

DATED

2010

BETWEEN:

CITY OF BOTANY BAY

("the Council")

AND:

**THE UNIVERSITY OF NEW SOUTH
WALES**

("UNSW")

**VOLUNTARY PLANNING
AGREEMENT**

HOUSTON DEARN O'CONNOR

Solicitors

Suite 33, 5th Floor

12 Railway Parade

BURWOOD NSW 2134

DX 8565 BURWOOD

Tel: 9744 9247

Fax: 9744 6739

REF: AJH:AS:B5394

THIS AGREEMENT made the day of 2010

BETWEEN: **CITY OF BOTANY BAY** of 141 Coward Street, Mascot in the State of New South Wales ("the Council") of the first part

AND: **THE UNIVERSITY OF NEW SOUTH WALES** the body corporate constituted by the University of New South Wales Act 1989 of Corner Anzac Parade and High Street, Kensington in the said State ("UNSW") of the other part

WHEREAS:

- A. The Council is the Local Government Authority for the City of Botany Bay Local Government Area.
- B. UNSW is an Australian University within the meaning of the Higher Education Act 2001 (NSW).
- C. UNSW is the registered proprietor of land within the City of Botany Bay Local Government Area known as the David Phillips Field located on the southern side of Gwea Avenue, Daceyville and bounded on the east by Banks Avenue, on the south by Bonnie Doon Golf Course and on the west by Cook Avenue and being the whole of the land comprised in Folio Identifier 3876/91234 ("David Phillips Field").
- D. By development application DA10/175 (the "Development Application") UNSW applied to the Council for approval for the redevelopment of the existing sporting fields and amenities of the David Phillips Field including the following works, namely:
- demolition of the existing amenities, clubhouse building and grandstand;
 - retention of the existing grounds shed on the north western corner of the site;
 - retention of existing fencing along the southern, western and northern boundaries;
 - construction of a new clubhouse and amenities;
 - construction of a new grandstanding with a seating capacity of three hundred

(300) persons;

- new amenities building behind the grandstand;
- new fields for the sporting activities of hockey, soccer, rugby, cricket and baseball;
- new tennis courts;
- new lighting including flood lighting, site lighting, building lighting and emergency lighting, involving the reuse of existing lighting and light poles from Little Bay and the existing lighting at David Phillips Field;
- erection of identification signage;
- erection of new spectator fencing to grandstand;
- erection of a new retaining wall and fencing along the north eastern and eastern boundary;
- construction of a concrete piered spectator stand adjacent to the new baseball field;
- erection of side screens to the baseball field;
- construction of cricket practice nets, baseball bullpen, and baseball dugouts adjacent to the new baseball field; and
- erection of scoreboards to each new field.

collectively hereinafter called (the "Development Proposal").

- E. The Development Application is a crown development application to which the provisions of Division 4 of Part 4 of the Environmental Planning & Assessment Act 1979 apply.
- F. By reason of the capital investment value of the Development Proposal exceeding ten million dollars (\$10,000,000.00) the provision of Part 3 of State Environmental Planning Policy (Major Development) 2005 applies with the consequence that the Sydney East

Joint Regional Planning Panel (the "JRPP") exercises the consent authority functions of the Council specified in clause 13F(1) of that policy, including determination of the Development Application.

G. By letters dated 29 July and 17 August 2010 UNSW submitted to the Council an offer to enter into a voluntary planning agreement as defined in Section 93F of the Environmental Planning & Assessment 1979 incorporating an offer by UNSW to undertake at its cost in conjunction with the carrying out of the Development Proposal the following public domain works, namely:

- the provision of sixty (60) car parking spaces within the existing Banks Avenue road reserve owned by the Council, including design and construction together with capital cost acceptance;
- the construction of a cycleway along the David Phillips Field frontage of Banks Avenue, including design and construction together with capital cost acceptance;
- the installation of two (2) traffic calming devices (subject to the approval of all relevant authorities) to enable cyclists to choose a safe point across to the eastern side of Banks Avenue at a location where the traffic speeds are low, and with capital cost acceptance; and
- provision to the Council of a plan of management for the provision of landscaping works in the public domain on the public land that is contiguous with the outer boundaries of the David Phillips Field and the nearside kerbs of Banks Avenue and Gwea Avenue, Daceyville and the provision and ongoing maintenance of such landscaping together with acceptance of all costs associated therewith.

hereinafter collectively referred to as (the "Public Domain Works").

H. At its meeting on 17 August 2010 the JRPP resolved that it would approve the

Development Application subject to the conditions as contained within the report to the JRPP prepared by the Council, with an additional deferred commencement condition in the following terms:

“The applicant and Council shall enter into a voluntary planning agreement (“VPA”) under Section 93F of the Environmental Planning & Assessment Act 1979 (as amended) for the following:

- the provisions sixty (60) car parking spaces and the construction of a new cycleway along the Banks Avenue road reserve;
- the installation of two (2) traffic calming devices in Banks Avenue; and
- the planting of trees in the public domain and the maintenance of those trees in accordance with the offers from the applicant in its correspondence to Council dated 29 July 2010 and 17 August 2010.

The draft agreement shall be exhibited and finalised in accordance with the provision of Section 93F.”

- I. The Council and UNSW have agreed to enter into a Voluntary Planning Agreement for the provision by UNSW of the Public Domain Works in conjunction with the carrying out of the Development Proposal.
- J. Pursuant to Section 93F of the Environmental Planning & Assessment Act 1979 the parties hereto now enter into this Voluntary Planning Agreement.
- K. This Voluntary Planning Agreement has been publicly notified in accordance with Section 93G of the Environmental Planning & Assessment Act 1979 and clause 25D of the Environmental Planning & Assessment Regulation.

NOW IT IS HEREBY AGREED as follows:

1. This Voluntary Planning Agreement shall be binding on the parties hereto and upon their respective heirs, executors, transferees and assigns.

2. This Voluntary Planning Agreement does not take effect until:
 - (i) the JRPP has granted formal approval to the Development Application (“Development Consent”); and
 - (ii) UNSW has taken up and acted upon the Development Consent.
3. The rights of the Council expressly provided for herein are cumulative and in addition to and not exclusive of the rights of the Council existing at law or which the Council would otherwise have available to it.
4. In case one or more of the provisions contained in this Voluntary Planning Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining conditions contained herein shall not thereby be affected.
5. UNSW hereby covenants and agrees with the Council that in conjunction with the carrying out of the Development Proposal pursuant to the Development Consent it shall undertake and provide, construct and complete the Public Domain Works to the satisfaction of the Council, and shall be responsible for the ongoing maintenance of the landscaping works in the public domain, all as specified or provided for in:
 - (i) the document titled “UNSW/BBCC Issues list for Voluntary Planning Agreement, David Phillips Curtilage Issue A 23 July 2010” a true copy of which is annexure “A” hereto;
 - (ii) the plan prepared by BVN Architecture dated 26 June 2010 titled “Banks Avenue Shared Cycle Way, Pedestrian Path & parking Layout” Issue A a true copy of which is annexure “B” hereto;
 - (iii) the document titled “UNSW Landscape Plan of Management for the Banks Avenue & Gwea Avenue Curtilage to David Phillips Field” prepared by the University of New South Wales and dated 30 August 2010 a true copy of which is annexure “C” hereto; and

- (iv) as otherwise specified in the conditions and approved plans of any development consent issued by the JRPP in respect of the Development Application.
6. UNSW shall pay Council's reasonable solicitor/client costs of preparing this Voluntary Planning Agreement (up to a maximum of two thousand (\$2,000.00)) and any cost to Council of registering the Voluntary Planning Agreement or caveat over the title to the land. Should it be necessary for Council to consent to the registration of any lease, mortgage, consolidation of title, strata plan or other document as a result of a caveat being registered on the titles to the land UNSW shall pay the Council's reasonable solicitor/client costs of providing Council's consent to such registration. UNSW shall also pay Council's reasonable costs of preparing any substitute Voluntary Planning Agreement between Council and any incoming purchaser, assignee or transferee of the land. Council must give UNSW a tax invoice for any amount payable by UNSW under this clause.
7. Should UNSW be in breach of any terms of this Voluntary Planning Agreement, and not rectify the default within twenty one (21) days of receiving notice from Council to do so (except if a delay in rectification is likely to cause irremediable damage or prejudice to Council, in which case no notice is required) Council shall be entitled, at its option, to enforce by way of injunction relief in the Supreme Court any provisions of this Voluntary Planning Agreement which have been breached, or to seek damages or to seek to enforce the provisions of any development consent which relate to the land whether by way of order under Section 121B of the Act, or Class 4 proceedings in the Land and Environment Court, or otherwise.
8. Any amendment or variation to this Voluntary Planning Agreement is not effective unless it is in writing and signed by all the parties.
9. The explanatory note put on exhibition with this Voluntary Planning Agreement is not to

be used in construing the terms of this Voluntary Planning Agreement.

10. In the event of any disagreement between the parties hereto arising out the provisions of this Voluntary Planning Agreement, and if the parties are unable within a reasonable time to resolve such disagreement amicably, either party may serve notice on the other requiring the matter to be referred to a conciliation by a single conciliator at the Australian Commercial Disputes Centre Limited in Sydney. The parties shall thereafter in good faith seek to resolve the matter through conciliation and the parties shall equally bear the cost of such conciliation. The parties must keep confidential and must not to disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:
 - (a) views expressed or proposals or suggestions made by a party, an expert or the conciliator during the conciliation relating to a possible settlement of the dispute;
 - (b) admissions or concessions made by a party during the conciliation in relation to the dispute; and
 - (c) information, documents or other material, including any confidential information, concerning the dispute which are disclosed by a party during the conciliation unless such information, documents or facts would have been otherwise discoverable in judicial or arbitral proceedings.

11.
 - (a) 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;
 - (b) the consideration for any supply under this Voluntary Planning Agreement excludes GST;

- (c) where a party to this Voluntary 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;
- (d) 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;
- (e) despite any other provision of this Voluntary Planning Agreement, any amount payable under this Voluntary Planning Agreement, which is calculated by reference to an amount paid or incurred by a party to this Voluntary 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.

IN WITNESS WHEREOF the parties hereto have executed these presents the day and year first abovementioned.

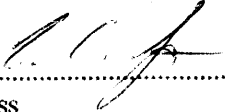
THE COMMON SEAL of **CITY OF**)
BOTANY BAY was hereunto affixed)
pursuant to a resolution of the Council)
passed on the day of)

.....
Mayor

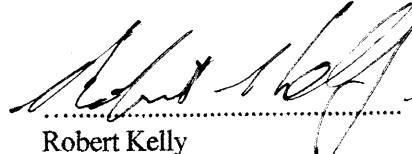
.....
General Manager

SIGNED for and on behalf of THE)
UNIVERSITY OF NEW SOUTH)
WALES by Robert Kelly, Director,)
UNSW Facilities Management, in the)
presence of: *Edward Smith*)

Property Manager



.....
Witness



.....
Robert Kelly
UNSW Facilities Management
Director

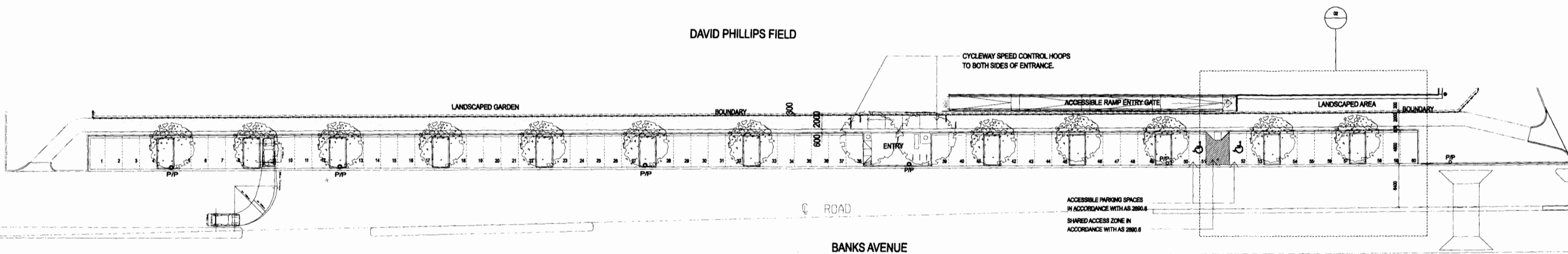
Property Manager
University of New South Wales
Sydney NSW 2052

"A"				
Design Timetable & Project Management		v	UNSW	The design will be as set out in the DA documentation and has been designed in accordance with the relevant DCPs.
Preliminary Design		v	UNSW	
Detailed Design		v	UNSW	
Approvals Risk		v	UNSW	
Design Failings		v	UNSW	
Project Management of the Construction		v	UNSW	
Site Preparation/Demolition/Remediation		v	UNSW	
Tendering for Contractor		v	UNSW	
Managing the Contractor		v	UNSW	
Care, control and management of the BACP Area during construction		v	UNSW	The BACP Area will be part of the overall construction site for the project and the appointed contractor will be the principal on site.
Carrying out the works including reasonable signage		v	UNSW	
Paying for Works		v	UNSW	
Achieving Practical Completion by Target Date		v	UNSW	
Defects during the 12 month defect liability period		v	UNSW	
Ownership of the BACP Works and Area following Practical Completion	v		BBCC	
Maintenance of Hard Surfaces (Car Parking and Bike Path)	v		BBCC	
Maintenance Costs & Standards for Hard Surfaces	v		BBCC	
Liability for the BACP Area Hard Surfaces following Practical Completion	v		BBCC	
Maintenance of Soft Landscaping in Banks & Gwea Nature Strip		v	UNSW	All landscaping along the David Phillips Field Banks Avenue and Gwea Street nature strips will be maintained by the University as part of the grounds maintenance contract for David Phillips Field. This landscaping will be maintained in accordance with the landscape management plan submitted to BBCC. The costs of this addition to the existing David Phillips grounds contract will be borne by UNSW.
Utility costs (mainly being electricity for street lighting)	v		BBCC	
Security	v		BBCC	
Insurance			BBCC	
Parking Conditions			BBCC	While BBCC has no current plans to change parking conditions in the area, UNSW understands that it is within BBCC's powers to change the parking conditions across the entire Rowlands Park / Astrolabe Park / David Phillips Precinct. BBCC agrees not to single out the BACP Area for any parking conditions that are different to the remainder of the parking spaces in the precinct.
Design		v	UNSW	As per relevant RTA and BBCC specifications.
RTA Approvals Risk	v	v	UNSW	Following DA determination, UNSW will use all reasonable endeavours to obtain all relevant approvals (including RTA) but, if approval is not granted, UNSW and BBCC agree that the pedestrian crossing / speed hump will not be built.
Construction		v	UNSW	
Ownership and Maintenance (excluding defects)	v		BBCC	
Design		v	UNSW	
Works		v	UNSW	UNSW will carry out the removal and replanting of trees in accordance with the submitted and approved DA plans, documentation and conditions. Part of the \$200,000 budgeted for landscaping (inclusive of prelims and margin) will be spent on the soft landscaping in the BACP Area and the balance will be spent on replanting and landscaping on the UNSW's land within the David Phillips Field boundary.
Consultation with BBCC	v	v	UNSW	UNSW and BBCC agree that it is in the best interests of the project, where possible, to maintain as many significant trees as reasonably possible. Where any significant tree (and, in particular, those trees referred to as trees numbered #154 and #158) can be retained through the use of an alternative, reasonable and non-cost-prohibitive construction methodology, UNSW will, with prior on-site consultation with the relevant BBCC officer, use this alternative methodology.
Maintenance		v	UNSW	UNSW to own and maintain landscaping on its land. UNSW to maintain landscaping in the BACP Area and the Gwea Avenue nature strip in accordance with the submitted landscaping management plan.
Ownership of the landscaping in the BACP Area and Gwea Avenue nature strip	v		BBCC	BBCC to own and UNSW to maintain landscaping in the BACP Area.

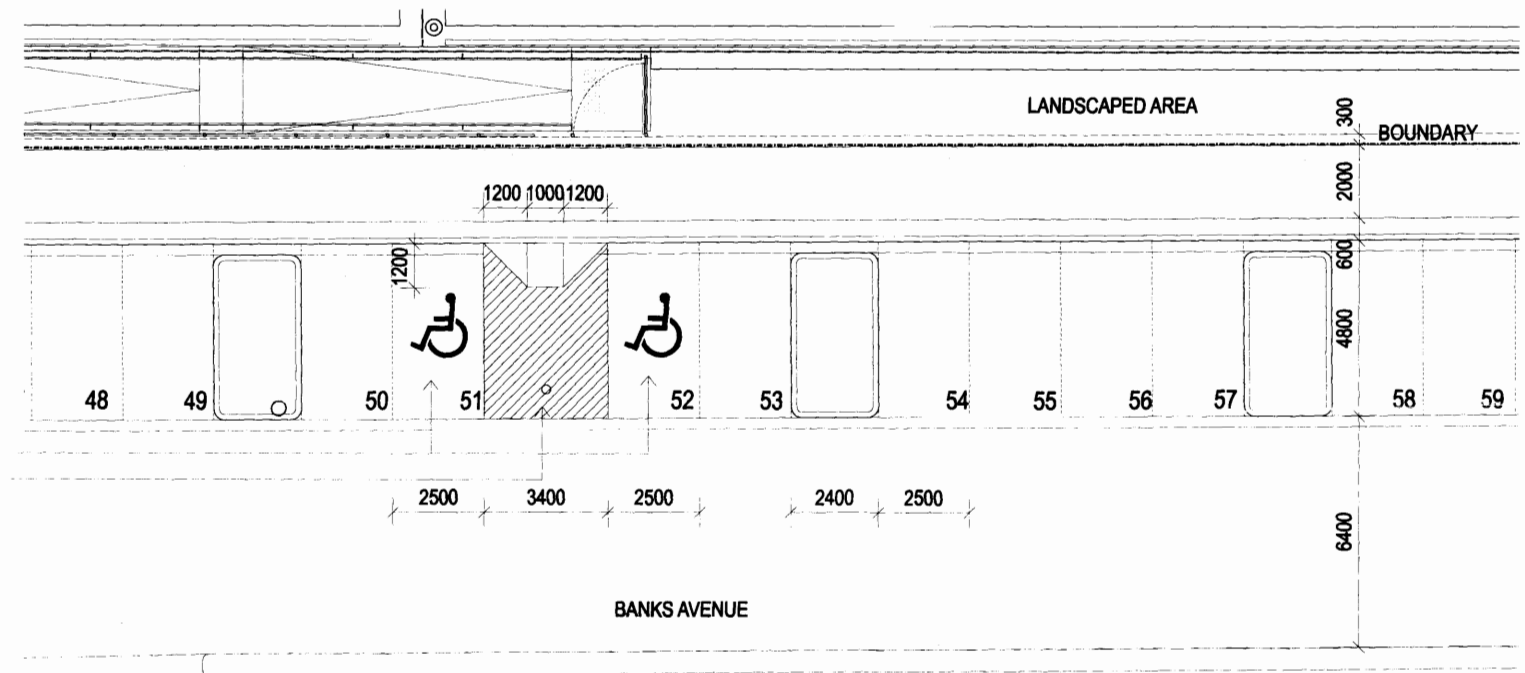
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"B"

DAVID PHILLIPS FIELD



01 BANKS AVENUE PARKING LAYOUT
1:300



02 BANKS AVENUE PARKING LAYOUT - DETAIL
1:100

[Handwritten signature]



BVNArchitecture

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ISSUE	DATE	FOR	ISSUE	DATE	FOR
A	28.05.10	FOR DEVELOPMENT APPLICATION			
B	24.08.10	FOR DEVELOPMENT APPLICATION			

ARCHITECT
BVN ARCHITECTURE
tel 02 8297 7200 fax 02 8297 7299
PROJECT MANAGER
McLACHLAN LISTER
tel 02 9385 3963
CIVIL ENGINEER
NORTHROP
tel 02 9241 4188 fax 9241 4324
STRUCTURAL ENGINEER
NORTHROP
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HYDRAULIC ENGINEER
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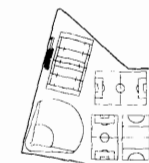
ACOUSTIC ENGINEER
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LANDSCAPE ARCHITECT
ENVIRONMENTAL PARTNERSHIPS
tel 02 9555 1033 fax 02 9818 5292
ARBORIST
HAYDEN COULTER
tel 0422 285 128

CLIENT
THE UNIVERSITY OF
NEW SOUTH WALES

CLIENT PROJECT NUMBER

PROJECT
DAVID PHILLIPS FIELD
REDEVELOPMENT
BVN PROJECT NUMBER
S0901005

DRAWING KEY



TRUE NORTH

PROJECT NORTH

DRAWING

GRAPHIC SCALE
SCALE
DO NOT SCALE
STATUS
DEVELOPMENT APPLICATION

**BANKS AVENUE SHARED
CYCLE WAY, PEDESTRIAN
PATH AND PARKING LAYOUT**
DRAWING NUMBER
A_DA_A015
ISSUE
B

"C"

UNSW



**Facilities Management
Planning and Development**

The University of New South Wales

*LANDSCAPE PLAN OF MANAGEMENT
BANKS AVE AND GWEA AVE SITE FRONTAGE TO
DAVID PHILLIPS FIELD*

Date: Monday, 30 August 2010

Revision: A

A handwritten signature in black ink, consisting of a stylized first letter followed by a surname, located in the bottom right corner of the page.

LANDSCAPE PLAN OF MANAGEMENT

BANKS AVE AND GWEA AVE SITE FRONTAGE TO

DAVID PHILLIPS FIELD

1. New services

1.1. General

UNSW is to engage a Contractor to perform the New Service. A New Service shall be considered as a proposed variation in accordance with the relevant landscape maintenance contracts for David Phillips Field (Tree Maintenance Contract 2010 / 03570 & Grounds Maintenance Contract 2008/4679). UNSW shall pay for the New Service, and the Contractor shall perform the New Service, in accordance with the terms of this agreements.

2 Increase or decrease in services required (capacity planning)

2.1 Notification

Where UNSW notifies the Contractor that it requires to increase or decrease the volume or type of Services required, the Contractor shall alter the delivery of such Services in accordance with the existing contract.

2.2 Response to Notification

Where the Contractor receives a notice from UNSW, the Contractor must:

- I. Within one month of receipt of such notice provide UNSW with a plan to deal with the increase or decrease in Services required;
- II. Ensure that it manages the reduction or increase in the Services required to ensure ongoing performance of the Services in accordance with this Agreement.

3. Scope of the Contractor's Responsibilities

3.1 Responsibilities

The Contractor is responsible for providing professional services aimed at:

- Horticultural maintenance of the curtilage areas of David Phillips Field being the Gwea Ave roadside verge together the Water Sensitive Urban Design (WSUD) street tress and planters of Banks Ave;

- Ensuring UNSW customer service on a day to day basis as per the current agreement;
- Ensuring the implementation of this new service with the existing management plans, strategies and programs.

4. Maintenance

4.1 Introduction

The Contractor shall be responsible for the new services in conjunction with the maintenance of the University's Sporting Fields at David Phillips Field Daceyville.

4.2 Contractor Responsibility

The following is a summary of the areas of maintenance required:

- Turf maintenance to the Gwea Ave roadside verge;
- Garden Beds and native vegetation areas of the Gwea Ave roadside verge; and
- The roadside tress and Water Sensitive Urban Design (WSUD) planters to Banks Ave.

In the carrying out of any turf maintenance activity, the Contractor shall:

- a) Collect and dispose of litter and debris from turf areas prior to the commencement of any other works.
- b) Not cause any damage to any other trees, shrubs, turf or any other landscape elements or assets. Trees shall not sustain any damage as a result of turf cutting. The Contractor is responsible for any corrective treatments, removals and replacements deemed necessary by a UNSW Grounds Representative as a result of damage caused by the Contractor.
- c) Cut turf to a uniform height across the turf surface.
- d) Remove and dispose of all turf clippings, leaves, mulch, litter etc on adjacent hard surfaces, paths, garden beds, etc at the completion of cutting.
- e) Maintenance of the turf to the roadside verge of Gwea Ave to the standard of abutting turf.
- f) Maintain the turf edging abutting hard surfaces, paths, fences, trees, buildings, garden areas and site infrastructure.
- g) Collect and dispose of all litter, dead vegetation, pruning, turf clippings and weeds at the time of service. In addition, collection and disposal of all litter from David Phillips Field shall occur daily. Also the Contractor shall collect together the wheelie bins provided and arrange them daily at an agreed point for the bulk collection by Council.

- h) Turf to roadside verge of Gwea Ave shall not exceed 50mm above any pathway, garden edge or kerb. Variation to cutting height will only be assessed by a UNSW Grounds Representative on request by the Contractor.
- i) Roadside verge trees of Gwea Ave that are less than three years old or with a trunk diameter of up to 75mm shall be kept clear of turf to a distance no less than 300mm. Trees older than three years or with a trunk diameter greater than 75mm shall be maintained clear of turf to a distance not less than 500mm.
- j) Roadside verge trees within the Banks Ave Parking area shall be maintained in accordance with the requirements of the Water Sensitive Urban Design (WSUD) planters.
- k) The Contractor must report any breakage and vandalism immediately to a Representative of UNSW Grounds of any sportsfield infrastructure and surrounding site curtilage including but not limited to floodlighting, street furniture, fencing, gates and trees.

5. Tree Maintenance

5.1 Introduction

The University of New South Wales is internationally recognised as one of Australia's leading educational facilities and is a member of the prestigious "Group of Eight" research universities.

Trees contribute significantly to the experience of David Phillips Field and provide an aesthetic and functional role. The UNSW community is exceptionally protective of its trees and is concerned with their appearance, health and maintenance.

These following specifications are for all trees on the UNSW External property of David Phillips Field with the information held on the UNSW Tree Database. Regular maintenance works will be scheduled for up to 48 weeks of the year on Saturdays.

Any days lost due to inclement weather may or may not be re-allocated depending on the determination of the UNSW Grounds Manager. The David Phillips Field is located within the Local Government Area (LGA) of Botany Bay City Council (BBCC). As each LGA has its own Tree Preservation Order TPO the relevant Orders for can be found at:

Botany Council

<http://www.botanybay.nsw.gov.au/pdf/communicating/june/TreePreservationDL.pdf>

6. Requirements

6.1 Scope

The objectives of the service are to

- Maintain healthy, structurally sound, well formed and attractive trees to the Gwea Ave roadside verge and WSUD planters to Banks Ave with limited diseases, insects, deadwood and damage therefore reducing the likelihood of any issues Relating to OHS and structural damage to buildings and the exterior landscape;
- Perform regular maintenance works to be done on Saturdays throughout the year;
- Immediately and effectively deal with significant pest and disease outbreaks that may affect the trees to the Gwea Ave roadside verge and WSUD planters to Banks Ave;and
- Provide an emergency call out service (24 hours/7 days) to undertake works on trees within the Gwea Ave roadside verge and Banks Ave WSUD planters presenting an immediate risk to people or property.

6.2 Services

The services to the trees of the Gwea Ave roadside verge and WSUD planters to Banks Ave include but are not restricted to:

- Tree Pruning;
- Tree Removal;
- Stump Treatment / Removal;
- Programmed maintenance;
- Reactive Tree Maintenance;
- 24hr Emergency call out;
- Disposal Of Waste Material;
- Tree Planting;
- Bushland Tree Maintenance;
- Root pruning.

In summary, the services encompass:

- All levels of tree management, supervision and delivery of tree maintenance services in accordance with the existing agreement specification and as set in the weekly program of works delivered by the UNSW Grounds Manager;
- Availability of qualified staff, materials, equipment and all resources necessary to conduct the new services in a safe, effective and timely manner;

- Key staff contactable by mobile phone at all times;and
- A positive and sensitive approach to customer relations when working on UNSW external properties.

The contractor will be responsible for gaining all necessary approvals from relevant authorities for any works external to the David Phillips Field property boundaries. This may include liaison with the RTA, Sydney Buses, local councils and emergency services when works require diversion or control of traffic on main roads.

Detailed records of all maintenance works will be recorded on a works completed form and returned to the UNSW Grounds Manager for entry into the UNSW database. Completed works, changes to work methods and other relevant matters will only be assessed by the UNSW Grounds Manager.