



Frasers Morton Pty Limited
ABN 49 119 168 875

Parramatta City Council
ABN 49 907 174 773

Planning Agreement

Environmental Planning and Assessment Act 1979

© Holding Redlich 2010

Two handwritten signatures are present. The top signature is in dark ink and appears to be "Neil O'Keefe". The bottom signature is in blue ink and also appears to be "Neil O'Keefe".

Contact
Sydney
Robert Moses
2664 0340

TABLE OF CONTENTS

1	DEFINITIONS AND INTERPRETATION	4
	1.1 Definitions	4
	1.2 Interpretation	6
2	OPERATION AND APPLICATION OF THIS DEED	8
	2.1 Operation	8
	2.2 Application	8
3	APPLICATION OF SECTION 94, SECTION 94A AND SECTION 94EF OF THE ACT	8
4	REQUIREMENT TO PROVIDE DEVELOPMENT CONTRIBUTIONS	8
5	REGISTRATION ON TITLE	8
	5.1 Land ownership	8
	5.2 Registration of deed	9
	5.3 Release and discharge of deed	9
6	SECURITY	9
	6.1 Security	9
7	DISPUTE RESOLUTION	9
	7.1 Not commence	9
	7.2 Written notice of dispute	10
	7.3 Attempt to resolve	10
	7.4 Mediation	10
	7.5 Court proceedings	10
	7.6 Not use information	10
	7.7 No prejudice	10
8	GST	11
	8.1 Definitions	11
	8.2 Intention of the parties	11
	8.3 Reimbursement	11
	8.4 Consideration GST exclusive	11
	8.5 Additional Amounts for GST	11
	8.6 Non monetary consideration	11
	8.7 Assumptions	12
	8.8 No merger	12
9	ASSIGNMENT	12
	9.1 Consent	12
10	WARRANTIES OF CAPACITY	12
	10.1 General warranties	12
	10.2 Power of attorney	12

11	GENERAL PROVISIONS	13
11.1	Entire agreement	13
11.2	Variation	13
11.3	Waiver	13
11.4	Further assurances	13
11.5	Time for doing acts	13
11.6	Governing law and jurisdiction	13
11.7	Severance	14
11.8	Preservation of existing rights	14
11.9	No merger	14
11.10	Counterparts	14
11.11	Relationship of parties	14
11.12	Good faith	14
11.13	No fetter	14
11.14	Explanatory note	15
11.15	Expenses and stamp duty	15
11.16	Notices	15
11.17	Confidentiality	15
	SCHEDULE 1	16
	SCHEDULE 2	17
	SCHEDULE 3	18
	SCHEDULE 4	20
	SCHEDULE 5	28

THIS PLANNING AGREEMENT is dated

2010

PARTIES:

FRASERS MORTON PTY LIMITED (ABN 49 119 168 875) of Level 11, 488 Kent Street, Sydney, New South Wales (**Developer**)

PARRAMATTA CITY COUNCIL (ABN 49 907 174 773) of 30 Darcy Street, Parramatta, New South Wales (**Council**)

INTRODUCTION:

- A** The Developer has made a request under section 54(3) of the Act by lodging a draft planning proposal requesting that the Land be zoned to allow for the Proposed Development.
- B** The Developer proposes to lodge applications for Planning Approvals for the Proposed Development if the Draft LEP is made.
- C** The Developer has offered to enter into this Deed to make Development Contributions towards public facilities and infrastructure.

IT IS AGREED:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this **Deed**, unless the context clearly indicates otherwise:

Act means the *Environmental Planning and Assessment Act 1979 (NSW)* as amended from time to time);

Address for Service means the address of each party appearing in **Schedule 2** or any new address notified by any party to all other parties as its new Address for Service;

Authority means a planning authority as defined by section 93C of the Act;

Bank Guarantee means an irrevocable and unconditional undertaking by a financial institution regulated by the Australian Prudential Regulatory Authority to pay the face value of that undertaking on demand;

Business Day means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, and concludes at 5 pm on that day;

Capital Investment Value has the same meaning as in the Regulation from time to time;

Cash Contributions means the monetary contributions required to be paid by the Developer in accordance with **Schedule 4**;

Construction Certificate has the same meaning as in the Act.

CPI means the Consumer Price Index (Sydney, All groups) released by the Australian Bureau of Statistics, Catalogue Number 6401.0.

Designated Land means that part of the Land along the Parramatta River foreshore to be dedicated to Council for the purposes of a public reserve as shown on the Indicative Staging Plan in Schedule 3 and the area of which is to be determined in accordance with Schedule 4;

Development Contributions means the Works In Kind, the dedication of the Designated Land and the Cash Contributions provided for in **Schedule 4**;

Draft LEP means any local environmental plan that amends the *Parramatta Local Environmental Plan 2001* or any other local environmental plan that applies to the Land generally in accordance with a planning proposal dated 24 November 2009 submitted by the Council to the Minister for Planning under section 56 of the Act;

Explanatory Note means the explanatory note relating to this agreement and required by the Regulation;

General Register of Deeds means the land register maintained under the *Conveyancing Act 1919* (NSW) and so titled;

GST means any form of goods and services tax payable under the GST Legislation;

GST Legislation means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time);

Indicative Staging Plan means the indicative 3 stage plans set out in **Schedule 3** of this Deed relating to the Proposed Development;

Land means Lot 1 DP 817709;

Occupation Certificate has the same meaning as in the Act;

Pedestrian and Cycling Bridge means a pedestrian and cycling bridge to be constructed that relates to the contribution referred to in Item 2 of the Table to **Schedule 4** and within 100 metres of the boundary to the Land.

Planning Approval means:

- (a) a development consent as defined under section 4 of the Act; or

(b) a project approval granted under section 75J of the Act,

in relation to the Proposed Development over all or part of the Land;

Proposed Development means the development of the Land generally in accordance with the Indicative Staging Plan including but not limited to subdivision, high density residential housing, mixed uses and open space;

Real Property Act means the *Real Property Act 1900* (NSW);

Register means the torrens title register maintained under the Real Property Act;

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW) (as amended from time to time);

Security Terms mean the terms and arrangements set out in **Schedule 5**; and

Works In Kind means the works required to be undertaken by the developer and specified or described in **Schedule 4**.

1.2 Interpretation

In this Deed unless the context clearly indicates otherwise:

- (a) a reference to **this Deed** or another document means this Deed or that other document and any document which varies, supplements, replaces, assigns or novates this Deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this Deed;
- (e) **clause headings** and the **table of contents** are inserted for convenience only and do not form part of this Deed;
- (f) the **introduction**, **schedules** (if any) and **annexures** (if any) form part of this Deed;
- (g) the **introduction** accurately sets out the circumstances in which the parties have entered into this Deed;

- (h) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (i) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (j) a reference to a **corporation** includes its successors and permitted assigns;
- (k) **related** or **subsidiary** in respect of a corporation has the same meaning given to that term in the Corporations Act;
- (l) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this Deed;
- (m) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (n) a reference to a **breach of warranty** includes that warranty not being complete, true or accurate;
- (o) 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;
- (p) **Including** and **includes** are not words of limitation;
- (q) the words **at any time** mean at any time and from time to time;
- (r) a reference to a time is to that time in New South Wales;
- (s) a word that is derived from a defined word has a corresponding meaning;
- (t) **monetary amounts** are expressed in Australian dollars;
- (u) the singular includes the plural and vice-versa;
- (v) words importing one gender include all other genders;
- (w) a reference to a thing includes each part of that thing; and
- (x) neither this Deed 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.

2 OPERATION AND APPLICATION OF THIS DEED

2.1 Operation

The parties agree that this Deed:

- (a) constitutes a planning agreement within the meaning of section 93F of the Act;
- (b) is effective and binding on the parties from the date that the Draft LEP commences in accordance with section 34(5) of the Act;
- (c) does not require any of the Development Contributions to be made until after the date when the relevant Authority imposes a condition on a Planning Approval under section 93I(3) of the Act; and
- (d) is terminated when the Developer provides all of the Development Contributions required by this Deed to the Council, subject to **clause 11.8**.

2.2 Application

This Deed applies to:

- (a) the Land; and
- (b) the Proposed Development.

3 APPLICATION OF SECTION 94, SECTION 94A AND SECTION 94EF OF THE ACT

The application of sections 94, 94A and 94EF of the Act are excluded to the extent stated in **Schedule 1**.

4 REQUIREMENT TO PROVIDE DEVELOPMENT CONTRIBUTIONS

The Developer will provide, or procure the provision of, the Development Contributions in the manner and at the times set out in **Schedule 4**.

5 REGISTRATION ON TITLE

5.1 Land ownership

The Developer represents and warrants that it is the registered proprietor of the Land.

5.2 Registration of deed

- (a) As contemplated by section 93H of the Act, the Developer agrees to procure the registration of this Deed within 5 business days of the date referred to in **clause 2.1(b)** under the Real Property Act in the relevant folio of the Register.
- (b) The Developer at its own expense, will take all practical steps and otherwise do anything to procure:
 - (i) the consent of each person who:
 - (A) has an estate or interest in the Land registered under the Real Property Act; or
 - (B) is seized or possessed of an estate or interest in the Land; and
 - (ii) the execution of any documents; and
 - (iii) the production of the relevant certificates of title; and
 - (iv) the lodgement and registration of this Deed, by the Registrar-General in the relevant folio of the Register, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.

5.3 Release and discharge of deed

The Council agrees to do all things reasonably required by the Developer to release and discharge this Deed with respect to any part of the Land upon the Developer satisfying all of its obligations under this Deed in respect of that part of the Land, at the Developer's cost.

6 SECURITY

6.1 Security

The Developer agrees to provide security to the Council for the performance of the Developer's obligations under this Deed in accordance with the Security Terms.

7 DISPUTE RESOLUTION

7.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with this **clause 7**.

7.2 Written notice of dispute

A party claiming that a dispute has arisen under or in relation to this Deed must give written notice to the other party specifying the nature of the dispute.

7.3 Attempt to resolve

On receipt of notice under **clause 7.2**, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

7.4 Mediation

If the parties do not agree within 7 days of receipt of notice under **clause 7.2** (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

the parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of NSW. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

7.5 Court proceedings

If the dispute is not resolved within 42 days after notice is given under **clause 7.2** then any party which has complied with the provisions of this **clause 7** may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

7.6 Not use information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this **clause 7** is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this **clause 7** for any purpose other than in an attempt to settle the dispute.

7.7 No prejudice

This **clause 7** does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this Deed.

8 GST

8.1 Definitions

Words used in this clause that are defined in the GST Legislation have the meaning given in that legislation.

8.2 Intention of the parties

The parties intend that:

- (a) Divisions 81 and 82 of the GST Legislation apply to the supplies made under and in respect of this Deed; and
- (b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

8.3 Reimbursement

Any payment or reimbursement required to be made under this Deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

8.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Deed are GST Exclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this **clause 8**.

8.5 Additional Amounts for GST

To the extent an amount of GST is payable on a supply made by a party under or in connection with this Deed (the GST Amount), the Recipient will pay to the Supplier the GST Amount. However, where a GST Amount is payable by the Council as Recipient of the supply, the Developer will ensure that:

- (a) the Developer makes payment of the GST Amount on behalf of the Council, including any gross up that may be required; and
- (b) the Developer provides a Tax Invoice to the Council.

8.6 Non monetary consideration

Clause 8.5 applies to non-monetary consideration.

8.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under **clause 8.5** the Developer will assume the Council is not entitled to any input tax credit.

8.8 No merger

This clause will not merge on completion or termination of this Deed.

9 ASSIGNMENT

9.1 Consent

Neither party may assign the rights or benefits of this Deed to any person except:

- (a) to a related body corporate, after obtaining the consent of the other party, which the other party must not withhold if it is reasonably satisfied that the related body corporate has sufficient assets, resources and expertise to perform all of the assigning party's obligations under this Deed; or
- (b) to any other person, with the prior consent of the other party, which the other party may give, give conditionally or withhold in its absolute discretion.

10 WARRANTIES OF CAPACITY

10.1 General warranties

Each party warrants to each other party that:

- (a) this Deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this Deed in the capacity of trustee of any trust.

10.2 Power of attorney

If an attorney executes this Deed on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

11 GENERAL PROVISIONS

11.1 Entire agreement

This Deed constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

11.2 Variation

This Deed must not be varied except by a later written document executed by all parties.

11.3 Waiver

A right created by this Deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will 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.

11.4 Further assurances

Each party must promptly execute all documents and do every thing necessary or desirable to give full effect to the arrangements contained in this Deed.

11.5 Time for doing acts

- (a) If:
- (i) the time for doing any act or thing required to be done; or
 - (ii) a notice period specified in this Deed,

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 pm on the specified day, it is taken to have been done on the following Business Day.

11.6 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this Deed.
- (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.

11.7 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this Deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

11.8 Preservation of existing rights

The expiration or termination of this Deed does not affect any right that has accrued to a party before the expiration or termination date.

11.9 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this Deed for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

11.10 Counterparts

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

11.11 Relationship of parties

Unless otherwise stated:

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

11.12 Good faith

Each party must act in good faith towards all other parties and use its best endeavours to comply with the spirit and intention of this Deed.

11.13 No fetter

Nothing in this deed shall be construed as requiring the Council to do anything that would cause it to be a breach of any of its obligations at law and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty in relation to the Draft LEP, the Land or the Proposed Development.

11.14 Explanatory note

The Explanatory Note must not be used to assist in construing this Deed.

11.15 Expenses and stamp duty

- (a) Subject to any other clause to the contrary, each party must pay its own legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Deed.
- (b) The Developer will be responsible for the payment of any stamp duty assessed on this agreement and any other document or transaction related to this agreement.

11.16 Notices

Any notice, demand, consent, approval, request or other communication (notice) to be given under this Deed must be in writing and must be given to the recipient at its Address for Service by being:

- (a) hand delivered;
- (b) sent by facsimile transmission;
- (c) mail sent by prepaid ordinary mail within Australia; or
- (d) sent by prepaid Express Post International airmail to the Address for Service of the recipient party, if the Address for Service of the sender and the recipient are in different countries.

A notice is given if:

- (e) hand delivered, on the date of delivery;
- (f) sent by facsimile transmission during any Business Day, on the date that the sending party's facsimile machine records that the facsimile has been successfully transmitted;
- (g) mail sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting; or
- (h) sent by prepaid Express Post International airmail between countries, on the date that is 10 Business Days after the date of posting.

11.17 Confidentiality

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

SCHEDULE 1

Requirements under Section 93F (Clause 1.2)

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the Deed complying with the Act.

REQUIREMENT UNDER THE ACT	THIS DEED
<p>Planning instrument and/or development application – (section 93F(1))</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(a) made, or proposes to make, a development or project application.</p> <p>(b) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) Yes</p> <p>(b) Yes</p> <p>(c) No</p>
Description of land to which this Deed applies – (section 93F(3)(a))	See clause 1.1
Description of change to the environmental planning Instrument to which this Deed applies – (section 93F(3)(b))	See clause 1.1
The scope, timing and manner of delivery of contribution required by this Deed – (section 93F(3)(c))	See Schedule 4
Applicability of section 94 of the Act – (section 93F(3)(d))	Excluded
Applicability of section 94A of the Act – (section 93F(3)(d))	Excluded
Applicability of section 94EF of the Act – (section 93F(3)(d))	Not excluded
Consideration of benefits under this Deed if section 94 applies – (section 93F(3)(e))	N/A
Mechanism for Dispute Resolution - (Section 93F(3)(f))	See clause 7
Enforcement of this Deed – (section 93F(3)(g))	See clause 6
No obligation to grant consent or exercise functions – (section 93F(9))	See clause 11.13

SCHEDULE 2

Address for Service (Clause 1.1)

Parramatta City Council

Contact: Chief Executive Officer

Address: PO Box 32 Parramatta, New South Wales, 2124

Facsimile No: (02) 9806 5917

Frasers Morton Pty Limited

Contact: Company Secretary

Address: Level 11, 488 Kent Street, Sydney, New South Wales, 2000

Facsimile No: (02) 8823 8801

SCHEDULE 3

Indicative Staging Plan (Clause 1.1)



Applies in case of less than 1.35:1 FSR specified in the Draft LEP

<p>1. 1:2000 Scale of Plan 2. 1:2000 Scale of Plan 3. 1:2000 Scale of Plan 4. 1:2000 Scale of Plan 5. 1:2000 Scale of Plan 6. 1:2000 Scale of Plan 7. 1:2000 Scale of Plan 8. 1:2000 Scale of Plan</p>	<p>9. 2000 0 2000 4000 6000 8000 10000</p>	<p>10. 1:2000 Scale of Plan</p>	<p>11. 1:2000 Scale of Plan</p>	<p>12. 1:2000 Scale of Plan</p>	<p>13. 1:2000 Scale of Plan</p>	<p>14. 1:2000 Scale of Plan</p>	<p>15. 1:2000 Scale of Plan</p>	<p>16. 1:2000 Scale of Plan</p>	<p>17. 1:2000 Scale of Plan</p>	<p>18. 1:2000 Scale of Plan</p>	<p>19. 1:2000 Scale of Plan</p>	<p>20. 1:2000 Scale of Plan</p>
<p>HBO + EMTB 180 DUNE LODGE A 180 DUNE LODGE B 180 DUNE LODGE C 180 DUNE LODGE D 180 DUNE LODGE E 180 DUNE LODGE F 180 DUNE LODGE G 180 DUNE LODGE H 180 DUNE LODGE I 180 DUNE LODGE J 180 DUNE LODGE K 180 DUNE LODGE L 180 DUNE LODGE M 180 DUNE LODGE N 180 DUNE LODGE O 180 DUNE LODGE P 180 DUNE LODGE Q 180 DUNE LODGE R 180 DUNE LODGE S 180 DUNE LODGE T 180 DUNE LODGE U 180 DUNE LODGE V 180 DUNE LODGE W 180 DUNE LODGE X 180 DUNE LODGE Y 180 DUNE LODGE Z</p>												
<p>Frasers Property Australia</p>						<p>Indicative Staging Plans</p>						
<p>Morton Street Precinct Perth 0003291 UD-SP-002</p>						<p>0003291 UD-SP-002</p>						



Applies in case of 1.35:1 FSR or more specified in the Draft LEP

- Key**
1. Existing industrial building
 2. Proposed industrial building
 3. Public open space (0.500m²/person) transferred to Council
 4. Entry road temporary turning circle constructed
 5. Forecourt Road constructed and temporary turning circle demolished (0.500m²/person) transferred to Council
 6. Public open space (0.500m²/person) transferred to Council
 7. 150m² Council land transferred to landowner

<p>7. 150m² Council land transferred to landowner</p> <p>6. Public open space (0.500m²/person) transferred to Council</p> <p>5. Forecourt Road constructed and temporary turning circle demolished (0.500m²/person) transferred to Council</p> <p>4. Entry road temporary turning circle constructed</p> <p>3. Public open space (0.500m²/person) transferred to Council</p> <p>2. Proposed industrial building</p> <p>1. Existing industrial building</p>	<p>Scale: 1:500</p> <p>North Arrow</p>	<p>1:500</p> <p>0 20M 40M 60M 80M 100M</p>	<p>N B O + E M T B</p> <p>Project No: 0003228</p> <p>Project Name: Morton Street Precinct</p> <p>Project Location: [Address]</p> <p>Project Date: [Date]</p> <p>Project Status: [Status]</p>	<p>Fraser's Property Australia</p> <p>Morton Street Precinct</p> <p>Permit No: 0003228</p> <p>UD-SP-001</p>	<p>Indicative Staging Plans</p> <p>Date: [Date]</p> <p>Page: [Page]</p> <p>Scale: [Scale]</p>
--	--	--	--	---	---

SCHEDULE 4

Development Contributions (Clause 4)

- 1 The Developer agrees to provide the Development Contributions in the manner and at the times set out in this Schedule.

Dedication of Land

	Column 1	Column 2	Column 3	Column 4
	Contribution	Value	Minimum Deliverables	Timing
1	The dedication of part of the Land along the Parramatta River foreshore to Council for public reserve in accordance with the Indicative Staging Plan in Schedule 3.		<ul style="list-style-type: none"> The Designated Land to be dedicated is to be surveyed prior to dedication. 	<p>If a floor space ratio less than 1.35:1 is the maximum specified under the Draft LEP:</p> <ul style="list-style-type: none"> Prior to the issue of the first Occupation Certificate for Stage 1 of the Proposed Development (unless otherwise agreed with the Council) the dedication of 9,950 sqm of foreshore land to the Council must be procured. Prior to the issue of the last Occupation Certificate for any part of the Land or eight (8) years from the date of the first Planning Approval, whichever is earlier, the dedication of a further 2,650 sqm of foreshore land to the Council must be procured. <p>If a floor space ratio of 1.35:1 or more is the maximum specified under the Draft LEP:</p> <ul style="list-style-type: none"> Prior to the issue of the first Occupation Certificate for Stage 1 of the Proposed Development (unless otherwise agreed with the Council) the dedication of 9,350 sqm of foreshore land to the Council must be procured. Prior to the issue of the last Occupation Certificate for any part of the Land or eight (8) years from the date of the first Planning Approval, whichever is earlier, the dedication of a further 6,500 sqm of foreshore land to the Council must be procured.

Cash Contributions

	Column 1	Column 2	Column 3	Column 4
	Contribution	Value	Minimum Deliverables	Timing
2	Contribution towards the design and construction of the Pedestrian and Cycling Bridge.	\$1.75M		On or prior to the issue of each Occupation Certificate for the Proposed Development at a rate per square metre of approved gross floor area that is determined and paid in accordance with the terms of clauses 7 to 11 this Schedule.
3	Additional cash contribution.	See clause 11 of this Schedule		On or prior to the issue of the last Occupation Certificate for Stage 3 of the Proposed Development at a rate determined and paid in accordance with the terms of clause 11 this Schedule.

Works in Kind

	Column 1	Column 2	Column 3	Column 4
	Contribution	Value	Minimum Deliverables	Timing
4	Contribution towards landscaping works and the installation of public artworks.	\$80,000	<ul style="list-style-type: none"> • Install feature trees that are locally native. • Revegetate open space/village green with native grasses. 	On or prior to the issue of the last Occupation Certificate for Stage 2 of the Proposed Development and in accordance with the terms of clauses 15 to 19 of this Schedule.
5	Construction and design of a pathway between the southern end of Morton Street and the new north-south road shown on the Indicative Staging Plan.	\$150,000	<ul style="list-style-type: none"> • A 3 metre wide concrete cycleway path up to PCC standards. • If the path crosses environmentally sensitive land then install a 3 metre wide hardwood timber bridge. • Install bollards for cycleway route within the park. 	On or prior to the issue of the last Occupation Certificate for Stage 1 of the Proposed Development and in accordance with the terms of clauses 15 to 19 of this Schedule.

6	Construction and design of one river platform (including applicable reports and design fees).	\$100,000	<ul style="list-style-type: none"> • Boardwalk and platform be constructed of a hardwood material, and be of a height that protects native vegetation areas. • That the boardwalk and platform have balustrades. 	On or prior to the issue of the last Occupation Certificate for Stage 1 of the Proposed Development and in accordance with the terms of clauses 15 to 19 of this Schedule.
7	Construction, design and dedication of a foreshore road from the southern end of Morton Street to link with a new north-south road shown on the Indicative Staging Plan.	\$440,000	<ul style="list-style-type: none"> • Design construction and dedication of a foreshore road reserve with a maximum width of 15m width which includes footpaths, carriageway, street lighting, pavements, signage and street trees. 	On or prior to the issue of the last Occupation Certificate for Stage 3 of the Proposed Development and in accordance with the terms of clauses 15 to 19 of this Schedule.
8	Removal of the existing hardstand area and the construction and design of a landscaped passive recreation area.	\$350,000	<ul style="list-style-type: none"> • Demolish existing kerb and asphalt from existing car park, stockpile sub-base soils. • Provide a level open space area and turf for the purpose of active recreation use. • Install picnic area and bench units overlooking river. • Install local native plants to complement new landscape theme. • Install drainage network. 	<ul style="list-style-type: none"> • \$250,000 worth of works as agreed with Council to be completed on or prior to the issue of the last Occupation Certificate for Stage 1 of the Proposed Development, or as otherwise agreed with the Council and in accordance with the terms of clauses 15 to 19 of this Schedule. • \$100,000 worth of works as agreed with Council to be completed on or prior to the issue of the last Occupation Certificate for Stage 3 of the Proposed Development, or as otherwise agreed with the Council and in accordance with the terms of clauses 15 to 19 of this Schedule.

9	Street trees plantings	\$50,000	<ul style="list-style-type: none"> Supplying, planting and maintaining street trees on the new public road reserves relating to each stage of the Proposed Development and including Morton Street and Broughton Street. 	On or prior to the issue of the last Occupation Certificate for each stage of the Proposed Development for that part of the contribution relating to the relevant stage and continuing for a period of 12 months from the issue of that Occupation Certificate and in accordance with the terms of clauses 15 to 19 of this Schedule.
10	Construction and design of a new vehicle turning point at the end of Pemberton Street.	\$30,000	<ul style="list-style-type: none"> As per Council specifications. 	On or prior to the issue of the last Occupation Certificate for Stage 1 of the Proposed Development and in accordance with the terms of clauses 15 to 19 of this Schedule.

Purchase of closed road

- 2 The Council agrees, subject to compliance with the *Roads Act 1993*, to transfer to the Developer that part of Morton St resulting from the partial closure of Morton St and the removal of the turning circle and as generally shown as point 6 or 7 on the Indicative Staging Plans (approximately equal to 155 sqm). The removal of the turning circle is to be at no cost to the Council.
- 3 The area of land referred to in **clause 2** of this Schedule is to be included for the purpose of calculating the floor space ratio for the site, once it is transferred.

Designated Land

- 4 The Developer must dedicate the Designated Land to Council free of any trusts, estates, interests, covenants and other encumbrances by the time(s) specified in Item 1 of the table in **clause 1** of this Schedule, except for easements as agreed between the Developer and the Council.
- 5 The Developer must meet all costs associated with the dedication of the Designated Land in accordance with **clause 4**, including any costs incurred by Council in relation to that dedication.

Indexation

- 6 Any Cash Contributions or Works In Kind contributions required under this Deed are to be paid or provided (as the case may be) in accordance with the following formula:

$$X = N \times \frac{A}{B}$$

"X" means the value of the contribution required to be paid or provided.

"N" means the value of the contribution in accordance with Column 2 of the table in **clause 1** of this Schedule.

"A" means:

- (a) for cash contributions - the most recent CPI determined prior to the cash contribution being made in accordance with the timing in the table in **clause 1** of this Schedule; or
- (b) for works in kind contributions - the most recent CPI determined prior the Cost Report being provided under **clause 17** of this Schedule.

"B" means the most recent CPI determined prior to the date referred to in **clause 2.1(c)** of this Deed.

Cash contributions

7 The Council agrees that the Cash Contributions referred to in Item 2 of the table in **clause 1** of this Schedule is to be set aside for the purpose of the Pedestrian and Cycling Bridge and is not be used for any other purpose ("Bridge Cash Contribution").

8 The instalment amounts for the Bridge Cash Contribution are as follows:

- (a) \$29.50 per sqm where the approved gross floor area results in a floor space ratio up to and including 1.2:1;
- (b) \$27.50 per sqm where the approved gross floor area results in a floor space ratio between 1.2:1 and 1.35:1; and
- (c) \$25.50 per sqm where the approved gross floor area results in a floor space ratio equal to or greater than 1.35:1.

In this clause, the "approved gross floor area" is to be calculated in accordance with the approved gross floor area that relates to the development the subject of each Occupation Certificate issued in relation to the Land.

9 Prior to the last Occupation Certificate being issued for Stage 3 or eight (8) years from the date of the first Planning Approval whichever is earlier, the parties will prepare a reconciliation statement that compares the value of the instalments paid by the Developer under **clause 8** of this Schedule and the overall value of the Bridge Cash Contributions as set out in Item 2 of the table in **clause 1** of this Schedule.

10 Once the reconciliation is completed in accordance with **clause 9** of this Schedule, the Developer must pay any outstanding cash contributions. If the reconciliation reveals that the Developer has made an overpayment, the Council agrees to refund the amount of the overpayment within 14 days of receiving a written request from the Developer for the refund.

11 Where the approved gross floor area is greater than 69,153 sqm, the Developer agrees to pay an additional cash contribution to Council based on the Capital

Investment Value attributable to the amount of gross floor area that exceeds 69,153 sqm calculated in the following manner:

- (a) where the additional Capital Investment Value is less than or equal to \$200,000, then 0.5% of the Capital Investment Value.
- (b) Where the additional capital investment value is greater than \$200,000, 1.0% of the capital investment value.

Note: 69,153 sqm = 1.4 x 49,395 sqm (site area including 155 sqm from Morton St turning circle) (This provision applies where the floor space ratio over the Land after the final stage is completed is greater than 1.4:1)

Pedestrian and Cycling Bridge

- 12 The parties agree to establish a working group with equal members from the Council and the Developer to inform the design process of the Pedestrian and Cycling Bridge.
- 13 The Council agrees to commence the design processes for the construction of the Pedestrian and Cycling Bridge when \$125,000 has been provided to the Council under the contributions required by Item 2 in the table in **clause 1** of this Schedule.
- 14 The Council agrees to complete the construction of the Pedestrian and Cycling Bridge within 12 months of the date of the last Occupation Certificate being issued for the Proposed Development.

Works in Kind – general matters

- 15 The parties acknowledge that any Works In Kind contributions will be:
 - (a) subject to any relevant statutory approvals obtained by the Developer,
 - (b) approved by the Council in circumstances where Council approval is not required for the works or the approval of another public authority is required for the works; and
 - (c) carried out in accordance with detailed design plans submitted for the purpose of the above approvals which will include finishes and other embellishment details.
- 16 The Developer agrees that the design and specifications for any Works In Kind that are to be carried out on any part of the Designated Land must be completed at the same time as the first Planning Approval is achieved.
- 17 Works In Kind contributions are to be provided as follows:
 - (a) any works are to be the subject of plans and specifications designed in accordance with any relevant Council standards and to a cost equivalent of the amounts referred to in the table in **clause 1** of this Schedule;

- (b) the Developer must provide the Council with a cost report prepared by a quantity surveyor ("Cost Report") that sets out how the cost equivalent amounts have been calculated with respect to any works;
 - (c) the Developer's obligations to provide the works in kind will relate to the works on the basis of the Cost Report, with the Developer accepting the risk that the actual cost of delivery of those works may exceed the amounts referred to in the table in **clause 1** of this Schedule;
 - (d) for the purpose of this clause, the cost equivalent of the amounts referred to in the table in **clause 1** of this Schedule includes the cost of construction and embellishment including all internal and external cost for surface works including but not limited to approvals, certification, design, documentation, supervision and construction;
 - (e) any works are to be built in accordance with approved plans, undertaken in a workmanlike manner and be subject to a defects liability period of twelve (12) months after completion of the relevant aspect of the Works In Kind as set out in **clauses 20 to 25** of this Schedule ("Defects Liability Period");
 - (f) during the defects liability period, the Council may acting reasonably require the Developer to rectify any defects and the Developer must rectify any defects in a manner and within a timeframe agreed with the Council;
 - (g) the Developer is to transfer any warranties in relation to the works to the Council once the works are complete and the Defects Liability Period has expired.
- 18 Prior to the last Occupation Certificate being issued for Stage 3 or 8 years from the date of the first Planning Approval whichever is earlier, all Works in Kind are to be constructed in accordance with the terms of this deed.
- 19 The Council agrees that if, when removing the hardstand area for the purpose of providing the contributions referred to in Item 8 in the table in **clause 1** in this Schedule, contamination is evident, that the Council is responsible for all costs associated with the remediation of that contamination howsoever incurred.

Completion of Works in Kind – procedure

- 20 If the Developer considers that any particular item of the Works In Kind is complete it must, within fourteen (14) days of completion of that item, serve a notice on the Council which:
- (a) is in writing;
 - (b) identifies the particular item of the Works to which it relates; and
 - (c) specifies the date on which, the Developer believes the relevant item of the Works in Kind was completed,
- ("Completion Notice").

- 21 The Council must inspect the works set out in a Completion Notice within fourteen (14) days of the receipt of that notice. If the Council fails to carry out an inspection required in accordance with the preceding sentence, then the works referred to in the relevant Completion Notice will be deemed to be complete.
- 22 Within twenty eight (28) days of inspecting the works set out in a Completion Notice, the Council must provide notice in writing to the Developer that the Works set out in the Completion Notice:
- (a) have been completed; or
 - (b) have not been completed, in which case the notice ("Rectification Notice") must also detail:
 - (i) those aspects of the works which have not been completed; and
 - (ii) the work the Council requires the Developer to carry out in order to rectify the deficiencies in those works.
- 23 If the Council does not provide the Developer with a Rectification Notice in accordance with **clause 22** of this Schedule, the works set out in the Completion Notice will be deemed to have been completed.
- 24 Where Council serves a Rectification Notice on the Developer, the Developer must rectify the works in accordance with that notice within the time stipulated by the Council (acting reasonably).
- 25 When the Developer rectifies the works in accordance with **clause 24** of this Schedule, it must serve upon the Council a new Completion Notice for the works it has rectified.

SCHEDULE 5

Security Terms (Clause 6)

Charge

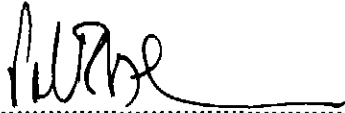
- 1 On the date referred to in **clause 2.1(c)** of this deed, the Developer grants to the Council a fixed charge over the Developer, limited to its interest in the Land for the purpose of securing the Developer's obligations under this Deed ("Charge").
- 2 The Council must, if requested to do so by the Developer and if satisfied that Development Contributions have been made for the relevant amounts, provide a discharge of the Charge in relation to the value of the Development Contributions that have been made.

Bank Guarantee

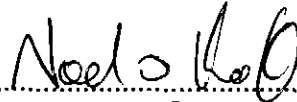
- 3 If at any time during the operation of this Deed the Developer requires the Charge to be released, it must notify the Council in writing of its requirement to release the Charge and the Council must provide a written release of the Charge, at the Developer's cost.
- 4 On the Council releasing the Charge, Bank Guarantees must be provided to the Council to secure the cash contributions and Works in Kind contributions as set out in, and in the amounts referred to in **Schedule 4**.
- 5 If a Bank Guarantee provided by the Developer to the Council expires on a certain date, the Developer must provide the Council with a replacement Bank Guarantee within 5 business days prior to the expiry of the relevant bank guarantee.
- 6 A Bank Guarantee must be released to the Developer in circumstances where:
 - (a) it relates to a cash contribution - when the Council is satisfied (acting reasonably) that the cash contribution has been made by the Developer;
 - (b) it relates to Works in Kind:
 - (i) where the Council is satisfied (acting reasonably) that the Works in Kind have been completed in accordance with **clauses 20 and 25** (inclusive) of **Schedule 4**.
 - (ii) an Occupation Certificate has been issued in relation to the stage of work for which those Works in Kind relate.
- 7 The Council agrees that if it makes a claim in relation to a Bank Guarantee that it may only do so in order to fulfil the Developer's obligations under this Deed.

EXECUTED as a deed

EXECUTED by **FRASERS MORTON PTY LIMITED** in accordance with section 127 of the Corporations Act:)
)
)



Signature of Director



Signature of Director/Secretary



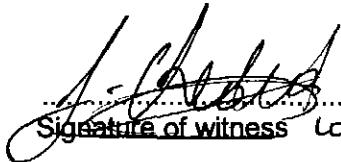
Name of Director



Name of Director/Secretary

EXECUTED for and on behalf of **PARRAMATTA CITY COUNCIL** by)
)
)
who hereby declares that they have been)
duly authorised to do so, in the presence of:)

THE COMMON SEAL OF THE COUNCIL OF THE CITY OF PARRAMATTA WAS HEREUNTO AFFIXED THIS 22nd DAY OF DECEMBER 2010 PURSUANT TO A RESOLUTION OF COUNCIL PASSED AT ITS MEETING HELD ON THE 6th DAY OF DECEMBER 2010. min No. 11986



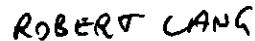
Signature of witness LORD MAYOR



Signature of authorised representative CHIEF EXECUTIVE OFFICER



Print Name



Print Name