

Voluntary Planning Agreement

[Date]

Burwood Council

ABN 84 362 114 428

and

Burwood RSL Club Ltd

ACN 000 975 646

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THIS PLANNING AGREEMENT is made on the day of 2022

PARTIES

Burwood Council of 2 Conder Street Burwood in the State of New South Wales (the '**Council**').

and

Burwood RSL Club Ltd [ACN 000 975 646] of 96 Shaftesbury Road Burwood in the State of New South Wales (the '**Developer**').

BACKGROUND

- A. The Land is situated at 2 George St Burwood NSW.
- B. The developer is the registered proprietor of the Land.
- C. On 25 February 2019, consent was granted by the Central Sydney Planning Panel to concept development application DA85/2017 for a mixed use development on the Land comprising of a registered club, and hotel tower development.
- D. On 22 October 2020, a modification to the Concept Consent to DA85/2017 was lodged by the Developer with Council to incorporate additional site area and modify the approved building envelope on the Land.
- E. On 22 October 2020, Detailed Development Application No. DA 10.2020.103.1 was submitted by the Developer to Council seeking Development Consent for the registered club component of the Concept Consent to be carried out on the Land.
- F. The Detailed Development Application and Concept Consent Modification Application was accompanied by an offer by the Developer dated 22 December 2020 to enter into this Planning Agreement to make contribution towards the provision, augmentation or improvement of open space, community facilities, and other public facilities including the construction of new roads and road upgrades if the Detailed Development Consent is granted and the Concept Consent Modification Approval is given.
- G. The Developer intends to undertake the Development of the Land in accordance with the Concept Consent as proposed to be modified by the Concept Consent Modification Application and in accordance with the Detailed Development Application.

OPERATIVE PROVISIONS

1. Planning Agreement under the Act

The Parties acknowledge and agree that this Planning Agreement is a planning agreement within the meaning of section 7.4 of the Act and is governed by subdivision 2 of part 7 of the Act.

2. Application of this Planning Agreement

This Planning Agreement applies to the Land and the Development

3. Operation of this Planning Agreement

- 3.1 The Parties are to execute this Planning Agreement within 10 working days following the grant by Council of the Detailed Development Consent and the giving of the Concept Consent Modification Approval.
- 3.2 This Planning Agreement shall operate from the date of execution of this Planning Agreement.

4. Definitions and interpretation

- 4.1 In this Agreement the following definitions apply:

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

Approval means any approvals, consents, section 4.55 modifications, Part 6 certificates or approvals under the Act, certificates, construction certificates, occupation certificates, complying development certificates, permits, endorsements, licences, conditions or requirements (and any variation to them) which may be required by this Planning Agreement or any Development Consent the subject of this Planning Agreement.

Authority means any government, local government, statutory, public, ministerial, administrative, fiscal or other authority or body, and includes the Joint Regional Planning Panel or such other consent authority as may be lawfully appointed and authorised to grant an Approval, including an accredited certifier defined under the Act.

Bond means an insurance bond for the Security Amount from an AAA credit rated party, or a party with a credit rating otherwise acceptable to Council.

Business Day means any day except Saturday or Sunday or a day which is a public holiday in Sydney.

Certificate of Practical Completion means a certificate issued under clause 9.6(a) by the Council's Representative confirming Completion of item/s of the Developer's Works.

Completion in relation to the Developer's Works set out in Schedule 1, Schedule 2 and Schedule 3, means the point in the construction of any individual item/s of Developer's Works when:

- (a) in the reasonable discretion of the Council's Representative and notified under clause 9.5(a) or (c), the item/s of the Developer's Works are complete except for minor omissions and minor defects, which are non-essential and:
 - (i) which do not prevent the Developer's Works from being reasonably capable of being used for their intended purposes;
 - (ii) which the Council determines the Developer has reasonable grounds for not promptly rectifying; and
 - (iii) the rectification of which will not prejudice the convenient use of the Developer's Works.

Concept Consent means the consent granted on 25 February 2019 by the Central Sydney Planning Panel to concept development application DA85/2017 for a mixed use development on the Land comprising of a registered club, and hotel tower development, and includes all modifications made under section 4.55 of the Act.

Concept Consent Modification Application means the application to modify the Concept Consent lodged with Council by the Developer on 22 October 2020 with application number 10.2017.85.2.

Concept Consent Modification Approval means the approval given to the Concept Consent Modification Application.

Construction Certificate means a certificate issued under Part 6 of the *Environmental Planning and Assessment Act 1979* (NSW) approving building work to be carried out on the Land for the whole or part of the work consented to under any Development Consent that is

the subject of this Planning Agreement.

Council's Representative means the Director - City Assets, delegate or other duly authorised Council employee, named and communicated to the Developer in writing in advance of that person becoming Council's representative.

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

Dedicated to Council means, in relation to:

- (a) for any item/s of the Developer's Works undertaken on Dedication Land, the time when that particular Dedication Land is dedicated to Council.
- (b) for any item/s of Developer's Works not undertaken on Dedication Land, the time when a Certificate of Practical Completion is issued for the particular item/s of the Developer's Works.

Dedication (of land) means dedication of land by way of transfer or registration of a deposited plan or registration of a subdivision which dedicates the land.

Dedication Land means those parts of the Public Benefits described as "Dedication Land" in Schedule 2

Defects Liability Period means the period of 12 months from the date when item/s of the Developer's Works are Dedicated to Council.

Detailed Development Application means the detailed development application No. 10.2020.103.1 lodged with Council on 22 October 2020 for the registered club component of the Concept Consent to be carried out on the Land.

Detailed Development Consent means the consent granted in to the Detailed Development Application.

Developer's Works means those parts of the Public Benefits described as "Developer's Works" in Schedule 1, Schedule 2 and Schedule 3.

Development means the development of the Land in accordance with the Concept Consent as modified by the Concept Consent Modification Approval and the Detailed Development Consent.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost or the provision of a material public benefit.

GST has the meaning as in the GST Law.

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

Guarantee means an unconditional bank guarantee, unlimited in time, issued by a bank licensed to carry on business in Australia that:

- (a) is in favour of Council;
- (b) for the Security Amount; and
- (c) on such other reasonable terms and conditions the Council may approve from time to time.

Insolvent means, in relation to a Party:

- (a) that Party makes an arrangement, compromise or composition with, or assignment for, the benefit of its creditors or a class of them;
- (b) a receiver, receiver and manager, administrator, provisional liquidator, trustee, controller, inspector or analogous person is appointed in relation to, or over, all or any part of that Party's business, assets or securities;

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

Inspection Points means the points in the Developer's Works set out in Annexure L and referred to in clause 9.4 of this Planning Agreement.

Land means Lot 1 in Deposited Plan DP 1261150 situated at and known as 2 George St Burwood.

Law means:

- (a) the common law including principles of equity, and
- (b) the requirement of all statutes, rules, ordinances, codes, instruments, regulations, proclamations, by-laws or consent by an Authority, that presently apply or that may apply in the future.

Maintenance and Repair Period means the earlier of the period of time between the date when item/s of Developer's Works are Dedicated to Council and:

- (a) the date of issue for any Occupation Certificate for an item (where that item is subject to the issue of an Occupation Certificate); or
- (b) the expiration of one year from the date of Dedication to Council of an item.
- (c) the expiration of one year from the issue of a Certificate of Practical Completion for those Developer's Works that are not dedicated to Council and not subject to the issue of an Occupation Certificate.

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

Party means a party to this Agreement, including their successors and assigns.

Planning Agreement means this Planning Agreement.

Public Art means those parts of the Public Benefits described as "Public Art" in Schedule 3.

Public Benefits means the public benefits set out in Schedule 1 and Schedule 2

Quantity Surveyor means a duly qualified and registered quantity surveyor of at least five (5) years' experience in the assessment of building material and constructions costs.

Regulation means the *Environmental Planning and Assessment Regulation 2021* (NSW).

Security means a Guarantee or Bond given in relation to item/s of the Developer's Works.

Security Amount means the amount secured by a Bond or Guarantee in relation to item/s of the Developer's Works. The amount to be initially secured for particular item/s of the Developer's Works is 80% of the Value specified for items in Schedule 1, to be reduced in accordance with clauses 10 and 11 of this Planning Agreement.

4.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (h) An expression importing a natural person including any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and reference to any gender denotes the other genders.
- (k) References to the word 'include' or 'including' are to be construed without limitation.
- (l) A reference to this Agreement includes the agreement recorded in this Agreement.
- (m) A reference to a Party to this Agreement includes a reference to the servants, agents and contractors of the Party, and the Party's successors and assigns.
- (n) Any schedules and attachments form part of this Agreement.

5. Developer to Provide Public Benefits

5.1 The Developer must, at its cost, provide the Public Benefits to Council in accordance with this document.

5.2 In the event the Detailed Development Consent expires, is abandoned, is surrendered, or ceases to have effect, the Planning Agreement will also expire and cease to have effect and from that point on not be binding on any Party.

Developer's Works

5.3 The Developer will carry out the Developer's Works in accordance with this Planning Agreement, including the timing shown in Schedule 1, Schedule 2 and Schedule 3.

5.4 The Developer's Works or any part of the Developer's Works required under this agreement will be taken to have been Completed for the purposes of this Planning Agreement when a Certificate of Practical Completion has been issued

for those Developer's Works.

Dedication of Land

- 5.5 The Developer must Dedicate to the Council the Dedication Land, in accordance with Schedule 2 of this Planning Agreement and any other provision of this Planning Agreement relating to the Dedication of lands.
- 5.6 The Developer must Dedicate to Council the Dedication Land, the value of which is set out in Schedule 2 of this Planning Agreement in the column titled "Fixed Attributed Value" at no cost to Council.
- 5.7 The Dedication will be effected when:
- (a) a plan of subdivision is registered dedicating the Dedication Land to Council; or
 - (b) Council becomes the registered proprietor of existing lots which encompass the whole of the Dedication Land as a result of the registration of the instruments dedicating the Dedication Land,
- however for the purposes of the issue of any Occupation Certificate, the Dedication will be taken to have occurred when the instruments effecting the Dedication are lodged with the Land Registry Services for registration.
- 5.8 Where an existing lot forming part of the Dedication Land is to be transferred to Council:
- (a) the Developer will deliver to Council the following:
 - (i) the instruments of affecting the dedication in registrable form signed by the registered proprietor of the lot;
 - (ii) the Certificate of Title for the lot; and
 - (iii) a discharge of mortgage, surrender of lease or other document to release the lot from any mortgage or lease;
 - (b) Council will on receipt of these documents arrange for the following to occur within 5 working days:
 - (i) stamping of the transfer (if any); and
 - (ii) lodgement of the transfer or other instrument of dedication, Certificate of Title and other documents at the office of NSW Land Registry Services for registration.
- 5.9 The Dedication Land must be freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts in, over or in connection with the land, including but not limited to, municipal rates and charges, water rates and land tax, except as permitted by Council in writing.
- 5.10 Council may provide the Developer with a tax invoice for its reasonable expenses incurred in relation to the Dedication of the Dedication Land including its legal costs and disbursements (including any registration fees). These costs must not exceed \$750 plus disbursements.
- 5.11 The Developer must pay to Council the amount invoiced in accordance with clause 5.10 above for expenses within 14 days of receipt of the invoice.
- 5.12 The Developer must pay Council on reasonable notice the stamp duty (if any) on the Dedication of the Dedication Land. The Parties acknowledge that section 277 of the *Duties Act 1997* (NSW) provides generally that duty under that Act is not chargeable on dutiable transactions where Council is liable to pay the duty.

Access to Council owned land

- 5.13 The Council agrees to permit the Developer, upon receiving at least 10 Business Days' prior notice, to enter, pass through or occupy any Council owned or

controlled land in order to enable the Developer to properly perform its obligations under this Planning Agreement. Nothing in this clause creates or gives the Developer any estate or interest in any part of the Council owned or controlled land.

5A. Developer to Provide Public Art

5A.1 The Developer must provide the Public Art in accordance with this Planning Agreement, including the timing shown in Schedule 3.

5A.2 Notwithstanding any other provision of this Planning Agreement, the provision by the Developer of the Public Art is taken to be full satisfaction of any public art contribution required under the Detailed Development Consent or any other detailed Development Consent for development under the Concept Consent.

6. Application of section 7.11 and section 7.12 of the Act to the Development

6.1 This Planning Agreement does not exclude the application of section 7.11 or section 7.12 of the Act in connection with the Detailed Development Consent.

6.2 Schedule 1 sets out the Public Benefits under this Planning Agreement that are to be taken into account (to the extent set out in Schedule 1, using the Value in Schedule 1) in determining the development contributions payable on the Detailed Development Consent under section 7.11 or section 7.12 of the Act.

6.3 Public Benefits under this Planning Agreement are to offset contributions payable on the Detailed Development Consent under section 7.11 or section 7.12 of the Act to the extent set out in the Value column in Schedule 1 only

6.4 Notwithstanding any other provision of this Planning Agreement, Council agrees that any development contributions payable on the Detailed Development Consent under section 7.11 or section 7.12 of the Act will be payable prior to the issue of any Occupation Certificate.

6.5 The Developer covenants and agrees that it will not make any application for an Occupation Certificate until the development contributions relating to the particular parts of the development the subject of that Occupation Certificate are paid. For the avoidance of doubt, this provides that applications for partial Occupation Certificates may be made prior to the payment of all development contributions for the entire Development.

6.6 To determine the Item 2 in Schedule 1 Value and the Item 4 in Schedule 1 Value for the purposes of clauses 6.2 and 6.3, the Developer covenants and agrees that it will submit a written assessment of the Item 2 in Schedule 1 Value and the Item 4 in Schedule 1 Value by a single independent Quantity Surveyor, the engagement of who is to be agreed between the parties and undertaken prior to the commencement of work on items 2 and 4 in Schedule 1 (**Poles/Resurfacing QS Report**).

6.7 Deleted

6.8 Deleted.

6.9 If the offsets under clause 6.3 above for the Items in Schedule 1 exceed the contributions payable on the Detailed Development Consent, then the excess will be taken into account when determining the development contributions payable on the Detailed Development Consent under section 7.11 or section 7.12 of the Act for the hotel stage of the Concept Consent.

6.10 To determine the Item 3 in Schedule 1 Value for the purposes of clauses 6.2, 6.3 and 6.9, the Developer covenants and agrees that it will submit a written assessment of the Item 3 in Schedule 1 Value, based upon for construction engineering drawings and scope outlined in annexure G, by a single independent Quantity Surveyor, the engagement of who is to be agreed between the parties and undertaken prior to the commencement of work on item 3 in Schedule 1 (**Traffic/Roadworks QS Report**).

6.11 Deleted

6.12 Deleted.

7. Approval of Developer's Works

7.1 Definition of Scope of Works

The parties agree that the Developer's Works described in Schedule 1, Schedule 2 and Schedule 3 comprise the Developer's Works for the purposes of this Planning Agreement. The parties acknowledge and agree that further design detail and refinement that is or may be necessary, will have regard to the following:

- (a) the extent to which the design of any part of the Developer's Works has been completed to the reasonable satisfaction of Council (in its capacity as a Party to this Planning Agreement and not as consent authority) at the date of execution of this Planning Agreement;
- (b) conditions reasonably affecting the Developer's Works which were not reasonably capable of identification on or before the date of this Planning Agreement;
- (c) the extent of any design refinement that is reasonably required;
- (d) the value attributed to the item of Developer's Works; and
- (e) any need to modify the Concept Consent or Detailed Development Consent or any other Development Consent or Approval granted in respect of the Developer's Works as a result of the contemplated refinement to the design detail.

7.2 Developer to Prepare and Submit Further Design Information of the Developer's Works

Following execution of this Planning Agreement, the Developer is to prepare further design description, including design drawings, for the Developer's Works, certified by a suitably qualified practicing engineer (where that is required) and submit the design details to the satisfaction of Council's Representative for approval, such approval not to be unreasonably withheld.

7.3 Notice of Plans

The Council will promptly (and in any event within 20 working days of submission) give the Developer notice whether or not the design drawings and description of the Developer's Works prepared under clause 7.2 are satisfactory. If the design or description is not satisfactory, subject always to the considerations in clause 7.1(a) – (d) above, then Council will identify the further information, or modifications, (as the case may be) which are suggested. The Developer must promptly amend the proposed design to take into account the modifications suggested by the Council under this clause. For the avoidance of doubt, this clause does not authorise Council to require artwork beyond that which is detailed in Schedule 3.

7.4 Valuation of Proposed Developer's Works

The Developer must, on or before the submission of plans under clause 7.2, prepare and submit a detailed costs estimate (certified by a Quantity Surveyor) for the estimated costs of the Developer's Works. The Council (acting reasonably) may:

- (a) reject items included within that Quantity Surveyor's estimate which are not directly related to the Developer's Works;
- (b) require substantiation for the costs of items where the amount estimated is considered by Council to be excessive in the circumstances;
- (c) require an adjustment to the costs estimates to reflect a variation to the design required under this clause 7.

8. Construction Documentation of the Developer's Works

8.1 Preparation of the Plans and Specifications

The Developer must complete detailed construction drawings of the Developer's Works (with a sufficient level of detail for the issue of a Construction Certificate) in accordance with the

design developed and approved by Council under clause 7 prior to obtaining, or if obtained, implementing any Construction Certificate in respect of above ground building works under the Detailed Development Consent.

8.2 Approval or Variation by the Council

The Council, acting reasonably, may by written notice to the Developer approve, vary or direct the Developer to vary the construction design drawings for the Developer's Works so as to reflect any relevant standards. Such written notice must be given to the Developer by Council within 10 working days of Council receiving drawings under clause 8.1 above.

8.3 Directions by the Council

The Developer must comply with any reasonable direction given by the Council under the preceding sub-clause in respect of the design and implementation of the Developer's Works.

8.4 Not to Implement Any Construction Certificate

The Developer covenants not to implement any Construction Certificate referred to in Clause 8.1 hereof until construction design drawings in respect of the Developer's Works have been approved by Council.

9. Construction of Developer's Works

9.1 Insurance

The Developer must:

- (a) maintain public liability insurance, with an insurer approved by the Council, with the Council identified as an interested Party, for an amount not less than \$20,000,000 covering all aspects of the Developer's Works and submit a copy of the certificate of insurance to the Council before the commencement of the construction of the Developer's Works;
- (b) maintain all other reasonably necessary and prudent insurance policies in respect of the Developer's Works including:
 - (i) construction insurance in relation to the Developer's Works;
 - (ii) insurance against death or injury to persons employed or otherwise engaged in relation to the undertaking of the Developer's Works, and
 - (iii) any other insurances required at law; and
 - (iv) maintain the insurances in clauses 9.1(a) and 9.1(b) until the expiration of the Defects Liability Period.

9.2 Approval and Consents

- (a) The Developer must (at its cost) obtain all relevant Approvals for the Developer's Works whether from the Council or any other relevant government agency, including any necessary road opening permit.
- (b) Before commencing any particular item of the Developer's Works, the Developer must give to the Council copies of all Approvals for the particular item of the Developer's Works.

9.3 Construction Work

The Developer must (at its cost) :

- (a) carry out and complete the Developer's Works in accordance with the Approvals relating to the Developer's Works (including the approval by Council of plans and any other information submitted under this Planning Agreement); and
- (b) ensure that all Developer's Works are constructed in a good and workmanlike manner, including the Developer's Works on public land, in accordance with the plans approved under this Planning Agreement so that they are structurally sound, fit for purpose, and suitable for their intended use; and

- (c) promptly advise the Council's Representative of any significant delays which it experiences in completing the Developer's Works; and
- (d) comply with any reasonable directions from the Council in respect of the construction of the Developer's Works.

9.4 Inspection of Works

- (a) The Council as a Party to this Deed and not as an authority or certifying authority may (but is not obliged to):
 - (i) inspect the Developer's Works during the course of construction at the Inspection Points set out at Annexure L to this Planning Agreement; and
 - (ii) notify the Developer's representative in good faith of any material or significant defect, error or omission relating to the construction or installation of the Developer's Works identified during or as the result of such inspection.
- (b) To provide the opportunity for the Council to make the inspection provided for above in this clause 9.4(a)(i), the Developer is to give Council's Representative at least 48 hours' notice of the Developer's Works reaching the relevant Inspection Point.
- (c) The parties expressly agree that:
 - (i) the Developer's Works will continue to progress past the Inspection Point whether or not Council takes the opportunity to inspect the Developer's Works as provided for by this clause 9.4; and
 - (ii) any failure to identify a defect, error and omission, will not be construed as amounting to an acceptance by the Council of that defect, error or omission.
- (d) No fee is payable whatsoever in connection with Council's inspections provided for in this clause 9.4.

9.5 Works Completion

When, in the opinion of the Developer, item/s of the Developer's Works have reached Completion, the Developer must notify the Council's Representative in writing, and must include in that notice:

- (a) a statement from the person with direct responsibility, carriage and supervision of that work that in their opinion the Developer's Works have reached completion;
- (b) copies of any certification, warranties, guarantees, maintenance information or other material reasonably required for the ongoing repair, maintenance, or servicing (as the case may be) of any part of the Developer's Works;
- (c) at least three (3) sets of the "as built" drawings of the item/s of the Developer's Works, including one set in electronic format; and
- (d) certification of the 'as built works' by a practicing Civil Engineer to certify the civil works have been constructed in accordance with the approved plans, specifications, relevant Australian Standards and that the 'as built' drawings are a true and correct record of what has been built.

Nothing in this clause prevents subsequent notices of Completion being issued to Council on item/s of the Developer's Works where Council has issued a notice to the Developer under clause 9.6(b) below that it disagrees that Completion has been achieved.

9.6 Final Inspection by Council

The Council's representative must inspect the Developer's Works within 10 working days of notification under clause 9.5 and must by notice to the Developer, issued within 5 working days of the inspection, either:

- (a) concur that Completion has been achieved and if Council's Representative so concurs, issue a Certificate of Practical Completion for the items of the Developer's Works that

have reached Completion; or

- (b) disagree that Completion has been achieved and (if the Council's representative so disagrees) identify the errors or omissions which have been identified and which in the opinion of the Council's representatives prevent Completion; or
- (c) issue a notice of the nature identified in clause 9.8 within 14 days.

Nothing in this clause 9.6, or in any notice issued under this clause 9.6, will be construed to reduce or waive in any manner the Developer's responsibility to correct minor defects or minor omissions, whether or not these are identified by Council.

9.7 Date of Completion of Developer's Works

- (a) The Developer must ensure that particular items of the Developer's Works on Land to be Dedicated reach Completion on or before the Dedication of the Land under clauses 5.5 and 5.6 on which the particular item/s are located.
- (b) Where item/s of the Developer's Works are undertaken on land other than Dedication Land (such as land that is already Council land), those item/s of Developer's Works are taken to have been Dedicated to Council upon the issue of the Certificate of Practical Completion for the particular item/s of the Developer's Works.

9.8 Non-completion of Developer's Works

- (a) The Council may permit the Developer not to complete the Developer's Works (or part of them) by issuing a notice in writing to the Developer, expressly stating that completion of the items identified in that notice is not required in fulfilment of this Agreement.
- (b) If the Council permits the Developer not to complete the Developer's Works (or any part of them), the Council may make an appropriation from the Security in such amount as the Council considers necessary. The Developer will make no objection to any such appropriation by the Council.
- (c) If the Developer fails to complete the whole of the Developer's Works in the form and to the standards required under any Development Consent the subject of this Planning Agreement or this Planning Agreement, then Council in its discretion may either:
 - (i) complete the Developer's Works; or
 - (ii) modify the Public Benefits to reasonably achieve the objectives identified in this Planning Agreement or any Development Consent the subject of this Planning Agreement.

and may recover all costs of and reasonably incidental to that work from the Developer. The Council may apply the monies secured from the Security and (to the extent that expenditure exceeds the amount secured) recover any shortfall from the Developer as a debt due and owing.

9.9 Indemnity by the Developer

The Developer indemnifies and releases the Council against all damage, expense, loss or liability of any nature suffered or incurred by the Council arising from any act or omission by the Developer (or any person engaged by it, including the Contractor) in connection with the performance of the Developer's Works and their subsequent maintenance and repair until the expiration of the Defects Liability Period unless caused by or arising out of the Council's act or omission.

9.10 Maintenance and Repair Period

The Developer shall maintain and keep in repair the Developer's Works for the Maintenance and Repair Period.

9.11 Defects and Items in need of Maintenance and Repair in the Developer's Works

If the Council notifies the Developer of a defect, item in need of repair or item (including drainage pits, landscaping, grass and soft scape) in need of maintenance in the Developer's Works within the Maintenance and Repair Period, then the Developer must, subject to its rights

under clause 15 below, remedy that defect, undertake repair or maintenance work to the reasonable satisfaction of the Council's Representative, within a reasonable period (having regard to the nature of the defect or work) provided always if the works carried out or to be carried out by the Developer arising from the act or omission of any public utility exercising its rights to undertake works in a Dedicated Land comprising a public road Council will use reasonable endeavours to recover the costs of those works from the public utility whose act or omission the Council has deemed is responsible for the need for the works.

9.12 Security for Maintenance and Repair Period

Until the expiration of the Maintenance and Repair Period for item/s of the Developer's Works, the Council may retain from the Security an amount equal to 100% of the Security Amount for those item/s of the Developer's Works as security for the performance by the Developer of its obligations under clauses 9.10-9.11.

9.13 Application of Security

If the Developer does not rectify any defect, undertake maintenance and repair of the Developer's Works duly notified under clause 9.11, then the Council may:

- (a) rectify the defect, undertake maintenance and repair of the Developer's Works;
- (b) may make an appropriation from the Security for the costs of and arising from the rectification; and
- (c) to the extent that the costs exceed the Security held, recover the costs from the Developer as a debt due and owing subject always to clause 12.2.

9.14 No Limitation

Clause 9.10 does not limit any other right, power or privilege of the Council whether arising under this Planning Agreement, any other document or otherwise at law.

10. Defects Liability Period

10.1 Defects in the Developer's Works

If the Council notifies the Developer of a defect in any of the Developer's Works within the Defects Liability Period, then the Developer must remedy that defect to the reasonable satisfaction of the Council's Representative, within a reasonable period (having regard to the nature of the defect).

10.2 Security for Defects Liability Period

Provided always that the Maintenance and Repair Period for an item of the Developer's Works has first expired, then until the expiration of the Defects Liability Period for that item, the Council may retain from the Security an amount equal to 10% of the value of that item (as set out in Schedule 1 and Schedule 2 or subsequently agreed) as security for the performance by the Developer of its obligations under this clause 10.

10.3 Application of Security

If the Developer does not rectify any defect in the Developer's Works duly notified under clause 10.1, then the Council may:

- (a) rectify the defect in the Developer's Works;
- (b) make an appropriation from the Security for the costs of and arising from the rectification; and
- (c) to the extent that the costs exceed the Security held, recover the costs from the Developer as a debt due and owing.

10.4 No limitation

Clause 10.1 does not limit any other right, power or privilege of the Council whether arising

under this Planning Agreement, any other documents or otherwise at law.

11. Security

11.1 Provision of Security

The Developer must provide Security to the Council in the Security Amount pertaining to item/s of the Developer's Works prior to the issue of the first Construction Certificate for works that include those particular items of the Developer's Works.

11.2 Rights and Remedies of the Council

- (a) The Developer expressly acknowledges and agrees that the Council may make an appropriation from the Security in such amount as the Council, acting reasonably, thinks fit if:
 - (i) the Council in exercising its powers under this Planning Agreement incurs expense or liability in connection with carrying out the Developer's Works.
- (b) The amount appropriated by the Council under paragraph (a) must be applied towards:
 - (i) the costs and expenses incurred by the Council rectifying any default by the Developer under this Planning Agreement; or
 - (ii) carrying out the Developer's Works.

11.3 Right to Claim not Affected

The Developer acknowledges and agrees that the rights of the Council under this Agreement do not derogate from any other rights at law or in equity in relation to any default by the Developer.

11.4 Release of Security

If the Maintenance and Repair Period for an item of the Developer's Works expires before the end of the Defects Liability Period for that item and conditions (a) and (b) below are satisfied, Council will return 90% of the Security for that item of the Developer's Works.

If upon the expiration of the later of the Defects Liability Period or the Maintenance and Repair Period:

- (a) the whole of the monies secured by the Security have not been expended; and
 - (b) the Council's Representative (acting reasonably) is satisfied that there are no actual or contingent liabilities of the Council arising as a result of the performance of any Developer's Works,
- then the Council will promptly return the Security, or the remainder of the monies secured under that Security (as the case may be), to the Developer or as the Developer directs.

11.5 Re-issue of Security

Upon expiry of the Maintenance and Repair Period for any item/s of the Developer's Works the Council will return to the Developer that part of the Security that applies to those item/s of the Developer's Works so as to only be entitled to maintain a sum equivalent to 10% of the original amount of the Security for the purposes of the Defects Liability Period.

12. Expenditure by Council

12.1 Expenditure by the Council

If the Council carries out the Developer's Works under sub-clause 9.8 or 11.2, then the Council:

- (a) is not required to expend more money than is secured by the Security. The Council may in its discretion elect not to carry out items of Developer's Works to ensure that the Developer's Works can be achieved for an amount equal to, or less than, the amount secured by the Security at that time; or

- (b) may expend more money than is secured by the Security in order to deliver the Developer's Works.

12.2 Debt due and owing to the Council

If Council expends more money than is secured by the Security in either carrying out or in rectifying the Developer's Works (whether that expenditure is incurred under sub-clause 9.8, 10.3 or 12.1), then any reasonable amount in excess of the Security for work that accords with a costing by a Quantity Surveyor engaged by Council (which is to be provided to the Developer prior to the undertaking of any such works) will be deemed to be a debt immediately due and owing to the Council by the Developer.

13. Registration of this Agreement

- 13.1 The Developer agrees to procure the registration of this Agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register of the Land in accordance with section 7.6 of that Act prior to the issue of a Construction Certificate for the Development or within such time as the parties hereto agree.
- 13.2 Each Party must promptly execute any document and perform any action necessary to effect the registration of this document on the title of the Land.
- 13.3 Council will, at the request of the Developer, release the Land from registration of this document when the Developer has provided the Public Benefits outlined in this agreement. Council will provide the Developer with a signed Request in registrable form for the release of registration of this document.

14. Acknowledgements

- 14.1 The Developer acknowledges that Council may include a notation on Planning Certificates under section 10.7(2) and 10.7(5) of the Act in relation to this Planning Agreement.
- 14.2 The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the terms of the Act and other legislation.

15. Dispute resolution

15.1 Reference to Dispute

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

15.2 Notice of Dispute

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

- (a) the nature of the dispute;
- (b) the alleged basis of the dispute;
- (c) the position which the Party issuing the Notice of Dispute believes is correct; and
- (d) the representative it has designated as the person to negotiate the dispute.

15.3 Response to Notice

Within 10 days of receiving the Notice of Dispute, the Respondent must notify the Claimant of its representative to negotiate the dispute.

15.4 Representatives of Parties to Meet

- (a) The representatives of the parties must promptly (and in any event within

20 Business Days of the Response to the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute.

- (b) The parties may, without limitation:
 - (i) resolve the dispute during the course of that meeting;
 - (ii) agree that further material or expert determination in accordance with clause 15.7 about a particular issue or consideration is needed to effectively resolve the dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or
 - (iii) agree that the parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

15.5 Further Notice if Not Settled

If the dispute is not resolved within 10 Business Days after the nominated representatives have met, either Party may give to the other a written notice calling for determination of the dispute (**Determination Notice**) by mediation under clause 15.6 or by expert determination under clause 15.7.

15.6 Mediation

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

- (a) the parties must agree to the terms of reference of the mediation within 15 Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- (b) the mediator will be agreed between the parties, or failing agreement within 15 Business Days of receipt of the Determination Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) the mediator appointed pursuant to this clause 15.6 must:
 - (i) have reasonable qualifications and practical experience in the area of the dispute; and
 - (ii) have no interest or duty which conflicts or may conflict with his or her function as a mediator he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) the mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (e) the parties must within 15 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation (except if a resolution of the Council is required to appoint a representative, the Council must advise of the representative within 5 Business Days of the resolution);
- (f) the parties must convene and attend the mediation within 30 days of the Determination Notice;
- (g) the parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (h) in relation to costs and expenses:
 - (i) each Party will bear its own professional and expert costs incurred in

connection with the mediation; and

- (ii) the costs of the mediator will be shared equally by the parties unless the mediator determines that a Party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that Party.

15.7 Expert determination

If the dispute is not resolved under clause 15.4 or clause 15.6, or the parties otherwise agree that the dispute may be resolved by expert determination, the parties may refer the dispute to an expert, in which event:

- (a) the dispute must be determined by an independent expert in the relevant field:
 - (i) agreed upon and appointed jointly by the parties; and
 - (ii) in the event that no agreement is reached, or no appointment is made within 20 Business Days of the agreement to refer the dispute to an expert, appointed on application of a Party by the then President of the Law Society of New South Wales;
- (b) the expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;
- (c) the determination of the dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (d) the expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (e) each Party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs; and
- (f) any determination made by an expert pursuant to this clause is final and binding upon the parties except unless:
 - (i) within 20 Business Days of receiving the determination, a Party gives written notice to the other Party that it does not agree with the determination and commences litigation; or
 - (ii) the determination is in respect of, or relates to, termination or purported termination of this agreement by any Party, in which event the expert is deemed to be giving a non-binding appraisal.

15.8 Litigation

If the dispute is not finally resolved in accordance with this clause 15, then either Party is at liberty to litigate the dispute.

15.9 No suspension of contractual obligations

Subject to any interlocutory order obtained under clause 15.1, the referral to or undertaking of a dispute resolution process under this clause 15 does not suspend the parties' obligations under this agreement.

16. Enforcement

16.1 Default

- (a) In the event a Party considers another Party has failed to perform and fulfil an obligation under this agreement, it may give notice in writing to the other Party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than

21 days.

- (b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.
- (c) If a Party disputes the Default Notice, it may refer the dispute to dispute resolution under clause 15 of this agreement.

16.2 General Enforcement

- (a) This Planning Agreement may be otherwise enforced by either Party in any court of competent jurisdiction.
- (b) For the avoidance of doubt, nothing in this Planning Agreement prevents:
 - (i) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Planning Agreement or any matter to which this Planning Agreement relates; and
 - (ii) Council from exercising any function under the Act or law relating to the enforcement of any aspect of this Planning Agreement or any matter to which this Planning Agreement relates.
- (c) The rights of Council expressly provided for herein are cumulative and in addition to and not exclusive of the rights of Council existing at law or which Council would otherwise have available to it.

17. Notices

17.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Planning Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) delivered or posted to that Party at its address set out as follows;
- (b) faxed to that Party at its fax number set out as follows;
- (c) emailed to that Party at its email address set out as follows.

Council

Attention: The General Manager
Address: 2 Conder Street Burwood NSW 2134
Post: PO Box 240, Burwood NSW 1805
Fax Number: (02) 9911 9900
Email: council@burwood.nsw.gov.au

Developer

Attention: Chief Executive Officer
Address: 96 Shaftesbury Road, Burwood NSW 2134
Post: PO Box 26 Burwood NSW 1805
Fax Number: N/A
Email: andrew@burwoodrsl.com.au and info@clubburwoodgroup.com.au

17.2 If a Party gives the other Party three business days' notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

17.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) if it is delivered when it is left at the relevant address;
- (b) if it is sent by post, two business days after it is posted;
- (c) if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error-free transmission to the correct fax number;
- (d) if it is sent by email, at the time it is sent.

17.4 If any notice, consent, information, application or request is delivered, or an error-free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5:00pm on that day on the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

18. Approvals and consent

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

19. Assignment and dealings

19.1 Assignment

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

19.2 Arrangement with Mortgagee

- (a) The Developer agrees with the Council that if the Developer mortgages the Land after this Planning Agreement is entered into it must use all reasonable efforts at that time to arrange a multiple Party deed of agreement between the Council, the Developer, and the mortgagee who will be providing finance for the Developer's Works so that the mortgagee accepts that the responsibilities set out in this Planning Agreement are binding upon the mortgagee in the event that the Developer defaults on the mortgage and the mortgagee takes possession of the Land.
- (b) The terms of the adoption of the obligations of the Developer by the mortgagee shall be as reasonably required by the Council. The agreement shall be prepared at the cost of the Developer.

19.3 Transfer of Land

- (a) The Developer may not transfer, assign or dispose of the whole or any part of its right, title or interest in the Land (present or future) or in the Development to another person (**Transferee**) unless before it sells, transfers or disposes of that right, title or interest:
 - (i) the Transferee delivers to the Council a novation deed signed by the Transferee in a form and of such substance as is acceptable to the Council containing provisions under which the Transferee agrees to comply with all the outstanding obligations of the Developer or Landowner under this agreement;
 - (ii) the Transferee delivers to the Council replacement Guarantees as required by this Planning Agreement;
 - (iii) any default under any provisions of this Planning Agreement has been remedied or

waived by the Council, on such conditions as the Council may determine

- (b) The Developer and the Transferee must pay the Council's reasonable costs in relation to the assignment.

20. Costs

20.1 The Developer shall bear Council's costs directly related, and incidental to executing, stamping and registering the Planning Agreement, including any costs of lodging/removing caveats on the title to the Land.

20.2 The Developer will pay Council's reasonable legal costs not exceeding \$5,000.00 directly related, and incidental to negotiating, preparing, executing, stamping and registering the Planning Agreement and of drafting, registering and removing caveats on the title to the Land.

21. Relationship Between the Parties

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

22. Entire Agreement

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

23. Time for Doing Acts

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

24. Further acts

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

25. Governing law and jurisdiction

This Planning Agreement is governed by the law of New South Wales. The parties submit to the exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

26. Joint and individual liability and benefits

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

27. No fetter

Nothing in this Planning Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

28. Representations and warranties

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

29. Severability

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

30. Modification

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

31. Waiver

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

32. Explanatory note

The explanatory note prepared in accordance with clause 205 of the *Environmental Planning and Assessment Regulation 2021* (NSW) put on exhibition with this Planning Agreement and attached at Schedule 4 is not to be used in construing the terms of this Planning Agreement.

33. Counterparts

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

34. Goods and Services Tax (GST)

- 34.1 All words in this clause which are also defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (the '**GST Act**') have a corresponding meaning to that in the *GST Act*.

- 34.2 The consideration for any supply under this Planning Agreement excludes GST.
- 34.3 Where a Party to this Planning Agreement is taken to have made a supply to another Party, the recipient of that supply must, in addition to the consideration payable for the supply and when paying the consideration for the supply, also pay to the maker of the supply an amount equal to the GST payable in respect of that supply. The recipient of a supply must also pay the GST payable in respect of a supply for which no monetary consideration is payable when the maker of the supply demands payment.
- 34.4 The maker of a supply must give the recipient a tax invoice in the form required by the GST Act at the same time it receives payment from the recipient of the GST payable for that supply.
- 34.5 Despite any other provision of this Planning Agreement, any amount payable under this Planning Agreement, which is calculated by reference to an amount paid or incurred by a Party to this Planning Agreement, is reduced by the amount of any input tax credit to which that Party or a member of its GST Group is entitled in respect of that amount.

35. Confidentiality

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

36. Release from Planning Agreement

Once Council is satisfied that the Developer has fully complied with all of their obligations under this Planning Agreement, Council agrees to provide a full release and discharge of this Planning Agreement with respect of the whole of the Land. In such circumstances Council will do all things reasonably necessary, including the execution of any documents to enable the Developer to remove any caveat and the notation of this Planning Agreement on the title to the Land.

Executed as an agreement

EXECUTED on behalf of Burwood Council (ABN 84 362 114 428) by its attorney, **Tommaso Briscese**, under power of attorney dated 29 May 2019 registered book 4760 number 381, in the presence of:

Signature of witness

(Print) Name of witness

Signature of Attorney

Tommaso Briscese

(Print) Full Name of Attorney

2 Conder Street, Burwood, New South Wales, 2134

(Print) Address

By executing this document, the attorney certifies that he has not received notification of revocation of the power of attorney.

EXECUTED by Burwood R S L Club Ltd [ACN 000 975 646] in accordance with section 127(1) of the *Corporations Act 2001* (Cth)

Signature of Director

Name of Director
(please print)

Signature of Director / Company Secretary
(delete as applicable)

Name of Director / Company Secretary
(please print)

Schedule 1 – The Developer Works identified by Council as Public Benefits

NB Costings as per MBM Cost Plan 30 May 2022

	Public Benefit	Fixed Attributed Value (Value) (excepting Items 2, 3 and 4 which are not a fixed value – see clauses 6.6 and 6.10)	Timing	Detail	Contributions
1.	Developer's Works	\$2,032,243 (Item 1 in the Cost Plan)	Prior to any Occupation Certificate for above ground works	Construction of new portions of road (including civil works) in George St and Shaftesbury Rd as identified under the Contributions Plan, including the relocation of services as further detailed in Annexure A	Value is to be taken into account when calculating contributions payable under s7.11 and s7.12 of the Act.
2.	Developer's Works	\$461,055 (Item 2 in Schedule 1 Value) (Item 6 in the Cost Plan)	Prior to any Occupation Certificate for above ground works	Installation of Multi-Function Poles (MFP) to all Land frontages as further detailed in Annexure F .	The value (being the difference between standard poles and Multi-Function Poles) is to be taken into account when calculating contributions payable under s7.11 and s7.12 of the Act.
3.	Developer's Works	\$678,750 (Item 3 in Schedule 1 Value) (Item 7 in the Cost Plan)	Prior to any Occupation Certificate for above ground works	Installation of traffic control signals and associated road works at the corner of George St and Shaftesbury Rd as further detailed in Annexure G .	Value taken into account when calculating contributions payable under s7.11 and s7.12 of the Act. Only the value reached under clause 6.10 shall be offset against s7.11 and s7.12 contributions payable under the Detailed Development Consent, subject also to clause 6.9.
4.	Developer's Works	\$1,502,566 (Item 4 in Schedule 1 Value) (Item 8 in the Cost Plan)	Prior to any Occupation Certificate for above ground works	Resurfacing of George Deane, Marmaduke Streets and Shaftesbury Rd as further detailed in Annexure H	The value (being the difference between the cost of resurfacing and make good cost) is to be taken into

					account when calculating contributions payable under s7.11 and s7.12 of the Act.
5.	Developer's Works	\$238,081 (Item 10 in the Cost Plan)	Prior to any Occupation Certificate for above ground works	The delivery of all public domain works to all Land frontages in accordance with the Council Public Domain Manual as further detailed in Annexure I	The value (being the difference between the cost of the finishes set out in Public Works Manual for the specific location and a standard requirement finish) is to be taken into account when calculating contributions payable under s7.11 and s7.12 of the Act.
	TOTAL Cost Of Schedule 1 Developers Works.	\$4,912,695			

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Schedule 2 – Other Developers Works

	Public Benefit	Fixed Attributed Value* (Value) *this is the value of the item in 2019	Timing	Detail	Contributions
1.	Dedication Land	\$9,500 x 391sqm = \$3,700,000	Prior to any Occupation Certificate for above ground works	Dedication of new road in George St and Shaftesbury Rd as identified under the Contributions Plan as further detailed in Annexure B.	Value not taken into account for contributions payable under s7.11 and s7.12 of the Act
2.	Developer's Works	\$715,477 (Item 3 in the Cost Plan)	Prior to any Occupation Certificate for above ground works	Construction of portions of new road (including Civil works) which lies within the boundaries of the Land fronting Marmaduke, George and Deane Streets, including relocation of services as further detailed in Annexure C	Value not taken into account for contributions payable under s7.11 and s7.12 of the Act
3.	Dedication Land	Marmaduke St 154sqm x \$5,000 = \$770,000 George St (75sqm x \$4,000) + (34sqm x \$6,000) = \$300,000 + \$204,000 = \$504,000 Deane St 375sqm x \$4,000 = \$1,500,000	Prior to any Occupation Certificate for above ground works	Dedication of portions of new road which lies within the boundaries of the Land fronting Marmaduke, George and Deane Streets as further detailed in Annexure D.	Value not taken into account for contributions payable under s7.11 and s7.12 of the Act
4.	Deleted	Deleted	Deleted	Deleted	Deleted
5.	Dedication Land	589sqm x \$5,000 = \$2,945,000	Prior to any Occupation Certificate for above ground works	Dedication to Council of Marmaduke Street (subject to easement for encroaching above ground level mechanical exhaust and easement for bus parking) for use as a public Road as further detailed in Annexure J	Value not taken into account for contributions payable under s7.11 and s7.12 of the Act
	TOTAL Cost of Schedule 2 Developers Works including land dedication	\$10,134,477			

Schedule 3 – Public Art

	Public Benefit	Fixed Attributed Value (Value)	Timing	Detail	Contributions
1.	Public Art	\$350,000	Prior to the final Occupation Certificate for development under the Concept Consent	Water Wall Feature on Shaftesbury Road, standalone Sculpture on George Street and Suspended Entry Sculpture at Porte Cochère as further detailed in Annexure K	Value is to be taken as full satisfaction of any public art contribution required under the Concept Consent, the Detailed Development Consent or any other detailed Development Consent for development under the Concept Consent.

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Schedule 4 – Explanatory Note

PLANNING AGREEMENT – Explanatory Note

Environmental Planning and Assessment Regulation 2021
(Clause 205)

Planning Agreement for the provision of monetary contribution for public benefit at and around 2 George St Burwood NSW.

Under Section 7.4 of the *Environmental Planning and Assessment Act 1979* (NSW) (**EP&A Act**)

1. Parties

The parties to the Planning Agreement are:

- (1) Burwood Council (**Council**)
- (2) Burwood RSL Club Ltd (**Proprietor/Developer**)

2. Description of Subject Land

Folio Identifiers: Lot 1 in DP 1261150

Location: 2 George St Burwood NSW

(the '**Land**')

3. Description of Proposed Development

On 23 October 2020 the Proprietor/Developer lodged a detailed development application DA 10.2020.103.1 for the Land which proposes a new Burwood RSL Club premises comprising of:

- (a) six levels of basement carparking,
- (b) public domain works,
- (c) a part three storey, part four storey podium building containing a registered club, a variety of food and beverage outlets, commercial premises, function centre and indoor recreation facilities.

(the '**Detailed DA**')

An offer by the Proprietor/Developer to enter into a planning agreement for material contributions to Council as public benefits accompanies the Detailed DA.

The Detailed DA is currently under assessment by Council.

The development proposed under the Detailed DA is part of the concept development approved under the consent to DA85/2017 for a mixed-use building comprising registered club, hotel tower, commercial premises, entertainment facilities, function centre and indoor recreation facility with basement parking for up to 1250 car spaces (the '**Concept Consent**'). Application 10.2017.85.2 to modify the Concept Consent accompanies the Detailed DA seeking modifications to the Concept Consent to ensure consistency between the proposed development the subject of the Detailed DA and the Concept Consent.

4. Summary of Objectives, Nature and Effect of the Planning Agreement

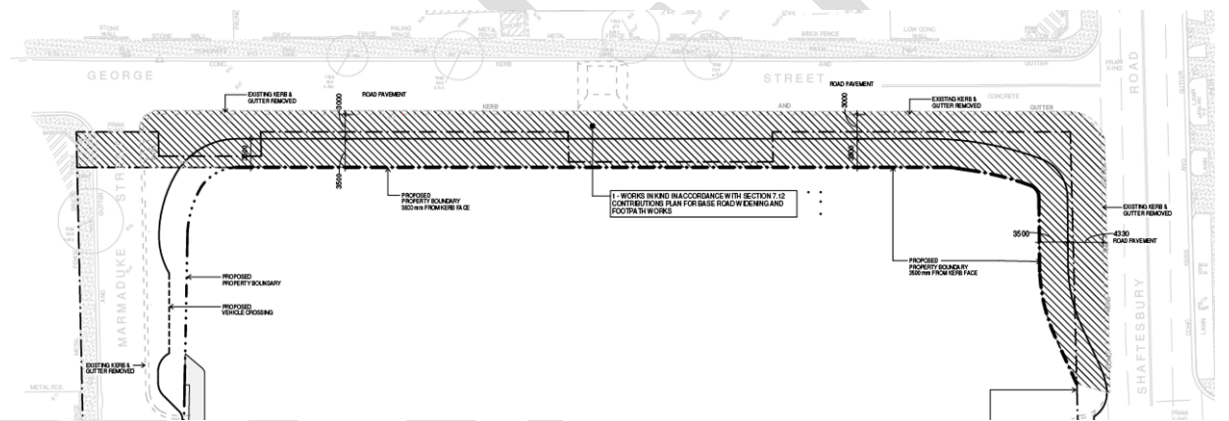
[Clause 205 (1)(a) of the EP&A Regulation 2021]

The intent of the Planning Agreement is to:

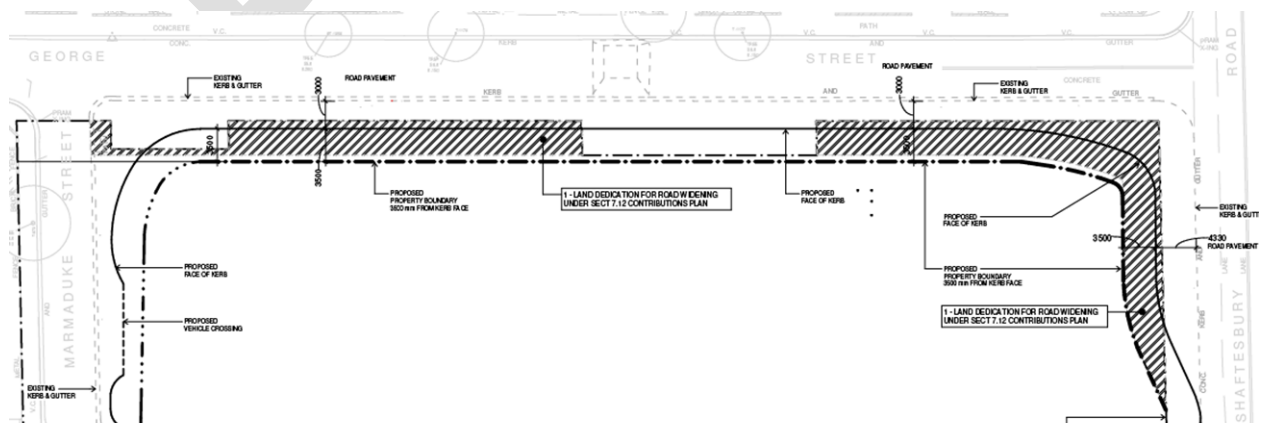
- (a) Give effect to the terms of the offer made by the Proprietor/Developer to enter into a planning agreement;
- (b) To make provision of the following public benefits with the total attributed value to the public of \$15,397,172 offered by the Proprietor/Developer to be undertaken in conjunction with the development the subject of the Detailed DA after the granting of development consent and prior to any Occupation Certificate for above ground works:

New Portions of Road in George St and Shaftesbury Rd Burwood

- i. Construction of new portions of road in George St and Shaftesbury Rd Burwood (including the relocation of services, new bitumen for road widening, new concrete footpath and new kerb and gutter to road, landscaping works and replacement planning, and instillation of bollards and street furniture) in the area indicated with hatching in the diagram below and as detailed in item 1 of Schedule 1 to the Planning Agreement and with the attributed value to the public of \$2,032,243, which is to be taken into account when calculating the monetary developer contributions payable by the Proprietor/Developer under any consent to the Detailed DA;

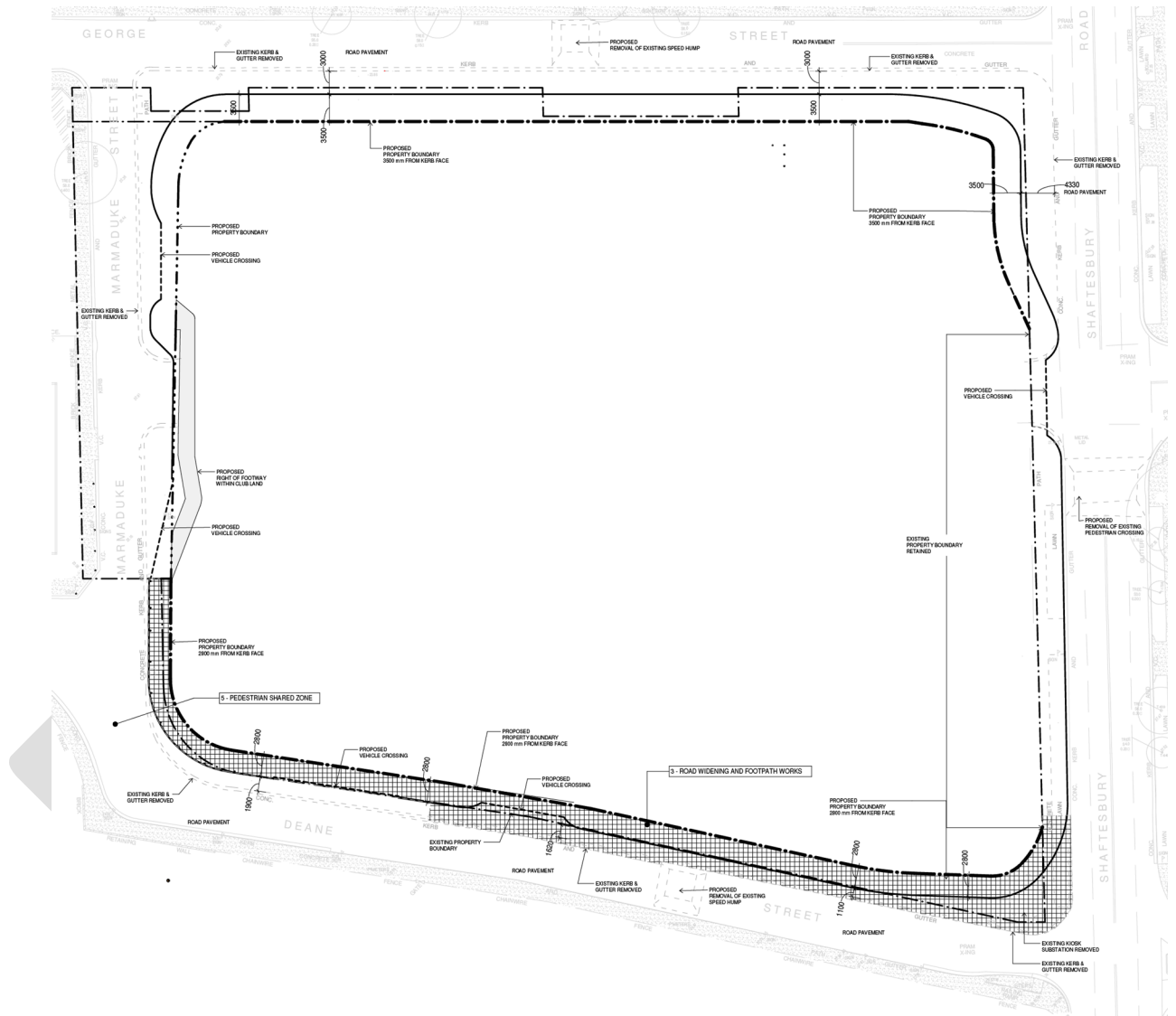


- ii. Dedication of land to Council totalling 391 sqm for the purposes of new portions of public road in George St and Shaftesbury Rd in the area indicated with hatching in the diagram below and as detailed in item 1 of schedule 2 to the Planning Agreement and with the attributed value to the public of \$3,700,000, which is not to be taken into account when calculating the monetary developer contributions payable by the Proprietor/Developer under any consent to the Detailed DA;

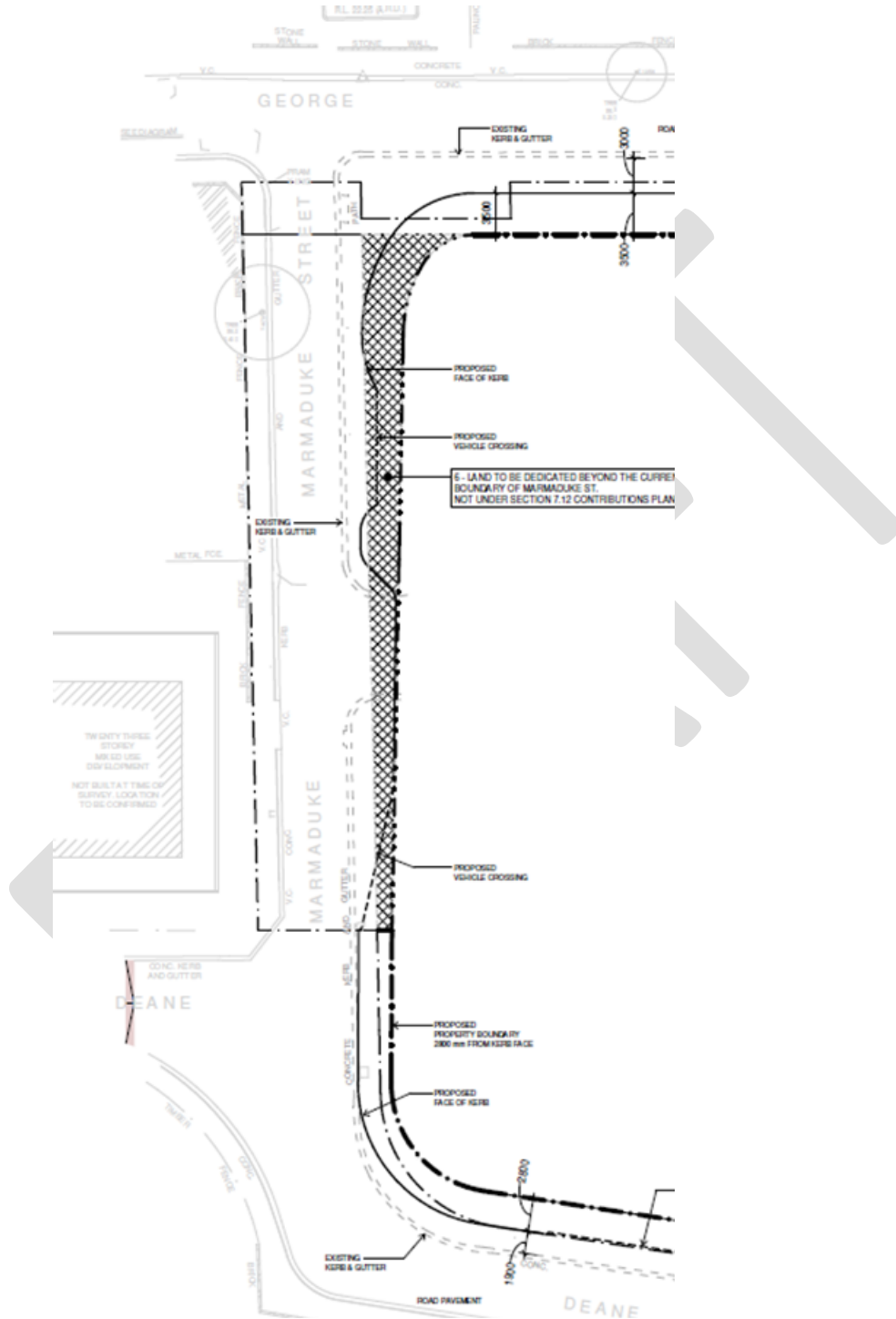


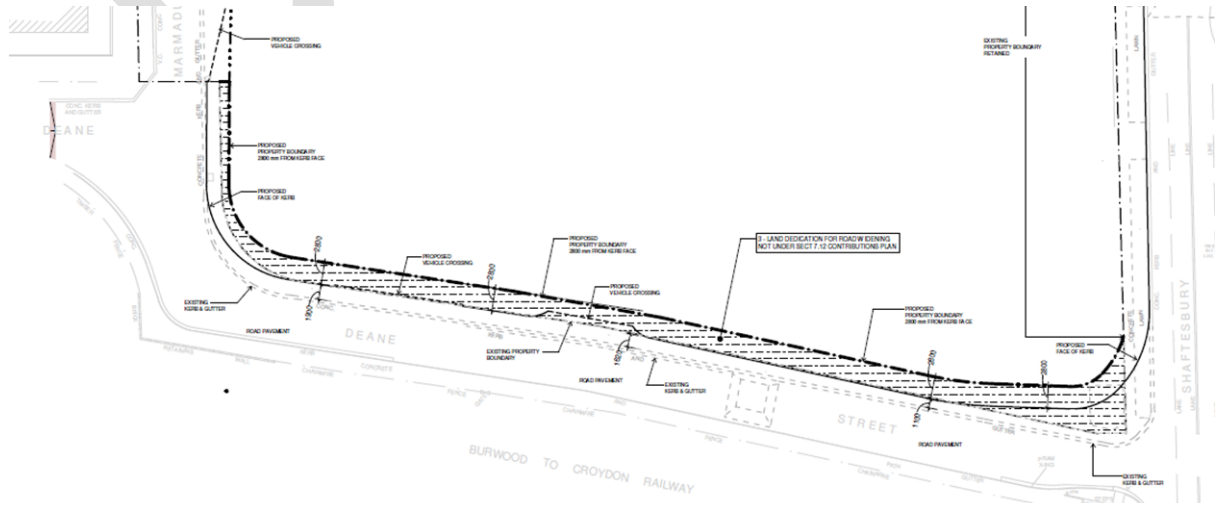
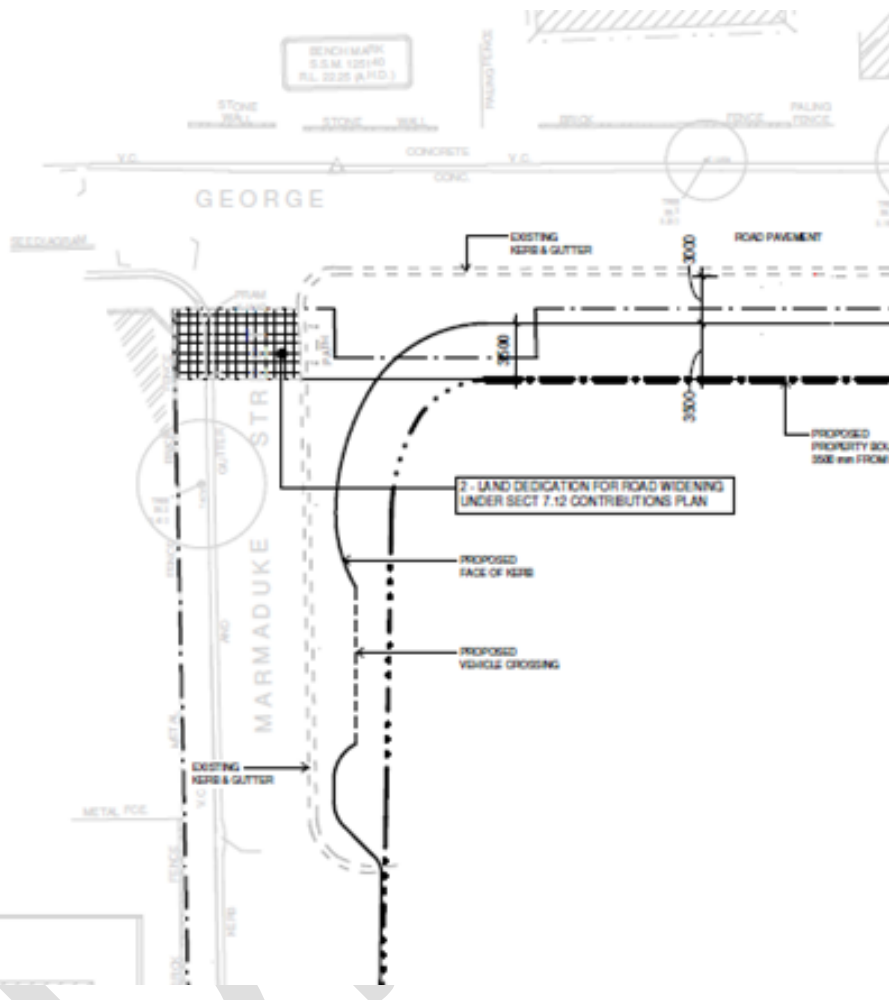
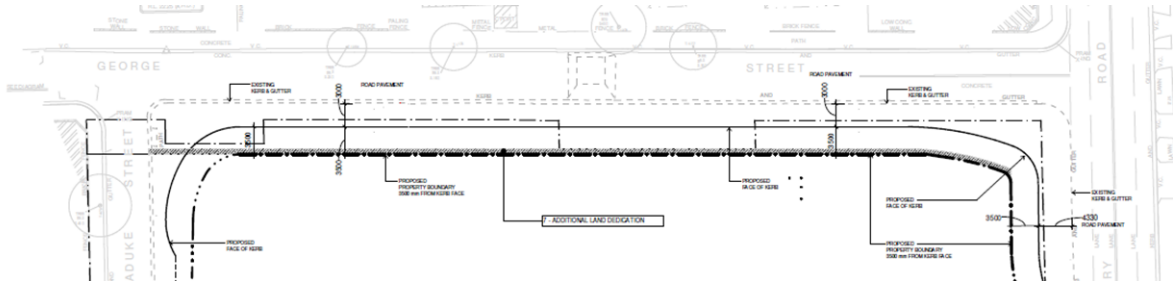
New Portions Road Fronting Marmaduke, George and Deane Streets Burwood

- iii. Construction of new portions of road on land fronting Marmaduke, George and Deane Streets Burwood (including relocation of services, construction of vehicle crossings, new bitumen and road widening, new kerb and guttering, new concrete footpaths, landscaping and installation of bollards and street furniture) in the locations indicated with hatching and speckling in the diagrams below and as detailed in item 2 of schedule 2 to the Planning Agreement and with the attributed value to the public of \$715,477, which is not to be taken into account when calculating the monetary developer contributions payable by the Proprietor/Developer under any consent to the Detailed DA;



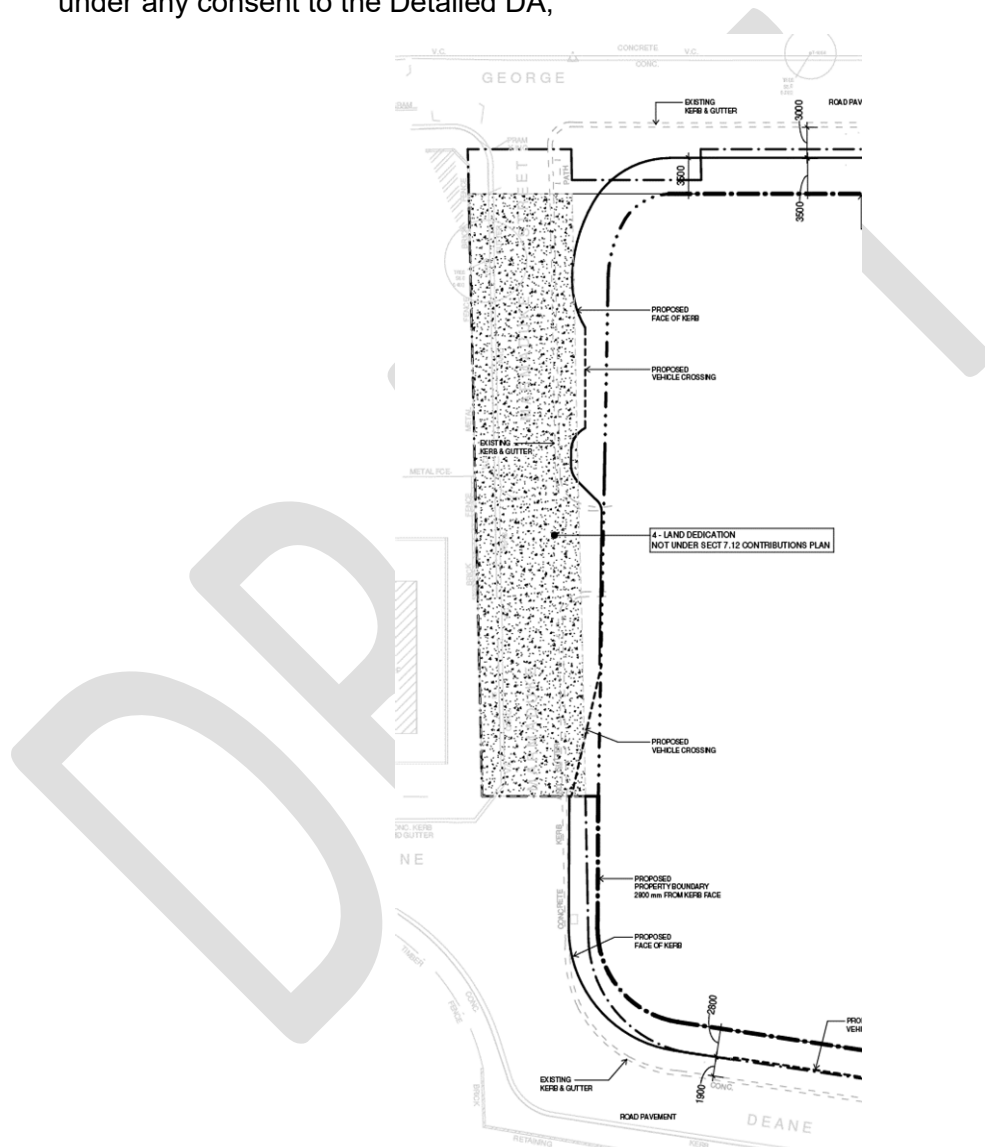
- iv. Dedication of land to Council totalling 154 sqm fronting Marmaduke St, 109 sqm fronting George St and 375 sqm fronting Deane St Burwood for the purposes of new portions of public road in the locations indicated with hatching in the diagrams below and as detailed in item 3 of schedule 2 to the Planning Agreement and with the attributed value to the public of \$2,774,000, which is not to be taken into account when calculating the monetary developer contributions payable by the Proprietor/Developer under any consent to the Detailed DA;





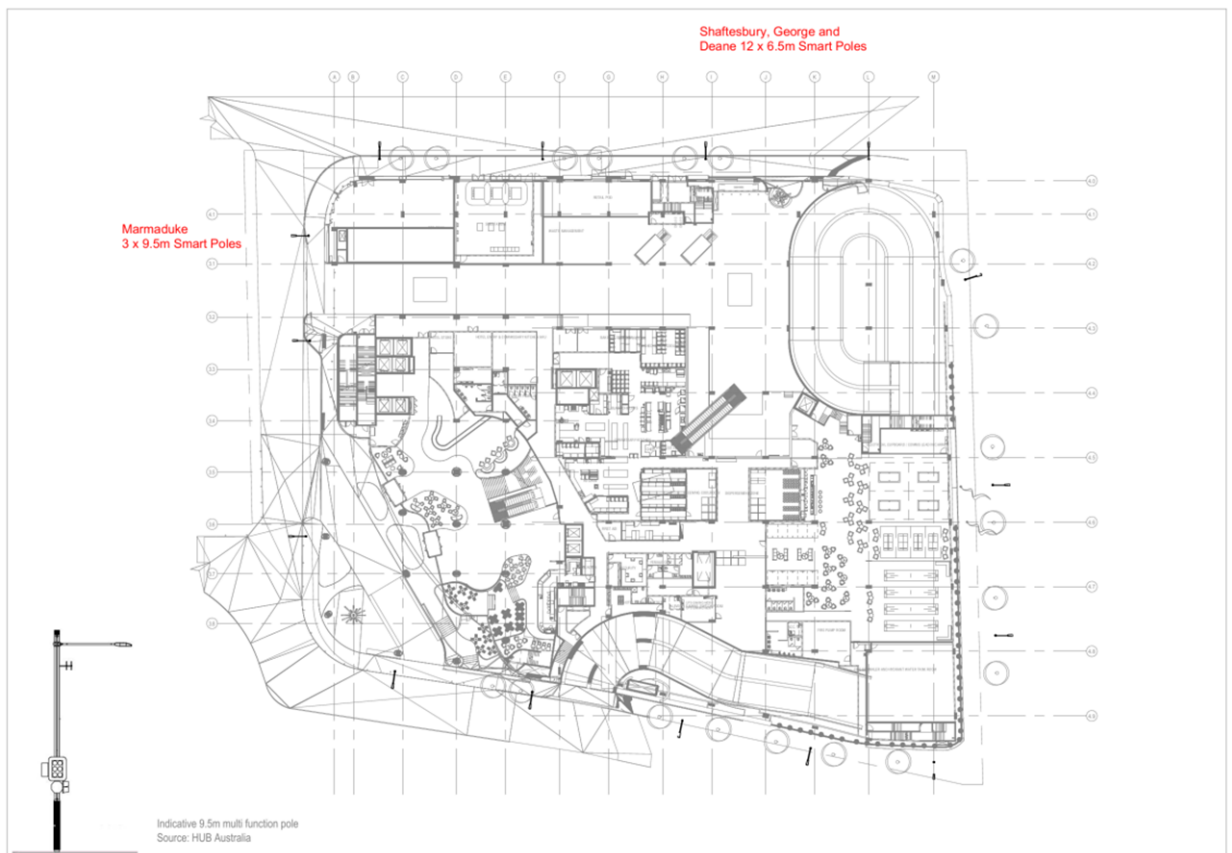
Dedication of Marmaduke St Land to Council

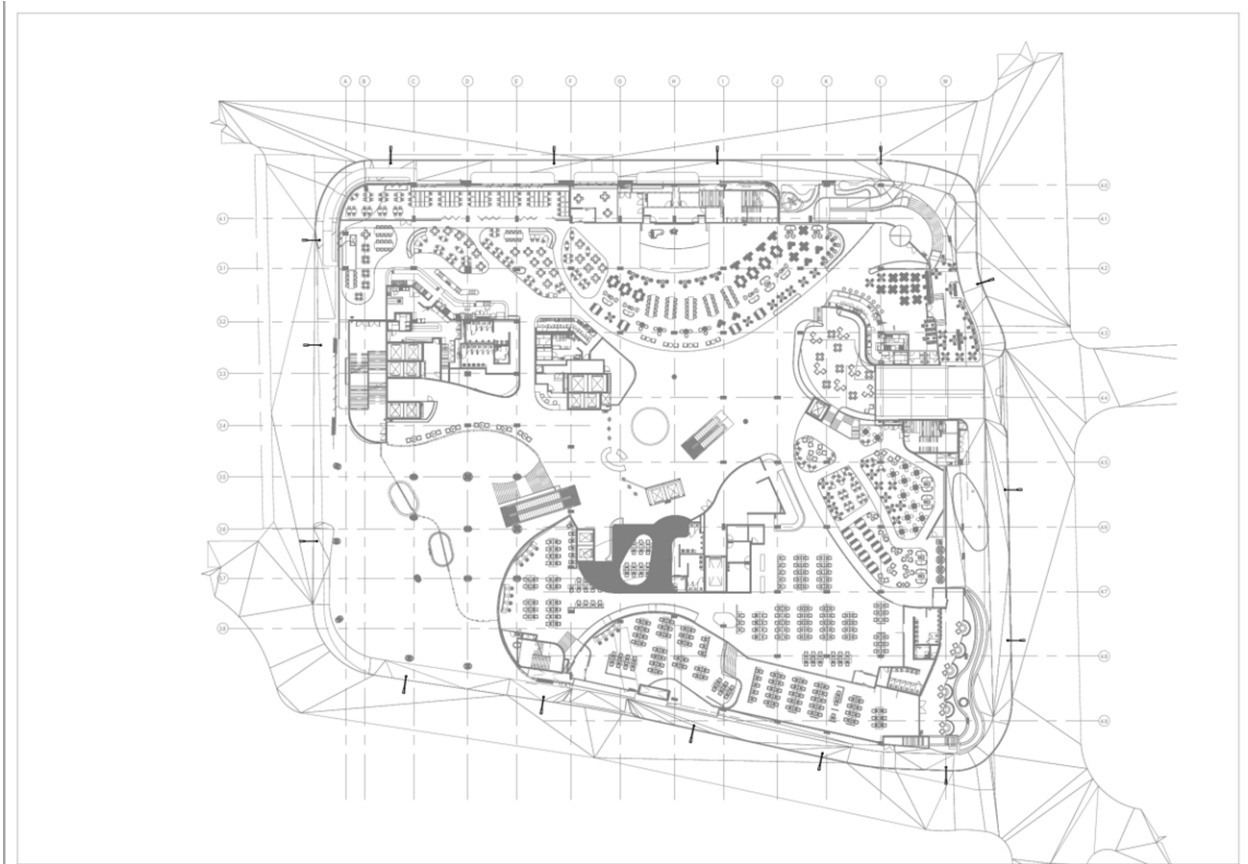
- v. Dedication of Marmaduke St land to Council (subject to an easement for encroaching above ground level mechanical exhaust and an easement for bus parking) totalling 589 sqm for the purposes of a public road in the area indicated with hatching in the diagram below and as detailed in item 5 of schedule 2 to the Planning Agreement with the attributed value to the public of \$2,945,000, which is not to be taken into account when calculating the monetary developer contributions payable by the Proprietor/Developer under any consent to the Detailed DA;



Installation of Multi-Function Light Poles

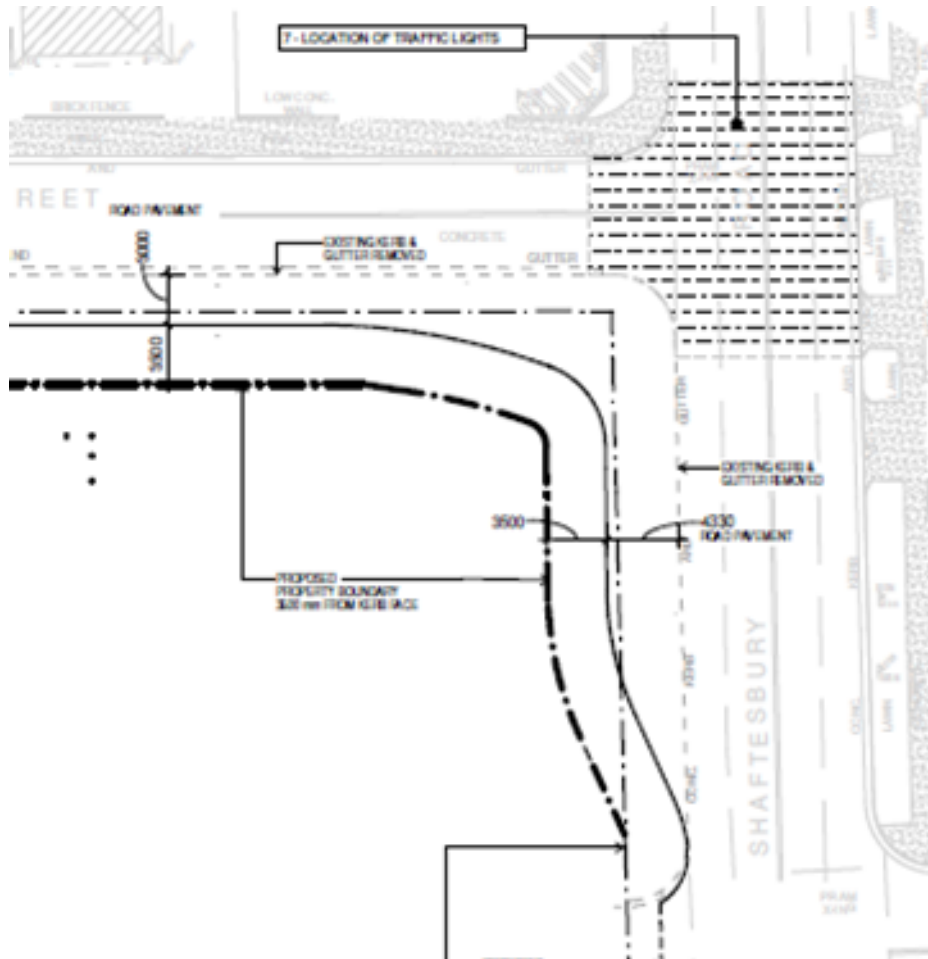
- vi. Installation of Multi-Function Light Poles on street frontages to the Land in the locations indicated below and as detailed in item 2 of Schedule 1 to the Planning Agreement and with the attributed value to the public of \$461,055 (being the increased difference in cost between Multi-Function Light Poles and standard poles, including the number of poles required), which is to be taken into account when calculating the monetary developer contributions payable by the Proprietor/Developer under any consent to the Detailed DA;





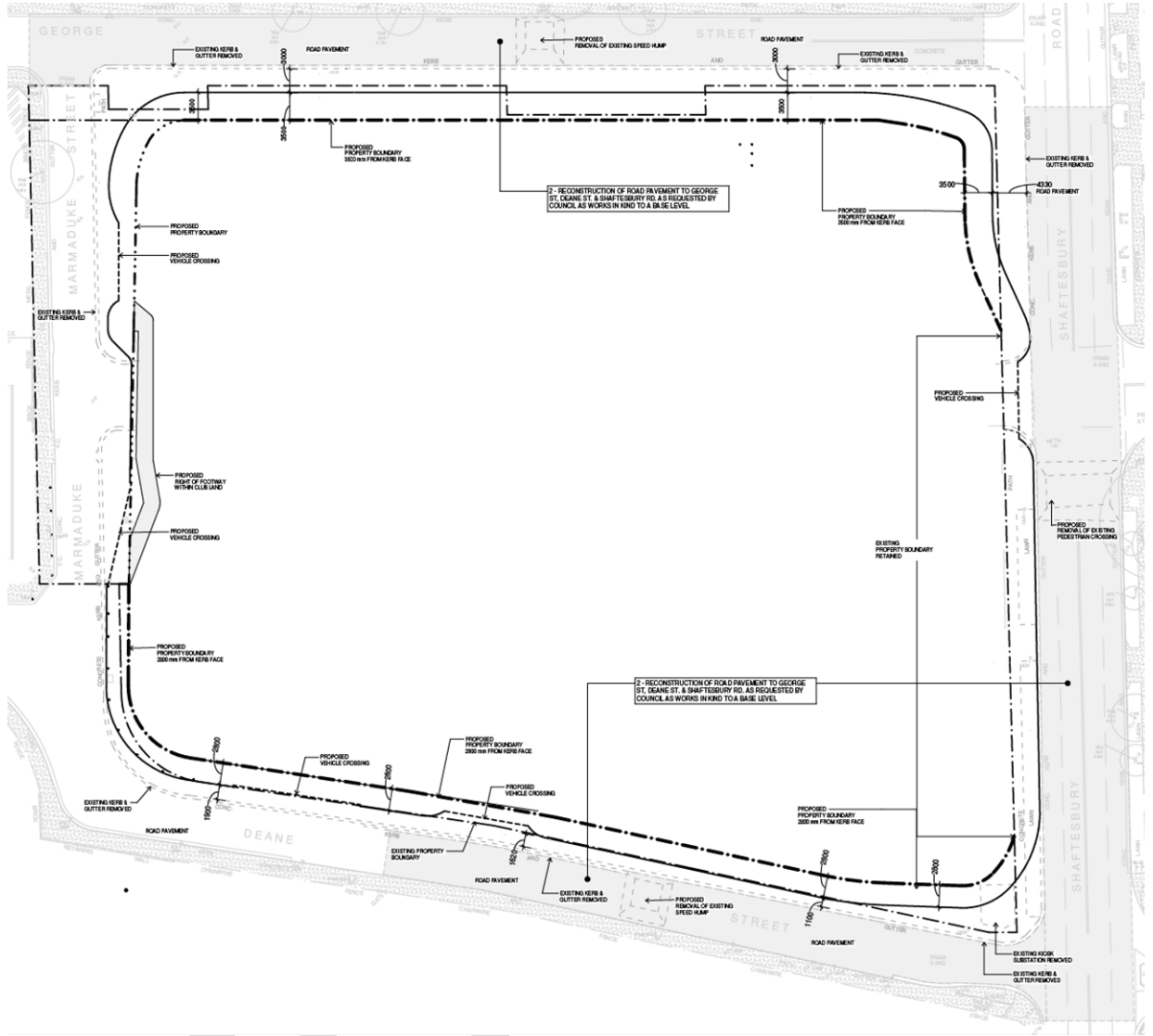
Installation of Traffic Control Signals

- vii. Installation of traffic control signals and associated road works at the corner of George St and Shaftesbury Rd Burwood in the location indicated by hatching in the diagram below and as detailed in item 3 of Schedule 1 to the Planning Agreement and with attributed value to the public of \$678,750, with any difference between the value attributed to this item and the actual cost above that attributed value to be offset against the monetary developer contributions payable by the Proprietor/Developer under any consent to the Detailed DA;

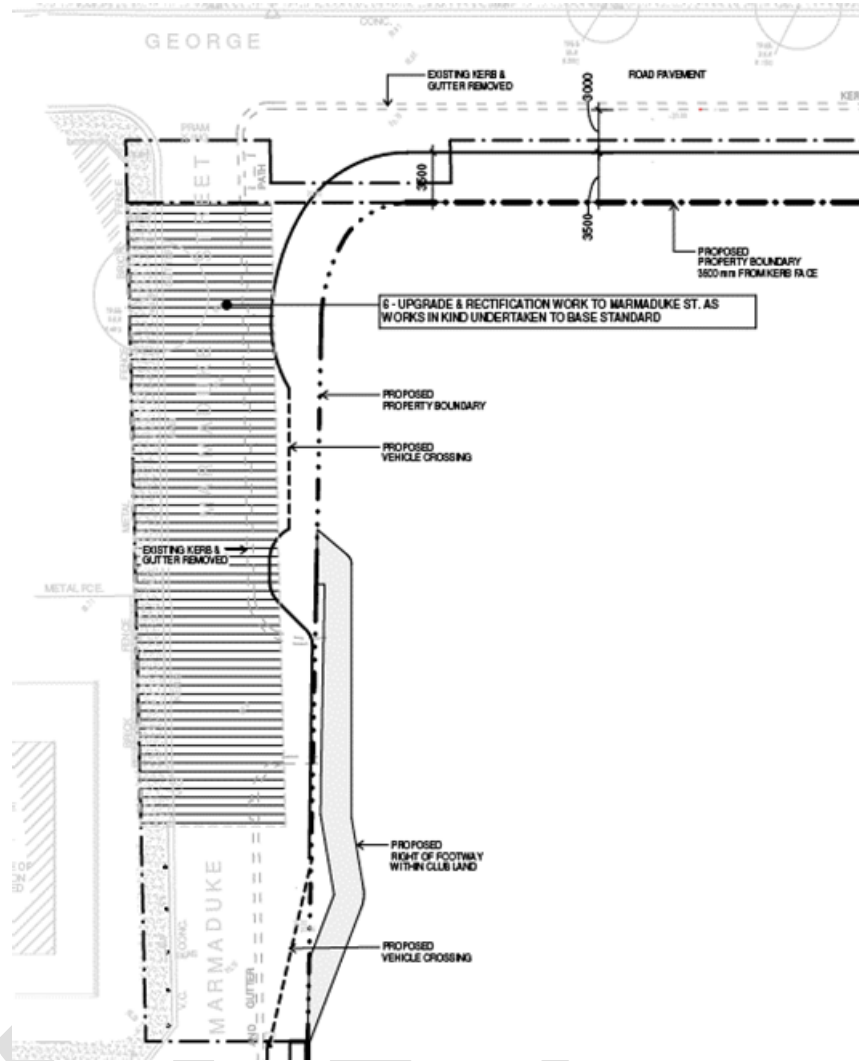


Resurfacing Portions of George Street, Deane St, Marmaduke St and Shaftesbury Road

- viii. Resurfacing portions of George St, Deane St, Deane St Pedestrian Zone, Marmaduke St and Shaftesbury Rd as indicated in the shading and hatching in the diagrams below and as detailed in item 4 of schedule 1 to the Planning Agreement and with the attributed value to the public of \$1,502,566 (being the increased difference in cost between resurfacing the roads and the cost of making good the existing road surfaces), which is to be taken into account when calculating the monetary developer contributions payable by the Proprietor/Developer under any consent to the Detailed DA;



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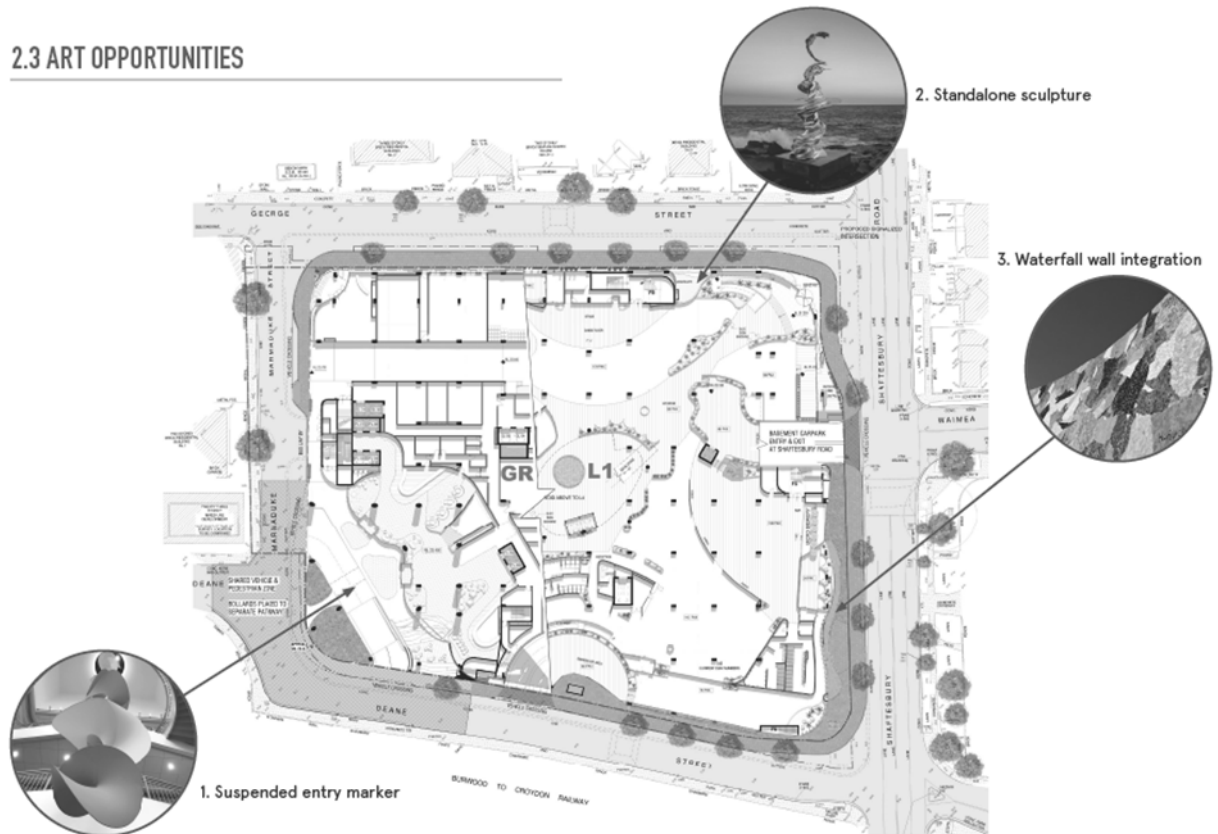


Public Domain Works Fronting the Land

- ix. Delivery of public domain works to all frontages to the Land comprising of footpath paving as detailed in item 5 of schedule 1 to the Planning Agreement and with the attributed value to the public of \$238,081 (being the increased difference in cost between the finishes set out in Public Works Manual for the specific locations and a standard requirement finish), which is to be taken into account when calculating the monetary developer contributions payable by the Proprietor/Developer under any consent to the Detailed DA; and

Public Artworks

- x. Installation of public art comprising of a water wall feature on Shaftesbury Rd, a standalone sculpture on George St and a suspended entry sculpture at Porte Cochere and with the attributed value to the public of \$350,000 as indicated in the diagram below and as detailed in item 1 of schedule 3 to the Planning Agreement.



5. Assessment of the Merits of the Planning Agreement

[Clause 205(1)(b) of the *EP&A Regulation 2000*]

The draft Planning Agreement requires the Developer to provide for the dedication of land and works to the road network in and around the proposed development site. It also provides for the provision of public domain works and the delivery of public art as a component of the proposed development. These works/funding are in addition to monies required to be provided under the section 7.11 contributions plan.

These works and development contributions will improve the public amenities, and infrastructure that will serve the wider community. The Draft Planning Agreement:

- promotes and co-ordinates the orderly and economic use and development of the land to which the Planning Agreement applies by
- enabling road works and upgrades to the public domain that serve the development and the wider community to be provided,
- promotes good design and amenity of the built environment by enabling public space works, and
- provides increased opportunity for public involvement and participation in the form of public notification of the draft Planning Agreement.

The Draft Planning Agreement promotes the objects of the EPA Act set out in sections 1.3(a), (c), (g) and (j).

The Draft Planning Agreement also promotes the following guiding principles for local councils as set out in s8A of the Local Government Act 1993:

- the management of lands and other assets so that current and future local community needs can be met in an affordable way,
- working with others to secure appropriate services for local community needs,
- promoting Council's long-term strategic planning on behalf of the local community

6. Promotion of the Public Interest

[Clause 205(2) of the *EP&A Regulation 2021* and section 4.6 of the Planning Agreements Practice Note dated February 2021]

The Planning Agreement promotes the public interest with the following:

6.1 Planning purposes served by the Planning Agreement

The Planning Agreement serves the following planning purposes:

- (a) The land dedications and public domain works to be made by the Proprietor/Developer under this Planning Agreement will be used by **Council** to provide, augment, or improve the public domain, local road network and other public facilities within the Burwood Town Centre;
- (b) The land dedications and public domain works to be made by the Developer under this Planning Agreement will improve traffic flows and pedestrian permeability within the Burwood Town Centre; and
- (c) The land dedications and public domain works to be made by the Developer under this Planning Agreement will see the timely delivery of infrastructure improvements in the Burwood Town Centre.

The Planning Agreement provides for a reasonable means of achieving the above purposes because there are limits on what the Proprietor/Developer can be required to do as conditions of any development consent. By entering into the Planning Agreement, the Council is able to secure considerable material benefit to the public in the forms of land dedications, civil infrastructure, public domain upgrades and facilities for the Burwood Town Centre that would not otherwise be available. These public benefits not only benefit the users and those in the immediate vicinity of the Burwood Town Centre but the wider Burwood local government area. This is considered to be a substantial public benefit and the Planning Agreement achieves this objective of delivering the benefit.

The Planning Agreement achieves these benefits for the community without the need for public funds to be expended.

6.2 The Planning Agreement Promotes the Objects of the EP&A Act

The Planning Agreement promotes one or more of the objects of the EP&A Act as follows:

- (i) The proper management and development of land for the purpose of promoting the social and economic welfare of the community and a better environment;
- (ii) The provision and co-ordination of community services and facilities; and
- (iii) Opportunities for public involvement and participation in environmental planning and assessment.

6.3 The Planning Agreement Conforms with Council's Capital Works Program

The Planning Agreement confirms with Council's Capital Works Program set out in the "Burwood 2030 Delivery Program 2018-2022 year 4 Operational Plan & Budget 2021-2022" document (the '**Capital Works Program**'). In particular, the Planning Agreement confirms with:

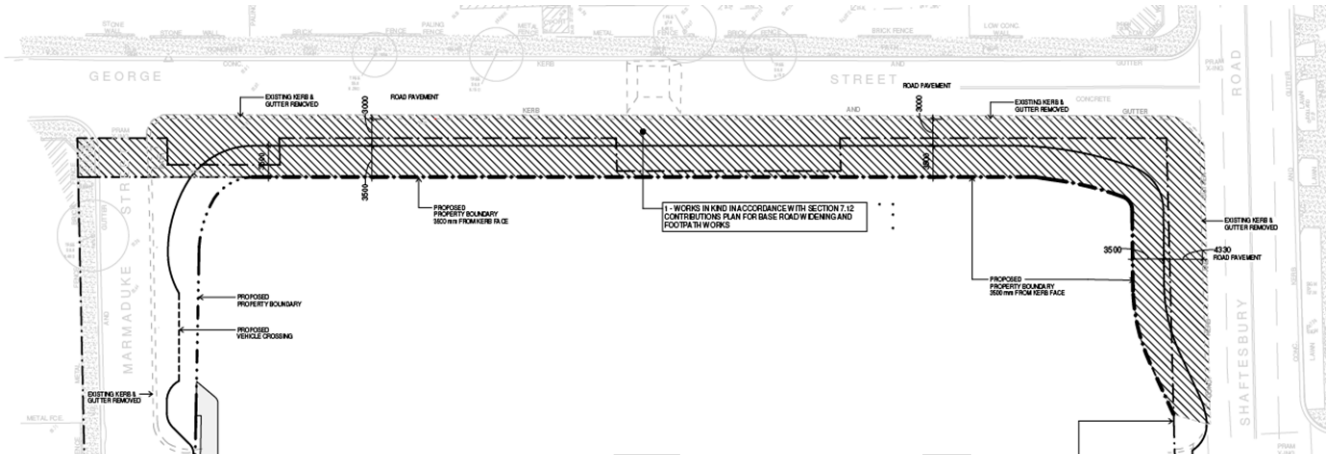
- (i) section 4 of the Capital Works Program on planning and infrastructure generally; and
- (ii) section 5.1.1 of the Capital Works Program on stimulating the local economy and activating the Burwood CBD and section 5.3 on enhancing and fostering local identity.

6.4 Timing for the Delivery of the Developers Works and Public Benefits.

The Planning Agreement requires the developers works, land dedications and public benefits to be completed after the granting of consent to Detailed DA and prior to the issue of any Occupation Certificate or the issue of a certificate of practical completion for above ground works under a consent to the Detailed DA.

Annexure A – Item 1 in Schedule 1 Developer’s Works - Construction of new portions of road in George St and Shaftesbury Rd

(i) Plans and Drawings of Works



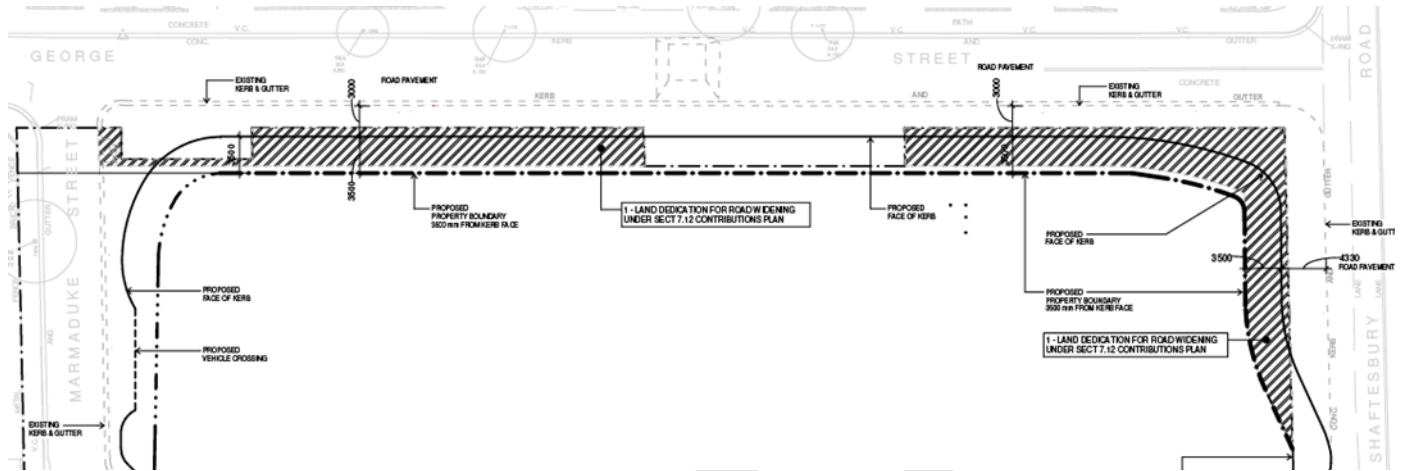
(ii) Detailed Description of Works

GEORGE STREET AND SHAFTESBURY ROAD

- Demolish existing concrete footpath
- Existing kerb and gutter to be removed (Boundary kerb and gutter only)
- New bitumen road pavement for road widening including base layers
- New concrete footpath and new kerb and gutter to road
- Removal of trees, landscaping works and replacement planting
- Installation of bollards, street furniture
- Service relocations and new connections
- Traffic control

Annexure B – Item 1 Dedication Land in Schedule 2 Developers Works - Dedication of new road in George St and Shaftesbury Rd

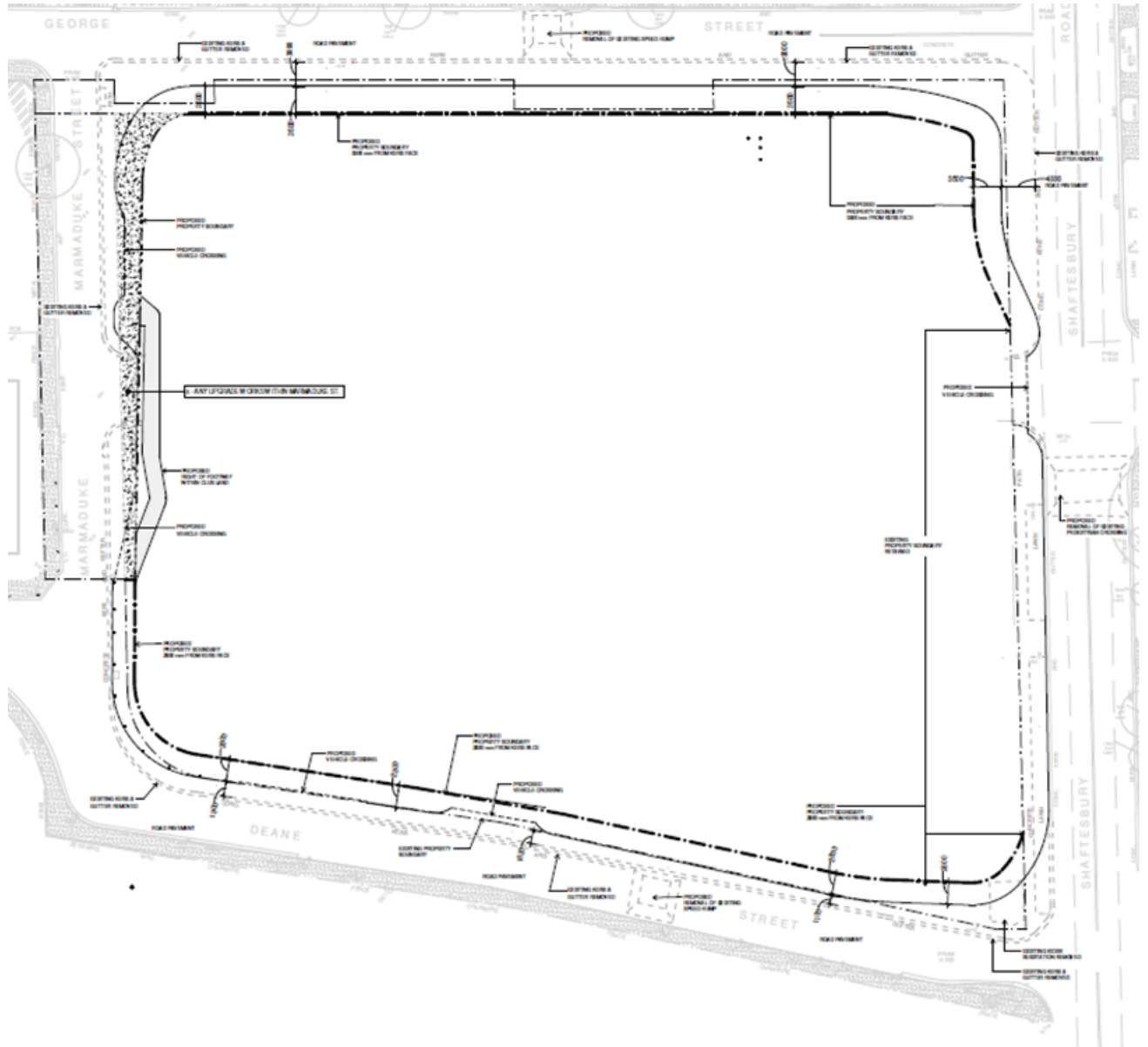
(i) Dedication Plan

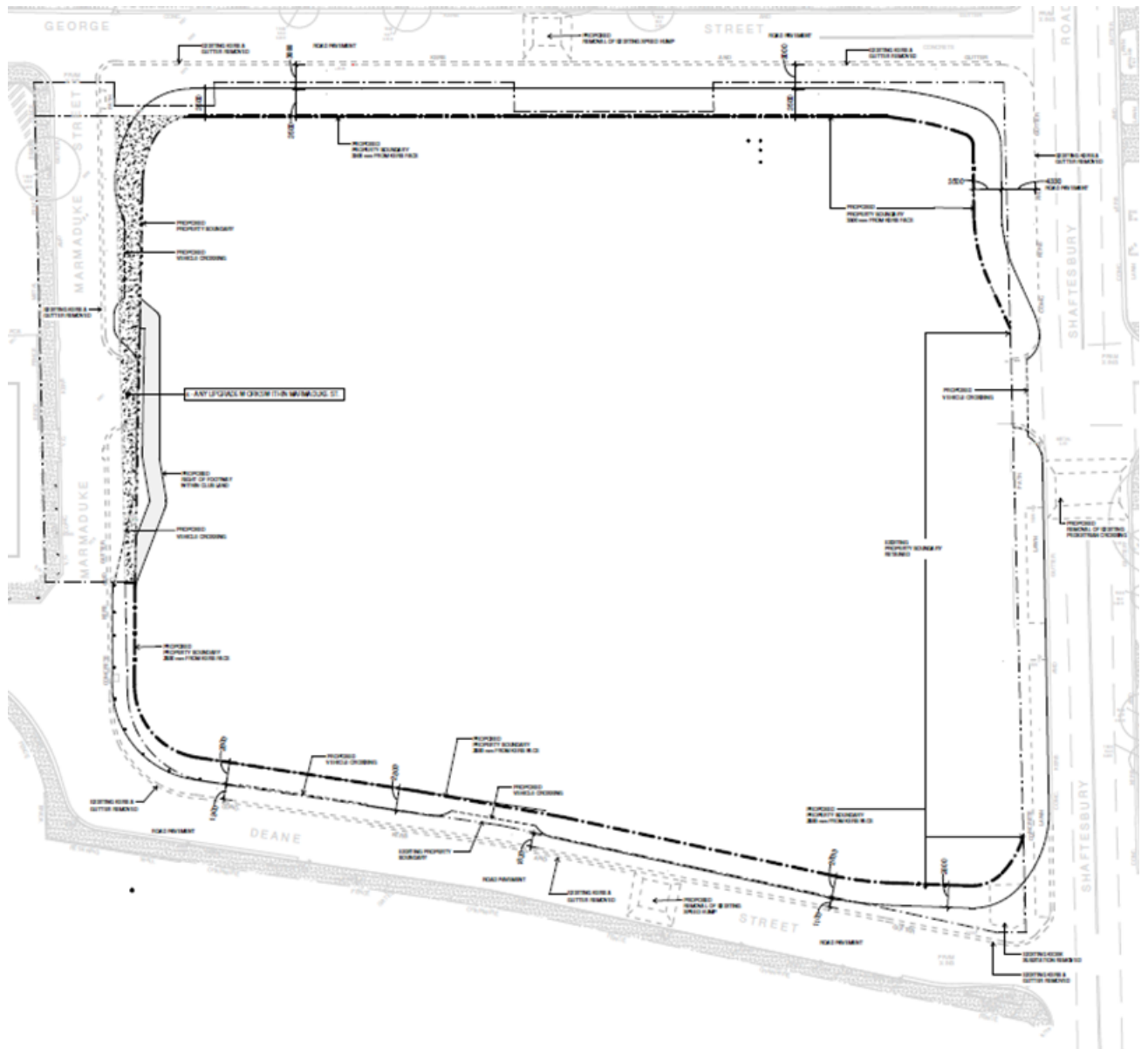


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Annexure C – Item 2 in Schedule 2 Developer’s Works - Construction of portions of new road which lies within the boundaries of the Land fronting Marmaduke, George and Deane Streets

(i) Plans and Drawings of Works





(ii) Detailed Description of Works

DEANE STREET

- Base road widening and footpath works to an agreed public domain standard
- Existing kerb and gutter to be removed (Boundary kerb and gutter only)
- Demolish existing concrete footpath
- New bitumen road pavement for road widening including base layers
- Vehicle crossing
- New kerb and gutter to road
- New concrete footpath
- Removal of trees plus landscaping to footpath including excavation, mulch, topsoil trees and cultivation
- Bollards and street furniture
- Services relocation and new connections
- Traffic control

MARMADUKE STREET

- Vehicle crossing
- New kerb and gutter to road

- Saw cut concrete pavement
- Reinstate existing concrete footpath
- Landscaping to footpath including excavation, mulch, topsoil, trees and cultivation
- Bollards and street furniture
- Traffic control
- Construction and paving of footpath via a right of footway on the Club land

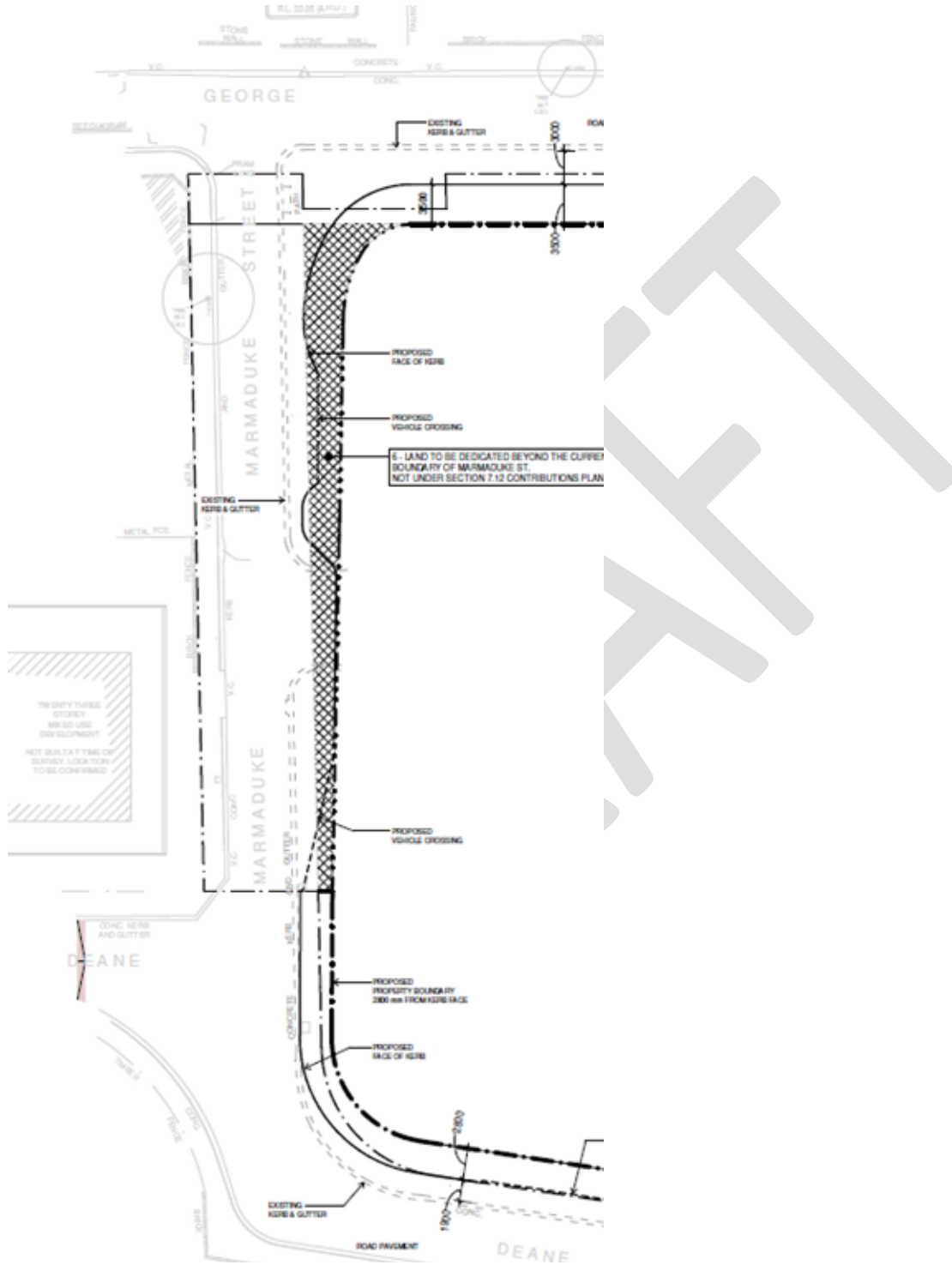
GEORGE STREET

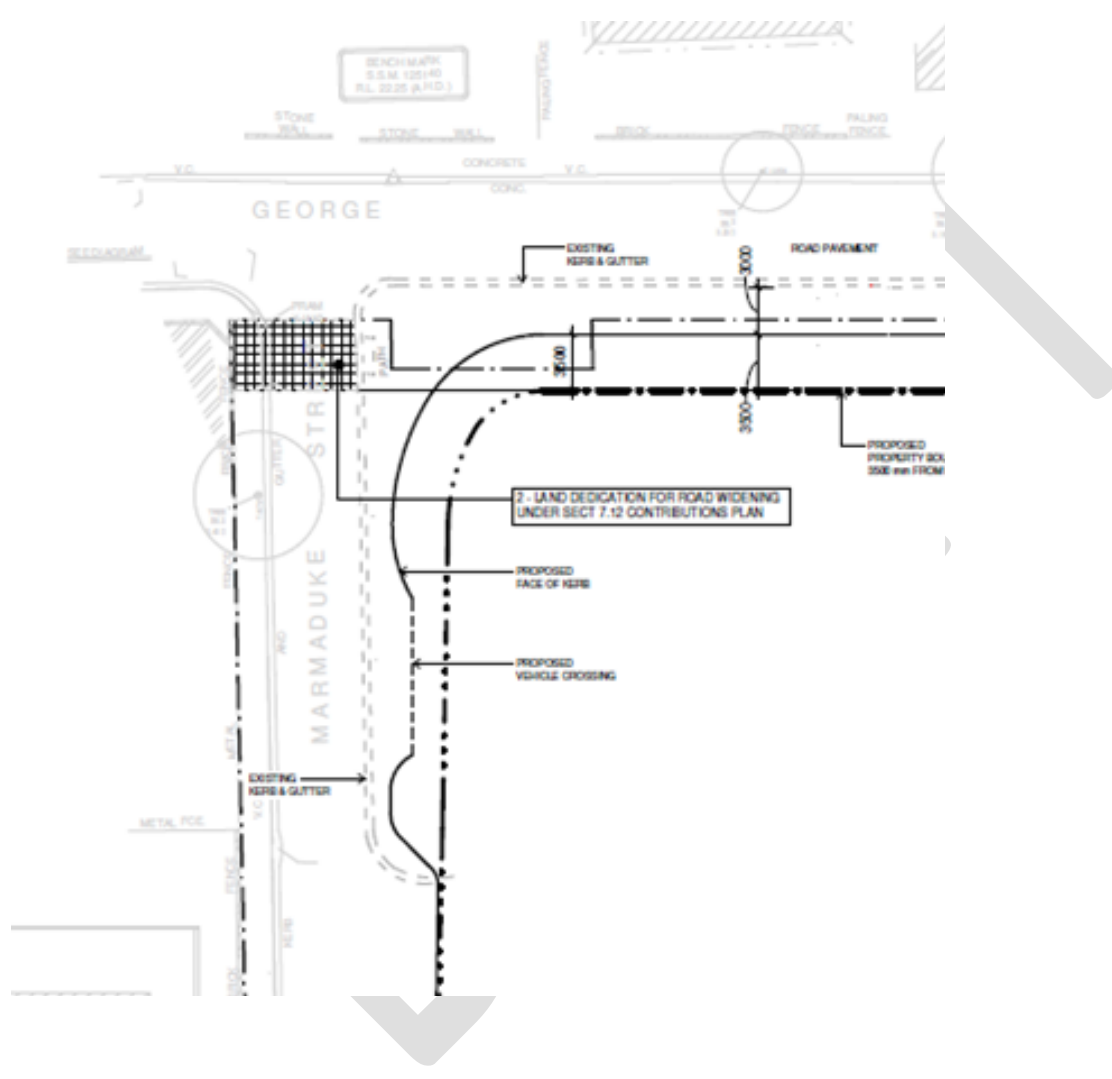
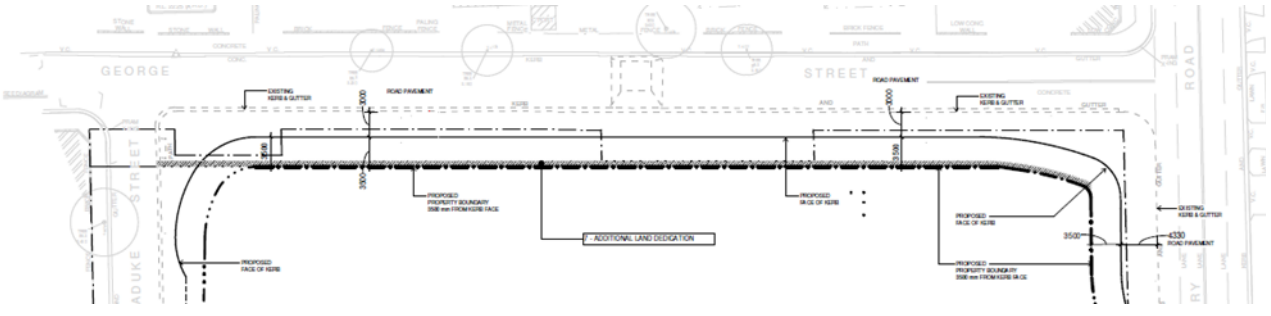
- Existing kerb and gutter to be removed (Boundary kerb and gutter only)
- Demolish existing concrete footpath
- New bitumen road pavement for road widening including base layers
- Vehicle crossing
- New kerb and gutter to road
- New concrete footpath
- Removal of trees plus landscaping to footpath including excavation, mulch, topsoil trees and cultivation
- Bollards and street furniture
- Services relocation and new connections
- Traffic control

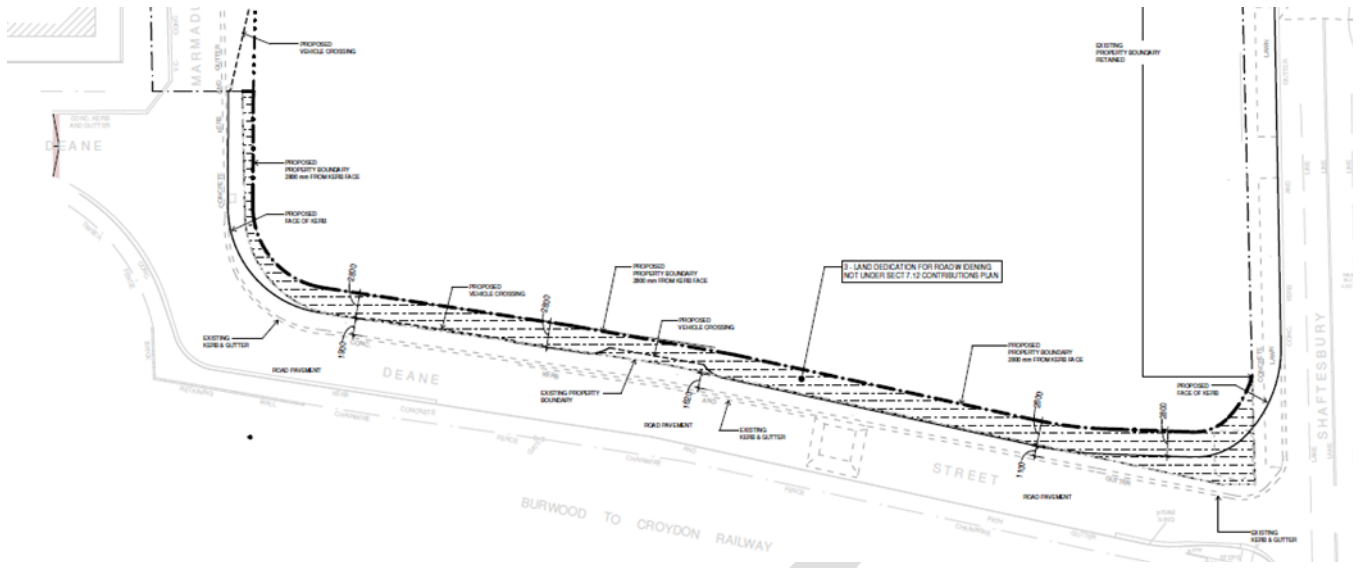
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Annexure D – Item 3 Dedication Land in Schedule 2 Developers Works – Dedication of portions of new road which lies within the boundaries of the Land fronting Marmaduke, George and Deane Streets

(i) Dedication Plan







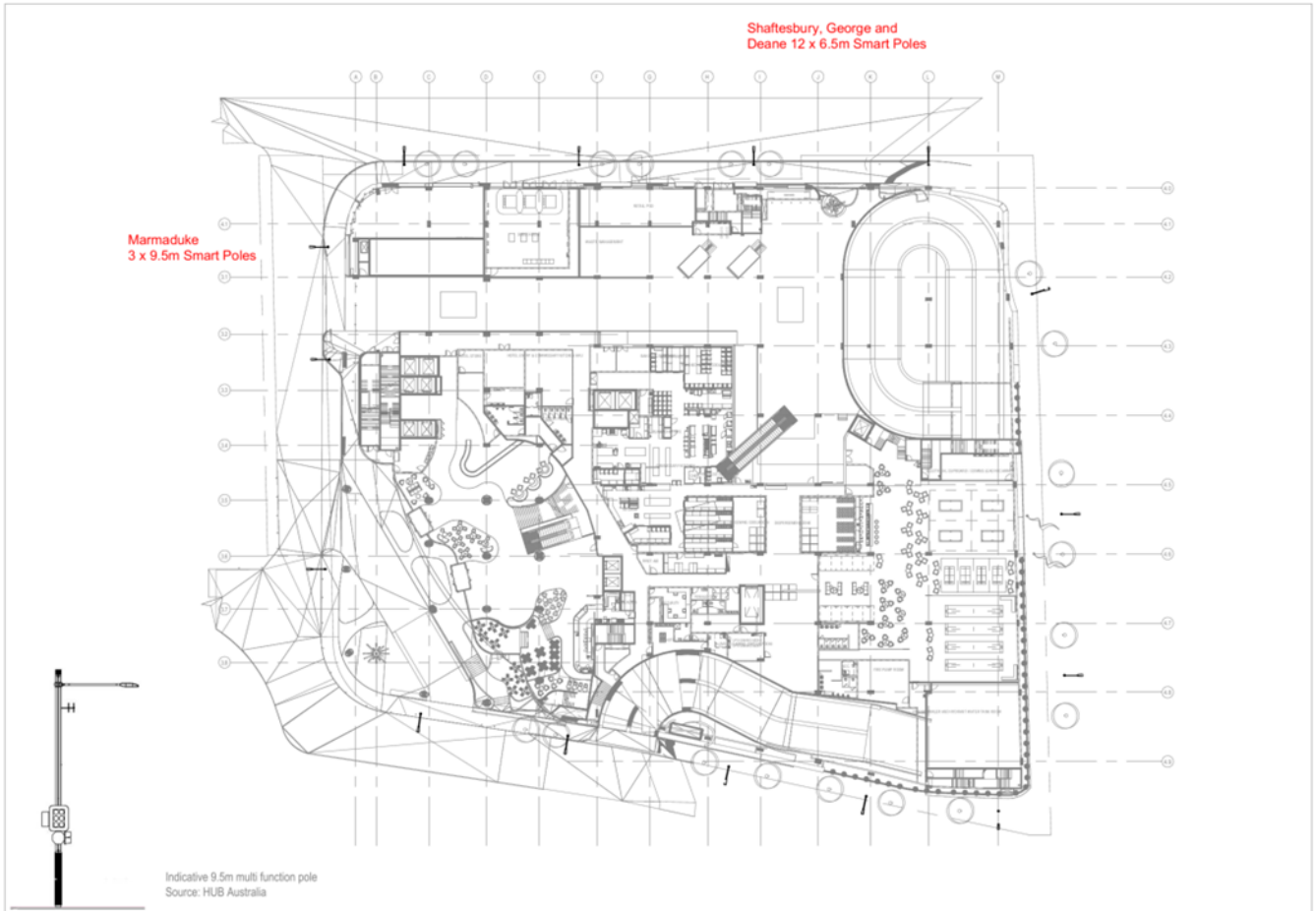
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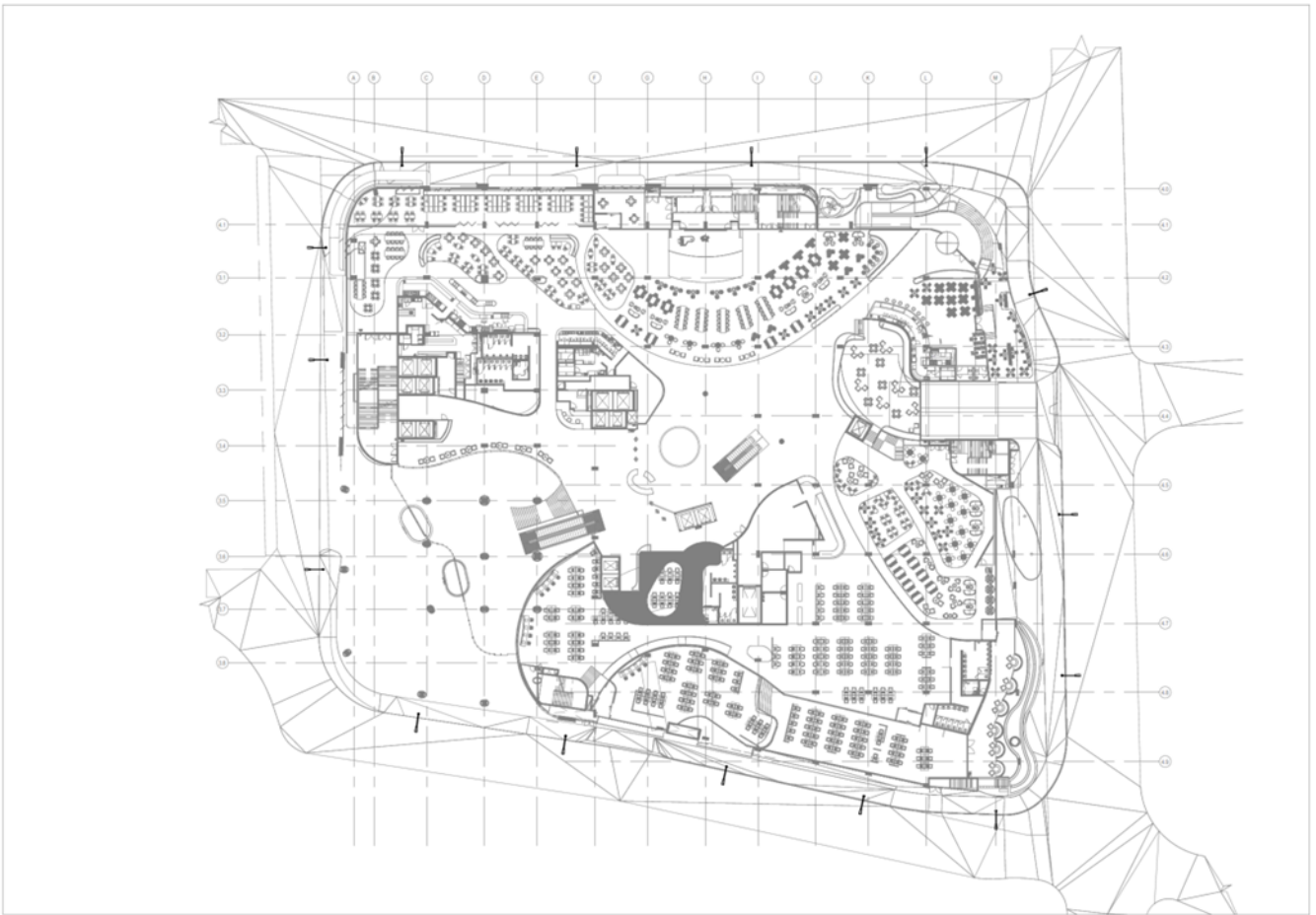
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Annexure F – Item 2 in Schedule 1 Developer’s Works - Instillation of Multi-Function Poles to all Land frontages

(i) Plans and Drawings of Works

The location of the Multi-Function poles to be determined with Council during the preparation of the final road and landscape plans prior to installation.





(ii) Detailed Description of Works

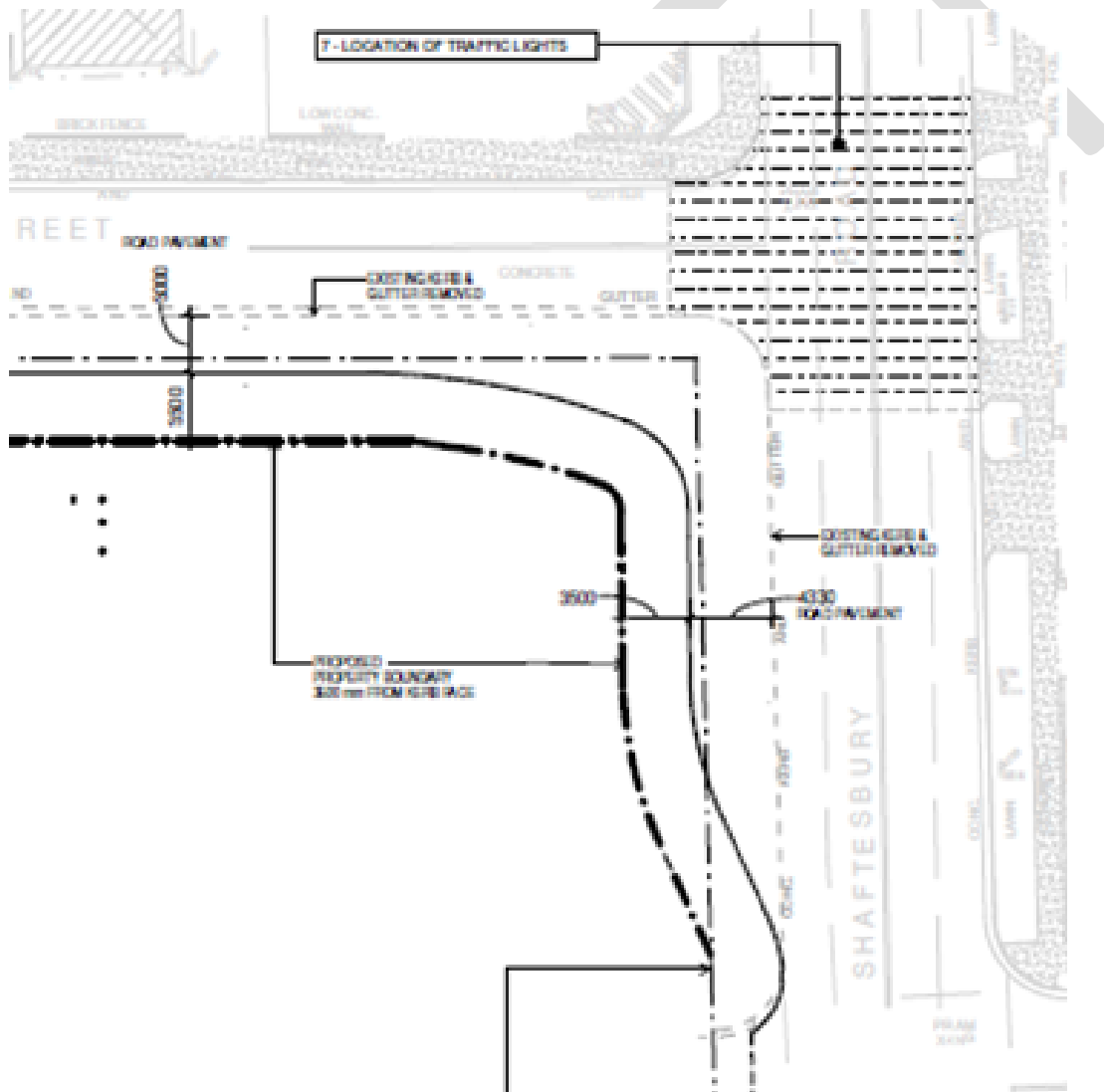
Uplift costs of the installation of Multi-functional Poles on the George, Deane and Marmaduke Street and Shaftesbury Road frontages.

Annexure G – Item 3 in Schedule 1 Developer’s Works - Installation of traffic control signals and associated road works at the corner of George St and Shaftesbury Rd

(i) Plans and Drawings of Works

(ii) Detailed Description of Works – Traffic Light works and works associated with the reconfiguration of roads due to traffic light works

- Provisional sum for Installation of 3-way traffic light system including controller, push buttons, junction boxes, cabling (power, comms/Scats, detector loop and connections) and all equipment, small mast arm signals (i.e. poles that reach over the road) and infrastructure works connecting the systems to the new electrical line
- Intersection works inclusive of re-sheeting road, road widening works, make good of footpaths, kerb re-alignment and associated works
- Removal of kerb and gutter, pedestrian crossing, removal of vehicle and pram ramps, new kerb and gutter to road, reinstate concrete footpath, remove and reinstate street signs and miscellaneous road infrastructure as division strips pedestrian crossings and markings



Annexure H – Item 4 in Schedule 1 Developer’s Works - Resurfacing of George, Deane, Marmaduke Streets and Shaftesbury Rd – as requested by Council

(i) Plans and Drawings of Works

(ii) Detailed Description of Works

GEORGE STREET

- Resurfacing of existing road at George Street, comprising stripping out existing road surface and provide new bitumen surface with underlay
- Removal of existing speed bump
- Allowance to remove/reinstate existing street signs
- Miscellaneous line marking to crossings etc including division strips, white arrow symbols, and pedestrian zebra crossing.

SHAFTESBURY ROAD

- Resurfacing of existing road at Shaftesbury Road, comprising stripping out existing road surface and provide new bitumen surface with underlay

DEANE STREET

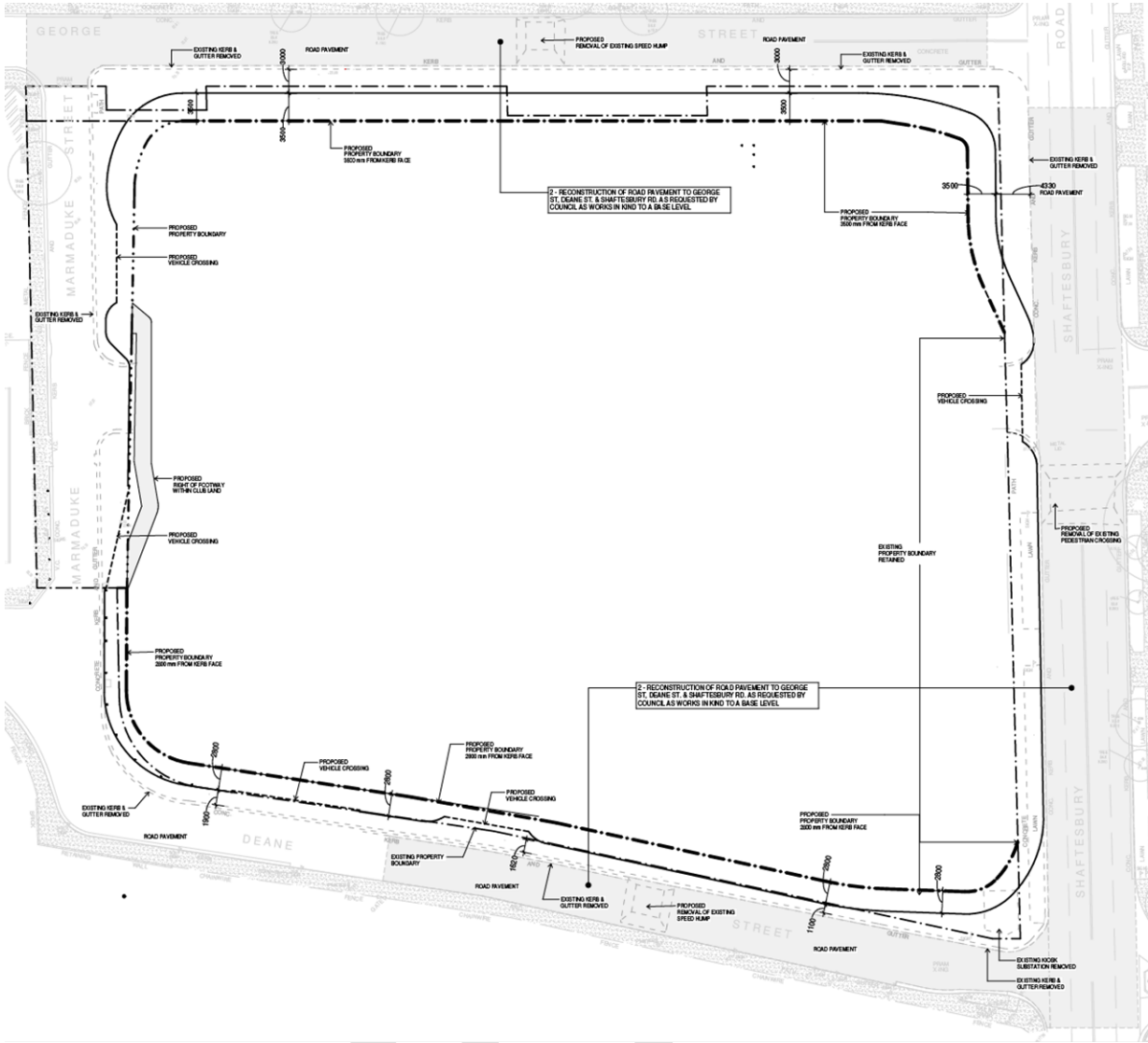
- Resurfacing of existing road at Shaftesbury Road, comprising stripping out existing road surface and provide new bitumen surface with underlay
- Removal of existing speed bump
- Remove/reinstate existing street signs
- Miscellaneous line marking to crossings etc including division strips, white arrow symbols, and pedestrian zebra crossing.

DEANE STREET PEDESTRIAN ZONE

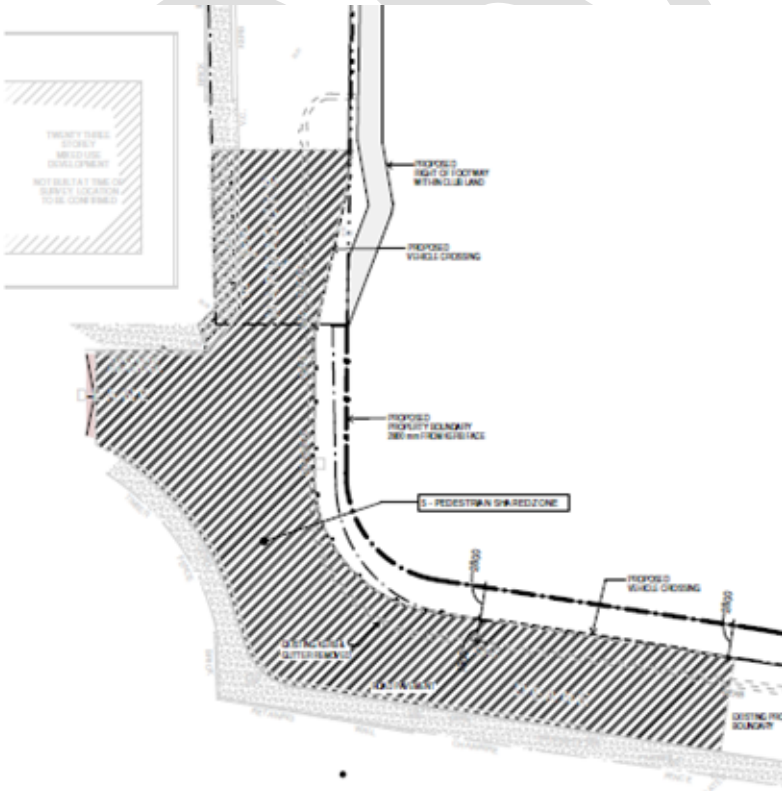
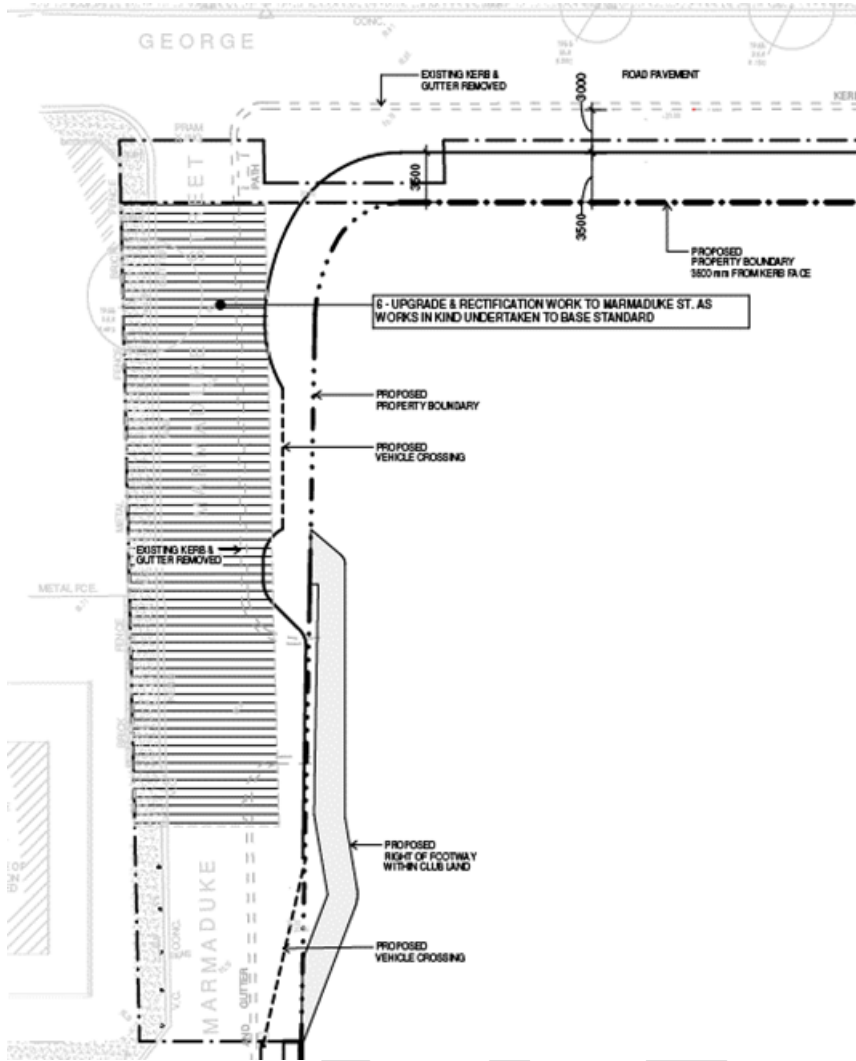
- Resurfacing of existing road at the intersection of Marmaduke and Deane Street, comprising stripping out existing road surface and provide pedestrian shared zone paving inclusive of Paver Type 1 (90x90 concrete granite set)

MARMADUKE STREET

- Provisional sum for the extra over of the rectification of Marmaduke Street due to poor condition of existing surface and sub-base (this is subject to surveys and dilapidation reports being completed)
- Existing kerb and gutter to be removed
- Remove/reinstate existing street signs
- Miscellaneous line marking to crossings etc incl. division strips, white arrow symbols, pedestrian zebra crossing, etc
- Allowance for additional pit required for stormwater as only three were installed in lieu of four as provide in proposed design
- Removal of the light pole and any related adjustment to services in Marmaduke Street opposite Waimea Street including a Level 3 design costs



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Annexure I – Item 5 in Schedule 1 Developer’s Works - The delivery of all public domain works to all Land frontages (works beyond public domain finishes requirement)

(i) Plans and Drawings of Works

No Plan provided. Installation of paver type to all footpaths on the street frontages adjacent to the Club building.

(ii) Detailed Description of Works

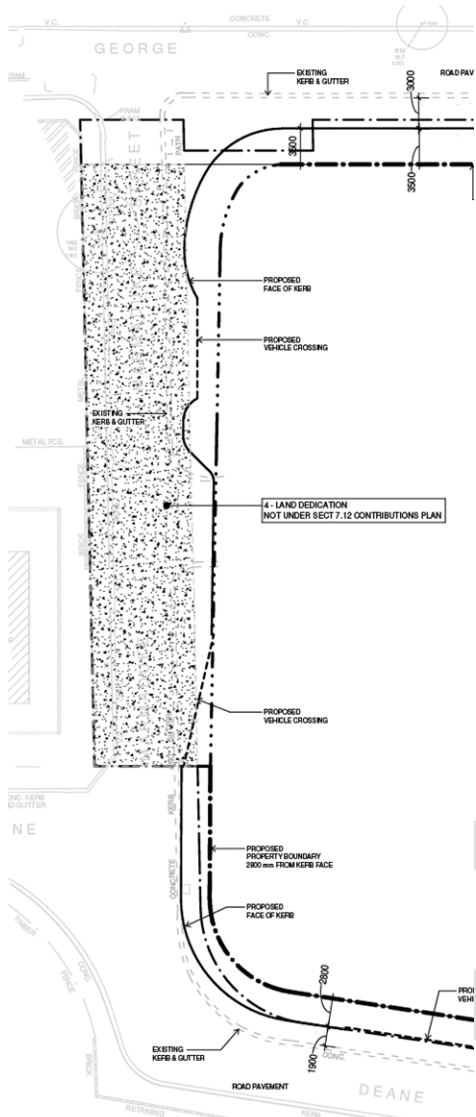
GEORGE, DEANE, MARMADUKE STREET AND SHAFETESBURY ROAD FRONTAGES

- Extra over costs on standard concrete foot path for new paver type 2 to all street frontages.

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Annexure J – Item 5 Dedication Land in Schedule 2 Developers Works - Dedication of Marmaduke Street

(i) Plan of Dedication



Annexure K – Schedule 3 Public Art

(i) Plans and Drawings

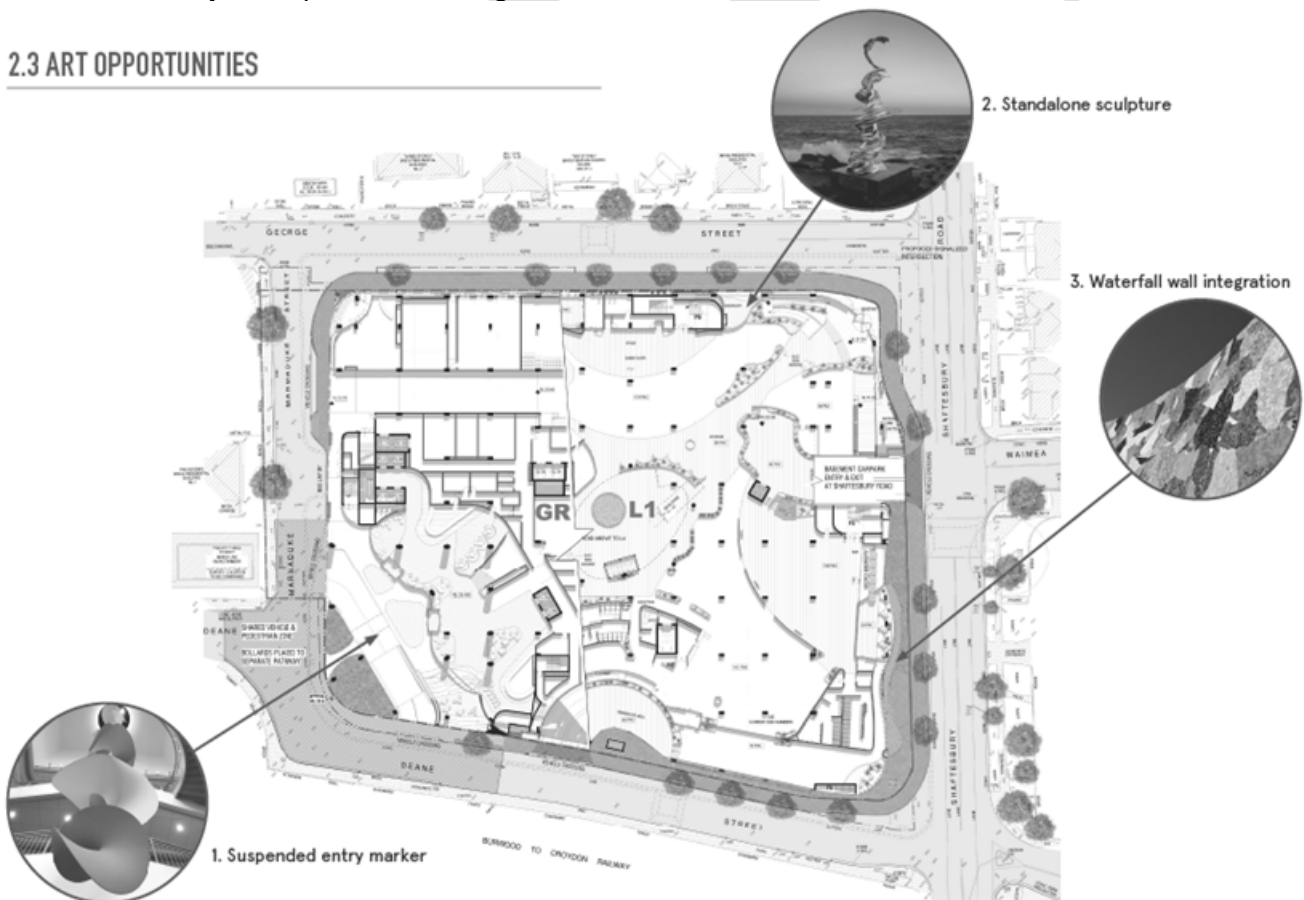
Locations shown in plan from the Public Art Strategy prepared by Cultural Capital March 2021.

Final plans and designs to be formulated with the Council's Public Art Committee.

(ii) Detailed Description of Public Art

- **Waterfall to the corner of Deane Street & Shaftesbury Road**
Artist design, construction and installation including pumps, concrete structure, services connecting into existing pipes and waterproofing to make the waterfall operational in line with current proposed design
- **Standalone sculpture positioned at George Street**
Standalone sculpture positioned at George Street incl. purchase, design, artwork installation and footings including freight
- **Suspended entry sculpture at porte cochere**
Suspended entry sculpture at porte cochere structure including structural steel support system, purchase, design and artwork installation

2.3 ART OPPORTUNITIES



Annexure L – Council Inspection Points

The following points are stages in the Developer's Works at which Council is to be given an opportunity to inspect the works. Inspection points will need to be agreed as part of a pre-start meeting and may include additional inspections to those outlined below:

(i) Stormwater drainage

- Pipeline works:
 - a) When trenches excavated but prior to bedding layer;
 - b) When pipes laid and jointed but prior to backfilling; and
 - c) When pipes backfilled.
- Pits:
 - d) When formwork completed and any reinforcement installed but prior to pouring concrete;
 - e) When concrete poured and formwork stripped (when step-irons are installed for pits deeper than 1.5 metres) and when grates and lintels installed (copies of concrete delivery dockets to be provided to verify 28 day compressive strength).
- Subsoil drainage:
 - f) When subsoil drainage pipes are installed with granular backfill in place but prior to covering with other materials.

(ii) Flexible road pavements (conventional granular pavement)

- a) When subgrade trimmed and consolidated but prior to any pavement courses or geotextiles being constructed;
- b) When subgrade trimmed and consolidated and after any geotextiles laid;
- c) When sub-base course laid and compacted but prior to base course being constructed;
- d) When base course laid and compacted but prior to surface course being constructed; and
- e) When surface course constructed.

(iii) Flexible road pavements (deep lift asphalt pavement)

- a) When subgrade trimmed and consolidated but prior to any pavement courses being constructed;
- b) On completion of each deep lift course; and
- c) When surface course constructed.

(iv) Rigid pavements (reinforced concrete pavements)

- a) When subgrade trimmed and consolidated but prior to any pavement courses being constructed;
- b) When base course laid and compacted but prior to concrete courses;
- c) When formwork and reinforcement, dowels, jointing etc. are in place prior to concreting; and
- d) When finished pavement completed and textured (copies of concrete delivery dockets to be provided on request to verify 28 day compressive strength).

(v) Kerb and gutter

- a) When excavations completed, road base laid and compacted, and formwork (or stringline for machine kerb) in place and to correct line and level;
- b) When roof water pipes in place if applicable; and
- c) When kerb and gutter completed and any formwork stripped but prior to adjoining road pavement or "back-up" for kerb being provided (copies of concrete delivery dockets to be provided on request to verify 28 day compressive strength and mix type).

(vi) Concrete footpaths and driveways

- a) When excavation completed, formwork and any reinforcement in place prior to concreting; and

- b) When footpath constructed and finished, formwork stripped and (where applicable) adjoining nature strip backfilled and turfed;

(vii) Segmental paver footpaths

- a) When excavation completed, formwork and any reinforcement in place prior to concreting;
- b) When base slab completed prior to laying pavers;
- c) Inspection of pavers prior to paving to confirm compliance (satisfactory slip resistance test results submitted on request from Council); and
- d) When pavers laid.

(viii) Smart poles

- a) When footings formed and reinforcement and anchor bolts and electrical ducting in place and prior to concreting;
- b) Copies of concrete delivery dockets to be provided on request to verify 28 day compressive strength.
- c) When poles installed and securely anchored (anchor bolts tensioned to specified torque settings) but prior to covering.

(ix) Landscaping

- a) When garden areas and tree pits excavated, subsoil drainage in place but prior to backfilling with approved planting medium;
- b) When planting medium in place, plants and trees planted (area mulched if required) and when tree grates and watering points installed where required.

(x) Completed works

- a) When the Developer's Works are completed (final inspection).