



Planning Agreement

153 Parramatta Road, Five Dock

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Canada Bay City Council

and

Deicorp Projects (Five Dock) Pty Ltd

Ref JEH:1195346

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153 Parramatta Rd Five Dock

Summary Sheet

Council:		
	Name:	City of Canada Bay Council
	Address:	Locked Bag 1470 DRUMMOYNE NSW 2047
	Telephone:	02 9911 6555
	Facsimile:	02 9911 6550
	Email:	council@canadabay.nsw.gov.au
	Representative:	General Manager
Developer:		
	Name:	Deicorp Projects (Five Dock) Pty Ltd, ACN 668 294 344
	Address:	Level 4 161 Redfern Street, Redfern
	Telephone:	02 8665 4100
	Email:	gcolbran@deicorp.com.au
	Representative:	Greg Colbran
Landowner:		
	Name:	NA
	Address:	
	Telephone:	
	Email:	
	Representative:	
Land:		
	See definition of Land in clause 1.1.	
Development:		
	See definition of Development in clause 1.1.	
Development Contributions:		See clause 9 and Schedule 1.
Application of s7.11, s7.12 and s7.24 of the Act:		See clause 7.
Security:		See Part 6.
Registration:		See clause 37.
Restriction on dealings:		See clause 38.
Dispute Resolution:		See Part 6.

Planning Agreement

Date

Parties	City of Canada Bay Council ABN 79 130 029 350 of Locked Bag 1470 DRUMMOYNE NSW 2047 (Council)
	Deicorp Projects (Five Dock) Pty Ltd ACN 668 294 344 of Level 3, 161 Redfern Street, Redfern (Developer)

Recitals	A.	The Developer has contracted to purchase the Land and will own the Land before any obligations to make Development Contributions under this Deed arise.
	B.	The Land is within Area 32 of the "Key Sites Map" in the LEP.
	C.	The Developer has lodged Development Application SSD-73228210 for the Development on the Land with the Department of Planning Housing and Infrastructure.
	D.	Clause 8.3 of the LEP permits development to exceed the maximum permissible height of buildings and maximum permissible floor space ratio which would otherwise be permitted under the LEP if the development is on land which meets the minimum site area for the Area in which the land is located specified in clause 8.4 of the LEP, the proposed development meets any applicable minimum setback requirements in clause 8.6 of the LEP, and if the Community Infrastructure required by the LEP is delivered in connection with the development.
	E.	The Development Application relies on the provisions of Chapter 1 Part 2 Division 1 of the <i>State Environmental Planning Policy (Housing) 2021</i> to facilitate the delivery of new infill affordable housing.
	F.	The Land meets the minimum site area specified in clause 8.4 for Area 32.
	G.	The Developer agrees to provide the Developer Contributions as set out in this Planning Agreement.

- H. The Parties have entered into this Deed to secure the provision of the Community Infrastructure required in respect of the Development, if Development Consent is granted to the Development

This deed witnesses that in consideration of, among other things, the mutual promises contained in this deed the parties agree as follows:

Part 1 Preliminary

1. Definitions and interpretation clauses

1.1 Definitions

In this deed the following definitions apply:

- Act** means the *Environmental Planning and Assessment Act 1979* (NSW).
- Approval** includes approval, consent, licence, permission or the like.
- Approved Person** means a person or contractor company for a major trade agreed upon by both Parties to this Deed to undertake design, construction, supervision, inspection, testing or certification of a Contribution Work because of the suitability of their qualifications, skills and experience in the Council's reasonable opinion and does not include their employees or labourers
- Authority** means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.
- Bank Guarantee** means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council to pay an amount or amounts of money to the Council on demand issued by:
- (a) one of the following trading banks:
 - (i) Australia and New Zealand Banking Group Limited,
 - (ii) Commonwealth Bank of Australia,
 - (iii) Macquarie Bank Limited,

- (iv) National Australia Bank Limited,
- (v) St George Bank Limited,
- (vi) Westpac Banking Corporation, or
- (b) any other financial institution approved by the Council in its absolute discretion.

Claim	Claim includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.
Clearance Certificate	means a clearance certificate issued by the Commissioner for Taxation under paragraph 14-220 of Schedule 1 of the <i>Taxation Administration Act 1953 (Cth)</i> .
Community Infrastructure	means the public open space, pedestrian links or road, or service accessways required to be provided under clauses 8.5, 8.6 8.7 and 8.8 of the LEP.
Concept Park Design	means the concept plan for the Park Works in Annexure B.
Construction Certificate	has the same meaning as in the Act.
Contamination	has the same meaning as in the CLM Act
Contaminated	means subject to Contamination
Contribution Value in respect of an Item	means the \$ amount specified in Column 5 of Schedule 1 corresponding to that Item.
Contribution Work	means a work described in Part C Column 3 of Schedule 1
Cost	means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.
Council Street Design Code	means the <i>PRCUTS Public Domain Plan</i> and the <i>Engineering Specification</i> in the DCP
CLM	means the Contaminated Land Management Act 1997
CPI	means the Consumer Price Index (All Groups – Sydney) published by the Australian Bureau of Statistics.
DCP	means the <i>Canada Bay Development Control Plan</i> adopted 28 March 2023 as amended from time to time
Dedication Land	means land required to be dedicated under this Deed and described in Schedule 1.
Deed	means this Deed and includes any schedules, annexures and appendices to this Deed.

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.
Defects Liability Period	means the period of 24 months commencing on the day immediately after a Contribution Work is dedicated or transferred to Council for the purposes of this Deed.
Development	means a development for the purposes of a mixed use development inclusive of shop top housing with infill affordable housing and indoor recreation facility and associated roadways and public park on the Land which relies on the maximum floor space ratios and/or heights in Part 8 of the LEP and the provisions of Chapter 2 Part 2 Division 1 of the <i>State Environmental Planning Policy(Housing) 2021</i> .
Development Application	means development application SSD- 73228210 ..
Development Consent	has the same meaning as in the Act.
Development Contribution	means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose, but does not include any Security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s7.4(3)(g) of the Act.
Dispute	means a dispute or difference between the Parties under or in relation to this Deed.
Dwelling	has the same meaning as in Canada Bay Local Environmental Plan 2013 on the date this Deed commences.
Easement Site 1	means the part of the Land limited in depth as shown outlined in red and marked E1 on the concept site plan in Annexure A as the 12m wide pedestrian link along the eastern boundary of Area 32 that connects the Spencer St extension and the Parramatta Rd Five Dock
Easement Site 2	means the part of the Land limited in depth and height as shown outlined in red and marked E2 on the concept site plan in Annexure A as the north-south pedestrian link connection between Queens Street to Parramatta Road
ELNO	has the meaning given to that term in the Participation Rules.
Embellishment of setbacks	Means footpath paving, kerb and gutter, landscaping and stormwater drainage and does not include street furniture.

Equipment	means any equipment, apparatus, vehicle or other equipment or thing to be used by or on behalf of the Developer in connection with the performance of its obligations under this Deed.
Final Lot	means a lot created in the Development capable of separate occupation, use or disposition for residential purposes of a lot of a kind or created for a purpose that is otherwise agreed by the Parties, not being a lot created for the subdivision of the Land; <ul style="list-style-type: none"> (a) that is to be dedicated or otherwise transferred to the Council, or (b) on which is situated a dwelling house that was in existence on the date of this Deed.
Foreign Resident Capital Gains Withholding Amount	means the amount a purchaser is required to pay to the Commissioner for Taxation under paragraph 14-200 of the <i>Taxation Administration Act 1953 (Cth)</i> .
GST	GST has the same meaning as in the GST Law.
GST Law	has the same meaning as in <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> and any other Act or regulation relating to the imposition or administration of the GST.
Item	means a Development Contribution item specified in Column 1 of Schedule 1.
Insurance Bond	means an insurance bond provided by an insurer licensed by the Australian Prudential Regulatory Authority (APRA) to operate in Australia or with an investment grade rating from an industry recognised rating agency such as Moody's Standard & Poors or Bests.
Just Terms Act	means the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> .
Land	means <ul style="list-style-type: none"> Lot 1 in Deposited Plan 180829 Lot 1 in Deposited Plan 176343 Lot 1 in Deposited Plan 191889 Lot 1 in Deposited Plan 176163 Lot 1 in Deposited Plan 73026 Lot A in Deposited Plan 401689 Lot 1 in Deposited Plan 872782 Auto Consol 5365-82- being lots Lot 40 in Deposited Plan 1097688 and Lot 41 in Deposited Plan 1097688 generally known as 53-75 QUEENS ROAD, FIVE DOCK

Lot Y in Deposited Plan 386093
generally known as 129 PARRAMATTA ROAD, FIVE DOCK
Lot X in Deposited Plan 386093
Lot 1 in Deposited Plan 82068
Lot 2 in Deposited Plan 591225
Lot A in Deposited Plan 332646
generally known as 131 PARRAMATTA ROAD, FIVE DOCK
Lot B in Deposited Plan 332646
Lot 1 in Deposited Plan 591225
generally known as 147-153 PARRAMATTA ROAD, FIVE DOCK.

LEP	means the <i>Canada Bay Local Environmental Plan 2013</i>
Occupation Certificate	has the same meaning as in the Act.
Participation Rules	means the participation rules as determined by the Electronic Conveyancing National Law (NSW).
Park	means the park on the Park Land .
Park Land	means the land labelled 'Proposed Public Park ' and coloured green on the concept site plan at Annexure A .
Park Work	means the construction and embellishment of a park on the Park Land in accordance with this Deed
Party	means a party to this Deed.
Planning Agreement	means this Deed.
Principal Contractor	means the person defined in as the <i>Principal Contractor</i> under the <i>Work Health and Safety Act 2011</i> (NSW) or <i>Work Health and Safety Regulation 2011</i> (NSW) or an equivalent under Commonwealth work health and safety laws.
Public Easements	means the easements and restrictions on use to be registered on the title to the Land and burdening Easement Site 1 and Easement Site 2 in the same terms as the terms in Schedule 2, or on such other terms agreed by Council.
Rectification Notice	means a notice in writing: <ul style="list-style-type: none"> (a) identifying the nature and extent of a Defect, (b) specifying the works or actions that are required to Rectify the Defect, (c) specifying the date by which or the period within which the Defect is to be rectified.

Rectify	means rectify, remedy or correct.
Regulation	means the <i>Environmental Planning and Assessment Regulation 2021</i> .
Security	means a cash deposit, or Bank Guarantee or Insurance Bond or bond issued by a financial institution approved by the Council, or other form of security to the satisfaction of the Council, indexed in accordance with the CPI from the date of this Deed.
Site Audit Report	has the same meaning as in the CLM Act.
Site Audit Statement	has the same meaning as in the CLM Act.
Stage	means a stage of the Development approved by a Development Consent or otherwise approved in writing by the Council for the purposes of this Deed.
Subdivision Certificate	has the same meaning as in the Act.
Subdivision Works Certificate	has the same meaning as in the Act
WHS Law	means the <i>Work Health and Safety Act 2011</i> (NSW) and <i>Work Health and Safety Regulation 2011</i> (NSW).
Work	means the physical result of any building, engineering or construction work in, on, over or under land.

- 1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
- (a) Headings are inserted for convenience only and do not affect the interpretation of this Deed.
 - (b) A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
 - (c) If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
 - (d) A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
 - (e) A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
 - (f) A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.

- (g) A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (h) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- (i) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (j) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (k) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (l) References to the word 'include' or 'including' are to be construed without limitation.
- (m) A reference to this Deed includes the agreement recorded in this Deed.
- (n) A reference to a Party to this Deed includes a reference to the employees, agents and contractors of the Party, the Party's successors and assigns.
- (o) A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- (p) Any schedules, appendices and attachments form part of this Deed.
- (q) Notes appearing in this Deed are operative provisions of this Deed.

2. Status of this Deed

- 2.1 This Deed is a planning agreement within the meaning of s7.4(1) of the Act.
- 2.2 The Developer agrees that this deed operates as a deed poll in favour of the Council on and from the date of execution of this deed by the Developer until the date on which this deed commences.

3. Commencement

- 3.1 This Deed commences and has force and effect on and from the date when the Parties have:
 - (a) both executed the same copy of this Deed, or

- (b) each executed separate counterparts of this Deed and exchanged the counterparts.

3.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.

4. Application of this Deed

4.1 This Deed applies to the Land and to the Development.

5. Warranties

5.1 The Parties warrant to each other that they:

- (a) have full capacity to enter into this Deed, and
- (b) are able to fully comply with their obligations under this Deed.

5.2 The Developer warrants that it will own the Land before any obligations to make Development Contributions arise under this Deed.

6. Further agreements

6.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

7. Surrender of right of appeal, etc

7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, other than a dispute under this Deed.

8. Application of s7.11, s7.12 and s7.24 of the Act to the Development

8.1 This Deed does not exclude the application of s7.11, s7.12 and s 7.24 of the Act to the Development.

8.2 Benefits provided under this Deed are not to be taken into consideration when determining a development contribution under s7.11 of the Act.

Part 2 Development Contributions Generally

9. Provision of Development Contributions

- 9.1 The Developer is to make Development Contributions to the Council in accordance with Schedule 1, any other provision of this Deed relating to the making of Development Contributions and otherwise to the satisfaction of the Council.
- 9.2 The Developer may complete and deliver a Development Contribution earlier than the time frame specified in Schedule 1.
- 9.3 Any Contribution Value specified in this Deed in relation to a Development Contribution comprising the carrying out of Work or dedication of land does not serve to define the extent of the Developer's obligation to make the Development Contribution.
- 9.4 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.
- 9.5 Despite clause 9.4, the Council may apply a Development Contribution made under this Deed towards a public purpose other than the public purpose specified in this Deed if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.
- 9.6 Any monetary Development Contribution and Contribution Value for a Contribution Work or land required to be provided under this Deed is to be indexed in accordance with the CPI from the date of this Deed to the date the Development Contribution is provided.

Part 3 Provisions relating to the dedication of land and easements

10. When land is dedicated

- 10.1 A Development Contribution comprising the dedication of land is made for the purposes of this Deed when:
 - (a) the Council is given:
 - (i) a Clearance Certificate that is valid at the time of dedication of the Dedication Land, or
 - (ii) the Foreign Resident Capital Gains Withholding Amount in respect of the Dedication Land; and

- (b) one of the following has occurred:
 - (i) a deposited plan is registered in the register of plans held with the Registrar-General that dedicates Dedication Land as a public road (including a temporary public road) under the *Roads Act 1993* or creates the Dedication Land as a public reserve or drainage reserve under the *Local Government Act 1993*, or
 - (ii) the Council is given evidence that a transfer of the Dedication Land has been effected by means of electronic lodgement through an ELNO

- 10.2 The Developer is to do all things reasonably necessary to enable registration of the instrument of transfer for the Dedication Land to occur.
- 10.3 The Developer is to ensure that the Dedication Land is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.
- 10.4 If, having used all reasonable endeavours, the Developer cannot ensure that the Dedication Land is free from all encumbrances and affectations, the Developer may request that Council agree to accept the Dedication Land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.
- 10.5 The Developer is required to dedicate the Dedication Land to the Council in accordance with the timing set out in Schedule 1 Column 4.

11. Public Easements

- 11.1 A Development Contribution comprising the creation of a Public Easement over the Land is satisfied when the Council is given evidence that the Public Easement has been registered on the title to the Land.

12. Contamination of Dedication Land or Easement Site

- 12.1 Prior to the dedication of the Dedication Land or registration of a Public Easement the Developer must (at its cost):
 - (a) remediate the Dedication Land or Easement Site (**Relevant Land**), if necessary, to ensure it is suitable for the purposes of;
 - (i) a road for land dedicated for the purpose of a public road or pedestrian thoroughfare; or
 - (ii) a public park for land dedicated for the purposes of a public park; and

- (b) obtain and provide to the Council a Site Audit Report and Site Audit Statement addressed to the Council which states that the Relevant Land has been remediated and is suitable for the purposes stated in clause (a) above (without being subject to compliance with an environmental management plan) or otherwise complies with the conditions of any development consent in respect of the content of a Site Audit Report and Site Audit Statement for the Development.

12.2 The Developer indemnifies and agrees to keep indemnified the Council:

- (a) against all Claims made against the Council as a result of any Contamination on or emanating from the Relevant Land but, in respect of the Dedication Land, only in relation to Contamination that existed on or before the date that the Dedication Land became owned by Council, except if, and to the extent that, the Claim arises because of Council's actions inconsistent with any Site Audit Statement, Site Audit Report, or requirements of any development consent in respect of remediation, or Council's negligence or default; and
- (b) in relation to any failure of the Developer to comply with this clause 12.

12.3 Without limiting any other provision of this Deed, the Council is not required to accept dedication of the Dedication Land unless and until the Developer has complied with this clause 12.

Part 4 Provisions relating to carrying out of Work

13. Approved persons

- 13.1 The Developer is to design, construct, supervise, and test each Contribution Work using Approved Persons.
- 13.2 The Developer is to supply to the Council, and keep current, a list of all Approved Persons who are engaged from time to time in relation to a Contribution Work.
- 13.3 The Council may, in its reasonable discretion, notify the Developer that an Approved Person whose name appears on the list submitted by the Developer to the Council is not to be engaged in relation to the Contribution Work, and the Developer must promptly take such action as is necessary to ensure that the Approved Person does not continue to be engaged in relation to the Contribution Work.

14. Principal Contractor

The Developer is to notify the Council of the details of the Principal Contractor for a Contribution Work before any construction of the Contribution Work occurs.

15. Carrying out of Work

- 15.1 The Developer is to carry out and complete each Contribution Work in a good and workmanlike manner having regard to the intended purpose of the Contribution Work and in accordance with:
- (a) location, design, specifications, materials and finishes approved by Council under this Deed;
 - (b) the Subdivision Works Certificate issued by a private subdivision certifier;
 - (c) any Approval
 - (d) any Development Consent,
 - (e) the lawful requirements of any Authority, and
 - (f) all applicable laws.
- 15.2 The Developer, at its own cost, is to comply with any reasonable direction given to it by the Council to prepare or modify a design or specification relating to a Contribution Work that the Developer is required to carry out under this Deed.
- 15.3 The Developer is to give the Council not less than 5 business days' written notice of its intention to commence carrying out a Contribution Work.
- 15.4 The Developer is to ensure that anything necessary for the proper performance of its obligations under this Deed is supplied or made available.

16. Warranties relating to Contribution Work

- 16.1 The Developer warrants to the Council that:
- (a) it has obtained all Approvals and has complied with all laws and applicable industry standards in relation to the Contribution Work,
 - (b) it accepts that, if any aspect of a Contribution Work does not comply with this Deed, the Council is entitled to require the Developer to cease the Contribution Work and immediately pursue its legal and equitable rights and remedies relating to the non-compliance,
 - (c) each Contribution Work, when completed, are to be fit for purpose,
 - (d) only Approved Persons are to be engaged in relation to a Contribution Work.
- 16.2 The Developer is to procure in favour of the Council from the appropriate Approved Person engaged in relation to the Contribution Works, any warranty reasonably required by the Council relating to the design, construction, supervision, inspection, testing or certification of the Contribution Works.

17. Ownership & Care of Contribution Works

The Developer owns, and is responsible for care of each Contribution Work, and bears all risk and liability in connection with the Contribution Work, unless and until the Council becomes responsible for the Contribution Work under this Deed.

18. Work Health & Safety

- 18.1 The Developer acknowledges that it is the Principal Contractor under WHS Law for the Works unless and until such time that the Developer engages a person to construct the Works, or engages another person conducting a business, or undertaking, to be the Principal Contractor for the Works, and authorises the person to have management or control of the workplace relating to the Works and to discharge the duties of a Principal Contractor under WHS Law.
- 18.2 If the Developer at any time terminates the engagement of the person engaged to construct the Works or to otherwise be the Principal Contractor for the Works, the Developer becomes the Principal Contractor until such time as a new person is appointed to construct the Works or to otherwise be the Principal Contractor for the Works.
- 18.3 The Developer is to use its best endeavours to ensure that all persons involved in the Works comply with relevant WHS Law and procedures, including but not limited to:
- (a) following published government and industry WHS guidelines,
 - (b) providing WHS induction training,
 - (c) keeping and regularly updating WHS records,
 - (d) preparing and maintaining an WHS management plan,
 - (e) preparing a Project Safety Plan that details safety strategies, including how persons must act to comply with WHS Law,
 - (f) providing safe work method statements for all tasks and ensuring they are complied with,
 - (g) directing staff to take corrective action or stop work if they are not complying with the method statements or WHS Law,
 - (h) identifying hazards and assessing risks using due diligence,
 - (i) eliminating or controlling risks in line with SafeWorkNSW requirements using due diligence,
 - (j) reviewing risk assessments and controlling measures,
 - (k) providing information to employers and contractors about WHS,

- (l) documenting site-specific safety procedures.

18.4 The Developer is to use its best endeavours to ensure that:

- (a) the Council can audit, inspect and test the Contribution Works without breaching WHS Law,
- (b) the Council can access and use the Contribution Works without breaching WHS Law.

18.5 The Developer is to promptly inform the Council of any incident occurring in relation to the Contribution Works where a person is injured or otherwise exposed to a risk to his or her health or safety, including, but not limited to, an incident which is required to be reported to SafeWork NSW.

19. Accidents & dangerous occurrences

- 19.1 The Developer is to notify SafeWork NSW, and the Council, as soon as it becomes aware of any serious accident or dangerous occurrence relating to the Contribution Works.
- 19.2 Within a further seven days, the Developer must formally notify or procure the notification of SafeWork NSW of the accident or occurrence in accordance with the WHS Law, using any prescribed form.
- 19.3 The Developer must give to the Council a copy of all information and documents that have been provided to SafeWork NSW relating to the accident or occurrence.
- 19.4 The Developer must also give to the Council, if requested by the Council, a written report relating to the accident or occurrence in the form specified by the Council.
- 19.5 The Developer must cooperate with SafeWork NSW and the Council if the accident or occurrence is investigated by Work Cover or the Council.
- 19.6 The Developer must immediately give the Council a copy of any improvement or prohibition notices that SafeWork NSW issues in relation to the Contribution Works.

20. Approval of Contribution Works

- 20.1 The location, design, specifications, materials and finishes for the Contribution Works are to be determined and approved in accordance with this clause subject to clause 21 of this Deed.
- 20.2 Before commencing the design of the Contribution Work, the Developer is to request the Council to provide the Developer with the Council's requirements for the location, design and specifications, materials and finishes for the Contribution Work (**Council's Requirements**).

- 20.3 The Council may request the Developer to provide a written proposal concerning the location, design specifications, materials and finishes for the Contribution Works, including site survey, preliminary concept designs, related assessments and reports, to assist Council in determining and notifying the Developer of the Council's Requirements.
- 20.4 Once the Developer receives notification from the Council of the Council's Requirements for the Contribution Works, the Developer is to submit details of the location, design specifications, materials and finishes for the Contribution Works to the Council for approval.
- 20.5 The details submitted by the Developer under clause 20.4 are to be consistent with:
- (a) the Council's Requirements;
 - (b) Council's Kings Bay Precinct Street Design Guideline (where relevant);
 - (c) the Infrastructure Strategy;
 - (d) any applicable "Australian Standards";
 - (e) the requirements of any relevant Authority, such as a roads authority or utility;
 - (f) any requirements for the Contribution Work contained in Part K20 of the DCP.
- 20.6 The Council may reasonably require the Developer to make any change to the location, design specifications, materials and finishes for the Contribution Works that it reasonably considers necessary or desirable as a precondition to approving the design of the Contribution Works.
- 20.7 The Developer is to make any change to the location, design specifications, materials, and finishes of the Contribution Works as is reasonably required by the Council.
- 20.8 The Developer is not to make any application for any approval for the Contribution Works or any modification of any Approval for same and is not to commence construction of the Contribution Works unless the Council has first notified the Developer of its approval of the location, design, specifications, materials and finishes of the Contribution Works. The Parties acknowledge that the prior lodgement of Development Application SSD- 73228210 is not a breach of this clause.

21. Design of Park Works

21.1 Developer and Council to work collaboratively

- (a) The Parties agree that the Park Works will be generally in accordance with the Concept Park Design in Annexure B to this agreement.
- (b) The Developer and Council are to work collaboratively to establish the strategy principles and final design for the Park Works based on the Concept Park

Design, the Council's Kings Bay Precinct Design Guideline and Part K20 of the DCP

- (c) Collaboration between the parties will take place via a series of workshops attended by representatives of the Developer, and/or its consultants, and the Council as follows:
 - (i) workshop 1 - initial park strategy and principles;
 - (ii) workshop 2 - draft park design;
 - (iii) workshop 3 - planting, park furniture, and finishes and maintenance strategy; and
 - (iv) workshop 4 - final park design.

21.2 Workshops

- (a) The Developer is to make a written request to Council to hold each of the workshops referred to in clause 21.1(c), and is to provide at least 2 proposed dates and times for the workshop the subject of the request.
- (b) The Parties are to use their best endeavours to agree on a time for a workshop within 1 week of the request for the workshop, and to hold the workshop within 3 weeks of the request for the workshop, to ensure workshops happen in a reasonable time frame.

21.3 Final Park design for approval

- (a) Following workshop 4, the Developer must submit a final design for the Park Works to Council for Council's Approval and clauses 20.6 to 20.8 apply.
- (b) The Developer may lodge a development application for the Park Works once the Council has notified the Developer that the design of the Park Works is approved.
- (c) The final design and development application referred to in clauses 21.3(a) and (b) must be generally consistent with any park strategies, principles and any designs agreed between the parties as at that date.
- (d) Council cannot withhold its Approval under clause 21.3(a) to the final design of the Park Works if it is consistent with the park strategies, principles and any designs agreed between the parties at the workshops.

22. Variation to Contribution Works

- 22.1 The design or specification of any Contribution Work that is required to be carried out by the Developer under this Deed may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed.

- 22.2 Without limiting clause 22.1, the Developer may make a written request to the Council to approve a variation to the design or specification of the Contribution Works in order to enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to the carrying out of the Contribution Works.
- 22.3 The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under clause 22.2.
- 22.4 The Council, acting reasonably, may from time to time give a written direction to the Developer requiring it to vary the design or specification of a Contribution Work before the Work is carried out in a specified manner and submit the variation to the Council for approval.
- 22.5 The Developer is to comply promptly with a direction referred to in clause 22.4 at its own cost.

23. Inspections

- 23.1 Within 20 Business Days of the Approval of a Contribution Work by Council under clause 20 and 21, Council will provide a schedule of inspections to be undertaken by Council (**Inspection Schedule**) to occur at specified stages of the construction of the Contribution Work (**Inspection Stage**).
- 23.2 5 Business Days prior to reaching an Inspection Stage as set out in the Inspection Schedule, the Developer must notify the Council of the inspection date (**Inspection Date**).
- 23.3 On the Inspection 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 relevant Contribution Work.
- 23.4 The Council may, acting reasonably, within 5 Business Days of carrying out an inspection under this clause, notify the Developer of any defect or non-compliance in the relevant Contribution Works (**Inspection Defect Notice**) 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:
- (a) removal of defective or non-complying material;
 - (b) demolishing defective or non-complying work;
 - (c) reconstructing, replacing or correcting any defective or non-complying work; and
 - (d) not delivering any defective or non-complying material to the site of the relevant Work.
- 23.5 If the Developer is issued an Inspection Defect Notice the Developer must, at its cost, rectify the defect or non-compliance specified in the Inspection Defect Notice within the time period specified in the Inspection Defect Notice.

- 23.6 If the Developer fails to comply with an Inspection Defect Notice, the Council will be entitled to refuse, acting reasonably, to issue a notice that the Contribution Work has been completed under clause 27 until the Inspection Defect Notice has been complied with to Council's satisfaction.
- 23.7 For the avoidance of doubt, any acceptance by the Council that the Developer has rectified a defect or non-compliance identified in an Inspection Defect Notice does not constitute:
- (a) acceptance by the Council that the relevant Contribution Work complies with all Approvals and Laws; or
 - (b) an Approval by the Council in respect of the relevant Contribution Work; or
 - (c) an agreement or acknowledgment by the Council that the relevant Contribution Work is complete for the purposes of clause 26.

24. Access to land by Council

- 24.1 The Council may enter any land on which a Contribution Work is being carried out by the Developer under this Deed in order to inspect, examine or test the Contribution Work, or to remedy any breach by the Developer of its obligations under this Deed relating to the Contribution Work.
- 24.2 The Council is to give the Developer prior reasonable notice in writing before it enters land under clause 24.1.

25. Protection of people, property & utilities

- 25.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:
- (a) all necessary measures are taken to protect people and property,
 - (b) unnecessary interference with the passage of people and vehicles is avoided, and
 - (c) nuisances and unreasonable noise and disturbances are prevented.
- 25.2 Without limiting clause 25.1, 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 land except as authorised in writing by the Council or any relevant Authority.

26. Repair of damage

- 26.1 The Developer is to maintain any Contribution Work required to be carried out by the Developer under this Deed until the Contribution Work is completed for the purposes of this Deed or such later time as agreed between the Parties.
- 26.2 If Council is not the owner of land on which a Work is constructed, or the land on which the Contribution Work is constructed is not required to be dedicated to Council under this Deed, then the Developer remains responsible for the Contribution Work unless and until such time as the land on which the Contribution Work is constructed is dedicated to Council.
- 26.3 The Developer is to carry out its obligation under clause 26.1 at its own cost and to the satisfaction of the Council.

27. Completion of Contribution Work

- 27.1 The Developer is to give the Council not less than 5 business days' written notice of the date on which it will complete any Contribution Work required to be carried out under this Deed or any Stage.
- 27.2 The Council is to inspect the Contribution Work the subject of the notice referred to in clause 27.1 within 10 business days of the date specified in the notice for completion of the Contribution Work.
- 27.3 A Contribution Work required to be carried out by the Developer under this Deed, or a Stage, is completed for the purposes of this Deed when the Council, acting reasonably, gives a written notice to the Developer to that effect.
- 27.4 If the Council is the owner of the land on which a Contribution Work the subject of a notice referred to in clause 27.3 is issued, the Council assumes responsibility for the Contribution Work 10 business days after the issuing of the notice, but if it is not the owner at that time, it assumes that responsibility when it later becomes the owner.
- 27.5 Before the Council gives the Developer a notice referred to in clause 27.3, it may give the Developer a written direction to complete, rectify or repair any specified part of the Contribution Work to the reasonable satisfaction of the Council.
- 27.6 The Developer, at its own cost, is to promptly comply with a direction referred to in clause 27.5.
- 27.7 The Developer is to procure in favour of the Council from the Developer's contractor engaged in relation to a Work, any warranty reasonably required by the Council relating to the design, construction, supervision, inspection, testing or certification of the Work.

28. Rectification of defects for Contribution Work

- 28.1 The Council may give the Developer a Rectification Notice in relation to a Contribution Work during the Defects Liability Period.
- 28.2 The Developer, at its own cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.
- 28.3 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice that has been given to it under clause 28.1.
- 28.4 Clauses 35.2 to 35.5 apply to a failure to comply with a Rectification Notice in the same way that they apply to a notice under clause 35.1 .

29. Works-As-Executed-Plan

- 29.1 No later than 15 business days after a Contribution Work is completed for the purposes of this Deed, the Developer is to submit to the Council a full works-as-executed-plan in respect of the Contribution Work.
- 29.2 The Developer, being the copyright owner in the plan referred to in clause 29.1, gives the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Deed.
- 29.3 The Developer is to include with the works-as-executed plan submitted, the original manufacturer's warranty in respect of any item installed on the Council's land as a part of the Contribution Work.

30. Removal of Equipment

- 30.1 When Work on any Council owned or controlled land is completed for the purposes of this Deed, the Developer, without delay, is to:
 - (a) remove any Equipment from Land and make good any damage or disturbance to the land as a result of that removal, and
 - (b) leave the land in a neat and tidy state, clean and free of rubbish.

Part 5 Dispute Resolution

31. Dispute resolution – expert determination

- 31.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
- (a) the Parties to the Dispute agree that it can be so determined, or
 - (b) the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 31.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 31.3 If a notice is given under clause 31.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 31.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 31.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 31.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 31.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

32. Dispute Resolution - mediation

- 32.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 31 applies.
- 32.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 32.3 If a notice is given under clause 32.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 32.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.

- 32.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 32.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 32.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 6 Enforcement

33. Security for performance of obligations

- 33.1 The Developer is to provide Security to the Council in the amount set out in Column 6 of Schedule 1 in relation to the performance of its obligations under this Deed.
- 33.2 The Developer may provide a separate Security for each of the Contribution Works and is to provide the Security to the Council before it commences any part of the Development that relates to a particular Contribution Work. .
- 33.3 .The Council, in its absolute discretion and despite clause 24, may refuse to allow the Developer to enter, occupy or use any land owned or controlled by the Council or refuse to provide the Developer with any plant, equipment, facilities or assistance relating to the carrying out the Development if the Developer has not provided the Security to the Council in accordance with this Deed.
- 33.4 The Council may call-up and apply the Security in accordance with clause 33 to remedy any breach of this Deed notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity.
- 33.5 The Council must promptly release and return 100% the Security or any unused part of it to the Developer within 14 days of completion of a Contribution Work in accordance with clause 27 to which the Security relates.
- 33.6 A Security may be reduced by agreement between the Parties, if the estimated cost of all outstanding work for which the Security is provided under this agreement (as determined by a report of a qualified quantity surveyor at the Developer's cost) is less than the amount required to be held by Council under clause 33.1
- 33.7 The Developer may at any time provide the Council with a replacement Security.
- 33.8 On receipt of a replacement Security, the Council is to release and return the Security that has been replaced to the Developer.

- 33.9 If the Council calls-up the Security or any portion of it, it may, by written notice to the Developer, require the Developer to provide a further or replacement Security to ensure that the amount of Security held by the Council equals the amount it is entitled to hold under this Deed.
- 33.10 The Developer is to ensure that the Security provided to the Council is at all times maintained to the full current indexed value.

34. Acquisition of land required to be dedicated

- 34.1 If the Developer does not dedicate the Dedication Land or register the Public Easement at the time required under this Deed at the time at which it is required to be dedicated, the Developer consents to the Council compulsorily acquiring the Dedication Land or Public Easement (as the case may be) for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- 34.2 The Council is to only acquire land pursuant to clause 34.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the Dedication Land or register the Public Easement and on giving the Developer 14 days notice in writing of its intention to compulsorily acquire the Dedication Land or the Easement Land
- 34.3 Clause 34.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 34.4 If, as a result of the acquisition referred to in clause 34.1, the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council that amount, upon a written request being made by the Council, or the Council can call on any Security provided under clause 33.3.
- 34.5 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 land concerned, including in respect of any Contamination on or emanating from the land but, in respect of the Dedication Land, only in relation to Contamination that existed on or before the date that the Dedication Land is compulsorily acquired by Council, and in respect of all Land, except if, and to the extent that, the Claim arises because of the Council's actions inconsistent with any Site Audit Statement, Site Audit Report, or requirements of any development consent in respect of remediation, or Council's negligence or default.
- 34.6 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 34, including without limitation:
- (a) signing any documents or forms,
 - (b) giving land owner's consent for lodgement of any Development Application,
 - (c) paying the Council's costs arising under this clause 34.

35. Breach of obligations

- 35.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
- (a) specifying the nature and extent of the breach,
 - (b) requiring the Developer to:
 - (i) rectify the breach if it reasonably considers it is capable of rectification, or
 - (ii) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
 - (c) specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 35.2 If the Developer fails to fully comply with a notice referred to in clause 35.1, the Council may, without further notice to the Developer, call-up the Security provided by the Developer under this Deed and apply it to remedy the Developer's breach.
- 35.3 If the Developer fails to comply with a notice given under clause 35.1, the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.
- 35.4 Any costs incurred by the Council in remedying a breach in accordance with clause 35.2 or clause 35.3 may be recovered by the Council by either or a combination of the following means:
- (a) by calling-up and applying the Security provided by the Developer under this Deed, or
 - (b) as a debt due in a court of competent jurisdiction.
- 35.5 For the purpose of clause 35.4, the Council's costs of remedying a breach the subject of a notice given under clause 35.1 include, but are not limited to:
- (a) the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
 - (b) all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - (c) all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 35.6 Nothing in this clause 35 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

36. Enforcement in a court of competent jurisdiction

- 36.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 36.2 For the avoidance of doubt, nothing in this Deed prevents:
- (a) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
 - (b) the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

Part 7 Registration & Restriction on Dealings

37. Registration of this Deed

- 37.1 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act.
- 37.2 Upon the execution of this Deed by the Developer, the Developer is to deliver to the Council in registrable form:
- (a) an instrument requesting registration of this Deed on the title to the Land duly executed by the owner of the Land, and
 - (b) the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.
- 37.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 37.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land:
- (a) in so far as the part of the Land concerned is a Final Lot,
 - (b) in relation to any other part of the Land, once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

38. Restriction on dealings

- 38.1 The Developer is not to:
- (a) sell or transfer the Land, other than a Final Lot, or

- (b) assign the Developer's rights or obligations under this Deed, or novate this Deed,

to any person unless:

- (c) the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
- (d) the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
- (e) the Developer is not in breach of this Deed, and
- (f) the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.

38.2 Subject to clause 38.3, the Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 38.1.

38.3 Clause 38.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

Part 8 Indemnities & Insurance

39. Risk

The Developer performs this Deed at its own risk and its own cost.

40. Release

The Developer releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

41. Indemnity

The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with

the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

42. Insurance

- 42.1 The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Deed up until the Work is taken to have been completed in accordance with this Deed:
- (a) contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,
 - (b) public liability insurance for at least \$20 million for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
 - (c) workers compensation insurance as required by law, and
 - (d) any other insurance required by law.
- 42.2 If the Developer fails to comply with clause 37.1, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
- (a) by calling upon the Security provided by the Developer to the Council under this Deed, or
 - (b) recovery as a debt due in a court of competent jurisdiction.
- 42.3 The Developer is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 42.1.

Part 9 Other Provisions

43. Review of Deed

- 43.1 The Parties agree to review this Deed every 5 years, and otherwise if either party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.

- 43.2 For the purposes of clause 43.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 43.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 43.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 43.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.
- 43.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 43.1 (but not 43.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.
- 43.6 This clause ceases to apply upon the Developer meeting all of its obligations under the Deed.

44. Notices

- 44.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- (a) delivered or posted to that Party at its address set out in the Summary Sheet, or
 - (b) emailed to that Party at its email address set out in the Summary Sheet.
- 44.2 If a Party gives the other Party three business days' notice of a change of its address or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address.
- 44.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- (a) delivered, when it is left at the relevant address,
 - (b) sent by post, 4 business days after it is posted, or
 - (c) sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 44.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

45. Approvals and Consent

- 45.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.
- 45.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

46. Costs

- 46.1 The Developer is to pay to the Council the Council's reasonable costs, relating to preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within seven days of a written demand by the Council for such payment.
- 46.2 The Developer is also to pay to the Council the Council's reasonable costs of enforcing this Deed within seven days of a written demand by the Council for such payment.

47. Entire Deed

- 47.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 47.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

48. Further Acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.

49. Governing Law and Jurisdiction

- 49.1 This Deed is governed by the law of New South Wales.
- 49.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 49.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

50. Joint and Individual Liability and Benefits

50.1 Except as otherwise set out in this Deed:

- (a) any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and
- (b) any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

51. No Fetter

Nothing in this Deed shall be construed as requiring Council to do anything that would cause it to be in 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.

52. Illegality

If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

53. Severability

- 53.1 If a clause or part of a clause of this Deed 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.
- 53.2 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 Deed, but the rest of this Deed is not affected.

54. Amendment

- 54.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 203 of the Regulation.
- 54.2 The Parties are to act in good faith in considering any request by a Party to amend this Deed.

55. Waiver

- 55.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 55.2 A waiver by a Party is only effective if it:
- (a) is in writing,
 - (b) is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - (c) specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - (d) is signed and dated by the Party giving the waiver.
- 55.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 55.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and 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.
- 55.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

56. GST

- 56.1 In this clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 56.2 Subject to clause 56.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 56.3 Clause 56.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 56.4 No additional amount shall be payable by the Council under clause 56.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 56.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- (a) to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
 - (b) that any amounts payable by the Parties in accordance with clause 56.2 (as limited by clause 56.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 56.6 No payment of any amount pursuant to this clause 56, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 56.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 56.8 This clause continues to apply after expiration or termination of this Deed.

57. Explanatory Note

- 57.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 205 of the Regulation.
- 57.2 Pursuant to clause 205 of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

Schedule 1 Development Contributions (Clause 9)



Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Item/ Contribution	Public Purpose	Manner & Extent	Timing	Contribution Value	Security
A. Monetary Contributions					
Not Applicable					
B. Dedication of Land					
1. Road Land	Public Road	18m road connecting Spencer St Five Dock to the eastern boundary of Area 32 and along the eastern boundary of Area 32 that connects Spencer St extension with Queens Rd as shown in the concept site plan in Annexure A	Prior to issue of the final Occupation Certificate for the Development.	\$1.00	NA
2. Public Park	Public Park	2,290sqm park to be known as William Street Park as shown on the concept site plan at Annexure A	Prior to issue of the final Occupation Certificate for the Development	\$1.00	NA
3. Setbacks.	Public Road	6m setback on land that fronts Parramatta Rd, Five Dock as shown on the concept at Annexure A 3m setback on land that fronts Queens Rd Five Dock as shown on the concept at Annexure A	Prior to issue of the final Occupation Certificate for the Development	\$1.00	NA

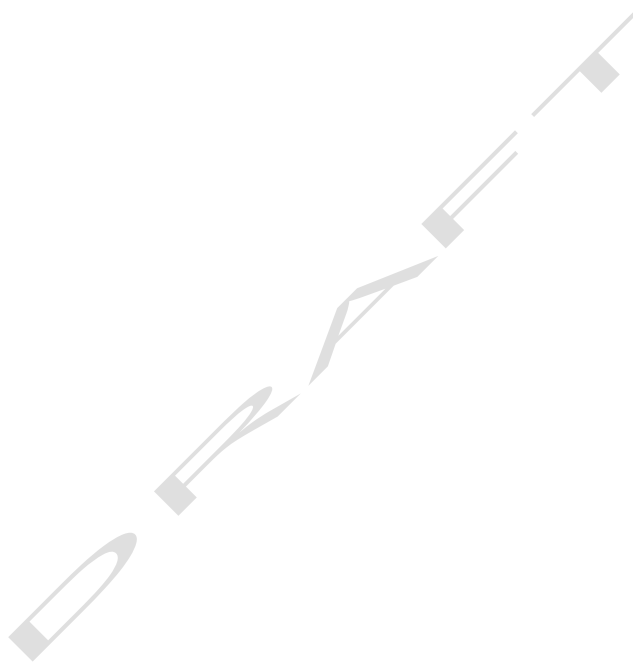
C. Carrying out of Work

1.	Road works	Construction of Public Road	Construction of 18m road connecting Spencer St Five Dock to the eastern boundary of Area 32 and along the eastern boundary of Area 32 to Queens Rd as shown in blue on the concept site plan in Annexure A	Prior to issue of the final Occupation Certificate for the Development	\$4,499 583.63.00	100% of the Contribution Value
2.	Construction of the Park	Accessible Public Park	Construction of and embellishment of the public Park on the Park Land.	Prior to the issue of the final Occupation Certificate for the Development.	\$2,286 394.53	100% of the Contribution Value
3.	Pedestrian Link	Public Footpath	Construction of 12m wide pedestrian link in the location shown in pink on the site plan in Annexure A These works are not to be dedicated to Council	Prior to the issue of the final Occupation Certificate for the Development	Nil	
4.	Embellishment of setbacks	Public Domain	Embellishment of setbacks	Prior to the issue of the final Occupation Certificate for the Development	\$1,121,395.94	100% of the Contribution value

D. Other Material Public Benefits

1.	Public Easement	Public footpath	Registration of the Public Easement over the Easement Site 1	After the completion of Item C.3 and prior to the issue of the final Occupation Certificate for the Development	NA	NA
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2.	Public Easement	Through site link	Registration of the Public Easement over Easement Site 2	Prior to the issue of the final Occupation Certificate for the Development	NA	NA
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Schedule 2 Public Easements

Terms of Easement 1

- 1 The registered proprietor of the lot burdened grants to Canada Bay City Council (**Council**) and members of the public full and free right to go, pass and repass over the lot burdened but only within the Easement Site at all times:
 - a) with or without companion animals (as defined in the *Companion Animals Act 1998*) or other small pet animals; and
 - b) on foot without vehicles (other than bicycles, wheelchairs or other disabled access aids);for all lawful purposes.
- 2 The registered proprietor of the lot burdened must, to the satisfaction of Council, acting reasonably:
 - (i) keep the Easement Site (including any services in, on or under the Lot burdened) in good repair and condition;
 - (ii) maintain and repair the Easement Site and all improvements on it in accordance with a maintenance or operational plan approved by the Council for the Easement Site;
 - (iii) keep the Easement Site clean and free from rubbish; and
 - (iv) maintain sufficient public liability insurance covering the use of the Easement Site in accordance with the terms of this easement.
- 3 The registered proprietor of the lot burdened may place dining tables and chairs on the Easement Site for use by adjacent retail premises, provided that the dining tables and chairs do not obstruct the through flow of pedestrians along the Easement Site
- 4 The registered proprietor of the lot burdened may erect awnings or canopies over the easement site provided development consent is obtained for such awnings where development consent is required
- 5 If the registered proprietor of the lot burdened is an owners corporation or community association, then it must ensure that any rules or by-laws adopted by it in relation to the Easement Site have been approved by the Council.

Easement Site means that part of the lot burdened that is affected by the easement and is limited in depth to 80mm as shown on the plan.

Terms of Easement 2

- 1 The registered proprietor of the lot burdened grants to Canada Bay City Council (**Council**) and members of the public full and free right to go, pass and repass over the lot burdened but only within the Easement Site at all times:
 - c) with or without companion animals (as defined in the *Companion Animals Act 1998*) or other small pet animals; and

- d) on foot without vehicles (other than bicycles, wheelchairs or other disabled access aids);
- for all lawful purposes.
- 2 The registered proprietor of the lot burdened must, to the satisfaction of Council, acting reasonably:
 - (i) keep the Easement Site (including any services in, on or under the Lot burdened) in good repair and condition;
 - (ii) maintain and repair the Easement Site and all improvements on it in accordance with a maintenance or operational plan approved by the Council for the Easement Site;
 - (iii) keep the Easement Site clean and free from rubbish; and
 - (iv) maintain sufficient public liability insurance covering the use of the Easement Site in accordance with the terms of this easement.
- 3 The registered proprietor of the lot burdened may place dining tables and chairs on the Easement Site for use by adjacent retail premises, provided that the dining tables and chairs do not obstruct the through flow of pedestrians along the Easement Site.
- 4 The registered proprietor of the lot burdened may erect awnings or canopies over the easement site provided development consent is obtained for such awnings where development consent is required.
- 5 Subject to obtaining development consent if development consent is required the registered proprietor may construct escalators within the easement site;
- 6 If the registered proprietor of the lot burdened is an owners corporation or community association, then it must ensure that any rules or by-laws adopted by it in relation to the Easement Site have been approved by the Council.

Easement Site means that part of the lot burdened that is affected by the easement and is limited to a stratum with a depth to 40mm and height to 2.5 meters above finished ground levels as shown on the plan.

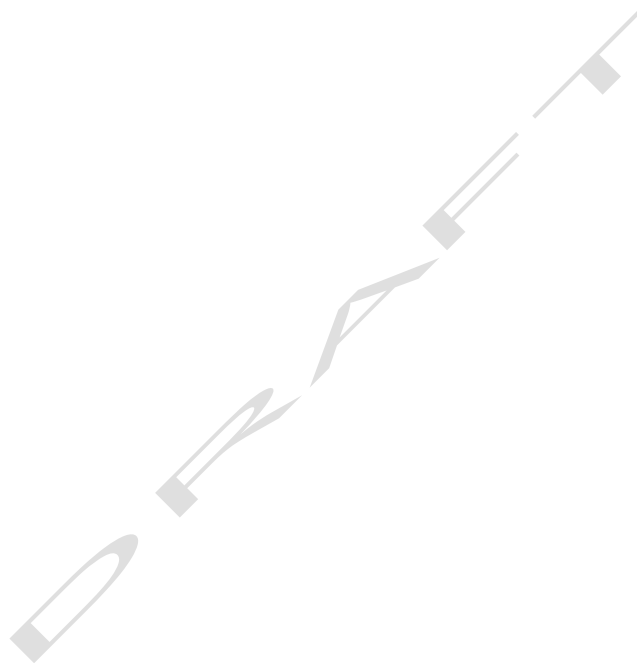
Terms of Restriction on the Use of Land Applying to both Easement Sites

The registered proprietor of the lot burdened will:

1. not construct or permit the construction of any buildings or structures on the lot burdened that will conflict with the use of the Easement Site in accordance with the easement without obtaining development consent if development consent is required or otherwise, the prior written consent of Council;
2. not make or permit or suffer the making of any alterations to the finished levels or remove any of the structures constructed on the Easement Site as at the date of creation of this restriction on use other than maintenance without the prior consent of Council;
3. not carry out any work or erect any buildings or structures such as fences which would prevent Council or members of the public from moving between the Easement Site and the adjacent land owned by Council other than that permitted by the Maintenance or Operational Plan or otherwise without the consent of the Council.

Name of authority whose consent is required to release, vary or modify the easement and restriction above is:

Canada Bay City Council



Schedule 3 Requirements under the Act and Regulation

The below table summarises how this document complies with the Act and Regulation.

Item	Section of Act or Regulation	Provision/Clause of this Document
Item 1	<p>Planning instrument and/or development application (section 7.4(1) of the Act)</p> <p>The Developer has:</p> <ul style="list-style-type: none"> sought a change to an environmental planning instrument; made, or proposes to make, a development application; or entered into an agreement with, or is otherwise associated with, a person, to whom paragraph • or • applies. 	<p>(a) No</p> <p>(b) Yes</p> <p>(c) No</p>
Item 2	Description of land to which this document applies (section 7.4(3)(a) of the Act)	Definition of Land
Item 3	Description of change to the environmental planning instrument to which this document applies and/or the development to which this document applies (section 7.4(3)(b) of the Act)	The development the subject of the DA
Item 4	The nature and extent of the provision to be made by the developer under this document, the time or times by which the provision is to be made and the manner in which the provision is to be made (section 7.4(3)(c) of the Act)	See clause 9.1
Item 5	Whether this document excludes (wholly or in part) or does not exclude the application of section 7.11, 7.12 or 7.24 to the Development (section of the Act)	No
Item 6	Applicability of section 7.11 of the Act (section 7.4(3)(e) of the Act)	Yes
Item 7	Consideration of benefits under this document if section 7.11 applies (section 7.4(3)(e) of the Act)	No

Item	Section of Act or Regulation	Provision/Clause of this Document
Item 8	Mechanism for Dispute Resolution (section 7.4(3)(f) of the Act)	See Part 5.
Item 9	Enforcement of this document (section 7.4(3)(g) of the Act)	See Part 6.
Item 10	No obligation to grant consent or exercise functions (section 7.4(9) of the Act)	See clause 51.
Item 11	Registration of this document (section 7.6 of the Act)	See clause 37.
Item 12	Whether certain requirements of this document must be complied with before a construction certificate is issued (clause 25E(2)(g) of the Regulation)	No
Item 13	Whether certain requirements of this document must be complied with before a subdivision certificate is issued (clause 25E(2)(g) of the Regulation) (clause 25E(2)(G) of the Regulation)	No
Item 14	Whether certain requirements of this document must be complied with before an occupation certificate is issued (clause 25E(2)(g) of the Regulation)	Yes
Item 15	Whether the explanatory note that accompanied exhibition of this document may be used to assist in construing this document (clause 25E(7) of the Regulation)	No (see clause 57)

Schedule 4 Explanatory Note

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Planning Agreement

Under section 7.4 of the *Environmental Planning and Assessment Act 1979* (NSW)

Parties

Canada Bay City Council ABN 79 130 029 350 of 1A Marlborough St, Drummoyne NSW 2047
(**Council**); and

Deicorp Projects (Five Dock) Pty Ltd ACN 630 425 955 of Level 3, 161 Redfern Street,
Redfern (**Developer**)

Description of subject land

53-75 QUEENS ROAD, FIVE DOCK

Lot 1 in Deposited Plan 180829

Lot 1 in Deposited Plan 176343

Lot 1 in Deposited Plan 191889

Lot 1 in Deposited Plan 176163

Lot 1 in Deposited Plan 73026

Lot A in Deposited Plan 401689

Lot 1 in Deposited Plan 872782

Auto Consol 5365-82- being lots Lot 40 in Deposited Plan 1097688 and Lot 41 in Deposited Plan 1097688

129 PARRAMATTA ROAD, FIVE DOCK

Lot Y in Deposited Plan 386093 **131 PARRAMATTA ROAD, FIVE DOCK**

Lot X in Deposited Plan 386093

Lot 1 in Deposited Plan 82068

Lot 2 in Deposited Plan 591225

Lot A in Deposited Plan 332646

147-153 PARRAMATTA ROAD, FIVE DOCK

Lot B in Deposited Plan 332646

Lot 1 in Deposited Plan 591225

Description of proposed development

Development Application (SSD-73228210) has been lodged to the Department of Planning, Housing and Infrastructure for a mixed use development inclusive of shop top housing with infill affordable housing, an indoor recreation facility and associated roadways and public park. The development application relies on the maximum floor space ratios and/or heights in Part 8 of the LEP and the provisions of Chapter 2 Part 2 Division 1 of the *State Environmental Planning Policy(Housing) 2021*.

Summary of objectives, nature and effect of the draft planning agreement

Objectives of Planning Agreement

The objective of the Planning Agreement is to provide publicly accessible open space to meet the increased demand for open space and public roads which will arise from the carrying out of the proposed development.

Nature of Planning Agreement

The Planning Agreement constitutes a planning agreement under section 7.4 of the Act. The Planning Agreement will be registered on the title of the Land.

Effect of the Draft Planning Agreement

The draft planning agreement requires the developer to provide the following community infrastructure in connection with the development of the Land:

- Construction and dedication of 2,290sqm Public Park to be known as William Street Park;
- Construction and dedication of
 - An 18 m wide road connecting Spencer Street, Five Dock to the eastern boundary of Area 32;and
 - An 18 m wide road along the eastern boundary of Area 32 that connects Spencer Street extension and Queens Road Five Dock;
- Construction and registration of a public easement over a 12 m wide pedestrian link along the eastern boundary of Area 32 that connects the Spencer Street extension and Parramatta Road Five dock .(The pedestrian link will not be dedicated to Council)
- Registration of a public easement over a through site link connecting Queens St and Parramatta Road
- Embellishment and dedication of setbacks
 - 6m wide setback on land that fronts Parramatta Rd and
 - 3m setback on land that fronts Queens Road Five Dock.

Assessment of the merits of the draft planning agreement

The planning purposes served by the Planning Agreement

The Planning Agreement:

- promotes the orderly and economic use and development of the Land to which the Planning Agreement applies;
- promotes good design and amenity of the build environment by facilitating the development of the Land in accordance with the Planning Agreement;
- promotes the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State; and
- promotes increased opportunity for the public in environmental planning and assessment.

How the Planning Agreement promotes the public interest

The Planning Agreement will promote the public interest by promoting the objects of the Act as set out in sections 1.3(c), (g), (i) and (j) of the Act.

For Planning Authorities:

Development Corporations — How the Planning Agreement promotes its statutory responsibilities

NA

Other Public Authorities - How the Planning Agreement promotes the objects (if any) of the Act under which it is constituted

NA

Councils - How the Planning Agreement promotes the guiding principles in s8A of the Local Government Act 1993

The Planning Agreement promotes the guiding principles by:

- enabling the Council to carry out its functions in a way that provides the best possible value for residents and ratepayers,
- enabling the Council to manage lands and other assets so that current and future local community needs can be met in an affordable way, and
- providing a framework for the Council to work with others to secure appropriate services for local community needs.

These elements of the guiding principles are promoted by securing public access to open space.

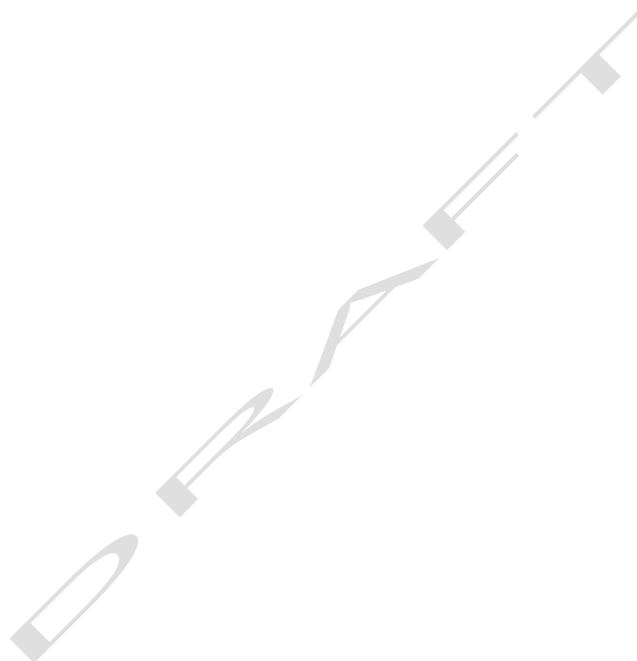
All Planning Authorities — Whether the Planning Agreement conforms with the Authority's Capital Works Program

NA

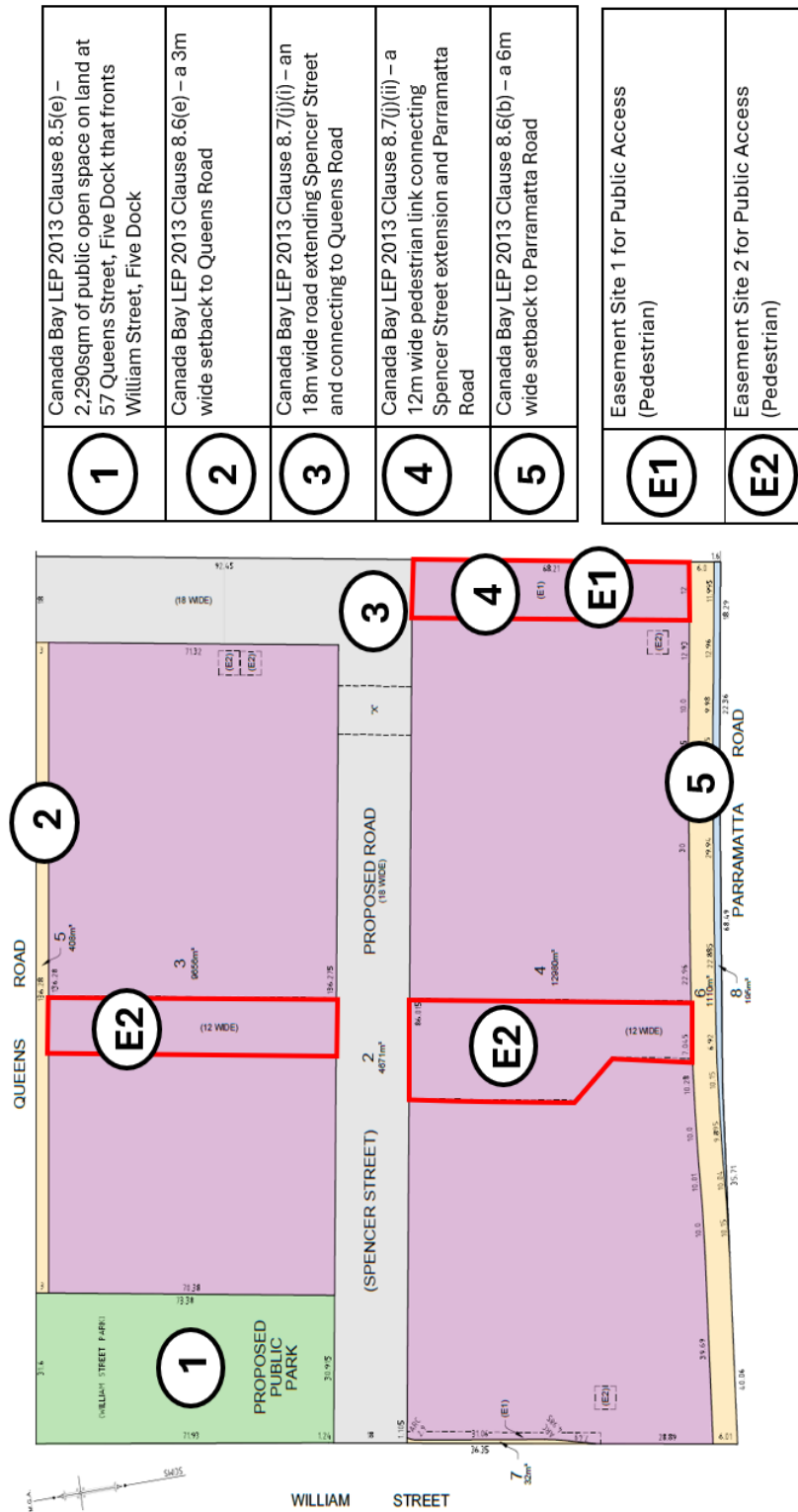
Security

The Planning Agreement requires contributions to be made before the issuing of a Final Occupation Certificate for the Development.

A Guarantor for the Agreement has been requested by Council but not accepted by the Developer on grounds that 100% of the works will be bonded by Bank Guarantee.



Annexure A Concept Site Plan



Signing page

Executed as a deed

Dated:

Executed on behalf of the Council

General Manager

Name:

Witness

Name:

Mayor

Name:

Witness:

Name:

Executed by Deicorp Projects (Five Dock) Pty Ltd ACN 668 294 344 in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

Signature of Director

Full name (print)

Date