

Planning agreement

The Council of the City of Sydney ABN 22 636 550 790 and
Karimbla Properties (No. 60) Pty Ltd ABN 44 622 383 724 and
Investments & Loans Pty Ltd 42 000 079 738

For 118-130 Epsom Road and 905 South Dowling Street, Zetland
NSW 2017

Reference: S153639

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BETWEEN:

- (1) **The Council of the City of Sydney** ABN 22 636 550 790 of Town Hall House, 456 Kent Street, SYDNEY NSW 2000 (the **City**);
- (2) **Karimbla Properties (No. 60) Pty Ltd** ABN 44 622 383 724 of Level 11, 528 Kent Street, SYDNEY NSW 2000 (**Developer**); and
- (3) **Investments & Loans Pty Ltd** ABN 42 000 079 738 of 134-138 William Street, Woolloomooloo NSW 2011 (**Landowner**).

BACKGROUND

- (A) The Landowner is the owner of the Land.
- (B) On 1 November 2021 the Landowner and the Developer entered into a Deed of Option to purchase and sell the Land pursuant to which the Landowner agreed to sell and the Developer agreed to purchase the Land in the event that the options are exercised (**Option Deed**).
- (C) The Developer, with the Landowner's consent has requested the Planning Proposal which would permit the Development to be undertaken on the Land.
- (D) The Developer has offered to enter into this document with the City to provide the Public Benefits on the terms of this document if the future Development relies on the Alternative Height of Buildings Map proposed under the Planning proposal.
- (E) The Landowner has agreed to be a party to this document solely in its capacity as the owner of the Land pending exercise of the option and subsequent sale and purchase.
- (F) If:
 - (1) the Options under the Deed are not exercised such that the Developer does not become the owner of the Land: and
 - (2) the Landowner transfers the Land to a third party,
 - (3) the third party will be responsible for the obligations on both of the Developer and the Landowner under this document if the third party relies on the Alternative Height of Buildings Map unless assigned under the terms of this document.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

The following definitions apply in this document.

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

Affordable Housing has the same meaning as in the Act.

Affordable Housing Building means the independent building to be located on the Land, as shown in Annexure C, that contains the Affordable Housing that is designed, constructed and fitted out by the Developer to meet the requirements of the Onsite

Affordable Housing and, where the context permits, includes the title of the land on which the building is located.

Affordable Housing Restriction means the restriction on the use of land by a prescribed authority pursuant to section 88E of the *Conveyancing Act 1919* (NSW) on the terms set out in Annexure A, with any changes to those terms being subject to the prior written approval of the City.

Alternative Height of Buildings Map means the alternative height controls that may be relied upon by the Developer under a future Development Application as proposed under the Planning Proposal.

Attributed Value means the value the City and the Developer agree is to be attributed to each element of the Public Benefits as at the date of this document, as set out in clause 1 of Schedule 3 of this document.

Authorisation means:

- (a) an approval, authorisation, consent, declaration, exemption, permit, licence, notarisation or waiver, however it is described, and including any condition attached to it; and
- (b) in relation to anything that could be prohibited or restricted by law if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken,

including any renewal or amendment.

Business Day means a day (other than a Saturday, Sunday or gazetted public holiday) on which banks are open for general banking business in Sydney, Australia.

City's Policies means all formally adopted policies and procedures relevant to the provision of the Public Benefits, as notified by the City in writing to the Developer.

City's Representative means the person named in Item 3 of Schedule 1 or his/her delegate.

Community Housing Provider means the community housing provider nominated by the City that is registered in NSW under the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW), and that has a Tier 1 registration category as those tiers are defined in the Registrar of Community Housing NSW Local Scheme Tier Guidelines.

Community Housing Provider Agreement means the legally binding contract between the Developer and Community Housing Provider that provides for the transfer of the Affordable Housing Building to the Community Housing Provider and that meets the requirements set out in clause 4 of Schedule 3.

Concept Development Application means the same as a Concept Development Application of the Act.

Confidential Information means:

- (a) information of a party (**disclosing party**) that is:
 - (i) made available by or on behalf of the disclosing party to the other party (**receiving party**), or is otherwise obtained by or on behalf of the receiving party; and

- (ii) by its nature confidential or the receiving party knows, or ought reasonably to know, is confidential.

Confidential Information may be made available or obtained directly or indirectly, and before, on or after the date of this document.

Confidential Information does not include information that:

- (a) is in or enters the public domain through no fault of the receiving party or any of its officers, employees or agents;
- (b) is or was made available to the receiving party by a person (other than the disclosing party) who is not or was not then under an obligation of confidence to the disclosing party in relation to that information; or
- (c) is or was developed by the receiving party independently of the disclosing party and any of its officers, employees or agents.

Construction Certificate has the same meaning as in the Act.

Corporations Act means the *Corporations Act 2001* (Cth).

DBP Act means the *Design and Building Practitioners Act 2020* (NSW).

DBP Regulation means the *Design and Building Practitioners Regulation 2021* (NSW).

Dealing means selling, transferring, assigning, novating, charging, or encumbering and, where appearing, **Deal** has the same meaning.

Defect means any error, omission, defect, non-conformity, discrepancy, shrinkage, blemish in appearance or other fault in the Developer's Works or any other matter which prevents the Developer's Works from complying with the terms of this document, but excludes any intentional or wilful damage caused by Council, the Community Housing Provider, their agents, any tenants of the Affordable Housing Building or other third parties under their control.

Design Compliance Declaration means, in respect of the Developer's Works, a "design compliance declaration" as that term is defined in the DBP Act.

Design Excellence Strategy means a strategy approved by the City for a competitive design process for the Development of the Land, if required by the Sydney LEP.

Developer means Karimbla Properties (No. 60) Pty Ltd, or, to the extent that this document is novated to another entity pursuant to clause 13, that entity.

Developer's Representative means the person named in Item 4 of Schedule 1 or his/her delegate.

Developer's Works means the design, construction and fit-out of the Affordable Housing Building which forms parts of the Public Benefit described as "Onsite Affordable Housing" in clause 1 of Schedule 3.

Development means the development of the Land described at Item 2 of Schedule 1.

Development Application means the development application identified in Item 6 of Schedule 1 and includes all plans, reports models, photomontages, material boards (as amended supplemented) submitted to the consent authority before the determination of that Development Application.

Development Consent means any consent granted to the Development Application for the Development and includes all modifications made under section 4.55 of the Act.

Dispute means any dispute or difference between the parties arising out of, relating to or in connection with this document, including any dispute or difference as to the formation, validity, existence or termination of this document.

Environmental Laws means all laws and legislation relating to environmental protection, building, planning, health, safety or work health and safety matters and includes the following:

- (a) the *Work Health and Safety Act 2011 (NSW)*;
- (b) the *Protection of the Environment Operations Act 1997 (NSW)*; and
- (c) the *Contaminated Land Management Act 1997 (NSW)*.

Environmental Performance Initiatives means those parts of the Public Benefit described as "Environmental Performance Initiatives" in clause 1 of Schedule 3, to be delivered by the Developer in accordance with this document.

Government Agency means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

Gross Floor Area (GFA) has the meaning given to that term in the *Sydney Local Environment Plan* in effect at the date of this document.

GST means the same as in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Guarantee means a bank guarantee or documentary performance bond (including insurance bond) for the Guarantee Amount which must:

- (a) be denominated in Australian dollars;
- (b) be an unconditional undertaking;
- (c) be signed and issued by a bank licensed to carry on business in Australia, an Australian Prudential Regulation Authority (APRA) regulated authorised deposit taking institution or an insurer authorised by APRA to conduct new or renewal insurance business in Australia having at all times an investment grade security rating from an industry recognised rating agency of at least:
 - (i) BBB + (Standard & Poors and Fitch);
 - (ii) Baa 1 (Moody's); or
 - (iii) Bbb (Bests);
- (d) be issued on behalf of the Developer;
- (e) have no expiry or end date;

- (f) state the beneficiary as the City;
- (g) be irrevocable;
- (h) state the Guarantee Amount as the minimum amount required by this document to be lodged as security;
- (i) state the purpose of the security as required in accordance with this document.

Guarantee Amount(s) means the total amount listed in Item 7 of Schedule 1 of this document.

Guarantee Amount(s) Due Date means the date or milestone by which the Developer must provide the Guarantee Amount to the City, set out at Item 8 of Schedule 1.

Index Number means the Consumer Price Index (Sydney all groups) published by the Australian Bureau of Statistics from time to time.

Insolvency Event means:

- (a) having a controller, receiver, manager, administrator, provisional liquidator, liquidator or analogous person appointed;
- (b) an application being made to a court for an order to appoint a controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property;
- (c) the person being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (d) an application being made to a court for an order for its winding up;
- (e) an order being made, or the person passing a resolution, for its winding up;
- (f) the person:
 - (i) suspending payment of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or being or becoming otherwise insolvent; or
 - (ii) being unable to pay its debts or otherwise insolvent;
- (g) the person taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
- (h) a court or other authority enforcing any judgment or order against the person for the payment of money or the recovery of any property; or
- (i) any analogous event under the laws of any applicable jurisdiction,

unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved by the other party.

Instrument Change means an amendment to the Sydney LEP in accordance with the Planning Proposal.

Land means the land described in Item 1 of Schedule 1 of this document.

Landowner's Representative means the person named in Item 5 of Schedule 1 or his/her delegate.

Laws means all applicable laws, regulations, industry codes and standards, including all Environmental Laws.

Occupation Certificate has the same meaning as in the Act.

Onsite Affordable Housing means those parts of the Public Benefit described as "Onsite Affordable Housing" in clause 1 of Schedule 3.

Personal Information means:

- (a) personal information within the meaning of the *Privacy and Personal Information Protection Act 1998* (NSW);
- (b) health information within the meaning of the *Health Records and Information Privacy Act 2002* (NSW); and
- (c) any information which does not fall within the scope of paragraphs (a) and (b) above, but is personal information within the meaning of the *Privacy Act 1988* (Cth).

Personnel means the Developer's officers, employees, agents, contractors or subcontractors.

Planning Proposal means the planning proposal for the Land which received Gateway Determination from the Department of Planning and Environment on 2 March 2023 (PP-2022-2530).

Practical Completion means when the building construction is completed except for any omissions or defects that do not prevent the building from being reasonably capable of being used for its intended purpose.

Privacy Laws means the *Privacy Act 1988* (Cth), the *Privacy and Personal Information Protection Act 1998* (NSW), the *Health Records and Information Privacy Act 2002* (NSW); the *Spam Act 2003* (Cth), the *Do Not Call Register Act 2006* (Cth) and any other applicable legislation, regulations, guidelines, codes and the City's Policies relating to the handling of Personal Information.

Public Benefits means the provision of benefits to the community by the Developer in the form and at the times specified in Schedule 3.

RAB (CEP) Act means the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* (NSW).

RAB (CEP) Regulation means the *Residential Apartment Buildings (Compliance and Enforcement Powers) Regulation 2020* (NSW).

Regulated Design means, in respect of the Developer's Works, a "regulated design" as that term is defined in the DBP Act.

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

Subdivision of Land has the same meaning as in the Act.

Sydney LEP means *Sydney Local Environmental Plan 2012* (NSW).

Tax means a tax, levy, duty, rate, charge, deduction or withholding, however it is described, that is imposed by law or by a Government Agency, together with any related interest, penalty, fine or other charge.

Total Floor Area (TFA) has the meaning given to that term in clause 7.13 of the *Sydney Local Environmental Plan 2012* in effect at the date of this document.

Warm Shell Fit Out means the base building and associated base building services including utilities provision (water, electrical, sewer and telecommunications) and fire services provided in accordance with the Building Code of Australia and any other relevant legislation plus the following:

- (a) grid ceiling with troffer lights
- (b) plasterboard finish to solid external walls with paint finish (no internal partition walls)
- (c) floor finish in carpet tiles
- (d) black aluminium skirting to floor and wall junction
- (e) air conditioning in accordance with relevant Australian standards
- (f) 1 x kitchenette including
 - (i) joinery, benchtop
 - (ii) sink and tapware
 - (iii) no appliances
 - (iv) 1 x hot water heater
- (g) 1 x accessible WC including
 - (i) 1 x toilet
 - (ii) 1 x basin
 - (iii) 1 x shower

1.2 Rules for interpreting this document

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.

- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) A reference to **including** means “including, without limitation”.
- (g) A reference to **dollars** or **\$** is to an amount in Australian currency.
- (h) A reference to **this document** includes the agreement recorded by this document.
- (i) Words defined in the GST Act have the same meaning in clauses about GST.
- (j) This document is not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on a provision of this document to protect itself.

2. **APPLICATION OF THE ACT AND THE REGULATION**

2.1 Application of this document

This document is a planning agreement within the meaning of section 7.4 of the Act and applies to:

- (a) the Land; and
- (b) the Instrument Change.

2.2 Public Benefits to be made by Developer

Clause 5 and Schedule 3 set out the details of the:

- (a) Public Benefits to be delivered by the Developer;
- (b) time or times by which the Developer must deliver the Public Benefits; and
- (c) manner in which the Developer must deliver the Public Benefits.

2.3 Application of sections 7.11, 7.12 and 7.24 of the Act

The application of sections 7.11, 7.12 and 7.24 of the Act are excluded to the extent set out in Items 5 and 6 of Schedule 2 to this document.

2.4 City rights

This document does not impose an obligation on the City to:

- (a) grant Development Consent for the Development; or
- (b) exercise any function under the Act in relation to a change to an environmental planning instrument, including the making or revocation of an environmental planning instrument.

2.5 Explanatory note

The explanatory note prepared in accordance with clause 205 of the Regulation must not be used to assist in construing this document.

3. OPERATION OF THIS PLANNING AGREEMENT

3.1 Commencement

This document will commence on the later of:

- (a) the date of execution of this document by all parties to this document; or
- (b) the date the Instrument Change enters into force.

3.2 Assignment

To avoid doubt, upon the sale of the Land by the Landowner to the Developer (or any other third party) and subject to compliance with clause 12.2, the Landowner is released from all future obligations under this document.

4. WARRANTIES

4.1 Mutual warranties

Each party represents and warrants that:

- (a) **(power)** it has full legal capacity and power to enter into this document and to carry out the transactions that it contemplates;
- (b) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this document and to carry out the transactions contemplated;
- (c) **(Authorisations)** it holds each Authorisation that is necessary or desirable to:
 - (i) enable it to properly execute this document and to carry out the transactions that it contemplates;
 - (ii) ensure that this document is legal, valid, binding and admissible in evidence; or
 - (iii) enable it to properly carry on its business as it is now being conducted,and it is complying with any conditions to which any of these Authorisations is subject;
- (d) **(documents effective)** this document constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping or registration;
- (e) **(solvency)** there are no reasonable grounds to suspect that it will not be able to pay its debts as and when they become due and payable; and
- (f) **(no controller)** no controller is currently appointed in relation to any of its property, or any property of any of its subsidiaries.

4.2 Developer warranties

- (a) The Developer warrants to the City that, at the date of this document:

- (i) it is legally entitled to request and pursue all consents and approvals that are required by this document and, subject to obtaining such consents and approvals, do all things necessary to give effect to this document;
 - (ii) all work performed by the Developer and the Personnel under this document will be performed with due care and skill and to a standard which is equal to or better than that which a well experienced person in the industry would expect to be provided by an organisation of the Developer's size and experience; and
 - (iii) it is not aware of any matter which may materially affect the Developer's ability to perform its obligations under this document.
- (b) The Developer warrants to the City that, prior to commencing delivery of the Public Benefits it will have obtained all Authorisations and insurances required under any Law to carry out its obligations under this document.

4.3 Landowner warranties

The Landowner warrants to the City that, at the date of this document:

- (a) it is the registered proprietor of the Land;
- (b) it is legally entitled to obtain all consents and approvals that are required by this document and do all things necessary to give effect to this document; and
- (c) it is not aware of any matter which may materially affect the Landowner's ability to perform its obligations under this document.

5. **PUBLIC BENEFITS**

5.1 Developer to provide Public Benefits

The Developer must, at its cost and risk, provide the Public Benefits to the City in accordance with this document if it undertakes the Development that relies on the Alternative Height of Buildings Map.

5.2 Non-completion of Public Benefits

- (a) If the Developer makes a request by notice in writing not to complete the Public Benefits (or any part of the Public Benefits):
 - (i) the City may permit the Developer not to complete the Public Benefits (or any part of the Public Benefits) by issuing a notice in writing to the Developer stating that completion of the items identified in that notice is not required to fulfil the Developer's obligations under this document; and
 - (ii) the City may make a claim on the Guarantee in such amount as to complete any portion of Onsite Affordable Housing not being delivered by the Developer.
- (b) If the Developer fails to complete the whole of the Onsite Affordable Housing in the form and to the standards required under the Development Consent or this document then the City may either:
 - (i) complete the Onsite Affordable Housing itself, including by exercising its right to compulsorily acquire the Affordable Housing Building in accordance with clause 9.6 of this document; or

- (ii) modify the Onsite Affordable Housing to reasonably achieve the objectives identified in the Development Consent and this document,

and may recover all costs of and reasonably incidental to that work from the Developer. The City can claim on the Guarantee in order to exercise this right, in which case the provisions of clause 9 will apply.

- (c) If the City exercises its rights under this clause 5.2 to complete the Onsite Affordable Housing, the Developer grant the City a licence for the period necessary for the City to access the Land to carry out, or procure the carrying out, of the Public Benefits and, to the extent the DBP Act or the RAB (CEP) Act applies to the Developer's Works, the Developer must provide all required assistance to the City to enable the City to comply with the DBP Act and the RAB (CEP) Act (as applicable).

6. **INDEMNITY**

6.1 From Developer

The Developer indemnifies the City and the Landowner against all damage, expense, loss or liability of any nature suffered or incurred by the City or the Landowner arising from any act or omission by the Developer (or any Personnel) in connection with the performance of the Developer's obligations under this document, except where the damage, expense, loss or liability suffered or incurred is caused by, or contributed to by, any wilful or negligent act or omission of the City or the Landowner (or any person engaged by the City or Landowner).

7. **DEFECTS LIABILITY**

Not used

8. **REGISTRATION**

8.1 Registration of this document

- (a) The Developer and Landowner:
 - (i) consent to the registration of this document at the NSW Land Registry Services on the certificate of title to the Land;
 - (ii) warrant that they have obtained all consents to the registration of this document on the certificate of title to the Land; and
 - (iii) must within 10 Business Days of a written request from the City do all things necessary to allow the City to register this document on the certificate of title to the Land, including but not limited to:
 - (A) producing any documents or letters of consent required by the Registrar-General of the NSW Land Registry Services; and
 - (B) the Developer providing the City with a cheque or electronic funds transfer for registration fees payable in relation to registration of this document at NSW Land Registry Services.
- (b) The Developer, the Landowner and the City must act promptly in complying with and assisting to respond to any requisitions raised by the NSW Land Registry Services that relate to registration of this document.

- (c) The City will notify the Developer and Landowner of any registration of this document by the City and provide the Developer and Landowner with a copy of all documents confirming any such registration.

8.2 Release of this document

If:

- (a) the City is satisfied, acting reasonably, that the Developer has provided all Public Benefits (unless waived by the City in accordance with this document or otherwise the subject of a notice issued under clause 6.3(a)) and otherwise complied with this document; or
- (b) this document is terminated in accordance with clause 13,

then the City must promptly do all things reasonably required to remove this document from the certificate of title to the Land.

9. ENFORCEMENT

9.1 Developer to provide Guarantee

The Developer must deliver the Guarantee for the Guarantee Amount to the City by the Guarantee Amount Due Date.

9.2 Adjustment of Guarantee Amount

- (a) Following each anniversary of the date of the Guarantee (the "Adjustment Date") and at any time prior to the expiry of the Defects Liability Period, the Guarantee Amounts are to be adjusted to a revised amount by applying the following formula:

$$\mathbf{RGA} = \mathbf{GA} \times (\mathbf{A/B})$$

where:

RGA is the revised guarantee amount applicable from the relevant Adjustment Date

GA is the Guarantee Amount that is current on the relevant Adjustment Date

A is the Index Number most recently published before the relevant Adjustment Date

B is the Index Number most recently published:

- (i) before the date of the Guarantee for the first Adjustment Date; and
- (ii) before the preceding Adjustment Date for every subsequent Adjustment Date

If after the formula is applied the revised Guarantee Amount will be less than the amount held at the preceding Adjustment Date, the Guarantee Amount will not be adjusted.

- (b) If the Guarantee Amount is adjusted under clause 9.2(a), the Developer is not required to provide the City with a replacement Guarantee for that revised Guarantee Amount until such time as the City notifies the Developer that the City is ready to exchange the then current Guarantee held by the City, following

which the City and the Developer must promptly exchange the then current Guarantee held by the City with a replacement Guarantee for that revised Guarantee Amount from the Developer.

9.3 Right of City to claim on Guarantee

- (a) The Developer agrees that the City may make an appropriation from the Guarantee in such amount as the City, acting reasonably, thinks appropriate if:
 - (i) the City allows the Developer not to complete the Onsite Affordable Housing, or any part of it, in accordance with clause 5.2(a);
 - (ii) an Insolvency Event occurs in respect of the Developer;
 - (iii) the Developer fails to deliver the Onsite Affordable Housing in accordance with clause 5.2(b);
 - (iv) to the extent the DBP Act applies to the Developer's Works, any Regulated Designs and Design Compliance Declarations for those Regulated Designs in relation to the Developer's Works are not procured by the Developer or the Personnel as required by the DBP Act or the DBP Regulation or otherwise not provided to the City as and when required by this document;
 - (v) to the extent the RAB (CEP) Act applies to the Developer's Works, the City incurs any other cost, expense or liability in exercising its rights to appeal or make representations under clauses 6.6(a)(iv) or 6.6(a)(vi) of Schedule 3;
 - (vi) the Onsite Affordable Housing does not reach Practical Completion within 60 months of the date of issue of the first Construction Certificate in respect of that part of the Development that includes the Affordable Housing Building (or such later time as agreed by the City in writing, such agreement not being unreasonably withheld having regard to the City's regulatory obligations);
 - (vii) the City incurs any other expense or liability in exercising its rights and powers under this document.
- (b) Any amount of the Guarantee appropriated by the City in accordance with clause 9.2(b) must be applied only towards:
 - (i) the reasonable costs and expenses incurred by the City rectifying any default by the Developer under this document;
 - (ii) carrying out any works required to achieve the Onsite Affordable Housing;
 - (iii) to the extent the DBP Act applies to the Developer's Works, the costs and expenses incurred by the City rectifying any failure by the Developer or the Personnel to procure Regulated Designs and Design Compliance Declarations for those Regulated Designs in relation to the Developer's Works as required by the DBP Act or the DBP Regulation and to provide copies of any Regulated Designs and Design Compliance Declarations for those Regulated Designs in relation to the Developer's Works to the City when required by this document; or
 - (iv) to the extent the RAB (CEP) Act applies to the Developer's Works, any costs, expenses or liabilities incurred by the City in exercising its rights to appeal

or make representations under clauses 6.6(a)(iv) or 6.6(a)(vi) of Schedule 3.

9.4 Expenditure by the City

If the City claims on the Guarantee to Complete the Developer's Works, then the City:

- (a) is not required to expend more money than the Guarantee Amount and may elect not to carry out items of the Developer's Works to ensure that those works can be carried out for an amount equal to or less than the Guarantee Amount; or
- (b) may expend more than the Guarantee Amount. If the City reasonably expends more money than the Guarantee Amount then the amount in excess of the Guarantee Amount will be deemed to be a debt due and owing to the City by the Developer.

9.5 Top-up and return of Guarantee

- (a) If the City calls upon the Guarantee in accordance with this clause 9 then the Developer must immediately provide to the City a replacement Guarantee to ensure that, at all times until the Guarantee is released in accordance with paragraph (b), the City is in possession of a Guarantee for a face value equivalent to the Guarantee Amount.
- (b) If the monies secured by the Guarantee have not been expended, then the City will return the Guarantee to the Developer within 15 Business Days of the first Occupation Certificate for that part of the Development that includes the Affordable Housing Building.

9.6 Compulsory acquisition

If the Developer fails to deliver the Onsite Affordable Housing in accordance with Schedule 3 of this document then the City may compulsorily acquire that portion of the Land that comprises, or will comprise, the Affordable Housing Building for the amount of \$1.00 in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*. The City and the Developer agree that:

- (a) this clause 9.6 is an agreement between the Developer and the City for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*;
- (b) in this clause 9.6 the Developer and the City have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition; and
- (c) if the acquisition of that portion of the Land that comprises, or will comprise, the Affordable Housing Building is liable for duty, the City agrees to make an application for an exemption from duty under section 277 of the *Duties Act 1997 (NSW)* prior to the transfer of the Land; and
- (d) the Developer must pay the City, promptly, an amount equivalent to all costs reasonably incurred by the City in acquiring the whole or any part of the Affordable Housing Building as contemplated by this clause 9.6 following a request in writing from the City, setting out the costs incurred by the City under this clause.

10. DISPUTE RESOLUTION

10.1 Application

Any Dispute must be determined in accordance with the procedure in this clause 10.

10.2 Negotiation

- (a) If any Dispute arises, a party to the Dispute (**Referring Party**) may by giving notice to the other party or parties to the Dispute (**Dispute Notice**) refer the Dispute to the Developer's Representative and the City's Representative and the Landowner's Representative for resolution. The Dispute Notice must:
 - (i) be in writing;
 - (ii) state that it is given pursuant to this clause 10; and
 - (iii) include or be accompanied by reasonable particulars of the Dispute including:
 - (A) a brief description of the circumstances in which the Dispute arose;
 - (B) references to any:
 - (aa) provisions of this document; and
 - (bb) acts or omissions of any person, relevant to the Dispute; and
 - (C) where applicable, the amount in dispute (whether monetary or any other commodity) and if not precisely known, the best estimate available.
- (b) Within 10 Business Days of the Referring Party issuing the Dispute Notice (**Resolution Period**), the Developer's Representative and the City's Representative and the Landowner's Representative must meet at least once to attempt to resolve the Dispute.
- (c) The Developer's Representative and the City's and the Landowner's Representative may meet more than once to resolve a Dispute. The Developer's Representative and the City's Representative and the Landowner's Representative may meet in person, via telephone, videoconference, internet-based instant messaging or any other agreed means of instantaneous communication to effect the meeting.
- (d) Notwithstanding any other provisions of this agreement, the Landowner can be a party to the dispute and exercise the rights set out in Clause 10.2, but only until such time that the Developer becomes the registered proprietor of the Land.

10.3 Not use information

The purpose of any exchange of information or documents or the making of any offer of settlement under this clause 10 is to attempt to settle the Dispute. Neither party may use any information or documents obtained through any dispute resolution process undertaken under this clause 10 for any purpose other than in an attempt to settle the Dispute.

10.4 Condition precedent to litigation

Subject to clause 10.5, a party must not commence legal proceedings in respect of a Dispute unless:

- (a) a Dispute Notice has been given; and
- (b) the Resolution Period has expired.

10.5 Summary or urgent relief

Nothing in this clause 10 will prevent a party from instituting proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.

11. TAXES AND GST

11.1 Responsibility for Taxes

- (a) The Developer is responsible for any and all Taxes and other like liabilities which may arise under any Commonwealth, State or Territory legislation (as amended from time to time) as a result of or in connection with this document or the Public Benefits, if payable.
- (b) The Developer must indemnify the City in relation to any claims, liabilities and costs (including penalties and interest) arising as a result of any Tax or other like liability for which the Developer is responsible under clause 11.1(a).

11.2 GST free supply

To the extent that Divisions 81 and 82 of the GST Law apply to a supply made under this document:

- (a) no additional amount will be payable by a party on account of GST; and
- (b) no tax invoices will be exchanged between the parties.

11.3 Supply subject to GST

To the extent that clause 11.2 does not apply to a supply made under this document, this clause 11.3 will apply.

- (a) If one party (**Supplying Party**) makes a taxable supply and the consideration for that supply does not expressly include GST, the party that is liable to provide the consideration (**Receiving Party**) must also pay an amount (**GST Amount**) equal to the GST payable in respect of that supply.
- (b) Subject to first receiving a tax invoice or adjustment note as appropriate, the receiving party must pay the GST amount when it is liable to provide the consideration.
- (c) If one party must indemnify or reimburse another party (**Payee**) for any loss or expense incurred by the Payee, the required payment does not include any amount which the Payee (or an entity that is in the same GST group as the Payee) is entitled to claim as an input tax credit, but will be increased under clause 11.3(a) if the payment is consideration for a taxable supply.
- (d) If an adjustment event arises in respect of a taxable supply made by a Supplying Party, the GST Amount payable by the Receiving Party under clause 11.3(a) will be recalculated to reflect the adjustment event and a payment will be made by

the Receiving Party to the Supplying Party, or by the Supplying Party to the Receiving Party, as the case requires.

- (e) The Developer will assume the City is not entitled to any input tax credit when calculating any amounts payable under this clause 11.3.
- (f) In this document:
 - (i) consideration includes non-monetary consideration, in respect of which the parties must agree on a market value, acting reasonably; and
 - (ii) in addition to the meaning given in the GST Act, the term "GST" includes a notional liability for GST.

12. **DEALINGS**

12.1 Dealing by the City

- (a) The City may Deal with its interest in this document without the consent of the Developer if the Dealing is with a Government Agency. The City must give the Developer notice of the Dealing within five Business Days of the date of the Dealing.
- (b) The City may not otherwise Deal with its interest in this document without the consent of the Developer, such consent not to be unreasonably withheld or delayed.

12.2 Dealing by the Developer and Landowner

- (a) The Developer and the Landowner may Deal with this document without the consent of the City only as a result of the sale of the whole of the Land by the Landowner to the Developer and provided the City is given prior notice.
- (b) Prior to registration of this document in accordance with clause 8;
 - (i) the Developer must not Deal with this document without:
 - (A) the prior written consent of the City (such consent not to be unreasonably withheld); and
 - (B) the City, the Developer, the Landowner and the third party the subject of the Dealing entering into a deed of consent to the Dealing on terms substantially similar to this document.
 - (ii) other than as permitted under clause 12.2 (a), the Landowner must not Deal with this document without:
 - (A) the prior written consent of the City (such consent not to be unreasonably withheld); and
 - (B) the City, the Landowner and the third party the subject of the Dealing entering into a Novation Deed.
- (c) Other than as permitted under clause 12.2 (a), on and from registration of this document in accordance with clause 8:
 - (i) the Developer may Deal with this document without the consent of the City only as a result of the sale of the whole of the Land (without subdivision) to a purchaser of the Land;

- (ii) the Developer may register a plan of strata subdivision, and the City consents to this document remaining registered only on the certificate of title to the common property of the strata plan upon registration of the strata plan; and
 - (iii) the Developer must not otherwise Deal with this document to a third party that is not a purchaser of the whole or any part of the Land without:
 - (A) the prior written consent of the City (such consent not to be unreasonably withheld); and
 - (B) the City, the Developer and the third party the subject of the Dealing entering into a deed of consent to the Dealing on terms acceptable to the City.
 - (iv) the Landowner must not otherwise Deal with this document to a third party that is a purchaser of the whole or any part of the Land without
 - (A) the prior written consent of the City (such consent not to be unreasonably withheld); and
 - (B) the City, the Landowner and the third party the subject of the Dealing entering into a Novation Deed in respect of the Dealing.
- d) The Developer must pay the City's costs and expenses relating to any consent or documentation required due to the operation of this clause 12.2.
- e) If a third party is acquiring an interest in the Land as a purchaser of one or more strata lots in a strata scheme (whether or not the relevant strata scheme has been registered at NSW Land Registry Services), then:
- (i) The Developer is not required to comply with clauses 12.1(b)(i) or 12.2(c)(iii); and
 - (ii) The Landowner is not required to comply with clauses 12.2(b)(ii) or 12.2(c)(iv).

13. **TERMINATION**

- (a) Either party may terminate this document by notice in writing to the other parties if:
 - (i) the Instrument Change does not enter into force within 24 months after the date of this document; or
 - (ii) the Sydney LEP is subsequently amended by an environmental planning instrument made after the Instrument Change, in a way that prevents the Development from proceeding; or
 - (iii) the Instrument Change is declared to be invalid by a Court of competent jurisdiction.
- (b) If this document is terminated in accordance with clause 13(a), then:

- (i) the rights of each party that arose before the termination or which may arise at any future time for any breach or non-observance of obligations occurring prior to the termination are not affected;
- (ii) the Developer must take all steps reasonably necessary to minimise any loss each party may suffer as a result of the termination of this document;
- (iii) the City will return the Guarantee to the Developer after first deducting any amounts owing to the City or reasonable costs incurred by the City by operation of this document; and
- (iv) the City will, at the Developer's cost, do all things reasonably required to remove this document from the certificate of title to the Land in accordance with clause 8.

14. **CONFIDENTIALITY, DISCLOSURES AND PRIVACY**

14.1 Use and disclosure of Confidential Information

A party (**receiving party**) which acquires Confidential Information of another party (**disclosing party**) must not:

- (a) use any of the Confidential Information except to the extent necessary to exercise its rights and perform its obligations under this document; or
- (b) disclose any of the Confidential Information except in accordance with clauses 14.2 or 14.3.

14.2 Disclosures to personnel and advisers

- (a) The receiving party may disclose Confidential Information to an officer, employee, agent, contractor, or legal, financial or other professional adviser if:
 - (i) the disclosure is necessary to enable the receiving party to perform its obligations or to exercise its rights under this document; and
 - (ii) prior to disclosure, the receiving party informs the person of the receiving party's obligations in relation to the Confidential Information under this document and obtains an undertaking from the person to comply with those obligations.
- (b) The receiving party:
 - (i) must ensure that any person to whom Confidential Information is disclosed under clause 14.2(a) keeps the Confidential Information confidential and does not use it for any purpose other than as permitted under clause 14.2(a); and
 - (ii) is liable for the actions of any officer, employee, agent, contractor or legal, financial or other professional adviser that causes a breach of the obligations set out in clause 14.2(b)(i).

14.3 Disclosures required by law

- (a) Subject to clause 14.3(b), the receiving party may disclose Confidential Information that the receiving party is required to disclose:
 - (i) by law or by order of any court or tribunal of competent jurisdiction; or
 - (ii) by any Government Agency, stock exchange or other regulatory body.

- (b) If the receiving party is required to make a disclosure under clause 14.3(a), the receiving party must:
 - (i) to the extent possible, notify the disclosing party immediately it anticipates that it may be required to disclose any of the Confidential Information;
 - (ii) consult with and follow any reasonable directions from the disclosing party to minimise disclosure; and
 - (iii) if disclosure cannot be avoided:
 - (A) only disclose Confidential Information to the extent necessary to comply; and
 - (B) use reasonable efforts to ensure that any Confidential Information disclosed is kept confidential.

14.4 Receiving party's return or destruction of documents

On termination of this document the receiving party must immediately:

- (a) deliver to the disclosing party all documents and other materials containing, recording or referring to Confidential Information; and
- (b) erase or destroy in another way all electronic and other intangible records containing, recording or referring to Confidential Information,

which are in the possession, power or control of the receiving party or of any person to whom the receiving party has given access.

14.5 Security and control

The receiving party must:

- (a) keep effective control of the Confidential Information; and
- (b) ensure that the Confidential Information is kept secure from theft, loss, damage or unauthorised access or alteration.

14.6 Media releases

Either party must not issue any information, publication, document or article for publication in any media concerning this document or the Public Benefits without the prior written consent of the other party.

14.7 Privacy

- (a) Without limiting its obligations at law with respect to privacy and the protection of Personal Information, the Developer:
 - (i) must not, directly or indirectly collect, use or disclose any Personal Information under or in connection with this document except to the extent necessary to perform its obligations under this document; and
 - (ii) must in the delivery of the Public Benefits and the performance of all its other obligations under this document comply with the Privacy Laws and must not do any act or engage in any practice that would breach the Privacy Laws or which if done or engaged in by the City would be a breach of any Privacy Laws.

15. **NOTICES**

- (a) A notice, consent or other communication under this document is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail or email. If it is sent by mail, it is taken to have been received 5 Business Days after it is posted. If it is sent by email, it is taken to have been received the same day the email was sent, provided that the sender has not received a delivery failure notice (or similar), unless the time of receipt is after 5:00pm in which case it is taken to be received on the next Business Day.
- (b) A person's address and email address are those set out in Schedule 1 for the City's Representative, the Developer's Representative and Landowner's Representative, or as the person notifies the sender in writing from time to time.

16. **GENERAL**

16.1 Governing law

- (a) This document is governed by the laws of New South Wales.
- (b) Each party submits to the exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document, and waives any right it might have to claim that those courts are an inconvenient forum.

16.2 Access to information

In accordance with section 121 of the *Government Information (Public Access) Act 2009 (NSW)*, the Developer agrees to allow the City immediate access to the following information contained in records held by the Developer:

- (a) information that relates directly to the delivery of the Public Benefits by the Developer;
- (b) information collected by the Developer from members of the public to whom the Developer provides, or offers to provide, services on behalf of the City; and
- (c) information received by the Developer from the City to enable the Developer to deliver the Public Benefits.

16.3 Liability for expenses

- (a) The Developer must pay its own and the City's expenses incurred in negotiating, executing, registering, releasing, administering and enforcing this document.
- (b) The Developer must pay for all reasonable costs and expenses associated with the preparation and giving of public notice of this document and the explanatory note prepared in accordance with the Regulations and for any consent the City is required to provide under this document.

16.4 Relationship of parties

- (a) Nothing in this document creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) No party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

16.5 Giving effect to this document

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this document.

16.6 Time for doing acts

(a) If:

(i) the time for doing any act or thing required to be done; or

(ii) a notice period specified in this document,

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 5pm on the specified day, it is taken to have been done on the following Business Day.

16.7 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this document without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

16.8 Preservation of existing rights

The expiration or termination of this document does not affect any right that has accrued to a party before the expiration or termination date.

16.9 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this document for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

16.10 Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:

(a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;

(b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and

(c) the exercise of a right does not prevent any further exercise of that right or of any other right.

16.11 Operation of this document

(a) This document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.

- (b) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

16.12 Operation of indemnities

- (a) Each indemnity in this document survives the expiry or termination of this document.
- (b) A party may recover a payment under an indemnity in this document before it makes the payment in respect of which the indemnity is given.

16.13 Inconsistency with other documents

Unless the contrary intention is expressed, if there is an inconsistency between any of one or more of:

- (a) this document;
- (b) any Schedule to this document; and
- (c) the provisions of any other document of the Developer,

the order of precedence between them will be the order listed above, this document having the highest level of precedence.

16.14 No fetter

Nothing in this document in any way restricts or otherwise affects the City's unfettered discretion to exercise its statutory powers as a public authority.

16.15 Counterparts

This document may be executed in counterparts.

SCHEDULE 1

Agreement Details

ITEM	TERM	DESCRIPTION
1.	Land	Lot 7 in DP 24134, known as 118-130 Epsom Road and Lot 2 in DP 830870, known as 905 South Dowling Street, Zetland 2017.
2.	Development	The development on the Land which relies on the Alternative Height of Buildings Map that is permitted by the controls proposed in the Planning Proposal and subject to the resultant Instrument Change, noting that this includes every Development Consent granted as a result of the Planning Proposal.
3.	City's Representative	Name: Director, City Planning, Development and Transport Address: Level 1, 456 Kent Street, Sydney NSW 2000 Email: planningsystemsadmin@cityofsydney.nsw.gov.au
4.	Developer's Representative	Name: General Counsel Address: Level 11, 528 Kent Street, Sydney NSW 2000 Email: generalcounsel@meriton.com.au mailto:
5.	Landowner's Representative	Name: Michael Winnem Address: Level 1, 134 William Street, Woolloomooloo NSW 2011 Email: Michael.winnem@suttons.com.au
6.	Development Application	Means any development application submitted to the City in connection with the Development.
7.	Guarantee Amount	A total amount of \$9,219,188.00 excluding GST.

ITEM	TERM	DESCRIPTION
8.	Guarantee Amount Due Date	Prior to the issue of the first Construction Certificate for the Development, excluding any Construction Certificate issued pursuant to Development Consents D/2023/720 and D/2023/753 for demolition of existing structures on, or remediation or excavation of, or civil works for roads, sewer, stormwater and water supply infrastructure in preparation for the future mixed-use development, on the Land.

SCHEDULE 2

Requirements under the Act and Regulation (clause 2)

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

ITEM	SECTION OF ACT OR REGULATION	PROVISION/CLAUSE OF THIS DOCUMENT
1.	<p>Planning instrument and/or development application (section 7.4(1) of the Act)</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument;</p> <p>(b) made, or proposes to make, a Development Application; or</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) Yes</p> <p>(b) No</p> <p>(c) No</p>
2.	<p>Description of land to which this document applies (section 7.4(3)(a) of the Act)</p>	Item 1 of Schedule 1.
3.	<p>Description of change to the environmental planning instrument to which this document applies and/or the development to which this document applies (section 7.4(3)(b) of the Act)</p>	The environmental planning instrument as described in clause 2.1.
4.	<p>The nature and extent of the provision to be made by the developer under this document, the time or times by which the provision is to be made and the manner in which the provision is to be made (section 7.4(3)(c) of the Act)</p>	Schedule 3
5.	<p>Whether this document excludes (wholly or in part) of does not exclude the application of section 7.11, 7.12 or 7.24 to the development (section 7.4(3)(d) of the Act)</p>	<p>Section 7.11 not excluded</p> <p>Section 7.12 not excluded</p> <p>Section 7.24 not excluded</p>
6.	<p>Applicability of section 7.11 of the Act (section 7.4(3)(e) of the Act)</p>	The application of section 7.11 of the Act is not excluded in respect of the Development and contributions (if any) under section 7.11 will be required to be paid.

ITEM	SECTION OF ACT OR REGULATION	PROVISION/CLAUSE OF THIS DOCUMENT
7.	Consideration of benefits under this document if section 7.11 applies (section 7.4(3)(e) of the Act)	Benefits are not to be taken into consideration in determining a development contribution under section 7.11 of the Act.
8.	Mechanism for Dispute Resolution (section 7.4(3)(f) of the Act)	Clause 10
9.	Enforcement of this document (section 7.4(3)(g) of the Act)	Clause 9
10.	No obligation to grant consent or exercise functions (section 7.4(9) of the Act)	Clause 2.4
11.	Registration of this document (section 7.6 of the Act)	Clause 8
12.	Whether certain requirements of this document must be complied with before a construction certificate is issued (clause 25E(2)(g) of the Regulation)	Provision of the relevant Public Benefits in clause 1 of Schedule 3.
13.	Whether certain requirements of this document must be complied with before a subdivision certificate is issued (clause 25E(2)(g) of the Regulation)	Not applicable
14.	Whether certain requirements of this document must be complied with before an occupation certificate is issued (clause 25E(2)(g) of the Regulation)	Provision of the relevant Public Benefits clause 1 of Schedule 3.
15.	Whether the explanatory note that accompanied exhibition of this document may be used to assist in construing this document (clause 25E(7) of the Regulation)	Clause 2.5

SCHEDULE 3

Public Benefits (clause 5)

1. PUBLIC BENEFITS - OVERVIEW

The Developer must provide the Public Benefits in accordance with Schedule 3 and this document if the future Development Applications for the Development rely on the Alternative Height of Buildings Map. The Attributed Value, timing of delivery and additional specifications relating to the Public Benefits is set out in the table below

Item	Public Benefit	Attributed Value	Due date	Additional specifications
1.	Environmental Performance Initiatives	Nil	<p>(a) On or before the date of issue of the first Occupation Certificate for each building in the Development.</p> <p>(b) On or before the date of issue of the first Construction Certificate for each residential component, building or stage in the Development.</p> <p>(c) On or before the date of issue of the first Occupation Certificate for each building in the Development.</p>	<p>(a) Design and construct all future buildings in the Development to be capable of providing a dual reticulation system for non-potable recycled water (refer to clause 2.1 of Schedule 3).</p> <p>(b) Submission to the City of BASIX Certificates demonstrating an energy and water BASIX score of at least 5 points above the target (refer to clause 2.2 of Schedule 3).</p> <p>(c) Installation of infrastructure to enable all residential parking spaces in the Development to be capable of being fitted with an Electric Vehicle Charger (refer to clause 2.3 of Schedule 3).</p>
2.	Non-residential floor space	Nil	On or before the date of issue of the first Development Consent for the Concept Development Application for the Development.	The Concept Development Application submitted by the Developer is to enable the provision of a minimum of 3,696 square metres of non-residential Gross Floor Area (GFA) within the Development to ensure that there is a genuine provision of retail, childcare and other non-residential

				services provided within the Development to serve the day-to-day needs of the local area within a walkable/accessible location and reduce car dependency.
3.	Onsite Affordable Housing	\$23,391,396.80	<p>(a) Prior to the first Occupation Certificate for the final residential component of the southern part of the Development (other than the Affordable Housing Building).</p> <p>(b) Prior to the first Construction Certificate for that part of the Development that includes the Affordable Housing Building, excluding any Construction Certificate issued for demolition of existing structures and public domain works.</p> <p>(c) & (d) Prior to the first Occupation Certificate for that part of the Development that includes the Affordable Housing Building.</p>	<p>(a) Design, construction and fit-out of the Affordable Housing Building as part of the Development, being of approximately 2,194 square metres (Gross Floor Area), that meets the requirements set out in clause 3 of Schedule 3.</p> <p>(b) Fully executed Community Housing Provider Agreement that meets the requirements set out in clause 4 of Schedule 3.</p> <p>(c) Payment of any monetary contribution for that part of the AHGFA that does not form part of the Affordable Housing Building.</p> <p>(d) Registration of the Affordable Housing Restriction on the Affordable Housing Building, and transfer of the Affordable Housing Building to the Community Housing Provider in accordance with the Community Housing Provider Agreement and clause 5 of Schedule 3.</p>

2. ENVIRONMENTAL PERFORMANCE INITIATIVES

2.1 Non-potable Recycled Water Dual Reticulation

- (a) The Developer must design and construct all buildings on the Land so as to be capable of providing a dual reticulation water system for water consumption. The system must be capable of fully connecting to the non-potable recycled water network provided by the City and must be configured to supply all toilets, washing machine taps, car wash bays, cooling towers and irrigation usage on the Land. It is to be noted that car wash bays are to be dedicated to car washing and not shared with any other purpose such as visitor parking.
- (b) As part of these requirements, the Developer must connect to the Non-potable Recycled Water Network installed by the City, in the event that Council's Non-potable Recycled Water Network system is not operational at that time, connect the non-potable water pipes in the building to the utility mains potable water supply pipes downstream of the Sydney Water mains supply water meter (Non Potable Water Connection Point) and allow the City to disconnect the potable water supply from the non-potable water system and connect the recycled water network as soon as it becomes operational.
- (c) Provide space of 1m x 1m x 2.4m (or as otherwise agreed by the City) and access for metering equipment, isolation valves and incoming pipes for recycled water at the non-potable water connection point at a location to be agreed between the parties.
- (d) Provide space and access from the property boundary to the non-potable water connection point for installation of recycled water pipes of 1 metre in width.
- (e) Non-potable recycled water supply static pressure will be a minimum of 15m head at the property boundary; and the Developer must design a reticulation system, including buffer storage of at least 35,000 litres or more storage as necessary, to adequately supply all the non-potable water end uses, specified in (a) above at all times.
- (f) Non-potable recycled water supply quality will comply with the relevant National and State guidelines for water recycling (including but not limited to Australian Guidelines for Water Recycling) regarding supply to toilets, washing machine taps, car wash bays, cooling towers and irrigation usage and have a Total Dissolved Solids consistent within the Australian Drinking Water Guidelines.

2.2 Residential Component Energy and Water BASIX

- (a) For all residential components of the Development, the Developer commits to the achievement of:
 - (i) an energy BASIX score at least 5 points above the target required for a BASIX Certificate;
 - (ii) a water BASIX score at least 5 points above the target required for a BASIX Certificate.
- (b) The Developer must provide the City with a copy of all BASIX Certificates issued for the Development prior to the issue of a Construction Certificate for each residential component, building or stage of the Development.

- (c) In the event that the new State Environmental Planning Policy (Sustainable Buildings) 2022 comes into force, then the provisions of that Policy will apply to the Development and will supersede the requirements of this Clause 2.2.

2.3 Electronic Vehicle Charging

To enable all residential parking spaces within the Development to be capable of being fitted with an Electric Vehicle Charger, electric vehicle charging infrastructure shall be provided as follows:

- (a) Power supply and distribution boards for electric vehicle charging in accordance with Section J9D4 'Facilities for electric vehicle charging equipment' in NCC 2022 Volume One – Building Code of Australia, and
- (b) All residential parking spaces are to be located within 10 metres of a cable tray sized to accommodate cabling for 100% of spaces it serves and terminates at the closest electric vehicle distribution board.

3. **ONSITE AFFORDABLE HOUSING**

3.1 Calculation of Affordable Housing

- (a) The minimum total square meterage (Gross Floor Area) of Affordable Housing required by clause 1 of Schedule 3 is to be calculated using the following formula:

$$\mathbf{AHGFA = (3\% \times RTFA) + (1\% \times NRTFA)}$$

where

AHGFA is the minimum Gross Floor Area of Affordable Housing

RTFA is the Total Floor Area of that part of the Development that is intended to be used for residential purposes, as determined in the Development Consent

NRTFA is the Total Floor Area of that part of the Development that is not intended to be used for residential purposes, as determined in the Development Consent

- (b) The following sets out the particulars of how the parties will manage the attribution of AHGFA to the delivery of the Public Benefits for the Development:
- (i) if the Affordable Housing Building is delivered prior to the final stage of the Development, the Developer must deliver an Affordable Housing Building of approximately 2,194 square metres. Any amount of AHGFA calculated in addition to the GFA in the Affordable Housing Building must be paid in accordance with clause 3.2(a)(ii);
- (ii) as part of issuing the Development Consent for each stage of the Development contemplated by the Planning Proposal, the City will:
- (A) prior to the grant of any Development Consent, provide to the Developer the amount of AHGFA to be delivered as part of the Development Consent; and
- (B) impose a condition of consent stating the amount of AHGFA to be delivered as part of the Development Consent and make provisions for it to be delivered in accordance with this Agreement.

- (iii) if the Development Consent does not specify:
 - (A) the amount of AHGFA to be delivered as part of a Development Consent; or
 - (B) that the amount of AHGFA is to be offset by the amount of AHGFA to be delivered by this clause 3 of Schedule 3,

the Developer may request a modification to the Development Consent and the City will co-operate with the Developer to ensure that the amount of AHGFA and its attribution is accurately reflected by the Development Consent;
- (iv) a failure of the Development Consent to address the matters raised in paragraph (iii) above does not impact the obligation of the Developer to deliver the Public Benefits in accordance with this document;
- (v) if the Developer disputes the calculation of AHGFA to be delivered as part of each Development Consent, the dispute provisions of this document will not apply and the Developer can exercise its usual rights to appeal a determination under the *Environmental Planning and Assessment Act 1979*;
- (vi) following the determination of each Development Consent that precedes the Development Consent for the Affordable Housing Building, the City will sum the total amount of AHGFA to be delivered as a Public Benefit under this document and inform the Developer of its calculation by notice in writing. The Developer must then comply with this document in the delivery of the AHGFA.

3.2 Affordable Housing requirements

- (a) The Developer is to deliver the AHGFA in the form of:
 - (i) the Affordable Housing Building; and
 - (ii) a monetary contribution for that part of the AHGFA that does not form part of the Affordable Housing Building.
- (b) The Affordable Housing Building must:
 - (i) consist entirely of Affordable Housing residential dwellings and associated common circulation areas, with the exception of one community/retail space at the ground level;
 - (ii) be the maximum size possible under the Sydney LEP, as amended by the Instrument Change;
 - (iii) not include any vehicle parking or building amenities such as a gym, pool, managers office or the like.
- (c) The Onsite Affordable Housing must meet the affordable housing principles set out in the City's 'Affordable Housing Program' adopted 24 August 2020 or any such updated or amended version of this document in effect at the time of lodgement of the Development Application that includes the Affordable Housing Building.
- (d) The Developer must design, construct and fit-out the Affordable Housing Building at its cost, including a Warm Shell Fit-Out of any community/retail space within the Affordable Housing Building.

- (e) Each residential dwelling within the Affordable Housing Building must have a total minimum floor area of 35 square metres (excluding any car or storage spaces).
- (f) The amenity objectives established by the Apartment Design Guide published by the NSW Department of Planning and Environment in effect at the time of lodgement of the Development Application that includes the Affordable Housing Building must be generally achieved for the Affordable Housing Building unless there are reasonable planning grounds for any non-compliance with a requirement of the Apartment Design Guide in effect at that time.
- (g) Subject to clause 3.2(h) of Schedule 3, the Affordable Housing Building must be:
 - (i) designed and constructed to the same standard as the other residential dwellings in the Development, and is not differentiated as affordable housing compared with the design and construction of other housing in the Development unless otherwise specified in the Community Housing Provider Agreement; and
 - (ii) fitted out in accordance with, or to a standard equivalent to, the specification in Annexure B.
- (h) The Developer must make changes to the design, construction and fit-out of the Affordable Housing Building as reasonably required by the Community Housing Provider to suit the Community Housing Provider's future use and maintenance program for the Affordable Housing Building, including changes that relate to:
 - (i) the configuration and/or layout of the dwellings within the Affordable Housing Building;
 - (ii) the finishes, materiality and/or durability of the construction and/or fit-out of the Affordable Housing Building; or
 - (iii) any accessibility requirements for the Affordable Housing Building.

This clause does not apply to changes that would require the lodgement of a modification to the relevant Development Consent for the Development Application that includes the Affordable Housing.

3.3 Affordable Housing consultation and reporting

- (a) The Developer must consult with the Community Housing Provider during all stages of the design, construction, fit-out and transfer of the Affordable Housing Building, including:
 - (i) providing regular updates on progress of the applicable Development Application and the design, construction, fit-out and transfer of the Affordable Housing Building;
 - (ii) the preparation of any Design Excellence Strategy competition brief that includes the Affordable Housing Building, noting the City reserves the right, in the event that it is the subject of a competitive process, to invite the Community Housing Provider to provide advice to the design competition jury and any advice given by the Community Housing Provider must not unreasonably delay that process;
 - (iii) providing regular opportunities for the Community Housing Provider to inspect the construction and fit-out of the Affordable Housing Building;

- (iv) obtaining the Community Housing Provider's agreement to any changes to or affecting the design, construction, fit-out and/or transfer of the Affordable Housing Building, which the Community Housing Provider must provide promptly and cannot unreasonably withhold.
- (b) The Developer must provide progress updates to the City, endorsed by the Community Housing Provider, in respect of the design, construction, fit-out and transfer of the Affordable Housing Building, and both party's compliance with the terms of the Community Housing Provider Agreement, where requested by the City, acting reasonably.

3.4 Development Application requirements

- (a) The Developer must obtain in writing the Community Housing Provider's approval of the proposed Affordable Housing Building prior to the lodgement of the Development Application that includes the Affordable Housing Building, which cannot be unreasonably withheld by the Community Housing Provider.
- (b) The Developer must identify the Affordable Housing Building in the Development Application, and demonstrate how the Affordable Housing requirements in clause 3.2 of Schedule 3 have been met.
- (c) The Developer must submit a letter of support for the proposed Affordable Housing Building from the Community Housing Provider as part of the Development Application that demonstrates the Community Housing Provider's in principle approval of the Affordable Housing Building, confirmation the Affordable Housing Building meet the Community Housing Provider's requirements, and in principle agreement to enter into the Community Housing Provider Agreement and accept the transfer of the Affordable Housing Building.

3.5 Monetary contribution

- (a) Where the Developer is required by clause 3.2(a)(ii) of Schedule 3 to provide a monetary contribution for some of the AHGFA:
 - (i) The monetary contribution will be calculated in accordance with the contribution amount per square metre specified in the City's 'Affordable Housing Program' adopted 24 August 2020 or any such updated or amended version of this document in effect at the time the contribution is due; and
 - (ii) The monetary contribution must be paid by the Developer in accordance with the City's 'Affordable Housing Program' adopted 24 August 2020 or any such updated or amended version of this document in effect at the time, prior to the first Occupation Certificate for that part of the Development that includes the Affordable Housing Building.

4. **COMMUNITY HOUSING PROVIDER AGREEMENT**

4.1 Selection of Community Housing Provider

- (a) The Developer must notify the City of its intent to submit the Development Application for that part of the Development that contains the Affordable Housing Building at least 6 months prior to the intended date of submission.
- (b) Within 3 months of the notice provided in accordance with clause 4.1(a) of Schedule 3, the City will notify the Developer of the Community Housing Provider.

- (c) The City will ensure that the nominated CHP is fully aware of the terms and obligations of the Community Housing Provider Agreement set out in clause 4.2 of this document.
- (d) The City does not assume or owe any duty of care to the Developer in selecting the Community Housing Provider, and selection of the Community Housing Provider by the City will not lessen or otherwise affect the Developer's obligations under this document.

4.2 Agreement requirements

The Developer must, at its cost, prepare and, subject to clause 4.3 of Schedule 3, enter into the Community Housing Provider Agreement by the due date specified in clause 1 Item 1 of Schedule 3 that:

- (a) provides for the transfer of the Affordable Housing Building to the Community Housing Provider, at no cost to the Community Housing Provider;
- (b) requires that, if the Community Housing Provider is exempt from the payment of duty under the *Duties Act 1977* (NSW) it must provide or do all things reasonably necessary to confirm to the Developer prior to transfer of the Affordable Housing Building that it is exempt;
- (c) requires the Affordable Housing Building to have the Affordable Housing Restriction registered on title, prior to the transfer of the Affordable Housing Building to the Community Housing Provider;
- (d) requires both parties comply with the City's 'Affordable Housing Program' adopted 24 August 2020 as updated or amended from time to time, in respect of the Affordable Housing Building;
- (e) specifies the size and layout of each dwelling comprising the Affordable Housing Building and the design, construction fit-out specifications, as agreed between the Developer and the Community Housing Provider;
- (f) requires that the Developer not amend, change or otherwise alter the size or layout of the Affordable Housing Building, or the design, construction and fit-out specifications agreed between the Developer and the Community Housing Provider except with the written approval of the Community Housing Provider, which cannot be unreasonably withheld;
- (g) requires that the Community Housing Provider cannot require the Developer to amend, change or otherwise alter the layout of the Affordable Housing Building, or the design, construction and fit out specifications agreed between the Developer and the Community Housing Provider, unless the changes or amendments are reasonably required and agreed to by the Developer;
- (h) specifies the process and timings for the Developer to provide regular updates to the Community Housing Provider on the applicable Development Application and the design, construction, fit-out and transfer of the Affordable Housing Building;
- (i) requires the Community Housing Provider respond promptly and without delay to requests for information, endorsement, or approval from the Developer;
- (j) sets out the processes for acceptance of the Affordable Housing Building by the Community Housing Provider following construction and fit-out, and prior to transfer of the Affordable Housing Building to the Community Housing Provider;

- (k) sets out a fair and reasonable process for dispute resolution, including for disputes relating to the size, layout, design, construction, fit-out and transfer of the Affordable Housing Building;
- (l) requires that the Developer promptly rectify, at its cost, any Defects in the Affordable Housing Building identified by the Community Housing Provider and notified to the Developer during the 12-month period commencing on the date the Affordable Housing Building is transferred to the Community Housing Provider; and
- (m) sets out when the parties can terminate the Community Housing Provider Agreement including (but not limited to) if either party fails to comply with a material obligation under the Community Housing Provider Agreement that is incapable of remedy or that cannot be remedied within a reasonable timeframe, or either party suffers an Insolvency Event.

4.3 City review of Agreement

- (a) The Developer must provide a copy of the proposed Community Housing Provider Agreement to the City and obtain the City's written confirmation that the proposed Community Housing Provider Agreement meets the requirements of clause 4.1 of Schedule 3, prior to execution of the Community Housing Provider Agreement.
- (b) The City must provide written confirmation that the Community Housing Provider Agreement meets the requirements of clause 4.1 of Schedule 3, or of any changes required in order for the City to provide such written confirmation, within 10 Business Days of receipt of the Community Housing Provider Agreement from the Developer in accordance with clause 4.3(a) above.
- (c) The Developer must notify the City of any variations or amendments to the Community Housing Provider Agreement.

4.4 Termination of Agreement or Insolvency Event of the Community Housing Provider

- (a) If:
 - (i) the Community Housing Provider Agreement is terminated for any reason prior to the transfer of the Affordable Housing Building to the Community Housing Provider, or
 - (ii) the Community Housing Provider is affected by an Insolvency Event,
 the Developer must promptly notify the City and request the City nominate an alternative Community Housing Provider.
- (b) The City will use its best endeavours to promptly select a new Community Housing Provider that will accept the terms of the Community Housing Provider Agreement as set out in clause 4.2 of this document and notify the Developer of the new Community Housing Provider within 30 Business Days of receipt of the notification from the Developer under clause **Error! Reference source not found.Error! Reference source not found.**
- (c) The Developer must enter into a new agreement with the new Community Housing Provider selected by the City on substantially the same terms.

5. **TRANSFER OF AFFORDABLE HOUSING BUILDING**

5.1 Transfer of land

The Developer must, at its cost, take all steps required to transfer the Affordable Housing Building to the Community Housing Provider, as its own single Torrens title allotment, consistent with the Community Housing Provider Agreement, and at no cost to the Community Housing Provider, by the due date specified in clause 1 of Schedule 3.

5.2 Evidence of transfer

The requirement for the Developer to transfer the Affordable Housing Building to the Community Housing Provider is satisfied where the Developer has provided the City with a title search showing that ownership of the Affordable Housing Building has been transferred to the Community Housing Provider in accordance with the requirements of this document.

5.3 General obligations

- (a) The Developer must ensure that the title to the Affordable Housing Building is free of all encumbrances, leases, licences and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except for the Affordable Housing Restriction and any encumbrances agreed in writing by both the Community Housing Provider and the City or unless required by a prescribed authority (as such term is defined in section 88E of the *Conveyancing Act 1919* (NSW)).
- (b) The Developer warrants that as at the date of this deed the Land is not subject to any Adverse Affectation and warrants as to those matters in Schedule 3 of the *Conveyancing (Sale of Land) Regulation 2022*(NSW), unless otherwise notified to and agreed by the City in writing in its absolute discretion.

6. **DEVELOPER'S WORKS**

6.1 Final design

- (a) The Developer must submit the final design of the Developer's Works to the City as part of the Development Application for that part of the Development that contains the Affordable Housing Building.
- (b) The parties agree that the review and approval of the final design of the Developer's Works, including ensuring its compliance with this document, will occur as part of the Development Application and Development Consent process under the Act. The final design will therefore be a design which is reflected in the applicable Development Consent, the approved plans and Construction Certificates issued pursuant to the applicable Development Consent.
- (c) If the Affordable Housing Building is subject to a competitive design process, the City agrees to the inclusion of provisions in the approved Design Excellence Strategy that describes the purpose and objectives of the Affordable Housing Building to inform the competitive design process.
- (d) The City does not assume or owe any duty of care to the Developer in reviewing any design drawings submitted to it under clause 6.1(a) of Schedule 3 or for any errors, omissions or non-compliance with this document.
- (e) No participation by the City in the development of, the review of, or comments on any design drawings submitted by the Developer will lessen or otherwise affect

the Developer's obligations under this document or constitute an acknowledgement by the City that the Developer have complied with their obligations under this document.

6.2 Insurance

- (a) From commencement of the Developer's Works until the date the Affordable Housing Building is transferred to the Community Housing Provider, the Developer must effect and maintain (or cause to be effected and maintained under one or more policies of insurance and without requiring any risk to be double insured) the following insurances held with an insurer licensed by the Australian Prudential Regulation Authority or holding an investment grade rating from Standard & Poors, Moody's or Fitch:
 - (i) worker's compensation insurance or registrations as required by Laws;
 - (ii) public liability insurance written on an occurrence basis with a limit of indemnity of not less than \$20,000,000 covering all aspects of the Developer's Works;
 - (iii) construction works insurance in relation to the Developer's Works; and
 - (iv) motor vehicle third party cover with a limit of indemnity of not less than \$20 million for each and every occurrence.
- (b) The Developer must submit a copy of all certificates of insurance to the City:
 - (i) prior to commencing construction of the Developer's Works; and
 - (ii) promptly following a written request by the City, provided that such a request is not made more than twice in any 12 month period.

6.3 Approvals and consents

The Developer must, at their cost, obtain all relevant approvals and consents for the Developer's Works, whether from the City or from any other relevant Government Agency, including any necessary road opening permits. Before commencing the Developer's Works, the Developer must give to the City copies of all approvals and consents for the Developer's Works, other than the Development Consent.

6.4 Construction work

The Developer must, at its cost:

- (a) carry out and complete the Developer's Works in accordance with all Laws, and all approvals and consents relating to the Developer's Works, including any approval given by the City under this document;
- (b) ensure that all Developer's Works are constructed in a good and workmanlike manner, in accordance with the plans approved under this document so that the Developer's Works are structurally sound, fit for purpose and suitable for their intended use;
- (c) ensure that the Developer's Works are complete by the due date specified in clause 1 of Schedule 3 and promptly after becoming aware advise the City's Representative of any significant delays in completing the Developer's Works or delays that may impact the delivery of the Public Benefits by the due date specified in clause 1 of Schedule 3; and

- (d) comply with all reasonable directions of the City made in accordance with this Agreement in respect to construction of the Developer's Works.

6.5 Inspections by the City

The City, as a party to this document and not in its role as a Government Agency, may:

- (a) inspect the Developer's Works during the course of construction at reasonable times and on reasonable notice; and
- (b) notify the Developer's Representative 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 an inspection.

Any failure by the City to identify a Defect, error or omission will not be construed as amounting to an acceptance by the City of the Defect, error or omission.

6.6 RAB (CEP) Act

This clause 6.6 of Schedule 3 (other than this sentence) applies only to the extent that the RAB (CEP) Act or the RAB (CEP) Regulation applies to the Developer's Works.

- (a) Without limiting any other obligation of the Developer, the Developer:
 - (i) must ensure that the Developer, and the Personnel and their respective employees and agents:
 - (A) comply with, and satisfy all obligations imposed on a developer under, the RAB (CEP) Act and the RAB (CEP) Regulation;
 - (B) do not cause the City to contravene the RAB (CEP) Act or the RAB (CEP) Regulation;
 - (C) do not carry out the Developer's Works in a manner that results in, or could result in:
 - (aa) a serious defect in relation to a residential apartment building;
 - (bb) significant harm or loss to the public or occupiers or potential occupiers of any building to which the Developer's Works relates; or
 - (cc) significant damage to property; and
 - (D) do not, by any act or omission, cause or contribute to any serious defect or the issue of any prohibition order, stop work order or building work rectification order;
 - (ii) must immediately provide the City with a copy of any notice issued to the Developer under the RAB (CEP) Act, including any prohibition order, stop work order, building work rectification order, notice of proposed building work rectification order and compliance cost notice;
 - (iii) must ensure that, in complying with its obligations under the RAB (CEP) Act, the Developer's Works are not delayed, and the Developer achieves the due dates for the Developer's Works specified in clause 1 of Schedule 3;
 - (iv) must provide all reasonable assistance to the City in exercising any right to make representations concerning any building work rectification order or

right of appeal as contemplated by the RAB (CEP) Act, including by providing the City with any information that may be necessary or required by the City for the purposes of any such representation or appeal;

- (v) acknowledges and agrees that:
 - (A) the RAB (CEP) Act contemplates particular orders and requirements, including:
 - (aa) requirements of an authorised officer;
 - (bb) stop work orders;
 - (cc) building work rectification orders; and
 - (dd) orders of the Court referred to in section 49(3) of the RAB (CEP) Act;
 - (B) such orders and requirements may be given or otherwise communicated directly to the Developer or otherwise; and
 - (C) the Developer must ensure that the Developer, the Personnel and their respective employees and agents comply with any such orders and requirements, whether they are given or otherwise communicated directly to the Developer or to any other person; and
- (vi) must comply with any compliance cost notice and reimburse the City for any costs incurred by the City in respect of any compliance cost notice, to the extent any such compliance cost notice relates to the Developer's Works.
- (b) The Developer will not be entitled to make, and the City will not be liable upon, any claim, damage, expense, loss or liability arising out of, or in any way in connection with, the Developer's obligations under this clause 6.6 of Schedule 3.
- (c) Except as otherwise provided in clause 1.1, all terms used in this clause 6.6 of Schedule 3 have the meanings given to them in the RAB (CEP) Act.

6.7 DBP Act and DBP Regulation

This clause 6.7 of Schedule 3 (other than this sentence) applies only to the extent that the DBP Act and the DBP Regulation applies to the Developer's Works.

- (a) Without limiting any other obligation of the Developer, the Developer must ensure that the Developer, the Personnel and their respective employees and agents:
 - (i) comply with the DBP Act and the DBP Regulation, including by preparing, providing and lodging all necessary or relevant documentation as and when required by, and in the form and method required by, the DBP Act and the DBP Regulation;
 - (ii) will be registered as required by the DBP Act and the DBP Regulation;
 - (iii) do not carry out the Developer's Works in a manner that results in, or could result in:
 - (A) significant harm or loss to the public or occupiers or potential occupiers of any building to which the Developer's Works relates; or
 - (B) significant damage to property; and

- (iv) do not, by any act or omission, cause or contribute to the issue of any stop work order.
- (b) The Developer warrants to the City that the Developer will perform the Developer's Works so as to avoid, and to otherwise not cause or contribute to, any economic loss (as contemplated by Part 4 of the DBP Act) on the part of any owner arising out of or in connection with any defect or otherwise arising out of or in connection with the Developer's Works.
- (c) In addition to and without limiting any other duty or obligation assumed by the Developer, the Developer acknowledges and agrees that it owes a duty to the City to exercise reasonable care to avoid economic loss (as contemplated by Part 4 of the DBP Act and whether suffered or incurred by the City or any owner) arising out of or in connection with any defect or otherwise arising out of or in connection with the Developer's Works.
- (d) In the event the City compulsorily acquires any of the Land under clause 9.6, the Developer indemnifies the City against any claims against, damages, expenses, losses or liabilities suffered or incurred by, the City arising out of, or in any way in connection with, any breach by the Developer of this clause 6.7 of Schedule 3.
- (e) The Developer must provide to the City at Practical Completion, from each person directly responsible for the lodgement of documents as required by the DBP Act, that all necessary and relevant documentation relating to the Developer's Works has been prepared, provided and lodged as and when required by, and in the form and method required by, the DBP Act and DBP Regulation.
- (f) The Developer will not be entitled to make, and the City will not be liable upon, any claim, damage, expense, loss or liability arising out of, or in any way in connection with, the Developer's obligations under this clause 6.7 of Schedule 3.
- (g) Except as otherwise provided in clause 1.1, all terms used in this clause 6.7 of Schedule 3 have the meanings given to them in the DBP Act and the DBP Regulation.

EXECUTED as a deed.

Signed, sealed and delivered for
THE COUNCIL OF THE CITY OF SYDNEY (ABN 22 636 550 790) by its duly authorised officer, in the presence of:

Signature of witness

Name

456 Kent Street, Sydney NSW 2000

Address of witness

EXECUTED BY KARIMBLA PROPERTIES (NO. 60) PTY LTD (ABN 44 622 383 724) in accordance with section 127 (1) of the Corporations Act 2001 (Cth):

Signature of director:

Name:

EXECUTED by **INVESTMENTS & LOANS PTY LTD** (ABN 42 000 079 738) in accordance with s127(1) of the Corporations Act 2001 (Cth):

Signature of director

Name

Signature of officer

Name of officer
Authorised delegate pursuant to section 377 of the Local Government Act 1993

Position of officer

Signature of director/secretary:

Name:

Signature of director/secretary

Name

ANNEXURE A

Affordable Housing Restriction

1. **DEFINITIONS**

Act means the *Environmental Planning and Assessment Act 1979* (NSW) as amended or varied from time to time

Affordable Housing has the meaning given in the Act.

Affordable Housing Dwellings means that part of the Land that has been approved in the Consent as Affordable Housing.

Consent means the consent granted to Development Application [insert DA number] in accordance with the Act\.

Conveyancing Act means the *Conveyancing Act 1919* (NSW) as amended or varied from time to time.

Council means the Council of the City of Sydney (ABN 22 636 550 790).

Eligible Community Housing Provider means an entity that provides community housing that is registered in NSW under the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW), and that has a registration category of Tier 1 or Tier 2, as those tiers are defined in the Registrar of Community Housing NSW Local Scheme Tier Guidelines, as varied or replaced.

Eligible Households means households taken to be a very low income household, low income household, or moderate income household, as such households are defined by reference to gross income in section 13(1)(a)(i) of the SEPP.

Land means the land contained within Folio Identifier [insert], also known as [insert address].

Maximum Rent means the percentage of household gross income for rent specified in section 13(1)(a)(ii) of the SEPP, or 30% of household gross income, whichever is the lesser.

Owner means the registered proprietor of the Land and every person (including a corporation) who at any time is entitled to an estate or interest in the Land, including but not limited to any freehold or leasehold estate or interest in possession in any part of the Land.

Program means the *City of Sydney Affordable Housing Program* adopted 24 August 2020, as varied or replaced.

SEPP means the *State Environmental Planning Policy (Housing) 2021* (NSW) as amended or varied from time to time.

Strata Act means the *Strata Schemes Development Act 2015* (NSW) as amended or varied from time to time.

2. **TERMS**

(a) The Owner must not develop, use or occupy the Affordable Housing Dwellings for any purpose other than for the purposes of Affordable Housing.

- (b) Any change of use of the Affordable Housing Dwellings from Affordable Housing is prohibited.
- (c) Any part of the Land that is used for Affordable Housing must be:
 - i. managed by an Eligible Community Housing Provider;
 - ii. provided to Eligible Households for a rent no greater than the Maximum Rent; and
 - iii. managed in accordance with the Program.
- (d) The Owner must obtain the consent of Council prior to the Land being subdivided, including but not limited to any subdivision under the Strata Act.
- (e) Any subdivision of the Land must include a restriction on the same terms as this document burdening all lots that comprise or contain Affordable Housing Dwellings.

3. GENERAL

- (a) This restriction on use is for the benefit of Council and only Council has the right to release, vary or modify this restriction in accordance with section 88E of the Conveyancing Act.
- (b) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.
- (c) In the event of any inconsistency between the terms and definitions of this restriction and the Act, SEPP, and/or Program, the terms of this restriction prevail to the extent permitted by law.

ANNEXURE B

Affordable Housing Building Fit-out Specification

ENTRY

Floor	Ceramic 600x600 tile polished finish
Walls	Lexicon white DULUX paint, low sheen finish
Lights	LED Downlights With Satin Finish
Door (Inside)	Hollow doors, Paint finish low sheen
Door (Outside)	Fire doors, Paint finish low sheen

LIVING

Floor	Grey Loop Pile Carpet
Walls	Lexicon white DULUX paint, low sheen finish
Blinds	White roller blinds with silver chain
Lights	LED down lights with satin finish
Provisions	Wall-mounted security intercom, provisions for high speed internet and pay TV
Ceiling	DULUX Lexicon white, flat finish
Skirtings	Lexicon white DULUX paint, semi gloss finish

BEDROOMS

Floor	Grey Loop Pile Carpet
Walls	Lexicon white DULUX paint, low sheen finish
Wardrobes	Built in wardrobes with white melamine and mirrored doors
Blinds	White roller blinds with silver chain
Lights	LED down lights with satin finish
Door	Hollow doors, Paint finish low sheen
Skirtings	Lexicon white DULUX paint, gloss finish SAMPLE 2
Ceiling	DULUX Lexicon white, flat finish

BALCONY / COURTYARD

Floor	600x600 lappato finish
Balustrade	Frameless glass with grey fixings (subject to design competition)
Lights	Ceiling mounted cannister, black downlight
Door	Floor-to-ceiling glass sliding doors

KITCHEN

Floor	Ceramic 600x600 tile polished finish
Walls	Lexicon white DULUX paint, low sheen finish
Splashback	Ceramic tile polished finish
Benchtop	Caesarstone, 20mm polished finish
Cupboards	Polyurethane, Dulux terrace white, 100% gloss
Sink	Stainless steel under mounted double or single sink
Tapware	Alder sink mixer
Appliances	600mm range ARTUSI / OMEGA oven, gas cooktop and under mounted rangehood.
Ceiling	DULUX Lexicon white, flat finish

BATHROOMS

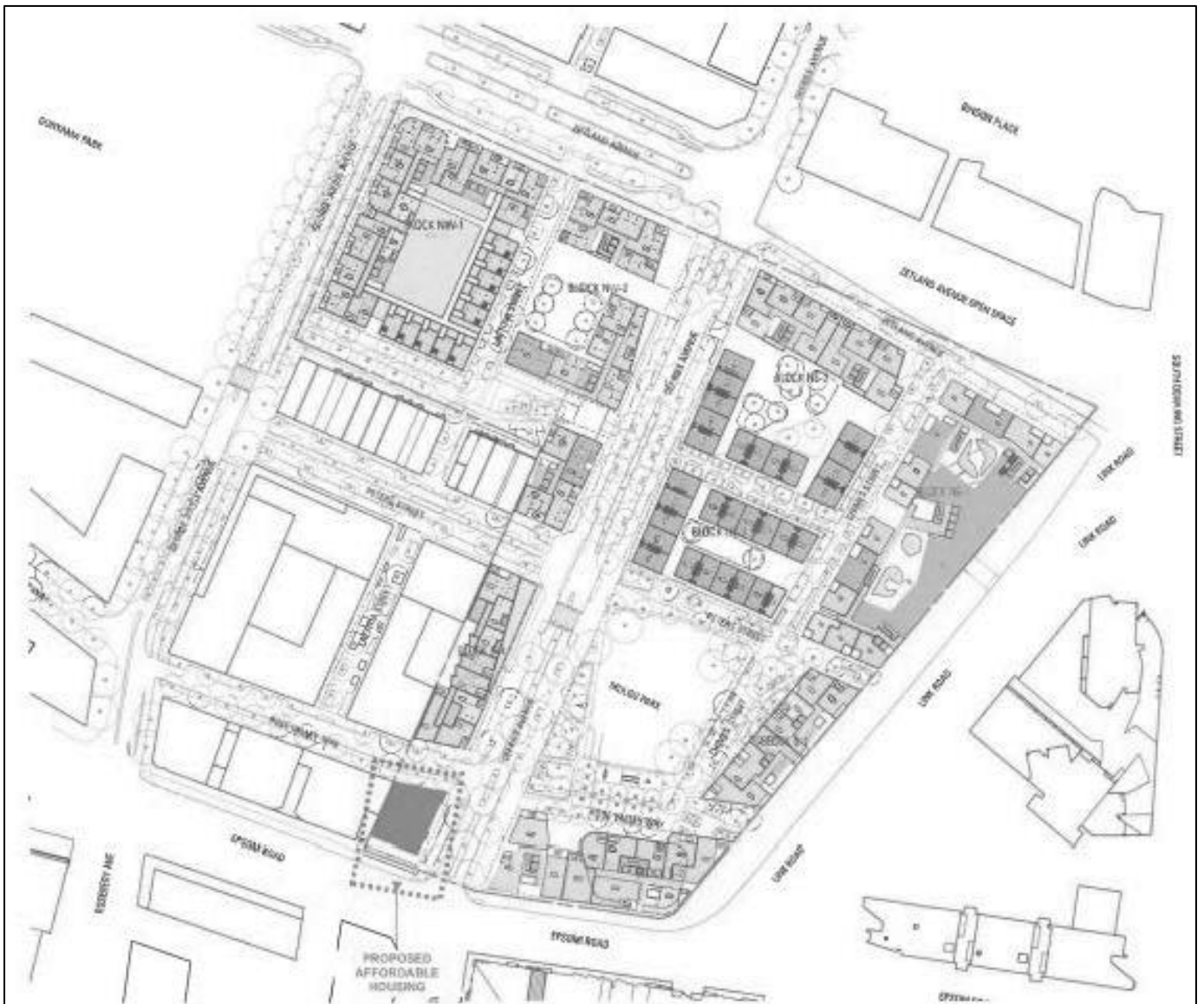
Floor	Ceramic 600x600 tile polished finish
Walls	Ceramic 600x600 tile polished finish
Shaving Cabinet	Custom wall-mounted cabinet, full mirrored doors
Wall hung basin	Ceramic wall mounted basin with pop-up plug and waste
Tapware	Alder chrome basin mixer, bath mixer, shower mixer, shower handheld set
Toilet	Wall-hung white toilet
Bathtub	Freestanding white bathtub with black pop-up waste plug
Shower screen	Semi Frameless glass
Accessories	Chrome toilet roll holder, towel rail, hand towel ring, soap dishes, robe hooks
Lights	LED down lights with satin finish
Door	Hollow doors, Paint finish low sheen
Ceiling	DULUX Lexicon white, flat finish

LAUNDRY

Floor	Stone white marble look tile, 600x600 polished finish
Walls	Pure white 100mm high skirting tile with splashback.
Sink	Stainless steel sink
Tapware	Polished chrome mixer
Clothes dryer	Wall-mounted, all enameled white
Lights	LED down lights with satin finish
Door	Hollow doors, Paint finish low sheen
Ceiling	DULUX Lexicon white, flat finish

ANNEXURE C

Affordable Housing Building Location Plan



	GFA	1B	2B	
Ground	269 m ²	2	0	(includes Retail/ Community)
Level 01	275 m ²	1	2	
Level 02	275 m ²	1	2	
Level 03	275 m ²	1	2	
Level 04	275 m ²	1	2	
Level 05	275 m ²	1	2	
Level 06	275 m ²	1	2	
Level 07	275 m ²	1	2	
	2194 m²	9	16	