	65-75 Macquarie Street, Parramatta	Anglican Church Property Trust Diocese of Sydney*
Lot J DP 15108 (Auto Consol 15461-22)	77 Macquarie Street, Parramatta	Anglican Church Property Trust Diocese of Sydney*
Lot K DP 15108 (Auto Consol 15461-22)	79 Macquarie Street, Parramatta	Anglican Church Property Trust Diocese of Sydney*
Lot M DP 15108 (Auto Consol 15461-22)	38 Hunter Street, Parramatta	Anglican Church Property Trust Diocese of Sydney*
Lots 1 and 2 DP 575473	45 Hunter Street, Parramatta	Anglican Church Property Trust Diocese of Sydney

* As at the date of exhibition of the agreement, part of the Land is owned by persons related to the Developer. Arrangements are being made to transfer that land to the Developer. If the land is not owned by the Developer at the time the agreement is executed, the owners of the land will be parties to this agreement and the following definitions will be inserted into clause 2 of the agreement.

Developer means the Anglican Church Property Trust Diocese of Sydney and the Landowners, jointly and severally.

Landowners means all registered proprietors of the Land as shown in the table to Schedule 1.

Schedule 2 - Monetary Contribution

1. Table 1

Monetary Contribution	Time for making the Monetary Contribution
\$1,100,000	Prior to the issue of an Occupation Certificate for any part of Building 1 (North Tower).
\$3,500,000	Prior to the issue of an Occupation Certificate for any part of Building 1 (North Tower).
\$4,600,000 IN TOTAL	

2. Public Purpose

- 2.1 The Monetary Contributions required under this agreement will be used towards improvement of public domain areas in the Parramatta CBD.
- 2.2 The parties acknowledge and agree that the Monetary Contributions may be used in addition to the Development Contributions Council expects to receive under a Contributions Plan applicable to the Parramatta CBD, to deliver works and items that will not be fully funded under the Contributions Plan.
- 2.3 Council agrees to use its best endeavours to apply the Monetary Contributions, in addition to Development Contributions it receives under a Contributions Plan, towards the items identified in Table 2.
- 2.4 The Developer agrees that it will not make any Claim from Council for refunds or offsets of or against the Monetary Contributions under this agreement or Development Contributions required in connection with the Development, on the basis that the Monetary Contributions and Development Contributions are to be provided for the same public purpose.

Table 2¹

Item/description	Location	Estimated Cost	Reason for inclusion
Table C3 – Public domain works²			
ITEM 3 - Macquarie Street public domain works – including paving, tree cells and multi-function poles Macquarie St between Pitt & Church St ³		\$9,815,040	■ Adjacent to site
ITEM 13 - Hunter Street public domain works – including paving and tree cells Hunter St between Pitt St & St John's Church ⁴		\$7,795,040	■ Adjacent to site

Schedule 3 - Civic Space Works

¹ Source: draft CBD Contributions Plan.

² Excluding any works along any frontage of the Land that would be required by standard conditions of any Development Consent.

³ This is the Developers second preference for which the public purpose Monetary Contributions should be put.

⁴ This is the Developers first preference for which the public purpose Monetary Contributions should be put.

1. Civic Space Works

- 1.1 The Civic Space Works are all works, including planning, engineering, design, survey, building, construction, landscaping, and installation of services and lighting required to construct and complete the open space area on the Civic Space Land, including an approved interface between the Development, the Civic Space Works and Hunter Street in accordance with:
- the Civic Space Concept and Performance Specifications in Annexures E and F;
 - the table at Part 2 of this Schedule 3;
 - the approved design for the Civic Space Works, developed and finalised in accordance with the Construction Terms;
 - the Construction Terms; and
 - any Development Consent or Approval for the Civic Space Works.

2. New Square

Public Purpose	Public Open Space / Active Recreation
Development area / staging rationale	Civic Space Works to be completed prior to the issue of an Occupation Certificate for Building 1 (North Tower)
Description of the Civic Space Works	The new square provides a new setting for the St John's Cathedral, an extension to Parramatta Square towards Marsden Street and enhanced public connections and open space circulation to Hunter and Marsden Streets, Centenary Square, Parramatta Square and Macquarie Street.
Core elements	<p>Civic Space Works to be delivered include:</p> <ul style="list-style-type: none"> ■ Soft and hard landscaping similar to Parramatta Square. ■ Lighting (P3 Lighting) (25 no.). ■ Large tree planting 2000 litre pots (10 no.). ■ Additional boundary, screen and specimen trees, 200-400L size (6-8 as required). ■ Bench seats under trees (12 no.). ■ Drinking fountain (2 no.). ■ Electrical services for popup events at two locations: 1x3 phase power + 2x20 Amp, 2x15 Amp and 2x10Amp power outlets at each location (locations TBC). ■ Automatic irrigation for all planting and trees and QCV connections (60m centres) for cleaning / maintenance purposes. ■ Access and bollards (at various locations including Hunter Street entry) (34 no.) allow for Hostile Vehicle Mitigation as required. ■ Garbage Bins (4 no.). ■ Signage (allowance). ■ Artwork and interpretation (allowance). ■ Indicative concept plans as shown in Annexure D. ■ Performance Specifications as shown in Annexure E. ■ Final plan as per Development Consent.
Area	1466 sqm (approximate), refer to Annexure D.

Schedule 4 - Construction Terms

1. Interpretation

For the purposes of this Schedule 4, the defined terms in clause 1 of this agreement and the Interpretation principles in clause 2 of this agreement will apply, unless context indicates a contrary intention:

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

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

Defects Liability Period means in respect of each item of building works which together comprise the Works the period of 12 months from the date on which the Certificate of Practical Completion is issued for the Works.

Detailed Design means the final specifications and finishes for the Works prepared in accordance with clause 5 of this Schedule and will include the design of the Works, the location for the Works, installation specifications.

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

Site Audit Report and **Site Auditor** have the same meaning as in the *Contaminated Land Management Act 1997* (NSW).

Superintendent means the Superintendent appointed under any Construction Contract.

Works includes any part of the Civic Space Works.

2. Requirements of Authorities and Approvals

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

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

2.2 If the Developer requires any Approvals in order to carry out the obligations under this agreement, then the Developer will acquire all Approvals necessary to carry out the Works at their own cost.

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

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

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

3. Costs of Works

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

4. Project Management and Contractor Engagement

- 4.1 The Developer will be responsible for managing the Works.
- 4.2 The Developer will ensure that any contractor engaged to carry out the Works agrees to:
 - (a) carry out the obligations in these Construction Terms as part of any Construction Contract; and
 - (b) extend an invitation to a Council representative to be present at each on-site meeting attended by the Superintendent.

5. Design Development

- 5.1 The Detailed Design for the Civic Space Works must be prepared by the Developer in accordance with:
 - (a) this agreement;
 - (b) the scope of the works set out in Schedule 3;
 - (c) the Civic Space Concept;
 - (d) the Performance Requirements in Annexure E; and
 - (e) any relevant Australian Standard.
- 5.2 Notwithstanding clause 5.1 of this Schedule, the Civic Space Works must be designed so that the Civic Space Land is compatible with the Parramatta Square open space and soft and hard landscaping is of a quality and standard equivalent to that used by Council in developing the Parramatta Square open space.
- 5.3 The Developer must engage a qualified landscape architectural organisation with a proven track-record in design and delivery of high-end CBD plaza settings.
- 5.4 Prior to submitting any Development Application or application for any other Approval for the Civic Space Works, the Developer must provide a draft Detailed Design to Council.
- 5.5 Council may request any amendments to the draft Detailed Design, provided the Council's suggested amendments are consistent with the requirements of clauses 5.1 and 5.2 of this Schedule and are made within 10 Business Days of receiving the draft Detailed Design.
- 5.6 The Developer agrees that it will make the Council's suggested amendments to the draft Detailed Design prior to lodging a Development Application for the Civic Space Works, provided the suggested amendments are consistent with the requirements of clauses 5.1 and 5.2 of this Schedule.
- 5.7 For the avoidance of doubt:
 - (a) any acceptance by the Council of the Detailed Design for the Civic Space Works under this clause 5 is not to be taken as approval of or to any Development Application or application for Approval for those works; and
 - (b) any proposal to depart from the requirements in clauses 5.1 and 5.2 of this Schedule must be negotiated with Council prior to a Development Application being submitted and this agreement may need to be amended to address the variation to the concept design.

6. Construction Drawings

- 6.1 Prior to applying for a Construction Certificate for any Works, or if a Construction Certificate is not required, prior to commencement of the Works, the Developer must provide to Council for approval draft construction drawings for those Works prepared in accordance with the Detailed Design.
- 6.2 Within 10 Business Days of receiving the draft construction drawings, Council may, acting reasonably, require a variation to the construction drawings to comply with the Detailed Design, the Building Code of Australia, any relevant Australian Standard or any requirements in clauses 5.1 and 5.2 of this Schedule.
- 6.3 The Developer must amend the construction drawings in accordance with a requirement issued by Council under clause 6.2 of this Schedule.
- 6.4 For the avoidance of doubt, any approval of the construction drawings provided by the Council under this clause 6 is not to be taken as approval of or to any Construction Certificate for the Works.

7. Review of Construction Documents

The Developer acknowledges and agrees that:

- (a) Council may, but is not obliged to critically analyse the draft Detailed Design and draft construction drawings for the Works in accordance with clauses 5 and 6 of this Schedule;
- (b) Council is not required to carry out any design work or contract any third party to carry out design work;
- (c) Council is not responsible for any errors, omissions or non-compliance with any Law or the requirement of any Authority by reason of approving the Detailed Design and construction drawings for the Works;
- (d) Council is not liable for any liability, loss or cost incurred by the Developer, or any Claim made against the Developer, because of any defect in the design or construction of any part of the Works that does not comply with the Building Code of Australia, any relevant Australian Standard or with Annexure E; and
- (e) no comment, review or information supplied to the Developer by Council alters or alleviates the obligation to construct and complete the Works in accordance with this agreement.

8. Carrying out of Works

8.1 Communication

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

8.2 Standard of Works

- (a) The Developer must procure the execution and completion of the Works and must cause the Builder to, use suitable new materials and proper and tradesman like workmanship when carrying out the Works.
- (b) The Works must be diligently progressed to Practical Completion in accordance with:
 - (i) the Detailed Design and construction drawings approved by Council under this Schedule;
 - (ii) any Development Consent and Approvals applying to the Works;
 - (iii) the requirements of all Laws, including without limitation, workplace health and safety legislation; and
 - (iv) the obligations of this agreement.

- (c) The Developer must not commence construction of any Works until it has given the Council copies of all Approvals necessary for the construction of the Works.

9. Inspection

- 9.1 The Council may enter the Land or any part of the Land on which the Works are located to inspect the progress of the Works, subject to:
 - (a) the terms of the Construction Contract (save for any clause of the Construction Contract which prevents the Council from accessing the Land);
 - (b) giving reasonable notice to the Developer;
 - (c) complying with all reasonable directions of the Developer; and
 - (d) being accompanied by a representative of the Developer, or as otherwise agreed.
- 9.2 The Council may, acting reasonably, within 5 Business Days of carrying out an inspection notify the Developer of any defect or non-compliance of the Works with the Building Code of Australia, any relevant Australian Standard or with approved plans.
- 9.3 Following receipt of notification of any defect or non-compliance under clause 9.2 of this Schedule, the Developer agrees that it will at the request of Council (acting reasonably) take all reasonable steps to enforce defect remedies against the Builder.

10. Completion

10.1 Practical Completion

- (a) When the Developer considers that the Works, or any part of the Works, are complete, the Developer must send a Notice to the Council accompanied by complete works as executed plans, any relevant certificates or consents of any public utility authority and a request for written certification from the Council that the Works are complete.
- (b) Within 10 Business Days of receipt of the notice under clause 10.1(a) of this Schedule, the Council will carry out an inspection of the Works and will, acting reasonably, either:
 - (i) provide written certification to the Developer that the Works have been completed; or
 - (ii) notify the Developer of any additional information required or matters which must be addressed by the Developer in accordance with clause 10.1(a) of this Schedule prior to the certification being issued.
- (c) If the Developer is required to provide additional information or address any matters under clause 10.1(b)(ii) of this Schedule, the Developer will provide that information to Council or address those matters within 10 Business Days of receiving the notice or within a reasonable period of time and make a further request under clause 10.1(a) of this Schedule for written certification that the Works have been completed.
- (d) Practical completion will be achieved in relation to the Works or any part of the Works when a Certificate of Practical Completion has been issued for those Works.
- (e) Notwithstanding clause 10.1(d), if the Council has not responded to the Developer's request for written certification from the Council that the Works are complete under clause 10.1(a) within 10 Business Days of receipt of the notice, the Council agrees that for the purposes of this agreement, Practical Completion will be deemed to have occurred on that date and a deemed Certificate of Practical Completion will be issued for the Works.

11. Risk

The Developer undertakes the Works entirely at its own risk.

12. Insurance

- 12.1 Prior to the commencement of the construction of any of the Works, the Developer must ensure that the Builder effects and the Developer produces evidence to the Council of the following insurances issued by an insurer approved by the Council (acting reasonably) in a form approved by the Council (acting reasonably):
- (a) contract works insurance for the value of the Works;
 - (b) public liability insurance with a limit of indemnity of \$20 million per occurrence;
 - (c) statutory workers compensation insurance with a limit of indemnity determined by the relevant statutory scheme.
- 12.2 The Developer must provide evidence of certificates of currency of insurance evidencing the required insurances in clause 12.1 of this Schedule upon written request by the Council, acting reasonably, throughout the term of this agreement.

13. Indemnities

The Developer indemnifies the Council, its employees, officers, agents and contractors from and against all Claims in connection with the carrying out by the Developer of the Works except to the extent such Claim arises as a result of negligence, default, act or omission of the Council or its employee, officer, agent, or contractor.

14. Contamination and Remediation

- 14.1 The Developer acknowledges and agrees:
- (a) that it is responsible for the management and remediation of any contamination present upon or under the land on which the Civic Space Works are to be carried out; and
 - (b) to the fullest extent permitted by Law indemnify and release the Council from any Claim which might arise from any contamination with respect to that land.

Schedule 5 - Easement Terms

1. Easement Terms

An easement in gross to the benefit of the Council is to be granted in respect of the Desired Access Point on the following terms:

1.1 Interpretation

For the purposes of this Schedule 5, the defined terms in clause 1 of this agreement and the Interpretation principles in clause 2 of this agreement will apply, unless context indicates a contrary intention:

Easement Site means the Desired Access Point.

1.2 The authority benefited and any person authorised by the authority benefited and members of the public (**Authorised Users**) have full and free right to go, pass and repass, and exit and enter, over that part of the burdened lot (**Easement Site**) designated for vehicle use, with vehicles (**Permitted Use**), in accordance with these Easement Terms.

1.3 The Easement Site must remain open for use by the authority benefited and all Authorised Users for the Permitted Use 24 hours per day, 7 days per week, except:

- (a) in the case of an emergency; or
- (b) for the safety of any person; or
- (c) for the protection of any property,

in which case the registered proprietor(s) of the burdened lot may temporarily close access to all or part of the Easement Site until it is safe to re-open access.

1.4 In exercising the rights granted by this easement, the authority benefited and all Authorised Users must:

- (a) cause as little inconvenience as is practicable to the registered proprietor(s) of the burdened lot and any occupier of the burdened lot;
- (b) cause no damage to the Easement Site or the burdened lot and any improvements on it;
- (c) subject to clauses 1.6 and 1.7 of these Easement Terms, make good any damage caused by the authority benefited or any Authorised User to the Easement Site; and
- (d) obey any reasonable requirements and directions of the registered proprietor(s) of the burdened lot whilst on the Easement Site.

1.5 The authority benefited and all Authorised Users acknowledge that any use of the Easement Site by the authority benefited or an Authorised User that is not in accordance with clause 1.4 of this easement:

- (a) is subject to the prior written approval of the registered proprietor(s) of the burdened lot, which may be given or withheld in the registered proprietor's (s') absolute discretion; and
- (b) the registered proprietor(s) of the burdened lot may, in the absence of any prior written approval to the relevant use, eject, move on or prohibit entry to those persons who are not using the Easement Site in accordance with clause 1.4 of this easement.

1.6 Notwithstanding anything in these Easement Terms, the registered proprietor(s) acknowledge that the authority benefited is not and cannot be responsible for all Authorised Users of the Easement Site and the registered proprietor(s) will not:

- (a) require the authority benefited to enforce these Easement Terms against an Authorised User, other than its employees, officers, agents and contractors acting for or on behalf of the authority benefited; or
- (b) make any Claim against the authority benefited for actions on the Easement Site of members of the public in respect of whom the authority benefited exercises no authority or control.

For the avoidance of doubt, nothing in this clause 1.6 is intended to:

- (c) limit the responsibility of the authority benefited in respect of its employees, officers, agents and contractors who are carrying out actions on the Easement Site for or on behalf of the authority benefited; or
- (d) prohibit the registered proprietor and the authority benefited from entering into an agreement permitted by the *Local Government Act 1993 (NSW)* or any other Law whereby the registered proprietor and the authority benefited agree that the authority benefited may or will enforce the Easement Terms against an Authorised User.

1.7 The registered proprietor(s) must maintain and repair the Easement Site, including the repair of damage and wear, repair of vandalism, removal of graffiti, removal of rubbish and conducting reactive cleaning, except to the extent it has been necessitated by the wilful or negligent act or omission or default of the authority benefited or its employees, officers, agents and contractors acting for or on behalf of the authority benefited, or any activities carried out for or on behalf of the authority benefited by itself, its employees, officers, agents and contractors on the Easement Site.

1.8 The registered proprietor(s) release the authority benefited from, and indemnify the authority benefited in respect of, any liability, loss, Damage, cost or Claim arising in relation to the use of the Easement Site by the authority benefited or any Authorised Users, including any accident, damage, death, loss or personal injury, except to the extent arising due to the wilful or negligent act or omission or default of the authority benefited or its employees, officers, agents and contractors acting for or on behalf of the authority benefited. The authority benefited covenants and agrees in favour of the registered proprietor(s) that the authority benefited will not settle or compromise any Claim in respect of which this release and indemnity applies without the prior written consent of the registered proprietor(s).

1.9 Insurance:

- (a) Both the registered proprietor(s) and the authority benefited are to maintain public liability insurance in respect of the Easement Site and the Permitted Use for the limit of liability of \$20 million per occurrence.
- (b) The registered proprietor(s) and the authority benefited must deliver to each other sufficiently detailed certificates of currency of insurance on each renewal and otherwise on written request.
- (c) The registered proprietor(s) is to effect and maintain appropriate property insurance for the Easement Site for the full reinstatement value or replacement value of the property insured.

Schedule 6 - Public Access & Restriction on Use Terms

1. Public Access & Restriction on Use Terms

A licence in perpetuity is to be granted in respect of the Civic Space Land on the following terms:

1.1 Interpretation

For the purposes of this Schedule 6, the defined terms in clause 1 of this agreement and the Interpretation principles in clause 2 of this agreement will apply, unless context indicates a contrary intention:

Licensed Site means the licensed site as indicated by the area marked 'Area of Public Access', excluding the Hunter Street Land area, as shown on the plan at Annexure A to this licence.

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

Damages means all liabilities, losses, damages, costs and expenses, including legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties.

Passive Recreation means recreational activities that have minimal impact on the Licensed Site and do not intrude on the amenity of other persons in the locality (including the Licensor), including walking, nature observation, picnicking, reading, and resting or sitting.

Social Covenants means any variation, replacement, addition or revocation of the social covenants made by the Synod of the Anglican Church Diocese of Sydney from time to time under any relevant ordinance, including at the date of this licence those declared under the *Church Trust Property (Declaration of Certain Purposes and Objects) Ordinance 1979* (as amended) to be the following proscribed purposes:

- (a) the practice of, or advocacy for, a religion or spirituality which is inconsistent with the doctrines, tenets and beliefs of the Anglican Church of Australia in the Diocese of Sydney;
- (b) the manufacture or sale of armaments or other weapons of war;
- (c) the provision of services in connection with, or advocacy for, gender re-assignment;
- (d) the manufacture or sale of abortifacients or abortion-like contraceptives;
- (e) the undertaking or referral of, or advocacy for, surgical elective abortions;
- (f) the undertaking of, or advocacy for, stem cell research involving the destruction of embryos;
- (g) the manufacture or sale of products or services in connection with, or advocacy for, euthanasia;
- (h) the production, sale or distribution of films, computer games, publications or digital media that are classified 'X' or 'R' by the Classification Board and the Classification Review Board established under the Classification (Publications, Films and Computer Games) Act 1995;
- (i) the commercialisation of sexual services;
- (j) the solemnisation or blessing of same-sex weddings or relationships;
- (k) the provision of a reception for same-sex weddings;
- (l) the production, promotion or sale by wholesale of tobacco;
- (m) the commercial manufacture, distribution or sale of liquor (other than the sale and consumption of liquor on premises where the liquor is intended to be consumed with food sold on those premises for consumption on those premises);

- (n) the manufacture, sale, distribution or provision of any drug of addiction (except as part of the normal trading practices of a registered medical practitioner, accredited residential aged care facility, pharmacist, chemist, dental or veterinary surgeon);
 - (o) the provision of gambling or betting services or products (other than lucky-draws, rewards programs or similar).
- 1.2 In accordance with the terms of this licence, the Licensor grants the Licensee and any person authorised by the Licensee, including members of the public (**Authorised Users**), a non-exclusive right to use the Licensed Site solely for the following purposes:
- (a) To go, pass and repass over those parts of the Licensed Site:
 - (i) on foot; and/or
 - (ii) with wheelchairs or other disabled access aids (including motorised scooters or similar used for mobility purposes); and/or
 - (iii) with or without domestic animals and animals for police purposes; and/or
 - (iv) with bicycles, tricycles, skateboards, rollerblades or other similar non-motorised machines (but only being walked and not ridden); and/or
 - (v) without vehicles,
 designated for pedestrian use in accordance with clause 1.4; and
 - (b) to use those parts of the Licensed Site designated for such use (or which are not designated for pedestrian use) for the purposes of Passive Recreation.
- (together, the **Permitted Uses**).
- 1.3 The Licensee acknowledges and agrees that nothing in this licence prevents or restricts the use of the Licensed Site by the parishioners of the Licensor or by the staff, employees and other invitees of the Licensor, and any one or more, or all, of them.
- 1.4 The Licensed Site must remain open for use by the Licensee and Authorised Users for the Permitted Uses 24 hours per day, 7 days per week, except:
- (a) in the case of an emergency; or
 - (b) for the safety of any person; or
 - (c) for the protection of any property; or
 - (d) for legitimate uses associated with the Licensor's activities at St John's Cathedral as set out in clause 1.23,
- in which case the Licensor may temporarily close access to all or part of the Licensed Site until it is safe to re-open access, subject to the Licensor providing 14 days prior written notice to Council (except in the case of an emergency, in which case Council must be notified as soon as possible after closure).
- 1.5 The Licensed Site must not be closed for use by the Licensee and Authorised Users for more than 90 days per calendar year, without the consent of Council, acting reasonably and in this clause 1.5:
- "closed for use"* means the Licensee and Authorised Users are excluded from using the Licensed Site for any of the Permitted Uses for a period of 5 hours or more in any 24 hour period; and
- "days"* does not include any day on which a Force Majeure Event is occurring.
- 1.6 If any Authorised Users congregate or otherwise use the Licensed Site, for a purpose which the Licensor, acting reasonably, considers to be a nuisance, safety risk or against their organisation beliefs,

the Licensor may either remove the Authorised Users, or arrange for their removal by an appropriate authority other than the Council.

- 1.7 Without limiting clause 1.6 of this licence, an Authorised User must not carry on any activity on the Licensed Site which predominantly involves any of the items or activities not to be undertaken, sold, manufactured, distributed, consumed or promoted under or in connection with the Social Covenants.
- 1.8 In exercising the rights granted by this licence, the Licensee and all Authorised Users must:
- (a) cause as little inconvenience as is practicable to the Licensor and any occupier of the Land;
 - (b) cause no damage to the Land and any improvements on it;
 - (c) subject to clauses 1.10 and 1.11, make good any damage caused by the Licensee or any Authorised User to the Land; and
 - (d) obey any reasonable requirements and directions of the Licensor whilst on the Licensed Site.
- 1.9 The Licensee acknowledges that any use of the Licensed Site by the Licensee or any Authorised Users that is not in accordance with clause 1.2 of this licence:
- (a) is subject to the prior written approval of the Licensor, which may be given or withheld in the Licensor's absolute discretion; and
 - (b) may result in the ejection or prohibition of entry to those persons who are not using the Licensed Site in accordance with clause 1.2 of this licence; unless
 - (c) the relevant use of the Licensed Site is authorised by a Development Consent or Approval.
- 1.10 Notwithstanding anything in this licence, the Licensor acknowledges that the Licensee is not and cannot be responsible for all Authorised Users of the Land and the Licensor will not:
- (a) require the Licensee to enforce the terms of the License against an Authorised User, other than the Licensee's employees, officers, agents and contractors acting for or on behalf of the Licensee; or
 - (b) make any Claim against the Licensee for actions of members of the public in respect of whom the Licensee exercises no authority or control.
- For the avoidance of doubt, nothing in this clause 1.10 is intended to:
- (c) limit the responsibility of the Licensee in respect of its employees, officers, agents and contractors who are carrying out actions on the Licensed Site for or on behalf of the authority benefited; or
 - (d) prohibit the Licensor and the Licensee from entering into an agreement permitted by the *Local Government Act 1993 (NSW)* or any other Law whereby the Licensor and the Licensee agree that the Licensee may or will enforce the terms of this licence against an Authorised User.
- 1.11 The Licensor must undertake the ongoing maintenance and repair of the Licensed Site and the Hunter Street Land, including;
- (a) keeping the Licensed Site and the Hunter Street Land in good repair and condition, including ensuring that damage is not caused to services in, on or under the Licensed Site and Hunter Street Land;
 - (b) maintaining and repairing the Licensed Site and the Hunter Street Land, to the same standard as Parramatta Square Public Domain;
 - (c) maintaining and repairing all improvements on the Licensed Site and those on the Hunter Street Land which form part of the Civic Space Works, to the same standard as Parramatta Square Public Domain;
 - (d) keeping the Licensed Site and the Hunter Street Land clean and free of rubbish;

- (e) rectifying any defects in structures, embellishment works, landscaping or other improvements on the Licensed Site and those on the Hunter Street Land which form part of the Civic Space Works,

except to the extent it has been necessitated by the wilful or negligent act or omission or default of the Licensee, or its employees, officers, agents and contractors acting for or on behalf of the authority benefited, or any activities carried out for or on behalf of the Licensee on the Licensed Site and the Hunter Street Land, by itself, its employees, officers, agents and contractors.

- 1.12 Nothing in clause 1.11 of this licence prevents the Licensor from agreeing with any particular user of the Licensed Site that that particular user will, in respect of any activity on the Licensed Site approved by the Licensor, be responsible for maintenance, repairing damage, cleaning etc arising from the carrying out of the particular activity.

- 1.13 If the Licensor does not perform any of its obligations under clause 1.11 of this licence, then the Licensee may, acting reasonably and at its sole discretion, undertake the required work and recover the costs of all such work from the Licensor as a liquidated debt. For the purposes of this clause, the Licensor by implication grants to the Licensee a licence to access, use and work on the Licensed Site.

1.14 Release and Indemnity

- (a) The Licensor releases the Licensee from, and indemnifies the Licensee in respect of, any liability, loss, Damage, cost or Claim arising in relation to the use of the Licensed Site by the Licensee, the Licensee's employees, officers, agents, or contractors, or any Authorised User, including any accident, damage, death, loss or personal injury, except to the extent arising due to the wilful or negligent act or omission or default of the Licensee or its employees, officers, agents and contractors acting for or on behalf of the Licensee.
- (b) The Licensor releases the Licensee from, and indemnifies the Licensee in respect of, any liability, loss, Damage, cost or Claim arising in relation to the use of the Hunter Street Land by the Licensor, the Licensee, the Licensee's employees, officers, agents, or contractors, or any Authorised User, including any accident, damage, death, loss or personal injury, to the extent covered by the Licensor's public liability insurance required under clause 1.15, except to the extent arising due to the wilful or negligent act or omission or default of the Licensee or its employees, officers, agents and contractors acting for or on behalf of the Licensee.
- (c) The Licensee covenants and agrees in favour of the Licensor that the Licensee will not settle or compromise any Claim in respect of which the releases and indemnities in this clause 1.14 apply without the prior written consent of the Licensor.

1.15 Insurance

- (a) Both the Licensee and the Licensor are to maintain appropriate public liability insurance in respect of the Licensed Site, the Hunter Street Land and the Permitted Uses for the limit of liability of \$20 million per occurrence.
- (b) The Licensee and Licensor must provide to each other sufficiently detailed certificates of currency of insurance on each renewal and otherwise on written request.
- (c) The Licensor is to effect and maintain appropriate property insurance for the Licensed Site for the full reinstatement value or replacement value of the property insured.

- 1.16 Despite any other provision of this licence, including clause 1.2, the Licensor may, subject to the Licensed Site remaining open to the public for other Permitted Uses, restrict or prohibit the Licensee and its Authorised Users from carrying out particular activities on the Licensed Site if:

- (a) the Licensor's insurer or insurance broker indicates to the Licensor that it will no longer provide one or more of the policies of insurance referred to in clause 1.15 in relation to the Licensed Site if the particular activity is permitted to continue; or
- (b) in the reasonable opinion of the Licensor, the costs of obtaining the insurances referred to in clause 1.15 will be unreasonably high if the particular activity is permitted to continue.

- 1.17 The Licensee and the Licensors acknowledge that any Development involving the Licensed Site or the Civic Space Land must take into consideration the terms of this licence.
- 1.18 A provision of this licence can only be varied by a later written document executed by or on behalf of the Licensee and the Licensors.
- 1.19 This licence is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Licensee, including, but not limited to, any statutory power or discretion of the Licensee relating to the Planning Proposal, the Instrument Change, or any application lodged by the Licensors for Development Consent.
- 1.20 **Entire agreement:**
- (a) The content of this licence constitutes the entire licence agreement between the parties and supersedes any prior licences, agreements, negotiations, representations, understandings or arrangements made between the Licensee and the Licensors regarding the subject matter of this licence, whether orally or in writing.
 - (b) The Licensee and the Licensors acknowledge and agree that all prior licences, agreements, negotiations, representations, understandings or arrangements made between the Licensee and the Licensors regarding the subject matter of this licence, whether orally or in writing, have come to an end at no cost, liability or Claim to either party.
- 1.21 **Assignment:**
- (a) The Licensors must not assign or deal with any right under the licence, except in accordance with clause 1.22 below.
 - (b) The Licensee must not assign or deal with any right under this licence without the prior written consent of the Licensee which will not be unreasonably withheld if the Licensee delivers to the Licensors a novation deed signed by the assignee substantially in the form attached to this licence.
 - (c) Any change of ownership or control (as defined in section 50AA of the *Corporations Act 2001* (Cth)) of a party (excluding the Council) shall be deemed to be an assignment of this licence for the purposes of this clause of the licence.
 - (d) Any purported dealing in breach of this clause is of no effect.
- 1.22 **Transfer of Licensed Site**
- (a) A party (**Transferor**) may not transfer, assign or dispose of the whole or any part of its right, title or interest in the Licensed Site (present or future) or in the Development to another person (**Transferee**) unless before it sells, transfers or disposes of that right, title or interest:
 - (i) the Transferor satisfies the Council (acting reasonably) that the proposed Transferee is financially capable of complying with the Transferor's obligations under this licence;
 - (ii) the Transferor satisfies the Council (acting reasonably) that the rights of the Council will not be diminished or fettered in any material respect;
 - (iii) the Transferee delivers to the Council a novation deed signed by the Transferee in substantially in the form attached to this licence;
 - (iv) any default under any provisions of this licence in respect of which the Transferor has been given prior notice has been remedied by the Transferor or waived by the Council, and
 - (v) the Transferor and the Transferee pay the Council's reasonable legal costs in relation to the assignment.

- 1.23 Subject to clause 1.5 and providing notice to Council at least 14 days prior to the proposed use, the Licensor retains the right to use parts of the Licensed Site to the exclusion of others at certain times and for certain purposes including:
- (a) for the installation of plant and equipment associated with the use of the Licensed Site by the Licensor, including security monitoring devices plant and equipment;
 - (b) for the installation of permanent and temporary signage associated with the use of the Licensed Site by the Licensor, including security signage;
 - (c) amenities, toilets and mothers' room directly adjoining, or as an extension to, the St John's Cathedral, on the southern side, subject to all Approvals for such structures being obtained;
 - (d) the erection of temporary structures related to activities undertaken by or on behalf of the Licensor or the Anglican Church diocese;
 - (e) for purposes incidental to the Licensor and the activities undertaken by or on behalf of the Licensor or the Anglican Church diocese, including the safe movement of passenger and service vehicles over the Licensed Site;
 - (f) for a specified number of days per year and also during particular periods (for example Easter and Christmas) for organised activities and events of the Licensor or the Anglican Church diocese, including the safe movement of passenger and service vehicles over the Licensed Site;
 - (g) for the erection of buildings or structures for the purpose of enhancing open space areas;
 - (h) for the erection of temporary structures for construction of the Development; or
 - (i) any other uses authorised by a Development Consent or Approval that are consistent with the public use of the Licensed Site.
- 1.24 If the Licensed Site is used in the manner set out in clause 1.23 of this licence, the Licensor will during the period of use ensure that there are reasonable pedestrian pathways, at least 3m wide, across the Licensed Site between Church Street and Hunter Street for use by Authorised Users.

Voluntary Planning Agreement



Schedule 7 - Temporary Access Terms

1. Temporary Access Terms

A licence for a term that ends on the earlier of: 1) 10 years after the date of this licence agreement; and 2) the date on which permanent vehicular access to the Licensee's property is made available at the rear of land at 41, 43 and 45 Hunter Street, Parramatta, is to be granted in respect of the Temporary Access Site on the following terms:

1.1 Interpretation

For the purposes of this Schedule 7, the defined terms in clause 1 of this agreement and the Interpretation principles in clause 2 of this agreement will apply, unless context indicates a contrary intention:

Temporary Access Site means the temporary access route on the Land as agreed between the Licensee and the Licensors, providing passenger and service vehicle access from Hunter Street to the rear parking area of Queensland Arcade, which may be relocated from time to time on the Land in accordance with any agreement between the parties.

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

Damages means all liabilities, losses, damages, costs and expenses, including legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties.

Licensors means the Developer.

Licensee means the Queensland Arcade Owner.

- 1.2 The Licensors grant the Licensee and any person authorised by the Licensee (**Authorised Users**) a non-exclusive right to have full and free right to go, pass and repass over that part of the Temporary Access Site designated for vehicle use, with passenger and service vehicles (**Permitted Use**), in accordance with the terms of this licence.

- 1.3 The Temporary Access Site must remain open for use by the Licensee and Authorised Users for the Permitted Uses 24 hours per day, 7 days per week, except:

- (a) in the case of an emergency; or
- (b) for the safety of any person; or
- (c) for the protection of any property,

in which case the Licensors may temporarily close access to all or part of the Temporary Access Site until it is safe to re-open access.

- 1.4 In exercising the rights granted by this licence, the Licensee and all Authorised Users must:

- (a) cause as little inconvenience as is practicable to the Licensors and any occupier of the Land;
- (b) cause no damage to the Land and any improvements on it;
- (c) make good any damage caused by the Licensee or any Authorised User to the Land; and
- (d) obey any reasonable requirements and directions of the Licensors whilst on the Temporary Access Site.

- 1.5 The Licensee acknowledges that any use of the Temporary Access Site by the Licensee or any Authorised Users that is not in accordance with clause 1.2 of this licence:

- (a) is subject to the prior written approval of the Licensors, which may be given or withheld in the Licensors's absolute discretion; and

- (b) gives the Licensor, in the absence of any prior written approval to the relevant use, the right to eject, move on or prohibit entry to those persons who are not using the Temporary Access Site in accordance with clause 1.2 of this licence.
- 1.6 The Licensor must maintain and repair the Temporary Access Site, including the repair of damage and wear, repair of vandalism, removal of graffiti, removal of rubbish and conducting reactive cleaning, except to the extent it has been necessitated by the wilful or negligent act or omission of the Licensee, or any activities carried out by the Licensee on the Temporary Access Site.
- 1.7 If the Licensor negotiates with the Licensee to relocate and provide an alternative area for the parking of the 8 vehicles associated with the Queensland Arcade, so that this licence is no longer required, the parties acknowledge and agree that they will bring this licence to an end at no cost, liability or Claim to any party.

Schedule 8 - Summary of Requirements (Section 7.4 of the Act)

Subject and subsection of the Act	Planning Agreement
Planning instrument and/or Development Application – Section 7.4(1)	
The Developer has:	
(a) Sought a change to an environmental planning instrument	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
(b) Made, or propose to make a Development Application	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
(c) Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Description of the land to which the Planning Agreement applies – Section 7.4(3)(a)	The land subject to the planning agreement is described in Schedule 1.
Description of the application – Section 7.4(3)(b)	See the description of Planning Proposal and Gateway Determination at Annexure A, and the definitions of Development and Instrument Change in clause 1.
The scope, timing and manner of delivery of contribution required by the Planning Agreement – Section 7.4(3)(c)	See clause 6.
Applicability of section 7.11 of the Act – Section 7.4(3)(d)	Not excluded. See clause 7. Contributions under this agreement are not to be taken into account when determining any section 7.11 contribution.
Applicability of section 7.12 of the Act – Section 7.4(3)(d)	Not excluded. See clause 7.
Applicability of section 7.24 of the Act – Section 7.4(3)(d)	Not excluded. See clause 7.
Mechanism for dispute resolution – Section 7.4(3)(f)	See clause 10.
Enforcement of the Planning Agreement – Section 7.4(3)(g)	See clause 11.
Registration of the Planning Agreement – Section 7.4(3)(g)	See clause 8.
No obligation to grant consent or exercise functions – Section 7.4(9)	See clause 14.

Signing page

EXECUTED as an agreement.

**Signed, sealed and delivered by City of
Parramatta Council** ABN 49 907 174 773 by its
authorised delegate in the presence of

Signature of witness

Name of witness (print)

Address of witness (print)

Signature of delegate

Name of delegate (print)

Position of delegate (print)

**Signed, sealed and delivered by Anglican
Church Property Trust Diocese of Sydney** ABN
95 960 399 815 in accordance with section 127 of
the *Corporations Act 2001* (Cth) by:

Signature of director

Name of director (print)

Signature of director/company secretary
(Please delete as applicable)

Name of director/company secretary (print)

Annexure A – Planning Proposal and Gateway Determination

Annexure to Planning Agreement

Reference: PAR970/169

Planning Proposal

The site-specific Planning Proposal (PP_2020_COPAR_001_00) seeks to amend the Parramatta Local Environmental Plan 2011 relating to the Land by:

- Amending the land zoning map from part B4 - Mixed Use and SP1 – Special Activities (Place of Public Worship) to part B3 - Commercial Core, part B4 Mixed Use and part SP1 Special Activities (Place of Public Worship).
- Amending the floor space ratio (FSR) mapped controls as follows:
 - o Increase the FSR on the parts of the site proposed to be zoned B3 Commercial Core and B4 – Mixed Use from 3:1 to 10:1 (11.5:1 including the existing 15% design excellence bonus),
 - o Apply a no FSR control on land zoned SP1 Place of Worship.
- Retaining the FSR sliding scale provisions within Parramatta LEP 2011 to the site.
- Amending the building height mapped controls (HOB) as follows:
 - o Increase the HOB control for a portion of the proposed B3 – Commercial Core land from 18 and 24 metres, to 211m (RL) (243m (RL) including the existing 15% design excellence bonus);
 - o Decrease the HOB control for a portion of the proposed B3 – Commercial Core land from 18 to 12 metres;
 - o Increase the HOB control for the B4 – Mixed Use land from 36 metres to 211m (RL) (243m (RL) including the existing 15% design excellence bonus);
 - o Apply a no building height control on land zoned SP1 Place of Worship.
- Amending the Special Provisions map to permit the application of Clause 7.6 Airspace operations.
- Amending the Land Reservation Acquisition Map to facilitate the creation of a 6 metre wide laneway to provide future vehicle access to 41, 43 and 45 Hunter Street and 181 Church Street, Parramatta. Noting that 41 and 43 Hunter Street have only been included in the Planning Proposal for the purposes of identifying the 6m wide laneway land on the Land Reservation Acquisition Map and that no other changes will be made to the planning controls that apply to these two sites.
- Including an additional site specific clause to require consistency with the solar access requirements for Parramatta Square, including the requirement for compensatory area.
- Including an additional site specific clause to require a DCP to be prepared that provides for the critical matters to be satisfied including the outcome for St John's Parish Hall.

Gateway Determination

The Gateway Determination and modifications to it are extracted below.

Gateway Determination

Planning proposal (Department Ref: PP_2020_COPAR_001_00): to amend to the zoning and development standards, inclusion of site specific provisions relating maximum car parking rates, unlimited commercial floor space, carparking as an additional use and overshadowing of Parramatta Square, and identification of land to be reserved.

I, the Executive Director, Central River City & West Parkland City at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Parramatta Local Environmental Plan (LEP) 2011 to enable redevelopment of 65-79 Macquarie Street 38 and 41-45 Hunter Street) Parramatta should proceed subject to the following conditions:

1. Prior to public exhibition, Council is to amend the planning proposal and supporting documentation as follows:
 - (a) amend to ensure protection of compensatory area of solar access at the eastern end of Parramatta Square at the Spring and Autumn equinox;
 - (b) all references regarding the removal of St John's Parish Hall as an item of local heritage significance are to be removed;
 - (c) update the explanation of provisions to identify the site is to be included in the areas specified in Clause 7.6 Airspace Operations;
 - (d) identify the relevant acquisition authority for land reservations where appropriate; and
 - (e) updated to address Direction 2.6 Remediation of Contaminated Land.
2. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
 - (a) the planning proposal must be made publicly available for a minimum of **28 days**; and
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 6.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment, 2018).
3. Consultation is required with the following public authorities/organisations under section 3.34(2)(d) of the Act and/or to comply with the requirements of relevant section 9.1 Directions:
 - NSW State Emergency Services,
 - DPIE – Environment, Energy and Science,

- NSW Heritage;
- Transport for NSW;
- Civil Aviation Safety Authority;
- Commonwealth Department of Infrastructure and Regional Development;
and
- Utility providers.

Each public authority/organisation is to be provided with a copy of the planning proposal and any relevant supporting material and given at least 21 days to comment on the proposal.

Council should raise the possibility of State infrastructure needs generated by the proposal when consulting State Agencies and forward their comments to the Department upon receipt.

4. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
5. Prior to finalisation, the planning proposal is to be consistent with the Parramatta CBD Planning Proposal's position in relation to solar access to Parramatta Square.
6. The time frame for completing the LEP is to be **12 months** following the date of the Gateway determination.

Dated 8th day of September 2020.



Catherine Van Laeren
Executive Director, Central River City
and Western Parkland City
Greater Sydney, Place and
Infrastructure
Department of Planning, Industry and
Environment

Delegate of the Minister for Planning
and Public Spaces

PP_ 2020_COPAR_001_00 (IRF20/3660)



Alteration of Gateway Determination

Planning proposal (Department Ref: PP_2020_COPAR_001_00)

I, the Group Deputy Secretary, Planning Delivery and Local Government, at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(7) of the *Environmental Planning and Assessment Act 1979* to alter the Gateway determination dated 8 September 2020 (since altered) for the proposed amendment to the Parramatta Local Environmental Plan 2011 as follows:

1. Delete "condition 6"

Replace with a new condition 6: "The LEP shall be completed by 30 June 2022."

2. Insert "condition 7":

"The planning proposal must commence public exhibition by 28 February 2022."

Dated 10 day of November 2021.

Brett Whitworth
Group Deputy Secretary
Planning Delivery and Local
Government
Department of Planning, Industry and
Environment

Delegate of the Minister for Planning
and Public Spaces

Alteration of Gateway Determination

Planning proposal (Department Ref: PP-2020-2179)

I, Acting Director, Central (GPOP) at the Department of Planning and Environment, as delegate of the Minister for Planning and Homes, have determined under section 3.34(7) of the *Environmental Planning and Assessment Act 1979* to alter the Gateway determination dated 8 September 2020 (since altered) for the proposed amendmend to the Parramatta Local Environmental Plan 2011 as follows:

1. Delete "condition 7"

Replace with a new condition 7: "The planning proposal must commence public exhibition by 28 March 2022."

Dated 22 day of February 2022.



Jazmin van Veen
Acting Director, Central (GPOP)
Central River City
Department of Planning and Environment

Delegate of the Minister for Planning and Homes

Alteration of Gateway Determination

Planning proposal (Department Ref: PP-2020-2179)

I, Acting Director, Central (GPOP) at the Department of Planning and Environment, as delegate of the Minister for Planning and Homes, have determined under section 3.34(7) of the *Environmental Planning and Assessment Act 1979* to alter the Gateway determination dated 8 September 2020 (since altered) for the proposed amendment to the Parramatta Local Environmental Plan 2011 as follows:

1. Insert "condition 8":

"Prior to public exhibition, the planning proposal must be amended to include a requirement to prepare and consider a site-specific development control plan prior to development consent being granted on the site."

Dated 28 day of March 2022.



Jazmin van Veen
Acting Director, Central (GPOP)
Metro Central and North
Department of Planning and Environment

Delegate of the Minister for Planning

Annexure B – Plan showing proposed key planning controls

Annexure to Planning Agreement

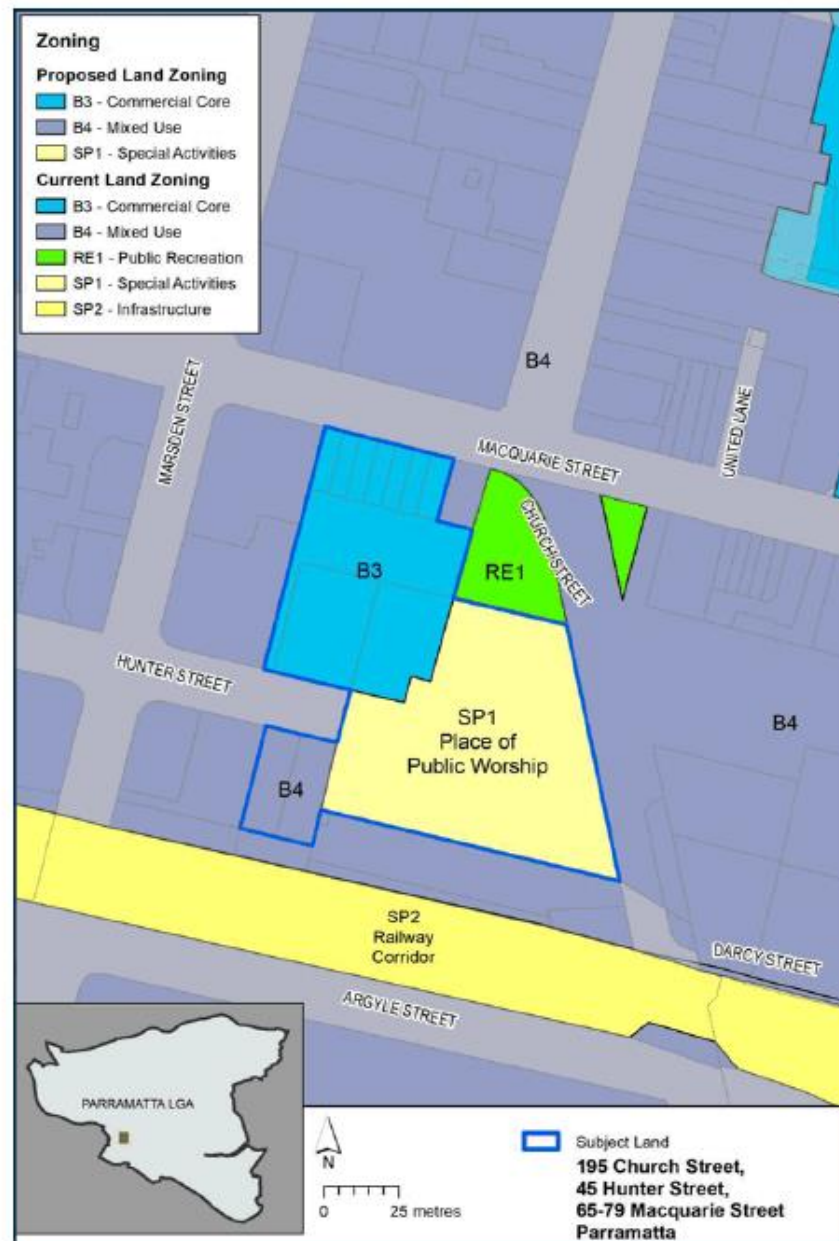
Reference: PAR970/169

PLANNING PROPOSAL – St John's Cathedral 195 Church Street Parramatta RZ/5/2018

4.2 Proposed Provision

To achieve the objectives and intended outcomes of this Planning Proposal, the Land Use Zoning Map is proposed to be amended. To facilitate the Height and FSR controls sought, the applicant put forward the following preferred option.

Figure 21. Proposed land use zoning map

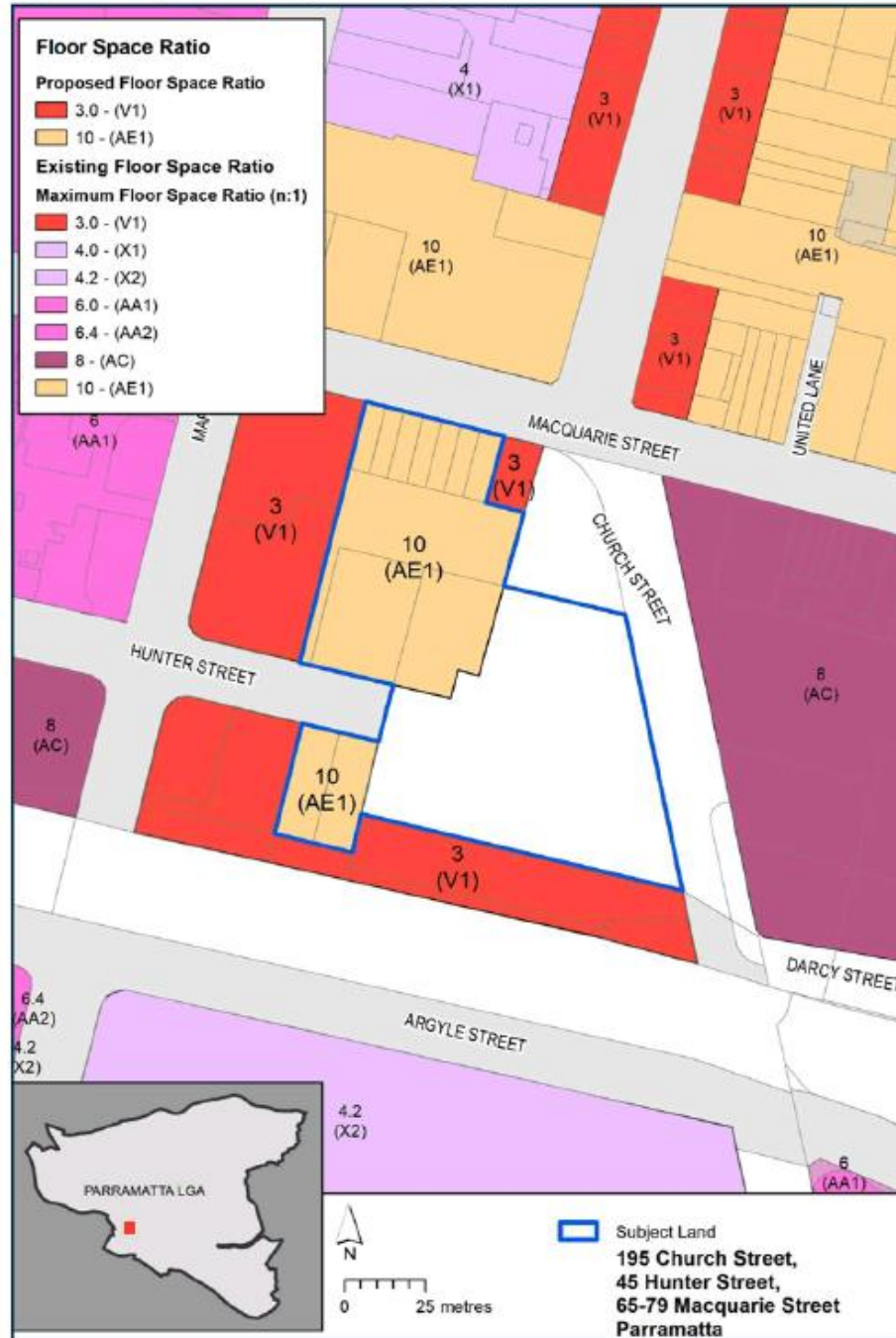


D07205262 (RZ/5/2018)

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PLANNING PROPOSAL – St John's Cathedral 195 Church Street Parramatta RZ/5/2018

Figure 23. Proposed floor space ratio map

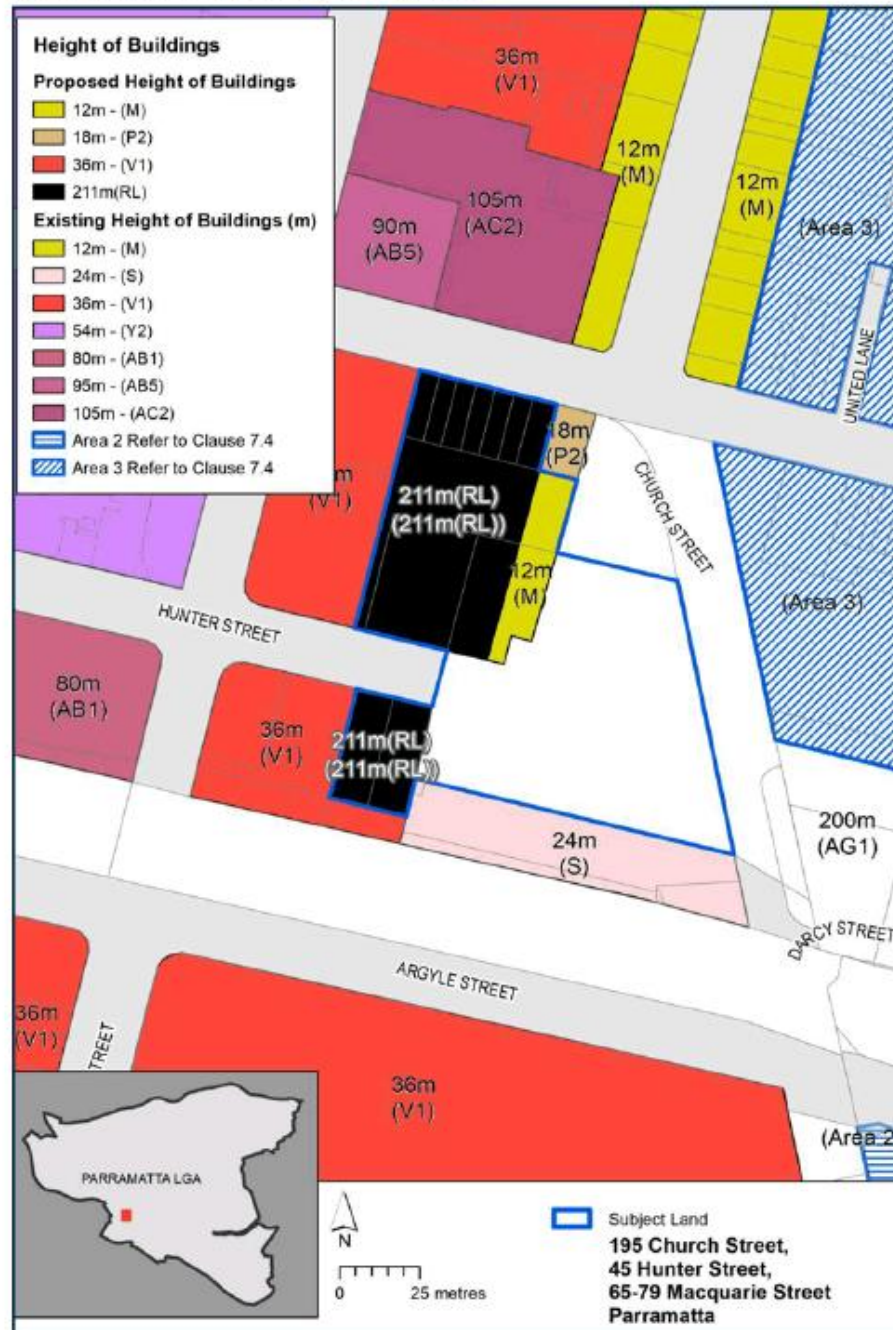


D07205262 (RZ/5/2018)

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PLANNING PROPOSAL – St John's Cathedral 195 Church Street Parramatta RZ/5/2018

Figure 22. Proposed height of buildings map

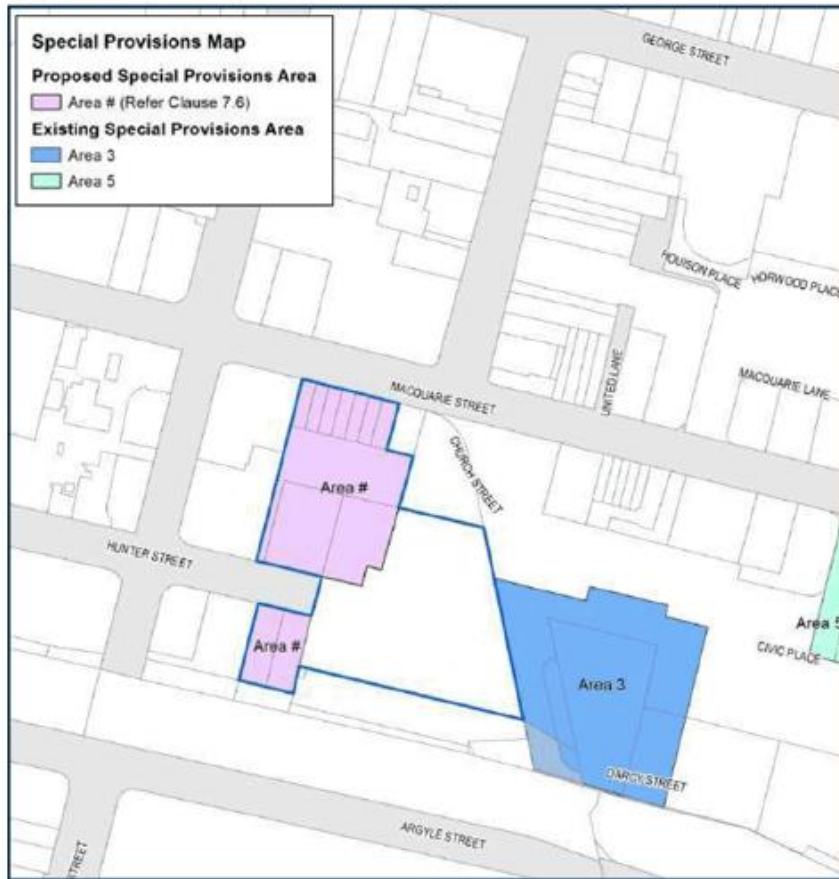


D07205262 (RZ/5/2018)

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PLANNING PROPOSAL – St John's Cathedral 195 Church Street Parramatta RZ/5/2018

Figure 24. Proposed special provisions map



D07205262 (RZ/5/2018)

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Annexure C – Desired Access Point

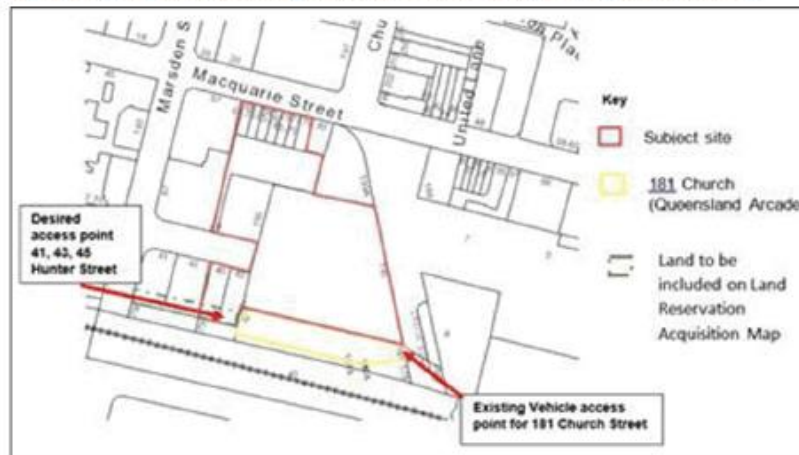
Annexure to Planning Agreement

Reference: PAR970/169

PLANNING PROPOSAL – St John's Cathedral 195 Church Street Parramatta RZ/5/2018

Please note: As discussed previously in this report, a change to the Land Reservation Acquisition (LRA) Map is also proposed. This change will be to add a 6 metre strip parallel to the railway line to the LRA map for properties at 41, 43 and 45 Hunter Street. This change is illustrated in the diagram below. This is the only change to planning controls proposed for 41 and 43 Hunter Street, Parramatta; no other changes will be made the planning controls that apply to these two sites.

Figure 25. Diagram illustrating land to be added to LRA map (green hatching)



D07205262 (RZ/5/2018)

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Annexure D – Civic Space Land, Civic Space Concept and Hunter Street Land

Annexure to Planning Agreement

Reference: PAR970/169

ASPECT Studios™



Annexure E – Performance Specifications for Civic Space Works

Annexure to Planning Agreement

Reference: PAR970/169

Performance Specifications For Civic Space Works

Element	Standards	Notes
Paving (All)	As per Public Domain Guidelines.	Sealed, slip resistance as per Public Domain Guidelines, DS45.
Plaza paving (surrounds)	Adelaide Black (main body surrounds). Granite finish, detailed design to suit context.	Special applications subject to Development Consent design.
New square paving	Granite finish, detailed design to suit heritage context.	Subject to Development Consent design.
Macquarie Street	Large format Adelaide Black granite, 600x300mm exfoliated.	Subject to Development Consent design.
Hunter Street	As per Public Domain Guidelines. Interface with granite paving in the new square.	Subject to Development Consent design.
Service pit lids	Stainless steel frames/solid cast iron to be used. No visible concrete surrounds. Infill lids to match surrounds.	As per Public Domain Guidelines.
Brass strip	60mm X 6mm.	Use to delineate public and private land as applicable. Subject to Development Consent design.
Location pins	Stainless steel: 10mm dia X 60mm deep rod	To delineate outdoor dining if applicable. Subject to Development Consent design.
Surface grading (pavement)	Min 1:80 plaza gradient to minimise surface ponding of water.	Subject to Development Consent design.
Furniture & Fixings		
Seats	Bespoke design	Subject to Development Consent design.
Bollard	Stainless Steel, fixed and retractable to design.	Subject to Development Consent design.
Bins	As per Public Domain Guidelines.	Subject to Development Consent design.
Bike racks	As per Public Domain Guidelines.	Subject to Development Consent design.
Drinking Fountain	TBA	Subject to Development Consent design.
Retaining wall, wall features	Custom design, granite finish. To reference Parramatta Square finishes.	Subject to Development Consent design.
Lighting		
Level	To AS1158.	
Light Poles	HUB MFP or tapered pole TBC.	Subject to Development Consent design.
Feature lighting	TBC. Feature lighting to Church and low level pedestrian lighting required (AS1158).	Subject to Development Consent design.
Services & Fixtures		

Element	Standards	Notes
TGSIs	As per Public Domain Guidelines.	Subject to Development Consent design.
Wayfinding shoreline	Stainless steel - to match Parramatta Square detail (as required).	Subject to Development Consent design.
Drainage pit and trench grates	Stainless steel or cast iron inlet lids and frames.	Heel safe, anti-slip, Class D. No visible concrete surrounds.
Trees		
Trees	2000L size. Ground level planting (no raised tree planters). No granular structural soil on podium (alternate structural support to be agreed). Soil volumes must meet ADG requirements for trees on slab.	Subject to Development Consent design. Allow minimum 1.2mm clear soil media depth excluding any drainage and mulch layers as required. Planter beds to be contiguous.
Tree pit infill	Tree grate or planting. Tree grate/finish to match Parramatta Square or Public Domain Guidelines stainless steel grate.	Subject to Development Consent design.
Water supply	QCV's at 60m centres supplied for cleaning and maintenance.	Subject to Development Consent design.
Irrigation	Automatic irrigation required for all planting beds and trees.	
Inspection points	Brass lid caps for subsoil inspection points	Subject to Development Consent design.
Other		
Roadworks	None included.	
Services upgrades	None included	
Structures and slabs	None included	
All construction details	Must comply with Council's DS standards (the version that existed at the date of this agreement available on request).	
All submission requirements and design considerations	Public Domain Guidelines requirements are to be addressed.	

For the avoidance of doubt, the reference to "Public Domain Guidelines" in this Annexure means the Public Domain Guidelines adopted by Council as at the date of the Development Application for the Civic Space Works.

Annexure F – Temporary Access Proposed Routes

Annexure to Planning Agreement

Reference: PAR970/169

N ✓ NTS



Explanatory Note
Exhibition of draft Planning Agreement
195 Church Street, Parramatta
65-75 Macquarie Street, Parramatta
77 and 79 Macquarie Street, Parramatta
38 and 45 Hunter Street, Parramatta

Environmental Planning & Assessment Regulation 2021 (clause 205)

Draft Planning Agreement

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft Planning Agreement (**the Planning Agreement**) under Section 7.4 of the *Environmental Planning and Assessment Act 1979* (**the Act**).

The Planning Agreement will require the carrying out of works, provision of access and monetary contributions towards the delivery of public infrastructure and amenities, in connection with a Planning Proposal and proposed development of land known as 195 Church Street, 65-75 Macquarie Street, 77 and 79 Macquarie Street and 38 and 45 Hunter Street, Parramatta.

This Explanatory Note has been prepared having regard to the requirements in clause 205 of the *Environmental Planning and Assessment Regulation 2021* (**the Regulations**).

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

Parties

Anglican Church Property Trust Diocese of Sydney (**the Developer**) made an offer to Parramatta Council (**the Council**) to enter into a Planning Agreement, in connection with a Planning Proposal relating to the subject land.

The Developer and the Council are the only parties to the proposed Planning Agreement.

Description of subject land

The land to which the Planning Agreement applies (**the Land**) is set out in the table below extracted from Schedule 4 of the Planning Agreement:

Address	Lot and DP Reference	Registered Proprietor (as at the proposed date of the agreement)
195 Church Street, Parramatta	Lots 1 and 2 DP 1110057	Anglican Church Property Trust Diocese of Sydney
65-75 Macquarie Street, Parramatta	Lots E to I DP 15108	Anglican Church Property Trust Diocese of Sydney
77 Macquarie Street, Parramatta	Lot J DP 15108	Anglican Church Property Trust Diocese of Sydney

Address	Lot and DP Reference	Registered Proprietor (as at the proposed date of the agreement)
79 Macquarie Street, Parramatta	Lot K DP 15108	Anglican Church Property Trust Diocese of Sydney
38 Hunter Street, Parramatta	Lot M DP 15108	Anglican Church Property Trust Diocese of Sydney
45 Hunter Street, Parramatta	Lots 1 and 2 DP 575473	Anglican Church Property Trust Diocese of Sydney

Description of the Change to the Environmental Planning Instrument to which the Planning Agreement applies

The Planning Agreement is offered in connection with Planning Proposal PP_2020_COPAR_001_00 seeking amendment of the *Parramatta Local Environmental Plan 2011 (LEP)* to rezone and amend the land use zoning, floor space ratio and height controls in the LEP and to include site specific provisions in respect of the lands described above, but which are more commonly known as the St John's Cathedral site.

The proposed amendments to the Planning Proposal are set out in Annexure B of the Planning Agreement and include:

- (a) rezoning the land from part B4 – mixed use and SP1 – Special Activities (Place of Public Worship) to part B3 Commercial Core and B4 – Mixed Use and part SP1 – Special Activities (Place of Public Worship);
- (b) increase the FSR controls on those parts of the site to be B3 Commercial Core and B4 – Mixed Use from 3:1 to 10:1 (11.5:1 including the 15% design excellence bonus) and apply no FSR control on land zoned SP1 – Place of Public Worship;
- (c) retaining the FSR sliding scale provisions within the LEP to the site;
- (d) amend the building height controls including increasing the control for a portion of land proposed to be zoned B3 – Commercial Core from 18 and 24m to 211m (RL) (up to 243m (RL) including the 15% design excellence bonus); decreasing the control on a portion of land proposed to be zoned B3 – Commercial Core from 18 to 12m; increasing the control for the B4 – Mixed Use land from 36m to 211m (RL) (243m including the 15% design excellence bonus); and applying no building height control on land zoned SP1 – Place of Public Worship);
- (e) amending the special provisions map to permit the application of clause 7.6 Airspace Operations;
- (f) adopting a site specific clause to require consistency with solar access requirements for Parramatta Square; and
- (g) facilitate the creation of a 6m wide laneway to provide future vehicle access to 41, 43 and 45 Hunter Street and 181 Church Street.

The proposed amendments also include a site specific development control plan that proposes guidelines on various controls including built form, public domain, heritage, traffic, flood management and environmental sustainability.

The Planning Agreement will also apply to the future proposed development of the land for two buildings, a commercial tower and a mixed use building in accordance with the LEP once the proposed amendments have been made (**Development**). The Developer anticipates that future development of the land will involve demolition of the St John's Church Hall that is located on the Land and is currently listed as a local heritage item under the LEP (**Demolition Works**).

Summary of Objectives, Nature and Effect of the Planning Agreement

Contributions

The Planning Agreement requires, on the grant of development consent for Demolition Works (and the obtaining of a construction certificate for those works) the following contributions:

- (a) monetary contributions of \$4,600,000 to be used for the improvement of public domain areas in the Parramatta central business district adjacent to or in the vicinity of the site;
- (b) provision of public access across private land by the grant of an easement for vehicular access to the Queensland Arcade, as well as an agreement to enter into a public access licence over the civic space area surrounding St John's Cathedral; and
- (c) civic space works and construction of New Square including soft and hard landscaping, lighting, large tree planting, bench seats, drinking fountains, electrical services, irrigation, access and bollards, bins, and signage.

The Planning Agreement contains:

- (a) A Contributions Tables (Schedules 2 and 3) setting out the contributions that are required to be delivered by the Developer and the proposed timing for delivery.
- (b) Construction and Easement Terms at schedules 4 and 5 and public access and restriction on use terms at Schedules 6 and 7; and
- (c) Performance specifications for the Civic Space Works at Annexure E.

Other Requirements

Schedule 8 of the Planning Agreement sets out how the Planning Agreement meets the requirements of section 7.4 of the Act. In particular, the Planning Agreement includes:

- (a) provisions confirming that sections 7.11, 7.12 and 7.24 are not excluded;
- (b) a mechanism for dispute resolution (clause 10);
- (c) provisions about enforcement of the Planning Agreement including a requirement for the Developer to provide financial securities, a clause authorising Council to compulsorily acquire the land if it is not dedicated as required and restrictions on the issue of Construction Certificates and Occupation Certificates for the Development if the obligations under the Planning Agreement are not met (clause 11);
- (d) a requirement for the Planning Agreement to be registered against the title to the Land (clause 8); and
- (e) provisions confirming that the Council is not obliged to grant consent or exercise any of its functions in relation to a change to an environmental planning instrument (clause 14).

Assessment of the Merits of the Planning Agreement

The Objectives, Nature and Effect of the Planning Agreement

The proposed contributions under the Planning Agreement will serve the public purposes of improving public infrastructure and amenities in and around the site and the Parramatta central business district.

Assessment of Merits of the Planning Agreement

The proposed Agreement promotes the public interest by offering monetary contributions to be applied toward the augmentation and delivery of local infrastructure and public amenities. In doing so, the proposed Agreement aims to ensure optimum local infrastructure and public amenities are provided and promote the social and economic welfare of the community and a better environment. In addition, the proposed Agreement will result in arrangements for public use of open space areas associated with St John's Cathedral, in a manner which is compatible with the nearby Parramatta Square, which will contribute to improved amenity of workers and residents in the CBD.

As it would be difficult to obtain these benefits through other statutory means, the Planning Agreement is the most suitable instrument by which the contributions can be delivered.

8 April 2021

The Chief Executive Officer
City of Parramatta Council
PO Box 32
Parramatta NSW 2124

By email
rcologna@cityofparramatta.nsw.gov.au

Dear Sir

Planning Agreement St John's Cathedral Planning Proposal
Our ref: NLS/PAR970-00169

- 1 We refer to the attached planning agreement relating to the Planning Proposal for the St Johns Cathedral and surrounding land at Hunter Street, Macquarie Street and Church Street, Parramatta, which has been negotiated between the parties and has been prepared for exhibition.
- 2 The original agreement was drafted using Council's template document in January 2021. Throughout 2021, negotiations continued between Council and the landowner due to uncertainties with the proposal, including:
 - (a) what would occur if development consent could not be obtained to demolish the St John's Church Hall,
 - (b) whether the planning agreement should address the proposed use of land that forms part of Hunter Street, and
 - (c) whether land should be dedicated to establish a laneway at the rear of Hunter Street properties for access to Queensland Arcade.
- 3 A revised version of the planning agreement was provided by us to Council (and then to the applicant) in December 2021. The planning agreement was originally drafted on the basis that a public access easement would be granted over that part of the land forming the public open space area around the Cathedral (**Civic Space Land**).
- 4 In early 2022, Council was advised by the landowner that it would not grant an easement or any proprietary interest or agree to any covenants registered on title. On that basis, the landowner has proposed a licence over the Civic Space Land for use as a thoroughfare and for passive recreation activities by the public.
- 5 Amendments have been made to the agreement following negotiations with the landowner about the use of the Civic Space Land and in accordance with Council's instructions including the "Terms Sheet of Public Benefits" dated 11 March 2022 as provided at Attachment 1 of Item 12.3 of the report to Council's Extraordinary Meeting on 21 March 2022, except as follows:

Newcastle

Sparke Helmore Building, Level 7, 28 Honeysuckle Dr, Newcastle NSW 2300
PO Box 812, Newcastle NSW 2300

t: +61 2 4924 7200 | f: +61 2 4924 7299 | DX 7829 Newcastle | www.sparke.com.au

adelaide | brisbane | canberra | melbourne | newcastle | perth | port macquarie | sydney | upper hunter NLS\NLS\83692139\2

- (a) the dedication at the rear of 45 Hunter Street has been amended from a 'stratum' parcel dedication by the Church to an 'easement in gross over the desired access point' to the benefit of Council; and
- (b) the location of the temporary access route has been amended from one option (west of the Warden's Cottage) to two options (west or east of the Warden's Cottage),

Parties to the agreement

- 6 The owner of the majority of land subject to the planning agreement, Anglican Church Property Trust Diocese of Sydney, is a party to the Planning Agreement. Some of the subject land is owned by individual representatives of the landowner. We are advised that the majority landowner is currently arranging to have that land transferred to it and it will be the owner of all of the subject land by the time the agreement is executed. The agreement has therefore been drafted on the basis that the Anglican Church Property Trust Diocese of Sydney is the owner of the relevant land.

Contributions towards Public Purposes

- 7 The agreement requires the landowner to:
- (a) carry out works to embellish the Civic Space Land to create an open space area that is consistent with Parramatta Square;
 - (b) enter into a "Public Access and Restriction on Use Licence" requiring the Civic Space Land to be generally open to the public for certain uses in perpetuity;
 - (c) carry out road works and grant an easement over land at the rear of 45 Hunter Street for permanent vehicular access to the Queensland Arcade (181 Church Street, Parramatta);
 - (d) grant a temporary access licence across the land for vehicular access to the rear of the Queensland Arcade (for a period of ten years or until permanent access is available, whichever is earlier); and
 - (e) pay a monetary contribution of \$4,600,000.00 for the improvement of public domain areas in the Parramatta Central Business District.
- 8 All of the obligations to deliver contributions, except the requirement to provide temporary access to the Queensland Arcade, are contingent on the grant of a development consent for the demolition of the St John's Church Hall and the landowner "electing" to carry out those works (that is, obtaining a construction certificate for, or commencing, demolition works). We are instructed that the offer has been made to provide an enhanced public space to mitigate the impacts of removal of a heritage listed item.
- 9 Obligations to deliver the Civic Space outcomes and pay the monetary contribution must be satisfied before an Occupation Certificate is issued for "Building 1 (North Tower)" located adjacent to the Civic Space land. A formal document containing the terms of the public access licence must be agreed in principle on execution of the planning agreement. The public access licence must be executed by the parties on the issue of a Construction Certificate for the demolition of the Church Hall (or on commencement of demolition if no such certificate is required), with the terms of the Public Access & Restriction on Use Licence to commence upon completion of the Civic Space Works.

- 10 Obligations to grant the easement in gross and carry out road works on that land to allow for vehicular access must be satisfied before an Occupation Certificate is issued for "Building 2 (South Tower)", which will be located on the land at 45 Hunter St.
- 11 The temporary accessway must be constructed and the temporary access licence must be granted, subject to agreement being reached with the Queensland Arcade owners, within 6 months of development consent being granted for the demolition of the Church Hall (regardless of whether the developer "elects" to act on that consent).

Easement and Licence Terms

- 12 The planning agreement contains draft easement and licence terms. Under the planning agreement, the parties agree to enter into the required easements and licences substantially in accordance with those terms.
- 13 The easement terms for the vehicular access to the Queensland Arcade are generally consistent with Council's standard terms and require the landowner to repair and maintain the easement. The terms allow the landowner to prevent use of the site in an emergency or for the safety or protection of any person. The terms further provide that Council is not responsible for users of the site (other than Council's employees, contractors and agents) and contain indemnities and releases in favour of Council. Both parties must obtain public liability insurance to cover liability up to \$20 million per occurrence over the easement land.
- 14 The terms of the public access licence for the Civic Space Land will permit public use of the land as a thoroughfare and for certain passive recreation uses. The landowner may be able to close the site to the public in the case of an emergency, for the safety of any person, for the protection of property or for legitimate Church related uses. The site may not be "closed" for public use for more than 90 days per calendar year without Council's consent. If the licensed area is "closed" for Church uses, the landowner must ensure that there is are reasonable pedestrian pathways at least 3 metres wide across the land between Church Street and Hunter Street. The landowner is entitled to remove persons who it considers to be a nuisance, safety risk or acting against their organisational beliefs (including breaching the landowner's Social Covenants).
- 15 The landowner will be required to repair and maintain the Civic Space Land (licensed area) as well as any portion of Hunter Street that it intends to incorporate into the Civic Space. Consequently, the landowner will be required to indemnify Council against claims arising on the licensed site, as well as on the Hunter Street Land. The indemnity relating to the Hunter Street land is limited, however, to the extent of the landowner's public liability insurance. The public access licence will require both the landowner and Council to maintain public liability insurance for both the licensed area as well as the Hunter Street land for the limit of liability of \$20 million per occurrence.

Enforcement

- 16 A bank guarantee equivalent to the value of the works to embellish the Civic Space Land will be required prior to the issue of a construction certificate or if no Construction Certificate is required, prior to commencement of the Demolition Works for the demolition of the Church Hall. The bank guarantee can be called on by Council if the developer has not commenced the construction of Building 1 (North Tower) within 6 months after demolition of the hall, or completed within 4 years after demolition of the hall (or the landowner is otherwise in substantial breach of the agreement or becomes insolvent). If Council calls on the bank

guarantee it will be entitled to carry out the works required under the planning agreement itself.

- 17 The planning agreement also provides that Council may compulsorily acquire the easement to provide vehicular access to Queensland Arcade at the rear of 45 Hunter Street for \$1.00 if the landowner fails to grant that easement as required.
- 18 The issue of construction certificates and occupation certificates for various parts of the development will be restricted unless the landowner satisfies the obligations to deliver contributions under the planning agreement.

Other Planning Agreement terms

- 19 The agreement does not exclude the application of sections 7.11, 7.12 and 7.24 of the EPA Act to the proposed development. Conditions requiring the payment of development contributions under the EPA Act may be imposed on the grant of any development consent granted for the proposed development.
- 20 The agreement is to be registered against the title to the land and Council has a caveatable interest over the Land if the landowner fails to register the agreement as required.
- 21 When the agreement is registered it will be "binding on, and is enforceable against, the owner of the land from time to time as if each owner for the time being had entered into the agreement" (in accordance with section 7.6 of the EPA Act). In addition, the agreement restricts transfer or assignment of the land unless the transferee agrees to comply with all the outstanding obligations of the landowner under the agreement.
- 22 The agreement contains standard provisions concerning dispute resolution, assignment, notices and other general provisions. Clause 14 confirms that the agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council.

Exhibition of the agreement

- 23 The attached version of the agreement is consistent with the terms agreed between the parties to date and may now be exhibited by Council in accordance with clause 204 of the *Environmental Planning and Assessment Regulation 2021*.
- 24 Please contact us if you have any queries regarding the exhibition of the agreement.

Yours faithfully



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