

# Ordinary Council Meeting

Tuesday 13 December 2022

# Seating Plan for Council meetings



Public gallery

# Statement of ethical obligations

Obligations	
<b>Oath [Affirmation] of Office by Councillors</b>	I swear [solemnly and sincerely declare and affirm] that I will undertake the duties of the office of councillor in the best interests of the people of Randwick City and the Randwick City Council and that I will faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the Local Government Act 1993 or any other Act to the best of my ability and judgment.
Code of Conduct conflict of interests	
<b>Pecuniary interests</b>	<p>A Councillor who has a <b>pecuniary interest</b> in any matter with which the council is concerned, and who is present at a meeting of the council at which the matter is being considered, must disclose the nature of the interest to the meeting.</p> <p>The Councillor must not be present at, or in sight of, the meeting:</p> <ol style="list-style-type: none"><li>at any time during which the matter is being considered or discussed, or</li><li>at any time during which the council is voting on any question in relation to the matter.</li></ol>
<b>Non-pecuniary conflict of interests</b>	A Councillor who has a <b>non-pecuniary conflict of interest</b> in a matter, must disclose the relevant private interest in relation to the matter fully and on each occasion on which the non-pecuniary conflict of interest arises in relation to the matter.
<b>Significant non-pecuniary interests</b>	A Councillor who has a <b>significant</b> non-pecuniary conflict of interest in relation to a matter under consideration at a council meeting, must manage the conflict of interest as if they had a pecuniary interest in the matter.
<b>Non-significant non-pecuniary interests</b>	A Councillor who determines that they have a non-pecuniary conflict of interest in a matter that is <b>not significant</b> and does not require further action, when disclosing the interest must also explain why conflict of interest is not significant and does not require further action in the circumstances.



Notice is hereby given that an Ordinary Council meeting of Randwick City Council will be held in the Council Chamber, 1st Floor, Randwick Town Hall, 90 Avoca St, Randwick on Tuesday, 13 December 2022 at 6pm

## **Acknowledgement of the Local Indigenous People & Prayer**

### **Acknowledgement of Country**

*"I would like to acknowledge that we are meeting on the land of the Bidjigal and the Gadigal peoples who occupied the Sydney Coast, being the traditional owners. On behalf of Randwick City Council, I acknowledge and pay my respects to the Elders past and present, and to Aboriginal people in attendance today."*

### **Prayer**

*"Almighty God,  
We humbly beseech you to bestow your blessings upon this Council and to direct and prosper our deliberations to the advancement of your glory and the true welfare of the people of Randwick and Australia.  
Amen"*

## **Apologies/Granting of Leave of Absences**

### **Requests to attend meeting by audio-visual link**

### **Confirmation of the Minutes**

Ordinary Council - 22 November 2022

## **Declarations of Pecuniary and Non-Pecuniary Interests**

### **Address of Council by Members of the Public**

#### *Privacy warning:*

*In respect to Privacy & Personal Information Protection Act, members of the public are advised that the proceedings of this meeting will be recorded for the purposes of clause 5.20-5.23 of Council's Code of Meeting Practice.*

#### *Audio/video recording of meetings prohibited without permission;*

*A person may be expelled from a meeting for using, or having used, an audio/video recorder without the express authority of the Council.*

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<b>Confidential Director City Planning report</b>		
CP82/22	Community Service Awards 2022-2023 <i>This matter is considered to be confidential under Section 10A(2) (a) Of the Local Government Act, as it deals with personnel matters concerning particular individuals (other than Councillors). (Award recipients for the 2023 Australia day )</i>	
<b>Confidential Director City Services reports (record of voting required)</b>		
CS68/22	Ella Reserve Playground Project - Tender No. T2023-07 <i>This matter is considered to be confidential under Section 10A(2) (d) Of the Local Government Act, as it deals with commercial information of a confidential nature that would, if disclosed (i) prejudice the commercial position of the person who supplied it; or (ii) confer a commercial advantage on a competitor of the Council; or (iii) reveal a trade secret. (Tender/ Procurement )</i>	
CS69/22	Fitzpatrick Park Playground Project - Tender No. T2023-06 <i>This matter is considered to be confidential under Section 10A(2) (d) Of the Local Government Act, as it deals with commercial information of a confidential nature that would, if disclosed (i) prejudice the commercial position of the person who supplied it; or (ii) confer a commercial advantage on a competitor of the Council; or (iii) reveal a trade secret. (Tender/ Procurement )</i>	
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**Confidential Director City Services report**

CS71/22 Heffron Centre Update - December 2022

*This matter is considered to be confidential under Section 10A(2) (c) Of the Local Government Act, as it deals with information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.*

**Confidential Director Corporate Services report (record of voting required)**

CO65/22 Supply and Implementation of an Asset Management Solution - Tender No. T2023-10

*This matter is considered to be confidential under Section 10A(2) (d) Of the Local Government Act, as it deals with commercial information of a confidential nature that would, if disclosed (i) prejudice the commercial position of the person who supplied it; or (ii) confer a commercial advantage on a competitor of the Council; or (iii) reveal a trade secret.*

**Confidential Director Corporate Services report**

CO66/22 Crown Land Property - Licence Agreement - Randwick & Coogee Ladies Swimming Association Inc. - McIvers Ladies Baths

*This matter is considered to be confidential under Section 10A(2) (d) Of the Local Government Act, as it deals with commercial information of a confidential nature that would, if disclosed (i) prejudice the commercial position of the person who supplied it; or (ii) confer a commercial advantage on a competitor of the Council; or (iii) reveal a trade secret.*

**Notice of Rescission Motions**

NR4/22 Notice of Rescission Motion submitted by Councillors Said, Burst and Rosenfeld - Community Engagement Strategy - Outcome of public exhibition ..... 287

Kerry Kyriacou  
**ACTING GENERAL MANAGER**

## Mayoral Minute No. MM51/22

**Subject: Financial Assistance and Donations - December 2022 to January 2023**

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### Motion:

That Council:

- a) donate plants from Council's Nursery to the value of \$400, to be funded from the 2022-23 Contingency Fund, to the Prince Henry Hospital Nurses Association for the Coast Chapel Nurses War Memorial Garden; and
- b) waive the fees associated with the Surfing NSW Regional titles being held at Maroubra Beach on 25 March 2023, totaling \$885.00 to be funded from the 2022-2023 Contingency Fund.

### Background:

#### Coast Chapel Nurses War Memorial Garden – Donation of Plants

The Coast Chapel Nurses War Memorial Garden is managed by the Prince Henry Hospital Nurses Association which is a memorial dedicated to the nurses who served in war time. Recently, new paving has been completed outside the Chapel and the Nurses Association have requested a donation of Coastal Rosemary to plant in their small garden area. I propose a donation of plants from Council's Nursery to the value of \$400 on this occasion in support of this worthy project for the benefit of the community.

#### Surfing New South Wales Regional Titles – 25 March 2023

The Surfing NSW Regional Titles event will be held at Maroubra Beach on 25 March 2023 and it has been held at this beach since 1980.

Surfing Southern Beaches is an incorporated not for profit sporting association, which as a Regional arm of Surfing NSW, administers all surfing in this area, from Bondi to La Perouse. With surfing now as an Olympic Sport, it is vitally important that we have a strong regional association to strengthen these pathways for our junior athletes.

Surfing NSW has requested the waiver of Beach hire and application fee to the value of \$885.00.

### Source of funding:

Should the report recommendation be endorsed, the financial implication to Council would be \$1,285 to be funded from the 2022-23 Contingency Fund.

### Attachment/s:

Nil

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**Responsible officer:** The Mayor, Cr Dylan Parker

**File Reference:** F2022/06574



## Mayoral Minute No. MM52/22

**Subject: Australia V Argentina Live screening at Maroubra Beach**

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### Motion:

That Council note the contribution of \$10,496.05 + GST, funded from the 2022-23 Contingency Fund, towards the Australia V Argentina Live screening event that was held at Maroubra on 4 December 2022 and thanks the staff involved for organising a fantastic morning for the community at such short notice.

### Background:

After their thrilling 1-0 win over Denmark, the Socceroos moved through to the final 16 for the second time in history. The Socceroos have never won a FIFA World Cup, with their best performance being the last time they made it to the final 16 in 2006.

Randwick Council hosted a free outdoor live screening of the World Cup match between Australia and Argentina on 4 December 2022. The live screen was set up at Arthur Byrne Reserve, across from McKeon Street Plaza. Local businesses were open to sell breakfast and coffees, and Maroubra United Football Club (whose colours are also green and gold) ran a breakfast BBQ.

To make it to the final 16 was a huge moment for the Socceroos and for Australia. The Maroubra Beach live screening gave our community the opportunity to come together to cheer on the Socceroos and to witness this moment in time with family and friends.

The total cost for the screening is outlined as follows:

\$6,819.05 + GST	Screen, power and security
\$730 + GST	Facepainting
\$890 + GST	Beanbag hire
\$720 + GST	Photography
\$237 + GST	Bunting
\$1,100 + GST	Green and gold flags
<b>TOTAL</b>	<b>\$10,496.05 + GST</b>

Due to the timing and short notice to organise the screening, I made the decision as Mayor to approve the costs to be funded from the Contingency Fund for the benefit of our community.

The Socceroos lost 2-1 to Argentina but made the country and our community so proud. It was an incredible sight to see the excitement and sense of community as the crowd, estimated to be 2,000-2,500 people, at Arthur Byrne Reserve all banded on together to cheer on the team.

Council staff, police and the Maroubra United Football Club did an incredible job in organising the live site and a fantastic morning for the community at such short notice. A huge thank you to all involved.

Onwards and upwards for Australia at the Women's World Cup.

### Source of funding:

The financial implication to Council is \$10,496.05 + GST funded from the 2022-23 Contingency Fund.

### Attachment/s:

Nil

**Responsible officer:** The Mayor, Cr Dylan Parker    **File Reference:** F2022/06574

MM52/22

## Director City Planning Report No. CP76/22

### Subject: Disability Inclusion Action Plan

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#### Executive Summary

- The Disability Inclusion Action Plan (DIAP) 2022 -26 has been developed to improve community inclusion and access over the next four years.
- It is the second iteration of the plan under the Disability Inclusion Act and is structured around four focus areas:
  - Inclusive attitudes and behaviours
  - Liveable communities
  - Meaningful employment
  - Processes and systems
- The DIAP 2022-2026 builds on the strengths of the Councils' existing work commitments, the previous DIAP and sets out over the next four years the actions and priorities for maintaining and improving access and inclusion for people with a disability.
- It has been developed in partnership with Waverley Council, recognising that residents access services and facilities beyond LGA borders and establishes strategies for continuous improvement in relation to access and inclusion.
- The DIAP meets Council's legislative obligations under the NSW Disability Inclusion Act 2014, Commonwealth Disability Discrimination Act 1992 and the Commonwealth Carers (Recognition) Act 2010.
- Amendments to the NSW Disability Inclusion Amendment Act were passed through both Houses of Parliament commencing on 1 July 2022, these amendments and how they relate to Randwick's DIAP are outlined in the report
- The draft DIAP was placed on public exhibition from 1 to 29 August 2022 and submissions have been assessed and considered in the DIAP.

#### Recommendation

That the Disability Inclusion Action Plan 2022-2026 (attached) be adopted.

#### Attachment/s:

1.  Community Consultation Report DIAP 2022
2. Disability Inclusion Action Plan 2022-2026

## Purpose

The purpose of this report is to:

- Address the submissions received in response to exhibition of the DIAP
- Provide a comparative analysis of submission to actions in the DIAP
- Seek Council's adoption of the 2022-2026 DIAP.

## Discussion

### Regional Strategies

Randwick has taken a leadership role in developing a regional approach to the DIAP, in recognition that residents access services and facilities beyond LGA borders. Council has worked closely with Waverly Council to develop regional strategies to underpin LGA specific actions and plans. Some of the key initiatives include:

#### FOCUS AREA 1: Attitudes and behaviours

- Provide community awareness raising activities to support inclusive attitudes and behaviours
- Increase staff understanding, knowledge and skills to apply access and inclusion principles and practices in their key job responsibilities
- Engage with the local business communities to promote the benefit of providing accessible services, environments and inclusive communications

#### FOCUS AREA 2: Liveable communities

- Work with partner agencies to increase access to services and information that support people to live independently
- Recreational and cultural activities and events are inclusive and actively promoted
- Advocate for increased diversity of housing stock that is affordable and accessible
- Increase access to Council facilities, venues, parks and beaches
- Work with transport providers for increased accessibility of the public, private and community transport systems and to support whole of journey planning

#### FOCUS AREA 3: Meaningful Employment

- Support and increase local employment opportunities
- Ensure that the Council's workforce and recruitment policies and procedures support disability and inclusion principles

#### FOCUS AREA 4: Systems and Processes

- Increase access and awareness of Council information, feedback systems and services for people with a disability
- Ensure Council's community consultation and engagement processes are inclusive, and support participation of a diverse range of users

### Legislation updates

Updates to the Disability Inclusion Act were provided to Councils from LGNSW on 10<sup>th</sup> August 2022. The NSW Disability Inclusion Amendment Act 2022 passed both Houses of Parliament and commenced on 1 July 2022.

Changes to Disability Inclusion Action Planning includes:

- DIAPs must now be remade (not just reviewed) every four years

*Response:* Randwick Council already took this approach with considerable consultation to write a new DIAP for 2022-2026

- Councils have been given a one-off extension for submitting their DIAPs
- New DIAPs are due 12 months after the review

- Councils must review their 2017 DIAP by 30 November 2022
- New DIAPs are due by 30 November 2023

*Response:* Randwick Council was one of the few Councils who had developed their new DIAP in the original timeframe (which was due Nov 2022). We are well ahead of this new deadline and will be able to submit our new DIAP to the Department of Communities and Justice (DCJ) and LGNSW in the new year.

DCJ held an industry webinar on the 29 September, to provide guidance and support for Councils on reviewing and remaking their DIAP's. At this session they used Randwick Councils DIAP as an example of what they are looking for, for other Councils to reference, which shows the quality of the teams work her at Randwick.

- DIAPs must be made available in one or **more** formats accessible to people with disability (e.g., audio, auslan, Easy English, Braille, large print)

*Response:* Council will provide the DIAP in large print and Easy English. We will also investigate an audio version of the DIAP

- The Act now requires supports to LGBTIQ+ people with disability in a way that addresses their specific needs, informed by consultation. This is in addition to the other groups which already require their disability needs to be specifically addressed

*Response:* Council has already done specific and extensive consultation with the LGBTQI community as part of the original consultation of the DIAP. The DIAP document does not identify any specific community sector, as 'inclusion' covers all groups. However, in our reporting of actions we will specify how they have had specific impact on all sectors (eg CALD, elderly, LGBTQI)

### **Consultation feedback and analysis**

The draft DIAP was placed on public exhibition from 1 to 29 August 2022 and several community engagement activities were undertaken:

- Your Say website
- Email to subscribers
- Randwick news
- Social media posts
- Emails to stakeholders
- Email to all precincts
- Digital display screens
- Councillor notification

The Your Say Randwick webpage had 629 visits, 306 downloads of the draft DIAP, and 15 submissions were received.

Feedback from the submissions is addressed below based on themes with the detailed consultation report attached. The report contains 15 submissions received during the consultation period. Fourteen are from individual members of the public. One was submitted by an organisation (Spinal Cord Injuries Australia).

The Community Consultation demonstrates that of the four Focus Areas covered in the DIAP, the most important consideration for respondents is Focus Area 2: Liveable Communities. Submissions overwhelmingly responded to and raised concerns regarding the physical environment and other 'liveability' issues including housing, transport and the achievement of equitable access to a range of facilities available in Randwick City.

The need for attitudinal and behaviour change (Focus Area 1) and access to information, systems and processes (Focus Area 4) were also identified through the submissions. Comments regarding barriers to employment (Focus Area 3) were fewer in number but still came through respondents.

**The table below outlines the following:**

- Identified themes emerging from the Consultation
- Corresponding submission numbers.
- Focus area/s related to each theme – noting that some overlap across multiple Focus Areas.
- How the DIAP addresses each theme: by reference to the Outcomes and Actions linked to that theme and its Focus Area/s.

Theme identified	Raised in submission # (as numbered in the detailed report)	Relevant DIAP Focus Area	How does the draft DIAP address this theme? By Key Outcome and Action/Project.
<i>Attitudinal barriers to inclusion:</i> The need for an inclusive approach, respectful language, training and education regarding disability.	8, 11, 12, 14	<b>Focus Area 1: Attitudes &amp; behaviours</b>	<b>1.1: Community awareness</b> <b>1.2: Positive images</b> <b>1.3: Skilled staff</b> <b>1.4: Engage local business</b>  <b>All actions from 1.1 – 1.4 relate to this theme and address this feedback.</b>
<i>Community access:</i> Business premises are often inaccessible to People with Disabilities (PWD).	4, 6, 12	<b>Focus Area 1: Attitudes and behaviours</b>	<b>1.4: Engage local business</b> <b>Actions 1-3 address this feedback:</b> <ul style="list-style-type: none"> <li>Promote the benefits of providing accessible and inclusive products, services and employment with local business.</li> <li>Investigate the feasibility of implementing a Mayor’s Award, as part of Business Awards ceremony, to recognise businesses that have significantly contributed to improving access and services for people with disability.</li> <li>Promote the benefits of accessible tourism to local business community and commercial benefits of providing good access to their business.</li> </ul>
<i>Co-design:</i> The importance of involving PWD in decision and policymaking.	5, 10, 11	<b>Focus Area 1: Attitudes &amp; behaviours</b>	<b>1.2: Positive images</b> <b>Actions 1.2.2 addresses this theme and feedback:</b> <ul style="list-style-type: none"> <li>Engage people with lived experience in the development and promotion of community awareness initiatives to challenge stereotypes</li> </ul> <b>1.3: Skilled staff</b> <b>Action 1.3.1 addresses this theme and feedback:</b> <ul style="list-style-type: none"> <li>Ensure there is a process for ongoing input from people with expertise and lived experience of disability to provide feedback and advice to Council on access and inclusion.</li> </ul>
		<b>Focus Area 4: Systems and processes</b>	<b>4.3: Co-design</b> <b>Actions 4.3.1 and 4.3.2 address this theme and feedback</b> <ul style="list-style-type: none"> <li>Ensure that a group of people with expert knowledge and lived experience is available to provide Council with independent advice on access and inclusion issues</li> </ul>

Theme identified	Raised in submission # (as numbered in the detailed report)	Relevant DIAP Focus Area	How does the draft DIAP address this theme? By Key Outcome and Action/Project.
			<ul style="list-style-type: none"> <li>Incorporate specific techniques and approaches are adopted to ensure that views of people with disability are considered as part of Council's Engagement Strategy</li> </ul>
<p><i>Consideration of intersectionality/needs of specific groups of PWD:</i> Eg. CALD communities, parents/breastfeeding mothers, people with dementia.</p>	10	<p><b>Focus Areas</b> <b>1: Attitudes &amp; behaviours</b> <b>2: Liveable Communities</b></p>	<p>The customised needs of different groups of people with disability are not specifically addressed through the DIAP, as 'inclusion' covers all these groups.</p> <p><b>Actions items in both these Focus areas consider all groups</b></p>
<p><i>Community access:</i> There is a need for more accessibility features in public spaces: examples mentioned include handrails, additional seating, hearing loops, wayfinding tools (Braille, colour contrasting strips) etc.</p>	5, 6, 7, 10, 11, 12, 13, 15	<p><b>Focus Area</b> <b>2: Liveable Communities</b></p>	<p><b>2.3: Design for accessibility</b> <b>Actions 2.3.1 and 2.3.4 and 2.3.5 address this theme and feedback:</b> <b>Design and Policy</b></p> <ul style="list-style-type: none"> <li>Design all new &amp; upgraded council assets, buildings and open spaces to meet disability access standards and observe Universal Design Principles.</li> </ul> <p><b>Facilities</b></p> <ul style="list-style-type: none"> <li>Ensure fixtures and fittings such as hearing loops, recharge points and calm spaces are included in venue and facility upgrades.</li> <li>Review policy and procedures for beach matting, beach wheelchairs and access to beaches</li> </ul>
<p><i>Community access:</i> Footpaths/surfaces are often dangerous or inaccessible for PWD.</p>	5, 7, 12, 14, 15	<p><b>Focus Area</b> <b>2: Liveable Communities</b></p>	<p><b>2.3: Design for accessibility</b> <b>Actions 2.3.10 and 2.3.11 and 2.3.12 address this theme and feedback:</b> <b>Footpaths and bus stops</b></p> <ul style="list-style-type: none"> <li>Continue to provide an annual capital works program to upgrade footpaths, pedestrian crossings, kerb ramps and bus shelters to universal design standards.</li> <li>Conduct access audits of commercial and village centres to identify continuous paths of travel, installation of accessible infrastructure, and spaces for social interaction and relaxing.</li> <li>Prioritise repair of damaged footpaths that block access for wheelchair users or others with limited mobility.</li> </ul>
<p><i>Community access:</i> Transport – A need for more taxi ranks/safe pick-up zones; designated disability parking spots; accessible bus stops.</p>	1, 5, 7, 13	<p><b>Focus Area</b> <b>2: Liveable Communities</b></p>	<p><b>2.3: Design for accessibility</b> <b>Actions 2.3.7 and 2.3.8 and 2.3.9 address this theme and feedback</b> <b>Parking</b></p> <ul style="list-style-type: none"> <li>Review accessible parking places and accessible drop off and pick-up zones.</li> <li>Increase the number of designated accessible parking spaces at key venues/facilities, in town centres, and outside key destination venues and facilities.</li> </ul>

CP76/22

Theme identified	Raised in submission # (as numbered in the detailed report)	Relevant DIAP Focus Area	How does the draft DIAP address this theme? By Key Outcome and Action/Project.
			<ul style="list-style-type: none"> <li>Monitor and enforce the appropriate use of mobility parking.</li> </ul> <p><b>2.5: Advocacy</b> <b>Action 2.5.1 addresses this theme and feedback</b></p> <ul style="list-style-type: none"> <li>Continue to advocate to Transport for NSW for improved pick-up zones for people with disability in Randwick</li> </ul>
<p><i>Community access:</i> Concerns about a lack of accessible toilets and/or they are difficult to locate.</p>	<p>9, 11, 14, 15</p>	<p><b>Focus Areas</b> <b>2: Liveable Communities</b></p> <p><b>4: Systems and processes</b></p>	<p><b>2.3: Design for accessibility</b> <b>Action 2.3.1 addresses this theme and feedback</b></p> <ul style="list-style-type: none"> <li>Design all new &amp; upgraded council assets, buildings and open spaces to meet disability access standards and observe Universal Design Principles.</li> </ul> <p><b>2.4: Accessible events</b> <b>Actions 2.4.1 and 2.4.2 address this theme and feedback</b></p> <ul style="list-style-type: none"> <li>Provide and promote events that are accessible and inclusive</li> <li>Promote and raise awareness of Council's accessible activities facilities and services in the region</li> </ul> <p><b>4.1: Connectivity</b> <b>Action 4.1.2 addresses this theme and feedback</b></p> <ul style="list-style-type: none"> <li>Develop a wayfinding strategy for upgrading signage to meet the needs of people with a disability</li> </ul> <p><b>4.2: More accessible Council services and information</b> <b>Action 4.2.1 addresses this theme and feedback</b></p> <p>Investigate, report on and implement options for improving access to information and services on Council's online services</p> <p><b>4.3 Co-design</b> <b>Actions 4.3.1 and 4.3.2 address this theme and feedback</b></p> <ul style="list-style-type: none"> <li>Ensure that a group of people with expert knowledge and lived experience is available to provide Council with independent advice on access and inclusion issues</li> <li>Incorporate specific techniques and approaches are adopted to ensure that views of people with disability are considered as part of Council's Engagement Strategy</li> </ul> <p><b>In addition:</b> Whilst not specifically referenced in proposed Actions for the new DIAP, p. 20-21 'What we've achieved so far' includes: 'Built 22</p>

Theme identified	Raised in submission # (as numbered in the detailed report)	Relevant DIAP Focus Area	How does the draft DIAP address this theme? By Key Outcome and Action/Project.
			accessible bathrooms' as an action achieved under the previous DIAP
<i>Lack of faith in Council:</i> Concern that the DIAP will not be properly implemented.	3, 7, 12, 15	Disability Inclusion Action Plan: p.20-21, 'What we've achieved so far'	This section of the Plan provides a summary of actions achieved during the last DIAP, between 2017-2021. This demonstrates Council's capacity to deliver on disability-related commitments.  The 2022-2026 DIAP shows Councils continued commitment in access and inclusion
<i>Community access:</i> Parks, beaches and other open spaces are often inaccessible.	13, 15	<b>Focus Area 2: Liveable Communities</b>	<b>2.3: Design for accessibility</b> <b>Actions 2.3.1-3 and 2.3.5 address this theme and feedback:</b> <b>Design and Policy</b> <ul style="list-style-type: none"> <li>Design all new &amp; upgraded council assets, buildings and open spaces to meet disability access standards and observe Universal Design Principles.</li> <li>Incorporate lived experience when designing playgrounds and outdoor gyms.</li> <li>Investigate opportunities to provide additional facilities in open space to encourage accessible tourism.</li> </ul> <b>Facilities</b> <ul style="list-style-type: none"> <li>Review policy and procedures for beach matting, beach wheelchairs and access to beaches.</li> </ul>
<i>National Construction Code:</i> NSW should opt into NCC provisions and provide for greater levels of accessibility to new dwellings	12, 14	<b>Focus Area 2: Liveable Communities</b>	<b>2.2: Collaboration</b> <b>Action 2.2.1 addresses this theme and feedback:</b> Work collaboratively with adjoining Councils, state agencies, and government funded aged and disability service providers across the region <b>2.3: Design for accessibility</b> <b>Design and policy</b> <b>Action 2.3.1 addresses this theme and feedback:</b> <ul style="list-style-type: none"> <li>Design all new &amp; upgraded council assets, buildings and open spaces to meet disability access standards and observe Universal Design Principles.</li> </ul>
<i>A disability-focused approach:</i> Accessibility and inclusion should be front of mind in all Council planning.	12, 15	<b>Focus Areas 1: Attitudes &amp; behaviours</b>	<b>1.3: Skilled staff</b> <b>Action 1.3.1 addresses this theme and feedback:</b>

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		<p><b>2: Liveable Communities</b></p> <ul style="list-style-type: none"> <li>Ensure there is a process for ongoing input from people with expertise and lived experience of disability to provide feedback and advice to Council on access and inclusion.</li> </ul> <p><b>2.1 Information about services</b>  <b>Action 2.1.4 addresses this theme and feedback:</b></p> <ul style="list-style-type: none"> <li>Regularly consult with our community service providers, key organisations and community representatives to identify key issues important to people with disability and their carers.</li> </ul> <p><b>2.3 Design for accessibility</b>  <b>Design and policy</b>  <b>Actions 2.3.1-2 address this theme and feedback:</b></p> <ul style="list-style-type: none"> <li>Design all new &amp; upgraded council assets, buildings and open spaces to meet disability access standards and observe Universal Design Principles</li> <li>Incorporate lived experience when designing playgrounds and outdoor gyms.</li> </ul> <p><b>4.3 Co-design</b>  <b>Action 4.3.1 addresses this theme and feedback:</b></p> <ul style="list-style-type: none"> <li>Ensure that a group of people with expert knowledge and lived experience is available to provide Council with independent advice on access and inclusion issues.</li> </ul>
<p><i>Appropriate housing:</i> Options are severely limited for PWD who require special design features to accommodate their disability. NDIS-funded housing options are not meeting need or supporting choice and control.</p>	14	<p><b>Focus Area 2: Liveable Communities</b></p> <p><b>2.3: Design for accessibility</b>  <b>Design and policy</b>  <b>Action 2.3.1 addresses this theme and feedback:</b></p> <ul style="list-style-type: none"> <li>Design all new &amp; upgraded council assets, buildings and open spaces to meet disability access standards and observe Universal Design Principles.</li> </ul> <p><b>2.5: Advocacy</b>  <b>Action 2.5.1 addresses this theme and feedback:</b></p> <ul style="list-style-type: none"> <li>Continue to advocate to Department of Planning and Communities and Justice for increased diversity of housing stock that is affordable and accessible.</li> </ul>
<p><i>Employment:</i>          PWD experience additional barriers to participation in employment.</p>	2, 11, 14	<p><b>Focus Area 3: Employment</b></p> <p><b>3.1: Local employment</b>  <b>3.2: Employment Policy</b></p> <p><b>All actions from 3.1 – 3.2 relate to this theme and feedback.</b></p>

<p><i>Council information and communication channels:</i> Need to be provided in accessible formats for PWD.</p>	<p>4, 11, 14</p>	<p><b>Focus Area 4: Systems and processes</b></p>	<p><b>4.2: More accessible Council services and information</b></p> <ul style="list-style-type: none"> <li>• Website</li> <li>• Information</li> </ul> <p><b>All actions falling under 4.2 specifically relate to this theme and feedback.</b></p>
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Based on the feedback provided through the public exhibition, it is considered that all points raised in the submissions are already covered in actions outlined in the DIAP.

**Strategic alignment**

The relationship with our 2022-26 Delivery Program is as follows:

<p><b>Delivering the Outcomes of the Community Strategic Plan:</b></p>	
<p>Strategy</p>	<p>Inclusive Randwick</p>
<p>Outcome</p>	<p>A city where people can access social support and amenities whatever their ability and wherever they live</p>
<p>Objective</p>	<p>Increase participation in social programs/services provided in partnership with Council for our marginalised communities by 2026 from the 2021 baseline</p>
<p>Delivery program commitment</p>	<p>Take a leadership role in developing and implementing a regional approach for the Disability Inclusion Action Plan (DIAP).</p>

**Resourcing Strategy implications**

Infrastructure initiatives sit in the capital works budget and would be included on a project basis and through the ongoing asset management program.

The operational initiatives would be resourced from existing staff resources and allocations through the various business unit budgets.

**Policy and legislative requirements**

The DIAP meets Council’s legislative obligations under the NSW Disability Inclusion Act 2014, Commonwealth Disability Discrimination Act 1992 and the Commonwealth Carers (Recognition) Act 2010.

**Conclusion**

Randwick Council is committed to making our city more inclusive and welcoming of people with visible and invisible disabilities. Council’s second Disability Inclusion Action Plan (DIAP) aligns with Council’s new ten-year Community Strategic Plan which supports diversity and inclusion. The DIAP is a mechanism to ensure barriers are removed for people living with disabilities and Council remains committed to inclusion and access as we work together to continuously improve the lived experience and sense of belonging of all people within our community.

**Responsible officer:** Jodi Tweed, Manager Community Development

**File Reference:** F2022/00218

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COMMUNICATIONS

# Community Consultation Report Disability Inclusion Action Plan 2022

30 August 2022



1300 722 542  
[randwick.nsw.gov.au](http://randwick.nsw.gov.au)

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## 1. Summary

Randwick Council is developing a new Disability Inclusion Action Plan (DIAP) 2022 -26, which sets out the actions and priorities for maintaining and improving access and inclusion for people with a disability over the next four years.

The following report outlines the consultation program undertaken to exhibit the draft plan and gather feedback from the broader community.

The Your Say Randwick webpage had 629 visits, 306 downloads of the draft DIAP, and 15 submissions were received.

The feedback received will help Council finalise the draft plan, which will be reported to Council for adoption.

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## 2. Community engagement strategy

### 2.1. Background

Randwick Council is developing a new Disability Inclusion Action Plan (DIAP) 2022 -26, which builds on the strengths of the Council's existing work in the community, and sets out the actions and priorities for maintaining and improving access and inclusion for people with a disability over the next four years.

The DIAP has been developed in partnership with Waverley Council, recognising that residents access services and facilities beyond LGA borders. Between October 2021 and February 2022, Randwick Council and Waverley Council consulted with the community, engaging with a wide range of people with a disability, their service providers, carers, family members and council staff involved in delivering services to communities.

### 2.2. Objectives

The consultation program aimed to:

- Exhibit the draft plan
- Encourage community feedback to help finalise the plan

### 2.3. Consultation period

The consultation was open 1 August to 29 August 2022.

The project was assessed as having a **lower-level city-wide impact**

IAP2 Consultation level: **Involve** - *we will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision.*

## 2.4. Consultation activities

Community engagement activities undertaken:

- Dedicated consultation website to learn more and engage with the project: <https://www.yoursay.randwick.nsw.gov.au/diap2022>
- Email to Your Say subscribers (7688 recipients): 1 August 2022
- Randwick News (weekly email): Every Wednesday from 3 August to 30 August 2022
- Social media posts: Dates
- Emails to key stakeholders, including:
  - City of Sydney and Eastern Sydney Ageing and Disability Interagency members.
  - Members of the Older Persons and Access Advisory (current)
  - Randwick Council Community Development Officers (to share with their respective networks)
  - Local Seniors and Disability support groups both formal and informal.
  - Waverley, Bayside and Woollahra A&D community development officers.
  - Members of the CHSP Forum and Digital Inclusion Working Group etc
  - The Hub@Lexo
  - Local Government NSW Ageing and Disability Network
  - Local Service Providers
- Email to all precincts
- Digital display screens and all Randwick libraries and Customer Service Centre
- Listing on Randwick City Council's *Current Consultations* webpage
- Councillor notification

## 3. Consultation outcomes

A dedicated Your Say Randwick website was created to exhibit the draft plan and take submissions from the community.

The Draft DIAP was on exhibition for 28 days, from 1 August to 29 August 2022.

During this time, the exhibition resulted in:

- 629 visits to the Your Say Randwick site
- 306 downloads of the draft DIAP
- 15 submissions

### 3.1. Submissions

15 submissions were received on the draft DIAP. All submissions are outlined below.

Most submissions asked Council to consider making more practical changes to infrastructure around the LGA to make living in Randwick City easier for those living with a disability; such as more handrails, markings on steps, safer footpaths, better access to disabled bathrooms, and improved access to our beaches.

*"even one step without a handrail is a barrier"*

*"Difficulty in differentiating steps (particularly when going downhill) prevents me and others from fully enjoying our local walks"*

*"more emphasis on numbers and locations of bathrooms to ensure easy access to bathrooms where possible."*

*"is there a disability hotline people can log issues with?"*

	Submission
1	<p>Your current draft of the Disability Inclusion Action Plan 2022-26 has some good initiatives for the community.</p> <p>As a vision impaired person who cannot drive, I would like to see more Taxi ranks set up in Randwick and Maroubra and major shopping centres.</p> <p>Eastgardens is great for Taxis but getting one in Randwick around Belmore road and Avoca street is a nightmare. This would make life easier for the vision impaired and people with mobility problems as well as the elderly.</p> <p>Maybe this could be a consideration.</p>
2	<p>Thanks to consider need of people living with disability. For the employment, is it possible to consider to provide number of quota who have qualification of library services to work in public library as per the offer around 2013. As that times, government provide number of quota working in library for people with disability who have such qualification. Therefore, I went to gain a diploma of library and information services. However, after I gain the qualification, government at that time informed that such budget was cut. So, the public library can't offer me a role. It is hard for me to get a job in libraries without experience although I have qualifications. Please consider my request. Thank you.</p>
3	<p>I used to be a paediatric neurologist and have now been a full time carer for my wife for 4 and a half years. So have spent most of my life immersed in the sad world of disability. It looks as though what you are planning is wonderful but is anyone going to read through all that? Why not simply list in order of priority the plans?</p>
4	<p>Thank you for developing the DIAP. It will be interesting to see which practical steps will be taken to make a real difference.</p> <p>Regarding simple practical steps to facilitate inclusion, is there a disability hotline people can log issues with? Emails to this general Council email only ever generate a generic response, rarely anything meaningful. A hotline dedicated to disability inclusion issues could facilitate real inclusion if suggestions were followed up properly. E.g. a simple matter recently observed by my group of friends having coffee at Centennial Park. Two of us had issues with the steps at the cafe near the childrens' bike track. I couldn't order a coffee as there is no ramp up to the cafe. Another friend who has limited vision was struggling with the stairs as they have no contrast strip on the edges. If little issues like this could be addressed, it would make everyday life so much easier.</p>
5	<p>Thank you for your updated disability inclusion action plan - I hope lots of good things come from it.</p> <p>I am an incomplete paraplegic who has learnt to walk again (in a fashion) but I have life-long mobility, balance, physical fatigue and sensory deficits, common to all those with spinal cord damage.</p> <p>Issues that particularly restrict my access to outside activities include a lack of handrails on steps (even one step without a handrail is a barrier) and insufficient outdoor seating in parks or on walking tracks. Atrophied and fatigued muscles can only get you so far before you need a rest!</p> <p>While this isn't Council's responsibility, the cancellation of certain bus routes following the recent privatisation of our local buses has made previously accessible areas now inaccessible to me.</p> <p>My comments may be a bit late in the piece but I have previously raised the matter of</p>

	Submission
	<p>lack of handrails with Council and, to their credit, where I have pointed out a particular deficiency on Council land, they have remedied the situation. But there are still areas to be fixed and many commercial premises remain difficult or impossible to access.</p> <p>Further to my previous email here are a few additional comments which are particularly pertinent to those who have mobility/balance issues.</p> <p>The type of floor or ground covering material, both in internal and external areas, is important and can determine whether an area is physically accessible or not. Smooth, shiny floor surfaces eg polished ceramic tiles (eg Westfield Eastgardens) are the worst as, for someone with mobility/balance deficits, they appear as slippery, dangerous and unforgiving and considerably heighten one's anxiety about safely traversing them. Flooring that provides a sense of texture is far less frightening.</p> <p>The brick footpath on the section of Carr St Coogee between Arden St and the beach is particularly treacherous as it is both a downhill slope (another challenge for mobility impaired) and perceived as smooth surfaced. This footpath is inaccessible for me - I walk on the road instead as its greater texture appears safer to me.</p> <p>Traversing large open spaces, particularly those with problematic flooring, can be terrifying. They can be less daunting if they contain infrastructure elements eg seating or something to hold onto at periodic intervals in order to steel your nerves to tackle the next section.</p> <p>A postscript to my previous email in which I said even one step without a handrail is a barrier. In many instances, a door frame that you can hold onto can provide the necessary support for one or a maximum two steps - in my case anyway. For outside areas, in cases where there is no tree or other vertical infrastructure to hold onto, even one step requires a handrail.</p> <p>Happy to elaborate further on accessibility issues should you wish. I used to be wheelchair bound, so I know a bit about that too!</p>
6	<p>As an active senior with a visual disability, I have been requesting the council for years to provide clear markings on the edges of steps along walking paths, specifically the coastal paths around Coogee. Difficulty in differentiating steps (particularly when going downhill) prevents me and others from fully enjoying our local walks, which plays such a large part in maintaining the physical and mental health of our community.</p> <p>There is also a need for better lighting in some locations, such as the footpath on the western side of brook street from Coogee bay road to dolphin street. This stretch is used by many people returning at night from the local shops, and I and others struggle with lighting, being forced to use the torch on our mobile phones.</p> <p>I urge the Council to take these simple actions which can have major benefits for anyone who has a vision impairment at any age.</p>

	Submission
7	<p>I fully support the DIAP. However I seriously question councils commitment to actually implement this in a reasonable timeframe. I contacted council 6 months ago because I couldn't get my mum (with terminal cancer) in her wheelchair to:</p> <ol style="list-style-type: none"> <li>1. my front gate due to a large substation blocking the entire footpath and steps</li> <li>2. doctors appointments from her house due to some kerb ramps in urgent need of repair</li> <li>3. The hospital by bus from the nearest stop due to an inaccessible bus stop.</li> </ol> <p>A staff member came out to take a look and said "gosh this is a problem. But it's not going to be funded in the next 2 years revise it's not a priority".</p> <p>Very sadly, my mum died since then. It was very distressing. Please Randwick, you actually need to fund what you say in the DIAP. I suggest add wording such as "with highest priority for individuals who require immediate access needs to basic services or to their homes".</p> <p>Your current DIAP plan days:</p> <p>"Prioritise repair of damaged footpaths that block access for wheelchair users or others with limited mobility" (this should also include inaccessible footpaths due to blockage eg substations, or steps, or no footpath)</p> <p>"In some locations, bus stops are not accessible, and lighting is poor."</p> <p>"Continue to provide an annual capital works program to upgrade footpaths, pedestrian crossings, kerb ramps and bus shelters to universal design standards.</p> <p>Conduct access audits of commercial and village centres to identify continuous paths of travel, installation of accessible infrastructure, and spaces for social interaction and relaxing</p> <p>Prioritise repair of damaged footpaths that block access for wheelchair users or others with limited mobility"</p>
8	<ol style="list-style-type: none"> <li>1. The focus should be on outcomes in terms of all members of the Randwick community rather than just equality in access - that is, there should be key performance indicators to facilitate post implementation assessment of the success of the initiatives</li> <li>2. The language should be framed with more care and sensitivity as everyone should be valued and appreciated rather than branded as being disabled</li> <li>3. The needs of the members of the Randwick community enjoying their golden years should be recognised - they are not disabled but just experiencing conditions that come with age to us all.</li> </ol>
9	<p>Hello. I've been fighting cancer for 7+ years. During that time I've been on chemo non stop, which has greatly impacted my GI system. As a result, I've needed 'fast' access to bathrooms without much notice. This results in always scanning an area to ensure understanding and access to bathroom facilities in the event of a GI emergency.</p> <p>I'm very interested in ensuring ample bathroom location and space, as often people with cancer, or older people, don't have the luxury of wandering around to find a bathroom.</p> <p>I noticed in the disability plan only a single mention of bathrooms, and in that context it was more around new handicap accessible bathroom additions. I would like Randwick to ensure in the future more emphasis on numbers and locations of bathrooms to ensure easy access to bathrooms where possible. Perhaps this appears in another plan, but it doesn't appear to be a concern in the disability planning.</p>

	Submission
10	<p>'I have a disability. I like the plan.</p> <p>I would like to see included in infrastructure and public space developments:</p> <ul style="list-style-type: none"> <li>- the needs of breastfeeding mothers with a disability (physical and psychosocial)</li> <li>- the needs of parents and carers with a disability (physical and psychosocial) of children &lt;5</li> <li>- the needs of people with dementia.</li> </ul> <p>I can't see that these have been addressed in the what we will do next activities, although wayfinding might cover the last point. CALD intersectionalities should also be considered.</p>
11	<p>For a cohesive, just, vibrant and caring society where all citizens can express their skills and abilities in positive and meaningful ways, an effective disability action plan is critical.</p> <p>At various times and in various locations, all manner of people face disadvantage due to prejudice regarding particular characteristics or traits. Women because they are women, for example, have been considered unable to work or express themselves in mainstream society. Indigenous people because they are indigenous, slaves because they are conquered, aged because they are over 60 years of age, etc. In a similar way, people who are physically or mentally different have often been excluded.</p> <p>Although the relevant act has been in existence since 2014, it is commendable that council has undertaken to spell out its actions in relation to the Act. There is certainly a need for a comprehensive action plan and this document spells out the depth and breadth of work to be done.</p> <p>There are some comments I would like to make in terms of the four key sections of the plan.</p> <p><u>Inclusive Attitudes and Behaviours</u></p> <p>Dylan Allcott AO is 2022 Australian of the Year. He was awarded 2016 Australian Paralympian of the Year, and is a media personality. Through his position, fame and accessibility, Dylan is doing much to break down barriers and promote inclusive attitudes and behaviours for people who are physically or mentally different from a supposed norm.</p> <p>Perhaps Randwick Council could promote a similar person to encourage inclusive attitudes and behaviours. Someone who the community is exposed to on a regular basis and who is admired and respected. Another approach is for the Randwick Mayor to take up a proactive approach and be seen as an inclusive Champion for all citizens.</p> <p>There are local citizens who are currently assisting groups of individuals with disabilities, either in professional or voluntary capacities. This promotes and inclusiveness for the individuals disadvantaged.</p> <p>For example:</p> <ul style="list-style-type: none"> <li>• children taught water safety through the Coogee Surf Club;</li> <li>• youth taught league on Coogee Oval;</li> <li>• adults attending the Randwick Ritz cinema on cheap Tuesday</li> <li>• Incapacitated individuals in wheel chairs at the Fox Markets of a Wednesday</li> </ul> <p><u>Liveable Communities</u></p> <p>The action plan states 6.1% of Randwick citizens are in State Housing, and 10.4% reported as having a disability. In 2018 7.4 % of the population of Randwick reported as being carers. Given the concentration of people in the Randwick LGA, there is both a strong need and opportunity to provide valuable attention and assistance.</p>

Submission
<p>Council has and is doing much to improve the infrastructure to assist people with physical incapacities. There is still much to be done in terms of retrofitting old premises and planning for appropriate inclusions in new buildings and infrastructure.</p> <p>The condition of toilets to meet peoples' basic needs is a constant that needs immediate and on-going attention. Most of the old facilities do not suit people with disabilities and this has been and remains an urgent need.</p> <p>Beyond physical barriers of infrastructure, much more needs to and can be done to support and assist people who remain unaware of the sorts of services available now. For example, there are a range of home care services that may be accessed. However, often when people find they are in need of such services they either do not know how to access them or are reluctant to take them up. Considerable work needs to be done to implant in society a knowledge of such services and a ready willingness to access them.</p> <p><u>Employment</u> Encouragement of employees to consider those with disabilities is admirable and the concept of a Mayoral Award appears worthwhile.</p> <p>There are industries that specifically employ people with the types of skills and abilities that some may consider disabilities but are in fact super-abilities. For example, certain tasks which may be considered by many mundane and monotonous or finicky can be fulfilling for many who may otherwise be considered disabled. Beehive Industries readily come to mind. Such industrial organisations may be encouraged in areas where there is a ready workforce.</p> <p><u>Engagement and Systems</u> Many people do not have access to the levels of computerisation that can be required to for example access and attend Council events. Physical alternatives may make up for this.</p> <p>Similarly, Council has put considerable effort into establishing and promoting state of the art sporting facilities. For inclusiveness, disability competitions from early ages onwards may be promoted and encouraged.</p> <p><u>Conclusion</u> Thank you for the opportunity to comment on this excellent initiative by Randwick Council. There is clearly much work to be done and a subsequent need to prioritise this work so that Councils limited resources are put to the best use.</p>

	Submission
12	<p>While the plan is welcomed, it is hard to know how 'delivery' will be measured as there seem to be little in the way of specific actions under the plan. I request the plan be further developed over the next year and re-advertised for community feedback following that.</p> <p>I suggest Council consider:</p> <ol style="list-style-type: none"> <li>1. For the built environment, it is disappointing that the NSW Government has 'opted out' of the National Construction Code (article in SMH dated 22 July 2022 refers). While I appreciate it would not be practical for Randwick City Council to adopt these provisions, as part of the DA lodgement process, consideration of disability access by the applicant and the assessing officer (where determined by Council, not private certifier) for new residential premises and for renovations over \$500,000 could be undertaken. The upcoming review of the Council's Development Control Plan may also provide another opportunity for inclusion of consideration of disability access, especially for retail and commercial premises.</li> <li>2. Council construction works - I suggest staff be tasked to specifically consider disability access. Specific consideration should be provided in the infrastructure works as part of the annual Operational Plan. I also consider Council should undertake an audit of all footpaths in the city to check for missing pram ramps. It is appreciated that given the steep topography of part of the city, particularly in the north, that disability access may not always be able to be provided. What is important is that consideration of this aspect be part of the mindset staff planning and undertaking infrastructure projects.</li> <li>3. For disability beyond the physical, I suggest in all Council business papers dealing with community engagement that a specific section of the report be provided to consider how disability access, both physical and societal be provided. I expect initial consideration to be limited, but again getting disability access into the mindset of Council staff is critical.</li> </ol>
13	<p>Generally the Plan is very positive and covers all of the areas that are important for people with a disability or disabilities.</p> <p>My area of interest is in my capacity as the Chairman of the Clovelly Precinct Committee and I would like to focus on an issue that the committee has been raising with council in the last couple of years.</p> <p>It is the access way on the north side of Clovelly Beach (the picture on page 36 of the plan) that enable wheelchairs to or other wheeled assistive devices to be used by individuals to get access to the waters edge.</p> <p>There are a number of issues we are seeking Council intervention in. They are:</p> <ol style="list-style-type: none"> <li>1. There are only 2 parking spaces in Eastbourne Avenue out of 21 at the entrance to the beach. We would like to see this number increased to 4. This would improve access to the playground as well as the beach;</li> <li>2. The access to the beach is often covered with seaweed to the extent that it becomes impassable. Ideally this could be cleaned on a daily basis but this is not always practical due to the tides.</li> <li>3. To prevent the seaweed from accumulating, a higher wall could be erected on the water side as this will push the seaweed up the beach and away from the wheelchair access.</li> </ol>
14	Spinal Cord Injuries Australia. See Appendix A
15	Resident submission. See Appendix B

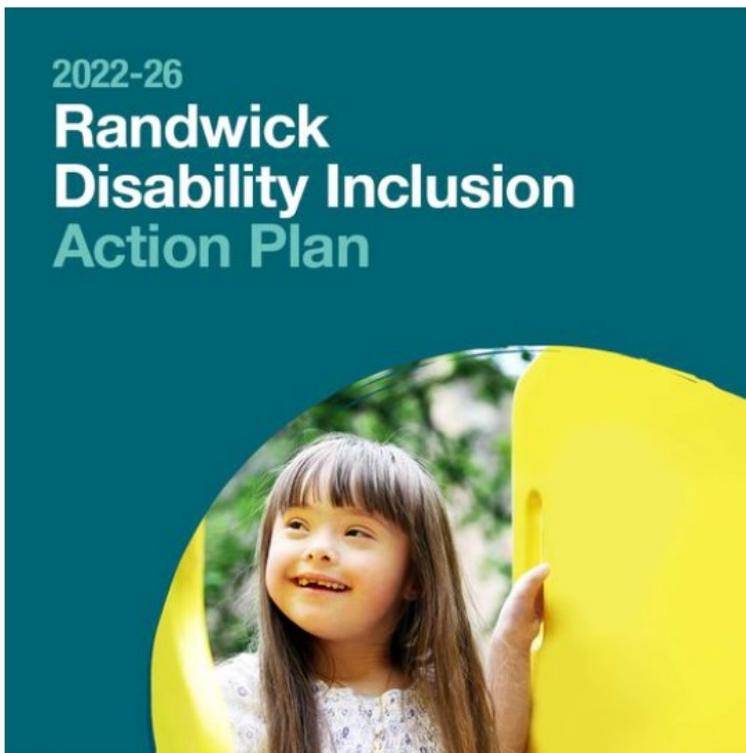
### 3.2. Social Media

 **Randwick City Council** August 5 at 12:00 PM · 🌐

HAVE YOUR SAY on our Disability Inclusion Action Plan (DIAP) 2022 -26. It builds on the strengths of the Council's existing work in the community, and sets priorities for maintaining and improving access and inclusion for people with disability within our community. The DIAP identifies four key focus areas:

- 👤 Inclusive attitudes and behaviours
- 🏡 Liveable communities
- 💼 Employment
- 🔧 Engagement and systems

Have a read and let us know your thoughts: <http://ow.ly/7Eov50Kc737>



👍 2

1 Share

Image: Facebook post 5 August 2022.



Image: Facebook post 26 August 2022.

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## A. Submission: Spinal Cord Injuries Australia



CP76/22

**Submission to Randwick Council Disability Inclusion  
Action Plan 2022-2026**

**Spinal Cord Injuries Australia**

[scia.org.au](http://scia.org.au)

**Contents:**

1. Introduction – about Spinal Cord Injuries Australia
2. Recommendations
3. National Construction Code Accessibility Standards
4. The current state of Accessible Housing in NSW
5. United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)
6. Supported Disability Accommodation
7. Group Homes
8. People with disability who are not NDIS participants
9. How are some OECD nations improving housing support to people with disabilities?
10. More accessible Council Services and Information
11. Employment of people with disability
12. Access Committee and improving access to public spaces



## 1. Introduction – about Spinal Cord Injuries Australia

Thank you for allowing Spinal Cord Injuries Australia (SCIA) to provide this submission to Randwick Council's Disability Inclusion Action Plan (DIAP) 2022-26 on behalf of the people with spinal cord injury and similar physical disability who use our services, some of them Randwick Council residents.

SCIA has been providing a dedicated advocacy service and specialty knowledge for people with spinal cord injuries and similar neurological conditions since 1967. SCIA was founded by people with acquired spinal cord injury and continues to employ many people with spinal cord injury and similar physical disability. People with disability make up over 25% of SCIA employees, and the SCIA Constitution requires at least 50% of SCIA Board Members to have a spinal cord injury (SCI). We currently employ 200 staff across services in NSW and Victoria including 14 staff dedicated to our Policy and Advocacy work.

The SCIA advocacy team works to remove barriers and increase access to all services and facilities. Our goal is for people living with SCI and other neurological or physical disabilities to have more social and economic opportunities and improvements to their quality of life.

SCIA has a proud history of being responsible for the improved and equitable access to many of the current disability, health and medical, social security, employment, education, transport, assistive technology, telecommunications, community, cultural and community services and programs now available.

Advocacy services play a major role in recognising and responding to violence, abuse, neglect, and exploitation of people with disability.

## 2. Recommendations

1. That Randwick Council petition the NSW Minister for Fair Trading and implore the Minister to make mandatory Accessibility Standards in the National Construction Code along with Victoria, Queensland, Tasmania, The Australian Capital Territory, and the Northern Territory.
2. That Randwick Council makes mandatory in any new dwelling or apartment universal accessibility features such as step free entry, step free showers, ground level accessible toilets, structural reinforcements to support grab rail installation in bathrooms and for doorways and transitional spaces to allow ease of movement.
3. That Randwick Council provides incentives for architects, developers, and builders of new homes and apartments to include universal accessibility features such as step free entry, step free showers, ground level accessible toilets, structural reinforcements to support grab rail installation in bathrooms and for doorways and transitional spaces to allow ease of movement.
4. That Randwick Council provides incentives for architects, developers, and builders to invest in accessible housing developments that include universal accessibility features such as step free entry, step free showers, ground level accessible toilets, structural reinforcements to support grab rail installation in bathrooms and for doorways and transitional spaces to allow ease of movement.



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5. That Randwick Council provides incentives for architects, designers, and builders to include features such as step free entry, step free showers, ground level accessible toilets, structural reinforcements to support grab rail installation in bathrooms and for doorways and transitional spaces to allow ease of movement in any renovation or home alteration.
6. That Randwick Council insists that all multistorey apartment developments include, as a condition of approval, a 20% quota of wheelchair accessible apartments.
7. That Randwick Council dedicates resources to ensuring that people with disability living within the council's jurisdiction, and authority are protected from violence, abuse, neglect, and exploitation. Particularly people with disability living in congregational settings like boarding houses and group homes.
8. That Randwick Council dedicates resources to relocating people with disability within the council's jurisdiction and authority living in inaccessible and unsuitable accommodation for their needs or people with disability who are at risk of violence, abuse, neglect, and exploitation.
9. On exchange of leases for shops and other commercial buildings, Randwick Council should insist, as a condition of approval, that any barriers to wheelchair accessibility be removed. This includes: Removing steps that prevent entry by wheelchair users or adding a ramp to assist entry by wheelchair users; and expanding entry ways to accommodate wheelchairs and the shop or building should also accommodate free movement throughout by wheelchairs.
10. That Randwick Council provide council staff with disability awareness training and initiate positive inclusion measures to help alleviate any misunderstanding or negative stereotypes and myths about people with disability especially as it relates to employing people with disability.
11. That Randwick Council allocate resources to the Access Committee to improve access to infrastructure and built environment, including maintenance such as upgrading foot paths, ramps, curb ramps when there are new road and footpath repairs or maintenance.
12. SCIA would like to recommend that council and independent building certifiers register all wheelchair accessible toilets on the National Toilet Map website before the Certifier is provided with an Occupation Certificate for the premises.  
The National Toilet Map toilet register link is: <https://toiletmap.gov.au/Account/Register>

### 3. National Construction Code Accessibility Standards

In April 2021, we wrote to the then Minister for Better Regulation and Innovation, The Hon. Kevin Anderson MP, to urge him to support the inclusion of mandatory minimum accessibility standards in the National Construction Code (NCC). As you are no doubt aware, the mandatory minimum standards to the NCC were subsequently adopted by all states and territories except for New South Wales, South Australia, and Western Australia.

In his response to us on July 8, 2021, Minister Anderson said that "more flexible and balanced approaches, including the non-regulatory options proposed in the analysis were not fully explored."



We have now had another 12 months to explore those 'non-regulatory options' without any notable signs of improvement or a clear strategy to suggest that there will be improvements.

We request that Randwick Council contact the NSW Department of Fair Trading, whose role it is to oversee such regulations, and implore them to reconsider their decision and adopt mandatory accessibility standards to the National Construction Code. We would also encourage Randwick Council to take the initiative and make universal accessibility standards mandatory for any new dwelling or apartment in your jurisdiction.

The advocacy work that we do to try and mitigate the problems caused by the lack of accessible accommodation here in NSW, goes beyond the impact it is having on our membership and the people with disability who use our advocacy services.

Family members and carers must incur the expense of additional care or provide informal care to meet the needs that people with disability have when their accommodation is inaccessible and unsuitable. The impact that inaccessible housing and housing that only partly meets the individual needs of people with disability significantly impacts their ability to participate in employment, education and many other services and activities that are fundamental to their human rights.

#### 4. The current state of Accessible Housing in NSW

SCIA acknowledges Randwick Council's intention to maintain affordable housing programs, implement initiatives to promote housing accessibility, and continue partnerships to address homelessness.

While the Federal Government is responsible for regulations, safeguards and policy settings that should protect people with disability and promote their inclusion, it does not exempt states, territories, and local councils from taking proactive positions that advance the human rights of people with disability and reduce discrimination and inequality in their jurisdictions.

The lack of affordable and accessible dwellings and apartments in the private and social housing markets, and supported disability accommodation funded under the NDIS, continues to negatively impact people with disability.

With every year that passes the mental and physical health of people with disability living in unsuitable, inaccessible accommodation deteriorates along with their ability to work, study, and take part in other activities due to the extra expense, energy and care needed just to manage in their homes.

It is both exhausting, and a physical and financial drain on people with disability and their families and carers to constantly make contingencies for the inaccessibility of their home.

While SCIA acknowledges that the National Disability Insurance Scheme (NDIS) has made a significant difference to the lives of people with disability and their families and carers, it has not provided a solution to the lack of affordable, accessible housing or the systemic problems caused by the lack of affordable, accessible housing.

Only about 10% of all people with disability are eligible or able to access the NDIS. Many NDIS participants are forced to live in congregational or group home settings that they accept out of necessity rather than choice.



In the last year we have heard through evidence to the Royal Commission into Violence, Abuse, Neglect, and Exploitation that many people with disability live in accommodation that is both unsuitable to their needs and not of their choosing, yet they are bound to their circumstances because there is insufficient accessible social and affordable housing.

At the end of June 2021, there were 3,899 younger people living in residential aged care according to Statistics from the Department of Health and Aged Care. Of the younger people living in residential aged care over 95% were NDIS participants living in urban and regional areas.

Randwick Council could play a more significant role in the protection of people with disability particularly people found or suspected to be living in inaccessible or unsuitable housing and in environments where they may be subjected to violence, abuse, neglect, and exploitation.

## 5. United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)

When Australia ratified the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) in 2006, we agreed to meet our 'Article 19' obligation that "persons with disabilities have the right to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement."

Australia is not meeting its UNCRPD Article 19 obligations. The roll-out of accessible, social and affordable housing has been far too slow to protect people with disability from violence, abuse, neglect, and exploitation. The largest residential institutions for people with disability are now gone but group homes remain as the preferred model for people with disability - including supported disability accommodation funded by the NDIS - despite the incidents of violence, abuse, neglect, and exploitation that occur in group homes.

According to People with Disability Australia's submission to the Disability Royal Commissions Violence and Abuse of People with Disability at Home Issues Paper (Dec. 2020), 50% of all people with disability reported feeling unsafe where they lived.

To move towards our UNCRPD Article 19 obligations all levels of government must commit to mandating universal accessibility standards for all new apartments and dwellings and provide incentives for property owners, builders, and developers to adopt universal accessibility standards to alterations and renovations.

## 6. Supported Independent Living

In just three months between 1 July 2019 and 30 September 2019, there were 8,595 serious incidents lodged with the NDIS Quality and Safeguards Commission. While most of those incidents were reports of unauthorised restrictive practices, 1,236 of those incidents or approximately 14%, were reports of alleged sexual, physical, verbal, and financial abuse, and neglect. Despite the volume of incidents, group homes continue to be the preferred form of housing for people with disability who are assessed as eligible for SIL funding.

SCIA and other advocacy services already contribute significant resources in supporting people with physical disability through the SDA and SIL eligibility process. However, this is a structural problem



that precedes the NDIS, and it is an issue that will continue to compound as the demand for all types of accommodation grows.

## 7. Group Homes

Many people with disability who live in group homes have little to no choice about where and with whom they live. They take the accommodation that is available and once there, they do not complain for fear of losing what they have and becoming homeless. The Royal Commission has received many submissions and other evidence of people with disability enduring violence, abuse, neglect, and exploitation in group homes. More recently, the Royal Commission has received evidence of people with disability being told that due to the risk of contracting and spreading Covid 19, if they leave their home, they will lose their accommodation.

The risk of violence, abuse, neglect, and exploitation is heightened in group homes where the same provider is responsible for accommodation and supports. This practice is reflective of older models of disability support and runs contrary to the principles of the NDIS – particularly the principles of choice and control.

This risk was highlighted in the recently released: Joint Standing Committee on the National Disability Insurance Scheme: Report into Supported Independent Living.

The report said: “Allowing a single entity to exercise control over both tenancy and service delivery may have significant negative impacts for participants, including reductions in service quality; increased risks of abuse and neglect; and reduced housing security.”

## 8. People with disability who are not NDIS participants

Incidents reported to the Royal Commission into Violence, Abuse, Neglect, and Exploitation of People with Disability through NDIS incident reporting obligations and the NDIS Quality and Safeguards Commission are but a small proportion of a much bigger problem.

People with disability who are not eligible for the NDIS or are unable to access the NDIS are among the most vulnerable people in our society. They may be susceptible to all kinds of violence and abuse, including domestic and family violence or violence perpetrated by co-residents and even carers.

Because they are not NDIS participants they live without the protection of the NDIS’ Quality and Safeguards Commission - the only proactive investigative agency assigned to the protection of people with disability. And for people with disability who are experiencing violence, abuse, neglect, and exploitation and need to be relocated because they are at risk, there are too few portable or interim housing options.

In the absence of any system designed for the protection of people with disability who are not NDIS participants, Randwick Council could improve the evidence base on people with disabilities, their housing needs and the extent to which current public and council supports meet their needs (e.g. regular housing surveys of people with disabilities that compare outcomes with people without disabilities).



## 9. How are some OECD nations improving housing support to people with disabilities?

Policy makers in some countries have successfully pursued (Scandinavian Countries and France) or are beginning to pursue universal standards (Britain and Ireland) to make housing more accessible and affordable to people with disabilities by:

- Improving the evidence base on the housing needs of people with disabilities, as well as the suitability of the housing stock and existing support service
- Developing tools to identify and match people with disabilities to the housing supports and services they need to live independently
- Strengthening minimum accessibility requirements and promoting innovative design solutions for new residential construction
- Providing incentives and direct financial support to support housing solutions adapted to the needs of people with disabilities
- Pursuing integrated approaches to address the housing and support service needs for people with more complex needs
- Regulating universal design features in new constructions and providing incentives to incorporate universal design features in renovations.

## 10. More accessible Council Services and Information

SCIA is pleased to read that Randwick Council will continue to improve its website accessibility and incorporate guidelines maximising accessibility of council publications.

Randwick Council's website is likely to be the first point of contact for many people with disability seeking Council information. As a resource providing Council information and services, it should be easy to navigate and be accessible for people with disability who use assistive technology such as screen readers or speech recognition software to interact with the website.

The Council's website needs to maintain up-to-date information, particularly where it relates to people with disability, due to the rapid development and amendments to local, state, and federal government supports and services, policies, procedures, and eligibility to access them. Any new initiatives related to access and inclusion of disability support services and facilities should be clearly stated.

## 11. Employment of people with disability

SCIA would like to encourage all levels of government to show leadership by increasing the employment levels of people with disability. Randwick Council is encouraged to contact SCIA and/or other disability employment services to assist the Council's recruitment processes for increasing employees with disability.

Randwick Council should apply an 'employee with disability ratio'. The council could review and if necessary, amend its employee recruitment processes to be more inclusive.

The Council's recruitment processes should be fully inclusive and should provide reasonable workplace adjustment and worktime flexibility. There is Federal Government funding to support



employees with disability through Job Access. Job Access can assist with accessibility to the workplace, and provide assistive technology like height adjustable desks, speech recognition software and headsets/microphones etc. Funding is also available through the NDIS for people with disability to have workplace support and workplace personal care.

Furthermore, Randwick Council provide council staff with disability awareness training and initiate positive inclusion measures to help alleviate any misunderstanding or negative stereotypes and myths about employing people with disability.

## **12. Access Committee and improving access to public spaces**

Further to recommendation 11: To allocate resources to the Access Committee to improve access to infrastructure and built environment, including maintenance such as upgrading foot paths, ramps, curb ramps when there are new road and footpath repairs or maintenance.

Wherever possible Randwick Council should consult with people with disability especially as it relates to service provision, access and improving processes.

It is extremely important for unisex wheelchair accessible toilet facilities to be available and maintained, whether they are the property of Randwick Council or privately owned and maintained, SCIA recommends that these toilets remain unlocked and always available.

If the Master Locksmith Association Key (MLAK) system is being used, council will need to ensure a MLAK key is available and in close vicinity when a person with disability requires access to the toilet. Council should ensure that MLAK information is clearly displayed in accessible formats.

Information about the location of existing or new wheelchair accessible toilets is extremely important. As regular and wheelchair accessible toilets are included in private development applications, dual occupancy developments, shopping centres and similar facilities, all accessible toilets should be registered on the National Toilet Map.

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## B. Submission: Resident

## Randwick City Council Submission Disability Inclusion Action Plan August 2022

Opening Statement Mayor:

**“Whether visiting the beach, participating in local sports, doing business or using Council’s services, people with disabilities must have opportunities to participate in all aspects of life on an equal basis with others.”**

[https://ehq-production-australia.s3.ap-southeast-2.amazonaws.com/bb7a26ba4ffa5714e19bac1bb2d6f68d5a2fb3d2/original/1659314386/545b37f50a76ef8747fa2fd92ba3049a\\_22065\\_Disability\\_Inclusion\\_Action\\_Plan\\_Web.pdf](https://ehq-production-australia.s3.ap-southeast-2.amazonaws.com/bb7a26ba4ffa5714e19bac1bb2d6f68d5a2fb3d2/original/1659314386/545b37f50a76ef8747fa2fd92ba3049a_22065_Disability_Inclusion_Action_Plan_Web.pdf)

I note that persons with disability are characterised as: *those who have long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.* (page 12)

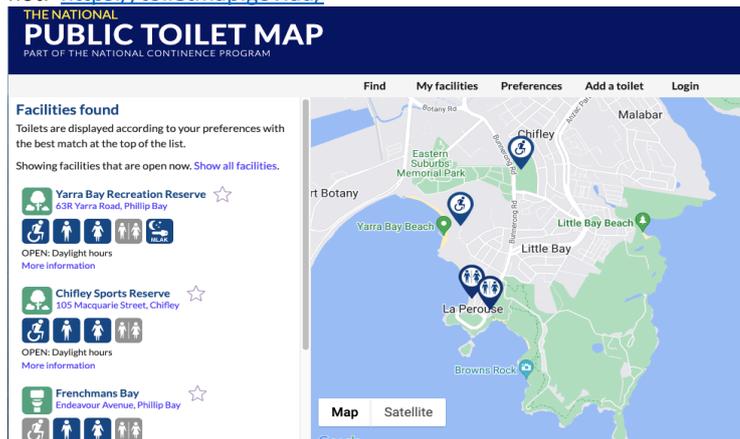
I also note the applicable legislation:

Commonwealth Disability Discrimination Act 1992  
 Australian Standard (AS 1428) - Design for Access and Mobility  
 Disability Standards for Accessible Public Transport 2002  
 Disability Access to Premises Buildings Standards 2010  
 Commonwealth Carers (Recognition) Act 2010.  
 Web Accessibility National Transition Strategy 2010.  
 NSW Disability Inclusion Act 2014

Examples in this submission are confined to South Ward where I live, however, the principles apply throughout the LGA.

1. The focus should be on Council’s direct sphere of influence and responsibilities, eg. public toilets, paths, parks, beaches and connections. Every example of access is a statement that people with disabilities/access challenges matter. That’s how to make positive changes in general perceptions, not with proclamations that don’t translate. eg

There is no point proclaiming Frenchman’s Bay playground is accessible (page 20) when toilets are not. <https://toiletmap.gov.au/>



Submission RCC Disability Inclusion Action Plan August 2022

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La Perouse does not have an accessible toilet. Although one is planned in the future it is disconnected from the main gathering area where there is a playground and accessible beach.

<https://www.yoursay.randwick.nsw.gov.au/la-perouse-ammenties-block-upgrade/widgets/351842/photos/97969> The National Park beach is not accessible even though work could be done to make it accessible via the fire trail from Henry Head road. Given the popularity of beaches and wellbeing significance and the obligations of National Parks to all citizens in NSW, Council could take co-operative action.

The same applies regarding co-operative action at Cape Banks:

There is a toilet block but it has not been available since the Scout Ground was excised from the National Park in 2004 <https://www.parliament.nsw.gov.au/bill/files/427/C2704.pdf> It is an excellent area for whale watching. While considerable money has been spent by RCC upgrading a section of the walking track around the golf course nothing was done to connect the carpark, where a disabled person would land, to that section of walking track. Nor was there anything done to make the military heritage, that has been significant to those who served at Cape Banks (and their families/carers), accessible. This was in Council's sphere of influence where they could demonstrate their commitment. If the problem was National Parks then call it out. The toilets should be available for disabled, and everyone else.

Another claim on page 20: *Upgraded the Malabar headland western walking track to provide unfettered access through previously inaccessible bushland.*

Access is definitely 'fettered'. There are stairs at the beginning of Malabar entry and it was noted at the opening ceremony by Jessica. The design could have been inclusive. It may not have been possible to have the full track wheelchair accessible, however, there could have been entry to a meeting place within the park where someone in a wheelchair could experience the bush – a place that had priority biodiversity enhancement and was suitable for interpretation.

See page 27 from Consultation: "Coastal walks are not accessible, and some parks have many steps and no accessible path."

Little Bay:

In the early stages of the Prince Henry Masterplan development the community centre area was supposed to be double what it is now. Toilets were supposed to be publicly accessible. Now there are no publicly accessible toilets for anyone unless they can walk half-way down to the beach. The Prince Henry centre toilets are off limits to residents and visitors walking around the area even though this is a Council asset containing an accessible toilet.

La Perouse Museum:

There is no accessible toilet in the La Perouse Museum even though this has been recognised as a serious shortcoming for decades. Council discussed the handover since before the Terms of Reference for the Trust were written in 2014

<https://laperousemuseum.files.wordpress.com/2014/01/terms-of-reference-as-at-9-december-2013.pdf> .

The Museum was handed over in 2017. It has obviously not been a priority, but other things have. Yet this is within the sphere of Council's influence. This is where Council can demonstrate, rather than just talk about its commitment. In addition, it is not possible to access the upper level. The Cann Snake Show exhibition is a legacy item for Council but needs to be addressed. The items used to be exhibited on the ground floor where at least there is a back door entry. With sponsorship money acquired by John Cann, the OEH/National Parks moved the items to one of the mould-ridden upstairs rooms.

2. I recommend that data on barriers is collected and published in the RCC Annual Report. Explore the use of Snap Send Solve for this purpose. I have appended an email I sent to the General Manager in July regarding access and safety issues around the La Perouse Headland. The Headland from Grose/Elaroo south has only one entry/exit point. There are around 200 residents while on a busy day around 10,000 visitors, including from other parts of Randwick. The ballpark estimate for people with a disability along with carer/s is around 30-40%. Safe enjoyable access is a major issue around here. Councillor Chapple asked for the issues to be addressed, however, only a couple were, and the others ignored.

There is no point spending money on consultation, wasting volunteered time and energy and causing frustration potentially resulting in diminished trust, when examples provided are ignored. The latter included the erosion and faulty works at Frenchman's Beach along with the removal of a water quality warning sign and closure of two access paths. The answer regarding erosion under the newly installed stairs in the reserve didn't address the problem, which was primarily related to the work, including materials, project design and risk management. The access and water quality issues were not addressed. Those who operationalised the Frenchman's Bay Plan of Management [https://www.randwick.nsw.gov.au/\\_data/assets/pdf\\_file/0009/24003/Frenchmans-Bay-POM.pdf](https://www.randwick.nsw.gov.au/_data/assets/pdf_file/0009/24003/Frenchmans-Bay-POM.pdf) 20 years ago were arguably more mindful of safe access than those engaged in current ad hoc works.

If you genuinely seek to change general public perceptions first start within Council. Every single project in the public space, including maintenance, should start with accessibility questions on the proposed work flowchart, eg: 'will this action improve access', 'will this action add to barriers', 'is this the best action possible to improve access given context and budget', 'is there a better project to improve access and meet other objectives.' Add biodiversity to the questions to boost wellbeing.

Email sent to the General Manager, copied to South Ward Councillors, Mayor and Deputy Mayor 17/7/2022 and blind copied to an email list. The only alteration is removal of my phone number and contact email address.

**From:** Lynda Newnam <xxxxxxxxxx>  
**Sent:** Sunday, July 17, 2022 9:56:33 PM  
**To:** Therese Manns <Therese.Manns@randwick.nsw.gov.au>  
**Cc:** Danny Said <Danny.Said@randwick.nsw.gov.au>; Bill Burst <Bill.Burst@randwick.nsw.gov.au>; Noel D'Souza <Noel.D'Souza@randwick.nsw.gov.au>; Michael Daley <michael.daley@parliament.nsw.gov.au>; Dylan Parker <Dylan.Parker@randwick.nsw.gov.au>; Kym Chapple <Kym.Chapple@randwick.nsw.gov.au>; xxxxxxxx  
**Subject:** Construction Destruction and Prohibition at La Perouse

To: Ms Therese Manns, GM Randwick City Council, copied South Ward Councillors, Mayor, Deputy Mayor, Maroubra MP, SOUTH WARD EMAIL LIST

Dear Ms Manns,

I write regarding construction works at La Perouse. I do so to enquire about details of approvals and budgets and also to suggest that when works are undertaken that signs be erected to inform residents and visitors of what the project is about, where to seek further information and estimated completion. As an example of better practice in communications I would recommend the work done by RCC contractors last year for the GPT adjacent the Boatshed Cafe.

Last year these stairs were constructed in Frenchman's Reserve. The railings were damaged last time I looked and there was erosion caused by construction. The stairs do not align with the Frenchman's Bay Plan of Management 2002. There was no information about the stairs available and when enquiries were made I couldn't find out details about the approval process let alone the cost. A neighbour also tried to find out information and was unsuccessful. The erosion has impacted on the beach and also now along with rail damage presents as a safety issue. Who managed, or rather didn't manage, this project?



At the time these mystery stairs were emerging there were closures to established paths between the beach and reserve facilities, such as the toilets. Those closures are still in place without explanation. This is one of the closed entries. The 2 paths I refer to were constructed consistent with the Frenchman's Bay Plan of Management.

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There is construction occurring/in preparation near the entry to Congwong Beach, near the Loop toilets at La Perouse. Again there are no details as to what this is about.



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There is one children's playground at La Perouse and the gate has been damaged for a while with no details on when it will be fixed.

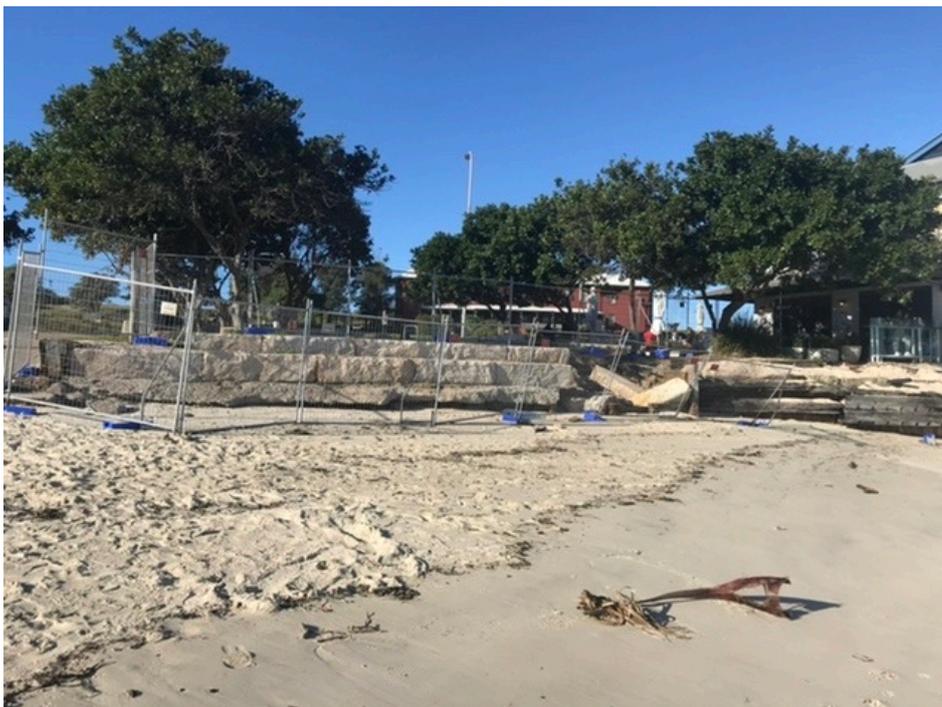


Frenchman's Beach has the worst water quality of all the beaches in Randwick. It is ranked as POOR in successive EPA Beachwatch Reports whereas all the other Randwick City beaches are ranked Good or Very Good. In Botany Bay the only other beach ranked as POOR is Foreshore. It is standard practice, as observed at Foreshore Beach, to provide risk warnings to beachgoers about biological contamination particularly advising not to swim within 3 days of rain events. It is up to the beach users to assess their own vulnerability. The sign that was at one entry - only one entry - to Frenchman's Beach is now laying facedown on the ground and has been for more than a month.

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Late last year sandstone blocks were installed in front of the playground. Again there was no information provided. The work proceeded slowly and then there was a flurry in the last couple of weeks before Christmas at a time when families were on holiday enjoying freedom from lockdown. I have video of dust being blown over patrons at the Boatshed. It was obvious at the time that the work beside the Boatshed should have been completed. Since then there has been significant damage and fencing erected. The job was not done properly in the first place and now this is what it looks like. I have many more photographs. Who is accountable?



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To complete the mess that is La Perouse I am adding photographs of the main entry to the National Park Bushwalking Trail and to the National Park Beaches. While this is National Parks responsibility Council does work with National Parks. There are witches hats marked Randwick City Council in use at the closure to the main entry. Very few visitors would know who was responsible for the signs and closures. In the case of the main entry it has been closed since March 2021, not March 2022 it has been March 2021. First time visitors out here for a bush walk have no idea where they are supposed to go and there is no explanation as to when the entry will be fixed. There are no footpaths for those who walk in on the roadway. The alternative is the beach entry. As with the main entry there are a number of signs warning of penalties, including for having a wine or beer with a picnic. Most of the public open space at La Perouse is National Park and the public, including La Perouse residents, are prohibited from a range of activities in what is an appallingly managed park for tracks, signs, invasive species and protection of native animals.



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There are plenty of signs about penalties but nothing about shorebirds, the Intertidal zone, the treasures of the marine environment surrounding the area, including marine mammals.

As I noted in a previous email there is no public toilet with wheelchair access. There is a lack of shade trees for summer picnics and few seats other than those placed next to cars. It is a poor reflection of the priorities of both National Parks and Randwick City Council.

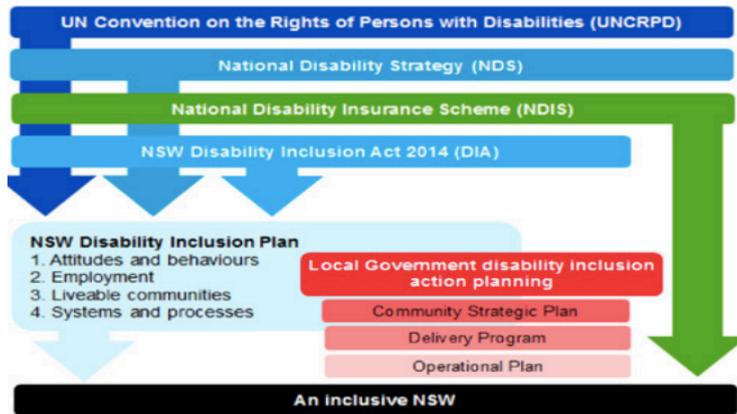


Image Source: Local Government NSW and NSW Family and Community Service - Disability Inclusion Action Planning Guidelines Local Government, 2015

## Director City Planning Report No. CP77/22

**Subject: Planning Proposal - New Local Heritage Item - 11A Marcel Avenue, Coogee, and Extension to Moira Crescent Heritage Conservation Area in RLEP 2012 - Post Exhibition report**

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CP77/22

### Executive Summary

- Randwick City Council has exhibited a draft Planning Proposal (**Attachment 1**) to recognise the heritage values of the property at 11A Marcel Avenue, Coogee. The Planning Proposal seeks to amend the Randwick Local Environmental Plan 2012 (RLEP 2012) by:
  - creating a new local heritage item at 11A Marcel Avenue, Coogee; and
  - incorporating 11A Marcel Avenue into the Moira Crescent Heritage Conservation Area (HCA) by extending the boundary of this existing HCA to include this subject site.
- The draft Planning Proposal was placed on exhibition from 12 October to 9 November 2022. This report outlines the results of the exhibition of the Planning Proposal
- Council received 9 submissions in total to the draft Planning Proposal, of which all were in support.
- This report recommends that Council retain its previous endorsement of the heritage listing of 11A Marcel Avenue, Coogee, and its inclusion in the Moira Crescent Heritage Conservation Area and that the final Planning Proposal be adopted and submitted for legal drafting.

### Recommendation

That Council:

- a) adopts the Planning Proposal as exhibited, which proposes to list 11A Marcel Avenue, Coogee, as a local heritage item and to extend the boundary of the Moira Crescent Heritage Conservation Area to include 11A Marcel Avenue, Coogee.
- b) authorise the Director, City Planning to make any minor modifications to rectify any numerical, typographical, interpretation and formatting errors in the Planning Proposal prior to submitting to the Department of Planning and Environment.
- c) resolves to make the LEP as the local plan making authority by preparing drafting instructions for the Parliamentary Counsel Office to draft the LEP and referring relevant mapping to the Department of Planning and Environment for endorsement.

### Attachment/s:

1. Post Exhibition Planning Proposal - 11A Marcel Avenue, Coogee, November 2022
2.  Gateway determination 11a Marcel Ave Coogee letter to Council



## Purpose

This report outlines the outcomes of the community engagement process for the Planning Proposal to list 11A Marcel Avenue, Coogee, as a local heritage item and to extend the boundary of the Moira Crescent Heritage Conservation Area to include the subject site.

## Discussion

### Background

On 28 June 2022, Council resolved to request that the Department of Planning and Environment (as delegate to the Minister for Planning) issue a 'Gateway Determination' under Section 3.34 of the Environmental Planning and Assessment Act 1979 for the draft Planning Proposal to list 11A Marcel Avenue, Coogee as a local heritage item and to extend the boundary of the Moira Crescent Heritage Conservation Area to include the subject site.

On 25 February 2022, a study was prepared by City Plan Heritage in support of an Interim Heritage Order (IHO) that was issued on the subject property, which found that No 11A Marcel Avenue meets criteria A (historic), and C (aesthetic), G (representative) when assessing significance in accordance with "Assessing Heritage Significance", prepared by the NSW Heritage Office.

In regard to criterion A, City Plan Heritage advises that:

*"Denison Hall (the name of the property at 11A Marcel Avenue) has historical significance as part of the fourth subdivision of the Bishopscourt Estate in 1926 and as evidence of the suburbanisation of Randwick in the first half of the twentieth century. The scale, materiality, and setbacks of Denison Hall reflect the building covenant attached to land sold as part of the fourth subdivision of the Bishopscourt Estate and contribute to the identified heritage significance of the Moira Crescent Conservation Area. Denison Hall is representative of the Inter-war residential development and the 1920s boom in flat construction throughout metropolitan Sydney."*

In regard to Criterion C, City Plan Heritage advises that:

*"Despite minor changes, Denison Hall demonstrates the characteristics of the Californian Bungalow idiom applied to an Inter-war flat building including projecting window frames, geometric patterned lead light glazing, grouped posts, and street-facing gable. Its scale and materiality are compatible with the one and two storey residential buildings within the Moira Crescent Heritage Conservation Area. Denison Hall demonstrates the characteristic of Inter-war flat buildings within Randwick LGA and meets the threshold for listing as a heritage item at the Local level under Criterion (c)."*

In regard to Criterion G, City Plan Heritage advises that:

*"Despite minor modifications, Denison Hall demonstrates the characteristics of Inter-war flat buildings constructed throughout Randwick LGA.*

- *Is a fine example of its type*
- *Has the principal characteristics of an important class or group of items*
- *Has attributes typical of a particular way of life, philosophy, custom, significant process, design, technique or activity"*

On 4 March 2022, Council, under delegated authority, placed an Interim Heritage Order (IHO) on the building and site at 11A Marcel Avenue Coogee (Lot 51 DP318884). The IHO became effective from Friday, 4 March 2022 following notification of the IHO in the Government Gazette (Government Gazette No. – Planning and Heritage). The IHO is consistent with the provisions of the Heritage Act 1977 and the Heritage Guidelines.

On 28 April 2022, a Class 1 appeal was lodged by the owner of 11A Marcel Avenue, Coogee, with the Land and Environment Court pursuant to 30(1) of the Heritage Act 1977 (NSW) (Heritage Act)

against the making of the IHO by Randwick City Council over the property at 11A Marcel Avenue, Coogee.

On 14 April 2022, the Planning Proposal matter was referred to the Randwick Local Planning Panel (RLPP) for assessment. The Panel resolved to support the Planning Proposal in principle.

On 28 June 2022, Council resolved at the Council Meeting to endorse the draft Planning Proposal to list 11A Marcel Avenue, Coogee, as a local heritage item and to extend the boundary of the Moira Crescent Heritage Conservation Area (to include the subject property) having considered the advice of the RLPP. Council also resolved to forward the Planning Proposal to the Department of Planning and Environment requesting ‘Gateway Determination’; to exhibit the Planning Proposal following ‘Gateway Determination’ in accordance with the conditions of the Gateway Determination and to bring back a report to Council detailing the results of the community consultation for final consideration by Council.

On 10 November 2022, the applicant filed a Notice of Discontinuance with the Land and Environment Court with respect to the IHO matter. In effect, the legal proceedings in relation to the IHO have now been discontinued.

It should be noted that the Development Application for demolition of the property (DA798/2021 lodged on 21 December 2021) that triggered the IHO remains live and under assessment. There has been no request from the applicant to withdraw this DA. However, a Pre-lodgement Development Application (PL/39/2022) lodged on 6 October 2022 for a residential flat development proposal incorporating retention of the façade and front sections of the existing building on-site was withdrawn on 23 November 2022.

Gateway Determination

On 5 September 2022, Council received the Gateway determination from the Department of Planning and Environment (**Attachment 2**). The Gateway Determination stated that the Planning Proposal may proceed subject to a number of key conditions being met. In summary, these conditions have been met as follows:

Gateway Condition	Compliance
The planning proposal is to be amended to include a list of updates, corrections and comments identified by DPE:	The planning proposal has been amended to include all updates, corrections and comments required by DPE: <b>Condition complied with.</b>
Place the planning proposal on public exhibition as required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act and must be made publicly available for a minimum of 20 working days;	The Planning Proposal was placed on public exhibition for 28 days from 12 October to 9 November 2022. <b>Condition Complied with.</b>
Consult with Heritage NSW and The National Trust of Australia (NSW under section 3.34(2)(d) of the Act and/or to comply with the requirements of applicable directions of the Minister under section 9 of the EP&A Act; and	Council referred the Planning Proposal to NSW Heritage and the National Trust of Australia (NSW) and responses in support from these bodies have been received, considered and addressed. <b>Condition complied with.</b>
Council is authorised as the local plan making authority subject to satisfaction of all Gateway conditions; consistency with all applicable Ministerial directions and there being no outstanding objections from public authorities.	Council will exercise the functions of a plan making local authority and, in doing so, all Gateway conditions have been complied with; the Planning Proposal is consistent with all applicable Ministerial directions; and there are no outstanding objections from public authorities. <b>Condition complied with.</b>
The LEP should be completed on or before 30 April 2023.	The LEP is on track for completion on or before 30 April 2023. <b>Condition will be complied with.</b>

## Public Exhibition and Consultation

The Planning Proposal was exhibited from 12 October to 9 November 2022. The public exhibition was undertaken in accordance with the consultation requirements of the *Environmental Planning and Assessment Act 1979* and the Gateway Determination.

Notice of the public exhibition was published on Council's Your Say webpage. Copies of the Planning Proposal were also available at Council's Administration Building and at the Bowen, Randwick and Malabar libraries. Land-owners and neighbouring properties were advised in writing of the Planning Proposal.

### Heritage NSW and National Trust of Australia

In accordance with the Gateway Determination, Heritage NSW and the National Trust of Australia (NSW) were notified of the Planning Proposal. Council received written correspondence from the National Trust of Australia (NSW) on 23 November 2022. The letter states that the Trust *"always encourage regularly update (of Council) LEP Heritage Schedules. We are delighted that Randwick City Council is aiming to list the property on their LEP Heritage Schedule."*

Comments were also received from Heritage NSW on 28 November 2022 advising that it encourages the identification and listing of new heritage items; is supportive of the making of the LEP and raises no objections to the planning proposal.

No other submissions were received from public authorities.

### Responses from residents

A total of 9 submissions were received in response to the public exhibition. The following table outlines the breakdown of responses received in relation to the exhibited Planning Proposal.

	Supportive	Not supportive/unsure
Letter/email submissions	4	0
Your Say Survey	5	0
Percentage of total	100%	0%
<b>Total responses</b>	<b>9</b>	

### Supportive of a change to the LEP

Key points and issues raised in support of the Planning Proposal are summarised in the table below. Individual submissions by homeowners or on behalf of homeowners within the locality surrounding 11A Marcel Avenue and the Moira Crescent HCA are addressed.

Summary of matters raised in submissions	Council Officer's response
The property at 11A Marcel Avenue should be preserved and protected as examples of the area's history	Noted. The Planning Proposal seeks to protect and conserve these buildings through the application of the heritage provisions of the <i>Randwick Local Environmental Plan 2012</i> .
The property contributes to the unique local character of the area	Noted. Council acknowledges that the local character of suburbs is an important consideration in guiding future growth and protecting existing residential amenity.
The property will allow future generations to appreciate and understand the area's history	Noted. In protecting and conserving these buildings through the application of the heritage provisions of the <i>Randwick Local Environmental Plan 2012</i> , it is anticipated that these properties will be able to provide current and future generations an

Summary of matters raised in submissions	Council Officer's response
	opportunity to appreciate the architectural and cultural history of Coogee and the wider Randwick City.
Loss of buildings with heritage significance in the area and replaced with contemporary housing typologies	Noted. The Planning Proposal seeks to protect and conserve these buildings through the application of the heritage provisions of the <i>Randwick Local Environmental Plan 2012</i> .  The heritage listing or inclusion in the HCA will mean that owners will not be able to use the complying development approval pathway to demolish or do works to their properties.
Marcel Avenue forms a unique and cohesive historic streetscape, characterised by distinctive heritage buildings and 11A Marcel Ave is, in particular, one of the most unique and significant buildings on the street.	The aesthetic quality of 11A Marcel Avenue has been confirmed in the heritage assessment undertaken by City Plan Heritage. In particular, this historical presentation reflects the scale, materiality and detailing of the other buildings contributing to the established character of the Moira Street Conservation Area.

**Not supportive of a change to the LEP**

There were no submissions objecting to the proposed heritage listing and extension of the heritage conservation area.

**Strategic alignment**

The relationship with our 2022-26 Delivery Program is as follows:

Delivering services and regulatory functions:	
Service area	Strategic Planning
Function	Implementation of land use and development controls
Delivery program commitment	Utilise land use and building controls to assess and provide advice on proposed developments and provide property information.

**Resourcing Strategy implications**

The costs associated with preparing and exhibiting the Planning Proposal have been accommodated within Council's Operation Budget.

**Policy and legislative requirements**

Public exhibition of the Planning Proposal has been undertaken in accordance with section 3.34(2)(c) and clause 4 of Schedule 1 to the Act.

Council has been granted authority to exercise the functions of the local plan-making authority under section 3.36(2) of the EP&A Act subject to relevant conditions identified in the Gateway Determination.

**Conclusion**

Council has conducted a comprehensive consultation on the Planning Proposal. The Planning Proposal is for the heritage listing of 11A Marcel Avenue, Coogee as a local heritage item and the extension the boundary of the Moira Crescent Heritage Conservation Area to include the subject site.

Public exhibition was conducted in accordance with the *Environmental Planning and Assessment Act 1979* and the Gateway Determination, with a total of 9 submissions received during the exhibition period from 12 October to 9 November 2022. All of the responses were in support of the planning proposal.

Council received support from the NSW Heritage and the National Trust of Australia (NSW) and comments from these bodies have been considered and addressed.

Council has considered and addressed all submissions against the proposal that were received during the exhibition period. The proposed heritage listing of 11A Marcel Avenue, Coogee, and the extension of the Moira Crescent heritage conservation area to include 11A Marcel Avenue, Coogee, has merit and, as such, the Planning Proposal should proceed to finalisation.

As the local plan-making authority, Council will seek legal guidance from the Parliamentary Counsel Office and liaise with the Department of Planning and Environment on mapping requirements in the final making of the LEP amendment.

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**Responsible officer:** David Ongkili, Coordinator Strategic Planning

**File Reference:** RZ/1/2022



## Department of Planning and Environment

PP-2022-3069 (IRF22/2797)

Ms Therese Manns  
General Manager  
Randwick City Council  
30 Frances Street  
RANDWICK NSW 2031

Dear Ms Manns,

**Planning proposal PP-2022-3069 to amend Randwick Local Environmental Plan 2012**

I am writing in response to the planning proposal you have forwarded to the Minister under section 3.34(1) of the *Environmental Planning and Assessment Act 1979* (the Act) and additional information received on 25 August 2022 in respect of the planning proposal to identify 11A Marcel Avenue, Coogee as a local heritage item and expand the Moira Crescent heritage conservation area.

As delegate of the Minister for Planning, I have determined that the planning proposal should proceed subject to the conditions in the enclosed Gateway determination.

It is noted that Council has requested to be authorised as the local plan-making authority. Considering the nature of the planning proposal I have determined that Council may exercise local plan-making authority functions in relation to the planning proposal.

Council should consider any feedback from the landowner prior to making its final decision about whether to make the LEP.

The proposed local environmental plan (LEP) is to be finalised on or before 30 April 2023. Council should aim to commence the exhibition of the planning proposal as soon as possible. As this is a minor amendment, Council is to request Parliamentary Counsel's Office commence drafting as soon as practicable. A copy of the request should be forwarded to the Department of Planning and Environment.

Should you have any enquiries about this matter, I have arranged for Pengfei Cheng to assist you. Mr Cheng can be contacted on (02) 8289 6686.

Yours sincerely

A handwritten signature in black ink that reads "Louise McMahon".

**Louise McMahon**  
Director  
Agile Planning and Programs  
Department of Planning and Environment

**5 September 2022**  
Encl: Gateway determination



## Director City Planning Report No. CP78/22

**Subject: Planning Proposal - New Local Heritage Items - Nos. 1 and 3 Berwick Street, Coogee, in RLEP 2012**

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### Executive Summary

- Randwick City Council has prepared a draft Planning Proposal (**Attachment 1**) to recognise the heritage values of the properties at Nos. 1 and 3 Berwick Street, Coogee. The draft Planning Proposal seeks to amend the Randwick Local Environmental Plan 2012 (RLEP 2012) by creating new local heritage items at Nos. 1 and 3 Berwick Street, Coogee.
- The heritage study findings and proposed amendments to Schedule 5 heritage listings under the RLEP 2012 were reported to the Randwick Local Planning Panel (RLPP) meeting on 24 November 2022. The RLPP unanimously resolved to advise Council that it supports the inclusion of No. 1 Berwick Street (Lot A DP 313214) and 3 Berwick Street, Coogee, (Lot B DP 313214) within Schedule 5 - Part 1 – **Heritage Items** of the Randwick LEP 2012, for the purpose of proceeding to gateway, and if approved, subsequent community consultation. The Panel further advised that, in doing so, the Panel particularly notes and relies upon the most recent detailed heritage review undertaken by City Plan Heritage for Council (**Attachment 3**).
- It is recommended that the draft Planning Proposal be endorsed by Council and be submitted to the Department of Planning and Environment seeking a Gateway Determination

### Recommendation

That Council:

- a) consider the advice provided by the Randwick Local Planning Panel at its meeting of 24 November 2022 and endorse the attached draft Planning Proposal to amend Schedule 5 to include No.1 Berwick Street and No 3 Berwick Street, Coogee, as local heritage items.
- b) forward the attached draft Planning Proposal to the Department of Planning and Environment as delegate to the Minister for Planning requesting 'Gateway Determination' under Section 3.34 of the Environmental Planning and Assessment Act 1979.
- c) exhibit the draft Planning Proposal following 'Gateway Determination' in accordance with conditions of the Gateway Determination and bring back a report to Council detailing the results of the community consultation for final consideration by Council;
- d) authorise the Director, City Planning to make typographical, grammatical or formatting changes to the documentation prior to submission to the Department of Planning and Environment.

### Attachment/s:

1. Draft Planning Proposal - Nos. 1&3 Berwick Street, Coogee - Local Heritage Items
2.  Heritage Assessment Advice - 3 Berwick Street, Coogee, by City Plan Heritage
3.  RLPP Resolution - 24 November 2022

## Purpose

The purpose of this report is to provide an overview of the draft Planning Proposal for Nos. 1 and 3 Berwick St Coogee and summarise the circumstances leading to the preparation of the Planning Proposal and recent advice received from the RLPP.

## Discussion

### Background

In September 2021, City Plan Heritage consultants were commissioned by Council to prepare State Heritage Inventory (SHI) Forms and Statement of Significance for 57 community nominated properties as recommended in the city-wide Randwick Heritage Study, undertaken by Extent Heritage consultants in 2020. The heritage-listing recommendations of the Extent Heritage study formed part of the Randwick Comprehensive Planning Proposal to amend the Randwick LEP and this was reported to the RLPP meeting on 6 April 2021 for advice. The RLPP considered and supported the recommendations of the report.

As part of the Randwick Heritage Study, Extent Heritage undertook a desktop review of Nos. 1, 3 and 5 Berwick Street, Coogee separately since all three properties were nominated by the community during the nomination process undertaken in 2020. Extent Heritage recommended that No. 5 Berwick Street be proposed for listing as a heritage item while Nos 1 and 3 were not recommended for heritage listing at that stage. In the case of No. 3 Berwick Street, the reason provided by Extent Heritage for not listing at the time was that the building had been modified, with loss of exterior and interior fabric including a front verandah enclosure.

On 25 May 2021, Council considered the heritage report that formed part of the Comprehensive Planning Proposal (recommending the inclusion of 57 properties in Schedule 5 of the Randwick LEP) and resolved, to carry out a future in-depth heritage study of the remaining nominated properties that were not proposed for heritage listing.

On the 31 May 2022, the Comprehensive Planning Proposal was placed on public exhibition for 6 weeks until the 12 July 2022 as part of an extensive and well publicised community engagement process. During exhibition a submission was received from the property owner of No. 1 Berwick Street, Coogee, requesting the heritage listing of his property because of the significance of the property and the need for conservation protection that would be afforded by such listing.

The SHI forms and Significance Statements for the original 57 nominated properties were submitted to the Department of Planning and Environment (DPE) in October 2022 and are currently being processed as part of the heritage proposal of the Randwick Comprehensive Planning Proposal and Randwick LEP review.

### No. 1 Berwick Street Coogee

In requesting heritage protection, the property owner of 1 Berwick Street, Coogee, provided a statement of heritage significance that states that the property is significant in line with historic and historical association criteria including its location as the original site, and subsequent subdivision, for the Catholic Church of Coogee comprising the current addresses of Nos. 1, 3 and 5 Berwick St; its Interwar bungalow style designed by Clement Glancey senior who was the pre-eminent architect of the Catholic Romanesque in New South Wales; and its construction in 1926. The request was referred to City Plan Heritage in August 2022 as part of a bundle of submissions to the Comprehensive Planning Proposal public exhibition that City Plan Heritage was commissioned to assess. Specifically in relation to No. 1 Berwick Street, City Plan Heritage has found that the submission has merit and can be supported, commenting as follows:

*“This request has been made by the owner of the property at 1 Berwick Street, Coogee, and not a third-party community nomination. In volunteering to have his property heritage listed, the owner has submitted a study of the heritage and historical significance of the subject property in support of the request. It should be noted that the property was initially nominated in the community YourSay Randwick process conducted in early 2020 but was eliminated/excluded by Extent Heritage Pty Limited in the Second Round Review of the Randwick Heritage Study as it’s*

*significance appeared to be border-line with Extent acknowledging that the building was built in 1926, had “interesting Art Deco features ...is highly intact and has an interesting corner block siting”. Given that more details have now been provided by the owner on the degree of intactness and the strong history underlying the property, the request and its supporting study has been forwarded to City Plan Heritage for assessment. City Plan Heritage has advised that the information and documentary evidence submitted indicates that the subject property will meet the threshold for heritage listing. The submission makes note of an Urbis report, which would need to be provided for a further consideration during the detailed assessment and preparation of the SHI form. Recommendation: POTENTIAL FOR LISTING ON PART 1 SCHEDULE 5 OF THE LEP (this will be undertaken as a future separate Planning Proposal).”*

Significantly, City Plan Heritage also observed that a relationship exists between Nos. 1, 3 and 5 Berwick Street stating as follows:

*“It is also worth noting that at the time of my inspection of 5 Berwick Street, it was apparent that the three properties at 1, 3 and 5 Berwick Street have had a common historical development and collectively were making significant contribution in understanding of the streetscape and built heritage of Coogee in the inter-war period. However, the brief for the peer review of Extent Heritage study was limited to the already nominated potential heritage items, and therefore, the subject property was not further assessed by City Plan Heritage. Notwithstanding, the likely heritage values of the subject three properties were verbally advised to the Council.*

*It is further noted that although each property at 1, 3 and 5 Berwick Street in Coogee meets the threshold for heritage listing individually, their collective interwar heritage values make stronger contribution and add to the environmental heritage of Randwick LGA and therefore they should be listed as a group heritage item to maintain their integrity and appreciation. It is recommended that the Council considers extension of the heritage listing for number 5 Berwick Street to a group listing in a future planning proposal to include properties at 1 and 3 Berwick Street.”*

As the request to heritage list No. 1 Berwick Street arose during the public exhibition of the Randwick Comprehensive Planning Proposal, any heritage listing of No.1 Berwick Street, Coogee, has to be part of a separate planning proposal and not part of the Randwick Comprehensive Planning Proposal. This is necessary as the proposed listing of 1 Berwick Street must proceed through the LEP making process, be referred to the Department for gateway determination and be publicly exhibited as part of a new planning proposal. As such, it is considered timely and reasonable to include the proposed heritage listing of No.1 Berwick Street in the current site-specific planning proposal. A detailed heritage data sheet will be prepared and placed on public exhibition with the Planning Proposal.

### No. 3 Berwick Street, Coogee

On 26 August 2022, a Development Application (DA/432/2022) was received for the Torrens-title subdivision of No. 3 Berwick Street, Coogee, into two (2) allotments and construction of two (2) semi-detached dwellings, one on each allotment. The DA was placed on public exhibition between 1 July 2020 and 31 July 2020. A significant number of submissions from the community raised objections to the proposed development on the grounds that the proposal would result in the demolition of the existing dwelling house on-site which was viewed as, potentially, heritage significant.

At the Council meeting on 27 September 2022, Council resolved as follows in relation to 3 Berwick Street, Coogee:

**RESOLVED:** (Olive/Neilson) that Item UB49/22 (Preliminary heritage assessment of the building at 3 Berwick Street, Coogee) be considered as urgent business.

- a) Council officers urgently undertake a preliminary heritage assessment of the building at 3 Berwick Street, Coogee to determine if it is likely to be found, on further inquiry and investigation, to be of local heritage significance;
- b) it is noted 1, 3 and 5 Berwick Street form a cluster of interwar buildings; and

- c) *if the preliminary heritage assessment is suggestive of 3 Berwick Street having local heritage significance, then an interim heritage order be placed on the property so its heritage values can be fully assessed*

On 13 October 2022, Council was advised by the owner of a neighbouring property to the subject site that correspondence had been received from a private certifier advising that 3 Berwick Street would be demolished under Complying Development Certificate (CDC).

In view of the concerns raised in the community submissions to DA/432/2022; the CDC for demolition, and having regard to Council's resolution, City Plan Heritage, was appointed to prepare an urgent assessment of the heritage significance of the property. On 13 October 2022, City Plan Heritage provided Council with a Heritage Assessment of No 3 Berwick Street, Coogee (**Attachment 2**), finding, among other things, that:

*“Based on the documentary and physical evidence, it is concluded that the subject building at 3 Berwick Street is of local heritage significance and meets the threshold for individual heritage listing under Criteria (a), (b), (c), (f) and (g) of the Assessing Heritage Significance as defined in the Statement of Significance”*

Accordingly, City Plan Heritage recommended in the Assessment:

- *“that the inter-war bungalow at 3 Berwick Street in Coogee is of local heritage significance and meets the significance assessment criteria for listing as a heritage item under Part 1 (Heritage items) of Schedule 5 of Randwick LEP 2012. ”*
- *“that although each property at 1, 3 and 5 Berwick Street in Coogee meets the threshold for heritage listing individually, their collective interwar heritage values make stronger contribution and add to the environmental heritage of Randwick LGA and therefore they should be listed as a group heritage item to maintain their integrity and appreciation. It is recommended that the Council considers extension of the heritage listing for number 5 Berwick Street to a group listing in a future planning proposal to include properties at 1 and 3 Berwick Street.”*

#### *Interim Heritage Order (IHO)*

In view of City Plan Heritage's recommendation, Council, under delegated authority, placed an Interim Heritage Order (IHO) on the building and site at 3 Berwick Street, Coogee, (Lot B DP 313214) on 14 October 2022 following notification of the IHO in the Government Gazette (Government Gazette No. 484 – Local Government). The IHO is consistent with the provisions of the Heritage Act 1977 and the Heritage Guidelines. In particular, Section 25 of the Heritage Act 1977 authorises a council to make an Interim Heritage Order for a building or place that council considers may be found to be of local heritage significance and is being or is likely to be harmed. The property warrants preservation in line with the assessment, findings and recommendations of the heritage assessment prepared by Council's heritage consultant, City Plan Heritage, dated 13 October 2022, and in view of its proposed demolition under development application No: DA/432/2022 and a recent CDC application.

Notice of the interim heritage order is available online and can be viewed on the following link: [Government Gazette 484 – 14 October 2022.pdf](#)

The Ministerial Order authorising the making of Interim Heritage Orders requires that a council must not make an Interim Heritage Order (IHO) unless:

- (a) an environmental planning instrument containing a schedule of heritage items derived from a heritage study and provisions for the management of those items is in force in the Local Government Area.

**Comment:** The Randwick LEP 2012 meets this criterion.

- (b) it has considered a preliminary heritage assessment of the item prepared by a person with appropriate heritage knowledge, skills and experience employed or retained by the council

and considers that the item is or is likely to be found on further inquiry and investigation, to be of local heritage significance.

**Comment:** City Plan Heritage has suitable heritage knowledge, skills and experience. City Plan Heritage's assessment report finds that No 3 Berwick Street, meets the threshold for individual heritage listing under Criteria A (historic significance), B (historical association), C (aesthetic), F (rarity) and G (representative) of the "Assessing Heritage Significance", prepared by the NSW Heritage Office.

In regard to criterion A (historic significance), City Plan Heritage advises that:

*"The house demonstrates the suburbanisation of Coogee following the subdivision of the nineteenth-century estates in the area and the period of prosperity in the Municipality of Randwick following World War 1. 3 Berwick Street also represents Coogee's first purpose-built registered dental surgery from the 1920s with dental surgery and residence that have operated continually as a dental practice for the last 96 years and still functioning as one."*

In regard to criterion B (historical association), City Plan Heritage advises that:

*"3 Berwick Street was constructed for Victor Emmanuel Pugliese of Ulan (Dentist) in 1924, the first registered Dentist in the village of Coogee. The house remained in the ownership of Victor's family until 1949, soon after Victor's death in April 1948."*

In regard to Criterion C (aesthetic), City Plan Heritage advises that:

*"3 Berwick Street is a good example of an Inter-War bungalow in Randwick. The house exterior includes face brick and sandstone walls, a prominent gable with half-timber detailing supported on brick and sandstone columns, a recessed verandah and entrance, and single hung timber windows with Venetian glass."*

In regard to criterion F (rarity), City Plan Heritage advises that:

*"The house is a highly intact example of an Inter-War bungalow, including examples of interior fixtures and finishes dating from its construction in c1924. The Inter-War bungalows are now unusual and seldom found in the area and are now "rare" items in Coogee."*

In regard to Criterion G (representativeness), City Plan Heritage advises that:

*3 Berwick Street is representative of the Inter-war suburban residential development constructed in Randwick in the first half of the twentieth century. The residence is also representative of Coogee's first purpose-built registered dental surgery from 1924.*

- (c) the item is being or is likely to be harmed.

**Comment:** If there is a development application, and a complying development certificate application, indicating demolition of the potential heritage item, as is presently the case, then that is sufficient evidence that it is likely to be harmed.

- (d) the IHO is confined to the item determined as being under threat.

**Comment:** The proposed IHO will be confined to No 3 Berwick Street, Coogee as being the property under threat.

Accordingly, there were adequate grounds for the making of the interim heritage order to protect the property at No 3 Berwick Street from likely harm. The interim heritage order will be in place for a period of 6 months expiring on 14 April 2023 subject to further extension if required. During this period, a planning proposal for the protection and listing of the subject property under Schedule 5 of the Randwick LEP will be undertaken.

On 10 November 2022, a Class 1 Appeal was lodged with the Land and Environment Court against the Interim Heritage Order. The applicant is preparing the Statement of Facts and Contention and the application is listed for hearing on 8 December 2022.

### **Planning Process**

A planning proposal is the first step to commence changes to the planning provisions relating to land. It is a formal application that sets out the objectives, intended outcomes, and justification for the proposed changes, and also details the community consultation to be undertaken.

The NSW Environmental Planning and Assessment Act 1979 (EP&A Act) and Regulations set out the process for amending the planning provisions (heritage) relating to land in NSW. Changes to the planning provisions can only be made via a formal amendment to the Randwick LEP.

### **Gateway Determination**

If Council resolves to proceed with the subject Planning Proposal, it will be forwarded to the Minister for Planning for a 'Gateway Determination'. The 'Gateway Determination' is essentially a checkpoint for planning proposals, and enables those proposals that are not well founded, or not in the public interest to be stopped early in the process, before significant resources are committed in carrying out technical studies or investigations.

The Minister's 'Gateway Determination' will stipulate whether the subject Planning Proposal should proceed, whether it needs to be resubmitted, the timeframe for its completion, the community consultation requirements and State/Commonwealth agency requirements and whether a public hearing is needed.

### **Exhibition and Making of Amendments**

Following the 'Gateway Determination', the Planning Proposal will be formally placed on public exhibition for comment. The final LEP and accompanying maps which amend the Council's principal planning instrument (i.e. the RLEP 2012) are notified on the NSW legislation web site in accordance with the EP&A Act. Certain LEPs which are of local significance can be finalised by Council via delegation from the Minister (this is determined at the Gateway stage).

### **Site description and context**

The properties that are the subject of the planning proposal are located on the southern side of Berwick Street, Coogee (Figure 1). The street addresses are No 1 and No 3 Berwick Street, Coogee, and are respectively described as Lot A and Lot B in Deposited Plan 313214.

The two sites are located side-by-side and comprise the following:

- **1 Berwick Street:** a corner lot with frontage to Berwick Street on the northern boundary and Mount Street on the western boundary. Existing on-site is a predominantly two-storey attached dual occupancy with a dwelling on each level and presents as an Interwar Art Deco residential building.
- **3 Berwick Street:** a north-facing lot with frontage to Berwick Street boundary. Existing on-site is an Interwar bungalow.

Adjoining No. 3 Berwick Street to the east is a single storey, face brick inter-war bungalow dwelling at No. 5 Berwick Street. This property is proposed to be listed as a local heritage item in the Randwick Comprehensive Planning Proposal. The Statement of Significance for the Item in the Randwick Heritage Study - Draft Heritage Items is as follows:

*"5 Berwick Street is of local heritage significance as evidence of the re-subdivision of large landholdings, and subsequent suburban development of Randwick in the first half of the twentieth century and following the construction of a tram line. The house is a highly intact example of an Inter-war bungalow within the area featuring face brick walls, prominent gables supported on brick columns, half-timbered gable details, recessed verandah and entrance. It was constructed for John Thomas Donnison in 1925, a prominent hotel-owner and the first president of the Federal United Licenced Victuallers' Association. The house remained in the ownership of the Donnison family until 1972".*

To the south of the sites is 109 Mount Street. This property is an irregular shaped allotment that abuts the rear of 1, 3 and 5 Berwick Street. Existing on this property is a two-storey residential flat building comprising four dwellings with the building located to the south of 1 and 3 Berwick Street.

Both sites are bounded by Berwick Street to the north and Mount Street to the west with a mix of residential development types beyond these two sites including dwelling houses and residential flat buildings.



Image 1: Aerial photograph of the subject properties (Nos. 1 and 3 Berwick Street, Coogee) outlined in red.

(Source: RCC Interactive Mapping)

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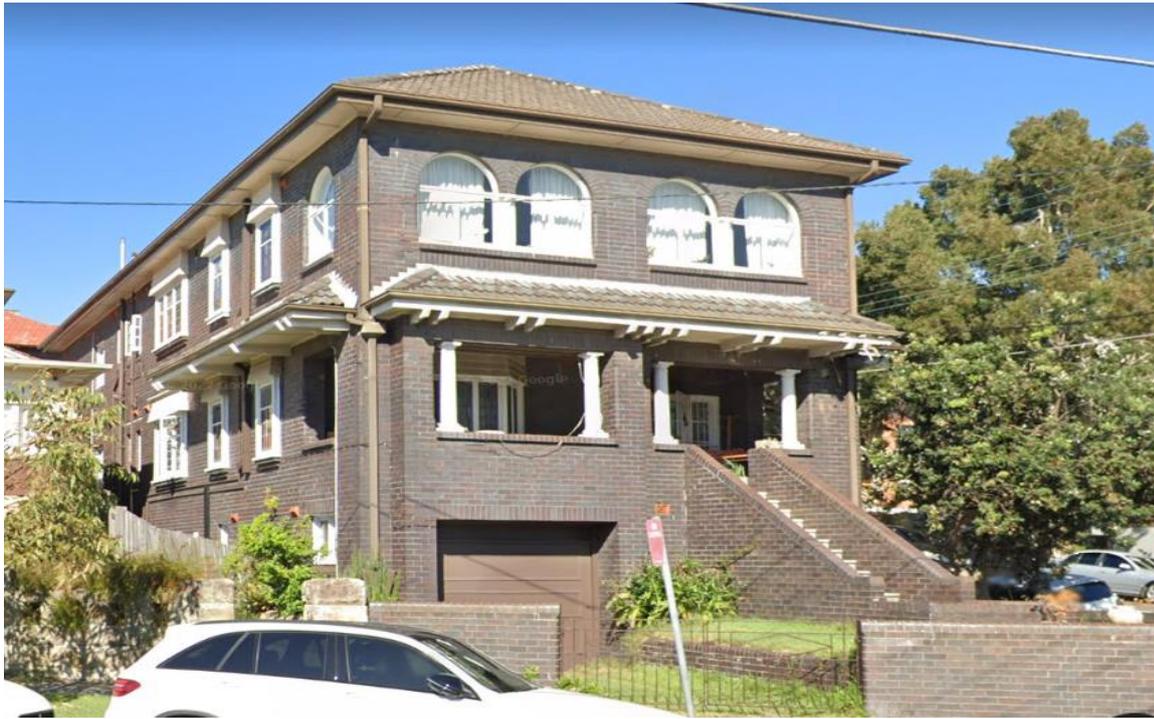


Image 2: General view of the main façade of 1 Berwick Street, Coogee, looking southward (Source: Extent Heritage)

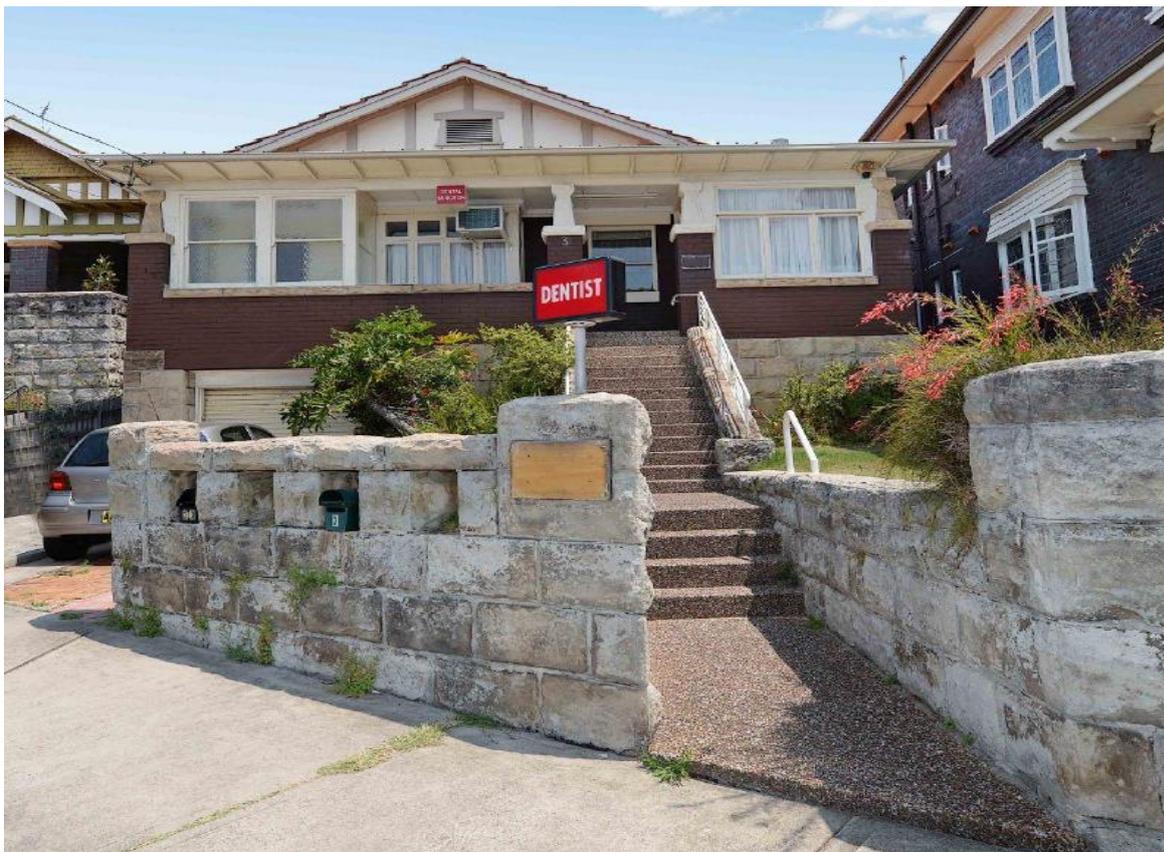


Image 3: General view of the main façade of 3 Berwick Street, Coogee, looking southward (Source: City Plan Heritage)



Image 3: Streetscape view of 1 Berwick Street (right), 3 Berwick Street (centre) and 5 Berwick Street (left) (Source: Sutherland Associates Planning)

The surrounding context is characterised by a variety of lot and building sizes, featuring a mix of Federation and Inter-War buildings comprising single and multi-dwelling residences, and some contemporary infill development fronting Berwick Street and further north-east along Carr Street. To the north-west of the site at No.21 Carr Street, is a late Victorian house listed as a heritage item (I75). Further to the north-west at No.15 Carr Street is a Federation house also listed as a heritage item (I74).

### Local Planning Framework

#### ***Randwick Local Environmental Plan 2012***

The two properties at Nos. 1 and 3 Berwick Street are proposed as items of local heritage significance under Schedule 5 of the Randwick LEP 2012. The properties are currently zoned R3 Medium Density Residential under RLEP 2012 with a maximum height limit of 12 metres and FSR of 0.9:1.

The existing zoning and development standards currently applying to the sites are not proposed to change as a result of the Planning Proposal.

### The Planning Proposal

The Planning Proposal will be prepared for submission to the DPE seeking the Gateway Determination. The purpose of the Planning Proposal is to amend the RLEP 2012 Schedule 5 Part 1 – Heritage Items and associated maps to include Nos. 1 and 3 Berwick Street, Coogee as heritage items.

Inclusion of these items in the schedule is pursuant to Clause 5.10 – Heritage Conservation of the Randwick LEP which sets out the objectives and requirements to be considered as part of development assessment.

### Strategic alignment

The relationship with our 2022-26 Delivery Program is as follows:

**Delivering services and regulatory functions:**

Service area	Strategic Planning
Function	Implementation of land use and development controls
Delivery program commitment	Utilise land use and building controls to assess and provide advice on proposed developments and provide property information.

**Resourcing Strategy implications**

The costs associated with preparation of the Planning Proposal including heritage assessment is accommodated within Council’s operational budget.

**Policy and legislative requirements**

Heritage Conservation section 5.10 of the *Randwick Local Environment Plan 2012*, and State and National registers, have been considered in the preparation of the Planning Proposal and addressed by City Plan Heritage consultants in the various underlying studies supporting the IHO and Planning Proposal.

The relevant planning priorities and actions of the Randwick Local Strategic Planning Statement (LSPS) and the Housing Strategy in relation to this work are contained in the Tables 1 and 2 below:

**Table 1: Relationship to the LSPS**

LSPS action	LEP update
<b>4.1 Undertake a Heritage Study of Randwick City to identify additional heritage items and HCAs including boundary adjustments where necessary.</b>	Consistent <ul style="list-style-type: none"> <li>A standalone Planning Proposal is being prepared to list 1 and 3 Berwick Street under Schedule 5 of the Randwick LEP consistent with heritage advice received by Council.</li> </ul>

**Table 2: Relationship to the Housing Strategy**

Housing Strategy action	LEP update
<b>5.4 Undertake a Heritage review of Randwick City to identify additional heritage items and HCAs including boundary adjustments where necessary.</b>	Consistent <ul style="list-style-type: none"> <li>A standalone Planning Proposal to list 1 and 3 Berwick Street under Schedule 5 of the Randwick LEP consistent with heritage advice received by Council.</li> </ul>

**S.9.1 Policy and legislative requirements**

The Planning Proposal is consistent with the following Ministerial Directions:

- Implementation of Regional Plans (Direction 1.1)

- Heritage Conservation (Direction 3.2)
- Residential zone (Direction 6.1)

Direction	Comment
<p><b>1. Focus area 1: Planning Systems</b></p>	
<p><b>1.1. Implementation of Regional Plans</b></p>	<p>Consistent.</p> <p>The Planning Proposal is in accordance with the following state plans issued by the Greater Sydney Commission:</p> <ul style="list-style-type: none"> <li>a) Greater Sydney Region Plan - A Metropolis of Three Cities</li> <li>b) Eastern City District Plan</li> </ul> <p>The Planning Proposal is consistent with the aims and objectives of these publications because it is consistent with Priority E6 Objective 13 <i>Environmental heritage is identified, conserved and enhanced.</i></p> <p>The Planning Proposal is consistent with the aims and objectives of these publications for the following reasons:</p> <ul style="list-style-type: none"> <li>a) It implements the findings of the independent heritage assessment which indicates that the properties meet at least two (2) (for 1 Berwick Street) and five (5) (for 3 Berwick Street) of the criteria for heritage significance</li> <li>b) The proposed heritage listing of the properties will ensure the sites will continue to contribute to the heritage streetscape of Berwick Street.</li> <li>c) It supports conservation of an existing Interwar residential buildings consistent with the values of residents within the community.</li> </ul>
<p><b>1.2. Development of Aboriginal Land Council land</b></p>	<p>N/A</p>
<p><b>1.3. Approval and referral requirements</b></p>	<p>N/A</p>

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Direction	Comment
1.4. Site specific provisions	N/A
<b>Focus area 1: Planning Systems – Place based</b>	
1.5. Parramatta Road Corridor Urban Transformation Strategy	N/A
1.6. Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	N/A
1.7. Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	N/A
1.8. Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	N/A
1.9. Implementation of Glenfield to Macarthur Urban Renewal Corridor	N/A
1.10. Implementation of Western Sydney Aerotropolis Plan	N/A
1.11. Implementation of Bayside West Precincts 2036 Plan	N/A
1.12. Implementation of Planning Principles for the Cooks Cove Precinct	N/A
1.13. Implementation of St Leonards and Cros Nest 2036 Plan	N/A
1.14. Implementation of Greater Macarthur 2040	N/A
1.15. Implementation of Pyrmont Peninsula Place Strategy	N/A
1.16. North West Rail Link Corridor Strategy	N/A
1.17. Implementation of the Bays West Place Strategy	N/A
<b>2. Focus Area 2: Design and Place</b>	N/A
<b>3. Focus Area 3: Biodiversity and Conservation</b>	
3.1. Conservation Zones	N/A
3.2. Heritage Conservation	Consistent. The Planning Proposal explains and justifies the conservation of the buildings.
3.3. Sydney Drinking Water Catchments	N/A
3.4. Recreation Vehicle Areas	N/A
<b>4. Focus area 4: Resilience and Hazards</b>	
4.1. Flooding	N/A

Direction	Comment
4.2. Coastal Management	N/A
4.3. Planning for Bushfire Protection	N/A
4.4. Remediation of Contaminated Land	N/A
4.5. Acid Sulfate Soils	N/A
4.6. Mine Subsidence and Unstable Land	N/A
5. Focus Area 5: Transport and Infrastructure	
5.1. Integrating Land Use and Transport	N/A
5.2. Reserving Land for Public Purposes	N/A
5.3. Development Near Regulated Airports and Defence Airfields	N/A
5.4. Shooting Ranges	N/A
6. Focus area 6: Housing	
6.1. Residential Zones	<p>Consistent.</p> <p>This Direction is applicable as the Planning Proposal affects land in residential zones. The Planning Proposal is consistent as it maintains the residential use of the properties whilst protecting their conservation as heritage items.</p>
6.2. Caravan Parks and Manufactured Home Estates	N/A
7. Focus Area 7: Industry and Employment	
7.1. Business and Industrial Uses	N/A
7.2. Reduction in non-hosted short-term rental accommodation period	N/A
7.3. Commercial and Retail Development along the Pacific Highway, North Coast	N/A
8. Focus area 8: Resources and Energy	
8.1. Mining, Petroleum Production and Extractive Industries	N/A
9. Focus area 9: Primary Production	
9.1. Rural Zones	N/A
9.2. Rural Lands	N/A
9.3. Oyster Aquaculture	N/A
9.4. Farmland of State and Regional Significance on the NSW Far North Cast	N/A

**Conclusion**

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The Planning Proposal seeks to amend Schedule 5 of the RLEP 2012 to recognise Nos. 1 and 3 Berwick Street, Coogee, as local heritage items. The preparation of the Planning Proposal should be supported on the following basis:

- The assessment of the heritage significance of:
  - 1 Berwick Street, Coogee, reviewed by City Plan Heritage, demonstrates that the property and site meets the NSW Heritage Council's criteria for historic, historical association and aesthetic significance and, hence, worthy as an item of local heritage significance.
  - 3 Berwick Street, Coogee, prepared by City Plan Heritage demonstrates that it meets the NSW Heritage Council's criteria for historic, historical association, aesthetic, rarity and representative significance and, hence, worthy as an item of local heritage significance.
- The planning proposal is consistent with several key strategic directions on heritage conservation articulated in the state and local strategic planning framework including:
  - Eastern City District Plan Planning Priority E6 – Creating and renewing great places and local centres, and respecting the District's heritage
  - Randwick Local Environment Plan 2012 Clause 5.10 – Heritage Conservation objectives and controls which aim to conserve the environmental heritage of Randwick
  - Randwick Community Strategic Plan 2022-32
  - Randwick Local Strategic Planning Strategy
  - Randwick Housing Strategy
  - Ministerial Directions which require that Planning Proposals contain provisions to facilitate the conservation of heritage
- The proposed new heritage items will have positive social effects for the local community through the retention and conservation of buildings with historical value and which represent the historical development of the area.

In view of the above, and considering the advice of the Randwick Local Planning Panel supporting the draft Planning Proposal, it is recommended that:

- the proposed Planning Proposal to include Nos. 1 and 3 Berwick Street, Coogee, within the heritage schedule (Schedule 5, Part 1) of the Randwick LEP be supported for submission to the Department of Planning and Environment requesting a Gateway Determination;
- the Planning Proposal be placed on public exhibition following receipt of the Gateway Determination.

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**Responsible officer:** David Ongkili, Coordinator Strategic Planning

**File Reference:** RZ/2/2022



City Plan Heritage P/L  
ABN 46 103 185 413

CP78/22

13 October 2022

**David Ongkili**  
Coordinator Strategic Planning  
Randwick City Council  
Administration Building & Customer Service Centre  
30 Frances Street  
RANDWICK NSW 2031  
[David.Ongkili@randwick.nsw.gov.au](mailto:David.Ongkili@randwick.nsw.gov.au)

Dear David,

**FEE PROPOSAL – HERITAGE CONSULTANCY SERVICES  
HERITAGE ASSESSMENT & ADVICE - 3 BERWICK STREET, COOGEE**

I am writing in relation to the preliminary assessment of heritage significance of the property at 3 Berwick Street in Coogee undertaken by City Plan Heritage (CPH) at the request of the Randwick City Council. We have consulted the following documentation, in particular, to inform the assessment of the likely heritage values of the subject property in addition to our knowledge of the Randwick City's environmental heritage through our ongoing heritage referral assistance to the Council since 2013.

- Urbis (2020) Heritage Impact Statement – 3 and 5 Berwick Street, Coogee
- Maurice Patrick Cunningham (2021) Consideration for Heritage listing No 1 Berwick Street, Coogee, NSW 2034 submission to Extent Heritage Pty Ltd (2021)
- Various real estate websites and heritage documentation included in the City Plan Heritage peer review of the Extent Heritage Pty Ltd heritage review study

**Background**

It is understood that the Council has received a Development Application (DA/432/2022) for the demolition of the existing building at 3 Berwick Street, Coogee, and for Torrens Title subdivision of the site into two (2) allotments and construction of two (2) semi-detached dwellings, one on each allotment. The subject site is not listed as a heritage item nor is it located within a heritage conservation area (HCA) under the Randwick Local Environmental Plan (LEP) 2012. Notwithstanding this, concern has been raised by residents in the locality that the subject property has heritage values that should be protected.

At the Council meeting on 27 September 2022, Council resolved as follows in relation to the subject site:

*RESOLVED: (Olive/Neilson) that Item UB49/22 (Preliminary heritage assessment of the building at Berwick Street, Coogee) be considered as urgent business.*

- a. *Council officers urgently undertake a preliminary heritage assessment of the building at 3 Berwick Street, Coogee to determine if it is likely to be found, on further inquiry and investigation, to be of local heritage significance;*
- b. *It is noted 1, 3 and 5 Berwick Street form a cluster of interwar building; and*
- c. *If the preliminary heritage assessment is suggestive of 3 Berwick Street having local heritage significance, then an interim heritage order be placed on the property so its heritage values can be fully assessed.*

It is further noted that the Council is in receipt of a Complying Development Certificate (CDC) application for the demolition of the subject building.

The Randwick City Council conducted a comprehensive review of the Randwick LEP 2012 around mid-2021 in order to implement the Randwick Local Strategic Planning Statement (Vision 2040) (LSPS) and

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give effect to the Eastern City District Plan. The review included a range of topics including housing and population growth, diversity, economic development and environment, that will form the basis of a comprehensive Planning Proposal (PP) to amend the Randwick LEP 2012.

City Plan Heritage assisted Randwick City Council in proposing the heritage listings accompanied by Heritage Inventory Sheets. After the completion of the study, Randwick City Council exhibited the accompanying Heritage Inventory Sheets in the form of Heritage Planning Proposal. As part of our peer review of the recommended potential heritage listings by Extent Heritage, it was concluded that the adjoining property at 5 Berwick Street is of local heritage significance and be listed as a heritage item in Schedule 5 of the Randwick LEP 2012. Subsequently, the Council has resolved its listing as heritage item under Part 1 of Schedule 5 of the Randwick LEP 2012 as part of the Comprehensive Planning Proposal now with the Department of Planning & Environment for finalisation. It is also noted that Council has resolved to list number 1 Berwick Street in Schedule 5 as part of a future Planning Proposal.

### Methodology

City Plan Heritage provides independent expert multi-discipline heritage consultancy services in accordance with the heritage management guidelines outlined in *The Burra Charter: Australia ICOMOS Charter for Places of Cultural Significance, 2013* (The Burra Charter) and relevant publications and guidelines produced by the Heritage NSW of the Community Engagement - Department of Premier and Cabinet (formerly NSW Office of Environment & Heritage). The heritage assessment of the subject site has been undertaken in accordance with NSW Heritage Manual 'Assessing Heritage Significance' guidelines. The philosophy and process adopted is that guided by the Australia ICOMOS Burra Charter 2013.

Inspection of 3 Berwick Street was undertaken by me on 22 September 2021 from the public domain as part of the peer review of the Extent Heritage potential heritage items, which included the adjoining building at 5 Berwick Street. Internal images of the subject building has been sourced from the above mentioned Urbis report in order to ascertain the integrity of the fabric of the building.

### Assessment of Heritage Significance

A detailed assessment of heritage significance of the property at 3 Berwick Street, Coogee, has been provided in the State Heritage Inventory form included in the Appendix to this covering heritage assessment and advice letter. Based on the documentary and physical evidence, it is concluded that the subject building at 3 Berwick Street is of local heritage significance and meets the threshold for individual heritage listing under Criteria (a), (b), (c), (f) and (g) of the Assessing Heritage Significance as defined in the Statement of Significance as quoted below (refer to the full assessment criteria in the attached SHI form):

*3 Berwick Street, Coogee, is of local heritage significance as evidence of the re-subdivision of large landholdings and subsequent suburban development of Randwick in the first half of the twentieth century and following the construction of a tram line. The house is a highly intact example of an Inter-war bungalow within the area featuring face brick walls, a prominent gable with half-timber detailing supported on brick and sandstone columns, a recessed verandah and entrance, and single hung timber windows with Venetian glass.*

*It was constructed for Victor Emmanuel Pugliese of Ulan (Dentist) in 1924, the first registered Dentist in the village of Coogee. The house remained in the ownership of Victor's family until 1949, soon after Victor's death in April 1948. The residence is representative of Coogee's first purpose-built registered dental surgery from 1924 with dental surgery and residence, which has been continuously used most of its 96 years of history.*

*The Inter-War bungalows with intact architectural characteristics of the style are now unusual and seldom found in the area and are now "rare" items in Coogee. The house is a highly intact example of an Inter-War bungalow, including examples of interior fixtures and finishes dating from its construction in c1924.*

It is also worth noting that at the time of my inspection of 5 Berwick Street, it was apparent that the three properties at 1, 3 and 5 Berwick Street have had a common historical development and collectively were



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making significant contribution in understanding of the streetscape and built heritage of Coogee in the inter-war period. However, the brief for the peer review of Extent Heritage study was limited to the already nominated potential heritage items, and therefore, the subject property was not further assessed by City Plan Heritage. Notwithstanding, the likely heritage values of the subject three properties were verbally advised to the Council.

#### Conclusion and recommendations

It is concluded by City Plan Heritage that the inter-war bungalow at 3 Berwick Street in Coogee is of local heritage significance and meets the significance assessment criteria for listing as a heritage item under Part 1 (Heritage items) of Schedule 5 of Randwick LEP 2012.

It is further noted that although each property at 1, 3 and 5 Berwick Street in Coogee meets the threshold for heritage listing individually, their collective interwar heritage values make stronger contribution and add to the environmental heritage of Randwick LGA and therefore they should be listed as a group heritage item to maintain their integrity and appreciation. It is recommended that the Council considers extension of the heritage listing for number 5 Berwick Street to a group listing in a future planning proposal to include properties at 1 and 3 Berwick Street.

I trust the above brief conclusion assessment covering letter and advice based on the detailed significance assessment of the subject property in the attached SHI form will assist the Council in its decision on the heritage values and protection measures for the property.

Should you have any questions or require further information please do not hesitate to contact me at [kerimed@cityplan.com.au](mailto:kerimed@cityplan.com.au)

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Kerime Danis'.

**Kerime Danis**  
Director - Heritage

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# APPENDIX A:

## State Heritage Inventory Form

## *Heritage Data Form*

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ITEM DETAILS						
<b>Name of Item</b>	Inter-War Bungalow					
<b>Other Name/s Former Name/s</b>	"Roma"					
<b>Item type (if known)</b>	Built					
<b>Item group (if known)</b>	Residential buildings (Private)					
<b>Item category (if known)</b>	House					
<b>Area, Group, or Collection Name</b>						
<b>Street number</b>	3					
<b>Street name</b>	Berwick Street					
<b>Suburb/town</b>	Coogee	<b>Postcode</b>	2034			
<b>Local Government Area/s</b>	Randwick					
<b>Property description</b>	Lot B DP 313214 (Parish of Alexandria, County of Cumberland)					
<b>Location - Lat/long</b>	<b>Latitude</b>	-33.922457		<b>Longitude</b>	151.251817	
<b>Location - AMG (if no street address)</b>	<b>Zone</b>		<b>Easting</b>	9692704.871	<b>Northing</b>	4417490.671
<b>Owner</b>	Private					
<b>Current use</b>	Residence					
<b>Former Use</b>	Residence					
<b>Statement of significance</b>	<p>3 Berwick Street, Coogee, is of local heritage significance as evidence of the re-subdivision of large landholdings and subsequent suburban development of Randwick in the first half of the twentieth century and following the construction of a tram line. The house is a highly intact example of an Inter-war bungalow within the area featuring face brick walls, a prominent gable with half-timber detailing supported on brick and sandstone columns, a recessed verandah and entrance, and single hung timber windows with Venetian glass.</p> <p>It was constructed for Victor Emmanuel Pugliese of Ulan (Dentist) in 1924, the first registered Dentist in the village of Coogee. The house remained in the ownership of Victor's family until 1949, soon after Victor's death in April 1948. The residence is representative of Coogee's first purpose-built registered dental surgery from 1924 with dental surgery and residence, which has been continuously used most of its 96 years of history.</p> <p>The Inter-War bungalows with intact architectural characteristics of the style are now unusual and seldom found in the area and are now "rare" items in Coogee. The house is a highly intact example of an Inter-War bungalow, including examples of interior fixtures and finishes dating from its construction in c1924.</p>					
<b>Level of Significance</b>	State <input type="checkbox"/>		Local <input checked="" type="checkbox"/>			

## *Heritage Data Form*

DESCRIPTION						
<b>Designer</b>	Unknown					
<b>Builder/ maker</b>	Unknown					
<b>Physical Description</b>	<p>The subject Inter-War Bungalow at 3 Berwick Street, Coogee, is a single-storey asymmetrical dwelling with a combination of facebrick and stone façade. The residence has a hipped roof clad in terracotta Marseilles tiling, with a prominent gable facing Berwick Street. The front gable has half-timber detailing with a traditional louvred decorative timber air-vent at the centre. The bungalow has a partially enclosed front-facing verandah with a face brick balustrade and posts having stone tops. The front-facing verandah is accessible by a series of steps lead via a pedestrian walkway connected to the Berwick Street footpath.</p> <p>The residence has a series of traditional timber framed casement and contemporary windows with an entrance doorway along the west. The surgery window (at the east of the northern elevation) built into the stone pillars are original single hung timber windows with venetian glass. The front-facing verandah has an extended roof/sunshade with timber rafters. The lower ground floor level is clad in sandstone with a rockface finish and has a contemporary garage door along the east of the northern façade.</p> <p>A small communal garden fronts the primary elevation to Berwick Street, with access from the street via a centrally located staircase and footpath. The residence is bound by a sandstone (rockface finish) boundary wall with a series of voids under the capping. Paling timber fence defines the site boundaries to the west and east.</p> <p>As seen in the previous heritage reports pertinent to the site the subject bungalow features a number of internal detailing from its original inter-war period including decorative plaster ceilings, timber door joinery and fireplace that provide clear evidence of the internal characteristics of a dwelling from that period.</p>					
<b>Physical condition and Archaeological potential</b>	Generally in good condition externally.					
<b>Construction years</b>	<b>Start year</b>	1924	<b>Finish year</b>	1924	<b>Circa</b>	<input type="checkbox"/>
<b>Modifications and dates</b>	1949 – Alterations and additions to dental surgery for J Dunworth 1975 – Alterations to dental surgery and residence for R Toll					
<b>Further comments</b>						

HISTORY	
<b>Historical notes</b>	<p>The site, located on Lot B in DP 313214, is part of the land originally granted to Alfred Raymond Jones two Crown Grants, both dated 16 December 1856, comprising part of Lot 2 shown in DP5026, and allotments 18 and 19 of Section 11 of the Town of Coogee. In the 1880s, the area was subdivided, with Thomas Edward Hall acquiring several parcels of land totalling 4a0r8½p between 1883 and 1893. Hall transferred part of his holdings to 'The Commissioner of Railways' on 19 October 1883 as a corridor for a tram line and the north-eastern allotment to Rosetta Evans on 3 January 1905, retaining an area of 2a3r 35p.</p> <p>In late 1904, Hall sold part of the land, comprising the northeast corner (part of Lots 12, 13 and 14). On 23 April 1907, Hall sold the remaining land (two acres, three roods and thirty-five perches) to Clarice Emily Florence Berwick of Enfield, who subdivided the land into 13 allotments, and in December 1907, the 'Berwick Estate' was offered for sale by Messrs HW Horning and Co. The Berwick Estate was advertised for auction sale as "the cream of this beautiful suburb, with marvellous and everlasting views of the ocean, situate at tram stop, Mount and Carr Streets". The Berwick Estate</p>

## *Heritage Data Form*

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	<p>was advertised again for auction sale on 3 April 1909 and was promoted especially to surfers and builders.</p> <p>Lots 1, 2 and 3 of the Berwick Estate were respectively sold to Ellen Margaret Mills, Leonard John Dew, and Archbishop Michael Kelly, Patrick Lewis Coonan and Peter Tread from the Catholic Church. In August 1923, Sarah Dixon of Gordon purchased part of Lots 1, 2 and 3, totalling 14½ perches. She subsequently subdivided and quickly sold the land at No 3, transferring title on 15 December 1923 to 'Victor Pugliese of Ulan Dentist'. Victor Emmanuel Pugliese built 3 Berwick Street and named it 'Roma' in memory of his Italian heritage. An application was made by Victor to the Municipality of Randwick on 11 February 1924 for approval of the erection of building plan number 118/24 with a building fee of £2.10 and built in the same year.</p> <p>Victor got married in 1906 to Theresea Jane Price Johnson/Stainton and had a daughter Florence Una Pugliese in 1907. Victor built 3 Berwick Street as a Dental Surgery, prominently next to the tram stop, with a residence for the family at the rear of the building, with a separate entrance accessed on the western side. The surgery stood prominently opposite the tram stop but also diagonally opposite the medical surgery at 21 Carr Street (Dr Thompson) and at 18 Carr Street (Dr Booth).</p> <p>Victor was the first registered Dentist in the village of Coogee, and probably 3 Berwick Street represents Coogee's first purpose-built dental surgery, and perhaps one of the few combined built 1920s dental surgery and residence in Coogee.</p> <p>In 1946 Victor leased the property to another Dentist, Francis David Dunsworth. After Victor's death in April 1948, his wife Theresa and daughter Florence sold 3 Berwick Street to Francis Dunsworth on 9 March 1949.</p> <p>Following are the property owners at 3 Berwick Street, commencing 1924:</p> <ul style="list-style-type: none"> <li>• Victor Pugliese (January 1924)</li> <li>• Therese Puglieses and Florence Una Nielson (by transmission) (March 1949)</li> <li>• Francis David Dunworth (March 1949)</li> <li>• Nancy Amelia Nelson (June 1954)</li> <li>• Mervyn Whitney Washington Armstrong (November 1959)</li> <li>• Ross Maxwell Toll (lease of premises being 2 surgeries, waiting room, work room and office at 3 Berwick Street) (April 1970)</li> <li>• Ritenka Pty Ltd (June 1974)</li> <li>• Bill and Helen Vakas (November 1987)</li> </ul>
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### THEMES

<i>National historical theme</i>	<i>State historical theme</i>	<i>Local historical themes</i>
Building settlements, towns and cities	Accommodation	Suburbanisation (Inter-war residential development)
Developing Australia's cultural life	Creative endeavour	Suburbanisation (Architectural styles in Randwick)
Developing local, regional and national economies	Health	Dental Surgery Clinic in Coogee

### APPLICATION OF CRITERIA

<b>Historical significance</b> SHR criteria (a)	The house demonstrates the suburbanisation of Coogee following the subdivision of the nineteenth-century estates in the area and the period of prosperity in the Municipality of Randwick following World War 1. 3 Berwick Street also represents Coogee's first purpose-built registered dental surgery from the 1920s with dental surgery and residence that have operated continually as a dental practice for the last 96 years and still functioning as one.
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## *Heritage Data Form*

<b>Historical association significance</b> SHR criteria (b)	3 Berwick Street was constructed for Victor Emmanuel Pugliese of Ulan (Dentist) in 1924, the first registered Dentist in the village of Coogee. The house remained in the ownership of Victor's family until 1949, soon after Victor's death in April 1948.
<b>Aesthetic significance</b> SHR criteria (c)	3 Berwick Street is a good example of an Inter-War bungalow in Randwick. The house exterior includes face brick and sandstone walls, a prominent gable with half-timber detailing supported on brick and sandstone columns, a recessed verandah and entrance, and single hung timber windows with Venetian glass.
<b>Social significance</b> SHR criteria (d)	The social significance of the site cannot be ascertained without undertaking community consultation. Notwithstanding, as an example of urban expansion during the Inter-War period, the site has some potential to provide a further sense of place and belonging to the local community. In addition, its long history of dentistry occupation for most of its 96 years history may have importance to the local community.
<b>Technical/Research significance</b> SHR criteria (e)	The residence contains examples of early twentieth century domestic brick and sandstone construction details.
<b>Rarity</b> SHR criteria (f)	The house is a highly intact example of an Inter-War bungalow, including examples of interior fixtures and finishes dating from its construction in c1924. The Inter-War bungalows are now unusual and seldom found in the area and are now "rare" items in Coogee.
<b>Representativeness</b> SHR criteria (g)	3 Berwick Street is representative of the Inter-war suburban residential development constructed in Randwick in the first half of the twentieth century. The residence is also representative of Coogee's first purpose-built registered dental surgery from 1924.
<b>Integrity</b>	The exterior of the building is highly intact, exhibiting building materials and details (including a prominent gable with timber detailing, brick and stone columns in front facing verandah, rockface sandstone cladding, and single hung timber windows with Venetian glass) dating from its initial construction in 1924.

### HERITAGE LISTINGS

<b>Heritage listing/s</b>	None known.
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### INFORMATION SOURCES

Include conservation and/or management plans and other heritage studies.

Type	Author/Client	Title	Year	Repository
Written	NSW Land Registry Services	Deposited Plan 5026		NSW Land Registry Services
Written	NSW Land Registry Services	Certificate of Title Vol. 3579 Fol. 121		NSW Land Registry Services
Written	NSW Land Registry Services	Certificate of Title Vol. 2081 Fol. 166		NSW Land Registry Services
Written	NSW Land Registry Services	Certificate of Title Vol. 2077 Fol. 229		NSW Land Registry Services
Written	NSW Land Registry Services	Certificate of Title Vol. 2087 Fol. 142		NSW Land Registry Services
Written	NSW Land Registry Services	Certificate of Title Vol. 3509 Fol. 128		NSW Land Registry Services

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Written	The Sydney Sun	'Advertising', p. 3.	15 December 1907	Trove
Written	Sunday Times	'Advertising', p. 3.	28 March 1909	Trove
Written	The Labor Daily	Mr JT Donnison - 6 April 1938, p.4	1938	State Library of NSW / Trove
Written	The Daily Telegraph	Death notice 'Donnison' - 6 April 1938, p.12	1938	State Library of NSW / Trove
Written	Real Estate		2019	<a href="https://www.realestate.com.au/sold/property-house-nsw-coogee-131078570">https://www.realestate.com.au/sold/property-house-nsw-coogee-131078570</a>
Written	Maurice Patrick Cunningham	Consideration for Heritage listing No 1 Berwick Street, Coogee, NSW 2034	2021	Extent Heritage Pty Ltd
Written	Fiona Binns, Bernice Phillips	Heritage Impact Statement – 3 and 5 Berwick Street, Coogee	25 May 2020	Urbis

### RECOMMENDATIONS

<b>Recommendations</b>	<ul style="list-style-type: none"> <li>- List as a heritage item on Part 1 (Heritage items) in Schedule 5 of Randwick LEP 2012.</li> <li>- Additions and internal alterations to the rear section of the house are acceptable, subject to consent authority approval of detailed documentation, and provided they do not detract from the street presentation of the existing Inter-war bungalow.</li> <li>- Inter-war architectural features, materials, sandstone detailing, gable and eaves details, are to be maintained, including timber framed windows with venetian glass, timber detailing over gables.</li> <li>- Retain interior finishes constructed in c1924 including decorative plaster ceilings and cornices, painted brick fireplace, doors and windows (including original hardware).</li> <li>- Landscaped area, including sandstone fence and gate, between street boundary and house is to be retained. Contemporary garage door can be removed or replaced.</li> <li>- A Heritage Impact Statement should be prepared for the building prior to any major works being undertaken.</li> <li>- Archival photographic recording, in accordance with Heritage Council guidelines, should be undertaken before major changes.</li> </ul>
------------------------	---

### SOURCE OF THIS INFORMATION

<b>Name of study or report</b>	Assessment of Heritage Significance – 3 Berwick Street, Coogee	<b>Year of study or report</b>	2022
<b>Item number in study or report</b>			
<b>Author of study or report</b>	City Plan Heritage		
<b>Inspected by</b>	Kerime Danis, City Plan Heritage		
<b>NSW Heritage Manual guidelines used?</b>	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	
<b>This form completed by</b>	City Plan Heritage	<b>Date</b>	October 2022

## Heritage Data Form

### IMAGES - 1 per page

Please supply images of each elevation, the interior and the setting.

<b>Image caption</b>	View of 3 Berwick Street, Coogee (right) and 5 Berwick Street, Coogee (left)				
<b>Image year</b>	2021	<b>Image by</b>	City Plan Heritage	<b>Image copyright holder</b>	Randwick City Council



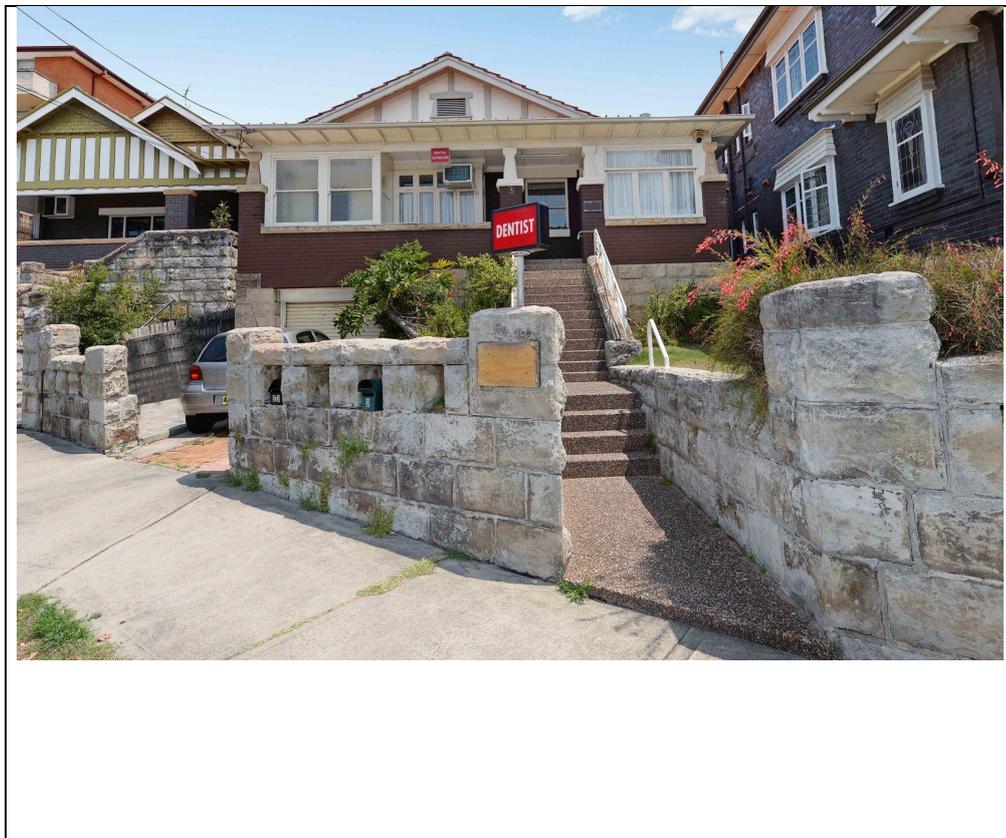
# Heritage Data Form

CP78/22

**IMAGES - 1 per page**

Please supply images of each elevation, the interior and the setting.

<b>Image caption</b>	View of 3 Berwick Street, Coogee <a href="https://www.domain.com.au/property-profile/3-berwick-street-coogee-nsw-2034">https://www.domain.com.au/property-profile/3-berwick-street-coogee-nsw-2034</a>				
<b>Image year</b>	2020	<b>Image by</b>	Domain	<b>Image copyright holder</b>	Domain



# Heritage Data Form

**IMAGES - 1 per page**

Please supply images of each elevation, the interior and the setting.

<b>Image caption</b>	Internal view of residence at 3 Berwick Street, Coogee with decorative ceiling and cornices <a href="https://www.domain.com.au/property-profile/3-berwick-street-coogee-nsw-2034">https://www.domain.com.au/property-profile/3-berwick-street-coogee-nsw-2034</a>				
<b>Image year</b>	2020	<b>Image by</b>	Domain	<b>Image copyright holder</b>	Domain



# Heritage Data Form

CP78/22

**IMAGES - 1 per page**

Please supply images of each elevation, the interior and the setting.

<b>Image caption</b>	View of living area at 3 Berwick Street, Coogee with decorative ceiling and cornices. <a href="https://www.domain.com.au/property-profile/3-berwick-street-coogee-nsw-2034">https://www.domain.com.au/property-profile/3-berwick-street-coogee-nsw-2034</a>				
<b>Image year</b>	2020	<b>Image by</b>	Domain	<b>Image copyright holder</b>	Domain

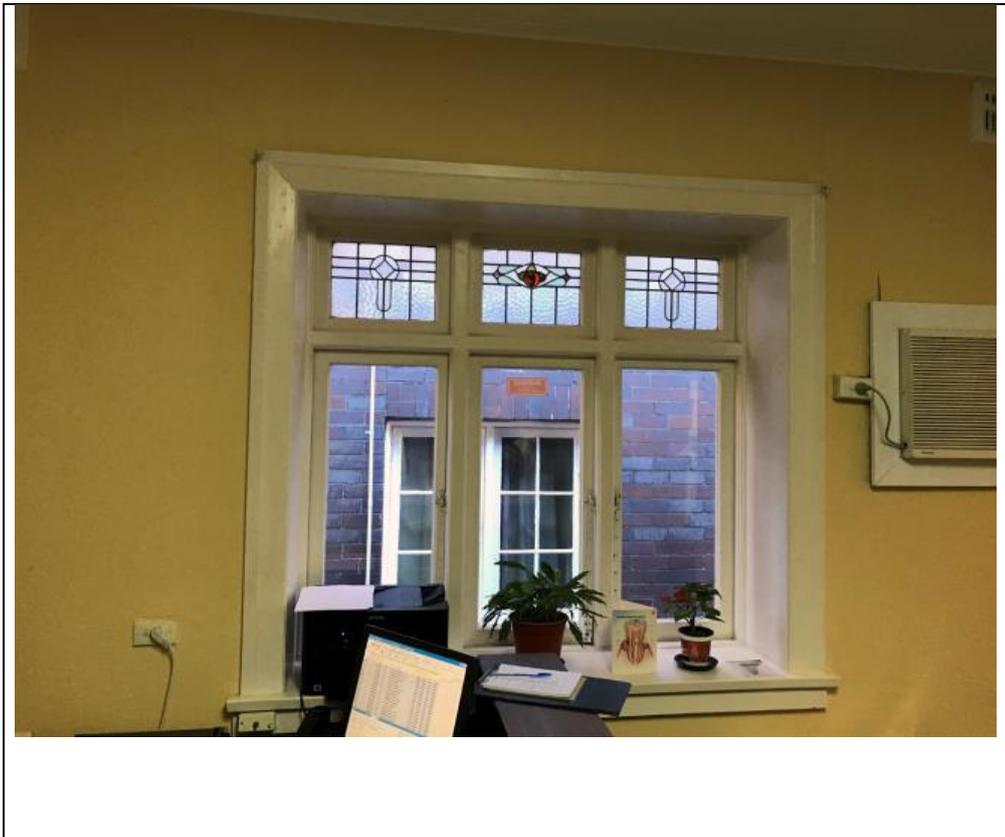


# Heritage Data Form

**IMAGES - 1 per page**

Please supply images of each elevation, the interior and the setting.

<b>Image caption</b>	Original casement and leadlight windows on the western façade.				
<b>Image year</b>	2020	<b>Image by</b>	Urbis	<b>Image copyright holder</b>	Urbis



# Heritage Data Form

CP78/22

**IMAGES - 1 per page**

Please supply images of each elevation, the interior and the setting.

<b>Image caption</b>	Decorative ceiling detail and cornices				
<b>Image year</b>	2020	<b>Image by</b>	Urbis	<b>Image copyright holder</b>	Urbis



# Heritage Data Form

**IMAGES - 1 per page**

Please supply images of each elevation, the interior and the setting.

<b>Image caption</b>	Aerial image showing the residential context of the subject site in c1943.				
<b>Image year</b>	1943	<b>Image by</b>	SIX Maps, NSW Government	<b>Image copyright holder</b>	SIX Maps, NSW Government



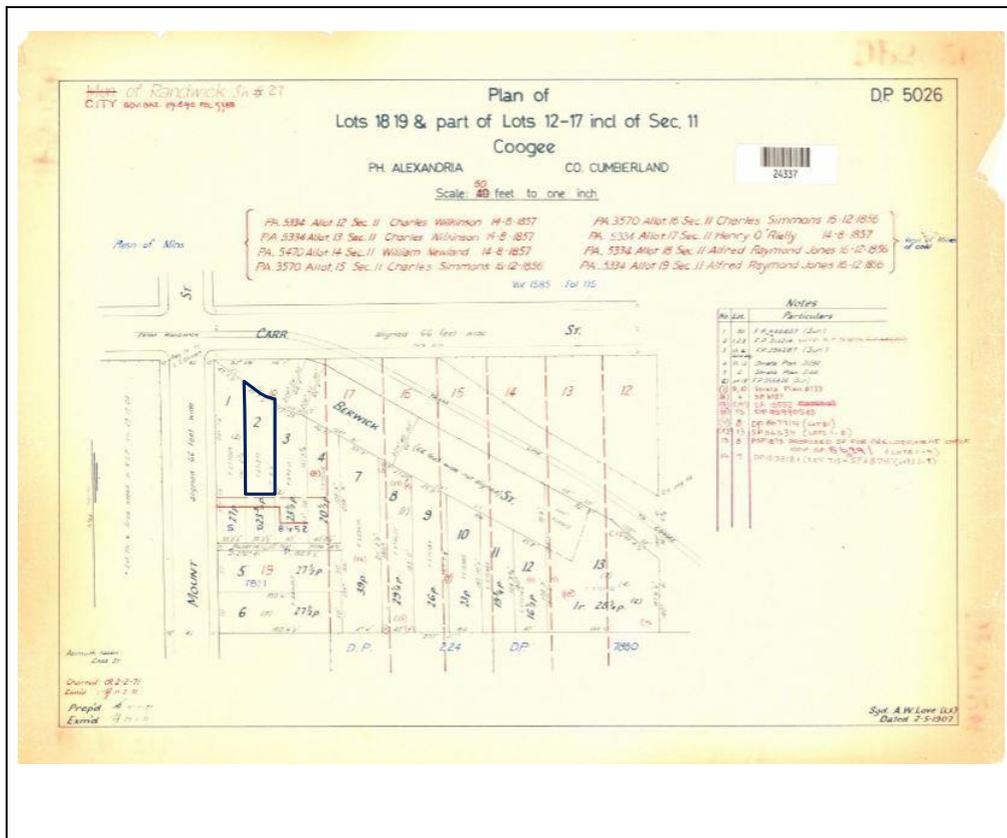
# Heritage Data Form

CP78/22

**IMAGES - 1 per page**

Please supply images of each elevation, the interior and the setting.

<b>Image caption</b>	Diagram showing the Berwick Estate re-subdivision. The subject site is outlined in blue.				
<b>Image year</b>	1907, annotated 1971	<b>Image by</b>	AW Love (1907)	<b>Image copyright holder</b>	NSW Land Registry Services

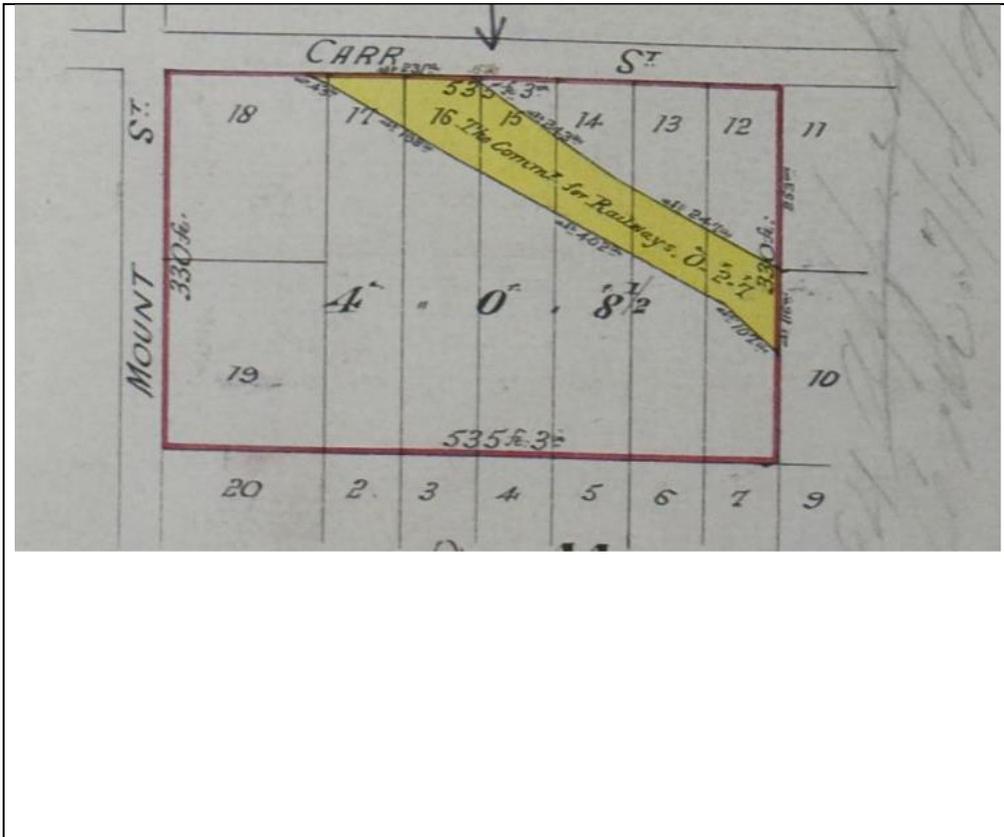


# Heritage Data Form

**IMAGES - 1 per page**

Please supply images of each elevation, the interior and the setting.

<b>Image caption</b>	Block plan accompanying Certificate of Title Vol 676 Fol 59, being the land consolidated on a single title by Edward Thomas Hall. The land, coloured yellow transferred to the Commissioner for Railways.				
<b>Image year</b>	n.d.	<b>Image by</b>	NSW and Registry Services	<b>Image copyright holder</b>	NSW and Registry Services



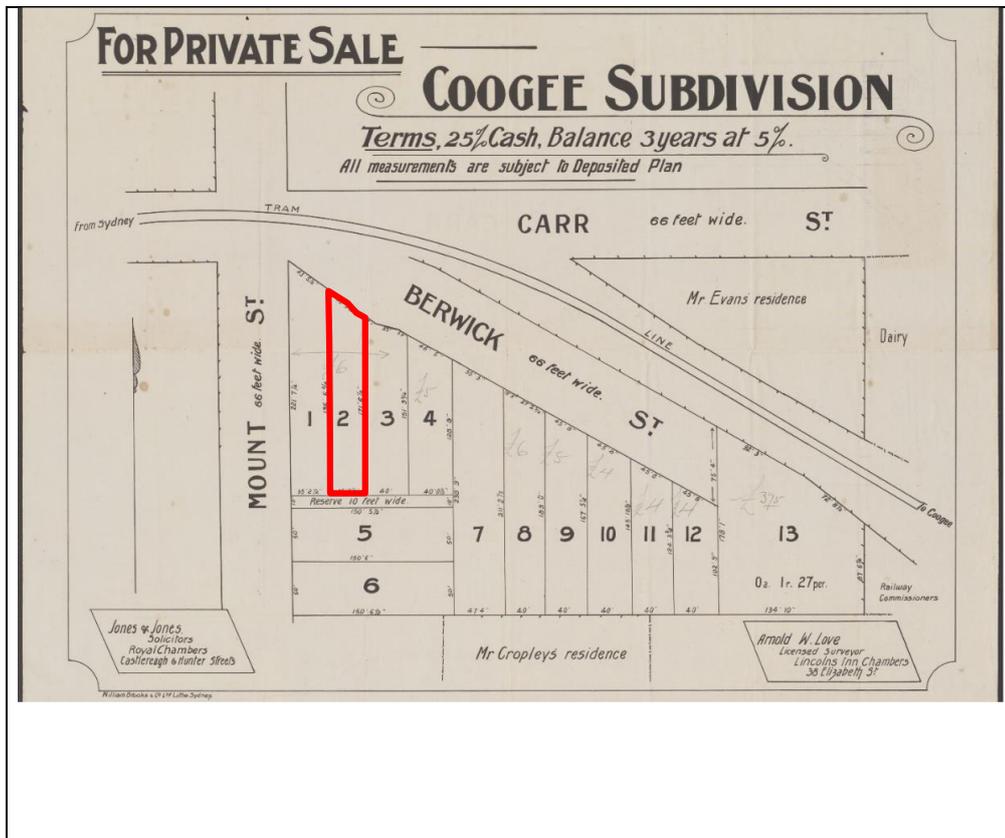
# Heritage Data Form

CP78/22

**IMAGES - 1 per page**

Please supply images of each elevation, the interior and the setting.

<b>Image caption</b>	Coogee Subdivision, otherwise known as Berwick Estate, c.1907. Approximate location of subject site indicated in red. nla.obj-230154371.jpg.				
<b>Image year</b>	c. 1907	<b>Image by</b>	National Library of Australia	<b>Image copyright holder</b>	National Library of Australia

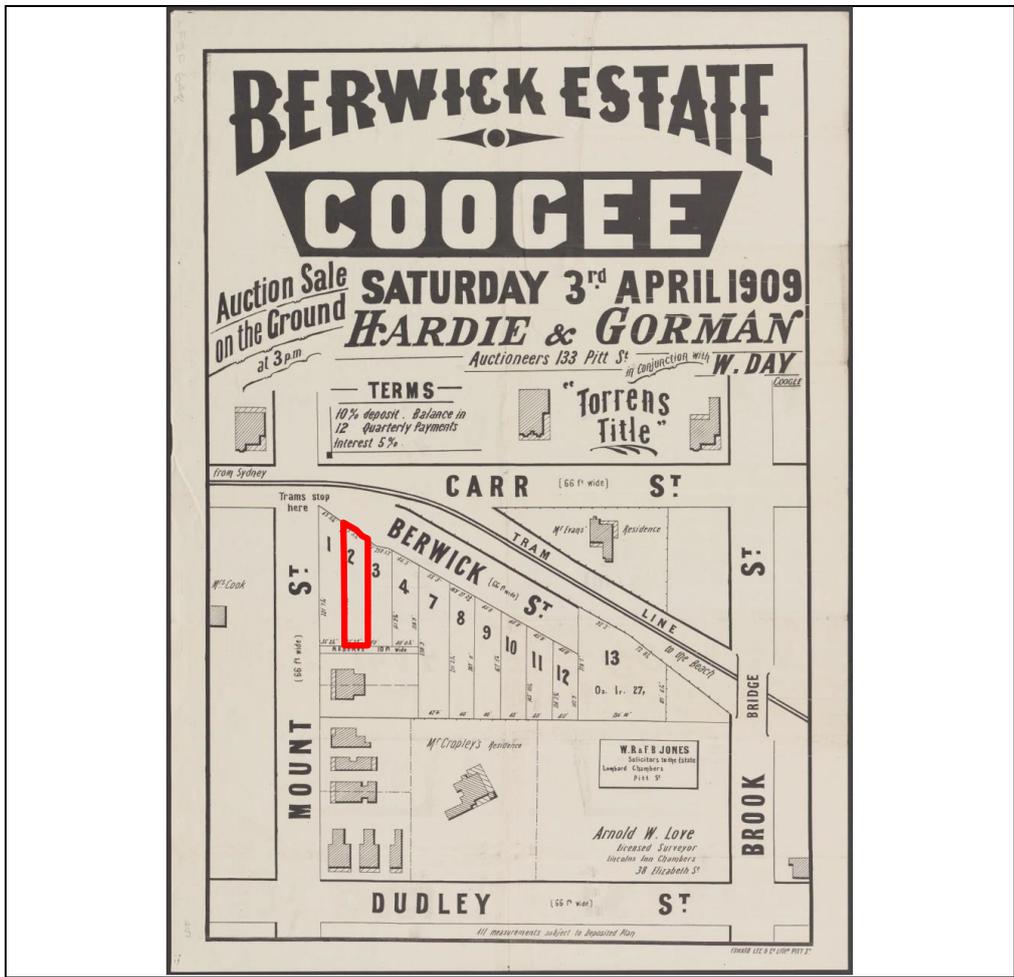


# Heritage Data Form

**IMAGES - 1 per page**

Please supply images of each elevation, the interior and the setting.

<b>Image caption</b>	Berwick Estate, 3 April 1909. Approximate location of subject site indicated in red. <a href="https://nla.gov.au:443/tarkine/nla.obj-230153789">https://nla.gov.au:443/tarkine/nla.obj-230153789</a> .				
<b>Image year</b>	1909	<b>Image by</b>	National Library of Australia	<b>Image copyright holder</b>	National Library of Australia





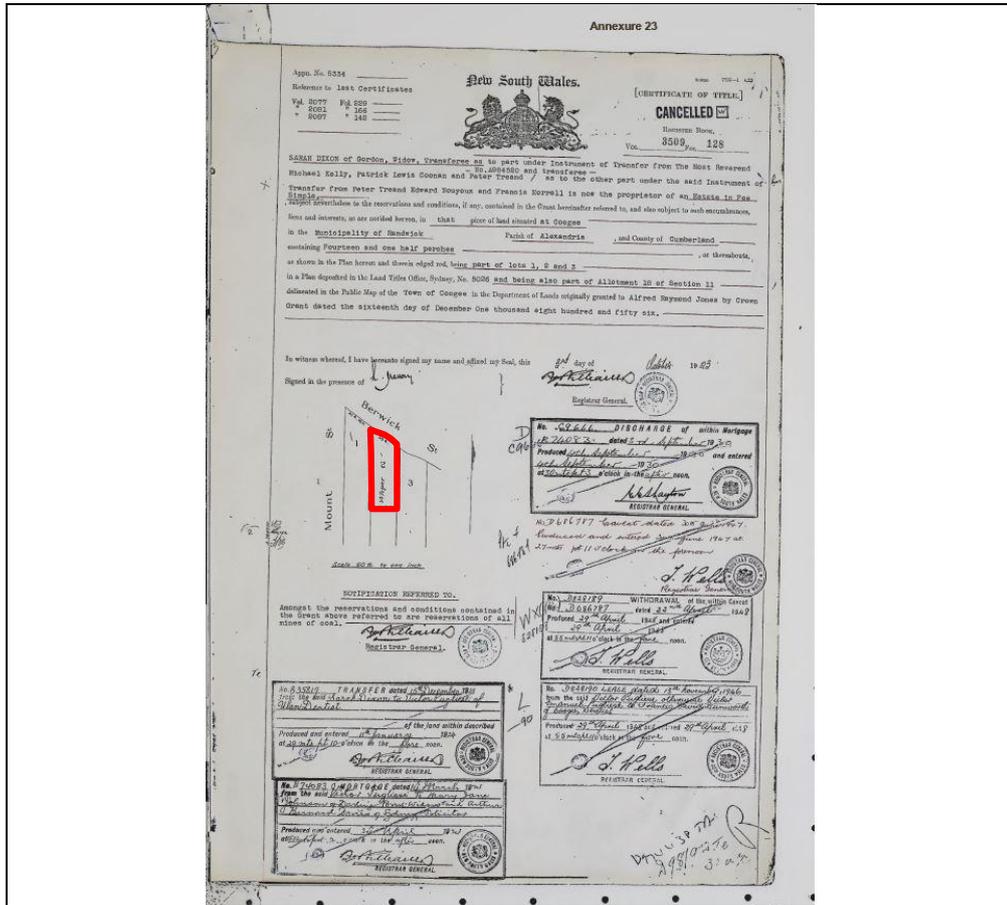
CP78/122

# Heritage Data Form

**IMAGES - 1 per page**

Please supply images of each elevation, the interior and the setting.

<b>Image caption</b>	Certificate of Title – Vol 3509 Fol 128. Approximate location of subject site indicated in red.				
<b>Image year</b>	1923	<b>Image by</b>	NSW Land Registry Services	<b>Image copyright holder</b>	NSW Land Registry Services



## FOR ACTION

RANDWICK LOCAL PLANNING PANEL (PUBLIC)

24/11/2022

TO: PA to Manager Development Assessment (Halcro, Andrea)

---

**Subject:** Planning Proposal - Nos. 1 and 3 Berwick Street, Coogee  
**Target Date:** 15/12/2022  
**Notes:**  
**Document No.:** D04770606  
**Report Type:** Report  
**Item Number:** GR14/22

---

**RESOLUTION:**

That the Randwick Local Planning Panel advises Council that it supports the inclusion of No. 1 Berwick Street (Lot A DP 313214) and 3 Berwick Street, Coogee, (Lot B DP 313214) within Schedule 5 - Part 1 – **Heritage Items** of the Randwick LEP 2012, for the purpose of proceeding to gateway, and if approved, subsequent community consultation.

**REASON:**

The Panel has visited or is familiar with the site, considered the submissions (oral and written) and reviewed the report prepared by Council officers that addresses the relevant matters detailed in the Environmental Planning and Assessment Act 1979, as amended.

The Panel supports the application proceeding to gateway for the reasons given in the assessment report. In doing so the Panel particularly notes and relies upon the most recent detailed heritage review undertaken by City Plan Heritage for Council.

**CARRIED UNANIMOUSLY.**[Open Item in Minutes](#)

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## Director City Planning Report No. CP79/22

**Subject: Public Notification of Voluntary Planning Agreement - 31- 41 Anzac Parade, Kensington (DA/672/2019)**

### Executive Summary

- A draft Voluntary Planning Agreement (VPA) has been prepared by Marsdens Law Group on behalf of Council to provide for, and secure, public benefits in connection with the Development Consent for DA/672/019 for the land at Nos. 31-41 Anzac Parade, Kensington.
- The draft VPA has been proposed by the Developer as per the provisions under Randwick Local Environment Plan 2012 and contains a monetary contribution of \$480,277.25 for the purposes of providing landscape upgrades including but not limited to Water Sensitive Urban Design (WSUD) works and also the dedication of two affordable housing dwellings and a residual affordable housing contribution amount of \$19,062.20.
- Relevant issues relating to the timing and adequacy of the VPA have been assessed and addressed in the preparation and review of the VPA.
- A letter of offer from the Developer was reported to the Council meeting on 28 September 2021 where Council resolved to accept the terms contained in the letter of offer subject to the Court granting approval to the development and the subsequent endorsement of a VPA.
- DA/679/2019 was approved by the Land & Environment Court on 29 March 2022.
- In accordance with Section 7.5(1) of the Environmental Planning and Assessment Act 1979, the draft VPA was placed on public exhibition for 28 days from 8 November to 5 December 2022.
- A total of 2 submissions were received in response to the public exhibition.
- This report advises Council of the outcome of the public exhibition prior to Council entering into the VPA and recommends that Council enter into the deed with the Developer.

### Recommendation

That Council:

- a) agree to enter into the Voluntary Planning Agreement in **Attachments 1** and **2** pursuant to Section 7.5 of the Environmental Planning and Assessment Act 1979; and
- b) authorise the General Manager to make minor drafting changes to the draft Voluntary Planning Agreement as required, prior to its execution.

### Attachment/s:

1.  Voluntary Planning Agreement with Annexures - Final version 7/11/2022
2.  Explanatory Note 31-41 Anzac Parade, Kensington - Final Version 7/11/2022

## Purpose

This report provides the outcome of the public exhibition of the draft Voluntary Planning Agreement (VPA) for the approved 9 storey mixed use development comprising retail premises at ground floor level and 57 dwellings on floors above, 2 levels of basement parking with a total of 71 car parking spaces including 1 car share space, 71 bicycle spaces and 13 motorcycle spaces, associated landscape and public domain works at Nos. 31-41 Anzac Parade, Kensington, pursuant to Section 7.5(1) of the Environmental Planning and Assessment Act 1979 (EP&A Act).

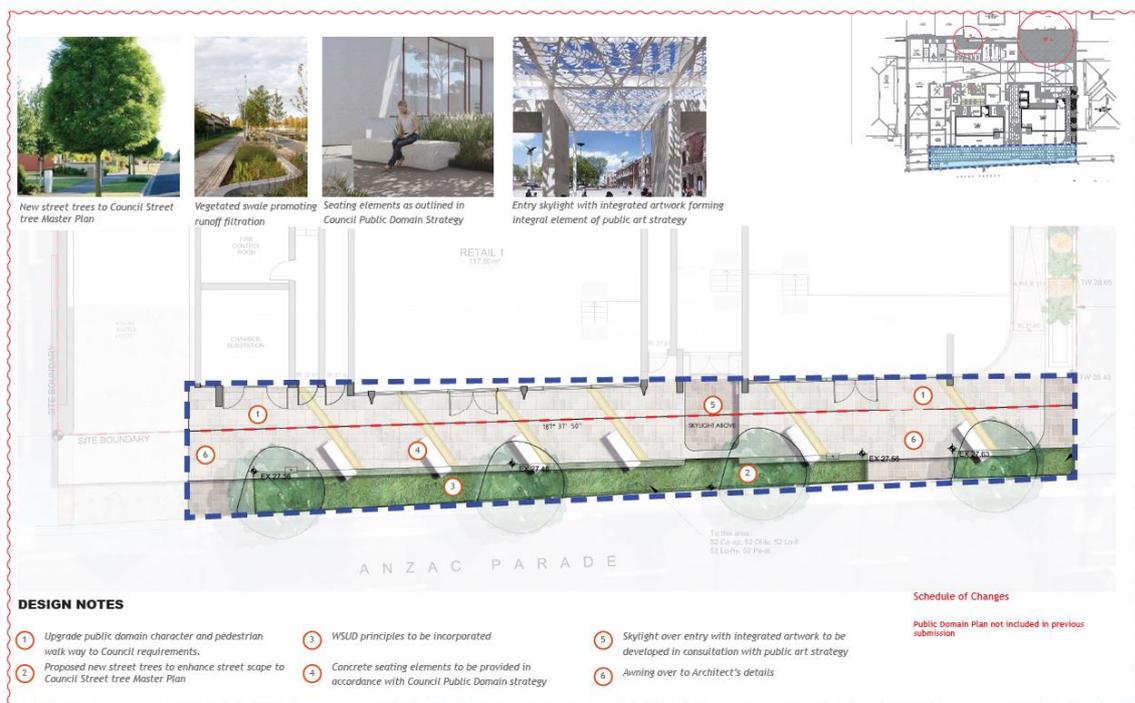
## Background

### Community Infrastructure Contributions Plan

Council's Community Infrastructure Plan (CIC) for the Kensington and Kingsford town centres provides for infrastructure, public domain and physical facilities that support the growth and function of the town centres and benefit the existing and new population as well as the wider Randwick population. The total value of the infrastructure that would be provided for in the two town centres is approximately \$37 million. It is important to note that the CIC contribution is only applicable to that part of the development over 7 storeys as that was the maximum height under the previous standard. The proposed development is up to 9 storey with 4 storey street wall fronting Anzac Parade.

The K2K strategy and its amending LEP was designed to allow additional height and density in the town centres and to capture that additional value through the CIC plan. The additional height and density were distributed across the town centres with the predominant height being 9 storeys and up to 17 & 18 storeys on the three key intersections. The CIC plan was a fundamental component of the overall strategy in that it allowed significant public benefits from the additional density.

The mechanism for delivery the Community Infrastructure items listed in this Plan is through a VPA. The contributions would be made towards the provision of landscape upgrades including Water Sensitive Urban Design (WSUD) works abutting Anzac Parade frontage (see **Figure 1**).



**Figure 1: Plan showing the proposed community infrastructure works Affordable Housing**

The Kensington and Kingsford Town Centres affordable housing plan aims to ensure that lower income households continue to live and work locally within Randwick LGA, to facilitate a socially diverse and inclusive community; and to support the economic functions of the Randwick Education and Health Strategic Centre.

### **Section 7.12 Development Contributions Plan: Kensington and Kingsford Town Centres**

This Plan applies to development on land that is subject to a development consent or a complying development certificate within the Kensington and Kingsford town centres. This Plan authorises Council to grant consent to development to which this Plan applies, subject to a condition requiring the applicant to pay a levy based on the proposed cost of carrying out the development (i.e. 2.5% levy for cost of development greater than \$250,000).

The total cost of development (as submitted) is \$20,785,000 and the applicable Section 7.12 contribution levy to be paid to Council prior to the issue of a construction certificate would be \$519,625.

## **Discussion**

### **Background**

A letter of offer provided by the Developer was reported to the Ordinary Council meeting on 28 September 2021, at which Council made the following resolution:

*(Matson/D'Souza) that Council agrees to the terms contained in the attached letter of offer subject to;*

- a) the Court granting approval to the development; and*
- b) the subsequent endorsement of a Voluntary Planning Agreement.*

On 29 March 2022, the Court granted development consent for the development at Nos. 31-41 Anzac Parade, Kensington. In particular, the approved development incorporates the following components that would result in positive contribution to the public benefits of the community and the long term vitality of Kensington town centre:

- Provision of footpath embellishments, widening, public realm works and landscape improvement works along Anzac Parade frontage.
- Dedication of affordable housing dwellings to Council.

The draft VPA contains the monetary contributions for both community infrastructure and affordable housing as required under Randwick Local Environmental Plan 2012. The monetary contribution amount of \$480,277.25 (being 1011.71sqm of floor space payable at a rate of \$475/sqm) for the community infrastructure would be provided through works-in-kind and by monetary contributions. In relation to the affordable housing contributions, two dwellings (i.e. 1 x one bedroom and 1 x two bedroom) will be dedicated to Council and a residual monetary contribution of \$19,062.20 to be paid to Council.

In addition to the VPA, the approved development is also subject to a total monetary contribution levy of \$519,625 as per the requirement pursuant to the Kensington and Kingsford Town Centre Section 7.12 Development Contribution Plan.

The total value of the contributions including the Section 7.12 contributions and affordable housing levy for the approved development is approximately \$1.01 million plus the dedication of two affordable housing dwellings.

## **Public Exhibition**

Section 7.5(1) of the EP&A Act requires that a planning agreement cannot be entered into, and a planning agreement cannot be amended or revoked, unless public notice has been given of the proposed agreement, amendment or revocation, and a copy of the proposed agreement, amendment or revocation has been available for inspection by the public for a period of not less than 28 days. Any public submission received must be considered before finalisation of the planning agreement.

The draft Voluntary Planning Agreement and the Explanatory Note for the Voluntary Planning Agreement was publicly notified in the Sydney Morning Herald and on Council's website on Your Say Randwick and Randwick eNews for 28 days, from 8 November to 5 December 2022. During this time the website had:

- 394 visits.
- 47 downloads of the VPA.
- 14 downloads of the Explanatory Note for VPA.

As a result of the public exhibition, a total of 2 submissions were received in relation to the draft VPA. A summary of the submissions is provided below:

No.	Issue	Comment
1	<p>The \$480,277.25 is not enough for any upgrade to the community. The development should be providing 1 free parking for each bedroom that they build in the development. Anzac Pde shops are inaccessible for regular people because the parking has been reduced on the main parade and Boronia Street is packed with its own residents.</p> <p>The developers should be providing space for more parking if they are given the go ahead. An additional contribution should be sought for the education infrastructure in the Kensington area because these developments will place more burden on our already stretched school.</p>	<p>The Community Infrastructure Contribution levy (i.e. \$480,277.25) is one of three development contributions schemes proposed by the Kensington and Kingsford town centres planning strategy to deliver a range of community benefit, local infrastructure and affordable rental housing. The approved development is also subject to the contributions required under Kensington and Kingsford Section 7.12 Development Contribution Plan and the Affordable Housing Plan.</p> <p>The approved development complies with the car parking requirements of the DCP and also includes 1 car share space within the development that will be accessible by public at all times.</p>
2	<p>What is missing is voluntary contribution to preventing climate change and urban heat island effects. This could be (not exclusively) by explicit commitment to using low-carbon materials and building life-cycle, reducing operational energy use, incorporating energy generation and rainwater harvesting in the design, providing facilities for air-drying laundry, passive ventilation, sun-reflective building envelope, etc. I note that large-scale new developments in the area seldom seriously consider their carbon and broader long-term environmental footprint. Randwick</p>	<p>The VPA is limited to the provisions of contributions as per Council's CIC and Affordable Housing Plans, which provides for infrastructure, public domain and physical facilities that support the growth and function of the town centres.</p> <p>The subject VPA relates to the delivery of the contributions which would result in significant public benefit (i.e. provision of landscape</p>

No.	Issue	Comment
	could be the first council mandating such voluntary contributions in line with the ambition to be environmentally more sustainable.	<p>upgrades including WSUD works abutting Anzac Parade frontage).</p> <p>It is important to note that the approved development accompanied by the Ecologically Sustainable Development (ESD) report, which sets out the requirements to achieve Five-Star Green Star design, compliance with National Construction Code/Building Code of Australia, and other DCP requirements (i.e. materials, energy efficiency, water efficiency and education).</p>

### Strategic alignment

The relationship with our 2022-26 Delivery Program is as follows:

Delivering services and regulatory functions:	
Service area	Development Assessment
Function	Assessment of Development Applications
Delivery program commitment	Assess and determine Development Applications, Modification Applications and Review Applications under the Environmental Planning and Assessment Act 1979

### Resourcing Strategy implications

N/A.

### Policy and legislative requirements

The draft Voluntary Planning Agreement has been prepared and publicly notified in accordance with the EP&A Act and meets the principles and procedures of the Local Government Act and Council's Planning Agreement Policy.

### Conclusion

The draft VPA was publicly notified in accordance with Section 7.5(1) of the EP&A Act. As a result of the public exhibition, 2 submissions were received in relation to the draft VPA.

The draft VPA has been prepared, duly processed and publicly notified in accordance with the EP&A Act and meets the principles and procedures of the Local Government Act and Council's Planning Agreement Policy. On this basis, it is recommended that Council enter into the deed with the Developer.

**Responsible officer:** Frank Ko, Manager Development Assessment

**File Reference:** DA/672/2019

CP79/22

## Planning Agreement

### 31-41 Anzac Parade, Kensington

---

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

3141 APK Pty Ltd (ABN 14 618 879 637) (**Developer**)

Prepared by:

**Marsdens Law Group**

Level 1  
49 Dumaresq Street  
CAMPBELLTOWN NSW 2560

Tel: (02) 4626 5077  
Fax: (02) 4626 4826  
DX: 5107 Campbelltown  
Ref: 44 1679



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## Planning Agreement

### 31-41 Anzac Parade, Kensington

#### Parties

<b>Council</b>	<b>Name</b>	Randwick City Council
	<b>Address</b>	30 Frances Street Randwick NSW 2031
	<b>ABN</b>	77 362 844 121
<b>Developer</b>	<b>Name</b>	3141 APK Pty Ltd
	<b>Address</b>	Level 4, 1 James Place North Sydney NSW 2060
	<b>ABN</b>	14 618 879 637

#### Background

- A** The Developer owns the Land.
- B** The Developer wishes to carry out the Development.
- C** The Developer has obtained the Development Consent.
- D** The Development Consent is subject to the following deferred commencement conditions:
- This consent shall not operate until:*
- A1.** *The owner of the land has executed a Voluntary Planning Agreement (VPA) in accordance with the Applicant's offer contained in the letter from Colin Biggers & Paisley to Randwick City Council dated 22 February 2022.*
- A2.** *Upon execution, the applicant shall register the VPA on the title to the land.*
- E** The Developer has agreed to make the Contributions on and subject to the terms of this document.

#### Operative Provisions

##### 1 Agreement

The agreement of the parties is set out in the Operative Provisions of this document, in consideration of, among other things, the mutual promises contained in this document.

## 2 Definitions and interpretation

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### 2.1 Defined Terms

In this document, words beginning with a capital letter that are defined in Part 1 of **Schedule 2** have the meaning ascribed to them in that schedule.

### 2.2 Interpretation

The interpretational rules contained in Part 2 of **Schedule 2** apply in the interpretation of this document.

## 3 Application and operation of document

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### 3.1 Planning Agreement

Subject to clause 3.3, this document is a planning agreement:

- (1) within the meaning set out in section 7.4 of the Act; and
- (2) governed by Subdivision 2 of Part 7 of the Act.

### 3.2 Application

This document is made in respect of the Development and applies to both the Land and the Development.

### 3.3 Operation

This document operates:

- (1) as a deed from the date that it is executed by both parties; and
- (2) as a planning agreement for the purpose of the Act from the date that the Development Consent is granted.

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

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### 4.1 Application

This document does not exclude the application of section 7.11 or section 7.12 of the Act to the Development.

### 4.2 Section 7.24

This document does not exclude the application of s7.24 of the Act to the Development.

## 5 Provision of Contributions

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### 5.1 Affordable Housing Levy Monetary Contribution

- (1) The Developer must pay the Affordable Housing Levy Monetary Contribution to Council in accordance with Schedule 3.
- (2) The Affordable Housing Levy Monetary Contribution is made for the purposes of this document when Council receives the full amount of the Affordable Housing Levy Monetary Contribution payable under this document:
  - (a) in cash;
  - (b) by unendorsed bank cheque; or
  - (c) by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by Council.
- (3) The Affordable Housing Levy Monetary Contribution will be increased annually (with the calculation to be made as from the date the relevant Contribution is required to be provided to Council under this document) by the greater of:

- (a) the amount determined in accordance with the indexation formula at clause 5.4; and
- (b) 2.5%.

### 5.2 CIC Monetary Contribution

- (1) Subject to clause 5.3, the Developer must pay the CIC Monetary Contribution in accordance with Schedule 3.
- (2) The CIC Monetary Contribution is made for the purposes of this document when Council receives the full amount of the CIC Monetary Contribution payable under this document:
  - (a) in cash;
  - (b) by unendorsed bank cheque; or
  - (c) by the deposit, by means of electronic funds transfer, of cleared funds into a bank account nominated by Council.

### 5.3 CIC Works

- (1) If the Developer elects to undertake the CIC Works, the Developer must within a reasonable time lodge an application under the *Roads Act 1993* and complete those CIC Works in accordance with this document and in particular Schedule 5.
- (2) The Developer acknowledges and agrees that if the parties are not able to agree on the detailed design of the CIC Works in accordance with clause 5.6, or if the Developer forms the view prior to commencing the CIC Works that the Developer cannot carry out the CIC Works at a reasonable cost, or if the Developer does not within a reasonable timeframe receive an approval under the *Roads Act 1993* to carry out the CIC Works after an application for such an approval is lodged, then the Developer may serve written notice on Council advising that it will no longer undertake the CIC Works.
- (3) Upon either event referred to in paragraph (2) occurring, the provisions of paragraphs (4) to (6) below have no effect and the Developer:
  - (a) is under no obligation to undertake the CIC Works; and
  - (b) is required to pay the full amount of the CIC Monetary Contributions under clause 5.2.
- (4) Prior to Completion of the CIC Works the Developer (at its own cost) must submit to Council a report from a Quantity Surveyor confirming the GST exclusive cost of the Completed CIC Works (CIC Works Value).
- (5) The parties agree that the report provided by the Quantity Surveyor under paragraph (4) is final and binding on the parties, subject to any manifest error.
- (6) Upon Completion of the CIC Works, the amount of the CIC Monetary Contribution required to be paid by the Developer under this document is reduced by the CIC Works Value.

### 5.4 Indexation of Amounts payable by Developer

Subject to clause 5.1(3), each Contribution Value will be increased annually (with the calculation to be made as from the date the relevant Contribution is required to be provided to Council under this document) in accordance with the following formula:

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

where:

- A = the indexed amount;
- B = the relevant amount as set out in this document;
- C = the Index most recently published before the date that the relevant payment or the calculation with respect to the relevant amount is to be made; and

**D** = the Index most recently published before the commencement date of the Development Consent.

If **A** is less than **B**, then the relevant Contribution Value will not change.

### 5.5 Conduct of CIC Works

The Developer, at its cost, must:

- (1) obtain any other form of consent required by a relevant Authority, for the construction and use of the CIC Works;
- (2) carry out and complete the CIC Works to the satisfaction of the Council by the time specified in Schedule 5; and
- (3) carry out and complete the CIC Works:
  - (a) in accordance with the specifications (if any) referred to in Schedule 5 for the relevant item of CIC Work or the design and specifications agreed or determined to apply to an item of CIC Work under clause 5.6;
  - (b) in accordance with any relevant development consent;
  - (c) in accordance with the requirements of, or consents issued by, any Authority;
  - (d) ensuring that:
    - (i) all necessary measures are taken to protect people, property, and the environment;
    - (ii) unnecessary interference with the passage of people and vehicles is avoided;
    - (iii) nuisances and unreasonable noise and disturbances are prevented; and
    - (iv) all relevant laws and regulations with respect to water, air, noise and land pollution (including 'pollution incidents') as defined under the *Protection of the Environment Operations Act 1997* (NSW) are complied with,
  - (e) in accordance with any Australian Standards applicable to works of the same nature as each aspect of the CIC Works; and
  - (f) in a proper and workmanlike manner complying with current industry practice and standards relating to each aspect of the CIC Works.

### 5.6 Design and specification of CIC Works

- (1) The Developer must:
  - (a) consult with Council with respect to the development of the detailed design and specification with respect to each item of CIC Works, having regard to the plans referred to at **Schedule 5**; and
  - (b) ensure that the relevant design is consistent with, and has regard to, any relevant policies of Council as identified in the Development Consent.
- (2) Before commencing construction of an item of CIC Works, the Developer must submit to Council:
  - (a) for its approval, the detailed design and specification for that item of CIC Works; and
  - (b) a report from a suitable qualified and experienced Quantity Surveyor which estimates the cost to complete the relevant item of CIC Work in accordance with the detailed design.
- (3) The design and specification for the item of CIC Works must be prepared by the Developer having specific regard to:

- (a) the specification for that item of CIC Works set out in column 3 of **Schedule 5**; and
  - (b) the value the relevant item of CIC Works, calculated in accordance with clause 5.6(2)(b).
- (4) Within thirty (30) days of the date of the first submission referred to in paragraph (3), Council will do either of the following:
- (a) Notify the Developer in writing of its approval of the design and specification. Subject to clause 5.3(2), the Developer must then carry out and complete the item of CIC Works in accordance with that design and specification.
  - (b) Notify the Developer in writing that it does not approve of the design and specification and provide the Developer with reasons for this.
- (5) If Council notifies the Developer in writing that it does not approve of the design and specification, the Developer may:
- (a) elect to amend the design and specification and submit to Council the amended design and specification in which case the approval process set out in this clause 5.6 applies to that amendment; or
  - (b) if the Developer does not agree with the modifications requested by Council, then, subject to clause 5.3, it may refer the relevant matter for dispute resolution in accordance with this document.

#### 5.7 No credit or re-imbursements

If the Developer's actual cost of carrying out the CIC Works are greater than the Contribution Value for those CIC Works, the Developer is not entitled to claim credit or reimbursement, as the case may be, for the difference.

#### 5.8 Access to the land and location of CIC Works

- (1) The Developer must permit the Council, its officers, employees, agents and contractors to enter the Land at any time, upon giving reasonable prior notice, in order to inspect, examine or test any of the CIC Works.
- (2) Council must give the Developer prior reasonable notice before it enters the Land and ensure that the Council and its employees comply with all reasonable directions of the Developer and all site construction requirements including without limitation all workplace health and safety requirements and reporting to a site office or site superintendent.
- (3) The Developer acknowledges and agrees that:
  - (a) access to any land upon which the CIC Works will be carried out is subject to any statutory approval or consent required, and also any applicable Council policy, to allow those CIC Works to be carried out;
  - (b) the Developer must obtain any such approvals or consents before commencing the CIC Works; and
  - (c) Council will consider any application for such approval or consent at the relevant time and is not bound to grant such approval or consent.

#### 5.9 Designated Units

- (1) The Developer must dedicate the Designated Units to Council free of any trusts, estates, interests, covenants and Encumbrances by the time specified in Schedule 3.
- (2) The Developer must meet all costs (including legal and registration costs) associated with the dedication of the Designated Units in accordance with paragraph (1), including any costs incurred by Council in relation to that dedication.
- (3) For the purpose of this document, the Designated Units are dedicated to Council:
  - (a) if the relevant allotments are dedicated in a plan registered at NSW Land Registry Services, when that plan is so registered; or

- (b) otherwise when the Developer delivers to Council:
  - (i) a transfer of the relevant allotments in registrable form;
  - (ii) any consent required by an interested party in the relevant allotments; and
  - (iii) any document in registrable form which, when registered, will remove any Encumbrances registered on the title of those allotments, excluding encumbrances that would not in the Council's opinion, acting reasonably, impede the intended use of all or any part of the Designated Units to be dedicated to the Council including but not limited to easements and covenants for services and drainage.

## 6 Completion of Works

### 6.1 Completion

For the purpose of this document an item of CIC Works is Completed when:

- (1) the CIC Works have been accepted as, or deemed to have been, Completed in accordance with this clause 6; and
- (2) any other obligation with respect to the relevant item of CIC Works which must be discharged prior to the Completion of that item of CIC Works in accordance with this document has been discharged.

### 6.2 Issue of Completion Notice

If the Developer considers that any particular item of CIC Works is complete it must serve a notice on Council which:

- (1) is in writing;
- (2) identifies the particular item of CIC Works to which it relates; and
- (3) specifies the date on which the Developer believes the relevant item of CIC Works was completed,

(Completion Notice).

### 6.3 Inspection by Council

- (1) Council must inspect the CIC Works set out in a Completion Notice within ten (10) business days of the receipt of that notice.
- (2) If Council fails to carry out an inspection required under paragraph (1) the CIC Works referred to in the relevant Completion Notice will be deemed to be Complete and acceptable to Council.

### 6.4 Rectification Notice

- (1) Within twenty (20) business days of inspecting the CIC Works set out in a Completion Notice Council must provide notice in writing (Rectification Notice) to the Developer that the CIC Works set out in the Completion Notice:
  - (a) have been Completed; or
  - (b) have not been Completed, in which case the notice must also detail:
    - (i) those aspects of the CIC Works which have not been Completed; and
    - (ii) the work Council requires the Developer to carry out in order to rectify the deficiencies in those CIC Works.
- (2) If Council does not provide the Developer with a Rectification Notice in accordance with paragraph (1), the CIC Works set out in the Completion Notice will be deemed to have been Completed and acceptable to Council.
- (3) Where Council serves a Rectification Notice on the Developer, the Developer must:
  - (a) rectify the CIC Works in accordance with that notice; or

- (b) serve a notice on the Council that it disputes the matters set out in the notice.
- (4) Where the Developer:
  - (a) serves notice on Council in accordance with paragraph (3)(b), the dispute resolution provisions of this document apply; or
  - (b) rectifies the CIC Works in accordance with paragraph (3)(a), it must serve upon the Council a new Completion Notice for the CIC Works it has rectified.

#### 6.5 Works-As-Executed-Plan

Prior to Completion of an item of CIC Work the Developer must provide to Council a full works-as-executed-plan in respect of the item of CIC Work.

#### 6.6 Acceptance of Works

Council accepts ownership, possession and control of, and risk in, any CIC Works carried out in respect of the Designated Units when:

- (1) those CIC Works are Completed; and
- (2) the relevant units have been dedicated to Council.

### 7 Defects Liability

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#### 7.1 Defects Notice

- (1) Where any part of the CIC Works has been Completed but those CIC Works contain a material defect which:
  - (a) adversely affects the ordinary use and/or enjoyment of the relevant CIC Works; or
  - (b) will require maintenance or rectification works to be performed on them at some time in the future as a result of the existence of the defect;

(Defect) Council may issue a defects notice (**Defects Notice**) concerning those CIC Works but only within the Defects Liability Period.
- (2) A Defects Notice must contain the following information:
  - (a) the nature and extent of the Defect;
  - (b) the work Council requires the Developer to carry out in order to rectify the Defect; and
  - (c) the time within which the Defect must be rectified (which must be a reasonable time and not less than ten (10) business days).

#### 7.2 Developer to Rectify Defects

- (1) The Developer must rectify the Defects contained within a Defects Notice as soon as practicable after receipt of the Defects Notice.
- (2) The Developer must follow the procedure set out in clause 6 in respect of the satisfaction of the Defects Notice.

#### 7.3 Right of Council to Step-In

Council, at its absolute discretion, may enter upon the Land for the purpose of satisfying the Defects Notice where the Developer has failed to comply with a Defects Notice but only after giving the Developer five (5) business days written notice of its intention to do so.

#### 7.4 Consequence of Step-In

If Council elects to exercise the step-in rights granted to it under clause 7.3 then:

- (1) Council may:
  - (a) enter upon any part of the land upon which the relevant CIC Works are being carried out that it requires access to in order to satisfy the obligations of the Developer in accordance with the Defects Notice; and

- (b) rectify the relevant Defects in accordance with the Defects Notice; and
- (2) the Developer must not impede or interfere with Council in undertaking that work.

#### 7.5 Costs of Council

Where Council exercises its step-in rights, the Developer will be liable for the costs incurred by the Council in rectifying the Defects where Council may call upon the Security provided by the Developer pursuant to clause 11 and recover as a debt due in a court of competent jurisdiction any difference between the amount of the Security and the costs incurred by the Council in rectifying the Defects.

### 8 Variation of scope or timing for provision of Works

#### 8.1 Variation to the scope of an item of Work

- (1) The Developer may request that Council approve in writing a variation to the scope of any item of CIC Work.
- (2) The scope of an item of CIC Work is not to be varied unless Council and the Developer agree in writing to the variation.
- (3) Council may refuse to agree to a variation of an item of CIC Work at its absolute discretion.

#### 8.2 Deferral of the timing of Completion of an item of the Works

- (1) Notwithstanding any other provision of this document, if the Developer forms the view at any time, that:
  - (a) it is unable to Complete any item of CIC Works by the time specified in **Schedule 5**; or
  - (b) it believes that there is a risk of damage to any item of the CIC Works if they are delivered by the time required in **Schedule 5**,

(**Deferred Works**), then the Developer may seek Council's approval to defer the Completion of the relevant item of the CIC Works by providing written notice to the Council:

  - (c) identifying the relevant item of CIC Work that the Developer proposes to defer;
  - (d) specifying the reason for the request to defer the Completion of that item of the CIC Works; and
  - (e) identifying the anticipated time for Completion of the relevant item of CIC Work.
- (2) The Council, acting reasonably, must give the Developer a written notice within thirty (30) business days of the date upon which the Developer serves written notice upon Council in accordance with paragraph (1) stating:
  - (a) whether or not it consents to the deferral of the Deferred Works;
  - (b) the revised date for Completion required by Council; and
  - (c) any reasonable conditions Council requires with respect to the deferral.
- (3) The Developer acknowledges and agrees that with respect to paragraph (2)(b), Council may require the relevant item of CIC Works to be completed before the issue of an Occupation Certificate with respect to the Development; and
- (4) If the Council consents to the deferral of the Deferred Works, then the following applies:
  - (a) The Developer must comply with any conditions required by Council under paragraph (2)(c) above.
  - (b) Provided the Developer satisfies those conditions, the Developer will not be considered to be in breach of this document as a result of a failure to achieve Completion of the relevant Deferred Works by the time for Completion specified in this document.

- (c) The time for completion of the Deferred Works under this document is the revised date for Completion approved by Council.

## 9 Developer Warranties and Indemnities

### 9.1 Warranties

The Developer warrants to Council that:

- (1) it is legally and beneficially entitled to the Land;
- (2) it is able to fully comply with its obligations under this document;
- (3) it has full capacity to enter into this document; and
- (4) there is no legal impediment to it entering into this document, or performing the obligations imposed under it.

### 9.2 Indemnity

Provided that Council provides full access to the area in which the CIC Works are to be carried out, the Developer indemnifies Council in respect of any Claim that may arise as a result of the conduct of the CIC Works during the construction phase of the CIC Works, until such time as a Completion Notice is issued for that item of CIC Work but only to the extent that any such Claim does not arise as a result of the negligent acts or omissions of Council.

## 10 Contamination

### 10.1 Definitions

For the purpose of this clause 10:

**Contamination** means any material, gas, substance, liquid, chemical or biological mineral or other physical matter which would, if present on the Land:

- (1) result in an Authority issuing a notice, direction or order under an Environmental Law; or
- (2) which would constitute a violation of contribution of contravention of any Environmental Law.

**Contaminated** means subject to Contamination.

**Environmental Law** means all planning, environmental or pollution laws and any regulations, orders, directions, ordinances or requirements, permissions, permits, licences issued under those laws or instruments.

### 10.2 Warranties and Indemnities

The Developer:

- (1) warrants that as far as it is aware, and other than as disclosed to Council, the Designated Units are not, or will not be, Contaminated; and
- (2) indemnifies and must keep indemnified Council against all liability for and associated with all Contamination present in, on and under the Designated Units including full responsibility for compliance with and any liability in respect of such Contamination under the Contaminated Lands Management Act 1997 (NSW) and all other relevant legislation and the requirements of any relevant Authority.

### 10.3 Remediation

- (1) If Council becomes aware or reasonably suspects that any part of the Designated Units were Contaminated before the date of this document, Council may as soon as practicable notify the Developer in writing to that effect.
- (2) As soon as practicable after receipt of the notice pursuant to paragraph (1) the Developer will at its cost (with the assistance of qualified experts) carry out all reasonable investigations (including investigations which Council reasonably directs in writing) to enable the parties to be informed of the full nature and extent of the

Contamination in, on, under, and leaving from the relevant part of the land on which the Designated Units sit and provide copies of all reports on such investigations to Council (Investigation Reports).

- (3) As soon as practicable after receipt by Council of the Investigation Reports the parties must meet to discuss in good faith the method by which the relevant part of the Designated Units might be dealt with so that it is no longer Contaminated.
- (4) Following the discussions pursuant to paragraph (3) the Developer must at its own cost undertake all reasonable measures which the Developer (acting reasonably) determines (and as Council acting reasonably approves in writing) as necessary to ensure that the relevant part of the Designated Units are no longer Contaminated.

## 11 Security

### 11.1 Compulsory acquisition of the Designated Units

- (1) The Developer consents to the compulsory acquisition of the Designated Units:
  - (a) in accordance with the Acquisition Act; and
  - (b) on the terms set out in this clause 11.1.
- (2) Council may only acquire the Designated Units compulsorily in accordance with the Acquisition Act if the Developer has committed an Event of Default with respect the dedication of that land under this document.
- (3) If Council acquires the Designated Units compulsorily in accordance with the Acquisition Act:
  - (a) the Developer agrees that the compensation payable to it on account of that acquisition under the Acquisition Act is \$1.00; and
  - (b) Council must complete that acquisition within twelve (12) months of the relevant Event of Default.
- (4) The parties agree that the provisions of this clause 11.1 are an agreement with respect to the compulsory acquisition of the Designated Units for the purpose of s30 of the Acquisition Act.
- (5) If Council:
  - (a) acquires the Designated Units under paragraph (3); and
  - (b) is required to pay any compensation to a third party as a result of that acquisition,
 then the Developer must pay Council the amount of that compensation as a Monetary Contribution:
  - (c) within ten (10) business days of demand for payment being made by Council; and
  - (d) prior to the issue of the then next Occupation Certificate or Subdivision Certificate with respect to the Development.

### 11.2 Developer must not deal with property

- (1) The Developer must not grant a mortgage or charge over the Designated Units unless and until this document is registered on the title of the Land in accordance with clause 12.
- (2) The Developer must not during the term of this document sell, transfer, or grant a lease or license or any other right of occupancy to any person over the Designated Units without first obtaining Council's consent in writing.
- (3) Council may, at its absolute discretion, refuse its consent or give consent with conditions.

**11.3 Occupation Certificate must be withheld**

- (1) The Developer may only make, or cause, suffer or permit the making of, an application for an Occupation Certificate in respect of the Development if, at the date of the application, the Developer is not in breach of an obligation to make a Contribution under this document that is required to be made before that Occupation Certificate can be issued.
- (2) Any such Occupation Certificate must not be issued until such time as:
  - (a) the breach is rectified; or
  - (b) Council calls upon the Security provided by the Developer in respect of the Contribution to which the breach relates.

**12 Registration of this document****12.1 Registration of this document**

The Developer acknowledges and agrees that:

- (1) this document must be registered on the title to the Land pursuant to section 7.6 of the Act; and
- (2) subject to clause 12.2, Council will undertake that registration at the cost of the Developer.

**12.2 Obligations of Developer**

- (1) The Developer, at its own expense, will promptly after this document comes into operation, and before the issue of any Construction Certificate for the Development, take all necessary and practical steps, and otherwise do anything that the Council reasonably requires, to procure:
  - (a) the consent of each person who:
    - (i) has an estate or interest in the Land; or
    - (ii) is seized or possessed of an estate or interest in the Land;
  - (b) the execution of any documents; and
  - (c) the production of any relevant title documentation,
 to enable the registration of this document in accordance with clause 12.1.
- (2) The Developer, at its own expense, will take all necessary and practical steps, and otherwise do anything that the Council reasonably requires:
  - (a) to allow the lodgement of this document with the Registrar-General as soon as reasonably practicable after this document comes into operation but in any event, no later than thirty (30) business days after that date; and
  - (b) to allow the registration of this document by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this document is lodged for registration.

**12.3 Discharge from the Register**

The Council will provide a release and discharge of this document so that it may be removed from the folios of the Register for the Land (or any part of it) when:

- (1) the Developer's obligations under this document having been performed to Council's satisfaction; or
- (2) if this document is terminated or otherwise comes to an end for any other reason.

## 13 Assignment

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### 13.1 Application

This clause 13 only applies during any period when this document is not registered on the title of the Land.

### 13.2 Restriction on Assignment

Other than in accordance with this clause 13 the Developer may not:

- (1) Assign any part of the Land; and/or
- (2) Assign their rights or obligations under this document.

### 13.3 Procedure for Assignment

- (1) If the Developer:
  - (a) wishes to Assign any part of the Land; and/or
  - (b) wishes to Assign its rights or obligations under this document,
 then the Developer must:
  - (c) provide a written request to Council for the consent of Council to the relevant Assignment;
  - (d) provide Council with any evidence required by Council, acting reasonably, to satisfy Council that the third party in whose favour the Assignment is to be made (**Assignee**) is reasonably capable of performing the obligations under this document that are to be Assigned to it; and
  - (e) obtain written consent of Council to the relevant Assignment; and
  - (f) at no cost to Council, procure:
    - (i) the execution by the Assignee of an appropriate deed where the Assignee agrees to be bound by the terms of this document; and
    - (ii) the provision of all Security to Council by the Assignee that the Developer is required to provide under this document (and any additional securities if required by Council acting reasonably) at the same time as, or prior to, entering into that deed.
- (2) Council is under no obligation to consider granting its consent to any request made by the Developer under paragraph (1)(c) if, at the time the request is made, the Developer is in breach of this document.

## 14 Dispute Resolution

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### 14.1 Notice of dispute

- (1) If a dispute or lack of certainty between the parties arises in connection with this document or its subject matter (**Dispute**), then either party (**First Party**) must give to the other (**Second Party**) a notice which:
  - (a) is in writing;
  - (b) adequately identifies and provides details of the Dispute;
  - (c) stipulates what the First Party believes will resolve the Dispute; and
  - (d) designates its representative (**Representative**) to negotiate the Dispute.
- (2) The Second Party must, within five (5) business days of service of the notice of dispute, provide a notice to the First Party designating as its representative a person to negotiate the Dispute (the representatives designated by the parties being together, the **Representatives**).

**14.2 Conduct pending resolution**

The parties must continue to perform their respective obligations under this document if there is a Dispute but will not be required to complete the matter the subject of the Dispute, unless the appropriate party indemnifies the other parties against costs, damages and all losses suffered in completing the disputed matter if the Dispute is not resolved in favour of the indemnifying party.

**14.3 Further steps required before proceedings**

Subject to clauses 14.14 and 14.15 and except as otherwise expressly provided in this document, any Dispute must, as a condition precedent to the commencement of litigation, mediation under clause 14.5 or determination by an expert under clause 14.6, first be referred to the Representatives. The Representatives must endeavour to resolve the dispute within fourteen (14) business days of the date a notice under clause 14.1(2) is served.

**14.4 Disputes for mediation or expert determination**

If the Representatives have not been able to resolve the Dispute, then the parties must agree within five (5) business days to refer the matter to mediation under clause 14.5 or expert determination under clause 14.6.

**14.5 Disputes for mediation**

- (1) Mediation must be conducted by a mediator agreed by the parties and, if the parties cannot agree within five (5) business days, then by a mediator appointed by the President of the Law Society of New South Wales for the time being.
- (2) If the mediation referred to in paragraph (1) has not resulted in settlement of the Dispute and has been terminated, the parties may agree to have the matter determined by expert determination under clause 14.6.

**14.6 Choice of expert**

- (1) If the Dispute is to be determined by expert determination, this clause 14.6 applies.
- (2) The Dispute must be determined by an independent expert in the relevant field:
  - (a) agreed between and appointed jointly by the parties; or
  - (b) in the absence of agreement within five (5) business days after the date that the matter is required to be determined by expert determination, appointed by the President of the Law Society of New South Wales for the time being.
- (3) If the parties fail to agree as to the relevant field within five (5) business days after the date that the matter is required to be determined by expert determination, either party may refer the matter to the President of the Law Society of New South Wales for the time being whose decision as to the relevant field is final and binding on the parties.
- (4) The expert appointed to determine a Dispute:
  - (a) must have a technical understanding of the issues in dispute;
  - (b) must not have a significantly greater understanding of one party's business, functions or operations which might allow the other side to construe this greater understanding as a bias; and
  - (c) must inform the parties before being appointed of the extent of the expert's understanding of each party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the parties.
- (5) The parties must promptly enter into a document with the expert appointed under this clause 14.6 setting out the terms of the expert's determination and the fees payable to the expert.

**14.7 Directions to expert**

- (1) In reaching a determination in respect of a dispute under clause 14.6, the independent expert must give effect to the intent of the parties entering into this document and the purposes of this document.
- (2) The expert must:
  - (a) act as an expert and not as an arbitrator;
  - (b) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
  - (c) not accept verbal submissions unless both parties are present;
  - (d) on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to the other party;
  - (e) take into consideration all documents, information and other material which the parties give the expert which the expert in its absolute discretion considers relevant to the determination of the Dispute;
  - (f) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
  - (g) issue a draft certificate stating the expert's intended determination (together with written reasons), giving each party ten (10) business days to make further submissions;
  - (h) issue a final certificate stating the expert's determination (together with written reasons); and
  - (i) act with expedition with a view to issuing the final certificate as soon as practicable.
- (3) The parties must comply with all directions given by the expert in relation to the resolution of the Dispute and must within the time period specified by the expert, give the expert:
  - (a) a short statement of facts;
  - (b) a description of the Dispute; and
  - (c) any other documents, records or information which the expert requests.

**14.8 Expert may commission reports**

- (1) Subject to paragraph (2):
  - (a) the expert may commission the expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the expert in making a determination; and
  - (b) the parties must indemnify the expert for the cost of those advisers or consultants in accordance with clause 14.6(5) of this deed.
- (2) The parties must approve the costs of those advisers or consultants in writing prior to the expert engaging those advisers or consultants.

**14.9 Expert may convene meetings**

- (1) The expert must hold a meeting with all of the parties present to discuss the Dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.
- (2) The parties agree that a meeting under paragraph (1) is not a hearing and is not an arbitration.

**14.10 Other courses of action**

If the mediation referred to in clause 14.5 has not resulted in settlement of the dispute, the mediation has been terminated and the parties have not agreed to refer the matter to expert determination within five (5) business days after termination of the mediation, then either party may take whatever course of action it deems appropriate for the purpose of resolving the Dispute.

**14.11 Confidentiality of information provided in dispute resolution process**

- (1) The parties agree, and must procure that the mediator and the expert agree as a condition of his or her appointment:
  - (a) subject to paragraph (2), to keep confidential all documents, information and other material disclosed to them during or in relation to the mediation or expert determination;
  - (b) not to disclose any confidential documents, information and other material except:
    - (i) to a party or adviser or consultant who has signed a confidentiality undertaking; or
    - (ii) if required by Law or any Authority to do so; and
  - (c) not to use confidential documents, information or other material disclosed to them during or in relation to the mediation or expert determination for a purpose other than the mediation or expert determination.
- (2) The parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:
  - (a) views expressed or proposals or suggestions made by a party or the mediator or the expert during the expert determination or mediation relating to a possible settlement of the Dispute;
  - (b) admissions or concessions made by a party during the mediation or expert determination in relation to the Dispute; and
  - (c) information, documents or other material concerning the dispute which are disclosed by a party during the mediation or expert determination unless such information, documents or facts would be discoverable in judicial or arbitral proceedings.

**14.12 Final determination of expert**

The parties agree that the final determination by an expert will be final and binding upon them except in the case of fraud or misfeasance by the expert.

**14.13 Costs**

- (1) Each party must contribute equally to the costs of any mediator appointed under clause 14.5.
- (2) If any independent expert does not award costs, each party must contribute equally to the expert's costs in making the determination.

**14.14 Remedies available under the Act**

This clause 14 does not operate to limit the availability of any remedies available to Council or the Developer under the Act.

**14.15 Urgent relief**

This clause 14 does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this document.

## 15 Breach of this document

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### 15.1 Breach Notice

If the Developer breaches this document, Council may serve a notice on the Developer (**Breach Notice**) specifying:

- (1) the nature and extent of the alleged breach;
- (2) if:
  - (a) the breach is capable of being rectified other than by the payment of compensation, what Council requires the Developer to do in order to rectify the breach; or
  - (b) the breach is not capable of being rectified other than by payment of compensation, the amount of compensation Council requires the Developer to pay in order to rectify the breach, and
- (3) the time within which Council requires the breach to be rectified, which must be a reasonable time or not less than ten (10) business days.

### 15.2 Events of Default

- (1) The Developer commits an **Event of Default** if it:
  - (a) fails to comply with a Breach Notice; or
  - (b) becomes subject to an Insolvency Event.
  - (c) Consequences of Events of default
- (2) Where the Developer commits an Event of Default, Council may, in addition to any rights it has at Law:
  - (a) exercise the Step in Rights so as to carry out any work specified in the relevant Breach Notice; or
  - (b) call on the Security to the extent of any compensation claimed in a Breach Notice and not paid by the Developer.

## 16 Termination, Rescission or Determination

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### 16.1 Termination

This document terminates in the following events:

- (1) The parties agree in writing to terminate the operation of this document at any time.
- (2) The Development Consent lapses or is surrendered in accordance with the Act.

### 16.2 Consequence of termination

Upon termination of this document:

- (1) all future rights and obligations of the parties are discharged; and
- (2) all pre-existing rights and obligations of the parties continue to subsist.

### 16.3 Determination

This document will determine upon the Developer satisfying all of the obligations imposed on it in full.

## 17 Position of Council

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### 17.1 Consent authority

The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the terms of the Planning Legislation.

**17.2 Document does not fetter discretion**

This document is not intended to operate to fetter, in any unlawful manner:

- (1) the power of Council to make any Law; or
- (2) the exercise by Council of any statutory power or discretion, (Discretion).

**17.3 Severance of provisions**

- (1) No provision of this document is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this document is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
  - (a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 17 is substantially satisfied; and
  - (b) in the event that paragraph (1)(a) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this document has full force and effect; and
  - (c) to endeavour to satisfy the common objectives of the parties on relation to the provision of this document which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.
- (2) Where the Law permits Council to contract out of a provision of that Law or gives Council power to exercise a Discretion, then if Council has in this document contracted out of a provision or exercised a Discretion under this document, then to the extent of this document is not to be taken to be inconsistent with the Law.

**17.4 No Obligations**

Nothing in this document will be deemed to impose any obligation on Council to exercise any of its functions under the Act in relation to the Development Consent, the Land or the Development in a certain manner.

**18 Confidentiality****18.1 Document not Confidential**

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

**18.2 Other Confidential Information**

- (1) The parties acknowledge that:
  - (a) Confidential Information may have been supplied to some or all of the parties in the negotiations leading up to the making of this document; and
  - (b) The parties may disclose to each other further Confidential Information in connection with the subject matter of this document.
  - (c) Subject to paragraphs (2) and (3), each party agrees:
    - (i) not to disclose any Confidential document received before or after the making of this document to any person without the prior written consent of the party who supplied the Confidential Information; or
    - (ii) to take all reasonable steps to ensure all Confidential Information received before or after the making of this document is kept confidential and protected against unauthorised use and access.
- (2) A party may disclose Confidential Information in the following circumstances:
  - (a) in order to comply with the Law, or the requirements of any Authority; or

- (b) to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the information confidential.
- (3) The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

## 19 GST

### 19.1 Defined GST Terms

Defined terms used in this clause 19 have the meaning ascribed to them in the GST Law.

### 19.2 GST to be Added to Amounts Payable

- (1) If GST is payable on a Taxable Supply made under, by reference to or in connection with this document, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- (2) This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive.
- (3) Unless otherwise expressly stated, prices or other sums payable or Consideration to be provided under or in accordance with this document are exclusive of GST.

### 19.3 GST Obligations to Survive Termination

This clause 19 will continue to apply after expiration of termination of this document.

## 20 General

### 20.1 Obligation to act in good faith

The parties must at all times:

- (1) cooperate and use their best endeavours to profitably and professionally give effect to their rights and obligations set out in this document;
- (2) not unreasonably delay any action, approval, direction, determination or decision which is required of them;
- (3) make approvals or decisions that are required of them in good faith and in a manner consistent with the completion of the transactions set out in this document; and
- (4) be just and faithful in their activities and dealings with the other parties.

### 20.2 Legal costs

The Developer agrees to:

- (1) reimburse the reasonable legal costs and disbursements of Council in the negotiation, preparation, execution, exhibition, registration and stamping of this document up to an amount of \$10,000; and
- (2) reimburse the legal costs and disbursements of Council arising from the ongoing administration and enforcement of this document including any breach or default by the Developer of its obligations under this document,

within seven (7) business days of receipt of a Tax Invoice from Council.

## 21 Administrative provisions

### 21.1 Notices

- (1) Any notice, consent or other communication under this document must be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
- (a) delivered to that person's address;

- (b) sent by pre-paid mail to that person's address; or
  - (c) transmitted by e-mail to that person's e-mail address.
- (2) A notice given to a person in accordance with this clause is treated as having been given and received:
- (a) if delivered to a person's address, on the day of delivery if a business day, otherwise on the next business day;
  - (b) if sent by pre-paid mail, on the third business day after posting; and
  - (c) if transmitted by e-mail to a person's e-mail address and a correct and complete confirmation of receipt is received, on the day of transmission if a business day, otherwise on the next business day.
- (3) For the purpose of this clause the address of a person is the address set out in this document or another address of which that person may from time to time give notice to each other person.

#### **21.2 Entire agreement**

This document is the entire agreement of the parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this document.

#### **21.3 Waiver**

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

#### **21.4 Cooperation**

Each party must sign, execute and deliver all agreements, documents, instruments and act reasonably and effectively to carry out and give full effect to this document and the rights and obligations of the parties under it.

#### **21.5 Counterparts**

This document may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument. A party who has executed a counterpart of this document may exchange it with another party by emailing a pdf (portable document format) copy of, the executed counterpart to that other party, and if requested by that other party, will promptly deliver the original by hand or post. Failure to make that delivery will not affect the validity and enforceability of this document.

#### **21.6 Amendment**

This document may only be amended or supplemented in writing signed by the parties.

#### **21.7 Unenforceability**

Any provision of this document which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid or enforceable, and is otherwise capable of being severed to the extent of the invalidity or enforceability, without affecting the remaining provisions of this document or affecting the validity or enforceability of that provision in any other jurisdiction.

#### **21.8 Power of Attorney**

Each attorney who executes this document on behalf of a party declares that the attorney has no notice of:

- (1) the revocation or suspension of the power of attorney by the grantor; or
- (2) the death of the grantor.

#### **21.9 Governing law**

The law in force in the State of New South Wales governs this document. The parties:

- (1) submit to the exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeal from those courts in respect of any proceedings in connection with this document; and
  - (2) may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of forum non conveniens.
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## Schedule 1– Requirements under s7.4

REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
<p><b>Planning instrument and/or development application – (Section 7.4(1))</b></p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(a) made, or proposes to make, a Development Application.</p> <p>(b) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) No</p> <p>(b) Yes</p> <p>(c) No</p>
<p><b>Description of land to which this agreement applies – (Section 7.4(3)(a))</b></p>	<p>(1) C/442199.</p> <p>(2) D/442199.</p> <p>(3) A/106671.</p> <p>(4) B/106671.</p> <p>(5) 1/435561.</p> <p>(6) 2/435561.</p>
<p><b>Description of change to the environmental planning instrument to which this agreement applies – (Section 7.4(3)(b))</b></p>	Not applicable
<p><b>Application of section 7.11 of the Act – (Section 7.4(3)(d))</b></p>	Applies
<p><b>Applicability of section 7.12 of the Act – (Section 7.4(3)(d))</b></p>	Applies.
<p><b>Consideration of benefits under this agreement if section 7.11 applies – (Section 7.4(3)(e))</b></p>	Applies. See clause 4.
<p><b>Mechanism for Dispute resolution – (Section 7.4(3)(f))</b></p>	See clause 14.
<p><b>Enforcement of this agreement (Section 7.4(3)(g))</b></p>	See clause 11.
<p><b>No obligation to grant consent or exercise functions – (Section 7.4(3)(9))</b></p>	See clause 17.

## Schedule 2 – Defined terms and Interpretation

### Part 1 - Definitions

<b>Act</b>	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
<b>Acquisition Act</b>	means the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> .
<b>Affordable Housing Levy Monetary Contribution</b>	means the Contribution so described in <b>Schedule 3</b> .
<b>Assign</b>	as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.
<b>Authority</b>	means (as appropriate) any: <ol style="list-style-type: none"> <li>(1) federal, state or local government;</li> <li>(2) department of any federal, state or local government;</li> <li>(3) any court or administrative tribunal; or</li> <li>(4) statutory corporation or regulatory body.</li> </ol>
<b>Business Day</b>	means a day which is not a Saturday, Sunday or a public holiday in New South Wales.
<b>CIC Monetary Contribution</b>	means the Contribution so described in <b>Schedule 3</b> .
<b>CIC Works</b>	means the Contribution so described in <b>Schedule 5</b> .
<b>CIC Works Value</b>	has the meaning ascribed in clause 5.3(4).
<b>Claim</b>	against any person any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
<b>Completed</b>	means completed in accordance with the requirements of this document.
<b>Completion Notice</b>	has the meaning ascribed in clause 6.2.
<b>Confidential Information</b>	means any information and all other knowledge at any time disclosed (whether in writing and orally) by the parties to each other, or acquired by the parties in relation to the other's activities or services which is not already in the public domain and which: <ol style="list-style-type: none"> <li>(1) is by its nature confidential;</li> <li>(2) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise);</li> </ol>

	(3) any party knows or ought to know is confidential;
	(4) is information which may be reasonably considered to be of a confidential nature.
<b>Construction Certificate</b>	has the same meaning as in section 6.4(d) of the Act.
<b>Contributions</b>	means the CIC Works, the Designated Units and the Monetary Contributions.
<b>Contribution Value</b>	means the amount specified in <b>Schedules 3</b> in the column headed "contribution value" for each item of the Contributions as indexed in accordance with this document.
<b>Defect</b>	has the meaning ascribed to it in clause 7.1.
<b>Defects Notice</b>	has the meaning ascribed to it in clause 7.1.
<b>Defects Liability Period</b>	means with respect to an item of Work, a period of twelve (12) months commencing on the date of Completion of the relevant item of Work.
<b>Designated Units</b>	means the units set out in <b>Schedule 4</b> and on the plan attached as <b>Annexure 2</b> .
<b>Development</b>	means the development permitted to be undertaken in accordance with the Development Consent, consisting of the demolition of the existing structures and construction of shop top housing consisting of 9 storeys, 3 storey basement car parking, 57 apartments, 2 commercial/retail tenancies at 31-41 Anzac Parade, Kensington.
<b>Development Application</b>	means an application for the Development Consent.
<b>Development Consent</b>	means the development consent issued for development application No DA/672/2019.
<b>Dispute</b>	has the meaning ascribed to it in clause 14.1.
<b>Encumbrance</b>	means an interest or power: <ul style="list-style-type: none"> <li>(1) reserved in or over an interest in any asset;</li> <li>(2) arising under, or with respect to, a Bio-Banking Agreement;</li> <li>(3) created or otherwise arising in or over any interest in any asset under any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement, covenant, lease, subordination to any right of any other person and any other encumbrance or security interest, trust or bill of sale; or</li> <li>(4) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.</li> </ul> <p><b>Encumber</b> means to grant an Encumbrance.</p>

<b>GST Law</b>	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition or administration of the GST.
<b>Index</b>	Means the Consumer Price Index, All Groups, Sydney as published by the ABS in respect of the quarter ending immediately prior to the date of payment.
<b>Insolvency Event</b>	<p>means the happening of any of the following events:</p> <ol style="list-style-type: none"> <li>(1) Application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order or an order is made that a body corporate be wound up.</li> <li>(2) An application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate or one of them is appointed, whether or not under an order.</li> <li>(3) Except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, agreement of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them.</li> <li>(4) A body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved.</li> <li>(5) A body corporate is or states that it is insolvent.</li> <li>(6) As a result of the operation of section 459F(1) of the <i>Corporations Act 2001</i> (Cth) (<b>Corporations Act</b>), a body corporate is taken to have failed to comply with a statutory demand;</li> <li>(7) A body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the <i>Corporations Act</i>.</li> <li>(8) A body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate.</li> <li>(9) A person becomes an insolvent under administration as defined in section 9 of the <i>Corporations Act</i> or action is taken which could result in that event.</li> <li>(10) A receiver, manager or receiver and manager is appointed to the Company.</li> <li>(11) A claim is filed in a court against a person that is not defended, released or otherwise settled within twenty eight (28) days of the date of its filing at the court.</li> </ol>

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

#### **Part 2 - Interpretational Rules**

<b>clauses, annexures and schedules</b>	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this document.
<b>reference to statutes</b>	a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
<b>singular includes plural</b>	the singular includes the plural and vice versa.
<b>Person</b>	the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
<b>executors, administrators, successors</b>	a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
<b>Dollars</b>	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.

<b>calculation of time</b>	if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
<b>reference to a day</b>	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
<b>accounting terms</b>	an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia.
<b>reference to a group of persons</b>	a group of persons or things is a reference to any two or more of them jointly and to each of them individually.
<b>meaning not limited</b>	the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
<b>next day</b>	if an act under this document to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.
<b>next business day</b>	if an event must occur on a stipulated day which is not a business day then the stipulated day will be taken to be the next business day.
<b>time of day</b>	time is a reference to Sydney time.
<b>Headings</b>	headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this document.
<b>Agreement</b>	a reference to any agreement, document or instrument includes the same as varied, supplemented, novated or replaced from time to time.
<b>Gender</b>	a reference to one gender extends and applies to the other and neuter gender.

**Schedule 3 – Monetary Contributions**

Item	Contributions	Timing	Contribution Value
1	Affordable Housing Levy Monetary Contribution	Prior to the issue of the first Occupation Certificate in respect of the Development.	\$19,062.20
2	CIC Monetary Contribution	Prior to the issue of the first Occupation Certificate in respect of the Development.	<p>The amount of the contribution will be calculated at the time that it is required to be paid in accordance with Clause 6.17 of the <i>Randwick Local Environmental Plan 2012</i>, the <i>Kensington and Kingsford Town Centres – Community Infrastructure Contributions Plan</i> adopted by the Council on 10 December 2019 and will be calculated (which includes for the sake of clarity any indexation required under the abovementioned Contributions Plans) using:</p> <ul style="list-style-type: none"> <li>(1) the relevant Community Infrastructure Contribution Rate (being an amount of \$475.00 per square metre as at the date of this document); and</li> <li>(2) the area of additional residential floor space within the Development above the maximum building height plane allowable under clause 4.3 of the RLEP determined on the basis of the final design of the Development.</li> </ul> <p>As at the date of this document, the Contribution Value is estimated to be \$480,277.25 (being 1011.71 square metres of floor space payable at a rate of \$475/sqm).</p>

**Schedule 4 – Designated Units**

Item	Affordable Housing Contribution	Time for Completion
1	Unit 107, being a one (1) bedroom unit of the Development comprising an internal area of no less than 60.0 sqm and balcony area of no less than 13.2 sqm as outlined in the plan attached as Annexure 2.	Prior to the issue of the first Occupation Certificate in respect of the Development.
2	Unit 105, being a two (2) bedroom unit of the Development comprising an internal area of no less than 78.0 sqm and balcony area of no less than 11.4 sqm as outlined in the plan attached as Annexure 2.	

**Schedule 5 – CIC Works**

Item of CIC Works	Specification	Application of specification and design approval (clause 5.6)
Landscape upgrades including Water Sensitive Urban Design along the site boundary of the Land.	Pursuant to item 6 of 'Appendix – Schedule of Community Infrastructure' in the <i>Kensington and Kingsford Town Centres – Community Infrastructure Contributions Plan</i> adopted by the Council on 10 December 2019. and in accordance with the Location Plan attached as <b>Annexure 1</b> .	Yes

CP79/22

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## Annexure 1 – Location Plan

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Drawing no. LA03, Revision D prepared by Taylor Brammer Landscape Architects dated 21 December 2021 approved under DA672/2019



New street trees to Council Street tree Master Plan



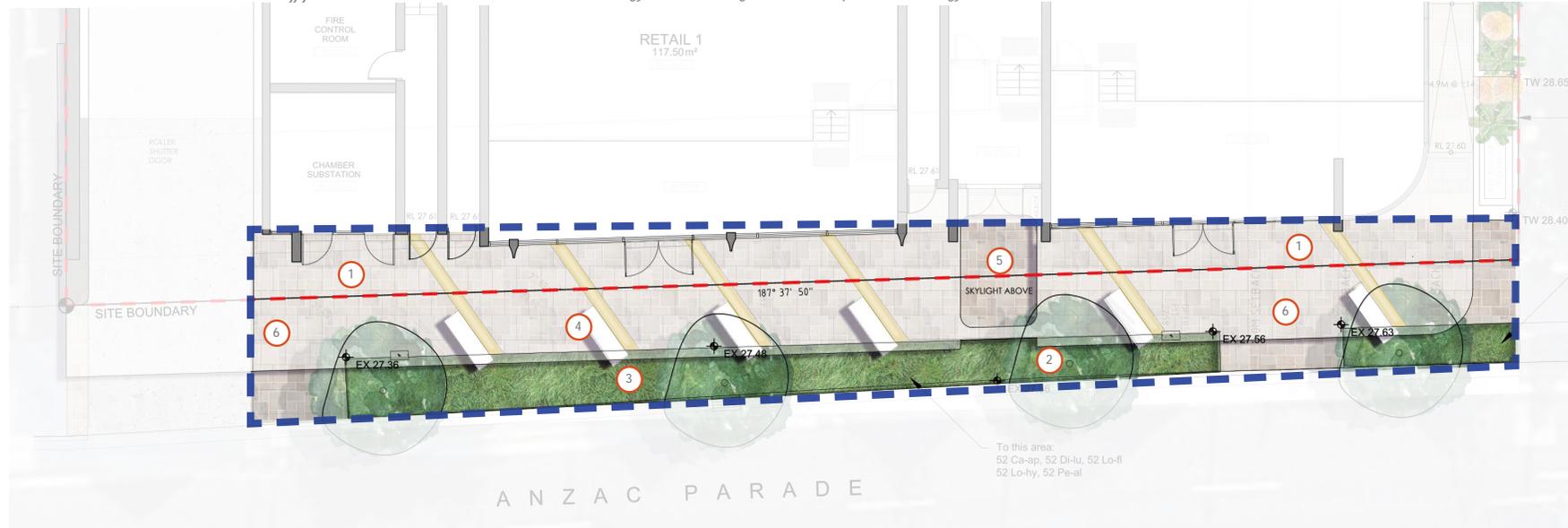
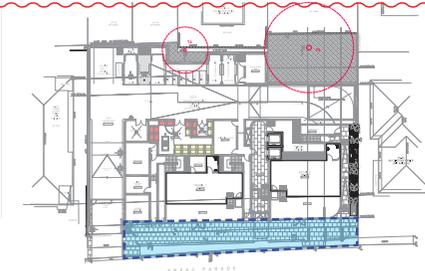
Vegetated swale promoting runoff filtration



Seating elements as outlined in Council Public Domain Strategy



Entry skylight with integrated artwork forming integral element of public art strategy



DESIGN NOTES

- ① Upgrade public domain character and pedestrian walk way to Council requirements.
- ② Proposed new street trees to enhance street scape to Council Street tree Master Plan
- ③ WSUD principles to be incorporated
- ④ Concrete seating elements to be provided in accordance with Council Public Domain strategy
- ⑤ Skylight over entry with integrated artwork to be developed in consultation with public art strategy
- ⑥ Awning over to Architect's details

Schedule of Changes

Public Domain Plan not included in previous submission

## Public Domain Plan

Project: 31-41 Anzac Parade, Kensington  
 Project No: 17-125s  
 Client: 3141 APK PTY LTD

Drawing No: LA03  
 Revision: D  
 Date: 21.12.2021

Scale: 1:75 @ A1

TaylorBrammer



Taylor Brammer Landscape Architects Pty Ltd  
 218 Oxford Street Woolahra NSW 2025  
 Tel: +61 2 9387 8855 Email: sydney@taylorbrammer.com.au



## Annexure 2 – Plan of Designated Units

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**Execution page**

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**Executed as a deed**

Dated:

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

\_\_\_\_\_  
 Witness (Signature)

\_\_\_\_\_  
 General Manager (Signature)

\_\_\_\_\_  
 Name of Witness (Print Name)

\_\_\_\_\_  
 Name of General Manager (Print Name)

**Signed, sealed and delivered** by **3141 APK Pty Ltd** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors.

\_\_\_\_\_  
 Director/Secretary (Signature)

\_\_\_\_\_  
 Director (Signature)

\_\_\_\_\_  
 Name of Director/Secretary (Print Name)

\_\_\_\_\_  
 Name of Director (Print Name)

## Explanatory Note

### Planning Agreement

#### 31-41 Anzac Parade, Kensington (DA/672/2019)

#### 1 Introduction

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- (1) The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a proposed Voluntary Planning Agreement (**Planning Agreement**) under s7.4 of the *Environmental Planning and Assessment Act 1979* (NSW) (**Act**).
- (2) This Explanatory Note has been prepared jointly between the parties as required by clause 205 of the *Environmental Planning and Assessment Regulation 2021* (**Regulations**).
- (3) This Explanatory Note is not to be used to assist in construing the Planning Agreement.

#### 2 Parties to the Planning Agreement

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The parties to the Planning Agreement are:

- (1) Randwick City Council (ABN 77 362 844 121) (**Council**); and
- (2) 3141 APK Pty Ltd (ABN 14 618 879 637) (**Developer**).

#### 3 Description of the Land to which the Planning Agreement applies

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The Planning Agreement applies to the land comprising Lot C Deposited Plan 442199, Lot D Deposited Plan 442199, Lot A Deposited Plan 106671, Lot B Deposited Plan 106671, Lot 1 Deposited Plan 435561 and Lot 2 Deposited Plan 435561 located at 31-41 Anzac Parade, Kensington (**Land**).

#### 4 Description of the Development to which the Planning Agreement applies

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The Planning Agreement relates to the development generally described in development application DA/672/2019 (**Development Consent**) consisting of the demolition of the existing structures and construction of shop top housing consisting of 9 storeys, 3 storey basement car parking, 57 apartments and 2 commercial/retail tenancies (**Development**).

#### 5 Summary of Public Benefit, Objectives, Nature and Effect of the Planning Agreement

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The Developer is required to provide the following public benefit in accordance with the Planning Agreement:

- (1) Prior to the issue of the first Occupation Certificate in respect of the Development, an **Affordable Housing Levy Monetary Contribution** of \$19,062.20.
- (2) Prior to the issue of the first Occupation Certificate in respect of the Development, a **CIC Monetary Contribution** will be calculated at the time that it is required to be paid in accordance with clause 6.17 of the Randwick Local Environmental Plan 2012, the Kensington and Kingsford Town Centres – Community Infrastructure Contributions Plan and will be calculated using:

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- (a) the relevant Community Infrastructure Contribution Rate (being an amount of \$475.00 per square metre as at the date of the Planning Agreement); and
  - (b) the area of additional residential floor space within the Development above the maximum building height plane allowable under clause 4.3 of the Randwick Local Environmental Plan determined on the basis of the final design of the Development.
- (3) Prior to the issue of the first Occupation Certificate in respect of the Development, the dedication of:
- (a) Unit 107, being a one (1) bedroom unit of the Development comprising an internal area of no less than 60.0 sqm and balcony area of no less than 13.2 sqm as outlined in the plan attached as Annexure 2 to the Planning Agreement.
  - (b) Unit 105, being a two (2) bedroom unit of the Development comprising an internal area of no less than 78.0 sqm and balcony area of no less than 11.4 sqm as outlined in the plan attached as Annexure 2 to the Planning Agreement (**Designated Land**).
- (4) Landscape upgrades including Water Sensitive Urban Design along the site boundary of the Land pursuant to item 6 of 'Appendix – Schedule of Community Infrastructure' in the Kensington and Kingsford Town Centres – Community Infrastructure Contributions Plan and determined in accordance with the Location Plan attached as Annexure 1 to the Planning Agreement (**CIC Works**). Upon Completion of the CIC Works, the amount of the CIC Monetary Contribution is reduced by the GST exclusive cost of the completed CIC Works.

If the parties are not able to agree on the detailed design of the CIC Works, or if the Developer forms the view prior to commencing the CIC Works that the Developer cannot carry out the CIC Works at a reasonable cost, or if the Developer does not within a reasonable timeframe receive an approval under the *Roads Act 1993* (NSW) to carry out the CIC Works after an application for such an approval is lodged, then the Developer may serve written notice on Council advising that it will no longer undertake the CIC Works, in which case the Developer is required to pay the full amount of the CIC Monetary Contribution.

The **objective** of the Planning Agreement is to provide a material public benefit to be applied towards community infrastructure.

The **nature** of the Planning Agreement is a contractual relationship between the Council and the Developer for providing public benefit.

The **effect** of the Planning Agreement is that the Developer will provide the public benefit in the manner provided for by the Planning Agreement (as applicable).

## 6 Assessment of the Merits of the Planning Agreement and Impact on the Public

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The Planning Agreement promotes:

- (1) the public interest; and
- (2) the objects of the Act.

The Planning Agreement will provide a material public benefit to be applied towards community infrastructure and also provides a benefit by way of monetary contributions, including towards affordable housing.

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## 7 Identification of how the Planning Agreement promotes the public interest

---

The Planning Agreement supports the public interest in the following ways:

- (1) By facilitating the improvement of public infrastructure to be utilised by the broader community.
- (2) By promoting the social and economic welfare of the community and a better environment.
- (3) By providing increased opportunity for community participation in environmental planning and assessment.
- (4) To promote the orderly and economic use and development of land.
- (5) To promote the delivery and maintenance of affordable housing.

## 8 How the Planning Agreement promotes the Guiding Principles for Councils

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The Planning Agreement promotes a number of the Guiding Principles for Councils under section 8A of the *Local Government Act 1993* (NSW), as follows:

- (1) To plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- (2) To manage land and other assets so that current and local community needs can be met in an affordable way.
- (3) To act fairly, ethically and without bias in the interests of the local community.
- (4) To recognise diverse local community needs and interests.
- (5) To have regard to the long term and cumulative effects of its decisions on future generations.
- (6) Transparent decision-making and active engagement with local communities, through the use of the integrated planning and reporting framework and other measures.
- (7) Providing strong and effective representation, leadership, planning and decision-making.
- (8) Applying the integrated planning and reporting framework in carrying out functions so as to achieve desired outcomes and continuous improvements.
- (9) Working with others to secure appropriate services for local community needs

## 9 Identification of whether the Planning Agreement conforms with the Council's local infrastructure delivery plan

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The Planning Agreement conforms with Council's local infrastructure delivery plans in meeting the development objectives for the establishment, ongoing management and development of infrastructure on community land, which are consistent with the community expectations for local infrastructure.

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## Director City Planning Report No. CP80/22

**Subject: Public Notification of Voluntary Planning Agreement - 137-151 Anzac Parade, Kensington (DA/810/2021)**

### Executive Summary

- A draft Voluntary Planning Agreement (VPA) has been prepared by Marsdens Law Group on behalf of Council to provide for, and secure, public benefits in connection with the Development Consent for DA/810/2021 for the land at Nos. 137-151 Anzac Parade, Kensington.
- The draft VPA has been proposed by the Developer as per the provisions under Randwick Local Environment Plan 2012 and contains a monetary contribution of \$1,433,464.50 for the landscape upgrades including but not limited to Water Sensitive Urban Design (WSUD) works and also the dedication of a total of 528sqm of gross floor area as affordable housing dwellings with each dwelling having minimum gross floor area of 50sqm.
- Relevant issues relating to the timing and adequacy of the VPA have been assessed and addressed in the preparation and review of the VPA.
- A letter of offer from the Developer was reported to the Council meeting on 28 June 2022 where Council resolved to accept the terms contained in the letter of offer subject to the Sydney Eastern City Planning Panel granting approval to the development and the subsequent endorsement of a VPA.
- DA/810/2021 was approved by the Sydney Eastern City Planning Panel on 13 July 2022.
- In accordance with Section 7.5(1) of the Environmental Planning and Assessment Act 1979, the draft VPA was placed on public exhibition for 28 days from 7 November to 4 December 2022.
- A total of 4 submissions were received in response to the public exhibition.
- This report advises Council of the outcome of the public exhibition prior to Council entering into the VPA and recommends that Council enter into the deed with the Developer.

### Recommendation

That Council:

- a) agree to enter into the Voluntary Planning Agreement in **Attachments 1** and **2** pursuant to Section 7.5 of the Environmental Planning and Assessment Act 1979; and
- b) authorise the General Manager to make minor drafting changes to the draft Voluntary Planning Agreement as required, prior to its execution.

### Attachment/s:

1.  Explanatory Note VPA - 137-151 Anzac Parade Kensington 071122
2.  Voluntary Planning Agreement - 137-151 Anzac Parade Kensington [Execution version 071122]

## Purpose

This report provides the outcome of the public exhibition of the draft Voluntary Planning Agreement (VPA) for the approved 9 storey mixed use development comprising ground floor commercial/retail premises and 142 dwellings on floors above, 2 levels of basement parking with a total of 151 car parking spaces including 2 car share spaces, 158 bicycle spaces and 13 motorcycle spaces, associated landscape and public domain works at Nos. 137-151 Anzac Parade, Kensington, pursuant to Section 7.5(1) of the Environmental Planning and Assessment Act 1979 (EP&A Act).

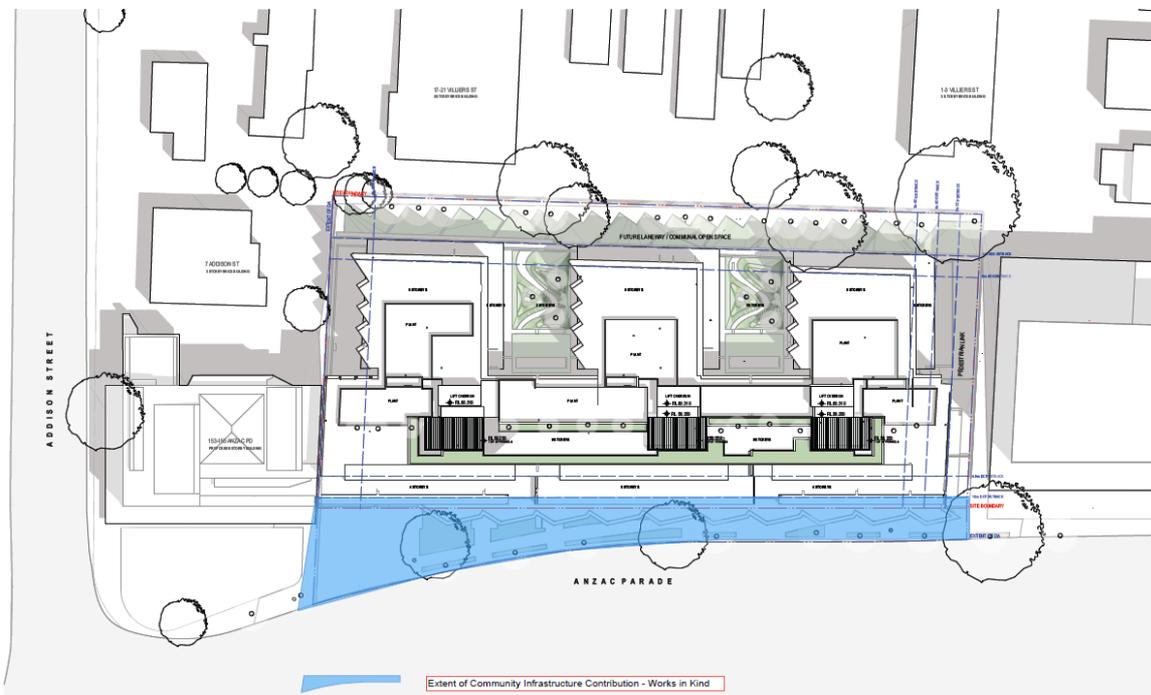
## Background

### Community Infrastructure Contributions Plan

Council's Community Infrastructure Plan (CIC) for the Kensington and Kingsford town centres provides for infrastructure, public domain and physical facilities that support the growth and function of the town centres and benefit the existing and new population as well as the wider Randwick population. The total value of the infrastructure that would be provided for in the two town centres is approximately \$37 million. It is important to note that the CIC contribution is only applicable to that part of the development over 7 storeys as that was the maximum height under the previous standard. The proposed development is up to 9 storey with 4/5 storey street wall fronting Anzac Parade.

The K2K strategy and its amending LEP was designed to allow additional height and density in the town centres and to capture that additional value through the CIC plan. The additional height and density were distributed across the town centres with the predominant height being 9 storeys and up to 17 & 18 storeys on the three key intersections. The CIC plan was a fundamental component of the overall strategy in that it allowed significant public benefits from the additional density.

The mechanism for delivery the Community Infrastructure items listed in this Plan is through a VPA. The contributions would be made towards the provision of landscape upgrades including Water Sensitive Urban Design (WSUD) works abutting Anzac Parade frontage (see **Figure 1**).



**Figure 1: Plan showing the proposed community infrastructure works**

## Affordable Housing

The Kensington and Kingsford Town Centres affordable housing plan aims to ensure that lower income households continue to live and work locally within Randwick LGA, to facilitate a socially diverse and inclusive community; and to support the economic functions of the Randwick Education and Health Strategic Centre.

### **Section 7.12 Development Contributions Plan: Kensington and Kingsford Town Centres**

This Plan applies to development on land that is subject to a development consent or a complying development certificate within the Kensington and Kingsford town centres. This Plan authorises Council to grant consent to development to which this Plan applies, subject to a condition requiring the applicant to pay a levy based on the proposed cost of carrying out the development (i.e. 2.5% levy for cost of development greater than \$250,000).

The total cost of development (as submitted) is \$65,333,547 and the applicable Section 7.12 contribution levy to be paid to Council prior to the issue of a construction certificate would be \$1,633,338.68.

## **Discussion**

### **Background**

A letter of offer provided by the Developer was reported to the Ordinary Council meeting on 28 June 2022, at which Council made the following resolution:

*(Hamilton/Burst) that Council agrees to the terms contained in the attached letter of offer subject to;*

- a) the Sydney Eastern City Planning Panel granting approval to the development; and*
- b) the subsequent endorsement of a Voluntary Planning Agreement.*

On 13 July 2022, the Sydney Eastern City Planning Panel granted development consent for the development at Nos. 137-151 Anzac Parade, Kensington. In particular, the approved development incorporates the following components that would result in positive contribution to the public benefits of the community and the long term vitality of Kensington town centre:

- Provision of footpath embellishments, widening, public realm works and landscape improvement works including WSUD along Anzac Parade frontage (see Figure 1).
- Provision of a through site link on the subject site with access from Anzac Parade to improve pedestrian experience and allows permeability and better connections to main pedestrian and cycling networks within the Kensington town centre.
- Provision of a shared way along the rear boundary to facilitate future connectivity from Todman Avenue to Addison Street.
- Dedication of affordable housing dwellings to Council.

The draft VPA contains the monetary contributions for both community infrastructure and affordable housing as required under Randwick Local Environmental Plan 2012. The monetary contribution amount of \$1,433,464.50 (being 3,017.82sqm of floor space payable at a rate of \$475/sqm) for the community infrastructure work would be provided through works-in-kind and by monetary contributions. In relation to the affordable housing contribution, a total of 528sqm of gross floor area to be dedicated for affordable housing and each dedicated affordable housing dwelling must have a minimum gross floor area of 50sqm.

In addition to the VPA, the approved development is also subject to a total monetary contribution levy of \$1,633,338.68 as per the requirement pursuant to the Kensington and Kingsford Town Centre Section 7.12 Development Contribution Plan.

The total value of the contributions including the Section 7.12 contributions and affordable housing for the approved development is approximately \$3.06 million plus the dedication 528sqm of affordable housing dwellings with minimum gross floor area of 50sqm.

**Public Exhibition**

Section 7.5(1) of the EP&A Act requires that a planning agreement cannot be entered into, and a planning agreement cannot be amended or revoked, unless public notice has been given of the proposed agreement, amendment or revocation, and a copy of the proposed agreement, amendment or revocation has been available for inspection by the public for a period of not less than 28 days. Any public submission received must be considered before finalisation of the planning agreement.

The draft Voluntary Planning Agreement and the Explanatory Note for the Voluntary Planning Agreement was publicly notified in the Sydney Morning Herald and on Council’s website on Your Say Randwick and Randwick eNews for 28 days, from 7 November to 4 December 2022. During this time the website had:

- 394 visits.
- 90 downloads of the VPA.
- 29 downloads of the Explanatory Note for VPA.

As a result of the public exhibition, a total of 4 submissions were received in relation to the draft VPA. A summary of the submissions is provided below:

No.	Issue	Comment
1	<p>The \$1,433,464.50 is not enough for any upgrade to the community. The development should be providing 1 free parking for each bedroom that they build in the development that can be accessed by the public. Anzac Pde shops are inaccessible for regular people because the parking has been reduced on the main parade and Boronia Street is packed with its own residents.</p> <p>The developers should be providing space for more parking if they are given the go ahead. An additional contribution should be sought for the education infrastructure in the Kensington area because these developments will place more burden on our already stretched school.</p>	<p>The Community Infrastructure Contribution levy (i.e. \$1,433,464.50) is one of three development contributions schemes proposed by the Kensington and Kingsford town centres planning strategy to deliver a range of community benefit, local infrastructure and affordable rental housing. The approved development is also subject to the contributions required under Kensington and Kingsford Section 7.12 Development Contribution Plan and the Affordable Housing Plan.</p> <p>The approved development complies with the car parking requirements of the DCP and also includes 2 car share spaces within the development that will be accessible by public at all times.</p>
2	<p>This appears to be a paltry, token gesture regarding both developments to affordable housing. Literally about 4-6 dwellings out of how many new apartments? Anzac Pde is destined to become an ugly cement wind tunnel reminiscent of Bondi Junction and North Sydney, further removing the history and character of the area. Just when I was beginning to applaud Randwick Council on recent green initiatives, this just makes me</p>	<p>The K2K strategy and its amending LEP was designed to allow additional height and density in the town centres and to capture that additional value through the Community Infrastructure Contributions, Section 7.12 and Affordable Housing Plans.</p>

No.	Issue	Comment
	<p>want to leave the area. And the greening/tree replanting scheme? How many years will this take to provide shade and beautification? So disappointing.</p>	<p>The development was approved by the Sydney Eastern City Planning Panel on the basis that it met Council's strategic planning objectives and development standards in relation the K2K corridor and also the needs of the local community.</p> <p>The approved development also incorporates high quality landscaping that would contribute towards the creation of a green boulevard along Anzac Parade in future.</p>
<p>3</p>	<p>What is missing is voluntary contribution to preventing climate change and urban heat island effects. This could be (not exclusively) by explicit commitment to using low-carbon materials and building lifecycle, reducing operational energy use, incorporating energy generation and rainwater harvesting in the design, providing facilities for air-drying laundry, passive ventilation, sun-reflective building envelope, etc. I note that large-scale new developments in the area seldom seriously consider their carbon and broader long-term environmental footprint. Randwick could be the first council mandating such voluntary contributions in line with the ambition to be environmentally more sustainable.</p>	<p>The VPA is limited to the provisions of contributions as per Council's CIC and Affordable Housing Plans, which provides for infrastructure, public domain and physical facilities that support the growth and function of the town centres.</p> <p>The subject VPA relates to the delivery of the contributions which would result in significant public benefit (i.e. provision of landscape upgrades including WSUD works abutting Anzac Parade frontage).</p> <p>It is important to note that the approved development is also subject to a minimum Green Star Certification rating of 5 star or equivalent, which is consistent with Council's commitment to ensure Kensington town centre being evolved as environmentally sustainable district, with a focus on best practice environmentally sensitive design, energy efficiency, water conservation, waste and resource minimisation.</p>
<p>4</p>	<p>With the number of new apartments and increase of population in this area there should be more allocation for amenities and public area. It doesn't look like there are a lot of new infrastructure like public spaces and playground for the increase of population in the</p>	<p>The approved development includes landscape works along the Anzac Parade frontage, a pedestrian link with direct access from Anzac Parade to improve pedestrian experience and allows permeability</p>

No.	Issue	Comment
	<p>section. A good example would be the Newmarket area where there is building of playground and green spaces for residents. Without the allocation of greenery and public spaces, the building would just be another big block of building. There also doesn't seem to be addition of greenery to soften all the big apartment buildings being built along Anzac Parade.</p>	<p>and better connections to main pedestrian and cycling networks within the Kensington town centre and a shared way along the rear boundary to facilitate future connectivity from Todman Avenue to Addison Street that would all result in positive contribution to the public benefit of the community and the long term vitality of Kensington town centre. In addition, the subject site is also directly adjacent to the Addison Street Triangle Plaza fronting Anzac Parade, which is a public space accessible by the community.</p>

**Strategic alignment**

The relationship with our 2022-26 Delivery Program is as follows:

Delivering services and regulatory functions:	
Service area	Development Assessment
Function	Assessment of Development Applications
Delivery program commitment	Assess and determine Development Applications, Modification Applications and Review Applications under the Environmental Planning and Assessment Act 1979

**Resourcing Strategy implications**

N/A.

**Policy and legislative requirements**

The draft Voluntary Planning Agreement has been prepared and publicly notified in accordance with the EP&A Act and meets the principles and procedures of the Local Government Act and Council's Planning Agreement Policy.

**Conclusion**

The draft VPA was publicly notified in accordance with Section 7.5(1) of the EP&A Act. As a result of the public exhibition, 4 submissions were received in relation to the draft VPA.

The draft VPA has been prepared, duly processed and publicly notified in accordance with the EP&A Act and meets the principles and procedures of the Local Government Act and Council's Planning Agreement Policy. On this basis, it is recommended that Council enter into the deed with the Developer.

**Responsible officer:** Frank Ko, Manager Development Assessment

**File Reference:** DA/810/2021

## Planning Agreement

### 137-151 Anzac Parade, Kensington

---

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

Toga Addison Pty Ltd (ABN 49 609 273 092) in its own capacity and as trustee for Toga Addison Unit Trust (ABN 56 742 581 520) (**Developer**)

Prepared by:

**Marsdens Law Group**

Level 1  
49 Dumaresq Street  
CAMPBELLTOWN NSW 2560

Tel: (02) 4626 5077  
Fax: (02) 4626 4826  
DX: 5107 Campbelltown  
Ref: 65 44 3502



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## Planning Agreement 137-151 Anzac Parade, Kensington

### Parties

<b>Council</b>	<b>Name</b>	Randwick City Council
	<b>Address</b>	30 Frances Street Randwick NSW 2031
	<b>ABN</b>	77 362 844 121
<b>Developer</b>	<b>Name</b>	Toga Addison Pty Ltd (ABN 49 609 273 092) in its own capacity and as trustee for Toga Addison Unit Trust
	<b>Address</b>	Level 5, 45 Jones Street Ultimo NSW 2007
	<b>ABN</b>	56 742 581 520

### Background

- A** The Developer owns the Land.
- B** The Developer wishes to carry out the Development.
- C** The Developer has obtained the Development Consent.
- D** The Developer has agreed to make the Contributions on and subject to the terms of this document.

### Operative Provisions

#### 1 Agreement

The agreement of the parties is set out in the Operative Provisions of this document, in consideration of, among other things, the mutual promises contained in this document.

#### 2 Definitions and interpretation

##### 2.1 Defined terms

In this document, words beginning with a capital letter that are defined in Part 1 of **Schedule 2** have the meaning ascribed to them in that schedule.

##### 2.2 Interpretation

The interpretational rules contained in Part 2 of **Schedule 2** apply in the interpretation of this document.

### 3 Application and operation of document

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#### 3.1 Planning Agreement

Subject to clause 3.3, this document is a planning agreement:

- (1) within the meaning set out in s7.4 of the Act; and
- (2) governed by Subdivision 2 of Part 7 of the Act.

#### 3.2 Application

This document is made in respect of the Development and applies to both the Land and the Development.

#### 3.3 Operation

This document operates:

- (1) as a deed from the date that it is executed by both parties; and
- (2) as a planning agreement for the purpose of the Act from the date that the Development Consent is granted.

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

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#### 4.1 Application

This document does not exclude the application of section 7.11 or section 7.12 of the Act to the Development.

#### 4.2 Section 7.24

This document does not exclude the application of s7.24 of the Act to the Development.

### 5 Provision of Contributions

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#### 5.1 Affordable Housing Levy Monetary Contribution

- (1) The Developer must pay the Affordable Housing Levy Monetary Contribution to Council in accordance with **Schedule 3**.
- (2) The Affordable Housing Levy Monetary Contribution is made for the purposes of this document when Council receives the full amount of the Affordable Housing Levy Monetary Contribution payable under this document:
  - (a) in cash;
  - (b) by unendorsed bank cheque; or
  - (c) by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by Council.
- (3) The parties acknowledge and agree that the Developer must only pay the Affordable Housing Levy Monetary Contribution to Council for any shortfall in the total floor area of the Designated Land to be dedicated to Council pursuant to this document.

## 5.2 CIC Monetary Contribution

- (1) Subject to clause 5.3, the Developer must pay the CIC Monetary Contribution in accordance with **Schedule 3**.
- (2) The CIC Monetary Contribution is made for the purposes of this document when Council receives the full amount of the CIC Monetary Contribution payable under this document:
  - (a) in cash;
  - (b) by unendorsed bank cheque; or
  - (c) by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by Council.

## 5.3 CIC Works

- (1) If the Developer elects to undertake the CIC Works, the Developer must Complete those CIC Works in accordance with this document and in particular **Schedule 5**.
- (2) The Developer acknowledges and agrees that:
  - (a) Council, at any time prior to the approval of the detailed design of the CIC Works under clause 5.6 and for any reason, may provide written notice to the Developer that it no longer agrees with the CIC Works being carried out; or
  - (b) if the parties are not able to agree on the detailed design, specification or cost to complete the CIC Works in accordance with clause 5.6, or if the Developer forms the view prior to commencing the CIC Works that the Developer cannot carry out the CIC Works at a reasonable cost, then the Developer may serve written notice on Council advising that it will no longer undertake the CIC Works.
- (3) Upon either event referred to in paragraph (2) occurring, the provisions of paragraphs (4) to (6) below have no effect and the Developer:
  - (a) is under no obligation to undertake the CIC Works; and
  - (b) is required to pay the full amount of the CIC Monetary Contributions under clause 5.2.
- (4) Prior to Completion of the CIC Works, the Developer (at its own cost) must submit to Council a report from a Quantity Surveyor confirming the GST exclusive cost of the Completed CIC Works (**CIC Works Value**).
- (5) The parties agree that the report provided by the Quantity Surveyor under paragraph (4) is final and binding on the parties, subject to any manifest error.
- (6) Upon Completion of the CIC Works:
  - (a) the amount of the CIC Monetary Contribution required to be paid by the Developer under this document is reduced by the CIC Works Value; and
  - (b) the Developer must pay to Council in accordance with clause 5.2 any difference between the CIC Monetary Contribution and the CIC Works Value.

#### 5.4 Indexation of Amounts payable by Developer

Unless otherwise specified in this document, each Contribution Value will be increased annually (with the calculation to be made as from the date the relevant Contribution is required to be provided to Council under this document) in accordance with the following formula:

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

where:

- A** = the indexed amount;
- B** = the relevant amount as set out in this document;
- C** = the Index most recently published before the date that the relevant payment or the calculation with respect to the relevant amount is to be made; and
- D** = the Index most recently published before the commencement date of the Development Consent.

If **A** is less than **B**, then the relevant Contribution Value will not change.

For the avoidance of doubt, the indexation method set out in this clause 5.4 does not apply to the Affordable Housing Levy Monetary Contributions.

#### 5.5 Conduct of CIC Works

The Developer, at its cost, must:

- (1) obtain any required consent by a relevant Authority, for the construction and use of the CIC Works;
- (2) carry out and complete the CIC Works to the satisfaction of the Council by the time specified in **Schedule 5**; and
- (3) carry out and complete the CIC Works:
  - (a) in accordance with the specifications (if any) referred to in **Schedule 5** for the CIC Works or the design and specifications agreed or determined to apply to the CIC Works under clause 5.6;
  - (b) in accordance with any relevant development consent;
  - (c) in accordance with the requirements of, or consents issued by, any Authority;
  - (d) ensuring that:
    - (i) all necessary measures are taken to protect people, property, and the environment;
    - (ii) unnecessary interference with the passage of people and vehicles is avoided;
    - (iii) nuisances and unreasonable noise and disturbances are prevented; and
    - (iv) all relevant laws and regulations with respect to water, air, noise and land pollution (including 'pollution incidents') as defined under the

*Protection of the Environment Operations Act 1997* (NSW) are complied with,

- (e) in accordance with any Australian Standards applicable to works of the same nature as each aspect of the CIC Works; and
- (f) in a proper and workmanlike manner complying with current industry practice and standards relating to each aspect of the CIC Works.

#### 5.6 Design and specification of CIC Works

- (1) The Developer must:
  - (a) consult with Council with respect to the development of the detailed design and specification with respect to the CIC Works and the estimate of the cost to complete the CIC Works; and
  - (b) ensure that the relevant design is consistent with, and has regard to, any relevant policies of Council as identified in the Development Consent.
- (2) Before commencing construction of the CIC Works, the Developer must submit to Council:
  - (a) for its approval, the detailed design and specification for the CIC Works; and
  - (b) a report from a suitable qualified and experienced Quantity Surveyor which estimates the cost to complete the CIC Works in accordance with the detailed design.
- (3) The design and specification for the CIC Works must be prepared by the Developer having specific regard to:
  - (a) the specification for the CIC Works set out in column 3 of **Schedule 5**; and
  - (b) the value the CIC Works, calculated in accordance with clause 5.6(2)(b).
- (4) Within thirty (30) days of the date of the first submission referred to in paragraph (3), Council will do either of the following:
  - (a) Notify the Developer in writing of its approval of the design, specification and the estimate of the cost to complete the CIC Works. The Developer is then to carry out and complete the CIC Works in accordance with that design, specification and the estimate of the cost to complete the CIC Works.
  - (b) Notify the Developer in writing that it does not approve of the design ,specification and/or the estimate of the cost to complete the CIC Works and provide the Developer with reasons for this.
- (5) If Council notifies the Developer in writing that it does not approve of the design, specification and cost to complete the CIC Works, the Developer may:
  - (a) elect to amend the design, specification and the estimate of the cost to complete the CIC Works and submit to Council the amended design and specification in which case the approval process set out in this clause 5.6 applies to that amendment; or

- (b) if the Developer does not agree with the modifications requested by Council, then, subject to clause 5.3, it may refer the relevant matter for dispute resolution in accordance with this document.

#### 5.7 No credit or re-imbursments

If the Developer's actual cost of carrying out the CIC Works are greater than the Contribution Value for those CIC Works, the Developer is not entitled to claim credit or reimbursement, as the case may be, for the difference.

#### 5.8 Access to the land and location of CIC Works

- (1) The Developer must permit the Council, its officers, employees, agents and contractors to enter the Land at any time, upon giving reasonable prior notice, in order to inspect, examine or test the CIC Works.
- (2) Council must give the Developer prior reasonable notice before it enters the Land and ensure that the Council and its employees comply with all reasonable directions of the Developer and all site construction requirements including without limitation all workplace health and safety requirements and reporting to a site office or site superintendent.
- (3) Council must permit the Developer, its officers, employees, agents and contractors to enter any Council owned land upon which the CIC Works will be carried out, at any time upon giving reasonable prior notice, in order to carry out the CIC Works.
- (4) The Developer acknowledges and agrees that:
  - (a) access to any Council owned land upon which the CIC Works will be carried out is subject to any statutory approval or consent required, and also any applicable Council policy, to allow those CIC Works to be carried out;
  - (b) the Developer must obtain any such approvals or consents before commencing the CIC Works; and
  - (c) Council will consider any application for such approval or consent at the relevant time and is not bound to grant such approval or consent.

#### 5.9 Designated Land

- (1) The Developer must dedicate the Designated Land to Council free of any trusts, estates, interests, covenants and Encumbrances in accordance with **Schedule 4**.
- (2) Details of the Designated Land are to be submitted to Council for approval prior to the issue of any Occupation Certificate for the Development.
- (3) With the exception of any stamp duty associated with the dedication of the Designated Land (which will be at the cost of Council), the Developer must meet all costs (including legal and registration costs) associated with the dedication of the Designated Land in accordance with paragraph (1), including any costs incurred by Council in relation to that dedication.
- (4) For the purposes of this document, the Designated Land is dedicated to Council:
  - (a) if the relevant allotments are dedicated in a plan registered at NSW Land Registry Services, when that plan is so registered; or
  - (b) otherwise when the Developer delivers to Council:

- (i) a transfer of the relevant allotments in registrable form;
- (ii) any consent required by an interested party in the relevant allotments; and
- (iii) any document in registrable form which, when registered, will remove any Encumbrances registered on the title of those allotments, excluding encumbrances that would not in the Council's opinion, acting reasonably, impede the intended use of all or any part of the Designated Land to be dedicated to the Council including but not limited to easements and covenants for services and drainage and encumbrances with respect to common property of the Development.

## 6 Completion of Works

### 6.1 Completion

For the purpose of this document the CIC Works are Completed when:

- (1) the CIC Works have been accepted as, or deemed to have been, Completed in accordance with this clause 6; and
- (2) any other obligation with respect to the CIC Works which must be discharged prior to the Completion of the CIC Works in accordance with this document has been discharged.

### 6.2 Issue of Completion Notice

If the Developer considers that the CIC Works are complete it must serve a notice on Council which:

- (1) is in writing;
- (2) identifies the CIC Works; and
- (3) specifies the date on which the Developer believes the CIC Works were completed,

(Completion Notice).

### 6.3 Inspection by Council

- (1) Council must inspect the CIC Works set out in a Completion Notice within ten (10) business days of the receipt of that notice.
- (2) If Council fails to carry out an inspection required under paragraph (1) the CIC Works referred to in the relevant Completion Notice will be deemed to be Complete and acceptable to Council.

### 6.4 Rectification Notice

- (1) Within twenty (20) business days of inspecting the CIC Works set out in a Completion Notice Council must provide notice in writing (**Rectification Notice**) to the Developer that the CIC Works set out in the Completion Notice:
  - (a) have been Completed; or
  - (b) have not been Completed, in which case the notice must also detail:
    - (i) those aspects of the CIC Works which have not been Completed; and

- (ii) the work Council requires the Developer to carry out in order to rectify the deficiencies in those CIC Works.
- (2) If Council does not provide the Developer with a Rectification Notice in accordance with paragraph (1), the CIC Works set out in the Completion Notice will be deemed to have been Completed and acceptable to Council.
- (3) Where Council serves a Rectification Notice on the Developer, the Developer must:
  - (a) rectify the CIC Works in accordance with that notice; or
  - (b) serve a notice on the Council that it disputes the matters set out in the notice.
- (4) Where the Developer:
  - (a) serves notice on Council in accordance with paragraph (3)(b), the dispute resolution provisions of this document apply; or
  - (b) rectifies the CIC Works in accordance with paragraph (3)(a), it must serve upon the Council a new Completion Notice for the CIC Works it has rectified.

#### 6.5 Works-As-Executed-Plan

Prior to Completion of the CIC Works the Developer must provide to Council a full works-as-executed-plan in respect to the CIC Works.

#### 6.6 Acceptance of Works

Council accepts ownership, possession and control of, and risk in, any CIC Works carried out on the land generally identified in the Location Plan when the CIC Works are Completed.

### 7 Defects Liability

#### 7.1 Defects Notice

- (1) Where any part of the CIC Works have been Completed but those CIC Works contain a material defect which:
  - (a) adversely affects the ordinary use and/or enjoyment of the relevant CIC Works; or
  - (b) will require maintenance or rectification works to be performed on them at some time in the future as a result of the existence of the defect,

(Defect) Council may issue a defects notice (**Defects Notice**) concerning those CIC Works but only within the Defects Liability Period.
- (2) A Defects Notice must contain the following information:
  - (a) the nature and extent of the Defect;
  - (b) the work Council requires the Developer to carry out in order to rectify the Defect; and
  - (c) the time within which the Defect must be rectified (which must be a reasonable time and not less than fifteen (15) business days).

**7.2 Developer to Rectify Defects**

- (1) The Developer must rectify the Defects contained within a Defects Notice as soon as practicable after receipt of the Defects Notice.
- (2) The Developer must follow the procedure set out in clause 6 in respect of the satisfaction of the Defects Notice.

**7.3 Right of Council to Step-In**

Council, at its absolute discretion, may enter upon the Land for the purpose of satisfying the Defects Notice where the Developer has failed to comply with a Defects Notice but only after giving the Developer five (5) business days written notice of its intention to do so.

**7.4 Consequence of Step-In**

If Council elects to exercise the step-in rights granted to it under clause 7.3 then:

- (1) Council may:
  - (a) enter upon any part of the land upon which the relevant CIC Works are being carried out that it requires access to in order to satisfy the obligations of the Developer in accordance with the Defects Notice; and
  - (b) rectify the relevant Defects in accordance with the Defects Notice; and
- (2) the Developer must not impede or interfere with Council in undertaking that work.

**7.5 Costs of Council**

Where Council exercises its step-in rights, the Developer will be liable for the costs incurred by the Council in rectifying the Defects where Council may call upon the Defects Security provided by the Developer pursuant to clause 11 and recover as a debt due in a court of competent jurisdiction any difference between the amount of the Defects Security and the costs incurred by the Council in rectifying the Defects.

**8 Variation of scope or timing for provision of the CIC Works****8.1 Variation to the scope of the CIC Work**

- (1) The Developer may request that Council approve in writing a variation to the scope of the CIC Works.
- (2) The scope of the CIC Works is not to be varied unless Council and the Developer agree in writing to the variation.
- (3) Council may refuse to agree to a variation of the CIC Works at its absolute discretion.

**8.2 Deferral of the timing of Completion of the CIC Works**

- (1) Notwithstanding any other provision of this document, if the Developer forms the view at any time, that:
  - (a) it is unable to Complete the CIC Works by the time specified in **Schedule 5**; or
  - (b) it believes that there is a risk of damage to the CIC Works if they are delivered by the time required in **Schedule 5**,

(**Deferred Works**), then the Developer may seek Council's approval to defer the Completion of the CIC Works by providing written notice to the Council:

- (c) identifying the CIC Works that the Developer proposes to defer;
  - (d) specifying the reason for the request to defer the Completion of the CIC Works; and
  - (e) identifying the anticipated time for Completion of the CIC Works.
- (2) The Council, acting reasonably, must give the Developer a written notice within thirty (30) business days of the date upon which the Developer serves written notice upon Council in accordance with paragraph (1) stating:
- (a) whether or not it consents to the deferral of the Deferred Works;
  - (b) the revised date for Completion required by Council; and
  - (c) any reasonable conditions Council requires with respect to the deferral.
- (3) The Developer acknowledges and agrees that Council may require additional Security on account of that deferral provided that the amount of any such security held by Council as a result does not exceed one hundred and fifty per cent (150%) of the then estimated cost to complete the CIC Works as determined by the Council.
- (4) If the Council consents to the deferral of the Deferred Works, then the following applies:
- (a) The Developer must comply with any conditions required by Council under paragraph (2)(c) above.
  - (b) Provided the Developer satisfies those conditions, the Developer will not be considered to be in breach of this document as a result of a failure to achieve Completion of the relevant Deferred Works by the time for Completion specified in this document.
  - (c) The time for completion of the Deferred Works under this document is the revised date for Completion approved by Council.

## 9 Contamination

### 9.1 Definitions

For the purpose of this clause 9:

**Contamination** means any material, gas, substance, liquid, chemical or biological mineral or other physical matter which would, if present on the Land:

- (1) result in an Authority issuing a notice, direction or order under an Environmental Law; or
- (2) which would constitute a violation of contribution of contravention of any Environmental Law.

**Contaminated** means subject to Contamination.

**Environmental Law** means all planning, environmental or pollution laws and any regulations, orders, directions, ordinances or requirements, permissions, permits, licences issued under those laws or instruments.

**9.2 Warranties and Indemnities**

The Developer:

- (1) warrants that as far as it is aware, and other than as disclosed to Council, the Designated Land is not, or will not be, Contaminated; and
- (2) indemnifies and must keep indemnified Council against all liability for and associated with all Contamination present in, on and under the Designated Land including full responsibility for compliance with and any liability in respect of such Contamination under the *Contaminated Lands Management Act 1997* (NSW) and all other relevant legislation and the requirements of any relevant Authority.

**9.3 Remediation**

- (1) If Council becomes aware or reasonably suspects that any part of the Designated Land was Contaminated before the date of this document, Council may as soon as practicable notify the Developer in writing to that effect.
- (2) As soon as practicable after receipt of the notice pursuant to paragraph (1) the Developer will at its cost (with the assistance of qualified experts) carry out all reasonable investigations (including investigations which Council reasonably directs in writing) to enable the parties to be informed of the full nature and extent of the Contamination in, on, under, and leaving from the relevant part of the land on which the Designated Land sits and provide copies of all reports on such investigations to Council (**Investigation Reports**).
- (3) As soon as practicable after receipt by Council of the Investigation Reports the parties must meet to discuss in good faith the method by which the relevant part of the Designated Land might be dealt with so that it is no longer Contaminated.
- (4) Following the discussions pursuant to paragraph (3) the Developer must at its own cost undertake all reasonable measures which the Developer (acting reasonably) determines (and as Council acting reasonably approves in writing) as necessary to ensure that the relevant part of the Designated Land is no longer Contaminated.

**10 Developer Warranties and Indemnities**

**10.1 Warranties**

The Developer warrants to Council that:

- (1) it is legally and beneficially entitled to the Land;
- (2) it is able to fully comply with its obligations under this document;
- (3) it has full capacity to enter into this document; and
- (4) there is no legal impediment to it entering into this document, or performing the obligations imposed under it.

**10.2 Indemnity**

The Developer indemnifies Council in respect of any Claim that may arise as a result of the conduct of the CIC Works until such time as a Completion Notice is issued for the CIC Work

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but only to the extent that any such Claim does not arise as a result of the negligent acts or omissions of Council.

## 11 Security

### 11.1 Provision of Security

- (1) The Developer must deliver to Council separate Bank Guarantees or other forms of security to the satisfaction of the Council:
  - (a) prior to the issue of a Construction Certificate for an item of CIC Works, for an amount equivalent to one hundred and ten per cent (110%) of the Contribution Value for that item of CIC Works (**Works Securities**); and
  - (b) prior to the Completion of an item of CIC Works, for an amount equivalent to ten per cent (10%) of the Contribution Value of that item of CIC Works (**Defects Security**),

(collectively referred to as the **Security**).
- (2) The Developer may satisfy its obligations (either in whole or in part), by directing Council to retain any Security held by Council which is required to be released by Council under this document.
- (3) If the parties have agreed that the Developer is to pay Council a Monetary Contribution in lieu of carrying out the CIC Works then no Security will be payable.

### 11.2 Replacement of Security

- (1) The Developer may replace any Security provided by it at any time, provided that the amount of that replacement is not less than that which is required to be provided under this document.
- (2) On receipt of a replacement Security, Council must immediately release the Security being replaced and return it to the Developer.

### 11.3 Council may call on Security

- (1) If the Developer commits an Event of Default then Council, without limiting any other remedies available to it, may call on any Security provided by the Developer.
- (2) If Council calls on any Security, it may use the amount so paid to it in satisfaction of any costs incurred by it in remedying the Event of Default.

### 11.4 Top up of Security

If Council calls on the Security, Council, by notice in writing to the Developer, may require the Developer to provide a further or replacement Security in an amount that, when added to any unused portion of any Security then held by Council, does not exceed the amount of the Security Council is entitled to hold at that time under this document.

### 11.5 Release of Works Security

Unless:

- (1) Council has made or intends to make a demand against any Security provided by the Developer;

- (2) the Development Contribution on account of which that Security was provided has not been made; or
- (3) the Developer is in breach of this document at the relevant time,

Council, upon a written request being made by the Developer, must return the Works Security within ten (10) business days of such a request being made.

#### 11.6 Release of Defects Security

Unless:

- (1) Council has made or intends to make a demand against any Security provided by the Developer;
- (2) the relevant Defects Liability Period has not expired; or
- (3) the Developer is in breach of this document at the relevant time,

Council, upon a written request being made by the Developer, must return the Defects Security within ten (10) business days of such a request being made.

#### 11.7 Compulsory acquisition of the Designated Land

- (1) The Developer consents to the compulsory acquisition of the Designated Land:
  - (a) in accordance with the Acquisition Act; and
  - (b) on the terms set out in this clause 11.6.
- (2) Council may only acquire the Designated Land compulsorily in accordance with the Acquisition Act if the Developer has committed an Event of Default with respect to the dedication of that land under this document.
- (3) If Council acquires the Designated Land compulsorily in accordance with the Acquisition Act:
  - (a) the Developer agrees that the compensation payable to it on account of that acquisition under the Acquisition Act is \$1.00; and
  - (b) Council must complete that acquisition within twelve (12) months of the relevant Event of Default.
- (4) The parties agree that the provisions of this clause 11.6 are an agreement with respect to the compulsory acquisition of the Designated Land for the purpose of s30 of the Acquisition Act.
- (5) If Council:
  - (a) acquires the Designated Land under paragraph (3); and
  - (b) is required to pay any compensation to a third party as a result of that acquisition,

then the Developer must pay Council the amount of that compensation as a Monetary Contribution:

- (c) within ten (10) business days of demand for payment being made by Council; and
- (d) prior to the issue of the then next Occupation Certificate or Subdivision Certificate with respect to the Development.

#### 11.8 Developer must not deal with property

- (1) The Developer must not during the term of this document sell, transfer, mortgage, charge or grant a lease or license or any other right of occupancy to any person over the Designated Land without first obtaining Council's consent in writing.
- (2) Council may, at its absolute discretion, refuse its consent or give consent with conditions.

#### 11.9 Occupation Certificate must be withheld

- (1) The Developer may only make, or cause, suffer or permit the making of, an application for an Occupation Certificate in respect of the Development if, at the date of the application, the Developer is not in breach of an obligation to make a Contribution under this document that is required to be made before that Occupation Certificate can be issued.
- (2) Any such Occupation Certificate must not be issued until such time as:
  - (a) the breach is rectified; or
  - (b) Council calls upon the Security provided by the Developer in respect of the Contribution to which the breach relates.

## 12 Registration of this document

### 12.1 Registration of this document

The Developer acknowledges and agrees that:

- (1) this document must be registered on the title to the Land pursuant to section 7.6 of the Act; and
- (2) subject to clause 12.2, Council will undertake that registration at the cost of the Developer.

### 12.2 Obligations of Developer

- (1) The Developer, at its own expense, will promptly after this document comes into operation, and before the issue of any Construction Certificate for the Development, take all necessary and practical steps, and otherwise do anything that the Council reasonably requires, to procure:
  - (a) the consent of each person who:
    - (i) has an estate or interest in the Land; or
    - (ii) is seized or possessed of an estate or interest in the Land;
  - (b) the execution of any documents; and
  - (c) the production of any relevant title documentation,

to enable the registration of this document in accordance with clause 12.1.

- (2) The Developer, at its own expense, will take all necessary and practical steps, and otherwise do anything that the Council reasonably requires:
- (a) to allow the lodgement of this document with the Registrar-General as soon as reasonably practicable after this document comes into operation but in any event, no later than thirty (30) business days after that date; and
  - (b) to allow the registration of this document by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this document is lodged for registration.

### 12.3 Discharge from the Register

The Council will provide a release and discharge of this document so that it may be removed from the folios of the Register for the Land (or any part of it) when:

- (1) the Developer's obligations under this document having been performed to Council's satisfaction; or
- (2) if this document is terminated or otherwise comes to an end for any other reason.

## 13 Assignment

### 13.1 Application

This clause 13 only applies during any period when this document is not registered on the title of the Land.

### 13.2 Restriction on Assignment

Other than in accordance with this clause 13 the Developer may not:

- (1) Assign any part of the Land; and/or
- (2) Assign their rights or obligations under this document.

### 13.3 Procedure for Assignment

- (1) If the Developer:
  - (a) wishes to Assign any part of the Land; and/or
  - (b) wishes to Assign its rights or obligations under this document,
 then the Developer must:
  - (c) provide a written request to Council for the consent of Council to the relevant Assignment;
  - (d) provide Council with any evidence required by Council, acting reasonably, to satisfy Council that the third party in whose favour the Assignment is to be made (**Assignee**) is reasonably capable of performing the obligations under this document that are to be Assigned to it; and
  - (e) obtain written consent of Council to the relevant Assignment; and

- (f) at no cost to Council, procure:
- (i) the execution by the Assignee of an appropriate deed where the Assignee agrees to be bound by the terms of this document; and
  - (ii) the provision of all Security to Council by the Assignee that the Developer is required to provide under this document (and any additional securities if required by Council acting reasonably) at the same time as, or prior to, entering into that deed.
- (2) Council is under no obligation to consider granting its consent to any request made by the Developer under paragraph (1)(c) if, at the time the request is made, the Developer is in breach of this document.

## 14 Dispute Resolution

### 14.1 Notice of dispute

- (1) If a dispute or lack of certainty between the parties arises in connection with this document or its subject matter (**Dispute**), then either party (**First Party**) must give to the other (**Second Party**) a notice which:
- (a) is in writing;
  - (b) adequately identifies and provides details of the Dispute;
  - (c) stipulates what the First Party believes will resolve the Dispute; and
  - (d) designates its representative (**Representative**) to negotiate the Dispute.
- (2) The Second Party must, within five (5) business days of service of the notice of dispute, provide a notice to the First Party designating as its representative a person to negotiate the Dispute (the representatives designated by the parties being together, the **Representatives**).

### 14.2 Conduct pending resolution

The parties must continue to perform their respective obligations under this document if there is a Dispute but will not be required to complete the matter the subject of the Dispute, unless the appropriate party indemnifies the other parties against costs, damages and all losses suffered in completing the disputed matter if the Dispute is not resolved in favour of the indemnifying party.

### 14.3 Further steps required before proceedings

Subject to clauses 14.14 and 14.15 and except as otherwise expressly provided in this document, any Dispute must, as a condition precedent to the commencement of litigation, mediation under clause 14.5 or determination by an expert under clause 14.6, first be referred to the Representatives. The Representatives must endeavour to resolve the dispute within five (5) business days of the date a notice under clause 14.1(2) is served.

### 14.4 Disputes for mediation or expert determination

If the Representatives have not been able to resolve the Dispute, then the parties must agree within five (5) business days to refer the matter to mediation under clause 14.5 or expert determination under clause 14.6.

**14.5 Disputes for mediation**

- (1) Mediation must be conducted by a mediator agreed by the parties and, if the parties cannot agree within five (5) business days, then by a mediator appointed by the President of the Law Society of New South Wales for the time being.
- (2) If the mediation referred to in paragraph (1) has not resulted in settlement of the Dispute and has been terminated, the parties may agree to have the matter determined by expert determination under clause 14.6.

**14.6 Choice of expert**

- (1) If the Dispute is to be determined by expert determination, this clause 14.6 applies.
- (2) The Dispute must be determined by an independent expert in the relevant field:
  - (a) agreed between and appointed jointly by the parties; or
  - (b) in the absence of agreement within five (5) business days after the date that the matter is required to be determined by expert determination, appointed by the President of the Law Society of New South Wales for the time being.
- (3) If the parties fail to agree as to the relevant field within five (5) business days after the date that the matter is required to be determined by expert determination, either party may refer the matter to the President of the Law Society of New South Wales for the time being whose decision as to the relevant field is final and binding on the parties.
- (4) The expert appointed to determine a Dispute:
  - (a) must have a technical understanding of the issues in dispute;
  - (b) must not have a significantly greater understanding of one party's business, functions or operations which might allow the other side to construe this greater understanding as a bias; and
  - (c) must inform the parties before being appointed of the extent of the expert's understanding of each party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the parties.
- (5) The parties must promptly enter into a document with the expert appointed under this clause 14.6 setting out the terms of the expert's determination and the fees payable to the expert.

**14.7 Directions to expert**

- (1) In reaching a determination in respect of a dispute under clause 14.6, the independent expert must give effect to the intent of the parties entering into this document and the purposes of this document.
- (2) The expert must:
  - (a) act as an expert and not as an arbitrator;
  - (b) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;

- (c) not accept verbal submissions unless both parties are present;
  - (d) on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to the other party;
  - (e) take into consideration all documents, information and other material which the parties give the expert which the expert in its absolute discretion considers relevant to the determination of the Dispute;
  - (f) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
  - (g) issue a draft certificate stating the expert's intended determination (together with written reasons), giving each party ten (10) business days to make further submissions;
  - (h) issue a final certificate stating the expert's determination (together with written reasons); and
  - (i) act with expedition with a view to issuing the final certificate as soon as practicable.
- (3) The parties must comply with all directions given by the expert in relation to the resolution of the Dispute and must within the time period specified by the expert, give the expert:
- (a) a short statement of facts;
  - (b) a description of the Dispute; and
  - (c) any other documents, records or information which the expert requests.

#### 14.8 Expert may commission reports

- (1) Subject to paragraph (2):
  - (a) the expert may commission the expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the expert in making a determination; and
  - (b) the parties must indemnify the expert for the cost of those advisers or consultants in accordance with clause 14.6(5) of this deed.
- (2) The parties must approve the costs of those advisers or consultants in writing prior to the expert engaging those advisers or consultants.

#### 14.9 Expert may convene meetings

- (1) The expert must hold a meeting with all of the parties present to discuss the Dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.
- (2) The parties agree that a meeting under paragraph (1) is not a hearing and is not an arbitration.

**14.10 Other courses of action**

If the mediation referred to in clause 14.5 has not resulted in settlement of the dispute, the mediation has been terminated and the parties have not agreed to refer the matter to expert determination within five (5) business days after termination of the mediation, then either party may take whatever course of action it deems appropriate for the purpose of resolving the Dispute.

**14.11 Confidentiality of information provided in dispute resolution process**

- (1) The parties agree, and must procure that the mediator and the expert agree as a condition of his or her appointment:
  - (a) subject to paragraph (2), to keep confidential all documents, information and other material disclosed to them during or in relation to the mediation or expert determination;
  - (b) not to disclose any confidential documents, information and other material except:
    - (i) to a party or adviser or consultant who has signed a confidentiality undertaking; or
    - (ii) if required by Law or any Authority to do so; and
  - (c) not to use confidential documents, information or other material disclosed to them during or in relation to the mediation or expert determination for a purpose other than the mediation or expert determination.
- (2) The parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:
  - (a) views expressed or proposals or suggestions made by a party or the mediator or the expert during the expert determination or mediation relating to a possible settlement of the Dispute;
  - (b) admissions or concessions made by a party during the mediation or expert determination in relation to the Dispute; and
  - (c) information, documents or other material concerning the dispute which are disclosed by a party during the mediation or expert determination unless such information, documents or facts would be discoverable in judicial or arbitral proceedings.

**14.12 Final determination of expert**

The parties agree that the final determination by an expert will be final and binding upon them except in the case of fraud or misfeasance by the expert.

**14.13 Costs**

- (1) Each party must contribute equally to the costs of any mediator appointed under clause 14.5.
- (2) If any independent expert does not award costs, each party must contribute equally to the expert's costs in making the determination.

**14.14 Remedies available under the Act**

This clause 14 does not operate to limit the availability of any remedies available to Council under the Act.

**14.15 Urgent relief**

This clause 14 does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this document.

**15 Breach of this document****15.1 Breach Notice**

If the Developer breaches this document, Council may serve a notice on the Developer (**Breach Notice**) specifying:

- (1) the nature and extent of the alleged breach;
- (2) if:
  - (a) the breach is capable of being rectified other than by the payment of compensation, what Council requires the Developer to do in order to rectify the breach; or
  - (b) the breach is not capable of being rectified other than by payment of compensation, the amount of compensation Council requires the Developer to pay in order to rectify the breach, and
- (3) the time within which Council requires the breach to be rectified, which must be a reasonable time or not less than ten (10) business days.

**15.2 Events of Default**

The Developer commits an **Event of Default** if it:

- (1) fails to comply with a Breach Notice; or
- (2) becomes subject to an Insolvency Event.

**15.3 Consequences of Events of default**

Where the Developer commits an Event of Default, Council may, in addition to any rights it has at Law:

- (1) exercise the Step in Rights so as to carry out any work specified in the relevant Breach Notice; or
- (2) call on the Security to the extent of any compensation claimed in a Breach Notice and not paid by the Developer.

**16 Termination, Rescission or Determination****16.1 Termination**

This document terminates in the following events:

- (1) The parties agree in writing to terminate the operation of this document at any time.

- (2) The Development Consent lapses.

### 16.2 Consequence of termination

Upon termination of this document:

- (1) all future rights and obligations of the parties are discharged; and  
 (2) all pre-existing rights and obligations of the parties continue to subsist.

### 16.3 Determination

This document will determine upon the Developer satisfying all of the obligations imposed on it in full.

## 17 Position of Council

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### 17.1 Consent authority

The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the terms of the Planning Legislation.

### 17.2 Document does not fetter discretion

This document is not intended to operate to fetter, in any unlawful manner:

- (1) the power of Council to make any Law; or  
 (2) the exercise by Council of any statutory power or discretion,

**(Discretion).**

### 17.3 Severance of provisions

- (1) No provision of this document is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this document is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
- (a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 17 is substantially satisfied; and
- (b) in the event that paragraph (1)(a) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this document has full force and effect; and
- (c) to endeavour to satisfy the common objectives of the parties on relation to the provision of this document which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.
- (2) Where the Law permits Council to contract out of a provision of that Law or gives Council power to exercise a Discretion, then if Council has in this document contracted out of a provision or exercised a Discretion under this document, then to the extent of this document is not to be taken to be inconsistent with the Law.

**17.4 No Obligations**

Nothing in this document will be deemed to impose any obligation on Council to exercise any of its functions under the Act in relation to the Development Consent, the Land or the Development in a certain manner.

**18 Confidentiality****18.1 Document not Confidential**

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

**18.2 Other Confidential Information**

- (1) The parties acknowledge that:
- (a) Confidential Information may have been supplied to some or all of the parties in the negotiations leading up to the making of this document; and
  - (b) The parties may disclose to each other further Confidential Information in connection with the subject matter of this document.
  - (c) Subject to paragraphs (2) and (3), each party agrees:
    - (i) not to disclose any Confidential document received before or after the making of this document to any person without the prior written consent of the party who supplied the Confidential Information; or
    - (ii) to take all reasonable steps to ensure all Confidential Information received before or after the making of this document is kept confidential and protected against unauthorised use and access.
- (2) A party may disclose Confidential Information in the following circumstances:
- (a) in order to comply with the Law, or the requirements of any Authority; or
  - (b) to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the information confidential.
- (3) The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

**19 GST****19.1 Defined GST Terms**

Defined terms used in this clause 19 have the meaning ascribed to them in the GST Law.

**19.2 GST to be Added to Amounts Payable**

- (1) If GST is payable on a Taxable Supply made under, by reference to or in connection with this document, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration, provided that the party has received a valid tax invoice for that Taxable Supply.

- (2) This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive.
- (3) Unless otherwise expressly stated, prices or other sums payable or Consideration to be provided under or in accordance with this document are exclusive of GST.

### 19.3 GST Obligations to Survive Termination

This clause 19 will continue to apply after expiration of termination of this document.

## 20 General

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### 20.1 Obligation to act in good faith

The parties must at all times:

- (1) cooperate and use their best endeavours to profitably and professionally give effect to their rights and obligations set out in this document;
- (2) not unreasonably delay any action, approval, direction, determination or decision which is required of them;
- (3) make approvals or decisions that are required of them in good faith and in a manner consistent with the completion of the transactions set out in this document; and
- (4) be just and faithful in their activities and dealings with the other parties.

### 20.2 Legal costs

The Developer agrees to:

- (1) pay or reimburse the reasonable legal costs and disbursements of Council in the negotiation, preparation, execution, exhibition, registration and stamping of this document; and
- (2) pay or reimburse the legal costs and disbursements of Council arising from the ongoing administration and enforcement of this document including any breach or default by the Developer of its obligations under this document,

within seven (7) business days of receipt of a Tax Invoice from Council.

## 21 Administrative provisions

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### 21.1 Notices

- (1) Any notice, consent or other communication under this document must be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
  - (a) delivered to that person's address;
  - (b) sent by pre-paid mail to that person's address; or
  - (c) transmitted by e-mail to that person's e-mail address.
- (2) A notice given to a person in accordance with this clause is treated as having been given and received:

- (a) if delivered to a person's address, on the day of delivery if a business day, otherwise on the next business day;
  - (b) if sent by pre-paid mail, on the third business day after posting; and
  - (c) if transmitted by e-mail to a person's e-mail address and a correct and complete confirmation of receipt is received, on the day of transmission if a business day, otherwise on the next business day.
- (3) For the purpose of this clause the address of a person is the address set out in this document or another address of which that person may from time to time give notice to each other person.

#### 21.2 Entire agreement

This document is the entire agreement of the parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this document.

#### 21.3 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

#### 21.4 Cooperation

Each party must sign, execute and deliver all agreements, documents, instruments and act reasonably and effectively to carry out and give full effect to this document and the rights and obligations of the parties under it.

#### 21.5 Counterparts

This document may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument. A party who has executed a counterpart of this document may exchange it with another party by emailing a pdf (portable document format) copy of, the executed counterpart to that other party, and if requested by that other party, will promptly deliver the original by hand or post. Failure to make that delivery will not affect the validity and enforceability of this document.

#### 21.6 Amendment

This document may only be amended or supplemented in writing signed by the parties.

#### 21.7 Unenforceability

Any provision of this document which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid or enforceable, and is otherwise capable of being severed to the extent of the invalidity or enforceability, without affecting the remaining provisions of this document or affecting the validity or enforceability of that provision in any other jurisdiction.

#### 21.8 Power of Attorney

Each attorney who executes this document on behalf of a party declares that the attorney has no notice of:

- (1) the revocation or suspension of the power of attorney by the grantor; or

- (2) the death of the grantor.

### 21.9 Governing law

The law in force in the State of New South Wales governs this document. The parties:

- (1) submit to the exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeal from those courts in respect of any proceedings in connection with this document; and
- (2) may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.

### 21.10 Trustee Limitation of Liability

- (1) The Developer enters into the document only in its capacity as trustee of the Unit Trust and in no other capacity.
- (2) A liability arising under or in connection with the document (whether that liability arises under a specific provision of the document, for breach of contract or otherwise) can be enforced against the Developer only to the extent to which it can be satisfied out of the assets of the Unit Trust out of which the Developer is actually indemnified for the liability.
- (3) The limitation of the Developer's liability under this document:
- (a) applies despite any other provision of the document (other than paragraph (5) below); and
- (b) extends to all liabilities and obligations of the Developer in relation to any representation, warranty, conduct, omission, agreement or transaction related to the document.
- (4) The parties may not:
- (a) seek the appointment of a liquidator, administrator, receiver or similar person to the Developer; or
- (b) prove in any liquidation, administration or arrangement of or affecting the Developer.
- (5) The provisions of this clause 21.10 will not apply to any obligation or liability of the Developer to the extent that it is not satisfied because there is a reduction in the extent, or an extinguishment, of the Developer's indemnification out of the assets of the Unit Trust, as a result of the Developer's fraud, negligence or breach of trust.

## Schedule 1– Requirements under s7.4

REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
<b>Planning instrument and/or development application – (Section 7.4(1))</b> The Developer has: (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(a) No (b) Yes (c) No
<b>Description of land to which this agreement applies – (Section 7.4(3)(a))</b>	(1) 10/3/3897. (2) 1/554563. (3) 2/554563. (4) B/340818. (5) C/100646. (6) D/100646. (7) 10/828868. (8) 1/573636.
<b>Description of change to the environmental planning instrument to which this agreement applies – (Section 7.4(3)(b))</b>	Not applicable
<b>Application of section 7.11 of the Act – (Section 7.4(3)(d))</b>	Applies
<b>Applicability of section 7.12 of the Act – (Section 7.4(3)(d))</b>	Applies.
<b>Consideration of benefits under this agreement if section 7.11 applies – (Section 7.4(3)(e))</b>	Applies. See clause 4.
<b>Mechanism for Dispute resolution – (Section 7.4(3)(f))</b>	See clause 14.
<b>Enforcement of this agreement (Section 7.4(3)(g))</b>	See clause 11.
<b>No obligation to grant consent or exercise functions – (Section 7.4(3)(9))</b>	See clause 17.

## Schedule 2 – Defined terms and Interpretation

### Part 1 - Definitions

<b>Act</b>	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
<b>Acquisition Act</b>	means the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> (NSW).
<b>Affordable Housing Contribution</b>	means the Contribution so described in <b>Schedule 3</b> .
<b>Affordable Housing Policy</b>	means the <i>Randwick Local Environmental Plan 2012</i> , the <i>Kensington and Kingsford Town Centres - Affordable Housing Plan</i> adopted by the Council on 10 December 2019.
<b>Assign</b>	as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.
<b>Authority</b>	means (as appropriate) any: <ol style="list-style-type: none"> <li>(1) federal, state or local government;</li> <li>(2) department of any federal, state or local government;</li> <li>(3) any court or administrative tribunal; or</li> <li>(4) statutory corporation or regulatory body.</li> </ol>
<b>Bank Guarantee</b>	means an irrevocable and unconditional undertaking without any expiry or end date by one of the following trading banks: <ol style="list-style-type: none"> <li>(1) Australia and New Zealand Banking Group Limited.</li> <li>(2) Commonwealth Bank of Australia.</li> <li>(3) Macquarie Bank.</li> <li>(4) National Australia Bank Limited.</li> <li>(5) St George Bank Limited.</li> <li>(6) Westpac Banking Corporation.</li> <li>(7) Any other financial institution approved by the Council, in its absolute discretion, in response to a request from the Developer.</li> </ol>
<b>Business Day</b>	means a day which is not a Saturday, Sunday or a public holiday in New South Wales.
<b>CIC Monetary Contribution</b>	means the Contribution so described in <b>Schedule 3</b> .
<b>CIC Works</b>	means the Contribution so described in <b>Schedule 5</b> .
<b>CIC Works Value</b>	has the meaning ascribed in clause 5.3(4).
<b>Claim</b>	against any person any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or

	future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
<b>Completed</b>	means completed in accordance with the requirements of this document.
<b>Completion Notice</b>	has the meaning ascribed in clause 6.2.
<b>Confidential Information</b>	means any information and all other knowledge at any time disclosed (whether in writing and orally) by the parties to each other, or acquired by the parties in relation to the other's activities or services which is not already in the public domain and which: <ul style="list-style-type: none"> <li>(1) is by its nature confidential;</li> <li>(2) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise);</li> <li>(3) any party knows or ought to know is confidential;</li> <li>(4) is information which may be reasonably considered to be of a confidential nature.</li> </ul>
<b>Construction Certificate</b>	has the same meaning as in section 6.4(d) of the Act.
<b>Contributions</b>	means the CIC Works, the Designated Land and the Monetary Contributions.
<b>Contribution Value</b>	means the amount specified in <b>Schedules 3 and Schedule 4</b> in the column headed "contribution value" for each item of the Contributions as indexed in accordance with this document.
<b>Defect</b>	has the meaning ascribed to it in clause 7.1.
<b>Defects Notice</b>	has the meaning ascribed to it in clause 7.1.
<b>Defects Liability Period</b>	means with respect to the CIC Works, a period of twelve (12) months commencing on the date of Completion of the CIC Works.
<b>Defects Security</b>	has the meaning ascribed to it in clause 11.1(1)(b).
<b>Designated Land</b>	means the land to be dedicated to Council for any affordable housing contribution as referred to in <b>Schedule 4</b> .
<b>Development</b>	means the development permitted to be undertaken in accordance with the Development Consent, consisting of the demolition of existing structures, site remediation, and construction of a nine (9) storey mixed use development comprising ground floor commercial/retail premises and one-hundred and forty-two (142) dwellings on floors above, two (2) levels of basement parking with vehicular access from Anzac Parade, tree removal, associated landscape and public domain works (variation to building height) at 137-151 Anzac Parade, Kensington.
<b>Development Application</b>	means an application for the Development Consent.

<b>Development Consent</b>	means the development consent issued for development application number DA/810/2021.
<b>Dispute</b>	has the meaning ascribed to it in clause 14.1.
<b>Encumbrance</b>	means an interest or power: <ol style="list-style-type: none"> <li>(1) reserved in or over an interest in any asset;</li> <li>(2) arising under, or with respect to, a Bio-Banking Agreement;</li> <li>(3) created or otherwise arising in or over any interest in any asset under any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement, covenant, lease, subordination to any right of any other person and any other encumbrance or security interest, trust or bill of sale; or</li> <li>(4) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.</li> </ol> <p><b>Encumber</b> means to grant an Encumbrance.</p>
<b>GST Law</b>	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition or administration of the GST.
<b>Index</b>	means the Consumer Price Index, All Groups, Sydney as published by the ABS in respect of the quarter ending immediately prior to the date of payment.
<b>Insolvency Event</b>	means the happening of any of the following events: <ol style="list-style-type: none"> <li>(1) Application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order or an order is made that a body corporate be wound up.</li> <li>(2) An application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate or one of them is appointed, whether or not under an order.</li> <li>(3) Except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, agreement of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them.</li> <li>(4) A body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved.</li> <li>(5) A body corporate is or states that it is insolvent.</li> <li>(6) As a result of the operation of section 459F(1) of the <i>Corporations Act 2001</i> (Cth) (<b>Corporations Act</b>), a</li> </ol>

body corporate is taken to have failed to comply with a statutory demand;

- (7) A body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act.
- (8) A body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate.
- (9) A person becomes an insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event.
- (10) A receiver, manager or receiver and manager is appointed to the Company.
- (11) A claim is filed in a court against a person that is not defended, released or otherwise settled within twenty eight (28) days of the date of its filing at the court.
- (12) Anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

<b>Land</b>	means the "Land" set out in <b>Schedule 1</b> .
<b>Law</b>	means all legislation, regulations, by-laws, common law and other binding order made by any Authority.
<b>Location Plan</b>	means the plan that is attached as <b>Annexure 1</b> .
<b>Monetary Contributions</b>	means the monetary contributions specified or described in <b>Schedule 3</b> .
<b>Occupation Certificate</b>	has the same meaning as in section 6.4(c) of the Act.
<b>Planning Legislation</b>	means the Act, the <i>Local Government Act 1993</i> (NSW) and the <i>Roads Act 1993</i> (NSW).
<b>Qualified Valuer</b>	means approved by the Council who: <ol style="list-style-type: none"> <li>(1) is a member of the Australian Valuers Institute and has been a member for at least five (5) years;</li> <li>(2) practises as a valuer of real property;</li> <li>(3) is active as a valuer of real property at the time of their appointment;</li> <li>(4) has at least three (3) years experience in valuing real property; and</li> <li>(5) undertakes to act fairly and promptly in accordance with the requirements of this document.</li> </ol>
<b>Quantity Surveyor</b>	means approved by the Council who:

- (1) is a member of their respective professional organisation and has been for at least five (5) years;
- (2) practises as a quantity surveyor for works of the same nature as the relevant Works;
- (3) is active as a quantity surveyor at the time of his appointment;
- (4) has at least three (3) years experience in valuing works of the same nature as the relevant Works; and
- (5) undertakes to act fairly and promptly in accordance with the requirements of this document.

<b>Rectification Notice</b>	has the meaning ascribed to it in clause 6.4.
<b>Security</b>	has the meaning ascribed to it in clause 11.1(1).
<b>Unit Trust</b>	means the Toga Addison Unit Trust (ABN 56 742 581 520).
<b>Works Securities</b>	has the meaning ascribed to it in clause 11.1(1)(a).

**Part 2 - Interpretational Rules**

<b>clauses, annexures and schedules</b>	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this document.
<b>reference to statutes</b>	a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
<b>singular includes plural</b>	the singular includes the plural and vice versa.
<b>Person</b>	the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
<b>executors, administrators, successors</b>	a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
<b>Dollars</b>	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
<b>calculation of time</b>	if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
<b>reference to a day</b>	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
<b>accounting terms</b>	an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia.
<b>reference to a group of persons</b>	a group of persons or things is a reference to any two or more of them jointly and to each of them individually.

<b>meaning not limited</b>	the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
<b>next day</b>	if an act under this document to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.
<b>next business day</b>	if an event must occur on a stipulated day which is not a business day then the stipulated day will be taken to be the next business day.
<b>time of day</b>	time is a reference to Sydney time.
<b>Headings</b>	headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this document.
<b>Agreement</b>	a reference to any agreement, document or instrument includes the same as varied, supplemented, novated or replaced from time to time.
<b>Gender</b>	a reference to one gender extends and applies to the other and neuter gender.

**Schedule 3 – Monetary Contributions**

Contributions	Timing	Contribution Value
Affordable Housing Levy Monetary Contribution	Prior to the issue of the first Occupation Certificate in respect of the Development.	<p>The amount of the contribution must be calculated at the time that it is required to be paid in accordance with clause 6.18 of the Affordable Housing Policy and will be calculated using the relevant indexed Affordable Housing Contribution Rate pursuant to part 2.8 of the Affordable Housing Policy (being an amount of \$540.62 per square metre as at the date of this document).</p> <p>The amount of the contribution will be calculated using the following formula:</p> $MC = AHC - AFHDL$ <p>where:</p> <p>MC = the monetary contribution required to be paid.</p> <p>AHC = the Affordable Housing Contribution Rate referred to above multiplied by the <i>total floor area</i> of the Development (as defined in section 2.5 of the Affordable Housing Policy).</p> <p>AFHDL = the Affordable Housing Contribution Rate referred to above, minus the total floor area of the Designated Land.</p>
CIC Monetary Contribution	Prior to the issue of the fourth Construction Certificate in respect of the Development.	<p>The amount of the contribution will be calculated at the time that it is required to be paid in accordance with clause 6.17 of the <i>Randwick Local Environmental Plan 2012</i>, the <i>Kensington and Kingsford Town Centres – Community Infrastructure Contributions Plan</i> adopted by the Council on 10 December 2019 and will be calculated (which includes for the sake of clarity any indexation required under clause 5.4 of this document) using:</p> <ol style="list-style-type: none"> <li>(1) the relevant Community Infrastructure Contribution Rate (being an amount of \$475.00 per square metre as at the date of this document); and</li> <li>(2) the area of additional residential floor space within the Development above the maximum building height plane allowable under clause 4.3 of the RLEP determined on the basis of the final design of the Development.</li> </ol>

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		As at the date of this document, the Contribution Value is estimated to be \$1,433,464.50 (being approximately 3,017.82 square metres of floor space payable at a rate of \$475/sqm).
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**Schedule 4 – Designated Land**

Affordable Housing Contribution	Timing
<p>The dedication of one (1) bedroom, two (2) bedroom or three (3) bedroom dwellings comprising an internal area of no less than 50.0 sqm within the Development with an aggregate floor area of up to three percent (3%) of the <i>total floor area</i> of the Development (as defined in section 2.5 of the Affordable Housing Policy and as required by clause 6.18 of the Randwick LEP 2012) and minimum ancillary car parking permitted by Council for the dwellings with the nature and extent of such dwellings to be determined by the Developer and approved by Council and generally in accordance with the finishes in the Kensington Finishes Schedule attached as <b>Annexure 3</b>.</p> <p>As at the date of this document, the anticipated maximum area required to be dedicated is 528sqm, being three per cent (3%) of the anticipated total floor area of 17,609 sqm, as outlined in the plan attached as <b>Annexure 2</b>.</p> <p>For the avoidance of doubt, the affordable housing floor area (which is a percentage of the total floor area) is not calculated by reference to net saleable area of the affordable housing dwellings and is instead a proportion of the total floor area. As an example, the anticipated maximum area of 528sqm is a proportion of the total floor area and not calculated by reference to net saleable area of the dwellings.</p>	<p>Prior to the issue of the first Occupation Certificate in respect of the Development.</p>

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**Schedule 5 – CIC Works**

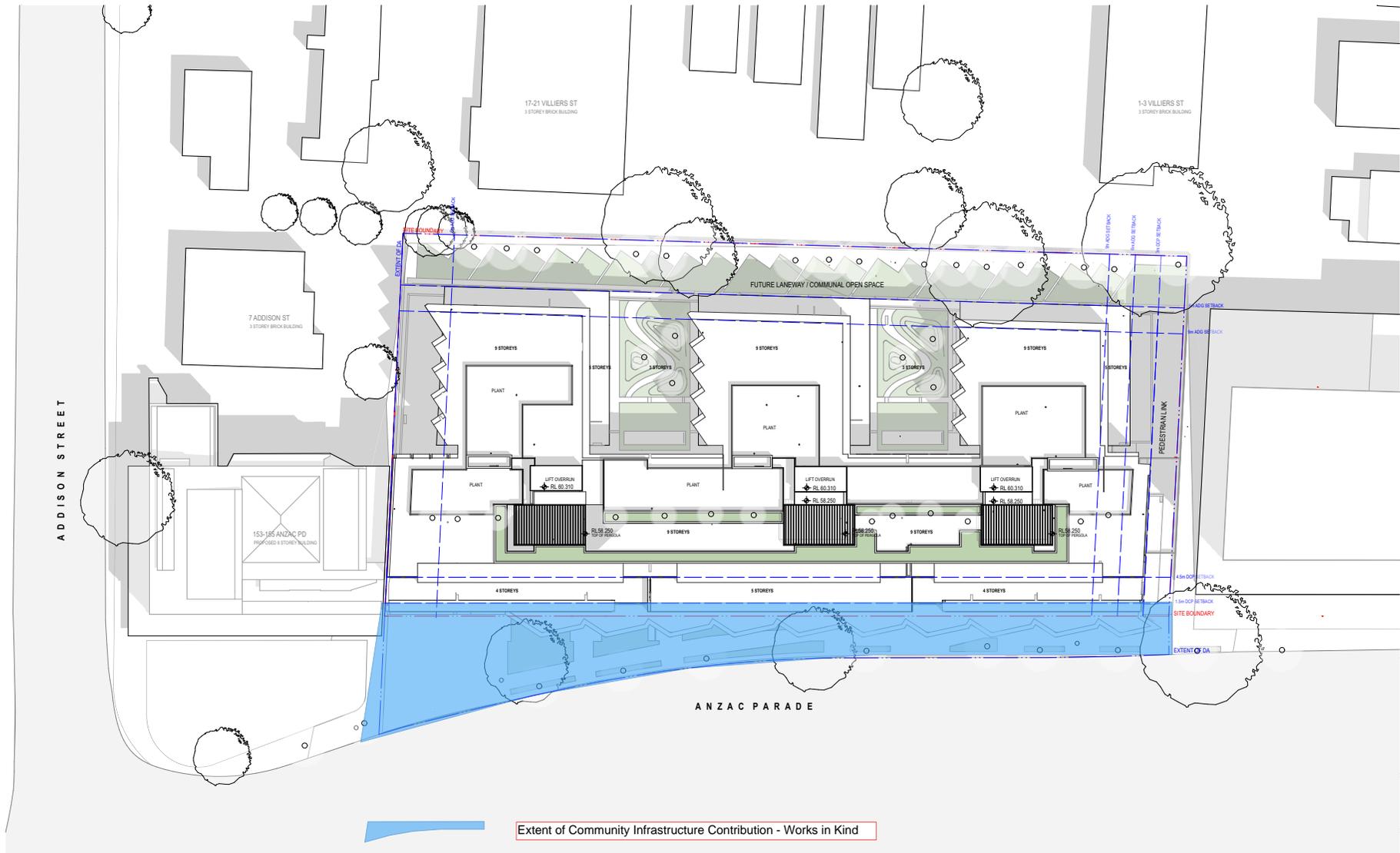
CIC Works	Timing	Specification
Landscape upgrades including Water Sensitive Urban Design (including but not limited to) Anzac Parade frontage as generally shown on the Location Plan.	Prior to the issue of the fourth Construction Certificate in respect of the Development.	Pursuant to item 6 of 'Appendix – Schedule of Community Infrastructure' in the <i>Kensington and Kingsford Town Centres – Community Infrastructure Contributions Plan</i> adopted by the Council on 10 December 2019 and determined in accordance with clause 5.6.

## Annexure 1 – Location Plan

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Explanatory Note VPA - 137-151 Anzac Parade Kensington 071122



Extent of Community Infrastructure Contribution - Works in Kind

**NOTES**  
 1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.  
 2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.  
 3. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.  
 4. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.  
 5. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.  
 6. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.  
 7. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.  
 8. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.  
 9. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.  
 10. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.

**CLIENT**  
 Toga Addison Pty Ltd  
 Level 5, 45 Jones Street, Ultimo NSW  
 2007, Australia

**Project Title**  
 137 Anzac Parade  
 137-151 Anzac Parade KENSINGTON NSW 2033 AUSTRALIA  
**Drawing Title**  
 Siteworks  
 Site Plan

**Scale**  
 1:200 (BAL 92/10/03)  
**Project No.**  
 21076  
**Client**  
 Toga Addison Pty Ltd  
**Design No.**  
 A-010-010  
**Revision No.**  
 P02  
**Revision History**  
 Issued for DA Submission  
 Update for DA Submission  
**Drawn by**  
 TURNER  
**Checked by**  
 TURNER  
**Scale**  
 1:200 (BAL 92/10/03)  
 1:200 (BAL 92/10/03)  
 1:200 (BAL 92/10/03)

**TURNER**



**Annexure 2 – Not used**

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### Annexure 3 – Kensington Finishes Schedule

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Group  
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**KITCHEN**

**SAND / OCEAN SCHEME**

Kitchen benchtop.....	Stone
Joinery.....	Poly laminate
Joinery handle.....	Powder coated metal
Kitchen island benchtop.....	Stone
Kitchen island joinery.....	Poly laminate
Kitchen sink - 1 Bedroom, 2 Bedroom.....	Single under-mount platinum gun metal PVD sink
Kitchen sink - 3 Bedroom.....	Double under-mount platinum gun metal PVD sink
Tapware.....	Gunmetal finish
Cooktop.....	Fisher & Paykel gas cooktop (60cm)
Oven.....	Fisher & Paykel electric oven (60cm)
Rangehood.....	Fisher & Paykel under cup-board rangehood (60cm)
Dishwasher.....	Fisher & Paykel integrated dishwasher (60cm)
Floor.....	Engineered timber floor

**BATHROOM**

**SAND / OCEAN SCHEME**

Floor.....	Stone/Porcelain
Walls.....	Ceramic tile
Vanity top.....	Stone
Vanity splashback.....	Stone
Vanity drawer.....	Joinery
Vanity cupboard.....	Joinery
Mirror.....	Mirror with LED light
Shower screen.....	Frameless shower screen where possible
Basin.....	Ceramic basin
Toilet.....	Vitreous china with inbuilt cistern
Tapware.....	Gunmetal finish
Shower.....	Wall mounted shower head and hand held Shower
Accessories.....	Gunmetal finish

**LAUNDRY**

Floor.....	Ceramic tile
Walls.....	Paint
Splashback.....	Ceramic tile
Tapware.....	Chrome
Laundry tub.....	Stainless steel single bowl
Dryer.....	Fisher & Paykel dryer (4.5kg)

**OTHER**

Dining, Living, Study (where applicable) floor.....	Engineered timber floor
Bedroom floor.....	Carpet
Walls.....	Paint
Ceiling and bulkheads.....	Paint
Skirting.....	Paint
Doors and doorframes.....	Paint
General wardrobe.....	Poly laminate with handles
Windows and balcony doors.....	Powder coated aluminium
Windows glazing.....	Double glazed along Anzac Pde only, single glaze elsewhere

**EXCLUDED ITEMS**

The following items are excluded from the contract: ..... Blinds

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**Execution page**

**Executed as a deed**

Dated:

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

\_\_\_\_\_  
Witness (Signature)

\_\_\_\_\_  
General Manager (Signature)

\_\_\_\_\_  
Name of Witness (Print Name)

\_\_\_\_\_  
Name of General Manager (Print Name)

**Signed, sealed and delivered by Toga Addison Pty Ltd in its own capacity and as trustee for Toga Addison Unit Trust** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors.

\_\_\_\_\_  
Director/Secretary (Signature)

\_\_\_\_\_  
Director (Signature)

\_\_\_\_\_  
Name of Director/Secretary (Print Name)

\_\_\_\_\_  
Name of Director (Print Name)

## Explanatory Note

### Planning Agreement

#### 137-151 Anzac Parade, Kensington (DA/810/2021)

#### 1 Introduction

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- (1) The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a proposed Voluntary Planning Agreement (**Planning Agreement**) under s7.4 of the *Environmental Planning and Assessment Act 1979* (NSW) (**Act**).
- (2) This Explanatory Note has been prepared jointly between the parties as required by clause 205 of the *Environmental Planning and Assessment Regulation 2021* (**Regulations**).
- (3) This Explanatory Note is not to be used to assist in construing the Planning Agreement.

#### 2 Parties to the Planning Agreement

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The parties to the Planning Agreement are:

- (1) Randwick City Council (ABN 77 362 844 121) (**Council**); and
- (2) Toga Addison Pty Ltd (ABN 49 609 273 092) in its own capacity and as trustee for Toga Addison Unit Trust (ABN 56 742 581 520) (**Developer**).

#### 3 Description of the Land to which the Planning Agreement applies

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The Planning Agreement applies to the land comprising Lot 10 Section 3 Deposited Plan 3897, Lot 1 Deposited Plan 554563, Lot 2 Deposited Plan 554563, Lot B Deposited Plan 340818, Lot C Deposited Plan 100646, Lot D Deposited Plan 100646, Lot 10 Deposited Plan 828868 and Lot 1 Deposited Plan 573636 located at 137-151 Anzac Parade, Kensington (**Land**).

#### 4 Description of the Development to which the Planning Agreement applies

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The Planning Agreement relates to the development generally described in development application DA/810/2021 (**Development Consent**) consisting of the demolition of existing structures, site remediation, and construction of a nine (9) storey mixed use development comprising ground floor commercial/retail premises and one-hundred and forty-two (142) dwellings on floors above, two (2) levels of basement parking with vehicular access from Anzac Parade, tree removal, associated landscape and public domain works (variation to building height) (**Development**).

#### 5 Summary of Public Benefit, Objectives, Nature and Effect of the Planning Agreement

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The Developer is required to provide the following public benefit in accordance with the Planning Agreement:

- (1) Prior to the issue of the first Occupation Certificate in respect of the Development, an **Affordable Housing Levy Monetary Contribution** be calculated at the time that it is required to be paid in accordance with clause 6.18 of the Affordable Housing Policy and will be calculated using the relevant indexed Affordable Housing Contribution Rate pursuant to part 2.8 of the Affordable Housing Policy (being an amount of \$540.62 per

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square metre as at the date of the Planning Agreement. The Developer must only pay the Affordable Housing Levy Monetary Contribution to Council for any shortfall in the total floor area of the Designated Land to be dedicated to Council pursuant to the Planning Agreement.

- (2) Prior to the issue of the fourth Construction Certificate in respect of the Development, a **CIC Monetary Contribution** be calculated at the time that it is required to be paid in accordance with clause 6.17 of the Randwick Local Environmental Plan 2012, the Kensington and Kingsford Town Centres – Community Infrastructure Contributions Plan and will be calculated using:
  - (a) the relevant Community Infrastructure Contribution Rate (being an amount of \$475.00 per square metre as at the date of the Planning Agreement); and
  - (b) the area of additional residential floor space within the Development above the maximum building height plane allowable under clause 4.3 of the Randwick Local Environmental Plan determined on the basis of the final design of the Development.
- (3) Prior to the issue of the first Occupation Certificate in respect of the Development, the dedication of one (1) bedroom, two (2) bedroom or three (3) bedroom dwellings comprising an internal area of no less than 50.0 sqm within the Development with an aggregate floor area of up to three percent (3%) of the total floor area of the Development and minimum ancillary car parking permitted by Council for the dwellings with the nature and extent of such dwellings to be determined by the Developer and approved by Council and generally in accordance with the finishes in the Kensington Finishes Schedule (**Designated Land**).
- (1) Prior to the issue of the fourth Construction Certificate in respect of the Development, landscape upgrades including Water Sensitive Urban Design (including but not limited to) Anzac Parade frontage as generally shown on the Location Plan and pursuant to item 6 of 'Appendix – Schedule of Community Infrastructure' in the Kensington and Kingsford Town Centres – Community Infrastructure Contributions Plan and determined in accordance with the Planning Agreement (**CIC Works**). Upon Completion of the CIC Works:
  - (a) the amount of the CIC Monetary Contribution required to be paid by the Developer is reduced by the CIC Works Value; and
  - (b) the Developer must pay to Council any difference between the CIC Monetary Contribution and the CIC Works Value.

Council, at any time prior to the approval of the detailed design of the CIC Works and for any reason, may provide written notice to the Developer that it no longer agrees with the CIC Works being carried out. If Council and the Developer are not able to agree on the detailed design, specification or cost to complete the CIC Works, or if the Developer forms the view prior to commencing the CIC Works that the Developer cannot carry out the CIC Works at a reasonable cost, then the Developer may serve written notice on Council advising that it will no longer undertake the CIC Works. If a party or the parties no longer agree with the CIC Works being carried out, the Developer is required to pay the full amount of the CIC Monetary Contribution.

The **objective** of the Planning Agreement is to provide a material public benefit to be applied towards community infrastructure.

The **nature** of the Planning Agreement is a contractual relationship between the Council and the Developer for providing public benefit.

The **effect** of the Planning Agreement is that the Developer will provide the Public Benefit in the manner provided for by the Planning Agreement (as applicable).

## **6 Assessment of the Merits of the Planning Agreement and Impact on the Public**

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The Planning Agreement promotes:

- (1) the public interest; and
- (2) the objects of the Act.

The Planning Agreement will provide a material public benefit to be applied towards community infrastructure and also provides a benefit by way of monetary contributions, including towards affordable housing.

## **7 Identification of how the Planning Agreement promotes the public interest**

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The Planning Agreement supports the public interest in the following ways:

- (1) By facilitating the improvement of public infrastructure to be utilised by the broader community.
- (2) By promoting the social and economic welfare of the community and a better environment.
- (3) By providing increased opportunity for community participation in environmental planning and assessment.
- (4) To promote the orderly and economic use and development of land.
- (5) To promote the delivery and maintenance of affordable housing.

## **8 How the Planning Agreement promotes the Guiding Principles for Councils**

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The Planning Agreement promotes a number of the Guiding Principles for Councils under section 8A of the *Local Government Act 1993* (NSW), as follows:

- (1) To plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- (2) To manage land and other assets so that current and local community needs can be met in an affordable way.
- (3) To act fairly, ethically and without bias in the interests of the local community.
- (4) To recognise diverse local community needs and interests.
- (5) To have regard to the long term and cumulative effects of its decisions on future generations.
- (6) Transparent decision-making and active engagement with local communities, through the use of the integrated planning and reporting framework and other measures.
- (7) Providing strong and effective representation, leadership, planning and decision-making.
- (8) Applying the integrated planning and reporting framework in carrying out functions so as to achieve desired outcomes and continuous improvements.

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- (9) Working with others to secure appropriate services for local community needs

## **9 Identification of whether the Planning Agreement conforms with the Council's local infrastructure delivery plan**

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The Planning Agreement conforms with Council's local infrastructure delivery plans in meeting the development objectives for the establishment, ongoing management and development of infrastructure on community land, which are consistent with the community expectations for local infrastructure.

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## Director City Planning Report No. CP81/22

**Subject: JOLT public electric vehicle chargers**

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### Executive Summary

- At the October 2022 Ordinary Council, it was resolved for a briefing to be held with information related to proposed installation of public electric vehicle (EV) charging stations incorporating electronic advertising signage.
- This briefing, held Tuesday, December 6, outlined issues relevant to these type of public EV charging stations including their limited scope within Randwick but the importance of providing this form of infrastructure for the expected number of electric vehicles expected across the eastern suburbs by 2030.
- Current charging sessions for electric vehicles in the eastern suburbs network is doubling every 12 months. Estimates that up to 400 public EV charging stations will be necessary across Randwick to meet demand of more than 10,000 electric vehicles on our local roads by 2030.
- There are currently 22 public electric vehicle charging ports across Randwick LGA, of which 8 have been installed by Council, 6 at UNSW, 6 in local shopping precincts and 2 JOLT chargers (Kensington and Maroubra).
- The JOLT public EV charging station at Kensington (Goodwood Street) is providing the second highest number of charging sessions across the JOLT charging network, currently comprising 20 public chargers across 6 local government areas in Sydney.

### Recommendation

That:

- a) Council note the preparation of Randwick's draft Public EV Charging Strategy, developed in conjunction with Waverley and Woollahra Councils as part of our 3-Council Regional Environment Program
- b) Council notes expansion of the 3-Council network to around 30 public EV charging stations by mid 2023 but a need for approximately 200 public stations by 2025 and 400 public stations by 2030 to meet expected demand and take-up of electric vehicles across the eastern suburbs.
- c) Council advertises a proposed interim annual fee of \$1,000 per car space for the approved public electric vehicle charging facilities accompanied by advertising screens and components and;
- d) provided that no substantive objections are received, this fee is endorsed for such applications.

### Attachment/s:

Nil

## Purpose

### CS55/22 Director City Services Report – Proposed New Fee – Electric Vehicle Charging Facility with Advertising Component (F2019/00761), 283/22 RESOLUTION: (Olive/Pandolfini)

That Council calls for a Councillor briefing to consider further information, including:

- (a) taking measures within its authority to stop the installation on public land of electric vehicle charging stations with electronic billboard advertising;
- (b) providing future reports on the progress of the measures outlined in clause (a);
- (c) details on the planning regulations applicable to the installation of chargers on streets in this report, including any differences for installation with or without advertising capability;
- (d) officers ensuring the Eastern Suburbs Electric Vehicle Strategy being undertaken by the Regional Environment Program (Randwick, Waverley and Woollahra Councils) includes the current and anticipated community need for electric vehicle charging in domestic and commercial settings and on streets; and
- (e) a potential future fee structure for charging stations and car spaces.

## Discussion

A draft Public Electric Vehicle Charging Strategy has been completed as part of the 3-Council Regional Environment Program between Randwick, Waverley and Woollahra Councils. Due in part to this collaboration's experience and expertise in public EV charging infrastructure, this strategy reflects detailed analysis on the 3-Council's continuing roll-out of public EV charging stations. Much of the details will be subject to technical consultation and review by experts prior to its finalization in February 2023.

The draft Strategy builds on our network of public EV charging stations, the largest of its kind for local government in Sydney when it commenced, and now expected to increase from 10 to 30 within the current financial year. Charging sessions at our public charging stations are more than doubling every 12 months with estimates there are likely to be 10,000 electric vehicles registered across the eastern suburbs requiring something in the order of 200 public electric vehicle charging stations by 2025 and up to 400 by 2030.

These estimated numbers are important in Council's planning for the transition to electric vehicles especially in light of the high number of residents living in medium to high rise buildings (approx. 70%), with around 50% of our householders renting as tenants.

Through our draft Strategy, Randwick Council, along with Waverley and Woollahra Councils, understand the challenges ahead in facilitating residents' access to EV charging, whether renting or buying, or living in single or multi-unit dwellings. Randwick in particular is combining public electric vehicle charging infrastructure with sustainability rebates for EV chargers in houses and apartments as well as setting out new directions in the new DCP currently in preparation as part of our longer term planning process.

Despite these innovations via our Regional Environment Program and individual Councils, there will need to be a substantial investment by others to provide the range and mix of public charging infrastructure to cater to the expected number and especially the type of electric vehicle charging stations. Council's deployment of charging stations are necessarily referred to as level 2 type charging providing in the order of 22 kilowatts of AC charge. This type of charging is typically used as 'top-up' charging for electric vehicles.

However, the need for fast charging will also be required, most typically in the order of 50 kilowatts and upwards. This is currently cost prohibitive across the 3-Council charging network as pricing between level 2 and fast charging solutions goes from up to \$30,000 to an amount commencing from around \$80,000.

While the JOLT public electric vehicle charging network starts around 25 kilowatts of charging, due to its placement over the top of Ausgrid substations, JOLT charging infrastructure will be upgradable to fast charging capability as market conditions transition with more electric vehicles on the road.

**Range of EV charging networks (i.e. “slow”, “medium”, “fast” charging systems)**

	Eastern Suburbs Network	Ausgrid Power Poles	JOLT	Multi-Function Poles	Future Fuels Fund	Tesla
Type	Medium 22 kW AC	Slow 7.4 kW AC	Medium 25 kW DC	Slow 7.4 kW AC	Fast 50 kW DC	Ultra-Fast 350 kW DC
EV Charger						

CP81/22

A new working group has been established by SSROC to consider the level of coordination, advice, learning and preparation required for the roll-out of public electric vehicle charging infrastructure to meet the increasing demand of electric vehicles coming on to our road networks over the next 5 to 10 years. This group has also been tasked by the General Managers group to look at the likely impacts, both positive and negative that might occur from an increased presence of JOLT electric vehicle chargers across the SSROC region.

In keeping with the State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP) provides a state-wide practice to facilitate the effective delivery of transport and infrastructure across the State. Part 2.3 of this SEPP sets out the development controls for the infrastructure with Division 5 dealing with electricity transmission or distribution.

The electric vehicle charging station is deemed part of the substation and is therefore permitted without consent and will be subject to assessment under Part 5 of the Environmental Planning Assessment Act 1979 by the electricity supply authority (i.e. Ausgrid). Council will continue to be notified of any proposal to install electric vehicle charging stations subject to Part 5 assessment processes within the Randwick LGA and will have the opportunity to make a submission to the electricity supply authority. As such, it is only the advertising component of the charging station that requires development consent.

In these cases, a separate DA approval process is required for the installation of new advertising signage integrated with the charging stations as the advertising is not included as the development permitted without consent. DAs submitted to Council for the purposes of this ancillary advertising are to be notified in accordance with Council’s Community Participation Plan and are assessed against the relevant planning provisions including but not limited to the permissibility within the applicable zoning, relevant SEPPs and DCP controls in relation to advertising. It should be noted that an advertising structure is generally prohibited in all residential zones (other than the minor signage permissible under exempt development).

**JOLT charger applications in Randwick LGA and their status:**

Application No.	Address	Description	Decision	Comment/Reason
DA/69/2021	88 Beach Street, Coogee	Ancillary advertising to Ausgrid kiosk electric vehicle charging station	Withdrawn	Incorrect street address and subsequent DA lodged (DA/85/2021) and refused by the RLPP on 11 Nov 2021.
DA/32/2021	57-63 St Pauls Street, Randwick	Ancillary advertising to Ausgrid kiosk electric vehicle charging station	Withdrawn	Advertising prohibited in residential zone
DA/30/2021	76-82 Anzac Parade, Kensington	Ancillary advertising to Ausgrid kiosk	Withdrawn	Advertising prohibited in residential zone

		electric vehicle charging station		
DA/709/2020	667P-829P Anzac Parade, Maroubra	Ancillary advertising to a vehicle charging station within the existing Ausgrid transformer kiosk in the public car park adjacent to the intersection of Anzac Parade and Haig Street	Approved	Approved under delegated authority on 20 August 2021 as the existing substation is located within the public car park.
DA/31/2021	110 Anzac Parade, Kensington	Advertising signage to Ausgrid kiosk electric vehicle charging station	Approved	Approved under delegated authority on 17 November 2021 as the existing substation is located within the road reserve adjacent to public on-street parking area.
DA/85/2021	2R Baden Street, Coogee	Ancillary advertising to Ausgrid kiosk electric vehicle charging station	Refused	Refused by the RLPP on 11 Nov 2021 for the following key reasons: <ul style="list-style-type: none"> <li>• The proposal not suited to the site.</li> <li>• Inconsistent with relevant provisions of SEPP 64 and Coastal Management SEPP.</li> <li>• Impacts of the proposed advertising outweighs the benefits.</li> <li>• Undesirable precedent as the proposal is in a location adjoining a significant park and coastal foreshore area.</li> </ul>
DA/85/2022	153-163 Beauchamp Road, Matraville	Ancillary advertising to Ausgrid kiosk electric vehicle charging station	Under Assessment	Pending Council decision
DA/84/2022	550 Bunnerong Road, Matraville	Ancillary advertising to Ausgrid kiosk electric vehicle charging station	Under Assessment	Pending Council decision

With the finalisation of our public EV charging strategy, it is expected more specific negotiations will be conducted with any new provider of public electric vehicle charging stations across Randwick and the other eastern suburban Councils. As an interim measure, it is proposed that a fee of \$1000 (excl GST) be applied to each parking space provided by Council adjacent to each of the JOLT charging locations. This fee will need to be exhibited and adopted by Council once public consultation is completed.

Since the last report was brought to Council, there has been an indication from JOLT as to a willingness to negotiate with Randwick on a number of issues which may be of interest to Council. These include:

- Flat fee or some proportion of advertising revenue (more likely if chargers are installed on Council land);
- Parking fee payment as proposed at the previous meeting (applied retrospectively);
- Limited advertising on screens for Council;
- Faster charging capabilities; and
- Joint promotion of public EV charging across the Council and public network.

JOLT has also been approved as a panel provider of their public EV charging facilities (including advertising screens) by local government procurement.

### Strategic alignment

The relationship with our 2022-26 Delivery Program is as follows:

Delivering the Outcomes of the Community Strategic Plan:	
Strategy	Integrated Transport
Outcome	A city with a transport network where sustainable transport options are the preferred choice for people
Objective	Achieve an ownership rate of over 5000 electric or hybrid vehicles by 2031
Delivery program commitment	Provide 5 new publicly accessible electric vehicle charging stations per year until 2031.

CP81/22

### Resourcing Strategy implications

There are no additional financial resources required.

### Policy and legislative requirements

Integrated Transport Informing Strategy  
 Environment Informing Strategy.

### Conclusion

With the preparation our public EV charging strategy and its finalisation in February 2023, there is a much more detailed understanding of our community’s likely requirements when it comes to public EV charging infrastructure. While Council’s own network is limited and JOLT’s existing and proposed public EV chargers is not widespread across the Randwick LGA, it is likely to provide one of the offerings to meet public demand as more and more electric vehicles roll-out across the eastern suburbs.

It is important that JOLT understand Council’s concerns regarding advertising attached to their charging facilities and are prepared to accept the new fee for adjacent parking spaces as an interim measure related to their current but limited number of proposed charging stations. These interim fees are likely to be replaced with additional measures as Council seeks progressive implementation of its strategy on EV infrastructure.

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**Responsible officer:** Peter Maganov, Manager Sustainability

**File Reference:** F2019/00856



## Director City Services Report No. CS66/22

**Subject: Draft Maroubra Junction Public Domain Masterplan**

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### Executive Summary

- A Draft Maroubra Junction Public Domain Masterplan has been developed following extensive community consultation. This project began in 2021 and is now programmed for public exhibition should council endorse the draft masterplan.
- Stage 1 of community consultation identified community values and obtained an insight into community views, needs and proposed enhancements / upgrades to Maroubra Junction.
- The community consultation feedback has been considered and where appropriate has been incorporated into the Draft Maroubra Junction Public Domain Masterplan.
- The Draft Maroubra Junction Public Domain Masterplan is presented to Council to endorse for public exhibition.
- The public exhibition will provide feedback that will permit the draft Masterplan to be finalised for Council adoption. The adopted Masterplan will then be used to guide future works and identify budgets and timeframes.

### Recommendation

That:

- a) Council endorses the Draft Maroubra Junction Public Domain Masterplan for Public Exhibition.

### Attachment/s:

1. Maroubra Junction Masterplan - Community Consultation Report
2. Draft Maroubra Junction Public Domain Masterplan

## Purpose

In 2021, Council commenced the development of a public domain masterplan for Maroubra Junction. This report summarises the outcomes of the community engagement activities undertaken to inform the masterplan and submits the draft masterplan for Council endorsement to place the masterplan on public exhibition.

## Background

Randwick City Council continues to foster a strong sense of community through a best practice approach to urban development. The Local Strategic Planning Statement (LPSPS 2040) vision ensures a culturally diverse community will have access to quality housing, beautiful open spaces, and a unique coastline. A thriving economy will provide for lively town centres and emerging work opportunities in knowledge-based industries.

The strategic centre at Maroubra Junction will provide for the local needs of the community. The urban environment will be adaptable and resilient to climate change through increased tree canopy and sustainable development. Mobility across the City will allow active transport options and an integrated network.

The importance of Maroubra Junction and a vision for its future is highlighted in the LPSPS. The LPSPS identifies the Maroubra Junction Strategic Centre as a newly identified strategic centre incorporating Eastgardens in the District Plan. Maroubra Junction town centre has a strong local population serving role offering retail, health, and community services. Maroubra Road is the key link between the two centres. The Public Domain Master Plan is a recognition of the importance of Maroubra Junction and provides a basis for improvement to the public spaces of this centre.

## Maroubra Junction Town Centre Scope

Maroubra Junction Town Centre straddles the intersection of Anzac Parade and Maroubra Road, extending from Storey Street to the north and Byng Street to the south, then east and west along Maroubra Road between Hannan Street and Cooper Street.

The Maroubra Road corridor is also included in the study area, bounded by the intersection with Bunnerong Road to the west and St John's Anglican Church to the east. The satellite commercial areas along Maroubra Road and associated streetscapes were important components to consider when developing the draft Public Domain Masterplan.

The town centre occupies a land area of approximately 16.5ha. It has evolved as both an enclosed Mall and an on-street shopping strip accommodating a variety of business and retail uses ranging from restaurants, cafes, and takeaway food outlets to smaller office suites, shop top housing, small scale independent supermarkets, pubs, and banks. In addition to the commercial uses, the centre is characterised by medium to large scale mixed use residential developments.

The established commercial area is concentrated around the junction of Anzac Parade and Maroubra Road Intersection. Pacific Square is located on the northwest corner, the historic Maroubra Junction Hotel to the southwest, the equally historic Dudley's Corner to the northeast and the newly built mixed use residential development on the former post office site to the southeast corner of the intersection.

The nearby shopping strips along Maroubra Road at Bunnerong Road and Flower Street are included in the scope of the Masterplan. These satellite commercial areas, and the associated intersections are important components in ensuring the public domain and streetscape / place is improved in its entirety.

## Discussion

### Maroubra Junction Centre Masterplan Community Consultation

Engagement with the community and key stakeholders has been a crucial component in the development of the draft Maroubra Junction Public Domain Masterplan (Refer to Attachment 2). This plan has been prepared to enhance the image and amenity of Maroubra Junction through the future potential reconfiguration of Anzac Parade and Maroubra Road, the provision of street trees, new paving, furniture, widened footpaths, landscaping, as well as new public spaces that are attractive, safe, and vibrant.

Community engagement for the Maroubra Junction Public Domain Masterplan has two stages. The first stage included comprehensive consultation with the community and key stakeholders to understand their issues and gather views. The consultation for the first stage was undertaken between 5 May 2021 and 1 June 2021. The second stage of community engagement will occur following Council's endorsement of the draft Maroubra Junction Public Domain Masterplan. This will include public exhibition to seek feedback on the draft masterplan. After public exhibition, feedback will be considered and if appropriate, incorporated into the final draft masterplan.

### Consultation Activities

Community engagement activities undertaken:

- Dedicated consultation website to take a survey or drop a pin on the map
- Workshop: 12 May 2021
- Community walks: 14 and 15 May 2021
- Pop-ins around Maroubra Junction town centre businesses: 7 May 2021
- Flyer drop to businesses and residents around the retail areas
- Posters around the retail areas
- Email to Your Say subscribers (5998 subscribers): 5 May 2021
- Randwick News (weekly email): 5 May 2021
- Facebook post: 6 May 2021 (9251 people reached, 1060 post clicks and 122 engagements)
- Communication with Maroubra Chamber of Commerce, Lions Club and Rotary
- Email to Maroubra, South Coogee, Randwick & Matraville eNews subscribers: 6 May 2021
- Listing on Randwick City Council's *Current Consultations* webpage
- Digital display screens at all Libraries and Customer Service Centre
- Email to all precincts
- Councillor notification

### Consultation Outcomes

A dedicated Your Say Randwick website was created to inform the community of the proposed masterplan, host a survey and interactive map:

<https://www.yoursay.randwick.nsw.gov.au/maroubrajunctionmasterplan>

The website was launched on 5 May 2021 and was open for 28 days, closing 1 June 2021. During this time, the site experienced the following:

- 879 visits to the Your Say Randwick webpage
- 297 completed surveys
- 105 pins dropped on the map

The community were invited to complete three separate surveys, one for each retail area. 289 surveys were completed for Maroubra Junction, 175 for Bunnerong Road and 120 for Flower Street.

The consultation findings along with the Issues Paper and Site Analysis provide a foundation for the Draft Maroubra Junction Public Domain Master Plan.

The Community Consultation Report (Attachment 1) describes the activities and outcomes of the consultation. Council received extensive feedback from the community throughout stage one of consultation. Common themes were identified, along with key priorities, concerns, and possible solutions for consideration by the project team.

Most participants recognised the quality of public domain and pedestrian priority as essential for a thriving Maroubra Junction town centre. Participants wished to see improved pedestrian access and public open spaces for community. They envisioned a range of public realm areas that accommodate social activities and cultural interventions.

The following are key findings from the consultation:

#### *Access and connectivity*

- Traffic calming and street trees are key to making the junction feel more pedestrian friendly.
- Wider footpath – existing narrow footpath with outdoor dining and waiting areas at bus stops limits the walkability.
- Improved pedestrian connections across Anzac Pde - more pedestrian crossing points needed and prioritise pedestrian circulation between East – West.
- Wider cycle network – improve connectivity to existing cycleways that are part of the wider transport network.
- Local cycle access - improve local access to Maroubra Junction Town Centre from properties, community facilities, open spaces, and other local centres (Eastgardens and Maroubra Beach).
- Safety – need to provide safe road crossings and consider nighttime safety for commuters.
- Traffic control – Intense traffic on Anzac Pde. Congestion on residential streets as well as main roads due to drivers taking short cuts along back streets to avoid traffic lights.
- Public transport hub - long bus zone on Anzac Pde on eastern side of northbound carriageway. Existing mid-block bus stops encourage pedestrian jaywalking. Consider re-organising the bus terminus and the main connections (Bus Terminal, Car circulation, pedestrian circulation) for safer access.

#### *Culture and community*

- Culture and heritage appreciation – indigenous art and history evident of local population in La Perouse, Dudley's Emporium, War Memorial, and local French influences.
- Community in Maroubra becoming younger - planning on the basis for the future and the needs of the community.

#### *Green and sustainability*

- Tree canopy – current lack of urban tree canopy; look for opportunities to provide more shade as well as make the precinct feel more pedestrian friendly.
- Environmental quality – need to consider environmental improvement. Rats are a problem throughout – no low planting.

### **Stage Two Community Consultation**

Subject to Council endorsement, the Draft Maroubra Junction Public Domain Masterplan will be placed on public exhibition for feedback and to obtain general support from the community and key stakeholders.

These documents will be available via the Randwick City Council Your Say website and exhibited in key locations for a minimum of 28 days. The public exhibition will be undertaken after the holiday period.

Council officers will also host drop-in sessions to explain and gather feedback on the draft masterplan. The dates of these drop-in sessions will be confirmed by Council at a future date

The final stage of the community consultation will be providing feedback to those who were involved in the consultation. This will include the following activities:

- Placing the endorsed Maroubra Junction Public Domain Masterplan on the Your Say Randwick Website and Randwick City Council Website.
- Letter or email directly to all participants in the consultation.

### **Maroubra Road Corridor Study**

In addition to the Maroubra Junction Public Domain Masterplan, Council is currently undertaking the Maroubra Road Corridor Study. This study examines the road safety performance, existing and future operation of the road and conditions faced by vulnerable road users such as pedestrians and cyclists. It will propose solutions and changes along the corridor to address these issues that will be costed and programed into future budgets.

Due to the significant design challenges in determining an appropriate Maroubra Road cycling facility, in the vicinity of Anzac Parade, additional cycling typology options are currently being examined. This examination will investigate all options for the delivery of a cycleway/s along Maroubra Road, to improve connectivity at Maroubra Junction.

A consultant has been engaged and finalisation of each of the design options, as well as a preferred option concept plan are expected to be completed by mid to late December. Subsequently, an updated draft corridor study report will be produced. Further community consultation will be undertaken for the draft Maroubra Road Corridor Study.

Ultimately the Maroubra Road Corridor Study will be integrated into the Maroubra Junction Public Domain Masterplan to ensure a holistic proposal for the future upgrade of the Maroubra Junction precinct.

### **Draft Public Domain Masterplan**

The Draft Maroubra Junction Public Domain Masterplan is a 20-year vision to guide future public domain improvement works necessary to strengthen the Maroubra Junction Town Centre. The draft Masterplan identifies opportunities for improvements for the streetscape of major streets, the creation of new and improved public spaces, improved pedestrian connectivity and identifies areas for greenery/tree planting.

It must be acknowledged that part of this long-term plan depends upon the future and nature of movements along Anzac Parade and Maroubra Road and increasing pedestrian amenity and safety.

It should be noted that Anzac Parade is classified as a State road with the carriageway managed by TfNSW. This creates constraints in the planning and development potential within the precinct.

### **Implementation Plan**

As part of the Draft Maroubra Junction Public Domain Masterplan, an Implementation Plan is under development to assist in the delivery of the improvements. A staged incremental approach will be necessary as it allows for practical and effective steps to be taken in the short-term, with restructuring and long-term investment to achieve the vision and major changes.

Three stages of design and development are proposed for Maroubra Junction public domain, which are:

- **Short term:** Base Concept - practical actions, short-term investment, improvements, and upgrades including paving, street furniture, tree planting and landscaping. Building cycleways and provision of cycling facilities will be considered for integration into the existing road configuration.

- **Medium:** Balanced Concept - feasible actions, mid-term investment, value adding improvements. Upgrades and initiatives in this stage include undergrounding powerlines, widening footpaths, separated cycleways, traffic and road safety facilities, and local improvements e.g. road closure to create a pocket park / plaza.
- **Long Term:** Vision Concept - bold actions, longer-term investment, re-structuring. This stage includes 'big ideas' which articulate a long-term vision for the Maroubra Junction precinct. These ideas are not constrained by budget nor time-line and represent a future transformation of the precinct in which innovative transport and traffic solutions combine to create a lively, pedestrian-oriented destination.

### Strategic alignment

The relationship with our 2022-26 Delivery Program is as follows:

Delivering the Outcomes of the Community Strategic Plan:	
Strategy	Economic Development
Outcome	A city with diverse, active places for businesses, including vibrant town and neighbourhood centres
Objective	Ensure 86% or more of our community are satisfied* with the vitality of town centres by 2032
Delivery program commitment	Implement place management plans that reflect the unique character of town centres to guide planning, marketing and activation initiatives that nurture small business by 2030.
Delivery program commitment	Identify and prepare 3 business cases for prioritised public space improvement or activation projects to leverage State and Federal Government funding opportunities as they arise by 2023.

### Resourcing Strategy implications

There are no direct financial implications to Council as a result of the recommendation of this report.

Following the consultation period, a subsequent report will be brought back to Council noting the next steps to deliver improvements to the Maroubra Junction Town Centre Master Plan and identifying a funding strategy for future capital works programs.

### Policy and legislative requirements

- Randwick City Council Community Strategic Plan 2022-2032
- Randwick City Council, Vision 2040, Local Strategic Planning Statement (LSPS)
- Randwick City Council Economic Development Strategy May 2022
- Randwick City Council, Arts and Culture Strategy.

Other relevant NSW government plans and policies including:

- Future Transport 2056, South East Sydney Transport Strategy 2020
- Draft NSW Public Spaces Charter: Healthy and Active
- Sydney green grid plan 1 introduction 2017
- Sydney green grid plan 4 central district 2017.

### Conclusion

The Draft Maroubra Junction Public Domain Masterplan will enhance the image and amenity of this precinct through improvements to Anzac Parade and Maroubra Road, the provision of street trees, paving, furniture, and landscaping, as well as new public spaces that are attractive, safe, and vibrant. The Draft Maroubra Junction Public Domain Masterplan has been developed after extensive consultation with our community and key stakeholders.

Council's endorsement of the Draft Maroubra Junction Public Domain Masterplan is now sought to allow the public exhibition of the draft masterplan. This will allow the community to provide further feedback in order to finalise the Draft Maroubra Junction Public Domain Masterplan. The adopted Masterplan will be used to identify budgets, timeframes, and guide future works.

---

**Responsible officer:** Kerry Colquhoun, Coordinator Open Space Assets

**File Reference:** F2021/00233



## Director City Services Report No. CS67/22

**Subject: Community High Performance Centre Naming Request - Heffron Centre**

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### Executive Summary

- Under the conditions Council endorsed within the 2019 Agreement for Lease and Licence, the Rabbitohs have requested to name the Community High Performance Centre (CHPC – clubs leased area only) the “The USANA Rabbitohs Centre”.
- The Heffron Centre Project Management Team (“Council”) has been working closely with the South Sydney Rabbitohs Football Club (“the Club”) to finalise the new Heffron Centre Project which is due to be completed in early 2023.

### Recommendation

That Council:

- a) note the overall facility remains known as the “Heffron Centre”.
- b) as per Clause 22(b) of the Agreement for Lease and Licence with the Rabbitohs football club, endorse the Club’s request to name the community high performance centre (only) the “USANA Rabbitohs Centre”.

### Attachment/s:

Nil

**Purpose**

Under the Council endorsed 2019 Agreement for Lease and Licence (AFL), The South Sydney Rabbitohs Football Club (“The Club”) are formally seeking Council’s consent to name their assigned leased area with the AFL in the Heffron Centre’s Community High Performance Centre (CHPC) as the “USANA Rabbitohs Centre.” This report outlines the request for Council consideration.

**Discussion**

The Heffron Centre Project Management Team (“Council”) has been working closely with the Club to finalise the new Heffron Centre Project which is due to be completed in early 2023.

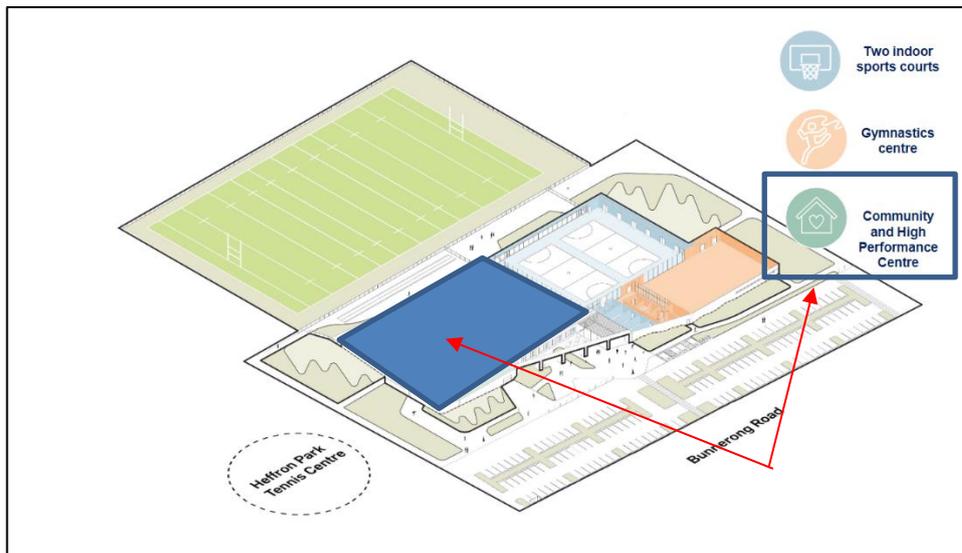
In 2019, Council resolved to enter into an agreement for the lease and licence (“AFL”) with the club. As per the Council adopted AFL, the Club has approached the Council in regard to the naming rights of the “Community High Performance Centre” (club leased area) only. See Figure 10 below.

It should be noted that the overall site name and complex name for the project remains as the Heffron Centre. Signage for the “Heffron Centre” is currently being manufactured, for display as the “hero” sign for the front façade (visible from Bunnerong Road) for the project.

The Club is seeking Council consent (per Clause 22(b) of the Agreement for Lease) to name the Premises defined as the part of the CHPC identified as the Premises on the Site Plan.

*“22 Naming Rights*

*(b) The Tenant has the right to name the Premises with the prior consent of the Council” (Page 41 Agreement for Lease and Licence)*



**Figure 1 - Suggested Naming area for the Club**

The club has explored a partnership with “USANA”. USANA is a US based manufacturer and retailer of nutritional products, dietary supplements, and skin care products, with global turnover of \$US1.186bn. USANA are growing market share in Australia and have an appetite for corporate partnerships which mix high-performance sport and community projects.

USANA’s core values include:

- Excellence We rely on scientific research to provide innovative, healthy living solutions, and we empower all individuals to continually improve each day

- Community We support, care for, and encourage one another—and the world—to live happier, healthier lives
- Integrity We demonstrate honesty, responsibility, and accountability through our individual actions and corporate decision-making
- Health We cultivate a holistic view of wellness that supports a healthy body and a strong mind.<sup>1</sup>

[USANA—Science-Based, Innovative Supplements and Health Products](#)

Should Council endorse the request of the Club for the naming rights to the Community and High-Performance Centre at Heffron Park the Club would enter into a direct partnership with USANA (no contractual relationship with the Council). The partnership between the Club and USANA would be for an initial term of 4 years – with a further option for a 4-year extension at the end of the initial term.

As such the club would like to name their leased area, the community high performance centre, “The USANA Rabbitohs Centre.”

In the request to Council, Mr Blake Solly CEO South Sydney Football Club has noted that the entire site will always be referenced as the Heffron Centre in all publications, however when describing activities particular to the Rabbitohs or Souths Cares they would refer to the name above. This is in keeping with how they have referenced Redfern Oval in recent seasons (e.g., the Metricon High Performance Centre at Redfern Oval).

**Strategic alignment**

The relationship with our 2022-26 Delivery Program is as follows:

Delivering the Outcomes of the Community Strategic Plan:	
Strategy	Open Space and Recreation
Outcome	A city with open space that grows and changes with the community
Objective	Every home in Randwick City will have open space of 1000m2 within 800m by 2031
Delivery program commitment	Explore partnership opportunities to achieve additional open space and recreation areas to meet community demand.

**Resourcing Strategy implications**

There are no direct resource strategy implications associated with the recommendations in this report.

**Policy and legislative requirements**

- Local Government Act 1993
- International Standard for Risk Management, ISO 31000:2009
- The Department of Local Government's Guidelines on the Procedures and Processes to be followed by Local Government in Public-Private Partnership, 1 September 2005 Guidelines.

**Conclusion**

As per the Council endorsed, 2019 Agreement for Lease and Licence the Club has approached Council in regard to naming rights for their leased area within the Heffron Centre – Community High Performance Centre. The club has explored a partnership with “USANA”. USANA is a US based manufacturer and retailer of nutritional products, dietary supplements, and skin care

<sup>1</sup> [USANA—Science-Based, Innovative Supplements and Health Products](#)

products. As such, the club has requested the CHPC be named the “The USANA Rabbitohs Centre”.

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**Responsible officer:** Todd Clarke, Director City Services

**File Reference:** F2019/10812

CS67/22

## Director Corporate Services Report No. CO63/22

**Subject: Randwick City Council Family Day**

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### Executive Summary

- This report responds to Council's recent resolution requiring amendments to be made to Council's Leave Policy to include the provisions for both a Union Picnic Day and a Randwick City Council Family Day.
- It is proposed that that the date for the Randwick City Council Family Day be on the first Monday in August each year. This date allows for an even spread of public holiday provisions across the latter half of each year and is amenable to operations and service impacts on the community.
- In accordance with the Local Government (State) Award, Union Picnic Day shall for the purposes of this policy be regarded as a holiday for employees who are financial members of the union(s) party to the Award.
- The resultant changes will mean an increase in the staff and wages budget for 2023-24 of approximately \$70,801, based upon the union membership as at the date of this report.

### Recommendation

That Council:

- a) endorse the changes to the Randwick City Council (RCC) Leave Policy; and
- b) approve the budget increase to the staff and wages budget for 2023-24.

### Attachment/s:

1.   DRAFT Leave Policy DEC 22
2.   CURRENT Leave Policy

## Purpose

To provide Council with the amended Randwick City Council Leave policy to include both Union Picnic Day and a proposed new date for the Randwick City Council Family Day.

## Discussion

The Randwick City Council Leave policy has been amended in accordance with the following resolution:

**RESOLUTION: (Wilson/D'Souza)** that Council:

1. *directs the Acting CEO to:*
  - a) *update the current leave policy to establish that a day-off for the annual Union Picnic Day will only be afforded to members of the United Services Union, the Local Government Engineers' Union, or the Development and Environmental Professionals' Association, as per the terms of the Local Government (State) Award;*
  - b) *move Randwick Family Day to another day separate to Union Picnic Day; and*
  - c) *bring back the updated policy to Council for the December 2022 meeting.*
2. *resolves that it is the policy of the Council that a day-off for the annual Union Picnic Day will only be afforded to members of the United Services Union, the Local Government Engineers' Union, or the Development and Environmental Professionals' Association, upon implementation of the revised policy.*

## Randwick City Council Family Day

Randwick City Council Family Day has been held on the first Friday in March each year, which previously coincided with the union picnic day.

It is proposed that the new date for the Randwick City Council Family Day will be on the first Monday in August each year. This date allows for an even spread of public holiday provisions across the latter half of each year and is amenable to operations and service impacts on the community.

**Table one: Proposed Leave policy clauses**

Clause	Proposed detail
<p><b>6.13</b></p> <p><b>Randwick City Council Family Day</b></p>	<p>The first Monday in August each year is considered Randwick City Council Family Day for eligible employees (excluding Managers, Directors, and the General Manager). Randwick City Council Family Day rewards and recognises employees with one day of paid special leave annually. To ensure minimal disruption to the community and to assist with the planning of resources:</p> <ul style="list-style-type: none"> <li>• Customer Service remains open and fully staffed</li> <li>• Public facilities and services remain open, and</li> <li>• For all other areas, the relevant Manager will ensure sufficient staff to work to provide adequate levels of service to the public.</li> </ul> <p>Council supports employees who are required to work on the day by providing catering for lunch at all staffed locations.</p> <p>The following holiday entitlements will apply to eligible staff on Randwick City Council Family Day:</p>

Clause	Proposed detail						
	<table border="1"> <tr> <td>Full time and part time staff who ordinarily work and are not required to work on this day</td> <td>Ordinary day of pay</td> </tr> <tr> <td>Full time, part time and casual staff who ordinarily work and are required to work on this day</td> <td>Paid at double time and one half</td> </tr> <tr> <td>Full time and part time staff employed on a seven-day week rotating roster system who are not rostered to work</td> <td>Paid an additional day at ordinary rates</td> </tr> </table>	Full time and part time staff who ordinarily work and are not required to work on this day	Ordinary day of pay	Full time, part time and casual staff who ordinarily work and are required to work on this day	Paid at double time and one half	Full time and part time staff employed on a seven-day week rotating roster system who are not rostered to work	Paid an additional day at ordinary rates
Full time and part time staff who ordinarily work and are not required to work on this day	Ordinary day of pay						
Full time, part time and casual staff who ordinarily work and are required to work on this day	Paid at double time and one half						
Full time and part time staff employed on a seven-day week rotating roster system who are not rostered to work	Paid an additional day at ordinary rates						
<b>6.14 Union Picnic Day</b>	<p>In accordance with the Local Government (State) Award, Union Picnic Day shall for the purposes of this policy be regarded as a holiday for employees who are financial members of the union(s) party to the Award.</p> <p>The Union Picnic Day shall be on such day as is agreed between Council and the union(s).</p> <p>The union(s) shall advise Council of financial members as at the time of the Union Picnic Day. Such advice must be given at least two weeks prior to the Union Picnic Day.</p>						

### Strategic alignment

The relationship with our 2022-26 Delivery Program is as follows:

Delivering services and regulatory functions:	
Service area	People Management
Function	Workforce Management
Delivery program commitment	Implement the Workforce Management Strategy

### Resourcing Strategy implications

The forecasted approximate cost of Union Picnic Day and Randwick City Council Family Day for 2023 are represented in the table below:

Leave type	Total
<b>Union Picnic Day</b> Only financial members of a union March 2023 (Date to be specified)	\$70,801.00
<b>Randwick City Council Family Day</b>	\$281,997.00

All Award staff ( <i>excluding Managers, Directors, and General Manager</i> )	
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Monday 7 August 2023	
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The resultant changes will mean an increase in the staff and wages budget of approximately \$70,801, based upon the union membership as at the date of this report.

There may be further financial impacts associated with an increase in union membership with more staff becoming members and taking picnic day leave.

### **Policy and legislative requirements**

Local Government (State) Award  
Randwick City Council Leave Policy.

### **Conclusion**

Councils Leave policy has been amended to include the policy parameters for Union Picnic Day and Randwick City Council Family Day, for the endorsement of Council.

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**Responsible officer:** Renee Schneider, Manager Human Resources

**File Reference:** F2013/00379

CORPORATE SERVICES

CO63/22

# DRAFT Leave Policy

Adoption Date:  
**xx December 2022**

Review Date:  
**13 October 2025**

Version:  
**3**

Responsible Department:  
**Human Resources**

TRIM Document Number:  
**003651339**

**Randwick City Council**  
a sense of community



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## 1. Objective

Leave is provided to enable you to meet your personal, family or community commitments, and to promote your health and wellbeing through adequate rest and recreation.

The objective of this policy is to provide consolidated information on your various leave entitlements.

This policy, together with the related processes and forms hyperlinked in the References section of this document, covers all the legal and procedural information related to Leave at Council.

## 2. Background

This policy consolidates six original individual leave policies in the table below. It also includes new policy content about other types of leave that are covered by the [Award](#), but were not previously in a policy including:

- Emergency Services Leave
- Military Leave
- NAIDOC Week Leave
- Special Leave
- Union Training Leave.

Original Policy	Adoption date
Annual and Long Service Leave Management	July 2012
Bereavement Leave	November 2011
Health and Wellbeing	January 2015
Jury Service	April 2012
Leave Without Pay	August 2012
Sick and Carer's Leave Management	July 2016

\* Please note that Randwick City Council has a separate [Family and Domestic Violence Policy](#) to provide leave and support to our workers who are victims of Family and Domestic Violence.

\*\*For information on **Parental and Adoption Leave** see the [Parental and Adoption Leave Policy](#) and the [Apply for Parental or Adoption Leave](#) process on the intranet or contact the Payroll team.

\*\*\*The [Remuneration Policy](#) also refers to the management of Sick and Carer's Leave (regarding your time and attendance).

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### 3. Scope

This policy applies to all employees that accrue leave entitlements in accordance with their employment conditions.

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### 4. Definition

**Definition:** Leader is a Council team member with people management responsibilities. The term includes but is not limited to Team Leaders, Supervisors, Coordinators, Managers, Directors and the General Manager.

**HRMS:** An online system called Human Resource Management System and refers to the system which manages the Human Resource, workforce management and Payroll functions of the organisation.

---

### 5. Responsibilities

**Leaders** are responsible for ensuring employees understand their entitlements and obligations under this policy, and for approving reasonable requests for leave made in accordance with this policy.

**Employees** are responsible for complying with the conditions under which leave is available to them.

**Human Resources and Payroll** are responsible for providing information, assistance and advice on this policy and on leave entitlements.

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### 6. Leave types

#### 6.1. Annual Leave

Annual Leave accrues at the rate of four weeks for each year of service and accumulates from year to year. The [Randwick Council Agreement](#), that applies for all Randwick City Council employees, outlines three additional days of Annual Leave for eligible employees.

Where you have accumulated in excess of eight weeks Annual Leave, a leave plan will be facilitated for you to take leave at a mutually convenient time to reduce your excess leave accumulation. You will be given at least four weeks prior notice.

Your accumulated Annual Leave is payable on termination.

#### 6.2. Bereavement Leave

You are entitled to Bereavement Leave of up to four days upon the death of a member of your immediate family (as defined in the [Award](#)), and up to two days Bereavement Leave upon the death of a member of your extended family (as defined in the [Award](#)). You must submit a leave application form stating your relationship to the deceased person. We may request satisfactory evidence to support your application.

Casual employees may be unavailable to work for the same periods and in the same circumstances as permanent or fixed term employees, however, are not entitled to payment for the period of non-attendance.

### 6.3. Carer's Leave

Carer's Leave is deducted from your sick leave balance. It is available to you if you are responsible for the care and support of close relatives or assistance animals (as defined in the [Award](#)) when they are ill, require medical care, or during an emergency. It is not intended for long-term, ongoing care. When you use more than 10 days of sick leave for caring purposes in any year of service, appropriate care arrangements need to be discussed with your Leader and confirmed with your Director.

If you are unable to attend work due to carer responsibilities, you must notify your Leader by telephone at the first opportunity on the day of absence or before. (It is not acceptable to report your absence to a colleague). Whenever practicable, you should provide your Leader with:

- adequate notice of an upcoming absence
- name of the person requiring care and that person's relationship to you
- your reasons for taking such leave
- your estimated length of absence.

You must complete a leave application form as soon as possible using HRMS and upon returning to work you may be required to provide a medical certificate or statutory declaration. You may be required to provide proof of the need for Carer's Leave i.e. illness or emergency.

Subject to the notice and evidence requirements outlined above, casual employees are entitled to be absent from work for up to two days if they need to care for a family member (as defined in the [Award](#)). Longer absences may be agreed with and approved by your Leader; however casual employees are not entitled to payment for the period of non-attendance.

### 6.4. Emergency Services Leave

If you have a minimum of 12 months service and engage in voluntary emergency management activities, you are eligible to take up to five days Emergency Services Leave in a calendar year. This leave is deducted from your Sick Leave balance. Taking such leave must not result in you having a Sick Leave balance of less than three weeks.

Eligibility for this type of paid leave is subject to the conditions outlined in the [Award](#).

### 6.5. Health and Wellbeing Leave

You can take up to two days Health and Wellbeing Leave in a calendar year to participate in health and/or wellbeing activities. This leave is deducted from your Sick Leave balance. Taking Health and Wellbeing Leave must not result in you having a Sick Leave balance of less than two weeks. Applications for health and wellbeing days must be pre-approved and comply with the following conditions:

- More than one health and wellbeing day cannot be taken on consecutive days without first returning to work for a full day or shift.
- Part time staff are entitled to two health and wellbeing days on a pro rata basis from their pro-rata sick leave entitlement. Pro rata means a proportionate entitlement – that is the hours normally rostered to work on a particular day.
- A health and wellbeing day cannot be taken consecutively with Annual or Long Service Leave.
- Unused health and wellbeing days will not accumulate from year to year.

Health and wellbeing leave is approved to take with:	Health and wellbeing leave is not approved to take with:
<ul style="list-style-type: none"> <li>• Public Holiday</li> <li>• Weekend</li> <li>• Rostered Day Off (RDO)</li> <li>• Flex Day</li> <li>• Time in Lieu</li> <li>• Sick Leave day</li> <li>• Carer's Leave day</li> <li>• Bereavement Leave</li> <li>• RCC Family day</li> </ul>	<ul style="list-style-type: none"> <li>• Annual Leave day</li> <li>• Long Leave day</li> <li>• Two consecutive days of Health and Wellbeing Leave</li> </ul>

\* Consecutive days refers to days or shifts of work that are next to one another regardless of whether there are days between them that are not worked for whatever reason (including a weekend).

### 6.6. Jury Service Leave

If you are required to attend Jury Service during ordinary working hours, you will be paid your normal ordinary rate of pay for any hours that you would have worked had you not been on Jury Service - in line with the [Award](#). Jury Service payment will only apply to days you are scheduled to work. If you are required to attend Jury Service on a day you were not scheduled to work, you will not be paid by Council for that day. If you are required to work additional shifts above and beyond the required amount of Jury Service, you will be required to attend work.

NOTE: You must NOT claim payment for Jury Service from the Courts. If you are found to have accepted or claimed payment from the Courts without advising Council, you will be subject to disciplinary action in accordance with Council's policies and procedures.

You must notify your Leader as soon as possible of the date of your Jury Service and complete a leave application form using HRMS for the duration of the Jury Service period.

### 6.7. Leave Without Pay

You may apply for Leave Without Pay, however this type of leave is not usually approved unless you have already exhausted your accumulated leave entitlements such as Annual Leave or Long Service Leave.

When considering applications for Leave Without Pay, consideration will be given to any impacts of the proposed leave on normal business operations, as well as the employee's reasons for the proposed leave.

Generally, Leave Without Pay will not be granted if you wish to perform other paid work while on Leave Without Pay.

Leave Without Pay cannot be taken without the prior approval of your Manager if the period is up to 4 weeks and for periods greater than 4 weeks you must obtain the prior approval of your Director. If you take Leave Without Pay without prior approval you may be subject to disciplinary action in accordance with Council's Discipline Policy.

Periods of Leave Without Pay are not counted as service and do not count towards the accrual of leave or any other employee entitlements (if you are on a fixed term contract, it will not be extended for the period you are on Leave Without Pay). However, Leave Without Pay does not break your continuity of service.

### 6.8. Long Service Leave

You are entitled to Long Service Leave (LSL) in accordance with the [Award](#). The following table is

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current at the time of this policy review:

Length of Service	Leave Entitlement
After 5 years' service	6.5 weeks
After 10 years' service	13 weeks
After 15 years' service	19.5 weeks
After 20 years' service	30.5 weeks
For every completed period of 5 years' service thereafter	11 weeks

You may apply to take your LSL at full pay, half pay, or double pay with corresponding deductions from your leave entitlements.

**Half pay** means you will be paid an entitlement of your LSL at the rate of your ordinary pay divided by two, and your LSL accrual is deducted for the period you are on LSL, divided by two.

**Double pay** means you are paid your LSL at the rate of your ordinary pay multiplied by two, and your LSL accrual is deducted for the period you are on LSL, multiplied by two.

When you request LSL to be taken at half pay or double pay, the following shall be taken into consideration:

- the amount of LSL you have accrued
- your previous leave patterns
- your ongoing career objectives, such as if you plan to leave Council.

If you intend to resign at the completion of the leave, you will need to confirm your resignation in writing prior to your request being granted.

The **Award** provides for employees who have received a varying rate of pay for 6 months or more in the aggregate in the preceding 12 months payment of the average weekly rate of pay over the 12 months immediately preceding the long service leave.

A minimum of one day's LSL can be requested.

Accumulated LSL is payable on termination.

### 6.9. Military Leave

If you are required to attend training or exercises as part of your Military commitments, you may apply for Leave Without Pay or Annual Leave. You receive payment from the Military and Council supports the protection of jobs and will accommodate where it is operationally possible.

You must notify your Leader as soon as possible of the dates of training or exercises, and when you return to work you must complete a leave form for the duration of the leave period.

### 6.10. NAIDOC Week leave

Aboriginal or Torres Strait Islander employees can apply using HRMS for one day's leave during NAIDOC Week so that they can participate in National Aboriginal and Islander Day celebrations. You must provide at least seven days' notice of your intention to take the holiday.

### 6.11. Sick Leave

Sick Leave accrues at the rate of three weeks for each year of service for outdoor employees and four weeks for each year of service for indoor employees. Sick Leave accumulates from year to year.

When you are unable to attend work due to illness or injury, you must notify your Leader by telephone within one hour of your normal starting time (or as close to this time as possible).

**Depot based employees must notify of absences via the sick leave hotline number: 1800 246 757 at least one hour before their starting time** or as soon as practicable in the event of an emergency.

**Library employees must call the library sick line: 9093 6444 by 9am** or as soon as practicable in the event of an emergency. Please notify of your anticipated time off if it will be more than one day, to assist with reorganising rosters.

**Fixed term or temporary employees** who are employed directly by Council's payroll, are entitled to one week of sick leave from their start date at Council, and a further week after each four months of continuous service.

It is not acceptable to report your absence to a colleague. Emails or text messages are not acceptable methods of notification unless otherwise arranged. When reporting absences, you must state the nature of your illness (or reason for absence) and the estimated duration of your absence. If your absence is longer than initially expected, you must contact your Leader again to revise the duration of absence and expected date of return to work.

As per the [Award](#), your Leader must be satisfied that the sickness is such that it justifies the time off, and that the illness or injury does not arise from engaging in other employment. Proof of illness to justify payment is required:

- After the first three separate periods of Sick Leave in each service year
- Where a Sick Leave absence exceeds two working days
- When requested, proof of illness shall indicate the employee's inability to undertake their normal duties.

#### 6.11.1. Certification

Certification to support absences will be consistent with the [Award](#) and the [Australian Medical Association Guidelines for Medical Practitioners on Certificates Certifying Illness – Revised 2016](#).

The type of proof of injury or illness required may include certification from a qualified medical/health practitioner registered with the appropriate government authority or a Statutory Declaration and must indicate your inability to undertake your normal duties. Under the HRMS system you will not be required to upload certificates but will still be required to indicate that you have obtained the required proof. Employees must keep copies of the relevant proof for a period of 12 months.

*Section 6.2 of the AMA Guidelines states that: "There may be circumstances where the doctor will certify that a period of illness occurred prior to the date of examination. The doctor needs to give careful consideration to the circumstances before issuing a certificate certifying a period of illness prior to the date of examination, particularly in relation to patients with a minor short illness which is not demonstrable on the day of examination and add supplementary remarks, where appropriate, to explain any discrepancy."*

If you are absent from work for an extended period due to illness or injury, you may be required to attend a fitness for duty assessment at Council's doctor before you return to work.

**Note:** If you sign and present a fraudulent, misleading or intentionally false statutory declaration as proof of illness under the terms of this policy, it will be treated as serious misconduct and may result in termination of employment.

#### 6.12. Special Leave

As per the [Award](#), you may be eligible for Special Leave with or without pay, to deal with situations that are not covered by other leave types, e.g. dealing with unforeseen circumstances such as natural disasters, terminal illness or injury.

Paid Special Leave may be approved by the General Manager (or delegate) on the advice of the Manager Human Resources, but only if other paid leave entitlements have been exhausted.

### 6.13 – Randwick City Council Family Day

The first Monday in August each year is considered Randwick City Council Family Day for eligible employees (excluding Managers, Directors and the General Manager). Randwick City Council Family Day rewards and recognizes employees with one day of paid special leave annually. To ensure minimal disruption to the community and to assist with the planning of resources:

- Customer Service is to remain open and fully staffed
- Public facilities and services will remain open, and
- For all other areas, the relevant Manager will ensure sufficient staff to work to provide adequate levels of service to the public.

The following holiday entitlements will apply to eligible staff on Randwick City Council Family Day:

Full time and part time staff who ordinarily work and are <b>not required</b> to work on this day	Ordinary day of pay
Full time, part time and casual staff who ordinarily work and are <b>required to</b> work on this day	Paid at double time and one half
Full time and part time staff employed on a seven-day week rotating roster system who are <b>not rostered to work</b>	Paid an additional day at ordinary rates

### 6.14 Union Picnic day

In accordance with the Local Government (State) Award, Union Picnic Day shall for the purposes of this policy be regarded as a holiday for employees who are financial members of the union(s) party to the Award.

The Union Picnic Day shall be on such day as is agreed between Council and the union(s).

The union(s) shall advise Council of financial members as at the time of the Union Picnic Day. Such advice must be given at least two weeks prior to the Union Picnic Day.

### 6.15 Union Training Leave

If you are appointed as a union delegate, you may be entitled to take paid leave to attend Union training and conferences. Eligibility for this type of paid leave is subject to several conditions, which are prescribed in the [Award](#).

## 7. Leave management

All leave, except unplanned leave like Sick, Carer's and Bereavement Leave, is to be taken at a mutually convenient time. Accordingly, you must request leave in advance with reasonable notice and submit a leave application form for prior approval. When operational difficulties arise, Council reserves the right to decline requested leave.

If you are expecting to be absent for a period of five days or longer, if practical, you are required to arrange with your Leader to provide contact details.

Periods of leave greater than 15 minutes must be recorded using a Leave Form. If there are stand-alone occasions where you are late for work, you must swipe your actual start and finish times in the Timeclock. If you are consistently late for work, your Leader will discuss with you as per the Disciplinary Policy. Occasional periods of Leave Without Pay for less than 15 minutes will be deducted from pay but a Leave Form does not need to be submitted unless directed by your Leader. This will ensure the accuracy of your payroll records and leave entitlements.

Annual, Sick and Long Service Leave accrue during all periods of leave *with* pay, and do not accrue

during periods of Leave *Without Pay*.

Sick and Carer's Leave absences are reported on, and absenteeism is reviewed to determine any trends, patterns or areas of concern. As a result of absenteeism reviews, you may be required to attend Council's doctor for all future absences relating to Sick Leave in accordance with the [Award](#). If you misuse your Sick or Carer's Leave, or do not notify an absence or provide the appropriate certification, you will be subject to Council's [Disciplinary Procedure Policy](#).

Council may, in reasonable circumstances, seek further information from the doctor who issued a certificate to confirm the authenticity of the certificate and will ensure appropriate permissions are sought.

If you become ill during a period of planned leave, you cannot change your planned leave to sick or carer's leave.

Council may request leave management plans to manage Leave balances.

Your corporate obligations still apply during periods of Leave, including your obligation to inform and seek approval of any secondary employment.

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### 7.1. Breaches

If you breach this policy, you may be subject to disciplinary action, up to and including termination of employment and/or summary dismissal in accordance with Council policy and the [Award](#).

### 7.2. Leave during fixed term positions

If you are Acting in a fixed term position, such as Secondment or Expression of Interest, your approved leave taken during the fixed-term position will be paid at the fixed term position rate. On your return to your substantive position, all approved leave taken will be paid at the rate of the substantive position.

### 7.3. Leave when on higher duties

If you are working in higher duties your approved leave taken during the period of higher duties:

- if the period of service in the higher duties is less than 6 months the leave will be paid at the rate of the substantive position.
- If the period of service is 6 months or more the leave will be paid at the higher duty rate of pay.

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## 8. References

- **Randwick City Council Agreement** [Link](#)
- **Local Government (State) Award** [Link](#)
  - **Section 21. Leave provisions** [Link](#) [includes Sick Leave, Carer's Leave, Emergency Services Leave, Annual Leave, Long Service Leave, Parental Leave, Paid Parental Leave, Concurrent Parental Leave, Adoption Leave, Bereavement Leave, Other Paid Leave, Special Leave, Family and Domestic Violence Leave (See Family and Domestic Leave Policy)]
- Australian Medical Association Guidelines for Medical Practitioners on Certificates Certifying Illness – Revised 2016. [Link](#)

#### Related internal policies, forms or processes

- Application for Leave form [Link](#)
- Remuneration Policy [Link](#)
- Parental and Adoption Leave form [Link](#)
- Parental and Adoption Leave guidelines [Link](#)
- Disciplinary Procedure Policy [Link](#)
- *Apply for Parental or Adoption Leave process* [Link](#)
- *Apply for leave process* [Link](#)
- *Apply for payout of excess Long Service Leave process* [Link](#)
- *Apply for Health and Wellbeing day process* [Link](#)

CO63/22



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**Randwick City Council**  
30 Frances Street  
Randwick NSW 2031

CORPORATE SERVICES

CO63/22

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# Leave Policy

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Adoption Date:  
**13 October 2020**

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Review Date:  
**13 October 2025**

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Version:  
**2**

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Responsible Department:  
**Human Resources**

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TRIM Document Number:  
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## 1. Objective

Leave is provided to enable you to meet your personal, family or community commitments, and to promote your health and wellbeing through adequate rest and recreation.

The objective of this policy is to provide consolidated information on your various leave entitlements.

This policy, together with the related processes and forms hyperlinked in the References section of this document, covers all the legal and procedural information related to Leave at Council.

## 2. Background

This policy consolidates six original individual leave policies in the table below. It also includes new policy content about other types of leave that are covered by the [Award](#), but were not previously in a policy including:

- Emergency Services Leave
- Military Leave
- NAIDOC Week Leave
- Special Leave
- Union Training Leave.

Original Policy	Adoption date
Annual and Long Service Leave Management	July 2012
Bereavement Leave	November 2011
Health and Wellbeing	January 2015
Jury Service	April 2012
Leave Without Pay	August 2012
Sick and Carer's Leave Management	July 2016

\* Please note that Randwick City Council has a separate [Family and Domestic Violence Policy](#) to provide leave and support to our workers who are victims of Family and Domestic Violence.

\*\*For information on **Parental and Adoption Leave** see the [Parental and Adoption Leave Policy](#) and the [Apply for Parental or Adoption Leave](#) process on the intranet or contact the Payroll team.

\*\*\*The [Remuneration Policy](#) also refers to the management of Sick and Carer's Leave (regarding your time and attendance).

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### 3. Scope

This policy applies to all employees that accrue leave entitlements in accordance with their employment conditions.

---

### 4. Definition

**Definition:** Leader is a Council team member with people management responsibilities. The term includes but is not limited to Team Leaders, Supervisors, Coordinators, Managers, Directors and the General Manager.

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### 5. Responsibilities

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Annual Leave accrues at the rate of four weeks for each year of service and accumulates from year to year. The [Randwick Council Agreement](#), that applies for all Randwick City Council employees, outlines three additional days of Annual Leave for eligible employees.

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Your accumulated Annual Leave is payable on termination.

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If you are unable to attend work due to carer responsibilities, you must notify your Leader by telephone at the first opportunity on the day of absence or before. (It is not acceptable to report your absence to a colleague). Whenever practicable, you should provide your Leader with:

- adequate notice of an upcoming absence
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You must complete a leave application form as soon as possible using HRMS and upon returning to work you may be required to provide a medical certificate or statutory declaration. You may be required to provide proof of the need for Carer's Leave i.e. illness or emergency.

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Sick Leave accrues at the rate of three weeks for each year of service for outdoor employees and four weeks for each year of service for indoor employees. Sick Leave accumulates from year to year.

When you are unable to attend work due to illness or injury, you must notify your Leader by telephone within one hour of your normal starting time (or as close to this time as possible).

**Depotbased employees must notify of absences via the sick leave hotline number: 1800 246 757at**

**least one hour before their starting time** or as soon as practicable in the event of an emergency.

**Library employees must call the library sick line: 9093 6444 by 9am** or as soon as practicable in the event of an emergency. Please notify of your anticipated time off if it will be more than one day, to assist with reorganising rosters.

**Fixed term or temporary employees** who are employed directly by Council's payroll, are entitled to one week of sick leave from their start date at Council, and a further week after each four months of continuous service.

It is not acceptable to report your absence to a colleague. Emails or text messages are not acceptable methods of notification unless otherwise arranged. When reporting absences, you must state the nature of your illness (or reason for absence) and the estimated duration of your absence. If your absence is longer than initially expected, you must contact your Leader again to revise the duration of absence and expected date of return to work.

As per the [Award](#), your Leader must be satisfied that the sickness is such that it justifies the time off, and that the illness or injury does not arise from engaging in other employment. Proof of illness to justify payment is required:

- After the first three separate periods of Sick Leave in each service year
- Where a Sick Leave absence exceeds two working days
- When requested, proof of illness shall indicate the employee's inability to undertake their normal duties.

#### 6.11.1. Certification

Certification to support absences will be consistent with the [Award](#) and the [Australian Medical Association Guidelines for Medical Practitioners on Certificates Certifying Illness – Revised 2016](#).

The type of proof of injury or illness required may include certification from a qualified medical/health practitioner registered with the appropriate government authority or a Statutory Declaration and must indicate your inability to undertake your normal duties. Under the HRMS system you will not be required to upload certificates but will still be required to indicate that you have obtained the required proof. Employees must keep copies of the relevant proof for a period of 12 months.

*Section 6.2 of the AMA Guidelines states that: "There may be circumstances where the doctor will certify that a period of illness occurred prior to the date of examination. The doctor needs to give careful consideration to the circumstances before issuing a certificate certifying a period of illness prior to the date of examination, particularly in relation to patients with a minor short illness which is not demonstrable on the day of examination and add supplementary remarks, where appropriate, to explain any discrepancy."*

If you are absent from work for an extended period due to illness or injury, you may be required to attend a fitness for duty assessment at Council's doctor before you return to work.

**Note:** If you sign and present a fraudulent, misleading or intentionally false statutory declaration as proof of illness under the terms of this policy, it will be treated as serious misconduct and may result in termination of employment.

#### 6.12. Special Leave

As per the [Award](#), you may be eligible for Special Leave with or without pay, to deal with situations that are not covered by other leave types, e.g. dealing with unforeseen circumstances such as natural disasters, terminal illness or injury.

Paid Special Leave may be approved by the General Manager (or delegate) on the advice of the Manager Human Resources, but only if other paid leave entitlements have been exhausted.

#### 6.13. Union Training Leave

If you are appointed as a union delegate, you may be entitled to take paid leave to attend Union training

and conferences. Eligibility for this type of paid leave is subject to several conditions, which are prescribed in the [Award](#).

---

## 7. Leave management

All leave, except unplanned leave like Sick, Carer's and Bereavement Leave, is to be taken at a mutually convenient time. Accordingly, you must request leave in advance with reasonable notice and submit a leave application form for prior approval. When operational difficulties arise, Council reserves the right to decline requested leave.

If you are expecting to be absent for a period of five days or longer, if practical, you are required to arrange with your Leader to provide contact details.

Periods of leave greater than 15 minutes must be recorded using a Leave Form. If there are stand-alone occasions where you are late for work, you must swipe your actual start and finish times in the Timeclock. If you are consistently late for work, your Leader will discuss with you as per the Disciplinary Policy. Occasional periods of Leave Without Pay for less than 15 minutes will be deducted from pay but a Leave Form does not need to be submitted unless directed by your Leader. This will ensure the accuracy of your payroll records and leave entitlements.

Annual, Sick and Long Service Leave accrue during all periods of leave *with* pay, and do not accrue during periods of Leave *Without* Pay.

Sick and Carer's Leave absences are reported on, and absenteeism is reviewed to determine any trends, patterns or areas of concern. As a result of absenteeism reviews, you may be required to attend Council's doctor for all future absences relating to Sick Leave in accordance with the [Award](#). If you misuse your Sick or Carer's Leave, or do not notify an absence or provide the appropriate certification, you will be subject to Council's [Disciplinary Procedure Policy](#).

Council may, in reasonable circumstances, seek further information from the doctor who issued a certificate to confirm the authenticity of the certificate and will ensure appropriate permissions are sought.

If you become ill during a period of planned leave, you cannot change your planned leave to sick or carer's leave.

Council may request leave management plans to manage Leave balances.

Your corporate obligations still apply during periods of Leave, including your obligation to inform and seek approval of any secondary employment.

### 7.1. Breaches

If you breach this policy, you may be subject to disciplinary action, up to and including termination of employment and/or summary dismissal in accordance with Council policy and the [Award](#).

### 7.2. Leave during fixed term positions

If you are Acting in a fixed term position, such as Secondment or Expression of Interest, your approved leave taken during the fixed-term position will be paid at the fixed term position rate. On your return to your substantive position, all approved leave taken will be paid at the rate of the substantive position.

### 7.3. Leave when on higher duties

If you are working in higher duties your approved leave taken during the period of higher duties:

- if the period of service in the higher duties is less than 6 months the leave will be paid at the rate of the substantive position.
- If the period of service is 6 months or more the leave will be paid at the higher duty rate of pay.

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## 8. References

- **Randwick City Council Agreement** [Link](#)
- **Local Government (State) Award** [Link](#)
  - **Section 21. Leave provisions** [Link](#) [includes Sick Leave, Carer's Leave, Emergency Services Leave, Annual Leave, Long Service Leave, Parental Leave, Paid Parental Leave, Concurrent Parental Leave, Adoption Leave, Bereavement Leave, Other Paid Leave, Special Leave, Family and Domestic Violence Leave (See Family and Domestic Leave Policy)]
- Australian Medical Association Guidelines for Medical Practitioners on Certificates Certifying Illness – Revised 2016. [Link](#)



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**Randwick City Council**  
30 Frances Street  
Randwick NSW 2031



## Director Corporate Services Report No. CO64/22

**Subject: Investment Policy**

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### Executive Summary

- Council has an investment policy that outlines the investment objectives of Council. The investment policy provides the framework that safeguards the investment portfolio.
- The Office of Local Government Code of Accounting Practice requires Council to review the Investment Policy annually.
- This annual review has been conducted in consultation with our independent investment advisors and is now presented to Council with minor changes.

### Recommendation

That the Investment Policy (as attached) be adopted.

### Attachment/s:

1.   Investment Policy

## Purpose

Council has an investment policy that outlines the investment objectives of Council. The investment policy provides the framework that safeguards the investment portfolio.

## Discussion

The Office of Local Government have published investment policy guidelines that recommend that the investment policy be reviewed annually and be amended as required in the event of legislative change or because of significantly changed economic conditions.

Given the current economic environment and the differences in interest rates offered for investments maturing in 0-3 months and 3-12 months, the investment policy has been reviewed in conjunction with Council's investment advisors, Imperium Markets, and is now presented for adoption with the following minor changes to the existing policy.

### Minimum Allocation Changes:

	From	To
Working capital funds (0-3 months)	10%	15%
Short-term funds (3-12 months)	20%	15%

The changes proposed will allow for greater flexibility by giving Council more cash in hand availability in a shorter timescale to pay invoices when they fall due for payment and in the future enable Council to take advantage of investments that will be paying a higher financial yield.

## Strategic alignment

The relationship with our 2022-26 Delivery Program is as follows:

Delivering services and regulatory functions:	
Service area	Financial Management
Function	Financial Management and Control
Delivery program commitment	Support Council's sustainable delivery of projects and services through sound Financial Management and Control, including long term financial planning, budget preparation, and financial performance monitoring.

## Resourcing Strategy implications

The investment policy provides the framework under which all investments are made. The policy aims to minimise risk while allowing for appropriate returns in accordance with adopted budget.

## Policy and legislative requirements

Council has an approved investment policy complying with Section 625 of the Local Government Act 1993 (NSW) and Clause 212 of the Local Government (General) Regulation 2005 (NSW).

Investments are placed and managed in accordance with that policy, having particular regard to authorised investments prescribed under the Ministerial Local Government Investment Order.

Council maintains an investment policy that complies with the Act and ensures that it, or its representatives, exercise the care, diligence and skill that a prudent person would exercise in investing Council funds.

## Conclusion

The annual investment policy review has been conducted in consultation with Council's independent investment advisor. Minor changes have been made to the terms to maturity framework which will ensure sufficient liquidity to meet the day-to-day cash requirements of the Council and to enable the further optimization of investment returns. The draft policy is attached for consideration/adoption.

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**Responsible officer:** Xinyu Zhang, Financial Accountant

**File Reference:** F2016/06527

CO64/22

CO64/22

CORPORATE SERVICES

# Investment Policy

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Review Date:  
01 December **2022**

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Next Review Date:  
**31 December 2023**

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Version:  
4

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Responsible Department:  
**Financial Services**

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TRIM Document Number:  
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## 1. Objectives

Preservation of capital is the principal objective of the investment portfolio. Investments are to be placed in a manner that safeguards the investment portfolio. This includes managing credit and interest rate exposure risk within identified thresholds and parameters.

Other objectives include:

- to maximise the return to Council in line with all requirements of the policy;
- to comply with the legislative requirements and regulations relevant to the management of Council's investments;
- to ensure sufficient liquidity to meet all cash flow requirements
- to establish a framework for monitoring investments. Investments are expected to achieve a market average rate of return in line with Council's risk tolerance;
- to confirm delegations and other relevant governance matters in relation to Council's investments.

The Council is committed to financial sustainability and inter-generational equity. It recognises that borrowings can be an important source of funding for capital projects and that the full cost of some projects should not be borne entirely by present-day ratepayers, but contributed to by future ratepayers who will also benefit.

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## 2. Legislation

### 2.1. Legislative and regulatory references

All investments are to comply with the following:

- Local Government Act (1993) Section 625;
- Local Government (General) Regulation (2005) Clause 212;
- Ministerial Investment Order
- The Trustee Amendment (Discretionary Investments) Act(1997) – Section 14;
- Local Government Code of Accounting Practice and Financial Reporting;
- Australian Accounting Standards;
- Office of Local Government Investment Policy Guidelines; and
- Office of Local Government Circulars

### 2.2. Authorised Investments

All investments must be denominated in Australian Dollars. Authorised Investments are limited to those allowed by the Ministerial Investment Order and include:

- Commonwealth / State / Territory Government securities e.g. bonds;
- Interest bearing deposits / senior securities issued by an eligible ADI;
- Bills of Exchange, (< 200 days duration) guaranteed by an ADI;
- Debentures issued by a NSW Council under Local Government Act (1993);
- Investments with NSW Treasury Corporation (T-Corp) &/or Investments in a T-Corp managed funds.

### 2.3. Prohibited Investments

This investment policy prohibits the following types of investment:

- Derivative based instruments (e.g. Collateralised Debt Obligations - CDO).
- Principal only investments or securities that provide potentially nil or negative cash flow.
- Standalone securities issued that have underlying futures, options, forwards contracts and swaps of any kind.

This policy also prohibits the use of leveraging (borrowing to invest) of an investment

## 3. Authority

### Delegated authority

Authority for implementation of the Investment Policy is delegated by Council to the General Manager in accordance with the Local Government Act (1993). The General Manager has in turn delegated the day-to-day management of Council's investment to those currently recorded in the Delegated Authority register.

Delegated officers are required to acknowledge they have received a copy of this policy and understand their obligations in this role when investing funds on behalf of Council in accordance with this policy.

Adequate controls are in place to safeguard Council's assets, such as the separation of duties in relation to authorising and executing transactions through the requirement of two authorised signatories for each transaction.

Delegation Register	
Reference Number	FI030
Category	Finance
Sub-category	Accounting
Sub-delegation title	Investments
Sub-delegation detail	The position holder is delegated authority to implement the Council's adopted Investment Policy and invest the Council's money in accordance with section 625 of the Local Government Act 1993.
Delegated to: Position Title	Refer to latest Delegations of Authority register as published on Council's website

---

## 4. Risk management

### Risk management guidelines

Investments are to be considered in light of the following key criteria:

#### Preservation of capital

The requirement for preventing losses in an investment portfolio's total value.

#### Interest rate risk

The sensitivity of the value of assets, liabilities and future cash flows to a change in interest rates.

#### Credit default risk

The risk that a party or guarantor to a transaction will fail to fulfil its obligations. In the context of this document it relates to the risk of loss due to the failure of an institution/entity with which an investment is held to pay the interest and/or the principal of an investment.

#### Diversification

The requirement to place investments in a broad range of products so as not to be over exposed to a particular sector of the investment market.

#### Liquidity risk

The risk an investor is unable to redeem the investment at a fair price within a timely period thereby incurring additional costs.

#### Market risk

The risk that the fair value or future cash flows of an investment will fluctuate due to changes in market prices, or benchmark returns unexpectedly overtake the investment's return.

#### Maturity risk

The risk relating to the length of the term to maturity of the investment. The longer the term, the greater the length of exposure and the risk to market volatilities.

#### Rollover/Reinvestment risk

The risk that income will not meet expectations or budget because interest rates are lower than predicted in the future.

## 5. Capital security, liquidity and maturity

### 5.1. Credit quality limits

Credit guidelines to be adopted reference the Standard & Poors (S&P) ratings system criteria and format – however, references to the Minister’s Order also recognise Moody’s and Fitch Ratings and any of the three may be used where available.

Ratings in no way guarantee the investment or protect Council against investment losses. The prescribed ratings should not be misinterpreted as an implicit guarantee of investments or entities that have such ratings. Even given this challenge, ratings provide the best independent information available.

Since credit ratings cannot be considered a consistent indicator of risk across different investment types, to provide a more effective risk management framework, this policy sets different exposure and duration terms for different categories of investments.

The following table provides a comparison of the rating equivalents between the different rating agencies:

	S&P	Moody's	Fitch
<b>Prime</b>	AAA	Aaa	AAA
<b>High Grade</b>	AA+	Aa1	AA+
	AA	Aa2	AA
	AA-	Aa3	AA-
<b>Upper Medium Grade</b>	A+	A1	A+
	A	A2	A
	A-	A3	A-
<b>Lower Medium Grade</b>	BBB+	Baa1	BBB+
	BBB	Baa2	BBB
	BBB-	Baa3	BBB-
<b>Non-Investment Grade Speculative</b>	BB+	Ba1	BB+
	BB	Ba2	BB
	BB-	Ba3	BB-
<b>Highly Speculative</b>	B+	B1	B+
	B	B2	B
	B-	B3	B-

To minimise risk and to maximise protection of capital, Council will only invest in Prime, High Grade and Upper Medium Grade investment classes.

All investments must have a S&P long term credit rating of A- or stronger. Council will not invest in any products with an S&P long term credit rating of BBB+ or lower.

The maximum holding limit in each rating category and the target credit quality weighting for Council's portfolio shall be:

S&P Long Term Rating Range (or Moody's / Finch equivalent)	Maximum Holding
AAA Category	100%
AA Category or Major Bank <sup>^</sup>	100%
A Category	80%
BBB Category	0%

<sup>^</sup> For the purpose of this Policy, "Major Banks" are defined as the ADI deposits or senior guaranteed principal and interest ADI securities issued by the major Australian banking groups:

- Australia and New Zealand Banking Group Limited
- Commonwealth Bank of Australia
- National Australia Bank Limited
- Westpac Banking Corporation

including ADI subsidiaries whether or not explicitly guaranteed, and brands (such as St George).

If any of Council's investments are downgraded such that they no longer fall within these policy guidelines, they will be divested as soon as is practicable after consultation with its investment advisor.

## 5.2. Terms to maturity

The term to maturity framework is structured around the cash requirements of the Council and the management of liquidity risk. The investment portfolio will diversify its maturity profile within the following term to maturity constraints.

Investment Horizon	Maturity Date	Minimum Allocation	Maximum Allocation
Working Capital Funds	0-3 months	15%	100%
Short Term Funds	3-12 months	15%	100%
Short to Medium Term Funds	1-2 years	0%	70%
Medium Term Funds	2-5 years	0%	50%
Long Term Funds	5-10 years	0%	25%

## 6. Diversification

### Counterparty exposure

Exposure to individual financial institutions / counterparties, will be restricted by their rating so that single entity exposure is limited, as detailed in the table below.

Individual Institution Limits	
S&P Long Term Rating Range (or Moody's / Finch equivalent)	Maximum Holding
AAA Category	40%
AA Category or Major Bank	40%
A Category	25%
BBB Category	0%

Percentage limits in the table refer to percentages of the total portfolio. It excludes any government guaranteed investments.

This table does not apply to any structured investment where it is not possible to identify a single counterparty exposure.

100% Commonwealth Government and Government-guaranteed deposits are included in the AAA category, but without any upper limit applying to the government as counterparty.

## 7. Ethical Investments

### Fossil Fuel Companies

Where financial institutions are offering equivalent investment returns with the same credit rating, and the investment fits within the provisions of this Investment Policy, preference will be given to placing funds with institutions identified as not dealing with fossil fuel companies.

## 8. Legal title

When a user of funds obtains finance from the provider of funds, the user must prepare a document that clearly defines the contractual arrangement that has been agreed. This is known as a "financial instrument". When Council enters into a financial instrument, it is important that the financial instrument clearly shows it is held in the name of Randwick City Council.

**Safe Custody arrangements**

Investments may be held in safe custody on Council's behalf, as long as the following criteria are met:

- Council retains beneficial ownership of all investments.
- Adequate documentation is provided, verifying the existence of the investments.
- The Custodian conducts regular reconciliation of records with relevant registries and/or clearing systems.
- The Institution or Custodian recording and holding the assets will be:
  - Austraclear or;
  - An institution with an investment grade Standard and Poor's or Moody's or Fitch rating; or
  - An institution with adequate insurance, including professional indemnity insurance and other insurances considered prudent and appropriate to cover its liabilities under any agreement.

## 9. Benchmarks

**Performance Benchmarks**

The performance of each investment will be assessed against the benchmarks listed in the following table.

Investment	Performance Benchmark	Time Horizon
11am Account, short dated bills, deposits issued by financial institutions of appropriate term	RBA Cash Rate	0-3 months
Term Deposits of appropriate remaining term, FRN's nearing maturity	AusBond Bank Bill Index (BBI)	3-12 months
Term Deposits with a maturity date between 1 and 2 years, FRN's.	AusBond Bank Bill Index (BBI)	1-2 years
FRN's, Bonds, Term Deposits with a maturity date between 2 and 5 years.	AusBond Bank Bill Index (BBI)	2-5 years
T-Corp Hour Glass Managed Funds	Fund's Internal Benchmark	3 years (Med Term) 5+ years (Long Term)

It is Council's expectation that the performance of each investment will be greater than or equal to the applicable benchmark by sufficient margin to justify the investment taking into account its risks, liquidity and other benefits of the investment.

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## 10. Monitoring and reporting

### Reporting & Reviewing Requirements (Accounting)

Documentary evidence must be held for each investment and details maintained in an investment register. The documentary evidence must provide Council legal title to the investment.

All investments are to be appropriately recorded in Council's financial records and reconciled at least on a monthly basis.

For audit purposes, certificates must be obtained from the banks/fund managers/custodian confirming the amounts of investment held on Council's behalf at 30 June each year and reconciled to the Investment Register.

A monthly report will be provided to Council. The report will detail the investment portfolio in terms of performance (i.e. investment income earned versus budget year to date and relevant performance benchmarks as outlined in this policy), percentage of holdings, maturity date and changes in market value and confirm compliance of Council's investments within legislative and policy limits.

Council will comply with appropriate accounting standards in valuing its investments and quantifying its investment returns.

In addition to recording investment income according to accounting standards, published reports may show a break-down of its duly calculated investment returns into realised and unrealised capital gains and losses, and interest.

Other relevant issues will be considered in line with relevant Australian Accounting Standards, such as discount or premium, designation as held-to-maturity or on a fair value basis, and impairment.

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## 11. Duties and responsibilities of the council officers

Council officers must act with the duty of care, skill, prudence and diligence that a prudent person would exercise when investing and managing their own funds. The "prudent person" principle is set out in section 14 of the Trustee Act.

### 11.1. Ethics and conflicts of interest

Officers shall refrain from personal activities that would conflict with the proper execution and management of Council's investment portfolio. This policy requires officers to disclose any conflict of interest to the General Manager as soon as they arise.

## 11.2. Non-Financial Factors

When assessing an investment opportunity as part of the prudent person rule there will always be a number of factors, which are not easily quantifiable that should be considered. These factors may lead to accepting a lower rate of return on a particular investment. Such decisions should be documented with reasons to support the decision. This will ensure accountability and transparency and enable those reasons to be identified at a later date.

The highest rate should not always be accepted, but the investment which delivers the best value to Council, should be selected. This allows officers to include other factors when choosing an investment.

Factors which may be considered when choosing investments include:

- Transaction costs
- Ease of making transactions
- Ability to switch out of the investment
- Level of service from an institution
- Benefit to local government
- Liquidity terms
- Reduced costs to other services

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## 12. Review of investment policy and investments

### 12.1. Annual review

The Code of Accounting Practice & Financial Reporting requires Council to review the Investment Policy annually or in the event of legislative change or as a result of significantly changed economic/market conditions.

The Investment Policy may also be changed as a result of other amendments that are to the advantage of the Council and in the spirit of this policy.

Any amendment to the Investment Policy must be by Council resolution.

### 12.2. Internal audit

Investment reports are sent to the internal audit committee for regular review.

### 12.3. External audit

Council's external auditor is required to review Council's investments as part of the audit of the Annual Financial Reports.

### 12.4. Investment Advisor

Council may use the services of a suitably qualified and experienced investment advisor for the purposes of achieving the objectives of this policy. The Council's investment advisor must be approved by Council and be licensed by the Australian Securities and Investment Commission.

The advisor must be independent and have no actual or potential conflict of interest in relation to investment products being recommended and is free to choose the most appropriate product within the terms and conditions of the policy. This includes receiving no commissions or other benefit in relation to the investment being recommended or reviewed, except as fully rebated to Council.

Manufacturers and distributors of investment products are excluded from acting as investment advisors to Council.

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## 13. Borrowings

### 13.1. Borrowing considerations

Council may:

- borrow for capital projects identified in its adopted Resourcing Strategy; or
- borrow to fund income producing assets.

Council will:

- not borrow for operational purposes;
- borrow in accordance with the Local Government Act 1993, the Minister for Local Government's Borrowing Order (Attachment F) and its borrowing limit reported to the Office of Local Government each financial year;
- not borrow for terms that exceed the expected economic life of the asset being funded; and
- ensure its borrowings are sustainable.

#### Internal Borrowings

Funds can be used from internally restricted revenues as an internal loan in place of external borrowings. A repayment schedule to repay internal borrowings will be drafted to ensure repayments to internal reserves can be funded. All such borrowings must be approved by Council resolution and cannot be delegated.

## 13.2. Risk parameters

### Interest Rate Risk

The establishment of interest rate risk parameters has the objective of managing Council's exposure to movements in interest rates in order to:

- manage the total interest expense associated with Council's debt portfolio;
- manage variations in interest expense from year-to-year; and
- recognise Council's exposure to economic markets and maintain flexibility to take advantage of favourable interest rate movements and protect against unfavourable movements.

Council will, based on its assessment of market conditions and forecasts at the time of borrowing, use the following interest rate risk management instruments:

- Floating Rate Debt;
- Fixed Rate Debt; or
- A combination of Floating and Fixed Rate Debt.

### Liquidity/Funding Risk

Liquidity/Funding risk parameters focus on the ability of Council to raise new debt or refinance existing debt as required and will be managed by:

- ensuring debt maturity / re-negotiation dates are set to avoid a concentration of more than \$50 million falling due during a single financial year;
- commencing negotiation of funding requirements at least three months prior to the need to drawdown on a new loan facility or the maturity of an existing loan.

### Credit Risk

The credit quality of the institutions from which Council borrows is an important consideration in the management of potential financial impacts arising from a credit event.

To manage its credit risk, Council will only borrow from:

- banks licensed by APRA which have a minimum Standard & Poor's long term credit rating of 'A-' (or the Moody's or Fitch ratings equivalents)
- NSW Treasury Corporation
- Australian State or Federal Government agency.
- a formalised debenture arrangement with other NSW Councils.

## 13.3. Performance measurement

Council will manage its debt portfolio with a view to meeting the following performance measures:

- Debt Service Ratio – less than or equal to 20%
- Debt Service Cover Ratio – greater than 2x
- Interest Cover Ratio – greater than 4x

The above performance measures only apply while Council has borrowings in place. The performance measures will be reported to Council annually in conjunction with the Financial Statements.

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## A. Local Government Act 1993 – Section 625

### How may councils invest?

- (1) A council may invest money that is not, for the time being, required by the council for any other purpose.
- (2) Money may be invested only in a form of investment notified by order of the Minister published in the Gazette.

Note: See Gazette No 152 of 24.11.2000, p 12041.

- (3) An order of the Minister notifying a form of investment for the purposes of this section must not be made without the approval of the Treasurer.
- (4) The acquisition, in accordance with section 358, of a controlling interest in a corporation is not an investment for the purposes of this section.

## B. Ministerial Investment Order

### LOCAL GOVERNMENT ACT 1993 – INVESTMENT ORDER

(Relating to investments by councils)

I, the Hon. Barbara Perry MP, Minister for Local Government, in pursuance of section 625(2) of the *Local Government Act 1993* and with the approval of the Treasurer, do, by this my Order, notify for the purposes of section 625 of that Act that a council or county council may only invest money (on the basis that all investments must be denominated in Australian Dollars) in the following forms of investment:

- (a) any public funds or securities issued by or guaranteed by, the Commonwealth, any State of the Commonwealth or a Territory;
- (b) any debentures or securities issued by a council (within the meaning of the *Local Government Act 1993* (NSW));
- (c) interest bearing deposits with, or any debentures or bonds issued by, an authorised deposit-taking institution (as defined in the *Banking Act 1959* (Cwth)), but excluding subordinated debt obligations;
- (d) any bill of exchange which has a maturity date of not more than 200 days; and if purchased for value confers on the holder in due course a right of recourse against a bank which has been designated as an authorised deposit-taking institution by the Australian Prudential Regulation Authority;
- (e) a deposit with the New South Wales Treasury Corporation or investments in an Hour-Glass investment facility of the New South Wales Treasury Corporation;

All investment instruments (excluding short term discount instruments) referred to above include both principal and investment income.

#### Transitional Arrangements

- (i) Subject to paragraph (ii) nothing in this Order affects any investment made before the date of this Order which was made in compliance with the previous Ministerial Orders, and such investments are taken to be in compliance with this Order.
- (ii) Paragraph (i) only applies to those investments made before the date of this Order and does not apply to any restructuring or switching of investments or any re-investment of proceeds received on disposal or maturity of such investments, which for the avoidance of doubt must comply with this Order.

#### Key Considerations

An investment is not in a form of investment notified by this order unless it also complies with an investment policy of council adopted by a resolution of council.

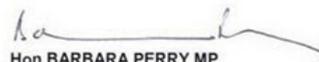
All councils should by resolution adopt an investment policy that is consistent with this Order and any guidelines issued by the Chief Executive (Local Government), Department of Premier and Cabinet, from time to time.

The General Manager, or any other staff member, with delegated authority by a council to invest funds on behalf of a council must do so in accordance with the council's adopted investment policy.

Councils have a fiduciary responsibility when investing. Councils should exercise the care, diligence and skill that a prudent person would exercise in managing the affairs of other persons.

When exercising the power of investment councils should consider, but not be limited by, the risk of capital or income loss or depreciation, the likely income return and the timing of income return, the length of the term of the proposed investment, the liquidity and marketability of the proposed investment, the likelihood of inflation affecting the value of the proposed investment and the costs (including commissions, fees, charges and duties payable) of making the proposed investment.

Dated this 12<sup>th</sup> day of January 2011

  
Hon BARBARA PERRY MP  
Minister for Local Government

## C. The Trustee Amendment (Discretionary Investments) Act 1997 - Sections 14A (2), 14C (1) & (2)

### Section 14A – Duties of trustee in respect of power of investment

- (1) This section has effect subject to the instrument (if any) creating the trust.
- (2) A trustee must, in exercising a power of investment:
  - (a) if the trustee's profession, business or employment is or includes acting as a trustee or investing money on behalf of other persons, exercise the care, diligence and skill that a prudent person engaged in that profession, business or employment would exercise in managing the affairs of other persons, or
  - (b) If the trustee is not engaged in such a profession, business or employment, exercise the care, diligence and skill that a prudent person would exercise in managing the affairs of other persons.

Note: Some Acts deem investments under the Acts to be investments that satisfy the prudent person test. See, for example, section 39 of the Public Authorities (Financial Arrangements) Act 1987.

- (3) A trustee must exercise a power of investment in accordance with any provision of the instrument (if any) creating the trust that is binding on the trustee and requires the obtaining of any consent or approval with respect to trust investments.
- (4) A trustee must, at least once in each year, review the performance (individually and as a whole) of trust investments.

### Section 14C - Matters to which trustee is to have regard when exercising power of investment

- (1) Without limiting the matters that a trustee may take into account when exercising a power of investment, a trustee must, so far as they are appropriate to the circumstances of the trust, if any, have regard to the following matters:
  - (a) the purposes of the trust and the needs and circumstances of the beneficiaries,
  - (b) the desirability of diversifying trust investments,
  - (c) the nature of, and the risk associated with, existing trust investments and other trust property,
  - (d) the need to maintain the real value of the capital or income of the trust,
  - (e) the risk of capital or income loss or depreciation,
  - (f) the potential for capital appreciation,
  - (g) the likely income return and the timing of income return,
  - (h) the length of the term of the proposed investment,
  - (i) the probable duration of the trust,
  - (j) the liquidity and marketability of the proposed investment during, and on the determination of, the term of the proposed investment,
  - (k) the aggregate value of the trust estate,
  - (l) the effect of the proposed investment in relation to the tax liability of the trust,
  - (m) the likelihood of inflation affecting the value of the proposed investment or other trust property,
  - (n) the costs (including commissions, fees, charges and duties payable) of making the proposed investment,
  - (o) the results of a review of existing trust investments in accordance with section 14A (4).
- (2) A trustee may, having regard to the size and nature of the trust, do either or both of the following:
  - (a) obtain and consider independent and impartial advice reasonably required for the investment of trust funds or the management of the investment from a person whom the trustee reasonably believes to be competent to give the advice,
  - (b) pay out of trust funds the reasonable costs of obtaining the advice.
- (3) A trustee is to comply with this section unless expressly forbidden by the instrument (if any) creating the trust.

---

## D. Local Government (General) Regulation 2005 – Clause 212

### Reports on council investments

- (1) The responsible accounting officer of a council:
  - (a) must provide the council with a written report (setting out details of all money that the council has invested under section 625 of the Act) to be presented:
    - (i) if only one ordinary meeting of the council is held in a month, at that meeting, or
    - (ii) if more than one such meeting is held in a month, at whichever of those meetings the council by resolution determines, and
  - (b) must include in the report a certificate as to whether or not the investment has been made in accordance with the Act, the regulations and the council's investment policies.

The report must be made up to the last day of the month immediately preceding the meeting.

Note: Section 625 of the Act says how a council may invest its surplus funds (Attachment A)

---

## E. Local Government Code of Accounting Practice and Financial Reporting

### Section 11.3.4

Councils must maintain a separate record of money it has invested under 625 of the LGA. The record must specify:

- (a) the source and amount of money invested; and
- (b) particulars of the security or form of investment in which the money is invested; and
- (c) if appropriate, the rate of interest to be paid, and the amount of money that the council has earned, in respect of the money invested.

### Section 11.3.5

Council must maintain an investment policy that complies with the Act and ensures "*it or its representatives exercise care, diligence and skill that a prudent person would exercise in investing council funds*".

For an extensive list of matters a prudent person would be expected to consider, reference is made to Section 4 of the NSW Local Government Investments Best Practice Guide.

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## F. Ministerial Borrowing Order

### Local Government Act 1993 – Borrowing Order (Related to borrowings by Council)

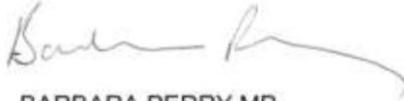
I, BARBARA PERRY MP, Minister for Local Government, in pursuance of section 624 of the Local Government Act 1993, hereby impose restrictions on borrowings by a council as follows:

A council shall not borrow from any source outside the Commonwealth of Australia nor in any other currency other than Australian currency.

#### Transitional Arrangements

Nothing in this Order affects any borrowings made before the date of this Order, which was made in compliance with the previous Ministerial Order dated 27 September 1993, and such borrowings are taken to be in compliance with this Order.

Dated this 13<sup>th</sup> day of May 2009



BARBARA PERRY MP  
Minister for Local Government

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## G. Definitions

### Act

Local Government Act, 1993.

### Ausbond Bank Bill Index

In 2014, Bloomberg acquired the UBS Australia Bond Indices. The benchmark index formerly referred to as UBSA BBI was rebranded as Ausbond Bank Bill Index.

Bloomberg calculates a daily Bank Bill Index representing the performance of a notional rolling parcel of bills averaging 45 days.

### Austraclear

Austraclear is a clearing and settlement facility, licensed by the Australian Securities and Investments Commission and subject to certain financial stability standards administered by the Reserve Bank of Australia.

### Australian Prudential Regulation Authority - APRA

APRA (Australian Prudential Regulation Authority) is the prudential regulator of the Australian financial services industry. APRA enforces prudential standards and practices (e.g. capital adequacy and other risk management issues) of banks, credit unions, building societies, insurance companies and friendly societies.

### Authorised Deposit-Taking Institutions ADI

Authorised Deposit-Taking Institutions (ADIs) are corporations that are authorised under the Banking Act 1959 (Cwth) to take deposits from customers.

### Bill of Exchange

A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person, or to bearer.

### BBSW

The Bank Bill Swap reference rate (BBSW) is the average of mid-rate bank-bill quote from brokers on the BBSW Panel. The BBSW is calculated daily. Floating rate securities are most commonly reset quarterly to the 90-day BBSW.

### Council Funds

Surplus monies that are invested by Council in accordance with section 625 of the Act

**Credit Rating**

Credit Rating refers to a short or long term summary assessment of the credit worthiness of a debt issuer or of a specific issue.

**Debenture**

A debenture is a document evidencing an acknowledgement of a debt, which a company has created for the purposes of raising capital. Debentures are issued by companies in return for medium and long term investment of funds by lenders.

**Debt Service Ratio**

$$\frac{\text{Cost of debt servicing (interest + principal)}}{\text{Total Revenue from continuing operations (excl. capital grants \& contributions)}}$$

Note: The denominator in this calculation excludes fair value adjustments, reversal of revaluation decrements, net gain on sale of assets and net share of interests in joint ventures

**Debt Service Cover Ratio**

$$\frac{\text{Operating Result before Interest \& Depreciation}}{\text{Cost of debt servicing (interest + principal)}}$$

**Direct Deposits**

Direct Deposits refer to investments made by Council (or on behalf of Council) directly with financial institutions.

**Fixed Rate Debt**

A loan structure with an interest rate that does not change for the term of the loan. This structure has the advantage of shielding Council from future interest rate increases and provides certainty around repayment commitments in Council's budget.

**Floating Rate Debt**

A loan structure with an interest rate designed to move up and down by a set margin above an underlying index/benchmark.

**Floating Rate Note - FRN**

A Floating Rate Note (FRN) is a medium to long term fixed interest investment where the coupon is a fixed margin ("coupon margin") over a benchmark, also described as a "floating rate". The benchmark is usually the BBSW and is reset at regular intervals – most commonly quarterly.

**Interest Cover Ratio**

$$\frac{\text{Operating Result before Interest \& Depreciation}}{\text{Interest expense}}$$

**LGGR**

Local Government (General) Regulation 2005 (NSW).

**Major Banks**

The ADI deposits or senior guaranteed principal and interest ADI securities issued by the major Australian banking groups being ANZ, CBA, NAB and Westpac, including ADI subsidiaries whether or not explicitly guaranteed and brands (such as St George).

**Minister's Order**

Refers to the Order of the Minister for Local Government relating to Investments made by Councils.

Last Minister's Order was dated 12 January 2011.

**Negotiable Certificate of Deposit - NCD**

Is a short term investment in an underlying security being a negotiable certificate of deposit (NCD) where the term of the security is usually for a period of 185 days or less (sometimes up to 2 years). NCDs are generally discount securities, meaning they are issued and on-sold to investors at a discount to their face value.

**OLG**

NSW Office of Local Government, Department of Premier and Cabinet

**Responsible Accounting Officer - RAO**

Responsible Accounting Officer of a council means a member of the staff of the council designated by the General Manager, or if no such member has been designated, the General Manager. (LGGR, clause 196)

**T-Corp**

New South Wales Treasury Corporation.

The *Treasury Corporation Act 1983* establishes New South Wales Treasury Corporation ("TCorp") as the central financing authority for the New South Wales public sector. Under this act, TCorp's principal objective is "to provide financial services for, or for the benefit of, the New South Wales government, public authorities and other public bodies".



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Randwick NSW 2031



## Motion Pursuant to Notice No. NM111/22

**Subject:** Notice of Motion from Cr Burst - Investigate a park gym in Woomera Reserve

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**Motion:**

That Council investigate a park gym at Woomera Reserve, Little Bay.

**Background:**

Community feedback is that residents would like a park gym at Woomera Reserve Little Bay. There is presently a children's playground in this park and a park gym would enhance the use of this amenity and help with a focus on health and fitness.

**Source of funding:**

TBA

**Attachment/s:**

Nil

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**Submitted by:** Councillor Burst, South Ward

**File Reference:** F2022/00634

NM111/22



## Motion Pursuant to Notice No. NM112/22

**Subject:** Notice of Motion from Cr Burst - Installation of water bubbler at Kooloora Community Centre

---

**Motion:**

That Council investigate the installation of a water bubbler, with a dog drink dish below, at the rear of the Kooloora Community Centre.

**Background:**

Community feedback is that residents would like a water bubbler with a dog drink dish, installed at the rear of the Kooloora Community Centre, also, a BBQ area could also be investigated.

**Source of funding:**

TBA

**Attachment/s:**

Nil

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**Submitted by:** Councillor Burst, South Ward

**File Reference:** F2004/07676



## Motion Pursuant to Notice No. NM113/22

**Subject:** Notice of Motion from Cr Said - Plaque for Heffron Centre

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**Motion:**

That, given construction on the Heffron Centre project is due to be completed in early 2023 and given the significance of the Heffron Centre project to Council, it is fitting that the plaque for the project include the names of all Randwick City Councillors on this current term of Council. Councillors who wish for their name not to be included on the plaque, however, would be entitled to do so by informing the Mayor.

**Background:**

The Heffron Centre is the largest capital works project in RCC's history, as per tradition large capital works projects have included all Councillors.

**Attachment/s:**

Nil

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**Submitted by:** Councillor Said, South Ward

**File Reference:** F2019/10812

NM113/22



## Motion Pursuant to Notice No. NM114/22

**Subject:** Notice of Motion from Cr Hay - Large outdoor broadcast locations for sporting events and the 2024 Olympics

---

### Motion:

That Randwick Council prepare a report on a variety of locations that could be used for public broadcasts of sporting events. The report should consider:

- A variety of suitable locations across the Local Government Area
- Proximity to local businesses and economic benefits.
- Wear and tear on grass, if too many events are held in the same location consecutively
- Whether large venues such as Randwick Racecourse, UNSW would be interested in broadcasts on their facilities
- Whether community BBQ, food trucks, coffee carts etc. can be provided to reimburse costs.

### Background:

Following the beyond expectation attendance of the Australia v Argentina World Cup Soccer game being broadcast at Maroubra Beach, Randwick Council should consider more.

### Source of funding:

To be determined.

### Attachment/s:

Nil

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**Submitted by:** Councillor Hay, West Ward

**File Reference:** F2021/00020



## Motion Pursuant to Notice No. NM115/22

**Subject:** Notice of Motion from Cr Chapple - Screenings of Matildas Games

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### Motion:

That Council Officers bring back a report on the feasibility of showing all Matilda's games during the 2023 Women's World Cup on public screens in our area

### Background:

The 2023 Women's World Cup will be held in Australia and New Zealand with our Matildas playing their opening game on Thursday 20 July 2023.

The recent Men's World Cup has been strongly taken up in the Randwick LGA with large numbers of spectators at the screen at the Maroubra Beach live site on 4 December for the Australia Argentina game.

### Attachment/s:

Nil

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**Submitted by:** Councillor Chapple, Central Ward

**File Reference:** F2021/00020

NM115/22



## Question with Notice No. QN7/22

**Subject:** Question with Notice from Cr Veitch - Completion and community access to the Heffron Centre

---

**Question:**

1. What date is construction of the Heffron Centre due for completion?
2. When will Council receive the next detailed progress report, project cost and cashflow position and will these be publicly available?
3. What date will the Gymnastics and Indoor Sports Centre commence operations?
4. How many spaces in the Rabbitoh's High Performance Centre will be made available for community use?
5. How many hours per week will there be guaranteed community use of these spaces, what fees will be charged, and how will the bookings be managed?
6. What facilities, support and access time will be allocated to the proposed Rabbitohs NRLW team?

**Response from Director City Services:**

To be distributed in supplementary business paper.

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**Responsible officer:** Councillor Veitch, West Ward

**File Reference:** F2019/10812



## Notice of Rescission Motion No. NR4/22

**Subject: Notice of Rescission Motion submitted by Councillors Said, Burst and Rosenfeld - Community Engagement Strategy - Outcome of public exhibition**

---

That the resolution passed at the Ordinary Council meeting held on Tuesday 22 November 2022 and reading as follows:

“That Council resolve to adopt the attached Community Engagement Strategy, subject to:

(a) on page 33 of the Community Engagement Strategy document:

Change the following Level 1 notifications to Level 2 notifications:

- Property boundary adjustment
- Tree works not affecting other properties
- Any other development which in the opinion of a senior council planning officer is of minimal environmental impact or ancillary in nature; and is not likely to result in any adverse impacts on the broader community or adjoining/neighbouring

(b) on page 33 at the bottom of page:

Remove “A development may be exempt from requiring site notices, if in the opinion of a Senior Council Planning Officer, the proposal will not result in adverse impacts on the broader community.”

(c) on page 34 – Section 5.5.2 Amended Applications (Re-Notification)

At top of page, end of first paragraph amend to say:

“For amendments prior to determination of an application, Council **will** renotify.”

Adjust table 3. Public notification requirements for modification applications as follows:

Section 4.55 (1) application – notify.  
Section 4.55 (1A) application – notify.”

**BE AND IS HEREBY RESCINDED.**

If the Rescission Motion is carried, it is intended to move the following motion:

“That Council:

- a) note the draft Community Engagement Strategy has been developed following extensive community consultation; and
- b) resolve to adopt the Community Engagement Strategy.”

### Attachment/s:

Nil

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**Submitted by:** Councillor Said, South Ward; Councillor Burst, South Ward; Councillor Rosenfeld, Central Ward  
**File Reference:** F2022/00271