

Voluntary Planning Agreement

[Date]

City of Parramatta Council

ABN 49 907 174 773

Landream Development Pty Limited

ACN 155 396 446

Aust & NZ International Investment Group Pty Ltd as
trustee for the Shen's Family Trust

ACN 114 597 867

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Agreement

Date

Parties

First party

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

Second party

Name Landream Development Pty Ltd (**Developer**)
ACN 155 396 446
Contact Mark Girgis
Telephone (02) 8247 8200

Third party

Name Aust & NZ International Investment Group Pty Ltd
as trustee for the Shen's Family Trust
(**Landowner**)
ACN 114 597 867
Contact c/- Landream Development Pty Ltd, Mark Girgis
Telephone (02) 8247 8200

Background

- A. On 8 May 2018 the Developer made an application to the Council for the Instrument Change for the purpose of making a Development Application to the Council for Development Consent to carry out the Development on the Land.
- B. The Instrument Change was the subject of a Gateway determination dated 3 October 2019.
- C. On 15 May 2020 the Developer made an offer to enter into this agreement to make contributions for public purposes associated with the Instrument Change and the Development.
- D. The Landowner owns the Land as trustee for the Trust.

Operative part

1 Definitions

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

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

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

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

Assets includes all assets, property and rights real and personal of any value whatsoever of the Trust;

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

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

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

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

Bond means an insurance bond from a AAA credit rated party, or a party with a credit rating otherwise acceptable to Council;

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

CI Amount means the Community Infrastructure Rate multiplied by the Residential GFA;

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

Community Infrastructure Rate means \$150 or the amount payable in respect of additional residential floor space per square metre of gross floor area pursuant to any community infrastructure contributions framework adopted by Council from time to time and applying at the date of the grant of Development Consent for the Development, whichever is the greater;

Concept Design means the concept design for the Works set out in the document in Annexure D;

Construction Certificate means a construction certificate as defined under section 6.4 of the Act, or if the Former Building and Subdivision Provisions apply, section 109C of the Act;

Construction Terms means the terms set out in Schedule 2;

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;

Dedication Land means that part of the Land to be dedicated to Council in accordance with this agreement, as shown on the plan at Annexure A;

Development means the future development of the Land as anticipated by the Instrument Change, for a mixed use development consisting of residential and commercial uses;

Development Application has the same meaning as in the Act;

Development Consent has the same meaning as in the Act;

Estimated Works Value means a detailed cost estimate for the Works certified by a Quantity Surveyor, and which covers costs of the type referred to in clause 5.5(b) of the Construction Terms;

Former Building and Subdivision Provisions has the same meaning as in clause 18 of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*;

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;

Instrument Change means the proposed change to the LEP set out in planning proposal PP_2019_COPAR_002_00 for the Land, which was the subject of a Gateway determination dated 3 October 2019;

Land means Lot 20 in DP 792518, known as 18-40 Anderson Street, Parramatta;

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*.

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

Occupation Certificate means an occupation certificate as defined under section 6.4 of the Act, or if the Former Building and Subdivision Provisions apply, section 109C of the Act, and includes an interim Occupation Certificate, a final Occupation Certificate or a partial Occupation Certificate as the case may be;

Quantity Surveyor means a qualified quantity surveyor approved by the Council (acting reasonably), appointed by the Developer on terms of engagement approved by the Council (acting reasonably) and whose costs are to be paid by the Developer;

Public Reserve has the same meaning as in the *Local Government Act 1993*;

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

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

Residential GFA means the total amount of gross floor area (as defined in the LEP) for residential accommodation (as defined in the LEP), approved by a Development Consent for the Development which is made permissible by the Instrument Change, being a maximum of 24,081m², representing residential floor space at a ratio of 3:1, which otherwise would not have been permissible under the LEP in the absence of the Instrument Change;

Residential OC means an Occupation Certificate in respect of any part of the Development comprising residential accommodation as defined in the LEP;

Trust means the Shen's Family Trust;

Trustee's Capacity means the capacity in which the Landowner enters into this agreement being as trustee or responsible entity as applicable;

Works means the work set out in Schedule 1;

Works Security means a Works Security provided under clause 11.2; and

Works Value means the actual costs of the Works as certified by a Quantity Surveyor under clause 5.5 of the Construction Terms.

2 Interpretation

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

- (a) **(documents)** a reference to this agreement or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this agreement;
- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement;
- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;

- (e) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) **(president, CEO, general manager or managing director)** the president, CEO, general manager or managing director of a body or Authority includes any person acting in that capacity;
- (g) **(requirements)** a requirement to do 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 Sydney, 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 4 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, and
- (b) the Development, and
- (c) the Land.

5 Operation of this agreement

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

6 Contributions to be made under this agreement

6.1 *Monetary Contribution*

- (a) The Developer will pay to Council a monetary contribution of the CI Amount, indexed in accordance with increases in the CPI from the date of this agreement to the date of payment, less the Works Value (**MC Amount**).
- (b) For the avoidance of doubt, if the Works Value is greater than the CI Amount, then the MC Amount is zero and clause 6.5 applies.
- (c) Within 14 days of receiving the notice of the Works Value from the Developer in accordance with clause 5.5 of the Construction Terms, together with the proposed date of payment of the Monetary Contribution, Council will notify the Developer in writing of the MC Amount. For the avoidance of doubt, if the Developer disagrees with the MC Amount included in the notice provided under this clause, then the Developer may within 14 days of receipt of the notice, issue a notice to the Council disputing the MC Amount, and if the parties cannot agree on the MC Amount, either party may notify a dispute under clause 10.
- (d) The Monetary Contribution must be paid to Council prior to the issue of any Residential OC.
- (e) The Monetary Contribution must be paid by way of bank cheque in favour of Council or by deposit by means of electronic funds transfer into an account specified by Council.
- (f) The Monetary Contribution will be taken to have been made when cleared funds or electronic funds have been deposited in the Council's bank account.
- (g) The parties agree and acknowledge that the Monetary Contribution will be used by the Council for the public purpose of embellishment works within the boundaries of the Parramatta Central Business District, south of the Parramatta River.

6.2 Works

- (a) The Developer will carry out the Works in accordance with this agreement, including the Construction Terms and any Development Consent granted for the Works.
- (b) The Works or any part of the Works required under this agreement will be taken to have been completed for the purposes of this agreement in accordance with clause 8.1 of the Construction Terms.
- (c) The Works or any part of the Works required under this agreement will be taken to have been delivered to Council when the land on which those Works are located is dedicated to Council.
- (d) The Works must be delivered to the Council prior to the issue of any Residential OC.
- (e) The parties agree and acknowledge that the Works serve the following public purposes:
 - (i) public accessway; and
 - (ii) public park.

6.3 Dedication of Land

- (a) The Developer and Landowner must dedicate or cause to be transferred to the Council, at no cost to the Council, the Dedication Land freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts in, over or in connection with the land, including but not limited to, municipal rates and charges, water rates and land tax, but excluding the reservations, restrictions, exclusions and easements numbered 1 to 4 on the title search for the Land which is Annexure C to this agreement.
- (b) The obligation to dedicate the Dedication Land will be taken to have been satisfied when either a Certificate of Title is issued by NSW Land Registry Services for the whole of the Public Reserve identifying the Council as the registered proprietor of that land without encumbrances as required by clause 6.3(a) or when the Public Reserve is dedicated to Council by operation of the registration of a plan of subdivision in accordance with section 49 of the *Local Government Act 1993*.
- (c) The Dedication Land must be dedicated or transferred to Council prior to the issue of any Residential OC.
- (d) The parties agree and acknowledge that the dedication of the Dedication Land serves the public purpose of public open space.
- (e) The Dedication Land must be classified as community land under the *Local Government Act 1993* on its dedication.

6.4 Access to Council owned land

- (a) The Council agrees to permit the Developer, its employees, officers, agents, and contractors upon receiving at least 10 Business Days' prior notice, to enter, pass through or occupy any Council owned or controlled land in order to enable the Developer to properly perform its obligations under this agreement. Nothing in

this clause creates or gives the Developer any estate or interest in any part of the Council owned or controlled land.

- (b) The Developer indemnifies the Council, its employees, officers, agents and contractors from and against all Claims in connection with the entry or access by the Developer to, or any presence of the Developer on, Council owned or controlled land for the purposes of performing its obligations under this agreement, except to the extent such Claim arises directly as a result of the Council or its employees, officers, agents, contractors or workmen's negligence, default, act or omission.

6.5 *Repayment by Council*

- (a) This clause applies if the Works Value is greater than the CI Amount.
- (b) Council agrees to reimburse the Developer the difference between the Works Value and the CI Amount (**Reimbursement**), subject to the following:
 - (i) the Works Value being certified by a Quantity Surveyor in accordance with clause 5.5 of the Construction Terms and provided to Council with the notice of completion required under clause 8.1(a) of the Construction Terms;
 - (ii) the Works Value not including any of the excluded costs specified in clause 5.5(b) of the Construction Terms;
 - (iii) the Works Value not including any variations from the Estimated Works Value that have not been approved by Council in accordance with clause 5.6 of the Construction Terms;
 - (iv) the Developer providing a tax invoice to Council for the Reimbursement, which must be expressed as being exclusive of GST (on the basis that it is a reimbursement); and
 - (v) the Works being completed in accordance with this agreement.
- (c) Council will pay the Reimbursement due to the Developer under clause 6.5(b) within 20 Business Days of receiving the Developer's tax invoice in accordance with clause 6.5(b)(iv), provided that the Works have been completed in accordance with this agreement.
- (d) Notwithstanding clauses 6.5(a), (b) and (c), if Council completes the Works in accordance with clause 11.2 and in doing so incurs any costs that cannot be satisfied by calling on a Works Security, Council may deduct those costs from the Reimbursement payable under this clause 6.5.

6.6 *Alternative to Works*

- (a) If Council and the Developer have been unable to agree on the Detailed Design for the Works under the Construction Terms, either party may notify a dispute under clause 10 of this agreement, and if so, the dispute procedures in clause 10 apply, other than clause 10.6, and subject to the mediation being required to occur within 30 Business Days of receipt of a Determination Notice.
- (b) If the process under clause 10 (modified by clause 6.6(a) above) does not result in agreement as to the Detailed Design, the Developer may elect not to carry out the Works by providing written notice to Council to that effect.

- (c) If a notice is issued under clause 6.6(b):
 - (i) the Developer has no obligation to carry out the Works under this agreement;
 - (ii) any provision of this agreement relating to the carrying out of the Works ceases to apply; and
 - (iii) the Monetary Contribution is calculated according to clause 6.1 but with the Works Value being zero.

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

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

8 Registration of this agreement

8.1 *Landowner Interest*

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

8.2 *Registration of this agreement*

- (a) The Developer 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 comes into operation, but in any event, no later than 20 Business Days after that date; and
 - (ii) 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 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; and

- (iii) The production of the relevant certificates of title,
to enable the registration of this agreement in accordance with this clause 8.2.
- (d) The Landowner consents to the registration of the agreement in accordance with this clause 8.2.

8.3 *Removal from Register*

- (a) The Council will provide a release and discharge of this agreement, within 15 Business Days of a request by the Developer, so that it may be removed from the folios of the Register for the Land (or any part of it) provided the Developer has duly fulfilled its obligations under this agreement, and is not otherwise in default of any of the obligations under this agreement.
- (b) For the avoidance of doubt, for the purposes of clause 8.3(a) the Developer will be taken to have duly fulfilled its obligations under this agreement to carry out the Works and will not be in default of its obligations under this agreement to carry out the Works, if it has not completed the Works, but has provided the Works Security in accordance with clause 11.2.

8.4 *Caveat*

- (a) The Landowner acknowledges and agrees that:
 - (i) when this agreement is executed, the Council is deemed to have acquired and the Landowner is deemed to have granted, an equitable estate and interest in the Dedication Land for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently the Council will have a sufficient interest in the Land in respect of which to lodge a caveat over the Land notifying that interest;
 - (ii) it will not object to the Council lodging a caveat in the relevant folios of the Register for the Land nor will it seek to remove any caveat lodged by the Council provided the caveat does not prevent registration of any dealing or plan other than a transfer.
- (b) The Council must, at the Developer's cost, register a withdrawal of any caveat in respect of the Land within five 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, however, the Council is entitled to lodge a further caveat over the Dedication Land once it is created as a separate lot to the remainder of the Land.

9 *Review of this agreement*

9.1 *Review by agreement*

- (a) This agreement may be reviewed or modified by agreement between the parties using their best endeavours and acting in good faith.
- (b) For the purposes of clause 9.1 of this agreement and subject to clause 9.2, no modification or review of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement.
- (c) For the purposes of clause 9.1 of this agreement and subject to clause 9.2, a party is not in breach of this agreement if it does not agree to an amendment to this agreement requested by a party in, or as a consequence of, a review.

9.2 *Change to Development Contributions*

- (a) The parties acknowledge that as at the date of this agreement:
 - (i) Council is proposing to amend the LEP to address the provision of community infrastructure within the Parramatta CBD and to adopt an accompanying Infrastructure Strategy and Development Guideline;
 - (ii) the Monetary Contribution for this agreement has been calculated on the basis of the Community Infrastructure Rate, being a percentage of land value uplift (as defined in the Council's Planning Agreements Policy); and
 - (iii) the community infrastructure rate of \$150 is being applied by Council at the date of this agreement, but may change when the planning proposal for the Parramatta CBD is finalised.
- (b) If, at the time the Monetary Contribution becomes payable (**Payment Date**):
 - (i) the Community Infrastructure Rate adopted by Council is less than the lowest rate that can be applied under this agreement (being \$150 per square metre); and
 - (ii) as a consequence of the reduction of the Community Infrastructure Rate, Council amends the contributions plan within the meaning of the Act applying to the Land, or adopts a new contributions plan that applies to the Land, so that the contributions payable under s7.11 or 7.12 of the Act pursuant to that contributions plan (**Development Contributions**) for the Development are higher, per square metre or other basis of measurement used to determine the quantum of contributions, than they would have been as at the date of this agreement,

then, within 20 Business Days of the Developer making a request for review, the Council and the Developer must meet to review this agreement in accordance with the principles in clause 9.2(c) and using their best endeavours and in good faith.
- (c) If a review of this agreement is carried out under clause 9.2(b) the parties must consider during that review process, the quantum of Monetary Contribution payable by the Developer to the Council under this agreement and a reduction of the Monetary Contribution by an amount equivalent to the difference between:
 - (i) the Development Contributions calculated as at the date of this agreement (indexed in accordance with increases in the CPI from the date of this agreement to the date of the calculation); and
 - (ii) the Development Contributions paid or payable for the Development in accordance with the Development Consent.
- (d) Any agreement reached during a review under this clause 9.2 will not constitute an amendment to this agreement until the amendment has been:
 - (i) confirmed in writing as a proposed amendment to this agreement;
 - (ii) publicly notified in accordance with the Regulation;
 - (iii) approved by Council after consideration of any public submissions; and
 - (iv) signed by the parties.

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

10 Dispute Resolution

10.1 *Reference to Dispute*

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

10.2 *Notice of Dispute*

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

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

10.3 *Representatives of Parties to Meet*

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

10.4 *Further Notice if Not Settled*

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

10.5 *Mediation*

If a party gives a Determination Notice calling for the dispute to be mediated, and clause 10.6 does not apply:

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

10.7 *Litigation*

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

10.8 *No suspension of contractual obligations*

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

11 Enforcement

11.1 *Default*

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

11.2 Security

- (a) If the Developer is unable to complete the Works by the time specified in clause 6.2(d), and provided the Works are at least 80% complete, the Developer must provide to the Council Security in the amount of the costs to complete the Works (**Works Security**) calculated at the date of provision of the Works Security, and as certified by a Quantity Surveyor.
- (b) For the purpose of clause 11.2(a) the costs to complete the Works are costs of the kind referred to in clause 5.5(b) of the Construction Terms.
- (c) If a Works Security is provided pursuant to clause 11.2(a) for the Works:
 - (i) the Works do not need to be delivered by the time set out in clause 6.2(d);
 - (ii) the Residential OC may be issued prior to the completion of the Works;
 - (iii) dedication of the Dedication Land may, at Council's discretion, be delayed until completion of the Works, and if Council does not agree to delay the dedication of the Dedication Land, the Council grants the Developer a licence to enter the Dedication Land in order to complete the Works; and
 - (iv) for the purposes of calculating the Monetary Contribution due prior to the issue of a Residential OC, the Works Value will be the actual costs of the completed portion of the Works certified in accordance with clause 5.5 of the Contributions Schedule plus the amount of the Works Security.
- (d) The Council may call on a Works Security provided under this clause if the Works are not completed within 12 months of the date on which the Residential OC is issued, but only if before doing so:
 - (i) Council has provided a written notice to the Developer to the effect that the Works have not been completed within the 12 month period and giving the Developer a reasonable period of time in which to complete the Works, having regard to the nature of the Works and the stage of completion of the Works; and
 - (ii) the Developer has failed to comply with that notice.
- (e) At any time following the provision of a Works Security under this clause, the Developer may provide the Council with one or more replacement Securities totalling the amount of all Securities required to be provided under this clause for the time being, provided that the Council releases the Security on receipt of the replacement Security.
- (f) The Council may apply the proceeds of the Works Security to completion of the Works.
- (g) The Council must within 10 Business Days promptly return a Works Security provided under this clause if requested by the Developer and:
 - (i) the Works have been completed in accordance with clause 8.1 of the Construction Terms; and
 - (ii) the Developer has provided a Security under clause 8.5 of the Construction Terms for those Works.
- (h) For the avoidance of doubt, the Developer may direct Council in writing to continue to hold a Works Security provided under this clause 11.2 in satisfaction

of the requirement to submit a Security under clause 8.5 of the Construction Terms.

- (i) Nothing in this clause 11.2 prevents or restricts the Council from taking any enforcement action in relation to:
 - (i) an obligation or part of an obligation of the Developer under this agreement which is not secured by or satisfied by calling on the Works Security; 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, and which is not satisfied by calling on the Works Security.

11.3 *Compulsory Acquisition*

- (a) If the Landowner does not dedicate the Dedication Land to Council as required by this agreement, the Council may compulsorily acquire the relevant land, in which case the Landowner consents to the Council compulsorily acquiring that land 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 the whole or any part of the relevant land 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 under clause 11.3(a) that are not or cannot be recovered by calling on a Bank Guarantee.

11.4 *Restriction on the issue of Certificates*

- (a) In accordance with section 6.10 of the Act and any associated regulations (or if the Former Building and Subdivision Provisions apply, section 109H(2) of the Act), and subject to the remainder of this agreement, the obligations to:
 - (i) pay the Monetary Contribution under clause 6.1;
 - (ii) carry out the Works; and
 - (iii) dedicate the Dedication Land,must be satisfied prior to the issue of any Residential OC for the Development.

11.5 *General Enforcement*

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

- (ii) the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this agreement or any matter to which this agreement relates.

12 Assignment and Dealings

12.1 *Assignment*

- (a) A party must not assign or deal with any right under this agreement without the prior written consent of the other parties, which shall not be unreasonably withheld.
- (b) Any purported dealing in breach of this clause is of no effect.

12.2 *Transfer of Land*

The Landowner must not transfer, assign or dispose of the whole or any part of its right, title or interest in the Land (present or future) to another person prior to the registration of this agreement on the title to the Land, without the consent of Council which will not be unreasonably withheld.

12.3 *Novation*

A party must not assign or deal with its rights under this agreement or transfer, assign or dispose of part or the whole of its right title or interest in the Land or part of the Land unless it has first entered into a novation deed with the other party and the transferee or assignee under which the transferee or assignee agrees to be bound by the terms of this agreement.

13 Obligations of the Landowner

13.1 *Landowner's obligations under the agreement*

- (a) The Landowner's obligations under this agreement are limited to those which are expressly stated to be obligations of the Landowner.
- (b) Notwithstanding clause 13.1(a), the Landowner accepts responsibility for the Developer's obligations if:
 - (i) the Developer is in default of any obligation to make a contribution under clause 6 or its obligations under clause 11 of this agreement, has failed to rectify the default in accordance with this agreement and Council reasonably forms the view that the Developer is unable or unwilling to comply with its obligations under this agreement, but only after Council has given the Landowner sufficient written notice (which must not be less than 3 months) of its intention to hold the Landowner responsible for the Developer's obligations, so as to enable the Landowner to make arrangements to meet the Developer's obligations or to novate the agreement to a third party in accordance with this agreement; or
 - (ii) the arrangements between the Developer and the Landowner in respect of development of the Land and compliance with this agreement are terminated, and the Developer's obligations under this agreement have not been assigned or novated to a third party within 3 months of the termination of the arrangements between the Developer and the Landowner.

13.2 Landowner's Capacity and Liability for Trust Claims

- (a) The Landowner enters into this agreement in its capacity as the trustee for the Shen's Family Trust (ABN 96 114 597 867).
- (b) The Landowner's liability under this agreement is limited to the Trustee's Capacity and the Landowner is not liable in any other capacity.
- (c) Subject to clause 13.1(e), the liability of the Landowner in respect of any cause of action, claim or loss arising:
 - (i) under or in connection with this agreement;
 - (ii) in connection with any transaction, conduct or any other agreement contemplated by this agreement; or
 - (iii) under or in connection with (to the extent permitted by law) a representation or undertaking given or to be given in connection with this agreement,

(each, a **Trust Claim**), is limited to the Assets. The right of the parties other than the Landowner to recover any amount in respect of any (and all) Trust Claims is limited to a right to recover an amount not exceeding the amount which the Landowner is entitled and able to recover from the Assets (after taking account of the costs of exercising its right of indemnity and exoneration) and if, after exercise of those rights, any such amount remains outstanding, no further Trust Claim may be made against the Landowner personally.

- (d) The parties other than the Landowner agree and acknowledge that they must not, in respect of any Trust Claim:
 - (i) subject to clause 13.1(e), bring proceedings against the Landowner in its personal capacity;
 - (ii) seek to appoint an administrator or liquidator to the Landowner;
 - (iii) commence the winding-up, dissolution or administration of the Landowner; or
 - (iv) appoint a receiver, receiver and manager, administrative receiver or similar official to all or any of the assets of the Landowner,

except to the extent that the steps taken affect any Assets or the Landowner's right of recourse against, and indemnity from, the Assets and nothing else.

- (e) If the Landowner acts negligently, fraudulently, with wilful misconduct or in breach of trust with a result that:
 - (i) the Landowner's right of indemnity, exoneration or recoupment from the Assets; or
 - (ii) the actual amount recoverable by the Landowner in exercise of those rights,

is reduced in whole or in part or does not exist, then to the extent that such right or the amount so recoverable is reduced or does not exist, the Landowner may be personally liable.

13.3 *Landowner Warranties and Replacement of Trustee*

- (a) The Landowner warrants that:
 - (i) it is the sole trustee of the Trust and no action has been taken to remove or replace it;
 - (ii) it is authorised under the trust deed of the Trust to enter into this agreement;
 - (iii) it is not in breach of the trust deed of the Trust; and
 - (iv) it has the power under the deed constituting the Trust to execute and perform its obligations under this agreement and all necessary action has been taken to authorise the execution and performance of this agreement under the trust deed constituting the Trust.
- (b) If the Landowner is replaced in accordance with the Trust, then;
 - (i) the Council and the replacement trustee will enter into a new agreement on terms satisfactory to the Council, acting reasonably, under which the replacement trustee agrees to be bound by the terms of this agreement; and
 - (ii) the Landowner will pay the reasonable costs and expenses of the Council in relation to the replacement of a trustee under this clause 13.2(b) and the costs and expenses of registering any new agreement on the title to the land as relevant.

14 No fetter

14.1 *Discretion*

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

14.2 *No fetter*

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

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

14.3 *Planning Certificates*

The Developer 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.

15 Notices

15.1 *Notices*

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

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by email at the address below, or at the address last notified by the intended recipient to the sender after the date of this agreement:
 - (i) to City of Parramatta Council: PO Box 32, Parramatta, NSW 2124
Email: council@cityofparramatta.nsw.gov.au
Attention: Manager, Land Use Planning
 - (ii) to Landream Development Pty Limited: Level 12, 41 Exhibition St, Melbourne VIC 3000
Email: accounts@landream.com.au
Attention: Mark Girgis
 - (iii) to Aust & NZ International Investment Group Pty Ltd as trustee for the Shen's Family Trust: c/- Landream Development Pty Ltd
Level 12, 41 Exhibition St, Melbourne VIC 3000
Email: accounts@landream.com.au
Attention: Mark Girgis
- (c) is taken to be given or made:
 - (i) in the case of hand delivery, when delivered; and
 - (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country).
- (d) if under clause (c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

15.2 *Notices sent by email:*

- (a) A party may serve a Notice by email if the Notice is sent to the email address below or the email address last notified by the intended recipient to the sender:

- (A) to City of Parramatta Council: Attention: Manager, Land Use Planning
council@cityofparramatta.nsw.gov.au
- (B) to Landream: Attention: Mark Girgis
accounts@landream.com.au

(C) to Aust & NZ International c/- Landream Development Pty Ltd
Investment Group Pty Ltd Attention: Mark Girgis
as trustee for the Shen's accounts@landream.com.au
Family Trust

- (b) The recipient of a Notice served under this clause 15.2 must:
 - (i) promptly acknowledge receipt of the Notice; and
 - (ii) keep an electronic copy of the Notice,
- (c) Failure to comply with clause 15.2 does not invalidate service of a Notice under this clause.

15.3 *Receipt of Notices sent by email*

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

16 General

16.1 *Relationship between parties*

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

16.2 *Time for doing acts*

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

- (b) If any act or thing required to be done is done after 5.00 pm on the specified day, it is taken to have been done on the following Business Day.

16.3 Further assurances

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

16.4 Joint and individual liability and benefits

Except as otherwise set out in this agreement, any agreement, covenant, representation or warranty under this agreement by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

16.5 Variations and Amendments

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

16.6 Counterparts

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

16.7 Legal expenses and stamp duty

- (a) The Developer must pay the Council's reasonable legal costs and disbursements up to an amount of \$20,000, or \$25,000 if this agreement is required to be publicly exhibited more than once, in connection with the negotiation, preparation, execution, carrying into effect, enforcement and release and discharge of this agreement, including the reasonable costs of obtaining any legal advice in connection with this agreement, no later than 10 Business Days after receiving a demand from the Council to pay such costs.
- (b) The Developer 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.

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 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

Scope of works

Work	Nature and Extent
Embellishment of Public Park	Embellishment of the part of the Dedication Land to be a public park generally in accordance with the Concept Design and the Detailed Design developed in accordance with the Construction Terms
Construction of Public Accessway	Embellishment of the part of the Dedication Land to be the public accessway generally in accordance with the Concept Design and the Detailed Design developed in accordance with the Construction Terms

Schedule 2 Construction terms

1 Interpretation

For the purposes of this Schedule 2, 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).

Defect means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a Work or any part of a Work, but excludes any damage caused by members of the public who have access to the Dedication Land, or damage caused by weather.

Defects Liability Period means in respect of each item of Works the period of 12 months from the date on which the item of Work is taken to have been completed.

Detailed Design means the final specifications and finishes for the Works prepared in accordance with clause 5.2 of this Schedule 2 and will include the design of the Works, the location for the Works, installation specifications and estimated costs of construction and/or installation.

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

Superintendent means the Superintendent appointed under any Construction Contract.

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.

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.

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 Approval the terms of the Approval shall take precedence.

3 Costs of Works

Subject to the remainder of this agreement, 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 it engages to carry out the Works agrees to carry out the Developer's obligations in these Construction Terms as part of any Construction Contract:

5 Design Development and Approvals

5.1 Concept Design

Council and the Developer have worked in consultation with each other to prepare and agree the Concept Design.

5.2 Detailed Design

- (a) The Council must notify the Developer of any design standards or guidelines or other requirements or policies of the Council applicable to the design and specifications of the Works (**Council Standards**) as soon as possible after the date of this agreement. If the Council does not provide the Council Standards, the Developer must request them from the Council.
- (b) The Developer must prepare the Detailed Design to be consistent with the Council Standards and the Concept Design and submit the Detailed Design to the Council for approval, together with the Estimated Works Value.
- (c) Within 15 Business Days of receiving the Detailed Design, Council must notify the Developer in writing as to whether the Detailed Design is approved or not approved, and Council can only withhold its approval under this clause reasonably.
- (d) If the Council does not approve the Detailed Design, the notice to the Developer to that effect must detail what, if any, changes are required to the Detailed Design to ensure it complies with the Council Standards and Concept Design:
- (e) Council may not request any variations to the Detailed Design other than pursuant to clause 5.2(d) of this Schedule 2.
- (f) The Developer must promptly amend the Detailed Design in response to any request by Council pursuant to clauses 5.2(d) of this Schedule 2 and provide a final Detailed Design including an Estimated Works Value for that design to Council for approval.
- (g) The Developer may not seek a Construction Certificate for the Works until the Detailed Design is agreed in accordance with this clause 5.2.

5.3 Any acceptance or approval by the Council of the Detailed Design under this clause 5 of Schedule 2 is not to be taken as approval of or to any Development Consent or Construction Certificate for the Works.

5.4 Good faith

The parties must act promptly and in good faith in relation to the Detailed Design.

5.5 Cost of Works

- (a) Once the Works are complete, the Developer must provide to Council a notice of the actual costs incurred by the Developer in carrying out the Works, which is accompanied by an independent certification of those costs by a Quantity Surveyor.
- (b) For the purposes of clause 5.5(a) of this Schedule 2, the actual costs of the Works are the final certified contract costs inclusive of variations approved in accordance with clause 5.6 of this Schedule 2, and other costs reasonably incurred in the carrying out of the Works and paid by the Developer to third parties for the design of the Works, project management fees, investigations, consultant fees, and studies or reports specifically required for the Works, but excluding:
 - (i) the application fees for any Approval required to be obtained for or in relation to the carrying out of the Works;
 - (ii) the costs of the Quantity Surveyor retained in respect of assessing the costs of the works;
 - (iii) the Developer's internal management costs;
 - (iv) any remediation or other works carried out in accordance with the Developer's obligations under clause 13 of this Schedule 2, other than works constituting earthworks to shape the Dedication Land to make it suitable for its intended use; and
 - (v) any variations to the Estimated Works Value that are not approved by Council in accordance with clause 5.6 of this Schedule 2.

5.6 Cost Variations

- (a) The Developer may seek Council's approval to costs variations arising after the Estimated Works Value has been determined.
- (b) Council must act reasonably when determining an application for approval under clause 5.6(a) of this Schedule and will approve cost variations that the Quantity Surveyor certifies:
 - (i) are reasonable; and
 - (ii) are costs that were not anticipated by the Quantity Surveyor certifying the Estimated Works Value; and
 - (iii) are not cost increases associated with any lack of care or failure to follow good practice by the Developer or its contractors.
- (c) If a dispute arises about approval of costs variations under this clause 5.6, the dispute may be referred by either party directly to expert determination by a Quantity Surveyor.

6 Carrying out of Works

6.1 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.

6.2 Standard of Works

- (a) Unless otherwise provided, the Developer shall, and must cause the Builder to, use suitable new materials and proper and tradesmanlike workmanship when carrying out the Works.
- (b) The qualitative standard of the design and finishes for the Works must be consistent with the Development Consent and Approvals for the Works and no less than those described in the following documents:
 - (i) Any relevant Australian Standard;
 - (ii) the Council Standards.

6.3 Damage to people, property & utilities

- (a) The Developer is to ensure to the fullest extent reasonably practicable that, in performing its obligations under this agreement:
 - (i) all necessary measures are taken to protect people and property;
 - (ii) unnecessary interference with the passage of people and vehicles is avoided; and
 - (iii) nuisances and unreasonable noise and disturbances are prevented.
- (b) Without limiting clause 6.3(a) of this Schedule, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any public land except as authorised in writing by the Council or any relevant Authority.

7 Inspection

- (a) On completion of the Detailed Design, the Council will provide a schedule of inspections to be undertaken by Council (**Inspection Schedule**) to occur at specified stages of the construction of the Works (**Inspection Stage**). If Council does not provide the Inspection Schedule, the Developer must request the Inspection Schedule from Council prior to the Works commencing.
- (b) Five Business Days prior to reaching an Inspection Stage as set out in the Inspection Schedule, the Developer must notify the Council of the proposed inspection date (**Inspection Date**).
- (c) On the Inspection Date, or other agreed date, the Developer must ensure that any employees, contractors, agents or representatives of Council have access to and may enter the Land to inspect the Works.
- (d) In addition to carrying out inspections in accordance with the Inspection Schedule, 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:
 - (i) the terms of the Construction Contract (save for any clause of the Construction Contract which prevents the Council from accessing the Land);
 - (ii) giving reasonable notice to the Developer;
 - (iii) complying with all reasonable directions of the Developer; and

- (iv) being accompanied by the Developer or a nominee, or as otherwise agreed.
- (e) The Council may, acting reasonably, within 5 Business Days of carrying out an inspection, notify the Developer of any defect or non-compliance in the Works and direct the Developer to carry out work to rectify that defect or non-compliance within a reasonable period of time. Such work may include, but is not limited to:
 - (i) removal of defective or non-complying material;
 - (ii) demolishing defective or non-complying work;
 - (iii) reconstructing, replacing or correcting any defective or non-complying work; and
 - (iv) not delivering any defective or non-complying material to the site of the Works.
- (f) If the Developer is issued a direction to carry out further work under clause 7(e) of this Schedule 2, the Developer must, at its cost, rectify the defect or non-compliance specified in the Notice within the time period specified in the Notice, provided that it is reasonable having regard to the nature of the works.
- (g) If the Developer fails to comply with a direction to carry out work given under 7(e) of this Schedule 2, the Council will be entitled to refuse to accept that the Works (or the relevant part of the Works) meet the Council Standards and certify completion, until Council is satisfied, acting reasonably, that the required Works have been completed as required under this agreement.
- (h) For the avoidance of doubt, any acceptance by the Council that the Developer has rectified a defect or non-compliance identified in a notice issued under 7(e) of this Schedule 2 does not constitute:
 - (i) acceptance by the Council that the Works comply with all Approvals and Laws; or
 - (ii) an Approval by the Council in respect of the Works; or
 - (iii) an agreement or acknowledgment by the Council that the Works or the relevant part of the Works are complete and may be delivered to the Council in accordance with this agreement.

8 Completion

8.1 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, the Works Value certified in accordance with clause 5.5 of this Schedule, and any relevant certificates or consents of any public utility authority stating that the Developer considers the Works to be complete..
- (b) Within 14 days of receipt of the notice under clause 8.1(a) of this Schedule 2, the Council will carry out an inspection of the Works and will, acting reasonably and within a further 7 days of the date of the inspection, 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 prior to the certification being issued.
- (c) If the Developer is required to provide additional information or address any matters under clause 8.1(b)(ii) of this Schedule 2, 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 8.1(a) of this Schedule 2 for written certification that the Works have been completed.
- (d) The Works are taken to be complete for the purposes of this agreement when the notice is provided under clause 8.1(b)(i) of this Schedule 2.

8.2 Delivery of documents

- (a) The Developer must as soon as practicable, and no later than 20 Business Days after the date on which the Works are completed, complete and legible copies of:
 - (i) all "as built" full-sized drawings, specifications and relevant operation and service manuals;
 - (ii) all necessary certificates including the certificates of any consultants of the Developer that the Council may reasonably require, and Approvals of any public utility authority (where relevant); and
 - (iii) copies of all Approvals required for use of the land subject to the Works.
- (b) The Developer must as soon as practicable, and no later than 20 Business Days after the date on which the Works are completed, provide the Council with a tour of the land subject to the Works and provide reasonable instructions on the operation and use of the Services on that land.

8.3 Assignment of Warranties and Causes of Action

- (a) The Developer must assign (as beneficial owner) or cause to be assigned to Council the benefit of any warranties and guarantees obtained by the Developer and the Builder (and capable of assignment) with respect to any material or goods incorporated in or forming part of the Works.
- (b) To the extent that any such warranties or guarantees cannot be assigned, the Developer must at the request of Council do anything reasonably required by Council to enforce such warranties or guarantees for the benefit of Council.

8.4 Defects Liability Period

- (a) During the Defects Liability Period, the Council (acting reasonably) may give to the Developer a notice (**Rectification Notice**) in writing that identifies a Defect in the Works and specifies:
 - (i) action required to be undertaken by the Developer to rectify that Defect (**Rectification Works**); and
 - (ii) the date on which the Defect must be rectified, which must be reasonable having regard to the nature of the Defect (**Rectification Date**).
- (b) The Developer must comply with the Rectification Notice by:
 - (i) procuring the performance of the Rectification Works by the Rectification Date, or such other date as agreed between the parties;

- (ii) keeping the Council reasonably informed of the action to be taken to rectify the defect; and
 - (iii) carrying out the Rectification Works.
- (c) The Council must give the Developer and its contractors any access required to carry out the Rectification Works.
- (d) When the Developer considers that the Rectification Works are complete, the Developer must notify the Council and provide documentation, plans or invoices which establish that the Rectification Works were carried out.
- (e) The Council must inspect the Rectification Works within 15 Business Days of receiving a Notice from the Developer under clause 8.4(d) of this Schedule 2 and, acting reasonably:
 - (i) issue a further Rectification Notice if it is not reasonably satisfied that the Rectification Works are complete; or
 - (ii) notify the Developer in writing that it is satisfied the Rectification Works are complete.
- (f) The Developer must meet all costs of and incidental to rectification of Defects under this clause 8.4 of this Schedule 2.
- (g) If the Developer fails to comply with a Rectification Notice, then the Council may do such things or take such action as is necessary to carry out the Rectification Works, including accessing and occupying any part of the Land without further notice to the Developer, and may:
 - (i) call upon any Bond or Bank Guarantee provided to the Council under clause 8.5 of this Schedule 2 to meet its costs of carrying out Rectification Works; and
 - (ii) recover as a debt due to the Council by the Developer in a court of competent jurisdiction, any difference between the amount of the security deposit and the costs incurred by the Council in carrying out Rectification Works.
- (h) The Developer must request that Council inspect the Works at least 10 Business Days prior to the end of the Defects Liability Period. The Council must inspect the Works at any time after receiving the request from the Developer and before the end of the Defects Liability Period.
- (i) If prior to the end of the Defects Liability Period, the Developer fails to request the inspection, the Defects Liability Period will be extended for a period of 10 Business Days after the inspection is requested so that Council may carry out the inspection and issue any Rectification Notice prior to the end of the Defects Liability Period.

8.5 Security for Defects Liability

- (a) Prior to completion of any Works the Developer must deliver to the Council Bonds or Bank Guarantees in the amount of \$80,000.
- (b) The Developer advises and the Council acknowledges its awareness that the Bonds or Bank Guarantees may be supplied by the Builder and form a part of the

security held by the Developer from the Builder under the terms of the Construction Contract, provided that:

- (i) any Bond or Bank Guarantee provided by the Builder benefits the Council and satisfies the requirements of this agreement; and
 - (ii) the Developer procure an agreement from the Builder that the Council will be entitled to call on any Bond or Bank Guarantee provided by the Builder, in accordance with the terms of this agreement and the terms of any Construction Contract.
- (c) Within 10 Business Days after the Defects Liability Period for a particular item of Works has expired Council must (if it has not called on it) return the Bond or Bank Guarantee referred to in clause 8.5(a) of this Schedule 2 for that item of Works (or any remaining balance of it) to the Developer.
- (d) Notwithstanding clause 8.4(c) of this Schedule 2, if during the Defects Liability Period for a particular item of Works, the Council issues a Rectification Notice and the Rectification Notice is not complied with, then the Council need not deliver the balance of any Bonds or Bank Guarantees provided to it until that defect has been rectified.
- (e) The Council must deliver the balance of any Bond or Bank Guarantee for the Defects Liability Period to the Developer within 14 days after the Defects Liability Period has ended.

9 Risk

The Developer undertakes the Works entirely at its own risk.

10 Insurance

- (a) Prior to the commencement of the construction of any of the Works, the Developer must ensure the Builder effects and the Developer must produce 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):
- (i) construction works insurance for the value of the Works;
 - (ii) public risk insurance for at least \$20 million;
 - (iii) workers compensation insurance as required by Law.
- (b) The Developer must provide evidence of currency of insurance required by clause 10(a) of this Schedule 2 upon request by the Council, acting reasonably, throughout the term of this agreement.

11 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 either directly or indirectly as a result of the Council or its employees, officers, agents, contractors or workmen's negligence, default, act or omission.

12 Intellectual Property Rights

The Council acknowledges that the Developer or its contractors hold all rights to copyright and any intellectual property which may exist in the Works. To the extent the Developer has or receives intellectual property rights for the Works, the Developer shall assign those intellectual property rights to Council or permit use thereof.

13 Risk of contamination

- (a) The Developer acknowledges and agrees:
 - (i) that it is responsible for the management and remediation of any contamination present upon or under the land on which the Works are to be carried out;
 - (ii) it will attend to any necessary remediation at its own costs; and
 - (iii) to the fullest extent permitted by Law indemnify and release the Council from any Claim which might arise from any contamination with respect to the land on which the Works are to be carried out, existing on the Land before the date on which the Dedication Land is dedicated to Council.
- (b) Prior to the dedication of any part of the Land to Council, the Developer must provide to Council's reasonable satisfaction, certification by a qualified person, that the land is not contaminated and is suitable for the proposed use.

14 Plans

The parties acknowledge and agree that further detail and refinement of plans and documents in connection with this agreement may be necessary having regard to the following matters:

- (a) matters affecting Works not capable of identification on or before the date of this agreement; or
- (b) by agreement between the parties.

Schedule 3

Summary of requirements (section 7.4)

Subject and subsection of the Act	Planning Agreement
<p>Planning instrument and/or Development Application – Section 7.4(1)</p> <p>The Developer has:</p> <p>(a) Sought a change to an environmental planning instrument</p> <p>(b) Made, or propose to make a Development Application</p> <p>(c) Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p>Description of the land to which the planning Agreement applies – Section 7.4(3)(a)</p>	<p>Lot 20 DP 792518, known as 18-40 Anderson Street, Parramatta</p>
<p>Description of the application – Section 7.4(3)(b)</p>	<p>Planning proposal for 18-40 Anderson Street, Parramatta, which seeks a rezoning to B4 Mixed Use, uplift in HOB to 120m, uplift in FSR to 6:1, comprising a 3:1 residential component and compulsory 3:1 non-residential component, and was the subject of a Gateway determination dated 3 October 2019</p>
<p>The scope, timing and manner of delivery of contribution required by the Planning Agreement – Section 7.4(3)(c)</p>	<p>See clause 6</p>
<p>Applicability of section 7.11 of the Act – Section 7.4(3)(d)</p>	<p>Not excluded, see clause 7</p>
<p>Applicability of section 7.12 of the Act – Section 7.4(3)(d)</p>	<p>Not excluded, see clause 7</p>
<p>Applicability of section 7.24 of the Act – Section 7.4(3)(d)</p>	<p>Not excluded, see clause 7</p>
<p>Mechanism for dispute resolution – Section 7.4(3)(f)</p>	<p>See clause 10</p>
<p>Enforcement of the Planning Agreement – Section 7.4(3)(g)</p>	<p>See clause 11</p>
<p>Registration of the Planning Agreement – Section 7.6</p>	<p>Yes, see clause 8</p>

No obligation to grant consent or exercise functions – Section 7.4(9)	Yes, see clause 14
--	--------------------

Executed as an agreement

Signed on behalf of **City of Parramatta Council** (ABN 49 907 174 773) by its authorised delegate pursuant to section 377 of the *Local Government Act 1993* in the presence of:

Signature of witness

Signature of authorised delegate

Name of witness

Name of authorised delegate

Address of witness

Position of authorised delegate

Signed on behalf of the **Developer** in accordance with s127(1) of the *Corporations Act 2001 (Cth)*

Name/Position

Name/Position

Signed on behalf of the **Landowner** in accordance with s127(1) of the *Corporations Act 2001 (Cth)*

Name/Position

Name/Position

Annexure A

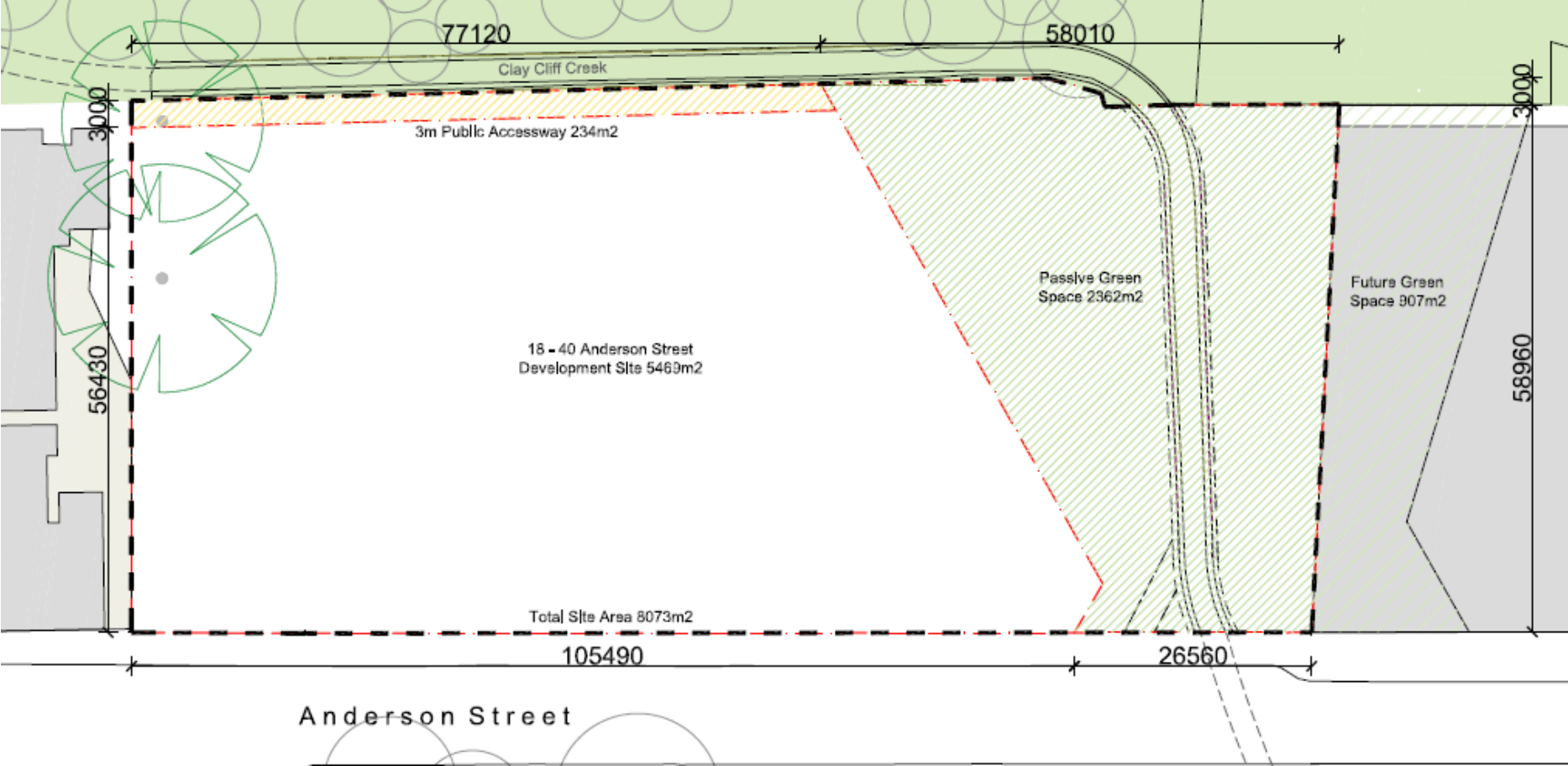
Plan showing Land



□ = Site

Annexure B

Plan showing Dedication Land



Both public park and 3m public access way to be dedicated.



LAND
REGISTRY
SERVICES

Title Search



NEW SOUTH WALES LAND REGISTRY SERVICES - TITLE SEARCH

FOLIO: 20/792518

SEARCH DATE	TIME	EDITION NO	DATE
25/5/2020	9:43 AM	9	8/9/2018

NO CERTIFICATE OF TITLE HAS ISSUED FOR THE CURRENT EDITION OF THIS FOLIO.
CONTROL OF THE RIGHT TO DEAL IS HELD BY WESTPAC BANKING CORPORATION.

LAND

LOT 20 IN DEPOSITED PLAN 792518
AT PARRAMATTA
LOCAL GOVERNMENT AREA CITY OF PARRAMATTA
PARISH OF ST JOHN COUNTY OF CUMBERLAND
TITLE DIAGRAM DP792518

FIRST SCHEDULE

AUST & NZ INTERNATIONAL INVESTMENT GROUP PTY LTD (T AF823094)

SECOND SCHEDULE (6 NOTIFICATIONS)

- 1 RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
- 2 EXCEPTING LAND BELOW A DEPTH FROM THE SURFACE OF 15.24 BY THE CROWN GRANT OF PART SHOWN IN THE TITLE DIAGRAM
- 3 LAND EXCLUDES MINERALS BY CROWN GRANT OF PART SHOWN IN THE TITLE DIAGRAM
- 4 EASEMENT(S) AFFECTING THE PART(S) SHOWN SO BURDENED IN THE TITLE DIAGRAM CREATED BY:
DP792518 -TO DRAIN WATER 5 WIDE
DP792518 TO DRAIN WATER 3 WIDE
- 5 3034224 LEASE TO INTEGRAL ENERGY AUSTRALIA OF SUBSTATION
NO:- 9775 SHOWN IN PLAN WITH 3034224. EXPIRES
31-12-2013
- 6 A1568495 MORTGAGE TO WESTPAC BANKING CORPORATION

NOTATIONS

UNREGISTERED DEALINGS: NIL

*** END OF SEARCH ***

LNDR19001

PRINTED ON 25/5/2020

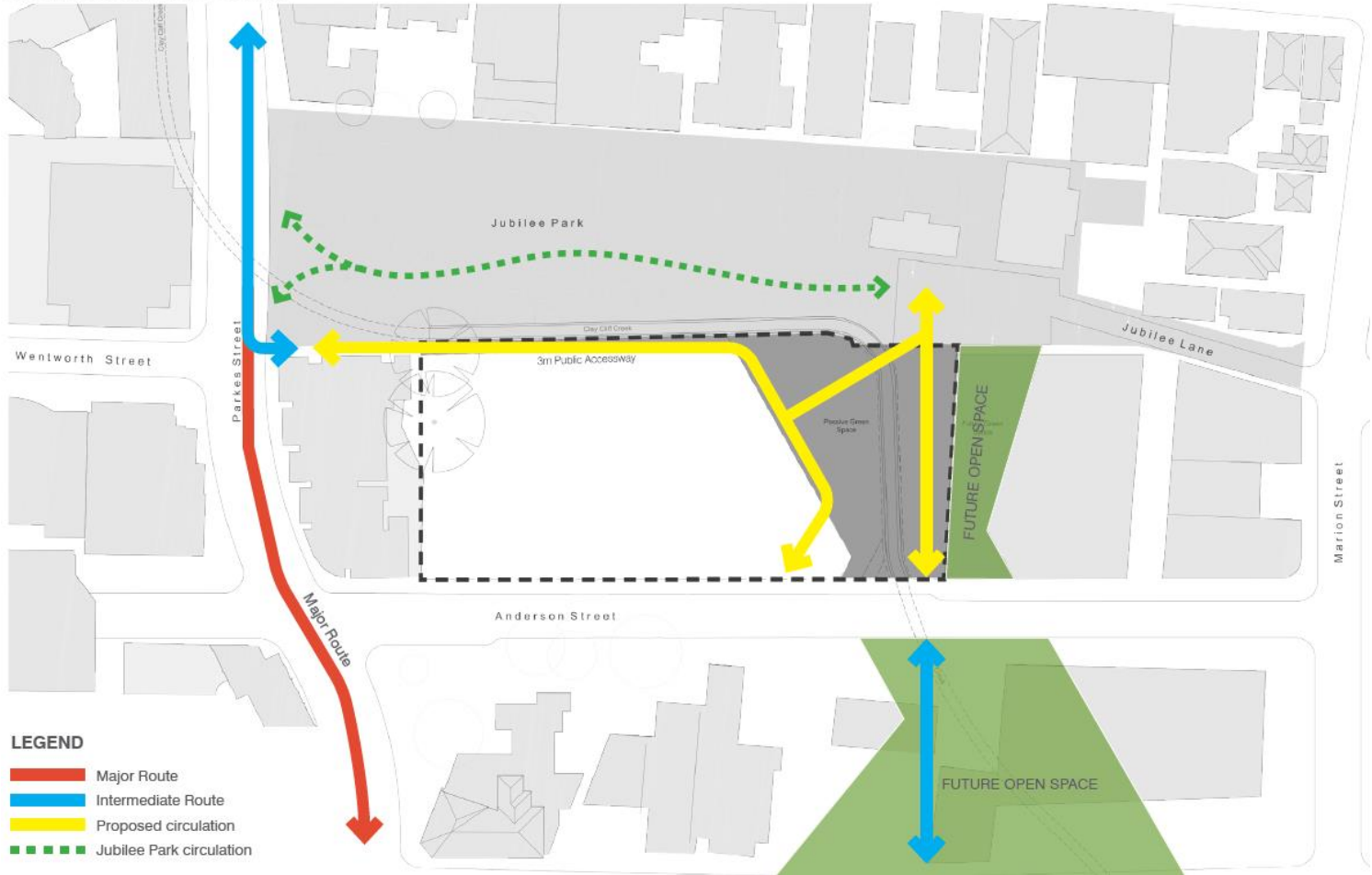
* Any entries preceded by an asterisk do not appear on the current edition of the Certificate of Title. Warning: the information appearing under notations has not been formally recorded in the Register. InfoTrack an approved NSW Information Broker hereby certifies that the information contained in this document has been provided electronically by the Registrar General in accordance with Section 96B(2) of the Real Property Act 1900.

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Received: 25/05/2020 09:43:39

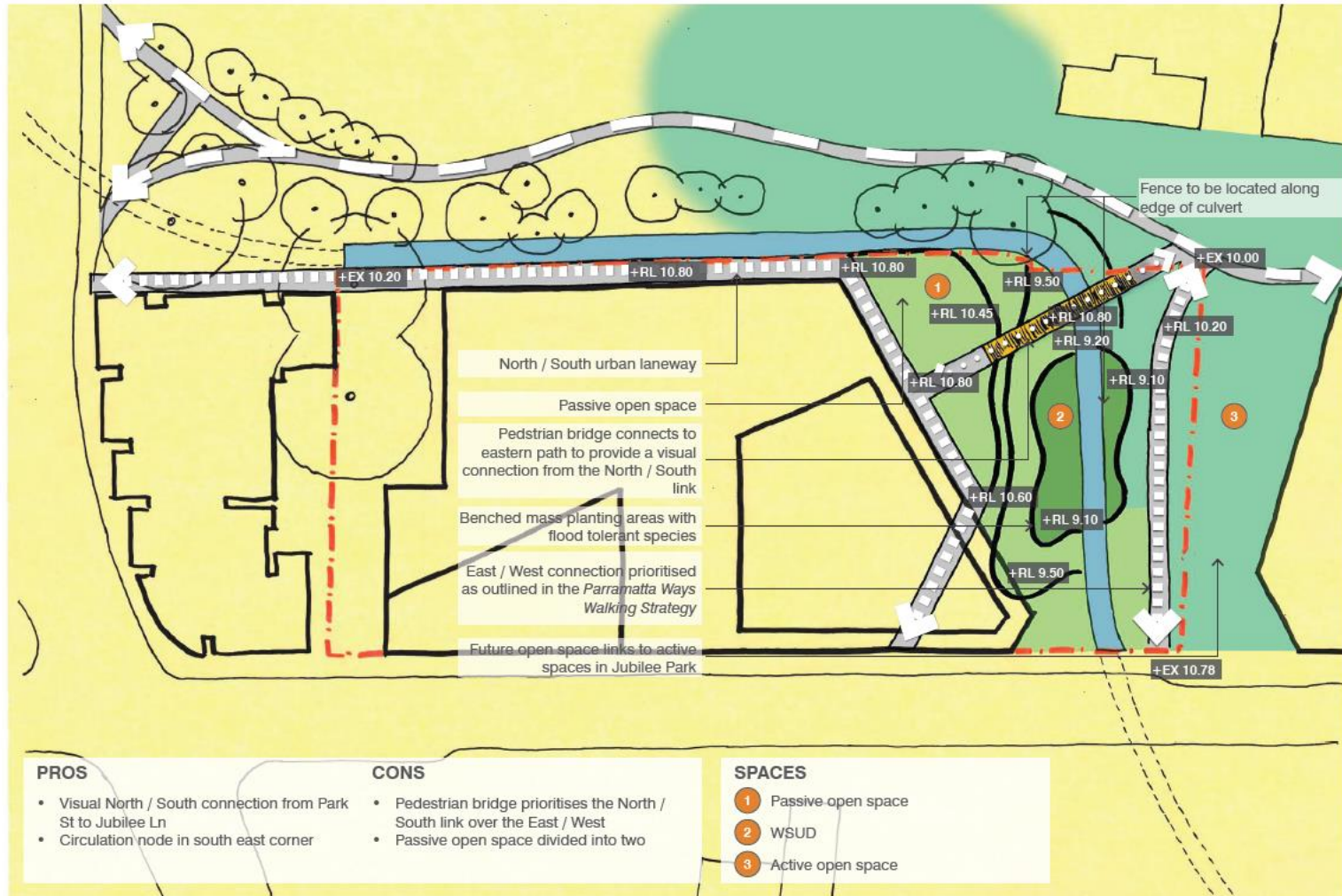
PREFERRED CONCEPT DESIGN

CIRCULATION PRINCIPLE DIAGRAM



PREFERRED CONCEPT DESIGN

CIRCULATION PRINCIPLE DIAGRAM



PROS

- Visual North / South connection from Park St to Jubilee Ln
- Circulation node in south east corner

CONS

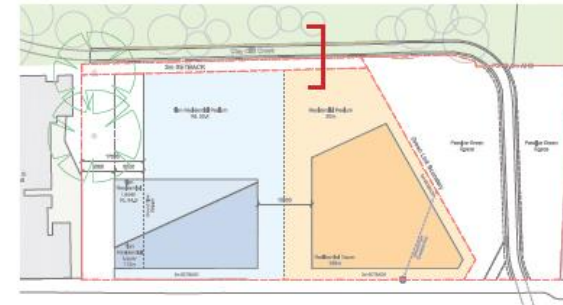
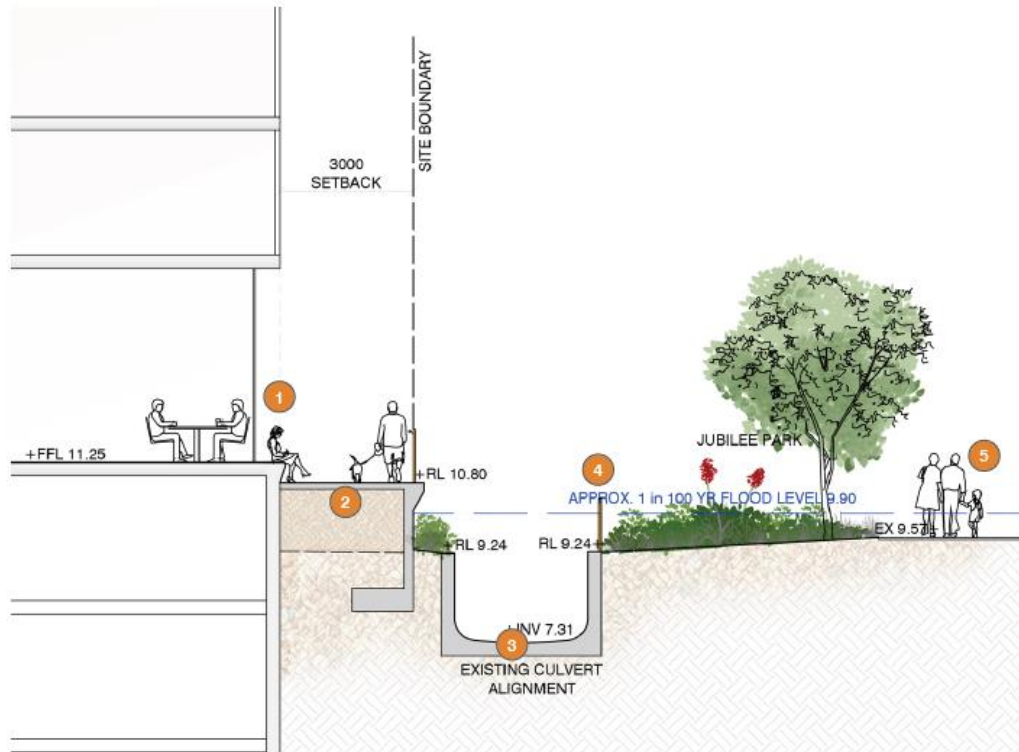
- Pedestrian bridge prioritises the North / South link over the East / West
- Passive open space divided into two

SPACES

- 1 Passive open space
- 2 WSUD
- 3 Active open space

PREFERRED CONCEPT DESIGN

EASTERN CULVERT SECTION



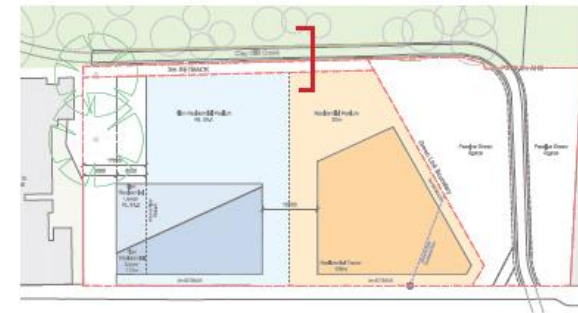
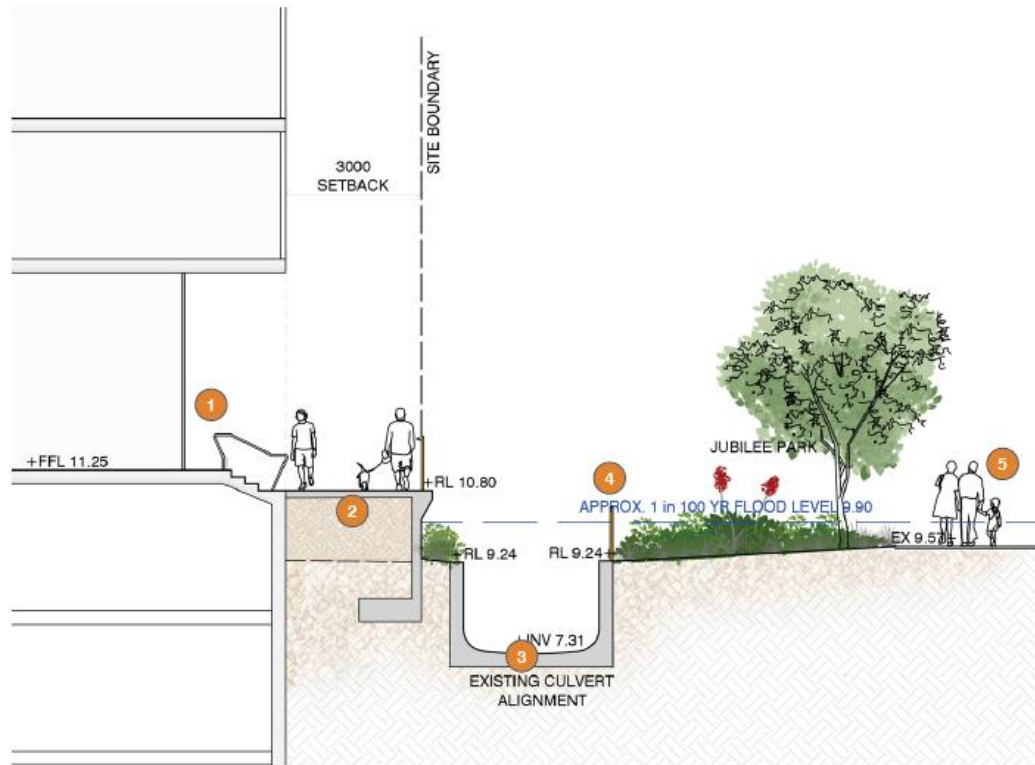
KEY PLAN

LEGEND

1. Occupiable edge (450mm high) located along laneway
2. Urban laneway
3. Existing channel to remain existing
4. Jubilee park fence to top of culvert
5. Existing Jubilee park footpath

PREFERRED CONCEPT DESIGN

EASTERN CULVERT SECTION



KEY PLAN

LEGEND

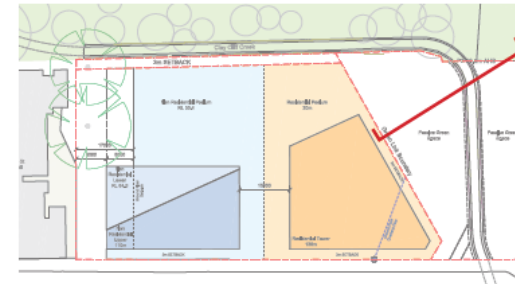
1. Punctuated access point located along laneway
2. Urban laneway
3. Existing channel to remain existing
4. Jubilee park fence to top of culvert
5. Existing Jubilee park footpath

PREFERRED CONCEPT DESIGN

SOUTHERN CULVERT SECTION

LEGEND

1. Passive open space with shade tolerant planting
2. Sandstone retaining wall benching
3. Lower mass planting area suitable for irregular flood inundations
4. East/West 2.5m wide concrete footpath at grade
5. Lowered amended channel
6. Pedestrian bridge over culvert
7. Boundary fence
8. Existing level of culvert retained



KEY PLAN

