

Planning agreement

The Council of the City of Sydney ABN 22 636 550 790

and

Botany Road Development Pty Ltd ACN

For 74-108 Botany Road and 84-100 Wyndham Street,
Alexandria NSW



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THIS PLANNING AGREEMENT is made on

2025.

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**); and
- (2) **Botany Road Development Pty Ltd** ACN 667 402 397 as trustee for the Botany Road Development Trust ABN 31 744 075 878 of Level 15, 124 Walker Street, NORTH SYDNEY NSW 2060 (the **Developer**).

BACKGROUND

- (A) The Developer is the owner of the Land and intends to undertake the Development on the Land.
- (B) The Developer has offered to enter into this document with the City to provide the Public Benefits on 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)*.

Adverse Affectation has the same meaning as in Part 3 of Schedule 2 of the *Conveyancing (Sale of Land) Regulation 2022 (NSW)*.

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 public holiday) on which banks are open for general banking business in Sydney, Australia.

City's Policies means all 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.

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:

- (b) is in or enters the public domain through no fault of the receiving party or any of its officers, employees or agents;
- (c) 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
- (d) is or was developed by the receiving party independently of the disclosing party and any of its officers, employees or agents.

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

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

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

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

Development Application means the development application identified in Item 5 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 the 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)*.

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 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 Amount(s) means the total amount listed in Item 6 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 7 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.

Instruments means the easement and positive covenant to be created pursuant to s88B of the *Conveyancing Act 1919* (NSW) in the form shown in Annexure A, subject to any amendments agreed to by the City, acting reasonably.

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

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

Occupation Certificate has the same meaning as in the Act.

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.

Plan means the plan attached at Annexure A.

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.

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

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

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.

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 Development.

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 date of execution of this document by all parties to 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 the registered proprietor of the Land;
 - (ii) 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;
 - (iii) 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

(iv) 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.

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.

6. INSTRUMENTS FOR PUBLIC ACCESS

The Developer must ensure that the creation and registration of the Instruments occur on or before the date or milestone referred to in clause 1 of Schedule 3 of this document.

7. INDEMNITY

The Developer indemnifies the City against all damage, expense, loss or liability of any nature suffered or incurred by the City 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 to the extent 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 any person engaged by the City).

8. REGISTRATION AND CAVEAT

8.1 Registration of this document

(a) The Developer:

- (i) consents to the registration of this document at the NSW Land Registry Services on the titles to the Land;
- (ii) warrants that it has obtained all consents to the registration of this document on the certificate of title to the Land; and
- (iii) must within 20 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) providing the City with payment for registration, electronic lodgement and requisition fees (where applicable) required for registration of this document at NSW Land Registry Services.

- (iv) The Developer 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.

8.2 Release of this document

- (a) If the City is satisfied that the Developer has provided all Public Benefits and otherwise complied with this document then the City must promptly do all things reasonably required to remove this document from the titles to the Land.
- (b) The Developer must, within 10 Business Days of a written request from the City, do all things necessary to allow the City to comply with clause 8.2(a), 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) providing the City with payment for registration, lodgement and requisition fees (where applicable) required for removal of this document from the titles to the Land by NSW Land Registry Services.

9. DISPUTE RESOLUTION

9.1 Application

Any Dispute must be determined in accordance with the procedure in this clause 9.

9.2 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 for resolution. The Dispute Notice must:
 - (i) be in writing;
 - (ii) state that it is given pursuant to this clause 9; 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 must meet at least once to attempt to resolve the Dispute.
- (c) The Developer's Representative and the City's Representative may meet more than once to resolve a Dispute. The Developer's Representative and the City'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.

9.3 **Not use information**

The purpose of any exchange of information or documents or the making of any offer of settlement under this clause 9 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 9 for any purpose other than in an attempt to settle the Dispute.

9.4 **Condition precedent to litigation**

Subject to clause 9.5, 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.

9.5 **Summary or urgent relief**

Nothing in this clause 9 will prevent a party from instituting proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.

10. **TAXES AND GST**

10.1 **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.
- (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 10.1(a).

10.2 **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.

10.3 **Supply subject to GST**

To the extent that clause 10.2 does not apply to a supply made under this document, this clause 10.3 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 10.3(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 10.3(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 10.3.
- (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.

11. **DEALINGS**

11.1 **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.

11.2 Dealing by the Developer

- (a) Prior to registration of this document in accordance with clause 8, the Developer must not Deal with this document or the Land without:
 - (i) the prior written consent of the City; and
 - (ii) the City, the Developer and the third party the subject of the Dealing entering into a deed of consent or novation to the Dealing on terms acceptable to the City acting reasonably. Any deed of novation to be entered into must be substantially in the same form as shown in Annexure C.
- (b) 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 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 or mortgagee of the whole or any part of the Land without:
 - (A) the prior written consent of the City; and
 - (B) the City, the Developer and the third party the subject of the Dealing entering into a deed of consent or novation to the Dealing on terms acceptable to the City acting reasonably . Any deed of novation to be entered into must be substantially in the same form as shown in Annexure C.
- (c) The Developer must pay the City's costs and expenses relating to any consent or documentation required due to the operation of this clause 11.2.

11.3 Extinguishment or creation of interests

- (a) Prior to the registration of the Instrument, the Developer must extinguish:
 - (i) all leases and licences affecting the Land that are inconsistent with the Instrument;
 - (ii) registered dealing BK 2607 NO 220 – Right of Carriageway affecting the Land; and
 - (iii) any other encumbrance registered on the Land that is inconsistent with the Instrument. The parties agree for the abundance of caution

that the following registered dealings affecting Lot 11 in DP 219505 need not be extinguished:

- (A) dealing H237356 right of carriageway; and
- (B) dealing J475402 easement for drainage.

12. **TERMINATION**

- (a) The City or the Developer may terminate this document by notice in writing to the Developer if:
 - (i) the Development Consent lapses;
 - (ii) the Development Consent is surrendered by the Developer; or
 - (iii) the Development Consent is found to be invalid by a Court of competent jurisdiction (after the expiry of appeal rights and if an appeal is made, on final determination of the appeal).
- (b) If the document is terminated under clause 12(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) each party 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, at the Developer's cost, do all things reasonably required to remove this document from the titles to the Land.

13. **LIMITATION OF LIABILITY**

- (a) Botany Road Development Pty Limited (**Trustee**) enters into this document only in its capacity as trustee for the Botany Road Development Trust (**Trust**) constituted under the Botany Road Development Trust - Trust Deed dated 26 April 2023 (**Trust Deed**) and in no other capacity.
- (b) A liability arising under or in connection with this document is limited to and can be enforced against the Trustee only to the extent to which it can be and is in fact satisfied out of property of the Trust from which the Trustee is actually indemnified for the liability.
- (c) This limitation of the Trustee's liability applies despite any other provision of this document and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this document.
- (d) No party to this agreement or any person claiming through or on behalf of them will be entitled to:
 - (i) claim from or commence proceedings against the Trustee in respect of any liability in any capacity other than as trustee of the Trust;

- (ii) seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to the Trustee, or provide in any liquidation, administration or arrangement of or affecting the Trustee (except in relation to property of the Trust); or
 - (iii) enforce or seek to enforce any judgment in respect of a liability under this agreement or otherwise against the Trustee in any capacity other than as trustee for the Trust.
- (e) The provisions of this clause 13 shall not apply to any obligation or liability of the Trustee to the extent that it is not satisfied because, under the Trust Deed or by operation of law, there is a reduction in the extent of the Trustee's indemnification out of the assets of the Trust as a result of the Trustee's failure to properly perform its duties as trustee of the Trust.
- (f) Nothing in clause 13(e) shall make the Trustee liable to any claim for an amount greater than the amount which the City would have been able to claim and recover from the assets of the Trust in relation to the relevant liability if the Trustee's right of indemnification out of the assets of the Trust had not been prejudiced by failure to properly perform its duties.
- (g) The Trustee is not obliged to do or refrain from doing anything under this agreement (including incur any liability) unless its liability is limited in the same manner as set out in clauses 13 (b) to 13 (e).
- (h) The Trustee represents and warrants to the City:
 - (i) it is the only trustee of the Trust;
 - (ii) no action has been taken, or as far as it is aware has been proposed, to remove it as trustee of the Trust;
 - (iii) it has the power to enter into and observe its obligations under this document, in its capacity as Trustee of the Trust;
 - (iv) it has all authorisations necessary to:
 - (A) enter into this document;
 - (B) perform its obligations under this document; and
 - (C) allow those obligations to be enforced against it;
 - (v) it has a right to be fully indemnified to the value of the property in the Trust in respect of obligations incurred by it under this document;
 - (vi) the Trust has been validly created and is in existence and solvent at the date of the document and the Trust will not vest or come to an end during the term of the document; and
 - (vii) there are and will remain at all times while the Trustee has obligations under the document, sufficient assets within the Trust to ensure that the Trustee is able to comply with those obligations.

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

The Developer must not issue any information, publication, document or article for publication in any media concerning this document without the City's prior written consent.

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 and the Developer'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	Folio Identifiers 2/136012, 11/219505, 3/1146614, 1/510091, 2/659166 and 11/135914, known as 74-108 Botany Road and 86-100 Wyndham Street, Alexandria NSW
2.	Development	<p>Demolition of existing structures, site preparation, remediation works and bulk excavation for two levels of basement. Construction of a mixed use development comprising health research facilities and retail uses with ancillary parking.</p> <p>The total Gross Floor Area of the Development on the Land is 27,089 square metres.</p>
3.	City's Representative	<p>Name: Director, Planning, Development and Transport</p> <p>Address: Level 1, 456 Kent Street, Sydney NSW 2000</p> <p>Email: planningsystemsadmin@cityofsydney.nsw.gov.au</p> <p>Or such alternative representative nominated by the City from time to time and notified in writing to the Developer's Representative</p>
4.	Developer's Representative	<p>Name: Nicholas Smith</p> <p>Address: Level 15, 124 Walker Street, North Sydney 2026</p> <p>Email: nsmith@kurrabagroup.com</p> <p>Or such alternative representative nominated by the Developer from time to time and notified in writing to the City's Representative</p>
5.	Development Application	D/2024/937
6.	Guarantee Amount	Not applicable
7.	Guarantee Amount Due Date	Not applicable

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.	Planning instrument and/or development application (section 7.4(1) of the Act) The Developer has: (a) sought a change to an environmental planning instrument; (b) made, or proposes to make, a Development Application; or (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(a) No (b) Yes (c) No
2.	Description of land to which this document applies (section 7.4(3)(a) of the Act)	Item 1 of Schedule 1.
3.	Description of change to the environmental planning instrument to which this document applies and/or the development to which this document applies (section 7.4(3)(b) of the Act)	The Development as described in clause 2.1.
4.	The nature and extent of the provision to be made by the developer under this document, the time or times by which the provision is to be made and the manner in which the provision is to be made (section 7.4(3)(c) of the Act)	Schedule 3 and Annexure A.
5.	Whether this document excludes (wholly or in part) or does not exclude the application of section 7.11, 7.12 or 7.24 to the development (section 7.4(3)(d) of the Act)	Section 7.11 not excluded Section 7.12 not excluded Section 7.24 not excluded

ITEM	SECTION OF ACT OR REGULATION	PROVISION/CLAUSE OF THIS DOCUMENT
6.	Applicability of section 7.11 of the Act (section 7.4(3)(e) of the Act)	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.
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 9
9.	Enforcement of this document (section 7.4(3)(g) of the Act)	Clause 7
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 (section 205(2) of the Regulation)	Creation and registration of Instruments
13.	Whether certain requirements of this document must be complied with before a subdivision certificate is issued (section 205(2) of the Regulation)	Nil
14.	Whether certain requirements of this document must be complied with before an occupation certificate is issued (section 205(2) of the Regulation)	Creation and registration of Instruments
15.	Whether the explanatory note that accompanied exhibition of this document may be used to assist in construing this document (section 205(5) 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. The Attributed Value, timing of delivery and additional specifications relating to the Public Benefits is set out in the table below

	Public Benefit	Attributed Value	Due date	Additional specifications
1.	24/7 Right of Access	Nil	On or before the date of issue of the first Occupation Certificate for the Development.	Creation of the Instruments (Refer to Annexure B) for a Right of Access with a minimum width of 3.5m and to the dimensions as shown on the Plan.

2. INSTRUMENTS

- (a) The Developer must at its own cost, create the Instruments pursuant to s88B of the Conveyancing Act 1919 (NSW) by registering the relevant plan of subdivision of the Land (or plan of consolidation of the Land).
- (b) The Developer must prepare and execute the Instruments and then deliver the Instruments to the City for execution.
- (c) The City must execute and deliver the Instruments to the Developer as soon as reasonably practicable following receipt of the Instruments under sub clause 2(b).
- (d) The Developer must register the Instruments:
 - (i) as part of the registration of the relevant plan of subdivision or plan of consolidation of the Land; and
 - (ii) before the issue of the relevant Occupation Certificate for the Development.
- (e) If requested by the Developer, the City is to do all things reasonably necessary to enable registration of the Instruments, including responding to any requisitions raised by NSW Land Registry Services.

EXECUTION

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 officer

Signature of witness

Name of officer

Name of witness

Position of officer

456 Kent Street, Sydney NSW 2000

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

Address of witness

EXECUTED by **BOTANY ROAD
DEVELOPMENT PTY LTD** (ACN 667 402
3970 as trustee for the Botany Road
Development Trust (ABN 31 744 075
878) in accordance with s127(1) of the
Corporations Act 2001 (Cth):

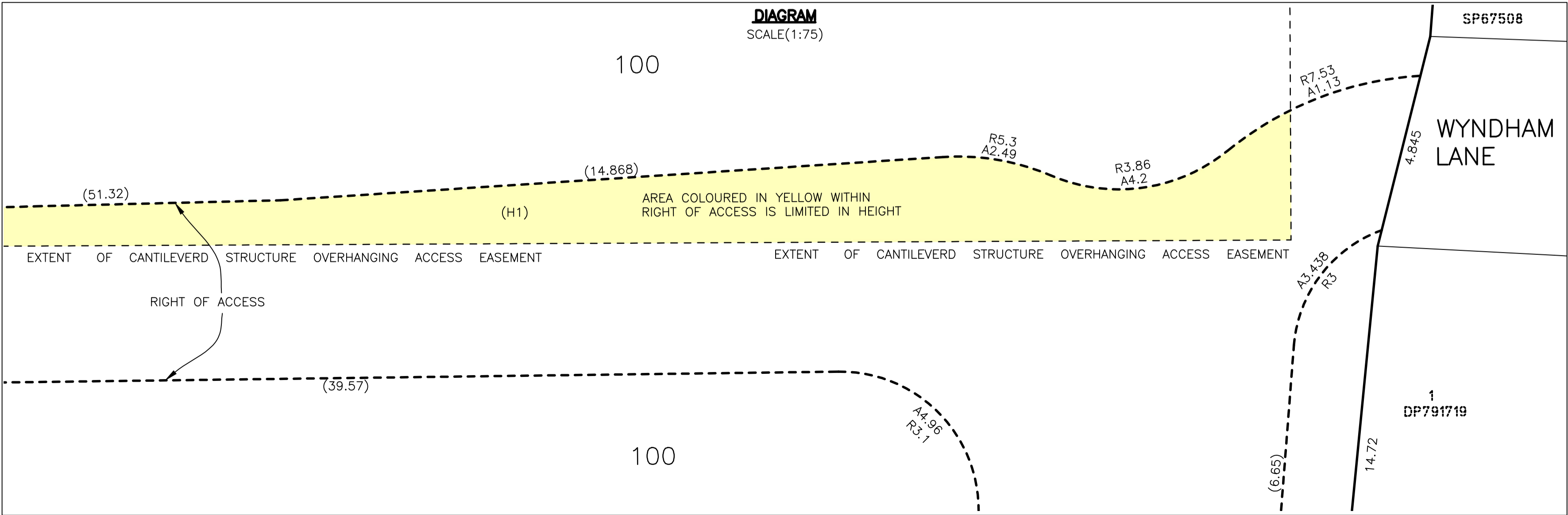
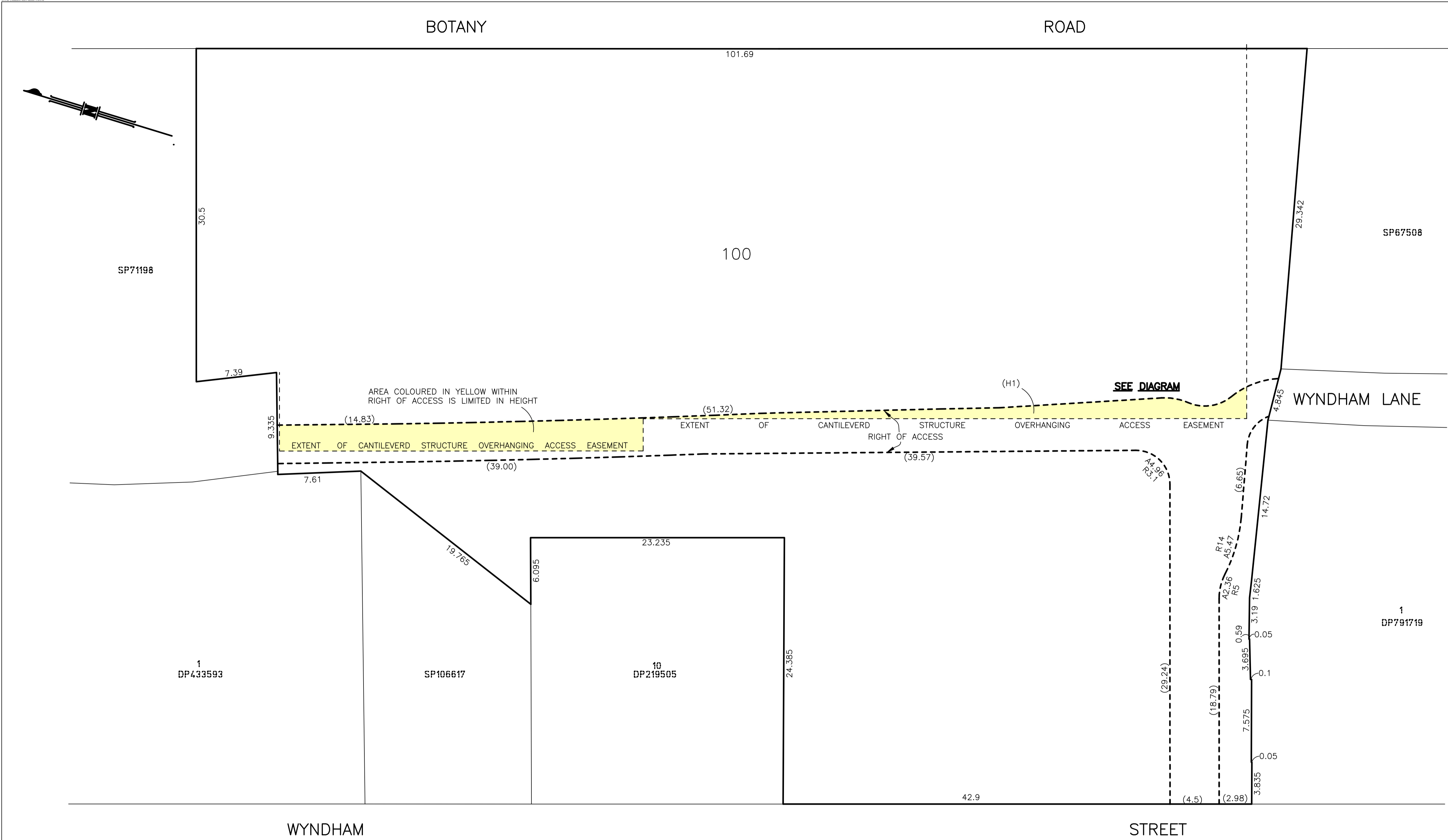
Signature of director

Signature of director/secretary

Name

Name

ANNEXURE A – PLAN



NOTE:

- RIGHT OF ACCESS IS LIMITED IN HEIGHT IN THAT AREA COLORED YELLOW
- THE RIGHT OS ACCESS IS LIMITED IN DEPTH TO THE UPPER SURFACE OF THE PAVEMENT OF THE ACCESS CORRIDOR AND LIMITED IN HEIGHT TO 4M ABOVE THE PAVEMENT OF THE ACCESS CORRIDOR

CLIENT

BOTANY ROAD DEVELOPMENT Pty Ltd

PROJECT

PLAN OF CONSOLIDATION
OF
LOT 2 DP136012,
LOT 11 DP219505, LOT 11
DP135914, LOT 2 DP659166,
LOT 1 DP510091, LOT 3
DP1146614 AND PROPOSED
ACCESS EASEMENT
(STRATUM LIMIT)

NOTES

(i) This plan has been prepared for the exclusive use of BOTANY ROAD DEVELOPMENT Pty Ltd and their consultants for design purposes and is not to be used for any other purpose or by any other entity without the express permission of LandPartners Pty Ltd.

(ii) All dimensions shown hereon are approximate & subject to survey.

(iii) Dimensions have been determined from plans held at Land Registry Services, Easement location determined from Architectural Plans.



REV	DATE	DRAWN	CHECKED	APPROVED	SURVEY DATE
2	29/05/2025	TP	GKO	GKO	-
1	13/05/2025	TP	GKO	GKO	-

Sydney Office
Level 2
23-29 South Street
Rydalmere NSW 2116
p: (02) 9685 2000
e: sydney@mnglandpartners.com.au
w: www.landpartners.com.au

Perth | Brisbane | Melbourne | Sydney | Broome | South West WA

LEVEL DATUM N/A	LOCAL AUTHORITY SYDNEY
LEVEL ORIGIN -	CONTOUR INTERVAL N/A
MERIDIAN -	CO-ORD SYSTEM -

UDN SY076363.000.1.2 SHEET 1 OF 1

ANNEXURE B - INSTRUMENTS

INSTRUMENT SETTING OUT TERMS OF EASEMENTS OR PROFITS À PRENDRE INTENDED TO BE CREATED OR RELEASED AND OF RESTRICTIONS ON THE USE OF LAND OR POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B CONVEYANCING ACT 1919.

(Sheet 1 of 7 sheets)

Plan: Plan of easement over [insert Lot and DP number]

Full name and address of the owners of the land: [insert]

Part 1 (Creation)

Number of item shown in the intention panel on the plan	Identity of easement, profit à prendre, restriction or positive covenant to be created and referred to in the plan.	Burdened lot(s) or parcel(s):	Benefited lot(s), road(s), bodies or Prescribed Authorities:
1	Easement for public access variable width limited in height and depth [<i>#insert consistent with final plan</i>]	[insert Lot and DP number]	The Council of the City of Sydney
2	Positive Covenant (Public Access)	[insert Lot and DP number]	The Council of the City of Sydney

Plan:

Plan of easements and positive covenant over [insert Lot and DP number]

Part 2 (Terms)

1 INTERPRETATION

1.1 Definitions

These meanings apply unless the contrary intention appears:

Authorised User means every person authorised by the Council or the Owner of the Lots Benefited for the purposes of the Easement created by this Instrument. Subject to the terms of the Easement, an Authorised User includes the employees, agents, servants, contractors, workers, licensees and invitees of the Council or the Owner of the Lots Benefited. Where the Easement benefits the Council or the Council is the owner of the Lot(s) Benefited, an Authorised User includes members of the public.

Council means The Council of the City Sydney, its successors and any other body serving the same or similar function.

Easement means the easements, restrictive covenant or positive covenants in this Instrument and includes the conditions in relation to that Easement.

Easement Site means in relation to an easement or positive covenant created by this Instrument, the site of that easement or positive covenant on the Plan.

Emergency Situation means any circumstance involving a need, for reasons of health, safety or security, for evacuation or egress from a building or other place or restriction of access, including fire, earthquake, flooding terrorist activity and any training or test of such evacuation or egress.

Grantee means the owner, or if there is more than one jointly the owners, of an estate in fee simple of a Lot Benefited.

Grantor means the owner, or if there is more than one jointly the owners, of an estate in fee simple of a Lot Burdened.

Lot Benefited means a lot or prescribed authority referred to in Part 1 of this Instrument as being land or authority benefited by an Easement created by this Instrument.

Lot Burdened means a lot referred to in Part 1 of this Instrument as being land burdened by an Easement created by this Instrument.

Owner means every person who is at any time entitled to an estate in a lot referred to in Part 1 of this Instrument as registered proprietor or mortgagee in possession.

Plan means the plan registered together with this Instrument.

Required Credit Rating means a long-term credit rating of at least A- by Standard and Poor's (or equivalent rating).

1.2 Interpretation

In this Instrument:

- (a) the singular includes the plural and vice versa;
- (b) a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and any regulations and statutory instruments issued under it;

Plan:

Plan of easements and positive covenant over [insert Lot and DP number]

- (c) a reference to anything (including any amount) is a reference to the whole or each part of it and a reference to a group of persons is a reference to any one or more of them;
- (d) specifying anything in this agreement after the words including, includes or for example or similar expressions does not limit what else might be included unless there is express wording to the contrary;
- (e) a reference to a right or obligation of two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
- (f) the expression "Grantor" includes the Grantor, its successors and every person who is entitled to an estate or interest in possession of the Lot Burdened or any part of it with which the right is capable of enjoyment;
- (g) the expression "Grantee" includes the Grantee, its successors and every person who is entitled to an estate or interest in possession of the Lot Benefited or any part of it with which the right is capable of enjoyment;

1.3 Headings

Headings do not affect the interpretation of this Instrument.

1.4 Positive covenants and maintenance requirements

A requirement in an Easement which requires a Grantee or Grantor to maintain or repair an Easement Site or anything in an Easement Site is a positive covenant according to section 88BA of the Act.

1.5 Severability

If a provision of an Easement under this Instrument is void, unenforceable or illegal, then that provision is severed from that Easement and the remaining provisions of that Easement have full force and effect.

2 TERMS OF EASEMENT FOR PUBLIC ACCESS VARIABLE WIDTH LIMITED IN HEIGHT AND DEPTH [#INSERT (IF APPLICABLE)] NUMBERED ONE IN THE PLAN

2.1 Grant

Subject to the Grantor's rights under clause 2.3 and 2.5, the Grantor grants to the Council and its Authorised Users full and free right to go, pass and repass over the Easement Site at all times:

- (a) on foot; and/or
- (b) with or without vehicles; and/or
- (c) with or without animals,

for all lawful purposes.

2.2 Purpose of the Easement

The Council and the Grantor acknowledge that the Easement is being provided at no cost to the public and is for the purpose of providing reasonable access over the Easement Site to any member of the public in accordance with and subject to the provisions of this Easement.

Plan:

Plan of easements and positive covenant over [insert Lot and DP number]

2.3 Restrictions on access

Without limiting the Grantor's rights under clause 2.4, the Grantor may temporarily close, or temporarily restrict, public access to the Easement Site under this easement:

- (a) for the purposes of, or as a result of the repair, maintenance or refurbishment of any improvement on the Lot Burdened, provided that:
 - (i) such restriction is for a period not exceeding one month (or such longer period of time as agreed by Council from time to time);
 - (ii) where the restriction is for a period not exceeding 24 hours, reasonable steps are taken to minimise the disturbance caused in accordance with rights granted under clause 2.1; and
 - (iii) where the restriction is likely to be for a period for between 24 hours and up to one month, the Grantor:
 - (A) obtains the prior written consent of the Council and complies with any conditions imposed on that consent (such consent to be granted or withheld in the City's absolute discretion); and
 - (B) takes reasonable steps to minimise the disturbance caused in accordance with the rights granted under clause 2.1; or
- (b) when reasonably necessary to prevent the use of the Easement Site by members of the public in a manner that gives rise to a hazard or nuisance;
- (c) for any other purpose provided the Grantor:
 - (i) obtains the prior written consent of the Council and comply with any conditions imposed on that consent (such consent to be granted or withheld in the City's absolute discretion); and
 - (ii) takes reasonable steps to minimise the disturbance caused in accordance with the rights granted under clause 2.1.

2.4 Emergencies

- (a) The Grantor may temporarily restrict access to the Easement Site in an Emergency Situation provided that it gives as much notice as is practicable to the Council and uses all reasonable endeavours to resolve the Emergency Situation and restore access to the Easement Site as soon as possible.
- (b) The Council or the Grantor may erect temporary signage or barriers on the Easement Site to restrict temporarily access to the Easement Site by members of the public under this easement if either of them reasonably forms the view that such access is unsafe.
- (c) Despite any other provision of this instrument:
 - (i) the Grantor must at all times allow the Easement Site to be used for access by all emergency and other essential service organisations in connection with an Emergency Situation; and
 - (ii) the Grantor must not interfere with such access.

Plan:

Plan of easements and positive covenant over [insert Lot and DP number]

2.5 Inspection

The Grantor must upon reasonable notice, permit the Council to enter the Easement Site with any equipment or machinery reasonably necessary to inspect the Easement Site for the purposes of ensuring that the grantor under Positive Covenant numbered 2 in the Plan is complying with its obligations under the Positive Covenant numbered 2 in the Plan.

2.6 Name of the person or Authority empowered to release or vary or modify any or all of the Easement numbered one in the Plan:

The Council of the City of Sydney

3 TERMS OF POSITIVE COVENANT (PUBLIC ACCESS) NUMBERED TWO IN THE PLAN

3.1 Maintenance of Easement Site

The Grantor must:

- (a) at all times, maintain the Easement Site (including any lighting) in good condition and state of repair; and
- (b) not permit the Easement Site to become unsafe; and
- (c) keep the Easement Site clean and free from rubbish.

3.2 Public Liability Insurance

- (a) The Grantor must take out and maintain or procure the taking out and maintenance of a public liability insurance policy with respect to any liabilities to Council or to any other person for the death or injury of any person or damage to third party property within or about the Easement Site for an amount in respect of any single accident of not less than \$20 million, or such higher amount as may be required by Council (acting reasonably).
- (b) The policy referred to in clause 3.2(a) must:
 - (i) note Council as an interested party; and
 - (ii) be taken out and maintained with reputable insurers which at all times hold at least the Required Credit Rating.
- (c) Council may request a copy of the policy at any time with reasonable notice.

3.3 Indemnity

The Grantor indemnifies the Council against any claims or damages arising from the use of the Easement Site by the Council or any of its Authorised Users under Easement for Public Access numbered One on the Plan, except to the extent that the claim or damage is caused by or contributed to by, the wilful or negligent act or omission of the Council or any of its Authorised Users (excluding any member of the public).

Plan:

Plan of easements and positive covenant over [insert Lot
and DP number]

3.4 Person empowered to release, vary or modify the Positive Covenant numbered two in the Plan:

This Positive Covenant may only be released, varied or modified with the consent of the Council of the City of Sydney.

Plan:

Plan of easements and positive covenant over [insert Lot and DP number]

EXECUTION PAGE

Executed by Council of the City of Sydney

EXECUTED by The Council of the City of Sydney ABN 22 636 550 790 by its attorney)	
under power of attorney registered book)	
in the presence of:)	
)	
)	
)	
)	
.....)
Signature of witness)	Signature of Attorney
)	
)	
)	
.....)
Name of witness (block letters))	Name of Attorney

Executed by Botany Road Development Pty Ltd

EXECUTED by Botany Road Development Pty Ltd in accordance with Section 127 of the Corporations Act 2001 (Cth))	
)	
)	
.....	
Signature of Director		Signature of Director/Secretarty
.....	
Name of authorised person (BLOCK LETTERS)		Name of authorised person (BLOCK LETTERS)

ANNEXURE C – DEED OF NOVATION

Deed of Novation

The Council of the City of Sydney ABN 22 636 550 790 and **[party name]**
Alt [ABN/ACN/ARBN] [number] and **[party name]** **Alt** [ABN/ACN/ARBN] [number]

For ***Planning Agreement re [description/address] dated # –***
Novation date: #

Reference: [insert TRIM number]

Deed of Novation (Planning Agreement)

Version number and year of contract

Green Global Connected

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THIS DEED OF NOVATION is made on

20[**insert**].

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**); and
- (2) [**Insert name**] ABN [**insert number**] of [**insert address**] (the **Outgoing Party**).
- (1) [**Insert name**] ABN [**insert number**] of [**insert address**] (the **Incoming Party**).

BACKGROUND

- (A) The City and the Outgoing Party are parties to the Planning Agreement.
- (B) The parties agree to novate the Planning Agreement as set out in this Deed.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following definitions apply in this Deed.

Deed means this deed of novation and all annexures, schedules, attachments and exhibits.

Effective Date means the date of this Deed.

Planning Agreement means the agreement named "Planning Agreement" dated [**insert**] entered into between the City and the Outgoing Party with registration number [**insert**], a copy of which is annexed to the Schedule.

Schedule means the schedule to this Deed.

1.2 Rules for interpreting this document

Words and expressions defined in the Planning Agreement have the same meaning in this Deed.

2. NOVATION

The parties acknowledge and agree that the Planning Agreement is novated so that, on and from the Effective Date:

- (a) the Incoming Party replaces the Outgoing Party under the Planning Agreement; and
- (b) any reference in the Planning Agreement to the Outgoing Party will be read as a reference to the Incoming Party.

3. **RIGHTS AND OBLIGATIONS**

On and from the Effective Date:

- (a) the Incoming Party obtains the rights and assumes the obligations and liabilities of the Outgoing Party under the Planning Agreement in respect of events occurring on and after the Effective Date; and
- (b) the City as the continuing party must continue to comply with its obligations and liabilities under the Planning Agreement on the basis that the Incoming Party has replaced the Outgoing Party under the Planning Agreement in accordance with this Deed.

4. **RELEASE AND LIABILITY**

4.1 **City**

The City releases and discharges the Outgoing Party from:

- (a) all of the Outgoing Party's obligations and liabilities under the Planning Agreement; and
- (b) all actions, claims, demands and proceedings that it may have against the Outgoing Party in respect of the performance of, and obligations under the Planning Agreement,

arising in respect of events occurring on or after the Effective Date.

4.2 **Outgoing Party**

The Outgoing Party releases and discharges the City from:

- (a) all of the City's obligations and liabilities under the Planning Agreement; and
- (b) all actions, claims, demands and proceedings that it may have against the City in respect of the performance of, and obligations under the Planning Agreement,

arising in respect of events occurring on or after the Effective Date.

5. **CONFIRMATION OF PLANNING AGREEMENT**

Subject to this Deed, the City and the Incoming Party ratify and confirm the Planning Agreement, which remains fully effective.

6. **REPRESENTATIONS AND WARRANTIES**

6.1 **Authority**

Each party represents and warrants to each other party that it has full power and authority to enter into and perform its obligations under this Deed.

6.2 **Authorisations**

Each party represents and warrants to each other party that it has taken all necessary action to authorise the execution, delivery and performance of this Deed in accordance with its terms.

7. **GENERAL**

- (a) This Deed is governed by the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales in relation to all matters arising under, or relating to, this Deed.
- (b) Each party will take all steps, execute all deeds and do everything reasonably required by any other party to give effect to any of the actions contemplated by this Deed.
- (c) This Deed may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.
- (d) Nothing in this Deed in any way restricts or otherwise affects the City's unfettered discretion to exercise its statutory powers as a public authority.

EXECUTED as a deed.

Signed, sealed and delivered for
**THE COUNCIL OF THE CITY OF
SYDNEY** by its duly authorised officer
in accordance with s377 Local
Government Act 1993 (NSW), in the
presence of:

Signature of officer

Signature of witness

Name of officer

Name

Position of officer

456 Kent Street, Sydney NSW 2000

Address of witness

EXECUTED by [**OUTGOING PARTY**]
[**ACN**] in accordance with s127(1) of
the Corporations Act 2001 (Cth):

Signature of director

Signature of director/secretary

Name

Name

EXECUTED by [**INCOMING PARTY**]
[**ACN**] in accordance with s127(1) of
the Corporations Act 2001 (Cth):

Signature of director

Signature of director/secretary

Name

Name

SCHEDULE